



**COURT OF MAGISTRATES (GOZO)
AS A COURT OF CRIMINAL JUDICATURE**

Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Given today, Thursday, the eleventh (11th) of April 2024

Case Number 11/2024

The Police

(Superintendent Bernard Charles Spiteri and
Inspector Josef Gauci)

Vs

Jesmond Galea Enriquez

Mechtilde-Maria Galea Enriquez

A. Preliminaries

The Court,

Having seen that **Jesmond Galea Enriquez**, 63 years old, holder of identity card number 72961(M) and **Mechtilde-Maria Galea Enriquez**, 60 years holder of identity card number: 178363(M) were accused that on the 8th August 2019 and in the following months and years, at Marsalforn, limits of Zebbug, Gozo and/or in these Islands:

1. misapplied, converted to their own benefit or to the benefit of any other person, anything which has been entrusted or delivered to them under a title which implied an obligation to return such thing or to make use thereof for a specific purpose, where the amount of damage caused by them exceeded five hundred euros (€500) but did not exceed five thousand euros (€5,000), and this to the detriment of Joseph Gatt, in breach of articles 293 and 310(b) of Chapter 9 of the Laws of Malta;
2. and also in the same circumstances, to the prejudice of Joseph Gatt, made any other fraudulent gain not specified in the preceding articles of this Sub-title, in breach of article 309 of Chapter 9 of the Laws of Malta.

The Court was kindly requested that in case of guilt, in addition to any punishment to which the persons convicted of an offence may be sentenced, to order the offenders to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid

or for any damages or other injury or harm, moral harm and or psychological harm, caused to such party by or through the offence, and any such order may include both a direction to make restitution and, or, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure, and this in terms of article 15A of Chapter 9 of the Laws of Malta.

Having seen the documents exhibited and all acts of the Case;

Having seen that the Attorney General gave his consent for this case to be dealt with summarily;¹

Having heard the witnesses brought forward by the Prosecution and the Parte Civile;

Having heard the witnesses put forward by the Defence;

Having heard the submissions of the Prosecution, the Parte Civile and the Defence earlier on today;

Having seen that the case was postponed for judgement for today:

Considered:

B. Summary of Evidence Tendered

¹ Fol. 18, 19, 19(a) and 19(b) of the records of the Case.

Inspector Josef Gauci² testified that on the 28th April 2023 a report was lodged at the Valletta Police Station by the parte civile Joseph Gatt against the accused Mechtilde Maria Galea Enriquez. Gatt reported that he had bought a yacht from the same Mechtilde Maria Galea Enriquez and paid the sum of five thousand euros (€ 5,000) as deposit on such yacht. However it resulted that the yacht was sold to somebody else. Gatt wanted back the five thousand euro (€ 5,000) he had paid. Although he had contacted the same Mechtilde Maria Galea Enriquez to have the money returned, the same Mechtilde Maria did not return the money back. From the investigations which were carried out, it also transpired that a report regarding the same issue had also been made against the accused Jesmond Galea Enriquez.

Superintendent Bernard Charles Spiteri³ testified that on the 16th May 2023 he received a written complaint on behalf of the parte civile Joseph Gatt wherein the Police were requested to investigate Jesmond Galea Enriquez in connection with an alleged fraud and misappropriation that was committed to the detriment of Joseph Gatt in 2019. The case concerned a yacht Nautical 44 and it involved the sum of five thousand euro (€ 5,000). The Police also received a complaint to investigate a certain Mechtilde Maria Galea Enriquez. This second complaint was handled by Inspector Josef Gauci.

Jesmond Galea Enriquez was called in for questioning and released a statement to the Police in the presence of his legal counsel. Mechtilde

² Fol. 22 et seq.

³ Fol. 132 et seq.

Maria Galea Enriquez was also called in for questioning and she also released a statement. The relative statements were filed in the records of these proceedings.

In his statement **Jesmond Galea Enriquez**,⁴ said that he had a yacht which he wanted to sell. The asking price for the same was twenty-thousand euro (€ 20,000). He confirmed that Gatt had given him the sum of five thousand euro (€ 5,000) as a deposit for the purchase of this yacht. Jesmond Galea Enriquez insisted that this was a non-refundable deposit. Jesmond stated that he did not know why the sale never materialised and that eventually he sold the vessel to an Italian guy. When his attention was drawn to the fact that Gatt had discovered that the vessel was not registered, VAT had not been paid, there were enforcement notices issued by Transport Malta and there were also amounts due to the marinas where the yacht had been anchored, Jesmond Galea Enriquez insisted that the yacht was registered under the Swiss flag. As regards the issue of Transport Malta, he said that Transport Malta had assumed that the vessel had been abandoned since he had not replied to the affixed notice because he had suffered a stroke. Jesmond also insisted that he did not owe anything to Transport Malta or to any marina and that the VAT due had been paid.

As regards his sister's involvement in the case, Jesmond said that his sister did not own the yacht. She had started taking care of his affairs when he suffered the stroke. When she got to know of his problem with Gatt, she offered her brother to settle this amount to Gatt. Jesmond decided to

⁴ Fol. 116 et seq.

pay this sum back to Gatt. He decided to pay it back in cash. However, Joseph Gatt wanted to get the refund via bank transfer.

In her statement **Mechtilde Maria Galea Enriquez**⁵ declared that she got to know there was an argument between her brother Jesmond Galea Enriquez and Joseph Gatt concerning the sale of a yacht. She said that her brother wanted to return the five thousand euro (€ 5,000) to Joseph Gatt, which sum Gatt had paid to her brother in connection with the sale of this yacht. Her brother gave this sum to her so that it would be delivered to Gatt. This because her brother had suffered a stroke and he had mobility problems. Mechtilde phoned Gatt to pick up the money from her residence in Żebbuġ, Gozo. However Gatt insisted with her he wanted the money deposited to his bank account. Mechtilde did not want to do that as otherwise the bank would have asked how she got the money. Gatt never turned up at her residence to pick up the money. Subsequently, her partner David Davis happened to be going to Malta and she offered Gatt that Davis would meet Joseph at Manoel Island and hand him over the money. Gatt did not turn up for this meeting, Davis returned to Gozo with the money and Mechtilde returned the money back to her brother.

PC 2412 Miriah Bongailas⁶ testified that on the 3rd October 2020 she received a report from Joseph Gatt at the Valletta Police Station. Gatt reported that in August 2019 he was going to purchase a yacht from Jesmond Galea Enriquez and he paid him the sum of five thousand euro (€ 5,000). Gatt reported that he had proof that the vessel was never

⁵ Vide fol. 122 et seq.

⁶ Fol. 138 et seq.

registered with the Canadian Ship Registrar. Gatt told the Police that Jesmond Galea Enriquez had also defrauded other people. He also claimed with the Police that the vessel was about to be impounded by the Enforcement Section at Transport Malta and Jesmond Galea Enriquez used the sum of money Gatt had given him to lift the vessel from the sea and to transfer it to a repair yard at Manoel Island. The complainant also told the Police that the vessel had been sold to an Italian guy. Complainant also added that Jesmond Galea Enriquez's sister named Mechtilde Maria Galea Enriquez joined the fray. She wanted to refund the amount of five thousand euro (€ 5,000) in cash. However the complainant had insisted to have the sum paid via bank transfer. However Mechtile Maria Galea Enriquez refused to avoid problems with the Bank.

PS 506 Derrick Bugeja⁷ testified that on the 28th April 2023 he was informed by the Valletta Police Station that a report was going to be filed as regards a case of alleged fraud and that this case was going to be transferred to the Gozo Police Station for investigation. As per report filed at the Valletta Police Station, complainant Joseph Gatt reported that on the 8th October 2019 he was defrauded the sum of five thousand euro (€ 5,000). The complainant said that on the 8th October 2019 he crossed over to Gozo to buy a yacht from Mechtilde Maria Galea Enriquez. He paid her the sum of five thousand euro (€ 5,000). However subsequently it transpired that the yacht had been sold to somebody else. Complainant said that he requested a refund of the money he had paid. Mechtilde Maria Galea Enriquez informed him that the money was going to be

⁷ Fol. 143 et seq.

refunded to him. However nothing happened. He also said that eventually he lost contact completely with the accused Mechtilde Maria Galea Enriquez.

Parte Civile **Joseph Gatt**⁸ testified that he had known Jesmond Galea Enriquez for around eighteen (18) years. Jesmond had a yacht which he had purchased from a Swiss individual. He suffered a stroke and he decided to sell the yacht. Originally Jesmond Galea Enriquez had offered the yacht to Gatt for the price of sixty-five thousand euro (€ 65,000). However the parte civile could not meet the requested price and decided not to buy the yacht. Subsequently, the yacht was involved in an accident as result of which it almost sank. The yacht sustained substantial damage as a result of which Jesmond Galea Enriquez had to reduce the asking price for the yacht to facilitate its sale. Gatt explained that he used to help out Jesmond in the latter's attempts to sell the yacht and this by accompanying potential purchasers for viewing. Eventually Gatt decided to buy the yacht himself for the price of twenty-thousand euro (€ 20,000) provided that the same yacht was free from any debts, it was not subject to any enforcement notices and that it was registered in Canada. He paid the sum of five thousand euro (€ 5,000) in cash as deposit for the sale to Jesmond Galea Enriquez in Marsalforn. Gatt went on to say that he subsequently got to know that the yacht was not registered. He also got to know that the vessel was the subject of an enforcement notice issued by Transport Malta and that it was debt laden. Upon learning this, Gatt decided to opt out of the purchase as the conditions were not met and he requested that he be refunded his money. However, initially Jesmond did

⁸ Fol. 149 et seq

not want to give him his money back since according to Jesmond the deposit was non-refundable. Then Jesmond agreed to give him back the money.

On being asked by the Court what was the involvement of Mechtilde Maria Galea Enriquez, Gatt replied that she was the advisor of Jesmond Galea Enriquez. He went on to add that he was offered to pick up the money from Gozo but he could not pick up the money because somebody advised him not to get any money from these people because they were dangerous people. The witness went on to say that eventually they agreed that he would meet Mechtilde Maria's partner, David Davis, at Manoel Island so that Gatt would return the outboard he had been given previously from Jesmond Galea Enriquez and he would get his deposit back. David Davis, Mechtilde Maria's partner, turned up. He picked up the outboard. However when Gatt asked him for the money, Gatt was informed by Davis that the money had been deposited in Court. However, upon verification of the same it did not result that this money had been in effect deposited in Court.

Joseph Gatt took again the witness stand during the sitting of the 20th March 2024.⁹ Gatt confirmed that the five thousand euro (€ 5,000) was paid to Jesmond Galea Enriquez and not to Mechtilde Maria Galea Enriquez. He also confirmed that the latter was not involved in the dealings concerning this yacht. She got involved when Gatt and Jesmond Galea Enriquez were debating as to whether the deposit was refundable or non-refundable.

⁹ Fol. 170 et seq.

Under cross-examination, Joseph Gatt confirmed that the whole saga had been going on for a period of seven (7) years. The first legal letter had been sent on his behalf way back in 2019 by Dr Edward Gatt. The witness confirmed that in that initial letter he had requested the payment of five thousand euro (€ 5,000). When his attention was drawn to the fact that in October 2019, he had sent another legal letter wherein he requested from Jesmond Galea Enriquez the sum of eight thousand euro (€ 8,000), Gatt replied that he also used to lend money to Mr Jesmond Galea Enriquez. Money was sent to Jesmond Galea Enriquez via Pay Pal. Following this legal correspondence which was sent, Gatt confirmed that he did not initiate any civil proceedings. Gatt explained that out of the eight thousand euro (€ 8,000) he was claiming, the amount of five thousand euro (€ 5,000) represented the deposit on the yacht whereas the remaining amount of three thousand euro (€ 3,000) were funds which Gatt had loaned to Jesmond Galea Enriquez.

Joseph Gatt also confirmed that he did not pass any money or objects to Mechtilde Maria Galea Enriquez.

David Davis¹⁰ availed himself of the right not to testify because he is co-habiting with the accused Mechtilde Maria Galea Enriquez.

Joseph Gatt testified again during the sitting of the 20th March 2024, this time as a defence witness. With reference to the document marked as Document JGE 3 exhibited by the defence, Gatt confirmed that the

¹⁰ Evidence given during the sitting of the 20th March 2024.

document contained his hand-writing. In cross-examination, the witness explained that there was legal correspondence wherein he had requested two different amounts because at one point he had also requested the refund of the amount of money which he had loaned to Jesmond Galea Enriquez besides the deposit paid. Gatt also confirmed once again that at no point did he hand over any money to Mechtilde Maria Galea Enriquez. However, he insisted that he had emails from the same Mechtilde Maria Galea Enriquez saying that she was going to refund the money he had paid as deposit for the yacht.

Having considered:

C. Legal Elements of the Charges brought against the Accused

The accused are being charged with two (2) separate offences:

- (a) the offence of misappropriation contemplated in article 293 of the Criminal Code;
- (b) the offence of fraudulent gain contemplated in article 309 of the Criminal Code.

Article 293 of Chapter 9 specifies that:

“Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title

which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:

Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.”

Four are the elements required for a finding of guilt under this specific article of law:

- (a) the delivery or entrustment of the item to the offender. Maino notes that the offence of misappropriation requires the “*affidamento o consegna*” (entrustment or delivery) of the item by the victim to the offender.¹¹ This element clearly features in the wording of article 293 of Chapter 9. In fact it is this element which distinguishes this offence from the offence of theft. Whereas in theft the item is taken contrary to the victim’s will, in misappropriation the victim is voluntarily handing over the object to the offender¹² Moreover, contrary to the offence of *truffa*, the offender does not use deceit or false pretences to coerce the victim to hand him over the item;

¹¹ L. Maino, *Commento al Codice Penale Italiano Parte II*, Donato Tedeschi e Figlio, Verona 1894.

¹² Vide *Il-Pulizija vs Enrico Petroni u Edward Petroni*, reported in Vol. 82 (1998), Part No 4, Page 195.

- (b) the item so delivered and entrusted must have been delivered or entrusted either with an obligation to return such thing or to make use thereof for a specific purpose;
- (c) thirdly the thing so delivered must be misapplied meaning that it must be converted to one's own benefit or the benefit of another person. The intention of converting it to one's own profit or that of another is required; however actual disposal or actual gain is not necessary for the completion of the offence;
- (d) fourthly the act of misappropriation must be committed with the intent to make a gain.

On the other hand article 309 contemplates what is often referred to by our Courts as *"frodi innominat"*:

"Whosoever shall make, to the prejudice of any other person, any other fraudulent gain not specified in the preceding articles of this Sub-Title shall on conviction be liable to imprisonment for a term from two months to two years or to a fine (multa)."

Dr Stefano Filletti in his criminal Law handbook describes this offence as *"a residual, umbrella provision, stipulating that a person can be guilty of fraud when maliciously with intent to defraud, deceit is applied and as a result of which an unjust gain is derived."*¹³

¹³ Filletti S., *Criminal Law Handbook*, Kite Group Malta (2023), p. 133.

The legislator has not prescribed any particular *actus reus* for this offence to subsist. The *actus reus* could be anything provided that the act would not fall under any other provision of law in the same sub-title of the Criminal Code. For a finding of guilt under this article, Maltese Courts have held that they do not even require some form of *mise-en-scène*. Reference is made to the case ***Il-Pulizija vs Aaron Mizzi*** wherein the court held:

“fir-rigward tar-reat ta’ frodi nnominata kkontemplat fl-Artikolu 309 tal-Kapitolu 9 tal-Liġijiet ta’ Malta, sempliċi gibda hija biżżejjed biex twassal għall-kummissjoni ta’ dan ir-reat u l-messa in scena mhix neċessarja. Madanakollu il-gibda trid tkun tali li twassal għat-telf patrimonjali tal-vittima hekk kif rikjesta mil-liġi.”¹⁴

D. Facts of the Case

The facts of the case can be summarised as follows: parte civile Joseph Gatt entered into negotiations with his long-time friend Jesmond Galea Enriquez to purchase a yacht from the same Jesmond Galea Enriquez for the price of twenty-thousand euro (€ 20,000). Gatt had long been interested in this yacht. However, the original asking price was too much for him. He only opted to proceed with the purchase of this yacht, after

¹⁴ Decided on the 15th January 2015 mill-Qorti tal-Appell Kriminali.

that the yacht suffered extensive damages as a result of an accident and the asking price for it went down to twenty thousand euro (€ 20,000).

A preliminary agreement as regards the sale of this yacht was entered into between Joseph Gatt and Jesmond Galea Enriquez wherein the two agreed that the yacht was going to be transferred to Joseph Gatt for the price of twenty-thousand euro (€ 20,000). The transfer was to take place subject to a number of conditions: (a) that the yacht was completely free from any debts; (b) that there were no enforcement orders on the vessel by any competent authorities; (c) and that the vessel was registered under the Canadian Flag. Gatt paid a deposit of five thousand euro (€ 5,000) to Jesmond Galea Enriquez and this as per the receipt attached as Document JGX 1 at folio. 163 of the acts of this case.

Subsequently, it transpired that the conditions which Joseph Gatt had imposed for the transfer of the yacht were not satisfied. There were debts which were still due vis-à-vis services provided to the same yacht (including marina berthing fees amongst others), there were also pending enforcement notices issued by Transport Malta and finally the vessel was not registered with the Canadian authorities as the provisional registration had expired and it was never followed-up. On seeing this, Gatt demanded that he be refunded the deposit paid in connection with the sale of this yacht. At first, Jesmond Galea Enriquez refused to refund this amount claiming that the deposit paid was non-refundable. In the meantime Jesmond Galea Enriquez suffered a stroke, which stroke also affected his mobility.

At one point, his sister Mechtilde Maria Galea Enriquez got involved as she started taking care of her brother's affairs in view of his ailment. She got to know of the matter between the two. Jesmond decided that he wanted to refund the five-thousand euro (€ 5,000) back to Joseph Gatt. He made arrangements with his sister so that she would hand over this sum to Gatt. Gatt however refused to accept the sum in cash and he insisted that he wanted the refund to be paid via bank transfer.

Eventually, Joseph Gatt lodged reports with the Executive Police against both accused and criminal proceedings were taken against both of them.

Considered:

E. The Involvement of Mechtilde Maria Galea Enriquez

This Court cannot possibly understand how the Police decided to take criminal action against Mechtilde Maria Galea Enriquez. It is quite clear that she was unnecessarily drawn into the fray between the parte civile and her brother Jesmond Galea Enriquez. Mechtilde Maria Galea Enriquez simply offered a helping hand to her brother after he suffered a stroke. She was in no way involved in her brother's dealings. Indeed the Court considers that there is not even *prima facie* evidence which could have justified her arraignment in Court.

The Court's conclusions are based on various reasons. First of all the parte civile never paid any money to the accused Mechtilde Maria Galea Enriquez. Joseph Gatt himself confirmed that the amount was never paid

to her and that she had no involvement in the negotiations concerning the sale of the yacht. She had only been involved in contacts with Joseph Gatt to have the money refunded. This is even confirmed by the receipt of the five-thousand-euro payment exhibited by the same Gatt during the hearing of this case. The receipt at folio 163 of the acts of this case confirms clearly that the amount was paid directly to Jesmond Galea Enriquez and that it was the same Jesmond Galea Enriquez who signed this receipt. So much so also that the legal correspondence which was sent by Joseph Gatt in connection with this saga **was never addressed** to Mechtilde Maria Galea Enriquez; it was always addressed to Jesmond Galea Enriquez.¹⁵ Therefore since the parte civile never effectively handed over anything to Mechtilde Maria Galea Enriquez, the same Mechtilde Maria Galea Enriquez cannot be found guilty of the offence contemplated under article 293. How can Mechtilde Maria Galea Enriquez be found guilty of this offence when the parte civile himself is saying that he did not deliver or entrust anything with Mechtilde Maria Galea Enriquez: no funds were paid to her. Consequently reason dictates that there was nothing which she could have misapplied to her benefit or for the benefit of a third party. The actus reus required for this offence is therefore completely lacking. Indeed in the case ***Il-Pulizija vs Carmel Spiteri***¹⁶ the accused was acquitted because from the evidence produced it did not transpire that funds were delivered or entrusted to the person charged or to his company. Contrary to what the parte civile claimed in its oral submissions heard earlier on today, the fact that at one point

¹⁵ Refer to letter sent by Joseph Gatt va Dr Edward Gatt dated 22nd October 2019, fol. 305 of the Acts.

¹⁶ Decided by the Court of Magistrates (Malta) on the 23rd January 2018. Case Number 943/2010.

Mechtilde Maria Galea Enriquez got involved to facilitate the return of the money cannot by any stretch of imagination result in her being filed guilty of this offence.

One other point which the Courts finds baffling is the following. The Court cannot possibly understand how come then Joseph Gatt filed a report at the Valletta Police Station on the 28th April 2023¹⁷ saying that he paid the sum of five-thousand euros to Mechtilde Maria Galea Enriquez for the purchase of this yacht and then during the course of these proceedings, he himself produced evidence which blatantly contradicts his report. Besides potentially exposing himself to criminal liability for having possibly filed a false police report, this raises serious doubt as regards the credibility of the same parte civile.

With reference to the offence contemplated under article 309, as pointed out earlier on in this judgement, this offence can result if the offender secures an unjust gain to the detriment of another person by using some form of deceit. As already pointed out earlier on in this judgement, the accused Mechtilde Maria Galea Enriquez was completely extraneous to the negotiations which took place as regards the sale of the yacht. She did not receive any money from the parte civile in the first place; hence it cannot be said that she exercised some form of deceit vis-à-vis the parte civile to obtain payment because in actual fact the parte civile did not pay anything to her. This was confirmed by none other than the parte civile himself. She only got involved because she was trying to facilitate the return of the money to the parte civile. This has even been confirmed by

¹⁷ Fol. 29 – 30 of the Acts of the Case.

Joseph Gatt himself when asked specifically by the Court as regards Mechtilde Maria Galea Enriquez's involvement in this whole saga:

“She was his advisor sort of. She ended up having my deposit money. We have got paperwork for it. They offered me to pick up the money from Gozo and I could not do that because just shortly before that somebody shot me with a rifle, you see a high individual, Libyan, there was the Libyan crises at the time, was involved in this picking up of the dinghy and I was advised by a friend of mine, who I happen to go and visit, he is an ex-diplomat to Libya, and he said ‘Do not get any money from these people because they are dangerous people.’”¹⁸

The parte civile reiterated this during the sitting of the 20th March 2024.¹⁹ Even if for argument's sake one were to consider that she exercised some form of deceit, this did not result in her obtaining some form of gain. The parte civile's dealings as regards this deposit were solely and exclusively made with the other accused Jesmond Galea Enriquez. Hence the Court cannot possibly find her guilty of this offence of fraudulent gain.

This Court is of the firm opinion that there is no way the accused Mechtilde Maria Galea Enriquez can be found guilty of the charges

¹⁸ Fol. 152-153 of the Acts.

¹⁹ Fol. 185 of the acts.

brought against her and consequently this Court will proceed to acquit her from these charges.

F. The Role of Jesmond Galea Enriquez

Having examined the acts of this case and having also heard the submissions of the parties to this case, it is quite obvious that this case should never have ended up before this Court. The problem between the parte civile and the accused Jesmond Galea Enriquez was a purely civil issue which should have been referred to the competent Civil Court for settlement. The issue between the two related solely to a deposit for a purchase of a yacht which in actual fact failed to materialise. The bone of contention between the two was simply whether the deposit paid by the parte civile to the accused Jesmond Galea Enriquez was in effect a forfeitable or a non-forfeitable deposit. So much so, that initially the legal action which was taken by Joseph Gatt was a purely civil action: indeed he filed a letter in terms of article 166A of Chapter 12 of the Laws of Malta. For some reason or another the parte civile then abandoned the civil avenue which would have been more appropriate to the case at hand and insisted that the Police file criminal proceedings against the accused.

The Court will start first by tackling the second charge which has been brought against Jesmond Galea Enriquez, precisely the charge concerning the offence contemplated under article 309 of Chapter 9 of the Laws of Malta. As already pointed out some form of deceit is required for a finding of guilt under this article. This deceit which has to originate from

the offender **must have induced** the victim to incur some of form of loss resulting in a gain for the offender.

Both the prosecution and the parte civile did not put forward any form of evidence suggesting that Jesmond Galea Enriquez **resorted to some form of deceitful action resulting in Gatt effectively paying the five thousand euro (€ 5,000) deposit**. The deposit was paid voluntarily by Joseph Gatt. For the Court it is quite clear that Joseph Gatt paid only a deposit because he first wanted to check that the conditions which he had requested to purchase the yacht were indeed satisfied. He did not want to have problems after. Joseph Gatt himself explained what the understanding between the parties was at the time the deposit was paid:

*“Then he asked me, you know, after the yacht was damaged, the price went down, I cut the inventory and it was agreed that I buy it for twenty thousand (20,000) this yacht, **provided there is no debt, no enforcement notices and it is registered in Canada. So I gave him five thousand (5,000).**”²⁰ (emphasis of the Court)*

The story would have been completely different had Jesmond Galea Enriquez led Joseph Gatt to believe that these conditions did in fact exist when in fact they didn't and Gatt following these assurances proceeded to pay the full purchase price of the yacht, discovering at a later stage that these conditions were non-existent. This however was not the case. The

²⁰ Fol. 151 of the Acts of the case.

Court is seeing no evidence of deceit in the way things unfolded. Joseph Gatt simply paid the deposit because he wanted to have something to guarantee that he purchases the yacht himself, bearing in mind that Jesmond Galea Enriquez had long been trying to sell it. Joseph Gatt was aware of this fact since he himself had accompanied prospective purchasers for viewings of this yacht. Therefore the second charge brought forward against Jesmond Galea Enriquez does not subsist.

The attention now focuses on the first charge: that of misappropriation. It is true that Joseph Gatt voluntarily deposited the sum of five thousand euro (€ 5,000) with Jesmond Galea Enriquez in connection with the prospective purchase of the yacht. The issue which needs to be tackled is whether from the evidence submitted it can be said that the sum of money was misapplied and converted to Jesmond Galea Enriquez's benefit or to the benefit of a third party and that this was done with an intent to make a gain.

For the Court, the facts of this case are akin to a prospective purchaser who enters into a promise of sale agreement to purchase immovable property only then to decide to withdraw from such promise of sale because things are not in order. This is what happened in this case. Gatt paid to Jesmond Galea Enriquez the five-thousand-euro (€ 5,000) deposit for the purchase of the yacht. He discovered that the conditions under which he wanted to purchase the yacht did not in fact exist and he insisted to have the deposit refunded to him. Jesmond Galea Enriquez refused to pay the deposit claiming that it was a non-refundable deposit, something which Joseph Gatt disagreed with. Gatt insisted that at no point in time

it had been stated or agreed between the two that the deposit which had been paid was non-refundable. **This was the sole point of contention between the parties.** The Court cannot possibly see how this can be classified as misappropriation and how it can be said that Jesmond converted the deposit so paid to his benefit. It is for this reason that the Court noted that the matter at hand was a purely civil issue which had to be referred to the competent civil court for settlement rather than this Court.

Although, Joseph Gatt claimed that Jesmond had used part of the sum paid to have the yacht hauled on land, this was not substantiated in any way. Definitely the services of a third-party contractor would have been required to haul the yacht on land. The least the Prosecution and the parte civile could have done was to summon the person who hauled the yacht on land to indicate when he provided his services and who paid him for the same. This proof was not brought.

From the evidence submitted, it is also quite clear for this Court that there were various attempts to have the deposit refunded to Joseph Gatt. However, it seems that Joseph Gatt was making things difficult to have this amount refunded to him. Joseph Gatt himself testifies that he was offered the sum of money in cash; however he persistently refused as he wanted to have the money wired to him via a bank transfer. This is quite evident from the emails Joseph Gatt exhibited.²¹ This fact also emerges from the legal letter which he sent to Jesmond Galea Enriquez on the 22nd October 2019, where specifically he requested that payment be made by

²¹ Vide emails exhibited at fol. 165 – 167 of the Acts of the case.

bankers' draft.²² Bearing in mind that the emails wherein payment was offered refer to September 2019, just a few weeks after the deposit had been paid to Jesmond Galea Enriquez, the Court finds it difficult to reconcile this with the intention of Jesmond Galea Enriquez to make a gain to the detriment of Joseph Gatt. Gatt carried out the verifications as regards the yacht in August 2019, he discovered that things were not in order and requested the deposit. At first Jesmond Galea Enriquez refused to refund this amount however then he had a change of heart and decided to refund it. However, the refund did not take place because Jesmond Galea Enriquez wanted to pay it in cash and Gatt was insisting in having it deposited to his bank account. It is true that Jesmond Galea Enriquez could have deposited the money in court to exempt himself from responsibility. However, the fact that he did not do that does not necessarily mean that he was converting the funds to his own benefit. The Court is therefore not convinced that the Prosecution and the Parte Civile managed to proof all the required elements for a finding of guilt under article 293. Consequently the Court will proceed also to acquit the accused Jesmond Galea Enriquez even from this first charge.

G. DECIDE

Therefore for the reasons expounded above, the Court is finding both accused **not guilty** of the charges brought against them and is consequently acquitting them from all charges.

²² Fol. 305 of the Acts of the Case.

Sgd Dr. Jean Paul Grech
Magistrate

Sgd Dr. Diane Farrugia
Deputy Registrar

True Copy

For The Registrar