



**COURT OF MAGISTRATES (GOZO)  
SUPERIOR JURISDICTION  
GENERAL SECTION**

**MAGISTRATE DR. SIMONE GRECH B.A., LL.D., Mag. Jur. (EU Law)**

**Sworn Application Number: 36/2024SG**

**Frank Xerri (Identity card number 479383M)**

**vs**

**Karmni Investments Limited (C97302)**

**and**

**Michael Henry Wiggins (Identity card number 261539A)**

**Today the 28<sup>th</sup> day of May, 2024**

The Court,

Having seen the application of Frank Xerri presented on the 8<sup>th</sup> May 2024, wherein the said Xerri declared and requested the following:

*“ 1. That by means of a contract of sale published in the records of Notary Dr Kristen Dimech on the 22nd of February 2023 (Dok. A), the plaintiff sold the immovable property, namely the house ‘Ta’ Indrija’, Number 5, Triq l-Għarb, Għarb, Gozo, to the defendant company Karmni Investments Limited;*

*2. That by means of a private writing signed on the same date on the 22nd of February, 2023, (Dok. B), the same defendant company acquired from the plaintiff the furniture and movables situated in the said house for the price of fifty thousand Euro (€50,000), from which price the plaintiff received the sum of fourteen thousand and six hundred Euro (€14,600) on account of the price, and the defendant company obliged itself to pay the remaining balance of thirty-five thousand and four hundred Euro (€35,400) to the plaintiff by means of two installments of seventeen thousand and seven hundred Euro (€17,700) each, within a period of one year and two years, respectively, from the date of the sale,*

together with interest at the rate of four per cent (4%) running from the date of the sale until the date of the effective payment;

3. That the defendant Michael Henry Wiggins obliged himself jointly and severally with the defendant company for the payment of the balance of thirty-five thousand and four hundred Euro (€35,400), and he consigned in favour of the plaintiff two bills of exchange, each in the amount of seventeen thousand and seven hundred Euro (€17,700) (Dok. C and Dok. D);

4. That in terms of the same private agreement, the defendants obliged themselves towards the plaintiff that in the eventuality that property of the defendant, namely flat number six (6) in the block 'Dwejra Heights', Triq il-Gebra tal-General, San Lawrenz, Gozo is sold within the period of two years, any pending balance due to the plaintiff was to be paid on the act of sale of the said property;

5. That the defendant failed to honour their said contractual obligations because, in the first place, they failed to pay the first instalment in the amount of seventeen thousand and seven hundred Euro (€17,700) when this became due within one year from the date of the said private writing that is the 22nd of February of the year 2024, and in the second place, the aforementioned property was transferred unto a third party by means of a contract of sale dated the 27th of January 2024 (Dok. E) published in the records of Notary Dr. Kristen Dimech and this without the plaintiff being called to receive the payment due to him from the proceeds;

6. That the defendants are therefore in default in their obligations in terms of the private writing between the parties dated the 22nd of February 2023, and in terms of the said private writing, they have lost the benefit of time granted to them for the payment of the balance, and the amount of thirty-five thousand and four hundred Euro (€35,400) became immediately due, together with interests from the date of the private writing till the date of the effective payment;

7. That the plaintiff rendered executive the bill of exchange which was to expire on the 22nd of February 2024 and this by means of a judicial letter bearing number 168/2024, and therefore, he is limiting his demand against Michael Henry Wiggins in these proceedings to the amount of seventeen thousand and seven hundred Euro (€17,700), reserving his right to proceed against the said Michael Henry Wiggins with a further action for the remaining amount of seventeen thousand and seven hundred Euro (€17,700) in the eventuality that the same defendant obtains a suspension of the executive title acquired by the plaintiff against him by means of the said judicial letter;

8. That the defendant remained in default notwithstanding that they have been requested to pay the amount due to the plaintiff;

9. That the debt of the defendants due to the plaintiff is certain, liquid and due in terms of Article 167 of Chapter 12 of the Laws of Malta, and in the plaintiff's belief, the defendants do not have any defence to the action;

10. That therefore, this case had to be instituted.

Therefore, the applicant humbly requests this Honourable Court to:

1. Declare the plaintiff the creditor of the defendant company Karmni Investments Limited in the sum of thirty-five thousand and four hundred Euro (€35,400), together with interest at the rate of four per cent (4%) from the 22nd of February 2023 until the date of the effective payment; and

2. Condemn the defendant company to pay the plaintiff the sum of thirty-five thousand and four hundred Euro (€35,400), together with interest at the rate of four per cent (4%) from the 22nd of February 2020 until the date of the effective payment;

3. Declare the defendant Michael Henry Wiggins as a joint and several debtor with the company Karmni Investments Limited in the amount of seventeen thousand and seven hundred Euro (€17,700) and condemn the same defendant Michael Henry Wiggins to pay the said amount of seventeen thousand and seven hundred Euro (€17,700);

4. Decide the cause without proceeding to trial in terms of Article 167 of Chapter 12 of the Laws of Malta;

With costs, including those of the warrant of prohibitory injunction presented concurrently against the said defendants, and with legal interests further due against the said defendants, who are now summoned so that a reference to their oath be made."

Having seen that both respondents, after having been duly notified with the acts of the suit, declared that they are not contesting the claims submitted by plaintiff, but are contesting only the expenses of this case;

Having seen that thus this Court can proceed to accede to the plaintiff's requests, except for the issue regarding the expenses of this case, which issue shall need to be decided after that the parties bring forth their evidence and submissions are made.

## **Decide**

**The Court decides the case in the following manner:**

- 1. Accedes to the fourth request and gives judgement in accordance with Art. 167 of Chapter 12 of the Laws of Malta;**
- 2. Accedes to the first request and declares the plaintiff, the creditor of the defendant company, Karmni Investments Limited, in the sum of thirty five thousand and four hundred Euro (€35,400) together with interests at the rate of four per cent (4%), from the 22<sup>nd</sup> of February, 2023, until the date of the effective payment;**
- 3. Accedes to the second request and condemns the defendant company to pay the plaintiff, the sum of 3rd request and declares that defendants owe thirty five thousand and four hundred Euro (€ 35,400) together with interests at the rate of four per cent (4%), from the 22<sup>nd</sup> of February, 2023, until the date of the effective payment;**
- 4. Accedes to the third request and declares that Michael Henry Wiggins, as a joint and several debtor with the company Karmni Investments Limited, in the amount of seventeen thousand and seven hundred Euro (€ 17,700), whilst condemning the same Wiggins to pay the said amount of seventeen thousand and seven hundred Euro (€ 17,700).**

**With legal interests further due against the said defendants, at the highest rate established by law, which interests shall keep running until the date of the effective payment.**

**The Court orders that this case continues to be heard, as regards to the issue of who is to bear the costs of this case.**

(ft.) Dr Simone Grech  
Magistrate

(ft.) Martina Axiak  
D/Registrar

True Copy

For the Registrar