



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

**MAGISTRATE DR SIMONE GRECH
B.A., LL.D., MAG. JUR. (EUR LAW)**

Sworn Application number 34/2012 (SG)

Pieter Marinus Van Gelder (I.D. 47556A)

vs

Carmela sive Karen Nowak (I.D. 264069M)

Today the 25th September 2024

The Court;

Having seen the application filed by Pieter Marinus Van Gelder on the 30th April, 2021 in which he declared and requested the following:

1. *«Illi l-attur kellu relazzjoni mal-konvenuta li damet minn Mejju tas-sena elfejn u tmienja (2008) s'Anwissu tas-sena u hdax (2011) u liema relazzjoni kienet wahda serja tali li matul dan iż-żmien il-partijiet kienu jikkoabitaw flimkien;*
2. *Illi l-attur kien jafda lill-konvenuta b'ghajnejn maghluqin u fil-fatt huwa kien fdaba bl-amministrazzjoni tal-beni tiegħu kollha. Din il-fiducja kienet wahda reciproka peress li anki l-konvenuta kienet tafda lill-attur.*
3. *Illi r-relazzjoni ta' bejn il-partijiet tfarrket f'Anwissu tas-sena elfejn u hdax (2011) meta l-attur skopra illi l-konvenuta kienet hatja ta' adulterju fil-konfront tiegħu;*

4. *Illi matul r-relazzjoni taghhom il-konvenuta approprijat rubba indebitament minn diversi ammonti ta' flus tal-attur, illi hija hadet mill-kontijiet bankarji tal-attur tramite l-użu tal-ATMs;*
5. *Illi in oltre hija wżat il-flus tal-konvenut għal xiri ta' diversi oggetti mmobbli, furnishings u vetturi fost obrajn, u anke sabiex thallas diversi kontijiet tagħha bħal kontijiet tad-dawl u l-ilma u xirjiet fost affarijiet obra, kif jigi dettaljament spjegat u pruvat waqt il-mori tal-kawża;*
6. *Illi in kawtela tad-drittijiet tiegħu, l-attur ottjena il-brug ta' Mandat ta' Sekwestru Kawtelatorju bin-numru 52/2012 kontra l-konvenuta u kif ukoll Mandat ta' Inibizzjoni;*

Tgħid għalhekk il-konvenuta għalhekk din l-Qorti Onorabbli m'għandbiex previa kwalsiasi ordni li jidbrilha xierqa u opportuni:

1. *Tillikwida l-ammont ta' flus li gie misapproprijat indebitament mill-konvenuta mingħand l-attur u l-bilanci l-obra dovuti lill-attur rappreżentanti blasjiet ta' kontijiet ta' xiri u manutenzjoni ta' oggetti fost obrajn, occorrendo permezz ta' perit nominandi;*
2. *Tiddikjara u tiddeciedi li l-ammonti kollha kif hekk likwidati huma dovuti mill-konvenuta u hija responsabbli għalibom il-konvenuta;*
3. *Tikkundanna lill-konvenuta debitrice fil-konfront tal-attur fl-ammont hekk likwidat u tordna lill-konvenut sabiex thallas dan l-istess hekk likwidat flimkien mal-imghaxijiet dovuti fuq l-istess ammont.*

Bl-ispejjeż, nkluzi dawn tal-Mandat ta' Sekwestru Kawtelatorja Nru 52/2012 u tal-Mandat ta' Inibizzjoni u bl-ingunzjoni tal-konvenuta li minn issa hija ngunta għas-subizzjoni.»

Having seen the reply filed by Carmela sive Karen Nowak on the 25th May, 2012 which reads as follows:

1. *«Illi t-talbiet tar-rikorrent huma infondati fil-fatt u fid-dritt stante illi l-intimata mibiex debitrice ta' l-ebda ammont indikat fir-rikors guramentat jew kwalunkwe ammont ieħor u dan kif ser jigi pruvat fil-mori ta' din il-kawża, għaldaqstant it-talbiet tar-rikorrent għandhom jigu lkoll miħuda;*
2. *Illi mingħajr preguidazzju għas-suespost, it-talbiet tar-rikorrent huma unikament intizi sabiex jivvessaw u jbezżgħu lill-istess intimata u saru biss bi tpatija wara li l-istess intimata fetħet ir-rikors guramentat kontra tiegħu li jgħib in-numru 7/2012 u li jinsab pendent quddiem din l-istess Onorabbli Qorti differita għat-22 ta' Gunju 2012, fliema rikors jirriżulta li huwa r-rikorrent stess li misappropria ruħu minn somom konsiderevoli tal-intimata u għalhekk, apparti l-fatt li r-rikorrenti huwa hati ta'*

gurament falz quddiem din l-Onorabbli Qorti, huwa l-istess rikorrent li huwa debitur tal-intimata u mbux bil-kontra, u dan kif ser jigi pruvat fil-mori ta' din il-kawza u tal-kawza 7/2012;

3. *Illi minghajr pregudizzju ghas-suespost, in vista tal-fatt li l-mertu ta' din il-kawza hu konness u bilfors jista jkollu effett u jinkombi fuq il-mertu tal-kawza l-obra bin-numru 7/2010 fl-ismijiet inversi, l-intimata qed tissottometti talba formali sabiex dawn iz-
zweg kawzi jinSTEMghu u jigu decizi kontestwalment minn din l-Onorabbli Qorti;*
4. *Illi minghajr pregudizzju ghas-suespost, filwaqt li hemm qbil ma' l-ewwel paragrafu tar-rikors guramentat ma hemm qbil mal-paragrafi rimanenti stante li dawn ma jirriflettux il-verita' tal-fatti per eżempju bl-ebda mod ma jaghmlu accenn gball-episodji ta' vjolenza kommessi mir-rikorrenti fuq l-intimata u kemm kien l-istess rikorrenti li misapproprija u seraq flus lir-rikorrenti, ghalhekk huma kontestati;*
5. *Illi minghajr pregudizzju ghas-suespost, ghalkemm huwa minnu li gie prezentat mandat ta' sekwestru kantelatorju bin-numru 52/2012 kontra l-intimata, r-rikorrent naqas milli jiprezenta il-kawza li permezz taghha jressaq il-pretensjoni tieghu koprenti l-pretensjonijiet fil-mandat ta' sekwestru fi zmien ghoxrin gurnata mposti mill-ligi u dan stante li l-istess mandat gie prezentat fil-30 ta' Marzu 2012 filwaqt li din il-kawza giet intavolata fit-30 ta' April, 2012. L-esponenti qed tiriserva d-drittijiet taghha fil-ligi rizultanti minn dan in-nuqqas foshthom li titlob ir-revoka tal-istess mandat a spejjez tar-rikorrenti. In oltre, sal-lum, l-esponenti ma taf bl-ebda mandat ta' inibizzjoni fil-konfront taghha;*

Ghaldaqstant it-talbiet tar-rikorrent ghandhom lkoll jigu michuda, bl-ispejjez kollha kontra tieghu.

Salv eccezzjonijiet ulterjuri jekk ikun il-każ skond il-ligi.»

Having seen that this case was assigned to this court as presided;

Having seen that during the sitting of the 23rd October 2012, the Court ordered that the proceedings were to be conducted in the English language;

Having seen all documents presented;

Having seen all the transcripts of the evidence submitted and having heard the testimony of the witnesses produced before this court as presided;

Having seen the notes of submissions filed by the plaintiff and that filed by the defendant;

Having seen that the case was adjourned for today for judgement;

Having seen the acts of the proceedings and the acts of the case bearing the number 7/2012 in the names of Carmela sive Karen Nowak vs Pieter Marinus Van Gelder et;

Considers:

Evidence produced in this case bearing the number 34/2012 and in the case bearing the number 7/2012.

Carmela sive Karen Nowak testified by virtue of a sworn written declaration wherein she declared that she used to work in the bar at Kempinski Hotel in Gozo in May 2008 and while at work, she met the defendants who had spent their time talking to her and used to leave tips to her. She explained that she also got to know that Pieter Marinus Van Gelder used to also tip the chamber maid. As a result, Carmela sive Karen Nowak got the impression that the defendants were successful businessmen as they spoke about business, stocks and shares. She continued that they had also asked her whether she would be interested in starting her own business and when they got to know that she had an account in stocks and shares, they showed willingness to help her start her own business. Carmela sive Karen Nowak explained that she had also been invited to go out with them and although at first she refused, she agreed to meet them.

She explained that during this meeting she ended up meeting only Pieter Marinus Van Gelder as his brother was busy working on preparations for a business. She explained that Pieter Marinus Van Gelder suggested to go to the most expensive restaurant in Gozo called “Otters” situated in Marsalforn. She testified that Pieter Marinus Van Gelder had tipped the restaurant more than 20% of the bill. Carmela sive Karen Nowak explained that she got to know that Pieter Marinus Van Gelder and his brother worked with a serious Dutch company and earned €4,000 a month and was given the impression that for them, money was not a problem. During dinner Pieter Marinus Van Gelder had told her that they had come to Malta due to his health problems and that he had fallen in love with the island and did not want to leave. She testified that after dinner, Pieter Marinus Van Gelder asked her to go to her apartment in order for him to explain about the business and for him to check on how his business was performing on her computer. She had explained to him that she was in a relationship with someone else who was living abroad but she considered Pieter’s intentions sincere and found no objections. Pieter Marinus Van Gelder had told her that her computer required some good programs and that he was willing to install the programs, which he did while she was asleep and when she woke up, Pieter Marinus Van Gelder was still on the computer.

She continued that she drove him back to the hotel before she went to work. She explained that she found codes and passwords written down which he might have found on her computer together with details about her wages which he had told her was very poor. She stated that at this present day, she realised that he during that night he had stolen information from her computer for his own benefit. When she dropped him off at Kempinski he told her that his health had improved and did not want to go back to Holland. She continued that he asked her if he could stay at her apartment and explained that he was willing to take care of all the bills so that she could save money since she had a poor wage, which request she had accepted after much insistence from Pieter Marinus Van Gelder. She explained that although she lived by herself, her son used to visit her every day and that she had also informed Pieter Marinus Van Gelder that her apartment was not suitable to host guests and needed some renovation. However in the end, she agreed that Pieter Marinus Van Gelder would stay a while longer in her apartment on the condition that he would pay all the daily needs and expenses incurred, which proposal was accepted by Pieter Marinus Van Gelder who stayed in her apartment until 22nd June 2008.

Carmela sive Karen Nowak continued to state that during his first stay at her home, Pieter Marinus Van Gelder used to help her with her schoolwork and also offered to help with her son's schoolwork. She explained that he used to take her out for dinner during her off days, and although she used to tell him that it was an expensive way to live, he used to insist that for him money was not a problem. She continued to state that on the 6th June 2008 Pieter Marinus Van Gelder had told her that due to the fact that he stayed longer in Malta, he could not withdraw money from his account and that he needed to borrow €500 from her in order to buy things needed for the house, which amount she withdrew from the ATM in Victoria Gozo and handed them over to Pieter Marinus Van Gelder after he promised her that he would give her the money back.

Carmela sive Karen Nowak continued that a few days later he asked her whether he could use her card details to book his return flight to Holland on 22nd June, but she insisted with him that she would give him the card provided he refunded her all the monies as she needed money for her son. She continued to state that they agreed that if he were to decide to reside permanently in her house, some refurbishments needed to be done such as extensions of doors since Pieter Marinus Van Gelder was very tall, painting and decorating. Although she paid for all expenses, he never paid her as they had agreed and every time she mentioned the subject he always reassured her that he will pay her back plus interest when he sold his house in Holland.

Carmela sive Karen Nowak added that between 22nd June 2008 and 12th February 2009 Pieter Marinus Van Gelder visited Malta on two occasions and then he settled in at her house in February 2009 adding that on one of these occasions he had used her motorbike without her permission to visit her at work and when she arrived back home she realised that he was drunk and had injured himself as he crashed with her bike. She explained that she took him to hospital and had taken some days off to be able to drive him to hospital since he did not have a driving license. She explained that notwithstanding that he had insisted that he should never drive her bike again, he still used to take it and had several accidents. She continued that she had to pay a lot of money to fix the bike and was never reimbursed for all these expenses even though he always promised he would.

On the 14th February 2009 when he arrived in Malta he asked her to borrow more money to transfer his belongings to Malta as he told her that he spent more than he should, and his bank card would be blocked for a few days. She stated that she withdrew €250 after he insisted that he would pay for everything once his house is sold. On 9th May 2009 Pieter Marinus Van Gelder asked for more money for the deposit for cupboards for himself; and as a result, she withdrew another €500 for such deposit.

Carmela sive Karen Nowak testified that on her 40th birthday on the 26th June 2009 she was working in a hotel in Ċirkewwa and Pieter Marinus Van Gelder wanted to take her out for her birthday after work. She stated that they agreed to meet at Mġarr ferry terminal at 13:25am and since her mobile was not charged, she left it at the apartment and went to work. When he finished from work, she went to meet Pieter Marinus Van Gelder but after waiting for 10 minutes he did not show up; so she became angry but concerned that he could have been drunk as he was an alcoholic. When she arrived home, she found loud music, an empty bottle of vodka, cans of beer and a lot of cigarette ends in the ashtray and noticed that he was drunk. She claimed that her mobile was smashed in several pieces on the kitchen floor, she started crying and he started laughing at her whilst telling her that she should have taken it with her. She explained that all this resulted in a quarrel. This quarrel continued in the balcony where he was going to throw her down five storeys but since she had the cat in her hands he pushed her inside and ended up in the kitchen where he threw her against the corner of her granite kitchen counter causing serious cuts around her left eye. There was blood everywhere and she could not see clearly. Carmela sive Karen Nowak explained that Pieter Marinus Van Gelder stopped his violent outburst when he

realised the extent of her injuries and reverted back to his nice character asking whether she needed help and insisted to accompany her to hospital.

She stated that Pieter Marinus Van Gelder started to apologize and asked her not to tell the truth about what had happened and that he would make up for his wrongdoings telling her that if she had to involve the Police it would ruin their business if he would have a bad conduct sheet. She was shocked and confused as she never thought Pieter Marinus Van Gelder was capable of being so violent. Since she was owed so much money, she was coerced into telling the hospital that she had an accident adding that the hospital staff insisted that she needed to stay in hospital since the injuries were serious and the blood could not stop but after an overnight in hospital she insisted that she wanted to go back home in order to go to work the following day. On the following Monday, the hotel secretary asked her for the details of Pieter Marinus Van Gelder as the hotel wanted to take action against Pieter Marinus Van Gelder for threatening to kill families of employees; her colleagues had realised that the injuries she had were caused by Pieter Marinus Van Gelder's violence and warned her not to let him to live at her house since the violent incident could repeat itself. She claimed that she regretted not telling the hospital staff the correct version of what had happened and to date she has a permanent defect in my face due to having stitches around her eyes. The day after the accident, she asked Pieter Marinus Van Gelder to leave her house, but he insisted that he was sorry and that he wanted to stay since he was excited that his brother was in Malta again.

She continued that Pieter Marinus Van Gelder said that he and his brother wished to buy her a car. However she ended up buying the car with her money after she was reassured that Pieter Marinus Van Gelder would reimburse her once he receives the money from the house in Holland since the sale had already taken place. Yet again she was never reimbursed for it. Carmela sive Karen Nowak explained that the relationship between her and the brothers continued to degenerate, but Pieter Marinus Van Gelder continued to live at her place and upon returning home from work, she would find Pieter Marinus Van Gelder drinking and smoking. She used to sleep for a few hours and leave again at 6am whilst Pieter Marinus Van Gelder would be up all night on the computer and sleep during the day. During the following months, Pieter Marinus Van Gelder made several trips back to Holland with his brother on the pretence that their business was coming to fruition claiming that they always found money for their extravagant lifestyle of eating out, spending hundreds of euros on Portable PlayStations and computer games and magazines while continuously convincing her that the company would shortly begin trading and that they would employ

approximately 300 people and that she need not worry about her money. She continued to testify that the brothers took her on two or three occasions to a well renowned expensive accountant in Malta 'Erremme Business and Management Consultants, 113b Paola Road, Tarxien and also promised her and her son a very good position in the company they would operate. They took her to a meeting in Victoria, Gozo where Pieter, his brother, a partner in the business called Ricardo met with Marcel Bonnici a representative of the Employment and Training Corporation (ETC) and on another occasion, she was told that they were about to meet the Minister for Gozo Giovanna Debono while always being told that they were waiting for investors from Holland and Switzerland to reply.

On 13th March 2010, Pieter Marinus Van Gelder took her to the bank to issue a cheque of €1202.91 to pay the rent for a farmhouse in Xaghra for his friends. She was promised that when his friends arrived they would return the money in cash, which monies was never returned. On one evening, when she arrived home she found Pieter Marinus Van Gelder, Jan Willem Van Gelder and one of their friends called Onno in her house and a quarrel developed when she demanded payment of the monies she had paid. On 30th April 2011, Pieter Marinus Van Gelder was drunk in her home and became violent with her with the result that she did not press charges with the police on condition that Pieter Marinus Van Gelder vacates her apartment. She further claimed that despite the order from the Police to leave her apartment, she found Pieter Marinus Van Gelder back in her apartment even though he had given her back the keys. She stated that Pieter Marinus Van Gelder agreed to prepare in writing a list of debts that he owed her but even though he wanted to sign the paper, she did not agree since it was not the complete amount due.

During the time she spent in the company of Pieter Marinus Van Gelder and Jan Willem Van Gelder, she suffered several monetary losses due to their continuous promises that they would pay her back claiming that she only gave Pieter Marinus Van Gelder permission to use her card to buy his flight on one occasion. Nonetheless, Pieter Marinus Van Gelder kept on using it without her permission while she was unaware of all the withdrawals that were being done since she had her Bank of Valletta internet banking key missing. She claimed that Pieter Marinus Van Gelder and his brother were using her card abroad without her permission.

Carmela sive Karen Nowak further testified that on the 4th September 2011, she found out Pieter Marinus Van Gelder had moved out of her apartment permanently even though he never mentioned that he intended to move out and this while she was staying for a week with her fiancée in Ghajnsielem. She found out that Pieter Marinus Van Gelder had removed all of his belongings and also many of hers, claiming that he had actually planned this sometime earlier when he knew she would not be there for several days. He took her cat which he claimed was his despite that she had got the cat when it was still a kitten, her printer, crockery, stationery, bedding, her coffee machine and computer. She stated that she had purchased a large Television with decoder on 10th August 2008 which Pieter Marinus Van Gelder also took with him including a DVD player. She testified that during the week she spent at her fiancée's, she used the new car and Jan Willem Van Gelder asked her to pay €1,000 for the registration fee of a car he brought with him. She refused and as a result Jan Willem Van Gelder fuelled up with anger requesting her son to lend him the Subaru J10 which was parked in a garage in Qala. She continued that the brothers managed to seize the car engine.

She further explained that she found an email addressed in her name to the customer care of Arms limited requesting an instalment plan to settle water and electricity bills. Soon after leaving the apartment, Pieter Marinus Van Gelder invited her to meet him for coffee and lunch as he still insisted that he wanted to keep the good relationship and offered to help her when required. He also told her that he would pay back all the money she issued for him and a few days later her mobile account was locked since he cancelled the agreement for her. She explained that when she realized that most of her belongings were missing, she phoned Pieter Marinus Van Gelder for an explanation but was told that he had to stop the conversation because he was working on a very important project with a deadline. However, some time earlier she was constantly reminding him about the money that was due to her since her son was turning eighteen and she wanted to get him a big present. She also told him that if the money was not forthcoming, she would be consulting her lawyer which she did, and he threatened her that he would never pay a cent if she did consult a lawyer. Subsequently, lawyer Dr Deborah Mercieca tried to contact him by email and phone to resolve the matter, but he refused to co-operate and made his plans to leave.

Carmela sive Karen Nowak further testified that having spent over three years living in her apartment, Pieter Marinus Van Gelder had never paid a bill for Water and Electricity despite her constant reminders. On 19th January 2011

Pieter Marinus Van Gelder explained how he would be transferring the money she was owed by him and transferred €1 to her account as a trial as shown in the bank statements. Pieter Marinus Van Gelder never cleaned the apartment and left a lot of damage when he moved out on 4th September 2011. The water pump had been damaged and needed to be replaced together with the queen size bed and mattress. The three new wooden doors installed before Pieter Marinus Van Gelder moved in were broken and without any handles; whilst the door leading to the bathroom had a hole due to the behaviour of Pieter Marinus Van Gelder while drunk. There were other damages and scratches on most surfaces and furniture in the kitchen which need to be repaired. Carmela sive Karen Nowak further explained that during the time Pieter Marinus Van Gelder spent in her apartment, he never bought her any presents but before he left in June 2011, he gave her a laptop as a birthday present because Jan Willem Van Gelder had broken her computer and took parts of it. During the time he spent in Holland, she never had access to his computer since he never allowed her to use it without him being there and whenever she urgently required the use of the Internet she had to go to her son.

Throughout the three years, Pieter Marinus Van Gelder never showed any signs of interest in the house and even though he spoke about business she never saw him work but only using the computer. He always boasted about his financial situation but despite this he still did not pay the debt and made her suffer as a result. Until his brother moved to Gozo, she always drove him to any place he requested as he refused to use public transport. Pieter Marinus Van Gelder made it a point to look and seem generous when in the company of other people even people he does not know. He never tried to save money. He showed a double personality, whereby he was either too kind and other times violent.

Not only did he not pay her for the money she withdrew for him, but he illicitly used her bank account without her permission both in Malta and when abroad and also damaged her apartment and stole her belongings. She let a flat to Jan Willem Van Gelder Van Gelder from May 2010 till 31st April, 2012 but he left the flat beforehand and Pieter Marinus Van Gelder moved in with his brother after leaving her apartment and left several damages to the apartment: they damaged the front door which needs to be replaced, door and window nets which were missing and broken, dirty curtains, a broken washing machine, cooker and fridge as well as an outstanding water and electricity bill which was never paid during his stay. She confirmed that the total amount due to her by defendants amounted to €23,350.08 together with the pending water and electricity bills regarding Jan Willem Van Gelder's apartment.

During her cross-examination, Carmela sive Karen Nowak explained that the first time Pieter Marinus Van Gelder went to her apartment was in May 2008 and given that the apartment was not good enough for both of them to live in, she agreed to make some changes in the apartment to accommodate Pieter Marinus Van Gelder after the latter had agreed to pay her for all these expenses. She stated that during the refurbishment, Pieter Marinus Van Gelder was constantly travelling from Holland to Malta and vice versa. She stated that she accepted Pieter Marinus Van Gelder to live with her in order to help him as he had told her that he would pay her after he sold his property in Holland, but he never did so. She added that he spent 3 years living there and he never cleaned the apartment, caused her multiple damages in the apartment and also damaged her motorbike. She stated that she had paid for the TV, DVD player and sofa as she had given cash to Pieter Marinus Van Gelder in order to purchase the items and claimed that her relationship with Pieter Marinus Van Gelder was more of a business relationship and was never intimate with him, even though they lived together in the same apartment for 3 years. She added that although there were emails where she referred to him as “honey” and “love” it did not mean that they had an intimate relationship. Carmela sive Karen Nowak declared that when she was 40 years old, he was going to throw her down from five floors and she ended up covered in blood.

She further explained that her relationship with Pieter Marinus Van Gelder and his brother started when they met whilst she was working at a bar, and they had made her believe that they had a lot of money as they told her that they received €4,000 a month. She stated that when Pieter Marinus Van Gelder went to live with her, he had told her that he will pay all the bills, but when he told her that he had paid the water and electricity bill she realised that he had paid such bill from her account, as evidenced on the bank statement. Furthermore, she claimed that she realised what he had done with her money long after he made such payment. When she requested him to pay back all monies, he had promised her to repay her once they open their business but when the time came for him to pay, he and his brother left from the apartment without informing her only to find the apartment in a very bad state.

Asked about the Halifax account, Carmela sive Karen Nowak agreed that in the emails dated 5th July 2008 and 29th November 2008 she had provided Pieter Marinus Van Gelder with her Halifax Account because he had promised her that he was going to give her the money she lost from the Stocks and Shares account. She claimed that when she had initially met Pieter Marinus Van Gelder and his brother, they had told her that they work in Stocks and Shares and that they were

willing to help her. She stated that she had given him her Halifax account details soon after they met because her account was empty, and he had promised her that he would get all her money back.

Asked about Pieter's work, Carmela sive Karen Nowak explained that he was working to open up a Gaming company in Malta adding that on the 6th of February 2009 she had given her BOV Credit Card details to Pieter Marinus Van Gelder after the latter claimed that he could not use his credit card to book a flight. Again, Pieter Marinus Van Gelder had promised her that he would give her the money back, but he never did so. Carmela sive Karen Nowak claimed that both Pieter Marinus Van Gelder and his brother promised her that once the company was up and running, they would repay her all the monies. She explained that she had issued a cheque for Pieter Marinus Van Gelder on the 13th March 2010, for him to pay for a farmhouse for his friend who was coming to Malta allegedly to sign papers in relation to the company and after he would be able to pay her for everything. At the time she did not report Pieter Marinus Van Gelder as she wanted to help him. Asked about the fact that she had asked Pieter Marinus Van Gelder to give her pin number whilst she was at KREA because she had forgotten it, Carmela sive Karen Nowak confirmed and added that it was at this point that she realised that he was using her pin without her consent and after consulting with the Inspector, she removed all her money from that account and transferred them to another account. She stated that he used to withdraw money from her account without consulting her.

She continued that on the 9th October 2010 he sent her an email saying that he paid the Melita bill, and he also told her that he gave her the money back, but she realised that this was not true. She also thought that Pieter Marinus Van Gelder had hidden the BOV Key so that she would not have access to her bank account. Pieter Marinus Van Gelder and his brother used to tell her that she will be part of their company and that they will employ 300 people. Carmela sive Karen Nowak said that she only had 1 computer and every time she went to check her bank accounts, she would be stopped by Pieter Marinus Van Gelder who used to tell her that everything is ok with her accounts and that he is using her computer as he is very busy with Stocks and Shares. She said that Pieter Marinus Van Gelder left in September 2011 and on 1st January 2012 she married her husband. She had known her husband since August 2010 and Pieter Marinus Van Gelder and his brother knew her husband well. Carmela sive Karen Nowak declared that there was no formal agreement in relation to such gaming business, but there were some emails and she used to go with them during the meetings for such business.

On the 23rd October 2012, **Angelita Grech in representation of Arms Limited** testified wherein she presented statement of 2 account numbers both in the name of Carmela sive Karen Nowak and confirmed that there have been no direct payments on these accounts. She explained that one account pertains to Saint John's Flats, Flat 5, Archpriest Saver Cassar, Nadur and another pertaining to Petra Court, Garage 3, Triq il-Madonna ta' Lourdes Nadur.

Witness continued to testify on the 15th February 2013 claiming that with reference to her previous testimony, in relation to a payment was made by means of a credit card made on the 17th May 2010 through the Water Services website and presented the instalment plan Carmela sive Karen Nowak had signed on the 27th August 2011. She explained that with regards to one of the accounts, two payments lots were effected on the 14th May 2010 amounting to €97.21 and 2nd November 2010 amounting to €32.15, whereas with regards to the other account apart from the credit card payment previously referred to, she also found a payment affected on the 4th October 2010 amounting to €92.38 affected by credit card and another payment was paid manually at their cash office on the 6th February 2012 amounting to €200 adding that the instalment plan related to the last account only.

Alfred Pisani on behalf of Bank of Valletta plc exhibited a statement of the account in the name of Carmela sive Karen Nowak and also a copy of the cheque bank draft.

Sunta Azzopardi on behalf of Bank of Valletta plc also presented bank statements regarding Carmela sive Karen Nowak.

Inspector Jonathan Ferries testified on the 22nd May 2013 and explained that in December 2011 he was on duty at the economic crimes unit when Mrs Carmela sive Karen Nowak went in to file a report regarding a legit fraud by her ex-partner Pieter Marinus Van Gelder. She informed him that Pieter Marinus Van Gelder was her partner for about two years, that they had met in Gozo and soon after they both decided to move in together in one of her apartments. He continued that she had explained that the relationship was very turbulent and that she also suffered some physical Violence but had not filed any police reports. He claimed that she explained to him that Mr Van Gelder had a drinking habit and once he went quite heavy on her, in that he punched her in her face, and she had to go to hospital for stitches.

The witness testified that Carmela sive Karen Nowak had claimed that Mr Van Gelder had stolen her credit card. He stated that she had stated that Van Gelder was a wizard on the computer and that he could have had stolen her identity

from there. He called the brothers in early February, but the Gozo police had some problems tracing them due to the address. Police Inspector Frank Tabone had also tried to knock on the door, but nobody answered and then they issued a warrant of arrest, and they brought them down on the 9th of March for interrogation at the general headquarters separately. The inspector noted that it was evident that some transactions in the bank statements were done at times when the Carmela sive Karen Nowak was at work: either in during her morning job as LSA or when she was also working part time at the Riviera adding that in fact it resulted that transactions were done in Gozo whilst she was in Malta. The inspector noted that during the investigation Jan Willem Van Gelder answered him that Pieter Marinus Van Gelder had paid for the trip to go back to Malta from Carmela sive Karen Nowak's credit card, but the inspector could not say whether he paid for such expenses with her consent or not. He declared that based on evidence, it tallies to fraud.

He stated that Jan Willem Van Gelder was the person who rented one of the apartments from Carmela sive Karen Nowak and who provided 2 bank slips, dated May 2010 and May 2011 for the sum of €5000 each slip. The inspector presented bank documents which were given to him by the brothers who alleged that they did not have a credit card in their name because they used the ING bank in Holland. He noted that since they had the money, they could have opened an account in Malta and transferred the money from the ING to a local bank, but they did not do so.

Inspector Ferris explained that at first, he had suspected that Carmela sive Karen Nowak was filing a false report because things were not tallying properly but then when he got proof that she was in Malta and money was being taken out from ATMs in Nadur, Rabat, Gozo, things started not to make any sense. He stated that there was one particular event when Carmela sive Karen Nowak recounted that she went to buy some furniture from KREA and she phoned Pieter Marinus Van Gelder, because she didn't have the credit card and he gave her, her pin number. This was for approximately around €1,750. She knew that he knew her pin number, but she did not know that he was using it. He added that she knew that money was being taken out from her account because she went to open a new account to transfer money and that is when she became aware that people were making use of her account. He stated that she changed her bank and went to Banif to open another account on his advice adding that the fact that Carmela sive Karen Nowak gave her pin number to Pieter Marinus Van Gelder does not imply that he could use it at any time he wanted but had to ask for her consent each time. He explained that Melita Bills were being paid

from her account as well but Carmela sive Karen Nowak did not take any notice of anything as otherwise, she would have stopped the account earlier.

Inspector Jonathan Ferries continued to testify that during the testimony he explained that he held the office of an inspector in the Fraud Department for 3 years and had started the investigation in 2012 when complainant Carmela sive Karen Nowak, went to his office on the 12th December 2011. He explained that the investigation was carried out throughout 2012 and were finalised and charges were going to be filed in the criminal court against Van Gelder in connection to fraud. The investigation was concluded in 2012 beginning of 2013. When Carmela sive Karen Nowak made her fraud claim she based her claim on the fact that she had never given him the consent to use her banking facilities, such as withdrawal of any money from the credit cards or using the atm. The inspector stated that Carmela sive Karen Nowak had told him that Pieter Marinus Van Gelder had no access to pin codes, and he did not have her consent to use internet banking. From their investigation he noted that Carmela sive Karen Nowak and Pieter Marinus Van Gelder had met when she was working in May 2008 at the Kempinski Hotel. Pieter's brother had confirmed the relationship between Carmela sive Karen Nowak and Pieter Marinus Van Gelder. The witness provided documents showing that someone was using her banking facility whilst she was not in Malta or also not in Gozo or else while she was working. He added that he was informed by complainant that she did not disclose her pin number to anyone. The witness was requested to make reference to an email dated 25th May sent from Carmela sive Karen Nowak to Pieter Marinus Van Gelder in which case Carmela sive Karen Nowak forgot her pin code and phoned home and Pieter Marinus Van Gelder gave it to her and the witness agreed that Carmela sive Karen Nowak did not know the pin number but with regards to the consent, he could not confirm whether Pieter Marinus Van Gelder had the consent from Carmela sive Karen Nowak to use the pin code. The complaint was done in December 2011, about seven months after such email with regards to transactions carried out between 2009 till 2011. When asked about the statements and documentation which Carmela sive Karen Nowak provided herself to Pieter Marinus Van Gelder including pin code, passwords and cards, the witness noted that such information was not given during the investigation by the defendant. He also noted that Carmela sive Karen Nowak had only authorised defendant once to withdraw or to use the pin number which authorisation does not amount to an automatic authorisation to make use of the pin number in your own pleasure. When shown an email which included all of Carmela sive Karen Nowak's passwords to enter into the Halifax account, the witness declared that he never saw such email and added that he

asked Carmela sive Karen Nowak whether she had given her banking details, but she always answered in the negative and that she never reported fraud to her bank and not even to the police. He noted that she had reported lost items, domestic violence but not fraud.

The first report in relation to this fraud was done on the 12th December 2011. The witness stated that the credit card was only used on one particular occasion when Pieter Marinus Van Gelder used it to bring down his brother from Holland. The other transactions were all done through ATM withdrawals and the cards were being used without consent when Carmela sive Karen Nowak was in Malta since the ATM withdrawals were being taken out from the ATM in Rabat and in Nadur. He added that he was never given anything in writing showing the consent for the transactions. The witness noted that since this is an allegation of fraud it is irrelevant that she knew about the transactions from her numerous internet banking sessions. The witness stated that he did not investigate any computer misuses, and that is why it is irrelevant, since the allegation was of fraud. He stated that the ATM was not hacked but used without consent. Although he stated that Carmela sive Karen Nowak had told him that Pieter Marinus Van Gelder had hacked her system, however, this was not established.

On the 19th May 2017, Inspector Jonathan Ferris declared that when Carmela sive Karen Nowak went to do the complaint in December 2011 she was not in a relationship with Pieter, however, she had informed him in March 2012 that Pieter Marinus Van Gelder and Carmela sive Karen Nowak had a relationship and were living together. He noted that during the time that the fraud took place the parties were in a relationship. The witness stated that the defendants were not cooperative, as when asked to appear at the police station they did not go and when they were arrested they were very rude but by time they started to cooperate more. The witness claimed that during the interrogation, Pieter Marinus Van Gelder had told him that he had consent to use Carmela sive Karen Nowak's bank account and that according to law for him to use her bank accounts he had to have a specific power of attorney, which was never produced to the witness and that if one had to give something to someone to be done for a specific use, it is only given to be used once but he had to have a power of attorney to use them more than once. He further claimed that although Pieter Marinus Van Gelder knew the PIN to Carmela sive Karen Nowak's account, he had no right according to law to use the funds of that account, as the account was not in the name of both Pieter Marinus Van Gelder and Carmela sive Karen Nowak but solely in Carmela sive Karen Nowak's name who thus, had to

authorise each and every transaction. Inspector Ferris explained that during the whole investigation he found several withdrawals from the Carmela sive Karen Nowak's accounts during the time she was working in Malta either as a LSA or else with the Riviera Hotel. He stated that with regards to Pieter Marinus Van Gelder there was no rent agreement. With regards to Jan Willem Van Gelder there were some agreements.

Alvin Scicluna on behalf of BOV PLC testified on the 23rd October 2013 and when asked whether he could check whether there was a report for lost cards regarding Carmela sive Karen Nowak Camilleri with the bank, he stated that he was not sure and he was going to check. He was also asked to check if there were any transactions which were contracted by Carmela sive Karen Nowak Camilleri, in between 2009 and 2010.

On 10th April 2014, Alvin Scicluna testified that no reports were lodged of a missing card with BOV. When asked to provide the transactions made between 2009 and 2011 in relation to the bank account of Carmela sive Karen Nowak Camilleri, he explained that he needed to verify if he would be able to decipher who actually used the card adding that some transactions done between 2008 and 2011 were done from overseas. The witness explained that Carmela sive Karen Nowak could have requested a statement of her account online and could also see the transactions online while confirming that no report was made with regards any misuses of her account, nor of any missing internet key. He explained that the key worked with a security code and password, and one cannot change the password without the authority of the bank.

Alvin Scicluna on behalf of BOV plc continued to testify on the 21st October 2016 where he explained to the Court that he worked as a manager in the legal section at the BOV, Gozo and presented a cheque issued by their Nadur Agency of €1,200 in favour of Anthony which was encashed on the 17th of March 2017. In a subsequent sitting, the witness presented a statement of transactions adding that he did not find many transactions but found one statement dated 21st April 2011 where it was stated that there was money transferred to Pieter Marinus Van Gelder on loan.

Giovanna Debattista on behalf of Banif Bank Malta plc gave evidence on the 23rd October 2013 and when asked whether at any particular moment in time a new account was opened with Banif by Carmela sive Karen Nowak Camilleri, she explained that between 2011 and 2012, 2 accounts were opened on behalf

of Carmela sive Karen Nowak Camilleri: One was opened on the 7th July 2011 and the other was opened on the 6th January 2012.

Marcel Tabone in representation of ETC gave evidence on the 10th April 2014 and stated that Pieter Marinus Van Gelder went to their offices to find some clients to work with him. He outlined that they organised an open day for him where a lot of their clients went for the interviews and also made reference to some emails exchanged with Olivia who was in charge of the employment aid programme. The witness explained that this was all done free of charge, but Pieter Marinus Van Gelder was not a registered employer with ETC.

Ricardo Samhan was summoned to testify on the 7th May 2015 wherein he stated that he knew both Carmela sive Karen Nowak and Pieter Marinus Van Gelder since he also lived in Nadur. He stated that the parties “had a steady relation” for at least one year and a half or two years and Jan Willem Van Gelder had rented a flat from Carmela sive Karen Nowak on top of his own apartment. He stated that Jan Willem Van Gelder was a neighbour for a period of 2 years and that he was aware that the defendants moved to Gozo and had the intention of establishing their business in the gaming industry.

On the 7th May 2015 **Inspector Frank Anthony Tabone** testified that he was the duty inspector at the time when the report was lodged, on the 10th April 2011 but was only informed about the report. The investigations were carried out by the duty Sergeant.

Anthony Bugeja testified on the 16th September 2016 and explained that he works for the government and also used to lease farmhouses. The witness was shown a bank statement dated 13th March 2010 showing that a cheque was issued amounting to €1,202.91 but he could not remember whether this cheque was issued to him. Furthermore, shown a bank draft dated 13th March 2010, he could not remember whether he had received it.

Ruben Buttigieg testified on the 16th September 2016 and explained that he was the director of the company named Erremme Business Advisors Limited, a corporate service provider in financial services. He explained that he knew Pieter Marinus Van Gelder when he met him together with another two persons, one of which was a female person, some years before in a Xlendi, Hotel in the lobby in 2012. He explained that his job was to give his advice on these matters adding that Dr Doreen Turner, who works at a separate firm, had informed him that these persons wanted to go to their office. He explained that his colleague Michele Portelli was obliged to retain any documents of the company.

Charlie Galea was summoned to give evidence on the 21st October 2016 and explained that he worked for government and was also as an auto dealer on part time basis. He stated that he had been doing this work for 25 years. He testified that he knew Carmela sive Karen Nowak as he had sold her a black car, Opel Tigra, more than five years before and remembered that Carmela sive Karen Nowak had gone to purchase the car with another man but did not remember who he was. He added that the contract was in the name of Carmela sive Karen Nowak and so she was the one who purchased the car.

Uwe Berthold Nowak testified on the 10th January 2017 and explained that he got married to Carmela sive Karen Nowak on the 2nd of January 2012 in Germany and had met for the first time in July/August of 2010 in Hotel Riviera where Carmela sive Karen Nowak used to work. He added that after his holiday he kept in touch with Carmela sive Karen Nowak via emails and he came back in December 2010, and they had been together since then. Asked about the defendants, he claimed that he did not know Jan Willem Van Gelder, but he knew some things about Pieter Marinus Van Gelder. He explained that in Spring 2010 when he called her on her home landline Pieter Marinus Van Gelder had picked up the call, and this happened two or three times. He stated that once he went to her apartment and he was shocked because he saw thousands of DVDs inside the room, and there were damaged walls, full ashtrays and the apartment was not in a good state. He stated that Carmela sive Karen Nowak had a scar over her lip and from what he was told, he knows that it was caused on her 40th birthday, when she went home and was hit by Pieter Marinus Van Gelder.

Jean Luke Azzopardi, Carmela sive Karen Nowak's son wrote a sworn declaration wherein he stated that he knew that his mum owns and lives in a property at 10, Petra Court, Our Lady of Lourdes Street, Nadur Gozo, where he used to visit her every day. He stated that in May/June of 2008 his mother told him that she had met Pieter Marinus Van Gelder at a hotel, and he had requested to share such apartment with her as he could not travel back to Holland due to health problems. He added that his mother had informed him that she was going to refurbish the apartment to accommodate Pieter Marinus Van Gelder and the works took place between September 2008 and January 2009, during which period his mother had to move out of the property given that the works consisted in heightening the already existing doors, breaking the already existing kitchen, opening a new arch to make one whole room, renovation of living, dining, kitchen, a new kitchen and installation of new doors. A wooden ceiling on the front area of the property needed to be changed. He added that after the works were done, Pieter Marinus Van Gelder moved in with his mother in

February 2009, till September 2011 when his mother had informed him that Pieter Marinus Van Gelder had vacated the property without any notice and they found the apartment in an atrocious condition: the three doors were broken and irreparable, its frames were out of the wall; handles were loose, and the keys were lost. The sofa bed was defecated and urinated upon by the cat; the pump on the ceiling was not working and water was not coming through the taps; the kitchen was very dirty and the doors and surfaces were all scratched; the washing machine was not working; the bed was broken; the doors of the wardrobe were all loose and scratched and there was a bad smell of cigarettes everywhere; the curtains of the main door were dishevelled and new blinds had to be ordered. The television was missing and only the wires were hanging down the wall and the computer had missing parts from its tower.

He explained that once he went to his mother's house and found Pieter Marinus Van Gelder lying in bed in a very bad state with his feet up covered in plasters and got to know that Pieter Marinus Van Gelder had driven his mother's motor bike without her permission and without any licence and had a bad accident. He also had a big scar on his forehead. He also noticed that the motorbike was in a very bad state of repair. The witness also made reference to another incident which happened after his mother turned forty in June 2009: he had tried to call her to congratulate her on her birthday, but her phone was switched off, the saw his mother at Mġarr reaching the ferry to go to work and could see bruises on her face, on her left part of her face was covered in white bandage and had stitches underneath. He added that his mother used to travel nearly almost every day with the 6:30am ferry to Malta and return with the mid-night ferry. The guests liked her in the hotel as she used to get very good tips.

After the incident he had seen Pieter Marinus Van Gelder with his brother driving a black Opel Tigra and did not know that his mother had paid nearly the entire sum of such car. Jan Willem Van Gelder was staying in a flat which belonged to his mother at 5, Triq l-Arcipriet Saver Cassar, in Nadur. In fact, Jan Willem Van Gelder stayed there till February 2012. When Pieter Marinus Van Gelder vacated his mother's apartment he went to live with his brother and when they left the other apartment they also found many damages. His mother had to pay an outstanding Water and electricity bill on both apartments when the brothers left. He noted that during his mother's and Pieter's friendship they were always out eating in restaurants in Gozo, and he stated that Pieter Marinus Van

Gelder had hundreds of CD films lined up in cupboards and shelves as well as the most recent PSP play station and several piles of different magazines.

Carmel Debrincat on behalf of BOV testified on the 28th March 2019 stated that with reference to the log in records of Carmela sive Karen Nowak's internet banking, there is an electronic audit trail. Nonetheless, in cross examination on the 19th June 2019, he explained that there is no official report, but the IT department informed him that they could transfer the information to an Excel Sheet and that they had no record given that they can only trace the last 5 years.

Georgina Gauci on behalf of BOV gave evidence on the 12th March 2020 and was asked about the log-in records into the internet banking system used to access Carmela sive Karen Nowak's account. She explained that given that the internet key seized operating on the 4th of June 2013, they could not go further than 5 years from the day of the sitting and had no further information to present.

The defendant, Pieter Marinus Van Gelder presented a sworn declaration wherein he stated that he arrived in Malta on the 5th of May 2008 for a 2-week vacation at Kempinski San Lawrenz with his brother, Jan Willem van Gelder. He met Carmela sive Karen Nowak while she was working as a bartender in the same hotel and during the second week of his stay he asked Carmela sive Karen Nowak out for dinner and went to Otters restaurant in Marsalforn and afterwards she invited him to her apartment "Petra Court" no. 10 at Triq il-Madonna ta' Lourdes in Nadur as he had offered to take a look at her faulty PC. He declared that after only 5 minutes there, Carmela sive Karen Nowak told him that he could stay with her at her apartment for as long as he wanted and subsequently spent the night with her at the apartment, marking the start of their relationship.

He accepted her offer and stayed with her while his brother returned to Amsterdam on the 18th of May. He stated that they agreed that he would go live with her and that he would give her money to put into her bank account for their future together. He moved to Gozo on the 10th February 2009 during which time, his relationship with Carmela sive Karen Nowak was serious, they had been together for 9 months and he believed that they had a future together since he had an internet based job which he was able to do from Gozo. When he moved to Gozo his brother moved into his apartment in Holland.

Pieter Marinus Van Gelder stated that on 19th of June 2009, his brother along with Sirik de Vires visited him and bought an Opel Tigra from Mr Charlie Galea in Ghajnsielem as a present for Carmela sive Karen Nowak, in fact the latter is

the registered owner of this car. He declared that the purchasing price of the car was €14,000 and Carmela sive Karen Nowak took out an €8,000 bank loan to pay for it and had asked him for a €3,000 loan, which he had given her. He stated that Carmela sive Karen Nowak had told him that she had other expenses due at that time as well and needed his money.

He went to Holland on the 28th March 2010 to move his other belongings to Gozo. By then, his relationship with Carmela sive Karen Nowak had been going on for 2 years and he believed that his future was in Gozo with Carmela sive Karen Nowak. During such time his brother was also moving to Gozo and Carmela sive Karen Nowak had offered him a rent free apartment at "Pace Haber" no. 5 at Triq l-Arcipriet Saver Cassar in Nadur but she broke such promise within one week of his brother's arrival in Gozo.

He stated that they trusted each other financially. His income was much greater than Carmela sive Karen Nowak's and he gave her money regularly for their future together. He did most of her financial administration and did financial transactions for her upon her request and she had given him access to all her banking facilities. Defendant Pieter Marinus Van Gelder claimed that Carmela sive Karen Nowak had also agreed that during the trip from 1 to 12 April 2010, he could make use of her credit card and declared that he had fully reimbursed her and that this was shown on the bank statements. He stated that she had told him that she completely trusted him and that he was free to use her credit card whenever he needed.

Pieter Marinus Van Gelder further declared that on his return to Gozo, on the 12th of April, Carmela sive Karen Nowak started to suffer frequent mood changes, he tried to help her as much as he could, but she would constantly complain that the hotel would not give her any time to eat dinner and admitted to frequently drinking a number of beers from the hotel bar without paying for them. Regarding her schoolwork she had said that she frequently slept during classes due to tiredness. In the second quarter of 2011, he started to notice that she was receiving large numbers of SMS messages from various other men. Carmela sive Karen Nowak used to stay in Malta overnight, usually for a few days and sometimes for a week at a time. He had come across a health certificate from the Gozo hospital dated 14 December 2010, which stated that she was having intercourse with multiple partners. He had confronted Carmela sive Karen Nowak with a list of text messages that were stored in her phone, and which were of a sexual nature, but she had refused to comment on any of them.

In August he had decided to look closely at the financial situation since 2008 and found that Carmela sive Karen Nowak had been systematically directing money away from her account to other newly opened accounts, usually at times when Pieter Marinus Van Gelder was abroad on business. Days later his suspicions were confirmed that she had developed a serious relationship with Mr Uwe Nowak from Hagen, Germany and so, on 4 September 2011, he decided to end his relationship with Carmela sive Karen Nowak, he left the Petra Court apartment after taking photographs of the state of the apartment at that moment and on the same day he moved in with his brother at the Pace Haber apartment in Nadur until on 20th September, both Pieter Marinus Van Gelder and Jan Willem Van Gelder received a warrant of seizure which had been requested by Carmela sive Karen Nowak on 15th September. He declared that it was only issued because Carmela sive Karen Nowak falsely stated that they presented a flight risk which was ruled against by the Gozo Court on the 24th of November and the warrant was revoked.

Pieter Marinus Van Gelder claimed that in March 2012, Carmela sive Karen Nowak filed a criminal charge against him and his brother and on the 9th of March, they were questioned by Inspector Jonathan Ferris of the Economic Crimes Unit in Floriana and were asked to go again a week later to present their evidence consisting of invoices, bank statements and other documents that remained in possession of Inspector Ferris. At the end of the interview, Inspector Ferris informed them that due to the evidence provided, the focus of the investigation had now shifted from them to Mrs Carmela sive Karen Nowak.

Defendant stated that during the time he was with Carmela sive Karen Nowak he had paid for various improvements to her apartment, such as air conditioning, wall to wall cupboards, a desk with bookcase, a satellite dish, a washing machine and a sofa, all of which are still at the apartment. He also regularly gave Carmela sive Karen Nowak cash to put into her account for their future plans and paid for such things as groceries, telephone, internet, fuel and restaurant visits. He stated that he used Carmela sive Karen Nowak's credit card with her full knowledge and consent, and only in situations where it would greatly facilitate a payment, such as buying an Air Malta ticket online or using an electronic payment facility which would not accept my standard bank card. Pieter Marinus Van Gelder noted that in Holland payment options of banking cards are more common and widespread than those of credit cards and that was the reason for not having a credit card. In addition, because the Maltese economy was largely cash-based he would only need a credit card in a few instances, and he did not

acquire a credit card because Carmela sive Karen Nowak had offered him to use hers.

He added that he used to take care of nearly all of Carmela sive Karen Nowak's correspondence, which involved a lot of work as she was involved in many legal disputes with various third parties. These included:

1. MEPA and other apartment owners at Petra Court, regarding a number of matters;
2. Karkanja Ltd, regarding her apartment Misraħ il-Fliegu in Għajnsielem;
3. MIG Limited, regarding her apartment O Mio Dio in Marsalforn;
4. Mr Heinz Rudiger Schultz, a former boyfriend from South Africa, regarding her breakup with him.

He also took care of most correspondence regarding Carmela sive Karen Nowak's jobs, including a large amount of both Carmela sive Karen Nowak's and her son's schoolwork, such as assignments, evaluations and work schedules. He practically did all of the work involved when, in 2010, Carmela sive Karen Nowak had applied for a course to become a Learning Support Assistant.

Pieter Marinus Van Gelder noted that during the course of their relationship:

1. Over 3,000 emails were exchanged between himself and Carmela sive Karen Nowak;
2. His total income was in excess of €150,000;
3. Carmela sive Karen Nowak deposited in excess of €110,000 into her bank accounts;
4. Carmela sive Karen Nowak declared a total income of €43,080 with the IRD;
5. The difference between the money deposited by Carmela sive Karen Nowak and her declared income more or less equals the amount withdrawn from Pieter Marinus Van Gelder's BOV account and he regarded this as fraud on the part of Carmela sive Karen Nowak. In addition to this amount he was also seeking reimbursement for all payments which he listed in Appendix A.

He also added that Carmela sive Karen Nowak never filed any complaints against any payment made through her BOV account, nor has she ever filed any complaints against improper use of her (online) banking facilities until he left her after having found out that she had been unfaithful to him, she had always monitored her BOV account closely through internet, it was Carmela sive Karen Nowak herself who defrauded him.

At a subsequent stage, Pieter Marinus Van Gelder presented another affidavit where he repeated several points which he had already mentioned in his previous sworn affidavit. He denied that he ever gave €50 as a tip to Carmela sive Karen Nowak. He insisted that he bought a tv and a DVD player from Sound and Vision for the cost of €1,136. He denied that Carmela sive Karen Nowak paid for the flight ticket of 22nd June 2008. He insisted that he paid it himself. He agreed that Carmela sive Karen Nowak painted, refurbished and redecorated the apartment at her own initiative and expense when he was in Holland.

Pieter Marinus Van Gelder denied that he damaged the motorcycle except for some scratches caused on the side panel. He insisted that Carmela sive Karen Nowak used the motorcycle regularly and that after the accident, he never used the motorcycle again. He stated that in April 2009, he paid for the maintenance expenses of the said motorcycle. Van Gelder clarified that it was when he moved his belongings to Gozo in February 2009, that he agreed with Carmela sive Karen Nowak that he would pay half of the living costs. He stated that he started giving Carmela sive Karen Nowak cash money to put in her BOV Account regularly.

He denied that on 14th February 2009 he borrowed money from Carmela sive Karen Nowak. He insisted that his salary had been credited to his bank account on 4th February 2009 and he made a withdrawal on 10th February 2009. He stated that the €250 that Carmela sive Karen Nowak withdrew on 14th February 2009 was a gift to her son who had his birthday on that same day. The cupboards were not paid by Carmela sive Karen Nowak on 9th May 2009 since he had paid €1,000 on 17th February 2009 and paid the remainder €1,130 on 16th April 2009.

Van Gelder explained that it was Carmela sive Karen Nowak who wanted to buy the Opel Tigra and she borrowed €3,000 from him. He stated that he paid also for the servicing of this car. He clarified that it was in August 2009 when their relationship seemed solid, that he decided to sell his house in Holland. He explained that his brother was moving to Gozo and that Carmela sive Karen Nowak had promised that his brother could live in her Pace Haber Apartment rent free from 2nd May 2010 onwards. He insisted that on 28th March 2010, Carmela sive Karen Nowak authorised him to make free use of her credit card while he was moving the remaining of his belongings to Gozo.

Van Gelder continued that later on, Carmela sive Karen Nowak insisted that his brother start paying rent which he did. He said that later on, he became aware that Carmela sive Karen Nowak was putting the money he was giving her regularly for their future in other accounts of her own. He denied that he left the

apartment in a bad condition. He insisted that in August 2011, Carmela sive Karen Nowak had removed almost all of her crockery, cutlery, bedding and stationery to her Ghajnsielem apartment. He stated that the printer was in the garage when he vacated the apartment. He took photos of how he left the apartment. As regards the meeting at Tamarisk, he insisted that Carmela sive Karen Nowak had invited him and that she was going to pay, but she said that she was going for money at the ATM and never returned to pay the bill. That bill was subsequently paid by Van Gelder on a later occasion after he was told what had happened.

He stated that he and his brother vacated the Pace Haber apartment on 24th February 2012 in accordance with the rental agreement. He denied that the Riviera hotel staff ever filed any police report against him or his behaviour towards them. He insisted that the only time that Carmela sive Karen Nowak mentioned the electricity and water bills, was when she asked him to correspond with ARMS to negotiate a payment plan for the Petra Court Apartment. He stated that Carmela sive Karen Nowak had to pay his share of the bills from the money he regularly gave her.

Van Gelder emphasized that Carmela sive Karen Nowak was fully aware that he used her banking facilities both in Malta and when abroad. Van Gelder went on to calculate that Carmela sive Karen Nowak should have earned almost €160,000 more than she actually did. Carmela sive Karen Nowak's allegation that the unexplained deposits of €62,479.27c amounted all to tips she received, was discredited by the Criminal court in the proceedings taken against Van Gelder. Van Gelder insisted that his claim from Carmela sive Karen Nowak amounts to €71,985.66c.

Pieter Marinus Van Gelder was cross examined on the 15th November 2022 and explained that during their relationship Carmela sive Karen Nowak worked as an LSA in Malta and also worked in a hotel in Mellieħa but when they met she was working at the Kempinski hotel. He confirmed that his income was directly paid into his account and in order to buy the car he loaned her €3,000. At the time he did not feel the need to draw up a private writing about such loan. He said that the car was in her name and that he as well as his brother and Silik paid for such car. He stated that he gave her the money in cash because he had a bank card which was not a credit card and he had to withdraw money from it as he could not get a credit card.

Asked about his brother, he claimed that his brother had moved to Gozo in March 2010 to set up a company and Carmela sive Karen Nowak offered him

to stay at the apartment in Triq l-Arcipriet Saver Cassar in Nadur for free. He confirmed that he could use Carmela sive Karen Nowak's credit card because she had sent him a message detailing exactly that he could use it and she sent him the PIN code whilst he was in Netherlands and also confirmed that whilst he was in Netherlands he was using her credit card whilst Carmela sive Karen Nowak was not there but with her consent. He stated that he had paid for the improvements in Carmela sive Karen Nowak's apartment. He confirmed that most of the time he was staying alone in the apartment as Carmela sive Karen Nowak would either be in Malta working or else she would be spending days in Malta. He stated that Carmela sive Karen Nowak had asked him to help with her son's schoolwork and that she had specifically asked him to do her accounts and that he had written evidence to the effect that she gave him her PIN code and therefore her consent. He stated that she had 2 accounts, one in Banif and one in BOV, and that he only had access to the bank account of Banif. He moved out on the 4th of September and a few weeks before, in August, he took a closer look at Carmela sive Karen Nowak's financial situation, going back to 2008. He stated that their relationship had ended and that during such time, in 2011, she had relations with other men and that he was going to move out, but had to take care of certain things, namely financial things. He then stated that he was remembering that the access to her account stopped several months before this.

Jan Willem Van Gelder presented a sworn declaration wherein he stated that from the 5th of May 2008 he had spent a two-week holiday with his brother, Pieter Marinus Van Gelder at the Kempinski hotel in Gozo, during which his brother had asked Carmela sive Karen Nowak out to dinner and after dinner, they had gone to her Petra Court apartment where they spent the night. The next day Carmela sive Karen Nowak asked his brother to prolong his visit and to go stay with her longer and since his brother had agreed to stay, he returned to Amsterdam by himself on the 18th May 2008. It was at the end of June 2008 that Pieter Marinus Van Gelder had gone back to Holland temporarily to plan everything needed to be able to go and live with Carmela sive Karen Nowak in Gozo. He explained that in February 2009 he had assisted Pieter Marinus Van Gelder when he moved part of his belongings from Holland to the Petra Court apartment in Nadur and in June 2009 he had spent a two-week vacation with a friend to visit Pieter, during which himself together with Pieter Marinus Van Gelder and his friend had accompanied Carmela sive Karen Nowak to Mr Charlie Galea's garage where she had bought a black Opel Tigra and Pieter Marinus Van Gelder had loaned her €3,000 to buy this car.

He testified that in September 2011 Pieter Marinus Van Gelder decided to break off his relationship with Carmela sive Karen Nowak and move out of her apartment because she had been cheating on him and had defrauded him at the same time, so he moved part of his belongings out of the Petra Court apartment which was left clean and in an undamaged state and a week later Carmela sive Karen Nowak had filed a Warrant for Seizure based on false statements under oath but this only lasted a few weeks as this was revoked.

He added that during the first months of 2012, Carmela sive Karen Nowak tried to file a criminal case for fraud against them and in March they were questioned by Inspector Jonathan Ferris of the Economic Crimes Unit in Floriana who requested to present their evidence, who after taking a look at the documents presented by them were informed by Inspector Ferris that due to the evidence provided, the focus of the investigation had now shifted from them to Carmela sive Karen Nowak. Furthermore, Pieter Marinus Van Gelder was advised to start a Civil Case against Carmela sive Karen Nowak which he did.

Jan Willem Van Gelder added that during their relationship Pieter Marinus Van Gelder had paid almost all expenses, including clothes, shoes, linen, kitchen appliances, dinners, LSA course, laptop, desk with bookcase, chair, wall-to-wall cupboards, pharmacy products, air conditioner, sofa, stationary, bathroom equipment, water pump and installation, satellite dish, washing machine, presents for Carmela sive Karen Nowak's son, groceries, telephone costs, internet costs and costs relating to cars and motorbike. He declared that Pieter Marinus Van Gelder had regularly gave Carmela sive Karen Nowak cash to be saved in her BOV bank account for their future together. During the relationship with Carmela sive Karen Nowak, Pieter Marinus Van Gelder had work related income deposited into his bank accounts. Carmela sive Karen Nowak's income was very little in comparison, but she managed to spend thousands of euros on refurbishing and decorating several apartments, buying a car and paying for other expenditures while saving all her earnings. These savings consist largely of Pieter's money and that was why Carmela sive Karen Nowak had given Pieter Marinus Van Gelder prior consent to use her credit card and online banking facilities and was fully aware of payments being made with it. She had also trusted him with access codes to her Halifax stock trading account.

He claimed that Carmela sive Karen Nowak had never filed any complaints against Pieter Marinus Van Gelder for any payment made through her BOV account, nor had she ever filed any complaints against Pieter Marinus Van Gelder for improper use of her (online) banking facilities until after he had left her in September 2011. Furthermore, he added that Carmela sive Karen Nowak

had asked Pieter Marinus Van Gelder to do most of her administration including handling her correspondence regarding her various jobs, her legal disputes with various third parties and her break up with Mr Heinz Rüdiger Schultz (a former boyfriend); making bank deposits; writing emails and letters; making phone calls; making worksheets; taking care of a large amount of Mrs Carmela sive Karen Nowak school work including Assignments, Evaluations and Work schedules; taking care of practically all the work involved in Carmela sive Karen Nowak's LSA course; taking care of part of her son's school work and arranging a payment plan regarding water and electricity costs.

Jan Willem Van Gelder claimed that the following people, amongst many others, had been aware of the fact that Pieter Marinus Van Gelder and Carmela sive Karen Nowak had an almost 3 year lasting relationship: Their family and friends from Holland that have visited over the years, Carmela sive Karen Nowak's parents, her brother and his wife and her son, their Gozitan friends, neighbours at the Petra Court and Pace Haber apartments, The staff at the Kempinski hotel, Tamarisk, Horatio's, Arkadia etc. On the 6th October 2022 the witness stated that he knew that his brother, Pieter Marinus Van Gelder and Carmela sive Karen Nowak, went to her Petra Court Apartment together and spent the night there and had helped his brother shift his belongings from Holland to Gozo in 2009.

Another affidavit was presented by Jan Willem Van Gelder whereby he repeated what he had already testified about and elaborated further on certain points. He stated that a colleague of Carmela sive Karen Nowak had warned him that Carmela sive Karen Nowak was after his brother's money. He confirmed that his brother loaned Carmela sive Karen Nowak €3,000 to buy the Opel Tigra. He denied taking any parts of the old desktop computer belonging to Carmela sive Karen Nowak. He stated that he used laptops and in the summer of 2010, he had given Carmela sive Karen Nowak his old laptop as her computer was broken. He also calculated that it is Carmela sive Karen Nowak that owes him money and therefore he did not pay Carmela sive Karen Nowak for the electricity and water costs.

In cross examination held on the 15th November 2022, Jan Willem Van Gelder confirmed that between May 2008 and April 2010 he spent 5 weeks in Malta wherein he stayed in an apartment in Nadur which was owned by Carmela sive Karen Nowak and this between 2010 and February 2012, during which he paid the rent for staying there. Asked about the monies lent, he declared that his brother had loaned €3,000 in cash to Carmela sive Karen Nowak to buy the car in 2009 and confirmed that since Pieter Marinus Van Gelder used to work on

the internet his income was paid directly into his bank account. He explained that Pieter Marinus Van Gelder would withdraw cash from his bank account and pay Carmela sive Karen Nowak cash while adding that he had also given his brother money from his own bank account amounting to around €1,000 while his friend Sirik De Vries, also gave Pieter Marinus Van Gelder €500 and Pieter Marinus Van Gelder gave all the money to Carmela sive Karen Nowak. He explained that his brother, Pieter, had handled Carmela sive Karen Nowak's affairs and that was why he was in possession of bank statements and payslips.

Considers:

From the evidence brought forth, it transpires that Pieter Marinus Van Gelder and Carmela sive Karen Nowak used to live in the same apartment up until their relationship turned sour and Van Gelder vacated the said apartment. The evidence brought forth by the parties is conflicting in that Pieter Marinus Van Gelder claims that Carmela sive Karen Nowak misappropriated his monies and defrauded him whereas Carmela sive Karen Nowak claims that the opposite happened in the sense that it was Pieter Marinus Van Gelder who defrauded her.

In such cases where there is conflicting evidence, reference is to be made to the present caselaw. For instance in the case bearing the names of **Maria Xuereb et vs Clement Gauci et** decided by the Court of Appeal in its Inferior Jurisdiction on the 24th March 2004, it was outlined that:

“Huwa pacifiku f'materja ta' konflitt ta' versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni tal-provi quddiemha:

- 1. Li tagbraf tislet minn dawn il-provi korroborazzjoni li tista' tikkonforta xi wahda miz-zewg versjonijiet bhala li tkun aktar kredibbli u attendibbli minn obra; u*
- 2. Fin-nuqqas, li tigi applikata l-massima “actore non probante reus absolvitur”.*

Ara a propozitu sentenza fl-ismijiet “Fogg Insurance Agencies Limited noe vs Maryanne Theuma”, Appell, Sede Inferjuri, 22 ta' Novembru, 2001.

Fi kliem iebor il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, ghandhiex teskludi lill-obra, anke fuq il-bilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f'kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant (Kollez. Vol L pII p. 440).”

In the same sense, on the 30th October 2003, the First Hall Civil Courts decided the case bearing the names of **George Bugeja vs Joseph Meilak**:

*“Jinsab ravvisat fid-decizjoni fl-ismijiet **“Farrugia vs Farrugia”**, deciza minn din il-Qorti fl-24 ta’ Novembru, 1966, li “il-konflitt fil-provi huma haga li l-Qrati jridu minn dejjem ikunu lesti ghalha. Il-Qorti ghandha tezamina jekk xi wahda misz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, ghandbiex teskludi lil-lohra, anke fuq il-bilanc tal-probabilitajiet, u tal-preponderanza tal-provi, ghax dawn, f’kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant”.*

Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-isbjergazzjonijiet forniti lilu, imma jekk dawn l-istess spjegazzjonijiet huwiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat bazziku ta’ azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall-konvinciment.

*Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta’ dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju rajonevoi. Kif kompli jinghad fl-imsemmija kawza **“Farrugia vs Farrugia”**, “mbux kwalunkwe tip ta’ konflitt ghandu jhalli lill-Qorti f’dak l-istat ta’ perplessita` li minhabba fib ma tkunx tista’ tiddeciedi b’kuxjenza kwieta u jkollha taqa’ fuq ir-regola ta’ in dubio pro reo”.*

In the case bearing the names **Kmandant tal-Forzi Armati ta’ Malta Vs Francis Difesa** decided on the 28th March 2003 by the First Hall Civil Courts, reference was yet again made to the case in the names of **Farrugia vs Farrugia**:

*Jinsab ravvisat fid-decizjoni fl-ismijiet **“Carmelo Farrugia –vs- Rokku Farrugia”**, Prim’ Awla, Qorti Civili, per Imballef Maurice Caruana Curran, 24 ta’ Novembru 1966,*
“il-konflitt fil-provi huma haga li l-Qrati jridu minn dejjem ikunu lesti ghalha. Il-Qorti ghandha tezamina jekk xi wahda misz-zewg versjonijiet, fid-dawl tas-soliti kriterji talkredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, ghandbiex teskludi lill-obra, anke fuq ilbilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f’kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant.”;

Reference is also made to the judgement given by the First Hall Civil Courts in the names of **Emanuel Ciantar vs David Curmi nomine** decided on the 28th April, 2003:

“Huwa ben maghruf f'materja konsimili illi mhux kwalunkwe konflitt, kontradizzjonijiet jew inezattezzi fil-provi ghandbom iballu lill-Qorti f'dak l-istat ta' perplessita` li minhabba fibhom ma tkunx tista' tiddeciedi b'kuxjenza kwjeta jew jkollha b'konsegwenza taqa' fuq ir-regola ta' in dubio pro reo;

Fil-kamp civili ghal dak li hu apprezzament tal-provi, ilkriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispejgazzjonijiet furniti lilu imma jekk dawn listess spejgazzjonijiet huwiex, fic-cirkostanzi zvarjati talhajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat bazziku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall-konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza talprobabilitajiet.

Dan ghad-differenza ta' dak li japplika filkamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli. (Vol. XXXVI P I p 319)”

Further reference is made to the judgement awarded by the Court of Appeal on 17th March 2003 in the names of **Enrico Camilleri vs Martin Borg**:

“Dan ghaliex, kif pacifikament akkolt fil-gurisprudenza taghna “l-gudikant, fil-kamp civili, ghandu jiddeciedi fuq ilprovi li jkollu quddiemu, meta dawn jinducu fib dik ic-certezza morali li kull tribunal ghandu jfittex, u mhux fuq semplici possibilitajiet; imma dik ic-certezza morali hija bizzejjed, bbala li hija bazzata fuq il-preponderanza tal-probabilitajiet”. (“Eucaristico Zammit -vs- Eustrachio Petrocchino”, Appell Kummerc, 25 ta' Frar 1952; “Paul Vassallo -vs- Carmelo Pace”, Appell Civili, 5 ta' Marzu 1986).

Il-Qorti allura jehriegilha tara jekk il-versjoni l-wahda ghandiex teskludi lill-obra fuq il-bilanc tal-probabilitajiet. B'hekk ukoll jigi evitat ir-riskju li l-Qorti taqa' fuq l-iskappatoja tad-dubju u ssib rifugju mir-regola ta' “in dubio pro reo”.....Kif rilevat fsentenza antecedenti fil-kawza fl-ismijiet “Dottor Herbert Lenicker -vs- Joseph Camilleri”, Prim'Avla, Qorti Civili, 31 ta' Meju 1972, “f'kawza civili lattur li jallega li gratlu hsara b'tort tal-konvenut, irid jipprova huwa a sodisfazzjon tal-Qorti li l-konvenut kellu tort. Jekk l-attur ma jgibx din il-prova l-azzjoni tieghu ma jistax ikollha ezitu favorevoli (anke jekk il-konvenut ma jipprovax – ghaliex legalment ma hu obbligat li jipprova – li l-incident ikun gara b'tort tal-attur); dan mhux ghaliex

ittort għall-incident jkun tal-attur, imma sempliciment ma jkunx irnexxielu jipprova dak li allega bhala bażi tal-ażżjoni tiegħu”.

Fl-istess sens id-deċiżjoni fl-ismijiet “Gemma Cassar Saetta –vs- Imco Distributors Ltd”, Appell, Sede Inferjuri, 13 ta’ Jannar 1999.”

This Court makes reference to the judgment in the names **Chef Choice Limited vs Galea** decided on the 26th September 2013, wherein it was stated:

Illi l-Qorti tqis li, għalkemm il-grad ta’ prova fil-proċediment ċivili m’huwiex wieħed tassattiv daqs dak mistenni fil-proċediment kriminali, b’daqshekk ma jfissirx li l-provi mressqa jridu jkunu anqas b’sabbithom. Il-prova mistennija fil-qasam tal-proċediment ċivili ma tistax tkun semplici suppożizzjoni, suspett jew koŋġettura, imma prova li tikkonvinci lil min irid jagħmel gudiżżju (Ara P.A. DS 13.2.2001 fil-kawża fl-ismijiet Nancy Caruana vs Odette Camilleri (mhix pubblikata, imma f’dan ir-rigward, koŋfermata mill-Qorti tal-Appell fis-27.2.2004). Iżda f’każijiet mibnija fuq id-delitt jew il-kważi-delitt, l-aktar meta jkun hemm imdabhal xi eġmli tal-qerq tal-parti mharrka huwa ammess li “f’kawża ċivili d-dolo jista’ jiġi stabbilit anke permezz ta’ presunzjonijiet u ndiżji, purke’ s’intendi jkunu serji, preċiżi u koŋkordanti, b’tali mod li ma jhallu lebda dubju f’min hu msejjah biex jiġġudika” (P.A. PS 28.4.2003 fil-kawża fl-ismijiet Emanuel Ċiantar vs David Curmi et (koŋfermata mill-Qorti tal-Appell fid-19.6.2006).

Illi minbarra dan, il-parti attriċi għandha l-obbligu li ttipprova kif imiss il-premessi għat-talbiet tagħha b’mod li, jekk tonqos li tagħmel dan, iwassal għall-helsien tal-parti mharrka (App. Inf. JSP 12.1.2001 fil-kawża fl-ismijiet Hans J. Link et vs Raymond Mercieca). Il-fatt li l-parti mharrka tkun ressqet verżjoni li ma taqbilx ma’ dik imressqa mill-parti attriċi ma jfissirx li l-parti attriċi tkun naqset minn dan l-obbligu, għaliex jekk kemm-il darba l-provi ċirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attriċi, l-Qorti tista’ tagħżel li toqgħod fuqha u twarrab il-verżjoni tal-parti mharrka. Min-naha l-obra, il-fatt li l-parti mharrka ma tressaqx provi tajba jew ma tressaq provi xejn kontra l-pretensjonijiet tal-parti attriċi, ma jehlisx lil din milli ttipprova kif imiss l-allegazzjonijiet u l-pretensjonijiet tagħha (App. Inf. PS 7.5.2010 fil-kawża fl-ismijiet Emanuel Ellul et vs Anthony Busuttil);

Illi huwa għalhekk li l-liġi torbot lill-parti f’kawża li ttipprova dak li tallega u li tagħmel dan billi tressaq l-aħjar prova. Fil-każ ta’ azzjoni għal htija extra-kuntrattwali jew akwiljana, l-parti attriċi trid ttipprova kemm il-fatt (l-għamil -omissjoni) li bih tixli lill-parti mharrka u kif ukoll li kien senwasew dak il-fatt li ikkawża l-bsara mgarrba;

Illi l-Qorti tifhem li, fil-kamp ċivili, il-piż probatorju m’huwiex dak ta’ provi lil hinn mid-dubju raġonevoli (App. Inf. PS 7.5.2010 fil-kawża fl-ismijiet Emanuel Ellul et vs Anthony Busuttil). Iżda fejn ikun hemm verżjonijiet li dijametrikament ma jaqblux, u li

t-tnejn jistgħu jkun plawsibbli, il-prinċipju għandu jkun li tkun favorita t-teżi tal-parti li kontra tagħha tkun saret l-allegazzjoni (Ara, per eżempju, P.A. NC 28.4.2004 fil-kawża fl-ismijiet Frank Giordmaina Medici et vs William Rizzo et). Ladarba min kellu l-obbligu li jipprova dak li jallega ma jsehhlux ivettaq dan, il-parti l-obra m'għandbiex tbatu tali nuqqas u dan bi qbil mal-prinċipju li actore non probante reus absolutor (Ara, per eżempju, P.A. LFS 18.5.2009 fil-kawża fl-ismijiet Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd.). Min-naha l-obra, mbux kull konflitt ta' prova jew kontradizzjoni għandha twassal lil-Qorti biex ma tasalx għal deċiżjoni jew li jkollha ddr fuq il-prinċipju li għadu kemm issemma. Dan għaliex, fil-qasam tal-ażżjoni ċivili, l-kriterju li jwassal għall-konvinciment tal-gudikant għandu jkun li l-verżjoni tinstab li tkun wahda li l-Qorti tista' toqgħod fuqha u li tkun tirriżulta bis-sabha ta' xi wahda mill-ghodda procedurali li l-ligi tippermetti fil-proċess probatorju (App. Ċiv. 19.6.2006 fil-kawża fl-ismijiet Emanuel Ċiantar vs David Curmi noe). Fit-twettiq ta' eżerċizzju bhal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruwa li tixbed ir-ragunijiet u l-kriterju tal-hsieb li hija tkun haddmet biex tasal għall-fehmiet tagħha ta' gudiżżju fuq il-kwestjoni mressqa quddiemha (App. Inf. 9.1.2008 fil-kawża fl-ismijiet Anthony Mifsud et vs Victor Calleja et);”

Furthermore, the Court makes reference to the judgment delivered by the First Hall of the Civil Court in the names **Carmen Xuereb u b'digriet tal-4 ta' Novembru 2013 l-isem inbidel, u sar Carmela Vassallo vs l-Avukat Anton Micallef** decided on the 12th December 2013 in which it was stated:

Fis-sentenza tagħha tal-24 ta' Marzu 2004 fil-kawża 'Xuereb et vs Gauci et' il-Qorti ta' l-Appell Inferjuri qalet bekk dwar konflitt ta' provi fil-kamp ċivili – Huwa pacifiku f' materja ta' konflitt ta' versjonijiet illi l-Qorti kellha tkun gwidata minn zewg prinċipji f'levalwazzjoni tal-provi quddiemha

- 1) *Li tagħraf tislet minn dawn il-provi korroborazzjoni li tista' tikkonforta xi wahda mis-zewg versjonijiet bhala li tkun aktar kredibbli u attendibbli minn obra ; u*
- 2) *Fin-nuqqas, li tigi applikata l-massima “actore non probante reus absolutor”.*

Ara a propozitu sentenza fl-ismijiet “Fogg Insurance Agencies Limited noe vs Maryanne Theuma”, Appell, Sede Inferjuri, 22 ta' Novembru, 2001.

Fi kliem iehor il-Qorti għandha teżamina jekk xi wahda mis-zewg versjonijiet, fid-dawl tas-soliti kriterji talkredibilita` u speċjalment dawk tal-konsistenza u verosimiljanza, għandbiex teskludi lill-obra, anke fuq ilbilanc tal-probabilitajiet u

tal-preponderanza tal-provi, għax dawn, f'kawżi civili, huma generalment suffiċjenti għall-konvinciment tal-gudikant (Kollez. Vol L pII p440)."

(ara wkoll: "Bugeja vs Meilak" – PA/TM – 30 ta' Ottubru 2003; "Kmandant tal-Forzi Armati ta' Malta vs Difesa" – PA/PS – 28 ta' Mejju 2003; "Farrugia vs Farrugia" – PA/CC – 24 ta' Novembru 1966)

Fis-sentenza ta' din il-Qorti (PA/PS) tat-28 ta' April 2003 fil-kawża "Ciantar vs Curmi noe" ippreżentat hekk –

Huwa ben magħruf f'materja konsimili illi mhux kwalunkwe konflitt, kontradiżzjonijiet jew inezatteżzi filprovi għandhom ihallu lill-Qorti f'dak l-istat ta' perplessità li minhabba fibom ma tkunx tista' tiddeciedi b'kuxjenza kwieta jew jkollha b'konsegwenza taqa' fuq ir-regola ta' in dubio pro reo;

Fil-kamp civili għal dak li hu apprezżament talprovi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispejgazzjonijiet furniti lilu imma jekk dawn l-istess spejgazzjonijiet humiex, ficcirkożtanzi żvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat bażiku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti għall-konvinciment. Għax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan għad-differenza ta' dak li japplika fil-kamp kriminali fejn il-tija trid tirriżulta mingħajr ma thalli dubju rajonevoli. (Vol. XXXVI P I p 319)

(ara wkoll: "Camilleri vs Borg" – Appell Civili – 17 ta' Marzu 2003; "Zammit vs Petrocchino" – Appell Kummerċjali – 25 ta' Frar 1952; "Vassallo vs Pace" – Appell Civili – 5 ta' Marzu 1986)

Aktar ricenti fiż-żmien, preżiżament fis-26 ta' Settembru 2013, din il-Qorti (PA/JRM) fis-sentenza tagħha fil-kawża "Chef Choice Limited vs Raymond Galea et" (mhux appellata) kellha l-okkażjoni tidhol f'dettall dwar kif għandu jiġi trattat l-oneru tal-prova. Dik kienet kawża fejn il-kumpannija attrici kienet qegħda tallega li l-konvenut approprija ruhu indebitament jew dawwar għall-beneficju tiegħu merkanzija tagħha u b'hekk ikkawżalha danni li għandu jwiegeb għalibom. Kif diga' rajna, fil-kawża tal-lum, apparti kwistjonijiet obra, lattrici qegħda tallega li l-konvenut approprija ruhu minn flusha mingħajr jedd u ad insaputa tagħha. Hija l-fehma ta' din il-Qorti illi l-linji ta' hsieb li kienu traccjati f'dik issentenza jimmeritaw riferenza konsiderata u partikolari għall-fini tad-decizjoni tal-lum.

Bosta kienu l-principji li ttrattat il-Qorti f'dik iddecizjoni u li din il-Qorti tgħid li huma rilevanti għallkawża tal-lum. Fost hwejjeg obra, il-Qorti hemm qalet bekk –

... Illi huwa accettat li biex persuna tista` tinsab responsabbli għall-ħsara li haddiehor ikun garrab bleghmil ta` dik il-persuna, m`huwiex mehtieg li l-eghmil wahdu ta` dik il-persuna ikun il-kawża wahdanija taddannu mgarrab, għaliex biżżejjed jintwera s-sehem ta` dik il-persuna bin-negligenza jew bir-rieda tagħha biex jintrabat magħha l-piż tar-responsabbiltà għal dak li jkun gara. Iżda biex is-sehem ta` dik il-persuna jnissel il-ħtija u r-responsabbiltà li tigi magħha, jehtieg jintwera (mill-parti li tallega d-dannu u bi prova tajba kif tistenna l-ligi) li dik il-ħtija nisslet id-dannu attwalment imgarrab u li tali dannu jkun imkejjel u ippruvat b`mod cert. Ir-rabta tal-kawżalita` hija mehtiega tabilfors;

Illi l-Qorti tqis li, għalkemm il-grad ta` prova fil-procediment civili m`huwiex wiebed tassattiv daqs dak mistenni fil-procediment kriminali, b`daqsbekk ma jfissirx li l-provi mressqa jridu jkunnu anqas b`sabbithom. Il-prova mistennija fil-qasam tal-procediment civili ma tistax tkun semplici supposizzjoni, suspett jew kongettura, imma prova li tikkonvinci lil min irid jagħmel gudizzju. Iżda f`kazzjiet mibnija fuq id-delitt jew il-kwazi-delitt, l-aktar meta jkun hemm imdabhal xi eghmil tal-qerq tal-parti mharrka huwa ammess li “f`kawża civili d-dolo jista` jigi stabbilit anke permezz ta` presunzjonijiet u ndizzji, purke` s`intendi jkunnu serji, precizi u konkordanti, b`tali mod li ma jhallu l-ebda dubju f`min hu msejjah biex jiggudika” (ara - P.A. PS - Emanuel Ciantar vs David Curmi et - konfermata mill-Qorti tal-Appell fid-19.6.2006).

Illi minbarra dan, il-parti attrici għandha l-obbligu li tipprova kif imiss il-premessi għat-talbiet tagħha b`mod li, jekk tonqos li tagħmel dan, iwassal għall-helsien tal-parti mharrka (ara - App. Inf. - JSP - 12.1.2001 - Hans J. Link et vs Raymond Mercieca). Il-fatt li l-parti mharrka tkun ressqet verżjoni li ma taqbilx ma` dik imressqa mill-parti attrici ma jfissirx li l-parti attrici tkun naqset minn dan l-obbligu, għaliex jekk kemm-il darba l-provi cirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attrici, l-Qorti tista` tagħzel li toqgħod fuqha u twarrab il-verżjoni tal-parti mharrka. Min-naha l-obra, il-fatt li l-parti mharrka ma tressaqx provi tajba jew ma tressaq provi xejn kontra l-pretensjonijiet tal-parti attrici, ma jehlisx lil din milli tipprova kif imiss l-allegazzjonijiet u l-pretensjonijiet tagħha (ara - App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil)

Illi huwa għalhekk li l-ligi torbot lill-parti f`kawża li tipprova dak li tallega (ara l-Art. 562 tal-Kap 12) u li tagħmel dan billi tressaq l-ahjar prova (Art. 559 tal-Kap 12).

... Iżda dak li jghodd f`kawża m`huwiex l-għadd tax-xhieda mressqa għaliex “il-fatt li xhieda jkunnu gew prodotti minn parti partikolari f`kawża ... certament ma jfissirx li l-Qorti hija marbuta li temmen b`għajnejha magħluqa, jew li temmen aktar,

dak kollu li dawn ix-xbieda jghidu `favur` il-parti. Fuq kollhom, ix-xhud ma jgix prodott biex jixhed `favur` parti jew `kontra` obra, imma jigi prodott biex jghid il-verita`, il-verita` kollha, u xejn anqas minn dik il-verita` kollha” (ara - App. Civ. 19.6.2006 - Emanuel Ciantar vs David Curmi et)

Illi l-Qorti tqis li, izda, bhal ma jigri f`kazijiet bhal dawn, il-verzjonijiet tal-partijiet u ta` dawke li setghu nvoluti maghhom ikunu tabilfors mizghuda b`dozja qawwija ta` apprezzament suggettiv ta` dak li jkun gara. Il-Qorti tifhem li kull parti jkollha t-tendenza li tpingi lilha nnifisha bhala l-wittma u l-parti l-obra bhala l-hatja, u dan jghodd ukoll ghall-verzjonijiet li jaghtu dawke il-persuni l-obrajn li jkun b`xi mod involuti fl-episodju. Huwa d-dmir tal-Qorti li tgharbel minn fost dawn il-verzjonijiet kollha u minn provi indipendenti li jstgħu jirrizultaw il-fatti essenzjali li jstgħu jghinuba tasal biex issib x`kien li tassew gara u kif imxew l-affarijiet;

Illi l-Qorti tifhem li, fil-kamp civili, il-piz probatorju m`huviex dak ta` provi lil hinn mid-dubju ragonevoli (ara App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttill). Izda fejn ikun hemm verzjonijiet li dijametrikament ma jaqblux, u li t-tnejn jstgħu jkunu plamsibbli, il-principju għandu jkun li tkun favorita t-tezi talparti li kontra tagħha tkun saret l-allegazzjoni (ara - P.A. NC - 28.4.2004 - Frank Giordmaina Medici et vs William Rizzo et). Ladarba min kellu l-obbligu li jipprova dak li jallega ma jsehblix inettaq dan, il-parti l-obra m`ghandhiex tballi tali nuqqas u dan bi qbil mal-principju li actore non probante reus absolvitur (ara P.A. LFS - 18.5.2009 - Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd.) Min-naha l-obra, mbux kull konflikt ta` prova jew kontradizzjoni għandha twassal lil Qorti biex ma tasalx għal decizjoni jew li jkollha ddrur fuq il-principju li għadu kemm issema. Dan għaliex, fil-qasam tal-azzjoni civili, l-kriterju li jwassal għall-konvinciment tal-gudikant għandu jkun li l-verzjoni tinstab li tkun wahda li l-Qorti tista` toqghod fuqha u li tkun tirrizulta bis-sabha ta` xi wahda mill-ghodda procedurali li l-ligi tippermetti filprocess probatorju (ara - App. Civ. 19.6.2006 - Emanuel Ciantar vs David Curmi noe). Fit-twettiq ta` ezercizzju bhal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruva li tixhed ir-ragunijiet u l-kriterju tal-hsieb li hija tkun haddmet biex tasal għall-fehmiet tagħha ta` gudizzju fuq il-kwestjoni mressqa quddiemha (ara - App. Inf. 9.1.2008 - Anthony Mifsud et vs Victor Calleja et)

Considers

Pieter Marinus Van Gelder is requesting this court to liquidate the sums which were misappropriated by Carmela sive Karen Nowak and also to liquidate those other sums due to him by Carmela sive Karen Nowak representing water and electricity bills, other bills, maintenance as well as the other things bought by

him. Given the conflicting evidence, the Court finds that both parties finished their relationship in a non-amicable way and their version of events is confounded due to the animosity which exists between them. The court finds that it cannot rest its decision on the version given by the contending parties but has to consider each version in the light of the documents presented and in the light of the evidence given in this case by third parties.

First and foremost, the Court outlines that it was constrained to discard any documentation which was in Dutch, and which was presented without any translation. Moreover, these documents are all copies and no evidence attesting to their authenticity and to the authenticity of the alleged bank that issued them.

As regards the claim of misappropriation, the Court is not satisfied that Pieter Marinus Van Gelder brought any evidence to prove this claim. Arguing that the income of Carmela sive Karen Nowak was far less than what she was actually depositing in her bank accounts, does not constitute proof that Carmela sive Karen Nowak was misappropriating funds that actually belonged to Pieter Marinus Van Gelder. This is certainly not a Court of assumptions. The plaintiff should have explained how much were the amounts he regularly passed onto defendant for their upkeep and for their future. But he did not provide any figures corroborated by documents showing that he indeed gave these monies to defendant. He was required to produce evidence that the alleged difference between defendant's earnings and the amount she had in her bank accounts, originated from his own accounts or belongings. None of this type of evidence was presented by plaintiff. Consequently, since the burden of proof lies on plaintiff, the Court finds that this claim regarding misappropriation of funds was not proven and shall dismiss the said claim.

Plaintiff also requested the Court to liquidate sums due to him from the defendant representing water and electricity bills, other bills, maintenance as well as the other things bought by him. To prove his claim, the plaintiff presented a number of documents consisting of invoices and receipts. For instance the document at fol. 210 states that it was paid, but from this document it does not emerge who actually paid the amount and to whom. The word at the top stating 'From Peter' is not sufficient proof. It was incumbent on the plaintiff to produce as witnesses the persons from whom these cupboards were ordered, so that he testifies as to who paid him. This testimony was never brought forth to this Court. The sole evidence given by plaintiff is not sufficient as this is opposed by the defendant's evidence. The same can be said as regards the other invoices. Some contain a description of the works such as the invoice relating to "Xoghol fil-flat fuq ftuh ta' hnejja" but this invoice seems to have been issued in the name

of defendant. The fact that this document was presented does not amount to sufficient proof that the monies for these works were paid by plaintiff. Yet again this also applies to the documents exhibited at fol. 211, 212, 219A, 220, 222, 224, 230, 231 and 249 amongst others.

The plaintiff compiled lists of what he is allegedly owed by defendant. For instance, he mentions amounts of parking tickets he paid, bills at restaurants visited amongst other items. However, not all of these items were substantiated by receipts or invoices. Even in the case of those items which an invoice or a receipt was presented, for this Court this is not sufficient proof that the amounts were actually paid by plaintiff. Most of these invoices or receipts were in the name of defendant and the plaintiff did not bring as witnesses the third parties who issued such receipts and/or invoices in order to prove his claim that he actually paid these amounts from his pockets.

DECISION

For the reasons above outlined, this Honourable Court is rejecting all the plaintiff's demands and orders that all expenses be borne by the said plaintiff.

**(sgd) Dr Simone Grech
Magistrate**

**(sgd) John Vella
D/Registrar**

True Copy

For the Registrar