



## **QORTI ĊIVILI PRIM' AWLA**

**ONOR IMHALLEF  
DR FRANCESCO DEPASQUALE  
LL.D. LL.M. (IMLI)**

**Seduta ta' nhar il-Ġimgħa  
Disgħa u Ghoxrin (29) ta' Novembru 2024**

**Rikors Numru 375/2018FDP**

Fl-ismijiet

**Raymond Degabriele (K.I: 514360M)**

**Vs**

**Nowasad Orest John Williams**

### **Il-Qorti:-**

1. Rat ir-rikors datat 23 ta' April 2018 li permezz tiegħu r-rikorrenti talab is-segwenti:
  1. *Illi huwa jikri il-fond ossia ħanut bin-numru disgħa u ħamsin (59), bl-isem, 'Trucco & Parrucco', qabel bl-isem ta' 'Stitches', u li jinsab fi Triq il-Pellegrinaġġ, kantuniera ma' Sqaq Srejdak, ġewwa Bormla, u dan skont skrittura datata 30 ta' Awissu 1988. (Annessa Dok RD 1).*
  2. *Illi, bejn Marzu 2016 u Novembru 2016, l-esponenti kien kostrett illi jagħmel diversi xogħolijiet ta' tiswija, kif ukoll kellu jagħmel diversi tibdiliet u xogħol ta' rinovazzjoni, u anke restawr ta' l-imsemmi fond, u cioè il-ħanut bin-numru disgħa u ħamsin (59) bl-isem "Trucco & Parrucco', qabel bl-isem ta' "Stitches", u li jinsab fi triq il-Pellegrinaġġ, kantuniera ma' Sqaq Srejdak, ġewwa Bormla, u dan anke minħabba li l-istess fond kien fi stat ta' perikolu, u dan peress illi kien qiegħed jidhol kwantita ta' ilma mill-fond sovrastanti, u cioè il-fond, ossia dar, bin-numru wieħed (1) fi Sqaq Srejdak, kantuniera ma' Triq il-Pellegrinaġġ, ġewwa Bormla, u li kien tħalla fi stat ta' abbandun, u ħsara kbira, liema fondi, irriżulta li huma propjeta' tal-konvenut.*

3. *Illi, l-esponenti, kien ilu saħansitra mis-sena 2013, jipprova jiskopri minn kien is-sid jew sidien il-ġodda, tal-fond kemm mikri lilu, kif ukoll il-fond sovrastanti, u dan peress illi kienet l-istess sid il-kera illi fis-sena 2013, li avzatu illi kienet bieġhet lill-terzi id-dar suindikata bil-ħanut mikri b'kollox, tant illi f'April 2013 hija ħarġet l-aħħar irċevuta lill-esponenti (Dok RD 2).*
4. *Illi, in vista tal-premess, l-esponenti dam mis-sena 2013 sas-sena 2016, jittenta a spejjeż tiegħu, jiskopri min huwa s-sid jew is-sidien taż-żewġ fondi suindikati, sabiex fl-ewwel lok, ikun jista' jibda jhallas il-kera lilu jew lilhom, u fit-tieni lok, sabiex jilmenta miegħu jew magħhom dwar il-ħsara kbira li kienet qed tigrri lill-fond mikri, minħabba t-telqa u l-abbandun tal-fond sovrastanti.*
5. *Illi, l-esponenti ma setax nel frattemp, jieqaf milli jkompli jiggestixxi in-negożju ta' l-imsemmi ħanut, u cioè il-fond bin-numru disgħa u ħamsin (59), bl-isem ta' 'Trucco & Parrucco', qabel bl-isem ta' 'Stitches', u li jinsab fi Triq il-Pellegrinaġġ, kantuniera ma' Sqaq Srejdak, ġewwa Bormla, u għalhekk kien kostrett illi jeseġwixxi dawn ix-xogħolijiet hu, a spejjeż tiegħu.*
6. *Illi, kien f'Awissu 2016, illi l-esponenti skopra illi il-fond minnu mikri, kif ukoll dak sovrastanti, kien ġie akkwistat mill-konvenut, u minn ċertu Matthew Selwyn Gubb, permezz ta' l-att tan-Nutar Tiziana Maria Refalo, datat tnejn (2) ta' Ottubru, tas-sena elfejn u tnax (2012), (Riċerki, u kopja ta' l-Att annessi u mmarkati Dok RD 3 u Dok RD 4).*
7. *Illi, l-esponenti stess, kiteb lill-imsemmija Gubb u Nowasad, permezz ta' ittra datata 29 ta' Settembru 2016, sabiex jiġi rikonoxxut fil-kirja mis-sidien il-ġodda, u sabiex ikun jista' jbidel il-liċenzja minn waħda ta' 'Boutique', għal dik ta' 'Hairdressing Salon'. (Dok RD 5)*
8. *Illi, kien permezz ta' ittra responsiva tal-konvenut, li ġġib id-data tas-7 ta' Novembru 2016, illi l-esponenti sar jaf illi fil-fatt Matthew Selwyn Gubb, kien miet, u li kien ħalla bħala eredi lill-konvenut (Dok RD 6 u dok RD 7), u li l-istess konvenut, ma' kienx qiegħed jaċċetta lill-esponenti bħala inkwilin, anzi talbu biex iwaqqaf ix-xogħolijiet illi kien qiegħed jagħmel, u sabiex jivvaka l-imsemmi fond.*
9. *Illi fil-fatt, l-esponenti kien ġia għamel ix-xogħolijiet kollha, sa dakinhar, u nforma lill-istess konvenut b'dan permezz ta' ittra datata l-Ewwel (1) ta' Diċembru 2016. (Dok RD 8).*
10. *Illi, ix-xogħolijiet li kien kostrett jagħmel l-esponenti, kollha kienu tort tal-telqa u n-nuqqas ta' manutenzjoni li fiha tħalla il-fond sovrastanti, u cioè l-fond bin-numru wieħed (1) fi Sqaq Srejdak, kantuniera ma' Triq il-Pellegrinaġġ, ġewwa Bormla, liema xogħolijiet se jiggwadanja minnhom il-konvenut bħala sid ta' l-istess fond u cioè il-fond ossia ħanut bin-numru disgħa u ħamsin (59), bl-isem, 'Trucco & Parrucco', qabel bl-isem ta'*

*'Stitches', u li jinsab fi triq il-Pellegrinagg, kantuniera ma' Sqaq Srejdak, gewwa Bormla.*

*11. Illi għalhekk, l-esponenti, sofra danni, liema danni jinsabu indikati fl-anness dokument immarkat Dok RD 9.*

*12. Illi għalhekk kellha ssir din il-kawza.*

*Jghid għalhekk l-istess konvenut, għaliex m'għandhiex din l-Onorabli Qorti joghġobha;-*

- 1. Tiddikjara lill-konvenut responsabbli għad-danni sofferti mill-esponenti, liema danni huma konsistenti f'xogħolijiet ta' tiswija, kif ukoll ta' diversi tibdiliet u oħrajn ta' rinovazzjoni, kif ukoll restawr ta' l-imsemmi fond, u cioè tal-ħanut bin-numru disgħa u ħamsin (59) bl-isem 'Trucco & Parrucco', qabel bl-isem ta' 'Stitches', u li jinsab fi triq il-Pellegrinagg, kantuniera ma' Sqaq Srejdak, gewwa Bormia, u dan anke minħabba li l-istess fond kien fi stat ta' perikolu, u dan peress illi kien qiegħed jidħol kwantita ta' ilma mill-fond sovrastanti, u cioè il-fond, ossia dar, bin-numru wieħed (1) fi Sqaq Srejdak, kantuniera ma' Triq il-Pellegrinagg, gewwa Bormla, u li kien tħalla fi stat ta' abbandun, u ħsara kbira, it-tnejn propjeta tal-konvenut;*
- 2. Tillikwida d-danni okkorrendo bl-opera ta' periti nominandi; u;*
- 3. Tikkundanna lill-konvenut, iħallas lill-istanti, dawk l-ammonti hekk likwidati u dikjarati bħala dovuti in linea ta' danni, kif imfisser.*

*Bl-ispejjeż u bl-imgħax skont il-ligi kontra l-konvenut, minn issa ngunt għas-subizzjoni.*

- 2. Rat illi fis-16 ta' Lulju 2018 il-konvenut laqa' għal dak mitlub billi qajjem is-segweni difiża:*
  - 1) Illi preliminarjament, in kwantu l-azzjoni hija bbażata fuq danni aquiliani allegatament ikkawżati bil-perkolazzjoni ta' ilma mill-fond sovrastanti, l-azzjoni hija preskritta bid-dekors tas-sentejn ai termini tal-Artikolu 2153 tal-Kodiċi Ċivili (Kap 16);*
  - 2) Illi mingħajr preġudizzju għas-suespost, jiġi rilevat illi diġa gie' ġudizzjarjament ikkonfermat (ara sentenza tal-Qorti tal-Appell - Inferjuri fl-ismijiet Nowasad v. Degabriele - App 9/2017 mogħtija nhar l-14 ta' Mejju 2018 - kopja Dok A) illi l-attur aġixxa in vjolazzjoni tal-kuntratt ta' lokazzjoni u kwindi l-lokazzjoni giet maħlula. Per konsegwenza, l-attur kien fi stat ta' illecità u għalhekk huwa prekluz milli jadixxi dawn il-Qrati in relazzjoni mal-kuntratt ta' lokazzjoni li kien qed jivvjola b'mod flagranti;*

- 3) *Illi in subsiduum, il-konvenut ma jista' qatt jigi ritenut responsabbli bhala sid il-keru u dan in omagg tal-principji inademplendi non est ademplendum u ex turpitudine non oritur actio;*
- 4) *Illi minghajr pregudizzju ghas-suespost, mhuwiex minnu illi l-konvenut (li kien biss fis-sena 2012 li akkwista l-fond de quo u l-fond sovrastanti) ikkawza xi dannu lir-rikorrenti. Illi di fatti kien biss wara li r-rikorrenti talab li jbidel id-destinazzjoni tal-fond (minn hanut tal-hwejjeġ għal hairdressing salon), u dan gie rifjutat mill-konvenut, li r-rikorrenti beda jallega li huwa kien sofra hsara;*
- 5) *Illi kwalsiasi xogħolijiet li setgħu saru mill-attur saru a riskju esklussiv tiegħu wara li dan iddeċieda abbużivament u unilateralment li i) jibdel id-destinazzjoni tal-fond (bi ksur tal-artikolu (a) u (f) tal-iskrittura ta' lokazzjoni) u ii) li jissulloka l-fond lil terzi, u dan bi vjolazzjoni ċara u espressa tal-kuntratt ta' lokazzjoni (bi ksur tal-artikolu (h) tal-iskrittura ta' lokazzjoni). Ċertament issa li l-attur spiċċa rinfaċċjat b'sentenza ta' żgumbrament huwa ma jistax jippretendi li jkun il-konvenut li jagħmel tajjeb għal dawn ix-xogħolijiet!*
- 6) *Illi di più ai termini tal-klawzola (i) tal-iskrittura ta' lokazzjoni, ir-rikorrenti kellu jirritorna l-fond lis-Sid malli "jispiċċa mill-użu tal-hanut tal-hwejjeġ". Illi minflok ma' rritorna l-fond de quo lis-Sid, l-attur żamm il-fond magħluq għal diversi perjodi, sakemm sussegwentament iddeċieda li jibdel id-destinazzjoni tal-fond, u jwettaq xogħolijiet biex ikun jista' jissullokah u allura imputet sibi;*
- 7) *Illi minghajr pregudizzju ghas-suespost, u f'każ li l-eċċezzjonijiet suesposti ma jintlaqgħux, l-attur għandu jipprova l-quantum, causa u nuagas ta' kontributerjetà in relazzjoni mad-danni allegatament subiti;*
- 8) *Illi huwa wkoll indikattiv ferm illi l-Perit inkarigat mill-attur sabiex jagħmel stima tal-assi "fil-present ismu mhux magħruf" u dan kif iddikjarat mill-attur innifsu fil-lista tax-xhieda tiegħu, u dina l-Onorabbli Qorti qed tiġi mistiedna biex tiegħu dawk il-provvedimenti opportuni f'dan ir-rigward;*
- 9) *B'riserva għal eċċezzjonijiet ulterjuri permessibbli fil-ligi.*

*Bl-ispejjeż, kontra l-attur minn issa ngunt ghas-subizzjoni tiegħu.*

3. Rat id-dokumentazzjoni ipprezentata mill-partijiet fuq l-atti msemmija.
4. Rat illi fis-seduta tat-30 ta' Novembru 2021 il-partijiet qablu li jiġu allegati l-atti bin-numru 9/2017 quddiem il-Bord li Jirregola l-Kera u l-Qorti tal-Appell (Sede Inferjuri).

## **Provi**

5. Rat in-nota pprezentata mill-attur fis-27 ta' Novembru 2018, kontenenti l-affidavit tiegħu stess, **Raymond Degabriele**, u rat id-dokumentazzjoni annessa magħha (fol 87-126).

6. Rat in-nota pprezentata mill-attur fil-21 ta' Jannar 2020, kontenenti l-affidavit tan-**Nutar Dr Sarah Bugeja** (fol 136-138).
7. Semgħet ix-xhieda tal-**Perit Matthew Bugeja** mogħtija fis-seduta tal-21 ta' Jannar 2020 u rat ir-ritratti eżebiti minnu (fol 139-151).
8. Semgħet ix-xhieda ta' **Raymond Portelli** mogħtija fis-seduta tat-2 ta' Diċembru 2020 (fol 162-166).
9. Semgħet ix-xhieda ta' **Dr Ivan Fsadni** mogħtija fis-seduta tal-1 ta' Lulju 2021 (fol 178-183).
10. Semgħet ix-xhieda tal-**Perit Karl Ebejer** mogħtija fis-seduta tal-1 ta' Lulju 2021 (fol 184-189 et seq).
11. Semgħet ix-xhieda tal-attur mogħtija fis-seduta tat-30 ta' Novembru 2021 u rat id-dokumentazzjoni eżebita minnu (fol 191-221).
12. Rat illi fis-seduta tat-30 ta' Novembru 2021 l-attur iddikjara li m'għandux aktar provi xi jressaq.
13. Rat illi fis-seduta tat-24 ta' Mejju 2022 l-attur reġa' ddikjara li m'għandux aktar provi xi jressaq.
14. Semgħet ix-xhieda tal-intimat **Nowasad Orest John William** mogħtija fis-seduta tal-20 ta' Marzu 2023 (fol 229-236).
15. Semgħet ix-xhieda tal-attur mogħtija fis-seduta tal-20 ta' Marzu 2023 (fol 237-248).
16. Rat in-nota tal-intimat ipprezentata fl-20 ta' Ġunju 2023, kontenenti l-affidavit tiegħu u rat id-dokument anness magħha (fol 250-253).
17. Semgħet ix-xhieda ta' **Maria Cristina Desinano** mogħtija fis-seduta tal-21 ta' Novembru 2023 (fol 258-262).
18. Rat illi fis-seduta tal-21 ta' Novembru 2023 l-intimat iddikjara li m'għandux aktar provi xi jressaq.
19. Rat illi fis-seduta tat-13 ta' Marzu 2024 il-kawża thalliet għas-sottomissjonijiet bil-miktub tar-rikorrent.
20. Rat illi fis-seduta tad-29 ta' Mejju 2024 il-kawża thalliet għas-sentenza bil-fakolta' tan-noti ta' sottomissjonijiet.
21. Rat in-nota tal-attur ipprezentata fil-11 ta' Lulju 2024 li permezz tagħha gie ddikjarat illi mhux ser ikun qiegħed jipprezenta nota ta' sottomissjonijiet imma ser jistrieħ fuq il-provi prodotti fil-kors tal-proċeduri (fol 266).
22. Rat in-nota ta' sottomissjonijiet tal-intimat ipprezentata fit-23 ta' Awwissu 2024 (fol 267-279).

## Fatti tal-kaz

23. Jirrizulta illi l-attur kien jikri l-fond, ossia l-ħanut bin-numru disgħa u ħamsin (59) bl-isem 'Stitches', sussegwentement bl-isem 'Trucco & Parrucco', li jinsab ġewwa Triq il-Pellegrinaġġ, kantuniera ma' Triq is-Srejdak, f' Bormla u dan skont skrittura privata datata 30 ta' Awwissu 1988.
24. Jirrizulta illi l-attur qiegħed jallega illi kien kostrett jagħmel diversi xogħolijiet ta' tiswija kif ukoll xogħolijiet ta' rinovazzjoni u restawr fil-fond mikri lilu u dan minħabba li skont l-istess attur il-fond kien fi stat ta' perikolu minħabba ingress ta' ilma mill-fond sovrastanti ossia d-dar bin-numru wieħed (1) fi Sqaq Srejdak, kantuniera ma' Triq il-Pellegrinaġġ, f'Bormla u dan minħabba li skont l-istess attur din id-dar kienet thalliet fi stat ta' abbandun u ħsara kbira.
25. Jirrizulta illi dawn ix-xogħolijiet saru mir-rikorrenti bejn Marzu tas-sena 2016 u Novembru tas-sena 2016.
26. Jirrizulta illi l-fond mikri lill-attur kif ukoll id-dar sovrastanti surreferita kienu ġew mibjugħa lill-intimat, u skont l-istess attur sa mis-sena 2013, huwa pprova jiskopri min kien is-sid il-ġdid ta' din il-proprjeta'. Illi l-aħħar riċevuta tal-kera mogħtija lir-rikorrent mis-sid preċedenti kienet f'April tas-sena 2013.
27. Jirrizulta illi skont dak allegat mill-attur, huwa dam mis-sena 2013 sas-sena 2016 jittenta, a spejjeż tiegħu, jiskopri min huwa s-sid il-ġdid tal-ħanut mikri lilu u tad-dar sovrastanti u dan sabiex ikun jista' jħallas il-kera lis-sid il-ġdid u sabiex jilmenta miegħu dwar il-ħsara kbira li kienet qed tiġri fil-ħanut mikri lilu. Madanakollu, huwa baqa' jiġġestixxi l-imsemmi ħanut u għalhekk eżegwixxa dawn ix-xogħolijiet a spejjeż tiegħu.
28. Jirrizulta illi fis-sena 2016 l-attur kien qabbad lin-Nutar sabiex tagħmel riċerka fir-Registru Pubbliku sabiex jiskopri min hu s-sid il-ġdid tal-ħanut mikri lilu u tad-dar sovrastanti. Mir-riċerki rriżulta illi l-ħanut mikri lilu u d-dar sovrastanti kienu ġew akkwistati minn Matthew Selwyn Gubb u l-konvenut permezz ta' kuntratt fl-atti tan-Nutar Tiziana Maria Refalo datat 2 ta' Ottubru 2012.
29. Jirrizulta illi fid-29 ta' Settembru 2016 l-attur baġhat ittra lil Matthew Selwyn Gubb kif ukoll lill-konvenut fejn talabhom illi jiġi rikonoxxut fil-kirja, sabiex iħallas l-arretrati tal-kera u sabiex ibiddiel il-liċenzja tal-ħanut minn 'boutique' għal 'hairdressing salon'.
30. Jirrizulta illi fis-7 ta' Novembru 2016, l-attur irċieva ittra responsiva fejn ġie nfurmat illi Matthew Selwyn Gubb ġie nieqes u li l-konvenut huwa l-unika sid tal-ħanut mikri għandu. In oltre, huwa ġie wkoll infurmat illi l-konvenut ma kienx qed jaċċetta illi jkun hemm tibdil fl-użu tal-ħanut u sabiex jieqaf milli jkompli x-xogħolijiet u sabiex jivvaka l-ħanut in kwistjoni.
31. Jirrizulta illi l-attur kien reġa' baġhat ittra lill-konvenut fejn kien infurmah illi huwa kien kostrett jagħmel dawk ix-xogħolijiet minħabba li l-ħanut kien fi stat perikoluż. Kif ukoll, reġa' talab lill-konvenut sabiex jerġa' jirrikonsidra d-deċiżjoni tiegħu u jagħtih il-kunsens sabiex ibiddel l-użu tal-ħanut minn 'boutique' għal 'hairdressing salon'.
32. Jirrizulta illi l-attur qiegħed permezz tal-kawża odjerna jilmenta illi sofradanni.

33. Jirrizulta illi, nelfrattemp, il-konvenut kien intavola b'suċċess, proċeduri kontra l-attur quddiem il-Bord li Jirregola l-Kera fejn talab l-iżgumbrament tal-attur mill-ħanut de quo kif ukoll talab il-ħlas tal-arretrati. Illi l-Bord li Jirregola l-Kera permezz ta' sentenza mogħtija fid-9 ta' Novembru 2017 laqgħet it-talbiet tal-konvenut f'din il-kawża u ordnat illi l-iżgumbrament tal-attur u l-ħlas tal-arretrati ta' kera.
34. Jirrizulta illi din is-sentenza għet appellata mill-attur. Illi l-Qorti tal-Appell (Sede Inferjuri) ċaħdet l-aggravji tal-attur għal dak li għandhom x'jaqsmu mal-kwistjoni ta' tibdil fl-użu tal-ħanut u varjat is-sentenza tal-Bord li Jirregola l-Kera biss għal dak li għandu x'jaqsam mal-ħlas tal-arretrati.

### **Meritu tal-każ**

35. Illi permezz tal-kawża odjerna l-attur qiegħed jallega illi soffra danni konsistenti f'xogħolijiet ta' tiswija, rinovazzjoni u restawr li kellu jagħmel fil-ħanut mikri lilu bin-numru disgħa u ħamsin (59) bl-isem 'Trucco & Parrucco', qabel bl-isem 'Stitches' li jinsab fi Triq il-Pellegrinaġġ ġewwa Bormla.
36. Illi skont l-istess attur, ix-xogħolijiet kienu neċessarji stante illi l-fond kien fi stat ta' perikolu peress li kien qiegħed jidhol kwantita' ta' ilma mill-fond sovrastanti ossia d-dar bin-numru wieħed (1) fi Sqaq Srejdak, ġewwa Bormla.
37. Illi kemm il-ħanut in kwistjoni kif ukoll id-dar sovrastanti l-istess ħanut huma proprjeta' tal-konvenut.
38. Il-Qorti ser tibda billi tagħmel referenza għall-affidavit tal-attur fejn huwa jsostni kif ġej:

*“With respect to the shop I was renting from Cilia, and others (by means of a private writing dated 30th August 1988 - attached with the application marked dok RD1), that is Shop no 59, Triq il-Pellegrinaġġ, Bormla, in 2010 three large beams from under the roof from the house on top of the shop, i.e. the house no 1, Srejdekk Street, Bormla (Now belonging to Nowasad) have collapsed and severe damages were caused to the roof and the underlying roof, at first floor level, (by underlying floor I also mean the roof of the shop).*

*When this accident happened, the house was rented and the people who were renting it were sleeping at that time. The accident was reported to the police and they have ordered me and the shop owner next door to close down and do not enter and operate as it was very risky. The place was taped by the police so no one would access, both the shop and the overlying property were the roof collapsed. The owners Cilia and Dar tal-Providenza who inherited 50% of the house took more than a year to do the necessary works and repairs and also to avoid all the risks and to avoid any further collapse of the roof. Though the shop was closed down for a period of time, I have suffered a lot of other consequences, in view of this matter before these works were carried out in the overlying property. After the house was repaired it was put up for sale and a promise of sale for two years was done with Mrs Marlene Farrugia who was being represented by Dr Ivan Fsadni.*

*During that period I have experienced floods in the shop pouring from the house above where I had damages and never been compensated for, although this happened again in other occasions. I have always informed Mr Fsadni, that there were these floods occurring into my shop, and Mr Fsadni came to see the shop, and if I remember well he was also accompanied by an architect, to see the damages each time these floods in the shop happened.*

*Later on Mr Fsadni informed me that the house and the shop was being sold again and that the buyers were foreigners. I asked Mr Fsadni about my concerns with respect to the damages caused in the shop, and said that it will not be a problem, and this in view of the fact that I wanted to know who the new owners are, so that I can start paying the rent to them. I have also told Mr Fsadni during the sale of the property to the new owners that extensive works needed to be done to the shop, due to floods, following the accident from the building above, and the age of the property. The property is round about 300 years old. During the 27 years I've been renting the property, no maintenance had been carried out to both the shop and the house. I have also brought up to his attention that I might change the use when I get the works to be done. Mr Fsadni assured me that it would not be a problem for Mrs Farrugia or to the new owners when sold as long as I will not change the use into a bar, where this could lead to noisy environment, and breaking of the peace, since this was quite a residential area, and so the new owners would not like that.*

*So basically, I was already given the go ahead at that time to change the use into a salon. After the house was sold, I continued to experience more floods into the property, and so the damages being caused were continuous. I didn't know who the new owners were and so I had difficulties to pay the rent since I was never approached by anyone to pay it, and did not know to whom I had to complain about the damages.*

...

*I then discovered that the new owners made an application through Perit Ebejer to build another floor and restore the facade....It was then that I discovered that the new owner's name was Matthew S Gubb but obviously did not manage to trace his whereabouts to sort out all the pending issues including the damages and the payment of rent. At the time I had not started any works, but water was still continuously flooding into the shop I was renting, which water was coming from the badly damaged property overlying the shop, now property of Mr Nowasad. Naturally I contacted Perit Karl Ebejer after the shop experienced another flooding and also asked him to inform the owners with the matters and also to inform me as to whom I can start paying the rent, but again I was left without a reply. This was in 2016. During those times, Architect Ebejer, came a number of times to visit the shop and had a look at the damages caused.*

...



*I ordered searches through the Public Registry, in the names of Cilia and it was then that I discovered that the property had been sold to Nowasad and Gubb by deed dated 2nd October 2012.*

*It was during March 2016, when I decided to start the works in order to restore the property, and to resolve the matter myself, because I was risking to lose the use of the shop, in view of the damages that continued to occur, in view of the water flooding. I called Perit Ebejer to come and view the property, which he did, and took pictures of the shop and the state it was in, before starting the works. He assured me that he was going to inform the owners of what I will be doing including also the change of use of the shop from a Boutique to a Salon. The works were necessary, and had to be done urgently, according to my architect's advice, Matthew Bugeja since there was a real danger of collapse, which I had an interest to avoid.....I asked Perit Ebejer to make sure that he informs the owners about the state the property was in, as well as with respect to the damages caused therein, and with the works I was undergoing to repair the property, and upgrade it to a good state of repair. Perit Ebejer, never informed me that the owners were objecting to these works, including the change of use. Perit Ebejer informed me that he always informed the owners about what was going on in the premises, and my impression was that since he never objected to any of the works being done, then the owners were not objecting too. Until then, works were completed and when we finally contacted the owners (and this following the results we got of the searches (completed August 2016), through Dr Cutajar by letter dated 29th September 2016 we asked both owners for recognition, for payment of arrears and for their signature in an application to change the licence of the shop from a Boutique to a Hairdressing salon and this in view of the fact that I was of the impression that since the owners did not previously object through Perit Ebejer, then it was just a matter of signature. To this letter, Mr Nowasad informed us by letter dated 7th November 2016 that Mr Gubb had passed away and made it clear to me that he wants his property back, in view of the fact that as he states I have changed the use of the shop, and this after all works were completed. I think that this is was really unjust after all the efforts, and expenses I have done to fix the damages, and upgrade the property.*

*Later on, I even discovered that I no longer required a licence to operate neither a boutique shop nor a hairdressing salon, so consequently I required no signatures from the owners.*

...

*But, the action I'm taking now, is not for the works I've done in connection with the changes I made in the shop, to make it a salon, but for the repairs and restoration I've done on the structure of the shop itself, to make it possible for it to continue to be used, and also to avoid risks of collapse. I think that irrespective of the issue I had with Nowasad with respect to the change of use issue, the works I've done, was an after all, an improvement I did in Mr Nowasad's property, which should have been by the owners themselves, which I had to do myself, in view of the lack of response from the owners, and*

*in view of the fact that I needed to continue to operate. I believe I should be compensated from the owner, for works I did myself on his property, which for sure avoided further damage and collapse, and as well as improved its value, making it possible to continue to be used.”*

...

(fol 88-92)

39. Il-Qorti hasset illi kellha tirriproduċi parti kbira mill-affidavit tar-rikorrent stante illi huma importanti l-fatti kif spjegati mill-attur. Issa ser tgħaddi sabiex tagħmel referenza għal dak mistqarr mix-xhieda prodotti fil-kawża.
40. Referenza ser issir għax-xhieda mogħtija mill-Perit Matthew Bugeja illi skont l-istess attur kien il-Perit li imqabba minnu. Fix-xhieda huwa jispjega s-segwent:

*“Dr Sarah Sultana :*

*So Perit Bugeja so ... we requested you in the summons to give us information regarding a property which was actually leased out to Mr Degabriele by the name of Trucco and Parrucco known also as Stitches in Triq il-Pellegrinagg Bormla with reference specifically to any problems that you ... that you actually saw in the property regarding the structure of the property. What the problems were? When did they happen and what are you aware of please?*

*The Witness :*

*Allright ... emm ... I was contacted by Mr Degabriele to visit the site emm ... for which I managed to find some photos from the day of the visit emm ... it was 27th June 2016 emm ... I visited the site, I took some photos ... emm ... I noted that the site was in shell form practically, the structure was all exposed emm ... it consisted of arches and traditional xriek mainly emm ... with load bearing walls. Emm ... that's it in general. Emm ... Mr Degabriele also noted that there were going to be some repair areas which might be required, before he closes off with new finishes ... emm ... and we discussed some ... some minor items which can also be seen emm ... in these photos which mainly were minor damages in the arches.*

*Dr Sarah Sultana :*

*The arches ... when Mr Degabriele contacted you to visit the property, did he explain what the problem was? Why he needed you to visit the property?*

*The Witness :*

*He thought it was a ... I think he thought it was a dangerous structure or something problematic. Emm ... I explained that a structure of such type is not imminently dangerous at the time of the visit and in fact we didn't report anything to the police about it and these were normal damages which are normally expected in buildings of such an age.*

*Dr Sarah Sultana :*

*When you say buildings of such an age, what ... what do you mean by that? What building was it?*

*The Witness :*

*I think ... I think it's over one hundred fifty (150) ... two hundred (200) years old. Emm ... it's in the centre of Bormla so ...*

*Dr Sarah Sultana:*

*And when you say there were defects relative to the building ... the type of building ... the age of the building ... what are we talking about? What were the ... what did you observe were the defects at the property at the time?*

*The Witness :*

*There were some detached parts in parts of the arches which can be seen also in these photos. Which I can ... I can show you.*

*Dr Sarah Sultana :*

*And that is what you observed solely in the property ... what did you tell Mr Degabriele to do about it?*

*The Witness :*

*If he wanted to do some repairs on the structure he would have to contact the owner.*

*Dr Sarah Sultana :*

*And why would he have to contact the owner?*

*The Witness :*

*Because normally if there are extraordinary damages, these were to be carried out by the owner.*

*Dr Sarah Sultana :*

*By the owner.*

*The Court :*

*So these damages were considered to be of an extraordinary nature?*

*The Witness :*

*No ... no ... no ...*

*The Court :*

*They weren't?*

*The Witness :*

*No.*

*The Court :*

*Ok.*

*The Witness :*

*These small damages no.*

*Dr Sarah Sultana :*

*And were there any other damages, because you say that he should have contacted the owner to carry out extraordinary works ...*

*The Witness :*

*If there were extraordinary damages ...*

*The Court :*

*But in this case the damages you found were not of an extraordinary nature?*

*The Witness :*

*No ... no ... these were ... let's say wear and tear ... but there's a long history of the property and I don't know exactly the time when these happened. These could have happened one hundred years before.*

*Dr Sarah Sultana :*

*Were you aware of something having happened in the properties above the actual shop before you were called on site to view? Were you aware of any accident that had happened ... incident sorry that had happened regarding the above properties?*

*The Witness :*

*As far as I know, Mr Degabriele has ... if I remember correctly he had told me that the property above was vacant and there were some damages in some roofs ... that's what I remember.*

*Dr Sarah Sultana :*

*Did you ever visit the properties upstairs?*

*The Witness :*

*No I don't even know who the owner is.*

...

*Dr Sarah Sultana :*

*After the on site inspection were you involved further in the actual works ...*

*The Witness :*

*No ...*

*Dr Sarah Sultana :*

*Or giving advice to Mr Degabriele?*

*The Witness :*

*I never visited the property and I wasn't involved."*

(fol 139-143)

41. Fil-kawża xehed ukoll Raymond Portelli, li għandu l-ħanut biswit dak mikri lill-attur fejn fix-xhieda tiegħu jitkellem dwar l-incident illi kien sar meta waqa' s-saqaf tad-dar sovrastanti l-ħanut u jtenni kif ġej:

*Il-Qorti :*

*Issa inti ntlabt hawn hekk mir-rikorrent sabiex tixhed dwar il-ħanut ma' ġenb il-bazaar tiegħek iġifieri 59, li kien magħruf bħala Trucco and Parrucco ġia' Stitches u li kien mikri lil Raymond Degabriele. Fuq il-kundizzjonijiet tal-post u x-xogħolijiet li kienu qed isiru minħabba danni kkaġunati fl-istruttura wara li kien waqa' s-saqaf tad-dar fuq il-ħanut 1, Triq Srejdek, kantuniera ma' Triq il-Pellegrinaġġ, Bormla. Mela ħa nibdew pass pass ... inti għandek ħanut fil-viċinanzi.*

*Ix-Xhud :*

*Adjoining shop mas-sinjur.*

*Il-Qorti :*

*All right ... tista' tgħidli l-indirizz tal-ħanut?*

*Ix-Xhud :*

*57 - 58 ... għax jiena qiegħed 57 Triq il-Pellegrinaġġ.*

...

*Ix-Xhud :*

*Issa l-ħsara li kien hemm fuq id-dar tal-ħanut tas-sinjur ... il-parti ta' fuq tiegħi tiġi taħtu. Iġifieri taħt parti mid-dar. Għax jiena għandi adjoining shops. 57 u 58 ...*

*Il-Qorti :*

*All right.*

*Ix-Xhud :*

*Iġifieri l-ħsara kienet fuq il-58 plus il-ħanut tas-sinjur.*

*Il-Qorti :*

*All right. U l-ħanut tas-sinjur huwa l-59.*

...

*Il-Qorti :*

*U allura meta waqa' dan is-saqaf, waqa' fuqkom?*

*Ix-Xhud :*

*Jiena attwalment ma waqa' xejn fuqi. Jiena attwalment li kelli ħsarat ... ilma*

...

*Il-Qorti :*

*Ilma.*

*Ix-Xhud :*

*Naturalment meta waqa' parti mis-saqaf, naturalment kien ix-xitwa, għamlet ix-xita, daħal dulluvju ilma, kemm daħal għas-sinjur ma nafx għax ma kontx miegħu l-ħin kollu imma naf li darba kellu apparti l-ilma ... ineħħi l-ilma bil-bramel, kellu tapit ... covering it-tapit il-ħanut sarlu żibel, skużi l-espressjoni. Jien minn naħa tiegħi daħalli balla ilma fil-ħanut ukoll sa kemm irrangāt ruħha s-sitwazzjoni.*

...

*Dr Sarah Sultana :*

*Mela tiftakar meta ġara dan jekk jogħġbok meta waqa' s-saqaf ta' ... tad-dar ta' fuq?*

*Ix-Xhud :*

*Naħseb ilu bejn tmienja ... għaxar snin nimmagina ...*

*Dr Sarah Sultana :*

*U inti għidtilna li kien hemm water seeping iġifieri daħal l-ilma għandek?*

*Ix-Xhud :*

*Iva.*

*Dr Sarah Sultana :*

*Daħal l-ilma f'dak il-perjodu biss? Kien hemm perjodi oħra ..?*

*Ix-Xhud :*

*Ha ngħidlek waħda ... daħal ilma sa kemm irrangaw is-saqaf. Imbagħad meta rrangaw is-saqaf waqaf l-ilma. Biss xi tlieta ... erbgħa snin ilu reġa' għamel il-maltemp ... jiena qatt ma rajt l-istruttura kif saret wara li rrangaw għax ma kellix aċċess. Biss emm ... xi tlieta ... erbgħa snin ilu ftaħt darba filgħodu ... għamlet ħafna xita u sibt ħafna ilma. Bdejt nara min qed jagħmel minnu llum għax is-sinjur ma kienx hemm u xi ħadd li qed jagħmel minnu biex jirranġa l-post ċempiltlu u għidtlu isma' eja ara għax hawn ħsarat għamilli ... dan bil-barmil nieżel l-ilma minn mas-saqaf ... għidtlu jiena meta kien ġara l-aċċident ... xi haġa li xtaqt ngħid ukoll anke l-pulizija kienu ġew u kienu kkundannawli l-biċċa ta' fuq iġifieri lanqas il-biċċa ta' fuq ma stajt nuża. Jien bqajt niftaħ xorta ... issa kien riskju għalija ... imma l-biċċa ta' fuq kienet magħluqa bit-tape ... b'dan tal-pulizija u ma stajtx namministra minnha. Iġifieri kien ikkundannat minn naħa ta' fuq ... in-naħa tiegħi qed nitkellem. Issa meta ġie dan xi erbgħa snin ilu ... għidtlu lil dan u qalli le ħa nċempel is-sid u qalli nirrangawh. Irrangawh u minn dakinhar 'l hawn qatt ma daħal iżjed.*

*Dr Sarah Sultana :*

*Iġifieri l-aħhar li kien hemm xi erbgħa snin ilu meta daħal l-ilma?*

*Ix-Xhud :*

*Iva naf ... imbagħad naf li kienu ġew b'xi rombli, nimmagina għamli l-membrane għax sa ġimgħa ilu, dan l-individwu reġa' ċempilli u qalli jien*

*ċempiltlek biex nara jekk hux kollox all right. Qalli jiena mort il-post ... u nerga' ngħid, m'għandix aċċess għalih ... qalli ma hemmx ilmijiet xejn. Għidtlu le ... għidtlu jiena ma għandix problemi minn naħa tiegħi.*

...

*Dr Sarah Sultana :*  
*Mela inti għidt li l-parti tiegħek giet kkundannata. Taf x'għara fil-parti tal-59 peress li huma adjoining? Inti nimmagina li għal 58 qed titkellem hux hekk?*

*Ix-Xhud :*  
*Jiena għal 58 ... 59 tas-sinjur ...*

*Dr Sarah Sultana :*  
*57 u 58 tiegħek ...*

*Ix-Xhud :*  
*57 u 58 huma tiegħi. Il-59 huwa tas-sinjur. Ma nitkellimx għalih.*

*Dr Sarah Sultana :*  
*Ma tafx kien ikkundanat jew le?*

*Ix-Xhud :*  
*Le ma nafx. Ma nafx.*

*Dr Sarah Sultana :*  
*Ma tafx. U emm ... meta daħal gewwa l-ilma ...*

*Ix-Xhud :*  
*Nimmagina li meta gew ikellmu lili l-pulizija gew ikellmu lilu igifieri naħseb illi kellna l-istess storja, nimmagina.*

*Dr Sarah Sultana :*  
*Mela meta daħal l-ilma għandek, f'xi hin rajt x'kien hemm bħala ilmiet minn naħa tal-59?*

*Ix-Xhud :*  
*Rajt is-sinjura ... tas-sinjur tneħhi bil-bramel ... kien hemm l-ilma żgur.*

*Dr Sarah Sultana :*  
*Is-sinjura tas-sinjur x'kienet qed tagħmel hemm hekk?*

*Ix-Xhud :*  
*Ovjament kienet bil-ħanut ... Stitches Boutique kien dak iż-żmien”.*

(fol 162-166)

42. Fix-xhieda tiegħu Dr Ivan Fsadni, jibda billi jispjega x'kien l-involvement tiegħu vis a' vis il-ħanut mikri lill-attur u jgħid illi:

*Ix-Xhud :*

*Ifhimni kont qiegħed ngħin lil emm ... min kien se jixtri fuq il-konvenju imma mbagħad emm ... instab xi ħadd ieħor li xtaq jixtri l-post, kienu għadhom fuq konvenju u dehru kollha fuq il-kuntratt u s-sidien originali bieghu lil min fil-fatt xtara u l-persuna li kont qiegħed ngħin jien emm ... dehret ukoll fuq il-kuntratt u ċediet id-drittijiet tagħha għax kien hemm a promise of assignment of rights ...*

*Il-Qorti :*

*Inti kont qiegħed tidher għal Dr Marlene Farrugia correct?*

*Dr Sarah Sultana :*

*Eżatt ...*

*Ix-Xhud :*

*Nidher mhux eżatt ... dehret hi kemm fuq il-konvenju u kemm fuq il-kuntratt u jiena kont qiegħed ngħinha.*

*Dr Sarah Sultana :*

*Kont qed tassistiha?*

*Ix-Xhud :*

*Eżatt.”*

(fol 178 et seq)

43. Ix-xhud Dr Ivan Fsadni imbagħad jispjega meta ltaqa' mal-attur u dwar l-istat li kien fih il-ħanut mikri lill-attur meta kien mar jarah:

*“Ix-Xhud :*

*Lis-Sur Degabriele iltqajt miegħu u emm ... bażikament wara li kien gie ffirmat il-konvenju, issa ċċekkajt id-dati u niftakar li kien fis-17 ta' Ottubru ...*

*Dr Sarah Sultana :*

*Ta' liema sena please?*

*Ix-Xhud :*

*Ta' 2011 ...*

...

*Dr Sarah Sultana :*

*Tajjeb mela meta uriek il-post, spjegalek li kien hemm xi problema rigward xi incident li kien seħħ ftit qabel ma' dhaltu fl-istorja inti u Dr Marlene Farrugia?*

*Ix-Xhud :*

*Ehe ... emm ... kien irrakontali xi affarijiet li graw qabel u anke urieni l-post ...*

...



*Dr Sarah Sultana :*

*Mela meta tgħid x'irrakuntalek u x'uriek please, relattivament ...*

*Ix-Xhud :*

*Hu kien semmieli li qabel ma ... issa ma nafx kemm qabel ... xi xhur qabel jew snin qabel ... li kien waqa' s-saqaf ...*

*Dr Sarah Sultana :*

*Ta' fejn kien waqa' s-saqaf?*

*Ix-Xhud :*

*Tad-dar ta' fuq u meta waqa' s-saqaf emm ... kien għamel xi ħsara fil-ħanut. Emm ... eżatt x'kienet il-ħsara ma nafx u meta aħna konna rajna d-dar, dan is-saqaf kien diga' tranga, iġifieri meta sar il-konvenju, l-post kien diga' tranga imma urienu l-istat li kien fih il-ħanut.*

*Dr Sarah Sultana :*

*Tista' tispjega lil Qorti f'liema stat kien fih il-ħanut? X'ikkonstatajt inti?*

*Ix-Xhud :*

*Ifhimni bhala ... l-ewwel nett kien miżmum tajjeb hafna u emm ... anke ... għax jekk niftakar sew ħanut tal-ħwejjeġ kien iġifieri anke l-ħwejjeġ kienu daqxejn aktar upmarket iġifieri mhux ... iġifieri kien ipprezentat tajjeb hafna. U peress li kien mikri aħna ma kellniex daqshekk interess fil-kundizzjoni tiegħu ... li kont qed ninsisti kienet aktar interessata fid-dar ta' fuq. Emm ... imma mbagħad xtaq jurini l-bqija tal-ħanut u dhalna ftit aktar 'il gēwwa ... il-ħanut mhux kbir hafna ... huwa kamra waħda u wrienu ... qed nipprova niftakar jekk kienx hemm xi ħnejjet ... jekk niftakar sew u ma nafx kinux mgħottijin b'xi forma ta' gypsum jew covering ... jew kinux mikxufin, ma niftakarx imma kien urienu xi patches ta' umdita jew moffa jew hekk ... li niftakar jien. Emm ... u kien qalli li kien hemm din id-diffikulta u ma niftakarx kenitx meta kien waqa' s-saqaf jew baqgħet tigi kkawżata wara ... aħna hekk jew b'hekk konna fuq konvenju u jien m'inhix perit imma kieku kien hemm xi haġa strutturalment vera ħażina konna ngibu l-perit tagħna biex jara. Iġifieri ma jidhirx ... milli rajt jien ma jidhirx li kien hemm xi haġa strutturalment ħażina.*

*Dr Sarah Sultana :*

*Pero inti qed tgħid li rajt xi patches. Apparti l-patches, ikkonstatajt dawk il-patches x'kienu prattikament? Jew jekk kienx hemm xi haġa relattiva għal dawk il-patches?*

*Ix-Xhud :*

*Nimmagina umdita jew leakage ta' ilma ... ma nafx ... imma ma dehrinx ... għal xi hadd li ma jifhimx bhali, ma dehrinx xi haġa serja u peress li konna għadna fuq konvenju, għidna mbagħad emm ... ifhimni jekk isir il-kuntratt imbagħad wara naraw x'hemm bżonn isir jew hekk ... għax anke d-dar ma kenitx f'kundizzjoni brillanti. Iġifieri kienet mikrija, nimmagina qabel, sibna*

*ħafna imbarazz u hekk ... naddafniha u hekk emm ... imma ma jidhirx ukoll ... strutturalment ma jidhirx li kien hemm affarijiet kbar.*

...

*Dr Sarah Sultana :*

*Mela inti semmejt xi water leakage l-ewwel ... leakage ta' ilma ...*

*Ix-Xhud :*

*Ma nafx ...*

*Dr Sarah Sultana :*

*Rajt xi leakage inti? Rajt xi ilma?*

*Ix-Xhud :*

*Ilma niezēl ma rajtx.*

*Dr Sarah Sultana :*

*Ilma niezēl ma rajtx.*

*Ix-Xhud :*

*Imma forsi kien qalli s-Sur Degabriele u forsi assumejt jien kien jidher li huwa ħsara ta' ilma.*

*Dr Sarah Sultana :*

*Mela ħsara fil-ħanut, apparti li kien hemm dawk il-patches ...*

*Ix-Xhud :*

*Patch ta' ... mhux qed ngħidu s-saqaf.*

*Dr Sarah Sultana :*

*Mela patch ... apparti l-patch li rajt, rajt xi ħaġa oħra fil-ħanut ġewwa ... iġifieri fl-affarijiet li kien hemm fil-ħanut? Meta rajt dik il-patch ...*

*Ix-Xhud :*

*Kien armat. Iġifieri ...*

*Dr Sarah Sultana :*

*Relattiva għal dak li rrakuntalek dejjem eh ... iġifieri mhux għax kien hemm biss il-ħwejjeg. Relattiva għal dak li rrakuntalek is-Sur Degabriele ...*

*Ix-Xhud :*

*Jekk kien hemm xi ħsarat li rriferu għalihom qabel nimmagina kienu ssewwew ... imma ma jidhirx ... per eżempju ma kienx hemm ... għax dan bejn il-ħnejjiet ikun hemm ix-xorok ... ma kienx hemm xorok mikxufin jew gaps jew hekk li tara d-dar ta' fuq imma ... għax jekk sfronda xi ħaġa u kisser ix-xorok ta' taħt, tista' tara d-dar ta' fuq ...*

...

*Dr Sarah Sultana :*

*Mela xorok, saqaf, patches ... igifieri fil-ħanut per se ... fil-ħanut tal-ħwejjeġ, furnishings tal-ħanut, inti rajt xi ħsarat? Rajt xi ħaġa meta inti dhalt ġol-post jekk tiftakar dejjem?*

*Ix-Xhud :*

*Qed nipprova niftakar ifhimni ... il-ħanut kien miżmum tajjeb ħafna ... igifieri jekk kien hemm ... jien naf ... il-ġebel tfarfar nimmagina li naddfu. Igifieri jiena mort meta l-ħanut kien qed jintuża ... igifieri ma kienx emm ... ħanut magħluq mhux qed jintuża ... forsi kieku kien jidher iżjed jekk kien hemm xi ... xi ħsarat li jkompli igifieri ... nimmagina kieku daħal l-ilma kien johroġ ma' kullimkien ... jimshuh u jnaddfuh. Igifieri dan ma kienx f'post magħluq li qed nara jien imma kien post qed jintuża.*

...

*Dr Sarah Sultana :*

*Issa wara li mort inti ... u wara li ssewwiet u kollox inti ergajt mort ... ergajt mort fil-ħanut ġħax kien hemm xi problematika relattivament ġħal dik wara ... mhux meta seħħ l-incident ġħax ...*

*Ix-Xhud :*

*Ok ...*

*Dr Sarah Sultana :*

*Apparti dik id-darba meta uriek il-patches.*

*Ix-Xhud :*

*Taht ġurament ma niftakarx. Imma li nkun hemm u qalli forsi isma' dieħel f'it ilma jew hekk ... niftakar li kien semma'. L-iktar li tkellimna fuq is-sidien li kienu anzjani ħafna u forsi la kienu kapaċi u lanqas kellhom wisq interess iżommu l-post. Dan kien mikri, ġie f'idejhom u kien fi stat ... il-post ma kienx fi stat tajjeb. Il-post ta' fuq. Il-ħanut kien fi stat tajjeb ħafna. Imma d-dar ta' fuq kienet ġħandha b'zonn titranġa.*

*Dr Sarah Sultana :*

*U meta qallek li dieħel l-ilma, f'dawk l-okkażjonijiet li qallek dieħel l-ilma, inti mort tara xi ħaġa? Fil-każ tiegħu. Fil-ħanut.*

*Ix-Xhud :*

*Ma niftakarx. Ifhimni ... ma neskludix li mort rajt u forsi qalli isma' ... dal-lejl ġħamlet ix-xita u daħal xi ilma. Xi ħaġa hekk. Igifieri aħna fuq konna naddafna u forsi ġħamilna xi affarijiet ... mhux jiena igifieri kien hemm xi ħaddiema naddfu l-post u forsi ġħamlu l-minimu ta' maintenance ... imma affarijiet zġħar"*

(fol 179-182)

44. Referenza ser issir issa ġħax-xhieda tal-Perit Karl Ebejer, li kien il-Perit tal-konvenut. Il-Perit Ebejer jispjega s-segwent:

*“Ix-Xhud :*  
*Bdejt naħdem fil-proġett fil-bidu nett fl-2013.*

*Dr Sarah Sultana :*  
*2013. Il-ħanut ta’ Raymond Degabriele li kien taħt din id-dar emm ...*  
*tiftakru? Tiftakar jekk kienx kellmek Raymond Degabriele dwar xi problemi*  
*u xi ħsarat li kellu fil-ħanut tiegħu minħabba d-dar ta’ fuq?*

*Ix-Xhud :*  
*Niftakar li kont mort xi darbtejn ... darbtejn ... tlieta ... darba kien daħal xi*  
*ftit ilma ... ilu ħafna ... naħseb li ilu ... naħseb 2014 ... kien qed iqattar ftit*  
*ilma minn waħda mill-arkati, għax kien għadu bħala ħanut emm ... u darba*  
*oħra għamilna survey, għax għamilna survey eventwalment tal-blokka kollha*  
*fuq ... x’hemm fuqna, taħtna, madwarna biex naraw il-load paths għax ħa*  
*nżidu sular hemm hekk emm ... u jidhirli li jista’ jkun li għaddejt darb’ oħra*  
*wkoll biex nara xi ħaġa li qalli li kienet forsi dieħel xi ilma dakinhar ...*

*Dr Sarah Sultana :*  
*Mela rigward l-ilma ... hemm hekk hija l-kwistjoni kollha ... li kien diehel l-*  
*ilma ... fejn kien diehel l-ilma u jekk rajtux diehel inti l-ewwel nett.*

*Ix-Xhud :*  
*Rajt li kien hemm xi ilma qed iqattar ... qisu l-post żgħir ... hemm xi erbgħa*  
*(4) arkati u beda jqattar minn waħda minnhom.*

*Dr Sarah Sultana :*  
*Iġifieri mill-ġenb, minn fuq, mis-saqaf?*

*Ix-Xhud :*  
*Minn fuq. Minn fuq.*

*Dr Sarah Sultana :*  
*Mis-saqaf?*

*Ix-Xhud :*  
*Mis-saqaf.*

*Dr Sarah Sultana :*  
*Illi iġifieri huwa s-saqaf ... li hija l-art tad-dar sovrastanti hux hekk?*

*Ix-Xhud :*  
*Hekk hu.*

*Il-Qorti :*  
*Mela ha nurik dawn ir-ritratti jekk jogħġbok ... kemm nurihomlok a fol 97*  
*tal-proċess ... dawn huma ritratti tal-fond kif rajtu inti hekk?*

*Ix-Xhud :*  
*Le ... le ... le ... jiena rajtu meta kien għadu qed jiffunzjona bħala ħanut ...*

*Il-Qorti :*  
*Bħala ħanut mhux f'dan l-istat.*

*Ix-Xhud :*  
*Le ... le ... definitely not. Meta kien ... għadu qed jaħdem il-ħanut.*

...

*Ix-Xhud :*  
*Ma tantx għandi xi ngħid għax rajt ftit ilma jqattar minn arkata minnhom, dak kollox.*

*Il-Qorti :*  
*Igifieri rajtu jqattar?*

*Ix-Xhud :*  
*Iva ... iva ...*

*Dr Sarah Sultana :*  
*Apparti li kien qiegħed iqattar l-ilma, taf jekk kienx hemm xi ħsarat fil-ħanut per se appartu li fis-saqaf kien hemm l-ilma jqattar?*

*Ix-Xhud :*  
*Għamilt spezzjoni imma ma kienx hemm ... ma kien hemm l-ebda ... ma jidher li kien hemm l-ebda issues strutturali, assolutament. Billi jidhol l-ilma ...*

*Il-Qorti :*  
*Mela anke biex nifhem jien, inti rajt l-ilma qed iqattar mill-arkati ... allura l-arkati nifhem li kienu viżibbli hux hekk mhux mgħoddija?*

*Ix-Xhud :*  
*Le milli rajt kienu viżibbli.*

*Dr Sarah Sultana :*  
*Mela ara tiftakarx li kien hemm suffett?*

*Ix-Xhud :*  
*Kien hemm suffett imma ftaħna biċċa minnu niftakar.*

*Il-Qorti :*  
*Igifieri viżibbli għax ftaħtu biċċa ...*

*Ix-Xhud :*  
*Qlajna partijiet minnu biex naraw. Definitely yes yes ...*

*Dr Sarah Sultana :*  
*U rajt l-ilma nieżel. Rajt l-ilma jqattar sorry ... appartu dik l-okkażjoni, kien hemm okkażjonijiet fejn rajt l-ilma jqattar?*

*Ix-Xhud :*  
*Ma jidhirlix*

*Dr Sarah Sultana :*  
*Jew li bagħat għalik s-Sur Degabriele?*

*Ix-Xhud :*  
*Kien jibgħat għalija biex jipprova jibgħat il-messaġġi miegħi speċi ... nista' nkellem lil Mr Nowasad ... I always told him to go ... please go through the official channels. Please go to the official channels. That was always my response.*

*Il-Qorti :*  
*X'kienet ir-raġuni li ried ikellmu?*

*Ix-Xhud :*  
*Għax ried ... jew jgħaddi xi messaġġi ... jew jgħidli nista' nkellmu jew kif se nagħmel biex ...*

*Il-Qorti :*  
*Kif se jagħmel biex xiex? Biex jirrangà? Biex ...*

*Ix-Xhud :*  
*Semmieli xi kera ... kif ħa jikkuntattjah biex jagħtih il-kera ... ma jafx kif ħa jikkuntattjah ... għidtlu I'm sorry ... not through me.*

*Dr Sarah Sultana :*  
*Apparti l-kera, dan il-water seepage li beda jiccomplinja miegħek ... minnha miegħek ... emm ... ara tifakarx kienx talbek illi tirreferi l-affari għal owners?*

*Ix-Xhud :*  
*Ehe jista' jkun.*

*Dr Sarah Sultana :*  
*Inti x'għamilt? Irreferejtha? Gara xi haġa?*

*Ix-Xhud :*  
*Kont irreferejtha.*

*Dr Sarah Sultana :*  
*Irreferejtha. U l-involviment tiegħek waqaf hemm iġifieri?*

*Ix-Xhud :*  
*L-involviment tiegħi imbagħad ... għax ma baqgħax diehel ilma. Iġifieri kieku kien jibqa' jikkuntattjani kif jagħmlu n-neighbours kollha. Sfortunatament ...*

*Il-Qorti :*  
*Iġifieri saru xi xogħolijiet rimedjali biex ma baqgħax diehel ilma jew waqaf waħdu hekk?*

*Ix-Xhud :*  
*Ma niftakarx bl-ament.*

*Il-Qorti :*  
*Ma tiftakarx.*

*Dr Sarah Sultana :*  
*Ma tiftakarx. Inti għidtilna li l-ħanut kif inhu hekk ma tiftakrux ...*

*Ix-Xhud :*  
*Ifhem ilma jidħol ... din il-propjeta naqra għandha 'l fuq minn mitejn (200) sena iġifieri anke fil-proġett il-ġdid ... kien hemm problema kbira, beda jidħol ħafna ilma tax-xita u ma setgħux isibu soluzzjoni. Imma msomma.*

*Dr Sarah Sultana :*  
*Jekk nagħmel referenza għal incident li kien seħħ fit-2010 fid-dar ... are you aware x'kien l-incident li kkaġuna ċertu ħsarat? Sia fid-dar u sia fil-ħanut? Qalulek bihom?*

*Ix-Xhud :*  
*Emm ...*

*Dr Sarah Sultana :*  
*Ma qalulekx bihom.*

*Ix-Xhud :*  
*I wasn't in the picture.*

...

*Ix-Xhud :*  
*Problematika f'liema sens?*

*Dr Sarah Sultana :*  
*Tal-ħanut ... tal-water seepage ...*

*Ix-Xhud :*  
*Ma tantx ... ma nqishiex problematika ... naraw ħafna iktar problemi strutturali iġifieri ... water seepage kwazi kwazi ... kwazi kwazi kull propjeta li naraw jgħidulna li hemm xi water seepage jew diehel mit-terazzin jew diehel minn hemm jew diehel minn hawn. U dawn propjetajiet godda ... aħseb u ara propjeta 'l fuq minn mitejn (200) sena iġifieri ... noqgħod attent kieku ngħid li din il-ħaġa problematika.*

...

*Dr Sarah Sultana :*  
*At the time li grat u ħadt ir-ritratti ... apparti r-ritratti hemm xi ħaġa oħra relattiva għaliha din il-problema li kellu Raymond Degabriele issa. Kenitx*

*normali o meno issa dik hija storja oħra. Imma inti bħala perit meta ħadt ir-  
ritratti, just ritratti ħadt?*

*Ix-Xhud :*

*Ma kienx hemm issues strutturali u affarijiet le.*

*Dr Sarah Sultana :*

*That's all. Igifieri ma hemmx ebda rapporti oħra.*

*Ix-Xhud :*

*U anke issa ma hemmx”.*

(fol 184 et seq-189 et seq)

45. Illi fis-seduta tat-30 ta' Novembru 2021 l-attur, b'zieda mal-affidavit tiegħu, jispjega lill-Qorti kif kien il-ħanut qabel ma rrangah kif ukoll jipprezenta numru ta' ritratti li jinsabu a fol 205 tal-proċess. In oltre, huwa jtenni s-segwent:

*“Dr Sarah Sultana:*

*..... Mela ... eventwalment inti kellek tistrippjah dak il-ħanut. Mela tispjega  
ftit f'dak il-mument meta inti kien hekk il-ħanut kellek xi problemi?*

*Ix-Xhud :*

*Iva emm ... hemm hekk kien jidħol l-ilma ... fil fatt ...*

*Il-Qorti :*

*Igifieri meta kellek il-panels tas-suffitt u tal-ġnub kien jidħol l-ilma?*

*Ix-Xhud :*

*Iva kien jidħol l-ilma. Fil-fatt kont għajjatt lil Ivan Fsadni emm ... għax l-  
owners ta' qabel kienu xjuħ u lanqas kienu jistgħu jimxu imma dejjem kont  
niccomplainja fuq l-ilma. Kien hemm xi inkwilini li kienu xjuħ ukoll ... kienu  
jikru dar. Eventwalment ...*

*Dr Sarah Sultana :*

*Liema dar? Liema dar?*

*Ix-Xhud :*

*Id-dar ta' fuq.*

*Dr Sarah Sultana :*

*Id-dar ta' fuq ok.*

*Ix-Xhud :*

*Id-dar ta' fuq ... emm ... one fine day mingħalija 2010 jew 2009 kien waqa'  
s-saqaf tal ... tal-bejt ... tal-bejt ... waqa' parti sostanzjali igifieri tlett (3)  
beams kbar u ġew f'ta' isfel li jiġu fil-kċina li jiġu fuq il-ħanut tiegħi.*

*Il-Qorti :*

*Fuq il-ħanut tiegħek.*



*Ix-Xhud :*

*Dan għamlu parti emm ... żmien twil li ... li kien mikxuf u konna jiena u tal-bazaar u t-tifel tiegħu pruvajna nagħlqu għax il-pulizija għamluh bit-tape u kienu qalulna aħjar ma tinzlux hemm hekk.*

*Il-Qorti :*

*Igifieri kellkom is-soqfa miftuħin għall-elementi tan-natura?*

*Ix-Xhud :*

*Parti mis-soqfa ehe ... din kienet kamra ta' xi sittax (16) il-pied ... igifieri kamra kbira. Emm ... dawk kienu reqdin dawn l-inkwilini u waqa' s-saqaf bihom b'kollox. Luckily kien li ma wegġa' ħadd. Emm ... pero l-pulizija għamlu t-tape u qalulna li aħjar ma toperawx emm ... għax hemm il-biża ...*

*Il-Qorti :*

*Igifieri bhala ħanut kontu għalaqtu għal xi żmien?*

*Ix-Xhud :*

*Konna għalaqna għal żmien ... għalaqna għal żmien ... ma stajniex ... jiena ma stajtx inkompli għax emm ... u ridna nagħmlu xi haġa. Jiena u t-tifel tal-bazaar ta' ma' ġenbi konna pruvajna nagħlqu ... għamilna qisu struttura tal-fibre biex ma jidholx ilma emm ... snin wara qabel ma nbiegħet bqajna noperaw hekk. Qabel ma nbiegħet din irrangaw is-saqaf. Mhux l-inkwilin ... mhux l-owner li hemm illum imma qabel ma nbiegħet il-propjeta'.*

*Dr Sarah Sultana :*

*Issa bhala ilma pero għidtilna li l-ilma ... meta gara dan? Sa kemm irrangawh l-owners ta' fuqkom baqa' ... x'gara?*

*Ix-Xhud :*

*L-ilma baqa' jidhol ... l-ilma baqa' jidhol ... baqa' jidhol sal-ġurnata ta' llum igifieri.*

*Dr Sarah Sultana :*

*Sal-ġurnata ta' llum ... hemm hekk eventwalment strippjajtuħ naqblu? U rajna ritratti li ġie stripped emm ... minn naħa tagħkom ...*

*Ix-Xhud :*

*Eżattament.*

*Il-Qorti :*

*Kif jidhru a fol 97 etc.*

...

*Ix-Xhud :*

*Eżattament. Meta qlajt kollox hekk jiena ... għajjatt ... sejjajt lil perit Karl Ebejer li kien il-perit tal ... tal-owners il-ġodda ... ġie jara ... niftakar ġie*

*ma' xi hadd ieħor ma nafx min kien ... jista' jkun student ma nafx ... ħa xi ritratti u kellu jikkuntattja lill-owners fuq is-sitwazzjoni.*

*Dr Sarah Sultana :*  
*U x'għara? Kellmek xi hadd inti mill-owners?*

*Ix-Xhud :*  
*No.*

*Dr Sarah Sultana :*  
*Ittieħdet azzjoni?*

*Ix-Xhud :*  
*No.*

*Dr Sarah Sultana :*  
*F'dak l-istadju kien hemm l-ilma għadu nieżel iġifieri?*

*Ix-Xhud :*  
*Iva l-ilma kien jisserpinja ... fil fatt emm ... aħna komplejna bix-xogħolijiet emm ... skoprejna li kien hemm bir emm ... dak huwa jiena hemm hekk ... taħt ... hemm hekk viċin fejn qiegħed jiena kien hemm fil żgħir u ħsibnieħ shelter biex ngħidlek il-verita u qlajna l-madum li kien hemm u skoprejna li kien hemm bir antik li huwa qanpiena.*

*Il-Qorti :*  
*Taħtu?*

*Ix-Xhud :*  
*Taħtu.*

*Il-Qorti :*  
*Iġifieri taħtek hemm hekk hemm bokka ta' bir.*

*Ix-Xhud :*  
*Hemm ... mhux ... issa iva għax għamilniha bi ħgiega ... għalaqniha u għamilnieħ functional emm ... dan il-bir ...*

*Il-Qorti :*  
*U l-bir jintela' iġifieri qiegħed?*

*Ix-Xhud :*  
*Il-bir għamiltu functional. Il-bir għamiltu functional.*

*Dr Sarah Sultana :*  
*Inti kont taf biħ il-bir qabel ma bdejt ...*

*Ix-Xhud :*  
*Ma kontx naf biħ il-bir ... lanqas idea ma kellna iġifieri ... dan skoprejnieħ minn fil daqshekk.*

*Dr Sarah Sultana :*

*U la darba inti skoprejt u ... l-ewwel ħsibtu shelter u mbaġhad skoprejt u ... tista' tispjega ftit lil Qorti x'tip ta' xogħolijiet għamilt?*

*Ix-Xhud :*

*Għamilna xogħolijiet kbar ġo fih għax dana inżilt ġo fih jiena, għamilt xi gimgħa niskava ġo fih emm ... hawn hekk nista' neżebixxi xi ritratti tal-materjal li ħriġna minn ġo dan il-bir ...*

...

*Dr Sarah Sultana :*

*Issa inti hemm hekk għamilt ix-xogħolijiet. Tista' forsi tgħidilna kif ġie bħala post?*

*Ix-Xhud :*

*Iva għamilna ħafna xogħolijiet, għamilna madum ġdid iġifieri ... kaħħalnieh kif suppost emm ... u ġibnieh ħanut illi heqq ... fl-opinjoni tiegħi wieħed mill-isbaħ hair dressing salons li kien hawn ġo Malta. Hawn nista' neżebixxi xi ritratti kif ... kif emm ... kif inhu ... kif kien qabel ma ttieħed mingħandi.*

...

*Dr Sarah Sultana :*

*Mela qabel għidtilna li inti bqajt bil-problema tal-ilma ... li baqa' dieħel lilma. Meta tgħid baqa' dieħel ... anke fi stadju rranġajtuħ ... u kien hemm xorta problemi dak iż-żmien?*

*Ix-Xhud :*

*Iva.*

*Dr Sarah Sultana :*

*U x'kienu l-problemi?*

*Ix-Xhud :*

*Iva ergajt ikkuntattjajt bħala messagg lil ... lil Perit tal-owners li huwa l-perit Karl Ebejer emm ... biex ninfurmah li anke wara li rranġajna l-ħanut iġifieri ... infaqna dawk il-flus biex irrangajnieh emm ... biex jiġi jara forsi bħala perit itina xi pariri oħrajn u nkunu nistgħu nirrangawha emm ... u qatt ma kellimni lura. Ahna ftahna l-ħanut emm ... u juri ... għandi xi ritratti li xorta emm ... kien qed jidħol l-ilma. Ċemplitli emm ... Kristina li kienet topera l-ħanut emm ... b'urgenza hawn ... mort hemm hekk u ħadt xi ritratti tal-ilma emm.*

...

*Dr Ruth Ellul :*

*Mela qed tgħidilna li bdejt tesperjenza problemi tal-perkolazzjoni tal-ilma 2008 hux hekk ...*

*Ix-Xhud :*  
*Ehe fil-bidu yes.*

*Dr Ruth Ellul :*  
*U qabbadt perit l-ewwel darba fit-2012.*

*Ix-Xhud :*  
*Għax ma stajniex naraw ... iġifieri biex inti tara ... tidentifika trid perit u trid iżżarma hanut ...*

*Dr Ruth Ellul :*  
*Le ... le ... imma hekk hu ... hux hekk iġifieri l-ewwel darba li qabbadt perit kien fit-2012. Sewwa. Issa qed tghidilna ... qed issemmi ...*

*Ix-Xhud :*  
*Il-perit qabbadt għax emm ... minhabba l-istruttura li kien hemm għax peress li struttura antika fil fatt skoprejna li kien hemm arkati li kellhom bżonn jiġu ... kif jgħiduha restored hawn ... għax kienu qed jifarrku.*

...

*Dr Ruth Ellul :*  
*Sewwa u l-perit tiegħek ... il-perit għidtilna Matthew Bugeja ...*

*Ix-Xhud :*  
*Iva.*

*Dr Ruth Ellul :*  
*Emm ... x'kien irrakomandalek tagħmel meta gie fit-2012?*

*Ix-Xhud :*  
*Ovvjament restoration tal-arkati għax emm ... kellhom bżonn dawra. Dan għamilt sebgħa u għoxrin (27) sena bil-hanut tal-ħwejjeġ iġifieri ... dejjem magħluqin u ma konniex nafu x'hemm warajhom u peress li kienu waqgħu dawk is-soqfa emm ... it was a must li inti iżżarma l-hanut biex tara xi ħsara hemm. Tinsiex dana ... dan għamel żmien kien kundannat mill-pulizija għamilna żmien ma stajniex noperaw. Aħna we operated at our own risks iġifieri morna oltre mill-pulizija.*

*Dr Ruth Ellul :*  
*Fit-2012 jew wara għamillek xi rapport il-perit Bugeja?*

*Ix-Xhud :*  
*Rapport tax-xogħolijiet?*

*Dr Ruth Ellul :*  
*Rapport ta' ... ta' minn fejn ġejjin il-ħsarat jew ... jew ta' x'kellu jsir?*

*Ix-Xhud :*

*Le. Le. Fil-fatt peress li għamilna emm ... xogħol fuq ġewwa lanqas kellna bżonn nirrikorru għal MEPA għax aħna ma missejniex il-faċċata. Iġifieri peress li fuq ġewwa, skont kif kont infurmat ma hemmx għalfejn tapplika mal-MEPA peress li ha nagħmlu restoration.*

*Dr Ruth Ellul :*

*Issa f'dawn is-sebġha u għoxrin (27) sena li kien ilu għandkom il-ħanut, saru xi xogħolijiet strutturali ta' manutenzjoni minn naħa tiegħek?*

*Ix-Xhud :*

*Emm ... le ... strutturali le ma stajniex nagħmlu aħna.*

*Dr Ruth Ellul :*

*U xogħolijiet ta' manutenzjoni?*

*Ix-Xhud :*

*Ta' manutenzjoni li kien jidher fuq barra. Iġifieri żebġha ...*

*Dr Ruth Ellul :*

*Fuq ġewwa qed nitkellmu ... fuq ġewwa tal-ħanut.*

*Ix-Xhud :*

*Imma mhux strutturali le. Li kien jidher ... cosmetic.*

*Dr Ruth Ellul :*

*Iġifieri tibjid ...*

*Ix-Xhud :*

*Eżattament.*

*Dr Ruth Ellul :*

*Issa mela ...*

*Ix-Xhud :*

*Tibdil ta' tapit iġifieri ... mhux il-ġebbla as such għax ma stajniex.*

...

*Dr Ruth Ellul :*

*Sewwa. U dawn ix-xogħolijiet kollha li semmejt iġifieri meta strippjajt il-ħanut, meta skoprejt il-bir u ergajt irrangajtu ... dawn kienu qabel ma għamilt ir-riċerki biex issir taf min huma s-sidien?*

*Ix-Xhud :*

*Ir-riċerki ehe ... dak l-ewwel ikkuntattjajt il-perit biex jiġi jara u ovvjament jgħaddi l-informazzjoni li jiena ...*

*Dr Ruth Ellul :*

*Il-perit ... liema perit?*

*Ix-Xhud :*

*Il-Perit Karl Ebejer skużani ... emm ... biex jgħaddi informazzjoni li jiena żarmajt il-ħanut u għalhekk għibt il-perit biex jara jekk hemmx xi haġa strutturalment u jkun aware tal ... tas-sitwazzjoni. Emm ... meta mbagħad qalli go through the right channels, jiena qabbadt in-Nutar emm ... biex jagħmel riċerki ... biex nagħmlu riċerki tagħna u ... u nsiru nafu min huma l-owners il-ġodda.*

*Dr Ruth Ellul :*

*U sa dan it-tant ħadt id-deċiżjoni li tkompli bix-xogħolijiet ...*

*Ix-Xhud :*

*U komplejt nistrippja ...*

...

*Dr Ruth Ellul :*

*Issa eżebejt ritratt RD 10 naħseb li ...*

*Il-Qorti :*

*Il-launch tal-hairdressing salon?*

*Ix-Xhud :*

*Iva.*

*Dr Ruth Ellul :*

*Mela dak meta ttieħed dak ir-ritratt?*

*Ix-Xhud :*

*Dak ittieħed emm ... fl-aħħar ta' Novembru ...*

*Dr Ruth Ellul :*

*Ta' liema sena?*

*Ix-Xhud :*

*Emm ... mingħalija 2016.*

*Dr Ruth Ellul :*

*U kif ittieħdet id-deċiżjoni li dak il-ħanut isir hairdressing salon?*

*Ix-Xhud :*

*Id-deċiżjoni ħadtha jiena għaliex meta jiena dejjem tkellimt ma' Ivan Fsadni li kien ir-rappreżentant tal ... ta' ... tas-selling hawn ... ta' Marlene emm ... Farrugia emm ... kien qalli li qed jinxtara l-ħanut bid-dar b'kollox emm ... għidtlu jiena għandi ħsieb li l-ħanut naqilghu u naf nagħmlu xi haġa oħra emm ... qalli l-importanti qalli ... li ma jsirx bar minħabba l-istorbju. Qalli mhux suppost ikollok problemi. Allura jiena bqajt dejjem b'dik l-idea li jien nista' nagħmlu hairdressing salon għax mhux ha jsiru oġġezzjonijiet. Fil fatt meta sirna nafu ...*

...

*Dr Ruth Ellul :*

*Iġifieri naqblu li permess biex jinbidel għal hairdressing salon qatt ma ngħata hux hekk?*

*Ix-Xhud :*

*Le fil fatt meta sirt naf min huma l-owners u tlabnihom biex jiffirmawlna biex indawwru l-permess emm ... l-ittra lura kienet li jridu l-ħanut lura. U fil fatt ħaduh lura.”*

(fol 196-204)

## **Ikkunsidrat**

46. B'referenza għat-talbiet kontenuti fir-rikors ġuramentat tal-attur, il-Qorti tosserva illi l-attur qiegħed permezz tal-kawża odjerna jitlob lil din il-Qorti sabiex tiddikjara li l-konvenut huwa responsabbli għad-danni sofferti minnu, liema danni huma konsistenti f'xogħolijiet ta' tiswija, kif ukoll ta' diversi tibdiliet u oħrajn ta' rinovazzjoni kif ukoll restawr tal-ħanut bin-numru disgħa u ħamsin (59) bl-isem 'Trucco & Parrucco', qabel bl-isem 'Stitches', li jinsab ġewwa Triq il-Pellegrinagġ, kantuniera ma' Triq is-Srejdak, f'Bormla u dan anke minħabba li l-istess fond kien fi stat ta' perikolu peress li kien qiegħed jidħol kwantita' ta' ilma mill-fond sovrastanti u ċioe' l-fond numru wieħed (1) fi Sqaq Srejdak, kantuniera ma' Triq il-Pellegrinagġ, f'Bormla li kien tħalla fi stat ta' abbandun u ħsara kbira, liema proprjeta' huma t-tnejn proprjeta' tal-konvenut.
47. Għalhekk, mill-qari tar-rikors ġuramentat, joħroġ ċar illi l-pern tal-kawża huwa bbażat fuq il-fatt illi skont l-attur ix-xogħolijiet illi huwa għamel fil-ħanut mikri lilu, ossia d-danni illi huwa qiegħed jippretendi, kien kostrett li jagħmilhom state illi minħabba l-ingress tal-ilma mill-fond sovrastanti, proprjeta' tal-konvenut, il-ħanut mikri lilu kien fi stat ta' perikolu.
48. Jirrizulta illi, fl-affidavit tiegħu r-rikorrenti jsostni illi:
- “It was during March 2016, when I decided to start the works in order to restore the property, and to resolve the matter myself, because I was risking to lose the use of the shop, in view of the damages that continued to occur, in view of the water flooding.....The works were necessary, and had to be done urgently, according to my architect's advice, Matthew Bugeja since there was a real danger of collapse, which I had an interest to avoid.”*
49. Il-Qorti tinnota illi l-attur kemm fl-affidavit tiegħu kif ukoll fix-xhieda tiegħu quddiem dina l-Qorti jagħmel referenza għall-inċident illi seħħ fis-sena 2010 fejn kien ċeda s-saqaf tal-fond sovrastanti u li b'riżultat ta' hekk beda dieħel l-ilma ġewwa l-ħanut li kien mikri lilu. Li seħħ dan l-inċident gie wkoll ikkonfermat mix-xhud Raymond Portelli.
50. L-attur ikompli jispjega illi minħabba dan l-inċident, kienu marru l-pulizija u ordnawlu sabiex ma jibqax jopera għax kien perikoluż. Ir-rikorrent jsostni illi huwa kien ħa r-riskju u baqa' jopera u jispjega wkoll illi qabel ma l-fond inbiegħ lill-konvenut u lil

Matthew S. Gubb, is-saqaf kien ġie rranġat iżda xorta waħda baqa' jidhol l-ilma fil-ħanut:

*“Ix-Xhud :*

*Konna għalaqna għal żmien ... għalaqna għal żmien ... ma stajnhix ... jiena ma stajtx inkompli għax emm ... u ridna nagħmlu xi haġa. Jiena u t-tifel tal-bazaar ta' ma' ġenbi konna pruvajna nagħlqu ... għamilna qisu struttura tal-fibre biex ma jidholx ilma emm ... snin wara qabel ma nbiegħet bqajna noperaw hekk. Qabel ma nbiegħet din irranġaw is-saqaf. Mhux l-inkwilin ... mhux l-owner li hemm illum imma qabel ma nbiegħet il-propjeta.*

*Dr Sarah Sultana :*

*Issa bhala ilma pero għidtilna li l-ilma ... meta ġara dan? Sa kemm irranġawh l-owners ta' fuqkom baqa' ... x'ġara?*

*Ix-Xhud :*

*L-ilma baqa' jidhol ... l-ilma baqa' jidhol ... baqa' jidhol sal-ġurnata ta' llum iġifieri”.*

51. Il-Qorti tirrileva illi mill-provi kollha prodotti, l-unika istanza fejn il-ħanut mikri lill-attur kien fi stat ta' perikolu kien f'dak il-perjodu meta ċeda s-saqaf tal-fond sovrastanti l-ħanut u sakemm dak is-saqaf ġie rranġat (liema saqaf kien ġie rranġat qabel ma sar il-bejgħ tad-dar u tal-ħanut lill-konvenut). Illi għalkemm l-attur jilmenta illi baqa' jkun hemm ingress ta' ilma ġewwa l-ħanut, dan bl-ebda mod ma rrenda l-fond *de quo* wieħed perikoluż.

52. Jirrizulta illi l-attur jallega illi:

*“The works were necessary, and had to be done urgently, according to my architect's advice, Matthew Bugeja since there was a real danger of collapse, which I had an interest to avoid”* ġie żmentit mill-Perit Matthew Bugeja stess.

53. Mill-banda l-oħra, l-Perit Matthew Bugeja fix-xhieda tiegħu huwa jsostni illi :

*“I was contacted by Mr Degabriele to visit the site emm ... for which I managed to find some photos from the day of the visit emm ... it was 27th June 2016 emm ... I visited the site, I took some photos ... emm ... I noted that the site was in shell form practically, the structure was all exposed emm ... it consisted of arches and traditional xriek mainly emm ... with load bearing walls. Emm ... that's it in general. Emm ... Mr Degabriele also noted that there were going to be some repair areas which might be required, before he closes off with new finishes ... emm ... and we discussed some ... some minor items which can also be seen emm ... in these photos which mainly were minor damages in the arches.*

*Dr Sarah Sultana :*

*The arches ... when Mr Degabriele contacted you to visit the property, did he explain what the problem was? Why he needed you to visit the property?*

*The Witness :*



*He thought it was a ... I think he thought it was a dangerous structure or something problematic. Emm ... I explained that a structure of such type is not imminently dangerous at the time of the visit and in fact we didn't report anything to the police about it and these were normal damages which are normally expected in buildings of such an age.*

...

*Dr Sarah Sultana:*

*And when you say there were defects relative to the building ... the type of building ... the age of the building ... what are we talking about? What were the ... what did you observe were the defects at the property at the time?*

*The Witness :*

*There were some detached parts in parts of the arches which can be seen also in these photos. Which I can ... I can show you.*

*Dr Sarah Sultana :*

*And that is what you observed solely in the property ... what did you tell Mr Degabriele to do about it?*

*The Witness :*

*If he wanted to do some repairs on the structure he would have to contact the owner.*

*Dr Sarah Sultana :*

*And why would he have to contact the owner?*

*The Witness :*

*Because normally if there are extraordinary damages, these were to be carried out by the owner.*

*Dr Sarah Sultana :*

*By the owner.*

*The Court :*

*So these damages were considered to be of an extraordinary nature?*

*The Witness :*

*No ... no ... no ...*

*The Court :*

*They weren't?*

*The Witness :*

*No.*

*The Court :*

*Ok.*

*The Witness :*  
*These small damages no.*

*Dr Sarah Sultana :*  
*And were there any other damages, because you say that he should have contacted the owner to carry out extraordinary works ...*

*The Witness :*  
*If there were extraordinary damages ...*

*The Court :*  
*But in this case the damages you found were not of an extraordinary nature?*

*The Witness :*  
*No ... no ... these were ... let's say wear and tear ... but there's a long history of the property and I don't know exactly the time when these happened. These could have happened one hundred years before".*

54. Apparti minn hekk, il-Qorti tinnota illi fix-xhieda tiegħu l-Perit Bugeja fl-ebda mument ma jsemmi l-kwistjoni tal-ingress tal-ilma jew ħsarat illi ggarbu minhabba dan l-ilma iżda kulma jsemmi huwa “*minor damages in the arches*” li skont l-istess Perit ma kinux danni ta' natura straordinarja. Infatti, waqt il-kontro-eżami tal-attur, għad-domanda jekk qabel beda x-xogħolijiet fis-sena 2016 kienx ikkonsulta Perit, huwa jirrispondi billi jsemmi biss ix-xogħolijiet fl-arkati:

*“Dr Ruth Ellul :*  
*And before you started to carry out works in 2016 did you consult an architect to see what works needed to be carried out?*

*The Witness :*  
*It's my ... my ... my architect.*

*Dr Ruth Ellul :*  
*All right. And what did he tell you?*

*The Witness :*  
*He said there's some work to be done like, you know some arches which were deteriorated and we had to put new emm ...”*

(fol 241 et seq)

55. Jirrizulta illi anke il-Perit Karl Ebejer wasal għall-istess konklużjoni fejn fix-xhieda tiegħu jsostni illi meta kien mar fil-ħanut *de quo*, hu kien ra illi kien hemm xi ilma jqattar minn waħda mill-arkati iżda jikkonferma li ma kienx hemm *issues* strutturali.

56. Ta' dan l-attur kien konsapevoli u waqt il-kontro-eżami tiegħu, Degabriele jgħid:

*“Dr Ruth Ellul :*

*OK. Do you confirm that both Perit Ebejer and Perit Bugeja told you that there were no major damages, that it was only normal water percolation emanating from the fact that it was a very old building?*

*The Witness :*

*Yes, it was a very old building and it still is a very old building and the thing is that slabs ... slabs emm ...*

*Dr Ruth Ellul :*

*Xorok.*

*The Witness :*

*Xorok ... hu l-ilma beda jinżel mix-xorok ... it was coming in from the slabs. But there was no broken slabs? There was only one broken slab which he repaired.*

*Dr Ruth Ellul :*

*Do you realize that both architects told you that there was no major damage and no major problem? Nothing to worry about?*

*The Witness :*

*No, as a ... as a structure no ... as a structure, no. We did fix the arches and renovate the arches and everything as the ... the building was ... it's built with soil ... ħamrija ... mimli hawn bil-ħamrija ... ”*

(fol 240 et seq)

57. Il-Qorti tosserva illi mill-provi prodotti jidher l-attur beda jagħmel ix-xogħolijiet fil-ħanut in kwistjoni f'Marzu tas-sena 2016. Meta r-rikorrenti ġie mistoqsi jekk minn mindu beda esperjenza l-ingress tal-ilma, qattx kien għamel xogħolijiet huwa jgħid:

*“Dr Ruth Ellul :*

*OK. And from 2008 or 2009 until 2016 do you confirm that you did not carry out any works? Any repair works?*

*The Witness :*

*No, we ... we were operating at the time, I mean on and off. We were operating on and off at the time.*

*Dr Ruth Ellul :*

*OK. But apart from that, did you carry out any repair works during that time?*

*The Witness :*

*Repair works for what?*

*Dr Ruth Ellul :*

*You said that you experienced flooding and ...*

*The Witness :*

*Yes ... I mean only ... only that we could have noticed and ... and easily to change.*

*Dr Ruth Ellul :*

*So what ... what works did you carry out?*

*The Witness :*

*We would not do any structure works. No we couldn't do that ... just soffits we carried out on fixing the soffits. Obviously the clothes you have to like either you sell them or as a shop sale and the carpet ... that's ... those are the only works we could have done.*

*Dr Ruth Ellul :*

*OK.*

*The Witness :*

*And like painting and whatever. But structurally no, we couldn't do any ... any ... any works. We had to close it down."*

(fol 241-241 et seq)

58. Il-Qorti tirrileva wkoll illi fl-affidavit tiegħu l-attur jsostni illi: *"During the 27 years I've been renting the property, no maintenance had been carried out to both the shop and the house"*. Meta mistoqsi dwar din il-kwistjoni, l-attur jispjega:

*"Dr Ruth Ellul :*

*In your affidavit and I quote, you say ... during the twenty seven (27) years I've been renting the property, no maintenance had been carried out to both the shop and the house. Now I'm asking you, why did you never carry out maintenance in the shop?*

*The Witness :*

*To carry maintenance in the shop, it had to be dismantled down because it was all with ... covered with wood and wood panels and the soffits and everything so I couldn't identify ... I mean if you ... if one don't dismantle it down, you could not identify where the water is coming from. It was coming obviously from upstairs. So even the house upstairs had to be maintained.*

*Dr Ruth Ellul :*

*OK, but this was your conclusion, correct? Not an architect's evaluation?*

*The Witness :*

*No, no.*

*Dr Ruth Ellul :*

*Ok. And you also say that after the house was sold to ... to Mr. Orest and Mr. Matthew, you continued to experience floods.*

*The Witness :*

*Yes.*

*Dr Ruth Ellul :*  
*At this stage now did you engage an architect?*

*The Witness :*  
*I did not engage an architect ... I always complained with what's his name ... Dr Carl Ebejer ... he was the architect of the owners ... the new owners upstairs. So I always complained to him. So he referred ... referred to the owners. As I never met the owners, I never had the opportunity to talk to them”*

(fol 239 et seq)

### **Ikkunsidrat**

59. Kif diġa' ngħad aktar 'il fuq, l-attur beda x-xogħolijiet fil-ħanut li kien mikri lilu fis-sena 2016. Il-Qorti tirrileva illi allavolja, kif isostni l-istess attur, kien ilu snin bil-problema tal-ingress tal-ilma, huwa ddeċieda li jagħmel ix-xogħolijiet fis-sena 2016 - deċiżjoni illi dina l-Qorti żgħur li ma tistax tqies bħala waħda każwali.
60. Illi kif joħroġ mix-xhieda tal-attur, id-deċiżjoni li jinbidel l-użu tal-ħanut, minn wieħed tal-ħwejjegħ għal *hairdressing salon* saret fis-sena 2016. Illi l-istess attur jgħid illi:

*“Dr Ruth Ellul :*  
*When did you make the decision to strip down the panelling and ... and renovate or ... or convert the shop? When did you make that decision?*

*The Witness :*  
*Emm ... early 2016.*

*Dr Ruth Ellul :*  
*2016. OK. And would I be correct in stating that this was when you decided to convert it into a hairdressing salon rather than a clothes shop?*

*The Witness :*  
*Actually, the idea was to renovate the shop and we operate again as a ... as a boutique.*

*Dr Ruth Ellul :*  
*As a clothes boutique.*

*The Witness :*  
*But I had problems with my ex so ... you know, I decided to convert it into ... into ... into a hairdressing salon”.*

(fol 240)

61. Il-Qorti tħoss illi huwa inverosimili dak sostnut mill-attur illi: *“Biex issolvi l-problema tal-ilma ridt bil fors tagħmel dismantling tal-ħanut kollu”* dan għaliex skont l-istess

attur il-problema tal-ingress tal-ilma kienet ilha hemm snin iżda qatt ma kien ha azzjoni fuqha u qatt ma kien ha parir minghand Perit fuq din il-kwistjoni.

62. Illi kif joħroġ ċar mill-provi, kien fis-sena 2016, u ċioe' meta r-rikorrent kien iddeċieda li jbidel l-użu tal-ħanut, illi ħass il-ħtieġa illi jqabba in-Nutar Sarah Bugeja sabiex tagħmel ir-riċerki fir-Registru Pubbliku biex isir jaf min hu s-sid il-ġdid tal-ħanut. Dan jinsab ikkonfermat min-Nutar Sarah Bugeja stess fl-affidavit tagħha li jinsab a fol 137 tal-proċess. Illi r-rikorrent kellu bżonn din l-informazzjoni mhux minħabba l-kwistjoni tal-perkolazzjoni tal-ilma iżda għaliex kellu bżonn il-firma tas-sid biex jagħmel tibdil fl-użu tal-ħanut. Konferma ta' dan hija l-ewwel ittra mibgħutha mir-rikorrent lill-konvenut u lil Matthew Selwyn Gubb datata 29 ta' Settembru 2016 fejn fiha ma jsir ebda aċċenn għall-problema tal-ingress tal-ilma iżda li fiha hemm imniżżel:

*“My client requires your signature, for an application to change the licence use of the shop from a ‘Boutique’ to ‘Hairdressing Salon’, a copy of which is being enclosed for you to sign, and to send it back to my client at his residential address above indicated” (fol 38).*

63. Illi l-attur stess jtenni illi:

*“Dr Ruth Ellul :*

*Sewwa. U dawn ix-xogħolijiet kollha li semmejt iġifieri meta strippajt il-ħanut, meta skoprejt il-bir u ergajt irrangajtu ... dawn kienu qabel ma għamilt ir-riċerki biex issir taf min huma s-sidien?*

*Ix-Xhud :*

*Ir-riċerki ehe ... dak l-ewwel ikkuntattajt il-perit biex jiġi jara u ovvjament jgħaddi l-informazzjoni li jiena ...*

*Dr Ruth Ellul :*

*Il-perit ... liema perit?*

*Ix-Xhud :*

*Il-Perit Karl Ebejer skużani ... emm ... biex jgħaddi informazzjoni li jiena żarmajt il-ħanut u għalhekk għibt il-perit biex jara jekk hemmx xi haġa strutturalment u jkun aware tal ... tas-sitwazzjoni. Emm ... meta mbaġħad qalli go through the right channels, jiena qabbadt in-Nutar emm ... biex jagħmel riċerki ... biex nagħmlu riċerki tagħna u ... u nsiru nafu min huma l-owners il-godda.*

*Dr Ruth Ellul :*

*U sa dan it-tant ħadt id-deċiżjoni li tkompli bix-xogħolijiet ...*

*Ix-Xhud :*

*U komplejt nistrippja ...”*

L-istess attur jgħid ukoll :

*“Dr Ruth Ellul :*

*Iġifieri naqblu li permess biex jinbidel għal hairdressing salon qatt ma ngħata hux hekk?*

*Ix-Xhud :*

*Le fil fatt meta sirt naf min huma l-owners u tlabnihom biex jiffirmawlna biex indawwru l-permess emm ... l-ittra lura kienet li jridu l-ħanut lura. U fil fatt ħaduh lura”.*

64. Illi kif jidher a fol 39 kif ukoll mill-affidavit u mix-xhieda in kontro-eżami tal-intimat huwa kien oġġezzjona illi jsir dan it-tibdil minn ħanut tal-ħwejjeg għal hairdressing salon. Huwa biss meta x-xogħolijiet kienu lesti, illi l-attur fit-tieni ittra tiegħu datata l ta' Diċembru 2016 jsemmi l-kwistjoni tal-perkolazzjoni tal-ilma. Kif jispjega l-attur stess fir-rikors ġuramentat tiegħu x-xogħolijiet saru bejn Marzu 2016 u Novembru 2016. Di fatti, l-Qorti tosserva illi l-launch tal-ħanut bħala hairdressing salon sar f'Novembru 2016:

*“Dr Ruth Ellul :*

*Issa eżebejt ritratt RD 10 naħseb li ...*

*Il-Qorti :*

*Il-launch tal-hairdressing salon?*

*Ix-Xhud :*

*Iva.*

*Dr Ruth Ellul :*

*Mela dak meta ttieħed dak ir-ritratt?*

*Ix-Xhud :*

*Dak ittieħed emm ... fl-aħħar ta' Novembru ...*

*Dr Ruth Ellul :*

*Ta' liema sena?*

*Ix-Xhud :*

*Emm ... mingħalija 2016”.*

65. Magħdud ma' dan, il-Qorti tosserva illi l-attur stess jammetti illi:

*“Dr Sarah Sultana :*

*Issa inti hemm hekk għamilt ix-xogħolijiet. Tista' forsi tghidilna kif gie bħala post?*

*Ix-Xhud :*

*Iva għamilna ħafna xogħolijiet, għamilna madum ġdid iġifieri ... kaħħalnieh kif suppost emm ... u ġibnieh ħanut illi ġeġq ... fl-opinjoni tiegħi wieħed mill-isbaħ hair dressing salons li kien hawn go Malta. Hawn nista' neżebixxi xi ritratti kif ... kif emm ... kif inhu ... kif kien qabel ma ttieħed mingħandi”.*

66. Barra minn hekk, fix-xhieda tiegħu l-attur jispjega illi waqt ix-xogħolijiet instab illi kien hemm bir li huwa rranġa sabiex iġibu funzjonarju. Huwa jgħid:

*“Peress li l-idea hi li kien hanut tax-xagħar allura l-ilma tużah ħafna u għamilt sistema li once li skoprejt biex nagħmlu functional. Hemm il-pompa iġifieri u għamiltu ... bid-dawl ukoll u għalaqtu bil-ħgieġa mhux ħorża”.*

## **Ikkunsidrat**

67. Il-Qorti sejra issa tagħmel referenza għall-prospett ipprezentat mill-attur li jinsab a fol 46 tal-proċess. Fl-ewwel lok, il-Qorti tirrileva illi d-danni mnizzla bħala: *“Carpet”, “Soffit”, “Loss of Use” u “Clothes Damaged”* huma danni illi saru qabel mal-intimat sar proprjetarju tad-dar li tinsab sovrastanti l-hanut li kien mikri lill-attur, ossia qabel is-sena 2012. Illi dan jikkonfermah l-attur stess fil-kontro-eżami tiegħu:

*“Dr Ruth Ellul :*  
*I refer to Dok RD 9 filed together with your sworn application. It's a prospect of damages.*

*The Court :*  
*RD 9 OK, one moment. OK, document RD 9 ...*

*Dr Ruth Ellul :*  
*So for instance, the first item that we see there is a carpet. So is this the carpet you bought to replace the one that was damaged in 2009?*

*The Witness :*  
*Yes.*

*Dr Ruth Ellul : OK.*

*The Court :*  
*Document RD 9 is in Page 46. OK.*

*Dr Ruth Ellul :*  
*OK. And the same thing for the soffits?*

*The Witness :*  
*Soffits ... Yes ... loss of use .... Because we had to close down when ... We had to close down when the roof collapsed.*

*The Court :*  
*And how did you calculate the loss of use?*

*The Witness :*  
*Through our income.*

*The Court :*  
*OK. And that loss of use for how long ... the period?*

*The Witness :*  
*It was four (4) months, I believe, four (4) or five (5) months.*



*The Court :*  
*OK.*

*Dr Ruth Ellul :*  
*OK. But it was before 2012, correct?*

*The Witness :*  
*Before 2012.*

*Dr Ruth Ellul :*  
*OK. So can you go through those items and indicate which ones relate to a period prior to 2012?*

*The Court :*  
*Prior?*

*Dr Ruth Ellul :*  
*Prior ... before they became owners.*

...

*The Witness :*  
*Mela Turnkey ...*

*The Court :*  
*Ok Turnkey.*

*The Witness :*  
*Architect fees. Electrician ... these are all ... these ... all these have been done  
emm ... new ...*

*The Court :*  
*New after or before?*

*The Witness :*  
*No after when we dismantled down the shop.*

...

*The Court :*  
*So would I be correct in understanding that when you mentioned carpet,  
soffit, loss of use ... clothes damaged.*

*The Witness :*  
*Those were prior ... prior the closing down to the renovate the shop.*

*The Court :*  
*What is MHS please?*

*The Witness :*  
*MHS is Mario Hardware Store.*

*The Court :*  
*OK, and those are prior also?*

*The Witness :*  
*No these were during the ...*

*The Court :*  
*The renovation works?*

*The Witness :*  
*Yes during the renovation ... MHS, architect fees, Turkey, electrician, aluminium ...*

*The Court :*  
*Would I be correct to understand that till clothes damage is before 2012.*

*The Witness :*  
*Yeah, exactly.*

*The Court :*  
*And from there onwards it is after?*

*The Witness :*  
*Yes, when we started to renovate the shop”*

(fol 246-247)

68. Magħdud ma’ dan, il-Qorti tosserva illi stante illi d-danni mnizzlin bħala: “*Carpet*”, “*Soffit*”, “*Loss of Use*” u “*Clothes Damaged*” saru qabel is-sena 2012, l-attur mhux biss m’għandux dritt illi jitlob il-ħlas tagħhom għaliex saru qabel mal-konvenut sar sid tal-ħanut u tad-dar sovrastanti iżda huma wkoll preskritti.

69. In oltre, b’ħarsa lejn il-kumplament tad-danni mnizzla fil-prospett a fol 46 tal-proċess u b’ħarsa lejn l-irċevuti pprezentati flimkien mal-affidavit tal-attur, il-Qorti tirrileva illi dawk huma xogħolijiet unikament minħabba li kien ser jinbidel il-generu u l-użu tal-ħanut. Illi fix-xhieda tiegħu l-attur isemmi li l-*hairdressing salon* kien qed jiġi operat minn Maria Cristiana Desinano u t-tifla tagħha. L-istess rikorrent jikkonferma illi:

*“Dr Ruth Ellul :*  
*OK. When ... when did you start the works?*

*The Witness :*  
*Start prior ... early 2016.*

*Dr Ruth Ellul :*  
*OK. And when did you make this arrangement with Miss Desinano?*

*The Witness :*

*Emm ... when we started the works ... well during ... during ... during the works.”*

(fol 244)

70. Magħdud ma’ dan, l-istess attur jiddikjara :

*“Dr Ruth Ellul:*

*There is a VAT number indicated on a number of those invoices and the VAT number is MT 236 44 216.*

*The Witness :*

*That was for the salon ... yes.*

*Dr Ruth Ellul:*

*Would I be correct to state that VAT number is registered on Miss Desinano?*

*The Witness :*

*Yes, Mrs Desinano. Yes.*

*Dr Ruth Ellul :*

*So the things were bought for her to operate the salon correct?*

*The Witness :*

*Emm ... she ... she ... she made them actually.*

*Dr Ruth Ellul :*

*Who paid for these things?*

*The Witness :*

*I paid for these.*

*Dr Ruth Ellul : OK. Now I refer to the ...*

*The Witness :*

*Some of them, they are without a VAT number for example”*

(fol 245 et seq)

Kif ukoll:

*“Dr Ruth Ellul :*

*Do you confirm that most of those works were not carried out to address the problem of the percolation of water that you say there was? They're not related to water percolation works?*

*The Witness :*

*Not ... not all of them”.*

(fol 247 et seq)

71. Illi fix-xhieda mogħtija minn Maria Cristiano Desinano, hija tispjega:

*“La Corte :*  
*E chi vi ha messo nel negozio ? Come mai siete entrati nel negozio?*

*Il Testimone :*  
*Tramite il signor ... tramite il signor Degabriele.*

*La Corte : Il Signor Degabriele ... allora voi avete fatto contatto con il signor Degabriele ...*

...

*La Corte :*  
*Avete mai fatto scrittura con il Signor Degabriele ?*

*Il Testimone :*  
*Contratto.*

*La Corte :*  
*Avete un contratto in scritto ?*

*Il Testimone :*  
*Si. Io non c' e' l' ho piu ... uno perche ci sono passata tanti anni ... si come non ho fatto causa al signor Degabriele ... non volevo problemi perche alla fine, il signor Degabriele ha fatto tutti I lavori nel negozio ... e avevamo un' accordo che nell' otto (8) anni di contratto di affitto, io avrei risarcito tutti i soldi che lui aveva investito nel negozio.*

...

*Dr Ruth Ellul :*  
*Emm ... I would like to know how you got to know about the shop and what state was it in when you first entered the shop*

*La Corte :*  
*Mela ... come siete arrivati a sapere del negozio e in quale stato era il negozio quando l' avete visto voi ?*

*Il Testimone :*  
*Allora ... emm ... sono venuta in vacanza a Malta e ho conosciuto il signor Degabriele. Ok. Poi sono ritornata per trovare ... perche mi era piaciuta Malta e volevo uno shop. Emm ... il signor Degabriele 'l ho rincontrato e lui mi ha fatto Vedere il negozio che lui aveva.*

*La Corte :*  
*Il negozio quando lo avete visto in che stato era ?*

*Il Testimone :*  
*Da paura. Disastro.*

*La Corte :*  
*E allora poi ha fatto del ... dei ristrutturazione lui ? Si ?*

*Il Testimone : Tutti lui.*

*La Corte :*  
*Gli ha fatti tutti lui ?*

*Il Testimone :*  
*Si. Ha fatto il pavimento, impianto luci, impianto acqua, emm ... il muro che era stato per ... quasi trent'anni tutto coperto ... e' stato smantellato ... poi aveva l'intonaco ... ha fatto impianto luci emm ... abbiamo trovato un pozzo, abbiamo pulito il pozzo per renderlo attivo, agibile ...*

*La Corte :*  
*Ha fatto tanti lavori.*

*Il Testimone :*  
*Il bagno che non c'era praticamente ...*

*Dr Ruth Ellul :*  
*Was the shop being used when you first saw it ?*

*La Corte :*  
*Mela ... quando l'ho avete visto prima voi, in posto era in uso o era chiuso ?*

*Il Testimone :*  
*Emm ... era chiuso.*

*Dr Ruth Ellul :*  
*In the letter you said that you invested a lot of money in the shop. You state that we would like to stay in the place where we put our money ... can you elaborate ?*

*La Corte :*  
*Lei qua aveva detto che ...*

*Il Testimone :*  
*Si ho messo anch'io dei soldi ...*

...

*La Corte :*  
*E allora il vostro agreement con il signor Degabriele ... lei ha già detto che era di otto (8) anni mi pare ...*

*Il Testimone :*  
*Il contratto ?*

*La Corte :*  
*Si.*

*Il Testimone :*  
*Si.*

*La Corte :*  
*Un contratto di otto (8) anni ... I pagamenti mensili erano di quanto ? Il Testimone : Aspetta ... sette cento cinquanta (750).*

*La Corte :*  
*E sette cento cinquanta (750) dovevano fare bene pure per le spese che lui ha fatto nel ...*

*Il Testimone :*  
*No. No. Quello era l'affitto. E poi emm ... ovviamente noi avevamo pensato dal secondo o terzo anno cominciare a pagare il lavori che aveva fatto il signor Degabriele.*

*La Corte :*  
*Ricordi se erano quantificati questi lavori ? No ?*

*Il Testimone :*  
*Si l'avevamo quantificati ... adesso non mi ricordo ma era una bella cifra."*

(fol 259-261 et seq)

72. Illi kif ġie rilevat ukoll fis-sentenza mogħtija mill-Bord li Jirregola l-Kera fl-ismijiet: *Nowasad Orest John William vs Raymond Degabriele* fid-9 ta' Novembru 2017 u fis-sentenza tal-Qorti tal-Appell (Sede Inferjuri) fl-14 ta' Mejju 2018 (fol 77-82), allavolja l-attur ma kellux il-kunsens tal-intimat sabiex ibiddel il-ħanut minn ħanut tal-ħwjjeg ġħal *hairdressing salon*, huwa xorta ġħamel ix-xogħolijiet u biddel l-użu tal-ħanut. Dan kien bi ksur flagranti tal-kuntratt ta' lokazzjoni datat 30 ta' Awwissu 1988 fejn hemm stipulat b' mod ċar illi l-*"fond għandu jintuża biss u esklussivament bħala 'boutique tal-ħwejjeg'"* u li l-*"inkwilin m'għandu l-ebda dritt li jbiddel id-destinazzjoni ta' dan il-fond minn dak stipulat"* (fol 13).

73. Għalhekk, wara illi din il-Qorti qieset il-provi kollha mressqu u għamlet l-osservazzjonijiet u konkluzjonijiet kif fuq spjegati, hija tqis illi r-rikorrent ma rnexxilux jipprova l-każ tiegħu, u għalhekk it-talbiet tar-rikorrent ma jistgħux jiġu milqugħa.

## **Il-Qorti,**

Wara illi rat l-atti u semgħet ix-xhieda;

Wara illi rat is-sottomissjonijiet tal-abbli difensuri ta' l-intimat;

Tgħaddi biex tiddeċiedi l-vertenza billi:

**Tilqa'** l-eċċezzjonijiet tal-intimat; u

**Tiċhad** it-talbiet tal-attur.

**L-Ispejjeż** ta' din il-kawża jkunu kollha a karigu tar-rikorrent.

**Francesco Depasquale LL.D. LL.M. (IMLI)**  
**Imħallef**

**Rita Sciberras**  
**Deputat Registratur**