



# QORTI ĊIVILI PRIM' AWLA

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

Seduta ta' nhar it-Tnejn  
Sittax (16) ta' Dicembru 2024

Rikors Numru 605/2014FDP

Fl-ismijiet

**Karina Borg Olivier (K.I: 300000L) f'isimha proprju kif ukoll bhala mandatarja speċjali ta' Nicolas Papaioannou (Passaport Ingliz numru: 801402677), Dr Alexander u Catherine sive Kathleen (K.I: 857747M) konjuġi Borg Olivier u Nikolai Borg Olivier (K.I: 16447A) u b'digriet tat-12 ta' April 2021 l-atti ġew trasfużi f'isem Dr Alexander u Catherine sive Kathleen konjuġi Borg Olivier u Karina Borg Olivier stante illi Nikolai Borg Olivier miet fil-mori tal-kawża**

**Vs**

**Karim Cordina (K.I: 501872M) u b'digriet datat 5 ta' Novembru 2014 ġie kjamat fil-kawża Sacha Muscat Inglott li b'digriet tat-30 ta' Jannar 2023 Dr Mario Caruana u PL Silvana Vella ġew mahtura bhala Kuraturi Deputati għall-assenti Sacha Muscat Inglott.**

## **Il-Qorti:-**

1. Rat ir-rikors datat 8 ta' Lulju 2014 li permezz tiegħu r-rikorrenti talbu s-segwent:

- 1. Illi l-esponenti dahlet f'negożju mal-intimat li kien jikkonsisti f'xiri bl-ingrossa ta' prodotti tax-xorb u l-ikel fosthom kafe, ċikkulati u soft drinks minghand grossista fl-Italja, liema prodotti kienu jinbiegħu b'qliegh f'iss mill-intimat lil terzi persuni;*
- 2. Illi l-intimat fil-bidu tas-sena 2013 kien fiehem lill-esponenti illi huwa kien ilu jagħmel dan it-tip ta' negożju, u l-qliegh kien wiehed tajjed u b'rata fissa. Illi l-intimat għalhekk kien offra lill-esponenti qliegh f'iss fuq dak il-kapital li hi xtaqet tinvesti miegħu għax-xiri u bejgħ ta' din il-merkanzija bl-ingrossa. L-intimata saħansitra qabel li jiffirma kuntratti ma' kull hlas ta' kapital mir-rikorrenti, li fihom ftiehem ir-rata ta' qliegh li kellu jithallas*

*mill-bejgħ tal-merkanzija kif ukoll id-data li fiha kellu jiħallas lura l-kapital flimkien mal-qliegħ. Ġew iffirmati ukoll ċekkijiet mill-intimat lir-rikorrenti li jikkorrispondu mal-ħlasijiet li kellhom isiru f'dati fissi, tant kienet giet aċċertata dwar is-serjeta' tan-negozju mill-intimat;*

- 3. Illi l-esponenti, kif tispjega f'aktar dettal fl-affidavit tagħha anness bħala "Dok A", kienet ħarġet l-ewwel kapital minn flusha personali sabiex isir dan in-negozju mal-intimat, u wara ftit ir-rikorrenti l-oħra, li huma ħabib Inġliż tar-rikorrenti Karina Borg Olivier kif ukoll il-ġenituri tagħha u ħuha, ħallsu somom ukoll bħala kapital lill-intimat sabiex isir dan in-negozju ta' xiri u bejgħ bl-ingrossa, kif jirriżulta mill-affidavits annessi ta' Kathleen Borg Olivier u Nikolai Borg Olivier (bħala Dok B u Dok C rispettivament);*
- 4. Illi fil-fatt l-intimat iffirma tmien (8) ftehim mal-esponenti li kienet qed tirrapreżenta lir-rikorrenti kollha (kopji annessi u mmarkati Dok D sa Dok K), u saħansitra l-intimat min jeddu iffirma post dated cheques li jikkombajaw ma kull ftehim u li kellhom id-data ta' meta kellu jsir il-ħlas lir-rikorrenti;*
- 5. Illi l-ewwel ħlas kellu jsir fl-1 ta' Ġunju 2013 permezz ta' żewġ pagamenti, wieħed tas-somma ta' tnejn u ħamsin elf, mitejn u disgħin Euro (€52,290.00) u l-ieħor ta' disgħa u erbgħin elf, mitejn u ħamsa u sebghin Euro (€49,275.00), kif jidher mill-kopji taċ-ċekkijiet hawn meħmuża u mmarkati Dok L u Dok M, liema ċekkijiet madanakollu ma ssarfux u ġew referred to drawer.*
- 6. Illi l-pagamenti l-oħra kellhom isiru: fl-24 ta' Lulju 2013 għas-somma ta' sebgha u erbgħin elf, disgħa mija u ħamsa u għoxrin Euro (€47,925.00); fl-10 ta' Awissu 2013 għas-somma ta' ħmistax-il-elf, sitt mija u ħamsa u sebghin Euro (€15,675.00); żewġ pagamenti fil-15 ta' Settembru 2013 għas-somom ta' ħamsa u tletin elf, sitt mija u tlieta u disgħin Euro u għoxrin ċenteżmu (€25,693.20) u erbgħin elf u sitt mitt Euro (€40,600.00); fl-1 ta' Ottubru 2013 għas-somma ta' mija u għaxart' elef, sitt mija u tlettax-il Euro (€110,613.00); u l-aħħar pagament kellu jsir fis-17 ta' Ottubru 2013 għas-somma ta' wieħed u għoxrin elf, tlett mija u tletin Euro (€21,330.00);*
- 7. Illi s-somma kumplessiva għalhekk dovuta mill-intimat lir-rikorrenti hija dik ta' tlett mija u tlieta u sebghin elf, erbgħa mija u Euro (€ 373,401.00), li minnhom għadu ma tħallas xejn;*
- 8. Illi għalkemm interpellat diversi drabi sabiex jaddivjeni għall-ħlas tas-somma minnu dovuta, li kienu saħansitra jinkludu abbozz ta' kostituzzjoni ta' debitu li madanakollu l-intimat baqa' ma ffirmax, l-intimat baqa' inadempjenti mingħajr ebda raġuni valida fil-ligi;*
- 9. Illi għalhekk kellha issir din il-kawża;*

10. *Illi dan l-ammont dovut mill-intimat lill-esponenti hu dejn, ċert, likwidu u dovut u fil-fehma tal-esponenti, l-konvenut m'għandu l-ebda eċċezzjoni x'jissollewa kontra l-pagament tad-dejn imsemmi;*

11. *Illi għalhekk jeżistu l-elementi kollha rikjesti mill-liġi a tenur tal-Artikoli 167 et seq sa 170 tal-Kap. 12 tal-Liġijiet ta' Malta sabiex il-kawża tiġi deċiża bid-dispensa tas-smiġħ;*

*Għaldaqstant l-esponenti umilment titlob illi dina l-Onorabbli Qorti jogħgobha tiddeċiedi l-kawża skond it-talba bid-dispensa tas-smiġħ a tenur tal-Artikoli 167 et seq sa 170 tal-Kap. 12 tal-Liġijiet ta' Malta, u taħt dawk il-provvedimenti li jidrilha xieraq:*

1. *Tiddikjara illi l-intimat huwa debitur tal-esponenti fis-somma ta' tlett mija u tlieta u sebgħin elf, erbgħa mija u Euro (€ 373,401.00) dovuta kif fuq ingħad, bl-interessi relattivi mid-data tal-iskadenza għall-ħlas skond kull ftehim sad-data tal-pagament effettiv;*
2. *Tikkundanna lill-intimat iħallas dan id-debitu, bl-ispejjeż tal-preżenti inkluż dawk tal-Mandat ta' Sekwestru kawtelatorju.*

*L-intimat huwa minn issa ngunt għas-subizzjoni.*

2. Rat illi fil-31 ta' Ottubru 2014 l-intimat Karim Cordina laqa' għal dak mitlub billi qajjem is-segweni difiża:

1. *Preliminarjament, in-nullita tal-proċeduri odjerni stante li r-rikors ġuramentat ġie preżentat meta r-rikorrenti li qed tidher f'isimha propju u kif ukoll għan-nom ta' terzi kienet assenti minn Malta u residenti l-Ingilterra; dana ai termini tal-Artikolu 189 Titolu IV tal-Ewwel Taqsima tat-Tieni Ktieb tal-Kap 16;*
2. *Illi mingħajr preġudizzju għall-ewwel eċċezzjoni, ir-rikorrenti ma tistax tidher bħala rappreżentanta ta' persuni residenti Malta kif inhuma Dr Alexander u martu Kathleen Borg Olivier u binhom Nicolai Borg Olivier għaliex dawn iridu jidhru fuq l-atti di sentu;*
3. *Illi mingħajr preġudizzju għas-suespost u fil-mertu, għal dak li jirrigwarda l-capital mġhoddi lill-eċċipjenti, it-talbiet attriċi għandhom jiġu miċħuda għaliex, fattwalment u legalment, mhux minnu illi kien sar negozju bejn il-partijiet imma kemm ir-rikorrenti u kemm l-intimat kienu vittmi ta' skema frawdolenti mwettqa minn ċertu Sacha Muscat Inglott li ħajjarhom jinvestu miegħu u rċieva il-flus mingħand il-partijiet sabiex jiġu nvestiti pero wara rrizulta li kien tilifhom f'loġhob tal-azzard.*
4. *Illi qiegħed jiġi preżentat kontestwalment rikors sabiex jiġi kkjamat fil-kawża dan Sacha Muscat Inglott;*
5. *Illi r-rikorrenti kienet taf eżattament fejn sejr in-flus u assumiet l-istess riskji li assumu l-eċċipjenti. L-iskritturi li huma palesament infantili delettanteski saru sabiex tingħata sembjanza ta' negozju għall-iskema fejn*

*gew miftiehma mgħaxxijiet ta' bejn ħamsa u tletin fil-mija [35%] u ħamsa u erbghin fil-mija [45%] profitti fi tlett [3] xhur medja ta' mija u erbghin fil-mija [140%] fis-sena.*

6. *Illi kif intavolati, it-talbiet għandhom jiġu miċħuda għaliex jinkludi ħlas ta' mgħaxxijiet imsejha profitti garantiti, li jeċċedu dak permess mill-liġi.*
7. *Salv eċċezzjonijiet oħra permissibbli mil-liġi.*

*Bl-ispejjeż.*

3. Rat id-dokumentazzjoni ppreżentata mill-partijiet fuq l-atti msemmija.
4. Rat ir-rikors tal-intimat Karim Cordina ppreżentat fil-31 ta' Ottubru 2014 li permezz tiegħu talab li jissejjaħ fil-kawża lil Sacha Muscat-Inglott.
5. Rat illi din il-Qorti, kif diversament presjeduta, permezz ta' digriet datat 5 ta' Novembru 2014, laqgħet it-talba tal-intimat Karim Cordina u sejhet fil-kawża lil Sacha Muscat-Inglott.
6. Rat illi fid-9 ta' Frar 2015 il-kjamat in kawża Sacha Muscat Inglott laqa' għal dak mitlub billi qajjem is-segwenti difiża:
  1. *Illi kif qalet l-attriċi hija kienet daħlet f'negozju mal-intimat u mhux mal-esponent.*
  2. *Illi l-esponent kien parti ma' grupp ta' nies involuti f'negozju li mar ħażin. L-esponent ma' għandux tort għal dak li ġara u l-esponent ma kellu l-ebda rabta jew ftehim mar-rikorrenti.*
  3. *Illi l-esponent mhux debitur tal-atturi fl-ammont li li r-rikorrenti qegħdin jitolbu mingħand Karim Cordina.*
  4. *Illi mhux minnu li l-esponent kien b'xi mod involut fi skema frawdolenti. L-esponent qatt ma kien frawdolenti fl-aġir tiegħu.*
  5. *Salv eċċezzjonijiet oħra.*
7. Rat illi din il-Qorti, kif diversament presjeduta, permezz ta' digriet datat 4 ta' Marzu 2015, laqgħet it-talba għall-kapovolgiment tal-provi sabiex jiġu ndirizzati l-ewwel żewġ eċċezzjonijiet preliminari.
8. Rat illi permezz ta' rikors ippreżentat fl-14 ta' Lulju 2015, l-intimat talab għall-korrezzjoni fir-risposta guramentata tiegħu sabiex minflok l-'Artikolu 189 Titolu IV tal-Ewwel Taqsima tat-Tieni Ktieb tal-Kap 16' tinqara l-'Artikolu 180(1)(a) tal-Kap 12 tal-Liġijiet ta' Malta'.
9. Rat illi b' digriet ta' din l-Qorti, kif diversament presjeduta, l-Qorti laqgħet it-talba għall-korrezzjoni.

10. Rat illi b'rikors intavolat sussegwentement quddiem il-Qorti tal-Appell fis-17 ta' Frar 2021, giet mitluba l-legittimazzjoni tal-atti f'isem Alexander u Kathleen konjuġi Borg Olivier u Karina Borg Olivier, stante l-mewt ta' Nicolai Borg Olivier.
11. Rat illi b'digriet datat 12 ta' April 2021, il-Qorti tal-Appell laqgħet ir-rikors għal-legittimazzjoni tal-atti f'isem Alexander u Kathleen konjuġi Borg Olivier u Karina Borg Olivier, bhala eredi ta' Nicolai Borg Olivier.
12. Rat illi fis-7 ta' Marzu 2022 l-intimat intavola rikors sabiex jġu mahtura kuraturi deputati sabiex jirrapreżentaw lill-assenti Sacha Muscat Inglott.
13. Rat illi d-digriet tal-20 ta' Mejju 2022, il-Qorti laqgħet it-talba għall-ħatra tal-kuraturi.
14. Rat illi fit-30 ta' Jannar 2023 Dr Mario Caruana u PL Silvana Vella ġew mahtura bhala Kuraturi Deputati għall-assenti Sacha Muscat Inglott.

## Provi

15. Rat in-nota tal-intimat ippreżentata fit-13 ta' Mejju 2015 u rat id-dokumentazzjoni annessa magħha (fol 150-154).
16. Rat ix-xhieda tar-rikorrenti **Karina Borg Olivier** mogħtija fis-seduta tat-13 ta' Mejju 2015 (fol 156-157).
17. Rat ix-xhieda tal-**Prokuratur Legali Jean Pierre Busutil** mogħtija fis-seduta tal-24 ta' Ġunju 2015 (fol 162-163).
18. Rat illi fis-seduta tal-24 ta' Ġunju 2015 l-intimat iddikjara li m'għandux aktar provi xi jressaq fuq l-ewwel żewġ eċċezzjonijiet.
19. Rat illi fis-seduta tad-9 ta' Lulju 2015, il-Qorti kif diversament presjeduta, kienet iddikjarat illi l-assenza tar-rikorrenti u tal-abbli rappreżentanti legali tagħha hi ekwivalenti għal dikjarazzjoni li r-rikorrenti m' għandhiex provi x'tippreżenta.
20. Rat illi fis-seduta tad-9 ta' Lulju 2015, il-kawża giet differita għas-sentenza preliminari.
21. Rat in-nota ta' sottomissjonijiet tal-intimat ippreżentata fis-7 ta' Awwissu 2015 (fol 171-182).
22. Rat illi fl-1 ta' Diċembru 2015, din il-Qorti, kif diversament presjeduta tat sentenza preliminari fuq l-ewwel żewġ eċċezzjonijiet imressqa mill-intimat (fol 184-192).
23. Rat illi r-rikorrenti fil-21 ta' Diċembru 2015 intavolaw rikors t'appell (fol 194-204).
24. Rat illi fil-5 ta' Frar 2016 il-kjamat in kawża Sacha Muscat Inglott ippreżenta r-risposta tiegħu (fol 209-210).
25. Rat illi fis-6 ta' Mejju 2016 l-intimat ippreżenta r-risposta tiegħu (fol 218-231).
26. Rat illi fis-seduta tat-8 ta' Novembru 2021 l-appell mar għas-sentenza.
27. Rat illi fl-1 ta' Diċembru 2021 il-Qorti tal-Appell tat is-sentenza tagħha (fol 267-275) fejn d-deċiżjoni ta' l-ewwel Qorti giet varjata, fejn l-ewwel eċċezzjoni giet miċhuda

filwaqt illi t-tieni waħda kienet milqugħa u l-atti ġew mibgħuta lura lill-Prim' Awla sabiex jiġi deciż il-meritu.

28. Rat illi sussegwentement il-kawża ġiet assenjata lil dina l-Qorti, kif komposta, illi pprocediet sabiex tirriapputa l-kawża għas-smiġh.
29. Rat in-nota pprezentata mir-rikorrenti fit-22 ta' Lulju 2022, kontenenti l-affidavit ta' Dr. Alexander Borg Olivier (fol 284-287).
30. Rat illi fis-seduta tat-28 ta' Settembru 2022 ir-rikorrenti ddikjaraw illi m'għandhomx aktar provi xi jressqu.
31. Rat l-affidavit ipprezentat mill-intimat fl-14 ta' Frar 2023 u rat id-dokumentazzjoni annessa miegħu (fol 292-297).
32. Rat illi fis-seduta tal-14 ta' Frar 2023 l-intimat iddikjara illi m'għandux aktar provi xi jressaq.
33. Semgħet ix-xhieda ta' **Karina Borg Olivier** mogħtija fis-seduta tal-24 ta' Mejju 2023 (fol 299-305 et seq).
34. Semgħet ix-xhieda ta' **Dr Alex Borg Olivier** mogħtija fis-seduta tal-24 ta' Mejju 2023 (fol 306-308).
35. Semgħet ix-xhieda ta' **Catherine sive Kathleen Borg Olivier** mogħtija fis-seduta tal-24 ta' Mejju 2024 (fol 309-315).
36. Semgħet ix-xhieda ta' **Karim Cordina** mogħtija fis-seduta tal-24 ta' Mejju 2024 (fol 316-323).
37. Rat illi fis-seduta tal-24 ta' Mejju 2024 ġie dikjarat illi l-istadju tal-provi huwa magħluq u li l-kawża setgħet tithalla għas-sottomissjonijiet finali.
38. Rat in-nota ta' sottomissjonijiet tar-rikorrenti pprezentata fl-14 ta' Diċembru 2023 (fol 325-333).
39. Rat in-nota ta' sottomissjonijiet tal-intimat ipprezentata fit-13 ta' Marzu 2024 (fol 338-348).
40. Rat illi fis-seduta tat-13 ta' Marzu 2024 il-kawża marret għas-sentenza.

#### **Fatti tal-Każ**

41. Jirrizulta illi r-rikorrenti Karina Borg Olivier kienet xtaqet tinvesti fin-negozju li l-konvenut Karim Cordina kienet qiegħed jagħmel, liema negozju kien jikkonsisti f'xiri bl-ingrossa ta' prodotti tax-xorb u l-ikel fosthom kafe', ċikkulati u soft drinks mingħand grossista fl-Italja.
42. Jirrizulta illi r-rikorrenti Karina Borg Olivier, kif ukoll familjari u hbieb tagħha kienu ħarġu somom ta' flus li ngħataw lil Karim Cordina sabiex isir dan in-negozju ta' xiri u bejgħ bl-ingrossa.

43. Jirrizulta illi bejn l-intimat Karim Cordina u r-rikorrenti Karina Borg Olivier ġew iffirmiti tmien (8) skritturi. F'kull ftehim ġie mniżżel is-somma illi Karina Borg Olivier kien qed taqbel li tinvesti u li “*This investment will be used as a bridge loan for the use of parallel trading*”. In oltre, f'kull ftehim ġiet indikata s-somma illi Karina Borg Olivier kienu ser tieġu lura u d-data ta' meta din is-somma ser tingħatalha.
44. Jirrizulta wkoll illi l-ħlas kellu jingħata lil Karina Borg Olivier permezz ta' ċekk *post dated* maħruġ mill-intimat Karim Cordina fid-data ta' meta kellha titħallas lura s-somma maqbula.
45. Jirrizulta illi fl-1 ta' Ġunju 2013 inħarġu żewġ ċekkijiet iffirmiti mill-konvenut Karim Cordina: wieħed fl-ammont ta' tnejn u ħamsin elf, mitejn u disgħin Euro (€52,290) u iehor fl-ammont ta' disgħa u erbghin elf, mitejn u ħamsa u sebghin Euro (€49,275), liema ċekkijiet ma ssarfux u ġew *referred to drawer*.
46. Jirrizulta mir-rikors promotur, illi s-somma komplessiva dovuta mill-intimat lir-rikorrenti hija ta' tlett mija u tlieta u sebghin elf, erbgha mija u wieħed Euro (€373,401) iżda l-intimat baqa inadempjenti.
47. Jirrizulta illi l-intimat Karim Cordina jsostni illi huwa vittma daqs l-atturi għaliex il-flus ġew investiti mal-kjamat in kawża Sacha Muscat Inglott qarraq b'kulhadd inkluż bih u berbaq il-flus fuq il-vizzji tiegħu. Għaldaqstant, huwa Sacha Muscat Inglott li għandu jirrispondi għall-pretensjonijiet tar-rikorrenti.

## Ikkunsidrat

### L-ewwel żewġ eċċezzjonijiet sollevati mill-intimat Karim Cordina

48. Fir-risposta ġuramentata tiegħu l-intimat Karim Cordina eċċepixxa n-nullita' tal-proċeduri odjerni stante li r-rikors ġuramentat meta r-rikorrenti li qed tidher f'isimha proprju u kif ukoll għan-nom ta' terzi kienet assenti minn Malta u residenti l-Ingilterra dana ai termini tal-Artikolu 180(1)(a) tal-Kap 12 tal-Liġijiet ta' Malta' u illi r-rikorrenti ma tistax tidher bħala rappreżentanta ta' persuni residenti Malta kif inhuma Dr Alexander u martu Kathleen Borg Olivier u binhom Nicolai Borg Olivier għaliex dawn iridu jidhru fuq l-atti di sentu.
49. Il-Qorti tosserva illi in vista ta' dawn iż-żewġ eċċezzjonijiet, din il-Qorti kif diversament presjeduta kienet fl-1 ta' Diċembru 2015 tat sentenza *in parte* fejn akkoljiet l-ewwel żewġ eċċezzjonijiet preliminari u ddikjarat li l-proċedura odjerna hija nulla.
50. Illi minn din is-sentenza *in parte*, r-rikorrenti intavolaw appell u l-appell ġie deċiż fl-1 ta' Diċembru 2021. Illi l-Onorabbli Qorti tal-Appell ikkonfermat is-sentenza appellata in kwantu ġiet milqugħa t-tieni eċċezzjoni u filwaqt li ddikjarat li ma hemmx nullita' konsegwenzi għall-eċċezzjoni mogħtija ordnat li fl-okkju tal-kawża issir il-korrezzjoni meħtieġa biex jirrifletti li l-atturi kollha bl-eċċezzjoni ta' Nicolas Papaioannou qed jaġixxu f'isimhom. In oltre, fis-sentenza tagħha l-Qorti tal-Appell ħassret is-sentenza fil-kumplement, ċaħdet l-ewwel eċċezzjoni u baġtet l-atti lura lill-Ewwel Qorti sabiex tordna l-prosegwiment tal-kawża.
51. Għaldaqstant stante illi l-ewwel żewġ eċċezzjonijiet tal-intimat Karim Cordina kienu diġa' ġew trattati, din il-Qorti ser tipproċedi billi tistħarreg il-mertu.

## Meritu tal-każ

52. Il-Qorti ser tibda fl-analiżi tagħha dwar il-mertu, billi tagħmel referenza għall-affidavit tar-rikorrenti Karina Borg Olivier fejn hija tispjega illi:

*“Karim Cordina told me that he was already involved in this parallel trading and that the business involved purchasing in bulk from the grossisti in Italy and sell on to wholesalers at fixed healthy profits. These profits would increase if he had the capital to acquire larger stocks of merchandise. He told me that he had always been paid on time and would therefore guarantee the timelines and the amounts and if any payments were late he would charge interest that he in turn would pass onto me.*

...

*Trusting this business venture as a healthy one, I myself convinced third parties to trust me to invest their money on their behalf in this bulk buying business. These were my parents, my brother and friends from London where I live.*

...

*Karim would then proceed to purchase stocks of merchandise and pay the bulk buyer (grossista) directly. With each deal he sent me a signed agreement and even signed corresponding post dated cheques that matured on the due date of payment.*

*Karim agreed, in writing, to repay the investment that myself, my family and some friends from London made, together with the profits we had agreed upon, within three (3) to four (4) months maximum and the returns were the original amount plus the agreed profit, which ranged in amounts depending on each sale.”*

(fol 9-10)

53. Illi dan jinsab ukoll ikkonfermat fl-affidavits ta' Catherine sive Kathleen Borg Olivier kif ukoll ta' Nicolai Borg Olivier. Illi fl-affidavit ta' Kathleen Borg Olivier hija ssostni illi :

*“Nghid ukoll illi għalkemm ħallasna xi flus direttament lil Karim Cordina, il-kuntratti iffirmathom it-tifla tiegħi Karina Borg Olivier miegħu u ċ-ċekkijiet ħargu f'isimha. Nippreċiża ukoll illi binti tgħix Londra, u għalhekk kien iktar sempliċi li fl-assenza tagħha niltaqgħu ma' Karim Cordina jiena u ibni direttament”.*

(fol 17).

54. Magħdud ma' dan, fl-affidavit ta' Nicolai Borg Olivier huwa jsemmi illi:



*“In order to safeguard our repayments, my sister signed agreements with Karim Cordina, who even covered each repayment with a post-dated cheque in order to guarantee the repayment.*

...

*My sister was keeping an account of all the payments my family including herself had made with Karim, and they signed agreements covering each sum invested. These agreements included a pay-by date, and where even covered by post dated cheques drawn on the corresponding amount of each agreement.”*

(fol 19-20)

55. Illi l-Qorti tosserva illi f’kull wiehed minn dawn it-tlett affidavits appena citati, ssir referenza għall-ftehim, ossia, skrittura, illi r-rikorrenti Karina Borg Olivier għamlet mal-intimat Karim Cordina. Illi b’kollox saru tmien skritturi.
56. Illi dawn l-iskritturi jinsabu eżebiti in atti a fol 22-29 tal-proċess. Il-Qorti tinnota illi dawn l-iskritturi saru bejn ir-rikorrenti Karina Borg Olivier u Karim Cordina, fejn f’kull wiehed minn dan il-ftehim hemm inniżżla s-somma illi Karina Borg Olivier qiegħda tgħaddi lill-intimat kif ukoll is-somma li Karim Cordina ser jgħaddi lura permezz ta’ cheque lill-istess Karina Borg Olivier u d-data ta’ meta ser isir il-ħlas.
57. Illi l-Qorti ser tislet l-informazzjoni hawn fuq imsemmija mill-ftehim eżebiti u tirriproduċiha permezz ta’ tabella (fol 22-29):

<b>Referenza tad-Dokument</b>	<b>Ammont mgħoddi mill-attriċi Karina Borg Olivier lill-intimat Karim Cordina</b>	<b>Ammont li l-intimat kellu jgħaddi lura lill-attriċi</b>	<b>Data ffixata għall-pagament</b>
K-K 001	€ 36,500	€ 49,250	1 ta’ Ġunju 2013
K-K 002	€ 37,000	€ 51,800	1 ta’ Ġunju 2013
K-K 003	€ 35,500	€ 47,925	24 ta’ Lulju 2013
K-K 004	€ 11,000	€ 15,675	10 ta’ Awwissu 2013
Bla referenza	€ 24,616	€ 35,693.20	15 ta’ Settembru 2013
Bla referenza	€ 28,000	€ 40,600	15 ta’ Settembru 2013
Bla referenza	€ 79,009	€ 110,613	1 ta’ Ottubru 2013
K-K 008	€ 15,800	€ 21,330	17 ta’ Ottubru 2013

58. B’hekk, skont dawn it-tmien (8) skritturi, t-total tal-kapital li gie mgħoddi mill-attriċi Karina Borg Olivier lill-konvenut Karim Cordina kien jammonta għal mitejn, sebgha u sittin elf, erbgha mija u ħamsa u għoxrin Euro (€ 267,425).

59. Illi kif jidher mill-qari tar-risposta ġuramentata tal-konvenut Karim Cordina, huwa jsostni illi huwa ma għandu xejn x'jagħti lill-atturi għaliex huwa vittma bħalhom ta' skema frawdolenti orkestrata mill-kjamat in kawża Sacha Muscat Inglott. Illi fl-affidavit tiegħu, l-konvenut Karim Cordina jgħid:

*“Karina kienet taf sa mill-bidunett illi jien ma kontx involut fl-investimenti in kwestjoni iżda kont semplicement sejjer ngħaddi l-flus lil Sacha Muscat Inglott, kif fl-aħħar mill-aħħar, għamilt bi flusi stess.*

...

*Karina kienet taf li l-problema kienet Sacha tant li infurmatni illi kienet qiegħda tikkorrispondi miegħu direttament u tipprowa tpoġġilu pressjoni sabiex iħallas lura l-flus.*

*B'xorti hażina, x'hin rat li ma rnexxilhiex, sabitha konvenjenti illi ddu fuqi u tippretendi li nkun jien illi nħallasha lura, anke jekk jien kont vittma tal-qerq ta' Sacha. Mhux biss qed tippretendi li nħallasha lura l-ammonti li għaddietli biex ninvestilha (€ 180,282 minnhom tħallset lura € 3500) iżda talli qed tistenna illi jien inħallasha wkoll il-profitt fażulli li kien wegħdna”.*

(fol 292-293)

60. Il-Qorti ser tgħaddi sabiex tagħmel referenza għax-xhieda in kontro-eżami kemm tal-attriċi Karina Borg Olivier kif ukoll tal-konvenut Karim Cordina għaliex il-Qorti tqis illi din ix-xhieda għanda piż probattiv kbir.
61. Illi fix-xhieda tagħha in kontro-eżami l-attriċi Karina Borg Olivier isostni kif ġej:

*“The Witness :*

*Karim spoke to me. Then he ... he discussed this other opportunity that he had that sounded great with ... you know ... you put money forward and get great returns. And he explained that it was completely safe and it was guaranteed and all the money was secure.*

*Dr Joseph Camilleri :*

*OK. In paragraph 6, you state that your many questions and fears were reassured by the defendant who provided you with agreements.*

*The Witness :*

*Correct.*

*Dr Joseph Camilleri :*

*Now you specify that these agreements covered the money you invested with him. Now were did the so called agreements entered into prior to your investing the money or after you invested it.*

*The Witness :*

*They were signed before the money was given. There was one agreement for every deal. There were eight (8) deals and there were post dated checks that*

*were given and signed by Karim to guarantee both the investment and the interest that was being proposed.*

...

*Dr Joseph Camilleri :*

*OK, now ... when you discussed this particular investment, I suggest to you that Karim had already indicated to you that he would invest these funds with a certain Sasha Muscat Inglott?*

*The Witness :*

*No, he told me he was working with Trusted Business Associates and that the money was secure.*

*Dr Joseph Camilleri :*

*When did you first hear about the name Sasha Muscat Inglott?*

*The Witness :*

*I heard of the full name Sasha Muscat Inglott the first time when the money went missing and I went into shock. Because I never had any ...*

...

*Dr Joseph Camilleri :*

*But would it be correct to state that you were aware that Karim was investing with somebody else?*

*The Witness :*

*I was aware that there were other people involved, but my agreements are only with Karim, so he ... who he speaks and what he does was up to him. I trusted him and the agreements are with him and the post dated cheques are signed by him.*

*Dr Joseph Camilleri :*

*Now, we agree ... it's not contested that you paid substantial amounts to Karim Cordina?*

*The Witness :*

*Correct.*

*Dr Joseph Camilleri :*

*And in terms of the agreement, you were expecting a return on investment of a considerable amount?*

*The Witness :*

*Correct.*

*Dr Joseph Camilleri :*

*Five per cent (5 %), forty two per cent (42 %), forty five per cent (45 %). Emm ... didn't you think that you should check who these third parties were?*

*The Witness :*

*I ... I ... I've known Karim. I've known his family and if ... if ... I work on my word, if someone gives me their word, I trust it. So I didn't go further. Now looking back, yeah, I mean, I'm ... I'm ten (10) years on, I would do things differently.*

*The Court :*

*And am I correct to say that the agreements are these which the Court is showing over there which are ... which are in pages 22, etcetera ... and ... and I have a series of agreements which started on the 20th of February '13 ...*

*The Witness :*

*Correct.*

*The Court :*

*And keep on going through.*

*The Witness :*

*Correct.*

...

*Dr Joseph Camilleri :*

*Jekk tista' tixhed ix-xhud ... għall-korrettezza. Were any amounts from ... of what you invested paid back and who paid you back?*

*The Witness :*

*Of the amount given there was ... after he had gone missing, there was money in transfer and that got returned back and that was three thousand euros (€3000) and then there was a further five hundred (500) paid and that was paid by Sasha.*

*The Court :*

*Sasha Muscat Inglott?*

*The Witness :*

*Sasha Muscat Inglott.*

*Dr Joseph Camilleri :*

*You just stated that there was a payment made by Sasha Muscat Inglott ...*

*The Witness :*

*Ehe ...*

*Dr Joseph Camilleri :*

*And am I correct to state that you had direct contact with him about the repayment of these funds?*

*The Witness :*

*So yes, I chased Karim for updates and to find out what had happened. Karim attempted to get information from the numerous sources, mainly being Sasha Muscat Inglott ... the situation got too stressful for Karim. He then provided a doctor's note from his doctor's stating that the stress was going to affect his aneurysm and that he could no longer be involved and that I would need to speak to Sasha directly. So I started to try to speak to Sasha directly. And Sasha promised payment and that he would make good. After ages he made the one payment of five hundred (500) and then it all stopped.*

*The Court :*  
*Five hundred (500)?*

*The Witness :*  
*Five hundred euros (500) ... yeah. And then ... and then it stopped."*

(fol 300-303 et seq)

62. Illi waqt ix-xhieda tiegħu in kontro-eżami, l-konvenut Karim Cordina jafferma:

*"The Court :*  
*So the Court is showing you these ... these eight (8) agreements that I have ... that I have in front of me ...*

*The Witness :*  
*Yes I made those.*

*The Court :*  
*You know about them.*

*The Witness :*  
*Yeah, absolutely.*

*The Court :*  
*There is one ... emm ... these are in pages 22 till 29 ok ... They date from the 20th of February till the 17th of June of 2013. And am I to understand that they are signed by you underneath here? Is this your signature?*

*The Witness :*  
*Yes ... yes ...*

*Dr Edward Debono :*  
*And that's Karina's signature?*

*The Court :*  
*And underneath...*

*The Witness :*  
*I don't know. Ask her.*

*Dr Edward Debono :*

*No, no, no. I mean did she sign it in front of you?*

*The Witness :*

*No. No.*

*Dr Edward Debono :*

*In your presence?*

*The Witness :*

*No, because no ... because we never ...*

...

*Dr Edward Debono :*

*On the various dates there are there ... which are stipulated in the agreements you gave her post dated cheques and that the cheques are signed of ... from your account and signed by you?*

*The Witness :*

*Yes, they are.*

*Dr Edward Debono :*

*OK. And the signature on the cheques is yours?*

*The Witness :*

*Absolutely, absolutely.*

*The Court :*

*So the cheques ... though the Court is showing you two cheques cause I ... I only have two cheques.*

*The Witness :*

*They're only those cheques ...*

...

*Dr Edward Debono :*

*OK, the scam came out from Sasha?*

*The Witness :*

*For sure ... and he scammed other people after us. So that's why he's no longer in Malta.*

*Dr Edward Debono :*

*Who spoke to Sasha?*

*The Witness :*

*I did.*

*Dr Edward Debono :*

*You did.*

*The Witness :*

*For sure.*

*Dr Edward Debono :*

*And Karina only spoke to you, correct?*

*The Witness :*

*For sure. Yeah.*

*Dr Edward Debono :*

*So the relationship for this deal was between you and Karina and nobody else.*

*The Witness :*

*No, that's it. But no, it was between me and her, but there was the third. There was Sasha. Without him this would never have happened.*

*Dr Edward Debono :*

*And then ... and Sasha, but ... Karina never spoke to Sasha. She only spoke to you, she said.*

*The Witness :*

*I don't know. I don't know who she spoke to.*

*Dr Edward Debono :*

*She spoke to you. Yeah, she gave the money to you.*

*The Witness :*

*For sure. Yeah.*

*Dr Edward Debono :*

*You wrote the cheques to her?*

*The Witness :*

*Yeah.*

*Dr Edward Debono :*

*So Sasha was never involved with Karina?*

*The Witness :*

*No.*

*Dr Edward Debono :*

*Sasha was involved with you. Am I correct in stating that?*

*The Witness :*

*Yes.*

...

*Dr Edward Debono :*  
*And are the amounts claimed by Karina ...*

*The Witness :*  
*Yeah.*

*Dr Edward Debono :*  
*Were actually given to you?*

*The Witness :*  
*What do you mean?*

*Dr Edward Debono :*  
*That the amount she is claiming in the writs ...*

*The Witness :*  
*Yeah.*

*Dr Edward Debono :*  
*Were they passed on to you, those amounts?*

*The Witness :*  
*No, not ... no ... not those amounts, no. Much less one ... minus the percentage ...*

*Dr Edward Debono :*  
*Minus interest.*

*The Witness :*  
*Sorry, minus interest. Yes.*

*The Court :*  
*Because here I have ... here I have ... here I have several payments which are said to have been done which in total amount to three hundred seventy three thousand, four hundred and one (373,401) that ... that ...*

*The Witness :*  
*I never received that kind of money though.*

*The Court :*  
*That's what I'm trying to ask you because ...*

*The Witness :*  
*No ... no ... that's with the interest.*

*The Court :*  
*Cause here I have and the amount of forty seven thousand (47,000) ... No, no ... these are the payments that had to be done dottore.*



*Dr Edward Debono :*  
*Ok.*

*The Court :*  
*OK, these are the payments that had to be done.*

*Dr Edward Debono :*  
*The original amount ...*

*The Court :*  
*The original ... the original amount which are in the agreements are correct?*

*The Witness :*  
*Yes.*

*The Court :*  
*So the amounts which I have in the agreements are correct? So when I have thirty six thousand, five hundred (36,500), she had given them to you the first time.*

*The Witness :*  
*But ...*

*The Court :*  
*Let's go through them.*

*The Witness :*  
*Yeah, that's with interest?*

*The Court :*  
*No, no, no, no, no ... there's no interest ...*

*The Witness :*  
*It's been a long time ... I haven't ...*

*The Court :*  
*So when I have for example ... when I have on the 20th of February, the amount of thirty six thousand five hundred (36,500) was given to you?*

*The Witness :*  
*Yes.*

*The Court :*  
*Yes ... and the same with all the different amounts for the other agreements ...*

*The Witness :*  
*Yes.*

*Dr Edward Debono :*

*And the only amount paid back was five hundred (500) euros and three thousand (3000)?*

*The Witness :*

*Yeah?*

*Dr Edward Debono :*

*You agree with that?*

*The Witness :*

*I don't know whether it was the three thousand (3,000) and the five hundred (500) because ... I gave you three thousand (3000)?*

*\*\*\* inaudible speech \*\*\**

*The Witness :*

*Then I agree ... the five hundred (500) I ... I don't remember.*

*The Court :*

*OK."*

(fol 317-322 et seq)

63. Il-Qorti tqis illi mix-xhieda in kontro-eżami tal-intimat Karim Cordina, joħroġ ċar illi huwa kellu pjena konoxxenza tal-ftehim illi kien hemm bejnu u bejn l-attriċi Karina Borg Olivier, kif ukoll tal-iskritturi illi saru bejniethom. Infatti l-istess konvenut jammetti li jaf bl-iskritturi u li hemm il-firma tiegħu fuq l-iskritturi in kwistjoni.
64. Illi magħdud ma' dan, u b'referenza għaż-żewġ ċekkijiet eżebiti a fol 33 u 35 tal-proċess, l-istess konvenut Cordina jammetti wkoll illi dawk huma ċekkijiet *post dated* maħruġa mill-kont personali tiegħu u li l-firma fuq l-imsemmija ċekkijiet hija tiegħu.
65. Addirittura, l-istess intimat jikkonferma u jammetti illi huwa kien irċieva l-flus mingħand l-attriċi Karina Borg Olivier u li jafferma illi s-somom li kien ħa kienu dawk relattivi għall-kapital imsemmi fl-istess skrittura, u ċioe':

*"Dr Edward Debono :*

*Were they passed on to you, those amounts?*

*The Witness :*

*No, not ... no ... not those amounts, no. Much less one ... minus the percentage ...*

*Dr Edward Debono :*

*Minus interest.*

*The Witness :*

*Sorry, minus interest. Yes."*

66. Għaldaqstant, il-Qorti tqis illi r-responsabilita' tal-konvenut Karim Cordina hija waħda ċara. Huwa stess jammetti illi kien konsapevoli bl-iskritturi a fol 22-29, jammetti li hu ffirmat l-istess skritturi, jammetti illi l-flus ingħaddew mingħand l-attriċi Karina Borg Olivier direttament għal għandu u saħansitra ġew eżebiti in atti żewġ (2) ċekkijiet pagabbli lill-attriċi maħruġa u ffirmati minnu mill-kont tal-istess konvenut.
67. Il-fatt illi l-intimat Cordina jikkontendi illi huwa kien vittma ta' raġġiri ta' parte tal-kjamat in kawża Muscat Inglott huma irrilevanti għall-proċeduri odjerni, u ċertament r-rikorrenti ma għandha tbaġhti ebda konsegwenza għal kwalsiasi raġġiri illi Cordina jista' jikkontendi illi sarulu da' parte ta' Muscat Inglott. Dik hija kwistjoni prettament bejn Cordina u Muscat Inglott, u ċertament mhux meritu tal-proċeduri odjerni.
68. Illi b'hekk il-Qorti tqis illi s-somma mogħtija mill-attriċi kif dokumentat fit-tmien skritturi in kwistjoni għandha tithallas lura mill-konvenut u dan biss relattiv għall-kapital illi ġie mġhoddi minn Karina Borg Olivier għal għand l-intimat Cordina. Illi kif diġa' aċċennat dan jammonta għal mitejn sebgħa u sittin elf, erbgħa mija u ħamsa u għoxrin Euro (€ 267,425).
69. Il-Qorti tosserva illi kif isostni l-istess attriċi kemm fl-affidavit tagħha kif ukoll fix-xhieda tagħha in kontro-eżami, hija ġiet mogħtija lura s-somma ta' tlett elef u ħames mitt €Euro (€3500). Għaldaqstant, il-Qorti tqis illi din is-somma għandha titnaqqas minn dak illi l-konvenut għandu jhallas lill-attriċi.
70. Illi b'hekk, fid-dawl ta' dan kollu, l-konvenut Karim Cordina għandu jhallas lill-attriċi Karina Borg Olivier s-somma ta' mitejn, tlieta u sittin elf, disgħa mija u ħamsa u għoxrin Euro (€ 263,925).

## **Il-Qorti,**

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

Wara illi rat is-sottomissjonijiet tal-abbli difensuri tal-partijiet;

Tgħaddi biex tiddeċiedi l-vertenza billi:

**Tastjeni** milli tieħu konjizzjoni ulterjuri tal-ewwel u t-tieni eċċezzjoni tal-intimat Karim Cordina stante illi ġia deċizi mill-Qorti tal-Appell fis-sentenza tagħha fuq ċitata;

**Tiċhad** il-kumpliment tal-eċċezzjonijiet tal-intimat Karim Cordina;

**Tastjeni** milli tieħu konjizzjoni tal-eċċezzjonijiet imressqa mill-kjamat in kawża Sacha Muscat Inglott peress illi rrilevanti għat-talbiet rikorrenti;

**Tilqa' limitatament** l-ewwel talba tal-atturi b'dan illi tiddikjara lill-intimat Karim Cordina huwa debitur fil-konfront unikament tal-attriċi Karina Borg Olivier u dan fis-somma ta' mitejn, tlieta u sittin elf, disgħa mija u ħamsa u għoxrin Euro (€ 263,925);

**Tilqa' limitatament** it-tieni talba tal-atturi u tikkundanna lill-intimat Karim Cordina iħallas lill-attriċi Karina Borg Olivier is-somma ta' mitejn, tlieta u sittin elf, disgħa mija u ħamsa u għoxrin Euro (€ 263,925).

**Interessi** mid-data ta' din is-sentenza sad-data tal-pagament effettiv.

**Spejjeż** tal-proċeduri odjerni ikunu kollha a karigu tal-intimat Karim Cordina.

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

**Imhalled**

**Rita Sciberras**

**Deputat Registratur**