



MALTA

COURT OF MAGISTRATES (MALTA)
MAGISTRATE DR. NADIA H. VELLA
B.A., LL.D., Dip. Trib. Eccl. Melit.

Sitting of the 10th of March 2025

Application Number: 349/2021NHV

No Deposit Cars Malta Limited
(C85780)

vs

Elena Angelova
(I.D. I0141872A)

The Court:

This judgement, is being delivered in the English language after the parties had agreed that proceedings be conducted in that language¹. Pursuant to the **application** (which was drawn up in the Maltese language), filed before this Court on 17th December 2021², the plaintiff company requested that the respondent declares why he should not be condemned to pay the plaintiff the sum of five thousand one hundred and ninety-nine Euro, as well as expenses and interest to the date of payment, representing the balance of the price of a vehicle Audi A4 TD1 registration number GBM-093, which was acquired by the respondent in virtue of the hire purchase

¹ See the minutes of the sitting of the 16th February 2022, at fol 13;

² See fol 1 and attached document at fol 2 to 6;

contract dated 05th November 2019. The plaintiff also claimed the costs of the present proceedings, as well as those of the garnishee order, the interest against the respondent, and summoned the respondent to appear in demand for reference to his oath.

In virtue of the decree dated 17th January 2022, the Court appointed the application for **hearing** for the sitting held on 16th February 2022.³

Having seen that the parties were **duly served** with the application and the date for hearing.⁴

Having seen the **reply** (also in the Maltese language) filed by the respondent on the 28th January 2022⁵ whereby the following pleas were presented:

“1. Illi t-talbiet għandhom jiġu miċħuda stante flas. Illi kif se jirriżulta waqt is-smiegħ tal-kawża l-eċċipjenti effettivament ħalset aktar minn dak li kellha tħallas u dana minħabba aġir abbużiv u illeġla da parti tas-soċjetà attriċi;

2. Salv eċċezzjonijiet ulterjuri;

Bl-ispejjeż.”⁶

Having seen that the Court ordered the continuation of the case after seeing Article 171A of Chapter 12 and after hearing the parties, and found that there are no prima facie reasons for the case to be referred to mediation.⁷

Having seen that this case was **assigned** to this Court as presided in virtue of the decree dated 2nd February 2024, effective as from 19th February 2024.

Having seen the witnesses and documentary evidence put forward by the **plaintiff company**, namely the testimony presented in virtue of an affidavit of Noel Darmanin,⁸ wherein he stated that he has been working as a sales representative with No Deposit

³ Fol 8;

⁴ Fol 12;

⁵ Fol 10;

⁶ Reply as filed *verbatim*

⁷ See minutes of sitting a fol. 13;

⁸ Filed by means of a note on 9th May 2022, at fol 15;

Cars Malta for almost four years, and that the respondent visited the show room in November 2019, and showed her interest in buying a vehicle, and eventually she liked an Audi A4 TDI, blue. He stated that he had explained that a person may purchase a car by paying monthly instalments without paying a deposit, provided she pays for the yearly insurance, and this after a contract is signed together with a number of bills of exchange to cover the number of payments due. The witness stated that the respondent confirmed that she wanted to proceed with the purchase of the vehicle, and that he referred her to the company's finance department to prepare the documentation so that the contract is signed. He stated that in the meantime the vehicle was prepared and was collected by Angelova.

Having read the testimony given by the respondent Elena Angelova before this Court during the sitting held on 28th June 2022⁹ who was presented for examination in chief by the applicant company. Angelova stated that she knew about No Deposit Cars Malta Limited through a friend of hers, named Branislav, who decided to buy a car for a company but he needed her help because he just started to work, that he will buy the car in her name, since he was Serbian and he needed a permit to sign the document. She said that she did not know the name of the company, and that her friend told her that they will give her all the documents in her name and that he will pay and drive the car himself. She insisted that she never went to No Deposit Cars and her friend gave her the contract to sign, he had told her that it will be for a few months until he is given his permit. She stated that the mobile number on the contract is that of her friend and the signature is hers.

The respondent confirmed that the details are hers, with regard to the address she explains that at the time of signature of the contract she resided at Birżebbugia, and at the time of the sitting she resided in Marsaskala. She was shown the statement at fol. 30 of the court file and declares that she never received nor seen that document prior to the sitting. Angelova stated that her friend Branislav drove the car and that she never drove the car. She explained that her friend paid for the car, however his payments were late, and she had asked him to contact the company as she did not want the contract to remain in her name, as she was worried with the situation. No Deposit Cars did not contact her, but were calling her friend for payment. She stated that her friend told her that in March after around a month and a half when he was late in paying, they found her friend in Naxxar, they stopped him and took the car; after a month he went to pay the outstanding amounts, however the company told him that the contract was cancelled and that he will not get the car back and that he does not need to pay anything else. She confirmed that she obtained this information from her friend Branislav as the company never contacted her.

⁹ Fol. 18 to 29;

The respondent stated that she received a letter in June informing her that she owes money to No Deposit, she stated that she contacted the company Credit Info and they informed her that she owes money to Princess Limited Holding. The respondent explained that she went to Burmarrad to ask for explanations, the persons she met told her that the amounts were outstanding as from January, whereas she had proof that her friend had carried out payments. She said that she paid all the amount of €3000 but she did not receive anything, and asked her to pay the court fee which was around €600, and that they claimed that she will be given the car back after they receive payment.

Angelova confirmed that she paid all that the company asked for, and she asked for the car, and despite their promises that she was going to be given the car, the company did not give it to her. The defendant stated that she never saw the insurance contract on the car and does not know who the insured driver was. She explained that there were extra payments, since there was a payment by Branislav of €500 marked as deposit, and that the company claimed that this will be given back at the final payment, then when the company took the car her friend paid €200 and they marked it as repair of the AC, she states that there was another payment as court fee, however she had never seen any court documents. The respondent states that she paid in October and yet she did not receive the car, and that when she insisted on receiving the car, the company said that she has to pay the amounts even if she does not have the car.

Having seen the documents presented by the respondent by means of a note filed on the 05th October 2022¹⁰ namely: garnishee order advice from Bank of Valletta¹¹, letter from CreditInfo¹², copy of garnishee order 2722/2021¹³, copy of contract between the Parties¹⁴, notes¹⁵, various receipts¹⁶ and legal letter sent by the respondent to the plaintiff company dated the 7th December 2021¹⁷.

Having seen the testimony of Luke Milton, who worked with No Deposit Cars Limited and acted as Director of the company between December 2020 and June 2021, who testified by way of an affidavit filed on 23rd January 2023¹⁸. Milton declared that in

¹⁰ Fol. 32 to 95;

¹¹ Fol. 32 to 33;

¹² Fol. 35;

¹³ Fol. 36 to 38;

¹⁴ Fol 39 to 43; and a further copy of the contract – which was is not signed at fol. 46 to 50; further copies of this same contract 53 to 61;

¹⁵ Fol 51 to 52 –the document was eventually confirmed on oath during the sitting held on 11th November 2024 – vide. Fol 218;

¹⁶ Fol. 62 to 95;

¹⁷ Fol. 68;

¹⁸ Fol 100 to 105, as well as attached documents at fol 106 to 139;

November 2019 he was informed that a person, with the surname Angelova, liked an Audi A4 and wanted to proceed with signing a hire purchase agreement for the vehicle. He stated that the interested person was asked to present her identity card and driving licence so that they may prepare all the necessary paperwork, including the agreement, registration of vehicle, insurance and bills of exchange. He stated that the price of the car was €9,000 and was going to be paid in 60 monthly instalments of €150 each. He presented a copy of the bills of exchange to the Court.¹⁹ He stated that he remembered that Angelova went to the showroom accompanied by a man. He declared that they had prepared a contract for Angelova and explained it to her and she signed the agreement. He claimed that the company vets its clients as they are entrusted with their vehicles and need to verify that the clients will be paying their instalments. Milton stated that after the respondent signed the documents, she collected car, and they did not have any issues for the first year.

The witness said that the bills of exchange were not being paid at the end of the year 2020 and beginning of 2021. He testified that the company had informed the respondent to pay all arrears due but she did not carry out any payments, therefore they had to track the vehicle to re-possess it as stipulated in Clause 7 of the agreement. The witness said that they tracked the vehicle on the 7th May 2021 in Naxxar and noted that it was being driven by a male person who did not want to give them his details. He stated that the driver was not insured to drive the vehicle and submitted that this is a breach of contract Angelova had with the company. The witness stated that when the vehicle was repossessed, Angelova had 5 months of bills of exchange in arrears, and the company filed a judicial letter on the 8th June 2021 to enforce the bills of exchange endorsed in favour of Princess Holdings Limited (1392/2021). He referred to another judicial letter filed on 27th August 2021 by Princess Holdings Limited (2207/2021), however Angelova was not notified.

The witness explained that after the vehicle was repossessed, the company had the vehicle checked and claimed that along with damages to the body it had electronic issues. He stated that at time of repossession the estimated value of the vehicle was of not more than €3,000, and they were due much more, and referred to Clause 6.3 of the Contract. He stated that on the 6th October 2021, Angelova visited their showroom at Burmarrad and paid 10 expired bills of exchange, the insurance and licence of the vehicle which had expired in August 2021. He said they informed her that the vehicle had sustained several damages, which was a breach of their contract terms, that he offered to repair the damages by their trusted mechanic but she had insisted that her mechanic will carry out the repairs. He stated that since the company was the owner of the car and since the respondent did not take proper care of the

¹⁹ Fol. 115 to 134;

care, the company insisted that it is the company that carries out the repairs. He testified that they offered an amicable settlement to the respondent to give her another car of similar value, and he said that Angelova seemed interested so much so she asked to visit the showroom with her mechanic to choose the car.

Having seen the testimony of Thorne Mangion, Operations Manager at No Deposit Cars Malta, who testified by an affidavit filed on 03rd May 2023²⁰, stated that his work involves drafting contracts, explaining contracts to clients, signing them and follow-up on payments of bills of exchange, and assisted with the collection of vehicles. He said that he remembered that in November 2019, he colleague Noel informed him that a client named Elena Angelova wanted to purchase an Audi A4 and gave him the details to prepare the documentation. He stated that Angelova went to the office in Burmarrad and she was asked for her identity card and driving licence, he stated that he personally explained the contents of the contract to Angelova who went to the office with a man who he does not know.

He testified that Angelova signed the contract together with 60 bills of exchange with the value of €150 each. Angelova collected the vehicle and paid the bills of exchange during the first year, and after about one year, the witness stated that she stopped paying the said bills of exchange. He said that they called Angelova to pay the bills of exchange that were due but she did not go to settle them.

The witness stated that they tracked the vehicle in Naxxar on May 7th, and it was being driven by a male person, he said they knew that that person was not insured as Angelova did not ask for any named drivers to be included in the insurance policy. He stated that in view of this and that Angelova had 5 unpaid bills of exchange, they repossessed the vehicle. He declared that he was present when they repossessed the vehicle and that the vehicle was in a bad state of repair, it had damages in the body and wires hanging. The witness said that later that year, Angelova visited the showroom and paid some bills of exchange, insurance and licence, and she was dealing with his colleague Luke about the repairs on the car.

Having seen that the plaintiff company declared that it had no further evidence to produce in this case.²¹

Having heard the testimony on oath by Branislav Zcatahovic presented by the **respondent**²² who testified that in November 2020 he decided to buy a car and he

²⁰ Fol. 142 and 143;

²¹ See minutes of sitting held on 03rd May 2023, at fol. 140;

²² Testimony given on 8th April 2024, Fol. 149 to 157, as well as documents presented 158 to 171;

went to No Deposit Cars in Luqa, he found a car he wanted to buy and spoke to Luke Milton, Noel and another person he does not recall the name, he handed over his old driving licence, and they told him that his driving licence from Serbia was going to expire in two weeks, and it would be better if he obtains a Maltese driving licence. The witness stated that Luke Milton offered that first he buys Milton's personal car then that the witness identifies a person who has a driving licence and to help him until he changes his driving licence; the witness stated that he did so and he phoned his colleague Elena Angelova and asked her to help him until he changes his driving licence. The witness explained that Angelova accepted and he went to Birzebbuga where Angelova lived at the time, with the contract and she signed the contract, and he went back to give the signed contract to No Deposit Cars. He said that he bought an Audi A4 2005 with the plates GBM 093 for €9,000 and was going to pay it over 5 years with monthly instalments of €150. The witness indicated that he signed all the documents when he paid, he said that he went to pay monthly with his card and his signature is there. He declared that Elena Angelova had "*nothing on that car. It was just in her name.*" ²³ The witness stated that he made around 20 to 25 payments, which amounted to more than €4000. The witness exhibited various receipts for payments which he indicated as being paid by his card.²⁴

The witness recalled that on the 8th of May 2022, he was parking the car in Naxxar, and another car stopped him on the street, and three people came out of the car, they took the keys from the car and started shouting at him as he was late with his payments, and that they need to take the car, as it was not his car but theirs. He explained that Luke Milton, a certain Thorne, and another person he did not know, were in the car. The witness declared that Angelova never even sat in the car, that the car is his and not Angelova's. Zeatahovic stated that he met Milton when he went to pay and every time when he needed something with the car, Milton even gave him his personal number. The witness testified that when they stopped him with the car, they told him to pay €300 immediately as he was late with his payments and he paid them €200 immediately in the street, and they made him go with them to the shop, he sat in the car, they were driving the car itself and put him in the car with another person.

The witness recalled that when they got to the shop, Thorne told him that he cannot give him the car as it is not in the witness' name, and Zeatahovic objected as he told him that he had been driving the car for almost two years, and that he could not go to Serbia because of Covid, however Thorne insisted that Angelova had to collect the car herself. The witness stated that he had informed Angelova about this, and when

²³ Fol. 150;

²⁴ Fol. 158 to 171;

Angelova contacted the company they said that there was a court case, and that they had to pay a fee of €2800 to collect the car from Court. He confirmed that they followed these instructions, however they never received the car from the claimant company, as Milton was saying that the Court did not want to release the car and that “there is a garage and that cannot pass under the garage.”²⁵ Zeatahovic stated that the €2800 was paid to Princess Limited Holdings, and that the car was not in his possession. He also confirmed that the car was in perfect condition when it was taken by Milton, Thorne and the other person.

The respondent testified under oath viva voce before this Court during the sitting held on 10th June 2024²⁶ and confirmed the testimony of Branislav Zcatahovic and stated that after No Deposit Cars took from his possession the car Audi A4, the car was never returned. The respondent confirmed that she never saw the car again. She stated that after a few months she received a letter from credit info indicating that she owes a large amount of money to No Deposit Cars Ltd and that if this amount is not paid judicial action will be taken against her. The respondent stated that upon receipt of this letter she immediately went to No Deposit Cars Ltd’s office in Burmarrad to check exactly what happened. She explained that this was three to four months after they took the car. Angelova stated that she was informed that they took the car from Branislav Zcatahovic as he did not pay for two months, and the outstanding installments continued increase. She said that she had asked them for a reason why they did not phone her, and the company did not give her a reason, and promised her that if she pays all the amounts they are claiming they will return the car to her. Angelva confirmed that she paid, and when she asked for ther car, the company’s representatives told her that everything is fine but the car is in the Court’s garage.

The respondent stated that she has messages to prove that she was requesting the car, but Luke was telling her that the car was not in a good state of repair and that they cannot give her the car as it is in the Court garage and cannot be taken out with a tow truck, and that she needs to go to choose another car; she confirmed that she visiting the showroom in Qormi, however the cars they were offering her were not in a good condition with missing parts. Angelova testified that she offered to go with a small tow truck to collect the car herself, however they refused, and kept on insisting that she needs to continue paying the monthly installments of €150, and she paid another payment of €150 and they promised her to give her the car on the following day, however the respondent was not given the car.

²⁵ Fol. 155;

²⁶ Fol. 173 to 179;

Angelova stated that she did not want to continue paying since she did not have possession of the car, however she had received a phone call from a certain Christian, who told her that she is obliged to continue paying the installments even though she does not have possession of the car; then after around a month she was served with this court case.

The respondent declared that on the 20th December her friend saw a photo of the car with the same number plate being offered for sale at a car dealer's shop in Fgura. She stated that she was asked to pay €690 even though the court case was not filed yet; and she paid this amount as well, under the promise by the persons she was dealing with representing the company that if she pays the outstanding amounts they will return the car to her.

Having seen the note filed by the respondent with various documents: screenshots of the vehicle purchased by the respondent as advertised by another car dealer²⁷, letter received from CreditInfo²⁸, copy of insurance certificate²⁹, screen shots of conversations with Thorne Mangion, Monique Mizzi and Luke Milton³⁰.

Having seen the cross-examination of the respondent by the applicant company³¹ who testified that she went to make the final payments in September 2021. She confirms that she refused to pay further payments as she did not have possession of the car and confirmed the note at fol. 51 and 52 under oath that she wrote the note and confirmed its contents. This notes indicates that on the 05th November 2019 the first contract was signed, and on the 07th November 2019 he (the Court notes that there is no indication as to whom the witness is referring – it is being understood that respondent is referring to Branislav Zcatahovic) had to carry out repairs to the tires of the car and when he contacted the company, they told him that they know about this and that he needs to carry out repairs himself. The declaration indicates that in August 2020 they had another problem with the car, as the company told him to return the car as he was late in payment, when he paid the outstanding amounts they gave him the car which was not functioning properly. It was also stated that in April 2021 he was driving in Naxxar, and he was stopped by 3 people who took the car and he went back to the office with them to pay and paid €200. It was declared that he was driving the car for more than one year, and that Angelova was never present, and she just signed.

²⁷ Fol. 181 and 182;

²⁸ Fol. 183;

²⁹ Fol. 184;

³⁰ Fol. 185 to 214;

³¹ Fol. 216 to 220;

Having seen the note of submissions filed by the applicant company³² which focused on the matter that the respondent was signatory of the hire purchase contract so she was bound by the obligations contained therein, and emphasised on breach of contract by the respondent.

Having seen that despite being given the opportunity to file a note of submissions, the respondent did not do so;

Having seen that this case was adjourned for final judgement during the hearing held on 11th November 2024, after giving the Parties the opportunity to file their respective notes of submissions relative to this case.³³

Considers:

This case relates to the claim for payment of balance of price amounting to €5199 relative to a vehicle Audit A4 TDI. The respondent raised one plea, being that respondent paid the claimant company more than was owed by her. The claimant company is presenting a monetary claim and did not present a claim relative to the termination of the Contract between the Parties.

In this regard, the Court refers to the judgement in the names Lomags Limited v. George u Carmen Muscat, where in the Court of Superior Appeal³⁴ held:

“Jinsab ritenut fil-gurisprudenza, li hi regola generali li fil-kuntratti bilaterali l-inadempjenza kuntrattwali ma twassalx ghat-terminazzjoni unilaterali tal-kuntratt, lanqas meta x-xoljiment ipso jure jkun espressament pattwit fl-istess ftehim, u sakemm ma jkunx hemm il-fuzjoni tal-kunsens taz-zewg partijiet ghat-terminazzjoni tal-kuntratt, ix-xoljiment ghandu dejjem jiġi ppronunzjat mill-Qorti (sottolinear u enfasi mizjuda). Il-fatt li t-terminazzjoni tal-kuntratt minhabba inadempjenza ta' xi parti tkun espressament pattwita ifisser biss li l-Qorti ma tistax taghti lill-parti inadempjenti zmien sabiex tissodisfa l-mora, imma hija marbuta li tiddikjara xxoljiment tal-kuntratt.”

³² Fol. 221 to 227;

³³ fol. 215;

³⁴ 1459/2002/1 – delivered on 28th March 2014;

The Court was struck with the diametrically opposed declarations made by the parties to this case, wherein the witnesses who worked with the claimant company and produced by the claimant company declared that Angelova chose the car herself and that she went to the showroom and that they explained the contents of the contract to her and that she signed in their presence; whereas the respondent herself and Zeatahovic declared continuously that the car was bought by Zeatahovic, the contract was not signed in the presence of representatives of the claimant company and that Angelova did not chose the car nor visited the showroom.

Furthermore, Luke Milton declared that he did not know Zeatahovic and never met him, he said that when they stopped the car in Naxxar the car was being driven by a man whom he did not know; whereas Zeatahovic declared that he was in contact with Milton, it was Milton who proposed to sell him the Audi.

The Court refers to the statement 'NDC1'³⁵ presented to Angelova by the claimant company during her examination in chief. The document purports to be a statement issued by No Deposit Cars – however the document does not show who issued the document, whether it pertains to No Deposit Cars, nor was it confirmed on oath by any of the witnesses who testified for the claimant company.

The Court notes that apart from the defendant, all witnesses were not cross-examined, despite this clear incongruity and inconsistency in the evidence as present in the acts of this case.

The Court also notes that claims made by witnesses summoned to give evidence by the claimant company, were not duly supported and very generic, by way of example the court notes that in Milton's testimony he uses the term 'we' without specifying to whom he is referring, they did not indicate who phoned Angelova, who did the chasing, no names! Another example is that it was claimed by Milton that the bills of exchange issued by No Deposit Cars Limited, were endorsed in favour of Princess Holdings Limited, however no proof of this was presented.

Court notes further message being indicated from Thorne Mangion "So we received your file from court and expenses have accumulated to €628.34" which was sent on 18 Oct 2021 (fol 188). It is to be noted that these proceedings were actually filed on 17 Dec 2021 (fol 1). Reference is made to the claims made by Mangion and Milton that the car is being kept in the Court garage in their messages to the respondent, and no evidence was presented in support of this claim.

³⁵ Fol. 30;

The Court finds these witnesses not to be credible.

It considered Article 591 Chapter 12, which provides that witnesses, who are not parties to a case “no person who has been present during the trial of a cause may be produced as a witness in the same cause”, and Article 592(1) which provides that “each witness shall be examined separately”. Therefore, any person who gives testimony in a case should not be aware or made aware of the testimony given by other witnesses in the case. Despite this rule, it is has resulted to the Court very clearly that Luke Milton, who was not a company representative at the time of his testimony, was given access to the testimony of the respondent, so much so he even commented and replied to her testimony in his affidavit. Those comments were therefore discarded by this Court.

The Court notes that although the witness Branislav Zeatahovic claims that the receipts were issued in his name, the receipts indicate the respondent’s name ‘Elena Angelova’. He states that the Customer Copy of the card payment attached to each receipt relates to payments made using his bank card, however there is no information said document linking it to Zeatahovic’s name.³⁶

The Court considered that from screen shots of conversations between respondent and Mangion that there were no further outstanding instalments – Question by Angelova: “There is something else to pay?” Answer by Mangion: “No ta” – fol 186.

The respondent was promised that the car will be released as soon as she pays the amounts being claimed by the company – “Good afternoon car will be released in a couple of days once the account is settled” – fol 190. “When you come you can collect car etc on the same day” – message from a certain Monique – fol 195, who could not tell her how much the outstanding amount was at the time 11 Oct 2021

Messages showing that Angelova tried to set a meeting to collect the car, however she was never given an appointment by Thorne, Mangion nor Monique. She was not given an updated statement (fol 206). Luke Mangion claimed that the car was not accessible with a tow truck and never gave her any information as to the location of the car, and she still has not been given possession of the car.

The Court refers to the plea raised by the respondent, that there were various payments and that there were no outstanding amounts owed by the respondent to the claimant company.

³⁶ Reference made to the receipts at fol. 158 to 171;

The Court refers to the copies of Receipts presented:

Dated

12/11/2021 - €150 – fol 69

09/12/2020 - €150 – ino Elena Angelova – fol 85 and fol 160

09/12/2020 - €150 – ino Elena Angelova – fol 84 and fol 159

02/09/2020 - €150 – ino Elena Angelova – fol 89 and fol 163

02/09/2020 - €150 – ino Elena Angelova – fol 88 and fol 162

02/09/2020 - €150 – ino Elena Angelova – fol 87 and fol 161

02/09/2020 - €667 – ino Elena Angelova – fol 86

10/06/2020 - €150 – ino Elena Angelova – fol 90 and fol 164

02/06/2020 - €150 – ino Elena Angelova – fol 91 and fol 165

05/03/2020 - €150 – ino Elena Angelova – fol 92 and fol 166

05/03/2020 - €150 – ino Elena Angelova – fol 93 and fol 167

08/01/2020 - €150 – ino Elena Angelova – fol 94 and fol 168

03/12/2019 - €150 – ino Elena Angelova – fol 95 and fol 169

29/01/2021 - €150 – ino Elena Angelova – fol 83 and fol 171

29/01/2021 - €150 – ino Elena Angelova – fol 82 and fol 170

04/11/2019 - €100 – ino Branislav Zeatahovic – fol 62 - audi

07/11/2019 - €37 - ino Branislav Zeatahovic – fol 63 - audi

31/07/2020 - €550 – ino Elena Angelova – fol 64 – hyundai

23/10/2021 - €628.34 – ino Elena Angelova – fol 70

06/10/2021 - €150 – ino Elena Angelova – fol 71

06/10/2021 - €150 – ino Elena Angelova – fol 72

06/10/2021 - €150 – ino Elena Angelova – fol 73

06/10/2021 - €150 – ino Elena Angelova – fol 74

06/10/2021 - €150 – ino Elena Angelova – fol 75

06/10/2021 - €150 – ino Elena Angelova – fol 76

06/10/2021 - €150 – ino Elena Angelova – fol 77

06/10/2021 - €150 – ino Elena Angelova – fol 78

06/10/2021 - €150 – ino Elena Angelova – fol 79

06/10/2021 - €826 – ino Elena Angelova – fol 80

07/05/2021 - €200 – ino Elena Angelova – fol 81

THUS, total payments made to the claimant company was of **€6458.37**.

The Agreement related to the payment of €9000 for the hire-purchase of a vehicle, out of which the respondent paid the sum of €6458.37 based on the receipts as presented and not contested by the claimant company.

The Court is recognising all the payments made as being payments for the vehicle, it is not recognising that any payments claimed to be as 'court fees' especially in the

light that the court case and the garnishee order were filed way beyond the date of payment, it did not result to the Court that the payments indicated as 'lic, ins, fines' should be allocated to other matters as no proof as to what they are referring to; and it amply resulted that the respondent was being induced into paying these amounts under the pretence, which proved to be false, that she will be given the car as soon as she pays the amounts the company was telling her to pay.

Given the two diverging positions of the parties in this case, this Court refers to the teaching of the First Hall Civil Court,

“il-Qorti tibda billi tirrileva li trattandosi ta’ żewġ verżjonijiet konfligġjenti, ikollha tirreferi u toqgħod mhux biss fuq id-depożizzjonijiet kontrastanti mogħtijin mill-partijiet imma testendi l-indaġni tagħha fuq il-provi dokumentali u / jew indizjarji li għandhom iwassluha għas-soluzzjoni ġusta tal-vertenza.”³⁷

Furthermore, the Court refers to the decision of the Court of Appeal (Inferior Jurisdiction) delivered on 17th March 2003, in the names Enrico Camilleri vs. Martin Borg wherein it was held:

“...kif paċifikament akkolt fil-ġurisprudenza tagħna l-ġudikant, fil-kamp ċivili, għandu jiddeciedi fuq il-provi li jkollu quddiemu, meta dawn jinduċu fih dik iċ-ċertezza morali li kull tribunal għandu jfittex, u mhux fuq sempliċi possibilitajiet; imma dik iċ-ċertezza morali hija bizzzejjed, bħala li hija bazata fuq il-preponderanza tal-probabilitajiet”.

Moreover, the Court refers that quoted by the First Hall Civil Court in its judgement in the names Joseph Zammit vs Carmelo Dingli et³⁸, where in Civil matters,

“si preoccupa soltanto di respingere un mezzo che nuoce alla scoperta del vero e che puo’ indurre il giudice a ritenere, in tutta buona fede la falsita’ in luogo della verita.”

In this present case, the evidence brought forward confirms that there is a contract signed by the defendant with the claimant company for the hire purchase of a vehicle against payment of €9000 which amount would be paid in instalments. It has been proven to the required level of proof of balance of probabilities that payments have been made in relation to this contract that amount to €6458.37.

³⁷ John Pace għan-nom u in rappreżentanza tas-socjetà Accent Clear Traders Co. Ltd. vs. Kenward Cole għan-nom u in rappreżentanza tas-socjetà H.P. Cole Limited, First Hall Civil Court, delivered on 26th February 2001, 221/95JF;

³⁸ Citazz Nru 771/2000/NC – delivered on 15th October 2003;

The Court, based on the above considerations, is morally convinced that the payments represented in the receipts namely €6458.37 are to be allocated as payment against the price of the vehicle and therefore the balance is of €2541.53.

The Court considers also that the car is possibly still in possession of the claimant company, however there is no clear evidence in the case as to the whereabouts of the vehicle. The claim being raised by the claimant company is a monetary claim for balance of price and not for the termination of a contract. The respondent has neither by way of plea nor by way of submission, made any request for the repossession of the vehicle. The matter has been left totally out of the remit of this Court and both the claim and the reply, as well as all the testimony was restricted to the matter of the payment or otherwise of the price of the vehicle, without any clear evidence as to the whereabouts of the vehicle. Therefore any order with regards to the repossession of the vehicle by the defendant will be outside the competence of this Court as defined by the parameters set out in the claim and in the pleas raised.

Decides

In view of the considerations above, the Court partially upholds the claim raised by the claimant company and this by ordering the defendant to pay the claimant company the sum of two thousand five hundred and forty-one euro and fifty three cents (€2541.53).

With the costs of the present proceedings as well as the garnishee order to be borne equally between the parties, and interest to be calculated from the date of this judgement against the respondent to the date when payment is effectively made.

Dr. Nadia H. Vella
Magistrate

Naomi Bonello
Deputy Registrar