COURT OF MAGISTRATES (GOZO)
SUPERIOR JURISDICTION
GENERAL SECTION

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

Sworn Application number 37/2015 SG

Noel Anthony Scerri and Pauline Scerri

versus

Derek Steward Wilkinson and Sharon Wilkinson

Today, the 26th June 2025

The Court;

After having seen the sworn application filed in the Maltese language by plaintiffs by means of which they premised that:

1. *Premess illi l-atturi Noel Anthony u Pauline konjugi Scerri flimkien akkwistaw il-fond numru tmintax u dsatax (18, 19) fi Triq Kortoll Xaghra Gahwdex bhala liberu u frank bid-drittijiet u pertinezi kollha tieghu u bil-pussess battal u dan permess ta' kuntratt fl-atti tan-Nutar Paul George Pisani datat is-sebgha u ghoxrin (27) ta Jannar elfejn u sitta (2006), liema kuntratt huwa hawn anness u mmarkat Dok AFI;*

2. *Premess illi biex iffinanzjaw dan l-investiment l-atturi sselfu mil-bank l-ammont ta' hamsin elf Lira Maltin (Lm50,000) pari ghal — mija u sittax il-elf erba' mija tmienja u sittin Euro (€116468), fis-sena elfejn u hamsa (2005) u dan kif jidher mil.iskrittura hawn anness u mmarkata Dok AF3;*

3. *Premess illi permezz ta' kuntratt iehor fl-atti tan-Nutar Paul George Pisani datat il-hdax (11) ta' Novembru elfqjn u tmienja (2008), hawn anness u mmarkat Dok AF2, l-attur flimkien mal-konvenuti, Derek Steward u Sharon*

konjugi Wilkinson il-partijiet iddikjaraw fost affarijiet ohra li l-konjugi Wilkinson kienu ikkontribbwixxew in kwantu ghal-nofs l-ispejjez tal-akkwist tal-immobbli deskritt fil-kuntratt Dok AF1, u li in oltre il-konjugi Scerri u l-konjgi Wilkinson ikkontribwixxew pero b'mod mhux indaqs ghal-konstruzzjoni u renovazzjoni talbini tal-fond. Illi dakinhar li sari l-kuntratt ipprezentat Dok AF2, il-bini kien diga lest gebel u saqaf u permezz tal-istess kuntratt il-partijiet ippremettew illi middata tal-kuntratt 'il quddiem l-ispejjez biex titlesta l-propjeta kellhom jigu imhallsa esklussivament mil-konjugi Wilkinson, wahedhom. Sabiex jigi ikkawtelat il-hlas lura tas-somma zborsata mil-konjugi Wilkinson gie kostitwit ipoteka specjali fuq il-fond fl-ammont ta' tliet mitt elf Euro (€300,000);

4. *Premess illi fl-istess gurnata u cioe fil-hdax (11) ta' Novembru elfejn u tmienja (2008), hawn anness u mmarkat bhala dok AF4, il-partijiet iffirmaw ukoll skrittura privata sabiex jirregolaw il-pozizzjoni interni ta' bejniethom fejn fl-ewwel lok qablu illi l-fondi ghal-akkwist gew imhallsa b'mod indaqs bejniethom, in kwantu nofs mil-atturi u nofs mil-konvenuti u li l-fond necessarji ghat-twaqqiegh u zvillup mil-gdid u tlestija tal-propjeta gie imhallas f'porzjonijiet mhux indaqs, b'dana illi l-konjugi Wilkinson hallsu aktar. Illi in oltre il-partijiet qablu illi kien fadal xi spejjez biex titlesta l-propjeta u biex tkun tista tinkera u dawn il-flus kellhom johorguhom il-konjugi Wilkinson wahedhom. Il-konjugi Wilkinson kellhom jiehdu hsieb il-manutenzjoni tal-fond ukoll;*

5. *Premess illi fl-istess skrittura, il-partijiet inghataw il-libertà sabiex iqabbdu lil Perit AIC Angelo Portelli sabiex jaghti stima tal-propjetà fl-istat komplut taghha u sabiex jistabilixxi il.valur fis-suq tal-istess. Illi l-atturi inqdew b'din il-klawzola u qabbdu lil Perit Angelo Portelli biex jistma l-fondi, liema valur gie ikkomunikat lil konvenuti;*

6. *Premess illi minkejja li l-konvenuti kienu obbligaw ruhhom li jaderixxu ma dan ir-rapport huma qieghdu il-propjetà minghajr il-kunsens tal-atturi fuq is-suq malagenti kollha jew 'il bicca kbira minnhom, bhal-prezz wisq oghla minn dak indikat mil-Perit biex ixekklu u anzi jassiguraw li ma jkunx hemm bejgh effettiv tal-propjetà. Illi ghalhekk effettivament il-propjetà ghalkemm lesta ma hix ghalbejgh fis-suq bil-prezz mifthiehem bejn il-partijiet, u dan ghad-dannu tal-atturi li la ghandhom pussess u lanqas ghandhom sehem mil-kirjiet u dan kif ser jirrizulta ampjament mil-kors tal-kawza;*

7. *Premess illi l-partijiet skont l-istess skrittura ftehimu illi ir-rikavat tal-bejgh eventwali tal-propjetajiet wara li jitnaqqsu l-ispejjez u t-taxxi relattivi, ser jinqasam in kwantu tletin fil-mija (30%) lil atturi u sebghin fil-mija (70%) lil konvenuti, ghas-saldu tal-investiment taghhom fil-propjeta in kwistjoni. Fir-rigward tal-mobbli il-partijiet kienu qabblu li dawn huma propjeta esklussiva talkonvenuti u huma l-konvenuti li ghandhom jaghzlu jekk ibieghu l-istess mal-kuntratt bi qliegh esklussiv ghalihom jew inkellajzommu l-istess mobbli;*

8. *Premess illi l-atturi awtorizzaw lil konvenuti sabiex jikru l-fond ghal-vantagg tal-istess konvenuti li minn naha taghhom kienu responsabbli ghal-manteniment u spejjez tal-fond. Illi bis-sahha ta' din il-klawzola l-konvenuti ma humiex qed jaghtu access liberu lil atturi u lanqas ma tawhom c-cwievet sabiex ikollhom access effettiv ghal-propjeta kollha biex b'hekk ukoll qed jistultifikaw kwalunkwe possibilta sabiex l-atturi juri l-propjeta lil xetrejja prospettivi;*

9. *Premess illi l-atturi iridu ki tinbiegh l-istess propjeta ai termini ta' Dok AF4 u cioe ghal prezz stabbilit, wara li tigi ikkancellata l-ipoteka specjali u r-rikavat jinqasam skont kif spjegat fl-istess skrittura dok AF4;*

10. *Premess illi ghalkemm l-atturi talbu lil konvenuti sabiex jaddivjenu ghal-process ta' bejgh kif spejgat fl-istess kuntratt kif jirrizulta mil-ittri interpellatorju u milittra uffcjali hawn annessi u mmarkat Dok AF6 huma baqghu inadempjenti u ghalhekk kellha ssir il-kawza odjema;*

Ghaldaqstant ir-rikorrenti jitolbu bir-rispett lil din il-Qorti Onorabbli joghgobha:

1. *tiddikjara li l-atturi huma s-sidien esklussivi tal-fond illum mibni bhala zewg maisonettes;*

2. *tiddikjara illi l-konvenuti cahdu l-istess atturi mil-pussess effettiv tal-propjeta taghom;*

3. *tordna lil konvenuti sabiex jaghtu kopja ta' kull cavetta, jew access card, li ghandha x'taqsam mal-post biex l-istess atturi ikollhom access effettiv ghal-propjeta kollha kemm hi fi zmien qasir u perentorju li ghandu jigi stabbilit mil-Qorti u fin-nuqqas torda lil istess atturi sabiex ibiddlu is-serraturi jew modalitajiet ta' access a spejjez tal-istess konvenut;*

4. *tiddikjara li l-konvenuti huma responsabbli ghad-dannu sofferti mil-atturi minhabba li bl-agir irresponsabbli taghhom l-konvenuti qed izommu l-atturi milli jbieghu l-fond kif ftehmu il-partijiet flimkien u konsegwentement b' ghemilhom listess konvenuti qed jiksbu akkrexximent indebitu ghad-detrimenti tal-interessi tal-istess atturi;*

5. *tillikwida l-ammont tal-istess akkrexximent indebitu u tordna lil konvenuti jersqu ghal-likwidazzjoni ta' danni soferti mil-atturi minhabba li fl-ewwel lok ostakolaw u inibew l-access liberu ghal-propjeta, u fit-tieni lok billi marru ghand l-agenti tal-propjetà minghajr il-kunsens tal-atturi, u qieghdu l-propjeta ghal-bejgh ghal prezz ezagerat immens, bl-ghan li ma tinbieghx il-propjeta u l-istess propjeta tibqà fil-pussess esklussiv taghhom u tibqa tinkera ghal gwadan esklussiv taghhom ghal zmien indefinittiv;*

6. *Konsegwentement tinibixxi lil konvenuti milli jkomplu jikru l-maisonettes, mibnija fuq il-propjetà mertu ta' din il-kawza mid-data li din il-Qorti jidhrilha li huwa xieraq u opportun;*

7. *tordna li l-proprjetà ghandha tinbiegh skont il-prospett tal-Petit Anglu Portelli, b'dana li titqieghed fuq is-suq bil-mod kif ddeskriva l-istess perit u ghal-imsemmi prezzijiet jew alternattivament billi l-maisonettes jitpoggew ghal bejgh bissubbasta jew separatament jew flimkien taht is-supervizzjoni ta' din il-Qorti Onorabbli, bil-prezz tal-bejgh jew l-ewwel offerta effettiva ikun il-prezz indikat mil-perit u bil-kundizzjoni li titnehha l- ipoteka specjali aggravanti fuq il-fond, bl-ammissjoni tal-oblaturi estranji;*

8. *tordna li r-rikavat mil-istess bejgh privat jew bis-subbasta, wara li jitnaqqsu l-ispejjez ghandu jinqasam in kwantu ghal-tletin fil-mija (30%) lil attur u sebghin fil-mija (70%) lil konvenuti ghas-saldu tal-pretensjonijiet koliha tal-partijiet fir-rigward l-immobbli;*

9. *tahtar Nutar Pubbliku sabiex jippubblika l-kuntratti relattivi u sabiex kontestwalment mal-bejgh tal-maisonettes jew minn minnhom ghal-prezz determinat, jirriduci jew jikkancella l-ipoteka specjali sabiex jirrifletti l-bilanc dovut, biex jigi assigurat li l-maisonettes jinbieghu jew flimkien jew separatament bhala liberi u frank minn kull piz;*

10. *Bl-ispejjez u l-imghaxijiet dekoribbli skont il-ligi kontra l-konvenuti li huma minn issa ingunti ghas-subizzjoni.*

Having seen the reply filed by defendants:

1. *Illi t-talbiet attrici huma totalment infondati fid-dritt u fil-fatt u ghandhom jigu michuda bl-ispejjeż kollha kontra taghhom, u dan, fost affarijiet ohra, gharaġunijiet elenkati f'iktar dettall hawn taht;*

2. *Illi jekk l-ewwel talba tal-atturi hija intiża biss sabiex jigi kkonstatat li titolu ta' proprjetà tal-fond de quo huwa intestat fuq isem l-atturi, minghajr b'ebda mod ma jittiefsu d-drittijiet u obbligi rispettivi tal-partijiet naxxenti mill-kuntxatti u skritturi ffirmati bejniethom u elenkati milbatturi infushom, allura dik it-talba saret inutilment u l-ispejjeż relattivi ghandhom jigu addossati interament u esklużivament fuq l-istess atturi;*

3. *Illi jekk, ghall-kuntrarju, permezz ta' din it-talba, l-atturi qeghdin jippruvaw jottjenu dikjarazzjoni tal-Qorti li b'xi mod tista' tiftiehem li ma humiex marbutin bit-termini u kundizzjonijiet naxxenti mill-kuntratt eżebit bhala Dokument AF2, u l-iskrittura Dokument AF4, f'dik l-eventwalità, it-talba taghhom hija nfondata fid-dritt u fil-fatt u ghandha tigi respinta bl-ispejjeż kollha jkunu a kariga tal-istess atturi;*

4. *Dan ghaliex dak il-kuntrati u skrittura huma validi u vinkolanti fuq u joholqu drittijiet favur l-esponenti li huma kemm drittijiet reali kif ukoll personali. Konsegwentement, d-dritt ta' proprjetà tal-atturi la jista' jkun "esklużiv" u lanqas mhux imxekkel;*

5. *Illi t-tieni talba hija daqstant iehor infondata fid-dritt u fil-fatt. Il-pussess tal-fond de quo gie akkwistat mill-esponenti, bil-kunsens u piena aderenza tal-*

atturi nfushom in eżekuzzjoni tat-termini u kundizzjonijiet pattwiti fid-dokumenti AF2 u AF4. Konsegwentement minn banda, ma kienux l-esponenti li "ċaħdu" lill-atturi minn dak il-pussess; u mill-banda l-oħra, l-atturi huma obbligati li joqgħodu għall-kundizzjonijiet pattwiti f'dawk il-kuntratt u skrittura u josservawhom, u għalhekk ma jistgħu jagħmlu xejn li permezz tiegħu jneżżgħu lill-esponenti minn dak il-pussess;

6. *Għal dawn ir-raġunijiet ukoll, it-tielet talba għandha tiġi riġettata;*

7. *Ir-raba talba hija wkoll infondata għaliex l-esponenti ma għamlu xejn li permezz tiegħu żammu lill-atturi milli jbiegħu l-fond de quo. L-esponenti jaqblu li dan il-fond jinbiegħ, imma jekk u meta dan isir, il-prezz rikavat għandu jirrifletti l-investiment taż-żewġ partijiet fih kif sejjer jiġi spjegat iktar l'isfel;*

8. *Fit-tieni lok, dejjem b'riferenza għal din ir-raba talba, l-esponenti ma qegħdin jirrealizzaw l-ebda arrikkiment indebitu għad-detriment tal-atturi minn dan il-fond. Kif diġà intqal, il-pusses tal-fond ġie affidat lilhom bis-saħħa tal-iskrittura u kuntratt iffirmati bejn il-partijiet u hekk ukoll l-introjtu mill-kera ta' dan il-fond jispetta esklużivament lilhom in eżekuzzjoni ta' dak il-kuntratt u dik l-iskrittura;*

9. *Għal dawn l-istess raġunijiet, il-ħames talba wkoll għandha tiġi miċħuda bl-ispejjeż relattivi kontra l-atturi;*

10. *L-istess raġunijiet jimmilitaw ukoll kontra s-sitt talba. Inoltre, il-paragrafu 1 tal-iskrittura tal-11 ta' Novembru 2008, Dok, AF4, jistipula ċar u inkontrovettibbilment li huma l-esponenti u ħadd iktar ħliefhom li għandhom jikru l-maisonettes u jżommu l-kera rikavata minnhom bi ħlas tal-ispejjeż addizzjonali li huma nvestew fil-fond, u l-imgħaxijiet fuq dawn l-ispejjeż;*

11. *Kuntrarjament għall-impressjoni li qegħdin jippruvaw jagħtu l-atturi, il-ftehim tal-2008 ma kienx xi ħaġa li ġiet imposta fuqhom jew li huma ffirmaw kontra l-volontà tagħhom. Kienet biss konsegwenza tal-fatt li ddeċidew, unilateralment u għal raġunijiet imputabbli lilhom biss, li ma jonorawx assunti minnhom ta' skrittura oħra firmata preċedentement bejn il-partijiet fis-27 ta' Jannar 2006. Dan sehh fil-mument li l-iżvilupp fuq de quo kien għadu fl-istadju inizjali tiegħu, u mhux, kuntrarjament għal dak li jgħidu fi stadju ta' ġebel u saqaf. Dan poġġa lill-esponenti f'sitwazzjoni fejn, sabiex jitkompla oriġinarjament ipprospettat bejn il-partijiet, kienu kostretti jinvestu ħafna ikiar flus minn dak oriġinarjament ippjanat minnhom, sabiex jitkompla u jitlesta l-proġett. Kien għalhekk, u għalhekk biss, li ġiet iffirmata l-iskrittura ta' Novembru 2008. U kien għalhekk li dik l-iskrittura tistipula dak li effettivament tistipula dwar min fost il-partijiet għandu jippercepixxi l-introjtu mill-kera tal-proġett;*

12. *Huwa fatt ukoll li sallum għadu ma nstab offerent li lest li jħallas il-prezz indikat mill-atturi nfushom għalhekk ma hemm l-ebda fattur materjali li jista' b'xi mod jiġġustifika t-tentattiv tal-atturi li jeludu l-obbligazzjonijiet assunti minnhom bis-saħħa tal- imsemmija skrittura. Konsegwentement it-tielet, ir-*

raba, il-ħames, is-sitt talba huma inammissibbli għaliex imorru diametralment kontra dak stipulat bonarjament bejn il-partijiet;

13. *Illi s-seba' talba ma għandhiex tintlaqa' għaliex, kif sejjer jiġi ppruvat waqt it-trattazzjoni tal-kawża, redatta mill-Perit Angelo Portelli hija waħda skorretta, ibbażata fuq premessi u kunsiderazzjonijiet skorretti u tonqos milli tieħu in kunsiderazzjoni elementi importantissimi li inevitabbilment jirriflettu u jimpingu fuq il-valur tal-fond;*

14. *Illi d-disa' talba hija intempestiva u ma tistax tiġi milqugħa. Il-kuntratti li l-atturi qegħdin jitolbu li jiġu ppubblikati jistgħu jiġu ppubblikati biss jekk u meta jinsab offerent li jagħmel offerta għall-akkwist tal-fond li tissodisfa t-termini u kundizzjonijiet patwiti bein il-partijiet sa issa għad ma nstab xerrej simili;*

15. *Finalment, l-atturi lanqas ma huma korretti meta jgħidu jew jippruvaw jagħtu xi impressjoni li huma l-esponenti li qegħdin joħolqu xi ostakoli sabiex jinsab bejgħ tal-fond de quo. Għall-kuntrarju huma li stinatament qegħdin jirritjutaw li jattendu għal seduta mal-esponenti li jiġi mfassal pjan dwar x'għandu jsir mill-fond, kif sejjer jiġi ippruvat fid-dettall waqt it-trattazzjoni tal-kawża;*

16. *Salvi risposti ulterjuri fid-dritt u fil-fatt.*

Having seen the documents exhibited;

Having heard the witnesses produced and having seen the transcripts of the evidence given;

Having seen the report presented by the Architect Angelo Portelli (which report did not result to have been duly sworn) although at a later stage, he appeared before this Court and answered under oath to questions made to him by the legal counsel of defendants.

Having seen the note of final submissions of the respective parties;

Having seen that in the note of final submissions of plaintiffs, the first, second, third, sixth, eighth and ninth claims were withdrawn;

Having seen that this case was adjourned for judgement;

Having seen all the acts of this case;

Considers:

The Ccourt notes that in their note of submissions, the plaintiffs outlined that pursuant to the sale of the properties in question, their claims numbered 1, 2, 3, 6, 7, 8, and 9 were withdrawn and that only claims numbered 4, 5 and 10 should be dealt with by this Court.

Thus, this Court shall focus on the fourth and fifth request, which both deal with unjustified enrichment and the final request which deals with

court case expenses and interests. This notwithstanding the fact that these other claims were never withdrawn through a relative note in the acts of this case, nor were any reservations made by plaintiffs about expenses when the said plaintiffs withdrew these claims.

Plaintiffs and defendants concur that their relationship is regulated by means of an agreement enrolled in the deeds of Notary Public Doctor of Laws Paul George Pisani dated the 11th November 2008 (Dok. AF 2 at fol 11 et seq), by means of which parties premised that:

(a) by a deed in the same notary's deeds dated 27th January 2006, spouses Scerri had purchased the property at numbers 18 and 19 Triq Kortoll, Xagħra, Gozo;

(b) that the funds for the acquisition of that property had been disbursed as to 50% by spouses Wilkinson;

(c) that the property had been subjected to extensive reconstruction and renovation works and the funds necessary have been disbursed in unequal portions between spouses Scerri and Wilkinson;

(d) further funds which are required to finish the property and to furnish it, shall be disbursed in their entirety by spouses Wilkinson; and

(e) in warranty of repayment by Spouses Scerri to spouses Wilkinson of the funds that will have been disbursed by spouses Wilkinson, spouses Scerri is constituting a special hypotec over the same property in the amount of €300,000.

On the same date, i.e. 11th November 2008, spouses Scerri and spouses Wilkinson signed a private agreement (Doc AF 4 at fol 15 et seq) whereby they agreed as follows:

a. they annulled the private writing of the 27th January 2006;

b. although the property in question was acquired by spouses Scerri, all the funds necessary for purchase and acquisition of this property have been disbursed in equal amounts between spouses Scerri and spouses Wilkinson;

c. the funds necessary for demolition, redevelopment, redecoration and finishing of the property have been disbursed in unequal amounts by spouses Scerri and spouses Wilkinson, with spouses Wilkinson disbursing a larger proportion of these funds;

d. all funds required to finish the property in such a manner that it can be rented out shall be disbursed in their entirety by spouses Wilkinson;

e. all funds for the proper maintenance of the property shall be disbursed by spouses Wilkinson;

f. either party may request Architect Angelo Portelli to establish the market value of the property in its finished state. If the architect cannot, or refuses to establish the market value, each party shall appoint its own architect and these two architects shall set out what s/he considers to be the fair market value of the property in its then state and condition separately. The market value shall be considered to be the mean between the two values set out by these two architects;

g. the property shall be put up for sale on the open market as soon as practicable after it has been fully finished, and parties bind themselves reciprocally to accept any such offers as are made for the acquisition of the house and which meet or exceed the market value of the property. The property shall be kept for sale on the open market, and may not be withdrawn unilaterally by either party;

h. once an offer has been received which meets or is in excess of the market value of the property, both parties shall be bound to appear on, and sign all agreements necessary to execute the sale in favour of the third party;

i. the net proceeds shall be divided as to thirty percent (30%) in favour of spouses Scerri and seventy percent (70%) in favour of spouses Wilkinson. The amount receivable by the spouses Wilkinson shall be so received by them in full and final settlement of all their capital investment in the property and any and all interests that may have otherwise accrued in their favour on the capital made by them. Spouses Wilkinson shall not have any claims for damages against spouses Scerri in the event that the net amount receivable shall be less than the capital investment made by them;

j. parties bound themselves to, as soon as practicable after the effective sale of the property, draw up a statement of account listing all expenses that have been disbursed by each of them relating to the property. Subsequently the proportion of funds receivable by each party will be altered to reflect the precise proportion of funds disbursed by each party;

k. moveable items (except for the kitchen and its appliances) shall be purchased at the sole expense of spouses Wilkinson, who shall remain sole owners of the same moveable items. It shall be in their absolute discretion to either sell these items together with the sale of the immovable, with all proceeds from the sale of the movables

being retained by spouses Wilkinson, or remove the movable items from the property immediately prior to the sale of the immovable;

l. spouses Wilkinson are authorised to rent out the property, in whole or in part, once finished and furnished. All proceeds from the rental or other use of the property shall be retained by spouses Wilkinson;

m. likewise all expenses relating to the lease of the property, including maintenance, water and electricity meter rental and consumption, any licence or permit fees, and any tax payable in respect of income derived from such leases shall be borne entirely by spouses Wilkinson;

n. spouses Scerri shall be entitled at any time between date of private writing and the date of any offer for the sale of the property which meets or exceeds the market value thereof, to make up the difference in the relative disbursements made by the two parties including the monies spent in furnishing the property. Thereafter, any income received, whether from renting out or selling the property, shall be apportioned equally between the two parties, and likewise all expenses relating to the property shall continue to be disbursed equally between them.

In their note of submissions, plaintiffs claimed that their requests ought to be favourably considered on the basis of the *actio de in rem verso* principles as defined under section 1028A et seq of the Civil Code. Defendants pointed out in their note of submissions, and also in their reply to the writ of summons that the right of action in respect of unjustified enrichment only arises if there is no other legal basis which the alleged creditor may utilise to bring forward his claim. Defendants argued that since the parties' relationship is regulated by the bilateral contract entered into between them by virtue of the private writing on the 11th November 2008, plaintiffs' claims cannot be evaluated in the light of articles 1028A et seq of the Civil Code, but in terms of articles 992 and 993 of the Civil Code acted within their rights when they rented out the property.

As regards the *actio de in rem verso,* this Court shall make reference to various jurisprudence which explained this type of action. The Court of Appeal in its judgement of 15th June 2023 bearing the names of Aldrin Muscat v. Charles u Bridget Sacco where it was explained that:

"Din il-Qorti tissokta billi tgħid li jirriżulta li l-attur appellat sejjes din l-azzjoni tal-lum fuq il-bażi tal-actio de in rem verso, li kif wieħed jista' jsib fl-Artikolu 1028A tal-Kodiċi Ċivili tipprovdi li min, mingħajr kawża ġusta, jistagħna ruħu għad-dannu ta' ħaddieħor għandu fil-limiti tal-arrikkiment ihallas lura u jikkumpensa għal kull tnaqqis patrimonjali li setgħet sofriet dik il-persuna. Il-limiti tal-azzjoni huma l-qies tal-vantaġġ li t-terza persuna tkun kisbet minħabba l-ispejjeż minfuqa mill-parti

attrici, u għandha l-mira li terġa' trodd l-ekwilibriju bejn il-patrimonju ta' min ikun staġħna u dak talparti li tkun għamlet jew nefqet spejjeż biex dan ikun seħħ (ara Edward Callus et v. Alfred Galea et deċiża mill-Qorti tal-Appell fil-25 ta' Marzu, 2011).

Bilkemm hemm bżonn illi jingħad, biex wieħed ikun jista' jissokta bl-actio de in rem verso, dan irid iseħħlu juri n-nuqqas ta' raġuni li tiġġustifika l-arrikkiment ta' parti u l-ftaqir tal-parti l-oħra, b'dana li min laqa' għandu l-ħaġa, spiċċa biex sar iktar sinjur minn fuq daħar dik il-parti li tkun għaddietlu l-ħaġa (ara Richard Dimech v. Alessio Zammit deċiża mill-Qorti tal-Appell fit-30 ta' Marzu, 2022, Jan Sammut v. Vincent Farrugia et deċiża mill-Qorti tal-Appell fit-23 ta' Novembru, 2020 u Francis Montanaro et v. Carmelo Mifsud deċiża mill-Qorti tal-Appell fil15 ta' Diċembru, 2015). Azzjoni bħal din hija mnissla mill-prinċipju, jure naturae aequum est, neminem cum alterius detrimento, et injuria fieri locupletiorem, li jfisser li bil-liġi naturali huwa xieraq li ħadd ma jistagħna bit-telf jew ħsara ta' ħaddieħor. ..... Kif rajna aktar kmieni, biex wieħed jista' jdur fuq ir-rimedju tal-actio de in rem verso taħt l-Artikolu 1028A tal-Kodiċi Ċivili, hemm bżonn li jintwera li l-istagħnar isir mingħajr kawża ġusta. F'dan il-każ ma jistax jingħad li hemm kawża inġusta ta' stagħnar, meta hija l-liġi stess li trid li min jonfoq flus fuq art miżmuma b'titlu prekarju m'għandux jedd li jiġi kkumpensat għal dak li jkun nefaq..."

The First Hall of Civil Courts in its judgement dated 7th October 2004 in the names of Francis Paris et vs Maltacom plc outlined:

"Issa kif qalet din il-Qorti fil-kawża "Said vs Testaferrata Bonnici", deciża fis-16 ta' Ġunju, 1936, l-elementi tar-rimedju komunement magħruf bħala "de in rem verso" huma tlieta, u cioe', "l'arricchimento", "il vincolo di causalita" u "il carrattere ingiusto dell'arricchimento".

Dan it-tielet element bażikament ifisser illi din l-azzjoni ma hijiex applikabbli meta hemm kuntratt li jirregola rrelazzjonijiet bejn il-partijiet. Ir-rimedju "de in rem verso" huwa rimedju sussidjarju li jista' jiġi invokat biss meta bejn il-partijiet m'hemmx kuntratt li b'mod espress u definit jorbot il-partijiet (ara "Scicluna vs Watson", deciża mil-Onorabbli Qorti tal-Appell fil-15 ta' Lulju, 1901).

Jekk persuna, fuq kuntratt, torbot lilha nfisha għallesekuzzjoni ta' xi obbligazzjoni, jekk dak il-kuntratt ikun validu u mhux soġġett għar-rexissjoni, l-istess irid jiġi eseġwit, u ma jistax jiġi sottomess li l-esekuzzjoni ta' dak il-kuntratt joħloq arrikiment ingust.

Kif jgħid il-Baudry - Lacantinerie ("Delle Obbligazioni" Vol. IV pag. 550), biex tista' tirnexxi din l-azzjoni, "Bisogna che l'arricchito non possa giovarsi di un fatto giuridico che lo autorizzi a conservare l'arricchimento". Jekk għar-rizultanzi hemm att ġuridiku, kif inhu kuntratt, ma jistax jingħad li dawk ir-rizultanzi huma senża causa. Hu interessanti l-eżempju li dan l-awtur iġib biex isostni dan l-argument:

"Un locatario ha fatto fare riparazioni o miglioramenti nell'immobile affittato. Ora, in virtu' di una clausola formale del contratto di fitto, i lavori di questa natura eseguiti per

ordine del locatario dovranno, alla fine dell'affitto avvantaggiare il proprietario, senza che questo abbia a pagare indennita'. Una volta spirato l'affitto, l'imprenditore, non essendo stato pagato dal locatario, pretende agire de in rem verso contro il proprietario. Gli puo' questo opporre il diritto che risulta per lui dalla clausola sopra indicata? La giurisprudenza risolve la questione affermativamente, e crediamo che abbia ragione. Se il proprietario puo', senza indennita, avvantaggiarsi delle riparazioni o dei miglioramenti realizzati dal locatario, questo vantaggio e' stato certamente preso in considerazione nel fissare il prezza dell'affitto, di guisa che il proprietario l'ha ottenuto soltanto con un sacrificio equivalente. Cio' si riduce a dire che in realta' non vi e' arricchimento e che quindi manca la prima delle nostre condizioni".

Dan hu konformi mal-principju li darba bejn il-partijiet hemm ftehim li jirregola r-relazzjonijiet ta' bejniethom, hu prezunt li qabel ma iffirmaw dak il-ftehim qiesu c-cirkustanzi tal-kaz u l-interessi taghhom, u allura darba iffirmaw il-kuntratt, huwa dak il-kuntratt li jissanzjona r-relazzjonijiet ta' bejn il-kontendenti, u mhux xi principju iehor, ancorche' bazat fuq l-ekwita'. Il-principju tar-rispett ghal volonta' tal-partijiet huwa wiehed fondamentali u dak li ftehmu fuqu il-partijiet ghandu "forza ta' ligi" ghalihom (artikolu 992 tal-Kodici Civili), u l-Qorti m'ghandhiex tuza d-diskrezzjoni taghha biex tissostitwixxi ghal dak li ftehmu l-partijiet il-volonta' taghha."

In the case bearing the names of Blye Engineering Co. Ltd. Vs Stanley u Margaret konjuġi Sullivan decided on 26th April 2002, the First Hall Civil Court pointed out:

"L-atturi qed jesperixxu l-azzjoni maghrufa bhala 'de in rem verso'. Dina l-azzjoni hija wahda sussidjarja meta l-azzjoni ex contractu mhux possibbli u hija proponibbli meta d-danneggjat ma jistax jesperixxi azzjoni ohra biex inehhi l-pregudizzju subit. (Ara Torrente u Schelsinger). L-azzjoni hi bazata fuq il-principju li persuna ma tistax tiehu vantagg minn dannu arrekat lill haddiehor (nemo locupletari potest cum aliena iactura) u il-limiti taghha hu sal vantagg li t-terza persuna takkwista. L-azzjoni ssir biex jigi ristabilit ekwilibriju bejn iz-zewg patrimoni."

In the judgement also given by the First Hall of the Civil Courts on 25th April 2017 in the names of Anthony Pace et vs Maria Pace, it was outlined that:

"Illi l-azzjoni tentata mir-rikorrenti hija l-azzjoni de in rem verso.

> *Din l-azzjoni, kif kwalifikata fid-duttrina u fil-gurisprudenza "hija rimedju sussidjarju estiz ghall-kazijiet meta tkun avverat ruhha lokupletazzjoni effettiva ghad-dannu ta' haddiehor, u ssib il-fondament taghha fil-principju "jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem" (L. 206 fr. de regulis juris)" ("Giuseppe Calleja –vs- Walter Zammit Tabona", Appell Kummercjali, 5 ta' April 1957).*
>
> *Illi din l-azzjoni, llum hija statutorjament stabbilita fl-artikolu 1028A u 1028B tal-Kodici Civili. Illi ghalkemm fiz-zmien li nfethet din il-kawza, ma kienx ghad*

hemm fis-sehh dawn id-dispozizzjonijiet tal-Ligi, li dahlu fis-sehh permezz tal-Att VIII tal-2007. Izda, l-insenjament u l-principji li jsejsu din l-azzjoni kienu ilhom stabbilti fil-gurisprudenza nostrana.

Difatti, l-elementi li jsawru din l-azzjoni huma:

1. Il-vantagg jew utilita` minhabba xi gid ta' haddiehor li ghadda ghandha bla ma sar il-hlas ghalih, ossija larrikiment ingustifikat ('l arrichimento').

2. In-ness ta' kawzalita bejn il-hidma ta' parti u l-vantagg/jew arrekkiment tal-parti l-ohra jircieva l-haga.

3. Min ikun ircieva l-hidma tal-atturi, ikun arrikixxa ruhu b'dak li ghadda ghandu u fil-patrimonju tieghu, u dan minghajr ebda titolu. Dan huwa element li l-gurista Baudry

Lacantinerie "Delle Obligazioni", Vol. IV pag.550, jiddiskrivi bhala "il carattere ingiusto dell'arricchimento". (Ara Said vs Testaferrata Bonnici P.A. – 16 ta' Gunju 1936, George Sladden vs Albert Mais et, P.A. (TM) – 27 ta' Jannar 2005), Blye Engineering Co. Ltd. vs Victor Balzan et (App. Inf. (PS) – 23 ta' Gunju 2004).

Illi l-principji li jirregolaw din l-azzjoni gew enuncjati wkoll filkaz Rocco Bugeja vs George Micallef P.A. (Imh. W. Harding) (Vol. XXXIV.i.784), fejn saret referenza ghal insenjament tal-guristi Aubry u Rau u ntqal:

"l actio de in rem verso e` un mezzo speciale, particolare, sussidiario, che si accorda in mancanza di altra tutela, quando al danneggiato non compete altro rimedio dipendente dal contratto o quasi contratto o quasi contratto."

Illi isegwi u dan huwa assodat fil-gurisprudenza nostrali li mhux lecitu li wiehed jaghmel profitt a skapitu ta' haddiehor. Koncettwalment, il-profitt huwa dak li ghandu dritt ghalih il-persuna li tkun ghamlet din it-tip ta' kawza u f'dan il-kuntest il-persuna li tkun inkorriet tali ndebitu hija ntitolata li tircievi kumpens gust, li ghandu allura jkun simili jew jekwivali ghall-valur tal-benefikati jew miljoramenti li saru. Fil-fatt fil-kawza "Emanuel Bartolo vs Victor Micallef" (P.A. - 28 ta' Ottubru, 2004) inghad li:-

"Ghalhekk, il-limiti tal-azzjoni huma l-qies tal-vantagg li tterza persuna tkun kisbet minhabba l-ispejjez minfuqa mitterz, u ghandha l-mira li terga' trodd l-ekwilibriju bejn ilpatrimonju ta' min ikun staghna u dak tal-parti li tkun ghamlet jew nefqet spejjez biex dan ikun sehh. Billi din l-azzjoni ghandha l-gherq taghha fl-istitut tal-kwazi-kuntratt, irid jintwera li l-fatt huwa wiehed lecitu u volontarju u li minnu titnissel obbligazzjoni, u li l-fatt ma jkunx sehh kontra l-projbizzjoni espressa tal-parti interessata".

Illi huwa assodat ukoll li din l-azzjoni hija wahda ekwitattiva.

Difatti, l-principju li huwa l-pern ta' din l-azzjoni huwa dak li mhuwiex xieraq li persuna tistaghna a dannu ta' haddiehor (nemo licet locupletari cum aliena iactura)

(Ara Tasika Auto Limited vs Jason Mizzi et, P.A. (JRM) - 17 ta' April 2012. Ghaldaqstant, l-ghan ta' din l-azzjoni hi li trodd lura l-bilanc bejn dak li ghamel spejjez u l-parti l-ohra li tkun arrikkiet ruhha u gawdiet b'konsegwenza ta' dan.

Illi gie ribadit li din l-azzjoni ghandha l-qofol taghha fl-istitut tal-kwazi-kuntratt. Fil-fatt, din l-azzjoni hija koncessa meta mhix esperibbli l-azzjoni ex contractu. (Ara Grima vs Fava et P.A. – 14 ta' Dicembru 1966 (Kollez.Vol. L.ii.487); Difatti din l-azzjoni hija rimedju sussidjarju estiza ghal meta jsir larrikiment indebitu a dannu ta' haddiehor, in forza talprincipju jure naturae aequum est neminem cum alterius detriment et injuria fieri locupletiorum. (Ara Vincent Parnis vs Av. Dr. Giuseppe Vella (1955) Vol. XXXIX.II.764; Josephine Gusman vs Anthony Agius et P.A. (NC) – 21 ta' Jannar 2004) u Louis Vella vs Alfred Borg et P.A. (G.V. – 16 ta' April 2004); u gie ribadit ukoll li ma tistax tinbeda jekk mhux wara li l-attur ikun fittex ghalxejn mod iehor lil min arrikixxa ruhu bi hsara tieghu, jew jekk ma jintweriex li ma kien hemm ebda azzjoni li setghet issir. (Ara Zammit vs Farrugia et P.A. – 10 ta' Dicembru 1955 (Kollez.Vol. XXXIX.ii.787); Harry Saliba vs Denise Caruana P.A. (JRM) – 6 ta' April 2006."

The Court continued to point out the following as regards the liquidation of the compensation in lieu of unjustified enrichment:

"Illi gie ribadit fil-kaz Doris Ellul et v Francis Camilleri et (PA PS 3/10/2003) "Huwa kontrovers fid-duttrina jekk l-indennizz jigix determinat in rapport ghall-arrikkament inizzjali jew ghal dak persistenti fil-mument tad-domanda gudizzarja jew tal-gudizzju dwarha. It-trattist Trabucchi ("Arrichimenti") jopta ghal din it-tieni ipotezi. Il-Laurent ("Principii di Diritto Civile", Vol. XX paragrafu 340) isostni li l-indennita` trid tigi kalkolata "sino alla concorrenza di quanto e` stato vantaggiato". Fuq il-bazi ta' dan l-insenjament hi s-sentenza fl-ismijiet "Dr. Emm.Said –vsNobbli Marquis D. Testaferrata Bonici Ghaxaq", Prim Awla, Qorti Civili, per Imhallef W. Harding,16 ta' Gunju 1936."

Ikkunsidrat li l-kumpens f'kaz ta' azzjoni de in rem verso ma jiddependix biss fuq is-somma sborsata, izda fuq korrelazzjoni bejn it-telf u l-gwadann. Kif jinghad mill-awturi Baudry Lacantinerie et Barde ("Trattato Teorico Pratico di Diritto Civili" voce "Delle Obbligazzione" Vol. IV pagna 551): "L'azione de in rem verso, essendo una specie d'azione in restituzione, non puo` far ottenere all'attore piu` dell'ammontare della perdita sofferta. Ma, d'altra parte, e` data soltanto nella misura dell'arricchimento di colui contro il quale compete, perche` l'equita` e` soddisfatta dal momento che egli restituisce tutto cio` di cui si e` arricchito.

Cosi` il massimo che puo` essere accordato dei guridici all'attore e` rappresentato dall'impoverimento, se e` inferiore all'arricchimento, e, nel caso inverso, da questo."

Illi fil-kaz fl-ismijiet Richard Azzopardi vs Isabel Cassar et – PA (JRM) 1/3/2004),15 gie ribadit li "Illi jidher li l-Qrati taghna laqghu l-applikazzjoni tal-kriterju li l-kumpens ghandu jkun il-konkorrenza tal-vantagg miksub mix-

xogħlijiet magħmulin u mhux biss għall-ispiża minfuqa biex twettqu dawk ix-xogħlijiet. Dan l-aħħar il-Qrati tagħna jidher li wessgħu il-medda tal-applikazzjoni tal-kumpens biex ikun magħmul jiddependi wkoll minn fatti sopravvenuti li kapaci jawmentaw, jew inaqqsu, l-arrikkiment. Rilevanti bħala elementi ta' konsiderazzjoni għall-valutazzjoni aktar konsona u gusta jitqiesu l-bwona jew mala fede tal-persuna vantaggjata u arrikkita". Din il-Qorti, fuq is-sahha ta' diversi kittieba li qrat dwar is-suggett, tasal biex tilqa' din ix-xejra ta' hsieb."

In the case decided on the 16th July 2024 in the names of Gaming Operations Limited (C-29897) v. Insignia Cards Limited (C-54426), the Court of Appeal started out by making reference to what was stated by the First Court:

"In linea ta' prinċipju ġenerali dwar il-mertu, l-azzjoni de in rem verso, kif kwalifikata fid-duttrina u fil-ġurisprudenza 'hija rimedju sussidjarju estiż għall-każijiet meta tkun avverat ruħha lokupletazzjoni effettiva għa-ddannu ta' ħaddieħor, u ssib il-fondament tagħha fil-prinċipju "jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem" (L. 206 fr. de regulis juris)', Giuseppe Calleja v. Walter Zammit Tabona, deċiża mill-Qorti tal-Appell Kummerċjali fil-5 ta' April 1957.

L-insenjament u l-prinċipji li jsejsu din l-azzjoni kienu ilhom stabbiliti filġurisprudenza ta' dawn il-Qrati. Huwa ritenut illi jinħtieġ:

1. Il-vantaġġ jew utilità minħabba xi ġid ta' ħaddieħor li għadda għandha bla ma sar il-ħlas għalih, ossia l-arrikiment inġustifikat ('l arrichimento');

2. In-ness ta' kawżalità bejn il-ħidma ta' parti u l-vantaġġ/jew arrekkiment tal-parti l-oħra li rċieva l-ħaġa;

3. Min ikun irċieva l-ħidma tal-atturi, ikun arrikixxa ruħu b'dak li għadda għandu u fil-patrimonju tiegħu, u dan mingħajr l-ebda titolu.

Dan huwa element li l-ġurista Baudry Lacantinerie 'Delle Obligazioni', Vol. IV pag. 550, jiddeskrivi bħala 'il carattere ingiusto dell'arricchimento' (Ara Said v. Testaferrata Bonici, deċiża millPrim Awla tal-Qorti Ċivili fis-16 ta' Ġunju 1936, George Sladden v. Albert Mais et, deċiża mill-istess Qorti fis-27 ta' Jannar 2005 u Blye Engineering Co. Ltd. V. Victor Balzan et, deċiża mill-Qorti talAppell Inferjuri fit-23 ta' Ġunju 2004.

Il-prinċipji li jirregolaw din l-azzjoni ġew enunċjati wkoll fis-sentenza flismijiet Rocco Bugeja v. George Micallef, deċiża mill-Qorti talKummerċ fis-16 ta' Marzu 1950 fejn saret referenza għall-insenjament tal-ġuristi Aubry u Rau u ntqal, «l'actio de in rem verso è un mezzo speciale, particolare, sussidiario, che si accorda in mancanza di altra tutela, quando al danneggiato non compete altro rimedio dipendente dal contratto o quasi contratto o quasi contratto.»

Isegwi, u dan huwa assodat fil-ġurisprudenza, li mhux leċitu li wieħed jagħmel profitt a skapitu ta' ħaddieħor. Konċettwalment, il-profitt huwa dak li għandu dritt għalih il-persuna li tkun għamlet din it-tip ta' kawża u f'dan il-kuntest il-persuna li tkun inkorriet tali indebitu hija intitolata li tirċievi kumpens ġust, li għandu allura jkun simili jew jekwivali għallvalur tal-benefikati jew miljoramenti li saru. Fil-fatt, fil-kawża fl-ismijiet Emanuel Bartolo v. Victor Micallef, deċiża minn din il-Qorti diversament preseduta fit-28 ta' Ottubru 2004 inghad li:

«Għalhekk, il-limiti tal-azzjoni huma l-qies tal-vantaġġ li t-terza persuna tkun kisbet minħabba l-ispejjeż minfuqa mit-terz, u għandha l-mira li terġa' trodd l-ekwilibriju bejn il-patrimonju ta' min ikun staġħna u dak tal-parti li tkun għamlet jew nefqet spejjeż biex dan ikun sehh. Billi din l-azzjoni għandha l-għerq tagħha fl-istitut tal-kważi-kuntratt, irid jintwera li l-fatt huwa wieħed leċitu u volontarju u li minnu titnissel obbligazzjoni, u li l-fatt ma jkunx sehh kontra l-projbizzjoni espressa tal-parti interessata.»

Huwa assodat ukoll li din l-azzjoni hija waħda ekwitattiva. Difatti, l-prinċipju li huwa l-pern ta' din l-azzjoni huwa dak li mhuwiex xieraq li persuna tistagħna għad-dannu ta' ħaddieħor (nemo licet locupletari cum aliena iactura), (ara Tasika Auto Limited v. Jason Mizzi et, deċiża minn din il-Qorti diversament preseduta fis-17 ta' April 2012).

Għaldaqstant, l-għan ta' din l-azzjoni hi li jintradd lura l-bilanċ bejn dak li għamel spejjeż u l-parti l-oħra li tkun arrikkiet ruħha u gawdiet b'konsegwenza ta' dan.

Ġie ribadit ukoll li din l-azzjoni għandha l-qofol tagħha fl-istitut tal-kważikuntratt. Fil-fatt, din l-azzjoni hija konċessa meta mhix esperibbli lazzjoni ex contractu (ara Grima v. Fava et, deċiża mill-Prim'Awla tal-Qorti Ċivili fl-14 ta' Diċembru 1966).

Difatti din l-azzjoni hija rimedju sussidjarju estiża għal meta jsir larrikiment indebitu a dannu ta' ħaddieħor, in forza tal-prinċipju jure naturae aequum est neminem cum alterius detriment et injuria fieri locupletiorum (ara Vincent Parnis v. Av. Dr. Giuseppe Vella, deċiża mill-Prim'Awla tal-Qorti Ċivili fit-30 ta' Novembru 1955 u Josephine Gusman v. Anthony Agius et, deċiża mill-istess Qorti fil-21 ta' Jannar 2004). Ġie ribadit ukoll li ma tistax tinbeda jekk mhux wara li l-attur ikun fittex għalxejn mod ieħor lil min arrikixxa ruħu bi ħsara tiegħu, jew jekk ma jintweriex li ma kien hemm l-ebda azzjoni li setgħet issir (ara Salvatore Zammit v. Giuseppa Farrugia et, deċiża mill-Prim'Awla talQorti Ċivili fl-10 ta' Diċembru 1955 u Harry Saliba v. Denise Caruana deċiża mill-istess Qorti fis-6 ta' April 2006)."

The Court of Appeal in its judgement stated:

"17. Fl-ewwel aggravju tal-appell ewlieni, il-kumpanija konvenuta appellanti ICL tilmenta dwar id-deċiżjoni tal-Ewwel Qorti li qieset l-azzjoni attriċi bħala actio de in rem verso. ICL tfisser l-elementi marbuta ma' din it-tip ta' azzjoni, u tagħmel referenza estensiva għall-ġurisprudenza, li fiha jingħad li meta jkun hemm

relazzjoni kuntrattwali bejn il-partijiet, ma tistax titressaq azzjoni ta' arrikkiment indebitu. ICL tishaq li din it-tip ta' azzjoni ma tistax tirnexxi fejn ikun hemm relazzjoni ġuridika bejn il-partijiet, sakemm dik ir-relazzjoni ġuridika ma ġietx dikjarata nulla jew ġiet riżolta.

Minkejja li jista' jkun hemm ftehim jew istruzzjonijiet verbali, ir-relazzjoni ġuridika tibqa' waħda kuntrattwali u għalhekk ma jistax ikun hemm l-arrikkiment indebitu. Tkompli li dan għandu jitqies fid-dawl tal-fatt li bejn il-partijiet kien hemm kuntratt ta' sullokazzjoni, kif ukoll ftehim iffirmat fl-istess ġurnata dwar ix-xogħlijiet li kellhom isiru minn GOL qabel din listess sullokazzjoni u f'kaz ta' xogħlijiet addizzjonali l-imsemmi ftehim kien jipprovdi għall-proċedura partikolari. Din il-proċedura kienet taħseb sabiex xogħlijiet żejda li ma kinux imsemmija fil-kuntratt isiru wara li GOL iġġib stejjem u kunsens mingħand ICL permezz ta' firma ta' rappreżentant tagħha fuq l-istima. Il-kumpanija appellanti tgħid li wara li GOL naqset milli timxi skont dan il-ftehim, hija ressqet l-azzjoni de in rem verso.

18. ICL tilmenta li bid-deċiżjoni tal-Ewwel Qorti, jirriżulta li GOL kellha bażi kuntrattwali fuq xiex timxi fejn jidħlu xogħlijiet addizzjonali. Biss però ladarba GOL naqset li timxi skont dak li jipprovdi l-istess kuntratt qieset li ma setgħetx tfittex għal danni kuntrattwali u għalhekk ħasset li ma kellhiex triq oħra ħlief li tressaq din l-azzjoni. ICL tistaqsi kif l-Ewwel Qorti setgħet qatt tiddeċiedi li l-azzjoni setgħet titressaq skont l-Artikolu 1028A tal-Kodiċi Ċivili, meta kien hemm relazzjoni kuntrattwali bejn il-partijiet u dan kontra kull tagħlim ġuridiku dwar l-actio de in rem verso. Tinsisti li l-azzjoni mressqa minn GOL ma setgħet qatt tirnexxi meta l-partijiet għażlu volontarjament li jidħlu f'kuntratt li jirregola r-relazzjoni tagħhom inkluż l-obbligi u d-drittijiet tagħhom, u għalhekk jekk GOL ġarbet xi dannu konsegwenza ta' dik ir-relazzjoni kuntrattwali hija kellha tressaq azzjoni ex contractu. ICL tilmenta li bid-deċiżjoni tagħha l-Ewwel Qorti żnaturat lazzjoni de in rem verso u marret kontra snin ta' ġurisprudenza tal-Qrati Maltin dwar din il-materja. Dan meta l-Ewwel Qorti warrbet il-prinċipju ta' pacta sunt servanda u ġabet fix-xejn il-kuntratt li kien hemm bejn ilpartijiet. Tinsisti li l-azzjoni de in rem verso ma setgħetx titressaq fiċċirkostanzi tal-każ u li l-uniku rimedju li kellha GOL kienet dik kuntrattwali, u sahansitra li kieku kellha tfalli dik l-azzjoni, il-ħlas li tippretendi GOL taħt dan ir-rimedju mhuwiex possibbli.

19. Min-naha l-oħra, GOL tilqa' għal dan l-aggravju billi ssostni li lpożizzjoni ta' ICL tul il-kawża (inkluż fl-appell) huwa kontradittorju fis-sens li, min-naha tgħid li x-xogħlijiet li tagħhom huwa mistenni l-ħlas huma l-mertu tal-kuntratt ta' sullokazzjoni, kif ukoll ta' ftehim anċillari, iżda flistess waqt targumenta li x-xogħlijiet jaqgħu lil hinn mill-ftehim anċillari peress li x-xogħlijiet żejda kellhom jiġu approvati skont mekkaniżmu u proċedura maħsuba fl-istess ftehim, u għalhekk ix-xogħlijiet li l-ħlas tagħhom huwa mistenni kellhom isiru skont l-istess ftehim.

20. Fil-fehma tal-appellata GOL, il-punt kruċjali huwa li kien hemm ftehim verbali bejn il-partijiet dwar ix-xogħlijiet. Dan tgħidu peress li kieku ma kienx dan il-każ, dawn ix-xogħlijiet qatt ma kienu jsiru minnha u wisq inqas kienu jiġu

aċċettati minn ICL. Ġara iżda li ICL ħadet vantaġġ ħekk kif wasal il-mument ta' ħlas, billi ressqet ilment li l-proċedura miftehma ma ġietx segwita…. GOL tisħaq li l-Ewwel Qorti fehmet dan kollu meta kkonkludiet li x-xogħlijiet ma kinux parti mill-ftehim u minn apprezzament magħmul minnha waslet għallkonklużjoni li GOL ma kellha l-ebda għażla oħra ħlief li tressaq din lazzjoni ta' de in rem verso. Għalhekk GOL issostni li dan l-ewwel aggravju għandu jiġi miċħud.

22. Din il-Qorti mingħajr tlaqliq tqis li l-kumpanija konvenuta appellant għandha raġun f'dan l-aggravju tagħha. Il-kumpanija attriċi GOL ma setgħet qatt issejjes l-azzjoni tagħha tal-lum fuq il-bażi tal-actio de in rem verso.

23. Huwa minnu li l-limiti tal-azzjoni huma l-qies tal-vantaġġ li t-terza persuna tkun kisbet minħabba l-ispejjeż minfuqa mill-parti attriċi, u għandha l-mira li terġa' trodd l-ekwilibriju bejn il-patrimonju ta' min ikun staġħna u dak tal-parti li tkun għamlet jew nefqet spejjeż biex dan ikun sehh (ara Edward Callus et v. Alfred Galea et deċiża mill-Qorti tal-Appell fil-25 ta' Marzu, 2011).

24. Madankollu, il-liġi ma tieqafx hemm, iżda tipprovdi wkoll taħt l-Artikolu 1028B tal-Kodiċi Ċivili, li l-actio de in rem verso ma tistax tiġi eżerċitata meta min ġarrab it-telf, jista' juża azzjoni oħra sabiex tagħmel tajjeb għad-dannu. Illi sahansitra qabel ma daħal fis-sehh dan il-provvediment tal-liġi (bis-saħħa tal-Att VIII tal-2007) kien ilu aċċettat u stabbilit mill-ġurisprudenza li tali azzjoni hija mogħtija lill-persuna f'dawk il-każijiet fejn ma tistax titressaq la azzjoni ex contractu (ara s-sentenza ta' din il-Qorti (Sede Inferjuri) tat-23 ta' Ġunju, 2004 fil-kawża fl-ismijiet Blye Engineering Co. Ltd. v. Victor Balzan) jew lanqas dik akwiljana mnissla mill-fatt illeċitu jew sahansitra dik maħsuba għar-radd lura talħlas indebitu (ara s-sentenza ta' din il-Qorti (Sede Inferjuri) tas-26 ta' Frar, 2010 fil-kawża fl-ismijiet Christopher Desira v. Gasan Enterprises Ltd).

25. Din l-azzjoni hija msejħa wkoll sussidjarja għaliex ma tistax tinbeda jekk mhux wara li l-attur ikun fittex għalxejn mod ieħor lil min staġħna bi ħsara tiegħu (ara s-sentenza tal-Prim'Awla tal-Qorti Ċivili tal-4 ta' Marzu, 1955, fil-kawża fl-ismijiet John Seychell v. Emanuele Farrugia - Kollez. Vol: XXXIX.ii.593) jew jekk ma jintweriex li ma kien hemm l-ebda azzjoni li setgħet issir (ara s-sentenza tal-Prim'Awla tal-Qorti Ċivili tal-10 ta' Diċembru, 1955 fil-kawża fl-ismijiet Salvatore Zammit v. Giuseppa Farrugia et - Kollez. Vol: XXXIX.ii.787). Rilevanti f'dan is-sens ukoll huma s-sentenzi ta' din il-Qorti (Sede Inferjuri) tal-10 ta' Ottubru, 2005, fil-kawża fl-ismijiet Joseph Cachia v. Yellow Fun Limited, kif ukoll issentenza ta' din il -Qorti tat-23 ta' Novembru, 2020, fil-kawża fl-ismijiet Jan Sammut v. Vincent Farrugia et).

26. Fost il-ġurisprudenza li tirreferi għaliha l-appellanti ICL, hemm is-sentenza mogħtija mill-Qorti tal-Appell (Sede Inferjuri) fis-6 ta' Ottubru, 2010, fil-kawża fl-ismijiet Martin Chetcuti et v. Rosario Gatt et, li fiha jissemmew ħames elementi li għandhom simultanjament jikkoeżistu sabiex tirnexxi l-actio de in rem verso:

«….. jiġi rilevat f'tema ta' dritt illi mid-dispożizzjonijiet tal-Artikoli 1028A u 1028B, kombinati flimkien, jemerġu l-ħames presupposti li jridu simultanjament jikkoeżistu għall-iskop tal-azzjoni de in rem verso, u ċjoè:-

i. l-arrikkiment;

ii. id-dannu;

iii. il-korrelazzjoni bejn id-dannu u l-arrikkiment;

iv. il-mankanza ta' kawża ġusta;

v. il-mankanza ta' azzjoni oħra mil-liġi prevista;»

27. F'din is-sentenza ngħad ukoll li konsegwenza tal-Artikolu 1028B tal-Kodiċi Ċivili, jeħtieġ li tingħata interpretazzjoni restrittiva, b'tali mod li s-sussidjarjetà hi strument ta' kontroll għat-twessigħ tal-kamp operattiv tal-azzjoni. Jekk allura tista' titressaq azzjoni oħra, marbuta pereżempju ma' kuntratt, is-sussidjarjetà ma tqumx, għaliex l-attur ikollu jmexxi kontra l-arrikkit fuq il-bażi ta' dak il-kuntratt. Ara wkoll fuq it-tema ta' dan ilprinċipju s-sentenza fl-ismijiet Rokku Bugeja v. George Micallef, tal-Qorti tal-Kummerċ, tas-16 ta' Marzu, 1950, *fejn issir referenza għal dak li jingħad mill-awturi* Aubry et Rau, VI, para. 578*:*

«l'actio de in rem verso è un mezzo speciale, particolare, sussidiario che si accorda in mancanza di altra tutela quando al danneggiato non compete altro rimedio dipendente da contratto o quasi contratto».

28. Minn dan kollu jinżel li din il-Qorti ma tarax kif il-kumpanija attriċi setgħet qatt tirnexxi meta tisħaq li l-kawża ressqitha f'dawk il-parametri. Dan jingħad peress li r-rimedju de in rem verso huwa rimedju sussidjarju li wieħed jista' jistrieħ fuqu biss meta bejn il-partijiet m'hemmx kuntratt li b'mod espress u definit jorbot il-partijiet. F'dan il-każ jirriżulta li l-kumpanija attriċi GOL, fuq il-fteħim tat-28 ta' Lulju, 2012 (ara Dok. ICL1 f'paġna 21 tal-proċess), rabtet lilha nnifisha li twettaq numru ta' xogħlijiet li jkunu bi speċjeż tagħha (ara paragrafu numru 1 tal-imsemmi fteħim) u fejn ikunu meħtieġa xogħlijiet li jaqgħu lil hemm minn dik il-lista, kellha timxi skont il-proċedura maħsuba f'paragrafu numru 3. In-nuqqas ta' GOL li twettaq ix-xogħlijiet żejda li jingħad li ntalbet li tagħmel minn ICL, skont l-obbligazzjoni miftehma fl-istess kuntratt, ladarba dak il-kuntratt huwa validu u mhux suġġett għar-rexissjoni, l-istess irid jitwettaq hekk kif miftiehem, u ma jistax wara jingħad li l-eżekuzzjoni ta' dak il-kuntratt joħloq arrikkiment inġust. Ġaladarba hemm att ġuridiku, kif inhu kuntratt, lanqas jista' jingħad li dawk ir-riżultanzi huma mingħajr kawża ġusta.

Isegwi li jonqos element essenzjali sabiex tirnexxi l-azzjoni attriċi, sa fejn jingħad li hija msejsa fuq l-actio de in rem verso.

29. Ma jistax jiġi invokat l-arrikkiment indebitu meta l-arrikkiment hu kkawżat bl-eżekuzzjoni ta' dak li jkun ġie miftiehem f'kuntratt li l-partijiet ikunu daħlu liberament għalih. Ġaladarba l-bażi tal-arrikkiment li GOL tixli lill-kumpanija

konvenuta ICL, huwa l-kuntratt li ġie ffirmat fit-28 ta' Lulju, 2012, ma jistax jingħad li kien hemm arrikkiment "mingħajr kawża ġusta".

Kif rajna, wieħed mill-elementi meħtieġa sabiex tirnexxi l-azzjoni de in rem verso huwa li l-arrikkiment indebitu jrid isir mingħajr kawża ġusta. Għalkemm m'hemmx dubju li ICL ħadet benefiċċju mix-xogħlijiet li għamlet GOL, però l-bażi ta' dan il-benefiċċju hu l-ftehim li kellha ma' ICL.

Ma jistax ikollok arrikkiment mingħajr kawża ġusta fejn l-arrikkiment ikun seħħ b'mod volontarju mill-parti li qiegħda tippretendi ħlas ta' kumpens (ara f'dan is-sens is-sentenza tal-Prim'Awla tal-Qorti Ċivili tal-1 ta' Novembru, 2013, fil-kawża fl-ismijiet Ancams Marketing Limited et v. L-Avukat Dottor Louis Cassar Pullicino noe).

30. Kif tajjeb osservat mill-appellanti ICL, dan il-prinċipju jorbot mal-prinċipju l-ieħor li ladarba bejn il-partijiet hemm ftehim li jirregola r-relazzjonijiet ta' bejniethom, hu preżunt li qabel ma ffirmaw dak il-ftehim, il-partijiet qiesu ċ-ċirkostanzi tal-każ u l-interessi tagħhom, u allura hekk kif iffirmaw il-kuntratt, dak il-kuntratt li jorbot u jirregola r-relazzjoni ta' bejn il-partijiet fil-kawża, u mhux xi prinċipju ieħor, (għal dak tal-ekwità kif invokat minn GOL). Il-prinċipju tar-rispett għall-volontà jew rieda tal-partijiet huwa wieħed fundamentali u dak li ftehmu fuqu l-partijiet għandu "forza ta' liġi" għalihom (Artikolu 992 tal-Kodiċi Ċivili), u l-Qorti m'għandhiex tuża d-diskrezzjoni tagħha sabiex tissostitwixxi dak li ftehmu l-partijiet (ara wkoll is-sentenza tal-Prim'Awla tal-Qorti Ċivili tas-7 ta' Ottubru, 2004, fil-kawża fl-ismijiet Francis Paris et v. Maltacom plc)…

35. Sfiq mal-prinċipju ta' pacta sunt servanda msemmi qabel, hemm prinċipju ieħor, dak ta' contra scriptum testimonium, non scriptum testimonium non feritur jiġifieri dak li jirriżulta minn prova bil-miktub, mhux meħtieġ li titressaq prova ulterjuri tagħha, wara kollox kif rajna, il-ftehim bejn il-partijiet jikkostitwixxi liġi. Fil-fatt, l-Artikolu 1002 tal-Kodiċi Ċivili jipprovdi li fejn il-kliem ta' att meħud fis-sens skont l-użu tal-kuntratt huwa ċar, ma hemmx lok ta' interpretazzjoni. F'każ fejn jinħoloq dubju dwar issens mogħti lill-konvenzjoni huwa l-ġudikant li għandu b'mod oġġettiv jislet l-intenzjoni tal-partijiet skont kif riflessa fl-att inkwistjoni. Għalhekk, fejn il-kontenut tal-konvenzjoni jkun ċar u fejn il-fatti li jkunu wasslu għal dak il-ftehim, kif ukoll fatti sussegwenti ma jpoġġux fid-dubju l-volontà tal-kontraenti ma jkunx leċitu għall-ġudikant illi jagħti lil dik l-iskrittura tifsira differenti, minn dak liberament espress mill-kontraenti, għaliex il-prinċipju tad-dritt huwa: in claris non fit interpretatio.

36. Iżda kif osservat fis-sentenza ta' din il-Qorti tat-28 ta' April, 2017, fil-kawża fl-ismijiet Terres Co. Limited et v. L-Għajn Construction Limited, meta s-sens litterali tal-kelma ma jaqbilx mal-intenzjoni tal-partijiet kontraenti kif tidher ċar mill-pattijiet meħudin flimkien, għandha tipprevali l-intenzjoni. Dwar dan, din il-Qorti, diversament preseduta, spjegat illi:

«din ir-regola għandha tiġi sewwa apprezzata u applikata. Irid jirriżulta bla dubju li s-sens tal-klawżola li tkun jista' biss jiġi nterpretat b'mod univoku għax hu ċar. Irid jirriżulta wkoll li dan is-sens ċar tal-kliem ma jkunx jaqbel ma' dak li kellhom f'moħħhom il-partijiet kollha u mhux ma' dak biss li xi waħda mill-partijiet kellha f'rasha u dan irid jidher mill-pattijiet kollha tal-kuntratt meħudin flimkien (J. Bartolo et v. A. Petroni deċiża 7 ta' Ottubru 1997).»

37. Kif ukoll, fl-applikazzjoni tar-regoli ta' interpretazzjoni tal-kuntratti, mhux l-interpretazzjoni tal-partijiet għall-kliem tal-ftehim jew is-sens divers li huma jagħtu lill-kliem li jiswa, imma dak li huwa importanti: «hu l-qari oġġettiv tal-ġudikant li jagħti lil kliem is-sens ordinarju tiegħu filkuntest ta' kif ġie użat mill-kontraenti li għandu jorbot» (J. Zammit v. Michael Zammit Tabone et noe – Qorti tal-Appell deċiża fit-28 ta' Frar 1997). Din il-Qorti żżid punt ieħor, li skont l-Artikolu 1009 tal-Kodiċi Ċivili: «fid-dubju, il-konvenzjoni tiġi mfissra kontra dak li favur tiegħu saret l-obbligazzjoni u favur dak illi ntrabat bl-obbligazzjoni.» (Ara ssentenza ta' din il-Qorti tat-18 ta' Jannar, 2024, fil-kawża fl-ismijiet James L. Hawkins v. Seasus Limited)…..43. Din il-Qorti diġà kkonkludiet li rriżulta mill-provi li ntalab xogħol żejjed mill-kumpanija konvenuta u li dan ix-xogħol twettaq mill-kumpanija appellata, iżda rriżulta wkoll li ma tħarsitx il-kundizzjoni tal-ftehim maqbula bejn il-partijiet li kellu jingħieb il-kunsens bil-miktub sabiex imbagħad ikun ħemm il-ħlas eventwali.

44. Fid-dawl ta' dan in-nuqqas, il-kumpanija attriċi li kellha kull interess li tħares l-interessi tagħha, ma tistax issa wara li minn jeddha għażlet li ma timxix skont il-proċedura miftehma, u b'ħekk sabet ruħha li ma setgħetx tmexxi abbażi tal-ftehim kuntrattwali, tmexxi minflok bl-azzjoni de in rem verso. Mod ieħor ikun ifisser li kull ftehim milħuq bejn partijiet ma jiswa għalxejn.

45. Għaldaqstant dan l-ewwel aggravju se jiġi milqugħ."

In another judgement given by the Court of Appeal on 23rd June 2004 in the names of Blye Engineering Co. Ltd vs Victor Balzan et, it was outlined that:

"Huwa notorjament ricevut fid-dottrina illi l-azzjoni ta' larrikkament indebitu mhijiex proponibbli meta l-kreditur danneġġjat seta' jeżercita azzjoni oħra biex jiġi indennizzat għall-pregudizzju soffert. Difatti hu magħruf illi l-azzjoni "de in rem verso" għandha karattru sussidjarju. Din issussidjarjeta` tal-azzjoni hi ntiża fis-sens li hu biżżejjed biex tiġi eskluża l-proponibilita` tagħha l-fatt tal-possibilita` ta' azzjoni diversa. Dan indipendentment millkonsiderazzjoni jekk din l-azzjoni diversa tistax twassal għal rizultat utli. Skond it-Trabucchi ("Arrichimento") lazzjoni ta' l-arrikkament hi inammissibbli anke meta lazzjoni diversa tkun saret improponibbli jew esperita inutilment. Biex jista' jkun xort'oħra u l-azzjoni 'de qua' tkun tista' ssir 'in via subordinata' jrid jirrizulta li fil-kawża lohra d-domanda tkun giet michuda minhabba l-karenza "ab origine" tal-azzjoni "ex contractu" għal motiv, per ezempju, tad-difett tat-titolu migjub bħala l-bażi tagħha.

Fir-rigward tal-konsiderazzjoni premessa l-gurisprudenza taghna tidher li hi wahda konkordi u pacifika.

(1) "L-azzjoni de in rem verso hija esperibbli biss meta mhiex esperibbli l-azzjoni "ex contractu"; u ghalhekk meta l-attur ghandu l-azzjoni "ex contractu" kontra d-debitur, huwa ma jistax jagixxi kontra haddiehor bl-azzjoni 'de in rem verso' – Kollez. Vol. XXXIV pIII p784);

(2) "Kwantu ghall-pretensjoni tal-appellant, fis-sens li huwa ghandu dritt ghall-hlas tas-somma reklamata bl-"actio de in rem verso", jinghad li din l-azzjoni hi rimedju sussidjarju estiz ghall-kazijiet meta tkun avverat ruhha lokupletazzjoni effettiva ghad-dannu ta' haddiehor, u ssib il-fondamentament taghha fil-principju "jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem" (L206 fr.de regulis juris). Dan irrimedju gie koncess fil-kazijiet fejn ma hiex esperibbli lazzjoni "ex contractu" - Kollez. Vol. XLI pI p631.

(3) "Minn dan li ntqal fuq jitnissel illi din l-azzjoni, ntrodotta mill-ekwita` tal-pretur ruman, giet estiza ghal kwalunkwe vantagg li persuna tirritraji mill-fatt ta' haddiehor, minghajr titolu guridiku, jew b'titolu difettuz, jew null" – Kollez. Vol. XXXIX pII p764).

(4) Ghalhekk, ad exemplum, "meta obbligazzjoni tigi annullata minhabba inkapacita` ta' wiehed mill-kontraenti, ma taghtix lill-kontraent l-iehor ebda dritt ghar-restituzzjoni ta' dak li jkun gie moghti, jew ta' dak li jkun gie imhallas in forza ta' din l-obbligazzjoni, imma di regola hija sogggetta ghall-eccezzjoni fil-kaz li jigi pruvat li l-haga moghtija jew imhallsa tkun avvantaggjat lil min kontra tieghu ssir lazzjoni. Minn dan jitnissel li l-obbligazzjoni trid tkun giet kuntratta ma' inkapaci, li l-istess ghalhekk tkun giet annullata, u l-pagament ikun gie realment maghmul in forza ta' l-obbligazzjoni annullata" – Kollez. Vol. XLI pII p816.

Is-suesposti precizazzjonijiet huma annoverati wkoll filgurisprudenza estera, specjalment dik Taljana.

A propozitu fis-sentenza taghha tal-5 ta' Marzu 1991, Numru 2283, il-Qorti tal-Kassazzjoni irrilevat illi, "l'azione di arricchimento senza causa e` proponibile soltanto nel caso in cui non sia prevista altra azione a tutela di colui che lamenta il depauperamento, ovvero quando la domanda sia stata respinta sotto il profilo della carenza "ab origine" dell'azione proposta, e non anche nel caso in cui sia stata infruttuosamente sperimentata nel merito la domanda volta al soddisfacimento della pretesa".

Hekk insibu wkoll illi minhabba l-karattru sussidjarju taghha din l-azzjoni titqies inammissibbli "allorche chi la eserciti disponeva di un'azione che si e` prescritta o in relazione alle quale si sia verificata decadenza" (Cassazione, 5 ta' April 2001, Numru 5072) jew li fiha "sia rimasto soccombente in giudizio per ragioni di rito o di merito" (Cassazione, 8 ta' Awissu 1996, Numru 7285).

At this point, this Court emphasises that since the relationship between the parties was regulated by the above, it is imperative to outline that according to Maltese caselaw, where there is a written agreement, any external evidence brought forward to contradict, add to, or alter the written agreement is inadmissible. The Court of Appel in the court case **Andrei Pace v. Ruben Vassallo u Victor u Helen konjuġi Xerri** decided on the 26th November 2024 declared that:

> *"Hija regola ermenewtika ġenerali li meta ftehim isir bil-miktub, iktar u iktar meta jsir permezz ta' att pubbliku, hija pprojbita kull evidenza barra mit-test miktub li żżid, tbiddel, jew tikkontradixxi t-termini miktuba. B'mod partikolari mhux ammess li provi orali jfissru dak li huwa diġà car.*
>
> *Kif tgħid il-massima ġuridika Latina: contra testimonium scriptum testimonium non scriptum non fertur. Huwa preżunt li jekk il-partijiet jikkonsagraw il-ftehim tagħhom f'dokument, dak kollu li riedu jiftiehmu fuqu l-partijiet jiġi mniżżel fl-iskrittura. Dan huwa bekk f'ġieh il-faċilitazzjoni tal-kummerċ; iċ-ċertezza tal-kuntratti u biex jiġu evitati l-kwistjonijiet. Li kieku kien mod ieħor, l-iktar titlu car ikun jista' jiġi mminat permezz ta' xhieda verbali tat-tifsira partikolari li xi parti tkun tat kliemha; jew tal-intenzjonijiet sigrieti li wassluha biex tagħmel il-kitba; jew tal-iskopijiet tagħha l-għala għamlitha. Sahansitra tkun tista' tiġi kontradetta l-lingwa ċara tad-dokument innifsu."*

Indeed it is an established principle that it is only when the parties did not express themselves clearly in the written agreement, that the Court has the authority to interprete the agreement. In the judgement bearing the names of Onor. Edgar Cuschieri O.B.E. ne vs Perit Gustavo R. Vincenti A. & C.E. decided on 13th February 1950 the court stated that:

"Illi fid-dritt dwar il-materja ta` interpretazzjoni tal-kuntratti, meta l-partijiet ma jkunux spjegaw ruhhom car, jew ikunu spjegaw ruhhom ekwivokament, jew fil-każ li posterjorment għall-kuntratt jintervjeni avveniment li jkollu bhala konsegwenza kwistjoni li ma tkunx preveduta u li hemm bżonn li tigi maqtugha, allura l-Qrati jkunu obligati jinterpretaw il-konvenzjoni;"

The court continued to explain:

"Mill-banda l-ohra jinghad li hija norma ta` interpretazzjoni stabbilita mill-ligi illi meta l-espressjonijiet fil-konvenzjoni skond is-sens lilhom attribwit mill-uzu fl-epoka tal-kuntratt, huma cari, m`hemmx lok ghal ebda interpretazzjoni."

In General Cleaners Co. Ltd. vs Accountant General et decided on 29th November 2001, the First Hall Civil Courts stated that:

"Jibda biex jinghad illi bhala principju generali, l-ligi u senjatament l-artikolu 1002 tal-Kodici Civili jghid illi "Meta l-kliem ta` konvenzjoni, mehud fis-sens li ghandu skond l-uzu fiz-zmien tal-kuntratt, hu car, ma hemmx lok ghal interpretazzjoni".

"Il-principju kardinali li jirregola l-istatut tal-kuntratti jibqa` dejjem dak li l-vinkolu kontrattwali ghandu jigi rispettat u li hi l-volonta` tal-kontraenti kif espressa fil-konvenzjoni li kellha tipprevali u trid tigi osservata. Pacta sunt servanda". (A.C. 5 ta` Ottubru, 1998 - "Gloria mart Jonathan Beacom et vs L-Arkitett u Inginier Civili Anthony Spiteri Staines").

Another judgement on this matter is Stanislao Cassar et vs Chevalier Antonio Cassar decided on 15th December 1995 (LXXIX.II.704) where it was held that:

"Meta l-kliem ta` konvenzjoni mehud fis-sens li ghandu skond l-uzu fiz-zmien tal-kuntratt hu car ma hemmx lok ghal interpretazzjoni" (Artikolu 1002 tal-Kodici Civili). Issa hu ovvju illi fil-kliem espress fil-klawsoli taz-zewg kuntratti fuq riportati ma hemm l-ebda ambigwità jew ekwivocità. …Hu biss" meta s-sens tal-kliem ma jaqbilx ma` dak li kellhom fi hsiebhom il-partijiet kollha, kif ikun jidher mill-pattijiet mehudin kollha flimkien, (li) ghandha tghodd l-intenzjoni tal-partijiet" (artikolu 1003 tal-Kap. 16)…

Therefore, it transpires that when the wording in the agreement is clear, such must be observed.

Another principle closely linked to the above is the legal maxim of pacta sunt servanda. This points to the fact that contracts are binding as between the parties who entered them. In the judgement given by the Court of Appeal in the names of **Gloria Beacom et vs AIC Anthony Spiteri Staines** on 5th October 1998, it was stated that:

"Il-principju kardinali li jirregola l-istatut tal-kuntratti jibqa` dejjem dak li l-vinkolu kontrattwali ghandu jigi rispettat u li hi l-volonta` tal-kontraenti kif espressa fil-konvenzjoni lli jkollha tipprevali u trid tigi osservata. Pacta sunt servanda." (vide ukoll ***Salvu Fenech vs Malta Dairy Products*** *deciza minn din il-Qorti diversament ippreseduta fit-30 ta` Ottubru 2003;* ***Grace Spiteri vs Carmel sive Lino Camilleri*** *deciza minn din il-Qorti diversament ippreseduta fit-30 ta` Mejju 2002;* ***General Cleaners Company Limited vs Accountant General*** *deciza minn din il-Qorti diversament ippreseduta fid-29 ta` Novembru 2001).*

Keeping all the above into consideration, this Court notes that in accordance with the agreements, plaintiffs appointed Architect Portelli to set the market value of the property. According to judicial letter attached with plaintiffs' writ of summons as Document AF 6, spouses Scerri proceeded to appoint Architect Angelo Portelli to establish the market value of the property and informed spouses Wilkinson about this:

> *"qabbdu lil perit Angelo Portelli li ghamel stima tal-propjeta' in kwistjoni, u cioe' il-propjeta taghhom ta' 18, 19 Triq Kortoll, Xaghra konsistenti f'unit fis-sular ta' isfel u unit iehor fl-ewwel sular, liema propjeta' giet stmata €327,000, kif ahjar spjegat fl-istima hawn annessa u mmarkata dok A. Ghaldaqstant qed tkunu avzati li l-ewwel offerta skont l-istima tal-Perit*

torbot lil partijiet, u ma tistax tigi kkontestata u ghaldaqstant mitluba li tavzaw l-agenti kollha tal-propjeta' fejn l-istess hija enlisted li il-prezz ta' bejgh ghandu jkun reklamat skont l-istima u d-deskrizzjoni tal-istess Perit. Malli jkun hemm l-ewwel offerta li taqbel mal-istima kif moghtija mill-Perit intom obbligati li tersqu ghall-kuntratt ta' bejgh. In oltre u minghajr pregudizzju ghal-klawzola (l) tal-istess kuntratt, il-mittenti qeghdin permezz tal-prezenti jinterpellawkom sabiex tghaddu sett ta' cwievet tal-propjetajiet rispettivi lilhom sabiex ikun jista' jigi ffacilitizzat (sic) il-bejgh."

It results from the same judicial letter that plaintiffs were fully aware that the property had already been put on the market by spouses Wilkinson prior to this estimate. In fact, they asked defendants to advise all estate agents with whom the property was enlisted to set the prices of the property according to Architect Portelli's report.

On the other hand, defendants testified that they had in fact listed the properties with the main estate agents, and indicated that since 2009, they were listed for the global price of six hundred and sixteen thousand euro (€616,000). Ms Marie Grech confirmed that spouses Wilkinson had asked Frank Salt Real Estate Agency to market the units for €258,000 for the ground floor unit, €258,000 for the first floor unit, and €100,000 for the penthouse.

From an examination of Doc. AF 4, the Court concludes that both plaintiffs and defendants acted within what was agreed between them (i) when plaintiffs authorised Perit Angelo Portelli to evaluate the property to be sold, in terms of paragraph (f) of the agreement exhibited as Doc. AF4 and (b) when defendants put up the property for sale in terms of paragraph (g) of the same agreement exhibited as Doc. AF4. Indeed, paragraph (g) of this agreement states clearly that the property shall be put up for sale as soon as practicable after it has been fully furnished and the parties bind themselves reciprocally to accept any such offers as are made for the acquistion of the house and which meet or exceed the market value of the property. The same clause continues to state that the property shall be kept for sale on the open market and may not be withdrawn unilaterally by either party. Accordingly, the defendants acted within their rights when they put up the property for sale, since the property was in fact fully finished in 2009.

In their writ of summons and during the hearing of this court case, plaintiffs argued that the prices set by defendants for the properties were set extremely high with the specific aim to dissuade any prospective bid for the properties, thus allowing defendants to retain possession of the properties, permitting them to rent out the same for their exclusive benefit, as agreed in paragraph (l) of the 2008 agreement. According to them, the main stumbling block which prevented the sale of the property was the price set by defendants.

On their part, defendants argued that the valuation carried out by Architect Portelli could not be relied upon, (i) since he had not visited the property to check the conditions of the finishings and furniture, (ii) the valuation was too low, and did not even cover the cost of acquisition of the site and the reconstruction and finishing of the property. They argued that the price set by them in 2009 was the true market value of the properties, and that it was not true that the prices were excessive, in order for the property to remain on the market in perpetuity. Defendants maintained that they were as eager as the plaintiffs to sell the properties, and like the plaintiffs they had to take a loan, incidentally also with HSBC to finance the reconstruction and finishing of the property. They pointed out, moreover that there were several other factors why the properties were not attractive to prospective buyers, which factors occured in 2009 or soon after:

1. The recession;
2. Construction and development permits in close proximity to the property;
3. The property was not built according to the permits obtained in 2007;
4. Obstruction of the view at the back of the property.

According to defendants' version, the gross prices advertised with the estate agents were established after consultation with the estate agents, and after taking into account the expenses borne by the parties to develop the project, and to keep some negotiating leeway when prospective purchasers asked for a discount. Defendants also stated that plaintiffs were perfectly aware that defendants had put up the properties for sale for the above mentioned prices, and had never, previous to 2014 objected against these listings. In fact, Noel Anthony Scerri confirmed that he and his wife were in fact aware that defendants put up the properties for sale at those prices. Moreover, emails between the parties submitted by defendants confirm this fact. On the other hand, plaintiffs did not produce any proof which shows that they did not agree with the prices set by defendants, or that they had asked defendants to amend the pricing of the property, prior to the judicial letter (Doc AF 6) which was dated November 2016. From the evidence brought forth, it was only following Perit Angelo Portelli's evaluation that plaintiffs requested that the property be sold for the global gross sum of €327,000.

After taking all that was brought before it, this Court outlines that as already outlined, the relationship between plaintiffs and defendants is a contractual one. It is that agreement which regulates the dispute between the parties. As has emerged from the above mentioned jurisprudence, this Court has to apply what has been agreed clearly by the parties. The right of action in respect of unjustified enrichment can only utilised when there

is no other legal basis which the alleged creditor can resort to. In this case, it is clear that the relationship between the contending parties is regulated by the private writing of the 11th November 2008 and it is in the light of such an agreement that plaintiffs' claim can be evaluated.

Taking into account the contents of the 11th November 2008 agreement, plaintiffs themselves acknowledged that the private agreement clearly states that defendants may rent out the property, and keep the proceeds for themselves. A thorough reading of this agreement vividly outlines this right of defendants. As a result, any enrichment which defendants might have enjoyed from the rental of the property is not unjustified, but was a result of the agreement reached between plaintiffs and defendants. The Court stresses that since the relationship between the parties is regulated by the private agreement, and since in terms of said agreement, defendants were allowed to rent out the property and receive the rent, any alleged enrichment was not unjustified.
Plaintiffs cannot at this stage after reaching a written agreement with defendants, change their mind and in view of the length of time that it took for the sale of the property to take place, argue that the clauses pertaining to defendants retaining all the rents and being able to rent the property, should not be given effect to as they create a situation of unjustified enrichment on the part of defendants. The agreement reached by the parties was never rescinded and so the effects of that written agreement constituted the law between the parties.

In parenthesis and without prejudice to the above considerations, the Court also outlines that furthermore, plaintiffs failed to prove it was defendants' fault that the properties were not sold previously. Indeed, it resulted that up till 2014, plaintiffs took no tangible steps to sell the property themselves, and it was actually the defendants who in 2009, listed the properties for sale. Additionally, it resulted that since 2015, when it became evident that the property was not built in accordance with the issued permits, defendants attempted to regularise the properties by engaging their Architect Patrick Griscti Soler but plaintiffs lodged a complaint with the Planning Authority, thwarting their attempt, and later on, in 2019 plaintiffs themselves submitted an application for the regularisation of the property. This regularisation needed to be done before the sale could take place and so this could also have been another issue for the length it took for the properties to be sold. There could have been various other underlying reasons why the sale did not occur. For instance, Marie Grech of Frank Salt testified that although there were viewings of the property, no offers were ever made. This may not necessarily have occurred because of the alleged inflated selling price but because of other issues for instance the property was not to the liking of the viewers. Without any proof brought by plaintiffs to prove their claim, the Court cannot be expected to simply assume that no sale occurred

because of the selling price which was being asked for by defendants. This is a Court of Law where plaintiffs need to produce evidence to prove their claims. This lack of evidence brought forth continues to highlight that indeed what the plaintiffs were after with their fourth and fifth claim was to not follow what the agreement states.

The Court shall therefore uphold the eight and ninth pleas raised by defendants and shall consequently reject the fourth claim of plaintiffs. For the same reasons, the Court shall not attempt to analyse what defendants might have earned from the proceeds of the rental of the property and is thereby also rejecting the fifth claim of plaintiffs.

As regards the costs relative to the other claims raised by plaintiffs, the Court outlines that these were withdrawn by plaintiffs in the first paragraph of the eighth page of their respective note of submissions. This Court notes that the plaintiffs had made these claims originally and held onto these claims up until in their final note of submissions, they mentioned that pursuant to the sale of the properties in question, these claims were withdrawn. The Court notes that no formal note of withdrawal of these claims was presented prior to this statement in the plaintiff's note of submissions. The Court was only presented with two joint declarations made by all the parties — (i) one done on 29th October 2019 wherein it was stated that the groundfloor maisonette and the penthouse are to be considered for all intents and purposes as having been excluded from the respective claims and rights deduced by the parties to the lawsuit and (ii) another done on the 15th July 2020 wherein parties declared that the continuation of this lawsuit shall not involve any claims over the first floor apartment in Triq Kortoll, Xagħra.

Since it was the plaintiffs who had made these claims, it was the same plaintiffs' responsibility to withdraw these claims once the sales of the property were completed. However, notwithstanding all this, the plaintiffs only withdrew these claims in their note of submissions. Moreover, nothing is mentioned as to what is their position as regards expenses. Although it was indicated that the court should deliberate solely on the fourth, fifth and tenth claim, (which tenth claim refers to expenses and interests), this Court notes that in their final note of submissions, no arguments or references were made as regards those claims which were withdrawn. Had the plaintiffs not renounced to the costs related to these withdrawn claims, they would have presented their arguments relating to these withdrawn claims in order for the Court to see whether those withdrawn requests were founded and justified, thereby consequently deciding on who is to bear the relative costs. The Court cannot ignore that no such arguments were brought forth in this regards by plaintiffs. The Court cannot also ignore the fact that since the sales took place years ago at a time when the plaintiffs had not even yet concluded their evidence, it

was the responsibility of plaintiffs to withdraw those claims at that stage and clarify whether they were insisting that respondents bear the costs for these claims. In lieu of all this, the Court deems that since the plaintiffs withdrew these claims and asked the court not to deliberate on them, it is them who shall bear the costs of the said claims.

DECIDE

For the above reasons, the Court, whilst abstaining from taking further cognizance of the first, the second, the third, the sixth, the seventh, the eighth and the ninth claims of the plaintiffs, rejects the fourth and the fifth claims of the plaintiffs and upholds the eighth and ninth pleas of the defendants. The Court orders that judicial expenses shall be borne entirely by plaintiffs.

(sgd) Dr Simone Grech
Magistrate

(sgd) John Vella
D/Registrar

True Copy

For the Registrar