# RENT REGULATION BOARD

## MAGISTRATE
## DR. JOSEPH GATT LL.D.

## Today the 19th of August 2025

## In the acts of the court case number 143/2025JG in the names:

## Il-Knisja Anglikana ta' San Pawl

**vs**

## C.R.S. Trading Limited

## Following warrant of seizure number 1554/2024 in the same names

**The Board;**

Having seen the application filed by C.R.S. Trading Limited (hereinafter referred to as "the executed party") by means of which it premised and requested the following:

1. *That, on the 23rd September, 2024 the Anglican Church requested and obtained the issue of warrant of seizure number 1554/2024 whereby the person of Neil Stuart Hodgson was indicated as consignee. As results from the acts of the same warrant, the same was executed on the 1st October, 2024 through the attachment and consequent*

*removal from the The Undercroft of the moveable items listed in the note filed by court marshall to this effect.*

2. *That, as stated on that occasion and as minuted by the same Court Marshall, through such warrant of seizure, the applicant also attached property which does not belong to C.R.S. Trading Limited but who is owned by third parties and only held by the company's director and shareholder Michele Rubino, this as evidenced by the attached contract marked Doc* ***A***.

3. *That, on the 23rd April, 2025, whilst the said company representative was abroad, he was informed by his employees present at the The Undercroft that a Court Marshall was again onsite, unannounced, with the representatives of the Anglican Church and seeking to remove further items from The Undercroft. The Court Marshall proceeded to attach the further list of items as per additional inventory. Most of such items were directed to rooms forming part of the same leased premises which are under the sole and exclusive possession of the same Anglican Church which holds the keys to such room/s.*

4. *That the current applicant was informed that during such second execution considerable violence was used by the executors on both the movables present in the property and also with damage being caused both to such movables and also to the property itself. This was then verified via the cctv footage obtained onsite with relative clips and photos of damage hereby attached in USB drive parked Doc* ***B.***

5. *That the current applicant feels aggrieved by the manner in which such warrant of seizure was executed and this for the following clear and serious reasons in terms of law.*

   *(i) In terms of art. 287 of the Code of Organization and Civili Procedure:*

   *A consignee may not be appointed under this Title when he is either:*
   *(a)* ***the execution creditor****;*
   *(b) the spouse of the debtor or of the creditor;*

*(c) any one of the parents, the creditor, his daughter or son, or his brother or sister, his uncle or aunt, any one of the parents of his spouse or any one of the spouses of his children;*
*(d)* ***directly or indirectly employed with the creditor****;*
*(e) the person who claims to be the owner of the property seized.*

*In addition, art 289 continues by providing that:*

*289.(1) The consignee shall be responsible for the proper preservation of the property entrusted to him and* ***he shall not use, nor shall he allow any person to use, such property*** *unless otherwise ordered by the court*

*Mr. Neil Stuart Hodgson, the appointed consignee, has already testified in these proceedings and has admits as follows:*

1. ***My name is Neil Hodgson and I occupy the role of Church Warden within the Church. My role within the cathedral is that of Warden, a voluntary post, elected democratically by the electoral roll. I have served as a Warden since May 2023. Wardens take care of the day to day running of the Cathedral (Ex Aficio's to The Suffragan Bishop of Europe), with the exception of the liturgy & music.***

*He seemingly also tries to pre-empt any action as the current one by stating:*

***Despite being a crucial part in the day to day running of the Cathedral,*** *I do not get paid do not have any contractual ties to the Cathedral. (Dok K9 sworn under oath by Mr Hodgson on the 21st January, 2025)*

*Nevertheless it is evident from the above that Mr. Neil Hodgson acts as the lunga manus of the Church and is one of such persons which would be deemed to be 'directly or indirectly employed with the creditor'. For these purposes, the law does NOT require a formal contract of employment or even a payment of a wage and this in line with the very spirit of the law which would require such*

*consignee to be, as much as possible, independent of the parties. The manner in which such exclusion is to be interpreted is also reflected in the very wording utilised by the law which excludes also persons deemed directly OR INDIRECTLY employed by the execution creditor, including therefore such persons as the appointed consignee Mr. Neil Stuart Hodgson.*

*In addition, it is submitted, that the nomination of Mr Hodgson as a consignee notwithstanding his self-declared essential role within the Church is, by itself, sufficient to uncover the total bad faith with which such warrant of seizure was issued, even at the very outset. Both the Church and Mr Hodgson himself should have also been aware of such limitation but both proceeded to act unanimously well-aware of the relative preclusion and of the clear conflict of interest held by the nominated consignee in these proceedings.*

*(ii) Art. 286 of the* ***Code of Organization and Civil Procedure*** *also provides:*

*(1) Such property as is removed from the possession of the debtor, in terms of article 282(1)(c) subject to the provisions of article 293,* ***shall be transferred forthwith to be retained in the hands of the consignee in the presence of the court executing officer, and the consignee shall receive and hold such property in a storage place authorised by the Registrar*** *until such time as that property is sold or the consignee is ordered to do otherwise.*

*(2) The consignee shall issue a receipt, to be signed by him, for such property as would have been seized and removed from the possession of the debtor and which he would have received:*

*Provided that the consignee may, with the written consent of the Registrar, retain such property in any place other than the official storage place in such circumstances where, due to the nature or the size of the articles seized, it would not be feasible to dispose otherwise.*

*Not only, as seen above, was the consignee appointed unable to hold such post and therefore unable to receive the objects attached but, even with regards to the second execution, the objects attached on that occasion could*

*NOT be arbitrarily locked in rooms belonging to the Church to which only the same execution creditor (and Mr Stuart Hodgson) hold exclusive possession. This is being submitted with regards to those items attached during the second execution which are currently and illegally held in the locked rooms belonging to the Anglican Church.*

*(iii)* *In addition to the above, as confirmed by the attached contract and as also minuted by the Court Marshall during the first execution, a number of the items attached do not even belong to C.R.S. Trading Limited but belong to others and are only merely held by it's director their director and shareholder Michele Rubino. In addition, such items are necessary for the execution of the trade and work of the said company in the operation of its leased premises. Current applicant is willing to bind itself to retain such movables in his possession (as he did with the oven of considerable value attached in the first execution) upon restitution of the same. Really and truly, there was nothing required the removal of such movables, particularly the kitchen (let alone the theft thereof) where it not that the executor was and remains intent on frustrating all operations by the current applicant. In addition, it should be noted that, as transpired clearly from the footage here attached, fridge freezers were attached and carried whilst holding foostuffs of a certain value, when the footstuffs therein was NOT duly inventoried as required by law. A number of other items were also taken from the site without them being inventoried by the court marshall to the extent that such removal of items by the consignee can only be deemed theft in terms of law. All this is recorded via the footage being exhibited via the attached USB. Once again, not only does this incident reflect the manner in which the Lessor has constantly harassed and sought ways in which to preclude the Lessee from the peaceful enjoyment of the leased property, but has also now abused of the legal procedures in order to pursue this very aim. The Lessor could not attach items which do not belong to the company and the Court Marshall should have inventoried all items collected including all foodstuffs found in the movables attached, including the fridge freezers.*

*(iv)* *In addition to the above, the applicant feels aggrieved by the manner in which the warrant of seizure was executed TWICE over against the same company for*

*the same indicated amount – this* ***without any evident explanation, justification let alone without seemingly any authorisation by this Honourable Board or at least without any right of reply being afforded to the current applicant****. In this regard it should be noted that no reservation was made for any further additional execution of the warrant of seizure in the first execution thereof. More than this, the Court Marshall himself confirms that he has executed the warrant of seizure through the objects attached in that instance. Art. 834 of the* ***Code of Organization and Civil Procedure*** *expressly provides as follows:*

> *The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, the lawyer or the legal procurator whose signature is subscribed on the application, of the execution of the warrant or order.*

*In this case this was done,* ***unreservedly*** *as stated above, via note dated 1st October, 2024.*

*In terms of law, the second unjustified execution of a warrant of seizure is tantamount to the second issuing of another warrant and in this regard our Honourable Courts have repeatedly held that, when a warrant has been rejected, a second one should not be issued without due explanation:*

> *Kif inghad fid-digrieti Michael Tober v. LeoVegas Gambling p.l.c. moghti mill-Imhallef Giannino Caruana Demajo fit-13 ta' Settembru, 2023, u f'dak mogħti mill-Imħallef Christian Falzon Scerri nhar il-25 ta' Settembru, 2023 fl-ismijiet Jasmin Buchegger v. Rabbit Entertainment Ltd, il-korrettezza kienet titlob illi, qabel ma jitlob il-ħruġ tal-mandat tallum, Ibrahim Sistek kellu jgħarraf lill-qorti li quddiemha saret it-tieni talba għall-ħruġ tal-mandat, illi l-ewwel talba għall-ħruġ ta' dak il-mandat kienet ġiet miċħuda. Hekk kif inghad fid-digriet mogħti fl-ismijiet Jasmin Buchegger v. Rabbit Entertainment Ltd:*

*«Tqis li m'hemm xejn irregolari jekk talba għall-ħruġ ta' mandat eżekuttiv terġa' tiġi proposta mill-ġdid, jekk kemm-il darba r-raġunijiet tac-ċaħda jkunu saru minħabba nuqqasijiet fil-forma tal-ewwel talba u fit-tieni talba għall-ħruġ tal-mandat ikunu tneħħew jew ġew imsewwija dawk in-nuqqasijiet. Mill-banda l-oħra huwa irregolari li wieħed jerġa' jipproponi talba ġdida għall-ħruġ ta' mandat eżekuttiv, jekk l-ewwel talba tkun ġiet miċħuda minħabba raġunijiet sostantivi bħalma ġara f'dan il-każ, fejn it-talba għall-ħruġ tal-mandat ta' sekwestru 829/2023 ġiet miċħuda minħabba li din il-qorti, b'Imħallef differenti, iddikjarat b'digriet tat-8 ta' Awwissu, 2023, li ma setgħetx tilqa' t-talba għall-ħruġ tal-mandat fid-dawl dak li jgħid l-artikolu 56A tal-Kap 583 tal-Liġijiet ta' Malta. Tqis li jekk Jasmin Buchegger ma kinitx qiegħda taqbel ma' dak id-digriet tat-8 ta' Awwissu, 2023, hija messha bdiet proċeduri biex jitħassar jew jinbidel dak id-digriet u mhux terġa' tipproponi talba oħra għall-ħruġ ta' mandat ta' sekwestru eżekuttiv.» (in the acts of garmishee order Nru: 1414/2023 in the names:* ***Ibrahim Sistek v. TSG Interactive Gaming Europe Ltd*** *Rik NRU: 1043/2023JD amongst others cited therein).*

*It is submitted that the same should also apply in the current case where, although the first application for the issue of the warrant of seizure had been issued, such warrant was duly and finally executed in October only to be re-issued without any explanation or justification on the 23rd April, 2025. In this case as well, no reason or justification was offered for the second execution. The least that the executor could do was to request an additional execution by the Honourable Board after offering reasons for this in terms of law. No action of the sort seems to have been done (in any case no document attesting this was provided to the applicant) but the Anglican Church proceeded arbitrarily to seek a second execution without justifying this and this by merely paying for a second notification.*

*It cannot be tolerated that a precautionary warrant is executed multiple times at the same place and for the same amount (after an initial and conclusive*

*execution in terms of above-quoted art. 834) as this clearly lends itself to abuse by the executor thereof. A second execution paves the way for an endless succession of repeated executions all of which would be clearly frivolous and vexatious to the succumbing party, given that the first and only execution made under the auspices of the Court Marshall should once attested via the relative note, as in this case, be deemed final in terms of law given precisely the unconditional note of execution lodged in the acts.*

*For all intents and purposes, it should also be clarified that* ***the movables originally attached were of a value more than sufficient to cater for the amount claimed, to the extent that the alleged creditor itself did not, on that occasion, require any further additional execution****. There is therefore no reason in terms of law for the further attachment of movables of a considerable value to the extent that now the executor has rendered itself, through Neil Stuart Hodgson, in possession of the movables the value of which is well in excess of the claimed amount.*

*(v)* *In addition and without prejudice to the above, in further confirmation of the abusive attitude to the executor in this case, during such second execution, the persons engaged by the executor/consignee exerted violence on the movables present onsite with footage taken onsite show:*

- *(i) Curtains being pulled off their hooks and torn,*
- *(ii) Security cameras removed from site attached to cupboard (with cameras not being duly inventoried)*
- *(iii) Licenses pertaining to the operation The Undercroft being removed from site and not inventoried*
- *(iv) Coffee machine (brand Dictrolux Alice Express), all oil and vinegar containers, all open liquers and a driller taken from site and not inventoried*
- *(v) Pipes of the reverse osmosis system being torn causing continuous water leakage for a value of Eur 2808 Doc* ***C***
- *(vi) Damage to the tiles of the property.*
- *(vii) Manhandling of fridge freezers including by turning them over when filling with foodstuffs of considerable value (as per attached invoices Doc* ***D****) not duly inventoried. Switching off of counter freezer.*

(viii) *Five (5) days loss of work until The Undercroft could be rendered operational again following the second execution of the warrant with losses of eur 755 per day (calculated on the net return per day for similar month in 2023 as per attached Doc **E**). Amongst others, this took place particularly in view of the removal from site of the kitchen which kitchen was and is essential to the operation of the restaurant.*

*For all these reasons it is amply evident that:*

(i) *Mr. Neil Stuart Hodgson is ill-suited and unable to hold the post of consignee in terms of art. 287 of the Code of **Organization and Civil Procedure**. To the extent that this nomination of the consignee is an integral requisite for the issue of the warrant of seizure, there exist reasons which justify the lifting in toto of the said warrant, particularly and more so with regards to all the items attached on the 23rd April, 2025 and to all such items belonging to third parties.*

(ii) *Without prejudice to the generality of the above, the second execution of the warrant of seizure took place illegally and, also for this reason, this Board should lift the warrant particularly in relation to the objects attached on such second unjustified execution occasion and thus order the Anglican Church and/or the consignee to return the said items back to the company within a peremptory period of time fixed by this Board.*

(iii) *In view of the above the executor has rendered itself liable in terms of law towards the current applicant via damages which are here being quantified in the sum of €12,880.70 eur 5398.49 for the re-acquisition of a functional kitchen, €899.21 representing value of foodstuffs not inventoried removed from site in fridges/freezers, €2808 value of broken osmosis system and €3775 for five (5) days during which The Undercroft could not operate following the second 'execution' of the said warrant and penalty due in terms of law.*

*For these reasons, without prejudice and whilst reserving any and all rights and/or action pertaining to the applicant both against executor and consignee, the same applicant humbly requests this Honourable Board that, subject to such necessary and/or opportune declarations:*

(i) *Orders, contrario imperio, in terms of art. 836(1)(b) and/or (c) and/or (e)) of the **Code of Organization and Civil Procedure** the revocation of the warrant of seizure unduly executed, in toto or limitedly as follows: by revoking with immediate effect the appointment of Mr. Neil Stuart Hodgson qua consignee, by ordering the*

*restitution of all or any such movables currently held by such consignee/the executor whilst also*

*(ii)* *condemning the executor creditor, in terms of art. 836(8) of the* ***Code of Organization and Civil Procedure*** *to pay a penalty of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not more than six thousand and nine hundred and eighty-eight euro and twelve cents (€6,988.12) in favour of the current applicant in view of the blatantly malicious, frivolous and vexatious actions by the same executor and/or also*

*(iii)* *condemns the same executor to pay such damages as have been caused by the issue of the warrant hereby liquidated in the sum of €12,880.70 and/or*

*(iv)* *orders in terms of art. 838A of the* ***Code of Organization and Civil Procedure*** *the Anglican Church as the party suing out the warrant to give, within a time fixed by the Board, sufficient security for the payment of the penalty that may be imposed, and of damages and interest, and, in default, to rescind the precautionary act.*

*With all expenses to be suffered by the Anglican Church.*

Having seen the responsive note filed by the Knisja Anglikana ta' San Pawl (hereinafter referred to as "the executing party"), whereby it submitted as follows:

1. *That this is a note containing all submissions in reply to the application in terms of Article 836(3) of the Code of Organization and Civil Procedure (Chapter 12, Laws of Malta), relative to the Warrant of Seizure with reference number 1554/2024, through which C.R.S. Trading inter alia requests that this Honourable Board:*

    *i.* *Orders the revocation of the warrant of seizure in toto or limitedly, in terms of Article 836(1)(b), (c) and/or (e);*

    *ii.* *Condemns the executor creditor to pay a penalty in terms of Article 836(8*

    *iii.* *Condemns the executor creditor to pay damages which 'have been caused by the issue of the warrant';*

    *iv.* *Orders the executor creditor to give sufficient security for the payment of the penalty that may be imposed and of damages and interest, and in default, to rescind the precautionary act;*

2. *That the Anglican Church firmly holds that the application is unfounded both in law and in merit, and should be wholly refused, and this for the following reasons:*

***A. Formal Deficiencies***

3. *That the Application cannot be entertained because the demands proposed to this Honourable Board are riddled by formal inconsistencies and are not capable of being proposed due to inconsistency with each other or lack of legal grounding;*

4. *That the second and third requests are incompatible with the fourth request. Specifically, the second and third requests seek an award of damages and the imposition of a penalty, whereas the fourth request seeks payment under a guarantee in respect of the same subject matter. It is logically inconsistent to demand payment under a guarantee for sums which the same adjudicator is simultaneously being asked to award. Such a position is inherently contradictory and lacks coherence.*

5. *That C.R.S Trading has failed to make its fourth demand conditional upon the failure of the second and third demands. Instead, it seeks to have all three mutually incompatible demands granted concurrently. This approach is unjust, illogical, and legally unfounded and thus cannot be upheld by this Honourable Board.;*

6. *That the second request is also irregular and not capable of being upheld. The Anglican Church's responsibility for damages, in contrast to that insinuated by the opposing party, is not automatic. Any request for the award of damages should be preceded by a declaratory request to the effect that the Anglican Church is recognised as being responsible for causing the damages complained of - a declaration which in any case, as will be further outlined, could not be upheld;*

7. *That it is a well-established legal principle that a declaratory request must precede any claim for the award of damages. This is because liability for the damage giving rise to such an award cannot be presumed and must first be judicially established. Without a declaration of responsibility, any claim for damages is procedurally and substantively premature.. This is being stated by reference to the decision of the First Hall Civil Court*

*in the names of D&M Enterprises Limited vs Adrian Grima pro et noe, dated the 31st of January 2001[1], wherein the court was faced with the decision on whether to declare the application null in absence of a declaratory plea to the effect that the rights of the applicant are confirmed. In its considerations, the Court clearly set out that in such case, for it to accept the cause of action upon which subsequent requests for the enforcement of rights are based, there must first be a request asserting the applicant's underlying rights:*

*Fi kliem semplici l-konvenuti qed jissottomettu li l-Qorti ma tistax tiddikjara li jezisti d-dritt ta' awtur jekk dana ma intalbitx li taghmlu mis-socjeta' attrici fic-citazzjoni taghha.*
*Illi mill-ezami tac-citazzjoni attrici fil-fatt ma jirrizultax li hemm domanda simili. Kull ma hemm hu li fit-tielet paragrafu hemm premess li l-kumpanija ghandha d-drittijiet ta' l-awtur fuq dawn id-disinji uzati fuq dawn l-ingravati. Din hi premessa li trid tigi sostanzjata u pruvata. Meta persuna tohrog mandat ta' inibizzjoni hija ghandha taghmel kawza ghal jedd imsemmi fil-mandat (Art 843 Kap 12). Hi ghandha dritt li titlob lill- Qorti li tiddikjara li hija ghandha tali dritt imbaghad tinghata ir-rimjedji skond il-Ligt.*
*Fil-kaz in ezami l-atturi qed jitolbu r-rimedji minghajr ma ghamlu talba biex il-Qorti tiddikjara li huma ghandhom tali jedd li jintitolahom ghar-rimedji li talbu.*
*Dak kontenut fil-paragrafu 3 fuq imsemmi jikkostitwixxi il-kawzali principali fic-citazzjoni u* ***hu evidenti li biex jigu milqugha t-talbiet attrici, trid tigi akkolta u accettata l-kawzali li tifforma l-bazi tat-talbiet. Imma dana I-Qorti ma tistax taghmlu minghajr talba li l-atturi ghandhom dritt ta' awtur.***
*Ghad li l-insistenza fqg formalizmu esagerat m'ghandux jigi inkoraggit u kwalunkwe att gudizzjarju ghandu kemm jista jkun jigi salvat,* ***imma dana dejjem ghandu jsir jekk ikun konformi mal-ligi li titlob l-osservanza ta' certi regoli fil-formulazzjoni tac-citazzjoni li jidher li fil-kaz in ezami ma gewx segwiti.***
*Fic-cirkostanzi l-Qorti m'ghandiex triq ohra hlief li tilqa' l-eccezzjoni tal-konvenuti.*

8. *That in parallel, the formulation of the application and the demands held therein insofar as they relate to the award of damages or penalty therefor, is irregular in that this Honorouble Board cannot legitimately award damages without a declaration that*

[1] ' Cit 2197/99 GV

*the Anglican Church is responsible for such damages, which declaration is a foundational assertion on which the existing demands are based;*

9. *That the first demand is irregular in that the remedies specifically sought in the second part of the demand, that is the removal of Mr. Hodgson from his appointment of consignee and the opposition to the execution of the warrant, do not emanate from Article 836 of the Code of Organisation and Civil Procedure, on which the same demand is grounded.*

10. *That the first demand is procedurally irregular in that the specific remedies sought in its latter part do not derive from Article 836 of the Code of Organisation and Civil Procedure, which is cited as its legal basis. The relief requested to the effect that Mr. Hodgson is removed from his role as consignee and the opposition to the execution of the warrant, extends beyond the scope of what Article 836 provides for, rendering the request legally unfounded.*

11. *That, Article 836 is confined to remedies concerning the revocation of a warrant, as recognised under law. However, the demand in question seeks, in part, to revoke the appointment of Mr. Neil Stuard Hogson as consignee, by ordering the restitution of all or any movables currently held by the said consignee or the executor:*

*'revoking with immediate effect the appointment of Mr. Neil Stuard Hogson qua consignee, by ordering the restitution of all or any such movables currently held by such consignee/the executor'.*
*The revocation of the appointment of a consignee is not contemplated by Article 836, which is instead dealt with in an adequate manner within the appropriate section of the law relative to the consignee, which provision was wholly ignored by C.R.S. Trading;*

12. *That the restitution of all or any such movables currently held by the consignee is also not a valid demand such that it is not tantamount to a revocation of the warrant in any way! A warrant of seizure provides the applicant thereto the right to seize property as a precaution to secure its prospective claims. A revocation of the warrant in part can only be understood as a revocation of a part of that right. In the context of a warrant*

*of seizure, his would include arguments as to the excessive value of the seizure of movables in excess of the claim secured, meriting the revocation of the warrant for some of the items seized. It definitely cannot be construed as including revoking the warrant in relation to its appointed consignee, such that, consequentially, all the movables seized and held by the consignee would be returned as if the warrant was never executed.*

13. *That ironically, the line of argumentation proposed by C.R.S. Trading is partially to the effect that a warrant of seizure can only be executed once —a fact which is being duly contested. However, it is worth noting that C.R.S. Trading, upon its unsubstantiated expectation that a warrant of seizure cannot be executed multiple times, is proposing such a demand in order to frustrate the execution of the warrant of seizure by reversing its effects whilst (by ordering that it is only revoked in part), keeping the warrant as issued but ineffective. This is completely illogical;*

14. *That in any case, without prejudice to any and all arguments as to Mr. Hodgson's valid appointment as a consignee, the Anglican Church firmly holds that the removal of an individual from the role of consignee does not negate or neutralise the effects of the warrant of seizure as previously executed;*

15. *That all this considered, the application should be considered null and void, either wholly or with reference to the requests relative to the above-described deficiencies;*

***A. Arguments Relative to the Section of the Application numbered (i)***

16. *That C.R.S. Trading argues that Neil Hodgson is not capable of acting as a consignee, and incorrectly uses this as a basis to request revocation in terms of Article 836 of the Code of Organisation and Civil Procedure;*

17. *That Article 287 states that :*

*'A consignee may not be appointed under this Title when he is either: (d) directly or indirectly employed with the creditor'.*

18. *That C.R.S. Trading is interpreting this provision in a creative manner, such that they are claiming that Mr. Hodgson should be considered as an employee despite not having any employment relationship to the Church whatsoever. This is strongly contested as the law does not disqualify anyone with a direct or indirect relationship to the creditor, but it subjects its disqualification to the existence of an employment relationship. In fact, it is quite clear that 'indirectly employed with the creditor' should be understood as an existing employment relationship that is not directly in place with the Church, but with a third party that is closely related thereto. This would be the case of being employed by a sister company of the creditor or employed to offer services to the creditor through a third-party employment company. In any case, an existing employment relationship is a prerequisite to disqualification in terms of law. If this were not the case, relying on the principle of ubi lex voluit dixit, the law would not have referred to the phrase 'employed' but would rather have referred to engagement in any capacity whatsoever. In the absence of any such declaration, the cited provision cannot be considered as disqualifying individuals who do not have any employment relationship to the creditor, even if through third parties (i.e. indirectly);*

19. *That, as confirmed within the extracts of his affidavit cited by C.R.S. Trading in its own application, Mr. Hodgson is not an employee of the Church in whatsoever capacity. Mr. Neil Hodgson is a volunteer whose relationship to the Church is not tantamount to an employment relationship. He does not receive any form of renumeration, nor does he have any obligations whatsoever towards the Church. This confirms that his relationship to the Church is not tantamount to an employment capacity. Instead, Mr. Hodgson is a patron of the Church who assists by providing voluntary assistance thereto;*

20. *That the ratio legis behind Article 287 is not that of avoiding any and all conflicts of interest between the consignee and the creditor, but rather to ensure that the creditor does not act as a consignee itself. If this were the case, the mechanism of a warrant of seizure would not be such as to provide the creditor the right to unilaterally propose an individual to act as a consignee themselves. The law does not disqualify any individual with a connection to the creditor from acting as consignee, and it should not be construed to disqualify a volunteer from such role since this would be counter to the*

*ratio legis, since a volunteer retains its full and unfettered independence in actions and decisions, even whilst serving as volunteers.*

21. *That in terms of Article 2 of the Employment and Industrial Relations Act, an employment relationship means "any contract of service or contract of employment as defined in this Act", whereas contract of service or employment is defined as 'an agreement, (other than service as a member of a disciplined force except as may be provided in or under this Act) whether oral or inwriting, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship;*

22. *That in contrast, Article 2 of the Voluntary Organisations Act (Chapter 492, Laws of Malta) defines a volunteer as a person who provides unremunerated services through or for a voluntary organisation. Notably, this Act recognises a voluntary organisation's right to employ individuals and distinguishes between an employment and volunteering relationship;*

23. *That Mr. Hodgson's relationship with the Church is consistent with the act of volunteering since he does not receive remuneration, and is not duty bound to render service or do work for the Church, and thus cannot be considered to be under an employment relationship with the Church in terms of law, whether directly or inderictly. Neither can he be considered as an extension of the Church himself or to be bound by the control or direction of the Church, despite C.R.S. Trading stating otherwise;*

24. *That it is clear that this application, consistent with the counter claim filed, is a continued assertion that C.R.S. Trading considers itself entitled to continue to operate the restaurant notwithstanding its consistent and continued failure to meet its rental payment obligations, which it expects to continue doing without any legally founded repercussions, inclusive of the warrant of seizure;*

25. *That in any case, furthermore, the remedy sought does not emanate from Article 836, on which C.R.S. Trading's request is expressly grounded. In fact, the consignee's capacity to act as such does not fall within the parameters of Article 836(b), (c) or (e),*

*which address completely different grounds potentially leading to revocation of a warrant. C.R.S. Trading has also failed to identify which of the three provisions are being relied on in this case and the link between the consignee's capacity and any of the aforementioned provisions. It is certainly not up to the Church to pre-empt or justify such connection, which is neither evident nor explained within the relative application;*

26. *That lastly, and stricly without prejudice to the above, in the event that this Honorouble Board considers Mr. Hodgson's position as irregular, the resulting remedy should not be that of revoking the executed warrant, which has been validly executed under the direction of the officials of the Courts of Malta, through its court marshals, but rather to provide the Church with a time period within which to appoint an alternative person to act as consignee and take over the possession of the seized goods. This is especially because the execution of the warrant takes place under the guidance and responsibility of the court marshall, and not of the consignee, whose role is limited to the possession of the goods after being transported to the location where such seized goods are held;*

***B. Arguments Relative to the Section of the Application numbered (ii)***

27. *That the second section is to the effect that the seized goods could not validly be stored at the Undercroft itself;*

28. *That the law does not establish any criteria as to which locations may be chosen for the safe keeping of the goods;*

29. *That no proof has been provided to the effect that the Church has exclusive control and possession over the location where the seized goods in question are held, nor that the location was selected without due regard to the procedure applicable thereto. It is worth noting that the location of the goods is transported under the guidance of the court marshal, who acts as the court executor of the warrant in question. Thus, the goods are necessarily held in a location known to the registry and approved thereby through its representative officer;*

30. *That thus, there exist no inconsistencies as to the location where the goods seized are being held;*

31. *That in any case, and strictly without prejudice to the above, the relative remedy would be to the effect that the Church's position would be ordered to be rectified through the selection of an alternative location where the seized goods would be stored for the duration of the warrant, and not the revocation of the warrant itself, seeing as the law does not establish deficiencies in the location of the goods as a valid cause for nullity of the warrant;*

***C. Arguments Relative to the Section of the Application numbered (iii)***

32. *That this section is twofold. On the one hand. C.R.S. Trading claims that the coffee machine seized is not capable of being seized as it is owned by a third-party company, and is only in possession of C.R.S Trading by way of a contract of precarium;*

33. *That whilst this may be the case, the Church contends that C.R.S. Trading has no legal standing or judicial interest to request that the property within its possession, which does not fall within its exclusive ownership, is released from seizure;*

34. *That the law expressly provides for a remedy applicable exclusively to a third party to release property owned by him from the effects of a warrant of seizure by way of asworn application;*

35. *That this is being stated with reference to the court decision dated 12th of February 2019 in the names Anthony Vella et vs Alfred Mifsud et*[2]*, wherein the court expressly recognized that the only available action in the event of property seized is owned by a third party is that such third party files a sworn application attacking the execution of the warrant, and not the warrant itself:*

> *B'danakollu, ghall-fini ta' kjarezza, u tenut kont ta' certi kummentz fir-risposta tal-ezekutandi, thoss li hu opportun li tirrileva li l-gurisprudenza maggoritarja (ghalkemm mhux unanima) taghna tiddistingwi bejn l-impunjazzjoni tal-validita' ta' mandat u l-oppozizzjoni ghall-ezekuzzjoni tieghu.*

[2] 663/2018 RG

*Konsegwentement gie ritenut li ai termini tal-Artiklu 281, terz interessat jista'jattakka l-validita ta'mandat ezekuttiv, izda mhux ukoll l-ezekuzzjoni tieghu. F'din l-ahhar eventwalita' jrid jipprocedi bil-procedura tar-rikors guramentat. L-gharef u l-wisq erudit Imhallef Joseph R. Micallef kellu l-okkazjoni li jikkummenta hekk fi procedura istitwita b'rikors semplici minn terz li kien sid t'oggetti maqbuda b'mandat ta' qbid ezekuttiv:*

*...*

*"Illi huwa accettat Ii I-fatt li l-hwejjeg magbuda fl-ezekuzzjoni ta' Mandat ma jaghmlux mill-gid tad-debitur ezekutat ma ghandu jkollu l-ebda effett fug is-siwi tal-Mandat innifsu, izda jekk stess thalli effett fuq l-ezekuzzjont?*[3]*. Minghandu d-dritt u l-interess li jattakka dik l-ezekuzzjoni, m'ghandux il-jedd li jattakka s-siwi tal-Mandat li bis-sahha tieghu saret tali ezekuzzjont, sakemm ma tohrogx xi wahda mir- ragunijiet li trid il-ligi*[4]*. Min-naha l-ohra, t-talba ghas-sospensjoni tal-ezekuzzjoni ta'Mandat ma ssirx taht l- artikolu 281*[5]*"*

*"Illi l-prattika stabilita, mbaghad, hi li min irid jattakka l-ezekuzzjoni ta' Mandat, irid jaghmel dan billi jmexxt bil-procedura normali mahsuba fil-ligt. Illum il-gurnata, din il- procedura hija azzjoni li tinbeda b'Rikors Mahluf"*[6]

*...*

*Illi ghalhekk in vista tal-ligi u l-gurisprudenza fug esposta, hemm ghadd ta' ragunijiet l-ghala l-procedura tar-rikorrenti hija irritwall: ... it-tieni l-ghaliex ir-raguni tat-talba ma tinkwadra ruhha fl-ebda wahda mir-ragunijiet tassattivament moghtija fil-paragrafi (a) sa (f) tal-istess Artiklu u t-tielet billi ankorke' r-rimedju kellu jitqies li*

*jestendi ghal terzi, bl-istess argument li I-gurisprudenza applikat ghall-mandati ezekuttivi, xorta ma kienx ikun applikabbli billi huwa ristrett ghall-impunjazzjoni tal-validita' tal-att innifsu u mhux ukoll ghas-sospensjoni tal-ezekuzzjoni tieghu*

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[3] P.A. AJM 14.11.1994 fil-kawza fl-ismijiet Josephine Spiteri vs Anthony Perry et (degriet interlokutorju)(mhux publikat)

[4] P.A. GCD 28.5.1999 fil-kawza fl-ismijiet Gianfranco Tolio vs Danuta Komarzynic

[5] App. Civ . 5.2.2002 fil-kawza fl-ismijiet Persiano et vs Persiano Kollez. Vol: LXXXVL.ii.257

[6] App. Civ . 5.2.2002 fil-kawza fl-ismijiet Persiano et vs Persiano Kollez. Vol: LXXXVL.ii.257

36. *That multiple crucial observations can be made in relation to this. Firstly, this extract clearly states that the seizure of items owned by third parties is not a matter capable of leading to the revocation of the warrant, and is as such inconsistent with C.R.S. Trading's demands, which do not request the reversal of execution for the purpose of releasing such items, but rather the revocation of the warrant in part or in whole in terms of Article 836 of the Code of Organisation and Civil Procedure. Secondly, the cited extract also establishes the procedure through which such a remedy may be sought, that is, through a sworn application. The application at hand is not a sworn application and is therefore defective in form, such that insofar as the Third Demand, mustbe considered as being irregular ('irritwali') and null;*

37. *That this demand also proposes the obscene idea that the Church conducted a 'theft'over the properties, and this because not all items seized were inventoried by the Court Marshall. This is entirely preposterous! Firstly, this Honourable Board, having its competence limited to civil matter, is definitely not the adequate forum to decide on any such matters of a criminal nature. Secondly, the description of the events does not amount to theft by any stretch of imagination;*

38. *That the events which C.R.S. Trading describes as theft consist of the Court Marshall's failure to identify foodstuffs within the inventory. It is clear that at law, the obligation to draft an inventory and to include items seized therein is one assigned exclusively to the Court Marshall. This is being stated by reference to Article 279(2) which clearly establishes the listing of the property seized and additional information as an obligation exclusive to the court marshal. It is also the Court Marshall who at law is considered as having seized the property — and not the executing creditor or the consignee! In fact, the possession of the property is given to the consignee not during the elevation of the movables from the site of execution, but once these are transported to the location in which items are to be held. Thus, the idea proposed whereby the Church is responsible for 'theft' is an allegation which is not only legally unfounded, but wholly illogical, ridiculous and irresponsible;*

***D. Arguments Relative to the Section of the Application numbered (iv)***

39. *That C.R.S. Trading's fourth section is intended at disputing the second attempt at executing the warrant by claiming that this is an irregular mechanism. This is legally incorrect;*

40. *That it is well established practice that when a warrant is issued, be it a warrant of seizure or a garnishee order, that warrant continues to apply as long as the limits of such warrant are not exceeded and consequently a counter warrant is issued. The law does not stipulate that a warrant loses its effect upon its first execution. Instead, a warrant remains in force (in vigore), including the facility to execute it, for the duration it is in vigore, unless a counter warrant is filed rendering it ineffective or until it is revoked;*

41. *That this is even the case relative to a garnishee order, whereby a garnisheed is bound to deposit any and all moneys up to the amount of that garnishee order for the duration in which the warrant is in force. It does not merely stop at depositing any money falling within the threshold at the time when the garnisheed is notified of the warrant in question. By analogy, the same applies to the Warrant of Seizure, which should be considered as enforceable, even if through multiple attempts of execution, for the duration of its operation, at least, until the value of the warrant is exceeded;*

42. *That in the case at hand, C.R.S. Trading has not provided any proof that the items originally seized exceed the value of the warrant of seizure in question. In fact, even if one considers the items listed within the inventory of the first execution attempt, one would note that most of the items seized are alcohol bottles and minor equipment, the value of which certainly does not exceed the value precautionarily secured by the warrant of seizure, that is the amount of twenty nine thousand, three hundred, sixty two euros and two cents! It is worth noting that despite C.R.S. Trading insinuating that the items elevated in virtue of the first execution exceeded the amount secured by way of the warrant of seizure, this does not appear to be the case, considering the items elevated. Neither has C.R.S. Trading presented any further evidence as to the values of the goods seized to support its claim;*

43. *That as is well known to C.R.S. Trading, who were present on site on the date of the first execution, the items seized through the second attempt of executions were not*

*capable of being seized at the first attempt, not because the value thereof was exceeded, but because of their size and weight rendering them physically difficult to be removed by the same court marshal;*

44. *That in any case, the Church followed the ordinary procedures applicable to such circumstances to request further attempts of execution, that is by filing an addition ('zieda') to the warrant of seizure, which is a procedure available to the applicant of any issued warrant. Contrary to that insinuated by C.R.S. Trading, this is not a procedure which could ever have been enforced and done by the Church's on its own initiative, without approval from court registry. Instead, the filed addition refers the acts of the warrant back to the relative court marshal, who takes account of whether the warrant has been fulfilled, in other words, whether any and all movables in satisfaction of the secured value of the claim have been elevated, and if not proceeds to execute the warrant a subsequent time. Thus, the procedure was not only supported by court registry officers, but even executed thereby after ensuring that appropriate circumstances existed therefor;*

45. *That the orders of the issued warrant of seizure incorporate within them multiple executions, and thus a second execution thereof does not require any explanation, justification or further authorisation by the issuing forum. Neither does it require a right of reply, especially in view of the fact that an issued warrant of seizure does not typically entitle the party subject to the warrant such a right in the first place!*

46. *That C.R.S. Trading is evidently attempting to manipulate the mechanism of a warrant of seizure to limits its effectiveness. This by raising complaints as to not being given the opportunity to reply or that the Church did not reserve the right for further executions. Neither mechanisms are elements of the warrant of seizure;*

47. *That the order which the court gives to the court marshal is to the effect that he seizes from the debtor goods valued at the amount secured by way of the warrant, without establishing whether this should be done through a single or multiple attempts of execution:*

*Inti ghaldaqshekk, fuq ir-rikors imsemmi, ordnat li, minghajr ebda dewmien taqbad minghand id-debitur hawn fuq imsemmi rahan li jiswa dags id-dejn/l-oggetti imsemmija fir-rikors flimkien mal-ispejjez ta' dan il-mandat kemm-il darba ma jsirx il-hlas jew ma titgieghedx fir-Registru ta' din il-Qorti l-oggetti/s-somma msemmija bhal dejn:*

48. *That it is only after goods valued at the sum secured by the warrant are seized that the warrant may be considered as fully executed, extinguishing further rights of execution of the same warrant. In absence of such event, further executions of the same warrants are legitimate attempts. That the notice envisaged by way of Article 834 is only required following the execution of the warrant of seizure, that is after goods exceeding the value of the sum secured by the warrant of seizure are seized;*

49. *That in any case, the Church is not answerable for any alleged deficiencies of the court marshal or registry in the further execution of the warrant of seizure in question;*

***E. Arguments as to the Revocation of the Warrant of Seizure***

50. *That the Church cannot but remark that the application, as drafted, does not clearly underline the grounds on which the revocation is sought in that despite Articles 836(1)(b), (c) and (e) are being cited as legal grounds for revocation in part or in full in the section stipulating requests made to this Honourable Board, none of these legal grounds are well motivated in relation to the rest of the application;*

51. *That by way of elimination, and without assuming the role of motivating C.R.S. Trading's requests, which remains the sole responsibility thereof, the Church understands that C.R.S. Trading is relying on the first to the fourth sections of the application, marked (i), (ii), (iii) and (iv), as a basis for revocation;*

52. *That none of these grounds are capable of being understood in relation to Articles 836 (b), (c) and/or (e). With all due respect, the application herein being addressed is misinterpreting and misapplying that intended by each of these legal basis for revocation;*

53. *That Article 836(1)(b) applies limitedly when one of the legal elements required by way of necessity for the issuance of the warrant in question subsisted at the date of issuance but for some reason or another does not continue to subsist thereafter;*

54. *That by reference to the decision of the First Hall Civil Court dated 29 of February 2008 in the names Raymond Meli vs David Meli proprio et nomine, for this legal ground to be a successful basis for revocation, one would have to prove that the warrant of seizure is no longer necessary owing to a change in circumstances occurring following the fact of issuance of a warrant:*

*Il-kawzali li wahda mill-htigiet tal-ligi ghall-hrug tal-Mandat m'ghadhiex tezisti [Art. 836(1)(b)]. Din id-dispozizzjoni, skond il-kliem uzat fiha, giet imfissra bhala riferenza ghal xi wahda mill-htigijiet tal-ligi ghall-hrug tal-att kawtelatorju li kienet tezisti fil-waqt tal-hrug tal-istess att izda li, wara l-hrug tal-istess Mandat, ma baqghetx tezisti izjed8. Ghalhekk, jekk wiehed trid jimxi ma'tali tifsira, wiehed irid juri li l-htiega ghall-hrug tal-Mandat trid tkun nagset wara li nhareg l-att;*

*Illi l-htigiet li l-ligi procedurali titlob sabiex persuna tista' tohrog Mandat kawtelatorju huma li (a) jkollha pretensjoni ta' dritt kontra I-persuna li dwarha jinhareg il-mandat; (b) li (flimkien mal-att jew fi zmien preskritt wara) ssir kawza li fiha tigi mistharrga sewwasew dik il-pretensjoni ta' dritt, (ċ) li l-Mandat irid ikun thares tr-rekwiziti mitluba mil-ligi dwar il-hrug tieghu u (d) It tali Mandat jinhareg u jigi esegwit taht ir-responsabbilta' tal-persuna li tkun talbitu;*

55. *That in the case at hand, neither did C.R.S. argue nor was it the case that the Church's pretension of a right has been extinguished, that the Church failed to subsequently file a case on the merits within the timeframe established by law, that the specific requisites relative to the issuance of the warrant of seizure are lacking or that the warrant is not being exercised by the Church;*

56. *That thus the Church fails to understand the relevance of Article 836(b) or its capability of being proposed as a valid legal ground for revocation in the circumstances. Neither has C.R.S. Trading raised any arguments claiming an absence of any such requisites;*

57. *That Article 836(1)(c) of the Code of Organisation and Civil Procedure is applicable wherein :*

*other adequate security is available to satisfy the claim of the person at whose request a precautionary act was issued either by the issue of some other precautionary act or if such other security can to the satisfaction of the court adequately secure the claim*

58. *That no such argument has been raised or substantiated within the application;*

59. *That it is certainly not the case that another precautionary act has adequately secured the claim. In fact, before the issuance of the warrant of seizure, the church obtained the issuance of a garnishee order, numbered 1995/2024 NB. Despite being acceded to, no amounts were deposited in Court;*

60. *That C.R.S. Trading has not indicated in its application that it has other security available and thus has fallen short in proving to the required extent that it has an alternative guarantee through alternative assets which may be used in security of the same claim;*

61. *That in terms of the teachings of First Hall Civil Court in its decision dated the 14th of August 2013 in the acts of the case with names Joseph Tabone vs Capece Construction Limited, for a claim for revocation under Article 836(1)(c) to be successful, the person subject to the warrant ought to prove that they possess enough assets to secure the claim;*

*Illi biex jista' jinghad li tezisti garanzija xierqa ohra li taghmel tajjeb ghall-pretensjoni ta' min talab il-hrug tal-Mandat ghall-finijiet tal-Artikolu 836(1)(c) tal-Kodici, irid jintwera li tali garanzija trid tkun tinstab fi hdan l-istess persuna ezekutata, u dan, generalment, minn stharrig tal-gid li hija jista' jkollha, ukoll jekk tali garanzija hija kostitwita "bil-hrug ta' att kawtelatorju iehor"... Wara kollox, il-Qorti tista' dejjem torbot lil min iressaq il-garanzija alternativa xierqa biex ma jaghmel xejn dwar dak il-gid li bih jista' jnaqqas jew ixellef is-sahha ta' dik il-garanzija;*

*Illi, f materja ta' garanzija xierga alternativa, l-piz tal-prova li jezisti gid iehor li jista'jaghmel tajjeb ghall-pretensjonijiet tal-intimat ezekutant jaqa' biss fuq il-parti ezekutata rikorrenti7. Fug kollox, tali garanzija trid tkun wahda soda, cara u realizzabbli lill-ezekutant'[7];*

62. *That domestic Courts have consistently required that the party may only successfully rely on Article 836(1)(¢) for the revocation of an issued warrant if they raise an alternative specific guarantee, which is quantified and proven, as emerging for instance a contrario sensu from the decision of the First Hall Civil Courts dated the 25th of August 2010 in the names Francis Spiteri et vs Charles Darmanin et[8]:*

*Illi meta wiehed iqis ic-cirkostanzi kollha li jduru mal-kaz, wiehed isib li l-garanzija alternativa li l-ezekutatt jsemmu hija wahda generika dwar il-qaghfda finanzjarja taghhom u f'dawn l-atti ma hija bl-ebda mod imwettqa b'xi sura ta' prova li l-Qorti tista' tizen u tqis;*

63. *That C.R.S. Trading has been subjected to a garnishee order issued on the Church's application, however it transpires that C.R.S. Trading is not a holder of any liquid assets in Malta. In fact, no liquid assets have been seized;*

64. *That C.R.S. has not provided any evidence as to the value of the items previously seized by the first attempt of enforcement, such that it could validly argue that a sufficient guarantee has already been secured up to the value of the claim secured by the warrant of seizure;*

65. *That Article 836(1)(e) of the Code of Organisation and Civil Procedure allows for revocation of a warrant if 'security provided is deemed by the court to be sufficient'. It thus concerns the same issue of alternative security. Thus, in view of the arguments made in terms of Article 836(1)(ċ), the Church holds that there is no basis on which this may be upheld;*

66. *That thus, the arguments raised within the applications do not correlate to the legal basis relied on expressly within the demands made to this Honourable Board;*

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[7] Ara P.A. TM 20.2.2003 fl-atti tar-Rikors fl-ismijiet Ranger Company Ltd vs Euro Imports Ltd.

[8] Rik 571/2010

*67. That it is a well-established principle that adjudicating bodies may only decide on the demands presented to it by virtue of the application;*

*68. That the demand for revocation of the warrant is expressly limited to the application of Articles 836(1)(b), (ċ) and (e), none of which have been well motivated or coincide with the arguments made throughout the application;*

*69. That thus this request can not be entertained or upheld by this Honourbale Board;*

***F. Legal Arguments Relative to the Section of the Application numbered (v)***

*70. That the fifth section relates to the requests relative to damages, whereby C.R.S. Trading is arguing that the Church should be held responsible for damages occurring to its income and to elevated goods due to mishandling of items during the second attempt at execution of the warrant;*

*71. That there are various reasons at law why this request cannot be entertained;*

*72. That firstly, an executor may only be subjected to the penalty envisaged by Article 836(8) and damages in terms of Article 836(9) if the party subject to the warrant manages to satisfactorily prove the occurrence of any of the events described in Article 836(8)(a) to (d);*

*73. That the circumstances meriting a decision relating to Article 836(8) of the Code of Organisation and Civil Procedure were eloquently set out in the Decision dated the 19th September 2013 in the names Rita Agius vs Nutar Joseph Vassallo Agius, wherein the First Hall Civil Court[9]:*

> *Minbarra li tali impozizzjoni hija fakultativa, irid jintwera ghas-sudisfazzjon tal-Qorti li trid tkun sehhet wahda mic-cirkostanzi mahsubin mil-ligi biex tali sanzjoni tigi imposta. Erbgha (4) huma c-cirkostanzi mahsuba mil-ligi f dan ir-*

[9] Rik 816/2013

*rigward u, ladarba huma sanzjoni punittiva, ghandhom jitqiesu strettament bhala tassattivi13. Dwar din id-diskrezzjoni nghad lil-Qorti hija tenuta li timponi I-penali fejn ikunu jirrizultaw l-estremi il-ligi tezigi biex din tkun imposta, u l-Qorti tista' biss taghzel li ma timponix il-penali mahsuba fl-artikolu 836(8) f'kazijiet estremi fejn is-sens ta' gustizzja hekk kien jimponilha*

74. *That C.R.S. Trading mentions in passing that it considers the execution of the warrant as being 'malicious', however it fails to explain what has led to its conclusion thereon and to substantially show that such circumstances fall within the parameters of Article 836(8)(d), which it seemingly, but not expressly, relies on;*

75. *That circumstances meriting the imposition of a penalty and damages in terms of Article 836, as resulting from the above-cited extract, are to be applied in exceptional circumstances where the court considers that justice would not be done unless the penalty and damages are so imposed;*

76. *That one may not claim that there is malicious intent justifying the imposition of damages or a penalty unless it is shown that there was no valid cause, on a prima facie basis, meriting the issuance of a warrant in the first place, as resulting from the same above-cited decision in the case Rita Agius vs Nutar Joseph Vassallo Agius:*

*Illi dwar it-tieni cirkostanza, ir-rikorrenti jibni din fuq l-allegazzjoni tal-hazen u s-sens ta' vendikazzjoni u kattiverja min-naha tal-intimata ezekutanti. Il-Qorti qieset li diga'ntwera li ma jezistux ir-ragunijiet ghat-thassir tal-Mandat u li l-intimata ezekutanti kellha ragunijiet tajbin bizzejjed biex titlob il-hrug tal-Mandat. Dan igib l-effett li ma pistax jinghad li l-Mandat inhareg b'hazen, jew ghal raguni fiergha jew inkella bil-hsieb biss li ddejjaq lir-rikorrent ezekutat;*

77. *That no arguments have been made to the effect that the warrant was wrongly issued or that the Church did not have valid reasons for requesting the issuance of the warrant;*

78. *That as emerging from the wording of the law ('if applicant's claim'), malicious intent relates to the claim for the original issuance of the warrant, not for the execution thereof. The application does not consist of any arguments claiming malice in the request for the issuance of the warrant;*

79. *That it is a deeply rooted principle that one cannot be subjected to damages for duly exercising legal rights available to them, such as the right to request that a warrant of seizure be issued and to seek to have that warrant executed. Thus, the Church cannot succeed in the absence of exceptional circumstances indicating that the right to request the issuance of the warrant was abused of;*

80. *That in any case, the request for issuance of a penalty and damages is premature, and this is being said because domestic courts have consistently upheld that damages sustained as a result of the issuance of a warrant are borne by the plaintiff or defendant depending on the outcome of the case on the merits. This was, for instance stated by the First Hall Civil Court in the case in the names Busietta Gardens Madliena Limited vs Civil Engineering and Contractors Limited et, dated the 11 of January 2002, the First Hall Civil Court stated that:*

> *Nergghu lura ghal dak li jghid I-art. 829 tal-Kodici ta' Organizzazzjoni u Procedura Civili dwar min hu responsabbli ghall-hrug tal-Mandat u ghall-konsegwenzi kollha li dan igib mieghu. F'dan I-istadju l-kawza ghadha ma nqatghetx; ghalhekk ghadna ma nafux jekk il-hsara li jista' jaghmel il-Mandat ghandhomx ibatuha r-rikorrenti jew l-intimata*

81. *That jurisprudence has further clarified this principle, establishing that liability for damages must depend not only on the outcome of the decision on the merits of the case, but also on the presence of abuse in the exercise of the right to request the issuance of a warrant. Accordingly, even if the party who requested the warrant is ultimately unsuccessful on the merits, they shall not be liable for damages unless it is shown that they acted abusively in seeking the warrant in the first place:*

> *Il-principju assodat mill-gurisprudenza lokali hija li ezercizzju ta' dritt ma jista' qatt iwassal ghar-responsabbilta' ghad-danni, sakemm dak id-dritt ma*

*jkunx abbuzat u jkun ezercitat fil-limiti permessibili mil-ligi. Ghalhekk, gie deciz li min jiftah il-kawza u jitlifha, ma jkunx responsabbli ghad-danni, sakemm il-ftuh tal-kawza ma jkunx sar b'mod vessatorju (ara "Farrugia vs Sammut", Kollez Vol. XXXVIII.1.223); u "Barbara vs Fleri" Kollez. Vol. XXVIILUI.695). Huwa meta persuna tagixxi kapriccosament jew b'mala fede, li hija tista'tkun responsabbli ghad-dani li jsegwu l-agir irresponsabbli taghha."*[10]

82. *That furthermore, the damages claimed are not damages that may be claimed in virtue of Article 836(9), seeing as the provision envisages damages suffered by the issuance of the warrant itself, whereas the damages sought relate to alleged deficiencies in the second attempt at executing the warrant;*

83. *That consequently, this Honourable Board, whose competence in so far as damages is limited to decisions based on Article 836, does not have the competence to decide on the claim for damages made, which is a civil claim falling within the competence of the Court of Magistrates or the First Hall Civil Court;*

84. *That relative to the same matter, the damages sought are in no case recoverable through the present action based on Article 836, since in any case, without prejudice to the contestation of damages having actually resulted from the execution of the warrant, there is no relation of cause and effect between the issuance of the warrant per se and the damages. Instead, a relation of cause and effect can be argued in relation to damages and the court marshall and/or the consignee's actions. Thus, the Church is not the legitimate adversary to the suit;*

85. *That with all due respect, reference to the case in the names Ibrahim Sistek v TSG Gaming Europe Ltd is completely irrelevant and inapplicable to the present case - a case, notably, brought by the undersigned attorney. It is not contested that a second warrant may not be issued unless duly justified where a prior request has been rejected. However, this principle has no bearing on the matter at hand, where a warrant has*

[10] John Zarb vs Port Cottonera Limited, First Hall Civil Court, 18th September 2002, Cit 883/02TM

*already been validly issued and is merely in the process of being executed in accordance with a court decree!*

86. *That accordingly, there is no legal basis meriting the issuance of a penalty or damages in terms of Article 836 of the Code of Organisation and Civil Procedure;*

***B. Factual Arguments Relative to the Section of the Application numbered (v)***

87. *That, without prejudice to the above, C.R.S. Trading has not produced evidence confirming that the damages resulted from the second execution of the warrant. In fact, despite claiming gross mishandling and 'abusive attitude' resulting in damages to property, the damages are not factually well-founded because*

    a. *the CCTV videos do not display any negligence in transporting the goods nor does it provide evidence as to the actual damage occurring on the date! This, despite the application stating otherwise. For instance, specific reference is being made to the images of damage to the tiles. These images depict broken tiles with evident dirt, which cannot be stated to have been accumulated immediately. This indicates that the tiles had been broken before. The same may be stated in relation to the leakage damage, proof of the source of which has not been provided;*

    b. *C.R.S. Trading is claiming damages to the property of the Church itself, inclusive of the 'curtains' which were provided in the premises when leased and were in fact owned by a previous tenant, as well as damages to the tiles which were included in the leased premises;*

    c. *The application does not include any proof as to the state of the allegedly damaged goods before the second execution attempt;*

    d. *Most of the damages being claimed pertain to items that were not included in the official inventory - being treated as damages solely by virtue of their omission. This deficiency, if anything, is attributable to the court marshal, whose duty it was to accurately and comprehensively list the items seized.*

*Accordingly, the Church cannot be held liable for such alleged damages, as the preparation and content of the inventory lie entirely outside its reasonable control;*

e. *if any damage actually occurred as a result of mishandling, dato ma non concesso, responsibility should be borne by the persons who actually mishandled the property on legal grounds falling beyond the remits of Article 836. In fact, the Church, as the party having requested the issuance of the warrant, cannot be held responsible if that warrant is not issued with the due diligence requested of the consignee and/or the court marshal! It is worth noting that in the transportation of goods, the court marshals were assisted by the consignee, as well as employees of C.R.S. Trading itself, depicted in the videos presented as evidence by C.RS. Trading. It is thus completely illogical to argue mishandling when C.R.S. Trading's own employees were handling the goods together with the court marshal and the consignee;*

88. *That thus, even if the court considers that there is a valid legal basis to consider the claim of damage, there is certainly no factual basis meriting the award of damages imputable on the Church;*

89. *That in light of the above arguments relative to the imposition of the penalty and damages, both with reference to legal and factual arguments, the Church stresses that there are no circumstances meriting the imposition of a guarantee for damages and interest thereon;*

***G. Conclusion***

90. *That considering all of the arguments put forward through this reply, the demands made through the application of C.R.S Trading should be wholly rejected since they are not well substantiated in law or in fact;*

91. *That Church emphatically maintains that this constitutes yet another blatant attempt by C.R.S. Trading to manipulate and abuse judicial mechanisms - mirroring its conduct through the counterclaim - with the clear aim of evading or diminishing its lawful*

*obligations to pay rent due to the Church. Such tactics are not only legally unfounded but also represent a clear misuse of process;*

*92. Thus the application and requests made therein should be wholly rejected.*

Having heard the final submissions on the relative application during the sitting of the 15th of July 2025.

Having seen all the acts of the application and of the relative warrant of seizure.

**Considers**

Whereas at the outset it is stated that the proceedings were conducted in the English language as they are proceedings linked to the case between the parties, currently pending before this Board. Those proceedings are being heard in the English language. The Board therefore deems it fit to simply refer to relevant case-law in the relative footnotes without citing from the same in the Maltese language.

Whereas, the executed party, through this application, is primarily requesting the revocation of the relative warrant of seizure citing articles 836(1)(b),(c) and or (e) of Chapter 12 of the Laws of Malta, particularly by revoking the appointment of Mr. Neil Stuart Hodgson as consignee; subsidiarily it requests the payment of a penalty in terms of article 836(8) of Chapter 12 of the Laws of Malta; damages relating to the execution to the warrant and in default the same party requested the Board to order the executing party to provide sufficient security in terms of article 838A of Chapter 12 of the Laws of Malta.

Whereas, the executing party obtained a precautionary warrant of seizure, issued on the 23rd of September 2024[11], on the basis of a claim related to alleged arrears of rent and consumption of water and electricity services, which claim forms the basis of the proceedings mentioned above, currently pending before this Board. From the acts of that warrant, it results that the first execution of the warrant occurred on the 1st of October 2024 and a number of items were duly elevated. These items were left with the appointed consignee. Months later, on the 24th of April 2025, a second execution of the same warrant was carried out and another set of items where elevated. These were also left with the consignee.

## 1) General Principles regarding article 836 of Chapter 12 of the Laws of Malta.

Whereas it is established that the examination to be done by an adjudicating body under this article is one which is of a restrictive and stringent nature. Without the need of citations, it has been consistently held that this procedure requires solely a *prima* facie examination, as the merits of the relative issue is solely reserved to the actual case[12]. The examination is therefore merely limited to whether the executing party has a legal claim and not whether that claim is one which is founded[13].

[11] Warrant in the names **Il-Knisja Anglikana ta' San Pawl vs C.R.S. Trading Limited,** (Warrant Number: 1554/2024).

[12] Amongst others, reference is made to the decrees in the names **Communications Ltd vs Office Group Limited**, (Application Number: 1183/2014) decided by the Civil Court, First Hall on the 28th of April 2015 and that in the names **Joseph Camilleri *et* vs Anthony Gové *et,*** (Application Number: 286/2001) decided by the Civil Court, First Hall decided on the 10th of May 2001.

[13] Amongst others, reference is made to the decree in the names **Grazio *sive* Horace Cachia vs Agostino sive Winston Carbone *et,*** (Application Number: 12/11) decided by the Court of Appeal (superior Jurisdiction) on the 25th of November 2016.

Whereas furthermore, and this is the subject of the first part of the application here examined, article 836, under its six exhaustive reasons, can only be used for the revocation of the actual warrant and not the execution of the same. The execution of the warrant, or rather, deficiencies in the execution, are not reasons envisaged by the law for the revocation of the warrant. In that case, the executed party has other remedies at law[14].

**2) <u>Article 287 of Chapter 12 of the Laws of Malta.</u>**

Whereas a large section of the relative application, also emphasised in the final oral submissions, relates to the appointment of Neil Stuart Hodgson as the appointed consignee. The executed party laments the fact that this person is intimately linked with the executing Church in that he occupies the role of Church Warden within the same Church. Whereas this Board does not agree with some other decisions[15] which state that this article is only relevant to executive warrants. In fact, article 846(3) of Chapter 12 of the Laws of Malta[16] states as follows:

> *The provisions of articles 275 to 293 and articles 842, 843 and 844, shall apply to warrants of seizure.*

Whereas however, the issue in this particular application is another one. In the first request, the executed party intrinsically linked the issue of the consignee with the revocation of the warrant. Alas, a wrong application of article 287 of Chapter

[14] The Executing party, at pages 10 and 11 of its responsive note, correctly indicated the decree in the names **<u>Anthony Vella *et* vs Alfred Mifsud *et,*</u>** (663/2018 GM) (and not RG as wrongly indicated in the note), issued on the 12th of February 2019 by the Civil Court, First Hall.
[15] Reference is being made to the judgement in the names **<u>Dr. Carlos Bugeja *noe* vs Palumbo Malta Shipyard Limited,</u>** (Claim Number 277/2017) decided by the Small Claims Tribunal on the 13th of January 2025 (not appealed).
[16] Which deals with the precautionary warrant of seizure.

12 of the Laws of Malta, is not one of the instances mentioned in article 836(1) of the same law. As rightly indicated by the executing Church, should a defect arise as to the appointment of a particular consignee, the result is not the revocation of the warrant but simply the removal and substitution of that particular consignee. In this Board's view, the executed party erroneously linked the issue of the consignee with the actual revocation and therefore the Board finds that it cannot delve into the merits of whether the appointment of this particular consignee was done according at law or otherwise. This further shows that article 836(1) is linked to the revocation of the warrant only and not the manner of its execution.

Whereas the Board is deciding to leave this matter (whether Neil Stuart Hodgson could have been indicated as consignee) undecided. There is therefore nothing which precludes the same executed party, by means of a proper application, to request his removal in another singular application.

3) **Objects elevated in the first execution do not belong to the executed party.**

Whereas in para 5(iii) of the application, the executed party laments the fact that a number of the items (these are not specified) which were elevated aren't property of the same executed party but of third parties. It is amply clear by a reading of article 836 of Chapter 12 of the Laws of Malta that this is not the correct procedure. Where an object belonging to a third party is elevated during the execution of a precautionary warrant, the remedy is the filing of an action **by that third party** and not by means of a simple application by the executed party[17] under article 836. Therefore, this reason cannot be dealt with in this manner.

[17] The Board refers to *inter alia* the decrees in the names **M.I.M.S Supplies Limited vs Ivan Calleja,** (App Number: 1200/2008) issued by the Civil Court, First Hall on the 26th of January

4) **<u>Articles 836(1)(b)(c) and (e).</u>**

Whereas as already indicated above, it is clear to this Board that the executed party has mistakenly utilised article 836 **to attack the execution** of the warrant and **not the validity** of the same. In fact, the two main reasons are simply the chosen consignee and the fact that a second execution of the same warrant was carried out. These two reasons do not fall within the parameters of the sub-articles mentioned by the executed party.

Whereas regarding the fact that a second execution was carried out, this Board does not find anything improper. It has not been duly established that the first execution was sufficient to cover the alleged claim in its entirety. Although reference was made to the decree in the names **<u>Ibrahim Sistek vs TSG Interactive Gaming Europe Ltd[18],</u>** this Board does not deem that decision to be relevant for the purposes of this application. First of all, that decision related to the revocation of an executive warrant. Secondly, that decision simply reaffirmed that one ought not to proceed with a second executive warrant if the first executive warrant is revoked on an issue relating to the merits of the same.

Whereas, similarly, article 836(5) of Chapter 12 of the Laws of Malta states as follows:

> *No appeal and no challenge shall lie from a decree acceding to an application referred to in sub-article (1), and such decree shall be final and irrevocable, and except in the case contemplated in sub-article (1)(a) a similar precautionary act may not be issued insecurity of the claim*

2009; **<u>Alf. Mizzi & Sons (Marketing) Ltd vs Joseph Pace,</u>** (App Number 456/2005) delivered b the Civil Court, First Hall on the 23rd of June 2005.

[18] Warrant Number 1414/2023, decided by the Civil Court, First Hall on the 11th October 2023 and confirmed by the Court of Appeal (Superior Jurisdiction) on the 17th of January 2024.

*against the person against whom the precautionary act so revoked was issued, unless in the application for the issue of such similar precautionary act the applicant states that circumstances have arisen since the revocation of the previous precautionary act which justify the issue of a similar fresh precautionary act to that which has been revoked, and the provisions of this article shall thereupon apply to such precautionary act freshly issued on the basis of such application.*

Whereas there was no revocation of the warrant in question; today's application is precisely the first attempt made by the executed party. There was nothing irregular with the second execution of the same warrant and there is no legal hindrance in this regard. By way of example, had this been a garnishee order, there would have been nothing irregular should the executor request the addition of further credit institutions (garnishees), in case the first attempt does not result in any deposits. It is simply a continuation of the same warrant.

Whereas nonetheless, although this Board deems the reasons for the revocation not applicable (as they relate to the execution and not the warrant), this Board does not find that the articles used are justified in this case. With regards to article 836(1)(b) of Chapter 12 of the Laws of Malta, it has not been shown that one of the requisites for the issuance of the relative warrant have ceased[19]. Regarding article 836(1)(c) of Chapter 12 of the Laws of Malta, it is accepted that the adequate security mentioned in the same article needs to emerge from property belonging to the executed party[20]. The security therefore cannot be the property

[19] Reference is made to the decree in the names **Tyrell Corporation Limited vs Yirum Europe GmbH *et,*** (App Number: 742/20) decided by the Civil Court, First Hall on the 14th of January 2021 and the decree in the names **Dylan Azzopardi vs Peter Zammit**, (Application Number: 989/2013) decided by the Civil Court, First Hall on the 9th of January 2014.

[20] Reference is made to the decree in the names **Paul Caruana vs Rudolph Gaerty,** (App Number: 862/2004) decided by the Civil Court, First Hall on the 1st of September 2009 and

or in the possession of third parties[21]. The same security needs to be clear and capable of eventually being used by the executing party[22]. The executed party has failed to show that it owns such security. Truth be told, the Board cannot understand how the executed party based itself on this sub-article when it stated in the same application that some items seized belong to third parties. Whereas the same reasoning is being adopted with regards to article 836(1)(e) of Chapter 12 of the Laws of Malta.

Whereas therefore, for all of these reasons, the first claim is being rejected in its entirety, with the *caveat* as explained above that the executed party is not precluded from filing a separate application regarding solely the removal or substitution of the consignee.

## 5) Article 836(8) of Chapter 12 of the Laws of Malta.

Whereas in the second claim the executed party is also asking the Board to order the executing Church to pay a penalty. Although the executed party fails to indicate which of the four instances allowed by law is being utilised under this heading, it is clear to this Board, due to the wording used in the request, that reference is here being made to article 836(8)(d) of Chapter 12 of the Laws of

the decree in the names **Helen Demicoli vs Kuraturi Deputati *noe,*** (App Number: 233/2014) decided by the Civil Court, First Hall on the 25th of April 2014.

[21] Reference is made to the decree in the names **Chain Services Limited vs Leo Micallef *et,*** (Application Number: 930/2009) decided by the Civil Court, First Hall on the 30th of October 2009.

[22] Reference is made to the decree in the names **Mark Alexander Bugeja vs ARCStudio Limited *et,*** (Application Number: 69/22) decided by the Civil Court, First Hall on the 16th of March 2022.

Malta[23]. It is only natural that since this Board has not found any reason to order to revocation of the warrant that this request cannot be acceded to[24].

## 6) Damages relating to the execution of the warrant

Whereas with regards to the third request, the executed party is claiming damages in the amount of €12,880.70c. Once again, these damages relate to the execution of the warrant, as the executed party is alleging the mishandling of the property seized (presumably also by the consignee who is not party to these proceedings). The Board reiterates that such a claim cannot be decided in an application based on article 836 of Chapter 12 of the Laws of Malta. Indeed, the law, under this procedure, allows damages solely by virtue 836(9) of the same law, which however necessitates the filing of an *ad hoc* case[25].

Whereas the damages being requested through this application do not refer to the issuance of the warrant but rather to the alleged destruction or mishandling of property in its execution. In any case, the examination relating to the liquidation of damages cannot be decided through such an application since this is only one which is of a *prima* facie nature. The issue of damages requires a profound examination of the merits[26].

Whereas therefore this request must be rejected as the procedure used is incorrect.

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[23] The second request, like this sub-article, utilises the words: malicious, frivolous and vexatious.

[24] Reference is made to the decree in the names **MGM Properties Limited vs Louise Buttigieg**, (Application Number: 1215/2022) decided by the Civil Court, First Hall on the 5th of January 2023.

[25] Reference is made to the decree in the names **Joseph Rapa vs Raymond Sammut,** (App Number: 1650/00 GCD) decided by the Court of Appeal (Superior Jurisdiction) on the 13th of March 2001.

[26] Reference is made to the decree in the names **Karmena Callus *et* vs Dione Cassar *et,*** (Application Number: 1206/2013) decided by the Civil Court, First Hall on the 30th of January 2014.

## 7) Article 838A of Chapter 12 of the Laws of Malta.

Whereas in its final request, the executed party requests the Board to impose a time-limit by which the executing Church is to provide sufficient security for the payment of the penalty that may be imposed and of damages. It is only natural that such a request is alternative to the revocation of the warrant. Should the warrant be revoked, there would be no need for such a security[27].

Whereas the executed party seems to base this last request on the same grounds used for the revocation above examined, however this is not the "good cause" mentioned in the law[28]. Again, the eventual damages need to be linked with the fact that the warrant was issued, most probably in an abusive manner[29]. The Board understands that generally, such a request is acceded to when it is shown that the executing party does not hold any assets in the country[30] or when it is proven that the financially stability of that party is precarious[31]. This is due to the fact that the aim of such a request is to put the executed party in a position to find assets should

[27] Reference is made to the decree in the names **Joseph Demicoli vs Coleiro General Supplies Ltd,** (Application Number: 812/00) decided by the Civil Court, First Hall on the 30th of May 2002 and that in the names **Edward Vella vs Charles Deguara,** (Application Number: 1111/2012) decided by the Civil Court, First Hall on the 21st of December 2012.

[28] Reference is made to the decree in the names **Portem Brew and Leisure Ventures Limited vs DAAA Haus Limited,** (Application Number: 848/2018) decided by the Civil Court, First Hall on the 4th of October 2018.

[29] Reference is made to the decree in the names **Charles Darmanin *et* vs Albert Cachia *et,*** (Application Number: 267/2007) decided by the Civil Court, First Hall on the 31swt of July 2007.

[30] Reference is made to the decrees in the names **Koray Global Malta Limited vs Shoreline Contracting Limited,** (Application Number: 612/2024) decided on the Civil Court, First Hall on the 25th of November 2024 and the decree in the names **Bruno Romano vs Blaschem (Malta) Limited,** (Application Number 1906/2001/1) decided by the Civil Court, First Hall on the 23rd of July 2003.

[31] Reference is made to the decree in the names **M.I.M.S Supplies Limited vs Ivan Calleja,** (Application Number: 1197/2011) decided by the Civil Court, First Hall on the 30th of December 2011.

he eventually file (and win) an *ad hoc* case regarding abusive judicial proceedings[32], related to the precautionary warrant.

Whereas the Board states that although an application under this article may be filed individually (not within the ambit of revocation proceedings), the same article is to be read and examined with reference to what is stated in articles 836(1)(8) and (9) of Chapter 12 of the Laws of Malta[33].

Whereas this Board has already held that it will not be ordering the revocation of the warrant and that no penalties are due. Therefore, there is no justification for the imposition of the security here requested[34].

Therefore, in conclusion, the Board is deciding the application filed by C.R.S. Trading Limited on the 30th of April 2025 by rejecting all the requests[35].

The expenses of this procedure are to be borne by C.R.S. Trading Limited.

**Dr Joseph Gatt LL.D.**
Magistrate

[32] Reference is made to the decree in the names **Bartholomeo Bonett *et* vs George Borg *et***, (Application Number: 589/2007) decided by the Civil Court, First Hall on the 23rd of October 2007.
[33] Reference is made to the decree in the names **Nazzareno Caruana *et* vs Jasper Developments Limited,** (Application Number: 1249/2007) decided by the Civil Court, First Hall, on the 29th of May 2007.
[34] Reference is made to the decree in the names **Mark Alexander Bugeja vs ARCStudio Limited *et*,** (Application Number: 69/2022) decided by the Civil Court, First Hall on the 16th of March 2022.
[35] The issue of the consignee as written in the first request and the issue of the damages as written in the third request are to be deemed as being left unprejudiced by this decree.

**Annalise Spiteri**
Deputy Registrar