



**CIVIL COURT
FIRST HALL**

**THE HON. MR. JUSTICE
GIANNINO CARUANA DEMAJO**

Sitting of the 5 th December, 2008

Rikors Number. 968/2008

Carmel *sive* Charles Busuttil

Versus

Stanley George Newbold and Antoinette Newbold

The Court:

Having seen the application, and the decrees of the 1 October 2008 and the 3 November 2008; having seen also the reply, all the acts and documents in the records and also the records of sworn application number 969/2008;

Having seen also the relevant provisions of art. 836 of the Code of Organisation and Civil Procedure:

Decrees as follows:

The present proceedings concern the request by Stanley and Antoinette Newbold ["Newbold"] for the court to revoke a garnishee order ["the Order"] issued at the request of Carmel Busuttil ["Busuttil"] on the grounds that

the debt secured by the Order is due not by Newbold but by a commercial company [“the Company”] in which both Newbold and Busutil have an interest.

At this stage of the proceedings, conclusive proof of the existence of the debt is not required; *prima facie* evidence is sufficient, but also required, for the Order to be kept in force.

In the present case Busutil failed to submit such evidence. There is no receipt or other documentary evidence, such as negotiated cheques or bank statements, showing the transfer of monies from Busutil to Newbold *proprio*. The available evidence – in particular the private writing of the 12 February 2008 and the item “stamp duty” shown on “Document A” in the records of sworn application number 969/2008 – shows rather that any monies which passed were in the interest of the Company rather than in the private interest of Newbold. It is hardly conceivable that Busutil would lend such a substantial sum as is claimed in the Order without requesting a proper receipt. There is no evidence of any such receipt.

The court therefore finds that the amount claimed is not *prima facie* justified and it therefore revokes the Order in terms of art. 836(1)(d) of the Code of Organisation and Civil Procedure.

The matter of costs will be determined in the judgment on the merits.

< Final Judgement >

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