



**COURT OF MAGISTRATES (MALTA)**

**MAGISTRATE DR.  
GABRIELLA VELLA**

Sitting of the 5 th July, 2010

Avviz Number. 208/2010

**In the records of judicial letter number 27/2010 filed  
before the First Hall Civil Court in terms of Article  
166A of Chapter 12 of the Laws of Malta in the names:**

**Symphony Malta Ltd.**

**vs.**

**Michael Peter Lord**

**The Court,**

After having examined the application filed by Michael Peter Lord on the 3<sup>rd</sup> June 2010 whereby he requests the Court to rescind the judicial letter bearing number 27/2010 issued against him by Symphony Malta Ltd. under the Authority of the First Hall Civil Court and declare it null and void, and consequently order the cessation of the execution of the Warrant of Seizure bearing number 760/2010 and of any other executive act obtained

consequent to the said judicial letter, and this in terms of the provisions of law set out in Article 166A of Chapter 12 of the Laws of Malta;

After having examined the reply filed by Symphony Malta Ltd. wherein it submits that the request by the applicant is to be rejected with costs against him, as totally unfounded in fact and at law since contrary to that alleged by him he was duly served in terms of law with the judicial letter issued against him by it;

After having heard the testimony given by the applicant and Faye Attard during the sitting held on the 24<sup>th</sup> June 2010, and after having examined the documents submitted in the records of the case, particularly Doc. "A", Doc. "B" and Doc. "C" submitted together with the application, Doc. "MPL1" submitted by the applicant, Doc. "FA1" submitted by Faye Attard and the letter dated 4<sup>th</sup> May 2010 submitted by the respondent company;

After having heard oral submissions by the lawyers of the parties;

**Considers:**

The applicant instituted these proceedings on the strength of the provision of law set out in Article 166A(5) of Chapter 12 of the Laws of Malta which provides that: *any executive title obtained according to the provisions of this article in the absence of any opposition on the part of the debtor shall be rescinded and declared null and void if upon a request by application in the Court of Magistrates (Malta) or in the Court of Magistrates (Gozo) as the case may be, to be filed by the debtor within twenty days from the first service upon him of any executive warrant or other judicial act based on the said title, the court is satisfied that: (i) the debtor was unaware of the said judicial letter because he was not duly notified; or (ii) the judicial letter did not contain the requirements laid down in subarticles (1), (2) or (3): Provided that the said application shall be appointed for hearing within two weeks.*

The applicant is requesting that the executive title obtained against him by respondent company in terms of Article 166A of Chapter 12 of the Laws of Malta be rescinded and declared null and void for two reasons: (i) that he was unaware of the judicial letter issued against him by the respondent company because he was not duly served with it in terms of law; and (ii) that in any case the judicial letter does not satisfy the requirements set out in Article 166A(1) of Chapter 12 of the Laws of Malta since he was absent from the Island on the day when the judicial letter was delivered and on the days immediately preceding and following such delivery.

The applicant gave evidence in support of his claim and the following are the facts which emerge from his testimony given during the sitting held on the 24<sup>th</sup> June 2010:

- The applicant in his personal capacity engaged the services of the respondent company in connection with an apartment he owns in the Tigè Point development. This project has been on going for about eighteen months to two years. He also purchased a Symphony Smart Home System from the respondent company;
- A dispute has arisen between the applicant and the respondent company in connection with such services and the applicant has withheld payments to the respondent company;
- The applicant manages a number of foreign companies and consequently he is absent from the Island fairly regularly;
- This fact is known to the respondent company, particularly to its director Marcus Micallef;
- When in Malta the applicant's place of business is the office at Level 19 of the Portomaso Tower and his place of residence is Apartment 2081 within the Portomaso Complex of Apartments;
- The applicant's place of business is not and never was in the Sunseeker Experience office at the Portomaso Marina;

- Faye Attard, the person who signed for the judicial letter, whilst being the General Manager of the office situated at Level 19 of the Portomaso Tower, is not employed by the applicant but by a company registered in the United Kingdom. Faye Attard is not authorized to receive the applicant's personal mail;
- Even though the office of Sunseeker Experience Limited is situated at the Portomaso Marina, the letter box of this company is in fact situated within the Portomaso Tower and all mail, including registered mail, which is to be delivered to the offices of Sunseeker Experience Limited is delivered to the Portomaso Tower;
- Even though mail which is to the attention of the applicant is normally left in an in-tray on his desk, for some reason this judicial letter was not brought to his attention, neither by Faye Attard nor by anyone else;
- The applicant became aware of the judicial letter and of the fact that the respondent company had obtained an executive title against him only when the Court Bailiffs went to the office of Sunseeker Experience Limited to execute the Warrant of Seizure bearing number 760/2010;
- Although applicant admits to having received and replied to a letter by Dr. Philip Manduca for respondent company dated 4<sup>th</sup> May 2010, he was not aware that at that point in time the respondent company had an executive title against him and that it intended to execute it shortly.

These facts have been confirmed by Faye Attard who, in the course of her testimony given during the sitting held on the 24<sup>th</sup> June 2010, submitted a photocopy of a bank statement – marked as Doc. "FA1" – showing that her salary is issued by Staff Logistics Limited and not by the applicant. Faye Attard also confirmed that she is not authorized to receive the applicant's personal mail.

Faye Attard explained how she came about to sign for the judicial letter issued by the respondent company against the applicant. On the day when the judicial letter was delivered she was asked by Jim Fern, the then Manager of Sunseeker Experience Limited, to sign for an envelope

addressed for delivery to the Sunseeker Experience offices. Faye Attard did as asked and without opening the envelope she handed it over to Fern and from that moment onwards she never thought about it again until asked about it by the applicant a few weeks before her appearing before this Court. She further declared that although she signed for the envelope she did not mention anything about it to the applicant.

The applicant submits that these facts clearly show that he was not duly served in terms of law with the judicial letter issued against him by the respondent company and not being aware of said judicial letter he could not contest the claim lodged against him by the respondent company within the term set by law.

The respondent company on the other hand argues that the judicial letter was duly served in terms of law since it was effectively delivered at the place of business of the applicant to a person authorized to receive his mail.

Respondent company further argues that contrary to that alleged by the applicant it is not at all credible that both Faye Attard and Jim Fern failed to inform him of the receipt of the judicial letter. The respondent company attacks the credibility of the applicant by highlighting the fact that whilst at first he claimed that he was not aware of the judicial letter in question and the executive title deriving from it until the Court Bailiffs turned up at the offices of Sunseeker Experience to execute the Warrant of Seizure bearing number 760/2010, he later admitted to receiving and replying to a legal letter sent to him by Dr. Philip Manduca dated 4<sup>th</sup> May 2010 wherein reference was made to the judicial letter.

Under our Legislation the mode of service of judicial acts is regulated by Article 187 of Chapter 12 of the Laws of Malta and in the present case the relevant provision of law is that set out under Sub-section 1 of the said Article, which provides that: *service shall be effected by the delivery of a copy of the pleading to the person on whom the pleading is to be served or by leaving such copy at the*

*place of residence or business or place of work or postal address of such person with some member of his family or household or with some person in his service or his attorney or person authorized to receive his mail: Provided that it shall not be lawful to leave such copy with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service. A person shall be presumed to be able to give such evidence unless the contrary is proved; and no objection may be raised on the ground of irregularity of the service for any of those reasons, if it is shown that the copy has actually reached the person to be served therewith.*

From this provision of law it is clear that our Legislation contemplates two modes of service of judicial acts: (a) a direct mode – service effected directly on the person to whom the act is addressed; or (b) an indirect mode – service effected at one of the places and with one of the persons mentioned in above quoted article of the law.

In the present case it is an undisputed fact that the judicial letter was not received by the applicant personally but by Faye Attard. If the receipt of the judicial letter by Faye Attard is to be considered as a valid service at law of the judicial letter on the applicant via the indirect mode of service, the following three elements have to result: (i) the judicial letter was served at the place of business of the applicant; (ii) that Faye Attard was authorized to receive mail addressed to the applicant personally; **and** (iii) that the applicant was ultimately made aware of the judicial letter.

These three elements denote the actuality of service of the judicial letter which is of the utmost importance for the validity of service and this in the light of the principle that *fir-rigward tal-validità ta' notifika għall-finijiet ta' proceduri gudizzjarji hija opportuna l-osservazzjoni tal-Onorabbli Qorti ta' l-Appell fil-kawza App. Civ. Dottor Michael Gialanze vs Sjakk Van Vleit [2000] Vol. LXXXIV.II.447 fis-sens li z-zmien ta' ghoxrin gurnata li l-ligi taghti lill-konvenut biex jirrispondi għan-nota ta' eccezzjonijiet*

***ghandu jkun wiehed reali u mhux virtwali fis-sens illi l-konvenut kellu jkun materjalment notifikat – insenjament bazat fuq il-finalità tad-disposizzjoni tal-ligi li tirrikjedi n-notifika ta’ l-atti giudizzjarji; u kostruwit fuq il-principju tal-audi alteram partem inkorporat fid-dritt fundamentali tas-smiegh xieraq<sup>1</sup>.***

Without any doubt this principle applies also and possibly even more so due to its ultimate judicial effects, to the judicial letter issued in terms of Article 166A of Chapter 12 of the Laws of Malta were failure by the debtor to contest the claim put forth against him by the creditor within a peremptory term of thirty days from service leads to the creditor obtaining an executive title against him.

Actual service of the judicial letter issued in terms of Article 166A of Chapter 12 of the Laws of Malta is of such paramount importance that the Law expressly provides that *the creditor may only proceed according to this article if the debtor is present in Malta and is not a minor or a person incapacitated according to law or if the debit is not due by a vacant inheritance. The appointment of curators under Title XI of Book Third of this Code shall not apply to proceedings under this article: ... subarticles (3), (5) and (6) of article 187 of this Code may not be availed of to effect the service of the aforesaid judicial letter.*

The Court is of the opinion that irrespective of what could *prima facie* appear, in the present case the judicial letter issued by respondent company against the applicant was not duly served on him in terms of law and the applicant was truly unaware of said judicial letter thus leading to the situation were he did not contest the claim put forth against him by the respondent company.

The Court firmly believes that the judicial letter was delivered at the Portomaso Tower by mere coincidence and not because the respondent company intended the said judicial letter to be served on the applicant at his

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<sup>1</sup> **Micallef Enterprises Limited et v. Chairman Water Services Corporation et, App. No. 877/03**, delivered by the First Hall Civil Court on the 27<sup>th</sup> May 2005. Emphasis added by the Court.

place of business. In fact, from the evidence submitted during the hearing of the application it satisfactorily results that the judicial letter was delivered at the Portomaso Tower merely because the letter box of the offices of Sunseeker Experience Malta is situated within the Portomaso Tower and not at the Portomaso Marina. Had the letter box of Sunseeker Experience Malta been situated at the Portomaso Marina and not within the Portomaso Tower the judicial letter would never have been delivered at the Portomaso Tower.

The coincidental service of the judicial letter in the Portomaso Tower cannot be considered to constitute valid service at the place of business of the applicant. Had the Court to decide otherwise it would be blatantly going against the principle set out in the above-quoted judgement “**Dottor Michael Gialanze vs Sjakk Van Vleit**”.

Furthermore, even though the judicial letter was signed for and accepted by Faye Attard the Court does not consider Faye Attard to have been vested with the authority by the applicant to accept and receive his personal mail.

The Court finds no reason why it should not believe the explanation given by Faye Attard as to how she came about to sign for and accept the judicial letter. Once the address shown on the envelope was that of the offices of Sunseeker Experience it is perfectly credible that the first person to be informed of such envelope would be the General Manager of Sunseeker Experience, at the time being Jim Fern, and that he in turn would ask someone working within the Portomaso Tower, that is Faye Attard, to sign for and accept the delivery of the document in issue. By so doing it does not mean that Faye Attard was directly or indirectly vested with the authority to accept and receive the applicant’s personal mail and it has not been shown that Jim Fern was vested with such authority by the applicant.

The Court also finds no reason why it should not believe that the applicant was truly unaware of the judicial letter



filed against him by the respondent company. It is convinced that had the applicant been aware of such judicial letter he would have promptly reacted to it in the same manner as he promptly reacted to the letter dated 4<sup>th</sup> May 2010 sent to him by Dr. Philip Manduca.

Therefore, in conclusion it is evident that the three elements necessary for the service of the judicial letter on Faye Attard to constitute valid service at law of the said judicial letter on the applicant via the indirect mode have not been met and the Court is thus satisfied that the executive title obtained by the respondent company against the applicant in terms of Article 166A of Chapter 12 of the Laws of Malta is to be rescinded and declared null and void because the applicant was unaware of the judicial letter filed against him by the respondent company because he was not duly served with the same in terms of law.

Having reached this conclusion the Court does not need to delve into whether the judicial letter issued by the respondent company against the applicant satisfies or otherwise the requirements set out in Article 166A (1), (2) and (3) of Chapter 12 of the Laws of Malta.

On the basis of the above-mentioned reasons the Court upholds the request made by the applicant in his application filed on 3<sup>rd</sup> June 2010 and rescinds the executive title obtained against him by the respondent company in terms of Article 166A of Chapter 12 of the Laws of Malta and declares it null and void and consequently orders the cessation of execution of the Warrant of Seizure bearing number 760/2010 and of any other executive warrant the respondent company could have obtained against the applicant on the strength of the said executive title. The costs of these proceedings are to be borne by the respondent company.

**< Final Judgement >**

Informal Copy of Judgement

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