



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
GABRIELLA VELLA**

Seduta ta' l-24 ta' Mejju, 2012

Avviz Numru. 555/2005

**Bernard Manduca bhala direttur ghan-nom u in
rapprezentanza ta' Bernard Manduca Real Estate Ltd.**

Vs.

John u Isabel konjugi Azzopardi

Il-Qorti,

Rat l-Avviz ipprezentat minn Bernard Manduca bhala Direttur ghan-nom u in rapprezentanza tas-socjetà Bernard Manduca Real Estate Ltd. fl-24 ta' Novembru 2005, permezz ta' liema jitlob li John u Isabel konjugi Azzopardi jigu kkundannati jhallsu lis-socjetà minnu rapprezentata s-somma ta' elfejn u hames mitt Lira Maltija (Lm2,500), illum ekwivalenti ghal €5,823.43, rapprezentanti senserija minnhom lilha dovuta in konnessjoni mal-bejgh lil Paul Vella tal-fond "Precious" Nru.22, Triq is-Sidra, Swieqi, ghall-prezz ta' Lm129,000, illum ekwivalenti ghal €300,489.17, liema bejgh sar unikament bl-intromissjoni ta' l-imsemmija socjetà u liema

somma giet miftehna bhala s-senserija dovuta qabel ma sar il-kuntratt finali fl-atti tan-Nutar Dottor Remigio Zammit Pace datat 29 ta' Awwissu 2005, liema att sar bil-mohbi tas-socjetà Bernard Manduca Real Estate Ltd. bl-ghan uniku li l-konjugi Azzopardi jiffrankaw is-senserija dovuta minnhom, bl-imghax legali dekoribbli mid-data tal-kuntratt imsemmi sad-data ta' l-effettiv pagament u bl-ispejjez giudizzjarji kontra l-konjugi Azzopardi;

Rat in-Nota ta' l-Eccezzjonijiet ipprezentata minn John u Isabel konjugi Azzopardi permezz ta' liema jeccepixxu li: (i) it-talba ta' l-attur nomine ghandha tigi michuda kemm fil-fatt kif ukoll fid-dritt stante li s-socjetà attrici ma tat ebda kontribut u ma kellha ebda involviment fl-arrangamenti sabiex seta' jsir il-bejgh tar-residenza li kienet proprjeta' taghhom, ossia l-fond "Precious" Nru.22, Triq is-Sidra, Swieqi; u (ii) l-attur nomine konsegwentement ma huwa intitolat la ghal kumpens u wisq anqas ghal senserija;

Semghet ix-xhieda ta' l-attur nomine moghtija waqt is-seduta tal-25 ta' Mejju 2006¹, rat l-affidavit ta' Paul Vella ipprezentat mill-attur nomine a fol. 23 sa' 25 tal-process, semghet ix-xhieda tal-konvenut John Azzopardi u tal-konvenuta Isabel Azzopardi moghtija waqt is-seduta ta' l-1 ta' Frar 2007² u x-xhieda tan-Nutar Dottor Remigio Zammit Pace moghtija waqt is-seduta tas-6 ta' Marzu 2007³ u rat id-dokument esebit min-Nutar Zammit Pace a fol. 48 sa' 50 tal-process, rat l-affidavit ta' Paul Vella u ta' Rebekah D'Agata ipprezentati mill-konvenuti konjugi Azzopardi a fol. 54 u 55 tal-process, semghet ix-xhieda ta' Paul Vella moghtija waqt is-seduta tat-2 ta' Marzu 2009⁴ u x-xhieda ta' l-Avukat Dottor Geraldine Spiteri moghtija waqt is-seduti tat-28 ta' Jannar 2010⁵ u tal-25 ta' Frar 2010⁶;

Rat l-atti l-ohra kollha tal-kawza;

¹ Fol. 13 sa' 17 tal-process.

² Fol. 30 sa' 32 tal-process u fol. 33 u 34 tal-process.

³ Fol. 46 u 47 tal-process.

⁴ Fol. 72 sa' 75 tal-process.

⁵ Fol. 86 sa' 88 tal-process.

⁶ Fol. 92 sa' 93 tal-process.

Ikkunsidrat:

Bil-proceduri odjerni l-attur nomine jitlob li l-konvenuti konjugi Azzopardi jigu ikkundannati jhallsu lis-socjetà Bernard Manduca Real Estate Ltd. is-somma ta' Lm2,500, illum ekwivalenti ghal €5,823.43, rapprezentanti s-senserija minnhom lilha dovuta in konnessjoni mal-bejgh tal-fond "Precious" Nru.22, Triq is-Sidra, Swieqi, favur Paul Vella bis-sahha ta' kuntratt fl-atti tan-Nutar Dottor Remigio Zammit Pace datat 29 ta' Awwissu 2005, liema bejgh sehh unikament bl-intromissjoni ta' l-imsemmija socjetà izda li baqghet ma thallsix dak lilha dovut ghaliex il-kuntratt ta' trasferiment gie ppubblikat minn wara daharha bl-iskop uniku li l-konvenuti konjugi Azzopardi jiffrankaw is-senserija minnhom lilha dovuta, ghalkemm din is- senserija skontu kienet giet miftehma qabel ma gie pubblikat l-imsemmi att ta' trasferiment.

Il-konvenuti konjugi Azzopardi jilqghu ghat-talba ta' l-attur nomine bl-eccezzjoni li is-socjetà Bernard Real Estate Ltd. ma hi intitolata ghal ebda hlas, la bhala kumpens u wisq inqas bhala senserija, stante li ma tat ebda kontribut u ma kellha ebda involviment fin-negozjati li kien hemm bejnhom u Paul Vella li finalment wasslu ghat-trasferiment favur l-istess Vella tal-fond taghhom "Precious" Nru.22, Triq is-Sidra, Swieqi. B'hekk jikkontendu li t-talba ta' l-attur nomine ghandha tigi michuda.

Huwa principju guridiku assodat f'materja ta' senserija li *l-intitolat ghall-kummissjoni ma tiskattax awtomatikament ghax semplicement jigi dimostrat illi l-ftehim negozjali gie finalizzat. Kif tghallem il-gurisprudenza, biex medjatur ikollu dritt ghal senserija jew il-kummissjoni appattwita hu jehtieglu juri ghas-sodisfazzjon tal-Qorti illi kien hu li wassal il-partijiet ghall-ftehim definittiv fuq il-kondizzjonijiet kollha sostanzjali w accidental ta' l-operazzjoni*⁷. Minn dan il-principju johrog ferm car li fi proceduri ghall-hlas ta' senserija l-oneru tal-prova jinkombi principalment fuq l-attur proponent ta' l-azzjoni li ghandu jipprova a

⁷ Anthony Degiorgio v. Stephen Degiorgio, Appell Civili Nru. 110/03 deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fit-23 ta' Novembru 2005.

sodisfazzjon tal-Qorti li huwa effettivament ghandu dritt jithallas is-senserija minnu pretiza.

Fil-kaz in ezami tressqu diversi xhieda mill-partijiet kontendenti izda, l-iktar xhieda importanti huma bla dubju ta' xejn Bernard Manduca, il-konvenuti konjugi Azzopardi u Paul Vella. Jigi osservat illi in kwantu rigwarda x-xhud Paul Vella kull wahda mill-partijiet kontendenti ressqet affidavit tieghu in sostenn tal-pretensjonijiet rispettivi taghha: l-attur nomine pprezenta affidavit ta' dan Paul Vella mahluf fit-18 ta' Gunju 2006⁸ u l-konvenuti konjugi Azzopardi pprezentaw affidavit ta' l-istess Paul Vella mahluf fit-3 ta' Jannar 2006⁹. Minn qari ta' dawn iz-zewg affidavits jirrizulta immedjatament evidenti li l-versjonijiet hemm moghtija minn Paul Vella huma kontradittorji ghal xulxin.

Filwaqt illi fl-ewwel affidavit mahluf fit-3 ta' Jannar 2006 u esebit mill-konvenuti konjugi Azzopardi, Paul Vella jghid *I, William Paul Alberto Vella, hereby declare that I purchased the property "Precious" 22, Triq is-Sidra, Swieqi, direct from owners, Mr. John and Dott. Isabelle Azzopardi, on my own initiative without the involvement of estate agent "Bernard Manduca Real Estate Limited" of Swieqi*¹⁰, fit-tieni affidavit mahluf fit-18 ta' Gunju 2006 u esebit mill-attur nomine l-istess Paul Vella jaghti versjoni tal-fatti ghal kollox differenti u li kuntrarjament ghal dak minnu affermat fl-ewwel affidavit tieghu, tindika lejn involviment attiv, ghall-inqas fi istadju inizjali, da parte ta' Bernard Manduca fin-negozjati bejnu u l-konvenuti konjugi Azzopardi: *prior to purchasing the house where I now live, I used to live for some six months at No.2/61, Topaz, Triq is-Sirk, Swieqi, and my next door neighbour was claimant Mr. Bernard Manduca. After some two months being there I got to know Bernard and also discovered that he was an Estate Agent. In fact I had asked him if he could find me a suitable property as I did not wish to keep on renting my home. In fact Bernard had suggested a couple to maisonettes in the Swieqi area and also the house that I*

⁸ Fol. 23 sa' 25 tal-process.

⁹ Fol. 54 tal-process.

¹⁰ Sottolinear tal-Qorti.

actually purchased. I was already aware that this house, which is the house I actually purchased, was for sale, as I had noticed a "For Sale" sign on the house advertised by another estate agent. On three occasions I had been to look at the house from the outside but I never, until that time, had seen it from the inside, nor did I ever phone up the agent as up to that time I was still very undecided on what to purchase. During one conversation with Bernard when he had suggested among other properties, this property, I had informed him that I knew about it but that I had never been inside. So Bernard insisted that I see it also from the inside and made the necessary arrangements with the owner of the house in order that we view the property. Before this meeting was fixed, I had been walking by the road where the house is situate and I remember looking at the house again from the road and on this occasion the owner, defendant, had noticed I was interested in the house and asked me in. I therefore did see the house from the inside in the presence of the owner and his wife Isabel. I knew the price of the house beforehand as Bernard had given me this information prior to that date. I was shown around and informed Mr and Mrs Azzopardi that I was interested and that I would think about it. Immediately I went home, I contacted Bernard and we discussed the offer and the procedures necessary for me to make an offer. We also discussed other matters, the stamp duty etc. After this meeting I asked Bernard to conduct negotiations with the owners on my behalf and I know that Bernard got the price down from the asking price of Lm139,000 to some Lm130,000 however negotiations were not yet closed on the price. Since the differences existing were not great, Bernard arranged a meeting at the owners' house and we all met, that is myself, Bernard and Mr. Azzopardi. During the meeting we toured the house in detail, explored the possibility of obtaining a further storey and found out that in effect Mr. Azzopardi had already obtained planning permission for the extension at roof level. During the meeting we also discussed which items of movables were to be included in the sale, how these were to be given a price separate from the immovable and also discussed the duration of the promise of sale and the deposit to be

paid on the promise of sale. I remember that we also discussed the possibility that the price be pushed down in return for a higher than normal deposit. I recall that we had considered a three month convenium. After this meeting I wanted to discuss matters with my lawyer and with Bernard before committing myself, so a few days after this meeting I asked my lawyer Dr. Geraldine Spiteri to visit me at my house and for this meeting I also got Bernard to attend. During this meeting we discussed whether the price was right – that is the sum of Lm129,500 which was to be divided between the price of the immovable and that for the movables. In view of the fact that Dr Spiteri was, to my mind, a solicitor, I believed that the procedure for purchasing property in Malta was similar to that in the U.K. with the solicitor doing all the work. When, however, Dr Spiteri informed me that in Malta, things were different, I wanted to discuss with her in private these procedures so that the meeting with Bernard present ended there and Bernard left my house. Discussions continued between myself and Dr Spiteri alone, and she explained the technicalities of purchasing a house in Malta, entering into a promise of sale, giving a deposit, paying stamp duty and notarial fees and the like. From that point on, I did not involve Bernard again. ... I know that John and Bernard had discussed between them during negotiations on Bernard's commission¹¹.

Meta rinfaccjat b'dawn iz-zewg affidavits hekk kontradittorji ghal xulxin Paul Vella iddikjara li *on being asked why did I file two seemingly contradictory affidavits, I wish to state that the first affidavit I made of my own accord. The second I was bulldozed into doing it. I do not know exactly how things are done in Malta. I lived my life in England and there we do things differently. I would have thought that the first affidavit would have been enough but then I was asked to do a second and that is when I was bulldozed into doing. The first affidavit was done at the request of Mr. Azzopardi at fol. 54. When drawing up the second affidavit I had three people standing in front of me suggesting one thing or another. I*

¹¹ Sottolinear tal-Qorti.

tried to make the second affidavit the same like the first but there was the time factor and it was difficult for me to remember. In drawing up the second affidavit I tried to go into more detail than the first affidavit. There was the lawyer present and Mr. Manduca. The second affidavit, it is not more truthful than the first. It is more detailed¹².

Kuntrarjament ghal dak affermat minn Paul Vella l-affidavit minnu mahluf fit-18 ta' Gunju 2006 u esebit mill-attur nomine ma huwix semplicement iktar dettaljat mill-affidavit minnu mahluf fit-3 ta' Jannar 2006 u esebit mill-konvenuti konjugi Azzopardi, izda huwa ghal kollox kontradittorju ghal dak l-ewwel affidavit tieghu. Fid-dawl ta' dak dikjarat minn Paul Vella dwar kif gie li ghamel l-affidavit esebit mill-attur nomine u partikolarment peress illi fi kliemu stess *I was bulldozed into doing it ... when drawing up the second affidavit I had three people standing up in front of me suggesting one thing or another*, il-Qorti difficilment tista' taghti kredibilita' lix-xhieda tieghu u ghalhekk ma hijiex ser tikkunsidraha.

Fic-cirkostanzi ghalhekk il-kwistjoni kollha issa tirrivolvi dwar dak li jirrizulta mix-xhieda ta' Bernard Manduca u mix-xhieda tal-konvenuti konjugi Azzopardi. Jigi osservat li ghalkemm l-attur nomine – wara d-dikjarazzjoni ta' Paul Vella fir-rigward ta' l-affidavit tieghu mahluf fit-18 ta' Gunju 2006 – talab li jressaq bhala xhud lill-Avukat Dottor Geraldine Spiteri, din ftit li xejn tefghet dawl fuq il-kwistjoni ghaliex mistoqsija dwar l-involvement ta' l-attur fin-negozjati bejn Paul Vella u l-konvenuti konjugi Azzopardi, hija rrispondiet: *ezattament m'inhix kapaci nirrispondi u se nispjega ghaliex. Jiena naf li s-Sur Manduca huwa estate agent u allura nimmagina li jitkellem fuq dawn l-affarijiet f'kuntest ta' xoghol. Madanakollu dak iz-zmien Paul Vella u s-Sur Manduca kienu girien u allura jiena ma nistax nghid kienux qed jitkellmu semplicement bhala girien jew inkella fuq bazi iktar professjonali f'kuntest ta' xoghol. Sussegwentement jiena kont sirt naf illi kien hemm tabella ta' Bernard Manduca mad-dar li eventwalment xtara Paul minghand il-konjugi Azzopardi. Meta jiena kelli l-laqgħa*

¹² Xhieda moghtija waqt is-seduta tat-2 ta' Marzu 2009, fol. 72 sa' 74 tal-process.

ma' Paul u s-Sur Manduca naf fic-cert li huma kienu qed jiddiskutu dwar x'prezz jista' joffri ghax-xiri tad-dar, però aktar minn hekk ma nistax niftakar u lanqas nista' niftakar jekk is-Sur Manduca kienx involut biex jipprova jnaqqas il-prezz ghal Paul¹³. Anzi, in kontro-ezami ddikjarat illi l-ewwel laqgħa fejn kont prezenti jien iktar bhala ghajnuna milli assistenza bejn Manduca u Paul Vella u t-tieni laqgħa li nzammet bejn Vella u Azzopardi fejn jiena wkoll kont prezenti imma mhux ezatt bhala assistenza legali. Irrid nghid illi fit-tieni laqgħa bejn Vella u Azzopardi l-attur ma kienx prezenti u rrid nghid ukoll li kien f'din it-tieni laqgħa illi gie miftiehem il-prezz tal-bejgh bejn Azzopardi u Vella u kien sar diskors ukoll fis-sens illi kien gie miftiehem dak il-prezz partikolari proprju ghax ma kienx hemm sesnara involuti. Jiena kont ukoll semmejt xi tabella li kien hemm mal-fond tal-konjugi Azzopardi. Jista' jkun li kienet tabella "for sale", però tant ghadda zmien li ma niftakarx. L-unika haga li niftakar li din kienet tabella bil-kulur ahdar car¹⁴.

Fix-xhieda tieghu Bernard Manduca jafferma li s-socjetà Bernard Real Estate Ltd. kienet, flimkien ma' agenziji ohra, inkarigata mill-konvenuti konjugi Azzopardi bhala *estate agency* għall-fini tal-bejgh tal-fond tagħhom "Precious" Nru.22, Triq is-Sidra, Swieqi u li hu, għan-nom tas-socjetà, kien involut fin-negozjati bejn il-konvenuti konjugi Azzopardi u Paul Vella għall-bejgh ta' l-imsemmi fond sakemm finalment waslu għall-ftehim fuq il-prezz tat-trasferiment u fuq kondizzjonijiet ohra rigward il-bejgh. Izda, wara li wassalhom sal-ftehim finali huma pprocedew għall-iffirmar ta' konvenju u għall-pubblikazzjoni tal-kuntratt ta' trasferiment finali minn wara dahru bl-iskop li l-konvenuti konjugi Azzopardi jevitaw ihallsu s-senserija dovuta lis-socjetà tieghu għas-servizzi minnha prestati favur tagħhom.

B'mod partikolari dwar l-involviment tieghu u b'hekk tas-socjetà Bernard Manduca Real Estate Ltd. fin-negozjati bejn il-konvenuti konjugi Azzopardi u Paul Vella, Bernard

¹³ Xhieda mogħtija waqt is-seduta tat-28 ta' Jannar 2010, fol. 86 sa' 88 tal-process.

¹⁴ Xhieda in kontro-ezami mogħtija waqt is-seduta tal-25 ta' Frar 2010, fol. 92 tal-process.

Manduca xehed illi wara li Vella kien infurmah li ra l-fond imsemmi minn gewwa u li l-konvenut John Azzopardi kien qallu li kien se jiehu hsieb is-senserija hu, *fuq din l-informazzjoni jiena stedint lis-Sur Vella d-dar, u hemmhekk bdejna niddiskutu l-modalità tan-negozjati kif normalment isir bejn klijent u estate agent. Konna qeghdin vicin il-prezz illi kien talab il-konvenut, izda mhux ezatt. Però, dhalt f'negozjati ukoll mal-konvenut u bejn telefonata u ohra, bdejna niddiskutu l-modalità tan-negozju. Dan kien jinkludi l-prezz u l-kondizzjonijiet ohra ghall-konkluzjoni tan-negozjati. Meta avvicinajna l-prezz, allura imbaghad ghamilna laqgħa, fejn kien hemm prezenti jiena, is-Sur Vella u l-konvenut John Azzopardi fil-fond in kwistjoni fi Triq is-Sidra, is-Swieqi. Hemmhekk ergajna dorna l-fond minn fuq s'isfel, iddiskutejna l-modalità tal-bjegħ, rajna liema parti mill-prezz kellu jkun għall-immobbli, liema parti kellha tkun għall-mobbli u liema għamara kellha tithalla fil-post. Din il-laqgħa damet xi siegħa u nofs. Meta ftehmna fuq kollox, il-laqgħa spiccat billi s-Sur Vella kellu jkellew lill-Avukat tiegħu halli jsir il-konvenju. Jiena kont prezenti meta l-Avukat tiegħu, Dr. Geraldine Spiteri, giet għand is-Sur Vella sabiex niddiskutu dawn in-negozjati. Però ma qadtx hemmhekk il-hin kollu u tlaqthom jtkellmu wahedhom. Dan għamiltu għax hassejt illi ma kienx posti illi nibqa' prezenti meta l-Avukat jkun qed ikellew il-klijent tiegħu, minhabba ragunijiet ta' etika. Dan kien għall-habta ta' Gunju 2005. Kellhom icempluli biex jghiduli meta ser jagħmlu l-konvenju, u min kien ser ikun in-Nutar. Izda din it-telefonata ma gietx¹⁵.*

Il-konvenuti konjugi Azzopardi però jagħtu versjoni tal-fatti għal kollox differenti minn dik mogħtija minn Bernard Manduca u kategorikament jichdu li s-socjetà Bernard Real Estate Ltd. laqqgħathom ma' Paul Vella u li b'xi mod kienet involuta fin-negozjati bejnhom u Vella dwar il-bejgħ tal-fond tagħhom "Precious" Nru.22, Triq is-Sidra, Swieqi. Il-konvenut John Azzopardi xehed illi *darba minnhom Paul Vella, illi jiena sirt naf illi joqgħod vicin id-dar tiegħi, ra t-tabella For Sale, habbat il-bieb u rrispondejtu jien.*

¹⁵ Xhieda mogħtija waqt is-seduta tal-25 ta' Mejju 2006, fol. 13 sa' 17 tal-process.

Staqsieni jekk id-dar kienetx għall-bejgh u għedtlu iva u stedintu biex jara l-fond. Bdejna naghmlu d-diskussjonijiet preliminari u staqsieni dwar il-prezz. L-ewwel prezz illi tajtu kien il-prezz illi normalment wiehed jaghti bis-senseriya. Hawnhekk is-Sur Vella ma qatalix qalbi, imma wera ruhu iktar interessat u komplejna nduru d-dar. Id-dar dorniha sew, għal darba darbtejn u wera ruhu aktar interessat, però qalli illi l-prezz kien għoli wisq u ma setax jasal daqshekk, għad illi kien vicin. Bdejna nitkellmu u għidtlu illi l-prezz illi kont tajtu jinkludi s-senseriya, f'liema kaz jekk huwa kien wahdu u ma kienx hemm senseriya involuta f'dan in-negożju stajt innaqqaslu dik ic-cifra. Is-Sur Vella qalli illi huwa gie wahdu u ma kienx hemm senseriya involuta. Għalhekk jiena ma sibtx oggezzjoni illi nnaqqaslu senseriya mill-prezz, fejn allura gie aktar vicin dak illi kien qed jippretendi s-Sur Vella. Wara xi saghtejn nitkellmu ftehmna fuq il-prezz u il-kundizzjonijiet kollha tal-bejgh. ... Mistoqsi x'kien l-operat tas-Sur Manduca f'dan in-negożju, nghid illi rrizultali illi Paul Vella u Bernard Manduca huma girien, jghixu bieb ma' bieb. Darba minnhom jiena nircievi ittra minghand is-Sur Manduca fejn dan ippretenda illi kellu jithallas tas-senseriya. Peress illi s-Sur Vella lili kien qalli illi ma kienx hemm senseriya involuta f'dan in-negożju, mort ghandu u tajtu l-ittra fil-fatt kienet l-avviz tal-kawza, illi jiena rcevejt minghand is-Sur Manduca u s-Sur Vella qalli li assolutament is-Sur Manduca ma kellux x'jaqsam f'dan in-negożju. Qalli darba minnhom kienu qeghdin fuq it-terrazzin ipejpu sigarett u s-Sur Vella kien qal lis-Sur Manduca illi kien sab post biex jixtri. Is-Sur Vella qallu fejn kien il-fond u s-Sur Manduca hawnhekk irrispondih u qallu li l-fond kien registrat mieghu. Però jiena naf illi s-Sur Manduca ma gabx lil Paul Vella¹⁶.

Huwa immedjatament evidenti li l-partijiet kontendenti jaghtu zewg versjonijiet kontrastanti għal xulxin li però entrambe huma possibbli u plawsibbli. Fid-dawl ta' dan għalhekk kien jinkombi fuq l-attur nomine *qua* l-parti fuq min principalment hemm l-oneru tal-prova fil-kaz in ezami, li jressaq prova jew provi ohra li juru li l-versjoni tal-fatti

¹⁶ Xhieda mogħtija waqt is-seduta ta' l-1 ta' Frar 2007, fol. 30 u 31 tal-process.

moghtija minnu hija iktar attendibbli u verosimili minn dik moghtija mill-konvenuti konjugi Azzopardi. Fil-fehma tal-Qorti però din il-prova ma saritx ghalieq ghalkemm l-attur nomine pprezenta affidavit ta' Paul Vella biex jikkonferma u jikkorrobora dak minnu affermat, ghar-ragunijiet moghtija iktar 'l fuq din l-istess xhieda ma tistax titqies attendibbli u konsegwentement ma jistax ikollha l-effett probatorju pretiz mill-attur nomine. Ghalkemm ukoll l-attur nomine ressaq bhala xhud lill-Avukat Dottor Geraldine Spiteri, kif già iktar 'l fuq osservat ix-xhieda taghha ftit li xejn tefghet dawl fuq il-kwistjoni u konsegwentement dak minnha dikjarat ma jistax jitqies li sodisfacentement jissosstanzja u jikkorrobora dak affermat mill-attur nomine.

Fic-cirkostanzi ghalhekk ladarba l-Qorti ghandha quddiemha zewg versjonijiet kontrastanti ghal xulxin izda entrambe possibbli u plawsibbli, u l-versjoni ta' l-attur nomine ma rrizultatx iktar attendibbli u kredibbli minn dik tal-konvenuti konjugi Azzopardi, *ma jibqax lecitum ghall-gudikant li jifforma opinjoni motivata fuq il-preponderanza ta' probabilitajiet. Jehtieglu jasal biss ghall-konkluzzjoni li l-attur ma jkunx sodisfacentement u konkludentement ipprova t-talbiet tieghu. Actor non probante, reus absolvitur*¹⁷.

Ladarba l-attur nomine ma rnexxilux jipprova b'mod sodisfacenti l-pretensjonijiet tieghu fil-konfront tal-konvenuti konjugi Azzopardi, it-talba attrici kif diretta fil-konfront taghom ma tistax tigi milqugha.

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi billi tilqa' l-eccezzjonijiet tal-konvenuti konjugi Azzopardi u konsegwentement tichad it-talba ta' l-attur nomine.

L-ispejjez ta' dawn il-proceduri jibqgghu a karigu ta' l-attur nomine.

¹⁷ Enrico Camilleri v. Martin Borg, Appell Civili Nru. 478/00 deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fis-17 ta' Marzu 2003; Anthony Camilleri v. Maurice Cauchi et, Appell Civili Nru. 2021/97 deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fit-22 ta' Novembru 2002.

Kopja Informali ta' Sentenza

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