MALTA

CIVIL COURT

FIRST HALL

THE HON. MADAM JUSTICE

JACQUELINE PADOVANI GRIMA

Sitting of the 17 th March, 2014

Citation Number. 154/2014

In the acts of the warrant 1709/2013 JPG

James Alexander Cook (holder of identity

card number 64703(A)) and Ruth Margaret

(holder of identity card number 60113(A))

vs

Erdin Hartoka (holder of identity card

number 37664 (A)) and

SES LIMITED (C 47382)

The Court

Having seen the sworn application of Erdin Hartooka, holder of identity card number 37664A and SES Limited Company bearing registration number C47382 of the 18 th February 2014 and as translated on the 11th March 2014 which reads as follows:

"1. That in view of the warrant of seizure number 1709/13 filed by the plaintiffs and accorded on the eighth (8th) of November 2013, the vehicle which is the personal property of the defendant Erdin Hartoka, manufacture type Chevrolet Captiva bearing the registration number EBS-659 was seized;

2. That in the above mentioned, it is contended that the defendant Erdin Hartoka is not the rightful defendant in that in his relation with the plaintiff he always acted in the capacity of Director of the defendant company SES Limited (C 47382) and not in his personal capacity. Despite this, the warrant of seizure was executed on his personal property;

3. That it is held that the only source of income of the defendant is derived exclusively from works carried out by the defendant company;

4. That the warrant of seizure is causing the defendant irreparable prejudice in view of the fact that the vehicle seized was bought exclusively to be used by Erdin Hartoka for his work, including the carrying of tools, material and objects related to his work from one place to another on various sites and this is according to the statements given by the defendant in the declaration hereby attached and marked as 'Dok EH 1';

5. That since the seizure of the vehicle, the defendant has found it very difficult to continue the economic activity of the company and works he had contracted with the Company's clients, with the consequence that the defendant company is making a loss putting in risk the economic activity of the defendant company;

6. That the present claim is based on the agreement between the parties where the defendant company was contracted to carry out construction and maintenance works for the plaintiffs. The plaintiffs capriciously stopped the defendant company from continuing the works and have refused to pay the defendant company for the works that have been completed until that time;

7. That the allegations of the plaintiffs that they have suffered damages as a result of the works carried out by the defendant company are totally unfounded and that the sum of thirty thousand Euro (€30,000) that is being requested is excessive. In reality, it was the defendant company that has suffered damages since it has not yet been paid for the various works that it has carried out in the house of the plaintiffs so much so that a case was instituted against the plaintiff by means of sworn application bearing the number 76/2013 JPG on 28th January 2013.

Now, therefore the defendants request this Honourable Court, in terms of Article 836 of the Code of Organisation and Civil Procedure (Cap.12 of the Laws of Malta) to:

1. Revoke the Warrant of Seizure in terms of article 836(1)(d) and (f) of Chapter 12 of the Lawsof Malta;

2. Condemn the plaintiffs to pay the highest penalty as provided in terms of article 836(8)(b) and (d) of the same Code and in the case where the Court is not of the opinion

to revoke the warrant, hold the plaintiffs to provide an adequate security for payment in terms of article 838A of the same mentioned Code to make good for the payment of damages caused by the same plaintiffs and, in case where they fail to provide the mentioned security in the time the sum fixed by Court to rescind the warrant;"

Having seen that the acts of the proceedings where duly served on James Alexander Cook and Ruth Margaret Cook;

Having seen the note of submissions of James Alexander Cook and Ruth Margaret Cook of the 5th of March 2014 which stated the following:

On 8th November, 2013, James Alexander Cook and Ruth Margaret Cook filed a precautionary warrant in above mentioned names, before this Court to safeguard their claims in the case Alexander Cook et vs Erdin Hartoka et, and this due to the fact that the Garnishee Order previously filed by them, failed to procur the seizure of any money of the defandants SES Limited or of Erdin Hartoka personally.

The present claim is the subject of a lawsuit filed before this Honourable Court bearing the registration number: 194/2013JPG which has been adjourned to the 3 April 2014 for a preliminary ruling on whether the defendant cited is the legitimate defendant at law.

That on 18 February 2014, respondent filed an application for the revocation of such a warrant.

James and Ruth Cook while strongly opposing the claims due to the that they are legally and factually unfounded for the reasons that are explained here under;

A. **All the reasons cited by the debtor go beyond the prima facie examination of the case and invite this Court to enter into the merits of the claim in issue**

According esthablished jurisprudence, the only examination that the Court should make when evaluating an application for revocation of a precautionary warrant of seizure is that of prima facie examination, whilst the merits of the case are left for the final analysis of Court seized of the case of the merits. This has been confirmed in the judgement given by Judge Dr.Tonio Mallia on 5th June 2003 in names **Emanuel Sammut et v. Josephine Sammut** where in it was stated:

> *Issa, kif inghad minn din il-Qorti,fil-kawia "Camilleri vs Gove et', deciza fl-10 ta'Mejju,2001,fuq rikors numru 286/01, "li mid-disposizzjoni tal-istess artikolu 836 jidher li l-unika ezami li trid taghmel din il-Qorti huwa dak biss ta' prima facie, u dan ghaliex il-mertu kollu jigi investigat fil-kawza proprja bejn il-partijiet, u ghalhekk hemm limitazzjoni sinijifikanti fl-ezami li trid taghmel il-Qorti f'dan l-istadju, u dan tenut kont li hawn si tratta dejjem ta' procedura preliminari, li ghad qed tistenna l-ezitu finali tal-kawza proprja,*
>
> *Illi fil-fatt jista' jinghad li dak li trid taghmel il-Qorti f din il-procedura huwa biss sabiex tezamina prima facie jekk min hareg il-mandat kellu pretensjoni legali ghall-istess, u dan indipendentoment jekk tali pretensjoni hijiex fondata jew le peress li dan l-ahhar ezami jffirma l-mertu tal-kawza, li din il-Qorti bil- procedura premessa, ovvjament ghandha thalli fil-gudizzju taghha, jew ta' Qorti ohra, ghall-ezitu tal- kawza." (ara wkoll "P.J. Sutters Co. Ltd vs Consept Ltd " deciza minn din*

il-Qorti fl-10 ta' Mejiu, 2001 u "Visa Investments Ltd vs Blye Engineering Co Ltd " deciza wkoll minn din il-Qorti fis-7 ta' Frar, 2001) .

The analysis of the grounds which applicant has proffered to impugne the warrant of seizure, necessarily embroils this Court in the investigatation of the merits of the case and will induce the Court to decide on the exeptions brought forward by Erdin Hartoka on merits of the same case.

It is being submitted that this case is based on the default of Hartoka from fulfilling his obligations at law and therefore, James and Ruth Cook contend that this Honorable Court can not decide on the merits of the case and impugn the precautionary warrant which was accorded by this same Court. Therefore the demand for the revocation of the warrant of seizure should be denied.

B. That the application for the revocation of the warrant is premature and should not have been filed at this stage of the proceedings

1 . This application is frivolous and vexatious due to the fact that this Honorable Court has not yet pronounced its decision as to who the legitimate defendants ought to be according to law in the cases pending before it. Until such time as the Court pronounonces its decision, Erdin Hartoka remains the applicant in the suit filed by him and defendant in the case filed by James and Ruth Cook.

2. Furthermore, and without prejudice to the above, it is being pointed out that Erdin Hartoka has indeed confirmed in the body of his application, that the seized vehicle is actually the only asset of SES Limited.

3. Indeed it was declared to be the only asset, without which, the company could not

operate commercially.

4 . Indeed it is evident the car was the only asset of the SES Company Limited due to the fact that the Garnishee Order filed by James and Ruth Cook , failed to seize any monies at all.

5 . Indeed it is evident the car is the only asset of the SES Company Limited due to the fact that it was used for the transport of tools, material and work-related items from one building site to another.

6 . Furthermore it needs to be pointed out that vehicles are not registered in the company's name , but in the name of their directors. Therefore since this car was bought by money generated by SES Limited and is registered in the name of the only Director of the said company that is Erdin Hartoka, this vehicle should be considered as the property of the company SES Limited.

7 . In view of these submissions the defendants contend that the said order should remain in force.

8 . It is clear from the claims made in the application that the vehicle was purchased for the purpose of facilitating work generated by SES Limited company. As a matter of fact all this has been confirmed in the application, wherein, with special reference to the fourth claim, it was held: "l-vettura maqbuda inxtrat minnu esklussivament sabiex tintuza mill-ezekutant Erdin Hartoka ghal qadi tax-xoghol tieghu."

9 . All this was also confirmed on oath in the sworn declaration filed by Erdin Hartoka wherein he confirmed that he was the sole share holder of the company and that the vehicle was purchased solely for the purposes of carrying out the works of the said company.

C. Further Observations- on article 836 (1) (d) of Cap. 12 of the Laws of Malta

This sub- article states that precautionary warrant may be revoked if it is shown that the amount requested is prima facie unjustified or excessive;

It is being stated without any hesitation, that in the present case Hartoka failed to produce any proof to substantiate his claim. He failed to produce a shred of evidence that the amount requested was not justified or was excessive. In fact there are proceedings pending before this Honourable Court filed by James and Ruth Cook who are suing the applicant for the payment of damages in the amount of thirty thousand Euros (€30,000).

Similarly, there is no legal foundation for the revocation of the warrant under sub-article (1)(d) ;

According to established jurisprudence:

> *"….l-Qorti tifhem li l-kejl li ghandu jittiehed biex jitqies it-thassir ta' Mandat kawtelatorju taht din ir-ras huwa wiehed li jorbot il-kawzali tal-istess Mandat mal-kreditu msemmi fih. Dan ifisser li l-Qorti ghandha tistharreg fl-ewwel lok jekk jirrizultax mad-daqqa t'ghajn li r-rikorrent ezekutant ghandu bazi ta' pretensjoni (dak kif oqsma ohra ta' dritt jissejjah il-'fumus juris" tal-pretensioni dedotta), u fit-tieni lok jekk wasalx biex "jilikwida' tali pretensjoni f somma li taqbel mal-ammont minnu mahluf fil-Mandat' Wiehed m'ghandu qatt jinsu li f dan il-kuntest, il-Qorti trid tkun gwidata mill-principju li d-dritt ghall-azzjoni gudizzjarja m'ghandux jigi mfixxkel jew imgarrab b'leggerezza, u l-iehor daqstant siewi li huwa dritt li persuna thares l-interessi taghha fil-milja taghhom sakemm il-jedd*

> *sostantiv lilha kontestat jigi definit minn Qorti.* ***Illi biex ammont imsemmi f'att kawtelatorju jitqies li huwa eccessiv, jehtieg li jintwera li jkun ikun esagerat fid-dawl tat-talba li ssir jew ikun tant grossolan li ma jistax ma jidhirx mad-daqqa t'ghajn bhala wiehed maghmul b'mod azzardat;***

The debtor has failed completely to prove his case according to the above mentioned dictates, and this is due to the fact that the amount requested by the defendant Cook is actually the correct one. Therefore there is no valid reason to revoke the warrant of seizure on this basis.

D. Article 836(l)(f) of Cap. 12 of the Laws of Malta

The debtors are also grounding their request for revocation of the precautionary warrant of seizure, on article 836 (l) (f) of Cap. 12 of the Laws of Malta which states that precautionary warrant may be revoked if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part or that the precautionary act is no longer necessary or justifiable;

In this context, our Courts have reiterated:

> *"… is-success jew telfien ta' kwestjoni fil mertu ma tista' qatt ffisser li mandat kawtelatorju nhareg b'mod vessatorju jew fieragh. Allura, fil-fehma ta' din il-Qorti, il-kwestjoni ta' jekk huwiex ragonevoli li mandat kawtelatorju jinzamm fis-sehh jew jekk huwiex mehtieg jew gustifikabbli li tali mandat jinzamm fis-sehh ma tiddependi xejn mill-eventwali cahda tal-kawzali fil-mertu tat-talbiet tal-intimati ezekutanti;*

> ***Illi jinghad ukoll li id-dispozizjoni tal-ligi taht ezami timplika li, wara l-hrug tal-mandat, tkun tbiddlet xi cirkostanzu li minhabba fiha ma jkunx xieraq li l-istess mandat jibqa' (ghal kollox jew in parti) fis-sehh****. Din it- tifsira tohrog mill-kliem "jinzamm" u "aktar mehtieg" li jinsabu fl-imsemmija dispozizzjoni, liema termini t-tnejn jimplikaw li dak li qabel kien jiggustifika l-hrug u z-zamma fis-sehh tal-Mandat issa m'ghadux il-kaz - vide decree of the Honourable Court of the 3rd September 2012, in the names:* ***Ryan John Farrugia v. Olive Gardens Investments Limited et;***

Here again the applicant failed to show that the warrant of seizure in question was unreasonable or no longer necessary; nor did he cite any change of circumstance subsequent to the issue of the relative warrant of seizure as required by the jurisprudence in order to justify the revocation of the warrant;

Therefore there is no reason under this sub-article to justify the revocation precautionary warrant of seizure in question;

E. The request for payment of penalties under Article 836 (8) (b) and (d) – the defendants contend that there is no valid reason at law which warrant the application of these articles in their regard.

It is crystal clear that none of these subsections apply to the case under review due to the fact that:

1. The defendants filed this warrant subsequent to the filing of Court proceedings and this, in order to procur a form of security for their claims, having previously filed the requisite official letters requesting payments from the applicant.

2. Furthermore, the defendants were constrained to file this warrant after the Garnishee Order filed by them failed to seize any money belonging to the applicant.

The applicant is also requesting the imposition of a penalty in terms of Art. 836 (8) (b) which contemplates the imposition of penalties in the following circumstances:

> *" (b) if, on demand of the defendant for the rescission of the precautionary act, the plaintiff fails to show that the precautionary act had to be issued or that within the fifteen days previous to the application for the precautionary act, he had in any manner called upon the defendant to pay the debt, or, if the debt be not a liquidated debt, to provide sufficient security:"*

Reference was made to the judgment cited in the application:

> *"Illi dwar il-kwestjoni tal-impozizzjoni tal-penali, irid jinghad li din hija sanzjoni fakoltativa. Il-Qorti, fid-diskrezzjoni taghha, tista' taqbel li tghabbi lil min ikun hareg Mandat kawtelatorju kontra persuna, u fuq talba ta' din, b'piena ta' hlas ta' penali. Minbarra li tali impozizzjoni hija fakultattiva, 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 fdan ir-rigward u, ladarba huma sanzjoni punittiva, ghandhom jitqiesu strettament bhala tassattivi, izda bizejjed li tirrizulta wahda minnhom biex il-Qorti tista' taccetta li tqis it- talba ghall-kundanna tal-hlas tal-penali.

Dwar din id-diskrezzjoni nghad li l-Qorti hija tenuta li timponi l-penali fejn ikunu jirrizultaw l-estremi li l-ligi tal-Ligi tesigi 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. Il-penali mahsuba fl-imsemmi artikolu 836(8) tal-Kap 12 hija wahda ta'ordni pubbliku immirata tizgura serjeta' fil- process gudizzjarju u biex ma thallix li l-istitut tal-Mandati kawtelatorji jintuza b' abbuz

Illi l-fatt wahdu li ma tkunx inghatat raguni tajba mill-parti ezekutata ghat-thassir tal-Mandat mahrug kontra taghha ma jfissirx li, jekk kemm-il darba tikkonkorri xi wahda mill-erba' cirkostanzi mahsuba fl- artikolu 836(8) tal-Kodici tal-Procedura Civili, il-Qorti m'ghandhiex tilqa' t-talba tal-istess ezekutata ghall-kundanna tal-parti ezekutanti ghall- hlas tal-penali" ("**Jamar Malta Ltd vs Office Group Ltd**", decided by **Judge Dr. Joseph R. Micallef** on the **10th August 2012**).

In this context, the defendants had called upon the applicant requesting payment and had and even filed judicial proceedings. Therefore the defendants ought not be condemned to pay penalties as requested by the applicant.

F. On a request for the imposition of guarantee in terms of Article 838A Chapter 12 of the Laws of Malta.

The applicant is requesting the Court to impose a guarantee in terms of Art. 838A. of Chapter 12 of the Laws of Malta.

The Court have repeatedly affirmed that every warrant creates an element of hardship on the person served.

The existence of the warrant itself is not a sufficient justification for the imposition of guarantee (vide "Caruana vs Gaerty'', decided by Judge Dr. T. Mallia of the 4 th October 2002).

Indeed it was the Court's considered opinion in the judgement "Spiteri vs Darmanin" (decided by Judge Dr. Joseph R. Micallef on 25 ta' August 2010) that:

> *"Illi nghad ukoll li d-danni li ghalihom jirreferi l-artikolu taht ezami huma dawk li l-intimat ezekutant jista' jipprova li jkun garrab direttament minhabba l-hrug tal-att kawtelatorju, u dment li jikkonkorru l-elementi mitluba mil-ligi ghal tali likwidazzjoni. Minbarra dan, jidher li fejn persuna ntwera li kellha ragunijiet tajba biex tohrog Mandat kawtelatorju u l-istess Mandat la kien eccessiv, la fieragh u lanqas vessatorju, ghaldaqstant ma jitnisslux ragunijiet la ghall-kundanna ghall-hlas ta'penali u lanqas ghad-danni minhabba l-istess Mandat."*

Here again, the defendants submit that in terms of the above mentioned judgement, this Court should not find any reason for the imposition of the security as requested.

Referring to the judgement "Blye Engineering Co. Ltd vs Paolo Bonnici Limited" (decided on 7 July 2004) it was held that:

> *"Il-principju assodat mill-gurisprudenza lokali hija li l-ezercizzju ta' dritt ma jista' qatt iwassal ghar-responsabilita' ghad-danni, sakemm dak id-dritt ma jkunx abbuzat u jkun ezercitat fil-limiti permessibbli mill-ligi. Ghalhekk gie deciz li min jiftah kawza u jitlifha ma jkunx responsabbli ghad-danni, sakemm il-ftuh tal-kawza ma jkunx sar b'mod vessatorju (vide"Farrugia vs Sammut, Kollezz. VOl. XXVIII.I.2.23; and Barabara vs Fleri" Kollezz VOl. XXVIII.695). Huwa biss meta persuna tagixxi kapriccjosament jew mala fede, li hija tista' tkun responsabbli ghad-danni li jsegwi l-agir irresponsabbli taghha"*

Having seen the decree of this Court dated the 5th of March 2014, wherein the proceedings between the parties were annexed to these proceedings;

Having heard the evidence on oath;

Having examined all exhibited documents and the record of the proceedings;

Having seen the record of the proceedings of the two other cases between the parties pending before this Court in terms of the decree of this Court of the 5th of March 2014;

Having heard oral submissions of the parties;

Deliberates:

This case contemplates the request made by applicant Erdin Hartoka for the Court to revoke the precautionary warrant of seizure 1709/2013, which seized his car that is, Chevrolet Captiva Registration Number EBS 659 and this in terms of Article 836 1(d) and (f) of Chapter 12 of the Laws of Malta.

Article 836 1(d) and (f) of Chapter 12 of the Laws of Malta reads as follows:

> ***"836. (1) Without prejudice to any other right under this or any other law, the person against whom any precautionary act has been issued, may make an application to the court issuing the precautionary act, or, if a cause has been instituted, may make an application to the court hearing such cause, praying that the precautionary act be revoked, either totally or partially, on any of the following grounds:***
>
> ***(d) if it is shown that the amount claimed is not prima facie justified or is excessive; or***
>
> ***(f) if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part or that the precautionary act in whole or in part is no longer necessary or justifiable"***

The applicant Erdin Hartoka gave evidence to the effect that James and Ruth Cook, had issued a warrant of seizure, and had seized his only vehicle, that is a Chevrolet Captiva, Registration Number EBS 659, and that this vehicle was registered in his name and not in the company's name (SES Limited). Applicant Hartoka stated that the agreement with James and Ruth Cook, was undertaken on behalf of his company, and was never in his own name.

He further stated that, when his company SES Limited undertook to effect the structural works on the property of James and Ruth Cook according to the architect's plans, James and Ruth Cook had subsequently required additional works. However there were no artichect's plans submitted for the additional works, which were estimated by SES Limited to cost a further sixteen thousand Euros (€16,000).

In the meantime the original works were being carried out by his company however after the estimate of the additional works to the tune of sixteen thousand Euros (€16,000) was given to the defendants, Hartoka stated that he was locked out of the premises inspite of the fact that he still had a substantial amount of tools in the premises of defendants Cook.

Hartoka exhibited Dok. ZEH 1 and 2 – (at page 16 to 20), which show that the car Chevrolet Captiva Registration Number EBS 659, was registered in his name and bought with his money and was not a company car.

Hartoka stated that James and Ruth Cook only paid him the sum of thirty thousand Euros (€30,000) from the outstanding bill of forty eight thousand Euros (€48,000).

James Alexander Cook, on oath, stated that he filed legal proceedings in Court against Erdin Hartoka, for damages suffered by themselves as a result of damage to the roof with the resultant percolation of water into their property, as well as damages caused by bad workmanship. Alexander Cook stated that his architect had estimated that these damages were in excess of thirty thousand Euros (€30,000).

James Cook stated that none of the damages had been repaired, but some damages had been "patched up" since his family was actually living in these premises, which was their only property. He stated that the tiles of the roof had to be removed, the correct membraine laid down, and that, as a result of the leaky roof, the house had suffered from terrible damp and that this has to be corrected.

Deliberates:

This Court deems it proper to set out the fundamental principles laid out by jurisprudence in cases where the Maltese Courts are requested to revoke precautionary warrants. It has been held, time and again, that **the examination that the Court has to effect in these proceedings, is a *prima facie* one**, due to the fact that a full and thorough examination is to be conducted in the course of the proceedings **of the case itself,** - vide **"Castelli Av. Carmelo noe vs Focal Maritime Services Ltd et"** dated **26 April 2002** per **Judge Dr. G. Camilleri**, who reiterated that:

> *"Skond l-**artikolu 836 (d) u (f) tal-Kap 12** jista' jigi revokat jekk jintwera li l-ammont mitlub ma jkunx 'prima facie' gustifikat jew ikun eccessiv jew jekk jintwera li fic-cirkostanzi ma jkunx ragonevoli li jinzamm fis-sehh l-att kawtelatorju jew parti minnu mhuwiex aktar mehtieg jew gustifikabbli. **L-ezami li trid taghmel il-Qorti f`dan il-kuntest huwa wiehed 'prima facie'."***

Vide also **"Joseph Camilleri et vs Anthony Gove' et"** dated **10 ta' May 2001** per **Judge Dr. R. C. Pace** , and **"Josephine Sammut vs Emanuel Sammut et"** dated **29 November 2001** per **Judge Dr. R. C. Pace** where in it was held:

> *"li mid-dispozizzjoni tal-istess* ***Artikolu 836*** *jidher li* ***l-unika ezami*** *li trid taghmel din il-Qorti* ***huwa dak biss ta' 'prima facie',*** *u dan ghaliex il-mertu kollu jigi nvestigat fil-kawza propja bejn il-partijiet, u ghalhekk hemm limitazzjoni sinifikanti fl-ezami li trid taghmel l-Qorti f'dan l-istadju, u dan tenut kont li hawn 'si tratta' dejjem ta' procedura preliminari, li ghad qed tistenna l-ezitu finali tal-kawza proprja".* (The emphasis is made by this Court)

Alexander and Ruth Cook reiterate that all the reasons governing the request for the revocation of the warrant of seizure, vastly exceed the limited prima facie examination that this Court, is bound to effect by law, in these proceedings.

Indeed an analysis of the reasons proffered by Hartoka to impugn the warrant would necessarily induce the Court to investigate the merits of the case.

Furthermore these proceedings were premature, frivalous and vexatious since the Court has yet to pronounce itself on the legitimate defendant at law in the proceedings that are pending before it.

In addition Erdin Hartoka confirmed on oath that the car was in fact SES Limited's only asset, such that without the car, he was unable to carry out the work of the company. Furthermore, the applicant has actually confirmed that the seized car was bought by himself with the sole scope of being used by him, in his commercial operations.

Cook stated furthermore that no proof was proffered by Erdin Hartoka to indicate that the amount of money mentioned in the warrant of seizure was in fact excessive.

Deliberates:

It is this Court's considered opinion that Erdin Hartoka, has embarked on these proceedings a trifle prematurely, in that this Court has yet to pronounce whether to accede to his demands in the other two proceeding limiting the actions soley to SES Limited rather than as cited to himself personally or jointly with SES Limited.

Moreover whilst acknowledging that the car has been registered in his personal name, and has been paid for by the applicant Hartoka, the same applicant has failed to show even on a prima facie basis, how this warrant of seizure is unjustified or excessive. Indeed the applicant in his evidence has not proffered this Court with any evidence which suggests, at least at a prima facie level, that the sum requested by the defendants is inflated or exaggerated or that the warrant of seizure is not justified.

This Court however understands that the seizure of his Hartoka's car has brought about a significant amount of hardship. This hardship, without more, does not justify the revocation of the warrant.

Moreover in the light of the fact that the Garnishee Order failed to provide James and Ruth Cook with any substantial security, the Court cannot accede to the demand for the revocation of the warrant under Article 836(1)(d).

With regards to 836(1)(f) the Maltese Courts have reiterated that Article (1)(f) can only be invoked were circumstances change **subsequent** to the issue of the warrant in such a way as to make the continued enforcement of the warrant unreasonable, no longer necessary, or justifiable – vide **Ryan John Farrugia vs Olive Garden Investment Limited et** decided on the **3rd September 2012**.

In the circumstances which have been outlined, it is this Court's considered opinion that Erdin Hartoka has failed to prove any subsequent change of circumstance such that would make the continued enforcement of the warrant unreasonable. Indeed no circumstance of any note, has been cited by Erdin Hartoka, such that would induce the Court to assess that the warrant is no longer necessary or justifiable. Indeed the Court has found, **only on a prima facie basis**, the exact opposite to be true.

As regards to the request for the payment of penalties under Article 836(8)(b)(d) of Chapter 12 of the Laws of Malta, the Court, after having seen the four (4) set of circumstances outline by law under (8)(b) that would necessarily induce the Court to contemplate such sanctions, reiterates that none of the circumstances brought forward by Erdin Hartoka in fact concur in this case. Therefore, according to the dictates set out in the judgement in the names **Jannar Malta Limited vs Office Group Limited** decided by **Judge Dr. J. R. Micallef** on the **10th August 2010**, this Court cannot accede to Erdin Hartoka request.

Moreover with reference to Article 836(8)(d) it is this Court's considered opinion that applicant, has failed to prove at least on a prima facie basis that the defendants' claims

is malicious, frivolous or vexatious. Indeed there is not a shred of evidence profferred by the applicant in this regard.

Therefore this Court is not at liberty to condemn the defendants to pay "the highest penalties", contemplated in sub-article (8)(b)and (d) of Article 836 of Chapter 12 as requested.

As far as the request of Erdin Hartoka for the imposition of a guarantee in terms of Article 838A of Chapter 12 of the Laws of Malta, this Court again cannot accede to the request by applicant Hartoka since it does not result that James and Ruth Cook have in any way abused their right in filing the relevant warrant of seizure to protect their rights.

Indeed according to the judgement in the names **"Blye Engineering Co. Ltd vs Paolo Bonnici Limited"** (decided on **7th July 2004 per Judge Dr. Tonio Mallia**):

> ***"Il-principju assodat mill-gurisprudenza lokali hija li l-ezercizzju ta' dritt ma jista' qatt iwassal ghar-responsabilita' ghad-danni, sakemm dak id-dritt ma jkunx abbuzat u jkun ezercitat fil-limiti permessibbli mill-ligi. Ghalhekk gie deciz li min jiftah kawza u jitlifha ma jkunx responsabbli ghad-danni, sakemm il-ftuh tal-kawza ma jkunx sar b'mod vessatorju (*vide *"Farrugia vs Sammut, Kollezz. VOl. XXVIII.I.2.23; and Barbara vs Fleri" Kollezz VOl. XXVIII.695). Huwa biss meta persuna tagixxi kapriccjosament jew mala fede, li hija tista' tkun responsabbli ghad-danni li jsegwi l-agir irresponsabbli taghha"***

Vide also the judgement is the names **"Paul Caruana vs Rudolphe Gaerty"** decide by **Judge Dr. Gino Camilleri** on the **4th of October 2002** wherein it was stated:

> ***"Il-fatt "per se" li jkun gie ottjenut il-hrug ta' att kawtelatorju, ma jghamilix awtomatika li talba bhal din, sabiex tinghata garanzija xierqa, ghandha tigi akkolta. Lanqas ma jista jinghad li l-istess fatt "per se" huwa "kawza gusta" skond kif trid il-ligi. Skond il-ligi minn qed jghamel talba bhal din in esami ghandu jipprova li hemm kawza gusta. F'dan il-kaz ma jistax jinghad li r-rikorrenti pprova b'mod sufficjenti li tesisti kawza gusta ghala t-talbiet tieghu ghandhom jigu akkolti;"***

Erdin Hartoka has failed to prove that the defendants Cook have filed vexatious proceedings, have acted capriciously or in bad faith in the manner with which they have filed judicial proceedings against Hartoka. In the same manner the applicant Hartoka has failed to prove that he has a just cause according to law, that would induce the Court to grant an adequate guarantee.

Therefore and for these reasons this Court, has no alternative but to uphold the exceptions of James Alexander and Ruth Margaret Cook, and denies the request of Erdin Hartoka, and SES Limited with costs against the same.

Read.

< Final Judgement >

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