MALTA

CIVIL COURT

FIRST HALL

THE HON. MR. JUSTICE

JOSEPH ZAMMIT MC KEON

Sitting of the 3 rd April, 2014

Citation Number. 489/2011

Peter Allan Cuthbert (ID 031311A)

vs

Royal Malta Golf Club, as duly represented by its Chairman Paul Stoner (ID 23666A), and Secretary Vanessa Galea

THE COURT :

I. The matter

Having seen the **sworn application** which plaintiff filed on the 13th May 2011 and states as follows –

1. That plaintiff has been a full member of 'Royal Malta Golf Club' (defendant – RMGC) and the 'Marsa Sports Club' (MSC) since the 1st June 2005 ;

*2. That the RMGC is regulated by the 'Royal Malta Golf Club – Constitution & Rules' (RMGC Constitution), a copy of which is hereby attached as **'Doc. PAC1'**, and is administered by a 'Board of Management' (RMGC Board) appointed and governed in accordance with the 'Constitution & Rules' ;*

*3. That the MSC is regulated by the 'Rules of the Marsa Sports Club' (MSC Rules) a copy of which is hereby attached as **'Doc. PAC2'**, and is administered by a 'Committee of Management' (MSC Committee) appointed and governed in accordance with the MSC Rules ;*

4. That the MSC incorporates within its organisation several clubs and sports sections, including the RMGC (MSC Rules, Part XIV, Rule 2) ;

5. That in order to be admitted as a member of the RMGC, one must a priori be a member of the MSC (MSC Rules, Part XIV, Rule 3; RMGC

Constitution – Rule 1.4), and thus each RMGC member is subject to both the RMGC Constitution and the MSC Rules ;

6. That notwithstanding anything contained in the RMGC Constitution, the MSC Committee retains the overall control of the RMGC in terms of the MSC Rules including the right to veto / overrule any act, rule or decision, which the MSC Committee of Management deems to be detrimental to the interests of the MSC (RMGC Constitution, Rule 11.6) ;

7. That on the 27th October 2010, plaintiff received an email from Ms. Vanessa Galea, the Managing Secretary of the RMGC Board, whereby he was summoned to urgently appear before the RMGC Board the following day ;

8. That notwithstanding plaintiff`s specific requests, the RMGC Board failed to provide a valid reason for the said urgent summons ;

9. That plaintiff informed the RMGC Board that, in default of a proper explanation for the said summons, he was constrained to refuse to appear before the RMGC Board on the 28th October 2010 ;

10. That on the afternoon of the 28th October 2010, plaintiff was informed by the RMGC Board, once again via email, that following his refusal to appear before it, the RMGC Board had decided to suspend his RMGC membership with immediate effect until he finally appears before the RMGC Board ;

11. That there was no valid reason/s which justify plaintiff`s suspension from the RMGC, since he has always been an exemplary member of the RMGC, and in the past he has also occupied official posts within the management of the RMGC ;

12. That, furthermore, plaintiff deems that in suspending him from the RMGC, the RMGC Board acted ultra vires and in violation of the RMGC Constitution since, a suspension, being a disciplinary sanction, could not have been inflicted upon him by the RMGC Board, as that falls under the exclusive remit of the RMGC Disciplinary Committee established under the RMGC Disciplinary Guidelines (a copy of which is hereby attached as ***'Doc. PAC3'****), adopted as a bye-law of the RMGC under the RMGC Constitution. (RMGC Constitution, Rule 6.2.2(e)) ;*

13. That the RMGC Board`s decision completely ignored the various safeguards stipulated in the RMGC Disciplinary Guidelines to ensure that a fair hearing is afforded to any member facing disciplinary proceedings (RMGC Disciplinary Guidelines, Rule 3) ;

14. That, furthermore, the RMGC Board`s decision to by-pass the RMGC Disciplinary Committee and directly inflict punishment upon plaintiff in his absence, note only violated the basic principles of natural justice in plaintiff`s respects, but it also denied plaintiff the right to appeal to the RMGC Appeal Committee (RMGC Disciplinary Guidelines, Rule 3.14) ;

15. That this denial from the right to appeal to the RMGC Appeal Committee also meant that plaintiff`s suspension could not be stayed until the definite resolution of the issue, as is otherwise provided in Rule 3.15 of the RMGC Disciplinary Guidelines ;

16. That the effect of plaintiff`s arbitrary suspension from the RMGC meant that, whilst still being liable to pay the RMGC subscription fees, plaintiff was immediately disqualified and prohibited from acceding to the RMGC facilities at the MSC including the RMGC clubhouse (the Putters Inn) and golf course (RMGC Constitution & Rules – Rule 4.7) ;

17. That this state of affairs forced plaintiff to tender his resignation from the RMGC on the 30th October 2010, since still being a member of the MSC he was entitled to make use of the RMGC facilities as a visitor / guest with limited rights (RMGC Constitution & Rules – Rules 2.1, 2.11, 2.13) ;

18. That, on the 3rd December 2010, plaintiff`s legal counsel wrote to the MSC (copy of the said letter attached as '**Doc. PAC4**') whereby the MSC was requested to exercise the powers vested in it by the RMGC Constitution and MSC Rules, to overrule the RMGC Board`s decision of the 28th October 2010, and subsequently reinstate plaintiff as a full member of the RMGC, with the same rights and rank he enjoyed in the RMGC prior to the suspension ;

19. That, in January 2011, the MSC Committee exercised the powers vested in it by the RMGC Constitution and MSC Rules, and requested the RMGC Board not to accept plaintiff`s resignation and to reinstate him as a full voting member of the RMGC, with the same rights and rank he enjoyed prior to his suspension ;

20. That, notwithstanding this request from the MSC Committee, the RMGC Board is still refusing to reinstate plaintiff as a full member of the RMGC as stated above ;

*21. That on the 21st February 2011, plaintiff filed a judicial protest against the RMGC (a legal copy of which is hereby attached as **'Doc. PAC5'**), once again insisting that the RMGC Board suspended him abusively and in breach of the RMGC Constitution, and should thus (i) reinstate him as a full voting member of the RMGC, with the same rights and rank he enjoyed prior to his suspension, and (ii) refund plaintiff the subscription fees he had paid in advance for the months of November and December 2010, during which months, due to his suspension, he was precluded from making use of the RMGC facilities ;*

22. That the RMGC`s reaction to the said judicial protest was a letter from their legal counsel, dated 29th March 2011 (a copy of which is hereby attached as **'Doc. PAC6'**), stating that in view of plaintiff`s resignation from the RMGC on the 30th October 2010, plaintiff could not challenge the action taken by the RMGC in his regard prior to his resignation ;

23. That plaintiff disagrees with the RMGC`s position, and reiterates that his suspension was nevertheless in breach of the RMGC Constitution and is thus entitled to be reinstated as a full member of the RMGC, with the same rights and rank he enjoyed prior to his suspension, insomuch that plaintiff should be deemed that he always remained a full member of the RMGC;

24. That Peter Allan Cuthbert knows of the above-stated facts personally, and has thus proceeded to file this lawsuit.

For the above-stated reasons, the plaintiff requests this Honourable Court, subject to any declarations which may be required at law, to decide as follows :

(1) To declare that in suspending plaintiff from the Royal Malta Golf Club on the 28th October 2010, the Board of Management of the said Club acted ultra vires and in breach of the Royal Malta Golf Club 'Constitution & Rules', as well as in breach of the principles of natural justice, thus violating plaintiff`s rights for a fair hearing ;

(2) To declare that there were no valid grounds or reasons which justify plaintiff`s suspension from the Royal Malta Golf Club on the 28th October 2010 ;

(3) To declare that plaintiff merits to be reinstated as a full voting member of the Royal Malta Golf Club, with the same rights and rank he enjoyed prior to his suspension, insomuch that plaintiff should be deemed that he always remained a full member of the RMGC ;

(4) To order the Royal Malta Golf Club to reinstate plaintiff as a full voting member of the said Club, with the same rights and rank he enjoyed prior to his suspension insomuch that plaintiff should be deemed that he always remained a full member of the RMGC ;

With all costs to be borne by the Royal Malta Golf Club, including the costs of the judicial protest of the 21st February 2011; with defendant`s authorised representatives summoned for the purposes of reference to oath.

Having seen plaintiff`s list of witnesses and list of documents.

Having seen the **sworn reply** that was filed by defendant on the 11th July 2011 and states as follows -

The Defence

1. As a preliminary defence, the applicant renounced to all the rights he might have had or any action he may have taken against the Club due to the fact that he resigned from the Club voluntarily and with immediate effect by means of a letter dated 30th October 2010.

2. Also as a preliminary defence, and without prejudice to the above, the applicant has no interest in this action.

3. Without prejudice to the above, the Club denies that on the 28th of October 2010 it acted ultra vires and in breach of the Constitution and Rules or that it acted contrary to the principles of natural justice. The Club also denies that it violated any right of fair hearing. Every decision taken by the Club in respect of the applicant was perfectly valid.

4. In any case, and without prejudice to the above, the remedy demanded by the plaintiff, in the sense that this Honourable Court ought to declare or order that he must be reintegrated as a member of the Club under the same rights and rank he enjoyed before the suspension in order for him to be deemed as having always remained a full member of the Club, is not an existent remedy.

5. Saving any other pleas or defences.

The facts

1. In relation to the first three paragraphs and the fifth paragraph in the sworn application, the defendant Club does not wish to add anything further.

2. With regard to the facts outlined in the fourth and the sixth paragraph, the defendant Club states that notwithstanding the fact that the Club is an ancillary club to the Malta Sports Club ('MSC'), the club is nonetheless a club which enjoys independence from MSC. Although it is true that the MSC has certain powers, these are irrelevant to this case.

3. The Club disagrees with certain facts as outlined in paragraphs number seven to sixteen. Firstly it is stated that the plaintiff was not an exemplary member of the Club. The plaintiff had various altercations with other members of the Club and they often times argued and insulted each other. Problems between these members continued to increase to the extent that criminal proceedings were instituted by one of the members against the other. The Club`s Board of Management decided to convene a meeting in order to discuss the problems which arose between the members, in an attempt to resolve the dispute amicably. The plaintiff was requested by the Club`s Board of Management to attend the meeting of the board. He was informed of this by the secretary of the Club. At first, the plaintiff accepted to attend but subsequently demanded the reason why he was being requested to appear before this Board. The secretary replied that she did not have the agenda of the meeting and she could not furnish him with any further information. The plaintiff informed her that since he was not given any reason why he was requested to attend the meeting, he would refuse to appear before the Club`s Board of Management. Subsequently, various

attempts had been made by the Club to convince the plaintiff to attend the meeting and also informed him of the reason why he was requested to attend, but he still refused to do so. The Club also replies that all action taken in respect of the plaintiff was perfectly valid.

4. The Club also disagrees with the facts as outlined in paragraph number 17. The plaintiff`s resignation was a voluntary one with immediate effect and the Club in no way obliged him to resign. It is also noted that he never gave any indication that he was forced to resign. The first time that an allegation in this regard was made over a month after his resignation, in which month he was silent about the matter.

5. Regarding the facts outlined in paragraphs number eighteen to twenty, the defendant Club replied that due to the fact that the plaintiff resigned voluntarily on the 30th of October 2010, he could not subsequently contest the decisions made by the Club in his regard before that resignation.

6. With reference to what is written in paragraph number twenty-three of the sworn application, the defendant Club replies that it is of the opinion that there exists no remedy, whereby the plaintiff can be re-integrated once again as a full member of the Club with the intention of being considered as having always been a full member of the Club. He may if he wishes, re-apply in order to become a member of the Club.

Having seen defendant`s list of witnesses.

Having seen its decree of the 12 July 2011 where the Court ordered that proceedings be conducted in the English language following plaintiff`s request in

that sense after he declared that he was a British national and did not understand Maltese.

Having heard the evidence of plaintiff at the hearings of the 3 November 2011 and 3 February 2012, and seen the documents exhibited by plaintiff during the two hearings.

Having heard the testimony of Ralph Asciak at the hearing of the 3 February 2012, and seen the documents produced by witness during the same hearing.

Having heard the testimony of Vanessa Galea and Albert Bonello at the hearing of the 12 April 2012, and seen the documents that were exhibited during the same hearing.

Having heard the cross-examination of plaintiff at the hearing of the 19 June 2012, and seen the documents that were exhibited during that hearing.

Having heard the cross-examination of Albert Bonello, and the testimonies of Alan Shaw, Kenneth Micallef and Guy Chamberlane at the hearing of the 1 November 2012, and seen the documents that were exhibited during that hearing.

Having heard the evidence of Paul Stoner at the hearing of the 6 December 2012, and seen the documents that were exhibited during that hearing.

Having heard plaintiff`s declaration made at the hearing of the 6 December 2012 and duly entered into the records of the proceedings. The declaration states as follows –

Plaintiff Peter Allan Cuthbert declares that despite this lawsuit, he wants to severe all possible future links with the Royal Malta Golf Club. Without prejudice to the position that he has taken in this lawsuit with regard to the first and second demands, on which he maintains his position unchanged to date, plaintiff does not want to insist any longer on the third and fourth demands, for the reason that as he wishes to severe all links or relationships with the Royal Malta Golf Club, he has no further interest to be re-integrated in the club as a full member, nor does he have any intention, whatever the outcome of the lawsuit, to apply for membership with the Royal Malta Golf Club.

Having taken due notice of a note filed on the 14 December 2012 whereby plaintiff stated as follows –

that he is no longer interested in pursuing his third and fourth requests in his sworn application and forthwith renounces to them whilst retaining and requesting the continuation of the first and second requests in his sworn application.

Having seen the application filed by defendant on the 4 January 2013 whereby, for reasons detailed in the application, requested the Court, in terms of Sec 728(2) of Chap 12, to grant leave for the filing of an additional sworn reply.

Having seen plaintiff`s reply filed on the 16 January 2013 whereby, for reasons detailed therein, submitted that the Court should reject defendant`s request.

Having seen its decree read out in open court on the 19 February 2013 whereby, for reasons stated in the decree, leave was granted to defendant to enter a further plea in terms of the application of the 4 January 2013.

Having seen the additional sworn reply that was filed on the 1 March 2013 which states as follows -

The claim of the applicant is unsustainable and impermissible at law given that the two demands of the applicant are of a declaratory nature and no remedy is being requested nor can any remedy be requested from this Honourable Court. In this respect, the applicant does not satisfy the requirements of judicial interest as required under our law.

With costs.

Having seen defendant`s list of witnesses for the purposes of the additional sworn reply.

Having seen the parties` written notes of submissions covering the merits and all the pleas.

Having seen its decree given at the hearing of the 12 November 2013 whereby the case was adjourned was judgement after the parties made their final oral submissions.

Having seen the remaining acts of the proceedings.

II. The Evidence

Plaintiff testified that he had been a member of Marsa Sports Club (MSC) and Royal Malta Golf Club (RMGC) for six and a half / seven years. There was a period when he was treasurer of the Captain's Committee. His relations with the other members of RMGC were very good and he got on well with the members of the Board of Management, except for the Chairman. He had difficulties with the Chairman in the sense that he made mistakes with the Constitution of the Club and went ahead to introduce a number of matters, like the introduction of a levy of Lm 1 every time one played golf – this issue was never put before the members and it was against the Constitution. The Chairman at the time and at present is Paul Stoner. He was a director of a Golf Club outside Malta for four years, namely the White Ring Golf Club in Middlesex, UK. Plaintiff believes that Paul Stoner considered him as a threat to him.

He explained the circumstances that lead to the filing of this lawsuit. He received an email from Vanessa Galea who was the secretary/manager of RMGC at the time – Dok PAC7. That email was preceded by a telephone call from Vanessa Galea on the 27 of October 2010, where he was informed that the Board of Management wished to see him the following day. Plaintiff asked for a confirmation by email. As the purpose of the meeting was not specified in Ms Galea`s email, he answered by stating that without further details on the part of the Board, he would not attend the meeting. Subsequently he received another email from the Board of Management where he was informed that due to the fact that he did not attend to the meeting, his membership had been suspended. He called the Captain and informed him that he would be resigning from his position as Treasurer because it was no longer tenable. Plaintiff states that the Board had breached the Constitution because the power of suspension had been given away to the Disciplinary Committee in June 2009. He pointed all this out to the Chairman in a letter dated 29 January 2010 – Dok. CPA 01. The answer

he received from the Chairman is exhibited as Dok. CPA 2. He was never asked to appear before a Disciplinary Committee. Nor did he receive any correspondence.

Plaintiff states that following the emails, he contacted a friend who was a member of the Board of Management to know what the whole matter was all about. The person concerned told him that the issue related to a dispute involving two other members. The matter between them ended in court but he was not summoned as a witness in the proceedings.

Plaintiff points out that after he was suspended, he approached Ralph Asciak, Chairman of MSC, because he knew that MSC could overrule his suspension as MSC had the right of veto. MSC actually sent a letter to RMGC where they registered their disagreement with the suspension – Dok. PAC 8. Plaintiff also contacted the President of the Malta Golf Association, William Beck, who had told him that the Association could not intervene in the matter.

When **cross-examined**, plaintiff confirmed his signature on his letter of resignation dated 30 October 2010 – Dok MA3. Asked whether he did contribute several times to amend the Constitution of the RMGC, he replied that this happened only once. He confirmed that Paul Stoner thanked him for his contribution during an annual general meeting. Plaintiff contests the suggestion that until a week before he resigned, he was working closely as Treasurer with Paul Stoner. He also contests that the imposition of Lm 1 levy was a decision of the Board of Management not of Paul Stoner alone. He confirmed that he knew Mr. Waddington and Mr. Tony Vella, as members of RMGC. Asked whether he knew whether anyone of them had ever been suspended, plaintiff stated that Mr. Vella had been suspended. He confirmed that he had problems with Mr Vella in the past but these had been resolved. He was aware that there were court proceedings between Mr. Waddington and Mr. Vella. He was also present once in court as a friend of Mr. Waddington. He advised that the Magistrates Court rejected Mr. Waddington's claim against Mr. Vella. After the case was decided, on that same day, there was an argument outside the courts building where Mr.

Vella made certain statements. He had written to the Board of Management on the 26 October 2010 regarding that incident – Dok. MA4. Asked whether the first time he was asked to attend a meeting was on the 27 October 2010, plaintiff replied - *"It could have been."* He confirmed that he was asked to attend the meeting a day after he sent the letter to RMGC alleging that he had been threatened with violence by Mr. Tony Vella. Plaintiff states that it did not cross his mind that the meeting was convened because of the letter he had sent.

Plaintiff was questioned on his contact with Mr Alan Shaw (a member of the Board of Management) on the morning of the day when he received the email. Plaintiff testified that Mr Shaw had called him after he had sent the email to Vanessa Galea, and told him that the meeting related to the issue concerning Mr. Waddington and Mr. Vella. Plaintiff told Mr Shaw that he had gone to court with Mr Waddington only a friend not because he was involved in the problem between the two. Asked by the Court for the reason why he resigned, instead of asking for another meeting, since the suspension remained operative until he appeared before the Board of Management, plaintiff stated that due to the fact that he was not given the reason to attend the first meeting, he could not presume that he would have been notified of the purpose of the meeting the second time.

Ralph Axiaq – Chairman of MSC - testified that RMGC forms part of MSC and falls under the umbrella of its Constitution. Anyone who wishes to become a member of RMGC has first to become a member of MSC. He has been Chairman for six years, and in the Committee for around nine to ten years prior to that. He knows plaintiff through the golf section. He was approached by plaintiff and told that due to the fact that he had been suspended by RMGC, he had resigned from the Club because he refused to accept that suspension. Witness was surprised with what plaintiff stated and asked him what happened. Surprise comes from the fact that to resign from the Golf club is a matter out of the ordinary as the Club is the only place in Malta where one can play golf. From what plaintiff explained, he had been summoned to appear before the Board of Management. No reason was given to him. And because he did not attend, he was suspended.

Witness stated that plaintiff contested the suspension procedure applied against him as running counter to the Constitution of RMGC. Plaintiff was evidently annoyed and was going to seek legal advice. Witness told plaintiff that he would discuss the matter with Paul Stoner in an attempt to resolve the issue amicably. Witness did speak to Paul Stoner who stated that plaintiff did know the purpose of the meeting. Stoner was asked by witness to reconsider the decision taken but refused adding that if plaintiff wanted, he was free to rejoin the Club as a new member. Shortly after this, MSC received a letter from plaintiff's lawyers holding MSC responsible. Witness decided to speak to plaintiff`s lawyer. He then went back to the Committee. A letter was written to RMGC, explaining to them that they should take back plaintiff – Dok. PAC 8. The reply of RMGC is Dok. RA1.

After RA1, the Committee met again and decided to write a formal letter to RMGC in order to reinstate plaintiff, as the MSC was of the view that RMGC had no right to keep plaintiff suspended – Dok. RA2. RMGC replied – Dok. RA 3. Some days later, witness met Jim Boyle, a member of the Board of Management, who acknowledged that the issue involving plaintiff had gone too far and suggested whether MSC would agree to meet the Board of Management. Witness agreed. That same afternoon, witness as Chairman of the MSC, together with Albert Bonello, met the Board of Management. During that meeting the BOM explained that they had told plaintiff a number of times the reason why he was he was being summoned. The BOM did not state why they did not give plaintiff the reason in writing and followed the procedure. In the minutes of that meeting, Bonello and himself highlighted errors which the BOM had committed. First and foremost, that the meeting was not convened by MSC but by RMGC. Secondly, MSC did not agree with BOM`s decision, in fact the matter was not even discussed – Dok. RA 4 to Dok. RA 6. Subsequently MSC received a letter from BOM saying that nobody could remember what was said at the meeting – Dok. RA 7 and Dok. RA 8.

Witness states that against this background, he spoke to plaintiff and told him that RMGC do not want him and that his only option was to rejoin as a new member. Plaintiff had informed witness that he was going to take legal action. Questioned by the Court, witness explained that if plaintiff reapplies for membership, he would be treated as a completely new member, meaning he

would be on probation for one or two years, during which time RMGC can terminate the membership for no reason ; during this time period, as a new member, he would not be entitled to join any of the committees.

Witness stated that he was aware that there had been ongoing friction between three members of the Club including plaintiff. Stoner had made it clear that he wanted the three out of the club. Regarding the other two members, apart from plaintiff, one had been suspended or expelled, while the other was still a member.

Under **cross-examination**, Ralph Asciak produced the minutes of the meeting of MSC – Dok. RA 9 and Dok. RA 10.

Vanessa Galea testified that she was secretary of RMGC between June 2007 and August 2011. As she was not any longer employed there, she had no access to her emails and therefore she was in a position to give evidence on what she remembers. Witness recalls that she was asked by the Board of Management to call plaintiff for a meeting. Asked by the Court what was the purpose of the meeting, she stated that she was not sure whether she knew at the time. She actually told plaintiff when asked that she was not aware of the agenda. Asked whether someone in particular from the Board of Management had asked her to contact plaintiff, she replied that there were five members on the Board, and anyone of them could have given her directions. Witness explained that she used the word "summon" in her email, because when she was at school she was taught that she should never repeat the same verb, so at the beginning as she had written to plaintiff to attend, and in the next email she used the term "summoned" just to be creative. Asked who from the Board had informed her that plaintiff had been suspended, witness stated that she could not remember who the person was.

Under **cross-examination**, witness was shown two documents marked Dok. MA 1 and Dok. MA 2. Witness confirmed the contents of the two documents. Asked who else apart from plaintiff was requested to attend the

meeting, witness confirmed that other members were requested to attend, including Mr. Vella and Mr. Waddington.

Albert Bonello – Acting Secretary of MSC – testified that RMGC is an ancillary club to MSC. He had been working all his life at MSC. Previously RMGC used to fall under the control of MSC as to administration, but subsequently there was an agreement between the RMGC and MSC for administration and finance matters to be managed directly by RMGC. He confirmed that MSC had no dispute whatsoever with plaintiff. Before the incident that triggered the lawsuit in question, he only knew plaintiff by sight. Plaintiff is a member of MSC. He was suspended from RMGC and following that suspension, he resigned. Asked by the Court whether a person who becomes a member of MSC automatically becomes a member of RMGC, witness replied that firstly the individual concerned has to be a member of MSC, because MSC governs all the disciplines of sport. Then if the person concerned wants to play golf, he must join RMGC which involves a separate process.

Witness explained that the statute of RMGC falls under the statute of MSC. Nonetheless each section has its own procedure as to how to deal with a member who is subject to discipline, unless that person wishes to bring the matter to the attention of the Main Committee of MSC. In the case involving plaintiff, witness confirmed that before taking action MSC wanted to hear the views of the RMGC. This information was available after a meeting was held with RMGC where MSC insisted with the BOM of RMGC that for MSC to arrive at a decision it had to hear all sides concerned. RMGC then a letter with their views.

Witness points out that MSC was concerned about the fact that when plaintiff requested the reason why the meeting was being held, the BOM did not state the reason. MSC was of the view that there was bad judgement on the part of RMGC. In a letter dated 27 January 2011, MSC requested RMGC to reinstate plaintiff. RGMC`s reply was in the sense that it would refer the matter to its BOM. As a matter of fact, MSC never received an answer. Asked by the Court

whether MSC had any authority on RMGC to reinstate a member, witness replied that there is rule in that sense in its statute but it was never applied. What actually happened was that MSC directed reinstatement without overruling the decision taken by the BOM of RMGC.

Witness states that when the Main Committee of MSC convened on 22 February 2011 to discuss the issue, due to the fact that it was aware that plaintiff was about to sue RMGC, in order to avoid an internal situation of conflict, decided to await the outcome of the present lawsuit. Witness exhibited the minutes of this meeting – Dok. AB 1. Witness also confirmed Dok. PAC 8 and Dok RA 1 – Dok. RA 8.

Under **cross-examination**, Albert Bonello testified that he was not aware of the incidents that lead to plaintiff`s suspension. He was informed afterwards. Regarding MSC's position on the matter, witness referred to Dok. RA 2, where MSC advised BOM of RMGC that the procedure followed was not according to the rules stipulated in the RMGC statute : specifically rule 4.5.2. Both before and after plaintiff`s case, the relations between MSC and RMGC were strained.

Alan Shaw – member of the BOM of RMGC – testified that he had informed plaintiff of the reasons why he was asked to attend the meeting. He recalled that on 27 October at 6.30 pm, he received a phone call from plaintiff, who told him that he was sending him a copy of an email which he had sent the BOM, informing them he was not going to attend to the meeting. Plaintiff also told him that he would not respond to the summons of the BOM as the Board was not a court of law. Witness told plaintiff that he would look at his email and get back to him in the morning. Witness informed the Board by email that plaintiff had called him. The next morning at around 9.00 a.m, he called plaintiff and explained to him the reason why they wanted to see him and encouraged him to attend, explaining that what the Board wanted was for the parties involved namely plaintiff, Mr. Vella and Mr Waddington to discuss and possibly reach an amicable settlement. Plaintiff kept on repeating that he would not be

"summoned" and refused to attend. Witness reiterated to plaintiff the only purpose of the meeting.

Witness confirmed that the meeting was held. Plaintiff did not attend the meeting. Mr Waddington and Mr Vella who received an email similar to the one sent to plaintiff did attend. The meeting was informal in nature and the BOM laid emphasis on the fact that it wanted to achieve peace and harmony between the parties concerned. Asked by the Court what was the reason for the action taken against plaintiff for not attending the meeting, witness replied that Board needed to know whether plaintiff intended to co-operate to resolve the issues that were pending with Mr. Vella and Mr. Warrington. As plaintiff failed to attend, the Board could not obtain the reassurance it was seeking and decided to suspend plaintiff. Witness exhibited Dok AS1.

Under **cross-examination**, Alan Shaw stated that when he knew the purpose of the meeting when plaintiff called. Plaintiff was suspended until he actually went before the Board to give assurances that the Board was seeking from plaintiff and it did with the other two involved. Asked for the reason why the matter was not referred to the Disciplinary Committee, witness replied that the Club Chairman did consult the Disciplinary Committee.

Kenneth Micallef – Captain of RMGC – testified that he was present at the meeting of the 28 October. After the meeting was closed, he received a phone call from plaintiff, informing him that he was resigning from the position of Treasurer on his committee. He told plaintiff that he was dealing with the matter wrongly, and that the only reason he was called before the BOM was because at the time there were three members who were causing problems, and all they wanted to tell them was to draw a line in order to have peace and harmony within the club. Plaintiff told witness that he was very annoyed because of the wording used in asking him to attend the meeting. Witness retorted that the manner how the notice was worded was no valid reason for resigning. Witness suggested to plaintiff that he should approach the BOM and the matter would be resolved in a few minutes. Plaintiff insisted on his

resignation. Witness confirmed that plaintiff was only suspended by the BOM until he decided to appear before the Board.

Witness explained that the purpose of the Disciplinary Committee was to investigate and decide on breaches of club rules. As the procedure before a DC was longer to arrive at a decision, the BOM opted for a quicker method of resolution. A DC does not suspend a member of its own motion ; it only recommends suspension to the BOM which has the final say. Suspension entailed that the member concerned could enter the club or play golf. He confirmed that plaintiff`s suspension would have remained in place until he decided to appear before the BOM. Following plaintiff`s resignation, there was no other purpose to hold the meeting.

Guy Chamberlane - member of RMGC and past Captain – testified that that on 31 October 2010, plaintiff informed him that his wife was going to hand in his resignation. He also met plaintiff`s wife who told witness that plaintiff had in the past resigned from other clubs on matters of principle.

Paul Stoner – Chairman of RMGC – testified that plaintiff was ordinarily a good member, however he was involved in a three-way dispute with two other members namely Tony Vella and Kenneth Waddington. On a personal level he played golf with plaintiff a number of times and never had any real issues with him. Plaintiff served on various committees and he was instrumental in giving advice to the people who put together the latest constitution of the club – Dok. PS1.

Witness explained that the dispute between the three members had escalated to the extent that violence, written accusations and threats were involved. Action was taken by the Police. Following a court sitting, remarks

were exchanged between plaintiff and Vella. The matter was brought to the attention of the Club : Dok PS2 – Dok PS10.

Stoner stated that the meeting of the 28 October 2010 was convened to obtain from the three members a commitment that they would refrain from offensive behaviour in future. Regarding plaintiff`s allegation that he was not given the reason for which the meeting, witness replied that the purpose of the meeting was obvious to the three members from the start, but apart from that, the purpose was also specifically explained to plaintiff by Alan Shaw. As a matter of fact, the secretary of the club did contact the three members ; plaintiff did not attend while the other two concerned did. Witness exhibited the minutes of the meeting - Dok. PS11.

Witness explained that the Board decided to suspend plaintiff until he would come forward to meet the Board. From plaintiff, the Board wanted the same assurances of good behaviour in future which the other two had given. The decision was taken on the basis of Rule 6.2.2.g of the Statute. That provision entitles the Board to take whatever steps are necessary for the safety of staff, members and visitors. Witness did point out that there is a Disciplinary Committee. The BOM or the Captain can deal with minor issues. If the complaint is serious, the disciplinary procedure which is a long process commences.

Stoner stated that following plaintiff's suspension, the Board had no response. A couple of days after, he went to the Club with his wife and handed in his resignation. No reason was given for the resignation. The Club accepted the resignation – Dok PS12. The Club did not keep plaintiff from resigning, although one of the past Captains had tried to dissuade plaintiff. His letter did not specify the reasons for the resignation. The consequence of the resignation was that the complaint filed against plaintiff had to stop there although it was kept on file in case plaintiff reapplied for membership in which case the matter would have been raised once again - Dok. PS15. The effects of suspension were that plaintiff was not able to use the facilities of the club until suspension was in

force. After the meeting ended, the Captain informed plaintiff that he needed to come before the Board.

Witness produced a letter which the Board had received from Waddington – Dok. PS13 - and the Board's reply – Dok. PS14.

Questioned on the relations between MSC and RMGC, witness explained that there was an open conflict between the two bodies that had been dragging for at least two decades. The BOM was very surprised when it received a letter from MSC saying that although plaintiff resigned, the Board should take him back. Witness objected to that stand, firstly because the matter was not in MSC`s remit and secondly MSC had not asked the Board for any information. A meeting was arranged and an account of what had happened was given to MSC. The Board did not hear from MSC again on the matter.

Under **cross-examination**, Paul Stoner stated that following his resignation which was accepted, if plaintiff wanted to join the Club he had to apply as a completely new member. Asked whether plaintiff was sent an email informing him that he was suspended only until he appears before the Board, witness answered that a communication in writing was not sent because meanwhile plaintiff resigned two days later. Witness confirmed that the condition of suspension was verbally explained to plaintiff by the Captain. Asked for the reason why the whole affair was not referred right away to the Disciplinary Committee, witness replied that the Board did approach the Chairman of the DC who had suggested that the Board should try and deal with the matter itself first before referring the matter to the DC. Asked where in the letter of the 4 November 2010 did RMGC state that it had accepted plaintiff's resignation, witness replied that he wrote back confirming receipt of that letter. Asked by the Court where that was more an acknowledgement rather than an acceptance, witness stated that the reply reflected their standard response. In the reply there is also stated that they had amended their membership database to record the fact. Asked whether in plaintiff's case the BOM had acted as judge and jury, witness replied that that would have been the case had the suspension

been definitive and plaintiff was dismissed from the Club. That was not the case as plaintiff was simply requested to come forward and meet in a gentlemanly manner. And plaintiff refused. The suspension was a precautionary not disciplinary measure.

III. Submissions

1) Plaintiff

Plaintiff states that he instituted this lawsuit in order to restore his credibility and reputation, which were damaged by defendant's actions. He has proved that RMGC acted *ultra vires*. He referred to a judgement delivered by this Court (PA/TM) on the 20 May 2004 in re "Mangion v. Cilia Pisani" which involved the Marsa Sports Club.

With regard to defendant's additional reply where the plea of inadmissibility of the action was raised, plaintiff referred to the following judgements :"Improved Design Limited v. Grima" – PA/JRM - 4 March 2004 ; "Bordieri et v. Aquilina et" - Court of Appeal – 3 February 2012 ; "Degiorgio v. Bianchi" - Court of Appeal (Inferior Jurisdiction) – 23 January 2004 ; "Falzon Sant Manduca v. Weale" - Court of Appeal – 9 January 1959 and "Ganado v. Ezekuttiv tal-Partit Nazzjonalista - Court of Appeal - 3 September 1961.

With reference to these judgements, plaintiff argues that once there is juridical interest, a declaratory action subsists and the Court has the legal competence to decide upon declaratory claims. In this lawsuit, plaintiff's interest is not only juridical, but it is also actual and direct. A declaration by the Court that plaintiff was wrongfully suspended and the manner in which this

suspension was implemented is in itself an act of justice and restoration of plaintiff`s reputation.

The overriding principle is that an organization is bound by its rules and regulations and cannot act *ultra vires*. The rules apply not only to the members but to the people who direct or manage the organisation. Reference is made to the decision in re "Wiles v Bothwell Castle Golf Club" [2005] Scot CS CSOH 108. Plaintiff points out that before this action was instituted, he had filed a judicial protest putting defendant in bad faith and holding him responsible for damages. As his claims were not contested or defended, that means that defendant admitted bad faith *a priori*.

Plaintiff contends that the DC Guidelines of RMGC lay out the procedure to be followed where a member is being investigated and subsequently disciplined. He refers to Clause 3.13 of the Guidelines and to Clauses 4.6 and 4.5.2 of the Constitution.

Plaintiff submits that under no circumstances was his failure to attend an informal meeting for which no reason was given could be regarded as within the remit of the Clauses quoted above. Plaintiff refers to clauses (f), (g), (i), (j) (n) and (q), clause 11.6 and Part XIV section 2 of the procedure to be adopted in the Disciplinary Guidelines.

According to plaintiff the real underlying motive for the actions of RMGC was the unilateral decision of the Chairman who wanted to dismiss plaintiff from the Club at all costs and without cause.

Plaintiff also refers to the principles of natural justice : *nemo judex in causa proprio* and *audi alteram partem*.

2) Defendant

Defendant submits that following the withdrawal of his third and fourth demands, plaintiff changed the framework of his sworn application, in such a manner that the remaining two demands - both of a declaratory nature – bear no concrete utility. Therefore during the course of the proceedings, plaintiff had no further interest at law. Defendant refers to the judgement of the 2 May 2002 given by this Court (PA/TM) in re "Laferla vs Lauri et noe" (and confirmed on appeal : 10 May 2005). Defendant argues that declaratory actions can only be accepted by the courts when there is a utility to have the court make such a declaration, and that such declaration would lead to the protection of and the enforcement of a right (see also : "Pisani vs Borg" (Vol XXXVI.i.127)].

Defendant rejects plaintiff`s argument that he has legal interest because through this action he intends to restore his credibility and reputation. Defendant argues that this is not the case as plaintiff's action was intended to achieve a court order for his reinstatement as a full voting member with all the rights and privileges he had prior to his resignation. Defendant contends the judgements quoted by plaintiff confirm his position in the sense that the juridical interest must be such that the action must seek to attain a remedy which is protected by law and so remedies which are simply declaratory are not permissible. Reference is made to "Damenia v Borg Olivier noe" decided by the Court of Appeal on the 18 February 1966 ; "Manche` v. Montebello" decided by the Court of Appeal on the 13 February 1953 ; "Formosa Gauci v. Lanfranco et" decided by the Court of Appeal on the 28 November 2003. Therefore on this point defendants conclude that even if the outcome were favourable for plaintiff, he would in no way have any means to enforce or execute that outcome.

Without prejudice to the issue of interest, defendant argues that the very fact that plaintiff voluntarily resigned from the Club means that he renounced to all rights he might have had or any action he might have taken against the Club.

Although plaintiff in his sworn application declares that he was made to resign from the Club, the evidence brought before the Court proves otherwise.

With regard to the merits, defendant submits that it did not act *ultra vires* and it did not breach any principles of natural justice. Plaintiff's case is focused on the fact that the BOM did not have the power to suspend him and this could only be done after the DC finalised proceedings itself. According to defendant, this is not correct. The Statute gives the BOM the power to take the action it had taken in respect of plaintiff this by virtue of Clause 6.2.2 (g). This was not a case where plaintiff was not given the opportunity to defend himself or that he was not given a reason to attend the meeting or that he did not know about it.

IV. Considerations of the Court

Before considering the merits of plaintiff's claims, and the pleas raised by defendant on the merits, the Court will be considering first the plea of lack of "interest" at law which defendant raised in his additional sworn reply following plaintiff's withdrawal of the third and fourth demands.

The Court points out that another plea of lack of "interest" was raised by defendant in the "original" sworn reply. The "original" plea and the "additional" plea differ in the sense that while lack of interest in the "original plea" was raised specifically because of plaintiff's resignation following his suspension, the "additional" plea was submitted specifically because plaintiff decided to withdraw his third and fourth demands.

Now while it is very evident from the records of the proceedings that the plea raised in the "original" sworn reply was treated by the Court as a matter to be considered with the merits. As the plea raised in the "additional" reply has an entirely different bearing, it is being considered first.

1) <u>The plea in the additional sworn reply</u>

Following the withdrawal of the third and fourth demands, but at the same time keeping in place the first and second demands, plaintiff in essence restricted his lawsuit to a declaratory action.

The extraordinary issue of plaintiff`s decision, which was preceded by his declaration at the hearing of the 6 December 2012, arises from the fact that in general terms, when a plaintiff in a lawsuit requests the Court to make only a declaration, he does so with a view to follow that declaration with another action that gives substance or a further right of action consequent to that declaration. Generally the option in favour of two lawsuits rather than all-comprising one is chosen due to the costs factor. In this particular case, the approach of plaintiff from a perfectly logical series of demands was turned into an uncommon "modus operandi". From a lawsuit requesting declarations from the Court, and followed by requests for a remedy, plaintiff transformed his cause into a simple declaratory action together with a voluntary renounciation to a remedy. It is more than obvious both from the premises of the action and the original demands that the purpose or motive for plaintiff`s action was to seek reinstatement into the RMGC despite his voluntary resignation. This specific motive was the <u>nexus</u> between demands one and two with demands three and four.

The issue for the Court to decide at this stage is whether by the very fact that he refused reinstatement by renouncing to demands three and four did plaintiff maintain intact his interest at law to insist on his demands one and two.

A leading judgement on the question of interest was of Court of Appeal in re "**Formosa Gauci v. Lanfranco**" decided on the 28 November 2003. There the Court stated as follows –

Huwa minnu, u l-partijiet jaqblu dwar dan il-punt, li l-ligi taghna tezigi li min jipproponi azzjoni gudizzjarja jrid ikollu interess guridiku, l-ghaliex altrimenti jkun ifisser li kull min ikun irid jivvessa lil xi hadd inutilment ikollu l-opportunita` shiha li jaghmel dan billi joqghod "jiqqortja" mieghu fuq kwalsiasi pretest li jkun, imqar jekk il-materja lanqas biss ma tkun tikkoncerna lilu. Il-Qorti tinnota li qabel ma l-ewwel Qorti waslet ghad-decizjoni taghha dwar in-nuqqas ta' interess guridiku da parti ta' l-attrici, hija ezaminat b'mod mill-aktar approfondit il-gurisprudenza ta' dawn il-Qrati, kif ukoll id-dottrina legali in materja. Mid-diversi decizjonijiet imsemmijin fis-sentenza tal-Qorti ta' l-ewwel grad jemergu kjarament, is-segwenti principji li ghandhom, fil-fehma anki ta' din il-Qorti, iservu ta' gwida li fuqhom ghandha timxi Qorti biex tirrizolvi vertenza ta' din ix-xorta.

Dawn il-principji huma s-segwenti :

(i) l-interess (guridiku) mehtieg irid ikun wiehed dirett, legittimu, kif ukoll attwali.

(ii) l-istat attwali ta' ksur ta' jedd jikkonsisti f'kundizzjoni pozittiva jew negattiva li xxejjen jew tinnewtralizza dritt li jkun jappartjeni lid-detentur jew lil dak li lilu jkun misthoqq.

(iii) l-interess guridiku fl-attur huwa dak li l-imharrek jirrifjuta li jaghraf il-jedd ta' l-istess attur u dan billi kull persuna ghandha d-dritt titlob li,

fil-konfront taghha, isir haqq jew tigi msewwija ingustizzja li tkun giet maghmulha kontriha.

(iv) l-interess guridiku irid ikun iwassal ghal rizultat ta' utilita` u vantagg ghal min irid jezercita l-jedd. Jekk l-azzjoni ma tistax twassal ghal tali rizultat ghal min jibdiha, dik l-azzjoni ma tistax tregi.

(v) l-interess guridiku jrid jibqa' jissussisti matul il-hajja kollha ta' l-azzjoni, u mhux biss fil-bidu taghha. Jekk l-interess jintemm, il-konsegwenza immedjata tkun li l-imharrek jinheles milli jibqa' fil-kawza.

(vi) l-interess ta' l-attur ghandu jkun jidher mill-att tac-citazzjoni nnifisha. Ghalkemm il-mottiv ta' l-interess mhux mehtieg li jkun imsemmi fic-citazzjoni, dan ghandu jirrizulta mill-provi jekk kemm-il darba jigi kkuntrastat.

(vii) fil-prattika gudizzjarja, wiehed jista' jippromuovi kawza biex jikseb dikjarazzjoni preordinata ghal azzjoni definittiva u ahharija, minkejja li din ma tkunx giet inkluza fl-azzjoni ta' accertament. Madankollu, f'kaz bhal dan, il-Qorti trid tkun soddisfatta li jkun hemm l-interess mehtieg, anki preordinat ghall-kawza l-ohra, u li d-dikjarazzjoni hekk miksuba tkun tifforma l-bazi tal-kawza l-ohra li tista' ssir aktar 'l quddiem.

(viii) l-interess mhux bilfors ikun wiehed li jigi kkwantifikat f'somma determinata ta' flus jew gid, imma jista' jkun imsejjes biex ihares jew jaghti gharfien ghal jedd morali jew soggettiv, imbasta l-jedd invokat ma jkunx wiehed ipotetiku.

(ix) jekk azzjoni, ghalkemm tkun imsejsa fuq jedd ta' l-attur, tkun mahsuba biss biex tirreka hsara lill-imharrek bla ebda vantagg utli lill-attur tali azzjoni titqies bhala wahda illegali – azzjoni maghrufa fid-duttrina bhala wahda acta ad aemulationem – u titqies li fiha jkun jonqos l-interess guridiku mehtieg.

This Court also refers to its judgement (**PA/TM**) [quoted by both parties] in re "**Mangion vs Cilia**" decided on the 20 May 2004. The Court there stated as follows –

Ghar-rigward ta' l-ewwel eccezzjoni, jinghad li biex tigi ezercitata azzjoni, l-attur irid ikollu interess guridiku fil-prosegwiment ta' dik il-kawza, liema interess irid ikun jezisti fil-bidu tal-kawza u jipperdura tul is-smiegh tal-kawza. ("Laferla vs Lauri" deciza minn din il-Qorti fit-2 ta' Mejju, 2002). Kif qalet l-Onorabbli Qorti ta' l-Appell fil-kawza "Goggi vs Mifsud', deciza fil-11 ta' April, 1930, ghalkemm il-kodici taghna m'ghandux provvediment li jittratta l-htiega ta' interess, din il-htiega tista' tigi desunta mill-artikolu 236, li jitkellem fuq dritt ta' appell "minn kull min ikollu interess", u mill-artikolu 960, li jitkellem fuq l-intervent f'kawza in statu et terminis, fiz-zewg kazi, tal-Kodici ta' Organizzazzjoni u Procedura Civili. Kompliet tghid dik l-Onorabbli Qorti li "Fu nondimeno sempre ritenuto nella patria gurisprudenza, malgrado il difetto di una precisa disposizione della legge in materia, e come corollario di (queste) due disposizione, che base e misura di ogni azione guidiziario e' l'interesse in chi la istituisce e in chi la contesta' perche' se l'interesse e una condizione sine qua non per il semplice intervento e per l'appello, e' tale con maggior ragione per poter iniziare un giudizio".

F'dan il-kuntest, l-interess irid ikun guridiku fis-sens li dan l-interess irid ikun rikonoxxut bil-ligi u l-azzjoni trid tkun preordinata ghal l-otteniment ta' rimedju protett bil-ligi. Minhabba dan ir-rekwizit, gie deciz li rimedji li jwasslu biss ghall-otteniment ta' semplici dikjarazzjoni mhux permissibli. Fil-kawza "Darmenia vs Borg Oliver noe", deciza mill-Onorabbli Qorti tal-Appell fit-18 ta' Frar, 1966, intqal li "fis-sistema aktarx segwit mill-Qrati taghna, ghad li m'humiex projbiti domandi diretti ghall-otteniment ta' semplici dikjarazzjoni li tista' tkun pre-ordinata ghal domanda ohra definitiva jew finali, avolja din ma tkunx dedotta, jehtieg illi l-Qorti tkun perswaza illi dak ir-rimedju l'iehor jista' jinghata; jekk ir-rimedju konsegwenzjali m'huwiex ottenibbli mill-Qorti, id-dikjarazzjoni ma tinghatax". Hekk ukoll, fil-kawza "Edrichton Estates Ltd vs Munro Philips & Co Ltd", deciza minn din il-Qorti fit-2 ta' Ottubru, 2003, intqal li f'kaz ta' talbiet dikjaratorji, il-Qorti tista' tiehu konjizzjoni taghhom, purche' dawn ikunu pre-ordinati ghal domanda definitiva u finali, anke jekk din tkun ghada ma gietx dedotta f'gudizzju. (Ara wkoll "Grech vs Grech", deciza mill-Onorabbli Qorti tal-Appell fil-11 ta' Jannar, 1989).

Minn naha l-ohra, intqal ukoll li, "L-interess f'min jaghmel kawza m'hemmx bzonn li jkun patrimonjali, imma jista' jkun anki morali u astratt, purche' jkun ta' natura guridika, jigifieri li jkun jikkorrispondi ghal lezjoni ta' dritt, u ghalhekk, hu bizzejjed, biex jirradika dak l-interess, anki semplici dritt onorifiku. Lanqas m'hu mehtieg li jkun hemm vjolazzjoni ta' dritt veru u propju, imma hu bizzejjed li l-ezistenza tad-dritt tkun minaccjata" – "Axiaq vs Mizzi", deciza minn din il-Qorti fit-13 t'Ottubru, 1952 (Kollez. Vol. XXXVI.11.532). Il-Qorti, f'dik il-kawza, kompliet tisma' l-kawza li kienet intiza ghas-semplici interpretazzjoni ta' legat, u, ghalkemm, seta' jinghad li s-sentenza ma tkunx tista' tigi ezegwita, "mhux koncepibli kif is-sentenza li taghti dik l-interpretazzjoni tista' tigi injorata".

Interessanti wkoll illi d-decizjoni fil-kawza "Falzon Sant Manduca vs Weale", deciza mill-Onorabbli Qorti tal-Appell fid-9 ta' Jannar, 1959, (Kollez. Vol XVIII.1.1), fejn inghad li l-interess m'hemmx ghalfejn ikun jissarraf fi flus jew f'valur ekonomiku. Fil-kawza "Ganado vs Ezekuttiv tal-Partit Nazzjonalista", deciza mill-Onorabbli Qorti tal-Appell fit-3 ta' Settembru, 1961, gie wkoll deciz li "d-dritt tal-attur vjolat bir-rizoluzzjoni impunjata ghandu kontenut morali, u jidhol fil-kategorija tad-drittijiet soggettivi immaterjali – liema dritt l-attur ghandu b'din l-azzjoni l-interess li jigi affermata permezz tal-awtorita' gudizzjarja".

The Court has given deep thought to the turn of events that evolved following plaintiff`s withdrawal of demands three and four. The Court is of the view that once *l-interess mhux bilfors ikun wiehed li jigi kkwantifikat f'somma determinata ta' flus jew gid, imma jista' jkun imsejjes biex ihares jew jaghti gharfien ghal jedd morali jew soggettiv, imbasta l-jedd invokat ma jkunx wiehed ipotetiku* then plaintiff has an interest at law to seek a court declaration in line with demands one and two despite renouncing to demands three and four. His interest at present is not hypothetical in nature. Every person has a right to his reputation and a right to safeguard that reputation. Reputation and credibility are values which people cherish and which are given protection. The fact that plaintiff feels that his reputation was actually tarnished through his suspension from RMGC gives plaintiff the right to seek a court declaration in line with demands one and two. Whether he has managed to prove his case on the merits is an entirely different matter. Restoration of a person`s reputation and credibility is ground

enough to seek redress even if through a court declaration without an ancillary remedy.

The Court therefore <u>rejects</u> defendant`s plea contained in his additional sworn reply.

2) <u>The second plea in the original sworn reply</u>

The plea of lack of interest was raised in the original sworn reply for different reasons. There defendant submitted that through his voluntary resignation from the Club, plaintiff remained without any interest at law to promote the four original demands. The considerations made by the Court with regard to plea of lack of interest in the additional sworn reply apply *mutatis mutandis* with regard to this plea of lack of interest. The principles that identify interest did stand in the original demands, independently from the issue of actual proof of the merits.

The Court therefore <u>rejects</u> defendant`s second plea in the original sworn reply.

3) <u>Chronology</u>

The following is a chronology of the **<u>established facts</u>** –

i) A letter was sent by plaintiff to the BOM dated 26 October 2010 – Dok. MA 4 – informing the Board of an incident that had happened outside the courts building. A request was made to the Board to consider as prejudicial to its interest the incident that happened and to request that Mr. Vella to appear before the DC.

ii) Email dated 27 October 2010 – Dok PAC 7 – where plaintiff was informed that the BOM wanted to meet him on Thursday 28 October.

iii) Plaintiff replied to this email by requesting the reason for the meeting and the agenda.

iv) Secretary answered email by stating that she was instructed to summon plaintiff for the meeting without any explanation.

v) Plaintiff declined that "summons" and stated that he would not be attending the meeting.

vi) Plaintiff then sent an email to Alan Shaw, making him aware of this exchange.

vii) Alan Shaw sent a follow-up email to the rest of the BOM informing them that plaintiff had called him and sent him an email and asking them what to do next.

viii) In an email dated 28 October 2010 – fol. 280 – Alan Shaw points out to plaintiff the importance of his attendance to the meeting. He made it clear that the meeting was informal and that it was important in order to bring an amicable closure to the whole issue. Alan Shaw explains that plaintiff told him he would not attend because he was not a direct party to the dispute and that he was only supporting Waddington.

ix) An email dated 28 October 2010 – Dok. PAC 7 – was sent by Vanessa Galea to plaintiff, informing him about his suspension due to his refusal to appear before the BOMs *"until you are asked again and indeed appear in front of the said Board."*

x) Plaintiff resigns from RMOC as per letter dated 30 October 2010 – Dok. MA 3.

xi) RMGC acknowledges and accepts plaintiff's resignation dated 4 November 2010 – Dok. PS 12;

xii) Letter dated 2 December 2010 – Dok. PAC 4 – whereby plaintiff writes to the Chairman of MSC, asking them to intervene and if necessary to overrule the decision taken by the BOM.

xiii) Letter sent by RMGC to MSC dated 17 December 2010 – Dok. RA1.

xiv) Letter sent by MSC to RMGC dated 27 January 2011 – Dok. PAC 8.

xv) Judicial protest filed by plaintiff against RMGC dated 21 February 2011 - Dok PAC 5.

xvi) Letter dated 29 March 2011 – Dok. PAC 6.

4) <u>The merits and the other pleas</u>

It is a proven fact that even though the BOM was aware of the dispute between Vella/Waddington/plaintiff, it was after plaintiff`s letter to BOM that followed the courts incident that the BOM called the meeting of the 28 October.

The Court refuses as ill-founded and unproven plaintiff`s pretention that he did not know the reason why he was being called or "summoned" to attend the meeting. Whether "summoned" was the proper term Vanessa Galea should have used to ask plaintiff to attend the meeting is irrelevant. What is relevant is that it has been proved that he knew very well the purpose of the meeting and for no justifiable reason decided not to attend. In fact what witness Alan Shaw testified is amply clear and unequivocal and frankly very difficult to contest.

The minutes of the BOM dated 28 October state as follows –

"Cuthbert did not attend the meeting, despite the fact that he had spoken to a BOM member who clearly explained the reason for the meeting and even explained the actions proposed by the BOM".

It appears that the meeting that was held by the BOM on the 28 October 2010 had also been suggested by the Chairman of the DC who as is stated in the minutes – Dok. PS 11 – *"was of the opinion that before starting discipline proceedings we should first again try to resolve the matter amicably."*

Out of the three members involved in the dispute, who were called to appear before the BOM, only plaintiff failed to appear.

From the minutes of the BOM meeting dated 2 February 2011 (fol 181) it results that plaintiff wanted to be reinstated with the same privileges he had before he resigned, and that plaintiff believed that he was forced to resign.

The Constitution of RMGC - fol 11 - regarding "Membership Termination", Clause 4.5.2 states as follows –

"If any member, either on the golf course or in the clubhouse, or elsewhere commits a criminal offence whether it be serious or not or behaves in a manner likely to bring the RMGC into disrepute or is considered by the BOM to behave in a manner that is injurious to character and/or interests of the RMGC, the BOM shall call attention to such conduct and request such Member to appear in front of the RMGC's Disciplinary Committee."

In Article 6.2, one of the powers of the BOM is *"g) take whatever steps are necessary for the safety of staff, members and visitors."*

The part dealing with the DC in the Constitution of the RMGC is minimal. However a provision of relevance is the following –

"MGC Club Captain has licence to deal with the relatively minor matters of discipline without bringing them, to the attention of the Board of Management, although it is suggested that the matter is discussed with the RMGC's Chairman beforehand."

In "The Rules of the MSC, the following Articles are relevant.

Article 6.4 states -

"If the conduct of any member, either on the golf course or greens or in the clubhouse or elsewhere, shall, in the opinion of at least three-fourths of the members of the Board of Management present at a meeting specially summoned to consider the case, be injurious to the character and interests of the club, the Management Committee (which in Article 8 is also defined as the Board of Management) shall call attention to such conduct and request such member to resign, and if the member, so requested shall not within seven days of receiving such request either resign or offer an explanation of his conduct with which a simple majority of the Board of Management is satisfied, such member shall cease to be member of the club.

"6.5 The Board of Management shall have the power to suspend a member for a period not exceeding twelve months. Before taking this action the member must be given the right of a hearing before the Board of Management and if they wish to be accompanied or represented."

17.3 In all disputes arising within the RMGC the Board of Management shall be the sole authority for interpreting these Rules and for settling all disputes relating to the affairs of the club and to the conduct of members in relation to the club."

A fol. 72 there are the Disciplinary Guidelines. Therein is stated that -

"The RMGC Secretary has licence to deal with relatively minor matters without bringing it to the Management Committee, although it is suggested that the matter is discussed with the Club's Chairman or Captain. In more serious cases however, should there be reason for disciplinary actions to be initiated against a member of the RMGC, the following procedure shall be used …

This is in fact confirmed in the Disciplinary Guidelines of the RMGC a fol. 108.

It is evident that the BOM did not want to undertake drastic disciplinary action against plaintiff. Its clear intention was to attempt to resolve amicably an intricate and delicate situation before it went out of hand. It was definitely within its remit to call an informal meeting for the interested parties to attend. It is quite evident for this Court that if plaintiff wanted to be represented, the BOM would have adhered to his request. Nonetheless plaintiff never submitted such a request.

The Court has determined that plaintiff decided not to attend that meeting of his own accord and not because he was not advised of the reasons for the meeting.

Plaintiff contests the procedure taken in his behalf.

On the basis of an attentive analysis of the statutes in question, this Court is of the view that the DC is called into play in *"more serious cases"*, and that before that takes place the matter should be discussed with the Club's Chairman or the Captain.

It has not been proven that the BOM wanted to take disciplinary action against plaintiff. The motive behind the call of the meeting was definitely conciliatory in nature, apart from the fact that the BOM had all the remit to call such a meeting.

Regarding the decision to suspend plaintiff, it is most evident from the evidence as a whole that the measure was intended to be temporary in nature until plaintiff presented himself before the BOM. As the suspension was temporary, all that plaintiff had to do in order to have the suspension lifted was to request appear before the BOM.

It was entirely plaintiff's decision to resign from the Club just <u>two</u> days after the meeting had taken place.

On the basis of Clause 6.5, the BOM has every right to suspend members. That action can be taken on condition that the member is given the right to a hearing, and if he wishes to be represented or assisted. Before the BOM suspended plaintiff, the latter had the right to be heard. For no fair reason whatsoever, plaintiff rejected that right.

The Court has nothing whatsoever to sanction in the manner how defendant dealt with plaintiff in the issue in question.

<u>Decide</u>

For the reasons above, the Court is hereby deciding the cause between the parties as follows –

Abstains from taking further notice of plaintiff`s third and fourth demands following their withdrawal in the course of this cause.

Rejects the plea submitted by defendant in the additional sworn reply.

Rejects the second plea raised by defendant in the original sworn reply.

Accepts the third plea raised by defendant in the original sworn reply.

Abstains from taking further notice of the other pleas that defendant raised in the original sworn reply.

Rejects plaintiff`s first and second demands.

For reasons that justify the application of Sec 223(3) of Chap 12 of the Laws of Malta, orders that the costs shall not be taxed between the parties.

< Final Judgement >

----------END----------