



MALTA

**QORTI CIVILI**

**PRIM' AWLA**

**ONOR. IMHALLEF**

**SILVIO MELI**

Seduta tal-15 ta' April, 2014

Rikors Numru. 1085/2013

**Michael McDermott**

**(English Passport Number 510293819)**

**VS**

**Anthony J. Ferro**

**(ID 188050M and English Passport Number 740138493)**

The Court,

- 1.0. Having seen the sworn application submitted by complainant McDermott on the 12<sup>th</sup> November, 2013, who synthetically confirmed the following on oath:
  - 1.1. That by means of a judgement delivered by Huddersfield County Court in the United Kingdom on the 8<sup>th</sup> March, 2011, in the names of Michael McDermott vs Anthony J Ferro et, the above defendant Ferro was declared as being the debtor of complainant McDermott of the sum of ninety-five thousand Sterling, (£95,000.00), (see folio 3), together with relative interest at the rate of five per cent, (5%), from the date of the same judgement referred to above, (see folio 5);
  - 1.2. That the court issuing the authentic document concerning the judgement referred to in the previous paragraph is Tauton County Court, (see folio 4);
  - 1.3. That this is a procedure initiated in terms of Council Regulations Number 44/2001 on the jurisdiction recognition, and enforcement of Civil and Commercial judgements;
  - 1.4. That as a direct effect thereof, this court has no jurisdiction to decide on the merit of the case;
  - 1.5. That on the basis of article 38(1) of Council Regulations 44/2001, a judgement given in a Member State of the European Union and is capable of being executed in that Member State may equally be executed in another Member State when, on the application of a party interested in such claim, the relative judgement is also declared executable in that other Member State;

- 1.6. That the judgement referred to above is capable of being executed in terms of the certificate issued by the Huddersfield County Court, (see folio 4);
- 1.7. That on the basis of the above complainant McDermott request the court to:
  - 1.7.1. Recognize the judgement given by the above mentioned U.K. court in the names of Michael McDermott vs Anthony J Ferro et dated 8<sup>th</sup> March, 2011;
  - 1.7.2. Declare the same said judgement as enforceable and capable of execution against the defendant Ferro;
  - 1.7.3. Declare that the expenses relative to these proceedings should be suffered by the same said defendant;
- 2.0. Having seen the reply submitted by defendant Ferro on the 24<sup>th</sup> February, 2014, which synthetically submits:
  - 2.1. That defendant was not duly notified with the procedures undertaken in the relative United Kingdom court referred to above;
  - 2.2. That hence, the relative judgement is null and therefore non-enforceable;

- 2.3. That during the period of the relative proceedings undertaken in the United Kingdom, the defendant was residing in the United States;
- 2.4. That as the defendant was residing in the United States the courts of the United Kingdom had no jurisdiction on him;
- 2.5. That Regulation 44/01 and the European Enforcement Order 1869/2005EC do not apply outside the European Union;
- 2.6. That the judgement of the Sommerset court does not fall within the parameters of enforceability as established in Regulation 44/01;
- 2.7. That therefore the defendant submits that the complainant's request should be rejected;
- 2.8. That expenses should be bourn by the complainant;
3. Having seen the documents submitted;
4. Having seen the decrees given on the sitting of the 3<sup>rd</sup> April, 2014;
5. Having heard the oral submissions of the learned legal representatives of the parties;

6. Having seen the application dated 10<sup>th</sup> April, 2014, and consequent decree thereto dated 14<sup>th</sup> April, 2014;

Considers:

- 7.0. That this procedure is one which is limited in terms of Council Regulation 44/2001, which synthetically established the following:

- 7.1. That in respect of judgements and orders emanating from courts or tribunals of States that are Members of the European Union said judgements and orders are of immediated enforcement once same are duly recognized as such in the courts of Member States of the European Union where one intends to enforce and execute them;

- 7.2. That on the basis of said Council Regulations, no defence whatsoever is granted to defendants at the level of a court of first instance;

- 7.3. That if an examination of the merits of the original case is allowed, such examination may only take place at the level of a court at second instance;

- 7.4. That this procedure is being conducted at the level of a court of first instance which is only granted the following jurisdiction:

- 7.4.1. To examine the documents submitted by the complainant to sustain his claim;
- 7.4.2. Ascertain that the judgement therein referred to emanates from a court or Tribunal of a State that is a Member of the European Union;
- 7.4.3. Having so ascertained that the judgement under review is according to Council Regulation 44/2001, the receiving court of first instance must then order the judgement's execution and convalidate its enforceability within its jurisdiction;

Considers:

- 8.0. That from an examination of the documents submitted by the complainant and referred to above, the court is satisfied of the following:
  - 8.1. That the judgement issued by the Huddersfield County Court in the United Kingdom on the 8<sup>th</sup> March, 2011, in the names of Michael McDermott vs. Anthony J Ferret is one which has been duly determined by a Court of a State which is a Member of the European Union;

- 8.2. That the said judgement has been duly documented and authenticated by the Tauton County Court of the United Kingdom;
- 8.3. That the basic requisites established for the enforcement of Civil and Commercial judgements as established by Council Regulation 44/2001 have been duly satisfied;
- 8.4. That this particular court, as a court of first instance, has no jurisdiction to enter into any merits of the case which may therefore not be addressed at this level;

**DECIDES:**

- 9.0. That on the basis of the above synthesis this court:
  - 9.1. Recognizes the judgement given by the above-mentioned court of the United Kingdom in the names of Michael McDermott vs. Antony J Ferro et and dated the 8<sup>th</sup> March, 2011;
  - 9.2. Declares that the judgement referred to in the preceding paragraph is enforceable and is capable of execution against the defendant Anthony J. Ferro;

- 9.3. Declares that the expenses of these proceedings are to be borne by the same said defendant Anthony J. Ferro.

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Hon. Mr Justice Silvio Meli

FINAL JUDGEMENT

**< Sentenza Finali >**

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