CIVIL COURT FIRST HALL

THE HON. MR. JUSTICE
JOSEPH ZAMMIT MCKEON

Sitting of Tuesday 6th October 2015

Case No. 2
Sworn Appl. No. 319/09 JZM

Emil Otto Bachet, detentur ta` passaport Olandiz Nru J6421737

vs

Bank of Valletta plc

The Court :

I. The Matter

Having seen the **sworn application** which plaintiff filed in Maltese on the 27th March 2009 which states as follows :-

1. Illi huwa proprjetarju uniku tad-drittijiet kollha relatati ma` Safety Deposit Box no 49, li huwa kien fetah Palace Square, il-Belt Valletta ; dan is-Safety Deposit Box sa fejn jaf huwa u sa fejn qalulu giet trasferita sussegwentement lill-fergha tal-Mqabba ; din il-kaxxaforti ta` depositu nfethet f`Gunju 2001 bi skrittura ; din l-iskrittura kienet totalment danneggjata u meqruda peress illi d-dokument kienu fil-basement tad-dar tieghu f`Anversa u flooding ta` l-ilma f`dan il-basement iddestruggihom totalment ;

2. Illi d-dirigenza tal-Bank kienet tatu kodici f`konfidenza biex jigi identifikat ai fini ta` din il-kaxxaforti, liema kodici kienet maghrufa lilu biss f`kunfidenza u lill-Bank. Li kien mehtieg biex tinfetah il-kaxxaforti/safety deposit box, kien ghalhekk ic-cavetta moghtija lill-esponent mill-Bank u l-kodici ; l-esponenti ghad ghandu fil-pussess tieghu c-cavetta u l-kodici. Il-procedura kienet illi l-esponenti kien jindika lill-Bank il-kodici tieghu ai fini ta` identifikazzjoni ; sussegwentement, l-esponent kien jipprocedi ma` l-impjegat tal-Bank u kienet tinfetah is-safety deposit box permess ta` zewgt icwievet, wiehed f`idejn l-esponent u l-iehor f`idejn il-Bank. Flimkien ma` l-impjegat tal-Bank, kienet tinfetah il-kaxxaforti/safety deposit box ; dan l-arrangament kien jahdem ;

3. Illi f`Marzu 2008, l-esponenti mar fil-fergha ta` Palace Square, il-Belt u meta talab biex jiftah is-safety deposit box, sar jaf ghaliex qalulu illi kienet giet trasferita fil-fergha ta` l-Imqabba. L-esponent mar sussegwentement il-fergha ta` l-Imqabba u hemm sab is-safety deposit box/kaxxaforti numru 49, identifika ruhu permezz tal-kodici, wera c-cavetta u talab ghal darba tnejn li jigi awtorizzat li jiftah is-safety deposit box. L-impjegati tal-Bank f`dik l-okkazjoni hallew lill-esponenti li jdahhal ic-cavetta li hadmet izda l-Bank ma uzax ic-cavetta tieghu. Il-Bank Manager kien qallu li ma setax jiftah the safety deposit box. Kellu anke nkontri mas-Sur T Depasquale u mas-Sur I Xuereb fejn gie verifikat illi c-cavetta kien wahda genwina ; dan kollu inutilment ; l-esponent qed jesebixxi Dokumenti A sa H ;

4. Illi c-cirkostanzi tal-esponenti huma dawn : huwa jista` juri c-cavetta, keychain u label Dok. I, moghtija mill-Bank konvenut ; dawn huma distintivi u normalment assocjata ma` safety deposit box. Ghandu fil-pussess tieghu kodici u c-cwievet ; l-esponenti wera lill-impjegati tal-fergha tal-Bank of Valletta illi c-cavetta tieghu taqbel, qed tigi esebita kopja tal-keychain Dok (sic) ;

5. Illi l-Bank konvenut ma gab ebda prova biex jikkontradici jew jirribatti l-prova u l-pozizzjoni tal-esponenti, izda qed jirrifjuta illi jippermetti access lill-esponenti ghal dan is-safety deposit box, minkejja laqghat u korrispondenza u ghalhekk kellha ssir din il-kawza ;

6. Illi l-esponenti minhabba n-nuqqas tal-Bank kien kostrett illi jidhol fi spejjez, isofri danni konsistenti f`perduratura f`Malta, u spejjez ancillari u ghal dan l-intimat Bank huwa responsabbli ;

GHALDAQSTANT L-ESPONENTI jitlob bil-qima lil din l-Onorabbli Qorti li joghgobha tiddikjara u tiddeciedi illi :

1. l-esponenti attur huwa proprjetarju uniku u esklussiv tad-drittijiet kollha assocjati ma` safety deposit box number 49, kif originarjament koncessa lilu mill-konvenut Bank of Valletta plc ;

2. taghti r-rimedju u direttivi kollha sabiex tippermettilu access esklussiv u uniku ghal tali safety deposit box numru 49 u ghall-kontenuti taghha, taht dawk il-provvedimenti tal-Ligi nkluzi dawk relatati mal-konfidenzjalita` u s-sigriet bankarju skont il-Ligi ;

3. tiddikjara u tiddeciedi illi l-bank konvenut huwa responsabbli ghad-danni ghar-ragunijiet tas-suespost ;

4. tillikwida d-danni hekk likwidati ;

5. tikkundanna lill-konvenut ihallas id-danni hekk likwidati.

Bl-ispejjez u bir-riserva ta` kull dritt u azzjoni fil-Ligi.

Il-konvenut ingunt ghas-subizzjoni.

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

Having seen the **sworn reply** which defendant filed in Maltese on the 20th May 2009 and which states as follows:-

1. Illi, preliminarjament l-attur irid igib il-prova illi huwa verament proprjetarju ta` xi dritt relatat ma` safe deposit box 49 imsemmija fir-rikors guramentat.

2. Illi, subordinatament u minghajr ebda pregudizzju, is-socjeta` konvenuta ma kkawzat l-ebda danni lill-attur.

3. Illi, subordinatament u minghajr ebda pregudizzju, l-eccipjenti m`ghandhiex tbati l-ispejjez ta` din il-kawza.

Illi, dwar il-fatti tal-kaz l-eccipjenti tikkontesta l-fatti kif elenkati fil-premessi wiehed (1) sa sitta (6) tar-rikors guramentat.

Having seen defendant`s list of witnesses.

Having noted that at the hearing of the 9th June 2009 plaintiff appeared together with his legal counsel, and requested that proceedings be conducted in English as he could neither speak nor understand Maltese. As the defendant did not oppose the request, the Court acceded.

Having heard the evidence given by plaintiff at the hearing of the 8th October 2009.

Having seen the note with attached document filed by plaintiff at the hearing of the 11th January 2010.

Having heard the cross-examination of plaintiff at the same hearing.

Having heard the evidence of Dr Michael Borg Costanzi at the hearing of the 22nd February 2010.

Having heard the evidence of Martin Vella and Joseph Caruana at the hearing of the 20th May 2010.

Having heard the evidence of Sonia Gravina and the cross-examination of plaintiff at the hearing of the 12th January 2011.

Having seen the *note verbal* of the on-site inspection held by the Court on the 21st February 2011.

Having heard the evidence of Joseph Caruana at the hearing of the 16th January 2012.

Having seen the documents filed by plaintiff at the hearings of the 20th February 2012 and of the 22nd March 2012.

Having heard further evidence given by plaintiff at the hearing of the 14th February 2013.

Having heard further evidence evidence given by Joseph Caruana at the hearing of the 2nd May 2013.

Having seen a note with documents filed by defendant at the same hearing.

Having heard the evidence of George Mizzi given at the hearing of the 17th June 2013.

Having seen the notes of submissions filed by the parties.

Having seen its decree of the 20th January 2014 whereby the cause was adjourned for judgement with leave for plaintiff to file a rejoinder and defendant bank to file a reply for that rejoinder.

Having seen both joinder and reply, together with the other acts and records of the proceedings.

II. A Summary of the Evidence

Plaintiff testified that in 2001, he went to the Palace Square Valletta, Bank of Valletta Branch, and requested a safe deposit box. The bank acceded to his requested and he was given box no 49. He was given a code and a key, and was told that every time he needed to open the safe deposit box, he would need to have with him the code and the key. He actually did go to the branch a number of times and did open the safe deposit box. On one occasion, when he went to access the box, he found that the branch had been renovated, and the safe deposit box was no longer at that branch. He was told that the box had been transferred from Valletta to Mqabba Branch. He did go to Mqabba Branch and he was shown the box which he recognized. The colour of the box was yellow, sand colour. He asked to put in his key but as the Branch Manager was not present, they asked him to make an appointment and return on another day.

Plaintiff states that he met Dr Michael Borg Costanzi regarding this matter. He was asked whether he had in his possession the agreement that he had signed with the Bank when he was first given the safe deposit box. He replied that he did not have the agreement or a copy as he had lost all personal documents due to damage caused in his Antwerp home. When Dr. Borg Costanzi asked him what was inside the box, plaintiff told him that those were private

matters, and refused to disclose any information.

Plaintiff stated that he worked as a company manager. His line of business is import export. He has a contact in Malta and comes to Malta between twenty and twenty-five times every year.

On **cross-examination**, plaintiff stated that the agreement regarding the safe deposit box was in his name. Asked about the type of code, he said that the code was a number that was given to him by the Bank. He confirmed that the holding of a safe deposit box involves an annual payment in favour of the Bank. He actually paid dues for the years 2001 until 2009. He did not have the receipts of payment or copies as even these were lost in the incident involving his Antwerp home. Asked how many times he went to access the safe deposit box during the eight-year period, plaintiff stated that he did so on ten occasions. Before 2008, he had been at Palace Square Branch in 2005, he showed the key and the box was opened by the bank representative. He also gave the code which serves as a means of identification. Questioned whether he did inform the personnel at Mqabba Branch that he did have a code, plaintiff replied that he did not tell them, because they knew he was going there and he had shown them the keys. Furthermore when he went to the Mqabba Branch the people there did not tell him that he needed a code to open the box. He did tell Dr. Borg Costanzi that he had a code, however he did not give him the relative number. On his part, Dr. Borg Costanzi told plaintiff that the Bank did not provide a code.

Plaintiff continued to state that besides holding the safe deposit box, he held also an account with defendant Bank which was opened in January 2009. To have the account in place, he was asked for a reference. To have the safe deposit box, no request in this sense was made by the Bank. Plaintiff rejected the suggestion made to him that the bank employees at Palace Square Branch had told him that the safe deposit box had been transferred to Mqabba but admits that an employee at Palace Square Branch recognized him, and informed him that the box had been moved to Mqabba. Asked whether in fact what he was informed at the Palace Square Branch was that all the safe deposit boxes had been moved to Mqabba, plaintiff replied that he wanted to know what happened to his box and he was told that it has been shifted to Mqabba Branch.

Plaintiff points out that he recognized the box he was shown at Mqabba because it had a yellow sand colour ; the other boxes were green in colour. The boxes had different sizes ; he also recognized his box from its size. To open the box, two keys were required ; one key was in his possession while the other was held by the bank. His key did go into the box. Asked whether at some point his safe deposit box was opened anonymously, plaintiff confirmed that that was the case and that was the reason why he had a code. He also confirmed that his name did not appear on the contract of the safe deposit box. Instead of a name there was a code.

Plaintiff continued to state that when he met Dr. Michael Borg Costanzi, he told him that the matter was not urgent. He confirmed that he refused to divulge the contents of the box to Dr. Borg Costanzi. He also confirmed that Dr. Borg Costanzi had accepted that if he were to describe the contents of the box, the Bank was willing to give him access to the box.

Plaintiff testified that before he went to the Branch he had another key. They had already made a copy of the key in the Republic Street branch. They had asked him to make a copy of the key on paper to check whether the key pertained to the Bank of Valletta.

Plaintiff explained that a copy of the key was made in 2006. This key was not for the same deposit box. He went with a larger key and a smaller one, however if the master key was not in the lock as well, it was not possible to turn the lock. Regarding the key of which the Bank made a copy, plaintiff stated that that was required for another safe deposit box. He had two safe deposit boxes. The Bank had photocopied the key and confirmed that the key was of Bank of Valletta.

With regard to the on-site inquiry that was held by the Court, plaintiff remarked that at Mqabba Branch they were shown a box of ten thousand cubic centimetres. His box was double that size. He could not understand how the Bank was stating that the box no 49 was rented to a member of staff of the Bank when he had the key of the box. He confirmed that he opened the box on various occasions with the key that was in his possession.

Dr. Michael Borg Costanzi - Chief Legal Officer and Compliance of defendant bank – testified that plaintiff had written to the CEO of the Bank in 2008 claiming that in the past he had opened a safe deposit locker at the Palace Square Branch under anonymity with a code of some sort. When his claim was investigated, there was no record to show that plaintiff had opened a safe deposit locker. The Bank did not have the practice of opening safe deposit lockers under anonymity. Nor did the Bank use codes. Although he was in a position to confirm on oath that plaintiff never held a safe deposit locker, he could certainly confirm that such a possibility did not result from the bank records.

Dr Borg Costanzi stated that when Palace Square was closed as a Branch, the safe deposit lockers were transferred to Mqabba Branch, and all holders were informed by letter. As plaintiff did not result as holder according to the records of the Bank, he was not sent any letter.

Witness pointed out that he had three meetings, if not four, with plaintiff. In one of these meetings plaintiff was assisted by a lawyer. They agreed that from a legal point of view it was up to plaintiff to prove that he was the owner of the safe deposit box. Although plaintiff did not figure according to the records of the Bank, nonetheless the Bank was ready to offer a practical solution to plaintiff if he declared the contents of the locker. They were also inclined to consider the opening of the locker to confirm the contents. He had made it clear to plaintiff that he had to declare something particular that could be easily identified with him, like a passport, and not mention anything that was general. Although the Bank extended its co-operation, a follow-up meeting ended in disagreement when plaintiff insisted on his right to access the safe deposit locker unconditionally.

Witness affirmed that plaintiff did not identify the contents of the box. Furthermore witness stated that plaintiff was claiming that he was the holder of a particular box, no 49. According to the records of the Bank, that particular box was empty and was available to rent to any third party. Although he personally was not familiar with the keys of these boxes, he was informed that the key presented by plaintiff did not match the keys of their boxes. Martin Vella from Internal Audit was directly involved in the investigation of plaintiff`s complaint.

Martin Vella – Manager Investigations – Internal Audit Department of defendant Bank – testified that the matter involving plaintiff commenced around April 2008, when he received a letter from plaintiff claiming that he was the owner of a safe deposit box no 49, which was held at the Palace Square Branch. The Bank requested Internal Audit to investigate the matter. He met plaintiff in April 2008 ; plaintiff was accompanied by a Mr. Cassar Aveta. During the meeting, plaintiff alleged that he had rented box no 49 in 2001 and was still its holder at the time of the meeting. Plaintiff said he had paid the rent and that his reference was 0049S. When asked whether he had ever accessed the box, plaintiff replied that the box was rented in anonymity, and that he used to call the Bank, give an eight digit figure, the bank representative would let him have access to the box.

Witness continued to state that with that information in hand, Internal Audit enquired whether the box was rented to anyone, whether there was a rental agreement in place, and also tried to trace the identity of plaintiff since 2001. No trace of the agreement was found – not even in the archives of the Bank. In the ledger detailing the safety lockers of Palace Square Branch, box no 49 was registered under the heading "For Staff Use" meaning that the box was rented out only to BOV staff over the entire period mentioned by plaintiff.

The Bank also verified plaintiff`s claim that he had paid for eight years rent of the box. No record of payment was traced. Witness specified that it was the practice of the Bank to charge customers the rental fee yearly not over a

period of years. It was also the practice of the Bank that when a safe deposit locker is rented, the Bank opens a standing order and it debits the person's account yearly with that fee. Witness ruled out that a customer could rent a safe deposit locker by a code and not by name. Such a matter had to be excluded to prevent money-laundering.

Witness continued to state that when all investigations were finalized, a meeting was organized with plaintiff in the presence of Dr Michael Borg Costanzi. Plaintiff was asked to disclose the contents of the box which he alleged to be holding. However plaintiff declined the request.

Witness concluded by stating that box no 49 was at Mqabba branch. The Bank has both the master key and the customer key. The box is available for rent. In addition, witness stated that he did not find any reference to plaintiff in the records of the Bank.

In cross-examination, witness stated that Palace Square Branch is now the legal office of the Bank. It still provides some banking services but does not handle safe custody or cash.

Joseph Caruana – Manager – Mqabba Branch – testified that he was present during plaintiff`s second visit to the Branch. He states that he had strict orders not to let anyone access the boxes without the agreement in hand. Plaintiff wanted to use the safe deposit box on that same day. He referred the matter to his superiors, who confirmed that plaintiff could not access the box. Plaintiff requested to discuss the matter with Mr. Tonio Depasquale – CEO of the Bank. At that point in time, plaintiff had already met Dr. Michael Borg Costanzi.

Witness underlined the fact that the Branch did not hold any agreement with plaintiff. Asked by the Court whether the safety deposit box in question was still held at the Branch and whether it is rented to anyone, witness stated that the box is still at the Branch, it is not covered by any agreement, and is therefore available for rent. The key to the box was in the vaults of the Bank, and he was not aware that the lock had been changed. Regarding the locks, witness stated that if a client breaks a key, it is forced open by a blacksmith in the presence of the client and left open. More recent boxes can have their locks changed.

Witness testified that that the Bank holds a master key, which opens all the safety deposit boxes. Therefore the Bank does not hold a key particular and specific to box 49. He was not aware of the contents of the safe deposit box. As a matter of procedure, every time a customer comes to check or open the safety deposit box, he has to sign, and his signature is countersigned by two bank

officials. He confirmed that during the on-site inquiry, the key which was in the possession of plaintiff did not open the box.

Witness stated that when a customer goes to the Branch to access a safety deposit box, the Bank asks for his identification, and the Bank records are verified. The Bank checks whether there is an agreement still operative, and ascertains that the customer hold the key. When plaintiff went to Mqabba Branch the first time, the staff did not find a copy of the agreement. The matter was therefore referred to the Legal Office of the Bank. The instructions from Legal Office were not to let anyone access the box.

Witness concluded by stating that since the box in question was vacant for rent, the Bank had the key intended for use by the customer.

In **cross-examination**, witness explained that when the boxes were transferred to Mqabba Branch, the agreements (including cancelled agreements) were transferred as well. He found nothing whatsoever regarding box no 49.

Sonia Gravina - Relationship Officer of defendant Bank – testified that she came to know plaintiff when she was employed at Mqabba Branch. Her manager had informed her that a customer was going to the Branch, and that although they did not have a signed agreement from him, she was instructed to let him in, and to try the key in one of the safe deposit lockers. When the customer had arrived, she let him in and they tried the key. She could not remember the number of the box. Nor was she one hundred per cent sure that the customer was plaintiff. However she did recall that the key held by the Bank was completely different from the one held by the customer in question. She confirmed that her instructions were simply to verify whether the key would fit in the lock and not to open the locker. After the customer tried the key which he had, and which was different from the keys in use, he left and after some time, went back with another key, which did fit the lock, but did not turn. She confirmed that the customer went to a particular box. At that point, the Branch Manager took over the matter.

On cross-examination, witness was specifically asked to repeat what the Manager told her in Maltese. He told her : " *gej wiehed qed jghid li ghandu safe deposit locker maghna, agreement m'ghandiex, dahhlu kemm jiccekja c-cavetta taqbilx*." That was the first time she met the customer in question at the Branch. Witness was asked if she checked whether the person concerned had an account with the Bank. She replied that in normal circumstances, clients give their identity card number, and she controls whether they have an account. In this particular case, when the person concerned told her his name, she knew that he was the person who had been indicated by her Manager. So she stopped there.

George Mizzi – Manager – Research Department – testified that at the time when this case emerged, he was a Project Manager at the Bank and was involved in the transfer of the safe deposit boxes from Palace Square Branch to Republic Street Branch and Mqabba Branch. The original plan was to transfer all the boxes to Republic Street, however some of the boxes were too heavy or bulky and they had to find a place which was at ground floor level. The Bank opted to transfer some of the boxes to Mqabba Branch. He did not have any record regarding box no 49.

III. A summary of the submissions

1) Plaintiff

Plaintiff submits that although defendant Bank denied responsibility, there are a number of unanswered questions – i) what is the reason that there seem to be no records regarding the safe deposit boxes at Mqabba Branch ? ; ii) Why did the Bank representatives testify that they found agreements in respect of all customers except for box 49 ? ; iii) Why did the master key held by the Bank not function during the on-site inquiry ?

Although it is true that plaintiff should have produced his agreement, he could not do so because the document was lost due to the circumstances which he explained.. However plaintiff had other circumstantial evidence in hand, including the key which clearly indicates Bank of Valletta. Although the key did not turn, nor did the Bank`s. It is not safe to argue that the Bank's key did not function because plaintiff's key did not turn.

Plaintiff remarks that his version was consistent and credible. Therefore the burden of proof was shifted onto defendant Bank. The least that the Bank could have done was to provide evidence to disprove positively the claim. The lack of any documentation regarding box no 49 is a significant factor.

The circumstantial evidence given by plaintiff of the key, and his accurate description of the safety deposit box are indicators that his interest in these proceedings is serious.

Plaintiff submitted that the Court should take note of the incident reported in the media and the anonymous client represented by Dr. Ghaznavi.

Plaintiff produced evidence that was in his possession. When both versions are weighed, there are strong reasons to believe plaintiff's version, due to the fact that defendant Bank`s version is incomplete and patchy.

2) <u>Defendant Bank</u>

Bank Defendant submits that plaintiff did not prove that the legitimate holder of Safe Deposit Box No 49, and therefore his demands should be rejected.

The Bank does not rest on plaintiff`s lack of evidence. But it tendered positive evidence that disproves plaintiff's claims.

Furthermore the Bank did not cause any damages to plaintiff.

In a lawsuit of this nature, where the parties come up with conflicting statements of fact, it is the plaintiff who has to bear the burden of proving what he alleges. If he fails then the Court should reject the claim with costs.

Plaintiff declared that he is the holder of Safe Deposit Box No 49. The onus of proving this as a fact was on plaintiff : *onus probandi incumbit ei qui dicit non ei qui nega*t. (ref : "**<u>Frank Giordmaina Medici et vs. William Izzo et"</u>** decided by this Court on the 28th of April 2004 ; and "**<u>Anthony Camilleri vs. Morris Cauchi et"</u>** decided by the Court of Appeal (Inferior Jurisdiction) on the 22nd of December 2002).

Plaintiff holds a key which he claims that together with the master key held by the Bank opens Safe Deposit Box no 49. The Court had the opportunity to observe that the key produced by plaintiff is different from the keys held by the Bank. During the onsite inquiry, this was specifically noted by the Court. During the inquiry, plaintiff inserted his key, and the Bank representative inserted the master key ; the box did not open. For defendant Bank this is adequate evidence that what plaintiff is claiming is unfounded.

Other facts disprove plaintiff's claims.

The key produced by plaintiff has a key chain, which marks B.V.L. No 49. Then another label was attached with the words : Bank of Valletta No 49. This label is not a label which the Bank ever attaches to the keys of the Safe Deposit Boxes. Nor is it a keychain that was appended by the Bank. The initials B.V.L. do not relate to the Bank.

Plaintiff stated that he was given the Safe Deposit Box under anonymity that is "to bearer" with access granted only by producing a code and the agreement, besides the key. Bank representative by Martin Vella testified that the Bank never opens Safe Deposit Box Accounts "to bearer" and there is no code procedure.

The Bank also proved that the box in question is to date marked "available".

With regard to the agreement, the Bank stated that it has the agreements of all valid holders of Safe Deposit Boxes. The Bank did not have any agreement regarding box no 49.

The Bank argues that plaintiff gave three different versions on what happened to the agreement : he states that it was "defaced" ; he states that it was "damaged and destroyed" through flooding ; and he states that he lost the document in his house in Antwerp.

An issue that arose during the lawsuit was the submission made by Dr. Ghasnazi who on behalf of a client stated that his client was the holder of box no 49. The Bank underlines that the fact that prior to plaintiff`s filing of the sworn application, the Bank had made an effort to resolve the matter by proposing to plaintiff to identify and disclose the contents of the box, so that the Bank would verify the contents, and if it resulted that plaintiff was correct, then the Bank was prepared to give plaintiff`s request further consideration. Plaintiff however flatly rejected the offer.

Another point although of minor relevance is that plaintiff states that he paid for the rent due for eight years. In Martin Vella`s testimony, it resulted that it is not the practice of the Bank to accept rent for more than one year. (ref "**Norbert Agius vs. Anthony Vella et"** decided by the Court of Appeal on the 25th of April 2008 ; and "**Rosa Spampinato Tabone vs. Joseph Falzon"** decided by the Court of Appeal on the 11th of December 1964).

Taken in its entirety, plaintiff`s case do not hold on a balance of probabilities. His evidence as a whole creates doubt and cannot lead to moral certainty which is vital in civil lawsuits.

3) Plaintiff`s rejoinder

He submits that his failure to produce a written agreement should not in itself be regarded as conclusive evidence to disprove his existing relationship with the Bank. The Bank did not challenge that he had safe-deposit arrangements. His version is also credible because he confirms that the box in question was transferred from Palace Square Branch to the Mqabba Branch.

According to the judgements of our courts, although written proof is the best form of evidence, it is not necessarily the only type of evidence that may be produced in order to sustain a claim [ref : "**Iris Dalmas vs. Mons Joseph Dalmas et"** decided by the Court of Appeal (Inferior Jurisdiction) on the 12th of January 2005 ; and "**Mifsud vs. Mifsud"** decided by the Court of Appeal (Inferior Jurisdiction) on the 12th of November 2003].

Defendant Bank is claiming that he was not a credible witness because he gave three different versions regarding the written agreement. However, according to plaintiff, the differences are minor not substantial, and above all do not contradict one another.

Plaintiff lays emphasis on the fact that during the on-site inspection, the key held by plaintiff did enter the keyhole of Box No 49. Due to the fact that both the client's key and the master key have to be used together to open the box, one might conclude that the master key was in fact faulty. During the inspection, the master key did not go in the lock, and therefore it was for the Bank to prove the integrity of the master key.

Plaintiff submits that while the Bank claims that Safe Deposit Accounts cannot be created under an anonymous name, although this might be correct according to today's procedures, this was not always the case. If reference is made to the "Terms and Conditions of Use" pertaining to Safe Deposit Account, one can see that the Bank has to right to alter conditions as laid out in the Agreement. As plaintiff did not receive any correspondence advising him of the move from Palace Square to the Mqabba Branch, if there were any changes in the "methods of operation", it is a reasonable to conclude that plaintiff was not informed of such changes.

The Bank also stated that there are no records referring to plaintiff. If this is so, then plaintiff should have been informed immediately that there were no such records. If no such records existed, the Chief Legal Officer of the Bank would not have made a proposal to plaintiff during their meeting.

Plaintiff reiterates that the Bank never effectively denied that he had a Safe Deposit Box. The Bank only disputed his title or access to the box. That he had access resulted from his possession of the key.

4) Defendant Bank`s reply

The Bank submits that the rejoinder is full of untruths and conjectures, which weaken, even further plaintiff's claim.

Plaintiff states that the Bank did not challenge that he had safe deposit arrangements – this is false.

The Bank never positively accepted that plaintiff had safe deposit arrangements. What the Bank stated was that if he did have such arrangements, then he had to prove it. Plaintiff did not prove anything because not only did he not have a written agreement, but contrary to what is stated by plaintiff, the key did not fit in the lock. Moreover plaintiff referred to codes attached to Safe Deposit Boxes which do not exist. The fact that there was a transfer of boxes from Valletta to Mqabba does not prove that plaintiff had a safe deposit box in Valletta that was transferred to Mqabba.

The Bank never asserted that the key which plaintiff produced was of a BOV safety deposit key. The Bank affirmed that the label attached to the key was not a label used by the Bank ; nor was the keychain appended to the key.

The submission made by plaintiff regarding the allegedly faulty master-key held by the Bank is a mere conjecture. Also a conjecture was the use of codes according to past bank procedures. The witnesses confirmed that the Bank never rented out such boxes in anonymity.

Finally it was not true that the Bank could not trace the written agreement. There was nothing for the Bank to trace because there was no written agreement between the parties.

IV. Considerations of the Court

The Court is evidently faced with two opposing and conflicting versions of events. In such situations, our Courts have elicited principles to be applied for the proper evaluation of evidence.

In its judgement of the 24 March 2004 in re '**Maria Xuereb et vs Clement Gauci et'** the Court of Appeal stated as follows –

"Huwa pacifiku f'materja ta' konflitt ta' versjonijiet illi l-Qorti kellha tkun gwidata minn zewg principji fl-evalwazzjoni tal-provi quddiemha :

1. Li taghraf tislet minn dawn il-provi korroborazzjoni li tista' tikkonforta xi wahda miz-zewg verzjonijiet bhala li tkun aktar kredibbli u attendibbli minn ohra ;

2) Fin-nuqqas, li tigi applikata l-massima "actore non probante reus absolvitur".

*Ara a propozitu sentenza fl-ismijiet "**Fogg Insurance Agencies Limited noe vs Maryanne Theuma**", Appell, Sede Inferjuri, 22 ta' Novembru, 2001.*

*Fi kliem iehor il-Qorti ghandha tezamina jekk xi wahda miz-zewg verzjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita` u specjalment dawk tal-konsistenza u verosimiljanza, ghandhiex teskludi lill-ohra, anke fuq il-bilanc tal-probabilitajiet u tal-preponderanza tal-provi, ghax dawn, f'kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant (**Kollez. Vol L pII p440**)."*

Likewise in the judgement by this Court (**PA/TM**) of the 30 October 2003 in re "**George Bugeja vs Joseph Meilak"** it was stated that :

*"Jinsab ravvisat fid-decizjoni fl-ismijiet **"Farrugia vs Farrugia",** deciza minn din il-Qorti fl-24 ta' Novembru, 1966, li –*

"il-konflitt fil-provi huwa haga li l-Qrati jridu minn dejjem ikunu lesti ghaliha. Il-Qorti ghandha tezamina jekk xi wahda miz-zewg versjonijiet, fid-dawl tas-soliti kriterji tal-kredibilita' u specjalment dawk tal-konsistenza u verosimiljanza, ghandhiex teskludi lill-ohra, anke fuq il-bilanc tal-probabilitajiet, u tal-preponderanza tal-provi, ghax dawn, f'kawzi civili, huma generalment sufficjenti ghall-konvinciment tal-gudikant".

*Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijet forniti lilu, imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta' azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghallkonvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta' dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoi. Kif kompla jinghad fl-imsemmija kawza "**Farrugia vs Farrugia**", "mhux kwalunkwe tip ta' konflitt ghandu jhalli lill-Qorti f'dak l-istat ta' perplessita' li minhabba fih ma tkunx tista' tiddeciedi b'kuxjenza kwieta u jkollha taqa' fuq ir-regola ta' in dubio pro reo".*

In another judgement of the 28 April 2003 in re "**Emanuel Ciantar vs David Curmi noe"** this Court (**PA/PS**) stated as follows –

"Huwa ben maghruf f'materja konsimili illi mhux kwalunkwe konflitt, kontradizzjonijiet jew inezattezzi fil-provi ghandhom ihallu lill-Qorti f'dak l-istat ta' perplessita` li minhabba fihom ma tkunx tista' tiddeciedi b'kuxjenza kwieta jew jkollha b'konsegwenza taqa' fuq ir-regola ta' in dubio pro reo."

In its judgement of the 17 March 2003 in re "**Enrico Camilleri vs Martin Borg** the Court of Appeal in its Inferior Jurisdiction had this to state :

" … kif pacifikament akkolt fil-gurisprudenza taghna "l-gudikant, fil-kamp civili, ghandu jiddeciedi fuq il-provi li jkollu quddiemu, meta dawn jinducu fih dik ic-certezza morali li kull tribunal ghandu jfittex, u mhux fuq semplici possibilitajiet ; imma dik ic-certezza morali hija bizzejjed, bhala li hija bazata fuq il-preponderanza tal-probabilitajiet".

*("**Eucaristico Zammit –vs- Eustrachio Petrococchino**", Appell Kummerc, 25 ta' Frar 1952; "**Paul Vassallo –vs- Carmelo Pace**", Appell Civili, 5 ta' Marzu 1986).*

Il-Qorti allura jehtiegilha tara jekk il-versjoni l-wahda ghandhiex teskludi lill-ohra fuq il-bilanc tal-probabilitajiet …"

In a judgement given on the 26th September 2013 in re '**Chef Choice Limited vs Raymond Galea et**' this Court (**PA/JRM**) went into detail on the issue of burden of proof. The Court raised points of law, which this Court fully endorses, and which are indeed relevant when considering the merits of this lawsuit. The Court stated as follows :-

… Illi l-Qorti tqis li, għalkemm il-grad ta' prova fil-proċediment ċivili m'huwiex wieħed tassattiv daqs dak mistenni fil-proċediment kriminali, b'daqshekk ma jfissirx li l-provi mressqa jridu jkunu anqas b'saħħithom. Il-prova mistennija fil-qasam tal-proċediment ċivili ma tistax tkun sempliċi supposizzjoni, suspett jew konġettura, imma prova li tikkonvinċi lil min irid jagħmel ġudizzju. Iżda f'każijiet mibnija fuq id-delitt jew il-kważi-delitt, l-aktar meta jkun hemm imdaħħal xi egħmil tal-qerq tal-parti mħarrka huwa ammess li "f'kawża ċivili d-dolo jista' jiġi stabbilit anke permezz ta' presunzjonijiet u ndizji, purke' s'intendi jkunu serji, preċiżi u konkordanti, b'tali mod li ma jħallu l-ebda dubju f'min hu msejjaħ biex jiġġudika" (ara - P.A. PS - Emanuel Ċiantar vs David Curmi et - konfermata mill-Qorti tal-Appell fid-19.6.2006).

Illi minbarra dan, il-parti attriċi għandha l-obbligu li tipprova kif imiss il-premessi għat-talbiet tagħha b'mod li, jekk tonqos li tagħmel dan, iwassal għall-ħelsien tal-parti mħarrka (ara - App. Inf. - JSP - 12.1.2001 - Hans J. Link et vs Raymond Merċieca). Il-fatt li l-parti mħarrka tkun ressqet verżjoni li ma taqbilx

ma' dik imressqa mill-parti attriċi ma jfissirx li l-parti attriċi tkun naqset minn dan l-obbligu, għaliex jekk kemm-il darba l-provi ċirkostanzjali, materjali jew fattwali jagħtu piż lil dik il-verżjoni tal-parti attriċi, l-Qorti tista' tagħżel li toqgħod fuqha u twarrab il-verżjoni tal-parti mħarrka. Min-naħa l-oħra, il-fatt li l-parti mħarrka ma tressaqx provi tajba jew ma tressaq provi xejn kontra l-pretensjonijiet tal-parti attriċi, ma jeħlisx lil din milli tipprova kif imiss l-allegazzjonijiet u l-pretensjonijiet tagħha (ara - App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil)

Illi huwa għalhekk li l-liġi torbot lill-parti f'kawża li tipprova dak li tallega (ara l-Art. 562 tal-Kap 12) u li tagħmel dan billi tressaq l-aħjar prova (Art. 559 tal-Kap 12).

… Iżda dak li jgħodd f'kawża m'huwiex l-għadd tax-xhieda mressqa għaliex "il-fatt li xhieda jkunu ġew prodotti minn parti partikolari f'kawża … ċertament ma jfissirx li l-Qorti hija marbuta li temmen b'għajnejha magħluqa, jew li temmen aktar, dak kollu li dawn ix-xhieda jgħidu 'favur' il-parti. Fuq kollox, ix-xhud ma jiġix prodott biex jixhed 'favur' parti jew 'kontra' oħra, imma jiġi prodott biex jgħid il-verita`, il-verita` kollha, u xejn anqas minn dik il-verita` kollha" (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi et)

Illi l-Qorti tqis li, iżda, bħal ma jiġri f'każijiet bħal dawn, il-verżjonijiet tal-partijiet u ta' dawk li setgħu nvoluti magħhom ikunu tabilfors miżgħuda b'doża qawwija ta' apprezzament suġġettiv ta' dak li jkun ġara. Il-Qorti tifhem li kull parti jkollha t-tendenza li tpinġi lilha nnifisha bħala l-vittma u l-parti l-oħra bħala l-ħatja, u dan jgħodd ukoll għall-verżjonijiet li jagħtu dawk il-persuni l-oħrajn li jkunu b'xi mod involuti fl-episodju. Huwa d-dmir tal-Qorti li tgħarbel minn fost dawn il-verżjonijiet kollha u minn provi indipendenti li jistgħu jirriżultaw il-fatti essenzjali li jistgħu jgħinuha tasal biex issib x'kien li tassew ġara u kif imxew l-affarijiet ;

Illi l-Qorti tifhem li, fil-kamp ċivili, il-piż probatorju m'huwiex dak ta' provi lil hinn mid-dubju raġonevoli (ara App. Inf. PS - 7.5.2010 - Emanuel Ellul et vs Anthony Busuttil). Iżda fejn ikun hemm verżjonijiet li dijametrikament ma jaqblux, u li t-tnejn jistgħu jkunu plawsibbli, il-prinċipju għandu jkun li tkun favorita t-teżi tal-parti li kontra tagħha tkun saret l-allegazzjoni (ara - P.A. NC - 28.4.2004 - Frank Giordmaina Medici et vs William Rizzo et). Ladarba min kellu l-obbligu li jipprova dak li jallega ma jseħħlux iwettaq dan, il-parti l-oħra m'għandhiex tbati tali nuqqas u dan bi qbil mal-prinċipju li actore non probante reus absolvitur (ara P.A. LFS - 18.5.2009 - Col. Gustav Caruana noe et vs Air Supplies and Catering Co. Ltd.) Min-naħa l-oħra, mhux kull konflitt ta' prova jew kontradizzjoni għandha twassal lil Qorti biex ma tasalx għal deċiżjoni jew li jkollha ddur fuq il-prinċipju li għadu kemm issemma. Dan għaliex, fil-qasam tal-azzjoni ċivili, l-kriterju li jwassal għall-konvinċiment tal-ġudikant għandu jkun li l-verżjoni tinstab li tkun waħda li l-Qorti tista' toqgħod fuqha u li tkun tirriżulta bis-saħħa ta' xi waħda mill-għodda proċedurali li l-liġi tippermetti fil-proċess probatorju (ara - App. Ċiv. 19.6.2006 - Emanuel Ċiantar vs David Curmi noe). Fit-twettiq ta' eżerċizzju bħal dak, il-Qorti hija marbuta biss li tagħti motivazzjoni kongruwa li tixhed ir-raġunijiet u l-kriterju tal-ħsieb li hija tkun

ħaddmet biex tasal għall-fehmiet tagħha ta' ġudizzju fuq il-kwestjoni mressqa quddiemha (ara - App. Inf. 9.1.2008 - Anthony Mifsud et vs Victor Calleja et)

In a judgement given by the Court of Appeal in its Inferior Jurisdiction on the 12th April 2007 in re "**Joseph Tonna vs Philip Azzopardi**" the following was stated :-

In materja ta` provi, gie diversi drabi ritenut illi r-regoli l-aktar prevalenti fl-ordinament guridiku taghna jidhru li huma dawn :-

(i) Ibda biex ir-regola tradizzjonali tal-piz tal-provi timponi a kariku tal-parti li tallega fatt l-oneru li ggib il-prova ta' l-ezistenza tieghu. Tali oneru hu ugwalment spartit bejn il-kontendenti, sija fuq l-attur li jsostni l-fatti favorevoli li jikkostitwixxu l-bazi tad-dritt azzjonat minnu (actori incumbit probatio), sija fuq il-konvenut ghas-sostenn tal-fatt migjub minnu biex jikkontrasta l-pretiza tal-attur (reus in excipiendo fit actor) – Ara Vol. XLVI/i/5 ;

(ii) Fil-kors tal-kawza dan il-piz jista` joxxilla minn parti ghall-ohra, ghax, kif jinghad, 'jista jkun gie stabbilit fatt li juri prima facie li t-tezi ta' l-attur hija sostenuta' – Ara Vol. XXXVII/i/577 ;

(iii) Il-gudikant adit mill-meritu tal-kaz hu tenut jiddeciedi iuxta allegata et probata, u dan jimporta li d-decizjoni tieghu tigi estratta unikament mill-allegazzjoni tal-partijiet. Jigifieri, minn dawk ic-cirkustanzi tal-fatti dedotti ghab-bazi tad-domanda jew ta' l-eccezzjoni u l-provi offerti mill-partijiet. Jikkonsegwi illi d-dixxiplina tal-piz tal-provi ssir bazi tar-regola legali tal-gudizzju 'n kwantu timponi fuq il-gudikant l-konsiderazzjoni li l-fatt allegat mhuwiex veru ghax mhux ippruvat ;

(iv) Il-valutazzjoni tal-provi hu fondat fuq il-principju tal-konvinciment liberu tal-gudikant. Lilu hu moghti l-poter diskrezzjonali tal-apprezzament tar-rizultanzi probatorji w allura hu liberu li jibbaza l-konvinciment tieghu minn dawk il-provi li hu jidhirlu li huma l-aktar attendibbli w idoneji ghall-formazzjoni tal-konvinciment tieghu.

Plaintiff is requesting this Court to declare that he is the sole and exclusive holder of safe deposit box 49 held at Bank of Valletta ; to grant him the remedies necessary to exercise access to the contents of the box ; and to declare the Bank responsible for damages.

On its part, defendant Bank has pleaded that plaintiff has to prove that he is the true holder of the safe deposit in question, and has rejected plaintiff`s claim that it caused any damages to his detriment.

In brief, plaintiff's account of events relates as follows : He claims that in 2001, he had opened an anonymous safe deposit box at the Palace Square Branch of defendant Bank. He states that he was provided with a code and a key. He claims to have paid eight years` rent for the box. In 2008, he went to Palace Square Branch to accede to his safe deposit box. He was there informed that the boxes had been transferred to Mqabba Branch. He did go to Mqabba Branch. When he went the Manager of the Branch was not present. However he did see the box which had a yellow sand colour. He was asked to return the day after when the Manager was present. He went the following day and met the Manager. He was asked for the written agreement with the Bank. He advised that he had lost the document in his house in Antwerp. He was refused access to the box. Plaintiff also met the Chief Legal Officer of the Bank. He was offered to disclose to the Bank the contents of the box so that his account of the contents could be verified but plaintiff declined the offer.

On its part, defendant Bank affirmed that it did not have any written agreement referring to plaintiff, that it was not bank practice to have safe deposit boxes in anonymity, nor was it bank practice to provide a code. The Bank rejected plaintiff`s claim that he had paid rent to cover a number of years because its practice was to accept only annual rental payments for its boxes. In their testimony, the bank employees confirmed that at the time of plaintiff`s claim and even after, the box in question was available for rent and the Bank was holding the keys to gain access.

The Court held an on-site inquiry at BOV Mqabba Branch on the 21st February 2011 with a view to ascertain facts at first hand.

The following was established :-

i) When plaintiff was requested to insert his key in the lock on the left hand side of the box, the key was not compatible with the lock. However when he inserted the key in the right lock, the key did go into the lock but failed to turn ;
ii) When a Bank representative tried to insert plaintiff's key in the left lock, the key did not go in ;
iii) When Court requested the Bank to operate the opening of a box which was available for rent, the Bank inserted its key in the left lock, the client in the right lock and the box opened ;
iv) Plaintiff placed again his key in the right lock and although it entered the lock it did not turn. As that key could not turn, the Bank could not its master key in the left lock.
v) The Court compared the key held by plaintiff and other client keys in the possession of the Bank. It was evident that the formation of the keys was different.

What is relevant from what transpired during the on-site inquiry is that the key held by plaintiff was not similar to other client keys held by the Bank.

Apart from this fact, although plaintiff`s key entered the lock, it did not make a turn. Because of this, the Bank could not use its master key.

On a point of law, the onus of proof is on plaintiff. Art 562 of Chap 12 is as clear as can be.

In his *Trattato di Trattato di Diritto Giudiziario Civile Italiano* (Vol. III 5ta ed. para. 465, 467, 468, 471 pag. 380 – 382) **Mattirolo** has stated :-

*Una regola di dottrina e di gurisprudenza generale reca che **'semper onus probandi ei incumbit qui dicit**', ossia che **'semper necessitas probandi incumbit illi qui agit**'. In verita`, il principio di egualianza civile, che nella pratica dei giudizi si traduce nel principio della parita` di trattamento assicurata alle parti, non permette che si presti fede piuttosto all'allegazione dell'uno che a quella dell'altro dei litiganti. Quindi ciascuna delle parti deve provare i fatti, che essa allega a sostegno del proprio assunto ; e l'autorita' giudicante deve pronunizare **juxta allegata et probata ….** Applichiamo questa regola all'una e all'altra parte.*

(a) Il primo ad agire nella causa e ad allegare un fatto, da cui egli pretende sia per risultare un cambiamento nello stato attuale del diritto, e' l'attore ; e percio` **actori onus probandi incumbit.** Quindi nelle cause in cui si propone un'azione reale l'attore dovra` provare il fatto dal quale deriva il dominio, … ; se egli invece promuove un'azione personale, dovra` pure provare quel fatto, quell'avvenimento da cui nacque il suo diritto e la conseguente obbligazione del convenuto . L'attore, che non provi, deve soccombere : actor non probante, reus est absolvendus. Conseguentemente, in presenza di una domanda non provata, il convenuto puo` limitarsi a negare il fatto allegato, ma non provato dall'attore ; e il giudice debbe senz'altro assolverlo.

*(b) Se l'attore abbia fornito la prova dei fatti che stanno a base della sua domanda, il convenuto, il quale voglia con qualsiasi eccezione o difesa modificare o distruggere lo stato attuale risultante dalle prove dell'attore, dovra`, dal suo conto, dare la prova di quei nuovi fatti, che egli allega e su di cui e' fondata la sua eccezione : onde la massima **'onus probandi incumbit actori'**, vuol essere completata con quest'altra **'reus in excipiendo fit actor'**.*

Although plaintiff testified on oath that he had lost the written agreement with the Bank for reasons which he described, he failed to produce any other evidence of substance to corroborate his version that the basement of his house in Holland had been flooded and because of that flooding the document was destroyed. Nothing whatsoever !

In default of a written agreement, the strongest ground for plaintiff to sustain his claim for holding box no 49 and its contents was the key to the box which he claimed was in his possession.

On the basis of facts in hand, it was evident for the Court that the key held by plaintiff differed in nature to the keys held by defendant Bank.

The Court has *de visu* established that although the key did enter the lock as afore-detailed, it did not turn.

Another fact which did not comfort plaintiff`s version was the keychain. In fact the keychain did read : "B.V.L". In no manner whatsoever did plaintiff establish by way of evidence that B.V.L. is an acronym used by defendant Bank ; more so in this case where the Bank rejected those initials as its own.

Faced by strong evidence to the contrary, plaintiff could have opted to disclose in open court the contents of the deposit box placing the Court in an adequate position to verify in real terms any objection by the Bank. Nonetheless plaintiff refrained from such a move.

Contrary to what plaintiff did state in his submissions, defendant Bank fulfilled its obligation vis-à-vis the burden of proof.

In a judgement given on the 28th April 2003 in re "**Ciantar vs Curmi noe**" this Court (**PA/PS**) stated that –

Fil-kamp civili ghal dak li hu apprezzament tal-provi, il-kriterju ma huwiex dak jekk il-gudikant assolutament jemminx l-ispjegazzjonijiet forniti lilu imma jekk dawn l-istess spjegazzjonijiet humiex, fic-cirkostanzi zvarjati tal-hajja, verosimili. Dan fuq il-bilanc tal-probabilitajiet, sostrat baziku ta` azzjoni civili, in kwantu huma dawn, flimkien mal-proponderanza tal-provi, generalment bastanti ghall-konvinciment. Ghax kif inhu pacifikament akkolt, ic-certezza morali hi ndotta mill-preponderanza tal-probabilitajiet. Dan ghad-differenza ta` dak li japplika fil-kamp kriminali fejn il-htija trid tirrizulta minghajr ma thalli dubju ragjonevoli. (Vol. XXXVI P I p 319)

Taking even the above into account, apart from all established facts, this Court is of the view that plaintiff`s demands against defendant Bank are ill-founded at law and in fact.

Decide

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

Accepts all defendant`s pleas.

Rejects all plaintiff`s demands.

Orders that all the costs of this cause are to be borne by plaintiff.

The Hon. Mr. Justice
Joseph Zammit McKeon

Amanda Cassar
Deputy Registrar