



**Civil Court  
(Family Section)**

**The Hon. Mr Justice Robert G. Mangion,  
LL.D., Dip. Tax (MIT), P.G. Dip. Mediation (Melit.)**

**Today the 31<sup>st</sup> October 2017**

**Application number 57/17RGM**

Case number: 15

**A B**

**vs**

**L-Avukat Carl Grech bhala mandatarju specjali ta' C D E**

**The Court,**

Having seen the sworn application filed by the plaintiff, where she premised and subsequently made the following demands:-

1. That the parties were married in a civil ceremony on the 1<sup>st</sup> October 2014 and their marriage was registered in the Public Registry with progressive number 2886, as results from the relative marriage certificate.
2. That no children were born from the marriage between the parties.

3. That the parties were married within only six months after they had met and after circa six months of marriage they decided to leave Malta and emigrate to New Zealand to build a future there.

4. That defendant is an engineer and practised this profession both before and after the marriage between the parties, such that he used to work on commercial diving boats outside Malta both while he lived in Malta as well as after he decided to leave Malta, together with plaintiff, for New Zealand, which work required that defendant would always spend six months [*recte.* weeks] on the diving boat and six months [*recte.* weeks] in Malta, and afterwards, six months [*recte.* weeks] on the diving boat and six months [*recte.* weeks] in New Zealand so that of the two years circa that parties spent together from when they first met until they married, and from the date of marriage until they separated in June 2016, they only actually spent twelve months circa living together, with several of those months spent in continuous fighting as explained in the succeeding paragraph.

5. That immediately after the parties decided to leave Malta and established their residence in New Zealand, defendant changed dramatically and he began to get drunk every day, use violence against plaintiff, leave the house without informing her of his whereabouts and returning home drunk in the early hours of the next morning; he also began to lead a dissolute life, in the company of different women as if he were a bachelor and had never married.

6. That when defendant's behaviour became such the plaintiff could no longer bear to continue living in those circumstances, particularly when she was living in a country so distant from Malta without any family or friends in that country and with a husband who was abroad most of the time, and when in New Zealand he would get drunk and spend time out revelling, while when he returns home there would be scenes arguments and insults to the extent that plaintiff had no

choice but to leave and seek refuge in Malta with her family, at which point her husband immediately entered into an intimate relationship with another person without any qualms whatsoever.

7. That there is no doubt in view of the circumstances and facts aforementioned, that defendant's consent to this marriage is defective by virtue of a serious defect of discretion of judgement on married life or its essential rights and obligations, or a serious psychological anomaly which renders it impossible for the party to fulfil the essential obligations of marriage.

7A. Moreover, defendant concealed from plaintiff the fact that he had a serious drug problem, specifically the drug cocaine, as well as a serious alcohol problem that made him dependant on alcohol and the only reason that he wanted to marry plaintiff was in order to be able to overcome these vices. During the period of time between meeting plaintiff and a few months after he married her, defendant made it a point not to drink an excessive amount of alcohol as he would normally drink, as well as refrain from making use of the drug cocaine, a situation which changed completely after the couple emigrated to New Zealand;

Plaintiff's parents had warned her several times that she should not marry a person whom she never knew before, only a few months after meeting him. Notwithstanding this warning, plaintiff accepted to marry defendant because he always showed her that he lived very much and wanted to get married within a short time.

That this behaviour constitutes a ground for the annulment of the marriage under Article 19(c) and (f) of Chapter 255 of the Laws of Malta, in addition to the ground mentioned in the preceding paragraph, that is, under Article 1(d) [*recte*. 19(d)] of the said Chapter 255 of the Laws of Malta.

8. That consequently plaintiff filed this lawsuit in order to have the marriage between the parties declared null.

For the premised reasons and other reasons that would result during the course of the lawsuit, plaintiff humbly requests this Court to:-

1. Declare and decide for the premised reasons or other reasons listed in Cap. 255 of the Laws of Malta, that the marriage between the parties is null and without effect for all intents and purposes of Law.
2. Authorise plaintiff to register in the Public Registry the judgement eventually delivered by this Court.

With costs against defendant who is as of now called upon to make reference to his oath.

Having seen the sworn reply filed by defendant, which reads as follows:-

1. That from the information referred to me by C John E, the facts mentioned by his wife in her sworn application are true, as is also correct the fact that Mr. E married plaintiff after only a few months that they had met, and after a short while, they emigrated to New Zealand. It was while in New Zealand that defendant realised that he had made a mistake and that he was not ready to fulfil his duties as a married man. After only a short while that they spent together in New Zealand, the plaintiff left from New Zealand and returned to Malta, and as soon as she left defendant entered into an intimate relationship with another person whom he wants to marry at the earliest opportunity and there he also wishes to have his marriage to plaintiff annulled.

Having seen its Decree dated 24<sup>th</sup> May 2017 by virtue of which it ordered that the proceedings are heard in the English language.

Having seen its Decree dated 29<sup>th</sup> May 2017 by virtue of which it acceded to plaintiff's request and ordered an amendment to the sworn application by means of the addition of a new premise marked as 7A.

Having seen its Decree dated 20<sup>th</sup> June 2017 where the parties were given a time-limit within which to file written submissions.

Having seen the note of submissions filed by plaintiff on the 28th September 2017.

Having seen all the acts of this case, and

Having seen that the case was adjourned for judgement for today,

Makes the following considerations.

Plaintiff, **A B** gave evidence by means of an Affidavit<sup>1</sup>, where she testified as follows:-

*"I met C D E on the 24<sup>th</sup> April 2014 through my then employer. We met at a bar and we immediately started seeing each other. C D E swept me off my feet. He proposed after one month and within six months we were married. We were married on the 1<sup>st</sup> October 2014.*

*"During those six months the relationship between us seemed to be going well. We planned our wedding very quickly and although we did discuss the future between us, we did not have any specific plans for our future. During this period, C used to work as an offshore engineer on a commercial diving boat and he used to spend six weeks at a time at sea - thus from this six month betrothal period, he spent about three months away from Malta.*

*"During this time as well, before we even got married, we started to try to have a child. As this was unsuccessful C wanted me to stop working so that we could*

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<sup>1</sup> Dok. JC1, pages 15 -17.

*try to have a baby through IVF. I stopped working in June 2014. I had to stop working to avoid stress so that I would increase my chances to have a child. Moreover, he made it clear that he only wanted me to be his housewife.*

*“We got married on the 1st October 2014. Soon after we got married I got to know that C had incurred tax liabilities running into tens of thousands of euro. I had no idea that there were any such liabilities before we got married. This caused me a lot of tension and stress. In addition to this there were also some further debts that C owed to third parties running into hundreds of thousands of dollars which were also concealed from me before the marriage.*

*“I had my first round of IVF on the 24<sup>th</sup> October 2015. In November 2015 I miscarried - during this time I had just got to know that there was this debt and I had the strain of having to deal with this tax liability and with his debts on my own. Even though these were technically C's debts and liabilities I had to take it onto myself to get these matters resolved. His attitude when faced with all of this was that he simply pushed everything to the side and waited for things to sort themselves out - which in reality meant that I had to take care of his liabilities for him. Also when I confronted him with the fact that I had miscarried our baby he was not supportive in any way shape or form - his only reaction was to simply say that 'life goes on' and that was that for him.*

*“We moved to New Zealand on Christmas Eve 2015. Soon after we moved to New Zealand the cracks started to show. Eight days after having moved there, on the 2<sup>nd</sup> January 2016, there was the first incident of domestic violence. On that day we had gone out for dinner at about 09:00pm and we had a bottle of wine at dinner. At one point the manager came over to me and advised me that there was no more alcohol to be served to my husband as he was already very intoxicated. I had questioned this, but the manager insisted. Following this we went to a small bar across the road but he was removed shortly thereafter because he was too intoxicated. Following this, there was a blow-out in the hotel room during which C was verbally abusive and threatened to take away my passport and my visa, and then he passed out.*

*“Following this incident C was away at work for six weeks. I found employment in New Zealand after about two months of having moved there. In*

*those periods when C wasn't at work, I used to return back home after work only to find C very drunk. I would just come home and find that he would have been drinking all day. I would cook for him and after dinner he would just pass out.*

*“In the light of this I had suggested therapy to him. He was reluctant at first but he then admitted that he had a drinking problem. During this period I was very supportive of him and I made it clear to him that I would help him to deal with his addiction. He gave his word that we would work through it, however when he returned after a work trip he decided that he was not the one with the problem and that I was the one with the problem so he basically went in denial. He refused to continue going to therapy and subsequently became very verbally and physically abusive. During this time we were also considering whether we should try for another round of IVF, however this didn't stop C from being abusive in my regard. Following the last incident where he was physically abusive in my regard, I left the house and came back to Malta within seventy two hours.*

*“I have to point out that before we got married C never told me that he had this problem with alcohol where he would spiral completely out of control. Whenever I tried to speak to C about the problems in our matrimonial life he always failed to acknowledge that there were any problems. He also struggled to understand that he had a role to play in the marriage as my husband. C continued to live his married life as though he was still single. Whenever he used to come back home from work he would spend entire days drinking, surfing, going out and generally spending his time as though I was nowhere in the picture. I tried to speak to him various times about this, however he always failed to acknowledge that he could not continue living in this Eer and that he had a role to play in our marriage - that of a husband. His attitude towards life was that of a teenager and he shirked all responsibilities in the marriage.*

*“Ever since I came back to Malta in July 2016 C never made any attempt to try to work things out between us or to even contact me. Not more than four months after I left, C started travelling the world and soon after he entered into a relationship with another woman in New Zealand whom he intends to marry. Once I came back to Malta I continued closing up his loose ends over here*

*including the outstanding matters on his properties, all while he was already engaged in another relationship.*

*“After I filed this case I discovered from the contents of an email that was sent by C to his special mandatory in Malta Dr. Carl Grech that C was a cocaine addict besides also an alcoholic but I never knew and indeed he never told me of these two problems he had before we got married or even after and after I returned to Malta from New Zealand. I got to know that the real reason why C married me was that he was hoping that through our marriage he would "straighten up" his life so that he hid these two very important circumstances from me and had I known that he was a cocaine addict and an alcoholic I would certainly never have married him. I never saw him taking drugs in front of me and although he used to drink occasionally even with me when we were together he never drank at home when we were in Malta. When went to New Zealand however he used to drink all the time both when he was not at home and also in our house.*

*“I recall that both my father and my mother were very apprehensive when I informed them that C and I decided to get married as they both thought that we should not do so after such a short time of getting to know each other and to only discuss marriage when our relationship would have lasted for years and not a few months.*

*“I recall that some year after we got married and within that period I never got pregnant, C and I had decided to try IVF treatment, something we did. This treatment was undertaken in Barcelona Spain where C and I went together for a whole month until the whole procedure went through and it was safe for me to travel back to Malta. Although this was successful I lost my baby after only around three/four weeks probably because at that time C I had found out, after my mother was instructed by C to sell the two apartments he had purchased in Malta during our marriage but with his money, with the notary informing my mother that the sale of the two apartments could not go through as the Income Tax Department was claiming the sum of around €90,000 in arrears of income tax he had never paid during his stay in Malta. This terrible news probably caused me to lose my child because of the enormous stress I suffered immediately this news was given.*



*“This problem was selfishly left to my mother and I to solve which we did but after a long time. In fact the matter was solved by my mother whilst C and I had already left Malta for New Zealand. Even here I was deceived by C who never ever mentioned that he owed any money here in Malta so that after we were only married for around a year I discovered with C I was in debt of €90,000 when I had absolutely no money. Had I known that C had a debt of nearly a 000,000 before we got married I would certainly not have married him, given up my career here in Malta and left the country to seek my fortune in New Zealand. My job in Malta was well paid - I was a gaming business manager with Euro Consulting - EMEA and was completely self-sufficient at that time earning around €35,000 gross per annum between my pay and my commission. I am convinced that C hid the truth or even lied to me about himself and his problems before we got married, problems these which I only found out after our marriage and reasons these which had I known of before our marriage would certainly not have led me to get married to him. He cheated me because of his selfishness and he himself admitted to his being selfish to me by never telling me the truth.”*

Plaintiff also produced in evidence, her mother **Josephine B** who testified as follows in her Affidavit<sup>2</sup>:-

*“I was introduced to C E by my daughter A in April 2014 and my original thoughts about C was that he a decent man. I was originally apprehensive however when A informed me that, after only one month of knowing one another, C had proposed to her and they were already planning on getting married. However, since A seemed very happy with the relationship, I supported their decision.*

*“The six months leading up to the wedding were intense and somewhat rushed and C was very keen on getting marrying quickly. I did feel that A might have been rushed into making a quick decision she did not think too properly about.*

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<sup>2</sup> Dok. JC2, page 18-20.

*“Following their return from their honeymoon, I first noticed that A was under a lot of stress as there was a lot of pressure from C who really wanted to have a child. At the same time, A informed me that C intended to take her to New Zealand on holiday to meet his family, which lasted for four months.*

*“Following their return, they had made up their mind that they would soon relocate to New Zealand towards the end of the same year. I first began to see a few flaws in the marriage as A and C would argue occasionally whenever events involving social drinking were concerned as C would sometimes overdo the drinking which would in turn make A upset. In the midst of all this, A was undergoing preparations for IVF because she was unable to conceive naturally.*

*“Before relocating to New Zealand, and whilst C was away on work, he asked A to put his apartments in Attard up for sale. Soon after an offer was made on one of the apartments, A discovered that C was in a large amount of debt, thus causing a lot of stress within the relationship. It was at this point that A would often come to me for help and guidance as the matter really took its toll on her. I tried as best I could to help with the situation, however, because the matter was never revealed to A before the marriage, this had more of an effect on her. In fact, because of the resulting stress, I advised C that IVF might not be the best option at the time. C was however persistent that they were to continue attempts at IVF treatment. A successfully conceived through IVF in October 2015 after returning from Spain (where the IVF was conducted). After their return, A was presented with even more stress as more debt from C's past emerged, making her extremely emotional and panicked about her future and her marriage. Consequently, A suffered a miscarriage after 4 weeks pregnancy, and at this point she was a proper wreck whilst C remained seemingly unaffected about the miscarriage as well as the debt. As a mother, I felt that A should have stayed in Malta surrounded by her family, however C was persistent that the move go through.*

*“They left for New Zealand on Christmas eve of 2015, and just shortly afterwards on A's birthday on the 2nd January 2016, I received a very upsetting phone call from my daughter informing me about the first episode of domestic violence whilst C was intoxicated and only then did I begin to realise the*

*severity of the situation and that A had been playing down the previous episodes/arguments.*

*“Following this particular incident, A began to look for work in New Zealand as C was to be away on another work trip. At this point, because he was away, things seemed to have calmed down and I was happy that A would begin to enjoy working life again as it would help her take her mind off the situation.*

*“Shortly before A returned to Malta, during a desperate facetime call, A broke down and informed me of C's drinking habits and other similar incidents of domestic violence. A's phone call was made to me whilst C was out and I could tell from her voice, that she was scared of the state C would come home to that evening, as he was sure to be intoxicated. I told A to go to sleep before he returned, and that we would speak the following day. The following day, we spoke again when A called me and was so distraught that she told me she was leaving New Zealand immediately coming back home.*

*“When A returned (in July 2016) she seemed a different person and was very emotionally damaged, such that I suggested she see a therapist who would be able to help her more than I could.*

*“After her return, C never tried to reach out to A or to comfort her in any way after what happened during their marriage, nor did he make an effort to try to work things out. C left behind the burden of solving his pending debt in Malta, which burden was left to A and myself to deal with. C gave A a small monthly allowance for a short amount of time after her return which was used to cover medical bills associated with the therapy A needed to recover from the domestic violence she encountered throughout her relationship with C.”*

Defendant, **C D E**, also gave evidence by means of an Affidavit<sup>3</sup>, where he testified as follows-

*“At the time when I met A I was in a very bad state of mind and had been for a few years. This was caused by a heavy addiction to cocaine which I never*

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<sup>3</sup> Pages 23-25.

*disclosed to A. I kept this addiction a secret to her in the fact that I believed getting married would sort my personal drug problem. I thought that getting married would give me reason to stop using drugs. I had this solution in my head even before I had met A and was looking for someone to marry to hopefully be a distraction from my addiction. Looking back I know now that was the most ridiculous and selfish thing of me to have thought, and the fact that I orchestrated it all not thinking of the feelings of A and the families and friends involved. I used cocaine throughout the whole relationship, even on the wedding night and continued to use it afterwards.*

*“I met A at a bar in the day time through a mutual friend, I was intoxicated at the time. I only met A on a couple of occasions before I headed to work offshore for 6 weeks.*

*“From there everything went too fast and before I knew it we were engaged and planning a wedding in a few months. All this time I was working offshore and barely even knew my bride to be. This was solely my doing as I put the idea to her, I convinced her that it was the right thing to do even though she was incredibly hesitant as we did not know each other. I completely took advantage of her in believing my feelings were true. I didn't think at all about the actual meaning of marriage or the requirements of being in a serious relationship, what I did was purely selfish. I went into this marriage for the wrong reasons, I did not once think that she was the 'one forever' and did not think at all about obligations of marriage let alone the obligations and duties to be a husband.*

*“The wedding itself was a civil ceremony in a registry office in Valletta. I did not even have family or friends there due to the last minute nature of this arrangement and the fact nobody even knew A, so I did not even bother inviting anyone.*

*“I didn't even know A properly and we had gotten married, we fought all the time and we didn't get along even before the marriage. There was no chance this was going to work, and my drug addiction had not changed at all, I still concealed it as much as I could and I did not want her help or opinion on the matter.*

*“There were countless fights and arguments so I decided to move us to New Zealand to try there to see if anything would change, this move was purely selfish again as I wanted to move near my family and friends taking A away from the life she knew. I was leading her on as I knew deep down this relationship would never work.*

*“In New Zealand things got worse we broke up countless times, we didn't get along or even like each other at all. I had severe mood swings, withdrawals and was always disconnected from her. I did not support A emotionally or even gave her a friendship.*

*“Enough was enough and we decided to end it for good, A went back to Malta. I felt bad for her Mum having to take care of A again so I decided to send money to her mother monthly, agreeing to help out for a few months. Once she left I started to realise the psychological and emotional damage I had caused to A.*

*“Very shortly after A left, I entered into a relationship with a new girl. Even though we are technically married I did not care at all as I wanted to start a new relationship. I feel extremely bad for leading her on with getting married for my own selfish reasons. I took advantage of a young woman's feelings and have really emotionally damaged her as well as her family. I told A exactly the right things she wanted to hear at the time, and created a fairytale dream like scenario of being happily married. Not once did I myself believe in this, I did it just to manipulate her into believing me. I am finally in a good clear head-space and drug free. I apologise to her for what I had done and how damaging this all is for her.*

*“I take full blame and responsibility of our very short and disconnected 'marriage' and I understand A is still young and hope she can have a fresh start. She is the victim in all this and does not deserve to have to go through being married to myself any longer because of my selfish, foolish actions.”*

Having considered,

That by virtue of her sworn application, plaintiff seeks to annul her marriage to defendant, claiming that his consent to the marriage was vitiated on the grounds contemplated in sub-articles (c), (d) and (f) of Article 19 subsection (1) of Chapter 255 of the Laws of Malta.

The relevant text of **Article 19** is being reproduced hereunder:-

*19(1) In addition to the cases in which a marriage is void in accordance with any other provision of this Act, a marriage shall be void:-*

*(c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;*

*omissis*

*(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial or on its essential rights and duties; or by a serious psychological anomaly which makes it impossible for that party to fulfil the essential obligations of marriage;*

*omissis*

*(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of anyone or more of the essential elements of matrimonial life, or of the right to the conjugal act.”*

In the first place, it would be appropriate, particularly in view of defendant’s sworn reply, where he adhered to the facts as stated by plaintiff and accepted her the demand for the annulment of the marriage, to observe that there exists a presumption in favour of the validity of a marriage so that in any event, the alleged nullity of the marriage must be duly proven by convincing evidence to the satisfaction of the court notwithstanding any admission that may be made by defendant to the demand for nullity. Accordingly, it has been held:-

*“Irid mill-ewwel jigi senjalat principju fundamentali fil-ligi civili u cioe’ li z-zwieg bejn il-kontendenti ghandu jkun prezunt li jkun wiehed validu. Ghalhekk huwa dover assolut ta’ kull parti fil-kawza li taghmel prova sodisfacenti ta’ l-allegazzDijiet rispettivi taghha dwar l-allegazzDi cioe’ li z-zwieg kien null, ghaliex l-oneru tal-prova huwa dejjem fuq spallejn min jallega.”<sup>4</sup>*

This principle stems from the fact that marriage is fundamentally an institute of public order and as such, requires that appropriate safeguards are in place to maintain its significance and status in the general order of society. Nullity is the exception to the rule and must be afforded a restrictive interpretation<sup>5</sup>:-

*“Iz-zwieg huwa wiehed mill-kuntratti l-aktar essenzjali ghas-socjeta’ u bla dubju ta’ xejn huwa ta’ ordni pubbliku li l-Qorti trid tersaq lejha bl-aktar rispettt... Ghall-Qorti n-nullita’ hija haga serjissima u eccezzDali bbazata fuq ir-rekwiziti legali, u bhala materja eccezzDali trid tkun interpretata restrittivament”.*

In the judgement in the names ***Anna Tonna vs Alexander Tonna***<sup>6</sup>, the Court of Appeal also observed that while the grounds on which a marriage is alleged to be null must result unequivocally, superficial and petty motives will not suffice to show that a marriage was contracted invalidly on one of the grounds envisaged by the Law.

Having considered,

#### Nullity in terms of Article 19(1)(c)

Plaintiff claims that her consent to the marriage was extorted by fraud about some quality of defendant which could of its nature seriously disrupt matrimonial life. Our Courts have consistently held that in order for this

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<sup>4</sup> ***Joseph Zammit vs Bernadette Zammit***, decided by the Court of Appeal, 27<sup>th</sup> January 2006.

<sup>5</sup> ***Carmel Farrugia vs Pauline Farrugia***, decided by the Court of Appeal, 2<sup>th</sup> July 1987.

<sup>6</sup> Decided on the 6<sup>th</sup> November 1991.

ground of nullity to subsist, the cumulative existence of the following requisites must be shown to the satisfaction of the Court:-<sup>7</sup>

- “(1) il-qerq perpetrati bil-hsieb li wiehed jikseb il-kunsens tal-parti;*
- (2) li l-qerq ikun incida fuq il-kunsens tal-parti;*
- (3) li l-qerq ikun jirrigwarda xi kwalita’ tal-parti l-oħra; u*
- (4) li din il-kwalita’ tkun tista’ mix-xorta tgahha tfixkel serjament il-hajja mizzewga.”*

In *Louis Agius vs Georgia Agius xebba Gauci*, the Court of Appeal<sup>8</sup>, interpreted Article 19(1)(c) of Cap. 255 in the following Eer:-

*"Hu ovvju li hawn qeghdin fil-kamp ta' 'moral substitution' u kif spjegat mill-awturi (Ara Wrenn L. "Annulment" p 82 et seq.) din tissussisti "when the quality is (I) an inherent property of the person and not some isolated past action; (II) present at the time of the wedding; (III) grave either objectively or subjectively; (IV) unknown to the other party; (V) fraudulently concealed for the purpose of obtaining marital consent. Lastly the quality must provoke a crisis on discovery; otherwise the presumption would be that the error was not in fact substantial".*

Having considered,

That in this case and with reference to this particular ground of nullity, plaintiff claims that defendant suffered from an addiction to cocaine and alcohol and that this addiction was not revealed to her prior to marriage.

It results from the evidence produced that the parties contracted marriage a mere six months after they met and that the nature of defendant's work required that he would spend six weeks at a time working on a diving boat, followed by a period of six weeks of leave<sup>9</sup>. According to plaintiff, defendant spent a cumulative period of three months, out of the entire six month duration

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<sup>7</sup> *Mary Farrugia vs Joseph Farrugia*, decided by The First Hall, Civil Court, 13<sup>th</sup> March 1995

<sup>8</sup> 19<sup>th</sup> October 1988, to which reference was also made in *Stephen Sciberras vs Av. Dr. Francesco Depasquale noe*, decided 9<sup>th</sup> December 2002.

<sup>9</sup> It is to be noted that in view of this evidence, confirmed also by defendant, the reference in the sworn application, in this context, to six months is incorrect.



of their relationship prior to their marriage, at sea on work. It is also amply proven from the evidence adduced that defendant proposed marriage after only one month that the parties had met, was very insistent on a hasty marriage and also put pressure on plaintiff to conceive a child immediately.

Plaintiff claims that although defendant did drink alcohol occasionally before they moved to New Zealand (circa fourteen months after their marriage), he never drank at home. That changed when the couple moved to New Zealand where plaintiff explained how her husband began to become intoxicated on a regular basis after their marriage, his behaviour giving rise to significant concern on her part as well as countless arguments and also occasions of verbal and physical abuse in her regard. According to plaintiff, when in New Zealand, her husband used to drink all the time both in their house as well as when he was not at home. In her Affidavit she explains:-

*“In those periods when C wasn't at work, I used to return back home after work only to find C very drunk. I would just come home and find that he would have been drinking all day. I would cook for him and after dinner he would just pass out.*

*“In the light of this I had suggested therapy to him. He was reluctant at first but he then admitted that he had a drinking problem. During this period I was very supportive of him and I made it clear to him that I would help him to deal with his addiction. He gave his word that we would work through it, however when he returned after a work trip he decided that he was not the one with the problem and that I was the one with the problem so he basically went in denial. He refused to continue going to therapy and subsequently became very verbally and physically abusive.”*

The fact that both defendant's alcohol problem and its extent, were unknown to plaintiff prior to marriage and eventually came to light at a subsequent stage after parties had moved to New Zealand, is supported by plaintiff's mother:-

*“A and C would argue occasionally whenever events involving social drinking were concerned as C would sometimes overdo the drinking which would in turn make A upset.*

*“They left for New Zealand on Christmas eve of 2015, and just shortly afterwards on A's birthday on the 2nd January 2016, I received a very upsetting phone call from my daughter informing me about the first episode of domestic violence whilst C was intoxicated and only then did I begin to realise the severity of the situation and that A had been playing down the previous episodes/arguments.*

*“Shortly before A returned to Malta, during a desperate facetime call, A broke down and informed me of C's drinking habits and other similar incidents of domestic violence. A's phone call was made to me whilst C was out and I could tell from her voice, that she was scared of the state C would come home to that evening, as he was sure to be intoxicated.”*

As for defendant's drug addiction, plaintiff claims that she never saw him taking drugs in front of her and was not aware at any time during the duration of their marriage, that defendant made use of any drugs whatsoever. She became aware of this fact after she returned to Malta and filed the present proceedings for annulment of the marriage<sup>10</sup>.

Most significant, however, is the fact that defendant admits in his testimony that he had a serious drug problem which preceded the date of marriage, and which therefore existed at the date of marriage. Indeed, he claims to have been fully aware of his addiction to the drug cocaine, and consumed the drug throughout the entire relationship and marriage, even on the wedding night, unbeknownst to his wife. Notably, he admits to having done his best to conceal this problem from her during their relationship prior to marriage. This opportunity appears to have been facilitated by the fact that defendant spent considerable time away from home due to his working schedule.

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<sup>10</sup> This discovery is reflected in the contents of plaintiff's application filed on the 26<sup>th</sup> May 2017 (page 12), where she requested that an additional premise is added to her sworn application.

*“... my drug addiction had not changed at all, I still concealed it as much as I could and I did not want her help or opinion on the matter.”<sup>11</sup>*

It also results that although in his Affidavit, defendant does not expressly make reference to his alcohol abuse, he does not contest in any Eer plaintiff’s version of events resulting from her Affidavit. More importantly, he expressly confirmed in his sworn reply that he agreed that the facts stated in the sworn application, including therefore the allegations regarding daily alcohol abuse<sup>12</sup>, were correct.

In the case *Pierina Micallef vs Bentanfous Amor*, the Court analysed the requirement of fraud in the particular context of marital consent:-

*“Kwantu ghal "qerq" prospettat fis-subinciz (c) ghall-Artikolu 19(1) tal-Kap. 255, dan certament hu motiv ta' nullita` tal-ftehim jew tal-kuntratt kif hekk del resto jiddisponi l-Artikolu 981(1) tal-Kodici Civili. L-eghmil doluz pero` ma jista' qatt ikun prezunt u ghandu jigi pruvat (Artikolu 981(2)),..... "Il raggio dev'essere capace di allontanare la ragione e sopraffare la volonta`" (Vol. XXIV P II p 578).”<sup>13</sup>*

In this context it is relevant to note the following. Defendant explains that his reason for his haste to marry and begin a family was precisely to acquire a motive which would act as a deterrent to his addictions and, so to speak, “put him on the right track” after having suffered from drug addiction for a number of years . It therefore results that it was also for this same reason that he intentionally concealed both his addiction from his future wife. This admission of defendant clearly explains the inordinately brief courtship between the parties and his almost immediate marriage proposal, as well as his subsequent insistence on marrying plaintiff. In defendant’s words:-

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<sup>11</sup> Paragraph 5 of his Affidavit.

<sup>12</sup> Paragraph 5 of the sworn application.

<sup>13</sup> Prim' Awla - 9 ta' Dicembru 2002

*“At the time when I met A I was in a very bad state of mind and had been for a few years. This was caused by a heavy addiction to cocaine which I never disclosed to A. I kept this addiction a secret to her in the fact that I believed getting married would sort my personal drug problem. I thought that getting married would give me reason to stop using drugs. I had this solution in my head even before I had met A and was looking for someone to marry to hopefully be a distraction from my addiction.”*

Plaintiff declares unequivocally in her Affidavit that had she known that her husband-to-be was a cocaine addict and an alcoholic, she would have certainly not married him. The Court considers that such a statement, taken in isolation, cannot be deemed sufficient on its own merits to satisfy the requirements that the fraud must have been concealed for the purpose of obtaining marital consent and that it had a substantial bearing on plaintiff’s consent. Having, however, considered this statement in the light of all other relevant circumstances in this case, particularly the exceedingly brief courtship of the parties, the fact that admittedly, parties barely knew each other and defendant’s admission that plaintiff was, for this very reason, particularly hesitant about marrying so soon, the Court deems that it is reasonable to conclude that discovery by plaintiff prior to marriage, of defendant’s alcohol and drug abuse, would have had a detrimental effect on his plans for a rushed marriage and a quick solution to his problems. Consequently, the Court concludes that there is sufficient evidence in this case to show that defendant intentionally and fraudulently concealed his addictions with the specific intention to ensure that plaintiff agrees to the marriage.

The Court also considers that persistent drug or alcohol abuse on the part of one of the spouses in a marriage, particularly to an extent such as that which results<sup>14</sup> on the part of defendant in this case, is a quality that evidently satisfies the requisites of Article 19(1)(c), in the sense that it can be viewed as a characteristic of that spouse’s personality which essentially would have a

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<sup>14</sup> Evidence given by both parties.

substantial effect on married life. In *Marica D'Amato vs Philip D'Amato*<sup>15</sup>, the Court made the following observation:-

*“Meta l-ligi titkellem “dwar xi kwalita’ tal-persuna l-ohra” wiehed jifhem daww il-kwalitajiet li jikkarakterizzaw fost aspetti ohra l-personalita’, kultura, posizzDi socjali, konvinzDijiet morali, u edukazzDi tal-konjugi l-iehor. Dan dejjem b’referenza ghall-mument taz-zwieg. U allura ma jistax jittiehed qies ta’ dik il-verita’ dwar dawn il-kwalitajiet skoperti wara z-zwieg.”*

In the light of this principle, this Court deems that of its very nature, consistent substance abuse particularly if unknown to the other spouse, would impact that party’s personality with detrimental effects on the marital relationship, as indeed results from the testimony of the parties to have been the case in this particular marriage. It is worthy to note that had such an addiction been revealed prior to marriage during the course of a stable and solid relationship between a couple who are also emotionally and psychologically prepared to face and attempt to overcome such a challenge, it might not necessarily assume the attributes of such a quality as is required by the Law in Article 19(1)(c). However, in the event that this factor is intentionally concealed from the other party and discovered during marriage, and then again a marriage built on less-than-stable foundations as in this case, it would invariably provoke the crisis contemplated by the relevant case-law on this matter.

Defendant admitted to suffering from severe mood swings, withdrawals and feelings of disconnection as a result of substance abuse, leading to “*countless fights and arguments*”. This version was substantiated by plaintiff who was consistent in her description of the regular arguments, verbal abuse and lack of communication and closeness which the constant drunkenness and degenerate lifestyle of her husband caused during their marriage.

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<sup>15</sup> Decided on 31<sup>st</sup> January 2003, First Hall, Civil Court.

The element of fraud contemplated in Article 19(1)(c) is limited to fraud regarding a quality of the other party that would of its nature serious disrupt marital life. In *John Borg vs Paula sive Polly Borg*<sup>16</sup> the Court held:-

*“The object of deceit must be a quality of the other contracting party which, in itself, will have to cause serious disturbance in the partnership of conjugal life; with this formula, the legislator intends that the quality **must be** objectively grave and establishes the partnership of conjugal life as an objective point of reference for the gravity of the quality so that the qualities are related to the essence, properties and ends of marriage. Therefore, those subjective qualities which cannot be objectively reconciled with conjugal partnership are irrelevant and, in this sense, they are merely arbitrary or trivial”. (Viladrich P.J. *Matrimonial Consent. Code of Canon Law Annot.*- Caparros, E. et al. ed)1993, Wilson and Lafleur, Montreal).*

In this case, the Court deems that the crisis which defendant’s habits appear to have provoked in the marriage in this case, would inevitably disrupt any marital relationship to such a considerable degree that even in the present case, both parties acknowledge that upon realising the extent to which the relationship had broken down due to these issues, plaintiff left the marriage and returned to Malta indefinitely. It results that plaintiff left New Zealand and returned to Malta no more than five months after the discovery of the extent of her husband’s drinking problem. In this context therefore, the quality which defendant concealed from plaintiff was manifestly grave and substantial, both objectively and subjectively, thus satisfying the relative requirement in Article 19(1)(c).

Consequently in view of the above considerations, this Court concludes that it has been sufficiently proven that plaintiff’s consent was obtained by fraud in terms of Article 19(1)(c) when at the time of celebration of the marriage she was unaware that defendant suffered from a serious drug addiction and alcohol problems which eventually caused serious disorder in the parties’ marriage. The Court is also convinced that this characteristic of defendant’s life and

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<sup>16</sup> Decided by the First Hall, Civil Court on 22 ta’ Meju 1995.

personality was concealed purposely by him from his spouse in order to secure a hasty marriage for entirely the wrong reasons, such that her consent to the marriage must be held to be vitiated on this ground. The marriage between the parties is therefore null and without effect in terms of Article 19(1)(c).

In view of the fact that plaintiff's demand is justified in terms of Article 19(1)(c) of the Marriage Act, the Court deems that it is not necessary to examine the existence or otherwise of the other grounds of nullity on which plaintiff's action is based.

### **Decide**

The Court therefore accedes to plaintiff's first demand and declares that the marriage celebrated between the parties on the 1<sup>st</sup> October 2014 is null and void on the basis of Article 19(1)(c), and consequently for the purposes of the second demand, authorises plaintiff to register this judgement in the Public Registry, with all costs at the charge of defendant.

Judge