COURT OF MAGISTRATES (MALTA)

Magistrate
Dr. Rachel Montebello B.A. LL.D.

Application Number: 32/2018 RM

Simonds Farsons Cisk plc C113

vs

1. Jan Panztar
2. Dolittle & Fishmore Limited (C-79128)

Today, 28th March 2019

The Court,

Having seen the application filed by plaintiff company in the Registry of this Court on the 16th February 2018 where it requested the Court to condemn the defendants to pay the sum of fourteen thousand two hundred and twenty nine Euro and forty three cents (€14,229.43) representing, as to the sum of ten thousand five hundred and fifty six Euro and fifty one cents (€10,556.51) the price of products sold and delivered to the defendants and, as to the sum of three thousand six hundred and sixty two Euro and ninety two cents (€3,662.92) balance of a sum loaned to defendants in terms of an agreement dated 1st April 2017 (statement of account Dok. A), with interest to run as from the date of the relative invoice until the date of effective payment and with costs including

those of the legal letter sent to defendants whose oath is hereby made reference to.

Having seen the reply filed by Jan Erik Panztar and Dolittle & Fishmore Limited (C 79128) on the 24th April 2018, where the following pleas were raised:-

1. That in the first place and in a preliinary manner, Jan Erik Pantzar has no juridical relationship with plaintiff company and therefore is not a debtor of the amount claimed in these proceedings. Consequently, he must be declared to be non-suited as he is not the proper defendant of the plaintiff company's action since in he never ordered or purchased any merchandise from the plaitiff company in his personal capacity.

2. That plaintiff's claims against Jan Panztar are unfounded in fact and at alw and are to be rejected with costs against said plaintiff.

3. That in the merits and without prejudice to the foregoing, the plaintiff company must prove that it effectively sold and delivered to the defendant company Dolittle & Fishmore Limited the products mentioned in Dok. A and Dok. B attached to the principal Application and must show that theamount claimed is due.

Having seen that during the hearing of the 23rd April 2018 it acceded to the request of the defendant Jan Pantzar for the proceedings to be conducted in the English language;

Having seen that by virtue of a decree given by the Chief Justice, this case was assigned to the Court as presided with effect from the 16th July 2018;

Having seen the evidence brought before the Court as previously presided;

Having heard the testimony of the witnesses produced by the parties and having seen all documents exhibited;

Having seen all the acts of the proceedings;

Having seen that both parties declared respectively that they have no further evidence to produce;

Having heard the final oral submissions of the parties' legal counsel during the hearing of the 30th January 2019;

Having heard the oral submissions of both parties regarding the said preliminary pleas raised in these proceedings;

Having seen that the case was adjourned for today for delivery of judgement;

Having considered;

Evidence

Frederick Cauchi, Head of Credit Control Section of plaintiff company, testified during the hearing of the 24th May 2018, and confirmed that Jan Pantzer owns the company the sum of 14,229.43 euro representing supplies taken by himself as well as on behalf of the company which amounts to 10,556.51. Balance represents the credit application form in the sum of 3662.92 Euro cents. For the supply there is a credit application form which is signed by himself. The witness exhibited a copy of this same document which was marked by the Courts as Document CSH.

He said that they made made various phone calls to the defendant to make payment. However, these were ineffective. He said that actually these were done by members of his team. He also exhibited a document which was marked as Document CSH1 which represents the loan account. This is signed joined and seperately by the same defendant. The witness said that the accused has defaulted under clause ten and eleven of the same Document CSH1 and therefore, all the amount is now due.

Robert Galea, Sales Manager for Simonds Farsons Cisk plc, testified by means of an Affidavit filed on the 8th August 2018, and declared that he had been first made the acquaintance of Jan Pantzar when he was managing a Birkirkara outlet by the name of Tra Amici. Jan Pantzar had the contacted him about another project he had planned for another outlet in Sliema which was to be Dolittle & Fishmore. He asked Simonds Farsons Cisk plc for financial support and the company opted to give Jan Pantzar personally and on behalf of Dolittle & Fishmore Limited a loan and credit facilities.

Galea further explained that he had personally met with Jan Pantzar at Tra Amici in B'Kara. Head of Sales at Simons Farsons Cisk plc Stefania Calleja was also present and the aim of the meeting was the discussion and presentation of financial planning and the concept the Jan Pantzar wanted to start in his outlet Dolittle and Fishmore in Sliema. After this the company decided to grant Jan Pantzar and Dolittle & Fishmore the sum of €10,000 as loan on the 1 st April 2017, were the agreement bound Jan Pantzar and Dolittle & Fishmore Limited jointly and severally. A bill of exchange was also signed by Jan Pantzar in his personal capacity and on behalf of Dolittle & Fishmore Limited. An amount of €3,662,92 is still unpaid and due as a remaining balance of this loan.

He add, that to further support Jan Pantzar and Dolittle & Fishmore, they had also provide them with a beer fount specifically designed for their outlet and cooling equipment. Galea said this to sustain his working relationship on behalf of Simonds Farsons Cisk plc with Jan Pantzar in the operation of his outlet Dolittle and Fishmore and state that today the company has taken back this equipment.

According to the witness, Jan Pantzar had personally approached the company to allow him credit terms and after discussions within the credit department of the Company it was decided to grant Jan Pantzar and Dolittle & Fishmore Limited a 30 day credit term and a credit application form was signed between the company and Jan Pantzar personally and on behalf of Dolittle & Fishmore Limited. An amount of €10,556.51 is still pending and due.

Defendant Jan Pantzar testified by means of an Affidavit filed on the 24th October 2018, where he explained that he met Mr. Robert Galea from Plaintiff Company through his involment in another restaurant named Tramici Birkirkara. He said that plaintiff company already had a relationship with the previous owners of this restaurant and they opted to extand and increase the relationship.

When the opportunity of opening another restaurant in Sliema with the name Dolittle & Fishmore came around, Pantzar on behalf of Dolittle & Fishmore Ltd made contact with plaintiff company the explore the possibility of expanding the relationship also with regards to this endeavour. Both Pantzar and Lydon Laudi, who at that time was also acting on behalf of Dolittle & Fishmore Ltd, entered discussions to negotiate the conditions of this relationship. These discussions eventually led to the signing of the documents exhibited by plaintiff company and marked as CSH and CSH1.

During the discussions period Pantzar have made it clear to Mr Robert Galea that he was acting on behalf of Dolittle & Fishmore Ltd. However Mr Galea had insisted that with regards to the Loan Agreement (CSH1), the relationship could only go forward if Pantzar would agree to be severally and personally liable for the loan repayment. Although Pantzar did not agree with this condition since his actions were solely directed towards the benefit of Dolittle & Fishmore Ltd, he opted forward. This was not the case with regards to the payments due by Dolittle & Fishmore Ltd in respect to the supply and delivery of the products, as it was made clear that these were being acquired by defendant company and that any payments would be due solely by it. In fact, the invoices and statements issued by Simonds Farsons cisk plc were directed toward Dolittle & Fishmore Ltd, as can be clearly seen from the documents marked Dok A and Dok B attached to the application filled by the Plaintiff Company that initiated these proceedings.

The business relation between Plaintiff Company and Dolittle & Fishmore Ltd was going on well until September 2017 when it came to Pantzar attention, that there was an outstanding bill due by defendant company. As matter of fact, Pantzar became aware that Dolittle & Fishmore Ltd had not made any payments to Simonds Farsons Cisk plc. At this stage defendant Company issued two payments in the form of cheques, one for the amount of €3,140.74 by a cheque numbered 172 and another of €3,361.20 by cheque numbered 132. These payments were made from a bank account which the defendant company has with Bank Valletta plc. These cheques were cashed by plaintiff company on the 17 November 2017 and this as results from the document herewith attached and marked as JP1.

During the following months Defendant Company made two other payments in the form of cash, one for € 3,140.74 and another of €500. However, in Decmber 2017 Dolittle & Fishmore Ltd was served with a garnishee order that made it

impossible for it to continue make payments to suppliers, including Plaintiff Company.

Having also seen the testimony in cross-examination of **Frederick Cauchi, Robert Galea** and the defendant **Jan Pantzar**[1].

Having considered;

Plaintiff company's claim in these proceedings is for payment of the global sum of €14,229.43, comprising the sum of €10,556.51 being the balance of the price of products supplied to defendants as would result from the statement of account Dok. A[2], and the sum of €3,662.92 being the balance due on a loan granted by plaintiff company to defendants as would result from a loan agreement entered into between the parties on the 1st April 2017 (Dok. CSH1)[3].

Jan Pantzar's Preliminary Plea

The Court will first consider the preliminary plea raised by defendant Jan Pantzar regarding his standing as proper defendant to the plaintiff's action. The issue of the proper defendant in litigation is a matter of public policy and is a plea peremptory of the action, so as such it may be raised at any stage of the proceedings (even at an appellate stage) and could be raised by the Court *ex officio*.

It is imperative at this point to underline that defendant Pantzar maintains that he is not the proper defendant with respect to the plaintiff's action, because he claims that he never ordered or purchased any merchandise from said company and therefore he has no legal relationship with the plaintiff.

[1] Hearing dated 29th November 2018.
[2] Fol. 2 and 3.
[3] Fol. 20 *et seq.*

On its part, plaintiff company insists that both defendants, that is Dolittle & Fishmore Limited and its director Jan Pantzar, are properly suited and that its action can validly survive against both of them in view of the fact that both the credit application agreement (Dok. CSH) and the loan agreement (Dok. CSH1) were entered into and signed by Jan Pantzar both in his personal capacity and as representative on behalf of the company Dolittle & Fishmore Limited.

The Court would point out that in order for the defendant to be declared non-suited in plaintiff's action, it would be necessary for him to show that no juridical relationship whatsoever exists between him and plaintiff. The determination of this plea does not require any examination of the merits of the plaintiff's claim or any ascertainment of the legitimate subject of plaintiff's action. Indeed, it has been consistently held that in the determination of such a plea, the Court must avoid considering and making any pronouncement that touches the merits of the claim and the Court must therefore limit its considerations to establish whether or not the plaintiff could have legitimately directed its action against the defendant who pleads non-suit, that is, whether or not defendant could reasonably be considered as the legitimate subject of a judicial pronouncement of plaintiff's claim.

It has been held by the Court of Appeal that:-

"... ghal fini tal-valutazzjoni tal-legittimazzjoni tal-kontradittorju wiehed ghandu necessarjament u guridikament jiehu rigward ghall-prospettazzjoni ta' l-attur bl-azzjoni minnu intentata u mhux ghall-ezitu tal-kontroversja. Fi kliem iehor, jekk il-konvenut huwiex ukoll il-legittimu kontradittur jiddependi mill-accertament maghmul fuq il-bazi tad-domanda proposta, jigifieri, mir-rizultat persegwit mill-attur fil-gudizzju"[4].

[4] **Karmenu Mifsud vs Mariano D'Amato** – deciza mill-Qorti tal-Appell (Inf) fil-15 ta' Novembru 2006.

The relevant facts of this case, as would result from the acts of the proceedings, are as follows.

- Defendant Jan Pantzar requested and was granted, financial support from plaintiff company in the form of a loan and credit facilities, for a new project that was being undertaken by him, consisting in the opening of an outlet called Dolittle & Fishmore.

- A loan agreement was entered into on the 1st April 2017 (Dok. CSH1)[5] between plaintiff company and "*Mr. Jan Pantzar ... ... in his personal capacity and on behalf of Dolittle & Fishmore Ltd, C-79128 ... jointly and severally…*", whereby a loan in the sum of ten thousand Euro was granted by plaintiff in favour of the said persons. On the same date, Jan Panztar "*in his personal capacity and obo Dolittle & Fishmore Ltd, C-79128*" signed a bill of exchange[6] in favour of plaintiff company, in acceptance of the said sum of €10,000.

- According to plaintiff company, defendants owe an outstanding balance in the sum of €3,662.92 on this loan[7]. This amount is comprised of the entries shown in the statement of account Dok. B[8].

- A further agreement was entered into between plaintiff company and Dolittle & Fishmore Limited[9] on the 4th April 2017 (Dok. CSH) where the company was granted a 30-day credit for payment of all invoices for products supplied by plaintiff company under the terms and conditions. This agreement was signed by defendant Jan Pantzar immediately under a printed declaration, forming part of the agreement, that reads as follows:

[5] Fol. 20 *et seq*.
[6] Fol. 23.
[7] Vide Affidavit of Robert Galea, fol. 27
[8] Fol. 4.
[9] Referred to, in the agreement, as the "Re-Seller".

"In conjunction with this application for credit, I verify that I have read and understood the above terms and conditions and agree to be bound by all the conditions above.

Signed by the Director or Owner/Spouse, personally and on behalf of the Re-Seller.*"*[10]

- The amount being claimed by plaintiff company from defendants in these proceedings representing the outstanding balance on invoices for the supply of products, which were issued between 20th March 2017 and 30th October 2017 in the name of "Dolittle and Fishmore", is that of €10,566.51 as would result from the statement of account dated 15th February 2018 (Dok. A)[11].

Having considered;

That it is a settled principle of the law of obligations that a person is deemed to have promised or stipulated for himself, unless the contrary is expressly established by law, or agreed upon between the parties, or appears from the nature of the agreement[12]. Furthermore, a person cannot by a contract entered into in his own name bind or stipulate for anyone[13], and unless it transpires expressly from any covenant that it is being stipulated for the benefit of a third party[14], an agreement carries its effects and shall be operative only between the contracting parties and shall be neither of any prejudice nor any advantage to third parties, unless in those cases established by law[15]. The presumption that a person contracts in his own name is a *juris tantum* presumption which can be rebutted by cogent proof brought forward but in case of doubt, the presumption prevails and one is deemed to contract in one's own name[16].

[10] Fol. 17.
[11] Fol. 2 and 3.
[12] Art. 998 of Chapter 16
[13] Art. 999(1) of Chapter 16
[14] Art 1000 of Chapter16.
[15] Art 1001 of Chapter 16.
[16] Civil Appeal decided on 31.10.2008 in **Charles Thorne et vs John Mallia Borġ et.**

A juridical relationship, furthermore, may arise out of various situations, not only within a contractual context. These situations would also give rise to legal effects tantamount to a reciprocally binding relationship and which would found a legal relationship[17].

As a matter of fact our Courts have held that:

"*B''relazzjoni ġuridika' wieħed neċessarjament jifhem dak l-att jew pluralita' ta' atti konnessi li jimmiraw għall-produzzjoni ta' effett ġuridiku fl-ambitu tad-drittijiet bejn żewġ soġġetti jew aktar. Tali att jew atti huma, mbagħad, ravviżabbli minn manifestazzjoni ta' volonta', ossija ta' dik l-imġiba li in bażi għaċ-ċirkostanzi li fih tavvera fit-traffiku ġuridiku tnissel fid-destinatarju t-tifsira li l-parti trid tipproduċi l-konsegwenzi ġuridiċi predetti.*"[18]

Having considered;

That in order to establish whether juridically, there exists a juridical *nexus* between plaintiff company and Jan Pantzar in his personal capacity, the Court must begin by considering whether on a *prima facie* basis it would result that the said defendant had a material involvement in the transactions on which the present action is founded. In such a case, the defendant will be deemed to be answerable to the plaintiff's demand and the Court can proceed to examine defendant's pleas on the merits[19].

In this case, as far as the **amount claimed for supplies sold and delivered to defendant company** is concerned, the Court is firmly of the belief that a very manifest legal and contractual relationship exists between plaintiff company and defendant Jan Pantzer in his personal capacity, arising from the fact that

[17] **Joseph Tabone vs Capece Company Limited et**, decided by the First Hall of the Civil Court on the 6th May 2014.
[18] Civil Appeal decided on 27.11.2009 in **Perit Robert Musumeċi vs Nażżareno sive Reno Fenech**.
[19] Ara fir-rigward: **Frankie Refalo nomine vs Jason Azzopardi et** – deciza mill-Qorti tal-Appell fil-5 ta' Ottubru 2001.

said defendant evidently undertook to be bound personally for by the credit terms and conditions granted to defendant company. While it is true that the products supplied by plaintiff company were purchased by and delivered to defendant company Dolittle & Fishmore Limited which is the company named in the Credit Application Form as "*the Re-Seller*", and in no way does it result that the supplies were made to Jan Pantzer personally, the latter's involvement in the transactions relating to the supply and delivery of products to Dolittle & Fishmore Limited is evident from the capacity in which he expressly signed the agreement for the granting of credit terms.

In so far as the **loan agreement** is concerned, the Court is of the same considered opinion. Jan Panzter himself in his Affidavit confirms unequivocally that he "*opted to go forward*" with the loan agreement knowing that personally, he would be severally liable with the defendant company for the loan repayments. There is therefore no doubt that even in this context, a legal and contractual relationship exists between plaintiff company and defendant Pantzer which mutually binds the parties and which falls perfectly within the parameters of plaintiff's action as proposed.

All this, however, is not to say that the Court finds liability in defendant Pantzer for the payment of the debt claimed by plaintiff: this is an issue which will have to be definitively determined after enquiry into the merits.

However, the Court cannot agree that defendant Pantzer is non-suited and consequently, will not be upholding his plea that he is not the proper defendant or that he is not answerable to plaintiff's claims.

Having considered;

Dolittle & Fishmore Limited's Plea

That on the merits of the claim, defendant company Dolittle & Fishmore Limited does not contest that it is the proper defendant; its only defence[20] is founded on the assertion that plaintiff would need to prove that it has effectively sold and delivered unto said company the products for which the invoices listed in statement of account Dok A were issued, and that the amount indicated in Dok B is indeed due.

The Court considers that given the statement of account (Dok. A) which clearly lists the invoices that were issued for the supply of products to defendant company on an account entitled "Dolittle & Fishmore", and given also that defendant company in its evidence[21] never even alleged that the products were not purchased by or delivered to it, the onus of proving that the debt of €10,556.51 is due, has been duly discharged by plaintiff company according to Law. After all, plaintiff company also exhibited the agreement styled "Credit Application Form", in virtue of which credit terms for the payment of supplies were granted to defendant company which, in turn, undertook to pay for all invoices for products supplied by the plaintiff company.

Consequently, the Court has no reservation in rejecting defendant company's plea in so far as the claim for payment of invoices for supplies made to said company, is concerned, and maintains that the sum of €10,566.51claimed by plaintiff company, which sum is comprised of those entries listed in the relative statement of account[22], apart from having been duly proven, is owed by defendant company. After all, it is evident from the statement of account exhibited as Dok. A that the invoices for products supplied to defendant company were <u>not</u> honoured within the 30-day credit period that, according to

[20] Third plea in the Reply dated 24th April 2018.
[21] Affidavit of Jan Pantzer and cross-examinations of the witnesses produced by plaintiff company.
[22] Vide Dok. A.

the Sales Manager of plaintiff company[23], was granted to the company in virtue of the Credit Application agreement.

Having considered;

That as far as the loan agreement is concerned (Dok. CSH1), the Court considers that no serious contestation of the balance claimed by plaintiff, was tendered by defendant company. The sum of €10,000 that, according to the said agreement, was loaned to defendant company, results also from the statement of the loan account Dok. B as having been paid into defendant company's account on the 24th April 2017. The entries of various repayments and postings result from the said statement and were not disputed by defendant company.

Although it does not result that as such, the company had defaulted on the repayment of the loan in the six-monthly instalments agreed to in clause 5 of Dok. CSH1, the Court observes that according to Clause 10 of the agreement, it was agreed that the plaintiff company reserved the right to cancel in its discretion the benefit of time granted for payment of the loan in terms of clause 5.

In any event, the Court is satisfied that there is sufficient evidence in the acts of the proceedings to show that this benefit was cancelled <u>after</u> the credit terms and conditions granted to the defendant company for payment of invoices for supplies, were not adhered to. Although Jan Pantzar asserts that in December 2017 Dolittle & Fishmore Limited was served with a garnishee order filed by plaintiff which prevented further payments from being made, no evidence was brought in support of this claim and moreover, the payments he claims to have effected during the month of November 2017, evidently by means of two cheques, were already not honoured in the same month of November, that is,

[23] Robert Galea.

prior to December 2017. This would result amply from the statement Dok. A[24]. Consequently, the Court after weighing all these factors, has no doubt that defendant company is liable for the payment of the entire balance of the loan.

It is therefore the Court's decision that defendant company is the debtor of plaintiff company in the sum of €3,662.92, due by way of the outstanding balance on the amount loaned as per agreement dated 1st April 2017, as would result from the statement of account Dok. B.

Jan Pantzer's Plea

Defendant Jan Pantzer pleads that plaintiff's claims in his regards are unfounded and cannot be acceded to.[25]

With reference to the sum claimed for products supplied to Dolittle & Fishmore Limited (Dok. A), as already pointed out, the Credit Application Form (Dok. CSH) is duly signed by defendant Jan Pantzar, who expressly accepted[26] to be bound by all conditions of the said agreement, "*personally and on behalf of the Re-Seller*" who, in the agreement Dok. CSH, is defined as Dolittle & Fishmore Limited. Although in his testimony, Jan Pantzar claims that the agreement reached with plaintiff company was in the sense that the responsibility for the payments due for the supply and delivery of products to defendant company, would be solely of said company, this statement is manifestly contradicted by the express terms of the agreement dated 4th April 2017 and by the personal capacity in which Jan Panzter undertook to accept these terms. After all, clause 10[27] of the said agreement signed by Jan Pantzer clearly stipulates that the directors of the company signing the agreement:

[24] Entries of 28th November 2017, fol. 3.
[25] Second plea in the Relpy dated 24th April 2018.
[26] Fol. 17.
[27] Fol. 15.

"*… bind themselves personally to the Company, which accepts, in solidum together with the private company, to the performance of all the obligations under these Terms and Conditions of Credit. In particular, and without prejudice to the generality of the above, they shall be personally liable, in solidum with the private company, for the repayment of all overdue payments and interest due to the Company under this agreement*."

This stipulation leaves no doubt in the Court's mind that Jan Pantzer is personally bound for the payment of any balance due on invoices for supplies sold and delivered to Dolittle & Fishmore Limited, that is in breach of the terms and conditions of the agreement Dok. CSH. Apart from the fact that at no point did Jan Panzter ever dispute the fact that he is a director of and that he was authorised, at least when the two agreements were concluded, to represent and bind Dolittle & Fishmore Limited, Robert Galea testified[28] that the plaintiff company had agreed to grant a 30-day credit period to defendant company for the repayment of the invoices for products supplied. Defendants never challenged that the credit period approved by plaintiff was of 30 days. Moreover, it is evident from the statement of account exhibited as Dok. A that the invoices for products supplied to defendant company were <u>not</u> honoured within the 30-day credit period granted in virtue of the Credit Application Form and consequently, the joint and several liablity of the director of the Re-Seller in terms of the aforementioned clause 10, came into effect.

It is moreover observed that although Jan Panzter alleged in his testimony that he did not agree that he would be personally liable for the amounts due for products supplied to Dolittle & Fishmore Limited, and asserted that the content of the agreements and the fact that he was binding himself in his personal capacity, was never explained to him, the Court cannot take this allegation seriously. The personal responsibility of the director of the debtor company (the Re-Seller) is not only illustrated in unequivocal terms in clause 10 of the agreement, but is also expressly stated **in bold print immediately above the signature** of director of debtor company on the said agreement. It is also

[28] Affidavit at fol. 27.

evident that the Credit Application Form (Dok. CSH) is concise and to the point without entering into excessive detail and small-print that would require specific elucidation for its substantial validity. After all, the entire terms and conditions of credit are specified in one single page which leaves no room for doubt about the requirements and consequences of the concession of credit terms.

In view of the above considerations, the Court has no doubt that Jan Pantzer must be deemed as having jointly contracted together with Dolittle & Fishmore Limited for the obligation of payment of the invoices issued to defendant company for products supplied to it, in the event that defendant company breached the credit terms granted in its favour in terms of Dok. CSH. As already established, these credit terms were indeed not honoured by defendant company.

The Court is also of the considered opinion that in this case, the obligation of payment of the overdue invoices has been jointly contracted by the defendants, and is also an indivisible debt in terms of Article 1111 of the Civil Code[29], such that each of the debtors is liable for the whole of the debt, even though the obligation might not have been contracted jointly and severally in terms of the credit agreement.

Above all however, it must be pointed out that the obligation for the payment of invoices for products supplied to debtor company is undoubtedly a commercial obligation[30] and consequently, in terms of Article 115 of Chapter 13 of the

[29] An obligation is indivisible if, although the thing or fact forming the subject-matter thereof is of its nature divisible, the manner in which such thing or fact has been considered in the obligation does not admit of a performance in part.

[30] Vide Article 5 of the Commercial Code which defines an "*act of trade*" as including "… *(c) any transaction relating to bills of exchange; … (e) any transaction relating to commercial partnerships or to shares in such partnerships; … (i) any transaction ancillary to or connected with any of the above acts*." Also Article 7, which provides that "*Every act of a trader shall be deemed to be an act of trade, unless from the act itself it appears that it is extraneous to trade*."

Laws of Malta, the co-debtors are, saving any stipulation to the contrary, presumed to be jointly and severally liable and thus, each of them may be compelled to discharge the whole debt.

Having considered;

That the position of Jan Panztar in relation to the loan agreement contracted with the plaintiff company, is somewhat less complex given that, as already pointed out, the said defendant appeared on the agreement and expressly and unequivocally bound himself in his personal capacity and on behalf of Dolittle & Fishmore Limited jointly and severally. Notwithstanding his testimony under cross-examination, Jan Pantzer testified in his Affidavit that although he did not agree with the stipulation in the loan agreement that he would be jointly and severally liable with Dolittle & Fishmore Limited for the repayment of the loan granted to the said company, "*he opted to go forward*." Defendant therefore, does not effectively dispute his personal and joint and several responsibility to pay the loan.

In view of these considerations, the Court cannot uphold Jan Panzter's plea that he is not responsible for the payment of the outstanding amount due by the defendant company on the loan agreement. As already established, the balance in the sum of €3,662.51 has been not only duly proven to be due from the documents exhibited by plaintiff in support of the debt, but has also been ineffectively contested by defendant.

For the above reasons, the Court cannot but conclude that both defendants jointly contracted in favour of plaintiffs for a loan to be granted to Dolittle & Fishmore Limited in the sum of €10,000, and for the payment of outstanding invoices for products supplied to said company. Consequently both amounts claimed by plaintiff, which have been duly proven to the Court's satisafaction, are also due by the defendants *in solidum*.

The Court cannot, therefore, uphold defendants' second and third plea and shall be rejecting them.

Decide

The Court therefore, for all the above reasons, decides and rules that:-

It rejects the first preliminary plea of the defendant Jan Pantzar and declares that said defendant is the proper defendant to plaintiff's action;

It rejects the second plea of defendant Jan Pantzar and rejects also the third plea of defendant company Dolittle & Fishmore Limited;

It consequently upholds plaintiff's demands and condemns defendants Jan Pantzar and Dolittle & Fishmore Limited *in solidum* to pay unto plaintiff company the global sum of fourteen thousand two hundred and twenty nine Euro and forty three cents (€14,229.43) for the reasons given in the principal Application, with interest to run as from the date indicated in the said principal Application, and with costs to be borne by the defendants also *in solidum*.

Read and delivered

Dr. Rachel Montebello
Magistrate

Graziella Attard
Deputy Registrar