MALTA

Administrative Review Tribunal
Magistrate
Dr. Gabriella Vella B.A., LL.D.

Application No. 266/11VG

Roswitha Steer Bonnici

Vs

Commissioner for Revenue

Today, 3rd July 2020

The Tribunal,

After having taken cognisance of the Application filed by Roswitha Steer Bonnici on the 29th November 2011 by means of which she requests the Tribunal to cancel and revoke the Assessment bearing Claim No. IV101638 raised against her by the Commissioner for Revenue, including the additional tax and interest imposed therein, with costs against the Commissioner for Revenue;

After having taken cognisance of the documents attached to the Application marked Dok. "RSB1" to Dok. "RSB4" at folios 4 to 10 of the records of the proceedings;

After having taken cognisance of the Reply by the Commissioner of Revenue by means of which he objects to the appeal lodged by the Applicant from the Assessment bearing Claim No. IV101638 raised against her and requests that the same be rejected, with costs against the Applicant, whilst the said Assessment be confirmed, since: (i) the Assessment is not time-barred; and (ii) the decision by the Commissioner and his subsequent tax assessment are just and have been raised in terms of Law;

After having taken cognisance of the Decree dated 14th February 2012, whereby the Tribunal ordered that in terms of Act XXII of 2011, which came into force by virtue of Legal Notice 16 of 2012, the Commissioner for Inland Revenue be designated as Commissioner for Revenue in the *occhio* of the Application and where necessary in the records of the proceedings;

After having heard testimony by the Applicant during the sitting held on the 14th February 2012[1] and after having taken cognisance of the documents submitted by her marked Doc. "RB1" and Doc. "RB2" at folios 29 to 33 of the records of the proceedings,

[1] Folios 34 to 37 of the records of the proceedings.

after taking cognisance of the document submitted by the Commissioner for Revenue by means of a Note filed on the 23rd May 2012 at folios 42 and 43 of the records of the proceedings, after having heard testimony by Architect Daniel Grima during the sittings held on the 19th July 2012[2], 20th November 2012[3], 12th May 2014[4] and the 2nd June 2014[5], and after taking cognisance of the documents submitted by him marked Doc. "DG" at folios 53 to 55 of the records of the proceedings and Doc. "DG1" at folios 77 to 81 of the records of the proceedings, after taking cognisance of the documents marked Dok. "CTD1" to Dok. "CTD6" submitted by the Commissioner for Revenue by means of a Note filed on the 25th November 2014 at folios 87 to 97 of the records of the proceedings, after hearing testimony by Architect Mario Cassar during the sitting held on the 12th February 2015[6] and after taking cognisance of the documents submitted by the Applicant by means of a Note filed on the 16th June 2015 at folios 112 to 118 of the records of the proceedings;

After having taken cognisance of the Report by the Technical Assistant to the Tribunal, Architect Elena Borg Costanzi, at folios 120 to 125 of the records of the proceedings;

After having taken cognisance of the Note of Submissions by the Commissioner for Revenue at folios 138 to 141 of the proceedings and of the Note of Submissions by the Applicant at folios 145 and 146 of the records of the proceedings;

After having taken cognisance of all the records of the proceedings;

Considers:

By virtue of a deed in the records of Notary Tonio Spiteri dated 14th February 2007, the Applicant acquired: *the elevated ground floor flat internally numbered three (3) forming part of an unnumbered block of flats and underlying garage, which block is named Chalto, in Triq J. Quintinius in Qawra, in the limits of Saint Paul's Bay, being bounded the whole block from the west by the street, from the south by plot numbered thirty one (31) of the land called tal-Bajda and on the north by plot numbered twenty nine (29) of the same said land, the property of the Prebenda attached to the Parochial Church of Hal Safi or its successors in title, as subject to the annual and temporary ground rent of ten Malta Liri (Lm10) for the remaining term from one hundred and fifty (150) years commencing on the twenty first day of November of the year one thousand nine hundred and eighty (1980) on the basis of the increase in minimum wage standard on the date of revision as compared to that applicable at the time of the original concession which was twenty two Malta Liri and eighty eight cents (Lm22.88) per week, otherwise free and unencumbered with all its rights and appurtenances, having also in common with the other flats in the same block the right of use of all the common parts, drains and drainage system, but excluding the roof,* for the price of Lm22,000, equivalent to €51,246.21[7].

This transfer of property was communicated to the Commissioner of Revenue on the 27th March 2007[8], who then proceeded to appoint Architect Mario Cassar for the purpose of giving a valuation of the true market value of the property acquired by the Applicant as

[2] Folios 48 to 51 of the records of the proceedings.
[3] Folios 56 to 57 of the records of the proceedings.
[4] Folios 69 to 72 of the records of the proceedings.
[5] Folios 82 to 84 of the records of the proceedings.
[6] Folios 105 to 110 of the records of the proceedings.
[7] Dok. "CTD1" at folios 88 to 90 of the records of the proceedings.
[8] Dok. "CTD1" at folios 88 to 90 of the records of the proceedings.

at the date of transfer. Architect Cassar valued the property acquired by the Applicant at Lm46,000[9], equivalent to €107,151.18, and since the purchase price as declared was less than 85% of the Valuation by Architect Cassar the Commissioner proceeded to raise an Assessment bearing Claim No. IV1016378 against the Applicant whereby he requested payment of the sum of Lm1,080, equivalent to €2,515.72, representing duty due on the additional chargeable value of Lm24,000, equivalent to €55,904.96, together with the further sum of Lm1,080, equivalent to €2,515.72, representing additional duty[10].

The Applicant objected to the Assessment raised against her by the Commissioner and when her objection was brought to the attention of Architect Mario Cassar he observed that *according to the Notary's description, this is an outright sale. Orig. Val. confirmed*[11]. Following the stand taken by Architect Cassar towards the objection submitted by the Applicant, the Commissioner, by virtue of a decision dated 18th October 2011, rejected the Applicant's objection and confirmed that the market value of the property acquired by the Applicant at the time of transfer was €107,151.18, equivalent to Lm46,000, and also confirmed that she is liable to the payment of the sum of €2,515.72, equivalent to Lm1,080, by way of duty and to the further sum of €2,515.72, equivalent to Lm1,080, representing additional duty[12]. On the 18th October 2011 the Commissioner for Revenue once again raised the Assessment bearing Claim No. IV101638 against the applicant requesting payment of the sum of €2,515.72 representing duty on the additional taxable value of €55,904.96 and the payment of the further sum of €2,515.72 representing additional duty, together amounting to **€5,031.44**[13].

The Applicant felt aggrieved by the decision of the Commissioner of Revenue dated 18th October 2011 and by the Assessment bearing Claim No. IV101638 raised against her and lodged an appeal from them before the Tribunal. The Applicant requests that the Tribunal cancel and revoke the Assessment bearing Claim No. IV101638 raised against her by the Commissioner for Revenue, including the additional tax and interest imposed therein. She founds her appeal on the following grounds of appeal: (1) the Assessment and the Notice of Refusal issued by the Commissioner were not issued properly, reasonably and fairly; (2) the Assessment is time barred; (3) she really purchased the property forming the merits of the Assessment for the declared price of €51,246.21, which is the real market price of the property, and she had paid that amount to the vendor; (4) the computations by the Commissioner of Revenue are totally incorrect and they are founded on wrong considerations; and (5) the additional duty imposed is not proportionate to the endangered duty.

The Commissioner for Revenue objects to the appeal lodged by the Applicant from the Assessment bearing Claim No. IV101638 raised against her and requests that the same be rejected, with costs against the Applicant, whilst the said Assessment be confirmed, since: (i) the Assessment is not time-barred; and (ii) the decision by the Commissioner and his subsequent tax assessment are just and have been issued in terms of Law.

The Tribunal is of the opinion that the first issue which must be determined is that raised by the Applicant in her second ground for appeal, that is the ground that the Assessment raised against her is time barred.

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[9] Dok. "CTD2" at folios 91 of the records of the proceedings.
[10] Dok. "CTD3" at folios 92 and 93 of the records of the proceedings.
[11] Dok. "CTD6" at folios 97 of the records of the proceedings.
[12] Dok. "RSB2" at folios 6 to 8 of the records of the proceedings.
[13] Dok. "RSB1" at folios 4 and 5 of the records of the proceedings.

In terms of Section 52(1) of Chapter 364 of the Laws of Malta as applicable in 2007, the *punctum temporis* pertinent to these proceedings, *where the Commissioner is satisfied that the price or consideration, or the value of an immovable as declared in a deed of transfer or in a declaration causa mortis made in accordance with section 33 of this Act, is less than eighty five per centum of the real value or consideration as established by the Commissioner, or is less than the consideration that results to the Commissioner to have been actually paid on the deed, or where a declaration that ought to be made in terms of section 33 of this Act has not been made, he shall proceed to determine by order in writing the amount of duty chargeable on the difference between the value or consideration declared in the deed and the value or consideration of the immovable as established or as results to the Commissioner to have been actually paid or the duty that would have been payable on a declaration, as the case may be and shall raise an assessment accordingly…* Sub-section (5) of the said Section of the Law as applicable in 2007 provided that *saving the other provisions of this section, the Commissioner may raise an assessment as provided in this section, at any time, within one year from the day of the receipt by the Commissioner of the notice referred to in Section 51 of this Act…,* that is the Notice by means of which notice is given of the transfer of property to the Commissioner for Revenue.

From the said provisions of the Law, as applicable in 2007, it clearly results that in the case of a transfer of property *inter vivos*, the type of transfer forming the merits of these proceedings, an assessment by the Commissioner of Revenue with reference to the said transfer could be raised against and served on the taxpayer within one year from when the transfer was notified to the Commissioner. In the present case the Notice referred to in Section 51 of Chapter 364 of the Laws of Malta was submitted with the Department of Inland Revenue on the **27th March 2007**[14] and the Assessment bearing Claim No. IV101638 was originally raised against the Applicant on the **7th November 2007**[15], and from the letter of objection dated 9th October 2008[16], it transpires that by the **20th November 2007** the Applicant was served with the said Assessment since on that date she claims to have lodged her first objection from the Assessment. This therefore means that the Assessment against the Applicant was raised and served on her within the statutory period of one year stipulated under Section 52(5) of Chapter 364 of the Laws of Malta.

Section 56(3) of Chapter 364 of the Laws of Malta as applicable to date following an amendment introduced by virtue of Act IV of 2011, provides that in the eventuality of an objection by the taxpayer to an assessment raised against him, *if no agreement is reached as provided in sub-article (2), the Commissioner shall determine the duty by order in writing and serve on the person objecting a notice of his refusal to amend the assessment as desired by such person within three years from the date or receipt of the aforementioned notice of objection*. Prior to the said amendment subsection (3) of Section 56 of Chapter 364 of the Laws of Malta simply provided that: *if no agreement is reached as provided in sub-article (2), the Commissioner shall determine the duty by order in writing and serve on the person objecting a notice of his refusal to amend the assessment as desired by such person*. The amendment introduced in 2011 clearly refers to objections from assessments submitted after the coming into force of the same and not to objections from assessment submitted before such date. This therefore means that

[14] Dok. "CTD1" at folios 88 to 90 of the records of the proceedings.
[15] Folios 92 and 93 of the records of the proceedings.
[16] Dok. "CTD4" at folios 94 of the records of the proceedings.

in the present case the Commissioner of Revenue was not bound by any statutory period, least of all a statutory period of three years, within which to issue and serve a Refusal of Objection on the Applicant.

In the light of the above, it clearly results that the Assessment bearing Claim No. IV 101638 raised against the Applicant is not time-barred.

Having dealt with this preliminary issue raised by the Applicant, the Tribunal will now proceed to deal with the merits of the appeal.

From the records of the proceedings it clearly transpires that the Applicant is claiming that the evaluation by Architect Mario Cassar of the market value of the premises purchased by her at date of transfer is excessive.

In support of her claim the Applicant[17] declares that: *I agree that these proceedings refer to the apartment that I am currently living in which is at Number 4B, Chalton Flats, Flat Number 3, J. Quintinos Street, St. Paul's Bay. The apartment is my personal property. I had purchased this property on the 14th of February 2007. In reality this was a contract of exchange in the sense that previously I lived in flat number 1 in the same block of apartments and another person being Tony Sammut … owned flat number 3. Who reached a mutual agreement whereby we exchanged the flats and I gave Tony Sammut an additional sum together with the flat of Lm4500. Mr. Sammut was interested in purchasing my flat because he wanted to continue developing the property further. … After sometime I received a notification from the Inland Revenue whereby I was told that the value declared in the deed was not the real value and that therefore I was being requested to pay additional tax. In reality I received two requests for payment from the commissioner of Inland Revenue pertaining to flat number 3. I did pay the first request, however the second one I did not pay and I went with it to my lawyer. I'm being asked by the Tribunal whether the 2 bills were for the same value, however I state that the second bill was much higher than the first one. I confirm under oath that I did exchange my apartment by means of the appropriate deed with apartment number 3 for the additional payment of Lm4500 to the purchaser of flat 1. Last year I found out from a number of neighbours who are trying to sell apartments within the same block, in fact 2 apartments in the same block, that they cannot sell the same because the apartments have not been built according to the plans issued by MEPA essentially therefore I found out that my apartment in reality is not sellable. In the two flats I'm referring to are flat number 5, which is owned by spouses Robinson, and flat number 9, however at the moment I can't remember who the owner is. When I got to know about this issue I immediately contacted my lawyer to be able to safeguard my interest. I also requested the issue of a compliance certificate from MEPA and I asked an architect to inspect the apartment so that he can draw up a formal report. When I applied for this compliance certificate with MEPA, no official from MEPA came to inspect the apartment. Some time later however I received this Compliance Certificate. The architect I spoke to for the purposes of drawing up a report about my apartment is architect Daniel Grima and as a matter of fact he did draw up the report. … prior to applying for the compliance certificate with MEPA, I had spoken to the architect who was responsible for the development of the block, who was architect Michael Falzon. When I went to his office, I did not manage to speak to him personally. However some person employed with him handed over the drawings of the apartment*

[17] Testimony given during the sitting held on the 14th February 2012, folios 34 to 37 of the records of the proceedings.

to me. However I was not satisfied with the information I was given by architect Falzon since the situation regarding the apartment was that it was not in conformity with the MEPA plans and it was at that point that I contacted architect Daniel Grima.

The Report by Architect Daniel Grima to which the Applicant refers, and duly confirmed under oath by the said Architect[18], is exhibited as Doc. "RB1" at folios 29 and 30 of the records of the proceedings. In the said Report, dated 30th January 2012, Architect Grima certifies that: *with reference to property located at 46 Charlton, Flat 3, Triq J. Quintinus, Qawra* (subsequently confirmed by him as being the property owned by the Applicant) *… I have been requested by Mr. Roswitha Steer Bonnici (ID No. 0134797M) to inspect the property referred to above in order to ensure its conformity with the approved MEPA permit PA 5482/00 issued on the 8th November 2001. A visit to the property in question was performed on the 28th January 2012. On comparing the dimensions of the existing rooms of the property of the property under review with those measured from the approved MEPA drawings issued by way of PA5482/00, it was noticed that: (1) the existing internal yard is 1.3m in width instead of 1.8m and 4.7m in length instead of 5.8m - thus not conforming to Sanitary Regulations; (2) planning-wise the bathroom, its adjacent bedroom and the kitchen/dining do not tally with what has been approved by MEPA at that time; (3) discrepancies have also been observed in the backyard, wherein the size varies from that which was submitted and approved by MEPA at that time; (4) the floor to ceiling height is 2.61m and not 2.75m as per Sanitary Regulations. The above variations indicated that the property in caption has not been built according to permit number PA5482/00 and as such does not conform to current Sanitary Regulations.*

Apart from the said Report, Architect Daniel Grima also drew up a Valuation Report dated 16th June 2012, wherein he valued the premises purchased by the Applicant on the 14th February 2007 at a value of €45,000, equivalent to Lm19,318.50, clarifying that *had the property in question been fully in conformity with the approved MEPA plans, the estimated market value of the freehold interest would have been €100,000 (one hundred thousand Euros)*[19]. During his testimony given during the sitting held on the 2nd June 2014[20], Architect Daniel Grima explained the basis of his valuation as follows: *back in 2012 if I am not mistaken, I was asked to pay a visit and do a certain inspection on the property in question and I noticed that the floor to ceiling height if I am not mistaken the backyard and the internal yard were not in accordance with sanitary rules and regulations. As such at that time there were no CDBs even concessions what I mean wherein MEPA may grant if it is according to some policies, may grant the permit even if the floor to ceiling height is not according to standard or the internal yard or back yard and obviously I did 2 valuations: 1. As in my opinion it would have cost with these illegalities because if you don't have a minimum of 2.75 meters floor to ciling height inhabitable rooms or internal yard or the back yard are not according to sanitary rules and regulations, the property is uninhabitable. As such I valuated the property like a store or something just an unhabitable property and even gave my opinion if it was according to specs how much it would have cost, its valuation.*

However from the said testimony it also transpires that the valuation by Architect Grima is at the date of the Report, that is at 16th June 2012 and not at date of transfer, which is the *punctum temporis* at which the property is to be valued for the purposes of the Duty

[18] Testimony given during the sitting held on the 19th July 2012, folios 48 to 51 of the records of the proceedings.
[19] Dok. "DG1" at folios 77 to 81 of the records of the proceedings.
[20] Folios 82 to 84 of the records of the proceedings.

on Documents and Transfers Act, Chapter 364 of the Laws of Malta[21]. On being asked whether he could give a valuation of the market value of the property purchased by the Applicant at the time of transfer, that is 2007, Architect Grima replied *I cannot just give a quote like that but obviously if I am not mistaken in 2009 there was a drop in the price of the property and even in 2013 the property was not so good but due in 2007 I am not sure about that I have to check.* On being asked *would you be in a position to evaluate?* Architect Grima replied *I don't have records because what I can work is either comparative method, I don't have records in 2007, but what I can say is obviously it was not more than what I indicated in 2012, it maybe a little bit less because there is only a lapse of about 5 years in between this and the report. It wouldn't have varied a lot.* In fact, Architect Grima not only gave a valuation of the property purchased by the Applicant as at 2012 but he wasn't in a position to give a valuation of the said property at date of transfer, that is 2007.

The Commissioner for Revenue countered evidence put forth by the Applicant in so far as concerns the market value of the property purchased by her in 2007 as at the date of transfer, by summoning as his main witness Architect Mario Cassar[22] who had been engaged by him to give a valuation of the market value of the property in question at date of transfer. Upon being asked how he established that the market value of the property in question at date of transfer was Lm46,000, equivalent to €107,151.17, Architect Cassar explained *well, after carrying out an onsite inspection and taking into consideration the location and the type of property and its floor area, which I don't remember, I actually arrived at that market value. That's the normal procedure I used to carry out.* Asked whether he could explain further, Architect Cassar replied *there is nothing to explain in my opinion because if I took that into consideration* - that is that the sale in question was an outright sale - *perhaps somebody was insinuating that it was not an outright sale. According to his description it was on a temporary emphyteusis for the remaining 150 years, so the market value should be considered at that stage. If the temporary emphyteusis was for a shorter period, let's say for ten or twenty years, it would have been a different story.* On being asked about the method he uses to value property at a particular point in time, Architect Cassar replied *normally with a laser measure I measure all the rooms to note the superficiality of the property, I take note of the location and the type of property and during that period … I used to do hundreds of these valuations so I had some idea regarding the actual values of properties in those particular areas and came up with this market value which I confirmed. I don't remember the particulars but after seven years.* On being asked *do you remember if you used to go into the issue of MEPA permits?* Architect Cassar replied *no if it was an airspace yes but if it was a property no. Perhaps there were instances were there used to be dilapidated properties.* On being asked by the Tribunal *but if the property is not dilapidated property and it's a built property, would you check for purposes of your valuation whether that property was actually built according to permit?* Architect Cassar replied *no, it was a property that it was on the market and I didn't think that if there is something totally flagrant, normally there will be some sort of additions to it and I wouldn't consider those, I would know that for example a backyard would have been built, so I wouldn't consider that part an illegal part of the property, so the worst case scenario that could get demolished and the property would actually then be according to sanitary laws.*

[21] Regulation 3(1) of Subsidiary Legislation 364.06.
[22] Testimony given during the sitting held on the 12th February 2015, folios 105 to 109 of the records of the proceedings.

Under cross examination upon being asked *if I tell you that this property in particular is non-compliant with the MEPA permits or any other permits, including sanitary regulations, would this effect your valuation?* Architect Cassar replied *partly, as I do not know the particular of this property but I would know as an architect that if there was an internal yard that was not according to sanitary laws, I would know immediately*. On being asked whether he would take such an irregularity into consideration for the purposes of his valuation, Architect Cassar replied *indirectly yes you would take it but I would value the property as a whole what I see during my site inspection*. On being asked by the Tribunal *but if the property was fully compliant as opposed to a property which is not fully compliant, would the valuations be the same or there would be a difference just the same?* Architect Cassar answered *at that time we didn't have any information from the notary regarding any conditions with the sale whether there was some sort of discount because there was a non-compliant property*. On being asked *so you are saying that a property which is fully compliant and a property which is not fully compliant, have the same value?* Architect Cassar replied *no I didn't say that, I take that into consideration when I'm effecting the site inspection and I would know probably that there would have been other properties in the area built in the same manner which I value at the same price and no objections were lodged. So in my mind I build up a database and not just in my mind as at one stage I actually used to have a database at one time*. On being asked *if I tell you that this property is not fully compliant and my client cannot sell it, does this affect your valuation?* Architect Cassar replied *but I am not interested in subsequent contracts, I was involved in this particular contract at that stage in time*. On being pressed *at that stage in time it was not fully compliant,* Architect Cassar replied *but there was a contract of sale and that's why the Inland Revenue got involved*. On being shown the Report by Architect Daniel Grima which identifies the irregularities in the property purchased by the Applicant, Architect Cassar reacted by saying *this is a valuation by an independent architect Perit Daniel Grima. … But even if this was presented I would have some to the same conclusion. … Some of the properties as Perit Grima refers did not have the 2.75 internal height in a lot of them so what's the market value? I should say that fifty percent of the property that was built ten to fifteen years ago was not compliant in this sense. …from what I see there, I mean I don't remember as I do not have a photographic memory, but even from what I see from this document, I am under the impression that actually it can be a sanitary endorsement. … That's my impression at face value of this thing, so even if this was presented to me I wouldn't actually have taken any notice of it. My scope of works were very specific and I actually carried out those and only those. It's irrelevant to present three or four valuations and in fact there is no valuation on this document, just a description*.

After considering all the evidence put forth by the parties to the proceedings the Tribunal deems that neither one of them managed to satisfactorily prove her/his case.

The Applicant claims that she purchased the apartment No.3, Chalton, J. Quintinus Street, San Paul's Bay, by exchanging her former apartment, apartment No. 1, within the same block with this apartment and paying by way of consideration an additional Lm4,500, equivalent to €10,482.18, to the value of apartment No.1. This transfer however does not result from the records of the proceedings. Even though Applicant did not submit the actual deed of transfer the Tribunal can still refer to the Notice of Transfer to the Commissioner for Revenue submitted by Notary Tonio Spiteri, exhibited as document Dok. "CTD1" at folios 88 to 90 of the records of the proceedings, wherein apart from giving a description of the property that has been transferred the Notary indicates

the nature of the transfer as *loan (HSBC) and Sale*. Nowhere does the Notary indicate the transfer as being an exchange/*permuta* as alleged by the Applicant.

Furthmore, the Applicant did not satisfactorily prove that, contrary to the valuation by Architect Mario Cassar, the price declared in the deed of sale reflects the market value of the property at date of transfer. Even though she asked Architect Daniel Grima to value her property, his valuation is at June 2012 and not February 2007 and he was not in a position to give a value of the property at 2007 which, as already stated above, is the point in time which is pertinent for the purposes of duty in terms of the Duty on Documents and Transfers Act.

Notwithstanding the above, this does not mean that the Tribunal must automatically accept the valuation by Architect Mario Cassar as truly reflecting the market value of the property purchased by the Applicant at date of transfer, particularly if, as is the case in the present case, the Tribunal is not at all convinced that Architect Cassar duly took into consideration all the elements which effect the value of the property in question.

Even though Architect Cassar declared that, as is normal for him to do when inspecting properties, he measured the property in question and actually took into consideration such measurements for the purposes of his valuation, the Tribunal very much doubts that he did so since it clearly results that the said Architect was not aware of the fact that the internal yard and the backyard of the apartment are smaller than is allowed by Sanitary Laws and that the internal height of the apartment is also smaller than is allowed by Sanitary Laws. Furthermore, the Tribunal finds it completely inexplicable how Architect Cassar can legitimately argue that had he encountered or been made aware of such irregularities, the same wouldn't have had any bearing on his valuation of the property. There should be absolutely no doubt that the value of a property which conforms to permits and sanitary laws is very different from its value should it be not so in conformity with permits and sanitary laws.

That the valuation by Architect Cassar is incorrect and in the circumstances excessive, results from the Report by the Technical Assistant of the Tribunal, Architect Elena Borg Costanzi[23], who valued the property acquired by the Applicant at date of transfer at a value of €95,000, equivalent to Lm40,783.50. Architect Borg Costanzi founds her valuation on the following considerations: *the property forms part of a residential development built over garages and is situated at elevated ground floor level, having an entrance through the modest common parts and a very narrow and long corridor and split level. The flat does not have a frontage on the street. The flat is planned out in having a combined kitchen, sitting room and dining room upon entering, with a narrow corridor that leads to two bedrooms and a bathroom, as well as a small store. One bedroom receives light from a common internal shaft, which has been built smaller than what is allowed by Sanitary Laws, whereas the other bedroom receives light from the backyard which is over 10 feet deep but is still shorter than what is allowed for a building built over four floors and more. The internal height throughout the apartment is also less than allowed by Sanitary Laws. The permit relevant to the said block bears reference PA 5482/00, whereby the bedroom that receives light from the backyard was actually split in two, therefore approving a three-bedroomed flat. The finishes throughout the apartment are modest. The flat is subject to a sub-ground rent of Euro 23.93, which is annual and temporary and expires 150 years from 1980. Having regard*

[23] Folios 120 to 125 of the records of the proceedings.

to the above, especially to the numerous infringements to Sanitary Law, it is in my opinion that the market value of the flat in 2007 stands at Euro 95,000 (ninety-five thousand euro).

On the basis of such considerations and in the light of the completely unsatisfactory evidence put forth by both parties to the proceedings, the Tribunal deems that and finds no reason why is should not consider the value established by Architect Borg Costanzi effectively reflects the market value of the property purchased by the Applicant at date of transfer.

This conclusion inevitably leads to a variation, or more appropriately to a reduction of the Assessment bearing Claim No. IV101638 raised against the Applicant, a reduction which the Tribunal is statutorily enabled to affect in terms of Section 58(4) of Chapter 364 of the Laws of Malta following the principles set out in Section 52(1) of Chapter 364 of the Laws of Malta.

Following the principles set out in said Section 52(1) of Chapter 364 of the Laws of Malta, namely the application of the 85% threshold between the declared purchase price and the price established by the Commissioner - at this stage by the Tribunal via its Technical Assistant, it transpires that price of the apartment as declared in the deed of sale in the records of Notary Tonio Spiteri dated 14th February 2007, that is Lm22,000, equivalent to €51,246.21, is less than 85% of the value established by the Technical Assistant of the Tribunal, that is €95,000. In fact, 85% of €95,000 amounts to €80,750. This therefore means that the Applicant must pay duty on the taxable additional value of €43,743.79, which duty amounts to **€1,908.17**[24].

In terms of Section 52(4) of Chapter 364 of the Laws of Malta as applicable in 2007, *where the Commissioner has determined that the value of an immovable as declared in a deed of transfer or in a declaration of a transfer causa mortis is less than eighty five per centum of the real value or consideration as provided in subarticle (1) or where in the opinion of the Commissioner the deed of transfer or the deed of declaration made in accordance with article 33 does not reflect the true conditions of the transfer, the transferor in a transfer inter vivos and the transferee shall be liable to pay an additional duty equivalent to the amount of duty assessed by the Commissioner as aforesaid.* Since the purchase price as declared in the deed of sale is less than 85% of the value established by the Technical Assistant of the Tribunal, the Applicant is also subject to the payment of additional duty equivalent to the amount of duty assessed, that is she is subject to additional duty amounting to **€1,908.17**.

In view of all the above, it follows that the Applicant's request for the revocation and cancellation *in toto* of the Assessment bearing Claim No. IV101638 raised against her cannot be upheld however, in terms of Section 58(4) of Chapter 364 of the Laws of Malta, the said Assessment is to be reduced by order of the Tribunal as follows: the additional taxable value is to be reduced from €55,904.96 to €43,743.79 and consequently the duty

[24] In terms of Section 32(4) of Chapter 364 of the Laws of Malta as applicable in 2007, the first €69,881.20 (Lm30,000) are taxed at 3.5% thus giving a duty due of €2,445.84. The balance of €25,118.80 (€95,000-€69,881.20) is taxed at 5% thus giving a duty of €1,255.94. The duty still to be paid amounts to €3,701.78 (€2,445.84 + €1,225.94) - €1,793.61 (Lm770 paid on the date of deed) =

due is to be reduced from €2,515.72 to €1,908.17 and the additional duty due is to be reduced from €2,515.72 to €1,908.17.

For the above-mentioned reasons the Tribunal rejects the Applicant's request for the revocation and cancellation *in toto* of the Assessment bearing Claim No. IV101638 raised against her however, in terms of Section 58(4) of Chapter 364 of the Laws of Malta, orders that the said Assessment be reduced as follows: the additional taxable value be reduced from €55,904.96 to €43,743.79 and consequently the duty due be reduced from €2,515.72 to €1,908.17. The additional duty too is to be reduced from €2,515.72 to €1,908.17.

In the particular circumstances of this case costs are to be borne equally between the Applicant and the Commissioner for Revenue.

MAGISTRATE

DEPUTY REGISTRAR