



MALTA
Court of Magistrates (Malta)
Magistrate
Dr. Gabriella Vella B.A., LL.D.

Application No. 250/2020VG

In the records of the Garnishee Order No. 1654/2020 in the names:

Orazio Petralia

Vs

Nadezhda Dimitrova

The Court,

Considered the Application filed by Nadezhda Dimitrova on the 16th December 2020, by means of which she requests that in view of her financial situation following the issue against her of the precautionary Garnishee Order No. 1654/2020 in the names “Orazio Petralia v. Nadezhda Dimitrova”, the Court revokes, *in toto* or *in parte*, the said precautionary Garnishee Order so that her current unreasonable financial situation be adequately addressed;

Considered the document attached with the Application filed on the 16th December 2020 at folio 3 of the records of the proceedings;

Considered the Reply by Orazio Petralia by means of which he opposes the request put forth by Nadezhda Dimitrova and considered the documents attached with the said Reply marked as Dok. “A” to Dok. “E”;

Considered the records of the precautionary Garnishee Order No. 1654/2020 in the names “Orazio Petralia v. Nadezhda Dimitrova” attached to the records of these proceedings;

Heard the testimony by Nadezhda Dimitrova given during the sitting held on the 2nd February 2021 and considered the document submitted by her marked as Doc. “ND”;

Considered submissions put forth by the parties;

Considers:

On the 23rd November 2020, Orazio Petralia (hereinafter referred to as the Respondent), together with and on the basis of a judicial letter in terms of Section 166A of Chapter 12 of the Laws of Malta No.2715/2020 filed against Nadezhda Dimitrova (hereinafter referred to as the Applicant), obtained the issue of a precautionary Garnishee Order against the said Applicant bearing No. 1654/2020 securing the sum of €4,082 representing the balance due from a larger sum in terms of a private writing dated 5th July 2020. The said precautionary Garnishee Order has been served on the following, as garnishees: APS Bank p.l.c., Bank of Valletta p.l.c., HSBC Bank Malta p.l.c., Lombard Bank Ltd., BNF Bank Malta p.l.c., Transport Malta and IZI Interactive Limited.

By means of the present proceedings the Applicant is requesting the revocation, *in toto* or *in parte*, of the precautionary Garnishee Order No. 1654/2020 on the grounds that following the issue of the precautionary Garnishee Order against her she is only receiving the sum of €700 from her salary, the balance being affected by the said Garnishee Order, and after paying her monthly rent amounting to €600 she is left with the sum of €100 for her personal needs and maintenance, a situation which she describes as untenable. The Applicant contends that if the precautionary Garnishee Order No. 1654/2020 remains in force, her livelihood, even in so far as concerns her place of residence, is and will be seriously endangered.

The Applicant is of the view that her current financial circumstances are such that warrant the revocation of the precautionary Garnishee Order No. 1654/2020 in terms of Section 836(1)(f) [and not Section 826(1)(f) as erroneously indicated in the Application] of Chapter 12 of the Laws of Malta.

Section 836(1)(f) of Chapter 12 of the Laws of Malta provides that: *Without prejudice to any other right under this or any other law, the person against whom any precautionary act has been issued, may make an application to the court issuing the precautionary act, or, if a cause has been instituted, may make an application to the court hearing such cause, praying that the precautionary act be revoked, either totally or partially, on any of the following grounds: ... (f) if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.* The Applicant is emphasising the aspect that ***in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part.***

It is an established principle at law that *l-interpretazzjoni korretta ta' l-Artikolu 836(1)(f) tal-Kap.12 teħtieġ illi jintwera li tkun tbiddlet xi ċirkostanza wara l-ħruġ tal-Mandat li minħabba fiha ma jkunx xieraq li l-istess Mandat jibqa fis-seħħ in toto jew in parti. Din it-tifsira toħroġ mill-kliem "jinżamm" u "aktar meħtieġ" li jinsabu fl-imsemmija disposizzjoni liema termini t-tnejn jimplikaw li dak li qabel kien jiġġustifika l-ħruġ u ż-żamma fis-seħħ tal-Mandat issa m'għadux il-każ. Sabiex issir din l-analiżi wieħed irid jistabilixxi jekk mid-data tal-ħruġ tal-Mandat għadhomx jissussistu l-kundizzjonijiet għall-ħruġ tal-Mandat. Issa, il-ħtiġijiet tal-ligi proċedurali għall-ħruġ ta' mandat kawtelatorju huma li l-perunsa li titlob il-ħruġ tal-Mandat: (a) jkollha pretensjoni ta' dritt kontra l-persuna li dwarha*

*jinħareġ il-Mandat; (b) li ssir kawża li fiha tiġi mistħarrġa sewwasew dik il-pretensjoni ta' dritt; (c) li l-Mandat irid ikun iħares ir-rekwiziti mitluba mill-liġi dwar il-ħruġ tiegħu; u (d) li tali Mandat jinħareġ u jiġi esegwit taħt ir-responsabilità tal-persuna li tkun talbitu*¹.

The reason given by the Applicant as the basis for her request for the revocation of the precautionary Garnishee Order No. 1654/2020, does not fall under any one of the elements of Section 836(1)(f) of Chapter 12 of the Laws of Malta as a ground for the revocation of a precautionary warrant and therefore the Court deems that it cannot go ahead and order the revocation of the said precautionary Garnishee Order on the basis of the mentioned provision of the law.

Even though the Applicant refers to a decree delivered *in camera* by the Civil Court First Hall on the 14th April 2020 following an application **in the records of the precautionary Garnishee Order No. 256/20 in the names John Camilleri et v. Luke Camenzuli**, in order to further prove that financial difficulties caused to the alleged debtor by the issuing of a precautionary Garnishee Order against him/her do constitute a ground for revocation of the said Order in terms of Section 836(1)(f) of Chapter 12 of the Laws of Malta, this Court - with all due respect towards the Civil Court First Hall - does not agree with the interpretation by that Court of Section 836(1)(f) of Chapter 12 of the Laws of Malta.

This Court's view that Section 836(1)(f) of Chapter 12 of the Laws of Malta should not and must not be interpreted in the way expected by the Applicant is further substantiated by the principle, now long established, that the prejudice caused to the alleged debtor by the issuing of a precautionary warrant against him/her is not of itself a valid reason for the revocation of that warrant². In this regard the Court makes reference to the Decree dated 29th July 2005 delivered by the Civil Court First Hall following an application **in the records of the precautionary warrant no. 494/05 names Theresa Mangion Galea v. Desmond Stanley Stewart, Application No. 336/05**, wherein that Court stated and observed that: *naturalment, il-Mandat ta' Sekwestru taħt eżami wegġa' lir-rikorrent. Il-Qorti ma kenitx tistenna li jitressaq ir-rikors promotur kieku dan ma kienx il-każ. Dan il-fatt, waħdu, m'huwiex raġuni biex il-Mandat jitneħħa. Il-bilanċ li l-Qorti trid tilhaq bejn il-jeddijiet tal-pretendenti u tal-parti li kontra tagħha ssir il-pretensjoni, jrid jiġġ meqjus fid-dawl li l-Mandat kawtelatorju huwa, min-natura tiegħu, protezzjoni bikrija maħsuba mill-Liġi sakemm il-kwistjoni tiġi mistħarrġa kif imiss fil-mertu. Ma jrid jintesa qatt li l-għan tal-Mandat kawtelatorju huwa dak li "jiffirza" l-qagħda sakemm il-kwistjoni tiġi mistħarrġa kif għandu jkun fil-mertu. Illi wieħed għandu jqis ukoll li, qabel daħlu fis-seħħ il-bidliet fil-liġi proċedurali fl-1995, ma kien mogħti l-ebda rimedju bħal dak mitlub illum mir-rikorrent għat-tneħħija ta' Mandat, sakemm kien ikun ġie mistħarreġ il-mertu tal-kwestjoni. Illi, minkejja dan, il-Qorti ma tistax tinsa għal kollox li, sewwasew minħabba l-effetti drastici tal-Mandat, iseħħu konsegwenzi kultant serji li jhallu l-*

¹ Roberto Carlos Calleja v. Gerard Dominic Borg Mizzi, Decree delivered by the Court of Magistrates (Malta) on the 12th February 2020.

² Taormina Holdings Limited v. Biochemicals International Limited, Application No. 715/03 delivered by the Civil Court First Hall on the 30th October 2003.

effetti tagħhom fuq il-parti intimata. Kemm hu hekk, il-Qorti tifhem sewwa li r-rikorrent qiegħed iġarrab ħsara kontinwa bil-Mandat fis-seħħ ma kull jum li jgħaddi. Din il-ħsara ma tistax mandanakollu tkun ir-raguni biex il-Mandat jitneħħa. Kieku l-liġi kellha titfisser b'dan il-mod, l-ebda Mandat effettiv ma jibqa' fis-seħħ ladarba jiġi muri li l-parti intimata f'dak il Mandat tkun qegħda tbat.

The Court therefore reiterates that the request put forth by the Applicant cannot be upheld in terms of Section 836(1)(f) of Chapter 12 of the Laws of Malta.

Notwithstanding the above, this Court cannot ignore the fact that the precautionary Garnishee Order No. 1654/2020 affects the Applicant's salary, so much so that one of the garnishees served with the Garnishee Order is the Applicant's employer, IZI Interactive Ltd., who already forwards to her the amount from her salary which is protected by law in terms of Section 382(1) of Chapter 12 of the Laws of Malta: *in the case of any salary, wage benefit, pension or allowance mentioned in article 381(1)(a) and (b) except for any benefit, pension allowance or assistance mentioned in the Social Security Act, when the same exceed six hundred and ninety-eight euro and eighty one cents (698.81) per month or such amount as may from time to time be established by order made by the Minister responsible for justice, the issue of a garnishee order shall be applicable on that part in excess of the amount afore-stated.*

In this regard and in view of the application of Section 382(1) of Chapter 12 of the Laws of Malta in this case, the Court cannot ignore that provided for in the first proviso to this particular section of the Law, that is: *provided that if the debtor, upon an application shows to the satisfaction of the Court that he needs such excess or part thereof for his maintenance or for the maintenance of his family, the court shall revoke the garnishee order with respect to the excess or such part thereof, whereupon the said order shall be deemed to be and to have been without effect to the extent to which it had been revoked:* This effectively means that even though the Applicant's request for the revocation *in toto* or *in parte* of the precautionary Garnishee Order No. 1654/2020 in terms of Section 836(1)(f) of Chapter 12 of the Laws of Malta cannot be upheld, her request can and should be considered and could potentially upheld in terms of the first proviso to Section 382(2) of Chapter 12 of the Laws of Malta, which Section of the Law applies also to precautionary garnishee orders in terms of Section 849 of Chapter 12 of the Laws of Malta.

In her application the Applicant claims that from the sum of €700 which she receives from her employer on monthly basis in terms of Law, that is in terms of Section 382(1) of Chapter 12 of the Laws of Malta, she pays - on a monthly basis - the sum of €600 by way of rent for the apartment in which she resides, that is Benrus Building, Flat No.2, Naxxar Road, San Gwann, leaving her a mere €100 for her other needs and maintenance; a situation which she claims to be untenable. In support of her claim, the Applicant submitted the lease agreement pertinent to the said apartment dated 1st June 2020³ - that is prior to the issuing of the

³ Dok. "ND".

precautionary Garnishee Order No. 1654/2020 - from which it clearly transpires that the rent due by the Applicant is indeed that of €600 per month.

The Court firmly believes that the sum of €100 per month is not enough for a person to properly support and maintain herself, not even in so far as concerns basic needs. The Court deems that currently a person who lives alone - the Applicant at no point in time claims to have a family whom she must support - needs a minimum of €900 per month to be able to maintain herself/herself, including the payment of any rental due. This therefore means that for the Applicant to be able to support and maintain herself - at least in so far as concerns basic needs, including housing - she needs the minimum sum of €900 per month, that is an additional €200 to the sum of €700 which she already receives. The Court is therefore of the opinion that this further sum of €200 monthly should not be affected by the precautionary Garnishee Order No. 1654/2020 and should instead be handed over to the Applicant together with the sum of €700 which she already receives.

Having said this, it does not mean that the precautionary Garnishee Order No. 1654/2020 should be revoked *in toto* and neither does it mean that any revocation so ordered and permitted should refer to and apply to all of the garnishees served with the precautionary Garnishee Order at issue.

The Court refers to the Decree delivered by the Court of Magistrates (Malta) on the 6th March 2013 following the Application in the records of the **Garnishee Order No. 445/12 in the names Nazzareno Vassallo v. Rosanne Zammit, Application No. 20/13**, wherein, with reference of Sections 381 and 382 of Chapter 12 of the Laws of Malta, that Court observed that: *illi dan l-Artikolu (Section 381 of Chapter 12 of the Laws of Malta) huwa ta' natura eċċezzjonali u fil-każ ta' pagi huwa kkwalifikat bl-Artikolu 382 tal-Kap. tal-Liġijiet ta' Malta fejn jiġi speċifikat li l-Artikolu 381(1)(a) huwa limitat biss bl-ammont ta' sitt mija u tmienja u disgħin ewro u wieħed u tmenin ċenteżmu (€698.81) fix-xahar. Dan l-artikolu huwa applikabbli meta s-sekwestratarju jkun l-employers u/jew dipartiment u ma hux applikabbli meta s-sekwestratarji jkun l-banek. Dan għaliex hekk kif flejjes jiġu depożitati f'kont bankarju huma jiġu meqjusa bħala depożitu kummerċjali u b'hekk nonostante l-fatt li jistgħu jkun pensjoni/paga/allowance/għajnuna, hekk kif jiġu depożitati huma jitilfu n-natura tagħhom bħala tali u jiġu meqjusa bħala depożitu bankarju. Dan l-Artikolu jgħid li f'każ ta' salarju, paga eċċetera, meta dawn jeċċedu Lm300, ossija €698.81 fix-xahar jew dik is-somma li l-Ministru tal-Ġustizzja jista', minn żmien għal żmien jistabilixxi, il-Qorti tista' tordna li jiġi sekwestrat l-ammont in eċċess ta' din is-somma. Però id-debitur jista' wkoll jitlob b'rikors bħal fil-każ in eżami, sabiex il-Qorti tħassar in toto jew in parte l-istess mandat in rigward dan l-eċċess jekk jintwera a sodisfazzjoni ta' l-istess Qorti li d-debitur għandu bżonn ta' dan l-eċċess jew parti minnu għall-manteniment tiegħu jew tal-familja tiegħu. Ma hemmx dubju kif ingħad fis-sentenza mogħtija riċentement mill-Prim' Awla tal-Qorti Ċivili nhar it-22 ta' Jannar 2013 fl-ismijiet "Maria Carmela Xuereb v. Chantel Xuereb Mulvaney et" li "il-proċedura de quo hi għalhekk intiza biex tesplora r-realtà eżistenzjali tar-rikorrenti biex jiġi deċiż jekk hux sewwa u ġust li l-effett tas-sekwestru jkun dak limitattiv kif statutorjament impost sal-limitu hemm konċess".*

In the light of that observed by the Court of Magistrates (Malta) in the above-mentioned Decree, it clearly results that the Applicant's request for the revocation of the precautionary Garnishee Order No. 1654/2020 is to be considered in terms of Section 382(1) of Chapter 12 of the Laws of Malta, namely the first proviso of the said Section of the Law, but cannot be upheld for the garnishee order *in toto* but only for the sum of €200 from her salary and thus such revocation cannot refer to and apply to all the garnishees served with the said precautionary Garnishee Order at issue but only to the Applicant's employer IZI Interactive Limited.

For the said reasons and in terms of the first proviso of Section 382(1) of Chapter 12 of the Laws of Malta, the Court is upholding the Applicant's request for the revocation *in parte* of the precautionary Garnishee Order No. 1654/2020, which revocation is limited to the amount of €200 from the Applicant's salary and applicable only to IZI Interactive Limited, who on a monthly basis is, together with the sum of €700 already being forwarded to the Applicant in terms of Section 382(1) of Chapter 12 of the Laws of Malta, to hand over to the Applicant the further sum of €200 from her monthly salary - thus leading to a total monthly payment of €900; other than what is being hereby ordered and imposed, the precautionary Garnishee Order No. 1654/2020 is to remain in force and to continue to apply to all the garnishees served with the said precautionary Garnishee Order, including IZI Interactive Limited with regard to the Applicant's remaining monthly salary in excess of the sum of €900.

In the circumstances of the case, each party is to bear his/her own costs.

Today, 9th February 2021

MAGISTRATE