

COURT OF MAGISTRATES (MALTA)

Magistrate

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

Application Number: 120/2021

In the acts of the Judicial Letter Number 850/2021 in the names:-

Princess Holdings Limited (C-72528)

-Vs-

Tarikul Tarikul (I.D. 200057A)

The Court,

Having seen the application filed by Tarikul Tarikul in the Registry of this Court on the 6th May 2021 in the acts of judicial letter number 850/2021 in the names Princess Holdings Limited v. Tarikul Tarikul, wherein applicant stated:-

1. That on the 22nd April 2021 he was served with judicila letter number 850/21 in the aforementioned names intended to render four (4) bills of exchange enforceable according to law, which bills of exchange are numbered from 2 to 5 and respectively attached to the judicial letter here indicated;
2. That **on a preliminary basis** it is stated that – whilst the applicant is of Bangladeshi nationality and does not understand the Maltese language – the aforementioned judicial letter was not accompanied by a translation into the

English language. Therefore the service effected as indicated above is not in accordance with the law and ought to be deemed null and without effect;

3. That **without prejudice** to the above it is stated that there subsist grave and valid reasons in terms of Article 253 (e) of Cap. 12 of the Laws of Malta on the basis of which this Honourable Court may justifiably order that the enforcement of the bills of exchange above indicated be suspended according to the provision herein cited, including:

- a. That the amount presently claimed from the company Princess Holdings Limited is not justifiably owed to the same in view of the fact that the applicant had already effected payment in favour of the company here indicated in the amount of seven thousand, six hundred and eight Euro (€7, 608), which sum exceeds the amount owed from the same applicant for the months of January 2021, February 2021, March 2021 and April 2021 in partial satisfaction of the price of the vehicle Ford Focus Titanium which he acquired from the respondent company on the 1st December 2020; and
- b. Without prejudice to the above that the company Princess Holdings Limited has arbitrarily, abusively and clandestinely taken possession of the aforementioned vehicle in the past days, and this in manifest violation of the provisions of the agreement entered into between the parties on the 1st December 2020 as premised above and specifically of clause eight (8) of the same.

Therefore, for the reasons premised above, the applicant respectfully requests that it should please this Honourable Court, in terms of Article 253 (e) of Cap. 12 of the Laws of Malta – and save for any such declaration as may be necessary and opportune – to suspend the execution of the four (4) bills of exchange respectively attached to

judicial letter number 850/21, and this under all of such terms and conditions as this same Honorable Court may deem appropriate.

With all costs against the company Princess Holdings Limited.

Having seen the reply filed by Princess Holdings Limited on the 8th June 2021, opposing the request in the application on the following grounds:-

1. Rigward il-ewwel baži ta' oġġezzjoni fejn Tarikul Tarikul jgħid illi huwa mhuwiex ta' nazzjonalita' Maltija u ma jifhimx bil-lingwa Maltija, il-kumpannija Princess Holdings Limited twieġeb illi din il-baži ta' oġġezzjoni hija għal kollox infondata fil-fatt u fid-dritt billi l-lingwa uffiċjali tal-Qrati tagħna hija l-lingwa Maltija. Il-Kap. 189 tal-Liġijiet ta' Malta jgħid x'għandu jsir fl-artikolu 5 li jiddisponi hekk:

5.(1) Meta għandu jiġi notifikat xi att lil xi persuna li r-registratur ikollu raġuni li jaħseb li titkellem bl-Ingliż, ir-registratur għandu jara li ssir traduzzjoni tiegħu fl-ilsien Ingliż minn uffiċjal tar-registru u n-notifika tiġi effettwata billi tiġi konsenjata kopja tal-original u t-traduzzjoni tiegħu.

(2) Jekk, għal xi raġuni tkun li tkun, it-traduzzjoni bl-Ingliż ta' xi att bħal dak ma' tiġix notifikata lil persuna li titkellem bl-Ingliż dik il-persuna tista' tagħmel fir-registru, jew tibagħat lir-registratur, b'kull mod, dikjarazzjoni fis-sens li hija persuna li titkellem bl-Ingliż u titlob traduzzjoni bl-Ingliż tal-att notifikat lilha.

Tarikul Tarikul ma għamel l-ebda talba f'dan is-sens u jidher illi ma ġie ippreġudikat bl-ebda mod billi huwa inkariga avukat u ressaq ir-rikors li għalih qegħda twieġeb il-kumpannija Princess Holdings Limited;

F'kull każ, l-ewwel bażi ta' oġġezzjoni mhijiex raġuni gravi u valida sabiex tiġi opposta l-eżekuzzjoni tal-kambjali;

- 2. Rigward it-tieni bażi ta' oġġezzjoni li tirreferi li Princess Holdings Limited irċiviet xi flus mingħand Tarikul Tarikul, u li kien hemm xi forma ta' ftehim iffirmati ta' hire purchase bejniethom, l-esponenti tirrileva illi hi qatt ma ffirmit l-ebda ftehim u li qatt ma ħadet pagamenti direttament mingħand l-attur u għalhekk, din il-baży hija għal kollox infondata fil-fatt u fid-dritt.*

Permezz tal-proċedura tat-talba għal eżekuzzjoni tal-kambjali, il-kumpannija Princess Holdings qed titlob l-eżekuzzjoni ta' kambjali li ġew iġġirati għaf-favur tagħha u għalhekk hija għandha kull dritt illi tghaddi għall-eżekuzzjoni ta' l-istess. Dan huwa punt bażilari li dwaru anke teżisti ġurisprudenza paċifika u kopjuża:

[-omissis-]

- 3. Rigward it-tielet baży ta' oġġezzjoni li tirreferi li Princess Holdings Limited ħadet il-pussess ta' vettura tal-għamla Ford Focus Titanium, qed jiġi rilevat illi l-esponenti ma ħadet l-ebda pussess ta' xi vettura mingħand Tarikul Tarikul, u għalhekk, din il-baży hija wkoll għal kollox infondata fil-fatt u fid-dritt.*

Għal dawn ir-raġunijiet u salv kwalunkwe risposta ulterjuri, it-talbiet ta' Tarikul Tarikul għandhom jiġu miċhuda bl-ispejjeż kollha kontra tiegħu.

Having seen that by means of a decree delivered during the hearing of the 21st June 2021, the acts of the proceedings were sent to this Court as presided in order to take cognisance of and decide the application simultaneously with the application bearing number 119/2021 filed in the acts of the judicial letter bearing number 850/2021 in the name **Princess Holdings Limited v. Tarikul Tarikul**;

Having seen that by means of a decree given during the hearing of the 12th July 2021, the proceedings were ordered to be conducted in the English language;

Having seen the decree given on the 12th July 2021, whereby the evidence brought forward by the applicant in the case application number 119/2021 in the names **Princess Holdings Limited v. Tarikul Tarikul**, was ordered to apply to and form part of the acts of these proceedings;

Having seen that the parties declared that it is not necessary that the affidavits that were drawn up in the Maltese language are translated into the English language;

Having heard the testimony of the parties and all other evidence, as well as all documents exhibited;

Having seen all the acts of the proceedings;

Having seen that by virtue of a decree given during the hearing of the 17th February 2022, the Affidavit of Christian Borg was ordered to be expunged from the acts of the proceedings;

Having heard the final oral submissions of the applicant's legal counsel during the hearing of the 17th February 2022;

Having considered;

That in the first place, applicant pleaded the nullity of the judicial letter number 850/2021 as filed by Princess Holdings Limited as this was not accompanied by a translation into the English language notwithstanding the fact that he is of Bangaldeshi nationality.

Article 5(2) of the Judicial Proceedings (Use of English Language) Act (Cap. 189 of the Laws of Malta) stipulates that if for any cause whatsoever, the translation into English of any judicial act is not served on an English-speaking person in terms of subarticle (1) of the same Article 5, such person may make in the Registry of the Court, or forward to the Registrar in any manner, a declaration to the effect that he is an English-speaking person and apply for a translation into English of the act served on him. At no point does the law contemplate nullity as an effect of the default of a translation into English being served on the person together with the judicial act.

The Court also observes that the fact in itself that the applicant initiated the procedure for requesting the suspension of the enforcement of the executive title in terms of Article 253(e) of Chapter 12, within the statutory time-limit, would necessarily mean that he suffered no prejudice as a result of the Registrar's failure to cause a translation into English to be served on him together with the judicial act and consequently, nullity cannot be invoked for the reasons stated in Article 789(1)(c) of Chapter 12 of the Laws of Malta.

Having considered;

That applicant has invoked the provisions of Article 253(e) of Chapter 12 of the Laws of Malta which states that bills of exchange are executive titles provided that the competent court may, by decree which shall not be subject to appeal, suspend the execution of such a bill of exchange in whole or in part and with or without security, upon an application of the person opposing the execution of such bill of exchange. The Law clearly provides two reasons for the suspension of the execution of a bill of exchange, namely where the signature is not that of the relevant person or of his mandatory and/or where such person provides other grave and valid reasons to oppose the execution.

Although this is not clearly expressed in the law, it was clearly the intention of the legislator that the action under Article 253(e) of Chapter 12 is conducted as a summary

procedure which is to be decided expeditiously, where the Court is requested to carry out a merely *prima facie* analysis. This means that pleas which require a detailed examination and evaluation are not admissible in such proceedings and such is the reason for the statutory limitation to the reasons which one may raise when requesting the suspension of a bill of exchange in terms of Article 253 (e) of Chapter 12.

In considering the existence of “*grave and valid reasons*” to oppose the execution of the bill of exchange, the Court observes that the law does not specify those reasons that would be considered as “*grave and valid*”, and therefore it is in the Court’s discretion to decide which reasons might satisfy this criterion according to the particular circumstances of each case. Undoubtedly, the reasons given in support of the opposition to and the request for suspension of, the execution of the bill cannot be frivolous and nor can the execution of the bill be opposed capriciously¹ and the grave and valid reasons cannot be wider in scope than the criteria stipulated in the Commercial Code for the opposition to payment of a bill of exchange. Indeed, the 2004 amendments to the Law which included the bill of exchange amongst the executive titles listed in Article 253 of Chapter 12, were introduced in order to avoid unnecessary court proceedings where the pleas available to the debtor are very limited in scope.

In any event, the Court is not required, for the purposes of an action instituted in terms of Article 253(e) of Chapter 12, to delve into the all the merits but it must only establish whether *prima facie* there are reasons that could be considered to be grave and valid reasons in terms of the said legal provision and which could be successfully raised by the debtor in opposition to an action for the payment of a bill of exchange.

Having considered;

In the case at hand, it results that on the 25th June 2020, the applicant entered into a written agreement with No Deposit Cars Malta Limited whereby he acquired vehicle Peugeot 508 with registration number AQZ-580 on hire-purchase terms against

¹ 2 Vide **Giovanni Briffa vs. Ronald Azzopardi** – Prim’Awla deċiża 5.02.2008.

payment of the sum of €39,000, payable in monthly instalments of €650 each. Sixty bills of exchange for the sum of €650 were also delivered by applicant to the order of No Deposit Cars Malta Limited, representing the monthly payment due in terms of the hire-purchase agreement. A total sum of €7,608 was paid by the applicant to No Deposit Cars Limited between the 22nd June 2020 and the 13th July 2020 in connection with the hire-purchase of the above-mentioned vehicle.

Applicant, Tarikul Tarikul, testified that since he intended to use the vehicle as a taxi, he was asked by the company to procure a Driver Tag from Transport Malta before he would be allowed to take possession of the vehicle. Although he was told that he could collect the car within two days, the car was never delivered to him despite his having paid a total of €7,608 to the company and having also applied for and obtained the Driver Tag from Transport Malta as requested by the company. He also realised that the car was no longer in the showroom where it had previously been and he was informed by various different persons each time he visited the company's offices, that that particular vehicle was no longer available and could not be delivered to the applicant and he must take another car.

Applicant testified that after his lawyer sent a legal letter to No Deposit Cars Malta Limited on the 17th August 2020 (Dok. TT3), the company contacted him in order to discuss the car and when he met with the manager, he was told that he cannot take the car agreed to in the hire-purchase contract and offered him another car. Applicant insisted that he is refunded the money he had paid for the Peugeot 508 but when the company informed him that they would not refund the money he had paid on account, he was constrained to accept the offer to take a Ford Focus vehicle instead for the price of €34,320 and he consequently entered into another agreement² on the 1st December 2020 with No Deposit Cars Malta Limited in order to acquire this other car on hire-purchase and he also signed sixty bills of exchange for the sum of €572 each. He then found out from the company's website that the Ford Focus was selling for a price of only €16,200 instead of the price of €34,000 that he was made to sign up for.

² Dok. TT4.

After two months of use, he was requested by the company to pay the monthly instalments as per the written agreement but he insisted that he had already paid the sum of €7,608, representing the amount due for almost 14 months. Subsequently, he received a message from the company that they had taken possession of the vehicle and applicant found that indeed, the vehicle car was removed from its parking place near his home. He was then notified with a judicial letter.

Tarekur Rahman and **Mohammed Mahijur Rahman** confirmed in substance, applicant's version of events: they testified that applicant had paid a deposit to No Deposit Cars Malta Limited on the Peugeot 508 and was told that he could take the car the next day, however the next day he was informed that he needed a Driver Tag from Transport Malta in order to be able to use the car as a taxi; each time he was asked to pay more money on account and was given different excuses each time by different persons within the company as to why the car could not be delivered to him. The witnesses confirmed that applicant handed in the documents and the money that the company requested of him, but the Peugeot 508 was never delivered to him and moreover it was no longer at the showroom.

Mohammed Mahijur Rahman also testified that applicant had applied immediately with Transport Malta for the Driver Tag as requested by the company and he provided the tag to the company within a couple of weeks³ and in any event before applicant was offered the second car. He also testified that they were informed by a certain Mr. Luke, who acted like he was drunk, that the money paid towards the first car could not be refunded the money he had paid as he had a problem with the insurance company in connection with the first car. He confirmed that Mr. Luke insisted that a refund of the money already paid was not an option and that applicant was being pushed into taking a different car instead. Although at first applicant did not accept, he eventually did accept to enter into another agreement to purchase a different car when it was made clear to him that he would forfeit all the money paid to him unless he takes a different car.

³ Testimony 12th July 2021.

Witness confirmed also that Mr. Luke agreed that the deposit paid with regard to the first car would be placed to the credit of the price of the second car: “... *he said he cannot give us the money back but he will use the money for another car*”.

Christian Borg, managing director of Princess Holdings Limited and managing director also of No Deposit Cars Malta Limited, explained in his testimony that Tarikul Tarikul entered into two hire-purchase agreements with No Deposit Cars Malta Limited: one agreement was concluded in June 2020 in respect of a Peugeot 508, which he failed to honour, while another agreement was entered into when applicant came to the showroom of the company to ask if he could choose a cheaper car and chose a Ford Focus instead⁴.

The witness also explained that No Deposit Cars Malta Limited sells the cars while the company Princess Holdings Limited finances the cars by purchasing the bills of exchange from the former company and enforcing them in the event that these are not honoured by the client. He explained further that the Princess Holdings Limited would have all the relative details of payments made to No Deposit Cars Malta Limited in connection with bills of exchange issued in its favour.

Christian Borg also confirmed the authenticity of the receipts issued in favour of Tarikul Tarikul for payments made to No Deposit Cars Malta Limited (Dok. TT2), as did Luke Milton in his separate testimony. He explained that in order to use the car originally purchased as a taxi, applicant needed to register the vehicle with a Y-plate however he failed to bring the Transport Malta Driver Tag to the company and consequently, the vehicle could not be used as a taxi and the monthly installments were not being paid.

⁴ The witness confirmed that although the agreement Dok.TT1 is an unsigned copy, he did not deny that the document is effectively a copy of the agreement signed by Tarikul Tarikul – testimony of Christian Borg, 12th July 2021. Indeed Luke Milton confirmed that this document was a copy of the agreement signed between No Deposit Cars Limited and Tarikul Tarikul.

According to Christian Borg, when applicant decided to purchase a cheaper car, an agreement was reached in the sense that all payments made to the company in respect of the first car, would be forfeited. He also confirmed that although the first contract was rescinded, the bills of exchange that were issued on the basis of that contract remained valid and in force and so long that payments for the second car continue to be honoured, then the bills of exchange issued in respect of the price of the previous car would not be enforced. *“If he fails to pay the second car, they will be enforced as well”*⁵. Christian Borg also testified that the sum of €7,608 paid in respect of the first agreement, was not credited to the account of the hire-purchase of the second car. He confirmed that applicant paid one instalment of the price when he took possession of the second car but made no further payments.

Thorne Mangion confirmed in his Affidavit that applicant, despite having been informed that he could not take delivery of the Peugeot 508 without a driver’s tag from Transport Malta and unless the vehicle was insured for use as a taxi, never provided the driver’s tag to the company but he reappeared at the company’s showroom several months later in order to choose a different car, Ford Focus, and entered into a new agreement and another set of sixty bills of exchange of €572 each.

Under cross-examination Thorne Mangion stated that the payments made by applicant in June and July 2020 were payments representing the amounts due for licences and insurance of the vehicle. He also testified that applicant never produced the driver’s tag because it was taking long to be issued and he came to the showroom in December 2020 in order to change the car, which was the only option that the company could offer in the circumstances. Applicant took a Ford instead, however this car had to be repossessed since applicant only made one payment after delivery of the car.

Luke Milton testified that applicant was advised that he needed a Driver’s Tag from Transport Malta before he could take possession of the car but although he had signed

⁵ Page 9 of Christian Borg’s testimony, 12th July 2021.

the hire-purchase agreement, he still had not produced the tag after one or two months despite several phonecalls made to applicant to produce this tag. Meanwhile applicant had made several payments to the company. He gave applicant the opportunity to choose another car in the same price range and he chose a Ford Focus and a second agreement was entered into where it was agreed that “*everything would be adjourned to on the second contract so he has to continue with his payments ... there was an ongoing agreement*”⁶. However after the lapse of three to four months, applicant failed to make any of the monthly payments due on this second car.

Having considered;

That applicant in these proceedings is requesting the suspension of the execution, in terms of Article 253(e) of Chapter 12, of four (4) bills of exchange issued in favour of No Deposit Cars Malta Limited for the sum of €572 each, having fallen due respectively in January, February, March and April 2021. Applicant was called upon by Princess Holdings Limited to pay these bills of exchange in a judicial letter bearing number 850/2021, in virtue of which the executive title consisting in the said bills of exchange, was rendered enforceable.

The reasons submitted by applicant in his application in support of this request for the suspension of the execution of the aforementioned bills of exchange are, in substance, that he had already paid a total sum of €7,608 to No Deposit Cars Malta Limited on account of the price of the vehicle Ford Focus Titanium which he acquired on hire-purchase terms by means of an agreement dated 1st December 2020. He claims that this amount was paid in order to honour payments due on the basis of a previous hire-purchase agreement concluded with the same company in respect of a different vehicle which was, however, never delivered to him such that this prior agreement was subsequently rescinded and substituted by the hire-purchase agreement of the 1st December 2020 on the basis of which new bills of exchange were issued. Applicant claims that the payments that he had effected in respect of the previous hire-purchase

⁶ Luke Milton’s testimony, 1st November 2021.

agreement were to be placed to the credit of the price of the new car and to the account of the new bills of exchange.

The Court observes that it is undisputed that in effect, applicant paid the total sum of €7,608 to No Deposit Cars Malta Limited, €508 of which were paid as fees due to Transport Malta. This payment is evidenced by the copies of the receipts exhibited collectively as Dok. TT2, duly recognised as such by the representatives of the company in their testimony. It is also undisputed that the vehicle in respect of which the hire-purchase agreement was concluded and in respect of which bills of exchange were issued on the 25th June 2020, was never delivered to applicant despite him having paid to the company a sum representing at least ten of the said bills of exchange. From this perspective, it is already difficult to understand the company's assertion that applicant had failed to honour the agreement entered into on the 25th June 2020.

No Deposit Cars Malta Limited's failure to deliver the vehicle to the applicant is documented in the legal letter sent on behalf of applicant to the said company on the 17th August 2020 at a time when, from the evidence adduced, it would result that applicant had already obtained from Transport Malta, the issue of the Driver Tag that was requested by the company as a condition for the delivery of the vehicle Peugeot 508⁷. In terms of this legal letter, applicant demanded the refund of the total sum he had paid on account of the price of the vehicle and the rescission of the hire-purchase agreement concluded on the 25th June 2020 since he had been informed that the vehicle was no longer available and could not be delivered to him as agreed.

It is applicant's contention that although the company failed to deliver the vehicle which he had already purchased on hire-purchase terms and in respect of which he had already paid a total sum of €7,608, the company refused to refund the payment he had already effected and insisted with him that these payments would be forfeited unless he agreed to purchase a different car. He maintains that he eventually had no choice but to concede to the company's terms and agreed to purchase a different car only because he

⁷ Karen Cremona testified that this Driver Tag had been issued by Transport Malta on the 11th August 2020.

was assured that the payments he had effected on the basis of the original hire-purchase agreement, would not be lost but they would be placed to the account of the new hire-purchase agreement that would be concluded in respect of the other car that he was told to choose.

The version of events proffered by the company – both No Deposit Cars Malta Limited and Princess Holdings Limited – is in itself contradictory. Christian Borg claims that when applicant approached the company as he wished to purchase a cheaper car, he was informed that all payments made in respect of the price of the Peugeot 508 as per the original hire-purchase agreement, would be forfeited. He maintained that although the first agreement was eventually rescinded, the bills of exchange that were issued on the basis of that contract remained valid and in force and the agreement that was reached with applicant was that so long that payments due for the second car continue to be honoured, then the bills of exchange issued in respect of the price of the previous car would not be enforced. *“If he fails to pay the second car, they will be enforced as well”*⁸.

This version of events however is contradicted by Luke Milton who, like applicant, maintained that the second car was chosen to replace the first car and that the agreement would continue in respect of this second car *“... everything would be adjourned to on the second contract so he has to continue his payments ... there was an ongoing agreement”*.

The Court cannot but observe at the outset that Christian Borg’s version of events is not supported by the terms and conditions of the hire-purchase agreement entered into on the 1st December 2020. In clause 1.1 of this agreement, the parties agreed as follows:-

*“By means of this agreement, the Owner and the Hirer are hereby agreeing that this agreement supersedes **and replaces in its entirety the Prior Agreements; signed on the 25th June 2020** and any other verbal agreements between the parties. Upon signing of*

⁸ Page 9 of Christian Borg’s testimony, 12th July 2021.

this agreement, all provisions made in the prior Agreements are hereby waived, released and superseded in their entirety and shall have no further force and effect.”⁹
(emphasis made by this Court)

This declaration would tend to show that all prior agreements signed by the parties on the 25th June 2020 – including, therefore, the bills of exchange issued and delivered by applicant in terms of clause 2.3 of that same hire-purchase agreement¹⁰ – were no longer in effect and were superseded by the agreement and the bills of exchange drawn up and signed on the 1st December 2020. The Court observes that no express reservation appears to have been made in this latter agreement for the continued validity of the bills of exchange issued on the basis of the original hire-purchase agreement and indeed, contrary to Christian Borg’s assertion, it does not result from the subsequent agreement that the payments already effected for the vehicle that was not delivered to applicant, would be forfeited. In fact, no mention whatsoever of the payments already made by applicant in favour of the company, was made in the subsequent agreement.

It is undisputed that the payments made by applicant on the basis of the original agreement and bills of exchange were not refunded to him despite his insistence: this state of affairs could only tend to show, objectively, that when applicant agreed to enter into the new hire-purchase agreement, he did so on the premise that the bills of exchange issued in terms of the prior agreement were replaced by the new bills and all sums paid towards the rescinded bills, would be placed to the account of the subsequent agreement and the new bills of exchange.

The Court must point out that although it is faced with conflicting versions as to the fate of the payments already made by applicant on the basis of the original hire-purchase agreement that was subsequently rescinded, it is not expected to determine which version is more credible since, as already established, for the purpose of this procedure it must only carry out a *prima facie* enquiry into the facts in order to determine whether

⁹ Dok. TT4.

¹⁰ Dok. TT1.

the reasons invoked by applicant may be considered to be grave and valid reasons that justify the suspension of the execution of the bill of exchange.

However, in the case at hand, the reasons brought forward by applicant by way of grave and valid reasons for the suspension of the execution of the bill of exchange - most notably the fact that on the face of the agreement entered into on the 1st December 2020, it would result that all prior agreements signed on the 25th June 2020 were rescinded and replaced in their entirety with the new agreement without any express reservation as to the payments already made on the basis of those agreements – cannot exclude but rather convalidate, applicant's version that such payments were intended to be credited to the account of the bills of exchange issued in respect of the price of the second car and that these bills effectively replaced the previous ones.

The Court cannot fail to note that the obligation to sign and deliver the bills of exchange unto the company with reference to the obligation to pay the monthly instalments of price of the vehicle, was expressly undertaken by applicant in the agreement signed on the 25th June 2020. This would mean that the effect of any rescission of that agreement and its replacement by the agreement entered into on the 1st December 2020, would also extend to the bills of exchange issued on the basis of that agreement. Consequently, the bills of exchange signed on the 25th June 2020 may be deemed to have been superseded and replaced by the bills of exchange issued in favour of the same company on the 1st December 2020. All these considerations would lend credence to the reason invoked by applicant for the suspension of the execution of the said bills of exchange on the basis that these were duly honoured by virtue of the payments made on account of the price of a vehicle that was never delivered to him and on the basis of an agreement that was substituted in its entirety by the issue of fresh bills of exchange. In this case, it would also result at a glance that the total payment effected by applicant, in the sum of €7,100, far exceeds the import of the four bills of exchange which the holder of the bills intends to execute for payment.

Having also considered;

That it is true that the bills of exchange appear to have been transferred by the drawee to Princess Holdings Limited and it is also true that the reasons invoked by applicant for the suspension of the execution of these bills which were drawn in respect of the debt due to No Deposit Cars Malta Limited, are inherent to the underlying obligations and transactions entered into between applicant and the said company. However it is the Court's view that since in this case, the bills of exchange were transferred to or endorsed in favour of third parties when they had already become due and when, as applicant claims, they were already duly honoured, they cannot and ought not be considered altogether autonomously and independently of the underlying obligations which gave rise to them.

It is the Court's view that since, as established, the payments made by applicant were all effected between June and July 2020 and therefore evidently prior to the transfer of the bills of exchange by the drawee in favour of the actual holder of the bills, the subsequent transfer of the possession of the bills to a third party cannot detract from the fact that it appears at face value that at this time, the debt due in respect of far more than four bills of exchange had been paid to the drawee company. It is also evident that the transferee company, the present holder of the bills which also shares the same managing director as the drawee, had to be aware when the transfer of the bills took place (i) that the vehicle forming the object of the original agreement was never delivered to the client despite the sum of at least €7,100 having been paid on account of the price of the vehicle and (ii) that the agreement signed on the 25th June 2020 including the obligation to deliver and sign a set of bills of exchange for the payment of the price of that vehicle, had already been rescinded and replaced in its entirety by a new agreement and new set of bills of exchange drawn up on the 1st December 2020 as stipulated in clause 2.3 of the latter agreement.

Having considered;

