



**COURT OF MAGISTRATES (GOZO)
SUPERIOR JURISDICTION
GENERAL SECTION**

**MAGISTRATE DOCTOR BRIGITTE SULTANA
LL.D., LL.M (CARDIFF) ADV. TRIB. ECCL. MELIT.**

Today, Friday, 30th June 2023

Sworn Application number: 24/2018 BS

Isabelle Farchy u Patrice Dubarre

-vs-

Terrence Zammit

The Court;

A. Preliminary:

Having seen the sworn application filed by the plaintiffs in the Maltese language¹ wherein they premised that:

- 1. Illi r-rikorrenti kienu inkarigaw lill-konvenut sabiex jagħmel xogħol ta' kostruzzjoni u finishing fil-propjeta' tagħhom bl-indirizz 4/5, Triq Sir Mikelang Refalo, Rabat, Ghawdex, liema propjeta' hija intiza sabiex tigi gestita bhala guesthouse;*
- 2. Illi dan ix-xogħol kellu jitlesta numru ta' xhur ilu u dan hekk kif miftiehem bejn il-partijiet, liema termini izda baqgħu qatt ma gew rispettati da parti*

¹ Sworn application filed in the Maltese language at fol 1 to 7 with documents at fols 8 to 34.

tal-konvenut u għalhekk eventwalment, ir-rikorrenti ma kellhom l-ebda għazla oħra hlief li jitterminaw dan l-inkarigu;

- 3. Illi r-rikorrenti kienu già' avvanzaw lill-konvenut ammonti konsiderevoli ta' hlasijiet b'referenza għax-xogħolijiet li kellhom jigu intraprizi mill-konvenut u dan fl-ammont ta' mitejn u disgha u għoxrin elf, tlett mija u sebgħa u sittin Euro u hdax-il centezmu (€229,367.11), liema ammont kien jinkludi fost affarijiet oħra xogħol u materjal li kien sar fil-propjeta' tar-rikorrenti, kif ukoll xogħolijiet oħra li kellhom jigu intraprizi mill-konvenut.*
- 4. Illi jirrizulta izda li dawn ix-xogħolijiet qatt ma gew finalizzati hekk kif miftiehem minhabba dewmien da parti tal-konvenut u dan kif sejjer jigi dettaljatament ippruvat fil-kors ta' dawn il-proceduri;*
- 5. Illi jirrizulta li l-intimat inghata hlas zejzed tax-xogħolijiet, materjali u materji oħra in konnessjonijiet ma' dan l-inkarigu u dan fl-ammont ta' ta' sitta u sittin elf, hames mija u disgha u tletin Euro u tlieta u għoxrin centezmu (€66,539.23) jew ammont verjuri kif sejjer jigi ppruvat matul il-kors tal-kawza;*
- 6. Illi dan kollu fisser għar-rikorrenti danni u telf ta' qliegh in vista li huma kellhom jingaggaw terzi persuni in konnessjoni ma' dawn ix-xogħolijiet kif ukoll li kellhom jipposponu l-gestjoni tan-negozju tagħhom minn tali fond;*
- 7. Illi barra minn hekk l-intimat zamm għandu numru ta' oggetti u għamara propjeta' tar-rikorrenti, fosthom bibien, twieqi, puggaman tat-tarag principali u ventilaturi, liema oggetti, minkejja li l-intimat gie nterpellat diversi drabi sabiex jirritornahom, għadhom fil-pussess tal-istess konvenut;*
- 8. Illi barra minn hekk, il-konvenut naqas milli jhallas ta' xogħol u materjal li kien gie ordnati b'referenza għax-xogħolijiet intraprizi minnu, minkejja li huwa kien thallas mir-rikorrenti, fosthom anke lil George Grech li għamel xogħolijiet fuq galleriji tal-hadid, b' dan eventwalment jiddikjara li rregistra ipoteka legali fuq il-propjeta' tar-rikorrenti;*
- 9. Illi minkejja li l-konvenut gie nterpellat diversi drabi, fosthom anke permezz tal-Ittra Ufficjali Numru 554/2017, hawn annessa bhala Dok. A sabiex huwa jhallas l-ammonti eccessivi mħallsa lilu in konnessjoni ma' dawn ix-xogħolijiet, u sabiex jirritorna l-oggetti mizmuma għandu, huwa baqa' inadempjenti;*

10. Illi r-rikorrenti jafu b' dawn il-fatti personalment;
11. Illi għalhekk ir-rikorrenti kienu kostretti sabiex jipprocedu permezz tal-prezenti proceduri;

Accordingly they requested this Court to:

1. Tiddikjara illi l-konvenut Terence Zammit naqas milli jespleta l-inkarigu mogħti lilu in konnessjoni max-xogħolijiet fuq il-fond 4/5, Triq Sir Mikelang Refalo, Rabat, Ghawdex u dan fit-termini u kundizzjonijiet miftehma bejn il-partijiet;
2. Tiddikjara li l-konvenut hu responsabbli għal danni u telf ta' qliegh fil-konfront tar-rikorrenti minhabba l-inadempjenza tieghu fir-rigward tal-inkarigu intrapriz minnu;
3. Tillikwida d-danni u telf ta' qliegh sofferti mir-rikorrenti, anke bil-hatra ta' perit/i nominandi, per konsegwenza ta' l-inadempjenza tal-konvenut;
4. Konsegwentement tikkundanna lill-istess konvenut sabiex ihallas dawn id-danni u telf ta' qliegh hekk kif likwidat;
5. Tiddikjara illi l-konvenut gie mhallas l-ammont ta' sitta u sittin elf, hames mija u disgħa u tletin Euro u tlieta u għoxrin centezmu (€66,539.23) jew kull somma verjuri li tigi hekk likwidata minn din l-Onorabbli Qorti, anke bil-hatra ta' perit/i nominand/i, fi hlas zejzed in konnessjoni max-xogħolijiet intraprizi minnu;
6. Tikkundanna lill-istess konvenut sabiex ihallas lir-rikorrenti l-ammont ta' sitta u sittin elf, hames mija u disgħa u tletin Euro u tlieta u għoxrin centezmu (€66,539.23) jew kull somma verjuri hekk likwidata;
7. Tiddikjara li l-konvenut zamm għandu oggetti u mobbli propjeta' tar-rikorrenti mingħajr ebda raguni valida fil-Ligi;
8. Tikkundanna lill-konvenut sabiex fi zmien qasir u perentorju jirritorna l-oggetti kollha propjeta' tar-rikorrenti li l-istess konvenut zamm għandu mingħajr ebda raguni valida fil-Ligi;
9. Tillikwida, fin-nuqqas li tali oggetti jigu ritornati lir-rikorrenti l-valur tal-istess oggetti, anke bil-hatra ta' perit/i nominand/i;

10. Tikkundanna lill-konvenut sabiex iħallas l-ammont hekk likwidat rapprezentanti l-valur ta' tali oggetti;

Bl-ispejjeż, inkluz ukoll dawk tal-Mandat ta' Qbid Nru. /2018,² tal-Mandat ta' Sekwestru Nru. /2018,³ ipprezentati kontestwalment, kif ukoll tal-Ittra Ufficcjal Nru. 554/2017, bl-imghaxijiet u t-Taxxa fuq il-Valur Mizjud skond il-Ligi u bl-ingunzjoni għas-subbizzjoni li għaliha minn issa huwa ingunt.

Having seen the sworn reply filed by the defendant in the Maltese language⁴ in which he declared that:

1. *Illi t-talbiet attriċi huma totalment infondati fid-dritt u fil-fatt u għandhom jiġu respinti bl-ispejjeż kollha kontra l-istess atturi.*
2. *Illi ma huwx korrett li jingħad mill-atturi li l-konvenut naqas milli jespleta l-inkarigu mogħti lilu fil-fond 4/5, Triq Sir Mikelang Refalo, Rabat, Għawdex iżda kienu huma li arbitrarjament iddecidew li jitterminaw il-contract of works li kien hemm eżistenti bejniethom meta hafna mix-xogħol ordnat kien diga sar mill-konvenut.*
3. *Illi l-konvenut ma għandu jagħti l-ebda ammont lill-atturi stante illi l-flus mgħoddija lilu kienu jkopru x-xogħol li huwa kien se jagħmel u effettivament għamel fil-jum li huwa gie mwaqqaf milli jkompli x-xogħolijiet li huwa kien qiegħed jagħmel.*
4. *Illi mingħajr preġudizzju għas-suespost, l-atturi għandhom għandhom igibu prova dwar kif huma waslu għal figura ta' €66,539.23 li allegatament hija dovuta mill-konvenut lill-atturi, u minn issa qiegħed jiġi ddikjarat li din iċ-ċifra qegħda tiġi ikkontestata mill-konvenut.*
5. *Illi l-oġġetti li kienu miżmuma għand il-konvenut kienu inżammu fuq talba ta' l-istess attriċi illi talbet lill-konvenut sabiex flok tikri fond biex iżzomm dawk l-oġġetti, iżzomhom hu, u dan taħt kumpens xieraq u adegwat lilu, liema kumpens għadu ma ingħaddix lilu.*

² Number not specified.

³ Number not specified.

⁴ Sworn reply filed in the Maltese language at fols 40 and 41.

6. *Illi l-atturi anqas soffrew ebda danni u telf ta' qliegħ, u fi kwalunkwe każ u mingħajr preġudizzju għal eċċezzjonijiet l-oħra, tali allegat danni għandhom jiġu pprovati tul dawn il-proċeduri.*
7. *Għaldaqstant it-talbiet tal-atturi għandhom jiġu michuda bl-ispejjeż kontra tagħhom inkluż dawk tal-mandat ta' qbid u mandat ta' sekwestru u tal-ittra ufficjali.*

Salvi twegibiet ulterjuri fid-dritt u fil-fatt.

Having considered all the acts of these proceedings.

Having seen the judicial letter with number 554/2017 filed by the plaintiffs against the defendant on the 19th December, 2017 and notified to the defendant on the 22nd January, 2018.⁵

Having seen the email sent by the defendant to plaintiff Isabelle Farchy on the 8th March, 2016 with which was attached a document described by the defendant as the “*final invoice for the building work*” showing a grand total of € 44,586.30 of which a deposit in the value of € 14,862.00 was requested upfront. The same “*final invoice*” contains various terms and conditions including that the defendant was to commence work between the 28th March and the 4th April, 2016 and complete same within 6 to 8 weeks from commencement.⁶

Having seen the email sent by the defendant to plaintiff Isabelle Farchy on the 9th March, 2016 with which was attached a document described by the defendant as a “*finishing quote*” showing a grand total of € 90,464.70.⁷

Having seen the judicial letter with number 22/2018 filed by George and Carmela Grech against the plaintiffs and the defendant on the 5th March, 2018 and requesting payment of € 4,000 excluding interest.⁸

⁵ Judicial letter at fol 8 to 10.

⁶ Email at fol 11 and *final invoice* at fol 12 with additional documents containing a breakdown and instructions on building/renovation works to be carried out at fols 14 to 28.

⁷ Email at fol 29 and *quote* at fol 30.

⁸ Judicial letter in the Maltese language a fols 31 and 32 and a translation of the same into the English language at fols 33 and 34.

Having seen that at the hearing of the 6th November, 2018 a request made by the plaintiffs for proceedings to be in the English language was upheld by the Court.⁹

Having seen the note filed by the plaintiffs on the 16th January, 2019 with attached various documents.¹⁰

Having seen the note of the plaintiffs filed on the 12th March, 2019 with attached various bank statements for accounts belonging to plaintiff Farchy showing several bank transfers made to the defendant.¹¹

Having seen the note of the plaintiffs filed on the 8th May, 2019 with attached an affidavit released by J. C. Bennavail.¹²

Having seen the note of the plaintiffs filed on the 9th October, 2019 with attached a list of payments made by plaintiff Farchy into the accounts of Donna Zammit, ex-partner to the defendant, *Zeds Turnkey and Development's* account, and the defendant's own account with one transaction made to a third-party account for withdrawal and payment in cash to the defendant.¹³

Having seen the note of the plaintiffs filed on the 10th September, 2020 with attached various documents relating to the plaintiffs' order of

⁹ Court record at fol 73.

¹⁰ Note at fols 78 and 79 with documents at fols 80 to 128 consisting of an email from the health and safety authority dated the 14th March, 2016 stating that works were to commence on the 29th March, 2016 and last 4 to 6 weeks for building and 8 to 10 weeks for finishings - fols 80 to 81, a report with photographs by Perit John Saliba dated the 22nd November, 2017 confirming damages on a step in a flight of stone stairs and two mislaid steps in the same flight of stone stairs as well as a missing flight of stairs that were to be built in concrete to roof level - fols 82 to 84, photographs of the situation at the plaintiffs' property as at the time the defendant's engagement was terminated - fols 85 to 112, bank statements for accounts held by plaintiff Farchy showing €3,300 transferred in July, 2016 with reference "*Gangu's Compensation*" - fols 113 and 114, email from the defendant to plaintiff Farchy dated the 25th July, 2016 requesting payment of compensation for *Gangu's Bar* - fol 115, declaration dated the 14th March, 2018 and signed by John Attard, manager at *Gangu's Bar*, stating that the defendant promised payment of €4,000 which he never paid - fols 116 to 117, email from the defendant to plaintiff Farchy dated the 15th March, 2016, re payment of deposit to be made to George Grech for wrought iron work - fol 118, invoice 160015 of the 7th March, 2016 showing the wrought iron entry at €4,500 and requesting 2/3 deposit on the price - fols 119 to 120, emails of October, 2017 showing that no money was paid to George Grech - fol 121, a bank statement for an account held by plaintiff Farchy showing €3,000 - 2/3 deposit for the wrought iron works - paid on the 15th March, 2016 - fol 122, judicial letter number 22/2018 of the 5th March, 2018 filed by George Grech and Carmela Grech against the plaintiffs and the defendant for payment of € 4,000 with interest - in both Maltese and English - at fols 123 to 126.

¹¹ Note at fol 402 with bank statements at fols 403 to 463.

¹² Note at fol 722 and affidavit at fol 723.

¹³ Note at fol 739 and list at fols 740 to 742 with supporting documents at fols 743 to 746.

UPVC apertures from *Window World Innovations* and orders from Ellis marble suppliers.¹⁴

Having seen the application filed by the plaintiffs on the 3rd December, 2020 – with reference to immovable items as were taken from their property by the defendant – whereby the plaintiffs requested the execution of a pending warrant of seizure in a specified address.¹⁵

Having seen the decree of the 3rd December, 2020 whereby the Court, after examining the acts of warrant of seizure number 41/2018 PC and confirming that the warrant remained pending; upheld the plaintiffs' request for execution of said warrant of seizure at the specified address.¹⁶

Having seen the acts of warrant of seizure number 41/2018 PC for execution on, *inter alia*, all objects therein described, and the note of execution dated the 23rd December, 2020 with attached to it 5 photographs showing the seized objects.¹⁷

Having seen the note filed by the plaintiffs on the 14th April, 2021 with attached various documents relating to the plaintiffs' business with *Window World Innovations*,¹⁸ emails between counsels for the parties relating to immovable items taken from the plaintiff's' property by the defendant,¹⁹ and receipts for timber and wrought iron works relating to the plaintiff's property.²⁰

Having seen that a request for a site inspection made by the plaintiffs at the hearing of the 8th June, 2021 was acceded to by Court at the same hearing.²¹

¹⁴ Note at fol 762 with documents at fols 763 to 776. The documents show, amongst other things, that whereas plaintiff Farchy paid the deposit for the UPVC apertures on the 2nd March, 2017, in September 2017 representatives of the company were informing her that the order was not finalised due to failure to pay the required deposit. To this, the defendant replied that as the suppliers owed him money, he hadn't forwarded her deposit to them. Later, he requested plaintiff Farchy to repay the deposit directly to them. Additional documents – screenshots of cellular text messages – show plaintiff Farchy insisting that she will tolerate no additional delays. Amongst said messages, messages of August, 2017 show plaintiff Farchy complaining that she has been waiting since March – vide fol 775.

¹⁵ Application at fol 893 and 894.

¹⁶ Decree at fol 895. The acts of warrant of seizure number 41/2018 PC were inserted in those of this case via a decree of the 24th November, 2021.

¹⁷ File 41/2018 PC.

¹⁸ Documents at fols 953 to 967.

¹⁹ Emails at fols 968 to 988.

²⁰ Receipts at fols 989 to 995 – all issued from December 2017 onward.

²¹ Court record at fols 998 to 999.

Having seen the additional note of the plaintiffs filed on the 8th June, 2021 with attached various documents.²²

Having seen the note of the plaintiffs filed on the 24th November, 2021 with attached a report compiled by court appointed expert Vincent Ciliberti in the acts of Criminal Case number 36/2019 JM filed by the Executive Police against the defendant.²³

Having seen the note of the plaintiffs filed on the 28th September, 2022 with attached several documents.²⁴

Having seen that at the hearing of the 28th September, 2022 the plaintiffs declared their case rested.

Having seen that at the hearing of the 23rd November, 2022 counsel for the defendant renounced his brief and the Court adjourned the case for evidence of the defendant.

Having seen that at the hearing of the 15th February, 2023 Court warned the defendant that if he failed to appear for the next adjournment his case will be deemed rested with the case adjourned for judgment.

Having seen that at the hearing of the 9th March, 2023 the defendant failed to appear in Court with his case deemed rested. The case was thus adjourned to today for judgment.

Having seen all the other acts of this case, including all the submitted documents, records of the sittings, as well as transcripts of testimonies and sworn affidavits.

B. Evidence:

The Court heard evidence made *viva voce* and saw that made in writing via affidavit by:

²² Note at fols 1001 to 1003 with an additional affidavit by plaintiff Farchy at fols 1004 to 1007 - printed on both sides of each fol - and various documents referred to therein at fols 1008 to 1087.

²³ Note at fol 1104, report at fols 1105 to 1156.

²⁴ Note - not page umbered. Documents consists of various receipts of payments affected by the plaintiffs to third parties.

Isabelle Farchy, plaintiff, gave testimony via affidavit.²⁵ She declares that she is the owner of the property with numbers 4 and 5 in *Triq Mikelang Refalo*, Victoria, Gozo.

She states that the property needed renovation works to be turned into a guest house for which reason, she first engaged Perit John Saliba to propose a renovation plan and then the defendant for a quotation for the necessary works.

She adds that she approached the defendant in February 2016 when he sent her two quotations: one for building works and the other for finishing works. She adds that the quotations were dated the 8th and the 9th of March, 2016 respectively. She re-submits a copy of the quotations as previously submitted with the sworn application.²⁶

She declares that she accepted the defendant's quotations and paid the value of € 20,972 requested by the defendant as a deposit on account of the price of both quotations. She attaches bank transfer statements showing her payment of said value via four bank transfers of € 3,000, €9,000, € 2,862, and € 6,110.²⁷

She states that whereas the building works were meant to start between the 28th March and the 4th April, 2016 they didn't start before May, 2016.

She adds that progress on the works was slow with the defendant blaming the fact that the property was old and in Victoria and that it was above third-party property. She states that these were factors that were all known to the defendant before he quoted for his work.

She declares that on the 1st July, 2016 a scaffolding installed by the defendant in her property for removal of stone slabs collapsed causing damages to *Gangu's Bar* situated directly beneath her property.

She adds that at this stage the defendant sent her a schedule indicating a new completion date for the construction works – taking into account repair works that were to be undertaken at *Gangu's Bar*. She states that

²⁵ Affidavit at fol 43 to 48 with documents at fol 49 to 72.

²⁶ Quotations at fol 12 and 30 with the sworn application and at fol 50 and 52 with the affidavit. The plaintiff also re-submits copies of the accompanying emails with which the quotations were sent to her by the defendant.

²⁷ Bank statements at fol 54 and 55.

the new completion date was now to be the end of July 2016. She submits a copy of the schedule sent to her by the defendant in an email dated the 6th July, 2016.²⁸

She declares that from here on things didn't get better with the defendant not organising the work properly and workers not showing up. She states that at one point the defendant commenced finishing works when building works hadn't been completed yet with said finishing works then needing to be redone. She lists various works that had to be redone. She further adds that this confusion also caused damages in the property such as broken old stair steps, broken old tiles, and chipped walls.

She declares that the second floor started being rebuilt in January, 2017 and thus, after the completion date of the end of July 2016. She states that workers kept changing and the quality of the work kept dropping.

She declares that the defendant kept making promises including that he'd finish the works by the first week of April 2017 – yet another completion date. She submits an email sent by herself to the defendant in which she refers to his verbal promise for completion of works by the 8th April, 2017.²⁹ She states that this notwithstanding at the end of May 2017 the defendant gave her a yet another, new handwritten schedule of works. She submits a copy of this additional schedule of works.³⁰

She declares that no real work was carried out between April and November 2017 with the defendant making promises which he never kept.

She states that she tried to reach an agreement by involving lawyers but the two meetings she had with the defendant and their respective lawyers were not fruitful.

She adds that by this stage, she had paid the defendant a hefty sum in advance with his prices and invoices constantly changing. She states that this confused everyone including him. She explains that there were 3 different quotes for the building works – numbered 16014, 16023, and

²⁸ Email by the defendant to the plaintiff dated the 6th July, 2016 at fol 56.

²⁹ Plaintiff's email to the defendant dated the 12th of April, 2017 at fol 57.

³⁰ Handwritten schedule of works entitled "*countdown*" and running through to the 6th June, 2017 at fols 58 and 59.

16036 – and 2 different ones for the finishing works – numbered 16015 eventually re-numbered to 17007. She states that these changed numerous times each at the end ending up having received a total of 27 invoices altogether.

She declares that whereas she and the defendant had agreed that she'd hold back a sum on each of the building and the finishing statements, the defendant kept putting pressure on her to pay more and more ultimately ending up paying some of the reserve as well. She states that she eventually decided to stop paying the defendant. She adds that at this point the defendant started adding entries and overheads to the invoices which would have already been quoted for such as sand for tiling which would have been included in "*floor tiling, including material excluding tiles*".

She declares that in September 2017 she was approached by *Gangu's Bar* manager John Attard who informed her that the defendant hadn't paid him € 3,300 that were promised to him as compensation for having to shut the bar down. She adds that she had passed this money onto the defendant for onward payment to John Attard back in August 2016. She submits an email sent to her by the defendant on the 25th July, 2016 regarding this money.³¹

She declares that similarly, George Grech, who made the metal balcony railings for her, *Bubbles* and *Newline* bathroom centres, Mario Formosa from *Living Concept*, Victor Sultana, a plumber and electrician, and *Window World Innovations* all didn't receive money due to them which she had passed on to the defendant. She adds that when she questioned the defendant about these workers and suppliers, he replied that he had credit with them and thus he didn't pass on the money because they were indebted to him.

She adds that eventually she ended up with a legal hypothec filed on her property by George Grech because the defendant hadn't paid him money for metal balcony railings put up in May 2017 which she had passed on to him in July, 2016.

³¹ Email sent by the defendant to plaintiff Isabelle Farchy on the 25th July, 2016 re money due to *Gangu's Bar* at fol 60.

She declares that the difficulty in keeping track of the defendant's invoicing, the constant changing in his prices, the continual delay in works, and her increasing distrust in the defendant left her no option but to terminate the agreement with him.

She adds that thus, on the 22nd November, 2017, after 8 months of no progress with works in her property, she terminated the defendant's engagement and engaged third-parties to finish off the works. She adds that she had commitments to fulfil and needed the property to be up and running.

She declares that most of the work done by the defendant had to be redone ending up with works ongoing in every single room in her property.

She adds that on terminating her agreement with the defendant she discovered other issues like works billed twice and more suppliers that hadn't been paid for their work or material.

She declares that she paid the defendant € 229,367.11 in total - € 88,326.11 on the building invoices, € 137,741 on the finishings invoice, and € 3,300 as had to be paid to *Gangu's Bar*.

She adds that she estimates that she is owed back from the defendant the sum of € 66,539.23 in materials paid for and not delivered and works paid for and not done or not completed. She attaches a breakdown statement of how she reached this calculation.³²

She declares that in the value of € 66,539.23 she is claiming from the defendant she did not include the materials and things he took from her such as apertures, metal handrails, vents and insect screens as well as a power cable.

She adds that she had to re-order several items taken by the defendant at a cost after he refused her various requests for their return. She attaches an email sent to this effect by her legal counsel to that of the defendant on the 26th April, 2018.³³

³² Breakdown statement at fols 63 to 67.

³³ Email at fol 71 refers to property of the plaintiff withheld by the defendant including apertures and railings and informs the defendant that the same will be re-ordered at his expense.

She values the re-ordered items at: apertures circa € 20,000 – to which she adds € 7,174 paid by her to the defendant regarding apertures that weren't delivered – and railing circa € 5,000. She lists an additional value of € 2,458 for tiles which was meant to be paid on her behalf by the defendant and wasn't.

She thus concludes that by adding these values to that of € 66,539.23 the total due to her by the defendant would be of € 101,171.23. This in the hope that no additional creditors for whom she had passed money on to the defendant step forward.

By additional affidavit,³⁴ she declares that when she was approached by Attard who ran *Gangu's bar* and she was told that he never received the compensation promised, she immediately and in Attard's presence text messaged the defendant whose reply was that he had no particular reason not to pass on the compensation but just decided not to.

She attaches a screenshot of cellular text communications showing this.³⁵

She states that she now knows that workers weren't staying on the job because the defendant wasn't paying them with some approaching her directly about this issue.

She refers to forger George Grech as well as *Window World Innovations* whose money she had transferred to the defendant who never made the payments to them on her behalf. She adds more such creditors to the list, namely; Charlie Axiak – stone mason who made the replacement steps for her stairs, *Bubbles Bathroom Centre*, *Newline Living Concept*, and *Distinct Homes* all of whom didn't get money whether in payments or deposits which she had transferred to the defendant for onward payment to them.

She attaches several documents with reference to these other creditors.³⁶

³⁴ Additional affidavit at fols 1004 to 1007 with attached documents at fols 1008 to 1087.

³⁵ Screenshot at fol 1008.

³⁶ Documents include screenshot of cellular text messages, invoices and emails re unpaid deposits at fols 1009 to 1019.

She states that apart from the ones whose documents she includes with her affidavit, there are probably others such as the scaffolding supplier, crane rental, ironmongers and such who all started warning her that the defendant is not reliable and that he wouldn't give them the money she'd have passed on to him for them.

She declares that she started getting emails from the defendant with lists of pending jobs and proposed deadlines. She attaches copies of these emails.³⁷ She also attaches emails from her legal counsel to that of the defendant where she indicates that the proposed deadlines were unrealistic while also proposing to draw a statement of account and reach settlement and stating that she was losing out on profit that could be made from the property due to the defendant's delay in executing the works as promised all while he was paid in advance.³⁸

She declares that all this led to having to call several meetings with her and the defendant's legal counsel including the last one of the 15th November, 2017 when the defendant started shouting and the meeting went nowhere.

She declares that following the failure that these meetings were, on the 22nd November, 2017 she decided to terminate her professional relationship with the defendant. She attaches an email of that date - 22nd November, 2017 - indicating the termination of the defendant's engagement with immediate effect and notifying that she will be engaging third-party contractors to continue the works.³⁹ The email also liquidates a sum due and refers to commitments of the plaintiffs with regards to the property.

With reference to payments made by her to the defendant, she declares that in hindsight she realizes how quick she was with paying. She declares that this was because she trusted the defendant and believed the work would be done.

She lists excuses the defendant would give her when nobody appeared on site, such as that the workers were working on her apertures in a workshop. She states that here to he would ask for payment for materials.

³⁷ Emails at fols 1020 to 1024 dated October and November 2017.

³⁸ Emails dated November, 2017 at fols 1025 to 1028.

³⁹ Email at fol 1033.

She states that eventually, after the defendant's separation from his wife, he started requesting cash payments which she was making. She adds that this was because he was not banking with the same bank as her and wouldn't wait the couple days it would take for transfers between different banks to clear. She attaches several receipts for cash payments.⁴⁰

She states that by March 2017 she was refusing to make more payments and the defendant started loaning money off her which he would never give back but would instead inflate invoicing to cover for it. She adds that when she refused to give him more money, he got aggressive, bullying her into making payments, including through a third party - J. C. Bennavil - while she was away. She adds that he also pushed her into reducing the money she had retained back by way of guarantee on the two agreements - of building and for finishings. She attaches an affidavit by J. C. Bennavil.⁴¹

She mentions additional suppliers/workers that she had sent money for to the defendant and states that she now knows that said suppliers/workers didn't deliver or didn't complete their work because the defendant wasn't paying them the money she was sending him for them. She states that to get work done she ended up paying these suppliers/workers directly herself, all while she would have already paid the defendant the money due to them.

She attaches several documents in evidence of this.⁴²

She admits that she was too trustful and with his matter she was naïve. She states that she arrived in Gozo from France in 2015 and it was a complete change of culture. She adds that this was her first renovation project, and she knew nobody in Gozo. She states that she trusted the defendant and his commitment to the project. She adds that he manipulated her to gain her trust only to then influence her and abuse the situation.

⁴⁰ Receipts via email confirmation of payment sent to the plaintiff Farchy by the defendant at fols 1034 to 1046.

⁴¹ Affidavit of J. C. Bennavil at fol 1047 stating that plaintiff Farchy called him from France telling him she'd transfer money to his account for onward payment - in cash - to the defendant. He states that this was on the defendant's request to plaintiff Farchy because the defendant wouldn't wait the couple days it took for a transfer between different banks to take effect.

⁴² Declaration at fol 1049, emails at fols 1050 to 1054, screenshots of cellular text messages at fols 1055 to 1056.

She reiterates how the defendant's quotations kept changing and he kept adding things with it all becoming very confusing. She adds that the defendant was unorganized and he'd lose her in different quotations and with hours of talking all while her English wasn't the best.

She attached a list of the several different invoices the defendant sent her over the course of their professional relationship.⁴³

She says that he'd always panic her with making payments "urgently", stating he needed the money to pay suppliers and workers which she now knows wasn't true.

She states that when she was inquisitive or held payments back the defendant would do work which she wouldn't have asked for to clock up more payable time. She mentions again also loaning the defendant money which he never paid back. She attaches documents showing how she'd lend the defendant money to help him out.⁴⁴ She further attaches a document prepared by herself showing payments made by her to the defendant.⁴⁵ She additionally attaches emails sent to her by the defendant acknowledging these payments.⁴⁶

She states that the original invoice stated that works by the defendant would be completed within 6 to 8 weeks. She adds that this shows that either the defendant didn't know what he was committing to or specifically committed to something he knew he couldn't fulfil.

She states that the defendant and his workers always had unfettered access to the property while their professional relationship was ongoing.

She declares that the Gozo guest house is the sole source of income for her and her family in Gozo and was always meant to be. She adds that the delays have therefore impacted her family's income. She adds that not only was she stuck with the defendant for 20 months but, after that, she had to find third party contractors to finish the works.

⁴³ List at fol 1057 to 1058.

⁴⁴ Screenshots of cellular text messages at fols 1062 to 1067.

⁴⁵ Document at fols 1068 to 1070.

⁴⁶ Emails dated November, 2016, January, February, and June 2017 with their attachments at fols 1071 to 1085.

She adds that through the process of the warrant of seizure, she eventually saw the apertures and railings that had been taken months earlier by the defendant, and these were still untouched; in the same condition that they had been taken by the defendant. She adds that the defendant had therefore done nothing of what he claimed he was doing on them. She says that therefore anytime the defendant said that his workers were working on her items just not on her site he was lying to her. She lists the money she paid for the renovation of these items which lay untouched. She adds documents relating to replacement apertures that she had to acquire.⁴⁷

She concludes by saying that she gave the defendant money for work that wasn't carried out as well as money for payments to third parties which weren't made.

By additional affidavit,⁴⁸ she presents an overview of payments made by her to the defendant as well as the refund being claimed from the defendant.

She states that the total amount she paid to the defendant is of €229,367.11 with payments affected by bank transfer to his ex-partner's or his account or cash paid directly to him or at times to his employees.

She reiterates that the value of € 66,539.23 was paid in excess and represents materials paid for but not delivered and works contracted and paid for which were not done or were not completed.

She states that to this value of € 66,539.23 one must add the value of the new apertures and metal railings ordered to replace the ones that were removed from her property and not returned to her as well as the value paid to the defendant for works on the original apertures and metal railings. She states that therefore the total amount due to her should be of € 94,312.65.

She also adds that because of all of the defendant's shortfalls she suffered losses on her business which she demands compensation for from the defendant.

⁴⁷ Quotations at fol 1087.

⁴⁸ Affidavit filed with a note of the 28th September, 2022 - not page numbered.

Perit John Saliba, testified⁴⁹ that he was the architect who applied for the plaintiff's planning permission for alterations and additions to property number 4 in *Triq Mikelanġ Refalo*, Victoria. He confirms that he was the only architect involved in the project.

He states that the contractor was to be the defendant. He adds that the defendant undertook all the works, building and finishing, as a turnkey contractor, but didn't finish all of them.

He states that unfinished works comprised tiling, pointing, electrical and plumbing works and several others identified in photographs which he recognizes in his report dated the 22nd November, 2017 at fols 82 to 84 and other photographs at fols 85 to 112. He confirms his report on oath.

He confirms that the images show the plaintiffs' property when the defendant left it.

He states that during the defendant's tenure at the plaintiffs' property he'd visit the site as often as necessary. He adds that in so doing, he noticed that some of the defendant's work was "ok" but other work had to be modified to be made acceptable. By way of example, he refers to images in his report showing the stairs and states that these weren't placed properly and had to be replaced by third party contractors after the defendant left the project.

He states that during works by the defendant, there was an incident where the defendant was dismantling a roof in the plaintiff's property and stone slabs fell and damaged third-party property - *Gangu's Bar*. He adds that the defendant had to undertake repair works for these third parties.

Shown the email from the health and safety authority at fols 80 and 81 and the timeline for completion of works shown there, he states that if the defendant had the necessary manpower it would have been doable. He adds that however the defendant never had the manpower so the works were not carried out within those time-frames.

⁴⁹ Transcript at fols 129 to 136.

In cross-examination,⁵⁰ asked whether the defendant left the project or was terminated he states that his understanding is that he was promising the plaintiffs that he would complete the project but he never did until he never appeared on site again.

He states that some items on the project list were started and completed, others were halfway through.

He states that the defendant was never barred access to the site while he was involved with the project.

He agrees that following the incident involving *Gangu's Bar* there was a warrant of prohibitory injunction filed against the defendant and the plaintiffs but the parties soon reached an agreement and works resumed.

John Attard, previously a manager at *Gangu's Bar*, gave testimony in the Maltese language.⁵¹ He states that he no longer runs the bar. He states that workers of the plaintiffs were labouring in their property when the bar's roof collapsed inside the bar.

Asked who carried out the necessary repair works he states that he thinks it was the plaintiff, Isabelle Farchy, through the defendant.

He adds that the bar remained shut for seven weeks for which he asked for compensation of around € 4,000. He states that this was never paid to him. Shown his declaration at fols 116 and 117 he recognizes the same and explains that it was done through his lawyer. He further adds that the private writing acknowledging the debt of € 4,000 to be paid to him by the defendant as attached to his declaration in draft form was signed. He obliges himself to file a signed copy of it.

He adds that the defendant would keep promising him payment of the €4,000 but he would never deliver. He further adds that the defendant never claimed that the plaintiffs didn't pass on the necessary money for payment of compensation to him. He states that he eventually told plaintiff Farchy about this.

⁵⁰ Transcript at fols 136 to 138.

⁵¹ Transcript at fols 139 to 150. Synopsis translated by the Court.

Shown plaintiff Farchy's bank transfers of € 2,400, € 600, and € 300 he states that none of that money reached him and he remains unpaid to date.

He adds that the incident happened in July, 2016 near the feast of St. George.

George Grech, metal forger, gave testimony in the Maltese language.⁵² He states that as a forger, he was contracted to make wrought iron balconies for the plaintiffs.

He states that on the first encounter, he met with the defendant and plaintiff Farchy at his workshop where an order was placed. He adds that he made the balconies, installed them, and gave the bill to the defendant but this was never paid.

He adds that initially, he didn't know who was to pay him. He states that later he discovered that the defendant was to pay him.

He adds that he found out who was responsible for payment after he gave his bill to the defendant and only then did the defendant start claiming that the work was not good, the price was too high, and such complaints. He states that plaintiff Farchy never complained about his work.

He adds that the defendant would give him the run-around about the payment, giving him appointments for payment and then not showing up, until he would then contact plaintiff Farchy who'd tell him that the defendant would have told her that the meeting for payment had been cancelled.

He adds that originally his bill was for € 4,500 but he then started distrusting the defendant so opted to not paint the metal and reduce his bill to € 4,000.

He adds that at one point the defendant also started claiming that included were to be a flight of metal stairs to the roof and a full spiral

⁵² Transcript at fols 151 to 157. Synopsis translated by the Court.

staircase. He insists that this is not true and the agreement was always solely for the balconies.

With reference made to a payment of € 3,000 made by plaintiff Farchy towards the balconies, he states that he never got any of that money and in fact he never got any payment at all.

He adds that he spoke to a lawyer who told him that he has a good case but even if he won it, there is a high probability that there would be no funds for recovery from the defendant. He confirms the judicial letter he filed in Court against the defendant and both plaintiffs. He agrees that he also registered a hypothec on the property of the plaintiffs.

In cross-examination,⁵³ he states that he filed the judicial letter against the defendant and both plaintiffs because his work is on the plaintiffs' property and plaintiff Farchy had ordered the work together with the defendant.

Victor Sultana, plumber and electrician, testified in the Maltese language.⁵⁴ He states that the defendant had approached him to work in the plaintiffs' property in Victoria, Gozo. He adds that the defendant told him that he was to install water and electricity and all rooms and was answerable to him, including for invoicing.

He states that he met the plaintiff Farchy after he commenced work on her property.

He adds that he never finished the work he was contracted to do for the defendant because the defendant wasn't paying him so he abandoned the site.

He states that at that time plaintiff Farchy contacted him but he couldn't explain to her because his professional relationship was with the defendant. He adds that through his conversations with plaintiff Farchy he found out that the defendant would tell her that he was not attending on site because he couldn't find parking in Victoria.

⁵³ Transcript at fols 157 to 160.

⁵⁴ Transcript at fols 161 to 171. Synopsis translated by the Court.

He states that later on, he explained everything to plaintiff Farchy who asked him if he'd continue working directly for her to which he agreed.

He adds that when he started working directly for plaintiff Farchy, the defendant was no longer on site. He further states that at this juncture, not much had been done in the plaintiffs' property, with a lot of work commenced but not finished.

He adds that since he started working directly for the plaintiffs, the work moved forward at a steady pace, with it now being near the end, and payments are regular.

Referred to document "H" at fols 63 to 67 and specifically the entries therein numbered 2.01, 2.02, 2.03, 2.05, 2.15, 2.18, 2.19, 2.20, he states that all materials therein mentioned were bought by him after the defendant left the site and he started working directly for the plaintiffs. He explains that he bought the material and presented receipts to the plaintiffs who promptly paid him. He adds that on plumbing and electricity there was only him and his partner on site so nobody else could have received those items from the defendant for the plaintiffs' site.

In cross-examination,⁵⁵ he states that the defendant had sub-contracted him. He adds that he worked with the defendant for around 8 months starting about two years prior.

He states that when he finished with the defendant, he had cut walls in preparation for installing conduits for water and electricity and started installing the conduits but never finished. He adds that when he finished with the defendant he hadn't concluded any of the work.

He states that before he could resume working directly for the plaintiffs there were various things that needed to be re-done, he mentions tiling, pointing, mortaring and other matters. He explains that water and electricity move in tandem with such other works.

⁵⁵ Transcript at fols 171 to 178.

Mark Cini, in representation of the Planning Authority, testified⁵⁶ that he was requested to submit documents relating to planning permit number PA/3956/15 obtained by the plaintiffs.

He states that the application was for internal and external alterations as well as additions. He adds that the permit was granted on the 8th March, 2016. He further adds that a commencement notice was filed on the 6th May, 2016 stating that works on site were to start on the 12th May, 2016.

He adds that on the commencement notice, the person listed as the contractor and site manager and thus, as responsible for the works allowed by the permit, was the defendant.

He submits a copy of the application for development permission dated the 7th September, 2015,⁵⁷ a copy of the permit dated the 8th March, 2016,⁵⁸ a copy of the approved plans,⁵⁹ and a copy of the commencement notice dated the 6th May, 2016.⁶⁰

Carmel Debrincat, in representation of Bank of Valletta, testified⁶¹ that the bank holds one savings account on behalf of plaintiff Farchy. He submits statements for said savings account.⁶²

In further testimony,⁶³ he states that it is the customer who decides what subject details to include when performing a bank transfer. He adds that in the case of plaintiff Farchy, he could only trace two transactions for which the customer inserted the name “Terence Zammit” in the details field. Asked about transfers made to Z Turnkey Development he confirms that the IBAN number there is the same as that used when the customer – plaintiff Farchy – made transfers with the defendant’s name in the details field.

⁵⁶ Transcript at fols 185 to 187.

⁵⁷ Application for development permission at fols 188 to 193.

⁵⁸ Permit at fols 194 to 198.

⁵⁹ Plans at fols 199 to 202.

⁶⁰ Commencement notice at fol 203.

⁶¹ Transcript at fols 204 to 206.

⁶² Statements at fols 207 to 242.

⁶³ Transcript at fols 719 to 721.

Mario Galea, in representation of *HSBC Bank Malta p.l.c.*, testified⁶⁴ that plaintiff Farchy holds three accounts with the bank. He submits statements for a savings account, a foreign currency account, and a fixed deposit account.⁶⁵

In further testimony, he testified⁶⁶ that he went through the statements of the accounts previously submitted and highlighted all transfers made between plaintiff Farchy and the defendant.

He re-submits statements as previously submitted as well as statements for accounts held by the defendant.⁶⁷

Adrian Camilleri, testified⁶⁸ that he met plaintiff Farchy because they were using the same contractor, the defendant. He states that in his case he had given the defendant a turnkey contract, meaning that the defendant had to start and finish all works necessary in his property.

He adds that after many delays with the work, he realized he was giving the defendant money supposedly for deposits that wasn't reaching the suppliers.

He states that he started investigating and found out that many of the defendant's clients had the same issues.

Jean-Christophe Bennavail, gave testimony via affidavit.⁶⁹ He declares that he met plaintiff Farchy near the end of 2015 and she introduced him to the defendant in April, 2016 who he then hired for a project in Xaghra.

He adds that late in 2017, plaintiff Farchy informed him that like him, she had ordered UPVC apertures from *Window World Innovations* through the defendant. He adds that plaintiff Farchy also told him that she gave the defendant the deposit to secure her order.

⁶⁴ Transcript at fols 243 to 246.

⁶⁵ Statements for savings account with acct. number ending 050 at fols 250 to 338. Statements for foreign currency account with acct. number ending 451 at fols 339 to 395. Statements for fixed deposit account with acct. number ending 100 at fols 396 to 401.

⁶⁶ Transcript at fols 472 to 473.

⁶⁷ Statements at fols 474 to 718.

⁶⁸ Transcript at fols 247 to 249.

⁶⁹ Affidavit at fol 723.

He declares that just like the defendant didn't pay his deposit to *Window World Innovations*, neither did he pay plaintiff Farchy's.

He further adds that he had witnessed plaintiff Farchy complaining to the defendant that the work on site was not progressing as per his revised schedule of works with the project already several weeks delayed. He adds that here he witnessed the defendant telling plaintiff Farchy that he would for sure meet the first week of April, 2017 deadline and if not, he'd run nude across *Pjazza t-Tokk*. He adds that it was the oddity of this remark that makes him recall this memory so clearly.

He concludes that this notwithstanding, the defendant didn't meet the deadlines and instead resorted to threatening and insulting plaintiff Farchy.

He further adds that plaintiff Farchy had to pay suppliers and workers for whom she had already paid the defendant.

In an additional affidavit,⁷⁰ he declares that on the 18th November, 2016, plaintiff Farchy contacted him from France informing him she would be transferring € 1,200 to his account and asking him if he would be able to withdraw that and deliver it in cash to the defendant. He states that plaintiff Farchy informed him that the defendant would not wait for her return to Gozo or the couple days it took for a transfer between her bank and his which were different banks to clear.

He adds that so it was and he delivered the cash to the defendant on the following day, the 19th November, 2016. He attaches a statement from his bank showing these transactions.⁷¹

Marilyn Scerri, in representation of *BNF Bank*, testified⁷² that plaintiff Farchy holds no accounts with the bank whereas the defendant had an account which he closed in 2017.

⁷⁰ Affidavit at fol 1047.

⁷¹ Statement at fol 1048.

⁷² Transcript at fols 730 to 731.

She exhibits statements for the account held by the defendant⁷³ and a statement showing transfers made by plaintiff Farchy into the defendant's account.⁷⁴

Donna Zammit, the defendant's ex-partner, testified⁷⁵ that there are bank transfers from plaintiff Farchy into her bank accounts made for the defendant who at the time didn't have a bank account. She states that the payments were for work the defendant was doing for the plaintiffs. She adds that the money would be transferred to her accounts, and she would then withdraw it and give it to the defendant.

She states that payments went into her HSBC Bank account, and she thinks also in her Bank of Valletta account.

She agrees to request the banks to release transaction reports showing transfers made by plaintiff Farchy for the defendant in her accounts.

Georgina Gauci, in representation of *Bank of Valletta*, testified⁷⁶ that the bank transaction reports for plaintiff Farchy and third-party Donna Zammit will show transfers made between the two.

She submitted bank statements for both parties.⁷⁷

Anthony Saliba, in representation of *Window World Innovations*, testified⁷⁸ that both plaintiff Farchy and the defendant are clients of the company.

He states that the defendant requested a quotation on behalf of plaintiff Farchy which was not completed with Farchy then going directly herself to make a new order. He confirms that all payments for the order relating to apertures in the plaintiffs' property - that is deposits and final

⁷³ Current account with acct. number ending 001 at fols 732 to 733.

⁷⁴ Statement at fol 734.

⁷⁵ Transcript at fols 735 to 738.

⁷⁶ Transcript at fols 785 to 788.

⁷⁷ Statements at fols 789 to 869.

⁷⁸ Transcript at fols 870 to 881.

settlements - were made by the plaintiffs with no payments made by the defendant.

Shown the screenshot at fol 763, he recognizes the company's quotation and states that the screenshot shows the original quotation provided to the defendant. He adds that the invoices submitted by him today are those that were eventually concluded with plaintiff Farchy.

Shown the emails between the defendant and the company's representative M. Jarrett of September 2017 in which mention is made of a certain C. Galea - at fols 766 to 771 - he states that Galea was their financial controller. He adds that the defendant had some pending matters with the company, but these didn't involve the plaintiffs.

Shown the email the defendant sent to plaintiff Farchy claiming that he was a creditor of the company - at fol 772, he states that the defendant was never a creditor but always a debtor of the company.

He submits copies of invoices issued to plaintiff Farchy on the 2nd February, 2018, 9th March, 2018 and 25th April, 2018 together with a statement of account showing that all such invoices were settled.⁷⁹ He confirms that there are no pending dues on plaintiff Farchy's account.

In further examination,⁸⁰ he states that the defendant is a debtor of the company and has outstanding balances with it in the values of € 5,751.85, € 2,008, and € 949 across different invoices.

He adds that the company also used the defendant's services for which it was billed € 1,000 which it settled via cheque payment.

Shown documents at fols 853 to 995 he states that the first is an order quotation issued by the company to the defendant. He adds that the invoice eventually issued to plaintiff Farchy mirrors this quotation.

He states that from his recollections all amounts due on the plaintiff's project were settled by plaintiff Farchy.

⁷⁹ Invoices at fols 882 to 886.

⁸⁰ Transcript at fols 914 to 926.

He submits an invoice dated the 2nd of February, 2018 addressed to plaintiff Farchy,⁸¹ a statement of account relating to dues owed by the defendant to the company,⁸² each invoice listed in the statement as issued to the defendant,⁸³ a covering letter referring to a cheque payment issued by the company to the defendant for € 1,000 with attached the relative invoice issued by the defendant to the company.⁸⁴

In further examination,⁸⁵ he submits a copy of the contract signed between the company and plaintiff Farchy,⁸⁶ a copy of an invoice issued to plaintiff Farchy on the 13th November, 2017,⁸⁷ confirmation of payments made by plaintiff Farchy via bank transfer,⁸⁸ receipts issued by the company to plaintiff Farchy,⁸⁹ an additional agreement entered into by the company with plaintiff Farchy,⁹⁰ confirmation of a payment made by plaintiff Farchy via bank transfer,⁹¹ a receipt issued by the company to plaintiff Farchy.⁹²

He states that at the beginning, it was the defendant who requested a quotation from them for the work required in plaintiff Farchy's property. He adds that this order by the defendant wasn't confirmed so a second agreement was signed directly with plaintiff Farchy.

He states that no payments were received from the defendant regarding the order for the property of the plaintiffs.

Anthony sive Tonio Ellis, marble distributor, in representation of *A.F. Ellis*, testified in the Maltese language.⁹³ He states that he met the defendant around July 2017 when he made an order for product which he wanted delivered by Sta. Maria. He states that the order was ready in

⁸¹ Invoice at fols 927 to 928.

⁸² Statement at fol 929.

⁸³ Invoices at fols 930 to 949.

⁸⁴ Covering letter at fol 950, invoice at fol 951.

⁸⁵ Transcript at fols 1193 to 1198.

⁸⁶ Contract at fols 1177 to 1180.

⁸⁷ Invoice at fols 1181 to 1182.

⁸⁸ Bank transfer confirmations at fols 1183 and 1184.

⁸⁹ Receipts at fol 1185.

⁹⁰ Agreement at fols 1186 to 1189.

⁹¹ Bank transfer confirmation at fol 1191.

⁹² Receipt at fol 1192.

⁹³ Transcript at fols 887 to 891. Synopsis translated by the Court.

time and by then he hadn't yet met plaintiff Farchy and didn't know the order was for her.

He adds that he then started calling the defendant telling him that the order was ready and there was always an excuse to not collect. He states that the order remained with them until several months later plaintiff Farchy went to their office.

He states that plaintiff Farchy called in at the office in January 2018 and settled the whole amount due. He adds that he had never received any payment from the defendant and never saw the defendant again.

He adds that he had to give similar testimony in another case relating to clients in Ghasri who had the same issue with the defendant as the plaintiffs.

Angelo Parnis, in representation of *HSBC Bank Malta p.l.c.*, testified⁹⁴ that in bank statements he is submitting he has highlighted all transactions which took place between plaintiff Farchy and Donna Zammit.

He submits statements which are all in one white Court Agency envelope.⁹⁵

Vince Cassar, testified⁹⁶ that he owns an apartment which he rented to a third party together with a garage. He adds that one day the third party told him that his boss would be storing some items in the garage. He adds that he said that as long as he – the tenant – is there and paying the rent it was up to him. He states that by then he didn't know the defendant.

He states that when the lease on the apartment was up, the tenant told him if he'd be willing to continue renting the garage to his boss which is when he met the defendant. He adds that the defendant paid him rent for the garage till 2016 then stopped paying him rent. He states that at this juncture he started requesting the defendant to vacate the garage.

⁹⁴ Transcript at fols 910 to 912.

⁹⁵ White Court Agency envelope at fol 913.

⁹⁶ Transcript at fols 1157 to 1169.

He states that the defendant refused to vacate so he moved all his items to another garage next to the one originally rented which he needed for himself. He adds that this was done with the defendant's consent. He adds that this was around 2016/2017 which was the first time he saw what was in the garage.

He adds that the objects are still in his garage.

He adds that when the Court Marshall showed up with a warrant of seizure in 2018 at the garage originally rented to the defendant's employee and then to the defendant, he had already moved the items to the other garage. He states that he didn't tell the Court Marshall that he had moved the items to another garage.

He states that all items that were photographed by the expert appointed in the Criminal proceedings against the defendant are still there. He states that he wants said items out of his garage since he isn't being paid any rent.

Terence Zammit, the defendant, subpoenaed by the plaintiffs, testified⁹⁷ that he met plaintiff Farchy through an ex-employee, was shown the property in Victoria, and provided a quotation for alterations and finishing works which were needed. He adds that his quotations were accepted.

He states that the work was challenging and got delayed due to the property's location but also because of issues encountered with permits and third parties. He adds that said third parties were objecting to works during the day and also filed warrants of prohibitory injunction.

He agrees that during the incident when roof slabs fell from the plaintiff's property into the bar beneath it, he was responsible for the works being carried out. He states that plaintiff Farchy paid for the damages caused to the third party.

⁹⁷ Transcript of the 17th March, 2022 – not page numbered.

He states that this incident contributed to delays as did the festa of Sta. Maria and that of St. George.

He states that construction work was completed and what was left were the finishing works. He adds that he cannot recall the date when the building phase was completed.

He states that the finishing stage got delayed due to other bookings he had as well as because he was going through a difficult time personally with a separation. He adds that the amount of work originally agreed on had also doubled.

He states that eventually plaintiff Farchy got fed up and although he proposed an ultimatum for November, at a meeting with the respective legal counsels, she didn't accept it and proceeded to finish the work herself.

He agrees that he didn't finish all the work contracted.

He agrees that the plaintiffs paid on time and on demand. He explains that at different stages of the work he would ask for payments and the plaintiffs would make them.

He states that it is he who would make payments to third party suppliers for materials used in the plaintiffs' property. Shown the documents of *Window World Innovations* which show that the payment was affected by plaintiff Farchy he states that he had many issues with that supplier. He adds that these problems had nothing to do with the plaintiffs. He adds that he had done a showroom for the company and they still owed him money.

He states that plaintiffs should never have gone directly to *Window World Innovations* and pay the deposit because it is he who was dealing with them, they owed him money, and he was to retain the plaintiff's deposit sent to him for them while they deduct same from the money owed to him.

He insists that plaintiffs were only answerable to him for payments.

He agrees that plaintiff Farchy made a payment to him aimed at the metal railing works. He adds that he didn't pay this on to the forger for various reasons. He adds that she could have paid the forger herself.

Regarding the apertures which were removed from the plaintiffs' property he states that work on them was done and finished, and they are still in his possession because he couldn't access them since they are in third party property. He adds that he did the plaintiffs a favour by keeping these items for them rent free. He then states that these items are not installed in the plaintiffs' property but are not in his possession but in third party property.

He agrees that he participated in the removal of the apertures and railings from the plaintiffs' property. He adds that he used his truck to transport them. He also agrees that the removal was done during his tenure as contractor for the plaintiffs.

He states that he didn't return the apertures because his contract with the plaintiffs was terminated and thus he refused to return them and told the plaintiffs to pick them up themselves if they wanted to.

He states that payments to him by the plaintiffs were done by bank transfer or cash, including bank transfer to his ex-partner's account - Donna's account. He agrees that plaintiff Farchy would pay wages directly to his employees.

Shown documents at fols 50 to 53 he identifies the same as his original quotations to the plaintiffs. He also confirms the timeframe of 6 to 8 weeks therein stated.

The Court has also seen the report compiled by Vincent Ciliberti in the acts of Criminal Case number 36/2019 JM filed by the Executive Police against the defendant. ⁹⁸

In said report,⁹⁹ Vincent Ciliberti, as technical expert appointed by the Criminal Court of Malta, stated that a site inspection was held on the 11th

⁹⁸ Note at fol 1104, report at fols 1105 to 1156.

⁹⁹ Report specifically found at fols 1114 to 1126 with images - photographs - following.

May, 2021 at the plaintiffs' guest house in *Triq Mikelanġ Refalo*, Victoria, Gozo.

He further stated that an inspection was also held in a garage where several items removed from the plaintiffs' property were found, removed, measured and photographed.

The court appointed expert also took measurements and photographs of various openings in the plaintiffs' property as well as of the stairs.

The court appointed expert concludes that the plaintiffs incurred expenses to replace apertures and metal railings as were not returned to them after being removed from their property by the defendant and placed in the garage where they were found.

He estimates the total expense at € 17,150.

He clarifies that this excludes delays by the defendant in completing the work entrusted to him, and those relative to the length of time it took for replacement apertures and railings to be made for the plaintiffs.

C. Considerations:

Preliminary:

With this case the plaintiffs requested the Court to declare that the defendant breached the terms of agreement relating to the works he undertook to carry out for them in their property at numbers 4 and 5, *Triq Mikelanġ Refalo*, Victoria, Gozo by not completing said works as agreed.

They further requested this Court to declare the defendant responsible toward them in damages for loss of income from said property, and to order him to refund them in the value of € 66,539.23 - or such sum as consequentially liquidated - paid to him for materials and work which were not delivered.

Additionally, they requested Court to order that the items removed by the defendant from their property be returned to them and, in default, to liquidate their value and order the defendant to pay the same to them.

The defendant responded to these demands by stating that it is not true that he breached the terms of the agreement between him and the plaintiffs, but it was the plaintiffs who unilaterally decided and proceeded to terminate his engagement.

He therefore contended that he owes no refund to the plaintiffs because all money passed on to him was accordingly utilised for works executed in their property.

He additionally stated that in any case, the plaintiffs must prove their claim for the refund of the claimed sum of € 66,539.23.

With regards to the items removed from the plaintiffs' property he stated that such were removed on the plaintiffs' own request and retained in storage by him for free instead of being retained in a rental facility at a cost for the plaintiffs.

With regards to claimed damages in loss of income he stated that the plaintiffs suffered no such loss and, in any case, any such loss would need to be proved by them.

Further Considerations:

From the considerable volume of evidence, both documentary and by way of witnesses *viva-voce*, brought forward before this Court, it transpires clearly to this Court that this case rests on the allegation advanced by the plaintiffs that the defendant breached an agreement that subsisted between them for works to be carried out by him in their property at numbers 4 and 5, *Triq Mikelanġ Refalo*, Victoria, Gozo which was to be converted into a guest house to be run by the plaintiffs as a source of income.

No formal contract of works was presented to this Court and indeed, it does not transpire that any such formal contract was ever signed.

What was presented to this Court were two invoices, one numbered 16014 and another numbered 160015 issued by the defendant to the plaintiffs for “building work” – construction – and “finishing” work respectively.¹⁰⁰

Both these invoices are dated the 7th March, 2016 although that relating to construction work was emailed by the defendant to the plaintiffs on the 8th March, 2016 whereas that relating to finishing works was emailed by the defendant to the plaintiffs on the 9th March, 2016.¹⁰¹

The construction work invoice contains terms and conditions amongst which are those reading that work would commence between the 28th March, 2016 and the 4th April, 2016 and would be completed within 6 to 8 weeks. These documents and their contents have been confirmed in testimony by the defendant.

The parties agreed on these invoices and continuously throughout these proceedings referred to their acknowledgment of them as the working contract between them.

The timelines therein established were confirmed as possible by Perit John Saliba in his testimony before this Court. Given that said timelines, as per the defendant’s email to the plaintiffs previously referred to,¹⁰² had been established with reference to documents annexed to invoice number 16014 as prepared by the same architect Saliba.

It transpires that immediately, there was a delay in the commencement of the works on the agreed dates of between the 28th March, 2016 and the 4th April, 2016.

In fact, from the documents in the Court file it appears clear that work on the plaintiff’s property did not commence until the 12th May, 2016, as per commencement notice a copy of which was presented in the acts of this case by Mark Cini, in representation of the Planning Authority.¹⁰³

¹⁰⁰ Ref invoices at fol 12 and at fol 30.

¹⁰¹ Ref defendant’s emails to plaintiff Farchy at fol 11 and at fol 29.

¹⁰² Email at fol 11 with which the construction invoice was provided to the plaintiffs.

¹⁰³ Commencement notice at fol 203.

Following this first delay in the commencement of the work, additional delays ensued. The reasons for these delays are contested between the parties.

The plaintiffs argue that they had initially attributed the delays to the defendant's mis-organisation of the work site and his workers. They then elaborate that later they realised that the delays were mostly due to the fact that the defendant was not making payments due, including to his own employees, who were thus abandoning the site.

On the other hand, the defendant argues that the delays were all due to the site's difficult location in the narrow streets of Victoria, Gozo and the fact that the property is overlying third-party properties. At some point there was even an allegation, perceived through the line of questioning partaken by the defendant's legal counsel to the project's site architect Perit John Saliba, that the plaintiffs might have deprived the defendant access to the site.

What transpires clearly to this Court is that there were obvious and various delays in the execution of the works contracted and partaken by the defendant which resulted in the defendant himself proposing alternative completion of works deadlines to the plaintiffs on more than one occasion. Deadlines that the plaintiffs often accepted, not only when the reason for the delay and the newly proposed deadline appeared reasonable to them – such as the incident where damage was caused to third party property – *Gangu's Bar* – when roof stone slabs slipped while being removed by the defendant and came crashing into said third party property – but even when they did not.

In this regard, this Court refers to the testimony of plaintiff Farchy whereat she explains that before the problems with the defendant truly came to, he had submitted:

- i. the original timeline as per invoices which, in the worst-case scenario, taking the latest commencement date – the 4th of April, 2016 – and the longest completion period – 8 weeks – into account, would have brought to completion of the works on the 30th May, 2016;

- ii. a second timeline proposed to them via a schedule emailed to them by the defendant on the 6th July, 2016 aiming at the end of July, 2016 as the new completion date;¹⁰⁴
- iii. a third timeline proposed via verbal statement by the defendant that the new completion date will be the first week of April, 2017,¹⁰⁵ and;
- iv. a fourth timeline established by the defendant at the end of May 2017 via a handwritten document proposing the end of June 2017 as the new completion date.

This notwithstanding, all these new completion deadlines kept being missed with the defendant himself agreeing in his testimony that he never finished the work which the plaintiffs eventually had to finish through the intervention of third-party contractors.

The problems between the parties to this case persisted through the duration of the defendant's tenure as the formally engaged contractor to complete the work requested on the plaintiffs' property.

This, not just due to the delays in reaching targets and completing the work but also due to the defendant's attitude with the plaintiffs in particular, plaintiff Farchy who states over and over again that she often felt intimidated by the defendant's demeanour, in particular when she questioned payments on starting to realise that materials, supplies and ordered goods weren't being delivered on the project site because they were not being paid for by the defendant notwithstanding that she would have transferred the relative funds due for their payment to the defendant as her turnkey contractor. Similarly, workers weren't showing up on the project site because they were not being paid by the defendant.

The issue with payments made by the plaintiffs to the defendant for onward payment to third party suppliers and workers results clearly from the voluminous documents in hand as well as the testimonies given by several such third parties involved.

Testimonies such as that of:

¹⁰⁴ Ref email of the defendant to the plaintiffs at fol 56.

¹⁰⁵ A new completion date corroborated by the plaintiffs via presentation of an uncontested email they sent to the defendant making reference to such new deadline – email at fol 57 – as well as by witness J. C. Bennavail's testimony.

- i. metal forger George Grech who himself had to take action against the parties to this suit to retrieve payment due to him, as was forwarded by plaintiff Farchy to the defendant for onward payment to him but never reached him;
- ii. plumber and electrician Victor Sultana who states that he felt frustrated about the money he had invested in the plaintiffs' project while he wasn't being paid by the defendant who contracted him – an issue that persisted until he felt he could speak freely with plaintiff Farchy who quickly proposed that he starts labouring directly for her, when payments due to him – as per his own testimony – then became regular and timely;
- iii. apertures supplier Anthony Saliba, from *Window World Innovations*, who clearly testified that whereas the first order for the plaintiffs' property was made by the defendant, the necessary deposit to secure the same never reached them and they didn't start production of the UPVC apertures before plaintiff Farchy contracted with them directly and settled all dues necessary, and;
- iv. marble supplier Anthony Ellis, who stated that the order made by the defendant for the plaintiffs' property was left abandoned at their end until months later when plaintiff Farchy went in, settled, and collected.

All this while plaintiff Farchy proved to this Court's satisfaction that payments needed to secure all these matters were being made by her to the defendant on his demand. This as ultimately also confirmed by the defendant himself in his own testimony before this Court.

The defendant is thus shown as engaging in an exercise whereby he would provide quotations to the plaintiffs, receive deposits to secure orders denoted on the same quotations, only to then unilaterally opt to retain the same deposits instead of passing them on to relative third-party contractors or suppliers to secure orders for the plaintiffs. This, for reasons independent off the plaintiffs, as the defendant also admits himself in his own testimony before this Court, relating to alleged or perceived credit rights the defendant would claim against these same third-party contractors or suppliers.

All while the defendant blatantly contradicts himself, in his own testimony before this Court, when on one hand he states that as the

turnkey contractor, payments wise, the plaintiffs were only answerable to him whereas on the other, when specifically questioned about the forger and why payment made to him by the plaintiffs for settlement with the forger wasn't given to the forger, he states that the plaintiffs could have paid the forger themselves directly.

Similarly, a payment made to the defendant by the plaintiffs for him to settle dues with John Attard - who ran *Gangu's Bar* - for damages suffered in said bar during the works in the plaintiffs' property as above mentioned, never reached the said John Attard but was retained by the defendant. This too is satisfactorily proven to this Court by evidence in file.

In contrast, the defendant's argument that the delays were all due to the site's difficult location in the narrow streets of Victoria and the fact it is overlying third-party properties all fall flat considering that as plaintiff Farchy correctly points out; all these site-specific adversities were known to the defendant before he quoted for his work. A point the defendant himself confirms when he gives testimony saying that he was shown the project site before he proposed his quotations.¹⁰⁶ Additionally, and as previously already mentioned, Perit John Saliba on whose documents the construction quotation of the defendant was based gave testimony that the project was doable in the timeline originally established by the defendant himself had the defendant had and retained the necessary manpower. Manpower he could not retain since he was not making payments due to his employees.

As regards the allegation, perceived through the line of questioning partaken by the defendant's legal counsel to the site architect Perit John Saliba, that the plaintiffs might have deprived the defendant access to the site; no evidence of this was brought forward to this Court's satisfaction with this Court finding plaintiff Farchy's testimony that the defendant

¹⁰⁶ Ref. judgment delivered by the Court of Appeal on the 25th February, 2011 in the names *Mark Calleja Urry et vs Joseph Portelli et* wherein Court declared that: "... il-prinċipju jibqa' l-istess cioè` dak tal-liberta kuntrattwali bil-korollarju tiegħu li l-eċċezzjonijiet għal dik il-liberta m'għandhomx jiġu estiżi li hemm mil-limiti tal-liġi li tistabilixxi l-eċċezzjoni...il-Kodiċi Ċivili li jagħtu lill-kuntratti magħmulin skont il-liġi, s-saħħa tal-liġi stess, li hija l-aqwa liġi, cioè` il-liġi tal-partijiet, il-mezz u l-miżura tal-indipendenza personali tagħhom fil-kamp kuntrattwali, u li ma jistgħux jiġu inħassra hliet bil-kunsens ta' xulxin jew għal raġunijiet magħrufa fil-liġi" - Appeal Case No. 129/2006/1. This is in conformity with the principle that once the parties came to an agreement it is such agreement that regulates the juridical relationship subsisting between them, with the presumption being that before they came to such an agreement they considered all the circumstances of the case as well as their personal interests.

and his workmen always retained unfettered access to the project site credible.

This, and the natural growing mistrust of the plaintiffs in the defendant as ensued from it, eventually lead the plaintiffs to opt for terminating their agreement with the defendant. To which extent, on the 22nd November, 2017 they sent an email, through their legal counsel to that of the defendant, informing the defendant of such a decision and that this was to take place with immediate effect.¹⁰⁷ This termination appears to have been accepted by the defendant who submits that eventually the plaintiffs got fed up, terminated him, and proceeded to finish the work themselves.

It is thus clear to this Court that the existing work arrangement between the parties, no matter the shape or form it may have had, was terminated due to faults attributable to the defendant who was persistently late with completing tasks in the job list he himself would have proposed a timeline for and this for reasons imputable to him.

With the above established, the relevant articles of the Civil Code, Chapter 16, of the Laws of Malta that are applicable to the matter at hand are the following:

From Title IV, sub-title IV:

1125. *Where any person fails to discharge an obligation which he has contracted, he shall be liable in damages.*

1130. *(1) Where the obligation is to give or to do, and a time is fixed in the agreement, the debtor is in default by the mere lapse of such time, saving, as regards the payment of interest under article 1141, the provisions of that article.*

1133. *The debtor, even though there has been no bad faith on his part, shall be liable for damages, where competent, both for the non-performance of the obligation as well as for the delay in the performance thereof, unless he proves that the non-performance or delay was due to an extraneous cause not imputable to him.*

¹⁰⁷ Email at fol 1033.

1135. *Subject to the exceptions and modifications hereinafter specified, the damages due to the creditor are, generally, in respect of the loss which he has sustained, and the profit of which he has been deprived.*

From Title IX, sub-title II:

1640. (1) *It shall be lawful for the employer to dissolve the contract, even though the work has been commenced.*

(2) *If the employer has no valid reason for the dissolution, he is to compensate the contractor for all his expenses and work and to pay him a sum to be fixed by the court, according to circumstances, but not exceeding the profits which the contractor could have made by the contract.*

(3) *If the employer has valid reason for the dissolution, he is to pay the contractor only such sum which shall not exceed the expenses and work of the contractor, after taking into consideration the usefulness of such expenses and work to the employer as well as any damages which he may have suffered.*

(4) *Any advance made to the contractor before the dissolution of the contract shall be applied to the sums due in terms of sub-article (2) or (3) of this article and the contractor shall return any resulting excess to the employer.*

(5) *The contract shall be immediately dissolved when the employer informs the contractor, by any means whatsoever, of his decision to dissolve the contract, and this without the need of any authorisation or confirmation by any court.*

From the above, it is clear that the defendant failed to discharge the obligation for which he was contracted in the time fixed by agreement for him to do so.

This, not just from the additional evidence in the Court file but on his own admission when he testified that he didn't finish the work he was contracted for.

For this, he may be liable in damages for non-performance as well as for the delay in performance in terms of the losses sustained by the plaintiffs and the profit of which they have been deprived.

It is also clear that the plaintiffs had valid reasons to terminate the defendant's contract in terms of Article 1640 sub-article (3).

This Court is also satisfied that the notification sent via email of the 22nd November, 2017 by legal counsel to the plaintiffs to legal counsel to the defendant informing the defendant of the termination of his employment with the plaintiffs suffices for the requirements of Article 1640 sub-article (5).

The above established; this Court notes that the plaintiffs submitted various documents to prove payments made by them to the defendant, as also confirmed by the various bank representatives where such were made by bank transfer and by independent documentation when such were made in cash.

The plaintiffs have also submitted, with plaintiff Farchy's affidavit at fols 43 to 48, a statement showing payments made by them to the defendant which, in their opinion, should be returned to them whether because the work these payments were advanced for was not done or not completed, or the items these payments were meant to pay for were not acquired for the them by the defendant, or because the payments made for onward forwarding to third party suppliers had to be remade by the plaintiffs themselves after they realised that the defendant hadn't forwarded said payments to the rightful creditors thereof.

The Court also notes that this statement has been corroborated by various independent witnesses or additional documents submitted by the plaintiffs while it was not contested as such by the defendant, other than generically in his sworn reply where he stated that the plaintiffs ought to proof their claim for € 66,539.23. A request this Court deems fulfilled.

This Court thus deems the claim for € 66,539.23 made by the plaintiffs against the defendant adequately proved and qualifiable as advance payments made by the plaintiffs to the defendant before the dissolution of the contract that must be returned to them by the defendant in terms of Article 1640 sub-article (4).

The same cannot however be said for the more considerable claim of €94,312.65 made by the plaintiffs in plaintiff's Farchy's other affidavit submitted at the hearing of the 28th September, 2022.

It is this Court's opinion that several values therein claimed in this last affidavit of plaintiff Farchy were already catered for in her previous affidavit at fols 43 to 43 or, if otherwise, remained unproved to this Court's satisfaction.

Particular reference is here made to entries 2.07, 2.08, 2.09, 2.10 and 2.12 in the document marked "H" submitted with plaintiff Farchy's affidavit at fols 43 to 48.¹⁰⁸ Said entries refer to windows, door frames, apertures, and timber doors which all appear to be also re-qualified in the section entitled "doors and windows" in plaintiff Farchy's subsequent affidavit of the 28th September, 2022. Thus being a double calculation this Court cannot entertain.

With reference to the report of court appointed expert Vincent Ciliberti, as appointed in the Criminal Court case with number 36/2019 JM filed by the Executive Police against the defendant, this to refers to apertures that appear to be included in plaintiff Farchy's affidavit at fols 43 to 48 with no evidence to the contrary having been brought forward to this Court's satisfaction.

With regards to damages for non-performance of the obligations assumed by the defendant or the delay in performance - in terms of Article 1133; this Court notes that although no extraneous cause not imputable to the defendant has been proved by him for non-performance and delay, no specific request was made by the plaintiffs for non-performance or delay other than one for interest which has consistently in local jurisprudence been considered tantamount to a payment in damages for delay.

Similarly, and with regard to the plaintiffs' claim for loss of revenue - profit from the running of their guest house - due to the delays attributable to the defendant, this Court notes that although mention of this matter was made at several stages in the gathering of the plaintiffs'

¹⁰⁸ Document "H" being specifically found at fols 63 to 67.

evidence as well as in plaintiff's Farchy's last affidavit submitted at the hearing of the 28th September, 2022, no evidence of such losses was actually brought forward in the acts of these proceedings.

With reference to the plaintiff's request for return of items removed from their property by the defendant and never returned to them, or payment of their value in default of return; this Court notes that following an arduous exercise partaken by the plaintiffs in regards to these items, these items were in fact located and identified in the acts of warrant of seizure number 41/2018 PC as annexed to the acts of these proceedings as well as in the report of Court appointed expert Vincent Ciliberti, appointed in the acts of Criminal Case number 36/2019 JM filed by the Executive Police against the defendant.

Additionally, it has been ascertained in testimony given by Vince Cassar in these proceedings that such items are still located in a property or several properties belonging to him and are thus easily retrievable by the plaintiffs on order by this Court.

Decision:

Therefore, and for the above reasons, this Court declares and decides this case by rejecting all of the defendant's pleas as consonant with this judgment while disposing of the plaintiffs' requests by:

- i. upholding the first request of the plaintiffs and declaring that the defendant breached the terms of the agreement - contract - of works subsisting between him and the plaintiffs regarding works to be carried out at the plaintiffs' property at numbers 4 and 5 in *Triq Mikelanġ Refalo, Victoria, Gozo*;
- ii. rejecting the second, third, and fourth requests of the plaintiffs;
- iii. upholding the fifth and sixth requests of the plaintiffs and declaring that the defendant received the value of sixty-six thousand, five hundred and thirty-nine Euros and twenty-three cents (€66,539.23) in excess payments while condemning and ordering the same defendant to pay the same amount back to the plaintiffs;

- iv. upholds the seventh and eighth requests of the plaintiffs and declares that the defendant withheld items belonging to the plaintiffs, including those as identified in the acts of warrant of seizure number 41/2018 PC as annexed to the acts of these proceedings as well as in the report of Court appointed expert Vincent Ciliberti, appointed in the acts of Criminal Case number 36/2019 JM filed by the Executive Police against the defendant, while condemning and ordering the defendant to return all such items as are in his possession and as belong to the plaintiffs including those identified in the aforementioned acts;
- v. rejects the ninth and tenth requests of the plaintiffs.

Costs of these proceedings as well as those relative to the warrant of seizure number 41/2018 PC and judicial letter 554/2017 as well as interest to be borne exclusively by the defendant.

(ft.) Dr. Brigitte Sultana
Magistrate

(ft.) Daniel Sacco
Deputy Registrar

True Copy

For the Registrar