



**CIVIL COURT
FIRST HALL**

**THE HON. MR. JUSTICE
ANTHONY ELLUL**

Sitting of the 28 th January, 2013

Citation Number. 7/2004

Carmel sive Charles Grech

Vs

Velitchka Iordanova Cardona

The proceedings¹ concern a request for payment of the sum of twenty five thousand Malta Lira (Lm25,000) which the defendant bound herself to pay as per bill of exchange dated 17th March 1999 and due on the 30th March 2000². The law-suit filed by the plaintiff is an *actio cambiaria*. The

¹ In the sitting of the 19th April 2004 the court ordered that proceedings were to continue in English.

² Fol. 5.

defendant claims that she paid the debt³. In her sworn declaration she declared that payment was effected on the 2nd September 1999 (Lm15,000), 29th September 1999 (Lm2,000) and 9th October 1999 (Lm8,000). She also declared that:

“There does however exist another agreement between the parties in connection with an advance of twenty five thousand liri (Lm25,000) which the parties had undertaken to set off against services to be given by defendant to plaintiff and his companies, which were in fact given over a four year period.....”⁴.

The evidence shows that plaintiff paid the sum of Lm50,000, the price paid for the purchase of Flat 6, Kira Mansions, Sir Reggie Miller Street, Gzira. The apartment was purchased by the defendant by means of a public deed dated 29th December 1999. Defendant confirms that the purchase price was paid by the plaintiff, and contends that she borrowed the sum of Lm25,000 and paid it back to the plaintiff whereas the other half of the price had to be paid in kind by rendering services to the plaintiff and his companies. On the other hand the plaintiff claims that originally a bill of exchange for Lm50,000 was signed by the plaintiff. On paying half the amount another bill of exchange was issued for Lm25,000 whereas the first bill of exchange was destroyed.

During the sitting of the 2nd February 2004, the plaintiff presented the original bill of exchange. In an *actio cambiaria* the principle is that:-

“Hi regola fl-azzjonijiet kambjarji li l-kambjalijiet huma prova tal-kontenut taghhom. Dawn il-kambjalijiet jikkostitwixxu mhux biss it-titolu ghall-pagament imma wkoll iservu ta’ ricevuta tal-hlas taghhom. Issa jinsab deciz illi la darba l-attur juri li hu l-possessor tal-kambjalijiet “id-debitur tal-kambjalijiet ma jistax jirrifjuta l-pagament lill-possessor hlief fil-kaz ta’ telf tal-kambjala

³ Statement of defence dated 20th February 2004 (fol. 16).

⁴ Fol. 18.

jew ta' falliment tal-possessur" (Kollez. Vol. XXIX P I p 1366). F' dan il-kaz l-attur wera li l-kambjalijiet, li taghhom ippretenda li jirriskwoti l-hlas, kienu ghadhom fil-pussess tieghu. Kambjalijiet dawn korrispondenti ghall-perijodu determinat, u kif jinghad fl-Artikolu 174 tal-Kodici tal-Kummerc meta "kambjala tkun migbuda ghal zmien jew jum determinat ghandha tithallas fiz-zmien jew fil-jum fiha msemija". Dan ma jidherx li sar, kif dimostrar kemm fl-azzjoni odjerna, kif ukoll f'dik l-ohra precedenti deciza fl-24 ta' Ottubru 2002." (Antoine Vassallo vs Mary Spiteri Tatchev et deciza mill-Qorti tal-Appell⁵ fis-16 ta' Marzu 2005).

Having considered the evidence, the court believes that:-

1. The defendant did not produce convincing evidence that, prior to purchase of the premises or some time thereafter, she agreed with the plaintiff that she would provide her services in exchange for the Lm25,000. The defendant did not give any details concerning the terms and conditions of this alleged agreement. For example for how long was she supposed to provide services to pay off the Lm25,000 owed to the plaintiff, and what was the rate of payment for the work?

2. Defendant stated that in July 1998 she started working for plaintiff, when they were only friends, and never received any salary. She said: *"The plaintiff knew I needed a job and when the opportunity arose he offered me to do work for him. The job had actually been offered to somebody else I know, a person called Marianna, but she turned it down and the he offered it to me. At the same time I was looking for a new flat"*⁶. She also stated that *"On 17.09.1998 I was given a mobile phone for the company work, which was in the name of the plaintiff and his company."* The court has serious doubts on the veracity of these statements. Had the defendant been employed by the plaintiff as a professional consultant, as she claims, one would expect that a salary or other form

⁵ Inferior, Judge P. Sciberras.

⁶ Fol. 26.

of compensation would have been agreed. There is no such evidence. Furthermore, there is no proof that at the time when defendant claims to have started working with the plaintiff, she was negotiating the purchase of the property which she eventually bought by the deed published in December 1999.

From the evidence compiled the court concludes that defendant gave the plaintiff a helping hand in matters relating to his business. However, this cannot be said to be anything near to what an employee or self-employed person would do. On occasions she would accompany plaintiff, and voluntarily help him. The defendant did her best to try and give the impression that she was totally committed and constantly working for the plaintiff. However the court is not convinced that this is the truth. The parties had an amorous relationship lasting between four to five years. While plaintiff was financially helping defendant, on her part she would assist her partner in matters relating to his business. However, the fact that she did give him a helping hand does not mean that the parties had agreed that Lm25,000 of the purchase price would be repaid by work to be performed by defendant⁷. In fact during the sitting of the 31st May 2005, the defendant was asked:

“Court:- And was there a specific agreement that you were doing this work for him and you were getting paid by the money he paid for the apartment, for the flat ?

*Witness:- **Not really specific agreement, the agreement was he'll offer me a job and I work for him and with this money I pay. I never got paid, I never had salary actually.**”⁸.*

⁷ In paragraph four of her sworn declaration defendant stated that another agreement exists *'between the parties in connection with an advance of twenty five thousand liri (Lm25,000) which the parties had undertaken to set off against services to be given by defendant to plaintiff and his companies, which were in fact given over a four year period as can be detailed in the course of proceedings.'* (fol. 18).

⁸ Fol. 86.

what her son, Nikolai Soukmandjiev, said: "**Charles gave her a copy of the document** and actually when he provided a copy of this document he explained that this document actually had no legal value, that if this document goes in the hands of the authorities it would get him into trouble because at the back of the document he signed that he would be collecting 5% interest rate."¹⁴. Further on he confirms that he saw a copy of the bill exchange, that was sent to him when he was working in Luxembourg¹⁵. Had plaintiff told defendant that he could not return the bill of exchange for the reason she mentioned, the probability is that he would not have given her a copy of the same document.

Furthermore, the court considers that there was no reason for plaintiff to retain the bill of exchange had he been paid in full. The defendant herself confirmed how generous the plaintiff was in her regard¹⁶. Plaintiff himself gave a detailed account of payments he made¹⁷:-

- for works carried out in the apartment owned by the plaintiff;
- with regards to a *visa card* registered in the name of defendant's son, and which she used;
- for purchasing movables he gave to defendant or that were taken from his business stock.

With the exception of payments regarding the credit card¹⁸, the defendant did not contest the other payments and gifts. The court believes that had the debt of Lm25,000 been extinguished by payment, the plaintiff would have returned the bill of exchange or disposed of it

¹⁴ Sitting held on the 4th November 2004 (fol. 39).

¹⁵ Fol. 42.

¹⁶ For example in an affidavit filed on the 17th April 2008 defendant declared: "I must admit that during these years Charles Grech was exceptionally generous with me, to the extent that I had to refuse some of his generosity."

¹⁷ Doc. CG3 (fol. 137), CG5 (fol. 141).

¹⁸ Defendant stated that "Many of the payments on my credit card were done in connection with expenses for restaurant bills, entertainment of his business partners, our meals, shopping for his daughter and her two sons, clothes and presents for his son, some clothes for me and many items he bought himself." (fol. 205). The court finds this hard to believe considering that the evidence shows that the plaintiff is well-off.

on receiving payment of Lm8,000 in October 1999. The court does not envisage any ulterior motive on the part of the plaintiff in retaining the bill of exchange.

The fact that the defendant claims that due to her financial position she would have never purchased the property had she not agreed that Lm25,000 would be repaid by rendering services to plaintiff, does not outweigh the considerations that lead the court to uphold plaintiff's request.

Under these circumstances the court cannot conclude that:-

ii. The payments effected during September and October 1999 refer to the bill of exchange in issue;

iii. An agreement was concluded by the parties that Lm25,000 of the purchase price paid by the plaintiff would be repaid by the defendant by providing services to the plaintiff with regards to his commercial affairs.

For these reasons the court dismisses defendant's plea and condemns her to pay the plaintiff the sum of fifty eight thousand two hundred and thirty four ewro (€58,234), with interest at 5%¹⁹ from date of maturity of the bill of exchange. Costs are to be paid by the defendant.

< Final Judgement >

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¹⁹ On the backside of the bill of exchange it is stated: "*Interests @ 5% per year*" (fol. 14).