



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
SILVIO MELI**

Seduta tas-17 ta' Ottubru, 2013

Citazzjoni Numru. 233/2007

**Martin Frederick Searle (Passaport Numru 204356584) u martu Genevieve Margaret Ruth Yvette Searle (Passaport Numru 204936158), u b'digriet tas-16 ta' Dicembru, 2010, il-gudizzju gie trasfuz f'isem Dr. Aldo Vella (karta ta' l-identita` numru 1077346 (M)) bhala mandatarju specjali ta' Genevieve Margaret Ruth Yvette Searle armla ta' Martin Frederick Searle debitament awtorizzat permezz ta' prokura specjali**

**vs**

**Jonathan Wayne Marks u Veronika Lyzakova**

The Court,

1.0. Having seen the sworn application of the complainants dated the 2<sup>nd</sup> March, 2007, by which they synthetically submitted the following:

## Kopja Informali ta' Sentenza

1.1. That by a preliminary agreement dated the 20<sup>th</sup> May, 2006, defendants solemnly bound themselves to sell "Villa Chandon", formerly known as "Xorbett", of "Triq Fomm il-Ghalliem", High Ridge, Saint Andrew's, formerly in the limits of St. Julians/Birkirkara, together with part of an area from that known as "Tal-Mielah", of one thousand eight hundred and twenty five, (1,825), square meters on which this same villa was built, (see folio 1);

1.2. That the same villa is subject to the annual perpetual ground-rent of one hundred Malta Liri, (LM100.00), and otherwise free and unencumbered, with all its rights and appurtenances, and vacant possession, together with the furnishings listed in the said promise of sale;

1.3. That the price agreed upon and expressly stipulated in the said promise of sale was eight hundred and eighty thousand Maltese Liri, (LM880,000.00), (see folio 8);

1.4. That together with the conclusion of the said promise of sale complainants paid eighty eight thousand Maltese Liri, (LM88,000.00), to the defendants, (see folio 8);

1.5. That after engaging several experts to inspect the said property it was discovered that the premises under review were affected by defects of a serious nature;

1.6. That as a result thereof complainants elected not to acquire the said premises and informed defendants of their said decision by means of:

1.6.1. A legal letter dated 11<sup>th</sup> January, 2007, and

1.6.2. A judicial letter dated 6<sup>th</sup> February, 2007;

1.7. That by means of the afore-mentioned letters complainants requested that the defendants refund the

deposit in question, (see paragraph one point four (1.4), above);

1.8. That notwithstanding the above request, the defendants remained in default;

1.9. That consequently complainants had no other alternative but to proceed with the institution of these proceedings to request the court to:

1.9.1. Condemn the defendants *in solidum* to refund the sum of eighty eight thousand Malta Liri, (LM88,000.00), to the complainants, which sum was previously paid to the defendants by the complainants on account of the price stipulated in the promise of sale under review dated the 20<sup>th</sup> May, 2006;

1.9.2. Following, if required, a declaration to the effect that the complainants had a valid reason not to acquire said property;

1.9.3. With legal interest with effect from the 6<sup>th</sup> February, 2007;

1.9.4. With judicial costs as requested in the introductory sworn application;

2.0. Having seen the sworn reply dated the 21<sup>st</sup> March, 2007, by which defendants synthetically submitted the following:

2.1. That the first (1) and second (2) paragraphs of the "Statement of the Subject of the Cause" and of the "Declaration of the Facts" as submitted in the introductory application, the defendants hold that these are correct but are still being contested, (see folio 1,2, 4, and 25);

2.2. That the third (3) paragraph of the said Statement and Declaration referred to in the previous paragraph is being partly contested, and this, on the following grounds:

2.2.1. That it is true that complainants paid the sum of eighty eight thousand Maltese Liri, (LM88,000.00), to defendants as deposit on account of the promise of sale under review;

2.2.2. That this payment did not take place together with the promise of sale as it was due to occur but much later

2.2.3. That furthermore, the amount paid did not cover the whole amount due;

2.2.4. That it had to be Frank Salt Real Estate Limited that had to fork out the three hundred Malta Liri, (LM300.00), still due to the defendants;

2.3. That on the fourth (4) paragraph of the said Statement and Declaration referred to above, (see folio 2 and 4), the defendants uphold the following:

2.3.1. That before signing the preliminary agreement referred to above complainants had inspected the villa in question very carefully on more than one occasion;

2.3.2. That complainants had taken possession of the villa in question on the 2<sup>nd</sup> July, 2006, a full six (6) months before sending their legal letter of the 11<sup>th</sup> January, 2007, informing the defendants that they did not intend to act in accordance to their commitment as evidenced in the said agreement of the 20<sup>th</sup> May, 2006;

2.3.3. That complainants only took this step in the eleventh hour after having utilized the villa and after the defendants had painstakingly undergone several sacrifices to accommodate the complainants in the shortest possible time;

2.3.4. That the complainants had not only accepted the villa in question but had actually undertaken several structural works therein;

2.3.5. That the defence of latent defects submitted by complainants is only intended so that they no longer remain bound to their obligation of buying the property under review, and at the same time retain from losing their previous deposit;

2.3.6. That the defects that were discovered were neither latent nor serious;

2.4. That the fifth (5) and sixth (6) paragraphs of the said Statement and Declaration, (see folios 2 and 4), uphold:

2.4.1. That the legal letter referred to above, (see paragraph one point six, (1.6), was not accompanied by the requested architect's certificate to sustain such allegation;

2.4.2. That the judicial letter referred to above, (see also paragraph one point six, (1.6), was issued after the date for execution of the final contract had actually expired;

2.5. That on the seventh (7) paragraph of the said Statement and Declaration, (see folios 2 and 5), the defendants declare that the refusal to refund the deposit in question as this was given them in accordance with the terms and conditions of the preliminary agreement under review which stipulates that this deposit would be forfeited in their favour in case the complainants fail to sign the final contract of sale;

2.6. That on the basis of the above the complainants' pleas are unfounded and should be rejected with costs as:

2.6.1. Complainants failed to protect themselves by means of a judicial letter before the expiry period of the preliminary agreement as requested by law;

2.6.2. That as a consequence thereof, the deposit paid by the complainants now belongs to the defendants on the basis of the said preliminary agreement;

2.6.3. That the villa under review does not suffer from any latent defects as alleged;

2.6.4. That the complainants had duly carefully examined the villa in question before they actually signed the preliminary contract;

2.6.5. That the behaviour of the complainants before and after the signing of the preliminary agreement is equivalent to their accepting the villa in the very state that it was at the time;

2.6.6. The defendants further withhold the right to submit further pleas;

3. Having seen the records of the proceedings dated the 23<sup>rd</sup> May, 2007, whereby the parties agreed that proceedings should henceforth be in the English language, (see folio 44);

4. Having seen the decree of the 23<sup>rd</sup> May, 2007, whereby the architect therein referred to was appointed as Court expert, (see folio 44);

5. Having seen the records of the proceedings dated the 3<sup>rd</sup> May, 2012, whereby the court technical expert referred to in the previous paragraph submitted his report, (see folio 90);

6. Having seen the decree dated the 28<sup>th</sup> June, 2012, whereby the contending parties after, requesting the authorisation to be able to submit written statements and submissions, were given due permission to do so;

7. Having seen the written submissions of the complainants dated the 22<sup>nd</sup> August, 2012, and of the defendants dated the 20<sup>th</sup> May, 2013;

8. Having heard the oral submissions of the complainant's legal representative;

Considers:

9.0. That the court appointed technical expert made the following considerations:

9.1. That complainants drew attention to defects in the corridor ceiling at basement level where it:

9.1.1. Spalled in parts;

9.1.2. Rusted mesh reinforcement was exposed;

9.1.3. Had different colour rendering;

9.1.4. Had a small crack close to the false ceiling fixing

support;

9.2. After being specifically asked by the court expert whether these were the only defects, complainant answered in the affirmative, (see paragraph 26 of the expert's report);

9.3. Complainant's architect also mentions, but does not ascertain, the following defects:

9.3.1. Dampness on the rock face at basement level;

9.3.2. The possibility of structural faults in the pool;

9.4. Notwithstanding the above paragraph, the court expert clearly indicates that the only defects encountered are those referring to the corridor at basement level;

9.5. As regards this corridor the court expert affirms the following:

9.5.1. It actually consists of two separate but adjoining corridors each being fifteen (15) meters in length and two point three, (2.3) meters wide;

9.5.2. The spalling in question is relatively small;

9.5.3. The whole corridor is being considered defective as it is not adequately water-proofed;

9.5.4. The corridor uncludes a false suspended ceiling;

9.5.5. The actual damages in the corridor do not appear to be of a serious nature;

9.5.6. The remedial work only consist of finishing works which are not even of a structural nature;

9.6. On the position taken by the complainants that the villa could not be lived in whilst the remedial works were being executed, the court expert had this to say:

9.6.1. That the defendants had lived in the villa when remedial works were carried out;

9.6.2. The corridor which requires these remedial works is situated under the front garden where access to the villa would easily be gained by bridging the corridor in question by using a temporary boardwalk or, simply using another entrance whilst the work was being carried out;

9.6.3. As the corridor is close to the street, remedial works would not require any access from the inside of the house;

9.6.4. As to the costs involved the court expert estimates that this would be to the tune of fifteen thousand five hundred and nineteen Euros, (LM15,519.00), and not as exaggeratedly projected by the complainants, (see paragraph 34 of the court expert's report);

9.6.7. Finally, the said court expert also concludes that the works would entail a period of three (3) weeks' work until completion – not as again exaggeratedly indicated by the complainants, (see paragraph 35 of the court expert's report);

Considers:

10. That the basic premises on which the whole edifice of the complainants' legal situation depends is on his claim that he refused to conclude the contract of sale in question on the basis of "serious defects" which he encountered in the villa he had previously intended to buy;

11. That on the basis of the court expert's report this allegation of serious damage or latent defects does not transpire and was not proved;

12. That hence, the complainants do not stand on solid ground at all;

13. That on the contrary it transpires that the remedial work that may be undertaken involves:

13.1. A minimal expense;

13.2. A short period of time;

13.3. No nuisance to the residents of the villa under review;

14. That it also results that the complainants had not only satisfactorily examined the villa in question before signing the preliminary agreement at issue, but had actually resided in the said villa for well over six (6) months before giving rise to these proceedings;

Considers:

15. That as aptly upheld by the defendants in their note of submissions, it is a fundamental principle at law that contracts are to be executed in good faith, (see article 993 of the Civil Code);

Considers:

16.0. That as a result of the evidence submitted the following transpires:

16.1. That the contending parties concluded a preliminary agreement on the 20<sup>th</sup> May, 2006, as aforementioned;

16.2. That the complainants paid a deposit as aforementioned;

16.3. That after residing in the villa in question for over six (6) months the complainants had second thoughts and wanted to renege the said preliminary agreement and have the deposit returned to them thus, wanting the best of both worlds;

16.4. That the complainants did not act in accordance to the contract of promise of sale they entered into with the defendants as the judicial letter they sent on the 6<sup>th</sup> February, 2007, was not within or according to the statutory limit as envisaged at law;

**DECIDES:**

17.0. That the Court is satisfied that the complainants did not prove the allegations submitted by them in their introductory sworn application and therefore, on the basis of the above considerations:

17.1. Rejects the complainants' pleas and requests as submitted in their said introductory application;

17.2. The expenses of the proceedings are to be borne by the complainants.

Kopja Informali ta' Sentenza

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Onor. Imhalledf Silvio Meli

**< Sentenza Finali >**

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