



MALTA

**QORTI TAL-MAGISTRATI
(GHAWDEX)
(GURISDIZZJONI SUPERJURI)
(SEZZJONI GENERALI)
MAGISTRAT DR.
JOSETTE DEMICOLI**

Seduta tat-28 ta' Marzu, 2014

Citazzjoni Numru. 17/2010

Erika Gertrud Selma Menestret

vs

Dr Georgine Schembri who by means of a decree dated 3rd August 2010 was authorised to assume the acts of the case on behalf of Brigitte Simsch

The Court;

Kopja Informali ta' Sentenza

By virtue of the sworn application filed on the 4th March 2010, plaintiff declared and premised that

1. In nineteen eighty-one (1981), whilst still living in Dusseldorf, applicant started a relationship with defendant Brigitte Simsch and the two of them at one point in time even rented out together an apartment in Dusseldorf;
2. That the two became familiar with the island of Gozo through their common friend Dr Arnold Buddenberg since they were invited by Dr Buddenberg on numerous occasions to spend some time at his Gozo residence;
3. Subsequently around nineteen eighty-eight (1988) the parties decided to establish their residence in Gozo and so they acquired the house numbered two (2), Tower Street, San Lawrenz, Gozo by virtue of a contract of purchase dated twenty-ninth (29th) January 1988 in the records of Notary Paul George Pisani (Document A);
4. The parties could not acquire the property in their name jointly and this for two main reasons : (a) at that time applicant was still married to Claus Menestret (now deceased) and therefore her husband would have automatically acquired rights over the property by virtue of the rules governing the community of acquests regime; (b) secondly at that time Government Policy did not allow for the issue of an acquisition of immovable property permit to two persons of the same sex who desired to acquire immovable property either in Malta or Gozo. Parties had been given an advice to this effect by the late Doctor of Laws Michael Grech. Therefore it was decided that the property was to be acquired in the name of Brigitte Simsch;
5. Therefore although the property was purchased in the name of Brigitte Simsch, the parties' intention was that they were to co-own the property in equal and undivided shares between them. Consequently, at the time of purchase Brigitte Simsch was acting as a mandatory *prestanome* on behalf and in the interest of applicant in so far as one-half undivided share of the property numbered two (2), Tower Street, San Lawrenz, Gozo was concerned;
6. In fact applicant contributed a substantial part of the finances so that this purchase of immovable property could take place as well as for the refurbishment of this same property, including the purchase of all necessary movable items, namely furniture and other movable objects to make the place habitable, as will be shown in the course of the hearing of this case. In fact the money which applicant forked out was not simply used to finance the purchase of the house proper but also to finance the acquisition of movable items for the same house. In addition applicant further brought over to the house other movable items which were her sole property. These items are still in the premises number two (2), Tower Street, San Lawrenz, as will be shown during the hearing of this case ;

Kopja Informali ta' Sentenza

7. So was the intention that the house was to be co-owned by both parties to this case, that some months after the acquisition of the house defendant made a will in the records of Notary Paul George Pisani dated eighteenth (18th) October of the year nineteen eighty-eight (1988) wherein she nominated applicant as her universal heir. Hence, defendant made sure that should she predecease applicant, the house would devolve upon applicant;
8. That Brigitte Simsch had even passed over to applicant a copy of this will which the notary had released to Brigitte Simsch as the testatrix, which copy is being annexed and marked as **Document B**;
9. That the couple's relationship broke down and Brigitte Simsch - without applicant's knowledge - concluded a promise of sale agreement with Patrick and Carmen spouses Cassar for the sale of house number (2), Tower Street, San Lawrenz, Gozo in an attempt to defraud applicant of her rights. Applicant got to know of this promise of sale agreement by chance and she immediately filed a warrant of prohibitory injunction (Warrant Number 6/2010) against Brigitte Simsch to halt the publication of the final deed of transfer which was to take place by the end of April of the year two thousand and ten (2010). This warrant was decreed on the twenty-third (23rd) February 2010 by this Court presided by a different magistrate;
10. Therefore this court case is being filed as a consequential action to the warrant previously filed;
11. That applicant is confirming all this under oath after that the contents of this application was duly explained to her in the English language;

Therefore plaintiff is requesting this Court to:

- (i) declare and decide that the property numbered two (2), Tower Street, San Lawrenz, Gozo acquired by Brigitte Simsch by virtue of a deed dated twenty-ninth (29th) January nineteen eighty-eight (1988) in the records of Notary Paul George Pisani was acquired by Brigitte Simsch as a mandatory *prestanome* on behalf of and in the interest of applicant and this in so far as half-undivided share of the property is concerned;
- (ii) order you as defendant to transfer to applicant half undivided share of the property numbered two (2), Tower Street, San Lawrenz, Gozo;
- (iii) appoint a Notary Public so that he would publish the relative contract so that the one-half undivided share of the property numbered two (2), Tower Street, San Lawrenz, Gozo would be transferred to applicant and to establish a date, time and place for the publication of the relative deed;

Kopja Informali ta' Sentenza

- (iv) to appoint curators to represent any person who would not turn up on the appointed date for the publication of the contract;
- (v) to declare that the movable objects including furniture and other items, situated in the house numbered two (2), Tower Street, San Lawrenz, Gozo are partly the sole property of applicant Erika Menestret and partly co-owned jointly by the parties to the case since applicant even financed their purchase;
- (vi) to authorise applicant Erika Menestret to take back all movable items situated in the house which are her sole property.

With costs including those of the present court case as well as those of the warrant of prohibitory injunction number 6/2010 in the same names referred to above. Defendant is hereby being informed that applicant will be requesting the reference of oath procedure to be applied in her regards.

Applicant is reserving the right to file against defendant an action for damages sustained.

In her sworn reply, defendant stated that:

- (i) Plaintiff's claims should be rejected both at law and in fact and should be rejected with costs against plaintiff;
- (ii) It is not true that she was acting as a prestanome of plaintiff on the contract dated 29th July 1988;
- (iii) That plaintiff simply loaned her a sum of money to enable the purchase of the house and it was never the intention to purchase the house in both names;
- (iv) So much so that the money which was loaned to her by plaintiff was given back to the said plaintiff and she has accepted them without any reservations;

Kopja Informali ta' Sentenza

- (v) Moreover, she carried out works in the house which were paid entirely by her. She submitted that if plaintiff truly had a share, then she would have contributed to the related expenses;
- (vi) Without prejudice to the above-mentioned, as will be explained in this case, the excuses brought by plaintiff why the contract could not be published in both names do not make any sense. And they should convince the court that plaintiff is not correct;
- (vii) Subordinately and without prejudice to the above, plaintiff's claims should be rejected with costs since plaintiff is trying to enforce an obligation which is based on an illicit cause (that is prohibited by law) and thus runs contrary to public policy.

Having heard witnesses.

Having seen the acts and documents of this case including the note of submissions.

Having seen that this case was adjourned for judgment.

Considerations:

By virtue of this case, plaintiff is asking the Court to declare that when defendant appeared on the contract of sale dated 29th January 1988 she was acting as her prestanome in so far as one half undivided share of the property is concerned. She is also asking this court to declare that the movable objects including furniture and other items situated in the house are partly the sole property of applicant and partly co-owned by the parties.

The uncontested facts which led to this case are the following:

- The parties, both German citizens, met in 1981 in Dusseldorf and started an intimate relationship. After some time they rented an apartment in Dusseldorf and started living together.
- Erika Menestret was married prior to meeting defendant and never divorced. Her husband is now dead.

Kopja Informali ta' Sentenza

- At some point in time they were invited by Dr Buddenberg (a common friend) to come to Gozo for a holiday and they liked Gozo.
- On their second visit to the Island, they went to look for houses together. Louise Grima helped them find the house in question.
- A contract of sale was published on the 29th January 1988. on the contract of sale only defendant Brigitte Simsch appeared. The property was bought for the price of LM6,000.
- Before the contract of sale, the parties spoke to Dr Michael Grech and asked for an advice. It resulted that they needed an AIP permit.
- In October 1988 Brigitte Simsch made a will by virtue of which she nominated Erika Menestret as her heir. This will was then revoked in 2008.
- From Bernard Bonnici's¹ testimony it results that at the time of the contract of sale, there was a policy department that persons of the same sex and who were foreigners were not given an AIP permit to purchase property. He further stated that *"This was only a department policy. There was nothing in the law which prohibited the issue of an AIP permit to two foreigners of the same sex. From what I could understand, during the time it was more of a moral issue"*.
- Various works of refurbishment were carried out in the farmhouse.
- Their relationship ended in 2007.

The institute and figure of the mandatory prestanome is accepted in our legal system. It is well known in our jurisprudence that although a property is bought in the name of the mandatory prestanome this is done in the name and interest of the mandator. Moreover *"l-akkwist ta' immobbli fl-interess ta' haddiehor jiswa avolja l-ftehim dwar dan l-akkwist bejn l-akkwirenti u l-persuna l-ohra ma jkunx sar bil-miktub"*².

In the case in the names of **Maria Calleja noe vs Paolo Deguara**³ was observed: *"nulla osta in legge a che, senza impugnare un contratto, si dimostri con prove che uno dei contraenti compariva e stipulava per conto e interesse di altre persone non figurante nell' atto ma avente*

¹ Sitting of the 25th November 2010 at fol 128 of the file – Assistant Principal at the Capital and Transfer Duty Department

² Vol 34 p2 p430; Vol 37 p1 p 350; Vol 27 p1 p 620 u p 60; **Maria Attard vs Filippa Abela**, Appell Civ Nru: 2463/2000 deciz fid-29 ta' Mejju, 2009

³ Qorti tal-Appell deciza fl-10 ta' Ottubru 1930 Vol.XXVII.i.620

Kopja Informali ta' Sentenza

diritto di avocare a se` quello che vi si e` contrattato nel proprio interesse." Reference is also made to the case in the names of **Professor Anthony Mamo noe vs Charles Sant Fournier** in which was stated that :

"Illi l-mandatarju prestanom huwa dak illi apparentement jerezcita drittijiet ta' proprjetarju mentri fir-realta' mhux hlief il-mandatarju. Meta hu, f'din il-kwalita' ta' mandatarju prestanom, jakkwista l-proprjeta' tal-haga kwalita' ta' mandatarju prestanom, jakkwista l-proprjeta' tal-haga immobbli, ikun hemm att pubbliku li bih tigi trasferita l-proprjeta' tal-haga u konvenzjoni sigrieta fis-sens li huwa, pretiz akkwirenti mhux hlief mandatarju. Ghar-rispett ta' terzi jibqa' l-principju illi rispett ghal dawn, il-konvenzjonijiet segreti li jidderogaw ghall-konvenzjoni palesi, ma jipproducu ebda effett. Imma bejn il-mandant u l-prestanom il-konvenzjoni vera tipprealixxi ghall-konvenzjoni apparenti u d-drittijiet u l-obbligi tal-mandatarju prestanom jigu retti mil-ligi tal-mandat u l-hwejjeg minnu akkwistati jappartjenu kwindi lill-mandant."

The Court deems that plaintiff has succeeded to prove that defendant was acting as her *prestanome* as regards to one half undivided share of the property in question. Her version of events is credible and plausible as opposed to defendant's. The reasons are the following:

- Both parties to this case confirm that they used to be a couple and they used to live together. Various other witnesses have also attested to this⁴.
- It is also evident that they decided together to buy the house in Gozo. They went house-hunting together and they also went to Dr Grech's office together.
- Erika stated that *"Moreover, although our intention was to buy the property together this permit could not be given to both of us but only to one person since there was no forms of legal relationship between us. Brigitte and I were not married, and even if we were, Malta did not recognise same sex relationships. Since I was still married to Nicholas at that time, we were also told that if I were to buy the property in my own name my husband was automatically have a share of the property in terms of Maltese law. Obviously, I did not want this and therefore the decision was taken to have the property bought in the name of Brigitte Simsch.*

The understanding between us was however that Brigitte was not going to acquire all the property in her name; one-half undivided share of the property was going to be acquired in my name."

⁴ Dr Verner Rodd; Josy Specks; Dr Arnold Buddenberg; Anke Helfers.

Kopja Informali ta' Sentenza

- Defendant denies all this and states that applicant only lent her money since at the time she did not have the entire amount. However, her version of events is contradicted by two witnesses in particular – Jacqueline Rose⁵ stated that *“I was always told that the house belonged to both of them. Both of them told me so”*. In cross-examination she stated that she knew about the partnership because they spoke about it in her presence. They would buy their needs together. Then, Ralph Meier Bondenstat⁶ (who knows both parties) testified that they discussed in front of him that no one of them could afford to buy the house alone. So, they decided to move in to live together to reduce the expenses so that they could be able to buy the house. Then, Anke Helfers⁷ stated that the parties told her that they have a house in Gozo. This witness also stated that in the German Courts, Brigitte said that they bought the house together whilst in Gozo she is stating the contrary.

Franz Specks⁸, (defendant's friend for over 50 years) stated that *“They have contributed both Erika and Brigitte contributed to the purchasing price. I do not know whether they contributed equally to the purchasing price. However, I know that eventually Brigitte paid a sum of money to Erika which consists of her part of whole purchasing price”*. In the same sitting he confirmed applicant's version in that Brigitte was the owner of the house because she did not want Cluas, her husband, to be able to reclaim any part of the house.

Joseph Curmi⁹, a retired carpenter, who did some works for the parties testified that Brigitte told him that together with her friend she had purchased a house. She used to help him in the workshop since she was a carpenter. Brigitte told him that she was going to pay for the joinery works whereas Erika was going to pay for the appliances. In cross-examination he stated that he is no longer on speaking terms with Brigitte. He confirmed though that Brigitte told him that the house is registered in her name but that the house was hers and Erika's.

- It has also been proven that both parties decided to refurbish the house. In fact defendant herself admitted that they discussed the issue of renovation together because this was their holiday home. Moreover, a contract of works was concluded with Plates Limited and they both engaged Architect Emanuel Vella to oversee the renovation works. This contract was signed by both of them¹⁰. And she took an interest in these works.

⁵ Sitting of the 25th November 2010 at fol 135

⁶ Sitting of the 1st March 2011 at fol 161

⁷ Sitting of the 1st March 2011 at fol 151

⁸ Sitting of the 10th October 2012 at fol 290

⁹ Sitting of 25th November 2010 at fol 137

¹⁰ Dok EM1 at fol 39

Kopja Informali ta' Sentenza

- It has also transpired that Erika Menestret has transferred 44,000DM in favour of Brigitte Simsch. The first payment order of 10,000DM¹¹ is dated 27th June 1988 and was equivalent to Lm1,870 and after having commission deducted amounted to Lm1867.68. Another payment order¹² to the amount of 24,000DM from Gertrud Schmidt (applicant's aunt) to defendant dated 17th October 1988; and finally, another 10,000DM¹³ transfer from Nicholas Menestret to Brigitte Simsch dated 1st February 1989. Applicant also stated that she gave various amounts of cash payments but that she did not keep an exact record.
- Moreover, she testified that she contributed the majority of the finances to have the purchase price of the house – the first payment was 35,000DM. This was transferred to Dr Michael Grech. She forked out a substantial amount of this payment that is 25,000DM. The receipt had to be in defendant's name since she appeared on the contract.
- Defendant does not deny that applicant has transferred and given her money both for the purchase price and for the refurbishment except for the latest refurbishment works carried out in 2006 which she paid. However, she states that this was a loan so much so that in 2003 she gave to applicant €30,000 which was her share of the purchasing price. She testified that the total cost of purchase and refurbishing of the house and household equipment amounted to circa 120,000DM equivalent to €60,000.
- As to how the defendant came up with this sum it has not been successfully explained by her.
- On the other hand, plaintiff testified that when she reached pensionable age she ended up having financial difficulties and asked Brigitte to sell the house in Gozo so that she would get half of the selling price of the property. Brigitte Simsch refused and she gave her €30,000 to help her financially. Plaintiff accepted the money but this was by far less the amount she had actually given to defendant over the years. Besides she asserts that there was no agreement between them that the money was in settlement of her share of the house. No receipt was issued. She also stated that *"The agreement was that if we should ever sell the house, I would get half of the price minus the €30,000"*.
- Two witnesses also have confirmed that this version that defendant got a loan from plaintiff is not the truth. Ralph Meier Bodenstet stated expressly :

"In the first meeting which is almost one year ago, I don't know one year or one and a half year ago or one a quarter of a year ago, we had a discussion about the whole situation and we said that I think we said that the situation is really bad because they are spending all the money for lawyers and I think you should end both the affair fairly and sell the house together and split the money. And so this is the fair way to do it. And in the same discussion Abke Helfers and I said, 'If you want to go the other

¹¹ Dok EM3 at fol 43

¹² Dok EM5 at fol 45

¹³ Dok EM8 at fol 48

Kopja Informali ta' Sentenza

way, you¹⁴ of course can lie and say, that Erika only borrowed the money to you, but it will not be the truth and we think this would not be fair".

This is corroborated by Anke Helfers who testified:

"I see her sometimes and we talk together sometimes and ehm now maybe I can tell you what happened. Brigitte told us everytime, when she lost Erika, she told us they bought the house together..."

- Also, the will wherein Brigitte appointed Erika as her heir confirms the real intention of the parties when the property was bought. As commented by plaintiff there was no need for defendant to appoint plaintiff as her universal heir simply to guarantee the repayment of what she defines a loan in the eventuality that Brigitte were to pre-decease Erika. Moreover, had the will really been a security for the repayment then it should have been revoked way back in 2003 when she paid €30,000 to Erika. The will was however revoked five years later and referring to the defendant's words¹⁵ she felt compelled to change the will when Erika confronted her with a claim to the amount of €85,868.67 in the German Court. In cross-examination¹⁶ she stated that she did not revoke the will at that time in 2003 because they were still using the house as '*their holiday home*' and she had forgotten about the will until they separated in 2007 and Erika filed the Court case in 2008.

The defendant's plea that the obligation under examination stems from an illicit cause

Having established that it was the parties' intention to acquire the house in their joint name, it remains to be seen whether there was an illicit cause or whether the prestanome mandate given was intended to avoid public policy rules.

At this stage reference is made to the decision in the names of **John William Haynes et vs Michelle Schembri et**¹⁷ which states:

"Fis-sentenza ta` din il-Qorti (PA/NC) fil-kawza 'Andrews et vs Borg' tal-31 ta' Ottubru 2003 kien ritenut illi –

¹⁴ Referring to Brigitte Simsch

¹⁵ At fol 215

¹⁶ Sitting of the 15th September 2011 at fol 222

¹⁷ Rik Nru: 187/2009JZM deciza fit-28 ta' Frar 2011

Kopja Informali ta' Sentenza

Hu pacifiku fil-gurisprudenza li 'hija bla effett kwalunkwe obbligazzjoni magħmula fil-kawza illecita u l-kawza hija illecita meta hija pprojbita mill-ligi jew kuntrarju għall-ghemil xieraq jew għall-ordni pubbliku u l-konvenzjoni hija kontra l-ordni pubbliku meta hija kontra l-interess generali. Il-kwistjoni tal-legalita' jew le tal-konvenzjoni minhabba kawza illecita tista' tigi sollevata mill-Qorti ex officio".

-----Omissis-----

Skond il-Kap.246, fiz-zmien tal-kaz, il-procedura li persuna meqjusa skond il-ligi bhala mhux residenti f'Malta kellha tosserva sabiex tkun tista' takkwista proprjeta' hawn Malta kienet illi titlob permess minghand il-Ministru tal-Finanzi. Infatti l-Art.6 jaghti s-setgha lill-Ministru li jaghti permess bil-miktub lill-persuna mhux residenti biex takkwista proprjeta` immobbli li tkun specifkament indikata fil-permess, jekk fil-fehma tal-Ministru, ikun fl-interess pubbliku jew ikun xort'ohra xieraq li jinghata dak

il-permess. L-istess disposizzjoni mbagħad tispecifika l-mod kif dan il-permess jista' jinhareg.

Fil-kaz tal-lum, dik il-procedura giet evitata ghaliex il-konvenuta Michelle Schembri dehret fuq il-kuntratt tal-akkwist bhala prestanome ta` l-attur missierha unikament sabiex tithallas rata ta` taxxa aktar baxxa ghax applikabbli għal persuni residenti Malta milli kien ihallas l-attur li kieku deher hu fuq il-kuntratt ladarba ma kienx residenti Malta.

L-iskop ta` l-Kap.246 kien li jikkontrolla fl-interess generali tal-pajjiz l-akkwist ta` propjeta` mmobbli fdawn il-Gzejjer minn persuni mhux residenti, irrispettivament mill-forma ta' l-akkwist, kif ukoll sabiex irazzan l-akkwist fdawn il-Gzejjer minn persuni mhux residenti sabiex tigi evitata spekulazzjoni fis-suq tal-proprjeta` f'Malta.

Skond l-Art.1857 tal-Kap.16, 'il-mandat għandu jkollu bhala skop tieghu haga lecita li min jaghti l-mandat seta' jagħmel huwa nnifsu'. Issa ladarba fil-kaz tal-lum l-atturi ma kienux residenti f'Malta fiz-zmien li kien sejjer isir l-akkwist tal-garage de quo u ladarba rrizulta li l-attur John Haynes ma kien talab l-ebda permess skond il-Kap.246 sabiex ikun jista' jakkwista din il-propjeta` f'Malta, il-ftehim kien kontra l-ordni pubbliku. L-atturi bhala persuni mhux residenti f'Malta ma setghux jakkwistaw proprjeta' f'Malta jekk mhux bil-permess skond il-Kap.246. Allura l-atturi ma setghux jaghtu mandat lill-konvenuta binthom sabiex din tagħmel fisimhom dak li kienu prekluzi milli jagħmlu hliet bil-procedura kontemplata mil-ligi li huma ben konsapevoli għazlu li jikkontravjenu sabiex igawdu minn rohs illecitu fil-hlas tat-taxxa.

Kopja Informali ta' Sentenza

Huwa minnu illi barranin illum jistghu jakkwistaw proprjeta` wahda f dawn il-Gzejjer, izda xorta wahda baqghet il-htiega li ssir applikazzjoni lill-awtoritajiet koncernati sabiex tista` tigi akkwistata validament dik il-proprjeta`. Dan l-obbligu ma gie bl-ebda mod dispensat anke jekk forsi illum l-applikazzjoni saret aktar formalita`.

*F`dak li din il-Qorti qeghda tghid issib sostenn u konfort fis-sentenza moghtija fit-3 ta` Dicembru 2004 mill-Qorti tal-Appell fil-kawza **Lucchesi et vs Sultana et**.*

Ghal din il-Qorti l-mandat tal-attur favour bintu l-konvenuta Michelle Schembri fil-kaz tal-lum kien afflitt minn kawza llecita.

*Skond l-**Art.987** tal-Kap.16 - 'L-obbligazzjoni minghajr kawza, jew magħmula fuq kawza falza jew illecita, m'għandha ebda effett'. Ghalhekk din il-Qorti ma tistax tordna lill-konvenuti għall-ezekuzzjoni tal-mandat u cioe` li jittrasferixxu l-fond de quo lill-atturi. Ighid **Laurent** (Vol.XXVII Para.402) -*

"Quando il fatto e' illecito la legge non riconosce alcun effetto alla convenzione ; e' una obbligazione fondata su causa illecita, poiche' la causa si confonde con l` oggetto dei contratti ; e quando la causa e' illecita l' obbligazione e' inesistente e non puo' avere alcun effetto"

*Maghdud mal-premess, din il-Qorti tghid li għall-kaz tal-lum huwa operattiv il-principju tad-dritt li hadd ma jista` jiehu vantagg mit-turpitudini tieghu stess (ex turpi non oritur actio). Din il-massima tfisser li hadd ma jista' jibbaza azzjoni gudizzjarja fuq att immorali jew illegali. Issib applikazzjoni naturali (ghalkemm mhux hekk ristretta) fil-kamp tal-kuntratti meta l-kawza tkun illecita. Fil-kawza **"Scicluna vs Abela"** (Vol.XXXII.I.174) il-Qorti tal-Appell kienet affermat il-principju li l-Qrati ma jistghux ighinu jew jagevolaw lil dak li jkun għamel xi haga llecita (ara wkoll - **"J.M.V. Holding Limited et vs Karina Holdings Limited et"** - Qorti tal-Appell - 30 ta' Novembru 2007".*

In this case, the above-mentioned witness Bernard Bonnici testified that at the time of the contract there was a policy department that persons of the same sex and who were foreigners were not given an AIP permit to purchase property. However it was underlined by the witness that this was only a departmental policy. There was nothing in the law which prohibited it as such. In fact so much so that during the cross-examination he then stated that :

Kopja Informali ta' Sentenza

"I do recall however that off the record, people who were interested, foreigners who were interested, in purchasing property in Malta were advised that one of the persons could file an application for the issue of the permit and the property would be bought by the applicant on the issue of the permit. Then the two parties could enter into a private agreement stipulating that the other party had an interest in the property".

Thus the agreement between the parties was not intended to by-pass any law but for the reasons which have already been mentioned before.

Movables

Plaintiff has filed Dok EM 38 wherein she listed all the movable items in the house and listed the items which belonged to both parties as well as the items which belonged solely to her. This list was not contested in any manner by defendant.

The Court reserves the right in favour of defendant to recover the amount already paid to plaintiff or if the property is ever sold the amount which has been already paid to applicant is to be deducted from plaintiff's share of the selling price.

Thus, for the above-mentioned reasons, the Court decides this case whilst rejecting defendant's pleas, accedes to plaintiff's requests and hence:

- (i) declares and decides that the property numbered two (2), Tower Street, San Lawrenz, Gozo acquired by Brigitte Simsch by virtue of a deed dated twenty-ninth (29th) January nineteen eighty-eight (1988) in the records of Notary Paul George Pisani was acquired by Brigitte Simsch as a mandatory *prestanome* on behalf of and in the interest of applicant and this in so far as half-undivided share of the property is concerned;
- (ii) orders defendant to transfer to applicant half undivided share of the property numbered two (2), Tower Street, San Lawrenz, Gozo;
- (iii) appoints Notary Public Dr Paul George Pisani to publish the relative contract so that the one-half undivided share of the property numbered two (2), Tower Street, San Lawrenz, Gozo would be transferred to applicant and this on the sixteenth (16) of May 2014 at the Gozo Courts;

Kopja Informali ta' Sentenza

- (iv) appoints Dr Angele Formosa to represent any person who would not turn up on the appointed date for the publication of the contract;
- (v) declares that the movable objects including furniture and other items, situated in the house numbered two (2), Tower Street, San Lawrenz, Gozo are partly the sole property of applicant Erika Menestret and partly co-owned jointly by the parties to the case since applicant even financed their purchase as indicated in Dok EM38;
- (vi) authorises applicant Erika Menestret to take back all movable items situated in the house which are her sole property within two (2) months from today.

Costs of this case and of the warrant of prohibitory injunction are to be borne by defendant.

< Sentenza Finali >

-----TMIEM-----