



MALTA

**QORTI CIVILI
(SEZZJONI TAL-FAMILJA)
ONOR. IMHALLEF
LORRAINE SCHEMBRI ORLAND**

Seduta tat-30 ta' Settembru, 2014

Mandat Numru. 238/2014/1

**Application for the Issue of a Warrant of
Prohibitory Injunction Number
238/2014/LSO in the names:-**

Jacqueline Grech ID 19296(A)

VS

Kevin Grech ID 591285(M)

The Court,

I. PRELIMINARY.

Having seen the application filed by Jacqueline Grech on the 15th day of September 2014 for an order of prohibitory injunction against the respondent, Kevin Grech.

Having seen its decree of the 17th April 2014 whereby the Court provisionally allowed to the request and ordered the notification of respondent with four (4) days to reply, and appointed the application for hearing on Tuesday the 23rd day of September 2014.

Having seen the Reply filed by Respondent on the 19th September 2014.

Having seen the record of the sitting of the 23rd September 2014 whereby this Court, on a request by applicant's advocate, not opposed by defendant, decreed that the proceedings were to be conducted in the English language. Applicant was assisted by Dr. Jonathan Spiteri whilst respondent was assisted by Dr. Ilona Debono.

Having seen the acts, heard the evidence produced as well as the oral submissions of the parties' advocates,

Adjourned the application for adjudication by decree in Chambers.

II. CONSIDERATIONS.

That by means of her application, Jacqueline Grech has requested that her husband, respondent Kevin Grech, be prohibited from (i) disposing of the immovable property named *Kololo*, numbered 5 in Triq Anglu Cilia, San Gwann, together with all its rights and appurtenances, in whole or in part, under any title, whether onerous or gratuitous; (ii) renting or assigning the said property or part thereof; (iii) effecting any structural alterations therein; and (iv) burdening the said property with any obligation or burthen including hypothecary burthens or from securing the said property as a guarantee for the performance of any obligation. Applicant declares that her request is justified and the warrant needed in order to safeguard her claims to her share of the community of acquests. The Community of Acquests is the patrimonial regime which regulates the parties in their marriage, pending the conclusion of proceedings for personal separation which are being heard before the Civil Court (Family Jurisdiction). These proceedings before the Family Court were reciprocally instituted by the parties against (Sworn Applications 406/2006 and 410/2006 RGM). The sum liquidated by applicant as her share of the acquests for the purposes of this application amounts to €136,963.02.

That Respondent objected to the application premising that the property, the couple's matrimonial home, is his own paraphernal property and that his wife had abandoned their home several years earlier. He responded

that the amount claimed by applicant was excessive, and that the value of the immovable property which is the object of this application far exceeds the sum claimed by applicant. He did state that he was willing to enter into an undertaking not to sell the property and would ensure that the sum which the Family Court would eventually determine as due to his wife in satisfaction of her share, would be duly deposited in Court upon a definitive judgment to that effect. In particular he objected to the imposition of the injunction which would prevent him from renting the property or from effecting structural alterations in the same.

Noted that the parties agree that the property *Kololo* is paraphernal to respondent.

Decree of Revocation of Garnishee Order

The parties referred to their submissions and to documents filed by them in the acts of an application instituted by Kevin Grech before the Family Court for the revocation of a garnishee order sued out by his wife (Precautionary Garnishee No.184/2014 RGM **Doc JG1** Fol 3-5). The decree, given on the 3rd September 2014 is exhibited at fol.128 in these proceedings and orders the revocation of the garnishee order premised (Application for Revocation of Warrant no 164/14 in the names **Jacqueline Grech v Kevin Grech**, Civil Court (Family Section) *per* the Hon. Mr. Justice R Mangion of the 3rd September 2014).

The Family Court, in reaching its decision in favour of the revocation of the garnishee order, considered that the claim put forward by Mrs. Grech was justified on a *prima facie* basis and that the determination of the

final amount due was an analysis proper to the Family Court when deciding on the merits of the separation proceedings pending before it.

However, the Court ordered the revocation of the garnishee order after it considered that Kevin Grech owned paraphernal property which would guarantee his wife's claims and that, in view of this consideration, it would not be reasonable to maintain the garnishee order which attached to respondent's salary.

Considers that it is settled law that this Court shall proceed to issue a warrant of prohibitory injunction if it is satisfied that applicant has a *prima facie* claim against respondent and that such claim would be irreparably prejudiced if the request is denied (**Art 873(2)** Chapter 12 of the Laws of Malta). Reference is made to numerous judgments delivered by our courts which have examined the meaning and effects of **article 873(1)** and **(2)** of Chapter 12 of our laws and enunciated the above two criteria which are to be cumulatively applied (*ad. exemplum*, **Emmanuel Sammut -v- Josephine Sammut P.A.(TM)** - dec. 5.06.2003; **Mary Borg vs Il-Kummissarju tal-Artijiet** – P.A.(JRM) – Dec. 15th December 2008; **The Golden Shephard Group Limited vs Enemalta Corporation** (P.A. (RCP) – Dec. 17th March 2009; **Grech proprio et nomine vs Manfre'** – A.C. – Dec.14th July 1988 – Vol. LXXII.ii.290; **40, Main Street Catering Establishment Limited vs L-Awtorita` tal-Ippjanar** (P.A. (RCP) - Dec. 2nd November 2010).

Considers that the liquidation and division of the community of acquests which is the matrimonial regime operative between the parties is a matter which is to be determined in the final decision of personal separation which is pending before the Civil Court (Family Jurisdiction). The final and definitive liquidation of plaintiff's claims will be resolved

when such proceedings are terminated. However, the claim put forward by applicant resulting from the detailed documentation exhibited is considered by this court sufficient to satisfy the *prima facie* requirement of **article 873 of Chapter 12** of the Laws of Malta. This is in consonance with the decree given by the Family Court which is the same Court appraised of the parties' matrimonial dispute.

Considers that these proceedings were instituted in the wake of, and pursuant to the Decree revoking the garnishee order. The Judge presiding in the Family Court reasoned that the paraphernal property which is the merit of this current application, would offer a guarantee in lieu of a garnishee on respondent's liquid assets, including his salary.

Neither of the parties contends that defendant has any other property which has been put forward as a guarantee and, consequently, this Court also agrees with applicant's claim that her claim would be irreparably prejudiced unless her request is upheld.

Respondent has stated that he would be willing to enter into an undertaking not to sell his property without prejudice to his rights at law. Yet this undertaking, which would be a unilateral one, cannot of itself neutralise the necessity of a warrant which would be binding not only on respondent but also on third parties. There is no guarantee that a unilateral obligation will be an irrevocable one. Of course nothing prevents the parties from entering into a separate agreement but respondent's statement of intent, of itself, is not sufficient to convince the court that this application should not be granted.

Respondent also claimed that he would be prejudiced by an injunction on property rental. Again the court is not convinced of this argument. The granting of an injunction will, in most cases, inconvenience the debtor, yet this is not an element which our legislator considers relevant in current proceedings unless such an order would create a disproportionate hardship. At the time of this decision, respondent resides in the property and declared before this court that he would not therefore consider renting it. This court will perform base its decision on current realities and circumstances.

The same reasoning applies to his objection concerning an injunction of structural alterations. Answering a question put to him by this court, respondent stated that his property did not need any structural alterations. His objection is therefore irrelevant to the court's current exercise. Needless to say, should the need for necessary repairs arise in the future, respondent retains a right of recourse to the court for authorisation and, if such repairs are indeed necessary, there is no reason to assume that they would not be so authorised.

In view of the foregoing, this court deems that this applicant has satisfied the elements required by law for the granting of Applicant's request.

III. CONCLUSION

That, therefore, pursuant to the foregoing considerations, this court hereby **rejects** respondent's pleas and disposes of applicant's request as follows:

1. **Definitively Accedes and approves** the request for the issue of the warrant of prohibitory injunction against respondent on the terms stated in the application and orders that respondent be hereby prohibited from (i) selling or transferring whether by onerous or gratuitous title the immovable property named 'Kololo', numbered 5 in Triq Anglu Cilia, San Gwann together with all its rights and appurtenances, whether in whole or in part; (ii) renting the said property to third parties or from assigning in any other manner to third parties any right over the said property; (iii) making any structural alterations of any type in the said property ; and (iv) constituting or binding the said property as a guarantee for any obligation or from burdening the same with any obligation or burthen including a hypothecary obligation.

For the purposes of this Decree this Court orders that in case of any conflict between the English translation and the Maltese text stated in applicant's request, the Maltese text as stated in the first paragraph of the application, and which is hereby approved *in toto* shall prevail.

Costs are adjudicated against Kevin Grech.

Read.

< Sentenza Finali >

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