



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

SILVIO MELI

Seduta tat-12 ta' Novembru, 2014

Citazzjoni Numru. 1078/2011

**Irina Sedova holder of the Italian Republic's
identity card number A 8982815**

VS

Pavel Eliashevich

The Court,

- 1.0. Having seen the sworn application giving rise to these proceedings dated the 2nd November, 2011, through which applicant synthetically drew up the following claims:
 - 1.1 That the above-mentioned parties had agreed that they would enter into a commercial relationship together;
 - 1.2 That part of this said agreement included the arrangement that the undertaking Ruspel Company Limited, of which the applicant is a share-holder and director, receives the necessary financial backing to enable it to participate in the commercial undertaking envisaged;
 - 1.3 That the contending parties drew up an agreement before Notary Doctor Elena Farrugia dated the 22nd September, 2010, whereby it was declared that the complainant applicant had received two hundred and thirty thousand Euros, (€230,000.00), from the defendant, and this, before the publication of the said agreement, (see folio 6);
 - 1.4 That the applicant declares that she had entered into such agreement in good faith;
 - 1.5 That it subsequently transpired that the bank transfers effected by the defendant in favour of the above-mentioned Ruspel Company Limited did not amount to the sum indicated in the said agreement, (refer to paragraph one point three, (1.3.), above);
 - 1.6 That the sum of one hundred and seventy five thousand Euros, (€175,000.00), is still due to the applicant;
 - 1.7 That the applicant had immediately given notice to the defendant that she was ready to pay him the amount transferred to her as it was only this amount, and not that indicated in the contract of the 22nd September, 2010, that was transferred under her control, and this, without any interests that may be due;

- 1.8 That the defendant did not accept this proposal and proceeded by judicial letter dated the 17th February, 2011, to render his claim an executive title in terms of article 256 (2) of Chapter 12 of the Laws of Malta, notwithstanding the fact that the amount transferred by him and now due to him was an inferior one, (see folio 8);
- 1.9 That the applicant answered said judicial letter referred to in the previous paragraph by means of another judicial letter dated the 16th February, 2011, (see folio 12);
- 1.10 That notwithstanding this, the defendant abusively persisted in his claim and proceeded to issue an executive garnishee order, (see folio 15), and an executive warrant of seizure, (see folio 19), both against the applicant, and these to the amount of two hundred and thirty thousand Euros, (€230,000.00);
- 1.11 That furthermore, legal action for the sum of one hundred and seventy five thousand Euros, (€175,000.00), was also undertaken by the defendant against the applicant in Russia when in Malta the very same said defendant is requesting two hundred and thirty thousand Euros, (€230,000.00), (see folios 30 and 34);
- 1.12 That the applicant had no other alternative but to take legal action so that the defendant would have the opportunity to answer the pleas addressed in his regard and say why this court should not:
- 1.12.1. Revoke the executive title obtained by the defendant by means of the judicial letter dated the 7th February, 2011;
- 1.12.2. Revoke any judicial act and warrant obtained as a result of this same said judicial letter;

1.12.3. Declare that the applicant owes the defendant the amount of one hundred and seventy five thousand Euros, (€175,000.00), without interest;

1.12.4. Save any other action that may be instituted including that for damages suffered;

2.0 Having seen the sworn reply dated the 14th December, 2011, through which the defendant synthetically answered in the following manner:

2.1. That the proceedings instituted by the applicant are unsustainable as the revocation of the executive title being requested is the result of a public deed dated the 22nd September, 2010, in the records of Notary Doctor Elena Farrugia, and the subsequent judicial letter that was issued is based on article 256 (2) of the above-mentioned Chapter 12;

2.2. That applicant cannot, after having drawn up a public deed as aforesaid, thereby constituting herself as debtor to an amount that is certain, liquidated and due, in favour of the defendant, attempt to now go against what she had previously committed herself to undertake;

2.3. That the applicant could have always instituted specific proceedings to defend her claims as expressly determined at law;

2.4. That the defendant denies that he had ever agreed with the applicant to undertake any form of commercial activity with her;

2.5. That the defendant has not only given the amount of one hundred and seventy five thousand Euros, (€175,000.00), to the applicant, but has also handed over to her the amount of two hundred and thirty thousand Euros, (€230,000.00), as agreed to in the public deed referred to above, (see paragraph number one point three, (1.3.), above);

- 2.6. That applicant not only accepted to pay the said amount of two hundred and thirty thousand Euros, (€230,000.00), handed over to her, but also executed those external acts by which she gave the impression that she was going to re-pay all the amounts due by her to the defendant;
- 2.7. That the defendant rejects the applicant's claim that he passed her one single cent less than the amount of two hundred and thirty thousand Euros, (€230,000.00), as agreed;
- 2.8. That he is not abusing legal procedures but he is merely pursuing those rights appertaining to him at law;
- 2.9. That the reference to the legal procedure instituted in Russia actually refers to a previous loan concluded by the applicant with the defendant and another third party which loan is completely separate and distinct from the merits under review which originate from the public deed referred to above and dated the 22nd September, 2010, (see folio 6);
- 2.10. That the second request submitted by the applicant cannot be accepted by this court as the judicial letter in question, (406/2011), (see folio 8), was introduced in terms of article 256 (2) of Chapter 12 referred to above on the basis of a public deed by which the applicant declared herself to be a debtor to the defendant, which public deed is still valid and furthermore, there is no request in this present procedure to declare the revocation of this deed;
- 2.11. That the third request submitted by the applicant cannot be accepted by this court as the applicant is already a debtor to the defendant to the tune of two hundred and thirty thousand Euros, (€230,000.00), and furthermore, also owes the amount of one hundred seventy five thousand Euros, (€175,000.00), to the same said defendant and to a third party;
- 2.12. That the applicant's pleas are unfounded and should be discarded;
- 2.13. Save all other pleas that may be necessary;

3. Having seen its decree dated the 18th January, 2012, whereby, at the request of the parties's legal counsel, ordered that the proceedings are to be conducted in the English Language, (see folio 61);
4. Having seen its decree dated the 23rd January, 2014, whereby, at the request of legal counsel of the contending parties, authorised same to conduct final pleadings in the manner therein indicated, (see folio 194), and as subsequently determined, (see folio 195);
5. Having seen the applicant's written submissions dated the 1st April, 2014, (see folio 197), and the defendant's written submissions dated the 6th May, of the same said year, (see folio 201);
6. Having heard the declaration of legal counsel dated the 29th May, 2014, whereby they declared that they were resting their case on the written submissions presented by them in the records of the proceedings, (see folio 206);
7. Having examined all the documents submitted in the records of the case together with the sworn declarations therein presented;
8. Having heard all the evidence submitted;

Considers:

9.0. That the applicant's case may be duly synthesised in the following manner:

9.1. That the contending parties are family friends residing in the same building complex in St Julians;

9.2. That the defendant granted a loan to Ruspel Company Limited, of which the applicant is a director;

9.3. That the contending parties started entering into commercial relationships with each other since 2009, (see folio 66);

9.4. That the contending parties eventually also concluded a loan contract amongst themselves, dated the 22nd September, 2010, (see folio 6), whereby:

9.4.1. Ruspel Company Limited received from the defendant the sum of two hundred and thirty thousand Euros, (€230,000.00);

9.4.2. The sum referred to in the previous paragraph was divided as follows:

- 9.4.2.i. One hundred and seventy five thousand Euros (€175,000.00), was owed to the defendant from a previous agreement, (see folio 73 which is truly illegible and cannot be relied upon);
- 9.4.2.ii. Fifty five thousand Euros, (€55,000.00), which the defendant was to invest in the project;
- 9.5. That as the applicant trusted the defendant she affirms that she had no problem in declaring that the payment involved had already been affected before the contract was finalised, (see folio 65);
- 9.6. That as the business enterprise conducted in Malta was not doing well, the defendant decided to break all relationships with the applicant and started judicial proceedings against her both locally and in Russia;
- 9.7. That by undertaking these proceedings the defendant is trying to make an illegitimate profit of one hundred and seventy five thousand Euros, (€175,000.00), in Russia and fifty five thousand Euros, (€55,000.00), in Malta, for a total of two hundred and thirty thousand Euros, (€230,000.00);
- 9.8. That the defendant is only owed one hundred and seventy five thousand Euros, (€175,000.00), from Ruspel Company Limited, which the same said applicant declares, even on oath, that she is “willing to pay”, (see folio 65 and folio 145);

Considers:

10.0. That the defendant's case may be duly synthesised in the following manner:

10.1. That the original casual acquaintance that happened to start because both parties lived within the same complex in St Julians eventually flourished into several loans, (see folio 154 – 158);

10.2. That once the applicant's relationship with Luciano Bellia, whom she described as being her husband, was under turmoil, her financial situation suddenly deteriorated and, applicant found herself in dire need of hard cash, (see folio 157);

10.3. That the parties agreed that the only way in which the applicant could pay the defendant all her previous loans was by entering into a public deed where all the amount due by her to the defendant would be clearly indicated, (see folio 158);

10.4. That at this stage "... the money had already been transferred to Irina Sedova before we appeared before the Notary", (see folio 158);

10.5. That the public deed dated the 22nd September, 2010, was only a mere reflection of the true state of affairs that then existed between the parties;

- 10.6. That by means of the said deed referred to in the previous paragraph the applicant solemnly declared that she owed the defendant the amount of two hundred and thirty thousand Euros (€230,000.00), as a debt which was certain, liquidated and due, (see folio 6 and 158);
- 10.7. That furthermore, the same said amount referred to in the previous paragraph was to be paid by the applicant to the defendant by the 18th January, 2011, (see folio 6 and 158);
- 10.8. That applicant further assured the defendant that she had enough assets to repay the said loan, even if necessary, to cede all her rights against her now estranged husband in favour of the defendant, (see folio 158 and 159);
- 10.9. That a few days before maturity, the applicant drew up five (5) cheques all dated the 18th January, 2011, together amounting to the sum of two hundred and thirty thousand Euros, (€230,000.00), (see folio 174 and 175);
- 10.10. That notwithstanding that the defendant was always dealing with the applicant in her personal capacity, said cheques were issued by Ruspel Company Limited, (see folio 174 and 175);
- 10.11. That when the defendant attempted to deposit the said cheques this was refused as there were no funds available, (see folio 176 and 180);

- 10.12. That at this point, after the applicant had made up with her partner, she ensured the defendant that she would now pay all her dues owed to him, (see folio 159);
- 10.13. That all communication between the contending parties was disrupted with the applicant seemingly even subtly hinting at some Mafia involvement in the issue to the detriment of the defendant, (see folio 159);
- 10.14. That following this not so veiled threat, the defendant had no other alternative to retrieve the amount given to the applicant but to resort to judicial proceedings;

Considers:

11. That before entering into the merits of the case it is imperative for the court to address an issue concerning the identity of the applicant as her given identity is not so clear;
- 12.0. That in this regard it is imperative to recall the following discrepancies;
 - 12.1. That the applicant is identified by four (4) different Italian identity card numbers namely:
 - 12.1.1. AR8982815 (see folio 1);

12.1.2. 8821447 (see folio 6 and 172);

12.1.3. AS8788086 (see folio 64);

12.1.4. AN8821447 (see fol 118,127,128,136,138,142 and 166);

12.2. That however as the defendant did not raise any issue in this regard, succumbed to the jurisdiction of this court and did not in any way challenge the identity of the applicant, the court declares that notwithstanding the aforementioned discrepancies, will still retain jurisdiction of the proceedings;

Considers:

13. That the court has before it two contrasting versions of the reality at hand together with the documents duly submitted by the very same parties involved;

14. That these documents primarily consist of a public deed, (that dated the 22nd September, 2010, (see folio 6), and copies of the five signed cheques, (see folio 175 and 176);

15.0. That the above mentioned documents unequivocally show and establish the following:

- 15.1. That by means of said public deed – which is in itself proof of its content – the applicant is declared as debtor of the defendant to the amount therein specifically indicated, (see folio 6);
- 15.2. That by means of this same said public deed, the defendant also obliged herself to pay the said amount by the 18th January, 2011, (see folio 6);
- 15.3. That the applicant drew up five relative cheques with which to settle the amount due to the defendant and that when these were presented to the bank in question, they were “referred to drawer”, (see folio 176 to 180);

Considers:

16. That furthermore, notwithstanding the present action, the applicant had assured the defendant that she would repay him the amount due, (see folio 159);

Considers:

17. That it is a settled principle of law that “pacta sunt servanda”;
18. That when the applicant committed herself to be a debtor to the defendant in a public deed dated the 22nd September, 2010, she was binding herself to satisfy the said obligation in terms of the conditions therein entered into;
19. That the applicant did not submit any plausible or legally valid reason which would contribute to her dissolving the obligations she solemnly undertook to uphold by means of the said public deed;

Considers:

20. That although both versions of the saga that emerged seem credible, yet, the documents referred to above all militate in favour of the defendant;

21.0. That however, the documents referred to above, namely:

21.1. The public deed dated 22nd September, 2010, and

21.2. The copies of the five (5) cheques addressed to the defendant and signed by the applicant, (see folio 174 and 175), both militate in favour of the defendant's thesis;

22. That indeed, the Latin maxim referred to by the defendant in his written note of submissions that:

“contra testimonium scriptum, testimonium non scriptum non fertur”,

is truly applicable in this case;

Considers:

23. That on the basis of the above this court is duly satisfied that the applicant did not prove her case according to law and therefore:

DECIDE:

23.0. That on the basis of the above:

23.1. Rejects the applicant's pleas;

23.2. Accepts the answers submitted by the defendant;

23.3. All costs of these proceedings are to be borne by the applicant.

< Sentenza Finali >

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