MALTA

QORTI TAL-MAGISTRATI

(GHAWDEX)

(GURISDIZZJONI SUPERJURI)

(SEZZJONI GENERALI)

MAGISTRAT

JOANNE VELLA CUSCHIERI

Seduta tal-15 ta' Lulju, 2015

Citazzjoni Numru. 102/2010

Rhiannon Lewis

Vs

Paul Scarrow

The Court;

Having seen the sworn application of Rhiannon Lewis that respectfully declares that:

1. Plaintiff's mother, Janet Ann Scarrow died in Xaghra, Gozo on the 15th of August, 2010 (Dok. A). Janet Ann Scarrow was married to defendant Paul Scarrow. A few months before her demise, Janet Ann Scarrow was informed that she was terminally ill, with a few months to live.

2. At the time, plaintiff was persuing her studies in Australia; when plaintiff received news of her mother's illness, she returned to Gozo to spend the last months with her mother, with whom she had a very close relationship. In this period, and until the death of Janet Ann Scarrow, defendant started showing a constant and unseemly interest as to how his wife's estate would devolve after her demise.

3. On the 24th of May, 2010, *decujus* drew up a last will and testament, enrolled in the acts of Notary Paul George Pisani (Dok.B), by means of which she revoked her previous will, bequeathed various legacies unto plaintiff, and instituted as universal heirs of the remaining part of her estate, defendant, defendant's son Christopher James Scarrow, and her said daughter Rhiannon Lewis.

4. In the four days following the 24th May, 2010, certain facts took place which forced *testatrix* to return to the hereabove mentioned Notary, on the 28th of May, 2010, in order to revoke the last will and testament she had just drawn up, and in order to make another will (Dok. C), wherein she bequeathed unto her daughter only the reserved portion according to law; *testatrix* instituted defendant as her universal heir, with substitution rights in favour of plaintiff and defendant's children.

5. Even *prima facie*, it appears that in those four days certain facts took place which forced *testatrix* to change her then last will and testament. In this period, *testatrix's* relationship with plaintiff

remained optimal. In fact, this transformation in *testatrix's* volition was only the result of undue pressure exercised upon her by defendant, and also of deceit, unfounded undertakings and assurances, and fraud exercised on a dying woman.

6. Immediately after his wife's death, defendant turned arrogant in plaintiff's regard, and deprived her from taking possession of some of her personal effects, which at the time were found in the premises wherein plaintiff's mother was living when she died, and of other objects which plaintiff's mother had donated to her before her death (Dok. D). Moreover, defendant forcefully evicted plaintiff from the premises wherein she was residing.

7. For said reasons, the last will and testament drawn up by Janet Ann Scarrow, on the 28th of May, 2010 is null and void.

8. Plaintiff is aware of all facts premised.

Cause of the Claim:

1. For said reasons, since the last will and testament drawn up by Janet Ann Scarrow, on the 28th of May, 2010 is null and void, and this is a result of undue pressure exercised upon her by defendant, and also of deceit, unfounded undertakings and assurances, and fraud exercised on a dying woman. Moreover, because defendant is depriving plaintiff from taking possession of some of her personal effects, which at the time were found in the premises wherein plaintiff's mother was living when she died, and of other objects which plaintiff's mother had donated to her before her death.

The plaintiff requests the Honourable Court to:

1. Declare null and void the last will and testament drawn up by Janet Ann Scarrow on the 28of May, 2010 for the reasons premised.

2. Order that the devolution of the estate of Janet Ann Scarrow, who died on the 15th of August, 2010, be in accordance to her last valid will and testament, which said Janet Ann Scarrow drew up on the 24th of May, 2010; this also in accordance with Art.784 Chapter 16 of the Laws of Malta.

3. Declare that defendant be considered as unworthy, and therefore incapable of receiving under a will, assets belonging to the estate of Janet Ann Scarrow; this also in accordance with Art.605 Chap.16 of the Laws of Malta.

4. Order defendant to immediately place plaintiff in possession of all her personal effects found in the premises wherein she resided at the time of her mother's death prior to her forceful eviction from the said premises as above explained; order defendant to immediately place plaintiff in possession of all the objects which plaintiff's mother had donated to her before her death.

With reserve to any claim against defendant which plaintiff may bring forward, and with costs, including those relative to the warrant of prohibitory injunction number 56/2010PC.

The defendant is hereby being *subpoenad*.

Having seen the sworn reply of Paul Scarrow confirming on oath:

1. That plaintiff's requests are unfounded both on fact and at law;

2. That in the first place it is submitted that since presumption is in favour of the validity of contracts, as the testamentary will in question, plaintiff has the burden of producing clear and concrete evidence on her allegations, so that she can succeed in her requests, which evidence she cannot produce in this case, since her requests are totally unfounded;

3. That defendant categorically denies that he exercised any pressure, action, unfounded promises and/or fraud on his wife Janet Ann Scarrow for the purpose of her making her last will of the 28th October 2010. On the other hand, he believes that it was plaintiff Rhiannon Lewis who exercised pressure for the purpose of publication of her penultimate will of the 24th May 2010; subsequently, with her last will, testator sought to reverse her testamentary dispositions to the position in which they were in another previous will of her dated 1st August 2007, in such way as to reflect her real testamentary wishes;

4. That consequently it is also contested that defendant is not worthy or incapable of receiving the property of Janet Ann Scarrow by will, since, as has been explained, he did not coerce testator to make a new will or change her testamentary dispositions in any way;

5. That furthermore, it is totally contested that subsequent to the decease of his wife, plaintiff was thrown out from the place where she was living or that she was in any manner kept from collecting her personal belongings from the place where she was living. In reality, plaintiff collected all her belongings at two separate occasions, without any opposition from defendant's part.

6. That consequently, as well, plaintiff's requests should all be rejected, at plaintiff's expense.

7. Saving further pleas based both on fact and at law.

With expenses.

Having seen, and read word by word, the voluminous evidence and documentation exhibited by the parties;

Having seen all the acts of the case;

Having seen that during the sitting of the 11th of February, 2015 the parties agreed that the case could be adjourned for judgement for today;

Having seen the notes of submissions;

Considered

Facts of the case:

In short, this case revolves around the inheritance of Janet Ann Scarrow who died on the 15th of August, 2010. It is however limited to her property in the Maltese Islands. Plaintiff is the deceased's daughter whilst defendant is the deceased's husband. Janet Ann Scarrow had her daughter, the plaintiff, from a previous marriage. At a teenage age plaintiff went with her natural father to live in Australia whilst her mother stayed in England. In 2006 Janet Ann Scarrow and defendant got married and consequently moved to live in Gozo. They lived in a house in Xaghra owned by defendant until Janet Scarrow's demise. In 2007 property in Gharb was bought in Janet Scarrow's name which property the couple used to lease and had been put up for sale in 2009. Immediately after the publication of the deed with which this property

was bought, Janet Scarrow drew up a public will in the acts of Notary Paul John Pisani wherein the defendant was nominated her heir (fol. 48). For various years Janet Scarrow and husband Paul Scarrow supported financially plaintiff who was still residing and studying in Australia. In December, 2009 Janet Scarrow was diagnosed with terminal cancer. Her daughter the plaintiff flew to Gozo to be with her mother. On the 24th of May, 2015 Janet Scarrow accompanied by plaintiff Rhiannon Lewis and defendant Paul Scarrow drew up a new will (fol. 7) again in the acts of Notary Paul John Pisani wherein the property in Gharb and various movables where bequeathed by means of various legacies to plaintiff whilst, plaintiff, defendant and his son where nominated her heirs. Four days later that is on the 28th of May, 2010 (fol. 9) Janet Scarrow returned to the said notary, by herself, and drew up another will by means of which she revoked her previous wills and again nominated defendant heir of her property within the Maltese Islands whilst leaving her daughter (plaintiff) the reserved portion according to law.

Plaintiff alleges in her application that the last will and testament drawn up by Janet Ann Scarrow on the 28th of May, 2010 is null and void since it was allegedly drawn up as result of undue pressure exercised upon her by defendant, and also of deceit, unfounded undertakings and assurances, and fraud exercised on the deceased. Plaintiff is also claiming that defendant deprived her from taking possession of some of her personal effects, which at the time were found in the premises wherein plaintiff's mother was living when she died, and of other objects which plaintiff's mother had donated to her before her death. Plaintiff states that as a result of his actions defendant should be declared unworthy to inherit his wife.

On the other hand defendant is denying all allegations against him and sustains his defence by stating that it was the will drawn up on the 24th of May, 2010 that was the result of undue pressure exercised by plaintiff herself and that the last will represents the true wishes of the deceased

since it is also very similar to her previous will drawn up in 2007. Defendant sustains that with her actions it is plaintiff that is unworthy to inherit her mother and not the other way round.

Legal Considerations:

The articles at law relevant to this case are found within the Civil Code, Chapter 16 of the Laws of Malta. The first article falls within the title 'OF THE CONDITIONS ESSENTIAL TO THE VALIDITY OF CONTRACTS' and is Article 966 which lists the requisites for a contract to be valid. Article 966 (b) states that for a contract to be considered valid there must be

'(*b*) the consent of the party who binds himself;'

With regards to the consent of the testatrix article 974 of the Civil Code states that:

'Where consent has been given by error, or extorted by violence or procured by fraud, it shall not be valid.'

With reference to the use of violence Article 977 states as follows:

'(1) The use of violence against the obligor is a cause of nullity, even if such violence is practiced by a person other than the obligee.

(2) Nevertheless, an obligation entered into in favour of a person not being an accessory to the use of violence, in consideration of services rendered for freeing the obligor from violence practiced by a third party, may not be avoided on the ground of such violence; saving the reduction of the sum or thing promised, where such sum or thing is excessive.'

And Article **978 states that:**

'(1) Consent shall be deemed to be extorted by violence when the violence is such as to produce an impression on a reasonable person and to create in such person the fear of having his person or property unjustly exposed to serious injury.

(2) In such cases, the age, the sex and the condition of the person shall be taken into account.'

Article 979 continues to specify that:

'(1) Violence is a ground of nullity of a contract even where the threat is directed against the person or the property of the spouse, or of a descendant or an ascendant of the contracting party.

(2) Where the threat is directed against the person or property of other persons, it shall be in the discretion of the court, according to the circumstances of the case, to void the contract or to affirm its validity.'

Article 980 clarifies that:

'Mere reverential fear towards the father, mother or other ascendants or towards the husband, shall not be sufficient to invalidate a contract, if no violence has been used.'

Finally with regards to Fraud Article 981 of Chapter 16 states as follows:

'(1) Fraud shall be a cause of nullity of the agreement when the artifices practiced by one of the parties were such that without them the other party would not have contracted.

(2) Fraud is not presumed but must be proved.'

The plaintiff is also asking this court to declare defendant as being unworthy to receive by will under article 605 (1) (d) which states as follows:

(1) Where any person has -

(*d*) prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will, he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.

That with regards to the above quoted articles the jurisprudence of the Maltese Courts states as follows:

In **Vincent Cachia vs. Carmelo Cachia et. decided by the Court of Appeal** on the 15th of February, 1957 it was stated**:**

'Illi, ghal dak li jirrigwarda l-portata tat-terminu "pressjoni", uzat fic-citazzjoni, ghandu jinghad illi din l-espressjoni tista' tigi riferita ghall-qerq jew ghall-vjolenza, izda wehedha la tfisser qerq u lanqas vjolenza. '

'Illi l-qerq jikkonsisti f'dawk il-maneggi frawdolenti li bihom jigi nfluwenzat l-animu tat-testatur, u bihom tigi karpita disposizzjoni tetamentarja li diversament hu ma kienx jaghmel; u l-forma li l-qerq jassumi konkretament tvarja skond l-ingenjozita' tal-bniedem. Izda biex iwassal ghall-vizzju tal-volonta' u ghan-nullita' relattiva ta' disposizzjoni testamentarja, il-qerq irid ikun ingust, gravi u determinanti. Hekk il-Qorti tal-Appell ta' Perugia (Giuris It. 1874, 2,60):- "Tutto cio' che agisce sull'intelligenza del testatore ne falsa i concetti, ne corrompe i giudizi, insinuandogli delle idee, facendogli adottare delle resoluzioni che egli, lasciato a se' stesso, sarebbe stato ben lunghi dall'adottare, tutto cio' che non male arti, con riprovevoli blandisie, e' diretto a conciliare l'altrui benevolenza affine di conseguire quelle liberalita' che altrimenti non si sarebbero ottenute, tutto questo complesso di cose costituisce l'essenza della suggestione e della captazione dolosa, ed e' causa di nullita' dei testamenti, rispetto ai quali stanno i predetti vizi come ai contratti la violenza e la frode.

Izda, kull kura, zeghil, attenzjoni, suggerimenti, insistenzi, li ma jkunux akkompanjati minn "male arti", minn artifizi riprovevoli, ma jikkostiwux il-qerq; ghax l-essenza tal-qerq tikkonsisti precizament f'dik is-suggestjoni li bhala effett tal-ingann tissoggjoga l-volonta' ta' min isofriha.'

In the case by the names of **Rachel Loporto Montebello noe vs. Dorothy Refalo et,** decided on the 6th December, 2013 by the Court of Magistrates, Gozo, Superior Jurisdiction it was stated that**:**

'Ghandhom ukoll relevanza qawwija d-deposizzjonijiet ta' nies professjonali, bhat-tabib kuranti tat-testaturi u n-Nutar li ghamel it-testment, dwar l-istat u l-komportament tat-testatur fiz-zmien relevanti.

Imbaghad fejn hemm l-allegazzjonijiet dwar raggiri, kaptazzjoni u mezzi lleciti ohra li jeffettwaw il-kunsens tat-testatur, il-provi ghandhom ikunu cari u konkludenti. Diversament, f'kaz ta' dubju, dan ghandu jmur favur il-konvenut li kontra tieghu tkun ezercitata din l-azzjoni[1]. Illi sabiex l-eghmil qarrieqi jkun motiv ta' nullita', irid jintwera illi l-qerq uzat kien ta' entita' tali illi, kieku ma kienx sar, it-testatur ma kienx jaghmel id-disposizzjonijiet li kien effettivament deher illi ghamel. Irid jirrizulta, ghas-success tal-azzjoni, illi l-volonta' tat-testatur tkun giet imdawwra bhala rizultat dirett ta', u b'effett tal-qerq adoperat fuqu. Hekk biss ir-raggiri jkunu effettwaw il-kapacita' tat-testatur. Mhux bizzejjed li t-testatur ikun qaghad ghax-xewqa ta' persuna ohra, u li jkun ikkuntentaha fid-disposizzjonijiet testamentarji. Daka ma jammontax ghall-qerq.

Illi kif inghad fis-sentenza Hayman et vs Caruana et[2] sakemm persuna

[1] Camilleri et vs Camilleri, Appell Civili, 19 ta' Mejju, 1947.

[2] Cit Nru: 1665/1999JRM deciza fis-6 ta' April, 2011.

ghadha hajja u kapaci, ghandha l-jedd li taghmel b'gidha kulma thalliha taghmel il-ligi. Il-fatt li persuna tintlaqat hazin b'bidla f'testment, ma jfissirx li dak it-testment ikun sar taht l-influwenza tal-qerq jew bil-kunsens vizzjat. Bhalma c-cirkostanzi tal-hajja jinbidlu mal-medda taz-zmien hekk ukoll ir-rieda tal-bniedem li, meta jara l-affarijiet kif tassew ikunu, jista' jisghobih b'li jkun ghamel qabel jew jaghmel xi haga biex tkun tirrifletti aktar ghal dak li gara wara. L-ebda wahda minn dawn ic-cirkustanzi ma tixhed vjolenza tal-kunsens.

In the case by the names **Emanuel Hayman et vs. Mary Caruana et., decided on the 6th of April, 2011,** the Honourable First Hall Civil Court stated**:**

'Illi ghal dak li jirrigwarda l-konsiderazzjonijiet ta' natura legali marbutin mal-kaz tal-lum, din il-Qorti trid toqghod fuq dak li tinbena fuqu l-azzjoni attrici. F'din il-kawza, l-atturi jqisu li l-ahhar testment ta' Maria Carmela Hayman ma jiswiex ghaliex kien ir-rizultat ta' pressjoni li huma jghidu li saret mill-imharrkin jew min minnhom b'mod li r-rieda tat-testatrici ma kinitx dik li tohrog mill-imsemmi testment;

Illi ghalhekk, il-kwestjoni legali ewlenija m'hijiex dwar jekk Maria Carmela Hayman kinitx f'qaghda mentali li taghmel testment, imma jekk ir-rieda taghha meta ghamlet l-ahhar testment kinitx suggetta għall-pressjoni maghmula minn haddiehor u mhux ir-rizultat tar-rieda hielsa taghha. Dan qieghed jinghad ghaliex, ladarba l-atturi ghazlu li jibnu l-azzjoni taghhom fuq il-kawzali tal-vizzju tal-kunsens minhabba r-rieda mgieghla tat-testatrici, ifisser li huma implicitament jaccettaw li l-imsemmija testatrici kellha l-kapacita' li taghmel testment. L-impunjazzjoni ta' testment fuq il-kawzali tal-pressjoni jew vjolenza fuq ir-rieda tat-testatur m'hijiex kompatibbli mal-impunjazzjoni ta' testment fuq il-kawżali tal-inkapacita' mentali tal-persuna li tagħmel testment[3]. Naturalment, il-hila jew kapacita' mentali ta' persuna li taghmel

[3] App. Civ. **28.5.1926** fil-kawza fl-ismijiet ***D'Anastas utrinque*** (Kollezz. Vol: **XXVI.i.498**).

testment tista' titfa' dawl fuq il-kwalita' ta' hazen li jinqeda bih haddiehor biex iwebbilha tagħmel testment;

Illi meta wieħed jitkellem dwar pressjoni jew vjolenza fuq il-kunsens ta' persuna fil-kaz ta' testment, ikun qiegħed jitkellem dwar l-istess raguni li s-soltu twaqqa' kull rabta kuntrattwali oħra magħmula *inter vivos*[4]. Fil-kaz ta' testment, izda, il-ligi tissanzjona lil min ikun gieghel persuna biex tagħmel testment jew li tagħmlu mhux skont ir-rieda ħielsa tagħha billi ggib lil dik il-persuna bħala waħda li ma jisthoqqilhiex li tiret lit-testatur li jkun[5];'

'Illi fil-kaz ta' vjolenza li twassal għal thassir ta' testment jingħad li "*non si esige un timore capace di influire sopra un uomo vigoroso; basta che i fatti siano tali da poterne dedurre che il testatore non abbia disposto di sua piena volonta', o che la violenza produsse un costringimento capace di obbligare il testatore a fare quello che non avrebbe voluto*"[6];

Illi huwa mizmum li biex l-għemil qarrieq ikun mottiv ta' nullita' irid jintwera li l-qerq uzat ikun tali li, minghajru, it-testatur ma kienx jagħmel id-disposizzjonijiet testamentarji li fil-fatt għamel. Il-fatt waħdu li testatur jiddisponi f'testment b'mod li joqgħod għax-xewqa ta' persuna oħra u biex jikkuntentaha ma tqiesx bħala bizzejjed biex jista' jingħad li tali testment huwa frott il-qerq. Għaliex biex l-impunjattiva tirnexxi jehtieg jirrizulta li r-rieda tat-testatur giet imdawra minħabba tali qerq u li t-testatur ma kienx jiddisponi kif iddispona li kieku ma kienx għall-qerq li twettaq fuqu[7];

'Illi f'dan ir-rigward ingħad li l-fatt li persuna terga' taħsibha wara li tkun għamlet testment u turi x-xewqa li trid tibdel dak li għamlet ma jfissirx b'daqshekk li dik il-persuna ma hijiex f'qagħda li turi fehma

[4] Art. 974 u 977 tal-Kap 16.

[5] Art. 605(1)(ë) tal-Kap 16.

[6] Laurent *Principii di Diritto Civile* (Vallardi Editore, 1881) Vol VIII, Cap. V, sez. IV, nn 4 e 2.

[7] App. Civ. **15.2.1957** fil-kawża fl-ismijiet ***Cachia vs Cachia et*** (Kollez. Vol: **XLI.i.83**)

gdida jew li dik il-fehma gdida hija ta bilfors ir-rizultat ta' pressjoni li jaghmel haddieħor fuqha[8];

Illi mbaghad hemm il-kwestjoni tal-grad tal-prova li jrid jintlahaq biex iwassal ghall-konvinciment li, minn dak li jidher, il-mejta kienet tassew giet imgeghla jew imhajra b'qerq tersaq biex taghmel it-testment. Dawn il-provi riedu wkoll jintrabtu mal-waqt li kien qiegħed isir it-testment minnhom attakkat u mhux minn cirkostanzi li jkunu dehru fi zminijiet ohrajn, qabel jew wara l-fatt[9];

This case was also confirmed in appeal decided on the 6th of February 2015 wherein it was stated as follows:

'Fil-kawza fl-ismijiet Vincent Cachia vs Emanuel Cachia deciza minn din il-Qorti fil-15 ta' Frar 1957, wiehed isib spjegazzjoni dettaljata ta' x'ried ifisser il-legislatur f'dan l-ambitu b'riferenza specjali ghall-qerq. Skont il-Qorti dan jikkonsisti f'dawk il-maniggi frawdolenti li bihom jigi mqarraq it-testatur u bihom tigi karpita disposizzjoni testamentarja illi diversament huwa ma kienx jaghmel.... biex iwassal ghall-vizzju tal-qerq u tan-nullita' relattiva tad-disposizzjoni testamentarja il-qerq irid ikun ingust gravi u determinanti. Il-Qorti ziedet tghid illi kull kura, zeghil, attenzjoni, suggerimenti, insistenzi li ma jkunux akkumpanjati minn 'mala arte', minn artifizi ripremevoli, ma jikkostitwixix il-qerq. Wiehed ma jsib ebda prova fl-atti tal-kawza li saru xi maniggi bhal dawk spjegati minn din is-sentenza. Dan japplika bl-istess mod ghall-allegazzjoni ta' vjolenza, konsistenti fl-allegata pressjoni, li dwarha din il-Qorti taqbel mad-deliberazzjonijiet tal-ewwel Qorti ghall-istess ragunijiet. Kien jispetta naturalment anke hawn lill-appellanti bhala atturi li jressqu provi f'dan ir-rigward - *"Onus probandi incumbit qui dicit non ei qui negat"* kif jghid car u tond l-Artiklu 562 tal-Kodici tal-Procedura u kif gie

[8] App. Civ. **2.3.2010** fil-kawża fl-ismijiet ***Victoria Xuereb vs Joseph Refalo et*** Pagna 8 minn 13.

[9] P.A. **8.3.1952** fil-kawża fl-ismijiet ***Mifsud et vs Giordano et*** (Kollez. Vol: **XXXIV.ii.404**) Pagna 9 minn 13.

ripetut diversi drabi f'diversi sentenzi (Dr H Lenicker v. J Camilleri, Prim'Awla 31 ta' Mejju 1972 u Peter Paul Aquilina v. Paul Vella, Appell Inferjuri, 2 ta' Mejju 1995).'

With regards to the incapacity to inherit in **John Agius vs. Carmelo Agius** decided on the 8th of July 2004 the First Hall, Civil Court stated as follows:

'Illi l-azzjoni mibdija mill-attur titkellem dwar il-kapacita' li wiehed jiret. Din l-azzjoni tingharaf minn dik dwar il-kapacita' li wiehed jaghmel testment, ghaliex, filwaqt li f'dan tal-ahhar, is-sanzjoni hija li tali testment ma jkunx jiswa, fil-kaz ta' testment fejn il-werriet ikun indenn, it-testment ma jitqiesx null imma jibqa' jghodd fejn jirrigwarda disposizzjonijiet ohrajn li jkunu saru fih favur persuni li ma jkunux milqutin bl-istess inkapacita' li jircievu. Madankollu, jekk issir xilja li persuna giet imgieghla jew b'qerq imgieghla taghmel testment, dak it-testment jew id-dispozizzjonijiet fih milquta mill-ghemil ma jkunux jghoddu lanqas. Huwa principju accettat li, kemm fil-kaz ta' persuna li ma kinitx kapaci taghmel testment, u kif ukoll fil-kaz fejn jigi allegat li persuna kienet imgieghla taghmel testment, il-piż tal-prova jaqa' fuq min irid igib it-thassir tat-testment[10];

Illi huwa mghallem ukoll li l-kaz ta' persuna li ma jisthoqqilhiex tiret hija kaz ta' inkapacita' relattiva ghalkemm totali u tibda tghodd mill-waqt li tinfetah is-successjoni. Filwaqt li l-inkapacita' li wiehed jiret (jekk ippruvata) tirreferi ghal kull testment li jkun ghamel it-testatur, in-nullita' tal-imsemmi testment tintrabat biss ma' dawk id-disposizzjonijiet li jkunu l-effett tal-ghemil jew qerq fuq l-istess testatur. Daqstant iehor jista' jinghad li filwaqt li l-inkapacita' li wiehed jiret tolqot lilu u 'l min ikun komplici mieghu[11], in-nullita' ta' testment tolqot ukoll lil kull beneficcjarju iehor, ukoll jekk ma jkun jahti xejn ghal xi ghamil li jista' jwasslu biex ikun meqjus bhala werriet indenn;

[10] Caruana-Galizia Notes on Civil Law – Succession, pagni. 966 u 970.

[11] Art. 605(2) tal-Kap 16.

Illi, fil-każ preżenti, l-attur jaghzel li jibni l-kawza fuq l-applikazzjoni tal-artikolu 605. Huwa jixli lill-imharrek li tilef il-kapacita' li jiret lil zitu minhabba li ezercita fuqha theddid u gieghlha b'qerq taghmel it-testment. Jidher li l-azzjoni attrici tinbena ghalhekk fuq l-artikolu 605(1)(c) tal-Kodici Civili;

Illi biex l-attur isehhlu jwassal l-azzjoni tieghu fejn jixtieq, irid juri li l-imharrek tassew ezercita theddid jew qerq fil-konfront ta' Michelina Parnis, u wkoll li b'tali qerq irrenda lilu nnifsu nkapaci li jiritha;

Illi fir-rigward ta' azzjoni bhal din huwa stabbilit li, qabel kull haga ohra, irid jigi ppruvat li kien hemm vjolenza jew qerq maghmul minn dik il-persuna li qeghdha titqies bhala nkapaci li tiret, jew li almenu xxierket ma' persuna ohra biex isehhu tali vjolenza jew tali qerq. Minhabba n-natura odjuża ta' xilja bhal din, huwa stabbilit ukoll li f'haga bhal din "il-provi ghandhom ikunu cari u konkludenti. Diversament, f'kaz ta' dubju, dan ghandu jmur favur il-konvenut li kontra tieghu tkun eżercitata din l-azzjoni"[12];

Merits of the case:

In this case the Court has been presented with two scenarios which although different, this Court does not deem them as necessarily contradicting each other.

Plaintiff has presented to this Court her own evidence taken on oath both before and after the demise of her mother (amongst others fol. 18 et seq, fol. 51 et seq, fol 262) and her cross-examination (fol. 180 et seq) within which she explains how close she was to her mother even though she lived in Australia and her mother lived in England and consequently in Malta. She explains how her mother kept telling her on various occasions that she would inherit her and have enough money for a house or even two. She specifies that her mother used to tell her that

[12] App. Civ. **19.5.1947** fil-kawża fl-ismijiet ***Camilleri et vs Camilleri*** (Kollez. Vol: **XXXIII.i.73**).

this inheritance was in fact coming from her maternal grandparents however since she was young plaintiff states that her mother invested in jewellery, three Picasso's and bought the house in Gharb. Plaintiff states that her mother used to tell her that she would inherit the mentioned movables and immovable. However plaintiff confirms that she knew of the 2007 will by means of which she was not the heir of the said properties but defendant was. In fact plaintiff confirms that throughout the months that she lived in Malta whilst her mother was sick, prior to her death, she was getting more worried as time went by that she would not inherit what, according to plaintiff, was meant for her by her mother. Plaintiff mentions that there was a verbal arrangement between the deceased and the defendant that he would be her heir and that it would be defendant that would sell the property in Gharb and send the proceeds to plaintiff in Australia together with the movables and the Picasso's this, according to plaintiff, in order that she would not have to pay a high amount of tax. Plaintiff confirms that the immovable property in Gharb, the movables including the jewellery and the Picasso's where discussed various times between her, respondent, her mother and witness Bettine McMahon. Bettine McMahon is described to this Court as a good friend of the deceased and both parties confirmed that she was helping in taking care of Janet Scarrow in the months prior to her death. It results that Bettine McMahon was very often present at the Scarrow's house in the last few months of Janet Scarrow's life.

Plaintiff in her evidence confirms that she was worried about her mother's 2007 will and discussed this with her mother and with Bettine MacMahon and various other people.

In fact other witnesses such as Bettine Mac Mahon (affidavit a fol. 68 et seq, cross-examination in various instances throughout the file), Gregory and Diane Bennet (amongst others fol, 78/79) have confirmed that they did speak to Janet Scarrow about their worries that plaintiff would not be given the property by defendant and that if Janet Scarrow wanted her to have them than she should mention and dispose of the same through her will.

It results also from these witnesses that the same plaintiff spoke to most of these witnesses including Paul Barnes (fol. 132 et seq) about her worries that she would not inherit this property and that consequently some of these witnesses would speak to or phone Janet Scarrow to express the same worries.

From the evidence presented by plaintiff it also results that the deceased on various occasions had expressed herself with acquaintances and friends that she wanted the Gharb property to be inherited by Rhiannon and that she also had jewellery and the three Picasso's that she wanted Rhiannon to have such as with James and Shirley Wilberforce(fol. 80, 81, 99 et seq and 101 et seq) and Emily Bromage (fol 127 et seq) .

Court however notes that most of this evidence regarding Janet Anne Scarrow expressing her wish that her daughter would inherit certain property predates the moment in which Janet Scarrow was informed that she was terminally ill and that she would die within a few months. Therefore this Court understands that these statements were made in a state of mind wherein Janet Scarrow was thinking that her death would not be in the near future especially due to the fact that on her demise Janet Scarrow was still considerably young since she died in 2010 at the age of 54 after having gotten married to defendant just three years before in 2006. Thus, Court can easily conclude that when Janet Scarrow was talking about Rhiannon inheriting her she was saying this with a state of mind that this was going to happen in the distant future and that therefore she and her husband would have made ample use of the property and any debts burdening her estate would probably have been settled by that time. Court is comforted in this by the fact that when the property in Gharb was bought in Janet Scarrow's name in 2007, Janet Scarrow immediately drew up a will in the acts of the same notary that drew up the contract of Gharb (fol. 564), stating that Paul Scarrow (defendant) would inherit her. This reflects the need that Janet Scarrow felt to cover her husband due to the financial burdens on the Gharb property, and what defendant states in his evidence (supported by documentation – fol 240, 241, 651 and 652) that the Gharb property was

funded by himself or at least that the money came from his accounts and through loans, although this does not mean that the deceased did not to an extent fund also this property. Court believes that it is plausible and thus believes as probable that the Gharb property was bought only in Janet Scarrow's name due to the fact that respondent being a foreigner already owned another property in Malta and that therefore at that time he was legally precluded from buying a second property (fol. 334).

Court also notes that very few of plaintiff's witnesses knew of the debts/loans burdening Janet Scarrow's estate, the Gharb property or of any arrangement regarding money and property agreed to between Janet Scarrow and her husband the defendant, thus it results to this Court that whilst Janet Scarrow liked to boast about what she owned and she did not like to talk about her financial situation and any financial arrangements between her and her husband. In fact witnesses brought up by plaintiff confirm that the Scarrow's seemed to live beyond their means and that they did not really worry about it (for example evidence by Diane Lesley Bennett at fol. 144 et seq). From the evidence in this case Court can conclude that it was only in the last few months of Janet Scarrow's life that plaintiff and Bettine Mac Mahon came to know about the debts which the couple had.

It also results to this Court that once Rhiannon Lewis came to know about her mother's financial situation her discussions with her mother about the will intensified as she feared even more that she would not inherit what plaintiff deemed to be 'rightfully hers'. This Court concludes that it was under all these circumstances that Janet Scarrow finally gave in on the date of the 24th of May, 2010 and attended at Notary Paul George Pisani's office to change her previous will which had remained untouched for three years:

' . . I do confirm that I had expressed my concern and that I had brought up the subject regarding the will to my mother and thus I suggested that we should go to the Notary. We went all together, when I am stating we, it was my mother, myself and Paul, and after the advice sought from the Notary then it was decided that the will should be changed.'

(Rhiannon Lewis fol. 186).

It results from the evidence that on this occasion both plaintiff and defendant were present with Janet Scarrow although defendant states in his evidence that he did not know of the purpose of the visit. In this will which is exhibited at fol. 7 Janet Scarrow revoked her previous will and specifically indicated that Rhiannon would inherit by means of legacy the property in Gharb, the furniture and contents of the same property, her jewellery and the paintings contained in testatrix's residence in Xaghra, which property is owned by defendant.

It also results from the evidence that whilst plaintiff was happy with the situation after the will dated the 24th of May, 2010 defendant was not happy about it, since as he says in his evidence (fol. 267 et seq) what happened on the 24th of May, 2010 at the Notary was a surprise to him. Bettine Mac Mahon and plaintiff state that between the 24th of May, 2010 and the 28th of May, 2010 defendant was threatening his wife with divorce as a result of her last will. Defendant rebuts these allegations by confirming that although he was not happy about it he never threatened his wife with divorce. He explains that by doing so he would be confirming any fears his wife had about leaving the property to him and would actually have strengthened her will to leave the things as they where to cover her daughter. Court does not believe that defendant actually threatened his wife with divorce, since such a threat would not really have made sense since Janet Scarrow knew that she had very short to live. Court however does believe that defendant did express even maybe angrily his disapproval of the will made on the 24th of May, 2010 since it probably did not respect what the spouses had agreed to between them. This however does not in itself make the 28th May, 2010 will invalid.

Of utmost importance in this case are the facts that occurred on the 28th of May, 2010 and upon which it seems that there is agreement upon them between the parties. It results to this Court that on the 28th of May, 2010 Janet Scarrow's health was still considerably good since both parties agree that she was still in a position to drive. In fact she drove

defendant to Mgarr to catch the ferry. Both parties agree up to this point. Plaintiff hinted various times and even witness Bettine Mac Mahon alleged that on that day Janet Scarrow was already under the effect of morphine. However, Court does not believe this to be the case because a person under morphine would not have been able to freely drive a car on her own and go to the Notary again by herself and give the specific instructions she gave on the day for a new will to be drafted. Also, documentary evidence filed by defendant shows that the administration of morphine to Janet Scarrow started in June 2010 and not previously (fol. 828).

At this point, Court deems of utmost importance the evidence given by Notary Paul George Pisani (fol 88 to 90) as to what happened on the day as follows:

'*My impression is that with regards to the will dated twenty fourth (24th) May two thousand and ten (2010) the plaintiff accompanied the testatrix. As regards to the second (2nd) will the one dated twenty eighth (28th) May two thousand and ten (2010), I am sure that nobody accompanied Janet Anne Scarrow. . . She came over to my office and told me that she wanted to change her will. She just told me that she wanted to change her will and make it as it was before that is the one which was made in two thousand and seven (2007). I do not recall that she expressed the reason why she wanted to revoke the will dated twenty fourth (24th) May two thousand and ten (2010). I told her "are you aware that you are changing the will dated twenty fourth (24th) May two thousand and ten (2010)?" She said "yes'. I explained that with regards to her daughter she had a right to the reserved portion contemplated by law. I also knew that at the time Janet Scarrow was ill. At no stage did it appear that Janet Scarrow was not in a state to make the will dated twenty eight (28th) May two thousand and ten (2010) I did ask her how she was feeling as I knew that she had a terminal illness.*

Janet Scarrow ***was determined*** (emphasis by the Court) *to change the will dated twenty fourth (24th) May two thousand and ten (2010). I did not inquire what made the testatrix change her mind to revoke the will dated twenty fourth (24th) May two thousand and ten (2010), just four (4) days after the first (1st)*

*will**. I only inquired whether she was sure of what she was doing and she said that she was and it was certain that she was capable of doing this will, had I not been sure I would not have given her my services.*** (emphasis by the Court). *I confirm that during this four (4) days . . . I do not recall that plaintiff or defendant contact me. From the twenty fourth (24th) May two thousand and ten (2010) till the twenty eighth (28th) May two thousand and ten (2010) I do not recall that Jane Scarrow contacted me by telephone. . . .*

I had also discussed the tax implications that is relating to her inheritance. Such a discussion was held either during the time of the first (1st will), the one thousand and seven (2007), or the one dated twenty fourth (24th) May thousand and ten (2010). However I do not recall the exact period. The discussions were held with the testatrix. Her husband was also present. The concern was as regards to the amount of tax to be paid. They were interested to pay the least amount of tax possible. The issue relating to the tax inheritance was an ongoing discussion. My advice was to take specialized advice from a tax consultant. I was also asked whether there was any tax on jewellery and paintings. This was eventually left to the plaintiff in the will dated twenty fourth (24th) May two thousand and ten (2010). It might have happened that during the discussion that were held between two thousand and seven (2007) and the will dated twenty fourth (24th) May two thousand and ten (2010), it was also discussed or mentioned that her beneficiary would pass certain items onto a third party on the death of the testatrix. It might be that such a discussion was held prior to the will dated twenty eighth (28th) May two thousand and ten (2010) that is within those three (3) days. . .

*. . . Since such a short period have passed, since the will dated twenty fourth (24th) May two thousand and ten (2010) when Janet Scarrow came over to my office and informed me that she wanted to change that will, I would personally have preferred if she had thought about the matter, however **she was determined to change the will and her wishes are as expressed in the will dated twenty eighth (28th) May two thousand and ten (2010).*** (emphasis by the Court) *I do not remember that I had any contact with Jane Scarrow after the will dated twenty eight (28th) May two thousand and ten (2010).'*

Court has no reason to doubt the veracity of this testimony both because the witness is known to this Court as a professional of integrity and due to the fact that this witness has no interest whatsoever in the property in contestation before this Court. No other witness can shed better light to this Court than this Notary as to the state of mind of the testator when publishing the will dated the 28th of May, 2010 since both parties confirm that they were not present and that the testator went, of her own will, by herself. As it was said in **Rachel Loporto Montebello noe vs. Dorothy Refalo et,** quoted above, the evidence of such professional persons is very important in these cases.

The first and second claim:

Plaintiff in this procedure is asking this Court to annul the will dated the 28th of May, 2010 because of undue pressure exercised upon the testator by defendant, because of deceit, unfounded undertakings and assurances, and fraud exercised on a dying woman. It has already been noted in the jurisprudence above that pressure by itself is not enough for the consent of the testator to be declared invalid (**Vincent Cachia vs. Carmelo Cachia et. decided by the Court of Appeal** on the 15th of February, 1957, supra). In order for pressure to be a ground for the invalidation of the consent of testatrix it must be accompanied by either deceit or violence. This Court has found no evidence within the very lenghty procedures of this case that show that defendant exercised any deceit on the testatrix, deceit that in line with jurisprudence lead the testatrix to subject her own will to that of the defendant. As it was said in the case mentioned above:

'Izda, kull kura, zeghil, attenzjoni, suggerimenti, insistenzi, li ma jkunux akkompanjati minn "male arti", minn artifizi riprovevoli, ma jikkostiwux il-qerq; ghax l-essenza tal-qerq tikkonsisti precizament f'dik is-suggestjoni li bhala effett tal-ingann tissoggjoga l-volonta' ta' min isofriha.'

Court is convinced that both parties exerted some sort of pressure, made suggestions and insisted on the testatrix on drawing up a will according to the party's own wishes however this by itself does not prove that testatrix when sitting on her own at the Notary's office insisting and 'determined' in the Notary's own words to change her will that her own will was being subjected to the will of someone else. This Court firmly believes that when the testatrix attended at the Notary's office on the 28th of May, 2010 she was determined to do what in her own mind was the right thing to do and thus she revoked her own will made four days before and reconfirmed her wishes in according to her previous will published in 2007. Court is further strengthened in this believe that this was testator's intention by the fact that when testator went back to her house she made it clear to plaintiff and to Bettine Mac Mahon (fol. 116) (when defendant her husband was not even at home but in Malta working) that she had again changed her will and that she did not want to hear about it anymore. Testatrix had no obligation to inform them that she had changed her will but she chose to do so with whatever repercussions this might have had to her relationship with them till the date of her death and this to this Court means that testatrix was convinced of what she had done and that the will of the 28th of May, 2010 reflected what was in fact her own will. Also the fact that testatrix died more than two months later and chose not to alter that will at no time till her death, even though she could easily have done so by simply calling the notary, is further evidence to this Court that the will of the 28th of May, 2010 reflected her own wishes and nobody else's. This is further enhanced by the fact that although from the evidence it results that a lot of pressure was exercised by plaintiff and Bettine Mac Mahon on testatrix after the 28th of May, 2010 till her death with regards to what would happened to her property so much so that even private writings and lists of the property where drawn up by plaintiff, notwithstanding all this, testatrix persisted in not changing her last will.

Also, from the evidence brought before, Court does not exclude that there might have been some kind of understanding between the testatrix

and defendant as to what would happen to the property within her Maltese estate after her death as Court cannot just discard all the evidence referring to such discussions (for example evidence given at fol 111 by Bettine MacMahon, Emily Bromage at fol. 128 and Paul Barnes fol. 132 et seq) and does not believe that such a story could have been completely made up by plaintiff and the other witnesses. At fol. 128 witness Emily Bromage states as follows:

'Jan also spoke to me about her property and she told me that she had a second property in Gharb which was really Rhiannon's. In terms of property even Paul admitted to me that the property is really Rhiannon's, however she has to pay the debts on such property.'

However, the content of the 28th of May, 2010 is enough evidence to show that whatever verbal understanding testatrix had with defendant her husband, she trusted him in keeping up to such understanding after her death and that is why it was her will to appoint him as her universal heir:

'When I stated that Jan had preferred Paul I would like to explain that Jan and Paul had been husband and wife for three years, I am stating that they were newlyweds, and it is only natural that Jan would prefer Paul however bearing in mind that there was a verbal agreement.' (fol. 141). This agreement was agreed to because there was the intention to avoid tax but there was the intention that Paul although being the beneficiary he would pass on everything to Rhiannon. I myself was witness to this verbal agreement because this was discussed very often. I am saying that was discussed I am referring to the various persons involved in this discussion namely Jan, Paul, Rhiannon and myself. The verbal agreement was very important to Jan and when she changed the will she was certain that this verbal agreement would be honoured.' (Bettine MacMahon fol. 141/142).

''I do not agree with what is being suggested that when the last will was made there was no verbal agreement because my mother told me that there was a verbal agreement. She didn't tell me what was exactly in the last will, but she told me that I had to trust Paul and that he would stick to whatever he had agreed.' (Rhiannon Lewis fol. 184).

Whether or not defendant will keep his word to his dead wife and live up to her trust and expectations is up to him and to his conscience but this by itself is not sufficient ground to annul testatrix's will of the 28th of May, 2010. Janet Scarrow's own wish was to trust Paul with her property and this is what is reflected in the will dated the 28th of May, 2010.

Also, the recordings of Janet Ann Scarrow at fol. 511 of the court file further confirm to this Court that testatrix seemed to have no regret as to the contents of the 28th of May, 2010 will since she is here to say as follows:

'Greedy cat don't get, always remember greedy cat don't get. I have always said that. It was one of her story books from years and years ago. I tried to find it several times. Greedy cat don't get. Greedy cat always wants more and more and more. So anyway Rhiannon don't get. I truly believe that, whether money or other, you know.'

In view of the considerations above Court concludes that the first and second claim made by plaintiff are not legally found and do not deserve to be acceded to.

The third claim:

With reference to the plaintiff's third claim wherein this Court is being requested to declare defendant as unworthy and therefore incapable of receiving under a will the assets belonging to the estate of Janet Ann Scarrow as already stated above the grounds for this plea to succeed are laid in article 605 (d) of the Civil Code as also referred to by plaintiff in her note of submissions. This article states that defendant would have to be declared unworthy of inheriting his wife Janet Ann Scarrow if he:

'prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will, he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.'

From the Court's considerations above Court cannot but conclude that defendant did not in any way hinder Janet Ann Scarrow from drawing up her own will so much so that he accompanied her on the 24th of May, 2015 and even though the will was not in his favour he did nothing to stop her from doing it, whilst on the 28th of May, 2015 testator even went by herself and certainly was not hindered in any way by defendant. After that date, Janet Ann Scarrow was free to call her notary and change her will if she wanted to, keeping also in mind that there where whole days and nights wherein defendant was not even present at the house, however she chose not to do so. Witnesses throughout the court case have confirmed that Janet Ann Scarrow even when bed-bound she would speak to them on the phone therefore she did have access to the phone if she needed to.

On the other hand defendant during the last days of testatrix's life chose to record his wife in order that he may use these recordings as evidence at a later stage. At first sight admittedly this is was not very nice of him and outright bad taste given that his wife was on the verge of dying however he insists that his wife agreed to being recorded. Court however must admit that given the pressure being exerted on testatrix by the plaintiff and other persons around her as to what will happen with regards to her estate with private writings being drawn up and handed to the testatrix for signature, both testatrix and defendant must

have felt that they had no other option but to take the recordings as the atmosphere in the house prior to testatrix's death very easily lead one to think that her inheritance would not be a very smooth one. But, clearly, all the above does not tantamount to any of the grounds listed in article 605 of Chapter 16 of the Laws of Malta and therefore Court deems that plaintiff's third claim must also be dismissed.

The fourth claim:

Plaintiff's fourth claim requests this Court to order defendant to immediately place plaintiff in possession of all her personal effects found in the premises wherein she resided at the time of her mother's death prior to her forceful eviction from the said premises as above explained and order defendant to immediately place plaintiff in possession of all the objects which plaintiff's mother had donated to her before her death.

With reference to any personal effects this Court has found no evidence throughout the acts of this case showing that any personal effects where not given to plaintiff on the day that she packed her things and left defendants house. With regards to donations, Court with reference to the sworn applicantion and the evidence brought before it, that plaintiff is referrring to the movables within the Gharb and Xaghra properties listed at fol. 12 et seq and fol. 24 et seq. of the file including her mother' jewellery. However with the exception of the jewellery Court finds no evidence whatsoever that testatrix donated these movables to her daughter prior to her death or somehow placed them in her possession. On the other hand the will of the 28th of May, 2010 does not shed any light with regards to the movables.

Plaintiff has presented to this Court at fol. 11 of the file a declaration signed on the the 17th of June, 2010 (that is signed after Jane Scarrow's

last will) and witnessed by Bettine McMahon wherein it is stated as follows:

'I, the undersigned, Janet Anne Scarrow write this letter and accompanying list of possessions to be referred to on the event of my death. The list of possessions is to be left to/and to be given to my daughter Rhiannon Catherine Mary Lewis on the time of my death or when she requests it.'

Following the said letter plaintiff has filed a list of possessions found at fol. 12 et seq of the file and plaintiff insists that this was the list to which the above declaration was making reference to. However Court notes that this declaration does not bear Janet Anne Scarrow's signature and witness Bettine McMahon (fol. 112 and 114) has stated that when she signed the said declaration the list was handwritten in deceased handwriting and not typed:

'At the moment when the declaration doc. "D" at fol 11 and I can see my signature, and I confirm that at the time, when it was signed, it was read out loud. As regards the list there was no typed list, but there was a list attached to it which was in Jan's handwriting. I confirm that this list contained a list of the jewellery and we went through it.'(fol. 112)

The handwritten list was never filed as evidence in front of this Court. In view of this Court is convinced that the list presented by plaintiff a fol. 12 et seq of the case is not the list shown to Janet Scarrow and witnessed by Bettine McMahon when the declaration dated the 17th of June 2010 was signed. This also in view of the fact that defendant has also managed to bring up evidence to contradict the veracity of the list exhibited at fol. 12 et seq and this by presenting a copy of the same list

apparently also typed by plaintiff which list however has various items omitted from it (fol.234 et seq).

With reference to testatrix's jewellery it appears from the evidence before this Court that there is no contestation betwen the parties that the box containing testatrix's jewellery was given by Janet Ann Scarrow to Rhiannon prior to her death and that Rhiannon kept it in her room in the Xaghra house. Thus, it has been established that the jewellery was in possession of plaintiff at the time of death of Janet Ann Scarrow. It is also uncontested that on the day that Rhiannon left defendant's house, after the death of Janet Ann Scarrow, defendant unilaterally entered into Rhiannon's room without any prior consent from plaintiff and took the jewellery box with its contents. This according to defendant for safe keeping pending the disputes on the inheritance (fol. 489).

In **George Spiteri (Successors Limited) vs. Anthony Cremona u Alexandra Palace Hotel Limited (case 1008/98 AJM)** decided on the 22nd of April, 2002 it was declared as follows:

'Fi proceduri fejn qed jigi allegat li effetti mobbili huma ta' parti u mhux ta' ohra jispetta lill-attur li jressaq provi konvincenti li dak li qed jallega huwa minnu. Huwa principju assodat li ghar-rigward ta' effetti mobbili "*possesso vale titolo*". Ghalhekk kien jinkombi lill-attur li jressaq provi konvincenti sabiex jwaqqa din il-presunzjoni.'

In this case, plaintiff Rhiannon Lewis has successfully proven to this Court that she had the possession of her mother's jewellery with all its contents prior to the death of her mother. Defendant did not contest this fact. Defendant even presented a transcription and recordings wherein Janet Ann Scarrow confirms, more than a month later after the drafting of the will dated the 28th of May, 2010, that she wanted Rhiannon to have the jewellery:

'Paul: Yes I know but already all that has already been like a fait accomple and as she said, you have already signed the paper at some stage.

Jan: **I know, my wish is that Rihannon has my jewellery.'** *(emphasis by court)'* (Fol. 505 recording dated the 31st of July, 2010).

In view of all this evidence and by application of the principle "*possesso vale titolo*" Court declares that the jewellery box containing Janet Ann Scarrow's jewellery together with all the jewellery contained therein, which was in plaintiff's room prior to being taken unilaterally by defendant, was already property of Rhiannon Lewis on the date of death of Janet Ann Scarrow and that therefore defendant had no right to misappropriate the same from plaintiff.

In view of the above plaintiff's fourth claim deserves to be acceded to limitedly to the jewellery box and all its contents (previously belonging to Janet Ann Scarrow) which qualify as objects which her mother had donated to her before her death, which jewellery box and contents were kept in plaintiff's room at the Xaghra house and taken away by defendant the day plaintiff left the same house. In order to avoid any disputes as to the contents of the said jewellery box Court makes reference to the list of jewellery found a fol. 30 to fol. 36 of the case items number 1 to 126 and declares that the contents of the said jewellery box where, at least, these listed items since these must have definitely been seen by the plaintiff in order that she could have listed and photographed them prior to being given the jewellery box and stored in her room. Any other items found to be in the jewellery box to date and which may not be listed are still to be deemed as forming part of the contents of the jewellery box and property of Rhiannon Lewis.

With regards to the three Picasso drawings which plaintiff claims her mother bought for her, within the acts court has found no evidence to support this claim. Once the list a fol. 12 has been excluded by this Court there is nothing to show that these where given to the plaintiff prior to her mother's death and thus this is not the same situation as the

jewellery. Even witness Bettine Mac Mahon confirmed more than once that the written list agreed to by Janet Scarrow contained only jewellery. Also, Janet Scarrow chose not to mention these paintings in her last will. On the other hand respondent has brought up evidence that these drawings where bought in his name (fol. 646 and 648). Whether the funds where his own, as for the house of Gharb, remains a question, however as per jurisprudence in case of any doubt this goes in favor of respondent. Whether or not these drawings were included in any verbal understanding between the respondent and his wife, only respondent knows and yet again the will drawn up on the 28th of May, 2010 confirms that the deceased trusted him in performing whatever they had agreed upon and it is now up to his conscience to do so however the Court has no right at law to declare that these drawing be given to plaintiff under plaintiff's fourth claim.

Decision

For the above reasons, this Court decides and concludes this case as follows:

1. Upholds defendant's second, third and fourth plea and consequently dismisses plaintiff's first, second and third claim;

2. Upholds plaintiff's fourth claim and orders defendant to immediately give the possession of the jewellery box with all its contents (contents as better specified in this judgement above), back to plaintiff.

3. Consequently dismisses defendant's remaining pleas.

All legal and judicial expenses are to be bourne, including those referring to the warrant of prohibitory injunction number 56/2010 PC as to three forth's (¾) by plaintiff and one forth (¼) by defendant.

< Sentenza Finali >

----------TMIEM----------