



MALTA

**Court of Magistrates (Malta)
Magistrate
Dr.Gabriella Vella B.A., LL.D.**

Application No. 424/14VG

**In the records of the judicial letter bearing No. 4172/14 dated 3rd
December 2014 in the names:**

Ventur Auto Imports Co. Ltd.

Vs

Oleg Anatolyevich Skylarov

Today 10th March 2016

The Court,

After having taken cognizance of the Application submitted by Oleg Anatolyevich Skylarov on the 23rd December 2014 whereby he requests that the Court, in terms of Section 253(e) of Chapter 12 of the Laws of Malta, suspend the execution of the bills of exchange which Ventur Auto Imports Co. Ltd. is seeking to render enforceable against him by means of the judicial letter filed on the 3rd December 2014;

After having taken cognizance of the document marked as Doc. "A" attached to the Application at folio 3 to 7 of the records of the proceedings;

After having taken cognizance of the Reply by Ventur Auto Imports Co. Ltd. by means which it objects to the request put forth by the Applicant for the suspension of the execution of the bills of exchange it is seeking to render enforceable against him by means of the judicial letter filed on the 3rd December 2014, and requests that the Court reject said request;

After having taken cognizance of the additional Reply by the Respondent Company, following the authorized addition by the Applicant of a further ground on the basis of which he founds his request for the suspension of the execution of the bills of exchange which the Respondent Company is seeking

to render enforceable against him by means of the judicial letter filed on the 3rd December 2014¹, whereby it objects to the said additional ground since it is unfounded in fact and as law;

After hearing testimony given by the Applicant during the sitting held on the 23rd April 2015² and considered the document submitted by him marked as Doc. "OS1" at folio 19 of the records of the proceedings, and testimony given by Keith Grima in representation of the Respondent Company during the sitting held on the 26th October 2015³;

After having taken cognizance of the judicial letter dated 3rd December 2014 bearing progressive number 4172/14;

After having taken cognizance of and considered the Note of Submissions by the Applicant⁴ and the Note of Submissions by the Respondent Company⁵;

After having taken cognizance of all the records of the proceedings;

Considers:

By means of these proceedings the Applicant, in terms of Section 253(e) of Chapter 12 of the Laws of Malta, is requesting the Court to suspend the execution of the bills of exchange which the Respondent Company is seeking to render enforceable against him by means of a judicial letter filed on the 3rd December 2014 [hereinafter referred to as the Bills of Exchange in issue]. The Applicant is founding his request on the following grounds:

- The service on him of the judicial letter dated 3rd December 2014 has not been effected in terms of Law since, though being a Russian national and thus does not understand the Maltese language, he was served with the judicial letter in the Maltese language only;
- The Respondent Company is legally incorrect in stating that bills of exchange are an executive title in terms of Section 256(2) of Chapter 12 of the Laws of Malta since the Law clearly provides that bills of exchange are an executive title in terms of Section 253(e) of Chapter 12 of the Laws of Malta;
- The Applicant is not the owner of the vehicle Land Rover Discovery bearing Registration Number KBR-924 to which the Bills of Exchange in issue refer;
- The said vehicle displayed a number of defects ever since the Applicant started using it, a fact which was brought to the attention of the

¹ Vide Decree delivered on the 17th June 2015, at folio 26 to 29 of the records of the proceedings.

² Folio 24 and 25 of the records of the proceedings.

³ Folio 38 to 40 of the records of the proceedings.

⁴ Folio 44 to 51 of the records of the proceedings.

⁵ Folio 57 to 67 of the records of the proceedings.

Respondent Company, and in order to repair and rectify the same the Applicant incurred an expense amounting to €7,348.75 and this all throughout the period when the said vehicle was covered by guarantee;

- The Bills of Exchange in issue do not conform to the requirements set out in Sections 123 to 129 of the Commercial Code, Chapter 13 of the Laws of Malta; and
- The bills of exchange numbered 5 to 10 are time-barred in terms of Section 218 and 219 of Chapter 13 of the Laws of Malta.

The Respondent Company objects to the request put forth by the Applicant and requests that the same be rejected on the grounds that:

- The Law clearly states that the execution of bills of exchange can only be challenged and a suspension requested and subsequently obtained when the signature on the bills of exchange sought to be rendered enforceable is not of the person seeking the suspension of the execution of the bills of exchange or of his mandatory or where such person brings forward grave and valid reasons to oppose the said execution;
- The fact that the Applicant is not be the owner of the vehicle to which the Bills of Exchange in issue refer to is totally immaterial and irrelevant within the context of these proceedings since the signature on the said Bills of Exchange in issue is the Applicant's, thus rendering him liable to pay the value of the said bills of exchange;
- It categorically denies that the vehicle transferred to the Applicant was in any way defective but in any case, such a reason cannot be considered to be a grave and valid reason on the basis of which the execution of the bills of exchange can be suspended and this in view of the fact that the Applicant had other remedies available to him;
- When the Applicant claims that the Bills of Exchange in issue do not conform to the requirements set out in Sections 123 to 129 of Chapter 13 of the Laws of Malta, said ground is totally unfounded in fact and at law; and
- Actions for payment of bills of exchange are time-barred after the lapse of five years in terms of Section 542 of Chapter 13 of the Laws of Malta and not after the lapse of the periods set out in Sections 218 and 219 of the said Chapter of the Laws.

Prior to dealing with the actual grounds on which the Applicant founds his request for the suspension of the execution of the Bills of Exchange in issue, the Court deems it necessary to make the following observations regarding two issues raised by the Applicant in his Application:

- (1) The legal validity of the service on the Applicant of the judicial letter dated 3rd December 2014; and
- (2) The legal and juridical implications of Sections 253(e) and 256(2) of Chapter 12 of the Laws of Malta.

In his Application the Applicant states that the service on him of the judicial letter dated 3rd December 2014 has not been effected in terms of Law since, though being a Russian national and thus does not understand the Maltese language, the judicial letter served on him was only in the Maltese language. In this regard the Court makes reference to the Judicial Proceedings (Use of English Language) Act, Chapter 189 of the Laws, Section 5 of which provides that: *(1) Where any act is to be served on any person whom the registrar has reason to believe to be English-speaking, the registrar shall cause a translation thereof to be made into English language by an officer of the registry and service shall be effected by delivering a copy of the original and its translation. (2) If, for any cause whatsoever, the translation into English of any such act is not served on an English-speaking person, such person may make in the registry, or forward to the registrar, in any manner, a declaration to the effect that he is an English-speaking person and apply for an English translation of the act served on him⁶. (3) Upon any such application, the registrar shall cause a translation of the act to be made as aforesaid and delivered to the applicant as soon as practicable; and, if in any such case the said application reaches the registry of the court not later than the time established for the closing thereof on the third working day after the date of service of the copy of the original act, any legal or judicial time the running of which is dependent on the service of the original act shall commence to run from the date of delivery of the translation...*

From these provisions it is very clear that when an English-speaking person, and the Applicant claims to be an English-speaking person so much so that he has requested that these proceedings be heard in the English Language⁷, is served with a judicial act in the Maltese language only, such service is not considered to be null and void. In such an eventuality the said English-speaking person may take the initiative to request and obtain a translation of the judicial act served on him and if the said request is made within the period of time set out in the law, any legal or judicial time the running of which depends on the service of the act [in this case the twenty days set out in the proviso to Section 253(e) of Chapter 12 of the Laws of Malta], shall start to run from the date of service of the translation.

In this case the Applicant does not seem to have availed himself of the right granted to him at law to request a translation of the judicial letter dated 3rd December 2014 but proceeded immediately to file this Application in order to request the suspension of the execution of the bills of exchange which the Respondent Company is seeking to render enforceable against him by means of the judicial letter dated 3rd December 2014. Therefore, in these circumstances the Applicant cannot successfully claim that the service on him

⁶ Underlining by the Court.

⁷ Vide declaration by the Applicant's lawyer during the sitting held on the 26th January 2015, folio 12 of the records of the proceedings.

of the judicial letter dated 3rd December 2014 was not carried out in terms of law.

The Applicant also submits that the Respondent Company is not legally correct when in the judicial letter dated 3rd December 2014 it claims that bills of exchange become executive titles in terms of Section 256(2) of Chapter 12 of the Laws of Malta since, according to him, the Law specifically stipulates how bills of exchange can become executive titles under Section 253(e) of the said Chapter of the Laws.

In the judicial letter dated 3rd December 2014 the Respondent Company stated that *peress illi d-debitu minnek dovut huwa cert, likwidu u ghalaq ai termini ta' l-artikolu 253(e) tal-Kap.12 tal-Ligijiet ta' Malta, din l-ittra ufficjali qed tintbaghat sabiex trendi l-kambjala hawn fuq imsemmija ezeqwibbli ai termini ta' l-artikolu 256(2) tal-Kap.12 tal-Ligijiet ta' Malta*⁸. It is very clear that with the filing of the said judicial letter against the Applicant the Respondent Company is not seeking to render the bills of exchange in issue an executive title but it is seeking to render the said bills of exchange, which *ex lege* are considered to be an executive title as per Section 253(e) of Chapter 12 of the Laws of Malta, enforceable against the said Applicant.

From the wording of the Law it clearly results that whilst in terms of Section 253(e) of Chapter 12 of the Laws of Malta bills of exchange are considered to be an executive title of the creditor against the debtor, the said bills of exchange can be enforced **only** after the procedure set out in Section 256(2) of Chapter 12 of the Laws of Malta is followed. The said provision of the law provides that *the enforcement of any other executive title* [that is an executive title which is not referred to in subsection (1) of the said section] *may only take place after the lapse of at least two days from the service of an intimation for payment made by means of a judicial act*⁹. The procedure set out in the first proviso of Section 253(e) of Chapter 12 of the Laws of Malta, which presumably is the procedure to which the Applicant is referring to, is clearly intended for the **suspension of the execution** of such bill/s of exchange sought to be rendered enforceable by means of the filing of the required judicial letter.

Therefore, contrary to that claimed by the Applicant the procedure adopted by the Respondent Company to render the Bills of Exchange in issue enforceable against him is legally correct.

Having dealt with these issues the Court will now proceed to deal with the request proper put forth by the Applicant that is, that the execution of the Bills of Exchange in issue against him be suspended since there are grave and valid

⁸ Underlining by the Court.

⁹ Underlining by the Court.

reasons in terms of Section 253(e) of Chapter 12 of the Laws of Malta which warrant his opposition to the execution of the said bills of exchange.

The first proviso to Section 253(e) of Chapter 12 of the Laws of Malta provides that: *Provided that the court which is competent according to the value of the bill of exchange or promissory note may, by decree which shall not be subject to appeal, suspend the execution of such a bill of exchange or promissory note in whole or in part and with or without security, upon an application of the person opposing the execution of such bill of exchange or promissory note, to be filed within twenty days from the service of the judicial letter sent for the purpose of rendering the same bill of exchange or promissory note executable, on the grounds that the signature on the said bill of exchange or promissory note is not that of the said person or of his mandatory or where such person brings forward grave and valid reasons to oppose the said execution¹⁰ and in such case any person demanding the payment of the bill of exchange or promissory note shall file an action according to the provisions of the Commercial Code.*

The Courts have on various occasions expressed their observations with regard to this particular provision of the Law as was the case in the judgment in the names **Giovanni Briffa v. Ronald Azzopardi, Application No. 231/06** delivered by the Civil Court, First Hall on the 5th February 2008, where the Court made the following observations: *illi minn qari akkurat ta' l-imsemmi sezzjoni jidher car li hemm zewg bazi ghaliex l-ezekuzzjoni tal-kambjala tista' tigi sospiza u cioè li l-firma ma tkunx tal-persuna jew mandatarju taghha u sekondarjament fejn dik il-persuna tressaq ragunijiet ohra gravi u validi ghall-oppozizzjoni ta' l-ezekuzzjoni. F'dak il-kaz il-persuna li tezigi l-hlas tkun trid tipprocedi b'kawza skond id-disposizzjoni tal-Kodici tal-Kummerc. Il-Ligi ma tispecificax x'inhuma r-ragunijiet gravi u fil-fehma tal-Qorti dan ma sarx b'xi nuqqas tal-legislatur izda intenzjonalment ghax il-legislatur ried ihalli fid-diskrezzjoni tal-Qorti f'liema kazijiet ikollha quddiemha l-Qorti ghandha tilqa' it-talba jew le. Certament li raguni valida m'ghandhiex tkun wahda frivola ghax kif tghid l-istess ligi hlief fil-kaz tal-firma r-raguni trid tkun gravi u valida u dan jaghmlha cara li persuna ma tistax kapriccozament toponni tali ezekuzzjoni. Izda min-naha l-ohra l-legislatur ma eliminax ir-ricerka li ssir f'kawza skond id-dispozizzjonijiet tal-Kodici tal-Kummerc izda l-artikolu 253(e) u proviso tieghu gie rez bhala procedura (prima facie) diskrezzjonali fidejn il-Qorti, bazat naturalment fuq ragunijiet validi u gravi. Huwa veru li imkien fil-ligi ma jinstab il-kliem prima facie izda kien ikun bla sens li l-Qorti tidhol fid-dettalji kollha tal-proceduri soliti meta hekk jew b'hekk daww il-proceduri ma gewx eliminati mill-legislatur, b'mod li jirrendi l-applikazzjoni gusta tal-ligi tittiehed f'dan is-sens.*

¹⁰ Underlining by the Court.

As already observed, the Applicant is claiming that the execution against him of the Bills of Exchange in issue should be suspended because: (i) he is not the owner of the vehicle Land Rover Discovery bearing Registration Number KBR-924 to which the said bills of exchange refer to; (ii) the mentioned vehicle displayed a number of defects ever since he started using it, a fact which was brought to the attention of the Respondent Company, and in order to repair and rectify the same he incurred an expense amounting to €7,348.75 and this all throughout the period when the said vehicle was covered by guarantee; (iii) the Bills of Exchange in issue are not in conformity with the requirements set out in Sections 123 to 129 of the Commercial Code, Chapter 13 of the Laws of Malta; and (iv) the bills of exchange numbered 5 to 10 are time-barred in terms of Section 218 and 219 of Chapter 13 of the Laws of Malta.

In so far as concerns the nature of the pleas which may be raised by a debtor when faced with an action for the payment of bills of exchange (*actio cambiaria*) our Courts have consistently held that: *skond il-prattika kostanti ta' dawn il-Qrati l-hlas tal-kambjali li tkun accettata u skaduta tigi dejjem ordnata meta l-eccezzjonijiet ikunu tali li jehtiegu indagini twila, salvi l-kawteli li l-Qorti jidhrilha opportuni, kompriz li tirrizerva l-eccezzjonijiet ghal kawza separata. Jibqa' però vitali l-Art. 198(2) tal-Kodici tal-Kummerc illi l-kundanna ghall-hlas tal-kambjali, bil-garanzija jew minghajrha, m'ghandhiex tkun imdewma. Hekk allura l-Qorti ma tistax, ad exemplum, tinkariga periti bl-inkarigu li jezaminaw eccezzjoni tax-xorta bhal dik sollevata f'din l-istanza. Ara "Professur Carlo Mallia noe v. Mariano Accarino noe" Appell Kumm, 22 ta' Novembru 1937. Kif inghad fil-kawza "Francesco Zammit nomine v. Paolo Scicluna noe" Qorti tal-Kummerc, 4 ta' Frar 1907 (Vol. XX pIII p15) – u dan kien kaz fejn kien qed jigi allegat li l-merce mixtrija kienet iddeterjorat – "secondo la pratica di questi tribunali il pagamento di una cambiale accettata e scaduta viene sempre ordinato quando le eccezioni siano tali da richiedere lunga indagine sotto quella cautela che il prudente arbitrio della Corte credesse opportuno". Dan it-tagħlim sekolari baqa' jigi sostenut anke fiz-zmenijiet recentissimi, kif manifest fis-sentenzi fl-ismijiet "United Acceptances Finance Limited v. Mario Grech pro et noe", Appell, 6 ta' Ottubru 2000 u "Jet-Tech Limited v. Marcon Coppola" Appell, 13 ta' Marzu 2001, fost bosta ohrajn. Dan huwa anke evidenti minn din is-silta mehuda mid-decizzjoni fl-ismijiet "Adrian Busietta noe v. Marco Attard noe" Appell, 9 ta' Frar 2001: "Issa filwaqt li hu minnu li "l-eccezzjonijiet personali huma opponibbli ghall-possessur tal-kambjali li qed jitlob il-hlas tagħha u jistghu jirrigwardaw tant l-origini ta' l-obbligazzjoni kemm l-ezercizzju tagħha" (Vol. XXX pIII p499), u dan a vantagg tal-konvenut kjamat biex jonora l-kambjali, kellu jkun ovvu li l-oggett ta' l-azzjoni kambjarja ma setax u ma ghandux ikun konfuz ma' l-oggett li kien jifforma l-obbligazzjoni naxxenti minn negozju u li ta lok ghall-hrug tagħha. Il-ligi stess proprju bl-insistenza fuq l-awtonomija ta' l-azzjoni kambjarja u bil-limitazzjoni ta' l-eccezzjonijiet li setghu jinghataw għaliha, kif ukoll bl-insistenza fuq l-ispeditezza fid-determinazzjoni ta' l-azzjoni, kienet tiddistingwi u ssalva n-negozju originali li jibqa' soggett ghal verifika*

u kontestazzjoni, anke wara li tkun giet onorata l-kambjali b'konsegwenza ta' l-ezekuzzjoni tas-sentenza fuqha moghtija". Jirrizulta mill-Artikolu 199 tal-Kodici tal-Kummerc illi l-ligi tikkonsenti in via eccezzjonali l-oppozizzjoni ghall-hlas tal-kambjali fil-kaz ta' telf tal-kambjali jew ta' falliment tal-possessur. Il-gurisprudenza imbaghad uriet ukoll illi Qorti ghandha d-dover tinvesti eccezzjonijiet li jolqtu l-ezistenza tal-kambjali stess. In partikolari dawk rigwardanti l-kunsens ta' l-accettant, ad exemplum id-dolo (Vol. XXXIV pIII p845; Lorenzo Ceci v. Alfred J. Baldacchino noe, Qorti tal-Kummerc, 8 ta' Ottubru 1974). Eccezzjonijiet ohra ammessi li jinstemghu u jigu trattati fl-istess gudizzju ta' l-azzjoni kambjarja huma l-uzura (Vol. XXIX pIII p319) u anke l-kompensazzjoni (Vol. XXX pII p499), basta li din tkun tista' tigi definitiva malajr¹¹.

Even though these principles have been established vis-à-vis pleas which may or may not be raised within the context of an action for the payment of bills of exchange (actio cambiaria), the Court firmly believes that the same apply also within the context of a request for the suspension for the execution of bills of exchange in terms of the first proviso to Section 253(e) of Chapter 12 of the Laws of Malta. In other words, these principles are a valid guide-line in order to determine which reasons can be considered to be grave and valid reasons that warrant the opposition to the execution of bills of exchange and effectively justify the suspension of the execution of said bills of exchange.

When the claim by the Applicant that the execution of the Bills of Exchange in issue against him should be suspended because the vehicle Land Rover Discovery bearing Registration Number KBR-924 to which the Bills of Exchange in issue refer displayed a number of defects ever since he started using it, a fact which was brought to the attention of the Respondent Company, and in order to repair and rectify the same he incurred an expense amounting to €7,348.75 and this all throughout the period when the said vehicle was covered by guarantee, is considered in the light of the above-mentioned principles, it clearly results that the same cannot be considered to constitute a grave and valid reason which warrants opposition to the execution of the Bills of Exchange in issue and thus justify the suspension of the execution of the said bills of exchange.

Similarly, the claim by the Applicant that the execution against him of the Bills of Exchange in issue should be suspended because he is not the owner of the vehicle to which the Bills of Exchange refer to, cannot be considered to constitute a grave and valid reason which warrants opposition to the execution of the Bills of Exchange and justifies the suspension of execution of the same.

¹¹ Integrated Electronics Limited v. Goldkraft Limited, Civil Appeal No. 278/02 delivered by the Court of Appeal (Inferior Jurisdiction) on the 25th February 2004; J. Micallef Builders Limited v. Philip Degorgio, Writ No. 123/02 delivered by the Civil Court, First Hall on the 16th October 2002; U.C.I.M. Co. Ltd. v. Charles Pisani, Writ No. 221/01 delivered by the Civil Court, First Halal on the 13th July 2001.

From evidence submitted during the hearing of these proceedings, including testimony by the Applicant himself during the sitting held on the 23rd April 2015¹², it transpires that the Applicant signed the Bills of Exchange in issue. The mere fact that he signed the Bills of Exchange in issue is reason enough to render him subject to the payment of the same irrespective of whether or not he is the actual owner of the vehicle Land Rover Discovery bearing Registration Number KBR-924. In this regard the Court refers to the judgment delivered by the Civil Court, First Hall on the 29th May 2003 in the names **Charles Pool v. Carmelo Mercieca** where reference was made to the following extract from the Notes by Profs. Renè Cremona regarding bills of exchange: *the moment a person signs the bill of exchange ... the obligation arising from that signature is considered to be complete in itself; it acquires a juridical existence which is considered separate, distinct and independent from the original and fundamental contract entered into between the parties concerned. The law identifies the obligation created or evinced by its bills with the signatures placed thereon. Accordingly, a party to a bill would be liable thereon, not because of any pre-existing obligations, but merely because he did actually sign the bill.*¹³

The Applicant also claims that the Bills of Exchange in issue and in particular the bills of exchange numbered 5, 6, 7, 8, 9 and 10 for the total value of €6,780.00, are time-barred in terms of Sections 218 and 219 of Chapter 13 of the Laws of Malta.

The said provisions of the Law provide that: *the holder of a bill of exchange payable in Malta at sight, or at a certain time after sight, or at usance, is bound to present it for payment or for acceptance within the times prescribed in the next following article, to be reckoned from the date of the bill, under penalty of forfeiting his right of recourse against the endorsers, and even against the drawer, if the latter has provided funds to meet the bill [Section 218]. The times referred to in the last preceding article are – (a) six months, if the bill is drawn at a place in Europe, Asia Minor, Syria, Egypt, Tripoli, Algiers or Morocco; (b) one year, if the bill is drawn at any other place; (c) one month, if the bill is drawn and made payable in Malta¹⁴: Provided that in time of maritime war, the times mentioned in paragraphs (a) and (b) shall be doubled.*

When the Bills of Exchange in issue are considered in the light of these provisions of the law it immediately results that the same are not applicable in this case. In fact, Sections 218 and 219 of Chapter 13 of the Laws of Malta clearly refer to bills of exchange *payable in Malta at sight, or at a certain time after sight, or at usance*¹⁵ whereas the Bills of Exchange in issue are bills made

¹² Folio 24 and 25 of the records of the proceedings.

¹³ Underlining by the Court.

¹⁴ This being the specific provision invoked by the Applicant.

¹⁵ Underlining by the Court.

payable in Malta on certain days, which is a mode of payment totally distinct from payment at sight, at a certain time after sight or at usance as can be easily determined from the provisions stipulated in Sections 172, 173, 174, 176 and 179 of Chapter 13 of the Laws of Malta.

Once the provisions of the Law invoked by the Applicant are not applicable in the present case, it clearly results that this further reason put forth by him as a justification for his request for the suspension of the execution against him of the Bills of exchange in issue does not constitute a grave and valid reason which warrants the opposition to the execution of the said bills of exchange and thus justifies the suspension of the execution of the same.

The Applicant also claims that Bills of Exchange in issue are not in conformity with the requisites set out in Sections 123 to 129 of Chapter 13 of the Laws of Malta. In his Note of Submissions the Applicant pin-points those requisites, which according to him are necessary for the legal validity of the bills of exchange, which are missing in the Bills of Exchange in issue: (a) lack of place where the bills of exchange are drawn and lack of place of payment; (b) lack of signature of Applicant's wife; and (c) lack of signature of the drawer. From the said submissions it is very clear that the Applicant claims that the Bills of Exchange in issue are not in conformity with the requisites set out in Section 123 of Chapter 13 of the Laws of Malta, which provides that: *a bill of exchange must be dated, and must specify the place where it is drawn, the sum to be paid, the name of the person who is to pay, and the name of the person to whom or to whose order payment is to be made, the time and place of payment, and the value given, whether in cash, in goods, in account, or in any other manner; and must be signed by the drawer.*

Lack of place where the bills of exchange are drawn and lack of place of payment: in so far as concerns this first requisite which the Applicant claims to be missing from the Bills of Exchange in issue, the Court observes that the said Bills of Exchange all indicate the place where they were drawn, that is Malta. Furthermore, the Court makes reference to the observations made by the Court of Appeal in the judgment in the names **Annunziato sive Lonzu Mifsud v. Angelo Xuereb nomine, Appeal No. 1997/95** delivered on the 5th October 2001, regarding a similar plea (that is that the bills of exchange in that case did not indicate the place of payment) raised by the defendant company in those proceedings: *trattandosi ta' obbligazzjoni ta' natura kummercjali, l-ewwel Qorti zbaljatament applikat in-normi tad-dritt civili, jissottometti l-appellant nomine. Huwa jiccita b'awtorità min-noti tal-kompjant Professur Joseph A. Micallef, studjuz eminenti tad-dritt kummercjali, li jghallem li f'kazijiet fejn il-lok mhuwiex indikat il-kambjali de quo "will have to be considered as invalid". Dak li donnu konvenjentement jiskarta l-appellant nomine fic-citazzjoni mehuda min-noti tal-Professur Micallef hija l-premessa l-ohra, daqstant iehor importanti, illi tali nuqqas apparenti jrid ukoll ikun tali li jwassal biex "the holder of the bill would be unable to seek any party" – meta dan zgur li ma japplikax fil-kaz in ezami*

billi sa indirizz u numru tat-telefon tat-traent jinsab innizzel fl-imsemmija kambjali. U “del resto” dana jaqbel ma’ dak l-insenjament tal-Professur Carlo fl-appunti tieghu dwar “Le Cambiali nel Diritto Maltese” (pag. 96) u cioè li “se manca l’indicazione del luogo di pagamento, non si può dire che la cambiale sia nulla, perchè vi suppliscono altre indicazioni”. In addition to this the Court further observes that Section 224 of Chapter 13 of the Laws of Malta provides that: *the presentment of a bill for acceptance or payment, the protest, the request for a duplicate of the bill, as well as all other acts against a particular party with regard to a bill, shall be made at such party’s place of business or otherwise at his residence.*

From the above it clearly results that apart from the fact that in this case the Bills of Exchange in issue do indicate the place where they have been drawn, the fact that there is no indication of the place of payment does not render the Bills of Exchange in issue null and void.

Lack of signature by the Applicant’s wife: The Applicant submitted an extract from his marriage certificate, Doc. “OS1” at folio 19 of the records of the proceedings, which shows that he has been married since the 10th November 2001. He therefore claims that his wife’s signature was necessary for the Bills of Exchange in issue to be considered valid at law. The Applicant submits that *the bills of exchange as presented are signed by Oleg Anatolyevich Skylarov only. However, Mr. Skylarov is a married man, and as such the bills of exchange should have been signed by his wife as well. Article 1322(3)(g) of the Civil Code states the following as regards acts of extraordinary administration which requires such acts to be entered upon by both spouses: “(3) Acts of extraordinary administration are the following ... (g) the acquisition of movable property or of any right of use or enjoyment over movable or immovable property the consideration for which is not paid on, or prior to, delivery: Provided that this shall not apply to any debt incurred for the needs of the family in terms of article 1327(c), or to the hiring of movables or immovable when the consideration therefor is moderate in relation to the condition of the family and the duration of the lease is for a short period”.* However, Article 1327(c) of the Civil Code is inapplicable since it refers to expenses for the needs of the family including those for the education and upbringing of the children. The vehicle in question was not bought for such purpose¹⁶.

With regard to this particular claim by the Applicant the Court makes reference to the observations made by the Civil Court, First Hall in the judgment in the names **Bank of Valletta p.l.c. v. Carmel Ray Micallef, Writ No. 1890/01** delivered on the 18th February 2004: *skond il-ligi, il-firma tal-konjugi hi mehtiega biss fuq att ta’ amministrazzjoni straordinarja. Dawn l-atti huma elenkati fl-artikolu 1322(3) tal-Kodici Civili, u l-firma ta’*

¹⁶ Note of Submissions by the Applicant at folio 44 to 53 of the records of the proceedings.

kambjali ma tissemmiex bhala att ta' amministrazzjoni straordinarja. Il-lista ta' l-atti straordinarji hija wahda kompluta, u ma tistax tigi estiza biex tkopri attijiet mhux hemm imfissra. Kif qalet din il-Qorti fil-kawza "Elmo Insurance Ltd. v. Pace" deciza fit-3 ta' Ottubru 2003, huma biss dawg l-atti elenkati fl-artikolu 1322(3)(a) sa' (m) li ghandhom jitqiesu ta' natura straordinarja u, ghalhekk, ghandhom ukoll jinghataw interpretazzjoni restrittiva.

In the light of the above it clearly results that the Bills of Exchange in issue cannot be considered null and void because they haven't been signed also by the Applicant's wife.

Lack of signature of the drawer: From evidence submitted during the hearing of these proceedings and as admitted by Keith Grima, the Respondent Company's representative, the Bills of Exchange in issue have been signed only by the Applicant and not also by him or some other representative of the Respondent Company as drawer. The word of the Law in this regard is more than clear: a bill of exchange which is not signed by the drawer cannot be considered to be a valid bill of exchange at law.

With reference to this particular issue the Court makes reference to the observations made by the Civil Court, First Hall in the judgment in the names **Phoenix Domestic Appliances Limited v. Joseph Vassallo, Writ No. 2388/97** delivered on the 20th April 2001: *Fil-kawza fl-ismijiet "Edward Vincenti Kind vs Carmelo Abdilla et" deciza mill-Qorti tal-Kummerc fil-5 ta' Ottubru 1954 (Vol.XXXVIII. III.675) giet appuntu trattata t-terminologia li tintuza fil-ligi ghar-rigward tal-kambjali: "Il-kambjali tikkonsisti fl-obbligazzjoni ta' xi hadd, imsejjah traent, jew emittent, li jgieghel li jhallas, jew ihallas, lil xi haddiehor, imsejjah prenditur, somma determinata lill-possessur tal-istess kambjali fl-iskadenza. Tant fl-ewwel kemm fit-tieni kaz, tisesejjah kambjali, u wkoll ittra ta' kambju; fit-tieni kaz tista tisesejjah anki 'pagherò cambiario' jew 'vaglia cambiario'. Il-kambjali, ghaldaqshekk, tista' tigi redatta u koncepita f'zewg forom; min jemettiha jista jobbliga ruhu li jhallas huwa stess, personalment, u allura l-kambjali, tkun kambjali proprja, jew, kif diga nghad, 'vaglia cambiario' jew 'pagherò cambiario'; imma tista' tindika terza persuna bhala dik li ghandha thallas, u lil min l-emittent jghati l-ordni biex ihallas, u allura kambjali tkun kambjali impropria u jghidulha 'tratta', ghaliex tigi migbuda fuq hadd iehor. F'din il-kambjali jippartecipaw tliet persuni traent, trattarju, prenditur; fl-ohra jippartecipaw zewg persuni biss, ghaliex f'dik l-ohra l-emittent jassumi li jemettiha u li jaccettha u jaccettha fl-istess hin li jemettiha." It-traent, jew emittent, hu dak li johrog il-kambjali. Fil-kaz in esami t-traent hu s-socjetà attrici li harget jew emettiet il-kambjali li gew ukoll iffirmati mill-konvenut li obbliga ruhu li jhallas l-ammont indikat fuq l-istess kambjali. Dejjem fil-kambjali in kwestjoni min ghandu jircievi l-hlas hu l-istess persuna li harget il-kambjali, cioè s-socjetà attrici. In effett dan hu permissibbli skond il-ligi u cioè ai termini ta' l-artikolu 127 tal-Kodici Kummercjali. L-artikolu 123 tal-Kodici Kummercjali*

jelenka l-elementi essenzjali li ghandu jkun fiha l-kambjali fosthom li trid tkun "iffirmata minn min jgibidha" u cioè "ad validitatem" il-kambjali trid tkun iffirmata mit-traent, f'dan il-kaz is-socjetà attrici. Fil-kawza fl-ismijiet "Walter Zammit vs Pio Callus" deciza mill-Qorti tal-Kummerc fid-9 ta' Settembru 1981 gie ritenut li kambjali li mhux iffirmata mit-traent ghandha tigi kkunsidrata bhala nulla. Hekk ukoll gie deciz f'diversi kawzi ohrajn, fosthom "Antonio Mifsud et vs Dr. Carmelo Mifsud Bonnici et nomine" (Qorti tal-Kummerc - 29 ta' Novembru 1974), "Alfred Calascione nomine vs Dr. Carmelo Mifsud Bonnici et nomine" (Qorti tal-Kummerc - 29 ta' Novembru 1974) u "Henry A. Pace vs Joseph Azzopardi (Prim Awla tal-Qorti Civili - 13 ta' Ottubru 1964 - Vol. XLVIII.II.1206).

Even though a bill of exchange which isn't signed by the drawer cannot be considered to be a valid bill of exchange, this does not mean that the underlying obligation which gave rise to the issue of the bill of exchange is null too. In this regard reference is made to the observations by the Civil Court, First Hall in the judgment in the names **Henry A. Pace v. Joseph Azzopardi**, delivered on the 13th October 1964¹⁷: *kambjali li ma tkunx firmata mit-traent mhix titolu negozjabbli u trasferibbli bil-girata (App. in re "Dr. Mifsud v. Giacomotto" deciza fis-6 ta' Marzu 1912). Però kif gie dejjem deciz mill-Qrati taghna l-obbligazzjoni kontenuta fil-kambjali li hija nulla, tista' tigi sostnuta bhala obbligazzjoni semplici, civili jew kummercjali skond in-natura tal-kreditu (Kollez. XXIX – iii – 39, 201).*

In spite of the fact that the underlying obligation between the Respondent Company and the Applicant is not necessarily null in view of the lack of the signature of the drawer on the Bills of Exchange in issue, the fact that this signature is missing renders the bills of exchange which the Respondent Company is seeking to render enforceable against the Applicant by virtue of the judicial letter dated 3rd December 2014, null and void at law and this of itself constitutes a grave and valid reason which warrants opposition to the execution of those bills of exchange and therefore justifies the suspension of the execution of the said bills of exchange against the Applicant.

For this reason, and for this reason alone, the Court has no other option but to uphold the request put forth by the Applicant by means of the Application filed on the 23rd December 2014, and in terms of Section 253(e) of Chapter 12 of the Laws of Malta orders the suspension of the execution of the bills of exchange which the Respondent Company is seeking to render enforceable against the Applicant by means of the judicial letter dated 3rd December 2014.

Costs pertinent to these proceedings are to be borne by the Respondent Company.

¹⁷ Collection of judgments by the Superior Courts, Vol. XLVIII – ii – 1206.

MAGISTRATE

DEPUTY REGISTRAR