

22nd January, 1990

Judge: -

**Onor. Albert Manchè LL.D.**

June Jackson

*versus*

Leonard Jackson

**Spoliation**

*The "Actio Spolii" is based more on the exigencies of social utility than on the absolute principle of justice and is eminently intended to extend protection to any kind of possession and to prevent the private citizen from taking the law into his own hands. Its object is that of restoring the state of possession which will have been upset or disturbed.*

The Court: - Having seen the write of summons filed on the 10th November 1988 whereby plaintiff premised that:

Whereas the plaintiff is co-owner of the premises "villa Ansarica", Ta' Ċafċaf Lane, Madliena, limits of Gharghur, and also had possession of the premises;

And whereas on or about the fourth (4th) of November, one thousand, nine hundred and eighty-eight (1988), the defendant, that is the plaintiff's husband, who does not reside with her, abusively and without any right fixed padlocks on the doors of the said premises with the result that the plaintiff cannot enter the said premises any more;

And therefore by doing this the defendant has committed a recent act of **spoliation** to the prejudice of the plaintiff;

Requested that it:

(1) be declared by this Court that the defendant committed a recent act of spoliation to the prejudice of the plaintiff;

(2) that defendant should consequently be condemned to return the plaintiff in possession of the said premises "Villa Andsarica", Ta' Ċafċaf Lane, Madliena, limits of Gharghur, by returning it to its previous state; and

(3) within the time-limit fixed by this Court;

With costs against the defendant;

Having seen plaintiff's declaration and her list of witnesses;

Having seen the defendant's Note of Pleas filed on the 23rd

February 1989 whereby defendant pleaded:

“1. That it was plaintiff herself who had locked the defendant out of the house and consequently it was she who had committed the first violent act and he had every right to remove that violence;

2. That as head of the community of acquests, possession was always in his hands and consequently, as he is the head of the community of acquests and he has the possession of the objects, the present action cannot proceed;

*Omissis;*

Considers:

The Judicial Assistant came to the conclusion that, from the evidence produced in this case, plaintiff has satisfactorily proved that defendant's action constitutes spoliation in terms of law;

The Judicial Assistant motivated his conclusion by submitting that plaintiff was in possession of the villa when defendant committed the act of spoliation and therefore, the element of possession required of plaintiff has been proved. He further submitted that plaintiff was not sleeping in the villa because she was afraid of her husband but this did not mean that she had lost control of the villa;

As regards the kind of possession by plaintiff required by law, the Judicial Assistant quoted case law to the effect that any

kind of possession is deserving of protection and the extension of this protection is such that even possession deriving from an unjust cause is defended by the law against violent and clandestine possession and, consequently, even precarious possession is protected (Vide Vol. XXXVIII-I-123);

As stated in the case "Margherita Fenech vs Pawla Zammit" (First Hall of the Civil Court decided on 12th April 1988 Vol: XLII-II-1973) the "*actio spoli*" is based more on the exigencies of social utility than on the absolute principle of justice and is eminently intended to extend protection to any kind of possession and to prevent the private citizen from taking the law into his own hands; thus its object is that of restoring the state of possession which will have been upset or disturbed. The Court went on to state that the section which contemplates the action is undoubtedly one of public order and is inherent to the fact concerning whoever by private authority causes damages to a third party; an act which, although he might have the right to, he cannot exercise without the intervention of the Court and together with this section is bound the other section of the Code of Civil Procedure which lays down that, against an action of spoliation, only dilatory pleas are admissible;

As regards the second element, the act of spoliation itself, the evidence given by defendant himself that he gained entry into the villa by using a crowbar to open the garage door is sufficient proof. He then admitted that he changed the front door lock and the garage lock and applied a new padlock to the front gate. Plaintiff could not then get in because the key in her possession could not fit into the lock;

As regards the third element, namely the time for filing the action, this too has been observed by plaintiff who filled the summons on the 10th November 1988 and the spoliation took place on the 4th November 1988;

The Court agrees with the Judicial Assistant's findings and consequently finds for plaintiff, because in a spoliation suit the overriding principle is "*ante omnia restituendum*".

For the above stated reasons, the Court rejects as unfounded defendant's pleas and upholds plaintiff's claims and for the purpose of the third claim by plaintiff, defendant is given a time limit of three (3) days from today to comply with the judgement.

Costs are to be borne by defendant.

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