

Civil Procedure

Lecture 1: Precautionary Acts

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Diploma in Law (Malta)



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What are Precautionary Acts?

- Precautionary acts are remedies granted by law to the creditor or holder of a real right to secure the future payment of his credit or other rights, whenever he has no title which grants him immediate execution.
- They are very important in situations where there exists a risk that the assets of the debtor will be dissipated.
- The law provides the possibility to a person, who alleges to have a claim against another, to take certain measures to secure the claim, even though the existence of such claim has not yet been judicially verified.
- The prerequisite for a precautionary warrant is that there must be a prima facie possibility that the claimant's rights be breached in absence of the warrant.



What are Precautionary Acts?

Article 829 of the Code of Organisation and Civil Procedure: *“It shall be lawful for any person, without the necessity of any previous judgment, to secure his rights by one or more of the following precautionary acts, which shall be issued and carried into effect on the responsibility of the person suing out the act, provided he shall have complied with the conditions prescribed by this Code.”*

Carmelo Abdilla vs Auto Sales Limited – Prim Awla tal-Qorti Civili, 17 ta’ Mejju 2011: *“Mandat kawtelatorju jinhareg biex il-kreditur iqieghed fiz-zgur il-jeddijiet tieghu...M’ghandux jinhareg biex igib l-allegat debitur gharkubbtejh”*

Thus, for a precautionary warrant to be issued, having a favourable judgment is not a requirement since it is intended to prevent the disappearance or dissipation of the assets of the debtor *pendente lite*.



What are Precautionary Acts?

- These precautionary acts will be rescinded, if the party against whom the act is issued makes such deposit or gives such security as, in the court's opinion, according to the circumstances of the case, may be sufficient to safeguard the rights or claims stated in the act.
- Notwithstanding that a deposit is made or security is given as aforesaid, the time limits established in the Code on the creditor to bring forward his action shall continue to apply.
- Such time limits shall run from the date of the issue of the precautionary act, and failure by the creditor to institute proceedings within the said time limits shall entitle the debtor to withdraw the deposit or cancel the security.
- In terms of the Code, a creditor must file the case on the merits **within 20 days from when the precautionary act is issued**. A precautionary act may also be issued contextually with the filing of the case on the merits or at any point after the filing of the case on the merits and during the course of proceedings.



Which are the Precautionary Acts?

1. Warrant of description;
2. warrant of seizure;
3. warrant of seizure of a commercial going concern;
4. garnishee order;
5. warrant of impediment of departure;
6. warrant of arrest of sea vessels;
7. warrant of arrest of aircraft;
8. warrant of prohibitory injunction.



The Application for the issue of the Warrant

- The demand for the issue of any of the precautionary warrants is made by an application prepared by the applicant and containing, **under pain of nullity of the act**, other than further details which may be prescribed by regulations:
 1. The **origin and nature of the debt or claim** sought to be secured;
 2. When the right sought to be secured by the act is a debt, or a demand which may be satisfied by the payment of a sum of money, **the amount of such demand** (If the case has already been filed in court, such demand may specify and include all judicial costs).
- The application must be confirmed on oath by the applicant - where in an application there is more than one applicant demanding the issue of any of the precautionary acts against the same respondent, the oath shall be taken by at least one of the applicants.
- Any of the warrants or order shall be issued by the court.



The Application for the issue of the Warrant

- Where the right sought to be secured by the act is a debt, or a claim which may be satisfied by the payment of a sum of money, the applicant shall also in this sworn statement referred to in the last preceding article indicate approximately the sum to which, in his belief, the debt or claim amounts, and if a cause has already been filed in court, such a claim may specify and include any judicial costs, under pain of nullity of the act.
- The oath may be administered by the registrar or by a legal procurator appointed as Commissioner for Oaths under the Commissioner for Oaths Ordinance.
- The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, the lawyer or the legal procurator whose signature is subscribed on the application, of the execution of the warrant or order.



Filing of precautionary warrants with judicial letter

- Where a judicial letter is filed and sworn according to article 166A, there may also thereupon be sworn and filed the warrant of description, the warrant of seizure and the garnishee order.
- When such judicial letter is filed, the applicant shall file a sworn application or application or petition, as the case may be, within twenty days from the date of filing of a full or partial note of contestation or else within sixty days from the date of the issuing of a warrant, unless a note of contestation will have been filed, according to which date first occurs.
- No sworn application or application or petition, as the case may be, shall be required in the case where the precautionary warrant is converted to an executive warrant or it is removed by means of a counter-warrant.



Filing of precautionary warrant with judicial letter filed in accordance with article 466

- Where a judicial letter has been filed in accordance with article 466 (Proceedings for debts due to Government), there may be filed the warrant of description, the warrant of seizure and the garnishee order.
- When such letter is filed in accordance with article 466, the applicant shall attach a copy of such letter in the acts of the precautionary warrant.



Filing of precautionary warrant with judicial letter filed in accordance with article 466

- Article 466: Where the head of a government department or the person vested with the legal representation of a body corporate established by law or with the legal representation of any company or other body which has been authorised by or under any law to collect any amounts due to a government department or to a body corporate established by law, desires to sue for the recovery of a debt due to a government department or to any administration thereof or to a body corporate established by law, for any services, supplies, penalties, rent, ground rent, other burdens on property, compensation for occupation and or for any licence or other fee or tax due, he may make a declaration on oath before the registrar, a judge or a magistrate wherein he is to state the nature of the debt and the name of the debtor and confirm that it is due.



Filing of precautionary warrant with judicial letter filed in accordance with article 466

- Article 466 continued: The same applies in respect of amounts due for the supply of water and electricity and for the rental of the relative meters but they shall not apply where prior to the service required (as explained below) the person from whom the amount is claimed shall have notified the claimant either by means of a judicial act or by registered post that he is disputing the metering, calculation or the charge in respect of such supply or rental.
- The declaration referred to above shall be served upon the debtor by means of a judicial act and it shall have the same effect as a final judgment of the competent court unless the debtor shall, within a period of twenty days from service upon him of the said declaration oppose the claim by filing an application demanding that the court declare the claim unfounded.
- The application explained in the above bullet point shall be served upon the head of department, who shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.



Counter-warrant

- Without prejudice to any other right under the COCP or any other law, the person against whom the precautionary act has been issued may ask for the precautionary warrant to be **revoked**, either totally or partially. This may be done through:
 - An application to the court that has issued the precautionary warrant; or
 - An application to the court hearing the case if it has already been instituted.



Counter-warrant

The grounds for revocation are 6:

- **that the precautionary act ceased to be in force;**
- **that any one of the conditions requested by law for the issue of the precautionary act does not in fact subsist;**
- **that other adequate security is available to satisfy the claim of the person at whose request a precautionary act was issued either by the issue of some other precautionary act or if such other security can to the satisfaction of the court adequately secure the claim;**



Counter-warrant

- if it is shown that the amount claimed is not prima facie justified or is excessive;
- if the security provided is deemed by the court to be sufficient;
- if it is shown that in the circumstances it would be unreasonable to maintain in force the precautionary act in whole or in part, or that the precautionary act in whole or in part is no longer necessary or justifiable.



Case law

- Digriet mogħti mill-Prim Awla tal-Qorti Ċivili datat 11 ta' Mejju 2020 fl-ismijiet Conrad Pisani v. J. Zammit Limited: *“l-ahhar aggravju hu fis-sens illi s-sekwestru ma kienx necessarju jew gustifikabbli ghax il-qagħda finanzjarja tas-socjeta hi tajba bizzjed li tista' tassorbi kull pretensjoni magħmula mis-sekwestrant. Gew esebiti l-management accounts ghas-sena 2019 fejn jirrizulta li s-socjeta ghamlet profitt f'dik is-sena ta' l-fuq minn miljun ewro. In oltre jirrizulta li ghandha assi ta' hmistax-il miljun u nofs ewro kontra debiti kurrenti ta' ghax miljuni u seba' mitt elf ewro. Hi l-fehma tal-Qorti li dawn il-management accounts, mhux kontradetti, juru stampa ta' kumpanija b'sahhitha finanzjarjament u li facilment tiflah tassorbi l-ammont pretiz kontraha f'dan is-sekwestru facilment. L-argument ta' Pisani li assi ta' kumpanija mhux affidabbli ghax l-audited accounts saru l-ahhar fl-2017 u li kumpanija tista' tigi likwidata fi zmien qasir, ma humiex ragonevoli meta tqis il-kobor ta' din il-kumpanija u l-istat b'sahhtu finanzjarju prima facie tagħha. Fic-cirkostanzi għalhekk, salv provi ohra li jistghu jirrizultaw kontra dak esebit in atti, il-Qorti tqis it-talba tas-socjeta J. Zammit Limited bhala gustifikata, ghalkemm mis-sottomissjonijiet magħmula ma hux gust li jigu applikati d-dispozizzjonijiet tal-artikolu 836(8) u (9) fil-konfront tas-sekwestrant”*

Counter-warrant

- The person making the application must, together with the application, file in writing all submissions to be made together with all documents in support of the demand that is being filed.
- The application, except for any application in terms of sub-article (1)(a) (when the precautionary act ceased to be in force), is to be served on the opposite party who may, within seven days from the service, file a note containing all submissions to be made together with all documents in support of the demand that is being filed.
- The court shall decide the application with urgency either in camera or after hearing the advocates of the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose.



Counter-warrant

- No appeal and no challenge shall lie from a decree acceding to an application requesting the issue of a counter-warrant, and such decree is final and irrevocable, and except in the case contemplated in sub-article (1)(a) (when the precautionary act ceased to be in force) a similar precautionary act may not be issued in security of the claim against the person against whom the precautionary act so revoked was issued, unless in the application for the issue of such similar precautionary act the applicant states that circumstances have arisen since the revocation of the previous precautionary act which justify the issue of a similar fresh precautionary act to that which has been revoked, and the provisions of this article will thereupon apply to such precautionary act freshly issued on the basis of such application.



Case-law

- Prim' Awla tal-Qorti Ċivili, 28 t' April 2015, fl-atti tar-rikors għall-ħruġ ta' kontromandat fl-ismijiet DOM Communications Ltd vs. Office Group Ltd: *"... fir-rigward tal-proċeduri li jsiru ai termini tal-Artikolu 836, il-Qorti kemm-il darba għamlitha ċara li hija bl-ebda mod ma tidhol fil-fond tal-vertenza għaliex kif irritenew diversi drabi l-Qrati tagħna, il-proċedura maħsuba fl-Artikolu 836 għandha tkun waħda sommarja, u l-eżami tagħha għandu jkun biss ta' prima facie."*
- Camilleri vs Gové et, l-10 ta' Mejju, 2001: *"mid-dispożizzjoni tal-Art. 836 jidher li l-uniku eżami li trid tagħmel din il-Qorti huwa biss dak ta' prima facie u dan għaliex il-mandat kellu jiġi investigat fil-kawża proprja bejn il-partijiet, u għalhekk hemm limitazzjoni sinifikanti fl-eżami li trid tagħmel il-Qorti f'dan l-istadju u dan tenut kont li hawn si tratta dejjem ta' proċedura preliminari li għad qed tistenna l-eżitu finali fil-kawża proprja."*

Counter-warrant

- Notwithstanding that adequate security for the satisfaction of the claim of the person at whose request the precautionary act was issued is deposited in the registry of the court, the court which issued the counter-warrant under the provisions of this article may still, on a request made by application by any interested person, investigate the legality or otherwise of the relative precautionary act and the court may also order the reduction of the amount of security deposited or declare the precautionary act to be contrary to law, in which latter case it shall give such orders as it may deem appropriate, including, if the case so warrants, the giving of the security back to the debtor.



Penalty

- The court may condemn the applicant at whose request a precautionary act was issued to pay a penalty of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than six thousand and nine hundred and eighty-eight euro and twelve cents (6,988.12) in favour of the person against whom the precautionary act was issued, in each of the following cases:
 - (a) if the applicant, without any valid reason, does not bring the action in respect of the claim, within the time established by law;
 - (b) if, on demand of the defendant for the rescission of the precautionary act, the plaintiff fails to show that the precautionary act had to be issued or that within the fifteen days previous to the application for the precautionary act, he had in any manner called upon the defendant to pay the debt, or, if the debt be not a liquidated debt, to provide sufficient security: Provided that the provisions of this paragraph shall not apply where it is shown that there were reasons of urgency for the issue of the warrant;
 - (c) if the circumstances of the debtor were such as not to give rise to any reasonable doubt as to his solvency and as to his financial ability to meet the claims of the applicant, and such state of the debtor were notorious;
 - (d) if applicant's claim is malicious, frivolous or vexatious.



Case-law

- Paul Caruana vs Global Executive Search Limited et', 31 ta' Jannar 2017: *"Illi dwar din id-diskrezzjoni ngħad li l-Qorti hija tenuta li timponi l-penali fejn ikunu jirriżultaw l-estremi li l-ligi težiġi. Il-penali maħsuba fl-artikolu 836(8) tal-Kap 12 hija waħda ta' ordni pubbliku immirata li tiżgura serjeta` fil-proċess ġudizzjarju u biex ma tħallix li l-istitut tal-mandati kawtelatorji jintuża b'abbuż."*

Damages

- In the case explained above, the court at the request, by application, of the person against whom the precautionary act was issued, may condemn the applicant at whose request the precautionary warrant was issued to pay such damages as may have been caused by the issue of the warrant, and in any such proceedings the court shall refer to, and make use of, the records of the proceedings of the precautionary act and of any other proceedings arising therefrom or consequential thereto, and such records shall be admissible evidence for the purposes of this action.



Case-law

- Paul Attard noe. vs Loreto Abela, Prim Awla tal-Qorti Ċivili, 25 ta' Mejju 2005: *“Illi għar-rigward tal-azzjoni attriċi immirata għall-kundanna tal-imħarrekk għad-danni minħabba u b'konsegwenza ta' ħruġ ta' mandat kawtelatorju kollox irid jitqiegħed fil-qafas ta' żewġ prinċipji ewlenin; l-ewwel wieħed huwa dak li min jirrikorri għall-jedd li għandu ma jitqiesx li hu responsabbli għall-ħsara mgarrba minn ħaddieħor minħabba l-użu xieraq ta' dak il-jedd (“qui suo jure utitur neminem laedere videtur”); it-tieni wieħed huwa dak li l-jedd li wieħed ifittex ir-rimedji tiegħu billi jirrikorri għall-awtorita` ġudizzjarja, minflok jieħu l-liġi b'idejh, m'għandux jiġi mxekkel bla bżonn”;*
- Paul Caruana vs Global Executive Search Limited et', 31 ta' Jannar 2017: *“Illi ġeneralment l-abbuż mill-proċedura ġudizzjarja jitqies biss f'każijiet eċċezzjonali li, x'aktarx, jintrabtu mal-qerq ta' persuna li tkun irrikorriet għaliha jew mal-frugħa tal-pretensjoni nnifisha. Fejn ikun hemm element ta' aġir fieragħ fi proċedura ġudizzjarja, dan normalment jixhed l-abbuż tal-proċess ġudizzjarju. F'dan ir-rigward ingħad li għalkemm, ir-raġunijiet li għalihom min ikun talab u kiseb il-ħruġ ta' mandat kawtelatorju jista' jinsab ħati għad-danni ma jintrabdux biss mal-erba' ċirkostanzi msemmija fl-artikolu 836(8), taħt ir-regoli ġenerali tar-responsabbilta` irid jintwera li tali persuna tkun mexxiet b'imprudenza, traskuraġni jew nuqqas ta' ħsieb ta' missier tajjeb tal-familja.” F'dan il-kuntest, in linea ta' prinċipju huwa ritenut li dak li tikkundanna l-liġi huwa l-abbuż tad-dritt ta' azzjoni ġudizzjarja.”*

Entities/individuals against whom a precautionary warrant may not be issued

- It shall not be lawful to issue any precautionary warrant of seizure or garnishee order in security of any right or claim against the Government of Malta.
- It shall not be lawful to issue any warrant of seizure or garnishee order, in security of any right or claim against any person belonging to the armed forces of any country or any person belonging to any vessel wholly chartered in the service of the Government of Malta if such person is in Malta with the force or vessel to which he belongs.
- It shall not be lawful to issue any warrant of impediment of departure in security of any right or claim against any master, seaman or other person regularly enrolled, if the ship to which he belongs has obtained her clearance; and against any engineer of any rank, employed on any steam vessel.



Entities/individuals against whom a precautionary warrant may not be issued

- If any such warrant or order has been unduly issued and carried into effect against any of the persons above-mentioned, it shall be lawful to obtain the rescission of the warrant or order or of anything done thereunder by making an application to that effect stating out the cause for his exemption, and producing in support thereof any certificate, document, or other evidence to the satisfaction of the judge or magistrate by whom the warrant or order was issued.
- The release of the person from the warrant or order may also be applied for as aforesaid by the officer commanding the vessel on which such person is enrolled, or by the officer commanding the force, the regiment or the company to which such person belongs, or by any other military, naval or air force authority.
- It shall not be lawful to issue any precautionary warrant of seizure, warrant of seizure of a commercial going concern or garnishee order in security of any right or claim against any person for damages for libel or other defamation under any law.

Other provisions

- The court may, when any party makes an application before it which is served on the other party, give any order as maybe required so as to prevent any damage or deterioration being caused to the things described in the precautionary act.
- It shall be lawful for the court, on good cause being shown, upon the demand by application of the person against whom a precautionary act has been issued, to order the party suing out the warrant to give, within a time fixed by the court, sufficient security for the payment of the penalty that may be imposed, and of damages and interest, and, in default, to rescind the precautionary act.





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Warrant of Description

- A warrant of description may be issued in order to secure a right over **movable things**, for the exercise of which the applicant may have an interest that such movable things remain in their actual place or condition.
- The marshal shall execute a warrant of description by describing the things in detail stating the number and quality thereof.
- He shall also state the weight or measure, and the value thereof, if the applicant makes an express demand to that effect in the application for the issue of the warrant, or subsequently, by means of a note. In any such case the value is to be stated upon an appraisalment made by one or more experts appointed by the court.



Warrant of Description

- The things so described shall remain in the custody of the person in whose possession they are found, and such person is responsible for their safe keeping, an express injunction to that effect being included in the warrant.
- It shall be lawful for the court, upon the application of any party notice whereof is given to the other party, to give any order calculated to prevent any loss, damage or deterioration of the things described.
- The applicant is bound to bring the action in respect of the right stated in the warrant within twenty days from the issue of the warrant: where the issue of the warrant is demanded by any spouse against the other spouse, and the spouse issuing the warrant has commenced proceedings in court, the time limit here before mentioned shall commence running from such date when that spouse is authorised to proceed by the court, provided that the warrant shall cease having its effect immediately upon the proceedings being withdrawn or abandoned.
- If the applicant fails, without just cause, to bring such action, the effects of the warrant shall cease and he shall be liable for all damages and interest.

Warrant of Description

- Where the party against whom the warrant was executed shall, by means of a note filed in the registry, allow to the applicant a time longer than that mentioned in the last preceding article, the warrant shall remain in force for such extended time.
- The court executing officer may, in connection with the execution of any warrant committed to him, after calling in two witnesses, exercise all such powers as are reasonably required of him to execute the warrant, which includes the breaking open of any outer or inner door as well as any box or other thing in which there might be effects liable to seizure.
- In the case of any warrant for the seizure of any property of the Government of Malta, the court executing officer shall not execute such warrant before the lapse of four working days from the day on which he shall have communicated in writing the issue of such warrant to the officer charged with the custody or care of such property.



Warrant of Description

- The Prime Minister may from time to time by regulations establish a list of property pertaining to the State which may not be the subject of an executive or a precautionary warrant.
- No opposition to the execution of the warrant shall be considered until the execution has been effected.
- The nullity of the warrant or of the execution thereof shall entitle the party against whom the warrant is issued to an action for damages and interest against the person suing out execution if the nullity arises out of any act of such person, or against the court executing officer who executed the warrant or order if the nullity arises out of any act of the court executing officer.



Warrant of Prohibitory Injunction

- There are four types of warrants of prohibitory injunction, which are the following:
 1. A 'general' warrant of prohibitory injunction (Article 873);
 2. An 'alienatory' warrant of prohibitory injunction (Article 874);
 3. Cases for personal separation or divorce (Article 876); and
 4. When one prevents a person from taking a minor outside of Malta (Article 877).



The 'general' Warrant of Prohibitory Injunction

- The warrant of prohibitory injunction is a precautionary act issued by the court which restrains a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant. The warrant of prohibitory injunction can **only act as a precautionary warrant**.
- The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant, and that *prima facie* such person appears to possess such right.



The 'general' Warrant of Prohibitory Injunction

- The court shall not issue any such warrant against the Government or authority established by the Constitution or any person holding a public office in his official capacity unless the authority or person against whom the warrant is demanded confirms in open court that the thing sought to be restrained is in fact intended to be done and the court is satisfied, after hearing the explanations given, that unless the warrant is issued, the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing sought to be restrained.
- If on an application, it is proved to the satisfaction of the court that subsequent to the issue of the warrant of prohibitory injunction the person restrained has acted directly or indirectly in breach of the court's order, the court shall, without prejudice to any other action competent to it at law, at a request of applicant, condemn the person against whom the warrant had been issued to remedy what was committed in breach of its order and to authorise in default the applicant to carry out such remedial works as the court may direct at the expense of the person restrained.



Case law

- Prim Awla tal-Qorti Ċivili, 17 ta' Diċembru 2021: Avv. Dr. Michael Psaila noe et vs. Ms Nancy Caruana bħala Segretarju Permanenti in Rappreżentanza tal-ministeru tal-ekonomija u l-Industrija et:

“Skont il-liġi, il-qorti għandha tawtorizza l-ħruġ ta’ mandat ta’ inibizzjoni meta:

1. *Ir-rikorrent ikollu mad-daqqa t’għajn il-jedd oġġettiv u mhux soġġettiv li jwaqqaf jew iżomm lill-intimat milli jagħmel xi ħaġa li tista’ tkun ta’ ħsara jew li biha tista’ oġġiblu preġudizzju. Wieħed irid jagħraf li l-jedd li jeħtieġ jithares mhux biżżejjed li jkun sempliċi diffikultà, disaġju jew tħassib (ara Dr. Louis Cassar Pulliċino noe v. Joseph Caruana Curran noe et, Qorti tal-Kummerċ tas-26 ta’ Mejju, 1995);*
2. *Il-mandat ikun meħtieġ biex jiġi mħares dak il-jedd. F’dan is-sens, jekk l-inkonvenjent jew in-nuqqas lamentat jista’ jitneħħa, imqar b’deċiżjoni wara li jiġi mistħarreg il-każ fil-mertu, jiġi nieqes it-tieni element meħtieġ għall-ħruġ tal-Mandat (ara fost ħafna oħrajn id-deċiżjoni fl-ismijiet Odette Tonna et v. Awtorità tal-Artijiet mogħtija mill-Prim’Awla tal-Qorti Ċivili fid-19 ta’ Lulju, 2018); u*
3. *Meta t-talba għall-ħruġ tal-mandat tkun qiegħda ssir kontra l-Gvern ta’ Malta jew kontra xi persuna b’kariga pubblika, fil-kariga ufficjali tagħha, b’żieda maż-żewġ elementi msemmija fil-paragrafu ta’ qabel dan, ir-rikorrenti biex jirnexxi fit-talba tiegħu għall-ħruġ tal-mandat ta’ inibizzjoni jrid juri wkoll skont l-artikolu 873(3) tal-Kap 12 tal-Liġijiet ta’ Malta: (i) li l-ħaġa li huwa qed jitlob li tinzamm milli titwettaq fil-fatt hemm il-ħsieb li titwettaq, u (ii) li l-preġudizzju li jinħoloq fuqu jkun sproporzjonat meta mqabbel mal-istess għamil tal-ħaġa li qed tintalab li tiġi miżmuma (ara d-digriet tal-15 ta’ Diċembru, 2008 fl-ismijiet Supretendent Anzjan Raymond G. Zammit v. Il-Ministru tal-Intern u Ġustizzja et);”*

The 'alienatory' Warrant of Prohibitory Injunction

- A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt or any other claim amounting to not less than eleven thousand six hundred and forty-seven euro (11,647). The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing inter vivos such property as may be indicated in the application by onerous or gratuitous title or in any manner creating a burthen or real and, or personal rights; provided that such a warrant shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to a court order, or over bank guarantees and letters of credit.



The 'alienatory' Warrant of Prohibitory Injunction

- Where a warrant prohibits the sale, alienation, transfer or other disposal of immovable property the application shall contain all the particulars relating to the person against whom it is directed that are required by law in respect of the registration of a transfer of immovable property by such person in the Public Registry. Where the warrant refers to specific immovables, the application shall describe them in the manner provided for in the Public Registry Act, in respect of notes of enrolment, namely it shall apply with reference to the geographical data in question. Where the application refers to specific immovables it shall also be accompanied by a complete draft of the note of enrolment for filing in the Public Registry.



The 'alienatory' Warrant of Prohibitory Injunction

- The warrant shall upon its issue and at the expense of the applicant, be served by the Registrar, within twenty-four hours, on the Director of the Public Registry and the Land Registrar or on such authority as may be nominated by the Minister responsible for justice, who shall forthwith register the same in books kept for the purpose. Such books shall be indexed and accessible to the public. It shall also be served upon any person indicated by the applicant.
- Upon registration of the warrant by the Director of the Public Registry, any future sale, alienation, transfer or disposal of immovable property to which the warrant refers shall be void and to no effect.



The 'alienatory' Warrant of Prohibitory Injunction

- Without prejudice to the provisions dealing with the counter-warrant, the warrant shall, unless previously revoked or otherwise ceasing to be in force, continue to have effect for a period of one year from the date of final judgment in favour of the creditor in his action for the recovery of the debt or claim.
- Where a warrant prohibits the sale or transfer of the shares in a commercial partnership, notice shall also be served on the Registrar of Companies and from the date of such service any transfer of shares shall be null.
- No action for damages shall lie against the Registrar for failure to comply with any of the provisions of this article except on the basis of wilful acts done in bad faith or of gross negligence.



Case law

- Digriet tal-Prim' Awla tal-Qorti Ċivili, datat 12 t'Ottubru 2021, fl-ismijiet Steve Agius vs Carmel sive Charles Deguara: *“Fil-fehma tal-Qorti r-rekwiziti meħtieġa għall-ħruġ ta’ mandat ta’ inibizzjoni fit-termini tal-Artikolu 874 tal-Kap 12 ma humiex rigorużi daqs ir-rekwiziti għall-ħruġ ta’ mandat ta’ inibizzjoni ai termini tal-Artikolu 873 tal-Kap. 12 u dan għaliex fejn si tratta ta’ pretensjoni ta’ kreditu li għad trid tigi deċiża f’kawża fil-mertu, una volta li r-rikorrent jipprova sodisfaċentement illi għandu prima facie jedd x’jikkawtela, jinkombi fuq l-intimat li juri illi anke f’dawk iċ-ċirkostanzi l-ħruġ tal-mandat mhux meħtieġ.”*

Cases for personal separation or divorce

- Where a spouse has brought or intends to bring before the Civil Court, a suit for personal separation, the spouse may request such court to issue a warrant of prohibitory injunction:
 - a. against the other spouse restraining such other spouse from selling, alienating, transferring or disposing inter vivos whether by onerous or gratuitous title any shareholding in any commercial partnership if such shareholding is comprised in the community of acquests; or
 - b. against any commercial partnership in which the other spouse has a majority shareholding which pertains to the community of acquests from selling, alienating, transferring or otherwise disposing by onerous or gratuitous title, any immovable property or rights annexed thereto owned by that commercial partnership; or
 - c. against the other spouse from contracting any debt or suretyship which is a charge on the community of acquests.



Cases for personal separation or divorce

- This demand may be made at any time after filing the application before the Civil Court, and until final judgement has been given in any such action for separation or divorce. The demand may also be made where it is the other spouse who has made the said application.
- A warrant issued under this article shall not apply to the constitution of any right on, or alienation or transfer of any property made pursuant to any court order.
- When the warrant is duly served, any obligation referred to in point (c) of the previous slide contracted after such service by the spouse against whom the warrant is issued in favour of the person served with the warrant shall be void and of no effect, and this without prejudice to any liability for contempt of court under the COCP.
- The spouse against whom the warrant is issued as well as any partnership referred to in the warrant and any person showing an interest may at any time by application request the court to revoke or vary this warrant.



When one prevents a person from taking a minor outside of Malta

- A warrant of prohibitory injunction may also be issued to restrain any person from taking any minor outside Malta.
- The warrant shall be served on the person or persons having, or who might have, the legal or actual custody of the minor enjoining them not to take, or allow anyone to take, the minor, out of Malta.



When one prevents a person from taking a minor outside of Malta

- The warrant shall also be served on:
 - a. the officer charged with the issue of passports enjoining him not to issue, and or deliver, any passport in respect of the minor and not to include the name of the minor in the passport of the minor's legal representatives or in the passport of any other person; and
 - b. the Commissioner of Police enjoining him not to allow such minor to leave Malta.



When one prevents a person from taking a minor outside of Malta

- If before the service of the warrant on the officer charged with the issue of passports, a passport in respect of the minor had already been issued or the name of the minor had already been included in the passport of another person, such officer shall take the necessary steps to withdraw the passport in respect of the minor, and of any other passport which includes the name of the minor, and to delete the name of the minor from such passport.
- The warrant shall contain the name and surname of the minor and any other particulars that may be established by regulations, so as to enable the persons served with the warrant to establish the identity of the minor.



When one prevents a person from taking a minor outside of Malta

- Any person served with the warrant who, directly or indirectly, takes the minor, or allows the minor to be taken, out of Malta shall be guilty of contempt of court.
- The warrant which has not ceased to be in force for other reasons, shall remain in force for one year to be reckoned from the day on which it was issued, unless within such time the person suing out the warrant shall have, upon an application to that effect, obtained an extension.
- Such extension may be granted more than once, but it may not be granted for more than one year each time.



When one prevents a person from taking a minor outside of Malta

- The decree allowing the extension shall state the date up to which the warrant shall remain in force.
- The decree allowing the extension shall be served on the person or persons having, or who might have, the legal or actual custody of the minor, the officer charged with the issue of passports and the Commissioner of Police.
- None of such persons shall incur any liability if, after the expiration of the said time, whether original or extended, and before the decree of any such extension has been served on him, he shall act as if the warrant had ceased to be in force.
- The absence of a demand for an extension shall not be a bar to the issue of a fresh warrant.



Execution of the Warrant of Prohibitory Injunction

- The application shall be served on the party against whom it is issued who shall file a reply thereto within ten days. The court may, in urgent cases, reduce the said period. In default of opposition, the court may accede to the demand.
- The court may initially issue provisionally a warrant for a short period under such terms and conditions as it may deem necessary according to the case, and subsequently decide about the matter in a definitive manner.
- The court shall, after appointing the application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible but not any later than one month from the day when the warrant had been filed and confirmed on oath and the parties have been duly notified.



Other provisions

- All of the articles already explained in the previous slides (dealing with precautionary acts, counter-warrants and the warrant of description) apply to the warrant of prohibitory injunction, the most important being:
 - The request for the issue of the warrant of prohibitory injunction must be made by means of an application on the prescribed form;
 - The origin and nature of the claim sought to be secured shall be confirmed on oath by the applicant, which is a requirement under pain of nullity;
 - The court executing officer shall serve notice in writing to the applicant, the lawyer or legal procurator whose signature is subscribed on the application, of the execution of the warrant or order;
 - The applicant is bound to bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant, and if the applicant fails, without just cause, to bring such action, the effects of the warrant shall cease and the applicant shall be liable for all damages and interest;
 - The warrant of prohibitory injunction may be filed without the necessity of having obtained a previous favourable judgment.





Diploma in Law (Malta)



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