

Award in Civil Procedure

Lecture Title: Executive Titles &
the Executive Warrants (Cont.)

Drafting of precautionary & executive acts

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Diploma in Law (Malta)



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Judicial Sales by Auction

- Judicial sales follow the issue of an executive warrant of seizure
- Court appoints the date of the judicial sale
- Appraisalment of the property in question made by an expert
- Advertisement of Judicial sales - published once in 2 daily newspapers (Maltese & English); parties may also advertise the judicial sale
- Advertisement shall include:
 - Court reference of judicial sale
 - Names of parties thereto and their identity document numbers
 - Clear indication of the property to be sold
 - Value of property, where available
 - Date, time and place of judicial sale



Judicial Sales by Auction

- Adjudication:
 - Bids are made orally, each bid being announced at least 3 times
 - Offers less than 60% of the value of the appraisal are rejected
 - Judicial sale continues until highest public bid is adjudicated
 - Price has to be paid in court within 7 days from adjudication
 - In default, personal arrest may ensue
 - In addition, bidder may have to pay the difference if a subsequent judicial sale attracts a lower price
 - Save as for a lawful impediment, from the amount of the price, the execution creditor is entitled to be paid (i) the credit and (ii) the taxed costs. Any balance is paid to the debtor



Judicial Sales by Auction

- Set-Off:
 - Creditors may bid *animo compensandi*
 - Through this mechanism, credits are set off against the value of the property on sale
 - Such bids can be made if a sworn declaration in that respect is filed at least 2 weeks prior to the sale
 - Upon adjudication, set-off must be demanded
 - The demand is made by an application and an accompanying schedule of deposit for the amount of the bid
 - Any surplus where price is higher than the debt, must also be deposited in Court
 - The execution creditor is entitled to recover all legal costs from the purchaser
 - In case of an eviction of the purchaser from the property, the amount has to be returned to him
 - The creditor must enter into a bond with sufficient surety to restore the said amount in such case.

Judicial Sales by Auction

- Set-Off (cont.):
 - The demand for set-off must be published in the Government Gazette
 - The demand must be also served on the debtor and all known creditors
 - The demand for set-off may be opposed within 20 days
 - Reasons must be given and all supporting documentation filed
 - The set-off can be approved unconditionally or against security for the price
 - Decision approving the set-off may be appealed within 20 days
 - The appeal is appointed for hearing and decided within 3 months
 - Delivery of property takes place upon payment of price in court or approval of set-off
 - In the case set-off is not approved, bidder must deposit price in court within 7 days
 - In default, consequence for failing to pay price in court apply

Judicial Sales by Auction

- Third-party creditor:
 - An execution creditor may join in a judicial sale initiated by others
 - In order to join in a judicial sale, such execution creditor needs to file a note
 - The new execution creditor obtains rights and obligation equal to those of the original execution creditor
- Proceedings between competing creditors:
 - More than one creditor might be entitled to be paid out of the proceeds of a judicial sale
 - In such eventuality, proceedings between competing creditors will be initiated
 - Creditors will be paid according to their ranking



Judicial Sales by Auction

- Suspension of judicial sale
 - A judicial sale may be suspended by creditor and debtor together
 - Suspension may also be demanded in case of a lawful impediment to the judicial sale
 - Debtor or 3rd party may demand the suspension on condition that a deposit covering expenses is made
 - Suspension may not be demanded within 7 days or less from judicial sale, unless it can be shown that the reason for such demand arose during that period or was not aware before
 - A judicial sale which remains suspended for more than a year, becomes void
 - A judicial sale order continues to apply with respect to 3rd parties, if its registration in the Public Registry is renewed prior to the lapse of the year
 - Disposals of the property subject to the judicial sale as registered are invalid
 - Any other diminution of the enjoyment of the said property must be allowed by Court
 - Where possession of the property remains with the debtor, he may be held liable for fruits



Judicial Sales by Auction

- Discontinuing a judicial sale – a judicial sale can be discontinued by the Court where alternative security sufficient to satisfy the creditors' claims is made available
- *Ius redemendi*:
 - Debtor is entitled to repurchase an immovable sold judicially
 - This right must be exercised within 4 months from the date of registration of the act of adjudication in the Public Registry
 - The filing of a schedule of redemption, and a concurrent deposit must be made

Judicial Sales by Auction

- Instances of a fresh sale:
 - Where proceeds are insufficient to meet claims of execution creditor and persons suing out a garnishee order, as well as costs
 - Experimental judicial sale –
 - Available to privileged and hypothecary creditors with better ranking than the purchaser
 - Can be attempted within 2 years from enrolment of act of adjudication in the Public Registry
 - Such period can be reduced to 4 months upon service of a judicial act with a copy of the act of adjudication
 - Judicial protest must be filed within the 2-year or 4-month period
 - Call upon the debtor to discharge the debt and the 3rd party in possession either to discharge the debt or surrender the property

Judicial Sales by Auction

- Eviction:
 - Sometimes, the debtor or a 3rd party occupying the property without title, fails to vacate the property
 - Adjudication of immovable property as of itself constitutes an executive title
 - The purchaser is entitled to seek, within 1 year from the adjudication, the issue of a warrant of eviction on the strength of such title
- Annulment or Rescission:
 - A judicial sale of an immovable property may be annulled or rescinded
 - The action may not be filed before the lapse of 1 year from the registration of the property in the Public Registry



Judicial Sales by Auction

- Instances of a fresh sale:
 - New judicial sale must be demanded after the lapse of 60 days but within 6 months from the filing of the protest or the service of a copy of the note of surrender by the 3rd party in possession
 - A property may be subject to burdens, leases or other rights (real or personal) not included in the appraisalment
 - Bidder can demand either to withdraw the bid or to have the bid reduced
 - Purchaser can demand the rescission of the sale
 - Demand must be made within 6 months from the adjudication by means of an application to be served on execution creditor and debtor
 - Purchaser of the original judicial sale is entitled to be paid from the proceeds of the second sale the sum of money defrayed together with all expenses
 - Where in the two judicial sales the purchaser is the same, he is obliged to deposit the difference between the 2 prices only

Court Approved Sales for Ships, Vessels & Aircraft

- A creditor may request approval of a private sale in favour of an identified buyer and for a determined price
- Must submit appraisements by 2 independent and reputable valuers confirming the value
- Must produce evidence that private sale is in the interest of all known creditors and that price offered is reasonable
- Application appointed for hearing within 10 days of filing
- If request approved, court nominates a person to make the transfer in accordance with the terms & conditions approved, as if such person were the owner
- Such person must deposit the price in court within 7 days from completion of sale
- Title is given to buyer free from all privileges and encumbrances.
- After the sale all claims or demands against the ship/vessel/aircraft may be enforced against the proceeds of the sale

Executive Garnishee Order

- Most elements are similar to the precautionary garnishee order
- Executive nature – therefore consequences are different
- An executive garnishee order (*mandat ta' sekwestru ezekuttiv*) leads to the withdrawal of funds deposited in favour of the executing creditor
- The general provisions on precautionary garnishee order apply to the executive garnishee order

Warrant of Ejectment or Expulsion from Immovable Property

- This warrant applies in relation to tenants or other occupants of immovable property
- In the execution of such warrant, the executing officer enjoins the tenants or occupants to quit the tenement within a period of not less than 4 days and not more than 8 days
- On expiration of such period, court executing officer shall cause the tenant or occupant to quit the tenement, which shall be cleared of all things belonging to them

Warrant of Ejectment or Expulsion from Seagoing Vessels or Aircraft

- This warrant applies in relation to operators, lessees or other occupants (including any members of their staff) of seagoing vessels or aircraft
- Demand can be made by a lessor or a mortgagee
- In the execution of such warrant, the executing officer enjoins the operator, lessee or other occupant to quit the vessel or aircraft within a period of not less than 4 days and not more than 8 days
- On expiration of such period, court executing officer shall ensure that the operator, lessee or occupant are removed from the vessel or aircraft, which shall be cleared of all things belonging to them
- For the purposes of executing the warrant, the vessel or aircraft shall be detained in Malta (on the basis of an executive warrant of arrest of sea vessels or of aircraft)



Warrant *In Factum*

- This warrant shall contain an order for the party against whom the warrant is issued ('debtor') to be conveyed to prison
- Debtor is kept in prison at his own expense
- Debtor is kept in prison until the performance of the act ordered by a judgement OR until such time as deemed necessary by the court to ensure performance
- Must contain an explicit order of the court
- Only issued by court if satisfied that creditor does not have any other means of execution available



Warrant *In Factum*

- Execution of a warrant in factum –
 - In any place, except a church
 - Against any person, except for ascendants of the person suing out warrant or any minister of religion while in the exercise of his ministry
 - Cannot be executed unless creditor delivers to the court executing officer a sum (fixed by the court) to be given to the debtor covering 4 days maintenance
 - Thereafter, an equivalent sum must be deposited every 4 days in advance against receipt by the court executing officer and the gaoler
 - Execution of warrant does not affect the right of action for damages and interest for non-performance of the act ordered by the judgement
 - Warrant cannot be demanded to compel one spouse to live with the other spouse

Warrant of Arrest of Sea Vessels

- Most elements are similar to the precautionary warrant of arrest
- Executive nature – therefore consequences are different
- An executive warrant of arrest of sea vessels leads to the sale of the vessel or repossession
- The general provisions on precautionary warrant of arrest apply to the executive warrant of arrest

Warrant of Arrest of Sea Vessels

- Special provisions applicable to the executive warrant of arrest:
 - On demand for the issue of the warrant, court shall establish whether –
 - (i) it shall order the sale or
 - (ii) fix a time-limit for payment of amount due or
 - (iii) order the article to be returned to owner / lessor / mortgagee
 - If sale is ordered, procedure relating to judicial sale by auction applies
 - If a time-limit for payment is fixed, it orders the warrant to remain in force until payment effected. In default, the court shall order the sale if so demanded by the interested party
 - If warrant issued in relation to the lease of the vessel for the purposes of repossession, court shall order operator, lessee or other occupant (including members of their staff) to return the vessel to the owner / lessor / mortgagee, and where necessary issue a warrant of ejectment or expulsion



Warrant of Arrest of Aircraft

- Most elements are similar to the precautionary warrant of arrest
- Executive nature – therefore consequences are different
- An executive warrant of arrest of aircraft leads to the sale of the aircraft or repossession
- The general provisions on precautionary warrant of arrest apply to the executive warrant of arrest



Warrant of Arrest of Aircraft

- Special provisions applicable to the executive warrant of arrest:
 - On demand for the issue of the warrant, court shall establish whether –
 - (i) it shall order the sale or
 - (ii) fix a time-limit for payment of amount due or to remedy the default (term shall not exceed 30 calendar days from application)
 - (iii) order the article to be returned to owner / lessor / mortgagee
 - If sale is ordered, procedure relating to judicial sale by auction applies
 - If a time-limit for payment is fixed, it orders the warrant to remain in force until payment effected or obligation performed. In default, the court shall order the sale if so demanded by the interested party
 - If warrant issued in relation to the lease of the aircraft for the purposes of repossession, court shall order operator, lessee or other occupant (including members of their staff) to return the aircraft to the owner / lessor / mortgagee and where necessary issue a warrant of ejectment or expulsion

Warrant *In Procinctu*

- A party may demand the Court to issue any such order to the Registrar of Courts as it may deem necessary for the orders contained in the judgement to be executed
- Creditor must make an application for this purpose
- Warrant is only issued if court is satisfied that creditor does not have any other means of execution
- The application must contain a clear indication of the reason for the necessity of such orders
- A decree is given after debtor is served with a notice of the application, to which he may reply within 4 days





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Case Studies:

Drafting of precautionary & executive acts



Case Study No. 1

Joe Borg has a claim against Paul Sammut for the sum of EUR250,000 by way of damages suffered consequent to Sammut's unlawful behaviour. Borg has already filed a court case but wants take measures to safeguard the claim, whilst the court case is pending.

- What remedy does Borg have?
- What act can Borg file?
- In which Court does Borg need to file the act?



Case Study No. 2

JAF represents Josef Johansson in Malta, a foreign national, who obtained a judgement in Malta on 25th June 2020 from the Court of Appeal against Peter Grech. Johansson wants to enforce the judgement against Grech in Malta, together with costs but without interest.

- What remedy does Johansson have?
- What act can he file?
- In which Court does he need to file the act?
- What documents does he need to file together with the act?

Case Study No. 3

ABC Bank obtained a judgement against *Mary Attard* from the First Hall Civil Court on 15 January 2020. No appeal was filed. ABC Bank had also filed a precautionary garnishee order (*sekwestru*) against Attard before filing the lawsuit. The bank now wants to enforce the judgement and costs.

- What remedy does the bank has?
- What documents does it need to file together with the act?



Case Study No. 4

Jane Abela obtained a judgement from the Small Claims Tribunal against Frans Attard on 13 June 2022 for the amount of EUR993. Abela wants to enforce the judgement, with interest and costs. She is aware that Attard has no money deposited in the banks but that he has a car (a Toyota Landcruiser) which he keeps garaged and is unregistered.

- What remedy does Abela has against Attard?
- In which court does she need to file the act?
- What formalities does she need to follow in the act?
- Does the act need to be confirmed on oath?

Case Study No. 5

JAF Insurance plc entered into a constitution of debt deed in front of Notary Pierre Cassar with John Agius on 7 May 1998 whereby Agius acknowledged he owes EUR31,745 to the company. Agius failed to pay and the company wishes to enforce its title.

- Does the company have an executive title?
- If yes, can it enforce it?
- How?



Case Study No. 6

ABC Ltd produces, sells and distributes a specific type & design of chair in green colour. It also has a registered trademark on its product. XYZ Ltd started selling a similar type of chair also in green colour. According to ABC Ltd this is prejudicing its sales and consumers are confusing the two products. ABC Ltd wants to stop XYZ Ltd from continuing selling its product.

- What remedy does ABC Ltd has against XYZ Ltd?
- What act can it file?
- If the act is issued by the Court, what does ABC Ltd need to do?



Case Study No. 7

Mario Grech issued a bill of exchange in favour of Rita Borg in the amount of EUR8,000 payable on 18 December 2022. Grech failed to pay this amount and honour the bill of exchange. Borg wants to enforce the bill of exchange.

- Can Borg enforce the bill of exchange?
- If yes, how can she enforce it & what she needs to do?





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