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**Fl-Atti tal-Inkjesta datata 19 ta' Novembru 2019, rigward skont it-Termini ta' Referenza ta' l-Inkjesta Pubblika dwar l-Assassinju ta' Daphne Caruana Galizia.**

**Seduta miżmuma llum il-Gimgha 23 ta' Ottubru, 2020.**

**Mark Gasan being recalled to the witness stand, states on oath in the English language:**

Imh. M. Mallia : Sorry for this bother it seems that we have one other question to ask you. Of course you are still under oath.

Imh. A. Lofaro : You are still under oath, ok?

Dr. T. Comodini Cachia : Mr Gasan, we apologize for calling you back, but –

Imh. M. Mallia : we have this email that you have to see.

Dr. T. Comodini Cachia : There are actually two emails that you have to see.

Imh. A. Lofaro : Eh! Two emails.

Dr. T. Comodini Cachia : Ok, let me explain what the email is. So this is an email dated twenty-eighth (28th) October two thousand and seventeen (2017) sent out at seven twelve in the evening (7:12 p.m.), it is an email from Franz Derfler; do you know who Franz Derfler is?

Mark Gasan : Yes, he was the CEO of ElectroGas.

Dr. T. Comodini Cachia : And it is addressed to Frederick Azzopardi at Enemalta, D. Galea at BeatConsult.com, and keith.schembri@gov.mt, cc'd to Catherine Helpin, Yani Karinin and Peter Kerner; the subject is EGM ENE Notary Damen Water, 11 kilovolts powerline and ... .. to eight, ten, seventeen

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(8/10/17). So this is an email sent by the COO of Electrogas to Frederick Azzopardi at Enemalta, D. Galea at BeatConsult and Keith Schembri at Government of Malta and the email reads as follows: “Dear all, following your meeting with one of our directors (Yorgen Fenech), we understand that the major points have been agreed to and the way forward is being drafted accordingly. Please note that apart from the headline items, EGM and more importantly our lenders require the attached technical / commercial agreements to be able to close the refinancing process at the end of November. The attached document should be self-explanatory even because these issues are mostly known to Enemalta executives. Without agreement on the attached, included in the conversion term agreement our lenders have made it clear that the project is not bankable on a project finance basis. We would appreciate a positive reply at your earliest convenience and direction on the way forward.” My questions to you are: In October two thousand and seventeen (2017) were you aware that Yorgen Fenech was meeting Keith Schembri to discuss concessions and to discuss what was required of the Government on this project?

Mark Gasan : No I was not.

Dr. T. Comodini Cachia : Were you ever aware that Keith Schembri was participating in meetings that related to ElectroGas and in which directors of ElectroGas were present?

Mark Gasan : No, I was not.

Dr. T. Comodini Cachia : Is this the first time you are aware that Keith Schembri was involved in these negotiations?

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Mark Gasan : In ElectroGas, yes.

Dr. T. Comodini Cachia : Prior to this there is another email –

Mark Gasan : can I see it?

Dr. T. Comodini Cachia : Sure. The one I just read to you and the one that you read was sent by the CEO of ElectroGas to Frederick Azzopardi, Galea and Schembri. On the same day but an hour and a half prior to that former email there was another email which was sent from Yorgen Fenech to Franz Derfler to the EGM mail board, to Catherine Helpin, Janica Rinnen and Peter Karner. And it reads as follows: “Franz, please send to the following individuals: Frederick Azzopardi Enemalta, David Galea, Keith Schembri Government of Malta keith.schembri@gov.mt . in Your email including following:...” And what comes after is exactly the draft of the email that you read before.

Mark Gasan : I do not recall this specific email. I do not recall this.

Dr. T. Comodini Cachia : Since you are back, there is just one last question. In an email dated fifteenth (15th) March two thousand sixteen (2016) Catherine Helpin wrote as follows, and this is an email exchange in which you are copied. The title of these email exchanges is “Emergency Funding and Initial Working Capital Requirements,” and I believe this is speaking of the interest that was due to be asked of ElectroGas on the shareholders loans and Catherine Helpin writes as follows: “Folks, I was not missing re the interest rate when I discussed with Doreen. I know it is low but this is to dig the company out of a hole, not a normal investment.” What hole was the company in?

Mark Gasan : It’s here?

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Dr. T. Comodini Cachia : You received the email so you need to tell us what hole the company was in. I was reading from the first page, paragraph before the last.

Mark Gasan : (reading the email off microphone)

Dr. T. Comodini Cachia : Was this a time when ElectroGas was facing financial difficulties because you were still on the bridge loan?

Mark Gasan : I do not recall in sixteen ('16) that there were issues, I know there were issues when there is a garnishee order ... but I cannot recall the specific issue. "Company out of a hole," I do not know what she is referring to here. I cannot recall what is she referring to here.

Dr. T. Comodini Cachia : Ok.

Imh. A. Lofaro : And you do not know what hole the company was in?

Mark Gasan : In two thousand sixteen (2016), no, I cannot recall exactly what it was.

Imh. A. Lofaro : Even though you are copied with the email?

Mark Gasan : I cannot recall a particular hole the company was in. I recall that when there was a garnishee order in two thousand and seventeen (2017) there was an issue but I do not recall a specific timeline.

Dr. T. Comodini Cachia : If you recall that there were funding problems in two thousand and seventeen (2017) with the garnishee order, are you telling me that the shareholders loan was in two thousand and seventeen (2017) because of that garnishee order?

Mark Gasan : No, I mean the shareholders loan as I explained earlier were the funds were put in over a period of time, so prior to that date there were funds put in by the shareholders apart from the LCs in

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terms of equity. And I think then in March two thousand and seventeen (2017) there was another injection by the shareholders because it was required. So whenever it was required the shareholders put money in.

Imh. A. Lofaro : So why was the re-financial hole in two thousand sixteen (2016)?

Mark Gasan : It says “digging a hole,” I am not sure what she refers to.

Imh. A. Lofaro : “Digging it out of the hole,” right?

Mark Gasan : I am not sure what it refers to, Your Honour.

Imh. A. Lofaro : Did you not question it when you received it?

Mark Gasan : I cannot recall, Your Honour.

Imh. A. Lofaro : You cannot recall! You cannot recall!

Dr. T. Comodini Cachia : According to this email thread in two thousand sixteen (2016), in March two thousand sixteen (2016) you had an issue of waiver with the Government; do you recall what that issue of waiver was about?

Mark Gasan : I mean throughout the process I mean there were many issues –

Imh. A. Lofaro : that is why she said two thousand sixteen (2016).

Mark Gasan : No, no, but it is only one; there were many issue throughout the period.

Dr. T. Comodini Cachia : There is a title here which is “Emergency Funding” and it says as follows: “I have spoken to BOV regarding sponsors intentions to provide a quantum of funding to EGM in the form of equity or shareholders loan. BOV reconfirmed that a shareholders loan up to one million (1m) is permitted and would not need any specific waiver from MLAs or GOM. The loan could

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be paid into the BoV current account utilized for emergencies and then reimbursed from subsequent drawdowns.

Mark Gasan : I believe that was put in then.

Dr. T. Comodini Cachia : So what was this financial hole the company needed to be dug up from? And emergency funding?

Mark Gasan : It must have been, I do not know, I have to check on that, but I cannot recall specifically what that issue was. But if there was a hole, I believe the shareholders then put in the equity to solve the issue.

Dr. T. Comodini Cachia : It looks like there were many holes.

Mark Gasan : Yes, definitely.

Imh. J. Said Pullicino : Can I ask a stupid question? The success fees, you actually receive it in your accounts?

Mark Gasan : No! The success fees as I explained earlier –

Imh. J. Said Pullicino : It was never passed on to you in cash or – ?

Mark Gasan : No, no, no, no. it was for cost and reinvestment.

Imh. J. Said Pullicino : When you reinvest funds, it means that you acquired them.

Imh. A. Lofaro : You have received them; and then you reinvest them.

Imh. J. Said Pullicino : Then when you reinvest your interest value increases.

Mark Gasan : Your Honour, as I explained earlier the twelve million euros (€12m) success fees was eleven million (11m) of that was the Government fee, so it went directly to pay for that fee required for the ... of the project –

Imh. J. Said Pullicino : I mean in theory, at least, you would have received the money and you paid those fees and you would have a credit against the company for that amount.

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Mark Gasan : Yes, but it was never recharged to ElectroGas, it was never paid back by ElectroGas. So it was net ...

Imh. J. Said Pullicino : It is still there. I mean what you paid it is still in your favour.

Mark Gasan : Yes, but it is not due by the shareholders from ElectroGas. It was never paid and will not be paid.

Dr. T. Comodini Cachia : I think the original question of the Board was because Gem Holdings issued invoices to ElectroGas.

Mark Gasan : Yes.

Dr. T. Comodini Cachia : One for two million (2m) and one for one point four million (1.4m) plus VAT on both,

Mark Gasan : Yes.

Dr. T. Comodini Cachia : So the original question I understood it to be: did Gem Holdings actually received these funds,

Imh. A. Lofaro : yes, that was the question.

Dr. T. Comodini Cachia : in its bank account?

Mark Gasan : Yes, yes.

Dr. T. Comodini Cachia : They did.

Mark Gasan : Yes. And they ... paid the expenses.

Imh. A. Lofaro : So the answer is yes.

Dr. T. Comodini Cachia : I think we have enough.

Imh. A. Lofaro : Thank you.

**Din hija x-xhieda ta' Mark Gasan dettata minnu stess.**

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**Niddikjara li traskrivejt bl-ahjar hila tieghi x-xhieda ta' l-istess xhud.**

**Margaret De Battista**  
**Traskrittrici**