

# CASE STUDY

# SLAPP IN MALTA



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## 1. INTRODUCTION

### 1.1 Summary of the proceedings

Case 126/2017 Muscat Joseph vs Caruana Galizia Matthew

Date registered: 10/05/2017

Forum: Civil Court of Magistrates, Courts of Malta

Presided by: Magistrate Victor Axiak

Legal Basis: Libel

Status: Ongoing

#### **Parties**

Plaintiff: Joseph Muscat, Prime Minister of Malta at the time of the filing of the case.

Defendant: Matthew Caruana Galizia, software engineer and journalist (then ICIJ).

#### **Lawyers**

Plaintiff: Pawlu Lia

Defendant: Joseph Zammit Maempel, Peter Caruana Galizia

## 1.2 Background of proceedings

On the 10<sup>th</sup> of May 2017, **Matthew Caruana Galizia** posted “*#CorruptionFacts part 10: A passport selling and money laundering story*” (See Annex 1) on Facebook. A month earlier Daphne Caruana Galizia published a number of stories in a series of blog posts in connection with the Panama Papers scandal, mostly notably the Egrant story linking a Panama company to Michelle Muscat, the wife of ex-Prime Minister Joseph Muscat. She published two blog posts “*Company owned by Leyla Aliyeva of Azerbaijan made ‘loan payments’ to Hearnville, Egrant and Tillgate*” dated 19<sup>th</sup> April 2017, and “*Declarations of trust in Pilatus Bank safe: Egrant Inc shares held for Michelle Muscat*”, dated 20<sup>th</sup> April 2017 (See Annex 2).

On the 20<sup>th</sup> of April 2017 NetTV during **Net News** reported on the two stories which Daphne Caruana Galizia published. Then Prime Minister Joseph Muscat, together with his wife Michelle Muscat, filed two separate libel cases on the 21<sup>st</sup> of April 2021 against Daphne Caruana Galizia (Case 111/2017 Muscat Joseph v Caruana Galizia Daphne) and Karl Gouder (Case 112/2017 Muscat Joseph v Gouder Karl), as editor of NetTV. Joseph Muscat filed another libel case against Matthew Caruana Galizia Case 126/2017 on the 10<sup>th</sup> of May 2017 after publishing the *CorruptionFacts* post on Facebook, and against Mario Frendo (Case 127/2017 Muscat Joseph v Frendo Mario) for reporting Matthew Caruana Galizia’s post on NetNews news portal with this post “*ARA HAWN: Kif Muscat u Schembri jdaħħlu l-flus mill-bejgħ tal-passaport – Caruana Galizia*”.

All **four cases** started being heard in tandem with the first hearing of each case being presided over by the same Magistrate appointed on the 15<sup>th</sup> of June 2017.

On the 20<sup>th</sup> of April 2017, further to the publication of Daphne Caruana Galizia’s posts, the legal representative of ex-Prime Minister Joseph Muscat filed a **police report** which contained a request to the Police Commissioner to investigate the allegations contained in the post. On the same day at 23:15 the Police Commissioner requested the Courts to launch a magisterial inquiry relating to the allegations contained in Daphne

Caruana Galizia's blog posts. This inquiry has come to be known as the **Egrant Magisterial Inquiry**.

On the 16<sup>th</sup> of October 2017 **Daphne Caruana Galizia** was assassinated by a car bomb planted in her car.

One of the **whistleblowers** connected to Daphne Caruana Galizia's stories is Maria Efimova, an ex-employee of Pilatus Bank. She was accused by Pilatus Bank of misappropriating €2,000 and a warrant for her arrest was issued by a Maltese Court when she did not turn up for a court sitting. She had left Malta for Greece after Daphne Caruana Galizia's assassination. Ms Efimova successfully challenged a **European Arrest Warrant (EAW)** in the Greek courts on the basis that she would not receive a fair trial in Malta. Another EAW was issued against her in order for her to answer charges relating to false accusations against two former police officers and one police inspector who she had accused of colluding with Pilatus Bank on the misappropriation charges. In 2022, a Maltese court adjourned proceedings relating to the latest EAW *sine dei* as there had been no developments relating to the warrant and no further attempts to arrest her.

On the 22<sup>nd</sup> of July 2018, the Attorney General published what he termed to be the conclusions of the 1501-page **Egrant Magisterial Inquiry** from pages 1403 to 1451. The conclusions stated that there was no evidence to suggest that the third Panama company, Egrant, belonged to the then Prime Minister Joseph Muscat or his wife, nor that his wife received over a million-dollar payment into a Dubai account. These 49 pages were presented as evidence by the plaintiff's lawyer. It later transpired that a further 50 pages of the Inquiry's conclusion were not published which contained a number of other conclusions that the judge felt required further action by the authorities.

The full Egrant Magisterial Inquiry was finally published in December 2019 further to a ruling by the **Constitutional Court** that ordered the Attorney General to give a copy of the report to the Leader of the Opposition. The Leader of the Opposition released the report to the public after receiving his copy.

In November 2019, the arrest of businessman **Yorgen Fenech** in connection with the assassination of Daphne Caruana Galizia. The arrest led to revelations of political links between the assassination and the administration led by Joseph Muscat. Several weeks of protests led to the resignation of ex-Prime Minister Joseph Muscat, his Chief of Staff Keith Schembri, ex-Tourism Minister Konrad Mizzi of the Panama Papers fame, the Commission of Police and of the Attorney General in August 2020.

Over two years after the assassination and calls for a thorough and **independent inquiry**, a public inquiry into the circumstances of Daphne Caruana Galizia's murder was initiated in December 2019.

The report of the Public Inquiry was published on 29<sup>th</sup> July 2021 and found that the State must bear responsibility for the assassination as it created an atmosphere of impunity generated from the highest levels in the heart of the administration. The Inquiry also found that public figures attempted to silence her with libel suits and SLAPP actions highlighting that at the time of her death, she had 47 libel suits pending against her, 5 of which were of a criminal nature. The Inquiry also suggested that the law should not allow for libel suits to continue after the death of a journalist.

The above led to changes in **legislation** which included the passing of the Media and Defamation Act which provided a new legal framework regarding media, libel, defamation and harm. Importantly, the reforms included the abolition of criminal libel.

In 2022 the Government presented three new **Bills**, however, the process was stalled after local and international journalists and media organizations criticized the bills as falling short of effective protection of journalists and the lack of public consultation.

Case 126/2017 **Muscat Joseph vs Caruana Galizia Matthew**, and the other 3 connected cases, is ongoing at the time of the writing of this case study.

## 2. Timeline

### 2.1 Timeline of Court Action

	<b>Date</b>	<b>Action</b>	<b>Comment</b>
	10/05/2017	Joseph Muscat, then Prime Minister of Malta, files an application in the Civil Court of Magistrates	The application <b>accuses</b> Matthew Caruana Galizia of breaching the <u>Press Act</u> by means of false and defamatory allegations contained in a post on Facebook dated 10 <sup>th</sup> May 2017, and in several others that followed, in which it was stated that Joseph Muscat held an offshore company, that he took commissions from the sale of passports, that he was involved in money laundering and that he exerted pressure to stall criminal investigations.
1.	15/06/2017	<b>First Hearing</b>	<p>Case was called and no one appeared. The lawyer for the plaintiff informed the court that he could not attend due to a funeral. The defendant was not notified of the sitting. The Court agreed to notify the defendant after business hours, and if notification was again negative to notify such through publication and affixation.</p> <p>Cases 111/2017 (Muscat Joseph et vs Caruana Galizia Daphne), 112/2017 (Muscat Joseph et vs Gouder Karl) and Case 127/2017 (Muscat Joseph v Frenzo Mario) are being heard in tandem with this case. The first sitting for all was held on this day, and the subsequent sittings for all 4 cases were held on the same day.</p>
2.	28/09/2017	Notification	Case was called and the lawyer of the plaintiff was present. The defendant was not notified. The hearing was deferred to 26/10/2017.
3.	4/10/2017	Notification	Matthew Caruana Galizia was notified by the Court Marshall at his home address in Malta.



4.	16/10/2017	Daphne Caruana Galizia, the defendant's mother, was assassinated.	
5.	17/10/2017	Notification to Matthew Caruana Galizia was published in Government Gazette, No. 11.581	
6.	26/10/2017	Notification	Case and the lawyers for both plaintiff and defendant were present. The parties requested for the hearing to be deferred to a future date in order to undertake the necessary steps within the proceedings.
7.	30/10/2017	Response from Defendant	Defendant filed his response to the claim by stating that the said publication amounted to <i>fair comment</i> on facts that are substantially true.
8.	04/12/2017	Other Information	Case was called and the lawyer for the defendant appeared. The hearing was deferred to 29/01/2018 to hear the proof from the plaintiff.
9.	29/01/2018	Proof - Plaintiff	Plaintiff's lawyer informed the Court that he wished to start with bringing the defendant to give evidence. Defendant's lawyer informed the court that the defendant does not live in Malta and would have to verify when he will be present. The hearing was deferred to 15/03/2018 to hear the proof from the plaintiff.
10.	15/03/2018	Proof - Plaintiff	The Court was informed that the defendant was out of Malta for a prolonged period of time. Plaintiff's lawyer highlighted that in any case, he wished to question the defendant in view of the allegations made. The court invited the parties to consider videoconferencing to be able to hear the defendant. Parties were given time to respond to this request. The hearing was deferred to 07/05/2018 for information on the possibility of the defendant giving evidence.

11.	07/05/2018	Other Information	Plaintiff's lawyer informed the Court that the defendant is currently living outside Malta and there is the possibility that a 3 <sup>rd</sup> party would assume the acts of the case in his absence. The hearing was deferred to 31/05/2018 for information.
12.	31/05/2018	Other Information	The lawyer for the defendant stated that although the defendant was not in Malta, he will testify during the stage of the proceedings in which the defence is allowed to bring evidence. The hearing was deferred to 04/10/2018 for evidence by plaintiff.
13.	04/10/2018	Proof & note filed by Plaintiff	Dr Peter Caruana Galizia presented a note relating to his assumption of the acts of the case in Matthew Caruana Galizia's absence. The lawyer for the plaintiff filed a note which contained only 50 pages of some of the conclusions of the 1501-page <u>Egrant Inquiry</u> and the press release of the Attorney General (AG) dated 22/07/2018. Furthermore, he requested Court time to respond to the issue relating to the testimony of the defendant. The hearing was deferred to 01/11/2018 for evidence by the plaintiff.
14.	01/11/2018	Proof - Plaintiff	Dr Abigail Caruana Vella, as a representative of the AG, presented 50 pages of the main conclusions of the <b>Egrant Inquiry</b> as published by the AG. The lawyer for the defendant requested the presentation of the first 1402 pages of the inquiry. Plaintiff's lawyers reminded the Court that the publication of the first 1402 pages was the subject of a pending Constitutional Case filed by the Nationalist Party. The AG's representative stated that she did not have access to the full inquiry and would have to verify with her superiors. The hearing was deferred to 17/01/2019 in order for the AG's representative to continue with her testimony.

15.	17/01/2019	Proof - Plaintiff	<p>Dr Abigail Caruana Vella, as a representative of the AG, continued her testimony and she said that she presented all the documents that were publicly available. In order to make the other conclusions public a request has to be made in accordance with Article 518 of the Criminal Code. It would then be up to the discretion of the AG as to whether he would accede to the request or otherwise. A previous denial by the AG of a request by a 3rd party for the publication of the Inquiry is the subject of a pending constitutional case. The plaintiff asked the defendant's representative whether, in the light of the publication of the conclusions of the Inquiry, his position on the allegations published in the relevant articles has changed. The defendant states that nothing has changed.</p> <p>The lawyer for the defendant is insisting that all the pages of the Inquiry should be exhibited in court and reserves the right to take further action if such is not presented. The hearing was deferred to 31/01/2019 for the testimony of the plaintiff.</p>
16.	31/01/2019	Proof - Plaintiff	<p>The hearing was deferred to 14/03/2019 for the Court to hear the submission of the defendant on this matter.</p> <p>On this same day, Joseph Muscat testified in cases 111/2017 and 112/2017. During his testimony, he stated that the libel suits were filed before the publication of the conclusions of the Egrant Inquiry, and therefore if the opposing party clearly accept the conclusion of the Inquiry then he would withdraw the cases. During the sitting, the defendant stated that they did not have access to the full Inquiry report, and had requested this in previous sittings. The Magistrate pointed out that cases 111/2017 and 112/2017 relate to Daphne</p>

			Caruana Galizia's blog posts about Egrant Inc, whereas 126/2017 and 127/2017 relate to Matthew Caruana Galizia's Facebook post on passport sales. In his testimony, Joseph Muscat stated that the Inquiry conclusions were clear in that no shares were found to belong to Michelle Muscat nor could any shares be traced back to herself nor her husband, Joseph Muscat. Furthermore, he stated that in the conclusions, it transpired that Daphne Caruana Galizia and Maria Efimova, ex-employee of Pilatus Bank, contradicted each other as to key documents relating to the allegations.
17.	14/03/2019	Other Information	During this sitting the lawyer of the defendant made reference to a note filed in case 111/2017. This note stated that as heirs of Daphne Caruana Galizia they do not accept the offer of the plaintiff to withdraw the case if they admit that Daphne Caruana Galizia was incorrect in the allegations about Egrant Inc. This is due to the fact that they do not have access to the full Egrant Inquiry report, specifically to Daphne's own testimony in front of Inquiring Magistrate, to the testimonies of other key witnesses, and to the reports of the forensic accountants that examined the operational database, accounts and archives of Pilatus Bank Ltd. In view of this, the judge ordered the case to continue.
18.	09/05/2019	Proof - Plaintiff	The sitting was deferred to the 10 <sup>th</sup> of June 2019.
19.	16/05/2019	Change of judiciary	Case transferred to Magistrate Victor Axiak from then Magistrate Francesco Depasquale on being appointed Judge.
20.	10/06/2019	Proof - Plaintiff	The sitting was deferred to the 14 <sup>th</sup> of June 2019.
21.	14/10/2019	Continuation	Plaintiff could not be in court and sitting was deferred to 9/12/2019.

22.	09/12/2019	Proof	On the 5 <sup>th</sup> of December, during the height of the 2019 protests, the Plaintiff's lawyer filed a note to request the deferment of the case for another date. The Court deferred to the 9 <sup>th</sup> March on condition that the plaintiff closes off his evidence during that sitting.
23.	09/03/2020	Proof	The Plaintiff did not appear, the hearing was deferred to the 4 <sup>th</sup> of May for the closing of plaintiff's evidence. During the sitting for Case 111/2017, the representative of the Attorney General presented the full Egrant report on USB.
24.	04/05/2020	Proof	The hearing was deferred on the basis of a Public Health Order closing the Courts of Justice due to COVID-19.
25.	13/07/2020	Proof	The hearing was deferred on the basis of a Public Health Order closing the Courts of Justice due to COVID-19.
26.	26/10/2020	Proof	Plaintiff's lawyer was indisposed, the Court deferred the sitting to the 30 <sup>th</sup> November 2020.
27.	30/11/2020	Proof	The Plaintiff requested more time in order to present more evidence. The Court acceded to this request and deferred the case to 1 <sup>st</sup> February 2021.
28.	01/02/2021	Proof	Joseph Muscat, the plaintiff, testified under oath for cases 126/2017 and 127/2017 relating to the sale of passports. Again, Muscat reiterated that the posts and news reports were not fair comment, that they were libelous and that he was never investigated, nor called in to testify in any inquiries.
29.	11/02/2021	Application filed by Defendant	The lawyer for the plaintiff filed a request for key witness Maria Efimova to testify remotely via video conferencing in accordance with Article 199A of the COCP due to the rejection of a Maltese EAW request by a Greek court and due to the COVID-19 restrictions. Furthermore, it was requested that such testimony would be

			valid and included in the other three libel cases.
30.	22/03/2021	Proof - Plaintiff	Under instructions of the Chief Justice, in order to protect employees and persons in attendance in Court against COVID-19, the sitting was deferred.
31.	10/05/2021	Proof - Plaintiff	The Plaintiff requested more time in order to present more evidence in view of the proceedings in Case 111/2017 (Muscat Joseph et vs Caruana Galizia Daphne). During the hearing for Case 111/2017 it was stated that the defendant's application for key witness Maria Efimova to be heard was filed on the 11th of February 2021, however, the plaintiff's lawyer was not notified in this regard in spite of efforts to do so. A copy of this notification was given to the Plaintiff's lawyer, and was deemed to be notified of such <i>seduta stante</i> . The Court gave the plaintiff an extension to the 11th of June to reply to the application and deferred both sittings to the 28 <sup>th</sup> of June.
32.	28/05/2021	Response filed by the plaintiff to an application filed by defendants on 11/02/2021	The plaintiff objected to Maria Efimova's testimony to be given via video conferencing. The objection to this request was based on the premise that the procedure was only allowed for those persons who are in Malta and are not able to testify in person due to public health reasons. The hearing of testimonies of persons residing outside Malta was regulated through letters rogatory procedures, EU Council Regulation 1206/2001 or the HCCH 1970 Evidence Convention.
33.	01/06/2021	Interlocutory decree	The Court acceded to the request by the defendants that Maria Efimova testified remotely via video conferencing.
34.	28/06/2021	Proof - Plaintiff	During the sitting for Case 111/2017, the Plaintiff presented an application in Court to request the permission of the Court to grant

		<p>leave to appeal the interlocutory decree dated 1<sup>st</sup> June 2021, in accordance with Article 229(3) of the COCP. The Court gave the defendant’s lawyer two months to reply to the application.</p> <p>Furthermore, a sworn affidavit by Dr Peter Caruana Galizia, Daphne Caruana Galizia’s husband, was filed in Court. In his affidavit he outlined the background of the posts published by Daphne and that she had confided in him as to the substance of the posts but not the source. He testified that Daphne had told him that she had seen documents relating to the allegations, that these documents were being kept by Pilatus Bank and that she had met her source a number of times. Mr Caruana Galizia did not have contact with Maria Efimova, as she had left Malta in fear of being assassinated. Furthermore, Daphne was assassinated 6 months after the libel cases were filed, and in the months prior to that she had stated that she had the proof and the witnesses ready to testify in these same cases. In relation to the blog posts published by Daphne (see Annex B), he contends that there were no allegations of illegal activity by Michelle Muscat, no allegations that Joseph or Michelle Muscat received payments and that the assertion that she was a UBO of shares in a Panama Company is not libelous. Finally, he pointed out that two other persons had withdrawn their libel suits against Daphne, in connection with their Panama companies in December 2019, however, Joseph Muscat is imposing specific conditions for the withdrawal of his libel suit which the family feels they cannot accept.</p>
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35.	25/10/2021	Continuation	The case was adjourned to give the legal representatives of the defence more time to file the response to the request filed by the Plaintiff.
36.	20/12/2021	Response Defendant	In its written response, the defence submitted that the Court should not grant the plaintiff the right to appeal the decree allowing Efimova to testify via videoconference. This is on the basis of the fact that Article 199A does not grant extraterritorial jurisdiction to Maltese courts and that this article does not lay down that the person testifying remotely must be present in Malta. Furthermore, the letters rogatory procedure only applies to procedures in the superior courts and therefore does not apply in this case.
37.	17/01/2022	Decree	The plaintiff filed an application that he would be indisposed for medical reasons and requested a continuation. The Court granted the continuation.
38.	14/03/2022	Continuation	Sitting was deferred to the 9 <sup>th</sup> May 2022.
39.	09/05/2022	Oral Submissions	Oral submissions relating to the request for leave to appeal the interlocutory decree. The decision will be given <i>in camera</i> .
40.	27/06/2022	Continuation	Magistrate was indisposed. Sitting was deferred to the 24 <sup>th</sup> October 2022.
41.	24/10/2022	Decree and continuation	The Court rejected the Plaintiff's request for leave to appeal the interlocutory decree on the basis of the fact that the Plaintiff did not prove that he would be irrevocably prejudiced if the decree was upheld <i>pendente lite</i> and neither did he provide specific reasons why an appeal should be allowed at this stage.
42.	21/11/2022	Other Information	Plaintiff's lawyer did not appear. The defence requested more time in order to organise the logistics of bringing their witness to testify via video conference. The



			request was acceded to. The sitting was adjourned.
43.	16/01/2023	Other Information	Pending

### 3. Impact of cases reported

#### 3.1 Political context

In order to understand the impact of this case, and the other 3 related cases, it is important to look at the **political context** of the time. During the period between 2016 – 2017, Daphne Caruana Galizia began revealing information relating to the involvement of key Maltese politicians in the Panama Papers leak. During that year, she revealed key information relating to 3 Panama companies, one owned by then government minister Konrad Mizzi and one by Prime Minister Joseph Muscat's chief of staff Konrad Mizzi. The ownership of the 3rd company, Egrant Inc., remains unknown and was the subject of her posts in which she alleged that Michelle Muscat, Joseph Muscat's wife, was the beneficial owner of such company. This **allegation** led to the setting up of the **Egrant Inquiry**. In February 2017, she reveals that a company registered in Dubai, 17 Black, was being used to move large sums of money around. Further investigations by local journalists revealed that this company was being used to transfer kickbacks connected to the energy sector to Konrad Mizzi and Keith Schembri. At the time it was not known who the ultimate beneficial owner of 17 Black was.

In the same period, the **International Consortium of Investigative Journalists (ICIJ)** broke the Panama Papers investigative story, which confirmed Mizzi and Schembri's ownership of two Panama companies and their link with two New Zealand trusts. At the time of the breaking of the story, Matthew Caruana Galizia was working with as a software engineer and data journalist with the ICIJ. In 2017, he published a Facebook post linking the Panama companies to **Nexia BT**, an accredited agent for the Individual Investor Programme (IIP). In the post, he detailed how the Panama Companies were used to receive a cut on fees for the sale of passports.

The ex-Prime Minister filed **4 lawsuits** relating to Daphne's April 2017 blog posts regarding Egrant's ownership and Matthew's May 2017 Facebook post on the cash-for-passports scheme.

**Keith Schembri** filed 2 libel suits related to two other April 2017 blog posts which contained allegations that he had received large sums of money from people close to Azerbaijani politicians. The suits were dropped in December 2019, during the height of the Malta protests. Schembri was charged with corruption and money laundering in March 2021. Konrad Mizzi also filed 2 libel suits in April 2017 over the same blog post. He also withdrew his suits against Caruana Galizia in December 2019.

In October 2017, Daphne Caruana Galizia was assassinated outside her home. After her death, it was revealed that the owner of 17 Black was Yorgen Fenech, the main Electrogas power station investor. In September 2019, the Council of Europe's Commissioner for Human Rights appealed to the then Prime Minister Joseph Muscat to **withdraw** the defamation cases against Daphne's heirs in order to protect media freedom in Malta and to alleviate the psychological and financial burden on her heirs. Furthermore, it was highlighted that the legal provisions allowing the passing of defamation cases to **heirs** send an ominous warning to all journalists in Malta and create a chilling effect on investigative journalism.

In November 2019, Yorgen Fenech was arrested in connection with Daphne's assassination. This event sparked protests, the resignation of Schembri, Mizzi and the **withdrawal** of their libel suits against her.

The cases instituted by Joseph Muscat against Daphne Caruana Galizia and Matthew Caruana Galizia, and 2 editors of news organizations, are **ongoing**.

### 3.2 Legal context

The assassination of Daphne Caruana Galizia sparked brought **international attention** to Malta and its concern with the state of the rule of law. In particular, the Council of Europe's Parliamentary Assembly requested a Venice Commission opinion on Malta's constitutional arrangements on the separation of powers and the independence of the judiciary and law enforcement bodies. The same concern was shown by the European Union's LIBE committee that set up an ad hoc monitoring committee in Malta. Besides focusing on Malta's constitutional amendments, both entities also looked into the protection and safety of the media and journalists in Malta.

Further to national and international **pressure**, in 2018, the government passed the Media and Defamation Act which repealed the 1974 Press Act, bringing about an overall positive overhaul of Malta's defamation laws. The **new Act** abolished criminal libel and removed the possibility of requesting the issuance of certain precautionary warrants as security of the claim for damages sought in relation to defamation. Furthermore, the new provisions include the possibility of the courts to consider mediation during a preliminary hearing and prohibit the multiplicity of libel lawsuits in Malta on the same journalistic report. Importantly, the Act introduced the concept of '*serious harm*' in relation to defamation and thus Maltese courts would now be required by law to consider whether any statement made caused serious harm or is likely to cause serious harm to a person or body corporate reputation. The Act left a limited number of provisions, such as those related to the protection of sources and '*the right of reply*', largely unchanged in scope and wording.

At the time of her death, Daphne was facing more than **40 different lawsuits** most of them brought by Maltese politicians and their business associates. The situation was described by her son, Matthew in a 2019 interview as "*just a form of harassment to eat up your time, eat up your money...It costs very little to file a libel suit in Malta... there's almost no risk to the plaintiff*". And the defendant has to pay to respond, otherwise, they lose by

default”. Despite the passing of the Act and the decriminalization of defamation, Maltese journalists continued and continue to face serious threats of SLAPPs.

In light of Daphne’s assassination and continuing libel suits, the European Parliament’s LIBE committee had called on the European Commission to present proposals to prevent SLAPPs. Values and Transparency Commissioner Věra Jourová, stated that Caruana Galizia's death was a “dramatic wake-up call” to protect journalists against abuse litigation.

A coalition of European and International media NGOs began to campaign for the introduction of an EU anti-SLAPP directive. The aim of the campaigning was not to prevent politicians from filing lawsuits but to have EU-wide legislation that offers protection from cross-border vexatious lawsuits filed against journalists and the media. In 2022, the European Commission presented its proposed anti-SLAPP directive.

## 4. Conclusion

As pointed out by Matthew Caruana Galizia in the interview quoted above, many of the lawsuits filed against his mother, and against other journalists like himself, fizzle out or get withdrawn. The ultimate aim of these vexatious suits is to simply harass and intimidate journalists by eating up their time and money in fighting multiple lawsuits.

The four cases Case 111/2017 Muscat Joseph v Caruana Galizia Daphne, Case 112/2017 Muscat Joseph v Gouder Karl, Case 126/2017 Muscat Joseph v Matthew Caruana Galizia and Case 127/2017 Muscat Joseph v Frendo Mario are **pending**. More than 5 and a half years have passed since the filing of the suits, and the proceedings are ongoing at a glacial pace. The plaintiff's evidence, which was presented in the 44-month-long period between May 2017 and February 2021, consisted of the presentation of the conclusions of the Egrant report, the presentation of the full Egrant report and the testimony of the plaintiff himself. In the period between the 11<sup>th</sup> of February 2021 and 24<sup>th</sup> of October 2022, the proceedings focused on whether one key witness for the defense could or could not testify via video conferencing.

Whilst not laying the blame solely on the plaintiff for the excruciatingly slow Court procedures, these cases serve to **highlight** the difficulties, both financial and psychological, faced by journalists in Malta when being threatened with a defamation suit.

## 5. Annexes

### 5.1 Annex 1 Facebook posted dated 10<sup>th</sup> May 2017

#CorruptionFacts part 10:

A passport selling and money laundering story.

On November 28, 2015, Nexia BT accountant Karl Cini emails Mossack Fonseca in Panama asking for something:

"We need to have the attached document signed by the directors of Willerby Trade Inc; a company set up in BVI for which you act as directors. Could I kindly have 2 copies signed and sent to me with the next batch of documents that you send to Adrian? Please ensure you put the documents in a separate envelope marked to my attention and with 'private and confidential'."

Mossack Fonseca were contracted by Nexia BT to provide fake, "nominee" directors for the company Willerby Trade Inc in order to keep hidden the fact that it was owned by Brian Tonna.

What was the document Karl Cini needed signed?

It was a contractual agreement between two companies, Willerby Trade Inc and BT International Limited. It states that when Willerby refers a passport buyer to BT International, it must be paid a fee, defined as:

"50% of the agreed fee between BT International and the Prospective Client"

What the contract hides is that both of the companies are owned by Brian Tonna. This is how money laundering works:

1) Joseph Muscat or Keith Schembri introduces a passport buyer to Brian Tonna or Karl Cini



- 2) the passport is sold, and the buyer pays a fee to Brian Tonna's company, BT International Limited
- 3) Willerby Trade Inc issues a fake invoice to BT International Limited for 50% of that fee
- 4) the money is paid into a secret bank account opened by Brian Tonna
- 5) offshore companies owned by Keith Schembri and Joseph Muscat invoice Willerby Trade Inc for their cut
- 6) the cut is transferred to other secret bank accounts opened in their names

On paper, things look clean because the names of the people involved are hidden. But now we know who they are and so does the FIAU. Nevertheless, the prime minister Joseph Muscat prevented a criminal investigation.”



## 5.2 Annex 2 Blog posts dated April 19<sup>th</sup> 2017 & April 20<sup>th</sup>, 2017

# Running Commentary

Daphne Caruana Galizia's Notebook

## Company owned by Leyla Aliyeva of Azerbaijan made 'loan payments' to Hearnville, Egrant and Tillgate

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A company owned by Leyla Aliyeva, one of the two daughters of Ilham Aliyev, ruler of Azerbaijan, transferred very large sums of money, described as "loan payments", to Hearnville Inc, Tillgate Inc and Egrant Inc last year.

The company, which is incorporated in Dubai's free zone, is called Al Sahra FZCO, and Ms Aliyeva is the ultimate beneficial owner.

The payments were made through Al Sahra FZCO's account at Pilatus Bank.

More about this tomorrow.



MICHELLE MUSCAT WITH LEYLA ALIYEVA OF AZERBAIJAN, IN MALTA IN 2014.

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# Running Commentary

Daphne Caruana Galizia's Notebook

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## Declarations of trust in Pilatus Bank safe: Egrant Inc shares held for Michelle Muscat

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In the kitchen at the offices of Pilatus Bank in Ta' Xbiex, there is a safe in which certain files are kept, and also particular documents marked for extreme secrecy. The safe used to be in the bank CEO's office, but for some reason was moved to the kitchen.

In this safe, documents are held pertaining to Russian clients of the bank, and to Maltese PEPs, including John Dalli, consultant to Prime Minister Muscat, and Keith Schembri, the Prime Minister's chief of staff, both of whom have accounts with the bank in their own personal names.

Dalli's account is not used much, but the Prime Minister's chief of staff uses his regularly and his statements show highly suspicious transactions involving people in Azerbaijan. This bank account is separate to the one held in the name of his once-secret Panama company, Tillgate Inc.

The safe in the kitchen at Pilatus Bank also contains the documents that answer the question which the whole of Malta has been asking this past year: who owns Egrant Inc, the third company Brian Tonna set up in Panama, for somebody so important that the name had to be given over Skype, rather than in an email as it was for Konrad Mizzi and Keith Schembri.

Those documents in the Pilatus Bank kitchen-safe are declarations of trust which show that shares in Egrant Inc are held by Mossack Fonseca nominees for "Mrs Michelle Muscat".

The declarations of trust were provided to the bank by Brian Tonna, as a prerequisite for opening an account for Egrant Inc, for which the identity of the ultimate beneficial owner is required. Mrs Muscat's name is also given on another document held in the bank's safe: the account opening form for Egrant Inc.

These documents have been scanned and uploaded to the cloud, for security purposes, by third parties so that they cannot be destroyed by the bank.



MICHELLE MUSCAT WITH LEYLA ALIYEVA OF AZERBAIJAN, IN MALTA IN 2014.

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