



MALTA

**Court of Magistrates (Malta)
Magistrate
Dr. Gabriella Vella B.A., LL.D.**

Application No. 157/11VG

Lawrence and Manwela sive Lillian spouses Fenech

Vs

Ian Moy and Jacqueline Forester

Today, 21st November 2016

The Court,

After having taken cognizance of the Application filed by Lawrence and Manwela sive Lillian spouses Fenech on the 13th May 2011, by means of which they request the Court to condemn Ian Moy and Jacqueline Forester to pay them sum of five thousand one hundred and sixteen Euro (€5,116) or any other sum which the Court might liquidate, representing the value of expenses and damages caused by them in the premises “Villa Vermont” Triq il-Paguni, Balzan, when the said premises were occupied by them by title of lease between January 2009 and February 2011, subject to the prior declaration that they are responsible for said damages and, if required, the appointment of Technical Experts for the finding and confirmation of the damages complained of by them; with legal interests calculated from the date of filing of the Application till date of payment in full and final settlement and with costs, including those pertinent to two legal letters dated 22nd February and 3rd May 2011 and to the *ex parte* Architect’s Report dated 11th April 2011;

After having taken cognizance of the Reply by Ian Moy and Jacqueline Forster by means of which they object to the claim put forth by the Plaintiffs on the grounds that: (i) contrary to that alleged by the Plaintiffs, they did not cause any damages to the premises leased to them by the Plaintiffs; and (ii) consequently they cannot be found responsible for and condemned to pay damages as requested by the Plaintiffs;

After having heard testimony by Architect Valerio Schembri during the sitting held on the 14th November 2011¹ and after having taken cognizance of his Report dated 11th April 2011 exhibited as Doc. “VS1” at folios 16 to 66 of the records of the proceedings, after having heard testimony by the Plaintiff Lawrence Fenech during the sittings held on the 14th November 2011², 13th March 2012³ and 15th October 2012⁴ and after having taken cognizance of the document exhibited by him marked Doc. “GV1” a folios 73 and 74 of the records of the proceedings, after having heard testimony by the Plaintiff Manwela sive Lillian Fenech during the sitting held on the 13th March 2012⁵, after having considered the documents exhibited by the Defendants by means of Note filed on the 29th May 2012 at folios 80 to 83 of the records of the proceedings, after having heard testimony by the Defendant Ian Moy during the sitting held on the 15th January 2013 and after having considered the document exhibited as Doc. “RFA1” at folios 88 to 92 of the records of the proceedings, after having taken cognizance and considered the testimony by the Defendant Jacqueline Forester during the sittings held by Dr. Daniela Mangion, Judicial Assisstant, on the 13th March 2014⁶ and on the 27th March 2014⁷ and after taking cognizance of the document exhibited by Defendant Jacqueline Forester marked Doc. “JM1” at folio 117 of the records of the proceedings;

After having taken cognizance of all the records of the proceedings;

Considers:

By virtue of these proceedings the Plaintiffs are requesting the Court to condemn the Defendants to pay them the sum of €5,116 or any other amount which the Court may liquidate, representing the value of expenses and damages caused by them in the premises “Villa Vermont” Triq il-Paguni, Balzan, when the said premises were occupied by them by title of lease between January 2009 and February 2011. The Defendants object to the claim put forth by the Plaintiffs on the grounds that contrary to that alleged by the Plaintiffs, they did not cause any damages to the premises leased to them and consequently they cannot be found responsible for and condemned to pay damages as requested by the Plaintiffs.

From evidence submitted by the parties it results that by virtue of a lease agreement dated 5th January 2009⁸ the Plaintiffs granted by title of lease to the Defendants for a period of one year with effect from the 1st March 2009,

¹ Folio 67 of the records of the proceedings.

² Folios 68 to 70 of the records of the proceedings.

³ Folio 75 of the records of the proceedings.

⁴ Folios 85 and 86 of the records of the proceedings.

⁵ Folios 76 and 77 of the records of the proceedings.

⁶ Folios 112 to 116 of the records of the proceedings.

⁷ Folios 118 to 120 of the records of the proceedings.

⁸ Doc. “RFA1” at folios 88 to 92 of the records of the proceedings.

the premises “Villa Vermont” in Triq il-Paguni, Balzan. Upon the lapse of the said one year, the Defendants remained in occupation of the said premises, duly paying rent to the Plaintiffs, up until February 2011 when they vacated the said property and deposited the keys thereto under the authority of the Court⁹. Upon inspecting the said premises after they were vacated by the Defendants the Plaintiffs found that the premises and movable items contained therein were damaged, with certain movable items missing all together, and not in the same condition in which they were given to the Defendants at the beginning of the lease. By means of a Report dated 11th April 2011¹⁰, which Report was drawn up following an inspection carried out in the immediate days following the vacation of the premises by the Defendants, Architect Valerio Schembri, who personally witnessed the damages, which damages are further shown in photographs taken by the Plaintiffs Lawrence Fenech¹¹, identified the damages caused and quantified the value of expenses required for the repair of the damages and/ or replacement of certain movable items. In the said Report he concluded that *in view of the situation witnessed in situ by the undersigned, the documents that came to his knowledge and any other factors that may bear influence on this report the undersigned is of the humble opinion that the damages that has been suffered by the property in question during the lease requires a total sum of circa €4651.00 to repair/replace. This damages cannot be attributed to fair wear and tear.*

It is an established principle at law that one of the major obligations of the lessee is to make use of the thing let to him as a *bonus pater familias* [Section 1554(a) of Chapter 16 of the Laws of Malta]. Emanating from said obligation is the further obligation that where the lessor and lessee have made a description of the condition of the thing let, the lessee is bound to restore the thing in the same condition in which he received it, according to the description, except as regards that which may have perished or deteriorated through age or irresistible force [Section 1559 of Chapter 16 of the Laws of Malta]. Where no description of the condition of the thing let has been made, it shall, in the absence of any proof to the contrary, be presumed that the lessee received the thing in good condition [Section 1560 of Chapter 16 of the Laws of Malta]. Furthermore, the lessee is liable for any deterioration or damage which occurs during his enjoyment, unless he proves that such deterioration or damage has occurred without any fault on his part [Section 1561 of Chapter 16 of the Laws of Malta].

In the present case the property was granted to the Defendants ‘*tale quale*’ (*as seen*) and furnished as per attached inventory¹² and the Defendant Ian Moy

⁹ Testimony by Ian Moy during the sitting held on the 15th January 2013 at folios 93 to 104 of the records of the proceedings and testimony by Jacqueline Forester during the sitting held on the 13th March 2014 at folios 112 to 114 of the records of the proceedings.

¹⁰ Doc. “VS1” at folios 16 to 66 of the records of the proceedings.

¹¹ Vide testimony given during the sitting held on the 14th November 2011, folios 68 to 70 of the records of the proceedings.

¹² Doc. “RFA1” at folios 88 to 92 of the records of the proceedings.

confirmed that when he and Defendant Jacqueline Forester took possession of the property in question the same was in good condition. The Court is of the opinion that whilst the Plaintiffs managed to prove that upon re-taking possession of the property after the same was vacated by the Defendants they found extensive damage to the property and movable items contained therein, including the fact that certain items went missing, the Defendants, on the other hand, did not prove to a satisfactory degree that the said damages were not caused by them or through any fault on their part. As a matter of fact the Defendants actually accept and acknowledge that they did cause damages, or at least certain damages, to the property in question and to certain movable items contained therein but they allege that they did not make good for the said damages because of the Plaintiffs' abusive behaviour towards them.

In their comments to the damages being claimed by the Plaintiffs, exhibited by means of a Note filed on the 29th May 2012 at folios 80 to 83 of the records of the proceedings, specifically with regard to claims made by the Plaintiffs for (a) Hall - damaged posa umbrella; (b) Dining Room - three chairs to be changed and damage to sideboard; and (c) Kitchen – four chairs and table bad by damages, the Defendants state that *we were prepared to repair any damage done during our time at the house but due to Mr Fenech's aggressive and bullying behaviour towards my wife and court proceedings we were advised to wait*. During her testimony the Defendant Jacqueline Forester further confirmed that *about the table and chairs in the kitchen I had informed Mr. Fenech that I will provide same quality table and chairs for the same value. I had put the table and chairs in the garage as there was no place for them and they got damaged with the dampness*¹³.

From testimony given by the Defendants themselves and documents, namely comments submitted by them, it therefore transpires that the Plaintiffs request for payment of damages caused to the posa umbrella, to three chairs and sideboard in the dining room and the chairs and table in the kitchen is legitimate and merits to be upheld. The Court points out that the Plaintiffs are also claiming that three other chairs in the dining room had to be repaired because they too were damaged. The Defendants did not reply in any way to this particular claim but the Court deems that the same too should be upheld since the damage to these chairs is confirmed by the findings of Architect Valerio Schembri – which findings haven't been contradicted by the Defendants, who incidentally didn't even cross-examine the said Architect – in his Report dated 11th April 2011.

The Defendants also acknowledge to have damaged the sofa in the sitting room but claim that when they offered to replace the same, their offer was rejected by the Plaintiffs. Defendant Ian Moy claims that *our dog did damage it but we admitted responsibility and we offered on two different occasions*

¹³ Testimony given during the sitting held on the 13th March 2014 at folios 112 to 114 of the records of the proceedings.

two types of suites. ... One was similar, cream, and the other one matched the decor what we had in the living room. ... Both were leather. ... my wife actually bought one while I was away but one was €800 and the other was I think €950, but I have to verify with my wife because I was away for the second one¹⁴. Defendant Jacqueline Forester states that I agreed that the sofa was damaged and I replaced it for another one of the same type and quality but different shade. It cost €750 and the one Mr. Fenech had wanted costed €2,800 from Orienta¹⁵. This latter claim was corrected by Jacqueline Forester during the sitting held on the 27th March 2014¹⁶, where she stated that I would like to correct myself in that in last sitting held on the 13th March 2014 I had said that with reference to the sofa the one Mr. Fenech had wanted costed €1298 and not €2800 as I had said.

Whilst acknowledging to have caused damages to the sofa in the sitting room, the Defendants failed to prove that they did offer a replacement of the same kind and quality as the one damaged by them and this notwithstanding the fact that Defendant Ian Moy claims that one of the alternatives offered is still in their possession. They also failed to satisfactorily prove that the Plaintiffs' request for payment of €1,200 for replacement of the damaged sofa, duly supported by a quote issued by Orienta¹⁷, is exorbitant. In fact even though the Defendants claim to have offered replacement of the same kind and quality for a value of circa €800, they failed to submit corroborating evidence in support of this particular claim. In the light of the above the Court is of the opinion that in this case too and failing proof to the contrary by the Defendants, the Plaintiffs' request is legitimate and should therefore be upheld.

The Defendants categorically oppose the claim being made by the Plaintiffs for responsibility and consequent payment of damages caused to the garden when the same was paved by them. They consistently claim that *permission was asked and granted for paving the garden. Mr. Fenech even provided for the paving of the garden¹⁸. Defendant Ian Moy claimed that there was a foot path on two halves of the garden and it was just soil. We asked Mr. Fenech if we could pave it. He said yes and Mr. Fenech supplied the material. In response to the question did you agree something about, I don't know, removing them at the end of the rent agreement? Ian Moy replied No, we weren't asked that question¹⁹. Under cross-examination Ian Moy claimed that he and Defendant Jacqueline Forester paved the whole garden and that the Plaintiff supplied the pavers for one side. ... We did the other side. In response to the question are you sure the permission you asked for and granted was not just to make a*

¹⁴ Testimony given during the sitting held on the 15th January 2013, folios 93 to 104 of the records of the proceedings.

¹⁵ Testimony given during the sitting held on the 13th March 2014 at folios 112 to 114 of the records of the proceedings.

¹⁶ Folios 118 and 119 of the records of the proceedings.

¹⁷ Folio 27 of the records of the proceedings.

¹⁸ Folio 82 of the records of the proceedings.

¹⁹ Testimony given during the sitting held on the 15th January 2013, folios 93 to 104 of the records of the proceedings.

passage only and not the whole garden? Ian Moy replied if was for the whole of it. Defendant Jacqueline Forester stated that I had a garden in this house which was in a wild state when we went in. I did some works in the garden and before doing them I asked permission from the Plaintiffs. I asked if we could have a concrete base to put a pool. I also asked for some tiles which Mr. Fenech himself supplied. I put a border all around, to put flowers etc. all around. Plaintiffs were aware of all this and never complained²⁰.

The Court is not at all convinced that the Plaintiffs were asked permission for and were actually aware that the whole garden was going to be paved by the Defendants. It is more of the opinion that the Defendants asked permission to pave part of the garden, which permission was granted so much so that the Plaintiff himself provided them with some tiles²¹, but then they unilaterally and arbitrarily went ahead and paved the whole garden with concrete. The lack of credibility of the Defendants results from their same testimony. First of all it is not at all credible that the Plaintiff gave permission for the paving of the whole garden but then proceeded to provide the Defendants with material required to pave only half of it and secondly, Jacqueline Forester tries to justify the paving of the whole garden in concrete by claiming that it was their intention to put a pool there, but strangely enough this fact was not mentioned by the Defendant Ian Moy at any time during his testimony.

In the light of the above the Court is of the opinion that the claim by the Plaintiffs for damages regarding removal and carting away of concrete paving in the garden is, failing proof to the contrary by the Defendants, justified and therefore merits to be upheld too.

Plaintiffs also claim that the Defendants damaged a king-sized bed and mattress found in one of the bedrooms, a claim which they duly substantiated by exhibiting the relative photographs. Defendants on their part claim that the damage was caused when the bed collapsed through no fault of theirs. In their comments they claim that *the mentioned bed and mattress was supported by a sheet of hardboard and four steel tubes. The hardboard rotted and one of the steel tubes broke through the hardboard due to the hardboard rotting due to humidity. This bed was used only 5 times in the 2 years we were in residence²²*. Defendant Jacqueline Forester claimed that *the king-sized bed was broken during the lease; my daughter had sat on the bed and the leg had gone through it since the cardboard was very thin. I never told the Fenech's that the bed had broken when five of us had slept in it. Five people at once never slept in it²³*. In response to the Plaintiffs' claim for the missing quilt, Defendant Jacqueline Forester claimed *I had my own quilt brought to the*

²⁰ Testimony given during the sitting held on the 13th March 2014 at folios 112 to 114 of the records of the proceedings.

²¹ Testimony given during the sitting held on the 15th October 2012, folios 85 and 86 of the records of the proceedings.

²² Folio 81 of the records of the proceedings.

²³ Testimony given during the sitting held on the 27th March 2014, folios 118 and 119 of the proceedings.

place and I have no idea what happened to the quilt the Fenech's are alleging was in the place²⁴.

In this case too the Court is not at all convinced of the veracity of that claimed by the Defendants and this for two fundamental reasons: first of all the state of the bed and mattress in question as evidenced by the photographs submitted together with the Report by Architect Valerio Schembri does not tally with the reasons given by the Defendants for the damage caused to the same; and secondly the reason for the damage given by Defendant Ian Moy is different from the reason for the damage given by Defendant Jacqueline Forester. Whilst Defendant Ian Moy claims that the damage occurred because the board under the bed had rotted due to humidity, Defendant Jacqueline Forester claims that the damage occurred because the board supporting the bed was not strong enough to withstand the weight of her daughter since it was too thin. In this case too, the Defendants failed to prove that the damage being claimed by the Plaintiffs was not caused by them or through no fault on their part and therefore the said claim by the Plaintiffs is once again justified and merits to be upheld.

In so far as concerns the quilt, the Plaintiffs' claim has been summarily brushed off by the Defendants however, the Defendants are expected to account for the items which are found or at least bound to be found in a furnished premises, ready to move into – as is the case of a bed quilt – and therefore once the Defendants cannot explain what happened to this quilt and why it went missing during the term of their occupancy renders the Plaintiffs' claim in this regard fully justified and therefore merits to be upheld.

Plaintiffs also claim that the following items went missing or were damaged during the term of the Defendants' occupancy: *sitting room curtain, 2 kitchen rugs and carpet for entrance hall, venetian blinds, and vacuum cleaner flexible pipe missing, iron board cover and pipe²⁵*. In so far as concerns this claim the Defendants counter by claiming that *sitting room curtains developed mildew due to humidity. All carpets and rugs were left. The venetian blind twist handle broke when trying to open. We had our own vacuum cleaner and never used the household's. We also had our own ironboard²⁶*. Defendant Jacqueline Forester further claims that *I did not use the curtains which I found in the premises when I started the lease but I put them away in the cupboard under the stairs. I agree as is being suggested to me that the curtains had become moulded however when asked to replace them by Mr. Fenech I refused as I felt that it was not my fault that they got moulded but eventually I still replaced them with another pair of curtains.*

²⁴ Testimony given during the sitting held on the 27th March 2014, folios 118 and 119 of the proceedings.

²⁵ Doc. "GV1" at folio 73 of the records of the proceedings.

²⁶ Folios 81 and 82 of the records of the proceedings.

*Mrs. Fenech did not complain about the curtains which I hung up. The curtains were of a different fabric.*²⁷

Once again the Defendants' objection to the Plaintiffs' claim for damages is unacceptable. In view of the lessee's obligation to make use of the thing let to him as a *bonus pater familias*, the Defendants were obliged to store the items they opted not to make use of during the term of the lease in such a way as not to cause any damage to the same. Once the curtains got stained due to humidity, or so claim the Defendants, it is evident that they weren't adequately stored or the place where they were stored was not the right place for such a purpose and therefore they have to make good for such damage. Even though Defendant Jacqueline Forester claims that she had ultimately replaced the curtains she admits that the replacements were not of the same material and therefore, in the Court's opinion they cannot be considered as an appropriate and acceptable replacement. Similarly, a lessee has to be able to adequately explain why items which evidently had to be in a furnished house, as for example the garden hose, the ironboard cover, carpets and rugs and a vacuum cleaner flexible pipe, were found to be missing at the end of the tenancy and failing such adequate explanation, as is the case in the present case, the said lessee has to make good for such a loss particularly when it clearly results, as happened in this case, that following his vacating the premises nobody had entered the same prior to an inspection by the owner of the property in question.

In so far as concerns the venetian blind, Defendant Jacqueline Forester acknowledges that the same broke during the term of the lease and whilst saying that it broke when someone tried to open the blind, at no point did she claim or infer that the same was not functioning properly or was in any way defective. In view of this fact the Court is of the opinion that once the Defendants or someone else from their family or acquaintances broke the said venetian blind, then they have to make good for the damage claimed by the Plaintiffs.

Apart from the general obligation of the Defendants to make good for any damages caused by them, in this case of particular relevance is the Clause in the lease agreement entered into between the parties which stipulates that *the Lessee shall be responsible for any shortages and/or breakages, damages, chipping or stains to articles of furniture (except fair wear and tear) and binds him/herself to make good or replace such articles before vacating the premises*. Even though the Defendants claim that upon the expiration of the original term of the lease the Plaintiffs did not enter into a new written lease agreement, they still remain responsible as per the original terms of the lease because it is an established principle at law that the lease is, unless otherwise agreed to between the parties, renewed under the same terms and conditions.

²⁷ Testimony given during the sitting held on the 27th March 2014, folios 118 and 119 of the proceedings.

Therefore, once again these particular claims for damages put forth by the Plaintiffs are, failing proof to the contrary by the Defendants, justified and must therefore be upheld.

The Plaintiffs are also claiming the cost incurred by them to have the wallpaper which the Defendants used to decorate the walls removed and to have the walls painted afresh. The Defendants counter this particular claim by stating that they had decorated the walls with wallpaper with the Plaintiffs' permission, however the Court deems that this particular argument in this case is totally irrelevant. From the photographs submitted together with the Architect's report it is very clear that the wall paper was, in certain areas, damaged and therefore could not be left in that state by the Plaintiffs particularly if they intended to put the property up for rental again. The Defendants had the obligation to return the premises to the Plaintiffs in the same state they found it, meaning that whilst they could have left the wall paper there upon their vacating the premises, they had to leave it in a good condition and not peeling in a number of areas. Therefore, the Defendants have to make good for the costs incurred by the Plaintiffs in order to reinstate the walls into a good condition.

In so far as concerns the damages claimed for the T.V. satellite equipment and repair, the Defendants claim that they did not use or take away any of the equipment because they had their own satellite system fitted. In the Court's opinion the veracity of this allegation hasn't been satisfactorily proven by the Defendants since they did not submit any evidence that they installed their own system which evidence is particularly relevant in view of the fact that as per terms of the lease agreement *the lessee binds himself/herself not to install any internet, cable television, satellite dish, TV or wireless aerials without the written consent of the Lessor*. In this case again the Defendants failed to satisfactorily prove that they did not take any part of the TV system/equipment and therefore the Plaintiffs claim in this regard is justified and must be upheld.

The Plaintiffs are also claiming damages caused to a flush door found in the premises, which damages are clearly shown and documented in the photographs exhibited together with the Architect's report exhibited at folios 16 to 66 of the records of the proceedings. Even though the Defendants deny that they damaged the said flush door, in view of that provided for in Section 1561 of Chapter 16 of the Laws of Malta, already referred to further-above in this judgment, failing satisfactory proof on their part that when they vacated the premises the door was not damaged or that if it was damaged it didn't happen through any fault on their part, they have to make good for said damage.

In so far as concerns the *quantum* of the direct damages being claimed by the Plaintiffs, the Court is satisfied that the Plaintiffs have satisfactorily proven the

same, not only by means of the quotes and/or receipts for expenses to be incurred or already incurred exhibited by them but also by means of the Report by Architect Valerio Schembri, which Report, it is being reiterated, has not been in any way satisfactorily contradicted by the Defendants particularly in so far as concerns the *quantum* of the direct damages liquidated by him: *in view of the situation witnessed in situ by the undersigned, the documents that came to his knowledge and any other factors that may bear influence on this report the undersigned is of the humble opinion that the damage that has been suffered by the property in question during the lease requires a total sum of circa €4,651.00 to repair/replace. This damage cannot be attributed to fair wear and tear*²⁸.

The Plaintiffs are also claiming a number of indirect damages, that is further expenses they have been compelled to incur due to this whole issue they have against the Defendants. Whilst the Plaintiffs have every right to claim such indirect damages, the Court deems that it cannot liquidate the full amount being claimed by them and this for the following reasons: (i) those damages being claimed as *expenses for opening court case and expenses for procurement of witness* will be included in the taxed bill of costs and therefore in view of the fact that the Defendants will, in the circumstances of this case, be condemned to pay the judicial expenses in relation to this case, if the Court liquidates the sums being claimed by the Plaintiffs, Defendants will be made to pay these particular expenses twice; (ii) those damages being claimed as lawyer's expenses for the issue of legal letters against the Defendants and upholsterer expenses for the repair caused to a green plush armchair haven't been duly supported by receipts and/or quotes and therefore since they haven't been satisfactorily proven, the Court cannot proceed to liquidate the same in favour of the Plaintiffs.

In view of the above the indirect damages being liquidated in favour of the Plaintiffs, and this without prejudice to their right to claim from the Defendants judicial expenses in terms of an official taxed bill of costs, amount to €354 these being expenses incurred by them for the drawing up and issue of the Report by Architect Valerio Schembri, which expense has been duly proven by means of a receipt exhibited at folio 61 of the records of the proceedings.

Therefore, the total sum being liquidated by way of damages payable by the Defendants to the Plaintiffs amounts to €5,005.00.

For all of the above reasons the Court, whilst rejecting the pleas put forth by the Defendants, upholds the claim put forward by the Plaintiffs and whilst declaring that the Defendants are responsible for all the damages and expenses suffered by the Plaintiffs as a consequence of damages caused by said

²⁸ Folio 20 of the records of the proceedings.

Defendants in the premises “Villa Vermont” Triq il-Paguni, Balzan, when the said premises were occupied by them by title of lease between January 2009 and February 2011, condemns the Defendants to pay the Plaintiffs the sum of €5,005.00, with legal interest calculated from the 20th May 2011, being the date when the Defendants were served with the Plaintiffs’ Application, till date of payment in full and final settlement.

Judicial costs pertinent to these proceedings are to be borne entirely by the Defendants.

MAGISTRATE

DEPUTY REGISTRAR