Rent Regulation Board

Magistrate Dr. Josette Demicoli LL.D.

Orest John William Nowosad

Vs

Raymond Degabriele

Application No: 9/17

Today 9th November 2017

The Board,

Having seen the applicant's application which reads:

1. That on the second of October of the year two thousand and twelve (02.10.2012), applicant, together with Matthew Selwyn Gubb, acquired the shop numbered 59, 'Stitches', in Srejdak Street, corner with Pellegrinagg Street, Cospicua, through a contract of sale in the acts of Notary Dr Tiziana Maria Refalo (Dok ON 1);

2. That Mr Matthew Selwyn Gubb passed away and left his undivided share of the property to applicant, thus rendering applicant the sole owner of the shop 'Stitches' (Dok ON 2);

3. That the said shop was sold 'as leased to third parties in terms of a lease agreement dated the thirtieth day of August of the year nineteen eighty eight (30.08.1988) (vide pg 5 of Dok ON 1);

4. That Clause 1(a) of the lease agreement of 30th August 1988, hereby attached as Dok ON 3, clearly states that the shop must be solely and exclusively used as a clothes' boutique, and clause (f) states the tenant has no right to change the destination of the premises from that of a clothes' boutique;

5. That clause (i) of the rent contract further stipulates that when the tenant no longer uses the shop as a clothes' boutique, he is to return the keys to the owners;

6. That, notwithstanding this, tenant changed the use of the shop to a hairdressing salon carried out works in the shop to this effect, and is currently operating the shop as a hairdressing salon, as shown in the photos exhibited as Dok ON 4, and this without the applicant's authorisation or permission. In fact, the defendant had asked for applicant's permission to change the use of the shop on two separate occasions, but then carried on with the change in use despite applicant's unequivocal refusal, which refusal was communicated to defendant through legal letters (a copy of the legal letters is being attached as Dok ON 5 a-c)

7. That furthermore, defendant has never paid rent to applicant, nor does it appear that he has deposited the same in Court, and thus rent payments for the past four years (i.e. from when applicant acquired the property) are also due;

8. That the annual rent amounts to €774.74,as calculated on the basis of the lease agreement, and also as calculated by defendant who has recently, after being called upon by plaintiff to evict the premises, offered to pay applicant arrears of rent from 1st March 2013 until 28th February 2016, amounting to three thousand and ninety eight Euro and ninety six cents (€3,098.96) (vide Dok ON 5c);

9. That applicant bought the premises in question on 2nd October 2012, and thus the amount above indicated should be increased by rent payments for sixteen additional months (i.e. from October 2012 – March 2013, and from March – December 2016). Thus, the amount due is four thousand and one hundred and thirty-one Euro and ninety-five cents (€4,131.95);

10. That Clause (g) of the lease agreement stipulates that the tenant undertakes to follow every condition listed in the contract, and that in the event that he breaches even one of these conditions, and/or fails to pay rent on two occasions, the owners will have the right to immediately and automatically terminate the lease, without any compensations to the tenant;

11. That despite being called upon through a legal letter to evict the premises, the defendant did not comply;

12. That applicant knows these facts personally and, to his knowledge, defendant has no valid defence to bring forward.

Therefore, applicant requests the Board to authorise the following, saving any other declaration that it might deem fit and necessary:

1. Decide the case without proceeding to trial, in terms of Article 16A of Chapter 69 of the Laws of Malta;

2. Authorise the carrying on of proceedings in the English language, since the applicant is a Canadian national and is a non-Maltese speaking person;

3. Declare that defendant is in manifest breach of the lease agreement dated 30th August 1988, and consequently declare that the lease is *ipso jure* terminated;

4. Authorise the applicant to regain possession of the tenement No 59, 'Stitches', in Triq Srejdak, corner with Triq il-Pellegrinagg, Cospicua;

5. Order the eviction of the defendant from the said tenement, and this in a short and peremptory period fixed by this Board;

6. Declare that the defendant is a debtor of the applicant for the sum of four thousand and one hundred and thirty-one Euro and ninety-five cents (€4,131.95);

7. Condemn defendant to pay the amount of four thousand and one hundred and thirty-one Euro and ninety-five cents (€4,131.95) to plaintiff.

With expenses and legal interests, and with the reservation of any further rights belonging to plaintiff (including for the payment of further sums) against the defendant, to whose oath reference to being hereby made.

Having seen the respondent's reply which reads:

1. Preliminary, that the procedure adopted is irregular, for in the application as written, there are more than one demand, and not solely for the eviction of any person from the lease, and so in terms of the provisions of Article 16A of Chapter 69 of the Laws of Malta, there should be regular trial proceedings.

2. Preliminary too, since the plaintiff, as results from the application, resides outside Malta (in France), for the integrity of the eventual judgment, since it does not result that he has given a mandate to someone in Malta to represent him in the acts, then he should be present in Malta during the course of the proceedings.

3. In the merits, and without prejudice to the above replies, the defendant has been since the year 2012 trying to trace the owner/owners of the tenement, so that he can pay the rent to him/them, but it was only recently and after the defendant, has at his expense found out who the owners are, that he received the correspondence indicated by the plaintiff by means of the document exhibited and marked Dok ON 5b.

4. For the same reasons indicated in reply number 3, the defendant had to do a number of works, changes and improvements, even structural ones in the tenement, which cost him thousands of Euros, in order to remedy the damages which were being caused on the tenement rented to him, which damages were even being caused by carelessness and abandonment in the overlying tenement, the house numbered one (1), in Srejdak Street, corner with Pellegrinagg street, Cospicua, which as results from the acts (Dok ON 1 exhibited with the application), is the property of the plaintiff, as will result during the hearing of the case.

5. In the course of these works, the defendant was informing Architect Karl Ebejer, who was appearing as the architect responsible for an application

with the Planning Authority, with respect to the overlying tenement (PA 01713/14), for the restoration and alterations and addition of one level, in the name of one of the owners, and the architect knew about the situation and the changes which were undergoing in the leased tenement, including the change in the condition from, 'clothes' boutique to 'Hairdressing Salon', as will result during the hearing of the case.

6. So it results that tacitly the applicant has given his consent so that the leased tenement is changed from a 'clothes' boutique to 'Hairdressing Salon'.

7. It is not true that the defendant did not pay the rent, as indicated in the application, since as already stated, he has been since the year 2012 trying to find out who the owner/owners are, for this purpose, and in view of the reply given by the plaintiff by means of a letter dated 7th November 2016, and subsequently by means of this present action taken by him, the defendant had no other option but to deposit the rent for the term starting 1st March 2013 up till 28th February 2018, in the Magistrates Court (Malta) on the 20th February 2017.

8. Moreover, it is not true that the arrears go back to October 2012, and this since the defendant had paid the rent arrears due to the preceding owners up till the 28th February 2013, as will result during the hearing of the case.

9. So all the demands being made by the plaintiff, are unfounded on basis of law and fact, and are to be rejected with costs against the plaintiff.

10. Saving further replies.

Having heard witnesses.

Having seen all the acts and the documents of the case including the note of submissions.

Considers

The applicant is requesting the Board to declare that defendant is in breach of the lease agreement and consequently declare that the lease is *ipso jure* terminated so that he regains possession of the tenement in question. Moreover the applicant is requesting this Board to order the defendant to pay the arrears in rent.

It results from the acts of this case that :

- On the 30th August 1988 the shop No 59, 'Stitches', Srejdak Street, c/w Triq il-Pellegrinagg, Cospicua was leased by certain Cilias to defendant by means of a lease agreement[1].
- On the 2nd October 2012 Matthew Selwyn Gubb and John William Nowosad bought the above-mentioned property *'as leased to third parties in terms of a lease agreement dated the thirtieth day of August of the year nineteen eighty eight (30.08.1988)'* by means of a contract published by Notary Dr Tiziana Maria Refalo[2].
- On the 4th May 2014 Matthew Selwyn Gubb passed away and in his will he left his share of the shop to the applicant[3] as evidenced by the declaration causa mortis in the acts of Notary Dr Maria Christina Tufigno.
- In the lease agreement the parties agreed in clause (a) that: *"Illi dan il-fond ghandu jintuza' biss u esklussivament ghal 'boutique tal-hwejjeg'".*
- In clause (f) of the same agreement it was stipulated that: *"Illi l-inkwilin m'ghandu l-ebda dritt li jbiddel id-destinazzjoni ta' dan il-fond minn dak stipulat bhala 'boutique tal-hwejjeg'"*
- Clause (g) reads that: *"L-inkwilin jobbliga ruhu josserva dawn il-kundizzjonijiet kollha hawn fuq stipulati, u fl-eventwalita' li jonqos li josserva kondizzjoni anke wahda mill-istess ftehim, u/jew jonqos li jhallas il-kera ghal zewg istanzi, il-proprjetarji jkollhom id-dritt li jitterminaw din il-lokazzjoni immedjatament u awtomatikament, bla ebda kumpens".*
- Clause (i) stipulates : *"meta l-inkwilin jispicca mill-uzu ta' dan il-boutique tal-hwejjeg, huwa ghandu jirritorna c-cwievet lis-sidien".*
- The defendant admits that the shop is now being operated as a hairdressing salon by his daughter.
- There is also an issue with regards to the payment of rent which will be referred to later on in this judgment.

[1] Dok ON3 at fol 28 of the proceedings
[2] Dok ON1 at fol 9 of the proceedings
[3] Dok ON2 at fol 24 of the proceedings

The Board will first of all tackle the first two preliminary pleas raised by defendant in his reply. With regards to the first plea due to the fact that defendant has been given the right to file a reply, this plea should be completely discarded because once he was given the right to reply automatically the case proceeds normally. With regards to the second plea, the applicant has been consistently present during the sittings and thus it will also be rejected.

Hence, the Board will now delve into the merits of the case.

With regards to the issue of change in use, there have been several judgments which enunciated various principles which will follow suit:

*"Premessi dawn il-fatti, huwa ben maghruf illi wiehed mid- doveri ta' l-inkwilin huwa li juza l-fond lilu lokat skond il-ftehim, u jekk ma jkunx hemm ftehim, skond l-uzu li ghalih huwa determinat (**Artikolu 1554, Kodici Civili**);*

F'dan il-kaz il-ftehim espressament jipprovdi illi "the premises shall be used solely for the sale of motor vehicle spare parts and other allied goods" [para. (h) ta' l-iskrittura tas-subinkwilinat, fol. 51];

*Ftehim bhal dan jorbot lis-socjeta` inkwilina daqs li kieku kien ligi. Jinghad a propozitu fl-**Artikolu 992, Kodici Civili** illi "l-kuntratti maghmula skond il-ligi ghandhom sahha ta' ligi ghal dawk li jkunu ghamluhom". Din l-espressjoni ghandha karattru enfatiku fis-sens illi patt miftiehem fi skrittura ma jistax jigi varjat b' volonta`unilaterali ta' parti wahda mill-kontraenti. Jitnissel minn dan fil-kaz in ispecje illi l-fond lokat ma jistax jigi wzat ghal skopijiet ohra minghajr l-awtorizzazzjoni ta' sid il-kera. Isegwi illi jekk il- patt ma jigix rispettat ikun hemm lok ghar-ripreza tal- pussess jekk il-kerrej ikun naqas milli josserva l-kondizzjonijiet tal-kirja jew li jkun uza l-post ghal xi skop divers minn dak li ghalih il-fond ikun gie mikri [**Artikolu 9 (a) tal-Kapitolu 69**];*

Issa huwa veru illi kif drabi ohra nghad, "l-iskop tal-ligi li tipprojbixxi lill-inkwilin li jbiddel id-destinazzjoni tal-fond mhux dak li javvantaggja lis-sid b'mod li huwa jista' japprofitta ruhu minn kwalunkwe cirkostanza, anke l-izjed zghira u genwina, biex jippriva lill-inkwilin mit-tgawdija tal-fond lilu mikri"

*[**Kollez. Vol. XXXIII.i.181**; **Mamo - vs- Cachia**, Appell, 1 ta' Gunju 1964 (inedita)];*

Dan ifisser illi sabiex ikun hemm lok ghas-sanzjoni tal-ligi specjali hu mehtieg li t-tibdil denunzjat ikun wiehed sostanzjali. Jehtieg allura li jigi ezaminat jekk l-uzu fattwali u attwali jimportax dak il-kambjament ta' l-uzu kontrattwali u jekk allura jimportax kontravvenzjoni tal- kuntratt jew tal-ligi;

*Fil-fehma konsiderata ta' din il-Qorti huwa illustrattiv ta' tibdil ta' sustanza l-fatt li fond adebit bhala hanut, fis-sens ordinarju tal-kelma fejn il-klijenti jirrikorru biex jixtru l- oggett li ghandhom bzonn, jiddawwar fi store. (Ara ukoll **Kollez. Vol. XLVI.i.5**). Stabbilit li l-oggett tal-kirja kien dak ta' hanut ghal bejgh u spacc ta' spare parts, kif hekk in effetti beda jintuza fil-bidu tal-lokazzjoni sakemm saru l- modifikazzjonijiet bl-akkwist ta' fondi ohra, dan awtomatikament kien jeskludi lis-socjeta`inkwilina mid-dritt li tuza l-istess fond ghal destinazzjoni diversa. Huwa veru li l-generu ta' affari ma nbidelx u huwa veru wkoll illi ope legis mahzen jirrientra fid-definizzjoni li l-ligi taghti lill-kelma "hanut". B'danakollu, l-uzu li s-socjeta`appellanti bdiet taghmel mill-fond wara li xtrat proprjetajiet ohra ma tidholx fil-latitudni konsentita expressis mill-kuntratt lokatizju. U allura, kif taraha din il-Qorti, meta jitqies dan kollu, l-uzu divers li sar mill-fond fil-kaz prezenti ma jistax ma jitqiesx sostanzjali, u wkoll pregudizzjevoli ghall- interessi tas-sid;*

*Kif drabi ohra deciz "una volta d-destinazzjoni tal-fond kienet tohrog car mill-oggett tal-ftehim ta' lokazzjoni, u cjoe min-natura ta' l-immobbli lokat, is-sid ma kien jehtieglu jaghmel xejn aktar hlief jipprova l-uzu divers. Stabbilit dan l-uzu divers, l-oneru tal-prova li tali uzu sar bil-konsapevolezza, akkweixxenza jew kunsens tacitu jew espress ta' sid il-kera kien jaqa' fuq l-inkwilin. Oneru dan li din il-Qorti tqis li l-inkwilin ma ssodisfax" – **Gemma Saliba et -vs- Mario Schembri**, Appell, 3 ta' Dicembru 1999; **Joseph Deguara proprio et nomine -vs- Emmanuele Peresso nomine**, Appell, 15 ta' Novembru 1994;*

Kollox ma' kollox, din il-Qorti hi sodisfatta illi kien hemm l- uzu divers lamentat mis-sid appellat. Is-socjeta` appellanti ddecidiet unilaterlament li tikkreja hanut mill- proprjeta`minnha akkwistata bi skapitu tal-fond lokat lilha mill-appellat. Fond dan ta' l-ahhar li minflok ma hi zammet id-destinazzjoni originarja tieghu – dik ta' hanut veru proprju bit-trawwim tieghu – integratu

ma' proprjeta` taghha, b' uzurpazzjoni tad-drittijiet tas-sid u kwazi kwazi b'abbuz ta' dominju fuq hwejjeg haddiehor.[4]

In the case in the names of **John Salomone vs Charles Farrugia**[5] it was held that:

"Ma jirrizultax mill-provi illi sid il-fond qatt ikkonceda li ssir xi deroga minn dan il-patt kontrattwali u, allura, l-appellanti ma kellhomx jassumu illi ghaliex it-tifsira tal-kelma shop skond il-ligi kienet inkorporativa anke ta' "mahzen" huma kellhom il-liberta` li setghu jiddeterminaw huma x'uzu jsir mill-fond. Meta jkun jidher, kif inhu l-kaz hawnhekk, illi jkun gie assunt mill-iskrittura jew mic-cirkustanzi uzu determinat bhala obbligazzjoni tal-kontrattazzjoni, l-uzu divers tieghu b'ghazla unilaterali tal-kerrej ma kienetx lilu akkonsentita. Implicitament, ghas-sid dak l-uzu ma kellux jigi pregudikat b'dannu ghalih, ghax altru hanut miexi bl-avvjament tieghu u altru mahzen. Ma kellux ghaldaqstant ikun mistenni li s-sid kien ser jikkontenta ruhu minn xi skwilibriju guridiku-ekonomiku ta' dik id-destinazzjoni ghal liema hu jkun akkonsentixxa ghal kirja. Ara a propositu s-sentenza fl-ismijiet ***Joseph Deguara proprio et nomine -vs- Emmanuele Peresso nomine****, Appell, 15 ta' Novembru, 1994 u fejn ukoll il-kerrej kien ikkonverta l-hanut mikri fi store."*[6]

Then reference is made to the judgment **Philip Saliba vs Anthony Seguna**[7] wherein it was stated that:

*"L-ewwel riflessjoni li tinzel mill-kuntratt ta' ftehim hi certament dik li specifikatament l-****fond inkera ghal destinazzjoni partikolari.*** *L-uzu tieghu ma kienx dak ta' semplici fond kummercjali fejn, allura, ghab-bazi ta' lesigenzi tieghu l-kerrej ma jkunx daqstant marbut li juza lfond ghal skop wiehed biss jew, xort'ohra, vjetat milli jaghmel uzu divers minn dak li jkun beda jaghmel. Ara f'dan is-sens* ***Cleopatra Consiglio et -vs- Beltram Camilleri****, Appell Civili, 28 ta' Mejju, 1962,* ***Antonio Zahra -vs- Francis Galea****, Appell Civili, 8 ta'*

[4] David Borg v WVS Marketing Ltd – 01.12.2004
[5] Court of Appeal (Inferior Jurisdiction) decided on 13th February 2009
[6] John Salomone v Charles Farrugia - 13.02.2009
[7] Court of Appeal (Inferior Jurisdiction) decided on 24th April 2009

*Jannar, 1965 u **Carmel J. Micallef -vs- Carmelo Bonello**, Appell Civili, 11 ta' Dicembru, 1967, fost bosta ohrajn.*

*F'dan il-kaz l-oggett tad-destinazzjoni kien specifiku u preciz. Kien allura mistenni li l-kerrej joqghod b'obbligu ghal din l-osservanza tad-destinazzjoni ghax, altrimenti, fleventwalita` li ma jaghmelx dan jitqies inadempjenti u tali qaghda tattira lejha s-sanzjoni prevvista fl-**Artikolu 1555(1) tal-Kodici Civili** jew, skond il-kaz, l-**Artikolu 9(a) tal-Kapitolu 69** in referenza ghal kaz fejn kerrej "ma jkunx esegwixxa l-kondizzjonijiet tal-kiri";*

Il-provi f'dan il-kaz manifestament juru illi l-intimati ma baqghux jattivaw mill-fond hanut ta' mastrudaxxa izda ghaddew biex ikkonvertewh fi store.[8]"

Bearing in mind these principles, the Board will proceed to analyse the evidence produced. As already stated, the defendant is not contesting that the shop in question is not being operated as a boutique shop but that today it is a hairdresser salon which is being operated by his daughter.

In a nutshell the defendant has stated in his evidence[9] that following damages caused to the shop in 2010, due to the fact that inside the overlying house (now belonging to the plaintiff), three large beams gave way and damaged the shop's roof. The owners at that time of the house were Cilia and Dar tal-Providenza which inherited 50% of the house, took more than a year to do the necessary work and repairs and also to avoid the risks and to avoid any further collapse of the roof. The defendant states that he suffered a lot of consequences before the works completed since he suffered floods in the shop pouring from the house above. He states that he was never compensated for such damages.

The defendant continues that following the repairs, a certain Mr Fsadni, who was involved in the sale of the whole property, informed him that the property including the shop were being sold to foreigners. The defendant continues that he wanted to know who the owners are so that he could start paying rent to them. He also informed Mr Fsadni to inform the new owners that extensive works were needed to be done to the shop due to flooding of water, following the accident from the building above, and due to the age of the property which is round three hundred years. He also stated that during the 27 years he had been

[8] Philip Saliba v Anthony Seguna - 24.04.2009
[9] Affidavit at fol 88 et seq. of the acts

renting the property, no maintenance was carried out to either the shop or house. He also brought to the attention of Mr Fsadni that he might affect a change in use once the repairs were carried out. According to defendant, Mr Fsadni told him that it would not be a problem for Ms Farrugia or the new owners, as long as the change will not be a bar.

The defendant continued that since he did not know who the owners were he had difficulty in paying rent and he stated that the last rent receipt was issued by Cilia on the 15th April 2013. He then discovered that the new owners had applied through Architect Ebejer to build another floor and restore the façade and thus he came to realise that Mr Gubb was the new owner. Defendant contacted the architect after the shop allegedly experienced another flooding and asked him to inform the owners but without success because the architect told him to get the information through the right channels. Thus, he ordered searches through the Public Registry and discovered that the property had been sold on the 2nd October 2012. Defendant continued to state that it was during March 2016 when he decided to start the works in order to restore the property. He called Architect Ebejer to view the property, which he did and took pictures and assured him that he was going to inform the owners of what he was doing including also the change of use of the shop. The works were continued and it was at this time that he ordered the searches. Defendant stated that architect Ebejer told him that he informed the owners of what was going on and the defendant's impression was that since the architect never objected to the works being done, then neither the owners were objecting. Once the works were completed and defendant contacted the owners through his lawyer. He asked the owners to sign an application to change the licence of the shop from a boutique to a hairdressing salon and they refused to do so. Later on he discovered that he no longer required a licence to operate.

In cross-examination, defendant confirmed that he never got a confirmation from the owners that he could change the use of the premises, even because of the fact that he did not k[10]now who the actual owners were. Moreover, he confirmed that no maintenance was carried out prior to the major restoration works executed lately.

Architect Karl Ebejer[11] testified that he remembers being contacted by the parties to see the shop because there were signs of water ingress. He went and took some photos and confirmed that there had been water ingress. He denies

[10] 27th April 2017
[11] 27th June 2017

that the defendant had informed him of the works he intended to carry out in the shop. He confirmed that he had been on site many times but he just went in once in the shop which was the day when he took the photos. He remembered that Mr Degabriele asked him several times the contact details pertaining to the new owners. When he went inside the shop there were clothes inside. He never got involved in the issue of the change of use or otherwise of the shop.

In view of what has emerged from the evidence brought forward, it has resulted that the defendant is not contesting the fact that there was a change of use of the shop from a boutique shop to a hairdressing salon. The change has also been proven by means of the photos and testimonies produced amongst which Architect Ebejer's. What is being sustained by the defendant is that the owners tacitly consented to this change of use.

As already referred to above, in the lease agreement entered into by the defendant with the predecessors of applicant, Cilia, it was very clearly specified that this shop was to be operated exclusively as a clothes boutique. The tenant was not authorised to change such use and the parties had moreover agreed that should the tenant cease to use the premises as a clothes' shop he was to immediately return the keys to the owner. Such clauses are clear and leave no room for interpretation.

Defendant argues that a certain Mr Fsadni[12] who was involved, it seems, in the sale of this property had authorised this change of use. Mr Fsadni was an agent acting on behalf of a prospective buyer who ended up not purchasing the property. Apart from the fact that Mr Fsadni was not even produced as a witness, however it is more than evident that this Mr Fsadni was never authorised by Mr Nowosad and Mr Gubb to approve the change of use of the shop.

Defendant also affirmed that Architect Ebejer was informed of the re-structuring and of the change of use and since no objection was raised he interpreted it that the owners were being kept abreast and they had no objection to the change of use. The Board deems that it is evident that defendant has made a lot of assumptions. First of all, he did not know who the owners were. He knew that the property was going to be sold and yet he did not ask for

[12] Who was involved

researches to be carried out before August 2016. Secondly, Architect Ebejer categorically denied that defendant informed him of the intended change of use. He just went once inside the shop and when he went in it was still a clothes' shop. It has not been proven in any manner that Architect Ebejer, in any case, had been given the mandate by the owner to authorise the defendant to change the use of the leased shop.

Mr Degabriele mentioned a Mr Fsadni who was acting as agent for a prospective buyer for a sale of property. It transpires from the contract of sale exhibited[13] that a promise of sale agreement between Hon. Dr Marlene Farrugia and Therese Cilia, Lorenza Cilia and Paul Cilia had been signed on the 19th October 2011. The contract of sale per se' by virtue of which Mr Gubb and Mr Nowosad bought the shop and the overlying property was published on the 2nd October 2012. The works had not started by then. Mr Degabriele, even at that time, could have initiated the searches to deal with this issue and also to make sure that he knew to whom he would be paying rent. So, at that stage Mr Fsadni was definitely not in a position to grant permission as has already been pointed out.

Architect Ebejer took the photos on the 11th November 2014. *Ex admissis*, when the works were practically executed, the defendant on the 29th September 2016[14]wrote to the present landlord and Mr Gubb asking (i) to be recognized as tenant; (ii) to pay the arrears for the years 2013 till that date; and (iii) to sign the application to change the license use of the shop from a boutique to a hairdressing salon[15]. On the 7th November 2016[16], applicant replied to defendant's letter whereby he objected to any change in the license use since this would be in clear breach of the lease agreement. Moreover, applicant stated that defendant had been breaching the lease agreement for a number of years by failing to pay the rent due and by failing to use the premises for the purpose for which it was leased. That the shop had only been opened sporadically over the past few years and that it appeared that works were already under way to change the destination of the premises, which works were not authorised by the owner. Hence, Mr Nowosad called upon Mr Degabriele **to discontinue any ongoing**

[13] Dok ON 1 at fol 9 of the acts of the proceedings
[14] Dok ON
[15] Dok ON 5a at fol 31 of the acts of the proceedings
[16] Dok ON 5b at fol 32 of the acts of the proceedings

works in the premises with immediate effect, to evict thr shop and to return the keys to the advocate within five days of receipt of the letter.

Defendant replied with another letter dated 1st December 2016[17] stating that he had not breached the lease agreement and that it took him some months to discover who the owners were. In this letter defendant stated that he had to renovate the interior of the shop in view of the structural damages in the overlying property (which is also owned by Mr Nowosad), due to lack of maintenance on the owner's part, resulting in flooding of rain water into the shop causing damage to the shop itself and the merchandise. With respect to the change of use, defendant stated that after managing to trace the address and after discovering the contract of sale he directed his lawyer to ask for the owner's consent for the change of use.

From the above, it is evident to the Board that the landlord has not given his consent to the change of use neither expressly nor tacitly as alleged by defendant. On the contrary, upon the first opportunity, Mr Nowosad objected to such change of use so much so that he wrote such objection in the letter and did not sign the application for the change of licence and moreover deemed that the lessor was in breach of the lease agreement and asked him to evict the property. The fact that the change of use requested fell within the same class of licence does not affect in any manner. The parties entered into a lease agreement which was very clear in its terms. Undoubtedly, a clothes' shop and a hairdressing salon are completely different from each other and thus there is an evident breach of the lease agreement.

It is to be noted that defendant up to a certain extent attempted to justify the change in use because he stated that the shop was in a bad state of repair due to the overlying property. First of all, although defendant has alleged that the overlying property was in such bad state of repair that it affected the shop this has just remained an allegation. It is worth noting that if such allegation were true, defendant could proceeding against the owner civilly and insist that repairs be carried out. Secondly, defendant himself has admitted that during the duration of lease he did not effect any maintenance to the property which, after all, he was obliged to do in accordance with the lease agreement. Thirdly, Architect Ebejer testified that he did not observe any structural damage.

[17] Dok ON 5c at fol 33 of the acts of the proceedings

Fourthly, even if it were the case that defendant needed to undertake urgent repairs this in no way entitled him to change the use of the premises.

The applicant also mentions that defendant has sublet the premises. Defendant argues that this was not originally included in the application thus such submission should be ignored. In actual fact, it is true that it has not been mentioned in the application. In any case, the defendant testified that it is his daughter who is running the hairdressing salon, but in actual fact it has not transpired that there is a management agreement.

With regards to the non-payment of rent, the applicant also claims the amount of €4,131.95 representing arrears of rent which he states are due since October 2012.

The annual rent amounted to €774.74. When applicant called upon defendant to pay him arrears of rent, defendant offered to pay the amount of €3,098.96 covering rent from 1st March 2013 until 28th February 2016. However, applicant expects that since he bought the premises on the 2nd October 2012, the amount offered by defendant should be increased by rent payments for sixteen additional months (i.e. from October 2012 – March 2013, and from March – December). Hence, the amount due is €4,131.95. Defendant states that as can be seen from the receipt dated 15th April 2013 issued by the previous owner Cilia[18] covering half yearly payment, in the sum of €387.49, the rent actually due was that indicated by him i.e. €3,098.96. Since by the time, the applicant filed this action another term fell due (from 1st March till 28th February 2018), and this was included in the schedule of deposit filed on the 20th February 2017 in the total sum of €3873.70

Now, with regards to the alleged receipt exhibited as Dok RD1, this document was not confirmed on oath by the person issuing it. The Board cannot be sure that this document is authentic and truthful. On the other hand, the amount claimed by applicant is incorrect because since he acquired the premises on the 2nd October 2012 at most the amount due is €3098.96 (as originally offered by defendant) and the amount of €387.49 (six month rent) which amounts to €3486.45. Applicant is also asking for the rent payments due till November 2017. Defendant himself referred to them. Thus, adding up nine additional months (from February 2017) the arrears total to the amount of €4,077.67.

It is to be noted that it would have been better had Mr Nowosad informed Mr Degabriele that he was the new landlord. However, the duty to pay rent falls

[18] Dok RD1 at fol 61 of the acts of the proceedings

squarely upon the lessee. Defendant knew that the property was going to be sold. He could have resorted to the researches beforehand not so many years after. Moreover. even after he knew who the owner was and after he was asked specifically to pay the rent defendant deposited the money by means of a schedule in Court only after he was notified with these proceedings.

Thus for the above-mentioned reasons this Board decides that whilst rejecting the defendant's pleas, decides in the following manner:

1. Abstains from taking any cognizance of the first claim since it has already been decided upon in the sense that defendant has been given the right to file a reply;
2. Abstains from taking any cognizance of the second claim[19];
3. Accedes to the third claim and thus declares that defendant is in manifest breach of the lease agreement dated 30th August 1988, and consequently declares that the lease is *ipso jure* terminated;
4. Accedes to the fourth claim and authorises the applicant to regain possession of the tenement No 59, 'Stitches', in Triq Srejdak, corner with Triq il-Pellegrinagg, Cospicua;
5. Accedes to the fifth claim and thus orders the eviction of the defendant from the said tenement, and this in a peremptory period of forty (40) days;
6. Accedes partly to the sixth claim and thus declares that the defendant is a debtor of the applicant for the sum of four thousand and seventy-seven Euro and sixty-seven cents (€4,077.67);
7. Accedes partly to the seventh claim and condemn defendant to pay the amount of four thousand and seventy-seven Euro and sixty-seven cents (€4,077.67) to plaintiff.

The expenses are to be borne by defendant with the exception of the expenses relating to the first and second claims of the applicant which are to be borne by the applicant, and with legal interest.

[19] In actual fact there was no need to make such a request by means of a claim in the sworn application. In any case, the procedure has been conducted in the English Language

Dr Josette Demicoli LL.D.

Magistrate

Lorianne Spiteri

Deputat Registratur