Rent Regulation Board

Magistrate Dr Josette Demicoli LL.D

Joseph Vassallo (649146M) in his own name and in representation of Carmela Vassallo (44727M)

vs

Xiaomei Zhou Gera

Application Number: 51/16 JD

Today 14th November 2017

The Board,

Having seen the application filed by applicant which reads:

1) That the plaintiff Carmela Vassallo is the owner of property 41, Clarence Street, Msida, as to one half undivided share and the usufructuary of the remaining half undivided share, whereas plaintiff Joseph Vassallo has a share of 1/20 from the same property in ownership as heir of his father Fortunato Vassallo together with his brothers and sisters, as evident from the documents annexed and marked as Doc CV1 and CV2 (declaration *causa mortis*);

2) That the property was leased to John Maurice Gera, now deceased, for the yearly rent of forty Maltese Lira (LM40 today equivalent to €93.17);

3) That the property was occupied by John Maurice Gera until his death and subsequently was occupied by his wife Antonia Gera until her death on the 27th March 2009;

4) That in the year 2010, Valhmor Gera, son of Antonia Gera, approached the plaintiff and demanded that he continue in the enjoyment of the lease agreement

in terms of Article 1531(f) of the civil code (Chapter 16 of the Laws of Malta) after alleging that he had lived with his mother until her death and at least five years before;

5) That although the plaintiff was not in a position to confirm the truth of the above allegations and even though Gera never subjected himself to the means test, the plaintiff allowed the said Valhmor Gera to continue in the enjoyment of the said lease agreement in terms of Article 1531F(i) of Chapter 16 of the Laws of Malta;

6) That the said Valhmor Gera died in 2014;

7) That as from 2005, Valhmor Gera was married to the defendant Xiaomei Zhou Gera. Xiaomei Zhou Gera is still occupying property number 41, Clarence Street' Msida, the property of the plaintiff;

8) That the plaintiffs submit that Xiaomei Zhou Gera is occupying the said property abusively, illegally and without any valid title for the reason that it was Valhmor Gera that may have had any right to continue enjoying the lease agreement in terms of Article 1531F (i) which Article specifically excludes the continuing of the lease agreement in favour of the spouses and the children to whomsoever invokes Article 1531F(i);

9) That the defendant Zhou Gera was called upon by a letter dated 17th March 2015 (Doc. CV2) to vacate the property. She replied through her legal advisor by a letter dated 27th March 2015. While accepting that she has no right according to Article 1531F to remain in property she submitted that she could continue enjoying the lease agreement in terms of Article 1531G:

> *"in the case of persons who although failing to qualify to continue the tenancy according to the criteria laid down in article 1531F but who before the 1st June, 2008 were residing with the tenant and continued to reside with the tenant until the tenant's death, such persons shall have a right to continue the tenancy as follows: (a) if the person fails the means test criteria as stipulated above, the lease shall in any case continue for a period not longer than three years from the date of the death of the last surviving tenant, with a rent which will be double that being paid by the last tenant; (b) if a person fails to qualify under other criteria, not being those of the means test, the lease shall continue for a period of not more than five years from the death of the last surviving tenant, with a rent which will be double that which was being paid by the last tenant."*

10) That the plaintiffs submit that the said Article is irrelevant with reference to the defendant Gera for the following reasons:-

- That on the 1st June 2008 there was only one 'tenant' in the property. That 'tenant' was not Valhmor Gera but his mother Antonia Gera;

- Valhmor Gera, as one of the descendants of Antonia Gera, already exhausted the extension of the lease agreement and therefore his wife Xiaomei cannot claim any rights pertaining to Valhmor Gera, if any;

- Provided that Xiaomei Zhou Gera has any rights in terms of Article 1531G as living with the tenant Antonia Gera until her death, these rights have commenced from the death of Antonia Gera in 2008 and therefore the terms of 3 years and 5 years respectively as provided in Article 1531G have elapsed;

11) That this was explained in another letter dated 12th May 2015 (Doc. CV3) whereby the defendant was called upon to vacate the property and to return it to the plaintiff in its original state;

12) That up to this day, the defendant is still in default;

13) That plaintiff also notes that in various structural alterations were carried out in the said property without authorisation, and also causing considerable damages to the property. Whilst making it clear that the present application is based solely on the lack of title of the defendant, the plaintiffs are also reserving any rights or remedies which may be available to them, including any rights for damages for illegal occupation;

14) That for the above reasons, in the opinion of the plaintiffs and as far as they are aware, the defendant does not have a defence to raise in contestation of plaintiffs' claims.

Therefore, in view of the above, the plaintiffs respectfully demand that this Board:

1) Uphold the demand for this application to be heard summarily and without the hearing of the case in terms of Article 16A of Chapter 69 of the Laws of Malta;

2) Declare that the defendant Xiaomei Zhou Gera does not have any right to continue in the enjoyment of the lease agreement of property 41, Clarence Street, Msida in terms of Article 69 of the Laws of Malta and that therefore she is occupying the said premises without any valid title;

3) Consequently, order the ejectment of the defendant Xiaomei Zhou Gera from the property 41, Clarence Street, Msida and this within a short and peremptory time.

With expenses, including those of the legal letters against the defendant and to testify *in subizione.*

Having seen defendant's statement of defence which reads:

1. In the first instance defendant contends that the action is null and irregular insofar as the acts are not whole, and this because as results from the said acts and the declaration *causa mortis,* applicant Joseph Vassallo is owner of one twentieth undivided share with others of the property forming the subject-matter of these proceedings, whereas applicant Carmela Vassallo is owner of half undivided share of the said property. Therefore, in order for the acts to be whole, there had to participate in these proceedings the other co-owners. Moreover, applicant Joseph Vassallo declared that he is acting in a representative capacity, without sustaining such an affirmation with the relative acts.

2. In the second instance, and without prejudice to the first line of defence, the applicants' request is legally and factually unsustainable and should be rejected with costs against applicants, insofar as the property constitutes the ordinary residence of respondent. As shall result during these proceedings, respondent was joined in matrimony with Valhmor Gera on the 14th March 2005. That respondent always resided with her husband in the property forming the subject-matter of these proceedings and until her husband passed away on the 17th November 2014. That apart from respondent and her husband there also resided in the said property Valhmor Gera's mother, that is Antonia Gera, who passed away on the 27th March 2009. That after the said Antonia Gera passed away, the rent was payable by Valhmor Gera, and the payments of rent were duly accepted by the owners of this property, with the last receipt having been issued and covering the period until the 31st December 2014.

3. That subsequently, and with effect from the 1st January 2015, respondent started depositing the rent under the authority of the Honourable Court of Magistrates (Malta), since the owners refused to accept payment of rent, and the said rent is being deposited periodically whenever due.

4. That the respondent has a valid title of lease in terms of Article 1531G of Chapter 16 of the Laws of Malta, insofar as the property constitutes her ordinary residence, and insofar as respondent meets the criteria resulting from the said provision of the law, as well as by application of the provisions of Section 39 of Act No X tal-2009.

5. Subject to further grounds for defence as permitted by Law.

Having heard witnesses.

Having seen all the acts and documents of the case

Considers

From the acts of the case the following results:

- Applicant Joseph Vassallo is owner of 1/20 undivided share of the property in question. Carmela Vassallo is owner of a half undivided share and the usufructuary of the remaining half undivided share. The other co-owners are Joseph Vassallo's brother and sisters.
- This property was leased to John Maurice Gera, now deceased, for the yearly rent of LM40, the equivalent of €93.17.
- After John Maurice Gera's death, his wife Antonia Gera continued with the lease and lived in the property in question until the day she died.
- Defendant states that she came to Malta on a holiday in 2004 where she met her late husband Valhmor Gera who at the time resided with his mother in the apartment no 41, Clarence Street, Msida.
- Subsequently defendant moved into the apartment with Valhmor Gera and his mother and they got married on the 14th March 2005, and on the 9th September 2011 she became a Maltese citizen.
- Antonia Gera passed away on the 27th March 2009.
- Valhmor Gera was recognized as lessee of the apartment in terms of Article 1531(f) of the Civil Code after he approached the owners in 2010.
- On the 17th November 2014 Valhmor Gera passed away.
- Following his death, the applicants refused to receive any further rent payments from the respondent. Hence, as stated by the defendant, she started depositing the rent payments in Court.
- Defendant is still residing in the property.

- Respondent sustains that she has a right to be recognized as a tenant in terms of article 1531G of the Civil Code.

The applicants have thus filed this application against respondent asking this Board to declare that respondent has no legal right to reside in the property and that consequently her occupation is an irregular one without legal title and to order her eviction from the premises.

Before delving into the merits, the Board must refer and decide the preliminary plea raised by respondent which are of a procedural nature. The first point raised by respondent is that no proof has been provided that applicant Joseph Vassallo represents his mother Carmela Vassallo. In actual fact, no written document has been presented in the acts of the case which indicates such representation. The applicant has confirmed on oath that he is representing Carmela Vassallo and that he has a valid authorisation in terms of law. This suffices[1]. Reference is to be made to article 1857 of the Civil Code which provides that a mandate can be also verbal.

Respondent also pleaded that that all the co-owners needed to be indicated as plaintiffs. Applicant states that all his siblings are aware of these proceedings and have consented to them. Yet, such consent does not transpire from the acts. Having said this, applicant submits that since plaintiffs are contending that respondent does not have title to the property then there is no need for the presence of all the co-owners in these proceedings.

At this stage this Board will refer to the judgment in the names of **Adelaide Ellul et vs Modern Crown Stoppers Limited**[2] which delved into this issue quite at length:

*1. L-istipiti tal-gurisprudenza kondiviza mill-Bord, hi ssentenza fl-ismijiet "**Ciantar Preziosi et –vs- Fabri et**", Prim'Awla, 7 ta' Mejju 1879 ben segwita mis-sentenza "**Bruno noe –vs- Notaro Emanuele Lauren**", Prim'Awla, Qorti Civili, 16 ta' Marzu 1881, li stabbilit li "uno di piu` locatori, finita la locazione, puo` domandare lo sgombramento del conduttore".*

*2. Ta' l-istess fehma hi d-decizjoni fl-ismijiet "**Paolo Pace –vs- Emmanuele Zammit et**", Prim'Awla, Qorti Civili, 29 ta' Novembru 1919. Fiha ntqal illi "il locatore compossessore con altri puo` impedire che la locazione sia rinnovata all'antico inquilino, e puo anche da solo domandare lo sgombramento di costui essendo*

[1] Vide Marianna Grima et vs Frankie Farrugia decided by the First Hall, Civil Court on the 16th March 2016, Application Number 971/2008AE

[2] Court of Appeal (Inferior Jurisdiction) decided on the 12th November 2003

l'azione indivizibile, e potendo essere esercitata per indiviso da ciascuno dei comproprietarii".

*3. It-tielet sentenza f'din is-serje izda l-aktar wahda ampja hi dik fl-ismijiet "**Ruggero Peralta –vs- Elisa Wirth**", Appell mill-Bord, 16 ta' Novembru 1942. Fiha gie osservat illi "jekk wiehed minnhom (il-ko-proprjetarji) ikun irid jiehu pussess tal-post, ikollu d-dritt, bhala wiehed mil-lokaturi, di fronti ghall-inkwilin, u in bazi din il-ligi specjali u eccezzjonali (Ord. XXI ta' l-1931) illi jagixxi wahdu biex jitlob il-permess tal-Bord biex jiehu pussess ta' dak il-post, u ma ghandux bzonn illi jagixxi ma' l-ohrajn. Infatti skond l-Art 187 ta' l-Ordinanza VII ta' l-1868 (illum Art 491 tal-Kodici Civili) kull wiehed mill-konsorti ghandu dritt li juza l-haga li tkun komuni skond id-destinazzjoni taghha, u ghalhekk biex il-kompossessur tal-haga komuni jiehu pussess taghha, ma ghandux bzonn il-konkors ta' l-ohrajn, izda l-azzjoni tista' tkun tieghu wahdu".*

*Il-Qorti qeghda tissofferma ghalissa biex tirregistra l-punt illi jirrizultalha wkoll illi fl-istess zmien tal-precitati sentenzi kienet ventilata parallellament il-veduta kuntrarja. Jigifieri dik li osservat li "nulla osta in legge a che simile istanza (koncernanti zgumbrament tal-kerrej) venga inoltrata da alcuni dei consorti con citazione degli altri consorti, i quali potrebbero dimostrare le ragioni per la loro eventuale opposizione, da essere vagliate dal Tribunale" ("**Maria Teresa Zammit et –vs- Giovanni Saliba et**", Appell Civili, 1 ta' Dicembru 1930).*

*Is-sentenza fl-ismijiet "**Carmela Scicluna xebba –vs-Rosina armla Azzopardi noe**", Appell Civili, presjeduta mill-Onor. President Sir Anthony Mamo, 3 ta' April 1964 filwaqt li rriteniet l-osservazzjoni appena citata bhala wahda valida ghaddiet biex severament tikkritika t-tezi kuntrarja, in partikolari dik abbraccjata fid-decizjoni "Peralta –vs- Wirth".*

Il-Qorti titlaq mill-punt illi trid tinzamm distinzjoni bejn il-kaz fejn id-detentur ikun qed jokkupa fond "minghajr titolu" u dak li jkun hekk jokkupah b'"titolu ta' lokazzjoni". F'dan lahhar kaz, "meta hemm diversi komproprjetarji huma kollha "lokaturi", il-kuntratt hu uniku u m'hemmx tant rapporti separati ta' bejn "inkwilini" u "lokatur" daqs kemm hemm komproprjetarji, izda l-lokazzjoni hi wahda; u meta l-ligi timponi r-rilokazzjoni timponiha bhala kontinwazzjoni jew, tigdid ta' l-istess kuntratt uniku fil-konfront talkomproprjetarji jew lokaturi kollha, u wiehed minnhom ma jistax, wahdu, jimpedixxi dik ir-rilokazzjoni statutorja li "ex hypothesi" topera ruhha ghar-rigward tal-komproprjetarji l-ohra".
*Issoktat tghid illi "din l-istess raguni tista' ma tapplikax meta, bejn id-diversi komproprjetarji u d-detentur, ma hemmx rapport kontrattwali, u d-detentur ikun jiddetjeni bla titolu". Hsieb dan fuq dan l-ahhar punt ta' okkupazzjoni bla titolu ricevut b'favur fid-decizjoni fl-ismijiet "**Caterina Gerada –vs- Dr. Antonio Caruana**", App Kummerc, 28 ta' Gunju 1973 oltre d-decizjonijiet a **Vol XXI pII p433** u **Vol XXXIX pII p540**. Din is-sentenza giet segwita mill-istess Qorti ta' l-Appell, din id-darba kapeggjata mill-Onor. President John Cremona, fis-sentenza fl-ismijiet "**Mary Magdalene Symes et –vs- Robert Eder noe**", 13 ta' Gunju 1980.*
Proprju fiha gie parafrazat il-hsieb tal-precitata sentenza illi "f'kaz ta' lokazzjoni li trid tigi terminata, l-azzjoni hi precizament tendenti ghall-mutament ta' rapport jew stat

guridiku wiehed, u kwindi, l-litis konsorzju bejn dawk kollha li huma partecipi hu necessarju. In-nuqqas ta' partecipazzjoni fil-kawza tal-komproprjetarji l-ohra, kemm bhala atturi jew bhala konvenuti, jista' jigi sostitwit bil-prova certa tal-adezjoni ta' dawk il-komproprjetarji ghad-domanda maghmula gudizzjarjament minn wiehed minnhom, izda mhux anqas minn daqshekk".

*Premess dan li fuq gie osservat, gara li fl-1983 l-istess Qorti ta' l-Appell, minghajr lanqas minimu accenn ghad-decizjonijiet appena citati, irrivertiet ghat-tezi sostenuta f'"**Peralta vs- Wirth**" u dawk is-sentenzi l-ohra li rritenew li kull wiehed mill-konsorti ghandu dritt jitlob li jirriprendi l-pussess ta' fond komuni minghajr il-bzonn tal-konkors tal-komproprjetarji l-ohrajn. Prekursuri ta' dan ir-ritorn lura huma s-sentenzi fl-ismijiet "**Joseph Scicluna et –vs- Joseph Schembri noe**", Appell Civili, 27 ta' Lulju 1983 u "**Angela armla ta' Anthony Sammut et –vs- Gerald Vella et**", Appell Civili, 26 ta' Ottubru 1983 fejn il-Qorti kienet komposta mill-Onorevoli Imhallfin l-Onor President Dr. Carmelo Schembri, l-Onor Dr Carmelo Agius u l-Onor Dr. Vincent Scerri. Decizjonijiet konsegwiti mill-ohra fl-ismijiet "**Carmelo Albani vs- Mary mart Peter Scicluna et**", Appell Civili, 2 ta' Gunju 1988 presjeduta mill-Onor. Imhallef Hugh Harding. Minn hawn il-quddiem jidher li l- Qrati u t-tribunali taghna issoktaw isegwu din il-linja.*

*Bir-rispett kollu dovut versu dawn il-gudikati precedenti, u recensjuri, li ghandhom certament jitqiesu bl-akbar rispett, din il-Qorti, kif presjeduta, ma thossx li ghandha ssegwi dan l-orjentament. Ghall-kuntrarju, l-Qorti tinklina versu l-veduti espressi fis-sentenza "**Scicluna –vs- Azopardi**" (ibid.) billi tirrikonoxxi fl-argomentazzjoni analisi guridika aktar valida u rafforzanti minn ta' dawk li pprecedewha jew ta' dawk li regghu optaw ghas-soluzzjoni ta' dawk l-istess decizjonijiet anterjuri.*

Issa huwa veru illi principju accettat ma ghandux jitbiddel spiss jew bla raguni, izda huwa ugwalment car illi dan ma ghandux ifisser ukoll illi l-principju, darba affermat u accettat, ma jista' jinbidel qatt. Wara kollox fis-sistema taghna l-ebda gudikant ma hu marbut bil-precedent. Multo magis, imbaghad, jekk wara rikonsiderazzjoni debita jsib ruhu fl-impossibilita` li jsegwi dak ritenut fil-gurisprudenza ta' dawn l-ahhar snin.

*Verament il-lanjanza ta' pregudizzju accennata mill-appellati fil-korp tar-risposta taghhom fis-sens illi huma ma ghandhomx jigu inceppati fil-prosegwiment tad-dritt taghhom mill-interessi personali ta' xi komproprjetarju interessat tinsab imwiegba sew fil-parti konklussiva ta' dik is-sentenza("**Scicluna –vs- Azzopardi**"):*

"L-ilment kien ikun veru u gustifikat kieku l-kunsens tal-komproprjetarji l-ohra kien l-uniku kondizzjoni inderogabbli. Imma l-fatt mhux hekk. Jekk hemm il-kunsens, sta bene u xejn aktar m'hu mehtieg. Pero` jekk il-kunsens ma hemmx, ghax il-komproprjetarji l-ohra – ingustament jew kapriccjozament, jew negligentement, kif jidhirlu l-komproprjetarju li jrid jagixxi – ma tawhx, allura hu bizzejjed li hu jiccithom fil-kawza. Il-kunsens jew adezjoni ghat-talba, certament ma jistghux jigu ottenuti kontra r-rieda u kien ikun ingust li tassoggetta lill-komproprjetarju agenti ghalih b'mod illi r-rifjut ta' dak il-kunsens kien ikun jista' jiffrustra u jipparalizza l-ezercizzju tad-drittijiet tieghu. Izda meta dak il-kunsens jonqos, m'hemm xejn li jista' jimpedixxi

c-citazzjoni fil-kawza, u din mhiex haga li l-komproprjetarji renitenti jew traskurati jistghu jinjoraw jew jimpedixxu".

In the present case, the allegation is that defendant has no valid title to occupy the property in question. Hence, this is a case where the action could have been proposed by one of the co-owners. Hence the plea should be rejected

With regards to the merits of the case this revolves around the interpretation which should be given to Section 1531G of the Civil Code in the circumstances of the case, since respondent is claiming that she has a right to reside in the property in terms of such article.

Upon reading of this article, it is evident that such article cannot be read on its own, but it must be read together with the preceding article. For ease of reference, both articles will be reproduced hereunder:

"1531F. *In the event of a lease of a house used as an ordinary residence made prior to 1st June, 1995 that person who will be occupying the tenement under a valid title of lease on the 1st June, 2008 as well as his or her spouse if living together and if they are not legally separated shall be deemed to be the tenant; when the tenant dies the lease shall be terminated:*

Provided further that a person continues the lease after the death of the tenant under the same conditions of the tenant if on the 1st June, 2008 -

(i) such person is the natural or legal child of the tenant and has lived with the said tenant for four years out of the last five years; and after 1st June, 2008 continues to live with the tenant until his death:

Provided that, if more than one child has lived with the tenant for four years out of the last five years before the 1st June, 2008 and they continued to live with the tenant until his death, all such children will continue the lease in solidum; this lease shall not extend to the wife, husband or offspring of the child, or

(ii) such person is the brother or sister of the tenant, who on the death of the tenant is forty-five years of age or more, or brother or sister of her husband or his wife who is forty-five years of age or more, and who has lived with the tenant for four years out of the last five years before 1st June, 2008 and who after that date continued living with the tenant until his death:

Provided that, if there are more than one brother or sister who are over forty-five years of age and who have been living with the tenant for four years out of the last five years before the 1st June, 2008 and have continued living with him until his

death, all such brothers or sisters shall continue the lease in solidum; this lease shall not extend to the wife, husband or children of the said brother or sister, or

(iii) such person is the natural or legal child of the tenant, who is younger than five years of age and after 1st June, 2008 has continued to live with the tenant until his death, or

(iv) such person is the natural or legal ascendant of the tenant, who is forty-five years of age, and who has lived with the tenant for a period of four years out of the last five years before the 1st June, 2008 and has continued living with the tenant until his death; this lease shall not extend to the wife, husband or children of the ascendant:

Provided that if on the death of the tenant, there are several children, siblings, or ascendants who all satisfy the criteria of paragraphs (i), (ii), (iii) or (iv), all those persons shall have the right to continue the tenancy together in solidum:

Provided further that a person shall not be deemed not to have lived with the tenant for the sole reason that she has been temporarily absent from the residence of the tenant due to work, study or medical care:

Without prejudice to the provisions of this article, a person shall not be entitled to continue the lease following the death of the tenant, unless such person satisfies the means test criteria which the Minister responsible for accomodation may introduce from time to time.

***1531G.** In the case of persons who although failing to qualify to continue the tenancy according to the criteria laid down in article 1531F but who before the 1st June, 2008 were residing with the tenant and continued to reside with the tenant until the tenant's death, such persons shall have a right to continue the tenancy as follows:*

(a) if the person fails the means test criteria as stipulated above, the lease shall in any case continue for a period not longer than three years from the date of the death of the last surviving tenant, with a rent which will be double that being paid by the last tenant;
(b) if a person fails to qualify under other criteria, not being those of the means test, the lease shall continue for a period of not more than five years from the death of the last surviving tenant, with a rent which will be double that which was being paid by the last tenant."

In the judgment in the names of **Saviour Vella et vs Therese Ebejer**[3]

"Illi kwindi skond l-artikolu 1531F, li fuqu isserraħ id-difiża tagħha l-konvenuta, u li japplika għall-każi bhal dak odjern fejn l-inkwilin oriġinali jkun miet wara li daħal fis-

[3] First Hall of the Civil Court decided on 8th January 2016, Application No: 519/11JA

seħħ l-Att X tal-2009 – kif effettivament ġara f'dan il-każ – il-persuna li tkun trid tibbenefika minn dak l-artikolu trid ukoll tissodisfa t-test impost mill-meżżi ndikati mill-Ministru responsabbli f'Regolamenti maħruġa apposta – dawn in effetti saru permezz tal-Avviż Legali numru 463 tal-2011 kif sussegwentement emendati. Dan ir-rekwiżit irid jirrizulta lill-Qorti u kwindi billi tkun tallegah il-konvenuta, trid tkun hija stess li tressaq il-provi dwaru. ***Min jallega jrid jipprova*** *jew* ***– 'Onus probandi incumbit qui dicit non ei qui negat'*** *kif jgħid ċar u tond l-artikolu 562 tal-Kodiċi tal-Proċedura u kif ġie ripetut diversi drabi f'diversi sentenzi (****"Dr H. Lenicker vs J. Camilleri"*** *deċiża mill-Prim Awla fil-31 ta' Mejju 1972, u* ***"Peter Paul Aquilina vs Paul Vella" –*** *Appell Inferjuri deċiż fit-2 ta' Mejju 1995).*

Illi dwar dan din il-Qorti ġja' ddeċidiet każi simili fil-kawżi fl-ismijiet ***"Le Brun vs Bryden"*** *(deċiża fil-11 ta' Lulju 2014) u* ***"Chetcuti vs Vella"*** *(deċiża fid-29 ta' Ottubru 2014). F' din il-kawża pero' fil-fehma tal-Qorti l-konvenuta dan għamlitu għaliex jirriżulta li qed tgħix biss bil-benefiċċji soċjali.* ***Barra minn hekk pero' trid tkun għexet mal-inkwilin oriġinali "tkun ilha toqgħod mal-inkwilin għal erbgħa mill-aħħar ħames snin (sal-1 ta' Ġunju 2008).***

Illi l-Qorti wara illi ħasbet fit-tul waslet għall-konklużjoni li kif qalet il-Qorti fl-aħħar każ imsemmi, filwaqt li l-konvenuta kienet tkun preżenti ħafna fil-fond imsemmi mis-sena 2001 'il quddiem biex tassisti lil ommha kif qalet fid-depożizzjoni tagħha, hija ma kinitx ***residenti*** *hemmhekk fis-sens li trid il-liġi qabel l-2007. Dan huwa ndikat mill-bdil tal-indirizz tagħha fir-Registru Elettorali u anke mis-sentenza tal-kawża ta' separazzjoni li waslet għal konkuzjoni li hija abbandunat id-dar matrimonjali fil-bidu ta' 2007. Għalhekk filwaqt li kien hemm preżenza fiżika tagħha fid-dar in kwistjoni, dan ma jfissirx li kienet residenti hemmhekk minn dak iż-żmien li qed tgħid hi (vide* ***"Agius vs Agius"*** *supra).*

Illi fil-kawża ***"Camilleri vs Borg"*** *fuq imsemmija, il-Qorti tal-Appell iċċitat u qablet ma' deċiżjoni tal-Prim Awla tal-Qorti Ċivili fil-kawża fl-ismijiet* ***"Vincent Rausi vs Joseph Muscat"*** *(deċiża fit-22 ta' Novembru 1995) fis-sens li f'tali sitwazzjoni l-ġudikant ma jistax jiddeċiedi aktar fuq preponderanza ta' probabiltajiet iżda fuq il-prinċipju actor non probante, reus absolvitur u għalhekk il-kawża tinqata' kontra l-attur.* ***Fil-każ in eżami pero'****, il-piż tal-prova kien fuq il-konvenuta għaliex hija kellha ġġib il-prova tat-titolu tagħha ossija tipprova li kienet intitolata għall-protezzjoni msemmija fl-artikolu ċitat minnha. Għalhekk fil-fehma tal-Qorti hija għandha tilqa' t-talba tal-atturi billi l-konvenuta naqset li tipprova li kellha titolu validu biex tgħix fil-post in kwistjoni.*

Illi finalment għall-kompletezza tajjeb jingħad illi skond l-artikolu 1531G, persuna bħall-konvenuta li tkun tgħix mal-inkwilin fid-data tal-mewt tiegħu jew tagħha u li ma tistax tibbenefika mill-artikolu 1531F għal xi raġuni li ma tkunx it-test tal-meżżi, ikollha dritt tibqa' tabita fil-fond għal ħames snin oħra b'kera doppja. Fil-każ tal-konvenuta, peress li ommha mietet fl-2010, dawn il-ħames snin ġja' għaddew. Għalhekk filwaqt li meta saret il-kawża din setgħet kienet intempestiva, bid-duttrina tal-jus superveniens, dan ma għadux il-każ – (vide s-sentenza ***"Brincat vs Brincat"***

deċiża fid-29 t'April 2015, mill-Prim Awla u l-ġurisprudenza msemmija fl-istess sentenza)."

From the acts of the case it emerges that the lease in question which was originally granted to John Maurice Gera was entered into prior to the 1st June 1995 and the apartment was used as an ordinary residence. Now, the relevant date for the purpose of these articles is 1st June, 2008. On this date, Valhmor Gera and respondent were living with Antonia Gera. However, on this date the tenant in accordance with the law was Antonia Gera. When eventually Antonia Gera died on 27th March 2009, since as stated by the applicants themselves they had no means how to verify whether Valhmor Gera actually satisfied the criteria laid down by the law in Article 1531F of the Civil Code, Valhmor Gera was recognized as being the tenant. At that time, that is, when Valhmor Gera requested to be recognized as a tenant respondent had been married to him for quite some years since 2005. Article 1531F (i) of Chapter 16 provides specifically that the right of Mr Gera could not be extended to his wife. This law is clear and leaves no room for interpretation.

With regards to article 1531G of Chapter 16 which is the article being invoked by respondent, this article in the Board's opinion should be clearer in its terms since the law in such article refers to 'the last surviving tenant' which could leave room for interpretation. The Board is of the opinion that the spirit of the law can never be ignored. The amendments introduced by Act X of 2009 were intended to try to balance the rights of the landlord and those of the lessee since it was felt that the landlord when it came to leases entered into prior to 1995 was carrying quite a heavy burden. Thus, the legislator whilst conscious of this burden also took into consideration also of the fact that amendments in the law could bring about social problems in certain cases. Hence, in the cases specified in article 1531F of the Civil Code the law deemed that such persons should be protected and hence the law permits that there be an extension of the lease in favour of such persons as mentioned by law which extension means that they could reside for the rest of their lives in the rented premises. In our case, respondent did not qualify for such a protection since the law expressly excludes that the spouse can benefit of such extension.

However, she does not even qualify for the protection afforded by article 1531G of the Civil Code. The extension of the lease was availed of by her husband after his mother's death who was the tenant on the 1st June 2008. If respondent's interpretation of the law were to be upheld it would mean that there should be another extension of the lease and this is not correct because the law is all the time referring to the 1st June 2008. On this latter date, it was Antonia Gera who was the tenant. Hence, even if the respondent's argument were to be considered as being founded at law, her right should have been availed of and calculated upon Mrs Gera's death, that is, on the 29th March 2009 which would mean that the terms of

three years and five years mentioned in Article 1531G have elapsed. In this case, the Board does not have enough evidence to consider whether in actual fact respondent had such right because not enough proof has been brought forward. In any case, it would in a way be superfluous because the terms have elapsed already. As a side note, the respondent emphasized the fact that rent was always paid in a timely manner and when the applicant refused to receive the rent, such rent was deposited in the registry of the Court by means of a schedule of deposit. The issue however was not the paying of rent in a timely manner or otherwise.

For the above-mentioned reasons, the Board whilst rejecting respondent's pleas, upholds the second and third claims of applicant and thus:

1) Declares that the defendant Xiaomei Zhou Gera does not have any right to continue in the enjoyment of the lease agreement of property 41, Clarence Street, Msida in terms of Article 69 of the Laws of Malta and that therefore she is occupying the said premises without any valid title;

2) Consequently, orders the ejectment of the defendant Xiaomei Zhou Gera from the property 41, Clarence Street, Msida and this within a peremptory period of two (2) months.

Since the Board has given the defendant the right to file a reply the first claim of applicant has been already decided upon and thus at this stage no further cognizance is being taken of same.

The expenses ,including those of the legal letters, but excluding those relating to the first claim which are to be borne by applicant, are to be borne by defendant.

Dr Josette Demicoli LL.D
Magistrate

Lorianne Spiteri
Deputy Registrar