



**MALTA**

**QORTI CIVILI  
PRIM'AWLA**

**ONOR. IMHALLEF  
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Cert. Jur. & H.R. (Strasbourg);  
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**Illum id-29 ta' Novembru, 2017.**

**Rikors Numru 669/2014 SM**

**L-Avukat Dottor Malcolm Cassar**

**vs.**

***Edrichton Estates Limited***

Il-Qorti,

- 1.0. Rat ir-rikors gurantat datat it-30 ta' Lulju, 2014, li permezz tieghu r-rikorrenti, sintetikament espona is-segwenti, (ara foll 1):
  - 1.1. Illi permezz ta' kuntratt datat it-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, s-socjeta` *Edrichton Developments Company Limited* ittrasferiet l-appartament

numru 35, *Block 5, Dolmen Court*, Triq il-Kurazza, l-Qawra, lil Patricia Roe, kif suggett ghas-sub-cens perpetwu ta' sebghin Lira Maltin, (£70.00), kif hemm deskritta, (ara foll 1 u foll 7);

- 1.2. Illi s-sub-cens fuq riferit hu pagabbli lill-Monastero San Pietro, (ara foll 67), u s-sub-cens l-iehor hu pagabbli lis-socjeta` *PAM Malta Limited*, (ara foll 38);
- 1.3. Illi konsegwentement wara l-fuq imsemmi kuntratt tat-3 ta' Marzu, 1969, (ara paragrafu numru wiehed punt wiehed aktar qabel), l-appartament hemm indikat kien suggett ghac-cens originali u ghas-sub-cens kif hemm indikat, (ara fol 2);
- 1.4. Illi permezz ta' kuntratt datat it-28 t'Awwissu, 1978, *in atti* tan-Nutar Joseph Gatt, (ara foll 48), infeda parti mill-awment fis-sub-cens fl-ammont ta' £58.00 minghand is-socjeta` *Edrichton Development Company Limited*, u ghalhekk l-istess appartament baqa' suggett ghac-cens u sub-cens fuq gia` indikat, (ara foll 2);
- 1.5. Illi s-socjeta` intimata hi successur fit-titolu tas-socjeta` *PAM Malta Limited* u tas-socjeta` *Edrichton Developments Company Limited*;
- 1.6. Illi ghalhekk s-sub-cens *de quo* jispetta lilha;
- 1.7. Illi skont il-kuntratt datat l-24 ta' Mejju, 1965 *in atti* tan-Nutar Joseph Sciberras, (ara foll 67), ic-cens originali ta' £6.32 ghandu jigi rivedut wara 150 sena mill-15 t'April, 1965, senjatament fl-2115 kif hemm indikat;
- 1.8. Illi s-sub-cens ta' £4.40.5 ghandu jigi rivedut fil-15 t'April, 2015, kif indikat fil-kuntratt datat il-5 ta' Lulju, 1966, *in atti* tan-Nutar George Cassar, (ara foll 2 u 38);
- 1.9. Illi l-awment tas-sub-cens rimanenti ta' £1.27.5 kellu jigi rivedut fil-15 t'April, 1990, kif indikat fil-kuntratt datat it-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, (ara foll 2 u 7);

- 1.10. Illi c-cens originali ta' £6.32 ghandu jigi rivedut fl-2115 u s-sub-cens t'£4.40.5 kellu jigi rivedut fl-2015, jirrizulta li l-uniku parti tac-cens li kellha tigi riveduta fl-1990 kien is-sub-cens ta' £1.27.5, li kien rivedut fil-15 t'April, 1990 *ai termini* tal-kuntratt tat-3 ta' Marzu, 1969, (ara foll 7);
- 1.11. Illi kif deciz mill-**Qorti tal-Appell** fis-sentenza fl-ismijiet **Avukat Dottor Marco Grixti *nomine* vs. Edrichton Holdings Limited wara Edrichton Estates Limited, Numru 2807/1997/1**, (ara foll 77), is-sub-cens ta' £1.27.5 gie rivedut fl-ammont ta' Lm8.66;
- 1.12. Illi r-rikorrenti akkwista l-*utile dominium* tal-appartament in dizamina permezz ta' kuntratt datat l-20 t'April, 2011, *in atti* tan-Nutar Dottor Philip Lanfranco, (ara foll 57), suggett ghas-sub-cnus fuq indikati pagabbli lis-socjeta` intimata;
- 1.13. Illi c-cens originali ta' £6.32 gie mifdi mill-Ufficju kongunt bhala successur tal-Monastero San Pietro;
- 1.14. Illi ghalhekk dak li fadal hu s-sub-cens ta' £4.40.5 u £8.66 dovuti lis-socjeta` intimata;
- 1.15. Illi meta r-rikorrenti gie biex ihallas dawn is-sub-cnus lis-socjeta` intimata din ippretendiet ammont ezagerat ta' €201.90, ferm aktar minn dak dovut skont il-kuntratti u m'accettatx l-ammonti offruti;
- 1.16. Illi ghalhekk kellha tigi intavolata din il-procedura;
- 1.17. Illi konsegwentement adixxa din il-qorti biex is-socjeta` intimata tghid ghaliex din m'ghandiex:
  - 1.17.1. Tiddikjara li l-appartament 35, *Block 5, Dolmen Court*, Triq il-Kurazza, il-Qawra, hu suggett ghal sub-cens annwu u perpetwu ta' £4.40.5 rivedibbli fl-2015 kif indikata fil-kuntratt tal-5 ta' Lulju, 1996, u ghall-awment ta' sub-cens annwu u perpetwu ta' £1.27.5 rivedibbli skont il-kuntratt tat-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino;

- 1.17.2. Tiddikjara li l-kuntratt tat-3 ta' Marzu, 1969, *de quo*, u wara l-fidi` permezz tal-kuntratt tat-28 ta' Awwissu, 1978, l-awment rimanenti tas-sub-cens ta' £1.27.5. li gie rivedut fil-15 t'April, 1990, fl-ammont ta' Lm8.66 jew somma ohra li tista' tigi ffissata minn din il-qorti u sussegwentement tiddikjara kemm din is-somma ghandha ssir wara r-revizjoni tal-2015;
- 1.17.3. Tiddikjara kemm ghandu jsir is-sub-cens fuq imsemmi ta' £4.40.5 meta jigi rivedut fil-15 t'April, 2015, kif indikat fil-kuntratt tal-5 ta' Lulju, 1966, *in atti* tan-Nutar George Cassar;
- 1.17.4. Tiddikjara jekk l-ammont ta' £4.40.5 li ghandu jithallas mill-attur sas-sena 2015, u l-ammont rivedut fil-15 t'April, 2015, hux f'Liri Sterlini (STG) jew Liri Maltin, u tiddikjara wkoll kemm hu l-ammont f'Euro;
- 1.17.5. Bl-ispejjez kontra s-socjeta` intimata;
2. Rat id-digriet taghha datat il-31 ta' Lulju, 2014, li permezz tieghu appuntat l-istess rikors guramentat promotur ghas-smigh ghall-udjenja hemm indikata, (ara foll 87);
- 3.0. Rat ir-risposta guramentata tas-socjeta` intimata datata s-26 t'Awwissu, 2014, li permezz taghha sintetikament irrispondiet bil-mod segwenti ghat-talbiet tar-rikorrenti, (ara foll 93):
  - 3.1. Illi t-talbiet tar-rikorrenti huma infondati *stante* li l-appartament in dizamina hu suggett ghac-cens annwu u perpetwu rivedibbli ta' Lm86.66 skont il-kuntratt datat is-16 t'Awwissu, 2007, *in atti* tan-Nutar Dottor Isabelle Gonzi, (ara foll 100);
  - 3.2. Illi b'kuntratt datat it-28 t'Awwissu, 1978, *in atti* tan-Nutar Dottor Joseph Gatt, (ara foll 48), J. Bugeja *Properties Limited* fdiet mill-poter tal-antekawza tas-socjeta` intimata, ossija *Edrichton Development Company Limited* parti mis-sub-cens annwu u perpetwu rivedibbli ta' Lm70, u cioe` s-sub-cens ta' Lm58.00, biex b'hekk, mill-istess

- gurnata sal-14 t'April, 1990, is-sub-cens annwu u perpetwu rivedibbli kien ta' Lm12.00;
- 3.3. Illi fil-15 t'April, 1990, J. Bugeja *Properties Limited* bdiet thallas is-sub-cens annwu u perpetwu awmentat fuq l-appartament *de quo ai termini* tal-kuntratt tat-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, (ara foll 19);
  - 3.4. Illi sub-cens annwu u perpetwu f'lira sterlina kif naxxenti minn kuntratt pubbliku kellu jifisser bhala pagament fil-munita kurrenti lokali ossija, Liri Maltin, u dan, kif deciz fis-sentenza tal-**21 ta' Jannar, 1975**, deciza mill-**Prim'Awla tal-Qorti Civili fl-ismijiet Emilia mart Carmelo Farrugia vs. Giuseppe Vassallo**, (ara foll 107);
  - 3.5. Illi jaqbel mal-kontenzjoni tar-rikorrenti li c-cens annwu u perpetwu originali rivedibbli pagabbli lill-Ufficju Kongunt jammonta ghal £Stg6.32p. ekwivalenti ghar-rata tal-lum ghal €8.00;
  - 3.6. Illi ghalhekk is-sub-cens annwu u perpetwu dovut lis-socjeta` intimata fuq l-appartament in dizamina ammontanti ghal Lm86.66 ekwivalenti ghal €201.86c ghandhom jitnaqqsu £Stg6.32p. ekwivalenti ghal €8.00 li kien jithallas lill-Ufficju Kongunt *stante* li r-rikorrenti jsosstni li hu gie hekk rikonoxxut mill-Ufficju Kongunt u sahsansitra feda l-istess cens biex b'hekk, is-sub-cens annwu u perpetwu pagabbli lill-intimat hu ta' €193.86;
  - 3.7. Illi ghalhekk it-talbiet tar-rikorrenti li l-awment rimanenti tas-sub-cens ta' 1.275 *pounds* li gie rivedut fil-15 t'April, 1990, ghandu jkun ta' 8.66 *pounds* jew somma ohra verjuri, ghandhom jigu michuda minn din il-qorti;
  - 3.8. Illi ghalhekk ukoll ghandha tigi michuda t-talba li s-sub-cens ta' £4.405 ghandu jigi rivedut *stante* li s-sub-cens annwu u perpetwu tal-fond fuq imsemmi gie stabbilit fl-ammont ta' Lm12.00 ekwivalenti ghal €27.95 mit-28 t'Awwissu, 1978, b'kuntratt tal-istess data indikata fil-paragrafu precedenti *in atti* tan-Nutar Dottor Joseph Gatt, (ara foll 48);

- 3.9. Illi ghalhekk l-azzjoni odjerna hi preskritta *a tenur* tal-artiklu 2140 u 2143 tal-Kodici Civili billi ghaddew aktar minn tletin (30) sena mid-data ta' meta gie stabbilit is-sub-cens annwu u perpetwu revidibbli;
- 3.10. Illi kif jirrizulta mill-kuntratt datat it-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, is-sub-cens annwu u perpetwu rivedibbli ta' Lm70.00 li minnhom jridu jitnaqqsu Lm58.00 li gew mifdija bil-kuntratt tat-28 t'Awwissu, 1978, *in atti* tan-Nutar Joseph Gatt, (ara foll 48), kellu jigi rivedut kull 25 sena mill-15 t'April, 1965, a bazi tal-valur tal-lira sterlina f'dik id-data futura kif paragonata mal-valur prezenti ossija s-sub-cens hu bbazat fuq 70 gurnata lavorattiva ta' ragel adult f'Malta b'paga bazika minima ta' sitt liri fil-gimgha u 25 sena wara, r-revizjoni tac-cens u tas-sub-cens ghandha ssir, u l-ammont pagabbli, kull sena, u ghandu jkun aggstat u jkun ekwivalenti ghal 70 gurnata lavorattiva ta' salarju ta' haddiem f'Malta;
- 3.11. Illi fil-15 t'April, 1990, J. Bugeja *Properties Limited* u l-ante-kawza tal-intimat *Edrichton Development Company Limited* stabbilew l-ammont ta' sub-cens li kellu jithallas, cioe` €201.86, (ara foll 48);
- 3.12. Illi dan ifisser li fil-15 t'April, 2015, il-€201.86 jew €193.86, (skont il-kaz), sub-cens annwu u perpetwu rivedibbli ghandu jigi awmentat a bazi tal-paga minima bazika ta' tnax- il gurnata lavorattiva ta' haddiem Malti, kif gia` deciz minn dawn il-qrati fil-kawza **Dottor Marco Grixti nomine vs. Edrichton Holdings Limited**, deciza mill-Qorti tal-Appell fis-27 t'April, 2003, (ara foll 77), u fil-kawza fl-ismijiet **Edrichton Estates Limited vs. Av. Dr. Neville Camilleri nomine**, deciza mill-Qorti tal-Appell fit-30 t'April, 2009, (ara foll 111);
- 3.13. Illi t-talbiet tar-rikorrenti ghandhom jigu respinti bl-ispejjez *stante* li meta r-rikorrenti akkwista l-proprjeta` imsemmija fl-20 t'April, 2011, b'kuntratt *in atti* tan-Nutar Dottor Philip Lanfranco, (ara foll 57), minghand John Joseph Simon Byrne li kien akkwista l-istess proprjeta` minghand J. Bugeja *Properties Limited* b'kuntratt datat is-16 t'Awwissu, 2007, *in atti* tan-Nutar Isabelle Gonzi (ara foll

100), minn fejn kien jirrizulta li s-sub-cens annwu u perpetwu kien ta' €201.86 ekwivalenti ghal Lm86.66;

3.14. Illi hu ovvju li r-rikorrenti kien jaf li s-sub-cens in dizamina kien dovut minnu *stante* li l-ante-kawza tieghu John Joseph Simon Bryne kien mhux biss hallas dan is-sub-cens, imma wkoll il-lawdemju dovut lill-intimat;

3.15. Illi r-rikorrenti ma jistax jippretendi li wara 36 sena jhallas anqas minn dak li hu dovut minnu lill-intimat;

3.16. Illi r-rikorrenti ghandu jhallas ic-cens annwu u perpetwu rivedibbli ta' €201.86, li ghandu jigi rivedut fil-15 t'April, 2015, kif ghamlu J. Bugeja *Properties Limited* u John Joseph Simon Bryne minn fejn jirrizulta t-titolu tieghu;

3.17. Salv risposti ulterjuri;

4.0. Illi s-socjeta` intimata pprezentat kontro-talba annessa mar-risposta guramentata taghha fuq sintetikament elenkata, li permezz taghha, a bazi tal-istess fatti fuq espressi u hemm essenzjalment ripetuti, talbet lir-rikorrenti jghid ghaliex din il-qorti m'ghandiex, (ara foll 97):

4.1. Tiddikjara li s-socjeta` intimata rikonvenzjonanti hi proprjetarja tas-sub-dirett dominju annwu perpetwu u rivedibbli gravanti l-appartament internament immarkat 35, *Block 5, Dolmen Court*, Triq il-Kurazza, il-Qawra, kif suggett ghas-sub-cens annwu u perpetwu ta' €201.86 jew €193.86, jekk ir-rikorrenti rikonvenzjonat gie rikonoxxut mill-Ufficju Kongunt, liema sub-cens annwu u perpetwu irid jigi awmentat kull 25 sena mill-15 t'April, 1965, skont il-kuntratt tat-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino;

4.2. Tiddikjara li s-socjeta` rikonvenzjonanti fil-15 t'April, 2015, irid jibda jhallas sub-cens annwu u perpetwu awmentat a bazi tal-klawsola 9 tal-kuntratt tat-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, b'dan is-sub-cens annwu u perpetwu ta' €201.86 jew €193.86 skont il-kaz, jigi rivedut a bazi tal-lira sterlina kif paragonata mal-valur taghha f'dak iz-zmien, ossia, ibbazati fuq 70 gurnata lavorattivi ta' haddiem f'Malta

b'paga minima fiz-zmien tar-revizjoni, u cioe`, fil-15 t'April, 2015, b'dan illi s-sub-cens annwu u perpetwu ghandu jkun ekwivalenti ghall-paga ta' t'nax -il gurnata lavorattiva ta' haddiem f'Malta fid-data tar-revizjoni;

- 4.3. Tikkundanna lir-rikorrenti rikonvenzjonat biex ihallas is-sub-cens annwu u perpetwu u lawdemju relattiv ta' €201.86 jew €193.86 skont il-kaz, gravanti l'appartament numru 35, *Block 5, Dolmen Court*, Triq il-Kurazza, il-Qawra, mill-1 ta' Lulju, 2011, sall-14 t'April, 2015, *stante* li hu akkwista l-*utile dominium* perpetwu rivedibbli tal-fond fuq imsemmi bil-kuntratt tal-20 t'April, 2011, tan-Nutar Philip Lanfranco;
- 4.4. Bl-ispejjez kif dedotti fl-istess kontro-talba;
- 5.0. Rat ir-risposta guramentata ghall-kontro-talba tas-socjeta` intimata rikonvenzjonanti, li permezz taghha r-rikorrenti rikonvenzjonat sintetikament irrisponda bil-mod segwenti, (ara foll 140):
  - 5.1. Illi t-talbiet rikonvenzjonanti huma nfondati, *stante* li s-sub-cens in dizamina mhux dak pretiz mis-socjeta` intimata rikonvenzjonanti izda hu fl-ammonti indikati mir-rikorrenti rikonvenzjonat fir-rikors promotur tieghu senjatment £4.40.5 kif jirrizulta mill-kuntratt tal-5 ta' Lulju, 1966, *in atti* tan-Nutar George Cassar, (ara foll 38), u l-kuntratt datat it-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino, (ara foll 7);
  - 5.2. Illi kuntrarjament ghal dak pretiz mis-socjeta` intimata, fil-kuntratt tal-15 t'April, 1990, din setghet biss tirrevedi l-ammont ta' sub-cens lilha dovut, senjatament, £1.27.5, kif indikat fil-kuntratt tat-28 t'Awwissu, 1978, *in atti* tan-Nutar Joseph Gatt, (ara foll 48);
  - 5.3. Illi skont l-istess kuntratt indikat fil-paragrafu precedenti, wara li infeda parti mill-awment fis-sub-cens fl-ammont ta' £58.00 minghand *Edrichton Development Company Limited*, l-appartament *de quo* baqa' suggett ghall-£10.72.5 cens u sub-cens, u £1.27.5 awment fis-sub-cens dovut lill-istess socjeta`;



- 5.4. Illi ghalhekk l-istess socjeta` intimata rikonvenzjonanti ma tista' bl-ebda mod tirrevedi l-ammonti dovuti lil terzi, liema ammonti jirrevedu ruhhom skont il-kuntratti li gew fihom kostitwiti;
- 5.5. Illi l-ammonti ta' cens li ghandhom jigu riveduti fil-15 t'April, 2015, mhumieq dawk indikati mis-socjeta` intimata izda dawk indikati mir-rikorrenti;
- 5.6. Illi kwalunkwe ammont zejzed li setghu hallsu l-predecessuri fit-titolu tar-rikorrenti huma biss *indebitum* u ma jobbligax lir-rikorrenti jhallas l-ammonti eccessivi rikjesti, u dan, kif deciz fis-sentenza datata s-27 ta' Frar, 2003, (ara foll 77);
- 5.7. Illi l-ammont ta' cens indikat fil-kuntratt datat is-16 t'Awwissu, 2007, *in atti* tan-Nutar Isabelle Gonzi, (ara foll 100), li la r-rikorrenti u lanqas is-socjeta` intimata ma kienu parti fih, hu zbaljat billi ma jirriflettix il-kuntratti precedenti;
- 5.8. Illi l-istess kuntratt bl-ebda mod ma jorbot lir-rikorrenti biex ihallas l-ammont zbaljat hemm indikat;
- 5.9. Illi l-ammont indikat fil-kuntratt datat l-20 t'April, 2011, *in atti* tan-Nutar Philip Lanfranco, (ara foll 57), mhux zbaljat billi jirrifletti cnus u sub-cnus kif indikati fil-kuntratti fejn gew kostitwiti l-istess;
- 5.10. Salv risposti ulterjuri;
- 5.11. Bl-ispejjez;
6. Rat in-nota ta' sottomissjonijiet tar-rikorrenti datata t-8 ta' Frar, 2017, (ara foll 309), flimkien man-nota ta' sottomissjonijiet tas-socjeta` intimata datata l-11 t'April, 2017, (ara foll 321);
7. Semghet ix-xhieda prodotta;
8. Ezaminat id-dokumenti prodotti flimkien mad-dikjarazzjonijiet guramentati pprezentati *in atti*;

9. Rat il-verbal tal-abbli rapprezentant legali tal-partijiet datat is-6 ta' Gunju, 2017, li permezz tieghu infurmaw lill-qorti li kienu qed jistrieħu fuq in-noti minnhom ipprezentati;

Ikkunsidrat:

10. Illi fl-essenzjalita` tagħha din hi procedura dwar is-sub-cens gravanti l-appartament numru 35, Blokk 5, *Dolmen Court*, Triq il-Kurazza, il-Qawra, (ara foll 1);
11. Illi r-rikorrenti hu s-sub-enfitewta, filwaqt li s-socjeta` intimata hi s-sub-direttarju, (ara foll 1 u 97 rispettivament);

Ikkunsidrat:

12. Illi permezz ta' kuntratt *in atti* tan-Nutar Paul Pullicino datat it-3 ta' Marzu, 1969, (ara foll 7), is-socjeta` *Edrichton Developments Company Limited* ittrasferiet l-appartament *de quo* lil Patricia Roe, suggett għas-sub-cens annwu u perpetwu ta' £70.00, liema ammont jikkompreni s-somma ta' £10.72.5, rapprezentanti c-cens originali u sub-cens, u s-somma ta' £59.27.5 rapprezentanti awment fis-sub-cens impost fuq dan il-kuntratt stess mis-socjeta` ġia` imsemmija f'dan il-paragrafu;
13. Illi permezz ta' kuntratt *in atti* tan-Nutar Dottor Isabelle Gonzi datat is-16 t'Awwissu, 2007, (ara foll 100), John Joseph Simon Byrne akkwista l-istess appartament meritu tal-procedura odjerna fuq riferit, (ara paragrafu numru għaxra, (10.), aktar qabel), minghand is-socjeta` J. Bugeja *Properties Limited*;
14. Illi permezz ta' kuntratt *in atti* tan-Nutar Philip Lanfranco datat l-20 t'April, 2011, (ara foll 57), ir-rikorrenti akkwista l-istess appartament meritu tal-procedura odjerna indikat fil-paragrafu precedenti minghand l-imsemmi John Joseph (Simon) Byrne, kif suggett għas-sub-cens pagabbli lis-socjeta` intimata;

Ikkunsidrat:

15. Illi kif jidher mill-kuntratt datat it-3 ta' Marzu, 1969, fuq riferit, (ara paragrafu numru tnax, (12.), aktar qabel), jirrizulta pattwit is-segwenti:

“1. The property above described and transferred by virtue of this deed is being sold as subject to an annual and perpetual ground-rent of seventy pounds, (£70), payable six monthly in advance as from this day and due on the first day of January and the first day of July of each year, out of this sub-ground rent the amount of ten pounds fourteen shillings and six pence, (£10.14.6), is a share of the original ground rent and sub ground rent burdening the said property with the balance of fifty-nine pounds five shillings and six pence (£59.05.6), being imposed by the vendor with the acceptance of the purchaser as an increase of annual perpetual sub-ground rent”, (ara foll 14 u 15);

16. Illi l-ammont ta' £10.72.5p. jikkonsisti fl-ammont ta' £6.32 rapprezentanti cens originali lill-Monastero San Pietro, u £4.40.5p. rapprezentanti is-sub-cens dovut lis-socjeta` *PAM Malta Limited*, (ara foll 38 *et seq.*);
17. Illi r-rikorrenti jssosstni li wara l-kuntratt datat it-3 ta' Marzu, 1969, (ara foll 7), l-appartament in dizamina kien suggett ghal cens originali ta' £4.40.5p. lill-*PAM Malta Limited*, u awment fis-sub-cens dovut lis-socjeta` *Edrichton Developments Company Limited* ta' £59.27.5p., (ara foll 2 u 3);

Ikkunsidrat:

18. Illi permezz tal-kuntratt *in atti* tan-Nutar Joseph Gatt datat t-28 t'Awwissu, 1978, (ara foll 48), jirrizulta li infeda parti mis-sub-cens ta' £58.00 minghand is-socjeta` *Edrichton Development Company Limited*, (ara foll 53);
19. Illi konsegwenza tal-istess fidi indikat fil-paragrafu precedenti l-appartament meritu tal-procedura odjerna baqa' suggett ghal cens u sub-cens ta' £10.72.5, u ghal awment fis-sub-cens ta'

£1.27.5 dovut lis-socjeta` *Edrichton Developments Company Limited*, komplessivament ammontanti ghal £12, (ara foll 55);

20. Illi s-socjeta` intimata fil-procedura odjerna tirrizulta li hi s-successur fit-titolu tal-imsemmija socjeta` *Edrichton Developments Company Limited*;
21. Illi konsegwentement, ic-cnus in dizamina jispettaw lis-socjeta` intimata;

Ikkunsidrat:

22. Illi rigward tac-cens ta' £6.32 dovut lill-Ufficcju Kongunt, (originarjament dovut lill-Monastero San Pietro), (ara foll 67 *et seq.*), jinghad li dan l-istess cens gie mifdi permezz ta' kuntratt *in atti* tan-Nutar Dottor Philip Lanfranco datat is-16 ta' Jannar, 2013, (ara foll 158 *et seq.*);
23. Illi jirrizulta wkoll li s-sub-cens ta' £4.40.5 indikat fil-kuntratt *in atti* tan-Nutar Dottor George Cassar, (ara foll 38 *et seq.*), kien rivedut fil-15 t'April, 2015, (ara foll 2 u 38 *et seq.*);
24. Illi konsegwentement, in vista tal-premess, is-sub-cens ta' £1.27.5 kellu jigi rivedut fil-15 t'April, 1990, u kull 25 sena wara *ai termini* tal-kuntratt *in atti* tan-Nutar Paul Pullicino datat it-3 ta' Marzu, 1969, (ara foll 7 *et seq.*);

Ikkunsidrat:

25. Illi ghalhekk din il-procedura tippernja fuq il-kwezit ta' liema hu l-ammont attwalment dovut bhala sub-cens gravanti l-appartament in kwistjoni u kemm gie l-ammont rivedut tal-istess fl-2015;
26. Illi tenut kont tal-frammentazzjoni riskontrata fil-kuntratti u fid-dokumentazzjoni pprezentata *in atti*, tali analizi jirrikjedi attenzjoni specjali mhux komuni u rarament riskontrat;
27. Illi min-naha tieghu r-rikorrenti jsosstni li s-sub-cens riklamat mis-socjeta` intimata hu wiehed ezagerat, (ara foll 140 u 141);

Ikkunsidrat:

28. Illi jirrizulta li s-socjeta` intimata kienet tibghat avviz lill-utilisti taghha, inkluzi lil dawk tal-appartament *de quo*, biex ihallsuha l-ammont ta' cens jew sub-cens lilha dovut;

Ikkunsidrat:

29. Illi fis-sena 1990, jirrizulta li meta s-socjeta` intimata giet biex tirrevedi l-awment tas-sub-cens lilha dovut ta' £1.27.5, irrivediet ukoll dak li mhux taghha – senjatament ic-cens ta' £12;
- 30.0. Illi dan ic-cens ta' £12 kien jinkludi s-segwent:
- 30.1. £6.32 dovut lill-Ufficcju Kongunt, li kien gie mifdi, (ara foll 158);
- 30.2. Illi ghalhekk ic-cens li ghadu attwalment dovut lis-socjeta` hu l-ammont rimanenti wara l-imsemmi fidi` - senjatament £1.27.5;
31. Illi jinghad li r-rapprezentant tas-socjeta` J. Bugeja *Properties Limited*, il-predecessuri fit-titolu tar-rikorrenti, kien jhallas l-ammont ta' Lm86.66 minghajr ma jaghmel il-verifiki tieghu fir-rigward, (ara foll 211);
32. Illi konsegwentement, l-ammont indikat fil-paragrafu precedenti bl-ebda mod m'ghandu jittiehed bhala l-bazi li fuqu jigi determinat l-ammont ta' cens effettivament dovut fuq l-appartament in dizamina;

Ikkunsidrat:

- 33.0. Illi fir-rigward tal-**ewwel talba tar-rikorrenti** (ara foll 3), jinghad sintetikament is-segwent:
- 33.1. Illi fir-rigward issir referenza ghall-artiklu 1002 tal-Kap 16 tal-Ligijiet ta' Malta, (minn issa 'l quddiem Kap 16), li jistabilixxi s-segwent:

“Meta l-kliem ta’ konvenzjoni, mehud fis-sens li ghandu skont l-uzu fiz-zmien tal-kuntratt, hu car, ma hemmx lok ghal interpretazzjoni”;

33.2. Illi ssir referenza wkoll ghall-kuntratt *in atti* tan-Nutar Joseph Gatt datat it-28 t’Awwissu, 1978, (ara foll 48), li fih jirrizulta li gie stipulat is-segwent:

“subsequent to this transfer, the above described properties are now subject to twelve pounds only, namely ten pounds seventy two cents and five mils – share of the original ground-rent and sub-ground rent, and one pound twenty seven cents five mils balance of increased sub-ground due to the *Edrichton Development Co. Ltd.*, (ara foll 55);

33.3. Illi jinghad li l-appartament in kwistjoni hu suggett ghas-sub-cens annwu u perpetwu ta’ £4.40.5 rivedibbli skont il-kuntratt tal-5 ta’ Lulju, 1966, (ara foll 38) u ghall-awment ta’ sub-cens annwu u perpetwu ta’ £1.27.5, rivedibbli skont il-kuntratt tat-3 ta’ Marzu, 1969, (ara foll 7);

34. Illi in vista tal-premess, l-ewwel talba tar-rikorrenti allura ghandha tigi akkolta u konsegwentement, l-ewwel kontro-talba tas-socjeta` intimata rikonvenzjonanti ghandha ghalhekk tigi respinta;

Ikkunsidrat:

35.0. Illi fir-rigward tat-**tieni talba tar-rikorrenti**, (ara foll 3), li permezz taghha essenzjalment qed jitlob x’ghandu jkun l-awment rimanenti tas-sub-cens ta’ £1.27.5 wara ir-revizjoni datata l-15 t’April, 1990, u dan, skont il-kuntratt tat-3 ta’ Marzu, 1969, (ara foll 7), u wara l-fidi` permezz tal-kuntratt tat-28 t’Awwissu, 1978, (ara foll 48), jinghad sintetikament is-segwent:

35.1. Illi f’dan l-istadju ssir referenza ghall-kuntratt tat-3 ta’ Marzu, 1969, (ara foll 7), specifikament ghall-klawsola numru 9, (ara foll 19 u 20), fejn gie pattwit is-segwent:

“The sub ground rent of seventy pounds (£70) per annum shall be revised and re-assessed after the lapse of twenty five years from the fifteenth April one thousand nine hundred and sixty five which revision shall be based solely on the value of the pound sterling on that future date as compared to its present value, that is to say, the sub-ground rent is based on seventy working days of an adult male labourer in Malta at the minimum basic wage of six pounds sterling per week, and twenty five years thereafter a revision of the ground rent and sub-ground rent is also to be made and the amount payable yearly shall be adjusted so as to be the equivalent to an adult male labourer’s wage in Malta for seventy (70) working days”;

- 35.2. Illi ssir ukoll referenza ghall-kuntratt *in atti* tan-Nutar Dottor Isabella Gonzi datat is-16 t’Awwissu, 2007, (ara foll 100), fejn gie wkoll pattwit is-segventi bejn il-partijiet kontraenti senjatament is-socjeta` J. Bugeja *Properties Limited* u John Joseph Byrne – il-predecessur fit-titolu tar-rikorrenti:

“The above described property is subject to the annual and perpetual revisable ground rent and sub-ground rent of eighty six Maltese Liri sixty six cents (£m86.66.0), which is payable to Edricthon Development Company Limited every six (6) months in advance on the first (1<sup>st</sup>) day of January and on the first (1<sup>st</sup>) day of July each year and is subject to and enjoys all those servitudes inherent in its position, otherwise free and unencumbered, with all its rights and appurtenances, (ara foll 102);

- 35.3. Illi jirrizulta assodat li r-rikorrenti akkwista l-appartament in kwistjoni minghand l-imsemmi Byrne permezz tal-kuntratt *in atti* tan-Nutar Dottor Philip Lanfranco datat l-20 t’April, 2011, (ara foll 57);

- 35.4. Illi minn ezami tad-dokumenti kospikwi prodotti *in atti* ma jirrizultax li l-kondizzjonijiet pattwiti fil-kuntratt indikat fil-paragrafu precedentii gew sussegwentement mibdula b'xi kuntratt iehor fir-rigward;
- 35.5. Illi in vista tal-premess, jirrizulta ghalhekk li r-rikorrenti akkwista l-appartament mertu ta' din il-procedura suggett ghas-sub-cens ta' Lm86.66 u konsegwentement hu ghalhekk marbut bl-istess sub-cens;
- 35.6. Illi ghalhekk, is-£70 riferiti fil-klawsola numru 9 fuq riprodotta, (ara paragrafu numru hamsa u tletin punt wiehed, (35.1.), aktar qabel), wara r-redenzjoni parzjali u revizjoni fuq riferiti dawn saru Lm86.66;

Ikkunsidrat:

- 36.0. Illi wara r-revizjoni tal-2015 fuq riferita, (ara paragrafu numru tlieta u ghoxrin, (23.), aktar qabel), jinghad sintetikament is-segwentanti:
- 36.1. Illi l-istess sub-cens irid jigi rivedut skont l-introjtu ta' haddiem ghal 12 il-gurnata lavorattiva fil-15 t'April, 2015;
- 36.2. Illi jirrizulta li l-paga minima dak iz-zmien kienet tammonta ghal mija sitta u sittin euro u sitta u ghoxrin centezmu, (€166.26), fil-gimgha – jew tlieta u tletin euro u hamsa u ghoxrin centezmu, (€33.25) kull jum;
- 36.3. Illi meta ma dan l-ammont jizdiedu l-*bonus* u l-*“weekly allowance”* ammontanti ghal hames mija u tnax –il euro u tnejn u hamsin centezmu, (€512.52), fis-sena – jew disat euro u seba' u tmenin centezmu, (€9.87), fil-gimgha – jew euro u seba' u disghin centezmu, (€1.97), kull jum, u hamsa u tletin euro u tnejn u ghoxrin centezmu, (€35.22) kuljum, senjatament (€33.25 + €1.97);
- 36.4. Illi in vista tal-premess tnax (12) -il gurnata ta' xoghol huma ekwivalenti ghal:

$$\mathbf{€35.22 \times 12 = €422.64}$$



36.5. Illi konsegwentement, l-ammont ta' cens li ghandu jirrizulta mir-revizjoni t'April, 2015, ghandu jkun dak komplessiv indikat fil-paragrafu precedenti, senjatament €422.64, u dan b'applikazzjoni tal-kuntratt *in atti* tan-Nutar Dottor Philip Lanfranco datat l-20 t'April, 2011, (ara foll 57 *et seq.*);

Ikkunsidrat:

37.0. Illi fir-rigward tat-**tielet talba tar-rikorrenti**, (ara foll 3), jinghad sintetikament is-segwenti:

37.1. Illi din it-talba tittratta r-revizjoni tas-sub-cens fl-ammont ta' €4.40.5 li ssir referenza ghalha fil-kuntratt *in atti* tan-Nutar Dottor George Cassar datat il-5 ta' Lulju, 1966, (ara foll 38);

37.2. Illi fil-klawsola numru 6 tal-istess kuntratt indikat fil-paragrafu precedenti, (ara foll 41), il-partijiet ftehm u is-segwenti:

“The said sub-ground rent of £415.14.2 is to be revised and re-assessed after the period of fifty years starting from the fifteenth April nineteen hundred and sixty five, (15<sup>th</sup> April, 1965), which revision shall be made as follows; the revised ground rent will be based on the adult male minimum basic wage for four hundred and fifteen working days of a labourer in Malta at that time in Malta as compared to the adult male minimum basic wage today of six pounds (£6) sterling per week”;

37.3. Illi in vista tal-premess, biex tigi ghalhekk deciza t-tielet talba tar-rikorrenti in dizamina, jinhtieg li tigi applikata l-paga minima kif fl-1965, paragonata ma dik il-paga minima ezistenti fl-2015 – data din tal-ahhar, meta kellha ssir ir-revizjoni;

37.4. Illi fil-fehma ta' din il-qorti din ghandha tinhadem bil-mod segwenti;

- 37.4.1. Paga Minima fl-2015 tirrizulta li kienet fl-ammont ta' mija u tmienja u sittin euro u disgha u ghoxrin centezmu, (€168.29), fil-gimgha – ekwivalenti ghal Lm14.45 kuljum;
- 37.4.2. Illi konsegwenza tas-suespost ir-revizjoni *de quo* ghandha tinhadem bil-mod segwenti:
- £4.40.5 x 14.45 = Lm63.65 ekwivalenti ghal  
€148.26**
- 37.4.3. Illi fl-istess somma fuq esposta jinghad li din tirrizulta li l-Lira Maltija tapplika ghalha kif jigi spjegat aktar 'l quddiem;

Ikkunsidrat:

- 38.0. Illi fir-rigward tar-raba' talba tar-rikorrenti (ara foll 4), jinghad sintetikament is-segwenti:
- 38.1. Illi din it-talba tirrigwarda l-kwistjoni f'liema munita ghandu jithallas ic-cens u sub-cens in dizamina;
- 38.2. Illi jigi stabbilit li l-pagament *de quo* ghandu jkun ibbazat fuq il-Lira Maltija;
- 38.3. Illi applikat l-insenjament tas-sentenza tal-**Prim'Awla tal-Qorti Civili**, fl-ismijiet **Emilia Farrugia mart Carmelo, minnu assistita vs. Giuseppe Vassallo**, datata l-**21 ta' Jannar, 1975**, (ara foll 107), fejn a skans ta' dilungar inutili ssir referenza ghat-tieni paragrafu a foll 109 tal-process odjern fejn gie stabbilit f'sitwazzjoni simili, li l-valuta li ghandha tigi uzata fic-cirkostanzi hi dik tal-Lira Maltija;
- 38.4. Illi dan qed jirrizulta hekk *stante* li ghal zmien twil ic-cens *de quo* dejjem thallas fil-valuta tal-Lira Maltija, (ara foll 288 sa 293);

- 38.5. Illi ovjament, stabbilit dan l-ammont fil-valuta imsemmija, l-istess ghandu jigi konvertit fil-valuta prezentement vigenti, senjatament l-Euro;

Ikkunsidrat:

- 39.0. Illi konsegwenza tas-suespost din il-vertenza qed tigi deciza bil-mod segwenti:

**DECIDE:**

- 39.1. Illi l-ewwel (1) talba tar-rikorrenti, (ara paragrafu numru wiehed punt sbatax punt wiehed, (1.17.1.), aktar qabel u foll 3), qeghda tigi akkolta u ghalhekk l-appartament numru 35, *Block 5, Dolmen Court*, Triq il-Kurazza, l-Qawra, hu suggett ghal sub-cens annwu u perpetwu ta' £4.40.5 rivedibbli fl-2015 kif indikat fil-kuntratt tal-5 ta' Lulju, 1996, u ghall-awment ta' sub-cens annwu u perpetwu ta' £1.27.5 rivedibbli skont il-kuntratt tat-3 ta' Marzu, 1969, *in atti* tan-Nutar Paul Pullicino;
- 39.2. Illi t-tieni (2) talba tar-rikorrenti, (ara paragrafu numru wiehed punt sbatax punt tnejn, (1.17.2.), aktar qabel u foll 3), qeghda ghalhekk tigi rispinta *stante* li l-awment postulat m'ghandux ikun kif hemm mitlub;
- 39.3. Illi fir-rigward tat-tielet (3) talba tar-rikorrenti, (ara paragrafu numru wiehed punt sbatax punt tlieta, (1.17.3.), aktar qabel u foll 3 u 4), fejn ir-rikorrenti jitlob lill-qorti tiddikjara kif ghandha ssir ir-revizjoni tas-sub-cens hemm indikat - tiddikjara li dan ghandu jsir bil-mod minnha gia indikat aktar qabel, (ara paragrafu numru sebgha u tletin punt tlieta, (37.3.), senjatament li tigi applikata l-paga minima kif ezistenti fl-1965 paragonata ma dik il-paga minima ezistenti fl-2015;
- 39.4. Illi fir-rigward tar-raba (4) talba tar-rikorrenti, (ara paragrafu numru wiehed punt sbatax punt erbgħa, (1.17.4.), u foll 4), fejn l-istess rikorrenti qieghed jitlob lill-qorti tiddeciedi liema ghandha tkun il-munita li ghandha tkun applikata għall-kuntratti in dizamina, jigi deciz li a

bazi tal-istess, ghandha tkun il-Lira Maltija – eventwalment tradotta f'Euro – li hi l-munita applikabbli illum;

- 39.5. Illi in vista tal-premess, it-talbiet kontenuti fil-kontro-talba tas-socjeta` intimata rikonvenzjonanti huma kollha respinti;
- 39.6. Bl-ispejjez kollha ta' din il-procedura jkunu kollha kontra l-istess socjeta` intimata *Edrichton Estates Limited*.

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Onor. Imhalled Silvio Meli

## **DECIZJONI FINALI**