

Court of Appeal  
(Inferior Jurisdiction)  
Judge Anthony Ellul  
Appeal No: 129/2017

**Marissa Maria Van Den Berg (appellant)**

**vs**

- 1. Maarten Haegdorens and Marilena Haegdorens;**
- &**
- 2. Fleur Muscat in her own name and on behalf of  
RE/MAX Alliance Pender (respondent)**

8<sup>th</sup> January 2019.

- 1. This appeal concerns the issue whether the Rent Regulation Board has the "jurisdiction" to decide claims against third parties who are neither landlord nor tenant; and the "competence" to decide claims relating to brokerage fees.**
2. On the 25<sup>th</sup> of September 2017 plaintiff (lessee) filed an application to the Rent Regulation Board wherein she explained that on the 30<sup>th</sup> of June 2017 she had signed a lease agreement (Doc. A) with defendants (lessors) Haegdorens with regards to apartment 93/2, Old College Street, Sliema. According to the said agreement, the property was leased to plaintiff for the duration of one year and one day with effect from the 7<sup>th</sup> of July 2017. Plaintiff also explained that before she moved into the apartment she paid €900 as a "guarantee deposit", another €900 as the first monthly rent and €398.25 as "agency fees". She claimed that notwithstanding having been assured that the leased property was clean and habitable, on moving into such property she found that the shaft was replete with drainage and mould and was emitting an unbearable odor; and that as a consequence of such an unsanitary situation she was constrained to vacate the premises after just two

days. Hence she requested the Rent Regulation Board:

- (1) to **rescind** the aforementioned lease agreement;
- (2) to order defendants Maarten and Marilena Haegdorens to refund the sum of **€900** (guarantee deposit) and the sum of **€900** (the first month's rent paid in advance);
- (3) to order defendant Fleur Muscat (pro et nomine) to refund the sum of **€398.24** (agency fees).

3. On the 13<sup>th</sup> of November 2017 defendants Maarten and Marilena Haegdorens filed their reply with regards the merits of the case and also filed a counter-claim requesting the Rent Regulation Board:

- (1) to condemn plaintiff to pay them **€9,900** (i.e. the rent for the remaining eleven months);
- (2) to liquidate costs and damages borne by them as a consequence of breach of contract by plaintiff;
- (3) to order plaintiff to pay such amount liquidated.

4. On the 19<sup>th</sup> of December 2017 defendant Fleur Muscat filed her reply which includes the following two preliminary pleas:

- (1) The Rent Regulation Board lacks the **jurisdiction** to decide claims directed at third parties who are neither the lessor nor the lessee;
- (2) Defendant *nomine* was simply a letting agent who introduced lessor to lessee, and the brokerage fees paid by lessee are distinct from the lease agreement in question; hence the Rent Regulation Board also lacks the **competence** (*rationæ materiæ*) to decide the claim insofar as it concerns said brokerage fees.

5. On the 16<sup>th</sup> July 2018 the Rent Regulation Board delivered a preliminary judgment upholding respondents pleas:

*"In the Board's view it is evident that defendant Fleur Muscat is correct in stating that the Board's jurisdiction is exclusively limited to issues which arise in relation to rent between the landlord, lessee and/or sub-lessee in the different variations. It is amply clear that defendant Fleur Muscat upon signing the contract of lease was doing so because it was her role to do so. She did not assume any kind of obligation vis-à-vis any of the parties. This Board will not and*

*cannot delve into the issue whether Ms Muscat was acting in her own personal capacity or else whether she was acting as a letting agent of JK Properties Ltd. Moreover, the Board cannot decide on issues relating to agency fees because this is the competence of the ordinary Courts or in this case due to the amount involved it is the competence of the Small Claims Tribunal.*

*For the above-mentioned reasons, the Board upholds the first and second preliminary pleas raised by Fleur Muscat and thus declares that it does not have jurisdiction and also does not have the competence rationæ materiæ to decide on applicant's third claim".*

6. On the 6<sup>th</sup> of August 2018 plaintiff Marissa Maria Van Den Berg lodged an appeal wherein she requested this court to cancel, revoke and annul said judgment, to accept her grievances, and this appeal of hers, with expenses of both instances to be paid by defendant Fleur Muscat.
7. Appellant contends that the Rent Regulation Board was incorrect in stating that its jurisdiction is limited to issues which arise in relation to leases between the landlord, the lessee and/or sub-lessees in different variations. She highlights the fact that Article 1525 of the Civil Code (as amended by Act X of 2009) stipulates that all matters related to the contracts of lease fall under the exclusive jurisdiction of the Rent Regulation Board, and consequently argues that a claim for the refund of brokerage fees from the person who signed the very same lease agreement as the lessor and lessee should be considered as a "related matter". She remarks that in its decision the Rent Regulation Board made limitations to the very same law which gives it exclusive jurisdiction in all matters related to leases. Furthermore she maintains that the scope of Act X of 2009 was so that disputes arising from the same lease agreement would not be fragmented into separate proceedings in front of different adjudicating bodies.
8. Defendant Fleur Muscat, duly notified with said appeal application on the 20<sup>th</sup> August 2018, did not reply.
9. Article 1525 of the Civil Code stipulates that:-

*"... The Rent Regulation Board, (hereinafter referred to as the "Rent Board", established under the Reletting of Urban Property (Regulation) Ordinance shall have exclusive*

*competence to decide **on all matters relating to contracts of lease** of urban property and of residence and of commercial tenements. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act..”*

10. According to Article 1525 of the Civil Code the Rent Regulation Board has the “*exclusive competence*” to decide on all matters relating to contracts of lease. It is a fact that the respondent signed the contract of lease, presumably due to the clause in the lease contract stating that the Lessor and Lessee each agree to pay a non-refundable agent’s fee to ‘Remax Malta’, “*being half the first month’s rental (+ 18% VAT) or 10% (+ 18% VAT) of the value of the total stay if less than 6 months*”. However, a contract of lease is one between the lessor and the lessee. They are the only parties having rights and obligations under the lease. Therefore, the court understands that the “*exclusive competence*” **IS** in fact limited to matters concerning the lessor-lessee relationship. Issues with third parties do not fall within the jurisdiction of the Board. The contract itself makes it amply clear that the lease agreement was

*“entered into between on one part, **Maarten Haegdorens and Marilena Haegdorens**.....hereinafter referred to as the LESSORS; and on the other part, **Marissa Maria Van den Berg**.....hereinafter referred to as the LESSEE”.*

11. Consequently, this Court concludes that the Board has no jurisdiction to decide on plaintiff’s third request, that is the refund of the sum of €398.25 she paid as brokerage fees to the agent.

**For these reasons the Court rejects the appeal. Appellant is to pay all costs.**

Anthony Ellul.