MALTA

# FIL-BORD LI JIRREGOLA L-KERA

## Magistrat Francesco Depasquale

**LL.D. LL.M. (IMLI)**

**Illum t-Tnejn, 1 ta' April 2019**

Rikors Numru 99/2018

**Spinola Limited**
**(C 4981)**

**vs**

**Fabrizio Lambelet**
**(Passaport Taljan AA1234573)**

Il-Bord,

**1. Premessi**

1. Ra ir-rikors promotur ippresentat fid-19 ta' Lulju 2018 fejn is-socjeta' rikorrenti talbet is-segwenti:

   1. *Illi r-rikorrenti hi s-sid tal-appartament, ossia Flat nru. 16B fi Triq Raddet ir- Roti gewwa x-Xemxija u bhala tali taghat tali fond b'titolu ta' lokazzjoni lill- intimat in virtú ta' ftehim ta' kera li kellu validità mill-4 ta' Ottubru, 2017 sat-3 ta' Ottubru, 2018 u dan versu l-kera mensili ta' €1,100.00c [kopja annessa bhala "Dok: A"]*

   2. *Illi matul il-perijodu lokatizzju, l-intimat qabad u abbanduna l-fond wara li gharraf lir-rapprezentanti tal-kumpannija hawn rikorrenti li kien behsiebu jitlaq minn Malta u jirritorna lura pajjizu.*

   3. *Illi sussegwentement ir-rikorrenti accediet ghal gewwa l-fond fuq deskritt u skopriet illi kien hemm diversi hsarat ikkagunati lill-istess u wkoll li kien hemm diversi oggetti nieqsa minn gewwa fih. F'dan is-sens ir-rikorrenti qed tannetti prospett li qed jigi mmarkat bhala "Dok: B".*

   4. *Illi sussegwentement ir-rikorrenti skopriet illi l-intimat mhux vera kien halla Malta, izda li l-istess kien qed jabita gewwa fond iehor (presumibilment b'titolu ta' kera) ftit 'il boghod mill-imsemmi fond proprjetà taghha.*

5. *Illi ghalkemm ir-rikorrenti pruvat tavvicina bonarjament lill-intimat sabiex jindennizzaha u jikkumpensaha ghad-danni lilha arrekati fil-fond kif appena deskritt, l-istess intimat baqa' passiv u inadempjenti [ara "Dok: C" anness]*

6. *Illi ghalhekk, in vista tan-nuqqasijiet da parti ta' l-intimat u billi dan l-Onorabbli Bord ghandha l-kompetenza esklussiva sabiex jisma' u jiddeciedi kwistjonijiet konnessi ma' kuntratti ta' kiri ta' fond urban, il-kumpannija rikorrenti qed tniedi l-prezenti procedura biex tirrimedja ghall-pregudizzju lilha arrekat mill-inkwilin intimat.*

   *Ghaldaqstant, ir-rikorrenti umilment titlob li dan il-Bord joghgbu:*

   i) *Jiddikjara illi l-intimat kiser unilateralment il-ftehim ta' lokazzjoni ezistenti bejn il-partijiet*

   ii) *Jiddikjara illi l-intimat kien inadempjenti fl-obbligi tieghu bhala inkwilin b'dana illi jiddikjara lill-istess intimat responsabbli ghall-hlas tad-danni minnu kagunati fil-fond mertu tal-kawza;*

   iii) *Tillikwida d-danni mwettqa mill-intimat u tikkundanna lill-intimat biex fi zmien qasir u prentorju stabbilit mill-Bord ihallas lir-rikorrenti dak l-ammont likwidat in linea ta' danni.*

   *Bl-ispejjez tal-prezenti proceduri kontra l-intimat, li huwa ingunt minn issa ghas-subizzjoni, inkluzi l-ispejjez marbuta mal-mandat kawtelatorju ta' sekwestru li qed jigi intvolat kontestwalment mal-prezenti procedura, bl-imghax fuq l-ammont dikjarat bhala dovut skond il-ligi, u b'riserva a favur tar- rikorrenti, u/jew l-aventi kawza taghha, ghal kwalsiasi azzjoni ulterjuri lilha kompetenti u/jew spettanti skond il-ligi kontra l-istess intimat, jew l-aventi kawza tieghu.*

2. Ra illi fis-6 ta' Dicembru 2018, l-intimat gie notifikat bl-affissjoni ġewwa l-Ghassa ta' San Pawl il-Bahar, il-Kunsill Lokali ta' San Pawl il-Bahar u fl-indirizz 1, Xemxija Waterfront residence, Triq is-Simar, Xemxija fejn issa qieghed jirrisjedi (fol 15 tergo) u wara bil-pubblikazzjoni fil-Gazzetta tal-Gvern fit-8 ta' Jannar 2019 (fol 26) u fil-Malta Independent tal-Erbgha 23 ta' Jannar 2019 (fol 30).

3. Ra illi fit-28 ta' Jannar 2019, imsejjah diversi drabi, l-intimat, debitament notifikat, ma deherx.

## 2. Provi

1. Jirrizulta, mix-xhieda ta' **PC 900 Steven Mifsud**, illi fl-1 ta' Gunju 2018, sar rapport (fol 40) ghand il-Pulizija minn Caroline Sammut, ghan-nom tas-socjeta' rikorrenti, fejn gharrfet il-Pulizija illi l-intimat, Fabrizio Lambelet, illi kien kera l-flat 16B, Sea Breeze Terraces, Triq Raddiet ir-Roti, San Pawl il-Bahar, kien telaq mill-flat qabel iz-zmien stipulat fil-kuntratt ta' kera u, filwaqt illi kkaguna varji ħsarat, kien ha varji oġġetti mill-flat u, filwaqt illi gharrafha illi kien ser jemigra d-Dubai meta telaq mill-flat, attwalment mar jirrisjedi ġewwa flat fil-vicin.

2. Jirrizulta, dejjem mix-xhieda tal-Pulizija PC900, illi huma ghamlu kuntatt mal-intimat Fabrizio Lambelet illi mar l-ghassa u r-rapport jgħid is-segwenti dwar tali laqgha:

   *The police called at Water Front Res, Flat no 1, Triq is-Simar, Xemxija, and Mr Fabrizio Lambelet, holder of Maltese ID card no: 111967(A), mob no: 77335550. Same was brought at Qawra police station, were same was given his legal right to consult with his lawyer, to which he refused and signed the usual declaration. (Same is being duly herewith attached).*

   *Fabrizio was duly informed about the afore mentioned report, who form his end same stated that he has been renting the said apartment for the past 3 years and never had any problems with the owner so far. However same was asked about the items, same stated that him and his family has been living there at for the past 3 years and the items got worn out, ex: the microwave broke down, he replaced it but since he moved out he took it with him, sofa was replaced but left it there at, the lock he had to change it since the one that there was had only 2 keys and when he went to do a spare one, he couldn't and thus he replaced it with another. Fabrizio pointed out that when he communicated with p/f/r he told her that she could keep the deposit money (1000 euro) so as to make good for anything that may arise. Also regarding the house key, he told her that he was willing to leave or in the letter box or with one of her relatives who lives in the same block of apartments.*

   *Same was asked about if it was true that he was going to Dubai, to which he stated that in the coming weeks he is meant to go to Dubai since his friend is going to open a company there at and he will be going to work with him. He is planning to maybe do 3 months.*

   *Fabrizio pointed out that this morning he sent p/f/r an email asking what are the damages but p/f/r didn't reply, he also pointed out that he has the rent paid till the 4/06/2018.*

   *When asked Fabrizio stated that he was willing to come to terms with p/f/r.*

3. Jirrizulta, mix-xhieda ta' **Caroline Sammut**, rappresentanta tas-socjeta' rikorrenti illi, fit-30 ta' Mejju 2018 l-intimat gharrafha b'email illi huwa kien sejjer Dubai (fol 106) u fil-31 ta' Mejju 2018, meta staqsietu dettalji dwar ċwievet tal-fond, gharrafha "*I am already in Dubai. I have hired a company for doing all the packing and shipping.*" (fol 107). Sussegwentement Sammut marret ghamlet rapport lill-Pulizija wara li dahhlet fil-fond u sabitu vojt u sussegwentement rat lill-intimat jimxi barra fit-triq bil-kelb tiegħu fl-1 ta' Gunju 2018 u saret taf illi kien qieghed joqghod go block flats fil-vicin u kellu kuntratt ta' sena hemmhekk, u eventwalment, dakinhar illi ghamlet ir-rapport, il-pulizija sabet lill-intimat, li kien gharrafha li kien Dubai, u ittiehed mill-Pulizija fl-Ghassa sabiex jiġi investigat.

4. Jirrizulta, skond ix-xhieda ta' **Sergio Gauci**, direttur tas-socjeta' rikorrenti, illi meta s-socjeta' rikorrenti hadet lura pussess tal-flat, hija kellha tisgassa ġewwa l-flat ghax l-intimat kien biddel is-serratura minghajr ma gharrafha, sabu hafna ħsarat fil-fond, illi kellu jiġi mill-gdid rinnovat u għalhekk tilef kera ta' xahar fil-fond. Apparti minn hekk, kien hemm ħsarat konsiderevoli u kont tad-dawl u ilma pendenti. Finalment, is-socjeta rikorrenti kienet qed tippretendi ukoll il-hlas ta' xahar kera skond il-kuntratt stante illi l-intimat ittermina l-kirja qabel iz-zmien miftiehem.

5. Jirrizulta illi, skond prospett (fol 7) redatt mis-socjeta' rikorrenti u kkonfermat minn Sergio Gauci fix-xhieda tiegħu, l-ammont totali reklamat mis-socjeta' rikorrenti kien jammonta ghal tmint elef, u sitta u tletin Euro u tmienja u sittin ċenteżmu (€ 8,036.68), u dan ghal varji ħsarat u talbiet oħra kif aħjar deskritt f'tali prospett.

6. Jirrizulta, kemm skond il-ftehim iffirmat bejn il-partijiet (fol 3), u preċiżament klawsola 4, s-socjeta' rikorrenti inghatat depositu ta' elf Euro (€1,000) bhala garanzija, liema depositu jidher illi l-istess intimat irrefera għalih mal-Pulizija, kif jidher fir-rapport tal-Pulizija.

7. Jirrizulta, għalhekk, illi tali depositu għandu jitnaqqas mill-ammont rikjest mis-socjeta' rikorrenti.

8. Jirrizulta illi l-intimat, ghalkemm debitament notifikat, baqa' qatt ma rrisponda u, wara illi l-Bord ta' cans lill-intimat sabiex jidher u jiddefendi l-kaz tiegħu, huwa baqa' ma deherx.

9. Jirrizulta, għalhekk, illima hemm ebda raġuni ghaliex il-ħsarat indikat mis-socjeta' rikorrenti ma għandhom jiġu akkollati lill-intimat, wara illi jitnaqqas l-ammont minnu mghoddi lis-socjeta' rikorrenti bhala depositu meta gie ffirmat il-kuntratt.

**Konkluzjoni**

Il-Bord,

Wara illi ra li l-intimat, debitament notifikat, baqa' ma deherx, la biex jikkontesta l-kawza u wisq anqas biex jaghti l-verzjoni tieghu tal-fatti,

Wara illi sema l-provi tas-socjeta' rikorrenti, jaqbad u jiddeciedi l-vertenza billi

**Jiddikjara** illi l-intimat Fabrizio Lambelet unilateralment kiser il-ftehim ta' lokazzjoni ghall-fond ossija Appartament Nru 16B, Sea Breeze Terraces, Triq Raddiet ir-Roti, San Pawl il-Bahar li kellu jiskadi fl-ahhar ta' Settembru 2018.

**Jiddikjara** illi, rizultat ta' tali agir, kif ukoll ta' nuqqasijiet da' parte tieghu, is-socjeta' rikorrenti soffriet danni fl-ammont ta' tmint elef, u sitta u tletin Euro u tmienja u sittin ċenteżmu (€ 8,036.68) li, wara li jitnaqqas id-depositu ta' elf euro (€1,000), ifisser illi s-socjeta' rikorrenti fadallha bilanċ ta' ħsarat fl-ammont ta' **sebat elef, u sitta u tletin Euro u tmienja u sittin ċenteżmu (€ 7,036.68)**, u għalhekk

**Jikkundanna** lill-intimat Fabrizio Lambelet ihallas lis-socjeta' rikorrenti Spinola Limited is-somma ta' **sebat elef u sitta u tletin Euro u tmienja u sittin ċenteżmu (€ 7,036.68)** rappresentanti l-bilanc tad-danni sofferti mill-istess soċjetà rikorrenti riżultat tal-agir ta' l-intimat.

Spejjez tal-proceduri odjerni u imghax mid-data tas-sentenza sad-data tal-pagamenti effettiv ikunu kollha a kariku ta' l-intimat.

**Magistrat Francesco Depasquale**

**Rita Sciberras -** Deputat Registratur