BORD LI JIRREGOLA L-KERA
Magistrat Dr. Charmaine Galea B.A. LL.D.

Illum 17 ta' Settembru 2020.

Rikors Numru 55/20

Francis Gauci
Mirlu Properties Limited
Sandro Estates Limied

Vs

Lawrence Degabriele

Il-Bord,

Ra r-Rikors tar-rikorrenti pprezentat fil-5 ta' Marzu 2020 li permezz tieghu gie premess u ntalab is-segwenti:

"

1. *Illi permezz ta' kuntratt datat 28 ta' Marzu, 2019 fl-atti tan-Nutar Sam Abela, l-atturi xtraw u akkwistaw:*

   *"(a) that part of San Salvatore Bastion, in Vittoriosa, Malta (herinafter referred to as the 'First Portion') of the area of circa ten thousand one hundred and seventy-five square meters (10,175sqm), with all the buildings existing thereon, which is accessible from a main gate without number in the glacis along Saint Edward Street to the south of the Property and from another gate without number in the Property to the South East, bounded the First Portion on the North by Santa Liberata Street, on the East by the remaining part of the bastion, on the South by the glacis along Saint Edward Street and on the West by Santa Liberata Street, and shown edged in blue and marked as Part A on the plan attached hereto and marked as Document '**P1**';*

   *(b)that part of San Salvatore Bastion, in Vittoriosa, Malta (hereinafter to as the 'Second Portion') , of the area of circa one thousand seven hundred and ninety square meters (1,790sq), which part is edged in pink and marked as Part B on the plan hereto attached and marked as Document '**P1**', which portion is bounded on the West partly by property*

of the Government of Malta, on the East by Santa Liberata Street and on the South by Saint Edward Street, or with more accurate boundaries;

*(c)any right, claim, or pretension which the Vendors have, including the right of use, on or in respect of that part of San Salvatore Bastion, in Vittoriosa,Malta (hereinafter referred to as the 'Third Portion'), which part is edged in red and marked as Part C on the plan hereto attached and marked as Document '**P1**', which portion is bounded on the west by the First Portion, on the East by a ditch which is the property of the Government and on the south by other property of the Government, or with more accurate boundaries;*

*(d) one-half (1/2) undivided share of any right, claim or pretension which the Vendors have including the right to receive compensation, on or in respect of that portion of land which has been taken by the Government of Malta for the construction thereon of a public road (hereinafter referred to as the 'Fourth Portion') which portion of land is edged in yellow and marked as Part D on the plan hereto attached and marked as Document '**P1**'; as bounded on the west by the second Portion, on the east by the First Portion and on the Courth (recte: Fourth) by Saint Edward Street.*

The First Portion, the Second Portion, the Third Portion and the Fourth Portion shall hereinafter collectively referred to as 'the Porperty'. The First Portion, the Second Portion, the Third Portion and the Fourth Portion include their relative airspace usque ad coelum and underlying land ".

U dan inkwantu għal:

*"... Francis Gauci as to one-fourth (1/4) undivided share, onto the Purchaser Sandro Estates Limited as to one-fourth (1/4) undivided share and onto the Purchasers Mirlu Properties Limited as to one-half (1/2) undivided share". (**dok. FG1**).*

2. *Illi l-konvenut qiegħed jokkupa parti mill-imsemmija proprjeta ossija garaxx u kien għalhekk li permezz ta' ittra uffiċjali datata 18 ta' Novembru, 2019 bin-numru 4547/2019 (**dok. FG2**), l-atturi talbuh sabiex huwa jiżgombra mill-imsemmija proprjeta minnu okkupata fi żmien xahar mir-reċizjoni tal-imsemmija ittra uffiċjali.*

3. *Illi l-istess konvenut, permezz ta' ittra uffiċjali responsiva datata 19 ta' Diċembru, 2019 bin-numru 5038/19 (**dok. FG3**) stqarr li huwa ilu jokkupa l-fond imsemmi għal għexieren ta' snin u kien iħallas il-kera lill-Gvern ta' Malta, li irrikonoxxih bħala inkwilin u għalhekk mhux minnu li qiegħed jokkupa l-fond mingħajr titolu validu fil-liġi u li ma kien xejn ċar mill-kuntratt ta' akkwist tal-atturi li tali akkwist kien jinkludi l-garaxx mertu tal-ittra uffiċjali. Illi l-istess konvenut, f'diversi ċedoli ta' depożitu minnu magħmula indika dan il-fond bħala li jġib in-numru 4 (30), fi Triq San Dwardu, Birgu.*

4. *Illi fi kliem il-konvenut stess, dan il-fond jużah bħala garaxx u minkejja li l-atturi talbuh jivvaka mill-istess fond, fit-terminu mogħti lilu, huwa baqa ma għamilx hekk.*

5. *Illi l-atturi jiddikjaraw u l-attur Francis Gauci jikkonferma bil-gurament tiegħu li hu jaf il-fatti ta' din il-kawża personalment u li fil-fehma tiegħu l-konvenut ma għandux eċċezzjonijiet x'jagħti għat-talbiet tal-atturi, u għalhekk il-kawża tista tiġi deċiża ai termini tal-artikolu 16A tal-Kapitolu 69 tal-Liġijiet ta' Malta bid-dispensa tas-smiegħ.*

   JGĦID għalhekk il-konvenut, l-għaliex il-Bord ma għandux:

   1. *JAQTA u jiddeċiedi din il-kawza ai termini tal-Artikolu 16A tal-Kapitolu 69 tal-Liġijiet ta' Malta u ċioe bid-dispensa tas-smiegħ;*

   2. *JIDDIKJARA li l-konvenut ma għandux dritt li jokkupa l-fond ossia garaxx li jinsab fi Triq San Dwardu, Birgu fis-Sur ta' San Salvatur (bl-indirizz indikat mill-istess konvenut bħala 4 (30), Triq San Dwardu, Birgu) u KONSEGWENTEMENT JORDNA l-iżgumbrament tiegħu mill-imsemmi fond fi żmien qasir u perentorju li jiġi lil prefiss;"*

Ra id-dikjarazzjoni guramentata ta' Francis Gauci a fol. 61 tal-process;

Ra n-Nota ipprezentata minn Lawrence Degabriele fis-7 ta' Settembru 2020 li permezz taghha elenka r-ragunijiet li abbazi taghhom ghandu jinghata l-fakolta` li jikkontesta t-talbiet tar-rikorrenti;

Ra illi fis-seduta tal-lum deher l-intimat fejn talab li jikkontesta dawn il-proceduri peress li ghandu difiza x'jaghti;

Ra illi wara li sema' s-sottomissjonijiet qies li l-intimat ma ppruvax fuq bazi *prima facie* li ghandu eccezzjonijiet validi x'jaghti u ghaldaqstant il-Bord cahad it-talba tieghu biex jikkontesta dawn il-proceduri;

Ra l-atti u d-dokumenti kollha;

Ra li in vista li din hija procedura sommarja, il-Bord kellu jghaddi ghas-sentenza minnufih.

Ikkunsidra:

Illi mir-rizultanzi processwali jirrizulta illi l-intimat kien jikri minghand id-Dipartiment ta' l-Artijiet, illum Awtorita` ta' l-Artijiet, il-fond ossia garaxx in kwistjoni. Jirrizulta wkoll illi l-ahhar ricevuta prezentata in atti rigward din il-kirja hija dik ghall-perjjodu bejn l-1 ta' Lulju 2007 u l-31 ta' Lulju 2007 (a fol. 103) wara liema hemm *vacuum*, bil-kirja tibda tigi depozitata taht l-

Awtorita` tal-Qorti f'Jannar 2018 wara li gie premess fic-cedola ta' depozitu illi fis-sena 2011 il-Gvern kien irritorna lura l-hlas tal-kera ghax kien qieghed jikkontendi li l-fond in kwistjoni ilu sa mis-sena 1982 mhux proprjeta` tieghu (ara fol. 104).

Illi mill-kuntratti esebiti mar-rikors promutur jirrizulta illi fit-28 ta' Marzu 2019, ir-rikorrenti akkwistaw b'titolu ta' xiri minghand terzi diversi partijiet tas-Sur Ta' San Salvatur gewwa l-Birgu u dan kif ahjar deskritti fl-istess kuntatt esebit a fol.6 *et sequitur* tal-process u kif murija fil-pjanta annessa mal-istess kuntratt u mmarkata bhala Dokument P1 a fol. 50 tal-process.

Illi ma jirrizultax li hemm kontestazzjoni illi l-fond in kwisjtoni jifforma parti mill-proprjeta` akkwistata mir-rikorrenti. Ghalkemm fl-ittra ufficjali ipprezentata fid-19 ta' Dicembru 2019 u esebita a fol. 57 l-intimat kien ivventila l-kwistjoni illi mill-kuntratt ta' akkwist ma kienx car li l-fond in kwisjtoni kien inkluz fl-istess kuntratt, l-istess kwistjoni ma gietx ventilata fin-Nota tieghu tas-7 ta' Settembru 2020 li permezz taghha attakka l-procediment sommarju ordjern.

Illi l-Bord iqis illi ghalhekk, ir-rikorrenti, *qua* sidien tal-garaxx in kwistjoni kellhom dritt jippromwovu l-azzjoni sommarja odjerna stante li l-intimat, anke jekk fiz-zmien kien ihallas il-kera lil awtorita` governattiva, ma jista' jivvanta l-ebda titolu fil-konfront tar-rikorrenti. Huwa probabbli li l-predecessur tal-Awtorita` tal-Artijiet baqa' jircievi l-kirja nonostante li l-art ma kinitx tieghu u nduna biss b'dan wara li l-predecessuri fit-titolu tar-rikorrenti kienu talbu lir-rikorrent biex jizgombra mill-istess fond permezz ta' ittra datata 20 ta' Gunju 2008, liema ittra giet imwiegba fl-1 ta' Lulju 2008 mill-intimat li gharraf lis-sidien ta' dak iz-zmien li kien se jinforma lit-Taqsima Proprjeta` tal-Gvern bil-pretensjonijiet li kienu qeghdin jigu vantati fuq l-istess fond. Jirrizulta li sussegwentement il-predecessur tal-Awtorita` tal-Artijiet kien ha azzjoni ghaliex ma baqghax jaccetta l-kirja tal-fond in kwistjoni minghand l-intimat.

Illi ghalhekk, wara li l-Bord ra l-atti kollha iqis illi t-tieni talba tar-rikorrenti hija misthoqqa.

Decide

Ghal dawn il-motivi, dan il-Bord qieghed jaqta' u jiddeciedi billi jilqa' t-talbiet kollha tar-rikorrent u ai fini tat-tieni talba jordna lill-intimat Lawrence Degabriele jivvaka mill-fond ossia garaxx li jinsab fis-**Sur ta' San Salvatur numru 4 (30), Triq San Dwardu, Birgu** fi zmien disghin (90)

gurnata mil-lum u jirritorna l-istess fond bil-pussess battal favur ir-rikorrenti.

Bl-ispejjez kif mitluba a karigu tal-intimat.

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Dr. Charmaine Galea
Magistrat

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Diane Gatt
Deputat Registratur