



**IN THE SMALL CLAIMS TRIBUNAL**

**Adjudicator: Dr. Claudio Żammit**

**Sitting of Monday, 14th December 2020**

**Claim Number: 165/19 CZ**

**Alexander Spangler**

**vs.**

**Merik Toms**

The Tribunal,

Having considered plaintiff's claim, filed on 1<sup>st</sup> July 2019, wherein he submitted:

1. Din it-talba hija ghall-kundanna tal-intimat biex jirrifondi lill-konvenut sitt mitt Euro (€600) jew ammont verjuri li jiddeciedi t-Tribunal.

2. Dina s-somma kienet tikkonsisti f'depozitu li kien ghamel ir-rikorrent f'iden l-intimat meta kera minghandu flat, cioe' Flat 3, Sky Apartments, Triq Viani, Sliema.
3. Izda meta ngala' incident konsistenti fi storbu u ghajjat persistenti fil-flat sottopost (Nru. 2), u wara li kien ilu jissaporti, ir-rikorrent mar ihabbat fuq il-bieb biex daww il-istorbjuzijieqfu, il-'panel' tal-bieb ifforma qasma; minhabba f'hekk sid il-flat imsemmi pretendiet li dan jissewwa spejjez tar-rikorrent Spangler.
4. Sid il-Flat 3, cioe' l-intimat ma ried kwistjonijiet mas-sid l-oħra, u wara korrispondenza mal-esponent, l-intimat deħru li kellu l-jedd jaqbad u ĵuza parti mid-depożitu biex qabad u hallas il-'carpenters' li allegatament sewwew il-bieb. Dan ma kienx awtorizzat jagħmlu.
5. X'ħin l-esponent irrealizza li, flok issewwa l-panel f'Malta, il-bieb b'kollox, kien meħud Ghawdex għand Zammit Woodworks, li tellghu kont ta' erba' mitt Euro (€400), huwa pprotesta, l-ewwel għax ma rax invoice/ricievuta bil-VAT, izda l-iktar ukoll għax minn verifiki li għamel Malta sab li dak il-panel kien jissewwa b'imqar hamsin Euro.
6. L-insistenza mal-intimat biex jirrifondilu d-depożitu lokatizju ta' sitt mitt Euro, jew almenu isofri biss ammont ferm inferjuri jekk dovut, baqgħet mingħajr xi skontra. Anzi lanqas biss kellu l-kreanza jirrifondilu d-differenza, li baqgħet f'idejh. Jigi rilevat li l-materjal ta' dak il-bieb kien ferm dgħajjef.
7. Għalhekk qed issir din it-talba biex it-Tribunal jistabbilixxi d-dritt tar-rikorrent għar-rifuzjoni mitluba, fic-cirkostanzi kif graw, u jekk it-Tribunal jidherli li mhux l-ammont kollu huwa rifondibbli, jistabbilixxi l-ammont xieraq considerando li l-ħlas sar mingħajr l-awtorita' tiegħu minn flus li ma kinux intizi għal xejn ħlief danni kagunati fil-flat lilu mikri, u wkoll li l-kont li tellghu il-mastrudaxxi Ghawdxin kien esagerat u ma jirriflettix semplici bdil ta' 'panel' wiehed ta' bieb; di piue' illi sid il-post koncernat setgħet faċilment iffirankat il-flus billi ggib mastrudaxxa minn Malta.

Bl-ispejjez.

The Tribunal also considered the translation of the claim at fol. 4 of the file.

The Tribunal considered the reply of defendant, filed on the 12<sup>th</sup> November 2019, where he stated:

The amount of six hundred Euro (€600) being requested by the plaintiff is being contested due to the fact that at the same time, the plaintiff owes the defendant an amount (see counter-claim) which the defendant paid on behalf of the plaintiff related to damages caused by the plaintiff himself on an apartment door of third parties inside the apartment block 'Sky Apartments', on Viani Street, Sliema.

The Tribunal also considered the counter-claim of defendant, wherein he requested the sum of four hundred and seventy-two Euro (€472) paid on behalf of the defendant amounting to fees incurred for the door which had to be repaired after damages caused by the defendant on third party property apart from interest at the rate of eight per centum (8%) per annum from the date of the payment effected by the plaintiff until the date of effective payment from the defendant to the plaintiff. Defendant as reconvenant also requested the payment of all fees related to this lawsuit as well as the fees of the case Spangler Alexander vs. Toms Merik 165/2019 CZ before this Tribunal.

The Tribunal considered the reply to the counter-claim filed on the 19<sup>th</sup> December 2019 whereby reconvened plaintiff stated:

1. The counter-claim is contested because it is unfounded in fact and in law, and its denial is requested.
2. The counter-claim is vexatious, intended to lose time for plaintiff and this Tribunal; because if the defendant is maintaining that he was legally empowered to used the rental deposit of plaintiff so as to pay a third party (and this without a power of attorney) then his original reply should have

been sufficient; but he knows that he could not use that deposit for the mentioned purpose and that it was refundable.

3. The said Merik Toms never produced a receipt for the alleged payment of €472, and in any case he was not authorised to use said deposit for the stated purpose.
4. Nowhere, and in any way was there any agreement that the alleged amount be refunded in favour of defendant Merik Toms, and the payment made by him to a certain Alexia Zammit was abusive and done at his own risk ('res perit reus')
5. In any case, and without prejudice to what has been explained above, the amount claimed was exaggerated, and if it appears to the Tribunal that plaintiff is obliged to pay some compensation for the very small damage (a tiny crack in the centre of the door panel) in the door of Alexia Zammit, the sum to be so liquidated should result to be quite small, and is not deductible from the rental deposit.
6. Saving further pleas; and with due summons.
7. Reference is being made to the plaintiff's affidavit already exhibited, and he reserves to produce further documents.

The Tribunal also considered the notes filed by each party, stating that they had no objection for the Tribunal to proceed to judgment, notwithstanding the fact that the transcript of the cross-examination of plaintiff and Samuel Zammit could not be made due to a technical error.

The Tribunal also considered that on the 1<sup>st</sup> September 2020 it raised *ex officio* the plea of lack of jurisdiction of this Tribunal, and this with regard to the original claim filed by plaintiff Alexander Spangler.

The Tribunal also considered plaintiff's note of submissions filed on the 5<sup>th</sup> November 2020 and defendant's note filed on 9<sup>th</sup> December 2020.

The Tribunal;

Considered the acts;

Considered plaintiff's affidavit<sup>1</sup>, the cross-examination of plaintiff<sup>2</sup>, defendant's testimony<sup>3</sup>, the affidavit of Samuel Zammit, and all other documents in the file.

Considered also that:

Plaintiff is requesting the payment of six hundred Euro (€600) by way of refund of the deposit he paid to defendant, as landlord, at the commencement of the lease<sup>4</sup> of an apartment. Defendant did not contest the fact that such deposit was paid; rather he stated that plaintiff should pay four hundred and seventy-two Euro (€472) by way of damage which plaintiff made in a third party's door, in the apartment underneath, and for which defendant had been constrained to pay.

The Tribunal must at the outset decide on the plea raised *ex officio* regarding the lack of jurisdiction of this Tribunal. It is not contested that the relationship between plaintiff and defendant was based on a contract of lease of an apartment. Since when the laws relative to leases were amended by Act X of 2009, the competence of ordinary courts in cases which deal with leases has been dealt with various times, and there were various judgments which interpreted these amendments in stark contradiction to each other, both at first instance and at appellate stages. The relative provisions which deal with this matter nowadays are the following:

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<sup>1</sup> Fol. 22

<sup>2</sup> Fol. 79

<sup>3</sup> Fol. 93

<sup>4</sup> Underlining by the Tribunal

**Section 1525 (1)** of Chapter 16 of the Laws of Malta:

The Rent Regulation Board (hereinafter referred to as the "Rent Board") established under the Reletting of Urban Property (Regulation) Ordinance shall decide all matters affecting the leases of urban tenements including residential as well as commercial tenements including causes relating to the occupation of urban tenements where such leases have expired, and any damages resulting during such period of occupation. 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:

**Section 16 (4)** of Chapter 69 of the Laws of Malta:

Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property where such leases have expired after the termination of the tenancy, and any damages resulting during such period of occupation:

**Section 39 (5) of the 2009 Act which amended the Civil Code (Act X of 2009):**

The Rent Board appointed by virtue of the Reletting of Urban Property (Regulation) Ordinance shall have exclusive jurisdiction to decide matters connected with the letting of urban property including both commercial tenements and residences. So however that causes relating to lease contracts which on the 1st January, 2010 are still pending before the Courts or other Tribunals shall still be dealt with by the same Courts or Tribunals.

The judgment which crystallised the position is the Court of Appeal (Inferior Jurisdiction) judgment in the names: *Salvatore Bartolo et vs. Anthony Deguara et*<sup>5</sup>, wherein the Court held:

‘Il-qorti rat id-dibattiti parlamentari u tistqarr li dwar din il-materja ma sabet l-ebda ispirazzjoni ghajr li l-Ministru tal-Politika Socjali li pprezenta l-ligi qal:-

“Materji li għandhom x’jaqsmu mal-kirjiet ma jibqgħux taħt id-diskrezzjoni tal-qorti imma jibdwu jaqgħu taħt il-kompetenza tar-Rent Regulation Board. L-eċċezzjoni

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<sup>5</sup> 16<sup>th</sup> December 2015 – per Hon. Mr. Justice Anthony Ellul

tkun li dawk il-kawzi li nfethu qabel din il-liġi jibqgħu taħt il-kompetenza tal-qrati” (seduta tal-10 ta’ Diċembru 2008, seduta numru 66).

Fil-white paper li kienet titratta l-liġijiet tal-kera<sup>6</sup> toħroġ ċar x’kienet l-intenzjoni tal-Gvern li ressaq il-liġi fir-rigward tal-Bord:

“Ir-regolamentazzjoni u l-governanza tas-suq tal-kera għandhom jitqiegħdu taħt entita waħda biex ikun żgurat li jkun hemm strument effettiv għal soluzzjonijiet legali f’materji ta’ din ix-xorta, u f’dan ir-rigward għandha tingħata ġurisdizzjoni sħiħa lill-Bord għar-Regolamentazzjoni tal-Kera li għandu jkun ristrutturatur”. Sfortunatament minkejja li s-suq tal-kiri tant kiber f’Malta, il-wegħda tal-Gvern li jkun hemm ristrutturazzjoni tal-Bord Li Jirregola l-Kera baqgħet biss fuq il-karta.

Fl-Att X tal-2009 hemm xejn inqas minn tliet provvedimenti li jittrattaw is-suġġett dwar il-kompetenza tal-Bord, u ċjoe’ l-Artikoli 2, 38 u 39(5). Fatt li ma jgħin xejn u anzi jidher li serva biex ħoloq incertezza. Dan appartni li f’dawn l-istess provvedimenti hemm sitwazzjonijiet fejn it-test Ingliż ma jirriflettix it-test Malti.

Il-qorti hi tal-fehma li jkun għaqli li l-leġislatur jintervjeni sabiex il-materja tal-kompetenza tal-Bord Li Jirregola l-Kera tiġi regolata minn provvedimenti wieħed tal-liġi li jkun ċar u li ma joħloqx il-problemi li l-imsemmija provvedimenti qegħdin joħolqu. Il-posizzjoni attwali tidher li qiegħda sservi biss għal incertezza u telf ta’ żmien għal min ikun kostrett jipproponi proċeduri ġudizzjarji fi kwistjonijiet fejn is-suġġett hu l-kiri ta’ fond urban.

Għal finijiet ta’ kompetenza, il-liġi ma tagħmilx distinzjoni jekk fiż-żmien li l-attur jipproponi l-kawża l-kirja tkunx għadha fis-seħħ jew le. Mill-Artikolu 1525 tal-Kodiċi Ċivili ma jirrizultax li l-kompetenza tal-Bord tiddependi mill-eżistenza ta’ lokazzjoni fiż-żmien li tiġi proposta l-kawża ... Il-pretensjoni tal-atturi hi bażata fuq obbligi kuntrattwali li jemanu mill-kuntratt ta’ lokazzjoni li kien hemm bejn il-kontendenti. Għaladarba l-Artikolu 1525 tal-Kodiċi Ċivili jipprovdi li l-Bord għandu: “..... l-kompetenza esklussiva li jiddeċiedi kwistjonijiet konnessi ma’ kuntratti ta’ kiri ta’ fond urban u ta’ dar għall-abitazzjoni u ta’ fond kummerċjali”, għal din il-qorti hu evidenti li t-talba għall-ħlas ta’ kera taqa’ fil-kompetenza tal-Bord irrispettivament jekk il-lokazzjoni għadhiex in vigore jew le. Provvediment li ma jagħmilx distinzjoni f’liema perjodu jkun sar il-kuntratt ta’ lokazzjoni.

Il-qorti taf li hemm ġurisprudenza li tgħid mod ieħor. Hekk per eżempju l-kawża **Enriketta Bonnici vs Gordon Borg**, deċiża minn din il-qorti fl-4 ta’ Diċembru 2013. Il-qorti ser tillimita ruħha biex tosserva li jidher li d-deċiżjoni tal-qorti kienet bażata fuq interpretazzjoni tal-Artikolu 16(4) tal-Kap. 69. Fir-rigward tal-Artikolu 1525 tal-Kodiċi Ċivili, il-qorti osservat:

“il-Qorti tqis illi l-kliem tal-artikolu 16(4) Kap. 69 ċjoe’ ‘minkejja d-dispozzjonijiet ta’ kull liġi oħra għandha tiftiehem illi anke jekk għal grazzja tal-argument hemm divergenza fil-portata tat-tifsira li għandha tingħata lill-artikolu 1525(1) tal-Kap. 16 u artikolu 16(4) tal-Kap. 69, għandu jipprevali dak li qed jingħad fl-aħħar imsemmi artikolu. Pero` din il-qorti tqis li ma hemm ebda divergenza iżda biss aktar kjarizza fil-kliem tal-artikolu 16(4)”.

Din il-qorti tosserva li:-

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<sup>6</sup> Il-Ħtiega ta Riforma, Sostenibilita’, Ġustizzja u Protezzjoni pubblikata mill-Ministeru għall-Politika Soċjali.

i. Il-qorti ma tara l-ebda raġuni għalfejn l-Artikolu 16(4) tal-Kap. 69 għandu jipprevali fuq l-Artikolu 1525 tal-Kodiċi Ċivili. Iż-żewġ provvedimenti tal-liġi ġew introdotti bis-saħħa tal-istess liġi, u l-applikazzjoni ta' wieħed ma jiddependix mill-ieħor.

ii. Wieħed jista' jargumenta li l-Artikolu 16(4) tal-Kap. 69 japplika fejn il-kirja tkun għadha fis-seħħ in kwantu jipprovdi li l-Bord għandu jiddeċiedi "...l-materji kollha li **jolqtu kirjiet** ta' fondi urbani....", u fit-test Ingliż: "... **affecting the leases** of urban property". Il-kelma "jolqtu" bl-Ingliż "affecting" tagħti lil wieħed x'jifhem li tirreferi għal kirja eżistenti u mhux li tkun spicċat. Il-kliem "... inkluż kawżi dwar okkupazzjoni ta' fondi urbani **fejn il-kirjiet ikunu intemmu....**", jistgħu jkomplu jsaħħu l-fehma li l-kelma **kirjiet** fl-ewwel parti tal-provvediment qiegħda tirreferi għal kirja li għadha fis-seħħ. Pero' l-interpretazzjoni tal-Artikolu 1525 tal-Kodiċi Ċivili m'għandhiex tiddependi mill-interpretazzjoni tal-Artikolu 16(4) tal-Kap. 69. Fil-fatt l-Artikolu 16(4) hu ntiż biss biex jagħti lill-Bord **ukoll** il-kompetenza li jiddeċiedi l-materji li jissemmew f'dak il-provvediment. Tant hu hekk li fl-Artikolu 16(4) tal-Kap. 69 jingħad li "... il-Bord għandu **wkoll** jiddeċiedi l-materji .....". Għalhekk il-kompetenza tal-Bord m'hijiex limitata biss għal materji li jissemmew fl-imsemmi provvediment.

iii. L-Artikolu 1525 jipprovdi li l-Bord hu kompetenti jiddeċiedi "**kwistjonijiet konnessi ma' kuntratti ta' kiri**". **Din id-disposizzjoni ma tagħmilx distinzjoni bejn kirjiet in vigore u oħrajn li ntemmu, u għalhekk fil-fehma tal-qorti m'għandhiex tkun hi stess li tintroduċi distinzjoni li l-liġi ma tagħmilx.**

iv. **Ir-realta' tibqa' li kawża fejn jintalab h̄las ta' kera hi kwistjoni ntrinsikament marbuta mal-kuntratt ta' kera, u dan minkejja li l-kirja ma tkunx għadha fis-seħħ.** Il-qorti ma tara l-ebda raġuni għalfejn bil-mod kif inkiteb l-Artikolu 1525 tal-Kodiċi Ċivili, il-Bord għandu kompetenza li jisma' u jiddeċiedi kawża għall-h̄las ta' kera meta l-kirja tkun għadha fis-seħħ filwaqt li m'għandux tali kompetenza għas-sempliċi raġuni li l-kirja tkun inħallet. L-Artikolu 1525 tal-Kodiċi Ċivili ma jatix lill-qorti x'tifhem li l-leġislatur ried jiddistingwi. Wara kollox huma kwistjonijiet relatati mal-obbligi kuntrattwali ta' inkwilin.

This Tribunal fully agrees with the interpretation given by the Court of Appeal in the mentioned judgment, and quoted this judgment at length because the reasons given therein apply to the plea examined in this part of this judgment.

It has been established that the claim made by plaintiff is linked to the lease of the apartment in question. The deposit referred to would not have been paid had there not been the lease agreement, and therefore this is a subject which is a 'matter affecting the leases of urban tenements' as per Section 1525 of Chapter 16 of the Laws of Malta. In view of this, the Tribunal can declare that it does not have jurisdiction to decide on the merit of the original claim filed by plaintiff.



The Tribunal notes, at the same time, that this procedural shortcoming cannot be rectified by referring to Section 741(b) of Chapter 12 of the Laws of Malta, since that procedure is only reserved to a 'court', and not to a tribunal like this tribunal.

As regards the counter-claim, reconvenant defendant is stating that reconvened plaintiff had authorised him to proceed with with the repair works to the door and to pay for the same. Both parties make reference to an extensive chat/direct correspondence between the parties to this case.

The Tribunal notes that reconvenant defenant is claiming that it was him who paid for the damages to the third party door. Samuel Zammit, the owner of the damaged door, confirms that it was defendant who paid for the works, but he also said that defendant paid on plaintiff's behalf. It does not result, however, that plaintiff authorised defendant to pay for the works on his behalf. Rather, from the correspondence and chats exhibited, it results that plaintiff contacted the third party (Alexia Zammit) directly and stated that he would pay her directly (although later he also claimed that the costs were excessive). Apart from the testimony of Samuel Zammit, in the sense that defendant paid for the costs himself, defendant produced no receipt to show that it was indeed him who paid. Notwithstanding this, the Tribunal could find no evidence which shows that plaintiff had entrusted defendant to deal with the third-party and pay her on his behalf. Rather, as already said, at the beginnng plaintiff wanted to pay directly himself. Defendant's counter-claim therefore cannot be upheld.

**For the above reasons, with reference to the original claim, the Tribunal declares that it has no jurisdiction to decide on the merits of that claim, and therefore abstains from taking further cognisance of it. As to the counter-claim, the Tribunal upholds reconvened plaintiff's defence pleas and rejects reconvenant defendant's request. The expenses and legal fees of the original claim shall be paid by plaintiff Alexander Spangler, whereas**

**the expenses and legal fees of the counter-claim shall be paid by defendant Merik Toms.**

**Dr. Claudio Żammit**

**Adjudicator**

Mary Josette Musu'

Deputy Registrar