



## TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR

**DR. Leontine Calleja LL.D**

Wednesday, 6 th July 2022

Claim Number: 180/2020 CL

**Atlas Insurance PCC Ltd (C5601) as subrogated in the rights of its insured John Sare' and Optimum Property Limited who were admitted as joinder in the case as per decree dated 15th September 2021**

VERSUS

**Faye Irene Hampson (ID no 158071A)**

The Tribunal;

Having seen the notice of claim filed on the 10 th August 2020 by which, the plaintiff company in terms of the insurance policy indemnified its insured in the sum of €3,802.81 and was subrogated in the rights of its insured since from their evidence it resulted that defendant was solely responsible for the incident. An incident occurred on the 6th July 2018, where apartment number 3, in block 135, Pieta Apartments, Marina Waterfront, Pieta belonging to John Sare', the insured of claimant company, sustained damages following the prelocation of water from the overlying premises, apartment no 5, belonging to Faye Irene Hampson. Costs including those related to the judicial letter dated 14th May 2020 and interest with effect from 14th May 2020 till effective day of payment were requested.

On the 2nd July 2021, defendant filed a reply claiming she was not the owner of the Flat no 5, Block 135, Pieta Apartments, Marina Waterfront, Pieta, so she could not be held responsible and does not owe any money to plaintiff company. Without prejudice to the above pleas the action was time barred in accordance with article 2153 of the Civil Code. During the sitting of the 15th September 2021, Defendant declared that the owner of the apartment was Optimum Properties Ltd and Plaintiff proceeded to request that the Tribunal authorise the Company as a joinder to the case, which request was acceded to.

Optimum Properties Ltd filed a reply on the 12th November 2021 stating that the action was time barred in accordance with article 2153 of the Civil Code and without prejudice to this pleas the defendant company did not owe any money to the plaintiff company. On the 17th November 2021, the Tribunal authorised inversion of proof with regards

to the preliminary plea. On the 12th January 2022, defendant presented a legal copy of the judicial letter sent to Ms Faye Irene Hampson dated 14th May 2020 which remain undelivered and a copy of the contract of purchase in the name of Optimum Properties Ltd. On the 23rd February 2022, Terry Callus representing Atlas Insurance testified stating that he had communicated with Faye Irene Hampson via e mail on a number of occasions the last e mail being dated 6th May 2021, which he presented correspondence that was marked as Dok TC1 to TC3. Their insured John Sare' had also contacted Ms Hampson and his niece Audrienne Spiteri Gonzi was assisting him with the claim. On cross examination he said that when he communicated with Faye Irene Hampson in July 2020, she referred to the apartment as her apartment, so they assumed she was the owner and she never indicated that she was the tenant or that Optimum Properties Ltd were the owners. He had no way of knowing who the owner was, since to conduct a search through land registry you must have the name, address and id no of the person. The case was put off for judgment on the preliminary plea.

After having heard the witnesses and seen the evidence submitted, the Tribunal considers, that Ms Irene Hampson's representative appeared during the sitting of the 21st June 2021 and accepted to be served with the acts of the case while the procedure for notification was still on going. Thus Ms Hampson was officially notified on the 21st June 2021. The Tribunal makes reference to Article 2153 of the Civil Code which reads as follows:

*Actions for damages not arising from a criminal offence are barred by the lapse of two years.*

Ms Hampson was officially notified on the 21st June 2021, when her legal representative accepted notification on her behalf. Since the claim dates back to July 2018, Ms Hampson was notified after three years and thus by the time she was notified the action was time barred.

The Tribunal thus decides that the action was time barred, thereby expenses are to be borne by the plaintiff company.

**Avukat, Leontine Calleja LL.D.**

**GUDIKATUR**