

**TRIBUNAL GHAL TALBIET ZGHAR****GUDIKATUR****DR. Leontine Calleja LL.D**

Wednesday, 30th November 2022

Claim Number: 317/2019 CL

The Tribunal;

Hakuna Matata Holiday Accomodation Limited (C90836)**VERSUS****John Seychell Navarro (KI nru: 228177M) and****Denise Formosa (KI nru: 159488M)**

Having seen the notice of claim filed on the 17 th October, 2019 whereby, the plaintiff company's stated that its main commercial activity consisted of taking over properties by title of rent on a long term basis and offering them on short lets to third parties. The plaintiff company was interested in renting a property situated at no 9, Casa Maria, in Triq San Lawrenz Sliema as part of its economical activity. On the 25th February 2019, the parties agreed that the property was to be rented to the plaintiff company and the sum of €500 was paid to John Seychell Navarro by way of deposit according to the attached agreement marked as Dok B, which stipulates that the deposit will be lost if the rent does not commence in the same week that the licence is obtained. On the 6th March 2019, the parties signed another agreement, where the remaining balance of the deposit amounting to €3000 was paid to the defendant according to the conditions set out in the agreement, which is attached and marked as Dok C. On this date, the parties agreed that the plaintiff company had to sign the same agreement that the defendant had with Maria Gweli, which contract is being attached and marked as Dok D, which was read and agreed upon on the 6th March 2019. The sum of €3000 was deposited with Dowdall (Real Estate) Ltd to be kept by them in escrow until final agreement was signed. It resulted that the property was not covered with the necessary license from the Malta Tourism Authority for the economical activity of the plaintiff company and the defendant applied for and obtained this licence towards the end of March 2019. When the licence was issued the defendants, presented the company with a draft contract that had different conditions from the ones the parties had agreed upon. The plaintiff company did not accept the second draft and requested to be given the previous draft to sign. The defendants refused and insisted that the second contract was the one that had to be signed which was attached and marked

as Dok E. As a result of defendants actions the parties did not sign any rental agreement and possession of the property was never passed on to the plaintiff. Thus there is no rental agreement between the parties and there never was. Therefore, the plaintiff company is requesting to be refunded the sum of €3500, €500 of which was paid directly to the defendants and the €3000 which was being held in escrow by Dowdall (Real Estate) Ltd. Dowdall Real Estate Ltd were refusing to release the sum of €3000 to any of the parties and deposited this amount in the registry of the Rent Regulation Board by schedule of deposit no 1834/19 a copy of which is attached and marked as Dok F. Due to this deposit the plaintiff company suffered a further loss of €109.90 as expenses related to the schedule of deposit, which sum should be compensated by the defendant. The defendants are retaining the sum of €3500 which belong to the plaintiff company without a valid reason at law which results in unjust enrichment. With expenses including the present as well as schedule of deposit number 1834/19 and with interest from the date of the present till effective payment.

On the 3rd March 2020, defendants filed a reply that the claims as they appear are unfounded at law and in fact, since they abided with the conditions of the agreement as had been agreed upon. It was the plaintiff company that failed to observe the conditions of the contract. The defendant in bonafede made all the necessary arrangements to obtain the malta tourism licence for accomodation which was issued on the 28th March 2019 and this will be proven during the case. The amended clause D forming part of Document C attached to the claim clearly stated that the deposit paid would not be refunded.

On the 12th October 2020, Affidavit of Adele Langiano, director of Hakuna Mutata Holiday Accomodation Ltd was filed together with attached documents. She stated that their business was renting properties from landlords and subletting to third parties at a profit. They were looking for property in Sliema and were shown a townhouse, Casa Maria, in Triq San Lawrenz, Sliema by Jose Camilleri, from Quicklets, where they met Dr. John Seychell Navarro. She informed him that they required the property to be covered by an MTA licence, that payments would be made by bank transfer and a lease contract of 5 years. On the 25th February 2019 a deposit of €500 was paid as per Dok HM1, on the 3rd March 2019 she sent Dr Seychell Navarro an e mail indicating conditions required in DOKHM2, and they requested proof that he was authorised to sublet. On the 5th March 2019, the lease agreement signed with the owner was sent to her and she transferred €3000 to Quicklets as a deposit. On the 6th March 2019 a meeting was held at Quicklets where an agreement was signed Dok HM4 and it was agreed that the contract would be identical to the contract which Navarro signed with the owner Doc HM3. They were constantly requesting that defendant send a copy of the draft agreement and despite several reminders even by Quicklets no draft contract was sent. On the 28th March 2019, Navarro sent her an e mail that the MTA licence was issued and forwarded an agreement that was completeley different to what they had seen at the meeting marked as Dok HM8. Luke Tanti, branch manager of Quicklets, also replied that it was completely different from what was promised at the office, that it would be identical but with minor amendements foll. 84. Their lawyer replied on the 29th March 2019 and another agreement was sent in word format and they replied that conditions were different to those agreed upon. They no longer trusted Dr. Seychell Navarro as he wanted to conduct negotiation to impose conditions which were different to those agreed verbally in front of witnesses as confirmed by Luke Tanti's e mail. Quicklets decided to deposit the deposit money held by them in court.

On the 16th December 2020, Luke Tanti, branch manager at the head office of Quicklets testified that he knew the parties but was not involved in the agreement between them as his colleague Jose Camilleri was involved. Jose had told him that there was an issue between the parties about the deposit. A €500 deposit had already been paid, but a further €3000 had to be paid so that property will be taken off the market Dok HM4. a foll. 66. There were however certain points that had not yet been clarified so they agreed that the deposit will be released to Dr Seychell Navarro once he obtained MTA licence and that the contract was going to be similar to the contract he had with the owner which was marked as HM8 a foll. 76. Before the deposit was to be released to Dr, Seychell Navarro after he fulfilled the obligation of MTA, they asked for the contract but when they received the contract his colleague Jose told him that it was completely different to the contract that was shown to them before and Adel and her partner did not agree with it. That is when they decided not to release the deposit and instead to deposit it in court as to his knowledge the agreement was never signed. He confirmed that Dok HM9 a foll 84 was an e mail he had sent.

On the 4th March 2021 Dr John Seychell Navarro and Denise Formosa filed their affidavits. They both confirmed that they were taking care of a property in Sliema belonging to an elderly lady who had become a friend of theirs and they had a basic contract between them that authorised them to sub let. Adele Langiano and Simona Lo Groi were interested in leasing the house however they asked him to obtain the MTA licence. On the 25th February 2019 John met Adele and Simona and accepted a deposit of €500 on account instead of the standard month's rent and he signed a deposit slip where there was written that the whole deposit will be lost if lease does not start within the same week as the licence was issued. He informed them that the property was of a client/family friend although he was not obliged to tell them so and on the 4th of March 2019 Jose Camilleri called him stating that clients wanted confirmation that he had a right to sublet and he eventually sent her an extract from the contract showing he had a right to sublet. On the 5th March 2019 Jose Camilleri called again saying that clients wanted to see the whole contract and not just an extract, so he sent a copy and Adele sent the deposit to Quicklets instead of him. It was agreed that contract would be similar to what he had with the owner but certain safeguards like prompt payment had to be added as they weren't in his agreement because of the close relations between them. The agreement was signed on the 6th March 2019 which stated that deposit will be released once MTA licence was obtained and if MTA licence was not obtained the deposit would be returned by the lessor and contract was to commence within 3 days from obtaining licence. On the 8th March 2019 tenants finalised insurance policy with Laferla Insurance as this was a requirement for the MTA licence. Licence was issued by MTA on the 28th March 2019 and all parties were informed and a scanned copy of a rental agreement was sent as a proposed contract. Various e mails followed and he proposed to meet and go over contract together, however Adele involved a lawyer Dr. Alan Muscat who asked for a contract in word format which was sent to him. Adele sent him an e mail insisting that the agreement had to be the same as the agreement with the owner, which he could not accept as in the contract with the owner there weren't the safeguards he needed with Adele since he did not know her enough. The contract had been sent only to confirm that they had a right to sub let. His partner Denise had a phone conversation with Adele and they were meant to meet in the evening to try and come to an agreement and they would remove any conditions that were worrying Adele. He also sent her an e mail however he received no reply and Adele did not turn up the following

day. The following day he sent another e mail and got a reply from Luke, manager of Quicklets, offering that they have contract written at the office which he accepted however Adele replied that a new lawyer will be taking care of case however Adele later replied that there would be no meeting. No communication followed until on the 29th April 2019, he received an e mail from Lara May Cardona from Laferla Insurance informing him that the insurance policy had been cancelled. On 1st October 2019 Quicklets informed him that they were depositing the €3000 deposit money that they held in court. They had taken the house off the market and kept the house available for them, sent draft contract and obtained the MTA permit.

On the 6th October 2021 Lara May Cardona an insurance clerk with Laferla Insurance testified that in 2019 an insurance polciy was issued by John Seychell Navarro and/or Hakuna Mutata for their respective rights on number 9, Casa Maria, Triq San Lawrenz, Sliema, and presented Dok LMC1. She then received instructions from Hakuna Mutata to cancel the policy Dok LMC2, so this policy was cancelled and a new one was issued solely in the name of John Seychell Navarro. She never requested the rental agreement and had no idea if this was signed and if a deposit was paid.

Jose Camilleri worked as an estate agent with Quicklets and confirmed that his client was italian and she had wanted confirmation that the defendant could sub let, so defendant had sent a contract showing that he had a right to sub let. She had also requested that defendant would issue the MTA licence and that the rental contract would be the same like the contract defendant had with the owner found a foll. 66. She was spending money in the property so she didn't want any issues. He confirmed Dok HM7 was an e mail he sent wherein John confirmed that Adel will have same rights that John had from the owner. The parties had gone to his office and John had said that the contract will be exactly like the one he had with the owner however Adel noticed some things that were different and she didn't want to sign. They met at his office and stayed on till late and they couldn't agree. Things got out of hand and he involved the boss and they called their lawyer as they were arguing over the deposit and lawyer told them to deposit the deposit money in court. He never saw the MTA licence and John was insisting that she had to pay the rent money.

Luke Tanti testified that in February or March one of his agents Jose Camilleri was involved in agreement between Adel and John Seychell Navarro which he confirmed was the agreement that was a foll.66 and that in that meeting the MTA licence which he had presented in court during the last sitting and the deposit were discussed.

Malcolm Zerafa, Senior Manager in the licensing unit testified that an inspection was carried out at number 9, Triq San Lawrenz, Sliema following which a letter of approval was issued on the 27th March 2019 in the name of John Seychell Navarro. An e mail was sent the following day, listing certain conditions and a request for payment. One of the conditions was that there had to be a valid insurance cover. He confirmed that payment was made and licence was active to date. Should the insurance be cancelled the authority had the right to withdraw the licence. He presented Dok MZ1, MZ2 and Dok MZ3.

Dr Alan Muscat gave evidence and confirmed the e mails presented which were marked as Dok AM 1 to AM7.

On the 12th January 2022 the parties declare that they had concluded their evidence and requested to file a note of final submission after which the case was deferred for judgement.

After having heard the witnesses and seen the evidence submitted, the Tribunal considers that on the 29th February 2019, the plaintiff paid a deposit of €500 subject to the defendant obtaining an MTA license, so plaintiff company could use the property for short lets. At this stage there was no discussion on the conditions of the contract and the emphasis was mainly on obtaining the MTA licence. Plaintiff then requested proof that defendant had a right to sublet property and requested that defendant sends a copy of his rental agreement with the owner so she could confirm he had a right to sublet. The parties agreed that the agreement was to be similar to agreement lessor had with the owner and the remaining deposit of €3000 was paid on the 6th March 2019. This deposit was sent to Quicklets instead of the Lessor and was to be kept in escrow and would be transferred to defendant on signing of agreement which had to be done three days after MTA permit was issued. Defendant applied for MTA licence which was issued on the 29th March 2019. Defendant sent an agreement which plaintiff claimed was not the same as the contract he had with the owner and although an attempt was made with the assistance of the agent to come to an agreement, this did not materialise. Defendants tried to meet plaintiff and were prepared to remove any conditions that were worrying her however the plaintiff did not turn up and neither did she accept to attend a second meeting at the agent. The defendant was eventually informed by insurance on the 29th April 2019, that that the plaintiff had cancelled the insurance which was an MTA requirement. The deposit held in escrow was eventually deposited in court by the agent. The Tribunal holds that the €500 deposit as well as the €3000 held on escrow, could only be released to the lessee if clause C of contract was not fulfilled¹.

The Tribunal thus decides that the defendant did conform with all requests of plaintiff and the issue regarding the conditions of the contract only arose because plaintiff requested a copy of the contract to confirm that the defendant had a right to sub let which request came after the deposit of €500 was sent. Thus the request by plaintiff company for the reimbursement of deposit of €500 paid to defendant and amount of €3000 deposited in court by the agent is being denied as Clause C of contract was fulfilled. All costs are to be borne by plaintiff company.

Avukat, Leontine Calleja LL.D.

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¹ if the MTA license was not obtained by the 6th April 2019 Dok C a foll 5 and Dok HM1 and Dok HM2 a foll 52 and 53