MALTA

COURT OF APPEAL
(Inferior Competence)

HON. JUDGE
LAWRENCE MINTOFF

Sitting of the 14th of June, 2023

Appeal Number 113/2022LM

Grenke Renting Limited (C 57282)
('the appealed party')

vs.

GLD Services Limited (C 69228)
('the appellant')

The Court,

Preliminary

1. This is an appeal brought before this Court by the respondent company **GLD Services Limited (C 69228)** [hereinafter 'the appellant'] from the Arbiter's decision of the 14th July, 2022, [hereinafter 'the Arbitral Award'] in the arbitral proceedings having a reference number Arb. Nru. 5941/2020 which were initiated at the Arbitration Tribunal at the Malta Arbitration Centre [hereinafter

'the Tribunal'] by the claimant company **Grenke Renting Limited (C 57282)** [hereinafter 'the appealed party'], whereby it was decided by the Arbiter Dr. Henri Mizzi as follows:

*"**Conclusion***

46. For the above reasons, the Tribunal rejects the Respondent's defences and the Counterclaim.

47. In so far as concerns the Claimant's claims, the Tribunal notes that while the Respondent contested liability for the reasons dealt with above, it has not contested the quantum thereof as such; nor has it contested its obligation to return the goods delivered, arguing only that it cannot do so because the Claimant has not provided an inventory. But this is, in truth, an absurd defence: why the absence of an inventory should prevent the return of goods admittedly in the Respondent's possession has not been explained, presumably because it cannot be explained. The absence of an inventory could, conceivably, have provided the Respondent with a defence of short return by the Claimant had that arisen, but it is hardly a justification of a refusal or failure to return that which is in the Respondent's possession.

48. Accordingly, given that the Tribunal has rejected the Respondent's position on liability, the Tribunal orders the Respondent to:

a. Pay the Claimant the outstanding rent instalments until termination in the amount of €19,978.93;
b. Pay the Claimant pre-liquidated damages in accordance with clause 11 of the Contracts and in terms of art. 1138, Cap. 16 consisting of the aggregate of the rent instalments still outstanding for the entire rent period amounting to €125,945.33; and
c. Pay the Claimant the aggregate of the daily penalties in terms of clause 11 of the Contracts arising because of failure by the Respondent, upon termination of the Contracts, to return the goods actually delivered under the Contracts for each day of default until the effective return of the said goods; for the purposes of this order, the penalty is calculated at the rate of €77.39 per day, (fn. 43 1/30 of the aggregate monthly rent due under the Contracts) which means that the penalty due until the date of this

ruling is of €66,555.40, (fn. 44 Calculated from 6 March 2020, being the date on which the goods were, according to the termination notices (Documents GR0 – GR16), to be returned) saving further penalties should the goods still not be returned.

Costs, as per Taxed Bill of Costs issued by the Malta Arbitration Centre which is being attached hereto and marked Document Letter X, are ordered against the Respondent. In so far as the claim for interest is concerned, this is also ordered against the Respondent as follows: as regards the rental arrears, to be calculated from the date on which each instalment became due; and as for the pre-liquidated damages as from the termination date, that is from 6 March 2020. No interest is due on the penalties, as no interest is said to be due on those due in terms of the Contracts."

The facts of the case

2. The facts of the case are as follows. The parties entered into a number of agreements for the lease of furniture and equipment for an ice-cream shop, howsoever Appellant defaulted in effecting payment in accordance with the terms and conditions of the said agreements. The Appealed Party called upon the said Appellant to settle the outstanding dues under the agreements, and eventually also invoked its right thereunder to terminate the same.

Merits

3. The Appealed Party filed its Notice of Arbitration and Statement of Claim in the Malta Arbitration Centre on the 15th June, 2020, and in the said Statement of Claim it requested the Arbitration Tribunal to:

*"1. **Declare** that the Respondent GLD Services Limited defaulted in payments to the Claimant in accordance with the Agreements;*

2. ***Declare*** *that the Respondent GLD Services Limited failed to observe the provisions of the Agreement relating to the default in payments;*

3. *Subsequently and consequently to the above,* ***Order*** *the Respondent to return the equipment rented by the Claimant to the Respondent in a good state within a peremptory period to be decided by this Honourable Arbitration Tribunal, and, in the event that the Respondents default in doing so,* ***Authorise*** *the Claimant, if possible, to affect the taking of such equipment's possession themselves at the cost of the Respondents as this Honourable Arbitration Tribunal may direct;*

4. *Subsequently and consequently to the above,* ***Order*** *and* ***Condemn*** *the Respondents or whosoever from the Respondents, to pay to the Claimant:-*

    i. *The outstanding rent instalments until termination in the amount of nineteen thousand nine hundred and seventy eight Euro and ninety three cents (€19,978.93) with interests;*

    ii. *The pre-liquidated damages with interests in accordance with interests in accordance with Section 11 of the Agreements marked as GR1 and GR8 and in terms of Article 1138 of Chapter 16 of the Laws of Malta consisting of the aggregate of the rent instalments still outstanding for the entire rent period together with any costs incurred by the Lessor as a result of the termination or otherwise in terms of the Agreements amounting to one hundred and twenty five thousand, nine hundred and forty five Euro and thirty three cents (€125,945.33) with interests;*

    iii. *The aggregate of the daily penalties in terms of Section 11 of the Agreements marked as GR1 and GR8 arising by reason of the Respondents' failure to return the Equipment upon termination for each day of default until the effective return of the Equipment;*

    iv. *The Liquidated damages and compensation in terms of the third request (if necessary by means of a technical expert nominated by this Arbitration Tribunal accordingly);*

    With costs and interests (in terms of the Agreements and L.N. 272 of 2012) from the date of default."

4. Appellant filed its reply on the 30th July, 2020, requesting the joinder of the company Gemini Europe Limited in the present proceedings, and hence also requested its own discharge from all claims made in its regard by the Appealed Party. Together with its reply, Appellant filed a counter-claim against the Appealed Party whereby it sought a declaration of default in the supply of material/equipment and of breach of contract, and consequentially the liquidation and payment of resulting damages suffered, with costs and interests.

5. The Appealed Party filed its Statement of Defence to the said Counter-Claim on the 30th September, 2020, whereby it requested the Arbitral Tribunal to reject Appellant's requests.

The Arbitral Award

6. The Arbiter made the following observations and conclusions relevant to this appeal:

> *"**The Tribunal's considerations***
>
> *Was the Claimant in delay?*
>
> *23. The first, and most important, of the Contracts is said by the Claimant to have been entered into on 16th May 2019 (ref. 1215) (the "First Contract"). (fn. 6 Document GR1 appended to the Statement of Claim. It was the most important one because it covered the bulk of the furniture and equipment taken on lease by the Respondent and was the one that was to allow the shop to open for business. In fact, Amedeo Renzulli asserted, in cross-examination, that the remaining contracts were only entered into because the furniture and equipment covered by those contracts should, according to him, have been ordered at the outset (see recording of cross-examination at*

approx. 1:07) On the same day, Mr Ugo Luca Renzulli ('ULR') is said to have signed a confirmation of delivery, which purported to confirm full delivery of the (unspecified) furniture and equipment covered by the First Contract on 14 May 2019. He is further said to have signed a guarantee, also on 16th May 2019. (fn. 7 document GR17 appended to the Statement of Claim.)

24. *The date on which the three aforementioned documents were completed is not entirely clear. ULR appears to have signed the First Contract and the confirmation of delivery on 6th May 2019. On the other hand, his signature on the guarantee appears to be dated 15th May 2019. Whoever signed for the Claimant did not insert a date by the signature, but all the documents bear a stamp dated 16th May 2019 which the Tribunal takes to be the date on which the Claimant signed off on the documents: hence, presumably, the assertion that the First Contract, the confirmation and the guarantee are all dated 16th May 2019. The Respondent has not contested this assertion and, therefore, the Tribunal takes it as admitted. In any case, nothing material turns on this point.*

25. *By letter dated 26th June 2019, (fn. 8 document GLDS1 appended to the Statement of Defence) the Respondent alleged that the Claimant was in breach of the First Contract in that the goods thereby leased had not yet been delivered. The Respondent requested delivery (and installation) by not later than 1st July 2019. In his affidavit, ULR asserts that, by means of this letter, the Respondent had served notice of delay on the Claimant. (fn. 9 See para. 11) However, apart from the issue of the validity of this letter as a notice for that purpose, (fn. 10 See art. 1130(2), Cap. 16) the Respondent's assertion that the Claimant was in delay is doubtful in light of what ULR wrote in his letter of 27th June 2019 and also in light of what appears to have been agreed at the time the contract in question was concluded. (fn. 11 Document GLDS2 appended to the Statement of Defence)*

26. *In the letter of 27th June 2019 reference is made to a commercial affiliation agreement dated 17th June 2019 entered into between the Respondent and a company called Gemini Europe Ltd ("Gemini"). (fn. 12 A copy of that agreement was exhibited along with ULR's affidavit and marked ULR1) The agreement provided, amongst other things,*

that Gemini was to provide 'assistenza nella progettazione del lay out dell'esercizio, con particolare riferimento all'installazione e al montaggio degli impianti'. *(fn. 13 Document GR1 appended to the Statement of Claim. It was the most important one because it covered the bulk of the furniture and equipment taken on lease by the Respondent and was the one that was to allow the shop to open for business. In fact, Amedeo Renzulli asserted, in cross-examination, that the remaining contracts were only entered into because the furniture and equipment covered by those contracts should, according to him, have been ordered at the outset (see recording of cross-examination at approx. 1:07) It was asserted in the said letter that Gemini was unable to accept delivery of the goods before 1 July 2019. (fn. 14 ULR concludes by saying that he hoped the letter would serve to clarify the situation and to avoid further delays. How there could be a delay from the Claimant's end if the Respondent was unable, due to commitments with Gemini, to accept delivery, is altogether unclear to the Tribunal)*

27. *Moreover, it would appear from the testimony given (in cross-examination) by both Paolo Dellamano ("PDM") and Amedeo Renzulli ("AR") that, when the parties entered into the First Contract, both understood that the confirmation of delivery signed by ULR incorrectly represented the fact of delivery on or around 14th May 2019. In these proceedings, the Claimant has taken the position that the Respondent cannot contest delivery because it had signed off on the confirmation. The Respondent has largely avoided the issue. In his cross-examination, AR branded it a truffa; a criminal act. (fn. 15 See recording of cross-examination at approx.. 0:33-0:34) On the other hand, PDM testified, when cross-examined, that he had explained the importance and consequences of the confirmation of delivery to ULR at the time he signed the document.*

28. *The Tribunal is not required to take a view on AR's assertion, given that his assertion was not formally adopted by the Respondent as part of its case. On the other hand, the Tribunal cannot accept the Claimant's position that the Respondent is debarred from disproving what purports to be evidenced by the confirmation of delivery. This is because, as is well known, where the literal meaning differs from the common intention of the parties as clearly evidenced by the whole of the agreement, preference must be given to the intention of the parties. (fn. 16 Art. 1003, Civil Code) It was clear to both parties that, at the*

time the First Contract was entered into, the goods leased had yet to be ordered, and it was thus impossible for delivery to have taken place on or around 16th May 2019.

29. *The problem for the Respondent is that even though it can challenge the evidence offered by the confirmation of delivery, it has presented no credible evidence as to what the agreed delivery date was, if indeed there was one. ULR and AR make no clear assertion in this regard in their affidavits. In cross-examination AR did assert, at one point, that the goods had to be delivered on or around the 16th May 2019, (fn. 17 See recording of cross-examination at approx. 0:39-0:40) but just a few minutes earlier he said that the confirmation of delivery was signed in good faith in the knowledge that the goods had yet to be delivered, which can only mean that the Respondent knew that delivery was not an obligation that was contemporaneous with the conclusion of the First Contract. (fn. 18 See recording of cross-examination at approx.. 0:36)*

30. *The Tribunal concludes that no agreement was reached in that regard other, perhaps, than an implied term that delivery was to take place as soon as possible.*

31. *Delivery did not take place before 1st July 2019. (fn. 19 See email exchanges attached to the affidavit of ULR and marked Document ULR7) In cross-examination, AR says delivery (under the First Contract) took place partly on 27th July 2019 and partly on 27th August 2019. (fn. 20 See cross-examination at approx. 0:40) But this version does not appear to be correct. It is contradicted, in so far as the August delivery is concerned, by what is alleged in the Counterclaim (where it was alleged that delivery took place at the end of July and the beginning of August). Further, according to ULR a delivery of* 'del materiale' *took place on 2nd July 2019. (fn. 21 See Document ULR8 attached to ULR's affidavit) By letter dated 12th July 2019, which following an on-site inspection attended by Mr Paolo Dellamano (at the time director of the Claimant), ULR claimed that only a partial delivery of the furniture and equipment had been made until then. In the same letter, ULR also asserted, in so far as concerned the items ordered from Food & Co, (fn. 22 See invoice dated 13th May 2019, exhibited as Document ULR9 and appended to ULR's affidavit. This invoice was sent to ULR on 3rd July*

2019: see Document ULR8 appended to ULR's affidavit) that (i) a bench (banco di lavoro) *that had been delivered was not of the correct size; (fn. ULR requested a replacement by 19th July 2019) (ii) a number of items not listed in the invoice had been delivered; and (iii) a number of items listed in the invoice were short delivered. Otherwise, the furniture and equipment appeared, it was said, to have been delivered, even if the identification did not always tally. With respect to the items delivered by The Catering Centre Ltd, it was asserted that only a few items were correctly identified. ULR concluded by asking the Claimant to solicit Food & Co to deliver the remaining items.*

32. *There is then a reference to a further delivery in an email dated 15th July 2019. (fn. 24 See Document GLDS4 appended to the Statement of Defence) The delivery was of the items covered by an invoice issued by The Catering Centre Ltd and dated 26th June 2019. It is unclear when this delivery was actually made, but on a balance of probabilities, the Tribunal finds that it must have happened sometime between 2nd July 2019 and 15th July 2019. The email – signed by Dott. Renzulli – does not suggest any short delivery. However, an issue was raised with respect to a washing basin which, it was asserted, was too large and did not fit. A replacement, of a smaller size, was requested by 19th July 2021* 'in tal modo da poter iniziare con la gelateria'. *If this item was indeed too large, it is unclear is who was at fault. Was a smaller basin ordered and a larger one delivered? Or was the order for a basin that was too large? Moreover, it is unclear whether the replacement was delivered by or even after 19th July 2019. No evidence in this regard was proffered.*

33. *As for the opening date of the ice-cream shop, neither party has properly addressed this factual issue thoroughly. ULR asserts that, because of the (alleged) delays, it was not possible to operate the shop during the summer of 2019, presumably until the end of September or thereabouts. (fn. 25 See affidavit of ULR, para. 20) However, the suggestion in the email of 15th July 2019 was that the opening was imminent and that all that was left was the replacement of a washing basin. As we have seen, the responsibility for that replacement, if it was even required, is unclear, as no evidence was adduced as to the reason for the need for it. That said, if one were to assume that the responsibility for the replacement lay with the Claimant, and if that was holding up the opening, it is difficult to accept that the Respondent did*

not follow up the email of 15th July 2019. It is even harder to accept that, if it was the case that the Respondent was unable to open the shop, that it did not protest rather more vociferously. (fn. 26 It is also alleged, in the Counterclaim, that ' in order to expedite matters and commence operations …other equipment or *[sic]*furniture was ordered from elsewhere…' This allegation has not been proved.)

34. *A further on-site inspection was requested and appears to have been held on 2nd August 2019. (fn. 27 See affidavit of ULR, paras. 16-20) ULR asserts, in his affidavit, that the inspection was unsuccessful in that it was not possible to identify* (individuazione) *the goods that had been delivered. (fn. 28 See affidavit of ULR, para. 19) But this is not tantamount to an assertion that the goods were not delivered. In his affidavit, Amedeo Renzulli ('AR') takes a similar stance regarding delivery: he asserts that when the inspection was held it was not possible to put together an inventory because, allegedly, of the lack of detail in the invoice. But he too fails to assert that, by then, some of the goods had not been delivered.*

35. *The Respondent's assertion that it was unable to put an inventory together and to identify any short delivery is difficult to accept and, in any case, little turns on this point. In his cross-examination, AR was at pains to explain that responsibility for the order of the furniture and equipment lay with Gemini, which had to deliver the shop on a turnkey basis. (fn. 29 See recording of cross-examination at approx.. 1:05-1.07) But, even if so, any issue in that regard is an issue between the Respondent and Gemini, and it is not germane to the dispute with the Claimant. (fn. 30 It is perhaps for this reason that the Respondent had, in its Statement of Defence, sought to have Gemini called in this arbitration, a request not subsequently pursued)*

36. *Moreover, the assertions about a supposed inability to produce an inventory are somewhat lame if the real complaint was a delay in delivery that was stopping the shop from being opened.*

37. *Further ULR's and AR's protestations in their respective affidavits are not quite consistent with the exchanges in the summer of 2019, nor with the Respondent's actions after it first (rather timidly) raised complaints.*

38. *Indeed, on 26 August 2019, ULR wrote to the Claimant again, and referred to the on-site inspection of 2nd August 2019 and to a letter received from a lawyer representing Gemini. The Tribunal makes the following observations:*

    a. *The Respondent does not assert that the shop was not, at that time, open for business. The Tribunal would have expected much to be made of this, had it been the case.*
    b. *The fact that the Respondent asserts that the equipment was delivered three months late is suggestive that, in fact, the Respondent was able to open the shop soon after delivery, which would have been sometime in July or, perhaps, early in August. (fn. 31 See email of 17th October 2019 (Document GLDS7 appended to the Statement of Defence) in which AR asserts that the goods were delivered in August 2019)*
    c. *The reference to the letter from Gemini appears to be a red herring. That letter dealt with issues between Gemini and the Respondent and, as far as the Tribunal could make out, had nothing at all to do with the goods supplied by the Claimant. In any case, the claim was not addressed to the Respondent.*
    d. *The Respondent did not request a reduction or suspension of the rental payments in view of the Claimant's (alleged) default, but simply asked for understanding from the Claimant and for a variation, by agreement, of the due dates for the rental payments due for the remainder of 2019.*

39. *This is hardly the sort of letter one would have expected from a party deprived entirely of its ability to run its business because of an ongoing and very serious default by the counterparty.*

40. *Now we turn to the Respondent's actions during that summer. On 7th August 2019 - a few days after the on-site inspection (now) described as unsuccessful - the parties entered into the second of the (eight) Contracts. (fn. 32 Document GR2 appended to the Statement of Claim) This was followed by a further six contracts, the first of which was entered into on 27th August 2019 and the last on 28th October 2019 (fn. 33 Documents GR3 to GR8 appended to the Statement of Claim) In his affidavit, AR says that the Respondent had to* (ha dovuto) *enter into these contracts to acquire items that should have been acquired when*

the order covered by the First Contract was made. He elaborated on this point in his cross-examination. (fn. 34 See recording of cross-examination at approx, 0:57) But it is obvious that, in the relationship between the parties, the responsibility to order what was necessary for the shop rested with the Respondent. That the Respondent had engaged Gemini to perform this responsibility is, of course, an internal matter between the Respondent and Gemini and has no bearing on the relationship between the parties to this arbitration. What is relevant is that the Respondent proceeded to enter into seven contracts with the Claimant after the Claimant was, allegedly, still holding up the opening of the ice-cream shop. The allegation and the facts do not sit very well together.

41. *Also not entirely consistent with the Respondent's position as set out in the Statement of Defence and in the Counterclaim is the fact that the Respondent's obligation to pay was acknowledged to a material degree by the Respondent during 2019; and that some payments continued to be made, until October of that year. It is true that, as is evidenced by the email exchange on 17th October 2019, (fn. 35 Document GLDS7 appended to the Statement of Defence) there were some differences about how much was due and when it was due, but there was no suggestion that the Claimant was still in breach, nor that the Respondent had a counterclaim to make that would offset the dues. At most, that email is suggestive, but no more, of a request for a partial reduction of the rent then due to make good for the (alleged) delay. Nonetheless, the Respondent made a further payment on or around 22nd October 2019, which paved the way for the last contract, entered into on 28th October 2019. (fn. 36 Documents GLDS7, 8 and 9 appended to the Statement of Defence)*

42. *In summary, the Tribunal finds that the Respondent has failed to demonstrate that there was an obligation to deliver on or around the date the First Contract was entered into: it is abundantly clear that the parties did not expect delivery to happen for some time as they were both aware that the order for the furniture and equipment had yet to be, or had just been, made. Absent an agreed delivery date, the Respondent had to put the Claimant in default in terms of the law of the contract. (fn. 37 See clause 14 of the Contracts) No evidence in that regard has been forthcoming. (fn. 38 See above, para. 25) Even if one*

were to consider the letter of 26th June 2019 as a (valid) notice of delay, the Respondent has not proved the a material delay as delivery was made partially on 2nd July 2019 and then some days later.

Did the Claimant short deliver or delivered non-conforming goods?

43. *Although the Respondent alleged short delivery, it has done very little to prove it. In his cross-examination, AR repeatedly says that the Respondent is unable to demonstrate short delivery because the Respondent is unaware of what was ordered. (fn. 39 See, inter alia, recording of cross-examination at approx. 1:09) The fact that, as appears to be the case, the order was made by Gemini is by the by: even if so, it was made for the benefit of the Respondent and it remained incumbent on the Respondent to prove short delivery by any means allowed by law, including by summoning representatives of Gemini, whose names were repeatedly mentioned, to testify.*

44. *In so far as concerns the allegation that goods were supplied with the wrong specifications, this too has not been proved. There is an email (fn. 40 Document GLDS4) in which it was asserted that a washing basin was too large. But there is no evidence to show that, even if that was the case, the fault lay with the Claimant: no attempt was made to show that the Claimant delivered an item not in accordance with the specifications set out in order. Indeed, the Respondent has repeatedly said it does not know what was ordered.*

Misallocation of payments

45. *The Respondent's final complaint is that payments made were misallocated as between the Contracts. A weak attempt to substantiate this was made through ULR's affidavit, in particular the documents appended to it. He refers to a letter of 20th January 2020, (fn. 41 Document ULR17 appended to his affidavit) in which he alleges that a payment made on 17th October 2019 was made to settle dues in respect of the Contracts that bear the numbers 1284, 1294, 1295, 1305, 1312, 1343 and 1347 but that the Claimant allocated the payment to the First Contract (1215) which was said to be* 'oggetto di contestazione'. *But no attempt was made to corroborate this. Further, the evidence available to the Tribunal – and provided by ULR himself – would appear to point in a different direction. Indeed Document ULR16 appended to his affidavit would appear to evidence a payment on 22nd*

October 2019 (not 17th October 2019 as alleged) in respect of the Contracts that bore the following numbers: 1215 (the First Contract), 1284, 1294, 1295, 1305 and 1312. This payment – and specifically the settlement of dues under the First Contract - was also referred to in an email dated 17th October 2019. (fn. 42 Document ULR14 appended to his affidavit)

Conclusion

46. *For the above reasons, the Tribunal rejects the Respondent's defences and the Counterclaim.*

47. *In so far as concerns the Claimant's claims, the Tribunal notes that while the Respondent contested liability for the reasons dealt with above, it has not contested the quantum thereof as such; nor has it contested its obligation to return the goods delivered, arguing only that it cannot do so because the Claimant has not provided an inventory. But this is, in truth, an absurd defence: why the absence of an inventory should prevent the return of goods admittedly in the Respondent's possession has not been explained, presumably because it cannot be explained. The absence of an inventory could, conceivably, have provided the Respondent with a defence of short return by the Claimant had that arisen, but it is harly a justification of a refusal or failure to return that which is in the Respondent's possession.*

48. *Accordingly, given that the Tribunal has rejected the Respondent's position on liability, the Tribunal orders the Respondent to:*

    a. *Pay the Claimant the outstanding rent instalments until termination in the amount of €19,978.93;*
    b. *Pay the Claimant pre-liquidated damages in accordance with clause 11 of the Contracts and in terms of art. 1138, Cap. 16 consisting of the aggregate of the rent instalments still outstanding for the entire rent period amounting to €125,945.33; and*
    c. *Pay the Claimant the aggregate of the daily penalties in terms of clause 11 of the Contracts arising because of failure by the Respondent, upon termination of the Contracts, to return the goods actually delivered under the Contracts for each day of default until the effective return of the said goods; for the*

purposes of this order, the penalty is calculated at the rate of €77.39 per day, (fn. 43 1/30 of the aggregate monthly rentdue under the Contracts) which means that the penalty due until the date of this ruling is of €66,555.40, (fn. 44 Calculated from 6 March 2020, being the date on which the goods were, according to the termination notices (Documents GR0-GR16), to be returned) saving further penalties should the goods still not be returned.

Costs, as per Taxed Bill of Costs issued by the Malta Arbitration Centre which is being attached hereto and marked Document Letter X, are ordered against the Respondent. In so far as the claim for interest is concerned, this is also ordered against the Respondent as follows: as regards the rental arrears, to be calculated from the date on which each instalment became due; and as for the pre-liquidated damages as from the termination date, that is from 6 March 2020. No interest is due on the penalties, as no interest is said to be due on those due in terms of the Contracts."

The Appeal

6. Appellant felt aggrieved by the Arbiter's decision and filed an appeal application before this Court on the 20th September, 2022, in accordance with the terms of para. (b) of subarticle 69A(2) and article 70A of the Arbitration Act (Cap. 387 of the Laws of Malta), whereby it is asking this Court to:

"1. Order unto the Registrar or any other competent person at the Malta Arbitration Centre fo release for its attachment to the acts of this appeal the abitral file thereby held relative to the arbitration matter no. 5941/2020 at the Arbitral Tribunal within the Malta Arbitration Centre, between Grenke Renting Limited (C 57282) -vs- GLD Services Limited (C 69228), as decided on 14th July 2022;

2. Decisively completely reverse and revoke the award delivered on 14th July 2022 in the arbitration matter no. 5941/2020 by the Arbitral Tribunal as presided by Arbiter Dr Henri Mizzi at the Malta Arbitration Centre;

3. *Liquidate the damages suffered by GLD as a result of Grenke's contractual breaches as requested by GLD in its counterclaim filed on 30th July 2020 and as statutorily authorised in terms of Article 45(2) of the Malta Arbitration Acts, Chapter 387 of the Laws of Malta;*

4. *Order Grenke to pay GLD damages as liquidated;*

With all costs to be borne by Grenke."

The Reply

7. The Appealed Party replied on the 11th November, 2022, whereby it submitted that the present appeal is inadmissible in terms of article 70B of Cap. 387, and as to the merits, it submitted that the Appellant's arguments are completely unfounded.

Considerations

8. The Court deems it prudent to consider the procedural plea raised by the Appealed Party before entering into the merits of the present appeal. Unless it is found that Appellant had a right to appeal from the Arbitral Award, the Court cannot consider itself competent to entertain its appeal.

9. The Appealed Party contends that the present appeal is inadmissible because the grievances which the Appellant has brought forward do not conform with the requirements of article 70B of Cap. 387. It argues that since the appeal follows domestic arbitration proceedings, it can only be made in respect of a point of law in accordance with para. (b) of subarticle 69A(2) and article 70A of Cap. 387. The Appealed Party cites the dispositions of the latter article, and also those of subarticle 70B(1) of the same law. It insists that the

Appellant's appeal represents a grievance as to the evaluation of the facts and of the evidence made by the Arbitral Tribunal, and as to the manner the latter exercised its discretion when examining those facts and that evidence. It contends that although Appellant represents its grievance as an *'erroneous application of the law',* it fails to identify a point of law which was determined by the Arbiter and which he interpreted erroneously. The Appealed Party insists that it is clear that the grievance is tied to the evaluation of the facts, and the evidence where it had disagreed with the evaluation made by the Arbitral Tribunal. It explains that the Appellant is submitting that the Arbitral Tribunal was wrong in relying on the contents of the eight contracts and on the eight relative Confirmation of Delivery forms, and goes on to explain the arguments brought forward by the said Appellant. It reiterates that without any doubt this grievance refers to the merits of the case and the Appellant had no basis to file the present appeal but also it failed to abide by the provisions of sub-article 70B(1) Cap. 387 of the Laws of Malta. The Appealed Party then refers to the Appellant's argument based upon the documents attached to Ugo Luca Renzulli's affidavit, but insists that it has failed to identify a point of law. It goes as far as to insist that all the points raised in Appellant's appeal application concern the merits of the case and there is no indication at all of which point of law this Court is being called upon to decide, and which interpretation of that point of law is the correct one. It contends that the grievance of the Appellant is with the Arbitral Tribunal's interpretation of the facts, in an attempt to convince this Court to re-examine the case.

10. The Court will now consider whether the grievance the Appellant has presented before it, truly constitutes a legal issue. It contends that when the Arbitral Tribunal awarded its decision, it relied on the truthfulness and good faith of the contents of eight contracts of lease, and the relative eight confirmations of delivery which it regarded as sufficient proof of the Appealed party's claims. It further argues that the Arbitral Tribunal did not recognise the incorrectness of the said documents, and explains various instances where it was wrong in its appreciation of their contents. The Appellant however fails to identify the point of law allegedly decided erroneously by the Arbitral Tribunal and which is the source of its grievance. Instead it immerses itself in various arguments as to the interpretation of the facts of the present case, and the evidence produced before the Arbitral Tribunal. In terms of para. (b) of subarticle 69A(2), the Court has no competence to appraise the evidence already examined by the Arbitral Tribunal, and cannot but uphold the Appealed Party's plea of nullity of the present appeal.

Decide

For the above reasons, the Court declares the present appeal null and void and refrains from taking cognizance of the said appeal.

The costs related to the Arbitration proceedings shall be paid as decided in the Arbitral Award, whilst those related to these proceeedings shall also be borne in their entirety by the Appellant.

Read.

Hon. Dr Lawrence Mintoff LL.D.
Judge

Rosemarie Calleja
Deputy Registrar