



BORD LI JIRREGOLA L-KERA

**MAGISTRATE
DR. JOSEPH GATT LL.D.**

Sitting this Wednesday, 27th of September 2023

**Application Number: 106/2021JG
Number on the list: 46**

**Massimiliano Damiano (Italian Passport Number YA 3358344)
and Chiara Macinetti (Italian Passport Number (YA6516466)**

VS

Giles Pinto (I.D. 12298A)

The Board,

Having seen the application dated the 30th of April 2021¹, whereby the plaintiffs claimed and asked for the following:

¹ Original act in the Maltese language commences at fol 1 of the acts. English translation is found at fol 5 *et seq* of the acts.

1. *Illi permezz ta' ftehim ta' kirja ffirmat bejn ir-Rikorrenti bhala inkwilini u l-Intimat bhala lokatur datat nhar il-25 ta' Novembru tas-sena 2019, l-Intimat kera lir-Rikorrenti l-fond ossia villa bin-numru ufficjali 41, fi Triq San Ġwann, in-Naxxar, għall-perjodu lokatizju ta' erbgħa u għoxrin (24) xahar mill-ewwel (1) ta' Ġunju tas-sena elfejn u għoxrin (2020), versu l-kera ta' elfejn, seba' mija u ħamsin Ewro (€2,750.00) fix-xahar, bil-pattijiet u kundizzjonijiet hemm stipulati. Kopja ta' dan il-ftehim qiegħda tigi hawn annessa u mmarkata dokument ittra "A";*

2. *Illi bhala garanzija versu l-adempjiment tal-obbligi tar-Rikorrenti qua inkwilini ta' uzu xieraq tal-għamajjar u hwejjeġ mobbli fil-fond mikri, u tal-fond mikri nnifsu bhala ħaġa immobbli, kif ukoll għall-ħlas tal-konsum ta' dawl u ilma, ir-Rikorrenti għaddew lill-Intimat is-somma ta' tmint elef, mitejn u għoxrin Ewro (€8,250.00) bhala depożitu li kellu jinżamm minnu u jintradd lura lir-Rikorrenti mat-terminazzjoni tal-kirja;*

3. *Illi bhala ħlas provvizorju versu l-ħlas tal-kera tal-arloġġi relattivi u l-konsum tad-dawl u ilma, ir-Rikorrenti kienu jħallsu wkoll is-somma addizzjonali ta' mitejn u ħamsin Ewro (€250.00) fix-xahar;*

4. *Illi matul il-pussess tal-fond mikri mir-Rikorrenti, irrizultaw fl-istess fond diversi difetti u ħsarat li tellfuhom mit-tgawdija ħielsa tiegħu fosthom infestazzjoni ta' wurdien, pressjoni baxxa ħafna ta' ilma mill-viti tal-ilma mifruxin madwar il-fond kollu, umditá u moffa mal-ħitan u soqfa li b'konsegwenza jerħu ħafna trabijiet u kontinwament jinfirxu mal-fond kollu, ingress qawwi ta' ilma tax-xita mill-fessuri tat-tieqa minnhom fil-kamra tal-banju ta' isfel li xi drabi tegħreq b'konsegwenza ta' dan u terħi rwejjah fastidjużi fit-tul, u ingress ta' ilma tax-xita wkoll mis-saqaf ta' kamra tas-sodda minnhom li jxarrab il-tessuti tas-sodda;*

5. *Illi minkejja li repetutament mitlub sabiex jindirizza n-nuqqasijiet tiegħu fil-fond mikri mir-Rikorrenti, l-Intimat baqa' lampantement inadempjenti billi jnaqqas mis-serjeta tal-problemi u ingustament jiddelega r-responsabilitajiet tiegħu saħansitra fuq ir-Rikorrenti;*

6. *Illi wara li bin ir-Rikorrenti ta' ftit snin rabba sogħla ħarxa, ir-Rikorrenti ma kellhomx għazla oħra għajr li jikkunsidraw it-terminazzjoni tal-kirja u sussegwentement jivvakaw mill-fond mikri u jsibu akkomodazzjoni alternattiva;*

7. *Illi nhar is-sabatax (17) ta' Settembru tas-sena elfejn u għoxrin (2020), il-Ko-Rikorrent Massimiliano Damiano informa lill-Intimat li bħala inkwilini kienu beħsiebhom jiterminaw l-kirja b'effett min-nhar l-ewwel (1) ta' Ottubru tal-istess sena u l-partijiet qablu għal dan u in oltre l-Intimat intrabat illi għandu jrodd lura s-somma mħallsa b' depożitu bħala garanzija mir-Rikorrenti meta l-Intimat jikri l-fond mikri lil terzi;*

8. *Illi nhar is-sbatax (17) ta' Ottubru tas-sena elfejn u għoxrin (2020), l-Intimat ikkonferma li l-fond mikri kien inkera lil terzi u għalhekk ir-Rikorrenti, skont il-ftehim ta' bejn il-Partijiet, kienu qegħdin jistennew ir-radd lura tad-depożitu minnhom mgħoddi lill-Intimat mal-iffirmar tal-kuntratt lokatizju iżda l-Intimat informa lill-Ko-Rikorrent Massimiliano Damiano illi unilateralment kien issa darlu l-ħsieb li jirrifondi l-imsemmi depożitu u saħansitra vvanta l-ħlas ta' spejjeż u tlef ta' qligħ allegatament minnu inkorsi u mgarrab oltre pretensjonijiet mingħajr ebda sisen legali u, jew ġustifikazzjoni ulterjuri, li talab li jħallsuh ir-Rikorrenti;*

9. *Illi oltre d-depożitu hawn fuq imsemmi, l-Intimat huwa debitur tar-Rikorrenti wkoll għad-differenza bejn il-ħlas provvizorju tal-kera u konsum tad-dawl u ilma mħallas mensilment mir-Rikorrent lill-Intimat fl-ammont ta' €250.00 kif hawn fuq dedott, u l-kontijiet attwali relattivi għall-fond mikri matul il-pussess tiegħu mir-Rikorrenti, liema kontijiet jew kopja taħghom qatt ma waslu għand ir-Rikorrenti;*

10. *Illi għalhekk, fid-dawl tas-sitwazzjoni inkrepattiva li ħoloq esklussivment l-Intimat u li jahti għaliha unikament hu, ir-Rikorrenti ma kellhomx għazla oħrajn għajr li jinkorru għal dawn il-proċeduri sabiex jiġbru dawk li huwa dovut lilhom mill-Intimat;*

11. *Illi ma' dan ir-rikors tar-Rikorrenti qiegħda tiġi annessa u mmarkata bhala dokument ittra "B" il-korrispondenza li saret tramite Whatsapp bejn il-Ko-Rikorrent Massimiliano Damiano u l-Intimat minn fejn anke jirriżultaw il-fatti hawn esposti;*

Għaldaqstant, fid-dawl tal-fatti hawn fuq edotti, ir-Rikorrent qegħdin jitolbu lil dana l-Bord sabiex:

I. Għal kull buon fini, jiddikkjara illi, minkejja l-ftehim ta' bejn il-Partijiet li jtterminaw il-kirja, ir-Rikorrenti kellhom raġuni valida u legalment ġustifikata li jtterminaw il-kirja tal-fond mikri fid-dawl tad-diversi nuqqasijiet tal-Intimat;

II. Jikkundanna lill-Intimat irodd lura d-depożitu imħallas lilu mir-Rikorrenti fl-ammont ta' tmint elef u mitejn u hamsin Ewro (€8,250.00);

III. Jikkundanna lill-Intimat irodd lura d-differenza bejn il-hlas provviżorju mhallas lilu mir-Rikorrenti fl-ammont ta' mitejn u hamsin Ewro (€250.00) fix-xahar versu l-kerata tal-arloggi relattivi u l-konsum tad-dawl u ilma fil-fond mikri, u l-kontijiet attwali għal dan;

IV. Jikkundanna lill-Intimat ihallas imghaxx fuq l-ammonti dovuti skont it-Tieni u t-Tielet talbiet hawn fuq indikati bir-rata ta' tmienja fil-mija (8%) dekorribbli mid-data tan-notifika ta' dana r-rikors;

Bl-ispejjeż kontra l-Intimat li huwa minn issa ingunt għas-subizzjoni.

Having seen the voluminous documents attached to the said application².

Having seen that the respondent, duly notified³ failed to file a reply in his defence and to register his presence in these proceedings.

Having seen the evidence of the plaintiffs Massimiliano Damiano and Chiara Macinetti⁴.

Having seen further testimony given by the plaintiff Massimiliano Damiano⁵.

Having seen the appointment made by the President of Malta dated the 5th of March 2023 in terms of article 16 of Chapter 69 of the Laws of Malta⁶.

² These commence at fol 9 of the acts.

³ With the procedure established in article 187(3) of Chapter 12 of the Laws of Malta.

⁴ Testimony given during the sitting dated 14th July 2022. Transcript commences at fol 92 of the acts.

⁵ During the sitting of the 16th of November 2022, at fol 105A of the acts.

⁶ At fol 112 of the acts.

Having seen the assignment of duties dated the 9th of March 2023 made by the Chief Justice whereby all cases before this Board which were previously being heard by Judge Josette Demicoli were assigned to this Board as chaired⁷.

Having seen the decree issued by this Board as presided on the 10th of May 2023⁸.

Having heard the final oral submissions on the part of the plaintiff's lawyer on the 31st of May 2023. On that date, this case was adjourned for judgement.

Considers

Whereas as has already been established above, the respondent in this case decided not to produce any defence in the claim brought against him.

Whereas this is tantamount to a failure on his part to observe what is required in terms of article 30 of Chapter 9 of the Laws of Malta. Naturally, this passive stance adopted by the respondent cannot be a useful tactic on his end. It should never be forgotten that one cannot simply ignore the tools given by the law and then hope that one finds solace by the judicial authority, tasked with deciding his faith. In this regard, the Board reminds that *qui culpa sua damnum sentit, non videtur sentire*⁹. Nonetheless, this Board is not obliged to simply accede to the plaintiff's request only due to the omission of formal representation on the part of the respondent¹⁰.

⁷ At fol 113 *et seq* of the acts.

⁸ At fol 118 of the acts.

⁹ “*Chi subisce un danno per propria colpa, non si considera averlo subito.*” – Brocard 3983, **Dizionario Dei Termini Giuridici e Dei Brocardi Latini**, Edoardo Mori, VII ediz, 2011, at fol 37.

¹⁰ Reference is made to the judgment given in the case in the names **Joseph Camilleri et vs Anthony Aquilina**, (App Nru 5/2015/1) given by the Court of Appeal (Inferior Jurisdiction) on the 9th of November 2016, where the following was dictum was enunciated: “*Kif qorti ghandha, “kull dritt tirileva, anke indipendentement mill-inizjattiva tal-parti konvenuta, in-*

Whereas the Board, having considered the evidence brought forward by the plaintiff, which evidence was not counter-examined by the respondent, including the documents exhibited, finds that the plaintiffs' remaining claims are worthy of acceptance. It is clear that the respondent in this case failed in his duty to abide by his obligations as lessor according to law¹¹. The SMS exchange between the parties is also evidence that the respondent accepted this fault.

Whereas the plaintiffs have renounced to their third claim and therefore there is no need for a judicial pronouncement on the same.

Therefore, the Board is deciding this case in the following manner:

- 1) Accedes to the first request and decides that the plaintiffs had a legally valid reason to terminate the lease.
- 2) Accedes to the second and fourth request and therefore orders the respondent to pay the plaintiffs, the amount of eight thousand, two hundred and fifty Euro (€8,250.00) with legal interest from the 2nd of February 2022¹².
- 3) Abstains from considering the third request, since this was renounced to by the plaintiffs.

Orders the respondent to pay all the costs of these proceedings.

*nuqqas ta' dawk l-elementi li jsostnu l-fundament tal-pretensjoni tal-atturi. Dan jigri dejjem, ukoll fejn parti mharrka tkun fi stat kontumacjali." (Maria Concetta Pons vs Carmelo Degabriele, 20 ta' Novembru 2009), l-istess dritt ghandu l-Bord. Refernce is also made to the sentence in the names **Maurice Borg et vs Robert Spiteri**, (App Nru: 137/2017) given by the Court of Appeal (Inferior Jurisdiction) on the 18th of June 2018 which stated the following: "Mad-daqqa ta' ghajn jidher li bl-artikolu 30 il-Bord ghandu jdejh marbutin. Pero' f'dan il-kaz tressqu provi dokumentarji u xehed l-attur. Il-qorti ma tarax kif a bazi ta' dawk il-fatti l-Bord seta' jaghlaq ghajnejh u jilqa' t-talbiet kollha tar-rikorrenti qiesu xejn mhu xejn"*

¹¹ Article 1539 of Chapter 16 of the Laws of Malta.

¹² The date on which the respondent was duly notified with the acts of the present case, being the third working day following the relative publication in terms of article 187(3) of Chapter 12 of the Laws of Malta.

Dr Joseph Gatt LL.D.
Magistrate

Annalise Spiteri
Deputy Registrar