

RENT REGULATION BOARD
Magistrate Dr. Monica Vella LL.D., M. Jur.
CHAIRPERSON

Application No. 09/2019MV

**Boris Formosa (I.D. No. 0435878M) and
Joelene Apap Formosa (I.D. No. 445885M)**

Vs

**Biao Abdouwahab (I.D. No. 0071361A) and
Miriam Abdouwahab (I.D. No. 0071363A)**

Today 4th of July, 2023

Took note of the application by Boris Formosa (I.D. No. 0435878M) u Joelene Apap Formosa (I.D. No. 445885M) presented in the Court Registry on the 16th January 2019 whereby applicants submitted and asked the Board the following:

Rikors ta' Boris Formosa (detentur tal-karta ta' l-identita bin-numru 0435878M) u martu Joelene Apap Formosa (detentriċi tal-karta ta' l-identita bin-numru 445885M)

Jesponu bir-rispett.

1. Illi l-esponenti huma s-sidien tal-fond 20/3, Jolmar, Triq Ferdnina Hompesch, Siggiewi;
2. Illi l-esponenti kienet, wara li saret taf b'diffikultajiet li kellha l-familja tal-intimata Miriam Abdouwahab, hennet għaliha u aċċettat li tikriha l-fond imsemmi għall tlett (3) xhur sakemm isibu fejn joqgħodu; ara skrittura

Dokument BF1; u nkiteb hekk: *'Today we resived the amount of 450euro this is a deposit. The rent is of 450euro for 3 months as a trial starting from 1 May end 31 July. It will be paid every first week of the month. Also electricity bill will not be included in the rent so when we resive the bill we cheque and let them know how much for those 3 month. After we will meet again and deside about the long let. Also the thing inside apartment both os us agree how they are must be kept. We are refering fpr breaking thing ecc.'*

3. Illi sussegwentement l-intimati talbu lir-rikorrenti jagħmlulhom karta oħra sabiex juzawha *identity malta*, u biex tkun tista ddaħħal lit-tifel l-iskola, li fiha jkun hemm konferma tal-hlas u l-esponenti għamlulom kitba li qieghda tiġi esebita bħala **Dokument BF2;** *This is a note to cover the rent for 3 months January, february, march of 2017 this will cover till the end of 31 st March. After this day we will arrange to make the Full Home Renting for 5 years that already have stated from 1 May 2016-31 July 2021;*
4. Illi l-partijiet qatt ma ltaqgħu sabiex tiġi regolata din il-kirja wara dawn it-tlett (3) xhur u l-intimati baqgħu fil-fond b'mera tolleranza tal-esponenti;
5. Illi fil-fatt lanqas biss ħallsu l-kirja skont kif kien mifthiem f'dawn l-iskritturi u wisq inqas ma onoraw dak li kienu pruvaw jaqblu dwaru għat-tul tat-tlett (3) xhur;
6. Illi l-intimati:
 - (i) Qieghdin jokkupaw il-fond mingħajr titolu peress li ma hemm ebda skrittura li tirregola dil-kirja wara li skada l-perjodu sal-31 ta' Marzu 2017;
 - (ii) Qatt ma ħallsu l-ammont ta' 450euro;
 - (iii) Naqsu li jħallsu tad-dawl u ilma;
 - (iv) Għamlu ħsara fil-komun;
 - (v) Daħħlu diversi persuni għol fond mingħajr il-kunsens tal-esponenti;

7. Illi għalkemm l-esponenti interpellaw lil intimati sabiex jersqu għall kuntratt formali li jissodisfa l-elementi tal-ligi huma irrifjutaw li jagħmlu dan;
8. Illi minflok huma qabdu u bdew jiddepozitaw is-somma ta' erbgħa mitt ewro (euro400) fix-xahar, somma li llikwidaw huma minn jeddhom u dana peress li ma kien hemm ebda ftehim u/jew kuntratt ta' kera maqbul bejn il-partijiet;
9. Illi l-intimati ġew interpellati sabiex jizgumbraw minn ġewwa l-fond imsemmi;
10. Illi huma baqgħu inadempjenti u minflok bdew jiddepozitaw din il-kirja li llikwidaw huma fl-ammont ta' erbgħa mitt ewro (euro400) l-Qorti u jippretendu li għandhom xi kirja;
11. Illi għalhekk din it-talba ta zgumbrament qiegħda ssir ai termini ta' dak li jipprovdi l-artikolu 9 subinċiz (a) u subinċiz (b) tal-Kapitolu 69 tal-Liġijiet ta' Malta.

Għaldaqstant l-esponenti bir-rispett jitolbu li dan il-Bord jogħgbu:

1. Jiddieċiedi l-kawża bid-dispensa tas-smieġh a tenur tal-Artikolu 16A tal-Kapitolu 69 tal-Liġijiet ta' Malta;
2. Konsegwentement tordna lil intimata tigi zgumbrata fi zmien qasir u perentorju li jogħgbu jistabilixxi dan l-Onorabbli Bord u jawtorizzahom sabiex jirripretendu lura l-pussess battal tal-imsemmi fond bin-numru ghoxrin (20) Flat 3, Jolmar, Triq F. Hompesch. Siggiewi.

Bl-ispejjez kontra l-intimata li hi minn issa ngunta għas-subizzjoni

Took note of the documents presented together with the application at fol 6 , 7 u 8 of the proceedings.

Took note of the note of the defendant Baio Abdouwahab (I.D. No. 0071361A) et at fol 15 of the proceedings whereby he submitted:

Jesponu bir-rispett:¹

Illi l-intimati jikru l-fond 20/3 Triq F.Hompesch, Siggiewi bil-kera ta' EURO 400 kull tlett xhur u dan mill-31 ta' Lulju kif jirrizulta mill-iskrittura dokument BF2 iffirmata bejn il-kontendenti annessa fil-process u dan mill-31 ta' Lulju 2016 sal-31 ta' Lulju 2021.

Illi din l-iskrittura giet iffirmata minn Jolene Apap Formosa u l-intimat Baio Abdouwahab.

Illi fil-fatt qabel ma giet iffirmata din l-iskrittura BF2, jirrizulta minn skrittura ohra datata 22 t'April 2016 illi l-kirja l-ewwel kienet għal tlett xhur mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2016 bir-rata ta' €450 fix-xahar kif ukoll depozitu ta' €450 li kienu mħallsin fit-22 t'April 2016 u dan skond skrittura hawn annessa u mmarkata bhala dokument GBO1 fejn il-kontendentiddikjaraw "today is the beginning of the rent for five years in advance and it will end on the 31st of July 2021. After this day we make another meeting for the future rent." Illi din giet iffirmata minn Jolene Apap Formosa u Baio Abdouwahab.

Illi b'ingann, Jolene Apap Formosa ma pprezentatx din l-iskrittura biex tizvija l-Qorti mill-ftehim li kien intlaħaq bejn il-kontendenti.

Illi l-kirja kif jirrizulta miud-dokument GBO1 hawn annessa l-kirja tal-fond 20/3 Jolmar, Ferdinand Hompesch Street, Siggiewi hija għal perjodu ta' 5 snin bir-rata ta' €400 fix-xahar mill-1 ta' Awwissu 2016 sal-31 ta' Lulju 2021 wara liema perjodu kellhom jergghu jiltaqghu u kif tghid l-istess skrittura "we make another meeting for the future rent" u cioe għal perjodu wara l-31 ta' Lulju 2021.

Illi skond il-"confirming note" Dokument BF1 fil-process din hija ricevuta li kienet tkopri l-kera bejn Jannar, Frar u Marzu 2017, jirrizulta illi l-kirja giet

¹ Fol. 15 of the file.

konfermata ghal perjodu mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2021. Illi l-kirja kienet diga bdiet l-ewwel ghal tlett xhur bir-rata ta' €450 fix-xahar mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2016 imbgħad ta' €400 fix-xahar għal hames snin fejn Jolene Apap Formosa ikkonfermat bil-kliem tagħha stress li l-kirja "already have started 1st May 2016-31st July 2021END" u dan bil-kitba tal-istess rikorrent Apap Formosa.

Illi din hija skrittura valida skond il-ligi ai termini ta' l-artikolu 1531A tal-Kap 16 tal-Ligijiet ta' Malta fejn il-propjeta giet indikata, fejn l-uzu ta' l-istess proprjeta gie mnizzel, il-perjodutal-kirja miftiehem kif ukoll illi għandha ssir estensjoni għal future wara t-terminazzjoni tal-kirja tal-31 ta' Lulju 2021.

Illi dawn huma skritturi validi skond il-Ligi u għalhekk għaladarba l-ammont tal-kera li kellu jithallas gie miftiehem, u l-ftehim sar bil-miktub, fuq il-firma taz-zewg partijiet ossia Jolene Apap Formosa u Baio Abdouwahab mingħajr ebda partikolari essenzjali nieqes, il-kuntratt huwa rabta bejn il-partijiet u mhux null.

Illi l-intimati għandhom eccezzjonijiet validi x'jagħtu kif jirrizulta mill-iskrittura dokument BF1, BF2 u BF3 hawn annessi u r-rikorrenti m'għandhomx dritt jipprocedu bi procedure sommarji stante li kull xahar minn Gunju 2018huma ddeposittaw il-kera ta' €400 fix-xahar fir-Registru tal-Qorti tal-Magistrati.

Illi jirrizulta illi r-rikorrenti kienu qed jiddefrodaw lill-intimatifil-hlas tal-konsum tad-dawl u ilma u għalhekk huma pprocedew ai termini tal-Artikolu 166A tal-kap 16 tal-Ligijiet ta' Malta għar-rimbors tal-konsum tad-dawl u ilma fl-ammont ta' EURO 1,200.

Illi r-rikorrenti opponew għar-rimbors ta' l-istess u għalhekk b'kontrotalba f'dawn l-atti ser jintalab ir-rimbors ta' l-istess flus imħallsa indebitament minnhom lir-rikorrenti.

Illi għalhekk l-intimati jitolbu li jingħataw zmien biex jagħmlur-risposta u kontro talba.

During the sitting of the 26th February 2019 defendants asked the Board to hold the proceedings in the English language since they do not understand Maltese. The Board acceded to this request after the plaintiffs did not object.²

Took note of the reply of the defendants submitted in the Court's Registry on the 27th February 2019 and also to the counter-claim submitted for the refund of Euro

² Fol. 18 of the file.

1,200 being the alleged over-payment of the water and electricity bills between the 1st May 2016 and the 31st September 2018.

Risposta ta' Baio Abdouwahab

Jeccepixxu bir-rispett:

1. Illi d-domnadi attrici huma nfondati fil-fatt u fid-dritt stante li huma ghandhom kirja valida ghal hames snin mill-31 ta' Lulju, 2016 sal-31 ta' Lulju 2021 kif jirrizulta mill-iskrittura dokument BF2 iffirmata bejn il-kontendenti annessa fil-process, u dan bil-kera ta' €400 fix-xahar.
2. Illi din l-iskrittura giet iffirmatabejn is-sid Jolene Apap Formosa u l-inkwilin Baio Abdouwahab.
3. Illi fil-fatt jirrizulta minn skrittura BF2 fil-process illi l-kirja l-ewwel kienet ghal tlett xhur mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2016 bir-rata ta' €450 fix-xahar fejn l-intimati hallsu wkoll depozitu ta' €450 li kienu mhallsin fit-22 t'April 2016.
4. Illi bi skrittura ohra datata 31 ta' Lulju 2016, hawn annessa u mmarkata bhala dokument GBO1 il-kontendenti ftehm u ddikjaraw illi l-kirja ta' hames snin bdiet mill-1 ta' Awwissu 2016-“today is the beginning of the rent for five years in advance and it will end on the 31st of July 2021. After this day we make another meeting for future rent”. Illi din giet iffirmata minn Jolene Apap Formosa u Baio Abdouwahab.
5. Illi b'ingann, Jolene apap Formosa ma pprezentatx din l-iskrittura biex tizvija l-Qorti mill-ftehim li kien intlaq bejn il-kontendenti.
6. Illi l-kirja kif jirrizulta mid-dokument GBO1 hawn annessa tal-fond 20/3 Jolmar, Ferdinand Hompesch Street, Siggiewi hija ghal perjodu ta' hames snin bir-rata ta' €400 fix-xahar mill-1 ta' Awwissu 2016 sal-31 ta' Lulju 2021 wara liema perjodu kellhom “we make another meeting for the future rent” u cio ghal perjodu wara l-31 ta' Lulju 2021.
7. Illi skond il-“confirming note” Dokument BF1 din hija ricevuta li kienet tkopri l-kera bejn Jannar, Frar u Marzu 2017, jirrizulta illi l-kirja giet

konfermata ghal perjodu mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2021. Illi l-kirja kienet diga bdiet kif diga inghad l-ewwel ghal tlett xhur bir rata ta' €450 fix-xahar mill-1 ta' Mejju 2016 sal-31 ta' Lulju 2016 imbaghad bir-rata ta' €400 fix-xahar ghal hames snin fejn Jolene Apap Formosa ikkonfermat bil-kliem taghha stress li l-kirja "already have started 1st May 2016-31st July 2021 END" u dan bil-kitba tal-istess rikorrenti Apap Formosa.

8. Illi dawn huma skritturi validi skond il-Ligi- Dokument BF1, BF2 u GBO1 ai termini ta' l-Artikolu 1531A tal-Kap 6 tal-Ligijiet ta' Malta fejn il-propjeta b'tlett skritturi giet indikata, fejn l-uzu ta' l-istess proprjeta gie mnizzel, il-perjodu tal-kirja miftiehem kif ukoll illi ghandha ssir estensjonighal future wara t-terminazzjoni tal-kirja tal-31 ta' Lulju 2021.
9. Illi ghalhekk gialadarba l-ammont tal-kera li kellu jithallas gie miftiehem, u l-ftehim sar bil-miktub, fuq il-firma taz-zewg partijiet ossia Jolene Apap Formosa u Baio Abdouwahab minghajr ebda partikolari essenzzjali nieqes, il-kuntratt huwa rabta bejn il-partijiet skond il-principji *pacta sunt servanda* u mhux null.
10. Illi r-rikorrenti accettaw il-kera u hargu r-ricevuti mill-1 ta' Mejju 2016 sal-31 ta' Mejju 2018, liema ricevuti qed jigu hawn ezebiti bhala Dokument GBO1 sa GBO7.
11. Illi wara dak il-perjodu mill-1 ta' Gunju 2018 bdew jigu depozitati l-krejja mensili kull xahar wara li gew offerti lill-istess rikorrenti li ngustament rrifjutaw li jaccettawghom, u dan skond Dokumenti GBO8 sa GBO16
12. Illi inoltre l-intimati rrizultalhom illi r-rikorrenti kienu qed fjiddefrodawhom fil-hlas tal-konsum tad-dawl u ilma u ghalhekk huma pprocedew ai termini tal-Artikolu 166A tal-kap 16 tal-Ligijiet ta' Malta ghar-rimbors tal-konsum tad-dawl u ilma fl-ammont ta' EURO 1,200. Illi r-rikorrenti rrifjutaw li jirrifondulhom din is-somma u ghalhekk b'kontrotalba qed jintalab ir-rimbors ta' dak kollhu mhallas zejzed mill-istess intimati.

Kontro-talba tar-rikonvenzjonat Baio Abdouwahab u Miriam Abdouwahab ghat-talba tar-rikonvenzjonati Boris Formosa u Jolene Apap Formosa

Jesponu bir-rispett:-

1. Illi huma jikru l-fond Flat 20/3, Triq Ferdinand Hompesch, Siggiewi, u ilhom jikru dan mill-1 ta' Mejju 2016.
2. Illi l-kirja hija ghal perjodu li jittermina fil-31 ta' Lulju 2021 u dan skond tlett skritturi Dokumenti BF1, BF2 u GBO1 fil-process.
3. Illi minn hawn jirrizulta illi bejn il-perjodu tal-1 ta' Mejju 2016 sal-31 ta' Lulju 2016 il-kera kienet €450 fix-xahar u hallsu wkoll depozitu ta' €450 ohra li jkopru l-arretrati fil-kera kif wkoll ghal xi hsarat li talvolta jista jigrilu l-fond in kwistjoni.
4. Illi mill-1 ta' Awwissu 2016 sal-31 ta' Lulju 2021 l-kera kellha tkun ta' €400 fix-xahar u filfatt huma hallsu din ir-ratata' kera skond Dokument GBO1 sa GBO16 annessi fil-process.
5. Illi l-konsum tad-dawl u ilma peress li kien hemm meter wiehed fil-fond Jolmar, Triq Ferdinand Hompesch, Siggiewi, kellu jinqasam bejn il-kontendenti 50:50 u dan stante li r-rikonvenzjonati kienu qed jokkupaw l-appartament 20/3 waqt li r-rikorrenti rikonvenzjonati kienu qed jokkupaw 20/4.
6. Illi effettivament huma hallsu zejjed ghal perjodu mill-1 ta' Mejju 2016 sal-31 ta' Settembru 2018 u ghamlu "overpayment" ta' €1,200 li ghandhom jigu rifuzi bl-imghaxijiet mill-espedizzjoni tal-ittra ufficjali tas-6 ta' Novembru 2018 hawn annessa u mmarkata bhala Dokument GBO17 li jigu ppruvati waqt it-trattazzjoni tal-kawza.

Ghaldaqstant jghidu r-rikorrenti rikonvenzjonati prevja kwalsiasi dikjarazzjoni necessarja u opportune u ghar-ragunijiet premessi ghaliex dan il-Bord li Jirregola l-Kera m'ghandux ;

1. Jikkundanna lir-rikorrenti rikonvenzjonati jirrifondu lill-intimati rikonvenzjonanti is-somma ta' €1,200 ta' flus imhallsa indebitament ta "overpaymet" li huma ghamlu ghal konsum u hlas tal-meters tad-dawl u ilma rigwardanti l-fond 20/3, Jolmar Triq F Hompesch, Siggiewi.

Bl-ispejjez komprizi dawk tal-ittra ufficcjali ai termini tal-Artikolu 166A tal-Kap 12 tal-Ligijiet ta' Malta datata 6 ta' Novembru 2018 hawn annessa u mmarkata

bhala Dokument GBO17 u bl-ingunzjoni tar-rikorrenti rikonvenzjonati ghas-subizzjoni.

Took note of the reply by plaintiffs to the counter-claim by the defendants.³

Risposta ta' Boris Formosa u Jolene Apap Formosa ghall kontrotalba tal-konvenuti.

Jesponu bir-rispett:

1. Illi preliminarjament il-kontrotalba tal-konvenuti hija improponibbli u tohrog lill hinn mill-kompetenza ta' dan il-Bord u ghandha ghalhekk tigi michudha.
2. Illi minghajr pregudizzju ghas-suespost, fil-mertu it-talba ghandha tigi michudha tenut kont li ma huwiex minnu li thallas ebda ammont zejzed anzi l-intimati huma debituri tar-rikorrenti f'hafna ammonti akbar minn dak li hallsu;
3. Illi fil-fatt il-konsum tal-konvenuti rikonvenzjonati ser jigi ppruvat waqt it-trattazzjoni tar-rikorrent u kull ammont ghandu jigi debitament imhallas lill-esponenti, bl-imghax skont il-ligi.

Took note of all the documents presented during the proceedings.

Took note of all the testimonies and the affidavits submitted by the parties.

Took note of the final submissions by the parties.

The case was differed for today for the final decision.

Facts in Brief.

³ Fol. 21 of the file.

Plaintiffs are the owners of the premises twenty (20) flat number three (3) in Triq F. Hompesch Siggiewi. This flat was being rented to the defendants for Euro four hundred and fifty (Euro 450) per month. This agreement was valid for three (3) months commencing on the twenty second (22) of April two thousand and sixteen (2016) till the twenty (22) of July two thousand and sixteen (2016). After this period defendants continued to occupy the premises. It seems that defendant asked the landlord to put things in writing since they wanted to apply for a Maltese identity card and in fact they made a private writing and wrote amongst others '*After this day we will arrange to make the full home renting for 5 years that already have started from 1 MAY 2016 – 31 JULY 2021*'. Plaintiffs claim that defendants did not pay the rent after January, February and March 2017 but began depositing the rent in Court. Plaintiffs are claiming damages since the rent is under priced in relation to what one could earn on the market and contend that they did not have any agreement for the full five years.

On the other hand, the defendants are claiming that they have a valid title to occupy the premises. They submit that the rent commenced on the 1st August 2016 for five (5) years) and after the 31st July 2021 they had to make another meeting for the future rent. They submitted a document dated 31st July 2016 to substantiate their claim. Moreover, in their counter claim, defendants submit that they over-paid the water and electricity bills by one thousand two hundred Euros (Euro 1,200).

The Evidence.

Boris Formosa offered his testimony through an affidavit where he states that the property *de quo* belongs to his wife, the other plaintiff. He confirms that the property was rented out to the defendants for Euro 450 per month from the 2nd April 2016 and was valid for three months. After this period, defendants continued to resided in the premises 20 flat 3 Triq F. Hompesch Siggiewi. According to him, defendants had asked his wife to scribble a piece of paper on which it was stated that they were going to do a contract for five (5) years and this document was needed so that a Maltese identity card could be issued. In fact, his wife did this private writing which stated that she is accepting rent for three months- January, February and March 2017 and added '*After this day we will arrange to make the full home renting for 5 years that already have started from 1 May 2016- 31 July 2021*'. Formosa claims that they did not even pay the Euro 450 due per month, but they unilaterally decided that they could occupy the flat

for a period of 5 years. Defendants and his wife were friends since they worked in the same workplace. When they did not accept the rent and told them to move out defendants began to deposit the rent in Court. He further adds that they did not pay the utilities (water and electricity) as well and moreover the flat could be rented for Euro 800 per month. Plaintiff alleges that defendants owe money to third parties and that they also had a physical argument with his wife.

At the request of the plaintiffs the Court appointed architects Stephanie Cassar and Elena Borg Costanzi to inspect the premises on the 26th November 2019.⁴ Architect Stephanie Cassar was substituted by architect Mario Cassar during the sitting of the 16th September 2020.⁵

The members of the board presented their findings on the 27th October 2020.⁶ **No damages to the premises were noted.**

Biao Abdouwahab and Mariame Abdouwahab presented a joint affidavit whereby they declared that they have rented flat 3, 20 Jolmar in Triq F. Hompesch Siggiewi from Joelene Apap Formosa since 22 April 2016. The rent was for an initial period of three (3) months) which had to serve as a trial period. According to them after the initial period they made an agreement to cover the periods 31 July 2016 till 31st July 2021 and after this day they would make another meeting to decide on the future rent. They added that since it was a long-let lease the payment had to be of Euro 400 per month. Defendants added that the document BF1 submitted by them confirms the latter. Moreover, they claim that the landlords defrauded them since they were paying for the water and electricity utilities of the two flats since the two had only one meter. Finally, they claim that the latter situation has been rectified since a coin meter was installed and they are paying between Euro 35-40 every two months whereas before they were paying between Euro 50- 70 every two months⁷.

Biao Abdouwahab further testifies on the 18th May 2021 and confirmed that the documents at fol 6 and 7 were written by the landlady, the plaintiff and signed by him and the other plaintiff Boris.⁸ He confirms that the premises is the one

⁴ Fol. 33 of the file.

⁵ Fol. 40 of the file.

⁶ Fol. 42 of the file.

⁷ Fo. 57 of the file.

⁸ Fol. 61 of the file.

referred to in these proceedings. He confirms that he paid the rent regularly and on time. He also confirms that during the tenancy he paid all the water and electricity bills and declares that during the initial period the meter served both his apartment and that of the plaintiffs. During cross-examination he confirmed that after July 2021 the landlady does not want him anymore in her flat.

Mariam Abdouwahab further testified on the 18th May 2021 whereby basically she confirmed her affidavit and version of events thereat. She holds that they had a five (5) year agreement with the plaintiffs. She contends that they had one meter and they were paying the water and electricity utilities for both apartments. She confirms that now they have a coin meter. She reaffirms that since the change of meter the consumption is less and she barely pays Euro 35 for two months. She confirms that in July 2021 they are going to move out since the tenants do not want them there.

Boris Formosa was cross-examined during the sitting of the 16th November 2021.⁹ He confirmed that the signatures on documents BF1 at fol. 6 of the file is his and that the other signature is that of Mr. Biao. Subject also held that the writing was done by his wife and that he is in agreement that the document states that the lease was for 5 years ending on the 31st July 2021. Mr. Formosa held that he did the lawsuit because that was in his powers and that the electricity and water meters were divided between the two tenants. He claims that tenants never gave him any money for the utility bills. He explains that the electricity meter is with the coin toppings while the meter for the common area is one and the water meter is one as well. When questioned about document SC2 at fol. 90 he categorically denies that the handwriting is his or that of his wife. He claims that the signatures on the document are not his nor that of his wife. Regarding the overpayment of the utility bills he holds that this subject was brought by them to his wife.

Joelene Apap Formosa was also cross-examined on the 16th November 2021 whereby she explained that the writing had to be done so that the children could go to school.¹⁰ She agrees that it was written by her and held that they had to go to do the contract but they never went. She agrees that the signature is hers but the other one is not of her husband. The writing at fol. 7 was also done by the witness and signed as well by her. Witness insists that defendants never wanted to do the contract of lease. According to the witness the writing at fol. 6 was done

⁹ Fol. 96 of the file.

¹⁰ Fol. 107 of the file.

so that defendants could register their children for schooling. She confirms that when payment for rent was done she always issued a receipt. Witness also confirms that when they paid the bills she gave them a copy of the bill itself and that the writing on the bills are hers as well. She insists that they never complaint about the bills until the case was brought forward in front of the Board. Defendant insists that the writing was in connection with the schooling of the children and not with the rent and according to her a copy of the writing is held at Siggiewi's primary school.

Considerations by the Board:

This case relates to an alleged abuse by defendants of a private writing related to an alleged lease agreement. The first document exhibited by plaintiffs is found at fol. 7 of the proceedings whereby it is stated that the rent is for three (3) months at Euro 450 per month. The utility bills are not included. After this period they had to meet again and discuss the conditions for the long term. The writing is dated 22nd April 2016 there seems to be agreement that it was signed by one of the plaintiffs and one of the defendants. The second private writing is signed by plaintiff Boris Formosa and defendant Biao Abdouwahab which is NOT dated but states that it covers ***'the rent for months January, February and March 2017 will cover till the end of 31st March. After this date they will arrange to make the home renting for 5 years and already have started from 1st May 2016 – 31st July 2021'***.¹¹ Defendants claim that this is the rent agreement that had to elapse on the 31st July 2021 while the plaintiffs hold that there was no rent agreement and they want the defendants move out of the premises. Defendants claim that the rent was Euro 400 per month since it was for the long term. Moreover, they claim that another writing dated 31st July 2016 was maliciously not presented by plaintiffs.¹² The latter reaffirms the new rent agreement and the equivalent monthly payment. This writing states: **Today is the beginning of the rent for 5 years in advance and it will end on the 31ST July 2021. After this day we make another meeting for the future rent. Paid Euro 400'**. This document has two signatures and one of them resembles the ones of Boris Formosa on fols. 6 and 7 of the proceedings. These are confirmed by plaintiff while the writing is that of the other plaintiff Jolene Apap Formosa as confirmed by them.

¹¹ Fol. 6 of the proceedings.

¹² Fol. 17 of the proceedings.

Defendants entered a counter claim of Euro 1,200 since they hold that they overpaid the water and electricity bills.

Parties do not agree on the interpretation of the documents presented in relation to the requirements of article 1531A of Chapter 16 of the Laws of Malta. Defendants claim that these documents are all valid at law and thus there is a rent agreement in place while the plaintiffs claim in their final submissions that what was written does not fall within the parameters of the said articles of the law.

Considers:

Article 1531A(1) of Chapter 16 of the Laws of Malta reads as follows:

With regard to the letting of an urban property, a residence and a commercial tenement made after the 1st January, 2010, the contract of lease shall be made in writing and shall stipulate:

- (a) the property to be leased;**
- (b) the agreed use of the property let;**
- (c) the period for which that property will be let;**
- (d) whether such lease may be extended and in what manner;**
- (e) and also the amount of rent to be paid and the manner in which such payment is to be made.**

(2) In the absence of one or more of these essential requirements, the contract shall be null.

(3) The lease of an urban property, a residence and a commercial tenement made after the 1st January, 2010 shall be regulated exclusively by the contract of lease and by the articles of this Code

Provided that private residential leases shall be regulated by the Private Residential Leases Act

Chapter 604 – Private Residential Leases then defines private residential lease as:

"private residential lease" means any long or short private residential lease, including the letting of shared residential space, which is entered into after 1st January, 2020, and any lease for a residential purpose entered into before 1st January 2020, which would still be in its original or renewed period on the 1st January 2021.' (underlined by the Board)

Then Article 4(1) of the same Act reads:

All private residential lease contracts entered into after the entry into force of the Act, including their renewal, whether express or tacit, shall be registered;

Provided that contracts of private residential leases which are not registered in accordance with the provisions of the Act shall be null and void.'

Considers further:

The First Hall of the Civil Court in the case **Awtorita' Marittima vs Michelle Grech** (Cit. Nru. 788/2005 AF) per Madame Justice Anna Felice decided on the 5th May 2016 stated the following:

'Din il-Qorti tqis illi biex wiehed jara sewwa x' inhi l-qaghda bejn iz-zewg partijiet f' din il-kawza irid ihares lejn il-kundizzjonijiet tal-ftehim li sar bejniethom. F' dan ir-rigward issir referenza ghas-sentenza Chev. Joseph M. Scicluna et noe, deciza fid-9 ta' Ottubru, 2003, fejn il-Qorti qalet is-segwenti:

"Il-principju pacta sunt servanda huwa wiehed applikat rigorosament mill-Qrati taghna, u jekk ma tirrizultax xi cirkustanza li, skond il-ligi, tista' twassal ghat-thassir tal-kuntratt, l-istess kuntratt irid jigi esegwit miz-zewg nahat."

The First Hall of the Civil Court in the decision **Dr. Gerald Montanaro Gauci ghan-nom u in rappresentanza ta' Sea International Limited kif debitament awtorizzat vs Alex Agius Cesario** (Cit. Nru. 866/95/RCP) per Mr. Justice Raymond C. Pace decided on the 31st January 2002 held:

Illi dawn il-principji gew konsistentement ribaditi mill-Qrati taghna, inkluza minn din il-Qorti kif presjeduta tanti li fios-entenza 'Emanuel Schembrui et vs Leonard Ellul et' (P.A. (RCP) 30 ta' Ottubru 2000) u 'Suzanne Xuereb vs Gilbert

Terreni' (P.A. (RCP) 12 ta' Lulju 2001) gie riaffermat li 'huwa principju generali fl-interpretazzjoni tal-kuntratti li dak stabbiliti fl-artikolu 1002 tal-Kap 16 u cioe' li meta' il-kliem tal-konvenzjoni, mehud fis-sens li ghandu skond l-uzu taz-zmien tal-kuntratt, hu car, ma hemmx lok ta' interpretazzjoni.' Tal-istess portata hija s-sentenza 'Alfrida Borg vs Carmen Camilleri et' (P.A. (RCP) 2 ta' Ottubru 2001).

Illi bl-aktar mod esplicitu gie ritenuto li 'il-principju kardinali li jirregola l-istatut tal-kuntratt jibqa' dejjem dak li l-vinkolu kontrattwali ghandu jigi rispettati u li hi l-volonta' tal-kontraenti kif espresso fil-konvenzjoni li kellha tipprevali u tigi osservata. 'Pacta sunt servanda'. (A.C. 5 ta' Ottubru, 1998- 'Gloria mart Jonathan Beacom et vs L-Arkitett u Inġinier Civili Anthony Spiteri Staines')

That Court continues to elaborate:

Illi intqal anke fis-sentenza 'General Cleaners Company Limited vs Attorney General et' (P.A. (RCP) 29 ta' Novembru 2001 li 'Il-Qrati jkunu obbligati jinterpretaw il-konvenzjoni meta f' kuntratt il-partijiet ma jkunux spejaw ruhhom car jew posterjorment ghall-kuntratt jintervjeni avveniment li kollu bhala konsegwenza kwistjoni li ma tkunx giet preveduta u li kien hemm bzonn li tigi maqtugha u din ghandha tigi primarjament interpretata skond l-intenzjoni tal-partijiet li jkunu hadu parti fil-kuntratt u li tidher cara mill-kumplex tal-konvenzjoni' (Vol. XXIV, P. I, p.27) (ikkwotata fis-sentenza Beacon vs Spiteri - ibid, Susanne Xuereb vs Gilbert Terreni- P.A. RCP. 12 ta' Lulju 2001, Anton Spiteri vs Alfred Borg – P.A. RCP 30 ta' Novembru 2000, Emanuel Schembri vs Leonard Ellul- P.A. RCP 30 t' Ottubru 2001).

Illi ghalhekk jirrizulta, u din hi anke r-ration tal-ligi (art. 1004 tal-Kodici Civili) illi l-interpretazzjoni li trid tinghata, meta klawnsola tista' tfisser haga u ohra, din ghandha tinftiehem dik il-haga li biha jista' jkun hemm xi effetti milli dik il-haga li biha ma seta' jkun hemm ebda effett. Disposizzjoni li tirrifletti l-principju ,in dubiis interpretatio capienda est, ut disposition potius valeat quam pereat'.¹³

¹³ See also **Mark Scicluna et vs Mary Anne Massa et**. Decided by the First Hall Civil Court (Rikors Nru. 638/2017 FDP) on the 17th June 2021 per Mr. Justice Francesco Depasquale.

Moreover in the judgement **Salvu Fenech et vs Malta Dairy Products Limited** (Cit. Nru. 1561/1997/1) decided by the First Hall Civil Court on the 30th Ottubru 2003 per Mr. Justice Raymond C. Pace stated:

Illi dan iwassal ghall-principju iehor li jirritjeni li l-kuntratti ghandhom jigi esegwiti in bona fede u li jobbligaw mhux biss dak li jinghad fihom, izda wkoll ghall-konsegwenzi kollha li ggib maghha tali obbligazzjoni. (Joseph Francis Depares nominee vs John O' Dea nominee- A.C. – 25 ta' Gunju 1996)

Illi l-konsegwenza ta' kull fthiem ghalhekk hija li l-obbligazzjonijiet iridu jiftehmu li jaghmlu sens (jekk jista' jkun buon sens) u l-kuntratti ghandhom ikunu nterpretati in buona fede (Carmel Mifsud vs Joseph Spiteri et – P.A. (WG) 30 ta' April 1987).

Moreover in the case **AIC Joseph Barbara vs Antonia Anastasi, Civil Appeal, 28th February 1997** held:

*'Hu ghalhekk li l-gurisprudenza hi konkordi li ma timponix sanzjoni ta' l-izgumbrament f' dawk il-kazijiet fejn id-dispost tal-ligi ma jkunx gie osservat bi precizjoni jew fejn ic-cirkustanzi jkun tali li l-inkwilin ikun legalment gustifikat fl-inosservanza ta' l-obbligi kontrattwali tieghu.'*¹⁴

Considers:

The Board after having evaluated the documents and the testimonies of the parties holds that the version and sequence of events dictated and outlined by the defendants is more credible. Their version of events is logical and consistent. They hold that they rented the apartment for an initial period of three months at Euro 450 per month, excluding water and electricity bills and after the 31st July 2016 they rented it for the continuation of the further five (5) years till the end of July 2021. It seems that since it was a long let, as it happens frequently in such instances, the landlords were happy with the tenants and offered a good discount of Euro 50 per month and in fact the invoice/cash sale after July 2017 show that the payment was Euro 400.

¹⁴ Hilda Debrincat v Mario Farrugia- 14.7.2004. Quoted with approval in the book – Massimarji tal-Imhallef Philip Sciberras- It-Tieni Volum: Dritt Sostantiv by Mr. Justice Grazio Mercieca, page 824.

The Board notes the inconsistency of the plaintiffs as to why they had issued the main document that it is being contested, that is, Dok BF 1, at folio 6 of the file. In their affidavit at fol. 29 Boris Formosa claims that the document was written so that they could have their Maltese identity cards issued. However, this version was changed when they gave evidence before the Board and held that the document was drafted and signed in connection with the schooling of the defendant's children. This apart, this document which according to the defendant Joelene Apap Formosa, Siggiewi's primary school needed and had a copy of, no such proof can be found in the acts of the case about such assertion. This assertion, if true, had to be substantiated through evidence from the school in question.

Neither their allegation during the proceedings that the apartment was being damaged or suffered some damages at the hands of the defendants could be more untruthful. The technical members of the Board found and commented otherwise. Thus, it is more than evident that after some time in 2017 plaintiffs were not happy by the rent received as agreed and wanted the couple to move out of the apartment so that they could rent it for a higher value, thus maximising the return. This, could be understandable but it is not legal once defendants had a valid agreement in place.

The Board also notes the behaviour of the plaintiffs during their *viva voce* testimony in court. Boris Formosa, in particular, was aggressive and at times evasive in his answers especially during cross-examination.

The Board holds that the writings presented at fol. 6, 7 and 17 when taken and read together are in line with what is stipulated in article 1531A of Chapter 16. Thus, the Board considers that the premises was validly rented to the defendants up till the 1st January 2021. Consequently, it is not for the Board to interpret what the real intentions of the parties was once the writings are clear. What was intended was written and one cannot assume outside the parameters of what was dictated and written in the writings.

On the other hand, the Board cannot understand why the defendants are still occupying the apartment after the 1st January 2021 not only once the tenants do not want them there after the 31st July 2021 but also because as from the

1st January 2021 the contract of tenancy had to be registered otherwise it would be declared null and void. This was the situation that the defendants faced after the 1st January 2021. Thus, their present situation cannot be considered to be in *bona fide*! The Board also holds that since the rent agreement was not registered after the 1st January 2021 it is being declared null and void from then onwards as this was a requirement *ad validatem* through Chapter 604 of the Laws of Malta.

Thus, the plaintiff's claim will be partially upheld as will be explained in the executive part of the sentence hereunder.

Consider further:

With regards to the counter-claim of excessive payment of the water and electricity bills which allegedly amounted to Euro 1,200. The Board after having again viewed the documents presented and the testimonies of the plaintiffs and the defendants do not believe that plaintiffs have a case to answer. The Board is satisfied that with regards to the water and electricity bills that plaintiffs acted in good faith and issued the invoices/cash sales that were required and that the defendants in no way protested that they were being over-charged or that there was any discrepancy. It was only *in limine litis* that they made such allegations. Defendants did not prove that they over-paid plaintiffs and it seems that the utility bills were being divided proportionally. The Board is of the view that plaintiffs managed to, on a basis of probability, that the water and electricity transactions were made transparently and it is not a valid argument for the defendant to solely claim that after the coin meter was installed they were paying less.

Thus, the Board is rejecting the counter-claim made by the defendants *in toto*.

Decides:

For the above reasons the Board decides as follows:

1. Does not take further cognizance of their first request since this was decided at preliminary stage;
2. Declares the contract of tenancy null and void as from the 1ST January 2021 only while declaring it valid for the previous years before such date;
3. Orders defendants to vacate the property, 20/3, Jolmar, Ferdinand Hompesch Street Siggiewi within **a month** from this sentence becoming final.

Expenses related to these procedures are to be paid 2/3 by plaintiffs while 1/3 by the defendants except the costs of the appointed architects which are to be paid solely by the plaintiffs.

As for the counterclaim made by the defendants for Euro 1,200 this is being rejected *in toto* since it is not justified,

Expenses related to the counter-claim are to be paid solely by the defendants.

Dr. Monica Vella LL.D. M,Jur

Magistrate

Victor Deguara

Deputy Registrar.