



## **QORTI CIVILI - PRIM'AWLA**

**IMHALLEF**

**Onor. Dr Joanne Vella Cuschieri  
B.A., Mag. Jur. (Eur. Law.), LL.D.**

**Illum it-Tlieta 3 ta' Ottubru, 2023**

**Kawza Numru: 6**

**Rikors Guramentat Numru:- 441/2017JVC**

**Ruggier Holdings Ltd (C-14022)**

**vs**

**Olena Vasylivna Leontyeva (ID  
Nru. 0199712L)**

**Il-Qorti,**

Rat ir-rikors guramentat tas-socjeta' rikorrenti Ruggier Holdings Limited (C14022) fejn Rudolph Cassar in rapprezentanza taghha kkonferma bil-gurament u talab kif isegwi:

1. 'Illi s-socjeta' rikorrenti hija propjetarja tal-fondi ossia appartamenti bin-numri erbgħa (4) u hamsa (5) li jinsabu fi blokk appartamenti bl-isem "Dolphin Buildings", Triq ix-Xatt, Pieta (kopja tal-kuntratt t'akkwist immarkata bhala "Dok.A");
2. Illi l-propjetajiet fuq imsemmija huma okkupati mill-intimata b'mod abbuziv, illegali u mingħajr titolu validu fil-ligi;
3. Illi s-socjeta' rikorrenti tixtieq tizgombra lill-intimata mill-imsemmija propjeta, izda nonostante li giet interpellata tagħmel hekk, inkluz permezz ta' ittra interpellatorja (kopja mmarkata bhala "Dok.B"), u nonostante illi hija stess ikkonfermat mar-rikorrenti li se tizgombra minnufih, hija baqghet inadempjenti;
4. Illi sa fejn jaf ir-rikorrent, il-konvenuta m'ghandha ebda eccezzjoni jew difiza x'tagħti għat-ta/lbiet tas-socjeta' rikorrenti
5. Illi stante li jezistu l-elementi għall-procedura sommarja kontemplati fl-artikoli 167 sa 170 tal-Kap 12 tal-Ligijiet ta' Malta, s-socjeta' attrici titlob li l-kaz jigi deciz b'din il-procedura, u cioe' bid-dispensa tas-smiegh;
6. Illi jirrizulta ukoll illi l-propjetajiet mertu ta' din il-proceduri jinstabu fi stat hazin hafna, huma perikoluzi u f'riskju iminenti ta' kollas, liema stat ta' fatt jikkostitwixxi periklu car fuq is-sahha u s-sigurta' mhux biss ta' l-intimata, izda ukoll ta' terzi u dan peress illi l-intimata qieghda b'mod illegali u abbuziv tippovdi akkomodazzjoni temporanja lil student u barranin turisti fil-propjeta' de quo; illi għaldaqstant qieghed jigi pprezentat rikors kontestwalment ma' din il-procedura sabiex il-kawza tinstema' bl-urgenza.

GHALDAQSTANT L-ESPONENTI titlob bil-qima li din l-Onorabbli Qorti joghogbha:

1. Tiddikjara w tiddeciedi li l-intimata qieghed tokkupa u tiddetjeni l-appartamenti bin-numri erbgha (4) u hamsa (5) li jinsabu fi blokk appartamenti bl-isem “Dolphin Buildings”, Triq ix-Xatt, Pieta’; abbuzivament, illegalment u minghajr titolu fil-ligi;
2. Tordna l-izgumbrament tal-intimata mill-imsemmija propjeta’ u dan, fi zmien qasir u perentorju li jigi ffissat;

Bl-ispejjez kontra l-intimata ingunta sabiex jidher ghas-subizzju, u b’riserva ta’ kull dritt azzjoni u rimedju fil-Ligi.’.

Rat illi ghalkemm din il-kawza bdiet bil-procedura sommarja tal-giljottina, din il-Qorti kif diversament preseduta fil-verbal tas-27 ta’ Lulju, 2017 (fol. 59) iddikjarat li l-intimata wriet li ghandha *prima facie* kontestazzjoni b’referenza ghal appartement bin-numru 4, Dolphin Buildings fi Triq ix-Xatt, Pieta u ai termini tal-Artikolu 167 tal-Kodici ta’ Organizzazzjoni u Procedura Civili Kap. 12 tal-Ligijiet ta’ Malta awtorizzat lill-intimata sabiex tipprezenta r-risposta taghha.

Rat ir-risposta guramentata u l-kontro-talba ta’ l-intimata Olena Vasylivna Leontyeva li taqra kif isegwi:

1. ‘As a preliminary plea the court in front of which the case has been presented is not competent to entertain the claim by way of incompetence *ratione materia*;

2. As a preliminary plea without prejudice to the above mentioned plea Rodolph Cassar is not authorised to represent the plaintiff company;
3. On merits the claim brought by the plaintiff should be rejected on the basis that it is unfounded on basis of law and of fact;
4. The defendant has valid title to reside in said property;
5. The defendant is also hereby filing a counter claim according to law

#### Counter Claim

Sworn Application of Olena V. Leontyeva ID 0199712(L)

Submits humbly;

1. That she hold by title of lease the property number 45 Dolphin Building, flat number 4, Marina Street Pieta'
2. That the said property is being endangered by damages sustained to other parts of the same block;
3. That the plaintiffs are obliged to repair said damages particularly before the rain season starts;
4. That the plaintiffs are obliged to provide alternative accomodation of equal level during the period of repair of said damages;

Therefore the applicant is hereby requesting the court to order:

1. That the block which the flat the applicant lives in requires urgent repair and that Ruggier Holdings Limited is responsible for such repairs within a time limit imposed by the court under the surveillance of a court appointed architect;

2. That in the event the first request is accepted by the court orders Ruggier Holdings Limited to provide alternative accomodation of equivalent level during the duration of the works.’.

Rat ir-risposta guramentata tas-socjeta’ rikorrenti rikonvenzjonata ghall-kontro-talba li taqra kif isegwi:

1. ‘Preimarily, in the view of the Counter-claimant’s preliminary plea of lack of jurisdiction on the basis of an alleged lease agreement contained in her reply as well as the fact that the counter-claim filed is based on such alleged lease agreement, the plea of incompetence rationae materiae of this Honourable Court to preside over the merits of the counter-claim is being submitted;
2. Without prejudice to the above, it is contested that the counter-claimant holds a title of lease over the property number 45 “Dolphin Building”, Marina Street, Pieta’. It is in fact *inter alia* submitted that documentation submitted *seduta stante* during the sitting of the 27th July by the said respondent rule out such a juridical relationship having ever existed between the parties;
3. That the respondent is not responsible for any repairs vis-a-vis the counter-claimant, and that her request for the provision of alternative accommodation as well as generally counter-claimant’s requests are unfounded at fact and at law are being strongly contested and should be rejected;
4. Save any further defences allowable at law;

With costs against the counter-claimant’.

Rat l-affidavits, xhieda, kuntratt, ittra legali, rapporti peritali ex-parte, reklami tal-appartament ghal kera, dikjarazzjoni ta' Oliver Ruggier, ritratti, licenzja mahruqa mill-Malta Tourism Authority li tinsab sospiza, okkorrenzi, dokumenti u l-provi kollha eseblti fl-atti;

Rat illi fil-verbal tat-13 ta' Gunju, 2017 Dr. David Wain ghas-socjeta' rikorrenti talab li ssir korrezzjoni fl-atti billi isem l-intimata jigi korrett sabiex jirrifletti l-isem proprju taghha hekk kif indikat fil-karta tal-identita' u rat li l-Qorti laqghet it-talba u ordnat li l-atti jigu jirriflettu l-isem taghha Leontyeva Olena Vasylivna;

Rat is-sentenza in parte moghtija nhar is-27 ta' Lulju, 2017 a fol. 65 et seq tal-process fejn il-Qorti fid-dawl li l-intimata ddikjarat li m'ghandhiex interess fl-appartament bin-numru 5, Dolphin Buildings fi Triq ix-Xatt, Pieta u ma' tokkupax l-istess proprjeta' u wara li rat l-Artikoli 167 et seq tal-Kap. 12 tal-Ligijiet ta' Malta, wara li rat l-atti u l-provi hemm migjuba ddecidiet billi ddikjarat li s-socjeta' rikorrenti gabet provi sufficjenti tat-titolu taghha fuq l-imsemmija proprjeta' u in vista tad-dikjarazzjoni tal-intimata lliberatha mill-osservanza tal-gudizzju u mit-talba. Il-Qorti ordnat ukoll li s-socjeta' rikorrenti ghandha tiehu l-pussess tal-imsemmi appartament bin-numru 5 ghall-finijiet u effetti kollha tal-Ligi bl-ispejjez relatati mal-appartament bin-numru 5 ikunu a karigu tas-socjeta' rikorrenti;

Rat illi fil-verbal tal-24 ta' Mejj, 2018 Dr David Wain talab sabiex il-provi f'din il-kawza jkunu jghoddu wkoll ghal kawza bir-Rikors Guramentat numru 686/2018 fl-ismijiet Ruggier Holdings Limited -vs- Leontyeva Olena Vasylivna et u rat li l-Qorti laqghet it-talba;

Rat illi fil-verbal tat-22 ta' Settembru, 2020 (fol. 181) Dr Fransina Abela rtirat l-ewwel eccezzjoni preliminari dwar l-inkompetenza rationae materiae fir-risposta guramentata a fol. 67 tal-process;

Rat illi fil-verbal tal-15 ta' Novembru, 2022 il-kawza giet differita ghal-lum ghad-decizjoni bil-fakulta' tal-partijiet li jipprezentaw noti ta' sottomissjonijiet b'termini imposti fuqhom;

Rat in-noti ta' sottomissjonijiet tal-partijiet esebiti fl-atti;

Rat l-atti kollha tal-kawza u tal-process anness bin-numru 686/2017.

### **Ikkunsidrat:**

Illi permezz tal-kawza odjerna s-socjeta' rikorrenti Ruggier Holdings Limited (C14022) tippremetti li hija l-proprjetarja tal-fondi ossia l-appartamenti bin-numri erbgha (4) u hamsa (5) li jinsabu fi blokka ta' appartamenti bl-isem 'Dolphin Buildings' fi Triq ix-Xatt, Pieta'. Is-socjeta' rikorrenti tghid li dawn iz-zewg appartamenti huma okkupati mill-intimata b'mod abbuзив, illegali u minghajr titolu validu fil-ligi u li malgrad li giet interpellata sabiex tizgombra mill-imsemmija proprjeta', hija baqghet inadempjenti. Is-socjeta' rikorrenti ghalhekk kellha tipprocedi bil-kawza odjerna fejn talbet sabiex jigi dikjarat u deciz li l-intimata qeghda tokkupa u tiddetjeni l-appartamenti bin-numri erbgha (4) u hamsa (5) fil-blokk 'Dolphin Buildings' fi Triq ix-Xatt, Pieta llegalment, abbuзивament u minghajr titolu fil-ligi. Talbet ukoll li jigi ordnat l-izgumbrament tal-intimata mill-imsemmi proprjeta' u dan fi zmien qasir u perentorju li jigi ffissat.

Illi l-intimata laqghet ghal din il-kawza billi preliminarjament eccepjet l-inkompetenza tal-Qorti *ratione materiae*. L-intimata preliminarjament eccepjet ukoll li Rudolph Cassar m'huwiex awtorizzat li jirrapprezenta s-socjeta' rikorrenti Ruggier Holdings Limited. Fil-mertu eccepjet illi t-talba migjuba mis-socjeta' rikorrenti ghandha tigi michuda fuq il-bazi li hija nfondata fil-fatt u fid-dritt. L-intimata eccepjet ukoll illi hija ghandha titolu validu sabiex tirisjedi fl-imsemmija proprjeta'.

L-intimata ntavolat ukoll kontro-talba fejn ippremettiet illi hija ghandha titolu validu ta' kera fuq l-appartament bin-numru 4 fil-blokka bin-numru 45 bl-isem 'Dolphin Building' fi Triq ix-Xatt, Pieta' liema proprjeta' ghandha f'partijiet minnha problemi strutturali li huma ta' perikolu. Sostniet illi s-socjeta' rikorrenti hija obbligata taghmel it-tiswijiet kollha necessarji partikolarment qabel jigi l-istagun tax-xitwa u ghalhekk is-socjeta' rikorrenti hija obbligata li tipprovd i akkomodazzjoni alternativa. Talbet ghalhekk fil-kontro-talba li jigi dikjarat li l-blokka li fiha tghix ghandha bzonn ta' tiswijiet urgenti mis-socjeta' rikorrenti u li hija responsabbli li taghmilhom fi zmien stipulat. Talbet ukoll li fl-eventwalita' li l-ewwel talba tigi milqugha l-Qorti tordna lis-socjeta' rikorrenti sabiex tipprovd i akkomodazzjoni alternativa ta' livell ekwivalenti tul iz-zmien ta' riparazzjoni tal-appartament in mertu.

Illi s-socjeta' rikorrenti rikonvenzjonata laqghet ghal kontro-talba billi preliminarjament eccepjet l-inkompetenza *ratione materiae* tal-Qorti li tippresjedi l-meritu tal-kontro-talba. Is-socjeta' rikorrenti eccepjet ukoll minghajr pregudizzju li huwa kontestat li l-intimata ghandha titolu ta' kera fuq il-proprjeta' bin-numru 45, 'Dolphin Building' fi Triq ix-Xatt, Pieta'. Issostni li infatti mid-dokumenti pprezentati seduta stante fis-seduta tas-27 ta' Lulju, 2017 dawn jeskludu li qatt ezistiet relazzjoni guridika bejn il-partijiet. Finalment eccepjet illi hija m'hijiex responsabbli ghar-riparazzjonijiet vis-a-vis l-intimata u t-talba sabiex is-socjeta' rikorrenti tipprovd i akkomodazzjoni alternativa hija nfondata kemm fil-fatt kif ukoll fid-dritt u huma kategorikament kontestati u ghandhom jigu michuda.

**L-ewwel eccezzjoni tal-intimata - inkompetenza tal-Qorti *ratione materiae*:**



Illi Dr Fransina Abela għall-intimata fil-verbal tat-22 ta' Settembru, 2020 a fol. 181 tal-process irtirat din l-ewwel eccezzjoni.

**It-tieni eccezzjoni tal-intimata - Rudolph Cassar m'huwiex awtorizzat jirrappreżenta lis-socjeta' rikorrenti:**

Illi bhala t-tieni eccezzjoni preliminari, l-intimata eccepjet illi Rudolph Cassar m'huwiex awtorizzat li jirrappreżenta lis-socjeta' rikorrenti Ruggier Holdings Ltd.

Illi l-Qorti rat li fl-atti tal-kawza bir-Rikors Guramentat numru 687/2017 fl-ismijiet Ruggier Holdings Limited -vs- Leontyeva Olena Vasylivna et giet intavolata kopja ta' *board resolution* (fol. 10) tas-socjeta' rikorrenti Ruggier Holdings Limited datata 23 ta' Marzu, 2017 fejn gie maqbul illi Rudolph Cassar huwa l-uniku rappreżentant legali u guridiku tal-imsemmija socjeta' fi kwalunkwe proceduri kemm guridici, amministrattivi u proceduri ohra li jittiehdu mis-socjeta' rikorrenti sabiex isir l-izgumbrament ta' okkupanti mill-proprjeta' 'Dolphin Building' fi Triq ix-Xatt, Pieta'. Fl-imsemmija risoluzzjoni gie maqbul ukoll illi s-socjeta' rikorrenti tirrorratifika kwalunkwe atti mwettqa mill-imsemmi Rudolph Cassar. Iz-zewg kawzi trattati llum kontestwalment gew intavolati wara data ta' din ir-risoluzzjoni.

Il-Qorti rat li l-veracita' ta' dan id-dokument ma gietx kontestata fl-atti w'ghalhekk tqis din il-*board resolution* bhala prova sufficienti tal-mandat li Rudolph Cassar ghandu sabiex jagixxi u jirrappreżenta lis-socjeta' rikorrenti f'dawn il-proceduri. Ghaldaqstant il-Qorti ser tghaddi sabiex tichad din it-tieni eccezzjoni.

**Kunsiderazzjonijiet legali u fattwali:**

Illi l-kwistjoni li jifdal x'tigi trattata hija jekk l-intimata Olena Vasylivna Leontyera ghandhiex titolu validu fil-ligi sabiex tokkupa l-fond ossia l-appartament bin-numru 4 'Dolphin Building' fi Triq ix-Xatt, Pieta' hekk kif teccepixxi fir-raba' eccezzjoni taghha.

Illi t-titolu vantat mill-intimata huwa dak derivat minn dikjarazzjoni maghmula minn Oliver Ruggier datata 19 ta' Awwissu, 2005 quddiem in-Nutar Patrick Critien (ara dikjarazzjoni a fol. 62 tal-process) liema dikjarazzjoni taqra kif isegwi:

**'19th August 2005**

I the undersigned Joseph Oliver Ruggier, Identity Card Number 57843(M) residing at Villa Ruggier, Triq il-Ferrovija, Attard, do hereby declare on oath the following:

I declare that I am the owner of the block "Dolphin Building" Flat 4, Triq ix-Xatt, Pieta'. Olena Tretyak and her three children reside at the above described property and have resided there since November 2002.

I declare that for humanitarian reasons I have exempted the said Olena Tretyak from the payment of any rent and that she is residing there on simple tolerance and without any title at law.

(sgd)

Oliver Ruggier

Signed and sworn before me

At 13 St Mary Street, Sliema

Today 19th August 2005.'.

Il-Qorti rat li l-intimata tikkonferma dan fl-affidavit taghha a fol. 71 et seq tal-process fejn issostni li t-titolu taghha gej mid-dikjarazzjoni msemija ghalkemm sussegwentament tibda tghid li t-titolu taghha sar wiehed minn *de facto* ghal *de jure*, assunzjonijiet li l-Qorti mill-atti sa sabet l-ebda bazi legali ghalihom. Hija tixhed:

'I, Olena Leontyeva, ID 199712L, the President of Philanthropic Incorporated Voluntary Organisation Lift Us Up Oghllina ([www.liftusupcharity.com](http://www.liftusupcharity.com)) live in Malta since 2000 with my children and we reside in the flat 4, 45 Dolphin Buildings, Marina Street, Pieta since 2002 on a special occupational agreement with Oliver Ruggier.

Though de-juro, in 2005, Oliver wrote "*without any title at law*", by doing my part of obligations for 15 years, in 2017, *de-facto*, I have a title. I do not know how it should be called "**Lease**", "**Freehold**", "**Comodatum**" or "**Emphyteusis**". I only know that I have a title. This is the case when *de-facto* becomes *de-juro*.

My obligations into our agreemet are valid and I honor them till today.

1. I must use Oliver's property for **Humanitarian Reasons**. I must care for people in need.
2. I must give regular **reports** about activities taking place in Oliver's property to him on the phone when he calls.
3. I must do the **maintenance** to my appartament all by myself.

Oliver Ruggier refused to accept a rent from us back in 2002 when we offered him money, and his decision he confirmed on oath in 2005. Instead we reached a different kind of occupational agreement and my obligation in our agreement are not monetary.’.

In kontro-ezami fis-seduta tas-6 ta’ Frar, 2020 (fol. 167) l-intimata kkonfermat li t-titolu taghha huwa derivat mid-dikjarazzjoni suesposta fejn qalet:

**‘Dr. David Wain:** What agreement do you have?

**The Witness:** I presented my agreement with the property to be used for humanitarian reasons and it was given by the owner of it and it is in the file.’.

Illi l-Qorti ma tarax li ghandha wisq x’tipprolunga fuq din il-kwistjoni. M’hemmx dubju li l-intimata tivvanta t-titolu taghha fuq id-dikjarazzjoni tad-19 ta’ Awwissu, 2005 nonostante li fl-affidavit tittenta tiznaturata dan it-titolu billi targumenta li t-titolu taghha minn wiehed *de facto* sar wiehed *de jure*. Il-ligi ma tikkontemplax il-possibilita’ li titolu ta’ semplici tolleranza minn *de facto* jsir wiehed *de jure*. Kif pacifikament ritenut mill-Qrati taghna, min igawdi b’tolleranza m’ghandu ebda titolu hlief kunsens tal-proprjetarju li jista’ jigi rtirat f’kull mument u li ma jatribwixxi l-ebda drittijiet ghajr ghal kunsens tal-proprjetarju li jista’ jigi rtirat f’kull mument<sup>1</sup>. Dipiu’ atti ta’ semplici tolleranza ma jistghux iservu ta’ fundament ghall-akkwist ta’ pussess legittimu<sup>2</sup>. Fi kwalunkwe kaz l-iskrittura msemija hija ffirmata minn Joseph Oliver Ruggier f’ismu proprju li mhux is-sid tal-proprjeta’ in kontestazzjoni w’ghalhekk is-sid li fil-fatt hija s-socjeta’ rikorrenti qatt ma tat l-ebda awtorizzazzjoni kwalunkwe lill-intimata sabiex tirrisjedi fil-proprjeta’.

<sup>1</sup> Ara f’dan is-sens **Maria Caruana -vs- Benedict Spiteri** et deciza mill-Qorti tal-Appell Inferjuri nhar l-24 ta’ Marzu, 2004.

<sup>2</sup> Ara ukoll **Carmelo Farrugia -vs- Emanuele Ferriggi** (Vol XL, P I Pg 534).

Illi ghaldaqstant fil-kaz odjern il-Qorti tqis li m'hemmx bzonn ta' prova oltre u ser tghaddi sabiex tikkonkludi li l-intimata Olena Vasylivna Leontyeva qeghda tokkupa l-fond bin-numru 4 li jinsab fil-blokka 'Dolphin Building' fi Triq ix-Xatt, Pieta' minghajr titolu validu fil-ligi u ghaldaqstant l-Qorti ser tghaddi sabiex tilqa' t-talbiet tar-rikorrenti fir-rigward ta' dan il-fond. Gjaladarba rrizulta li l-intimata m'ghandhiex titolu validu fil-ligi, l-Qorti m'ghandhiex ghalfejn tinoltra ruhha oltre fil-kontro-talba tal-intimata u ser tghaddi sabiex tichad l-istess.

Ghar-ragunijiet suesposti l-Qorti ser tghaddi sabiex tilqa' t-talbiet kollha tas-socjeta' rikorrenti Ruggier Holdings Limited u tichad l-eccezzjonijiet kollha tal-intimata Olena Vasylivna Leontyera. Dwar il-kontro-talba ser tghaddi sabiex tichad l-istess.

### **Decizjoni:**

Ghaldaqstant ghar-ragunijiet kollha suesposti din il-Qorti tghaddi sabiex taqta w' tiddeciedi din il-kawza kif isegwi:

### **Talba promotorja:**

1. Tichad l-eccezzjonijiet kollha li ghadhom vigenti tal-intimata Olena Vasylivna Leontyeva;
2. Tilqa' l-ewwel talba u tiddikjara u tiddeciedi li l-intimata qieghda tokkupa u tiddetjeni l-appartament bin-numru erbgħa (4) li jinsab fil-blokka ta' appartamenti bin-numru 45 bl-isem 'Dolphin Building' fi Triq ix-Xatt, Pieta' abbużivament, illegalment u minghajr titolu validu fil-ligi;

3. Tilqa' t-tieni talba u tordna l-izgumbrament tal-intimata Olena Vasylivna Leontyeva mill-imsemmija proprjeta' u dan fi zmien xahrejn mid-data ta' din id-decizjoni.

**Kontro-talba:**

1. Tilqa' t-tieni eccezzjoni tas-socjeta' rikorrenti ghall-kontro-talba u tghaddi sabiex tichad il-kontro-talba in toto.

Bl-ispejjez kollha tat-talba limitatament izda ghall-appartament numru 4, kif ukoll l-ispejjez kollha tal-kontro-talba a karigu tal-intimata Olena Vasylivna Leontyeva.

**Moqrija.**

**Onor. Imhalled Dr. Joanne Vella Cuschieri  
B.A., Mag. Jur. (EUR.LAW), LL.D.  
3 ta' Ottubru, 2023**

**Cora Catania  
Deputat Registratur  
3 ta' Ottubru, 2023**