



BORD LI JIRREGOLA L-KERA

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

Sitting of Wednesday, 24th of January 2024

**Application Number: 244/2019
Number on the list: 7**

Natalia Menshova (ID 18943A)

vs

**Camelot Properties Limited (C 22692), Propinvest Limited
(C22690), Clifford Berrington and Charlotte Berrington**

The Board,

Having seen the application dated the 29th of October 2019¹, whereby the plaintiff 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.

Illi permezz ta' kuntratt datat 1 ta' Jannar 2011 l-esponenti flimkien mas-sieheb taghha Ralph Asciak kienet kriet l-fond ossia dar bin-numru tmienja (8), bl-isem The Robin, gewwa Triq Santa Clara, Naxxar mis-socjeta intimata Camelot Properties Ltd ghal tletin (30) sena (Dokument anness u mmarkat bhala Dok A);

Illi Ralph Asciak miet fil-5 ta' April 2017 u l-kuntratt kien jaghti d-dritt lil partijiet illi f'kaz ta' mewt, il-persuna l-ohra tibqa' bid-drittijiet kollha ta' inkwilin (klawsola 1c);

Illi filwaqt illi l-partijiet li kellhom anke tifla bejniethom kienu jghixu fil-fond kien hemm problemi bejniethom u kien sar rapport ta' spill u fastidju mis-sieheb taghha Ralph Asciak u l-pulizija kienu hargu lir-rikorrenti mid-dar taghha minkejja li kien hemm kirja vigenti;

illi din il-kirja ghadha in vigore sal-llum u l-esponenti ghandha dritt terga' tidhol tabita fid-dar minn fejn giet illegalment zgombrata ghax ghandha kirja valida fil-ligi;

illi jirizulta illi s-socjeta inintmata kriet il-fond lil terza persuni Clifford u Charlotte Berrington, ghalkemm kien hemm din il-kirja li kienet ghadha valida;

Ghaldaqstant, prevja kull dikjarazzjoni li dan il-Bord jidhirli xierqa, l-esponenti titlob bir-rispett li, ghar-ragunijiet premissi, dan il-Bord joghgbu;

1. Tordna lill-intimat/i jew min minnhom, sabiex fi zmien qasir u perentorju li jigi lilu prefiss minn dan il-Bord jonora l-kuntratt ta' kirja

iffirmat minnhom fl-1 ta' Jannar 2011 u jaghti l-access u c-cwieviet tal-fond numru 8, Triq Santa Clara, limiti tan-Naxxar lil-attrici sabiex tkun tista' terga' tirisjedi fil-fond;

2. Tordna li l-inkwilin li hemm fil-fond jigi zgombrat ghax qeghdin minghajr ebda titolu;

3. Inoltre jordna wkoll lill-istess intimat/i ihallas lill-esponenti somma li tigi hekk likwidata minn dan il-bord bhala kumpens ghan-nuqqas ta' tgawdija tal-kirja meta l-esponenti inharget illegalment;

Bl-ispejjez u bl-imghaxijiet legali kontra l-intimat li huwa ingunt ghas-subizzjoni.

Having seen the decree issued by this Board as previously presided on the 11th of November 2019², whereby it allowed a correction in the original application in terms of article 175 of Chapter 12 of the Laws of Malta.

Having seen the reply filed by the respondents on the 31st of January 2020³.

Having seen the minute of the 2nd of March 2020 before this Board as previously presided where the Board ordered that these proceedings continue in the English language.

Having seen the minute of the 12th of October 2020⁴ whereby this Board as previously presided allowed that the proceedings in the names **Natalia**

² Fol 13 of the acts.

³ Fol 19 *et seq* of the acts.

⁴ Fol 42 of the acts.

Menshova vs Ralph Asciak (Ref Num: 325/2012) decided by the First Hall Civil Court on the 21st of June 2017 be annexed and form part of the evidence in this case.

Having seen the affidavit of Michael Asciak⁵.

Having seen further documents filed by the respondents⁶, regarding a report filed in the criminal case in the names **The Police vs Natalia Menshova**.

Having seen the note of the Registrar of the Criminal Court whereby the acts of the above indicated criminal proceedings were filed⁷.

Having seen the affidavit of the plaintiff filed on the 14th of January 2022⁸.

Having seen the cross examination of Michael Axiaq⁹.

Having seen the cross examination of the plaintiff¹⁰.

Having seen the document filed by the plaintiff¹¹.

Having seen the note of submissions filed by the respondents on the 23rd of August 2022¹².

⁵ Relative note is found at fol 44 of the acts.

⁶ Fol 81 of the acts.

⁷ Relative note is found at fol 180A of the acts.

⁸ Relative note is found at fol 183 of the acts.

⁹ Carried out in the sitting of the 21st of February 2022 and commences at fol 194 of the acts.

¹⁰ Carried out in the sitting of the 21st of March 2022 and commences at fol 200 of the acts.

¹¹ Relative note found at fol 213 of the acts.

¹² Commences at fol 224 of the acts.

Having seen the note of submissions filed by the plaintiff in reply on the 21st of December 2022¹³.

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 Malta¹⁴.

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 chaired¹⁵.

Having seen the Boards' decree issued on the 6th of September 2023¹⁶, whereby the Board suspended the delivery of the preliminary judgement on the first six preliminary pleas, for the reasons there indicated.

Having heard the oral submissions on the issue raised by this Board, on the 27th of September 2023¹⁷. During that sitting, the proceedings were adjourned for judgement for today.

Considers

Whereas it is only natural that the Bord primarily investigates the issue raised *ex officio* in the decree dated 6th September 2023 whereby it raised its incompetence in terms of article 774(b) of Chapter 12 of the Laws of Malta, with regard to the first and third plea raised by the respondents.

¹³ Commences at fol 231a of the acts.

¹⁴ At fol 232 of the acts.

¹⁵ At fol 233 *et seq* of the acts.

¹⁶ At fol 240 of the acts

¹⁷ Duly registered and transcribed and commence at fol 243 of the acts.

Whereas in this case, the plaintiff is asking the Board to condemn the respondents to honour the lease agreement dated the 1st of January 2011 and to be given access to the tenement which forms the merits of these proceedings. Subsequently, the Board is being asked to order the eviction of the current tenant and to award damages to the plaintiff in the form of compensation for the lack of habitation of the same tenement.

Whereas it is the Board's consideration that this action falls strictly within its competence and therefore there are no issues in this regard. The difficulty arises because of the first and third plea utilised by the respondents. This was the reason as to why the Board suspended proceedings and allowed the parties to make submissions on the procedural issue raised *ex officio*.

Whereas the first plea states that the lease contract is null and void as it is fabricated and not signed by Ralph Ascjak (both in his own capacity and as director of the respondent company), the third plea states that the contract is also null since it is missing an essential element indicated in article 1531A of Chapter 16 of the Laws of Malta.

Whereas the Board notes that this case was filed on the 29th of October 2019 and therefore a couple of days prior to the promulgation of Act XXVIII of the year 2019, which *inter alia* amended article 1525 of Chapter 16 of the Laws of Malta. Nonetheless, the Board understands that this Act had simply codified and promulgated into law, what had already been established by previous *dicta* issued by our Courts¹⁸. Therefore, the situation regarding the competence of this Board was simply an act of clarification rather than a whole amendment. It is

¹⁸ Reference is made to the judgement in the names **Lisa Barker et vs Jeanette Critien**, (Rik App Nru: 198/2016/1) given by the Court of Appeal (Inferior Jurisdiction) on the 4th of October 2019.

quite clear that the issue regarding the validity or otherwise of a contract of lease falls outside the scope of the competence allowed by law of the Rent Regulation Board¹⁹. This Board has already delved into this matter and deemed that all issues attacking the validity of a lease agreement, and not simply those emanating from article 1531A of Chapter 16 of the Laws of Malta, are not within the competence of this Board²⁰.

Whereas our courts have consistently held that whilst the jurisdiction or competence of a particular Court is to be **primarily** determined by the initial application, that Court is also obliged to examine the relative pleas in such determination. It is for this reason that the courts have held that, where a particular plea is not within the jurisdiction of a particular Court, then that plea ought to be used as the basis of an *ad hoc* action before the competent Court²¹.

¹⁹ Reference is here made to the judgement in the names of **Avukat Dr. Alfred Grech noe vs Raymond Grech**, (App Nru: 57/2020/2) delivered by the Court of Appeal (Superior Jurisdiction) decided on the 12th of July 2023 whereby it established that “*Dak li l-ligi però speċifikatament teskludi mill-kompetenza tal-Bord huma l-kwistjonijiet dwar il-validità ta’ kuntratt ta’ kiri. Ifisser dan, li jekk xi ħadd irid jattakka s-siwi ta’ kuntratt ta’ kiri, b’hal ngħidu aħna minhabba vizzju fil-kunsens, dan irid jagħmlu quddiem il-qrati ta’ ġurisdizzjoni ċivili u mhux quddiem il-Bord Li Jirregola l-Kera.*”

²⁰ Reference is being made to the judgement in the names **D&D Italian Food Limited vs Joseph Vella et.** (Ref Number: 190/2020) delivered by this Board on the 27th of October 2023. In those proceedings the action was deemed to be of the Civil Court First Hall’s competence and therefore the procedure established in article 741 of Chapter 12 of the Laws of Malta was used. It is to be noted that the Civil Court First Hall, did not send the acts back to this Board and accepted its jurisdiction.

²¹ By way of reference, the Board refers to the judgement in the names **Mary Doris Veneziani et vs Emmanuel Farrugia et.** (Ref Number: 625/2002/1) decided by the Court of Appeal (Inferior Jurisdiction) on the 10th of March 2004 whereby it held that “*Huwa car minn natura stess tal-eccezzjonijiet illi dawn jinfluwixxu sostanzjalment fuq l-ezitu tal-kawza. Huwa wkoll daqstant iehor car illi in vista ta’ dak li jinghad fl-Artikolu 47 (3) tal-Kap 12 l-Qorti inferjuri adita ma tistax tokkupa ruhha mill-eccezzjoni akkampata fuq drittijiet reali u għalhekk minhabba l-istess natura guridika eccezzjoni din ma tkunx tista’ konvenjentement tigi ezaminata u deciza hliet permezz ta’ kawza ohra separata. Huwa immaterjali għal dan l-iskop jekk l-atturi kienux jafu, o meno, bid-dritt vantat mill-appellanti u allura x’azzjoni kien messhom ipproponew. Dak li jghodd hu x-xorta ta’ kawza propulsa mill-atturi u l-kontenut tal-eccezzjoni għaliha.*” Reference is also made to the judgement in the names **Gaetana Ghiller et vs Michael Ebejer et.** (Ref Number: 445/2004/1) delivered by the Court of Appeal (Inferior Jurisdiction) on the 20th of February 2008 whereby it stated that “

Whereas the Board is not of the opinion that article 741(b) of Chapter 12 of the Laws of Malta is applicable in this case. This is being stated since it is not the plaintiff's action that rises doubts to the competence of this Board. Had this been the case, the Board would have decided to transmit the acts of these proceedings to the appropriate Court which holds the correct competence. In this particular case, the difficulty arises out of the pleas, which as already established are not of this Board's competence. In such scenarios, our courts have held that the solution is to suspend the current proceedings until that plea is brought as an independent action before the appropriate Court²². Naturally, should the defendants fail to either promote that action in the time limit afforded

*Logikament ukoll, lanqas ma hi ġuridikament tenibbli d-domanda alternattiva tagħhom għal varjazzjoni tas-sentenza biex timponi terminu sabiex il-konvenuti jressqu kawża quddiem il-Qrati Superjuri wara li quddiem il-Qorti tal-Maġistrati esperew l-eċċezzjoni li l-atturi m'humix is-sidien. **Kien ikun xort'ohra kieku l-konvenut asserixxa li hu l-proprjetarju b'xi wiehed mill-modi ta' akkwist rikonoxxuti mil-liġi għax allura f'każ bħal dan l-Qorti adita kien jikkorrilha tiddekrete s-soprasjessjoni u timponilu terminu għal proponiment ta' l-azzjoni li kienet tmiss in sede proprja. F'dan il-każ il-konvenut appellat ma vvanta xejn minn dan u allura sewwa iddeċediet kif iddeċidiet l-ewwel Qorti fil-parti konsiderativa tas-sentenza. (emphasis of the Board).***

²² Reference is also made to the judgement in the names **Giovanna Cardona vs Carmelo Pisani**, delivered by the Court of Appeal (Superior Jurisdiction) on the 4th of November 1957 whereby it reasoned as follows: "huwa komputu tal-Qorti li fil-kawża tiegħu konjizzjoni tal-eċċezzjonijiet u tal-kontro-eċċezzjonijiet kollha li jiġu mogħtija in konnessjoni mal-meritu li tkun qegħda teżamina u tirriżerva biss għal ġudizzju ieħor ġdid li jkollu jiġi propost apposta, u għalhekk tissoprasjedi, meta l-kwestjoni mqajma bl-eċċezzjoni jew kontro-eċċezzjoni ma tkunx sollevabbli "ope exceptionis", jew ma tkunx tal-kompetenza tagħha inkella, kif intqal, fl-interess gravi tal-ġustizzja jkun jaqbel li jsir hekk." Similarly it was also held in the judgement in the names **Emanuel Lawrence Vella pro et noe vs Bernardina D'Amato**, decided on the 28th of October 1994 by the Court of Appeal (Inferior Jurisdiction) that "hu ovvju illi l-kwestjoni tal-proprjetà m atistax tiġi ventilata u deċiża "ope exceptionis" u tista' tiġi determinata biss b'azzjoni ad hoc tentata minn min ikun qed jallega l-akkwist tat-titolu. Azzjoni li naturalment teżorbata mill-kompetenza tal-Qrati Inferjuri u għandha allura tiġi promossa quddiem il-Qorti Superjuri, jekk il-konvenuta għandha tali interess. Azzjoni li l-eżitu tagħha jkun direttament jinfluwixxi fuq il-meritu tal-preżenti istanza, imma li mhux b'daqshekk jirrendi nkompetenti lill-ewwel Qorti milli tiegħu konjizzjoni tat-talba fl-avviż, li fit-termini limitati tagħha ndubbjament taqa' fil-kompetenza tagħha. Anke jekk ikun għaqli u opportun li l-Ewwel Qorti tissoprasjedi jekk u meta l-azzjoni li tikkontesta t-titolu ta' proprjetà ta' l-attur nomine tiġi intavolata. Similarly, the Board makes reference to the judgement in the names **Paul Bugeja vs Kummissarju tal-Artijiet**, (Ref Number: 13/2007) decided by the Court of Magistrates (Malta) on the 17th of April 2012 (the appeal from this judgement was declared null by means of a judgement given on the 16th of December 2013).

or lose that action, these pleas can longer be utilised by the defendants as a proper defence for this current action. This is exactly what is contemplated in article 16(4) of Chapter 69 of the Laws of Malta²³.

Therefore, the Board, whilst declaring that the subject matter forming the merits of the first and third preliminary pleas raised by the respondents are not within the competence of this Board, is ordering the same respondents to institute a suitable action before the appropriate Court within a time period of two months from the date of this decision. Consequently, it is suspending these proceedings until the outcome of that action or until the time-limit here imposed is not utilised or adhered to.

Expenses are reserved for final judgement.

Dr Joseph Gatt LL.D.
Magistrate

Annalise Spiteri
Deputy Registrar

²³ The proviso reads as follows: *“Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.”*