MALTA

Court of Appeal
(Inferior Jurisdiction)

Hon. Judge
LAWRENCE MINTOFF

Sitting of the 12th April, 2024

Inferior Appeal Number 64/2022 LM

Krista Maria Raitamaki and by means of a decree of the 4th of April, 2023 the Court appointed Dr Sue Mercieca and Legal Procurator Gerald Bonello as curators to represent Lauri Lehto
('the appellees')

vs.

Christopher Pace
('the appellant')

The Court,

Preliminary

1. This appeal was filed by the defendant **Christopher Jeremy Pace (ID no. 543765M) in his own name as well as on behalf of Pace Investments Limted (C 27970) in terms of article 30 of Chapter 604 of the Laws of Malta**, [hereinafter 'the appellants'], from the decision delivered on the 12th May, 2022,

[hereinafter referred to as 'the appealed decision'] by the Adjudicating Panel for Private Residential Leases, [hereinafter referred to as 'the Adjudicating Panel'], by means of which the Panel decided that the respondent had to pay the plaintiffs **Krista Maria Raitamaki** and **Lauri Lehto** [hereinafter referred to as 'the appellees'] the sum of €1,343.14 with interest to run from the date of filing of the claim, with costs.

The facts

2. The plaintiffs had filed a claim with the Adjudicating Panel, by means of which they claimed that their previous landlord, the defendant **Christopher Jeremy Pace**, was refusing to return the deposit money they had paid at the commencement of the lease, and this in respect of tenement number 46, 'Avril', Tigné Street, Sliema [hereinafter 'the tenement']. It was claimed by the landlord that the tenants had left a damaged cupboard in the kitchen, where the said cupboard was burnt by a toaster, and that the deposit was being withheld to cover the cost of the repair of the said piece of furniture. The plaintiffs also complained that the rent from one year to the next increased by more than the five percent (5%) stipulated in the law, and that this state of affairs had caused them financial prejudice.

3. The defendant replied that there were various damages left in the tenement by the plaintiffs. He stated that besides the kitchen cabinet door, there were damaged outdoor stools in the property, and that the cost to replace the kitchen cabinet door amounted to €460, whereas the cost to replace the damaged stools amounted to €470.72. In his reply he stated that the plaintiffs

were aware of this damage, so much so that they themselves asked for a quotation in that regard. The defendant also held that the plaintiffs had left unpaid water and electricity bills to the tune of €204, and that therefore out of a deposit of €1,800 that had been retained, he was entitled to withhold the €204 for the pending utility bills, €470.72 for the damaged stools and €460 for the damaged kitchen cabinet. The defendant also said that he needed to withhold another €150 in relation to the costs of the delivery and labour related to the replacement of the kitchen cabinet, as well as the sum of between €100-€150 for the cleaning of the tenement, and that therefore he was willing to refund the plaintiffs the sum of €365.27. The defendant also claimed that the monthly rent increased from €1,800 to €1,900, meaning an increase of 5.2% from one year to the next, and therefore this increase went only marginally beyond the 5% threshold stipulated in the law.

The appealed decision

4. The Adjudicating Panel made the following considerations in its decision:

> ***"II. CONSIDERATIONS***
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> *This case is a request by tenant to be refunded the deposit paid (€1,800) minus the pending utility bill (€446.86) which sum the tenant states that the landlord is unwilling to refund in virtue of some damages found in the property rented. The Panel notes immediately that no reply has been filed to this claim and that no reason or justification has been provided for the retention of the deposit. The panel must observe that the retention of the deposit is and should not be the default right of the landlord and that the retention is a form of payment against a damage sustained must be properly justified by that person claiming to have a right to retain the deposit. Here the lessor provided no such justification, and therefore he cannot retain the*

deposit except for the amount that the tenant has admitted that is due - €446.86. that leaves the amount of €1,343.14 which must be returned.

III. DECISION

Therefore the Panel accedes to the request and orders the respondent to pay the claimant the sum of €1,343.14 with interest to run from date of the filing of this claim.

The costs of the case shall be borne by the respondent."

The Appeal

5. The appellant filed an appeal from this decision on the 24th May, 2022, both in his personal name as well as on behalf and in representation of Pace Investments Ltd (C 27970) in terms of article 30 of Chapter 604 of the Laws of Malta, by means of which he requested this Court to reform the decision of the Adjudicating Panel in such a manner that, taking into account the submissions submitted on the merits, it varies and reduces the amount to be reimbursed to the appellees in the sum of €365.27 instead of the sum of €1,343.14 indicated in the appealed decision, or alternatively, but without prejudice to the aforesaid, to declare the decision of the Adjudicating Panel null and void on the basis of his second ground of appeal.

6. The appellant said that the first grievance being put forward by him is very clear, in the sense that the appealed decision was absolutely and clearly wrong, where it stated that after it took into account the submissions of the parties, it considered that no valid reasons were given for the deposit being withheld. The appellant said that to the contrary, he gave several reasons as to why out of the sum of €1,800 indicated, he was willing to refund the sum of €365.27 only. The second grievance put forward by the appellant is that the

same Adjudicating Panel could never find him personally liable for the plaintiffs' claim, since the lease had been signed by the appellant on behalf of Pace Investments Limited and not on his own behalf. He said that this matter could have been raised *ex officio* by the Adjudicating Panel, but it was not.

7. The appellant explained that he was granted leave to file a late reply to the complaint filed before the Adjudicating Panel, after submitting evidence that he had been abroad and could not reply by the deadline originally set. He then proceeded to explain that the plaintiffs had caused damage to a kitchen cabinet when they placed a toaster on it, and that the cost to replace this piece of furniture amounted to €460. The appellant stated that the plaintiffs themselves had acknowledged that this damage had been caused by them, and that a reasonable sum had to be deducted to cover the same expense. The appellant also explained that he had found damage to the outdoor stools that were in the property, and that the cost to replace the same amounted to €470.72. There were also pending utility bills amounting to €204, as well as an expense of €150 for delivery and labour to replace the kitchen cabinet and another cost of between €100-€150 as cleaning costs incurred when the tenants had left the premises, and for any cleaning which may need to be carried out after the replacement of the kitchen cabinet takes place. The appellant explained that following this explanation to the Registrar of the Adjudicating Panel, the tenants had communicated with the Registrar again, and had informed him that the outdoor stools were already damaged at the beginning of the lease. The appellant explained that he had submitted a number of photographs to the Registrar to show that the damage at the end of the lease

was far greater and much more visible than it had been at the time when the plaintiffs rented the property.

8. The appellant held that it was inexplicable to him how the Adjudicating Panel concluded that no valid reasons had been brought forward to explain why the deposit had been withheld by the appellant, even though he had made detailed submissions on this point. He further explained that what is being asked of this Court is not a simple matter of appreciation of evidence that was brought forward, but an appreciation of evidence which has not been considered in any way, where the Panel even ignored that fact that the balance on the pending utility bills had been recalculated. He further stated that the plaintiff himself had acknowledged that a reasonable reduction from the deposit had to be made due to the damage to the kitchen cabinet, and yet the Adjudicating Panel had concluded that no reasons and explanations were given. The appellant said that therefore this ground of appeal may be regarded as referring to two deficiencies – the first being the total failure to refer to the submissions made, and the second failure being that no explanation was given for this fact, with the suspicion being that every explanation given by the appellant had been ignored.

9. The appellant also stated that it should also transpire that the same Adjudicating Panel had ignored the fact that the lease contract itself exhibited by plaintiffs had been signed with Pace Investments Limited as represented by Christopher Pace, and not by Christopher Pace in his own name and on his own behalf, and consequently the matter could not have been decided against Christopher Pace in his own name. The appellant also pointed out that, in the

first correspondence sent to the Registrar of the Adjudicating Panel on the 7th April, 2022, it was indicated that the correspondence was being sent in the name of Christopher Pace in his personal name and on behalf of the company Pace Investments Limited. The appellant stated that in the haste shown by the Adjudicating Panel, the matter had been decided against him in his own name, without mention of the company in whose name the lease in question had been signed. The appellant said that this error in the decision of the Adjudicating Panel may even lead to the decision being considered null and void. He also said that another apparent error lies in the fact that the Adjudicating Panel included Maria Raitamaki as 'plaintiff' when as a matter of fact the complaint was filed by Lauri Lehto in his own name, and that this fact may also lead to the decision being considered null.

The appellees' reply

10. The appellees stated in their reply, that the appeal was never served to them in the Maltese language but only in English, thus rendering the appeal null. With reference to the first grievance of appeal by the appellant, the appellees stated that they do not agree with what is stated by the appellant, and that the decision is clear and should not be revoked, annulled or amended. With reference to the appellant's grieviance that the lease had been signed by the appellant on behalf of his company Pace Investments Limited and not on his own behalf, the appellees contend that if the appellant had been aggrieved by the fact that he was cited as being personally responsible, he should have raised the issue before proceedings reached the appeal stage. The appellees held that the appellant had always communicated with them through his personal email,

through his personal telephone and received the money in his personal Revolut account. He is also a director and shareholder of Pace Investments Limited, and therefore he had both the juridical interest and the required *locus standi* to stand personally in decision.

11. The appellees further claimed that from the documents submitted by them, it is clear that Christopher Pace was signing in his own name, and that the words 'obo Pace Investments Limited' are hand written with no registration number being indicated on the same document. The bank details given are also those of Chris Pace personally, together with his personal mobile number and his personal Revolut account. They further held that even the address given does not belong to Pace Investments Limited.

12. Finally the appellees held that the lease agreement had been signed by both Krista Maria Raitamaki and by Lauri Leht, and that the complaint was filed by both of them, and hence the deposit money is to be returned to both of them. They said that both their names had been included since this was reflected in the agreement and that even this argument could have been raised before proceedings reached the appeal stage.

Considerations

13. Prior to considering the grievances raised by the appellant, the Court would like to point out that the names of both Krista Maria Raitamaki and of Lauri Leht have been correctly included in the complaint filed, given that the lease agreement had been signed by both of them, and the presumption is

therefore that any deposit is to be refunded to them jointly. The point raised by the appellant as to whether Krista Maria Raitamaki is suited to stand in these proceedings, is therefore being dismissed completely.

14. The Court would also like to make its observations regarding a preliminary issue raised by the appellees regarding whether the appeal served upon them is null, and this in view of the fact that the notice of appeal was only served to them in the English language and not in Maltese. The Court, having considered the provisions of the Code of Organisation and Civil Procedure as well as of the Judicial Proceedings (Use of English Language) Act (Chapter 189 of the Laws of Malta), observes that there is no provision in our laws which states that the notice of appeal has to be served in the Maltese language in order to be valid, especially in view of the fact that the parties had agreed that proceedings be conducted in the English languge, and in fact this decision is being delivered in the English language upon the request of the appellees. This grievance is therefore being dismissed as well.

The First Grievance raised by the appellant

15. The appellant contends that the Adjudicating Panel was mistaken in its decision, especially since it is clear that prior to giving its decision, the Panel had failed to consider the submissions raised by the appellant himself, who gave a clear description of the reasons why he was refusing to return the entire sum of money deposited at the inception of the lease. The appellant stated that the Panel had completely ignored the fact that the appellees had admitted that they had caused damage to one of the kitchen cupboards, and had even accepted to

pay for the damage caused by them, they had also asked about the price of some outdoor stools which had been damaged, and that the outstanding utility bills had been revised downwards to €204, instead of €446.86 as erroneously stated by the Panel in its decision. Moreover, the Adjudicating Panel had held that the appellant had given no reason for withholding the deposit, when this was clearly not the case.

16. The Court has considered the acts in their entirety, and it is clear that the Adjudicating Panel made a gross error of fact when it stated that the appellant, as defendant, had failed to give a clear reason as to why he was withholding the deposit money. In fact it is clear, from the evidence submitted, that the appellees were made aware that the cost to replace the damaged kitchen cupboard was going to amount to €460. The outstanding utility bills had been revised downwards to €204 by the appellant himself, after he made his verifications. The Court however has an issue with respect to the other costs claimed by the appellant. It is clear, from the photographs provided, that at the beginning of the lease, there was already a fair degree of wear and tear sustained by the outdoor stools in the property. The nature of the material used in such stools, rattan, is such that the damage shown in the photographs exhibited by the appellant is to be expected after they have been in use for a length of time, and therefore it cannot be held that the state of the outdoor stools at the end of the lease can be attributed to carelessness or deliberate damage caused by the appellees. It is the Court's opinion therefore that it would be unfair to expect the appellees to pay for the replacement of the said outdoor stools when they were not brand new at the beginning of the lease and when the damage sustained by them can be classified as fair wear and tear due to

exposure to the elements. The appellant's request in this regard is therefore not being accepted. The appellant stated that he is also withholding the amount of €150 for the labour and delivery costs he is expected to incur for replacement of the kitchen door as well as a further €100 - €150 for the cleaning of the tenement. The Court observes that these amounts claimed by the appellant are not supported in any way, and that in any case the appellant did not present any evidence to show that the place was left in a state which warrants the expenditure claimed in order to be cleaned. Moreover, it is common practice in the industry that the owner of a property takes the necessary measures to ensure that the property is fit and proper to be put on the market again, and therefore it would be unfair to expect the former tenants to pay for a deep clean of the place, especially since there is no evidence that the place was left in a state that it cannot be shown to prospective tenants without an intervention warranting the costs mentioned by the appellant. The Court is therefore conceding that the amount to be withheld by the appellant is of €460 for the damaged cabinet door and €204 for the outstanding utilities, whereas the remaining €1,136 are to be returned to the appellees.

The Second Grievance

17. The appellant contends also that the decision given by the Adjudicating Panel can be considered null as the lease agreement was signed by him on behalf of Pace Investments Limited and not by him personally, and therefore the decision given is erroneous in so far as it condemns him personally to pay any part of the deposit to the appellees.

18. The Court here would like to reiterate that there was more than a slight blurring between the distinct personality of the company the appellant was representing, and the appellant himself, especially in view of the fact that the appellees always dealt with the appellant in his personal capacity, and not with an employee or any other representative of the company he represents. and the money was paid to him in his personal Revolut account. That being said, it was always clear that the appellant was acting on behalf of Pace Investments Limited and not in his personal capacity. However, with respect to the grievance raised by the appellant, that the decision given by the Adjudicating Panel is null because the decision had to be given against the company he represents and not against him personally, the Court would like to refer to a decision given by the First Hall of the Civil Court in the names **Dr Ivan Sammut *vs.* Winetailors Limited**[1], where the Court held that:

> *"Il-personalità ġuridika separata tal-kumpannija, ċjoe s-separazzjoni netta tal-kumpannija mill-membri tagħha, titqies li hija prinċipju fundamentali tal-liġi tal-kumpanniji. Madanakollu, bħala eċċezzjoni għal din ir-regola, kemm il-liġi Maltija u dik Ingliża li fuqha hija mmudellata, kif ukoll il-Qrati tagħna fid-deċiżjonijiet tagħhom okkażjonalment ippermettew li tiġi injorata l-identità separata tal-kumpannija minn dik tal-membri tagħha u l-azzjonist fl-aħħar mill-aħħar inżamm responsabbli għal djun tal-kumpannija."*

19. Given that it has transpired that the appellant was personally in receipt of the monies paid by the appellees, the Court will not be upholding his grievance that the decision given by the Adjudicating Panel is null since it failed to take into account the fact that the appellant was acting on behalf of Pace Investments Limited, rather than in his personal capacity.

[1] 31.10.2016.

Decide

For the above reasons, the Court decides to partially upold the appellant's appeal, and is declaring that the amount of money to be returned to the appellees by the appellant is €1,136.

All expenses in respect of the present proceedings shall be borne as to half by the appellant, and half by the appellees.

Read.

Onor. Dr Lawrence Mintoff LL.D.
Judge

Rosemarie Calleja
Deputy Registrar