



MALTA

**QORTI TAL-APPELL**  
**(Sede Inferjuri)**

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tad-19 ta' Ġunju, 2024

Appell Inferjuri Numru 144/2022 LM

**Grenke Renting Limited (C 57282)**  
*(l-appellanta')*

**vs.**

**PFS Import & Export Ltd (C 78413);**  
**Eduardo Maiello (K.I. nru. 162948A)**  
*(l-appellati')*

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mis-socjetà rikorrenti **Grenke Renting Limited (C 57282)** [minn issa 'l quddiem 'l-appellanta'], mil-*lodo* arbitrali mogħti mit-Tribunal tal-Arbitraġġ fi ħdan iċ-Ċentru Malti dwar l-Arbitraġġ [minn issa 'l quddiem 'it-Tribunal'], fit-23 ta' Settembru, 2022 [hawnhekk 'il-*lodo* arbitrali'],

fil-proċeduri istitwiti minnha fil-konfront tal-intimati **PFS Import & Export Ltd (C 78413)** u **Eduardo Maiello (K.I. nru. 162948A)** [minn issa 'l quddiem 'l-appellati'], fejn it-Tribunal iddeċieda illi:

*“Whilst rejecting Grenke Renting Ltd’s claims as per paragraphs (iii) and (iv) of its fifth (5<sup>th</sup>) claim in its Notice of Arbitration and Statement of Claim, upholds all Grenke Renting Ltd’s other claims in part, as follows:*

*This Arbitral Tribunal:-*

- i. Declares that the respondent PFS Import & Export Ltd defaulted in payments to the claimant in accordance with the three agreements (Docs. GR1, GR2 and GR3) subject-matter of these proceedings;*
- ii. Declares that the respondent PFS Import & Export Ltd failed to observe the provisions of the said three agreements (Docs. GR1, GR2 and GR3) with its default in effecting rent payments;*
- iii. Declares that the respondent Eduardo Maiello failed to observe his duties and obligations as guarantor jointly and severally with PFS Import & Export Ltd in relation to the agreements marked as Doc. GR1 and Doc. GR2;*
- iv. Subsequently and consequently to the above:*
  - 1. Orders the respondent PFS Import & Export Ltd to return to the claimant the equipment relative to agreements Doc. GR1, GR2 and GR3 rented by the claimant to the same respondent, in a good state, within a peremptory period of sixty (60) days from the date of this award: provided that if the respondent PFS Import & Export Ltd defaults in doing so, the claimant may resort to the competent court or judicial organ to request authorisation to take possession of such equipment itself according to and by the means provided by law;*
  - 2. Orders and condemns the respondents PFS Import and Export Ltd and Eduardo Maiello, jointly and severally to pay to the claimant the sum of €4,135.17 (four thousand one hundred and thirty-five Euro and seventeen cents) by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> October 2019 until the date of effective payment;*
  - 3. Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of*

- €4,882.23 (four thousand eight hundred and eighty-two Euro and twenty-three cents) by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> January 2020 until the date of effective payment;*
4. *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of €4,847.28 (four thousand eight hundred and forty-seven Euro and twenty-eight cents) by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> April 2020 until the date of effective payment;*
  5. *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally to pay to the claimant the sum of €1,627.41 (one thousand six hundred and twenty-seven Euro and forty-one cents) by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> July 2020 until the date of effective payment;*
  6. *Orders and condemns the respondents PFS Import & Export Ltd to pay the claimant the sum of €1,072.57 (one thousand and seventy-two Euro and fifty-seven cents) by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> January 2020 until the date of effective payment;*
  7. *Orders and condemns the respondents PFS Import & Export Ltd to pay the claimant the sum of €864.34 (eight hundred and sixty-four Euro and thirty-four cents) by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> April 2020 until the date of effective payment;*
  8. *Orders and condemns the respondents PFS Import & Export Ltd to pay the claimant the sum of €432.42 (four hundred and thirty-two Euro and forty-two cents) by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> July 2020 until the date of effective payment;*
  9. *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant a penalty (equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract) relative to contracts GR1 and GR2 in the sum of €64,107.65 (sixty-four thousand, one hundred and seven Euro and sixty-five cents), without interest;*

10. *Orders and condemns the respondent PFS Import & Export Ltd to pay to the claimant a penalty (equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract) relative to contract GR3 in the sum of €18,574.82 (eighteen thousand five hundred and seventy-five Euro and eighty-two cents) without interest."*

## **Fatti**

2. Is-soċjetà rikorrenti spjegat li hija daħlet fi tliet ftehim ta' kiri separati ta' tagħmir, datati rispettivament il-5 ta' Marzu, 2019, il-11 ta' Ġunju, 2019 u d-9 t'Awwissu, 2019, mas-soċjetà intimata PFS Import & Export Ltd, fejn gie pattwit bejn il-partijiet li s-soċjetà rikorrenti għandha tipprovdi tagħmir lis-soċjetà intimata b'kera mensili ta' €1,062.62, b'kera mensili ta' €316.55, u b'kera mensili ta' €366.46 rispettivament, kollha għal perijodu ta' sittin (60) xahar. L-intimat Eduardo Maiello iffirma żewġ garanziji favur is-soċjetà rikorrenti fir-rigward tal-ħlasijiet u l-imgħaxijiet kollha dovuti. Is-soċjetà rikorrenti spjegat li minkejja l-fatturi kollha maħruġa u mibgħuta minnha, l-intimati naqsu milli jwettqu l-ħlasijiet dovuti minnhom skont it-termini u l-kundizzjonijiet tat-tliet ftehim. Spjegat ukoll li hija żammet id-dritt li tittermina l-imsemmija ftehim, u għalhekk hija ħarġet in-notifiki tat-terminazzjoni rispettivi fil-11 ta' Mejju, 2020. Is-soċjetà rikorrenti qalet li fl-20 ta' Novembru, 2020 hija talbet lill-intimati jħallsuha l-arretrati, id-danni pre-likwidati, il-penali, il-penali amministrattivi u l-imgħaxijiet dovuti lilha *ai termini* tal-ftehim li kien hemm bejn il-partijiet. Qalet li hija għandha dritt titlob danni pre-likwidati li huma ekwivalenti għall-pagamenti mensili li jkunu għadhom dovuti għar-rimanenti perijodu tal-kirja, flimkien ma' spejjeż oħra inkorsi minnha bħala riżultat tat-terminazzjoni tal-

ftehim bejn il-partijiet. Is-soċjetà rikorrenti qalet li l-ftehim jgħidu ukoll li mat-terminazzjoni, is-soċjetà intimata PFS Import & Export Ltd għandha tħallas l-arretrati tal-kera li jkunu dovuti minnha sad-data tat-terminazzjoni, kif ukoll il-ħlasijiet l-oħra kkontemplati fil-ftehim. Qalet ukoll li l-klawsola 11 tal-ftehim tgħid li mat-terminazzjoni, l-intimati għandhom jirritornaw it-tagħmir li kien fil-pussess tagħhom lura lir-rikorrenti, u f'każ li l-intimati jonqsu li jirritornaw dan it-tagħmir, tapplika penali ekwivalenti għal 1/30 tal-kera mensili maqbula bejn il-partijiet għal kull ġurnata ta' dewmien. Qalet li sal-mument li hija istitwiet dawn il-proċeduri, l-imsemmi tagħmir kien għadu ma ġiex ritornat lilha, u l-intimati huma morużi wkoll fil-ħlasijiet dovuti minnhom.

3. Is-soċjetà rikorrenti spjegat li l-punti in kontestazzjoni huma li l-intimati kisru t-termini tal-ftehim; li l-intimati huma morużi fil-ħlasijiet dovuti minnhom skont it-termini tal-ftehim bejn il-partijiet; u li mat-terminazzjoni tal-ftehim, l-intimati jew min minnhom, huma obbligati jħallsu lir-rikorrenti d-danni pre-likwidati, il-penali u l-penali amministrattivi skont it-termini tal-ftehim.

4. Is-soċjetà rikorrenti għalhekk talbet lill-Arbitru jiddikjara li (i) is-soċjetà intimata PFS Import & Export Limited hija moruża fil-ħlasijiet dovuti minnha skont it-termini tal-ftehim bejn il-partijiet; (ii) is-soċjetà intimata PFS Import & Export Ltd naqset milli tosserva d-disposizzjonijiet tal-ftehim meta naqset milli twettaq il-pagamenti dovuti minnha; (iii) l-intimat Eduardo Maiello naqas milli josserva l-obbligi tiegħu bħala garanti flimkien mas-soċjetà PFS Import & Export Limited; (iv) tordna lill-intimati jew min minnhom jirritornaw it-tagħmir mikri mis-soċjetà rikorrenti lill-intimati f'kundizzjoni tajba, u (v) f'każ li l-intimati

jonqsu milli jagħmlu dan, jawtorizza lis-soċjetà rikorrenti, sabiex fejn possibbli, tieħu pussess tal-imsemmi tagħmir bi spejjeż tal-intimati. Is-soċjetà rikorrenti talbet ukoll lit-Tribunal (vi) jordna u jikkundanna lill-intimati, jew lil min minnhom, iħallsuha l-ammont ta' kera dovuta fl-ammont ta' sbatax-il elf, tmien mija u wieħed u sittin Euro u tnejn u disgħin ċenteżmu (€17,861.92), (vii) jakkorda d-danni pre-likwidati skont il-klawsola numru ħdax (11) tal-ftehim u skont dak li jipprovdi l-artikolu 1138 tal-Kodiċi Ċivili, li jikkonsisti fil-kera mensili li għadha dovuta sakemm kien maħsub li kellu jiġi fi tmiemu l-ftehim maqbul bejn il-partijiet fl-ammont ta' tlieta u tmenin elf, u tmenin Euro u sebgħa u erbgħin ċenteżmu (€83,080.47), (viii) jillikwida l-penali dovuti skont l-artikolu ħdax (11) tal-ftehim għaliex l-intimati naqsu milli jirritornaw it-tagħmir fi tmiem il-kirja, u dan għal kull ġurnata ta' morożità, kif ukoll (ix) jikkundanna lill-intimati għall-ħlas tal-penali amministrattiva fl-ammont ta' tliet mija u tlieta u sittin Euro u disgħin ċenteżmu (€363.90), u kull ammont ieħor dovut mill-intimati, jew min minnhom, u li s-soċjetà rikorrenti talbet li jiġi likwidat mit-Tribunal.

5. Jirriżulta li l-intimati la ressqu risposta għat-talbiet tas-soċjetà rikorrenti, u lanqas ma pparteċipaw fil-proċeduri quddiem it-Tribunal, u għalhekk tqiesu li baqgħu kontumaci.

### **Id-Deciżjoni Appellata**

6. Permezz tal-*lodo* arbitrali mogħti fit-23 ta' Settembru, 2022, it-Tribunal iddeċieda li t-tielet u r-raba' talbiet kontenuti fil-ħames talba tas-soċjetà

rikorrenti għandhom jigu miċhuda, filwaqt li laqa' it-talbiet rimanenti tas-soċjetà rikorrenti, u dan wara li għamel is-segwenti konsiderazzjonijiet:

*“Preliminary*

*The claimant company filed its Notice of Arbitration and Statement of Claim on the 2<sup>nd</sup> July 2021.*

*The undersigned was appointed as Arbitrator by the Malta Arbitration Centre by virtue of a notice dated 2<sup>nd</sup> November 2021.*

*The defendants PFS Import & Export Ltd (“PFS”) and Eduardo Maiello did not file any written reply, remained in a state of contumacy, and did not appear for any sitting.*

*Three sittings were held in this arbitration.*

*Considerations*

*As stated above, the defendants PFS Import & Export Ltd and Eduardo Maiello remained contumacious in these proceedings. In these situations, the Maltese Courts do not consider the state of contumacy as an admission or as a statement by the defendant who fails to present his statement of defence/pleas in the proceedings; but on the contrary it is deemed to be a contestation, and the amendments in the law of procedure which took place in article 158 by virtue of Act XXIV of 1995 appear to strengthen this understanding. On the other hand, the institute of contumacy is founded on the presupposition that the defendant, by his failure to respond to the plaintiff’s claim, would have shown disrespect towards the Court’s request to appear before it, which disrespect is viewed by the law as an action which deserves to be sanctioned – that of not being able to interfere with the production of evidence – since it is deemed to be an element of social disorder. (fn. 1 Elizabeth Said vs. Bank of Valletta plc et, P.A. (JRM), - 01.12.2015)*

*The Arbitral Tribunal shall therefore proceed to consider the claimant company’s claims in the light of the evidence produced during these proceedings.*

*The provisions of the three contracts in issue (Docs. GR1, GR2 and GR3) most relevant to these proceedings are the second and third paragraphs to article 11 of the General Terms and Conditions of Rent which provide as follows:*

*“In the event that the lessee is in default of any of the obligations in terms of this rent contract, the Lessor shall be entitled to terminate with immediate effect. In cases*

where the Lessor elects to terminate the rent contract due to the default of the Lessee, the Lessee shall return the RO to the Lessor with immediate effect, at the Lessee's expense, and the Lessee shall be bound to pay the arrears and an immitigable penalty equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract by way of pre-liquidated damages together with interests in accordance with Directive 2011/7/EU as incorporated into Maltese Law by virtue of LN 272 of 2012.

In the event that the Lessee does not return the equipment with immediate effect, the Lessee shall pay to the Lessor 1/30 of the agreed base monthly rate for each additional day of detaining such equipment."

Rent Arrears

*In his affidavit (Docs. MM to MM3), Mr Marcello Micieli, managing director of the claimant company, states on oath that the defendant company PFS was in default in the payment of rent due on the relative movables in terms of each of the three agreements [Docs. GR1 to GR3] forming the subject-matter of these proceedings.*

*In his affidavit (Docs. MM to MM3), Mr. Marcello Micieli also states on oath that due to the above-mentioned defaults, the claimant company terminated the above-mentioned agreements [Docs. GR1 to GR3], in terms of article 11 of the General Terms and Conditions of Rent of the same agreements, on the 11<sup>th</sup> May 2020 [notices of termination attached to the Notice of Arbitration and marked as Docs. GR6 to GR10].*

*In his said affidavit (Docs. MM to MM3), Mr Miceli further adds on oath that as at the date of termination of the three contracts in issue (the 11<sup>th</sup> May 2020), PFS was in default in the payment of the following rent due on the relative movables until the said 11<sup>th</sup> May 2020:*

- Contract number 146001154: €12,528.83
- Contract number 146001241: €2,963.26
- Contract number 146001286: €2,369.83

Total:  €17,861.92

*The Arbitral Tribunal also notes that the above rent arrear figures correspond to the rent arrear figures set out in the notices of termination (Docs. GR6 to GR10) attached to the claimant's Notice of Arbitration. In his affidavit, Mr Micieli also confirms on oath that said Docs. GR6 to GR10 were sent to the defendant company.*



*In the absence of any evidence to the contrary, and in view of the above-mentioned affidavit and documents referred to therein, the Arbitral Tribunal has no reason not to uphold the claimant's claims that respondent company defaulted in payments due to the claimant in accordance with the above-mentioned three agreements and hence failed to observe the provisions of the said agreements. In the absence of any evidence to the contrary, and in view of the above-mentioned affidavit and documents referred to therein, this Arbitral Tribunal also has no reason not to uphold the claimant's claim that as the date of termination of the three contracts in issue (the 11<sup>th</sup> May 2020) the total amount of €17,861.92 was owed by the defendant company to the claimant company by way of rent arrears on the relative movables (and still remains outstanding to date).*

*Interest on Rent Arrears*

*This Arbitral Tribunal notes that in the rent contracts, relative general terms and conditions notices of termination and Docs. MM1 to MM3 (the latter attached Mr. Marcello Micieli's affidavit) there are conflicting provisions as to whether the rent was payable: every month or every quarter; at the beginning or at the end of such month or quarter, in advance or in arrears. In his affidavit however, Mr. Marcello Micieli states that "The rent of each contract was due at the first day of each calendar quarter as indicated in the agreements."*

*In view of all the above, this Tribunal will therefore take the rent as having been due on the first day of each calendar quarter, in arrears. Accordingly, legal interest on late payment in terms of article 26J of the Commercial Code (Chapter 13 of the Laws of Malta) on the above-mentioned unpaid rent will be computed as from the following dates:*

*Contract number 146001154*

- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €3,761.64 to begin to run as from the 1<sup>st</sup> October 2019;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €3,761.64 to begin to run as from the 1<sup>st</sup> January 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €3,751.67 to begin to run as from the 1<sup>st</sup> April 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €1,253.88 to begin to run as from the 1<sup>st</sup> July 2020.*

Contract number 146001241

- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €373.53 to begin to run as from the 1<sup>st</sup> October 2019;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €1,120.59 to begin to run as from the 1<sup>st</sup> January 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €1,095.61 to begin to run as from the 1<sup>st</sup> April 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €373.53 to begin to run as from the 1<sup>st</sup> July 2020.*

Contract number 146001286

- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €1,072.57 to begin to run as from the 1<sup>st</sup> January 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €864.84 to begin to run as from the 1<sup>st</sup> April 2020;*
- *Legal interest on late payment in terms of article 26J of the Commercial Code on rent arrears of €432.432 to begin to run as from the 1<sup>st</sup> July 2020.*

Penalties

*From the evidence, it is clear that the claimant terminated the three contracts in issue as a result of PFS' failure to pay the relative rent. The "default" by PFS as per the second paragraph to article 11 of the General Terms and Conditions of Rent is clearly its failure to pay rent – this is also evident from the claimant's company claims as per its Notice of Arbitration and Statement of Claim.*

*Mr. Marcello Micieli, managing director of the claimant company, also states on oath that following the said termination, the defendant company did not return the movables relative to the three contracts subject-matter of this proceedings to the claimant. In the absence of any evidence to the contrary, there is no reason why this Tribunal should not conclude that the said equipment was not and still has not been returned to the claimant company.*

*Article 1120 (1) of the Civil Code, Chapter 16 of the Laws of Malta provides the following:*

*"The penalty represents compensation for the damage which the creditor sustains by the non-performance of the principal obligation."*

*Although Grenke Renting Ltd terminated the three contracts in issue as a result of the claimant's failure to pay the relative rent as stated above, one cannot not note however that the 'damage which the creditor sustained by the non-performance of the principal obligation' in terms of article 1120(1) above is clearly interlinked to PFS' failure to return the equipment following such termination. This is not only apparent on a de facto basis [had the equipment been returned, the claimant could have rented it to third parties and reduced its damages], but also from the first part of the second paragraph to article 11 of the General Terms and Conditions of Rent. The latter provision indeed provides that in the event of the said termination, "**the Lessee shall return the RO to the Lessor with immediate effect**, at the Lessee's expense, **and the Lessee shall be bound to pay the arrears and an immitigable penalty** equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract by way of pre-liquidated damages.*

*The penalty laid down in the second part of the second paragraph to article 11 of the General Terms and Conditions of Rent, which provides that:*

*"In the event that the Lessee does not return the equipment with immediate effect, the Lessee shall pay to the Lessor 1/30 of the agreed base monthly rate for each additional day of detaining such equipment."*

*Is clearly also relative to the failure to return the equipment.*

*All the above implies that both of the above-mentioned penalties mentioned in article 11 of the General Terms and Conditions of rent are related to PFS' failure to return the equipment, as a result of which the claimant was and is unable to rent the equipment to third parties and therefore lost and is losing rent.*

*In the context of penalty clauses, judgments of the Courts of Malta have held that article 992 of the Civil Code, which lays down the pacta sunt servanda principle, cannot be applied independently of the article which follows it (article 993) and which provides the following:*

*"Contracts must be carried out in good faith, and shall be binding not only in regard to the matter therein expressed, but also in regard to any consequence which, by equity, custom, or law, is incidental to the obligation, according to its nature."*

*Accordingly, in **Michael Pace vs Richard Micallef pro et noe**, Court of Appeal, 15/12/2004; **Falzon Sant Manduca vs Mario Grima**, First Hall Civil Court, 08/03/2005; and **Calleja Urry vs Portelli**, Court of Appeal, 28/02/2011, the said Courts held that:*

“l-applikazzjoni tar-regola maħsuba fl-artikolu 1122 tal-Kap. 16 trid titfisser ukoll fid-dawl ta’ prinċipju ieħor ewlieni tad-dritt, jiġifieri dak li jrid li l-kuntratti jiġu esegwiti b’bona fidi u jobbligaw, mhux biss għal dak li jingħad fihom, imma ukoll għall-konsegwenzi li għib magħhom l-obbligazzjoni, skont l-għamla tagħha, b’ekwità, bl-użu jew bil-liġi. Dan ifisser li b’applikazzjoni tal-massima in omnibus quidem, maxime tamen in jure, aequitas spectanda sit, huwa possibbli li l-effett u l-applikazzjoni litterali ta’ klawnsola penali jiġu “ridimensjonati” jekk jirrizulta li dawn joffendu jew jiksru s-sens prattiku u morali tal-obbligazzjoni billi jkunu jidhru sproporzjonati jew inaċċettabbli “skont in-normi stabbiliti tas-soċjetà u l-logika ġuridika”.

*[The above translates as follows into English: “the application of the rule contemplated in article 1122 of Chapter 16 must also be understood in the light of another principal principle of law, that is that which requires that contracts should be performed in good faith and bind, not only with regard to what is stated therein, but also with regard to the consequences that the obligation brings with it according to its nature, by equity, by use or by law. This means that with the application of the maxim in omnibus quidem, maxime tamen in jure, aequitas spectanda sit, it is possible for the literal effect and application of the penalty clause to be “re-dimensioned” if it results that these offend or breach the practical and moral sense of the obligation as they would appear disproportionate or unacceptable “according to the established norms of society and juridical logic”].*

*(see also **Marcin Depczynski nomine vs. STK Europe Limited** – First Hall Civil Court, 14<sup>th</sup> February, 2018).*

*Thus, in the light of the above judgments, and also keeping in view that the damages which the claimant incurred are linked to PFS’ failure to return the equipment and Grenke’s consequent inability to rent the said equipment to third parties, it does not appear proper, correct and equitable to award, cumulatively, both the penalty laid down in first part of the second paragraph to article 11 of the General Terms and Conditions of Rent and the penalty laid down in the second part of the second paragraph to article 11 of the said General Terms and Conditions of Rent. This Arbitral Tribunal shall only be awarding the former penalties; however, inter alia due to the fact that the equipment has not been returned to the claimant company (and there is an uncertainty as to when it will be returned), these shall be awarded in full as per the following:*

- *A penalty equivalent to the aggregate of the rent instalments which would have been due on each contract [all three of which had an original duration of 60*

*months – Docs. GR1, GR2 and GR3], from the date of termination of each contract [i.e. the 11<sup>th</sup> May 2020] until the original date of expiration of each rent contract, shall be paid by PFS to the claimant as follows:*

- *Contract number 146001154: €48,596,70* (€1,062.61 per month from the above-mentioned date of termination until the 5/3/2024);
- *Contract number 146001241: €15,510.95* (€316.55 per month for the above-mentioned date of termination until the 11/6/2024);
- *Contract number 146001286: €18,574,82* (€366.46 per month from the above-mentioned date of termination until the 9/8/2024).

#### *Administration Charges*

*In his affidavit, Mr. Micieli fails to explain inter alia what the administration charges of €363.90 consist of and how these were incurred by the claimant company, and hence, in the absence of the said evidence these administration charges cannot be awarded.*

#### *Guarantees*

*In his affidavit (Docs. MM to MM3), Mr Marcello Micieli, managing director of the claimant company, states on oath that Mr. Eduardo Maiello, in his own personal name, provided the guarantees attached to the Notice of Arbitration and marked as Docs “GR4” and “GR5”, with respect to the contract dated 5<sup>th</sup> March 2019 (Doc. GR1) and the contract dated 11<sup>th</sup> June 2019 (Doc. GR2). The said guarantees basically provide that the guarantor shall be personally liable, jointly and severally with the defendant company, for all amounts due by the defendant company to the plaintiff in terms of the said contracts GR1 and GR2. In the absence of any evidence or pleas to the contrary, this Arbitral Tribunal finds no reason not to uphold the said guarantees and condemn the defendant Eduardo Maiello to pay to the claimant company, jointly and severally with PFS, all the above-mentioned amounts, relative to contracts numbered 146001154 and 146001241, which PFS is obliged to pay in terms of this award.*

#### *Return of Equipment*

*As already stated above, in his affidavit (Docs. MM to MM3), Mr. Marcello Micieli states on oath that the defendant company did not return the movables relative to the three contracts subject-matter of these proceedings to the claimant. In the*

*absence of any evidence or pleas to the contrary, said movables should be returned by the defendant company to the claimant company.*

**Decision**

*Now therefore, in view of all the above, this Arbitral Tribunal:*

*Whilst rejecting Grenke Renting Ltd's claims as per paragraphs (iii) and (iv) of its fifth (5<sup>th</sup>) claim in its Notice of Arbitration and Statement of Claim, upholds all Grenke Renting Ltd's other claims in part, as follows:*

*This Arbitral Tribunal-*

- (1) Declares that the respondent PFS Import & Export Ltd defaulted in payments to the claimant in accordance with the three agreements (Docs. GR1, GR2 and GR3) subject-matter of these proceedings;*
- (2) Declares that the respondent PFS Import & Export Ltd failed to observe the provisions of the said agreements (Docs. GR1, GR2 and GR3) with its default in effecting rent payments;*
- (3) Declares that the respondent Eduardo Maiello failed to observe his duties and obligations as guarantor jointly and severally with PFS Import & Export Ltd in relation to the agreements marked as Doc. GR1 and Doc. GR2;*
- (4) Subsequently and consequently to the above:*
  - (i) Orders the respondent PFS Import & Export Ltd to return to the claimant the equipment relative to agreements Doc. GR1, Doc. GR2 and Doc. GR3 rented by the claimant to the same respondent, in a good state, within a peremptory period of sixty (60) days from the date of this award; provided that if the respondent PFS Import & Export Ltd defaults in doing so, the claimant may resort to the competent court or judicial organ to request authorisation to take possession of such equipment itself according to and by the means provided by law;*
  - (ii) Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of €4,135.17 [four thousand one hundred and thirty-five Euro and seventeen cents] by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> October 2019 until the date of effective payment;*
  - (iii) Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of €4,882.23*

- [four thousand eight hundred and eighty-two Euro and twenty-three cents] by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> January 2020 until the date of effective payment;*
- (iv) *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of €4,847.28 [four thousand eight hundred and forty-seven Euro and twenty-eight cents] by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> April 2020 until the date of effective payment;*
- (v) *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant the sum of €1,627.41 [one thousand six hundred and twenty-seven Euro and forty-one cents] by way of rent arrears relative to contracts GR1 and GR2, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> July 2020 until the date of effective payment;*
- (vi) *Orders and condemns the respondent PFS Import & Export Ltd to pay to the claimant the sum of €1,072.57 [one thousand and seventy-two Euro and fifty-seven cents] by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> January 2020 until the date of effective payment;*
- (vii) *Orders and condemns the respondent PFS Import & Export Ltd to pay to the claimant the sum of €864.84 [eight hundred and sixty-four Euro and eighty-four cents] by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> April 2020 until the date of effective payment;*
- (viii) *Orders and condemns the respondent PFS Import & Export Ltd to pay to the claimant the sum of €432.42 [four hundred and thirty-two Euro and forty-two cents] by way of rent arrears relative to contract GR3, with legal interest in terms of article 26J of the Commercial Code thereon from the 1<sup>st</sup> July 2020 until the date of effective payment;*
- (ix) *Orders and condemns the respondents PFS Import & Export Ltd and Eduardo Maiello, jointly and severally, to pay to the claimant a penalty (equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contracts) relative to contracts GR1 and GR2 in the sum of €64,107.65 [sixty-four thousand, one hundred and seven Euro and sixty-five cents], without interest;*

(x) *Orders and condemns the respondent PFS Import & Export Ltd to pay to the claimant a penalty (equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract) relative to contract GR3 in the sum of €18,574.82 [eighteen thousand five hundred and seventy-four Euro and eighty-two cents], without interest;*

*Two-thirds (2/3) of all the costs of these proceedings, as per Taxed Bill of Costs issued by the Malta Arbitration Centre, which is being attached hereto and marked Document Letter X, and of the judicial letter dated 20<sup>th</sup> November 2020 (Number 3905/2020) shall be borne by the respondents PFS Import & Export Ltd and Eduardo Maiello jointly and severally; whilst one-third (1/3) of the said costs shall be borne by the respondent PFS Import & Export Ltd alone.”*

## **L-Appell**

8. Fir-rikors tal-appell imressaq mis-soċjetà rikorrenti fis-17 ta' Novembru, 2022, hija talbet lil din il-Qorti tordna l-allegazzjoni tal-atti relattivi għall-arbitraġġ numru 6230/2021 deċiż mit-Tribunal tal-Arbitraġġ fi ħdan iċ-Ċentru Malti għall-Arbitraġġ fit-23 ta' Settembru, 2022 fl-ismijiet premissi; tirrifirma l-*lodo* arbitrali in kwantu tilqa' t-talba tal-appellanta magħmula f'paragrafu (iii) tal-ħames talba tal-*Istatement of Claim* tagħha quddiem it-Tribunal tal-Arbitraġġ, senjatament fejn talbet għall-ħlas tal-penali għan-nuqqas tar-ritorn tal-mobbli mikrija wara t-terminazzjoni tal-kuntratti tal-kiri skont il-ftehim relattiv, dekorribbli mid-data tat-terminazzjoni sar-ritorn effettiv tal-imsemmija mobbli; u tikkonferma l-kumplament tal-*lodo* arbitrali mogħti mit-Tribunal fit-23 ta' Settembru, 2022.

9. Is-soċjetà appellanta bdiet ir-rikors tal-appell tagħha billi spjegat li hija giet notifikata bil-*lodo* arbitrali bil-posta registrata fis-2 ta' Novembru, 2022.



Spjegat, li l-kwistjoni odjerna tikkonċerna tliet kuntratti ta' kiri ta' mobbli u għamlet riassunt tat-talbiet tagħha u tal-*lodo* mogħti mit-Tribunal.

10. Is-soċjetà appellanta spjegat li hija ħassitha aggravata għaliex it-Tribunal ċaħad il-paragrafu numru tlieta (3) tal-ħames (5) talba, u ċioe t-talba għall-ħlas tal-penali dovuti in konnessjoni man-nuqqas tal-appellati li jirritornaw il-mobbli mikrija, wara t-terminazzjoni tal-kuntratti mertu ta' dawn il-proċeduri, speċifikament il-penali għal kull jum ta' inadempjenza sar-ritorn effettiv tal-mobbli *ai termini* tal-klawsola (11) tal-Ftehim. Is-soċjetà appellanta spjegat li l-appell tagħha huwa limitat għal dik il-parti tal-*lodo*, fl-istess waqt li qiegħda titlob konferma tal-bqija tal-*lodo* li laqa' il-kumplament tat-talbiet tagħha.

11. Is-soċjetà appellanta qalet li t-Tribunal għamel interpretazzjoni u applikazzjoni skorretta tal-liġi u tal-kuntratti mertu tal-kawża, fir-rigward tal-ħlas tal-penali dovuti. Qalet li fil-konsiderazzjonijiet tiegħu t-Tribunal qies li ma jkunx ekwitattiv li jakkorda l-penali stipulata fl-ewwel paragrafu tal-artikolu 11 tal-*General Terms and Conditions of Rent*, u l-penali msemmija fit-tieni parti tat-tieni paragrafu tal-artikolu 11 tal-istess Termini u Kundizzjonijiet, u għaldaqstant it-Tribunal akkorda biss il-penali maqbula bħala danni pre-likwidati għaliex il-kirja giet itterminata qabel immaturat, u li ma kellux jillikwida l-penali minħabba l-fatt li l-appellati żammew fil-pussess tagħhom it-tagħmir mikri oġġett tal-kirja. Qalet li trid issir distinzjoni bejn il-penali dovuti *ai termini* tat-tieni paragrafu tal-klawsola 11 tal-Ftehim, u l-penali dovuti *ai termini* tat-tielet paragrafu tal-istess klawsola. Is-soċjetà appellanta qalet li l-ewwel penali jirrapprezentaw il-valur kumplessiv tal-kirjiet li kellhom ikunu dovuti għall-kumplament tal-perijodu tal-

kirjiet bħala danni prelikwidati minħabba t-terminazzjoni bikrija tal-ftehim li kellu terminu fiss. Qalet li t-tieni penali strettament huma dovuti jekk wara t-terminazzjoni tal-kirja, l-intimati jonqsu milli jirritornaw il-mobbli mikrija. Is-soċjetà appellanta ċċitat it-tieni parti tal-klawsola numru ħdax (11) tal-Ftehim, li tipprovdi illi:

*“In the event that the Lessee is in default of any of the obligations in terms of the rent contract, the Lessor shall be entitled to terminate with immediate effect. In cases where the Lessor elects to terminate the rent contract due to the default of the Lessee, the Lessee shall return the RO [Rented Objects] to the Lessor with immediate effect, at the Lessee’s expense, and the Lessee shall be bound to pay the arrears and an inmitigable penalty equivalent to the aggregate of the rent instalments which would have been due until the end of the rent contract by way of pre-liquidated damages ...”.*

12. L-appellanta spjegat li din l-istess parti tal-klawsola, minkejja li tirreferi għall-fatt li t-tagħmir għandu jiġi ritornat mat-terminazzjoni tal-kuntratt, tipprovdi li l-penali huma strettament dovuti minħabba t-terminazzjoni bikrija tal-kuntratt li kellu żmien definit, u dan irrispettivament minn jekk l-oġġetti mikrija ġewx ritornati mat-terminazzjoni tal-Ftehim. L-appellanta qalet li t-tielet parti tal-klawsola tipprovdi għall-ħlas ta’ penali ekwivalenti għal 1/30 tar-rata mensili miftiehma bejn il-partijiet għal kull ġurnata li matulha t-tagħmir ma jiġix ritornat, u għalhekk għandu jirrizulta li l-penali in kwistjoni hijaa dovuta unikament minħabba in-nuqqas ta’ ritorn effettiv tal-istess tagħmir. Qalet li minkejja li l-Ftehim ma jhalli l-ebda dubju dwar l-iskop taż-żewġ penali, u li dawn huma distinti u separati minn xulxin, għal xi raġuni, it-Tribunal iddecieda li (i) id-dannu li inkorriet l-appellanta kien marbut mal-fatt li l-oġġetti mikrija ma ġewx ritornati u għalhekk ma setgħux jerggħu jinkrew; u (ii) il-ħlasijiet li qegħdin

jintalbu mill-appellanta permezz tal-penali preċitati huma t-tnejn marbuta mal-fatt li ma ġewx ritornati l-mobbli mikrija, u għalhekk ma kienx ekwu u ġust li jingħataw penali doppji għal dan in-nuqqas. Is-soċjetà appellanta qalet li din hija konkluzjoni żbaljata, u għalhekk għandu jirriżulta li t-Tribunal għamel interpretazzjoni skorretta tal-Ftehim u tal-liġi fir-rigward tal-ħlas tal-penali in kwistjoni.

13. Is-soċjetà appellanta spjegat li kif għandu jirriżulta minn qari tal-klawsola numru 11 tal-Ftehim, il-penali in kwistjoni huma separati u distinti minn xulxin. Qalet li min-naħa l-waħda hemm penali dovuti bħala danni pre-likwidati meta jirriżulta li kien hemm terminazzjoni bikrija tal-kirjiet minħabba inadempjenza u nuqqasijiet tal-appellati. Qalet li mill-banda l-oħra, l-istess klawsola tipprovdi għal penali li jkunu dovuti *per via di danni* unikament jekk il-mobbli mikrija ma jiġux ritornati wara t-terminazzjoni tal-kirjiet. Is-soċjetà appellanta qalet li fi kwalunkwe każ, u mingħajr preġudizzju, filwaqt li l-iskop tal-penali jirriżulta b'mod ċar mill-Ftehim, it-Tribunal ma kellux jistabilixxi x'tip ta' dannu sofriet l-appellanta biex jiġġustifika l-ħlas ta' dawn il-penali. Qalet li t-Tribunal kellu jiddetermina biss jekk kienx hemm nuqqasijiet da parti tal-appellati, li kellu jwassal għall-ħlas tal-penali in kwistjoni. Is-soċjetà appellanta qalet li f'dan ir-rigward, it-Tribunal sab li l-appellati kisru l-kundizzjonijiet tal-kirja li wassal għat-terminazzjoni prematura tal-Ftehim, u dawn naqsu milli jirritornaw il-mobbli mikrija. Is-soċjetà appellanta qalet li l-penali kkontemplati fil-kuntratt jikkostitwixxu liġi bejn il-partijiet, u l-Qrati m'għandhomx is-setgħa li jittempraw l-istess, għajr għal raġunijiet validi skont il-liġi. Qalet ukoll li fil-każ odjern ma jirriżultawx raġunijiet validi sabiex il-penali jiġu ridotti.

14. L-appellanta saħqet li ladarba ġie stabbilit li l-penali huma dovuti għal żewġ raġunijiet differenti, għandu jirriżulta li mhuwiex il-każ li dawn il-penali mhumiex ekwi u ġusti. Qalet li fir-rigward tal-penali għan-nuqqas ta' ritorn tal-mobbli, dawn jammontaw għal 1/30 tal-kera dovuta għal kull ġurnata, u allura jammontaw għall-istess ammont ta' kera li kienet dovuta meta kien fis-seħħ il-Ftehim. Qalet li ma jistax jingħad li ġew imposti xi penali eżorbitanti. Fir-rigward tal-penali għat-terminazzjoni prematura tal-Ftehim, ġew imposti u maqbula penali ekwivalenti għall-kirjiet li kellhom ikunu dovuti għall-kumpliment tal-perijodu tal-kirjiet, skont il-prassi meta jiġi tterminat kuntratt ta' kiri b'perijodu *di fermo* mingħajr raġuni valida.

15. Is-soċjetà appellanta qalet li fir-rigward tal-penali li skont il-Ftehim għadhom qegħdin jiddekorru minħabba n-nuqqas ta' ritorn tal-mobbli mikrija, l-appellati huma unikament responsabbli għal dan in-nuqqas tagħhom, u għadhom qegħdin jirrifjutaw li jirritornaw l-istess mobbli. Qalet li l-penali ġew speċifikament maqbula u imposti sabiex jindirizzaw sitwazzjoni bħal din, u mhux sabiex jikkumpensawha f'każ ta' inadempjenza, iżda sabiex iservu ta' deterrent. L-appellanta qalet li d-deċiżjoni tat-Tribunal fejn ma ordnax il-ħlas tal-penali minħabba n-nuqqas tar-ritorn tal-mobbli, qiegħda tippremja l-inadempjenza tal-appellati li qegħdin jonqsu milli jonoraw l-obbligi kuntrattwali tagħhom, u minkejja dan in-nuqqas, huma ġew eżentati milli jħallsu l-penali relattiva miftiehma bejn il-partijiet.

16. L-appellanta qalet li fil-każ odjern ġie ppruvat li l-appellati naqsu mili jirritornaw il-mobbli mikrija wara t-terminazzjoni tal-Ftehim, u fil-fatt din hija

konstatazzjoni li tinsab fil-*lodo* appellat. Komplet tgħid li l-ligi tippermetti li l-partijiet jistgħu jistipulaw u jaqblu fuq danni pre-likwidati bi ftehim bejniethom. Żiedet tgħid li *ai termini* tal-artikolu 1138 tal-Kap. 16 tal-Liġijiet ta' Malta, għandu jirriżulta b'mod ċar li d-danni kollha pre-likwidati huma dovuti kif imnissla mill-kuntratt maqbul bejn il-partijiet. Is-soċjetà appellanta rreferiet għal diversi sentenzi li jsostnu l-pożizzjoni tagħha, kif ukoll għamlet riferiment għall-prinċipju tal-*pacta sunt servanda*, fl-artikolu 992(2) tal-Kap. 16 tal-Liġijiet ta' Malta.

17. L-appellati ma ressqu l-ebda risposta għar-rikors tal-appell tal-appellanta, u lanqas ma dehru quddiem din il-Qorti sabiex jagħmlu s-sottomissjonijiet tagħhom.

### **Konsiderazzjonijiet ta' din il-Qorti**

18. Din il-Qorti ser tgħaddi sabiex tikkonsidra l-aggravju mressaq mis-soċjetà appellanta fir-rikors tal-appell tagħha, u dan fid-dawl tal-konsiderazzjonijiet magħmula mit-Tribunal fil-*lodo* arbitrali tiegħu. L-appellati ma pparteċipawx f'dawn il-proċeduri, ma ressqu l-ebda risposta, u lanqas ma kienu rappreżentati dakinhar li kellha ssir it-trattazzjoni.

*L-Agravju:*

*[It-Tribunal għamel interpretazzjoni u applikazzjoni skorretta tal-ligi u tal-kuntratti mertu tal-kawża fir-rigward tal-ħlas tal-penali dovuti]*

19. L-appellanta qalet li t-Tribunal naqas milli jinterpreta l-klawsola numru 11 tal-ftehim b'mod korrett, meta qal li ma jkunx qiegħed jimxi bi spirtu ta' ekwità jekk jalloka l-penali kkontemplati fil-ftehim għall-eventwalità li l-appellati jonqsu milli jirritornaw l-oġġetti mobbli mikrija lilhom. Il-ftehim jipprovdu għall-ħlas ta' penali għal kull jum ta' inadempjenza sad-data tar-ritorn effettiv tal-mobbli, u dan *ai termini* tal-klawsola numru 11 tal-ftehim. L-appellanta spjegat li l-ftehim bejn il-partijiet jikkontempla l-ħlas ta' żewġ tipi ta' penali, jiġifieri l-penali dovuta f'każ li l-kirja tiġi tterminata qabel timmatura, u għalhekk il-ftehim kien jikkontempla danni pre-likwidati f'każ tat-terminazzjoni bikrija tal-ftehim. Iżda l-ftehim kien jikkontempla wkoll il-ħlas ta' penali f'każ li l-appellati jibqgħu inadempjenti u jonqsu milli jirritornaw l-oġġetti mobbli mikrija lilhom.

20. Il-Qorti tirrileva li l-ftehim bejn il-partijiet kien jikkontempla sitwazzjoni fejn it-tagħmir li jiffirma l-oġġett tal-kirja, kellu jiġi ritornat mat-terminazzjoni tal-kuntratt. Jekk dan it-tagħmir ma jiġix ritornat, il-ftehim kien jikkontempla il-ħlas ta' penali ta' 1/30 tar-rata mensili miftiehma għal kull ġurnata li t-tagħmir jibqa' ma jiġix ritornat lis-soċjetà appellanta. Din il-klawsola tal-ftehim fil-fatt daħlet fis-seħħ fil-mument li l-kirja ġiet itterminata, u l-appellati naqsu milli jirritornaw l-oġġetti mikrija lilhom. Il-ftehim bejn il-partijiet kien jistipula li s-soċjetà appellanta kellha tikri tagħmir lill-appellati, u għal din il-kirja kellu jkun hemm ħlas mensili. It-terminu tal-kirjiet miftehema kien ta' sittin xahar. L-appellati kienu morużi fil-ħlas tal-kera dovuta minnhom, u għaldaqstant is-soċjetà appellanta fittxet li tittermina l-ftehim ta' kirja. Is-soċjetà appellanta istitwiet il-proċeduri odjerni sabiex tinforza t-termini tal-ftehim pattwit bejn il-partijiet, senjatament il-klawsoli li jikkontemplaw il-ħlas ta' penali f'każ li l-kirja

tigi tterminata qabel tigi fi tmiemha bid-dekors taż-żmien, u għalhekk minħabba inadempjenza min-naħa tal-appellati, u l-ħlas ta' penali minħabba li l-appellati naqsu milli jirritornaw l-oġġetti mikrija lilhom.

21. It-Tribunal iddeċieda li fi spirtu ta' ekwità għandu jakkorda l-ħlas ta' penali maqbula bħala danni pre-likwidati minħabba li l-kirja giet itterminata qabel immaturat, iżda ma kellux jillikwida l-penali minħabba l-fatt li l-appellati żammew fil-pussess tagħhom it-tagħmir mikri, u li jiffirma l-oġġetti tal-kirja. Fil-każ odjern jirriżulta li l-appellati naqsu milli jirritornaw it-tagħmir mikri lilhom, u fil-fatt mill-provi jirriżulta li dan it-tagħmir baqa' ma ġiex ritornat lis-soċjetà appellanta minkejja li ġew istitwiti dawn il-proċeduri. Naturalment għal dan in-nuqqas m'għandu jwieġeb ħadd għajr għall-appellati li naqsu milli jonoraw it-termini tal-ftehim tal-kirja, billi jirritornaw l-oġġetti mikrija lilhom. It-Tribunal qies li dan l-istat ta' fatt qiegħed iwassal biex is-soċjetà appellanta qiegħda ssofri danni wkoll għaliex ma tistax tikri dan it-tagħmir lil terzi. Il-parti tal-klawsola li tikkontempla l-ħlas ta' penali f'każ li l-appellati jonqsu milli jirritornaw l-oġġetti mikrija lilhom iżda, mhijiex marbuta mad-danni sofferti mill-appellanta, iżda mas-sempliċi fatt li l-appellati baqgħu fil-pussess tal-oġġetti mikrija lilhom, minkejja li la huma sidien ta' dan it-tagħmir u lanqas m'għadhom marbutin bil-ftehim ta' kiri stante li gie tterminat. L-appellati għalhekk qegħdin jonqsu milli jonoraw l-obbligi tagħhom bħala inkwilini, mhux biss billi qegħdin jonqsu milli jħallsu l-kera dovuta minnhom, iżda billi baqgħu fil-pussess tal-oġġetti mikrija lilhom mingħajr m'għandhom jedd li jagħmlu dan.

22. Il-Qorti tqis li l-klawsoli tal-ftehim huma ċari u jinftiehm u ċar. Il-penali kkontemplati u maqbula bejn il-partijiet jiskattaw mhux biss f'każ ta' terminazzjoni bikrija tal-ftehim, iżda hemm ukoll penali separati li jridu jiithallsu għaliex l-appellati baqgħu ma rritornawx l-oġġetti mikrija lilhom lis-soċjetà appellanta. Dan in omagġ għall-prinċipju ben stabbilit *pacta sunt servanda*. L-appellati kienu jafu li f'każ li jonqsu milli jirritornaw it-tagħmir mikri lilhom, kienu ser ikunu sugġetti għall-ħlas tal-penali kkontemplati fil-ftehim. Kienu huma li baqgħu ma pparteċipaw bl-ebda mod f'dawn il-proċeduri, u li ma spjegaw bl-ebda mod x'inhu jzommhom milli jonoraw l-obbligi tagħhom taht il-ftehim. Il-Qorti tqis li l-prinċipju tal-ekwità ma ġiex imħares meta t-Tribunal għalaq għajnejh għal dak miftiehem bejn il-partijiet, u minflok iddeċieda li l-parti tal-penali marbuta mal-fatt li l-appellati naqsu milli jirritornaw l-oġġetti mikrija lilhom, għandha tinħafer jew ma tigix infurzata. Din il-Qorti għalhekk hi tal-fehma li t-talba kontenuta fit-tielet paragrafu tal-ħames talba tal-*Statement of Claim* għandha tiġi milqugħa, u l-appellati għandhom iħallsu l-penali kkontemplati fil-ftehim, liema penali qegħdin jibqgħu jogħlew ma' kull ġurnata li tgħaddi u li matulha l-appellati jibqgħu inadempjenti u jibqgħu fil-pussess tat-tagħmir mikri lilhom. Fil-fatt din il-Qorti mhijiex f'pożizzjoni li tillikwida l-penali hekk dovuta għaliex dan l-ammont qiegħed jizdied ma' kull ġurnata ta' morożità min-naħa tal-appellati. Hija ukoll din ir-raġuni għalfejn fil-fehma tal-Qorti, it-Tribunal ma kienx ekwitattiv fid-deċiżjoni tiegħu, għaliex fin-nuqqas tal-impożizzjoni tal-penali kkontemplati fil-ftehim, l-appellati m'għandhom l-ebda raġuni għalfejn jirritornaw l-oġġetti li sallum għadhom fil-pussess tagħhom.



## **Decide**

**Għar-raġunijiet premissi, il-Qorti tiddisponi mill-appell odjern billi tilqgħu, b'dan illi tvarja l-*lodo* arbitrali limitatament safejn qiegħda tilqa' t-talba kontenuta fit-tielet paragrafu tal-ħames talba, u tiddikjara li l-appellati għandhom iħallsu l-penali marbuta man-nuqqas tar-ritorn tal-mobbli mikrija wara t-terminazzjoni tal-kirja skont il-kuntratt relattiv, u dawn il-penali għandhom jiġu kkomputati għall-perijodu bejn id-data tat-terminazzjoni u d-data tar-ritorn effettiv tal-istess mobbli.**

**L-ispejjeż ta' dawn il-proċeduri fiż-żewġ istanzi huma a karigu tal-appellati.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.  
Imħallef**

**Rosemarie Calleja  
Deputat Registratur**