



# **RENT REGULATION BOARD**

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

**Sitting held on Wednesday, 25<sup>th</sup> of September 2024**

**Application Number: 244/2019  
Number on the list: 1**

**Natalia Menshova (ID 18943A)**

**VS**

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

**The Board,**

Having once again seen the application dated the 29th of October 2019<sup>1</sup>, whereby the plaintiff claimed and asked for the following:

*Illi permezz ta' kuntratt datat 1 ta' Jannar 2011 l-esponenti flimkien mas-sieheb taghha Ralph Ascjak kienet kriet l-fond ossia dar bin-numru tmienja*

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<sup>1</sup> 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.

(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-oħra 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' spoll u fastidju mis-sieheb tagħha Ralph Asciak u l-pulizija kienu hargu lir-rikorrenti mid-dar tagħha 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 jidhirlu 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 iffirmit 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 zgombat 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 once again seen the decree issued by this Board as previously presided on the 11th of November 2019<sup>2</sup>, whereby it allowed a correction in the original application in terms of article 175 of Chapter 12 of the Laws of Malta.

Having once again seen the reply filed by the respondents on the 31st of January 2020<sup>3</sup>, wherein the defendants plead as following:

1. *Illi fl-ewwel lok, u minghajr preġudizzju għal dak li ġej, l-allegat ftehim ta' kirja huwa wiehed iffabbrikat u dan effettivament qatt ma kien iffirmit mil-lum mejjet Ralph Ascjak (kemm qua rappreżentant ta' Camelot Properties Limited u kemm f'ismu personali) u għalhekk dan il-ftehim huwa invaldu, null u bla effett u per konsegwenza ma hemm l-ebda rabta bejn ir-rikorrenti u socjeta' Camelot Properties Limited;*

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<sup>2</sup> Fol 13 of the acts.

<sup>3</sup> Fol 19 *et seq* of the acts.

2. *Illi fit-tieni lok, u mingħajr preġudizzju għas-suespost u għal dak li ġej, it-talbiet tar-rikorrenti huma improponibbli u ma jistgħux jintlaqgħu minn dan l-Onorabbli Bord stante li qiegħed jiġi mistieden jagħti deċiżjoni kunfligġenti ma' sentenza preċedenti mogħtija mill-Prim'Awla tal-Qorti Ċivili fl-ismijiet Natalie Menshova v. Ralph Asciak deċiża fil-21 ta' Ġunju 2017 (Ref. 325/2012/JA), li qatt ma ġiet appellata. It-talbiet rikorrenti għandhom jiġu miċħuda u dan għaliex inter alia jekk jintlaqgħu ser joħolqu kunflitt bejn sentenzi kontra l-ordni pubbliku u l-prinċipju taċ-ċertazza legali;*
3. *Illi, fit-tielet lok, u mingħajr preġudizzju għas-suespost u dak li ġej, l-allegat ftehim ta' kirja huwa null u bla effett u peress li hemm assenti wħud mill-elementi essenzjali ta' kirja skont l-Artikolu 1531A tal-Kodiċi Ċivili (Kapitlu 16 tal-Liġijiet ta' Malta) fosthom li l-ftehim ma indikax l-użu tal-propjeta maqbul bejn il-partijiet u jekk tali kirja tiġġieled u jekk iva, il-metodu kif tista' tiġedded hekk, kif tirrikjedi il-liġi ad validitatem;*
4. *Illi fir-raba' lok u mingħajr preġudizzju għas-suespost u għal dak li ġej, it-talba tar-rikorrenti hija preskritta peress li n-natura tal-azzjoni odjerna hija waħda possessorja jew fl-aħjar ipotezi waħda ta' manutenzjoni u għalhekk ai termini tal-Artikoli 534 u 535(1) tal-Kodiċi Ċivili (Kapitlu 16 tal-Liġijiet ta' Malta) kellha tiġi eżerċitata se mai f'temp ta' xahrejn jew sena skont kif ikun il-każ;*
5. *Illi fil-ħames lok, u mingħajr preġudizzju għas-suespost, effettivament il-propjeta' mertu ta' dan l-allegat ftehim hija (u dejjem kienet) proprjeta' tas-socjeta' konvenuta l-oħra Propinvest Limited u mhux tas-socjeta' konvenuta Camelot Properties Limited u jirriżulta biċ-ċar illi effettivament*

*ma kien hemm l-ebda ftehim bejn Propinvest Limited u r-rikorrenti u għalhekk, fin-nuqqas ta' relazzjoni guridika bejn it-tnejn, il-konvenuta Propinvest Limited ma għandiex tirispondi għat-talbiet mressqa mir-rikorrenti u r-rikorrenti ma għandha l-ebda jedd reali jew personali fuq il-propjeta tal-istess;*

6. *Illi minghajr pregudizzju ghas-suespost, fil-mertu it-talbiet tar-rikorrenti huma improponibbli u kif ukoll infondati fil-fatt u fid-dritt u qatt ma jistghu jintlaqgħu;*

7. *Illi m'huwiex minnu illi r-rikorrenti għanda tifla minghand Ralph Asciaq, jew li kienet f'xi hin kienet tirisjedi fil-propjeta' mertu ta' dan il-kaz jew li qatt halset xi kera hekk kif qed tallega u m'għandha l-ebda drittijiet fuq il-fond de quo;*

8. *Illi għal dak li għandu x'jaqsam mal-konjugi Berrington, dawn għandhom kuntratt ta' kera validu ma' sid il-propjeta' mertu ta' dan il-kaz, ossia s-socjeta' Propinvest Limited u ma hemm l-ebda lok li huma jigu b'xi mod zgumbrati minn dan il-fond. Fi kwalunkwe kaz ma għandhom jirrispondu għat-talbiet dedotti mir-rikorrenti;*

9. *Illi t-talbiet tar-rikorrenti għandhom jigu michuda bl-ispejjez kontra tagħhom.*

Having once again 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 once again seen the minute of the 12th of October 2020<sup>4</sup> whereby this Board as previously presided allowed that the proceedings in the names **Natalia 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 once again seen the affidavit of Michael Asciak<sup>5</sup>.

Having once again seen further documents filed by the respondents<sup>6</sup>, regarding a report filed in the criminal case in the names **The Police vs Natalia Menshova**.

Having once again seen the note of the Registrar of the Criminal Court whereby the acts of the above indicated criminal proceedings were filed<sup>7</sup>.

Having once again seen the affidavit of the plaintiff filed on the 14th of January 2022<sup>8</sup>.

Having once again seen the cross examination of Michael Axiaq<sup>9</sup>.

Having once again seen the cross examination of the plaintiff<sup>10</sup>.

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<sup>4</sup> Fol 42 of the acts.

<sup>5</sup> Relative note is found at fol 44 of the acts.

<sup>6</sup> Fol 81 of the acts.

<sup>7</sup> Relative note is found at fol 180A of the acts.

<sup>8</sup> Relative note is found at fol 183 of the acts.

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

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

Having once again seen the document filed by the plaintiff<sup>11</sup>.

Having once again seen the note of submissions filed by the defendants on the 23rd of August 2022<sup>12</sup>.

Having once again seen the note of submissions filed by the plaintiff in reply on the 21st of December 2022<sup>13</sup>.

Having once again seen the appointment made by the President of Malta dated the 5<sup>th</sup> of March 2023 in terms of article 16 of Chapter 69 of the Laws of Malta<sup>14</sup>.

Having once again seen the assignment of duties dated the 9<sup>th</sup> 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 chaired<sup>15</sup>.

Having once again seen the Boards' decree issued on the 6th of September 2023<sup>16</sup>, 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 2023<sup>17</sup>.

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<sup>11</sup> Relative note found at fol 213 of the acts.

<sup>12</sup> Commences at fol 224 of the acts.

<sup>13</sup> Commences at fol 231a of the acts.

<sup>14</sup> At fol 232 of the acts.

<sup>15</sup> At fol 233 *et seq* of the acts.

<sup>16</sup> At fol 240 of the acts

<sup>17</sup> Duly registered and transcribed and commence at fol 243 of the acts.

Having seen the partial judgement delivered on the 24<sup>th</sup> of January 2024, whereby this Board decided that it is not competent to deliver judgment due to the nature of the first and third plea filed by the respondents. In that same judgement, the Board gave a peremptory period of two months for the respondents to file the relative suit on the bases of those pleas as an action *ad hoc*.

Having seen the application filed by the respondents on the 15<sup>th</sup> of March 2024<sup>18</sup>.

Having seen that during the sitting of the 25<sup>th</sup> of March 2024<sup>19</sup>, this Board rejected the first claim of the respondents to suspend the term imposed in the preliminary judgement.

Having seen the reply to the said application filed by the plaintiff on the 8<sup>th</sup> of April 2024<sup>20</sup>.

Having heard further submissions on the 15<sup>th</sup> of March 2024<sup>21</sup>. On that day the case was adjourned for a decision on the remaining preliminary pleas.

## **Considers**

Whereas it is of the utmost importance that the Board reiterates that the proceedings at this stage were only deferred to deal with the preliminary pleas brought forward by the defendants<sup>22</sup>. In fact, the relative minute indicates (before

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<sup>18</sup> At fol 260 of the acts of these proceedings.

<sup>19</sup> Relative minutes are found at foll 266 and 267 of the acts of these proceedings.

<sup>20</sup> At fol 268 of the acts of these proceedings.

<sup>21</sup> At fol 271 of the acts of these proceedings.

<sup>22</sup> According to the minute of the 2<sup>nd</sup> March 2020; the written notes of submissions and the ultimate oral submissions finally made before this Board as presided.



this Board as previously presided) that the acts were deferred for a decision on the first six preliminary pleas.

Whereas this Board, in its previous preliminary judgement had already stated that it is incompetent to deal with the first and third plea. These defences related to the validity or otherwise of the contract of lease, which is at the very heart of the merits of this case. The legal reasons for that decision are well indicated in the same and this Board does not deem it fit to repeat the same for the purposes of today's judgement. The defendants (or more importantly Camelot Properties Limited) failed to initiate proceedings attacking the validity of the contract of lease, within the judicially afforded time frame, indicated in that judgement. It should be noted (as those acts also form part of these proceedings) that the First Hall Civil Court had also referred to the fact that not even Ralph Axciaik (director of Camelot Properties and the other tenant as written in the contract) had filed proceedings to annul the said contract<sup>23</sup>.

Whereas therefore, due to Camelot Properties Limited's inaction, for the reasons enunciated beforehand, this Board now has to deal with the relative lease contract as a **valid contract at law**. It was in the interest of the defendant company to file an action showing otherwise. For reasons known only to it, the defendant company failed to commence the relative action. For this Board therefore, the reasons brought forward in the first and third plea are now a settled manner.

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<sup>23</sup> Reference is made to the previous judgement in the names **Natalia Menshova vs Ralph Axciaik** (Ref Num: 325/2012) decided by the First Hall Civil Court on the 21st of June 2017 (not appealed). In that judgement, the Court had stated as following: *"Illi kif diġa' ġie ribadit diversi drabi għall-finijiet tal-azzjoni odjerna l-Qorti m'għandhiex tidhol fil-mertu tal-validita' ta' titolu. Li huwa żgur hu illi filwaqt li l-attriċi qegħda ssejjes largumenti tagħha fuq dan il-kuntratt ta' kiri, il-konvenut qed jinnega l-veraċita' tiegħu – iżda ma jirriżultax illi ha xi azzjoni sabiex jimpunjah"*

Whereas naturally, since this Board had already decided that it is incompetent to deal with same, there is no further decision to be given on the first and third plea.

## **The Second Plea**

Whereas the second plea states that this Board should not delve into the merits of this action since it would possibly go against the previous decision given by the Civil Court (First Hall). In an unclear manner, it seems that the defendants bring forward the plea of *res judicata*.

Whereas this Board does not agree. Whilst the Board agrees that a previously litigated issue, decided in a definitive manner, should not be the subject to further proceedings<sup>24</sup>, the spoliation proceedings and these proceedings ought to be described as totally distinct from each other.

Whereas this Board, having read the previous judgement delivered by the Civil Court (First Hall), is of the opinion that the previous judgement dealt with a

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<sup>24</sup> Reference is made to the judgement in the names **Helen sive Eileen Borg vs Bank of Valletta plc**, (Ċit Nru: 1753/00) given by the First Hall Civil Court on the 7th of May 2001 (not appealed) where the following was reasoned: “*Illi, min-naha l-oħra, dan il-principju huwa mwiezen b’dak daqstant għaqli li, fejn kwestjoni tkun giet defnita u trattata, s-sentenza ssir irrevokabbli jekk, wara li tigi appellata jew ritrattata, tigi konfermata; jew jekk ma tigix appellata jew ritrattata fiż-żmien li tippreskrivi l-ligi [ara sentenza ta’ din il-Qorti tal-11 ta’ Marzu, 1949, fil-kawza fl-ismijiet Cassar Parnis vs Soler nomine (Kollez. Vol: XXXIII.ii.344)]. Dan il-principju jissahhah meta l-kwestjoni li dwarha tinfetah it-tieni kawza jkun diga’ jesisti fil-waqt li tinghata s-sentenza fl-ewwel kawza [ara sentenza ta’ din il-Qorti tas-27 ta’ Gunju, 1995 fil-kawza fl-ismijiet Alfred Paul Farrugia nomine vs Tancred Borg Reveille et;” Reference is also made to the judgement in the names **Michael Chetcuti vs Miller Distributions Ltd**, (App 993/19/1) decided by the Court of Appeal (Superior Jurisdiction) given on the 1st of August 2023: “*Sentenza li għaddiet ‘in giudicato’ jgħifieri li ma tistax tappella minnha iżjed, hija miżmuma bħala tajba u sewwa u tal-ħaqq - res judicata pro veritate habetur ... minn naha l-oħra fejn kwistjoni tkun giet defnita u trattata, is-sentenza ssir irrevokabbli jekk, wara li tigi appellata jew ritrattata, tigi ikkonfermata, jew jekk ma tigix appellata jew ritrattata fi żmien li trid il-ligi ma ssir l-ebda proċedura oħra li tattakka s-sentenza”**

totally different *petitum* from the case here examined<sup>25</sup>. The previous judgement dealt solely with the issue of possession as defined by case law with relevance to article 535 of Chapter 16 of the Laws of Malta<sup>26</sup>.

Whereas in truth, having read that judgement, it is clear to the Board that the Civil Court (First Hall) did not deal with the issue of title and rejected plaintiff's claim mostly on the result that the action was time-barred. Nonetheless, the action here examined is totally distinct. That action was of a possessory nature, whilst today's case is based on the rights of the lessee with regards to a contract of lease. The elements are totally separate.

Whereas the elements required for a successful argumentation of this plea is lacking, the Board is finding this plea as incorrect and is rejecting the same.

#### **Fourth Plea**

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<sup>25</sup> The jurists **Crisanto Mandrioli u Antonio Carratta** describe this concept as following: *“L’oggetto, o petitum e’, come dice la parola, cio’ che si chiede con la domanda. E poiche’ la domanda e’ rivolta non a un soggetto solo, ma a due soggetti (al giudice ed all’altra parte) ai quali si richiedono cose diverse, il petitum assumerà in concreto, due aspetti diversi. Anzitutto, ossia in via immediata, la domanda si rivolge al giudice al quale si chiede non la cosa o la prestazione oggetto del diritto sostanziale, ma un provvedimento... ..In secondo luogo, ossia in via mediante, la domanda si rivolge alla cosiddetta controparte, che per lo piu’ e’ il convenuto: e a questo soggetto non si chiede un provvedimento, ma si chiede un bene della vita: una cosa (il fondo Serviano, o quella certa macchina ecc), o una prestazione (pagare 100, costruire un muro ecc.) oppure si chiede di non contestare una determinata situazione giuridica che ha un certo oggetto; oppure, ancora, di subire una certa modificazione giuridica..... ‘Causa petendi’ significa ragione del domandare; e naturalmente ragione giuridica o titolo giuridico... la ragione obiettiva su cui la domanda si fonda: in altri termini il diritto sostanziale affermato in forza del quale viene chiesto il petitum..... Petitum (mediato) e causa petendi sono, dunque, le due angolazioni del diritto sostanziale affermato, che e l’oggetto del processo”*. – Diritto Processuale Civile, Giappichelli, Volum1, XXVII edizioni, 2019, para 29 a fol 157, 158 u 159.

<sup>26</sup> After all an action under article 535 of Chapter 16 of the Laws of Malta is allowed even when the possessor has possession as a matter of fact and not at law (issues regarding title are irrelevant in such an action, and are limited to ascertain only that the possessor is not solely one being merely tolerated).

Whereas this plea states that the action is somehow time-barred in terms of article 534 and or 535 of Chapter 16 of the Laws of Malta.

Whereas this Board, without the need to delve deeper into the difference between a prescriptive period and a peremptory period, states that for such a plea to be in any way successful it is required that the same is properly reflective of the action utilised<sup>27</sup>. In this case, this plea is totally incorrect.

Whereas once again, the Board restates that the plaintiff's action is not one of the possessory actions promulgated in Chapter 16 of the Laws of Malta. The plaintiff is claiming that she was not allowed to utilise the relative premises as a lessee in the terms of the contract. The Board, should all other preliminary pleas be rejected, will have to establish whether obligations arising out of the contract have been adhered to or not. In other words, the plaintiff is stating that her personal right, deriving from the contract, has been violated.

Whereas this plea is also incorrect and is being rejected.

### **Fifth Plea**

Whereas, as an introduction to this plea, the Board reiterates that in terms of article 1530 of Chapter 16 of the Laws of Malta, it is possible that a particular

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<sup>27</sup> Reference is made to the judgement in the names **Phyllis Farrugia vs Attard Services Limited**, (App Number: 634/2012/1) delivered by the Court of Appeal (Superior Jurisdiction) on the 27th of March 2020 where it stated as following: “*Il-Qorti għalhekk trid li l-ewwel tqis jekk l-artikolu talpreskrizzjoni li jkun ġie eċċepit ikunx jgħodd għaċ-ċirkostanzi tal-azzjoni li l-eċċezzjoni trid twaqqaf, qabel ma tghaddi biex tistharreg il-provi.*” Reference is also being made to the judgement in the names **Western Company Limited vs Salvu Pisani et.** (App Number: 718/2022/1) delivered by the Court of Appeal (Superior Jurisdiction) on the 30th of November 2023, where the Court reminded that: mogħtija mill-Qorti tal-Appell (Sede Superjuri) nhar it-30 ta' Novembru 2023 fejn ġie mfakkar hekk: “*..... f'kaz li ż-żmien preskrittiv invokat ma jkunx jgħodd għall-għamla ta' kawża li tkun, allura jkun ta' xejn li l-Qorti toqgħod tqis il-provi.*”

lessor is not the owner of the leased property. Therefore, in so far as the argument brought by defendants' rests on a finding that Camelot Properties Limited could not have entered into this agreement, that is an issue which can still be decided by this Board. Should the Board find that Camelot Properties Limited, as defendants allege, was not the owner of the property, then the plaintiff could (even through this very case) claim for relevant damages. The same is true should the reintegration of the plaintiff not be possible by Camelot Properties Limited.

Whereas nonetheless, this contractual action therefore necessitates that the proper defendant (in so far as the claim for re-integration and for damages) is the lessor and not necessarily the owner of the immovable property<sup>28</sup>. It is well established that, by way of example, in the case of a usufructuary, it is the same that has the right to receive rents due and not the bare owner<sup>29</sup>.

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<sup>28</sup> Reference is made to the judgement in the names **Emmanuel Vella et vs Abdul Al-Kadi sive Abdul Al Kali**, (App Number: 2725/1996/1) given by the Court of Appeal Superior Jurisdiction) on the 29th of April 2005: *“In-nuqqas ta' relazzjoni bejn l-inkwilin u sid il-fond, izda, mhux bil-fors twassal ghan-nuqqas ta' titolu. Infatti l-istess Kodici Civili f'artikolu 1530 jipprovdi b'mod espress għall validita` ta' dawk il-kirjiet li jkunu koncessi minn persuni li ma jkunux is-sidien tal-fond mikri. Inoltre, inkwantu kirja hija obbligazzjoni ta' natura strettament personali, mhux mehtieg li minn jikkoncediha jkun sid il-fond lokat, izda, kif osservat il-Prim Awla tal-Qorti Civili fis-sentenza tagħha ta' l-1 ta' Settembru, 1964 filkawza fl-ismijiet “Walter Agius vs Carmelo Cachia” il-lokatur jista' jkun “inkwilin, semplici uzufuttwarju, kreditur antikretiku, u pussessur tal-fond, anki b'titolu abusiv u illegittimu, rizolubbli u tranzitorju”. Dan, kif osservat dik il-Qorti fis-sentenza citata, b'rispett ukoll lejn dak li jipprovdi l-kap rigwardanti l-jeddijiet u l-obbligi ta' sid il-kera billi, “(il-ligi) dejjem tirriferixxi għal sid il-kera, u f'ebda parti ta' l-istess ligi ma jinsab imadahhal il-‘proprjetarju tal-fond’”*. The Board also indicates the judgement in the names **Bl-istess mod, fis-sentenza fl-ismijiet Joseph Mercieca et vs Michael Mercieca et**, (App Number: 1473/2002/1) given by the court of Appeal (Inferior Jurisdiction) on the 24th of January 2007 *“Fl-ewwel lok qed jiġi rilevat illi għall-assunzjoni tal-kwalita ta' lokatur mhux neċessarju li wieħed ikun sine qua non proprjetarju tal-ħaġa lokata, imma hu biżżejjed li jkollu d-disponibilità tal-ħaġa. Konsegwentement, il-konduttur ma jistax jikkontrasta u jirreżisti l-pretiża tal-lokatur għal pagament tal-kanoni miftiehma billi jakkampa b'difiża illi min krielu ma huwiex ukoll il-proprjetarju tal-ħaġa”*

<sup>29</sup> Reference is made to the judgement in the names **Richard Zahra vs l-Avukat tal-Istat et**, (Const App: 564/2021/1) given by the Constitutional Court on the 25th of October 2023 where it stated that: *“Id-dokumenti li fuqhom l-attur jibni l-pretensjonijiet tiegħu juru li bejn l2014 u l-2020 il-fond kien soġġett għall-użufutt ta' missieru, li jfisser għalhekk li l-jedd li jirċievi l-kera – u wkoll il-jedd għad-danni jekk il-ligi ċaħħditu minn kera xieraq – kien imiss lill-missier*

Whereas as has been established, this action is a contractual action on the part of the plaintiff, claiming a breach of the lease contract. Therefore, in as far as this action is claiming for the reintegration of the plaintiff's rights as per the contract, it has not been shown that Propinvest Limited is somehow required to defend the action or that it may be ordered to give the required remedy. The burden of proof was on the plaintiff to show this link, which burden she failed to attain.

Whereas potentially, a situation may arise between Camelot Properties Limited and Propinvest Limited, should the allegation by the defendants be correct. Furthermore, the other defendants, who are seemingly occupying the premises under a title of lease from Propinvest Limited, could also have a potential action against Propinvest Limited. However, these are not the merits of the current case.

Whereas the Board deems it fit to state that the situation of Clifford Berrington and Charlotte Berrington is of a different nature. In the second claim as written in the original application, the Board is being asked to evict any tenants currently in the premises without any title. It is in the interest of these defendants to participate in this case.

### **Sixth plea**

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*(jew lill-komunjoni tal-akkwisti bejn il-missier u l-omm) u mhux lill-attur. Jekk l-attur qiegħed jallega li missieru irrinunzja għall-użufrutt, l-oneru tal-prova li hekk gara hija fuq l-attur, iżda dik il-prova ma saritx.*” Reference is also made to the judgement in the names **Joseph Pace et vs Avukat tal-Istat et**, (Const App: 223/2020/1) given by the Constitutional Court on the 12th of July 2023 and that in the names **Dr Aldo Fiorini et vs l-avukat tal-Istat et**, (Const App: 357/2022) given by the Civil Court (First Hall) in its Constitutional Jurisdiction on the 30th of January 2024 (not appealed). In the latter judgement it was re-affirmed that: *“It-terminazzjoni tal-użufrutt, bil-mewt jew mod’ieħor, kienet prova ta’ mportanza kbira, partikolarment meta wiehed iqis li meta jkun veljanti fuq immobbli jedd ta’ użufrutt, huwa lużufruttwarju li għandu d-dritt ta’ tgawdija fuq dak l-immobbli u fuq il-frottijiet tiegħu, ad esklużjoni tas-sid. Li jfisser li huwa biss l-użufruttwarja li, matul il-pendenza tal-użufrutt, għandu “possediment” għal finijiet tal-Konvenzjoni, u kwindi huwa l-użufruttwarju li jista’ jilmenta minn ksur tad-dritt fundamentali u mhux is-sid”.*

Whereas as previously indicated, these proceedings were left for judgement solely on the first six preliminary pleas. However, it is quite obvious that the second part of this plea cannot be decided at this juncture. In so far as the second part of the plea relates to the defence that the plaintiff's claim is unfounded in fact and in law, it is clear that this part of the plea is resisting the merits of the plaintiff's action. The first part of the plea may be deemed procedural, as it attacks the capability of the plaintiff, in the circumstances of the case, to promote this action.

Whereas the first part of this plea was somewhat clarified in the oral submissions held on the 19<sup>th</sup> of April 2024<sup>30</sup>, the defendants state that the plaintiff cannot file this action as she is the lessee<sup>31</sup>. This plea is incorrect.

Whereas in so far as the argument brought that article 30 of Chapter 69 of the Laws of Malta only allows a lessor to file an application before the Board, the wording of the law is not as described by the defendants<sup>32</sup>. In any case, the contract of lease is in its original period and therefore Chapter 69 of the Laws of Malta is not applicable in this regard.

Whereas a lessee, may bring an action in order to protect contractual rights<sup>33</sup>. The Court of Appeal (Superior Jurisdiction) has recently (in a case brought by the

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<sup>30</sup> Regarding the application filed on the 15<sup>th</sup> of March 2024.

<sup>31</sup> Although the transcript as transcribed in fol 271 of the acts of proceedings contains missing words, the Board vividly remembers that the argument was based on article 30 of Chapter 69 of the Laws of Malta.

<sup>32</sup> The law states as following: *"The lessor or the tenant on whom the application has been served shall make his submissions, orally or in writing, if any, at the hearing of the matter. He may, however, accede to the requests contained in the application, by means of a written reply filed in the Registry of the Board at any time previous to the date fixed for the hearing."*

<sup>33</sup> For a list of examples on the obligations of the lessor, in an action brought by the lessee (which was filed prior to the amendments which enhanced this Board's competence), the Board refers to the judgement in the names **The House Shop Ltd vs Michael Fenech et.** (Application Number: 885/2013) decided the Civil Court (First Hall) on the 20<sup>th</sup> of June 2022 (not appealed).

lessee against the lessor who she alleged had changed the locks of the tenement and deprived the lessee from the use of the tenement, similar to this case) held that in such scenarios, it is the Board who is to decide the case<sup>34</sup>. This further shows that such an action is permissible.

Whereas the Board states that the term “lessee” does not necessarily mean that the same is in the physical possession of the tenement, as has been reasoned above. The eviction (abusive or not) from a tenement does not necessarily mean that the resulting obligations from the contract of lease are suddenly extinguished. The Board finds that this plea is incorrect, and that the plaintiff may bring this action.

Whereas finally, in the application of the 15<sup>th</sup> of March 2024, the defendants also seem to raise a new plea that this Board has no jurisdiction due to article 16B of Chapter 69 of the Laws. This was a new argument<sup>35</sup>, which this Board is not going to delve into further. The Board simply states that a distinction needs to be made

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<sup>34</sup> 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 “*Fil-każ tal-lum, l-avukat Alfred Grech nomine qiegħed jallega firrikors maħluf tiegħu illi l-konvenut Raymond Grech abbużivament čakħhad lil Daniela Finardi mill-jedd tagħha illi tgawdi u tinqeda bil-post mikri lilha minħabba li l-konvenut biddel is-serratura tal-bieb. Bil-liġi skont l-Artikolu 1539(ċ) tal-Kodiċi Ċivili, sid il-kera huwa obligat, min-natura stess talkuntratt, u mingħajr ma jinħtieg ebda ftehim speċjali illi jieħu ħsieb illi lkerrej ikollu t-tgawdija bil-kwiet tal-ħaġa, għaž-żmien kollu tal-kirja. 29. Ifisser għalhekk, li jekk huwa veru dak li qiegħed jgħid l-avukat Alfred Grech nomine fir-rikors maħluf tiegħu, illi l-konvenut Raymond Grech bħala sid il-kera čakħhad lil Daniela Finardi milli tgawdi l-kirja, allura dan ifisser li l-konvenut jista’ jiġi kkundannat li jagħmel tajjeb għad-danni kollha li garrbet Daniela Finardi bħala kerrejja minħabba li ma setgħetx tinqeda bil-fond mikri lilha (ara Joseph Pisani v. Arkitett u Inġinier Ċivili Godfrey Vella deċiża mill-Prim’Awla tal-Qorti Ċivili fis-7 ta’ Diċembru, 2001).*”

<sup>35</sup> In the original note of submissions filed by the defendants on the 23<sup>rd</sup> of August 2022, there is no mention whatsoever of this argument. Relative parts of the note are found at fol 228 and 229 of the acts.



between article 4 and article 5 of Chapter 604 of the Laws of Malta<sup>36</sup>. It is only in the case of a contract of lease entered into after January 2020 (which is clearly not today's case) where the law expressly mentions nullity.

Whereas the first part of this plea is therefore also being rejected.

The Board is therefore deciding as follows:

- 1) Abstains from deciding the first and third plea, in light of its preliminary judgement of the 24<sup>th</sup> of January 2024.
- 2) Rejects the second, fourth and limitedly the sixth plea as explained above.
- 3) Accedes to the fifth plea and whilst finding Propinvest Limited to be non-suited, it rejects the plaintiff's claims against the same Propinvest Limited with the relative costs to be borne by the plaintiff.

Remainder of the costs are reserved for final judgement.

The Board orders the continuation of these proceedings in the merits of the case.

**Dr Joseph Gatt LL.D.**  
Magistrate

**Annalise Spiteri**  
Deputy Registrar

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<sup>36</sup> For an understanding of this issue, with reference to previous case-law on the subject matter, reference is made to this Board's decision in the judgement in the names **Joseph Degiovanni vs Jordan Peshevski et.** (Case Number: 9/2021) delivered on the 23<sup>rd</sup> of October 2023.