MALTA

Court of Appeal
(Inferior Jurisdiction)

Hon. Judge
LAWRENCE MINTOFF

Sitting of the 12th February, 2025

Inferior Appeal Number 747/2021 LM

Anthony Caruana (ID No. 330168M)
('the Appellee')

vs.

Zhivko Mitkov Petkov (ID No. 34532A) and Dimka Kaneva Petrova (ID No. 34671A)
('the Appellants')

The Court,

Preliminary

1. This appeal was filed by the defendants **Zhivko Mitkov Petkov (KD No. 34532A)** and **Dimka Kaneva Petrova (ID No. 34671A)**, [hereinafter 'the appellants'], from the judgement delivered on the 30th May, 2024, [hereinafter referred to as 'the appealed judgment'] by the Rent Regulation Board, [hereinafter referred to as 'the Board'], following proceedings initiated against

them by the plaintiff **Anthony Caruana (ID No. 330168M)** [hereinafter 'the appellee'], by means of which the Board decided that:

> "*Għalhekk, għal dawn ir-raġunijiet, il-Bord qiegħed jiddisponi mit-talba u mill-kontro-talba billi:*
>
> *1. Jastjeni milli jieħu konjizzjoni tal-ewwel talba;*
> *2. Jilqa' t-tieni talba attriċi u jordna lill-konvenuti sabiex fi żmien perentorju ta' xahar millum jiżgombraw mill-appartament internament immarkat bin-numru 3 formanti parti mill-blokk magħruf bl-isem Yanika Court fi Triq San Ġużepp, Msida u jirritornawh lir-rikorrenti bl-għamara u bl-attrezzaturi kollha mikrija miegħu u f'kundizzjoni tajba;*
> *3. Jilqa' in parte t-tielet talba attriċi u jikkundanna lill-intimati jħallsu lir-rikorrenti s-somma ta' elfejn u sitt mitt euro (€2,600) rappreżentanti arretrati ta' kera dovuta minnhom għax-xhur ta' Ġunju, Lulju, Awwissu u Settembru 2021;*
> *4. Jilqa' l-ewwel talba tal-intimati rikonvenzjonanti u jiddikjara li r-rikorrenti Anthony Caruana kien obbligat li jassigura li jżomm il-fond mikri lill-intimati bin-numru 3 formanti parti mill-blokk magħruf bl-isem Yanika Court fi Triq San Ġużepp, Msida fi stat li l-intimati setgħu jagħmlu użu minnu bħala r-residenza tagħhom u ċioe għall-użu li għalih ġie mikri u li jassigura li l-intimati rikonvenzjonanti ikollhom it-tgawdija bil-kwiet tal-ħaġa, għaż-żmien kollu tal-kiri;*
> *5. Jiċħad it-tieni, it-tielet, ir-raba' u l-ħames talbiet tal-intimati rikonvenzjonanti.*
>
> *Peress li hemm nuqqasijiet da parti taż-żewġ partijiet l-ispejjeż kemm tat-talba prinċipali u tal-kontro-talba għandhom ikunu a karigu tal-partijiet nofs bin-nofs."*

The facts

2. The plaintiff filed a sworn application by means of which he claimed that he had rented out the apartment internally marked number three (3), forming part of the block 'Yanika Court', Triq San Ġużepp, l-Imsida [hereinafter referred to as 'the apartment'], against the terms and conditions laid out in the lease agreement of the 14th October, 2020. The plaintiff claimed that the said agreement had been registered with the Housing Authority. The plaintiff explained that the defendants had failed to pay the rent due for the periods

ending May 2021, June 2021, July 2021, August 2021 and September 2021, which amounted to a total of three thousand, two hundred and fifty Euros (€3,250), and since the defendants had failed to pay the rent due by them within seven days, he had every right to request a termination of the lease, as stipulated in one of the clauses in the agreement. The plaintiff further held that despite the said notification requesting the defendants to vacate the property, they had failed to vacate the apartment, which means that they are now occupying the apartment without a valid title at law, despite being legally obliged to release the apartment in a good state of repair back to its owner. The plaintiff also claimed that the defendants owed him the amount of €3,250 in rent arrears. The plaintiff held that since all the provisions of article 16A of Chapter 69 are satisfied, the Board could do away with the hearing of the case and give judgment, since in his opinion the defendants had no statement of defence to raise against his claims.

3. During the first hearing, the Board decided that the defendants had valid submissions to raise against the plaintiff's claims. In their sworn reply, the defendants held that the demands made by the plaintiff are null and void and legally unfounded in fact and at law, since the plaintiff never complied with the provisions of article 1570 of the Civil Code, and he had failed to notify them by means of a judicial letter prior to filing the court case. The defendants held that the plaintiff had to call upon them by means of a judicial letter, and request that they settle any arrears due prior to filing court proceedings, but in this case the plaintiff had failed to do so. The defendants also held that the claims raised by the plaintiff are null and void, in the sense that there is no claim which could lead the Board to dissolve the lease agreement between the parties. The

defendants also held that, since they had been given leave to defend the lawsuit, the Board could not decide upon the claim for eviction first, but the case had to be first heard and tried prior to being determined. The defendants claimed that the plaintiff was not correct when he stated that they had failed to pay all the rent instalments falling due in May 2021, in June 2021, in July 2021, in August 2021 and in September 2021, and that the plaintiff had not acted in good faith and had never given them proper receipts in respect of the rent paid. The defendants held that the plaintiff was obliged to keep the apartment leased to them in a good state of repair so that they could make use of it for the purpose for which it was intended, and this for the entire duration of the lease. The defendants claimed that the plaintiff failed to honour this obligation, as the apartment lacks proper ventilation, and this gave rise to issues with mould and damp as well as water ingress. The defendants also claimed that the plaintiff had never finished the common parts of the block, and had even left the lift shaft in a dangerous state of repair, with openings to the said shaft merely covered with planks of wood. The defendants held that the plantiff had breached his obligations with respect to ensuring an adequate supply of water and electricity, and to acknowledge the number of people residing in the apartment, as well as failing to furnish them with the account details relative to the leased premises. They said that the plaintiff had never provided them with a utility bill, and had even cut off all water and electricity supplies to the apartment. The defendants claimed that they had sustained damages due to the plaintiff's actions, and that they had been prejudiced in their enjoyment of the said premises.

4. The defendants also filed a counter-claim against the plaintiff, in which they stated that they had rented out the apartment at an agreed rent of six hundred and fifty Euros (€650) a month, subject to the conditions stipulated in the lease agreement dated the 14th October, 2020. The defendants held that plaintiff had acted in manifest breach of his obligations as landlord and that as a result of this conduct, they had suffered deficiencies and damages for which plaintiff is solely responsible. The defendants further claimed that plaintiff was obliged to lease out the said apartment in a state which could be used for the purposes for which it was leased out for the entire duration of the lease. The defendants explained that the apartment does not have adequate ventilation, and as a result there are problems with humidity and mould, as well as water ingress. Another problem stemmed from the fact that plaintiff had failed to finish the common parts of the block, and had left the lift shaft in a dangerous state, merely covering it with a plank of wood. The defendants stated that the plaintiff was bound to ensure that the apartment had an adequate supply of water and electricity, to acknowledge the number of people living in the apartment, and to grant the lessees access to the account details relative to the apartment. The defendants held that the plaintiff continuously breached these conditions, and he had never provided them with a utility bill in respect of water and electricity consumed at the apartment, and this in breach of the provisions of the Private Residential Leases Act, and in breach of the provisions of articles 85(1) and (2) of the Criminal Code. The defendants held that owing to this conduct on the part of the plaintiff, they suffered deficiencies and damages for which the plaintiff is responsible. They also stated that despite calling out the plaintiff to carry out the necessary repairs, and to reach an amicable resolution

including by agreeing to a reduction in the rent and the liquidation and payment of damages due to them, the plaintiff remained in default. In view of all this, the defendants called upon the Board to declare, if necessary by means of technical referees to be appointed by the Board for such purpose, that the plaintiff was obliged to ensure that the premises leased out to them were and are in such a state that the defendants could make use of the apartment as their residence, and to ensure that the defendants would have the quiet enjoyment of the premises leased out to them for the entire duration of the lease; to order the plaintiff to carry out, within a short peremptory time to be established by the Board, all such work as is necessary to ensure that the defendants are able to use the apartment leased out to them, for the purposes for which it was rented out, and which are necessary for the defendants to have the full and quiet enjoyment of the same, for the entire duration of the lease, at the plaintiff's expense and under the supervision of the Technical Referees to be appointed by the Board; and also to declare that should the plaintiff fail to execute such works within the time limit imposed by the Board, to allow the defendants to carry out the works themselves at the expense of the plaintiff and even to deduct such expenses from the rent due to the plaintiff; to declare, if necessary after taking note of the opinions of the Technical Referees to be appointed by the Board, that due to all the above, the defendants have suffered substantial damages and expenses, for which the plaintiff is to be held responsible and that the defendants are entitled to compensation for the same; to liquidate the said damages and expenses suffered or incurred by the defendants, if necessary after having taken note of the opinion of the Technical Referres to be appointed by the Board for this purpose; and to order the plaintiff to pay the defendants

all the damages, expenses and costs liquidated by the Board, within a short peremptory time to be established by the Board.

5. In his sworn reply to the said counter-claim, the plaintiff replied that all demands of defendants filed by way of rejoinder, are unfounded in fact and at law, and should be rejected with costs. He further held that as declared in the principal claim, the defendants have been in continuous and full enjoyment of the apartment, but have refused to pay the rent due for several months, without good reason. Furthermore, the plaintiff held that he opposes the defendants' allegations that the apartment is not fit for the use for which it is intended, or that he breached any of his letting obligations under the lease agreement or at law. The plaintiff also held that the defendants had already pursued the same claim unsuccessfully before the Adjudicating Panel for Private Residential Leases, however their claims had proved unsuccessful.

The appealed judgment

6. The Board made the following considerations in its judgment:

> *"**KONSIDERAZZJONIJIET***
>
> *Permezz ta' dawn il-proċeduri r-rikorrenti qiegħed jitlob l-iżgumbrament tal-intimati mill-appartament numru 3, formanti parti mill-blokk magħruf bl-isem "Yanika Court" fi Triq San Ġużepp, Msida u l-ħlas ta' €3,250 rappreżentanti arretrati ta' kera. Fir-risposta tagħhom l-intimati qajmu n-nullità tal-azzjoni billi r-rikorrenti ma mexiex mal-proċedura msemmija fl-Art. 1570 tal-Kap. 16 għaliex qatt ma ntbagħtet l-ittra uffiċjali msemmija f'dan l-artikolu u fir-rikors promutur ma saritx talba għax-xoljiment tal-kera. Fil-mertu jgħid li mhuwiex minnu li ma tħallsux il-kirjiet għax-xhur minn Mejju 2021 sa Settembru 2021 u kien hemm ksur tal-Art. 1539 tal-Kap. 16 u tal-Art. 17 et seq tal-Kap. 604. Fil-kontro-talba qegħdin jagħmlu dikjarazzjoni li r-rikorrenti*

naqas milli jiggarantixxi t-tgawdija tal-fond u sabiex jagħmel dawk ix-xogħlijiet neċessarji u l-likwidazzjoni tad-danni sofferti mill-intimati.

Qabel ma ġew intavolati dawn il-proċeduri l-intimati istitwew proċeduri quddiem il-Panel ta' Arbitraġġ għal Kirjiet Residenzjali Privati (fol. 119) li ġew deċiżi fl-24 ta' Awwissu, 2022 fejn it-talbiet tal-intimati ġew miċħuda għar-raġuni li l-Panel ta' Arbitraġġ iddikjara ruħu mhux kompetenti sabiex jiddeċiedi l-kwistjonijiet imqanqla mill-intimati f'dawk il-proċeduri.

Mill-provi prodotti jirriżulta li l-appartament imsemmi jappartjeni lil K&K Ventures Limited (C 35044) li kriet l-appartament lir-rikorrenti permezz ta' skrittura datata 25 ta' Novembru, 2020 (fol. 115) bil-fakultà li jissullokah lil terzi. Ir-rikorrenti ssulloka l-fond lill-intimati permezz ta' skrittura tal-14 ta' Ottubru, 2020 (fol. 7 sa 13) reġistrata mal-Awtorità tad-Djar fit-2 ta' Awwissu, 2021 bin-numru LL046923 ai termini tal-Kap. 604 tal-Liġijiet ta' Malta (fol. 14 u 15). Permezz ta' ittra legali datata 13 ta' Settembru, 2021 (fol. 17) l-intimati ġew interpellati sabiex jiżgumbraw mill-fond u jħallsu l-ammont ta' €3,250 rappreżentanti arretrati ta' kera. Din l-ittra tħalliet mir-rikorrenti wara l-bieb tal-intimati peress li ma fetaħ ħadd. Irriżulta li f'dak iż-żmien l-intimati kienu msefrin (fol. 44 sa 49). Dwar il-morożità fil-ħlasijiet tal-kirjiet dovuti r-rikorrenti ppreżenta s-segwenti irċevuti rappreżentanti l-kirjiet imħallsa:-

i. *Irċevuta fl-ammont ta' €650 għax-xahar ta' Diċembru li nħarġet fil-15 ta' Jannar, 2021 (fol. 38)*
ii. *Irċevuta fl-ammont ta' €650 għax-xahar ta' Jannar li nħarġet fil-21 ta' Jannar, 2021 (fol. 39)*
iii. *Irċevuta oħra fl-ammont ta' €913.68 li nħarġet fit-22 ta' Marzu, 2021 rappreżentanti €650 kera u €263.58 għall-konsum tad-dawl u l-ilma iżda ma jirriżultax għal liema perijodu nħarġet (fol. 40)*
iv. *Irċevuta fl-ammont ta' €650 għax-xahar ta' Marzu li nħarġet fil-5 ta' Mejju, 2021 (fol. 41)*
v. *Irċevuta fl-ammont ta' €1,300 għax-xahar ta' April u Mejju li nħarġet fis-16 ta' Ġunju, 2021 (fol. 42)*
vi. *Irċevuta fl-ammont ta' €250 għal konsum tad-dawl u l-ilma li nħarġet fil-5 ta' Frar, 2021.*

L-intimati jikkontendu li l-irċevuti mhumiex korretti għaliex il-pagament ta' €1,300 sar għax-xahar ta' Mejju u Ġunju u mhux għax-xhur ta' April u Mejju. Mir-rendikont esebit mill-intimati a fol. 51 jirirżulta li saru s-segwenti pagamenti:-

i. *Fil-15 ta' Jannar, 2021 sar pagament ta' €650 għall-kera ta' Diċembru*
ii. *Fil-21 ta' Jannar, 2021 sar pagament ta' €650 għall-kera ta' Jannar*

iii. *Fil-5 ta' Frar, 2021 sar pagament ta' €650 għall-kera ta' Frar u tħallsu €250 għas-servizzi tad-dawl u ilma*
iv. *Fil-15 ta' Marzu, 2021 sar pagament ta' €650 għall-kera ta' Marzu u tħallsu €264 għas-servizzi tad-dawl u ilma*
v. *Fl-1 ta' Mejju, 2021 sar pagament ta' €650 għall-kera ta' April*
vi. *Fl-10 ta' Ġunju, 2021 sar pagament ta' €1,300 għax-xahar ta' Mejju u Ġunju.*

L-intimat għamel żewġ pagamenti permezz ta' revolut ta' €914 fil-15 ta' Marzu, 2021 u €650 fl-1 ta' Mejju, 2021 lil ċertu Grazio (fol. 50) li kien jiġbor il-kirjiet għan-nom tar-rikorrenti. L-irċevuti kienu jingħataw tard u meta raw li l-irċevuti ma kinux korretti l-intimati ma ħadu ebda azzjoni. F'Lulju inqala' diżgwid bejn il-partijiet għaliex l-intimati riedu li jiġu installati insect screens*. Sussegwentement l-intimat ipprova jagħmel kuntatt mar-rikorrenti biex iħallas il-kera dovuta iżda ma rnexxilux jagħmel kuntatt miegħu u ħadd ma ġie jitolbu jħallas il-kera, b'hekk jgħid li l-aħħar kera ġiet imħallsa minnhom kienet għax-xahar ta' Ġunju 2021. Il-kera għax-xhur sussegwenti ma ġietx iddepożitata fir-Reġistru tal-Qorti. Ir-rikorrenti xehed li l-intimati ma ridux iħallsu l-kirja għax riedu li r-rikorrenti jinstalla* aircondition *li ma kienx hemm ftehim fuqu.*

Dwar is-servizzi tad-dawl u l-ilma ***r-rikorrenti xehed fis-seduta tas-7 ta' Ottubru, 2022 (fol. 130 sa 136)*** *li l-ftehim kien li l-intimati kellhom iħallsu bir-rata sakemm l-intimat idawwar il-*meters *fuqu u jħallas is-somma ta' €466 lill-ARMS sabiex is-servizz jiġi reġistrat fuq ismu. Peress li l-kontijiet ma baqgħux jitħallsu, is-servizz tad-dawl inqata'.* ***Mill-kontro-eżami (fol. 139 sa 143)*** *rriżulta li l-appartament m'għandux* meters *tad-dawl u l-ilma għalih iżda kien qiegħed jiġi fornut b'*sub-meters*. Fl-affidavit tiegħu l-intimat jgħid li huwa qatt ma ngħata kopja tal-kontijiet tal-ARMS minkejja li kien jitlobhom u kien jingħata biss ammont.*

Fis-seduta tad-19 ta' Mejju, 2023 xehed Bonnici in rappreżentanza ta' ARMS Limited li kkonferma (fol. 147 sa 149) *li l-appartament m'għandux installati* meters *għalih u l-*meter *tal-komun jgħajjat lir-rikorrenti. Il-kont pendenti tal-komun kien ta' €3,384.26 sa dakinhar tas-sospensjoni tas-servizz.*

Fis-seduta tat-13 ta' Ottubru, 2023 l-inġinier John Tonna, in rappreżentanza tal-Enemalta plc (fol. 251 sa 258) *xehed li minn spezzjoni li saret fit-18 ta' Mejju, 2023 fil-blokka li fiha jinsab l-appartament in meritu kkonstata li l-appartament numru 3 kien qiegħed jieħu* supply *permezz ta'* sub-meter *mill-*meter *tal-partijiet komuni. Din kienet l-istess sitwazzjoni f'ispezzjoni li saret fl-2022. Fl-ispezzjoni tat-18 ta' Mejju, 2023 il-*meter *tal-komun kien diskonness. B'hekk dakinhar l-appartament ma kellux dawl. Is-servizz ġie sospiż għaliex l-użu ta'* sub-meter *mhuwiex permess. L-Enemalta*

bagħtet żewġ ittri lir-rikorrenti (fol. 259 u 260) sabiex jirregolarizza s-sitwazzjoni bili japplika għal meter *għal appartament numru 3.*

Fl-istess seduta tat-13 ta' Ottubru, 2023 Robert Busuttil in rappreżentanza tal-Water Services Corporation (fol. 261 sa 265) *xehed li minn ispezzjoni li saret fl-24 ta' Ġunju, 2022 irriżulta li l-appartamenti numru 1, 4 u 5 kellhom* meters *u kien hemm preżenti żewġ* sub-meters *u r-rikorrenti kien intalab jirregolarizza s-sitwazzjoni billi ħadd ma jista' jforni provvista tal-ilma fi djar ħlief il-Water Services Corporation u meta jkun hemm* sub-meters *ma jkunx qed jitħallas il-kera tas-*sub-meter.

*In kwantu għas-sigurtà u l-iġjene, l-intimati ppreżentaw numru ta' ritratti li juru l-istat tal-komun (fol. 161 sa 181) u email datata 29 ta' Lulju, 2022 (fol. 159) mibgħuta lir-rikorrenti minn Alan Calleja in rappreżentanza tal-Building and Construction Authority li permezz tagħha r-rikorrenti ġie mitlub irendi siguri l-entraturi tal-*lift shaft *f'kull sular biex ħadd ma jaqa' u jassigura li jitneħħa l-ħmieġ fl-art tal-istess* shaft *sabiex jipprevjeni kontra insetti jew ġrieden.* ***Fl-affidavit tiegħu (fol. 183 et seq)*** *l-intimat ilmenta mill-istat tal-appartament u xehed li hu u l-aġent Sean Mifsud kienu qablu li r-rikorrenti kellu jirranġa l-partijiet komuni u l-intimat kellu jiksi u jiżbogħ l-appartament. Wara li daħlu fl-appartament, l-intimat talab li r-rikorrenti jibdel* frame *ta' bieb fol. 209) u* toilet seat *(fol. 210). Fix-xitwa beda jidħol l-ilma li wassal għal umdità u moffa fl-appartament (fol. 210, 213 sa 225). F'Lulju 2021 ir-rikorrenti mar fl-appartament flimkien ma' Grazio u Sean Mifsud biex jiġbor il-kera. L-intimat urieh il-ħlasijiet li kienu saru fuq revolut u talab lir-rikorrenti jinstalla* insect screen *minħabba l-insetti għaliex ma kienx hemm* airconditioners *u lanqas ventilaturi u dakinhar talab li jiġi pprovdut il-kont tal-ARMS. Jgħid li d-dawl inqata' fis-16 ta' Lulju, 2022 u wara ftit inqatgħet il-provvista tal-ilma. L-intimati spiċċaw jgħixu ma' ħbieb tagħhom u kellhom iħallsu nofs il-kera ta' €980 oltre għas-servizzi tad-dawl u l-ilma li minn Ġunju 2022 swew €5,000 u qiegħed jitlob kumpens minħabba dak li għadda minnu oltre għas-somma ta' €513.58 rappreżentanti ħlasijiet għas-servizzi tad-dawl u ilma għaliex qatt ma ngħata kont u f'dawn kien hemm inkluż il-konsum tal-partijiet komuni.* ***L-intimat ippreżenta wkoll rapport peritali tal-Perit Johann Farrugia datat 20 ta' Lulju, 2022 (fol. 230 sa 247)*** *li kkonstata l-ħsarat ikkaġunati mill-ingress ta' ilma u nuqqas ta' ventilazzjoni bil-konsegwenza li l-appartament mhuwiex abitabbli kif ukoll ikkonstata l-istat ta' periklu, in-nuqqas ta' iġjene u sigurtà fil-partijiet komuni u n-nuqqas ta' manutenzjoni. Dan ir-rapport ġie kkonfermat bil-ġurament mill-Perit Johann Farrugia permezz ta' affidavit ippreżentat fl-24 ta' Jannar, 2024 (fol. 286 et seq).*

Mill-kontro-eżami tal-intimat (fol. 307 sa 308) *irriżulta li huwa vvaka l-fond f'Ġunju 2022 għaliex il-fond kien mingħajr servizzi ta' dawl u ilma, ma rritornawx iċ-ċavetta u lanqas ħallas aktar kirjiet jew iddepożitahom fir-Reġistru tal-Qorti.*

IKKUNSIDRA

Il-Bord ser jittratta l-ewwel l-eċċezzjonijiet preliminari sollevati mill-intimati:-

1 In-nullità tal-azzjoni billi r-rikorrenti ma mexiex mal-proċedura msemmija fl-Art. 1570 tal-Kap. 16 għaliex qatt ma ntbagħtet l-ittra uffiċjali

Ai termini *tal-klawsola 9 tal-kuntratt ta' lokazzjoni l-partijiet qablu li s-sid jista' jittermina* ipso jure *u mingħajr preavviż il-kirja f'każ li l-kerrej jonqos milli jħallas il-kera dovuta fi żmien sebat ijiem jew inkella f'każ li jikser xi kundizzjoni hemm imsemmija u dan mingħajr preġudizzju li s-sid jitlob l-arretrati tal-kera dovuta.*

L-iskrittura saret fl-14 ta' Ottubru, 2020, wara d-dħul fis-seħħ tal-Kap. 604. Dan ifisser li r-relazzjoni bejn il-partijiet hija regolata mid-dispożizzjonijiet tal-Kap. 604. L-art. 7 tal-Kap. 604 jiddisponi li klawsoli li jipprovdu għat-terminazzjoni awtomatika tal-kuntratt minbarra n-nuqqas ta' twettiq tal-obbligi tal-kerrej taħt l-artikoli 1554, 1555, 1555A u 1614 tal-Kodiċi Ċivili, jew in-nuqqas ta' osservanza ta' kwalunkwe waħda mill-kondizzjonijiet tal-kirja li għalihom it-terminazzjoni ġiet espressament prevista, għandha titqies li tkun bla effett. Iżda fejn il-kerrej jonqos milli jħallas b'mod puntwali l-kera dovuta, sid il-kera għandu dejjem isejjaħ lill-kerrej skont l-artikolu 1570 tal-Kodiċi Ċivili.

F'dan il-każ it-terminazzjoni hija marbuta man-nuqqas ta' ħlas ta' kera u mal-ksur ta' xi kundizzjoni msemmija fl-iskrittura. B'hekk il-klawsola hija marbuta man-nuqqas ta' twettiq tal-obbligi tal-kerrej taħt l-artikoli 1554, 1555, 1555A u 1614 tal-Kodiċi Ċivili jew in-nuqqas ta' osservanza ta' kwalunkwe waħda mill-kondizzjonijiet tal-kirja. Għaldaqstant il-klawsola numru 9 tal-kuntratt għandha titqies li hija valida.

Fir-rigward tan-nuqqas tal-ħlas b'mod puntwali tal-kera dovuta, il-proviso tal-Art. 7(a) tal-Kap. 604 jipprovdi li s-sid għandu jsegwi l-proċedura msemmija fl-Art. 1570 tal-Kap. 16 li jipprovdi li fil-każ ta' fondi urbani, djar ta' abitazzjoni u fondi kummerċjali fil-każ ta' nuqqas puntwali tal-kera, il-ħall jista' jintalab biss wara li s-sid ikun interpella lill-inkwilin permezz ta' ittra uffiċjali u l-inkwilin ikun, minkejja dak l-avviż, naqas milli jħallas dik il-kera fi żmien ħmistax-il jum min-notifika.

Il-Bord ma jaqbilx li dan l-artikolu huwa applikabbli għall-każ odjern. Din il-kwistjoni diġà ġiet ikkunsidrata ***mill-Qorti tal-Appell (Inferjuri) fis-sentenza fl-ismijiet Catherine Cauchi vs Daniel Zammit (App. Inf. Nru. 10/2020/1LM) deċiża fil-25 ta' Ġunju, 2021*** *fejn tali klawsoli simili tqiesu li huma riżoluttivi u għalhekk huma regolati*

mill-Art. 1569 u mhux mill-Art. 1570 tal-Kap. 16. Dan ifisser li dak li huwa meħtieġ hu att ġudizzjarju u mhux ittra uffiċjali. Ingħad:-

"21. Il-Qorti tqis li f'dan il-każ il-kuntratt lokatizju miftiehem bejn il-partijiet kien jinkludi kundizzjoni riżoluttiva, u ladarba jirriżulta li din il-kundizzjoni nkisret, japplika l-artikolu 1569 tal-Kodiċi Ċivili għall-fattispeċie tal-każ. Għamel sew għalhekk il-Bord li ddeċieda li huwa l-artikolu 1569 tal-Kodiċi Ċivili li jirregola l-azzjoni odjerna u mhux l-artikolu 1570 tal-istess Kodiċi. Il-klawsola 12 tal-kuntratt lokatizju tipprovdi illi:

"F'każ illi l-inkwilin ma jħallasx puntwalment il-kera mensili dovuta lis-sid u/jew ma jadempix mal-obbligi u kundizzjonijiet ta' dan il-ftehim, il-kirja hija 'ipso jure' terminata, salv id-dritt tas-sid li jitlob li kull kera arretrata u/jew kull somma dovuta, ai termini tal-istess skrittura. L-inkwilin qed jagħti l-fakoltà lis-sid biex ibiddel iċ-ċwievet tal-fond mingħajr bżonn li jadixxi proċeduri ġudizzjarji liema awtorizzazzjoni hija irrevokabbilment miftiehma bejn il-partijiet u għalhekk it-tibdil tas-serratura ma tikkostitwixxix spoll a tenur tal-liġi."

22. Din il-klawsola tipprovdi li f'każ li l-inkwilin jonqos milli jħallas il-kera mensili jew ma jadempix mal-obbligi tal-ftehim, il-kera tiġi terminata ipso jure. Iżda dan ma jfissirx li l-appellata ma kinitx obbligata tosserva dak li jipprovdi l-artikolu 1569(2) tal-Kap. 16, jiġifieri l-obbligu li hija tibgħat tinforma lill-appellant b'att ġudizzjarju li kien fi ħsiebha tinvoka dak li jistipula dan il-ftehim li kellhom bejniethom il-partijiet. Minflok att ġudizzjarju notifikat lill-appellant, l-appellata bagħtet żewġ ittri legali, waħda fil-25 ta' Jannar, 2019, li permezz tagħha infurmat lill-appellant li f'każ li jibqa' moruż fil-ħlas tal-kera, huwa kien ser ikun qiegħed jingħata l-congedo a tenur tal-klawsola 12 tal-ftehim, u ittra legali oħra tas-6 ta' Novembru, 2019, li permezz tagħha l-appellata tat il-congedo lill-appellant. Minkejja l-ksur tal-kundizzjoni riżoluttiva li hemm provvediment għaliha fil-ftehim lokatizju, l-appellata kellha l-obbligu li tikkonforma mar-rekwiżit proċedurali stipulat fil-liġi billi tibgħat att ġudizzjarju lill-appellant. Huwa hawnhekk fejn il-Qorti ma taqbilx mad-deċiżjoni tal-Bord, għaliex dan mhux każ fejn seħħet xi kundizzjoni li taħtha ġie miftiehem il-ħall tal-kuntratt, iżda s-sitwazzjoni tinkwadra ruħha perfettament taħt dak li jipprovdi l-artikolu 1569(2) tal-Kap. 16, jiġifieri n-nuqqas ta' dak li kien imwiegħed da parti tal-appellant, li kien jimporta fuq l-appellata l-obbligu li tinforma lill-appellant b'dak li kienet sejra tagħmel billi tinnotifikah b'att ġudizzjarju.

...

23. Jirriżulta li l-ewwel att ġudizzjarju li kien notifikat bih l-appellant kien proprju r-rikors promutur li wassal biex inbdew il-proċeduri quddiem il-Bord, u għalhekk il-konsegwenzi legali tal-ksur tal-kundizzjoni miftiehma fil-kuntratt jidħlu fis-seħħ meta l-proċeduri mibdija bis-saħħa ta' dak l-att ġudizzjarju jgħaddu in ġudikat.

Il-Bord iqis li f'dan il-każ kien hemm kundizzjoni riżoluttiva u għalhekk japplika l-Art. 1569(2) li jipprovdi li jekk il-ħall tal-kiri jiġi miftiehem għall-każ li waħda mill-partijiet tonqos li tagħmel dak li tkun wiegħdet, il-kuntratt ma jinħallx ħlief minn dak in-nhar li l-parti li favur tagħha l-ħall ikun ġie miftiehem, tgħarraf b'att ġudizzjarju lill-parti l-oħra, bil-ħsieb tagħha li tinqeda b'dak il-ftehim. F'dan il-każ l-ewwel att ġudizzjarju li rċevew l-intimati kien ir-rikors ġuramentat, li l-Bord iqis biżżejjed bħala att ġudizzjarju sabiex jissodisfa l-kriterju tal-Art. 1569(2) tal-Kap. 16.

2 In-nullità tal-azzjoni stante li ma saritx talba għax-xoljiment tal-kera

Dwar din l-eċċezzjoni l-Bord jagħmel referenza għas-sentenza fl-ismijiet ***Francis Debono et vs Peter Leonard Nind et (Ċitazzjoni 1062/2002) deċiża mill-Prim'Awla tal-Qorti Ċivili fid-19 ta' Ottubru, 2007*** *fejn il-Qorti kellha quddiemha sitwazzjoni simili għal dik odjerna fejn ġiet eċċepita n-nullità tal-azzjoni għaliex ma saritx talba għax-xoljiment tal-kirja. Wara rassenja estentiva ta' ġurisprudenza qieset li f'każijiet fejn jintalab l-iżgumbrament u ma tintalabx ix-xoljiment tal-kirja, meta jitniżżel fiċ-ċitazzjoni l-kliem "*hemm premessi d-dikjarazzjonijiet neċessarji" *(u f'dan il-każ kliem simili peress li l-formola taċ-ċitazzjoni ġiet abolita), it-talba għax-xoljiment hija insita u involuta fit-talbiet l-oħra tal-attur. Fis-sentenza* ***Silvia Curmi et vs Carmen Bugeja 138/2021JD deċiża fit-22 ta' Settembru, 2022*** *il-Bord kien aktar liberali. Ngħad li "*nonostante l-fatt li r-rikorrenti m'għamlitx talba ad hoc għat-terminazzjoni tal-kirja, dan ma jipprekludix lill-Bord milli jordna l-iżgumbrament stante li effettivament il-kirja hija terminata." *Dan l-insenjament għandu japplika wkoll għall-każ odjern.*

3. Mertu

Mill-provi prodotti jirriżulta li l-kwistjoni bejn il-partijiet qamet minħabba l-ħlasijiet tal-kera. Ir-rikorrenti jgħid li l-intimati naqsu milli jagħmlu l-ħlasijiet tal-kera dovuta għal ħames xhur ċioe bejn Mejju 2021 u Settembru 2021. Mill-irċevuti ppreżentati mir-rikorrenti jirriżulta li l-intimati ħallsu l-kera għax-xhur ta' Diċembru, Jannar, Marzu, April u Mejju. Ġiet esebita irċevuta oħra fl-ammont ta' €913.68 li nħarġet fit-22 ta' Marzu, 2021 rappreżentanti €650 kera u €263.58 għall-konsum tad-dawl u l-ilma li ma jirriżultax għal liema perijodu nħarġet (fol. 40). Il-partijiet jaqblu li l-kirjiet għax-xahar ta' Lulju 'l quddiem ma tħallsux. B'hekk din l-irċevuta kellha neċessarjament tkun għax-xahar ta' Frar. In kwantu għall-kera għax-xahar ta' Ġunju 2021 ir-rikorrenti

jgħid li din ma tħallsitx filwaqt li l-intimat jgħid li din tħallset. L-intimat ma ressaqx prova tal-ħlas għal dan ix-xahar.

L-intimat fix-xhieda tiegħu kkonferma li huwa waqaf iħallas il-kirjiet u sa llum ma rritornax lura ċ-ċwievet lir-rikorrenti. B'hekk ex admissis *l-intimati huma moruži fil-ħlas tal-kera dovuta għax-xhur ta' Lulju, Awwissu u Settembru 2021. L-intimat jiġġustifika dan in-nuqqas billi jagħmel referenza għal skorta ta' sentenzi fejn l-inkwilin tqies legalment ġustifikat fl-inosservanza tal-obbligi tiegħu.*

Fis-sentenza ċitata mill-intimati fl-ismijiet ***L-Avukat Francis Lanfranco et vs Tonio Caruana (86/07) deċiża mill-Qorti tal-Appell fit-30 ta' Settembru, 2015*** *ingħad:-*

> Premess dan allura, fil-kwistjoni ta' morożità fil-ħlas ta' kera dovut, jeħtieġ li l-Bord ikun konvint minn żewġ rekwiżiti u ċioe l-ewwel li l-intimat verament kien inadempjenti fl-obbligu tiegħu anke jekk tardivament u t-tieni jekk kienx hemm xi fattur li jista' jiġġustifika dik l-istess inadempjenza b'mod allura li tiskolpa lill-inkwilin mill-konsegwenzi ta' dik l-inazzjoni. (ara f'dan ir-rigward Joseph u Carmen aħwa Darmanin vs Ġiljan Cutajar App. 23/11/05). Dan għaliex:
>
> "F'materja fejn il-liġi trid tissalvagwardja d-dritt tas-sid għal ħlas tal-kera li hu wieħed mill-obbligi prinċipali tal-inkwilin, is-sanzjoni ultima tal-iżgumbrament hi naturalment meħtieġa u għandha tiġi applikata imma dan biss f'dawk il-każijiet fejn il-liġi strettament timponiha. Id-diċitura tal-liġi għandha tiġi allura applikata, imma l-interpretazzjoni li għandha tingħata għandha tkun restrittiva, anke jekk korretta. Dan għaliex is-sanzjoni tal-iżgumbrament ma hijiex maħsuba fil-liġi bħala xi vantaġġ li jista' jakkwista s-sid bħala konsegwenza tan-non pagament tal-kera fit-terminu stabbilit, imma bħala deterrent biex l-inkwilin jadempixxi l-obbligi tiegħu li jħallas il-kera. Hu għalhekk li l-iżgumbrament f'dawk il-każijiet fejn id-dispost tal-liġi ma jkunx ġie osservat bi preċiżjoni jew fejn iċ-ċirkostanzi kienu tali li l-inkwilin ikun legalment ġustifikat fl-inosservanza tal-obbligi kuntrattwali tiegħu." ('Vella vs Galea', Appell 24 ta' Jannar, 1997).

F'sentenza aktar riċenti mogħtija mill-Qorti tal-Appell fl-ismijiet ***Carmelo Mallia pro et noe vs Mary Doris Montebello (Appell Inferjuri Numru 167/2018 LM) deċiża fl-10 ta' Ġunju, 2022****, il-Qorti tal-Appell qieset li ċirkostanza fejn l-inkwilina ħallset appena aċċertat ruħha li l-appellat kien intitolat jirċievi l-kera f'ismu u f'isem bintu qabel ma ġiet notifikata bl-atti tal-kawża bħala skuża mhux ġustifikata u dan in vista tal-interpellazzjoni għal ħlas li kienet saret qabel mill-appellat. Il-Qorti qalet hekk:*

> 29. Permezz tat-tieni aggravju tagħha, l-appellanta saħqet li hija kellha ġustifikazzjoni raġonevoli u legalment sostnuta sabiex tiġġustifika d-dewmien fil-ħlas tal-kera. Qalet li hija ħallset dak dovut minnha hekk kif ivverifikat li l-

appellat kien intitolat għal ħlas tal-kera, u hija saħansitra ħallset qabel ġiet notifikata bil-proċeduri odjerni. L-appellanta tikkontendi illi l-Bord kellu jevalwa jekk hija kellhiex raġuni valida għad-dewmien fil-ħlas, u għamlet riferiment għal diversi sentenzi tal-Qrati tagħna li qiesu s-sanzjoni tal-iżgumbrament bħala sanzjoni estrema, li m'għandhiex tiġi applikata fejn inkwilin ikun legalment ġustifikat fl-inosservanza tal-obbligi kuntrattwali tiegħu. Din il-Qorti iżda mhijiex tal-fehma li l-appellanta kienet legalment ġustifikata meta baqgħet lura mill-ħlas tal-kera minkejja l-interpellazzjoni għall-ħlas min-naħa tal-appellat. L-appellanta kienet obbligata li tħallas il-kera dovuta minnha fir-rigward tal-maisonette u tal-appartament xahrejn bil-quddiem, u għalhekk hija ma kinitx ġustifikata żżomm lura milli tħallas, meta l-appellat kien qiegħed jikkomunika magħha b'diversi modi biex hija tersaq għall-ħlas.

Imbagħad fis-sentenza ***Hilda Debrincat vs Mario Farrugia et deċiża mill-Qorti tal-Appell fl-14 ta' Lulju, 2004 (5/2001/PS)*** *ġie meqjus ġustifikat li l-inkwilin ma jħallasx il-kera dovuta f'sitwazzjoni fejn il-partijiet kienu għaddejjin bi trattattivi sabiex l-intimati jirrilaxxaw il-pussess ta' ħanut in kunsiderazzjoni ta' kumpens adegwat da parti tar-rikorrenti. Fost il-kundizzjonijiet li kienu qed jissemmew kien hemm ukoll li jinħafru l-iskadenzi dovuti tal-kera u għalhekk ma sarx il-ħlas tal-kera dovuta. Malli l-inkwilin ġie interpellat għall-ħlas huwa offra minnufih il-kera dovuta li ġiet rifjutata.*

*Mix-xhieda tal-intimat in kontro-eżami fis-seduta tal-25 ta' Jannar, 2024 jirriżulta li huwa waqaf iħallas il-kera dovuta għaliex ħadd ma mar jiġbor il-kera. Sussegwentement fl-istess xhieda jgħid li waqaf iħallas il-kera minħabba argument mar-rikorrenti dwar l-*insect screens *għaliex meta bdew jiftħu t-twieqi minħabba s-sħana bdew jidħlu l-insetti. Imbagħad jgħid li xorta waħda kellu l-intenzjoni li jħallas il-kera dovuta iżda ma setax jagħmel kuntatt mar-rikorrenti. Fl-affidavit (fol. 183 et seq) l-intimat isemmi nuqqasijiet oħra fosthom li r-rikorrenti naqas milli jirranġa l-partijiet komuni. Jgħid li dakinhar li r-rikorrenti mar fl-appartament ir-rikorrent infurmah li ma kienx bi ħsiebu jħallas il-kera sakemm huwa jingħata kopja tal-kontijiet tal-ARMS, tal-irċevuti u jissolvew il-kwistjonijiet li kien hemm fosthom il-komun u l-bieb tal-*ensuite*. Mill-kuntratt esebit a fol. 7 jirriżulta li fil-preambolu l-intimat kera l-fond* "tale quale" *u ma jingħad xejn dwar ix-xogħlijiet li kellhom isiru mir-rikorrenti fil-komun u bieb tal-*ensuite*. Mill-affidavit tal-intimat jirriżulta saħansitra li qabel ma kera l-fond huwa mar jarah u kkonstata wkoll l-istat fqir tiegħu u ngħata riduzzjoni fil-kera, li ġiet aċċettata minnu. Inoltre dwar il-ftehim tal-partijiet komuni, dan lanqas biss intlaħaq mar-rikorrenti iżda ma' aġent tal-proprjetà li mhux is-sid. B'hekk l-intimati ma kinux ġustifikati li ma jħallsux il-kera dovuta. Bl-istess mod ma kinux ġustifikati li ma jħallsux il-kera għaliex ir-rikorrenti ried l-*insect screens*. Meta l-*

intimat ra l-appartament, dan ma kellux airconditioners*, la ventilaturi u lanqas* insect screens*. Fl-iskrittura bejniethom ir-rikorrenti ma obbligax ruħhu li jinstalla jew iforni dawn l-affarijiet.*

Jifdal il-kwistjoni tal-kontijiet tal-ARMS u l-irċevuti. Dwar is-servizzi tad-dawl u l-ilma l-partijiet qablu li:

> 2. All utilities including water, electricity, gas, telephone, internet and cable TV dues shall be borne and paid by the Lessee. The Lessor shall have the right to demand immediate payment of these dues by the Lessee or to order discontinuation of the relative services in which event the lessee shall not be entitled to claim any damages from lessor as a consequence of such action. Lessee agrees that the lessee's obligation to pay the rent and all other payments stipulated in this agreement shall still remain valid even in the event of discontinuation of the said services.

Mill-provi prodotti jirriżulta li fir-rigward tal-appartament mikri lill-intimati, ir-rikorrenti kien qiegħed jagħmel użu minn sub-meters *u għalhekk il-konsum tal-intimati kien qiegħed jiġi reġistrat fuq* meters *li kienu qegħdin jintużaw għal skop ieħor. Ir-rikorrenti ma ressqx prova ta' kif kien qiegħed jasal għall-konsum tal-intimati bħal per eżempju l-units użati u r-rata ta' kull unit biex wasal għall-ammont dovut mill-intimati. Inoltre skont l-iskrittura l-intimat ma kienx obbligat li jirreġistra l-*meters *fuqu tant li r-rikorrenti żamm ferm id-dritt li jissospendi s-servizz fin-nuqqas ta' ħlas – sospensjoni li tista' ssir mill-persuna li fuqu huwa rreġistrat is-servizz.*

L-Art. 17 tal-Kap 604 dwar is-servizzi ta' ilma u elettriku jipprovdi li:

> 17. (1) Sid il-kera huwa marbut li jiżgura forniment adegwat ta' dawl u ilma kull meta fond, jew parti minnu, huwa mikri għal skop residenzjali.
>
> Iżda dan l-artikolu għandu jkun mingħajr preġudizzju għad-dritt tal-fornitur li jissospendi l-forniment tad-dawl u l-ilma taħt ir-Regolamenti fuq il-Provvista tal-Elettriku u r-Regolamenti dwar il-Fornitura tal-Ilma f'każ ta' nuqqas ta' ħlas ta' kont jew fejn dawn is-setgħat huma speċifikament riżervati liċ-Chairman tal-operatur tas-sistema ta' distribuzzjoni tal-elettriku jew tal-Water Services Corporation skont kif ikun il-każ.
>
> (2) Sid il-kera huwa marbut li jirrikonoxxi n-numru ta' persuni li qegħdin jgħixu fil-fond għall-fini li jikkalkula t-tariffa korretta applikabbli għal forniment tad-dawl u l-ilma, u biex jagħti lill-kerrej aċċess għad-dettalji tal-kont relattiv għall-fond mikri:

Iżda li l-obbligi ta' sid il-kera taħt dan is-subartikolu għandhom ikunu mingħajr preġudizzju għal possibilità tal-kerrej li japplika għar-rikonoxximent temporanju tiegħu bħala konsumatur mill-fornitur tas-servizz u biex jassumi responsabbilità għall-ħlas ta' kontijiet relattivi mal-fond mikri, f'ismu.

(3) Kwalunkwe ammonti addizzjonali mġarrba mill-kerrej b'riżultat tan-nuqqas ta' sid il-kera li jonora l-obbligi tiegħu kif stipulati fis-subartikolu (2) għandhom jiġu irkuprati mill-kerrej:

Iżda l-kerrej jista' jżomm parti mill-kera dovuta għall-iskop ta' rimborż ta' dawk l-ispejjeż.

(4) Il-kerrej għandu jiżgura li ebda arretrati tas-servizzi tad-dawl u l-ilma ma huma pendenti fir-rigward tal-perijodu tal-kera:

Iżda n-nuqqas ta' ħlas tal-kontijiet tad-dawl u l-ilma matul kwalunkwe perijodu tal-kera għandu jitqies bħala nuqqas parzjali u għandu jintitola lil sid il-kera li jitlob il-ħall tal-kuntratt skont l-artikolu 1570 tal-Kodiċi Ċivili:

Iżda wkoll l-inkwilin ma għandux ikun marbut li jħallas servizzi ta' utilità sakemm ma jkunx provdut b'kopja tal-kont, sakemm ma jkollux aċċess dirett għalih.

Minn qari ta' dan l-artikolu hu ċar li r-rikorrent kien obbligat li jagħti lill-kerrej aċċess għad-dettalji tal-kont relattiv għall-fond mikri. F'każ li dan ma jsirx, il-kerrej kellu l-fakultà li japplika għar-rikonoxximent temporanju tiegħu bħala konsumatur mal-fornitur tas-servizz u jassumi responsabbilità għall-ħlas ta' kontijiet relattivi mal-fond mikri, f'ismu. Iżda wkoll l-inkwilin ma għandux ikun marbut li jħallas servizzi ta' utilità sakemm ma jkunx provdut b'kopja tal-kont, sakemm ma jkollux aċċess dirett għalih. Dan ifisser li l-obbligu li jingħataw il-kontijiet jistrieħ fuq ir-rikorrenti, li mill-provi prodotti ma jirriżultax li għamel dan. Mill-banda l-oħra l-inkwilin għandu l-fakultà li jirreġistra dawn is-servizzi temporanjament f'ismu u b'hekk ikollu aċċess għalihom. F'dan il-każ l-appartament ma kellux meters *u kellu* sub-meters *mhux reġistrati mal-forniturі awtorizzati, b'hekk kien impossibbli li l-intimat jirreġistra s-servizzi temporanjament fuqu. F'tali każijiet il-liġi tagħti dritt lill-inkwilin li ma jħallasx għas-servizz tad-dawl u l-ilma iżda mhux li ma jħallasx il-kera dovuta. B'hekk il-Bord iqis li l-intimati ma kinux ġustifikati li jżommu l-ħlas tal-kera dovuta meta kellhom rimedju a dispożizzjoni tagħhom.*

Fir-rigward tal-kopja tal-irċevuti tal-ħlas tal-kera, il-Bord għandu provi kunfliġġenti. Ir-rikorrenti jgħid li dawn kienu jinħarġu dak in-nhar tal-pagament u l-intimat jgħid li l-irċevuti kienu qegħdin jingħataw tard u ma kinux ikunu korretti. Ai termini tal-art. 13 tal-Kap. 604, sid il-kera għandu jkun obbligat li jagħti lill-kerrej irċevuta tal-ħlas, sakemm ma jkunx miftiehem li l-ħlas isir permezz ta' proċeduri li kapaċi jippruvaw l-

issodisfar effettiv tal-obbligu. L-iskrittura bejn il-partijiet ma tistipulax kif għandu jsir il-ħlas tal-kera u fin-nuqqas ta' ftehim dwar kif kellu jsir il-ħlas, ir-rikorrenti kien obbligat li jagħti l-irċevuta lill-intimati u dan anke sabiex ma jkunx hemm konfużjoni ta' x'kera tħallset. Mix-xhieda tal-intimat (fol 53 et seq) jirriżulta li wara li r-rikorrenti mar fl-appartament u inqala' diżgwit bejniethom fejn l-intimati talbu l-irċevuti tal-kera, l-irċevuti ngħaddew kollha lill-intimat fl-aħħar ta' Ġunju 2021. Din id-dikjarazzjoni xxejjen ix-xhieda preċedenti tiegħu li l-irċevuta ta' Ġunju 2021 baqgħet ma ngħatatx. Filwaqt li l-Bord iqis li kien hemm nuqqas da parti tar-rikorrenti għaliex ma bediex jagħti l-irċevuti lill-intimati wara kull ħlas li beda jsir, mill-banda l-oħra wara li ngħataw l-irċevuti kollha lill-intimat f'Ġunju 2021, l-intimat ma kellux raġuni għalfejn iżomm il-ħlas tal-kera. Il-fatt li kien hemm irċevuta fejn issemma x-xahar ħażin mhijiex ta' tali portata li tiġġustifika n-nuqqas ta' ħlas tal-kera dovuta partikolarment għaliex l-intimat induna bl-iżball u ma ħa l-ebda azzjoni sabiex dan jiġi korrett.

Fiċ-ċirkostanzi l-Bord ser jilqa' in parte *t-talbiet attriċi, u f'dan is-sens ser jikkundanna lill-intimati sabiex jiżgombraw mill-fond in meritu u sabiex iħallsu l-arretrati ta' kera għax-xhur minn Ġunju 2021 sa Settembru 2021.*

4. Kontro-Talba

In kwantu għall-kontro-talba, l-intimati qegħdin jitolbu dikjarazzjoni li r-rikorrenti naqas milli jiggarantixxi t-tgawdija tal-fond u li naqas milli jagħmel dawk ix-xogħlijiet neċessarji kif ukoll qegħdin jitolbu wkoll il-likwidazzjoni tad-danni sofferti minnhom. L-intimati jibbażaw il-kontro-talba fuq Art. 1539 tal-Kap. 16 u l-Art. 17 et seq*, ċitat aktar 'il fuq tal-Kap. 604.*

L-Art. 1539 jipprovdi:-

> 1539. Sid il-kera hu obbligat, min-natura stess tal-kuntratt, u mingħajr ma jeħtieġ ebda ftehim speċjali –
>
> (a) jikkunsinna lill-kerrej il-ħaġa mikrija;
> (b) iżomm din il-ħaġa fi stat li wieħed jista' jagħmel minnha l-użu li għalih ġiet mikrija;
> (ċ) iqis li l-kerrej ikollu t-tgawdija bil-kwiet tal-ħaġa, għaż-żmien kollu tal-kiri

*L-intimati jilmentaw li l-appartament għandu nuqqas ta' ventilazzjoni, umdità, moffa u ingress ta' ilma, ir-rikorrenti qatt ma lesta x-xogħlijiet fil-partijiet komuni u ħalla s-*shaft *tal-*lift *fi stat perikoluż kif ukoll naqas milli jiżgura forniment adegwat ta' dawl u ilma u li jforni l-istess kontijiet lill-intimati.*

Kif ingħad aktar 'il fuq dwar in-nuqqas ta' ventilazzjoni, umdità, moffa u ingress ta' ilma, l-intimati kienu jafu li l-fond li kienu ser jikru kien tale quale*, ċioe kif rawh qabel ma ffirmaw l-iskrittura. Il-fatt li l-intimat mar jara l-appartament qabel ma ffirma l-iskrittura u ngħata kirja ridotta juri li dawn il-kwistjonijiet kienu viżibbli għalih u aċċetta r-riduzzjoni. Fir-rigward tan-nuqqas ta' xogħlijiet fil-partijiet komuni u l-fatt li r-rikorrenti ħalla s-*shaft *tal-*lift *fi stat perikoluż, il-partijiet ma qablux li kellhom isiru xi xogħlijiet mir-rikorrenti u lanqas li r-rikorrenti kien obbligat li jagħmel xi riparazzjonijiet jew manutenzjoni fil-partijiet komuni. L-istat fqir tal-komun ma jfissirx li l-intimati ma setgħux jagħmlu użu mill-komun biex jaċċedu għall-appartament tagħhom, kif wara kollox aċċedew għalih meta marru jarawh qabel iffirmaw l-iskrittura.*

Dwar il-kontijiet tad-dawl u l-ilma, a skans ta' ripetizzjoni l-Bord jagħmel referenza għal dak li ngħad aktar 'il fuq ċioe li huwa minnu li r-rikorrenti kien obbligat li jagħti lill-kerrej aċċess għad-dettalji tal-kont relattiv għall-fond mikri. F'każ li dan ma jsirx, il-kerrej għandu l-fakultà li japplika għar-rikonoxximent temporanju tiegħu bħala konsumatur mill-fornitur tas-servizz u biex jassumi responsabbilità għall-ħlas ta' kontijiet relattivi mal-fond mikri, f'ismu, iżda wkoll l-inkwilin ma għandux ikun marbut li jħallas is-servizzi ta' utilità sakemm ma jkunx provdut b'kopja tal-kont, sakemm ma jkollux aċċess dirett għalih.

L-istess artikolu jorbot lis-sid li jiżgura forniment adegwat ta' dawl u ilma kull meta fond, jew parti minnu, huwa mikri għal skop residenzjali. L-unika eċċezzjoni hija li l-fornitur jista' jissospendi l-forniment tad-dawl u l-ilma taħt ir-Regolamenti fuq il-Provvista tal-Elettriku u r-Regolamenti dwar il-Fornitura tal-Ilma f'każ ta' nuqqas ta' ħlas ta' kont jew fejn dawn is-setgħat huma speċifikament riżervati liċ-Chairman tal-operatur tas-sistema ta' distribuzzjoni tal-elettriku jew tal-Water Services Corporation skont kif ikun il-każ. Mix-xhieda tar-rappreżentant tal-Enemalta jirriżulta li s-servizz ġie sospiż għaliex l-użu ta' sub-meter *mhuwiex permess. In kwantu għax-xhieda mogħtija mir-rappreżentant tal-Water Services Corporation, intbagħtet ittra lir-rikorrenti sabiex jirregolarizza ruħhu iżda ma jirriżultax jekk is-servizz ġiex sospiż mill-Korporazzjoni jew mir-rikorrenti. F'kull każ il-provvista tad-dawl ġiet sospiża għaliex ir-rikorrenti kien qed jagħmel użu ta' sistema ta'* sub-meters *mhux permessa. Inoltre r-rikorrenti ma ħax ħsieb li fl-iskrittura bejn il-partijiet jitniżżel li l-intimat kien obbligat li jdawwar il-*meter *fuq ismu. L-uniku obbligu tal-intimati* ai termini *tal-klawsola 2 kien li jħallsu l-kontijiet. B'hekk ir-rikorrenti naqas milli jżomm il-ħaġa mikrija fi stat li wieħed jista' jagħmel minnha l-użu li għalih ġiet mikrija u li jassigura l-forniment adegawt ta' dawl. B'hekk l-ewwel kontro-talba tal-intimati ser tiġi milqugħa.*

Fir-rigward tal-bqija tat-talbiet, dawn ser jiġu miċħuda. In kwantu għat-tieni talba ossia li r-rikorrenti jiġu ordnati jwettqu xogħlijiet riparatorji biex l-intimati jkunu jistgħu jużaw il-fond, tali talba hija insostenibbli ġjaladarba l-intimati ser jiġu ordnati jiżgombraw. In kwantu għad-danni reklamati mill-intimati, fl-affidavit l-intimat jgħid li huwa kellu jħallas nofs il-kera tal-fond mikri lil ħabib tiegħu oltre għas-servizzi ta' dawl u ilma li b'kollox jammontaw għal €500 fix-xahar u li jammontaw għal €5,000 oltre għas-somma ta' €513.58 imħallsa lir-rikorrenti (€263.58 u €250) rappreżentanti dawl u ilma.

Il-Bord iqis li fiċ-ċirkostanzi ż-żewġ partijiet naqsu mill-obbligi rispettivi tagħhom u kwindi m'għandhomx jiġu akkordati danni. Apparti minn hekk kieku l-intimat baqa' jgħix fil-fond tar-rikorrenti, xorta waħda kien ser ikollu jħallas kera u konsum għas-servizzi ta' dawl u ilma. Finalment fir-rigward tal-ammont ta' €513.58 imħallsa lir-rikorrenti għas-servizzi tad-dawl u l-ilma waqt l-okkupazzjoni tal-intimati tal-fond de quo*, il-Bord josserva li mir-rendikont tal-ARMS* a fol. *155 jirriżulta li mill-21 ta' Diċembru, 2020 sat-3 ta' Lulju, 2021, il-bilanċ dovut lill-ARMS kien ta' €668.28. Parti minn dan l-ammont kien għal konsum, li ċertament huwa anqas minn konsum ta' residenza ta' tliet persuni. Mhuwiex ikkontestat li l-intimati għamlu użu mid-dawl u l-ilma sakemm ħarġu u għalhekk f'każ li tali danni jiġu akkordati lill-intimati dan ser isarraf f'arrikkiment indebitu a skapitu tar-rikorrenti."*

The Appeal

7. The appellants filed their appeal application on the 19th of June, 2024, whereby they requested this Court to uphold their grounds of appeal and to revoke the decision of the Rent Regulation Board by acceding to the first and second defence pleas raised by them; to revoke the decision of the Rent Regulation Board and reject the first and second demands raised by the appellee; to accede to and uphold the second, third, fourth and fifth counter-claim demands raised by the appellants; to revoke the part of the decision of the Board wherein it was decided that the costs of the case should be split in half, and instead to provide that the appellee is to bear and pay all the costs

relating to these proceedings, or at least a higher percentage of these costs, and to confirm the rest of the judgment given by the Rent Regulation Board.

8. The appellants explained that they feel that the decision given by the Board is going to prejudice their rights irremediably. Their first grievance is based on the fact that they feel extremely prejudiced by the provisions of article 24 of Chapter 69 of the Laws of Malta, in view of the fact that the sworn application by means of which this lawsuit was initiated was based on article 16A of Chapter 69 and not on article 8 of the same law, and hence, in view of the provisions of article 24, they are only allowed to enter an appeal on a point of law determined by the Board. The appellants claimed that the Board interpreted the law wrongly when it concluded that the provisions of article 1570 of the Civil Code do not apply to the current case, and then moved on to order to appellants to evict from the apartment. The appellants felt aggrieved because in its judgment, the Board held that in terms of clause 9 of the lease agreement, the parties had agreed that the landlord could terminate the lease *ipso jure* and without notice in case the tenants fail to pay the rent due within seven days, or otherwise in case they violate any of the conditions of the lease, and this without prejudice to the landlord requesting the arrears of rent due. The appellants contend that the Board decided that a sworn application was a sufficient judicial act to satisfy the criteria laid down in article 1569(2) of the Civil Code. The appellants held that this declaration is *extra petita* and that the Board has by far exceeded the scope of relief requested by the appellee as plaintiff. The appellants claimed that the Board should not have entertained or applied this reasoning, and even if the rental rental contract could have been terminated by virtue of article 1569(2) of the Civil Code, this could not have

happened in this particular case. The appellants held further that a simple look at the sworn application confirms that the appellee's demands are based solely on the provisions of article 16A of Chapter 69, and that the Board was not requested to declare that the appellants had breached any of the terms of the lease agreement. Had there been such a claim, the appellee would not have been able to benefit from the dispositions laid down in article 16A of Chapter 69, and therefore the appellants would have been in a position to rebut such a demand. The appellants said that article 213 of the Code of Organization and Civil Procedure gives the right to the Court of Magistrates in its inferior jurisdiction to adjudge a right claim, and that this same faculty is not extended to the Rent Regulation Board which is considered for all intents and purposes to be a superior court. The appellants held that the Board acted erroneously when it referred to the decision given in the names of **Catherine Cauchi *vs.* Daniel Zammit** (10/2020/1) whose facts certainly do not form part of the record of this current lawsuit. They explained that in this case there was no demand for the Board to declare that the appellants had breached any of the conditions of the lease, and therefore the Board had no right to reach any conclusion or decision that could only have been reached following a determination or decision that the appellants had breached the conditions of their lease contract. The appellants argued that the Board's reasoning based on article 1569(2) of the Civil Code, was totally in breach of the proviso to article 1570, and in breach of the appellants' right to certainty of the law and its application, and to their right for a home.

9. The appellants referred to the provisions of article 1570 of the Civil Code, which lays down three requisites which need to be satisfied prior to a

declaration of the termination of the lease, that is the lessor must have called upon the lessee by means of a judicial letter; and the said judicial letter must have been notified to the lessee; and the lessee must have failed to pay the rent within fifteen days from notification of the said judicial letter. The appellants held that if any of these conditions does not subsist, the lease cannot be terminated for non-payment of rent, and that the law in this regard is clear and hence leaves no room for interpretation. The appellants argued that the provisions of article 1569 of the Civil Code can only be applied in respect of a breach by the covenantor of any condition of the lease agreement other than that relating to the punctual payment of the rent, but in this case the Board went on to assume that the provisions of article 1569 of the Civil Code can be applied for any failure by any of the parties to perform that which they have promised in the lease agreement. The appellants said that this line of reasoning renders the proviso of article 1570 of the Civil Code useless. They also argued that the Board should not have rejected their first and second plea, nor should it have acceeded to the first demand of the appellee. The appellants also claimed that the Board rendered its decision far worse by acceding to the second request of the plaintiff, and ordering them to evict within a peremptory period of one month from the date of the judgment. The appellants expressed the idea that the Board should have rejected this second request, and simply moved on to entertain the third request raised by the appellee, that is the claim for payment of arrears of rent due.

10. The second ground of appeal raised by the appellants is that the Board made an erroneous interpretation of article 1570 of the Civil Code, and then moved on to reject all the counter-claims raised by the appellants. The

appellants held that the appellee has been in continous and manifest breach of his obligations in terms of article 1539 of the Civil Code and of article 17 *et seq.* of the Private Residential Leases Act, and as a result of his conduct, the appellee caused them great prejudice and rendered them liable to damages. The appellants held that the Board should have rejected the appellee's first and second demands, and then proceeded to liquidate the damages caused by the appellee and condemned him to pay the same.

11. The third grievance raised by the appellants is that in their opinion, the Board was incorrect when it decided that the costs of the present case should be split between the parties.

The appellee's reply

12. The appellee stated in his reply that the decision given by the Board is fair and correct, both in law and in fact, and should be confirmed by this Court. He further held that the appellants' appeal is at best frivolous and vexatious, and intended solely to increase the losses and damages sustained by him even further.

13. The appellee referred to the lease agreement signed on the 14th October, 2020, which was duly registered with the Housing Authority, and claimed that by virtue of this agreement he had rented out the apartment for residential purposes, for a period of five years running from the 1st of November, 2020. Clause 9 of the said agreement stipulates that:

The Lessor shall have the right to terminate the agreement if:

- *The premises are not solely used for residential purposes*
- *The Lessee causes unnecessary disturbances to neighbours by careless parking, loud music and dirtiness*
- *Should the Lessee fail to pay the rent for seven (7) days and/or infringe any other condition of this contract, the lessor will have the right to rescind without warning the agreement* "ipso jure"*, and this without any prejudice to his claim for payment of the amount which is still due.*

14. The appellee explained that the appellants had lived in the apartment for several months before these proceedings were initiated, but that they only paid rent until May 2021. Subsequently they were in default and started citing several issues with the apartment as justification for their failure to pay. The appellee further held that the appellants did not take any legal or judicial action, but merely decided arbitrarily to refrain from paying rent, in a clear attempt at forcing the landlord's hands at giving in to their many demands. The appellee held that he formally requested the appellants to settle any outstanding rent due by virtue of a legal letter dated 13th September, 2021, but they remained in default, without even replying. He then proceeded with filing judicial action. The appellants are still living in the said apartment until this day, without even offering to settle the rent due. Supply of utilities to the apartment was suspended in the course of these proceedings.

15. With reference to the first ground of appeal raised, the appellee contends that the appellants are being very selective in choosing which parts of the Board's judgment to criticise, and that in their appeal they left out completely some fundamental points of fact and law which the Board mentioned in its considerations, on the basis of which it correctly concluded that the case calls for the application of article 1569 of the Civil Code, rather than article 1570. The

appellee held that this lease is regulated by the Private Residential Leases Act and that therefore the terms of the lease agreement should prevail, provided that they satisfy the minimum requirements and respect the public policy exclusions set out in the special law. The appellee held that clause 9 of the agreement stipulates an express resolutive condition, as defined in article 1066 of the Civil Code, and therefore has the effect mentioned in article 1067 of the Civil Code. The appellee contends that when the legislator opted to amend article 1570 of the Civil Code through the enactment of Act X of 2009, in the midst of extensive reforms to the law regulating leases, it added the requirement of the service of a judicial letter formally registering the failure of the tenant to pay the rent, to article 1570 and not to article 1569 of the Civil Code. The appellee explained that the margin note to article 1570 of the Civil Code reads *'[c]essation of lease on the ground of non-performance',* and that the inclusion of the requirement to send out a judicial letter in article 1570 and not in article 1569 of the Civil Code, clearly shows that the legislator wanted to preserve the effect of the *ipso iure* dissolution of the lease upon the happening of the resolutive condition, where the lease contract expressly stipulates a resolutive condition, whilst imposing the requirement of the formal judicial intimation where dissolution is sought on the basis of the non-payment of the rent, in the absence of an express resolutive condition to that effect. The appellee held that therefore the Board was correct in its application of article 1569 rather than article 1570 of the Civil Code to the facts of the case.

16. The appellee further held that the Board was correct in its' citing of article 7 of Chapter 604 of the Laws of Malta, and added that the obligation of the tenant to pay the rent is stipulated in article 1554(b) of the Civil Code, and

therefore an express resolutive condition for default in the payment of the rent is permitted in a private residential agreement regulated by the special law. With respect to the intimation required according to the proviso of article 7(1)(a) of Chapter 604, the appellee held that in this case there is no contestation that the appellants were served with the sworn application initiating these proceedings, and this despite their claims that they never received the legal intimation requesting the rent arrears. The appellee further held that the appellant confirmed that no rent payments were being effected, and that despite the passage of time, he still has not paid up the rent due by him, while retaining full possession of the property. The appellee held that it is very evident, both at law and in fact, that the necessary requirement of the service of a judicial act was satisfied in this case, and that the Board ruled correctly on the strength of the prevailing judicial interpretation, that is that the appellants had consciously and voluntarily defaulted in the payment of the rent, thus bringing about the *ipso jure* dissolution of the lease.

17. The appellee also contended that it is not true that the Board went beyond the demands made in the sworn application and the counter-claim, or those in the respective replies, as argued by the appellants. The appellee explained that the lease was not dissolved by the Board through the appealed judgment, but because of the occurrence of the express resolutive condition in terms of clause 9 of the lease agreement.

18. With reference to the second ground of appeal, the appellee contended that even this ground is frivolous and unfounded. He explained that the appellant himself admitted in his own affidavit that he had visited the

apartment prior to renting it out, and that therefore he was conscious of the state of the common areas, and of the apartment in general, but still proceeded to rent it out. The appellee also stated that there is no clause in the lease agreement which states that he was obliged to repair the common parts or to fix all issues highlighted by the tenant in the apartment. He claimed that the Board was probably right in its analysis that the appellants wanted to rent the apartment despite the state it was in, because they wanted to save on the rent. The appellee held that damages can only be due as a consequence of the unlawful breach of an obligation, and where actual damages are not only sufficiently proved, but also causally linked to the breach of the obligation. The appellee claimed that the appellants failed to prove that they suffered any actual damage, but have continued to enjoy and use the premises as their residence without paying the rent due. For as long as there were utilities serving the apartment, the appellants had no issue with the fact that the apartment was being served with a sub-meter, and they also relied on the unlawfulness of the sub-meter to avoid their obligation to pay for the use of the utilities. The appellee held that if this were a genuine case, the appellants would have availed themselves of the remedy laid out in article 1545 of the Civil Code. He also held that given that the lease agreement was terminated prior to the delivery of the judgment, through the happening of the resolutive condition, no claim for damages can be entertained at this stage, this notwithstanding finding a breach of the appellee's obligation with respect to the provision of utilities.

19. The appellee finally states that the conclusion of the Board on the costs of the proceedings is correct as well, and that therefore the Board's judgment should be upheld in its entirety.

Considerations of the Court

20. This Court shall now proceed to consider the grievances raised by the appellants in their appeal, and this after considering the decision given by the Rent Regulation Board, and the position adopted by the appellee in these proceedings.

The First Grievance: *[The Board made an erroneous application and interpretation on the applicability of article 1570 of the Civil Code]*

21. The appellants state that the Board's decision has caused them to suffer an irremediable prejudice to their rights, and that even the application of article 24 of Chapter 69 has caused them to be prejudiced, since they can only base their appeal on a point of law. They also claimed that the Board was erroneous when it decided that the provisions of article 1570 of the Civil Code do not apply to the current case, and that a sworn application was a sufficient judicial act to satisfy the criteria of article 1569(2) of the Civil Code. They held that in this case the appellee based his demands on article 16A of Chapter 69, and that he failed to request the Board to declare that the tenants were in breach of any of the conditions of the lease.

22. The Court finds that despite claims by the appellants to the contrary, the appellee could not base his claims on article 8 of Chapter 69, which seeks to regulate proceedings where the landlord seeks possession of the premises at the termination of the lease. The appellee was correct in basing his claims on article 16A of Chapter 69, and this in view of the fact that his demands were

two-fold, first for the eviction of the appellants from the apartment rented to them, and secondly for payment of the arrears of rent due to him. In fact article 16A of Chapter 69 of the Laws of Malta states that:

> "16A (1)(a) In actions before the Rent Board, where the demand is solely for the eviction of any person from the lease or sub-lease of any urban, residential or commercial tenement, with or without a claim for rent or any other consideration due or by way of damages for any compensation, up to the date of the surrender of the tenement, it shall be lawful for the applicant to demand in the sworn application that the Board gives judgment allowing his demand, without proceeding to trial:
>
> Provided that when the demand for eviction is made with a claim for rent or any other consideration due or damages for any compension, the Rent Board shall decide the demand for eviction at the first hearing before deciding any other demands made by the applicant ...".

23. It results therefore, that the appellee's action was correctly instituted under article 16A of Chapter 69 of the Laws of Malta.

24. The appellants further contended that the Board was erroneous in its claim that it is article 1569(2) of the Civil Code which is the applicable law to the facts of this case, rather than article 1570 of the same Chapter 16. The Court considered that clause 9 of the lease agreement stipulates that:

> "The Lessor shall have the right to terminate the agreement if:
>
> - Should the lessee fail to pay the rent for seven (7) days and/or infringe any other condition of the contract, the lessor will have the right to rescind without warning the agreement *"ipso jure"*, and this without any prejudice to his claim for payment of the amount which is still due."

25. The appellee rightly cited the above clause in seeking to evict the appellants from the property leased out to them. There is no doubt that the lease agreement in this case was subject to the resolutive condition that in the

case of default of payment of the rent on the part of the lessees, the lease agreement would be rescinded *ipso jure.* Article 1570 (1) of the Civil Code mentions a very important proviso when considering the facts of this case:

> "1570(1) A contract of letting and hiring may also be dissolved, **even in the absence of a resolutive condition**, where either of the parties fails to perform his obligation; and in any such case the party aggrieved by the non-performance may elect either to compel the other party to perform the obligation if this is possible, or to demand the dissolution of the contract together with damages for non-performance." *(emphasis of the Court)*

26. The wording of this particular provision of the law indicates that it is possible to rescind a lease agreement in the absence of a resolutive condition, however the rest of the requisites laid out in article 1570 of the Civil Code shall subsist for this to be possible. Article 1569(1) and (2) on the other hand seeks to regulate what should happen where a lease agreement is subject to a resolutive condition the fulfilment of which leads to the resolution of the contract. The law stipulates that in such cases, the lease agreement is dissolved *ipso jure.*

> "1569. (1) A contract of letting and hiring shall also be dissolved *ipso jure* upon the fulfilment of a condition under which the dissolution of the contract was expressly covenanted, saving any action for damages which may be competent to the covenantee according to law.
>
> (2) If the dissolution of the contract is covenanted in the event of either of the parties failing to perform that which he has promised, the dissolution shall take effect only from the day on which the covenantee shall have, by means of a judicial act, given notice to the covenantor of his intention to avail himself of the covenant.
>
> (3) In the cases referred to in this article, no time for clearing the delay can be granted to the party in default."

27. The Court reiterates that the text of the law is very clear in this regard. In the case of a resolutive condition covenanted in the agreement between the parties, the lease is dissolved *ipso jure* should the resolutive condition materialise. This particular provision means that the moment the appellants defaulted in their rent payment, they brought about an *ipso jure* dissolution of the lease through their own actions. A formal judicial intimation would have been needed had the termination of the lease been sought on the basis of non-payment of the rent, and in the absence of an express resolutive condition to that effect in the lease agreement. In this case the appellee did not need to request the Court to terminate the lease or to declare that the appellants were in default, because the minute they defaulted in their payment, the lease agreement was terminated *ipso jure.* Despite the claim raised by the appellants that the decision given by this same Court in the judgment in the names **Catherine Cauchi *vs.* Daniel Zammit**, does not apply to the merits of this case, this Court begs to differ. In that particular decision, this Court had considered that:

> *"Il-Qorti tqis li f'dan il-każ il-kuntratt lokatizju miftiehem bejn il-partijiet kien jinkludi kundizzjoni riżoluttiva, u ladarba jirriżulta li din il-kundizzjoni nkisret, japplika l-artikolu 1569 tal-Kodiċi Ċivili għall-fattispeċie tal-każ. Għamel sew il-Bord li ddeċieda li huwa l-artikolu 1569 tal-Kodiċi Ċivili li jirregola l-azzjoni odjerna u mhux l-artikolu 1570 tal-istess Kodiċi. Il-klawsola 12 tal-kuntratt lokatizju tipprovdi illi,*
>
> > "F'każ illi l-inkwilin ma jħallasx puntwalment il-kera mensili dovuta lis-sid u/jew ma jadempix mal-obbligi u kundizzjonijiet ta' dan il-ftehim, il-kirja hija 'ipso jure' terminata, salv id-dritt tas-sid li jitlob kull kera arretrata u/jew kull somma dovuta, ai termini tal-istess skrittura. L-inkwilin qed jagħti l-fakoltà lis-sid biex ibiddel iċ-ċwievet tal-fond mingħajr bżonn li jadixxi proċeduri ġudizzjarji liema awtorizzazzjoni hija irrevokabilment miftiehma bejn il-partijiet u għalhekk it-tibdil tas-serratura ma tikkostitwixxix spoll a tenur tal-liġi."

*22. Din il-klawsola tipprovdi li f'każ li l-inkwilin jonqos milli jħallas il-kera mensili jew ma jadempix mal-obbligi tal-ftehim, il-kera tiġi terminata ipso jure. Iżda dan ma jfissirx li l-appellata ma kinitx obbligata tosserva dak li jipprovdi l-artikolu 1569(2) tal-Kap. 16, jiġifieri l-obbligu li hija tibgħat tinforma lill-appellant b'att ġudizzjarju li kien fi ħsiebha tinvoka dak li jistipula dan il-ftehim li kellhom bejniethom il-partijiet. Minflok att ġudizzjarju notifikat lill-appellant, l-appellata bagħtet żewġ ittri legali, waħda fil-25 ta' Jannar, 2019, li permezz tagħha infurmat lill-appellant li f'każ li jibqa' moruż fil-ħlas tal-kera, huwa kien ser ikun qiegħed jingħata l-*congedo *a tenur tal-klawsola 12 tal-ftehim, u ittra legali oħra tas-6 ta' Novembru, 2019, li permezz tagħha l-appellata tat il-*congedo *lill-appellant. Minkejja l-ksur tal-kundizzjoni riżoluttiva li hemm provvediment għaliha fil-ftehim lokatizju, l-appellata kellha l-obbligu li tikkonforma mar-rekwiżit proċedurali stipulat fil-liġi billi tibgħat att ġudizzjarju lill-appellant. Huwa hawnhekk fejn il-Qorti ma taqbilx mad-deċiżjoni tal-Bord, għaliex dan mhux każ fejn seħħet kundizzjoni li taħtha ġie miftiehem il-ħall tal-kuntratt, iżda s-sitwazzjoni tinkwadra ruħha perfettament taħt dak li jipprovdi l-artikolu 1569(2) tal-Kap. 16, jiġifieri n-nuqqas ta' twettiq ta' dak li kien imwiegħed da parti tal-appellant, li kien jimporta fuq l-appellata l-obbligu li tinforma lill-appellant b'dak li kienet sejra tagħmel billi tinnotifikah b'att ġudizzjarju."*

28. In this case it is abundantly clear that the resolutive condition under which the dissolution of the contract was covenanted, was fulfilled when the appellants decided to withhold payments unilaterally, and hence the appellee's action falls squarely under the parameters of article 1569 of the Civil Code, and the appellee's action did not need to be preceded by a judicial letter as the appellants claim. In view of these considerations, the appellants' first grievance is being rejected.

The Second Grievance: [The Board reached an erroneous conclusion when it decided to reject all the counter-claims raised by the appellants]

29. The appellants held that further to stating that the merits of the case fall under article 1569 rather than under article 1570 of the Civil Code, the Board compounded the injustice suffered by them, by rejecting all the counter-claims by means of which they sought relief or a remedy from the appellee for damages sustained by them. The appellants claimed that they could not make use of the apartment for the reason for which it was rented to them, namely due to the state of the common areas of this property, and due to the lack of ventilation of the property, which made it damp and humid and therefore not fit for habitation.

30. The Court, having analysed all the evidence produced before the Board, considered that in this case the appellants had viewed the property prior to signing the lease agreement, and that despite knowing full well what state the apartment was in before agreeing to rent it out, they still proceeded to enter into the lease agreement. It is highly probable that the Board's consideration that the appellants were likely tempted by the more favourable rental price asked for this property, is correct as well. The Court also notes that nowhere did the appellee bind himself to carry out any works in the property or to complete the common parts. For a long while, the appellants had no issue with the fact that their utilities were being serviced by means of a sub-meter, and it was only when utilities to the property were cut off, that they raised a counter-claim based on damages allegedly suffered by them due to the state of the property. Moreover, the Court makes it clear that the appellants were aware of the state of the apartment at the inception of the lease, and that they voluntarily chose to rent the place out, according to the terms and conditions

laid out in the lease agreement. Hence this second grievance is being rejected as well.

The Third Grievance: [Expenses]

31. The appellants claimed that the Board was erroneous in its decision to split the costs of proceedings between the parties, and argued that the appellee alone had to bear the entire costs or most of the costs of these proceedings. In view of the findings of this Court, and of its decision not to uphold the grievances raised by the appellants, this Court is of the opinion that the apportionment of expenses made by the Board should remain unaltered, whereas the appellants are to bear the costs of this appeal, in line with the legal principle that costs should be awarded against the party cast (article 223 of the Code of Organisation and Civil Procedure).

Decide

For the above reasons, the Court decides to reject the appellants' appeal, and confirms the appealed judgment in its entirety.

All expenses in respect of the present proceedings shall be borne by the said appellants.

Read.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Reġistratur