



RENT REGULATION BOARD

MAGISTRATE DR. NOEL BARTOLO
B.A. M.A.(Fin. Serv.) LL.D.

Today, 27th February 2025

Life in Malta Ltd (C-61115)

vs

Mark Grima (ID 299180M)

Sean Grima (ID 194786M)

Number on the List : 1

Application Number: 176/20 NB

The Board,

I. INTRODUCTION

Having seen the application of the plaintiff company dated 24th September 2020 wherein it premised and claimed:

“Illi l-esponenti dahlet fil-ftehim ta’ kirja mal-intimati fil-31 ta’ Jannar 2020 kollox kif hemm stipulat fir-rigward tal-fond maghruf 37/38 ‘Greengove Guesthouse’, Triq id-Dris, Swieqi, inkluz ‘penthouse’ soprastanti il-fond, kopja tal-kuntratt hawn annessa u mmarkata ‘DOK A’.

Illi l-esponenti ghamlet depozitu ta’ EUR 20,400 u dan ai termini tal-artikolu 3 tal-istess skrittura, b’liema mod ghalhekk kif ghad fadlilha somma bilancjali ta’ depozitu biex

tithallas ta' EUR 20,400, liema somma kellha tithallas sa mhux iktar tard minn 30 ta' Gunju 2020.

Illi qabel l-imsemmija data, l-intimati unilateralment terminaw il-kirja u senjatament rregistraw din it-terminazzjoni mal-Awtorita' tat-Turizmu billi nehhew l-isocjeta' rikorrenti, ossia d-diretturi tal-istess bhala operaturi tal-fond mikri.

Illi noltre dan, irrizulta lir-rikorrenti illi l-intimati ma kienux zamm u mal-ftehim taghhom fir-rigward tal-fond mikri lilhom kemm fir-rigward tan-numru tal-kmamar u soddod licenzjati u x'kien qed tkopri l-licenzja ezistenti fir-rigward tal-fond.

Illi l-esponenti in vista tas-suespost tablet ir-refuzjoni tad-depzinu maghmul minnhom kif intqal fuq, izda dan inutilment.

Illi ghalhekk kellha ssir din il-kawza.

Ghaldaqstant, ir-rikorrenti umilment titlob li dan it-Tribunal;

- 1. Tikkundanna lill-intimati sabiex ihallsu solidament bejniethom lir-rikorrenti is-somma ta' EUR 20,400 in via ta' refuzjoni ta' depozitu kif intqal fuq u ghar-ragunijiet fuq premissi.*

Bl-ispejjez inkluzi dawk tal-mandat tas-sekwestru prezentat kontestwalment kontra l-intimati li jibghu ngunti ghas-subizzjoni.

Having seen the Reply of defendants Mark Grima et dated 3rd December 2020 (fol 31 et seq) wherein they submitted:

- 1. Illi d-domandi attrici huma nfondati fil-fatt u fid-dritt stante illi l-lokazzjoni tal-fond '37/38 Greengrove Guesthouse, Triq id-Dris, Swieqi' skont id-'**Dokument A**' fil-process, liema kirja kella tibda fl-1 ta' April 2020 ghal tlett snin di fermo u rimanenti sentejn di rispetto;*
- 2. Illi huma intimati naqsu milli jibdew jiggestixxu l-fond in kwistjoni u minkejja li gia hallsu €20,400 bhala parti minn depositu, liema bilanc ta €20,400 oltre l-imghaxxijiet bit-8% ai termini tal-klawsola 3.ii, kellu jithallas fit 30 ta' Gunju 2020;*
- 3. Illi l-intimati bil-pandemija li laqtet id-dinja offrew lir-rikorrenti li l-perjodu li nzamm maghluq il-fond sa' 17 ta' Mejju 2020, ma jhallsux kera sat 30 ta' Gunju 2020 f'liema gurnata kellhom jhallsu l-bilanc tad-depositu msemmi u l-kera bix-xahar bil-quddiem;*

4. *Illi r-rikorrenti ma gewx biex jiggestixxu l-fond in kwistjoni sal-gurnata tal-lum biex b'hekk huma ma jistawx unilateralment jitterminaw l-kirja ghal perjodu di fermo miftiehem bejn il-partijiet;*
5. *Illi ai termini tal-iskrittura tal-lokazzjoni r-rikorrenti rregistraw bhala licensee r-rikorrenti u dan fit-3 ta' Marzu 2020, kif jirizulta mil-iskrittura hawn annessa u mmarkata bhala '**Dokument MG1**' u '**Dokument MG2**'.*
6. *Illi ghalhekk ir-rikorrenti ma jistawx jitolbu r-rimborz tad-depositi minnhom mhallas, anzi se jigu mitluba biex jhallsu il-bilanc tad-depositi €20,400 ohra li obbligaw ruhhom jhallsu sat-30 ta' Gunju 2020, skont skrittura '**Dokument A**' u qed tintalab kontro-talba ghal-kundanna tal-hlas tal-bilanc tad-depositi imsemmi, li ghadu dovut.*
7. *Salv eccezzjonijiet ohra.*

Having seen the Counter-Claim submitted by the same defendants Mark Grima et dated 3rd December 2020 (fol 31 et seq) wherein they premised and claimed:

1. *Illi l-intimati rikonvenzjonanti huma kredituri tal-attur rikonvenzjonat fis-somma ta' €20,400 oltre l-imghax legali mit-30 ta' Gunju 2020, tal-bilanc tad-depositi li ghad irid jithallas ai termini tal-iskrittura ta' lokazzjoni '**Dokument A**' fil-process rigwardanti l-fond '37/38 Greengrove Guesthouse, Triq id-Dris, Swieqi', ai termini tal-klawsola 3.01(ii).*
2. *Illi l-intimati rikonvenzjonanti huma kredituri tal-attur rikonvenzjonat ta' sitt xhur kera mil-1 ta' Lulju 2020 sat 30 ta' Dicembru 2020, oltre l-hlas tal-kera ghal perjodu sussegwenti ta' sentejn u nofs sal-30 ta' Gunju 2023.*
3. *Illi l-attur rikonvenzjonat abbanduna l-fond lokat minkejja l-ftehim raggunt mal-intimati, u jippretendi illi minkejja ftehim di fermo raggunt bejn il-partijiet jista unilateralment jirilaxxa l-obbligi minnu assunti.*

Ghaldaqstant prevja kwalsiasi dikjarazzjoni necessarja u opportuna, u ghar-ragunijiet premessi, jghidu l-atturi rikonvenzjonati ghalhiex dan il-Bord m'ghandux:-

- (I) *Jiddikjara u Jiddeciedi illi l-iskrittura ta' lokazzjoni tal-31 ta' Jannar 2020, Dokument A, fil-process, tal-fond 37/38, Greengrove Guesthouse, Triq id-Dris, Swieqi, inkluz il-Penthouse, hija valida u skond il-ligi, u hija ghall-perijodu ta' tlett snin di fermo li jitterminaw fit-30 ta' Gunju 2023.*
- (II) *Jikkundanna lill-attur rikonvenzjonat jhallas lill-intimati rikonvenzjonanti s-somma ta' €20,400 oltre l-imghax legali mit-30 ta' Gunju 2020, tal-bilanc*

tad-depositu li ghad irid jithallas ai termini tal-iskrittura ta' lokazzjoni 'Dokument A' fil-process rigwardanti l-fond '37/38 Greengrove Guesthouse, Triq id-Dris, Swieqi', ai termini tal-klawsola 3.01(ii).

- (III) *Jikkundanna lill-attur rikonvenzjonat jhallas il-kera arretrata mill-1 ta' Lulju 2020 sal-31 ta' Dicembru 2020, kif wkoll kull kera futura, sat-terminazzjoni tal-perijodu di fermo tal-iskrittura ta' lokazzjoni, Dokument A fil-process, ossia sat-30 ta' Gunju 2023.*

Bl-ispejjez u bl-ingunzjoni tal-intimati ghas-subizzjoni.

Having seen the Reply to the Counter-Claim submitted by plaintiff company dated 19th February 2020 (fol 42 et seq) wherein it submitted:

- 1. Illi s-socjeta' esponenti rikonvenzjonata m'ghandha taghti l-ebda somma lir-rikonvenzjonanti kif mitluba u dan stante illi l-istess rikonvenzjonati ma segwewx il-provvedimenti tal-iskrittura tal-lokazzjoni DOK A fil-process rigwardanti l-fond 37/38. 'Greengrove Guest House', Triq id-Dris, Swieqi.*
- 2. Illi kif jigi ppruvat il-fond mikri ma kellux in-numru ta' kmamar u sodod debitament licenzjat mill-Awtorita' tat-Turizmu u ghalhekk l-esponenti rikovenzjonata ma setghetx tiggstixxi l-kirja moghti lilha legalment skond il-ligi.*
- 3. Illi in oltre, l-intimati unilateralment ghandhom jigu kkonsidrati li tterminaw il-kirja u fil-fatt irregistraw din it-terminazzjoni mal-Awtorita' tat-Turizmu meta nehhew is-socjeta' rikonvenzjonata ossia d-direttur tal-istess, bhala operaturi awtorizzati tal-fond mikri.*

Salv eccezzjonijiet ohra.

Having seen the minutes of the case.

Having seen the Board's decree during the sitting of the 9th June 2021 (fol 59) whereby it was ordered that the proceedings be conducted in the English language.

Having seen all the records of the case.

Having seen that this case has been assigned to this Board, as presided, by Order of the Hon. Chief Justice Mark Chetcuti of the 27th July 2021.

Having seen the Notes of Submissions of both parties namely that of defendants filed on the 3rd September 2024 (fol 157 *et seq*) and that of plaintiff company filed on the 17th October 2024 (fol 174 *et seq*).

Having seen that the case has been adjourned for today for judgement.

II. CONSIDERATIONS

The applicant company is requesting the Board to order defendants to reimburse it the sum of €20,400 which applicant tendered to defendants in warranty of the execution of its obligations arising from the commercial lease agreement dated 31st January 2020 (fol 5 to 24). Respondents opposed the claim and moreover filed a counter-claim requesting the Board to condemn plaintiff company to pay a further payment of €20,400 being the balance of the deposit initially paid by plaintiff company and additionally to condemn plaintiff company to pay the rent due for the duration of the *di fermo* period of the lease.

Pursuant to the lease agreement, defendants leased to plaintiff company the property located at 37/38, “Greengrove Guesthouse”, Triq id-Dris, Swieqi including the overlying penthouse. The leased premises were in the process of obtaining licensing as a guesthouse from the Malta Tourism Authority and were already operational. The term was for five years, with the first three years being *di fermo* whilst the remaining two years *di rispetto*, commencing on the 1st April 2020.

The provisions of the lease agreement pertinent to the present claim and the counterclaim are the following:-

Section 1.01 – Basic Lease Provisions

...

(c) Term: The period of five (5) Years, the first three years *di fermo* whilst the remaining two years *di rispetto*, commencing on the 01st April 2020.

Section 2.03 – Commencement of Tenant’s Obligation

The Term and Tenant’s obligation to pay Rent shall commence from the 1st of April 2020.

Section 3.02 – Payment of Rent Instalments

- i. The Rent of the Leasing of the Leased Premises shall be €81,600 exclusive of VAT per annum paid every month in advance in monthly instalments of €6,800 per month.
- ii. Moreover an additional six (6) months' rent, that is, €40,800 will also be paid in advance as Deposit, €20,400 was paid prior to today, and the balance of €20,400 by the 30th of June 2020. In the event of non-punctual payment of the deposit to be paid, this lease is ipso jure terminated and the Landlords may change the locks of the premises and resume total possession of the property without need for any further notification. Furthermore, interest at 8% per annum shall accrue on the balance due from today if payment is not effected by the 30th June 2020.

Section 4.02 – Licenses

Tenants shall obtain and maintain all certification, permits and licenses to operate the business contemplated in Section 4.01 which shall always remain in the name of the Landlords. Any permits and licenses which may be required shall be obtained at Tenants' sole expense, which Tenants shall at all times during the term of this Agreement maintain all such permit and licences valid. Landlords shall give written authorisation for obtaining of said permits, and shall sign all necessary applications.

However, it is agreed between the Parties that this shall include the initial Malta Tourism Authority license which is to be issued as soon as possible for the operation of the guesthouse which shall always remain in the name of the Landlords.

...

Tenants bind themselves to conduct all business operations in strict conformity with such licenses. Should Tenants operate without its activities being covered by a license, or breach any of the license conditions, Landlords shall have the right to terminate this Agreement forthwith, and in the event that any breach is not rectified within fifteen (15) days from notice in writing by the Landlords unto the Tenants. It is agreed that the grace period granted shall not serve to extricate Tenants from any warranties granted in terms of this Section and this Agreement, and that the indemnity granted by the Tenants in terms of Section 7.02 shall not be affected in any manner whatsoever.

Section 4.04 – Governmental Regulations

...

It is agreed between the Parties that if for any reason whatsoever the Malta Tourism Authority demand Lessees to close down the premises because it is not duly licensed, the Landlords shall immediately and without any delay refund to the Lessees all deposits paid and all rent paid in advance which would not have been yet utilized...

Section 9.01 – Events of Default

The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenants:

- (a) The failure by Tenants to make any repayment of Rent, or any other payment required to be made by Tenants hereunder, promptly when due, whether demanded or not. Non-payment of Rent, or any other payment required, does not entitle Tenants to a grace period, and the Lease may be terminated by the Landlords *ipso jure*.

...

- (c) Breach of Section 2.03 hereof

- (d) Breach of Section 4.01, 4.02, 4.03, 4.04 or 4.05 hereof.

Section 9.02 – Security Deposit

In order to guarantee Tenants' obligations under this Agreement, a deposit of €40,800, a sum equivalent to six months' rent is being paid hereon by tenants unto the Landlords, which deposit shall be refunded to Tenants at the termination of the Lease, provided that the Leased Premises, after having been inspected by the Landlords, is found to be in a good state of repair, and Tenants have complied with all their obligations under this Agreement. It is agreed also that the said deposit or part thereof can be appropriated by the Landlords at any time to pay any sums due in favour of the Landlords by the Tenants in terms of this Agreement...

Section 9.03 – Remedies

In the event of any default or breach by Tenants as described in Section 9.01 Landlords may, at any time thereafter, with or without notice or demand,

and without limiting Landlords in the exercise of any right or remedy which Landlords may have by reason of such default or breach:-

- (a) Unilaterally, and at their own discretion terminate this Agreement by simple notice in writing at any time following the Rent due date, and retake possession of the Leased Premises. In such event Landlords shall be entitled to recover from Tenants all damages incurred by Landlords by reason of Tenant's default, including, but not limited to, the cost of recovering possession of the Leased Premises, Landlords' reasonable advocate fees, and any interest or unpaid rent, or other sums payable by Tenants under the provisions of this Lease, from the date the same became due at the highest rate applicable at law.
- (b) Set-off any claim against the security deposit without any need for notice or demand.

Adalberto Goncalves Amorin testified orally on 7th February 2022 (fol 63A to 63D) and by means of an affidavit (fol 74 to 76) that the Plaintiff Company entered into a commercial lease agreement for the operation of the guesthouse, which was executed on 31st January 2020 and was set to commence on 1st April 2020. Upon execution of the lease agreement, the Plaintiff Company remitted the sum of €20,400, constituting half of the deposit owed to the Defendants. On 3rd March 2020, Lilian Ronsoni Mendes, the witness's spouse, was registered with the Malta Tourism Authority as the registered operator of the premises on behalf of plaintiff company (fol 64). The witness was instructed by the Defendants to list the penthouse as a room, rather than as a self-catering apartment, on online travel platforms such as Expedia.

Subsequently, the witness sought clarification from the Malta Tourism Authority regarding the registration status of the guesthouse and was informed that his wife's registration as the operator had been revoked as of 8th April 2020. The suspension of the registration was initially intended as a consequence of the COVID-19 pandemic, which prevented the Plaintiff Company from commencing operations. The parties had agreed that, should the COVID-19 situation improve, the lease and operations would resume after July 2020. Despite this understanding, the Defendants insisted that the Plaintiff Company remit the outstanding balance of the deposit, amounting to €20,400, notwithstanding the termination of the operations permit and the suspension of the lease.

The Plaintiff Company was never notified of any resumption of the operations permit. Additionally, the witness discovered that the Defendants had only registered 12 rooms with the Malta Tourism Authority, excluding the restaurant and the self-catering penthouse, whereas the contract stipulated that the Defendants were obliged to provide 11 rooms and the penthouse. A representative of the Malta Tourism Authority

informed the witness that self-catering apartments could not be registered with the Authority. In correspondence between the witness and the Defendants (fol 68 to 70), Defendant Sean Grima instructed the witness to list the penthouse as a room. The premises were not fully covered by the required licenses to operate, as the total number of rooms and beds in the guesthouse had not been registered with the Malta Tourism Authority, and the penthouse was not included in the MTA permit. The lease agreement was ultimately terminated by the Defendants on 15th July 2020 (fol 65).

During cross-examination on 25th January 2024 (fol 143 to 153), Adalberto Goncalves Amorin reiterated that the penthouse had been misrepresented as a room in the Malta Tourism Authority permit. He confirmed that he had informed the Defendants that, due to the COVID-19 pandemic, the Plaintiff Company was unable to commence operations. The Defendants granted the Plaintiff Company a three-month grace period and informed the witness that they would continue operating the property. Instead of suspending the Plaintiff Company's registration with the Malta Tourism Authority, the Defendants proceeded to remove the Plaintiff Company as the registered operator. Consequently, the Plaintiff Company was unable to commence operations, both because it was no longer registered with the Malta Tourism Authority and because the operations permit was not in compliance with the terms of the lease agreement.

Defendants Sean Grima and Mark Grima provided their testimony through affidavits (fol 80 to 85), stating that during the negotiations, Adalberto Goncalves Amorin insisted that the penthouse, which was the residence of a third party, Jennifer Mary Davis, be included in the lease alongside the guesthouse. The Defendants were able to accommodate this request, and the penthouse was subsequently incorporated into the lease agreement. Due to the COVID-19 pandemic, the guesthouse experienced the cancellation of all bookings, resulting in the Defendants being unable to continue operating the business. Adalberto Goncalves Amorin informed the Defendants that, owing to the pandemic, the Plaintiff Company would be unable to take possession of the property as agreed, as its provisional bookings had been cancelled. The parties verbally agreed to delay operations until the resumption of business and the removal of government-imposed restrictions. It was understood that, by June 2020, the Plaintiff Company would commence operations, begin paying rent, and settle the balance of the deposit.

However, in June 2020, the Plaintiff Company informed Defendants that it was unable to fulfill the lease agreement and could not afford to pay the remaining balance of the deposit. In response, the Defendants offered the Plaintiff Company two alternatives: (i) a reduction in the rent by €2,000 per month, or (ii) a postponement of the contract until April 2021, during which time the Defendants would continue operating the guesthouse themselves but the Plaintiff Company would still be required to pay the remaining balance of the deposit as agreed (fol 86). Plaintiff Company did not accept

either of these offers, as it sought to postpone the contract without paying the remainder of the deposit. Instead, Adalberto Goncalves Amorin proposed sub-letting the restaurant and premises to a third party under different lease conditions.

When the Plaintiff Company raised concerns about fulfilling the agreement, the Defendants notified the Malta Tourism Authority that the Plaintiff Company was not operating the guesthouse, and that the premises were not open for business (fol 87 to 90). Defendants testified that they had neither terminated the lease agreement nor the operations license.

The testimony of the Defendants was corroborated by their mother, Maria Grima (fol 137 to 138). Additionally, the Defendants submitted a copy of the correspondence between Defendant Mark Grima and Adalberto Goncalves Amorin (fol 93 to 119).

On 12th May 2023, Malcolm Zerafa, a representative of the Malta Tourism Authority, testified (fol 129 to 130) that an application to register Liliana Ronsoni Mendez on behalf of the Plaintiff Company was submitted on 3rd March 2020 (fol 131). However, on 8th April 2020, the operator was removed from the registration by the licensee.

Considers

After deliberating at length on the testimonies tendered by both Adalberto Goncalves Amorin and the defendants the Board concludes that on a balance of probabilities, it is more likely that the version of events detailed by defendants reflects the true and actual occurrences between the parties.

Plaintiff company contends that the defendants breached the lease agreement on three grounds:- (i) plaintiff company could not operate the premises since Liliana Ronsoni Mendez was removed from operator of the license registered with the Malta Tourism Authority (ii) the penthouse was not licensed to operate as part of the guesthouse in breach of clause 4.02 and (ii) defendants unilaterally terminated the lease agreement.

In relation to the Plaintiff Company's first claim, which asserts that it was unable to operate the premises due to the removal of Liliana Ronsoni Mendez as the operator of the license registered with the Malta Tourism Authority, the Board deems this revocation to have been only temporary. The revocation was a direct consequence of the agreement reached between the parties verbally to postpone the effects of the lease agreement due to the COVID-19 pandemic. This position is supported by an email dated 28th March 2020, sent by Sean Grima to the Malta Tourism Authority (fol 88), in which he stated "*... Due to the situation of COVID-19 new operators will not be starting on the 1st April 2020 as planned but contract will commence later on this year well to*

be honest we do not know exactly when as this situation is not going to pass anytime soon, so its indefinite...”

Additionally, in an email dated 7th April 2020 (fol 89-90 and 35-36) the Defendants wrote to Malcolm Zerafa, stating “...We were going to rent our property on the 1st of April 2020 and has already done the change of ownership with the MTA. Unfortunately due to the current situation the lease will not start in April and is still undecided. So we would like to inform you that we are still running our guesthouse and once it lease begins if all goes to plan when this is over we will yet again let you know about the new operators taking over”.

These emails reflect the unforeseen circumstances caused by the COVID-19 pandemic, which the Plaintiff Company was aware of. Furthermore, Adalberto Goncalves Amorin corroborates this position in his affidavit (fol 74), wherein he states “...This suspension was originally intended as a result of the fact that on account of COVID, we were unable to commence operations. The agreement being that after July 2020, if things were back to normal, we would then be able to resume the lease”. This is also reflected in a message sent by Adalberto Goncalves Amorin on 13th March 2020 (fol 103), where he informed Sean Grima that “... We are receiving many cancellation and stopped receiving bookings in the last days due this problem of coronavirus and on the next days will be even worst as the Maltese government announced that flights from many countries are cancelled and probably by Monday even more countries will be banned and maybe we have a knock down for 3 weeks... Maybe is better if you postpone the starting date of the contract...”. Moreover, in a text message sent to defendant (fol 119), Adalberto Goncalves Amorin himself suggested the removal of the operator, stating “I just realized that we were operators from beginning of March No need for us to be there? I think we should to change it again for you not?”.

It logically follows that, due to the unforeseen circumstances caused by the COVID-19 pandemic, the Defendants were correct in informing the Malta Tourism Authority of the situation between the parties. In response to these circumstances, the Malta Tourism Authority's decision was to remove Liliana Ronsoni Mendez as the operator. The Board notes that the response from Malcolm Zerafa (fol 89) indicates that the removal of Liliana Ronsoni Mendez as operator was “for the time being.” The Board further observes that no evidence was tendered by the Plaintiff Company to demonstrate that Liliana Ronsoni Mendez could not be re-registered as an operator once Plaintiff Company's operations were set to resume. Hence plaintiff company's first ground is rejected.

Regarding the license for the penthouse, the lease agreement stipulates that the premises were leased as a guesthouse in accordance with the permits attached to the agreement, marked as documents GG1, GG2, and GG3. However, these permits (GG1, GG2, and GG3) were not submitted during the proceedings, and as such, the Board is not aware of the specific permitted use outlined in the permits referenced in the lease

agreement. While Adalberto Goncalves Amorin testified that he was informed that the penthouse could not be licensed by the Malta Tourism Authority to operate as part of the guesthouse due to its nature as a self-catering apartment, this assertion was not substantiated with evidence. The burden of proof lay with the Plaintiff Company to demonstrate that the self-catering penthouse could not be licensed by the Malta Tourism Authority. The Plaintiff Company failed to meet this burden. No evidence was submitted to support this claim. In the absence of such evidence, the lease agreement between the parties cannot be deemed to have an *illegal causa* or that defendants were in breach of the agreement. Additionally, as per Section 4.02 of the lease agreement, the responsibility for obtaining the necessary permit to operate the penthouse as part of the guesthouse, if required, was solely placed on the Plaintiff Company. To this end plaintiff company's second ground is also being rejected.

With regard to the Plaintiff Company's third ground, which asserts that the Defendants unilaterally terminated the lease agreement, the Board notes that, by virtue of an email dated 15th July 2020, the Defendants informed Adalberto Goncalves Amorin (fol 65) that the lease was being terminated *ipso jure* due to the Plaintiff Company's failure to fully pay the deposit by 30th June 2020, as agreed in the contract. The Defendants acted in accordance with Section 3.02 (ii) of the lease agreement, which stipulates that, in the event of non-punctual payment of the deposit, the lease shall be terminated *ipso jure*, and the Landlords may change the locks on the premises and resume full possession of the property without the need for any further notification. Furthermore, Section 3.02 (ii) also provides that interest at a rate of 8% per annum shall accrue on the outstanding balance from the date the payment was due, should payment not be effected by 30th June 2020.

However, pursuant to Article 1569 of Chapter 16 of the Laws of Malta, which regulates resolute conditions in lease agreements, a contract of letting and hiring shall be dissolved *ipso jure* upon the fulfilment of a condition under which the dissolution of the contract was expressly agreed, without prejudice to any action for damages that may be competent to the covenantee according to law. The dissolution of the contract takes effect in the event that either party fails to perform their obligations, but it shall only take effect from the date on which the covenantee has notified the covenantor, by means of a judicial act, of their intention to invoke the resolute condition.

In the case **Catherine Cauchi vs Daniel Zammit** decided by the Court of Appeal (Inferior) on the 25th June 2021 (Appeal No. 10/2020/1 LM) regarding a resolute condition in relation to non-payment of rent, it was observed that:-

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 ttipprovdi illi,

“F’każ illi l-inkwilin ma jhallasx 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-ċwieviet tal-fond mingħajr bżonn li jadixxi proċeduri ġudizzjarji liema awtorizzazzjoni hija irrevokabbilment miftehma bejn il-partijiet u għalhekk it-tibdil tas-serratura ma tikkostitwixxix spoll a tenur tal-ligi.”

22. Din il-klawsola ttipprovdi li f’każ li l-inkwilin jonqos milli jhallas 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 jstipula 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-rekwizit proċedurali stipulat fil-ligi billi tibgħat att ġudizzjarju lill-appellant. Huwa hawnhekk fejn il-Qorti ma taqbilx mad-deċizzjoni 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.

23. Għaldaqstant, il-Qorti filwaqt li tiċhad l-aggravju tal-appellant li f’dan il-każ kien japplika l-artikolu 1570 tal-Kodiċi Ċivili, qiegħda tilqa’ l-aggravju limitatament sa fejn l-appellant sostna li huwa kellu jiġi notifikat bl-intenzjoni tal-appellata li tattwa dak miftiehem fil-kuntratt lokatizju, permezz ta’ att ġudizzjarju. 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 jidhlu fis-seħħ meta l-proċeduri mibdija bis-saħħa ta’ dak l-att ġudizzjarju jgħaddu in ġudikat.”

Clause 3.02(ii) of the lease agreement constitutes a resolutive condition. However, the Defendants did not provide evidence that, prior to initiating these proceedings, they notified the Plaintiff Company by means of a judicial act of their intention to invoke this clause. Hence defendants cannot be deemed to have legally availed themselves of the said resolutive condition.

From the evidence submitted it results that in June 2020, when Plaintiff Company informed Defendants that it was unable to fulfill the lease agreement and could not afford to pay the remaining balance of the deposit, the Defendants offered the Plaintiff Company two alternatives: (i) a reduction in the rent by €2,000 per month, or (ii) a postponement of the contract until April 2021 provided the plaintiff pays the remaining balance of the Deposit. By means of an email dated 17th June 2020 (fol 86) Plaintiff Company informed defendants that it was ready to accept the postponing of the contract to 2021. However this option also included the payment of the remaining balance of the deposit which amount was not paid so much so that the said balance is being claimed by defendants in their counter-claim. Through this exchange of communications it can be safely concluded that as at 17th June 2020 plaintiff company still wanted to go ahead with the contract but that it failed to secure for itself any one of the options offered by defendants. Hence the agreement of the 31st January 2020 remained binding on the parties as covenanted. In this regard Plaintiff Company's third ground, namely that the Defendants unilaterally terminated the lease agreement, is unfounded and is also being rejected.

Consequently, Plaintiff Company's claim for the restitution of the deposit is being rejected.

As regards the counter-claim submitted by the defendants the Board observes that they are seeking: (i) the second tranche of the deposit, and (ii) rent arrears for the *di fermo* term.

Section 9.02 of the lease agreement, which governs the security deposit, stipulates that *"In order to guarantee Tenants' obligations under this Agreement, a deposit of €40,800, a sum equivalent to six months' rent is being paid hereon by tenants unto the Landlords, which deposit shall be refunded to Tenants at the termination of the Lease, provided that the Leased Premises, after having been inspected by the Landlords, is found to be in a good state of repair, and Tenants have complied with all their obligations under this Agreement. It is agreed also that the said deposit or part thereof can be appropriated by the Landlords at any time to pay any sums due in favour of the Landlords by the Tenants in terms of this Agreement..."*.

The security deposit outlined in the agreement serves as a safeguard in the event that the Plaintiff Company defaults on its rent obligations. Consequently, if the Board were to award both the deposit and the arrears, the Defendants would be compensated twice. Since the parties agreed that the security deposit or part thereof can be appropriated by the Landlords at any time to pay any sums due in favour of the Landlords, including rent arrears, the Board is hereby rejecting defendants' counter-claim for the remaining balance of the deposit and instead shall proceed to consider the Defendants' request for the rent arrears.

The Board observes that from the evidence submitted it is unclear whether Plaintiff Company took possession of the premises, and in the affirmative, the date of such possession. Through an email dated 17th June 2020 sent by the defendants to Adalberto Goncalves Amorim (fol 86) defendants asked Mr. Amorim to *“please come over this week it’s very important for us so you can explain all you changed in systems”*. In his response Mr. Amorim stated that *“I didn’t make any changes in the systems (booking.com or Expedia), was just synchronized with a channel manager that I already disconnected and don’t have access anymore. You can still manage your bookings, etc from the extranets like always. We can meet next week as you wish, let me know when”*.

Nevertheless during the sitting held on the 25th January 2024 (fol 143 *et seq*) Adalberto Goncalves Amorim confirmed that the Defendants were always in a position to give him possession of the keys, even, *post-covid* (fol 151 – 152). The lease agreement stipulates in Section 1.01 (c) that the term of the lease is of five (5) Years, the first three years *di fermo* whilst the remaining two years *di rispetto*. Given that the parties are bound by these terms and the premises were always available to the Plaintiff Company it follows that rent shall be deemed due commencing from 1st July 2020 (as requested in the Defendants' counterclaim) until 30th January 2023, corresponding to three years of *di fermo* period from the date of the lease agreement.

With regards to the liquidation of the amount of rent due the Board observes that according to the contract rent is set at €6,800 per month excluding VAT. However in this particular case the Board observes that the defendants themselves had acknowledged the difficulties surrounding the operation of this lease agreement to the extent that in June 2020 they had offered the Plaintiff Company the option of a €2,000 reduction of rent per month. This emerges clearly from the affidavits of both defendants and is also evident from the text messages exhibited by the defendants themselves (Dok ND 1) in particular fol 118 of the records.

In the case **Jason Bonavia et vs Elton Calleja et** decided on the 29th April 2019 (Application No. 2/12VG)¹, the Court of Magistrates observed that for the application of a reduced adjusted rent, the reduction shall be manifest, clear and positive:-

Minn din ix-xhieda tal-konvenut joħroġ ċar li huwa jikkontendi li l-atturi rrinunzjaw għall-kera mifthemata ta’ €46 kuljum u minflok aċċettaw li jibdwew jirċievu kera mnaqqsa ta’ €35 kuljum; pretensjoni din li hija għal kollox miċħuda u kontestata mill-attur.

Il-Qorti tosserva li f’materja ta’ rinunzja huwa assodat il-prinċipju ġuridiku li: bla dubju r-rinunzja hija att ġuridiku unilaterali, b’karattru abdikattiv in kwantu tirriżolvi ruħha fit-telf tad-dritt ġà akkwistat. Għaldaqstant iġġorr l-effetti tagħha imprexxindibilmill mill-aċċettazzjoni tal-parti l-oħra. Kif spjegat mill-

¹ Confirmed by the Court of Appeal on the 12th June 2020

*Laurent (Principii di Diritto Civile, Vol. XXXII para. 126 pagna 109) ir-rinunzja hija “la manifestazione di una volontà, e la volontà o il consenso può manifestarsi o espressamente o tacitamente.” Din il-volontà trid tkun ċara u pożittiva u tista’ tkun deżumibbli kemm minn provi diretti kemm minn presunzjonijiet - **Anthony Scerri et v. Anthony Cutajar et, Appell Nru. 583/02** deċiża mill-Qorti ta’ l-Appell (Sede Inferjuri) fis-16 ta’ Marzu 2005.*

Fis-sentenza hawn appena citata l-Qorti ta’ l-Appell osservat ulterjorment illi: korrispondenti ma’ dan il-ħsieb, il-ġurisprudenza tagħna ma tonqosx milli tavverti illi: (1) “La rinunzia ad un diritto, perche si possa ritenere tale deve risultare da espressioni chiare ed univoche, e non già da espressioni generiche” (Kollez. Vol. XXVIII p III p 1154); (2) Qualunque rinunzia, non essendo generale e specifica non riceve che stretta interpretazione in guisa che in dubbio s’intenda rimesso quanto meno sia possibile” (Sciberras v. Giappone, Qorti Ċivili, Prim’ Awla, 12 ta’ Ottubru 1840); (3) Ir-rinunzji huma di stretto diritto u għandhom jirrizultaw minn fatti assolutament inkonċiljabbli mal-konservazzjoni tad-dritt u li juru l-volontà preċiża tar-rinunzjant “Henry Thake v. Carmel sive Lino Borg” Appell, Sede Inferjuri, 25 ta’ Novembru 1986; (4) In kwantu għall-eżami dwar in-natura ta’ l-att u l-effikaċja tiegħu biex jopera r-rinunzja, dan l-eżami huwa rimess għall-apprezzament tal-ġudikant, li għandu jieħu in konsiderazzjoni ċ-ċirkostanzi kollha li fihom ġie kompjud l-att (Kollez. Vol. XXXIV p II p 646).

In the circumstances of the present case the Board considers that defendants were manifestly clear in their intention to reduce the rent by €2,000 per month. Consequently, such reduction ought to be taken into account when liquidating the amount of arrears due which amount as follows:

Rent from 01/07/2020 to 30/01/2023 €4,800 ² per month x 31 months	€148,800
Less the partial deposit paid upon signing of the lease agreement	€20,400
Total	€128,400

III. CONCLUSION

Therefore, for the above mentioned reasons, the Board decides this case as follows:-

1. Rejects the claims brought forward by plaintiff company.

² €6,800 - €2000 (as per defendants’ reduction) = €4,800

2. Accedes in part to the first counter-claim of the defendants and declares the lease agreement dated 31st January 2020, Document A in the records of these proceedings, as valid, lawful and binding for the *di fermo* period until the 30th January 2023.
3. Rejects the second counter-claim of the defendants.
4. Accedes in part to the third counter-claim of the defendants and orders plaintiff company to pay the defendants in reconvention the rent arrears from the 1st July 2020 to the 30th January 2023 in the reduced **amount of one hundred twenty eight thousand and four hundred Euros (€128,400).**

The costs of these proceedings both with regards to the claim and the counter-claim shall be borne entirely by the plaintiff company.

Noel Bartolo
Magistrate

Marisa Bugeja
Deputy Registrar

27th February 2025