



RENT REGULATION BOARD
Magistrate Dr. Monica Vella LL.D., M. Jur.
CHAIRPERSON

Application number: 14/2019

**Angelo Bugeja (ID 521442M,
Andrew Bugeja (ID 120549M),
Theresa Mula (ID 775243M),
Antida Bugeja (ID 56347M),
Rudolph Bonnici (ID 388871M)
who is appearing on his own behalf
and on behalf of the absent Alfred
Bugeja Passaport number BC
379167**

vs

**Jacqueline Tite Passaport number
173177 W, English citizen**

Today the 17th June 2025

The Board,

Having seen the sworn application of Angelo Bugeja 521442M et. presented in the Registry of this Court on the 23rd January 2019 whereby they declared and requested the following:

- “1. Illi l-esponenti kienu krew lill-intimata, Jacqueline Tite, permezz ta’ kuntratt tal-15 ta’ Dicembru tas-sena elf disgha mija u erbgha u disghin, fl-atti tan-Nutar John Patrick Hayman, il-fond indikat fl-indirizz numru hmistax(15) bla isem, fi Triq San Duminku, fiz-Zejtun, liema fons huwa indikat ahjar bhala il-fonod Numru 3, fil-Logga Numru 15, fi Triq San Duminku, iz-Zejtun bil-kera ta’ mitt lira Maltija (LM 100) fis-sena ekwivalenti ghal €232.90 fis-sena;
2. Illi l-kirja kif jirrizulta mid-dokumnet ittra A, kellha terminu ta’ hmistax-il sena, liema terminu skada fil-2009, fil-15 ta’ Dicembru;
3. Illi l-intimata f’dan il-perjodu qatt ma hallset il-kera hekk dovuta lill-esponenti rikorrenti bi ksur perenni tal-kondizzjoni tal-kuntratt;
4. Illi l-intimata hija ċittadina Ingliza u tirresjedi fl-Ingliterra, fl-indirizz hawn isfel moghti ghan-notifika;
5. Illi l-intimata nnegożjat mal-esponenti, xiri tal-fond, mertu ta’ dan ir-rikors, li kien qed jintuża ghan-negożju, li ma tawx eżitu pożittiv minkejja l-isforzi tal-partijiet;
6. Illi minkejja l-weghdi tal-intimata li ser tivvaka mill-fond peress li ma sehhx il-bejgh, ma ghamlet xejn u spiċċat inadempjenti f’dan ukoll;
7. Illi ghalhekk ir-rikorrenti qeghdin jipproċedu, permezz ta’ dawn il-proceduri sommarji speċjali odjerni, ghat-tkeccija u ghall-izgumbramnet tal-intimata mill-fond fuq indikat f’numru 3, fil-Logga Numru 15, fi Triq San Duminku, iz-Zejtun;

8. Illi r-rikorrenti jiddikjara u Angelo Bugeja jikkonferma bil-Gurament, li l-intimata, Jacqueline Tite, ma għanda l-ebda difiża x'tagħti kontra t-talba li qegħda ssir permezz ta' dawn il-proceduri sommarji speċjali;
9. Illi l-esponenti jafu dawn il-fatti premeżsi personalment u flimkien ma dan ir-rikors għuramentat qegħdin jippreżenta dikjarazzjoni għuramentata skond l-Artiklu 16A (1)(a) tal-ordinanza li Tirregola t-tigdid tal-kiri ta' Bini (Kapitlu 69 tal-Ligijiet ta' Malta);
10. Illi l-proceduri odjerni huma proċeduri sommarji speċjali a tenut tal-Artiklu 16A tal-Ordinanza li Tirregola t-Tigdid tal-Kiri ta' Bini li fihom is-sentenza għandha tingħata fl-ewwel dehra fil-kawza jekk l-intimat ikun kontumaci f'dik is-seduta jew inkella jekk l-intimat jonqos milli juri f'dik is-seduta li jkollu difiża li tiswa' u li jista' jagħmel biex jikkontesta t-talbiet tar-rikorrenti.

Għaldaqstant ir-rikorrenti jitolbu bir-rispett li dan l-Onorabbli Board a tenur tal-proceduri sommarji speċjali skond l-artiklu 16A tal-Ordinanza li Tirregola t-Tigdid tal-Kiri ta' Bini, joghgbu jawtorizza lir-rikorrenti jirriprendu l-pussess tal-fond f' numru 3, Logga Numru 15, fi Triq San Duminku, iz-Zejtun, u għall-fini tal-izgumbrament tal-intimata Jacqueline Tite, jipprefiggi terminu qasir u perentorju.

Bl-ispejjeż kontra l-intimata u b'rizerva għad-dritt tar-rikorrenti li jipproċedu kontra l-intimata għall-penali u għad-danni inklużi telf ta' qliegh ta' kera.”

Having seen the reply of the defendant which states:

- “ 1. Illi in linea preliminari r-rikorrenti naqsu li jinnotifikaw lill-intimati bl-atti relattivi bit-traduzzjoni bil-lingwa Ingliza;

2. Illi l-intimata ghandha indirizz lokali u li ma kienx hemm ghalfejn jaghmlu notifika fuq indirizz barrani;
3. Illi l-allegata kirja indikata mir-rikorrenti hija fittizja u l-agir kollu tar-rikorrenti huwa vizzjat b'simulazzjoni. Ghaldaqstant in vista tal-istess, ir-rikorrenti ma jistghux jipproċedu gudizzjarjament;
4. Illi l-istess intimata kienet xtrat il-fond minghand ir-rikorrenti. Di fatti kien ghalhekk illi qatt ma thallset kera;
5. Mitlubin biex jaghtu lok għall-obbligazzjoni fiducjarja u konsegwentement jaddiivjenu għall-pubblikazzjoni tal-atti notarili relattiv iżda dawn naqsu li jersqu;
6. Salv eċċezzjonijiet ulterjuri.

Ghaldaqstant l-intimata qed titlob bir-rispett lil dana l-Onorabbli Board joghgbu jikkonċedi l-fakulta lilha biex tippreżenta r-risposta taghha f'terminu li ghandu jiġi impost minn dana l-Onorabbli Board.”

Having seen the note presented by the defendant Tite Jacqueline holder of passport number 173177W at folio 27 and 28 of the acts whereby she gave reasons in her defence and requested the Court to grant her a right of reply.

Having seen the minute of the sitting held on the 12th April 2019, whereby the Board granted the defendant's request for a right of reply.

Having seen the sworn reply filed by Dr Joseph Bonnici as special mandatory of the absent Jacqueline Tite:

- “1. Illi in linea preliminari, in-nuqqa ta’ kompetenza ta’ dan l-Onorabbli Board sabiex jittratta u jiddeċiedi dwar allegat ftehim ta’ kera li huwa simulat ab initio;
2. Illi, minghajr preġudizzju ghas-suesspost, t-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt u ghandhom jiġu michuda bl-ispejjez stante li l-intimata qatt ma kienet tghix fil-fond numru 3, fil-Logga Numru 15, fi Triq San Duminku z-Zejtun taht titolu ta’ kera. Di fatti qatt ma hallset u lanqas intalbet li thallas xi somma jew pagament ta’ kirja minn meta iffirmit il-kuntratt;
3. Illi permezz ta’ kuntratt tal-hmistax ta’ Dicembru tas-sena elf disgha mija u erba’ u dighin (15/12/1994) fl-atti tan-Nutar John Patrick Hayman, dan l-att ta’ kera in kwistjoni tidher in prima facie kuntratt ta’ trasferiment. Pero’ kien att kimeriku sabiex jevitaw id-dettami ta’ liġi speċifika li kienet tirrigwardja akkwist ta’ proprjeta’ minn persuni mhux residfenti Malta bi limitru ta’ prezz. Di fatti b’osservanza tal-ewwel parti tal-kuntratt jidher b’mod car u stipulat illi r-rikorrenti huma msejjhin bhala l-vendituri u sussegwentement l-intimata qeghda tiġi msejjha bhala l-kompratrici;
4. Illi sussegwentement l-intimata permezz ta’ skrittura privata bejn hi u bejn wiehed mir-rikorrenti u cioe Andrew Bugjea datata fit-tnejn u ghoxrin ta’ Ottubru tas-sena elf disa mija u erbgħa u disghin (22/10/1994) kienet hallset is-somma ta’ hamest elef u hamsin liri Maltin (LM 5050) bhala prezz tal-akkwist tal-proprjeta’ imsemmija. Illi l-hlas tal-apparenti kera ta’ LM 100 annwali kienet finta. Kien kollox simulat. Tant hu hekk illi qatt ma ntalbet hlas ta’ kera kif allegat mir-rikorrenti. Qatt ma hadu passo ġudizzjarji għal pagament jew terminazzjoni tal-allegata kirja;

5. Illi permezz ta' ricevuta mill-Korporazzjoni ghas-servizzi ta' l-Ilma datata seba u ghoxrin ta' Lulju tas-sena elf disa mija hamsa u disghin (27/07/1995), din il-Korporazzjoni tirrikonoxxi lill-intimata bhala s-sid tal-fond in kwistjoni;
6. Illi permezz ta' prokura fil-presenza tan-Nutar Dr John Patrick Haymn datata fil-hmistax ta' Dicembru tas-sena elf disa mija erbgha u disghin (15/12/1994), r-rikorrenti awtorizzaw lil Jacqueline Tite sabiex ikollha d-dritt li tbiegh il-proprjeta imsemmi u cioe il-fond numru hmistax (15), Triq San Duminku, Zejtun bhala fond libera u frank u ghal prezz li jaccedi hamest elef Liri Maltin (LM 5000);
6. Illi permezz ta' ottra ufficjali datata tlieta u ghoxrin ta' Awwissu tas-sena elfejn u sittax (23/08/2016), ir-rikorrenti nfurmaw lill-intimata sabiex tigi kkancellata l-prokura taghha sabiex tkun tista tbiegh il-fond imsemmi. B'kull rispet, ir-rikorrenti kellhom konjizzjoni bizzejjed sabiex ikunu jafu l-effett kli ghandu prokura u dana stante il kienet spjegata min-Nutar in kwistjoni. Ma ghamlu ebda oggezzjoni b'tali prokura;
7. Illi l-intimata qatt ma mxiet skond id-dettami tal-kuntratt u skritturi privati u qatt ma kellha intenzjoni li tohloq xi tip ta' tahwid jew simulazzjoni minn naha taghha. Di fatti d-d-okumenti kollha msemmija kienu kollha moqrija min-Nutar u approvata minn kull individwu rikorrenti;
8. Salv eccezzjonijiet ulterjuri.

L-intimata titlob bir-rispett lil dan l-Onorabbli Board, tichad it-talbiet tar-rikorrenti u tirrikonoxxi l-intimata bhala s-sid tal-fond numru 3, Logga numru 15, Triq San Duminku, Zejtun.

Bl-ispejjez kollha kontra r-rikorrenti li minn issa huma ingunti ghas-subizzjoni.”¹

Having seen the annexed documents with the sworn application.²

Having seen that the parties agreed that these proceedings are held in the English language.³

Having seen the reply of the defendant⁴.

Having seen the documents presented.

Having heard the testimonies of the parties.

Having seen the note of submissions of the parties.⁵

Having seen that the case was adjourned for judgement for today with regard to the preliminary plea.⁶

Considered:

Facts in brief.

This case resolves on the property number 3, Fil-logga number 15, Triq San Duminku, iz-Zejtun. The plaintiffs are claiming that the residence was rented out to the defendant for a period of fifteen years for a rent of two hundred and thirty two Euro and ninety cents (€232.90c) per annum. They claim that the defendant never paid such rent. This agreement lapsed on the 15th December 2019 and although there were

¹ Folio 1 to 3 of the acts.

² Folio 4 to 23 of the acts

³ Folio 29 of the acts.

⁴ Folio 30 of the acts.

⁵ Folio 127 to 135 of the acts.

⁶ Folio 126 of the acts.

negotiations with the defendant by the plaintiffs so that the former would buy the property, such negotiations failed. However, the defendant did not vacate the property. Through this action, the plaintiff are asking the Board to order the defendant to vacate the premises.

On the other hand in her sworn reply the defendant is claiming that the Board is not competent to decide on the agreement which she holds was simulated ab initio. Moreover, defendant claims that she never lived in the said property and that she had bought it for Lm5050 on the 22nd October 1994. Defendants also claims that the Water Services Corporation also recognised her as the landlord. Moreover, through a power of attorney dated 15th December 1994 the plaintiffs had given authority to the defendant to sell the property.

Considered:

Evidence

Jacqueline Tite gave evidence on the 30th May 2019 and held that she met Andrew Bugeja and told him that she wanted to buy a property in Malta and he told her that he could help out. He came a few days later and took her to see the property in question and agreed to a price of Lm 5050. This was in 1994. She gave a deposit of 10% and gave Andrew Lm50 for the commission of the sale of property. She met with Andrew's family and also with Notary Hayman. The notary also made a power of attorney that night and the agreed price was Lm5,000. She held that the deposit was paid in Sterling. Dr. Hayman told me that I bought the property. She signed the contract which Dr. Hayman took away, and a power of attorney which he wrote in his handwriting. She stayed in the property for 8 years until her mum turned very old and she stayed with her and that she is doing it up to live back in it.⁷ She did not make any payments to the Bugeja family because she owns the property.

⁷ Folio 45 of the acts.

Witness confirms that she left all the paperwork with notary Hayman. She recognises the signatures shown at Folio 7, 33, 34 and 35. Folio 36 is the Arms document which she asked to be in her name. Document 37 is what Notary Hayman gave her, she thinks the next day. The papers were signed by the family Bugeja on the 15th December 1994. The On hundreded Maltese Liri (LM100) is the deposit and it was signed by Andrew Bugeja. Tessie Mula help her to switch the electricity on her name⁸. After she heard of Notary Hayman demise she approached her lawyer and was asked to go to the notarial archives in Valletta since she did not have the contract. She picked a copy of the contract and asked Andrew to do away with the power of attorney. Then she heard nothing from them and this process began.

Maria Victoria Cassar gave evidence in the Maltese language on the 4th October 2019. She testified that “li ilha habiba mal-intimata snin twal. Tghid li hija kellha habiba taghha li jisimha Evelyn Falzon u kellha l-partner taghha Andrew Bugeja.⁹ L-intimata qaltlu li xtaqet post u qalilha li jaf b’wiehed. U hadha ghand ommu biex jaghmlu l-kuntratt tad-dar. Taf li ghamlu l-karti kollha ghand In-nutar Hayman u li l-hallset hamest’elef Maltin (Lm5,000). Il-flus hadhom Andrew. Kienu erbat’ ahwa u ommhom. Taf li kien hemm Angelo, Andrew Ms. Mula u l-iehor ma tafx x’ jismu. Tghid li marret f’dan il-post u kienet tiehu hsiebu. Tghid li l-post kwazi kienet tiehu hsiebu sa issa u Jacqueline Tite tafdaha f’kollox ghax qisha zijitha. Tite tghix l-Ingilterra. Tghid li Tite daret dawra mieghu sew meta xtratu u c-cwieviet tal-post kienu ghandha. Tghid li ma tafx li qatt Tite hallset kera ghax il-post hu taghha.”

Cross-examined she confirms that: “taf li Tite xtrat il-post. Tghid li hija u l-partner taghha kienu prezenti meta inxtara. Tghid min kien hemm

⁸ Folio 47 of the acts.

⁹ Folio. 51 of the acts.

waqt ix-xiri. Sa fejn taf hija darba iffirmaw, meta qablu. Tghid li kien hemm l-ahwa Bugeja, in-nutar u n-nanna. Tghid li Tite ghamlet xi zmien tghix fih u wara hija xtrat wiehed Birzebbugia u marret hemm. Hija baqghet tiehu hsieb il-post taz-Zejtun. Tichad li qatt inkera. Kien hemm wiehed li kien qed jaghmel xi xogholijiet ta' manutenzjoni u kien joqghod hemm biex jindukrah. Kien barrani u mill-Ghana.”

Jacqueline Tite gave evidence on the 4th October 2019 whereby she confirmed that the premises were never sub leased to others.¹⁰ She confirms that there is still a man living inside the house since he is doing renovations. She confirms that the sale was done with the assistance of Notary Hayman and she left the papers with him. She confirms that she had a power of attorney for quite a while. This was done so that I could sell the property at the agreed price and pay the family's capital gains. She confirms that there was a letter of cancellation. The revocation of the power of attorney came at 2016, after 22 years.¹¹ She confirms that she owns the property and never paid rent. She confirms that there were remedial procedures to finalise matters.

Upon re-examination she stated that Notary Hayman was hired by the Bugejas. She states that apart from the five thousand Maltese Liri (Lm 5000) she did not pay any other sums. She also paid the fifty Maltese Liri (Lm50) commission to Andrew Bugeja at that time. In the 22 years after, no one asked for any payment.¹²

Angelo Bugeja gave evidence in the Maltese language on the 7th November 2023. He stated: “li hu rahha darba jew darbtejn lill-intimata. Jghid li iltaqa' maghha ghand ommu.¹³ Jghid li jiftakar li qalilhom li

¹⁰ Folio 62 of the acts.

¹¹ Folio. 64 of the acts.

¹² Folio 66 of the acts.

¹³ Folio 92 of the acts.

setghu jaghmlu kuntratt ta' kera ghal hmistax-il sena.¹⁴ Jghid li ma jaf x'kien il-hsieb tan-Nutar Hayman u lanqas ta' ommu li ilha mejta madwar disgha u ghoxrin (29) sena. Isostni li Hayman qalilhom li l-intimata ma tistax tixtri l-post ghax ma kinux jippermettu l-ligijiet ta' dak iz-zmien. Jghid li hu ma jiftakarx il-prezz u l-flus hadithom ommu. Jaghraf il-firem fuq folio 4, 5, 6 u 7. Jaghraf il-firma a folio 35 tal-process. Jghid li l-kitba hija tal-avukat (tan-Nutar Hayman). Ma jaghrafx il-firma tieghu a folio 38. Jghid li ommu qatt ma haditilha xejn. Jghid li huwa qatt ma ircieva kera wara il-mewt t'ommu u marru ihabbtu l-bieb xi 15- il sena ilu u hareg jifthilhom wiehed ta' karnaggjon skura. Jikkonferma li jekk thallsu xi flus ghaddewhom lil ommu. Ma jiftakarx fuq xi senserija.”¹⁵

Antida Bugeja gave evidence on the 20th February 2024. She declared that: “lill-intimata ma targhafhiex ghax ghadda hafna zmien. Ma kinux jafu x'ghamli fuq dak il-post. Ma tiftakarx xi ftehm. Taghraf il-firma a folio 7 bhala taghha.¹⁶ Ix-xhud issa gharfet lill-intimata. Taghraf il-firma bhala taghha a Folio 35 tal-process. Tghid li l-fond de quo krewh lis-sinjura.”

Cross-examined she declared: “li l-post ma tafx x'kien jigri minnu illum. Ma tafx jekk l-intimata toqghodx hemm.”

Anthony Bonnici gave evidence on the 20th February 2024. He declared that: “jaqbel li Alfred Bugeja ma kienx hawn Malta u kienu ghamli prokura.¹⁷ Jghid li ma kienx prezenti meta gew iffirmati l-karti u l-ahhar li kien mar il-post sab persuna ta' karnaggjon skura. Kellu xi tfal mieghu u qal li qed jikri minn xi hadd Birzebbugia. Ma kienx qed

¹⁴ Folio 93 of the acts.

¹⁵ Folio 101 of the acts.

¹⁶ Folio 108 of the acts.

¹⁷ Folio 110 of the file.

jaghmel xoghol hemmhekk dan is-sinjur. Jghid li kienu qalulu li krewh lis-Sinjura Tite.”

Cross-examined he declared that: “jghid li l-persuna li sab hemmhekk kellmu. L-ewwel qallu li kien qed jikrieh u wara xi hmistax rega’ mar u qallu li qed thallieh joqghod hemm bhala tpattija ghal xi xoghol li ghamel. Kien qed jirrisjedi hemmhekk mal-familja. Qatt ma raha l-intimata fil-post. Dejjem persuni differenti ra ghax kellhom post iehor vicin. Jghid li f’dan il-post mar xi 3 darbiet.”¹⁸

Andrew Bugeja gave evidence on the 28th Mejj 2024 and declared: “li hu u hutu ghandhom post qadim iz-Zejtun li jsibuh il-logga, 11 St. Domenic Street. Hemm xi 4 jew 5 postijiet. Jghid li ghandu jkun kienet krietu l-intimata u kien ha hsieb in-nutar Hayman li illum miet. Jghid li ma jafx x’iffirma jew le u dan b’referenza a folio 4 u 7 tal-process. Pero’ f’pagna numru 7 qisha l-firma tieghu. Jaghraf il-firma ta’ Antida li tigi ohtu pero’ l-ohrajn ma jaghrafhomx.¹⁹ Jghid li ommu kien jisimha Carmela u illum mejta u l-firma hija taghha. Jghid li l-intimata kienet qed tifittex post u marru maghha ghand in-nutar Hayman. Ma jafx x’tip ta’ negozju sar pero’ in-nutar qalilhom li jista’ jaghmilha bhala kera u halsithom 15-il sena kera. Jinsisti li kienet kirja. Wara 15- il sena marru jiccekjaw u sabu wiehed iswed fil-post. Ma jafx kemm inkera fis-sena pero’ hallset kollox f’daqqa. Jghid li wara li ghaddew hmistax- il sena u sentejn hija ma taghthomx ic-cavetta. Hu ma jiftakarx kif iltaqghu mal-intimata.” Being referred to folio 33 to 35 of the acts he declared that: “a folio 35 qisa tieghi l-firma. Isostni li kien in-nutar Hayman li kien irranga l-karti kollha.” Referred to folio 37 and 38 of the acts he declared: “..qisha il-firma tieghi. Jghid li dak iz-zmien Tite ma setatx tixtri propjeta’ hawn u allura Hayman qalilhom biex jaghmluha kera. Jghid li min ghalih li il-ftehim kien li jinbiegh tmintax-il elf (Lm18,000)

¹⁸ Folio 111 of the file.

¹⁹ Folio 121 of the file.

il-post u ma jafx jekk kellhiex flus biex tixtrih u imbaghad in-nutar qalilhom jekk tridu taghmlu kera u tixtri wara.”

Questioned by the Board he declared: “li l-kirja thallset kollha f’daqqa, In-nutar iddecieda. Hallset hmistax-il sena f’daqqa.”²⁰

Considered:

Plaintiffs are alleging that the lease made to the defendant had expired and the latter is refusing to vacate their property. On the other hand, defendant is stating that she had bought the property for five thousand Maltese Liri (Lm5,000) and it was never rented. The defendant in her note of submissions is claiming that what happened is the ‘*casus classicus of simulation*.’²¹ Defendant also submits that “*Fraus omnia corrumpit*” and “*Nullum casus Producit nullum effectum*.”

Considered:

This is a preliminary judgement on the first plea raised by the defendant which reads:

‘Illi, in linea preliminari, in-nuqqas ta’ kompetenza ta’ dan l-Onorabbli Board sabiex jitratta u jiddeciedi dwar ftehim ta’ kera li huwa simulat ab initio.’

Considered:

It is very evident from the testimonies given by the parties that there is a conflict of versions²². Plaintiffs say that they leased the property for a long period of time and that the five thousand Maltese Liri (Lm5,000) represent the payment of the rent that had to be covered for the duration of that period. On the other hand defendant states that it was a sale.

²⁰ Folio 125 of the file.

²¹ Folio 129 of the file.

²² See the quoted judgement regarding conflicting evidence in the case **Jerry Polidano vs Antonella Pulis** (Rik. Nru. 56/2021) decided on the 20th January 2025 by the Court of Magistrates (Malta) Civil Jurisdiction per Magistrate Victor G. Axiak- pages 17 to 21.

They both however agree that they practically left all their papers in the hands of Notary Hayman.

Considered:

The documents in the acts are the following:

1. Lease agreement dated 15th December 1994 whereby the transferors (now plaintiffs in these proceedings) and transferee (now defendant in these proceedings) agreed to lease the said property for an annual rent of one hundred Maltese Liri (Lm 100).²³
2. Power of attorney dated 15th December 1994 which refers to *a deed published on the same day and plaintiffs authorise the defendant to sell the said tenement for the price not exceeding LM 5,000.*²⁴
3. Water Services Corporation bill dated 27th July 1995.²⁵
4. Receipt of five thousand Malta Liri (Lm5,000) ground rent received in advance dated 15th December 1994.²⁶
5. Receipt of one hundred Malta Liri (Lm100) being part payment on 10% deposit on five thousand and fifty Malta Liri (LM5050) dated 22nd October 1994.²⁷

Considered:

The applicable legal provision that merits attention to the issue under examination in the opinion of the Board are the following:

²³ Folio 4 to 7 of the acts.

²⁴ Folio 33 to 35 of the acts.

²⁵ Folio 36 of the acts.

²⁶ Folio 37 of the acts.

²⁷ Folio 38 of the file.

Chapter 64- Reletting of Urban (Regulation) Ordinance

Article 16(4): Without prejudice to any other law the Board shall also decide all matters affecting the leases of urban property including residential as well as commercial property in terms of Title IX of Part II of Book Second of the Civil Code, Of Contracts of Letting and Hiring, including causes relating to the occupation of urban property where such leases have expired after the termination of the rent, and any damages resulting during such period of occupation:

Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board.²⁸

Chapter 16 of the Laws of Malta further provides:

Article 985: Things which are impossible, or prohibited by law, or contrary to morality, or to public policy, may not be the subject-matter of a contract.

Article 987: An obligation without a consideration, or founded on a false or an unlawful consideration, shall have no effect.

Article 988: The agreement shall, nevertheless, be valid, if it is made to appear that such agreement was founded on a sufficient consideration, even though such consideration was not stated.

Article 989: Where the consideration stated is false, the agreement may, nevertheless, be upheld, if another consideration is proved.

Article 990: The consideration is unlawful if it is prohibited by law or contrary to morality or to public policy.

²⁸ Emphasis of the Board.

Article 991(1): Where the consideration for which a thing has been promised is unlawful only in regard to the obligee, any thing which may have been given for the performance of the contract, may be recovered.

(2) If the consideration is unlawful in regard to both contracting parties neither of them, unless he is a minor, may recover the thing which he may have given to the other party, saving the provision of Article 1716.

Article 992(1): Contracts legally entered into shall have the force of law for the contracting parties.

(2) They may only be revoked by mutual consent of the parties, or on grounds allowed by law.

Article 993: Contracts must be carried out in good faith, and shall be binding not only in regard to the matter therein expressed, but also in regard to any consequence which, by equity, custom, or law, is incidental to the obligation, according to its nature.

Article 1525 (1): A contract of letting and hiring, whether of things or of work and labour, may be made either verbally or in writing, provided that a contract of letting and hiring of urban property and of a residence and of a commercial tenement entered into after the 1st January, 2010 shall be in writing.

Chapter 69 and Chapter 199 of the Laws of Malta

The Rent Regulation Board (hereinafter referred to as the "Rent Board") established under the Reletting of Urban Property (Regulation) Ordinance shall decide all matters affecting the leases of urban tenements including residential as well as commercial tenements including causes relating to the occupation of urban tenements where

such leases have expired, and any damages resulting during such period of occupation. Other leases fall under the competence of the courts of civil jurisdiction while matters relating to agricultural leases shall fall under the competence of the Rural Leases Control Board appointed according to the provisions of the Agricultural Leases (Reletting) Act: Provided that matters relating to the validity of a contract of lease, shall be examined by the courts of civil jurisdiction, so however, that any other matter following the determination of such matters relating to validity shall fall under the competence of the Rent Board²⁹.

Considered:

In the book ‘**Massimarji tal-Imhallef Philip Sciberras- It-Tieni Volum: Dritt Sostantiv**’ per Honourable Mr. Justice Grazio Mercieca one finds the following quote in relation to an illicit cause:

‘Mil-linja difensorjali adottata mill-konvenuta hu desumibbli illi din qed tittanta tehles mill-obbligazzjoni kontrattwali taghha, minnha liberament assunta, fuq il-bazi tal-illecita’ tal-kawza tal-kuntratt, minnha spjegata bhala uzura, kif fuq gja ntqal;

F’ kazijiet bhal dan il-Qorti trid toqghod ferm attenta illi minn naha ma thassarx ftehim, meta invece messu jibqa’ fis-sehh, u minn naha l-ohra ma zzommx haj ftehim fejn dan jirrizultalha vizzjat ghal xi raguni valida fil-ligi;

Mill-atti tal-kawza din il-Qorti ftit jista’ jkollha dubju illi l-konvenuta kienet, jew messha kienet a konoxxenza tal-allegat illecita’ li issa qed taddebita lill-kontrattazzjoni. Dan ghaliex hi kienet kompartecipi u konsenzjenti fih. Anke jekk ghar-regola generali contra scriptum testimonium non scriptum testimonium non feritur huma ammessi l-eccezzjonijiet (Vol. XXXIX.iii.855) bhala f’dan il-kaz, difficilment

²⁹ Underlined by the Board.

imbaghad jista' jigi accettat bhala xi skuzanti legittima dak mistqarr mill-konvenuta fl-Affidavit taghha illi hi ma tatx kaz x'qed jaqra in-Nutar jew li ma tantx tifhem wisq ghaliex kull ma kien jinteressaha kien li l-attur jghaddilha l-flus;

*Indubbjament l-iskrittura tinghata piz determinanti sakemm ma tigix newtralizzata minn provi skjaccanti, univoci u konkluzivi. Dan l-oneru kien jinkombi fuq il-konvenuta in kwantu hi kellha turi ghas-sodisfazzjon tal-Qorti illi l-obbligazzjoni taht ezami kienet tabilhaqq kif minnha allegat.*³⁰

In the same book then the eminent author the Honourable Mr. Justice Grazio Mercieca quotes the following in relation to the nature and elements in relation to the contract of lease:

'Issa ma jista' qatt ikun ddubitat mill-istess definizzjoni li jaghti l-Kodici Civili fl-artikolu 1526(1) illi l-lokazzjoni hi:-

- (i) Kuntratt konsenswali li minnu jitwieled dritt personali ta' godiment ghall-vantagg tal-kerrej. La locazione trasferisce al conduttore un diritto personale e non reale della cosa egli locata (Kollez. Vol. XX.i.84).*
- (ii) Kuntratt ghal zmien fejn il-funzjoni tipika tal-ftehim jigi realizzat bid-dekorrenza taz-zmien u bl-adempiment ta' certi prestazzjonijiet. Dik tas-sid-lokatur konsistenti filli jippermetti lill-kerrej tieghu tgawdija tal-haga; dik tal-kerrej, li jhallas il-korrispettiv miftihem. La locazione e' un contratto per cui si da il godimento di una cosa per un*

³⁰ Pages 44 and 45.

*tempo determinato e mediante un determinato fitto da pagarsi dall' inquilino (Kollez Vol XXIV.ii.642).*³¹

With regards to the issue of simulation, in the book by the late eminent author the Honourable Mr. Justice Emeritus Philip Sciberras in '**L-Alfabet tal-Kodici Civili- Volum S**' one finds the following quotation:

*'Huwa principju fil-gurisprudenza illi meta l-partijiet jaghmlu simulazzjoni bejniethom biex juru haga b'ohra, ma tistax wahda mill-partijiet tmur kontra l-ohra ghall-impunjazzjoni ta' l-att li realment riedu (Coen, Simulazione, no. 133), ghaliex ikun verament immorali illi wara li l-partijiet urew haga ghal ohra, imbaghad wahda mill-partijiet tkun trid twaqq'a' dak li realment riedu, ammenoke' mhix haga illecita jew kontra l-ligi; li mhux il-kaz'. (Eliza Agius vs Joseph Mamo noe-Qorti tal-Kummerc, 25 ta' Frar 1935 konfermata fl-Appell fis-6 ta' Dicembru, 1935)*³².

Considered:

In the book '**Massimarji tal-Imhallef Philip Sciberras- L-Ewwel Volum: Procedura Civili**' per Honourable Mr. Justice Grazio Mercieca one finds the following quote in relation to competence of the Rent Regulation Board:

*'Gie imbaghad osservat illi una volta l-Qorti tasal ghall-konkluzjoni li titolu bhal dan ikun jeszisti, allura ma tibqax hekk kompetenti u f'kaz li t-titolu vantat ikun wiehed ta' lokazzjoni l-kompetenza ssir tal-Board specjali li Jirregola l-Kera. Ara decizjoni fl-ismijiet Vincent Camilleri noe vs Pio Muscat, Appell Inferjuri, 21.01.1986'*³³

Considered:

³¹ Pages 844 and 845.

³² Page 294.

³³ Page 335.

It is well known that the plea in relation to the competence of the Board is intrinsically related to the application and to the claims of the plaintiff, however, this Board believes that one cannot examine the plea raised by the defendant without investigating the true relationship between the parties, the documents presented, the testimonies of the parties and the sequence of events so that one can establish the real relationship between the parties, that is if the agreement between the parties was a relationship of sale or that between a lessor and lessee and thus a lease *in vigore* in 1994 and in the subsequent 15 years.

If one had to consider that there was a lease agreement for 15 years as claimed by the plaintiffs and it was agreed that the defendant had to pay one hundred Maltese Liri (Lm100) per year, then, the amount that had to be paid in advance was one thousand and five hundred Maltese Liri (Lm1,500) (Lm 100 x 15 years) and not – five thousand Maltese Liri (Lm5000) that was in fact actually paid and agreed by both parties, to have been paid since the said payment has in no manner whatsoever been contested by the plaintiffs to have been received by them and paid by the defendant. This discrepancy in the two amounts is very important and indicative that in reality this was a sale of the property and not a lease of the property.

The Board also finds it strange that the plaintiffs gave the defendant a power of attorney so that she could sell, on their behalf the said property, if the latter was not owned by her and this on the same day that they allegedly leased the property and accepted the five thousand Maltese Liri (Lm5000) as payment when in fact according to the lease agreement they were only owed one thousand and five hundred Maltese Liri (Lm1,500) as per the said lease agreement.

Considered:

The Board believes that ALL the parties in this transaction had the intention to sell and buy the property. The property was worth five thousand Maltese Liri (Lm5,000) which the plaintiffs believed was a fair and just price and the defendant was willing to buy the said property for that price. The only issue that cropped up was that the defendant was not able to buy the property for that price in view of the prevailing laws at the time which prohibited non-Maltese citizens from buying property which was worth less than fifteen thousand Maltese Liri (Lm15,000). Thus, the Board believes that the parties instructed Notary Hayman to find a solution to this situation and the latter unethically and illegally suggested that they could enter into a fictitious lease agreement which in fact they did and was acceptable to all. And this is the reason that the defendant was also given a power of attorney which allowed her to sell the said property, because she had fully paid the agreed price between the parties to acquire the said property.

Considered:

The Board has the power and authority to investigate the merits of the relationship between a lessor and a lessee³⁴. The Board cannot investigate other relationships and if there was a sale it cannot investigate the issues claimed by the plaintiffs any further. It is the competence of the ordinary courts to establish if what this Board believes was a simulation is in effect thus and thus the Board believes that it is The First Hall of the Civil Court which is competent to resolve the matter.³⁵

Decide:

Therefore, for these reasons, the Board is accepting the first plea of the defendant and declares that it is not competent to investigate and decide

³⁴ Vide- ‘L-Alfabbett tal-Kodici Civili- Volum K’ per Honourable Mr. Justice Emeritus Philip Sciberras, pages 45- 52.

³⁵ ‘Massimarji tal-Imhallef Philip Sciberras- L-Ewwel Volum- Procedura Civili’, page 355- punt (v).

the case further since in the opinion of the Board the transaction between the parties was simulated by all of them in order to find a way around the prevailing laws at the time that prohibited the transfer of immovable property to non-Maltese citizens for an amount that was under fifteen thousand Maltese Liri (Lm15,000). Consequently, the relationship between the plaintiff and defendant is not that as between lessor and lessee and this Board is therefore not competent *ratione materiae* to investigate and decide the issues raised by the plaintiffs any further.

The Board, therefore, transmits the acts to the Registrar of the Civil Courts and Tribunals to be assigned to the competent Court according to law.

Magistrate Dr. Monica Vella LL.D., M. Jur.
Chairperson

Heidi Zammit
Deputy Registrar.