RENT REGULATION BOARD
MAGISTRATE DR. LEONARD CARUANA LL.D., M.A. (FIN. SERV)
CHAIRPERSON

Application Number: 664/2022 LC

FRANK ATTARD (I.D. 523956M) AND HELEN ATTARD (I.D. 856452M)

VS

KATERINA PASHCHENKO (I.D. 61440A)

Today, the 25th July, 2025

The Board,

Having seen the application of Frank Attard (I.D. 523956M) and Helen Attard (I.D. 856452M), whereby for the reasons therein declared, demanded this Board to:

I. *Declare that the respondent owes the applicant the sum of €2,936 representing the rents and utility bills which till today are still pending;*

II. *Liquidate such damages and other amounts as the Board deems fit and opportune;*

III. Order the respondent to pay the amounts above claimed.

With costs of this present as well as judicial missives, and interest at the highest rate so permitted by law.

Having seen the reply of Katerina Pashchenko dated the 28th April, 2023, wherein apart from submitting her pleas to the case, filed a counter-claim, whereby for the reasons therein stated, demanded this Board to:

I. Declare the lease agreement of the premises No 3, of 35, Giovanna Flats, Triq Fra Duminku Mifsud, Ħal Għargħur was seriously violated by the plaintiffs, or either of them, since the illegal access started in the premises of the respondent..

II. Declare the reconvened plaintiffs in solidum, or either of them, as debtors of the reconvening respondent in the global amount of fourteen thousand, two hundred and thirteen euro and eighty nine cents (€14,213.89)

III. *Order the reconvened plaintiffs in solidum, or either of them, to pay the same reconvening respondent the said amount claimed of fourteen thousand, two hundred and thirteen euro and eighty nine cents (€14,213.89).).*

With costs and interests according to law.

Having seen the reply of the reconvened plaintiffs for the counter-claim, dated the 9th June, 2023;

Having heard all the witnesses produced;

Having seen all the documents presented;

Considers;

That the reconvened plaintiffs are the owners of the penthouse numbered three at 35, Triq Fra Duminku Mifsud, Għargħur. In terms of several private agreements, the reconvened plaintiffs had leased the property to the reconvening respondent for a number of years, precisely as from the year 2014. The last private agreement entered between the two parties is the lease agreement dated the 29th February 2020,[1] by virtue of which the reconvened plaintiffs leased the property subject to these proceedings to the reconvening respondent for a period of one year, with effect from the same date of the agreement. The Parties agreed that the reconvening respondent had to pay the monthly rent of €600 payable on the first day of each month.

The reconvened plaintiffs premise that the agreement between the Parties was always made in light of the fact that structural works within the building were meant to be carried out as the intention of the reconvened plaintiffs was always to have another level built on the property leased to the reconvening respondent. To this effect, as premised by the reconvened plaintiffs, the agreed rental payment was severely reduced when compared with the rental prices on the market, in order to compensate for the inconvenience which the reconvening respondent was meant to suffer whilst the works were ongoing. The said structural repairs started on the 15th May 2019 on the basis of the Planning Authority permit number PA/08465/18.[2] During March 2020, precisely during the lock-down period, imposed as a result of the Covid-19 pandemic, the reconvening respondent spent several months in Russia with her family. According to the

[1] Doc. "A" a fol. 48 of the acts of these proceedings.
[2] Doc. "A" a fol. 5 in the acts these proceedings.

reconvened plaintiffs, they ensured that the works that needed to be carried out inside the apartment leased to the reconvening respondent, be carried out in her absence, in order to ensure the least possible inconvenience to the same respondent. The reconvened plaintiffs declare that the reconvening respondent was kept abreast of all that was important to her, and this also by informing her about all the mail that had arrived in the property. Eventually, the reconvening respondent returned to Malta on the 6th October 2020, at a point when despite the property was habitable, some finishings were not yet complete and the property needed to be cleaned from tools and construction debris.

The reconvened plaintiffs, premise that towards the end of 2020, after the reconvening respondent returned back to Malta, she failed to honour her obligations and, subsequently, as confirmed on oath by the reconvened plaintiff Frank Attard, a registered letter was sent to her in November 2020[3], confirming that the intention of the reconvened plaintiffs was not renew the lease agreement. As stated in the affidavit of the reconvened plaintiff Frank Attard, the reconvened defendant failed to:

a) Pay the monthly rents until February 2021;
b) Pay the utility bills of water and electricity until February 2021.

According to the breakdown prepared by the reconvened plaintiff Frank Attard and exhibited together with his affidavit, the global sum of €2,926 is owed to the reconvened plaintiffs, which balance represents the monthly rents and the utility bills not paid.

[3] Such letter is not exhibited.

The reconvened plaintiff Frank Attard testified further that in addition to the said sum of €2,926, they are claiming from the reconvening respondent:

> c) A ten per (10%) cent increase in rent, which is due to them and
>
> d) Twenty five per cent (25%), owed to reconvened plaintiffs, for the period when third parties resided in the property.

Considers

That on part of the reconvening respondent, she confirmed that she was absent from Malta from the beginning of March 2020 for a number of months, and this because, as she testified: "*for personal reasons but due to the global COVID-19 restrictions at the time, I was unable to return to Malta*"[4]. The reconvening respondent testified that during her absence, the Parties agreed to lower the monthly rent to €500 and on the 4th September 2020, she paid the rent "*covering the five previous months during which, is the period when (she) was stuck in Russia*".

Eventually, upon the lifting of the restrictions related to the global pandemic, the reconvening respondent returned to Malta, and as she testified: "*on the 6th October, 2020, I was quite shocked to find out that my apartment was in a state of disarray as I found that it had been demolished and destroyed. I felt quite violated at that moment, as I had absolutely no idea that people had entered my apartment without my consent and started carrying out works. I immediately confronted Frank who told me that I had already known*

[4] Affidavit of Respondent.

that works needed to be done. However, at no point was I ever consulted, nor did I ever consent to such works being carried out in my apartment."

As a result, the reconvening respondent replied to the principal claim put forward by the reconvened plaintiffs, arguing that nothing is owed by her to them, since the demand for payment of rent arrears, outstanding utility bills, additional sums allegedly due with regards to sub-letting of the leased premises, as well as a request for compensation for damages sustained by the reconvened plaintiffs, as being unfounded in law. On her part, and in addition to the reply, the reconvened defendant filed a counter-claim, for a declaration that the reconvened plaintiffs breached the lease agreement, together with a deceleration of responsibility for damages sustained by her in the amount of €14,213.89. Under these damages claimed, the reconvening respondentclaimed the following damages:

a. €347 representing rental expense incurred by her for an apartment in Swieqi for October 2020;

b. €2,500 representing payment of rent to the reconvened plaintiffs covering the period between April and August 2020 which, she feels, where not due as the rental agreement was null and void;

c. €950 representing the deposit paid by the reconvening respondent which was not returned back by the reconvened plaintiffs;

d. €6,104 as a result of personal items which were damaged;

e. €110.89 representing home items which were damaged;

f. €2,400 representing the value of a missing watch of the make RADO;

g. €880 representing expenses incurred due to dry-cleaning services;

h. €139 representing expenses incurred by the reconvening respondent as a result that she could not work from home;

i. €783 representing the expenses incurred by her when she was constrained to return to Russia.

Considers

That, the two Parties in these proceedings presented proof to sustain their respective claims and whilst they highlight different aspects which they deem relevant to their contestation, it clearly emerges that:

a. The lease agreement of the 1st March 2018, which lease agreement preceded the one subject to this case, included the following clause after the last clause but above their signatures: [5]

"*Important Notice*

By mid-June-18 works may accour [recte: occur] *in the block of the flats such as panel at the back terrace and enlarging the sitting room area over the front terrace in penthouse. Building a flat (4) on top of the*

[5] A fol. 243 of the acts of these proceedings.

> *penthouse. Preparation for a Lift for the Flats. Maintenance of the existing Property*."

b. The present lease agreement, that is that of the 29th February 2020, contained no such clause or reference to any works.

c. The various messages exchanged between the Parties confirm that the reconvening respondent was aware that improvements and works were being carried out in the Block. She states, however, that It was not clear at which stage the works in her apartment had commenced and therefore, that the reconvened plaintiff Frank Attard together with third parties entered inside the property leased to her. For instance, in a message from the reconvened plaintiff to the reconvened respondent dated the 26th August 2019, it is written: [6]

> *Frank: If you want to sleep more no problem for me I will enter from the roof as I am doing at the moment so you be more in peace.*
> *Katerina: But won't there be noise?*
> *Frank: I have a delivery of some material like bricks and sand I don't think it is noisy like when I used jigger.*
> *Katerina: Ok*
> *Frank: If for some reason I have to use noisy tools, I try to start that particular job after 9am.*

It is noteworthy that even when the reconvening respondent notified the reconvened plaintiff that she was meant to return back to Malta on the 6th October 2020, his reply was: "*I am doing some work in the flat will finish it next week*"[7]. This message has to be read in the context of all the messages exchanged between the Parties, whereby the indications

[6] Messages a fol. 260 of the acts of the proceedings.
[7] Message a fol. 164 and 165 of the acts of the proceedings.

given by the reconvened plaintiff Frank Attard on numerous occasions were that works were being carried out on the front and back terraces.

d. That on the 6th October 2021, upon arriving in her leased property, the reconvening respondent found the property in the condition as seen in the photographs exhibited by her (vide fol. 57 *et seq* of the acts of these proceedings). The reconvened plaintiff Frank Attard confirmed that the condition of the property leased to reconvening respondent in October 2020 was as seen in the said photos, when he confirmed that[8]:

> *Dr. Balzan: 57 sa 61.*
> *Qorti: Sa 61. Mela għandek il-57 qiegħed hawn sewwa. 58, 59, 60 u 61. Tajjeb fuq dawn ħa isaqsik.*
> ***Dr. Balzan: Ara naqblux li dawn ir-ritratti juru l-istat tal-appartament meta waslet Katerina.***
> ***Xhud: Iva hekk kien imma ma talbitx flus ta' dak ix-xahar**.*
> *Dr. Balzan: U allura naqblu illi l-post min dawn ir-ritratti ma kienx abitabbli hux hekk.*
> *Xhud: Dakinhar le fil-fatt għalqet banda oħra.*
> *Dr. Balzan: U fil-fatt inti ma pretendejt li tibqa tgħix hemm hux hekk.*
> *Xhud: Le anzi offrejtilha il-flat 2 jekk trid ukoll.*

e. The reconvening respondent states she was not aware that works were being carried out inside the property leased to her, and that the reconvened plaintiff together with third parties entered inside the property leased to her without her

[8] Cross-examination of Applicant, transcript a fol. 211 of the acts of these proceedings.

knowledge or consent. This has been confirmed by the reconvened plaintiff himself when in cross-examination he testified as follows (emphasis of this Court):

> *"Dr. Balzan: Tajjeb. F'dak il-kuntratt li qed tgħid miktuba bl-aħmar inti tajtha deskrizzjoni dettaljata tax-xogħlijiet li kellhom isiru.*
>
> *Xhud: Deskrizzjonijiet u kienet miktuba anke mal-faċċata tal-*
>
> *Dr. Balzan: Le, le, le. Apparti tajtha deskrizzjoni dettaljata tax-xogħlijiet li kellhom isiru.*
> ***Xhud: Ma niftakarx.*** [9]
> *...*
>
> *Dr. Balzan: Inti jekk ngħidlek li fil-fatt ma nfurmajtiex tal-construction site biex tibqa tħallas il-kera.*
>
> *Xhud: Le mhux l-argument.*
>
> *Dr. Balzan: Le mhux l-argument. Issa jien qed ngħidlek mhux qed nargumenta miegħek qed ngħidlek stat ta' fatt u fuq qed naqblu għal menu b'mod parzjali illi dan l-appartament kien construction site u għidtilna fil-bidu tax-xhieda tiegħek li fil-fatt bnejt sular inti fuqu jiġifieri m'intiex tagħmel affarijiet li ħaddieħor, jien qed ngħidlek l-unika raġuni għaliex ma nfurmajtiex dwar l-istat eżebiti f'dan il-proċess huwa biex int tkompli tinkassa il-kera u lilha dan il-*

[9] A fol. 205 of the acts of these proceedings.

construction site li lanqas l-annimali ma jgħixu fih aħseb u ara n-nies, tibqa iddaħħal il-kera.

Qorti: Hu qed jissuġerilek illi inti dak li għamilt għamiltu bi ħsieb illi tibqa tieħu il-kera. Dik hi.

Xhud: Le naħlef li mhux hekk. Anzi għandi r-ritratti li juru li l-madum li kien hemm qabel stajt ħallejtu, imma għax kien in good condition u għidt din il-flat tħobbu, ħafna tħobbu il-flat. ***Għidt issa naqbad nibdel il-madum u ntijulha qisu bħala sorpriża qas ridt ngħidilha li ħa nibdel il-madum. Jien x'ridt nibdlu nagħmel il-madum, ġieni elf u ma nafx kemm biex bdiltu, għandi r-ritratti li juru li l-madum għadu fi stat tajjeb maħsul u kollox. Inti jekk tmur tixtri xi rigal jew present lil-mara mhux ħa tmur tgħidilha mort nixtrilek bukket fjuri****.*[10]

...

Dr. Balzan: Allura x'kont ħa tagħmel ejja ngħidu li kieku ma marritx ir-Russja, x'kont ħa tagħmel?

Xhud: ***Navża hux u kont ngħidilha sewwa umbagħad it is up to her****.*

Dr. Balzan: U allura l-fatt li marret ir-Russja qed ngħid sew li ma avżajtiex f'dan is-sens x'se tagħmel mhux minħabba li ridt tagħmillha sorpriża u tiġi lura u tara x'appartament għandha sabiħ. Imma għax għidt issa iċ-ċans u għidt din telqet ir-Russja mela issa iċ-ċans.

[10] A fol. 208 of the acts of these proceedings.

Xhud: Dik l-intenzjoni tiegħek qed tgħid hekk tiegħi ma kienitx hekk.[11]

...

Qorti: Imma inti dħalt meta ma kienx hemm hi? Dik id-domanda.

Xhud: Kont nidħol tlett darbiet fil-ġimgħa.

Qorti: Fl-appartament tagħha.

Xhud: Tagħha. Daqqa qsari, daqqa niftaħ għax hemmhekk forsi ma tafux imma hdejha stess kellha penthouse oħra u jien ġieli kont niftaħ u kif jibda iqatta ta' ħdejja kont nalaqhom it-twieqi ħabba trabijiet.

Dr. Balzan: Tlabtha permess?

Xhud: M'hemmx għalfejn.

Dr. Balzan: M'hemmx għalfejn għax ma kienitx hawn allura m'hemmx għalfejn. Inti ix-xogħol għamilthom int waħdek jew qabbadt lill-ħaddieħor?

Xhud: Waħdi

Dr. Balzan: Għamilt kollox waħdek.

Xhud: Kważi kollox waħdi.

[11] A fol. 209 of the acts of these proceedings.

Dr. Balzan: Meta tgħidli kważi kollox waħdek, dak li mhux waħdek il-kważi, min għamlu?

Xhud: Ir-raġel ta' oħti għini fil-madum u ġie ħabib tiegħi mil-Għargħur kemm għamel il-gallarija.

Dr. Balzan: Tlieta b'kollox mela kontu.

Xhud: Iva.

Dr. Balzan: Jiġifieri apparti inti min daħal iktar fl-appartament mingħajr il-kunsens tagħha.

Xhud: Ma jidhirlix ta.

Dr. Balzan: Dawn it-tnejn nies oħra li semmejt daħlu fl-appartament tagħha?

Xhud: Daħlu iva.

Dr. Balzan: Mingħajr il-kunsens tagħha?

Xhud: Issa ma nafx imma daħlu.

Dr. Balzan: Le, le, le. X'taf inti għal-mument.

Qorti: Qed jgħidlek illi ma jafx hekk hux bil-kunsens jew le.
Dr. Balzan: Inti ftaħtilhom int lil dawn it-tnejn min-nies?
Xhud: Iva.

Dr. Balzan: Inti ftaħt, allura kif qed tgħidli li ma tafx.[12]

Considers

That from the evidence brought before the Board it results that the 2018 Lease Agreement contained an "Important Notice" which specified that works such as "*at the back terrace and enlarging the sitting room area over the front terrace in penthouse"* were going to be carried out. The Court finds that the reconvening defendant is not credible when she states that she wasn't aware that works were going to be carried within the penthouse. The wording of this clause, the wording of the Notification of Receipt of Development Application and the various exchanges of texts between the parties make it amply clear that works were going to be carried out within the penthouse. Moreover, the fact that she lived in the penthouse after the commencement of works in 2019 and the fact that and that she entered into a new lease agreement for the same penthouse in February 2020 make it amply obvious that she was happy to live in those conditions. On the other hand, she was benefitting from a rent payment of €600 per month (which was lowered to €500 during the COVID-19 pandemic as she was not in Malta), which rent is considerably lower than what one would expect to pay for a penthouse in Gharghur.[13]

The Board also finds, however, that the fact that he was accessing her apartment and that works were being carried out within the apartment was nebulously told to the reconvening defendant. This, in fact, led to a situation where upon her arrival in Malta on the 6th October 2020, she found the property unfit for use as it had an

[12] A fol. 212 of the acts of these proceedings.
[13] Vide dok "H" a fol. 248 of the acts of these proceedings.

appreciable part of the floor without tiles ,[14] various personal items misplaced[15] and various areas that required a thorough cleaning.[16]

From the message dated the 28th September 2020 it results that the reconvening respondent had clearly informed the reconvened plaintiff Attard that she was returning to the property soon. In fact she wrote "*Frank, I am coming back soon :)*".[17] Moreover, on the 6th October 2020 she wrote "*Hi Frank! I will arrive to Malta today*" to which the reconvened plaintiff Attard replied "*I am doing some work in the flat, will finish it next week*"[18]

In her counter-claim, the reconvening respondent requests this Board to declare the breach of the lease agreement as from the date the reconvened plaintiffs, or either of them, illegally accessed the apartment. From the evidence presented it is clear that access to the property was required for the continuation of the works and that she consented to such works. The Board also considers that although Article 1548A of the Civil Code states that during the running of a lease period the lessor must agree with the lessee to accede the tenement, given the circumstances at the time and that fact that the reconvening respondent was aware and consented to the works, it was impracticable for the reconvened plaintiff to agree each time he required to access the property. There definitely could have been better and clearer communication between the reconvened plaintiffs and the reconvening respondent on this matter, however the Board finds that the access was not illegal as the reconvening respondent alleges.

[14] Vide fol. 58 of the acts of these proceedings.
[15] Vide fol 60 – 61 of the acts of these proceedings.
[16] Vide fol. 62 – 65 of the acts of these proceedings.
[17] Vide Dok "D" at fol. 56 of the acts of these proceedings.
[18] Vide dok FA3 at fol. 164 of the acts of these proceedings.

On the other hand, however, the Board refers to the obligations of imposed on the Lessor by Article 1539 of the Civil Code, Cap. 16 of the Laws of Malta. This Article stipulates that reconvened plaintiffs, *qua* lessors, are bound, by the nature of the contract, and without the necessity of any special agreement -

(a) *to deliver to the lessee the thing let;*

(b) *to maintain the thing in a fit condition for the use for which it has been let;*

(c) *to secure the lessee in the quiet enjoyment of the thing during the continuance of the lease."*

The Board also notes that the reconvened plaintiffs were aware that she was to return to Malta at the beginning of October and therefore, in accordance with their obligations under Article 1539 above, they were bound to give her the apartment in a state which could be used (bearing in mind her consent for the works as discussed above). In fact, since the apartment was not habitable upon her return, the reconvened plaintiffs offered her another property, which she refused, and forfeited the rent for the month October 2020.

The Board finds that notwithstanding that the reconvened plaintiffs offered an alternative accommodation and forfeited the rent for that month, they indeed breached their obligations in regard to this lease, which breach occurred on the date whereby the reconvening respondent could not make use of the thing rented by her, that is the 6th October 2020 being the date she wanted to use the apartment as her residence but could not do so.

Therefore, the Court is finding that the reconvened plaintiffs breached the 2020 lease agreement on the 6 October 2020.

Considers;

That from the evidence brought before the Board it also results that the reconvening respondent returned back to the penthouse in November 2020. In fact in cross-examination she confirmed that:

> *"Dr. Bonnici: Ok. November 2020 you were living in the penthouse, right?*
>
> *Witness: Correct".*

It results that she remained living there till the 31st January 2021 where she sent a message to the reconvened plaintiff Attard stating:

> *"[31/01/2021, 10:05:11 PM] Katarina F-3: Hi Frank! I found a flat and signed a contract. Next weekend i am moving out. I believe should be done in 2 days. I will clear the apartment and return you the keys. Thank you for everything. Only this year was a big dissapointment but these things happen, better once in 7 years than every half a year like it happens with others."*[19]

Therefore, it results that the reconvening respondent effectively vacated the premises at the end of January 2021.

At this juncture, and with a view of the counter-claim submitted in this case, which shall be discussed in detail below, the Board makes reference to Article 1570 of the Civil Code which states that:

> **"*1570.*** *a contract of letting and hiring may also be dissolved, even in the absence of a resolutive condition, where either of*

[19] Vide fol. 217 a tergo, of the acts of these proceedings.

> *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:"*

The reconvening respondent is requesting a declaration by this Board that the reconvened plaintiffs breached the agreement the moment they illegally accessed the property. The Board finds that the property was not fit for use on the 6 October 2020 and therefore on that day the reconvened plaintiffs failed to perform their obligations, thus attracting the dissolution of the agreement, as is demanded by the reconvening respondent.

Therefore, it results to this Board that the lease agreement has been breached on the 6 October 2020 and that this brought with it the dissolution of the 2020 Lease Agreement.

Considered;

That in their first request, the reconvened plaintiffs request the Board to condemn the reconvening respondent to pay the sum of €2,936 representing unpaid rents and utility bills.

From the affidavit of the reconvening respondent[20] it is said that "*In fact, I on the 4th September 2020 I paid the rent covering the five previous month during which is the period when I was stuck in Russia*" [sic!]. This would cover the payment of rents from April 2020 to August 2020. The Board notes that from the ledger submitted by

[20] Vide dok "KP" para 2, at fol 300 of the acts of the proceedings.

the reconvened plaintiffs[21] and by the reconvening respondent[22] it results that the last payment of rent indicated is March 2020. This was made when the reconvening respondent was still in Malta. Furthermore, it also results that in August 2020 the parties agreed to lower the rent to €500 monthly there is no evidence to suggest that the rent amount had been reinstated to €600 per month any time after August.

Therefore, it is the Board's view that any rents due should be for the period between the 1 September 2020 and the 6 October 2020, which amount to €600.[23]

Moreover, it also results that the reconvening respondent resided in this property between November 2020 and January 2021, with the exception of the period between the 5 December 2020 and the 9 January 2021. During this period, however, the reconvening respondent had all her belongings in the apartment and in fact she returned back to upon her arrival in January 2021. Therefore, the Board finds that the reconvening respondent is liable to pay compensation for her occupancy of the premises for the months of November 2020 till January 2021. The Board will award a monthly amount as the rent paid for when the lease was still in force, that is €500. Therefore, the compensation for the occupancy amounts to €1,500[24].

Considered;

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[21] Vide fol. 275 of the acts of the proceedings.
[22] Vide fol. 87 of the acts of the proceedings.
[23] Between the 01/09/2020 and the 28/02/2021 there were 180 days. The rent payable had the lease matured would have been of €500 X 6 months = €3,000. This amounts to a rate of €16.67 daily (€3,000/180). Between 1 September 2020 and 6 October 2020 there are 36 days and therefore €16.67 X 36 days = €600.
[24] 3 months x €500 per month.

In his affidavit, the reconvened plaintiff Attard states that the rent should have increased by 10% on an annual basis and that the rent for 2018 – 2019 was of €600 monthly; 2019 – 2020 should have been of €660 monthly and 2020-2021 should have been of €726 monthly. Moreover, they also claim an additional 25% increase on the rent as the reconvening respondent sublet the property to third parties.

With respect to the 10% increase in the monthly rent, Clause 2 of the lease agreement dated the 1 March 2018 stipulates that "*The rent shall be of 600 (six hundred) Euro per month and shall be paid monthly, in advance. An increase of 10 (ten) % each year*". [25] Although the 29 February 2020 agreement had a considerably different clause that stated *"[Only in case of agreements exceeding one (1) year] After the first year of the agreement the monthly rent may increase in proportion to the yearly adjustment of the Property Price Index (PPI), published by the National Statistics Office, provided that this increase does not exceed 5%."* the agreement was only for one year and for a rent for €600.

The Board notices that the rent stipulated in the 2018 Agreement was of €600 and the rent stipulated in the 2020 Agreement was also of €600. Therefore, had the reconvened plaintiffs wanted to implement the 10% increase, they would have done so in 2019 and/or reflected such increase in the 2020 Agreement. Therefore, it is clear to the Board that the reconvened plaintiffs have renounced the rent increase at that time and cannot expect now, after these years and in light of the counter-claim, to be paid such increases.

[25] Doc. "F" attached with the Affidavit of Frank Attard.

With regard to the 25% increase in case of sub-letting, the Board notes that the 2020 Lease agreement is completely silent about such increase. In fact, the reconvened plaintiff in cross-examination[26] confirmed that:

> *Dr. Balzan: Fir-rikors u fl-affidavit tiegħek inti issemmi illi Katerina kienet qed tikri lill-ħaddieħor.*
>
> *Xhud: Iva.*
>
> *Dr. Balzan: U kellha nies jgħixu magħha fl-appartament tgħid bħala sublease u li naqset milli tħallas ir-rata ta' ħamsa u għoxrin fil-mija.*
>
> *Xhud: Iva.*
>
> *Dr. Balzan: Issa l-kuntratt tat-2020 ma jsemmi xejn dwar dan il-ħlas.*
>
> *Xhud: Li ġara hu li jien sirt naf wara.*
>
> *Dr. Balzan: Le, le issa spjegalna. Imma ara hux jien korrett qed nissuġerilek li dan il-kuntratt tas-sena 2020 ma jsemmi xejn dwar dan il-ħlas.*
> *Xhud:* ***Le ma kienx hemm****.*

The Board notes that although the reconvened plaintiff Attard in cross-examination stated that he became aware she was sub-letting the property after signing the 2020 Lease Agreement, this declaration does not find any comfort in the facts. Indeed, clause 5 of the 2018 Agreement contained a clause which considered this increase in the event the lessee sublet the premises. On the 20 October 2018, the reconvening respondent informed the reconvened plaintiffs that she "*found 2 very nice people to share the apartment*" and asked him to suspend the additional charges, to

[26] A fol. 193 of the acts of the proceedings.

which he replied that "*there won't be any additional charges*".[27] He also received a message on the 2 December 2018 from "*Kasia from Katerina flat*" where she asked him to look at a problem with the gas in the kitchen.[28] Therefore, the reconvened plaintiff Attard is not credible when stating that he became aware of the sublease after the 2020 Lease Agreement. The 2020 Lease Agreement, on the other hand does not mention any increase in rent in the event that the lessee sublets the premises. Therefore, the Board finds that the reconvened plaintiffs accepted the temporary sublease of the property without the implementation of the 25% increase for the period covered in the 2018 Agreement and, on the other hand, cannot claim any increase following the 2020 Agreement.

Finally, the reconvened plaintiffs do not make any claim for these amounts in their application. Notwithstanding this fact, such additional claims could be captured within the second request, that is, the liquidation of damages or other amounts.

Therefore, the Board finds that these requests are unfounded and cannot be upheld.

Considered;

That the reconvened plaintiffs also request payment for utility bills in the amount of €462.70. To this end, they submitted a "Bill Calculator"[29] attached to the affidavit of the reconvened plaintiff Attard.

[27] Vide doc I at fol. 252 of the acts of the proceedings.
[28] Vide fol. 253 of the acts of the proceedings.

The Board finds that the bill calculator without any further confirmation of the actual consumption does not meet the required standard of proof to claim such damages. Moreover, the bill calculator is for the period between 01 December 2019 and 28 February 2021, which period covers (i) the period the reconvening respondent was not using her apartment (ii) the works carried out on the property (iii) the period following the 7 October 2020 wherein the lease was terminated as per above.

Considered:

Therefore, on the basis of the above, the Board finds that in connection with the claim, the following amounts are due by the reconvening respondent to the reconvened plaintiffs:

Claim awarded:	€
Rent for the period 1 September - 6 October 2020	600
Compensation for occupancy November 2020 - January 2021	1,500
Total:	**2,100**

Considers

That, in her counter-claim, the reconvening respondent states that owing to the fact that her belongings where in the apartment during the works she suffered considerable damages amounting to €14,213.89.

As has been discussed above, the reconvened plaintiffs continued with the works on the property whilst the reconvening respondent was not residing at the property. It has been proven that works were also carried out within the leased apartment and that the reconvened plaintiffs tried to cut off some areas with plastic. Therefore, it results that the reconvened plaintiffs, whilst authorising the continuation of the works, took it upon themselves to try and minimise the damage caused.

Article 1012 of the Civil Code, Cap. 16 of the Laws of Malta allows the *ad hoc* creation of quasi-contracts, that is, a lawful and voluntary act which creates an obligation towards a third party. Morevoer, Aricle 1015 of the Civil Code states that:

> *"**1015.** The voluntary agent shall be bound to use in the management of the business all the diligence of a bonus paterfamilias."*

It is therefore the Board's view that the reconvened plaintiffs created a quasi-contract when administering the reconvening respondent's belongings during the works carried out for the duration of her absence from the property. Therefore, the Board finds that they should have exercised the diligence of a *bonus paterfamilias* in such matters. The damages suffered by the reconvening respondent indicate that the reconvened plaintiffs did not exercise such diligence and therefore, as per Article 1031 of the Civil Code, have rendered themselves liable for the damages which occurred through their fault.

The reconvening respondent, however, must prove the damages suffered and the Board will now examine her counter-claims:

a. The claim of €347 as rental expense for the month of October 2020. It results from the acts that when she returned to Malta and found the penthouse unhabitable she rented out a property in Swieqi for about three weeks, which cost this amount claimed. The Board finds that this circumstance forced her to seek an alternative arrangement and therefore find that this claim is justified and that it has been proven by the respective receipt.[30]

b. The claim for a refund of €2,500 rent for the months between April and August 2020 is unjustified for the reasons set out above in this judgement.

c. The claim of €950 paid as deposit on of the lease agreement of the 28 July 2014.[31] Clause 8 of this Agreement stipulates that

> "*The tenant is hereby paying three deposits:*
>
> *a. Deposit A (300Euro) For any Damages etc.*
> *b. Deposit B (100Euro) for Water and Electricity. ..*
> c. *Deposit C (1650) for 3 months in advance*.'

The same agreement stipulates that the rent for the first three months was of €550 and would increase to €600 thereafter. It also stated that the lease period was to commence on the 3 August 2014. This means that the €1650 payment covered the months of August, September and October. From the receipt ledger submitted by the reconvening respondent,[32] however, it results that she paid the €550 rent for October 2014.

As regards the €300 "for any damages" the Board notes that although the reconvened plaintiffs allege that they suffered considerable damages to the apartment, they did not quantify or

[30] Document "H", a fol. 70 of the acts of the proceedings.
[31] Doc. "J" a fol. 78 of the acts of the proceedings.
[32] Dok. "L" a fol. 82 of the acts of these proceedings.

prove such damages and therefore the Board is awarding this amount to the reconvening respondent.

As regards the €100 as deposit on utility bills, the Board finds that this deposit was paid on the 29 July 2014[33] and that the property had such services installed. Such amount would have been deducted from subsequent utility bills and therefore the Board finds that this amount is not justified.

Therefore, the Board is awarding the sum of €850 as refund of monies paid.

d. The claim of €8,614.89 covering personal and home items which were allegedly damaged and the value of a missing watch of the make RADO:

i. In so far as the clothing items and the home items are concerned, the reconvening respondent failed to present the actual receipts to confirm the price of the objects purchased and the date when these were purchased. The date of purchase if especially significant as it would allow for depreciation due to wear and tear. The reconvening respondent is claiming the marked prices of brand new items which are <u>similar</u> to the ones she claims to have been damaged without any depreciation. From the evidence provided it is evident that the clothes and shoes were effectively used. Furthermore, the evidence submitted does not suggest that the clothing and shoes items are unusable. Therefore the Board finds that the reconvening respondent did not prove this claim.

[33] Vide dok "K" a fol. 81 of the acts of these proceedings.

ii. With regard to the chandelier [34] and the vase [35] the reconvening respondent submitted no receipts or proof of purchase and therefore this claim cannot be entertained. With regard to the toaster, the reconvening respondent failed to prove the extent of the alleged damages sustained or that it is unusable other than it had building debris. Therefore this claim is being rejected.

iii. With respect to the RADO watch, the reconvening respondent claims the sum of €2,400. She submitted a receipt dated the 17 March 2015 which confirms that the said watch was purchased for the sum of €1,850 [36] . The reconvening respondent, however, did not submit a valuation for this watch but an undated printout from a website offering said watch for sale for this price.

The reconvening respondent claims that this watch went missing during the time that she was not residing in the apartment. As has been proven above, during this period the reconvened plaintiff Attard and other third parties on his instructions, had regular access to the leased property. In his affidavit, Marvik Borg[37] states that:

"Sometime in October 2020, when the 14 days quarantine for Ms Pashchenko llapsed and she was free to go outside, I met her and accompanied her the Gharghur apartment to help her to have a proper look at her belongings and pick up some of them since she did not have time to collect her clothes on arrival. On this occasion we went upstairs only to

[34] Dok. "V" a fol. 165 of the acts of the proceedings.
[35] Doc. "W" a fol. 107 of the acts of the proceedings.
[36] Doc. "Y" a fol. 111 of the acts of the proceedings.
[37] Doc. "MB" a fol. 184 of the acts of the proceedings.

> *find the front door to her apartment wide open, without her knowing, however there was nobody inside the apartment at the time."*
>
> It has been proven that the reconvening respondent had her belongings in the apartment during the months she was in Russia and also upon her return when she temporarily relocated to another apartment in Swieqi. The Board finds that this RADO watch went missing as a consequence of fact that the reconvened plaintiffs did not exercise the diligence of the *bonus paterfamilias* in regard to her belongings and therefore the Board finds that this claim has been proven, to the actual suffered damages of €1,850.

e. In regard to the claim of €800 representing dry cleaning expenses, the reconvening respondent presented no receipt to cover such amount. In fact, she only provided an approximate expense if had to send 55 items of clothing for dry-cleaning. In the absence of the actual damages incurred by the reconvening respondent being proven, this Board cannot uphold this claim.

f. In regard to the claim of €139 as expenses incurred because she could not work at her leased premises, the Board notes that the expenses submitted do not provide any details other than the outlet, the time and the amount. In fact it would appear that these expenses were carried out between 3 November 2020 and the 30 November 2020 at specific venues.

From the employment history presented in these acts[38] it results that the reconvening respondent is a self-employed part-time consultant. This claim appears to be limited to the month of November 2020, the month where she returned back to the

[38] Vide dok "LB1" at fol. 22 of the acts of the proceedings.

penthouse. The reconvening respondent did not clarify why these expenses were incurred in November other than she was constrained to work out of her home. One would consider that such constraints would exist for the duration of the last three weeks of October 2020 where she had to temporarily move to Swieqi. The reconvening respondent, did not provide any reasons or evidence about (i) what or how was she allegedly working during out of the house (that is, if she was working on her device via internet connection, if she required physical meetings with her clients, if she was doing the paperwork or any other form of work); (ii) why she was precluded for that month to work from the apartment. Moreover, from the bank statements submitted, there is an item dated the 11th November 2020 which indicates drycleaning services. The reconvening respondent did not submit any evidence on what this item was and therefore, failing these essential elements for this claim, the Board cannot accede to this request.

g. In regard to the claim of €783 representing her flights to Russia and back between the 5 December 2020 and the 9 January 2021, the reconvening respondent claims that this flight was forced upon her given the circumstances at the time. In her cross-examination, she states that she had to leave to Russia due to the stress this situation was cause her and because she needed to rest. She said that she could not sleep in her bedroom and that she could not call it living and that she had to leave and go to Russia as she needed some peace.

The Board finds that this reasoning does not tally with the fact that a month earlier she relocated back to the apartment knowing that works were being done in the apartment and knowing all that she claimed above. Moreover, she was not obliged to return back to the apartment by way of upfront payments the month of November or of any subsequent month. The reconvening respondent could have

easily avoided all this stress and sleep comfortably in another bed by moving to another property as she did in October 2020.

The Board, therefore, does not find the reconvening respondent credible when stating that she was forced to go to Russia due to the situation. Admittedly, going to Russia would have helped her escape from the situation of the apartment she returned back to, but the reconvened plaintiffs should not be held liable for this trip. Therefore this claim is being rejected.

Considered;

Therefore, on the basis of the above, the Board finds that in connection with the counter-claim, the following amounts are due by the reconvened plaintiffs to the reconvening respondent

Claim awarded:	€
Rental of the Swieqi Apartment	347
Refund of monies paid	850
Personal and home items	1,850
Total:	**3,047**

Decide:

Therefore, for the reasons and considerations hereabove, the Board is deciding this claim and counter-claim by:

1. Accedes in part to the first request of the reconvened plaintiffs and declares that the reconvening respondent is to pay the reconvened plaintiffs the rent of €600 for the period between 1 September 2020 and 6th October 2020 together with the compensation of €1,500 for the occupancy of the property

between November 2020 and January 2021, with the legal interests as awarded in the third request of the claim hereunder;

2. **Rejects** the second request of the reconvened plaintiffs.

3. **Upholds** the third request of the claim and, for the reasons described in the first request above, orders the reconvening respondent to pay unto the reconvened plaintiffs the sum €600 as rent and this with legal interest as from the 6th October 2020 till the date of the effective payment together with the sum of €1,500 as compensation for the occupancy and this with legal interest from the date of this judgement until final payment;

4. **Upholds in part,** the first request of the counter claim and declares that the lease agreement relating to the property number 3, of 35, Giovanna Flats, Triq Fra Duminku Mifsud, Ħal Għargħur, has been terminated and dissolved on the 6th October 2020 by the fault of the reconvened plaintiffs.

5. **Upholds in part** the second request of the counter-claim and declares the reconvened plaintiffs *in solidum* as debtors of the reconvening respondent in the amount of €3,047 with the legal interests as awarded in the third request of the counter-claim, being the sixth paragraph hereunder;

6. **Upholds** the third request of the counter-claim and orders the reconvened plaintiffs *in solidum* to pay the reconvening respondent the sum of €3,047, with legal interest from the date of this present judgment until final payment;

7. **Rejects** all pleas put forward by the reconvened plaintiffs and by the reconvening respondent insofar as they are inconsistent with the above.

Each party is to bear its own expense of these proceedings and of the judicial intimations.

Dr. Leonard Caruana
Magistrate

Sharonne Borg
Deputy Registrar