



**CIVIL COURT
FIRST HALL**

**THE HON. MR. JUSTICE
ANTHONY ELLUL**

Sitting of the 1 st November, 2011

Citation Number. 463/2010

Shanghai Cuisine Limited and Xu Qianyi

V

Micallef Holdings Limited

By application filed on the 6th May 2010 the plaintiffs are requesting the Court to condemn the defendant to pay seventy two thousand nine hundred and ninety seven euro (€72,997.26), as for €20,000 brokerage fees, €23,000 refund of key money, and €29,697.26 representing the value of movables and improvements which plaintiff company made in the restaurant, Marco Polo. The plaintiff company claims that it is the lessee of the premises after Xu Qianyi, the original lessee, assigned the lease. The company contends that payment is being claimed in terms of Clause 24 of the agreement, since the premises were sold on the 22nd May 2009.

The defendant company replied that:-

1. The private agreements are clear and disclaim plaintiffs request.
2. The defendant had no contractual relationship with plaintiff company.
3. Prior to the sale of the premises, the plaintiffs never mentioned that the lease was assigned to Shanghai Cuisine Limited. Furthermore, in the agreement dated 20th December 2008 Xu Qianyi signed in her personal name.
4. Had the lease been assigned, it has no effect with respect to defendant company as she was never formally informed of such an assignment.
5. Without prejudice, if the court rejects the first four pleas, the amount being claimed is to be set-off with money owed by the plaintiff.

In brief the facts of the case are the following:-

1. Plaintiff Xu Qianyi leased the premises Marco Polo, Dragonara Road, Paceville from defendant company. A private writing was signed, dated 29th October 2004. The lessee was granted the right to assign the lease to a company whose shares are fully owned by the lessee (clause 13).
2. Xu Qianyi contends that the lease was assigned to the plaintiff company, as confirmed by the fact that the rent was paid by the company. Furthermore, defendant company issued receipts to Shanghai Cuisine Limited (vide doc. RM2).
3. In clause 24 the lease agreement provided that *“.... if the Lessor opts to sell the premises this agreement shall terminate as from the date of the final deed of sale. Provided that the Lessor undertakes and agrees to promptly refund the sum of Lm10,000 (ten thousand Malta Liri) paid in terms of clause 3 above and to refund the value at cost of all improvements made to the premises by gthe Lessee and, furthermore, a commission of five per cent (5%) shall be paid to the lessee on the actual purchase price of the premises. Provided that any rent paid in advance by the Lessee for periods not utilised shall also be refunded. Provided, furthermore, that the premises cannot be so sold before one (1) year from today.”*
4. By private writing dated 20th December 2008, the parties to the lease agreement terminated the lease. The

lessee declared that “... *she has no further claims, which, in any manner, may be directed against the Lessor in connection with the said lease of the said premises and holds the Lessor harmless of any claims which third parties may have against the said Lessee.*”.

5. The premises were sold by a deed dated 22nd May 2009 by means of a contract published by Notary Dr Lisa Camilleri.

Having read the court proceedings, including the written submissions filed by both parties, the court is of the opinion that plaintiffs claims are unfounded:-

1. No written agreement was filed to prove the claim that Xu Qianyi assigned the lease to Shanghai Cuisine Limited. The payment of rent by plaintiff company is not sufficient proof (vide **Carmelo Camilleri vs Antonio Chircop**, Civil Court First Hall 24th June 1955 – “*Cessjoni tal-inkwilinat, meta ssir bla kitba, hija guridikament inezistenti.*” – Vol. XXXIX.ii.710; vide Article 1470 of the Civil Code).

2. It appears the the private writing dated 20th December 2008 was signed since plaintiff was in arrears in rent. In fact the agreement was preceded by judicial letters filed by defendant against Xu Qianyi claiming payment for rent. For example on the 12th November 2008 a judicial letter was filed against Xu Qianyi claiming €24,280.91 in arrears. Subsequently, on the 26th November 2008 a garnishee order was filed.

3. In the sitting held on the 12th July 2011, plaintiff confirmed that “... *she is the sole director and sole shareholder of Shanghai Cuisine Limited. She also confirmed that as far as she knows no agreement was signed between herself and Shanghai Cuisine Limited.*”. Had the court accepted the argument that Xu Qianyi assigned the lease to her company, the court would not have hesitated in concluding that she signed the agreement dated 20th December 2008 on behalf of her company. Being the sole director and shareholder of the company, there would have been no reason to conclude otherwise. From the evidence it is clear that the intention was to terminate the lease with immediate effect. Had this not been the intention, there would have been no reason

for Xu Qianyi to vacate the premises and return possession to the owner.

4. The lease was terminated on the 20th December 2008, and Xu Qianyi signed the agreement as the lessee of Marco Polo Restaurant. In the agreement she identified herself as the lessee of the premises. Similarly on the 5th November 2009 she filed a judicial letter against defendant company claiming payment in terms of clause 24 of the lease agreement. These circumstances confirm that the lease was never assigned to plaintiff company.

5. In the agreement dated 20th December 2008 it was declared that Xu Qianyi has no further claims against Micallef Holding Ltd, “**....in connection with the said lease of the said premises.**”. Plaintiff is aware that she has no right to claim payment in terms of clause 24, and therefore based her argument by alleging that:-

(a) the lease was assigned to Shanghai Cuisine Limited; and

(b) Shanghai Cuisine Limited was not a party to the agreement dated 20th December 2008, and therefore has a right to invoke clause 24 of the lease agreement.

6. According to clause 24 of the lease agreement, it is evident that payment was only due if the premises were still being rented at the time of sale of the property; “*It is hereby agreed that if the Lessor opts to sell the Premises this agreement shall terminate as from the date of the final deed of sale.*”. The money which the Lessor had to pay was intended as compensation for the lessee for termination of the lease and vacating the premises. Since the lease was terminated on the 20th December 2008, on the date of sale (22nd May 2009) there was no lease. Therefore no payment is due in terms of clause 24 of the lease agreement.

7. In her sworn declaration, Xu Qianyi claims that “*... I originally refused to sign the agreement without my lawyer being present but they put pressure on me and I did. Although I speak and understand English I did not understand the legal effects of the agreement I signed.*”. The law-suit filed by the plaintiff is not founded on the allegation that when she signed the private writing dated 20th Decemebr 2008, her consent was vitiated.

Informal Copy of Judgement

Therefore the court rejects plaintiffs' request for payment of seventy two thousand nine hundred and ninety seven euro (€72,997.26) in terms of clause 24 of the lease agreement dated 29th October 2004, with costs against them.

< Final Judgement >

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