

## **Rent Regulation Board**

**Magistrate Dr Josette Demicoli LL.D.**

**Consiglia *sive* Connie Spiteri (39059M) and Mario Spiteri (590857M)**

**vs**

**Lanli Yin (33653A)**

Application Number: 80/16JD

Today 8<sup>th</sup> May 2018

The Board,

Having seen the application filed by the applicant which reads:

- 1) That the applicants leased to the respondent, in virtue of a private agreement [attached and marked as Doc. A] as amended in virtue of a subsequent agreement [attached and marked as Doc. B] the tenement number 145, Cospicua Road, Rahal Gdid (the 'Tenement'), which tenement was leased as bearing Class 6 permits, that is permits which allow the use of the tenement as a restaurant;
- 2) That the tenement has been so leased to the respondent since the 12<sup>th</sup> September 2014 and it was leased for a term of five years subject to the pacts and terms agreed to in virtue of the aforementioned agreements;
- 3) That during the current year the applicants started receiving various notifications from the competent authorities stating that the tenement was not abiding by the conditions imposed in the relative permits, which permits had been issued in the name of the applicant Connie Spiteri and this as can be confirmed in virtue of a letter and a report by the Malta Tourism Authority [attached and marked as Doc. C];

- 4) That clearly this constituted a serious breach of the obligations of the tenant who was not making use of the tenement as a *bonus pater familias* and was breaching the conditions of the permits and the relative agreements;
- 5) That apart from this it also resulted that notwithstanding the fact that she was obliged to insure the tenement with an Insurance Company [Article 12 of the Agreement dated 12<sup>th</sup> May 2014 – Doc. A] respondent failed to abide by this obligation;
- 6) That apart from this notwithstanding the fact that the respondent bound herself to pay the permits of the shop which was leased to her, the respondent failed to abide by this obligation as well;
- 7) That therefore, in the light of these serious shortcomings, the applicants terminated the lease effective the 4<sup>th</sup> July 2016 in virtue of a registered letter sent in terms of article 11 of the Lease Agreement of the 12<sup>th</sup> May 2014, [attached and marked as Doc. D] along with another subsequent letter of the applicant's lawyers [attached and marked as Doc. E] and in virtue of which letter the defendant was once again called upon to amongst others leave the tenement;
- 8) That notwithstanding the fact that this letter was duly notified to the respondent she refused to return the tenement to the applicant with its vacant possession and as is clear from the schedule of deposit [attached and marked as Doc. F], she proceeded with the deposit of the rent under the authority of this Board. Therefore the respondent rendered herself liable to the penalty prescribed by Article 10 of the agreement of the 12<sup>th</sup> May 2014, effective from the 5<sup>th</sup> July, that is the date when the vacant possession of the tenement;
- 9) That therefore the applicants had to present this case before this Honourable Board so as to be authorised to take possession of the tenement;
- 10) That the applicants are personally aware of the facts of this case;

Therefore in view of the above the applicants respectfully demand that this Board:

- 1) Declares and decides that the lease of the tenement that is the shop number 145, Cospicua Road, Rahal Gdid was terminated, with effect from the 4<sup>th</sup> July 2016;
- 2) Orders the eviction of the respondent from the tenement within a short and fixed period to be decided by this Honourable Board and to authorise the applicants to establish their possession over the tenement;
- 3) Declares that the respondents are liable to the payment of a daily penalty of a hundred Euro (€100) commencing on the 5<sup>th</sup> July 2016 up to the day the vacant possession of the tenement is returned to the applicants and consequently to liquidate, if needs be with the assistance of experts nominated by the Honourable Board, the amount so due by the respondent to the applicants;
- 4) Orders and condemns the respondent to pay the sum so liquidated to the applicants.

With all expense being borne by the respondent who is presently being called upon to appear in court for the reference to her oath.

Having seen respondent's statement of defence which reads:

1. In the first instance, the application of the applicant is invalid and null as the procedure contemplated in article 5 of Chapter 189 of the Laws of Malta was not followed;
2. That without prejudice to the above, the requests of the applicants are unfounded in fact and at law with regards to the termination of the lease of the shop numbered 145 and which is found in Cospicua Road, Rahal Gdid and should be dismissed with expenses against the applicants as there is no valid reason which permits the termination of the same lease and the eviction of the excipients;
3. That without prejudice to the above, the requests of the applicants are invalid and null as the lease of the property expires in 2019, as indicated in clause 1 of the writing attached to the application [marked as Doc. A];

4. That without prejudice, the excipient denies categorically that she received the letter sent to her by the applicants, attached [marked as Doc. D] to the application;
5. That without prejudice, the applicants unjustly and without any valid reason refused the rent from the excipient which rent covered the period from the 5<sup>th</sup> July 2016 to the 1<sup>st</sup> January 2017 and therefore the excipient had to deposit the said rent through a schedule of deposit numbered 1268/16;
6. That without prejudice to the above, Article 9(a) of Chapter 69 of the Laws of Malta lists specific circumstances when the lessor can request this Honourable Board to take back the possession of the property in question, circumstances which in the present case have not yet happened;
7. That without prejudice to the above, the respondent who has been renting the property in question for the past two (2) years did not change the destination of the property;
8. That the property in question was always and is still kept in a good state;
9. Subject to further grounds of defence as permitted by Law.

Therefore the respondent asks with respect that this Board denies the requests of the applicants with expenses against the applicants.

Having heard witnesses.

Having heard final submissions.

Having seen all the acts and documents of the case.

Considers:

Before delving into the merits of the case the Board must refer and decide the preliminary plea raised by the respondent which is of a procedural nature. Article 5 of Chapter 189 of the Laws of Malta necessitates that a person (in this case the respondent) who is believed to be English speaking, such acts which are served on such person have to be translated into the English language and service has to be affected by delivering a copy of the original and its translation. It results that the respondent was notified with the original in the Maltese Language on the 14<sup>th</sup> September 2016 and with a translation of the said acts in

the English Language on the 17<sup>th</sup> January 2017. The Board refers to article 789 of Chapter 12 of the Laws of Malta which specifies the nullity of judicial acts. From a reading of such an article, it is evident that the fact that defendant was not notified with a translation of the application in the English Language, when the applicant knew fully well that she does not understand Maltese, although was not desirable, yet it does not mean that the application itself is null.

Considers:

From the acts of the case it emerges that the applicants Mario Spiteri and Consiglia *sive* Connie Spiteri are co-owners of the restaurant named *Kun Lun*, numbered 145, situated in Cospicua Road, Rahal Gdid bearing class six (6) permits. Said restaurant was leased to the respondent Lanli Yin through a lease agreement dated the 12<sup>th</sup> May 2014 in the acts of Notary Dr Antonella Navarro<sup>1</sup> for a period of five (5) years starting from the 12<sup>th</sup> September 2014, subsequently a further agreement<sup>2</sup> was entered into between the parties whereby the consideration of rent and the conditions ancillary thereto were revised.

Mario Spiteri<sup>3</sup> states that his former wife takes care of the lease of the restaurant co-owned by them both as he often travels due to work commitments. He confirms that the permits issued by the Malta Tourism Authority and the upkeep of the restaurant and adhering to the agreement are of utmost importance to him in order to retain the good reputation of the restaurant. He states that he was aware that Connie Spiteri was receiving notifications from the same Authority advising that the tenement's upkeep was not in accordance with the conditions imposed by the Permit also constituting a serious breach of the relative agreements exhibiting a series of photographs<sup>4</sup> he took together with his daughter Amy Spiteri of the condition of the restaurant to sustain his claims following the information which was passed on to him by his former wife. He states that as a consequence of the respondent's actions, the applicants risked losing the permit and also giving the restaurant a bad reputation due to the fact that the premises were not being used properly as it was often neglected and dirty. Furthermore he says that the respondent failed to observe other terms stipulated in the agreement namely failing to take out an insurance policy and failing to show him the fire extinguishers. Although he says that he is aware that action was taken to make sure that the respondent started observing her obligations, she still failed to adhere to or leave the premises thus they pursued

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<sup>1</sup> Doc. A – A Fol. 5 - 7

<sup>2</sup> Doc. B – A Fol. 8

<sup>3</sup> Affidavit – A Fol. 29 – 30

<sup>4</sup> A Fol. 31 – 37

the matter further by instituting judicial proceedings. In cross-examination<sup>5</sup> the witness was not in a position to confirm which conditions relative to the lease agreement were being breached as most of the time he was abroad, nor was he able to confirm whether he was aware that the respondent had encountered problems in insuring the premises, however he states that he was aware that there were fire extinguishers in the restaurant as he had installed them, but he stated that failure to service said fire extinguishers was tantamount to not having fire extinguishers. He also confirmed that no procedures were instituted by the Malta Tourism Authority against his former wife and that the respondent was depositing the rent in court.

Connie Spiteri<sup>6</sup> confirms that an initial lease agreement was signed between the parties, whereby she states that the initial three months' rent was paid, however the two thousand Euro (€2,000) deposit was never paid. A secondary agreement was then signed whereby the daily rent due was revised and reduced, so were the conditions relative to the periodical payments changed. Said amendments were introduced due to the fact that business had not yet picked up and the respondent was facing financial difficulty and she wanted to help her and give her some time to establish her clientele. In the meantime the applicant herself states that she had a loan and preferred receiving some money than nothing at all. In 2015 two (2) inspections were conducted by the Malta Tourism Authority whereby a list of deficiencies were found and sent to her, a third inspection was conducted in 2016 whereby once again a number of deficiencies were found, after which a letter was sent to her by a Malta Tourism representative, Francesca Camilleri stating that she had conducted an inspection on the premises and a number of deficiencies were found namely issues relating to insurance, pest control and a fire alarm certificate. She states that Francesca Camilleri called her informing her that if the deficiencies were not rectified she was going to start incurring fines which could eventually result in the permit being revoked. Although the applicant states that these deficiencies amongst others were brought to the attention of the respondent, she failed to rectify the situation and was also falling back on the rent due to the applicants, after which the applicant decided to terminate the lease agreement by sending the respondent a registered letter in accordance with the said agreement asking her to vacate the premises within two weeks, to which letter she received no reply. Once she informed the Malta Tourism Authority that she was taking action to terminate the lease agreement, she states that the Authority decided to suspend

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<sup>5</sup> A Fol. 74 – 90

<sup>6</sup> A Fol. 38 – 45

any action that it was going to take against the applicant. In cross-examination<sup>7</sup> the applicant confirms that she did not receive further notifications from the Malta Tourism Authority and she incurred no penalties. The witness says that she is aware that since the 1<sup>st</sup> July 2016 rent relative to the restaurant has been deposited in court and so have the bills passed on to the respondent paid but she emphasises that the bills only started being paid on time by the respondent after she filed judicial proceedings, prior to which she lived in worry that the electricity services would be cut off as the respondent was not paying the bills. The applicant insists that getting a permit to operate the premises as a restaurant is expensive and the respondent put the license in jeopardy to the detriment of the applicant who adds on that if the respondent wanted to solve this matter she should have done so before judicial proceedings were instituted against her and the only reason that the Malta Tourism Authority did not revoke the permit was because of the present proceedings. On further cross examination<sup>8</sup> the applicant confirms that the respondent had paid her ten thousand Euro (€10,000) for the use of all the equipment found in the restaurant. With reference to the insurance policy relative to the restaurant she confirms that an insurance representative called her asking for a valuation of the property whereby she failed to give him a valuation insisting that said valuation could be obtained once the survey was carried out by the insurance.

Francesca Camilleri<sup>9</sup> in representation of the Malta Tourism Authority states that on the 5<sup>th</sup> April 2016 the Enforcement Directorate received a complaint that there was a breach of standard with regards to the restaurant in question whereby the licensee holder is the applicant and the operator is the respondent. Following the said complaint an inspection was conducted on the 14<sup>th</sup> April 2016 whereby it was noted that both the bar and the kitchen needed to be organised and cleaned especially in view of the fact that health and safety measures were not being observed with regards to the latter, after which the respondent was given two weeks to rectify the situation. The second inspection was conducted on the 25<sup>th</sup> May 2016, however unfortunately the witness states that there was little improvement but not up to the standard required so an inspection report was compiled and sent together with a covering letter on the 8<sup>th</sup> June 2016 both to the licensee and the operator. Francesca Camilleri states that the report consisted of a long list of deficiencies which were mainly related to organisation, cleanliness and safety whereby failure to rectify said situation, it was the discretion of the management whether to issue an administrative fine both to the licensee and the operator and in extreme cases this could result in an

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<sup>7</sup> A. Fol. 91 – 99

<sup>8</sup> A Fol. 171 – 175

<sup>9</sup> A Fol. 49 – 66

enforcement notice whereby the premises would be closed down. The witness confirms that on the 13<sup>th</sup> June the applicant sent her an e-mail whereby she informed her that she was aware of the situation and was taking the necessary action to terminate the lease agreement with the respondent, after receiving said information the Authority decided to take a step back and not pursue the matter further, however she stated that the Authority did not exclude the possibility of issuing penalties and eventually closing down the premises if the applicant wouldn't have informed her that she was proceeding towards the termination of the lease agreement. In cross examination Francesca Camilleri states that photos relative to the restaurant were taken during the second site inspection on the 25<sup>th</sup> May 2016 whereby she explains that the photos show the lack of cleanliness found in the said restaurant leading to health hazards. The witness also confirms that the respondent was registered as an operator with the Malta Tourism Authority on the 13<sup>th</sup> October 2014 prior to which date Francesca Camilleri had not conducted an inspection in the said restaurant and was not in a possibility to confirm that any of her colleagues had done the same. Asked in cross-examination whether another site inspection was carried out between the 25<sup>th</sup> April 2016 and the 8<sup>th</sup> June 2016 and between the 25<sup>th</sup> April 2016 and the date of the sitting namely 7<sup>th</sup> March 2017 the witness replied in the negative.

Amy Spiteri<sup>10</sup>, the applicant's daughter states that she helps her mother in matters related to the lease of the said property whereby she is aware that her mother applied for permits to operate the property as a catering establishment. She gives the same version of events like her mother whereby she said that she witnessed the respondent complaining that the business was not doing well and that she was failing to pay the bills including the expenses relating to the Malta Tourism Authority license. She states that she went to the premises together with her father to take photos of the restaurant following the receipt of a letter from the same Authority whereby she confirmed the content of the photos emphasising the lack of cleanliness and organisation within the restaurant. In cross-examination Amy Spiteri confirms that all the bills had been paid by the respondent following the filing of judicial proceedings before this Board and that her mother was not accepting the rent due to the fact that the parties were in litigation.

Lanli Yin<sup>11</sup> confirms that she signed a lease agreement in relation to the lease of the restaurant after she saw a note on the restaurant door bearing the telephone number of the applicant. Initially she signed the agreement on the 12<sup>th</sup> September 2014 whereby the termination of the lease was for a period of five

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<sup>10</sup> A Fol. 66 – 71

<sup>11</sup> A Fol. 119 – 135



(5) years whereby the rent was for the amount of thirty Euro (€30) daily and she had also paid ten thousand Euro (€10,000) as key money on condition that if she closes down the restaurant within one (1) year the sum of five thousand Euro (€5,000) had to be returned back to her. After running the restaurant for three (3) months she explains that the restaurant was not doing well and was going to stop operating it however the applicant did not want to return the five thousand Euro (€5,000) back to her instead she suggested reducing the rent whereby said variations in the terms and conditions were reflected in another agreement signed in 2015. The witness states that she was eventually informed by the applicant through a telephone call to vacate the restaurant, failing to do so she was informed that the rent was going to be increased to one hundred Euro (€100) daily after which she started depositing the rent in court as the applicant was not collecting the rent. She says that she has received a document every year for the past three (3) years from the Malta Tourism Authority whereby said document had to be renewed yearly, and an administration fee had to be paid authorising her to run a restaurant business. The witness states that the applicant came regularly to the restaurant however she had never been inside the kitchen whilst her husband had only been to the restaurant once together with his daughter, it was during this occasion the witness explains that Amy Spiteri informed her that she had to vacate the premises, failure to do so the rent was going to be increased. Lanli Yin states that she informed Amy Spiteri that she had signed a contract and she was not going to move out. In cross-examination on being asked whether the respondent paid an insurance policy prior to applicant filing judicial proceedings in court in 2016, she states that that a representative of the insurance company Daniel Spiteri both during the years 2015 and 2016 refused to issue an insurance policy as it was the responsibility of the owner to take out an insurance policy, however this issue was resolved in 2017 when the insurance company issued an insurance policy. With regards to the fire extinguishers the witness says that these were serviced in 2015 and 2017 but not in 2016 as the respondent insisted that the applicant did not bring the need to service the fire extinguishers to her attention in 2016. The witness confirms that the Malta Tourism Authority did find deficiencies within the restaurant which some of them she improved whilst other such as installing a fire alarm was too expensive apart from not being regulated in the agreement as to who out of the two parties had to burden the cost. Furthermore the witness denies being informed by the Malta Tourism authority prior to 2017 that she had to take out an insurance policy, she says that the Authority asked her to replace the emergency light and insect screen and to clean and organise the restaurant.

George Stagno Navarra<sup>12</sup> court representative of Elmo Insurance Limited confirms that an insurance policy was taken out to cover the restaurant on the 12<sup>th</sup> May 2017 whereby in his capacity as a Risk Inspection Surveyor he carried out the risk inspection, verified that the fire extinguishers on the premises were serviced and a fire blanket was found in the kitchen, put forward his recommendations to the insurance after which an insurance certificate was issued. The witness was not aware that Daniel Spiteri had refused to issue an insurance policy in the name of the respondent in previous years and was not in a position to verify whether the restaurant was insured during the years 2015 and 2016.

Considers:

First of all, reference must be made to Article 11 of the lease contract which stipulates the following:

*If the lessees shall default in the punctual payment of the rent or if the lessees shall infringe any of the lease conditions then the lessors shall be entitled to rescind this agreement 'ipso jure' and retake possession of the premises provided that the lessees shall have been given two weeks notice by means of a registered letter to be sent to the above rented premises thereby expressing the lessor's intention to enforce this right and this without prejudice to the lessor's right to recover the amount of rent remaining unpaid.*

Although the applicant Connie Spiteri exhibited both the letter she personally sent to the respondent dated 20<sup>th</sup> June 2016 in accordance with article 11 no proof was brought by same applicant that the respondent did receive the letter. Receipts relative to the payment for the letters to be registered together with a track and trace document were exhibited in the acts of the proceedings however no proof was presented as to whether defendant actually received the letter. The same can be said of the legal letter sent by applicant's lawyer dated 7<sup>th</sup> July 2016. Thus article 11 of the lease contract has not been adhered to. It is hereby also pointed out that defendant in her reply stated that she did not receive the letter dated 20<sup>th</sup> June 2016.

Considers:

Applicant states that respondent did not make use of the immovable property in question as a *bonus paterfamilias*.

Article 1554 of the Civil Code, Chapter 16 of the Laws of Malta stipulates the obligations of the lessee.

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<sup>12</sup> A Fol. 139 – 144

*1554. The lessee is bound:*

*(a) To make use of the thing let to him as a bonus paterfamilias, and for the purpose stated in the contract, or, in the absence of an agreement to that effect, for such purpose as may be presumed according to circumstances.*

To sustain such allegation applicant has presented in the acts of the case one letter from MTA dated 8<sup>th</sup> June 2016<sup>13</sup>. In this letter addressed to Connie Spiteri (the licensee) it was stated that Kunlin Restaurant was inspected by Francesca Camilleri (Executive Enforcement Directorate) and her colleague on the 25<sup>th</sup> May 2016. A full inspection report was attached, listing the deficiencies which needed to be addressed as soon as possible. Ms Li was directed by the directorate that meticulous cleaning and maintenance were needed, especially in the kitchen. Additionally, documentation, fire alarm certificate and fire training of all full-time staff was requested.

Upon testifying, Mrs Connie Spiteri stated that she herself emphasised to defendant that she must keep things up to date. She stated that since the licence is in her name she is risking that the MTA imposes fines upon her and that the licence is revoked. She states that it is difficult to obtain a Class 6 permit and the value of the property is much higher with such a permit. She continued to say that defendant did not comply with all that was suggested by MTA. Thus, she sent her a letter dated 20<sup>th</sup> June 2016 to terminate the lease. Defendant did not reply. She even sent her an sms but no reply was forthcoming. Mrs Spiteri states that she was under pressure from MTA. Thus, she informed MTA that she had started the procedures to terminate the lease. Thus, MTA representative informed her that any procedures from MTA's side would stop. In fact she confirmed that till now she incurred no penalties.

Ms Francesca Camilleri, as has already been pointed out, testified that she went twice on the property. The first time she went on the premises was on the 14<sup>th</sup> April 2016 and she pointed out to defendant that she needed to rectify the situation and she gave her two weeks to do so. Then, she went a month later, on the 25<sup>th</sup> May 2016, to carry out the proper inspection but there was little improvement. The place was still not up to standard. Defendant had informed her that she had some financial difficulties. Thus the letter dated 8<sup>th</sup> June 2016, previously referred to, was sent. Ms Camilleri explained that the main issue was the cleanliness and a major issue was the fire-safety because there was the need for training. She explained that if the requirements imposed by MTA are not met up, the Authority would decide to issue an administrative fine both to the

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<sup>13</sup> Dok C

licensee and operator and in extreme cases order the complete closure of the premises. She stated that she was informed by Mrs Spiteri that she was going to terminate the contract she did not take any action, but otherwise she would have definitely taken action. But, she was not in a position to state whether the MTA management would have opted for a fine or closure. After the inspection carried out on the 25<sup>th</sup> May 2016 she did not return to the premises.

It must be pointed out that once the defendant is operating a restaurant, it is of the essence that premises are kept clean and that all hygiene requirements are observed not just because the MTA requires it, but also because people's health who will buy food from the restaurant cannot be put at risk.

Having said this, no specific condition was agreed upon between the parties that the restaurant was to be kept clean at all times or otherwise the lessor will have the right to terminate the lease. Although it is being indirectly argued that it should be obvious that a restaurant must be kept clean at all times and the Board is in full agreement with this, it is a totally different thing to say, however, that lack of cleanliness should bring about the termination of the lease. Particularly in this case, although Francesca Camilleri stated that she would have taken action herself, the action which would have been taken was not specified what it would have been. It is also to be pointed out that the situation in the restaurant although not optimal was not in such a terrible state to pose such a health risk to prompt the MTA to close the premises because since food was and is still being offered to the public the Board would believe that the MTA would take no risks with the public's health. Thus, although most definitely there is room for improvement in the way defendant is operating, in the Board's view the applicants have not proven that the defendant has not acted as a *bonus paterfamilias*.

Moreover, the applicant Connie Spiteri and her daughter emphasised that the respondent failed to adhere to the conditions of the lease contract, arguing that the bills relevant to the restaurant license and water and electricity bills were not paid on time however in the acts of the proceedings no evidence was brought by the applicant supporting her claims. On the other hand the respondent provided documentary evidence showing that the water and electricity bill relative to the restaurant had been paid by the respondent up till May 2017. Same applicant testified that the bills had been paid up.

With regards to the conditions ancillary to maintaining the restaurant licence the applicant Connie Spiteri states that the respondent failed to take out an

insurance policy in accordance to article 12 of the lease contract. Although from the documentary evidence it results that the respondent took out an insurance policy in 2017 and not on the commencement of the lease contract in 2014, on Connie Spiteri's own admission she stated that she received a phone call from an insurance agency representative to provide the valuation of the property being leased whereby she insisted with the same representative that the surveyor could easily establish the valuation of the property when he conducted a site inspection prior to issuing an insurance policy. The applicant's unwillingness in facilitating the procedure for the respondent by providing the necessary valuation of the property to the insurance representative shed light on the reluctance of the insurance as stated by the respondent to issue an insurance policy in the preceding years. It is evident that although the applicant Connie Spiteri claimed that the bills related to the running of the business were not paid on time, both the applicants and their daughter confirm that all the bills and related expenses were eventually paid.

Moreover, reference is made to Dok B which is an agreement by virtue of which the lease agreement originally entered into was varied. The date of such agreement seems to be the beginning of July 2015, at least it refers to a rental period starting to run as from 5<sup>th</sup> July 2015. At that time, no insurance policy had been taken out by respondent and yet applicant proceeded with the agreement and continued to accept the rent without any questions posed. Moreover, in this second agreement no reference is made to the first agreement and the issue of the insurance policy is not even mentioned. This must have been a bit confusing even to defendant.

Thus for the above-mentioned reasons, whilst rejecting the defendant's first plea, accedes to all the other defendant's pleas and rejects plaintiff's claims.

The expenses are to be borne by the applicants, except for the expenses relating to the defendant's first plea which must be borne by herself.

**Dr Josette Demicoli**  
**Magistrate**

**Lorianne Spiteri**  
**Deputy Registrar**