

Rent Regulation Board

Magistrate Dr. Josette Demicoli LL.D.

AJRP Limited

vs

Ricky Alan Reeves

Application Number: 113/2016JD

Today 7th October 2019

The Board,

Having seen Applicants' Application¹ filed before the Court of Magistrates (Malta) on 20th May 2018 by virtue of which the plaintiff requested the Court to condemn the defendant to pay the amount of eleven thousand seven hundred and seventy-seven Euro and sixty cents (€11,777.60) in unpaid rent and unpaid water and electricity bills in accordance with the lease agreement entered into between the plaintiff company and the defendant on the 17th December 2011 for the property situated at Villa No 4, Triq Frangisk Assisi, Bahar ic-Caghaq, Malta.

Having seen Respondent's Reply² filed on 22nd June 2016 by virtue of which the defendant pleaded that the Court lacked competence to hear and try the case; and without prejudice, the defendant pleaded that he always abided by his contractual obligations and it was applicant company who failed to abide by its contractual obligations; that proof must be brought forward with regards to the consumption of electricity and water which amount is being contested; that he should not bear expenses.

Respondent filed a counterclaim by virtue of which he asked that applicant company be condemned to pay the amount of fifteen thousand Euro (€15,000) allegedly due by way

¹ Fol. 1, acts of the proceedings before the Court of Magistrates (Malta)

² Fol. 11, acts of the proceedings before the Court of Magistrates (Malta)

of re-imbusement for maintenance expenses which Respondent claims to have incurred in order to render the tenement let habitable, as it should have been in terms of the lease agreement dated 17th December 2011, which was extended until 2015. Applicant company rejects said counterclaim as unfounded in law and in fact.

Having seen the Judgement of the Court of Magistrates (Malta) dated 16th November 2016³ in virtue of which respondent's plea of incompetence of the Court was upheld, and the Court ordered the transfer of these proceedings to this Board in terms of **art. 741(1)(b)** of Chapter 12 of the Laws of Malta.

Having seen its decree dated 17th August 2018 in virtue of which this Board rejected respondent's request to vary the sum counterclaimed from fifteen thousand Euro (€15,000) to sixty one thousand nine hundred and fifty Euro (€61,950).

Having seen the acts of the proceedings, and the documentary evidence filed by the contending parties.

Having heard the testimony of the parties and their witnesses.

Having heard the oral submissions of the parties' respective counsels.

Considers that:

In this cause, Applicant Company is requesting the payment of the sum of eleven thousand seven hundred and seventy seven Euro and sixty cents (€11,777.60) due as to the sum of nine thousand five hundred and twenty Euro and fifty five cents (€9,520.55) rent arrears for the tenement Villa No. 4, Triq San Frangisk Assisi, Bahar ic-Caghaq for the period between 28th February 2015 and 4th July 2015 in terms of a lease agreement dated 17th December 2011, and the balance of two thousand two hundred and fifty seven Euro and five cents (€2257.05) due by way of outstanding balance for electricity and water utilities provided in said tenement.

On his part, Respondent contests that he is in any way indebted to Applicant Company. He furthermore counterclaims⁴ against applicant company the payment of fifteen thousand Euro (€15,000) allegedly due by way of re-imbusement for maintenance expenses which Respondent claims to have incurred in order to render the tenement let habitable, as it should have been in terms of the lease agreement dated

³ Fol. 37-41, acts of the proceedings before the Court of Magistrates (Malta)

⁴ Fol. 13, acts of the proceedings before the Court of Magistrates (Malta)

17th December 2011, which was extended until 2015. Applicant company rejects said counterclaim as unfounded in law and in fact

Considers furthermore that :

The lease under investigation was contracted and regulated by a Lease Agreement, which the contending parties executed between them on 17th December 2011.⁵

According to this Lease Agreement, Applicant Company let in favour of Respondent, with effect from 5th March 2012, the tenement at Villa No. 4, Triq San Frangisk Assisi, Bahar ic-Caghaq, for a compulsory period of three (3) years and four (4) months, at the annual rent of one hundred thousand Euro (€100,000) payable annually, with an option in favour of Respondent to extend the lease term by two subsequent periods of one (1) year each. A security deposit of twenty five thousand Euro (€25,000) was paid at the commencement of the Lease, subject to Applicant Company's obligation to release said deposit in favour of Respondent at the termination of the lease, if all other stipulated conditions were satisfied. In addition to the rent, Respondent was obliged to pay for electricity, water, gas and telephone services provided in the tenement, and on this account, Respondent had to pay an additional monthly sum of five hundred Euro (€500) in part settlement of this obligation, subject to his duty to settle the entire actual bills on their receipt. Applicant Company undertook to carry out works, and give Respondent assistance, to settle down in the tenement. The contending parties included an inventory of the contents of the tenement in the Lease Agreement.

In the acts of this case a note filed by applicant company denotes that **Joseph Satariano**⁶'s affidavit is being presented. Mr Satariano is the director of Applicant Company. In this document there is an explanation as to how Respondent failed to settle the rent due for the last four months of the lease, totalling to €34,520.55. Applicant Company retained the security deposit in part satisfaction of this debt, and is still owed the outstanding balance of nine thousand five hundred and twenty Euro and fifty five cents (€9520.55). In addition, he declares that Respondent failed to pay for water and electricity consumption between 2nd April 2015 and 4th July 2015, totalling to €2257.05⁷. According to the witness, Respondent's total indebtedness to Applicant Company amounts to €11,777.60. The difficulty which this Board is encountering with regards to

⁵ Doc. JS1, fol. 47 to 50, acts of the proceedings before the Court of Magistrates (Malta)

⁶ Fol. 45 to 46, acts of the proceedings before the Court of Magistrates (Malta)

⁷ €1922.67 + €334.38, Docs. JS2 and JS3, fol. 51 to 52, acts of the proceedings before the Court of Magistrates (Malta)

this document is that Mr Satariano has neither signed it nor is there an indication of it being sworn or that it is being presented upon solemn declaration.

Eventually Joseph Satariano testified *viva voce*⁸, whereby he clarified that he took the utilities' meters readings when Respondent vacated the tenement let, and exhibited the relative pictures⁹ taken by himself. He explained that he calculated the price due for services consumed up to said readings utilising the online bill calculator which the provider operates.

Rueben Bonnici, in representation of ARMS Limited, testifying for Applicant Company,¹⁰ exhibited the detailed bills for utilities consumed in the tenement up to the date on which Respondent vacated the tenement.¹¹ He declared that the utility services were registered in the name of Joseph Satariano, and that the client was provided with a three-phase service. He further explained that the online rent calculator calculates the price of utilities consumed, according to the reading which is put in, and the rents vary according to whether a single-phase meter or a three-phase meter is provided. Meter rent rates for a three-phase service are higher than those for a single-phase service. According to the witness's calculation, the price due for utilities consumed between 26th May 2015 and 4th July 2015 totals to €348.62¹², instead of €334.38¹³.

Applicant Company furthermore exhibited legal correspondence sent and received on its behalf from Respondent¹⁴, as well as the legal copy of an executive judicial letter number 187/2015 which Applicant Company filed against Respondent.¹⁵

In his first sworn declaration¹⁶, Respondent explained that he is a UK citizen and moved to Malta with his family in 2010. He states that, in terms of the aforementioned Lease Agreement, he was obliged to make three annual payments of €100,000 each, which were intended to cover the 40-month term of the lease, therefore dividing up to €7,500 per month, instead of €8,333.33 per month as Applicant Company interprets their written agreement to mean. He claims that on the expiration of the third whole year on 5th

⁸ See transcript of testimony, 15.3.2018, fol. 109 to 112

⁹ Fol. 104 to 105

¹⁰ See transcript of testimony, 1.6.2017, fol. 5 to 12

¹¹ Fol. 13 to 75

¹² Dok. RB4, fol. 98

¹³ Fol. 52, acts of the proceedings before the Court of Magistrates (Malta)

¹⁴ Doc. AJRP2, fol. 76 to 79

¹⁵ Doc. AJRP3, fol. 80 to 82

¹⁶ Fol. 117 to 118

March 2015, Applicant Company sent him an invoice for €100,000, only to be replaced by a second invoice requesting a payment of €33,333. Respondent contends that the Applicant Company has to bear a third of the utilities' total bill for the whole duration of the lease, on account of its use of water and electricity for the pool and garden, whilst it bore exclusive responsibility therefor. Respondent further states that Applicant Company owes him the sum of €8,450 in reimbursement of the expense he had to incur as a result of its failure to engage a gardener/farmer to tend the garden and pool area as expected. In addition, he claims an additional payment of €15,000 to make good for the reduction in his quality of life on account of Applicant Company's failure to maintain the property as required, and finally the remission of the €25,000 security deposit. Furthermore, Respondent claims that he quit the tenement let on 3rd July 2015, when the electricity meter read 283929 and the water meter read 1362.

In his second sworn declaration¹⁷, Respondent insists that his agreement with Applicant Company at the time of constitution of the lease was that he be allowed to let the tenement for an additional four months, beyond the third year, without incurring any additional rent, to make good for the disruption and costs he had to suffer on account of difficulties caused by the previous tenant and works which Applicant Company failed to execute. He contends that the agreement states that the total rent due for the entire lease term totalled to €300,000.

Considers moreover that :

- (i) the lease under examination lapsed on 4th July 2015, and Applicant Company initiated these proceedings on 20th May 2016, almost one year after, and following Respondent's opposition to Applicant Company's executive judicial letter dated 18th September 2015 claiming the payment which is hereby being requested ;
- (ii) in the meantime, Respondent did not proceed judicially in furtherance of his claims now forming the merits of the counterclaim, and in particular did not request the release of the €25,000 security deposit ;

¹⁷ Fol. 130

(iii) in his counterclaim, Respondent is not requesting the release of said security deposit, but only claiming reimbursement of maintenance expenses allegedly incurred unduly.

(iv) Even though it has not resulted that Joseph Satariano has confirmed on oath his version of events, in reality there is agreement that €300,000 have been paid. The issue is whether the lessee had to pay for rent for the last four months he was living in the rented property or else whether as respondent argues the last four months have already been paid. It all boils down to a question of interpretation of clause one of the rental agreement.

In this context, the Board has considered in detail the terms and conditions of the Lease Agreement executed between the contending parties, dated 17th December 2011, and in particular clause one (1) stipulating a '*rent of One Hundred Thousand Euros **per year**¹⁸ (Euro 100,000) payable annually in advance by the Lessee*' and a term of '*3 (three years and 4 (four) months as from the 5th March 2012*'. The Board, whilst conceding that the drafting of this clause leaves much to be desired and that a clearer expression is expected in lease agreements, is convinced, on a basis of probabilities, that the contending parties had agreed on a lease term of three years and four months, at the annual rent of €100,000, meaning that Respondent was obliged to pay Applicant Company a proportionate rent (a third of €100,000) for the last four months of the lease term. This is the only interpretation which explains why Respondent did not request Applicant Company to release the security deposit on the expiration of the lease, or thereafter. That course of action on the part of Respondent can only be explained if Applicant Company's interpretation of clause one (1) of the Lease Agreement is upheld. Respondent only attempted (unsuccessfully) to put forward this claim for the reimbursement of the sum of €25,000 during the pendency of these proceedings, possibly when he realised that his attempt to justify his failure to pay the rent due for the last four months of the lease based on his interpretation of the Lease Agreement conflicted with the course of action he had followed after termination of the lease.

On the other hand, Applicant Company did not explain its calculation of the sum of €34,520.55 as the proportionate rent due, and in particular why it mentions the 28th February 2015 as the date on which rent arrears due start. The Lease Agreement states that the lease started to run on 5th March 2012, for a term of three years and four months, and that the rent had to be paid annually. This means that the €300,000 which

¹⁸ Emphasis of the Board

Applicant Company received from Responent by way of rent cover the term until 4th March 2012, and the the outstanding rent covers the period running from 5th March 2015 to 4th July 2015, a total of four months or one hundred and twenty two (122) days, amounting to €33,424.65. After deducting the security deposit, the rent arrears which Respondent still owes Applicant Company amount to **€8,424.65**.

With regard to the overdue price for utilities which Respondent consumed in the tenement let, he does not deny having consumed said services without having settled the final bills in terms of his contractual obligations. On the strength of the best evidence which Applicant Company produced in this regard, the Board finds that its demand to be paid the sum of **€2257.05** in settlement of utilities' dues is founded.

With respect to Respondent's counterclaim, and noting in particular his option to rely solely on his own declarations to prove his claims, and not to produce independent and objective evidence of the alleged undue and additional expenses and costs he had to incur to secure his enjoyment of the tenement let, the Board considers that the counterclaim is unfounded in law and in fact. The Board is of the view that Respondent's counterclaim partakes more of a weak attempt to shake off responsibility for the principal claim, than a properly-founded claim. As the law stands, Respondent cannot expect this Board to interfere or alter the conditions of a lease, long after its expiration, merely because he may have concluded a bad deal or accepted to pay an excessive rent. It is very clear that Respondent sought a high-end tenement, well aware that he will be required to pay a high rent for it, and with this full consciousness, negotiated a lease in complete freedom, and so also opted to execute a lease agreement. All obligations so contracted have the force of law between the parties, and no one party is justified or allow to plead ignorance of market facts or change in circumstances to attempt releasing itself of such obligations. On the other hand, rights of action are contemplated under our law to ensure adherence to contractual obligations, and Respondent could very well enforce said obligations in the course of the lease, or thereafter, producing the best evidence of his claims.

Decide

For the aforementioned reasons, this Board rejects Respondent's pleas to the principal claim and therefore upholds only in part Applicant Company's claim, condemning Respondent to pay in favour of Applicant Company the sum of ten thousand six hundred and eighty one Euro and seventy cents (€10,681.70), with legal interest from the date of this judgment until final payment, and rejecting the remaining part of the demand. In

regard to the counterclaim, the Board upholds Applicant Company's pleas and rejects Respondent's counterclaim.

Respondent shall bear the entire costs of these proceedings.

Dr Josette Demicoli
Magistrate

Cora Azzopardi
Deputy Registrar