



QORTI TA' L-APPELL

**ONOR. IMHALLEF
RAYMOND C. PACE**

Seduta ta' l-14 ta' Gunju, 2012

Appell Civili Numru. 55/2011/1

Claudine Sammut

vs.

Piotr Skoczylas

The Court,

I. PRELIMINARIES.

In 12th October 2011 the Rent Regulation Bord pronounced the decision in the above mentioned names: -

“Il-Bord;

Ra r-rikors guramentat ta' Claudine Sammut;

1. Illi l-esponent kienet tikri lill-intimat Piotr Skoczylas il-flat bin-numru intern 321, fi Blokk 3, St. Angelo Mansions, Birgu, u l-parking space mhux ufficjalment market bin-

numru 74 fl-istess kumpless, bil-kera u l-kundizzjonijiet l-ohra indikati fl-iskrittura ta' kiri datata 15 ta' Dicembru 2009 (Dokument A):

2. Illi l-intimat naqas li jhallas il-kera tal-flat u parking space dovuta skont l-imemmsija skrittura ghax-xhur ta' Novembru 2010 u Dicembru 2010;

3. Illi skont il-klawsola ittra (u) tal-istess krittura, 'should the lessee fail to pay the rent within one week od the due date, the lessor will have the right to rescind without warning this agreement 'Ipsa Facto' (automatically) and this without prejudice to his claim for the payment which is still due'.

4. Illi b'ittra legali tal-5 ta' Jannar, 2011 (Dokument "B"), l-esponenti avzat lill-intimat li kienet qed ixxolji b'effett immedjat din il-kirja ai termini tal-imsemmija klawsola, u interpellatu sabiex, filwaqt li jivvaka mill-fondi, jirritornalha c-cwieviet u l-access cards kollha, u jhallas dak kollu dovut minnu.

5. Illi minkejja dan, l-intimat ghandu sallum qed jokkupa b'mod illegali u abbuziv l-istess flat u parking space, filwaqt li naqas li jhallasha kemm l-arretrati tal-kera, ammontanti b'kollox ghal elf mitejn ewro (€1,200), kemm ghas-servizz tad-dawl u l-ilma, ammontanti sat-2 ta' Marzu 2011 ghal elfejn, tliet mija u sittin ewro u wiehed u hamsin centezmu (€2,360.51).

6. Illi inoltre, l-agir tal-intimat qed jikkaguna danni lill-espoennti konsistenti fost ohrajn fit-telf tal-kera percepibbli mill-fondi msemmija ghaz-zmien kollu li lintimat jibqa' jokkupahom illegalment.

7. Illi kemm l-arretrati tal-kera, kemm l-ispejjez ghas-servizzi tad-dawl u l-ilma fil-fondi msemmija, u anke d-danni ghall-okkupazzjoni illegali, dovuti lill-esponenti mill-intimat kif fuq inghad, huma dejn cert, liwidu u skadut.

8. Illi jezistu l-elementi kollha preskritti bid-dispozizzjonijiet tal-artikolu 16A tal-Ordinanza li tirregola t-Tigdid tal-kiri ta'

Bini (Kap 69) sabiex it-talbiet tal-esponenti, kemm ghall-izgumbrament kif ukoll ghall-hlasijiet fuq imsemmija dovuti mill-intimat, jigu decizi bid-dispensa tas-smigh tal-kawza billi sa fejn taf l-esponenti l-intimat ma ghandux difiza x'jaghti kontra dawn it-talbiet.

Ghaldaqstant, prevja kull dikjarazzjoni li dan il-Bord jidhirli xierqa, l-esponenti titlob bir-rispett li, ghar-ragunijiet premessi, dan il-Bord joghgbu:

i. Jiddeciedi skont it-talbiet bid-dispensa tas-smigh tal-kawza a tenur tal-artikolu 16A tal-Ordinanza li tirregola t-Tigdid tal-Kiri ta' Bini;

ii. Jordna lill-intimat sabiex fi zmien qasir u perentorju li jigi lilu prefiss minn dan il-Bord jizgombra mill-flat bin-numru intern 321, fi Blokk 3, St. Angelo Mansions, Birgu, u mill-parking space mhux ufficjalment market bin-numru 74 fl-istess kumpless, u jirritorna lill-mittenti c-cwieviet u l-access cards kollha tal-istess;

iii. Jikkundanna lill-istess intimat ihallas lill-esponenti s-somma komplessiva ta' tliet elef hames mija u sittin ewro u wiehed u hamsin centezmu (€3,560.51) dovuti kwantu ghal €1,200 arretrati tal-kera mill-21 ta' Novembru 2010 sal-5 ta' Jannar 2011 u kwantu ghal €2,360.51 spejjez tas-servizzi tad-dawl u l-ilma sat-2 ta' Marzu 2011 kif fuq inghad;

iv. Jikkundanna wkoll lill-intimat ihallas lill-esponenti danni in linea ta' kumpens ghall-okkupazzjoni illegali fit-termini tal-ligi, bir-rata ta' €800 fix-xahar b'effett mis-6 ta' Jannar 2011 sad-data tac-cediment tal-fond.

Bl-ispejjez inkluzi dawk tal-ittra ufficjali tal-11 ta' Marzu 2011 u tal-mandat ta' sekwestru prezentat kontestwalment, u bl-imghaxijiet legali kontra l-intimat li huwa ingunt ghas-subizzjoni.

B'rizerva ghal kull azzjoni ohra kompetenti lill-esponenti skont il-ligi inkluz ghall-ispejjez kollha tas-servizz fil-fondi

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sad-data tal-izgumbrament, u ghal kwalsiasi danni ohra sofferti minnha bi htija tal-intimat.

Ra l-atti kollha tar-rikors;

Ra illi l-intimat naqas milli jkun prezenti biex iwiegeb ghat-talbiet tar-rikorrenti;

Semgha lir-rikorrenti bil-gurament tiddikjara illi ma kien hemm l-ebda kambjament fis-sitwazzjoni minn meta intavolat ir-rikros promutur hlief li l-intimat irritorna c-cwieviet tal-fond fis-7 ta' Settembru 2011 u ghalhekk prezentat prospett ta' ammonti dovuti mill-intimat sad-data effettiva tal-okkupazzjoni tal-fond;

Ghal dawn il-motivi, dan il-Bord jaqta' u jiddeciedi billi bid-dispensa ta' smigh skont l-artikolu 16A tal-Kap 69 filwaqt illi jastjeni milli jiehu konjizzjoni tat-tieni talba stante irrilaxx volontarju tal-fond mill-intimat, jilqa' t-talbiet l-ohra tar-rikorrenti billi:

1. Jikkundanna lill-intimat ihallas lir-rikorrenti s-somma ta' €3,560.51 kwantu ghal €1,200 arretrati tal-kerha mill-21 ta' Novembru 2010 sal-5 ta' Jannar 2011 u €2,360.51 spejjez tas-servizzi tad-dawl u l-ilma sat-2 ta' Marzu 2011;

2. Jikkundannah ihallas is-somma ta' €1,283.10 ghal spejjez ta' dawl u ilma ghall-perjodu mit-8 ta' Marzu 2011 sad-9 t'Awissu 2011;

3. Jikkundanna wkoll lill-intimat ihallas lill-esponenti danni in linea ta' kumpens ghall-okkupazzjoni illegali fl-ammont ta' €6,400.00 mis-6 ta' Jannar 2011 sas-7 ta' Settembru 2011 bir-rata ta' €800 fix-xahar;

Ghalhekk fl-ammont komplessiv it-tliet kundanni ta' €11,243.61 li minnhom ghandhom jitnaqqsu €800 depositu li jinsabu f'idejn ir-rikorrenti;

Bl-ispejjez u imghaxijiet kontra l-intimat."

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Having seen the sworn application of Piotr Skoczylas dated 26th October 2011 at page 1 of the court file by means of which he asked for the revocation of the judgement of the Rent Regulation Bord on the basis that he was afforded a fair hearing in terms of Law also on the basis that his demand that the proceedings be held in the English language were not acceded to by the Bord.

Having seen that this appeal was appointed for hearing on the 26th January 2012.

Having seen the reply of Claudine Sammut dated 14th November 2011 at page 137 of the relative appeal court by means of which stated that the judgement of the Board should be confirmed for the reasons therein indicated.

Having seen the record of the sitting held by the Court on the 16th February 2012 where in that sitting the appellant asked that the proceedings be conducted in the English Language that he be allowed to make oral submissions, and that the Court acceded to these requests and effectively the appellant made the relative submissions personally in the English Language. The respondent's also made his submissions and the appeal was postponed for judgement for the 14th June 2012.

Having seen all the acts including this decision of the Rent Regulation Bord in the said names dated 12th October 2011.

Having seen all the exhibited notes and documents.

Having seen all the other relative acts of this case.

II. CONSIDERATIONS.

Having seen that that the appeal is based on the basic grievance that the appellant was not accorded a fair hearing by the Rent Regulation Board since his application dated 30th August 2011 for the postponement of the case for a date in December 2011 when he would be in Malta was not acceded to; his request that the

proceedings be held in English was also not acceded to; he was not allowed through his legal representative to present a note of submissions as indicated in Exhibit PAS 7 or a rebuttal note as per **article 16 A (5) of Chapter 69 and article 170 of Chapter 12** on the date of the hearing when he was for all intents and purposes of law represented by his lawyer Dr. Joseph Ellis, also in view of the fact that he was not in Malta at the time and thus this vitiates the decision given by the mentioned Board.

The Court having seen all the relative acts of the case in point finds that from the records it results that effectively the appellant was not duly notified with the respondent's application which initiated proceedings in front of the Rent Regulation Board according to **article 16 A (4) of Chapter 69** as service on the appellant was not effected by means of a court official as therein specifically indicated.

Having also noted, that considering that the Board ordered that appellant be notified with the said application by means of means of publication and the affixing of the judicial act in the places indicated by law, but such service was not actually effected according to the provisions of **article 187 (3) of Chapter 12** since no publication in a local newspaper was actually provided for.

Having also noted that the sworn application of the appellant presented in the records of the case indicated clearly that the appellant, who was English speaking would not be present in Malta except in December 2011, as the Board itself indicated in the records of the sitting of the 5th October 2011 and that in spite of this fact the relative decree was acceded to only in the sense that the case was postponed for the 12th October 2011, a date on which the appellant was actually in Ireland, and that date was fixed so that the Board would decide on the issue whether to allow the respondent to defend the case in the normal manner, these being special summary proceedings.

Having seen that on that date the record shows *inter alia* that the Board stated in the Maltese language that the case had been postponed to that same date so that the defendant or his representative appear before it to see if he has a valid reason to contest the case, and since no one appeared the Board ordered the continuation of the proceedings. In fact Claudine Sammut testified on oath, and asked the Board to proceed to pronounce its decision. The case was postponed for the Board to give judgement.

However it results from the records that later on Dr. Joseph Ellis appeared on behalf of the defendant and asked that the case be recalled and asked for the suspension of the delivery of the judgement by the Board. The Board noted that since this was a special summary proceeding in terms of **article 16 A of Chapter 69** the request was being denied; Dr. Joseph Ellis again pleaded that the Board reconsider his decision and thus accede to his request to postpone the decision so that he may be able to present an exhaustive note explaining why the respondent should be allowed to contest the case. The Board noted that since Dr. Ellis was not the legal representative of the respondent but only a lawyer that had been assigned to him as legal aid, and such a reason for contestation could only be brought by the defendant or his representative, and so the demand made was being denied and again postponed the case for judgement which was duly delivered later on that date acceding to the applicant's request after noting that the respondent did not appear to contest the applicant's claims.

Having examined all the records of the case finds that the procedure indicated by **article 16A of Chapter 69** which is similar to that provided for in **article 167 of Chapter 12** was not adhered to as on the date of judgement, once the Board had heard the case and the defendant or his representative did not appear, the said Board had to deliver judgement forthwith and not postpone the case for judgement.

However once the case was postponed for judgement, and in the meantime Dr. Joseph Ellis appeared on behalf of the respondent and asked the Board leave to be allowed to present a note of submissions on behalf of the respondent detailing why the applicant's demand for summary proceedings should not be acceded to on the basis that he had valid reasons at law to allow him to contest such demands made against the respondent, it was obvious that in the circumstances of the case, that Dr. Joseph Ellis was acting as representative of respondent, who was abroad, (and so could not be present for the proceedings), and thus the respondent was actually present through his representative, and the Board in such circumstances should have allowed him to present the said note, (also since his presence was acknowledged in the records of the case) according to **article 16 A (5) of Chapter 69.**

The Court further adds that in any case it results that Dr. Joseph Ellis was actually representing respondent in these proceedings, and the fact that he was appointed through the Maltese legal aid system, does not in any way mean that he could not represent the respondent in these proceedings, especially since the respondent was abroad, and so also on this basis the Court finds that the proper procedure in special summary proceedings was not followed according to law and that the Board should by law have allowed Dr. Joseph Ellis as representative of the respondent to present the relative note and/or hear his submissions why the respondent should be allowed to contest the case; only after taking cognisance of that note, or hearing such submissions, the Board should then have given a decision if the procedure adopted by the applicant was applicable in this case and consequently to decide whether respondent had proved on a *prima facie* basis that he had a defence to the applicant's case, and if in the affirmative give the respondent a time limit to present written pleadings and proceed with the case in the normal manner, or decide that the respondent had not proved that he had on a *prima facie* basis a line of defence to the applicant's case and so proceed to accede to the applicant's demands in his application. Thus the present

appeal is being acceded to in so far as this is consistent with the findings and considerations of this Court.

III. CONCLUSION.

For these reasons and considerations, this Court, **determines this appeal, by rejecting the appeal reply of the applicant Claudine Sammut dated 14th November 2011 only in so far as this is inconsistent with the decision of this court, and accedes to the appeal application filed by the appellant Piotr Skoczylas dated 26th October 2011 only in so far as this is consistent with the considerations of this judgement, and thus revokes and annuls for intents and purposes of law the decision of the Rent Regulation Board in the names "Claudine Sammut vs. Piotr Skoczylas" dated 12th October 2011 (Application No. 55/2011) and therefore sends back the records and file of this case to the Rent Regulation Board, so that on the basis of the above considerations it decides whether to afford the appellant the right to defend the case, and also to decide on the merits of the case according to Chapter 69, including article 16 A of the said Chapter.**

Judicial expenses are hereby reserved for final judgement on the merits of the case.

Read and Delivered.

< Sentenza Finali >

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