



MALTA

BORD LI JIRREGOLA L-KERA

MAGISTRAT DR.

PAUL COPPINI

Seduta tas-27 ta' Gunju, 2014

Rikors Numru. 6/2012

Michael and Mary spouses Zammit

vs

David Paul McDonagh

The Chairman,

Having seen the sworn application, confirmed on oath by Mary Zammit, whereby applicants stated that:

1. She and her husband leased to David Paul McDonagh the house numbered one (1) named "Wardija Gardens", Tac-Cawl Street, Qala, Gozo as well as a garage forming part of the same block

named "Wardija Gardens". The garage is the first one from the left hand side as one enters the block;

2. The said premises were leased for the sum of four hundred euros (€ 400) monthly;
3. Defendant failed to pay the balance of rent due for the month of December 2011 amounting to two hundred euros (€ 200) as well as the rent due for the period between January and August 2012 amounting to three thousand and two hundred euros (€3,200);
4. That the total rent due amounts to three thousand and four hundred euros (€3,400);
5. That in terms of the agreement between the parties, McDonagh had also to pay the meter rentals as well as the water and electricity consumption for the leased premises throughout the whole period of the lease;
6. That the pending water and electricity bills up to the 10th April 2012 amounted to four thousand and nineteen euros and seventy-five euro cents (€4,019.75);
7. That the sum of one hundred and forty euros (€ 140) reconnection charge is also due in view of the fact that the water and electricity services were suspended as defendant failed to pay the said bills;
8. That the total amount due by David Paul McDonagh amounts to seven thousand five hundred and fifty-nine euros and seventy-five euros cents (€7,559.75), which amount is certain liquid and due;
9. Notwithstanding the various requests for payment made to the debtor by spouses Zammit including a request made by means of a judicial letter sent in terms of article 166A of Chapter 12 of the

Laws of Malta, letter number 72/2012 dated 23rd July 2012, defendant failed to settle the amount due and contested the same letter without specifying any reason whatsoever why he should not pay the requested amount;

10. That in the same judicial letter spouses Zammit had indicated to defendant that they were going to proceed to terminate the lease in view of the fact that he had failed to pay the rent due;
11. Notwithstanding the above request defendant continued occupying the leased premises and did not return the vacant possession of the same to lessors. In fact this case has also been filed to obtain the eviction of defendant from the leased premises;
12. That spouses Zammit want to obtain payment of the sum due to them by defendant as well as the eviction of the same defendant from the leased premises;
13. Plaintiffs believe that defendant has no defence to the action and for this reason they have filed this court case;
14. That this case has been filed in terms of article 16A of Chapter 69 of the Laws of Malta so that the Board gives judgment allowing their demand, without proceeding to trial.

Having seen the decree of the fourth (4) October 2012, by which it was ordered that proceedings in this case were to be held in the English language.

Having noted that respondent handed over the keys of the property in question to applicant Mary Zammit during the same sitting.

Having seen the decree of the fifteenth (15) November 2012 whereby respondent was authorised to file a Note of Pleas with regards to the amounts allegedly due.

Having seen the Note of Pleas of respondent, whereby he stated that:

In the first place, exponent is non-suited as regards the first three requests of plaintiff as he has been given faculty to contest plaintiff's case and he relinquished the lease of the premises in question;

In the second place, defendant is contesting that he owes plaintiffs the amount of three thousand and four hundred euro (€3,400) by way of rest arrears as the rent due is much less than said sum being claimed by plaintiffs;

In the third place, the amount due to the plaintiffs for water and electricity is much less than the amount claimed by plaintiffs due to payments that have been effected on account by exponent and due to billing mistakes as will be shown;

Subject to additional pleas.

Having seen the evidence produced, including any affidavits and other exhibited documents.

Having seen respondent's Note of the sixth June 2014 with the attached documents.

Considers that:

Applicants had leased the premises at number one (1), Wardija Gardens, Taç-Ċawl Street, Qala, Gozo, together with a garage, to respondent at the rate of four hundred euro (€400) monthly. Water

and electricity bills relating to these premises during the continuation of the lease, were to be paid by respondent. As they claimed that respondent was delaying payment of both the rent and the services bills, applicants were demanding the termination of the lease and the payment of the outstanding amounts due to them.

After respondent vacated the premises in question and returned the relative keys to applicants, the contestation between the parties relates only to the amounts effectively due by respondent. Originally applicants were requesting the payment of seven thousand five hundred fifty nine euro and seventy five cents (€7,559.75), these being as to three thousand four hundred euro (€3,400) on account of arrears of rent due on the premises let to respondent, and four thousand one hundred fifty nine euro and seventy five cents (€4,159.75), representing the outstanding balance on water and electricity charges which remained unpaid. This latter sum includes a re-connection fee which had to be paid by the landlords, after the supply of these services had been suspended, because the bills remained unpaid.

Respondent is contesting the amount being claimed on overdue rent. Yet he never produced any evidence sustaining this plea. The sum of €3,400, representing the balance of the unpaid rent, is therefore due. With regards to the claim on the outstanding service bills, applicants filed a sworn Note on the 22nd March 2013, reducing their demand in view of the fact that, pending these proceedings, respondent made some payments to ARMS Limited and they themselves paid the remaining balance of €2,992.56,¹ in order to get a reconnection of the water and electricity supply. During the last hearing of the 2nd May 2014, respondent promised to file within a week two other receipts for payments made since by him. On the sixth June 2014, respondent filed a Note with a receipt for three hundred euro (€300) paid by him

¹ Vide Note at page 50, Doc. MZ 1 at page 51 and official receipt Doc.AG 6 at page 45

on account of the pending services bill on the 11th November 2012. Mrs. Angelita Grech stated in her evidence given on 25th January 2013, that up to the 2nd October 2012 the pending balance on water and electricity consumption for the premises in question stood at €2,922.56.² However these €300 paid by respondent were never deducted.

Consequently it results that the outstanding balance due by respondent amounts to:

The sum of three thousand four hundred euro (€3,400) on account of the rent due, together with two thousand nine hundred ninety two euro and fifty six cents (€2,992.56) covering the balance of the services bills and reconnection fee which had to be paid by applicants themselves, less the €300 paid by respondent as indicated above, hence totalling six thousand and ninety two euro and fifty six cents (€6,092.56), and not as indicated by applicant in her Note of the 22nd March 2013.

For these reasons, the Chairman determines the case by condemning respondent to pay to the applicants the sum of six thousand and ninety two euro and fifty six cents (€6,092.56), with legal interests on three thousand four hundred euro (€3,400) from the date of the judicial letter of the 23rd July 2012 and on the balance of two thousand six hundred and ninety two euro and fifty six cents (€2,692.56) from the 5th of October 2012, the date when applicants settled the pending bill with ARMS Limited.

² Vide evidence at page 29; this is a mistake, as the receipt for EUR2992.56 issued to applicant Mrs. Zammit (Doc.AG 6 at page 45) clearly indicates

All expenses, including those for the judicial letter of the 23rd July 2012 and of the warrant of seizure no.199/2012, are to be paid by respondent.

< Sentenza Finali >

-----TMIEM-----