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By Prof. Dr. Visar Hoxha 2022

The Case of the Rent-Paying Lessee– The problem

Problem Solving Workshop Case Study

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MEMORANDUM¹

From: Arsim Berisha, Managing Attorney, Prishtina Area Legal Aid
To: Ardian Gashi, Lead Attorney, Sejdiu LLC Law Firm
Re: Haxhiu Case

Our office is representing Besart Haxhiu, a 24-year-old single father of two children, in an eviction case. A few months ago, Mr. Haxhiu's landlord, Lirim Osmani, lost his property, including the apartment Mr. Haxhiu has been renting the apartment until the bank initiated the procedure of mortgage debt default because Mr. Osmani defaulted on his debt. The mortgagee -- that is Raiffeisen Bank that loaned Mr. Osmani the money to buy the property, with the property as security for the loan -- has owned the property since the mortgage debt default procedure. After Mr. Haxhiu refused the bank's offer to move out in exchange for cash, the mortgagee initiated a summary process case to evict him. Mr. Haxhiu has always paid his rent on time and has never done anything that would warrant his eviction. Raiffeisen Bank is evicting him solely because it believes that it must have the building completely vacant in order to sell it.

Mr. Haxhiu first moved into his two-bedroom apartment at Ulpiana in Prishtina on February 1, 2020, before COVID-19 pandemics began. He had just finalized a particularly bitter divorce and was looking for a fresh start in a new place for himself and his two young children. He was initially attracted to the apartment because of its location: it is within walking distance of both his mother's apartment at Bregu i Diellit and the Clinical University Center of Kosovo where he works as a nurse. When Mr. Osmani offered to rent the apartment to him without collecting either a security deposit or pre-payment of the last month's rent, Mr. Haxhiu jumped at the offer.

The apartment is on the second floor of a six-story building. When Mr. Haxhiu moved in, Mr. Osmani occupied the apartment on the first floor, and a newlywed couple lived on the third floor. He never had a written lease, but simply an oral agreement to pay 400 € a month.

Despite his economic hardships, Mr. Haxhiu has diligently paid his rent on time every month. In addition to working full-time at QKUK, he works

¹ This case was prepared by Prof. Dr. Visar Hoxha, Professor of Real Estate Department, College ESLG in 2022. The facts, while realistic in the opinion of the author, are, as to specifics, fictional.

two ten-hour shifts per week as a nurse at the American Hospital. Although he receives child support from his ex-wife, he must work these long hours just to make ends meet. Mr. Haxhiu also seems to be a devoted, hard-working father. Since he cannot afford private daycare for his children, his mother cares for them while he works.

Mr. Osmani is the adopted child of Hetem Osmani who was married with Elife Osmani with whom he did not have any children. However, Mr. Hetem Osmani had three other children with his first wife Hanife, who all three are adults and live in Germany. Mr. Hetem Osmani worked for NBI Agrodrini and was given the right to use the apartment in 1989 for 30 years with the symbolic rent of 1,000 Yugoslav dinars at the time. Nevertheless, when Mr. Osmani was given the apartment for use he was in a common-law partnership with Hanife, who was working for NBI Agrodrini as a cleaner, however, participated in the payment of rent to Agrodrini. In 1993, the AgroDrini was under the forced management installed by Serbian Government who issued a warning for Mr. Osmani to pay the apartment or vacate the apartment, or otherwise the apartment should be vacated and be given for use despite of use and rent agreement to a Serbian colleague Milos.

As Hetem was evicted from the apartment in 1998 before the war began, the colleague Milos moved in but NBI Agro Drini then called Agro Popova never formalized any agreement with Milos. Milos stayed in the apartment until September 1999 when he fled to Serbia. After the war, Hetem moved in with his second wife Elife with whom he did not have any children but adopted a child in 1998 named Lirim. Hetem paid the apartment to NBI Agro Drini under AKP management in 2016 and in 2019 served as a guarantor with the collateral of apartment for a loan in 2019, which Lirim took from Raiffeisen Bank in the amount of 60,000 € to purchase land for building a house in his village Pakashtica to go and live with his wife. Nevertheless, in April 2021 he and his second wife died from COVID-19 leaving Mr. Lirim Osmani with his debt towards Raiffeisen Bank unpaid and collateral still securing the bank loan of Lirim. Lirim and Hetem in order to finance the loan leased the apartment to Bekim with a four-year contract of 400 € per month. Nevertheless, Hetem before he died wrote a statement that Lirim should continue to live in the apartment until he constructs a house in Pakashtica and after that, the apartment should belong to all heirs in accordance with the Law on Inheritance of Kosovo.

Nevertheless, Mr. Osmani fell behind on his payments. On December 15, 2021, the bank completed the foreclosure procedure and made a request to the court for forced eviction of property rights bearers.

Mr. Haxhiu first learned of the foreclosure on January 21, 2022. He was just arriving home with his children when he saw a man with a clipboard who appeared to be inspecting the exterior of the building. When the man saw him approach the front door, he asked Mr. Haxhiu if he lived in the building. Mr. Haxhiu guardedly answered that he did. The man introduced himself as Arian Krasniqi, a banking lawyer who had been hired by the mortgagee that initiated the procedure to acquire the property rights over the property. He told Mr. Haxhiu that the mortgagee wanted to sell the building as soon as possible with the public auction, and that it needed the building to be vacant in order to do so. He said that the mortgagee was prepared to offer him 200 € if he vacated his unit by the end of the month. Stunned, Mr. Haxhiu assured Mr. Krasniqi that he would consider his offer. He took Mr. Krasniqi's business card and promised to call him later. Before he left, Mr. Krasniqi erected a "For Sale" sign on the door.

After speaking with Mr. Osmani to confirm that the property had indeed been foreclosed, Mr. Haxhiu examined his finances. He expected to have approximately 100€ on hand by the end of the month, just enough to pay his current rent and utility bills and purchase enough groceries to last until his next paycheck. Even with the 200 €, the mortgagee was offering, he figured he would still need to find a new apartment in the area, which cost 500 € on average and all of them require a security deposit of one month plus the first-month payment upfront, meaning that he would need lots of money, which his salary of 700 € at QKUK cannot cover.

Bearing in mind that he will need to pay lots of money and that under contract the lessor must inform the lessee at least three months in advance, Mr. Haxhiu asked 1,200 €, which the mortgagee refused to give. Mr. Haxhiu decides to file a lawsuit in court.

Financial considerations aside, Mr. Haxhiu was reluctant to leave his apartment because it had become the center of his new life. It afforded him easy access to both of his jobs and allowed him to be close to his mother, who had become a tremendous source of support. If Mr. Haxhiu moves somewhere else he would need to send children either to private kindergarten adding another 250 € per month or buying a car to send his children to his mother adding lots of hassle to his already complicated life as a single father. Mr. Haxhiu has also made some renovations in the apartment in Ulpiana in the amount of 500 € to change the windows with the promise from Mr. Osmani that this will be deducted from his rent. Mr. Haxhiu has taken a loan from TEB Bank for a change of windows due to high electricity bills.

On February 02, 2022, Mr. Haxhiu called Mr. Krasniqi and rejected his offer. He explained that even if he could find a new apartment by the end of the month, he could not afford to move at this time and he would need three months to leave as per the contract. Rather than increasing the amount of the move-out offer, Mr. Krasniqi became angry and told him that if he did not accept the offer and leave voluntarily, the mortgagee would be forced to evict him. He warned that eviction proceedings had already been started against Mr. Osmani, and ended the call with a threat: Mr. Haxhiu could either move out on his own initiative now, or be thrown out later with the mortgage procedures.

Mr. Haxhiu has asked from our Legal Aid Office to file a lawsuit against the Notice of Eviction and asks compensation for three months plus the renovation expenses that he has made in verbal agreement with Mr. Osmani.

We are hereby informing you as the law firm Sejdiu LLC representing Raiffeisen Bank that we will file a lawsuit and seek an injunction order from the Basic Court of Prishtina.

Additional facts: The case goes to court, however, during the case Milos's son from Serbia makes a claim that his father died in Serbia and paid property taxes, made renovations while living in the apartment from 1998 until 1999.

QUESTIONS:

1. This is a Group Project and role-playing. Simulate a court trial with video presentations made with your telephones of different parties involved due to COVID-19? One of you should play the role of a judge?
2. Imagine you are the judge in the Basic Court of Prishtina. How would you decide on this matter? Please refer to all applicable law articles?
3. Please write a court decision with the enactment order and Reasoning Part of the Court Decision?
4. Others should become attorneys of different parties involved and participate in the trial?
5. After the trial, you each of the parties should file an appeal against the decision of the Court Judge in the Court of Appeals of Prishtina?

