



CCT/99/14/S

Ian Bellia
Vs
Styles Apertures Limited

Today 25th of June, 2015.

The Tribunal,

Took cognizance of the application filed by Ian Bellia on the 6th of May, 2014 and the reply filed by Styles Apertures Limited on the 20th of June, 2014;

Took note of the various documents submitted by the parties including the report of the Expert Dr. Ing. Maurizio Fenech nominated by this Tribunal and heard the parties give their evidence and their verbal submissions;

Considered

In a nutshell this cases involves one of a number of glasspanes which developed a crack after a couple of months from installation whilst respondent company contended that other windows were installed in the same property which did not crack;

That plaintiff's application is based on article 73 of Chapter 378 of the Laws of Malta and the remedy requested emanates from article 76 of Chapter 378 of the Laws of Malta;

That respondent company replied that plaintiff failed to adhere to that established by article 79(1) and 79(2) of Chapter 378 of the Laws of Malta;

That respondent company knew about plaintiff's complaint and consequently the spirit of article 79 was adhered to;

That the merit of this case is of a technical nature and for this reason, an expert was nominated by this Tribunal - Dr. Ing. Maurizio Fenech from the University of Malta;

That in its decision given on the 19th of November, 2001 in the case "Calleja vs Mifsud" the Court of Appeal argued that:

"...Kemmm il-kostatazzjonijiet tal-perit tekniku nominat mill-Qorti kif ukoll il-konsiderazzjonijiet u opinjonijiet esperti tieghu jikkostitwixxu skond il-ligi prova ta'fatt li kellhom bhala tali jigu meqjusa mill-Qorti.

Il-Qorti ma kienitx obbligata li taccetta r-rapport tekniku bhala prova determinanti u kellha dritt li tiskartah kif setghet tiskarta kull prova ohra.

Mill-banda l-ohra pero, huwa ritenut minn dawn il-Qrati li kellu jinghata piz debitu lill-fehma teknika ta' l-espert nominat mill-Qorti billi l-Qorti ma kellhiex leggerment tinjora dik il-prova...";

That it is to be highlighted that the Expert's report was thoroughly examined by this Tribunal;

That the Expert nominated by this Tribunal was clear in his conclusions in that "with these observations, it is being concluded that the glass has failed due to



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*thermal stresses, which failure was facilitated by the incorrect application of spacer blocks beneath the said glass pane..."*¹

That according to the technical expert, "*the appropriately sized spacer blocks are used to minimise the possibility of thermal stress fracturing*";²

That our Courts have constantly reiterated that an Expert's conclusions cannot be disregarded in a light manner;

That caselaw has established that our Courts cannot ignore an Expert's findings unless they are convinced that the Expert's conclusions are not just and correct and this conviction must be based on technical motives as required;

That as the Court of Appeal stated in its decision given on the 23rd of June, 1967 in the case "Bugeja et vs Muscat":

"...Il giudizio dell'arte espress mill-perit tekniku ma jistax u m'ghandux, aktar u aktar fejn il-parti interessata ma tkunx ipprevaliet ruhha mill-fakolta lilha moghtija ta'talba ghan-nomina ta'periti addizzjonali, jigi skartat facilment, ammenokke ma jkunx jidher sodisfacebtelement illi l-konkluzjonijiet peritali huma, fil-kumpless kollha tac-cirkostanzi, irragonevoli...";


That after the Expert's report was presented, the parties did not contest the substance of this report;

That in the circumstances of this case, this Tribunal makes as its own the conclusions of the Expert's report;

That 'thermal stress fracturing' was indicated by the Expert as being the main reason for the fracture;

That in this regard and taking into consideration the Expert's findings, the Tribunal finds fault, partly due to the defendant company as to its incorrect application of spacer blocks which aided the glass failure;

Consequently and for the abovementioned reasons and taking into consideration the circumstances of this case and after having examined Chapter 378 of the Laws of Malta, the Tribunal Decides to Accept in part the plaintiff's request whilst dismissing the reply of the defendant company and orders Styles Apertures Limited to pay Ian Bellia the sum of two-thirds the requested amount, that is €538 excluding VAT established *ex aequo et bono*, with each party paying the respective legal costs. .


Richard Sladden Av.
Arbiter

¹ Page 7 of the report prepared by the technical expert Dr.Ing.Maurizio Fenech.

² Ibid.