TRIBUNAL GHAL TALBIET TAL-KONSUMATUR

CONSUMER CLAIMS TRIBUNAL

MALTA

Fit-Tribunal tal-Konsumatur

Giovanna Mizzi

vs

Vince Vassallo

CCT 81/20/MS

29 ta' Settembru 2021

It-Tribunal

Ra l-avviz tar-rikorrenti pprezentat fl-14 ta' Lulju 2020 fejn talbet is-somma ta' elf u mitejn Euro, prezz ta' xoghol fis-saqaf tal-gallarija tar-rikorrenti mahdum mill-intimat, liema xoghol ma sarx skond l-arti u s-sengha.

Ra r-risposta tal-intimat ipprezentat fis-6 ta' Awwissu 2020 fejn cahad it-talbiet tar-rikorrenti bhala infondati fil-fatt u fid-dritt ghaliex bix-xoghol li ghamel hu, is-saqaf gie issigillat u ma kienx hemm perkolazzjoni tal-ilma tax-xita.

Ra l-atti kollha tal-kawza.

Sema' x-xhieda bil-gurament.

Ikkunsidra

Illi rrizulta mill-provi u mhux kontestat illi r-rikorrenti inkarigat lill-intimat biex jaghmillha diversi bicciet ta' xoghol, fosthom xoghol fis-saqaf tal-gallarija mertu tal-kawza odjerna. Ir-rikorrenti qieghda tilmenta illi x-xoghol ma sarx skond l-arti u s-sengha u wara x-xoghol li sar fis-saqaf baqa' diehel l-ilma min-naha tal-genb. Qalet ukoll illi kien hemm toqbiet li baqghu vojta u ma ntlewx bis-siment.

Illi min-naha l-ohra, l-intimat xehed illi x-xoghol tieghu kien jikkonsisti f'barxa tas-saqaf sakemm gabu sal-konkoss orginali u wara passata *stone stabilizer* biex jaqbad mal-konkos. L-intimat ighid li bix-xoghol li ghamel, l-ilma tax-xita ma setax ighaddi, pero' qal li kien avza lir-rikorrenti illi l-lastku tal-alumuminium kellu bzonn jinbidel u dan ma kienx xoghol li kellu jaghmel hu ghaliex hu ma jaghmilx xoghol ta' aluminium. Skond l-intimat, l-ilma qed jiccarcar minn fuq u qed jidhol mill-genb.

Ikkunsidra

Illi fis-seduta tat-28 ta' Ottubru 2020, ir-rikorrenti ma accettatx il-proposta ghan-nomina ta' perit tekniku, pero' jidher illi sussegwentement qabbdet perit hija stess illi ghamel rapport, liema rapport gie prezentat fl-atti tal-kaz.

Dan ir-rapport, redatt fl-10 ta' Mejju 2021 mill-perit Kurt Sammut Alessi ighid testwalment hekk:

The undersigned architect and civil engineer is hereby declaring that he has inspected the closed balcony at no. 16 Saviour House, Gammari Dalli Street, Ghaxaq, property of Ms Jane Mizzi on the 5th May 2021.

The inspected balcony is a closed stone balcony, with aluminium glazed apertures and concrete roof slab roofing over the same balcony. oveer the concrete slab, roof screed can be found (kontrabejt). The balcony is situated at first floor level and faces the street. (PH_01.02)

The undersigned architect and civil engineer has inspected the condition of the concrete slab within the balcony from inside as well as from the roof level to observed the roof screed.

Kindly note that cracks were observed within the underside of the balcony, along the length of the balcony. Kindly also note that cracks were observed at the edge of the balcony on the inside along the corner, as well as throughout the length of the balcony (at the underside). (PH_07-14). Cracks could have occurred due to exposure of the slab to water seepage, causing steel to expand with rust.

Please also note that part of the drip at the top part of the balcony is plastered over and hence is ineffective at part of the balcony. This can be seen from the signs of water trickles seen on the balcony. (PH_03,04,05,12.) Video shown by the client to the undersigned was taken in stormy weather. It shows that large amounts of water flow onto the windows from the roof slab due to the drain being plastered. (PH_17,18).

The roof slab was inspected from above and signs of ponding was observed since the roof screed is not adequately laid and water ponds on it. (PH_15,16). The undersigned was also informed by the client that a number of holes were found of the upper surface of the balcony, and were sealed with "spirtu", and were not plastered off. Furthermore, undersigned was informed that the joints between the aluminium and the concrete were inadequately sealed and the client sealed it off herself. (PH_15,16).

In the opinion of the undersigned, the works undertaken are not according to good practise and remedial works are required in order for the closed balcony to be restored to a good working condition.

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illi skont Artikolu 681 tal-Kapitolu 12, il-Qorti (f'dan il-kaz Tribunal) ma hijiex tenuta jew marbuta li taccetta l-konkluzjonijiet tar-rapport peritali, kontra l-konvinzjoni taghha nnifisha. Kif qalet il-Qorti fis-sentenza **Philip Grima v. Carmelo Mamo** ***et nomine***, Appell, 29 ta' Mejju 1998, *"Dan pero` ma tistax taghmlu b'mod legger jew kapriccjuz. Il-konvinzjoni kuntrarja taghha kellha tkun ben informata u bazata fuq ragunijiet li gravement ipoggu fid-dubbju dik l-opinjoni teknika lilha sottomessa b'ragunijiet li ma ghandhomx ikunu privi mill-konsiderazzjoni tal-aspett tekniku tal-materja taht ezami".* Gie wkoll sewwa ritenut illi *"f'cirkostanzi bhal dawn ikun pruzuntuz ghall-gudikant illi jiddipartixxi bla raguni verament valida mir-relazzjoni peritali. Dan mhux biss ghax ma kellux il-mezzi ghad-dispozizzjoni tieghu biex serenement jinoltra ruhu fl-aspetti teknici tal-meritu, imma wkoll ghaliex necessarjament tkun tonqsu dik il-konoxxenza mehtiega biex, b'mod kritiku, jasal ghal konvinciment divers minn dak li jkunu waslu ghalih l-esperti minnu nominati"* – [**Benjamin Camilleri** ***nomine*** **v. Charles Debattista** ***nomine***, Appell, 9 ta' Frar 2001).

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Illi filwaqt illi huwa veru illi r-rapport prezentat mir-rikorrenti huwa rapport *ex parte,* xorta wahda jibqa' certifikat minn perit professjonist li acceda fuq il-post, u ma jistax jigi injorat jew skartat sempliciment ghaliex huwa rapport *ex parte*. Ir-rikorrent kellu kull dritt jitlob l-isfilz tar-rapport, jaghmel kontro-ezami tal-perit, jew adirritura igib perit huwa stess sabiex jikkontesta jew ixejjen l-konkluzjonijiet peritali. Pero' minn dan m'ghamel xejn u ghalhekk gialdarba r-rapport jifforma parti mill-process u huwa opinjoni professjonali, ghandu jinghata l-piz tieghu, iktar u iktar meta t-Tribunal innota illi anke mir-ritratti esebiti jidher illi hemm nuqqasijiet, specjalment fejn jidhlu konsenturi li huma ben vizibbli. Dawn ir-ritratti jikkoroboraw kemm il-versjoni tar-rikorrenti kif ukoll il-konkluzjonijiet li wasal ghalihom il-perit.

Ghalhekk it-Tribunal jidhilru illi r-rikorrenti ippruvat l-istanza taghha, almenu fuq bazi ta' probabbilta'.

Il-perit jahgmel referenza ghal xogholijiet rimedjali li ghandhom isiru fil-gallerija tar-rikorrenti pero' ma jiddentifikax dawn ix-xogholijiet x'inhuma. Ghalhekk, fic-cirkostanzi u jekk dawn ix-xogholijiet rimedjali jibqghu ma jsirux, it-Tribunal jidhirlu li ghandu jillikwida dan l-ammont, *arbitrio bono viri* fl-ammont ta' tlett mija u hamsin Euro.

Ghal dawn il-motivi, jaqta u jiddeciedi illi jilqa' parzjalment it-talba tar-rikorrenti, jipprefiggi terminu ta' erba' gimghat sabiex l-intimat iwettaq ix-xogholijiet rimedjali li hemm bzonn, u fin-nuqqas jikundannah ihallas lir-rikorrenti s-somma ta' tlett mija u hamsin euro (€350.00). Bl-ispejjes ghandhom jitqassmu bin-nofs bejn il-partijiet.

Michela Spiteri LL.D
Arbitru