TRIBUNAL GHAL TALBIET TAL-KONSUMATUR

CONSUMER CLAIMS TRIBUNAL

MALTA

Fit-Tribunal tal-Konsumatur

Carmel Cordina

vs

ISD Company Limited

CCT 85/20/MS

14 ta' Settembru 2022

It-Tribunal

Ra l-avviz tar-rikorrentipprezentat fil-15 ta' Lulju 2020, fejn talab ir-rifuzjoni ta' mhux inqas minn tlett elef u hames mitt Euro, u dan wara li s-socjeta' intimata installat tnax il-panella fuq il-bejt tar-residenza tieghu minkejja li huwa xtaq jinkancella l-ordni, u dan ghaliex qabel l-installazjoni kien sar jaf li l-panelli kienu ser jitghattew minn blokk ta' appartament li kien ser jinbena hdejn ir-residenza tieghu, kif fil-fatt gara, u b'konsegwenza ta' dawn il-is-sistema ma baqghetx daqshekk effettiva bhal qabel;

Ra r-risposta tas-socjeta' intimata fejn eccepiet illi dak kollu li sar, sar bil-kunsens tar-rikorrent li kien jaf bid-dellijiet u li xorta wahda ikkonferma l-ordni; illi ghalkemm il-pannelli kienu qed jiggeneraw izjed milli kien anticipat xorta wahda biddlu l-posizzjoi tal-panelli minghajr ebda hlas, fuq talba tar-rikorrent.

Ra l-atti kollha tal-kawza, inluz ir-rapport tal-Ing. Cordina.

Sema' x-xhieda bil-gurament.

Ikkunsidra

Illi rrizulta mill-provi illi lejn l-ahhar ta-sena 2016 ir-rikorrent ordna tnax il-panella minghand is-socjeta' intimata u hallas depozitu ta' mitejn Euro. Fl-20 ta' Jannar tas-sena 2017 il-kumpanija baghtet certu Alessandro biex ikejjel il-post u jfassal pjan ghall-installazjoni. Pero' fit-3 ta' April tal-istess sena, u ghalhekk qabel saret l-installazjoni, ir-rikorrent intebah b'avviz tal-MEPA fuq bini vicin ir-residenza tieghu fejn kien ser jinbena blokk ta' appartamenti ta hames sulari. Fil-pront hu ghamel kuntatt mal-kumpanija u talabhom jikancella l-ordni. Pero' ighid li l-kumpanija kkonvincietu biex jistenna sakemm jerga' jigi Alessandro biex jiccejka l-affarijiet. Kif fil-fatt gara. Alessandro rega' gie u assigurah illi l-bini ma kienx ser jghatti l-pannelli u ta' dan hallas ghoxrin Euro. F' Awwissu 2017 saret l-installazjoni tal-pannelli . Il-bini nbniet fis-sena 2019 u f'Jannar tas-sena 2020 ir-rikorrent innota tibdil fil-generazzjoni tas-supply u ghamel kuntatt mal-kumpanija li baghtu tekniku fuq il-post, li kkonferma illi dan kien konsegwenza tal-bini in kwistjoni. Ir-rikorrent qed jitlob is-somma ta' 3,500 u wasal ghac-cifra wara li kellem mal-gar li joqghod faccata tieghu li ghandu tnax il-panella solari u m'ghandux il-problema tal- bini li qallu li qed jitlef xi 900 units kuljum u ghalhekk ikkalkula li qed jitlef €144.00 fis-sena (900 x 0.16c). Peress illi l-pannelli ghandhom garanzia ta' 25 sena u ghal sentejn ma kellux problemi, wasal ghas-somma billi ikkalkula 144 x 23 sena.

Illi min-naha l-ohra, Sasha Sant Vassallo, li jahdem mas-socjeta' intimata, filwaqt li kkonferma illi r-rikorrent xtrara sistema ta' pannelli minghand is-socjeta' intimata u li *draughtsman* kien mar fuq il-post biex jaghmel sketch, qal li ma kienx prezenti dakinhar. Pero' minkejja dan, skond il-karti li kellu, ir-rikorrent kien avzat li kien ha jkun hemm id-dellijiet u xorta firma. Spjega wkoll illi hemm indikat kemm kienet ser tiggenera s-sistema kull sena u baghtu l-inginier Mario Galea fuq il-post u wara l-ispezzjoni kienu mexxew il-panelli metru lura biex jippruaw itaffu mill-problema.

Illi xehed ukoll l-Ing. Mario Galea, li tqabbad mis-socjeta intimata biex jiccertifika s-sistema. Ikkonferma illi l-bini li kienet qed taghmel id-dellijiet ma kenitx hemm fis-sena 2017 meta r-rikorrent iffirma l-karti. Qal ukoll illi minkejja li s-sistema tressqet lura biex inaqqsu l-ammont tad-dellijiet, xorta kien ghad hemm id-dellijiet. Qabel kompletament mar-rapport ipprezentat mill-Ing, pero' irrefera wkoll ghall-applikazzjoni tal-ARMS fejn hemm indikat kemm is-sistema mistennija tiggenera fl-ewwel sena, it-tieni sena ecc u li effettivament r-rikorrent kien qed jigi moghti dak li kien gie imwieghed.

Ikkunsidra

Illi t-Tribunal ghandu quddiem rapport imhejji mill-Ing. Christina Cordina li tqabbad mir-rikorrent li ikkonkluda hekk:

"Pursuant to the above and based on the calculations, the undersigned confirms that the PV system under consideration will be extensively shaded in the months of December and January, while slight shading occurs in October, November, February and March. Furthermore the minimum distance required to avoid shading between 9am - 3pm from the high-rise building throughout the whole year should be at least 22 m, which is much higher than the current distance. In addition to the above, there will be cases from 1 April until 22 September where, due to the S35 degree orientation of the PV panels, during certain hours in the afternoon, the sun will be behind the PB system, meaning little or no energy production during these hours. To mitigate this problem, the author recommends orienting the PV panels to the true South.

Further to this, the author wishes to point out that the current inclination angle of the PV panels does not result in optimum energy generation throughout the whole year, but allows for maximum generation during the summer periods, due to sun's high position in the sky. During the summer months, the PV panel inclination angle should be around 10 degrees since the sun is high in the sky. On the contrary, during the winter months, the PV panel inclination angle should be around 50 degrees because the sun is low in the sky. For optimum energy generation throughout the whole year for a fixed PV system, the inclination angle should be 30 degrees oriented due South. However, in this scenario, due to the PB panels being shaded in the winter months, it is practical to leave the inclination of the PV panels as it is or lower it to 10 degrees."

Illi dan ir-rapport ma jsemmi xejn fuq kemm kienet tiggenera s-sistema qabel, kif ukoll wara, li nbena il-blokk ta' appartamenti. Bhala fatt, meta sāret l-applikazzjoni tal-ARMS, ir-rikorrent gie imwieghed 5088kwh. (Estimated Total Amount Electricity Generated) .

Illi t-Tribunal ghandu quddiemu wkoll id-dokumenti ipprezentati mis-socjeta' intimata - Dok 1, 2 3 u 4. Dok 1 jiddokumenta l-gurnata meta gie Alessandro fl-20 ta' Jannar 2017 - u fil-kummenti hemm indikat li "the system will have shade in the morning from the wall on the street side." Ir-rikorrent iffirma d-dokument fejn ikkonferma illi qed jaqbel mal-posizzjoni tal-panelli:

"I, the undersigned declare that I agree with the position of the panels and that of the structure (if required). I understand that the ISD personnel, in agreement with myself did their utmost to posistion the panels in an optimum position to avoid shading, however it is my responsibility to check for any legal requirements regarding the said position of the panels an that of the structure.

I'm fully satisfied with the position of my photovoltaic panels as clearly stated by the ISD personnel. I have also been notified that there might be some shading on part of the system. If my PV system requires any types of amendment, this will be done against a charge agreed beforehand with ISD."

Illi r-rikorrent iffirma dawn il-karti fil-11 ta' Jannar u fl-20 ta' Jannar 2017. Dawn gew iffirmati tlett xhur qabel ir-rikorrent sar jaf bil-bini gdid li kien ser jinbena u sadanittant l-installazjoni ma kenitx ghadha saret. Kien biss f'April 2017 li r-rikorrent intebah bl-avviz tal-MEPA u kien hemmhekk illi cempel il-kumpanija u talabhom jikancella l-pannelli. Ghalhekk dawn id-dokumenti ftit li xejn ighinu it-Tribunal. Huwa fatt li sakemm nbniet il-bini, ir-rikorrent qatt ma kellu problemi. Kien biss tlett snin wara - u wara li nbniet il-bini - li l-problemi tfaccaw u ghalhekk id-dellijiet imsemmijin fid-dokument 1 u li kien konsapevoli taghhom ir-rikorrent, ma kienux l-istess dellijiet li fuqhom ir-rikorrent kien qed ilmenta. Jigi osservat ukoll illi l-posizzjoni tal-pannelli indikat fid-Dok 1 mhuwiex l-istess posizzjoni attwali tal-pannelli kif qeghdin prezenti, ghaliex minn dakinhar il-pannelli gew imexxija iktar lura minhabba l-bini.

Ikkunsidra

lli permezz ta' din it-talba, ir-rikorrent qed jitlob rizarciment fl-ammont ta' mhux anqas minn tlett elef u hames mitt Euro, u dan ghaliex skond hu inghata parir hazin mis-socjeta' intimata u li wara li nbena il-bini ta' hdejh, is-sistema ma baqghetx daqshekk effettiva kif kienet qabel u qed tikkawzalu telf kull sena.

Illi tajjeb jew hazin, ir-rikorrent ma kancellax l-ordni mas-socjeta' intimata u ghal sentejn shah huwa ma kellux problemi. F'Jannar 2020 ir-rikorrent osserva tibdil fil-generezzjoni tal-pannelli meta paragunat mas-snin ta' qabel. Pero' biex jirnexxi fit-talba tieghu, ir-rikorrent ghandu jipprova illi huwa sofra danni attwali. Jidher, pero', illi r-rapport redatt mill- Ing. Cordina ma jagmilx referenza ghas-supply attwali - u cjoe' kemm kienet tiggenera s-sistema qabel ma kien hemm il-bini u anke wara - u ghalhekk ghalkemm ma hemmx dubju illi l-bini affettwat is-supply, milli jista' jifhem it-Tribunal, anke bid-dllijiet, is-supply xorta kien aktar minn dak antipicat u mistenni. Dan hareg mix-xhieda tal-Ing. Mario Galea u gie konfermat ukoll mir-rikorrent fid-dokument ipprezentat minnu fejn ighid hekk: 'With shading the actual generation of the system was higher than the expected generation. Without shading, the actual generation of the system would be much higher than that stated in the report by ISD."

Illi dan ifisser illi r-rikorrent qed jaqbel illi anke bid-dellijiet is-supply xorta wahda kien iktar minn dak mistenni u allura anke jekk dan it-Tribunal jifhem u japprezza illi l-generezzajoni ma baqghetx daqshekk effettiva bhal ma kienet qabel, xorta ma jistax jinghad illi s-socjeta' ntimata kienet naqset mill-obbligi kuntrattwali taghha.

It-Tribunal ma jistax ma jikkumentax fuq il-mod dilettantesk ta' kif ir-rikorrent wasal ghal cifra ta' tlett elef u hames mija. Minghajr it-Tribunal ma jidhol fil-mertu tal-gar li qatt ma xehed quddiem dan it-Tribunal, danni ghandhom ikunu attwali u mhux ipotetici u bbazati fuq x'qal persuna li lanqas biss xehdet f'dawn il-proceduri. Kien ikun ahjar u izjed utili li kieku r-rapport tal-Inginier Cordina, ipprezentat mir-rikorrent ghamel accenn fuq dan il-punt.

It-Tribunal josserva wkoll illi r-rikorrent kellu jhallas ghoxrin Euro meta xtaq jikancella l-ordni u gie l-impjegat f'April 2017 biex jiccekja l-affarijiet. It-Tribunal jaqbel illi r-rikorrent ma kellux ihallas ta' dak is-servizz u it-Tribunal ser jittiehed dan in konsiderazzjoni meta jigi biex jalloka l-ispejjes tal-kaz.

It-Tribunal jidhilru illi r-rikorrent naqas milli jipprova l-istanza tieghu.

Ghal dawn il-motivi, it-Tribunal jaqta' u jidecciedi illi jichad it-talba tar-rikorrent. Bl-ispejjes ghandhom jibqghu bla taxxa bejn il-partijiet.

Michela Spiteri LL.D
Arbitru