



Fl-atti tat-Talba CCT 177/18/F

Charlo Mifsud u Natasha Cassar

vs

Roderick Debono

Illum, 11 ta' Settembru 2023

It-Tribunal:

Ra l-Avviz tat-Talba pprezentat mir-Rikorrenti nhar l-4 ta' Diċembru 2018;

Ra r-Risposta pprezentata mill-Intimat nhar il-31 ta' Jannar 2019;

Ra r-Relazzjoni redatta mill-Perit Abigail Scicluna Lewis fuq inkarigu tat-Tribunal, liema relazzjoni giet debitament maħlufa nhar il-21 ta' Novembru 2019;

Ra li fis-seduta tal-25 ta' Ottubru 2021 it-Tribunal iddikjara il-provi kollha tal-Partijiet magħluqa u halla t-Talba għat-trattazzjoni finali;

Sema' s-sottomissjonijiet tal-Partijiet;

Ra li t-Talba thalliet għas-sentenza.

Ikkonsidra:

Illi permezz tat-Talba tagħhom, ir-Rikorrenti qed jitolbu li l-Intimat jigi kkundannat iħallashom is-somma ta' elfejn u hames mitt Euro (€2,500). Jilmentaw li xogħol ta' tqegħid ta' madum tal-art u tal-ħajt li laħaq għamlilhom l-Intimat fil-fond tagħhom fl-Imtarfa ma sarx sewwa u rreferew partikolarment għall-fatt li l-madum iżomm l-ilma għax ma għandux qlib sufficjenti fost ilmenti oħrajn.

Illi permezz tar-Risposta tiegħu, l-Intimat jikkontesta t-Talba tar-Rikorrenti billi jgħid li x-xogħlijiet saru kif suppost u li mexa skont l-istruzzjonijiet mogħtija mill-klijenti Mifsud, speċjalment f'dak li jirrigward l-qlib tal-ilma tax-xita. Dan għax Charlo Mifsud ried l-inqas *inclination* possibbli fil-madum. Jilmenta li l-istess Charlo Mifsud kien iġib ruhu miegħu b'mod pastaż u arroganti u kien qallu biex jieqaf mix-xogħol diversi drabi. Għalhekk, isostni li t-Talba tar-Rikorrenti mhijiex gustifikata.



Illi b'mod kurjuż, matul is-smiegh ta' din it-Talba, liema smiegh tista' tghid kien wiehed prolongat hafna, hadd mill-Partijiet ma xehed jew ipprezenta provi ghajr li skont ma jghid il-verbal tas-seduta tal-20 ta' Mejju 2019, "il-Partijiet qed jitolbu lit-Tribunal sabiex jinhatar Perit sabiex jispezzjona u jagħmel rapport dwar ix-xogħlijiet mertu ta' din il-kawża". Għalhekk, it-Tribunal jifhem li l-Partijiet irrimentew ruħhom għall-gudizzju tekniku tal-espert mahtur mit-Tribunal. It-Tribunal kien laqa' t-talba u għadda biex jahtar lill-Perit Abigail Scicluna Lewis sabiex tirrelata dwar ix-xogħlijiet u jekk ikun il-każ, tisma' lill-Partijiet.

Illi jrid jingħad li minkejja l-kontestazzjonijiet varji mqanqla fir-risposta tiegħu, l-Intimat ma xehedx, u ma ressaqx provi jew opinjoni teknika *ex parte* u għalhekk, dak li jghid fir-Risposta ma jistax ikollu wisq siwi f'ghajnejn dan it-Tribunal.

Illi wara li zammet access fil-fond tar-Rikorrenti fis-7 ta' Novembru 2019, fir-relazzjoni tagħha, l-espert tekniku ikkonkludiet is-segwenti:

I refer to the photographic survey at the end of this document where some of the tiles currently laid on the roof at the address in question, both on the floor and the walls, are shown. In some instances, these have not been laid as per good standard of practice and this implies that the workmanship could have been improved. This is not in any way stating that the workmanship of all the tiles laid is not acceptable however there are a few instances where it could have been of a better standard.

Walls tiles

According to the tile specifications (see attached document for full specifications), this tile variation in length is acceptable up to a variation of + or - 0,6%. The straightness of sides, rectangularity and warping all have an acceptable tolerance of + or - 0,5%. The mis-alignment in the joints (photos 1, 2,3,4 and 6), could be partly due to this variation in the length of the tiles. However, in other cases (photos 3 and 4), there is a defect in the way the tiles were laid. This is due to the fact that, as one can see, the spaces between the tiles (the joints) are not uniform. The joint at the bottom part of the tiles is wider than that along the top part of the same tiles. This could be a result of a defective datum line used at the setting out. Should the tool used to set the datum line have warped or sagged, then the tiles would also have moved and this results in the joint on the bottom part of the tile widening while that at the top narrowing. These defects are not located throughout the tiled wall however there are a good number of such defective joints.

The specifications of the wall tiles provided to me where made available by Mr. Charlo Mifsud and Mrs. Natasha Cassar.

There is also a dispute about the light fitting location along the low wall on the outer side of the roof. Mr. Mifsud claims that he informed Mr. Debono to place the cuts in the tiles in such a way that the light fitting would be placed exactly where the lighting preparation was located. Mr. Debono on the other hand thought it best to place the light fittings in such a way that they are equally distant from each other and therefore, he thought, more aesthetically pleasing. In my opinion, this was done in good faith however was not accepted by Mr. Mifsud. Ultimately since Mr. Mifsud is the client paying for Mr. Debono's services, Mr. Debono should have followed Mr. Mifsud's requests even though he thought that what he was doing was the right thing.

Floor tiles

I was informed that there was a request by Mr. Mifsud for the tile laying gradient to be less than that normally used for outdoor tiles (normally gradient of 1:100). Mr. Debono accepted to accommodate this request and therefore the tile laying gradient is less steep than this norm. This did not help the situation when it came to completely avoiding the retention of water in certain location along the floor.



However, in one particular area (photo 8) the water retention is unacceptable and even with a lower gradient of falls, this pooling of water could have been avoided. This could be rectified if the tiles in this area are replaced and their level is corrected however in the process other tiles might be damaged. In photo 7 one can see that some of the joints between the tiles are black. This could be a result of water retention also in this area. Over the whole area of the roof only these two sections were noted as being defective with respect to the laying and its gradient.

Expansion joint

The parties are not in agreement regarding the formation of the expansion joint. Mr. Charlo Mifsud claims he requested an expansion joint of normal thickness while Mr. Roderick Debono claims that Mr. Mifsud requested the expansion joint to be thinner than the norm since he did not like thick expansion joints as they do not look aesthetically pleasing. One must note that if the expansion or movement joints are not constructed at a thickness of 5mm or more then they would not fulfill their function as desired. However, here again, if Mr. Mifsud requested these to be narrower and was made aware of the possible consequences by Mr. Debono, then it is his call to make since the property is his.

Illi in fis-sentenza tagħha tat-23 ta' Ġunju 1967 fil-kawża *Bugeja et vs Muscat et*, il-Qorti tal-Appell sostniet illi "l-*giudizio dell' arte*" espress mill-perit tekniku ma jistax u ma għandux, aktar u aktar fejn il-parti nteressata ma tkunx ipprevaliet ruhha mill-fakolta' lilha mogħtija ta' talba għan-nomina ta' periti addizzjonali, jigi skartat faċilment, ammenokke ma jkunx jidher sodisfacentement illi l-konklużjonijiet peritali huma, fil-kumpless kollha taċ-ċirkostanzi, irragjonevoli."

Illi inoltre, skond il-prinċipji generali tad-dritt in materja ta' adempjenza kuntrattwali, l-appaltatur, kif f'dan il-każ huwa l-Intimat, għandu jassikura li x-xogħol lilu kommess ikun ser isir utilment u mhux b' mod li juri difetti jew li addirittura jiddanneggju l-proprietà tal-konsumatur. L-obbligu primarju jibqa' dejjem li "l-appaltatur hu obbligat jeżegwixxi l-opra miftehma skond is-sengħa" (Kollez. Vol. XLI P II p 892). Dan fis-sens li "*l' imprenditore ha l' obbligo di eseguire bene l' opera commessagli secondo i dettami dell' arte suo, e deve prestare almeno una capacita' ordinaria*" (Kollez. Vol. XXVII P I p 374).

Illi għalhekk, dak li qed jitolbu r-Rikorrenti jinkwadra sewwa entro d-drittijiet tagħhom bhala konsumatur għax huma, ladarba inkarigaw persuna teknika sabiex tagħmel ix-xogħol, kellhom kull dritt li jippretendu li dan ix-xogħol isir sewwa u b' mod li jhalli r-riżultat utili.

Illi wara li eżamina l-fatti u ċ-ċirkostanzi kollha tal-każ, speċjalment fil-kuntest tal-fatt li hadd mill-Partijiet ma għab provi indipendenti, it-Tribunal iqis li ma hemm l-ebda raġuni valida għalfejn il-konklużjonijiet milhuqa mill-espert tekniku Perit Abigail Scicluna Lewis għandhom jigu skartati.

Illi intant, l-atti huma għal kollox sajma minn spjega għalfejn qed tigi mitluba s-somma ta' elfejn u hames mitt Euro (€2,500) mir-Rikorrenti. Ovvjament, mhuwiex kompitu tat-Tribunal li jiddeduċi hu għalfejn qed tintalab din is-somma u mhux xi somma oħra. Dan kien jispetta lir-Rikorrenti.



Illi t-Tribunal iqis għalhekk li f'dan il-każ huwa għandu jagħti rimedju a bażi ta' dak konkluz mill-espert tekniku u cioè li għalkemm ix-xogħol prestat mill-Intimat jammetti għal bosta difetti, mhux ix-xogħol kollu li sar sar hażin kif jgħidu r-Rikorrenti.

Illi fiċ-ċirkostanzi, it-Tribunal iqis li r-relazzjoni bejn il-Partijiet iddeterjorat tant li mhuwiex idoneju li l-Intimat jirritorna fuq il-lok biex jagħmel xogħlijiet rimedjali huwa stess.

Illi skont ma jiddisponi li-Artikolu 21(1) tal-Kapitolu 378 tal-Ligijiet ta' Malta, "it- Tribunal jaqta' l-kwistjonijiet f'talba jew kontro-talb apreżentati quddiemu skont kull meritu u ġustizzja sostantiva tal-każ, u skont l-ekwità". Ukoll, fi kliem il-Qrati tagħna "ma jistax ikun dubitat illi hu rikonoxxut lill-ġudikant ankè fis-sistema tal-ligi tagħna l-poter diskrezzjonali li jillikwida t-telf u l-qligh bl-adoperu tal-kriterju sussidjarju tal-valutazzjoni ekwitattiva. Ara a propożitu deċizzjoni a Vol. XXXV P III p 615 fejn gie proprju rikonoxxut, fuq l-istregwa ta' dak espress mill-Qorti Taljana ta' Kassazzjoni, illi "*vi hanno casi in cui, non potendosi avere mezzi istruttori, e' rimesso al magistrato il valutare 'ex aequo et bono' secondo i dettami della sua ragione e coscienza, l' ammontare del danno al risarcimento del quale taluno fu condannato*" (*Margaret Camilleri et vs The Cargo Handling Co Ltd, PA, deċiża 13.10.2004*);

Illi għalhekk, wara li qies sewwa ċ-ċirkostanzi kollha tal-każ, it-Tribunal jikkonkludi li t-Talba tar-Rikorrenti timmerita akkoljiment parzjali u għal fini ta' likwidazzjoni, qed jiffissa *arbitrio boni viri* s-somma dovuta lir-Rikorrenti mill-Intimat fl-ammont ta' **elf, sitt mija u sebghin Euro (€1,670)** [*vide* l-Artikoli 1640(3) u 1640(4) tal-Kapitolu 16 tal-Ligijiet ta' Malta].

Deċizzjoni

Għaldaqstant, għar-raġunijiet spjegati, u fiċ-ċirkostanzi tal-każ, wara li ra l-Kapitolu 378 tal-Ligijiet ta' Malta, it-Tribunal jaqta' u jiddeċiedi din it-Talba billi jilqaghha *in parte* u jikkundanna lill-Intimat sabiex iħallas lir-Rikorrenti s-somma ta' **elf, sitt mija u sebghin Euro (€1,670)**.

Spejjeż ta' dawn il-proċeduri jithallsu $\frac{2}{3}$ mill-Intimat u $\frac{1}{3}$ mir-Rikorrenti.


Avv. Mattia Felice
Arbitru