



Fit-Tribunal tal-Konsumatur

Fl-atti tat-Talba CCT 63/19/F

Alfred Agius u Anna Maria Agius

vs

Power Plus Limited

Illum, 11 ta' Settembru 2023

It-Tribunal:

Ra l-Avviż tat-Talba pprezentat mir-Rikorrenti nhar it-22 ta' Mejju 2019;

Ra r-Risposta pprezentata mill-azjenda intimata nhar it-8 ta' Ġunju 2019;

Ra li wara diversi talbiet ghal differiment minn naħa tal-azjenda intimata li dejjem ġew akkomodati, fil-verbal tas-seduta tal-24 ta' Ottubru 2022 it-Tribunal għamilha ċara li t-Talba kienet ser tithalla għas-sentenza jekk kemm il-darba l-azjenda intimata ma tipprezentax il-provi tagħha fis-seduta sussegwenti, u cioè dik appuntata għas-16 ta' Jannar 2023. F'dik is-seduta deher Dr Jean Carl Farrugia għall-azjenda intimata li nforma li hemm possibiltà ta' transazzjoni u għalhekk, reġgħu ma tressqux provi. Fl-udjenza sussegwenti tat-8 ta' Mejju 2023 reġa' ma deher hadd għall-azjenda intimata u għalhekk, in vista tad-delungar inutili u nuqqas ta' interess f'dawn il-proċeduri minn naħa tal-istess azjenda intimata, it-Tribunal ordna li t-Talba tithalla għas-sentenza;

Sema' x-xhieda tar-Rikorrent bil-ġurament;

Ra r-rapport *ex parte* tal-Perit Eric Formosa pprezentat mir-Rikorrent;

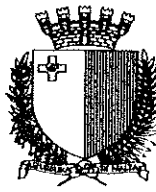
Ra r-relazzjoni tal-espert tekniku nominat mit-Tribunal Ing. Dr Charles Yousif;

Ra d-dokumenti kollha;

Ra li t-Talba thalliet għas-sentenza.

Ikkonsidra:

Illi permezz tat-talba tagħhom ir-Rikorrenti qed jitolbu li jiġu rifiżi s-somma ta' **tlett elef u tlett mitt Euro (€3,300)** mill-azjenda intimata.



Illi l-azjenda itimata kienet forniet lir-Rikorrenti b'sistema ta' pannelli fotovoltajiċi nhar id-19 ta' Lulju 2017. Ġara imbagħad li nhar l-24 ta' Frar 2019, din is-sistema sofriet hserat konsiderevoli billi diversi pannelli harġu minn posthom u saħansitra spiċċaw fuq il-bjut ta' terzi persuni. Skont ma jsostnu r-Rikorrenti, dan ġara minħabba li l-pannelli ma ġewx installati skont l-arti u s-sengħa u għalhekk ma kienux jifilhu għar-riħ li jahkem fuq il-bejt tar-residenza tagħhom f'Rahaġ Ġdid.

Illi fir-Risposta tagħha, l-azjenda intimata tispjega li l-hsara fis-sistema tal-pannelli tar-Rikorrenti kienet dovuti għall-kondizzjonijiet tat-temp "estremi" u ssostni li r-Rikorrenti kellhom iħallsu sabiex isiru r-riparazzjonijiet neċessarji. Ippreżentat rapport redatt minn Inġinier barrani inkarigat mill-manifattur tas-sistema EcoSun li jikkonkludi li s-sistema kienet tiflaħ għal riħ f'qawwa massima ta' 47 m/s.

Illi minn naha tiegħu, ir-Rikorrent Alfred Agius xehed illi huwa kien ordna l-pannelli mingħand l-azjenda intimata u kienu ġew installati minn ċertu "Clayton" li t-Tribunal jifthem li huwa d-dirigent tal-azjenda intimata. Wara li twaħħlu l-pannelli kienu ġew spezzjonati minn Inġinier mibgħut mill-azjenda intimata stess, li kien qal lir-Rikorrent li l-pannelli ma kienux sodi. Eventwalment kien ġie haddiem iehor u žied xi aluminju fl-istruttura. Din id-darba li Clayton u lanqas l-Inġinier ma kienu preżenti fuq il-post. Imbagħad fi Frar ta' wara inqala' l-maltemp u t-12-il pannelli kollha kemm huma inqalghu u spiċċaw fuq il-bjut tal-ġirien. Ir-Rikorrent jirrimarka li għadd li l-maltempata kienet waħda, hadd mill-ġirien tiegħu ma nqalghulhom il-pannelli.

Illi r-Rikorrent ippreżenta ukoll rapport *ex parte* redatt mill-Perit Eric Formosa fuq inkarigu tiegħu. Ġie konkluż is-segwent:

The scope of this report is to reconstruct the events as happened chronologically of a system of photovoltaic panels which consequently collapsed.

The event started when one of the three bolts disengaged from the connection and the forces were shed to the other two. This resulted that the force on each bolt increased by around 20%.

Eventually the bolts were forced out of the channel at the top and this resulted by having the panels being loose from the top end.

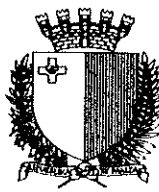
The load was then shed to the foot of the structure. The bending moment was too large to be carried out by the aluminum structure, and the whole system of struts gave way under the force of the wind.



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Illi tenut kont tal-indoli teknika tal-punt kontrovers f'din it-Talba. It-Tribunal hatar lill-Ing. Dr Charles Yousif bhala espert tekniku. Huwa spezzjona l-fdalijiet tal-istruttura tal-pannelli in kwistjoni fir-residenza tar-Rikorrent u fir-relazzjoni tieghu ikkonkluda is-segwenti:

1. In as far as it could be inferred, the PV structure had at least three key nonconformities with good practice installations, namely:
 - a. no evidence of cross bars at the back to resist sideway movements and reduce vibrations, which contributed to the failure of the installation.
 - b. close proximity to the edge of the roof having a drop of at least 12 metres which is not conforming with the MCCA PV Standard. Potentially, this has also contributed to a significant upward lift on the structure, causing the bolts to disengage from the channels.
 - c. there were no vents to keep the structure in place.
2. The wind speed that caused the damage (25-35 m/s) was not higher than the limit of wind loading (47 m/s) that the structure is claimed by the installer to withstand and therefore this incident is not a force majeure case.
3. There are at least 5 physically damaged panels and another three physically damaged panels belonging to the neighbour. However, this does not mean that the remaining panels are not damaged or are safe to be used until they are certified to be electrically safe to operate.
4. The inverter will need to be tested to confirm that it is still fit for purpose.
5. The structure is a total loss and needs to be replaced.
6. The PV panels of the neighbour will need to be tested and/or replaced.
7. From a technical point of view and given that the PV system was purchased with the PV grant of the Regulator for Energy and Water Services (REWS), it remains under guarantee for five years as required by the same national grant conditions of REWS, as shown in Figure 7 below.
8. Therefore, the PV system will need to be repaired by the installer at his own expense in line with the standard guaranteed conditions and certified as fit for purpose by a warranted engineer. In addition, repairs or making good for the neighbour's PV system may need to be resolved.



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9. On the other hand, the request of the client (Mr. Agius) for additional refund for damages due to loss of energy generation from 24 November 2019 to date is not sufficiently justified, given that the case was still open with the Consumer Claims

Illi in fis-sentenza taghha 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 ghandux, aktar u aktar fejn il-parti nteressata ma tkunx ipprevaliet ruhha mill-fakolta' lilha moghtija ta' talba ghan-nomina ta' periti addizzjonali, jigi skartat faċilment, ammenokke ma jkunx jidher sodisfacentement illi l-konkluzjonijiet peritali huma, fil-kumpless kollha taċ-ċirkostanzi, irragjonevoli."

Illi wara li eżamina l-fatti u ċ-ċirkostanzi kollha tal-każ, it-Tribunal iqis li ma hemm l-ebda raġuni valida għalfejn il-konkluzjonijiet mil-huqa mill-espert tekniku Ing. Dr Charles Yousif għandhom jigu mwarrba.

Illi t-Tribunal iqis li fuq il-bażi tal-provi prodotti, ir-Rikorrent irnexxielu jipprova l-każ tiegħu skont il-liġi.

Illi intant, bis-silenzju taghha, l-azjenda intimata effettivament naqset milli tikkontesta sodisfacentement il-verzjoni tal-fatti moghtija mir-Rikorrent u dan minkejja li kellha kull opportunità li tagħmel dan li kieku riedet.

Illi l-Artikolu 74(1) tal-Kapitolu 378 tal-Liġijiet ta' Malta jtenni li "*fil-każ ta' nuqqas ta' konformità, il-konsumatur għandu jkun intitolat li jkollu l-oġġetti miġjuba f'konformità jew li jirċievi tnaqqis proporzjonat fil-prezz, jew li jgħid li l-kuntratt [...]*".

Illi l-Artikolu 21(1) tal-Kapitolu 378 tal-Liġijiet ta' Malta jipprovdi li "*it-Tribunal jaqta' l-kwistjonijiet f'talba jew kontro-talba preżentati quddiemu skont kull meritu u gustizzja sostantiva tal-każ, u skont l-ekwità*".

Illi jirrizulta għalhekk li dak li qed titlob ir-Rikorrent jinkwadra fil-parametri tad-drittijiet legali tiegħu bhala Konsumatur biss in kwantu ta' rimedju, għalkemm l-espert tekniku issuggerixxa li jkun hemm ordni sabiex l-azjenda intimata tibdel għal kollox is-sistema tal-pannelli tar-Rikorrent a spejjeż taghha, fl-Avviż tat-Talba ppreżentat minnu, ir-Rikorrent qed jitlob li jigi rifiuż il-prezz li huwa ħallas għas-sistema in kwistjoni u cioè s-somma ta' tlett elef u tlett mitt Euro (€3,300) – xi haġa li l-liġi tippermettilu li jitlob f'każ ta' nuqqas ta' konformità.

In vista tal-provi miġjuba, jidher li l-pannelli u l-istruttura in kwistjoni huma *beyond repair* u allura ma hemmx lok li t-Tribunal jagħti l-fakolta' li l-azjenda intimata tigborhom lura la tkun ħallset dak dovut minnha lir-Rikorrent skont din is-Sentenza.

Deċiżjoni



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Ghaldaqstant, ghar-raġunijiet spjegati, u fiċ-ċirkostanzi tal-każ, wara li ra l-Kapitolu 378 tal-Liġijiet ta' Malta, it-Tribunal jaqta' u jiddeċiedi din it-Talba hekk:

- 1) Filwaqt li jiddikjara l-kuntratt ta' bejgh xolt a bażi ta' nuqqas ta' konformità gravi, jordna lill-azjenda intimata sabiex thallas lir-Rikorrenti s-somma ta' tlett elef u tlett mitt Euro (€3,300) rappreżentanti l-prezz imhallas lill-azjenda intimata ghas-sistema ta' pannelli fotovoltajiċi in kwistjoni;
- 2) It-Tribunal qiegħed ukoll jikkundanna lill-azjenda intimata sabiex thallas lir-Rikorrenti s-somma ta' mitejn Euro (€200) in linea ta' danni morali tenut kont l-inkonvenjenza kkawżata lilhom, u dan ai temini tal-Artikolu 21(2) tal-Kapitolu 378 tal-Liġijiet ta' Malta;

Spejjeż ta' dawn il-proċeduri ikunu a karigu esklussiv tal-azjenda intimata.



Avv. Mattia Felice
Arbitru