Qorti tal-Appell

(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell numru: 7/2016

Valerie Vella (appellata)

Vs

Aluminium Ltd (appellanti)

19 ta' Mejju, 2017.

1. Permezz ta' avviz prezentat fl-14 ta' Settembru 2015 fit-Tribunal ghal Talbiet tal-Konsumaturi, l-attrici talbet il-hlas tas-somma ta' tlett elef u hames mitt ewro (€3,500) minhabba xoghol ta' aluminju li ma sarx skont is-sengha u l-art.

2. Is-socjeta konvenuta kienet kontumaci.

3. B'decizjoni tas-26 ta' Settembru, 2016 it-Tribunal ghal Talbiet tal-Konsumaturi, iddecieda:

   > *"Ghal dawn ir-ragunijiet, it-Tribunal jaqta' u jiddeciedi li jilqa' t-talba tal-attrici u jikkundanna lis-socjeta konvenuta illi tirrifondi lill-istess attrici l-ammont ta' tlett elef u hames mitt euro (€3,500) ghar-ragunijiet fuq imsemmija, bl-ispejjez kontra s-socjeta intimata, li pero' ghandha dritt izzarma u tiehu lura l-aperturi mertu ta' din il-kawza"*.

   Dan wara li t-Tribunal qal li mir-rapport teknici kien irrizulta li, *"hemm difetti fil-manifattura u installazzjoni tal-aluminium u hgieg li jiggustifikaw l-ilment tal-attrici. Ma hemmx dubju illi x-xoghol seta' sar ahjar u kieku ntuzat is-sengha u l-arti tal-professjoni ma kienx ikun hemm ir-rizultat li minnu l-attrici qeghda tilmenta"*.

4. Is-socjeta konvenuta appellat mis-sentenza.

5. L-attrici wiegbet.

6. **Fatti**.

   i. L-attrici nkarigat lis-socjeta konvenuta sabiex taghmel aperturi tal-aluminju ghall-penthouse numru 5, Il-Pjazza A, Triq Birbal, Balzan. Tilmenta li sar xoghol hazin u mhux skond is-sengha u l-arti.
   ii. Mid-dokumenti li hemm fl-atti jidher li l-attrici hallset is-somma ta' erbat elef mitejn u tmien ewro u hamsa u sebghin centezmu (€4,208.75).

iii. L-attrici pprezentat rapport tal-perit Gerald Debono li fih elenkat id-difetti li hemm fix-xoghol. Fis-seduta tat-30 ta' Novembru 2015, xehed il-perit Debono u kkonferma r-rapport. Spjega li, *"…. Bieb minnhom kien imwahhal rasu l-isfel. Hemm xoghol illi gie maqtugh zghir per ezempju l-istess bieb li gie imwahhal bil-kontra min-naha ghall-ohra s-sealer ma kienx l-istess hxuna. Inglettaturi tal-bibien m'humiex maqtughin puliti (bieb tal-kamra tas-sodda), l-installation tal-main bedroom il-bieb ghadu mibrum. Il-hgiega ma nbidlitx ghalkemm kienet imkissra kien hemm glass top extra minflok inbidlet"*.

iv. Fl-14 ta' Settembru, 2015 harrket lis-socjeta konvenuta ghas-somma ta' tlett elef u hames mitt ewro (€3,500). Ghalkemm iddikjarat li s-somma dovuta hi ta' €4,751.87, iffirmat id-dikjarazzjoni fl-avviz tat-talba li qeghda twarrab mit-talba kull ammont li hu iktar mis-somma ta' €3,500. Waqt is-seduta tad-19 ta' Ottubru, 2015 l-attrici kkonfermat li l-ammont li qeghda tippretendi minghand il-konvenuta hu €3,500. L-ilment tal-attrici fl-avviz tat-talba hu:

> *"Kif gie nstallat ix-xoghol indunajt li s-sliding door kien jinfetah fid-direzzjoni l-hazina. Il-kummercjant qal li ibiddiluli. Ftit wara ndunajt li kien hemm bicca mil-hajt tal-hgieg imcaqqma. Il-kummercjant qal li mhux hu, u l-kuntrattur qalli li jsewwiha biex izomm il-kwiet. Wara xi gimgha sibna bieb shih bil-hgiega maqsuma u bil-frame mghawweg. Il-kummercjant qal li mhux tort tieghu u ghal darb'ohra accetta li jhallas l-ispejjez biex jissewwa imma l-fatt li l-frame tal-bieb tghawweg b'dak il-mod juri li mhux b'sahhtu bizzejjed. Xorta ghadu mghawweg anke wara t-tiswijiet li saru minn Aluminium Ltd.*
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> *Ftit wara l-hgieg tas-sliding door il-kbir beda jixxxaqqaq wahdu. Il-kummercjant m'accettax li kien difett fix-xoghol tieghu u rrifjuta li jirrimedja ghas-sitwazzjoni. Kien hemm li gibt persuna professjonali f'dan ix-xoghol u qalilna li l-materjal li ntuza kien NC40, profil antik li ftit jigi uzat illum, u mhux profil modern. Qalli wkoll li l-bieb tas-sliding door ma kienx gie mibdul kif imwieghed il-kummercjant, imma gie semplicement maqlub ta' taht fuq, bir-rizultat li l-pum gie hafna iktar gholi min-normal, u l-bieb iebes biex jizzerzaq. Barra minnhekk it-toqob il-qodma gew stokkjati mill-kummercjant biex jipprova jahbihom. Ta min jinnota li l-hgiega li xxaqet wahda kienet tal-bieba maqluba"*.

v. Is-socjeta konvenuta kienet notifikata bl-atti izda ma wegbitx.

vi. B'digriet tal-25 ta' Frar, 2016 it-Tribunal ordna li l-konvenuta terga' tigi notifikata bl-atti, u fil-fatt fl-4 ta' Marzu, 2016 giet notifikata.

vii. Fis-seduta tal-4 ta' April, 2016 it-Tribunal iddikjara li t-twegiba li pprezentat il-konvenuta, kienet tardiva. Ghalhekk ordna l-isfilz taghha.

viii. Fis-seduta tat-2 ta' Mejju, 2016 l-attrici talbet ghall-hatra ta' perit tekniku sabiex, *"… jaccedi fuq il-post u wara li jaghmel id-debiti verifiki jirrelata dwar it-talba tar-rikorrenti"*.

ix. Il-perit tekniku pprezentat ir-rapport u l-konkluzjoni hi:

> *"Conclusion.*

Taking all the issues into consideration one may conclude that there are some issues which have arisen due to the lack of written confirmations of what the owner of the penthouse desired. It is however not my remit to draw any conclusions on this as it is not a technical matter. Here I may refer to: 1) the type of profile which was to be used in the manufacturing of the apertures, 2) where the rotating handle of the kitchen sliding door was located.

Other issues which the owner pointed out are considered standard in the manufacturing of the NC45 aluminium apertures. Here I namely refer to: 1) gap between the door and the frame externally in all swinging doors 2) the mitred connection in the spare bedroom door.

Some other issues (which are considered minor) are defects in the workmanship of the manufacturing and could be rectified. Here I namely refer to: 1) the installation of flange in main bedroom and 2) some 'glass stops' cut short".

x. Hadd ma deher ghall-konvenuta fis-seduti tal-25 ta' Lulju, 2016, filwaqt li attendew l-attrici u d-difensur. Il-kawza thalliet ghas-26 ta' Settembru, 2016 ghas-sentenza.

7. L-appell tas-socjeta konvenuta fih zewg ilmenti:

i. Fir-rigward tat-tieni notifika li kienet saret lis-socjeta konvenuta, ma giex dikjarat mit-Tribunal f'liem terminu kellha tigi pprezentata t-twegiba. Generalment f'digriet simili jinghad kemm f'kemm zmien il-konvenut ghandu jipprezenta t-twegiba. F'dan il-kaz ma ntqalx. Ghalhekk it-Tribunal naqas milli jiffissa t-terminu li fih il-konvenuta kellha tipprezenta t-twegiba. Dan ifisser li l-appellanti kellha sas-seduta tal-4 ta' April, 2016 sabiex tipprezenta t-twegiba.

ii. It-Tribunal ghamel apprezzament zbaljat tal-provi. Il-konvenuta argumentat:

"(….) it-Tribunal ma setax jiskarta kapriccjozament ir-rapport hekk kif redatt mill-Perit Tekniku. L-appellant jirrileva anzi illi dan ir-rapport kellu jkun imhaddan bhala parti mill-konkluzjonijiet tal-Onorabbli Tribunal. Fil-fatt, jekk wiehed janalizza r-rapport tekniku tal-perit Abigail Scicluna Lewis jista' jikkonstata illi fil-verita minn spezzjoni illi ghamlet l-istess Perit fuq il-fond in kwistjoni jirrizulta illi fil-verita' illi certu allegazzjonijiet ta' difetti min-naha tal-attrici huma kkunsidrati bhala normali fil-manifattura tal-aluminium specjalment fir-rigward tal-materjal NC45 illi ntuza senjatament l-ispazju bejn il-bieb u l-frame fil-bibien u l-mitred connection fl-ispare bedroom. Inoltre, l-istess Perit tikkonstata illi d-difetti l-ohra hekk imsejha mill-attrici huma difetti minimi hafna u huma rizultat tat-thaddim fil-manifattura liema difetti stante illi huma minimi jistghu jittrangaw senjtament difetti fl-installazzjoni tal-flange fil-kamra tas-sodda u xi glass stops. Fi kliem iehor fir-rigward ta' dawn l-allegati difetti anke skont il-perit ghalhekk ma kienx hemm danni x'jigu likwidati stante illi tali difetti apparti li hafna minnhom m'huma difetti xejn izda parti mill-immanifatturar tal-

aluminium ohrajn huma tant difetti minimi illi jistghu jittrangaw mill-appellant ghal liema l-appellant stess ma jsib l-ebda oggezzjoni".

8. Fir-rigward tal-ewwel aggravju, dan hu fieragh. Il-qorti tosserva:

   (a) It-Tribunal ma kellu l-ebda obbligu li jiffissa t-terminu li fih kellha tigi pprezentata t-twegiba. It-terminu jirrizulta mil-ligi, cjoe' tmintax-il jum min-notifika tal-avviz tat-talba (ara regolament 4.1 tar-Regoli dwar it-Tribunal ghal Talbiet tal-Konsumaturi - Legislazzjoni Sussidjarja 378.01).
   (b) Fl-4 ta' Marzu, 2016 il-konvenuta kienet notifikata bl-atti.
   (c) Skont il-konvenuta ipprezentat it-twegiba waqt is-seduta tal-4 ta' April, 2016, li hu wara t-tmintax il-gurnata kontemplata mil-ligi.
   (d) F'kull kaz fil-verbal tal-4 ta' April 2016 jinghad li t-terminu ghall-prezentata tat-twegiba hu ta' tmintax-il jum.
   (e) Il-konvenuta kienet notifikata fis-6 ta' April, 2016. Skont il-konvenuta pprezentat it-twegiba waqt is-seduta tat-2 ta' Mejju, 2016. Dan ifisser li pprezentat it-twegiba wara t-terminu stabbilit mil-ligi.

9. Ghal dak li jirrigwarda l-mertu, il-qorti tibda biex tosserva li x-xiri tal-bibien minghand is-socjeta konvenuta jikkwalifika bhala *'kuntratt ta' bejgh'* skont id-definizzjoni li hemm fl-Att dwar l-Affarijiet tal-Konsumatur (Kap. 378).

10. L-aperturi kellhom ikunu tajbin ghall-uzu u jkollhom il-kwalita li wiehed ragonevolment jistenna li jkollhom oggetti simili.

11. M'hemmx dubju li l-attrici tat altru milli prova sodisfacenti li l-bieb li jidher fit-ritratti 1 u 2 tar-rapport tal-perit Gerald Debono, hu difettuz. Li twahhal apertura l-kontra li kellha ssir u tirrimedja ghal dan in-nuqqas billi ddawwar il-bieb, hu inaccettabbli. F'dan ir-rigward fir-rapport tal-perit Gerald Debono, li hu prova, jinghad:

    "2. The same aperture frame was originally fixed in the wrong position, later removed and rotated. This is evident as the frame has lock bays fitted on the outermost rail, whilst the leaf is on the inner rail; the handle is fixed at the wrong height; and sealed old holes in the aperture which were utilised in the original position of installation. Furthermore, as a result of the excessive handling of the door leafs in the said aperture, the outer glass of the left leaf is broken (Photo 1,2,3,4)".

    Minn stima li hemm fl-atti il-prezz ghal din l-apertura kien €1,339 (mhux inkluz it-Taxxa Fuq il-Valur Mizjud). Mir-ritratti numru 1 u 2 wiehed jista' jara per ezempju l-gholi zejjed li fih qieghed il-pumm. Hu evidenti li wara li l-konvenuta ma mmanifatturatx il-bieb kif suppost, dawwret il-bieb biex tirrimedja ghan-nuqqas taghha stess. Dan hu inaccettabbli u jikkonferma agir dillettantesk min-naha tas-socjeta konvenuta.

Dwar din l-apertura fir-rapport tal-perit tekniku jinghad:

> *"The door was subsequently rotated resulting in the handle and other lock bay being installed at an excessive height from finished floor level.* ***This does not make the door comfortable to open and close therefore does not function as per good standard practice*** *(See Photo 1).*
>
> *In addition the holes in the aluminium which were utilised in the previous installation are still quite visible and require improving in the way they are sealed (See Photo 2 & 3).*
>
> *The outer glass of the middle leaf of this door is cracked.* ***This is very probably due to thermal shock.*** *The frame of this leaf had been hit on the side and therefore one cannot fully exclude that his could have somehow damaged the glass however* ***such a crack is usually the result of thermal shock due to the glass being exposed to highly varying temperatures. In the case of such apertures it would be advisable to use tempered glass in order to avoid such incidents*** *(See Photo 4)".*

L-osservazzjoni dwar il-hgieg tkompli ssahhah il-fehma tal-qorti li fir-rigward ta' dan il-bieb, l-ilment tal-attrici hu gustifikat. Wiehed kien jistenna li l-konvenuta taghti parir lill-attrici dwar il-kwalitajiet li kellu jkollu l-hgieg, iktar u iktar meta tqies li gie nstallat f'penthouse fejn allura jkun espost ghall-hinijiet twal ghax-xemx u t-temp shun li jaghmel f'Malta.

12. L-attrici lmentat ukoll dwar l-hgieg u bieb li saru fil-*main bedroom*. Jidher li l-bieb sofra hsara minhabba li nstabat. M'hemmx prova li l-hgieg tal-bieb inkiser minhabba xi raguni differenti, ghalkemm il-qorti fehmet li l-konvenuta accettat li tibdel il-hgieg tal-bieb. Id-difett li fih il-bieb hu li, *".... when closed does not fully seal onto the frame and this could be due to the damage the door suffered because of the slamming"* (rapport tal-perit tekniku). Wiehed jista' jghid li m'hemmx prova sodisfacenti li l-bieb kien difettuz. Pero' mill-istess rapport jirrizulta li *"Between the fixed glass section and the door there is a flange (See photo 6 & 7)".* Il-perit tekniku spjegat li ghalkemm l-*aluminium section* kienet tkun iktar wiesa, *"... however it would have made the joint between the glass section and the door much stronger and it would have further reinforced the structure of the opening door making it more resistant to bending. More so the door is higher than 2.1m (which is the standard height of doors) and thus such a profile would have assisted its stability".* Fil-fehma tal-qorti a bazi ta' din l-opinjoni, il-konvenuta hi responsabbli ghal fatt li l-hgieg tal-bieb inkiser u l-bieb imbaram, u dan gialadarba ghazlet li tuza *flange* minflok *aluminium section*. Dan wassal biex l-istruttura kienet dghajfa wisq. Ghamlet sew il-konvenuta li accettat li tibdel il-hgiega tal-bieb, pero daqstant iehor kellha d-dmir li tirrimedja l-hsara li saret lill-bieb. Fil-fehma tal-qorti dan jista' jsir biss billi jinbidel il-bieb u minflok flange isir frame tal-aluminium. Il-fatt li bieb tal-aluminju jinstabat m'ghandux

iwassal li ma jibqax jinghalaq sew. Id-difett li hemm fil-bieb ma jistax jinghad li hu minuri jew insinifikanti.

13. Ghal dak li jikkoncerna l-bieb li hemm f'kamra tas-sodda ohra, mir-rapport tal-perit tekniku ma jirrizultax li fih difetti tant hu hekk li l-opinjoni hi: *"The manufacturing of this door is as per standard and correct practice. The detailing of the mitred connection is as per standard detailing practise as with the properties of this particular profile (See photo 10)"*. Opinjoni li tikkontradici dak li qal il-perit Gerald Debono (ara paragrafu 8 tar-rapport). Ghalhekk il-qorti ma tistax tikkonkludi li l-attrici tat prova li hemm difetti f'dan il-bieb. Mir-rapport jirrizulta li hemm difett iehor li jista' facilment jigi rimedjat, *"some glass stops cut short"* li l-perit tekniku kkwalifikathom bhala *'minor issues'*. Madankollu dan ma jistax iservi biex itaffi n-nuqqasijiet fl-aperturi l-ohra kif spjegat hawn fuq.

14. Ghal dak li jikkoncerna t-tip ta' materjal li ntuza f'whud mill-aperturi, fid-decizjoni tat-Tribunal ma ntqal xejn. F'kull kaz il-perit tekniku rrelatat li:

> *"The type of profile used with the swinging doors and windows (not sliding) throughout, are manufactured using NC45 type profile and not P4. These two profiles are quite similar in strength and other properties, although the P40[1] can be considered better than NC45 as it has a thicker frame than NC45 (by 2mm) and could be considered better aesthetically for some"*.

L-attrici ma xehedet xejn dwar it-tip ta' profil li kellu jintuza. Ghalkemm fl-avviz tat-talba ilmentat li l-profil li ntuza kien antik, din l-allegazzjoni m'hijiex sorretta mill-provi.

15. Mill-avviz tat-talba jirrizulta li l-attrici ma tridx li zzomm l-aperturi li kkonsensjat is-socjeta konvenuta. Dan ifisser li trid li jigi rexxiss il-kuntratt. Skont l-artikolu 74 tal-Att dwar l-Affarijiet tal-Konsumatur (Kap. 378), l-attrici ghandha l-jedd li taghzel wiehed mir-rimedji li jissemmew f'dik id-disposizzjoni, fosthom dik ta' rexxissjoni. Id-difetti li hemm, ghalkemm mhux fl-oggetti kollha, zgur li m'humiex ta' natura insinifikanti u minuri (ara artikolu 75 tal-Kap. 378). Kien f'dak il-kaz biss li r-rimedju tar-rexxissjoni tal-kuntratt ma kienx ikun disponibbli.

Ghal dawn il-motivi tichad l-appell bl-ispejjez kontra s-socjeta konvenuta.

Anthony Ellul.

[1] Fir-rapport l-ewwel issemma P4 u mbaghad P40. M'huwiex car x'inhi r-riferenza korretta.