



FIT - TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr. Philip M. Magri LL.D; M.A. (Fin.Serv); M.Phil (Melit)

Seduta ta' nhar il-Hamis, 9 ta' Novembru, 2017

Talba Nru: 467/2016PM1

Margaret Camilleri (ID Nru. 558359(M)) u Daniel Camilleri (ID Nru. 565094(M))

Vs

Samuel Cachia (ID Nru. 46885(M))

It-Tribunal,

Ra l-avviz fl-ismijiet premissi pprezentat fil-21 t'Ottubru, 2016 illi l-konvenut ghandu jigi kkundannat ihallas lill-atturi is-somma ta' elfejn erba' mija u hamsa u disghin Ewro (€2495) rapprezentanti is-somma ta' elf disa' mija u hames ewro (€1905) rapprezentanti danni kkawzati fil-fond propjeta` tal-atturi b'rizultat tal-iskavar illi sar fis-sit adjacent proprjeta` tal-konvenut u dana skont ir-rapport tal-Perit Mario Cassar, is-somma ta' erba' mija u tlettax-il euro (€413) rapprezentanti drittijiet tal-Perit Mario Cassar zborsati mill-attribuci ghar-rapport surreferit u s-somma ta' mija u sebgha u sebghin

euro (€177) rapprezentanti spejjez u drittijiet inkluz VAT fuq l-istess drittijiet, dovuti lin-Nutar Graziella Agius Farrugia ghall-ftehim minnha redatt li kien jirrifletti ftehim milhuq bejn l-atturi u l-konvenut fil-presenza tal-periti rispettivi tagghom u ghal-laqghat mizmuma fir-rigward tal-istess ftehim, bl-ispejjez inkluzi l-ispejjez tal-ittra ufficjali bin-numru 2825/2016 u tal-mandat ta' sekwestru kawtelatorju prezentat mill-atturi kontestwalment mal-prezenti avviz tat-talba u bl-imghax legali sad-data tal-hlas effettiv kotra l-konvenut ingunt in subizzjoni.

Ra d-dokumenti annessi mal-istess avviz senjatament ir-rapport tal-Perit Mario Cassar, ricevuta relattiva u kif ukoll ricevuta mahruga min-NutarGraziela Agius Farrugia.

Ra r-risposta tal-konvenut permezz ta' liema gie eceptit illi, preliminarjament l-ammont mitlub huwa ezagerat u dan ghaliex l-esponenti ma kkawzax il-hsarat kollha fil-fond tal-atturi; illi in ogni caso, l-esponenti m'ghandux ibati l-ispejjez ta' dawn il-proceduri ghaliex meta offra li jsewwi l-hsarat fil-fond tal-atturi baqa' minghajr risposta u f'daqqa wahda rinfaccjat b'mandat ta' sekwestru kawtelatorju u l-kawza odjerna (sic), bl-ispejjez.

Sema' x-xhieda tal-intimat in subizzjoni (fol. 19 tal-process) u ha konjizzjoni tan-nota bid-dokumenti ezebiti mill-attrici (fol. 22 et. seq), tar-rapport peritali datat 20 ta' Marzu, 2016 mahrug mill-Perit Borg u r-ritratti relattivi u l-ittra legali datata 30 t'Awwissu, 2016.

Sema' x-xhieda tal-Perit Mario Cassar, tal-Perit Deborah Borg u tal-intimat in subizzjoni (waqt is-seduta tal-15 ta' Marzu, 2017).

Ha konjizzjoni tan-nota tal-attrici b'affidavit taghha stess u ta' binha Daniel Camilleri (fol. 53 et seq. tal-process) flimkien mad-dokumenti annessi mal-istess.

Ha konjizzjoni tar-rapport mhux datat mahrug mill-Perit Deborah Borg (dok. MC1 a fol. 70 tal-process).

Ha konjizzjoni tan-nota tal-attrici b'affidavit ulterjuri taghha u b'affidavit ta' Roderick Borg u ta' Emanuel Gauci (fol. 80 et. seq. tal-process).

Sema x-xhieda tal-attrici in kontro-ezami (seduta tal-11 ta' Mejju, 2017).

Ha konjizzjoni tal-affidavit tal-intimat b'dokumenti annessi (a fol. 92 et. seq. tal-process) u wkoll tal-affidavit tal-Perit Deborah Borg (a fol. 103 tal-process).

Sema' x-xhieda tal-attrici in kontro-ezami ulterjuri (seduta tat-13 ta' Gunju, 2017)

Sema' x-xhieda in kontro-ezami ta' Emanuel Gauci u tal-intimat (seduta tal-11 ta' Lulju, 2017)

Sema' x-xhieda ta' Roderick Borg in kontro-ezami (seduta tat-18 ta' Settembru, 2017).

Ha konjizzjoni tan-noti ta' sottomissjonijiet prezentati mid-difensuri legali tal-partijiet.

Sema' t-trattazzjoni orali tal-istess difensuri tal-partijiet.

Ha konjizzjoni tac-cirkostanzi kollha tal-kaz.

Ikkunsidra

Ili l-kaz odjern jirrigwardja azzjoni ghal danni allegatament naxxenti minn xogholijiet, inkluzi xogholijiet ta' skavar, affetwati mill-intimat fil-fond tieghu li jmiss mal-fond proprjeta` tal-atturi.

Illi qabelxejn jehtieg illi, mill-aspett prettament legali tal-kaz, jigi sottolinejat is-segwenti:

1. Illi, fil-kawza **Bugeja vs Washington**, deciza mill-Onorabbli Qorti tal-Appell, fil-5 ta' Mejju 1897, gie enuncjat il-principju, li kien u ghadu kardinali fil-kuntest tad-drittijiet ta' proprjetarji, li "*il diritto del proprietario di usare liberamente del*

suo fondo e di farsi le modificazioni che crede convenienti cessa la ove si reca grave molestia al vicino”.

2. Illi intqal ukoll fil-kawza **Captur vs Borg**, deciza mill-Onor. Prim’Awla tal-Qorti Civili fil-5 ta’ Ottubru, 1993, *“kull min, b’xogħol konness ma’ kostruzzjoni, jagħmel hsara lill-vicin, jirrispondi għad-danni”.*
3. Illi kif qalet il-Qorti fil-kawza **Sammut vs Zammit**, deciza mill-Prim Awla, fil-11 ta’ Lulju 2001:
”Hu obbligat ta’ kull persuna li jkun qed jizviluppa s-sit tiegħu, li jiehu dawk il-prekawzjonijiet kollha opportuni li jigi evitat hsara fil-fond tal-gar”.
4. Illi f’dan il-każ jidhrol fis-seħħ ukoll dak li jipprovdi l-artikolu 439 tal-**Kodiċi Ċivili** li jgħid li *“Hadd ma jista’ jhaffer fil-fond tiegħu bjar, ġwiebi, jew latrini, jew jagħmel thaffir ieħor għal kull hsieb li jkun, f’boghod ta’ anqas minn sitta u sebghin centimetri mill-hajt divizorju”.* Huwa car li l-għan tal-leġislatur dwar din id-dispożizzjoni – li tirreferi kemm għat-thaffir, thammil jew ukoll xogħlijiet oħra – taħseb biss biex thares li ma jsir xejn f’fond li jista’ jgħib xi hsara jew li jdgħajjef il-hajt li jifred dak il-fond mill-fond li jmiss miegħu.
5. Illi minbarra dan, huwa stabbilit ukoll li din il-projbizzjoni hija waħda ġenerali, mingħajr ebda kwalifika jew eċċezzjoni. Perdipiu`, jekk kemm-il darba jirriżulta li xi hadd naqas li jhares id-dispożizzjonijiet tal-imsemmi artikolu 439 hu u jsir xogħol ta’ thaffir fis-sit li jmiss ma’ ta’ haddieħor, titnissel ukoll il-preżunzjoni *juris et de jure* li kull hsara li sseħħ fil-ġid tal-gar tkun kawża diretta tax-xogħol li jkun qiegħed isir bi ksur ta’ dak l-artikolu (Maġ. Ċiv (Għ) AE 26.9.2007 fil-kawża fl-ismijiet **Dr. John Cassar et vs Salvu Attard et** (mhix appellata)).

6. Illi l-artikolu 439 johloq prezunzjoni assoluta ta' hsara u huwa għalhekk li l-ligi tishaq li tinzamm id-distanza regolamentari, halli b'hekk jigi evitat dannu lill-gar. (App. Civ. 12.6.1959 fil-kawża fl-ismijiet **Grixti et vs Schembri** (Kollez. Vol: XLIII.i.283); u P.A. TM 14.10.2004 fil-kawża fl-ismijiet **Eric Fenech Paçe et vs Bajja Developments Ltd**).

7. Illi b'zieda mas-surreferit ghandu jigi kkunsidrat ukoll dak li llum jinsab espressament provdut taht ir-Regolamenti maħsuba biex jevitaw hsara lil ġid ta' terzi waqt li jkun qiegħed isir bini jew xogħlijiet oħrajn (**Regolamenti dwar l-Evitar ta' Hsara lil Proprjeta' ta' Terzi Persuni** (A.L. 72 tal-2013, L.S. 513.02)) b'mod partikulari illi skond ir-regolament 7(5) tal-imsemmija Regolamenti, l-iżviluppatur huwa huwa marbut li jagħmel rapport dwar l-istat tal-proprjeta` kontigwa ('condition report') u jagħti kopja tagħhom lill-gar jew ġirien ikkonċernati. Naturalment, apparti l-applikabilita` tas-surreferit, kif jinsab ukoll regolament deciz anke fi zminijiet li fihom ir-Regolamenti imsemmija ma kenux ghadhom gew promugati, "*xorta waħda l-prudenza u l-bon sens tal-bonuspaterfamilias kif ukoll iddettami tal-bwon viċinat u l-iskansar ta' kwestjonijiet bla bżonn kien mistenni li l-atturi jingħataw almenu l-'condition report'*" (**Sergio Galea et. vs Philip Camilleri** deciza mill-Onor. Prim'Awla tal-Qorti Civili fil-25 ta' Mejju, 2016).

Illi mill-aspett prettament fattwali tal-kaz odjern jehtieg illi jigi sottolinejat is-segwenti:

1. Illi ma jidhirx illi hemm kontestazzjoni min-naha tal-intimat li huwa rreka hsrat fil-fond tal-atturi bhala konsegwenza tax-xogħolijiet imwettqin minnu tant illi huwa jghid li sahansitra offra li jsewwi l-hsara kagunata minnu. F'dan ir-rigward, permezz tal-affidavit tieghu stess, jistqarr: "*Eventwalment l-avukat tieghi kien issuggerixxa li jsiru xogħolijiet ta' tiswija skont kif indikat il-Perit Borg. Din l-offerta saret fit-30 ta' Awwissu, 2016 izda ma smajna xejn minghand Margaret*

jew l-avukata Dr. Marion Camilleri li kienet l-avukata taghha f'dan iz-zmien.” Bl-istess mod waqt ix-xhieda in subizzjoni moghtija mill-istess intimat huwa stess jirreferi ghal “danni ohrajn illi jista’ jkun illi kienu kawza tal-kostruzzjoni u progetti li kelli jiena. Nghid li jiena kont offrejtilha elf u hames mitt ewro (€1500) ghas-saldu tal-pretensjonijiet tal-istess atturi fir-rigward ta’ dawn il-hsarat.” (xhueda moghtija fl-20 ta’ Frar, 2017)

2. Illi l-kontestazzjoni bejn il-partijiet effettivament tirrigwardja (i) l-estent tal-hsara effettivament sofferta mill-atturi bhala konsegwenza tax-xogholijiet imwettqin mill-intimat u (ii) l-estent tax-xogholijiet riparatorji mehtiega senjatament fir-rigward tal-bzonn o meno li x-xoghol tal-artex li l-attrici kellha fit-tarag taghha jerga’ jsir mill-gdid.
3. Illi fir-rigward tal-ewwel punt u cioe` l-estent tal-hsara effettivament sofferta mill-attrici bhala konsegwenza tax-xogholijiet imwettqin mill-intimat, l-intimat jirreferi ghar-rapport peritali ossija ‘condition report’ imhejji minn ohtu qabel ma beda x-xogholijiet.
4. Illi fir-rapport redatt mill-Perit Deborah Borg (liema rapport m’huwiex datat – ghalkemm jirreferi ghal access li sehh f’Awwissu, 2014 - u jinsab ezebit a fol. 70 bhala Dok. MC1) jinsabu elenkati s-segwentu hsarat li, allura skont l-intimat, kienu pre-ezistenti ghax-xogholijiet imwettqin minnu:

“Backyard at ground floor level: crack (konsentura) was noted in the party wall as illustrated in Annex A – Plate 1

Combined sitting room and formal dining area at ground floor level: a spot of humidity was noted in the ceiling of the sitting room;

Terrace overlooking the main façade at first floor level: a crack was noted at the junction between wall and the ceiling slab. Furthermore

from the terrace it was noted that part of the cladding on the front part of the party wall, has fallen off. Refer to Annex A – Plate No. 2.

Main Bedroom at first floor level: Humidity was noted in the ceiling of the main bedroom;

Main Hall at first floor level: Humidity was noted beneath the window leading to the internal yard;

Spare Bedroom at first floor level: A structural crack was noted in the ceiling of the spare bedroom as well as in the two window lintels of this bedroom. Refer to Annex A – Plates no. 3, 4, 5 and 6. Further cracks were noted on the other wall of the terrace adjacent to the washroom. Refer to Annex A – Plates No. 7, 8 and 9.”

Kif intqal hawn fuq tali rapport jidher li ma giex formalment mghoddi lill-attrici kif mehtieg mil-ligi, dan kif ammess mill-istess Perit Borg permezz tax-xhieda taghha: “*Nghid li ghalkemm jiena r-rapport condition report li rredajt fl-elfejn u erbgħa (2004) kont bghattu b’reģistered mail lill-attrici pink card ma kellix u allura ma stajtx niddetermina jekk din ircevitux jew le pero` li dan ma giex lura. Nghid li jien kont dhalt fuq it-tracking record tal-posta u minn hemmhekk irrizulta li dana baqa’ qatt ma gie delivered lill-attrici. Dan iccekjajtu ricentement wara li nqalghu l-kwistjonijiet bejn il-partijiet.” (kontro-ezami fis-seduta tal-15 ta’ Marzu, 2017). Permezz tal-affidavit taghha il-Perit Borg tghid li dan ir-rapport huwa datat 28 t’Awwissu, 2014 imma effettivament il-kopja ezebita in atti lanqas biss tirrizulta li hija datata.*

5. Illi fir-rapport redatt mill-istess Perit Borg wara li l-intimat wettaq ix-xogholijiet tieghu (datata 20 ta’ Marzu, 2016 u ezebit bhala Dok, SC1 a fol. 27 tal-process) jinsabu elenkati s-segwenti hsarat (il partijiet skuri huma b’zieda mar-rapport precedenti tal-istess Perit Borg:

“Backyard at ground floor level: crack (konsentura) was noted in the party wall as illustrated in Annex A – Plate 1

Combined sitting room and formal dining area at ground floor level: a spot of humidity was noted in the ceiling of the sitting room. **In some area within the dining room, paint is becoming detached. The locations coincide with areas where the external joints are not pointed.**

Terrace overlooking the main façade at first floor level: a crack was noted at the junction between wall and the ceiling slab. Furthermore from the terrace it was noted that part of the cladding on the front part of the party wall, has fallen off. Refer to Annex A – Plate No. 2.

Main Bedroom at first floor level: Humidity was noted in the ceiling of the main bedroom;

Main Hall at first floor level: Humidity was noted beneath the window leading to the internal yard;

Spare Bedroom at first floor level: A structural crack was noted in the ceiling of the spare bedroom as well as in the two window lintels of this bedroom. Refer to Annex A – Plates no. 3, 4, 5 and 10. Further cracks were noted on the other wall of the terrace adjacent to the washroom. Refer to Plates No. 6, 7, 8 and 9.

Main Hall at ground floor level: A crack in the underneath decorations finish (artex) of the main staircase was noted, Refer to Plate No. 11.

Washroom at first floor level: A crack in the wall tiles was noticed. Refer to Plate No. 12.

Bedroom at first floor level: A structural crack was noted on one of the walls. Refer to Plate No. 13.

Living room at ground floor level: A structural crack was noted in one of the corners adjacent to the yard. Refer to Plate No. 14.

In general the following were noticed:

The party wall adjacent to the site to which the development refers, has been unmaintained and some time (sic) and a number of joints are not pointed. Refer to Plate No. 15.

Following excavation of this site it was noticed that foundations of the neighbouring property consist only of a small amount of levelling concrete with some instances where the foundation masonry was laid directly on the rock which was not leveled at all. Refer to Plate No. 16.”

Illi ghaldaqstant mis-surreferit jirrizulta diga` li s-segwent i hsarat, jekk xejn, kienu ravizabbli sussegwentement ghax-xogholijiet imwettqin mill-Intimat:

“In some area within the dining room, paint is becoming detached. The locations coincide with areas where the external joints are not pointed.

Main Hall at ground floor level: A crack in the underneath decorations finish (artex) of the main staircase was noted, Refer to Plate No. 11.

Washroom at first floor level: A crack in the wall tiles was noticed. Refer to Plate No. 12.

Bedroom at first floor level: A structural crack was noted on one of the walls. Refer to Plate No. 13.

Living room at ground floor level: A structural crack was noted in one of the corners adjacent to the yard. Refer to Plate No. 14.

Fir-rigward tas-segwent i: *“The party wall adjacent to the site to which the development refers, has been unmaintained and some time (sic) and a number of joints are not pointed. Refer to Plate No. 15.*

Following excavation of this site it was noticed that foundations of the neighbouring property consist only of a small amount of levelling concrete with some instances where the foundation masonry was laid directly on the rock which was not leveled at all. Refer to Plate No. 16.”

dawn il-paragrafi wkoll gew mizjuda f’dan ir-rapport u ma ssir l-ebda referenza ghalihom fil-condition report mahrug mill-Perit Borg.

Ovvjament ukoll fir-rigward ta’ dawn il-hsarat, certament rizultanti wara li saru x-xogholijiet imwettqin mill-intimat, tapplika allura il-presunzjoni legali hawn fuq citata.

6. Illi b’zieda mas-surreferit ghandha ssir referenza wkoll ghall-fatt li permezz tar-rapport tieghu datat 21 ta’ Gunju, 2016 (ezebit a fol. 3 tal-process bhala Dok. MC1) il-Perit Mario Cassar, fuq inkarigu tal-attrici, filwaqt li ddetermina li “*l-iskavar ma rrispettax id-distanza ta’ 76 centimetru minn mal-appogg*” innota s-segweni hsarat “*bhala rizultat dirett tax-xogholijiet fil-fond adjaceti*”:

“Dawn il-hsarat jikkonsistu:

- 1. Fil-hsara illi garrab il-kisi tat-tip artex ta’ taht it-tarag;*
- 2. Zviluppaw xi xquq irqaq fl-appogg min-naha interna tal-proprjeta`*
- 3. Zviluppaw xquq fil-hajt tal-kamra tal-hasil.*
- 4. Hsara f’xi madum tal-hajt tal-kamra tal-hasil.*
- 5. Kunsenturi fil-hitan tal-kamra tal-pranzu.”*

It-Tribunal jinnota li l-hsarat determinati mill-Perit Cassar huma pressoke` identici ghal dawk determinati wkoll mill-Perit Borg wara li huwha kien wettaq ix-xogholijiet. L-istess Perit Cassar ikompli billi jghid ukoll fl-istess rapport tieghu li t-tiswija ghal tali danni tiswa elf, disa’ mija u hames euros (€1905).

7. Illi b'zieda mas-surreferit u kieku r-rapporti hawn fuq citati ma kenux fihom infushom sufficjentement cari fil-konkluzjonijiet li kjarament jistghu jigbibdu minnhom, skont kif deciz regolarment mill-Qrati Taghna, fl-evalwazzjoni tieghu tal-provi, dan it-Tribunal ghandu gustament iqis ukoll li f'kaz ta' dubju dwar il-kawza u l-entita` tal-ħsara, dan id-dubju ghandu jmur favur l-atturi fil-kaz odjern, billi: (i) minħabba l-ksur tad-distanza regolamentari, hemm, kif fuq spjegat, preżunzjoni *juris et de jure* li l-ħsara grat tort tax-xogħlijiet eżegwiti mill-intimat; u (ii) għalkemm saru spezzjonijiet tal-proprjeta` qabel bdew ix-xogħlijiet, ir-rizultat tagħhom jidher li ma giex ufficjalment rez a konjizzjoni tal-atturi li konsegwentement ghal dan ma kellhomx l-opportunita` juru l-fehma tagħhom dwarhom. (ara f'dan l-istess sens id-decizjoni hawn fuq citata fl-ismijiet **Sergio Galea et. vs Philip Camilleri** deciza mill-Onor. Prim'Awla tal-Qorti Civili fil-25 ta' Mejju, 2016). F'dan ir-rigward takkwista wkoll importanza id-dikjarazzjoni sottoskritta mill-istess intimat datata 18 t'Awwissu, 2014 (Dok. M1 ezebit a fol. 58). Huwa car li l-intimat kien jaf ghal xiex qieghed jiffirma u, kieku tassew kien fil-pussess tal-*condition report* redatt min ohtu, seta' facilment ghadda kopja tal-istess lill-attrici meta din insistiet mieghu li jiffirma dan id-dokument. Fin-nuqqas, seta' facilment jirrifjuta li jiffirma d-dikjarazzjoni imsemmija sakemm ma jikkonsultax lil ohtu, jottjeni kopja tal-*condition report* u, kif trid il-ligi, jghaddih lill-attrici. Minn dan kollu l-intimat ipprefera li jiffirma d-dikjarazzjoni u kwindi, b'zieda mas-surreferit, huwa car li m'hemm xejn li jista' b'xi mod jikkontradici b'mod serju u sostanzjali, il-konkluzjonijiet teknici raggjunti mill-Perit Cassar permezz tar-rapport tieghu.
8. Illi fir-rigward tat-tieni punt u cioe` dak koncernanti jekk l-atturi humiex gustifikati li jitolbu għall-hlas fir-rigward tax-xogħol tal-artex li jrid isir mill-gdid fir-rigward tat-tarag kollu u kwindi minghajr 'patching' jew l-uzu tad-'Do-it-yourself kit' imsemmija mill-intimat, it-Tribunal isib li f'dan ir-rigward strettament tekniku ix-xhieda kollha hija univoka fis-sens illi x-xogħol irid isir

kollu mil-gdid. Hekk per ezempju Emmanuel Gauci jistqarr li “*biex ix-xoghol jigi sew ma tistax tuza repair kit imma l-Artex irid isir kollu mill-gdid, kemm dak tas-saqaf u kif ukoll dak ta’ taht it-tarag*” (affidavit a fol. 88 tal-process) In kontro-ezami l-istess xhud kompla jsostni li “*mill-esperjenza tieghi biex jittranga dan ix-xoghol irid jinbidel ix-xoghol kollu. (...) Mistoqsi dwar jistghux jigu minimizzati d-danni fis-sens illi tingala’ biss dik il-parti fejn hem mil-hsara u tigi rimpjazzata biss dik il-parti nghid lid an ma jistax isir peress li xorta wahda kieku jsir hekk il-hsara tbqa’ tidher*” (seduta tal-11 ta’ Lulju, 2017). Ix-xhud Roderick Borg jikkonferma din il-verzjoni anke in kontro-ezami meta jixhed: “*certament li la l-patching u lanqas id-do-it-yourself kit li semmejt qabel ma kienu soluzzjoni tajba ghal dak li riedet l-attrici u cioe` li jkollha prodott seamless*” (seduta tat-18 ta’ Settembru, 2017). F’dan ir-rigward ukoll it-Tribunal ihoss illi tenut kont tal-mod kategoriku illi bih xehdu quddiemu it-teknici li huma esperti f’dan il-qasam u fin-nuqqas ta’ provi konvincenti min-naha tal-intimat li jistghu b’xi mod jikkontradiku s-surreferit jew jaghtu imqar indikazzjoni li x-xoghol jista’ jsir tajjeb b’mod li jpoggi lill-attrici fl-*istatus quo ante* u b’korrissettiv irhas, it-Tribunal m’ghandux ghazla hlief li f’dan ir-rigward jiddikjara li t-talba tal-attrici ghall-kumpens sabiex ix-xoghol tal-Artex isir mill-gdid hija gustifikata ukoll.

9. Illi hija gustifikata wkoll it-talba sakemm tirrigwardja l-ispejjez inkorsi mill-attrici sabiex jigi redatt ir-rapport tal-Perit Cassar liema spiza giet minnha inkorsa mhux b’kappricc imma sabiex tkun tista’ tissalvagwardja d-drittijiet taghha permezz tal-azzjoni odjerna.
10. Daqstant iehor hija gustifikata wkoll it-talba ghall-ispejjez koncernanti l-iskrittura redata min-Nutar Agius Farrugia in vista tal-fatt li tali skrittura saret proprju fuq suggeriment tal-istess intimat (fol. 25).

11. Ghall-kompletezza jinghad li huwa car li mill-korrispondenza li ghaddiet bejn il-partijiet, l-intenzjoni tal-intimat kienet aktar dik illi jtawwal iz-zmien sabiex forsi ma jhallasx dak kjarament dovut minnu milli li effettivament jilhaq soluzzjoni mal-attrici wara d-danni li din tal-ahhar giet li sofriet intortament bhala konsegwenza diretta tal-agir tieghu liema agir kien sahansitra jinkludi xogholijiet li saru kontra dak li tehtieg il-ligi. Anke wara l-interpellazzjoni permezz tal-ittra ufficjali ma jidher li kien hemm xejn li seta' jwaqqaf lill-intimat milli jaddivjeni ghall-hlas tal-kumpens dovut minnu skont il-ligi. Certament, kif irrizulta kjarament anke matul dawn il-proceduri, f'it li xejn seta' jsib konfort fil-'*condition report*' mahrug minn ohtu stess u li perdipiu` bi ksur ta' dak espressament mehtieg mil-ligi u tad-dettami tal-valuri tal-bwona fede u tal-bwon vicinat, huwa naqas milli jghaddi lill-attrici. Minhabba f'hekk l-attrici giet kostretta li mhux biss tinkorri spejjez ulterjuri billi tingaggja Perit u wkoll Nutar kif maqbul mal-istess intimat imma giet ukoll kostretta tipprocedi permezz tal-kawza odjerna ghas-salvagwardja tad-drittijiet taghha.

Tenut kont tac-cirkostanzi kollha tal-kaz it-Tribunal konsegwentement isib li t-talba attrici hija pjenament gustifikata.

Ghaldaqstant, it-Tribunal jaqta u jiddeciedi din il-kawza billi filwaqt li jichad l-eccezzjonijiet tal-intimat, jilqa' t-talba attrici u jikkundanna lill-intimat ihallas is-somma mitluba ta' elfejn, erba' mija u hamsa u disghin euro (€2495) rapprezentanti kumpens ghall-hsara sofferta mill-attrici bhala konsegwenza diretta tal-agir tal-intimat bl-ispejjez inkluzi l-ispejjez tal-ittra ufficjali bin-numru 2825/2016 u tal-mandat ta' sekwestru kawtelatorju prezentat mill-attrici kontestwalment mal-avviz odjern u bl-imghax legali mit-30 t'Awwissu, 2016 data tan-notifika lill-intimat tal-ewwel interpellazzjoni ufficjali mahruqa mill-attrici fil-konfront tieghu.

Avukat Dr. Philip M. Magri LL.D. M.A. (Fin. Serv.) M.Phil.

Gudikatur