FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn hdax (11) ta' Gunju 2018

Rikors Numru 238/15 FDP

Grezzju Meilak (ID 476658M), Carmen Beach (ID 217366M) u Joseph Meilak (ID 380356M), lkoll ulied Lucy Meilak

vs

George Attard u Joseph Attard

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil 11 ta' Awissu 2015 fejn ir-rikorrenti talbu lill-Qorti tikkundanna lill-intimati ihallsuhom s-somma ta' erbat elef mitejn tlieta u sittin euro u erbgha u tletin centezmu ta' euro (€4,263.34) jew kull somma ohra verjuri, anke jekk izjed, prevja kwalsiasi dikjarazzjoni mehtiega u opportuna, ghall-hsara u danni kollha li sofrew ir-rikorrenti fil-propjeta 2, triq Santu Rocco, Kalkara meta f'April 2015 sbroffa d-drenagg fl-imsemmija propjeta, liema sbroff kien tort uniku taghkhom peress li intom jew terzi inkarigati minnkhom tfajtu materjal mir-razzett tagkhom li ghandkhom f'dawk l-akwati fis-sistema tad-drenagg pubbliku. Konsegwenza ta' dan l-agir, kif gia inghad, ir-rikorrenti sofrew danni u hsarat fl-ammont riklamat hekk kif iccertfikat mill-Perit Joseph Attard.

Rat ir-rapport tal-Perit Joseph Attard datat 9 ta' Mejju 2015 u ppresentat mir-rikorrenti mar-rikors promotur. (fol 2 sa 14)

Rat ir-risposta ta' l-intimati ppresentata fit 18 ta' Settembru 2015, fejn laqghu ghal dak mitlub billi qajjmu s-segwenti eccezzjonijiet:

1. *Preliminarjament, l-eccepjent Joseph Attard mhuwiex legittimu kontradittur ghat-talbiet attrici u dan peress li mhuwiex sid u lanqas jopera r-razzett fi Triq Santu Rokku, Kalkara.*

2. *Preliminarjament ukoll, l-atturi ghandhom jipprovaw l-interess ta' kull wiehed minnhom f'din il-kawza u t-titolu taghhom fuq il-propjeta 2, Triq Santu Rokku, Kalkara.*

3. *Fil-meritu, it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez.*

4. *F'kull kaz, mhux minnu li l-isbroff tad-drenagg fil-fpnd 2, Triq Santu Rokku, Kalkara kien dovut ghal xi nuqqasijiet tal-eccipjenti*

5. *F'lkull kaz ukoll u minghajr pregudizzju, l-ammont reklamat mill-atturi mhux dovut.*

Semghet ix-xhieda ta' **Gejtu Mercieca**, bhala rappresentant tal-Water Services Corporation u prodott mir-rikorrenti, moghtija fid 19 ta' Novembru 2015 u rat id-dokumentazzjoni minnu prodotta, ossija korrispondenza kemm bejn ir-rikorrenti u l-Water Services Corporation (fol 29), kif ukoll korrispondenza interna tal-Water Services Corporation in rigward il-problema li nqalghet fil-fond tar-rikorrenti (fol 28).

Semghet ix-xhieda tal-**Perit Joseph Attard**, prodott mir-rikorrenti u moghtija fid 19 ta' Novembru 2015 u rat ir-rapport originali gia ppresentat mar-rikors promotur, izda ppresentat mill-gdid (fol 38 sa 48) b'ritratti bil-kulur annessi.

Semghet ix-xhieda tar-rikorrent **Grezzju Meilak** moghtija fil 25 ta' Jannar 2016.

Semghet ix-xhieda ta' **Trevor Chircop Bray**, moghtija fil-11 ta' April 2016, bhala rappresentant tal-Water Services Corporation li jokkupa l-kariga ta' Senior Professional fil Waste Water Quality u jiehu hsieb id-dipartiment maghruf bhala Discharge Permit Unit, liema xhud gie prodott mir-rikorrenti u rat id-dokumentazzjoni minnu ppresentati, ossija ritratti mehudha waqt l-ispezzjoni illi saret wara l-incident meritu tal-kawza odjerna. (fol 74 sa 81)

Semghet ix-xhieda ta' **Gino Micallef**, moghtija fil 11 ta' April 2016, bhala rappresentant tal-Water Services Corporation, fil-kariga tieghu ta' Regional Manager (South Region) Water Services Corporation, prodott mir-rikorrenti.

Semghet ix-xhieda tar-rikorrent Grezzju Meilak moghtija fil 11 ta' April 2016 u rat ir-ricevuta minnu esebita dwar xogholijiet ghall-installar ta' 'back flow valve' fis-sistema ta' drenagg tad-dar ta' ommu fejn gara l-akkadut. (fol 92)

Semghet ix-xhieda ta' l-intimata **Joseph Attard**, moghtija fit 30 ta' Mejju 2016 u prodott mir-rikorrenti.

Semghet ix-xhieda ulterjuri ta' Trevor Chircop Bray moghtija fit 30 ta' Mejju 2016 u rat il-korrispondenza esebita.

Semghet ix-xhieda ta' **Josef Debono**, moghtija fit 30 ta' Mejju 2016, bhala rappresentant tal-Water Services Corporation, fil-kariga tieghu ta' Operations Manager (South Region) Water Services Corporation, prodott mir-rikorrenti.

Rat illi fit-30 ta' Mejju 2016 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet ix-xhieda ta' **George Attard** moghtija fl-24 ta' Novembru 2016.

Semghet ix-xhieda in kontro ezami ta' Grezzju Meilak moghtija fl-24 ta' Novembru 2016.

Semghet ix-xhieda in kontro ezami tal-Perit Joseph Attard moghtija fit-3 ta' April 2016 u rat id-dokumentazzjoni minnu esebita, ossija kopja ohra tar-rapport gia ppresentat mir-rikorrenti flimkien mar-rikors promotur kif ukoll ppresentat mix-xhud stess fix-xhieda tieghu precendenti.

Semghet ix-xhieda in ri ezami tal-Perit Joseph Attard moghtija fil 25 ta' Mejju 2017 u rat id-dokumentazzjoni minnu esebita, ossija rapport dwar fond iehor illi abbazi tieghu ghamel il-kalkoli ghar-rapport minnu redatt u relatat mal-propjeta meritu tal-kawza odjerna, kif ukoll ritratti tal-fond in kwistjoni (fol 233 sa 238).

Semghet ix-xhieda ulterjuri ta' Grezzju Meliak moghtija fil 25 ta' Mejju 2017.

Semghet il-kontro ezami ulterjuri ta' Grezzju Meilak moghtija fl-10 ta' Lulju 2017.

Rat illi fit-30 ta' Ottubru 2017 il-Qorti ddikjarat il-provi intimati bhala maghluqa u halliet il-kawza ghas-sottomissjonijet finali.

Rat is-sottomissjonijiet bil-miktub tar-rikorrenti ppresentati fit 18 ta' Jannar 2018.

Semghet it-trattazzjoni finali ta' l-abbli difensuri taz-zewgt partijiet illis aret fis 17 ta' Mejju 2018, wara liema data il-kawza thalliet ghas-sentenza.

Ikkunsidrat

Jirrizulta illi r-rikorrenti huma lkoll it-tfal ta' Lucy Meliak, illi kienet tirrisjedi fil-propjeta 2, Triq Santu Rokku, Kalkara.

Jirrizulta illi l-intimat George Attard jopera razzett fejn irabbi l-hniezer gewwa r-razzett bl-isem ta' Pickless Farm, gewwa Triq Santu Rokku, Kalkara, filwaqt illi l-intimat Joseph Attard ghandu residenza fuq ir-razzett inniffsu.

Ikkunsidrat

Jirrizulta illi fl-14 ta' April 2015, hekk kif Lucy Meilak kienet l-Isptar, fejn eventwalment mietet ftit taz-zmien wara, r-rikorrent Grezzju Meilak mar id-dar taghha sabiex jigbor xi affarjiet u, x'hin dahal, ra illi l-fond kollu kien mimli drenagg, liema drenagg kien hiereg mit-toilet tad-dar.

Jirrizulta illi, hekk kif ra hekk, huwa minnufih kellem lill-intimat George Attard, illi jopera razzett tal-hniezer bl-isem ta' Pickles Farm fl-istess triq tieghu, ftit aktar 'l fuq, sabiex jgharrfu dwar dana l-akkadut, stante illi minufih Grezzju Meilak ikkonkluda illi kien rizultat ta' hmieg hiereg mir-razzett ta' Attard.

Jirrizulta illi hekk kif Attard ra il-hsara illi kienet grat minnufih hadu ghand tal-Water Service Corporation filwaqt illi gharraf lill-Grezzju illi kien ser jiehu hsieb illi jizvojtalu l-ilmijiet kollha illi kien hemm, li kienu moghjla filata, bil-bowsers illi kellu huwa stess, kif di fatti ghamel l-istess George Attard.

Jirrizulta illi sussegwentement, Grezzju Meilaq qal lill George Attard illi kellu jhallsu tal-hsarat u, meta Attard talbu kemm bhala hsarat, Grezzju Meilaq semmilu s-somma ta' €700, ghal liema somma George Attard l-ewwel qallu li ftit gholja u wara qallu "jien inrid nghid lil huti ghedtlu ghax jiena hawnhekk mhux tieghu wahdi".

Jirrizulta illi eventwalment George Attard ra lill Grezzju Meilaq gej fuqu bil-herra u qallu li ma kienx ser ihallsu xejn.

Ikkunsidrat

Jirrizulta illi, l-ewwel u qabel kollox, l-intimat Joseph Attard ikkontenda illi huwa kellu jigi liberat mill-osservanza tal-gudizzju stante illi huwa ma kellu x'jaqsam xejn mar-razzett illi kkawza l-hsarat.

Jirrizulta, di fatti, illi l-intimat Joseph Attard ma ghandu ebda involviment fit-tmexxija tar-razzett, izda jirrizulta wkoll illi l-intimat Joseph Attard ghandu dar illi hija mibnija fuq ir-razzett li jitmexxa minn George Attard.

Jirrizulta, ghalhekk, illi filwaqt illi huwa ppruvat illi l-intimat Joseph Attard ma huwiex il-legittimu kontradittur, madanakollu r-rikorrenti kellu kull ragun jemmen illi l-istess Joseph Attard kellu x'jaqsam mar-razzett, stante illi huwa jigi hu George Attard u jghix ezattament fuq ir-razzett.

Ghaldaqstant, filwaqt illi t-talba tal-liberazazjoni mill-osservanza tal-gudizzju jisthoqq illi tigi ammessa, l-ispejjez madanakollu ghandhom jigu ssoportat mill-istess Joseph Attard.

Ikkunsidrat

Jirrizulta illi r-rikorrenti jikkontendu illi l-fond meritu tal-kawza odjerna, huwa l-fond illi fih kienet tghix ommhom, illum mejta Lucy Meilak.

Jirrizulta illi l-intimat George Attard jikkonferma huwa wkoll illi omm ir-rikorrenti kienet toqghod hemm. (fol 156)

Jirrizulta, ghalhekk, illi jidher car illi r-rikorrenti kellhom interess fil-post u l-hsarat kkawzati fil-post meta gara l-incident meritu tal-kawza odjerna, u ghalhekk it-tieni eccezzjoni ta' l-intimati ma tistax tintlaqa.

Ikkunsidrat

Jirrizulta illi l-intimati jikkontendu illi s-sadd illi gara fis-sistema tad-drenagg, liema sadd wasal sabiex jisbroffa d-drenagg gewwa l-fond 2, Triq Santu Rokku, Kalkara, fejn kienet tghix omm ir-rikorrenti, ma sehhx minhabba f'xi nuqqas da' parte taghom, izda sehh minhabba fis-sistema tad-drenagg antik illi hemm fis-sistema tal-Gvern.

Jirrizulta, kemm minn email interna tal-Water Services Corporation, kif ukoll mix-xhieda ta' rappresentanti tas-sezzjoni tad-drenagg ta' l-istess Water Services Corporation illi marru fuq il-post minnufih, illi, a differenza ta' dak dikjarat mill-intimati, ir-raguni ghas-sadd kien attribwibbli direttament lill-intimati.

Jirrizulta, di fatti, illi skond email datata 14 ta' April 2015 fit 13.33pm, (fol 28) jigifieri ftit sieghat wara illi sehh l-akkadut, liema email intbghatet minn Trevor Chircop Bray, Senior Professional Waste Water Quality Officer fi hdan il-Korporazzjoni, huwa kellu dan xi jghid dwar l-akkadut:

> *"Further to your prompting this morning regarding a sewage overflow in Triq Santu Rokku, Kalkara, DPU (Discharge Permit Unit) went to make its investigations and these resulted that the blockage was caused by the Pickless Pig Farm owned by Mr George Attard. He admitted that he has no sedimentation pits and he is directly connected to the waste water network. He also said that he has a pending application at MEPA for the construction of such a pit. He acknowledged the fact that the blockage was caused by his activities, in fact he sent a couple of his workers to help in the cleaning efforts of the household affected. We opened manholes directly outside the farm and also from the main sewer. These were all filled with big waste. We have ascertained the fact that there was no foul plat by opening a manhole further uphill. This confirmed that the waste in question originated solely from the farm in question.*
>
> *From our part we have given Mr Attard an application for a PSPD (Public Sewer Discharge Permit) and warned him that he should take this up with MEPA with haste in order to commence the construction of such a pit. Moreover I have informed him that WSC might charge him for the damages incurred."*

Jirrizulta wkoll, mix-xhieda ta' George Attard stess, illi huma ma kellhomx "treatment facility (sedimentation pit)" installat fir-razzett taghhom meta gara l-akkadut fl-14 ta' April 2015, tant illi, fil 25 ta' Jannar 2016, il-Water Services Corporation, tramite Trevor Chircop Bray, kiteb lill George Attard u gharrfu bis-segwenti: (fol 115 tergo)

> *" Following your submission of the application for a Public Sewer Discharge Permit on 24/4/15 you stated that your farm in Kalkara is not equipped with a treatment facility (sedimentation pit). Even though all the requested documentation has been supplied, the permit is denied and cannot be issued given that no adequate catchment is in place.*
>
> *I urge you to regularise your position as soon as possible."*

Aktar tard, fit 28 ta' Jannar 2016, wara illi l-istess Chircop Bray intalab jaghtihom indikazzjoni dwar x'kellhom jaghmlu, huwa qal is-segwenti: (fol 115)

> *"Given the frequency of blockages and damages to ournetwork being cause by your operations I urge you to submit an application with MEPA for the construction of such a sedimentation pit. Of course this pit must not be connected to sewer otherwise the same problems will persist."*

Jirrizulta, ghalhekk, illi ma jista jkun ebda dubju illi l-intimat u l-operazzjoni tar-razzett tal-hniezer illi huwa kopera, kien responsabbli ghas-sadd tad-drenagg u, ghalhekk, ghad-drenagg illi far fil-fond 2, Triq Santu Rokku, Kalkara fl-14 ta' April 2015.

Ikkunsidrat

Jirrizulta illi l-intimati jikkontendu fl-eccezzjonijet taghhom, illi l-ammont reklamat mir-rikorrenti ma kienx dovut izda, madanakollu, fix-xhieda ta' George Attard, huwa jikkontendi illi kien dispost ihallas xi haga, isda l-ammont ta' €700 mitlub mir-rikorrent Grezzju Meilak dakinhar tal-incident kif wiehed esagerat.

Jirrizulta, mill-banda l-ohra, illi l-ammont mitlub mir-rikorrenti, kif kkalkulat mill-Perit Joseph Attard, u li issa jilhaq l-ammont ta’ €4,236.34, huwa certament ferm aktar minn dak originalment mitlub mir-rikorrent.

Madanakollu, il-Qorti tosserva illi, ghajr ghall-ammont ta’ €350 inkorsi mir-rikorrent ghall-installar ta’ ‘*House Service Connection Waste Water*’, ossija ‘*non-return valve*’ fis-sistema tad-drenagg tal-fond 2, Triq Santu Rokku, Kalkara (fol 92), l-ammonti l-ohra mitluba huma kollha ipotetici.

Il-Qorti, ma tistax ma tossservax illi l-kont tal-Perit Joseph Attard jinkludi spejjez illi gia gew inkorsi mill-intimati meta naddfu l-post – “*Sum allocated for the general cleaning of the dwelling and disposal/carting away of dirt*”.

Il-Qorti tosserva wkoll illi l-istess kont jikkontempla spejjez ghal “*remedial works to fitted kitchen*” meta r-rikorrent jistqarr illi huwa ghazel illi jarmiha ghax kienet antika u bi hsara, u lanqas biss ritratt wiehed ta’ tali kcina allegatement bi hsara ma giet ippresentata, ghajr ghal ritratt ta’ bieb b’folja mbewqa ‘l barra. (fol 46)

Il-Qorti tosserva wkoll illi l-Perit Attard jattribwixxi valur ghal ghamara illi ma jaghti ebda deskrizzjoni taghha u, in kontro ezami, jirrizulta illi tali valuri gew minnu stabbiliti abbazi ta’ rapport iehor illi huwa kien ghamel fuq fond iehor – indikazzjoni cara illi tali valuri kienu biss tentattiv sabiex ir-rikorrenti jiehdu aktar milli kien attwalment haqqhom.

Il-Qorti ma tistax ma tosservax illi kien ferm aktar verosimili l-ammont mitlub originalment mir-rikorrent Grezzju Mejlak ta’ €700, peress illi dana jirrifletti aktar b’mod onest u reali il-hsarat inkorsi mir-rikorrenti, ghajr ghall-ispiza ta’ €350 ghall-installar ta’ ‘*non-return valve*’, illi certament ma kienx kkontemplat mir-rikorrenti fil-mument illi tkellmu dwar hsarat.

Ghaldaqstant, il-Qorti qieghda tikkonkludi illi d-danni sofferti mir-rikorrenti rizultat tal-ingress ta’ drenagg wara li dana nstadd minhabba hmieg li gie mir-razzett ta’ l-intimat George Attard ghandhom ikunu fl-ammont ta’ €1,050.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi rat is-sottomissjonijiet ta’ l-abbli difensur tar-rikorrenti

Wara illi semghet it-trattazzjoni ta’ l-abbli difensuri taz-zewgt partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-ewwel eccezzjoni ta’ l-intimati u tillibera mill-osservanza tal-gudizzju lill Joseph Attard, u dana a spejjez ta’ l-intimat George Attard,

Tichad l-kumplament tal-eccezzjonijiet ta’ l-intimat George Attard,

Tiddikjara lill intimat George Attard responsabbli ghall-hsarat inkorsi mir-rikorrenti rizultat ta' l-ingress ta' drenagg fil-fond 2,Triq Santu Rokku, Kalkara, fejn kienet tirrisjedi ommhom Lucy Meilak dak iz-zmien,

Tillikwida d-danni sofferti fis-somma ta' elef u hamsin ewro (€1,050).

Tikkundanna lill intimat George Attard ihallas lir-rikorrenti is-somma ta' **elef u hamsin ewro (€1,050).**

Spejjez kollha tal-proceduri odjerni, inkluz dawk ta' Joseph Attard, kif fuq gja spjegat, u **Imghax** kalkolabbli mill-lum sad-data tal-pagament effettiv ikun a kariku ta' l-intimat George Attard.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur