



**QORTI CIVILI PRIM' AWLA**

**ONOR. IMHALLEF MARK CHETCUTI LL.D.**

**Illum l-Erbgħa, 29 ta' Jannar, 2020**

Numru 2

**Rikors Guramentat Nru. 83/2016**

**Spiridione u Julia sive Sheila konjugi Casha**

**vs**

**TM Finishings Limited**

**Il-Qorti,**

Rat ir-rikors guramentat tal-atturi tad-29 ta' Jannar, 2016 li jghid hekk:

Illi permezz ta' skrittura ta' appalt datata 28 ta' Jannar 2013 (Dok.. A anness), ir-rikorrenti kienu nkarigaw lis-socjeta intimata sabiex iwettqu x-xoghlijiet kollha hemm indikati fil-proprjeta tagħhom li huma kienu għadhom kemm akkwistaw u cioe l-apartament mibni "at level one of the block of buildings of which it forms part, that is at elevated ground floor level having access from an unnumbered and unnamed common entrance in Cathedral Street, St Paul's Bay, which apartment is unofficially known as Apartment number two letter 'A' (2A) ... and the garage which is constructed at semi-basement level having its access from unnumbered and unnamed garage common entrance in Cathedral Street, in St Paul's Bay, is to be (sic!) unofficially known as Garage number nineteen (19)".

Illi s-socjeta intimata kellha zmien sas-6 ta' Awwissu 2015 sabiex twettaq x-xoghlijiet kollha elenkati fl-iskrittura suriferita u fin-nuqqas l-istess socjeta kellha tinkorri penali ta' mitejn u hamsin euro (€250) mensilment limitament għal tali dewmien.

Illi kif inhu evidenzjat mill-iskrittura suriferita, l-istess socjeta intimata kienet ukoll responsabbli sabiex twettaq ix-xoghlijiet kollha neccessarji fil-partijiet komuni essenzjali kollha tal-blokka ta' bini li minnu jiffirmaw parti l-apartament u l-garage akkwistati mir-rikorrenti.

Illi sal-gurnata prezenti s-socjeta intimata ma' wettqghet kwazi ebda parti minn dawk ix-xoghlijiet u konsegwentement l-istess socjeta tinsab inadempjenti-fit-termini tal-istess kuntratt.

Illi in konsegwenza ta' tali inadempjenza kontrattwali da parti tas-socjeta intimata l-esponenti soffrew danni konsiderevoli u dan kif jigi ppruvat waqt it-trattazzjoni orali ta' din il-kawza.

Illi s-socjeta intimata giet debitament interpellata permezz ta' ittra ufficjali datata 14 Awwissu 2015 izda inutilment u ghalhekk kellha ssir din il-kawza.

Ghaldaqstant l-esponenti umilment jitolbu lil din l-Onorabbli Qorti joghgobha:

1. Prevja kull dikjarazzjoni li thoss opportuna fic-cirkostanzi, tiddikjara illi s-socjeta intimata naqset mill-obbligi kontrattwali taghha hekk kif stipulati fl-iskrittura ta' appalt datata 28 ta' Jannar 2013;
2. Tiddikajra ghalhekk illi l-istess socjeta inkorriet il-penali stipulata fl-istess ftehim u cioe ta' mitejn u hamsin euro (€250) mensilment limitatament ghal tali dewmien u tikkundanna lill-istess socjeta intimata sabiex thallas dak l-ammont ta' penali li jigi stabbilit minn din l-Onorabbli Qorti fil-mument tal-pronunzjament tas-sentenza finali;
3. Tiddikajra ulterjorment illi bl-agir u l-inadempjenza taghha s-socjeta intimata ikkagunat danni lir-rikorrenti;
4. Tillikwida l-ammont ta' danni hekk sofferti mir-rikorrenti;
5. Tikkundana lis-socjeta intimata thallas dik is-somma hekk likwidata in linja ta' danni lir-rikorrenti; u dan taht il-provvedimenti kollha opportuni.

Bl-ispejjez inkluzi dawk tal-ittra ufficjali datat 14 ta' Awwissu 2015 kif ukoll tal-mandat ta' sekwestru kawtelatorju pprezentat kontestwalment u bis-socjeta konvenuta minn issa ngunta in subizzjoni.

Rat ir-risposta guramentata tas-socjeta konvenuta li tghid hekk:

1. Illi minghajr pregudizzju ghall-eccezzjonijiet sussegwenti jigi except illi l-kawza intavolata mill-atturi hija wahda intempestiva u dan stante illi t-terminu illi fih is-socjeta konvenuta kellha tiffinalizza l-appalt in kwistjoni ghadu lanqas beda jiddekorri, billi fost ragunijiet ohra, kif ser jigi pruvat fl-andament tal-proceduri odjerni, ai termini tal-iskrittura ta' appalt is-socjeta konvenuta kellha tiffinalizza l-appalt fi zmien sitt (6) xhur mid-data tal-istess skrittura u mid-data li fiha jigu sottomessi mill-atturi l-invoices kollha, u kif ikkonfermat l-istess attrici waqt is-smigh tar-revoka tal-mandat kawtelatorju, l-istess atturi ghadhom ma ssottomettewx l-invoices kollha lis-socjeta konvenuta;
2. Illi minghajr pregudizzju ghall-eccezzjoni precedenti u ghall-eccezzjonijiet sussegwenti s-socjeta konvenuta ma setghet qatt tiffinalizza l-appalt u dan minhabba

I-inadempjenza tal-atturi stante li sal-prezent, ghadhom ma provdewhiex bl-invoices kollha abbazi ta' liema jrid jigi ottenut il-materjal mis-socjeta konvenuta u sussegwentement jigi ezegwit l-appalt. Ghaldaqstant it-talbiet attrici ghandhom jigu respinti stante illi s-socjeta konvenuta ma naqsitx mill-obbligi kontrattwali taghha kif stipulati fl-iskrittura ta' appalt datata t-tmienja u ghoxrin (28) ta' Jannar 2013;

3. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u ghall-eccezzjonijiet sussegwenti jigi except illi t-tielet, ir-raba' u l-hames talba attrici ma jistghu qatt jigu milqugha, stante illi l-atturi permezz tat-tieni talba qed jitolbu hlas ta' penali u permezz tat-tielet, tar-raba' u tal-hames talba qed jitolbu wkoll il-likwidazzjoni ta' danni, meta hu principju stabbilit illi 'Il-klawsola penali hija ghamla ta' danni pre-likwidati' (Galea Mario et vs Casha Renald, Prim Awla tal-Qorti Civili, 31/10/2011) u l-penali indikati fl-iskrittura ta' appalt de quo ma humiex merament ghad-dewrnien;

4. Illi minghajr pregudizzju ghall-eccezzjonijiet precedenti u dawk sussegwenti, jigi except illi kif ser jigi pruvat fl-andament tal-proceduri odjerni, l-ebda dannu ma gie kkagunat mis-socjeta konvenuta lill-atturi u li ghaldaqstant l-ebda somma in linja ta' danni ma hi dovuta mill-istess socjeta konvenuta;

5. Illi t-talbiet tal-atturi huma infondati fil-fatt u fid-dritt u ghaldaqstant ghandhom jigu rnichuda bl-ispejjez;

6. Salv eccezzjonijiet ulterjuri.

Bl-ispejjez kontra l-atturi, inkluz l-ispejjez tar-rikors ghar-revoka tal-mandat ta' sekwestru kawtelatorju bin-numru 138/2016 prezentat mill-atturi kontestwalment mar-rikors guramentat u b'rizerva ghal kwalsiasi azzjoni li tikkompeti lis-socjeta konvenuta, kontra l-istess atturi, fosthom ghall-hlas tal-appalt in kwistjoni.

Rat l-atti;

Rat li l-kawza thalliet ghas-sentenza.

## **Ikkunsidrat**

### **Provi**

Julia Casha testified that she signed a promise of sale on the 28<sup>th</sup> January 2013 with ta' Dernis Properties and was told that the place would be ready by June 2014. On the same date she signed a contract of works with TM Finishings Ltd. (Dok. A page 4-7). TM Finishings and Ta' Dernis Properties are managed by the same person. She had to order the tiles, the bathroom, the ensuite, internal doors, and garage door. She cannot produce an invoice for these as they were going to be paid by defendants. She got a quotation which she gave to defendants so they could place the order as they were going to pay for it. When the amount of the order exceeded

what was allotted by the company she paid for the extra cost and she gave the invoices to defendants. She placed the order for the tiles with MRCD on 23<sup>rd</sup> January 2015 (Dok. JC1 fol. 62) and the goods were delivered when defendants asked for them in October 2015 (Dok. at page 37). She gave all the orders to defendants and never changed her original order. As to the flash doors she submitted a quotation to defendants dated 20<sup>th</sup> February 2015 (Dok. JC4 at page 65) but defendants had to pay a deposit of 400 euro for the contractor to start the work. She could only order the garage door when defendants would tell her that they were ready (Dok. JC5 at page 66). She made an order for the bathroom (Dok. JC 2 dated 2<sup>nd</sup> September 2015 at page 63 (Plaintiff says that this order was also made in January 2015 like the other two orders and not in September. This can be seen from the Bill Number and amounts outstanding which is always the same). She had an email dated 3<sup>rd</sup> February 2015 (at page 139) which refers to the tiles ordered (and the date is February not September). She made the order in January and they were delivered when defendants got invoiced for the material. When defendants wanted the material they informed MRCH to deliver and then the invoice is issued. Actually the material was delivered in October and November 2015 (Dok. TM1-3 at pages 37-39).

The quotation for the garage door was made in March 2016 because it was valid for thirty days and the contractor could not measure before the building site was complete. She handed over these last documents to defendants in August or September 2015.

She was given two cheques dated 3<sup>rd</sup> June 2016 to pay JRC Furniture for the internal doors and another for Charles Camilleri for the garage door as deposit. (see pages 95 and 99). As regards MRCH, defendants dealt with them directly and paid them. There are no more monetary contributions to be made by defendants.

The building had to be ready by June 2014 but instead it was finished in February 2015. Because of this delay and since she had to rent another property, in August 2014 Ta' Darnis drew up a document wherein they promised to pay her €250 a month from June 2014 to January 2015 (see Dok. JC1 at page 125). On the 5<sup>th</sup> February 2015 an addendum was included in the contract of works dated Dok. A. They paid for the building in shell form on the 6<sup>th</sup> February 2015 and defendants

promised that they would do the finishings in six months, that is, till August 2015. The finishings were supposed to start in February 2015. When the cut off date passed (August 2015) they sent an official letter to defendants. The bathrooms were done in June 2016 and the apertures were fixed in September 2016.

As regards damages, she is claiming payment for three rent agreements Dok. MC1. (From August 2015 onwards at page 198). She paid Euro 295 as agency fees, over and above for what she paid for rent (see Dok. MC2 page 202). She paid a commission of €290 euro on the rent agreement (see Dok. MC3 a fol. 207 and 209) There were still some minor alterations which she had to fix before moving in (Dok. MC4 fol. 218). She had to get a qualified engineer to have the electricity system certified because defendants did not want to get their electrician (€185 Dok. MC5 at page 219). She paid for the report by Perit Daniel Grima (Dok. MC6 which is not being claimed (see page 220).

She moved in the premises in August 2017 and so she is claiming €250 a month as penalty for a total of 24 months for delay starting from August 2015.

When cross-examined she answered that the penalty of €250 a month was not going to cover all her claims against the company but would help her in her financial situation as she had to rent a place till the finishing works were completed. The main area was tiled except where the floor was not level. They could not tile that part before the area was fixed properly and not just by filling with 'torba'. She does not agree that this issue delayed the project by another five months. She had asked for the bathroom tiles to be removed because they were not made as she had ordered them. She paid for the shell construction on the 6<sup>th</sup> February and the six months started from that date. As regards the place rented in August 2015 this was for a four month period but she stayed two months only because she needed a bigger place. She did not give notice according to the rent agreement that she would not be staying there only till October. As regards Dok. MC4, the skirting was part of the list and was not fixed because the doors were not fitted yet. The skirting is part of the flooring. The painting in the yard was not included in the list. In the amount of €720 she does not know which part is for skirting and which is for the painting. She sold

the apartment for €233,000 (Dok. MG1). The finishing cost €8,000 and she has not yet paid this amount as she instituted the present case.

Cliffon Attard, impjegat mas-socjeta konvenuta, xehed li skond il-kuntratt ta' appalt iffirmit mal-atturi, ix-xoghlijiet kellhom isiru fi zmien sitt xhur mill-kuntratt kif ukoll minn meta huma jkunu tawhom l-invoices kollha. Huma ma setghux jikkonkludu x-xoghlijiet kollha billi l-atturi ma tawhomx l-invoices kollha, fosthom dawk tal-bieb tal-garaxx u l-bibien ta' gewwa. L-ahhar 'order' ipprovvduta mill-atturi hija datata Settembru 2015 (Dok. TMF1). Il-fornitur hareg tlett invoices (Dok. CA1, 2, 3) tnejn datati Novembru 2015 u wahda Ottubru 2015. Ghalhekk qabel it-22 ta' Ottubru 2015 l-ebda materjal mill-kmamar tal-banju ma kien gie trasportat fil-post tal-atturi ghalhekk ebda xoghlijiet ma setghu jsiru u konsegwentement is-sitt xhur ghadhom lanqas bdew ghaddejin. Ighid li l-atturi kienu dejjem jaqilghu l-problemi.

Gary Camilleri, electrician u plumber, xehed li l-atturi kienu tawh il-lista tal-finishings li kellu jaghmel u jekk l-atturi riedu jzidu xi haga kellhom ihallsu ghaliha. Hu kien ghamillhom xi xoghol extra tal-elettriku u ghadu ma thallasx tieghu minghand l-atturi. Meta gie ghal plumbing kellu jerga jinqala xi madum u waqaf ghal xi xhur.

Kasam Shawakh xehed li hu kesa l-post tal-atturi minn gewwa u minn barra u dam xi erbat ijiem jew hamsa.

Mansur Sakur xehed li hu ghamel il-madum fl-appartament tal-atturi f'Ottubru 2015 u dam hamest ijiem. Hu wahhal il-bathrooms. Meta wahhal il-madum, dan ma ghogobx lill-atturi u kellu jaqilghu u jerga jaghmlu mod iehor kif rieduh l-atturi. Huma kienu jigu biex jaraw ix-xoghol isir. It-twieqi saru fuq in-naha ta' wara mhux fuq il-maduma.

Malcolm Mallia xehed li hu jassisti lid-Direttur tal-Kumpanija fil-bejgh. F'Dok. A hu deher ghan-nom tas-socjeta konvenuta ghall-kuntratt ta' appalt dwar il-finishings u deher fuq il-konvenju dwar il-biegh tal-arja tal-kostruzzjoni. Is-sitt xhur kienu jibdeu minn meta jinbena l-post u meta l-invoices kollha tal-oggetti fil-lista ikunu sottomessi lill-kumpanija. L-atturi kienu jilmentaw li l-affarijiet qed idumu izda hu ma dahalx f'dak il-mertu.

Abigail Attard u Graziella Camilleri xehdu li l-atturi ghadhom ma gabux l-ahhar invoices li kellhom igibu, u cjoe dawk dwar il-bibien ta' gewwa u l-bieb tal-garaxx.

Thomas Mifsud xehed li hu wiehed mid-diretturi tal-kumpanija konvenuta. Jaf li l-socjeta konvenuta kellha tikkonkludi x-xogholijiet fi zmien sitt xhur mill-kuntratt kif ukoll minn meta l-aturi jaghtuhom l-invoices. L-atturi kellhom jordnaw l-affarijiet huma stess, igibu l-invoices u s-socjeta konvenuta thallas skond ir-rata miftiehma. Jekk il-kljenti ma jaghmilx l-ordni u ma jgibx l-invoice, huma ma jkunx jistghu jircievu l-materjal, ihallsu u jwettqu x-xoghol. Sal-gurnata prezenti (Mejju 2016) l-atturi ghadhom ma gabux l-invoices li kellhom igibu, u cjoe dawk dwar il-bibien ta' gewwa u l-bieb tal-garaxx ghalhekk ma setghux jikkonkludu x-xoghol. L-ahhar order ipprovduta lilhom hija datata Settembru 2015 (Dok. TMF1) l-fornitur hareg tlett invoices, wahda ta' Ottubru 2015 u tnejn Novembru 2015. Qabel it-22 ta' Ottubru 2015 l-ebda materjal u kmamar tal-banju ordnati mill-atturi ma gew trasportati fil-proprjeta tal-atturi ghalhekk ma setghax jinbeda x-xoghol f'dan il-periodju. Is-sitt xhur indikati fil-kuntratt ghalhekk ghadhom lanqas bdew ghaddejjin. L-atturi kienu jaqilghu kwistjonijiet waqt il-kostruzzjoni.

Perit Daniel Grima xehed li kien gie mitlub mil-atturi, il-kljenti tieghu, biex jaghmel site inspection u jirrapporta sija dwar il-kwalita tax-xoghol kif ukoll dwar ix-xoghol li kien jonqos li jsir. Hareg rapport fis-16 ta' Ottubru 2016 (ara fol. 221) fejn sab li kienu jonqsu l-windows sills x'isiru ghalkemm l-aluminium kien gja mwahhal (photo 6); kien twahhal l-aluminium tal-bieb minghajr ma ghamlu t-targa (photo 1, 2 u 3); kien hemm kwantita ta' madum mhux invellat, u xi madum imkisser li jrid jinbidel; katusa ghaddejja mill-proprjeta; katusa ghaddejja mill-bitha; katusa tax-xita ghaddejja mill-gallerija; il-bieb ta' barra kien ghadu ma twahhalx; kif ukoll il-lift. Ghalih il-post ma kienx abitabbili fit-13 ta' Ottubru 2016 meta ghamel is-site inspection. Kien 'in a semi-finished state'. Fil-kontroezami insista illi hu baghat rapport fil-31 ta' Jannar 2015 rigward l-istruttural finishes fis-sens li kien hemm problema dwar il-livellar ta' parti mill-art tal-appartament, u l-mod kif kien ser jimtela' billi skond hu l-mod kif kien qed isir ix-xoghol ma kienx tajjeb ghax it-toqba kienet qed timtela bl-imbarazz. Hu irrefera ghar-risposta tal-perit Camilleri tal-14 ta' Settembru 2015. Hu ikkonferma li

din il-kwistjoni baqgħet tkarkar sal-2016 ghalkemm ma jafx meta giet solvuta pero kien hemm affarijiet ohra li ma kienux saru jew ma sarux sew bhal sollijiet mhux imwahhlin, madum tal-art mhux imwahhal tajjeb, bieb ta' barra mhux imwahhal ghax ma kienx hemm soll u l-art ta' gewwa u barra kienu tal-istess livell. Semma wkoll madum tal-kmamar tal-banju mhux allinejati sew b'fili ma jaqblux, hitan tal-gibs mhux dritti u hitan imwahhlin bil-madum u s-shower u dranagg mhux mghoddijin. Dan kollu ikkostatah fl-2016.

Xehed il-perit Mark Camilleri prodott mis-socjeta konvenuta li irrefera ghar-rapport tal-perit Daniel Grima tal-31 ta' Jannar 2015 u tal-14 ta' Settembru 2015 (fol. 295-297 tal-process) u in kwantu għad-dizlivell minhabba l-garages u drive-in taht l-appartament, qal li l-kwistjoni kienet b'liema mod kien ser jigi livellat pero finalment il-kwistjoni giet risolta bil-mod kif ipproponiet Ta' Darnis Properties li kienet responsabbli għal binja.

### **Fatti**

Mill-fatti prodotti jirrizulta li l-ftehim ta' appalt sar mal-konvenju ta' bejgh tal-appartament in shell form fit-28 ta' Jannar 2013 (ara fol. 4 tal-process dwar l-appalt u fol. 125 għal konvenju). Il-kuntratt ta' bejgh tal-appartament li kien jappartjeni lil Ta' Darnis Properties Limited sar fil-25 ta' Frar 2015 (fol. 8 tal-process). L-appalt sar mas-socjeta konvenuta. Kif jidher mill-iskrittura tal-20 ta' Awwissu 2014 rigward l-konvenju dwar l-appartament, ix-xogħol ta' kostruzzjoni ittardja u filwaqt li gedded il-konvenju, ftehm li l-vendituri kienu ser jissussidjaw il-kera li kienu qed ihallsu l-kumpraturi, sal-15 ta' Jannar 2015. Sar addendum (ara fol. 5) imbagħad biex il-finishings isiru sas- 6 ta' Awwissu 2015 u fin-nuqqas il-kuntrattur cioe s-socjeta konvenuta jehel penali ta' €250 għal kull xahar dewmien. L-addendum sar fiz-zmien tal-bejgh tal-appartament 'in shell form' fil-25 ta' Frar 2015. L-atturi qed jitolbu penali ta' €250 fix-xahar għat-total ta' 24 xahar li jibded minn Awwissu 2015 ghax ix-xogħol ma spiccax fil-hin.

### **Konsiderazzjonijiet ta' din il-Qorti**

F'din il-kawza l-atturi qed jikkontendu illi s-socjeta konvenuta li magħha sar il-ftehim ta' appalt datat 28 ta' Jannar 2013 naqset mill-obbligu tagħha li tlesti x-xogħlijiet



miftehma sas-6 ta' Awwissu 2015 u b'hekk qed ifittxu lill-istess ghad-danni sofferti minnhom u penali pattwiti fl-istess skrittura.

Il-kontenzjoni l-atturi tistrieħ fuq zewg binarji cioe danni ghan-nuqqas ta' adempiment tal-obbligi assunti mis-socjeta konvenuta senjatament fl-appartament fil-partijiet komuni u garage, u hlas ta' penali skond il-fteħim ta' appalt.

L-ewwel eccezzjoni preliminari dwar intempestivita giet michuda minn dina l-Qorti b'sentenza datata 27 ta' Gunju 2017 (ara fol. 183).

Fil-mertu s-socjeta konvenuta wiegbet illi hija ma setghetx tiffinalizza l-appalt u dana minhabba l-inadempjenza tal-atturi stante li sal-prezent, ghadhom ma provdewhiex bl-invoices kollha abbazi ta' liema jrid jigi ottenut il-materjal u sussegwentement jigi ezegwit l-appalt.

Hemm qbil bejn il-partijiet illi s-socjeta konvenuta kellha zmien sas-6 ta' Awwissu 2015 sabiex twettaq x-xoghlijiet kollha elenkati fil-lista a fol. 6 u 7 u fin-nuqqas l-istess socjeta kellha tinkorri penali ta' mitejn u hamsin euro (€250) mensilment limitatament ghal tali dewmien.

Illi skond Thomas Mifsud, wiehed mid-diretturi tal-kumpanija konvenuta, huma kellhom jikkonkludu x-xogholijiet fi zmien sitt xhur mill-kuntratt kif ukoll minn meta l-atturi jaghtuhom l-invoices. Hu jsostni li jekk kljent ma jaghmilx l-ordni u ma jgibx l-invoices, huma ma jkunux jistghu jircievu l-materjal, ihallsu u jwettqu x-xogholijiet. Ighid li sa Mejju 2016 l-atturi kienu ghadhom ma gabux l-invoices li kellhom igibu, u cjoe dawk dwar il-bibien ta' gewwa u l-bieb tal-garaxx ghalhekk ma setghux jikkonkludu x-xogholijiet. L-ahhar order ipprovvduta lilhom kienet dik datata Settembru 2015 (Dok. TMF1) lmbaghad il-fornitur baghat ix-xoghol u hareg tlett invoices, wahda ta' Ottubru 2015 u tnejn ta' Novembru 2015. Ghalhekk qabel it-22 ta' Ottubru 2015 l-ebda materjal u kmamar tal-banju ordnati mill-atturi ma gew trasportati fil-proprjeta tal-atturi ghalhekk ma setghax jinbeda x-xoghol f'dan il-periodju. Is-sitt xhur indikati fil-kuntratt ghalhekk ghadhom lanqas bdew ghaddejjin. Inltre jikkonkludi billi jishaq li l-atturi kienu jaqilghu kwistjonijiet waqt il-kostruzzjoni ghalhekk intilef hafna zmien.

Illi min-naha taghhom l-atturi jsostnu li l-ordnijiet huma ghamluhom fit-23 ta' Jannar 2015 (Dok. JC2, 3 u 4 a fol. 127 et seq.) wara li tlestiet is-shell tal-appartament. Dwar id-Dok. JC3 a fol. 128 u Dok. TMF1 datat 25 ta' Settembru 2015 l-atturi jsostnu li d-data hija zbaljata billi l-progressive number tal-Bill No. 12871501 datat 2 ta' Settembru 2015 ghandu numru li jigi qabel Bill No. 12871504 li hu datat 23 ta' Jannar 2015. Il-bilanc ta' €42,605.25 hu l-istess u ma jinbidilx. Inoltre ezibew email datata 3 ta' Frar 2015 (a fol. 139) li jirreferi ghall ordnijiet maghmula u ritratti tal-madum. Huma ghamlu l-ordni f'Jannar 2015 u l-invoices li pprezentat is-socjeta konvenuta (Dok. TM1-3 a fol. 37-39) jgibu d-data meta huma talbu l-konsenja taghhom u cioe Ottubru u Novembru 2015.

Fil-fehma tal-Qorti l-osservazzjonijiet li ghamlu l-atturi dwar l-invoice JC3 huma validi. Huwa inverosimili li, kif qed tghid s-socjeta konvenuta, l-atturi ghamlu l-ordni f'Settembru u dina tigi delivered f'Ottubru. Huwa aktar verosimili dak li jsostnu l-atturi li s-socjeta konvenuta setghet biss titlob li tigi konsenjata l-ordni meta huma kienu f'posizzjoni li jwadhlu x-xoghol u cioe f'Ottubru u Novembru 2015. In oltre l-progressive numbers tal-invoices isostnu t-tezi attrici.

Is-socjeta konvenuta tghid ukoll li sa Mejju 2016 l-atturi ma kienux gabu l-invoices li kellhom igibu dwar il-bibien ta' gewwa u l-bieb tal-garaxx. L-atturi spjegaw li dwar il-bibien huma kienu ssottomettew quotation lis-socjeta konvenuta fil-20 ta' Frar 2015 (Dok. JC4 a fol. 65). Dan ix-xoghol ma setghax jibda qabel s-socjeta konvenuta taghmel deposit ta' €400. Dwar il-garage door l-atturi xehdu li huma setghu biss jordnaw il-bieb meta s-socjeta konvenuta kienet tinfirmahom li x-xoghol kien lest u l-bieb setgha jitwahhal. Huma ma setghux jaghmlu l-ordni ghal garage door qabel billi l-quotation kienet valida ghal 30 gurnata (Dok. JC5 at page 66). Illi mix-xhieda ta' Julia Casha jirrizulta li l-pagamenti li kellhom isiru mis-socjeta konvenuta ghal dawn iz-zewg items saru biss fit-3 ta' Gunju 2016 (ara fol. 95 u 99).

Illi ghalhekk fil-fehma tal-Qorti l-atturi kienu pprovdeu l-invoices kollha abbazi ta' liema s-socjeta konvenuta setghet tottjeni l-materjal biex jigi ezegwit l-appalt.

Ghalhekk jekk kien hemm dewmien biex isir ix-xoghol dan ma kienx minhabba r-raguni li tat lis-socjeta konvenuta.

L-atturi qed jitolbu kemm danni minhabba nuqqas ta' adempiment tal-obbligi assunti mis-socjeta konvenuta kif ukoll hlas ta' penali skond il-ftehim ta' appalt. Is-socjeta konvenuta issostni illi l-kwisjoni tal-mili tat-toqba f'parti mis-sit hadet iz-zmien biex tigi rizolta minhabba li l-atturi u l-perit taghhom kienu qed jinsistu fuq metodologija differenti kif kellha issir minn dik proposta mis-socjeta Dernis billi s-socjeta konvenuta issostni illi dan kien dmir tal-bejjiegh mhux tal-appaltaturi. Il-Qorti mhix konvinta minn dan l-argument billi d-direttur fuq iz-zewg kumpaniji hu l-istess u anki waqt li kien qed jixhed Thomas Mifsud hu beda jirreferi ghaz-zewg kumpaniji bhala haga wahda bil-kliem 'ahna' u 'jien'. Il-Qorti ma tqis lecitu ghas-socjeta konvenuta li tuza mezzi artificjali ghalkemm fuq il-karta jidhru legali biex tevadi d-dmir taghha cioe li tottempera ruhha ma' dak miftiehem mal-atturi. Il-buona fede fil-kuntrattazzjonijiet hi suprema u ghandha tigi rispettata.

Is-socjeta konvenuta tghid ukoll li l-atturi kienu ezigenti u jaqilghu l-problemi. Izda fil-fehma tal-Qorti jirrizulta li kien hemm dewmien mhux gustifikat min-naha tas-socjeta konvenuta: il-kmamar tal-banju saru f'Gunju 2016 u l-aperturi f'Settembru 2016; id-dizlivell kellhu jintela' mis-socjeta konvenuta u ha z-zmien (Dok. AX2 fol. 155). L-atturi kellhom dritt li jwaqqfu x-xoghol fejn dan ma kienx qed isir sew jew ma kienx kif ordnat. L-atturi kienu se johrogu flus tajbin ghalhekk ghandhom dritt jippretendu xoghol sew. Il-Qorti issib li x-xieghda tal-Perit Grima taghti pjuttost stampa cara tal-inadegwatezzi tas-socjeta konvenuta anki jekk ghal grazzja tal-argument l-atturi setghu kienu iktar esigenti minn haddiehor f'dak li kienu qed jippretendu.

Is-socjeta konvenuta eccepjet illi l-atturi permezz tat-tieni talba qed jitolbu hlas ta' penali u permezz tat-tielet, tar-raba' u tal-hames talbiet qed jitolbu wkoll il-likwidazzjoni ta' danni, meta hu principju stabbilit illi 'Il-klawsola penali hija ghamla ta' danni pre-likwidati' (**Mario Galea et vs Renald Casha**, PA 31/10/2011) u l-penali indikati fl-iskrittura ta' appalt de quo ma humiex merament ghad-dewmien.

L-atturi Julia Casha xehdet li penali ta' €250 fix-xahar giet imposta mhux biex tkopri l-claims taghha kontra s-socjeta konvenuta imma biss bhala penali ghad-dewmien fl-esekuzzjoni tal-appalt billi hija kellha tikri post sakemm jitlesta x-xoghol.

Il-penali stipulat fil-ftehim in kwistjoni ghandu l-karattru ta' penali ghad-dewmien.

L-awturi **Baudry-Lacantineri** "Trattato Teorico Pratico di Diritto Civile" huma tal-fehma li filwaqt li persuna jista' jinvoka l-klawsola penali stipulata ghall-inadempjenza kontrattwali, kif ukoll dik stipulata ghad-dewmien kumulattivament, ma jistax jitlob ir-rexissjoni tal-kuntratt u fl-istess waqt jinvoka l-penali ghas-semplici dewmien.

Din hija wkoll il-pozizzjoni fl-artikolu 1120(2) u (3) tal-Kodici Civili li jiddisponi hekk:

(2) Il-kreditur jista' jagixxi ghall-esekuzzjoni tal-obbligazzjoni principali minflok ma jitlob il-penali li fiha jkun waqa' d-debitur.

(3) Hu ma jistax jitlob il-haga principali u l-penali flimkien, hlief meta l-penali tkun giet miftiehma ghad-dewmien biss.

Illi l-atturi talbu €250 fix-xahar ghal 24 xahar bhala penali minhabba dewmien minn Awwissu 2015.

Illi mill-provi donnu ma hemmx qbil dwar minn meta ghandu jibda jghaddi t-terminu ghax-xoghol li kellu jsir **mid-data tal-kuntratt**. L-atturi jghidu li t-terminu jibda mis-6 ta' Frar 2015, id-data meta hallsu tal-appartament in shell form, mentri s-socjeta konvenuta tghid li jibda mid-data tal-iffirmar tal-kuntratt cioe il-25 ta' Frar 2015.

Fil-fehma tal-Qorti mid-dokument a fol. 5 jirrizulta li l-partijiet qablu li xoghol tal-finishing kellu jigi terminat "by the 6<sup>th</sup> August 2015" ghalhekk dina hija d-data minn meta tibda ghaddejja l-penali.

Il-Perit Daniel Gatt, imqabbad mill-atturi, ghamel inspection fuq il-post, u kkostata x-xoghol li sar u xi xoghol kien jonqos li jsir u kkonkluda li ghalih il-post ma kienx abitabbili fit-13 ta' Ottubru 2016 meta ghamel is-site inspection billi kien ghadu in a semi-finished state. L-atturi xehdu li dahlu fil-post f'Awwissu 2017. Pero r-ricevuti tal-keru esebiti cioe Dok. MC1 a fol. 198 jwasslu l-hlasijiet ta' keru sa Mejju 2017 (l-

ahhar ricevuta tkopri l-perjodi 13/05/2017 sa 26/05-2017) b'kollox dsatax-il xahar bejn Awwissu 2015 u Mejju 2017 b'kollox €4,750. Dawn id-danni jirrigwardaw biss il-penali ghad-dewmien kif stipulat fil-ftehim tas-6 ta' Awwissu 2015. Pero l-atturi qed jippretendu wkoll danni minnhom inkorsi minhabba tali dewmien a bazi tal-artikolu 1120(3) tal-Kap. 16.

L-atturi pprezentaw id-dokument MC1 a fol. 198 li hu lease agreement ghal erba xhur li jibda minn l-ewwel ta' Awwissu 2105. Kif rajna x-xoghol kellu jitlesta sas-6 ta' Awwissu 2015 ghalhekk proprjament l-atturi kienu intitolati li jibdew jikru mis-7 ta' Awwissu 2015 u mhux mill-ewwel ta' Awwissu. Inotire jirrizulta li l-atturi ma ghamlux l-erba' xhur kollha imma xaghrejtn biss ghax qalu li kellhom l-umdata fil-post u riedu post akbar. Huma setghu jaghtu notice skond il-lease agreement izda dana ma ghamlux u ghalhekk ma illimitawx id-danni kif kienu obbligati u l-aktar li huma intitolati huwa ta' xahrejn cioe €700. Il-kera sussegwenti bdiet fit-13 ta' Ottubru 2015 (fol. 203 tal-process). Il-kera din id-darba kienet ta' €500 fix-xahar, liema kirja spiccat f'April 2016 u bdiet ohra f'April 2016 b'kera ta' €580 fix-xahar. Il-Qorti hi tal-fehma li ghalkemm l-atturi huma intitolati ghad-danni naxxenti minn kiri alternattivi sakemm jitlesta l-appartament skont il-ftehim, huma obligati jimminimizzaw id-danni. Hi l-fehma tal-Qorti li l-kera mhallsa ta' €350 fix-xahar fix-xahar ghall-ewwel kirja u €500 ghat-tieni kirja u €580 ghat-tielet kirja mhux ammont eccessiv meta tqis li fil-ftehim tal-20 ta' Awwissu 2014 (fol. 125 talprocess) is-socjeta venditrici ikkontribwiet €250 fix-xahar ghal kirja li kellhom jaghmlu l-atturi ghal perjodu ta' kera hames xhur. Ghalhekk hi dovuta lil atturi s-somma ta' sitt xhur kera cioe €3,000 ghat-tieni kirja u €70 bhala depozitu ghad-dawl u ilma. Il-Qorti tirrileva li ma hemmx ricevuti ta' hlas ghal perjodu kollu izda biss ghall-ewwel xahar flimkien ma' depozitu ghad-dawl u ilma msemija fl-istess skrittura. Billi ma saret ebda oppozizzjoni valida li tikkontesta l-hlas il-Qorti tqis li l-ammont ta' €3,070 gew imhallsa. In kwantu ghat-tielet kirja l-atturi esebew ir-ricevuti kollha fil-pussess taghhom oltra l-hlasijiet ta' dawl u ilma ammontanti ghal €7,680.73 b'kollox ghalhekk €10,750.73.

L-atturi ezebew Dok. MC2 a fol. 202 fejn hallsu €295 bhala commission apparti l-kera li bdiet mit-13 ta' Ottubru 2015. Dok. MC 3 huwa ghal hlas ta' €290 bhala

commission apparti l-kera li tibda mit-13 ta' April 2016. Dawn ukoll jikkostitwixxu danni u jridu jigi risartiti.

Kien hemm xi xoghol zghir xi jsir li ghamlu l-atturi qabel dahlu fil-post fl-ammont ta' €720 (Dok. MC4 datat 1 ta' Awwissu 2017 a fol. 218). L-atturi kellhom jgibu inginer kwalifikat biex jiccertifika l-post ghax is-socjeta konvenuta ma ghamlitx dan ix-xoghol (€185 Dok. MC5 a fol. 219). Il-hlas tar-rapport tal-Perit Daniel Grima (Dok. MC6) mhux qed jintalab f'din il-kawza.

Il-Qorti rat il-lista tal-finishings li kellha taghmel is-socjeta konvenuta a fol. 6-7. Jirrizulta li l-approval tal-elettriku kellhu jsir mis-socjeta konvenuta u ghalhekk l-atturi fil-fehma tal-Qorti kellhom jinsistu magghom biex jaghmlu dan. Dwar it-talba ghal €720 ghal repairs u finishing, dawn ix-xoghlijiet mhumiex itemised u ma ngibitx prova cara ghal xhiex intefqet u x-xoghol effettivament li sar apparti li hemm dubbju dwar kemm dawn kellhom isiru mis-socjeta konvenuta bhal per ezempju l-iskirting. Ghalhekk din l-ahhar talba mhix tigi milqugha.

Id-danni ghalhekk jammontaw ghal €12,240.73.

### **Decide**

Ghal dawn il-motivi l-Qorti tiddeciedi billi tilqa' t-talbiet attrici, tillikwida l-ammont dovut bhala penali ghal dewmien fis-somma ta' €4,750 kif ukoll is-somma ta' €12,240.73 ghad-danni b'kollox €16,990.73; u tikkundanna lis-socjeta konvenuta thallas is-somma hekk likwidata. Tichad it-talbiet l-ohra. Spejjez ghas-socjeta konvenuta. Bl-imghax mid-data tas-sentenza.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur