



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-18 ta' Settembru, 2024

Appell Inferjuri Numru 73/2023 LM

Dr. Kelly Fenech (K.I. nru. 248685(M))
(l-appellat')

vs.

- (1) Proxy Services rappreżentata minn Mary Louise Cuschieri (K.I. nru. 373379(M)) (l-appellanta')**
- (2) Kristine Bonnici (K.I. nru. 79569(M))**
- (3) Andrew Pirotta (K.I. nru. 537192(M))**
- (4) Gordon Schembri (K.I. nru. 762758(M))**
- (5) Michelle Scicluna (K.I. nru. 414091(M))**

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mill-intimata **Mary Louise Cuschieri (K.I. nru. 373379(M))** bl-isem tal-kummerċ **Proxy Services** [hawnhekk 'l-appellanta']

minn lodo arbitrali tal-14 ta' Ġunju, 2023, [minn issa 'l quddiem 'il-lodo arbitrali'] mogħti mit-Tribunal tal-Arbitraġġ fi ħdan iċ-Ċentru dwar l-Arbitraġġ ta' Malta [minn issa 'l quddiem 'it-Tribunal'], li permezz tiegħu t-Tribunal ddeċieda t-talbiet magħmulin fil-konfront tagħha u tal-intimati l-oħra **Kristine Bonnici (K.I. nru. 79569(M))**, **Andrew Pirotta (K.I. nru. 537192(M))**, **Gordon Schembri (K.I. nru. 762758(M))** u **Michelle Scicluna (K.I. nru. 414091(M))** [minn issa 'l quddiem 'l-intimati'], mir-rikorrent **Dr. Kelly Fenech (K.I. nru. 248685(M))** [minn issa 'l quddiem 'l-appellat'], kif ġej:

“DECISION

It is for the above reasons that the Tribunal decides to uphold the claim that no valid call for a general meeting for 12 January, 2020 had taken place by the administrator. That is the administrator of a block who is responsible for calling a general meeting, to ensure that it observes all legal requirements and procedures and to act within the parameters of the law whilst guiding its members impartially.

However, in view of the fact that all four co-owners with the exception of the fifth co-owner, that is the claimant, voted in favour of appointing Proxy Services as its administrator, in the particular circumstances of the case, the Tribunal shall not be annulling the appointment of the administrator to the detriment of the other owners but amending its appointment as the administrator of The Wave block of apartments in Triq is-Sikka, Baħar iċ-Ċagħaq to 13th March, 2020 in terms of Art 23(3).

Costs are to be suffered solely by respondent Proxy Services.”

Fatti

2. Il-fatti tal-każ odjern jirrigwardaw il-*condominium* tal-blokk ta' appartamenti magħruf bħala 'The Wave' f'Triq is-Sikka, Baħar iċ-Ċagħaq, f'liema *condominium* l-appellat huwa sid ta' appartement wieħed minn ħamsa, filwaqt li l-intimati huma s-sidien tal-appartamenti l-oħra. Peress li ma kienx hemm qbil bejn il-*condomini* dwar il-ħatra ta' amministratur tal-*condominium*,

kien gie deciz li kellha ssir sejha għall-offerti fejn kellha tiġi magħzula l-aħjar offerta. Wara li sar dan il-proċess u l-appellat kien gie nkarigat sabiex jagħmel evalwazzjoni tal-offerti li saru mill-appellanta u min-Nook Property Services Ltd rispettivament, huwa allegatament kien sab li l-appellanta fil-fatt ma kellhiex offerta irħas minn ta' Nook Property Services Limited, u t-termini u l-kundizzjonijiet tagħha kienu inqas favorevoli. Għalhekk huwa kien informa b'dan lill-*condomini* l-oħra, u anki li huwa kien ser jgħaddi sabiex jibda n-negozzjati ma' Nook Property Services Limited f'isem il-*condomini*. Imma allegatament mingħajr ma huwa kien jaf b'xejn, jidher li fit-12 ta' Jannar, 2020, il-*condomini* l-oħra għaddew sabiex mingħajr l-ebda laqgħa formali tal-*condomini* nnominaw lill-appellanta bħala amministratriċi tal-*condominium*. L-appellat jgħid li huwa fil-fatt qatt ma rċieva avviż għal-laqgħa li fiha kellha ssir il-ħatra ta' Proxy Services bħala amministratriċi, u lanqas xi riżoluzzjoni li permezz tagħha saret il-ħatra.

Mertu

3. FI-Avviż tal-Arbitraġġ u fid-Dikjarazzjoni tat-Talba tiegħu, l-appellat filwaqt li ssottometta li mingħajr l-għarfien tiegħu u mingħajr l-ebda laqgħa formali, il-*condomini* l-oħra kienu ħatru lill-appellanta bħala amministratriċi tal-*condominium*, u għalhekk talab lit-Tribunal sabiex tiddikjara invalida kemm il-formola relattiva ta' dik il-ħatra, u anki ir-riżoluzzjoni ffirmata mill-imsemmija *condomini*, u li sussegwentement ġew registrati mill-appellanta. Talab ukoll sabiex it-Tribunal jiddikjara invalidu l-istatut tal-assocjazzjoni tal-*condominium* għaliex dan kien fih klawsoli mhux aċċettabbli u ta' żvantaġġ għall-*condomini*.

Fl-aħħarnett talab ukoll lit-Tribunal sabiex jiddikjara li l-appellanta ma kienitx giet maħtura b' mod validu bħala amministratriċi, u li l-ħatra ma kienitx fl-aħjar interessi tal-*condominium*, u li minflokha bħala amministratriċi għandha tinħatar Nook Property Services Ltd, jew amministratur ieħor li jogħġbu jahtar it-Tribunal.

4. L-appellanta flimkien mal-intimati wieġbu fl-20 ta' April, 2020, fejn eċċepew is-segwent: preliminarjament (a) huma kellhom jingħataw kopja tad-dokumenti li għalihom sar riferiment fid-Dikjarazzjoni tat-Talba; (b) it-talba hija preskritta *ai termini* tas-subartikolu 23(2) tal-Kap. 398; (ċ) mingħajr preġudizzju għall-eċċezzjonijiet l-oħra, il-ħatra tal-appellanta kienet regolari u skont il-liġi; (d) l-appellat kien qiegħed jopponi l-ħatra tal-appellanta għal raġunijiet fiergħa u sabiex jagħmel il-bsaten fir-roti; (e) mingħajr preġudizzju għall-eċċezzjonijiet l-oħra, u kuntrarjament għal dak li kien qiegħed jallega l-appellat, ma kien hemm l-ebda obbligu sabiex jinħareġ *tender* għall-ħatra ta' amministratur, u sabiex jinħatar dak bl-inqas offerta; (f) mingħajr preġudizzju għall-eċċezzjonijiet l-oħra, it-talbiet tal-appellat kellhom jiġu miċhuda bħala infondati fil-fatt u fid-dritt; (g) b'rizerva għal eċċezzjonijiet ulterjuri, (g) u bl-ispejjeż kontra l-appellat.

Il-Lodo Arbitrali Appellat

5. Sabiex waslet għad-deċiżjoni tagħha, it-Tribunal għamel is-segwent konsiderazzjonijiet:

“...

This is a claim for the removal of the administrator Proxy Services from the condominium association referred to as The Wave, Triq is-Sikka, Baħar iċ-Ċagħaq,

which association was registered at the Lands Registry in terms of the Condominium Act, (Chapter 398).

Claimant is an owner of one apartment out of a block of five apartments. Claimant's grievance is that there was no valid condominium agreement signed by the parties to administer the common parts and that the administrator had not been appointed lawfully, since no formal meeting was called by the prospective administrator Proxy Services. Claimant Kelly Fenech maintains that he only found out about the appointment of Proxy Services weeks later towards the end of January, 2020 when this state of fact was communicated to him. He claims that the unlawful appointment had allegedly taken place on 12th January, 2021 and registered with the Land Registry on 21 January, 2020. He also claims that on 9th January, 2020 he was asked to sign some documents indicating the appointment of Proxy Services during a meeting which was to be held on 12 January, 2020.

Claimant further states that a general meeting was never called lawfully for this appointment to take place by the respondents Proxy s and consequently such appointment was unlawful and in breach of the Condominium Act.

The Tribunal saw the reply of respondents wherein such claims were being contested.

As an objection it was stated that one of the respondents mentioned by claimants Chris Cachia was not an owner of any apartment in the block. This was duly noted by the Tribunal.

Respondents stated that all the owners of the block agreed to appoint a condominium administrator and were all included in a Whatsapp group chat forum which they called The Wave and that claimant was always well aware of what was going on. It transpired that all the owners with the exception of claimant Kelly Fenech were in agreement to nominate Proxy Services as their condominium administrator but claimant had opposed such a decision.

Respondents also maintained that the claim was prescribed by law in terms of Art 23(2) of Chapter 398 which reads as follows:

'The reference of a matter to arbitration in accordance with sub-article (1) shall be made by the dissentient condominus within 30 days from the date of the decision of the meeting is notified to him in accordance with the provision of Art 22(3).'

From evidence it transpired that claimant had personally attended all the meetings whereby it had been agreed to take a vote via Whatsapp. Respondents maintain that claimant had been validly notified via Whatsapp that a meeting was going to be held to appoint Proxy Services.

It is the understanding of the Tribunal that the relationship between claimant and the respondents escalated to the extent that each action became a confrontation.

The Tribunal shall primarily delve into the claim that there was no valid appointment in terms of the law and that therefore the administrator's appointment was not lawful and consequently null and void. The Tribunal shall also delve into the primary objection raised, that the claim was prescribed by law as claimant had been lawfully notified of the first general meeting called up on by the newly appointed administrator Proxy Services.

The Tribunal noted and took full cognizance of all documents submitted by claimant and all the objections raised by respondents.

The Tribunal noted and took full cognizance of all documents and all the additional clarifications and supporting documents filed by both parties and additional clarifications which were authorized by the Tribunal after the first sitting.

The Tribunal took cognizance of all documents filed and noted all points raised in the parties' written submissions and sifted finely through the evidence produced.

The Tribunal took note of the objection raised about documentation filed well after claimant had closed his testimony, which documentation has been been duly disregarded by the Tribunal.

It is to be clarified at the outset that an arbitration case regarding the termination of the services of an administrator can be made by any co-owner independently of whether the majority of the co-owners approve the continued services of the administrator.

It is clear from the diametrically opposed evidence that there are several issues between claimant and respondents.

It was noted that from all evidence submitted that it was true that claimant had accepted to be part of a WhatsApp group to move forward between co-owners of the block and to appoint a condominium administrator. It was also true that there was a majority decision by the apartment owners to appoint Proxy Services as the administrator of the Wave condominium association despite claimant objecting vehemently to such an appointment. However, claimant's object was consequently overruled by an overwhelming majority of votes.

However, the Tribunal is not convinced that the prospective newly chosen administrator had called a general meeting to formalize its appointment in terms of Art 22 the Condominium Act, Chap 398.

Art 22(4) of the Condominium Act clearly stipulates that for a meeting to be valid, the administrator must call a meeting with seven days' notice which notification has to take place in terms of Chapter 398.

Respondents stated that that on 17 September, 2019 Proxy services had attended a meeting of all condomini of the Wave and in November, 2019 Proxy services were informed that they were chosen to be the administrators of the block The Wave. However, claimant was the only person as owner of one apartment out of five who did not sign the registration forms required to register The Wave as an association in terms of the Condominium Act with the Land Registry, when asked by Proxy Services to do on 12 January, 2020.

The Tribunal noted that no evidence of a meeting to be held on 12 January, 2020 had been produced and that this meeting was not communicated within seven days as required by law, which leads the Tribunal to believe that the administrator is to bear responsibility for such procedural shortcomings.

It was further noted that there was a general consensus amongst five out of five apartment owners that the appointment was done lawfully via Whatsapp chats. The Tribunal points out that it is the duty and obligation of a new appointed administrator to first call a general meeting and obtain, ratify and register a majority vote of all the condomini and then to simultaneously proceed to sign the agreement and relative forms. From the evidence produced it seems that Proxy Services accepted that they were appointed because they had the majority of votes with the exception of claimant and proceeded to ask all the condomini to sign the register of appointment so they can be registered by law, thus by passing all required legal procedure in terms of Art 22 of Chap 398. Respondents claim that the general meeting took place on 12 January, 2020. However after considering all the evidence before it the Tribunal does not find any proof that all the condomini were in fact lawfully notified of the general meeting by Proxy Services in terms of the law. The Tribunal notes that statements made by the respondents were not corroborated with documentary evidence of such lawful notification. This is where the Tribunal notes that the defendants were incorrect. An administrator may be agreed upon and nominated by the majority of the condomini and such a vote on an administrator does not have to be unanimous as in the case of the appointment of Proxy Services as the administrator of The Wave. The Tribunal understands that the majority of the condomini chose Proxy Services as their administrator. However, in turn Proxy Services had a duty and an obligation to act in terms of the Condominium Act to call a meeting in order to formalise its appointment and set an agenda on the way forward. The Tribunal further noted from all the evidence submitted that through an email sent to all the condomini on 29 January,

2020 a meeting was to be held on 5 February, 2020 in order to ratify their appointment and approve the annual financial / expenditure budgets. This meeting was in fact correctly sent in terms of the law. However, at that point the association had already been set up and registered on 12 January, 2020.

In terms of Art 22 (4) of Chapter 389, the administrator is dutybound to give notice at least seven days before the appointed date. Service of notice is clear and this has to take place either by registered mail or by any electronic means as well by affixing a notice as on a notice board in a prominent common part. The Tribunal notices that no such evidence was produced in corroboration.

From the evidence produced it also resulted that once Proxy Services was informed of the decision by the majority that there was an agreement by four out of five apartment owners to appoint them via a Whatsapp group chat vote, the legal procedure was never followed through by the administrator to formalize such an appointment and set out an agenda.

As regards the respondents' statement of defence, the Tribunal is of the opinion that Art 23 (1) is clear where it states that 'any condominus who disagrees with a decision on the grounds that it was contrary to law or to the regulations of the condominium or to the regulations of the condominium or is unreasonable or oppressive may refer the matter to arbitration' which the claimant did.

However Art 23(2) further states 'that the reference of a matter to arbitration in accordance with sub-article (1) shall be made by the dissentient condominus within 30 days from the date of the decision of the meeting is notified to him in accordance to with the provision of Art 22(3);'

Here it seems from the outset that Claimant had allowed the thirty days to elapse, however article 22(4) of Chap 389 is also clear and further states that no meeting shall be held before the expiry of seven days from the service of the notice in terms of sub-article (3) and from affixing of the notice in terms of sub-article (5).

From the evidence produced, no such notice was ever affixed on the notice board by the administrator to communicate any general meeting to confirm and formalize the majority of the owners' decision of its appointment. In fact no mention was ever made by any of the parties in connection of a notice board affixed in a prominent place of the block in the evidence submitted.

As stated by claimant, on 12 January, 2020 the condomini between them with the exception of claimant agreed to nominate Proxy Services but no service of a meeting took place in terms of Art 22 of Chap 398. On 29 January, 2020 all owners of

apartments in The Wave received a notification from Proxy Services that a general meeting would take place on 7 February, 2020. This meeting was called within the seven days allowed by law.

It is a fact that the majority of the condomini wanted to appoint Proxy Services as the administrator of the block. However, it is also a fact that Proxy Services was not compliant with the law and never called a general meeting and instead proceeded with registering its appointment as from 12 January, 2020.

It is the understanding of the Tribunal that the relationship between claimant and all other co-owners soured and that claimant was not accepting and respecting what the majority of the other owners of the block wanted. The majority of the block overwhelmingly voted for Proxy Services as its administrator. However, Proxy Services qua administrator is there to administer impartially according to law and to ensure that its appointment is also well within The Tribunal is convinced that the administrator did not call a general meeting correctly. However, this procedural error by the administrator should neither negatively impact all the other four co-owners' rights.

In conclusion the Tribunal finds that in terms of the same Art 23(3) of Chap 398, "If the arbitrator finds for the dissentient condominus, he may annul or amend the decision." Consequently, in the particular circumstances of the case the Tribunal shall proceed to amend the decision of the meeting rather than annulling it in terms of Art 23(3) by accepting that claimant was correct to state that the administrator did not follow the correct procedure by not calling a general meeting in terms of the law. However, since Proxy Services had an overwhelming majority of five out of five apartment owners to appoint it as administrator it shall proceed to amend the appoint of Proxy Services as from 13th March, 2020 the date a meeting took place to approve the budget for the year, sign statute of association and agree on other matters".

L-Appell

6. L-appellanta appellat mil-lodo arbitrali quddiem din il-Qorti, permezz ta' rikors ntavolat fit-30 ta' Ġunju, 2023, fejn qiegħda titlobha sabiex:

"...jogħgobha tilqa' dan l-appell u konsegwentement tħassar u tirrevoka l-lodo mogħti fl-14 ta' Ġunju, 2023 miċ-Ċentru dwar l-Arbitraġġ ta' Malta u tgħaddi sabiex tiċħad

it-talbiet kollha tal-appellat Fenech u tilqa' l-eċċezzjonijiet tal-appellanti fil-mod spjegat hawn fuq. Bl-ispejjeż kontra l-appellat/i."

Tgħid li l-aggravji tagħha huma dawn: (a) il-*condomini* kienu appuntawha b'mod regolari qabel it-12 ta' Jannar, 2020; (b) ma kienitx ir-responsabbiltà tagħha li ssejjaħ laqgħa għall-ħatra tagħha stess, jew li ssejjaħ laqgħa sussegwenti għall-konferma tal-istess ħatra; (ċ) it-Tribunal għamel interpretazzjoni ħażina tas-subartikolu 23(2) tal-Kap. 398; u (d) hija ma kellhiex tbatl l-ispejjeż

8. L-appellat wieġeb fil-15 ta' Jannar, 2024, fejn filwaqt li ssottometta li illum l-appellanta m'għadhiex aktar amministratriċi tal-*condominium*, u għaldaqstant il-mertu huwa eżawrit, imma jibqa' biss li jiġi deċiż min għandu jhallas l-ispejjeż tal-proċedura, jissottometti li l-lodo arbitrali huwa sostanzjalment ġust u jimmerita konferma bl-ispejjeż kontra l-appellanti. Madankollu huwa għadda wkoll sabiex appella incidentalment mill-imsemmi lodo arbitrali fir-rigward tal-ispejjeż, li skont hu għandhom ikunu a karigu tal-intimati jew min minnhom minħabba l-aġir skorrett tagħhom. L-intimati wieġbu fl-4 ta' Diċembru, 2023.

Konsiderazzjonijiet ta' din il-Qorti

9. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravji tal-appellanta, u dan fid-dawl ta' dak li ddeċida t-Tribunal fil-lodo arbitrali tiegħu, u meħudin in konsiderazzjoni wkoll is-sottomissjonijiet tal-partijiet l-oħra. Tqis li jkun utli li dawn l-imsemmija aggravji jiġu ttrattati flimkien, peress li huma marbutin flimkien u jgħoddu għalihom l-istess konsiderazzjonijiet.

10. L-appellanta permezz tal-ewwel aqgravju tagħha tikkontendi li l-*condomini* kienu appuntawha b'mod regolari qabel it-12 ta' Jannar, 2020, iżda

t-Tribunal ddecieda li kien hemm difett fil-ħatra tal-amministratriċi għaliex ma kienitx saret laqgħa ġenerali fit-12 ta' Jannar, 2020. Tiddikjara, u dan tgħid li mingħajr preġudizzju għall-aggravji l-oħra tagħha, li hija tinsab aggravata b'din id-deċiżjoni għaliex kif diġà ngħad, il-ħatra kienet saret regolarment fit-12 ta' Jannar, 2020, u l-formoli tar-Registru tal-Artijiet kienu ġew iffirmati dakinhar skont dik il-ħatra. Tissottometti li naturalment hija ma kienitx involuta f'dik il-proċedura, iżda tirrileva li: (a) il-*condomini* kienu sejħu numru ta' laqgħat bejniethom qabel il-ħatra; (b) huma kienu ddecidew waqt il-laqgħa tat-30 ta' Ottubru, 2019, li ser jittieħed il-vot dwar l-amministratur permezz ta' *Whatsapp*, fejn l-appellat kien prezenti; (c) il-vot bejn il-*condomini* ttieħed fl-14 ta' Novembru, 2019; (d) erba' minn ħames *condomini* vvutaw favur tagħha. Għalhekk tikkontendi li l-ħatra tagħha kienet waħda regolari qabel it-12 ta' Jannar, 2020, u dakinhar hija kienet biss ġabret il-firem fuq il-formoli neċessarji għar-registrazzjoni, li kellha ssir mar-Registru tal-Artijiet wara li kien diġà ttieħed il-vot bejn il-*condomini*. B'riferiment għal dak li qal it-Tribunal fil-lodo arbitrali, l-appellanta titfa' dubju dwar kif l-istess Tribunal seta' jasal għall-konkluzjoni li hija ma kienitx ġiet appuntata jew kellha tagħmel proċedura ulterjuri sabiex tiġi appuntata, wara li osservat li kien hemm vot fejn il-maġġoranza tal-*condomini* kienu ħatru lilha.

It-tieni aggravju tal-appellanta huwa li kuntrarjament għal dak li ġie deciz mit-Tribunal, hija ma kellha l-ebda responsabbiltà sabiex issejjaħ laqgħa sussegwenti għall-ħatra tagħha sabiex tiġi formalizzata dik il-ħatra. Tikkontendi li jekk il-*condomini* ddecidew li jivvutaw għall-ħatra tagħha fuq il-*Whatsapp group chat*, hija ma kellha l-ebda ħtija għall-allegat difett fil-proċedura segwita,

u kienu l-*condomini* stess li kellhom isejġu laqgħa *ai termini* tas-subartikolu 15(1) tal-Kap. 398. L-appellanta tistaqsi minn fejn kien joħroġ l-obbligu fl-artikolu 22 tal-Kap. 398, li l-amministratur il-ġdid għandu jsejjaħ laqgħa ġenerali oħra sabiex tiġi kkonfermata l-ħatra tiegħu. L-appellanta tikkontendi li huwa superfluwu u jmur kontra l-liġi l-fatt li wieħed isejjaħ laqgħa ġenerali oħra f'dak il-każ. Hija tissottometti li fil-każ odjern ma kienx għad ġie maħtur amministratur, u għalhekk ir-responsabbiltà kienet f'idejn is-sidien, u skont is-subartikolu 15(3) tal-Kap. 398 tali responsabbiltà taqa' fuq min ikun fil-kariga ta' amministratur dak iż-żmien qabel ma jidhol l-amministratur il-ġdid. L-appellanta tgħid li fit-12 ta' Jannar, 2020, hija kienet biss ġabret il-firem tal-*condomini* ta' deċiżjoni li kienet diġà ttieħdet, u spjegat li din d-data msemmija ntgħazlet sabiex tirrifletti d-data meta hija kellha tassumi l-inkarigu tagħha.

Dwar *it-tielet aqgravju* tagħha, l-appellanta tissottometti li l-appellat kien tardiv meta kkontesta d-deċiżjoni tal-ħatra tagħha. Filwaqt li tiċċita d-disposizzjonijiet tas-subartikolu 23(2) tal-Kap. 398, hija tikkontendi li t-terminu ta' tletin jum li fih għandha titressaq referenza għall-arbitraġġ, jibda jiddekorri min-notifika tad-deċiżjoni kkontestata, li fil-każ odjern kienet intbagħtet permezz ta' mezzi elettronici, u l-appellat kien jaf tassew b'dik id-deċiżjoni, fejn kien saħansitra bagħat *email* fit-12 ta' Jannar, 2020, fejn ilmenta dwar il-ħatra tagħha. Tgħid li huwa kien jaf bid-deċiżjoni sa mill-inqas id-29 ta' Jannar, 2020, fejn hija kienet bagħtet *email* b'kopja tal-formola relattiva tal-ħatra, u l-5 ta' Frar, 2020, meta l-avukat difensur tiegħu kien bagħat *email* fejn wera li l-appellat kien qiegħed jikkontesta l-ħatra tagħha. B'hekk tikkontendi li t-terminu ta' tletin jum li fih l-appellat kellu jiftaħ proċeduri ta' arbitraġġ, kien leħaq iddekorra meta huwa ntavola d-Dikjarazzjoni tat-Talba tiegħu fil-11 ta' Marzu, 2020.

Ir-raba' aqgravju tal-appellanta jittratta l-kap tal-ispejjeż kif deċiż mit-Tribunal. Filwaqt li ttenni għal darb'ohra l-argumenti mfissra hawn fuq, tilmenta mill-fatt li l-lodo arbitrali wassal sabiex hija spicċat vittma tal-argumenti bejn il-*condomini*, u dan fejn huma kien daħlu għall-inkarigu u qdewh in *buona fede*.

11. L-intimati jirrelevaw li fil-laqgħa li kienet saret fit-30 ta' Ottubru, 2019, il-*condomini* nkluż l-appellat kienu ftehm u li kull wieħed minnhom kellu jivvota permezz tal-*Whatsapp group chat* għall-ħatra ta' amministratur tal-*condominium*. B'hekk fl-14 ta' Novembru, 2019, saret il-votazzjoni fejn il-magħgoranza tefgħet il-vot tagħha favur l-appellanta. Huma jinsistu li l-appellat kien konxju ta' dan kollu, iżda għażel li jastjeni milli jivvota, u sussegwentement intavola proċeduri arbitrali b'mod vessatorju fil-konfront tagħhom u anki tal-appellanta. Filwaqt li huma jagħmlu riferiment għad-disposizzjonijiet tal-para. (a) tal-artikolu 21 tal-Kap. 398, jispjegaw li huma kienu permezz tal-laqgħa tat-12 ta' Jannar, 2020, ħatru l-amministratrici. Jgħidu li għalkemm l-appellat kien qiegħed isostni li huwa ma kienx gie notifikat permezz ta' *Whatsapp*, u għalhekk ma kienx iffirma r-risoluzzjoni, it-talba tiegħu hija waħda kontradetta mill-azzjonijiet tiegħu stess meta baġhat ittra legali ħamsa u għoxrin jum wara d-deċiżjoni, fejn kien wera t-tħassib tiegħu dwar il-proċess ta' votazzjoni. Jgħidu li dan minflok ma rrefera il-kwistjoni għall-arbitraġġ *ai termini* tas-subartikolu 23(2) tal-Kap. 398. Dwar it-tieni aggravju, l-intimati jikkontendu li l-appellanta kienet impenjat ruħha fir-rwol tagħha, fejn gie prezunt li l-ħatra tagħha kienet waħda legali u legittima, u hija saħansitra uriet l-integrità proċedurali fl-imsemmija ħatra tagħha li tħassar kull allegazzjoni ta' proċeduri żbaljati. Dwar it-tielet aggravju, l-intimati jissottomettu li l-ligi tipprovdi għal terminu ta' tletin

jum li fih tista' tiġi kkontestata deċiżjoni, u liema terminu għandu jibda jiddekorri minn meta d-deċiżjoni titqiegħed fuq *notice board* fiżiku, skont kif jipprovdu s-subartikoli 22(3) u (5) tal-Kap. 398. L-intimati jirrilevaw li l-ligi hawnhekk ma tikkunsidrax modalitajiet oħra digitali ta' notifika bħal pereżempju permezz ta' *Whatsapp*, li kien gie aċċettat mill-appellat għall-fini ta' komunikazzjoni tal-*condomini*. L-intimati jikkontendu li kull *condominus* kellu vizibilità ta' dak kollu li kien qiegħed jingħad fil-grupp, u kull membru kien saħansitra attiv f'dan il-grupp, anki l-appellat.

12. Min-naħa tiegħu, l-appellat Dr. Kelly Fenech jirrileva li għalkemm l-appellanta ssostni li hija kienet giet maħtura qabel it-12 ta' Jannar, 2020, li hija ndikata fil-formoli ffirmati mill-*condomini*, hija tonqos li tindika b'mod preċiż meta fil-fatt giet maħtura. Jikkontendi li l-appellanta u l-intimati naqsu milli jressqu prova li turi li kienet ittiegħdet rizzoluzzjoni jew li kienet saret laqgħa formali msejha b'mod regolari, fejn l-amministratriċi giet maħtura formalment. L-appellat isostni li kif gie kkonfermat anki fil-lodo arbitrali, jirriżulta li l-ħatra ma kienitx seħħet qabel id-data tat-12 ta' Jannar, 2020, f'liema data huma kienu ltaqgħu mingħajr ma kienu avżawh u ffirmaw il-formoli rikjesti mil-ligi sabiex tiġi appuntata l-appellanta bħala amministratriċi. Dwar it-tieni aggravju, l-appellat jikkontendi li l-fatt jibqa' dejjem inkontestat li l-laqqgħa ma kienitx issejthet b'mod regolari sabiex jinħatar l-amministratur, u dan bi preġudizzju għad-drittijiet tiegħu. B'riferiment għas-sottomissjoni tal-intimati li jittentaw jiġġustifikaw in-nuqqas tagħhom b'riferiment għall-użu tal-*Whatsapp group chat*, l-appellat jgħid li d-disposizzjonijiet tal-artikolu 3 tal-Kap. 398 ma jagħtix lok għal deroga mid-drittijiet tal-*condomini* fir-rigward in-notifika tal-laqqgħa

skont l-artikolu 15 fejn għandu jiġi maħtur amministratur, u anki n-notifika *ai termini* tal-artikolu 22 u 23 tal-Kap. 398 ta' dawk il-persuni li ma jkunux attendew għal-laqgħa. Dwar it-tielet aggravju, l-appellat jibda billi jiċċita d-disposizzjonijiet tal-artikolu 23 tal-Kap. 398, u jissottometti li dawn flimkien mad-disposizzjonijiet tal-artikolu 22 huma inderogabbli. Jgħid li huwa ma kienx ġie notifikat, u lanqas kien jaf bil-laqgħa tat-12 ta' Jannar, 2020, u l-intimati ma ressqu l-ebda prova sabiex jikkontradixxu dan. L-appellat jirrileva li huma minflok qegħdin jinsistu li fid-19 ta' Settembru, 2020 kienet ittieħdet deċiżjoni, liema allegat fatt huwa kontradett mit-traskrizzjonijiet tal-messagġi fuq *Whatsapp*. L-appellat isostni li kienet ir-responsabbiltà tal-intimati li jaċċertaw li huwa jiġi notifikat bid-deċiżjoni b'mod regolari *ai termini* tal-artikoli 22 u 23 tal-Kap. 398, billi ssir laqgħa u jitwaħħal avviż fuq *notice board*, iżda dan ma sarx. Jgħid li lanqas kien hemm *notice board*, għaliex l-intimati qegħdin jikkontendu li dak iż-żmien ma kienitx prattika li ssir, iżda llum fil-fatt saret mill-amministratur il-ġdid. B'riferiment għas-sottomissjoni tal-appellanta u l-intimati, jgħid li dawn ma ġabu l-ebda prova sabiex juru li kien hemm deċiżjoni espressa u unanima sabiex tinbidel il-proċedura stabbilita mil-liġi, li wara kollox hija inderogabbli. L-appellat jikkontendi li l-obbligu tan-notifika hawnhekk, kif korrettement iddeċieda t-Tribunal, kien proprju fuq l-amministratrici, fejn in-notifika kellha ssir ukoll billi d-deċiżjoni titwaħħal fuq *notice board*. Dan kollu kien ifisser li għalhekk huwa qatt ma kien ġie notifikat korrettement u t-terminu mpost mil-liġi ma setax jiddekorri, sabiex b'hekk l-arbitraġġ sar fit-termini preskritti. L-appellat jagħlaq billi jsostni li fuq kollox it-terminu mpost mil-liġi mhuiwix applikabbli għal dawk id-deċiżjonijiet li jittieħdu b'mod irregolari. Dwar il-kwistjoni ta' *buona fede*, li qajjmet l-appellanta fir-rikors tal-appell

tagħha, sabiex tiġġustifika għaliex hija m'għandhiex tinzamm responsabbli għall-ħlas tal-ispejjeż tal-proċeduri odjerni, l-appellat jikkontendi li dan il-kunċett ma jistax iwassal sabiex b'hekk jiġu evitati proċeduri mposti mil-ligi u li huma ntiżi sabiex jiproteġu d-drittijiet ta' kull *condominus*. Imma huwa saħansitra jinsisti permezz tal-appell inċidentali tiegħu, li jekk il-Qorti jidhrilha li huwa m'għandux ibati l-ispejjeż tal-proċeduri, dawn għandhom jithallsu mill-intimati appellati jew min minnhom, għaliex kien proprju l-aġir skorrett tagħhom li wassal sabiex jiġu ntavolati l-imsemmija proċeduri.

13. Il-Qorti tikkunsidra li t-Tribunal kien korrett fid-deċiżjoni tiegħu, meta stqarr li ma kienix konvint li l-appellanta kienet sejthet laqgħa ġenerali sabiex tifformalizza l-ħatra tagħha *ai termini* tal-artikolu 22 tal-Kap. 398. Dwar l-allegata laqgħa tat-12 ta' Jannar, 2020, it-Tribunal sewwa osserva ukoll li ma kienet giet esebita l-ebda prova li din il-laqgħa fil-fatt kienet saret, u li nħareġ l-avviż sebat ijiem qabel skont il-ligi. Hawnhekk il-Qorti tgħid li għaladarba kien hemm vot tal-maġġoranza favur il-ħatra tagħha, it-Tribunal sewwa għaraf li kienet l-appellanta responsabbli għal dawn in-nuqqasijiet proċedurali, li permezz tagħhom kellha tiġi formalizzata l-ħatra tagħha wara vot meħud bejn il-*condomini* fil-*Whatsapp group chat*. Il-ligi hija ċara dwar l-obbligi tal-amministratur, mhux biss fejn jidhlu r-rekwiżiti sabiex issir laqgħa ġenerali tal-*condomini*, iżda anki dwar il-formalità neċessarja sabiex jiġu kkomunikati permezz tal-użu ta' *notice board* id-deċiżjonijiet li jittieħdu waqt dik il-laqgħa, u anki mill-amministratur stess.

14. Għalhekk it-Tribunal korrettement għaraf li għalkemm kien hemm qbil bejn il-*condomini* li l-ħatra kienet saret skont il-ligi permezz ta' *Whatsapp chats*,

L-amministratriċi l-ġdida mbagħad kellha obbligu sabiex qabel xejn issejjaħ laqgħa ġenerali fejn kellha takkwista, tirratifika u tirreġistra l-vot tal-magġoranza tal-*condomini*, u b'hekk ukoll imbagħad jiġu ffirmati l-ftehim u l-formoli relattivi. Iżda t-Tribunal qal li fil-każ odjern l-appellanta ma kienitx osservat il-proċeduri legali rikjesti mill-artikolu 22 tal-Kap. 398, u tajjeb iddeċida li b'hekk ma kienitx saret sejħa valida għal-laqgħa tat-12 ta' Jannar, 2020.

15. Il-Qorti għarblet il-provi li ġew prodotti quddiem it-Tribunal, u hija wkoll sabet li m'hemm l-ebda evidenza li turi li l-laqgħa tat-12 ta' Jannar, 2020 tassew saret, u għalhekk tikkunsidra li l-ewwel talba tal-appellat għandha tiġi milqugħa. Imma ġaladarba l-Qorti qiegħda tikkunsidra li l-ħatra tal-appellanta permezz tar-riżoluzzjoni tal-*condomini* u l-formola relattiva wkoll mhumiex validi *ai termini* tal-liġi, it-tieni u t-tielet talbiet tiegħu, għandhom jiġu milqugħa b'riferiment għad-data suriferita, u sugġett għal dak li qal it-Tribunal fil-parti deċiżiva tal-lodo arbitrali. Fiċ-ċirkostanzi preżenti tal-każ, fejn l-appellat jirriveleva fir-risposta tal-appell tiegħu li l-appellanta m'għadx għandha l-inkarigu ta' amministratriċi stante li l-kuntratt tagħha ma ġgeddidx bi qbil bejn il-*condomini*, tagħraf li għandha tastjeni milli tikkunsidra l-aħħar parti tad-*decide* tal-lodo arbitrali li jolqot ir-raba' u l-aħħar talba li ressaq l-appellat quddiem it-Tribunal.

16. Dwar il-kwistjoni tal-ispejjeż, il-Qorti tikkunsidra li l-vertenza odjerna hija waħda li nħolqot minn piki u nuqqas ta' djalogu bejn il-*condomini*. Tqis li dakollu seta' faċilment ġie evitat permezz ta' ftit bon sens u rieda tajba sabiex jinstab kompromess mingħajr ma kien meħtieġ li din il-kwistjoni titkabbar daqstant li waslithom ukoll quddiem din il-Qorti tal-Appell. Għalhekk il-Qorti tagħraf li jkun

iktar ġust u ekwu li l-ispejjeż tal-proċeduri tal-Arbitraġġ u tal-appell odjern, għandhom jiġihallu mill-partijiet rispettivi kif inkorsi minnhom.

Decide

Għar-raġunijiet premissi, il-Qorti tiċhad l-appell odjern u anki l-appell incidental, filwaqt li tikkonferma l-lodo arbitrali fl-intier tiegħu, għajr li l-ispejjeż minflok kif deciż mit-Tribunal għandhom jiġihallu mill-partijiet rispettivi.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**