MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
ANTHONY ELLUL

Seduta tad-9 ta' Jannar, 2012

Citazzjoni Numru. 1229/1999/1

James Camenzuli u Denise Sammut illum Camenzuli

vs

Alexander Baldacchino

Il-kawza hi l-*actio aestimatoria*. B'kuntratt tal-14 ta' Lulju 1998 l-atturi xtraw minghand il-konvenut il-fond 141, 143 u 145, Triq San Frangisk, Balzan. Il-fond inxtara ghall-prezz ta' Lm42,000. L-atturi qeghdin jitolbu li l-qorti :-

1. Tiddikjara li l-fond Mayfair, 141, 143 u 145, Triq San Frangisk, Balzan hu milqut minn difetti li ma jidhrux.
2. Tillikwida l-parti tal-prezz ta' akkwist li l-atturi ghandhom jiehdu lura minghand il-konvenut.
3. Tikkundanna lill-konvenut ihallas lill-atturi dik il-parti tal-prezz.

Min-naha tieghu l-uniku eccezzjoni li ta l-konvenut hi li l-atturi kienu jafu bid-difetti fuq taghrif li tahom, u sahanistra nkarigaw zewg periti biex ihejju rapporti dwar il-

kondizzjoni tal-fond qabel ma gie ppubblikat il-kuntratt ta' xiri u gie miftiehem tnaqqis fil-prezz minhabba l-istat u difetti li kien hemm.

Il-bejjiegh hu obbligat li jwiegeb ghad-difetti mohbija. Jirrizulta li qabel xtraw l-atturi kienu nkarigaw periti biex jispezzjonaw il-fond. Wiehed minnhom kien il-perit Victor Torpiano li rrilaxxa rapport fil-11 ta' Frar 1998, cjoe' ftit xhur qabel il-pubblikazzjoni tal-kuntratt ta' xiri. Dwar is-soqfa, fir-rapport jinghad :-

'The slab soffits inside the house have been plastered with gypsum during the last year. The quality of the workmanship is quite good and all the soffits are more than reasonably smooth and true. Systematic tapping revealed some hollow sounding areas. It was confirmed with the vendor that spalling of the concrete had occurred previously, mainly in part of the living room, and that repairs had been carried out prior to re-plastering. Some of the suspect areas were chipped out and signs of rusting of the slab reinforcement revealed. In some areas the repair material showed up in the form of a dark-grey cement mortar, followed by a browning coat of cement plaster, and a finish coat of gypsum. The repairs were not done correctly everywhere with the result that unsound concrete was still present.

The defective areas were distributed in the living room, the dining room, the master bedroom, and the 2 smaller bedrooms. By far the biggest concentration was in the living room, where about 50% of the space needs to be repaird again. The other rooms contain only isolated patches not exceeding 10% of the soffit area..... The repairs needed consist of the standard Sika treatment of removal of all unsound concrete, exposure of the rusted steel by chipping, removal of all rust by abrasion, application of protective paint and re-plastering with non-shrink pre-mixed grout.'.

Ghalkemm jirrizulta li l-atturi kienu jafu, sa minn qabel xtraw, li kien hemm difetti fis-saqaf, hu altru milli evidenti li ma kellhom l-ebda hjiel li kien hemm iktar hsara minn dik li kkonstata l-perit Torpiano. Mill-provi ma rrizultax li fl-intervall bejn ir-rapport tal-perit Torpiano u l-pubblikazzjoni tal-kuntratt, l-atturi skoprew iktar difetti fis-soqfa. Irrizulta li sabu iktar difetti f'partiijet ohra tas-soqfa:-

i. Waqt li kienu qeghdin jaghmlu t-tiswija ta’ dawk il-partijiet li l-perit Torpiano kien identifika qabel l-akkwist xoghol li sar matul is-sajf tas-sena 1998.
ii. Fis-sajf 1999, meta partijiet ohra mis-saqaf bdew jinqasmu.

Id-difetti kollha kienu jezistu fiz-zmien tal-bejgh meta tikkunsidra li l-kuntratt sar fl-14 ta’ Lulju 1998 u l-kawza saret fis-27 ta’ Mejju 1999, u d-data meta skoprew id-difetti kollha. F’dan il-kuntest hi ferm flokha r-riferenza li ghamel il-perit legali ghas-sentenza **Michael Bonnici et vs Joachim Francica et** deciza mill-Qorti tal-Appell fis-27 ta’ Gunju 2003, fejn il-qorti kkonfermat li ghalkemm ikun hemm xi difetti fis-soqfa li x-xerrejja kienu jafu bihom qabel xtraw, il-fatt li wara l-bejgh jinstabu iktar difetti fis-soqfa ma jfissirx li m’humiex mohbija. Kien biss wara li saret it-tiswija fis-soqfa skond fejn kien immarka l-perit Torpiano, li l-atturi saru jafu li kien hemm iktar hsara fis-soqfa. Fil-fatt f’dokument li l-perit Torpiano pprezenta waqt li kien qieghed jixhed, jinghad li *“..... at the end of summer 1999, Ms Sammut called me to say that more spalling had been discovered during painting work that had been done at that period..... It became clear at this stage that it could not be guaranteed that, even though a bitumen membrane had been installed at roof level to ensure against rainy water entry, the spalling would not recur at any time in the future. Therefore the decision was taken to strip all the soffits of the plaster to inspect minutely the true condition of the slabs.”* (fol. 239). Fil-fatt ir-ricevuta fiskali datata 1 ta’ Ottubru 1999 ghal Lm100 ghal xoghol ta’ *“sandblasting of ceiling of house at St. Francis Street, Balzan”*, jaghti lill-qorti x’tifhem li s-soqfa nkixfu f’dak iz-zmien. Dan hu konfermat minn rapport li hejja l-perit Alfred Grech datat 15 ta’ Ottubru 1999 fejn jinghad: *“On the 5th October 1999 another inspection was carried out in order to assess the condition of the ceiling, once all the plaster had been removed. From the inspection it was noted that the ceiling had a number of areas where water infiltration had taken place over a number of years. A number of cracks were also noted in a number of rooms namely in the kitchen, dining room and hall.”*. Ghalhekk jidher li l-estesjoni tal-hsara fis-soqfa, l-attur saru jafu biha

fil-mori tal-kawza peress li pprezentaw il-kawza fis-27 ta' Mejju 1999.
Eventwalment kien meta inkixfu s-soqfa li harget il-verita kollha. Lanqas minn spezzjoni li saret fuq il-bejt ma seta' jigi determinat li hemm iktar hsara peress li fir-rapport tal-perit Torpiano jinghad: *"The roof finish appears to be in relatively good condition; the gradient is quite regular and sufficient. There are no telltale signs of ponding."*. Mill-provi jidher ukoll li l-hsara fis-soqfa saret minhabba perkolazzjoni ta' ilma.
Ir-raguni tghidlek li l-atturi ddecidew li jixtru l-fond wara r-rapport li ghamel il-perit Victor Torpiano. Rapport li ma kienx jikkundanna s-soqfa izda jidentifika fejn kien hemm difetti li kellhom bzonn tiswija. L-atturi mxew b'diligenza meta hadu parir u ma tistennix li kellhom jaghmlu xi haga iktar milli ghamlu. Huma kellhom parir ta' perit li d-difetti kienu dawk identifikati fir-rapport, u ma kien hemm l-ebda raguni ghalfejn jiddubitaw mill-parir professjonali li nghataw. Il-perit kien tal-fehma li d-difetti kienu lokalizzati ghal postijiet partikolari fis-saqaf, u setghu jigu rimedjati. Jidher ukoll li l-perit Torpiano kien ghamel verifiki fil-post bil-mod tradizzjonali. Jekk il-bejjiegh ma riedx igorr responsabbilta' ta' x'hemm taht il-kisi, allura kellu jiehu hsieb li fil-kuntratt ta' bejgh titnizzel klawzola fejn jinghad car u tond li ma kienx qieghed jaghti garanzija ghal difetti li ma kienux jidhru.
Ghal dik li hi rifuzjoni ta' parti mill-prezz, il-qorti m'ghandix dubju li kieku x-xerrejja kienu jafu li kien hemm iktar difetti minn dawk identifikati mill-perit Torpiano, kienu ser joffru prezz inqas minn dak li hallsu. Ghal dak li jikkoncerna r-rifuzjoni tal-prezz il-qorti ltaqghet ma' problema mehud in konsiderazzjoni li:-

i. Fis-seduta tal-11 ta' Novembru 1999 il-qorti kienet inkarigat lill-perit Joseph Ellul Vincenti.

ii. Fis-seduta tal-14 ta' Lulju 2000 il-qorti nnominat lil Dr Noel Bartolo bhala perit legali biex **jassisti** lill-perit tekniku. Sfortunatament mill-atti hu evidenti li s-seduti baqghu isiru mill-perit legali. Fis-seduta tat-3 ta' Marzu 2003 deheru d-difensuri tal-partijiet u gie verbalizzat hekk: ***"Il-qorti giet infurmata li l-partijiet ghamlu l-provi kollha taghhom*** *u talbu direzzjoni minn din il-qorti jekk ghandu l-ewwel jirrelata l-perit legali wahdu dwar l-*

eccezzjoni tal-konvenut. Il-qorti tidderigi lill-perit legali li jghaddi biex jirrelata wahdu dwar l-eccezzjoni tal-konvenut.”. Fil-fatt il-kawza giet differita ghas-seduta tal-24 ta’ Gunju 2003 ghar-rapport tal-perit legali. Hekk ukoll fil-verbal tas-seduta tal-4 ta’ Marzu 2004 il-kawza giet differita ghar-rapport dwar l-eccezzjoni li nghatat mill-konvenut.

iii. Fil-fatt mill-atti jirrizulta li l-perit Joseph Ellul Vincenti qatt ma pprezenta r-rapport tieghu, u jirrizulta li l-kwistjoni dejjem baqghet fuq l-eccezzjoni tal-konvenut. Tant hu hekk li wara li l-perit legali kkonferma bil-gurament ir-rapport (seduta tal-25 ta’ Jannar 2005), fuq talba tal-konvenut gew nominati perit addizzjonali (Dr Edward Zammit Lewis, Dr Aldo Vella, u Dr Melanie Schembri). Il-kawza baqghet tigi differita ghal snin sakemm gie pprezentat ir-rapport (intaxxat fit-23 ta’ Lulju 2009) u minkejja li l-konvenut inghata diversi opportunitajiet biex ihallas lill-periti addizzjonali, baqa’ ma hallasx. F’dak ix-xenarju fis-seduta tas-6 ta’ Ottubru 2011 il-qorti ordnat li *“…. s-smigh tal-kawza jitkompla u l-qorti mhux ser tiehu konjizzjoni tal-istess rapport.”*.

Il-qorti hi konxja li billi tibghat lura l-atti quddiem il-perit tekniku ser ifisser iktar tul ta’ zmien sakemm din il-kawza tinqata’ finalment. Madankollu mehud in konsiderazzjoni dak li jinghad fil-verbali fuq imsemmija tqies li m’hemmx alternattiva ohra. B’hekk l-ebda wahda mill-partijiet ma tkun tista’ tilmenta li l-qorti tat decizjoni fuq ir-rifuzjoni tal-prezz meta kienet ghadha qeghda tigi trattata l-eccezzjoni tal-konvenut. Il-perit tekniku ghandu jillimita ruhu fuq il-provi li jirrizultaw mill-atti, u jaghti opinjoni dwar il-parti tal-prezz li ghandha tigi rifuza lill-atturi meta jqies fost’affarijiet ohra:-

i. Il-prezz li hallsu l-atturi ghax-xiri tal-fond.

ii. Il-hsara li sabu fis-soqfa wara li gie ppubblikat il-kuntratt tal-14 ta’ Lulju 1998 u kemm kienet estensiva.

iii. Ix-xogholijiet li ghamlu l-atturi biex irrimedjaw ghad-difett.

Fir-rapport il-perit tekniku ghandu jispjega kif ikun wasal ghal dik il-parti mill-prezz li fil-fehma tieghu ghandha tintradd lura lill-atturi. Il-perit tekniku m’ghandux izomm seduti.

Ghal dawn il-motivi l-qorti qeghda :-

1. Tichad l-eccezzjoni tal-konvenut.
2. Tilqa' l-ewwel talba tal-atturi u tiddikjara li d-dar Maryfair, 141,143 u 145, Triq San Frangisk Balzan kellha difetti mohbija fid-data tax-xiri.
3. Tibghat lura l-atti quddiem il-perit Joseph Ellul Vincenti sabiex iwettaq l-inkarigu li kien inghata bid-digriet tal-11 ta' Novembru 1999, b'dan li ghandu jillimita ruhu ghal dak li jirrigwarda t-tieni u tielet talba tal-atturi. Il-perit tekniku ghandu jipprezenta r-rapport sal-ahhar ta' Marzu 2012. Tordna li kopja ta' din is-sentenza tintbghat minnufih lill-perit tekniku.
Spejjez a karigu tal-konvenut.

< Sentenza In Parte >

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