



MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.

KATJA PSAILA SAVONA

Seduta tal-25 ta' Novembru, 2014

Talba Numru. 263/2012

Joseph Brincat (K.I. 550934M)

Vs

Panta Marketing and Services Limited (C11244)

It-Tribunal,

Ra l-avviz tal-attur, pprezentat fis-27 ta'Marzu, 2012 li permezz tieghu ppremetta illi:

L-attur qed jitlob li dan it-Tribunal jordna lis-Socjeta' ntimat thallsu s-somma ta' tmien mijha u sitta u disghin ewro u tmenin centezmu (€896.80) oltre l-imghaxijiet legali sad-data tal-pagament effettiv, rappresentanti danni subiti mill-esponenti konsistenti f'kontijiet ta' riparazzjonijiet li kieni jinhtiegu fil-lift, mixtri mill-esponenti minghand is-Socjeta' ntimata.

Kopja Informali ta' Sentenza

Illi permezz ta' sentenza tal-Arbitragg fl-ismijiet **Panta Marketing and Services Limited vs Joseph Brincat** ceciz fl-ewwel (1) t' Ottubru, elfejn u ghaxra (2010), u kkonfermat fl-Appell fit-tmienja u ghoxrin (28) ta' Gunju, elfejn u hdax (2011), kif jirrizulta mill-annessi sentenzi mmarkati Dok 'A' u 'B', irrizulta illi s-Socjeta' ntimata kien għad fadlilha tezegwixxi diversi xogħolijiet sabiex il-lift gdid fjamat jithaddem sew, u llum il-gurnata *ai termini* ta' l-ordni ta' l-Arbitri, s-Socjeta' ntimata ezegwit ix-xogħoljiet riparattivi, taht id-direzzjoni tal-Perit Tekniku l-Inginier Scerri.

Illi s-somma mitluba jirraprezentaw kif jigu pruvati fit-Trattazzjoni tal-kaz, l-ammonti li l-esponenti hallas lit-teknici u lill-Inginiera għar-riparazzjoni tal-lift difettuz fil-perjodu bejn l-installazzjoni originali tal-lift fis-sit in kwistjoni u s-sentenza tal-Bord ta' l-Arbitragg kif konfermat fl-Appell.

Ra ir-risposta tas-Socjeta' konvenuta, Panta Marketing and Services Limited, pprezentata fit-3 ta' Mejju, 2013 li biha eccepixxew illi:

illi kull kwistjoni relattata mal-lift mertu ta'dan il-kaz għandha tigi rizolta permezz ta' procedura tal-Arbitragg u dan skont ma jipprovd i-l-ftehim ta' bejgh ta' lift in kwistjoni ezistenti bejn il-partijiet u datat it-18 ta' Frar, 2008 fejn klawsola 6.4 ta' '*Annex II - Terms and Conditions*' tal-ftehim imsemmi tghid hekk:

"Finally the parties agree that any disputes arising out of the engagement in favor of the company or as a consequence of this agreement shall be decided solely and exclusively by means of Arbitration in Malta in accordance with Malta Arbitration Act of 1996.....'

Illi fil-mertu u mingħajr pregudizzju t-talbiet tar-rikorrenti huma kompletament infondati fil-fatt u fid-dritt u għandhom jigu michuda bl-ispejjeż kollha kontra tieghu;

Illi inoltre, kif jaf ben tajjeb l-attur kull vertenza rigward il-lift mertu tal-kaz giet rizolta permezz ta' sentenza tal-Arbitragg fl-ismijiet *Panta Marketing and Services Limited vs Joseph Brincat* ikkonfermat fl-Appell fit-28 ta' Gunju, 2011, liema sentenza hija llum *res judicata*;

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Illi f'kull kaz u minghajr pregudizzju s-Socjeta' konvenuta wettqet l-obbligi kollha tagħha fir-rigward il-lift mertu tal-kaz u għalhekk ma tezisti l-ebda pendenza ohra bejn il-partijiet u dan kif ser jirrizulta fit-trattazzjoni ta' dan il-kaz;

Illi inoltre, u minghajr pregudizzju għas-suespost, l-attur għandu jindika n-natura tal-azzjoni minnu proposta u l-Artikolu tal-ligi li fuqu l-azzjoni qiegħda tigi msejsa sabiex is-Socjeta' konvenuta tkun f'qaghda tiddefendi ruhha, F'dan ir-rigward u minn issa, s-Socjeta' konvenuta tirrizerva kull dritt illi tipprezenta eccezzjonijiet ulterjuri skont il-kaz;

Għaldaqstant, għar-ragunijiet suesposti, t-talbiet attrici għandhom jigu michuda bl-ispejjeż.

Ra l-atti kollha u d-dokumenti kollha li gew esebiti;

Semħa t-trattazzjoni tar-rappresentanti tas-Socjeta' attrici u l-konvenuta Rita Brincat.

Ra l-verbal tas-seduta ta' nhar il-11 ta' Dicembru, 2013 li bih il-kawza thalliet għal-lum, għas-Sentenza;

Illi in forza tal-azzjoni odjerna s-Socjeta' attrici qiegħda titlob mingħand il-konvenuti Mark u Rita Brincat tmien mijha sitta u disghin ewro u tmenin centezmu (€896.80) li huwa ammont li thallsu lit-tekniku u ingieniera għar-riparazzjoni tal-lifts difettużi.

Illi mill-provi jirrizulta illi hemm skrittura privata bejn il-partijiet li jirregola tilwimiet bejn il-partijiet ossia *"finally the parties agree that any disputes arising out of the engagement in favour of the Company or as a consequence of this Agreement shall be decided solely and exclusively by means of arbitration in Malta in accordance with Malta Arbitration Act of 1996 (Act 11 of 1996 as amended periodically).*

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Illi hareg mix-xhieda ta' Jesmond Brincat li kien hemm arbitragg peress illi kien hemm kontestazzjoni dwar il-lifts provduti illi min-naha parti ddikjarat li kien hemm certu difetti u ghalhekk ma xtaqux ihallsu l-ammont totali u minn naha l-ohra l-parti l-ohra kienet qed tinsisti fuq il-hlas totali.

Illi l-Arbitration nqaghtet favur l-attur tal-kawza odjerna u dan gie konfermat in Appell. Gew indikati diversi difetti li kellhom jigu msewwija taht is-supervizjoni tal-Perit Scerri (vide pagna 11 tad-dok a fol 7 tal-process)

"Claimant must address all the complaints mentioned hereunder namely:

Lift stopping below or above level at times and on all floors.

The stopping levels require final adjustments.

Lift remains stuck at Floor Landings 2 & 5.

Both levels tested several times with the car empty. It was noted that lift does not stop level with floor, remaining out of floor for more than 2cm at a time. The difference in stopping level might be the cause of complaint for lift not operating satisfactorily on these floors. As already indicated the door locks have tight clearances and although the car did stop at level 2 & 5 during the time of inspection, there remains a good possibility that lift stoppages will be recurrent.

Lift will not work when three persons, sometimes two are inside the car.

Lift tried with three persons and stopped at level four. The overload of the car needs resetting.

Lift travels beyond the Level at Ground Floor and gets stuck.

There is a setting problem which requires adjustment.

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Door Motor Fuse blown twice.

This could not be verified at time of inspection. However, there was a fuse covering missing on close inspection of the electronic board which requires replacement.

Door Motor Mechanism not correctly aligned with door locks.

Alignment very tight on all doors. More clearance on door lock housing in jamb of door channel recommended.

Car Guide Shoe Liner came out of its holder twice, wrong type.

This could not be verified on site as no representative of installer was present on site to assist inspection. This needs to be verified and corrected if required.

Inadequate Shaft Lightning

Shaft Lightning present but not operational. The distance between lamps is more than 2 meters. Another lamp is located on the lift car. When all lights are operational the lighting level in lift shaft should suffice.

Uncovered/unprotected bare control wires in lift shaft.

Bare wires form part of the lift shaft installation.

within ten weeks from today, under the supervision of Technical Arbiter Emmanuel Scerri, whose costs and fees shall be borne by the Claimant (konvenut fil-kawza odjerna). The amount claimed by Claimant shall fall due without interest up to the date of certification hereunder mentioned and with legal interest as from the date of certification until final payment is in full upon the issue by the aid engineer Scerri notified to both parties."

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Failing appropriate repair and adjustment in the time period herein above mentioned the said engineer Scerri shall reconvene this tribunal in order to award a sum equivalent to the cost of repair of all and any pending faults. And then the Tribunal shall then proceed to award to the Claimant such sum as shall be due after having regard to the balance claimed in the Notice of Arbitration and Statement of Claim, and any sum to be deducted in accordance with this part of the award.

Illi ma ngabitx ebda evidenza ohra u ghalhekk dan it-Tribunal għandu jibbaza d-deċiżjoni fuq l-evidenza li ngab quddiemu.

L-invoices li gew prezentati huma “JB1” u “JB2” li huma ricevuti tal-kumpanija li giet isewwi il-lift waqt li l-artbitragg kien pendent filwaqt li JB3 u JB 4 huma ta’ Camilleri il-consulting engineers li nhattru mill-Bord. Hemm ukoll spejjes ohra.

Illi fic-cirkostanzi johrog car illi dawn huma spejjes li kellhom jigu u għandhom jigu ndirizzati mit-Tribunal tal-Arbitragg.

Għal dawn il-motivi, t-Tribunal, jichad it-talba.

Bl-ispejjes.

< Sentenza Finali >

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