



FIT - TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr Vincent Galea M.A., LL.D.

Seduta ta' nhar il-Hamis 24 ta' Settembru, 2015

Talba Nru: 764/2014/VG

Maria Victoria De Domenico u Jonathan De Domenico

Vs

Bianca Attard

It-Tribunal,

Ra t-talba tar-rikorrenti minnhom mressqa fl-24 ta' Novembru, 2014 u li permezz taghha talbu lill-intimata thallashom is-somma ta' elf erba' mija tlieta u hamsin euro u erbgha u erbghin centezmi ta' euro [€1,453.44c] u dan wara li ppremettew hekk:

“Illi wara rapport li sar lill-Pulizija Ezekuttiva min nies mhux maghrufa, l-atturi kienu kostretti jwettqu xi xoghol fuq il-bejt tal-blokka tal-appatamenti bl-isem Casa D'Aragona, tas-Sliema fejn il-konvenut huwa proprjetarju tal-appartament numru 6;

Illi x-xoghol sar fuq il-bejt tal-blokka billi nbiddu l-balavostri tal-gebel li jdawwru d-dawra kollha tal-bejt;

Illi l-atturi nkorrew diversi spejjez ammontanti ghal prezz ta' €15,987.85, liema ammont gie diviz bejn is-sidien l-ohra tal-appartamenti tal-istess blokka u l-blokka adjacenti ta' liema wkoll gew mibdula l-balavostri;

Illi s-sehem li kellu jithallas minn kull sid ta' ghal kull appartament ghax-xoghol ta' bdil tal-balavostri hu dak ta' €1,453.44;

Illi saru diversi tentattivi sabiex dan l-ammont jigi saldat izda u stante inadempjenza, l-atturi ma kellhomx alternattiva ohra hlief li jipprocedu b'din il-kawza;

Bl-ispejjez u bl-imghax legali”.

Ra **r-risposta tal-intimata** minnu mressqa fis-27 ta' Jannar, 2015 u li permezz taghha huwa rrisponda hekk ghat-talba tar-rikorrenti nomine:

“1. Illi t-talbiet tal-atturi huma nfondati fil-fatt u fid-dritt;

2. Illi b'mod partikolari, l-bejt fejn sar it-tibdil tal-balavostri huwa l-proprjeta tal-atturi u ghaldaqstant hija r-responsabbilita ta' l-istess atturi illi jhallsu ghall-ispejjez straordinarji bhal dawn ghaliex l-konvenutghandu uzu biss kif kontemplat fil-kuntratt ta' bejgh tas-16 ta' Marzu 2007;

3. Illi l-atturi qatt ma kkonsultaw lill-konvenuta qabel ma beda jsir ix-xoghol fuq il-bejt;

4. Illi l-atturi qatt ma pproducewx fattura formali biex jissusstanzjaw l-pretenzjoni ta' hlas allegatament dovuti lilhom mil-konvenuta;

5. Illi din il-pozizzjoni tal-konvenuta kienet wahda kostanti u gja giet komunikata lill-atturi. Ghaldaqstant l-ispejjez ta' dawn il-proceduri ghandhom ibaghtuhom l-atturi.

Salv eccezzjonijiet ulterjuri.

Bl-ispejjez kontra l-atturi.”

Ra l-verbal datat 2 ta' Lulju, 2015 fejn d-difensur ta' l-intimata Dr. Matthew Attard iddikjara li huwa sodisfatt bid-dokumentazzjoni mressqa mir-rikorrenti fis-16 ta' April, 2015.

Ra l-verbal datat tat-2 ta' Lulju, 2015 fejn il-kawza thalliet ghal lum ghas-sentenza;

Ra l-atti;

Semgha t-trattazzjoni;

Ikkunsidra:-

1. Permezz ta' dawn il-proceduri, r-rikorrenti qeghdin jitolbu lill-intimata thallashom is-somma ta' elf erba' mija tlieta u hamsin euro u erbgha u erbghin centezmi ta' euro [€1453.44] bhala spejjez minnhom inkorsi minhabba xi xogholijiet li saru fuq il-bejt tal-blokka tal-appatamenti bl-isem Casa D'Aragona, tas-Sliema. L-intimata hija l-proprjetarja ta' l-appartament numru sitta (6) fl-imsemmija blokka. L-intimata laqghet ghal dawn it-talbiet billi qalet li t-talbiet rikorrenti huma nfondati fil-fatt u fid-dritt.

B'mod partikolari, kompliet tghid l-intimata, l-bejt fejn sar it-tibdil tal-balavostri huwa l-proprjeta tar-rikorrenti u ghaldaqstant hija r-responsabbilita taghhom li jhallsu ghall-ispejjez straordinarji bhal dawn ghaliex hi kull ma ghandha huwa l-uzu biss kif kontemplat fil-kuntratt ta' bejgh tas-16 ta' Marzu 2007. Di piu, r-rikorrenti qatt ma kkonsultawha qabel ma beda jsir ix-xoghol fuq il-bejt u li r-rikorrenti qatt ma pproducew fattura formali biex jissusstanzjaw l-pretenzjoni ta' hlas allegatament dovuti lilhom minnha. Qalet li din il-posizzjoni taghha kienet wahda kostanti u gja giet komunikata lir-rikorrenti. Ghaldaqstant l-ispejjez ta' dawn il-proceduri ghandhom ibaghtuhom l-istess rikorrenti.

Ikkunsidra ulterjorment;

1. **Jonathan De Démonico** qal li ommu, Maria Victoria De Domenico, kienet proprjetarja ta' diversi appartamenti fil-blokka maghrufa bl-isem ta' Casa Aragon, Dun Karm Psaila Street, Sliema. Qal ukoll li darba fost l-ohrajn, kienu cemplulu l-pulizija u nformawh li kienu waqghu xi balavostri min fuq il-bejt. Huma kienu qalulu sabiex jiehu hsieb din is-sitwazzjoni kif fil-fatt ghamel. Zied ighid li ommu ghad ghandha l-arja fuq iz-zewg blokkok maghrufa bl-isem ta' Cordoba u D'Aragona. Il-kumplementtas-sidien ghandhom d-dritt li juzaw il-bejt.

Ir-rikorrenti qal li huwa kien inkariga lil Perit Giorgio Schembri li ghamel rapport bid-data tad-19 ta' April, 2013. Il-Perit, kompla jghid ir-rikorrenti, kien irrakkomanda li jinbidlu l-ballavostri kollha fuq il-bejt. B'kollox kien hemm mija u sittin ballavostra x'jinbidlu. Hekk gara u x-xogholijiet damu ghaddejjin madwar gimghatejn. Qal li huwa ma kienx kellew lill-intimata l-ghaliex ma kellhux cans u dan minhabba li x-xoghol kellu jsir urgentement. Lanqas ma kienet kellmitu l-intimata tul iz-zmien li dam ghaddej ix-xoghol fuq il-bejt. Zied ighid ukoll li huwa ma kellhux ghalfejn jghidilha b'dawn ix-xogholijiet u dan l-ghaliex hija kienet obligata li thallas ghal dawn ix-xogholijiet a tenur tal-kuntratt datat 16 ta' Marzu, 2007 fl-atti tan-Nutar Charlene Vella (Dok. JDD 1 a fol. 33) u r-regolamenti tal-partijiet komuni ta' "Casa D'Aragona" (Dok. JDD 2 a fol. 38). Huwa rrefera ghar-regolament numru 11 u qal li l-kliem ta' dan il-paragrafu huwa car.

2. **Ir-rikorrenti Maria Victoria De Domenico** xehdet u qalet li hija kienet skopriet bil-problema fuq is-saqaf tal-bejt taghha minghand il-pulizija. Il-lejl ta' qabel ma kienu cemplu l-pulizija, kien hemm residenti li kien qalilha li parti minn balavostra kienet waqghet u giet fit-triq. Qalet li hija hadet hsieb li jittranga s-saqaf kollu u ghalhekk kull ma qeghda titlob lill-intimata huwa li tohrog sehemha pro rata. Dawn ix-xogholijiet, insistiet ir-rikorrenti, kellhom isiru. Mistoqsija dwar ir-ricevuta datata xahrejn qabel ma bdew ix-xogholijiet, ir-rikorrenti qalet li hija kellha thallas depozitu lill-bennej.
3. Ir-rikorrenti resqu diversi dokumentazzjoni fosthom rapport datat 19 ta' April, 2013 imhejji mill-Perit Giorgio Schembri. Min dan ir-rapport jirrizulta li fil-15 ta' April, 2013 kienet saret spezzjoni "*to visually examine the extent of the damages incurred to the concrete balustrades at roof level of the whole block of the same property due to water ingress and other weather conditions*" (fol. 13). Qal li minn ezami vizwali, rrizulta li l-

ballavostri kienu qeghdin isofru minn “*spalls due to two actions; primarily the water ingress from the weather actions and due to aging*” (fol. 13). Il-Perit Schembri kkonkluda li “*it is hereby recommended that all the concrete balustrades around the roof perimeter shall be all removed together with these deteriorated pilasters since nothing can be done to reinstate the damages and to render the place safe primarily to the passers by using the public pavement and secondly to the motorists making use of the streets around the above mentioned block of apartments*” (fol. 16).

4. Irrizulta ukoll li fil-25 ta’ Marzu, 2013 kien sar rapport mal-pulizija fejn dawn gew infurmati li kien hemm periklu ghan-nies li kienu ghaddejjin mit-triq min fejn il-proprjeta Casa Aragon, Dun Karm Psaila Street, Sliema minhabba li l-ballavostri li kien hemm fuq il-bejt ta’ l-imsemmi fond kienu qed jiddeterjoraw u jaqaw fit-triq.
5. Mill-kuntratt esebit a fol. 33 tal-process, jirrizulta li fis-16 ta’ Marzu, 2007, atti Nutar Dott. Charlene Vella, l-intimata kienet xtrat u akkwistat minghand ir-rikorrenti Maria Victoria De Domenico u zewgha Philip l-appartament internament immarkat bin-numru 6 fil-blokka bin-numru 24, maghrufa bl-isem ta’ Casa D’Aragona, fi Triq Dun Karm Psaila, gewwa tas-Sliema. Eskluz mill-bejgh kien hemm l-arja, izda l-intimata kellha l-uzu ta’ parti minnu. F’dan il-kuntratt insibu li “*The Purchaser shall pay her pro rata share of the maintenance, cleaning and electricity consumption of the common parts, including the roof maintenance of the said block and the lift*” u “*This sale is subject to all the terms, conditions and stipulations of the regulations listed in the document marked letter “D” hereto attached, which the Purchaser declares to be cognizant of and which have been explained to her and which she undertakes to abide with in all respects*” (tergo ta’ fol. 34).
6. Minn qari tad-dokument intitolat “*Regulations of the Common Parts of the Block named Casa D’Aragona, 24, Dun Karm Psaila, Sliema*” (fol. 38) insibu s-segweni paragrafi ta’ interess ghar-risoluzzjoni tal-kwistjoni odjerna:

“*5. It is agreed between the Vendor and the Purchaser that the ownership of the roof and airspace of the Block and the ownership of the stairwell and staircase shall remain the exclusive property of the Vendor. Notwithstanding the generality of the above, Vendor reserves the right to transfer its rights over the roof and airspace of the said Block to third parties* (fol. 61-62).

9. Without prejudice to that provided under Clause 5 (Clause number five) above, all expenses necessary for the maintenance and repair of the roof shall be borne proportionately between the Purchaser and all other owners of the apartments in the Block according to the number of apartments owned by each of them (fol. 62).

10. Similarly all expenses necessary for the maintenance repair and enjoyment of all the common parts, including the façade, the shafts, and the services given in the common interest, including the water pipes, conduits, electric cables, electric installation in the common parts, the lifts, the communal satellite dish, and generally all other parts and

installations which are intended for common use, shall be borne proportionately between the Purchaser and all other owners of the apartments in the block according to the number of apartments owned by each of them (fol. 63).

11. It shall be in the sole exclusive discretion of the Vendor, so long as he still owns property in the Block, or so long as he does not decide to assign his rights to an Owner's Association composed of the owners of apartments in the block, to take care of and decide upon the normal maintenance, electricity, re-decoration and cleaning of the common parts of the block and to receive and pay the relative Bills or invoices. The Purchaser as from now gives his consent for the execution of the said maintenance and shall contribute his pro rata share of the relative expense provided that he shall be entitled to a copy of the invoices of expenses. All payments shall have to be effected within eight (8) days from request in writing by the Vendor. Unpaid maintenance shall incur in favour of the Vendor an interest of nine per cent per annum until payment is made to the Vendor. Should the unpaid amount inclusive of interest exceed Lm300 at any one time, the Purchaser gives his irrevocable consent for the registration of a special hypothec on the apartment of the Purchaser in favour of the Vendor in security of the payment of said amount. Any cancellation of the said special hypothec shall be paid for by the Purchaser (fol. 63)".

7. **Jesmond Micallef** qal li r-rikorrenti kienet thallsu bin-nifs. Qal li min dak-in-nhar li kien lesta x-xogholijiet fuq il-bejt huwa ma kienx ghamel xogholijiet ohra ghar-rikorrenti. Qal li r-rikorrenti kienet hallsitu tax-xoghol kollu li kien ghamel. Ghar-rigward ta' l-istima, huwa qal li din kienet inqas mill-ammont li kien dovut wara li tlestew ix-xogholijiet u dan peress li haga ggib lill-ohra u biex isir ix-xoghol sew, kellhom isiru affarijiet addizzjonali. Qal li huwa kien johrog ricevuta lir-rikorrenti kull meta din kienet tghaddilu pagament. Qal ukoll li qabel ma beda x-xogholijiet, r-rikorrenti kienet taghtu depositu u kien ghalhekk li huwa kien hargilha ricevuta qabel ma kienu nbdew ix-xogholijiet. Ix-xogholijiet, kompla jghid ix-xhud, kienu nbdew xi ffit qabel u mhux f'April u dan fis-sens li kien ordna l-balavostri u l-vazi ta' l-ordni.

Ikkunsidra ulterjorment;

8. Mid-dokumentazzjoni esebita mir-rikorrenti a fol. 73 sa 87 tal-process jirrizulta li r-rikorrenti hargu s-somma ta' €16,726.88c. Magghom iridu jizdiedu l-ispejjez tal-Perit Giorgio Schembri li skond ma jirrizulta minn fol. 27 jammontaw ghal €250. B'kollox ghalhekk jigi l-ammont ta' €16,976.88c.
9. Fil-fehma tat-Tribunal, id-disgwid inqala minhabba l-fatt li r-rikorrenti ma nfirmawx lill-intimata bix-xogholijiet li kellhom isiru, liema xogholijiet, kif jirrizulta ampjament mill-process, kienu urgenti u kellhom isiru ta' bilfors. Id-difensur ta' l-intimata, li baqghet ma xhedix f'dawn il-proceduri, qal li l-assistita tieghu qatt ma inghatat l-ircevuti ghax-xogholijiet li kellhom isiru in kwistjoni u li f'kull kaz, peress li l-intimata kellha biss l-uzu tal-bejt, hija ma kellhiex tkun responsabbli ghax-xogholijiet li saru. Qal li dawn kienu responsabbilita tas-sid u cioe tar-rikorrenti. Sahaq li dawn ix-xogholijiet ma kienux

jinvolve spejjez ordinarji izda spejjez straordinarji. Rajna li fir-regolamenti annessi mal-kuntratt datat 16 ta' Marzu, 2007 u li bih xtrat u akkwistat l-appartament taghha l-intimata, senjatament fir-regolament numru disgha (9) insibu li *"9. Without prejudice to that provided under Clause 5 (Clause number five) above, all expenses necessary for the maintenance and repair of the roof shall be borne proportionately between the Purchaser and all other owners of the apartments in the Block according to the number of apartments owned by each of them"* (fol. 62). Il-kliem ta' l-imsemmija regolament huwa car u ma jhalli l-ebda lok ghal xi dubju. Id-difensur ta' l-intimata jsostni ukoll li dan ir-regolament numru disgha (9) ma ghandux jinqara izolatament izda ghandu jinqara flimkien mar-regolament numru hdax (11) li jaqra testwalment hekk: *"11. It shall be in the sole exclusive discretion of the Vendor, so long as he still owns property in the Block, or so long as he does not decide to assign his rights to an Owner's Association composed of the owners of apartments in the block, to take care of and decide upon the normal maintenance, electricity, re-decoration and cleaning of the common parts of the block and to receive and pay the relative Bills or invoices. The Purchaser as from now gives his consent for the execution of the said maintenance and shall contribute his pro rata share of the relative expense provided that he shall be entitled to a copy of the invoices of expenses. All payments shall have to be effected within eight (8) days from request in writing by the Vendor. Unpaid maintenance shall incur in favour of the Vendor an interest of nine per cent per annum until payment is made to the Vendor. Should the unpaid amount inclusive of interest exceed Lm300 at any one time, the Purchaser gives his irrevocable consent for the registration of a special hypothec on the apartment of the Purchaser in favour of the Vendor in security of the payment of said amount. Any cancellation of the said special hypothec shall be paid for by the Purchaser"* (fol. 63)". Fil-fehma tat-Tribunal pero, dan l-ahhar regolament qieghed hemm kif insibu fih stess *"normal maintenance, electricity, re-decoration and cleaning of the common parts of the block and to receive and pay the relative Bills or invoices"*. Ix-xogholijiet li kellhom isiru zgur ma jistghux jigu klassifikati bhala *normal maintenance*. Huwa minnu ukoll li r-rikorrenti naqsu meta huma ma nfirmawx lill-intimata bix-xogholijiet li kienu ppjanti li jsiru izda galadarba l-pulizija kkomunikat magghom, kienet responsabbilita tagghom li jaraw li x-xogholijiet isiru u jsiru kemm jista jkun malajr sabiex jigu evitati incidenti li setghu jqeghdu fil-periklu, l-hajja ta' l-utenti tat-triq fejn tinsab din il-blokka ta' appartamenti. Ghalhekk, huwa r-regolament numru disgha (9) li ghandu japplika f'dan il-kaz u l-intimata ghandha tohrog sehemha mill-imsemmija spejjez anke jekk hija kull ma ghandha biss l-uzu tal-bejt. Wara kollox, il-ballavostri huma estensjoni tas-saqaf u l-intimat, kif rajna, kienet obligat ruhha li tohrog sehemha meta ffirmat il-kuntratt u regolamenti relattivi.

10. Ghar-rigward ta' l-ammont reklamat, it-Tribunal huwa sodisfatt mill-provi mressqa f'dan ir-rigward u konsegwentement sejjer jiddikjara li l-intimata hija responsabbli ghal hlas tas-somma mitluba.

Ghal dawn il-motivi, t-Tribunal, jaqta u jiddeciedi da nil-kaz billi filwaqt li jichad l-eccezzjonijiet kollha mqanqla mill-intimata inkwantu dawn huma inkompatibbli ma dak hawn fuq deciz, qieghed jilqa t-Talba tar-rikorrenti u konsegwentement qieghed

jikkundanna lill-intimata thallashom is-somma ta' elf erba' mija tlieta u hamsin euro u erbgħa u erbgħin centezmi ta' euro [€1,453.44c] flimkien ma l-imghaxijiet relattivi li għandhom jibdeu jiddekorru mid-data tal-prezentata tat-Talba u cioe mill-24 ta' Novembru, 2014 sad-data tal-hlas effettiv.

L-ispejjez għandhom ikunu kollha a karigu ta' l-intimata.

Vincent Galea M.A., LL.D.

Gudikatur

Mary Josette Musu

Deputat Registratur