MALTA

FIL-QORTI TAL-MAGISTRATI TA' MALTA

Magistrat Francesco Depasquale

LL.D. LL.M. (IMLI)

Illum l-Hamis, 25 ta' Ottubru 2018

Rikors Numru 35/2016

GasanMamo Insurance Limited (C 3143) kif surrogata fid-drittijiet tal-assigurati taghha Marvic u Allan Mifsud skond il-ligi u skond il-polza ta' assigurazzjoni

vs

Tekno Airconditioning Limited (C 43857)

Il-Qorti,

1. Premessi

1. Rat ir-rikors promotur ippresentat fis-17 ta' Frar 2016 fejn is-socjeta rikorrenti talbet lill-Qorti tikkundanna is-segwenti:

   thallas is-somma ta' tnax-il elf u dsatax-il Euro u hamsa u disghin centeżmu (12,019.95) rappreżentanti danni subiti mill-assigurati tar-rikorrenti li ghalihom gew debitament kompensati b'riżultat ta tixrib fil-proprjetà taghhom li sehh fl-4 ta' Awwissu 2014 meta mar pipe/connection tal-ilma fil-ensuite bathroom tal-konjugi Mifsud fil-fond 'Faith' Triq il-Frančiż, lbragg ghall-liema hsarat huma unikament responsabbli I-intimati billi kienu l-intimati li kienu gew ingaggati biex

jaghmlu xogholijiet ta" plumbing fl-istess fond, liema xogholijiet ma kienux skond l-arti u s-sengha u b'hekk ikkawżat il-hsarat in kwisjtoni.

2. Ra ir-risposta tas-socjeta intimat **Tekno Airconditioning Limited** ippresentata fit-22 ta' Marzu 2016 fejn laqghet ghal dak mitlub billi qajjmet is-segwenti difizi:

   1. Illi t-talba attrici hija infondata fil-fatt u fid-dritt, stante li x-xogholijiet effettwati mill-eccipjenti saru skont l-arti u s-sengha, u kwalunkwe danni lamentati mill-atturi, anke jekk stess jistghu jigi pprovati, sehhew minghajr il-htija jew responsabilita tal-eccipjenti, izda semmai bhala rizultat tal-agir ta' terzi u/jew ta' Alan u Marvic konjugi Mifsud, assigurati tal-istess socjeta attrici.

   2. In linea sussidjarja u assolutament minghajr pregudizzju ghall-premess, l-ammont ta' danni pretiz mis-socjeta' attrici ghandu jigu adegwatment provat stante illi anke ad ictu oculi, dan jirrizulta eccessiv u esagerat.

2. Provi

1. Rat l-affidavit ta'**Allan Mifsud** ippresentat mis-socjeta rikorrenti fis 7 ta' Lulju 2016.

2. Rat l-affidavit tal-**Perit Alfred Grech** flimkien mas-survey report minnu redatt u ppresentat fis 7 ta' Lulju 2016.

3. Semghet ix-xhieda ta' **Gordon Axiaq**, Claims Manager fi hdan is-socjeta rikorrenti, moghtija fit 3 ta' Novembru 2016 u rat id-dokument, ossija rendikont tad-danni mhallsa mis-socjeta rikorrenti. (fol 46)

4. Semghet ix-xhieda ta' Gordon Axiaq moghtija fis 27 ta' April 2017.

5. Semghet ix-xhieda ta' **Saviour Agius** in rappresentanza ta' Agius Decorations Limited moghtija fis 27 ta' April 2017 u rat id-dokumentazzjoni minnu esebiti.

6. Semghet ix-xhieda ta' **Stephen Agius** moghtija fis 27 ta' April 2017.

7. Semghet ix-xhieda ta' **Julian Dingli** in rappresentanza ta' Exclusive Interiors moghtija fis 27 ta' April 2017 u rat id-dokumentazzjoni minnu esebiti.

8. Semghet ix-xhieda ta' **Yan Grixti** in rappresentanza ta' Parquet Warehouse Limited moghtija fid 19 ta' Gunju 2017 u rat id-dokumentazzjoni minnu esebiti.

9. Semghet ix-xhieda ulterjuri ta' Stephen Agius moghtija fid 19 ta' Gunju 2017 u rat id-dokumentazzjoni minnu esebiti.

10. Rat illi fit 12 ta' Ottubru 2017 is-socjeta rikorrenti ddikjarat illi ma kellhiex aktar provi x'tippresenta.

11. Semghet ix-xhieda ta' **Martin Galea** in rappresentanza ta' Joinwell Limited moghtija fl 14 ta' Dicembru 2017.

12. Semghet ix-xhieda in kontro ezami ta' Allan Mifsud moghtija fl 14 ta' Dicembru 2017 u rat id-dokumentazzjoni minnu esebiti.

13. Semghet ix-xhieda ta' **Stephanie Vella** in rappresentanza tas-socjeta Joinwell Limited moghtija fit 8 ta' Frar 2018 u rat id-dokumentazzjoni minnha esebiti.

14. Semghet ix-xhieda ulterjuri in kontro ezami ta' Allan Mifsud moghtija fit 8 ta' Frar 2018 u rat id-dokumentazzjoni minnu esebiti.

15. Rat l-affidavit ta' **Christopher sive Chris Debono** in rappresentanza tas-socjeta intimata ippresentat fit 3 ta' Mejju 2018 flimkien mad-dokumenti mieghu annessi.

16. Rat l-affidavit ta' **Mark Debono** in rappresentanza tas-socjeta intimata ippresentat fit 3 ta' Mejju 2018 flimkien mad-dokumenti mieghu annessi.

17. Semghet ix-xhieda in kontro ezami ta' Mark Debono moghtija fis 17 ta' Mejju 2018.

18. Semghet ix-xhieda in kontro ezami ta' Chris Debono moghtija fis 17 ta' Mejju 2018.

19. Rat illi fis 17 ta' Mejju 2018 il-partijiet qabblu illi ma kienx hemm aktar provi x'jippresnetaw u l-kawza setghet tithalla ghas-sottomissjoniejt fianli bil-mitkub.

20. Rat is-sottomissjonijet tas-socjeta rikorrenti ippresentati fil 31 ta' Lulju 2018.

21. Rat is-sottomissjonijet tas-socjeta intimata ippresentati fl-4 ta' Ottubru 2018.

22. Rat illi fl-4 ta' Ottubru 2018 il-kawza giet differita ghas-sentenza.

3. Konstatazzjonijiet fattwali.

1. Jirrizulta, mill-provi presentati, illi s-socjeta rikorrenti kellha polza tal-assikurazzjoni mahruga a favur ta' Allan u Marvic Mifsud ghad-dar ta' l-istess konjugi Mifsud gewwa 'Faith', Triq il-Franciz, Ibragg.

2. Jirrizulta illi l-konjugi Allan Mifsud kienu bnew id-dar taghhom u kienu qabbdu lis-socjeta intimata Tekno Airconditioning Limited sabiex taghmel ix-xogholijiet kollha ta' dawl u ilma fid-dar il-gdida taghhom, liema xogholijiet tlestew f'Settembru 2013.

3. Jirrizulta illi l-konjugi Mifsud dahhlu jghixu fid-dar f'Novembru 2013 u ma kellhom ebda problema fid dar sakemm inqalghet problema serja fl-4 ta' Awissu 2014.

4. Jirrizulta, di fatti, illi fl-4 ta' Awissu 2014, Allan Mifsud, meta dahal d-dar tieghu ghal habta tal-hdax ta' filghodu, sab id-dar kollha meghrqa fl-ilma. Huwa tela fuq u ra illi l-ilma kien hiereg mis-suffitt tal-bathroom tal-bathroom ensuite, liema ilma hareg b'volum kbir peress illi l-pompa tal-ilma kienet qieghda tahdem u ttella ilma mill-bir.

5. Jirrizulta illi, wara li rnexxilu jwaqqaf l-ilma hiereg, irrizulta illi pipe tal-ilma illi kien ghaddejj minn gos-suffit tad-dar u li minnu kien jghaddi l-ilma jahraq, kif inqala mill-

fittings tieghu, bir-rizultat illi l-ilma hareg u xarrab kollox u sahansitra baqa' niezel sas-sular ta' isfel.

6. Jirrizulta illi l-ghada acceda fuq il-post l-Perit tas-socjeta rikorrenti assikuratrici, l-Perit Alfred Grech illi ghamel is-segwenti osservazzjonijet: (fol 12)

> ***Description***
>
> *A heavy water leak ensured when a pipe feeding the en-suite at first floor came out of a socket. Since water was on a pressure pump, large quantities of water escaped, causing damage to a number of room at first floor and a living room at ground floor.*
>
> ***Damages***
>
> *In fact damage was done to gypsum wall and ceiling panelling at ground floor. At first floor damage was done to a number of walls in the stairwell and the main bedroom, the gypsum ceiling of the bathroom en-suite and a timber parquet floor.*
>
> *Damage was also done to the floor of the said bathroom en-suite were a number of tiles as reported by the insured have become loose This is probably due to the water penetrating beneath the floor tiles into the underlay material causing it to be soaked and loose adhesion to the floor tiles.*
>
> *Damage was also noted on the wall paper of the back wall to the bedroom.*
>
> *Damage was also caused to the bottom plinth of two side commodes and a chest of drawers.*

7. Jirrizulta illi l-istess Perit Grech wasal ghal stima ta' hsarat fl-ammont ta' €14,632 – fol 13.

8. Jirrizulta illi fil 5 ta' Jannar 2015 (erronjament indikat bhala 2014 fis-Subrogation Form [fol 34]) is-socjeta rikorrenti hallset lill-Allan Mifsud is-somma ta' €12,019.95, u dana wara illi evalwat il-claim maghmulha lilha minn Mifsud, illi kienet tammonta ghal €16,324.41, u riducietha ghal €12,054.95 u naqqset minnha l-Excess tal-klijent fl-ammont ta' €35. – dana jidher dokumentat fil-prospett pprenetat mis-socjeta rikorrenti a fol 46 tal-process.

9. Jidher illi s-socjeta intimata qieghda tikkontesta kemm ir-responsabbilta' tal-akkadut kif ukoll il-kwantum mitlub, stante illi tishaq illi l-hsarat kienu rizultat tal-fatt illi ma giex installat 'expansion tank' mas-Solar Water Heater filwaqt illi kkontestaw illi l-hsarat pretizi jidhru ferm akbar minn dawk illi setghu gew sofferti.

4. Konsiderazzjonijiet

1. Jirrizulta mhux ikkontestat illi l-hsarat illi soffrew il-konjugi Mifsud fid-dar taghhom kien rizultat ta' difett fis-sistema tal-ilma installata mis-socjeta intimata, fejn pipes nstallati minnha fis-suffit ta' kamra tal-banju fis-sular ta' fuq, inqalghu mill-fittings taghhom, bir-

rizultat illi hareg hafna ilma u gharraq kull fejn seta jgharraq sakemm intebah bil-problema Allan Mifsud illi kien dahal id-dar.

2. Jirrizulta illi d-danni rikjesti huma lkoll danni illi attwalment gew ikkawzati lill-konjugi Mifsud, liema danni gewa accertati u certifikati mill-Perit tas-socjeta rikorrenti ftit sieghat wara illi gara l-akkadut.

3. Jirrizulta illi l-quantum tad-danni eventwalment imhallsin mis-socjeta rikorrenti huma anqas minn dawk iccertifikati mill-Perit tas-socjeta rikorrenti u ferm anqas minn dawk pretizi mill-konjugi Mifsud, u ghalhekk jidher car illi tali danni huma kemm reali kif ukoll ragjonevoli, u dana anke invista tax-xhieda tal-varji persuni illi kkonfermaw is-servizzi minnhom moghti lill-konjugi Mifsud sabiex jirrangaw il-hsarat minnhom sofferti.

4. Jirrizulta illi l-konjugi Mifsud kellhom kull dritt illi jippretendu illi s-sistema installata mis-socjeta intimata kienet sistema efficjenti u li ma tikkawza ebda problema, u ghalhekk ma hemm ebda raguni ghaliex s-socjeta rikorrenti, kif surrogata fid-drittijiet tal-konjugi Mifsud, ma ghandhiex iddur fuq is-socjeta intimata ghal risarciment tad-danni.

5. Jirrizulta illi kien jispetta lis-socjeta intimata tinstalla sistemi ta’ sigurta’ fis-sistema tal-ilma sabiex jigi evitat pressjoni zejda illi setghet twassal ghall-incident bhalma gara fil-kaz odjern, u ma hijiex skuzanti illi gie installat solar heater minn terzi u tali installazzjoni saret hazina – xoghol tas-sena u l-arti jirrikjedi illi jigu kkreati sistema ta’ emergenza sabiex jipprovdu ghal tali eventwalita’, liema sistemi iridu jkunu mahsuba u intallati mill-persuni illi originalment ddisinjaw is-sistema fid-dar, ossija is-socjeta intimata.

6. Il-Qorti ma ghandha ebda dubju illi s-socjeta intimata kienet taf ben tajjeb illi l-konjugi Mifsud kienu ser jinstallaw sistema ta’ solar heating fir-residenza taghhom, bhalma jsir f’hafna residenzi llum il-gurnata, u ghalhekk kien jinkombi fuq is-socjeta intimata illi tipprovdi sistema illi kienet tinkludi wkoll l-installazjoni ta’ solar panel heating system, anke jekk dan ikun installat minn terzi – ma hijex skuzanti illi dana gie installat minn terzi persuni. Is-socjeta intimata kienet inkarigata tinatalla sistema totalment gdida ta’ dawl u ilma f’dar illi kienet ghadha kemmm tinbenda u n-nuqqas taghha li tinstalla ghal sistemi ta’ emergenza wassal sabiex jinqala pipe minn fitting illi kien gewwa suffit u kkawza hsarat konsiderevoli, liema hsarat setghu gew facilment evitati kienu s-socjeta intimata ghamlet ix-xoghol taghha skond is-sengha u l-arti.

5. Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi rat is-sottomissjonijiet ta’ l-abbli difensuri taz-zewgt partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha tas-socjeta intimata,

Tiddikjara lis-socjeta intimat Tekno Airconditining Limited unikament responsabbli ghall-hsarat illi sehhew fil-fond 'Faith', triq il-Franciz, Ibragg, propjeta ta' Allan u Marvic Mifsud u assikurata mas-socjeta rikorrenti GasanMamo Insurance Limited,

Tillikwida d-danni hekk sofferti mill-konjugi Allan u Marvic Mifsud u sussegwentement imhallsa mis-socjeta rikorrenti GasanMamo Insurance Limited lill Allan u Marvic Mifsud fis-somma ta' **tnax-il elf u dsatax-il Euro u hamsa u disghin centeżmu (€12,019.95)**

Tikkundanna lis-socjeta intimata Tekno Airconditioning Limited thallas lis-socjeta rikorrenti GasanMamo Insurance LImited is-somma ta' **tnax-il elf u dsatax-il Euro u hamsa u disghin centeżmu (€12,019.95).**

Spejjez kollha tal-proceduri odjerni u **Imghax** kalkolabbli mid-data tal-pprezentata tal-avviz, kif rikjest, sad-data tal-pagament effettiv ikun a kariku tas-socjeta intimata.

Magistrat Francesco Depasquale

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