



MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta ta' l-24 ta' Ottubru, 2005

Talba Numru. 716/2004

**Henry Borg I.D. 926245M ghan-nom u in
rapprezentanza ta' The Mosta Technopark
Tenants' Association**

Vs

Di Limited – C 20906

It-Tribunal

Ra l-Avviz li fih l-attur nomine talab il-hlas ta' elf erba' mija u disgha u tmenin lira Maltin u hamsa u ghoxrin centezmu (Lm1,489.25c) rapprezentanti *service charge* fuq area F25 għall-perjodu mill-1 ta' Jannar, 2004 sal-31 ta' Marzu, 2004 liema *service charge* tithallas bil-quddiem.

Ra r-Risposta fejn is-socjeta' konvenuta:

1. Fl-ewwel lok qalet li diga' hallset l-ammont kollu dovut minnha lill-attur nomine *service charges* fuq area F25.

Kopja Informali ta' Sentenza

2. Illi fit-tieni lok qalet li s-somma mhallsa lill-attur nomine hija nfondata fil-fatt u fid-dritt.

3. Illi fit-tielet lok qalet li kienet hallset l-ispejjez relatati ghall-Mandat ta' Sekwestru Kawtelatorju li gie rrevokat permezz ta' Kontro-Mandat mahrug skond il-ligi.

Ra d-dokumenti esebiti.

Ra r-Rikors ta' l-attur nomine fejn ghamel korrezzjoni tan-Nota pprezentata mill-attur fl-10 ta' Mejju, 2004 illi minflok sitt mija u tmienja u tletin lira Maltin u hamsa u ghoxrin centezmu (Lm638.25c) ghandha tigi elf u tlieta u sittin lira Maltin u hamsa u sebghin centezmu (Lm1,063.75c).

Ra l-Affidavit ta' Henry Borg.

Ra x-xhieda ta' David Muscat, projects manager mas-socjeta' konvenuta, fejn jghid illi ma kienx mar il-laqgha tal-10 ta' Dicembru, 2003. Jghid ukoll illi s-socjeta' konvenuta m'accettatx is-*service charges* kif riveduti fl-imsemmija laqgha.

Ikkunsidra

Illi s-socjeta' konvenuta tikri spazju fit-Technopark. Illi skond l-attur saret laqgha bejn il-membri kollha u ghal din il-laqgha ntbaghtu l-ittri lill-membri kollha. F'din il-laqgha gie deciz li s-*service charge* jizdied minn lira Maltija (Lm1) kull metru kwadru ghal tlett liri Maltin u hamsin centezmu (Lm3.50c) kull metru kwadru b'effett mill-31 ta' Dicembru, 2003. Intbaghtu l-invoices izda s-socjeta' konvenuta naqset li thallas skond l-istess invoice.

Is-socjeta' konvenuta hija membru tal-Mosta Technopark Tenant's Association. Illi skond l-istatut ta' l-istess:

“The decision to alter the fees shall be agreed by at least two thirds of the members present at an Annual General Meeting which has the subject of the Revision of Fees specifically listed as an item on the agenda, and shall in all cases be subject to the terms of individual contracts

with the MDC, provided that even that the MDC does not object to any increase in fees, such increases having been duly decided upon shall be deemed to be due in terms of the individual contracts.”

Illi skond l-Affidavit ta' Henry Borg il-proposta sabiex jizdiedu l-fees giet milqugha unanimament mill-membri kollha prezenti.

Illi l-laqgha ma kienetx Annual General Meeting izda kienet Laqgha Generali Straordinarja. Il-membri gew infurmati b'din il-laqgha.

Illi fil-kawza fl-istess ismijiet deciza mit-Tribunal kif differentement presjedut deciza fis-16 ta' Gunju, 2005 (719/04JB) gie ddikjarat li s-socjeta' konvenuta ma setghetx tikkontesta l-ammont per via di eccezzione izda kellha tiehu passi hi kontra dak li gie deciz.

Illi fil-kawza fl-istess ismijiet (718/04AJD) deciza fit-23 ta' Settembru, 2005 mit-Tribunal kif differentement presjedut gie ddikjarat li:

“Il-kontestazzjoni (tas-socjeta' konvenuta) hija ghal kollox infondata ghaliex jekk wiehed jara l-Artikolu 8.2 tal-Memorandum isib li dak kollu li huwa applikabbli ghall-Annual General Meetings huwa wkoll applikabbli ghall-Extraordinary General Meetings. Inltre gie ppruvat sodisfacentement li s-socjeta' konvenuta kienet giet notifikata bil-laqgha li kellha ssir, li f'din il-laqgha kien hemm il-quorum rikjest mill-Memorandum u li d-decizjoni li jizdiedu *s-service charges* ghaddiet b'vot unanimu tal-membri kollha prezenti ghall-Extraordinary General Meeting u ghalhekk kienet valida u ttiehdet ai termini tal-Memorandum. Inltre rrizulta wkoll li z-zieda saret entro l-parametri tal-Letter of Intent li kull tenant tal-Mosta Technopark ghandu mal-Malta Development Corporation, li hija s-sid tal-Mosta Technopark u li nkargiat lill-attur nomine sabiex jigbor is-*service charges* ghan-nom taghha.”

Kopja Informali ta' Sentenza

Illi skond il-Letter of Intent a fol 17 tal-process hemm *annual service charge* ta' tlett liri Maltin u hamsin centezmu (Lm3.50c) per square metre. Illi bhala fatt is-socjeta' konvenuta kienet qieghda thallas inqas minn dan l-ammont.

Illi s-socjeta' konvenuta qieghda tistrieħ fuq l-Artikolu 4.1.3 tal-Memorandum, illi dan l-Artikolu jipprovdi li:

“Decisions to alter fees...shall in all cases be subject to the terms of individual contracts with the MDC.”

Illi s-socjeta' konvenuta ma caħditx li skond il-fteħim tagħha ma' l-MDC is-*service charge* kellha tkun tlett liri Maltin u hamsin centezmu (Lm3.50c) per square metre. Il-fatt li qabel kienet thallas inqas ma jfissirx li l-MDC irrinunzjat għad-dritt li tippretendi tlett liri Maltin u hamsin centezmu (Lm3.50c) per square metre.

Fid-dawl ta' dawn il-fatti t-Tribunal jichad ir-Risposta tas-socjeta' konvenuta, jilqa' t-talba ta' l-attur nomine u jikkundanna lis-socjeta' konvenuta biex thallas elf u tlieta u sittin lira Maltin u hamsa u sebghin centezmu (Lm1,063.75c) lill-attur nomine bl-interessi mit-30 ta' Marzu, 2004 kontra s-socjeta' konvenuta.

< Sentenza Finali >

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