IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum il-10 ta' Dicembru, 2024

Rikors numru: BCT/53/2024/

Membri:

Avukat Christopher L. Vella L.L.B., Dip. Not., LL.D.(Melit.)

Perit Samuel Formosa B.E.&A.(Hons), M.Sc. Arch.(Lond), M.Sc.(Env.Pln.& Mgt.), A.&C.E.

Inġ. Johan A. Psaila B. Eng. (Hons.), Pg. Dipl. (Brunel)

Salvu Abela

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal

Ra r-rikors tal-appell ippreżentat mill-Perit Jason Zammit għan-nom ta' Salvu Abela fejn permezz tiegħu huwa ppremetta u talab is-segwenti:

> *' I, the undersigned, on behalf of my client, Mr. Saviour Abela (0235963M), would like to file an appeal on the penalty imposed on my client.*
>
> *A fine of €1000 was imposed on my client since the client started works before clearance was issued from BCA. May I remind that all the documents requested by the BCA were submitted, from my end, immediately after their request. Hereunder is a timeline of submissions and requests up to the date when the enforcement notice was issued:*
>
> *- 18th May 2023 – Commencement notice and declaration not affecting third parties was submitted.*

- *25th May 2023 – Not affecting third parties was not accepted (even though this property abuts another client's property on the right hand side which was still not excavated at that time and covered by permit PA 303/21 and surrounded by other vacant sites (on the left and back to back with this property). However in this letter, it was stated that since neighbouring properties had planning permits, these will be affected by our development.*

- *15th June 2023 – Architect's Letter - I stated that the properties back to back with my client's property, although there was an application, the Planning Permit was not yet issued from the Planning Authority, and the site on the left was vacant with no planning applications whatsoever.*

- *21st June 2023 – BCA Communication Notice – Stating that there are permits on adjacent properties (which was not true at that time).*

- *24th July 2024 – After communication with BCA personnel – it was decided to submit a block plan. Architect's Letter – declaration that no neighbouring permits were yet issued. The only neighbouring property abuts the adjacent property which belongs to the client as well (approved PA 303/21) and which was inspected, and all the documents were already submitted and a BCA clearance was issued. A block plan was submitted for ease of reference.*

- *8th August 2023 – BCA Communication Office – client was asked to amend the previous insurance and bank guarantees on PA 303/21 to reflect PA 3543/22. And to confirm that method statement still applies.*

- *10th August 2023 – An email was sent to the insurance company to provide the requested documents from BCA.*

- *27th October 2023 – I had the insurance in hand and related documents were submitted.*

- *16th November 2023 – Amended bank guarantees were in hand and were immediately submitted.*

- *16th November 2023 – BCA Communication Notice – Architect was asked to submit the new commencement notice/Site Management Responsibility Form.*

- *17th November 2023 – Site Management Responsibility Form was submitted.*

- *20th November 2023 – BCA Communication Notice – Architect was asked to resubmit the method statements of PA 303/21 and declaration and block plan showing affected zones and third party properties which will be affected. (I had already stated before that no third party properties will be affected…).*

- *12th December 2023 – All documents were submitted again, including responsibility forms.*

- *14th December 2023 – BCA email, from building_permits@bca.org.mt, requesting Geological Investigation (again, our site does not touch third party development sites).*

- *14th December 2023 – Architect submitted the geological investigation which was already submitted on PA 303/21.*

No further communication from BCA was received. I honestly thought that since we have submitted all the documents required (even though it was clear that this development does not affect third parties), the Regulation 26 was accepted (there was a time when Regulation 26 was accepted, and architect/developer does not receive any correspondence). Works continued as there was an already approved permit PA 303/21, for which a BCA clearance was already issued.

Another 8 months have passed since my last submissions and the insurance was about to expire, and a renewal has been done.

- *9th August 2024 – Renewal of Insurance was submitted.*

- *14th August 2024 – BCA Communication Notice – States that no commencement works may take effect before BCA provides clearance in writing. Also, BCA asked for condition reports of third party properties (this issue was already explained, however it was asked again), affected zones and so on. They also requested block plan with affected zones (this was already submitted a year before – although this site does not abut third party developments…).*

- *20th August 2024 – Architect's letter – stating that it was already declared that no third parties will be affected.*

- *20th August 2024 – Communication with Ms. Laken Azzopardi, whereby she asked for photos of adjacent properties and another block plan with the relevant permits, if any. In the meantime, the site back to back with my client's property was excavated and piles were being excavated and cast. Just a reminder that this particular site was at planning stage with no permit when we asked for the clearance from BCA for our works.*

- *21st August 2024 – Architect submitted another block plan with photos, as requested by Ms. Azzopardi.*

- *22nd August 2024 – BCA Communication Notice (Ms. Laken Azzopardi) – We were asked to submit proof from the insurers that workers on site back to back with our development, are duly covered for third party injury/death. When I spoke*

with the insurance company, they said that this is already confirmed in the previously submitted documentation.

- *22nd August 2024 – Declaration was submitted by the Architect.*

- *22nd August 2024 – BCA Communication Notice – Same letter received in same day but from Ms. Elise Aquilina.*

- *22nd August 2024 – I asked insurance company again to forward me another detailed covering letter. This was received that day and I submitted it immediately. I just assume that this lengthy and repetitive procedure was done on purpose for the enforcement notice to be issued before the clearance is issued by the BCA.*

- *22nd August 2024 – ENFORCEMENT NOTICE WAS ISSUED – Fine of €1000 was imposed.*

- *23rd August 2024 – Fine was paid and receipt was uploaded, as per BCA request.*

- *26th August 2024 – BCA Communication Notice – Ms. Laken Azzopardi asked again for same insurance declaration, specifically mentioning the site back to back with my client's property.*

- *26th August 2024 – Architect submitted this declaration.*

- *26th August 2024 – BCA Communication Notice – BCA noticed that declaration submitted on 22nd August 2024 stated the wrong PA reference number.*

- *26th August 2024 – Architect submitted amended insurance declaration.*

- *26th August 2024 – Clearance was issued!*

It is clear that this lengthy and repetitive procedure was imposed on my client on a development site that abuts his own property on which BCA clearance was issued and other third party vacant sites. I still do not know why Regulation Not Affecting Third Parties was not accepted in this case. It is also clear that we submitted everything BCA had asked and it was an oversight from BCA not to issue clearance of works. I do not think it is fair on my client to pay a fine of €1000 just because BCA forgot to send any correspondence/clearance.

I hope my arguments are favourably considered and the imposed fine is withdrawn.'

Ra r-risposta tal-Awtorita' li permezz tagħha wieġbet u eċċepiet is-segwenti:

1. *Illi l-Awtorità appellata qegħda umilment tissottometti li kwalunkwe deċiżjoni meħuda kienet in konformita' ma dak rikjest mil-liġi, u kwindi korretta f'kull aspett;*

2. *Illi l-liġi hija tassattiva u tali zvilupp jirrikjedi "clearance" mil-Awtorita' liema ma kienx ottenut qabel ma sar tali zvilupp;*

3. *Għaldaqstant fuq dak suindikat, l-Awtorita' appellata qiegħda umilment titlob lil dan l-Onor. Tribunal sabiex tiċħad l-appell odjern;*

4. *Salv eċċezzjonijiet ulterjuri.*

Ra l-atti u d-dokumenti kollha.

Ra l-verbali tas-seduti kollha li seħħew quddiem it-Tribunal.

Ra d-deposizzjonijiet tax-xhieda li tressqu quddiem it-Tribunal.

Ra li l-partijiet iddikjaraw l-istadju tal-provi tagħhom magħluq.

Semgħa it-trattazzjonijiet finali tal-partijiet.

Ra li l-kawża tħalliet għal-llum għas-sentenza.

Ikkunsidra:

Dan l-appell jittratta avviż ta' infurzar maħruġ mill-Awtorita' intimata nhar it-22 ta' Awwissu, 2024, li permezz tiegħu ġie ordnat li jieqfu kwalunkwe xogħlijiet ġewwa s-sit li jinstab ġewwa 9, 11, 13 u 16, Triq il-Kastellan, Żejtun u kif ukoll imposizzjoni ta' penali amministrattiva fl-ammont ta' elf euro (€1000). Il-bażi tal-avviż de quo hija li skont l-istess Awtorita' fid-9 ta' Awwissu, 2024 kif ukoll fil-granet u fix-xhur ta' qabel, saru xogħlijiet ta' skavar u kostruzzjoni mingħajr ma kienet sottometta d-dokumentazzjoni kollha meħtieġa u allura mingħajr ma kien hemm l-approvazzjoni bil-miktub tal-istess Awtorita' sabiex it-tali xogħlijiet ikunu jistgħu isiru.

It-Tribunal ħa in konsiderazzjoni d-dokumentazzjoni kollha li giet sottomessa, inkluż *timeline* dettaljata preżentata mill-Perit Jason Zammit, fejn joħroġ b'mod ċar li kull darba li l-Awtorita' talbitu jissottometti xi informazzjoni, il-Perit dejjem irrisponda lura bl-informazzjoni mitluba. It-Tribunal jinnota li minkejja dan, l-awtorizzazzjoni meħtieġa sabiex jinbdew ix-xogħlijiet baqgħet ma nħarġitx u allura ebda xogħlijiet ma setgħu isiru. Dan joħroġ ċar minn sub-Regolament 7(12) fejn jagħmilha ċara dwar l-obbligu li jrid jkun hemm l-approvazzjoni ta' l-Awtorita' qabel kwalunkwe xogholijiet ta' kostruzzjoni jistghu jibdew:

> *(12) Il-bidu ta' kwalunkwe xogħol ta' skavar, demolizzjoni jew kostruzzjoni jistgħu jidħlu fis-seħħ biss wara li l-Awtorità tal-Bini u l-Kostruzzjoni tagħti approvazzjoni bil-miktub.*

It-Tribunal jinnota li wara li nħareġ l-avviż odjern u wara li ġie sottomess dokument dwar l-assigurazzjoni, din l-approvazzjoni da parti tal-Awtorita' intimata ingħatat.

Xehed is-Sur Kevin Clews fejn ikkonferma li approvazzjoni bil-miktub mill-Awtorita' biex jsiru ix-xogholijiet in kwistjoni ma kienx hemm. Dan ma huwiex ikkontestat mill-appellant innifsu. L-ilment tal-appellant huwa li hu qatt ma rċieva korrispondenza li titlob dokumentazzjoni ulterjuri u allura kellu l-impressjoni li kien ssottometta kollox u seta' jibda bix-xogħlijiet.

It-Tribunal iqis li l-liġi hija ċara li ebda xogħlijiet ta' skavar, demolizzjoni jew kostruzzjoni ma jistgħu jibdew qabel ma jkun hemm l-approvazzjoni tal-Awtorita' intimata. L-appellant naqas li jottjeni dan u allura l-Awtorita' ma kellha ebda għażla oħra għajr li toħroġ l-avviż odjern. Minkejja dan, it-Tribunal jinnota li tul il-proċess l-appellant mexa mal-istruzzjonijiet li kien qed jingħata u preżenta dak li ġie mitlub. Jirriżulta ukoll li l-proċess twal b'mod konsiderevoli u li l-appellant tħalla fl-għama dwar l-iproċessar tad-dokumenti tiegħu. Sintendi dan bl-ebda mod ma jiskolpa lill-appellant mill-obbligu tiegħu li jistenna din l-approvazzjoni qabel jibda kwalunkwe xogħlijiet. Kwalunkwe ħaġa bil-kontra ikollha sfumatura tar-reat li fil-kamp kriminali huwa magħruf bħala *ragion fattasi* u ċioe li tieħu l-liġi b'idejk. Minkejja dan, it-Tribunal, meħud dan kollu in konsiderazzjoni iqis li penali amministrattiva fl-ammont ta' ħames mitt euro (€500) hija aktar ġustifikata u riflessa taċ-ċirkostanzi odjerni u għaldaqstant ser jgħaddi sabiex inaqqas il-multa għal dan l-ammont.

Decide

Dan it-Tribunal, għar-raġunijiet fuq imsemmija qiegħed jilqa' l-appell in parte u filwaqt li jsib lill-appellant responsabbli li naqas milli jottjeni l-approvazzjoni tal-Awtorita' intimata qabel beda x-xogħlijiet fis-sit 9, 11, 13 u 15 Triq il-Kastellan, Żejtun, qiegħed inaqqas il-penali amministrattiva għal ħames mitt euro (€500).

********** VERA KOPJA TAL-ORIGINAL**********

Dr Christopher L Vella	**Perit Samuel Formosa**	**Inġ. Johan A. Psaila**
Chairperson	**Membru**	**Membru**