IT-TRIBUNAL TAL-BINI U L-KOSTRUZZJONI

Illum l-14 ta' Jannar, 2025

Rikors numru: 52/2024/CV

Simon Felice

vs

Awtorita' tal-Bini u l-Kostruzzjoni

It-Tribunal,

Ra r-rikors tal-appell ippreżentat mill-appellant fejn huwa premetta u talab is-segwenti:

> *I, Perit Charles Azzopardi, representing the applicant, Mr. Simon Felice, hereby submit an appeal regarding the administrative fine referenced as BCA/P06/0132/2024 [attached]. This fine pertains to the development at Holy Mary, 41, 42, 43, Triq San Guzepp, Gwardamangia, Pieta, Malta, under permits PA/326/18 and PA/7463/20.*
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> *The fine was issued due to a lapse in insurance coverage for the works associated with permit PA/326/18 following the clearance to commence construction. While we acknowledge the absence of insurance during the specified period, we respectfully request the board to consider the exceptional circumstances surrounding this development when reviewing this matter. A summary of these circumstances has already been submitted in document minute 278A [attached].*
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> *The project was originally managed by Mr. Alex Mercieca, who is currently facing multiple fraud charges related to his involvement in various developments which ultimately were partially built or not built at all.*
>
> *Despite listing himself as the Site Manager in accordance with Legal Notice 295 of 2007, Mr. Mercieca's conduct led to significant mismanagement, including the failure to renew the project's insurance. As a result of his actions, the project underwent multiple changes in representation, with each representative ultimately withdrawing due to Mr. Mercieca's malpractice and unfulfilled commitments.*
> *The future apartment owners, most of whom had purchased their properties off-plan before the commencement of works, took collective action to remove Mr. Mercieca and assume control of the development themselves. They appointed Mr. Simon Felice to represent their interests as the developer. Upon taking over the project, I was appointed*

to replace the previous Perit and immediately identified several deficiencies within the BCA file, including lapses in insurance coverage.

During the periods when insurance was not in place, no construction activities were conducted on-site as the project was stalled due to legal and ownership disputes. When works resumed in May 2023, insurance coverage was promptly reinstated, only to lapse again due to financial difficulties in November 2023. With Mr. Mercieca no longer involved, insurance coverage was reinstated in June 2024, prior to the resumption of construction, and has remained in effect following clearance from the BCA.

Given these circumstances, we respectfully request that the BCA reconsider the imposed fine, as the current owners have already faced numerous challenges beyond their control, primarily due to the fraudulent actions of Mr. Mercieca. It is important to note that at no time were works conducted without active insurance coverage, and there have been no claims or issues raised by any third parties since the project's inception. Consequently, this fine does not serve as compensation for any harm suffered by others.

In light of the above, we urge the BCA to review its decision and either dismiss or reduce the fine accordingly.

The undersigned and the applicant remain at your disposal should you require any further clarification and/or a meeting.

Thank you for your attention to this matter.

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 mingħajr preġudizzju għal dak sottomess preliminarjament, il-liġi hija tassattiva u tali ndipendentament jekk kienx qieghed jsehh zvilupp o meno, tali kien sit ta' kostruzzjoni liema jinnecessita polza tal-assigurazzjoni f'kull hin;

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 kollha 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 għall-llum għas-sentenza.

Ikkunsidra:

Dan l-appell jitratta penali amministrattiva maħruġa fil-konfront tal-appellant bħala l-applikant tal-proġett fis-sit ta' kostruzzjoni bl-indirizz Holy Mary, 41, 42, 43, Triq San Ġużepp, Gwardamangia, Pieta', Malta. Il-bażi tal-avviż hija "*Illi nqast li tissottometti lill-Awtorita' tal-Bini u l-Kostruzzjoni, kopertura ta' assigurazzjoni flimkien ma' ittra mill-assiguratur, kif ukoll inqast li tassigura li x-xogħlijiet ta' kostruzzjoni li jaqgħu taħt id-dispożizzjonijiet ta' dawn ir-regolamenti ikunu assigurati b'mod adatt u adegwat fil-perjodu ta' bejn id-09 ta' Lulju 2021 sat-08 ta' Mejju 2023 u 09 ta' Novembru 2023 sad-19 ta' Gunju 2024. skont ir-Regolament (6) subregolamenti (1) u (2) tal-Legislazzjoni Sussidjarja 623.06.*"

It-Tribunal jinnota li l-appellant ma jikkontestax il-fatti kif preżentati u lanqas ma jikkontesta li fil-fatt il-proġett ma kienx munit b'polza ta' assikurazzjoni tul id-dati msemmija. Id-difiża li jressaq l-appellant huwa li l-proġett in kwistjoni kien mgħobbi b'numru ta' problemi li ġew ikkawżati mhux mill-appellant iżda minn ċertu Alex Mercieca li kellu diversi nuqqasijiet u saħansitra spiċċa b'akkużi ta' misapropjazzjoni u frodi. L-appellant jispjega li hu ħa l-irwol ta' manġier tas-sit wara Mercieca propju sabiex jassigura li l-proġett jitkompla peress li hu stess kellu appartament fl-istess blokka. Hu jgħid ukoll li s-sidien kollha tal-appartament fis-sit in kwistjoni ħarġu bejniethom numru ta' flejjes sabiex jikkonkludu l-proġett minflok Mercieca u li l-penali amministrattiva in kwistjoni ser tkun ta' piż akbar minn dak li diġa għandhom.

It-Tribunal jinnota li in vista' tax-xhieda mogħtija, ebda provi ma ġew preżentati.

Ma huwiex ikkontestat li l-proġett in kwistjoni kellu jkun munit b'polza ta' assigurazzjoni u li l-proġett kien għal numru ta' xhur mingħajr din il-polza. Regolament 6 tal-Avviż Legali 136 tal-2019 jagħmilha ċara li dan l-obbligu jibqa' fuq l-iżviluppatur u li għaldaqstant in-nuqqas ta' polza ta' assigurazzjoni hija b' leżjoni ċara tal-istess Regolament.

It-Tribunal jifhem u jissimpatizza maċ-ċirkostanzi eċċezzjonali li nstabu fihom diversi sidien ta' appartamenti fil-proġett in kwistjoni, inkluż l-appellant innifsu li assuma r-responsabbilita' li jagħlaq il-proġett u li flimkien ma' diversi sidien oħrajn jagħmel tajeb għal ċertu spejjeż li daħħalhom fihom is-sid preċedenti. Fid-dawl ta' dawn iċ-ċirkostanzi, filwaqt li t-Tribunal ma jista' bl-ebda mod jippermetti li nuqqasijiet ta' din in-natura jingħataw il-barka tiegħu u allura ser jgħaddi sabiex jikkonferma li l-appellant huwa responsabbli għan-nuqqasijiet indikati fl-avviż tat-3 ta' Settembru, 2024, ser jgħaddi sabiex inaqqas il-penali amministrattiva għal mitejn u ħamsin euro (€250).

Decide

Għaldaqstant għar-raġunijiet imsemmija hawn fuq, it-Tribunal qiegħed filwaqt li jsib lill-appellant responsabbli għan-nuqqas indikat fl-avviż ta' nhar it-3 ta' Settembru, 2024, qiegħed inaqqas il-penali amministrattiva għal mitejn u ħamsin euro (€250).

********** VERA KOPJA TAL-ORIĠINAL **********

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