

Fil-Bord ta' l-Appell dwar it-Turiżmu

Fl-atti ta' l-Appell Numru 02/21

Fl-ismijiet:

**Philip Wismayer bħala
rappreżentant tal-kumpanija La
Mode Ltd.**

Vs


L-Awtorità tat-Turiżmu ta' Malta

Illum, 1 ta' Gunju 2022

Il-Bord:

Ra l-appell tal-appellant, Philip Wismayer bħala rappreżentant tal-kumpanija La Mode Ltd., rigward id-deċiżjoni tal-Awtorità tat-Turiżmu ta' Malta tad-disgħa (9) ta' Novembru 2021 (ref: HPC/5554), in konnessjoni ma' liċenza għal *Holiday Furnished Premises* tal-fond No.24, Triq San Federiku, Valletta. L-appellant gie infurmat li l-liċenza mhix ser tiġi maħruġa minħabba nuqqasijiet li huma:

- "1. No living room/area;*
- 2. no dressing table/mirror/chair/armchair;*
- 3. no bedside tables;*
- 4. no dining/living room area;*
- 5. no proper dining table;*

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6. no coffee table;

7. no sofa/armchairs.

These shortcomings are mainly due to the very small size of the property, which is less than 27 square metres.

Furthermore, the property is only served by one small window in the bathroom which is not in line with Regulation 2.2.1 that states that there shall be a window/balcony allowing natural light and ventilation into each bedroom.

Given the above, it is being deemed that the property is not in conformity with the applicable regulations.”

Ra r-risposta tal-Awtorita' tat-Turizmu u id-dokumenti eżebiti;

Ra l-provi kollha mressqa mill-partijiet, dokumenti u ritratti pprovduti mill-partijiet;

Sema' ix-xiehda mressqa mill-partijiet;

Ikkunsidra:

Illi fl-appell tiegħu l-appellant jikkontesta d-deċizjoni tal-Awtorita' tat-Turizmu minħabba li l-aggravji huma li “the letter (dated 24th November 2021) informing my client that the decision is to withdraw, cancel or reverse its (ie MTA’s) original decision of approval gives no details nor any reason for the withdrawal of the licence save that their decision resulted from a Lapsus Calami i.e. slip of the pen. In absence of a reasoned decision, my client can only assume that the decision for refusal is based on the following shortcomings (ie MTA) noted in relation with application HPC/5554.

The decision taken by the Malta Tourism Authority is wrong as it is based on incorrect assertions and premises which have led the Authority to take a wrong decision.

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The property in question comprises of a legally existing ground floor tenement in Valletta with an area of 27sqm circa – with a frontage over St. Frederick Street, Valletta comprising of three (3) interconnecting rooms all having an aperture onto the street... Furthermore, the said tenement has a valid compliance certificate (CMP/08267/20)."

Ikkunsidra:

Dan l-appell jirrigwarda rifjut ta' applikazzjoni mill-Awtorita' tat-Turizmu, li fir-risposta taghha qalet "illi r-raġuni għaliex l-applikazzjoni tal-fond 24 ġiet miċħuda hi għab-baži tar-raġunijiet li ġew indikati fl-ittra tad-9 ta' Novembru 2021 li kien errorjament jirreferi għall-Fond 23 flok il-Fond 24;

Illli l-Fond 24 ma jissodisfax ir-rekwiżiti/standards kollha li l-istess fond huwa obligat li jissodisfa sabiex ikun jista' jottjeni liċenza ta' holiday furnished premises u liema rekwiżiti/standards jirżultaw mir-Regolamenti dwar Positijiet għall-Btala (L.S. 409,11 tal-Liġijiet ta' Malta), b'mod partikolari t-Tieni Skeda tal-istess, liema tali nuqqas ta' ħarsien ta' dawn l-istandards minimi jwassal ukoll sabiex l-appellant jekk jingħata liċenza ma jkunx f'posizzjoni li jissodisfa r-Regolament 7 tal-istess Regolamenti dwar Postijiet għall-Btala u konsegwentement ikun ħati ta' reat skont ir-Regolament 9."

Fit-trattazzjoni tal-konsultent ta' l-appellant kkumenta li fir-Regolamenti Dwar Postijiet għal-Btala (L.S. 409.11) mhemmx deskrizzjoni ta' x'inhu *studio apartment*. Ikkumenta ukoll li l-kundizzjonijiet sabiex wieħed jaderixxi mar-rekwiżiti tar-Regolamenti sabiex wieħed jikseb liċenza sabiex jopera fond bħala wieħed li jospita turisti mhumiex ċari. Peress li mhemmx deskrizzjoni ta' x'inhu *studio apartment* wieħed irid jinterpreta dawn ir-Regolamenti b'mod li huma fattibli u funzjonali.

L-appellant spjega li l-fond in kwistjoni huwa ta' 27sqm u *'within those 27sqm you have to include everything: the bedroom, living room area, which it now has.'* Spjega wkoll li skond permess tal-MEPA dan il-fond kien registrat bħala residenza. *"If it was good to live in as a family, then it is just as well and good enough to live in for tourist purposes."*

Fid-deskrizzjoni tal-fond, l-appellant spjega li f'kull kamra hemm tieqa li tagħti għal barra, in kontrarju mill-ittra mibgħuta mill-Awtorita' tat-Turizmu li *'the property is only served with a small*

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window in the bathroom, not in line with regulation 2.2.1'. U dan kif muri fir-ritratti li ssottometta l-appellant fl-appell odjern. L-appellant qal li *'the photograph itself contradicts the Authority's conclusion that there was no adequate ventilation or apertures on to the main road'*.

Fit-trattazzjoni tiegħu, l-appellant qal ukoll hi hu lest sabiex jagħmel aġġustamenti/ameljoramenti neccessarji sabiex jigu in regola ma dak li tixtieq l-Awtorita' sabiex jottjenu din il-liċenza, bħal per eżempju minn flokk sodda normali jbidduha għal *sofa bed*.

L-appellant qal ukoll li kien hemm nuqqas ta' komunikazzjoni da parti ta' l-Awtorita' dwar kif l-appellant seta' jindirizza n-nuqqasijiet tiegħu. *'What I saw was opposition not cooperation as one would normally expect because what they do not understand is this, is that we specialise in Airbnb and we offer a specialised product and we have found a niche and we have documents to support that guests want to come for short visits and want to stay in a premises which is 400 and 500 years old, they are comfortable to sleep there and during the day they are out and about.'*

L-Awtorita' tat-Turiżmu, fit-trattazzjoni tagħha qalet li l-propjeta' *'is extremely small and even though it was used as a residence in the 1960s, as the colleague claims, one has to remember that we are in 2022 where Malta has to compete as a country with other countries to get the best possible tourist to come to our country and that is the direction of the Malta Tourism Authority... it wants quality to rise. Even if it is nicely furnished and everything, it does not mean that properties are considered as high quality property that would satisfy 1. It does not satisfy the minimum standards, 2. It is also small that they are going to present it to today's tourists...'*

Ix-xhud ta' l-Awtorita' tat-Turiżmu, il-Col. David Mifsud, qal li dwar id-daqs tal-fond, *'rightfully so you were saying legally, there is nothing which says what is the minimum or maximum. However, we have to also see the legislation, the spirit of the legislation. We are talking of 409.11... There is no definition of what a studio apartment is. It is true. There is no definition of what a villa is. There is no definition of what a holiday apartment is. But everybody on the street knows what a studio apartment is.. at least a generic idea... I have never come across a property which is a studio flat with no living/dining room area. We are not talking about a room, but about an area. Here we practically have a bed, you wake up, you fall out of the bed and find the wall just one or two feet away... So as a director I said 'Listen if I am going to approve this apartment, I am going to create a precedent'. Why? Because these sort of properties seem to be much coming out.'*

Ix-xhud qal li l-Awtorita' għandha d-diskrezzjoni għall-għotja ta' licenzi, *'discretion within reason – to deem a property if it is suitable or not for the purposes of tourism'*. Għamel referenza għall-

Artiklu 19 tal-Kap. 19, L-Att Dwar Servizzi tal-lvvaġġar u Tat-Turiżmu Għal Malta, fuq il-kondizzjonijiet li taħthom tingħata liċenza:

(c) L- użu tal-post bħala lukanda, guest house, hostel, postijiet għall-vaganzi, stabbiliment li jipprovdi ikel jew dar li tintuża biex jiġi provdut allogġ lit-turisti jkun skont kif mixtieq mill-politika tal-Gvern fiż-żmien tal-konsiderazzjoni tal-applikazzjoni biex tingħata l-liċenza.

Il-partijiet talbu sabiex isir aċċess fuq il-fond in kwistjoni, liema aċċess sar minn dan il-Bord, flimkien mal-partijiet kollha fl-14 ta' Frar 2022.

Fir-trattazzjoni finali tal-partijiet, l-appellant qal li 'naħseb li jien il-post jitkellem aktar aħjar milli noqgħod nitkellem jien u noqgħod nerġa' nagħmel resume ta' kollox għax inkun qed nirripeti.'

Fir-risposta tagħha l-Awtorita' qalet li d-deċizjoni ta' l-Awtorita' 'kienet tajba dakinhar u in fatti sussegwentement meta bdew dawn il-proċeduri saru xi tibdiliet – ħa nagħti eżempju: is-sodda saret sofa bed. So juri li kien hemm nuqqasijiet u d-deċizjoni ta' l-Awtorita' kienet ben motivata u aħna nsostnu l-pozizzjoni tagħna għadha kif inhi għax in vista tal-fond, iċ-ċokon tiegħu huwa limitat, ma jissodisfax l-istandards kollha.'

Konsiderazzjonijiet ta' dan il-Bord:

L-applikazzjoni għal-liċenza ta' l-appellant, La Mode Co Ltd., giet rifjutata mill-Awtorita' tat-Turiżmu abbazi ta' numru ta' nuqqasijiet, kif ukoll minħabba ċ-ċokon tal-fond, 27sqm. Fix-xhieda ta' l-Awtorita' ħareġ il-punt li jekk fond ta' dan id-daqs jingħata liċenza għall-akkomodazzjoni turistika ser jinholoq precedent u l-kwalita' tonqos, li jmur kontra l-politika odjerna.

Waqf l-aċċess fuq il-post li sar fl-14 ta' Frar 2022, dan il-bord innota li allavolja dan il-fond hu zgħir kien mghammar b'standard għoli u kellu l-amenitajiet kollha li wieħed ikollu bżonn għall-vaganza ta' kwalita' tajba. Dan il-bord innota wkoll kif l-appellant mill-ewwel seduta sal-gurnata ta' l-aċċess biddel xi għamara fil-post sabiex ikun iktar komdu, per eżempju s-sodda nbidlet għal sofa bed, u għaldaqstant hekk ikkrea living area, li ma kienx hemm qabel meta saret l-applikazzjoni għall-liċenza ma' l-Awtorita'. Dawn it-tibdiliet ġew innutati wkoll mill-Awtorita'.

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Għaldaqstant, in vista tal-konsiderazzjonijiet hawn fuq magħmula, il-Bord jilqa l-appell magħmul minn La Mode Co Ltd.

L-ispejjez ta' dan l-appell jithallsu mill-Awtorita' appellata.



Avv. Alexandra Mizzi

Madam Chairman



Ms. Laura Cunningham

Membru



Ms. Joan Sheridan Manara

Membru