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Animal Farm revisited

In a decision on April 28, 2006 (John Vella et vs Dennis Gatt, case no. 141/04), the Court of Appeal composed of Chief Justice Vincent DeGaetano, Mr Justice Anton Depasquale and Mr Justice Albert J. Magri, reconfirmed a decision by the First Hall of the Civil Court, presided over by Mr Justice Tonio Mallia, authorising the installation of a lift in a block of flats in St Paul's Bay. The ruling, in both instances, was made on the basis that no serious prejudice would be caused to any of the co-owners residing in the block of flats.

The court had carefully examined whether a balance was maintained between the alleged prejudice to be suffered by the flat owners who objected to the lift installation and the benefits to be enjoyed by all the co-owners in general.

The issue was sparked off by the sale of the airspace of the block of flats when Mepa issued a permit for the building of a penthouse. The penthouse was to be sold at an aleatory price, which does not reflect the market price of penthouses in the area. It included the building of a large room that was previously the common roof together with a garage. The sale had to include the common parts of the block of flats, which, therefore, could be declared null ab initio. In other words, for the sale of the common parts of the flat to go ahead, the co-owners should have been co-signatories of the contract of sale.

Out of the two shafts available, the proposed lift is to be installed in the smaller one in order to accommodate the penthouse owner and alleviate any possible discomfort to his family-related residents who happen to overlook the larger shaft, which is closer to the common staircase, enjoys a wider landing area and has fewer services passing through it. It is also nearer to the main door entrance, while the smaller one is at the far end of the corridor.

The courts based their decision, inter alia, on the fact that the relative permit was granted by Mepa and issued on February 9, 2004. Mepa based itself on plans submitted to it according to revised permit DNO 88/04. It was proved that the measurements of the proposed lift could not fit into the shaft. In fact, upon court order, the lift to be installed had to be smaller than that appearing on the Mepa plans.

Among other things, the court also ruled that the said families were not to be deprived of light and air. In effect, the lift is to be installed in the middle of the shaft with the position of the water/drain pipes to remain unaltered, so that the lift was not to be in any way bolted or anchored to any of the dividing residents'

walls. Consequently, some space afforded by the shaft was to be given up for such installation.

Once the court ruling was obtained by the owner, however, a fresh Mepa application was submitted. Such application (DN0 356/06) was received by Mepa on May 26, 2006. The new plans were approved by the authority on May 31, 2006. This means the permit was issued only four working days after submission of the application.

Such Mepa-approved plan is not in line with DN 88/04 and therefore does not correspond with the plans approved by the court which explicitly stated that no other works in excess of this permit shall be allowed. In fact, the lift, of larger dimensions than those approved, projects into the common parts and blocks the residents' doors by at least 30cm. This means it blocks the front doors of the apartments by one-third of their width and projects onto the landings which is common to all property owner-residents as per relevant contracts of sale.

With reference to the principle upon which the courts based their decision, that is, of the prejudice to objecting families not being serious enough to inhibit the installation of the lift, one wonders whether the prejudice is now serious enough to inhibit such installation? In other words, if the prejudice had not been serious when a lift was to be installed inside the shaft, is the prejudice also not serious in case of a lift projecting into the common parts and blocking adjacent front doors and encroaching on third party property rights?

Installation of the lift commenced under strict police supervision.

However, the case does not end here. The parties who claim they will be adversely affected by the installation of such lift asked for the assistance of the Building Regulations Office at the Ministry for Resources and Infrastructure's Services Division. In correspondence dated July 20, 2006, this office said that the intended lift does not comply with the Lifts Directive 95/37/EC. Health and safety regulations include certain restrictions such as those relating to the extent of drain and water plumbing passing through the shaft (which is only eight feet by three feet) and also lay down that no pit can be constructed. Such a lift could only be installed if it managed to satisfy the conditions under another directive for it to be CE approved - the Machinery Directive 98/37/EC. But this could only happen under the following conditions: There should be a clear sign indicating that the lift is intended for persons with impaired mobility and that its use is actually restricted only to persons with impaired mobility.

However, no persons with impaired mobility reside in the said block of flats and, even if any did, only such persons would be allowed to use the lift. Interesting is the fact that even were an attempt to be made to have the lift approved under the Machinery Directive, the owner and installers would have to overcome another stumbling block. This is because a lifting platform carries with it other approval

restrictions in terms of commercial activity. Such lifts/hoists allowed under the Machinery Directive cannot be installed in buildings were any kind of commercial activity is carried out. In the block in question, such commercial activity does take place.

It appears, however, that by invoking the penthouse occupier's intentions, the developer is determined to proceed with the lift installation plans.

The parties that will be prejudiced tried to set a meeting with a senior official at the Ministry for Rural Affairs and the Environment last August but to no avail, until the Prime Minister intervened. A meeting was held in mid-October in the presence of the Mepa's legal consultant who, although admitting that the developers/penthouse occupier, as applicants, failed to notify the rest of the households of the encroachment - the applicants claimed title over the common parts in the development notification application, which explicitly lays down that "notification is null and void in the event that the details submitted are incorrect" - insisted that the declaration of ownership had no material bearing on the approval of the notification.

Have we stumbled here on another case of Mepa rash decisions taken in the interest of some but not of all? Although Mepa is definitely not acting alone in this case, and although the authority was to approve the plans rather than the dimensions of the lift, this case is a clear one that shows that not all animals are equal in this country.