

ATHENS PROSECUTOR'S OFFICE

A.B.M. E22/4685

Order Number: 214/2023

ORDER

The Prosecutor of the Misdemeanours Court of Athens

After having considered the criminal preliminary investigation No ABM E22/4685, which was composed in the pretext of the complaint dated 25-8-2022 of the company under the name "SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC", lawfully represented and headquartered at the address 16 Kyriakou Matsi Str, Nicosia, Cyprus, against: 1) Delikanakis Ioannis, son of Anastasios, resident in Alimos, at 20 Solonos Str, 2) Pisante Victor, son of Andreas and 3) Pandis Charalambos, son of Nikolaos, both residents in Athens at 32 Voukourestiou Str, with which the above company requests the prosecution of the above persons for the offence of fraud committed jointly with a loss incurred and respective profit of over Euro 120,000 (articles 1, 14, 26, 27, 45, 386 par. 1(b) of the Criminal Code).

By virtue of the complaint in question, after summarizing its contents and evaluation the assertions raised therein, the complainant claims that the defendants, as joint owners and administrators of the company "BLUEHOUSE CAPITAL L.P." with which it had negotiation and agreed to purchase a property in Craiova, Romania, which was leased until 2019 to the company PRAKTIKER and operated as a branch thereof, in the period from 18/6/2014 to 21/5/2015, with the illegal concealment of material facts, they damaged it by the amount of Euro 4.2 m., since they withheld, during the period from the execution of the Memorandum of Understanding dated 2.7.2014 between SPDI and the companies of the Bluehouse Group and until the execution of the final Agreement on 21.5.2015, the existence of the appraisal report dated 14.7.2014 of DTZ Echinox that was prepared on behalf of MARFIN BANK ROMANIA in relation to the value of the above property, the fact that the defendants were during the same period, negotiating with PRAKTIKER the permanent reduction of the rent and that they had reached a relevant agreement which should be approved by the lender bank, while they also made false representations for that allegedly the rent reductions were "temporary and circumstantial" and withheld the decision of PRAKTIKER that was communicated to BLUEHOUSE, that it would not pay the agreed upon rent for the remainder of the lease. They obtained knowledge of the above on 9-6-2022 when the complainant received by email, the letter of PRAKTIKER dated 30-1-2015 to the company of the defendants, from which the agreement for the reduced rent was concluded, to the ignorance of the complainant.

Whereas, from the provision of article 51, par. 3 of the Code of Criminal Procedure, it is concluded that if a preliminary examination or an *ex officio* preliminary investigation have been conducted pursuant to article 245, par. 2 or a sworn administrative inquiry and the Prosecutor rules that there are no sufficient grounds for the initiation of prosecution, he/she dismisses the complaint with a justified order. The complaint is not founded on the law and is

dismissed by the Prosecutor, when among other things, the constituent elements of the alleged committed offence are not present (see relevantly Bouropoulos, Interpretation of the Code of Criminal Procedure, volume A, 1957, article 47, p.p. 70-71). The complaint is - inter alia - groundless in law, when there are reasons that eliminate the imposition of a punishment (Kontaxis, Code of Criminal Procedure, volume A, 2006, art. 43 p. 500), such as statutory limitation, remission or the lapse of the three-month period provided for by the law for the filing of the complaint by the law, only of the offences prosecuted via the filing of a complaint, the prior waiver from the complaint etc. (Bouropoulos, Interpretation of the Code of Criminal Procedure, article 47, published in 1951). Furthermore, according to the provision of article 114, par. 1 of the Criminal Code *"when the law necessitates a complaint for the prosecution of a punishable act, the punishment is eliminated if the person entitled to file the complaint, does not file it within three months from the date it obtained knowledge for the act committed and for the identity of the person who committed it or for one of its accessories"*. It is concluded from the above provision that the complaint must be filed within the time specified, with the starting point being the knowledge of the committal of the act and the identity of the person who committed it or of an accessory thereof. Besides, from the provision of article 405, par. 1(a) of the Criminal Code "A complaint must be filed for the prosecution of the offences set out in par. 1 of article 386, par. 1 of article 396A, articles 387 and 389, in the first sentence of par. 1 of article 390 and in articles 297 and 404".

In the case in question, from the evidence collected during the preliminary investigation and in particular, from the witness statements, the documents and the explanations of the defendant without granting oath, the following was concluded: On 2-7-2014, the complainant executed with the company of the defendants BLUEHOUSE, a Memorandum of Understanding for the purchase of properties belonging to the defendants, among which a property in the city of Craiova in Romania, which was leased until 2019 to the company PRAKTIKER and operated as a store thereof, with a property yield of 9% and an annual rent of Euro 971,175. The complainant had been informed for a temporary reduction of the rent, while on 30-4-2015, the defendants applied a 40% discount on the rent and on 21-5-2015 the final agreements were executed and the defendants presented the said reduction as a provisional facility. Following the attempts to draw funds in order to support the cooperation of the complainant with the company of the defendants, on 8-3-2018 a Memorandum of Understanding was executed, according to which the complainant would offer 12.7 million new shares to BLUEHOUSE as repayment of the initial value of the above property, however on 7-8-2018 the defendants claimed such payment within 5 weeks, without any fruitful outcome and they resorted to the Nicosia District Court, where a civil action has been scheduled for hearing on 12-1-2023.

The complainant claims that on 9.6.2022, it received an email from the head of the company in Romania, Mihai Ghircolas, which contained communications of PRAKTIKER to the company BLUEBIGBOX 3 and the letter dated 30-1-2015 was forwarded to the complainant via the said email, from which it appeared that a permanent rent reduction had been agreed upon until 2019 and not a provisional one between PRAKTIKER and the defendants, thus it obtained knowledge for the first time of the fraudulent conduct of the defendants on 9-6-2022. However, it was concluded that the defendant possessed the above letter of PRAKTIKER to BLUEBIGBOX 3 at least since 8.2.2019, a time at which the Managing Director thereof,

Lambros Anagnostopoulos, produced the said document as Evidence in the context of his Affidavit that was granted before the Nicosia District Court, thus it is concluded that the complainant had already obtained knowledge of the alleged fraudulent conduct of the defendants since 8.2.2019, i.e. more than three years before filing the complaint in question, a period during which it did not file a complaint. The complainant filed the complaint in question on 25-8-2022, i.e. after the lapse of the above three-month period from the knowledge of the acts and the identity of the perpetrator thereof, without however the existence of any impediment or other reasons of force majeure being evident, which rendered the timely filing of the complaint impossible, thus the punishment sought for the alleged act committed against it has been eliminated and the complaint in question is rendered groundless in law.

Following the above, the complaint in question must be dismissed, according to the provisions of article 51 of the Code of Criminal Procedure, and the complainant must be ordered to pay any relevant expenses according to article 580 of the Code of Criminal Procedure, whereas it filed the said complaint with knowledge of its groundlessness, attempting in a manner that is incompatible to the criminal procedure to expand the boundaries of a private dispute. The justification it invokes with the memorandum dated 23-11-2022 and more specifically, that the Managing Director Lambros Anagnostopoulos forgot the possession and knowledge of the letter dated 30-1-2015 and had not realised the importance suited to it, is deemed groundless and groundless, given that the aforementioned civil action, concerns, as the complainant claims, a serious financial dispute for millions and it can certainly not be forgotten that this letter was produced to the competent civil Courts of the Republic of Cyprus, in support of the views of the complainant.

FOR THESE REASONS

1) WE DISMISS the complaint dated 25-8-2022 of the company under the name "SECURE PROPERTY DEVELOPMENT & INVESTMENT PLC", as lawfully represented and headquartered in Nicosia, Cyprus, at 16 Kyriakou Katsi Str, against: 1) Delikanakis Ioannis, son of Anastasios, resident in Alimos, at 20 Solonos Str, 2) Pisante Victor, son of Andreas and 3) Pandis Charalambos, son of Nikolaos, both residents in Athens at 32 Voukourestiou Str.

2) WE ORDER the complainant to pay the court expenses.

3) WE ORDER the service of a copy of this order to the complainant.

Athens, February 7, 2023

The Prosecutor

SERVICE COPY ATHENS

The SECRETARY

DIONYSIA TH. LIOTOU