# QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

**Illum il-Hamis 28 ta` April 2016**

**Kawza Nru. 7**
**Rik. Nru. 90/15 JZM**

**Doris Maritime Services S.A., socjeta` registrata fl-Isvizzera bin-numru ufficjali IDE CH 103 195 573 u rapprezentata mill-mandatarju specjali taghha l-Avukat Louis Cassar Pullicino (K.I. 441061M)**

***kontra***

**L-Avukat Dr Victor J Bugeja LL.D u l-Prokuratur Legali Alison Wadge, li b`digriet moghti fit-23 ta` Gunju 2015 gew mahtura bhala Kuraturi Deputati sabiex jirraprezentaw lis-socjeta` Maltese Sun Maritime Company Ltd (C-27109)**

**Il-Qorti :**

## I. Preliminari

Rat ir-rikors ipprezentat fit-30 ta` Jannar 2015 li jaqra hekk :–

*Illi permezz ta` ftehim datat 12 ta` Mejju 2010 is-socjeta` rikorrenti kienet giet inkarikata bhala Manager tal-bastiment MARIEKE li dak iz-zmien kien nollegjat mis-socjeta` intimata ;*

*Illi in segwitu inqalghu xi divergenzi bejn il-kontendenti li wasslu sabiex permezz ta` lodo arbitrali moghti gewwa Londra tat-30 ta` Settembru 2011 u sussegwentement dikjarat bhala ezegwibbli gewwa Spanja skont sentenza moghtija mill-Qorti ta` Valencia gewwa Spanja fis-27 ta` Lulju 2012, l-imsemmi lodo gie dikjarat ezegwibbli gewwa Spanja riferibbilment ghall-ammont ta` US$ 353,274.89 li skont ir-rata tal-kambju vigenti tekwivali ghal € 304,881.16 ;*

*Illi in segwitu ta` arrest tal-imsemmi bastiment MARIEKE u proceduri dwar l-arrest in kwistjoni, b`sentenza tal-Qorti ta` Valencia gewwa Spanja, is-socjeta` rikorrenti giet kundannata thallas lis-socjeta` intimata s-somma ta` € 137,349.19 ;*

*Illi in vista tal-premess u wara li jigu pacuti z-zewg krediti rispettivi, s-socjeta` rikorrenti tibqa` kreditur tas-socjeta` intimata fis-somma ta` € 167,531.97, liema somma sal-lum ghadha dovuta ;*

*Illi huwa evidenti illi s-socjeta` intimata mhijiex f`qaghda li thallas il-kredituri taghha ;*

*Illi fuq kollox is-socjeta` rikorrenti ghandha x`tifhem illi s-socjeta` intimata mhijiex topera u n-negozju taghha ilu sospiz zmien ghal perjodu ta` aktar minn tnax-il xahar ;*

*Ghaldaqstant l-esponenti jitolbu lil din l-Onorabbli Qorti sabiex :-*

*(1) Tiddikjara u tiddeciedi illi s-socjeta` intimata Maltese Sun Maritime Company Ltd mhijiex f`qaghda li thallas d-djun taghha u li n-negozju tas-socjeta` intimata ilu sospiz ghal perjodu bla waqfien ta` tnax-il xahar u konsegwentement tordna x-xoljiment u stralc konsegwenzjali tal-istess socjeta` intimata a tenur tar-Regolament 99(2)(a) u (4)(b) tal-Merchant Shipping (Shipping Organisations-Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004).*

*(2) Taghti kull provvediment opportun sabiex jinhatar l-istralcjarju u jigi kondott l-istralc konsegwenzjali skont id-disposizzjonijiet tal-Att XXV tal-1995 Dwar il-Kumpanniji.*

*Bl-ispejjez.*

Rat id-dokumenti li kienu pprezentati mar-rikors promotur.

Rat ir-risposta li pprezentaw il-kuraturi deputati fid-29 ta` Lulju 2015 fejn iddikjaraw li ma kienux edotti mill-fatti tal-kawza u ghalhekk Irriservaw li jipprezentaw risposta ulterjuri jekk ikun il-kaz.

Semghet ix-xiehda ta` Nicholas Wurth fl-udjenza tat-12 ta` Novembru 2015.

Semghet ix-xiehda ta` Michael Savona fl-udjenza tal-14 ta` Jannar 2016, u rat id-dokument li pprezenta.

Rat l-atti pprezentati mill-kuraturi deputati fit-8 ta` Frar 2016.

Rat id-digriet li tat fl-udjenza tat-22 ta` Marzu 2016 fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

## II. Xiehda

**<u>Nicholas Wurth</u>** xehed illi huwa direttur u azzjonista tas-socjeta` rikorrenti li topera bastimenti. Ir-rikorrenti hija bbazata Geneva u ghandha ufficcju Amsterdam. Fix-xahar ta` April 2010, is-socjeta` ntimata ffirmat *ship management agreement* mar-rikorrenti. Din bdiet topera l-bastiment peress li s-socjeta` intimata kellha bastiment li kien fuq *bareboat charter* minghand is-sidien. Ir-rikorrenti kienet ix-*ship manager* u kellha struzzjonijiet sabiex jithallsu kontijiet skont il-kuntratt. Fix-xahar ta` Ottubru 2010, il-pagamenti waqfu u ghalhekk saret laqgha ma certu Mena, direttur tas-socjeta` intimata. Mena qal li ser ihallas il-kontijiet aktar tard. Madanakollu l-kontijiet ma thallsux u fix-xahar ta` Novembru kien hemm bilanc dovut ta` US$ 300,000. Ghalhekk ir-rikorrenti rrizenjat minn *ship manager*. Il-ftehim kien itterminat formalment. Malli l-bastiment wasal go port Spanja, kien arrestat.

Kompla jghid illi wara l-arrest, il-bastiment kien rilaxxjat u saru proceduri ta` arbitragg go Londra. L-arbitragg kien deciz fix-xahar ta` Ottubru 2011. Fil-lodo kien ikkonfermat il-kreditu dovut lis-socjeta` rikorrenti. Id-decizjoni arbitrali kienet validata minn Qorti Spanjola.

Stqarr illi s-socjeta` ntimata hadet azzjoni legali ghal danni minhabba l-arrest tal-bastiment bl-esitu tal-azzjoni jkun likwidazzjoni favur is-socjeta` ntimata ta` €137,000. Wara tpacija bejn dak li kellha t-tiehu r-rikorrent u dak li kellha tircievi s-socjeta` ntimata baqghu dovuta lir-rikorrenti s-somma ta` €167,000. Ghalkemm is-socjeta` ntimata ntalbet thallas hija baqghet inadempjenti. Il-bilanc ta` €167,000 ghadu dovut.

Fisser illi l-bastiment MARIEKE kien proprjeta` ta` kumpannija Germaniza. Is-socjeta` intimata kienet ghamlet *bareboat hire purchase* tal-vapur. Il-ftehim intemm fix-xhur ta` Novembru jew Dicembru 2010, peress li s-socjeta` ntimata ma kenitx qeghda thallas il-kera. Il-*bareboat hire purchase* kien registrat Malta.

Sostna li s-socjeta` intimata ma ghandhiex assi ohra billi hija *shell company*. L-iskop tas-socjeta` intimata kien illi tiehu bastiment b` *bareboat contract* u ma kellha l-ebda ghan iehor. Mena u s-socjeta` ntimata kienu fi stadju iehor hadu is-*ship management* izda waqfu peress li ma kellhomx il-kwalifiki.

Qal illi l-ahhar negozju li sar mis-socjeta` intimata kien fl-ahhar tal-2010.

**<u>Michael Savona</u>** – Assistant Registratur tal-Bahhara u Bastimenti – Transport Malta – xehed illi s-socjeta` ntimata kellha vapur registrat fuq isimha bhala *charterer.* Il-vapur m`ghadux aktar registrat taht il-bandiera Maltija b`effett mit-28 ta` Frar 2011. Is-sid tal-vapur hija kumpannija Germaniza.

## III. <u>Dritt</u>

Skont il-*memorandum of association* tas-socjeta` intimata jirrizulta li s-socjeta` hija *"registered under the Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004, Legal Notice 223, and qualifying as a shipping organization in terms of Artcile 84Z of the Merchant Shipping Act."*

Il-ligi applikabbli ghal dak il-kaz huwa l-**<u>A.L. 223 tal-2004</u>**.

## IV. <u>Locus standi</u>

L-eligibilita` o meno tar-rikorrenti sabiex tmexxi bl-azzjoni tal-lum hija trid titqies skont ma jghid l-**<u>Art 100</u>** tal-**<u>A.L. 223 tal-2004</u>** li jghid :-

*An application to the court (hereinafter referred to as the "winding up application") for the winding up of a company shall be made by means of an application which may be made either by the company or by any of its members or directors, or by any creditor having a debt due and unpaid in excess of twenty-three thousand and two hundred and ninety-three euros and seventy-three cents (23,293.73) or by all or any of them together or separately.*

Jirrizulta ppruvat illi r-rikorrent hija kreditur tas-socjeta` ntimata fl-ammont ta` €167,531.97.

Dan il-kreditu huwa ppruvat mid-deposizzjoni ta` Nicholas Wurth u mid-dokumenti esebiti fosthom il-lodo arbitrali moghti Londra fit-30 ta` Settembru 2011 (fol 14 et seq), id-dikjarazzjoni li l-lodo huwa ezegwibbli gewwa Spanja fis-27 ta` Lulju 2012 (fol 30 et seq) u sentenza tal-Qorti ta` Valencia gewwa Spanja tat-23 ta` Lulju 2014 (fol 35).

Ghalhekk ir-rikorrenti ghandha *locus standi* sabiex tittenta l-azzjoni.

## V. **It-talbiet**

Ir-rikorrenti qeghda titlob ix-xoljiment u l-istralc tas-socjeta` ntimata abbazi tar-**Reg 99(2)(a) u (4)(b) tal-A.L. 223 tal-2004**.

Id-disposizzjonijiet citati mir-rikorrenti jghidu hekk :-

*(2) In addition to the modes of dissolution …*

*(a) a company may be dissolved and wound up by the Court when the company is unable to pay its debts …*

*(4) For the purposes of subregulation (2)(a), a company shall be deemed to be unable to pay its debts …*

*(b) if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.*

Dawn id-disposizzjonijiet huma testwalment identici ghal dawk li nsibu fl-Att tal-1995 dwar il-Kumpanniji (Kap 386) precizament **l-Art 214(2)(ii) u l-Art 214(5)(b)**.

Il-Qorti tghid illi l-linja ta` gurisprudenza ta` din il-Qorti dwar dawn id-disposizzjonijiet tal-Kap 386 tghodd *mutatis mutandis* ghar-Reg 99(2)(a) u 4(b) tal-A.L. 223 tal-2004. Ghalkemm il-lista hija twila, tirreferi biss ghal wahda minn dawn id-decizjonjiet, cioe` dik tal-15 ta` ta` Settembru 2014 fil-kawza "**Galleria Management Limited (C19258) v. Derby International Limited (C12482)**". A skans ta` repetizzjoni tirreferi ghad-dottrina u ghall-gurisprudenza citata f`din id-decizjoni.

Ghal dawk li huma provi u risultanzi, il-kuraturi deputati li kienu mahtura sabiex jirrapprezentaw lis-socjeta` ntimata baqghu mal-linja inizjali taghhom illi baqghu mhux edotti mill-fatti tal-kaz u ghalhekk irrimettew ruhhom ghad-decizjoni tal-Qorti.

Fuq l-iskorta tal-provi akkwiziti, u fl-isfond tad-decizjonijiet tal-Qrati taghna, il-Qorti hija tal-fehma li saret il-prova tat-talbiet tar-rikorrenti sal-grad rikjest mil-ligi.

Ghalkemm il-Qorti m`ghandhiex id-dokumenti tal-kontabilita` tas-socjeta` ntimata, ghandha l-prova (a) li s-socjeta` ntimata hija midjuna mar-rikorrenti ghal ammont li jaqbez il-€167,000 (b) li m`ghandhiex assi biex thallas dan id-dejn (c) li l-bastiment *Marieke* ma kienx propjeta` taghha (d) li m`ghandhiex bastimenti ohra (e) li l-*Marieke* kien registrat fir-Registru Malti mis-socjeta` ntimata stess sat-28 ta` Frar 2011 ghaliex kellha *bareboat charter* (f) in segwitu rriverta lura ghand is-sidien u (g) is-socjeta` ntimata waqfet topera lejn l-ahhar tal-2010. Da parti tas-socjeta` intimata, ma tressqu l-ebda provi sabiex juru li ttiehdu xi mizuri sabiex jitqajjem in-negozju u l-passiv dovut jigi mhallas. Bid-dejn li ghandha li baqa` mhux imhallas ghaliex m`ghandhiex mnejn thallsu, is-socjeta` ntimata poggiet ruhha f`qaghda li ma tistax thallas id-djun taghha ghall-finijiet u effetti kollha tal-ligi. U propju ghaliex waqfet in-negozju mhux se jibqa` tama li thallas l-obbligi taghha. Wieqaf in-negozju, jieqaf id-dhul u l-esistenza stessa tas-socjeta` ntimata. Ghalhekk ma hemmx triq ohra hlief li tkun xjolta u stralcjata minn din il-Qorti.

## Provvediment

**Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talbiet tas-socjeta` rikorrenti billi :-**

**Tiddikjara illi s-socjeta` ntimata Maltese Sun Maritime Company Ltd (C27109) mhijiex f`qaghda li thallas id-djun taghha skont ir-Regolament 99(2)(a) u (4)(b) tal-Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004).**

**Tordna x-xoljiment tas-socjeta` ntimata Maltese Sun Maritime Company Ltd (C27109) b`effett mit-30 ta` Jannar 2015 kif previst mir-Regolament 105(2) tal-Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004).**

**Tordna wkoll l-istralc tal-istess socjeta` ntimata.**

**Tahtar bhala stralcjarju tas-socjeta` ntimata Maltese Sun Maritime Company Ltd (C27109) lill-Avukat Dottor Leonard Caruana bis-setghat u bid-dmirijiet previsti mid-disposizzjonijiet tal-Merchant Shipping (Shipping Organisations - Private Companies) Regulations 2004 (Avviz Legali 223 tal-2004).**

**Tordna li l-ispejjez kollha ta` dan il-procediment, inkluzi l-ispejjez tal-kuraturi deputati, l-ispejjez tal-istralc, u l-ispejjes u d-drittijiet tal-istralcjarju jithallsu kollha mir-rikorrenti.**

**Thalli l-istralc ghall-udjenza ta` nhar il-Hamis 16 ta` Gunju 2016 fid-9.00 a.m.**

**Onor. Joseph Zammit McKeon**
**Imhallef**

**Amanda Cassar**
**Deputat Registratur**