QORTI CIVILI PRIM'AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 14 ta` Lulju 2016

Kawza Nru. 27
Rik. Gur. Nru. 448/16 JZM

Banif Bank (Malta) plc
[C-41030]

kontra

Aaron Buhagiar
[I.D. 383379M]

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fit-3 ta` Gunju 2016 li jaqra hekk :–

1. Illi l-kumpannija esponenti hi bank kummercjali licenzjat taht il-Ligijiet ta` Malta biex fost l-ohrajn issellef flus lill-klijenti taghha;

2. Illi l-konvenut hu klijent tal-kumpannija esponenti u ha minghandha l-facilitajiet segwenti:

a. House loan ta` erbgha u disghin elf u hames mitt Euro (€94,500) u Personal Loan, minn hawn `l quddiem imsejjah Personal Loan (I), ta` ghoxrin elf u tmien mitt Euro (€20,800) koncessi ai termini tal-Credit Agreement datat 11 ta` Lulju 2011 (ara Dok. 'A') u kuntratt ippubblikat fl-atti tan-Nutar Dottor Mario Bugeja fil-11 ta` Ottubru 2011 (ara Dok. 'B') u dan sabiex jigi finanzjat l-akkwist ta` appartament, u

b. Personal Loan, minn hawn `l quddiem imsejjah Personal Loan (II) ta` sittax-il elf u tett mitt Euro (€16,300) koncess ai termini tal-Credit Agreement datat 19 ta` Jannar 2015 (ara Dok. 'C') u dan sabiex isir ristrutturar ta` facilita` bankarja precedenti;

3. Illi l-konvenut naqas milli jhallas lura dawn il-facilitajiet u konsegwentement, il-bilanc dovut minnu, hu kif gej:

a. tnejn u disghin elf, sitt mija u disgha u disghin Euro u wiehed u sebghin centezmu (€92,699.71) dovuti fuq il-House Loan. Dan l-ammont jinkludi mghaxijiet ta` tlett mija u disgha u ghoxrin Euro u tlieta u disghin centezmu (€329.93), kalkulati sat-13 ta` Mejju 2013 u jikkoncerna Loan Account numru 123927 71 001 (ara Dok. 'D'), u

b. ghoxrin elf, tmien mija u hamsa u hamsin Euro u erbghin centezmu (€20,855.40) dovuti fuq il-Personal Loan (I). Dan l-ammont jinkludi mghaxijiet ta` sitta u disghin Euro u centezmu (€96.01), kalkulati sat-13 ta` Mejju 2016 u jikkoncerna Loan Account numru 123927 70 002 (ara Dok. 'E'), u

c. sittax-il elf, erba` mija u tnejn u tmenin Euro u tmienja u disghin centezmu (€16,482.98) dovuti fuq il-Personal Loan (II). Dan l-ammont jinkludi mghaxijiet ta` mija u hamsin Euro u hdax-il centezmu (€150.11), kalkulati sat-13 ta` Mejju 2016 u jikkoncerna Loan Account numru 123927 71 004 (ara Dok. 'F');

4. Illi l-ammonti fuq imsemmija, saru dovuti fl-intier taghhom mill-konvenut lill-kumpannija esponenti ai termini tal-artikolu 11(n) tal-Credit Agreement markat Dok. 'A' u Artikolu 11 tal-Credit Agreement markat Dok. 'C' u dan ghax kif jistipulaw dawn l-Artikoli, sehhew wahda jew aktar mill-events of default imsemmijin fil-Credit Agreements rispettivi, partikolarment, izda mhux esklussivament:

"a. Default by the Borrower/s in the payment of any amount of principal, interest, fees, charges due for payment in the manner stipulated in the agreement regulating the Facility,
b. The Borrower/s committing any other breach of or omitting to observe any other of the obligations and undertakings as expressed to be assumed by it in the agreement regulating the Facility,
n. Any other event which in the Bank`s reasonable opinion gives grounds for belief that the Borrower/s may not perform all or any of the obligation/s under or otherwise comply with the terms of the agreement regulating the Facility";

5. Illi in oltre, l-konvneut ghandu jhallas lill-kumpannija rikorrenti spejjez bankarji relatati mad-dejn tieghu fuq imsemmi, liema spejjez huma kif gej:

a. fuq il-Current Account numru 123927 10 001 li l-konvenut ghandu mal-kumpannija esponenti, hemm dovuti tlett mija u tnejn u ghoxrin Euro u sebgha u ghoxrin centezmu (€322.27), li jinkludu mghaxijiet ta` Euro u seba` centezmi (€1.07) kalkulati sat-13 ta` Mejju 2016 (ara Dok. 'H');

b. fuq Current Account numru 123927 10 002 li l-konvenut ghandu mal-kumpannija esponenti, hemm dovuti mija u erbgha u hamsin Euro u sitt centezmi (€154.06) li jinkludu mghaxijiet ta` wiehed u hamsin centezmu (€0.51) kalkulati sat-13 ta` Mejju 2016 (ara Dok. 'H');

6. Illi l-ammonti fil-Current Accounts saru dovuti fl-intier taghhom in virtu` ta` Artikolu 5 tat-Terms and Conditions (ara Dok. 'I') u ta` Artikolu 6 tal-Conditions of Use (ara Dok. 'J') relattivi ghall-istess Current Accounts u dan kif specifikat hawn taht:

"5.1 The Account Holder(s) hereby authorise(s) the Bank to debit the Account all sums relating to commissions, expenses, postage and legal expenses payable in respect of services provided, in accordance with the Tariff of Charges published by the Bank.
5.2 Save for written instructions to the contrary, the bank shall apply all direct debits to the Account, together with the respective expenses and charges.
5.3 Maintenance expenses shall be debited to the Account, the amount and frequencies of such expenses are published by the Bank in its Tariff of Charges.
5.4 When a debit or credit card is issued by the Bank, the latter shall be expressly authorised to debit the card costs and any debits arising from the use of the card, by debiting the Account.

6.1 The Account Holder(s) hereby authorise(s) the Bank to debit the Account all sums relating to commissions, expenses, postage and legal expenses payable in respect of services provided, in accordance with the Tariff of Charges published by the Bank.
6.2 Save for the written instructions to the contrary, the Bank shall apply all direct debits to the Account, together with the respective expenses and charges.
6.3 Maintenance expenses shall be debited to the Account, the amount and frequency of such expenses are published by the Bank in its Tariff of Charges.
6.4 When a debit or credit card is issued by the Bank, the latter shall be expressly authorised to debit the card costs and any debits arising from the use of the card, by debiting the Account;"

7. Illi in vista tas-suespost l-ammont komplessiv dovut mill-konvenut, hu ta` mija u tletin elf, hames mija u erbatax-il Euro u tnejn u erbghin centezmu (€130,514.42);

8. Illi l-kumpannija esponenti ttentat tinterpella lill-konvenut diversi drabi biex ihallas dejnu, fosthom permezz ta` ittra legali datata 19 ta` Awwissu 2015 (ara Dok. 'K') u ittra ufficjali numru 1207/2016 (ara Dok. 'L'). Di konsegwenza, il-konvenut baqa` inadempjenti u kien proprju ghalhekk li l-ftuh ta` din il-kawza sar necessarju;

9. Illi l-kreditu tal-kumpannija esponenti huwa cert, likwidu u dovut u l-konvenut m`ghandux eccezzjonijiet x`jaghti f`dan ir-rigward kontra t-talbiet tal-kumpannija esponenti;

10. Illi ghalhekk jezistu l-elementi kollha rikjesti mil-ligi a tenur tal-Artikoli 167 et sequitur tal-Kapitolu 12 tal-Ligijiet ta` Malta.

Ghaldaqstant u ghar-ragunijiet fuq premessi, l-kumpannija esponenti titlob bir-rispett lil dina l-Onorabbli Qorti sabiex:

1. taqta` u tiddeciedi dina l-kawza bid-dispensa tas-smigh, ai termini tal-Artikoli 167 et sequitur tal-Kap. 12 tal-Ligijiet ta` Malta; u

2. tiddikjara li l-konvenut sar debitur tal-kumpannija esponenti fl-ammont ta` €130,514.42; u

3. tikkundanna lill-konvenut ihallas lill-kumpannija esponenti l-ammont ta` €130,514.42,

Bl-ispejjez, bank charges u fees u bl-imghaxijiet mit-13 ta` Mejju 2016 sad-data tal-pagament effettiv.

1. Il-bank charges qed jintalbu kif gej:

a. kwantu Loan accounts numri 123927 71 001 u 123927 71 002, ai termini tal-Credit Agreement markat Dok. 'A', it-Tariff of Charges relattivi ghall-House Loans (ara Dok. 'M') u t-Tariff of Charges relattivi ghall-Personal Loans (ara Dok. 'N'), u

b. kwantu Loan account numru 123927 71 004, ai termini tal-Credit Agreement markat Dok. 'C' u t-Tariff of Charges relattivi ghall-Personal Loans u markati Dok. 'N', u

c. kwantu l-ammonti dovuti fuq il-Current Accounts kollha, ai termini tat-Tariff of Charges relattivi ghall-Current accounts (ara Dok. 'O');

2. L-imghaxijiet qed jintalbu kif gej:

a. bir-rata ta` sebgha fil-mija (7%) fis-sena fuq l-ammont dovut fuq il-Loan Account numru 123927 71 001 u dan ai termini tal-Artikoli 5 u 11(r) tal-Credit Agreement markat Dok. 'A', u

b. bir-rata ta` tmienja punt hamsa fil-mija (8.5%) fis-sena fuq l-ammont dovut fuq il-Loan Account numru 123927 71 002 u dan ai termini tal-Artikoli 5 u 11(r) tal-Credit Agreement markat Dok. 'A', u

c. bir-rata ta` hdax fil-mija (11%) fis-sena fuq l-ammont dovut fuq il-Loan Account numru 123927 71 004 u dan ai termini tal-Artikoli 5 u 11 tal-Credit Agreement markat Dok. 'C', u

d. bir-rata ta` ghaxra fil-mija (10%) fis-sena fuq l-ammont dovut fuq il-Current Accounts kollha u dan ai termini tat-Tariff of Charges markata Dok. 'O' u msemmija aktar`l fuq (ara marker bl-ahdar fuq Dok. 'O').

Il-konvenut hu minn issa ngunt ghas-subizzjoni u dan b`rizerva ghal kull dritt iehor spettanti lill-kumpannija esponenti fil-konfront tal-istess konvenut.

Rat il-lista tax-xhieda ndikati mill-Bank attur u l-elenku ta` dokumenti esebiti mar-rikors guramentat.

Rat in-nota li pprezenta l-konvenut fl-udjenza tal-lum li permezz taghha huwa ammetta t-talbiet attrici.

Ghaldaqstant, wara l-ammissjoni tal-konvenut tat-talbiet attrici, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tiddikjara li l-konvenut huwa debitur tal-kumpannija attrici fl-ammont ta` mija u tletin elf hames mija u erbatax-il Ewro tnejn u erbghin centezmu (€130,514.42).

Tikkundanna lill-konvenut sabiex ihallas lill-kumpannija attrici s-somma ta` mija u tletin elf hames mija u erbatax-il Ewro tnejn u erbghin centezmu (€130,514.42), bl-imghaxijiet kif mitluba sad-data tal-effettiv pagament, u bil-***bank charges u fees*** kif mitluba.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur