

Qorti Civili, Prim'Awla

Imhalled Anthony Ellul

Rikors numru: 615/2009AE

**Avukat Dottor Pio M. Valletta li qieghed jidher ghan-nom, fl-interess u in rappreżentanza ta' Peter E. Klenner**

**Vs**

**Jeno Torocsik, Thomas Tibor Antalffy, Web Services Holdings Limited, u Web Services Malta Limited**

7 ta' Ottubru, 2016.

Permezz ta' rikors prezentat fit-23 ta' Gunju 2009, l-attur ippremetta u talab:-

*1. Illi l-awtur tar-rikorrent esponent nomine huwa azzjonista ta' sehem ordinarju fis-socjeta' intimata Web Services Malta Limited flimkien mal-intimati Jeno Torocsik, Thomas Tibor Antalffy u Web Services Holdings Limited u dan kif jirrizulta fl-annessa kopja tal-Istatut soċjali ta' l-imsemmija socjeta' intimata Web Services Malta Limited, liema kopja qieghdha tigi mmarkata bhala Dokument PV1;*

*2. Illi l-intimati azzjonisti ppartecipaw, hadu sehem, kienu involuti u attivament ikkontribwew fl-implimentazzjoni u esekuzzjoni ta' ftehim ghall-"management buyout" li ma kienx gie debitament approvat kif mehtieg u mitlub fl-istatut soċjali tas-socjeta' intimata Web Services Malta Limited u dan bi hsara u dannu ghall-interessi u drittijiet personali tar-rikorrent esponent u dan kif sejjer jigi ppruvat f'aktar dettal waqt is-smigh tal-kawza;*

*3. Illi l-awtur tar-rikorrenti esponenti ghandu interess li jippromwovi din il-kawza u dan fid-dawl tal-fatt illi l-atti fuq imsemmija jilledu d-drittijiet tieghu personali u kif l-interessi u drittijiet tas-socjeta' Web Services Malta Limited li ghandha r-rappreżentanza guridika taghha vestita fl-intimat Thomas Tibor Antalffy;*

*4. Illi saru diversi tentattivi sabiex l-imsemmi ksur jigi regolarizzati izda dawn it-tentattivi ma taw ebda ezitu possittiv anzi l-azzjonijiet u l-atti lezivi kemm tad-drittijiet personali ta' l-awtur tar-rikorrent esponent thallew isur u ma gewx rimedjati jew irrangati;*

*5. Illi ghalhekk kellha ssir din il-kawza.*

*Għaldaqstant, l-attur jitlob għar-raġunijiet premissi, lil din l-Onorabbli Qorti sabiex:*

*1. tiddikjara u tiddeciedi li illi l-agir tal-intimati azzjonisti Jeno Torocsik, Thomas Tibor Antalffy u Web Services Holdings Limited u l-atti kollha konsegwenti u rizzultanti minn tali agir konsistenti fil-partecipazzjoni, sehem, involvement u kontribut attiv fl-implimentazzjoni u esekuzzjoni ta' ftehim ghall-"management buyout" li ma kienx gie debitament approvat kif mehtieg u mitlub fl-istatut soċjali tas-socjeta' intimata Web Services Malta Limited jilledu d-drittijiet personali ta' azzjonista l-awtur tar-rikorrent esponent barra li saru bi ksur tad-disposizzjonijiet u regoli ta' l-istatut soċjali tas-socjeta' intimata Web Services Malta Limited kif ukoll ta' l-Att tal-1995 dwar il-Kumpanniji;*

*2. tiddikjara u tiddeciedi li l-atti kollha segwenti u rizzultanti minn tali agir u li huma lezivi ghad-drittijiet personali ta' l-awtur tar-rikorrent esponent bhala azzjonista fis-socjeta' intimata u/jew li saru bi ksur tad-disposizzjonijiet u regoli ta' l-istatut tas-socjeta' intimata*

*Web Services Holdings Limited u ta' l-Att tal-1995 dwar il-Kumpanniji huma kollha nulli u minghajr effett;*

*3. tiddikjara u tiddeciedi li l-agir tal-intimati azzjonisti Jenó Torocsik, Thomas Tibor Antalffy u Web Services Holdings Limited u l-atti kollha konsegwenti u rizultanti minn tali agir kkawzaw hsara lill-awtur tar-rikorrent esponent;*

*4. tillikwida dik il-hsara u okkorrendo dan anke permezz ta' periti nominandi;*

*5. tikkundanna lill-intimati azzjonisti Jenó Torocsik, Thomas Tibor Antalffy u Web Services Holdings Limited sabiex ihallsu dik il-hsara hekk likwidata.*

*Bl-imghaxxijiet legali u bl-ispejjez inkluz dawk tal-Mandat ta' Sekwestru Kawtelatorju pprezentat kontestwalment kontra l-intimati li minn issa huma ngunti ghas-subizzjoni.*

Permezz ta' twegiba guramentata prezentata fl-14 ta' Frar 2011, il-konvenut Thomas Tibor Antalffy, is-socjeta' konvenuta Web Services Holdings Limited u s-socjeta' konvenuta Web Services Malta Limited, wiegbu:-

*1. Illi in limine litis, ir-rikors guramentat huwa difettuz fis-sens illi l-attur nomine jonqos milli jindika liema huwa l-ftehim ghall-'management buyout' illi dwaru qed jilmenta fir-rikors guramentat tieghu<sup>1</sup>; inoltre, jonqos milli jispjega kif u fejn l-istatut socjali tas-socjeta' intimata Web Services Malta Limited jirrikjedi li tali ftehim ghall-'management buyout' kellu jigi approvat; jonqos milli jghid kif, fejn u ghaliex hemm ksur ta' l-istatut tas-socjeta' intimata l-ohra Web Services Holdings Limited; u l-attur nomine jonqos ukoll milli jghid liema huma "l-atti" illi qieghed jitlob (fit-tieni talba tieghu) lil dina l-Qorti tiddikjara bhala "nulli u minghajr effett";*

*Kwindi, minhabba l-imsemmija nuqqasijiet, tezisti inkompletezza u ambigwita' fir-rikors illi tipprekludi l-eccipjenti milli jipprezentaw difiza shiha u kompluta. L-esponenti ghalhekk jeccepixxu illi, minhabba tali nuqqasijiet, il-Qorti ghandha jew tichad it-talbiet attrici jew tordna l-attur nomine jispjega, qabel xejn, il-premessi u l-kawzali tieghu, sabiex l-eccipjenti jkollhom, imbaghad, l-opportunita' iressqu, ulterjorment, l-eccezzjonijiet taghhom relatati, dejjem jekk ikun il-kaz;*

*2. Illi minghajr pregudizzju ghas-sueccipit, it-talbiet attrici ghal-likwidazzjoni, kundanna u hlas ta' danni huma preskritti ai termini ta' l-artikolu 2153 tal-Kapitolu 16 tal-Ligijiet ta' Malta;*

*3. Illi minghajr pregudizzju ghas-su eccepit, tali azzjoni attrici ma tistax tirnexxi stante illi dina l-Onorabbli Qorti ma tistax tiddikjara bhala nulli u minghajr effett (kif qed jitlob l-attur nomine fit-tieni talba tieghu) l-atti illi huma "konsegwenza ta' agir konsistenti fil-partecipazzjoni, sehem, involvement u kontribut fl-implimentazzjoni u esekuzzjoni ta' ftehim ghall-'management buyout"; minghajr ma tiddikjara, qabel xejn, l-istess ftehim innifsu bhala wiehed null u minghajr effett, talba illi l-attur nomine jonqos milli jaghmel fir-rikors guramentat tieghu;*

*4. Illi minghajr pregudizzju ghas-su eccepit, minn qari tar-rikors guramentat odjern jirrizulta li l-ebda mit-talbiet attrici m'hi diretta kontra s-socjeta' intimata Web Services Malta Limited: kwindi, ireggi li l-attur nomine ma kellux il-htiega li jharrek lis-socjeta' intimata Web Services Malta Limited fil-kawza odjerna u ghalhekk is-socjeta' intimata ghandha tigi illiberata mill-osservanza tal-gudizzju;*

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<sup>1</sup> Fin-nota ta' sottomissjonijiet, il-konvenuti ddikjaraw li ma jinsistux dwar dan l-aspett tal-eccezzjoni.

5. Illi minghajr pregudizzju ghas-suecepit u fil-mertu, l-agir ta' l-eccipjenti u l-atti illi ghalihom qed jirreferi l-attur nomine fir-rikors guramentat huma legali, konformi ma' l-istatuti socjali tas-socjetajiet intimati u 'in regola' u kwindi ma sehh ebda lezjoni ta' xi dritt illi ghandu l-attur nomine u kwindi, dina l-Qort m'ghandiex tiddikjarhom nulli u minghajr effett kif qed jitlob l-attur nomine u daqstant iehor dina l-Qorti m'ghandiex issib li hemm xi danni li huma kompetenti lill-istess attur nomine;

6. Illi minghajr pregudizzju ghas-suecepit, dwar il-ftehim ghall-management buyout, l-eccipjenti jirrispondu illi tali ftehim huma validu, konformi mal-ligi u ma' l-istatuti socjali tas-socjetajiet intimati u kwindi, l-attur nomine m'ghandu ebda dritt fil-ligi jew bazi legali ghat-talbiet attrici u tali talbiet attrici ghandhom, ghalhekk, jigu michuda minn dina l-Onorabbli Qorti;

7. Illi minghajr pregudizzju ghal dak eccepit supra, m'huwiex minnu li l-attur nomine sofra xi danni u anke jekk dan huwa l-kaz, tali danni dejjem iridu jigu ppruvati minnu;

Il-konvenut Torocsik ma wegibx ghalkemm notifikat (ara fol. 41-45).

Il-qorti semghet il-provi u rat l-atti li jinkludi noti ta' sottomissjonijiet.

### **Fatti.**

1. L-attur hu sid ta' sehem wiehed fil-kumpannija Web Services Malta Limited. L-azzjonisti l-ohra huma l-konvenuti Thomas Tibor Antalffy (sehem), Jeno Torocsik (sehem) u Web Services Holdings Limited (1497 sehem).
2. Il-konvenut Antalffy hu direttur tal-kumpannija Web Services Malta Limited.
3. Web Services Malta Limited kienet azzjonisti tal-ishma kollha fil-kumpannija Web Services Hungary, registrata fl-Ungerija.
4. Web Services Malta Limited kienet ikkonkludiet kuntratt ma' diversi kumpanniji li l-attur jirreferi ghalih bhala "*Master Internet Web Site Development and Support Services Agreement.*", hawn maghruf bhala *Amway Contract*. Kuntratt li kellu d-data ta' terminazzjoni tal-1 ta' Awissu 2004.
5. Is-socjeta Ungeriza kienet il-kumpannija li kellha l-assi, il-haddiema u mezzi ohra sabiex jigi mplimentat l-*Amway Contract*. Kuntratt li kien jipprovdi l-qligh principali ta' Web Services Malta Limited.
6. Fil-21 ta' Frar 2005, Antalffy ghan-nom ta' Web Services Malta Limited ittrasferixxa l-ishma kollha li l-kumpannija kellha f'Web Services Hungary (*management buyout agreement*, a fol. 190). L-akkwirenti kienu Anita Dangel li hi mart Antalffy u Richard Petho.
7. M'hemmx prova li qabel Antalffy ffirmat l-*management buyout agreement*, sejjah laqgħa u ottjena l-kunsens tal-azzjonisti tal-kumpannija Web Services Malta Limited.
8. Fit-28 ta' Marzu 2006 saret laqgħa ta' Web Services Holdings Limited li ghalha kienu prezenti Carmel Buttigieg ghan-nom tal-azzjonisti l-attur, Antalffy, Torocsik, kif ukoll David Vella Gera u George Gondon. Fil-minuti tal-laqgħa (fol. 194) jingħad li: "*The meeting next moved to discuss the management buyout agreement where it was again emphasized by LB that this did not have the approval of the other shareholders and hence was considered ultra vires. The point was also raised that this bore a conflict of*

*interest because the proposed buyout was a company owned as to 91% by Mr Antalfy's wife."*

### **Konsiderazzjoni.**

1. **L-ewwel eccezzjoni** - il-konvenuti jsostnu li hemm nullita' tar-rikors guramentat ghalieq l-attur:

*"jonqos milli jispjega kif u fejn l-istatut socjali tas-socjeta intimata WebServices Malta Limited jirrikjedi li tali ftehim ghall-management buyout kellu jigi approvat; jonqos milli jghid kif, fejn u ghalieq hemm ksur tal-istatut tas-socjeta intimata l-ohra Web Services Holdings Limited; u l-attur nomine jonqos ukoll milli jghid liema huma l-atti illi qiegħed jitlob (fit-tieni talba tieghu) lil il-qorti tiddikjara bhala nulli u minghajr effett."*

F'dan ir-rigward il-qorti tosserva:-

- i. Ghalkemm l-attur ma semmiex liema parti tal-istatut tas-socjeta kien jezigi li l-*management buyout agreement* kellu jigi approvat mill-azzjonisti, b'daqshekk ma jfissirx li r-rikors guramentat hu null. Ovvjament waqt is-smigh tal-kawza kellu d-dmir jiddikjara għal liema parti tal-istatut kien qiegħed jirreferi.
- ii. Fir-rigward ta' Web Services Holdings Limited, fil-premessi tar-rikors guramentat l-attur qatt ma allega li kien hemm ksur tal-istatut ta' dik il-kumpanija. Fil-fatt f'paragrafu 3 allega li dak li sar, *"... jilledu d-drittijiet tieghu personali u kif [ukoll] l-interessi u drittijiet tas-socjeta Web Services Malta Limited li għandha r-rappreżentanza guridika tagħha vestita fl-intimat Thomas Tibor Antalfy."*
- iii. Hu minnu li fir-rigward tat-tieni talba l-attur ma ddikjarax liema huma l-atti, *"...konsegwenti u rizzultanti minn tali agir u li huma lezivi għad-drittijiet personali tal-awtur tar-rikorrent esponent bhala azzjonista fis-socjeta intimata u/jew li saru bi ksur tad-disposizzjonijiet u regoli tal-istatut socjali tas-socjeta intimata Web Services Holdings Limited<sup>2</sup> u tal-Att tal-1995 dwar il-Kumpaniji huma kollha nulli u minghajr effett."* Kliem li għall-qorti qiegħed jipprospetta fatti li sehew b'rizzultat tal-implimentazzjoni u ezekuzzjoni tal-*management buyout agreement*. Madankollu l-fatt li l-attur m'identifikax x'kienu dawn l-atti, ma jwassalx għan-nullita tar-rikors guramentat. Il-konvenuti kellhom kull opportunita' li jitolbu lill-qorti tagħti ordni sabieq qabel jibdeu jitrassqu l-provi, l-attur jiddikjara liema huma l-atti li għaliha tirreferi t-tieni talba. F'kull kaz kien fl-interess tal-attur stess li jghid x'inhuma l-atti,

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<sup>2</sup> Il-qorti fehmet li r-riferenza għas-socjeta Web Services Holdings Limited kellha tkun Web Services Malta Limited. Konklużjoni li tasal għaliha minn dak li jingħad fil-premessi, b'mod partikolari paragrafu numru 3. Għall-qorti hu evidenti li l-attur kien qiegħed jirreferi għas-socjeta Web Services Malta Limited, in kwantu mit-talbiet l-oħra hu evidenti li qiegħed jippretendi li Web Services Holding Limited kkwawzatlu d-danni u jippretendi li għandu jigi rizarcit.

"...*kollha konsegwenti u rizultanti minn tali agir.*" li jippretendi li huma nulli. Haga li m'ghamilx. L-attur ma jistax jippretendi li *ex officio* l-qorti toqghod tipprova tfittex x'setghu kienu l-atti li l-attur kellu f'mohhu.

Inoltre, t-tezi tal-konvenuti li minhabba kif gie redatt ir-rikors guramentat ma setghux iressqu difiza shiha u kompluta hi bla bazi, u dan kif jirrizulta mill-atti.

2. **Tieni eccezzjoni** – il-konvenuti jsostnu li l-azzjoni tal-attur hi preskritta skond l-Artikolu 2153 tal-Kodici Civili<sup>3</sup>. L-attur jippretendi wkoll il-hlas ta' danni minghand l-azzjonisti tas-socjeta Web Services Malta Limited, cjoe' Torocsik, Antalffy u Web Services Holdings Limited. Dawn il-partijiet huma firmatarji ta' kuntratt, l-istatut tal-kumpannija. L-istatut ghandu natura kuntrattwali. Wiehed mill-ilmenti tal-attur hu li l-*management buyout agreement* ma kienx gie approvat skond ma jitlob l-istatut tal-kumpannija, u madankollu l-azzjonisti nvolvu ruhhom fl-implimentazzjoni u ezekuzzjoni ta' dak il-kuntratt. Pjuttost jidher li l-attur qieghed jallega l-ksur ta' obbligi kuntrattwali u f'liema cirkostanza l-Artikolu 2153 tal-Kodici Civili ma japplikax. Il-fatt li f'kawza attur jitlob il-likwidazzjoni u hlas ta' danni, ma jfissirx awtomatikament li allura japplika l-Artikolu 2153 tal-Kodici Civili; "*Il-preskrizzjoni ta' sentejn li tolqot l-azzjoni ghal danni li ma jkunux kagunati b'reat hija applikabili biss fil-kaz ta' danni indipendenti minn obligazzjoni kontrattwali*" (**Stivala vs Colombo** deciza mill-Prim'Awla fid-9 ta' Jannar, 1953 – Vol. XXXVII.ii.622).
3. **Tielet eccezzjoni** – it-tieni talba ma tistax tirnexxi gialadarba fil-kawza m'hemmx talba biex jithassar il-*management buyout agreement*. F'dan ir-rigward il-qorti taqbel mal-konvenuti li sabiex it-tieni talba tintlaqa', il-kuntratt tal-21 ta' Frar 2005 irid jigi dikjarat null. Talba f'dan is-sens m'hemmx u f'kull kaz l-akkwirenti (Anita Dangel u Richard Petho) m'humix parti fil-kawza.
4. **Raba' eccezzjoni** – il-konvenuti jsostnu li ma kienx hemm htiega li Web Services Malta Limited tkun parti fil-kawza. Hu fatt li l-attur ma ressaq l-ebda pretensjoni kontra din il-kumpannija. Madankollu hi l-fehma tal-qorti li kien opportun li din il-kumpannija tkun parti fil-kawza gialadarba kienet hi li ttrasferit l-oggett tal-*management buyout agreement*, cjoe' l-ishma kollha li kellha fil-kumpannija estera Web Services Hungary. Wara kollox dan hu l-meritu tal-vertenza.
5. **Meritu** - L-attur qieghed isostni, u jrid dikjarazzjoni, li dak kollu li ghamlu l-konvenuti Torocisk, Antalffy u Web Services Holdings Limited bhala azzjonisti, li wassal ghal konkluzjoni u mplimentazzjoni tal-*management buyout*

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<sup>3</sup> Argument bazat fuq dak li jinghad minn Prof. Andrew Muscat f'pagna 1012 tal-ktieb *Principles of Maltese Company Law* (2007) dwar il-preskrizzjoni li tapplika ghall-azzjoni kontemplata fl-Artikolu 402 tal-Kap. 386.

*agreement*, jikser id-drittijiet personali tieghu u sar bi ksur tal-istatut tal-kumpannija u tal-Att dwar il-Kumpanniji. Fl-affidavit xehed:

*"The scope and purpose of my action apart from requesting the court to declare the abusive and collusive action of whatsoever of the respondents as an oppression of the plaintiff as shareholder and as a breach of my minority shareholder's rights, also requests the liquidation and consequent condemnation for payment, of those damages and losses consisting in the loss of profits income and the devaluation of my shares as a result of those abusive and collusive actions committed by respondents or whosoever of them prior and subsequent to the Management Buy Out Agreement."*(fol. 110).

Mir-rikors guramentat hu evidenti li l-attur qieghed jallega li dak li sar kien bi ksur tad-drittijiet personali tieghu bhala azzjonist minoritarju. Il-gurisprudenza lokali sa minn qabel dahal fis-sehh l-Att dwar il-Kumpanniji (Kap. 386) irrikonoxxiet l-possibilita' ta' dritt ta' azzjoni personali minn azzjonist fejn l-azzjonist isofri telf personali li jkun distint mit-telf li setat sofriet il-kumpannija (ara per ezempju *Scifo Diamantino vs Pace Bonello pro et nomine et*, tal-Qorti tal-Kummerc 29 ta' Novembru 1989, u *Martin Bonello Cole vs Kenneth Cole*, Qorti tal-Appell 5 ta' Ottubru, 2011)<sup>4</sup>;

*"It therefore appears that if a shareholder can establish the existence of a right appertaining to him personally, as opposed to the company, he may sue to have that right enforced, either through the remedy of specific performance or through that injunction. A shareholder, as a party to the company's constitutive contract, should, in many instances, be able to institute proceedings to enforce the provisions of the company's memorandum or articles of association and his rights at law. He may also have an action in damages."*<sup>5</sup>

6. Jekk b'din il-kawza l-attur ippropona wkoll id-*derivative action*<sup>6</sup>, f'sentenza li nghatat fit-30 ta' Settembru 2016 fil-kawza **I-Arkitett Raymond Vassallo proprio et nomine et vs Anthony Parlato Trigona et**, intqal li fid-dritt Malti ma tezistix *derivative action* indipendenti minn dak kontemplat fl-Artikolu 402 tal-Kap. 386. Il-qorti osservat wkoll li: "*Lanqas ma tista' tigi amnessa azzjoni li ma tezistix fid-Dritt Malti minhabba l-affermazzjoni tar-rikorrenti illi jekk tali azzjoni tigi michuda, huma jisfaw minghajr rimedju. Ma jispettax lill-Qorti illi tipprovdi rimedju alternattiv ghal xi parti jew ohra jekk mhux kontemplat fil-ligi. Id-dmir tal-Qorti huwa li taghti gudizzju ai termini tal-ligi u mhux legalment konsentit li qorti li, minhabba c-cirkostanzi tal-kaz, tiddikjara bhala ammissibbli azzjoni li ma tinkwadrax fis-sistema legali taghna.*" L-ghan ewlieni tal-Artikolu 402 hu li joffri rimedju lill-azzjonist. Pero' b'din il-procedura il-qorti tista' tordna lill-kumpannija li, "*...tibda, tiddefendi, tkompli jew ma tkomplix procedimenti tal-qorti, jew jawtorizza lil membru jew membri tal-kumpannija li jibdew, jiddefendu, ikomplu jew ma jkomplux procedimenti tal-*

<sup>4</sup> Citati fil-ktieb *Principles of Maltese Company Law*, Prof. Andrew Muscat, pagna 902.

<sup>5</sup> Ibid *Principles of Maltese Company Law*, pagna 903.

<sup>6</sup> Qed issir din l-osservazzjoni in vista ta' dak li jinghad fit-tielet paragrafu tar-rikors guramentat, fejn l-attur iddikjara li dak li sar jikser "*... l-interessi u drittijiet tas-socjeta Web Services Malta Limited.*"

*qorti f'isem u ghan-nom tal-kumpannija.*" (paragrafu (e) tas-subinciz 2 tal-Artikolu 402). Ghalhekk il-ligi tipprotegi l-interessi tal-kumpannija wkoll fejn il-kontroll taghha qiegħed f'idejn min ikun għamel il-hazin billi tipprovd, "*a statutory form of derivative action.*" (ara sentenza ta' din il-qorti fil-kawza **Amadeo Balzan vs Central Holidays (Travel and Tourism) Ltd et** tas-16 ta' Gunju, 2015. Pero' jekk l-attur qiegħed jipproponi kawza fl-interess tal-kumpannija, m'hemmx prova li qabel ipprezentata l-kawza ngħata l-permess kontemplat f'paragrafu (e). Dan apparti li mill-istess disposizzjoni hu evidenti li jekk azzjonist jigi awtorizzat jipproponi kawza għan-nom tal-kumpannija, trid tkun attrici. Fil-kaz tal-lum l-attur ippropona l-kawza f'ismu personali biss.

7. Il-konvenuti jsostnu li l-azzjoni tal-attur ma tinkwadra ruħha taħt l-Artikolu 402 tal-Att dwar il-Kumpanniji<sup>7</sup>. Il-qorti tresserva li azzjonist għandu rimedju taħt l-Artikolu 402 tal-Att dwar il-Kumpanniji. Il-fatt li l-attur għandu sehem wieħed biss fis-socjeta Web Services Limited mhu ta ebda konsegwenza fuq id-dritt tiegħu li jfittex rimedju taħt din id-disposizzjoni. Skond din id-disposizzjoni:

*"Kull membru ta' kumpannija li jilmenta li l-affarijiet tal-kumpannija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b'mod li, jew li xi att jew omissjoni tal-kumpannija kienu jew huma jew x'aktarx se jkunu, oppressivi b'mod mhux ġust diskriminatorji kontra, jew b'mod mhux ġust ta' preġudizzju, għal membru jew membri jew b'mod li jkunu kontra l-interessi tal-membri in ġenerali, jista' jagħmel rikors lill-qorti għal ordni taħt dan l-artikolu."*

Fil-kaz ta' *unfair prejudice*, hemm bzonn li:

- i. It-test ikun wieħed oggettiv.
- ii. M'hemmx htiega li l-attur jipprova l-*mala fede*.
- iii. M'hemmx htiega li l-attur jipprova li kien hemm intenzjoni li tikkawza preġudizzju.
- iv. Mhux ġust ma jfissirx bilfors li l-agir irid ikun illegali.
- v. L-agir irid ikollu effett negattiv fuq l-attur bħala azzjonist.

F'sentenza Ingliza **Re Coroin Ltd** (2012)<sup>8</sup> intqal:

*"630 Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member.... The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section."*

<sup>7</sup> Ara paragrafu 25 tan-nota ta' sottomissjonijiet.

<sup>8</sup> Hight Court of Justice Chancery Division Companies Court.

631 Where the acts complained of have no adverse financial consequences, it may be more difficult to establish relevant prejudice. This may particularly be the case where the acts or omissions are breaches of duty owed to the company rather than to shareholders individually. If it is said that the directors or some of them had been in breach of duty to the company but no loss to the company has resulted, the company would not have a claim against those directors. It may therefore be difficult for a shareholder to show that nonetheless as a member he has suffered prejudice..."

## 8. L-attur xehed:

"The Management Buy Out Agreement was signed and executed by Thomas Antallfy in representation of Web Services Malta Limited without the obtainment of a resolution of the shareholders of Web Services Malta Limited including therefore the consent and approval of the majority shareholder of Web Services Malta Limited, namely Web Services Holdings Limited and further in breach of my rights as minority shareholder, who was faced with a situation and a result that the principal and main source of income of Web Services Malta Limited was extinguished."

Fl-ewwel lok l-attur m'ghamilx riferenza ghal klawzola fl-istatut tal-kumpannija li kienet tipprojbixxi lil Antallfy, bhala direttur tal-kumpannija, milli jaghmel in-negozju li sar bil-kuntratt tal-21 ta' Frar 2005. Kuntrarjament ghal dak li jsostni l-attur, mill-istatut ta' Web Services Malta Limited ma jirrizultax li hemm xi disposizzjoni li espressament tezigi li Antallfy jitlob il-permess tal-azzjonisti qabel jikkonkludi l-*management buyout agreement*. Skond klawzola 17 tal-istatut, "*deeds of whatever nature engaging the Company*", "*.... shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any one Director .....*" (fol. 12). Inoltre, f'Gunju 2001 Antallfy kien inghata prokura minghand il-kumpannija Web Services Malta Limited fejn fost'affarijiet ohra nghata l-jedd:

"To transact manage carry on and do all and every business matters and things requisite and necessary or in any manner connected with or having reference to the business and affairs of the Company in any country and for such purposes to conduct all correspondence appertaining to such business and affairs."

Ghalhekk ma jistax jinghad li l-agir ta' Antallfy kien *ultra vires*. Direttur ta' kumpannija hu mandatarju u fiducjarju tal-kumpannija. Dan apparti li fi klawzola 4, l-*objects clause* tinkludi:

"(iii) To purchase, sell, take by title of emphyteusis, lease or exchange or otherwise acquire or dispose of any immovable or movable property, and any rights or licences which the Company may deem necessary or convenient for the purposes of its business."

Hu minnu li fit-28 ta' Marzu 2006 kienet saret laqgha straordinarja tal-azzjonisti ta' Web Services Holdings Limited u wiehed mis-suggetti fuq l-agenda kienet l-approvazzjoni tal-*management buyout agreement*, li ma giex approvat. Waqt il-laqgha Lino Buttigieg, li kien qiegħed jidher ghan-nom ta' BDO Consult Limited li kienet nominee tal-azzjonisti, osserva:



*"The meeting next moved to discuss the management buyout agreement where it was again emphasized by LB that this did not have the approval of the other shareholders and hence was considered ultra vires. The point was also raised that this bore a conflict of interest because the proposed buyout was a company owned as to 91% by Mr Antalfy's wife."*

Madankollu din kienet biss opinjoni u legalment ma jfissirx li kienet il-posizzjoni korretta.

9. Mill-provi rrizulta li kien biss wara li sar il-*management buyout agreement* li Antalfy baghat memo lill-azzjonisti ta' Web Services Malta Limited, fejn gharrafhom bin-negozju li kienet ghamlet il-kumpannija. Fih jinghad, "1. *I have agreed to a management buyout of Web Services Hungary. The agreed price is USD 150,000 – the same amount we paid for the subsidiary.*" (fol. 196). Fl-ahhar paragrafu tal-avviz jinghad: "*According to my projections, this deal will reduce our revenues to about one quarter of the current level. The impact on profits I will be able to assess after discussing the implications with Lino.*" Inoltre, dan in-negozju sar ukoll ma' Anita Dangel, mart Antalfy. Wiehed jista' jghid li oggettivament<sup>9</sup> kien hemm element ta' kunflitt ta' nteress da parti ta' Antalfy. Madankollu:

- i. mill-*audited accounts* jirrizulta li fil-fatt minn meta Web Services Malta Limited ghamlet dan in-negozju, kellha iktar dhul mis-sena 2004. F'dan ir-rigward issir riferenza ghal *audited accounts* ta' Web Services Malta Limited ghas-snin 2005, 2006 u 2007 il-qligh kien iktar minn dak li kien meta Web Services Malta Limited kienet ghadha s-sid fl-ishma ta' Web Services Hungary. Ghalkemm fin-nota ta' sottomissjonijiet l-attur argumenta li bid-dikjarazzjoni li saret fil-memo li baghat Antalfy, ifisser li "... *Precedentement ghall-esekuzzjoni tal-Management Buy Out kien hemm ammont mhux indifferenti ta' dhul li ma kinux qeghdin jigu riportati u indikati fid-dikjarazzjonijiet finanzjarji.*" (fol. 697)<sup>10</sup>, din baqghet biss allegazzjoni.
- ii. mill-provi rrizulta li l-*management buyout agreement* sar minhabba li Anita Dangel u Richard Petho, il-persuni li jmexxu Web Services Hungary<sup>11</sup>, kienu qeghdin jheddu li ser jitolqu mill-impieg ghaliex ma nghatawx ishma li gew imwieghda lilhom (ara deposizzjoni ta' Anita

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<sup>9</sup> "*The test of unfairness must, I think, be an objective, not a subjective one. In other words it is not necessary for the petitioner to show that the persons who have de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith: the test, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests.*" (**RA Noble & Sons Clothing Ltd** [1983]).

<sup>10</sup> L-attur accenna ghal dan fl-affidavit (fol. 110)<sup>10</sup>.

<sup>11</sup> Dangel kienet *development manager* filwaqt li Petho kien *managing director* ta' Web Services Hungary Kft.

Dangel<sup>12</sup>, Thomas Antalfy u Richard Petho<sup>13</sup>). Provi li ma gewx kontradetti. Li kiek u dan sehh kien ser iwassal ghal diffikultajiet sabiex Web Services Malta Limited tkun tista' twettaq l-obbligi taghha taht l-Amway Contract, u dan meta tqies li Dangel u Petho kienu l-imhuh wara Web Services Hungary. Il-qorti tqies bhala legittima l-osservazzjoni li ghamel Antalfy meta xehed fis-seduta tas-6 ta' Ottubru 2014, *"There were two risks there. One was that if management leaves, then how will the company keep operating ? The other risk was if the contract runs out, what do we do with the whole company ? So if we hang on to it and risk losing the managers and left with whatever is left and try to recover, is it worth fighting for ?"* (fol. 658).

- iii. jirrizulta li dwar dan in-negozju kienet saret ukoll investigazzjoni mill-pulizija fl-Ungerija. F'din l-investigazzjoni kien gie nkarigat awditur sabiex jezamina u jaghti parir dwar jekk il-prezz ta' \$150,000 kienx jirrifletti valur reali. Fl-*audited accounts* ta' Web Services Malta Limited ghas-sena 2005, l-awditur Charles Scerri kiteb: *"On the 21<sup>st</sup> February, 2005 the company entered into a management buyout agreement whereby all the equity holding in Web Services Hungary were sold to Mr Richard Petho and Ms Anita Dangel for a total consideration of USD 150,000. **The financial asset was transferred at the cost of the investment as per the company's records and not at the fair value.**"* (fol. 442). Pero' fl-*audited accounts* ghas-sena 2008, l-istess awditur kiteb: *"On the 21<sup>st</sup> February, 2005 the company entered into a management buyout agreement whereby all the equity holding in Web Services Hungary were sold to Mr Richard Petho and Ms Anita Dangel for a total consideration of USD 150,000. **An independent expert report established that, the fair value of Web Services Hungary Kft as at 31<sup>st</sup> December 2004 amounted to HUF 20,675 (Thirty million, six hundred and seventy five thousand Hungarian Forint), equivalent to USD 164,670 when converted with the exchange rate ruling at 21<sup>st</sup> February 2005. The***

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<sup>12</sup> Dangel xehedet: *"I always hoped to hold ownership in Web Services and an opportunity arose when a shareholder, Mr Jenő Torocsik decided that he wanted to transfer his shares. Mr Torocsik held shares in the ultimate parent company, Web Services Holding Limited (Web Services Holdings). Mr Peter Klenner would not give his consent to the shares being transferred to me and this, for a time, blocked the transfer of the shares."* (fol. 378). Ara wkoll paragrafu 5 tal-affidavit tal-avukat Dr Simonyi Ugyvedi Iroda li assista lil Antalfy fil-*management buyout agreement*. Fis-seduta tal-10 ta' Ottubru 2014, qalet: *"We were not happy with working anymore for the Maltese company. We were ready to walk out."* (fol. 687).

<sup>13</sup> Fil-kaz ta' Petho, f'dikjarazzjoni ffirmata fis-16 ta' April 2002 mill-attur u Antalfy, jinghad: *"Richard Petho, General Manager of Web Services Hungary has received 5%B shares. Of these shares a progressively increasing portion is converted into shares not dependent on employment status as follows: 1% converted on each 1<sup>st</sup> of July 2001, 1<sup>st</sup> January 2002, 1<sup>st</sup> July 2002, 1<sup>st</sup> January 2003, and 1<sup>st</sup> July 2003. Thus, if Richard Petho's employment extends until 1<sup>st</sup> July 2003, he will have all 5% owned independently of employment status."* (fol. 341).

*difference of USD 14,670 is not material considering exchange currency fluctuations.” (fol.496).*

- iv. m’hemm l-ebda prova li l-*management buyout agreement* kellu mpatt negattiv fuq il-valur tas-sehem li l-attur ghandu f’Web Services Malta Limited. L-attur ma ressaq l-ebda prova f’dan ir-rigward u lanqas xi prova ohra li b’dak il-ftehim personalment sofra telf finanzjarju.
- v. m’hemmx provi li l-konvenuti Antalfy, Torocsik u Web Services Holdings Limited bhala azzjonisti tas-socjeta Web Services Malta Limited, ghamlu xi haga li holoq pregudizzju ngust lill-attur, kien oppressiv jew diskriminatorju ghal dak li jikkoncerna t-twertiq tal-*management buyout agreement*. Dan apparti li l-qorti ma tarax kif l-attur seta qatt jirnexxi fl-azzjoni tieghu minghajr ma jimpunja l-validita tal-*management buyout agreement*. Fil-fatt l-attur ma talabx dikjarazzjoni li l-kuntratt iffirmit fil-21 ta’ Frar 2005 hu null, tant li f’din il-kawza Anita Dangel u Richard Petho m’humiex parti fiha.

Maghmula dawn il-konsiderazzjonijiet, il-qorti m’hijiex f’posizzjoni li Antalfy agixxa b’mod li l-attur sofra xi telf jew pregudizzju. Lanqas ma tista’ tikkonkludi li meta Antalfy biegh l-ishma li kellha f’Web Hungary Services, effettivament abbanduna l-interessi ta’ Web Services Malta Limited. Mill-provi li tressqu u bil-beneficcju tat-trapass taz-zmien, irrizulta li finanzjarjament in-negozju li ghamel Antalfy mhux telf iggenera izda iktar dhul ghall-kumpannija.

**Ghal dawn il-motivi, tiddeciedi l-kawza billi:-**

- 1. Tichad l-ewwel eccezzjoni.**
- 2. Tichad it-tieni eccezzjoni.**
- 3. Tilqa’ t-tielet eccezzjoni limitatament b’riferenza ghat-tieni talba.**
- 4. Tichad ir-raba’ eccezzjoni.**
- 5. Tilqa’ t-tielet, hames u sitt eccezzjoni u tichad it-talbiet tal-attur.**
- 6. Spejjez jinqasmu in kwantu ghal 5% a karigu tal-konvenuti li taw l-eccezzjonijiet li gew michuda u 95% a karigu a karigu tal-attur.**

Anthony Ellul.