FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta taʼ nhar it-Hamis sebgha u ghoxrin (27) taʼ Ottubru 2016

Rikors Numru 206/15 FDP

Wellmade Company Limited (C 57572) u Tiziano Donini (Passaport Taljan 0998857)

vs

Domestica Limited (C 2210)

Il-Qorti:-

Rat ir-rikors promotur ippresetat fis-16 ta’ Lulju 2015 fejn ir-rikorrenti talbu lill-Qorti tordna lis-socjeta rikorrenti tirritorna lura l-oggetto kollha indikati minnha fi skeda annessa li jinsabu gewwa l-fond 131, Msida Valley Roard, Birkirkara, liema fond kien mikri lill-atturi mill-intimati, liema kirja giet pero terminata jew, alternettivament, tordna lis-socjeta intimata thallas is-somma ta’ tmint elef, mija u erbgha u tletin Euro (€8,134) rappresentanti l-valur ta’ l-imsemmija oggetti.

Rat ir-risposta tas-socjeta intimata ippresentata fis 17 ta’ Awissu 2015 fejn, preliminarjament, sahqet illi t-talbiet attrici kienu infondati fil-fatt u fid-dritt fil-konfront ta’ Tizano Donnini, stante illi ma tesisti ebda relazzjoni guridika mieghu. Fil-meritu, is-socjeta intimata sahqet illi hija ma ghandhiex fil-pussess taghha numru sostanzjali ta’ l-oggetti elenakti filwaqt illi insistiet illi s-socjeta rikorrenti Wellmade Company Limited kienet dahhlet fi skrittura ta’ lokazzjoni fis 7 ta’ Dicembru 2013 li kien jistabilixxi, fost affarjiet ohra, li l-benefikati kellhom jibqu mal-propjeta’. Sahqet ukoll illi s-socjeta rikorrenti kienet wahhlet light fittings fis-suffit illi ghalhekk kellhom jitqiesu bhala twahhil permanenti u, apparti minn hekk, skond l-istess skrittura, s-socjeta intimata kienet awtorizzata tiehu pussess ta’ l-affarjiet mobbli illi kien hemm fil-hanut f’kaz illi s-socjeta rikorrenti ma tiehux tali affarjiet f’gheluq tal-kirja. Finalment, is-socjeta intimata stqarret ukoll illi l-valur indikat ma huwiex wiehed reali stante illi hija bbazata fuq fattura mahruga minn missier ir-rikorrent lill-ibnu, u ghalhekk ma tistax titqies bhala kredibbli.

Rat il-kirja illi saret fis 7 ta' Dicembru 2013 bejn Saverio Donini, missier ir-rikorrenti flimkien mas-socjeta Wellmade Company Limited, u s-socjeta intimata Domestica Limited relatat mas-showroom fl-indirizz 131, Msida Valley Road, Birkirkara, a fol 7 tal-process.
Semghet ix-xhieda ta' **Saverio Donini** moghtija fil 25 ta' Jannar 2016 u rat id-dokumentazzjoni minnu esebita.

Rat illi fil 25 ta' Jannar 2016 is-socjeta rikorrenti iddikjarat illi ma kellhiex aktar provi x'tippresenta.

Rat l-affidavit ta' **Alan Fiorini**, accountant tas-socjeta Domestica Limited, ippresentat fil 15 ta' April 2016.

Semghet ix-xhieda ta' **Chris Vassallo Cesareo**, Direttur tas-socjeta Domestica Limited, moghtija fl-20 ta' Gunju 2016.

Rat illi fl-20 ta' Lulju 2016, il-kawza giet differita ghall-eghluq provi intimati u trattazzjoni finali ghas 17 ta' Ottubru 2016.

Rat illi, fis-17 ta' Ottubru 2016, il-Qorti ghalqet l-istadju tal-gbir tal-provi u, wara illi semghet it-trattazzjoni tad-difensur tas-socjeta intimata, ghaddiet biex differita il-kawza ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi s-socjeta intimata hija sid ta' showroom gewwa 131, Msida Valley Road, Birkikara, liema showroon hija tikrieh lill-terzi.

Jirrizulta illi, fis 7 ta' Dicembru 2013, Saverio Donnini f'ismu personali u s-socjeta Wellmade Company Limited krew tali showroom ghall periodu ta' sena '*di fermo*' bil-possibbilta' illi l-kirja tiggedded ghal sentejn ohra '*di rispetto*' filwaqt illi Tiziano Donnini deher fuq il-kuntratt bhala garanti.

Jirrizulta illi skond il-kuntratt ta' kera, Artikolu 5 kien jipprovdi dan li gej:

> *"Improvements of a permanent nature may only be carried out by the Lessee in the Premises with the Lessor's prior consent in writing, which consent may be witheld at its sole and absolute discretion. The works shall accede to the Premises for the sole benefit of the Lessors without any right of the Lessee for compensation."*

Jirrizulta illi, hekk kif dahhlet fil-hanut, is-socjeta rikorrenti ghamlet xogholijiet strutturali fil-fond, li kienu jndikaw l-installazzjoni ta' parquet mal-art kif ukoll l-installazzjoni ta' dwal godda fis-suffitt illi kien hemm gia installat.

Jirrizulta wkoll illi, skond l-istess kuntratt ta' kera, f'kaz ta' terminazzjoni tal-kuntratt, Artikolu 11 jipprovdi illi:

> *"The parties agree and accept that an additional daily sum of five hundred Euro (€500) shall be due as pre-liquidated damages in the event that the Lessee fails to remove its moveable effects from the Premises after the expiration or termination of the Lease. Furthermore, the Lessee irrevocably authorises the Lessor to take control and/or dispose of such moveable effects, irrespective of their nature and value, should the*

Lessee fail to remove them from the Premises following expiration or termination of the Lease."

Jirrizulta, mill-provi prodotti u fatt mhux kontestat illi wara sena, is-socjeta rikorrenti ghazlet illi ma ggeddietx il-kuntratt ta' kiri tal-fond 131, Msida Valley Road, Msida u ghalhekk il-kuntratt ta' kera gie ufficjalment terminat fl-1 ta' Jannar 2015.

Jirrizulta illi hemm kif kien qed jigi terminat il-ftehim, kien hemm ftehim verbal bejn il-partijiet illi l-oggetti illi kien hemm fil-hanut setghet jithallew ftit hemm sa wara il-festi tal-Milied u jintennew minn hemm hekk kif Saverio Donnini jerggha jigi lura Malta.

Jirrizulta, madanakollu, illi sa l-20 ta' Marzu 2015, kif jidher f'korrispondenza skambjata bejn l-accountant tas-socjeta Intimata, Alan Fiorini u Saverio Donnini, l-merkanzija u affarjiet ohra tas-socjeta rikorrenti, illi kienu indikati bhala "*two electric cars, three electric bikes, one chest freezer, a wooden box, three black bags and some office furniture*" kienu ghadhom gewwa l-hanut, filwaqt illi c-chest freezer kienu ghadu mqabbad mad-dawl sa dakinhar, ghalkemm il-krija kienet ilha li spiccat tlett xhur.

Jirrizulta, nelfrattemp, illi s-socjeta intimata kienet kriet il-hanut lill-terzi izda, in vista tal-fatt illi kien ghad hemm l-oggetti tas-socjeta rikorrenti fil-hanut, hija ma setghetx tibda l-kirja l-gdida.

Jirrizulta illi, eventwalment, fil 25 ta' Marzu 2015, l-oggetti indikati mis-socjeta intimata gew mehudha mis-socjeta rikorrenti.

Jirrizulta illi, sussegwentement, Saverio Donnini kiteb lis-socjeta intimata fl-10 ta' Gunju 2015 fejn talabaha tirritornalu d-dawl li kien hemm installat fil-hanut, ghal liema talba is-socjeta intimata, tramite l-konsulent legali taghha, insistiet illi l-oggetti thallew fil-post u ghalhekk is-socjeta intimata setghet tiddisponi minnhom hi.

Jirrizulta illi eventwalment giet imnieda l-procedura odjerna ghar-ritorn ta' tali apparat tad-dal jew inkella l-hlas ta' l-istess.

Ikkunsidrat

Jirrizulta, mix-xhieda ta' Saverio Donnini, illi t-talba odjerna tirrigwarda ir-ritorn ta' dwal installati mis-socjeta rikorrenti fis-suffitt tal-hanut tas-socjeta intimata u, f'kaz illi dawna ma jigux ritornati, s-socjeta intimata thallas lis-socjeta rikorrenti taghhom.

Jirrizulta ammess minn Donnini illi dawna d-dwal huwa installahom sabiex itejjeb is-showroom tas-socjeta intimata.

Jirrizulta illi, ai termini tal-ftehim iffirmat mis-socjeta rikorrent mas-socjeta intimata, kwalsiasi "*improvements of a permanent nature*" jibqghu mal-fond fejn saru tali xogholijiet minghajr ebda dritt ta' kumpens.

Jirrizulta mhux disputat illi d-dwal illi s-socjeta rikorrenti qieghd tippretendi illi tiehu lura huma dwal illi gew installati fis-suffitt tal-hanut, liema dwal twahhlu billi fis-suffitt tqattghu toqod appositi.

Il-Qorti ma tistax ma tosservax illi ma jista jkun hemm ebda dubju illi d-dwal, kif installati mis-socjeta rikorrenti fis-suffitt, ghandhom jitqiesu bhala xoghlijiet ta' natura permanenti, stante illi t-

tnehhija taghhom ma jistax isir hlief billi ssir hsara lis-suffitt tal-hanut, u ghalhekk lill-hanut inniffsu, liema hanut inghata lis-socjeta rikorrenti fi stat li setgha intuza w l-installazzjoni tad-dawl kienet biss intiza mis-socjeta rikorrenti sabiex issebbah aktar il-hanut inniffsu.

Ghaldaqstant, kkunsidrat illi tali dwal ghandhom jitqiesu bhala "*improvements of a permanent nature*", a tenur tal-ftehim maghmul bejn il-partijiet, dawda d-dwal ghandhom jiqtiesu bhala parti mill-fond illi kellu jigi ritornat lis-socjeta intimata hekk kif gie terminat il-ftehim mis-socjeta rikorrenti, u ghalhekk it-talba tas-socjeta rikorrenti ma hijiex wahda gustifikata.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi prodotti quddiemha,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha tas-socjeta intimata, u ghalhekk

Tichad it-talbiet attrici kollha.

Spejjez tal-proceduri odjerni ghandhom ikunu kollha a kariku tas-socjeta rikorrenti u Tiziano Donnini in solidum bejniethom.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur