



QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 28 ta` Frar 2017

Kawza Nru. 8
Rik. Gur. Nru. 870/13 JZM

Dr. Suzanne Wolfe Martin bhala
mandatrici tas-socjeta` Urtica limited
registrata fil-Gzejjer Cayman

kontra

Geraldine Schembri (detentrici tal-karta
tal-identita` 63769M) f'isimha proprju u
bhala likwidatur ta` Bonatrans Group
Holdings Limited (C-49189)

u

b`digriet tat-23 ta` Jannar 2014 Dr
Suzanne Wolfe Martin giet awtorizzata
tintervjeni fil-kawza *in statu et terminis*
bhala mandatarja specjali ta` l-assenti
Frantisek Komarek u ta` l-assenti Karel
Komarek Sen.

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fid-9 ta` Settembru 2013 li jaqra :-

i. Illi s-socjeta` esponenti (minn hawn `il quddiem `Urtica`) hija kumpanija registrata u nkorporata gewwa l-Gzejjer Cayman (kopja tac-certifikat ta` registrazzjoni hawn anness u mmarkat bhala `URT1`);

ii. Illi Urtica, flimkien mas-socjeta` Malverine Limited (kumpanija ohra registrata gewwa l-Gzejjer Cayman) kienu l-ahhar zewg azzjonisti ta` Bonatrans Group Holdings Limited (C-49189) (minn hawn `il quddiem `Bonatrans`) (kopja tal-Memorandum & Articles ta` Bonatrans hawn anness u mmarkat bhala `URT2`);

iii. Illi ai termini ta` rizoluzzjoni tas-socjeta` Bonatrans, tneddiet procedura ta` xoljiment, liema wasslu sabiex l-intimata Geraldine Schembri tigi appuntata bhala likwidatur – is-socjeta` Bonatrans eventualment giet stralcjata fir-4 jum ta` Ottubru 2011 (kopja tan-notifika da parti ta` l-Awtorita` Maltija ghas-servizzi finanzjarji hawn annessa u mmarkata bhala `URT3`);

iv. Illi sussegwentament, is-socjeta` Urtica nediet ezercizzju liema huwa ntiz inter alia sabiex jistabilixxi li l-elementi li jikkostitwixxu x-xoljiment tas-socjeta` Bonatrans, kienu maghmula fl-ahjar interess ta` l-azzjonisti kollha, tas-socjeta` Bonatrans, kif ukoll tal-beneficjarji fosthom Karel Komarek u Frantisek Komarek ;

v. Illi in vista tas-suespost inbdew proceduri gewwa l-Principat ta` Liechtenstein, liema wasslu sabiex it-tlett azzjonisti precedenti ta` Bonatrans (it-tlieta li huma fondazzjonijiet registrati gewwa l-istess Principat, gew eventualment mibdula u posthom mehud mis-socjeta` rikorrenti u Malverine Limited), gew integrita u restitwiti l-hajja u l-isem fir-registru tal-Principat, u per konsegwenza gie appuntat kuratur sabiex jiehju hsieb l-operat taghhom ;

vi. Illi in linja ma` dak li kien qieghed isehh gewwa gurdizzjonijiet ohra, giet intavolta rikjesta ghal informazzjoni datata 14 ta` Mejju 2013 lil-likwidatur qua intimata fil-proceduri odjerni, bir-risposta datata 3 ta` Gunju 2012 inter alia tispecifica li,

“Prior to analysing your requests with my lawyers, I have been advised to request from you an original, notarised and apostilled Resolution signed by

all the directors of Urtica Limited, showing that they have appointed you to write to me on behalf of Urtica Limited in respect of all the matters indicated in your letter”

(kopja ta` l-ittra u risposta hawn annessi u mmarkati bhala URT4) ;

vii. Illi tali mandat gie provdut kif kien rikjest, izda l-informazzjoni rikjesta xorta wahda ma gietx provduta u minflok gie inter alia ssugerit li,

“The Company is no longer in existence and there are therefore no shareholders who can claim any shareholder rights”

(kopji ta` l-ittra u risposta hawn annessi u mmarkati bhala URT5) ;

viii. Illi ghaldaqstant, Urtica kienet kostretta li tintavola mandat ta` deskrizzjoni sabiex inter alia tikkawtela l-interessi taghha billi d-dokumenti li qed jintalbu minghand l-intimata qua likwidatur jigu mharsa u protetti (kopja tal-mandat ta` deskrizzjoni hawn anness u mmarkat bhala URT6) ;

Ghaldaqstant, l-esponenti umilment titlob lil din l-Onorabbli Qorti, prevja kwalsiasi ordni, provvediment u dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi, joghghobha :-

i. Tiddikjara li, is-socjeta` attrici ghandha d-drittijiet kollha, jew in parte, li jkollha access ghall-informazzjoni u dokumenti kollha, jew in parte, dwar Bonatrans Group Holdings Limited (C-49189) u dana in vista tal-pozizzjoni li hija kienet tokkupa fil-kumpanija Bonatrans Group Holdings Limited, qabel din gie xolta.

ii. Tiddikjara li r-rifjut da parti tal-konvenuta li tforni l-informazzjoni u d-dokumenti mitluba mis-socjeta` attrici, jikser l-obbligazzjonijiet assunti meta giet accettata l-hatra ta` likwidatur, u dana bi ksur ta` inter alia l-artikoli li jirregolaw lil-likwidatur fil-kapitolu 386 tal-ligijiet ta` Malta.

iii. Tikkundanna lill-konvenuta sabiex taghti access lis-socjeta` attrici ghal informazzjoni kollha, jew in parte, u tforni kopji tad-dokumenti kollha, jew in parte, ilkoll relatati ma` Bonatrans Group Holdings Limited (C-49189) li din l-Onorabbli Qorti hekk iddikjarat.

iv. *Tiddikjara illi in vista ta` l-agir u komportament da parti tas-segretarju tas-socjeta` Bonatrans Group Holdings Limited (C-49189) fil-konfront tat-talbiet li saru mis-socjeta` attrici, l-istess socjeta` attrici soffriet id-danni pekunarji.*

v. *Tikkundanna, okkorrendo bl-opera ta` esperti nominati minn din l-Onorabbli Qorti, lill-konvenuta, thallas id-danni li gew ikkawzati mill-agir u l-komportament taghha.*

Bl-ispejjez kontra l-konvenuta li hija minn issa stess ingunta in subizzjoni.

Rat il-liswta tax-xhieda u l-elenku tad-dokumenti.

Rat ir-risposta guramentata pprezentata fis-17 ta` Ottubru 2013 li taqra hekk :-

Risposta ghall-fatti dikjarati

1. *Illi l-fatti esposti fl-ewwel tliet paragrafi tad-dikjarazzjoni attrici mhumiex kontestati.*

2. *Illi dwar il-fatti dikjarati fir-raba` paragrafu tad-dikjarazzjoni attrici, trid issir prova dwar l-istess kif ukoll tar-rilevanza ghall-fatti tal-proceduri odjerni. In oltre jinkombi fuq l-attrici li taghmel l-ahjar prova dwar l-interess tal-imsemmija beneficjarji Karel Komarek u Frantisek Komarek kemm f`Bonatrans Group Holdings Limited u / jew is-socjeta` rikorrenti kif ukoll f`dawn il-proceduri.*

3. *Illi l-fatti dikjarati fil-hames paragrafu tad-dikjarazzjoni attrici huma kontestati fis-sens li trid issir prova tal-proceduri allegati ghalkemm mhuwiex car x`rilevanza jista` jkollhom dawn il-proceduri ghaliex fl-ahhar mill-ahhar l-azzjonisti ta` Bonatrans Group Holdings Limited meta dina tqeghdet fi stralc kienu proprju Malverine Limited u Urtica Limited;*

4. *Illi dwar il-fatti dikjarati fis-sitt paragrafu tad-dikjarazzjoni attrici, mhuwiex kontestat illi hija rceviet l-ittra ndikata tal-14 ta` Mejju 2013 u li hija baghtet risposta permezz ta` ittra datata 3 ta` Gunju 2013.*

5. *Illi l-fatti dikjarati fis-seba` paragrafu tad-dikjarazzjoni attrici mhumieq kontestati.*

6. *Illi ghal dak li jirrigwarda l-mandat ta` deskrizzjoni msemmi fil-paragrafu tmienja tad-dikjarazzjoni attrici, ghandu jizdied illi l-esponenti ntavolat proceduri ghar-revoka tal-istess mandat, liema proceduri ghadhom pendenti quddiem dina l-Onorabbli Qorti;*

Eccezzjonijiet

1. *Preliminarjament in-nullita` tar-rikors guramentat ai termini tal-artiklu 789 (1) (c) tal-Kap. 12 in kwantu kif gie redatt ir-rikors guramentat huwa nieqes ghal kollox minn kawzali car li jiddetermina l-bazi tal-kawza attrici.*

2. *Illi l-process ta` stralc gie konkluz u l-imsemmija socjeta` Bonatrans Group Holdings Limited giet struck off fl-4 ta` Ottubru 2011 wara li l-istess azzjonisti tal-kumpannija, inkluz Urtica Limited, approvat rizoluzzjoni sabieq il-kumpannija tigi xjolta, approvat l-iskema ta` distribuzzjoni u l-operat tal-esponent qua stralcjarju, bil-konsegwenza ghalhekk illi s-socjeta` attrici ma ghandha l-ebda drittijiet u/jew rimedji sakemm l-istess socjeta` tibqa` struck off. Kopja tal-iskema ta` distribuzzjoni u l-audited accounts tal-istralc huma hawn annessi.*

3. *Illi minghajr pregjudizzju ghall-premess, it-talbiet attrici huma nfondati fil-fatt u fid-dritt stante illi d-dokumenti u l-informazzjoni li qed jintalbu jirrigwardaw l-operat u transazzjonijiet tal-kumpannija Bonatrans Group Holdings Limited fl-istadju qabel ma giet formalment xjolta u matul liema stadju kienu responsabbli ghall-operat tal-kumpannija d-diretturi.*

4. *Illi minghajr pregjudizzju ghall-premess, ma jezisti l-ebda dritt skond il-ligi li jaghti dritt lil azzjonista li jkollu access ghal dokumenti jew informazzjoni dwar il-kumpannija sew jekk kumpannija tkun qed topera normalment u sew jekk din tkun ghaddejja minn process ta` stralc; fuq kollox ma jezisti l-ebda obbligu fuq stralcjarju li jforni din l-informazzjoni lil azzjonista aktar u aktar wara li ntemm il-process ta` stralc.*

5. *Illi l-esponenti ma ghandha l-ebda responsabbilta` ghad-danni fil-konfront tas-socjeta` attrici u fi kwalunkwe kaz mhuwiew minnu illi s-socjeta` attrici sofriet xi danni pekunarji.*

6. *Salvi eccezzjonijiet ulterjuri.*

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat ir-risposta ulterjuri ta` Geraldine Schembri prezentata fis-26 ta` Novembru 2013 li taqra hekk :-

Illi peress illi s-socjeta` attrici hija registrata gewwa l-gzejjer Cayman u tinsab rapprezentata f`dawn il-proceduri minn mandatarja specjali li mhijiex ta` nazzjonalita` Maltija u lanqas residenti hawn Malta, is-socjeta` attrici jehntieg li tirregolarizza l-atti tal-kawza odjerna billi skont il-ligi jenhtieg li jkollha rapprezentanza gudizzjarja fizika gewwa Malta.

Semghet ix-xhieda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat illi fl-udjenza tal-11 ta` Lulju 2016 kien hemm qbil illi kull prova li tressqet fil-kawza fl-ismijiet *Dr Suzanne Wolfe Martin noe vs Claire Valletta Giordano et noe (Rik. Gur. Nru. 869/2013 JZM)* tkun tikkostitwixxi prova ghall-fini ta` din il-kawza.

Rat id-digriet illi tat fit-13 ta` Ottubru 2016 fejn iprovdiet illi kienet sejra taghti decizjoni dwar l-ewwel tliet talbiet attrici.

Rat in-noti tal-osservazzjonijiet.

Rat id-digriet li tat fl-udjenza tat-28 ta` Novembru 2016 fejn halliet il-kawza ghas-sentenza ghal-lum dwar l-ewwel tliet talbiet attrici.

Rat l-atti l-ohra tal-kawza.

Rat l-atti tal-kawza fl-ismijiet *Dr Suzanne Wolfe Martin noe vs Claire Valleta Giordano et noe (Rik. Gur. Nru. 869/2013 JZM)*.

II. Provi

A skans ta` repetizzjoni, il-Qorti tirreferi ghar-riassunt tal-provi li ghamlet fil-kawza fl-ismijiet *Dr Suzanne Wolfe Martin noe vs Claire Valletta Giordano et noe (Rik. Gur. Nru. 869/2013 JZM)* peress illi daww il-provi *mutatatis mutandis* jikkostitwixxu prova anke għall-iskopijiet ta` din il-kawza. B`zieda magħhom, il-Qorti tirreferi wkoll għad-deposizzjoni li tat il-konvenuta propju fil-kawza tal-lum.

III. L-eccezzjoni ulterjuri

L-attrici ddikjarat bil-gurament tagħha illi hija għandha permess ta` residenza Malta li jagħlaq fl-2018 u li fil-fatt qegħda tirsjedi Malta. Din l-istqarrija ma gietx kontradetta mill-konvenuta. Għalhekk għandha jedd tagixxi bhala mandatarja ta` Urtica Limited, li hija soċjeta` registrata fil-Gzejjer Cayman.

Il-Qorti qegħda tichad l-eccezzjoni ulterjuri.

IV. L-ewwel eccezzjoni

Biex azzjoni tkun nulla skont l-Art 789 tal-Kap 12, in-nullita` trid tkun iddikjarata mil-ligi espressament jew ikun hemm vjolazzjoni tac-cirkostanzi mehtiega mil-ligi jew in-nuqqas ta` xi partikolarita` essenzjali mehtiega mil-ligi espressament.

Fil-kaz tal-lum, in-nullita` tal-azzjoni attrici qegħda tkun ecepita abbazi tal-Art 789(1)(c) li jghid :-

L-eccezzjoni ta` nullità tal-atti gudizzjarji tista` tinghata ...

jekk fl-att ikun hemm vjolazzjoni tal-forma mehtiega mil-ligi, ukoll jekk mhux taht piena ta` nullità, kemm-il darba dik il-vjolazzjoni tkun giebet, lill-parti li titlob in-nullità, pregudizzju illi ma jistax jissewwa xort`ohra hlief billi l-att jigi annullat ...

Izda dik l-eccezzjoni ta` nullità kif mahsuba fil-paragrafi (a), (c), u (d) ma tkunx tista` tinghata jekk dak in-nuqqas jew vjolazzjoni jkun jistghu jissewew taht kull disposizzjoni ohra tal-ligi.

(2) *L-eccezzjoni ta` nullità ta` att, taht is-subartikolu (1)(c), ma tistax tinghata, meta l-parti li tagħtiha tkun baqghat tagħmel jew,*

ghad li tkun taf biha, tkun halliet li jibqghu jsiru atti ohra wara, minghajr ma teccepixxi dik in-nullità.

Fil-kaz tal-lum, ma jirrizultax ippruvat fejn il-konvenuta garrbet pregudizzju bl-azzjoni attrici kif saret. Il-konvenuta wiegbet fil-mertu ghat-talbiet attrici u kompliet tippartecipa fil-kawza. Inoltré fis-sottomissjonijiet taghha, il-konvenuta ma ghamlet l-ebda referenza ghal din l-eccezzjoni.

Fis-sentenza taghha tal-21 ta` Marzu 1988 fil-kawza "**Aquilina vs Aquilina**", il-Qorti tal-Appell qalet hekk :-

"... illi l-allegata nullità ta' citazzjoni qed tigi invokata fit-termini ta' l-artikolu 789(1) tal-Kap 12 li inter alia jipprova li l-eccezzjoni ta' nullità ta' latti gudizzjarji tista' tinghata 1) jekk in-nullità hija ddikjarata mil-ligi espressament 2) jekk l-att ikun mahrug minn Qorti nkompetenti ; 3) jekk fl-att ikun hemm vjolazzjoni tal-forma mehtiega mil-ligi wkoll jekk mhux taht piena ta' nullità u dan biss f'kaz ta' pregudizzju ; 4) jekk l-att ikun nieqes minn xi partikolarità essenzjali mehtiega mil-ligi espressament.

... kif qalet din il-Qorti fis-sentenza taghha tat-28 ta' April 1978 in re Teresa Vella vs Salvatore Conti (App. Kumm.) biex tigi ddikjarata nulla citazzjoni u jitwaqqaf il-kors taghha, jinhtieg li jkun jikkonkorru ragunijiet gravi, fosthom nuqqasijiet ta' evidenti pregudizzju ghad-difiza tal-konvenut ;

Din il-Qorti inoltré tul is-snin f'diversi sentenzi taghha applikat dan il-principju b`mod li fejn jew ikun jonqos il-pregudizzju ghad-difiza tal-konvenut jew in-nuqqas fic-citazzjoni kienet taghmel tajjeb xi haga ohra ghalih, ma annullatx ic-citazzjoni (ara Savona vs Asphar deciza minn din il-qorti fit-23 ta' April 1945 u dik riportata fil-Vol XXXIV tal-Kollezzjoni a fol 313 ta' l-Ewwel Parti). Minbarra minn hekk gie diversi drab deciz u llum hu ormai pacifiku li nonostante l-fatt li citazzjoni jkollha xi haga mhux cara bizzejjed go fiha li pero` hi ccarata fid-dikjarazzjoni ta' l-attur dan hu bizzejjed biex isalva c-citazzjoni (ara Bonello vs Azzopardi, Vol XXXIX.II.556 ; Gerada vs Cassar, XXXIV.II.501 ; Muscat vs Borg et, XXXIX.II.575 u Demarco vs Fiteni XLI.II.1035)."

Fid-decizjoni taghha tal-4 ta' Novembru 1991 fil-kawza "**Vella vs Cefai**" il-Qorti tal-Appell qalet illi :-

" ... n-nullità ta' l-atti gudizzjali hija sanzjoni estrema li l-ligi trid li tigi imposta biss meta nnuqqas - formali jew sostanzjali - fl-att ma

jistax assolutament jigi tollerat minghajr hsara ghal xi principju ta` gustizzja procedurali."

Fil-kaz tal-lum, tirrizulta rabta bejn il-kawzali u t-talbiet billi l-attrici noe qeghda titlob li tinghata access ghal informazzjoni. L-attrici ppremettiet illi nediet ezercizzju ntiz *inter alia* biex tistabilixxi jekk x-xoljiment ta` Bonatrans kienx fl-ahjar interess ta` Bonatrans, tal-assjonisti u tal-beneficjarji.

Il-Qorti qeghda tichad l-ewwel eccezzjoni.

V. L-ewwel tliet talbiet

It-talbiet attrici li qeghdin jigu decizi llum huma l-ewwel tlieta fejn il-Qorti kienet mitluba :-

Tiddikjara li, is-socjeta` attrici ghandha d-drittijiet kollha, jew in parte, li jkollha access ghall-informazzjoni u dokumenti kollha, jew in parte, dwar Bonatrans Group Holdings Limited (C-49189) u dana in vista tal-pozizzjoni li hija kienet tokkupa fil-kumpanija Bonatrans Group Holdings Limited, qabel din gie xolta.

Tiddikjara li r-rifjut da parti tal-konvenuta li tforni l-informazzjoni u d-dokumenti mitluba mis-socjeta` attrici, jikser l-obbligazzjonijiet assunti meta giet accettata l-hatra ta` segretarja, u dana bi ksur ta` inter alia l-artikoli li jirregolaw lis-segretarja fil-kapitolu 386 tal-ligijiet ta` Malta.

Tikkundanna lill-konvenuta sabiex taghti access lis-socjeta` attrici ghal informazzjoni kollha, jew in parte, u tforni kopji tad-dokumenti kollha, jew in parte, ilkoll relatati ma` Bonatrans Group Holdings Limited (C-49189) li din l-Onorabbli Qorti hekk iddikjarat.

VI. L-eccezzjonijiet relattivi

L-eccezzjonijiet illi jilqghu ghall-ewwel tliet talbiet huma dawk numerati trnejn (2), tlieta (3) u erbgha (4).

VII. Konsiderazzjonijiet

Il-Qorti sejra tittratta l-eccezzjonijiet li jilqghu ghat-talbiet li qeghdin jigu decizi illum waqt illi tkun qeghda tqis it-talbiet.

Irrizulta li Ganado & Associates kienu nkarikati biex iwaqqfu Bonatrans bl-azzjonisti jkunu tliet fondazzjonijiet : Alezia Foundation ; Nausaa Foundation u Siam Foundation.

Frantisek Komarek, Karel Komarek Snr u Jitga Komarkova jissemmew bhala Ultimate Beneficial Shareholder Interests.

Ma hemmx prova li Urtica kienet involuta fl-inkariku li naghata lil Ganado & Associates.

L-azzjonisti registrati ta` Bonatrans kienu Alezia Foundation (720 sehem - 60%), Nausaa Foundation (240 sehem – 20%) u Siam Foundation (240 sehem – 20%).

In segwitu, kien hemm trasferiment ta` ishma li wassal sabiex :-

1. Alezia Foundation ittrasferiet l-ishma taghha kollha lil Malverine Limited.
2. Nausaa Foundation ittrasferiet l-ishma taghha kollha lil Malverine Limited.
3. Siam Foundation ittrasferiet l-ishma kollha taghha lil Urtica Limited.

Kemm Malverine kif ukoll Urtica huma registrati fil-Cayman Islands.

Urtica kienet azzjonista ta` Bonatrans fiz-zmien ta` bejn l-1 ta` Lulju 2010 u l-11 ta` Ottubru 2011. Ghalhekk kienet l-azzjonista meta Bonatrans marret *in liquidation*.

Il-konvenuta kienet il-*company secretary* ta` Bonatrans.

L-attrici noe ggib `il quddiem il-pretensjoni li d-dokumenti u l-informazzjoni dwar Bonatrans ghandhom imorru ghand l-ahhar azzjonisti taghha, u ma kellhomx jibqghu ghand il-konvenuta, li maghha m`ghandhom l-ebda relazzjoni ladarba Bonatrans kienet xjolta u stralcjata.

Kien ipprecizat ukoll min-naha tal-attrici illi b`*dokumenti u informazzjoni* hija kienet qeghda tirreferi ukoll ghal informazzjoni elettronika inkluzi emails skambjati.

Kien ukoll ribadit da parti tal-attrici illi meta kumpannija tkun xjolta, id-dritt ghall-informazzjoni u dokumentazzjoni jghaddi ghand l-azzjonisti, peress li kull ma kien tas-socjeta` jmur ghand l-azzjonisti, inkluz l-assi u hwejjeg ohra.

Jidher illi dak illi wassal ghal din il-kawza kien il-fatt illi wara li l-konvenuta kienet mitluba taghti informazzjoni dwar Bonatrans, li kienet tinkludi kopja tal-kotba tal-minuti tal-laqghat, kopja tal-laqghat tad-diretturi u kwalunkwe dokumenti ohra, il-konvenuta rrifjutat ghax sostniet illi l-funzjoni taghha bhala *company secretary* kienet spiccat.

1. L-access ghal informazzjoni

Id-dritt ghall-access u informazzjoni kien trattat minn Andrew Muscat fil-pag 523 ta` Principles of Maltese Company Law (MUP – 2007).

Prof Muscat ighid illi l-azzjonisti ghandhom dritt li jezaminaw il-minuti tal-laqghat generali annwali, li jircievu kopja ta` *annual accounts* tal-kumpannija, u r-rapporti tad-diretturi u ta` l-awdituri.

Ighid :-

“Whereas the directors of a company have full access to all documents and information concerning the company they represent, the shareholders` rights in this regard are considerably restricted. Indeed, as a general rule, a shareholder (including a majority shareholder) does not, qua shareholder, have a right (except in well defined circumstances) to demand that he be furnished with information or copies of documents concerning the company`s business or affairs. Indeed shareholders` rights to information concerning the affairs of the Company are severely curtailed under the Companies Act and

include only such rights, for example, to examine the minutes of general meetings (Article 149(3) Companies Act) and to receive a copy of the annual accounts of the Company together with the relative directors` report and the auditors` report (Articles 180-182 Companies Act)”

Minn dan il-bran, jirrizulta li azzjonista ghandu drittijiet **limitati** dwar x`ghamla ta` informazzjoni jista` jikseb dwar il-kumpannija.

Kaz fejn kienet trattata kwistjoni simili kienet il-kawza deciza minn din il-Qorti (**PA/AE**) fis-27 ta` Ottubru 2014 fl-ismijiet “**Dr Suzanne Wolfe Martin noe vs Ganado & Associates Advocates et**”.

Is-sentenza kienet appellata. L-appell ghadu mhux deciz.

Il-kaz kien jittratta dwar inkariku li nghata lid-ditta ta` avukati Ganado & Associates minn Frantisek Komarek, Karel Komarek Snr u Jitka Komarkova li riedu jwaqqfu kumpannija Malta bl-isem ta` Vivax Holding Limited. L-azzjonisti kellhom ikun tliet fondazzjonijiet : Santon Foundation, Serravall Foundation u Landoverly Foundation. Komarek u Komarkova kellhom ikunu l-ultimate beneficial shareholders.

L-ilment tal-attrici f`dak il-kaz kien illi saret talba lill-konvenuti sabiex jinghataw informazzjoni dwar il-kumpannija, liema talba kienet rifjutata.

Il-Qorti qalet hekk :-

“L-Att dwar il-Kumpanniji (Kap. 386) jipprovidi x`taghrif jista` jinghata lill-azzjonisti. Hekk per ezempju l-Artikolu 149 jipprovidi li l-azzjonisti jistghu jispezzjonaw ir-registru tal-minuti tal-laqghat generali. L-Artikolu 125 tal-Kap. 386 jipprovidi li l-membri jistghu jaraw ir-registru tal-membri. Provedimenti li fihom infushom juru li l-azzjonisti m`ghandhomx xi jedd assolut li jitolbu kull taghrif dwar kumpannija.”

Il-Qorti mbaghad irreferiet ghall-bran citat aktar kmieni minn **Principles of Maltese Company Law** (op. cit.).

Il-konkluzjoni tal-Qorti kienet illi *li l-atturi m`ghandhomx dritt li jitolbu taghrif minghand il-konvenuti dwar l-operat ta` Vivax.*

Kaz iehor li mexa fuq l-istess linja tal-kawza appena citata kienet il-kawza deciza minn dik l-istess Qorti (**PA/AE**) fit-30 ta` Gunju 2015 fl-ismijiet “**Dr Suzanne Wolfe Martin noe vs Ganado & Associates Advocates et**”

Hemm l-attrici noe talbet dikjarazzjoni illi l-mandanti taghha ghandhom dritt li jiksbu access ghall-informazzjoni u dokumenti relatati mal-kumpannija Bonatrans Group Holdings Limited (C49189), li kienet registrata fl-24 ta` Marzu 2010.

Dik l-azzjoni hija simili hafna ghal din tal-lum, tittratta dwar l-istess kumpannija u cioe` Bonatrans ghalkemm il-partijiet huma differenti minn daww tal-lum.

Fis-sentenza taghha, il-Qorti irribadiet illi ghal dak li jirrigwarda taghrif relatat mal-operat ta` Bonatrans ma kienx bizzjed li ssir talba mill-mandanti tal-attrici jew minn azzjonist.

Is-sentenza kienet appellata. L-appell ghadu mhux deciz.

Fil-fehma ta` din il-Qorti, id-dritt ghall-informazzjoni ta` azzjonista huwa limitat skont ma jipprovdu l-memorandum u l-articles of association, jew – jekk ikun sar – skont shareholders` agreement. Fin-nuqqas, allura d-dritt ghall-informazzjoni ta` l-azzjonista huwa regolat b`dak li jipprovdi l-Kap 386.

Il-Qorti tirreferi ghal kitba li saret minn Dinesh Sadhwani bl-isem “**Shareholders and Directors : Rights to Inspect the Company`s Records**” ippubblikata fin-Newsletter Vol & No \$ December 2008 – Shearn Delamore & Co fejn inghad hekk :-

“A question that often arises is the extent to which directors and shareholders of a company are entitled to information and access to the company`s records. It is often presumed by shareholders that as `owners` of the company, they are entitled to have access to all documents belonging to the company. However...the actual position of is that shareholders and directors have different rights of inspection....the shareholder`s rights are limited. This is based on the legal position that a company is a separate entity from its shareholders and where the power to manage the company is generally vested in the board of directors.”

...

The right of a shareholder to inspect the relevant registers kept by the company for example, the register of members, directors, secretaries, managers and so on is expressly provided for under the Companies Act 1965.

In addition, a shareholder is also entitled to inspect minuted of the company's general meetings and to receive a copy of the last audited profit and loss account and balance sheet not less than 14 days before the general meeting at which the accounts are to be presented.

Other than as stated above, shareholders do not have any overriding right to inspect the books and records of a company, such as the minutes of directors' meetings or the accounting records of the company. The shareholder may, however, be entitled to inspect the company's records if it can be shown that inspection is necessary with reference to some specific dispute or question in which the shareholder is interested and even then, such right is only granted to such extent as may be necessary for the particular occasion. (Edman v Ross (1922) SR (NSW) 351)"

Mill-gurisprudenza Ingliza, issir referenza ghad-decizjoni "**Woodhouse and Co Ltd v Woodhouse**" (1914) 30 TLR 559. Hemm kienet traccjata l-linja illi "a company cannot claim privilege against its own shareholder in respect of legal advice, unless the advice was taken in contemplation of hostile litigation with that shareholder."

Madanakollu dan il-principju kien definit bhala "a narrow exception" ghal-principju generali li "privileged documents are protected from disclosure in the course of litigation."

Infatti kien spjegat li :

"The Woodhouse rule does not, however establish an unconstrained, free-standing inspection right for shareholders."

Intqal li dak stabbilit fil-kaz ta' **Woodhouse** :-

"does nothing to undermine two fundamental precepts of corporate law: that the company is an entity distinct from its shareholders, having rights of its own in respect of confidential and privileged information, and that the company is to be managed by and under the authority of its board of directors and not its shareholders. Statute,

regulation and the company's articles of association set out exhaustively the limited circumstances in which the shareholders are normally entitled to receive or access information. The articles of association of most companies explicitly deny shareholders the right to inspect company documents, except where ordered by a court, permitted by the board or authorised by a shareholder resolution."

(ara l-kitba bl-isem "**Shareholder rights to access company information : Lost in Nottingham Forest**" : Sarah Lee & Murray Cox, Slaughter and May 2014).

Sentenza ohra kienet dik fl-ismijiet "**CAS (Nominees) Ltd v Nottingham Forest FC Plc**" (Application for Disclosure) (2001) 1 All E R 954. Fil-kawza azzjonista talab li jinghata kopji tal-parir legali li kien inghata lill-Bord tad-Diretturi, liema parir legali kien dwar transazzjoni partikolari li l-istess azzjonista kien qed jilmenta dwarha u kien qed jaghmel procedura ta' *unfair prejudice*. Il-Qorti ordnat li d-dokumenti jigu mghoddija lill-azzjonista. Minkejja l-ordni, l-azzjonista falla fil-procedura. Fis-sentenza inghad illi l-bordijiet ta' diretturi "*are not immune from challenge where they exceed their powers or breach their fiduciary duties.*"

Fil-kaz ta' "**Burry & Knight Ltd**" (2014) EWCA Civ 604 inghad illi :-

"a shareholders' statutory right to inspect the register of members is similarly subject to a proper purpose requirement."

Fl-appell mill-High Court of Justice - Chancery Division - Companies Court inghad illi :-

"I would dismiss the appeal against the Registrar's order under section 117(3) of the CA 2006 ((A) in paragraph 1 above). Dr Knight's purpose in circulating shareholders with details of past irregularities was not a proper purpose because this communication could not confer anything of value on fellow shareholders, alternatively because the real purpose was to harass fellow shareholders, as found by the Registrar. I would make no order on the respondents' notice."

Lord Justice Briggs kompli jghid li :

"I also agree with her analysis of the reason why, regardless whether Dr Knight was pursuing a vendetta or seeking to vindicate his integrity over that of other members of the family, his main purpose in seeking to circulate shareholders was not a proper one. The

allegations which he was seeking to resurrect were very stale and their further investigation could have been of no possible benefit to the companies or to their shareholders, or indeed to him in his capacity as shareholder."

Anke diretturi ghandhom jezercitaw id-dritt tagghom ghal spezzjoni ta` dokumenti ghal ghanijiet ragjonevoli u gusti.

Fil-kaz ta` "**Oxford Legal Group Ltd vs Sibbasbridge Services Plc**" (2008) EWCA Civ 387, the Rt Hon Sir John Chadwick qal hekk :-

"It is plain that the right exists, whether at common law or by statute, for the purpose of enabling the director to carry out his duties as such. As Mr Justice Slade put it, in stating his second principle in Conway v Petronius ([1978] 1 WLR 72, 89H-90A) :

"(2) The right of a director to see his company's books of account, which is exercisable both at and outside meetings, is conferred by the common law in order to enable the director to carry out his duties as a director: see the Burns case, 7 T.L.R. 118."

And, again, in elaborating his fifth principle (ibid, 90G-H):

"The right of inspection is in my judgment one given to him to exercise for the benefit of the company. He can claim the right as a personal right only in the sense that he may invoke it so as to enable him to discharge his personal obligations to the company and his statutory obligations."

Mr Justice Mahon took a similar view in Berlei Hestia (NZ) Ltd v Fernyhough [1980] 2 NZLR 150, 163 lines 34-37, when he said:

". . . where it is proved that a director is acting or is about to act in breach of his fiduciary duty to the company and intends to aid that process by inspecting the books, then his right to inspect disappears."

To my mind the proposition that the right to inspect the company's books of account is conferred "in order to enable the director to carry out his duties as a director" is not in doubt. Nor is it in doubt, as it seems to me, that a right which is conferred for one purpose is not intended for use for some other purpose: for a director to invoke the right to inspect for some purpose other than that of carrying out his duties as a director is to seek to use the right for an improper purpose.....

In Wuu Khok Chiang George v ECRC Land Pte Ltd [1999] 3 SLR 65 the Court of Appeal in Singapore referred (ibid, 78G, at [32]) to the director being refused inspection when the court was satisfied "that the intention of the director in inspecting the books and records is to make use of the information for ulterior purposes such as with a view to causing detriment to the company". At paragraph [33] (ibid, 78H-I) the court said this :

"[33] The right of a director to inspect the books and records of the company flows from his office as a director and enables him to perform his duties as a director. . . Such a right is an important one, as the books and records of a company are a primary, and sometimes the only, source of information as to the state of affairs of a company. It follows that unless a director has access to these sources of information he would be severely inhibited in the proper performance of his duties. So long, therefore, as such right is exercised for that purpose and not with a view to causing detriment to the company, the right to inspect is `absolute`. In this sense and to that extent, the right may be termed `absolute`. The corollary of this is that the right will be lost where it is exercised not to advance the interests of the company but for some ulterior purpose or to injure the company: Edman v Ross (supra) at p 361, Molomby v Whitehead (supra) at p 292 . . ."

And at paragraph [34] (ibid, 79D) the court went on to say:

"It is for those who oppose the director`s right to inspect to show `clear proof` and to satisfy the court `affirmatively` that the grant of the right of inspection would be for a purpose which would be detrimental to the interests of the company. There must be a `real ground` that the right would be abused and that substantial harm would be caused to the company thereby".

Il-fehma ta` Rt. Hon Chadwick kienet kondiviza fl-istess decizjoni minn Lord Justice Hughes, li sostna hekk :-

"Inspection may well not be ordered if a clear prima facie case is raised that the information sought will not be used qua director and especially if to the detriment of the company; one of many possible examples is where inspection is in effect sought for the benefit of a competitor. That said, many cases in which the right of inspection is invoked will no doubt arise in the course of a boardroom dispute in which one side of the argument has de facto custody of the books and the other lacks the opportunity to see them. Each side will often, and it may be typically, accuse the other of improper conduct in the sense of alleged breach of fiduciary duty to the company. It follows from the review of the authorities in my Lord`s judgment that a bare assertion

of such improper conduct made by the custodian of the books against the director seeking inspection will not ordinarily cause the court to say that there should be a trial of that issue before inspection is permitted. That would in most cases render the right of inspection nugatory and would divert the court into the merits of the underlying dispute.”

Ghalhekk, “*even directors must exercise their inspection rights only for a proper purpose.*”

Dan qed jinghad biex jigi sottolineat kemm id-dritt ghal informazzjoni huwa dritt limitat partikolarment vis a vis l-azzjonisti.

Din il-Qorti tissenjala li fir-Renju Unit, saru emendi ghad-disposizzjonijiet li jittrattaw id-drittijiet tal-azzjonisti sabiex jispezzjonaw informazzjoni relatata mal-kumpanija.

Bil-Companies Act 2006, l-azzjonisti “*are entitled to inspect (without charge) various company records including :*

- *records of shareholder resolutions and minutes of shareholder meetings ;*
- *the company`s statutory registers (e.g. registers of members, directors, secretaries, and charges) –although any request to inspect the register of members must be made for a “proper purpose” ;*
- *directors` service contracts and any directors` indemnities ; and*
- *any contracts relating to the company`s purchase of its own shares.*

L-azzjonisti ghandhom dritt ghal kopja ta` d-dokumenti bi hlas.

Id-dritt baqa` ma giex estiz ghal *accounting records jew board minutes.*

2. Il-mertu

Il-konvenuta tishaq illi azzjonista ghandu drittijiet limitati ghal informazzjoni.

Saret referenza għall-fatt li awturi Ingliżi jittrattaw jekk id-diretturi għandhomx obbligi lejn l-azzjonisti fil-qadi ta` dmiriethom u għall-konkluzjonijiet raggunti fis-sens li d-diretturi għandhom obbligi versu l-kumpannija mhux lejn l-azzjonisti personalment.

Għamlet dan l-argument biex issahhah it-tesi tagħha illi azzjonista m`għandux dritt għal informazzjoni hliet fis-sitwazzjonijiet stabbiliti mil-ligi.

Min-naha l-oħra, biex tikkorrabora t-tesi tagħha illi azzjonista għandu jedd għall-informazzjoni, l-attrici noe tirreferi għal diversi drittijiet li jirrizultaw mill-*memorandum* u l-*articles of association*, mill-Kap 386, kif ukoll mill-gurisprudenza tagħna u dik estera.

Issostni l-attrici illi ma kienx irragonevoli għaliex kull ma talbet kienu dokumenti li azzjonista għandu dritt għalihom.

a) L-articles of association

L-attrici tgħid illi bl-artikolu 10 ta` l-*articles of association*, li huwa in linea ma` l-Art 131 tal-Kap 386, azzjonista għandu dritt li jircievi avvizi bil-miktub dwar il-laqgħat generali, u li jekk l-avviz ma johroġx, il-laqgħa ma tkunx valida.

Tirreferi għall-artikolu 13 ta` l-*articles of association* u għall-Art 135 tal-Kap 386, fejn jingħad illi huwa dritt ta` azzjonista li jipproponi rizzoluzzjonijiet ordinarji u straordinarji. Fil-fatt saru numru ta` rizzoluzzjonijiet li l-mandanti tal-attrici għandha dritt li tkun dwarhom ; għalhekk il-konvenuta kellha l-obbligu li tagħti din informazzjoni.

Kien allegat illi kien hemm nuqqasijiet serji partikolarment fir-rigward mal-procedura li waslet għax-xoljiment u għall-istralc ta` Bonatrans. L-attrici tishaq illi sabiex il-kumpannija setgħet tigi xjolta u stralcjata, kienet mehtiega rizzoluzzjoni straordinarja. Din ir-rizzoluzzjoni setgħet biss tittiehed waqt laqgħa generali. Saret referenza għax-xieħda tal-konvenuta fejn tgħid illi ma kienet saret l-ebda laqgħa generali. Għalhekk kien hemm nuqqas serju meta saret ir-rizzoluzzjoni dwar ix-xoljiment u l-istralc.

Din il-Qorti tirrileva illi l-konvenuta ndikat id-dokumenti li kellha fil-pussess tagħha waqt l-ezekuzzjoni ta` mandat ta` deskrizzjoni li ppreceda l-

presentata ta` din il-kawza. Jidher li hafna mid-dokumenti li gew mitluba ma kinux a disposizzjoni tal-konvenuta peress li mix-xiehda taghha rrizulta illi din ma kinitx mitluba tattendi laqghat tal-bord ta` diretturi ; lanqas ma saret ebda laqgha generali annwali ta` l-azzjonisti in vista tal-fatt illi Bonatrans kellha hajja qasira.

Ir-rizoluzzjoni ghax-xoljiment u stralc ta` Bonatrans kienet iffirmata minn rapprezentanti taz-zewg azzjonisti : Malverine u Urtica Limited : bla ma saret laqgha.

Jekk l-ilment tal-attrici hija r-regolarita` tal-procedura kondotta ghax-xoljiment u ghall-istralc, allura ma kellhiex tkun din l-azzjoni li kellha tkun tentata.

Saret referenza ukoll ghall-Art 181 tal-Kap 386 fejn jinghad illi azzjonista ghandu dritt sabiex jispezzjona l-*annual accounts, auditor`s report* u *directors` report* waqt laqgha generali.

Saret ukoll referenza ghall-Art 366 et seq tal-Kap 386 fejn huma trattati l-istanzi meta kumpannija tkun qed tinqasam fi tnejn jew aktar, liema disposizzjonijiet jaghtu lill-azzjonisti l-opportunita` li jaghmlu spezzjoni ta` dokumentazzjoni.

Madanakollu, dawn id-disposizzjonijiet ilkoll jitkellmu dwar drittijiet li azzjonista ghandu waqt laqgha generali.

Mill-provi rrizulta li ma saret l-ebda laqgha generali.

Ghalhekk l-attrici ma tistax tfittex u ssib kenn taht dawk id-disposizzjonijiet.

b) Gurisprudenza

L-attrici tirreferi ghas-sentenza ta` din il-Qorti tat-13 ta` Mejju 1999 fil-kawza “**Monreal et vs Delia**” biex issostni illi l-kaz tal-lum mhux wiehed wisq differenti, billi fil-kaz odjern, kien hemm trasferiment ta` ishma u xoljiment ta` kumpannija bi ksur tal-*memorandum* u l-*articles*. Kien hemm allegazzjoni minn Urtica illi sar trattament ingust u possibilment abbuzi.

L-attrici tirreferit ghas-sentenza tal-Qorti ta` New South Wales fl-Awstralja fil-kawza “**Edman v Ross**” (1922) 22 SR (NSW) 351 AT 358 fejn inghad illi d-dritt ta` azzjonista sabiex jispezzjona dokumenti jissussisti fil-kaz ta` *some specific dispute or question in which the party applying is interested, that it is only then granted to such an extent as may be necessary for the particular occasion*. Saret referenza ghall-fatt li d-dritt ta` spezzjoni ta` dokumenti u informazzjoni dwar il-kumpannija huwa permess, i wara li jigu sodisfatti l-kriterji ta` *good faith* u *proper purpose*.

In sostenn l-attrici tirreferi ghall-ktieb **Shareholders` Rights and Remedies** tal-gurista Peter G Willcocks, u ghad-decizjonijiet : “**Knightswood Nominees Pty Ltd v Sherwin Pastoral Company Limited**” (1989) 15 ACLR 151 at 156 ; “**Quilan v Vital Technology Australia Limited**” (1987) 5 ACLC 389 ; u “**Garina Pty Ltd v Action Holdings Pty Ltd**” (1989) 7 ACLC 962.

Skont l-attrici, milli xehed Dr Igor Rusek irrizulta li t-talba ghall-informazzjoni saret sabiex ikunu stabbiliti fatti li kellhom impatt fuq is-socjeta` attrici. Imabghad mix-xiehda ta` Karel Komarek Snr irrizulta illi huwa tilef il-kontroll fis-socjeta`; ghalhekk ried informazzjoni biex ikun jista` jara x`sehh.

Din il-Qorti hija tal-fehma illi fil-kaz tal-lum kienet Urtica li ffirmat id-dokumentazzjoni li biha kien inizjat il-process ta` xoljiment u stralc ta` Bonatrans. Mhux komputu ta` din il-Qorti f`kawza ta` din ix-xorta li tindaga r-regolarita` tal-procedura adottata. Jibqa` l-fatt illi l-informazzjoni relatata ma` l-operat ta` kumpannija u ma` transazzjonijiet partikolari ma jistghux jghaddu ghand l-azzjonisti. Din hija informazzjoni li l-attrici talbet bi dritt fil-kawza tal-lum, skont parametri prefissi mill-attrici stess, haga li l-Qorti ma tistax taghmel.

c) **Good corporate governance**

In sostenn tat-talbiet, l-attrici tirreferi ghall-principji ta` *good corporate governance* li sabiex tkun zgurata, hija mehtiega trasparenza kif ukoll *disclosure of information*.

Huwa minnu li matul is-snin, kien hemm aktar pressjoni sabiex azzjonisti jinghataw aktar drittijiet ta` informazzjoni u aktar accessibilita` ghal dokumenti relatati mal-kumpannija li taghha jkunu membri.

Fil-kitba bl-isem “**Shareholders` rights in private and public companies in Switzerland : Overview**” David Ledermann u Andreas Roetheli jghidu :-

Each shareholder has a right to receive each year a copy of :

- *The audited accounts of the company.*
- *The management report of the board of directors.*
- *The audit report of the auditors.*

*Each shareholder has a right to obtain a copy of the minutes of the general meetings (GMs). Each shareholder has, in addition, the right to ask questions during the shareholders` meeting to the board of directors and the auditor. Such questions can relate to the general state of the company`s business or to a specific transaction. From a practical standpoint, it is advisable to communicate to the board of directors in advance the list of questions that the shareholder intends to pose at the GM, so as to enable the board of directors to be ready to answer at the GM, or to provide the shareholders with its answers ahead of the GM if the board of directors chooses to do so. The right of information of the shareholder is the same irrespective of the number of shares held. **In the currently contemplated reform of Swiss corporate law (not expected to enter into force before 2017, at the earliest), the shareholders would obtain the right to ask written questions to the company outside of the shareholders` meeting.***

Huma evidenti restrizzjonijiet ghall-informazzjoni li tista` tinghata fil-kaz ta` certa sitwazzjonijiet, ghalkemm hemm dritt li cahda ghal informazzjoni tigi trattata mill-qrati :-

“Information requested by a shareholder must be provided to the extent such information is necessary for that shareholder to exercise his rights. Information can be refused if it puts in jeopardy the business secrets of the company or other worthy interests of the company. A shareholder only has a right to consult the books and accounts of the company if he is expressly authorised to do so by the shareholders` meeting or by the board of directors, and only to the extent the business secrets of the company can be preserved at the same time.

If a request for information or to consult the books and accounts are refused, the shareholder can request the competent court to decide whether his request has merit or not.”

Fuq l-istess linja huwa Prof Petri Mantysaari fil-ktieb “**The Law of Corporate Finance – General Principles and EU Law : Volume III Funding, Exit, Takeovers**” (2010 – Springers). Ighid :-

“A further way to reduce the risk of bad management decisions is transparency and the disclosure of information....Disclosure of information to shareholders may help the firm to reduce shareholders` perceived risk and the cost of equity...However disclosure is not always in the best interests of the firm...A shareholder typically has unlimited information rights where the shareholder is personally liable for the obligation of the entity, (for example in partnerships). In limited liability companies, however there is a higher risk that shareholders will abuse information disclosed to them or reveal it to third parties to the detriment of the firm. The risk can be mitigated by limiting their information rights in general, by limiting rights to selective (private) disclosure and by ensuring that effective non-disclosure obligations and sanctions for breach of confidential obligations are in place before making any selective obligations.”

Ghalhekk jibqa` riaffermat il-principju li l-access ghal informazzjoni minn azzjonista ghandu jkun limitat.

d) L-obbligi ta` company promoter

L-attrici tirreferi ghall-obbligi ta` *company promoter* li gie definit bhala dik il-persuna li tiehu l-inizjattiva li tiffirma kumpanija u li tiehu l-passi necessari biex titwettag dik l-inizjattiva.

Sar l-argument illi l-*ultimate beneficial shareholders* ta` Bonatrans huma lkoll il-*promoters* taghha. Ghalhekk bhala tali jistghu jinzammu ghal atti jew omissjonijiet tad-diretturi u/jew ta` l-kumpanija. Ghalhekk l-attrici tishaq illi *company promoter* ghandu dritt li jkun jaf x`qed jigri fil-kumpanija. Biex isir jaf, jehtieg li jinghata t-taghrif li jirrikjedi dwar l-operat tal-kumpanija.

Ghal din il-Qorti l-argument tal-attrici huwa kemxejn imgebed, apparti li ma jghoddx ghall-kaz tal-lum.

Tajjed jinghad illi fil-kaz tal-lum l-*ultimate beneficial owners* mhux parti fil-kawza, ghax huma biss intervenuti.

Tajjed li din il-Qorti tirriafferma d-dottrina u l-gurisprudenza illi tishaq illi l-intervenut fil-kawza mhuwiex l-istess bhall-kjamat fil-kawza. L-intervenut mhux parti. La huwa attur ; lanqas huwa konvenut. Huwa biss osservatur. Lanqas jista` jitlob li parti thallas l-ispejjez tieghu. Lanqas jista` jigi kundannat ihallas l-ispejjez tal-partijiet. L-intervenut ma jistax jigi kkundannat jew liberat, fis-sens li sentenza ma tistax tigi esegwita mill-intervenut fil-kawza jew vice

versa ; u ma tistax sentenza tigi esegwita kontra tieghu. L-intervenut ma jsirx legittimu kontradittur – u dan a differenza tal-kjamat fil-kawza li *ope legis* jitqies bhala konvenut. L-intervenut jista` jiehu parti attiva fil-kors tal-kawza fejn ikun thalla jintervjeni u jaghmel sottomissjonijiet. U l-Qorti tista` tqis daww is-sottomissjonijiet fid-decizjoni illi taghti.

(ara fost ohrain id-dottrina u r-rassenja ta` gurisprudenza li tirrizulta fis-sentenza li tat din il-Qorti (**PA/LFS**) fid-29 ta` Ottubru 2010 fil-kawza “**Alex Azzopardi vs Anna Ellul**”).

Anke ghal dawn ir-ragunijiet, l-argument tal-company promoters li gabet l-attrici ma jistax jigi applikati ghall-kaz taht ezami.

e) ***Letter of instructions***

L-intervenuti rrilevaw illi ai termini tal-*letter of instructions* moghtija lil Ganado & Associates, bhala firmatarji ta` l-istess, huma kienu awtorizzati jaghtu struzzjonijiet u jitolbu *inter alia* lill-company secretary biex tforhom bl-informazzjoni u dokumentazzjoni.

Dan premiss, tajjeb jinghad illi l-*letter of instructions* kienet iffirmata minn tliet persuni.

Il-*letter of instructions* kienet destinata u fil-fatt marret ghand Ganado & Associates **mhux** lill-konvenuta.

Tirribadixxi din il-Qorti illi l-intervenuti ma jistghux jitolbu rimedju minn din il-Qorti fil-kawza tal-lum ladarba m`humiex parti.

Intervenut mhux parti. Ghalhekk la jirbah u lanqas jitlef kawza meta jkun intervenut.

Fic-cirkostanzi l-Qorti mhijiex sejra tezamina l-kwistjoni jekk l-intervenuti fil-kawza li ddikjaraw li huma *ultimate beneficiaries* ghandhomx dritt (inkella le) ghal informazzjoni u dokumenti ta` Bonatrans.

Dwar taghrif dwar l-operat tal-kumpanija, din il-Qorti ma taqbilx li permezz ta` *letter of instructions* li kienet moghtija mhux lill-intimata izda lil

Ganado & Associates inghata dritt lill-azzjonisti ghal informazzjoni dwar l-operat tal-kumpannija.

Id-dokument sar fi stadju meta l-kumpannija kienet ghadha mhix kostitwita.

Ghalkemm f'parti mil-*letter of instructions* jissemmew xi servizzi ohra, l-inkariku principali kien li ssir il-kumpannija (ara d-deposizzjoni **mhux kontradetta** tal-Av. Stephen Attard).

Din il-Qorti tqis bhala nsostenibbli l-pretensjoni attrici li l-*letter of instructions* kienet qeghda tkopri wkoll l-operat ta` Bonatrans.

3. Osservazzjonijiet ohra

L-attrici qeghda titlob li tinghata taghrif u dokumenti, **inkluzi** dokumenti dwar l-operat tal-kumpannija, bhal rizzoluzzjonijiet tal-bord tad-diretturi u transazzjoni tal-kumpannija.

It-talba qeghda ssir minn Urtica, azzjonista ta` minoranza fi Bonatrans.

Bonatrans marret fi stat ta` xoljiment u stralc wara li saret rizzoluzzjoni li kienet approvata **unaniment** mill-azzjonisti taghha, u allura Urtica **wkoll**.

Punt determinanti huwa l-fatt li Bonatrans giet xolta, stralcjata u *struck off* bl-approvazzjoni unanima ta` l-azzjonisti **kollha** taghha.

Infatti l-azzjonisti approvaw il-process shih ta` l-istralc.

Din il-Qorti tara li ladarba Bonatrans spiccat bhala kumpannija ghall-finijiet u effetti kollha tal-ligi, Urtica ma baqalhiex jeddijiet u/jew rimedji bhala azzjonista.

Fil-fehma ta` l-Qorti, l-azzjonisti jibqalhom dritt ghal dik l-informazzjoni li kellhom dritt ghalha skont il-ligi, ossija dokumenti relatati mat-twaqqif tal-kumpannija.

Ladarba Bonatrans mhux biss kienet xjolta, stralcjata u mhassra mir-registru, Urtica ma setghetx tipprocedi bl-azzjoni tal-lum.

Seta` kellha toroq ohra.

Ghal ragunijiet ta` dritt, il-Qorti jkollha tieqaf hawn.

4. Il-konvenuta

Jifdal il-kwistjoni dwar l-ilmenti li saru mir-rikorrenti dwar ir-rwol tal-intimata.

Skont ir-rikorrenti, l-intimata kienet : a) stralcjarja ta` Bonatrans ; b) espert ta` Bonatarans skont l-Art 73(4) tal-Kap 386 ; c) *tax representative* ; d) konsulent.

Ir-rikorrenti tinsisti li l-konvenuta qatt ma setghet tkun appuntata stralcjarju ta` Bonatrans billi kienet tokkupa kariga ohra u cioe` dik ta` espert indipendenti sa erba` xhur biss qabel kienet mahtura bhala stralcjarju.

Din il-Qorti tesprimi ruhha fis-sens illi l-kawza tal-lum ma trirrigwardax il-legittimita` tal-hatra tal-konvenuta bhala stralcjarja.

Ghalhekk il-Qorti mhijiex sejra tqis jekk l-ilment tar-rikorrenti huwiex fondat inkella le.

L-istess konsiderazzjoni tghodd fir-rigward tal-legittimita` tar-rwoli l-ohra li kellha l-konvenuta.

Dak illi din il-Qorti tqis bhala rilevanti huwa li l-konvenuta bhala stralcjarja kellha l-obbligu skont l-**Art 324 tal-Kap 386** illi zzomm :-

the accounts, accounting records, and documents of the company for a period of ten years from the date of publication of the striking of the company's name off the register."

5. Konkluzjonijiet

Trid issir distinzjoni fil-kwalita` ta` informazzjoni mitluba.

L-attrici noe ghandha kull dritt li tinghata taghrif (inkluz dokumenti) dwar it-twaqqif ta` Bonatrans, ghalkemm din il-kumpannija kienet xjolta, stralcjata u mhassra mir-Registratur tal-Kumpanniji ta` Malta.

Fl-istess waqt l-attrici noe m`ghandha l-ebda jedd tikseb taghrif (inkluz dokumenti) dwar l-operat ta` Bonatrans.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi billi :-

Tichad l-eccezzjoni ulterjuri.

Tichad l-ewwel, it-tieni u t-tielet eccezzjonijiet.

Tichad ir-raba` eccezzjoni limitatament u safejn din tirrelata mat-taghrif kollu (inkluz dokumenti) dwar it-twaqqif tal-kumpannija Bonatrans Group Holdings Limited (C49189).

Tilqa` r-raba` eccezzjoni limitatament u safejn din tirrelata mat-taghrif kollu (inkluz dokumenti) dwar l-operat tal-kumpannija Bonatrans Group Holdings Limited (C49189).

Tilqa` l-ewwel, it-tieni u t-tielet talbiet attrici limitatament u safejn it-taghrif (inkluz dokumenti) huwa relatat biss mat-twaqqif tal-kumpannija Bonatrans Group Holdings Limited (C49189).

Tichad l-ewwel, it-tieni u t-tielet talbiet attrici limitatament u safejn dawn jirrigwardaw taghrif (inkluz dokumenti) li huwa relatat

mal-operat tal-kumpanija Bonatrans Group Holdings Limited (C49189).

Riferibbilment ghat-tielet talba, tordna lill-konvenuta sabiex sa zmien xahar mil-lum taghti lill-attrici noe t-taghrif kollu (inkluz dokumenti) li huwa relatat mat-twaqqif tal-kumpanija Bonatrans Group Holdings Limited (C49189).

L-ispejjez relatati mas-sentenza tal-lum jibqghu riservati ghall-gudizzju finali.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**