



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 30 ta` Marzu 2017

Kawza Nru. 7  
Rikors Nru. 642/12 JZM

Suzanne Busuttil, karta tal-identita` numru 19076(M) u Brian Busuttil, karta tal-identita` numru 525373(M) f` ismu proprju u bhala Direttur f` isem u in rapprezentanza ta` Stealth Holdings Limited, C26763

*kontra*

1) Francis Busuttil & Sons Limited, C334; 2) B&S Contractors Limited, C552; 3) Franco Busuttil ID11461(M); 4) Michael Busuttil ID51261(M); 5) Joseph Busuttil ID90968M; 6) Christian Busuttil ID199278M; u 7) Jean Paul Busuttil ID102172M; ilkoll fil-kwalita` tagghom kollha bhala diretturi f` isem Francis Busuttil & Sons Limited u B&S Contractors Limited, hlief Franco Busuttil li ma huwiex Direttur ta` B&S Contractors Limited u Jean Paul Busuttil li ma huwiex direttur ta` Francis Busuttil & Sons Limited u ghal kull interess li jista` jkollhom; 8) Foster Clark Products Limited (C803); 9) Francis Busuttil & Sons (Marketing) Limited (C24137); 10) B&S Exports Limited (C16946); 11) B&S Manufacturing Limited (C16941); u 12) Chris

Degiorgio ID70456(M) bhala direttur ta` Foster Clark Products Limited u ta` Francis Busuttil & Sons (Marketing) Limited; u b`digriet tat-12 ta` Mejju 2014 gew kjamati fil-kawza Rebecca Darmanin Kissaun (ID54472M), Natasha Busuttil (ID317370M), Paul Busuttil (ID695058M), Joanna Decesare (ID412357M), Mary Ann Lanzon (ID555155M), Roberta Pecci Busuttil (ID809060M), Clarissa Pace (ID521963M), T&L Holdings Limited (C8054), Maria Schaerrer Busuttil (Passaport Svizzeru 5115194), Simone Pace Busuttil (ID192157M), Christian Busuttil (ID199278M), Joseph Busuttil (ID90968M), u Michael Busuttil (ID51261M), bhala azzjonisti ta` Francis Busuttil & Sons Limited (C334); u bhala azzjonisti ta` B&S Contractors Ltd (C522), Sealex Holdings Co Ltd (C14190), Mavel Holdings Co Ltd (C16864), Antonia Busuttil (ID51231M), Bag Investments Limited (C14189), Yan Co Limited (C11586), B.C Investments Limited (C8063), The Estate of the Late Charles Busuttil, Joanna Decesare (ID412357M), Mary Ann Lanzon (ID555155M), Clarissa Pace (ID521963M), Roberta Pecci Busuttil (ID801060M), Maria Schaerrer Busuttil (Passaport Svizzeru 5115194), Simone Pace Busuttil (ID192151M), Michael Busuttil (ID51261M), u Franco Busuttil (ID11461M)

Il-Qorti :

## I. Preliminari

**Rat ir-rikors prezentat fit-22 ta` Gunju 2012 li jaqra hekk –**

1. *ILLI dan huwa Rikors a tenur tal-art 402 tal-Companies Act (Kap 386) ; l-esponenti qed jillanjaw illi “the affairs of the company” ilhom zmien twil jitmexxew u qed jitmexxu fil-mument u minghajr ebda prospett illi dan jinbidel fil-futur, b`mod illi huwa oppressiv, unfairly discriminatory against, or unfairly prejudicial magghom bhala membri u / jew kontra l-interessi tal-membri kollha. L-esponenti jillanjaw ukoll illi minkejja kull apparenza kontrarja, spiss maskerata f`kumitati u minuti, hemm nuqqasijiet serji ta` corporate governance u trasparenza, u rispett lejn il-minoranzi ;*

2. *ILLI l-interess u locus standi tal-esponenti huwa ta` azzjonisti diretti jew ultimate u beneficial owners fl-azzjonijiet fil-kumpanniji msemmija. L-esponenti sejrjn jergghu jirrepetu formalment u ghal finijiet u effetti kollha tal-ligi l-lanjanzi taghhom. Dawn gew trasmessi lill-Bord tad-Diretturi u azzjonisti ohra ghal diversi drabi, zejzed drabi u qatt ma nghataw twegiba jew reazzjoni ;*

3. *ILLI l-esponenti jesponu illi t-tmexxija tal-kumpannija hija bi vjolazzjoni tad-doveri tad-diretturi kif illum parzjalment kodifikati fl-art 136A tal-Companies Act :*

(i) *vjolazzjoni tad-doveri bazici ta` direttur ta` self-dealing u conflict of interest ;*

(ii) *vjolazzjoni tad-dover baziku ta` direttur li jagixxu fl-ahjar interess tal-kumpannija ;*

(iii) *vjolazzjoni tal-corporate opportunity doctrine, fejn xi diretturi jiehdu a vantagg personali taghhom, opportunitajiet kummercjali li jigu f`kuntatt maghhom minhabba l-kariga ;*

(iv) *nuqqas serju ta` trasparenza minhabba nuqqas ta` trasmissjoni ta` informazzjoni kompleta, b`mod illi l-membri jew xi membri tal-Bord ma humiex f`pozizzjoni li jaraw il-kwadru shih tas-sitwazzjoni ;*

(v) *tmexxija “oligarkika” tal-kumpannija, fejn numru zghir jaghmel decizjonijiet wahdu u fl-interess ta` ftit, mhux fl-interess aktar wiesgha tal-kumpanniji ;*

(vi) *nuqqas ta` access ghall-informazzjoni ;*

(vii) *beneficju mhux awtorizzati jew mohbija minn xi membri.*

*Dawn in-nuqqasijiet huma ezempji ghaliex fil-kors tal-provi jirrizultaw izjed. In-nuqqas fil-corporate governance hija sistematika u sistematika fit-tmexxija ; l-esponenti jghidu illi hemm concert and collusion bejn diversi interessi biex jostakolaw corporate governance proprja fit-tmexxija tal-kumpannija ;*

4. *ILLI l-lanjanzi, gia ripetutament trasmessi à outrance u injorati sistematikament huwa hekk sintetizzati :*

(i) *nuqqas minkejja talbiet kostanti u ripetuti li tigi provduta informazzjoni fuq l-istatus tal-kumpannija : dan jinkludi dokumenti, records u minuti ta` meetings u laqghat, informazzjoni finanzjarja. Intalbu inutilment management accounts ta` kull xahar ghal kull kumpannija sussidjarja li topera u hija attiva ;*

(ii) meta inghataw management reports, dawn inghataw minghajr analizi, spjegazzjoni jew reconciliations ta` figuri ; ghandu jigi spjegat hawnhekk illi figuri minghajr analizi dettaljata u spjegazzjoni li tqiegħed il-figuri fil-kuntest huma fl-ahjar ipotesi inutli u fl-agħar ipotesi misleading u fuorvianti ; fil-fatt il-ftit analizi jew spjegazzjonijiet li nġhataw kienu aktarx inkompjuti, insufficienti jew misleading u f`istanzi oħra addirittura ma nġhatat xejn ;

(iii) ma nġhatawx pjanijiet kummerċjali ta` kull sena u għal kull hames snin tal-kumpanniji sussidjarji u rapporti agġornati u attwali għall-mument dwar il-proġett ta` fabrika u mhazen godda ta` Foster Clark Products Limited u ta` ufficini godda ta` Francis Busuttil & Sons (Marketing) Limited ;

(iv) istanzi fejn xi membri tal-Bord tad-Diretturi hbew lill-Bord tad-Diretturi informazzjoni jew ipprovdew rapporti jew informazzjoni li hija nkompleta jew falza, bħal per eżempju dwar proġetti godda li dahlet fihom il-kumpannija jew is-sussidjarji tagħha ;

(v) nuqqas ta` xi membri tal-Bord tad-Diretturi, in vjolazzjoni tal-basik fiduciary duties tagħhom u kif kodifikati fil-Companies Act li jevitaw li jitqiegħdu jew jagixxi f`sitwazzjoni ta` konflitt ta` interess, jew self-dealing mal-kumpannija jew li josservaw il-corporate opportunity doctrine li ma jehdux huma opportunitajiet kummerċjali li gew għandhom fil-vesti ta` Diretturi tal-kumpannija ;

(vi) nuqqas kollettiv tad-dirigenza li għandha f`idejha t-tmexxija li jipprezentaw lill-Bord tad-Diretturi pjanijiet maqbula u strategija għal xi kumpannija parti mill-Busuttil Group ;

(vii) nuqqas tal-Bord li jwieġeb mistoqsijiet legittimi dwar kwistjonijiet u mplikazzjonijiet legali li jolqtu l-kumpanniji ; fil-fatt l-esponent Brian Busuttil għamel mistoqsijiet rilevanti u attwali lill-Bord li ma twegħbux, u meta l-esponent Suzanne Busuttil talbet li jittiehed parir legali indipendenti, il-magġoranza fil-Bord, b`konflitt car ta` interess, giet rifjutata mill-Bord ;

5. ILLI l-esponenti huma konxji tal-entita` tal-kuntest u ma hijiex l-intenzjoni tagħhom li jagixxu b`mod li jikkawzaw hsara u danni, izda jidhrilhom illi huma ntitolati illi l-kumpanniji jitmexxew b`mod serju u konsistenti man-negozju tagħhom, kif ukoll b`mod car, trasparenti u li jirrifletti z-zminijiet u l-generazzjonijiet differenti ta` azzjonisti. Kienu kostretti jiehdu dawn il-mizuri proprju minhabba n-nuqqas sistematiku tal-Bordijiet ta` Diretturi rispettivi illi sistematikament injoraw talbiet biex it-tmexxija ma tibqax diskriminatorja u kontra l-interessi tal-azzjonisti jew xi whud minnhom ;

6. *ILLI ghalhekk filwaqt illi huma bhal dejjem ser jagixxu b`mod ghaqli u responsabbli, jintimaw minn issa illi behsiebhom jiehdu kull misura legali u prudenti biex jiprotegu l-interessi taghhom u sabiex tieqaf il-hsara li qed issir lill-kumpanniji u lill-interessi taghhom.*

*GHALDAQSTANT L-ESPONENTI, jitolbu bl-akbar rispettt l-intervent u l-azzjoni ta` din l-Onorabbli Qorti sabiex taghti dawk id-direttivi li jidhrilha xierqa u opportun, fl-interess tar-rikorrenti fid-dawl ta` dak kollu preambulat u premiss, imma tenut kont tal-interessi tal-kumpannija u l-azzjonisti taghha, sabiex jieqfu l-abbuzi fuq indikati u sabiex ikun hemm tmexxija skond regoli u principji accettati ta` corporate governance, kif rikjest mill-Companies Act, inkluz l-art 136A(2)(A) u taht il-provedimenti li din il-Qorti joghghobha taghti.*

**Rat ir-risposta li pprezentaw l-intimati Foster Clark Products Limited, Francis Busuttil & Sons (Marketing) Limited, B&S Exports Limited, B&S Manufacturing Limited u Chris Degiorgio bhala direttur ta` Foster Clark Products Limited u ta` Francis Busuttil & Sons (Marketing) Limited fis-7 ta` Settembru 2012 li taqra hekk :-**

*Illi fl-ewwel lok u preliminarment l-esponenti mhumieq il-legittimi kontradditturi stante li r-rikorrenti mhumieq azzjonisti (membri) fis-socjetajiet intimati Foster Clark Products Limited, Francis Busuttil & Sons (Marketing) Limited, B&S Exports Limited u B&S Manufacturing Limited, filwaqt li l-intimat Chris Degiorgio "ex admissis" mill-istess rikorrenti hu biss direttur ta` Foster Clark Products Limited u ta` Francis Busuttil & Sons (Marketing) Limited u ghalhekk ghandhom jigu liberati mill-osservanza tal-gudizzju.*

*Illi fit-tieni lok u preliminarment u minghajr pregudizzju ghal fuq espost, ghandu jigi rilevat in-nuqqas ta` integrita` tal-gudizzju stante li l-azzjonisti tas-socjetajiet intimati Francis Busuttil & Sons Limited u B&S Contractors Limited mhumieq partijiet f`dawn il-proceduri u ghalhekk l-esponenti jitolbu l-kjamata in kawza tal-istess.*

*Illi fit-tielet lok u wkoll preliminarment u minghajr pregudizzju ghal fuq espost, wiehed jirrileva li ma jirrizultax b`mod car liema rimedju qed jigi verament invokat mir-rikorrenti. Waqt illi l-premessa hi li r-rikors qieghed isir a tenur tal-artikolu 402 tal-Kap 386, l-ilmenti u l-lanjanzi huma kollha diretti kontra d-diretturi u fir-rigward gie nvokat l-artikolu 136A tal-istess Kap. L-istess talba mbaghad hija ghat-"tmexxija skond regoli u principji accettati ta` corporate governance, kif rikjest mill-Companies Act (m`hemm xejn dwar corporate governance fil-Companies Act) inkluz l-artikolu 136A(2)(A) ...." illi fl-isfond ta` dan kollu r-rimedju hu dak previst fl-artikolu 140 tal-Kap 386 u mhux l-istanza odjerna u ghalhekk ukoll it-talbiet tar-rikorrenti ghandhom jigu respinti.*

*Illi fil-mertu l-allegazzjonijiet kollha migjuba fir-rikors promotur dwar agir mhux korrett tad-diretturi intimati u ta` tmexxija rregolari u allegazzjonijiet ohra huma kollha michuda bhala ghal kollox infondati fil-fatt u fid-dritt. Kif ser jigi ppruvat ahjar waqt it-trattazzjoni tal-kawza, il-kumpanniji intimati kollha, inkluz ukoll dawk li fihom ir-rikorrenti huma azzjonisti, jitmexxew skond il-ligi, fl-ahjar interess tal-azzjonisti kollha u b`rizultati ottimi. Ghalhekk it-talba tar-rikorrenti hi kompletament minghajr bazi u ghandha tigi michuda bl-ispejjez kontra taghhom stante li ma tezisti l-ebda raguni ghaliex l-Artikolu 402 tal-Kap 386 kif invokat mir-rikorrenti ghandu jigi applikat.*

**Rat ir-risposta ta` l-intimati Francis Busuttil & Sons Limited, B&S Contractors Limited, Franco Busuttil, Michael Busuttil, Joseph Busuttil, Christian Busuttil, Jean Paul Busuttil lkoll fil-kwalita` taghhom kollha bhala diretturi f'isem Francis Busuttil & Sons Limited u B&S Contractors Limited hlief Franco Busuttil li ma huwix direttur ta` B&S Contractors Limited u Jean Paul Busuttil prezentata fis-7 ta` Settembru 2012 li taqra hekk –**

*Illi fl-ewwel lok u preliminarjament ghandu jigi rilevat in-nuqqas ta` integrita` tal-gudizzju stante li l-azzjonisti tas-socjetajiet intimati Francis Busuttil & Sons Limited u B&S Contractors Limited mhumix partijiet f'dawn il-proceduri u ghalhekk l-esponenti jitolbu l-kjamata in kawza tal-istess.*

*Illi fit-tieni lok u wkoll preliminarment u minghajr pregudizzju ghal fuq espost, wiehed jirrileva li ma jirrizultax b`mod car liema rimedju qed jigi verament invokat mir-rikorrenti. Waqt illi l-premessa hi li r-rikors qieghed isir a tenur tal-artikolu 402 tal-Kap 386, l-ilmenti u l-lanjanzi huma kollha diretti kontra d-diretturi u fir-rigward ghie invokat l-artikolu 136A ta` l-istess Kap. L-istess talba mbaghad hija ghat-“tmexxija skont regoli u principji accettati ta` corporate governance kif rikjjest mill-Companies Act (m`hemm xejn dwar corporate governance fil-Conmpanies Act) inkluz l-artikolu 136A(2)(A) ...” Illi l-isfond ta` dan kollu r-rimedju hu dak previst fl-artikolu 140 tal-Kap 386 u mhux l-istanza odjerna u ghalhekk ukoll it-talbiet rikorrenti ghandhom jigi respinti.*

*Illi fil-mertu l-allegazzjonijiet kollha migjuba fir-rikors promotur dwar agir mhux korrett tad-diretturi intimati u ta` tmexxija rregolari u allegazzjonijiet ohra huma kollha michuda bhala ghal kollox infonfati fil-fatt u fid-dritt. Kif ser jigi ppruvat ahjar waqt it-trattazzjoni tal-kawza l-kumpanniji intimati, u li fihom r-rikorrenti huma azzjonisti, jitmexxew sjkont il-ligi, fl-ahjar interess tal-azzjonisti kollha u b`rizultati ottimi. Ghalhekk it-talba tar-rikorrenti hi kompletament minghajr bazi u ghandha tigi michuda bl-ispejjez kontra taghhom stante li ma tezisti l-ebda raguni valida ghaliex l-Artikolu 402 tal-Kap 386 kif invokat mir-rikorrenti ghandu jigi applikat.*

**Rat illi *in primis* kienet trattata l-ewwel eccezzjoni preliminari ta` l-intimati Foster Clark Products Limited, Francis Busuttil & Sons (Marketing) Limited, B & S Exports Limited, B & S Manufacturing Limited u Chris Degiorgio nomine.**

**Rat il-provvediment illi tat fis-6 ta` Mejju 2013 fejn laqghet l-ewwel eccezzjoni preliminari ta` l-intimati Foster Clark Products Limited, Francis Busuttil & Sons (Marketing) Limited, B&S Exports Limited, B&S Manufacturing Limited u Chris Degiorgio bhala direttur ta` Foster Clark Products Limited, iddikjarat illi ma kienux legittimi kontraditturi tar-rikorrenti, u lliberathom mill-osservanza tal-gudizzju, bl-ispejjez kontra r-rikorrenti.**

Rat illi kienet tat permess lir-rikorrenti sabiex jinterponu appell minn dan il-provvediment.

**Rat id-decizjoni li tat il-Qorti tal-Appell fil-31 ta` Jannar 2014 fejn laqghet l-ewwel eccezzjoni ta` l-intimati Foster Clark Products Limited, Francis Busuttil & Sons (Marketing) Limited, B&S Exports Limited, B&S Manufacturing Limited u Chris Degiorgio bhala direttur ta` Foster Clark Products Limited, iddikjarat irritu u null l-appell tar-rikorrenti (l-appellanti), cahdet l-istess, bl-ispejjez kontra l-appellanti.**

**Rat illi fl-udjenza tal-10 ta` Marzu 2014 kienet irtirata t-tieni eccezzjoni mill-intimati.**

Rat illi kienet milqugha t-talba tal-intimati ghall-kjamata fil-kawza tal-azzjonisti tal-kumpanniji Francis Busuttil & Sons Limited u B&S Contractors Limited.

**Rat ir-risposta ta` l-kjamati fil-kawza Rebecca Darmanin Kissaun (ID54472M), Natasha Busuttil (ID317370M), Paul Busuttil (ID695058M), Joanna Decesare (ID412357M), Mary Ann Lanzon (ID555155M), Roberta Pecci Busuttil (ID809060M), Clarissa Pace (ID521963M), Maria Schaerrer Busuttil (Passaport Svizzeru 5115194), Simone Pace Busuttil (ID192157M), Christian Busuttil (ID199278M), Joseph Busuttil (ID90968M), Michael Busuttil (ID51261M), Sealex Holdings Co Ltd (C14190), Mavel Holdings Co Ltd (C16864), Antonia Busuttil (ID51231M), u The Estate of the Late Charles Busuttil, prezentata fis-16 ta` Gunju 2014 li taqra hekk –**

*Minn dak li jafu l-intimati, partikolarment izda mhux biss mir-rizultati eccellenti li jottjenu konsistentement il-kumpanniji, l-allegazzjonijiet kollha migjuba fir-rikors promotur huma mhux biss infondati, imma frivoli u probabbilment animati minn agenda li tmur lil hinn minn dak allegat. L-allegazzjonijiet u, iktar u iktar, il-kawza, jaghmlu hsara lill-kumpanniji u, indirettament, lill-intimati.*

*Ghalhekk it-talba tar-rikorrenti hi kompletament minghajr bazi u ghandha tigi michuda bl-ispejjez kontra taghhom, b`rizerva ta` kull dritt u rimedju kontra r-rikorrenti fir-rigward tal-hsara li qed igarrbu l-kumpanniji minhabba fl-agir taghhom.*

**Rat ir-risposta ta` Franco Busuttil (ID11461M) u B.C. Investments Limited (C8063), prezentata fis-26 ta` Gunju 2014 li taqra hekk –**

*Illi t-talbiet dedotti mir-rikorrenti huma ghal kollox infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez ghaliex il-kumpanniji koncernati jitmexxew sew u skont il-ligi bil-konsegwenza illi l-ebda oppressjoni u / jew pregudizzju u / jew diskriminazzjoni ma huma qed jigu kawzati fil-konfront tar-rikorrenti u kwindi ma tezisti l-ebda raguni valida ghaliex dina l-Onorabbli Qorti ghandha taghti lir-rikorrenti xi rimedju a tenur tal-Artikolu 402 tal-Kap. 386.*

**Rat ir-risposta ta` Jean Paul Busuttil ghal Bag Investments Limited u Louiana Busuttil ghal Yan Company Limited, azzjonisti ta` B&S Contractors Limited, prezentata fis-16 ta` Settembru 2014 li taqra hekk –**

1. *Illi din ir-risposta hi limitata ghal dak li jirrigwarda l-allegazzjonijiet tar-rikorrenti fil-konfront tal-kumpannija B&S Contractors Limited u s-sussidjarji taghha izda ma humiex qed jikkumentaw dwar l-allegazzjonijiet fil-konfront tal-kumpanniji l-ohra u lanqas tad-diretturi taghhom.*

2. *Illi l-esponenti jirrispondu ghat-talbiet fir-rikors promotorju billi jghidu li l-affarijiet deskritti mir-rikorrenti huma affarijiet li ghalihom ghandhom jirrispondu d-diretturi tal-kumpannija individwalment u certament mhux l-esponenti li huma ghal kollox estraneji ghall-fatti reklamati mir-rikorrenti.*



3. *Illi fi kwalsiasi kaz u minghajr pregudizzju ghas-suespost l-esponenti jghidu li huma qatt ma ghamlu xejn li jista` jigi deskritt bhala diskriminatorju u / jew abusiva u / jew lesiva tad-drittijiet ta` xi membru tal-kumpannija la fil-konfront tar-rikorrenti u lanqas fil-konfront ta` xi membru iehor tal-kumpannija FBS u kwindi ghandhom jigu liberati mil-osservanza tal-gudizzju.*

4. *Illi l-esponent saret taf li fil-mori ta` din il-procedura sar rikors fl-ismijiet premessi bin-numru 642/2012/1 u li permezz tieghu r-rikorrenti qeghdin jitolbu interim order koncernanti t-tnehhija ta` Suzanne Busuttil mill-kariga ta` direttur tal-kumpannija FBS. Ghalkemm dan il-kaz jirrigwarda l-kumpannija FBS u mhux B&S Contractors Limited, l-esponenti jridu li jigu notifikati bir-rikors in kwistjoni sabiex ikunu jistghu jirrispondu formalment ghall-istess u jaghmlu s-sottomissjoni taghhom fir-rigward. Jirrilevaw f`dan ir-rigward li l-azzjonisti ma gewx notifikati bir-rikors de quo. L-esponenti jridu li din il-Qorti tisma` lill-azzjonisti kollha espressament ukoll fuq dan il-punt. B`danakollu xtaqu li jaghmluha cara minn issa li huma jafu bi ftehim espress bejn l-azzjonisti kollha li kull wiehed mill-ahwa originali u l-familjari diretti taghhom, li ghandhom ghoxrin fil-mija tal-ishma kull wiehed (legacy family) kellhom u ghad ghandhom id-dritt li jinnominaw direttur fuq il-Bord tal-kumpannija, dan kif gie attwat espressament u ripetutament mill-bidu tal-kumpannija sa meta qam it-tilwim bejn Suzanne Busuttil u whud mill-membri tal-familja.*

5. *Illi stante r-relazzjoni ta` familja li tezisti bejn il-partijiet l-esponenti jhossu li d-disgwid li qam ghandu jigi risolt bi djalogu bejn il-partijiet kollha u tghid bla pregudizzju li hi lesta biex tghin lill-partijiet jaslu ghal soluzzjoni bonarja.*

6. *Tant ghandhom x`jissottomettu l-esponenti f`dan l-istadju.*

**Rat ir-risposta ta` T&L Holdings Limited, prezentata fis-17 ta` Settembru 2014 li taqra hekk –**

1. *Illi l-kumpannija T&L Holdings Limited izzomm l-ishma li kienu jappartjenu lil Louis Busuttil, wiehed mill-ahwa fundaturi tal-kumpannija Francis Busuttil & Sons Limited (FBS). L-esponenti thaddan 20% tal-kapital azzjonarju u hi ghalhekk l-akbar azzjonista fil-kumpannija FBS.*

2. *Illi din ir-risposta hi limitata ghal dak li jirrigwarda l-allegazzjonijiet tar-rikorrenti fil-konfront tal-kumpannija FBS u s-sussidjarji taghha izda ma humiex qed jikkumentaw dwar l-allegazzjonijiet fil-konfront tal-*

*kumpanniji B&S Contractors Limited billi hi ma hijiex azzjonista f`dik il-kumpannija.*

3. *Illi l-esponenti tirrispondi ghat-talbiet fir-rikors promotorju billi jghidu li l-affarijiet deskritti mir-rikorrenti huma affarijiet li ghalihom ghandhom jirrispondu d-diretturi tal-kumpannija u certament mhux l-esponenti li hi ghal kollox estranea ghall-fatti reklamati mir-rikorrenti.*

4. *Illi fi kwalsiasi kaz u minghajr pregudizzju ghas-suespost l-esponenti tghid li hi qatt ma ghamlet xejn li jista` jigi deskritt bhala diskriminatorju u / jew abusiva u / jew lesiva tad-drittijiet ta` xi membru tal-kumpannija la fil-konfront tar-rikorrenti u lanqas fil-konfront ta` xi membru iehor tal-kumpannija FBS u kwindi ghandhom jigu liberati mil-osservanza tal-gudizzju.*

5. *Illi l-esponent saret taf li fil-mori ta` din il-procedura sar rikors fl-ismijiet premissi bin-numru 642/2012/1 u li permezz tieghu r-rikorrenti qeghdin jitolbu interim order koncernanti t-tnehhija ta` Suzanne Busuttil mill-kariga ta` direttur tal-kumpannija FBS. Billi l-esponenti giet kjamata f`din il-kawza tghid li hi ghandha tigi notifikata bir-rikors in kwistjoni sabiex tkun tista` tirrispondi formalment ghall-istess u taghmel is-sottomissjoni taghha fir-rigward. Tirrileva li f`dan ir-rigward li l-azzjonisti ma gewx notifikati bir-rikors de quo u li fir-risposta taghhom wara li gew kjamati in kawza ma jidhirx li ghamlu riferenza ghal din il-kwistjoni. L-esponent tghid li din il-Qorti ghandha tisma` lill-azzjonisti kollha espressament ukoll fuq dan il-punt. B`danakollu xtaqet taghmilha cara minn issa li hija taf bi ftehim espress bejn l-azzjonisti kollha li kull wiehed mill-ahwa originali u l-familjari diretti taghhom, li ghandhom ghoxrin fil-mija tal-ishma kull wiehed (legacy family) kellhom u ghad ghandhom id-dritt li jinnominaw direttur fuq il-Bord tal-kumpannija, dan kif gie attwat espressament u ripetutament mill-bidu tal-kumpannija sa meta qam it-tilwim bejn Suzanne Busuttil u whud mill-membri tal-familja.*

6. *Tirrileva ukoll li dan l-ahhar rikors ma ghandux jigi dekretat qabel ma l-esponenti jigu formalment notifikati bih u jkollhom opportunita` shiha li jirrispondi.*

7. *Tant ghandha x`tissottometti l-esponenti f`dan l-istadju.*

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

Rat illi fl-udjenza tal-20 ta` Mejju 2016 accettat it-talba tal-partijiet sabiex il-provi formanti parti mill-atti tal-kawzi Rik. Nru. 833/14 JZM, 802/14 JZM u 12/15JZM ikunu jikkostitwixxu prova anke ghall-fini ta` din il-kawza.

Rat il-provi li saru fil-kawzi Rik. Nru. 833/14 JZM, 802/14 JZM u 12/15JZM ikunu jikkostitwixxu prova anke ghall-fini ta` din il-kawza.

Rat in-noti ta` osservazzjonijiet.

Semghet is-sottomissjonijiet tal-ahhar bil-fomm.

Rat illi l-kawza thalliet ghal-lum ghal provvediment finali dwar il-mertu.

Rat l-atti l-ohra, inkluz il-verbali tal-udjenzi, u l-ghadd ta` provvedimenti li kienu moghtija fil-kors tal-kawza.

## **II. Provi**

**Suzanne Busuttil** xehdet illi Stealth Holdings Limited hija proprjeta` ta` huha Brian Busuttil. Stealth Holdings Limited ghandha ishma fil-kumpannija B & S Contractors Limited. Hija azzjonista ta` Francis Busuttil & Sons Limited u ta` B & S Contractors Limited.

Xehdet illi hemm zewg gruppi li kienu originarjament jappartjenu lil hames ahwa subien Busuttil, li wiehed minnhom huwa missierha. Spjegat li attwalment dawn jappartjenu lit-tfal ta` dawn is-subien. Fl-ewwel grupp li huwa FBS *Group*, hemm Francis Busuttil & Sons Limited li hija *holding company*. Din imbaghad ghandha bhala sussidjarja taghha lil Foster Clark Products Limited. FBS Marketing Limited hija kumpannija sussidjarja li hija involuta fl-importazzjoni u *wholesale*. Medina Food Manufacturing Company Limited hija kumpannija sussidjarja li ma ghadhiex topera.

Kompliet tghid li B & S *Group* kien jappartjeni originarjament lil hamest ahwa li llum il-gurnata huma l-hames *legacy families*. B & S Contractors Limited hija l-*parent holding company* filwaqt li B & S Exports u B & S Manufacturing huma sussidjarji. It-tliet kumpanniji fil-B & S *Group* huma fir-realta` kumpanija wahda ta` manifattura li gew divizi ghal ragunijiet ta` taxxa. Is-sehem taghha ta` Francis Busuttil & Sons Limited huwa ta` 10% peress li hija ghandha 40 sehem. Huha ghandu l-istess bhalha.

Qalet li Stealth Holdings Limited ghandha 2000 sehem fi B & S Contractors Limited, filwaqt li huha ghandu 1000 sehem. Flimkien ghandhom 10% tal-kumpannija. Hija ghandha 3,000 sehem ta` B & S Contractors Limited u ghalhekkk hija wkoll ghandha 10%. Sostniet li x-xenarju huwa wiehed fejn il-kumpanniji huma kollha konnessi peress li kollox gej minn negozju ta` familja. Spjegat li anke d-diretturi huma komuni f`hafna minn dawn il-kumpanniji. Foster Clarks Products Limited tbiegh prodotti ta` B & S *Group* u anke vice versa. Sostniet li anke finanzjarjament, dawn huma lkoll konnessi. Fil-kaz ta` numru ta` okkazjonijiet, decizjonijiet jittiehdu fl-interess tal-grupp u mhux tal-kumpanniji individwali.

Stqarret illi kien Mejju 2007 li saret 10% *shareholder* fi Francis Busuttil & Sons Limited (FBS). F`Ottubru 2009, saret 10% *shareholder* ta` B & S Contractors Limited. Kienet ukoll direttrici ta` FBS bejn April 2008 u Frar 2013. Kienet direttur ta` B & S bejn Mejju 2010 sa Frar 2013 u rega` kienet appuntata f`Marzu 2013. Hija direttrici ta` B & S Exports Limited u B & S *Group* minn Mejju 2010. Spjegat ukoll li hija *accountant*, awditur u *management consultant*.

Fissret illi hija u huha kellhom jirrikorru ghal dawn il-proceduri minhabba l-problemi serji li hemm fil-familja Busuttil. Illum in-negozju tal-familja Busuttil huwa kkontrollat minn hames *legacy families* u hi u huha jiffurmaw wahda minnhom. In-negozju tal-familja Busuttil jirrigwarda FBS *Group* u B & S *Group*. Dawn il-gruppi ghandhom diversi kumpaniji sussidjarji li uhud minnhom joperaw u ohrajn le. Iz-zewg gruppi ta` kumpanniji huma trattati bhala entita ekonomika wahda peress li kollha huma konnessi u dependenti fuq xulxin kif ukoll huma proprjeta` u kkontrollati mill-istess individwi.

Kien hemm diversi sitwazzjonijiet fejn in-negozju tal-kumpanniji varji fiz-zewg gruppi seh b`mod oppressiv, diskriminatorju u ta` pregudizzju ghaliha, ghal huha Brian kif ukoll ghall-ahajr interessi tal-membri kollha.

Spjegat li qabel ma ttrasferixxa l-ishma tieghu lilha u lil huha, missierha wkoll soffra minn tali agir.

Sostniet li kien hemm atti wkoll konsistenti f`abbuz ta` poter, gideb u atteggiament frawdolenti . Fost ohrajn semmiet, li kien hemm skemi biex jigu migjuba fix-xejn il-kumpanniji fil-grupp li l-aktar jirrendu bhal meta kien hemm pjanijiet biex l-ishma ta` Foster Clark Products Limited jigu trasferiti lil *holding company* fl-Olanda sabiex titnehha l-kontroll ta` Foster Clark Products Limited mill-familja Busuttil. Sostniet li kienu wkoll saru negozjati biex FCP tinbiegh lil *multinational organisation* ghal 10% tal-valur reali taghha. Spjegat li fl-istess hin, gew rifjutati offerti li kienu validi ghall-akkwist ta` FCP. Hija allegat li kien hemm diversi skemi biex l-profitt u *dividends* ta` B & S jigu ridotti. Inholqu

impiegi u posizzjonijiet li ma kinux awtorizzati. Ma kenitx tinghata informazzjoni meta mitluba ; ittiehdu anke decizjonijiet li kienu jmorru kontra l-*memorandum and articles of association*.

Ilmentat li kien hemm inkompetenza mill-maggor parti tad-diretturi u *top management*. Il-kumpanniji u l-gruppi ma ghandhom l-ebda pjani jiet formali u strategiji. Huma nieqsa minn *effective internal controls, good basic management principles* u *good corporate governance*. Spjegat li uhud mis-sussidjarji joperaw b'telf jew minghajr profitt. Kien hemm ukoll dewmien fil-progress ta' progetti. Kien hemm ukoll diretturi li agixxew b'kunflitt ta' interess . Fost ilmenti ohra, semmiet li kien hemm diretturi li approvaw u awmentaw is-salarji taghhom stess; rcivew beneficji finanzjarji eccessivi; kellhom kumpanniji li kienu jikkompetu direttament jew indirettament man-negozju tal-familja; u kienu jaqilghu *commissions* personalment fuq *business deals*.

Irreferiet ukoll ghal istanzi fejn kien hemm diskriminazzjoni diretta lejn il-familja taghha. Spjegat li l-familja taghha mhjiex rapprezentata fil-bord tad-diretturi ta' FBS u lanqas f'bordijiet tas-sussidjarji ta' FBS. Huma l-unika familja li ma ghandhom l-ebda membru li huwa impjegat fin-negozju tal-familja minkejja li dan huwa dritt inkluz fil-*memorandum and articles of association* ta' FBS. Spjegat li missierha, kuntrarjament ghal hutu l-ohra, gie mgieghel jirtira meta wasal fl-eta' ta' l-irtirar.

Ir-ripperskussjonijiet ta' dan kollu huwa li qed ikun hemm impatt negattiv fuq l-*ultimate individual shareholders* ta' FBS u B & S. Dan kollu jaffettwa wkoll il-qliegħ li taghmel il-kumpanija, u fl-ahhar mill-ahhar il-valur tal-kumpanija u ta' l-ishma taghha. Hija sostniet li l-familja taghha tilfu kull fiducja fid-diretturi, fil-*management*, fl-awdituri, fil-*company secretary* u kif ukoll fl-*outside consultants* ta' B & S u FBS. Sostniet li s-sitwazzjoni li fiha jinsabu ma tistax tigi ttollerata aktar.

Stqarret li hija kienet tipprowa tigbed l-attenzjoni tad-diretturi u tal-azzjonisti għal dak li kien qed isehh u dan għamlitu kemm verbalment u anke bil-miktub. Hija kienet ukoll tippartecipa f' diskussjonijiet u tipprowa li tintlahaq soluzzjoni fil-livell ta' l-azzjonisiti u kif ukoll fil-livell ta' diretturi. Madanakollu, matul iz-zminijiet il-principji ta' ugwaljanza, stabilita' u unita' li fuqhom kien mibni n-negozju tal-familja Busuttil ma baqghux jigu osservati. Hija insistiet li l-individwi qed juzaw l-assi tal-kumpanija a beneficju personali taghhom minghajr ma jikkompensaw lill-istess kumpanija. L-abbuz kemm-il darba qed isehh minghajr il-konsapevolezza u kunsens tad-diretturi l-ohra u l-azzjonisti. Hija stmat li dan l-abbuz jammonta għal mijiet ta' eluf ta' Ewro annwalment.

Hija ghamlet enfasi li numru ta` impjegati ta` FCP intuzaw ghal *refurbishment* ta` Lotus Eater li damet madwar ghaxar snin. Dan kollu sar a beneficju tal-mejjet Charles Busuttil. Anke d-dipartiment tal-mastrudaxxi f`FCP immanifattura diversi oggetti ta` ghamara ghal uzu personali ta` diretturi, membri tal-familja, u terzi persuni ohra. Kien hemm imbaggad diversi impjegati li kienu jithaddmu fir-residenzi privati tad-diretturi fosthom fir-residenzi ta` Charles Busuttil u Joseph Busuttil, liema impjegati kienu jithallsu mill-kumpanija. Sostniet li Joseph Busuttil kellu *full time handyman* li kien jahdem mieghu privatament u dan kien impjegat u mhallas minn wahda mill-kumpaniji. Dan kollu sar minghajr il-konsapevolezza u kunsens tad-diretturi l-ohra, kif ukoll ta` l-azzjonisti. Karozzi tal-kumpanija kienu wkoll jintuzaw ghal uzu personali mid-diretturi u l-familjari tagghom. Kien hemm zmien fejn bint Charles Busuttil, Rebecca u *step daughter* tieghu Sarah kienu joperaw in-negozju tagghom mill-proprjeta` tal-kumpanija u kienu anke jutilizzaw impjegati u assi tal-kumpanija. Franco Busuttil ukoll kien utilizza l-proprjeta` tal-kumpanija kif ukoll rizorsi ta` l-istess kumpanija biex jopera n-negozju tieghu bl-isem Globe Imports Limited. Din il-kumpanija kienet f`kompetizzjoni diretta ma` FBS kif ukoll ma` FBS (Marketing). Franco kien ukoll utilizza l-proprjeta` tal-kumpanija bhala mahzen ghall-affarijiet personali tieghu.

Ilmentat ukoll dwar l-ispejjez li saru mill-kumpanija fuq kappella tal-familja Busuttil fic-Cuimterju tal-Addolorata u tmien oqbra, liema spejjez gew ikkonfermati minn Chris Degiorgio li nhargu minn certi kumpaniji f`B & S Group u FBS Group. Fl-ewwel tas-sena tigi organizzata ikla ghall-familjari kollha li tqum eluf ta` Ewro fis-sena. Dan l-avveniment ma ghandhux jghaddi mill-kontijiet tal-kumpanija izda ghandu semmai jigi mhallas individwalment. Anke l-*christmas hampers* u rigali li jinghataw huma eccessivi. Intalbet informazzjoni dwar dawn il-*hampers* , il-valur tagghom u lil min jintbaghtu u dwar il-konnessjoni bejn min jircievi dawn il-*hampers* u l-kumpanija, izda tali informazzjoni qatt ma nghatat lilhom. Sostniet ukoll li gieli dawn il-*hampers* ikollhom *poor quality products* minn FBS (Marketing) *product portfolio* u dan ikompli juri l-inkompetenza li hemm fl-operat ta` dan in-negozju tal-familja. Hemm ukoll varji spejjez ghal vjaggjar li jirrizultaw li huma vjaggi personali bhal meta thallset *fishing expedition* minn Charles Busuttil, ibnu u impjegati ohra, u vaganzi ohra ta` diversi membri tal-familja. Sostniet li l-familja taghha qatt ma kienet kopartecipi ta` dan il-frodi u abbuz.

Qalet illi xi snin ilu, numru ta` individwi fosthom Charles Busuttil, Joseph Busuttil, PricewaterhouseCoopers tramite John Zarb u Dr Neville Gatt, Chris Degiorigo, Dottor JJ Vella u Michael Busuttil kienu pproponew il-krejazzjoni ta` *holding company* fl-Olanda. Din il-kumpanija kellha tkun proprjeta` ta` FBS u l-ishma f`FCP li kellha FBS kellhom jigu trasferiti lil din il-kumpanija. Dan kien ser jirrizulta fit-telf tal-ftit kontroll li kellha l-familja Busuttil. Din il-proposta regghet giet imqajjma ricentement minn Joseph Busuttil. Sostniet li r-riskju ghalhekk ghadu hemm.

Semmiet illi Joseph Busuttil, Charles Busuttil u Chris Degiorgio dahlu f'negozjati ma` s-socjeta` Dr Oetker biex 100% ta` FCP jinbiegh lilha. Din il-kumpanija timpjega 26,000 impjegat u l-*annual revenue* taghha jeccedi EUR 10.9 *bilion*. Dr Oetker timmanifattura numru ta` prodotti li huma f'kompetizzjoni diretta ma` prodotti ta` FCP. L-offerta li nghatat minn Dr Oetker kienet tirraprezenta biss 10% tal-valur reali ta` FCP. Kien biss wara li nbdew in-negozjati li dawn l-individwi infuumaw il-bord ta` FBS. Dak iz-zmien, hija kienet direttrici ta` FBS . Michael Busttuil, l-*company secretary* u John Bonello li kien konsulent tal-Bord ta` FBS kienu favur din il-proposta u li jkomplu n-negozjati minkejja li hija kienet osservat li l-valur offrut ma kienx jikkombaca mal-valur reali ta` FCP. Hija spjegat li qatt ma kienet involuta fl-ebda diskussjonijiet mar-rapprezentanti ta` Dr Oetker u lanqas ma giet provduta bl-ittra fejn kien hemm innizzel il-prezz offrut minkejja li hija talbet li tintwera tali ittra. Sostniet li n-negozjati ma` Dr Oetker komplew anke wara l-mewt ta` Charles Busuttil.

Stqarret illi l-ahhar offerta li saret ghall-akkwist ta` FCP kienet minn Piper Jaffray ghan-nom ta` numru ta` klijenti li huma *foreign investment firms*. Piper Jaffray huwa bank ta` investiment Amerikan kif ukoll *asset management firm*. L-offerti kienu bbazati fuq l-*audited financial statements* ta` FCP li kienu gew pprezentati mar-Registru tal-Kumpanniji u fuq stima konservattiva tal-potenzjal awment fi dhul u profitti in vista tal-fabbrika l-gdida ta` FCP li kienet ghadha kemm bdiet topera. Kienet giet koordinata laqgha ma` Piper Jaffray izda Joseph Busuttil kien sostna magghom li FCP ma kinitx ghal bejgh u li l-offerta taghhom kienet wisq gholja. Dan ir-rifjut ta` somma li kienet tlett darbiet aktar minn dik offruta minn Dr Oetker tindika li huwa kien ser jibbenifika xi haga f'kaz li tigi accettata l-offerta ta` Dr Oetker.

Xehdet ukoll li l-maggor parti tad-diretturi ta` B & S (ossija d-diretturi kollha apparti hi) approvaw il-bejgh ta` l-operat ta` B & S lil FCP. Il-Bord ta` B & S iddecideda li din id-decizzjoni tirrikjedi l-approvazzjoni mill-azzjonisti ta` B & S. Il-laqgha generali straordinarja ta` B & S kienet giet iffissata ghat-30 ta` Lulju 2014. Hi u huha kienu pprezentaw protest legali, kif ukoll zewg rikorsi fir-rigward ta` din il-vertenza. Waqt il-laqgha generali straordinarja, li nzammet fit-30 ta` Lulju 2014, 80% ta` l-azzjonisti, (ossija kollha hlief Brian u hi) approvaw il-bejgh. Joseph Busuttil kien il-persuna li kienet qed timbotta ghal dan in-negozju. Hi u huha kienu kontra dan it-trasferiment ghal diversi ragunijiet fosthom li (i) l-valutazzjoni ta` PWC kienet ferm baxxa mill-valur gust ta` B & S; (ii) il-profitti tal-prodotti ta` Tiara li kienu jinbieghu minn FCP u li jappartjenu lil B & S ma gewx inkluzi mal-profitti ta` B & S; (iii) ma saru l-ebda pjanijiet u strategiji ghal B & S abbazi ta` liema kellha semmai tigi kkalkolata l-valur ta` B & S; (iv) il-valur tal-marka Tiara ma gietx valutata bi prezz reali tas-suq u (v) dan it-trasferiment seta` jkun ta` detriment ghal marka Tiara jew ghal marka Foster Clark.

Hija kompliet tghid li l-marka Tiara tappartjeni lil B & S izda kien hemm diversi prodotti li kienu qed jigu manifatturati u mibjugha taht din il-marka Tiara minn FCP bil-konsegwenza li FCP kienet qed tiehu l-profitt minn dan il-bejgh a detriment ta` B & S. Dan ifisser li d-dhul, l-ispejjez u l-profitt ta` dawn il-prodotti ma kinux inkluzi fl-accounts ta` B & S, u b`hekk kien ikun hemm anqas profitti u anqas *dividends*. Hija sostniet li din il-kwistjoni qatt ma giet indirizzata mill-awdituri, mid-diretturi u mill-*company secretary*. Ilmentat ukoll li diversi impjegati jigu hekk maghzula mhux fuq il-mertu taghhom izda a bazi ta` nepotizmu. Hafna mis-salarji lanqas ma huma dipendenti fuq l-impjeg li l-individwu jaghmel. Sostniet li kien hemm diretturi li awmentaw is-salarju taghhom taht skema simulata ta` *corporate governance*. Hemm ukoll evazjoni mit-taxxa billi ma huwiex jigi dikjarat id-dhul kollu ta` uhud mid-diretturi.

Ghamlet ukoll referenza ghall-fatt li Joseph Busuttil dahhal lil FBS f`zewg *consortia* li ssottomettew zewg *expressions of interest* u zewg *tenders* koncernanti l-privatizzazzjoni ta` zewg facilitajiet ta` Malta Shipyards Limited. Sostniet li Joseph Busuttil ghamel dan kollu minghajr il-konsapevolezza u l-kunsens tad-diretturi ta` FBS u tal-azzjonisti. Dan kollu sar b`abbuz u kontra l-*objects clause* tal-*memorandum and articles of association* ta` FBS.

Ghaddiet biex tirreferi ghall-fatt li hafna mill-informazzjoni mitluba ma tinghatax lilhom jew tinghata b`mod inkomplet u b`mod inkorrett. Sostniet li kemm-il darba talbet informazzjoni u din ma nghatatx lilha jew inghatax lilha b`mod inkomplet. Infatti, qalet li f`certu okkazonijiet, hija kienet tinghata rapport differenti minn dak moghti lid-diretturi l-oħra li kienu jinghataw il-verzjoni originali tar-rapport. Innotat ukoll li d-diretturi l-oħra u l-*company secretary* kien ikollhom informazzjoni li hija ma kinitx tkun taf biha. Dan kien ipoggiha fil-posizzjoni ta` zvantagg mad-diretturi l-oħra. Hija tilmenta li kien hemm istanzi fejn intalbet tohrog mill-kamra sabiex jigu diskussi kwistjonijiet oħra li hi ma tkunx taf dwarhom jew alternattivament xhin titlaq hi, ikomplu jiddikutu kwistjoni tal-bord fl-assenza taghha. Ezempju ta` meta sehħ dan kien waqt diskussjoni li kellu John Bonello ma` Joseph Busuttil dwar ir-*remuneration committee*.

Spjegat li hija kienet tintalab tapprova *consolidated financial statements* minghajr ma tigi provduta b`kopji ta` l-*audited financial statements* tas-sussidjarji u dan *at director level*. Dan isehħ ukoll *at shareholder level*. Sostniet li minn mindu tnehhiet mill-bord ta` FBS, il-familja taghha ma gietx provduta b`kopji tal-*financial statements* tas-sussidjarji ta` FBS. Id-diretturi u l-*legacy families* l-oħra rrifjutaw li jipposponu l-laqghat sakemm ikunu jistghu jottjenu kopji ta` l-*audited financial statements* mir-Registru tal-Kumpanniji. Ilmentat ukoll li l-kwalita` tal-*management reports at board level* u *at shareholder level* huma wkoll ta` kwalita` inferjuri. Ir-rapporti mhumix dettaljati u l-ispejjezzjonijiet hemm kontenuti huma vagi. Dan kollu jostakola l-analizi ta` l-



informazzjoni u ghandu effett fil-process ta` tehid ta` decizjonijiet. Aktar ma` jghaddi zmien, l-informazzjoni aktar qed tkun skarsa u limitata .

Hija xehdet illi l-maggor parti tad-diretturi komplew jaghtu s-sostenn taghhom lil dawk l-individwi li qed jabbuzaw mis-sistema u dana peress li f`hafna mill-istanzi, dawn huma l-istess persuni. Anke uhud mill-azzjonisti, gialadarba jkunu qed jibbenifikaw personalment minn dak l-abbuz, baqghu ma jaghmlu xejn biex inehhu lil min qed jabbuza. Meta ssejhet laqgha generali straordinarja biex tindirizza dan l-abbuz, il-maggor parti ta` l-azzjonisti ma attendewx u appuntaw bhala mandatarju taghhom, lill-istess direttur li kienet ser tittiehed l-azzjoni kontra tieghu.

Minhabba l-kwalita` fqira tat-tmexxija, il-kumpanniji mhux irendu l-potenzjal kollu taghhom. Spjegat li l-*gross profit margin* ta` FCP nizel minn 44.5% fis-sena 2000 ghal 30.4% fis-sena 2011 mentri l-profitt qabel it-taxxa fuq il-bejgh naqas minn 30.1% fl-2000 ghal 21.6% fis-sena 2011. Dan kollu jirrizulta mill-*audited financial statements* li wzat biex taghmel ir-rapport taghha tat-28 ta` Mejju 2012. Il-profitt ta` FBS (Marketing) qabel it-taxxa bejn April 2000 u 2011 varja b`mod erratiku bejn profitti u telf. Dan kollu rrizulta f`*overall average annual profit before tax* ta` anqas minn EUR 5,500 per annum.

Sostniet li kien hemm dewmien u spejjez zejda li ntefqu fi progetti li qed jikkagunaw pregudizzju lill-azzjonisti u ghall-valur tal-kumpanija minhabba *opportunity costs*. Il-progett tal-fabbrika l-gdida ta` FCP huwa ezempju car fejn skont hi, il-progett dam ma gie konkluz u gie jiswa 55% aktar mill-istimi originali. Dan kien jammonta fi *cost over-run* ta` EUR 7,5 miljun u *opportunity cost* ta` EUR 19.5 miljuni .

Tat ezempji ta` kunflitt ta` interess li ghandhom uhud mid-diretturi. Diversi minnhom li holqu skema ta` kif jawmentaw is-salarji taghhom. Dan kollu sar kontra l-ahjar interess tal-kumpannija. Uhud sa anke awmentaw is-salarji taghhom minghajr il-kunsens tad-diretturi l-ohra jew ta` l-azzjonisiti. Dan kollu qed isehh billi dawn ma jiddikjarawx is-salarju kollu taghhom u b`hekk ikunu qed ipoggu lill-kumpanniji fi sitwazzjoni perikoluza ta` evazzjoni ta` taxxa. L-istess diretturi qed jutilizzaw spejjez personali taghhom fl-*accounts* tal-kumpannija. Hafna diretturi jassistu lil ohrajn biex ighattu l-kunflitti ta` interess.

Insistiet li Franco Busuttil sa anke huwa proprjetarju u jikkontrolla lil Globe Imports Limited, li hija kumpanija li hija f`kompetizzjoni diretta ma` FBS (Marketing) u ma` FBS. Ghandu wkoll interess f`diversi kumpaniji ohra li huma wkoll relatati ma` l-industrija ta` l-ikel u tax-xorb. Qalet li t-tifel ta` Franco Busuttil, Francesco Busuttil li kien impjegat ta` FBS (Marketing) ghandu numru

ta` kumpanniji li hadu f`idejhom parti min-negozu ta` FBS (Marketing). Spjegat li kienet ittiehdet decizjoni li jieqaf id-dipartiment ta` FBS (Marketing) li kien jierhu hsieb *frozen/chilled goods* meta din kienet tigi amministrata mill-istess Francesco Busuttil. Dan ha *stock* antik u kif ukoll impjegati tal-kumpanija meta d-divizjoni ghalqet. Inltre utilizza assi tal-kumpannija ghan-tan-negozju tieghu. Saret ukoll referenza ghall-fatt li mart Joseph Busuttil, Louise Busuttil hija direttrici, proprjetarja u tahdem ma` Charles Darmanin & Co Ltd li hija kompetitrici ta` FBS (Marketing).

Xehdet li *t-tenders* li gew sottomessi kienu sempliciment saru ghall-interess ta` Mark Darmanin Kissaun li huwa r-ragel ta` Rebecca. Fil-progetti, FBS agixxiet ta` protettur ta` S & D Yachts Limited li kien in-negozju personali tal-familja ta` Charles Busuttil. Louis Busuttil ukoll kien ittenta li jibni spizerija u klinika fil-proprjeta` ta` FBS Santa Venera ghall-beneficju ta` Mark Schembri Wismayer li dak iz-zmien kien ir-ragel ta` bintu.

Ghamlet referenza ukoll ghall-fatt li matul diversi laqghat u vjaggi, kienu jigu riskontrati opportunitajiet godda ta` negozju u Charles Busuttil minflok jiehu vantagg minnhom ghall-beneficju tal-kumpanniji, kien jghaddi l-opportunitajiet lil terzi sabiex jiehu *commission*. Dwar dan, kien jitkellem Charles Busuttil stess. Uhud mill-opportunitajiet kienu fl-istess sfera ta` negozju.

Dwar diskriminazzjoni kontra l-familja taghha, ghamlet referenza ghall-fatt li fis-sena 1999/2000 meta FBC saret proprjeta kollha tal-familja Busuttil u giet ffurmata FBS (Marketing), il-familja taghha kienet l-unika wahda mill-familji li ma kinitx rapprezentata fil-bordijiet ta` FCP u FBS (Marketing). Missierha tnehha wkoll mill-bordijiet ta` l-erba` kumpaniji sussidjarji ta` FBS u ma giex rimpjazzat minn membru tal-familja tieghu. Fi Frar 2013, hija tnehhiet mill-Bord ta` FBS u ghalhekk huma kienu l-unika familja li ma kinux rapprezentati fuq il-Bord ta` FBS.

Ghamlet ukoll referenza ghal klawnsola 8.1 ta` *l-articles of association* ta` FBS li tghid illi membru ta` kull familja ghandu d-dritt li jinsisti biex ikun impjegat fil-kumpannija. Hija sostniet li l-familja taghha hija l-unika wahda li ma ghandha lil hadd impjegat u dana sa minn mindu missierha kien sfurzat biex jirtira. Huha Brian kien talab ghal xoghol izda ma giex moghti l-ebda offerta u b`hekk kellu jfittex impjieg band`ohra. F`Marzu 2013, hija wkoll talbet li tinghata impjieg izda t-talba taghha giet michuda. Sostniet li din id-diskriminazzjoni ssehh mal-familja taghha biss.

Dwar it-trasferiment ta` l-operat ta` B & S lil Foster Clark Products Limited, xehdet illi ma taqbilx ma` dan it-trasferiment u lanqas li jsir it-

trasferiment tal-bqija ta` B & S fi Francis Busuttil & Sons Limited. It-trasferiment kien approvat mill-maggor parti tad-diretturi ta` B & S abbazi ta` valutazzjoni maghmula minn PricewaterhouseCoopers. Kienet skedata laqgħa generali straordinarja fit-30 ta` Lulju 2014 ; hi u huha pprezentaw protest gudizzjarju kif ukoll talba biex il-qorti zzomm it-trasferiment. Waqt il-laqgħa generali straordinarja, 80% ta` l-azzjonisti eskluzi hi u huha vvutaw favur it-trasferiment.

Qalet illi kienet kontra t-trasferiment. Il-valutazzjonijiet li għamlu PricewaterhouseCoopers huma nkorretti għaliex intuzaw figuri hziena. Il-profitti mill-bejgħ ta` certi prodotti ta` Tiara ma gewx inkluzi fil-profitti ta` B & S. Ma kien hemm l-ebda pjanijiet u strategiji għal B & S u Foster Clark Products, minkejja li dawn huma dokumenti importanti għall-fini ta` valutazzjoni. Jekk Foster Clark Products Limited tiehu l-operat ta` B & S, issir hsara lil Tiara *brand* u lil Foster Clark *brand*. Huwa essenzjali li dawn il-*brands* jibqgħu jidhru separati peress li fin-nuqqas, hemm cans li jinqatlu z-zewg *brands*.

Kompliet tghid li apparti l-valutazzjoni baxxa, ma ttiehdet l-ebda konsiderazzjoni għad-differenzi ezistenti bejn FBS *group* u B & S *Group*. Sostniet li fil-B & S *Group* kull 20% *shareholding* għandu dritt awtomatiku li jappunta direttur. Dan huwa l-ftehim li jezisti bejn il-hames *legacy families* minkejja li dan mhuwiex imnizzel fil-*memorandum* u *articles of association* ta` Francis Busuttil & Sons Limited. Kompliet tghid li hemm differenzi fil-persentaggi ta` *shareholding* bejn iz-zewg kumpaniji kif ukoll differenzi fid-drittijiet għal *dividends* bejn iz-zewg gruppi. Spjegat li hi u huha per ezempju ma jircevox *dividends* minn Francis Busuttil & Sons Limited izda minn B & S. Sostniet li għalhekk hija u huha ser jigu affettwati hazin meta l-operat ta` B & S jigi trasferit lil FBS *Group*.

Sostniet ukoll li minn reklami li rat, saret taf li qed jigu prodotti xi prodotti ta` xorb minn Foster Clark Products Limited taht l-isem ta` Tiara. Dan l-isem jappartejni lil B & S. Meta imbagħad irceviet l-*management accounts* ta` B & S, hija ma ratx li dawn il-prodotti kienu msemija. Talbet spjegazzjoni mid-diretturi ta` B & S u anke minn PricewaterhouseCoopers izda baqgħet mingħajr informazzjoni dettaljata. Sostniet li dan kollu juri li hemm ammonti li mhux qed innizzla fl-*accounts* ta` B&S. Sostniet li dan ifisser ukoll li l-profitti qed jigu mghoddija lill-azzjonisti ta` Francis Busuttil & Sons Limited minflok lill-azzjonisti ta` B & S.

Ilmentat illi hafna mid-diretturi li huma membri tal-familja Busuttil ma humiex adegwati għall-karigi mogħtija lilhom. Hija dejjem ipproponiet li jkun hemm sejha għal min hu interessat għal pozizzjonijiet vakanti fil-kumpaniji, izda din dejjem giet skartata. Sostniet li dejjem intqal lilha li dawn il-pozizzjonijiet għandhom jigu mimlija minn membri tal-familja peress li dawn

ikollhom ghal qalbhom l-ahjar interess tal-kumpanija. Qalet li s-salarji u r-remunerazzjoni hija kkalkolata skont it-titlu tal-kariga u mhux skont kif qed isir ix-xoghol. Hija ddeskriviet l-introduzzjoni ta' *remuneration committee* bhala skema kif isir awment fis-salarji. Sostniet li din hija biss skema frawdolenti biex igawdu minnha uhud.

Hija pprotestat ghal dak li gie deciz dwar salarji u remunerazzjonijiet mir-*remuneration committee*. Ipproponiet it-tnehhija ta' John Bonello li kien gie introdott fil-grupp biex jimplementa *good corporate governance*. Dan wieghed li ser jaghmel *family charter* li qatt ma mmaterjalizza. Jipprova jintimidaha waqt il-laqgħat u fl-iskambju ta' korrispondenz. Bonello kien mistieden għal diversi laqgħat fejn hi u huha kienu eskluzi. Minn mindu dahal huwa fix-xena, is-sitwazzjoni tal-kumpaniji ddeterjorat u anke gew inkorsi spejjez kbar minhabba l-mizati esagerati li jithallsu lil Bonello.

Allegat illi xi diretturi jevadu t-taxxa billi jiddikjaraw salarji inqas mis-salarji li effettivament jircievu. Sostniet li meta hija rrifjutat li tiffirma dokumenti sabiex tagħti l-kunsens tagħha dwar din l-evazzjoni ta' taxxa, id-direttur involut, ossija Joseph Busuttill, iddikjara s-salarju tiegħu għal finijiet ta' taxxa, wara li rega' awmenta s-salarju tiegħu biex b'hekk jaghmel tajjeb għal dak li kellu jhallas. Hija rrappurtat dan kollu lil Assistent Kummissarju tal-Pulizija fis-27 ta' Mejju 2012. Qalet li kellha laqgħa mal-Ispettur Ian Abdilla dwar dan ir-rapport. Billi kien hemm certa ezitazzjoni mill-Ispettur, ma ttiehdet l-ebda azzjoni.

Qalet illi hejjiet rapport fit-28 ta' Mejju 2012 b'*addendum* fit-18 ta' Jannar 2013 li kien analizi ta' l-operat tal-kumpaniji sussidjarji. Id-diretturi ta' Francis Busuttill & Sons Limited kienu hadu għalihom b'dak ir-rapport u pprezentaw rapport iehor Mejju 2013 li ma kienx jitratta d-diversi vertenzi li ttrattat fir-rapport tagħha.

Stqarret illi sar tehid ta' flus minn kumpaniji sussidjarji abbuzivament li mbagħad kienu depozitati go kontijiet bankarji esteri. Dawn il-fondi kienu distribwiti lill-beneficjarji ta' *FBS Group* u *B & S Group*. Fl-2012, tqassmu US \$ 7.5 miljuni bejn l-azzjonisti ta' *FBS* filwaqt li EUR 2.2 miljuni gew distribwiti bejn l-azzjonisti ta' *B & S*. Tat rendikont tad-*dividends* li rceviet minn *B & S Contractors Limited* minn Ottubru 2009 u spjegat li fil-31 ta' Awissu 2012. Inghatat cheque li hareg minn kont Svizzeru li ma kienx dikjarat fl-ammont ta' EUR 220,000. Missierha wkoll ircieva cheque ta' Coutts datat 12 ta' Ottubru 2012 b'ammont ta' dollari Amerikani.

Sostniet li hija kemm-il darba talbet informazzjoni dwar dawn il-flejjes li kien hemm mizmuma fil-kontijiet bankarji esteri izda ma nghatax informazzjoni

dettaljata. Hi u huha bdew jaghmlu pressjoni biex jieqaf l-abbuz. Meta talbet sabiex dawn il-flejjes jigu dikjarati, ma kienx hemm qbil. Hija qatt ma tat il-kunsens taghha ghal din il-prattika illegali. Setghet tqis kemm kien mifruq l-abbuz meta din il-prattika waqfet. Minn evalwazzjoni tal-*audited financial statements* irrizultat id-differenza mill-*audited financial statements* vigenti meta kien ghadu ghaddej l-abbuz.

Dwar l-offerta tal-bejgh tal-grupp jew parti, kien hemm offerta ta` akkwist f'Novembru 2015 ta` €400 miljun. L-offerta kien id-doppju tal-valur stabbilit minn PwC. Hi u huha jikkontendu li l-grupp jiswa` aktar minn €400 miljun. Ghalhekk mhux lesti jbieghu s-sehem taghhom.

Qalet illi fis-16 ta` Mejju 2016, waqt laqgħa tal-bord ta` B & S, giet infurmata li għadu ma sarx it-trasferiment tal-propjeta` immobbli, għalkemm dan kien qed jigi processat. Saret laqgħa tal-azzjonisti ta` Francis Busuttil & Sons fit-18 ta` Marzu 2016 fejn ma gewx distribwiti minuti u dokumenti, bħalma sehh fit-tlett laqgħat ohra precedenti. Sostniet li dawn il-laqgħat jissejju billi d-diretturi ta` Francis Busuttil & Sons Limited isejhulhom u tintbagħat ittra lill-azzjonisti mill-*company secretary*. Isiru aktar laqgħat informali li għalihom mhux kull azzjonist jigi mistieden. L-informazzjoni li tingħata fil-laqgħat tkun parzjali.

Qalet illi fil-laqgħa tat-18 ta` Marzu 2016, kull min attenda kien infurmat li f'Ottubru 2015, Franco Busuttil kien irriżenja minn direttur ta` Francis Busuttil & Sons Marketing Limited u minn Foster Clark Products Limited. Joseph Busuttil huwa l-*managing director* ta` Foster Clark Products Limited u Francis Busuttil & Sons Marketing Limited kif ukoll fil-kumpanniji kollha tal-B & S *Group* liema kumpanniji qed jigu stralcjati. Għalhekk l-operazzjonijiet interi tan-negozju tal-familja Busuttil qed titmexxa minn individwu wiehed. Fi Frar 2016, kien appuntat direttur gdid fil-bord ta` Foster Clarks Products Limited kif ukoll direttur gdid fil-bord ta` Francis Busuttil & Sons Marketing Limited. Dawn il-persuni huma *managers* jew *head of departments* ta` Foster Clarks Products Limited u Francis Busuttil & Sons Marketing Limited u għalhekk kollox huwa kkontrollat fl-ahhar mill-ahhar minn Joseph Busuttil. Il-*general manager* il-gdid ta` Francis Busuttil and Sons Marketing Limited huwa neputi ta` Joseph Busuttil. Dan tal-ahhar huwa wkoll *Chief executive officer* ta` Foster Clarks Products Limited.

Stqarret illi Joseph Busuttil irnexxielu jiehu l-kontroll kollu taht idejh ; dan imur kontra *good corporate governance*. Joseph Busuttil għandu wkoll konflitti ta` interess.

Qalet illi fl-*internal audit committee*, ghad fadal x` jimtela t-tielet post. Kienet talbet li tinghata kariga li ghandha x` taqsam ma` awditjar izda din it-talba taghha giet rigettata. Il-*consolidated financial statements* tas-sena li ghalqet fl-ahhar ta` Dicembru 2015 u l-B & S *annual report* kienu approvati mid-diretturi kollha hlief hi.

Fissret illi l-operat ta` B & S kien trasferit lil Foster Clark Products Limited f`Mejju 2015. Ghalhekk il-figuri li kien hemm fil-*financial statements* kienu jikkoncernaw erba` xhur u mhux sena shiha. Is-*sales revenue figures* ghas-sena 2015 kienu jammontaw ghal 67% mis-*sales revenue figure* tas-sena precedenti. Il-*gross profit margin* mhux affettwat mid-differenza fix-xhur ta` operazzjoni bejn 2015 u 2014. Il-*gross profit margin* kien ta` 37.5% fl- 2015 li kien sostanzjalment oghla minn 21.6% ottenut fl-2014 u hafna oghla minn dak tal-hames snin precedenti. Ghaliha dan ikompli juri li l-figuri utilizzati u l-assunzjonijiet li ghamlu PricewaterhouseCoopers fil-valutazzjoni ta` l-operat ta` B & S huma zbaljati.

Fil-**kontroezami**, xehdet illi billi missierhaghandu l-usufrutt fuq l-ishma taghha u ta` huha fi FBS, id-dividends johodhom hu. Id-dividends ta` FBS ikunu ta` madwar €6 miljun nett fis-sena. Id-diretturi ma jiehdux *directors fee* izda kull direttur li huwa impjegat jiehu salarju ta` impjegat. FBS ghandha erba` diretturi. M`ghandhiex impjegati.

**Brian Busuttil** ikkonferma d-deposizzjoni ta` ohtu Suzanne Busuttil.

Xehed illi l-problemi fil-familja Busuttil jmorru lura ghal diversi snin. L-ostilita` lejh u lejn ohtu bdew minn mindu huma kien irnexxilhom jidhlu l-universita` a kuntrarju tal-kugini l-ohra taghhom. Ipprezenta l-korrispondenza skambjata bejnu u bejn Dr J.J Vella datata 12 ta` Settembru 1997 fejn huwa kien kiteb lill-*company secretary* minhabba l-*Busuttil Group Proposed Restructuring Paper*, fejn il-familja taghhom kienet eskluza ghal kollox mill-*management committee*. Saru wkoll allegazzjonijiet li huwa ma kienx interessat jinvolvi ruhu fin-negozju tal-familja.

Qal illi huwa kkjarifika fl-ittra tieghu r-raguni ghalfejn huwa hass li kellu jmur jfittex impjeg band`ohra. Fl-istess ittra huwa ddikjara li huwa qatt ma kien minn Dr Vella jew mis-Sur John Zarb sabiex jippartecipa fil-*management committee*. Sal-lum, huwa baqa` bla risposta ghal dik l-ittra tieghu. Ipprezenta estratt mill-minuti tal-bord ta` FBS tas-16 ta` Settembru 1997 fejn il-bord innota li kien ircieva l-ittra tieghu u li risposta kienet ser tintbaghat u fejn kien hemm ukoll innizzel li d-dokument kellu jigi emendat. Dan baqa` qatt ma sehh. Imbaghad f`estratt mill-minuti tal-bord ta` FBS dwar li saret fit-13 ta` Novembru 1999, jirrizulta li l-familja tieghu kienet eskluza mill-bordijiet ta` FBS

Trading u FCP. Ipprezenta wkoll ittra li saret ghan-nom ta` missieru minn Dr Edward Debono u mibghuta lil Dr Vella bid-data ta` 6 ta` Dicembru 1999, fejn missieru kien qed jikkontesta l-fatt li l-familja tieghu ma kinitx rapprezentata fl-ebda wiehed mill-bordijiet tal-kumpanniji sussidjarji.

Kompla jghid li waqt laqgħa tal-bord ta` FBS tat-13 ta` Dicembru 1999, li fiha huwa attenda bhala direttur alternattiv minflok missieru, il-bord ikkonferma li rcieva l-ittra legali. Fl-istess laqgħa, huwa gie appuntat fuq il-bord ta` FBS Trading izda mhux fuq il-Bord ta` FCP. Minkejja dan, l-inkarigu qatt ma nghata lilu u spicca qatt ma gie appuntat fl-ebda bord tan-negozju tal-familja Busuttil. Fir-risposta tieghu tal-31 ta` Dicembru 1999, Dr Vella spjega li l-principju fin-negozju tal-familja Busuttil huwa li kull familja jkollha direttur jirraprezentaha izda Suzanne u hu ma kinux interessati fin-negozju. Sussegwentement, fil-11 ta` Jannar 2000, Charles Busuttil ipprezenta *memo* dwar ir-ristrutturar propost u għal darb`ohra rega` sostna li hu u Suzanne ma kinux interessati fin-negozju tal-familja, bla ma kkonsulta la lilu u lanqas lil ohtu.

Xehed li fil-5 ta` Mejju 2007, missieru għadda b`donazzjoni l-ishma lilu u lil ohtu, biex b`hekk huwa sar 10% azzjonista ta` FBS. Imbagħad f`Ottubru 2009, missieru ttrasferixxa b`donazzjoni l-ishma li kellu f`B & S Contractors Limited lil Suzanne u lilu biex b`hekk hu u ohtu kellhom 10% kull wiehed ta` B&S. Missieru ha hsieb li kollox jinqasam ugwalment bejnu u bejn ohtu Suzanne. Wara t-trasferiment, hu u missieru ftehm u li Suzanne kellha tkun ir-rapprezentant tal-familja tagħhom u nfurmaw b`dan lil *company secretary* verbalment. Kienu skambjati ittri fejn regghet giet espressa x-xewqa li Suzanne tigi mahtura direttur. Kien imbagħad biss fit-2 ta` April 2008 li Suzanne giet appuntata bhala direttur ta` FBS. Spjega li l-*memorandum* ta` Francis Busuttil & Sons jagħmilha cara fi klawnsola 7.2 illi "*the directors shall be chosen or elected from members in the company or members in the shareholding companies.*" Missieru ttrasferixxa l-ishma tieghu ta` FBS f`Mejju 2007 u l-bord u l-*company secretary* damu 11-il xahar biex appuntaw lil Suzanne direttur ta` FBS minflok missieru.

Fl-4 ta` Frar 2009, huwa kien mitlub jattendi għal laqgħa urgenti ta` FCP minhabba billi Suzanne kienet imsiefra. Il-laqgħa damet mit-3.00 pm sas-6.00 pm fejn huwa pprezentat bi ftit informazzjoni dwar proġetti u *tenders* ta` Manoel Island Yacht Yard u Malta Super Yachts *Tenders*. Fid-9.00 pm Suzanne giet mibghuta *email* b`xi informazzjoni dwar finanzjament ta` dawn iz-zewg proġetti u giet mogħtija struzzjonijiet biex tirispondi sa l-ghada f`nofsinhar. Saru jafu li l-kumpanniji li kienu ser jissottomettu t-*tenders* kienu HBR Holdings Limited kostitwita fit-2 ta` Frar 2009; MYC Marine Limited kostitwita fis-6 ta` Frar 2009; SYC Limited kostitwita fis-6 ta` Frar 2009. Hu u Suzanne ma kinux informati bil-process kollu u b`din l-opportunita` hlief fl-ahhar mument meta

kien hemm bzonn il-firma ta` Suzanne. Huwa u Suzanne ma ffirmawx ir-rizoluzzjoni datat 4 ta` Frar 2009.

Ipprezenta rizoluzzjoni tal-bord ta` FBS iffirmata mill-*company secretary* Dr Vella tas-6 ta` Frar 2009 fejn kien hemm dikjarat li saret laqgħa tal-bord u ngħatat awtorizzazzjoni lil zewg diretturi biex jiffirmaw għan-nom tal-kumpannija l-*bank pledge form* rikjesta għaz-zewg *tenders*. Huwa caħad li qatt inzammet din il-laqgħa u insista li la hu u lanqas oħtu ma kienu jafu b`din il-laqgħa. Ipprezenta kopja tal-korrispondenza li hu u oħtu bagħtu fit-30 ta` April 2009 lill-azzjonisti kollha dwar it-*tenders* ; f`liema *email* huma spjegaw li l-*objects clause* tal-*memorandum* ta` FBS kienet tipprekludi lill-kumpanija sabiex tinvesti jew ikollha negozju ma` dghajjes, *yachts*. *Email* iehor intbagħat fit-2 ta` Mejju 2009 minn Suzanne lid-diretturi u azzjonisti ta` FBS wara li hija ottjeniet dokumenti ufficjali dwar it-*tenders*. Hija kkontestat il-mod kif gie trattat il-process kollu, il-vjolazzjoni minn FBS tal-*memorandum*, kif ukoll infurmat lid-diretturi li hija kienet ser issejjah *extraordinary general meeting* biex jigi diskuss kollox.

Kompla jgħid li fis-7 ta` Mejju 2009, hu u Suzanne bagħtu *email* lic-*Chairman* ta` FBS sabiex huwa jsejjah *extraordinary general meeting* biex tigi diskussa emenda fil-*memorandum* u *articles of association* . Waqt din il-laqgħa li saret fl-1 ta` Gunju 2009, kien attenda Dr J J Vella bhala *company secretary* u Dr Albert Grech bhala legali indipendenti. Spjega li l-maggoranza vvutaw favur l-emenda li kienet taqra “4.7 *subscribe for, purchase or otherwise acquire and hold any shares, stocks, bonds, debentures, securities or obligations of or in any other company or body (whether such shares be fully paid or not) where the so doing may seem desirable in the interest of the company.*” Sostna li l-azzjonijiet li gew mehuda mid-diretturi meta applikaw għat-*tenders* kienu marru kontra l-*memorandum* u *articles of association*..

Qal ukoll li kienet skambjata korrispondenza bejnu u bejn Dr Vella fit-12 ta` Dicembru 2011 fejn huwa lmentat dwar il-fatt li spejjez personali tal-familja kienu qed jigu attribwiti lill-kumpanniji. Dr Vella rrisponda li din il-kwistjoni kienet dig` kienet analizzata mill-awdituri ; meta huwa talab li jkun jaf x`kienet il-fehma ta` l-awdituri, baqa` bla risposta. Spjega li wara hafna *emails* u insistenza da parti tiegħu li jingħata risposta, huwa rcieva *email* mic-*Chairman* li kien bazikament risposta li dan kien irceiva minn Simon Flynn ta` PwC. Flynn kien irrisponda fis-sens li huwa qatt ma kien inkarigat li jagħmel dan it-tip ta` xogħol u analizi. Dan ifisser illi Dr Vella kien gideb u dahak bl-azzjonisti. Dr Vella kellu l-awdacita` li jallega li l-*emails* tiegħu kellhom intenzjoni fiergħa meta dan ma kienx veru. Huwa spjega li la hu u lanqas Suzanne ma rcevev apologija mingħand Dr Vella.



Xehed li huwa assista lil missieru Anthony Busuttil fil-kawza li dan fetah kontra l-eredi ta` l-erba` hutu dwar il-kappella Busuttil li hemm fic-Cimiterju ta` l-Addolorata. Spjega li Chris Degiorgio li huwa l-*financial director* ta` FCP, xehed li l-ispejjez ta` din il-kappella u tat-tmien oqbra thallsu minn FBS u B & S. Huwa kkonferma li c-cavetta tal-kappella kienet tinsab ghand il-*maintenance department* ta` Foster Clark Products Ltd.

Irrefera ghall-klawosla 7.2 tal-*memorandum* ta` Francis Busuttil & Sons Limited. Spjega li Charles Busuttil (illum mejjet) kien ittrasferixxa l-ishma tieghu f`Mejju 2007 mentri missieru ttrasferixxa l-ishma tieghu wkoll. Madanakollu, Charles Busuttil thalla jzomm l-posizzjoni tieghu bhala *managing director* u *chairman* ta` FBS anke wara li sar it-trasferiment ta` l-ishma u minkejja li huwa ma kienx ghadu azzjonist. Ghalhekk, intbaghat *email* datat 6 ta` Dicembru 2011 lil *company secretary* fejn ingibdet l-attenzjoni dwar il-vjolazzjoni tal-*memorandum* da parti ta` Charles Busuttil. Ir-risposta ghal dan l-*email* ntbaghtet fit-23 ta` Dicembru 2011 fejn huwa gie infurmat li d-domanda tieghu ma kinitx timmerita risposta u li l-*email* tieghu kien jikkontjeni hafna insinwazzjonijiet malizzjuzi. Hadd mid-diretturi u l-*company secretary* ma kkonfermaw illi Charles Busuttil kien qed jivvjola l-*memorandum* kif ukoll lanqas ma ddikjaraw li d-dokumenti ffirmati minn Charles Busuttil matul l-erba` snin li ma kienx ghadu azzjonist kinux nulli.

Kwistjoni ohra li tqajjmet minnhom kienet dwar jekk l-azzjonisti setghux jappuntaw lil Christian Busuttil bhala direttur tal-bord ta` FBS minflok missieru waqt il-laqgħa generali straordinarja li saret fl-24 ta` Novembru 2011. Charles Busuttil kien zamm id-drittijiet tieghu tal-vot minkejja li kien ittrasferixxa l-ishma lil uliedu ai termini ta` att ta` donazzjoni. Spjega li fl-24 ta` Novembru 2011, hu u Suzanne kienu astjenew milli jivvutaw fuq il-hatra ta` Christian Busuttil bhala direttur peress li riedu jistennew li jaraw it-testment ta` Charles Busuttil. Fl-24 ta` Frar 2012, Av Luca Vella, li jigi t-tifel ta` Dr J J Vella, kiteb lil *company secretary*, fejn infurmah li l-*voting rights* kienu gew trasferiti lill-ulied ta` Charles Busuttil.

Qal li wara li rceviet l-*agenda* ghal laqgħa generali straordinarja ta` FBS li kellha tinzam fit-30 ta` Jannar 2013, u dik ta` B & S li kellha tinzamm fis-6 ta` Frar 2013, Suzanne baghtet korrisondenza fit-18 ta` Jannar 2013 . Huwa kien baghat ittra lill-azzjonisti ta` FBS fis-26 ta` Gunju 2013 u dana wara r-rapport li nghata lilo fis-27 ta` Mejju 2013 liema rapport kien preparat mid-diretturi ta` FBS b`risposta għall-korrisondenza ta` ohtu tat-18 ta` Jannar 2013. Sostna li l-figuri utilizzati fir-rapport magħmul ta` ohtu huma korretti u in linea ma` l-*audited financial statements* hekk kif ipprezentati lill-MFSA. Mill-banda l-ohra ir-rapport tad-diretturi ta` FBS li ha erba` xhur biex jigi ppreparat, ma fih xejn hlief analizi pregudikat u mhux indipendenti, minghajr logika. Sostna li l-*audited financial statements*, ir-rapport ta` ohtu, u certa partijiet mir-rapport tad-diretturi ta` FBS juru n-nuqqasijiet fl-operat ta` FCP.

Stqarr illi wara li Suzanne tnehhet minn direttur, l-ebda informazzjoni ma qeghda tinghata lilhom hlief ghall-*audited financial statements* li jintbaghtu lir-Registratur tal-Kumpaniji. Id-diretturi ta` FBS u ta` B & S mhumiex joperaw l-kumpanniji fl-ahjar interess ta` l-azzjonisti, u mhux adegwati li jokkupaw tali posizzjonijiet.

Qal ukoll illi kien ilu azzjonista ta` B & S Contractors Limited ghal dawn l-ahhar 26 sena. Huwa rcieva *gross dividends* fl-ammont ta` EUR 608,618. Il-Managing Director huwa Joseph Busuttil. Fl-ahhar ghaxar snin, huwa nghata erba` Credit Suisse *bank drafts* fl-ammont ta` EUR 525,579. Dawn inghataw lilu minn Charles Busuttil u Joseph Busuttil. Il-familji kollha involuti fil-B & S inghataw €6.8 miljun. Dawn l-ammonti gew mehuda b`mod abbuziv minn sussidjarji ta` B & . Il-*gross dividends* distribwiti ufficjalment minn B & S ghal dawn l-ahhar 26 sena kien ta` €8.4 miljun. Qal illi huwa ma jistax jaccetta l-istima ta` B & S maghmula minn John Zarb ta` PwC ghaliex hemm bzonn li jsir awditjar ta` B & S u tas-sussidjarji. Trid issir investigazzjoni dwar l-erba` diretturi ta` B & S li approvaw din l-istima.

Fil-**kontroezami**, ikkonferma li missieru dejjem kien direttur fuq il-bord ta` FBS sakemm kien azzjonista. Meta missieru ttrasferixxa l-ishma lilhom, missieru avza lill-bord li huwa ma riedx jibqa` membru u li ried li tigi appuntata bintu. Suzanne Busuttil damet direttur sal-2013. Ohtu giet appuntata xi sena wara li ntabbet li tinhatar minflok missieru. Ikkonferma li ufficjalment tramiet l-prezentazzjoni ta` Form K mar-Registratur tal-Kumpaniji, missieru rrizenja minn direttur fit-2 ta` April 2008 u ohtu Suzanne dahlet minfloku fl-istess data.

**Anthony Busuttil** xehed illi l-maggor parti tal-kwistjonijiet ghandhom effett dirett fuq in-negozju tal-familja u dan kemm b`mod immedjat u kif ukoll wara. Kwalunkwe azzjoni li ghandha impatt finanzjarju fuq profitti ta` kumpannija individwali, jkollha wkoll effett fuq ir-*retained profits* tal-kumpannija, fuq id-*dividends*, il-valur tal-kumpannija, fuq il-valur tal-gruppi u finalment anke fuq il-valur ta` l-ishma tal-azzjonisti individwali tan-negozju tal-familja. Il-maggor parti ta` l-individwi involuti ghadhom impjegati fin-negozju tal-familja u ghad ghandhom inkarigi ta` diretturi u f`posizzjonijiet ohra ta` fiducja.

Spjega li missieru, il-mejjet Paul Busuttil, kien inkluda lil uliedu fin-negozju tal-familja snin ilu. L-intenzjoni kienet li n-negozju jghaddi ghandhom u ghand uliedhom. Spjega li hu u hutu inghataw dritt jahdmu f`dan in-negozju u dan id-dritt kiene mghoddi fuq wild wiehed taghhom. Hu u hutu nghataw ishma ugwali u eventwalment mal-mewt ta`missieru, l-ahwa hadu 20% min-negozju tal-familja ossija minn Francis Busuttil & Sons *Group* u B & S Contractors *Group*. Missieru dejjem haseb sabiex il-hames uliedu subien jigu trattati bl-istess mod u ugwali bejniethom. Spjega per eżempju li missieru ma kienx ghadda

L-ishma lil ibnu Charles Busuttil (illum mejjet) peress li f'ghajnejn missieru dan ma kienx qed jghix hajja li kienet approprjata. L-ishma li kienu intenzjonati ghal Charles Busuttil inzammu minn missieru sakemm dan biddel l-istil ta` hajja li kellu. Spjega li missieru xorta wahda kien ha hsieb li jikklassifika lil Charles bhala *founding member* tal-kumpanija ghalkemm huwa sar azzjonist aktar tard fiz-zmien. Dan kollu sar sabiex ikun trattament ugwali bejn kulhadd mill-ulied ta` Paul Busuttil.

Xehed illi meta missieru miet fl-1974, huh il-kbir illum mejjet Frank Busuttil, ha f'idejh ir-rwol li kellu missierhom. Dak iz-zmien, kien hemm tlett kumpaniji li kienu jiffurmaw n-negozju tal-familja, ossija (i) Francis Busuttil & Sons Limited (FBS) li kienet kumpanija ta` *wholesale* u ta` importazzjoni; (ii) B & S Contractors Limited (B&S) li kienet kumpanija tiehu hsieb *subcontracting projects* u (iii) Foster Clark Products Limited (FCP) li kien proprjeta` ta` FBS in kwantu ghal 40% u proprjeta` tal-kumpanija barranija Unilever in kwantu ghal 60%. FCP kienet involuta fil-manifattura u esportazzjoni ta` ikel u prodotti tax-xorb. Spjega li l-abbuz u l-immaniggjar hazin fin-negozju tal-familja beda minn zmien Frank Busuttil ossija bejn 1974 sa 1986 fejn din ta` l-ahhar kienet is-sena tal-mewt tieghu. Sostna li l-abbuz baqa` dejjem jikber.

Kompla jghid li fis-snin sebghin u tmenin, ir-rati ta` *income tax* kienu gholja, u ghalhekk hafna azzjonisti kienu jinkludu numru ta` spejjez personali fuq il-kumpaniji rispettivi. Fil-kaz taghhom, peress li kellhom sehem ta` 40% biss minn FCP u minhabba li l-kontroll u l-immaniggjar tal-kumpanija kien f'idejhom, Frank kien jinkludi diversi spejjez personali kif ukoll jikri impjegati ghal uzu personali tieghu. Spjega li meta kien jiehu hsieb Frank Busuttil, go FCP sar dipartiment ta` mastrudaxxa. L-ghan kien sabiex tigi manifatturata ghamara ta` l-ufficini u bibien fost ohrajn li kellha bzonn FCP u l-kumpaniji l-ohra tal-grupp. Il-ftehim kien li meta l-haddiema ta` dan id-dipartiment jkollhom hin liberu, dawn kellhom jahdmu ghamara ghall-familja. Fir-realta` dan id-dipartiment spicca jahdem biss u esklussivament ghall-bzonnijiet tal-familja. Frank dak iz-zmien kien qed jibni *bungalow* ghall-familja tieghu u kollox sar minn dan id-dipartiment ghal dak li jirrigwarda ghamara u aperturi. Frank kien jiehu haddiema ta` FCP ghal tibjid u stallazzjoni ta` dawl u ilma – kollox spejjez tal-kumpanija.

Kompla jghid li dawn is-servizzi kienu bbenifikaw minnhom hutu Louis u Charles. Meta huwa kien ilmenta dwar dan, huh Frank kien offra li dan id-dipartiment tal-mastrudaxxa jahdem xi ghamara lill-wkoll. Sostna li din kienet tattikka li kienet tintuza biex b`hekk jitwaqqfu l-ilmenti. Sostna li kien hemm ukoll numru ta` purtinari, gardiniera, *handymen* li kienu impjegati ma` FCP, FBS jew ma` B & S li kienu jahdmu *full time* jew *part time* ma` membri tal-familji – kollox spejjez tal-kumpanija. L-istess ighodd ghall-karozzi.

Xehed li fl-1986 miet Frank minghajr testament. Bhala azzjonisti dahlu t-tliet uliedu. Ibnu Michael gie appuntat direttur minflok Frank sabiex jigi assigurat li l-hames familji jkunu lkoll rapprezentanti fin-negozju tal-familja. Michael kien ukoll impjegat fin-negozju tal-familja dak iz-zmien. Charles ha l-*leadership position* ta` FCP u Louis ha l-*leadership* ta` FBS. L-abbuz baqa` jizdied. Matul is-snin, huwa kien dejjem jigi injorat u skartat partikolarment meta kien jipprova jigbed l-attenzjoni dwar nuqqasijiet jew abbuzi. Kull darba li kien jitlob informazzjoni, huwa ma kienx jinghata risposta jew r-risposta li jinghata ma kinitx tkun wahda kompleta. Sostna li kien hemm ukoll certa arroganza tant li Charles kien jitolbu biex jghidlu grazzi meta kien jghaddilu c-cheque bid-*dividends*. Spjega li huwa dejjem hadem fil-kumpannija u dejjem zamm il-kumpannija bhala prijorita qabel il-hin liberu tieghu u l-familja tieghu, izda minkejja dan huwa ma kienx qed jigi trattat b`mod gust. Spjega li anke Chris Degiorgio li huwa direttur ta` sussidjarja, impjegat f`FCP u neputi tieghu gieli anke ghadha kummenti fil-konfront tieghu meta huwa kien iressaq xi lment fuq dak li kien qed isehh.

Qal li kull darba li kien jilmenta jew juri d-disapprovazzjoni tieghu, huwa kien jigi intimidat u mgieghel jaccetta xi haga in kambju tas-silenzju u tal-akkwixxenza tieghu. Spjega li gieli intqal lilu biex jekk irid messu jitlob is-sehem tieghu u jitlaq. Is-sitwazzjoni tant aggravat li okkazzjoni minnhom, huwa gie anke mhedded li jitkecca l` barra mill-ufficini ta` B & S bl-assistenza tal-pulizija u dan fi zmien meta huwa kien ghadu direttur u azzjonist ta` B & S.

Spjega li meta hutu lahqu l-eta` tal-irtirar, huma zammew posthom bhala impjegati jew konsulenti biex b`hekk baqghu jircievu paga sa mewthom. Huh il-kbir biss ma ghamilx hekk ghaliex miet qabel lahaq l-eta tal-pensjoni. Mill-banda l-ohra, huwa kien imgieghel li jirtira malli kellu l-eta u ma` baqax jircievi salarju bhal hutu.

Stqarr illi fl-1999,, FBS xtrat is-60% *shareholding* li Unilever kellha fl-FCP u b`hekk FCP saret kollha kemm hi tal-familja Busuttil. Fl-istess zmien, giet iffurmata Francis Busuttil & Sons (Marketing) Limited, u l-operat ta` FBS kien trasferit lil din. Waqt il-process ta` ristrutturar, il-grupp iffirma *management committee* u ittiehdet decizjoni sabiex jigu nvoluti l-ulied tal-hames ahwa subien. Il-familji kollha hlief il-familja tieghu kienu rapprezentati fuq il-bord ta` s-sussidjarji ta` FBS u fil-*management committee*. Huwa kien infurmat li ma setax ikun fuq il-bord u li ibnu ma kienx interessat. Kien infurmat illi Chris Degiorgio kien ser jigi appuntat minflok u biex jirraprezenta l-interessi tieghu. Dan kollu sehk kontra x-xewqat tieghu u tal-familja tieghu. Mill-banda l-ohra, Charles thalla fil-bord.

Kompla jghid li ibnu Brian kien wera interess li jkun appuntat fil-bords tas-sussidjarji ta` FBS u kif ukoll fil-*management committee* izda ma kien qatt

appuntat minkejja li kienet ittiehdet decizjoni f`dak is-sens. In segwitu, Charles kien mar jintimidixxi lill-ohrajn sabiex jbiddu d-decizjoni taghhom. Sar jaf illi Charles kien qalilhom li kellhom jaghzlu bejnu u bejn Brian ghaliex huwa ma kienx lest li jkun fuq il-bord jekk ikun hemm Brian. Sostna li ghalhekk hu u l-familja tieghu li kellha 20% mill-ishma kienet l-unika familja li ma kinitx rapprezentata fil-*management committee* u fil-bordijiet tas-sussidjarji ta` FBS. Huwa kien prekluz milli jiehu sehem fl-immaniggjar ta` l-ikbar zewg kumpanniji li kienu joperaw fl-FBS *Group*, u li kienu jaghmlu bejn 80 % u 90% tan-negozju tal-familja. Sostna li huwa ma kienx qed jinghata informazzjoni dwar l-operat hekk kif jinghata lill-familji l-ohra. Dan kollu wassal ghal diskriminazzjoni fil-konfront tieghu. Spjega li gieli kienu jittiehdu decizjonijiet ghal ghanijiet li imbaghad wara jibqghu ma jsehux. Wara l-akkwist tas-60% ta` Unilever kien hemm l-intiza li s-socjeta` ssir pubblika, izda dan qatt ma sar.

Kompla jixhed li ibnu Brian talab li jahdem ma` FCP izda ma kienx milqugh bhal membri tal-familja l-ohra li kienu jahdmu hemm. Spjega li huwa kien qed jistudja ghal B.Sc fil-Chemistry and Biology. Mill-ulied kollha tal-familji, uliedu biss komplew jistudjaw l-Universita`. Kien hemm ukoll azzjonisti ohra li lmentaw mill-abbuz, mill-immaniggjar hazin u mid-diskriminazzjoni. Anke wliedu minkejja li ppruva jsolvu l-problemi internament, ma rnexxilhomx u ghalhekk kellhom imexxu b`din il-kawza.

Qal li matul is-snin, sehew ukoll numru ta` avvenimenti li juri kunflitt ta` interess.

Fost ohrajn, Franco Busuttil li jigi iben Louis, waqt l-impjieg tieghu ma` FBS, ifforma kumpannija f`ismu li tiehu hsieb importazzjoni u *wholesale* go suq li kienet diga` topera fih l-FBS. Kien juza letterheads ta` FBS biex jghin innegozju tal-kumpannija tieghu. Meta dan kollu sar ilment dwaru, rega` saret intimidazzjoni fil-konfront tieghu ; u Franco baqa` jokkupa l-pozizzjoni tieghu go FBS filwaqt li kompla jopera l-kumpannija tieghu. F`xi zmien Franco kien ukoll offra li jbiegh il-kumpannija tieghu lil FBS. Il-kumpannija ghadha tezisti. Iben Franco ghamel l-istess ricentement.

Ezempju iehor ta` kunflitt ta` interess sar minn huh Joseph Busuttil (Snr) meta fforma kumpanija f`ismu u f`isem uliedu, liema kumpanija timporta makkinarju. Dan ghamlu kontra dak li jghidu l-*memorandum* u *articles of association*. Charles ukoll jiftahar fuq il-*commissions* li jircievi minhabba *business deals* li jiltaqa` maghha waqt li jkun ghal laqgħat jew safar fuq xogħol ta` FCP jew FBS. Sostna li Charles minflok jghaddi dawk il-*business deals* linnegozju tal-familja, kien ighaddihom lil azjendi ohra u jiehu l-kummissjonijiet hu.

Insista li l-impjeg ta` membri tal-familja kien qed isehh mhux fuq il-mertu izda sempliciment ghax kienu parti mill-familja. Uhud kienu jigu moghtija karigi li ma kinux adattati ghalihom u sa anke kienu jigu introdotti posizzjonijiet godda biex jakkomodaw lil dawn il-membri. Per eżempju, Louis kien talab li tinfetah spizerija fil-proprjeta` tal-kumpanija peress li r-ragel ta` bintu kien tabib u ghalhekk kien konvenjenti ghalih. Charles kien awtorizza lil bintu u lil *step daughter* biex joperaw in-negozju taghhom mill-proprjeta` tal-kumpanija u biex jutilizzaw assi u impjegati tal-kumpanija. Charles ghamel l-istess fir-rigward tal-partner ta` bintu u r-ragel ta` bintu l-oħra.

Kompla jghid li huwa dejjem ilmenta dwar dan kollu kemm verbalment u anke bil-miktub. Kien anke pprotesta permezz tal-vot tieghu u anke tramite l-avukat tieghu. Sostna li l-abbuz u l-maltrattament li kien jircievi hu issa qed jircevu uliedu. Kompla jiddeskrivi sitwazzjonijiet oħra ta` abbuz u immaniggjar hazin. Spjega li sar finanzjament ta` tmien oqbra u kappella fic-cimiterju ta` l-Addolorata min-negozju tal-familja, izda wara skopra li huwa mhux innizzel li ghandu 20% ta` din il-kappella u tmien oqbra. Sostna li huwa baqa` qatt ma nghata cavetta tal-bieb tal-kappella biex jidhol jara l-proprjeta` tieghu. Qal illi fl-ewwel ta` sena, issir ikla ghal familja kollha f'*five star hotel*. Din l-ikla tigi mhallsa mill-kumpanija meta l-maggor parti tal-persuni ma humiex azzjonisti u meta l-membri tal-familji rispettivi mhumiex kollha fl-istess numru.

Ilmenta li kien hemm haddiema tal-kumpanija li hadmu fid-djar ta` neputijiet tieghu u anke fid-djar ta` terzi li Charles ried jiffavorixxi. Il-haddiema hadmu wkoll fil-bini ta` dghajsa ghal Charles, liema bini dam ghaddej diversi snin. Dan kollu a detriment tal-kumpanija. Kompla jghid li kien hemm ukoll varji spejjeż oħra li gew inkorsi mill-kumpaniji minghajr il-kunsens tad-diretturi u azzjonisti fosthom salarji, *bonuses* u btajjel. Kien hemm ukoll manuvri biex diversi kumpaniji sussidjarji jispicaw biex tkompli d-dominanza minn certu persuni biss. Sostna wkoll li l-minuti li jinzammu huma vagi, inkompleti u inkorretti u gieli anke lanqas ezistenti.

Kompla jghid li dan kollu rrizulta fi profitti baxxi, *dividends* iktar baxxi u dan kollu a pregudizzju tieghu u ta` uliedu. Sostna li dan kollu huwa ta` dannu ghan-negozju tal-familja.. Sostna li min jilmenta dwar dan l-abbuz jigi kkastigat mentri dawk li qed jabbuzaw, jkomplu jithallew jitgawdu.

**Joseph Busuttil** xehed illi huwa direttur ta` Francis Busuttil & Sons u Managing Director fil-B & S *Group*. Huwa Managing Director ta` Foster Clark Products Limited. FBS hija proprjetarja ta` FCP. FBS hija *holding company*. M'ghandhiex attivitajiet kummercjali, minkejja li l-marki huma taghha. Spjega li hemm bejgh li jsir minn FCP u hemm bejgh li jsir minn B & S Exports Limited. Fil-B & S Contractors Limited huwa kien jinghata rimunerazzjoni ta` madwar Lm 200 li kienet giet approvata mill-bord tad-diretturi. Spjega li ma

kellux minuti dwar din l-approvazzjoni izda kellu diversi cekkijiet li kienu gew iffirmati mid-diretturi fosthom Anthony Busuttil. Huwa kkonferma li kien hemm *handyman* li kien jahdem fid-dar tieghu personali, u li bl-approvazzjoni tal-bord kien impjegat tal-kumpanija. Huwa cahad li kien hemm sitwazzjonijiet fejn spejjez personali gew mahruqa mill-kotba tal-kumpanija.

Jeskludi illi saru hlasijiet minn flus ta` kontijiet fl-Isvizzera u dana fil-kuntest ta` Francis Busuttil & Sons Limited u B & S Contractors Limited. Huwa sostna li l-kumpaniji kellhom kontijiet bankarji Malta ma` HSBC. Ma jafx li kien hemm kontijiet bankarji fl-esteru. Spjega li biex jinfetah kont bankarju, tintalab direzzjoni mill-*financial director*. Il-kumpaniji qatt ma kellhom relazzjoni bankarja ma` Credit Suisse jew ma` Coutts fl-Ingilterra. Sostna li ma kienx fl-interess tieghu li xi azzjonisti jinfurmawh li kienu fethu xi kontijiet barra minn Malta.

Huwa cahad li kien hemm *consolidated financial statements* taz-zewg kumpaniji li jirriflettu xi pagamenti li ghaddeu minn Credit Suisse jew Coutts.

Huwa cahad ukoll li xi azzjonisti thallsu flus minn dawn iz-zewg istituzzjonijiet direttament minghandhom minflok dawn gew ghand il-kumpaniji.

Spjega li FBS ghandha *cash investments*, ishma f`kumpaniji ohra fosthom FCP u FBS Marketing kif ukoll *trademarks* bl-isem ta` Foster Clark, Calypso, Tiara u Bevimix. Huwa kkonferma li saru valutazzjonijiet ta` dawn l-ishma. Huwa spjega li sa fejn jaf hu qatt ma saret stima ta` *trademarks per se*. Dawn mhumiex valutati. Huwa spjega li meta gie approvat il-bejgh ta` B & S, FBS ezercitat id-dritt li kellha li tiehu lura *trademark* u dan minghajr ma` ghaddiet l-ebda konsiderazzjoni.

Spjega li B & S Contractors ma bieghetx direttament prodotti bit-*trademark* Tiara lil terzi. Insista li l-attivitajiet tal-grupp huma riflessi fil-*consolidated accounts*. Il-bejgh ta` prodotti ta` Tiara huma hemm riflessi. Huwa spjega li B & S Contractors Limited u FBS m`ghandhomx impjegati. Safejn jaf hu mill-*accounts* ta` dawn iz-zewg kumpaniji ma ghaddewx spejjez personali tad-diretturi. Il-kumpaniji jhaddmu principji ta` *corporate governance*. Bhala *holdings companies*, FBS u B&S ma ghandhomx strategiji. Kull decizjoni li ttiehdet, u kull caqliq ta` ishma li sar fil-kumpaniji, sar b`mod korrett u skont il-procedura. Qal illi ma jafx li kien hemm xi investigazzjoni mid-dipartiment tat-Taxxi fir-rigward ta` FBS u B&S.

Xehed illi minn meta Suzanne Busuttil saret direttur fil-*holding company* flok missierha, l-attitudni taghha kienet wahda negattiva. Hija qatt ma qablet dwar l-incentivi li kienu qed isiru, fosthom li tigi ffurmata *remuneration committee*. Dan kien ser ikun kompost minn Lawrence Zammit li jmessi l-MISCO, u John Bonello, li kien kap ta` PricewaterhouseCoopers. Il-bord kollu kien accetta li jsir dan il-kumitat hlief Suzanne Busuttil. Qal li Suzanne lanqas kienet taqbel ma` l-approvazzjoni ta` l-*accounts*. Bhala direttur huwa jirraprezenta l-azzjonisti kollha u mhux il-familja tieghu biss. Suzanne tnehhiet minn direttur mil-laqgha generali tal-azzjonisti.

In **kontroezami**, huwa xehed li meta mietu d-diretturi originali, kienu sostitwiti minn uliedhom.

**Jean Paul Busuttil** xehed illi huwa jigi t-tifel ta` Louis Busuttil li huwa wiehed mill-hamest ahwa subien li ffurmaw FBS. Huwa direttur ta` B&S. Parti mill-prodotti bl-isem Tiara jigu manifatturati minn B & S u parti minn FCP. Ghalkemm ma kienx cert, huwa qal li t-*trademark* ta` Tiara hija proprjeta` ta` Foster Clark. Huwa sostna li t-*turnover* tal-bejgh tal-prodotti tal-isem Tiara minn B & S Contractors jammonta ghal madwar €6.5 miljun. Spjega li huwa sar jaf li l-*managing director* kellu *allowance* li ma kinitx iddikjarata fil-pakkett tieghu. Spjega li meta giet migbuda l-attenzjoni dwar dan, gie kollox iddikjarat bhala parti mill-pakkett ta` rimunerazzjoni tieghu. Huwa spjega li din l-*allowance* kienet giet approvata mill-bord tad-diretturi. Huwa spjega li ma ghandux access ghal informazzjoni dwar Tiara products fi Foster Clark. Jaf li kienet saret offerta minn bankiera barranin biex jixtru n-negozju ta` Francis Busuttil & Sons. L-offerta ta` EUR 370 miljun ma kenitx accettata.

**Franco Busuttil** - hu Jean Paul - xehed illi huwa MD ta` FBS Marketing. Huwa direttur ta` FBS izda rrizenja minn Chairman.

Cahad li mal-pagi indikati fil-*financial statements*, hemm inkluzi remunerazzjoni ta` nies li jahdmu ma` xi individwi tal-kumpanija personalment. Huwa cahad li hemm imnizzla spejjez personali tal-familja Busuttil.

Huwa spjega li qabel l-2011 meta kien ghad hemm l-ahwa ghadhom hajjin, kien hemm prassi li jintbaghtu impjegati tal-kumpanija biex jaghmlu xoghol ghall-hamsa fuq livell personali. Dan sar dejjem sar bil-kunsens ta` kulhadd. Per ezempju, missier ir-rikorrenti kellu bzonn ghajnuna fil-luzzu tieghu jew anke fil-kura ta` ghasafar u annimali li kellu ; marru impjegati tal-kumpanija biex jaqdu l-bzonnijiet li kellu. Sostna li l-ahwa qatt ma sabu problema dwar dan. Wara l-mewt ta` Charles Busuttil, gew ratifikati xi kwistjonijiet li kien hemm u minn hemm imxew ` il quddiem.



Huwa spjega li ma kienx involut direttament fuq negozjati ta` bejgh ta` shares ta` FBS li ghandha fi Foster Clark. Kienu saru diskussjonijiet ma` Piper Jeffrey u kif ukoll ma` ohrain. Ikkonferma li dak iz-zmien dehrilhom li ma kienx jaqbel li jbieghu ; sal-lum ghadhom ta` l-istess fehma. Huwa spjega li d-diskussjoni kienet dwar bejgh ta` kollox u mhux ta` *trademarks* li ghandha FBS. Spjega li kienu saru stejjem dwar l-valur izda huma ddecidew li ma kienx il-mument li tinbiegh. Spjega li dawn l-istejjem gew diskussi fil-laqghat tal-bord u meta kien wasal il-mument, gew diskussi anke ma` l-azzjonisti.

**Luana Busuttil** – oht Franco u Jean Paul - xehdet illi hija kienet impjegata ta` FBS u B&S. Hija kellha t-tifla tahdem ma` FBS kif ukoll uliedha bniet ohra kienu nghataw impjieg fis-sajf hemm. Spjegat li bintha kienet impjegata ma` FBS u tkecciet April 2014. Taf illi kien hemm mastrudaxxa li kien hadem diversi xogholijiet personali ghal membri tal-familja, kif ukoll kahhala u *plumbers*. Hija kkonfermat li l-mastrudaxxa kien ukoll hadem fuq dghajsa ta` membru tal-familja. Hija sostniet li ma tafx jekk il-kumpanija hallsitx spejjez ta` safar ta` natura personali lil xi membri jew diretturi. Hija kkonfermat li l-kcina taghha kien hadimilha l-mastrudaxxa tal-kumpanija u dan kien ghamel anke xoghol lil missierha. Safejn tiftakar hija hallset l-ispejjez ta` l-injam u l-materjal. Hija kkonfermat li dan il-mastrudaxxa kien hadem fil-hames familji. Ikkonfermat li hija rceviet cekkiijiet minn Credit Suisse.

Qalet illi waqt laqgha tal-bord ta` T & L, Franco kien semma li kienu ghaddejin tahdidiet ma` kumpanija estera ghal bejgh ta` Foster Clark. Issemmiet cifra ta` €200 miljun. Huma u l-awditur li kien prezenti ghal-laqgha kienu tal-fehma li l-offerta kienet baxxa. Saret offerta aktar gholja pero` l-bejgh qatt ma mmaterjalizza.

**Chris Degiorgio** – Direttur Finanzi – FCP – xehed illi ommu hija oht il-hamest ahwa subien Busuttil. La hi u lanqas hu m`ghandhom ishma. Huwa direttur fis-sussidjarji pero` mhux fil-*holding company*. Mhuwiex impjegat tal-*holding company*. Id-diretturi tal-*holding company* huma erba` – Franco, Michael, Joseph u Christian Busuttil. L-azzjonisti gejjin mill-hames familji.

Ikkonferma li kien hemm sitwazzjonijiet fejn impjegati tal-kumpanija ghamlu xoghol barra mill-kumpanija. Dan jidher mill-*consolidated accounts*.. Spjega li dan ilu jsehh sa minn dejjem. Sabha topera diga` meta dahal hu. Qal illi ma jafx bi spejjez personali bhal spejjez ta` safar u ta` medicina li thallsu mill-kumpaniji ghall-fini personali.

Dwar il-kappella ta` l-Addolarata, huwa spjega li din tappartjeni lill-hamest ahwa u mhux tal-familja kollha Busuttil. Spejjez ta` din il-kappella gew mgghoddija mill-kontijiet tal-kumpanija. Huwa nsista li jekk kien hemm xi

spejjez personali li thallsu mill-kumpanija, dawn regghu thallsu lura mill-persuna koncernata. Huwa sostna li ma jafx bi flus li gew minn kontijiet esteri u li marru ghand il-membri tal-kumpaniji.

Kompla jispjega li Tiara hija *trademark*. Hemm ftehim bejn Foster Clark u B & S biex B & S tkun tista` tbiegh certu prodotti ta` Tiara lil certi klijenti taht kundizzjonijiet stabbiliti minn Foster Clark. Dan sar sabiex ikun hemm *market penetration*. Spjega li dak iz-zmien, Foster Clark dehrilha li dan ma ghandux jidher fis-suq li huwa *trademark* taghha u sussegwentement, B & S bdiet tiehu hsieb li jinnegozjaw bil-*brand* ta` Tiara, izda taht ftehim specifiku li d-decizjonijiet kollha u l-produzzjoni kollha taqa` taht Foster Clark. Dan il-ftehim sar fi zmien meta kienet ghadha involuta Unilever f`Foster Clark u f`Jannar 2000, il-hamest ahwa ta` Busuttil saru s-sidien ta` l-intier peress li Unilever ma baqhetx involuta.

Spjega li l-prodotti ta` Tiara ghadhom jibieghu lil B & S export jew B & S Manufacturing. Spjega li x-xorb li huwa ta` Tiara jinbiegh direttament minn Foster Clarks lil terzi. Spjega li d-decizjoni finali dwar lil min tbiegh; f`liema swieq jinbiegh u l-kundizzjonijiet kollha hija f`idejn Foster Clark. Insista li dejjem hekk sar.

Huwa kkonferma li kien involut fid-diskussjonijiet dwar bejgh ta` l-ishma li ghandha Francis Busuttil & Sons Limited fi Foster Clark. Ikkonfermat li l-kumpanija Dr Oetker kienet interessata li f`Foster Clark u fil-produzzjoni ta` l-affarijiet ta` l-ikel li taghmel Foster Clark. Spjega li din kienet interessata li titlob lil Francis Busuttil & Sons Limited tbiegh l-ishma li din ghandha go Foster Clark. Id-diskussjonijiet bdew isehhu fis-sena 2010 /2011.

Huwa sostna li waqt il-process ta` negozjati, ma kienx ghadu sar *due diligence exercise* ghaliex in-negozjati kienu ghadhom fil-bidu. Ikkonferma li huma kellhom indikazzjoni ta` l-offerta filwaqt li kellhom ukoll valutazzjonijiet li saru minn PwC u wahda minn KPMG. Sostna li l-offerta kienet ta` xi €170 miljun eskluż il-*cash* u l-investimenti li ghandha l-kumpanija. Dawk ma kinux parti mill-offerta. Ikkonferma li l-valutazzjonijiet li kellhom minghand PwC u KPMG kienu vicini. Izda dan in-negozju ma mmaterjalizzax ghaliex ittiehed parir legali li ma jkomplux bid-diskussjonijiet minhabba c-cirkostanzi li kien hemm bejn l-azzjonisti tal-familja.

Huwa cahad li qatt kien hemm xi diskussjonijiet sabiex jinbieghu t-*trademarks* ta` Francis Busuttil & Sons Limited ; infatti lanqas nbieghu xi *trademarks*.

B`referenza ghal pagna 7 tal-*accounts* tal-31 ta` Dicembru 2011, huwa kkonferma li l-ispejjez tal-kumpanija Francis Busuttil & Sons kienu jammontaw ghal €29,500. Dawn kienu primarjament spejjez relatati ma` *trademark*, peress li din trid tiggdedd kontinwament. Dawn ammontaw f`madwar €9,000. Il-bqija ta` l-ispejjez huma *legal fees, audi tfess, professional fees*. L-*audit* sewa EUR 8,000 mhallsa lil PwC. FBS m`ghandhiex impjegati. Ikkonferma li dawn l-ispejjez kollha jirrelataw ma`FBS. L-ispejjez tal-kappella mhux inkluzi ghax dawki kienu inkluzi f`*accounts* precedenti l-2011. Dwar l-ispejjez tal-kappella kien hemm ftehim bejn il-hames ahwa subien. Erbgha minnhom huma midfuna hemm.

**John Zarb** xehed illi kien ilu involut man-negozju tal-familja Busuttil sa mill-1982. Ikkonferma li huwa kien l-*audit partner* u ricentement sar konsulent. Kien responsabbli mill-valutazzjoni ricenti li saret tal-B & S *Group*. Saret abbazi tal-*cash flows* u profitti li tista` tiggenera jekk tibqa` ghaddejja bil-volum tax-xoghol ta` FCP.

B`referenza ghal dokumenti ezebiti a fol 893, 894, 908 u 909 (li *cheques* u *bank drafts* li marru ghand l-azzjonisti), huwa spjega li dawn gew mehuda in konsiderazzjoni fil-valutazzjoni u fil-konkluzjonijiet li wasal ghalihom.

Ikkonferma li huwa kien konsapevoli ta` dawn il-figuri qabel ma ghamel l-evalwazzjoni.

Kellu x` jaqsam mal-*audit* ghal hafna snin.

Xehed illi meta giet l-offerta minghand Dr Oetker, huwa kien tkellem fit-tul mal-*management* tal-grupp u kien tahom parir biex jiehd u l-offerti bis-serjeta` peress li s-sitwazzjoni fil-grupp kien qed tinkwetah. Madanakollu dak iz-zmien kienu ghadhom kemm ghamlu investiment kbir hafna fil-fabbrika u ghalhekk ma kienu iz-zmien tajjeb ghall-bejgh.

Ikkonferma li fil-valutazzjoni li kien ghamel, kien ikkunsidrat il-valur tat-*trademarks* u ta` l-*intellectual property*.

Meta nghatat l-offerta ta` Dr Oetker, huwa kien intalab jaghti opinjoni tal-valur tal-grupp u huwa kien ta` permess biex tigi avvicinata ditta ohra biex taghmel valutazzjoni ghaliex kien ahjar li jkun hemm aktar minn opinjoni wahda.

Spjega li l-opinjoni dwar il-valur li hareg biha kienet oghla mill-offerta ta` Dr Oetker. Il-valutazzjoni saret fuq *accounts* konsolidati ta` FCP u B&S Manufacturing.

Jekk kien hemm *income* li ma giex iddikjarat personalment, dak in-nuqqas ma ghandhux relevanza ghall-*financial statements* tal-kumpanija. Jaf li kien hemm dhul iehor, *commissions*, *suppliers* u anke klijenti tal-kumpanija, li nqasam bejn is-*shareholders* minflok kien dikjarat ghall-finijiet ta` *taxxa*.

**Simon Flynn** xehed illi huwa *auditpartner* ta` PwC fil-kaz tal-kumpaniji ta` Francis Busuttil and Sons Limited u B & S Contractors Limited u dan ghal madwar 17-il sena. Spjega li l-*audit* isir dwar B & S Contractors bhala soċjeta`. Wara 1995, inholqu zewg kumpaniji ohra : B & S Manufacturing u B & S Export. In-negozju ta` Francis Busuttil & Sons Limited ghadda ghal` Francis Busuttil & Sons Marketing u ghalhekk Francis Busuttil & Sons Limited hija biss *receiver of dividend* u *interest income*, u ghandha xi spejjez zghar. Spjega li jsiru l-*audits* specifici tal-kumpanija u tohrog opinjoni fuq il-*legal entities* separati u mbaghad isir *consolidation* tal-gruppi kemm ta` Francis Busuttil & Sons Limited u kemm tal-B & S ghax dawn huma zewg gruppi separati fejn jigu kkonsolidati r-rizultati tal-*holding* u tas-sussidjarji taghha.

Sostna li huwa qatt ma ra d-dokumenti li huma ezebiti a fol 893, 894, 908 u 909.

Spjega li dawn ma jidhrux li huma dokumenti tal-B & S Contractors u ghalhekk mhumiex riflessi fil-kotba tal-kumpanija.

Bhala awditur, huwa ma kienx b`dawk id-dokumenti.

Xehed illi B & S Contractors ilha ma topera essenzjalment minn 1995 fl-ambitu ta` bejgh u xiri. Id-dhul li ghandha gej minn *rents* u *interest income* u spejjez. Fl-2013, kien hemm EUR 23,000 bhala spejjez li kienu *legal professional fees*, *audit fees*, *property depreciations*.

Qal illi ma jafx li s-*shareholders* ta` B & S Contractors Limited ircivew xi flus minn xi sorsi ohra relatati mal-kumpanija. Dawn evidentement ma gewx mill-kumpanija u ghalhekk ma sarx audit ta` x` seta` gara barra mill-kumpanija.

Wara l-1995, B & S Contractors ma kellhiex *advertising* u *marketing costs*.

Stqarr illi l-*financial statements* kienu gew approvati u ma ntabx jaghmel follow ups tagghom. Spjega li l-allegazzjonijiet li saru minn Suzanne Busuttil u huha kienu pjuttost generici tant li d-diretturi l-ohra rribattewhom.

Huwa spjega li ma ntabu l-ebda rregularitajiet f'FBS Limited u B & S Contractors Limited.

Huwa stqarr illi l-kwistjoni dwar flejjes gejjin minn kontijiet bankarji esteri ma ghandhiex konnessjoni mal-*accounts* tal-kumpanija.

Huwa nsista li meta jsir *audit* tal-*accounts* ta' kumpanija, trid issir distinzjoni bejn is-socjeta' u s-*shareholders*.

**John L. Bonello** xehed illi kien iltaqa' ma' Joseph Busuttil f'Settembru 2010. Kien qallu li kien hemm bzonn ta' strutturi formali dwar governanza partikolarment fuq kwistjonijiet ta' successjoni u r-relazzjoni ta' membri familjari li ma jahdmux fil-grupp ta' kumpaniji.

F'April 2011, saret laqgha ma' Charles Busuttil li kien dak iz-zmien Chairman u MD. Preokkupazzjoni ta' Charles Busuttil kienet illi kellha titnehha l-pretensjoni ta' uhud illi l-membri tal-familji kellhom dritt mit-twelid li jiffurmaw parti mill-*management*. Charles Busuttil tah spjegazzjoni twila tal-problemi li kellu ma' Suzanne Busuttil u ghadliel file shih b'korrispondenza li giet skambjata bejniethom.

Kompla jghid li huwa kien kiteb lil Charles Busuttil dwar kif fil-fehma tieghu kellha tkun indirizzata l-preokkupazzjoni tieghu. Huwa kien ippropona li jiltaqa' mal-membri u jara setax jintlahaq consensus dwar *family charter*. Madanakollu, meta ltaqa' ma' Suzanne Busuttil u huha, huwa nduna consensus kien ser ikun impossibbli. Rinfaccjat b'dik is-sitwazzjoni, huwa mar ghal ftehim tal-maggor parti tal-bord ta' Francis Busuttil & Sons Limited li jigu ntrodotti *corporate governance actions on a piecemeal step by step basis*.

Kompla jixhed illi sar progress dwar *corporate governance* fil-grupp mis-sena 2011. Fosthom semma li kien hemm progress fil-komposizzjoni tal-bordijiet, fil-frekwenza tal-laqghat u fil-kwalita' tal-laqghat tal-bordijiet. Programm annwali tal-laqghat tal-bordijiet qed jigi ffissat fil-bidu tas-sena u d-dati jibqghu dejjem skedati. Meta jinbidlu dati, ikun hemm ftehim bejn id-diretturi. L-attendanza ghal-laqghat hija gholja ; l-eccezzjoni tkun illi direttur ma jkunx prezenti.

Stqarr illi l-*agenda* tal-laqgħa tintbagħat minn kmieni. Kull laqgħa, ikun hemm inkluz *detailed management accounts*, *detailed commentary* u *detailed presentation*. Qal li l-bord ta` FCP jinkludi llum *executive directors* u Francis Busuttil and Sons Marketing Limited kienet imsahha bl-inkluzjoni ta` zewg persuni kwalifikati u ta` esperjenza. Inhatar General Manager gdid li ghalkemm huwa membru tal-familja huwa wkoll kwalifikat u kien għamel zmien b`esperjenza ta` xogħol barra mill-grupp. Il-bord ta` Francis Busuttil and Sons Limited baqa` l-istess hlief għat-tnehhija ta` Suzanne Busuttil.

Qal li fl-2013, kien iffurmat biex jagħmel rakkomandazzjonijiet lill-bord dwar il-livelli ta` remunerazzjoni għall-*executive directors*. Huwa c-Chairman. Bħala membri, hemm Lawrence Zammit ta` Misco Ltd u Chris Degiorgio sas-sena 2014. Ir-rakkomandazzjonijiet li jsiru huma bbazati fuq *market data* filwaqt li s-salarji rakkomandati għandhom elementi ta` *performance related pay*. Fl-2014, inbdiet *Key Talent Development Programme* għal FBS sabiex jigu identifikati *leaders* futuri. Barra minn hekk, kien qed jigi ffurmat *audit committee*. Huwa accetta li jkun membru. Fl-2014, id-diretturi ta` FBS bdew isejju laqgħat ma` l-azzjonisti darbtejn f`sena, apparti l-laqgħa generali annwali. Fil-laqgħat, isir prezentazzjoni dettaljata ta` l-operat tas-sussidjarji ta` FBS.

Huwa insista li FBS ma tistax tibqa` tigi kkunsidrata bħala *family business*. Il-familja għandha l-ishma u għalhekk huwa importanti li l-familja tkun konsapevoli ta` dak li jkun għaddej. Kien għalhekk li zdieđu l-laqgħat mal-azzjonisti. Fl-istess waqt in-negozju jrid jitmexxa bħal dak ta` korporazzjoni. Il-partecipazzjoni tal-familja fl-operat tal-grupp irid jkun ibbazat fuq kompetenza u mertu. Il-management għandu jkun separat mill-propjeta` fl-interess ta` l-azzjonisti. FBS għandha *turnover* ta` aktar minn EUR 110 miljun. Fl-2015 iggenerat profitt qabel it-taxxa ta` aktar minn EUR 28 miljun. Il-*group tax liability* fl-2015 kienet ta` EUR 8 miljun. Hemm impjegati madwar 500 persuna.

Huwa spjega illi fl-inkontri li kellu ma` Suzanne Busuttil, din dejjem saħqet li dawk li qegħdin fil-postijiet manigerjali huma nkompetenti u għandhom jitnehew. Hija rreferiet għad-diretturi kollha, l-*company secretary*, l-awdituri u l-*advisors* kollha tal-bord. Huwa sma kienx jaqbel ma` dan peress li l-grupp dejjem issahhah biz-zmien. Spjega li huwa qatt ma sema` lil Suzanne Busuttil tghaddi rimarki pozittivi dwar xi hadd li huwa konness mal-FBS *group*. L-effett ta` l-kritika ta` Suzanne Busuttil u l-effett li dawn il-pendenzi gudizzjarji hallew fuq l-bord ta` FBS huwa serju hafna. Diskussjonijiet fuq il-futur tal-grupp huma dejjem mizghuda b`dubbji dwar x` ser tkun ir-reazzjoni ta` Suzanne Busuttil u huha.

Ikkonkluda li huwa ma jistax jifhem l-attitudni ta` Suzanne Busuttil lejn il-Grupp. Sostna li ma tressqu l-ebda lmenti legittimi u huwa jichad li saret xi diskriminazzjoni fil-konfront ta` Suzanne Busuttil u huha.

**Perit Dr Edwin Mintoff** ikkonferma li huwa ghamel stima tal-istores u administration offices, Misrah Santa Venera, proprjeta` ta` B & S Contractors Limtied datat 10 ta` Mejju 2012. Spjega li huwa kien ghamel applikazzjoni biex isir zvilupp residenzjali u dana fit-23 ta` Gunju 2012 bir-referenza tal-applikazzjoni bin-numru 5336/10. Il-permess hareg fl-4 ta` Novembru 2014. Spjega li tul il-process tal-applikazzjoni, huwa kellu indikazzjonijiet li l-permess kien ser jigi moghti. Spjega ukoll li l-potenzjalita` ta` l-izvilup ta` din il-proprjeta` ma timpingix fuq il-valur tal-proprjeta` ghaliex il-valur li kien ghamel kien ha diga` in konsiderazzjoni *l-planning policies* li kienu ezistenti dak iz-zmien. B`hekk il-valutazzjoni tieghu kienet diga` hadet in konsiderazzjoni il-fatt li l-permess kien ser jigi approvat. Spjega li fl-2015 huwa kien ghamel dikjarazzjoni li l-valur tal-proprjeta` kien baqa` l-istess.

**Lawrence Zammit** xehed illi kien mahtur fir-*remuneration committee* ta` Francis Busuttil & Sons Limited. Spjega li Suzanne Busuttil kienet irreatiet b`mod negattiv kemm ghall-formazzjoni u kif ukoll ghall-komposizzjoni ta` l-kumitat. Kienet tressaq ilmenti li ma ghandhiex fiducja fid-diretturi tal-kumpanniji u li dawn ma kienx haqqhoppm zidiet fir-rimunerazzjoni taghhom. Kienet ikkupjatu b`*emails* li kellhom kontenut kunfidenzjali. Qalilha li ma kienx messha baghtet lilu dawk l-*emails*.

**Av. Dr. Henri Mizzi** xehed li huwa jirrapprezenta l-interessi ta` tlett familji mill-hamest ahwa Busuttil.

Spjega li l-klijenti tieghu kienu gharfuh bil-problemi li kienu qed jinholqu minn Suzanne u Brian Busuttil. Suzanne Busuttil kienet tressaq numru ta` lmenti dwar it-tmexxija tal-kumpannija. Huwa kien attenda ghal laqgha straordinarja tal-azzjonisti ta` Francis Busuttil & Sons Limited fejn tnehhiet Suzanne Busuttil minn direttur. Id-decizjoni ttiehdet wara hafna hsieb u minhabba l-fatt li Suzanne Busuttil kienet dejjem tressaq l-istess ilmenti u ma kienet tkun sodisfatta bl-ebda risposta li tinghata. Ikkonferma li l-korrispondenza ta` Suzanne Busuttil kienet wahda distruttiva u mimlija attackki.

Waqt il-laqgha, kien spjega li r-raguni ghat-tnehhija ta` Suzanne Busuttil kienet kemm l-azzjonijiet taghha bhala azzjonista u kif ukoll l-atteggjament taghha waqt il-laqghat tal-bord. Spjega li din kienet qed taghmel akkuzi serjissimi fil-konfront ta` uhud.

Kompla jghid li huwa attenda laqgħa straordinarja ohra fejn kien intalab li Brian Busuttil jigi mahtur bhala direttur fuq il-bord. Din il-mozzjoni ma għaditx. T & L Holdings Limited, flimkien ma` Suzanne u Brian Busuttil, ivvutaw favur din il-mozzjoni.

**Av. Dr. Joseph J Vella** xehed illi huwa kien involut fl-abbozzar tal-ftehim sabiex Anthony Busuttil għadda l-ishma tiegħu lil uliedu. Fil-fatt Anthony Busuttil kien infurmah li huwa ma xtaqx jibqa` direttur ta` Francis Busuttil & Sons Limited u li kien informa b`dan lil Charles Busuttil. Ftit taz-zmien wara, Charles Busuttil talab li ssir ittra formali b`talba li Suzanne Busuttil tigi appuntata direttur. Spjega li kienet iffirmata rizzoluzzjoni straordinarja mill-azzjonisti kollha għall-hatra ta` Suzanne Busuttil bhala direttur. Kienu saru biss diskussjonijiet bejn il-familji, Spjega li missier Suzanne Busuttil irrizenja ufficjalment fl-istess gurnata li Suzanne Busuttil giet appuntata.

Spjega li Anthony Busuttil kien attiv fil-grupp izda ma kellux pozizzjoni manigerjali. Huwa kompla jghid li f`minuta datat 11 ta` Jannar 2000 u ffirmata minn Anthony Busuttil kien hemm imnizzel li uliedu mhux interessati fin-negozju u li huwa kien qed jikkonsidra jbiegh sehmu. Dan spjega fid-dettal ukoll dwar kif kien sehh ir-ristrutturar tal-kumpanija. Suzanne Busuttil kienet kontra l-hatra ta` John Bonello u kif ukoll kontra d-diretturi tal-kumpanija li kienu gia` mahtura. Spjega li lil din ma kien jogħgobha xejn. Spjega li kienet anke lmentat fuq il-fatt li kienu jingħataw *hampers* fiz-zmien tal-Milied.

### **III. It-tieni eccezzjoni preliminari tal-intimati Francis Busuttil & Sons Limited u ohrajn, kif ukoll it-tielet eccezzjoni tal-intimati Foster Clark Products Limited u ohrajn**

Fis-sostanza, iz-zewg eccezzjonijiet huma tal-istess natura. Ghalkemm kienu mogħtija in linea preliminari, għad ma hemmx provvedimenti dwarhom u l-Qorti sejra tqis issa qabel tghaddi għall-konsiderazzjoni tal-mertu. Tajjeb jingħad illi fin-noti ta` sottomissjonijiet u waqt it-trattazzjoni orali, ma sarx accenn għal din l-eccezzjoni għaliex il-partijiet qagħdu fuq il-parametri tal-azzjoni skont l-Art 402 tal-Kap 386.

Propju għaliex kif jigi dikjarat fl-ewwel paragrafu l-azzjoni hija bbazata fuq l-Art 402 tal-Kap 386, ir-rikorrenti mexxew b`rikors semplici, mhux b`rikors guramentat (ara : “**Michael Debono et vs Mario Debono et**” - 29 ta` Novembru 2011 ; u “**Bridget Giusti et vs Godwin Giusti et**” - 3 ta` April 2012).



Li kieku r-rikorreni riedu li l-azzjoni taghhom tkun fondata fuq l-Art 136A tal-Kap 386 kellhom imexxu b`rikors guramentat *ad validitatem* li mhux il-kaz tal-lum (ara : “**Amadeo Balzan vs Central Holidays (Travel and Tourism) Ltd et**” – 16 ta` Gunju 2015).

Din mhijiex kwistjoni ta` forma izda ta` sostanza.

Ghalkemm fit-talba r-rikorreni jirreferu wkoll ghall-Art 136A tal-Kap 386, l-azzjoni taghhom tibqa` fis-sostanza dik skont l-Art 402 tal-Kap 386, mhux l-azzjoni derivattiva.

Kif inghad fil-kawza “**Amadeo Balzan vs Central Holidays (Travel and Tourism) Ltd et**” (op. cit.) id-“*derivative action*” kif thaddmet fil-*common law* tal-Ingilterra ma tistax titqies fil-kuntest Malti bhala *a plus* favur l-azzjonista, u kwindi agguntiva ghall-azzjoni skont l-Art 402.

Il-legislatur ried li kollox idur mal-Art 402.

Dan ifisser illi l-legislatur ried illi l-“*membri*” jagixxi skont l-Art 402, jaghmel il-prova li tispetta lilu skont dak li jghid is-subinciz (1) u jekk issir dik il-prova sal-grad rikjest mil-ligi, ikun hemm miftuha u disponibbli r-rimedji kontemplati mis-subinciz (3).

Infatti l-qorti hija prekluziva milli tikkonsidra l-ghoti ta` rimedji **qabel** ma ssir il-prova tar-rekwiziti tal-Art 402(1).

Minn qari tal-premessi tar-rikors kif ukoll tat-talba, u fl-isfond tal-provi estensivi li nstemghu fil-kawza, il-Qorti ssib illi dak li riedu jiksbu r-rikorreni bil-kawza tal-lum ma kienx permess mill-qorti sabiex jipprezentaw azzjoni derivattiva li jekk jinghata kien jinvolvi procediment iehor izda li jiksbu rimedju **mmedjat** mill-qorti.

Fit-talba r-rikorreni jirreferu ghall-Art 136A. Huwa minnu wkoll illi t-talba hija generika. Ghalhekk il-qorti trid toqghod fuq il-provi.

Il-provi bl-ebda mod ma jwasslu lill-qorti biex tikkonkludi illi fil-kaz li jkun ippruvat l-ewwel subinciz tal-Art 402, dak li ried r-rikorreni kien permess sabiex jistitwixxu l-azzjoni derivattiva.

Sabiex bil-kawza tal-lum jixlu lil dawk mill-intimati li huma diretturi bi ksur ta` l-Art 136A tal-Kap 386, ir-rikorrenti bhala azzjonisti ma setghux jistitwixxu **direttament** azzjoni anke kontra tagghom skont l-Art 402.

**Ghalhekk ghal dan is-sens iz-zewg eccezzjonijiet qeghdin jigu milqugha.**

**Tenut kont tar-ragunijiet ghala kienu milqugha z-zewg eccezzjonijiet, ma jipprekludix lill-qorti milli tghaddi biex tqis il-mertu tal-istanza tar-rikorrenti.**

#### **IV. L-Art 402(1) tal-Kap 386**

L-ewwel subinciz tal-Art 402 jaqra :-

*Kull membru ta` kumpanija li jilmenta li l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li, jew li xi att jew omissjoni tal-kumpanija kienu jew huma jew x`aktarx se jkunu oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi tal-membri in generali, jista` jaghmel rikors lill-qorti ghal ordni taht dan l-artikolu.*

Fis-sentenza li tat din il-Qorti (diversament presjeduta) [**PA/GV**] fit-30 ta` Jannar 2008 fil-kawza “**Cutajar pro et noe et vs S.C. & Company Limited et**” inghad hekk –

*Illi l-prova biex tirnexxi dina l-azzjoni tispetta lir-rikorrenti li ressuq dina l-azzjoni. Huma jridu jippruvaw li (a) l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li... (b) jew li xi att jew omissjoni tal-kumpanija kienu jew huma jew x`aktarx se jkunu, oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi tal-membri in generali.*

*Il-ligi taghna ma taghtix spjegazzjoni ta` x`inhu oppressiv b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju. Kull kaz ghalhekk irid jigi trattat u deciz fuq il-mertu tieghu proprju, u dana kaz b`kaz. L-iskop tal-ligi hu biex il-Qorti tkun tista` tintervjani f`dawk il-kazijiet fejn hemm bzonn li jinghata rimedju minhabba unfair dealing fejn jigi pruvat li kien hemm azzjonijiet jew omissjonijiet li ma kienux gusti u li kienu ta` pregudizzju jew li l-affarijiet tal-kumpanija mhux qed jitmexxew sew.*

Fis-sentenza li tat il-Qorti ta` Ghawdex (Gurisdizzjoni Superjuri) [AE] fl-4 ta` Frar 2009 fil-kawza “**Ellis vs Ellis**” inghad hekk –

*Jibda biex jinghad li dan il-provvediment jista` jigi nvokat mill-membri kollha, u mhux biss minn membri minoritarji u m`hemmx dubju li d-diskrezzjoni u l-poteri moghtija lill-qorti f`dan il-kuntest huma wesghin. Minn dan il-provvediment hu evidenti li :*

(a) *Dan il-provvediment japplika wkoll f`kaz ta` att jew ommissjoni izolata ;*

(b) *Ir-rimedju jista` jinghata kemm ghal dak li jkun gara fil-passat u wkoll xi att propost li jsir fil-futur ;*

(c) *L-ilment jrid ikun fuq it-tmexxija tal-affarijiet tal-kumpanija jew fuq att jew ommissjoni tal-kumpanija.*

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza “**Vella et vs Vella Brothers Ltd et**”, il-Qorti tal-Appell qalet hekk –

*... l-Artikolu 402 ta` l-Att dwar il-kumpaniji jaghti diskrezzjoni pjuttost wiesa` lill-Qrati u dan ghaliex dawn il-provvedimenti ghandhom l-ghan li jissalvagwardjaw u jiprotegu lill-azzjonisti ta` socjeta` kummercjali, partikolarment lil dawk li huma minoritarji u li ghalhekk qeghdin fl-impossibilita` li jirregolaw il-mod li bih tkun qed titmexxa s-socjeta` li fiha huma jkollhom interess ...*

*... din id-disposizzjoni, li hija bbazata fuq l-Art.459 tal-Companies Act (1985) Ingliza, hija ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legalistici biex ikun jista` jigi moghti rimedju. Dak li hu necessarju hu li l-azzjonista jipprova li minhabba l-gestjoni tas-socjeta` partikolari hu qed isofri, jew ukoll jista` jsofri, pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi sempliciment ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista` jirreferi ghall-azzjonist li qed jippromwovi l-proceduri, ghal xi azzjonist iehor jew ghall-interess in generali ta` l-azzjonisti. Ma hemmx ghalfejn li huwa jipprova li huwa zgur ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` possibilita` (“**Vincent Monreal et v. Lino Delia noe**” deciza mill- Prim`Awla tal-Qorti Civili fit-13 ta` Mejju, 1999). Infatti gie deciz mill-Qrati Inglizi fil-kawza in re **Bovey Hotel Ventures Ltd** [(1983) B.C.L.C. 290] li *“the Court will not give a list of situations when this remedy may be resorted to however one principle remains clear. A shareholder may make use of this article when his shareholding in the company has been seriously diminished at least seriously jeopardized by reason of a course of conduct or the part of those who have the de facto control of the company, which has been unfair to the member concerned”*.*

*... Fid-decizjoni **O`Neill v Phillips** moghtija mill-House of Lords fl-20 ta` Mejju 1999, gie ritenut illi l-legislatur ried illi biex jinghata rimedju taht l-*

artikolu jigi kkunsidrat il-kriterju ta` dak li huwa `fair`. Izda Lord Hoffman izid ighid li - “Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used ... The requirement that prejudice must be suffered as a member should not be too narrowly or technically construed.

Fis-sentenza **In Re Bovey Hotel Ventures Ltd** (op. cit.) kien inghad hekk –

*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 had the 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.*

Fis-sentenza “**Monreal et vs Delia noe**” (op. cit.) inghad hekk –

*Dawn il-provedimenti huma ta` salvagwardja u ta` protezzjoni ghall-azzjonisti ta` socjeta` kummercjali, b`mod partikolari ghal dawk li huma minoritarji. Ir-rimedji li johorgu minn dawn il-provedimenti huma moghtija lil kull azzjonist ta` socjeta` kummercjali. Kull azzjonist, anke jekk hu minoritarju, ta` socjeta` kummercjali, anke jekk hi pubblika, jista` jitlob li jinghataw l-ordnijiet kollha necessarji u opportuni, f`kaz li jirnexxielu jipprova illi minhabba l-gestjoni tal-istess socjeta` huwa qed isofri jew ukoll jista` jsufri xi pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi semplicement ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista` jirreferi ghall-azzjonist li qed jippromuovi l-proceduri, ghal xi azzjonist iehor jew ghall-interessi in generali tal-azzjonisti. In vista ta` dan kollu jista` jinghad li hu bizzejjed li l-azzjonista jipprova li huwa qed isofri jew eventwalment jista` jsufri xi pregudizzju minhabba xi agir tas-socjeta` li taghha huwa jippossjedi xi ishma. Ma hemmx ghalfejn li huwa jipprova li huwa zgur li ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` probabbilita`. Inoltre, skond dak li hemm provdut fis-subartikolu (3) tal-istess artikolu 402, il-Qorti tista` tipprocedi biex taghmel kull ordni necessarja u opportuna skond dawn il-provedimenti, jekk jirrizulta li l-ilment tal-azzjonista hu sewwa bbazat u jekk il-Qorti thoss li huwa ekwu u gust li taghmel.*

Fis-sentenza taghha tal-31 ta` Jannar 2003 fil-kawza “**Ellul vs Ellul pro et noe**”, il-Qorti tal-Appell qalet hekk –

... *Fil-ligi Ingliza (ara Art 459 tal-Companies Act, 1985) jinstab rimedju simili li hu maghruf bhala “The Unfair Prejudice Remedy”. Il-Qorti ta` l-Appell Ingliza stabbiliet fil-kaz “in Re Saul D. Harrison & Sons plc (1995)*

1BCLC 14)” il-linji ta` gwida dwar kif kellu jkun l-operat biex ikun jista` jigi kkwalifikat bhala, “unfairly prejudicial” (fit-test tal-Ligi Maltija din il-frazi hi tradotta “b`mod mhux gust ta` pregudizzju”). Wiehed kellu, fl-ewwel lok, jara jekk dak l-operat kienx jew le skond l-istatut tal-kumpanija. Izda fl-applikazzjoni tal-imsemmija dispozizzjoni – ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legali – il-Qorti tiehu in konsiderazzjoni l-aspettattivi legittimi (“legitimate expectations”) li r-rikorrent jista` jkollu u li sikwiet ikunu ferm aktar wiesgha mid-drittijiet strettament legali li johorgu mill-istatut tassocjeta`. Dawn l-aspettattivi legittimi jitwiieldu minn xi relazzjonijiet personali partikolari bejn l-azzjonisti. Fil-kaz *Ebrahimi vs Westbourne Galleries Ltd.* ([1973] AC 360) Lord Wilberforce elenka numru ta` sitwazzjonijiet fejn dan ir-rimedju jista` jinghata, sitwazzjonijiet dawn li x`aktarx jinstabu f` kumpaniji zghar privati li ta` sikwiet jissejhu “quasi partnerhsips”, fosthom is-segwenti :-

“(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company ;

(ii) an agreement, or understanding, that all, or some (for there may be “sleeping members”) of the shareholders shall participate in the conduct of the business ;

(iii) restriction upon the transfer of the members` interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere”.

Fil-pagna 464 tat-Tielet Edizzjoni tal-**Ferrar`s Company Law** jinghad hekk –

... The position will vary greatly from the small private companies, commonly called quasi-partnerships, to public companies of considerable size. As a quasi-partnership, the company will usually have been formed or continued on the basis of a personal relationship involving mutual confidence. There may be an agreement or understanding that all or some of the shareholders are to participate in the conduct of the business. Restrictions on the transfer of shares will be the rule rather than the exception. The individuals involved may also have made relatively substantial capital contributions to the company. Shareholders in such companies will be a small close-knit group, actively involved in many instances in the daytoday operations and financially and personally committed to the company. Here the scope for legitimate expectations beyond their strict legal rights is obviously greatest.

However, as Lord Wilberforce stressed in *Ebrahimi v Westbourne Galleries Ltd*, the case for giving effect to equitable considerations must be made in each instance and it is not sufficient simply to assert that the company is small or private, for in many cases the basis of the relationship will be adequately and exhaustively laid down in the articles. If it is so defined by the articles or, for

*example, by the articles supplemented by a shareholders` agreement, then there is little room for finding further legitimate expectations beyond those outlined in the documents.*

*The interests of shareholders in larger private and public companies, on the other hand, are likely to be quite different from those of shareholders in quasi-partnerships and considerably more restricted. In these larger companies there is usually no underlying personal relationship, employment is rarely an issue and the shareholders are more interested in such matters as dividend yield and capital appreciation than involvement in the day-to-day running of the company. If they become dissatisfied, especially if it is a public company, they can sell their shares and withdraw from the company. Here the members rarely have expectations beyond their strict legal rights as provided by the articles.*

*That is not to say that s.459 does not apply to larger private companies and public companies for the section is clearly not limited to quasi-partnerships. The point is that it may be harder to establish conduct which is unfairly prejudicial to the interests of the members in such companies.*

Kif qalu Hicks u Goo fil-pagna 409 tal-Hames Edizzjoni ta` **Cases and Materials on Company Law** –

*In the early days of S.459, it was thought that the petitioner must have unfairly suffered prejudice to an interest as a member only (and not eg. as a director). This requirement has never been relaxed in that the Court is prepared to recognise that members may have different interests having regard to their rights, expectations and obligations (re a company (No 00477 of 1986 [1986 BCLC 376; O`Neill v Phillips. [1999] 1 WLR 1092). This is particularly so in quasi-partnership cases where a minority is excluded from management. But where the articles make detailed provision for any departing members to sell their shares at a fair price, the position may be different ...Section 459 has proved to be a powerful weapon for minority shareholders, particularly in the case of quasi-partnerships. In such companies, minorities who are excluded from management participation or who unfairly suffer loss as a result of wrongdoing by directors or majority shareholders may get relief under the section.*

Fil-pagna 449 tar-Raba` Edizzjoni tal-**Farrar`s Company Law**, jinghad illi –

*A member`s interests are not necessarily limited, therefore, to his strict legal rights under the Articles and the Companies` Act but can extend also to legitimate expectations as to the conduct of the company`s affairs arising from the nature of the company and the agreements and understandings between the parties.*

Ghalkemm id-dicitura tal-Art 402(1) ittiehdet testwalment minn disposizzjoni simili li tirrizulta fil-Companies Act ta` New Zealand, il-ligi ta` New Zealand segwiet l-izvilupp legislattiv fir-Renju Unit.

Fl-Ingilterra kien hemm l-ewwel il-Companies Act 1985 (Sec 459) li fi zminijiet aktar ricenti kienet segwita mill-Companies Act 2006 [Sec 994(1)]. Fil-fatt Sec 459 thassar ghal kollox mill-Companies Act 1985 u dahal ezatt kif kien fl-Art 994(1) tal-Companies Act 2006.

**L-awtrici Brenda Hannigan fil-ktieb Company Law (Fourth Edition – 2016 – OUP – pg. 485) tghid :-**

*Where the court is satisfied that a petition under s. 994 is well founded, it may make such order as it thinks fit for giving relief in respect of matters complained of [s 996(2)]*

Dwar il-prova, Brenda Hannigan tghid hekk fil-Pag 492 ta` **Company Law** (op. cit.)

*“Whether the company’s affairs are being or have been conducted in a manner which is unfairly prejudicial to the petitioner’s interest is an objective, not a subjective, matter. The prejudice must be real, rather than merely technical or trivial, and the petitioner does not have to show that the persons controlling the company have acted deliberately in bad faith or with a conscious intent to treat him unfairly. The conduct complained of must be prejudicial in the sense of causing prejudice or harm to the relevant interest of the member (usually, but not limited to financial damage) and also unfairly so (usually connoting some breach of company law or the constitution but not limited to that) and it is not sufficient if the conduct satisfies only one of these tests.” [enfasi u sottolinear ta` din il-qorti].*

**L-awturi ta` Boyle & Birds` Company Law (Eighth Edition – 2011 – Jordans – pg. 711) ighidu :-**

*“The term “unfair prejudice” whether analysed as a `standard` or a `concept` is a relatively more objective one which is concerned with running the company in a way that is clearly unfair in its consequences to the complaining shareholder, even if the respondents can claim to have acted in the best of good faith.”*

**L-awtur Paul L. Davies u l-kollaboraturi tieghu fil-ktieb Gower and Davies – Principles of Modern Company Law ( Eighth Edition – 2008 – Sweet & Maxwell – pg. 691-692) ighid :-**

*“ ... the courts recognised that sec 994 protects expectations and not just rights. Borrowing from public law, it is sometimes said that the section protects the “legitimate expectations” of the petitioner, though more recently the courts have preferred the private law phrase “equitable considerations” [Qorti tal-Appell Ingliza fil-kawza “Saul D Harrison & Sons plc” – 1995 – għall-uzu tal-frazi “legitimate expectations” ; House of Lords – “O’Neill vs Phillips” – 1999 – għall-uzu tal-frazi “equitable considerations”] Whatever the language used, the difficult issue is to distinguish those expectations of the petitioner which are to be classified as “legitimate” or which considerations are to fall within the category of “equitable considerations” and so as deserving of legal recognition and protection from those expectations which the petitioner may harbour as a matter of fact but which the courts will not protect.”*

**L-awturi Mayson, French & Ryan fil-ktieb Company Law (26th Edition – 2009/2010 – OUP – pg. 569-570) ighidu b`riferenza għal Re Saul D Harrison and Sons plc (op. cit.) illi :-**

*“The words `unfairly prejudicial` are general words and they should be applied flexibly to meet the circumstances of the particular case ... The conduct [being complained of] must be both prejudicial [in the sense of causing prejudice or harm to the relevant interest) and also unfairly so ; conduct may be unfair without being prejudicial or prejudicial without being unfair, and it is not sufficient if the conduct satisfies only one of these tests.”*

*Ikomplu billi jagħmlu riferenza għal “O’Neill vs Phillips” (op. cit.) in partikolari dwar l-għazla li għamel il-Parlament Ingliz –*

*“Parlament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief ... it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. Although fairness is a notion which can be applied to all kinds of activities its content will depend upon the context in which it is being used.”*

**Fis-sentenza ta` din il-Qorti (PA/AE) tas-7 ta` Ottubru 2016 fil-kawza “Av. Dr. Pio M Valletta noe vs Jenó Torocsik et” ingħad hekk dwar l-azzjoni għal *unfair prejudice* :**



*“Fil-kaz ta` unfair prejudice, hemm bżonn li :*

- i) It-test ikun wiehed 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 pregudizzju.*
- iv) Mhux gust ma jfissirx bilfors li l-agir irid ikun illegali.*
- v) L-agir irid ikollu effett negattiv fuq l-attur bhala azzjonist.*

*F`sentenza Ingliza **Re Coroin Ltd** (2012) (High Court of Justice Chancery Division Companies Court) 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.*

*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 ...”*

## **V. Konsiderazzjonijiet**

Qabel xejn tajjeb jinghad illi fil-konsiderazzjonijiet taghha il-qorti zammet quddiemha l-principju *primum non nocere* citat mir-rikorrenti fin-nota ta` sottomissjonijiet taghhom.

Kif ukoll l-iskop tal-azzjoni huwa li jigi ekwilibrat u restawrat bilanc u mhux li ssir hsara.

Dan premiss, il-qorti tirribadixxi li mhux permess lilha illi taghti xi rimedju previst mis-subinciz (3) tal-Art 402, jekk ma ssirx il-prova mir-rikorrenti tal-fondatezza tal-ilmenti taghhom skont is-subinciz (1) tal-Art 402.

Fin-nota ta` sottomissjonjiet taghhom u kif ukoll waqt trattazzjoni ta` l-kawza, ir-rikorrenti ndikaw l-ilmenti li skont huma wassluhom biex imexxu bl-azzjoni skont l-Art 402. Fis-sostanza huma dawn :-

- a. It-tnehhija ta` Suzanne Busuttil minn direttur ta` Francis Busuttil & Sons Limited (FBS) u r-rifjut tal-azzjonisti l-oħra li jitqieghed flokha Brian Busuttil.
- b. In-nuqqas ta` FBS illi Suzanne u/jew Brian Busuttil jinghataw impieg..
- c. In-nuqqas ta` rappreżentanza fil-bordijiet tad-diretturi tas-sussidjarji ta` FBS, inkluza Foster Clark Products Limited (FCP).
- d. Frodi u abbuż konsistenti, mhux kontrollat u mhux verifikat.
- e. Manuvri u skemi mwettqa fl-interess ta` sezzjoni ta` azzjonisti biss.
- f. Governanza dgħajfa jew mankanti, nepotizmu u nuqqas ta` meritokrazija.

Il-Qorti sejra tqis dawn l-ilmenti.

U tara jekk il-provi li tressqu jwasslux għall-agir illi l-Art 402(1) ma jridx li jkun kommess.

a) **It-tnehhija ta` Suzanne Busuttil minn direttur ta` Francis Busuttil & Sons Limited (FBS) u r-rifjut tal-azzjonisti l-oħra li jitqieghed flokha Brian Busuttil**

Ir-rikorrenti jinsistu illi t-tnehhija ta` Suzanne Busuttil mill-kariga tagħha ta` direttur fil-bord ta` FBS hija oppressiva, diskriminatorja u ta` pregudizzju ingust.

Huwa ppruvat li llum l-erba` familji ta` l-ahwa subien Busuttil lkoll għandhom familjarji bħala diretturi ta` FBS.

Huwa ppruvat ukoll li l-unici li mhumiex diretturi huma l-ulied ta` Anthony Busuttil li huwa wiehed mill-hamest ahwa subien.

Kien allegat illi hemm ftehim li sar konswetudni fis-sens li kull wahda mill-hames familji tal-hames ahwa subien għandhom jedd għal rappreżentanza fil-bord.

Saret referenza għall-fatt li kien hemm dikjarazzjoni u ftehim iffirmit mill-azzjonisti kollha ta` FBS li jirrifletti u jikkonferma din il-koswetudni, liema ftehim kien eżebit bħala Dok JJVI waqt ix-xhieda lit a Av. J J Vella fit-

trattazzjoni tat-talba ghal *interim order* bin-nru 642/2012/1/JZM fl-udjenza tat-12 ta` Mejju 2014 a fol 268 u 269 tal-process.

Din il-Qorti ma taqbilx li kull wahda mill-familji tal-hames ahwa subien ghandha dritt li tahtar direttament direttur fuq il-bord tad-diretturi ta` FBS minghajr ma jkun hemm l-approvazzjoni ta` l-maggoranza ta` l-azzjonisti.

Fil-*memorandum* u l-*articles of association* ta` FBS ma jissemmiex dan l-allegat dritt kif pretiz mir-rikorrenti.

Ghal din il-Qorti, dan huwa il-punt krucjali li ghandu jirregola l-vertenza.

Il-*memorandum* u l-*articles of association* huwa l-essenza ta` l-kostituzzjoni ta` kumpannija.

**Brenda Hannigan** (op. cit.) – pag 97 – tghid hekk :-

*“The memorandum is one of a company’s two constitutional documents, the other being the articles of association. The distinction between the two documents is that the memorandum of association is an external facing document, telling the outside world the key facts about the company: its, name , its status as a public company (if that is the case), the jurisdiction in which it is registered, the company’s objects, the limited liability of its members, and the company’s authorised capital. The articles, on the other hand, set out the internal rules and regulations which govern the relationship between the company and the members...In the event of a conflict, the memorandum, as the document containing the fundamental conditions upon which the company is incorporated, prevails over the articles. (Guinness v Land Corpn of Ireland (1882) 22 Ch D 349; and see Lord Cairns in Ashbury Railway Carriage and Iron Co Ltd v Riche (1875) LR 7 HL 653 at 667 – 668 as to the subsidiary role of the articles.)*

*The legal status of the memorandum of association is determined by CA 1985, s 14 which provides that :*

*Subject to the provisions of this Act, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles.*

*The effect is that the memorandum of association and the articles form a contract between the company and the members. The precise nature of this statutory contract has been controversial, particularly with respect to the articles*

of association and the enforcement of the articles by individual members....The memorandum of association must be registered with the registrar of companies on incorporation and on any subsequent alteration, and persons dealing with a company are deemed under the doctrine of constructive notice to have notice of the company's memorandum and articles of association. (**Ernest v Nicholls** (1857) 6HL Cas 401; **Mahony v East Holyford Mining Co** (1875) LR 7 HL 869; **Irvine v Union Bank of Australia** (1877) 2 App Cas 366, PC; **Wilson v Kelland** (1910) 2 CH 306. The impact of the doctrine of constructive notice is much reduced by CA 1985, ss 35-35B which are discussed further in the text above and in Ch 7.)”

Fil-**Gower** (op. cit.) – pag 116 – jinghad hekk :-

“First the memorandum and articles constitute a contract between the company and each member. (**Hickman v Kent or Romney Marsh Sheepbreeders` Assc** (1915) 1 Ch 881 where Astbury J reviewed earlier cases in a judgement which has become the locus classicus. An article providing for a reference to arbitration of disputes between members and the company was held to be contractually binding.” But it is a contract with various special characteristics....Thus a member enters into a contract on terms which are alterable by the other party (**Shuttleworth v Cox** (1927) 2 K.B. 9, C A per Atkin L J at 26; **Malleon v National Insurance and Guarantee Corporation** (1894) 1 Ch 200 per North J. at 205), rather in a same way as a member of a club agrees to be bound by the club rules as validly altered from time to time, or a workman agrees to be employed on the terms of a collective agreement as occasionally varied by the employers and his trade union....Secondly , the contract is enforceable among the members inter se. ..Thirdly the decisions have constantly affirmed that the section confers contractual effect on a provision in the memorandum and articles only in so far as it affords rights or imposes obligations on a member qua member.”

Similment, fil-kaz ta` Malta, **Andrew Muscat** (op. cit.) – pag 105 – ighid hekk :-

“The memorandum and articles of association bind the company and its members and can generally be regarded as a contractual set of documents. It has been said that the memorandum of association “governs the relationship between the company and the outside world” and “informs third parties dealing with the company what are its objects, its sphere of activity and its capital.” On the other hand, the articles “ regulate the internal affairs of a company” and contain “regulations for the management of the affairs of a company and the conduct of its business.” ...Once registered, both the memorandum and the articles of association become public documents and are open for inspection by any member of the public.”

Fil-Pag 6 ta' **Notes on the Companies Act (2003)** [Mid Sea Books Ltd] **Oscar Grech** ifisser kif tista' ssir emenda ghall-memorandum u l-articles of association u xi jrid isir wara tali emenda -

### **Alteration to the Memorandum and Articles of association**

*A company is empowered by **section 79(1)** to alter or add to its memorandum or articles of association by means of an extraordinary resolution.*

- *Where the alteration consists of a change in the registered office of the company it may be effected by a resolution of the directors which would specify the date of the change;*
- *If duly authorized by its memorandum or articles, a company may, by ordinary resolution, convert any of its fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination.*

### **Updated copy of altered Memorandum and Articles**

*Every time that the memorandum or articles are altered, the directors and the company secretary are required by **section 79(2)** to file with the Registrar, within not later than 14 days after the passing of the relative resolution, a printed copy of the amendment together with a revised and updated copy of the memorandum and articles. The revised copy should incorporate the amendment including all changes that would have occurred prior to the amendment including changes relating to the directors, company secretary, the representation of the company, the registered office of the company and any transfer, transmission or allotment of shares.*

*In the event of any discrepancy between the text of any updated memorandum and articles and the text of the original memorandum and articles, the latter text, together with resolutions duly registered thereafter, prevail (**sec 79(2) proviso**)."*

**Andrew Muscat** (op. cit.) – pag 159 – ighid :-

*The general principle is that a company may by extraordinary resolution alter or add to its memorandum or articles. The law quite logically vests the power to alter the memorandum or articles in the hands of the members, who after all are the owners of the company...Once a resolution altering the memorandum or articles has been passed, it becomes the duty of the directors and of the company secretary to deliver to the Registrar for registration a copy of such resolution within fourteen days after the date of the resolution.....The Companies introduced a useful and practical measure to facilitate the perusal of the memorandum and articles of a company which have undergone one or more alterations: it requires the directors and the company secretary to deliver to the Registrar for registration, together with the copy of any resolution altering the*

*memorandum or articles of association, a revised and updated copy of the entire memorandum and articles as altered by the said resolution.*

Ikompili **Andrew Muscat** (op. cit.) – pag 161 -

*An important rule is that an alteration to the memorandum or articles of association does not take effect unless and until it is registered with the Registrar. This rule is sometimes overlooked in practice, with potentially serious consequences.*

**Andrew Muscat** jaghti ezempji tal-konsegwenzi serji li jista` jwassal il-kaz fejn kumpannija tkun trid taghmel *fresh issues of shares and the unissued share capital is insufficient to cover the full amount of the proposed issue.*

L-importanza ta` r-registrazzjoni hija sottolineat fil-**Pennigton`s Company Law** (8<sup>th</sup> Edition - Butterworths - pag 70) :

*“When an alteration is made in a company`s memorandum or articles, a printed copy of the resolution effecting the alteration must be delivered to the Registrar of Companies within fifteen days after it is passed and a printed copy of the altered memorandum or articles must be delivered to the Registrar at the same time. The Registrar must advertise the filing of the resolution effecting the alteration in the London Gazette, and until the advertisement is published, the alteration is not effective against other persons who at the material time are unaware of it having been made. Other persons in this context seem to comprise all persons other than the company, and therefore shareholders and directors, as well as outsiders are included. The material time at which an unpublished resolution is vulnerable appears to mean the time when a transaction is entered into, and a resolution altering the memorandum or articles will be effective against all persons if it has been notified to the Registrar and advertised in the London Gazette by the date when the transaction in question is entered into. However, the fact that the Registrar of Companies has advertised the filing of a resolution altering the company`s memorandum or articles in the London Gazette does not mean that third parties are deemed to have knowledge or notice of it in cases where knowledge or notice is material, unless the company can also prove that they actually knew of the alteration, (**Official Custodian of Charities v Parway Estates Development Ltd** (1985) Ch 151, (1984) 3 All ER 679).”*

**Hija kontestata l-pretensjoni tar-rikorrenti li kull wahda mill-hames familji ghandha jedd li tkun rapprezentata fil-bord ta` FBS.**

**Jekk tassew il-prassi saret konswetudini b`tali mod illi din kellha l-effett li ggib bidla fil-memorandum u fl-articles allura l-azzjonisti ma**

setghux jiefqu hemm. Jekk tassew kien hemm bidla, allura kien jinkombi fuq l-azzjonisti l-obbligu illi sabiex ikun hemm bidla fil-*memorandum* u l-*articles* ta` FBS għall-finijiet u effetti kollha tal-ligi dik il-bidla kellha tkun registrata mar-Registatur tal-Kumpanniji kif trid il-ligi. Minn dan kollu ma sar xejn. Ma jagħmel ebda sens l-argument li peress li l-affarijiet kienu jitmexxew b`certa mod u li sa minn dejjem allegatament kien hemm intendiment dwar kif għandhom jitmexxew l-affarijiet, dak il-metodu kellu s-sahha legali li jigi enforzat a skapitu ta` kull ma jingħad fil-*memorandum* u fl-*articles*. Jekk jigi accettat dan l-argument, allura huwa inutile li jsir l-*memorandum* u l-*articles*. Dawn għandhom natura kontrattwali, u għalhekk metodu jew prassi – sejjahlu li trid - mhux bizzejjed wahedhom jitwarrab dak stipulat fil-*memorandum* u fl-*articles*.

L-importanza tal-kontenut tal-*memorandum* u l-*articles* hija manifestata fid-dottrina tal-*ultra vires*.

L-awturi **Charlesworth & Cain** - **Company Law** - 12<sup>th</sup> Edition – Pag 73 ighidu :-

*“In order to protect the subscribers and persons dealing with the company the courts held that a company incorporated by registration under the Companies Acts is incorporated by Parliament for the objects stated in the memorandum of association so that it has power only to carry out such objects and anything else which is reasonably incidental thereto. If an act is performed or a transaction carried out which, though legal in itself, is not authorised by the objects clause in the memorandum or by statute, it is ultra vires, i.e. beyond the powers of the company and void, so that it cannot be ratified even if all the members wish to ratify.”*

Dwar din id-dottrina, kien hemm diversi sentenzi fir-Renju Unit u dana peress li inholqot sitwazzjoni fejn jekk kumpanija tagixxi *oltre l-objects clause* kontenut fid-dokumenti relattivi, tali att gie meqjus f`certi okkazzjonijiet bhala *ultra vires*.

Din id-dottrina giet moderata u llum il-gurnata, tapplika biss għal kazi limitat ferm.

**Brenda Hanningan** (op. cit.) – pag 101 – tghid :-

*“A company registered under the CA 1985, while a separate legal entity, as we saw in Chapter 3, does not have unlimited capacity to act. Instead, its capacity*

is determined by the company's objects as stated in the memorandum and acts outside of the objects are ultra vires and void.

This ultra vires doctrine was laid down by the House of Lords in **Ashbury Railway Carriage and Iron Co Ltd v Riche** (1875 LR 7 HL 653). The facts were that a company (whose objects were limited to making and selling railway carriages and equipment) contracted to provide the funding for the construction of a railway in Belgium. Subsequently, the company was sued when it failed to provide the funding as agreed and it pleaded in its defence that the transaction was ultra vires and beyond its capacity.

The House of Lords agreed that the contract was ultra vires and the company could not be held to it. The memorandum of association required the company to state its objects which indicated the purpose for which the company was established. Those objects identified the ambit of activity beyond which the company could not go. The question, Lord Cairns noted, was not as to the legality of the contract; the question was as to the competency and power of the company to make the contract. The restriction of a company's capacity to its objects as stated was intended to protect creditors and shareholders by requiring the company to operate within defined limits. (See **Cotman v Brougham** (1918) AC 514 at 520 per Lord Parker).

Almost immediately, the judiciary appeared to appreciate that the doctrine was something of a strait-jacket. In **A-G v Great Eastern Rly Co** (1880 5 App cas 473, HL), the House of Lords attempted to relax it somewhat by holding that, in addition to a company's express objects, the court will imply that a company may do all such other things as may fairly be regarded as incidental or conducive to the attainment of its objects. In practice, a clause of this nature is usually expressly included in the objects clause.

Notwithstanding the concession in **A-G v Great Eastern Rly Co**, and rather than relying on any possible judicial implication, the practice developed whereby companies typically adopted a vast array of objects to make sure that their activities could not conceivably be ultra vires.....Moreover, despite the breadth of the objects adopted, disputes continued pursuing (See for example, **Re Jon Beau fort (London)Ltd** 1953, Ch 131; **Re; International Sales and Agencies Ltd v Marcus** (1982) 3 All ER 551; **Re Horsley & Weight Ltd** (1982) 3 ALL ER 1045; **Simmonds v Heffer** (1983) BCLC 298). This situation was increasingly unacceptable as the original justifications given in **Ashbury Railway Carriage and Iron Co Ltd v Riche** for the ultra vires doctrine (protection of shareholders and creditors) ceased to have much modern resonance. The expectation in the commercial world was that a company would not be restricted in the activities which it might conduct and shareholders and creditors looked to mechanisms other than the ultra vires doctrine to protect their interests.

Legislative intervention to protect third parties followed, both at the EC level and domestically.....The net result, as far as persons dealing with the company are concerned, is that the significance of the ultra vires doctrine and



therefore the objects clause is much diminished by these statutory provisions which, in particular, prevent the validity of any act done by a company from being questioned on the ground of lack of capacity (CA 1985, s 35(1)).

However, as the statute permits shareholders to seek injunctive relief with respect to anticipated acts which are ultra vires (s 35(2) and directors, and others, may be personally liable for losses arising from ultra vires transactions (s 35(3), it is still necessary in a very small number of cases to be able to identify when a transaction is ultra vires. Thus the doctrine retains some residual vitality...Against that background, and faced with a particularly convoluted lower court judgement dwelling at length on the ultra vires doctrine (See 1982, 3 All ER 1057), it was perhaps unsurprising that the Court of Appeal decided to comprehensively restate the position on ultra vires in **Rolled Steel Products (Holdings) Ltd v British Steel Corpn** ((1985 3 All ER 52)...The fact in Rolled Steel are complex but involved a company guaranteeing debts of an associated company, essentially gratuitously. The transaction had been entered into with a view to improving the position of one of the directors who had personally guaranteed the associated company's debts.

In approaching these matters, the court said, a clear distinction must be drawn between acts which are beyond the capacity of the company and acts which are carried out by the directors in excess or abuse of their powers. Only the former are ultra vires transactions and void. Whether a transaction is beyond the capacity of the company and ultra vires is a matter of construction of the memorandum. The objects clause must be construed to see whether there is explicit provision for the activity or transaction in question, whether expressed as an object or a power, or whether the transaction is capable of being performed as reasonably ancillary or incidental to the objects. If the transaction falls within either of these categories (ie either expressly provided for, whether as an object or as a power, or within an implied power) then it is intra vires, otherwise it is ultra vires.”

Fil-pag 111 tal-**Pennington** (op. cit.) huwa spjegat kif kienet mitigate d-dottrina :-

“The purpose of the new rules enacted by the Companies Act 1989 is subject to certain reservations, to validate transactions entered into by a company, even though they are ultra vires or beyond the company's objects and the powers conferred on it by its memorandum and articles of association` at the same time the new rules maintain the personal liability of the company's directors to the company for the loss caused by them engaging in ultra vires activities, and also relief to prevent the company and its directors from entering into ultra vires transactions and engaging in ultra vires activities. In other words, the external operation of the ultra vires rule in invalidating transactions entered into by a company beyond its objects and powers is brought to an end, but the internal or disciplinary function of the rules for the protection of members or shareholders of the company is retained.”

Din id-dottrina terga` ghal darb`ohra tixhet dawl dwar l-importanza tal-kontenut tal-*memorandum* u *l-articles of association*.

**Huwa imperattiv li l-kontenut ta` l-istess ikun jirrifletti dak li qed isir peress li huwa l-istess kontenut tal-*memorandum* u *articles* hekk kif registrati li huwa vinkolanti u *legally binding*.**

Din il-Qorti hija konvinta li dak li huwa vinkolanti u li ghandu jorbot huwa dak kontenut fil-*memorandum* u *articles of association* mhux l-allegat intendiment li seta` kien hemm.

Il-Qorti ssib konfort dwar dan anke mill-fatt li fil-kaz tal-*memorandum* u *articles of association* ta` B & S Contractors Limited (B & S), jissemma espressament illi kull wahda mil-*legacy families*, jkollha rapprezentanza fil-Bord ta` l-ghazla tagghom. Fl-artikolu 7(i) tal-*memorandum* ta` B & S, hemm imnizzel li hemm dritt ta` kull familja li tinnomina direttur.

Din il-Qorti mhijiex konvinta li nholqot konswetudni li ghall-finijiet u effetti kollha tal-ligi ssuperat il-kontenut tal-*memorandum* u *articles of association*.

Dan qed jinghad peress li meta jigu meqjusa l-provi mressqa dwar x` sehh wara l-mewt ta` uhud mill-ahwa subien Busuttil jew ir-rizenja ta` uhud mill-ahwa subien Busuttil, jirrizulta li l-prassi dejjem kienet li ssir rizoluzzjoni straordinarja mill-azzjonisti ta` FBS li permezz taghha jigi mahtur direttur gdid. Huwa minnu li dan id-direttur il-gdid solitament kien jigi mill-familja koncernata fejn ikun ghadu kif miet jew irrizenja l-awtur, izda sabiex in-nomina ssir hatra kien hem mil-htiega tal-approvazzjoni ta` l-azzjonisti. Ghalhekk in-nomina setghet tigi skartata, u ma kenitx torbot lill-azzjonisti l-ohra.

Mill-provi rrizulta, li kien jintalab li jkun hemm approvazzjoni unanima ta` dik in-nomina u dana minhabba x-xewqa ta-*chairman* ta` dak iz-zmien Charles Busuttil. Effettivament, maggoranza ta` l-azzjonisiti kienet bizzzejjed biex jigi appuntat direttur, izda ic-*chairman* ta` dak iz-zmien kien jipprova jgib il-kunsens unanimu u dan bil-ghan li jkun hemm kulhadd ferhan u maghqud. Kif irrizulta, l-ottjeniment ta` kunsens unanimu kien jiehu z-zmien, bhalma gara meta giet nominata Suzanne Busuttil bhala direttur minflok missierha.

Il-Qorti tinnota li l-hatra ta` Suzanne Busuttil sehhet bis-sahha ta` extraordinary resolution tat-2 ta` April 2008.

Wara l-mewt ta` Charles Busuttil, il-hatra ta` direttur iehor minfloku sehhet billi gie nominat mill-familja ta` l-istess Charles Busuttil, ibnu Christian Busuttil izda mbaghad issejhet laqgħa generali straordinarja ta` l-azzjonisti li fiha Christian Busuttil gie appuntat b`maggoranza ta` l-azzjonisti.

Ghaldaqstant il-Qorti ma taqbilx li dan huwa kaz fejn kien hemm konswetudni li qatt ma giet formalizzata bil-miktub.

**Ghalhekk il-Qorti mhijiex sejra tilqa` t-talba tar-rikorrenti fis-sens li tagħti ordni sabiex il-memorandum u articles of association ta` kull kumpannija involuta jigu emendati biex jirriflettu l-allegazzjoni li kull familja għandha tkun rappreżentata fil-Bord minn persuna ta` l-ghazla tagħha.**

Ir-rikorrenti sostnew li kagun li mhumiex rappreżentati fil-bord ta` FBS u anke tas-sussidjarji ta` FBS, huma qed jigu prekluzi li jippartecipaw fil-geštjoni, sorveljanza, monitoragg u kontroll ta` FBS u tas-sussidjarji tagħha.

Kif diga` ngħad, din il-Qorti ma tarax li hemm xi dritt vigenti li r-rikorrenti jkunu parti mill-bord tad-diretturi ta` FBS.

**Lanqas ma taqbel ma` l-allegazzjoni li r-rikorrenti mhumiex rappreżentati fil-bord ta` FBS. Id-diretturi effettivament jahdmu u jirrapreżentaw l-interessi tal-kumpannija kollha, u fl-ahħar mill-ahħar jirrapreżentaw ukoll l-interessi ta` l-azzjonisti kollha.**

Fuq nota ohra, ir-rikorrenti allegaw ukoll li jmur kontra l-Companies Act, li azzjonisti (bħalma huma r-rikorrenti) jigu penalizzati għaliex ikun esprimew ruhhom. Gie sostnut li l-maggoranza ma għandhiex dritt li tagħmel dak li trid u tikkaguna oppressjoni u tghaffig tal-minoranza. Saret referenza għad-dottrina tal-*proper purpose doctrine* u ta` *l-equity*.

Għal darb`ohra, din il-Qorti ma taqbilx ma` dak li qed jigi allegat mir-rikorrenti.

Abbazi tal-provi, din il-Qorti hija konvinta li bl-agir taghha bhala direttur ma jfissirx illi Suzanne Busuttil setghet taghmel li trid u toggezzjona ghal kollox.

Il-Qorti tirreferi ghall-affidavit ta` John Bonello :-

*“..SB has no proper basis for her disdain....I have never, to my recollection, ever heard her say anything positive about anyone or anything connected to the FBS group....I have seen the effect that SB`s criticism and litigious actions has had on the spirit and mood of the FBS board....I have to state that I have seen no evidence of discrimination against her or any shareholder but I have seen her behaviour and I can say that it was not helpful to installing the right governance structures in the Group.”*

Mix-xiehda ta` Suzanne Busuttil, irrizulta li mhi kuntenta b`xejn li jsir fil-kumpanniji. Lanqas ma hija kuntenta bin-nies esperti u professjonisti li kienu nkarikati, fosthom id-ditta ta` awdituri li ironikament ghamlet zmien tahdem maghha stess.

Din il-Qorti tara li t-tnehhija ta` Suzanne Busuttil minn direttur sehhiyet ghal ragunijiet serji u validi peress li l-agir taghha fil-bord kien negattiv.

Inoltre dik kienet ix-xewqa tal-maggoranza ta` azzjonisti.

Din il-Qorti tqis ukoll li wara li Suzanne Busuttil tnehhiet minn fuq il-Bord ta` FBS, ma giet prodotta l-ebda evidenza li t-*turnover* naqas jew li n-negozju beda sejjer ghall-aghar.

Addirittura kien ippruvat li t-*turnover* zdieg kif ukoll il-profitti qabel it-taxxa.

Ma tressqet l-ebda prova sostantiva li n-nuqqas ta` Suzanne Busuttil li tagixxi bhala direttur kien ta` pregudizzju ghall-interessi tal-kumpannija u tal-azzjonisti.

Finalment il-Qorti tirreferi ghall-provvediment taghha tat-2 ta` Settembru 2016 fil-kawza **Av Jonathan Abela Fiorentino vs Vroon Containers BV et** li kienet citata mill-intimati fin-nota ta` osservazzjonijiet taghhom. Il-Qorti qalet hekk :-

*“In-nuqqas ta` rapprezentanza fit-tmexxija ta` kumpanija mhux per se att ta` oppressjoni, ingust jew diskriminatorju. Il-protezzjoni gudizzjarja tal-membru hija fis-sens li min b`xi mod ikollu kontroll fuq l-ishma ta` kumpanija ma jikkommettix atti li jopprimu b`mod ingust u diskriminatorju lil min jippossjedi ishma ohra.”*

**Ma hemmx lok li taghti rimedji kif mitlub mir-rikorrenti, inkluz illi Suzanne Busutil tkun appuntata direttur.**

**b) In-nuqqas ta` FBS illi Suzanne u/jew Brian Busutil jinghataw impieg**

Ir-rikorrenti ghamlu referenza ghall-artikolu 8.1 tal-*articles of association* ta` FBS li jipprovdu li kull membru ta` kull *legacy family* ghandu d-dritt li jigi impjegat mal-kumpanija. Irrizulta mix-xhieda moghtija li Suzanne u Brian Busutil ma kinux impjegati minn FBS jew is-sussidjarji taghha.

Gie sostnut li dan huwa kaz iehor ta` abbuz tal-maggoranza peress li diversi membri ohrajn tal-familja Busutil kienu jew ghadhom impjegati ma` FBS jew is-sussidjarji taghha.

Saret referenza ukoll ghall-fatt li fl-*articles of association* hemm projbizzjoni li persuna f`pozizzjoni gholja jew azzjonist huwa prekluz li jahdem ghal rasu u ghalhekk ir-rikorrenti ma jistghux jaqilghu salarju minn band` ohra.

Ir-rimedju mitlub mir-rikorrenti huwa li Suzanne Busutil tigi mpjegata ma` FBS u kumpens tat-telf ta` paga.

Dwar din il-lanzanza, din il-Qorti tosserva li FBS qeghda tagixxi u ilha hekk tagixxi bhala *holding company* sa mis-sena 2000.

Infatti FBS ma taghmel l-ebda attivita` hlief li tqassam id-*dividends* lill-azzjonisti taghha.

Mill-provi jirrizulta li FBS ma ghandha l-ebda impjegati u lanqas ghandha bzonn li timpjega xi nies. Mill-*financial statements* hekk jirrizulta wkoll.

**Ghalhekk it-talba tar-rikorrenti li Suzanne Busuttil tigi mpjegata ma` FBS ma tistax tigi akkolta.**

**Dwar imbaghad it-talba biex Suzanne Busuttil tigi mpjegata ma` sussidjarji ta` FBS, jerga` jigi ribadit li din it-talba tezorbata ruhha mill-mertu ta` din l-procedura fid-dawl tal-provediment taghha tas-6 ta` Marzu 2013 li kien ikkonferma mill-Qorti ta` l-Appell.**

Dwar ir-rimedju tat-telf ta` paga, din il-Qorti tara li lanqas dan ma ghandu jintlaqa` peress li kif gia` inghad, FBS ilha ghal zmien twil tagixxi bhala *holding company* minghajr impjegati.

In oltre, lanqas ma ngabet prova li Suzanne Busuttil spiccat bla impjeg u ma setghet tahdem imkien. In fatti, ghamlet zmien tahdem ma` l-istess ditta ta` awdituri li qed jagixxu bhala l-awdituri ta` FBS.

**c) In-nuqqas ta` rappresentanza fuq is-sussidjarji ta` FBS, inkluza FCP**

Li diga` nghad fil-kaz ta` (a) ighodd ghal dan l-ilment, li ghalhekk qed ikun respint.

**d) Frodi u abbuz**

Ir-rikorrenti ghamlu referenza ghal grajjiet li skont huma jammontaw ghal frodi u abbuz.

**i. Flus li ma gewx dikjarati u li kienu depozitati f`kontijiet esteri**

Ir-rikorrenti ghamlu referenza ghall-fatt li ittiehdu miljuni minn FBS u B & S minghajr dawn qatt ma nstabu waqt l-*audit* u spicaw f`kontijiet esteri bir-*risultat* li l-*financial statements* kif ukoll l-*consolidated financial statements* jinkludu spejjez fittizji.

Kuntrarjament ghal din l-allegazzjoni, hemm ix-xieghda ta` John Zarb u Simon Flynn kli kienet konsistenti u baqghu jinhargu *clean audit reports*.

Ir-rikorrenti allegaw li huwa irrelevanti li dawn il-flejjes sussegwentement tqassmu lill-azzjonisti. Dan ghalix dak iz-zmien, ir-rikorrenti ma kinux fil-bord ghalix kienu qed jissucedu lil missierhom u ghalix malli Suzanne Busuttil bdiet tistaqsi dwar dawn il-flejjes, giet imwissija biex toqghod kwieta.

Skont ir-rikorrenti, dan huwa agir oppressiv ghalix il-gestjoni kienet qed issir bil-mohbi, b`mod irregolari u kontra l-ligi.

Minkejja l-allegazzjonijiet tar-rikorrenti, ma tressqux provi li dawn il-flejjes effettivament kienu jidderivaw minn negozju ta` FBS jew minn B & S.

Mhuwiex ippruvat b`mod sodisfacjenti in-natura tal-flejjes esteri li tqassmu bejn l-azzjonisti u kif kienu generati.

Minn ezami tad-dokumenti ezebiti a fol 908 u 909, ma hemm l-ebda indikazzjoni fuq min kien intestat il-kont bankarju.

Lanqas ma hemm xejn x`jindika li dawn id-dokumenti kienu jirrigwardaw B & S jew lil FBS.

Skont ix-xiehda ta` John Zarb fil-kawza 802/2014 JZM, irrizulta li meta huwa sar jaf b`dawn il-flejjes, kien hemm uzanza tal-hamest ahwa originali, liema uzanza twaqqfet.

Dan spjega li dawn il-flus ma sarux b`tali mod li kkompromettew l-kontrolli tal-kumpaniji u li kien hemm kummissjonijiet li jinghataw direttament minghand il-kumpaniji li kienu jissorsjaw l-affarijiet u li kienu jaghtu *commission* lil familja.

Spjega li kien hemm ukoll kaz ta` *volume discounts* u *marketing costs* li kienu jithallsu lil kumpaniji u lil klienti awtorizzati.

Bil-gurament tieghu, huwa spjega li dawn bl-ebda mod ma kkompromettew *the day to day transactions* tal-kumpanija.

Irrizulta wkoll li minn laqghat li saru mal-Kummissarju tat-Taxxi, gie deciz li din il-vertenza tigi kkunsidrata bhala li l-azzjonisiti ma ddikjarawx dan

id-dhul, izda mbaghad bl-amnestija li hareg il-Gvern ta` dak iz-zmien, dak li rcivew dawn il-flejjes gew moghtija parir li jhallsu l-mizata ta` l-amnestija.

**Fl-isfond ta` dan kollu, prova dwar min liema sorsi ingiebu dawn il-flejjes u jekk tali fondi nghatawx lil kumpaniji nfushom u mhux lill-familja Busuttil *per se* ma tressqitx a sodisfazzjon ta` din il-Qorti.**

**ii. Hlas ta` spejjez personali ta` ufficjali mill-flus tal-kumpanija**

Ezempju iehor ta` allegat abbuż li ghamlu referenza ghalih ir-rikorrenti huwa l-uzu ta` flejjes tal-kumpanija u ta` impjegati tal-kumpanija ghal skopijiet personali tal-diretturi, staff u membri tal-familja taghhom. Dan kollu jwassal ghall-inattendibilita` tal-*financial statements* kif ukoll ta` l-operat ta` min gie inkarigat biex imexxi l-kumpanija.

Ir-rimedju li qed jintalab mir-rikorrenti huwa li din il-prattika ta` frodi u abbuż ma jigux tollerati u jigu istitwiti kontrolli serji interni, sistemi ta` internal reporting traparenti, *good management practices*, *good governance* u *accountability* li jaghti kaz l-interessi tal-kumpanija u ta` l-azzjonisti kolha.

Din il-Qorti gharblet dak li ssemma mir-rikorrenti fejn gie sostnut li fil-kaz ta` B & S kien hemm *allowance* li tithallas lil Joseph Busuttil. Madanakollu, din saret bl-approvazzjoni tad-diretturi kollha ta` dak iz-zmien inkluz missier ir-rikorrenti u wara l-mewt ta` Charles Busuttil, dan il-hlas gie ratifikat mid-diretturi l-ohra kollha tal-kumpanija hlief ghal Suzanne Busuttil. Dwar l-allegazzjoni tal-famuza ikla tal-ewwel tas-sena, din il-Qorti ma tarax li dan jista` jitqies bhala abbuż izda hija semplici turija ta` apprezzament lill-familja kollha.

Dwar allegazzjonijiet li kienu jithallsu safar, vaganzi u ikliet li kienu lkoll personali izda imhallsa minn flus tal-kumpanija, din il-Qorti ma giet moghtija l-ebda provi sostanzjali.

Kien hemm ukoll allegazzjoni li kienu jintuzaw impjegati tal-kumpanija biex jaghmlu xogholijiet personali ghal uhud mill-membri tal-familja Busuttil.

Madanakollu, ghalkemm din kienet Prattika normali ghal xi snin, din il-prattika ma ghadhiex tigi adoperata, hekk kif irrizulta mix-xhieda migbura.

**e) Manuvri u skemi fl-interess ta` sezzjoni ta` azzjonisti biss**



Ir-rikorreni ghadew biex ghamlu referenza ghal diversi manuvri allegatament oppressivi fil-konfront tar-rikorreni u li gew intizi biss ghall-ahjar interess ta` grupp ta` azzjonisti.

Dawn kienu (i) tbaghbis tal-profitti ta` B & S billi jsir bejgh u profit ta` certu Tiara Prodcuts u jidhru fil-kotba ta` FBS; (ii) progett li ssir Dutch  *Holding company*; (iii) negozjati li tinbiegh FCP ghal prezz inferjuri ghal valur reali taghha u (iv) trasferiment u bejgh ta` l-assi u operazzjonijiet ta` B & S lil FCP/FBS bazata fuq valutazzjoni inkorretta.

Din il-Qorti tinnota illi dawn il-lanjanzi huma mertu ta` azzjonijiet ohra li jinsabu pendenti quddiem din il-Qorti u li ser jigu decizi llum wkoll.

Ir-rikorreni sostnew li r-rimedju li jridu huwa li jkun hemm ordni ta` reversal tat-trasferiment ta` l-assi u operazzjonijiet ta` B & S lil FCP/FBS, illi l-profitti mill-bejgh tal-prodotti tat-*trademark* TIARA jigu kollha re-allokati lil B & S u illi jigi appuntat rapprezentant tar-rikorreni fuq FCP/FBS u l-Bordijiet kollha.

Dwar dawn l-ilmenti, din il-Qorti tara li ghandha tistrieħ fuq ix-xhieda ta` Simon Flynn u John Zarb, entrambi persuni indipendenti, ta` integrita u tal-oghla reputazzjoni professjonali. Dawn sostnew fix-xhieda taghhom li ma kienx hemm xi tbaghbis ta` profitti ta` B & S in konnessjoni mal-prodotti TIARA. Anke fir-rigward tal-valutazzjonijiet maghmula dwar l-assi u n-negozju ta` B & S, dawn saru minnhom bhala esperti indipendenti u anke ntalbet stima minghand ditta ohra ta` awdituri.

Dwar imbagħad l-ilment fuq il-progett tal-kumpanija Olandiza, din il-Qorti hadet konjizzjoni ta` l-ilment tar-rikorreni u tar-referenzi li gew maghmula mir-rikorreni dwar *tax avoidance schemes* u *sweetheart deals*. Madanakollu, f'dan il-kaz, kien sar studju dettaljat u akkurat minn esperti lokali u barranin, kif ukoll kien hemm approvazzjoni dwar tali progett mill-Ministeru tal-Finanzi, Malta Enterprise u d-Dipartiment tat-Taxxi Interni.

L-ilment dwar tahdidiet għall-bejgh ta` FCP lanqas ma jforni xi prova ta` oppressjoni, peress li minn banda l-wahda, l-intimati qed jinsistu li ma kien hemm ebda diskussjonijiet sabiex tinbiegh il-kumpanija FCP u kif ukoll, ma seħħ l-ebda trasferiment ta` FCP u għalhekk ma jistax jigi kkunsidrat li kien hemm xi oppressjoni jew diskriminazzjoni li seħħet fil-konfront tal-azzjonisti.

f) **Governanza dgħajfa jew mankanti, nepotizmu u nuqqas ta` meritokrazija**

Gie allegat mir-rikorrenti li hafna mill-impjegati gew promossi u nghataw opportunitajiet fuq bazi ta` *cronyism* u mhux mertu. Ir-rikorrenti allegaw li min kien kompetenti inzamm lura u inholqot sistema ta` salarji minghajr process car u trasparenti. Ir-rikorrenti saħqu illi giet zviluppata kultura li f`pozizzjonijiet ta` fiducja jitpoggew niex li ma kinux oggettivament kompetenti jiehdu veduta indipendenti.

Ir-rikorrenti sostnew illi hemm tmexxija u kontroll minn certu fazzjonijiet li jinnominaw nies biss leali lejhom u dan qed iwassal għal pregudizzju dwar kif qed titmexxa l-kumpanija. Ir-rimedju mitlub mir-rikorrenti dwar dan huwa li tigi kreata struttura fejn l-informazzjoni tkun veritiera u kredibbli u li l-vantaggi indiretti mhux dikjarati jiu regolarizzati. Intalab li wara sejha għall-applikazzjoni, ikun hemm process ta` ristrutturar fejn persuni kompetenti jigu appuntati fuq bazi ta` mertu u li r-remunerazzjoni tigi miftehma skont policies ragonevoli. Giet mitluba wkoll li jkun hemm sistema ta` internal u external reviews kontra l-frodi.

Wara li analizzat dak li tressaq quddiemha, din il-Qorti qieset li attwalment hemm in vigore varji mizuri sabiex jissalvagwardjaw kontroll u thaddin tal-principji ta` *good governance*. Irrizulta li qed isiru laqgħa tal-Bord tad-diretturi b`mod regolari kif ukoll qed issir prezentazzjoni ta` rapporti dettaljati qabel kull laqgħa sabiex dawn jigu kkunsidrati mid-diretturi. Gie mwaqqaf *remuneration committee* indipendenti li huwa mmexxi minn John Bonello kif ukoll twaqqaf *audit committee* immexxi minn Joseph Schembri. Qed isiru laqgħat informali kull sitt xhur għall-azzjonisti sabiex dawn jingħataw informazzjoni dwar l-andament tan-negozju tal-kumpanija.

Per konsegwenza, din il-Qorti ma tarax li hemm lok li jintlaqgħu t-talbiet tar-rikorrenti. Hija mhijiex tal-fehma li tressqet prova oggettiva u sodisfacenti dwar ir-rekwizit ta` l-ewwel subartikolu ta` l-artikolu 402 tal-Kap 386.

**Provvediment**

**Għar-ragunijiet kollha premessi, il-Qorti qegħda tipprovdi billi :-**

**Tilqa` l-eccezzjonijiet kollha tal-intimati li sal-lum dwarhom għadu ma nghatax provvediment.**

**Tilqa` l-eccezzjonijiet tal-kjamati fil-kawza.**

**Tichad it-talba tar-rikorrenti.**

**Tordna lir-rikorrenti sabiex ihallsu l-ispejjez taghhom u tal-intimati.**

**Tordna lill-intimati sabiex ihallsu l-ispejjez kollha tal-kjamati fil-kawza.**

**Onor. Joseph Zammit McKeon  
Imhallef**

**Amanda Cassar  
Deputat Registratur**