

Qorti ta' l-Appell
(Kompetenza Inferjuri)

Imhalled Anthony Ellul

Appell Civili numru:- 161/2015/1

Yellow Pages (Malta) Limited [C11814]

vs

Stephen Debono

30 ta' Mejju, 2017.

Is-socjeta attrici appellat mis-sentenza tal-Qorti tal-Magistrati (Malta) tas-6 ta' Lulju, 2016 li biha laqghet l-ewwel eccezzjoni preliminari tal-konvenut li m'huwiex il-legittimu kontradittur tas-socjeta' attrici. Fis-sentenza l-ewwel qorti qalet:

"Illi fil-kaz odjern jirrizulta li s-socjeta' attrici kienet taf li l-konvenut ma kienx qed jidher fil-vesti tieghu personali izda f'isem il-kumpaniji tieghu. Jirrizulta mix-xhieda li ta Jason Gafa' ghan-nom tas-socjeta' attrici li kien jaf li l-konvenut ma kienx qed jagixxi f'ismu proprju u ex-admisses jghid:-

"Sostna illi l-konvenut ilu klijent taghhom mis-sena 2009 u ilhom jiehdu hsieb irrekliamar tal-kumpaniji tieghu ghal dawn l-ahhar sitt snin. Huwa qal li hemm bilanc li ilu dovut mis-sena 2013 fl-ammont ta' elf, sitt mija u sittax (€1,616) fuq l-account maghruf bhala Labopharm u erbat elef, sitt mija u hamsa u hamsin Ewro (€4,655) fuq kont iehor maghruf bhala Reactilab Limited".

Imbaghad ikompli jghid ukoll ex admisses:

"Gie esebit ukoll id-Dokument CSH1 li jirreferi ghall-kont Reactilab Limited u x-xhud spjega li hawn hekk ukoll hemm l-ordni, hemm l-invoice u hemm l-istatement of accounts datat 31 ta' Lulju 2013".

In oltre id-dokumentazzjoni esebita a fol. 11 et seq tkompli tikkonferma li s-socjeta' attrici kienet taf li qed tinnegozja ma' socjeta'. Fl-invoice datata 31 ta' Lulju 2013 hdejn l-intestatura 'company name' hemm miktub 'Labo-Pharm', fl-istatement of accounts a fol 12 hemm bhala account name 'Labo-Pharm' gewwa Hal Warda Complex. Kif ukoll fl-invoice datata 31 ta' Lulju 2013 hdejn l-intestatura 'company name' hemm miktub 'Reactilab' u l-istess fl-istatement of accounts a fol. 15.

L-exchange of e-mails saru bejn Maria Attard ghan-nom ta' Reactilab u Jason Leigh Gafa ghan-nom tas-socjeta' attrici, l-adverts huma ukoll indikattivi li l-oggetti li kienu qed jigu reklamati huma ta' socjeta', l-ittra legali li ntbaghtet mis-socjeta' attrici kienet tirreferi ghal Reactilab & Labo-Pharm accounts (fol. 98) oltre l-ircevuti li jinsabu esebiti a fol 96 et seq huma intestati f'isem Reactilab u Labo-Pharm.

Ghalhekk dawn id-dokumenti wahedhom huma indizzji cari li effettivament in-negozju sar bejn is-

socjeta' attrici u s-socjeta' Labo-Pharm u Reactilab. Sahansitra fuq l-advertisement order hemm anke indikat mis-socjeta' attrici il-VAT number tassocjeta' Labo-Pharm u Reactilab (fol 98 u 99).

Ghalhekk fid-dawl tas-suespost il-Qorti tara li l-eccezzjoni preliminari moghtija mill-konvenut hija gustifikata u ghandha tigi milqugha".

L-attrici appellat mis-sentenza u l-aggravji hu bazat fuq il-fatt li mid-dokument JG21 kien jirrizulta li hemm relazzjoni guridika bejn il-partijiet. Ma jirrizultax li l-attrici appellat minn dik il-parti tas-sentenza fejn l-ewwel qorti kkonkludiet li n-negozju sar bejn l-attrici u Labopharm Limited u Reactilab Limited.

Il-konvenut wiegeb li d-dokument JG21 ma kellu l-ebda valur probatorju in kwantu m'huwix awtentikat u lanqas ma gie kkonfermat bil-gurament.

B'digriet tal-10 ta' Marzu, 2017 din il-qorti kienet issospendiet il-prolazzjoni tas-sentenza u ordnat li:

"i. L-attrici tipprezenta l-original tad-dokumenti (advertisement order form datati 31.7.2013) li pprezentat u jinsabu a fol. 11 (Dok. CSH) u fol. 14 (Dok. CSH1);

ii. Il-konvenut jipprezenta l-original tad-dokument (advertisement order forms datati 31.7.2013) li pprezenta u jinsabu a fol. 98 u 99 tal-process".

Fil-15 ta' Marzu, 2017 l-attrici pprezentat nota b'dokumenti, li jikkonsistu:

- i. Advertisement order form datata 31 ta' Lulju, 2013 fejn il-prezz tal-ordni kien ta' €8,448.58. Fil-parti ntestata 'company name' l-isem hu Reactilab. Fil-qiegh tal-formola hemm isem il-konvenut u l-firma. Fiha jinghad: *"The undersigned has read this contract, including the terms and conditions on the reverse side and by his/her signature acknowledges that he/she has received a copy of this form and agrees to the terms and conditions as stated. The Undersigned further understands and agrees that this application is subject to acceptance by the publisher, and cannot be cancelled except as stated on reverse"*.
- ii. Advertisement order form datata wkoll 31 ta' Lulju, 2013 fejn il-prezz tal-ordni kien ta' €2,444.02. Fil-parti ntestata 'company name' l-isem hu Labo-Pharm. Fil-qiegh tal-formola hemm isem il-konvenut u l-firma. Il-parti *printed* ta' din il-formola hi identika ghal dik tal-*advertisement order form* fuq imsemmija.
- iii. Specimen ta' *original advertisement order form*, li fil-parti *printed* ta' quddiem hi identika ghaz-zewg formoli fuq imsemmija. Fuq wara tal-formola hemm il-kundizzjonijiet tal-kuntratt. Fost affarijiet ohra jinghad:

"2.3 Guarantor shall mean the person signing this form who guarantees in his own personal capacity name to pay any balance due to YPL should the customer fail to pay as agreed whether the customer trades as a sole trader, any partnership or limited liability Company".

"5.5 The guarantor hereby constitutes himself a joint and several debtor with the customer in favour of YPL, which accepts, to abide by the customer's obligations under these terms and conditions. The customer and guarantor acknowledge that YPL has the right at its option to proceed for the recovery of any balance due against either the customer or the guarantor or against both at the same time.

5.6 In the event that the customer is a private limited liability company, the director/or shareholder signing this form or placing this order bind themselves personally to YPL which accepts, in solidum together with the customer to the performance of all the obligations under these terms and conditions. In particular and without prejudice to the generality to the above, they shall be personally liable in solidum with the customer for the payment of all dues to YPL in the absence of any other agreement this personal liability shall subsist even where the customer is liquidated, wound up, amalgamated with another company or converted, or notwithstanding any charge in the names of the directors and/or shareholders after the signing of this form and/or placing of this order and/or in the running of the business".

L-ewwel eccezzjoni li giet michud fis-sentenza tas-6 ta' Lulju, 2016 hi fis-sens li l-konvenut qal li m'ghandux relazzjoni guridika mas-socjeta attrici u li dejjem:

"..... agixxa fil-kwalita' tieghu ta' rapprezentant ta' zewg socjetajiet b'responsabbilta' limitata u senjatament Reactilab Limited (C56095) u Labo-Pharm Ltd (C39816)".

Wara d-digriet tal-10 ta' Marzu, 2017, fis-27 ta' Marzu, 2017 il-konvenut ipprezenta nota guramentata fejn iddikjara:

"Illi sfortunatament l-esponenti ma jistax jaderixxi ma' din id-direttiva stante li minkejja hafna tentattivi u tiftixiet, l-esponenti ma jistax isib l-original ta' dawn id-dokumenti, izda ghandu biss fil-pussess tieghu fotokopji tal-advertisement order forms kif diga' gew esebiti fl-atti".

Wara li l-qorti regghet qrat l-atti, tosserva:-

1. Kif il-qorti diga' osservat fid-digriet fuq imsemmi, il-konvenut qatt ma kkontesta li dawn il-kundizzjonijiet kienu fl-original tal-formoli li ffirmu u li evidentement kienu nghataw lilu. Il-qorti m'ghandix dubju wkoll li l-original tad-dokumenti tkun inghatat lill-konvenut, li sahsitra pprezenta kopja fotostatika taghhom meta xehed quddiem l-ewwel qorti.
2. Fil-kopja fotostatika tal-*advertisement order form* li pprezenta l-konvenut stess (ara fol. 98 u 99), hemm stampat li: *"The undersigned has read this contract, including the terms and conditions on the reverse side and by his/her signature acknowledges that he/she has received a copy of this form and agrees to the terms and conditions as stated. The Undersigned further understands and agrees that this application is subject to acceptance by the publisher, and cannot be cancelled except as stated on reverse"*. Mela hu evidenti li fuq iz-zewg advertisement forms li ffirmu l-konvenut, fuq il-parti ta' wara tad-dokumenti kellu l-kundizzjonijiet tal-

kuntratt.

3. Meta tipparaguna l-advertisement order form li pprezentat l-attrici wara d-digriet tal-10 ta' Marzu 2017 u li ffirmat l-konvenut (ara fol. 20 u fol. 24) u l-ispecimen *advertisement order form* (fol. 27), il-parti stampata tad-dokument hi identika. Ghalhekk probabilment il-parti stampata li tidher fuq wara tad-dokument a fol. 27 kienet ukoll stampata fl-original tad-dokumenti a fol. 20 u 24 li iffirmat l-konvenut.
4. Il-qorti tifhem ukoll li fid-dokumenti a fol. 20 u 24 fuq il-parti ta' wara m'hemmx stampat it-*terms and conditions* ghar-raguni li huma l-kopja tal-formoli li zzomm l-attrici.

Il-fatt li l-konvenut iffirmat l-*advertisement order form* hi fiha nnifisha prova li hu ta l-kunsens tieghu li jkun marbut bil-kundizzjonijiet u li minnhom m'hemmx dubju li hu personalment u solidalment responsabbli mal-kumpanniji msemmija.

Ghal dawn il-motivi thassar is-sentenza tas-6 ta' Lulju, 2016 u minflok tichad l-ewwel eccezzjoni. L-ispejjez taz-zewg istanzi huma kollha a karigu tal-konvenut.

Tibghat l-atti lura quddiem l-ewwel qorti sabiex tissokta bis-smiegh tal-kawza.

Anthony Ellul.