



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum it-Tlieta 30 ta` Mejju 2017

Kawza Nru. 10  
Rikors Nru. 430/16 JZM

Ballut Blocks Services Limited (C8360)

*kontra*

Unibuild Company Limited (C19011)

*u*

b`digriet tat-12 ta` Dicembru 2016  
il-Kummissarju tat-Taxxi gie awtorizzat  
jintervjeni fil-kawza *in statu et terminis*

Il-Qorti :

### I. Preliminari

Rat ir-rikors ipprezentat fit-30 ta` Mejju 2016 li jaqra hekk :-

*Illi l-esponenti hija kreditrici tas-socjeta` intimata fl-ammont ta` sitta u tmenin elf, tmien mija tnejn u hamsin ewro hamsa u sebghin centezmi (€86,852.75), oltre l-imghaxijiet legali u l-ispejjez gudizzjarji u dan in forza ta` sentenza, li għaddiet in gudikat, fl-ismijiet “Ballut Blocks Services Limited vs Unibuild Company Limited (C 19011) deciza fl-24 ta` April, 2014 Citazzjoni Numru 28/2014, u dana kif jirrizulta mill-annessa kopja tal-istess sentenza Dok. “BBS1” u tat-taxxa relattiva Dok. “BBS2”.*

*Illi kif se jigi ppruvat waqt is-smigh ta` dawn il-proceduri s-socjeta` intimata ma tistax thallas id-djun taghha u l-esponenti tifhem li l-istess socjeta` intimata hija insolventi inter alia ai termini tal-Artikolu 214(2)(a)(ii) tal-Att dwar il-Kumpaniji b`applikazzjoni tal-Artikolu 214(5) tal-istess Att.*

*Illi s-socjeta` intimata ilha f`dan l-istat ta` insolvenza għal zmien twil u dan kif jafu, jew kif għandhom ikunu jafu d-diretturi taghha.*

*Illi l-esponenti tissottometti li dawn in-nuqqasijiet, flimkien ma` nuqqasijiet ohra fit-tregija tas-socjeta` intimata li se jigu ppruvati tul it-trattazzjoni ta` dawn il-proceduri, saru u għadhom qed isiru bl-iskop li b`hekk is-socjeta` intimata teludi l-obbligi skont il-Ligi.*

*Illi x-xoljiment tas-socjeta` intimata huwa rikjest mic-cirkostanzi premessi f`dan ir-Rikors, liema cirkostanzi huma wkoll serji u gravi ai termini tal-Artikolu 214(2)(b)(iii) tal-Att dwar il-Kumpaniji.*

*Għaldaqstant in vista tal-premess, is-socjeta` esponenti titlob bir-rispett lil din l-Onorabbli Qorti, prevja li jinghataw id-dikjarazzjonijiet u l-provvedimenti kollha opportuni, li joghghoba:*

1. *Tiddikjara u tiddeciedi li s-socjeta` intimata mhijiex f`qaghda li thallas id-djun taghha ai termini tal-Artikolu 214(2)(a)(ii) tal-Kap. 386 tal-Ligijiet ta` Malta.*

2. *Tiddikjara u tiddeciedi li jezistu ragunijiet gravi bizzejjed li jiggustifikaw ix-xoljiment u konsegwentement l-istralc tas-socjeta` intimata ai termini tal-Artikolu 214(2)(b)(iii) tal-Kap. 386 tal-Ligijiet ta` Malta.*

3. *Tahtar minnufih fil-mori ta` dawn il-proceduri amministratur provvisorju sabiex jamministra l-affarijiet tas-socjeta` intimata u dan taht u*

*skont id-dispozizzjonijiet kollha li din l-Onorabbli Qorti jidhrilha opportun li taghti.*

*4. Tordna x-xoljiment u l-istralc konsegwenzjali tas-socjeta` intimata a tenur tal-Artikolu 214(2)(a)(ii) u/jew l-Artikolu 214(2)(b)(iii) tal-Kap. 386 tal-Ligijiet ta` Malta.*

*5. Taghti kull provvediment opportun sabiex jinhatar stralcarju u jigi kondott l-istralc konsegwenzjali tas-socjeta` intimata ai termini tal-Kap. 386 tal-Ligijiet ta` Malta.*

*Bl-ispejjez u b`riserva ghal kwalsijasi azzjoni ulterjuri spettanti lis-socjeta` esponenti inter alia ai termini tal-Artikolu 303, 315 u 316 tal-Att dwar il-Kumpaniji.*

Rat id-dokumenti li kienu esebiti mar-rikors promotur.

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

Rat illi l-kawza thalliet ghal provvediment ghal-lum.

Rat l-atti l-ohra tal-kawza.

## II. Xiehda

Etienne Zammit (rapprezentant tal-kumpannija rikorrenti) xehed illi din il-Qorti diversament presjeduta tat sentenza fl-24 ta` April 2014 fil-kawza fl-ismijiet “*Ballut Blocks Services Limited vs Unibuild Company Limited*” fejn Ballut Blocks Services Limited (“**Ballut**”) kienet kanonizzata bhala kreditrici ta` Unibuild Company Limited (“**Unibuild**”) fl-ammont kapitali ta` EUR 86,852.05c.

Peress illi wara s-sentenza, ma thallas xejn, fit-30 ta` Gunju 2014, sar mandat ta` sekwestru ezequttiv. Anke wara dak il-mandat, ma sar ebda pagament mill-ammont komplessiv dovut skont is-sentenza.

**Av. Dr. Massimo Vella** xehed illi n-notifika tal-mandat ta` sekwestru ezekuttiv kontra Unibuild saret lill-*company secretary* Yolanda Grixti. Wara s-sentenza, kienu iskritti ipoteka generali u ipoteka specjali. Ipprezenta kopja tar-ricerki ta` Unibuild ghall-fini tal-prova tal-istat ipotekarju tal-kumpanija sa April 2014.

**Jara Grixti** (rapprezentant ta` Juanafil Consultants Limited) xehdet illi Junafil Consultants Limited ghandha ipoteka generali ghall-ammont ta` EUR 2,535.76c kontra Unibuild. L-ammont kien ghadu dovut. Fl-ipoteka tnizzel it-titolu ezekuttiv li s-socjeta` kreditrici kellha kontra Unibuild. Qalet illi ma tafx li saru mandati ezekuttivi wara li nghatat is-sentenza.

**Alex Frendo** (rapprezentant tal-Kummissarju tat-Taxxi) xehed illi minn ricerka li saret, kien hemm tlett kontijiet dovuti mis-socjeta` intimata. Kont minnhom huwa datat 19 ta` Lulju 2016 fejn il-kumpanija intimata ttrasferiet proprjeta` lil terzi u kien hemm *under valuation*. Il-kont kien ghal EUR 360. Ipprezenta zewg kontijiet ohra li huma dovuti mis-socjeta` intimata. Sar mandat ta` sekwestru.

**Anthony Bonnici** (rapprezentant ta` GO plc) xehed li kien hemm tlett *accounts* li fuqhom hemm il-bilanci dovuti fl-ammonti ta` EUR 288.92, EUR 57.38 u EUR 873.62c rispettivament. Ikkonferma li dwar l-ahhar kont, saret kawza fit-Tribunal ghal Talbiet Zghar fejn it-talba kienet milqugha. Ma sar l-ebda mandat ezekuttiv wara s-sentenza.

**Joanna Bartolo** (rapprezentant tal-Bank of Valletta plc) xehdet illi s-socjeta` ntimata kellha pendenzi mal-bank. Sat-28 ta` Ottubru 2016 kienet dovuta s-somma ta` EUR 23,898.91. Saret procedura skont l-Art 166A tal-Kap 12. Sar ukoll mandat ta` sekwestru 823/2012.

**Carmelo Farrugia** [rapprezentant ta` Mangion Brothers (Zurrieq) Limited] xehed illi l-kumpanija hija kreditrici tas-socjeta` ntimata. Ikkonferma illi l-ammont dovut baqa` ma thallsax lura.

**P.L. Quentin Tanti** (rapprezentant tar-Registratur tal-Kumpanniji) ipprezenta *r-registered documents* kollha tas-socjeta` ntimata.

### III. **L-azzjoni**

Huwa l-**Art 218(1) tal-Kap 386** li jirregola l-mod kif issir talba ghax-xoljiment u l-istralc ta` kumpannija.

Id-disposizzjoni tghid hekk :-

*Talba lill-qorti (aktar `il quddiem imsejha "rikors ghal stralc") ghal -*

*(a) stralc ta` kumpannija mill-qorti skont l-artikolu 214(1)(a) ;*

*(b) xoljiment u stralc ta` kumpannija mill-qorti skont l-artikolu 214(2)(a) ; jew*

*(c) xoljiment u stralc ta` kumpannija skont l-artikolu 214(2)(b),*

*ghandha ssir b`rikors li jista` jsir jew mill-kumpannija wara decizjoni tal-laqgha generali jew mill-bord tad-diretturi taghha jew minn xi detentur ta` obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji :*

*Izda rikors skont il-paragrafi (b) jew (c) jista` wkoll isir minn xi azzjonist jew direttur tal-kumpannija.*

Fil-kaz tal-lum, irrizulta li Ballut hija kreditrici ta` Unibuild. Ghalhekk Ballut ghandha *locus standi* sabiex tippromwovi l-azzjoni.

#### IV. **L-istanza**

Ir-rikorrenti qeghda tibbaza t-talba taghha fuq :-

l-Art 214(2)(a)(ii) tal-Kap 386 [li jirreferi ghall-Art 214(5)] ; u l-Art 214(2)(b)(iii) tal-Kap 386.

#### V. **L-Art 214(2)(a)(ii) u l-Art 214(5) tal-Kap 386**

Fil-kaz tal-Art 214(2)(a)(ii), il-Kap 386 jaghti lill-Qorti d-diskrezzjoni li xxolji u tistralcja kumpannija jekk din ma tkunx tista` thallas id-djun taghha.

Id-disposizzjoni trid tingara flimkien ma` l-Art 214(5) li jistabilixxi meta kumpanija skont il-ligi taghna ghandha titqies li ma tkunx tista` thallas id-djun taghha.

Tnejn huma c-cirkostanzi definiti mil-ligi –

(a) jekk id-dejn dovut mill-kumpanija jkun baqa` ma thallasx ghal kollox jew f`parti wara erbgha u ghoxrin gimgha mill-ezekuzzjoni ta` titolu ekekuttiv kontra l-kumpanija b`xi wiehed mill-atti ekekuttivi msemmijin fl-artikolu 273 tal-Kodici ta` Organizzazzjoni u Procedura Civili ;

jew

(b) jekk ikun ippruvat ghas-sodisfazzjon tal-qorti li l-kumpanija ma tkunx tista` thallas id-djun taghha, meta din tqis ukoll il-passiv kontingenti u prospettiv tal-kumpanija.

Ir-rikorrenti ma indikatx fuq liema minn dawn ic-cirkostanzi qed tinkwadra t-talba taghha. Per konsegwenza, sejra taghrbel iz-zewg sitwazzjonijiet ser jigu nvestigati entrambi c-cirkostanzi.

Meta tfassal il-mudell ghal-ligi taghna l-gdida dwar il-kumpaniji, il-qafas maghzul kien dak tal-Companies Act Ingliza 1985.

Fil-ligi Ingliza, ix-xoljiment u l-istralc ta` kumpaniji kien trattat f`legislazzjoni *ad hoc* u cioe` l-Insolvency Act 1986. Meta fl-1995 saret il-ligi taghna l-gdida dwar il-kumpaniji li hadet post il-Commercial Partnerships Ordinance 1962, id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu integrati fl-Att tal-1995.

Fil-ligi taghna, li kumpanija ma tkunx tista` thallas id-djun taghha ghandu sinjifikat preciz u definit mil-ligi stess fl-Art 214(5).

Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha.

Il-koncett ta` insolvenza fil-ligi taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm overlaps.

Fit-Tmien Edizzjoni (2012) ta' l-ktieb Boyle & Birds' Company Law (pubblikat minn Jordans) pg 859 jinghad hekk –

*There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due (“cash flow insolvency”) ; it is also insolvent if its liabilities exceed its assets (“balance sheet insolvency”) ...*

(i) L-Art 214(5)(a) tal-Kap 386

Dwar din id-disposizzjoni, tajjeb jinghad illi titkellem dwar l-ezekuzzjoni ta' *atti ekekuttivi*.

Ghalhekk kumpannija ma tistax titqies illi mhijiex f' qaghda li thallas id-djun taghha abbazi ta' mandat kawtelatorju, anke jekk dak il-mandat ikun gie ezegwit kontra d-debitur.

Tajjeb jinghad ukoll illi l-fattur rilevanti sabiex jiskattaw l-erbgha u ghoxrin (24) gimgha huwa l-ezekuzzjoni tal-Mandat.

Fil-kaz ta' mandat ta' sekwestru, l-ezekuzzjoni tal-mandat tiskatta bin-notifika tal-att lis-sekwestratarji minghajr il-htiega tan-notifika tad-debitur.

B'mod aktar strett, fil-ligi taghna dak previst mill-Art 214(5)(a) jixbah il-koncett ta' *cash flow insolvency* fil-ligi Ingliza.

Fil-kaz ta' *cash flow insolvency* din il-Qorti tghid illi filwaqt illi fil-ligi taghna huwa specifikat bil-preciz x'm'ghandhiex taghmel kumpannija debitrice sabiex ma tkunx meqjusa li ma tistax thallas id-djun taghha, fil-ligi Ingliza il-kriterju huwa aktar generiku ghax ikun hemm dik it-tip ta' insolvenza *if it is unable to pay its debts as they fall due*.

Din il-Qorti sejra taghmel riferenza ghad-dottrina dwar il-ligi Ingliza, ghax tiswa biex tkun tista' tasal, abbazi tal-fatti ta' kull kaz, inkluz dak tal-lum, mhux daqstant biex tghid jekk jirrizultax ppruvat dak stipulat fl-Art 214(5)(a), izda biex tasal ghal decizzjoni dwar jekk ghandhiex tghaddi ghax-xoljiment u l-istralc ta' l-kumpannija debitrice.

Fil-Boyle & Birds` Company Law (op. cit.) ikompli jinghad hekk –

*Failure to pay a debt which is due and not disputed amounts to evidence of cash flow insolvency. Thus a company which has a policy of late payment of bills could find itself the subject of a petition for a winding-up order or administration order. Such a petition will not be struck out at an early stage as a form of improper pressure and an abuse of the process of the court, because, as Staughton LJ explained in Taylor`s Industrial Flooring (1990. BBC 44 at 51) creditors, not late payers, are more worthy of insolvency law`s protection.*

*“Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one ... This can cause great hardship to honest traders, particularly those engaged in small businesses recently started. Anything which the law can do to discourage such behaviour in my view should be done.”*

Fil-pag 17 tal-ktieb Insolvency Law – Corporate and Personal ta` Andrew Keay u Peter Walton (pubblikat minn Pearson Longman – 2003) 17 jinghad hekk dwar *cash flow insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

*The court, in examining whether a company is suffering cash flow insolvency, will consider whether the company is actually paying its debtors. Courts must take into account what current revenue the company has as well as what the company can procure by realising assets within a relatively short time ... A company can rely upon money which might be obtained from the sale of assets or upon money which might be obtained on the strength of its assets ... It is possible that sometimes a debtor might be able to establish solvency by demonstrating that funds can be obtained through an unsecured loan. In considering whether a person or a company is insolvent, the debtor`s whole financial position must be studied ... and a temporary lack of liquidity does not necessarily mean that the company is insolvent ... At one time courts were rather strict on what they required to be established before they were willing to deem a person or a company insolvent, but in more recent times they have become more liberal as far as creditors are concerned and have held that a debtor is insolvent if a creditor is able to prove that he or she has not paid an undisputed debt after a demand has been made ... and this is the case even if there is*



*other evidence which suggests that the value of the assets outweighs liabilities ... Whether a company is cash flow insolvent is principally a question of fact and one which may be established in any number of ways, such as the existence of a large number of outstanding debts and unsatisfied judgments ... or there is lack of assets on which execution can be levied ... It has been said that a debtor is not regarded as solvent just because if sufficient time were granted the debts could be paid off ...*

(ii) **L-Art 214(5)(b)**

Fit-test bl-Ingiliz id-disposizzjoni taqra hekk :-

*For the purposes of subarticle (2)(a)(ii), a company shall be deemed to be unable to pay its debts ... if it is proved to the satisfaction of the court that the company is unable to pay its debts, account being taken also of contingent and prospective liabilities of the company.*

Fl-Insolvency Act 1986, insibu disposizzjoni li tixbah diktal-ligi taghna, ghalkemm mhijiex l-istess. Il-Qorti qeghda tirreferi ghall-**Art 123(2) tal-Insolvency Act 1986** li jaqra hekk –

*A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.*

Id-divergenza bejn il-legislazzjoni Ingliza u dik Maltija hija li filwaqt li fil-kaz ta` dik Maltija, il-mizura hija semplici : u cioe` *the company is unable to pay its debts account being taken also of contingent and prospective liabilities of the company*, fil-kaz tal-ligi Ingliza, il-kriterju huwa divers ghaliex il-Qorti tkun trid tqis illi : *the value of the company's assets is less than the amount of its liabilities ... billi tiehu kont tal- ... contingent and prospective liabilities.*

Ghal din il-Qorti, id-differenza hija ta` sostanza mhux ta` *drafting*. Fl-istess waqt, il-Qorti hija tal-fehma li xorta wahda ghandha tfittex sintesi bejn id-disposizzjoni tal-ligi taghna u dik tal-ligi Ingliza. U s-sintesi hija kostitwita mill-koncett ta` *contingent and prospective liabilities*.

Il-Qorti sejra tirreferi ghal dak li tghid id-dottrina Ingliza dwar il-materja li tikkostitwixxi l-mertu tal-istanza tal-lum.

Bid-debiti riservi, u tenut kont tad-disparita` fid-disposizzjonijiet ta` bejn il-ligi Ingliza u dik taghna, il-Qorti sejra tirreferi ghal dak li tghid id-dottrina Ingliza dwar dak li huwa maghruf bhala *balance sheet insolvency* meta abbinat mal-Art 123(2) tal-Insolvency Act 1986 tar-Renju Unit.

Fil-Pag 19 tal-ktieb **Insolvency Law – Corporate and Personal** (op. cit.) jinghad hekk :-

*In determining whether the assets are outweighed by the liabilities a court is able to take into account contingent and prospective liabilities, but not contingent and prospective assets [Byblos Bank SAL v. Al-Khudhairy (1986) 2 BCC99, 549 (CA)] It has been said that “liabilities” is a broaded term compared with “debts” [Re A debtor (No 17 of 1966) (1967) Ch 590 ; (1967) 1 All ER 668]. “Liabilities” is defined for the purposes of winding up in rule 13.12 (4) to mean “a liability to pay money or money`s worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation ta make restitution”. Then rule 13.12 (3) states that it is immaterial whether the liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.*

*Clearly with this test it is only possible to take into account the assets owned by the company including the uncalled capital of the company [Re National Livestock Insurance Co (1858) 26 Beav 153; 53 ER 855 ...*

Fil-Pag 114 tar-Raba` Edizzjoni (2011) ta` **Principles of Corporate Insolvency Law** (Sweet & Maxwell) Roy Goode ighid hekk –

*The idea underlying this test ... is that it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets and these are insufficient for the purpose ...*

Fil-Pag 130 ikompli hekk –

*The mere excess of liabilities over assets is not in itself determinative. What has to be shown is that by reason of the deficiency of its assets the company has reached the point of no return.*

Fil-Pag 134 sa 136, l-awtur jittratta n-nozzjoni ta' *contingent liability* u jghid hekk –

*To give the phrase “contingent liability” any meaning we must restrict it to a liability or other loss which arises out of an existing legal obligation or state of affairs but which is dependent on the happening of an event which may or may not occur. Many of the cases have stressed the need for the liability to arise out of an existing obligation. ... in considering whether there is a contingent liability the court has regard to the existing commercial situation, not merely an existing legal obligation. In this regard, assistance can be derived from Financial Reporting Standard 12 which defines a contingent liability in the following terms :*

*(a) “A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the entity’s control ; or*

*(b) a present obligation that arises from past events but is not recognised because :*

*(i) it is not probable that a transfer of economic benefits will be required to settle the obligation ; or*

*(ii) the amount of the obligation cannot be measured with sufficient reliability.”*

*... the term “contingent liabilities” is ultimately not a term of art and its precise meaning will depend on its context. The court is thus entitled to have regard to commercial realities ...*

Fil-Pag 136 u 137, l-awtur jittratta n-nozzjoni ta' *prospective liability* u jghid hekk –

*... The phrase “prospective liability” is neither a legal nor an accounting term of art. It has been judicially defined as : “ ... a debt which will certainly become due in the future, either on*

*some date which has already been determined or some date determinable by reference to future events.”*

*... it has been described ... as unmatured liability which will inevitably ripen into a debt with the passage of time. Such a definition encompasses all forms of debitum in praesenti, solvendum in futuro including an indisputable claim for unliquidated damages which remains only to be quantified and will result in a debt far more than a nominal amount. “Prospective liability” thus embraces both future debts, the sense of liquidated sums due, and unliquidated claims.*

Dwar l-Art 214(5)(b) din il-Qorti diversament presjeduta (**PA/GV**) fis-sentenza taghha tat-28 ta` Mejju 2003 fil-kawza “**Axel John International AB vs Aluminium Extrusions Limited**” qalet hekk –

*Din il-kondizzjoni tista` tigi verifikata permezz tal-balance sheets wara li jigi kunsidrat jekk l-assets are less than its liabilities. Izda ... it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets over a lengthy period (Re : European Life Assurance Society 1869 LR 9 Eq 122).*

*Ghalhekk ma hemmx raguni ghaliex il-kredituri ghandhom joqghodu jistennew sakemm il-kumpannija tbiegh l-assets taghha biex forsi xi darba jithallsu.*

## VI. **Risultanzi**

### 1. **L-Art 214(2)(a)(ii) tal-Kap 386**

#### a) **L-Art 214(5)(a) tal-Kap 386**

Fil-kaz tal-lum, kienet esebita kopja tas-sentenza ta` din il-Qorti diversament presjeduta tal-24 ta` April 2012 fil-kawza “**Ballut Blocks Services Limited vs Unibuild Company Limited**” fejn jirrizulta illi Ballut kienet kanonizzata kreditrici ta` Unibuild fl-ammont ta` EUR 86,852.75c bl-imghax legali (fol 5 sa 6). Kienet esebita wkoll it-taxxa ufficjali tal-ispejjez tal-kawza (fol 7). Wara li d-decizjoni ghaddiet in gudikat, kien prezentat mandat ta` sekwestru ezekuttiv bin-nru 991/2014 fit-30 ta` Gunju 2014 (fol 27 – 28). Il-hrug tal-mandat kien akkordat fl-1 ta` Lulju 2014. Jidher illi l-mandat kien notifikat lill-*company secretary* ta` Unibuild fit-12 ta` Frar 2015, waqt li s-sekwestratarji kienu lkoll notifikati fit-2 ta` Lulju 2014.

Ghalhekk jirrizulta ppruvat illi ghaddew l-24 gimgha mill-ezekuzzjoni ta` l-att ezeuttiv ta` Ballut. Kien ippruvat ukoll illi nonostante l-ezekuzzjoni tal-at ezeuttiv, id-dejn baqa` ma thallasx.

Irrizulta illi Unibuild hija debitrice wkoll ta` Juanafil Consultants Limited (fol 305 u fol 379 sa fol 381) pero` rrizulta li l-kreditrici ma mexxiex b`att ezeuttiv kontra Unibuild.

L-istess gara fil-kaz ta` l-kreditu ta` Go plc kontra Unibuild (fol 334 sa fol 346).

Irrizulta illi Unibuild hija debitrice wkoll ta` Bank of Valletta plc. Kien prezentat mandat ta` sekwestru ezeuttiv bin-nru 822/2012, li kien akkordat fit-12 ta` Gunju 2012, u notifikat lis-sekwestratarji fit-13 ta` Gunju 2012. Mix-xieghda tar-rapprezentant ta` Bank of Valletta plc irrizulta li d-dejn ta` Unibuild sat-28 ta` Ottubru 2016 kien jammonta ghal EUR 23,898.91c.

Irrizulta illi Unibuild hija debitrice tal-Kummissarju tat-Taxxi. Kien prezentat kontra taghha mandat ta` sekwestru ezeuttiv bin-nru 847/09 fis-16 ta` Marzu 2009 (fol 317 sa 320). Billi wiehed mis-sekwestratarji kien iddepozita flus taht l-awtorita` tal-qorti, liema ammont kien ikopri parti mill-kreditu, sar rikors ta` zbank tal-flus depozitati. Ma jirrizultax jekk it-talba ghall-izbank kenitx milqugha jew jekk il-Kummissarju tat-Taxxi thallasx. In segwitu sar mandat ta` sekwestru ezeuttiv iehor bin-nru 1911/2013 (fol 326 sa 329). Il-mandat kien notifikat lis-sekwestratarji, u lil Unibuild, bejn it-30 ta` Awissu 2013 u t-2 ta` Settembru 2013. Ir-rapprezentant tal-Kummissarju tat-Taxxi ixehed illi Unibuild baqghet ma hallsitx l-ammonti dovuti minnha. Il-Kummissarju tat-Taxxi kien ammess jintervjeni fil-kawza wara li rrizulta li huwa kreditur ta` Unibuild fis-somma ta` EUR 1,049.60c ghal sorte u spejjez legali konnessi mal-mandat ta` sekwestru nru 1911/2013, ghall-ispejjez tal-eventwali kontromandat, u ghal EUR 226.73 rapprezentanti spejjez legali konnessi mal-mandat ta` sekwestru nru 847/2009 oltre l-ispejjez legali tar-rikors ta` zbank u tal-eventwali kontromandat.

**Il-Qorti hija sodisfatta li saret il-prova ta` dak rikjest fl-Art 214(5)(a) kemm fil-kaz ta` Ballut izda wkoll fil-kaz ta` kredituri ohra kif fuq spjegat.**

**b) L-Art 214(5)(b) tal-Kap 386**

Apparti l-prova tad-debiti ta` Unibuild, kienu prezentati dokumenti ufficjali rilaxxjati mir-Registratur tal-Kumpanniji (fol 392 sa fol 486).

Minn ezami ta` dawn id-dokumenti, jidher li l-ahhar *financial statements* li kienu prezentati minn Unibuild kienu daww ghas-sena li ghalqet fil-31 ta` Dicembru 2008 (fol 398 sa fol 405).

Il-profitt ghal dik is-sena finanzjarja, wara t-taxxa, kien jammonta ghal EUR 15,147 mentri t-*turnover* kien jammonta ghal EUR 181,683 (fol 398 sa fol 405).

Mill-*balance sheet* ezebata a fol 400 jirrizulta illi bhala *fixed assets*, il-kumpannija intimata kellha EUR 41,536 mentri bhala *current assets*, kellha EUR 905,477.

Meta mbaghad jigu mnaqqsa l-ammont ta` EUR 113,225 rapprezentanti debiti li jigu dovuti fi zmien sena, kien hemm *total assets less current liabilities* ammontanti ghal EUR 833,788.

Jirrizulta li kien hemm ammont ta` EUR 568,391 rapprezentanti debiti li jigu dovuti wara aktar minn sena, biex b`hekk in-*net assets* kienu jammontaw ghal EUR 265,397. Bhala *called up issued share capital* kien hemm l-ammont ta` EUR 23,294 mentri l-*profit and loss account* kien jammonta ghal EUR 242,103.

Fil-*financial statements* tas-sena precedenti u cioe` dik li ghalqet fil-31 ta` Dicembru 2007, irrizulta li kien hemm profitt wara t-taxxa fis-somma ta` Lm58,718 filwaqt li t-*turnover* kienet ta` Lm277,500 (fol 406 sa fol 413).

Skont il-*financial statements* ghas-sena li ghalqet fil-31 ta` Dicembru 2006 (fol 414 sa fol 419), is-socjeta` intimata kellha profitt wara t-taxxa ta` Lm28,157 filwaqt li t-*turnover* kien ta` Lm278,000.

Il- *financial statements* jibqghu sejrin lura sas-sena li ghalqet fil-31 ta` Dicembru 1997.

Ma jirrizultawx il-*financial statements* ta` wara s-sena li ghalqet fil-31 ta` Dicembru 2008 ma gewx prodotti.

Bil-provi li ghandha ghad-disposizzjoni taghha, il-Qorti m`ghandhiex il-prova ta` dak li huwa rikjest bl-Art 2154(5)(b).

c) Id-diskrezzjoni tal-Qorti

Accertat illi jirrizultaw ippruvati r-rekwiziti tal-Art 214(2)(a)(ii) u tal-Art 214(5)(a), il-Qorti trid tara jekk fuq il-provi akkwiziti, ghandhiex hi tezercita d-diskrezzjoni taghha li tordna x-xoljiment u l-istralc ta` Unibuild.

Fis-sentenza li tat fit-18 ta` Settembru 2009 fil-kawza "Avukat John Refalo noe vs Garden of Eden Limited" il-Qorti tal-Appell qalet hekk :-

*"L-Artikolu 214 tal-Att dwar il-Kumpaniji jiddetermina kif u meta kumpanija ghandha "titqies" ("shall be deemed" fit-test Ingliz) li ma tkunx tista` thallas id-djun taghha. Ir-regoli huma cari u ma jhallu ebda lok ghall-provi in kuntrarju. Jekk il-kumpanija ma thallasx fi zmien 24 gimgha, hija titqies li ma tistax thallas id-djun taghha, u jekk tirrizulta din ic-cirkostanza, il-Qorti tista` tipprocedi ghall-istralc taghha."*

Il-Qorti taghmel riferenza ghal Palmer`s Company Law (Edition 25 - Sweet & Maxwell) fejn jinghad :-

*The court`s jurisdiction is discretionary and the fact that the petitioner can establish this ground does not give him an automatic right to an order (re. Metropolitan Railway Warehousing Co. Ltd 1887.36.LJCh 827). The court has refused to make an order where there are good reasons for the delay and where the great majority of members desire that the company shall continue. An order may however be made in appropriate circumstances against the majority`s wishes. Where the business has merely been suspended the court must be satisfied of an abandonment or inability to carry on. In ascertaining such intention the court will have regard to the opinion and wishes of the majority of shareholders whose names appear on the register. Merely abandoning one of several objects is insufficient (re. Norwegian Titanic Iron Co. (1866) 35 Beav.223).*

Dan premiss, il-Qorti kkonduciet ezami akkurat kemm tad-dokumenti esebiti u kif ukoll ta` dak mistqarr mix-xhieda.

Rat ir-ricerki pubblici li saru fir-rigward tas-socjeta` intimata, stante li dawn huma l-unika dokumentazzjoni ricenti li jistghu forsi jixhtu dawl fuq is-sitwazzjoni taghha (ara fol 40 sa 300). Ikopru z-zmien ta` 31 ta` Awissu 1995 u t-3 ta` Ottubru 2016.

Mir-ricerki johrog dan il-passiv :-

Saret ipoteka generali u ipoteka specjali fuq diversi immobbli a favur ta` Bank of Valletta Limited fir-rigward ta` kreditu ta` Lm120,000 (nru 17209/1997). Kien hemm kancellament b`nota ta` riferenza nru 5239/2001 u nru 479/2002.

Saret ipoteka generali u ipoteka specjali fuq diversi immobbli a favur tal-Bank of Valletta Limited fir-rigward ta` overdraft u *banking facilities* ohra ammontanti ghall-massimu ta` Lm30,000 (nru 17210/1997). Kien hemm kancellament b`nota ta` riferenza nru 5239/2001 u nru 479/2002.

Saret ipoteka generali u ipoteka specjali mill-kumpanija intimata u minn terzi persuni li agixxew bhala *sureties* a favur ta` Bank of Valletta plc fir-rigward tas-somma mislufa ta` Lm60,000 (nru H 6973/2000). Kien hemm noti ta` riduzzjoni ref 44/2003, 5518/2008, u 7554/2008. Saru wkoll noti ta` posponiment nru 604/2003, 2417/2003, 6026/2006, 6529/2007 u 9720/2008.

Saret ipoteka generali u ipoteka specjali a favur ta` Mid Med Bank Limited fir-rigward ta` kreditu ta` Lm32,000 u dan bir-referenza 6975/2000. Din wara kienet emendata bin-nota ta` insinwa nru 2115/2004, li wara kienet kancellata b`nota ta` kancellament ref nru 3319/2004.

Saret ipoteka genrali u ipoteka specjali flimkien ma` privilegg specjali a favur ta` HSBC Bank Malta plc fir-rigward ta` kreditu ta` Lm60,000 bin-numru ta` referenza 3424/2001. Din giet kancellata permezz ta` nota ta` kancellament bin-numru 3319/2004.

Saret ipoteka specjali ghall-ammont ta` Lm15000 a favur ta` HSBC Bank Malta plc stante li s-socjeta` intimata agixxiet bhala *surety* u dan bin-numru ta` referenza 16337/2002. Din giet kancellata bin-nota relattiva bin-numru 4127/2003.

Saret ipoteka specjali a favur ta` Bank of Valletta plc fir-rigward ta` Lm60,000. Din ghandha n-numru ta` referenza 115/2003 u giet ridotta bin-noti ta` riduzzjoni bin-numru 1669/2003; 1907/2005, 237/2008; 5518/2008, 5692/2008. Saret ukoll noti ta` postponiment bin-numri 1893/2006; 6026/2006; 6847/2006; 6529/2007; 7554/2008 u 8338/2009.



Saret ipoteka generali u ipoteka specjali a favur ta` Bank of Valletta plc fir-rigward ta` Lm30,000 bin-numru ta` referenza 123/2003. Din giet ridotta bin-noti ta` riduzzjoni enumerati 1669/2003; 1907/2005, 237/2008; 5518/2008; 5692/2008 Saru wkoll noti ta` postponiment bin-numri 2417/2003; 1893/2006; 6026/2006;6846/2006; 2785/2008; 7554/2008; 9720/2008 u 8338/2009.

Saret ipoteka generali u ipoteka specjali mis-socjeta` intimata a favur ta` Ceramax Company Limited fir-rigward ta` Lm7,000 u din bir-referenza 11251/2003. Din giet cancellata bin-nota relattiva numru 3652/2004.

Saret ipoteka generali u ipoteka specjali a favur ta` HSBC Bank Malta plc fir-rigward ta` kreditu ta` Lm60,000. Din iggib in-numru 16621/2003 u sussegwentement giet emendata bin-nota ta` insinwa numru 2114/2004. Din giet cancellata bin-nota ta` cancellament bin-numru 3319/2004.

Saret ipoteka generali, ipoteka specjali u privilegg specjali bin-numru ta` referenza 20055/2004 a favur ta` HSBC Bank Malta plc fir-rigward tas-somma ta` Lm205,000. Dawn gew ilkoll cancellati bin-nota ta` cancellament numru 7521/2009.

Saret ipoteka specjali addizzjonali bin-numru 4057/2005 a favur ta` Bank of Valletta plc fir-rigward tas-somma ta` Lm20,654. Saru mbaghad noti ta` postponiment bin-numri 6529/2007, 7554/2008 u noti ta` riduzzjoni bin-numri 237/2008, 5518/2008.

Saret ipoteka specjali addizzjonali ghall-ammont ta` Lm30,000 a favur ta` Bank of Valletta plc bin-numru ta` referenza 4058/2005. Dwar din, saret nota ta` postponiment bin-numru 7554/2008.

Saru ipoteki specjali u ipoteka generali a favur HSBC Bank Malta plc fir-rigward ta` kreditu ta` Lm110,000 u dawn bin-numru ta` referenza 19914/2006. Saru noti ta` riduzzjoni bin-numri ta` referenza 7977/2009; 8858/2010; 5687/2011; u 1432/2011; Saret wkoll nota ta` cancellament numru 7521/2009.

Saret ipoteka specjali a favur Nisso Company Limited fir-rigward ta` Lm33,000 u dana bin-numru ta` referenza 15558/2007. Din giet ikkancellata bin-nota ta` cancellament bin-numru 5124/2009.

Saru ipoteka generali, ipoteki specjali u privilegg specjali a favur ta` HSBC Bank Malta plc fir-rigward ta` Lm230,000 bin-numru ta` referenza 19909/2007. Dawn gew ridotti bin-noti enumerati 6418/2008; 9512/2008; 7256/2009; 7977/2009; 8858/2010; 1815/2011; 5687/2011.

Saru ipoteka generali, ipoteka specjali u privilegg specjali a favur HSBC Bank Malta plc fir-rigward ta` kreditu ta` EUR 236,659 bin-nota ta` referenza 11859/2008. Saret imbaghad nota ta` riduzzjoni bin-numru 1815/2011.

Saret ipoteka specjali a favur Nisso Company Limited fir-rigward ta` kreditu ammontanti ghal EUR 76,869 bin-numru ta` referenza 10337/2009. Din giet ikkancellata permezz tan-nota enumerate 1350/2011.

Sar privilegg legali specjali fir-rigward ta` EUR 105,147 a favur HSBC Bank Malta plc bin-numru ta` referenza 4731/2010. Imbaghad saru noti ta` riduzzjoni bin-numri 1815/2011.

Saret ipoteka specjali addizzjonali a favur ta` HSBC Bank Malta plc bin-numru 15832/2010 fis-somma ta` EUR 236,659. Sussegwentement, saru noti ta` riduzzjoni enumerati 8858/2010 u 1815/2011.

Saret ipoteka specjali addizzjonali a favur ta` HSBC Bank Malta plc fir-rigward tas-somma ta` EUR 535,755.88 bin-numru ta` referenza 15833/2010. Gew imbaghad ipprezentati noti ta` riduzzjoni enumerati 1815/2011.

Saret ipoteka specjali addizzjonali fl-ammont ta` EUR 72,412.65c a favur ta` HSBC Bank Malta plc bin-numru ta` referenza 15834/2010.

Saret ipoteka specjali a favur ta` Nisso Company Limited fir-rigward ta` EUR 80,700 bin-numru ta` referenza 373/2011.

Saret ipoteka generali fir-rigward ta` EUR 45,185.59c a favur ta` HSBC Bank Malta plc bin-numru ta` referenza 4662/2011.

Kienet kostitwita ipoteka specjali a favur ta` HSBC Bank Malta plc fir-rigward ta` EUR 45,185.59c bin-numru ta` referenza 6634/2011. Sussegwentement, gew ipprezentati noti ta` riduzzjoni bin-numri 3427/2013; u 4838/2013.

Saret nota ta` ipoteka generali a favur ta` Juanafil Consultants Limited fir-rigward ta` EUR 2,535.76c bin-numru ta` registrazzjoni 15389/2011.

Saret nota ta` ipoteka specjali a favur ta` Nisso Company Limited fir-rigward ta` EUR 8,070 bin-numru ta` referenza 743/2012.

Saret nota ta` ipoteka specjali a favur Nisso Company Limited fir-rigward ta` EUR 80,700 bin-numru ta` referenza 744/2012.

Kienet kostitwita ipoteka legali specjali bin-numru 13061/2012 a favur ta` Buz Dov Developments Limited fir-rigward ta` EUR 45,000.

Kienet kostitwita ipoteka legali specjali bin-numru 13062/2012 a favur ta` Buz Dov Developments Limited fir-rigward ta` EUR 7,000.

Saret ipoteka generali bin-numru H 10652/2014 a favur ta` Ballut Blocks Services Limited fir-rigward tas-somma ta` EUR 86,852.75c.

Saret ipoteka specjali bin-numru 11192/2014 a favur ta` Ballut Blocks Services Limited fir-rigward tas-somma EUR 86,852.75c. Din l-ipoteka specjali giet kancellata bin-nota relattiva numru RC 5874/2016.

Saret ipoteka specjali addizzjonali bin-numru H 14666/2014 a favur ta` HSBC Bank Malta plc fir-rigward ta` EUR 535,755.88c.

Saret ipoteka specjali addizzjonali bin-numru H 14667/2014 a favur ta` HSBC Bank Malta plc fir-rigward ta` EUR 45,185.59c.

Saret ipoteka specjali addizzjonali bin-numru H 14668/2014 a favur ta` HSBC Bank Malta plc fir-rigward ta` EUR 236,659.

Saret ipoteka specjali addizzjonali bin-numru H 14669/2014 a favur ta` HSBC Bank Malta plc fir-rigward ta` EUR 256,231.07.

Saret ipoteka generali u ipoteka specjali bin-numru ta` l-insinwa H 16829/2014 a favur ta` Bank of Valletta plc fir-rigward ta` EUR 16,424.67c.

Saret ipoteka generali a favur Andre Hugo fir-rigward tas-somma ta` EUR 64,273.47c datata 2 ta` Jannar 2015 bin-numru ta` l-insinwa H 10/2015.

Saret ipoteka generali u ipoteka specjali bin-numru ta` referenza H 2872/2015 a favur ta` Nisso Company Limited ghas-somma ta` EUR 56,000.

Saret ipoteka specjali a favur Andre Hugo fir-rigward tas-somma ta` EUR 64,273.47c bin-nota ta` insinwa enumerata H 5695/2015.

Saret ipoteka specjali a favur Ballut Blocks Services Limited ghas-somma ta` EUR 86,852.75c bin-numru ta` referenza H 14492/2015.

Daqstant bhala passiv abbazi tar-ricerki.

Bhala attiv, mir-ricerki jirrizultaw dawn l-akkwisti minn Unibuild :-

Art iz-Zurrieq ghall-prezz ta` Lm28,000 li sehh fl-10 ta` Novembru 1999. In-nota ta` l-insinwa hija 6769/2000.

Art Hal Tarxien ghall-prezz ta` Lm66,000. Dan igib in-numri ta` insinwa enumerati 17306/2001; 132/2002.

Bini tas-Sliema ghall-prezz ta` Lm90,000 fil-15 ta` Lulju 2004. In-nota ta` l-insinwa hija I 1219/2004.

Bini iz-Zurrieq ghall-prezz ta` Lm120,000 fit-2 ta` Ottubru 2007 bin-nota ta` l-insinwa I 19644/2007.

Bini tas-Sliema ghall-prezz ta` EUR 232,937.33c fil-21 ta` Lulju 2008 bin-nota ta` l-insinwa I 11748/2008.

Is-socjeta` intimata ghamlet dan il-bejgh :-

Proprjeta` Hal-Tarxien ghall-valur ta` Lm25,000 fil-5 ta` Jannar 2002 bin-numru ta` insinwa I 903/2002.

Proprjeta` Hal-Tarxien fil-11 ta` Ottubru 2001 bin-numru ta` l-insinwa I 3724/2002 ghall-valur ta` Lm4000.

Proprjeta` Hal Tarxien fit-8 ta` Mejju 2002 ghall-valur ta` Lm25,000 bin-numru ta` l-insinwa I 7654/2002.

Proprjeta` Hal Tarxien ghall-prezz ta` Lm28,000 fis-16 ta` Awissu 2002 bin-numru ta` l-insinwa I 13966/2002.

Proprjeta` Hal-Tarxien fit-22 ta` Ottubru 2002 ghall-prezz ta` Lm27,000 ; insinwa nru I 16654/2002.

Immobbli Hal Tarxien ghall-prezz ta` Lm2,500 li sehh fit-30 ta` Ottubru 2002 ; insinwa nru I 17038/2002.

Immobbli Hal Tarxien ghall-prezz ta` Lm25,000 li sehh fis-17 ta` Ottubru 2002 ; insinwa nru I 1043/2003.

Immobbli Hal Tarxien ghall-prezz ta` Lm25,000 li sehh fl-20 ta` Frar 2003 ; insinwa nru I 3530/2003.

Immobbli z-Zurrieq ghall-prezz ta` Lm38,000 li sehh fil-5 ta` Marzu 2004 ; insinwa nru I 5199/2004.

Immobbli z-Zurrieq ghall-prezz ta` Lm35,000 li sehh fit-23 ta` April 2004 ; insinwa nru I 6839/2004.

Proprjeta` Hal Tarxien ghall-prezz ta` Lm3000 li sar fil-11 ta` Frar 2005 bin-nota ta` l-insinwa I 4499/2005.

Proprjeta` Hal-Tarxien ghall-prezz ta` Lm3000 fil-11 ta` Frar 2005 bin-nota ta` l-insinwa I 4501/2005.

Proprjeta` tas-Sliema fit-23 ta` Awissu 2006 ghall-prezz ta` Lm60,000 bin-nota ta` l-insinwa I 15757/2006.

Immobbli tas-Sliema ghall-prezz ta` Lm54,000 li sehh fid-19 ta` Settembru 2006 bin-numru ta` l-insinwa I 16990/2006.

Immobbli tas-Sliema ghall-prezz ta` Lm54,000 li sehh fit-12 ta` Ottubru 2006 bin-numru ta` l-insinwa I 18780/2006.

Tpartit li sehh fis-6 ta` Novembru 2006 b`valur ta` Lm50,000 bin-nota ta` l-insinwa I 20260/2006.

Immobbli tas-Sliema ghall-prezz ta` Lm60,000li sehh fis-7 ta` Novembru 2006 bin-nota ta` l-insinwa I 22790/2006.

Immobbli tas-Sliema ghall-prezz ta` Lm69,500 li sehh fis-26 ta` marzu 2007 bin-numru ta` l-insinwa I 5982/2007.

Immobbli tas-Sliema ghall-prezz ta` Lm63,000 li sehh fl-14 ta` Frar 2007 bin-numru ta` l-insinwa I 8518/2007.

Immobbli tas-Sliema ghall-prezz ta` Lm80,000 li sehh fis-16 ta` Mejju 2007 bin-numru ta` l-insinwa I 9601/2007.

Immobbli tas-Sliema ghall-prezz ta` Lm65,000 li sehh fit-23 ta` Mejju 2007 bin-numru ta` l-insinwa I 12890/2007.

Immobbli tas-Sliema ghall-prezz ta` EUR 81,528.06c li sehh fis-27 ta` Awissu 2008 bin-numru ta` l-insinwa I 13670/2008, hekk kif korretta bin-numru ta` l-insinwa I 1968/2014.

Immobbli tas-Sliema ghall-prezz ta` EUR 106,219.43c li sehh fl-24 ta` Novembru 2008 bin-numru ta` l-insinwa I 2771/2009.

Immobbli tas-Sliema ghall-prezz ta` EUR 118,800 li sehh fl-1 ta` Ottubru 2009 bin-nota ta` l-insinwa I 15480/2009.

Immobbli z- Zurrieq ghall-prezz ta` Lm4,000 li sehh fl-1 ta` April 2008 bin-numru ta` l-insinwa I 17292/2009.

Immobbli tas-Sliema ghall-prezz ta` EUR 70,000 li sehh fid-29 ta` Dicembru 2010 bin-nota ta` l-insinwa I 20751/2010.

Immobbli tas-Sliema ghall-prezz ta` EUR 255,000 li sehh fil-11 ta` Marzu 2011 bin-nota ta` l-insinwa I 4282/2011.

Immobbli tas-Sliema ghall-prezz ta` EUR 75,000 fit-28 ta` Gunju 2012 bin-nota ta` l-insinwa I 12301/2012.

Immobbli tas-Sliema ghall-valur ta` EUR 170,000 fil-21 ta` Lulju 2014 bin-nota ta` insinwa I 13850/2014.

Immobbli tas-Sliema ghall-valur ta` EUR 90,000 fit-8 ta` Jannar 2016 bin-nota ta` l-insinwa I 1078/2016.

Irrizulta wkoll li kien hemm bejgh b`subbasta ta` immobbli tas-Sliema wara digriet ta` din il-Qorti tad-19 ta` Dicembru 2013 wara rikors ta` Nisso Limited bil-fond jigi liberat ghall-prezz ta` EUR 120,000, kif ukoll illi kien hemm mandat ta` inibizzjoni kontra Unibuild dwar proprjeta` tas-Sliema.

Wara evalwazzjoni ta` dawn ir-ricerki, il-Qorti tesprimi ruhha fis-sens illi ta` l-anqas sat-8 ta` Jannar 2016, Unibuild kienet ghadha qed topera peress li kienet bieghet immobbli taghha lil terzi.

Il-Qorti ma ghandhiex prova ta` jekk Unibuild ghadx ghandha proprjeta` li biha tista` taghmel tajjeb ghad-dejn li kien accertat illi ghandha ma` terzi.

Lanqas ma tressqu provi dwar jekk ghadx hemm kontijiet il-bank li jistghu jiggarantixxu l-hlas tal-kredituri.

Il-Qorti qieset l-assenza ta` *audited financial statements* ghal dawn l-ahhar snin.

Il-Qorti hija mhassba mill-fatt illi Unibuild ma ppartecipatx fil-procediment tal-lum – bhal donnu xejn mhu xejn !

**Brenda Hannigan** tghid hekk fil-ktieb taghha **Company Law** (harga tal-2003) :-

*“winding up or liquidation ... is the process by which the assets of the company are collected in and realised, its liabilities discharged and the net surplus, if there is one, distributed to the persons entitled to it. Only when this has been done is the company’s existence finally terminated by a process known as dissolution ... Insolvent winding up occurs essentially when companies are unable to pay their debts in full. When a company cannot pay its debts in full, difficult problems arise as to how the assets that are available should be distributed. In theory, as we shall see, the law tries to maintain an equality between creditors so that assets are pooled and distributed pari passu ie rateably according to the size of each creditor’s claim.”*

**Brenda Hannigan** tirreferi għall-Cork Committee Report dwar *good modern insolvency law*.

Kien specifikat li l-ghanijiet huma :-

*“...to recognise that the world in which we live and the creation of wealth depend upon a system founded on credit and that such a system requires, as a correlative, an insolvency procedure to cope with its casualties; ...to relieve and protect where necessary the insolvent, and in particular the individual insolvent, from any harassment and undue demands by his creditors ....at the same time, to have regard to the rights of creditors whose own position may be at risk because of the insolvency; ...to realise the assets of the insolvent which should properly be taken to satisfy his debts, with the minimum of delay and expense; to distribute the proceeds of the realisations among the creditors in a fair and equitable manner, returning any surplus to the debtor; to ensure that the processes of realisation and distribution are administered in an honest and competent manner,.... To recognise that the effects of insolvency are not limited to the private interests of the insolvent and his creditors, but that other interests of society or other groups in society are vitally affected by the insolvency and its outcome and to ensure that these public interests are recognised and safeguarded,.....to provide the means for the preservation of viable commercial enterprises capable of making a useful contribution to the economic life of the country.”*

Dan premiss, tajjeb jinghad illi l-procedura ta` xoljiment u stralc ta` kumpannija mhijiex intiza sabiex taghmel pressjoni fuq id-debitur.

Il-legislatur haseb għal varji metodi u proceduri oħra kif persuna tista` tirkupra kreditu tagħha.

Dak li trid tara l-Qorti huwa jekk bil-fatt innifsu li gie ppruvat ir-rekwizit ai termini ta` l-Art. 214(5)(a) tal-Kap 386 u tenut kont tac-cirkostanzi ta` dan il-kaz, hijiex tal-fehma li ghandha tezercita d-diskrezzjoni taghha u tordna x-xoljiment u stralc ta` din il-kumpanija.

Fil-kaz tal-lum, il-Qorti sejra tezercita d-diskrezzjoni taghha - kif trid il-ligi - u cioe` li xxolji u tistralcja lil Unibuild.

Fil-kaz tal-lum, il-Qorti hija rinfaccjata minn numru ta` kredituri li baqghu ma thallsux dak dovut lilhom skont il-ligi, mill-fatt illi s-socjeta` kreditrici mqar ippruvat tiddefendi ruhha, mill-fatt illi warrbet fil-genb l-obbligi statutorji taghha vis-à-vis ir-Registratur tal-Kumpanniji.

Kumpannija li b`mod flagranti tiskarta kull obbligu li ghandha lejn terzi ma timmeritax li tibqa` tali tenut kont tal-fatt illi n-negozju huwa fondat fuq il-fiducja u meta l-fiducja tigi skartat daqs li kieku mhijiex valur rilevanti allura l-qorti ghandha tintervjeni b`mod qawwi sabiex taghmel car il-principju illi – *the rule of law is here to stay*.

## 2. L-Art 214(2)(b)(iii) tal-Kap 386

Din id-disposizzjoni tghid illi : *“kumpannija ghandha tkun xolta bil-qorti jekk ... il-qorti tkun tal-fehma li hemm ragunijiet gravi bizzzejjed li jiggustifikaw ix-xoljiment u konsegwentement l-istralc tal-kumpannija”*.

Il-ligi thalli lill-qorti diskrezzjoni wiesa` sabiex tistabilixxi hi jekk fil-fehma taghha jirrizultawx fatti u cirkostanzi **“gravi bizzzejjed”**.

Jekk tistabilixxi l-gravita`, allura minn hemm `il quddiem il-Qorti ma jkollhiex aktar diskrezzjoni u **tkun obbligata** taghmel id-dikjarazzjoni ta` xoljiment u konsegwenti stralc tal-kumpannija.

Il-ligi ma taghti l-ebda tifsira ta` x`inhuma *“ragunijiet gravi bizzzejjed”*.

Ghalhekk il-Qorti m`ghandha tiskarta xejn.



Sabiex tistabilixxi jekk fatti jew cirkostanzi humiex gravi bizzzejjed, il-Qorti m'għandhiex toqghod fuq grajjiet li jkun sehhew sad-data tal-presentata tar-rikors promotur tal-azzjoni, izda għandha taghti piz ukoll għal kull ma jigri anke wara, sa ma tigi biex taghti d-decizjoni tagħha.

Fl-Art 122 tal-Insolvency Act 1986 Ingliza, wiehed isib lista ta' cirkostanzi li jwasslu għax-xoljiment u għall-istralc ta' kumpannija.

**Fl-Insolvency Act 1986 ma hemmx disposizzjoni identika għal dik li tirrizulta fl-Art 214(2)(b)(iii) tal-Kap 386.**

Il-wahda li tqarreb l-aktar lejha hija l-Art 122(1)(g) li tghid: *the court is of the opinion that it is just and equitable that the company should be wound up.*

Huwa evidenti anke mad-daqqa t'għajn li d-disposizzjoni tagħna hija aktar stretta fis-sens illi fil-kaz tagħna l-Qorti għandha xxolji u tistralcja meta fil-fehma tagħha ikunu jirrizultaw ragunijiet gravi bizzzejjed.

Fil-ligi Ingliza, il-kriterju li fuqu l-Qorti trid tibni l-fehma tagħha huwa dak tal-gustizzja u l-ekwita'.

L-istrettezza tad-disposizzjoni tagħna tagħmel hafna sens anke għaliex jekk il-Qorti tesprimi l-fehma li hemm ragunijiet gravi bizzzejjed, allura minn hemm tkun obligata tordna x-xoljiment u l-istralc tal-kumpannija.

Il-Qorti tghid li r-riferenza għall-Art 122(1)(g) tal-Insolvency Act 1986 hija utili għaliex il-linja li hadu l-Qrati Inglizi biex ighidu x'inju *just and equitable* għall-fini ta' *winding up* tghin biex tiftah tieqa lill-Qrati tagħna għall-interpretazzjoni ta' x'jistghu jkunu ragunijiet gravi bizzzejjed.

Kull kaz għandu l-istorja tiegħu u għalhekk il-Qorti trid tibni l-fehma tagħha fuq il-fatti u cirkostanzi ta' kull kaz.

Dan premiss, u meqjusa l-provi li tressqu fl-assjem tagħhom, il-Qorti tghid illi m'għandhiex prova ta' x'assi għandha l-intimata llum, u li jekk għandha, hemmx minnhom disponibbli sabiex jinbieghu halli thallas lill-

kredituri taghha fi zmien ragonevolment qasir u l-kumpanija tkompli bl-operat li ghalha kienet ikkostitwita.

Irrizulta li l-intimata baqghet ma hallsitx id-debiti taghha u minn dak li jidher mir-ricerki pubblici, dan l-ahhar, din il-kumpanija intimata waqfet milli topera u spiccat fis-sitwazzjoni ta' *no return* billi kellhom jinbieghu mmobbli minn taghha bis-subbasta.

Meta tqis l-assjem, din il-Qorti ghandha c-certezza morali li x-xoljiment u stralc ta' Unibuild ikun gustifikat anke abbazi tal-Art 214(2)(b)(iii) tal-Kap 386.

### Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar l-istanza tar-rikorrenti billi :-

Tilqa' l-ewwel u t-tieni talbiet.

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tielet talba.

Riferibbilment ghar-raba' talba, tordna x-xoljiment ta' Unibuild Company Limited (C19011) abbazi ta' l-Art 214(2)(a)(ii), ta' l-Art 214(5)(b) u ta' l-Art 214(2)(b)(iii) tal-Kap 386 tal-Ligijiet ta' Malta, b'effett mil-lum, kif previst mill-ewwel proviso ta' l-Art 223(1) tal-Kap 386 tal-Ligijiet ta' Malta.

Tordna wkoll l-istralc ta' Unibuild Company Limited (C19011).

Riferibbilment ghall-hames talba, tahtar lir-Ricevitur Ufficjali bhala stralcjarju ta' Unibuild Company Limited (C19011), bis-setghat u bid-dmirijiet kollha li huma stabbiliti fil-Kap 386 tal-Ligijiet ta' Malta.

Tordna li l-ispejjez ta' dan il-procediment, inkluzi d-drittijiet u l-ispejjez tal-istralcjarju, ghandhom jithallsu mill-partijiet *in solidum* bejniethom, u dan bl-applikazzjoni tal-Art 236(2) tal-Kap 386 tal-Ligijiet ta' Malta.

Ghar-rigward tal-Kummissarju tat-Taxxi, ladarba huwa intervenut fil-kawza, u allura mhuwiex parti, huwa ghandu jbati l-ispejjez tieghu.

Thalli l-istralc ghal nhar it-Tlieta 3 ta` Ottubru 2017 fid-9.00a.m.

Onor. Joseph Zammit McKeon  
Imhallef

Amanda Cassar  
Deputat Registratur