



## QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF  
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 28 ta` Settembru 2017

Kawza Nru.  
Rik. Nru. 60/2015 JZM

**Paul Buhagiar Company Limited  
(C 40715)**

*kontra*

**Paul & Rocco (Gzira) Limited (C 2661),  
Victor Buhagiar (ID 35942M) u George  
Buhagiar (ID 21264M)**

Il-Qorti :

### I. Preliminari

Rat ir-rikors ipprezentat fit-23 ta` Jannar 2015 li jaqra hekk :-

1. *Illi s-socjeta` esponenti Paul Buhagiar Company Limited u l-intimati George u Victor Buhagiar, huma azzjonisti b`partecipazzjoni ugwali ta` terz (1/3) kull wiehed mill-ishma tas-socjeta` intimata, u t-tliet diretturi*

*tal-istess socjeta` intimata huma l-intimati Victor Buhagiar, George Buhagiar u kif ukoll Paul Buhagiar (li huwa appuntat mis-socjeta` esponenti).*

2. *Illi tul dawn l-ahhar snin, sahsitra b`atti vjolenti u intimidatorji kontinwi, l-intimati eskludew de facto lis-socjeta` rikorrenti mill-gestjoni tas-socjeta` intimata u qed jiggstixxu l-istess socjeta` intimata b`mod li qed jigi kkawzat pregudizzju serju, mhux gust u irrimedjabbli lis-socjeta` esponenti u lill-istess socjeta` intimata u dan kif se jigi ppruvat fil-kawza odjerna.*

3. *Illi f`diversi okkazzjonijiet tul dawn l-ahhar snin l-intimati u membri tal-familji taghhom aggredeu u intimidaw lid-direttur nominat mis-socjeta` rikorrenti fi hdan is-socjeta` intimata, cioe` Paul Buhagiar, u l-membri tal-familja tieghu sabiex iwarrbuhom mill-gestjoni tas-socjeta` intimata. Tant hu hekk li la l-istess Paul Buhagiar, u lanqas l-“alternate directors” li kienu gew debitament appuntati skont l-istatut ma nghataw il-liberta` ta` access ghall-propjeta` tal-istess socjeta` intimata u wisq anqas ghad-dokumenti kollha u informazzjoni ohra rigwardanti s-socjeta` intimata u t-tmexxija taghha.*

4. *Illi, kif se jigi ppruvat fil-mori tal-proceduri odjerni, l-intimati qed jiggstixxu s-socjeta` intimata kif jaqbel lilhom, b`mod li huwa insostenibbli, fraudolenti, u kontra l-interess tal-istess socjeta` u tas-socjeta` esponenti, u sahsitra l-intimati qed imexxu l-kumpannija intimata bi vjolazzjoni tad-doveri impost mill-artikolu 136A tal-Att dwar il-Kumpanniji.*

5. *Illi kif se jigi wkoll ippruvat fil-mori tal-kawza odjerna l-intimati qed imexxu s-socjeta` intimata b`mod illi ma huwiex finanzjarjament sostenibbli ghall-istess socjeta` intimata, u dan billi l-intimati u anke impjegati ohrajn tas-socjeta` intimata qed jikkoncedu, ghan-nom tas-socjeta` intimata, self lil terzi persuni b`mod mhux gustifikat u f`ammonti mhux gustifikati, f`okkazzjonijiet anke minghajr imghaxxijiet, liema self mhux qed jingabar lura.*

6. *Illi oltre dan l-intimati u l-“accountant” u l-awdituri tas-socjeta` intimata qed ihejju u japprovaw l-“accounts” ghan-nom tas-socjeta` intimata li ma jurux “true and fair view” ta` dak li verament qed jigri fil-kumpannija intimata. Oltre dan l-accounts tas-socjeta` intimata lanqas ma huma qed jitlestew entro t-termini imposti mil-ligi. Dan kollu qed jirreka pregudizzju u danni kemm lis-socjeta` esponenti u kif ukoll lis-socjeta` intimata.*

7. *Illu inoltre l-laqghat tal-kumpannija qed jigu organizzati u qed isiru b`mod li huwa oppressiv kontra s-socjeta` esponenti u kontra d-direttur minnha mahtur (u anke l-“alternate directors” minnha mahtura), u dan b`mod oppressiv, mhux gust u diskriminatorju kontra s-socjeta` esponenti.*

8. *Illu kif inghad, dan l-agir precitat qed johloq pregudizzju mhux gust, serju u irrimedjabbli kontra s-socjeta` esponenti.*

9. *Illu minkejja d-diversi interpellazzjonijiet da parti tad-direttur mahtur mis-socjeta` esponenti u anke da parti tal-“alternate directors” minnha mahtura minn zmien ghal zmien u anke da parti tal-proxies minnhom mahtura minn zmien ghal zmien sabiex l-intimati jieqfu mill-prassi oppressivi, abbużivi u pregudizzjali fil-konfront taghhom u ghalhekk fil-konfront tas-socjeta` esponenti u anke fil-konfront tas-socjeta` intimata, l-intimati baqghu ghal kollox inadempjenti u sahsitra injoraw ghal kollox lis-socjeta` esponenti u baqghu ghaddejjin bl-abbużi taghhom kontriha u kontra s-socjeta` intimata.*

10. *Illu s-socjeta` esponenti jidhrilha li hija intitolata illi kumpannija li taghha tkun azzjonista titmexxa b`mod serju, car u trasparenti u anke li tali tmexxija ma tkunx oppressiva, diskriminatorja kontra s-socjeta` esponenti u li l-istess socjeta` esponenti ma ssofrix minn pregudizzju mhux gust.*

11. *Illu l-agir abbużiv tal-intimati kawza u qed jikkawza pregudizzju qawwi u danni irrimedjabbli kemm lis-socjeta` esponenti kif ukoll lill-istess socjeta` intimata u fl-umli opinjoni tas-socjeta` esponenti, kif se jigi ppruvat fil-kawza odjerna, jezistu ragunijiet gravi bizzejjed li jiggustifikaw u li dina l-Onorabbli Qorti taghti daww l-ordnijiet li huma necessarji, xierqa u opportuni a tenur tal-precitat Artikolu 402 tal-Att dwar il-Kumpanniji.*

*Ghaldaqstant, in vista tas-suespost, is-socjeta` esponenti titlob bir-rispett illi dina l-Onorabbli Qorti joghgobha :-*

1. *Taghti daww id-direttivi, provvedimenti u ordnijiet kollha li jidhrilha xierqa u opportuni a tenur tal-precitat Artikolu 402 tal-Att dwar il-Kumpanniji (Kap. 386 tal-Ligijiet ta` Malta) bil-ghan li l-precitati atti*

*oppressivi, diskriminatorji u pregudizzjali jigu rrimedjati minnufih u sabiex, anke “pendente lite”, jkun hemm tmexxija serja u xierqa tas-socjeta` intimata kif del resto huwa rikjest mill-Att dwar il-Kumpaniji, u dana fl-interess tas-socjeta` esponenti u tenut kont l-interessi tal-kumpannija intimata;*

*Bl-ispejjez.*

Rat ir-risposta li pprezentat l-intimata Paul & Rocco (Gzira) Limited fid-19 ta` Frar 2015 li taqra hekk :-

1. *Preliminarjament ir-rikors kontenenti talba ghall-ghoti ta` dawk id-direttivi, provvedimenti u ordnijiet xierqa u opportuni a tenur tal-Artikolu 402 tal-Att dwar il-Kumpaniji [Kap. 386 tal-Ligijiet ta` Malta] huwa improponibbli u bhala tali huwa irritu u null bl-applikazzjoni tal-massima “electa una via non datur recursus ad alteram”. Certament li ma jistax fmument jintalab l-istralc tas-socjeta` esponenti u fl-istess waqt jintalbu direttivi, provvedimenti u ordnijiet li jippressupponu li l-kumpannija ghandha tibqa` operanti u operattiva.*

2. *Preliminarjament ukoll u minghajr pregudizzju ghas-suespost in-nuqqas ta` “locus standi” tas-socjeta` esponenti fl-azzjoni promossa mir-rikorrenti u dan in virtutu tal-fatt li l-premessi li fuqhom hija bbazata l-azzjoni promossa jindikaw kollha allegati nuqqasijiet kommessi mill-koazzjonisti u mhux mis-socjeta` esponenti u ghaldaqstant l-azzjoni odjerna kellha tkun diretta limitatament kontra l-koazzjonisti.*

3. *Minghajr pregudizzju ghas-suespost u fil-mertu s-socjeta` esponenti tirrimetti ruhha ghal dak li tiddeciedi l-Onorabbli Qorti wara li jinstemghu l-provi in sostenn tal-allegazzjonijiet imressqa mill-azzjonisti Paul Buhagiar Company Limited.*

4. *Salvi eccezzjonijiet ulterjuri.*

Rat ir-risposta prezentata mill-intimati l-ohra Victor Buhagiar u George Buhagiar fid-19 ta` Frar 2015 li taqra hekk:-

1. *Preliminarjament ir-rikors kontenenti talba ghall-ghoti ta` dawk id-direttivi, provvedimenti u ordnijiet xierqa u opportuni a tenur tal-Artikolu 402 tal-Att dwar il-Kumpaniji [Kap. 386 tal-Ligijiet ta` Malta] huwa*

*improponibbli u bhala tali huwa irritu u null bl-applikazzjoni tal-massima “electa una via non datur recursus ad alteram”. Certament li ma jistax f'mument jintalab l-istralc tas-socjeta` esponenti u fl-istess waqt jintalbu direttivi, provvedimenti u ordnijiet li jippressuon li l-kumpannija ghandha tibqa` operanti u operattiva.*

*2. Preliminarjament ukoll u minghajr pregudizzju ghas-suespost ir-rikors tas-socjeta` Paul Buhagiar Company Limited huwa nieqes minn indikazzjoni specifika tal-mizura jew mizuri alternattivi li qeghdin jigu mitluba mill-Onorabbli Qorti u bhala tali r-rikors huwa irritwali u ghandu jigi respint bl-ispejjez.*

*3. Minghajr pregudizzju ghas-suespost l-esponenti jecepixxu li t-talbiet tas-socjeta` rikorrenti ghandhom jigu michuda bl-ispejjez ghall-imsemmija ragunijiet:*

*3.1. Primarjament jinghad illi l-lanjanzi esposti u prospettati fir-rikors promotur tas-socjeta` rikorrenti u li abbazi taghhom qieghda tintalab l-applikazzjoni ta` dak kontenut u stipulat Artikolu 402 tal-Att dwar il-Kumpannija [Kap. 386 tal-Ligijiet ta` Malta] fil-parti l-kbira taghhom ma jikwadrawx ruhhom fil-parametri ffixxati fl-imsemmi Artikolu li minn qari tieghu jitkellem dwar “l-affarijiet tal-kumpannija li jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew” jew dwar “ommissjoni tal-kumpannija”.*

*3.2. Minghajr pregudizzju ghal dak espost fil-paragrafu precedenti u fi kwalunkwe kaz riferibbilment ghall-imsemmija lanjanzi esposti u prospettati fir-rikors promotur tas-socjeta` rikorrenti u konsistenti f'allegazzjonijiet l-esponenti jwiegbu hekk :*

*3.2.1. Ma huwiex minnu li l-esponenti intimati eskludew lir-rikorrent mill-gestjoni tas-socjeta` Paul & Rocco (Gzira) Limited izda kien l-istess rikorrent li eskluda ruhu minn din il-gestjoni wara li l-azzjonisti esponenti rrezistew kull attentat da parti tar-rikorrent li jagixxi bi prepotenza u arroganza u li jew jiddetta jew ihassar. Dan l-atteggjament tar-rikorrent sejjer jigi ppruvat permezz ta` diversi xhieda li tul iz-zmien gew f'kuntatt mar-rikorrent u li jistghu jikkonfermaw il-prepotenza, l-arroganza u l-atteggjament ostili fil-konfront ta` kollox u ta` kulhadd. Sa ftit xhur ilu l-esponenti zammew laqghat mar-rikorrent u mat-tifla tieghu Simone Pisani fil-prezenza tal-konsulent legali l-Avukat Dottor Kris Borg u tal-awditur tas-socjeta` Paul & Rocco (Gzira) Limited sabiex jigu diskussi varji materji*

*marbuta mal-gestjoni. Kien saħansitra waqt dawn il-laqghat li r-rikorrent infexx f'tghajjir fil-konfront ta' diversi persuni li kienu qegħdin jaqdu dmirhom fejn dawn gew imghajjra korrotti, hallelin u aġġetivi ohra dispregjattivi.*

*3.2.2. Ma huwiex lanqas minnu li saret xi aggressjoni jew intimidazzjoni fil-konfront tar-rikorrent u membri tal-familja tieghu u li r-rikorrent ma għadx għandu l-liberta' ta' access għall-propjeta' tas-socjeta' Paul & Rocco (Gzira) Limited jew għad-dokumenti u informazzjoni ohra rigwardanti l-istess socjeta'. Sejjer jigi ppruvat permezz ta' diversi xhieda li dan ma huwiex minnu u li r-rikorrent u membri tal-familja tieghu ma gew qatt esklużi milli jaccedu għall-propjeta' tas-socjeta' Paul & Rocco (Gzira) Limited jew għal xi dokumenti u informazzjoni rigwardanti s-socjeta' Paul & Rocco (Gzira) Limited, salv dejjem li jigu segwiti certi regoli li japplikaw għal kull direttur. Saħansitra xi xhur ilu bint ir-rikorrent Simone Pisani qattgħet gimghat tikkollezzjona u tivverifika informazzjoni fl-ufficji tas-socjeta' Paul & Rocco (Gzira) Limited mingħajr ebda xkiel jew tfixxkil.*

*3.2.3. Ma huwiex minnu li s-socjeta' Paul & Rocco (Gzira) Limited qieghda tigi gestita kif jaqbel lill-esponenti intimati jew b'mod li huwa insostenibbli, frawdolenti u kontra l-interess tas-socjeta' u xi azzjonist tagħha. Ma huwiex ġustifikabbli, korrett u ekwu li r-rikorrent jaġħmel allegazzjoni wiesgħa bħal din mingħajr ma jaccenna anke jekk b'mod ġeneriku u sintetiku għal cirkostanzi jew fatti li jindikaw dak li huwa qieghed jallega. Kieku qatt biss kien kif qieghed jallega r-rikorrent kif jispjega r-rikorrent li l-bank li miegħu s-socjeta' għandha facilitajiet bankarji mhux talli baqa' jaġhti support finanzjarju lis-socjeta' Paul & Rocco (Gzira) Limited izda estenda u kabbar dan is-support. Barra minnhekk ir-rikorrent sa f'it xhur ilu kien jircievi regolarment id-dividendi provvizorji tiegħu u kien biss l-aħħar pagament li gie rifjutat minnu wara snin jaccetta u jinkassa dawn il-hlasijiet.*

*3.2.4. Ma huwiex lanqas minnu li l-esponenti konvenuti qed imexxu s-socjeta' Paul & Rocco (Gzira) Limited b'mod li ma huwiex finanzjarjament sostenibbli għall-istess socjeta'. Minbarra l-fatt li s-socjeta' rikorrenti trid tipprowva dan, l-istess esponenti sejrjn juri fil-kors tas-smiġħ tal-kawza il-kuntrarju.*

*3.2.5. Dwar l-allegazzjoni li r-rapporti finanzjarji tal-kumpannija Paul & Rocco (Gzira) Limited ma jurix "true and fair view", minbarra l-fatt li huwa meħtieġ is-socjeta' rikorrenti tipprowva dan, l-istess esponenti sejrjn juru li din hija allegazzjoni ohra fiergħa bħall-allegazzjonijiet li s-Sur Paul*

*Buhagiar l-azzjonista tas-socjeta` rikorrenti, soltu jaghmel u huwa espert ghalihom.*

*3.2.6. Dwar l-allegazzjoni li l-laqghat tal-kumpannija jigu organizzati kontra s-socjeta` rikorrenti, kontra d-direttur mahtur minnha u anke l-“alternate directors” mahtura dan jehtieg li jigi ppruvat. L-esponenti koazzjonisti huma konvinti li sejjer jintwera fil-kors tas-smigh tal-kawza li l-oppresjoni u d-diskriminazzjoni allegata hija biss finzjoni tal-hsieb tas-Sur Paul Buhagiar u xejn aktar.*

*3.3. Sejjer jirrizulta fil-kors tas-smigh tal-kawza li ma gie kkawzat jew ma qiegħed jigi kkawzat ebda pregudizzju qawwi, gravi jew mhux gust fil-konfront tas-socjeta` rikorrenti. Il-pregudizzju qiegħed biss f`mohh u fl-immaginazzjoni paranojka tal-azzjonist tas-socjeta` rikorrenti u kawza ta` din l-immaginazzjoni paranojka tal-ezistenza ta` xi pregudizzju f`mohh l-azzjonista tas-socjeta` rikorrenti gie skonvolt u distrutt l-ekwilibriju mixtieg mill-esponenti u tant mehtieg ghall-armonija soċjetarja.*

*3.4. Dwar it-talba tas-socjeta` rikorrenti ghall-ghoti ta` direttivi, provvedimenti u ordnijiet pendente lite tali talba ma hijiex legalment sostenibbli u bhala tali ghandha tigi skartata. Fejn il-legislatur ried li jipprovi ghall-ordnijiet pendente lite jew ta` natura provizorja dan ghamlu billi pprova ghalih espressament.*

*3.5. Salvi eccezzjonijiet ulterjuri.*

**Rat il-verbal tal-udjenza tad-19 ta` Frar 2015 fejn l-intimati Victor Buhagiar u George Buhagiar irtiraw l-ewwel eccezzjoni preliminari tagħhom, u fejn l-intimata Paul & Rocco (Gzira) Limited irtirat l-ewwel eccezzjoni preliminari tagħha.**

Rat id-digriet li tat fl-istess udjenza fejn ordnat li l-allegazzjoni ta` l-atti kollha tal-kawza fl-ismijiet *Paul Buhagiar vs Paul & Rocco (Gzira) Ltd et Rik. Nru. 980/11 JZM* li kienet ceduta.

Rat l-atti tal-process allegat.

Rat il-provi li tressqu fil-kors tal-kawza.

Rat id-digriet li tat fl-udjenza tal-11 ta` Ottubru 2016 fejn iddikjarat maghluq l-istadju tal-gbir tal-provi.

Rat in-nota ta` osservazzjonijiet tar-rikorrenti.

Rat illi l-kawza thalliet ghad-decizjoni bil-fakolta` illi l-intimati jipprezentaw nota ta` osservazzjonijiet.

Rat illi l-intimati baqghu ma pprezentawx nota ta` osservazzjonijiet.

Rat l-atti l-ohra tal-kawza.

## II. Provi

### 1. Deposizzjonijiet ta` xhieda fil-kawza tal-lum

Simone Pisani xehdet illi hija tigi bint Paul Buhagiar, u minn mindu saret din il-kawza ma kienx hemm progress jew bdil ghall-ahjar fl-attitudini tal-intimati Buhagiar, tal-awdituri u ta` l-*company secretary* fil-konfront taghhom. Missierha jew kwalunkwe *alternate director* tieghu ma kienx qed jithalla jippartecipa u jacedi ghal informazzjoni attwali. L-informazzjoni li kienu qeghdin jinghataw kienet skaduta u mhux effettiva. Il-finanzi tal-kumpannija ntimata baqghu jitmexxew hazin ghad-detriment mhux biss tal-kumpannija ntimata izda wkoll ghal dik rikorrenti.

Komplet tixhed li fl-2012, l-intimati Buhagiar applikaw mal-MEPA ghal permess ta` bini ta` *showroom* u *car washbooth* kif ukoll ghal *solar panels* li eventwalment kien stallati. Dan sar bla ma saret laqgha tal-bord tad-diretturi biex ikun diskuss l-investment u l-finanzjament tieghu. Spjegat li missierha nduna b` dan kollu meta kien ghaddej minn quddiem il-post ts-socjeta` ntimata. Missierha ghamel oggezzjoni ghal dan mal-MEPA fl-10 ta` Ottubru 2012 fejn spjega li huwa ma kienx avzat bl-applikazzjoni u li ma kienx ta l-kunsens tieghu. Il-MEPA ma setghetx tidhol fil-kwistjoni. Ghalhekk il-permess hareg. Missierha ma kienx interessat ma kienx interessat jitlob il-hrug ta` mandat ta` inibizzjoni.



Stqarret illi ezempju iehor ta` nuqqas ta` konsultazzjoni ma` missierha, kien meta l-awdituri DFK ghamlu kuntatt maghha fil-25 ta` Marzu 2015 u talbu informazzjoni dwar il-kumpanniji li kellhom l-azzjonisti tas-socjeta` intimata. Fil-kaz ta` missierha, il-kumpanniji kienu : PSP & GC Ltd, Paul Buhagiar Co Ltd, Paul & Rocco (Marsa) Ltd, u Paul & Rocco Estates Ltd. Talbuha t-*turnover* ta` kull kumpannija kif ukoll in-numru ta` impjegati. Riedu dan it-taghrif sabiex ikunu jistghu ghal Micro Invest Tax Credit fuq investimenti kapitali. Dan kollu gara lejliet li kienet ser taghlaq l-applikazzjoni. Missierha ma kellux access ghal din l-informazzjoni daqshekk malajr.

Fissret illi l-intimati Buhagiar jidhrilhom li jistghu jmexxu kif iridu minghajr ma jinfurmaw, jikkonsultaw u jiddiskutu ma` r-rikorrenti li hija t-tielet azzjonista tas-socjeta` intimata u li ghandha terz tal-ishma.

Stqarret illi f` Novembru 2014 missierha ddecieda li jirtira u tkellem ma` nutar biex jittrasferixxi l-ishma ta` s-socjeta` rikorrenti fuq l-erba` uliedu. Waqt li n-nutar kien qed jigbor id-dokumenti rikjesti, kienu mehtiega l-*audited accounts* ta` l-ahhar hames snin ta` Paul & Rocco (Gzira) Limited. Sabu li l-*audited accounts* tal-2003 kienu ghadhom lanqas inbdew. Missierha kien ilu zmien jitlob sabiex isiru dawn l-*audits* izda sal-15 ta` April 2015, dawn kienu ghadhom ma nbdewx. Skont DFK id-diretturi ma kienux qeghdin jikkoperaw magghom, u li fl-ahhar tlett snin dejjem kellhom problema dwar ksib ta` informazzjoni. Id-dewmien fit-tlestija tal-*audits* holoq pregudizzju ghar-rikorrenti kif ukoll ghaliha u ghat-tliet hutha.

Xehdet li rari jsiru laqghat generali tal-kumpannija, sakemm ma jitolbux huma. Minn tlett diretturi li suppost jiltaqghu, kienu jiltaqghu tlett *alternate directors* : Joe Gauci minflok Victor Buhagiar, Edward Camilleri minflok George Buhagiar, u hi jew l-avukat taghhom minflok missierha ghar-rikorrenti. Hadd minn dawn il-persuni ma jafu x` inhu jigri *fid-day to day running* tan-negozju. Hafna drabi jattendi Dr Pio Valletta li huwa l-avukat ta` Paul & Rocco (Gzira) Ltd u tal-intimati Buhagiar, kif ukoll Ray Vella li huwa l-*company secretary* u rapprezentanti ta` DFK.

Komplet tixhed illi kull ma jkun miftiehem fil-laqghat mhux dejjem jitwettaq bhal fil-kaz ta` talba taghhom li jkollhom *bank account access (viewing only)* via *internet*, bhalma diga` ghandhom l-intimati Buhagiar.

Kompliet tghid li fil-25 ta` Settembru 2009 saret laqgħa fejn inzammu l-minuti. Fil-laqgħa Av. Paul Micallef Grimaud, li kien l-*alternate director* ta` r-rikorrenti gibed l-attenzjoni li wiehed mid-diretturi kien qed jigi mcanggih l-access fil-fond tal-Gzira permezz tal-*Proposal for Directors` Ethics*. Dan id-dokument kien miktub minn Dr Pio Valletta, iffirmata minn Victor Buhagiar wahdu, u għadda mill-bord tad-diretturi b` zewg voti favur u wiehed kontra. Skont Dr Valletta, dak id-dokument sar sabiex id-diretturi jkunu fuq l-istess livell.

Xehdet illi l-intimati Buhagiar kissru dak li kiteb l-avukat tagħhom stess fid-dokument.

Qalet dan għaliex l-intimat Buhagiar talbu lill-impjegati informazzjoni kontinwa biex ikunu jistghu jmessu n-negozju ta` kuljum izda fl-ebda mument ma talbu bil-miktub lill-bord tad-diretturi biex ikunu jistghu jacedu għal inofrmazzjoni jew dokumenti.

Sostniet li b`ittra tat-28 ta` Settembru 1999 li giet minghand l-intimati Buhagiar fuq letterhead tal-kumpannija, Ray Vella kien ordnat biex ighid lil missierha jmur il-post tan-negozju tal-kumpannija l-Gzira wara s-6.00 p.m. meta l-ufficini jkunu magħluqa u l-impjegati jkunu telqu.

Spjegat li meta missierha jitlob informazzjoni lil Ray Vella, dan dejjem jghidlu li l-ewwel irid juri l-informazzjoni lil Dr Pio Valletta.

Dan l-istat ta` fatt kien ilu għaddej mill-2009.

Skont ix-xhud, id-dokument approvat miz-zewg diretturi l-oħra sar specifikament sabiex missierha ma jkunx jaf is-sitwazzjoni ta` Paul & Rocco (Gzira) Limited u biex izommuh fl-ghama dwar dak li qed jigri.

Dan kollu huwa aggravat bil-fatt li l-*management accounts* u l-*audited accounts* dejjem jkunu ta` madwar sentejn b`lura, minkejja l-insistenza tagħha u ta` missierha li dawn isiru fil-hin. Missierha kien ukoll ivvota kontra li jergħu jinhatru DFK bhala awdituri izda dawn baqgħu fl-inkarigu tagħhom għax iz-zewg diretturi l-oħra vvutaw favur tagħhom.

Tghid illi meta marret fil-fond fil-Gzira biex taghmel rapport dwar il-*hire purchase debtors*, kienet michuda access liberu ghall-kotba li kienet tinhtieg.

Qalet li Victor Buhagiar talabha tahdem minn go *sales room* li kienet *cubicle* zghira ffit metri `l boghod mill-ufficju tal-impjegati li jzommu l-kotba. Sostniet li Buhagiar kien qalilha biex dak li trid hi titolbu lilu u jkun hu li jgibilha dawn id-dokumenti.

Sahqet illi hi, hutha u missierha jemmnu li hemm *mismanagement* kbir fil-kumpanija Paul & Rocco (Gzira) Ltd u dan b` dannu lill-istess kumpanija u lir-rikorrenti.

Sostniet li t-tmexxija hazina tirrizulta mix-xiri u l-bejgh ta` karozzi u l-mod kif qed jinghata finanzjament lill-klijenti.

Qalet illi Norbert Buhagiar, li jigi t-tifel ta` Vincent Buhagiar, huwa *salesman* li jbiegh u jixtri l-karozzi . Dan ghandu paga u *commission* fuq kull karozza li jbiegh. Huwa jbiegh u jixtri karozzi skont kif irid hu ghaliex ma jezistux *policies* ta` kif il-kumpanija ghandha tixtri u tbiegh. Norbert Buhagiar jixtri karozzi bi prezz gholi hafna jew ipartat karozzi u jipprezzahom gholi.

Spjegat li Ray Vella qalilha li meta jdur l-*istock* tal-karozzi ghal bejgh, huwa jsejjah lil Norbert Buhagiar sabiex jistaqsieh jekk il-prezzijiet ta` daww il-karozzi li ilhom *in stock* ghadhomx validi. Billi Norbert ma jaqbillux li dawn jibqghu ma jinbieghux, ghax jitlef il-*commission*, huwa jaghti prezz aktar baxx meta fil-verita dawn ikunu nextraw bi prezz aktar gholi. Bhala eżempju semmiet illi skont l-*istock* tal-31 ta` Dicembru 2013, kien hemm karozza Mercedes Reg DI 864 li t-*total cost* taghha kien EUR 11,617.92 u li fl-2014 inbieghet minn Norbert ghall-prezz ta` EUR 2,500, ossija b` telf ta` EUR 9,117.92.

Komplet tixhed illi dan il-metodu ta` *accounting* huwa abbużiv peress li facilment jista` jsir loghob bil-figuri. Skont ix-xhud, dan l-eżercizzju ghandu jsir minn kumpanija ta` assikurazzjoni peress li dawn ikollhom il-*market value* ta` kull vettura. Huma pproponew li jsir hekk izda l-proposta kienet respinta. Fl-2013 huma tilfu EUR 48,000 b`dan il-mod.

Kompliet tghid li meta klijenti jixtru karozza li tiswa hafna flus, ikun hemm zewg *accounts* fuq l-istess debitur u fuq l-istess karozza. Spjegat li *account* minnhom jkun minghajr imghax u l-iehor ikun bl-imghax. Qalet li l-klijent suppost ihallas l-ewwel ammont li huwa minghajr imghax fi zmien qasir li jkun gie miftiehem, izda dak li effettivament jaghmel il-klijent huwa li l-ewwel ihallas l-ammonti li ghandhom l-imghax halli jkun jista` jiffranka l-imghax, imbaghad ihallas l-ammont ta` minghajr imghax.

Sostniet li l-kumpannija ntimata ghandha *overdraft* b`imghax ta` 5% u ghalhekk tkun qed tiflef meta hija thallas 5% fuq is-self taghha, imbaghad issellef minghajr imghax. Sal-1 ta` April 2015, kien hemm EUR 668,775.89c mislufa lid-debituri minghajr imghax.

Fissret illi Norbert Buhagiar ibiegh karozzi lil *dealers* ohra u dawn jinbieghu kollha bid-dejn u minghajr imghax ghal perjodu ta` xahrejn. Il-problema hija li jghaddu xhur u gieli snin qabel ma jhallsu u dawn jibqghu minghajr imghax. Dawn id-*dealers* lanqas ma jhallsu *cash* ; infatti l-intimati Buhagiar gieli jaccettaw djun ta` klijenti ta` l-istess *dealers* biex jinqatghu kontra dak li ghandu jaghti d-*dealer* stess. Dan ikompli jaggrava l-problema tal-*cash flow* tal-kumpannija. Ir-riskju li ma jingabrux dawn il-flejjes huwa akbar. Sostniet li wiehed minn dawn id-*dealers*, Damian Borg ghandu jaghti lill-kumpannija ntimata l-ammont ta` EUR 383,378.48c. Din hija Prattika perikoluza ghaliex jekk dan ma jhallasx, il-kumpannija tista` tiehu daqqa kbira `l isfel. Hi u missierha kienu pproponew *policies* godda dwar kif qed jinxtraw u jinbieghu l-vetturi.

Kompliet tistqarr illi dwar id-debituri tal-kumpannija, hemm nuqqas kbir ta` *credit control*. Hemm hafna debituri li qeghdin lura fil-pagamenti tagghom. Minn circa €3,000,000 dovuti minn debituri skont l-*accounts* tal-2012, hemm €1,238,000 fejn qed jiehdur riskju li ma jingabrux. Hemm ammont li mhux ser jingabar jew ghaliex il-kambjali huma preskritti jew ghax id-debituri telqu mill-pajjiz jew ghax qeghdin il-habs. Dawn mhux qed ikunu riflessi fl-*accounts* u b`hekk il-*balance sheet* tibqa` tidher tajba. Skont ir-rapport ta` *hire purchase charges* ta` l-2013, is-somma li ngabret ta` EUR 8393.35 kienet baxxa hafna. Jekk wiehed jiehu l-ammont tal-kolonna msejha *Hire Purchase tal-Cars Sold Report* fil-31 ta` Dicembru 2013 li huwa EUR 961,000 u jahdem 3%, ir-rizultat jigi EUR 28,830 u mhux EUR 8393.35c. Il-probabilita` hija li mhux jinzammu *charges* fuq dejn li ghandhom id-dealers magghom.

Kompliet tghid illi waqt laqgha ma` Ray Vella dwar il-*managament accounts* tal-2013, hija ndunat li ma kienx hemm dhul ta` *insurance*. Meta staqsiet dwar dan, kienet infurmat li din kienet tnehhiet ghaliex ma kinitx trendi. Dan is-servizz twaqqaf minghajr ma kien infurmat missierha.

Qalet illi l-intimat George Buhagiar fetah negozju tieghu tal-karozzi, u allura b`kompetizzjoni man-negozju tal-kumpannija ntimata.

Fissret illi missierha kien ilu jghid illi kienu qed jitqassmu *dividends* iktar milli kien qed isir qliegh. Kull xahar, kull azzjonist jiehu EUR 2,500 bhala *dividend*. Waqt illi l-intimati Buhagiar kienu jiehu dan id-dividend, ir-rikorrenti tramite missierha rrifjutat billi l-kumpannija ma kinetx qieghda taqla` bizzejjed. Is-sehem tar-rikorrenti tqieghed go kont il-bank fl-isem tal-kumpannija ntimata minghajr il-kunsens ta` missierha. Qeghdin johorgu EUR 7500 bhala *dividends* kull xahar, qabel ma johorgu l-*accounts*, u allura qabel ma jkun jafu xi profitti kien hemm matul is-sena.

Xehdet illi l-azzjonisti qeghdin jiehu l-profitti kollha tal-kumpannija ta` kull sena kif ukoll qed jiehu mir-*retained profits* ; dawn tal-ahhar sejr in jispicaw. Fl-2013, il-kumpannija ghamlet telf ta` EUR 27,274 qabel it-taxxa u skont id-*draft accounts* ta` l-2013 li hejjew DFK dan it-telf ser jizdied ghal EUR 56,912. Ghalkemm DFK jafu b` dan, qatt ma ghamlu xejn. Spjegat li fis-*sanction letter* tal-bank hemm klawzola li tghid li biex jittiehu *dividends* iridu l-kunsens tal-bank, izda dan il-kunsens baqa` qatt ma ntab. Missierha gibed l-attenzjoni tal-bank kemm-il darba dwar dan izda ghalxejn. Kompliet tghid li l-awditur ta` r-rikorrenti, Steve Fenech, kien taghhom analizi dettaljata ta` l-*audited accounts* mill-1999 sa l-2012 u infurmahom li l-*balance sheet* marret lura hafna u li l-profitt fuq l-operat mar lura wkoll. Ghamel din l-analizi meta ma kienx ghadu ha vizjoni tad-*draft accounts* ta` l-2013 fejn hemm jidher telf ta` EUR 56,912.

Xehdet illi l-intimati Buhagiar ikkommettew il-kumpannija ntimata ghal kuntratti ghal tul ta` zmien fil-kiri ta` karozzi lil azjendi kbar. Biex jaghmlu dan akkwistaw hafna vetturi godda bid-dejn minghand l-agenti. Qabel ma ghalqu dawn il-kuntratti, uhud mill-azjendi taw lura kwantita` ta` karozzi bil-konsegwenza li l-vetturi spicaw ghandhom *idle*. Il-vetturi kellhom jigu *garaged* biex ma jithallsux licenzji u *insurances*. Missierha ma kienx infurmat b` dan in-negozju ta` kiri.

Qalet li mid-*draft accounts* tal-2013, jirrizulta li jekk il-kumpannija zżomm il-*fuel station* biss u taghlaq id-dipartimenti l-oħra, inkluz il-karozzi għal bejgh, taghmel profitti hafna ahjar, tant li tkopri d-*dividends*, u jibqa` profitt biex jizdiedu mar-*retained profits*.

Fissret illi kien fl-20 ta` April 2015 illi hadet *draft* ta` l-*audited accounts* ta` l-2013. Inghataw ukoll *draft management letter* minghand DFK fejn dawn gibdu l-attenzjoni għal certu punti li missierha kien ilu jishaq fuqhom. Fost il-kummenti, DFK irrimarkaw illi kienu qeghdin jinstabu differenzi bejn il-*control accounts* u d-*debtors list* minhabba *software problems* li l-intimati Buhagiar baqghu qatt ma rrimedjaw. Kien rimarkat ukoll li kien hemm nuqqas ta` *aged debtors list*. Fl-istess *management letter*, DFK issenjalaw illi l-kumpannija tilfet EUR 11,000 fl-operat tal-karozzi u EUR 6,000 fl-operat tal-car hire ; fl-istess waqt zdiedu bi EUR 13,000 l-ispejjeż amministrattivi u kien hemm tnaqqis sostanzjali fil-*finance income* ta` EUR 22,000.

Irrilevat illi DFK ikkonfermaw li l-*balance sheet* tal-kumpannija tinsab f` qagħda hazina għaliex hemm *net current liability* ta` EUR 749,883 li jfisser li jekk il-bank jiddeciedi li jagħmel *call in*, Paul & Rocco (Gzira) Ltd mhijiex fil-pozizzjoni li tonora l-obbligi tagħha. DFK sostnew li minkejja t-telf, id-diretturi baqghu jiehdu *dividends* ta` EUR 90,000.

Komplet tgħid li ssemma n-nuqqas ta` *plant register*. Dwar dan baqa` ma sar xejn. Li għamli DFK kien illi siltu hafna mill-proposti u suggerimenti li kien għamel missierha matul is-snin u nserewhom fil-*management letter* ta` l-2013.

Sahqet illi kien hemm bzonn : (a) ta` aktar *credit control* u *financial projections* billi jinhatar *financial controller* indipendenti ; (ii) li jsiru *quarterly accounts* biex ma jittieħdux *dividends* aktar milli jmiss ; (iii) li jinhatar awditur indipendenti li jivverifika bir-reqqa s-sitwazzjoni u jipproponi rimedji fejn jidhirlu li qed isir hazin ; (iv) li jinhatar *company secretary* gdid peress li Ray Vella mhuwiex kompetenti bizzejjed; (v) li jsiru *policies* ta` kif għandu jsir ix-xiri u l-bejgh tal-karozzi għax dak huwa n-negozju principali tal-kumpannija ; u (vi) li r-rikorrenti tinghata access liberu għal kwalunkwe informazzjoni bħal ma għandhom id-diretturi l-oħra.

Komplet tixhed illi għal habta ta` Marzu 2015, wara talba ta` missierha bħala direttur tar-rikorrenti, bdiet tmur l-ufficju tas-socjeta`

intimata biex tigbor informazzjoni dwar l-operat tal-*car sales* u tal-*hire purchase*. Dwar il-*car sales*, hija bdiet taghmel verifika tad-dokumenti tal-bejgh tal-karozzi. Sabet li ma kien hemm l-ebda kuntratt ta` bejgh bi klawzoli adattati.. Fis-snin passati dejjem intuza kuntratt ta` bejgh bi klawzoli li jorbtu lix-xerrej ghal pagament shih tal-vettura fi zmien stipolat u klawzoli ohra, izda dan waqaf li jintuza. Kienet infurmata minn Mariella Aquilina li l-kambjali kienu jaghmlu tajjeb u ma kienx hemm bzonn ta` kuntratt ta` bejgh. L-unika dokumenti li sabet kienu *sales invoices* u *purchase invoices* mhux iffirmati mix-xerrej jew mill-bejgiegh. Il-kuntratt rega` beda jintuza wara insidenza ta` Dr Mary Grace Buhagiar.

Stqarret li l-bicca l-kbira tal-karozzi jinbieghu lil *dealers* ohra. F` kull kaz ta` bejgh, id-*dealer* ma jhallasx tal-vettura mixtrija minghand il-kumpannija intimata bi flus kontanti izda jsir tpartit ma` karozza ohra tad-*dealer* stess. Jekk il-valur tal-vettura li tigi minghand id-*dealer* ikun inqas mill-valur tal-karozza li qed ibieghu, id-*dealer* ihallas il-bilanc fi zmien xahrejn jew tlieta minghajr imghax. Peress li ma kienx isir kuntratt miktub izda biss *sales invoices*, ma kienx hemm klawzoli li jorbtu lid-*dealers* biex ihallsu fiz-zmien stipulat kif ukoll lanqas klawzoli dwar imghax meta jkun hemm nuqqas ta` hlas. Ghalhekk id-*dealers* approfittaw minn dan u akkumulaw bilanci dovuti lill-kumpannija li jammontaw ghall-eluf ta` mijiet ta` Ewro.

Spjegat li Norbert Buhagiar gieli ipartat iktar minn karozza wahda ghal kull vettura li jbiegh lil dawn id-*dealers*. Meta l-valur tal-karozza li jkun biegh lid-*dealer* ikun l-istess ammont tat-total tal-valur tal-karozzi li jkun partat, f` dan il-kaz ma jkunx fadal bilanc xi jihallas id-*dealer*. Ghalhekk il-valur tal-*istock* tal-karozzi tal-kumpannija intimata jibqa` l-istess minflok jonqos filwaqt li n-numru tal-karozzi *in stock* jizdied sew b`cans inqas li l-vetturi li jkun partat jinbieghu malajr biex jingabar il-valur tal-vettura li tkun marret ghand id-*dealer*. Sostniet li r-rikorrenti dejjem oggezzjonat ghal dan ghax ma jaghmilx sens li filwaqt li jintuza l-*overdraft* biex tiffinanzja l-*car sales department* u jithallas imghax ta` 5% lill-bank, imbaghad ghad-dejn li jkun dovut mid-*dealers* ma jithallasx imghax lill-kumpannija intimata.

Spjegat li Dr Mary Grace Buhagiar insistiet hafna dwar dan sakemm sa fl-ahhar il-bord tad-diretturi accetta illi d-*dealers* jibdew ihallsu imghax ta` 5% fis-sena fuq il-bilanci dovuti. Ghalkemm inbaghat *internal memo* Mariella Aquilina u Norbert Buhagiar baqghu jinjoraw id-decizjoni tal-bord tad-diretturi.

Qalet illi l-kumpannija ntimata ghandha tiehu EUR 400,000 li minnhom EUR 148,000 huma dovuti minn Damian Borg.

Kompliet tghid li skont il-verzjoni *draft* tal-*income statement* ta` 2015, jidher illi t-*turnover* minn vetturi kien ta` EUR 4,781,543 filwaqt li t-total ta` karozzi akkwistati mill-kumpannija fl-2015 kien ta` EUR 4,504,787. Il-*gross profit margin* huwa ta` 2% biss u wara li jinqatghu l-ispejjez amministrattivi u d-deprezzament, id-dipartiment tal-car sales ghamel telf. Meta kienet domandata r-raguni ghaliex mill-2013 sal-2015 it-*turnover* mill-bejgh tal-karozzi zdieg b`madwar EUR 2,600,000, ma nghatat l-ebda risposta gustifikattiva. Spjegat li EUR 2,570,210 fuq l-imsemmi *turnover* ta` EUR 4,781,543 kienu karozzi mibjugha lid-*dealers* filwaqt li EUR 2,249,600 mill-ammont totali ta` EUR 4,504,787 ta` xiri ta` karozzi kienu vetturi akkwistati minghand *dealers*. Il-profitti minn dan it-*turnover* gholi fin-negozju ma` *dealers* ma kienx rifless fl-*income statement*.

Fissret illi fl-2015, Norbert Buhagiar biegh vetturi lid-dealer Tanio Fenech b`valur ta` EUR 848,300 waqt li partat mieghu vetturi b`valur totali ta` EUR 993,300. Id-differenza bejn it-total ta` bejgh u t-total ta` xiri jigifieri EUR 145,000 thallsu lil Fenech bi flus mill-kumpannija intimata. Peress li negozju ma` Fenech jinvolvi tpartit ta` karozzi biss, prezz bi prezz, il-valur ta` l-istock ta` vetturi ghall-bejgh baqa` l-istess, u ghalkemm kien hemm dak it-*turnover* kollu ma` Fenech, flus ma jidhlux u l-*cashflow* tal-kumpannija dejjem naqas.

Stqarret illi l-istock ta` vetturi ghall-bejgh fit-30 ta` April 2016 tela` ghal valur ta` kwazi EUR 900,000. Dan l-istock huwa gholi wisq biex tibqa` sostnut mill-*overdraft* billi l-limitu nqabez. Il-valur tal-istock tal-karozzi ma ghandux jaqbez il-EUR 550,000 biex jibqghu fil-limiti tal-facilita` tal-bank. Sostniet li Norbert Buhagiar bl-approvazzjoni ta` l-intimati Buhagiar ghazlu li jkomplu jzidu l-istock minkejja li nqabzet il-facilita` ta` l-*overdraft*. Dan huwa abbuz serju mill-finanzi tal-kumpannija. Sostniet li Norbert Buhagiar gieli xtara vetturi *high-end* u b` hekk kompla zied id-dejn tal-kumpannija. Taf li kien miftiehem mal-akkwirenti li d-dovut jithallas fi zmien determinat. Din kienet decizjoni li baqghet ma giet diskussa qatt fil-bord. Norbert Buhagiar kien qed jiehu decizjonijiet wahdu li jaffettwaw negattivament l-finanzi tal-kumpannija.

Kompliet tistqarr illi x-xiri eccessiv ta` vetturi ghall-bejgh gab nuqqas qawwi ta` likwidita` u ghalhekk intuzaw flus li kienu fil-kont tal-bank fejn kienu depozitati d-*dividends* dovuti lir-rikorrenti. Kienu zbankati ftit iktar



minn EUR 100,000 f` daqqa biex ikomplu isostnu x-xiri ta` vetturi. Spjegat li l-bord ta` diretturi talab lill-bank zieda temporanja ta` l-*overdraft* ta` EUR 150,000. Il-bank accetta bil-hlas lura kellu jsir sa Jannar 2016. Billi l-hlas lura baqa` ma sarx, intalbet zieda permanenti fl-*overdraft* ta` EUR 300,000.

Dwar id-dipartiment tal-*hire purchase* xehdet illi ghamlet rapport fis-17 ta` Marzu 2016 dwar debituri li kienu qeghdin lura fil-pagamenti. Kien hemm minnhom li kienu waqfu jhallsu mill-2007 u zewg debituri li qatt ma ghamlu pagamenti. L-ammont totali ta` dejn li waqaf jithallas waqfu mill-2007 sal-2014 jammonta ghal EUR 298,194.37c. Qalet li fl-*audited accounts* ta` l-2012, saret *provision* ta` EUR 31,506 biss filwaqt li fl-*accounts* ta` l-2013, saret *provision* ghal EUR 60.858.

Kompliet tghid illi skont ir-rapport taghha, kien hemm EUR 449,175.83c f` kambjali dovuti u li huma dubjuzi. Qalet li ammont sostanzjali ta` kambjali huma preskritti u allura saru *bad debts*. Sakemm ma jkunx hemm *provision* ghal dawn id-debituri, l-*accounts* tal-kumpannija ntimata qatt ma jistghu jaghtu stampa cara u veritiera ta` l-assi tal-kumpannija. Qalet li Mariella Aquilina ghandha l-inkarigu li tiehu hsieb issegwi dawn id-debituri izda hija injorat l-istruzzjonijiet li taha l-bord illi kull xahar tavza lill-bord bil-moviment ta` dawn id-debituri. Kien hemm kwazi €2,000,000 ta` krediti favur il-kumpannija. Il-proposta taghha li jitqabbad *debt collector* professjonali kienet rifjutata.

Qalet li wara li dahlet hi, sabet ammont sostanzjali ta` kambjali li ma kinux iffirmati mid-debituri, partikolarment kambjali dovuti minn *dealers*. Din is-sitwazzjoni kienet rettifikata wara hafna insistenza min-naha taghhom.

Stqarret illi d-dipartiment tal-*car sales* ghamel telf ta` EUR 48,411 fl-2015 b` *turnover* ta` EUR 4,781,543. Id-dipartiment tal-karozzi tal-kiri kien ilu jaghmel telf ghal bosta snin ghalkemm ghamel profitt fl-2015. Spjegat li l-profitti li qed isiru mill-*car wash* u *jet wash* u mill-*fuel* qed jittieklu mit-telf tad-dipartimenti l-ohra.

**Paul Buhagiar** xehed illi huwa l-uniku direttur tas-socjeta` rikorrenti. L-ishma tar-rikorrenti huma allokatu in kwantu ghal sehem tieghu u in kwantu ghal 499 tas-socjeta` P.S.P & G.C. Limited. L-azzjonijisti ta` P.S.P & G.C. Limited huma in kwantu ghal sehem wiehed tat-tip Cumulative Preference Share ta` Edwin Vella, in kwantu ghal 50,499 sehem

tat-tip Cumulative Preference Shares tieghu personalment u in kwantu ghar-  
rimentanti 2000 sehem ordinarju tieghu wkoll personalment. Huwa wkoll l-  
uniku direttur ta` P.S.P & G.C. Limited.

Kompla jghid illi s-socjeta` rikorrenti ghandha terz ta` l-ishma kollha  
tas-socjeta` ntimata, cioe` 20,000 sehem Ordinary A Class Shares ta` EUR  
2.33-il sehem. Is-socjeta` rikorrenti ghandha dritt tappunta direttur wiehed  
fuq il-bord tad-diretturi tas-socjeta` ntimata. Fil-fat huwa d-direttur  
appuntat mr-rikorrenti fil-bord tas-socjeta` ntimata. Id-diretturi l-ohra huma  
huh l-intimat Victor Buhagiar u n-neputi tieghu l-intimat George Buhagiar li  
jigi iben hu l-iehor Rocco Buhagiar.

Xehed illi Paul & Rocco (Gzira) Limited kienet kostitwita fl-24 ta`  
Jannar 1973 sabiex topera petrol station u u sabiex taghmel negozju ta` xiri u  
bejgh ta` karozzi godda u uzati.

Stqarr illi matul dawn l-ahhar snin, l-intimati Buhagiar *de facto*  
warrbu lir-rikorrenti mill-gestjoni tas-socjeta` intimata Paul & Rocco (Gzira)  
Limited u qed jiggestixxu l-istess socjeta` intimata b` mod li qed jigi kkawzat  
pregudizzju serju, mhux gust u rrimedjabbli liz-zewg kumpanniji. Huwa  
nkariga lil uliedu Simone Pisani, Paula Pace u Dr Mary Grace Debono  
Roberts bhala *alternate directors* biex jghinuh isib tarf ta` dak li kien ghaddej  
fil-gestjoni ta` s-socjeta` ntimata.

Xehed li ghal zmien twil, l-intimati Buhagiar ma kienux jattendu  
personalment ghal-laqghat generali u ghal-laqghat tal-bord tad-diretturi ta`  
Paul & Rocco (Gzira) Limited. Kienu jappuntaw lil Joe Gauci u lil Edward  
Camilleri bhala *alternate directors* u anke bhala *proxies*. Kemm Joe Gauci kif  
ukoll Edward Camilleri mhux involuti fil-kumpannija ntimata ghajr bhala  
*alternate directors*. Il-laqghat tal-kumpannija kienu u qeghdin jigu wzati  
bhala *rubber stamp* ghat-tmexxija hazina tal-kumpannija mill-intimati  
Buhagiar, u minn ulied Victor, li huma Norbert u Mariella. Qal li l-laqghat  
isiru biss sabiex jigu mwettqa l-obbligi statutorji u cioe` il-laqghat generali  
annwali u l-approvazzjoni ta` l-*annual financial statements*. Fil-laqghat hu  
wliedu dejjem jitolbu spjegazzjonijiet u jivventilaw l-ilmenti taghhom dwar  
din it-tmexxija tas-socjeta` ntimata.

Kompla jixhed dwar ir-rapport ta` Diamantino Mizzi & Co li kien sar  
fid-9 ta` Novembru 1994 u li huwa esebit a fol 55 fl-atti tal-kawza 980/2011  
JZM.

Stqarr illi huwa kien inkarika lill-awdituri Diamantino Mizzi & Co sabiex rapport ghaliex deherlu li Paul & Rocco (Gzira) Limited kienet qed titmexxa b`mod mhux professjonali.

Anke llum qiegghda titmexxa hazin mill-intimati Buhagiar u minn ulied Victor bhallikieku hija sole trader bla kont ta`xejn u ta`hadd.

Spjega li huwa jhossu aggravat bil-fatt li l-proposta li jsir investment f`*self service car wash* qatt ma kien ventilat waqt laqghat tal-kumpannija qabel sar. Huwa kellu kull dritt jressaq l-ideat tieghu qabel jittiehed vot dwar progett li kien jinvolvi investment. L-istess gara meta nbriet showroom ghal karozzi mal-genb ta`l-binja ta` Paul & Rocco (Gzira) Limited fejn huwa ma kienx konsultat qabel bdew ix-xogholijiet.

Stqarr illi meta kien moghti d-draft statements tal-2012, dawn kienu juru li kien hemm spiza ta` *commissions* relatata ma` din il-*car wash* li huwa *self service*. Sar jaf li Paul & Rocco (Gzira) Limited kienet ghadha kemm xtrat bid-dejn *car wash second hand* u li huwa tat-tip li jkollu brushes iduru u li ghandu ta` bilfors jigi operat minn impjegati. Bhalo direttur qatt ma ta l-kunsens biex jinxtara dan il-*car wash*, aktar u aktar meta qed jigi offrut servizz ta` *car wash self service* li ghandhom ferm anqas spejjez assocjati magghom.

Kompla stqarr illi huwa kien kostret ma jatendix ghal-laqghat peress li huwa kien jigi aggredit verbalment kull darba li kien jitkellem. Huwa kellu dritt jinvolvi ruhu fit-tmexxija ta` Paul & Rocco (Gzira) Limited minghajr biza` li jigi fastidjat minn persuni li kienu biss *alternate directors*.

Dwar il-*company secretary*, Ray Vella, huwa xehed illi originarjament, dan kien inkarigat sabiex ihejji l-*accounts* ta` Paul & Rocco (Gzira) Limited izda imbaghad inhatar *company secretary*. Qal li Vella mhuwiex qed ihejji l-*accounts* b`mod korrett peress li dawn qed idumu ma jitlestew, u ma jaghtux *a true and fair view* ta` dak li verament qed tigri fil-kumpannija. Vella qed jonqos milli johrog *management accounts* aggornati li juru attwalment dak li jkun qed jigri fil-kumpannija. Sostna li Vella mhuwiex kapaci li jaqdi r-rwol li ghandu minghajr biza` u ndhil tad-diretturi l-ohra. Lanqas ma huwa kapaci li jiccirkola l-minuti tal-laqghat.

Irrimarka li l-avukat ta` Paul & Rocco (Gzira) Limited ma jistax ikun anke l-avukat personali tal-intimati Buhagiar.

Ghal dak li jirrigwarda l-bejgh u x-xiri tal-karozzi, huwa stqarr illi s-sitwazzjoni hija prekarja hafna.

Fisser illi l-bejgh isir minn Norbert u George Buhahar. Fil-bejgh hemm involut certu Hugh Caruana u nies ohra li mhux impjegati tal-kumpannija. Ilmenta li mhux qed tinzamm dokumentazzjoni akkurata dwar il-prezz tax-xiri ta` vetturi kemm dawk mixtrija lokalment u dawk mixtrija minn barra minn Malta. Mhux qed isiru kuntratti meta vetturi jinbieghu hlief ghal kambjalijiet meta l-vetturi jinbieghu bid-dejn. Lanqas ma jirrizulta kif Hugh Caruana qed jigi mhallas ta` l-involviment tieghu.

Kompla jghid li l-kotba, anke ghal dak li ghandu x` jaqsam ma` cost of sales, mhumiex qed jaghtu kwadru shih ta` dak li qed jigri.

Minkejja l-ilmenti tieghu, il-kumpannija ghad ma ghandhiex elenku bi prezz fiss ghal kull vettura. Lanqas ghandha sistema li tistabilixxi kemm ghandha tkun il-mark up fuq il-*purchase price* tal-vetturi li hi tbiegh u fejn u meta jkun jistghu jinghataw skontijiet u min irid jawtorizza l-ghoti ta` tali skontijiet.

Dwar dak li ghandu x` jaqsam mad-decizjonijiet dwar lil min ghandu jinghata l-fakolta ta` xiri ta` vetturi on credit, qal illi ma hemm l-ebda procedura li tassikura li kreditur prospettiv huwa kapaci jwettaq l-obbligi li hu jkun ser jassumi.

Spjega li hemm numru ta` *bad and doubtful debtors*. Qal illi l-hlasijiet li jsiru minn debituri mhux qed jigu depozitati mill-ewwel il-bank u ghalhekk il-kotba mhux jirriflettu dak li tassew qed jigri fil-kumpannija. Qeghda tigi adoperata sistema xejn trasparenti ghal dak li ghandu x` jaqsam ma` negozju li qed isir ma` *dealers* ohra ta` karozzi. Ma jkun hemm l-ebda *audit trial* kull meta jinbieghu vetturi lil dealers ; lanqas meta dawn jinxtraw. Qed isir numru sostanzjali ta` negozji ma` *dealers* li qed ihallu krediti kbar ghal Paul & Rocco (Gzira) Limited. L-ammonti dovuti jammontaw ghal mijiet ta` eluf ta` Ewro u kien biss b` mod informali li kien infurmat li ricentement kienu mposti imghaxijiet fuq bilanci li dovutri mid-*dealers*.

Irrileva li n-negozju ma` dawn id-*dealers* qed isir minn George Buhagiar u Norbert Buhagiar bil-partecipazzjoni ta` Victor Buhagiar li jiffirma l-log books tal-vetturi. Il-prezz jibqa` dovut lil Paul & Rocco (Gzira) Limited bil-qliegħ imur għand id-*dealer* involut. Kif kondott dan in-negozju qed imur kontra l-interess ta` Paul & Rocco (Gzira) Limited u bi spiza esagerata li ttellef il-valur tal-ishma li r-rikorrenti għandha fil-kumpannija Paul & Rocco (Gzira) Limited.

Qal illi diversi kienu l-okkazjonijiet huma sfaw intimidati mill-intimati Buhagiar u familjari tagħhom.

Stqarr illi hu u wliedu ma ngħatawx il-liberta` ta` access għall-proprjeta` tas-socjeta` intimata ; lanqas għad-dokumenti u nformazzjoni oħra dwar is-socjeta` intimata u tmexxija tagħha.

Għamel referenza għal *Code of Directors Ethics* li permezz tiegħu huwa kien projbit milli jaccedi fl-bini tas-socjeta` Paul & Rocco (Gzira) Limited qabel is-6.00 p.m.

Sahaq illi l-intimati Buhagiar qed jiggstixxu n-negozju hekk kif jaqbel lilhom b`mod insostenibbli, frawdolenti u kontra l-interess ta` l-istess socjeta` u ta` l-azzjonisti tagħha.

Qal li George Buhagiar qed imexxi negozju iehor bl-isem George & Rocco li jinsab fin-Naxxar u li huwa ta` George & Rocco Car Centre Limited. Inqeda bin-negozju ta` Paul & Rocco (Gzira) Limited sabiex igib klijenti għalih. Qed igib vetturi għalih b`finanzjament inizjali provdut minn Paul & Rocco (Gzira) Limited. Is-socjeta` ta` George Buhagiar qiegħda titmexxa minnu u minn uliedu Justine Buhagiar u Markita Scicluna. Sostna li Justine u Markita kienu impjegati ta` Paul & Rocco (Gzira) Limited `il fuq minn hames snin ilu u huma kienu jieħdu hsieb l-introjti ta` Paul & Rocco (Gzira) Limited. Huwa qatt ma ta l-kunsens tiegħu sabiex ulied George jokkupaw karigi ta` fiducja fis-socjeta` Paul & Rocco (Gzira) Limited u jkollhom access għall- informazzjoni kummercjali kunfidenzjali appartenenti lil Paul & Rocco (Gzira) Limited. Qatt ma ta l-kunsens tiegħu illi Paul & Rocco (Gzira) Limited tinneogzja vetturi ma` George & rocco Car Centre.

Kompla jixhed illi b`effett mill-2013, Paul & Rocco (Gzira) Limited waqfet toffri s-servizz ta` assigurazzjoni lill-klijenti taghha bhala sub-agents. Dan sar wara insistenza tal-intimati Buhagiar bla ma huwa kien ikkonsultat. Sar jaf illi n-negozju tal-assikurazzjoni mar minn Paul & Rocco (Gzira) Limited ghal George & Rocco Car Centre Ltd. Dawn tal-ahhar jaghtu servizz bhala sub-agents tal-istess agenti ta` assikurazzjoni. Anke dan sar minghajr il-kunsens tieghu. Dan ifisser telf ta` introjtu ghall-kumpannija intimata bi pregudizzju qawwi ghall-azzjonisti.

Kompla jghid illi mill-*financial statements* tas-socjeta` intimata ghall-2013 li kienu approvati waqt laqgħa generali fil-15 ta` Mejju 2015, irrizulta li l-kumpannija ddikjarat telf ta` EUR 87,782 qabel it-taxxa minhabba l-intimati Buhagiar. It-telf gie ghaliex ma hemmx *policies* li jirregolaw kif ghandu jingħata credit lil klijenti tal-kumpannija intimata u li jirregolaw jekk klijent ghandux jingħata credit. Ma hemmx credit control *policies* u mhux qed isir sforz bil-ghan illi d-djun dovuti lil kumpannija intimata jithallsu. Kien hemm kazi fejn Paul & Rocco (Gzira) Limited tilfet id-dritt li tiehu azzjoni legali minhabba preskrizzjoni.

Stqarr illi l-intimati Buhagiar qed imexxu s-socjeta` intimata b`mod li mhuxwix finanzjarjament sostenibbli.

Sostna li għandhom jigu ntrodotti regoli li (i) jassiguraw li l-profitti u l-gwadan sigriet u personali li għamlu sal-lum l-intimati Buhagiar u familjari tagħhom jithallas lis-socjeta` intimata ; (ii) jassiguraw li l-profitti u gwadan sigriet u personali li għamel sal-lum George Buhagiar sew f` ismu jew f` isem xi ditta jew kumpannija tieghu jithallas lill-kumpannija intimata ; (iii) jassiguraw li s-socjeta` ntimata tithallas il-gwadann sigriet u personali li sar minn Justine Buhagiar u Markita Scicluna u li dawn ma jibqghux jottjenu informazzjoni kummercjali u kunfidenzjali għall-vantagg ta` s-socjeta` kompetitrici George & Rocco Car Centre Limited ; (iv) jintemm minnufih l-impjeg ta` Justine Buhagiar u Markita Scicluna minn ma` Paul & Rocco (Gzira) Limited ; (v) li Paul & Rocco (Gzira) Limited tkun tista` tigi rizarcita b`dawk l-ammonti kollha li tilfet kagun ta` t-traskuragni, malgestjoni, u possibilment agir frawdolenti ; (vi) li George Buhagiar jigi eskluż mit-tmexxija tal-affarijiet tal-kumpannija intimata fil-futur sakemm jibqa` imexxi negozju in kompetizzjoni mas-socjeta` intimata ; (vii) jassiguraw li Paul & Rocco (Gzira) Limited tiehu dawk il-passi kollha necessarji bil-ghan li tigbor dawk id-djun kollha dovuti mid-*dealers* ; (viii) jassiguraw li Paul & Rocco (Gzira) Limited timplimenta dawk il-*policies* li huma necessarji bil-ghan li l-kumpannija titmexxa b` mod rett fl-ahjar interess tal-azzjonisti kollha minghajr l-eskluzjoni ta` hadd ; (ix) jintemm minnufih l-impjeg ta`

Norbert Buhagiar minn ma` Paul & Rocco (Gzira) Limited ; (x) tipprovdi ghax-xiri tal-ishma li ghandhom l-intimati Buhagiar fis-socjeta` ntimata ; (xi) tordna lill-kumpannija intimata sabiex tiehu passi kontra kull min naqas kontra taghha ; u (xii) tipprovdi ghall-hlas ta` kumpens mill-intimati Buhagiar ghan-nuqqas taghhom fil-konfront tas-socjeta` ntimata.

**Dr Mary Grace sive` Graziella Buhagiar** xehdet illi hija kienet mahtura bhala direttur ta` Paul & Rocco (Gzira) Limited fis-7 ta` Lulju 2015. Il-hatra taghha saret mir-rikorrenti peress li din hija azzjonista fil-kwota ta` terz tal-ishma ta` Paul & Rocco (Gzira) Limited u ghalhekk tista` tahtar direttur. Qabel il-hatra, hija kienet tattendi ghal-laqghat tal-kumpannija minn Marzu 2015 bhala *alternate director* ta` missierha Paul Buhagiar.

Fissret illi kemm damet *alternate director*, l-intimati Buhagiar qatt ma attendew ghal-laqghat. Kienu jibghat flokhom bhala *alternates* taghhom lil Joseph Gauci ghal Victor Buhagiar u Edward Camilleri ghal George Buhagiar. Fil-laqghat dejjem insistiet li jsiru *policies* rigward it-tmexxija tal-*car sales department* billi dan id-dipartiment kien qed jopera b`telf sostanzjali ghal numru ta` snin.

Minkejja dan kollu, qatt ma ttiehdu decizjonijiet.

Xehdet illi n-negozju li kien qed isir minn Norbert Buhagiar dwar bejgh ta` karozzi kien qed ihalli telf kbir ghall-kumpannija. Dan it-telf irriskontratu hija stess mill-*management accounts* li pprezenta Raymond Vella.

Fissret illi malli saret direttur, Victor Buhagiar beda jibghat bhala *alternate director* lil bintu Mariella Aquilina filwaqt li George Buhagiar beda jattendi personalment assistit mill-Av. Pio Valletta. Mariella Aquilina hija impjegata tal-kumpannija ntimata nkarigata mill-administration tal-kumpannija u l-formalizzazzjoni ta` ftehim ma` terzi.

Talbet quote lill-*accountant* tal-kumpannija Matthew Zampa dwar kemm jiswa *internal audit* tal-*car sales department* biss sabiex hi tkun tista` tipprezentah ghad-decizjoni tal-bord. Zampa baghat l-*email* lid-diretturi kollha u wara ftit, kienet infurmata illi Mariella Aquilina haditha kontra Zampa.

Xehdet illi talbet spjegazzjoni minghand Mariella Aquilina li pero` hadet imgieba agressiva maghha anke fil-presenza ta` terzi.

Stqarret illi kienet ghamlet proposta fil-laqghat tal-bord sabiex id-*debt collecting* jitmexxa ahjar ghax kien hemm numru kbir ta` klijenti li kienu waqghu lura hafna fil-pagamenti tal-kambjali tal-hire purchase.

Qalet illi kull suggeriment li ghamlet kien rifjutat.

Komplet tghid illi waqt laqgha Mariella Aquilina kienet ghamlitha cara li ma kintx tara ghaliex kellhom jitkomplew il-*policies* imsemmija fl-*internal memo* mentri Norbert Buhagiar baqa` jmessi l-*car sales department* bi ksur ta` din l-*internal memo*.

Waq t-istess laqgha, saret presentation shiha sabiex ikunu jistghu jitolbu facilita` gdida minn HSBC ta` EUR 400,000 bla ma hija kienet giet informata. Dan kien fi zmien meta l-*management accounts* kienu tardivi u kienu qed jintalbu mill-bank.

## **2. Deposizzjonijiet ta` xhieda fil-kawza Rik. Nru 980/2011 JZM**

**Paul Buhagiar** xehed ukoll fil-kawza l-ohra.

**Minn dik ix-xiehda, se ssir riferenza biss ghal fatti li huma rilevanti ghall-istanza tal-lum.**

**Dan kollu a skans ta` repetizzjoni.**

Xehed illi Victor Buhagiar sar direttur fl-1988. Wara l-mewt ta` Rocco fl-1989, inhatar ibnu George bhala direttur. Dak iz-zmien Victor kien jithallas tax-xoghol, ghal kuntrarju tieghu u ta` Rocco. Meta bdew jinjalghu intoppi fit-tmexxija ta` Paul & Rocco (Gzira) Limited, it-tliet diretturi inkarigaw lil Diamantino Mizzi & Co sabiex jirraportaw dwar il-proceduri ta` kontroll interni tal-kumpannija bil-ghan li jkun hemm aktar trasparenza. Dan sar u saru rakkomandazzjonijiet dwar kif seta` jsir titjib. Id-disgwid kompla u hu ppropona li kull wiehed minnhom jinkariga konsulent, biex



jittieħdu decizjonijiet fl-interess tal-kumpannja. Id-diretturi ma accettawx u fteħmu li jmexxu kif iridu ħuma u bdew jeskluduh mit-tmexxija u jimminaw kull proposta li kien jagħmel.

Spjega li r-relazzjoni ta` bejniethom tant marret lura li safa anke aggređit fizikament, fi zmien qabel ma ttieħdu l-kotba tal-kumpannja mill-Marsa għall-Gzira. Bintu Paula llum Pace tqegħdet fis-sitwazzjoni li kellha titlaq mill-impjeg li kellha ma` Paul & Rocco (Gzira) Limited peress li l-agir ta` l-intimati Buhagiar baqa` jaggrava u dawn kienu jagħmlu pressjoni fuqha biex tieħu decizjonijiet hi minfloku.

Kompla jixhed illi ħuwa kiteb lil Emanuel Farrugia ta` DFK Malta biex jinfurmah li l-figuri li kienu jidħru fl-accounts ma kinux qed jagħtu stampa veritiera tas-sitwazzjoni finanzjarja tal-kumpannja. Fil-fatt ħu ma kienx jiffirma l-accounts. Kien anke kiteb lill-intimati Buhagiar bl-avukat u għamel proposta li dawn jixtru seħmu izda din giet rifjutata.

Stqarr illi kien ħemm fteħim li Victor jithallas Lm 800 fix-xaħar waqt li ħu u George jithallsu Lm 200 fix-xaħar. Meta ma thallieħ jattendi aktar, ħuwa ma baqax jithallas il-Lm 200 u kien deciz mingħajr il-kunsens tieghu li George jibda jithallas Lm 400 fix-xaħar. ħuwa appunta diversi konsulenti biex jirraprezentawħ bhala *alternate director*, izda kienu kollħa rifjutati.

Kompla spjega illi ħuwa ħatar awdituri biex janalizzaw is-sitwazzjoni finanzjarja ta` Paul & Rocco (Gzira) Limited. Steve Fenech ta` Erremme Advisory Services ħejja rapport li jkopri perijodu ta` ħdax-il sena, ibbatat fuq l-accounts ta` Paul & Rocco (Gzira) Limited. Saret analizi komparattiva tan-negozji rispettivi ta` Paul & Rocco (Marsa) Limited u Paul & Rocco (Gzira) Limited. Mir-rapport, irrizulta li l-kumpannja tal-Marsa, minkeħja li l-ufficini tagħħa jinsabu fi triq li ilħa magħluqa għat-traffiku mill-1974 u filwaqt li topera b`nofs it-*turnover* tal-Gzira, tagħmel profitt qabel it-taxxa li ħuwa kwazi d-doppju ta` dak tal-Gzira.

Qal illi kien inkariga wkoll lil David Borg ta` Capstone Advisory Co Ltd sabieħ iħejji rapport preliminarari dwar il-*financial statements* ta` Paul & Rocco (Gzira) Limited għas-sena li tintemm fil-31 ta` Dicembru 2008. ħuwa kien talab lil Borg biex jagħmel ukoll analizi komparattiva tal-car hire division bejn is-snin 2008 u 2009. Ir-rapport juri li l-intimati Buhagiar kienu qegħdin isellfu l-flus lil car *dealers* oħra ħafna drabi mingħajr kambjali u kuntratt, mingħajr imghax u mingħajr il-kunsens tieghu.

Kompla jghid li kien hemm cirkostanzi fejn Paul & Rocco (Marsa) ghenet lil Paul & Rocco (Gzira) Limited finanzjarjament. Fost ohrain, Novembru 2002, Paul & Rocco (Gzira) Limited qabzet il-limitu tal-*overdraft* u kien hemm cheque ta` Lm 40,000 li ma ssarrafx. Paul & Rocco (Marsa) Limited onorat dak il-hlas ghal Paul & Rocco (Gzira) Limited billi selfet dak l-ammont. Fis-17 ta` Dicembru 2004, Paul & Rocco (Marsa) Limited rega` sellfet lil Paul & Rocco (Gzira) Limited l-ammont ta` Lm 50,000 sabiex l-*overdraft* ma jergax jaqbez il-limitu tieghu. Fl-ahhar peress li Paul & Rocco (Gzira) Limited baqghet kontinwament taqbez il-limitu ta` l-*overdraft*, kien miftiehem li Paul & Rocco (Marsa) Limited tixtri kambjali ta` debitori ta` hire purchase ghall-ammont ta` Lm 316,929 bil-kundizzjoni li Paul & Rocco (Gzira) Limited taghmel l-almu taghha biex l-*overdraft* jigi regolarizzat u l-*hire purchase debtors* jonqsu minn Lm 1,200,000 ghal Lm 800,000.

Xehed li l-konflitt ta` tnejn kontra wiehed fil-Gzira kien kontinwu u beda jinnota li anke fil-Marsa, George Buhagiar kien beda juza l-istess metodi hziena ta` negozju li kienu jintuzaw fil-Gzira. Kontra qalbu ha decizjoni li jaqta` minn ma` George u fit-2 ta` Settembru 2010, sar ftehim bejniethom. Huwa ceda n-negozju tal-karozzi lil George Buhagiar, u dan fetah showroom ohra ghal rasu fin-Naxxar. Sakemm din tlestiet, George, bil-kunsens ta` Victor, mar il-Gzira flimkien ma` l-impjegati tieghu li qabel kienu jahdmu l-Marsa, u beda jopera n-negozju tieghu minn hemm bl-isem ta` George & Rocco Car Centre. Dan kollu sar minghajr ma kienet konsultata r-rikorrenti.

Spjega li huwa baghat diversi interpellazzjonijiet tramite l-avukati tieghu biex jitwaqqfu il-prattici abbusivi miz-zewg diretturi l-ohra. Fit-22 ta` Lulju 2011, huwa offra lill-azzjonisti l-ohra li jixtru l-azzjonijiet tieghu jew li l-art tinqasam skont survey ta` perit inkarigat minnu. Dawn izda infurmawh li ma kinux interessati.

Fil-**kontroezami**, huwa kkonferma li Victor Buhagiar kien hareg Lm 4000 biex dahal fil-kumpannija Paul & Rocco (Gzira) Limited. Sostna li hu kien sellfu dawn il-flus u Victor kien hallsu lura. L-intoppi bdew ghaliex riedu li l-kotba tal-Gzira jittiehdu mill-Marsa. Sostna li huwa riedu l-kotba ghaliex huwa kien qed izommilhom u jaghtihom ir-rakkomandazzjonijiet dwar x` kellu jsir halli n-negozju jmur ahjar. Huwa qal li kien dispost li jbiegh il-post, bin-negozju u bl-ishma b` kollox sabiex ikunu jistghu jahdmu.

Huwa spjega li kien jaghfas hafna fuq li d-dejn kellu jingabar. Sostna li huwa ma jafx xejn dwar x` inhu ghaddej fil-kumpanija. Huwa kkonferma li huwa jattendi ghal-laqghat tal-bord tad-diretturi. Sostna li hu u uliedu kienu jigu intimidati mid-diretturi l-ohra. Spjega li huwa kien jattendi ghal laqghat tal-bord tad-diretturi biex jigbdilhom l-attenzjoni fejn ikunu sejrin hazin. Huwa cahad li qatt kien aggressiv.

Sostna li l-problema li kellu b` Raymond Vella kienet li kull haga li titolbu, qatt ma kien jaghtihlek. Spjega li Joe Gauci gie mdahhal minn Victor Buhagiar biex jaqleb kollox ta` taht fuq. Insista li meta kien hemm it-tifla mpjegata ma` Paul & Rocco (Gzira) Limited, l-ohrajn kienu jinsistu li din tiehu decizjoni minflok.

Sahaq illi matul iz-zmien huwa kien ressaq varji proposti biex huwa jinqata` minn dan in-negozju izda l-ohrajn qatt ma accettaw. Huwa kkonferma li l-flus li kien sellef lill-kumpanija bhala azzjonista gew ilkoll mhallas lura.

Huwa kkonferma li bintu Simone thalliet tidhol fl-ufficju tal-Gzira u tagixxi bhala direttur.

**Simone Pisani** xehdet ukoll fil-kawza Rik. Nru 980/2011 JZM

**Minn dik ix-xiehda, se ssir riferenza biss ghal fatti li huma rilevanti ghall-istanza tal-lum.**

**Dan kollu a skans ta` repetizzjoni.**

Xehdet illi bhala alternate director ta` missierha fil-kumpanija Paul & Rocco (Gzira) Limited kellha l-ewwel laqgha maz-zewg diretturi l-ohra fil-bidu tal-2001. Fil-laqgha, inghatat sitt xhur zmien bhala *alternate director* bil-kundizzjoni li wara dan iz-zmien u jekk ma jkollhomx oggezzjoni, hija tidhol flok missierha bhala direttur. Sostniet li l-iskop taghhom kien li jwarrbu lil missierha. Kien deciz illi hija tibda tattendi saghtejn kuljum bhalma kien jaghmel George Buhagiar u tithallas LM 200 fi-xahar.

Kompla tixhed illi matul dawk is-sitt xhur, hija bdiet tqabbel *is-schedules* kollha tal-*hire purchase debtors* mal-*computer*. F`kaz minnhom sabet illi s-schedule ta` wiehed mid-debituri ma kinetx taqbel ma` l-*account* tieghu fil-*computer*. Fuq is-schedule kien hemm innizzel pagamenti izjed minn dawk li kien hemm fuq il-*computer*. Osservat li l-pagamenti li dahlu fil-kompjuter kienu depozitati izda fuq *is-schedules* tal-kumpannija kien hemm xi pagamenti innizzlin li ma kinetx depozitati. Cempet lill-klijent u vverifikat li l-*ischedule* tieghu kienet taqbel ma` l-*ischedule* tal-kumpannija. Minn hemm indunat li kien hemm xi haga hazina peress li dak li gie depozitat fil-kumpannija kien inqas minn dak li kellu ffirmat l-klijent. Hija sabet kazi ohra bhal dan.

Stqarret illi hija sabet li kien hemm ma` t-Lm8000 pagamenti ta` *insurances* mhux imdahhla fil-kotba taghhom. Hija avzat b` dan lil Victor Buhagiar u lil Carmel Aquilina. Saret laqgħa u Carmel Aquilina kien ammetta li kien ha dawk il-flus u talabhom jahfrulu. Victor Buhagiar deherlu li dan ma kellux jitkecca izda l-avukat tal-kumpannija ta parir biex dan jitkecca u jrodd lura t-Lm 8000 ratealment kull xahar. Fil-fatt hekk sar.

Komplet tfisser illi wara s-sitt xhur, inhatret direttur flok missierha. Norbert u Martin li jigu kugini tagħha ghax huma l-ulied ta` Victor Buhagiar lanqas biss kienu jkellmuha ghax ma qablux ma` missierhom li hija tinhatar direttur. Taf illi Martin kien ta` spiss jagħmel negozju ta` bejgh li hi ma kinitx taqbel mieghu. Semmiet in-negozju li sar ma` Christopher Agius li hija kienet rrimarkat dwaru u li fil-fatt dan spicca telaq mill-pajjiz u l-kumpannija marret minn taht b`Lm 16,000.

Hija komplet tagħti ezempji ta` debituri li kienu waqfu jagħmlu l-pagamenti dovuti minnhom u li d-debiti tagħhom spiccaw bad debts tal-kumpannija. Dan kollu sehħ minhabba t-tmexxija hazina li kienet għaddejja. Spjegat li hija gibdet l-attenzjoni ta` Victor Buhagiar għal diversi okkazjonijiet minhabba li l-*overdraft* kienet tkun waslet fil-limitu tagħha ossija ta` Lm 1,250,000. Kien hemm sitwazzjonijiet fejn il-limit tal-*overdraft* inqabez tant li cheque għal Lm 40,000 li ma giex onorat, u kellha tidhol Paul & Rocco (Marsa) Limited.

Tghid illi skopriet li Martin kien qed juza kont tal-kumpannija biex idahhal u johrog ammonti tieghu personali u b` hekk ma jhallasx taxxa. Meta rrifjutat li tiffirma cheques għal car deals intestati lil Hugh Caruana, Victor Buhagiar kien beda jintimidaha u jwissiha biex ma tiksru. George u Victor kienu jiftehmu bejniethom biex hi tinqata` barra.

Spjegat li Mariella Aquilina kienet tghallmet x` ghandu jsir izda meta hija kienet talbitha biex tikteb lil certu debitori li kienu waqghu lura fil-pagamenti, din irrifjutat billi sostniet li dawn kienet taffhom u li kellhom jinghataw aktar zmien. Spjegat li hija kienet ilha hames snin tikkumbatti ma` dawn in-nies u f`dak il-punt, hija tat ir-rizenja taghha. Missierha rega` sar direttur wara r-rizenja taghha. Hija baqghet tghin lil missierha billi tigborlu l-informazzjoni dwar l-andament tal-kumpannija. Hija kienet tattendi l-laqghat ma` missierha.

Qalet li hija kienet daret id-debituri kollha u anke l-kambjali. Fir-rapport li ghamlet, hija elenkat in-nuqqasijiet kollha li sabet. Hija ghaddiet l-informazzjoni li kkompilat lill-awdituri DFK Limited izda dawn gabu skuza li mhux xogholhom jaghmlu dan ir-rapport. Spjegat li wara hafna insistenza da parti taghha u ta` missierha, dik is-sena finanzjarja fil-fatt spiccat b` rizultat ferm differenti mill-*management accounts* li kien tahom Ray Vella. Kien hemm numru sostanzjali ta` karozzi li kien ilhom bejn sena u tlett snin biex jinbieghu u ghalhekk il-valur taghhom nizel tant li l-prezz kellu jitbaxxa b` hafna inqas milli kienu xtrawhom bil-konsegwenza li l-kumpannija ghamlet telf.

Qalet li bil-mod irresponsabbli kif l-intimati Buhagiar mexxew il-finanzi, Paul & Rocco (Gzira) Limited tista` tispicca hazin. Il-current liabilities huma hafna iktar mill-current assets, jekk teskludi l-proprjeta`. Jekk il-bank jaghmel call in, il-kumpannija ma jkollhiex mnejn thallas il-bank u ghalhekk hemm riskju kbir li l-bank idur fuq il-proprjeta`. Il-qliegħ huwa relattivament baxx hafna minkejja *t-turnover* kien ta` €4,000,000. Spjegat li fl-ahhar *accounts*, *it-turnover* nizel bin-nofs filwaqt li l-ammont totali tad-debituri baqa` l-istess. Dan ma jaghmilx sens ghax jekk tbiegh, suppost tiddejjien inqas. Spjegat li hija nkwetata li sehem missierha fil-kumpannija qed jigi pregudikat.

**Paula Pace** xehdet illi hija tigi t-tifla ta` Paul Buhagiar.

Xehdet illi hija hadmet ma` Paul & Rocco (Gzira) Limited.

Spjegat li l-kotba ta` l-*accounts* tal-Gzira kienu jinhadmu fl-ufficcju ta` Paul & Rocco (Marsa) Limited izda x-xoghol tal-gurnata kien jigi rekordjat f` kotba ohra ghal kull dipartiment. Charles Aquilina kien imbagħad jinzel fizikament il-Marsa u jhalli l-flus tal-gurnata fejn wara li jidhlu fl-*accounts*

kienu jigu depozitati. Hija kellha tghin lil Charles Aquilina fix-xoghol b`lura li kellu u kienet taghmel xoghol ta`book-keeping. Spiccat inghatat xoghol inutli bhal irrigar ta`pitazzi, tghodd ic-centezmi tal-*coke vending machine* u taghmel xi traduzzjoni tal-karti tal-medicini taz-zwiemel ghal Martin, hu Victor.

Xehdet dwar l-incident li kien sehh fejn fl-ufficju tal-Marsa fejn missierha kien aggreddat minn Victor u Martin u dana fiz-zmien meta kien ghadu kif ghamel operazzjoni. Spjegat li Victor imbaghad kien ha decizjoni li l-kotba tal-Gzira jittiehdu l-Gzira u ghalhekk hija bdiet tahdem il-Gzira. Spjegat li sakemm nizzlet il-Gzira, kien ghadda zmien u sabet li l-kotba ma kinux qed jigu *updated*. Sabitha diffiqli taghmel l-aggornament tal-kotba.

Spjegat li gieli kienet tigi msejha mill-intimati Buhagiar fil-board room biex tiehu decizjonijiet minflok missierha. Hija ma kinitx taccetta, u Victor kien jintimidaha u jobbligaha taghmel conference call lil missierha sabiex hija tghidlu xi jkunu qalulha Victor u George. Spjegat li din kienet tohloq pressjoni fuq missierha li kien ikollu jiehu decizjoni minghajr ma jkollu l-fatti kollha quddiemu. Qalet li Victor u George kienu jaghmlu pressjoni kbira fuqha. Ghalhekk kellha tirrizenja.

**Emanuel Stephen sive` Stephen Fenech** xehed illi huwa awditur u *accountant*.

Xehed illi kien ha hsieb l-*audit* ta` l-kumpannija PSP & GC li tappartjeni lil Paul Buhagiar.

Ix-xoghol tieghu kien jestendi ghal evalwazzjoni tal-*performance* ta` Paul & Rocco (Gzira) Limited ghaliex fil-*balance sheet* ta` PSP & GC hemm il-valur tas-*shareholding* ta` Paul & Rocco (Gzira) Limited.

Spjega li r-rapport tieghu jibda mis-sena 1999 u jestendi ghas-sena 2009. Hares lejn l-operat, il-profitti u l-*balance sheet*. Dwar l-operat, huwa ra li ghalkemm is-sales kienu zdiedu b`madwar EUR 28,000,000, il-profitti tal-kumpannija qabel it-taxxa nizzlu minn 5% ghal 1%. Ir-raguni ghal dan kienet li minkejja li s-sales zdiedu, kellu jittiehed in konsiderazzjoni l-fatt ta` kemm il-vetturi kienu jinbieghu. Inoltre, kien ittiehed *overdraft* ikbar u ghalhekk kien hemm diversi interessi x`jithallsu.

Qal illi zdied is-self minn EUR 1.9 miljun fl-1999 ghal €3.6 miljun fl-2009.

Ikkonferma li l-kumpannija kienet qed tipproduci hafna izda ma kienet qed idahhal xejn sostanzjali.

Spjega li l-kambjali kienu qed jigu utilizzati biex ihallsu l-*overdraft*. Il-loans inaqqsu hafna mill-profitti minhabba l-imghax gholi.

Huwa kompla jghid li Paul & Rocco (Marsa) Limited ghandha *turnover* ta` EUR 38,000,000 u l-profitt qabel it-taxxa kien ta` EUR 3 miljun. Il-Gzira it-*turnover* huwa ikbar izda l-profitt huwa inqas. Il-kumpannija tal-Marsa ma ghandhiex self bhal tal-Gzira.

Stqarr illi n-*net current assets* huma anqas min-*net current liabilities*. L-art fejn hemm il-*petrol station* li hija proprejta` tal-kumpannija kienet giet valutata mill-gdid fl-2005 u l-valur taghha awmenta b` dana li sahhah il-balance sheet tal-kumpannija.

Fil-**kontroezami**, huwa kkonferma li hargu ma` l-EUR 125,000 fis-sena mill-kumpannija. Qal li d-diretturi kienu jiehdu xi rimunerazzjoni skont l-ahhar *audit accounts*. Huwa sostna li ma hax dan in konsiderazzjoni.

**Bernard Bartoli** xehed illi huwa *commercial relationship manager* ma` HSBC Bank Malta plc.

Qal li Paul & Rocco (Gzira) Limited ghandha *general banking facility (overdraft)* ta` EUR 2,911,720 u *special guarantee facility* ta` EUR 163,000. L-*overdraft* qieghed go` kont wiehed. Il-kumpannija kienet qed topera vicin tal-limit li kien approvat ghall-*overdraft* li huwa EUR 2,911,720. Gieli kien hemm *encroachment* in excess tal-limit. Kien hemm okkazjoni fejn il-limit inqabez b` EUR 40,000. Il-limit baqa` li kien mill-2003.

Sostna li kien hemm loans li kienu sussegwentement thallsu.

Kompla jghid illi fi zminijiet ricenti saret rikjesta ghal loan ohra ta` EUR 200,000. Din kienet intiza biex isiru panels, *car wash* u jsir saqaf ta` fejn hemm il-karozzi.

Qal li kien ikollhom rikjesti ghal facilitajiet temporaniji fuq *l-overdraft* pero` ma kienx talab biex jizdied il-limit tal-*overdraft*.

Spjega li mill-2003 sal-lum fuq dan il-kont thallas biss imghax u renewal fees.

Qal illi l-bank qatt ma ghamel call in ta` *l-overdraft* peress illi l-facilita` kienet ben garantita. Il-balance sheet tidher b`sahhitha wkoll. L-imghax kien ta` 2.5% over the base rate ; fil-prattika - 5%. Qabel l-imghax kien anqas peress li l-base rate kienet 1.5%.

Bhala bilanci, *l-overdraft* ghandu €2,897,824 u l-kont l-iehor huwa EUR 88,834.

Sostna li l-bank mhuwiex preokkupat b`dawn l-ammonti.

**David Borg** xehed illi Paul Buhagiar tah inkariku dwar kwistjonijiet ta` taxa tieghu personali u taz-zewg kumpanniji tieghu Paul Buhagiar Company Limited u Paul Buhagiar Marketing Limited. Tal-ewwel ghandha ishma fis-socjeta` ntimata.

Qal illi huwa ezamina *l-audited accounts* ta` s-socjeta` ntimata ghall-2007 u 2008. Hu hejja rapport komparattiv. Huwa ghamel *ratio analysis*. Ibbaza ruhu fuq informazzjoni li gabar mill-*financial statements* u minn informazzjoni li giet minghand Paul Buhagiar.

Qal illi l-bottom line ta` l-ezami komparattiv kien li fil-kumpannija, jidher li kien hemm affarijiet li ma kinux mexjin tajjeb. L-asset base tal-kumpannija meta tikkomparaha mat-*turnover* hija fjakka. L-efficjenza tal-kumpannija meta tikkomparaha mar-rata tal-imghax fuq is-self hija fragli wkoll. Kien ammont qawwi ta` stocks. Il-general outlook kien negattiv.



Stqarr illi jista` jkun hemm turnaround izda jista` jkun li l-pozizzjoni marret lura aktar. Spjega li l-kapacita` li l-kumpannija thallas is-short term liabilities taghha mis-short term assets taghha kienet preokkupanti. Il-kumpannija ma kinitx qiegghda tiggenera current assets bizzejjed biex thallas il-current liabilities taghha.

Qal li l-bank kreditur jista` jhossu komdu minhabba l-market value tal-proprjeta` tal-Gzira li qed jintuza bhala garanzija. Fuq dak li analizza hu, il-konkluzjoni hija wahda li turi li hemm indikazzjonijiet b` sahhithom li juru li s-sitazzjoni hija nkwetanti.

**George Buhagiar** xehed illi huwa dahal bhala azzjonista fis-socjeta` Paul & Rocco (Gzira) Limited wara l-mewt ta` missieru Rocco fl-1989. Meta dahal hu fil-kumpannija, il-flus kienu jigu amministrati minn zijuh Paul Buhagiar wahdu. Kien jamministra kollox mill-ufficcju li kellu l-Marsa. Spjega li zijuh kien jippretendi li huwa jhalli kollox f` idejh u jiddeciedi kollox wahdu minghajr konsultazzjoni ta` xejn. Anke fil-kumpannija Paul & Rocco (Marsa) Limited, Paul Buhagiar ried jiddetta kollox hu. Spjega li kienu wehllu ammont kbir ta` taxxa ghaliex kienu damu ma` qasmu d-dividends spettanti mill-kumpannija Paul & Rocco (Marsa) Limited.

Qal li huwa u z-ziju l-iehor Victor Buhagiar kienu talbu li l-amministrazzjoni finanzjarja ta` Paul & Rocco (Gzira) Limited issir mill-ufficcju ta` l-istess kumpannija fil-Gzira. Hemmhekk bdew il-problemi u l-intoppi ghax Paul Buhagiar ried izomm il-kontroll wahdu. Sostna li kull laqgha li kienet issir, Paul kien mohhu biss illi jallega li hu u Victor kienu qed jisirquh. Paul kien beda jgib ukoll avukat mieghu ghal-laqghat u ghalhekk huma kellhom jibdew igibu avukat ukoll. Kull laqgha li fiha kien jattendi Paul Buhagiar kienet tispicca f` ghajjat u tghajjir. Dan kollu wassal ghal sitwazzjoni fejn hu u Victor bdew jappuntaw proxy biex jattendu ghal-laqghat tal-bord tad-diretturi. Anke xi awdituri li kellhom jaghzlu li ma jibqghux ghax ma felhux ghat-tghajjir, il-prepotenza u l-atteggjament aggressiv ta` Paul Buhagiar.

Xehed illi Paul Buhagiar hadha kontra tieghu ghaliex ippretenda li hu jzomm mieghu kontra z-ziju Victor. Qal li missieru Rocco kien icedilu kollox lil Paul. Spjega li Paul kien anke ta daqqiet ta` ponn f` wicc missieru ; anke mieghu, huwa kien dejjem jagixxi b` mod aggressiv. Sostna li Paul kien ikun aggressiv anke ma` uliedu stess li kemm-il darba talbuh sabiex hu jipprova jkellmu. Cahad illi hu u z-ziju Victor qatt impedew lil Paul u lil uliedu milli jiehd u sehem fl-amministrazzjoni ta` kuljum. Ulied Paul kienu dejjem

jinghataw access għall-informazzjoni li talbu. Paul Buhagiar qatt ma interessu ruhu fit-tmexxija tal-Gzira ; infatti eskluda ruhu minn kull involvemint fl-amministrazzjoni ta` Paul & Rocco (Gzira) Limited.

Qal li dik il-kawza kienet rizzultat tal-fatt li Paul Buhagiar ilu jixtieq johrog mill-kumpannija Paul & Rocco (Gzira) Limited izda dan irid jagħmlu kif jidhirlu hu u skont it-termini u kundizzjonijiet li jidhirlu hu. L-avukat tiegħu u ta` Victor dejjem irrispondew lill-avukati ta` Paul Buhagiar li jekk irid johrog mill-kumpannija, huwa għandu jsegwi l-istatut tal-kumpannija u joffri l-ishma tiegħu għall-bejgħ. Sostna li Paul Buhagiar ma jridx li jsir. Għalhekk ried jagħlaq il-kumpannija.

Fil-**kontroezami**, huwa sostna li kellu jhallas taxxa akkumulata minn ta` qabel. Il-flus li eventwalment thallset taxxa fuqhom kienu għadhom mhumiex dikjarati. Spjega li kienet thallset it-taxxa f` daqqa biex kollox gie in regola. Huwa sostna li baqa` involut fil-kumpannija tal-Marsa.

Ikkonferma li huwa għandu kumpannija oħra li fetah fuq suggeriment ta` Paul Buhagiar stess u li topera min-Naxxar. Tbiegħ u tixtri l-karozzi kif tagħmel is-socjeta` ntimata. Spjega li sar ftehim li fl-aħhar ta` Awissu 2011 ma kinux ser jibqgħu jinnegozjaw karozzi fil-Marsa, izda kienet ser tibqa` taħdem il-pompa tal-petrol biss. Huwa xtara xi 40 karozza li kienu l-Marsa. Kien imgiegħel jixtri dawn il-karozzi biex imbagħad jerga` jbiegħhom. Huwa kien għadu jmur l-ufficini tal-Gzira sagħtejn kuljum hekk kif dejjem għamel.

Huwa caħad li qatt kien hemm istanzi fejn Paul Buhagiar ma ngħatax l-informazzjoni li talab. Paul Buhagiar qatt ma kien mizmum milli jmur fl-ufficini tal-Gzira. L-unika problema hi li kull darba li jmur, kien jaqla` l-għied. Huwa gieli mar għand Paul Buhagiar bl-informazzjoni li kien jitlob l-istess Paul Buhagiar. Huwa kien għadu shab ma` Paul Buhagiar fuq il-pompa tal-petrol tal-Marsa. Qabel ma fetah in-negozju tan-Naxxar, in-negozju tal-Marsa kien ezatt bħal dak tal-Gzira. Anke Paul Buhagiar kien jikkompeti mal-kumpannija ntimata.

**Victor Buhagiar** xehed illi fis-socjeta` Paul & Rocco (Gzira) Limited huh Paul kien jikkontrolla kollox u jagħmel dak li jrid. Meta hu dahal fil-kumpannija bl-akkwist ta` terz ta` l-ishma, il-flus kienu jigu amministrati esklussivament minn Paul mill-ufficju li kellu l-Marsa ta` Paul & Rocco (Marsa) Limited. Spjega li kien wehħlu hafna flus f` taxxa għax mohħ Paul kien li ma jhallsux taxxa. Kien dejjem jipprova jevita milli jhallas l-income tax.

Wara li dahal in-neputi tagghom George iben Rocco beda jaghmel parti mill-kumpannija Paul & Rocco (Gzie) Limited, huwa kien talab lil Paul sabiex l-amministrazzjoni finanzjarja tibda ssir mill-ufficju ta` Paul & Rocco (Gzira) Limited fil-Gzira. Minn hemmhekk, bdew l-intoppi. Paul beda jaqla` hafna problemi peress li kellu ossessjoni li huwa ma jifhimx u li kien jifhem biss hu. Beda jmur avukat ghal kull laqgħa, u kull laqgħa kienet tispicca bl-inkwiet. Kien hemm awdituri li telqu minhabba l-imgieba aggressiva ta` Paul Buhagiar.

Huwa caħad li hu jew George b` xi mod ostakolaw lil Paul jew lit-tfal tiegħu milli jieħdu sehem fl-aministrazzjoni ta` kuljum. Kulhadd għandu access għall-informazzjoni li kienet tintalab.

**Raymond Vella** xehed illi huwa organizza l-*accounting department* tas-socjeta` ntimata u jalloka x-xogħol lil *accounts clerks*. Huwa kien jipprepara l-*management accounts*, VAT returns, statistika, u jieħu hsieb l-implimentazzjoni ta` *accounting software* għida, u l-obbligati ta` *company secretary*. Spjega li huwa dejjem sab lil Victor u George Buhagiar b` atteggjament kostruttiv għal dak li għandu x` jaqsam mal-finanzi tal-kumpannija. Dejjem semgħu s-suggerimenti tiegħu u urew interess kif itejjbu l-*management accounts* u l-*audited financial statements*. Paul Buhagiar izda huwa ferm negattiv u antagonist hafna fil-konfront tiegħu, minkejja li hu dejjem urih rispett.

Qal li Paul Buhagiar dejjem jakkuza lill-ohrajn b`korruzzjoni izda qatt ma għaddielu informazzjoni jew dokumentazzjoni li jikkorrabora dan. Spjega li huwa gie akkuzat ukoll li huwa korrott u li qieghed in kolluzjoni mad-diretturi l-ohra. Qal li huwa dejjem caħad dan. Huwa kien anke offra r-rizenja tiegħu liz-zewg diretturi l-ohra, izda dawn ma accettawhiex. Kien hemm okkazzjoni fejn hu u Mario Galea – Managing Partner ta` Ernst & Young Malta - marru jispjegaw l-*audited financial statements* lil Paul Buhagiar. Paul Buhagiar allega li l-awdituri huma kollużi mad-diretturi l-ohra u baqa` jinsisti tant li EY Malta ma baqgħetx l-awditur.

Stqarr illi fil-laqgħat tal-kumpannija, Paul Buhagiar rament kien jikkontribwixxi b` mod pozittiv u kien dejjem ikun aggressiv. Paul Buhagiar biddel kemm –il darba l-konsulenti tiegħu. L-atteggjament ta` Paul Buhagiar huwa kagun tal-fatt li huwa ma jkunx prezenti waqt id-*day to day operations* tal-kumpannija. Ix-xogħol qieghed f` idejn zewg diretturi ta` esperjenza u qed jigi wkoll vetted minn *accountants* u awdituri. Simone Pisani kienet effiċjenti hafna u huwa hadem dejjem tajjeb magħha. Sostna li

Paul Buhagiar dejjem ingahta kwalsiasi informazzjoni li talab. Simone Pisani kienet giet il-Gzira u talbet diversa informazzjoni biex tkun tista` taghmel rapport dwar id-debituri tal-kumpannija. Din kienet inghatat lilha izda sabiex jigi evitat li jkun hemm *disruptions* ohra, il-bord ha decizjoni li jekk direttur jkollu bzonn informazzjoni, l-ewwel ghandu jitlob lil bord mhux imur direttament fuq l-impjegati. Stqarr illi HSBC iqis in high esteem lill-intimati Buhagiar.

Fil-**kontroezami** kkonferma li l-ittra ezebita bhala Dok LCP1 kienet mibghuta lilu. Sostna li huwa mar kemm-il darba l-Marsa biex jaghti l-informazzjoni mitluba lil Paul Buhagiar.

Stqarr illi d-dizgwid bejn id-diretturi kien ilu gej. Spjega li l-ilmenti ta` Paul Buhagiar kien kollha rizultat tad-dubbji li kellu dwar in-negozju minhabba l-fatt li huwa ma kienx ikun il-Gzira. Bhala impjegat huwa dejjem jobdi d-direttivi li kien jinghata. Sostna li wara r-rapport li kienet ghamlet Simone Pisani, kienet ittiehdet decizjoni dwar liema debiti ghandhom jitqiesu bhala bad debts, liema jigu *provided for* u liema setghu jithallsu. Ikkonferma li wahda mill-preokkupazzjonijiet ta` Paul Buhagiar kienu d-debituri tal-kumpannija. Pero` qal illi kien hemm kontroll fuq kull debitur minhabba l-kambjali. Xehed li hafna drabi Paul Buhagiar ma kienx jiffirma l-*accounts* tal-kumpannija.

Fisser illi wara l-ittra ezebita bhala Dok LCP1, huwa xorta wahda mar f` xi okkazjonijiet b`informazzjoni ghand Paul Buhagiar fl-ufficini tal-Marsa. Id-diretturi l-ohra qatt ma zammewh milli jmur jaghti l-informazzjoni.

Xehed illi l-karozzi li kienu jinbieghu kienu ta` *high cost* u ghalhekk jekk bejgh minnhom jispicca bad debt, dan ikun bad debt ta` ammont sostanzjali. Huwa kkonferma li l-ilmenti kienu dwar il-*car sales department*. Kienu wkoll bdew jakkwistaw karozzi mhux daqstant lussuzi biex b` hekk ikun hemm tahlita tat-tip ta` karozzi ghal bejgh. Ikkonferma li Norbert Buhagiar kien jiehu hsieb il-bejgh tal-vetturi. Sostna li l-persentagg ta` *bad debts* u debiti li gew *provided for* huma minimi.

**Edward Camilleri** xehed illi huwa *accountant*.

Xehed illi George Buhagiar kien talab l-assistenza tieghu minhabba li ma setax ikompli fis-sitwazzjoni fejn Paul Buhagiar, sid ta` 50% tal-isma ta` Paul & Rocco (Marsa) Limited u 33.5% ta` l-ishma ta` Paul & Rocco (Gzira) Limited kien jiddetta u jikkontrolla kollox hu. Fil-kaz tal-Marsa, ma tantx

kien hemm wisq xi jsir biex ma jkunx hemm stalemate, izda fil-kaz tal-Gzira, George Buhagiar kellu l-appogg taz-ziju tieghu Victor.

Qal li huwa kien talab li Victor Buhagiar sabiex jappunta konsulent ukoll. Fil-fatt hekk ghamel u hatar lil Joseph Gauci. Fil-fatt hu u Joseph Gauci kienu appuntati bhala *alternate directors* sabiex it-tliet diretturi propju ma jiltaqghux. Kien suggeriet li Paul jappunta konsulent ; ghalkemm ghamel hekk. bidilhom ta` spiss. Paul Buhagiar ried jiehu lura l-amministrazzjoni tal-kumpannija ntimata jew li l-ishma tieghu jinxtraw ghal prezz eccessiv.

Qal li strategija ohra ta` Paul Buhagiar kienet li l-kumpannija ghandha taqşam il-proprjeta` immobbli taghha fil-Gzira (eskluza l-pompa tal-petrol) fi tlett bicciet biex b` hekk kull azzjonist jiehu parti. Izda mpona kundizzjoni li huwa jkollu d-dritt ta` l-ewwel ghazla. Spjega li din ma kinitx proposta accettabbli.

Stqarr illi mhux minnu illi l-kumpannija qed titmexxa b` mod hazin u abbuziv. Jekk wiehed jara l-profitti u d-*dividends* li nhargu jsib li dan assolutament mhuiwix minnu. Mhux minnu li Paul Buhagiar kien qed jigi mcahhad mid-drittijiet tieghu ta` azzjonist.

**Mario Galea** xehed illi huwa awditur irtirat u kien il-Managing Partner ta` Ernst & Young Malta li kienet mahtura sabiex taghmel *audit* ta` Paul & Rocco (Gzira) Limited fl-2000. Damet l-awditur ghal xi ghaxar snin. Imbaghad id-ditta rrizenjat mill-inkarigu taghha. Ir-rizenja saret peress li kienu gew espressi suspetti dwar ix-xoghol taghhom bhala awdituri. Sostna li kien hemm l-impresjoni li l-pozizzjoni taghhom ma kinitx wahda indipendenti. Dawn is-suspetti kienu gejjin minn Paul Buhagiar. Spjega li huwa gieli ltaqa` ma` Paul Buhagiar u dan dejjem kien jesprimi mieghu l-preokkupazzjonijiet tieghu fir-rigward dan in-negozju. Sostna li Paul kellu suspetti li l-*financial statements* ma kinux qed jirriflettu l-*business* kollu li kien ikun ghaddej.

Xehed illi bhala awditur, huwa kien ipprova jindirizza l-preokkupazzjonijiet ta` Paul Buhagiar. Spjega li kull awditur ta` kumpannija dejjem isib xi irregolaritajiet li jirrapporta lid-diretturi biex dawn jitrangaw. Ir-rizenja tad-ditta kienet dettata fuq bazi ta` etika peress li Paul Buhagiar ma kienx ghad fadallu fiducja fihom bhala awdituri. Qal li Paul Buhagiar kien jiffirmahom l-*accounts* bhala direttur.

Fil-**kontroezami**, huwa spjega li Paul Buhagiar kien jilmenta dwar il-bejgh li kien qed isir u dwar l-ispejjez li kienu qed isiru. Paul Buhagiar kien qed jilmenta li mhux kull bejgh kien qed jigi registrat. Kull sena kienu jaghmlu rakkomandazzjonijiet bil-miktub. L-inkariku tad-ditta kien l-audit mhux investigazzjoni. Pero` huma ghamlu xoghol *extra* sabiex jinvestigaw l-ilmenti ta` Paul Buhagiar. Wahda mill-problemi tal-kumpannija kienu l-*bad debts* ; fil-fatt ghamlu rakkomandazzjonijiet dwar dan.

**Emanuel Farrugia** xehed li huwa awditur mad-ditta DFK li taghmel l-audits tas-socjeta` intimata.

Xehed illi huwa kien prezenti ghal laqghat generali annwali tal-kumpannija. Gieli ltaqa` wkoll ma` Paul Buhagiar.

Dwar il-bad debts, xehed illi dawn kienu jigu analizzati sew u kienu jinhargu numru ta` *provisions* li kellhom jigu segwiti.

Spjega li l-ahhar *accounts*, tnejn kienu approvawhom izda Paul Buhagiar ma ffirmax. Safejn jaf hu kien hemm qbil bejn it-tlett azzjonisti dwar x` ghandhom jkunu l-*provisions* tal-bad debts.

Fil-**kontroezami** xehed illi fl-2010, l-amont ta` EUR 39,000 kien *fully provided for* mentri fl-2009, kien hemm EUR 29,000 . Spjega li l-krediti li l-kumpannija ghandha tircievi minghand terzi tela` minn sena ghal ohra. Fl-2009, kien hemm EUR 52,000 bhala bad debts mentri fl-2010, kien hemm EUR 59,000 *written off*. Ikkjarifika li *written off debts* ifisser djun li ma hemmx cans li jingabru waqt li krediti li jigu *provided for* huma krediti li jista` jkun li jingabru. Il-profitti netti qabel it-taxxa fl-2009 kienu EUR 84,000. Il-kumpannija ghandha *surplus* .

**Joseph Gauci** xehed illi huwa awditur.

Xehed illi kellmu Victor Buhagiar biex jirraprezentah u jipprotegi l-interessi tieghi fis-socjeta` ntinata.

Qal illi ghall-bidu fil-laqghat tal-bord, kienu jiltaqghu t-tlett diretturi u l-konsulent tagghom. Edward Camilleri u hu baqghu jirraprezentaw lil

George u Victor Buhagiar rispettivament izda r-rapprezentant ta` Paul Buhagiar kien jinbidel.

Stqarr illi meta bdew isiru l-laqghat, irrizulta li l-kotba ta` *l-accounts* ma kinux qed jinzammu sew. Kien hemm bankier li kien jahdem fuq bazi ta` part time li kien izomm il-kotba tal-kumpannija. Il-cash sales ma kinux qed jigu reconciled u l-kotba tac-cheques kienu jinzammu l-Marsa u sabiex jinhareg cheque, kellu jintbaghat skrivani il-Marsa.

Spjega li ma kienx hemm kontrolli sabiex jigi assigurat li l-income kollu jkun *accounted for*. Fl-ewwel snin inholqot sezzjoni ta` *accounts* li llum ghandha tliet skrivani impjegati full time u *accountant* part time.

Fisser illi l-bord tad-diretturi ha mizuri fosthom li jsir *upgrading* ta` l-ispazju ta` l-ufficini biex jakkomoda l-istaff ta` *l-accounts* u ta` l-administration u fejn jinzamu l-kotba ta` *accounts*. Twettqu kontrolli fosthom sistema ta` reconciliation ta` l-income ghal car sales. Sar kompjuterizzar ta` parti mill-process ta` *accounting* kif ukoll bdew jinzammu laqghat tal-bord b` mod formali.

Irrimarka illi waqt il-laqghat, Paul Buhagiar kien jopponi ghal kollox b` xi skuza jew ohra. Istanzi fejn dan kien qed jopponi biex jostakola l-operat tal-kumpannija kienu meta kien jastjeni milli japprova *l-audited accounts* ; jopponi ghal spejjez kapitali bhalma meta kien hemm bzonn ta` akkwist ghal makkinarju tal-*car wash* ; ma japprovax sanction letter tal-bank u jitlewwem ma` awdituri tal-kumpannija. Paul Buhagiar kien iressaq hafna akkuzi u mbaghad ma jsostnihomx bil-provi.

Irrileva li mhuwiex minnu li Paul Buhagiar ma kienx involut fit-tmexxija tal-kumpannija. Il-kumpannija tat opportunitajiet lil tnejn mill-ulied ta` Paul Buhagiar biex jahdmu fl-istess kumpannija. Inoltre, l-informazzjoni li kien jitlob Paul Buhagiar, kienet dejjem tinghata. Bhala fat huwa kien oppona ghal dan billi kienet tohloq konfuzjoni fis-sistema. Ghalhekk huwa pprezenta mozzjoni sabiex kwalunkwe informazzjoni tintalab lill-bord. Paul Buhagiar kien hsiebu biex iressaq ilmenti li *l-accounts* ma kinux qed jiriflettu s-sitwazzjoni reali tal-kumpannija peress li l-hsieb tieghu kien li jnaqqas il-valur tal-kumpannija.

Isemmi okkazzjoni minnhom fejn Paul Buhagiar informa lill-bord li ried ibiegh l-ishma tieghu lid-diretturi l-ohra. Il-prezz li talab ghall-ishma tieghu kien eccessiv. Saret proposta ukoll fis-sens li tinqasam l-art tal-kumpannija bejn it-tlett azzjonisti filwaqt li l-kumpannija zzomm biss il-petrol station. Din ma kinitx soluzzjoni Prattika.

Stqarr illi mhuwiex minnu li l-kumpannija mhijiex taqla` bizzejjed. Huwa qal li l-issued share capital fl-1994 kien Lm 60,000. In-net asset value tal-kumpannija fil-31 ta` Dicembru 2009 kien ta` EUR 7,925,694. Il-bejgh tal-kumpannija bejn 1995 sa 2009 kien jammonta ghal EUR 69,997,456. Dan ifisser li kienu qed isiru average sales fis-sena ta` EUR 2,799,898. Matul dawn il-25 sena, il-kumpannija qassmet average dividend ta` EUR 125,820 li jfisser illi l-azzjonisti hadu EUR 23,019,680 flimkien jew EUR 1,006,560 kull wiehed.

Spjega li l-bad debts tal-kumpannija huma anqas minn 1% matul dawn is-snin.

Qal illi s-self bankarju thallas kollu u l-limiti tal-*overdraft* dejjem jigu rispettati.

Stqarr illi l-kumpannija ma ghandhiex kredituri.

Qal illi d-debituri taghha lkoll ghandhom kambjali a favur tal-kumpannija. Dan kollu jindika li l-kumpannija qieghda f`sitwazzjoni finanzjarja tajba. Spjega li minkejja li Paul Buhagiar dejjem sahaq li l-kumpannija mhijiex likwida, huwa dejjem insista ghal *dividend* tieghu u kien biss fl-2010 li rrifjuta d-dividend. In-net assets tal-kumpannija fl-2009 kienu EUR 7,925,694 u jekk wiehed kellu jghodd id-*dividends*, dawn kienu jwasslu ghas-somma ta` €10 miljun.

Sahaq illi l-ezami komparattiv bejn Paul & Rocco (Gzira) Limited u Paul & Rocco (Marsa) Limited ma jaghmilx sens. Il-kumpannija tal-Gzira ghandha l-kiri tal-karozzi mentri dik ta` l-Marsa, ma tippovdix dak is-servizz. Il-kumpannija tal-Gzira hija rinomata ghall-bejgh ta` karozzi ta` valur gholi mentri dik tal-Marsa tbiegh karozzi ta` prezz baxx. Is-socjeta` tal-Gzira ghandha zewg facilitajiet ta` *car wash* mentri dik tal-Marsa ghandha wahda biss. Is-socjeta` tal-Marsa ghandha fond ikbar b`zewg showrooms. Sostna li s-suq illum inbidel hafna izda Paul Buhagiar dejjem



sostna li huwa ghandu erbat ibniet li mhumiex interessati fin-negozju. Huwa insista li din il-kumpanija hija organizzata tajba u huwa kburi li bil-kontribut tieghu, ghen ghas-success ta` din il-kumpanija.

Fil-**kontroezami**, huwa spjega li Paul Buhagiar kien dejjem jallega li l-valur ta` l-*istock* huwa gholi. Huwa sostna li l-prezz li kienu jgibu dawn il-vetturi kien aktar milli kienu jiswew fil-kotba. Spjega li kieku il-karozzi nbieghu ghal valur inqas milli jiswew, dan kien ser jaffettwa il-profitt. Huwa accetta li l-valutazzjoni tal-karozzi kienet issir *at a cost*. Spjega li peress li l-karozzi dejjem inbieghu ghal valur aktar minn dak il-prezz ma kienx hemm skop li l-valur jkun inqas. Huwa kkonferma li n-net assets tal-kumpanija fl-2009 kien ta` € 3.5 miljun. Huwa spjega li skont Paul Buhagiar, l-ishma li ghandu fis-socjeta` ntimata jiswew €7 miljun.

Kompla stqarr illi l-kapital gej mill-*overdraft* kien jintuza dejjem aktar ghaliex Paul Buhagiar dejjem irrifjuta li jizdied il-kapital azzjonarju. Paul Buhagiar kien ukoll irrifjuta li ma jibqghux jinhargu *dividends* fis-sena. Huwa kemm-il-darba tlewwem ma` Paul Buhagiar dwar r-raguni ghalfejn kien jilmenta minn nuqqas ta` likwidita` tal-kumpanija, imbaghad ried jiehu d-*dividends*.

**Av. Dr. Pio Valletta** xehed li huwa kien fiehem lill-intimati Buhagiar li setghu jappuntaw *alternate directors* sabiex jevitaw li jattendu ghal-laqghat tal-bord tad-diretturi tas-socjeta` ntimata peress li kienu jigu assoggettati ghal hafna tghajir. Spjega li Paul Buhagiar kien allega f` xi laqgha li l-problemi kollha kienu qed jinholqu minhabba l-intervent ta` l-awditur Joe Gauci. Semma li kienu saru diversi attakki fuq Raymond Vella ukoll. Spjega li l-kwistjoni ta` l-*bad debts* kienet tqum kull laqgha. Huwa personalment kien anke insultat minn Paul Buhagiar.

Huwa kkonferma li Paul Buhagiar bidel l-avukati tieghu diversi drabi. Spjega li minhabba li Paul Buhagiar kien beda jitlob informazzjoni lill-bank u lill-awdituri, kien deciz mill-bord illi meta direttur jitlob l-informazzjoni, din l-informazzjoni trid tintalab lill-bord mhux lil individwi jew entitajiet partikolari. Stqarr illi ma` Simone Pisani, kien ikun hemm diskussjoni tajba u minghajr problemi. Tenna pero` li fil-laqghat tal-bord, dejjem kien jinqala` d-disgwid jekk mhux ukoll ghajjat u storbju.

Esprima ruhu fis-sens illi Paul Buhagiar kien hsiebu biex jitkellem dwar il-propjreta` mhux dwar l-ishma tal-kumpanija. Id-diretturi l-oħra ma

kinux jaqblu mal-proposta li l-proprjeta` tinqasam. Spjega li dak li kien qed jigi propost minn Paul Buhagiar lanqas ma kien accettat mill-bank. Huwa dejjem ghadha l-informazzjoni meta din giet mitluba. Insista ukoll li Paul Buhagiar dejjem inghata access.

### III. L-Art 402 tal-Kap 386

Ir-rikorrenti qeghdin iressqu t-talbiet taghhom abbazi tal-Art 402 tal-Kap 386.

Il-Qorti sejra taghmel riferenza ghal dawk mis-subartikoli tal-Art 402 li tqis rilevanti ghall-istanza tal-lum –

*(1) Kull membru ta' kumpannija li jilmenta li l-affarijiet tal-kumpannija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b'mod li, jew li xi att jew omissjoni tal-kumpannija 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 general, jista' jaghmel rikors lill-qorti ghal ordni taht dan l-artikolu.*

...

*(3) Jekk dwar rikors maghmul skond is-subartikolu (1) ... il-qorti tkun tal-fehma li l-ilment ikun bazat sewwa u li jkun gust u ekwu li hekk taghmel, il-qorti tista' taghmel ordni taht dawk il-kondizzjonijiet li jidhrilha xierqa -*

*(a) li jirregola t-tmexxija ta' l-affarijiet tal-kumpannija fil-futur ; jew*

*(b) jirrestringi jew jipprojbixxi l-ghemil ta' xi att propost ; jew*

*(c) jehtieg lill-kumpannija li taghmel xi att li r-rikorrent ikun ilmenta li kienet naqset li taghmel ; jew*

*(d) jipprovi ghax-xiri ta' l-azzjonijiet ta' xi membri tal-kumpannija minn membri ohra tal-kumpannija jew mill-kumpannija nnifisha u, f'kaz ta' xiri mill-kumpannija, ghat-tnaqqis li jkun mehtieg fil-kapital azzjonarju mahrug tal-kumpannija ; jew*

*(e) jordna lill-kumpannija li tibda, tiddefendi, tkompli jew ma tkompli procedimenti tal-qorti, jew jawtorizza lil membru jew membri tal-*

*kumpannija li jibdew, jiddefendu, ikomplu jew ma jkomplux procedimenti tal-qorti fisem u ghan-nom tal-kumpannija ; jew*

*(f) jipprovi għall-hlas ta' kumpens minn dik il-persuna li tista' tkun instabet responsabbli mill-qorti għal telf jew danni li jkunu ggarrbu minhabba att jew nuqqas li dwaru jkun sar ilment lill-persuna li tkun garrbet dak it-telf jew danni ; jew*

*(g) ixolji l-kumpannija u jipprovi għall-istralc konsegwenzjali tagħha.*

*(4) Meta jsir ordni għax-xoljiment ta' kumpannija skond is-subartikolu (3)(g), il-kumpannija għandha titqies li tkun xoljiet fid-data meta jkun sar l-ordni u d-disposizzjonijiet tas-Sub-Titoli I u III tat-Titolu II tat-Taqsima V ta' dan l-Att li jirregolaw l-istralc ta' kumpanniji għandhom japplikaw.*

*(5) Ordni magħmul taht dan l-artikolu jista' jehtieg lil kumpannija biex ma tagħmilx xi emenda, jew li tagħmel emenda mehtiega, fil-memorandum jew fl-istatut tagħha.*

Għalkemm id-dicitura tal-Art 402(1) ittiehdet testwalment minn disposizzjoni simili li tirrizulta fil-Companies Act ta` New Zealand, tajjeb jinghad illi l-ligi ta` New Zealand segwiet l-izvilupp legislattiv fir-Renju Unit. Fir-Renju Unit, kien hemm l-ewwel il-Companies Act 1985 (Sec 459). Imbagħad fi zminijiet aktar ricenti kienet hemm il-Companies Act 2006 [Sec 994(1)]. Fil-fatt Sec 459 thassar għal kollox mill-Companies Act 1985 u dahal ezatt kif kien fl-Art 994(1) tal-Companies Act 2006.

Fil-pag 485 ta` l-ktieb **Company Law** (Fourth Edition – 2016 – OUP) **Brenda Hannigan** 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)]”*

**Sabiex tinghata ordni skont kif previst fis-subartikoli (3), (4) u (5) ta` l-Art 402, hija tassattiva l-prova tal-att li minnu qeghdin jilmentaw ir-rikorrenti.**

Dan ifisser illi jekk abbazi tal-provi akkwiziti, il-qorti tkun sodisfatta li jirrizulta dak previst fis-subartikolu (1), allura tghaddi mbaghad biex taghti l-ordni skont is-subartikoli l-ohra.

Jekk il-prova tkun insodisfacjenti ghaliex ma jkunx irrizulta dak previst mis-subartikolu (1), allura l-qorti ghandha tieqaf hemm, u ma ghandhiex tapplika dak previst fis-subartikoli l-ohra.

Ghalhekk il-prova tas-sussistenza legali u fattwali ta` dak li jipprovdi s-subartikolu (1) huwa pregudizzjali ghall-prosegwiment tal-azzjoni.

#### IV. Il-prova

Fil-Pag 970 ta` Principles of Maltese Company Law (MUP – 2007) Andrew Muscat ighid illi fuq ir-rikorrenti jinsab il-piz tal-prova li l-att jew omissjoni jaqa` fl-ambitu tas-subartikolu (1).

Ighid –

*This wording (tal-subartikolu 1) clearly suggests that the member **need only prove one effect** of the conduct, act or omission, that is, that such conduct, act or omission, has been, is or is likely to be “oppressive” or “unfairly discriminatory” or “unfairly prejudicial” (to a member or members) or contrary to interests (of the members as a whole). (enfasi u sottolinear tal-qorti)*

Fis-sentenza li ta` din il-Qorti diversament presjeduta tat-30 ta` Jannar 2008 fil-kawza “Cutajar pro et noe et vs S.C. & Company Limited et” inghad hekk –

*Illu **l-prova biex tirnexxi dina l-azzjoni tispetta lir-rikorrenti** (enfasi u sottolinear ta` din il-qorti) 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' tintervjeni 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.*

Fil-pag 492 ta' **Company Law** (op. cit.) **Brenda Hannigan** tghid :-

*“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].*

## V. **L-ewwel eccezzjoni tal-intimati kollha**

Il-Qorti mhijiex sejra taghti aktar konsiderazzjoni ghal din l-ewwel eccezzjoni billi kienet rtirata hekk kif kienet ceduta l-kawza fl-ismijiet : **Paul Buhagiar vs Paul & Rocco (Gzira) Ltd et** (Rik. Nru. 980/2011 JZM) [ara l-verbal tal-udjenza tad-19 ta' Frar 2015].

## VI. **Ordnijiet pendente lite**

Lanqas ma sejra l-Qorti taghti konsiderazzjoni ghal fejn fit-talba tas-socjeta` rikorrenti ssem mew ordnijiet *pendente lite* fl-ewwel lok ghaliex hadd ma ghamel talba specifika lill-Qorti sabiex taghti ordni ta' xi xorta fil-kors tal-kawza, u fit-tieni lok lok ghaliex it-talba sfumata ghal kollox bil-provvediment li qed jinghata illum.

## VII. Il-legittimu kontradittur

Is-socjeta` rikorrenti hija membru tas-socjeta` rikorrenti u kwindi tista` tippromwovi azzjoni skont l-Art 402 tal-Kap 386.

Is-socjeta` ntimata tat l-ecezzjoni tan-nuqqas ta` *locus standi* taghha fl-azzjoni promossa mis-socjeta` rikorrenti billi l-premessi li fuqhom hija bbazata l-azzjoni huma diretti mhux lejha izda lejn l-azzjonisti l-ohra. Ghalhekk skont is-socjeta` ntimata l-azzjoni kellha tkun diretta biss kontra dawn – li wkoll huma ntimati fil-kawza – izda mhux kontra taghha wkoll.

Fil-“Principles of Maltese Company Law” (op. cit.) Andrew Muscat jitratta l-kwistjoni ta` kontra min tista` tigi istitwita azzjoni ta` din ix-xorta.

Fil-pag. 995 tal-ktieb ighid hekk :-

*The Companies Act does not specify the person or persons against whom an action under article 402 is to be brought. It does well not to do so. The reason is that the choice of the defendant or defendants depends on the facts of the case and on the type of relief sought.*

*... the persons responsible for the conduct complained of would typically vary from the current or past majority shareholder to the managing director or the controlling directors acting on behalf of company. Control may also be vested in a shadow director, a provisional administrator, a liquidator, an official receiver and even the pledgee of shares in the company, who, in terms of the pledge agreement, may exercise the shareholder`s voting rights or appoints directors on the board.*

*Moreover, as will be noted in the following pages, the forms of relief that may be granted by the court are considerably wide-ranging; a court order could be issued against a number of persons, typically the company itself and one or more shareholders. In Joseph Calleja vs Vincent Calleja, an article 402 was filed only against one of the shareholders. The company itself was not a party. The defendant pleaded that the company itself were wrongly instituted, as the action had to be filed against the company and not against himself as a member. The Court, in a judgement in parte, considered article 402 to provide a flexible and equitable remedy and agreed with the applicant`s submissions*

*that an article 402 action had to be instituted against the person or persons who were allegedly responsible for the wrongdoing and that the court's order need not in all cases be issued against the company itself. The Court remarked that as the applicant's allegations of wrongdoing were directed towards the defendant, it was clear that the defendant was a proper party to the proceedings. It also stated that the fact that the action was not also filed against the company did not nullify the proceedings.*

*... Given the fundamental principle of Maltese procedural law that no person can be bound by a court's decision or judgement unless he is a party to the relative proceedings, it is important for the complainant to carefully identify the person or persons against whom the action is to be filed.*

**Fil-Pag 218 ta' l-Kap 6 ta' l-ktieb Minority Shareholders : Law, Practice and Procedure, Victor Joffe jikteb :-**

*The petitioner will be the member seeking relief, and the company of which he is a member and in relation to whose affairs he alleges unfairly prejudicial conduct will be made a respondent. Additionally, every member of the company (other than the petitioner) whose interests might be effected by the relief sought should be joined as a respondent, whether or not allegations of unfairly prejudicial conduct are made against him: in the case of a small private company, this will usually mean that every member ought to be joined as a respondent to the petition. The category of potential respondents (other than the company) is not, however, limited to members of the company. In an appropriate case, relief may be sought against a non- or former member. The width of the category of potential respondents is indicated by *Lowe vs Fahey* ((1996) 1 BCLC 262), where it was held that if the unfairly prejudicial conduct alleged was a diversion of corporate funds, a petitioner could seek relief not only against members and former members, but also against directors involved or third parties who knowingly received or improperly assisted in the diversion. Even a person who is not actively involved in the conduct of the affairs of the company complained of may be made a respondent, at least if he would be affected by the relief sought.*

Il-Qorti tqis illi s-socjeta` ntimata hija legittima kontradittur tar-rikorrenti ghall-finijiet u effetti kollha tal-ligi.

L-ilment tar-rikorrenti mhuwiex dirett biss kontra l-intimati Buhagiar bhala azzjonisti tas-socjeta` ntimata, izda huwa dirett ukoll kontra s-socjeta` ntimata, fejn l-intimati Buhagiar huma tnejn mit-tliet diretturi.

Skont is-socjeta` rikorrenti, l-intimati Buhagiar – kien x`kien ir-rwol tagghom – kemm jekk de proprio kif ukoll bhala diretturi tas-socjeta` ntimata – ghamlu li setghu sabiex jaqtghu barra u jirrendu rrilevanti lis-socjeta` rikorrenti b`mod li nholoq pregudizzju ngust. Skont is-socjeta` rikorrenti, dan l-agir imur kontra dak li jrid l-Art 402(1).

Kienx hekk tassew, naraw `il quddiem.

Tajjed jinghad ukoll illi fl-eventwalita` li ssir il-prova ta` l-Art 402(1) u allura l-Qorti tkun trid tipprovdi skont l-Art 402(3), kwalsiasi provvediment jolqot lis-socjeta` ntimata li allura ghandha kull jedd tghid taghha, b`mod distint u awtonomu mill-intimati l-ohra de proprio.

Anke ghalhekk hija legittima kontradittur ghar-rikorrenti.

### **VIII. Irritwalita`**

L-intimati Buhagiar jeccepixxu wkoll illi r-rikors promotur huwa nieqes minn indikazzjoni specifika tal-mizura jew mizuri alternattivi li qeghdin jigu mitluba mill-Qorti. Ghal din ir-raguni, isostnu li r-rikors huwa irritu.

Is-socjeta` rikorrenti talbet lill-Qorti sabiex taghti dawk id-direttivi, provvedimenti u ordnijiet kollha li jidhrilha xierqa u opportuni a tenur ta` l-Art 402 tal-Kap 386, bil-ghan li l-atti oppressivi, diskriminatorji u pregudizzjali jigu rimedjati minnufih.

Dwar kwistjoni ta` din ix-xorta, **Andrew Muscat** ighid hekk fil-pag. 1011 ta` **Principles of Maltese Company Law** :-

*“Is the choice at the discretion of the court or must the complainant clearly specify the type of order he is after? The law is silent on this matter. The correct approach, it is suggested, is that the complainant has a choice: he may either request a particular type of order (for example, that the company be required to do an act which it has omitted to do) or he may specify his requests in an alternative manner (for example, he may in the first place request a dissolution of the company, or alternatively if the court considers dissolution to be inappropriate in the circumstances, to issue a share purchase order), or*



*he may leave the choice of remedy entirely up to the court's discretion. In each case, of course, the complainant must ensure that he files the action against such persons as are to be bound by the court order. What cannot be done, it is suggested, is for the court to provide a remedy different to that requested by the complainant. Thus, for example, the court cannot, if the complainant simply seeks a court order prohibiting the company from carrying out a particular act, order instead that the defendants acquire the complainant's shares. Such an order would be ultra petita the complainant's demand."*

Il-Qorti hija tal-fehma illi hekk kif tinsab dedotta t-talba tas-socjeta` rikorrenti ma tirrendix irritu r-rikors promotur ghaliex dak li qed jintalab huwa li l-Qorti tiddeciedi hi stess r-rimedji li ghandha taghti. Is-socjeta` rikorrenti halliet fid-diskrezzjoni ta` l-Qorti li tkun hi li taghzel u li tordna t-twettieq ta` dak ir-rimedju li jkun l-aktar opportun.

Il-Qorti tishaq illi fil-kwadru tas-subartikolu (3) tal-Art 402 ghandha diskrezzjoni wiesgha ta` liema rimedji timplimenta fil-kaz li jirrizulta fondat l-ilment skont l-ewwel (1) subartikolu. Din id-diskrezzjoni hija wiesgha bizzejjed tant li l-Qorti tista` twarrab rimedju li jkun rikjest mir-rikorrent u minflok takkorda iehor jew aktar abbazi tal-fatti u cirkostanzi tal-kaz. Dan kollu ghaliex l-azzjoni ssib ir-*raison d`etre* taghha fil-gustizzja sostanzjali u fl-ekwita`. Il-formalizmu huwa cirkostanza aljena ghal azzjoni ta` din ix-xorta.

Ghalhekk l-eccezzjoni qed tkun michuda.

## **IX. Gurisprudenza**

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

*Jibda biex jinghad li dan il-provediment 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-provediment hu evidenti li :*

(a) *Dan il-provediment 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-kumpannija jew fuq att jew ommissjoni tal-kumpannija.*

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 ghalix dawn il-provedimenti 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 jipromwovi 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.*

Fid-decizjoni **In Re Bovey Hotel Ventures Ltd.** (1983) Slade J ighid dwar ‘unfair prejudice’ –

*The test for 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 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 –

*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' jsofri xi pregudizzju ta' natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista' tirreferi semplicement ghal xi att specifiku jew xi omissjoni 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' jsofri 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 ta-ssocjeta`. 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-segwent i :-*

*“(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”.*

Fid-decizjoni ta` din il-Qorti diversament presjeduta tas-7 ta` Ottubru 2016 fil-kawza **Av. Dr. Pio M. Valletta noe vs Jeno Torocsik et** inghad illi sabiex ikun hemm *unfair prejudice*, (a) *it-test irid ikun wiehed oggettiv ;* (b) *M’hemmx htiega li l-attur jipprova l-mala fede ;* (c) *M’hemmx htiega li l-attur jipprova li kien hemm intenzjoni li tikkawza pregudizzju ;* (d) *M’hux gust ma jfissirx bilfors li l-agir irid ikun illegali ;* u (e) *L-agir irid ikollu effett negattiv fuq l-attur bhala azzjonist.*

Fid-decizjoni **Re Coroin Ltd** – 2012 – All ER (d) 58(Feb) – EWHC 129 (Ch) – moghtija mic-Chancery Division tal-Ingilterra – David Richards J. qal hekk :-

*“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 ...”*

## **X. Dottrina**

Fil-pag. 464 ta`**Ferrar’s Company Law** – Third Edition - 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.*

Fil-pag. 409 ta` **Cases and Materials on Company Law** – Fifth Edition – **Hicks and Goo** – ighidu :-

*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-pag. 449 ta` **Farrar's Company Law** - Fourth Edition - 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.*

Fil-pag. 506 ta` **Company Law** (op. cit.) **Brenda Hannigan** tghid :-

*“Mere deadlock between the parties who have lost trust and confidence in one another is insufficient then to merit relief under CA 2006, s 994, **in the absence of prejudicial conduct.**” [enfasi u sottolinear ta` din il-qorti].*

Fil-pag. 711 ta' **Boyle & Birds' Company Law** (Eight Edition – 2011 – Jordans) l-awturi jghidu :-

*“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.”*

Fil-pag. 691-692 ta' l-ktieb **Gower and Davies - Principles of Modern Company Law** (Eighth Edition – 2008 – Sweet & Maxwell) jinghad illi :-

*“... 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 – ghall-uzu tal-frazi “legitimate expectations” ; House of Lords – “O’Neill vs Phillips” – 1999 – ghall-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.”*

Fil-pag 569-570 tal-ktieb **Company Law** (26<sup>th</sup> Edition – 2009/2010 – OUP) l-awturi **Mayson, French & Ryan** ighidu hekk b`riferenza ghad-decizjoni ta' Re Saul D Harrison and Sons, citata aktar kmieni :-

*“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 conducts satisfies only one of these tests.”*

Ikomplu billi jaghmlu riferenza ghal “O’Neill vs Phillips” (op. cit.) in partikolari dwar l-ghazla li ghamel 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.”*

## **XI. Risultanzi dwar l-Art 402(1)**

Il-Qorti sejra tghaddi biex tqis jekk l-ilmenti li ghamlet r-rikorrenti jissoddisfawx il-vot ta` l-Art 402(1).

Tajjeb li jkun ribadit illi sabiex ikun sodisfatt il-vot tal-ligi jkun bizzejjed jekk tirrizulta mqar wahda mic-cirkostanzi ndikati fl-Art 402(1). Il-legislatur infatti ghazel il-konguntiv *jew* mhux *u* fit-test tal-ligi. Dan ifisser illi r-rekwiziti huma alternattivi mhux kumulattivi.

### **1. L-ilmenti**

**In sintesi**, l-ilmenti tar-rikorrenti kienu dawn :-

a) L-oppresjoni, pregudizzju u diskriminazzjoni li wettqu l-intimati Buhagiar bhala diretturi u azzjonisti kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.

b) L-oppresjoni, pregudizzju u diskriminazzjoni perpetrati mill-awdituri u mill-*company secretary* tas-socjeta` ntimata bl-approvazzjoni tal-intimati Buhagiar fiz-zewg vesti taghhom kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.

c) L-oppresjoni, pregudizzju u diskriminazzjoni li saru minn Norbert Buhagiar u Mariella Aquilina, impjegati tas-socjeta` ntimata, bl-approvazzjoni tal-intimati Buhagiar fiz-zewg vesti taghhom, kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.

d) Il-konflitt ta` interess tal-intimat George Buhagiar.



e) It-tmexxija hazina u l-kontroll hazin tal-finanzi tas-socjeta` ntimata da parti tal-intimati Buhagiar bi pregudizzju ghall-interess tar-rikorrenti bhala azzjonista u tas-socjeta` ntimata b`mod generali.

## 2. Analizi

### a) L-oppressjoni, pregudizzju u diskriminazzjoni li wettqu l-intimati Buhagiar bhala diretturi u azzjonisti kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.

Bhala parti mill-provi taghha, is-socjeta` rikorrenti telenka incidenti u cirkostanzi ndikattivi – skont hi – ta` dak li l-Art 402(1) jiccensura, u li effettivament wasslu ghall-eskuzjoni taghha mit-tmexxija tas-socjeta` ntimata.

### i) Vjolenza fizika u/jew morali fil-konfront ta` l-persuni nominati fil-bord tad-diretturi mis-socjeta` rikorrenti

Kien lamentat illi ghaliex Paul Buhagiar kien ikun esigenti fil-laqghat tal-bord dwar *good governance* tas-socjeta` ntimata huwa safa` aggredit fizikament u ntimidat verbalment mhux biss miz-zewg diretturi l-ohra, izda anke minn Norbert Buhagiar u Mariella Aquilina, li huma mpjegati tas-socjeta` ntimata u wlied l-intimat ta` Victor Buhagiar.

Inghad ukoll li pressjoni ndebita saret ukoll fuq Simone Pisani, bint Paul Buhagiar, li kienet impjegata tas-socjeta` ntimata, u wara kienet *alternate director* fil-kumpannija intimata.

L-intimati Buhagiar xehdu l-maqlub.

Ghalkemm huma ma stqarrew xejn kontra Simone Pisani anzi ddeskrivewha bhala persuna efficjenti fix-xoghol taghha, mhux l-istess xehdu dwar Paul Buhagiar.

Jikkontendu li l-imgieba aggressiva ripetuta giet min-naha ta` Paul Buhagiar (beneficial owner tas-socjeta` rikorrenti) li baqa` ma accetta qatt illi

l-kotba tat-tmexxija (inkluz tal-finanzi) tas-socjeta` ntimata jmorru l-Gzira fis-sede tas-socjeta` ntimata, minflok jibqghu l-Marsa fejn kienu u fejn hemm l-ufficini ta` socjeta` oħra bl-isem Paul & Rocco (Marsa) Limited fejn l-azzjonisti huma r-rikorrenti u l-intimat George Buhagiar izda mhux l-intimat Victor Buhagiar.

Isostnu l-intimati Buhagiar illi huma qatt ma cahhdu lil Paul Buhagiar minn xejn izda ma kienx accettabbli għalihom li jagixxi tagħhom b`arroganza u prepotenza, u jittrattahom ta` korrotti u hallelin, frazijiet li għajjarhom bihom, u li huma jikkontestaw.

Kienet il-Qorti stess li semgħet lid-diversi persuni jixhdu *viva voce* quddiemha. Mnejn u għaliex skattat imgieba li tagħmel xempju ta` kif għandha tkun diretta kumpannija mhuwiex il-pern tal-kwistjoni. Il-paroli fil-vojt certament ma għen propju xejn *per rasserenare le diverse anime*. Jingħad hekk għaliex ftit jew wisq bil-hatra ta` *alternate directors* it-tensjoni battiet għalkemm mhux il-problemi strutturali tal-kumpannija. Il-Qorti wisq tibza` wkoll illi l-*alternate directors* gibdu l-habel ta` min inkarikahom milli l-ahjar interess tas-socjeta` ntimata.

## ii) It-tmexxija tal-laqgħat tal-bord

Il-Qorti torbot mal-ahhar tema.

Ingħad min-naha tas-socjeta` rikorrenti illi l-azzjonisti u diretturi ma jmorrux għal-laqgħat tal-bord tad-diretturi u għal-laqgħat generali tal-kumpannija billi jwahhlu fl-imgieba ta` Paul Buhagiar.

Tgħid is-socjeta` rikorrenti illi bil-hatra ta` *alternate directors* jew *proxies* il-laqgħat tal-kumpannija kienu qed iservu bhala *rubberstamp* tat-tmexxija hazina tal-kumpannija, bil-maggoranza tghaddi minn fuq il-minoranza, u kull ma jintalab minn din jigi rigettat sdabiex jibqa` jippersisti l-istatus quo.

Tgħid is-socjeta` rikorrenti illi fil-laqgħat ma jsirx xejn proposittiv jew kreattiv fl-interess tal-kumpannija għaliex il-laqgħat tal-bord tad-diretturi u l-laqgħa generali jsiru biss sabiex ikunu sodisfatti l-obbligi statutorji u sabiex jigu approvati l-*annual financial statements* ; kollox ighaddi *a colpi di*

*maggoranza* ghax hekk jaqbel ghal dik il-maggoranza, tikkontendi r-rikorrenti.

Bhala fatt. Ghalkemm Paul u Victor Buhagiar huma ahwa, waqt li George huwa n-neputi tagghom (iben il-mejjet Rocco) b`xorti hazina l-parentela ma tiswa xejn biex dawn il-familjari jfittxu l-gid komuni. Daqstant bhala fatt. Illum dawn ma jaqblu dwar xejn. U b`xorti hazina il-klima nfelici illum infirxet bejn in-neputijiet ghaliex mhux facli *to build bridges* meta ma hemmx ir-rieda.

Fil-hatra *ut sic* ta` *alternate directors* u *proxies* il-Qorti ma tara xejn irregolari ladarba hatriet ta` din ix-xorta huma permessi mill-*articles of association*. Dment illi l-persuni koncernati jaqdu l-funzjonijiet tagghom b`responsabilita` u fil-kwadru tal-ligi, ma tistax issir lanjanza abbazi tal-Art 402(1) tal-Kap 386. Fil-kaz tal-lum, ma ssibx li l-hatra skattat l-estremi tas-subartikolu (1).

**iii) Nuqqas ta` access fisiku ghall-ufficini tal-kumpannija ntimata u ghal informazzjoni**

Kif rajna mid-deposizzjonijiet ta` Paul Buhagiar u ta` wliedu, anke dwar access kien hemm ilment.

Il-kwistjoni tal-access jew nuqqas tieghu hija parti mill-kwadru aktar wiesgha ta` disgwid u inkomprensjoni bejn id-diretturi.

Jinghad mir-rikorrenti illi abbazi ta` l-*Code of Ethics* (fol 45) id-direttur Paul Buhagiar kien imcahhad milli jippartecipa fit-tmexxija tas-socjeta` intimata, milli jacedi ghal, u kif ukoll milli jikseb informazzjoni dwar is-socjeta` ntimata.

Min-naha tagghom, l-intimati jfissru ghaliex dahhlu regoli godda dwar it-tmexxija fis-socjeta` intimata. Jimputaw il-htiega ghal dawn ir-regoli godda minhabba l-imgieba ta` Paul Buhagiar li – skont huma – kien kontinwament imur fuq l-impjegati u fuq il-bank (li mieghu s-socjeta` ntimata kellha facilitajiet) ghal informazzjoni bla ma jinvolvi lill-bord.

Fil-*Code of Ethics* jinghad illi :-

(a) *no director will represent the company with third parties or banks unless he is authorized by the Board of Directors;*

(b) *any director who requires any data or document from the company must make a written request to the Board of Directors. The Board of Directors will decide whether such data or document how it is to be collected and by whom. Then once this verification is done it will inform the Director when such data or documents will be furnished to him. If in the opinion of the Board such data is already available or if being requested for personal use only by such Director, the Board will be authorized to charge such cost the same director requesting information.*

(c) *No director is authorized to collect any data by going directly to any employee of the company. The Board is to issue a memorandum to all employees to inform them of this matter.*

(d) *Any director who has any suggestions or complaints must make such claims in writing.*

Il-Qorti rat id-dokument ezebit a fol 46 tal-process fejn il-company secretary Ray Vella kien nformat illi l-intimati Buhagiar ma kienu qed isibu l-ebda oggezzjoni li Paul Buhagiar imur jivverifika l-kotba u kwalunkwe informazzjoni ohra pero` kien hemm insistenza da parti taghhom illi minhabba l-ezigenzi tax-xoghol ikun ahjar jekk dan isir wara s-6.00 p.m.

Testwalment insibu miktub hekk :-

*“... ahna ma nsibu l-ebda oggezzjoni li s-Sur Paul Buhagiar jigi jiccekkja l-kotba u kwalunkwe informazzjoni ohra. Ahna nawtorizzawk li taghtih l-informazzjoni kollha.*

*Minhabba l-ezigenza tax-xoghol u l-fatt li s-Sur Victor Buhagiar jkun irid jaghlaq l-istation u jiehu hsieb il-cash, ma jkunx jista` jitlaq l-istation. Ghalhekk, nitolbok li dawn il-laqghat isiru wara s-6.00 ta` filghaxija.*

*Nixtiequ nghidulek wkoll li fl-ebda hin izda s-Sur Paul Buhagiar ma jista` jaghtik ordnijiet amministrattivi.”*

Minn konsiderazzjoni ta` l-mod kif svolgew il-fatti, jirrizulta li dak li sehh kien li giet regolata l-procedura ta` kif direttur jacedi ghal informazzjoni dwar il-kumpanija.

Ma jirrizultax illi nghatat xi ordni li xi direttur inkluz Paul Buhagiar m`ghandux jottjeni l-informazzjoni li jitlob.

Lanqas ma tirrizulta xi restrizzjoni, kontra dak illi allega Paul Buhagiar illi ma thallix jidhol fl-ufficini tal-kumpannija qabel is-6.00 p.m. Seta` jidhol meta u x`hin ried pero` biex jikseb u jinghata informazzjoni kellu jsegwi procedura appozita.

Abbazi tal-provi, irrizulta wkoll li Simone Pisani thalliet tikkollezzjona u tivverifika informazzjoni fl-ufficini tas-socjeta` intimata, minghajr xkiel ta` xejn.

Il-Qorti ma ssibx li dan l-ilment kien ippruvat fil-kuntest tal-Art 402(1).

**(iv) It-tehid ta` decizjonijiet dwar progetti kapitali minghajr diskussjoni u bla ma jittiehed vot**

Saret ilment illi s-socjeta` ntimata dahlet ghal progetti kapitali bhas-self service car wash minghajr diskussjoni bejn id-diretturi jew l-azzjonisti u allura bla ma ttiehed vot. Ghalhekk il-kumpannija spiccat rinfaccjata *con un fatto compiuto* ; l-istess ir-rikorrenti.

Dwar din il-kwistjoni, l-intimati ma kkummentaw xejn. Lanqas ressqu provi.

Min-naha taghha, apparti d-deposizzjonijiet, is-socjeta` rikorrenti pprezentat ittra datata 10 ta` Ottubru 2012 li baghat Paul Buhagiar lill-MEPA li fiha stqarr illi bhala rapprezentant tas-socjeta` rikorrenti huwa ma tax il-kunsens tieghu sabiex tkun prezentata l-applikazzjoni li ghaliha tirreferi l-ittra, u ghalhekk talab li jittiehdu passi billi l-izvilupp kien diga` nbeda minkejja li l-applikazzjoni kienet ghadha mhix approvata (fol 28 -30).

Sar ilment ukoll li s-socjeta` rikorrenti lanqas biss ma kienet infurmata li s-socjeta` intimata ma kinitx ser tibqa` toffri s-servizz ta`

assigurazzjoni tal-vetturi, decizjoni li – skont ir-rikorrenti – ittiehdet minghajr decizjoni tal-bord u wisq anqas bla ma kienet ikkonsultata.

Da parti taghhom, l-intimati baqghu siekta dwar din il-kwistjoni.

In linea generali, il-Qorti tqis illi fejn si tratta ta` materji li jolqtu *day to day administration* ta` socjeta` mhux necessarju li kollox irid jigi diskuss u deciz mill-bord. Pero` fejn si tratta ta` progetti kapitali jew decizjonijiet ta` *policy* jew decizjonijiet li johorgu barra mill-*ordinaria amministrazione* fejn is-socjeta` tkun sejra tiehu direzzjoni minflok ohra, decizjoni li tista` tincidi fuq il-finanzi taghha – tajjeb jew hazin – allura hemm l-organi kostitwiti tas-socjeta` ghandhom ikunu nvoluti u jiddeciedu huma.

Fil-kaz tal-lum, anke jekk is-socjeta` ntimata twieldet frott il-hidma ta` zewgt ahwa, mhijiex ditta fejn l-impreditorija hija aktar flessibbli. Mhijiex socjeta` *en nom collectif*. Izda hija socjeta` ta` responsabilita` limitata regolata b`ligi specjali li allura tesigi l-osservanza ta` dak li trid il-ligi fl-interess tal-bilanc ta` drittijiet u obbligi ta` kull min huwa legalment involut u responsabbli fis-socjeta`.

F`dan l-ambitu, u tenut tal-fatti u cirkostanzi partikolari tal-kaz, il-Qorti ssib li l-ilment huwa gustifikat.

**b) L-oppressjoni, pregudizzju u diskriminazzjoni perpetrati mill-awdituri u mill-company secretary tas-socjeta` ntimata bl-approvazzjoni tal-intimati Buhagiar fiz-zewg vesti taghhom kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.**

Is-socjeta` rikorrenti tilmenta li l-*company secretary* ma kienx johrog il-*management accounts* fil-hin u s-socjeta` rikorrenti kienet dejjem tinsisti mieghu biex dawn jinhargu fil-hin.

Tilmenta li l-awdituri kienu jafu bil-problemi ta` tmexxija hazina izda minkejja li s-socjeta` rikorrenti sahqet maghhom dwar dan, l-awdituri baqghu qatt ma ghamlu xejn.

Skont is-socjeta` rikorrenti, Paul Buhagiar kien talab lill-awdituri sabiex jibdlu l-*provisions* ghal *doubtful debts* sabiex dan jirriflettu r-realta` izda ma nghatax widen.

Il-Qorti tirrimarka illi l-azzjoni tal-lum ma saritx kontra l-awdituri jew kontra l-*company secretary*.

Tghid illi semghet id-deposizzjoni kemm tal-*company secretary* Ray Vella u kif ukoll ta` Emanuel Farrugia ghall-awdituri DFK Malta. Ma ssibx li naqsu fit-twettieq tal-obbligi li tassenjalhom il-ligi. Lanqas ma ssib illi dawn warrbu fil-genb l-obbligi taghhom sabiex jakkomodaw lid-diretturi u l-azzjonisti l-ohra tas-socjeta` ntimata, kif jimplika kjarament Paul Buhagiar.

Il-Qorti tara ironija (biex ma tghidx – kontradizzjoni) fil-posizzjoni tar-rikorrenti fis-sens illi min-naha wahda taghmel dan l-ilment, u min-naha l-ohra tferrex jew issostni lanjanzi ohra taghha billi tirreferi ghal dokumenti li hejjew il-*company secretary* u l-awdituri.

Ghalhekk ma tistax tghid illi dan l-ilment kien ippruvat.

c) **L-oppressjoni, pregudizzju u diskriminazzjoni li saru minn Norbert Buhagiar u Mariella Aquilina, impjegati tas-socjeta` ntimata, bl-approvazzjoni tal-intimati Buhagiar fiz-zewg vesti taghhom, kontra r-rikorrenti bhala azzjonista u kontra d-direttur appuntat minnha.**

Is-socjeta` rikorrenti lmentat ukoll dwar il-fatt li minkejja li nhargu direttivi mill-bord tad-diretturi dwar kif kellu jitmexxa n-negozju, Norbert Buhagiar u Mariella Aquilina (ulied l-intimat Victor Buhagiar) baqghu ma josservawx tali direttivi, u thallew jaghmlu dan qisu qat ma kien xejn mid-diretturi l-ohra.

Kienet ezebita a fol 408 *internal memo* tal-bord tad-diretturi li taqra hekk :-

1. *The purchase of High End cars should be temporarily suspended This decision will be revisited every three months in order to confirm it or vary it depending on results.*

2. *Credit Info should be contacted and consulted when dealing with new clients.*

3. *Brief debtor movement reports should be prepared and circulated to the members of the Board.*

4. *After a three month credit term Car Dealers shall be charged a five per cent (5%) per annum interest rate on any outstanding balance.*

5. *Customer Sales Contracts on the same lines as the one used by George Buhagiar should be prepared and presented to Customers for signature. The Bill of Exchange accompanying the Customer Sales Contract shall have a sight maturity date, meaning that the Bill of Exchange is to be paid and settled on presentation.*

Il-persuni li xehdu dwar dan l-ilment kienu wlied Paul Buhagiar.

Norbert Buhagiar u Mariella Aquilina ma xehdux.

Dak mistqarr min-naha tar-rikorrenti mhuwiex kontradett.

Ghal din il-Qorti mhuwiex bizzejjed li johrog *internal memo* u jithalla jibqa` *lettera morta* ghaliex min kellu jwettaq id-direttiva tal-bord injoraha.

Tenut kont tal-isfond li wassal ghal dik il-*memo* li hareg tant kjarament mix-xiehda, fejn ir-rikorrenti kienet qeghda tishaq fuq kontroll aktar effettiv fuq il-krediti tas-socjeta` ntimata kontra terzi, il-Qorti tiddubita kemm tassew id-diretturi l-ohra kienu jhallu lil impjegati ohra jinjoraw l-ordni tal-bord. Billi pero` si trattava ta` zewg impjegati li jigu wlied Victor Buhagiar, ma ttiehdet ebda azzjoni.

Dan l-agir huwa censurabbli u jmur kontra dak li l-Art 402(1) irid li ma jsirx.



Ghalhekk l-ilment huwa gustifikat.

**d) Il-konflitt ta` interess tal-intimat George Buhagiar**

Is-socjeta` rikorrenti tilmenta illi George Buhagiar qiegħed imexxi negozju ta` xiri u bejgh ta` vetturi bl-isem ta` George & Rocco Car Centre Limited li għandha showroom fin-Naxxar.

Tilmenta illi George Buhagiar kien qed jiehu klijenti tas-socjeta` intimata kif ukoll igib vetturi għall-fini ta` kompravendita bis-sahha ta` finanzjament inizjali li kien ipprovdut mis-socjeta` intimata.

Kien esebit a fol 323 sa fol 331 reklam ta` dan in-negozju fejn jingħad illi George Buhagiar kien ilu jahdem fil-qasam tal-bejgh tal-karozzi għal 35 sena ma` Paul & Rocco.

Kien esebit il-memorandum u articles of association ta` George & Rocco Car Centre Limited (332 sa 347) mnejn jirrizulta li George Buhagiar flimkien ma` uliedu huma azzjonisti ta` din is-socjeta`.

Ilmentat illi ulied George Buhagiar kienu gew impjegati mill-kumpannija intimata fil-posizzjoni sensittiva li jiehdu hsieb l-introjti tagħha.

Paul Buhagiar jishaq illi huwa qatt ma ta l-kunsens tiegħu biex George Buhagiar u uliedu jkollhom inkariki ta` fiducja jew sabiex il-kumpannija intimata tagħmel negozju ta` vetturi ma` George & Rocco Car Centre Limited.

Sar ukoll ilment illi s-socjeta` intimata waqqfet is-servizzi ta` assigurazzjoni li kienet toffri minn dejjem u dawn is-servizzi bdew ighaddu għand George & Rocco Car Centre Limited mingħajr ebda beneficcju għas-socjeta` intimata.

Art 22 tal-articles of association tal-kumpannija intimata jghid :-

*“Subject to the provisions of section 145 of the Act no Director shall be disqualified by his position as Director from entering into any contract or arrangement with the Company, and a Director may vote and be taken into account for the purpose of constituting a quorum at meetings in which any contract or arrangement in which he may in any way be interested is due to be discussed and he shall be entitled to retain for his own use and benefit all profits and advantages accruing to him therefrom.”*

Bhala fatt in-negozju li kienet taghmel is-socjeta` ntimata kien qrib dak li kienet taghmel Paul & Rocco (Marsa) Limited. Diga` rrilevat illi l-azzjonisti komuni ghaz-zewg socjetajiet huma Paul Buhagiar u George Buhagiar. Bejn dawn iz-zewg socjetajiet ma jidhirx li qatt qamet kwistjoni ta` konflitt ta` interess.

Dan premiss, il-fatt li trid tara l-Qorti huwa jekk bil-formazzjoni u bin-negozju li bdiet taghmel George & Rocco Car Centre Limited kienx hemm pregudizzju reali ghad-dannu tas-socjeta` ntimata.

Il-Qorti ma tistax toqghod fuq l-impressjoni izda fuq il-provi u tqis illi l-provi ta` dan l-ilment fil-kuntest tal-Art 402(1) huwa nsodisfacjenti.

Il-Qorti hija edotta mill-prova illi l-ispeccjalizzazzjoni tas-socjeta` ntimata hija l-bejgh ta` vetturi *di lusso*. Ghal dawn kienet imfittxija l-aktar u stabbiliet isem fis-suq. Ma rrizultax li l-generu ta` George & Rocco huwa l-istess generu ta` vetturi. Lanqas ma rrizulta – figuri *in mano* – li ghax saret George & Rocco, is-socjeta` ntimata garrbet *una battuta d`arresto* fin-negozju taghha. L-unika nuqqas kostatat kien li s-socjeta` ntimata ma baqghetx taghmel poloz ta` assikurazzjoni. Dan fatt stabbilit. Li mhux stabbilit huwa x`kien jinvolvi dan il-qasam ghas-socjeta` ntimata f`termini ta` *costs and benefits*. U fiex kien jissarraff il-beneficcju finanzjarju reali ghal George & Rocco a skapitu ta` s-socjeta` ntimata.

Din il-karenza ta` provi oggettivi ma tmurx favur ir-rikorrenti.

Il-Qorti ma tistax tispekula, tassumi jew tissuspetta.

Ghalkemm il-kriterju jibqa` l-ekwita`, xorta wahda trid issir il-prova.

Jekk taghsar l-istanza tar-rikorrenti fl-assjem, ma ssibx li n-negozju ta' George & Rocco huwa *the focal point*. Tghid anzi li dan kien ilment periferali u tressaq mhux daqstant ghaliex ir-rikorrenti kienet bil-wisq konvinta minnu izda biex taghti stampa aktar kompleta lill-Qorti : *niente di piu`*.

e) **It-tmexxija hazina u l-kontroll hazin tal-finanzi tas-socjeta` ntimata da parti tal-intimati Buhagiar bi pregudizzju ghall-interess tar-rikorrenti bhala azzjonista u tas-socjeta` ntimata b`mod generali.**

i) **Xiri u bejgh ta` vetturi minghand *dealers* ohra tal-karozzi**

Ir-rikorrenti tilmenta illi Norbert Buhagiar jiehu hsieb in-negozju ta` l-bejgh u xiri tal-karozzi b`telf ghas-socjeta` rikorrenti.

Tilmenta li bil-*bene placitu* tad-diretturi *eccetto* d-direttur nominat mir-rikorrenti, Norbert Buhagiar ibiegh vetturi lil *dealers* ohra tal-karozzi bla ma jircievi hlas fi flus.

Tilmenta li fin-negozju li jsir, Norbert Buhagiar jaccetta vetturi ohra jew djun li l-istess *dealers* ikollhom ma` terzi. B`hekk jidhol ghal riskju li dawk il-vetturi jibqghu *invenduti* jew id-dejn ma` terzi jibqa` ma jithallasx : dejjem bil-*bene placitu* tad-diretturi *eccetto* d-direttur nominat mir-rikorrenti

Tilmenta li ma jsirx ftehim mad-*dealers* dwar somma li ghandha tithallas bhala depozitu.

Tilmenta li lanqas ma jkun hemm imghax fuq l-ammont dovut lis-socjeta` ntimata.

Il-Qorti tirreferi ghad-dokumenti esebiti a fol 61 sa 70, mnejn jirrizulta li sal-1 ta` April 2015, is-socjeta` ntimata kellha tircievi l-ammont ta` EUR 668,775.89c bla ma kien patwit ebda imghax.

Ir-rikorrenti sahqet illi ladarba l-kumpannija intimata kienet qed topera *overdraft facility* b'imghax ta` 5% fis-sena, in-negozju li kien qed isir mad-*dealers* kien ghal kollox sfavorevoli u ghad-dannu tas-socjeta` ntimata.

Il-Qorti tirreferi ghal laqgħa li saret fl-20 ta` Mejju 2010 u relativi minuti (a fol 71 sa fol 74).

Il-Qorti hadet konjizzjoni tal-fatt li rrizulta li l-kumpannija ntimata gieli halliet lil certi *dealers* b`debiti favur tagħha ammontanti għal ammonti qawwija.

Irrizulta mid-dokument a fol 75 sa 81 illi d-*dealer* Damian Borg kellu jhallas lill-kumpannija intimata s-somma ta` EUR 383,378.48c.

Minn dokument aktar ricenti (ara fol 422) irrizulta li d-dejn ta` Damian Borg sas-17 ta` April 2016 kien nizel għal EUR 148,449.88c.

Dan pero` mhuwix bil-wisq ta` konfort għaliex il-parti tad-dejn li thallset ma kinetx bi flus izda xort`ohra jew *in kind* bl-insidji ta` kull xorta li dan tal-ahhar johloq b`mod specjali għal kumpannija fejn il-likwidita` hija vitali għaliha u għall-operat tagħha.

Irrizultaw wkoll mid-dokumenti ezebti a fol 324 u 325 il-bilanci dovuti minn diversi *dealers* sal-31 ta` Mejju 2015.

Is-socjeta` rikorrenti kienet ilha tilmenta minn din il-prattika riskjuza.

Hija Prattika riskjuza għaliex il-qares tal-hajja jghallem illi kumpannija ma ssirx insolventi biss għaliex ma tkunx fil-qagħda li thallas id-djun li tkun gemghet hi izda wkoll għaliex ma tkunx kapaci tigbor dak li għandha tiehu minghand haddiehor biex bih thallas id-djun diretti tagħha u b`hekk ma tghakkisx ir-risorsi finanzjarji tagħha.

Għal din il-Qorti, mhuwix ta` serhan tal-mohh dak mistqarr mir-rapprezentant ta` HSBC Bank Malta illi għall-bank il-mod kif is-socjeta` ntimata tikkonduci n-negozju tagħha u r-riskji li tiehu *non desta alcuna*

*preoccupazione*. Il-bank jara l-interessi tieghu. Jaf illi fin-nofs hemm *prime site* li tiswa hafna biex taghmel tajjeb ghad-dejn tas-socjeta` ntimata. Dak huwa l-uniku interess tal-bank. Mentri l-Qorti trid twessa` l-harsa taghha li jmur ben oltre l-aspettattivi tal-bank – huma x`hinuma.

ii) **In-nuqqas ta` rkupru ta` krediti**

Skont ir-rikorrenti, mhux qed ikunu segwiti d-debituri tal-kumpannija intimata ghall-fini tal-rkupru ta` dak li ghandhom jaghtu. Dan kien il-kawza illi kwantita` ta` krediti waqghu bil-preskrizzjoni jew kellhom jigu *written off* bhala *bad debts*.

Ilment iehor kien illi ma kien hemm l-ebda procedura stabbilita u applikata sabiex ikun assigurat li kreditur prospettiv ikun kapaci jwettaq l-obbligi assunti.

Dwar dawn l-ilmenti ftit li xejn tressqu provi mill-intimati.

Ghal kuntrarju, is-socjeta` rikorrenti pprezentat rapport ippreparat minn Simone Pisani (u li dwaru xehdet ampjament) fejn kienu ndividwati d-debituri tal-kumpannija fejn kienet identifikata l-problema ghaliex ma setghux jingabru l-ammonti dovuti lis-socjeta` ntimata (ara fol 82 sa 89 u fol 449 sa 455).

Irrizulta li s-socjeta` ntimata kellha tiehu €2,000,000. (ara fol 456 sa 464).

Il-Qorti rat ukoll id-*draft management letter* tal-awdituri DFK ghall-2013 (fol 158 -162) fejn inghad hekk :-

*“Once, again, bad debts and provisions were not completely accounted for in the management account. ...*

*Certain clients stopped paying for a number of years ...*

*We suggest that these balances are monitored on a regular basis and that necessary action be taken ...*

*Loans due by dealers without interest include client dealers with substantial overdue balances. We suggest that the Company monitors the recoverability and level of debt given to these dealers ...*

*As in previous years, we noted that the accounting system does not issue an aged debtors` list ...”*

L-ilmenti tar-rikorrenti huma gustifikati.

Huwa fatt accertat illi minkejja l-ilmenti ta` Paul Buhagiar baqa` ma sar xejn fil-konkret mit-tmexxija effettiva tas-socjeta` ntimata.

Il-pregudizzju skont l-Art 402(1) huwa ppruvat.

iii) **Karenza ta` dokumentazzjoni dwar akkwist ta` vetturi, u ta` prezzijiet biex iservu ta` benchmark fix-xiri, bejgh u tpartit ta` vetturi**

Saru lmenti fis-sens illi ma kinetx qeghda tinzamm tajjeb dokumentazzjoni dwar il-prezz tax-xiri ta` vetturi, kemm dawk mixtrija fis-suq lokali kif ukoll dawk akkwistati minn barra. Lanqas ma kienu qed isiru kuntratti speċjalment fil-kaz ta` bejgh hlief ghal kambjali meta vettura tinbiegh *on credit*.

Sar l-argument illi ma hemmx elenku bi prezz bhala *benchmark* ghal kull vettura. Lanqas sistema li tistabilixxi kemm ghandha tkun il-*mark up* fuq il-*purchase price* tal-vetturi li qed jinbieghu. Lanqas ma jezitu *guidelines* dwar meta u kif jistghu jinghataw *discounts*.

L-intimati Buhagiar isostnu illi mhuwiex minnu li s-socjeta` intimata qed tigi gestita kif jaqbel lilhom, jew b` mod insostenibbli, jew kontra l-interessi tas-socjeta`, jew kontra l-azzjonisti in generali.

Ighidu illi kieku dak allegat mis-socjeta` rikorrenti kien minnu, il-bank li mieghu s-socjeta` ghandha facilitajiet ma kienx ser jibqa` jaghtiha appogg finanzjarju.

Ighidu wkoll illi sa ftit taz-zmien ilu, is-socjeta` rikorrenti kienet ghadha taccetta s-sehem taghha mid-*dividends*, minghajr l-ebda riservi.

Il-Qorti rat id-dokument esebti.

Skont id-dokument a fol 48 sa 51, Ray Vella kkalkola li fl-2013, il-kumpanija intimata tilfet cirka EUR 48,000 mill-bejgh u xiri ta` karozzi.

Il-Qorti tifhem li l-kontegg sar abbazi ta` figuri ndikati minn Norbert Buhagiar. Jidher illi l-ammonti li jforni Norbert Buhagiar mhux qed jigu verifikati b`mod indipendenti fl-interess tas-socjeta` intimata u l-azzjonisti taghha.

Il-Qorti tat piz notevoli lid-dokumenti ezebti li huma relatati mal-pozizzjoni finanzjarja tal-kumpanija.

Qieset ir-rapporti li kienu prezentati fil-kawza li l-process taghha kien allegat u li jittrattaw il-qaghda finanzjarja tal-kumpanija intimata qabel l-2011.

Tat importanza l-aktar ghar-rapporti li saru fis-snin ta` wara, peress li dawn jipprezentaw stampa aktar aggornata tal-qaghda tas-socjeta` intimata.

Tinnota minn dawn ir-rapporti illi d-dizgwid bejn id-diretturi u l-azzjonisti kien ilu ghaddej.

Innotat l-insistenza da parti tas-socjeta` rikorrenti li riedet tbiegh l-ishma taghha biex ma tibqax involuta fis-socjeta` intimata.

L-awditur Steve Fenech ghamel analizi ta` l-audited *accounts* tal-kumpanija intimata sa l-2012.

Sab illi :-

*The Balance sheet position has deteriorated. The Shareholders` Equity decreased by EUR 59,569. 2) The Operating Profit at EUR 79,908 is the lowest ever. As also the Profit before tax of EUR 46,386. When one considers the*

*doubtful position of the HP debtors then there is considerable doubt as to these two amounts. Not only your study shows that the provision for doubtful debts should be EUR 418,366 (in the accounts it is EUR 64,921). But the HP interest receivable and other HP income includes income from these HP doubtful debts. (ara fol 148 sa 157)*

Mill-accounts ta` l-2013, irrizulta li matul dik is-sena, il-kumpannija intimata ghamlet telf qabel it-taxxa ta` EUR 87,782.

Jinghad :

*During the year under review, the Company registered a loss before tax of EUR 87,782 (2012 profit EUR 46,386). Operational losses in the car sales and car hire departments, decrease of EUR 22,845 in finance income and EUR 74,177 (2012 – EUR 49,413) increase in bad debts and provisions, are all factors that contributed to the above loss. (ara fol 348 sa 372).*

Minkejja dan kollu, xorta wahda hargu *dividends* fis-somma ta` EUR 90,000 ghal dik is-sena.

Terga` tirreferi ghad-draft *management letter* tal-awdituri DFK ghall-2013 (fol 158 -162) fejn inghad hekk :-

*“During the year under review, the Company registered a net loss after tax of EUR 56,912 (2012 profit – EUR 30,341). This change in results, when compared to the previous year, was mainly due to :*

- Operating losses of EUR 11 k (2012 profit – EUR 24k) in the car sales department and EUR 6 k (2012 profit – EUR 24k) in the car hire department;*
- An increase of EUR 13 k in administrative expenses;*
- A decrease in finance income of EUR 22k*
- An income tax credit of EUR 30k (2012 expense – EUR 16k)*

*...*

*As regards working capital, the Company has a net current liability position of EUR 749,883 (2012 – EUR 837,977). This is due to long term assets mainly Hire purchase debtors being financed by bank overdraft ...*



*In 2013, the Company paid dividends amounting to EUR 90,000 even though the Company registered a net loss after tax of EUR 56,912. This means that dividends were paid out of previous years retained profits. ....We suggest that the dividend policy is reviewed by management in view of the above mentioned circumstances and in view of reserves being diluted.”*

Mill-management accounts tal-2014 (ara fol 562 sa fol 578) irrizulta illi l-kumpannija ntimata ghamlet telf ta` EUR 2,006 u cio` nonostante harget hlas ta` *dividends* fl-ammont ta` EUR 90,000.

Il-Qorti qieset ukoll il-kontenut ta` l-ittra li baghat HSBC fit-22 ta` April 2016 (a fol 409 u 410) mnejn jirrizulta li l-bank talab li jigu pprezentati diversi hwejjeg ; fosthom l-*audited accounts* ghas-sena li spiccat fil-31 ta` Dicembru 2014 ; il-*management accounts* ghas-sena li ghalqet 31 ta` Dicembru 2015 ; il-lista ta` debituri tal-kumpannija ; il-lista shiha tal-vetturi li qeghdin ghal bejgh.

Ikkunsidrat ukoll il-fatt li l-kumpannija dejjem topera fil-limiti tal-*overdraft*, u kien hemm okkazjonijiet fejn anke qabzet il-limitu tal-istess facilita`. Saru wkoll talbiet ghal zieda tal-limitu tal-*overdraft* (ara fol 429 sa 448).

L-ilment tar-rikorrenti huwa ppruvat ghas-sodisfazzjon tal-qorti.

#### **f) Konkluzjoni**

Fil-kaz ta` **In Re Coroin Ltd** (op. cit.) David Richards J kien irrileva illi l-*unfair prejudice remedy* mhijiex diretta “ *to the activities of shareholders amongst themselves*”. Fl-istess waqt, ikkondizzjona dan billi qal : “*unless those activities translate into acts or omissions of the company or the conduct of its affairs*”

Fil-pag. 487 et seq ta` **Company Law** (op. cit.) **Brenda Hannigan** tghid hekk :-

*... the courts do not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look to the business realities. It is frequently stressed that the requirement for the conduct of “the affairs of the company” should be liberally construed ...*

**Fl-isfond tal-kumpless tal-provi akkwisiti, tad-dottrina u tal-gurisprudenza, inkluz dawk li ghalihom ghadha kif ghamlet riferenza, il-Qorti hija tal-fehma illi, ghalkemm ma kienux ippruvati l-ilmenti kollha tar-rikorrenti, kienu ppruvati l-ilmenti l-aktar serji.**

**Ghalhekk issib vjolazzjoni mill-intimati tal-Art 402(1) tal-Kap 386.**

## **XII. L-Art 402(3) tal-Kap 386**

**Ladarba sabet vjolazzjoni tal-Art 402(1), il-Qorti sejra tghaddi ghall-konsiderazzjoni tar-rimedji skont kif jipprovdi s-subartikolu (3) tal-Art 402.**

**L-ghazla tar-rimedju minn fost dawk indikati fis-subartikolu (3) jimmerita analizi ghalha.**

*In primis*, il-Qorti tirrileva illi d-disposizzjoni takkorda lill-Qorti diskrezzjoni wiesgha sabiex taghti dik l-ordni li tkun xierqa tenut kont tal-fatti u cirkostanzi tal-kaz (ara d-decizzjoni tal-Qorti tal-Appell tal-31 ta` Jannar 2003 fil-kawza “**Philomena Ellul vs Charles Ellul pro et noe et**”).

Id-diskrezzjoni li ghandha l-Qorti hija talment wiesgha illi sahansitra tista` twarrab t-talbiet specifici li jkunu saru mill-membri li jkun garrab *unfair prejudice* skont is-subartikolu (1).

Fil-provvediment li tat din il-Qorti fl-1 ta` Awissu 2017 fil-kaz : **Calamatta Cuschieri Investment Services Limited et v. Pefaco International plc et** inghad hekk :-

“ ... kull wahda mid-disposizzjonijiet tal-Art 402(3) hija sottoposta ghad-diskrezzjoni tal-Qorti. Dan ikompli jfisser illi anke jekk issib li jissussisti dak li jghid l-Art 402(1), xejn ma jzomm lill-Qorti milli tapplika rimedju minflok iehor...”

Fil-Pag. 285 ta` “**Company Law – Theory, Structure and Operation**” (OUP – 1998) **Brian Cheffins** ighid illi Sec 459 (illum Art 94 tal-Companies Act 2006) *provides a Judge with broad powers to grant to a successful applicant whatever remedy is appropriate.*

**Fil-kaz tal-lum, ir-rikorrenti ghamlet talba wahda.**

**U halliet fl-idejn tal-Qorti l-ghazla tal-ahjar rimedju jekk issib – kif fil-fatt sabet – ksur tal-Art 402(1).**

Kien biss fin-nota ta` osservazzjonijiet illi r-rikorrenti ndirizzat il-kwistjoni tar-rimedju b`mod aktar ristrett u ma baqghetx fuq il-generiku.

Fil-fatt fin-nota ta` osservazzjonijiet, is-socjeta` rikorrenti talbet lill-Qorti sabiex ma tordnax il-bejgh tal-ishma, jew ix-xoljiment u l-istralc tal-kumpannija intimata.

Fin-nota ta` sotomissjonijiet, ir-rikorrenti talbet lill-Qorti sabiex tordna li :

i) l-kumpannija intimata tiehu dawk il-passi kollha bil-ghan li jigi assigurat li jingabru dawk id-djun kollha dovuti fosthom bi proceduri gudizzjarji u fin-nuqqas tawtorizza lis-socjeta` rikorrenti tibda tali procediment gudizzjarji f` isem is-socjeta` konvenuta ;

ii) l-kumpannija intimata tieqaf tiggestixxi negozju ta` bejgh u xiri ta` karozzi peress li huwa minn dan in-negozju li qed isir telf u immaniggjar hazin ;

iii) l-kumpannija intimata tittermina l-impjeg ta` Norbert Buhagiar u Mariella Aquilina peress li dawn ma osservawx id-direttivi legittimi tal-kumpannija intimata u tal-bord tad-diretturi kif ukoll peress li dawn baqghu jwettqu atti ta` *mismanagement* fi hdan is-socjeta` intimata ;

iv) jinhatar a spejjez tas-socjeta` intimata financial controller indipendenti bil-ghan li jigi sorveljat l-operat mil-lat ta` finanzi tas-socjeta` intimata ;

v) jigi assigurat illi s-socjeta` intimata timplimenta dawk il-*policies* kollha li huma idoniji sabiex is-socjeta` intimata titmexxa b` mod rett skond il-ligi u fl-ahjar interessi ta` l-azzjonisti kollha.

Ir-rikorrenti ma tghidx ghaliex marret ghal dan il-kwalita` ta` rimedju.

Il-Qorti hasbet fit-tul.

Tghid mill-ewwel li ma tistax twarrab fil-genb il-kumpless tal-provi qishom dawn ma jfissirx xejn jew m`ghandhom piz ta` xejn.

Tghid dan ghaliex l-istampa li taghti r-rikorrenti bil-provi taghha hija dik ta` kumpanija li qeghda titmexxa hazin, bit-telf, bid-dissipar ta` flus, b`mod li jiffavorixxi lill-familjari tal-intimati Buhagiar, bl-eskuzjoni tar-rappresentanti tar-rikorrenti mid-decizjonijiet li jittiehdu. Min-naha taghhom, l-intimati Buhagiar jikkontestaw il-provi tar-rikorrenti anzi jikkontendu li l-inkwiet gej minn persuna wahda biss u cioe` Paul Buhagiar u hadd aktar.

Rinfaccjata bi klima *di scontro aperto* bejn iz-zewg nahat il-Qorti ma tarax illi tista` tidderiegi r-rimedju ghal dak illi qed jigi propost mir-rikorrenti propju ghaliex bejn iz-zewg nahat hemm fis-sehh sfiducja aperta, taqtaghha b`sikkina, u mhux se tkun rimedjata b`imposizzjoni mill-Qorti ta` bidla fit-tmexxija u addirittura x`ghandu jinkiseb bil-bidla fit-tmexxija. Ikun biss li jitfa` lura s-soluzzjoni tal-problemi minghajr garanzija ta` xejn li l-partijiet sejrjn jaccettaw is-sitwazzjoni gdida.

**Issib illi dak li inghad fil-Pag 702-703 minn Gower and Davies fil-Principles of Modern Company Law (op. cit.) joqghod bhala *a perfect fit* ghall-kaz tal-lum.**

Jinghad hekk mill-awturi citati :-

*Section 996 gives the court a wide remedial discretion to “make such order as it thinks fit for giving relief in respect of the matters complained of”. In addition to this general grant, five specific powers are given to the court by section 996(2) of which undoubtedly the most commonly used is an order that the petitioners` shares be purchased by the controllers or the company. The reason for the popularity of this remedy, with both petitioners and the courts, is linked to the fact that ... the notion of unfair prejudice is most firmly established in relation to quasi-partnership companies. Where businesses and, often, personal relationships between quasi-partners have broken down, they are incapable of reconstitution by a court, which can effectively operate only on the terms of the minority`s exit. A share purchase order gives the petitioner an opportunity to exit from the company with the fair value of his or her investment, something which, in the absence of a court order, is often not available to the shareholder of a small company, because often no potential purchasers of the shares would be willing or, even if they were, the purchase price a third party would be willing to pay would reflect, rather than remedy, the harm inflicted on the seller by the unfairly prejudicial conduct. (enfasi u sottolinear tal-qorti)*

Din il-Qorti – bla tlaqlieq – tghid illi l-precitat insenjament dottrinali joqghod bizzilla ghall-kaz tal-lum ghax jindirizza *con un solo colpo* l-kwistjonijiet kollha – ta` naha u ta` ohra - fejn si tratta ta` l-ahjar rimedju.

Tenut kont ta` kollox, il-Qorti tghid illi ordni ghall-bejgh ta` l-ishma tar-rikorrenti fis-socjeta` ntimata tkun l-ahjar mir-rimedji ndikati fl-Art 402(3) tal-Kap 386.

*Del resto*, il-bejgh tal-ishma tar-rikorrenti – kif ser jinghad `il quddiem – u allura bit-twarrib effettiv ta` Paul Buhagiar mill-isfera tal-kumpanija ntimata – ikun jaqbel ukoll ghall-intimati Buhagiar ghaliex jekk l-intimati Buhagiar huma kuntenti kif qeghda titmexxa s-socjeta` ntimata llum – fatt illi l-Qorti diga` ccensurat – ikunu liberi li jzommu l-*istatus quo* minghajr l-icken tfixkil.

Fil-Pag 727-728 ta` Boyle & Birds` Company Law (op. cit.) jinghad hekk –

*It is not surprising that in the case of most successful petitions the remedy sought by the petitioners, and granted by the court, is that of purchase*

of the minority's shares by the majority. As a solution to intra-corporate disputes in small private companies this is still the most attractive choice among the remedial solutions offered by s.996.

The Court of Appeal in "**Grace v. Biagola**" [2006. 2. BCLC 70, at 96-97] explained the policy considerations which guide the court in choosing an order for the purchase of the minority's shares :

*"In most cases, the usual order to make will be the one requiring the respondents to buy out the petitioning shareholder at a price fixed by the court. This is normally the most appropriate order to deal with the inter-corporate disputes involving small private companies ... The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the business and assets in return for foregoing any future right to dividends. The company and its business will be preserved for the benefit of the respondent shareholders, free from his claims and the possibility of future difficulties between shareholders. In most cases of serious prejudice and conflict between shareholders, it is unlikely that any regime of safeguards which the court can impose will be as effective to preserve the peace and safeguard the rights of the minority".*

Fil-Pag 103 ta' **Principles of Maltese Company Law** (op. cit.)  
**Andrew Muscat** ighid :-

*This radical order has a number of advantages : (i) that the complainant can realise the value of his interest in the company without having the company wound up ; (ii) that the purchasers will receive full value for the price paid for the shares ; and (iii) that the complainant on the one hand, and the company and the majority shareholder on the other, can make a "clean break". This remedy should ideally be used sparingly and should be resorted to only when other remedies are inapplicable or bound to be ineffective to redress the wrongdoing.*

**Kif ser naraw `il quddiem, il-Qorti sejra tahseb ukoll ghall-eventwalita` illi bi strategemma ta` xi natura – legali jew mhix – ikun hemm tentattiv ta` xi parti li tkun intiza biex dak li sejra tipprovdi jisfuma fi-xejn.**

Il-Qorti sejra tghaddi issa biex tittratta s-sostanza tar-rimedju prexelt.

Terga` ticcita minn **Gower and Davies – Principles of Modern Company Law** – op. cit. – Pag. 703 :-

*The crucial question in this buy-out process is how the court is to assess the fairness of the price for the shares. Two important issues have emerged in the valuation process. The first is whether the petitioner`s shareholder should be valued pro rata to the total value of the company or whether its value should be discounted on the basis that it is ex hypothesi a minority holding and so does not carry with it control of the company. In this context the notion of a “quasi partnership” company has become important. Although many unfair prejudice proceedings concern such companies, the statutory provisions are not confined to them. However, in relation to whether a minority shareholding should be discounted, the courts have developed the presumption that it should not in a quasi-partnership company, whereas no such presumption applies for other categories of the company.*

*In Bird Precision Bellows Ltd Re [1984] Ch. 419, per Nourse J. approved on appeal [1986] Ch. 658 it was established that ther principle was pro rata valuation where the company was a quasi-partnership. This is because, in a true partnership, upon dissolution of the partnership the court orders a sale of the partnership business as a going concern and divides the proceeds among the partners according to their interests in the former partnership. However the normal principle in company law of discounting a minority shareholding applies if the company is not a partnership carried on in corporate form or if the petitioner had bought the shareholding at a price which refected its minority status or it had devolved upon him or her by operation of law. The concept of quasi-partnership involves more than simply the company having a small number of members. The members must have set up their association on the basis of mutual trust and confidence, expect to be involved in the management of the company (though the existence of clearly defined “sleeping partners” would not defeat this requirement) and there must be some degree of lock-in of the members to the company.*

*The second question is whether the valuation should be on the basis that the company will continue as a going concern, or on liquidation or break-up basi, which would normally yield a lower value for the company. The going concern basis will normally be appropriate, but this will depend to some degree on the facts of the case, as will the precise method to be adopted for valuing the going concern.*

*A further issue concerns timing. The value put on shares, whether on a pro rata or a discounted basis, will often crucially depend on when the value of the company is assessed. The courts have given themselves the widest dicretion to choose the appropriate date. The normally competeing dates are a date close to when the chares are to be purchased and the date the petition was presented. In Profinance Trust SA v Gladstone [2002] 1 B.C.L.C. 141, CA, the*

*Court of Appeal thought that the former had become the presumptive valuation date, but that there were many circumstances when an earlier date might be chosen, for example, where the unfairly prejudicial conduct had deprived the company of its business, where the company had reconstructed its business, or even that there had been a general fall in the market since the presentation of the petition.*

(ara wkoll : **Boyle & Bird's Company Law** (op. cit.) : Pag. 727 et seq ; u **Brenda Hannigan : Company Law** : op. cit. : Pag. 511 et seq)

Wara li qieset il-fatti u c-cirkostanzi ta` dan il-kaz, fl-isfond tad-dottrina precitata, il-Qorti trid illi l-valutazzjoni tal-ishma li ghandha r-rikorrenti fis-socjeta` ntimata ssir fuq basi *pro rata* tal-valur shih tal-kumpannija ntimata *on a going concern basis* fid-data tal-lum.

### **Provvediment**

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi dwar it-talba tar-rikorrenti billi, filwaqt illi qeghda tichad l-eccezzjonijiet tal-intimati kollha :-

1. Tiddikjara illi jirrizultaw ppruvati u sodisfatti l-elementi tal-Art 402(1) tal-Kap 386 tal-Ligijiet ta` Malta.

2. Bl-applikazzjoni tal-Art 402(3) tal-Kap 386 :-

(a) Tordna illi ssir valutazzjoni tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum.

(i) Ghall-fini ta` din il-valutazzjoni, tordna lill-intimati Victor Buhagiar u George Buhagiar sabiex fi zmien xahar mil-lum jipprezentaw fir-Registru ta` din il-Qorti prospett guramentat minnhom it-tnejn tal-propjeta` kollha - kollox inkluz u xejn eskluż - illi ghandha l-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum. Mal-presentata, il-prospett ghandu jigi notifikat lill-kumpannija rikorrenti u lill-periti teknici li l-Qorti sejra tahtar.



(ii) Ghall-fini ta` din il-valutazzjoni, tordna lill-intimati Victor Buhagiar u George Buhagiar sabiex fi zmien xahar mil-lum jipprezentaw fir-Registru ta` din il-Qorti prospett guramentat minnhom it-tnejn tad-dejn kollu li ghandha l-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum. Mal-presentata, il-prospett ghandu jigi notifikat lill-kumpannija rikorrenti u lill-periti li l-Qorti sejra tahtar.

(iii) Ghall-fini ta` din il-valutazzjoni, tordna lill-intimati Victor Buhagiar u George Buhagiar sabiex fi zmien xahar mil-lum jipprezentaw fir-Registru ta` din il-Qorti prospett guramentat minnhom it-tnejn tal-krediti kollha li ghandha l-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum. Mal-presentata, il-prospett ghandu jigi notifikat lill-kumpannija rikorrenti u lill-periti teknici li l-Qorti sejra tahtar.

(iv) Ghall-fini ta` din il-valutazzjoni, tordna lill-intimati Victor Buhagiar u George Buhagiar sabiex sa zmien tliet (3) xhur mil-lum jipprezentaw fir-Registru ta` din il-Qorti il-*full audited accounts* tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) aggornati sad-data tal-lum, kif ukoll il-*management accounts* tal-istess kumpannija sad-data tal-lum.

(v) Ghall-fini ta` din il-valutazzjoni, tinnomina lill-Perit Mario Cassar bhala perit tekniku sabiex jistma l-valur tal-assi mmobbiljari kollha propjeta` tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum skont il-prospett guramentat li l-intimati Victor Buhagiar u George Buhagiar huma ordnati jipprezentaw. Il-perit tekniku ghandu jipprezenta relazzjoni guramentata fi zmien xaghrejn mid-data tan-notifika tieghu bil-prospett guramentat tal-intimati Victor Buhagiar u George Buhagiar. Tordna lir-Registratur tal-Qorti sabiex jintaxxa d-drittijiet u l-ispejjez tal-perit tekniku, li ghandhom jithallsu kif ser jigi ordnat aktar `il quddiem. Ir-relazzjoni ghandha tinzamm mir-Registratur tal-Qorti u ghandha tigi konsenjata biss lill-perit komputista li l-Qorti sejra tahtar minnufih wara illi jkollu konferma mill-perit tekniku li thallas id-drittijiet u l-ispejjez relatati mal-inkariku tieghu.

(vi) Ghall-fini ta` din il-valutazzjoni, tinnomina lil Natalino Agius bhala perit tekniku sabiex jistma l-valur tal-assi mobbli kollha – kollox inkluz u xejn eskluż – propjeta` tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum skont il-prospett guramentat li l-intimati Victor Buhagiar u George Buhagiar huma ordnati jipprezentaw. Il-perit tekniku ghandu jipprezenta relazzjoni

guramentata fi zmien xaghrejn mid-data tan-notifika tieghu bil-prospett guramentat tal-intimati Victor Buhagiar u George Buhagiar. Tordna lir-Registratur tal-Qorti sabiex jintaxxa d-drittijiet u l-ispejjez tal-perit tekniku, li ghandhom jithallsu kif ser jigi ordnat aktar `il quddiem. Ir-relazzjoni ghandha tinzamm mir-Registratur tal-Qorti u tigi konsenjata biss lill-perit komputista li l-Qorti sejra tahtar minnufih wara illi jkollu konferma mill-perit tekniku li thallas id-drittijiet u l-ispejjez relatati mal-inkariku tieghu.

(vii) Ghall-fini ta` valutazzjoni, tinnomina lill-Awditur Michael Spiteri Bailey bhala perit komputista sabiex jistma l-valur tal-ishma li ghandha l-kumpannija rikorrenti fil-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) fid-data tal-lum. Tordna lill-perit komputista sabiex jaghmel din il-valutazzjoni fuq basi *pro rata* tal-valur intier tal-kumpannija ntimata u fuq basi ta` *a going concern*. Il-perit komputista ghandu jipprezenta relazzjoni guramentata fi zmien xaghrejn mid-data li fiha jiehu in konsenja minghand ir-Registratur tal-Qorti r-relazzjonijiet guramentati tal-periti teknici l-ohra. Tordna lir-Registratur tal-Qorti sabiex jintaxxa d-drittijiet u l-ispejjez tal-perit komputista, li ghandhom jithallsu kif ser jigi ordnat aktar `il quddiem. Tordna lill-perit komputista sabiex jaghmel notifika lill-partijiet ta` kopja tar-relazzjoni tieghu kif ukoll kopja tar-relazzjonijiet tal-periti teknici l-ohra.

(viii) Tordna lill-partijiet sabiex jaghtu access shih u liberu lill-periti mahtura sabiex jespletaw l-inkariku taghhom.

3. Tordna lill-kumpannija rikorrenti sabiex tbiegh u tittrasferixxi lill-intimati l-ishma kollha li ghandha fil-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) ghall-valur li jkun stabbilit mill-perit komputista.

4. Tordna lill-intimati sabiex jixtru u jakkwistaw l-ishma kollha li ghandha l-kumpannija rikorrenti fil-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) ghall-valur li jkun stabbilit mill-perit komputista.

5. Tordna li l-bejgh, akkwist u trasferiment tal-ishma li ghandha l-kumpannija rikorrenti fil-kumpannija ntimata jsir fi zmien xahar min-notifika tar-relazzjonijiet guramentati tat-tliet periti.

6. Taghti lill-perit komputista l-inkariku li jikkonduci l-procedura kollha ta` l-bejgh, akkwist u trasferiment tal-ishma, inkluz li jassikura li jkun kompilat u ffirmat kull dokument li jkun mehtieg ghall-fini ta` registrazzjoni mar-Registratur tal-Kumpanniji.

7. Tordna li ma jsir l-ebda tibdil fil-*memorandum* u fl-*articles of association* tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661), sakemm isir il-bejgh, akkwist u trasferiment ta` l-ishma. Jekk isir bdil fil-*memorandum* u fl-*articles of association* tal-kumpannija ntimata sakemm isir il-bejgh, akkwist u trasferiment ta` l-ishma, dak il-bdil ikun null u bla effett.

8. Tordna lill-perit komputista sabiex fil-kaz illi jkun sar il-bejgh, l-akkwist u t-trasferiment tal-ishma kif fuq inghad, jipprezenta nota fir-Registru ta` din il-Qorti fejn jiddikjara li sar il-bejgh, l-akkwist u t-trasferiment tal-ishma u d-data tal-istess.

9. Tordna illi l-provvediment tal-lum fl-assjem tieghu ghandu jipprevali fuq kull disposizzjoni kontenuta fil-*memorandum* u fl-*articles of association* tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661).

10. Fl-eventwalita` illi l-partijiet jew min minnhom ma jottemperawx ruhhom mal-ordnijiet taghha fuq riferiti, allura f` dak il-kaz tordna ix-xoljiment u l-istralc tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) ghall-finijiet u effetti kollha tal-ligi b`effett mil-lum.

11. Fil-kaz biss illi javvera ruhu dak li jipprovdi l-paragrafu ta` qabel dan, tahtar lir-Ricevitur Ufficjali bhala stralcjarju tal-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) bis-setghat u d-dmirijiet previsti fil-Kap 386 tal-Ligijiet ta` Malta.

Tordna lill-kumpannija ntimata Paul & Rocco (Gzira) Limited (C2661) sabiex thallas l-ispejjez kollha ta` din il-kawza, inkluz l-ispejjez u d-drittijiet tal-periti li kienu mahtura bis-sahha tal-provvediment tal-lum.

**Tordna n-notifika ta` dan il-provvediment lill-Perit Mario Cassar, lil Natalino Agius, lill-Awditur Michael Spiteri Bailey, lir-Ricevitur Ufficjali u lir-Registratur tal-Qorti.**

**Onor. Joseph Zammit McKeon  
Imhallef**