



QORTI CIVILI PRIM`AWLA

**ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON**

Illum it-Tlieta 30 ta` Jannar 2018

**Kawza Nru. 5
Rik. Nru. 268/2016JZM**

Catherine Grech Mallia [ID 89248(G)]

kontra

- 1. Paolo Buffa [ID 188002(L)] ;**
- 2. Nadine Buffa [ID 613664(M)] ;**
- 3. Joseph de` Conti Manduca [53238(M)] ;**

u

**4. Dr Kevan Azzopardi fil-vesti tieghu ta`
straljarju tal-kumpannija P. Buffa & Co.
Limited (C9907)**

Il Qorti :

I. Preliminari

Rat ir- rikors li pprezentat Catherine Grech Mallia bhala azzjonista u kreditrici ta` s-socjeta` P. Buffa & Co. Limited fl-1 ta` April 2016 li jaqra hekk:-

1. *ILLI f`Novembru tas-sena 1990, l-esponenti giet impjegata mal-kumpannija ntimata P. Buffa & Co. Limited, li giet kostitwita fil-5 ta` Settembru 1988 u li llum tinsab fi stat ta` xoljiment u stralc. Fiz-zmien tal-bidu ta` l-impjieg tal-esponenti, id-diretturi fil-kumpannija ntimata kienu l-intimati Paolo u Nadine konjugi Buffa u certu Kevin Camilleri. Nadine Buffa kienet azzjonista maggoritarja tal-kumpannija ntimata filwaqt li l-kumplament ta` l-ishma kienu f`isem Kevin Camilleri. Paolo Buffa ma setax, ai termini tal-ligijiet vigenti f`Malta dak iz-zmien, izomm ishma fl-istess kumpannija ntimata, madanakollu hu dejjem kien l-iktar persuna attiva fil-gestjoni ta` l-istess kumpannija, filwaqt li Nadine Buffa ftit li xejn kienet tinvolvi ruhha fl-istess gestjoni (kopja tal-memorandum u artikoli t`assocjazzoni originali tal-istess kumpannija tinstab fl-ahhar tmien pagni tad-dokument hawn anness u mmarkata bhala `DOK: A`);*

2. *ILLI permezz ta` kuntratt datat 31 t`Ottubru 1991 ippublikat fl-atti tan-Nutar Marco Farrugia (kopja legali ta` liem qieghda tigi hawn annessa u mmarkata `DOK: B`), l-intimat akkwista l-ishma kollha li sa dak iz-zmien kellu f`ismu l-imsemmi Kevin Camilleri, u cjoe` erbat elef, sitt mija u hamsa u sebghin (4,675) sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas. Dak inhar stess, Kevin Camilleri rrezenja minn direttur tal-kumpannija ntimata (kopja tar-rezenja relattiva tinstab f`pagna 42 tad-dokument hawn anness u mmarkat bhala `DOK: A`) sabiex b`hekk l-istess Kevin Camilleri qata` kull involviment li kellu fl-istess kumpannija intimate ;*

3. *ILLI permezz ta` kuntratt datat 14 ta` Novembru 1991 fl-atti tan-Nutar Dr Marco Farrugia (kopja legali ta` liem qieghda tigi hawn annessa u mmarkata `DOK: C`), flimkien ma` share transfer agreement bl-istess data (kopja vera ta` liem qieghda tigi hawn annessa u mmarkata `DOK: D`), l-intimat Paolo Buffa ghadha lill-esponenti mitejn u tletin (230) sehem ta` Lira Maltija (LM 1.00), illum zewg Ewro u tnejn u tletin centezmu (€2.32), `il wiehed, b`sebghin fil-mija (70%) kapital azzjonarju mhallas, sabiex b`hekk saret ukoll azzjonista fl-istess kumpannija, liem ishma ghadhom f`isimha sal-gurnata tal-lum ;*

4. *ILLI wara li ttrasferixxa lill-esponenti il-230 sehem taghha, l-intimat Paolo Buffa baqa` b`erbat elef, erba` mija u hamsa u erbghin (4,445) sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas fl-istess kumpannija ;*

5. *ILLI ghal habta ta` Gunju tas-sena 1993, il-kumpannija ntimata bdiet sejra hazin u l-esponenti, bhala impjegata, ma baqghetx tircievi l-paga*

mensili taghha. Dan naturalment wassal ghal dizgwid bejn l-esponenti u l-intimati Paolo u Nadine konjugi Buffa bhala diretturi tal-kumpannija ntimata, u f'Novembru ta' l-1995, l-esponenti telqet mill-impjeg taghha mal-kumpannija ntimata ;

6. *ILLI l-imsemmi dizgwid wassal ghal proceduri legali, inkluzi dawk fl-ismijiet Catherine Grech Mallia vs P. Buffa & Company Limited (1531/1996/1 RCP) li dwarhom inghatat sentenza nhar id-29 ta' Mejju 2001 (kopja ta' liem qieghda tigi hawn annessa u mmarkata 'DOK: E') li kkanonizzat lill-esponenti bhala kreditrici tal-kumpannija ntimata f'dik li llum hija s-somma ta' wiehed u tletin elf, tmien mija u erba' u hamsin Ewro u tnejn u ghoxrin centezmu (€31,854.22), eskluzi mghaxijiet u spejjez, minn liema somma l-esponenti ghada sal-lum ma thallset xejn ;*

7. *ILLI per konsegwenza, l-esponenti qatghet kull kuntatt minn mal-kumpannija ntimata u l-ufficjali kollha taghha, u ma semghet xejn izjed minghandhom ghal madwar ghoxrin sena, salv ghall-proceduri gudizzjarji hawn fuq imsemmija ;*

8. *ILLI kien f'Settembru ta' l-2014 li l-esponenti rceviet l-ewwel komunikazzjoni ufficjali dwar ix-xoljiment u stralc ta' P. Buffa & Co. Limited, u dan minghand l-Avukat Dr Kevan Azzopardi permezz ta' ittra datata s-16 ta' Settembru 2014 (kopja hawn annessa u mmarkata 'DOK: F') fejn infurmaha li huwa gie nkarigat mill-Prim` Awla tal-Qorti Civili bhala stralcjarju ta' l-istess kumpannija, u li kienet sejra tinzamm laqgha ghall-azzjonisti tal-kumpannija fit-30 ta' Settembru 2014 ;*

9. *ILLI l-esponenti attendiet din il-laqgha assistita mill-Avukat Dr Sefora Agius, u matulha u fil-prezenza ta' intimati Nadine Buffa u missierha Joseph de` Conti Manduca, li llum huwa s-segretarju tal-kumpannija ntimata u l-unika ufficjali li ghad ghandha l-istess kumpannija, nfurmat ukoll lill-imsemmi Dr Kevan Azzopardi li hija kellha biss 230 sehem fil-kumpannija ntimata, u li l-istess kumpannija kellha dejn konsiderevoli maghha ;*

10. *ILLI wara dan, l-esponenti ma semghet xejn iktar minghand Dr Kevan Azzopardi u wisq anqas minghand l-azzjonisti l-ohra fil-kumpannija ntimata qabel ma rceviet ittra ohra minghand Dr Kevan Azzopardi datata l-24 ta' Settembru 2015 (kopja hawn annessa u mmarkata 'DOK: G') li permezz taghha, l-esponenti giet interpellata sabiex, a tenur ta' verbal tas-7 ta' Lulju 2015 fl-atti tar-rikors ghal xoljiment u stralc fl-ismijiet P. Buffa & Co. Limited vs X (772/2014 JZM), hija thallas lill-istess stralcjarju s-somma ta' tmint elef, sitt mija u erbgha u sebghin Ewro u tmienja u hamsin centezmu (€8,674.58)*

rapprezentanti kapital azzjonarju mhux imhallas fuq l-ishma taghha fil-kumpannija ntimata ;

11. *ILLI billi din is-somma ma kinitx tikkorrispondi ma` dak li hemm imnizzel fil-kuntratt taghha ta` l-14 ta` Novembru 1991, l-esponenti mill-ewwel gibdet l-attenzjoni ta` Dr Kevan Azzopardi permezz ta` l-ittra datata l-5 t`Ottubru 2015 (hawn annessa u mmarkata `DOK: H`), u sussegwentement, tramite l-avukati taghha, sahsansitra offriet li tghaddilu kopja ta` l-istess ftehim, u anke dokumenti ohra, bhala prova ta` dan, izda din l-offerta qatt ma giet milqugha ;*

12. *ILLI permezz ta` ittra datata l-20 t`Ottubru 2015 (hawn annessa u mmarkata `DOK: I`), l-esponenti talbet ukoll laqgħa b`urgenza mar-Registratur tal-Kumpanniji fi hdan l-Awtorita` ta` Malta għas-Servizzi Finanzjari (MFSA) ;*

13. *ILLI fil-frattemp, sar ukoll kuntatt f`isem l-esponenti mal-Principal tas-Sezzjoni tal-Kumpanniji fi hdan id-Dipartiment tat-Taxxi Nterni, Ralph Decelis, u giet ottenuta kopja tar-Rapport Annwali sottomess mill-kumpannija ntimata għas-sena bazi 1992 (kopja ta` liema qieghda tigi hawn annessa u mmarkata `DOK: J`), dan kien l-ahhar Rapport Annwali sottomess mill-kumpannija ntimata ffirmat mill-intimat Paolo Buffa biss u juri li n-numru ta` ishma f`isem l-esponenti sat-30 ta` Settembru 1992, kien proprju dak li hija kienet taf li akkwistat fl-14 ta` Novembru 1991 u cjoe` dak ta` 230 sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas fil-kumpannija ntimata ;*

14. *ILLI l-laqgħa mar-Registratur tal-Kumpanniji nżammet nhar id-9 ta` Dicembru 2015, u matulha, l-esponenti, assistita minn Dr Sefora Agius u fil-prezenza tar-Registratur Joseph Caruana flimkien mar-rapprezentanta legali tieghu, Dr Geraldine Spiteri Lucas, kellha l-opportunita` li għall-ewwel darba tifli folja folja d-dokumenti ufficjali u pubblici mizmuma mill-istess Registratur kif sottomessi mill-ufficjali tal-kumpannija ntimata matul is-snin, kopja legali ta` liem tinstab hawn annessa u mmarkata `DOK: A` ;*

15. *ILLI kien biss f`dan il-punt li l-esponenti accertat ruhha li ma kien hemm assolutament xejn fid-dokumenti mizmuma mir-Registratur tal-Kumpanniji li kien jirrifletti r-realta`, u cjoe` li fl-14 ta` Novembru 1991 hija akkwistat biss 230 sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas fil-kumpannija ntimata. Għal kuntrarju ta` dan, skond Prospett Annwali sottomess lir-Registratur tal-Kumpanniji fl-1994 u ffirmat mill-intimat Paolo Buffa biss (pagna 37 et seq ta` `DOK: A`) jirrizulta erronjament illi fl-14 ta` Novembru 1991, u cjoe` fl-istess data tal-kuntratt ta` l-esponenti, kienu gew trasferiti lill-esponenti erbat elef, sitt mija u hamsa u sebghin (4,675) sehem*

fl-istess kumpannija ta` €2.32, gja` LM 1, `il wiehed, b`20% biss mill-kapital azzjonarju mhallas ;

16. *ILLI dan huwa kronologikament l-ewwel dokument, u l-unika dokument originali, mizмум mir-Registratur tal-Kumpanniji li jikkontjeni din l-informazzjoni erroneja, anke jekk l-istess informazzjoni erroneja hija riprodotta f`memoranda u artikoli t`assocjazzjoni tal-kumpannija ntimata li kienu gew sottomessi lir-Registratur tal-Kumpanniji fl-1998 u fl-2002 (pagna 27 et seq u pagna 15 et seq ta` `DOK: A`) rispettivament ;*

17. *ILLI l-esponenti umilment tenfasizza illi dawn l-imsemmija memoranda u artikoli t`assocjazzjoni m`humieq dokumenti originali izda `kopji vera` ta` l-originali, fejn daww sottomessi fl-1998 huma ffirmati mill-intimati Nadine Buffa u Joseph de` Conti Manduca (allegatament f`isem l-intimat Paolo Buffa), waqt li daww sottomessi fl-2002 huma ffirmati mill-intimata Nadine Buffa biss. Jigi enfasizzat ukoll illi l-ebda dokument minnhom m`hu ffirmat mill-esponenti qua azzjonista u l-esponenti tichad bl-aktar mod kategoriku illi hija qatt iffirmit dokument simili, ossija illi l-istess memoranda u artikoli t`assocjazzjoni hawn imsemmija huma verament kopji awtentici ta` l-original taghhom ;*

18. *ILLI ghar-ragunijiet premissi l-informazzjoni kontenuta fid-dokumenti hawn fuq indikati u mizmuma mir-Registratur tal-Kumpanniji hija ghal kollox zbaljata u falza, u huwa evidenti li meta l-intimati Paolo Buffa, Nadine Buffa, u Joseph de` Conti Manduca, jew min minnhom, f`daww iz-zminijiet, ghaddew dawn id-dokumenti lill-istess Registratur u nkludew fihom informazzjoni hekk qarriega, huma ezercitaw hazin l-awtorita` taghhom bhala ufficjali tal-kumpannija ntimata u kisru d-dmirijiet taghhom dwar il-kumpannija, bi ksur tal-Artikolu 312 ta` l-Att dwar il-Kumpanniji [Kapitolu 386 tal-Ligijiet ta` Malta] ;*

19. *ILLI dan jinghad b`mod partikolari b`referenza ghall-Prospett Annwali sottomess fl-1994 li evidentement huwa l-gheruq ta` l-istess informazzjoni zbaljata u falza, li giet riprodotta sussegwentement, liema Prospett Annwali konvenjentement jittenta li jezenta lill-intimat Paolo Buffa minn kull responsabbilta` li seta` kellu fil-falliment ta` l-istess kumpannija ntimata. Jigi sottolineat illi dan il-Prospett Annwali gie sottomess lir-Registratur tal-Kumpanniji fl-1994 u cjoe` fi zmien meta l-istess intimat Paolo Buffa bhala d-direttur manigerjali tal-kumpannija intimata kien ben konxju tal-fatt illi n-negozju tal-kumpannija intimata kien sejjer lura sew u li l-istess kumpannija intimata kienet qabdet it-triq l-isfel versu l-insolvenza ossija l-falliment taghha ;*

20. *ILLI jigi rilevat illi l-imsemmi Prospett Annwali gie sottomess lir-Registratur tal-Kumpanniji f`Marzu 1994, f`cirkostanzi fejn perjodu qasir qabel u precizament fit-12 ta` Jannar 1994 il-kumpannija ntimata kienet issottomettiet l-imsemmi Rapport Annwali ghas-sena bazi 1992 lid-Dipartiment tat-Taxxi Nterni (gja` sebit bhala DOK: J), liema dokument jikkontjeni informazzjoni ghal kollox konfliggenti minn dik kontenuta fil-Prospett Annwali sottomess f`Marzu tal-1994 (gja` esebit bhala pagna 37 minn DOK: A) - u dan billi, kif diga` espost, fil-pagna ta` qabel ta` l-ahhar ta` l-istess dokument DOK: J jidher bl-iktar mod car li n-numru ta` ishma f`isem l-esponenti sat-30 ta` Settembru 1992, kien dak ta` 230 sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas fil-kumpannija ntimata ;*

21. *ILLI waqt li l-informazzjoni kontenuta fir-Rapport Annwali ghas-sena bazi 1992 mizmuma mid-Dipartiment tat-Taxxi Nterni hija kkorroborata miz-zewg kuntratti originali u pubblici li dejjem kellha f`idejha l-esponenti u li gew ffirmati minnha, il-Prospett Annwali mizmum mir-Registratur tal-Kumpanniji huwa kkorroborat minn dokumenti li huma biss allegatament `kopja vera` ta` l-original, minghajr il-firma ta` l-esponenti, u minghajr ma qatt iffirmit kopja originali taghhom l-esponenti. Jinghad ukoll illi skond l-istess DOK: J, ir-Rapport Annwali gie approvat mill-Bord tad-Diretturi tal-istess kumpannija intimata, u cjoe` mill-intimati Paola Buffa u Nadine Buffa fit-8 ta` Novembru 1993, u gie pprezentat lill-Kummissarju tat-Taxxi Interni fi-12 ta` Jannar 1994, filwaqt illi l-Prospett Annwali a fol 37 et seq tad-dokument DOK: A, jallega illi l-esponenti akkwistat 4,675 sehem fil-kumpannija intimata fl-14 ta` Novembru 1991 ;*

22. *ILLI huwa proprju minhabba din l-informazzjoni ghal kollox zbaljata u falza kontenuta fid-dokumenti pubblici sottomessi lir-Registratur tal-Kumpanniji mill-intimati Paolo Buffa, Nadine Buffa u Joseph de` Conti Manduca, jew min minnhom, b`ezercizzju hazin ta` l-awtorita` taghhom bhala ufficjali tal-kumpannija ntimata, u bi ksur tad-dmirijiet taghhom dwar il-kumpannija, li l-esponenti qieghda illum il-gurnata tintalab thallas is-somma ta` tmint elef, sitt mija u erbgha u sebghin Ewro u tmienja u hamsin centezmu (€8,674.58) rapprezentanti kapital azzjonarju mhux imhallas fuq l-ishma taghha fil-kumpannija ntimata minn Dr Kevan Azzopardi fil-vesti tieghu ta` stralcjarju ta` l-istess kumpannija ;*

23. *ILLI ghalhekk huma proprju l-istess intimati Paolo Buffa, Nadine Buffa u Joseph dei Conti Maduca, jew min minnhom, li ghandhom jikkontribwixxu dik is-somma lill-attiv tal-kumpannija ntimata bhala kumpens dwar l-istess ezercizzju hazin u ksur ta` dmir, u dan hekk kif din l-Onorabbli Qorti jidhrilha gust ;*

GHALDAQSTANT, u ghar-ragunijiet hawn fuq premissi, jghidu l-intimati ghaliex m`ghandhiex l-Onorabbli Prim` Awla tal-Qorti Civili, prevja kull dikjarazzjoni necessarja u opportuna :-

i. Tiddikjara u tiddeciedi illi l-informazzjoni kontenuta fid-dokumenti mizmuma mir-Registratur tal-Kumpanniji, u dan senjatament kull fejn juru li l-esponenti Catherine Grech Mallia nghatat xi azzjonijiet li huma oghla jew b`xi mod ivarjaw minn 230 sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas, kemm fl-14 ta` Novembru 1991 u fi kwalunkwe data ohra, hija zbaljata u falza.

ii. Tiddikjara li meta l-intimati Paolo Buffa, Nadine Buffa u Joseph de` Conti Manduca, jew min minnhom, issottomettew dawn id-dokumenti kontenenti nformazzjoni zbaljata u falza lir-Registratur tal-Kumpanniji, dan ghamluh b`ezercizzju hazin ta` l-awtorita` taghhom jew min minnhom u/jew bi ksur ta` dmirijiet taghhom jew ta` min minnhom dwar il-kumpannija ai termini ta` l-Artikolu 312(1) ta` l-Att dwar il-Kumpanniji [Kapitolu 386 tal-Ligijiet ta` Malta].

iii. Tiddikjara li l-esponenti Catherine Grech Mallia ghandha biss 230 sehem ta` LM 1.00, illum €2.32, `il wiehed, b`70% kapital azzjonarju mhallas fil-kumpannija ntimata P. Buffa & Co. Ltd.

iv. Tordna lill-intimati Paolo Buffa, Nadine Buffa u Joseph de` Conti Manduca, jew lil min minnhom, jikkontribwixxu dik is-somma lill-attiv tal-kumpannija ntimata P. Buffa & Co. Ltd bhala kumpens ghall-ezercizzju hazin ta` l-awtorita` taghhom jew ta` min minnhom u/jew tal-ksur ta` dmir taghhom jew ta` min minnhom dwar il-kumpannija intimata, u dan kif din l-Onorabbli Qorti jidhrilha gust, ai termini ta` l-Artikolu 312 (2) ta` l-Att dwar il-Kumpanniji [Kapitolu 386 tal-Ligijiet ta` Malta].

Rat ir-risposta prezentata mill-intimati Buffa u de Conti Manduca fit-28 ta` April 2016 li taqra hekk :-

1. Illi jidher mid-dokumenti ezebiti li dak li qiegħed tallega r-rikorrenti huwa kollu minnu.

2. Illi dawn id-dokumenti ma kinux fil-pussess tal-esponenti kollha u ma kelliex l-opportunita` ticcekkja l-veracita` o meno ta` dawn id-dokumenti.

3. *Illi tant hu hekk illi l-esponenti hallset ammont sostanzjali lill-istralcjarju għall-unpaid capital fl-ammont ta` disat elef sebgha u erbghin euros u tmienja u ghoxrin centezmi (€9,047.28) u li kieku l-esponenti kienet taf b`dawn il-fatti kienet tkun l-esponenti li toponi għal hlas kbir li hallset lill-istralcjarju għax imxiet fuq id-dokumenti li l-istralcjarju stess ta lilha.*

4. *Illi di piu` l-esponenti kienu jiffirmaw kull dokument li kien jitpogga quddiemhom minghajr ma kienu isaqsu xejn għax kellhom fiducja shiha kemm dak iz-zmien f`Catherine Grech Mallia u kienu jibbazaw id-decizjonijiet fuq il-ftit id-dokumenti li sabu. Jirrizulta car illi terza persuna kienet hadet u appropjat id-dokumenti kollha.*

5. *Illi l-esponenti ma għandhomx ikunu dikjarati responsabbli għal xi ksur ta` dmirjiethom dwar il-kumpannija.*

6. *Illi di piu` l-ebda mill-intimati ma għandu jkun ikkundannat li jhallas jew jikkontribwixxi għal xi somma attiv tal-kumpannija P.Buffa & Co. Ltd. għax ma hemm ebda kumpens dovut u għandha jigifieri r-rikorrenti hi thallas il-bilanc tat-30% tas-somma tal-attiv tal-kumpannija ta` sehma.*

7. *Illi di piu` l-esponenti għandha tinghata rifuzjoni mill-ammont li hallset għax jidher car illi minn sehem Nadine Buffa l-attiv huwa mhallas sa sebghin fil-mija (70%) u mhux fl-ammont ta` tletin fil-mija (30%);*

Bl-ispejjez kontra r-rikorrenti.

Rat ir-risposta ulterjuri li pprezentat Nadine Buffa fil-21 ta` Novembru 2016 fejn eccepjet il-preskrizzjoni tal-azzjoni tar-rikorrenti skont l-Art 2156(f) tal-Kap 16.

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

Semghet is-sottomissjonijiet tal-ahhar bil-fomm li saru mid-difensuri fl-udjenza tad-9 ta` Novembru 2017.

Rat id-digriet li tat fl-istess udjenza fejn halliet il-kawza għal provvediment għal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

Ir-rikorrenti xehdet illi kienet bdiet tahdem ma` P. Buffa & Company Limited f` Novembru 1990 bhala *executive secretary* u damet sat-30 ta` Novembru 1995. Kienet tiehu hsieb dak kollu li jkun hemm bzonn partikolarment fejn Paolo Buffa kien ikollu bzonn min ighinu ghaliex ma kienx jitkellem bl-Ingiliz jew bil-Malti. Meta bdiet tahdem hemm, id-diretturi kienu Paolo Buffa u Kevin Camilleri. Dak iz-zmien, billi Buffa kien Taljan, ma setax ikollu ishma f`ismu ; ghalhekk l-ishma tieghu ta` 51% kienu fuq isem l-gharusa tieghu Nadine de Conti Manduca. Ir-rimanenti 49% ta` l-ishma kienu ta` Kevin Camilleri.

Kompliet tixhed illi Paolo Buffa kien imexxi l-kumpannija kollha hu. Huwa kellu kumpanniji ohra, fejn il-maggoranza ta` l-ishma kienu f`ismu. *L-accounts* kien jiehu hsiebhom Kevin Camilleri kemm dam direttur u kien jiehu hsieb ukoll hsieb l-awdituri. Paolo Buffa kien jikkomunika ma` l-awdituri. Dak iz-zmien, Nadine de Conti Manduca ma kellha l-ebda rwol fil-kumpannija. Fl-1990, Joseph de Conti Manduca kien jahdem bhala qisu *project manager* izda imbghad kien hemm xi dizgwid fil-familja u telaq mill-kumpannija fl-1992.

Stqarret illi meta Kevin Camilleri ddecieda li jitlaq mill-kumpannija P Buffa & Company Limited f` Ottubru 1991, Paolo Buffa kien izzewweg lil Nadine de Conti Manduca, cittadina Maltija, u ghalhekk seta` jiehu l-ishma f`ismu, precizament 49% ta` l-ishma. B`hekk Paolo Buffa spicca b`4,800-il sehem ammontanti ghal 49% ta` l-ishma. Nadine Buffa kellha 51% ta` l-ishma f`isimha. F`Novembru 1991, Paolo Buffa offra lir-rikorrenti 230 sehem u qalilha li kien lest jaghtiha 5% tal-ishma li huwa kien akkwista minghand Kevin Camilleri. Sar kuntratt fl-14 ta` Novembru 1991 ghand in-Nutar Marco Farrugia.

Kompliet tistqarr illi hija ma hallset xejn tal-ishma li kienu 70% *paid up*. Paolo Buffa ried jaghtihomlha bhala rigal peress li dak iz-zmien il-kumpannija kienet miexja tajjeb. Fil-31 ta` Mejju 1993, il-kumpannija bdiet tmur hazin u hija ma baqghetx tinghata paga anzi kienet tohrog il-flus minn taghha. Marret il-qorti u hadet sentenza favur taghha dwar kemm kellha tiehu pagi.

Qalet illi ma kinitx taf li kienet saret zieda fl-ishma li kellha. Saret taf li l-ishma kollha li kellu Paolo Buffa kienu gew f` isimha meta irceviet l-ittra minghand il-likwidatur Dr Kevan Azzopardi biex thallas *unpaid up share capital* fl-ammont ta` €8,600. Hija marret l-MFSA flimkien ma` l-avukat taghha. Meta

rat ir-records, sabet illi 51% tal-ishma kienu fuq isem Nadine Buffa mentri l-49% kienu fuq isimha. Mid-dokument a fol 44 jirrizulta li Paolo Buffa ha 4,675 –il sehem minghand Kevin Camilleri u meta saret il-kitba tnizzel illi hija kienet hadet dawk l-4,675 ishma kollha mhux 230-il sehem biss. Ghall-ishma, iffirma Paolo Buffa mentri l-firma taghha ma tidher imkien.

Kompliet tghid illi hija qatt ma rat id-dokument li kien ighid illi kien hemm 4,675-il sehem fuq isimha. Dak li kellha fil-pussess taghha kien is-*share transfer* originali ta` 230-il sehem. Dwar id-dokument a fol 34 u 35, fessret illi dak huwa l-*memorandum of association* li kien prezentat fl-24 ta` Frar 1998, ossija fi zmien wara li kien diga` ntemm fl-impieg taghha mal-kumpannija. Fid-dokument, hemm innizzel li hija ghandha 4,655 u 20-il sehem. Dak id-dokument kien iffirmit minn Nadine Buffa u missierha Joseph de Conti Manduca fit-23 ta` Frar 1998. Hija qatghet kull kuntatt mal-kumpannija fit-30 ta` Novembru 1995.

Ipprezentat l-*income tax returns* taghha tas-snin 1992 u 1993 fejn hemm dikjarati il-230 sehem. Ir-returns kienu prezentati fi zmienhom.

Paolo Buffa xehed illi huwa kellu kumpannija P. Buffa & Co Ltd, li kienet soċjeta` li tipprovdni prodotti lill-industrija tal-kostruzzjoni. Huwa kien azzjonista u direttur. Originarjament kien hemm Kevin Camilleri bi shab mieghu. Fil-bidu wkoll Lawrence Zammit kellu wkoll xi 5% tal-ishma. Huwa qal li ma jiftakarx x`sar mill-ishma li kellu Kevin Camilleri meta hareg mill-kumpannija.

Kompla jghid illi huwa kien jiehu hsieb ix-xoghol fuq barra mentri l-amministrazzjoni kienet f`idejn persuni ohra fosthom ir-rikorrenti. Qal li huwa ma jafx jittellem bl-Ingiliz. Fiz-zmien li ntelag Kevin Camilleri, kollox kien gestit mir-rikorrenti. Huwa kien jafda lir-rikorrenti ghaliex huwa hsiebu kien fuq ix-xoghol.

Muri d-dokument li bih kienu trasferiti 230-il sehem lir-rikorrenti, huwa kkonferma li l-firma fuq dak id-dokument hija tieghu izda qal li ma jafx x`kien il-kontenut tad-dokument. Sostna li dawk id-dokumenti kienet tiehu hsiebhom ir-rikorrenti. Huwa ma kellux x`jaqsam magghom. Sostna li huwa kien jafda u kien jiffirma dokumenti li jkun ghadhom ma jkunux mimlija. Jekk ighidulu li dokument kien kien fih certa kontenut, huwa kien joqghod fuq li jghidulu u jiffirma. Lanqas ma kien jaf jekk l-ishma kinux *fully* jew *partly paid up*. Lanqas ma kien jaf li r-rikorrenti kellha ishma fuq isimha.

Fil-kontroezami, huwa kkonferma li d-dikjarazzjonijiet tat-taxxa kienu jigu ppreparati mill-awdituri tal-kumpanija. Huwa qal izda li ma kellux x`jaqsam ma` l-awdituri. Qal li huwa ma kienx jikkomunika mal-awdituri jew mal-avukati. Kienet sempliciment tmur ir-rikorrenti bid-dokumenti u tghidlu biex jiffirmahom. Qal li huwa kien jaghmel direttament biss ix-xoghol kollu li kellu x`jaqsam man-negozju.

Qal li r-rikorrenti bdiet bhala segretarja izda wara li telaq Kevin Camilleri, hija bdiet tiehu hsieb kollox fl-amministrazzjoni. Sostna li kellu problemi mal-banek u spicca joqghod aktar l-Italja milli Malta. Jiftakar illi fil-bidu huwa kellu 49% ta` l-ishma, 40% Kevin Camilleri u l-bqija kienu f`idejn Lawrence Zammit li huwa mizzewweg lil oht il-mara tieghu. Huwa kkonferma li l-firma tieghu tinsab fid-dokument a fol 67.

Av. Dr. Claudette Fenech ghar-Registratur tal-Kumpaniji pprezentat id-dokumenti pubblici tas-socjeta` P Buffa and Company Limited bin-numru ta` registrazzjoni C 9907 li illum hija xjolta.

Skont il-Form H, jidher li fit-13 ta` Gunju 1989, saret zieda fil-kapital b`dana li 4845-il sehem marru ghand Nadine de Conti Manduca u 4655-il sehem ghand Kevin Camilleri. Sar ukoll trasferiment ta` ishma, u fl-*annual return* ta` l-1993 kien dikjarat li Nadine de Conti Manduca ghandha 5,325-il sehem mentri Catherine Grech ghandha 4,675 ishma.

Qalet illi dak iz-zmien, ma kienx rikjest li tigi prezentata l-Form T. Li kien isir kien li jigu prezentati *share transfer agreements* u jkun hemm referenza fl-*annual returns*.

Komplet tghid li gew ipprezentati zewg memoranda u articles of association li gew iccertifikati bhala vera kopja minn Nadine de Conti Manduca u Joseph de Conti Manduca. Min jiffirma vera kopja jkun qed jerfa` r-responsabbilita` tal-kontenut. Fl-20 ta` Mejju 2002, Joseph de Conti Manduca kien l-*company secretary*.

Fil-kontroezami, xehdet illi l-*annual return* fejn Catherine Grech Mallia kienet dikjarata li ghandha madwar 4,500-il sehem kienet iffirmata minn Paolo Buffa bhala direttur.

John Micallef ghad-Dipartiment tat-Taxxi xehed illi kien ghad hemm returns ta` P Buffa & Co Limited li ma kienux gew ipprezentati. L-ahhar *return*

ipprezentata kienet dik ghas-sena ta` stima 1993. Ir-returns iridu jibqghu jsiru minkejja li l-kumpannija tkun fi procedura ta` xoljiment. Dawn ir-returns kienu jsiru bl-idejn u ntbaghtu mill-kumpannija. Spjega li fil-*file* hemm nota li l-kumpannija giet xjolta b`ordni tal-Qorti u r-Ricevitur Ufficjali pprezenta *income tax returns* li ma kinux gew ipprezentati.

Ir-Ricevitur Ufficjali Av. Dr. Kevan Azzopardi bhala stralcjarju tal-kumpannija xjolta P Buffa & Co Limited xehed illi huwa dejjem ibbaza ruhu fuq id-dokumenti u r-rapporti annwali li kienu registrati mar-Registratur tal-Kumpanniji u mhux dawk li kienu ezebiti fl-atti.

Qal li huwa m`ghandux informazzjoni fir-rigward ta` min issottometta d-dokumenti lir-Registratur tal-Kumpanniji. Id-dokumenti ezebiti mal-kawza odjerna bhala Dok A juru li l-memoranda u l-artikoli tal-kumpannija gew approvati u ffirmati minn Nadine Buffa fil-kaz ta` rezoluzzjoni tas-17 ta` April 2002 u minn Nadine De Conti Manduca (aktar tard Buffa) u Joseph De Conti Manduca fil-kaz ta` rezoluzzjoni tat-23 ta` Frar 1998. Minn dan pero` ma jirrizultax min ipprezenta l-imsemmija dokumenti lir-registratur tal-kumpanniji.

Xehed illi huwa ma setax jaghti spjegazzjoni tal-fatt li l-memoranda u l-artikoli ta` l-assocjazzjoni huma *certified true copy* ghaliex huwa qatt ma kien fil-pussess ta` l-imsemmi dokumenti. Dawn id-dokumenti jigu sottomessi lir-Registratur tal-Kumpanniji u mhux lilu. Huwa qatt ma ra l-verzjoni originali tal-istess dokumenti. L-informazzjoni li ghandu access ghaliha fir-rigward ta` dokumenti pprezentati lir-Registratur tal-kumpanniji hija dik li tinsab fuq is-sit elettroniku tar-Registru.

Spjega li huwa ghamel ricerki u verifiki dwar il-memoranda u l-artikoli ta` assocjazzjoni tal-kumpannija minhabba l-inkarigu tieghu bhala stralcjarju. Dawn il-verifiki saru inter alia sabiex jigi stabbilit kif kien imqassam il-kapital azzjonarju tal-kumpannija. Kull pass li ghamel kien skont id-dokumenti li huwa kiseb mis-sit elettroniku tar-Registru tal-Kumpanniji,, liema dokumenti huma wkoll accessibbli mill-pubbliku.

Huwa kkonferma d-dokumenti a fol 241 u 242 tal-process.

Joseph de Conti Manduca xehed huwa hadem ma` P Buffa & Co Limited bejn Settembru 1989 u Lulju 1991. Ix-xoghol tieghu kien illi jaghmel *book-keeping*. Fl-1996 huwa ghen lil bintu Nadine Buffa biex igibu l-kotba aggornati. Sab hafna karti u files, u pprova jqieghead kollox f`postu. Ma kellu

x`jaqsam xejn ma` trasferimenti ta` ishma ; lanqas mal-presentata ta` *annual returns*.

Fil-**kontroezami**, huwa xehed illi ffirmja dokumenti bhala vera kopja peress li kien qed jipprova jaggorna l-kotba tal-kumpannija biex tkun tista` ssir il-likwidazzjoni. Spjega li d-dokument a fol 290 ghamlu hu mentri d-dokumenti a fol 291 u 292 gabhom minn dokumenti li kienu diga` lesti. Spjega li l-original ta` dawn id-dokumenti jinsab fil-kantina ta` Nadine Buffa. Qal illi filwaqt illi fl-1991 il-kumpannija kienet ghadha topera, ma kenitx topera fl-1996.

Nadine Buffa xehdet li hija zzewget lil Paolo Buffa fit-2 ta` Lulju 1989. Qabel izzewgu, zewgħa fetah negozju relatat mal-kostruzzjoni. Wara saret il-kumpannija P. Buffa & Co Limited li kienet registrata qabel iz-zwieg. Hija kienet azzjonista u direttur. In-negozju kien jitmexxa minn zewgħa. Hija ma kenitx tattendi fuq il-post tax-xogħol ta` zewgħa b`ordni ta` zewgħa stess.

Qalet illi shab ma` zewgħa kien hemm Kevin Camilleri li kien azzjonista u direttur ukoll. Camilleri ma baqax fil-kumpannija fl-1991 u minn hemm beda t-tahwid. L-ishma li kellu Camilleri kienu trasferiti lil zewgħa u dan ittrasferiehom lir-rikorrenti. Skont l-*annual return* tas-sena 1993, l-ishma għaddeu minghand Camilleri għal zewgħa għar-rikorrenti f`jum wiehed.

Komplet tixhed illi r-rikorrent kienet tmexxi n-negozju ma` zewgħa. Tgħid illi ma tafx ezatt x`gara. Sostniet li hija saret taf mid-dokumenti li r-rikorrenti kellha l-ishma għaliex zewgħa qatt ma kien ighidilha xejn. Spjegat li l-ishma li kienu f`isimha baqgħu għandha. Zewgħa dak iz-zmien li saret il-kumpannija ma setax ikollu ishma ta` kumpannija f`ismu billi ma kienx cittadin Malti.

Stqarret li l-kumpannija bdiet sejra għall-agħar u zewgħa kecca l-impjegati u beda jagħmel ix-xogħol hu. Zewgħa spicca telaq minn Malta u l-bank ried ic-cwieviet tal-proprjetajiet. Accettat u ingħatat l-opportunita` li tieħu d-dokumenti u l-oggetti minn go fihom. Missierha Joseph de Conti Manduca għenħa biex tigbor l-affarijiet.

Komplet tistqarr illi r-rikorrenti spiccat mill-impjeg fl-1994 u bdiet tahdem ma` kumpannija oħra li kienet proprjeta` ta` zewgħa. Hafna dokumenti ma nstabux. In segwitu id-dokumenti nieqsa gew ipprezentati l-qorti mir-rikorrenti. Missierha ha parir legali fl-1996 u l-avukat kiteb sabiex id-dokumenti nieqsa jigu ritornati izda bhala fatt qatt ma kienu ritornati.

Sostniet li hija talbet l-informazzjoni lir-rikorrenti ghalieq zewgha halla kollox warajh u mar l-Italja.

Hija bdiet tiffirma d-dokumenti li kienu jgibu ghandha.

Fil-**kontroezami**, xehdet li kien hemm zieda fl-ishma peress li fil-bidu kien hemm biss mitt sehem. Sostniet li hija qatt ma hadmet fil-*ledgers*. Ikkonfermat li d-dokumenti a fol 66 u 76 kienet rathom. Ma kenitx involuta ghal dak li ghandu x`jaqsam mad-dokumenti a fol 66 u 76. Sostniet li kienet sabet xi haga fil-karti tal-kumpannija li kien hemm 230 ishma registrati.

Qalet illi hija qatt ma pprezentat memorandum u articles of association peress li dawn kienu prezentati mill-awdituri. Insistiet li hija ma kinitx attiva fil-kumpannija. Sostniet li zewgha gieli kien jigi u jghidilha biex tiffirma xi dokumenti u hija kienet tobdih. Hija ffirmit Dok NB1.

III. **Fatti**

Skont il-*memorandum of association* ta` P Buffa & Co Limited (fol 58 sa 61), jirrizulta li l-ewwel azzjonisti kienu Nadine de` Conti Manduca b`450-il sehem u Lawrence Zammit b`50 sehem. L-ewwel diretturi kienu l-istess Lawrence Zammit u Nadine de` Conti Manduca. Dak iz-zmien l-*authorized share capital* kien ta` Lm 500 divizi f`500 sehem ta` Lm 1 kull wiehed. L-*issued share capital* kien ta` Lm 500 divizi f`500 sehem ta` Lm kull wiehed li minnhom 20% kienu mhallsa *on subscription*.

B`effett mill-10 ta` Novembru 1988, Kevin Camilleri kien mahtur bhala direttur tal-kumpannija (fol 57). Paolo Buffa kien ukoll gie appuntat direttur b`effett mis-17 ta` Novembru 1988 (fol 56) waqt li Lawrence Zammit irrizenja minn direttur b`effett mit-13 ta` Gunju 1989 (fol 55).

Fit-13 ta` Gunju 1989, kienet approvata rizzoluzzjoni sabiex (i) ikun hemm it-trasferiment ta` 30 sehem minn Lawrence Zammit favur Nadine de Conti Manduca u ta` 20 ishma minn Lawrence Zammit favur Kevin Camilleri; (ii) tkun accettata r-rizenja ta` Lawrence Zammit bhala direttur b`effett mit-13 ta` Gunju 1989 ; (iii) ikun zieda fl-*authorized share capital* minn Lm 500 ghal Lm 20,000 ; u (iv) ikun hemm zieda fl-*issued share capital* sabiex dan ikun jammonta ghal Lm 10,000 divizi f`10,000 sehem b`valur nominali ta` Lm 1 kull sehem, ikunu mhallsa sa 20% b`dana li Nadine de Conti Manduca jkollha 4,845 sehem u

Kevin Camilleri jkollu 4,655 ishma (fol 523 sa 54). Din ir-risoluzzjoni kienet ippubblikata fil-Gazzetta tal-Gvern fis-16 ta` Marzu 1990.

Kienu prezentati d-dokumenti relattivi ghat-trasferiment ta` l-ishma minn Lawrence Zammit favur ta` Nadine de Conti Manduca u favur Kevin Camilleri a fol 268 u 269 tal-process.

In linea ma` dan, fil-prospett tat-taxxa fuq l-*income* ghas-sena ta` stima 1990 (sena bazi 1989) tal-kumpannija tnizzel li Nadine Buffa ghandha 5100 –il sehem b`valur ta` Lm 1 kull sehem mentri Kevin Camilleri ghandu 4900-il sehem b`valur ta` Lm 1 kull sehem (fol 347).

Fil-kors ta` din il-kawza, ma nghatat l-ebda spjegazzjoni kif sar dan l-awment ta` ishma.

Fil-prospett tat-taxxa fuq l-*income* ghas-sena ta` stima 1991 (sena bazi 1990) tal-kumpannija jirrizulta li l-ghadd ta` ishma fl-isem ta` Nadine Buffa kien indikat bhala 4845-il sehem ta` Lm 1 kull sehem li minnhom 20% kienu mhallsa mentri Kevin Camilleri kellu 4655-il sehem b`valur ta` Lm 1 kull sehem, li minnhom 20% kienu mhallsa (fol 333 sa 334).

Fil-prospett tat-taxxa fuq l-*income* ghas-sena ta` stima 1992 (sena bazi 1991) jirrizulta li l-ghadd tal-ishma fuq Nadine Buffa kien 5325-il sehem b`valur ta` Lm 1 kull sehem u mhallsa sa 70% waqt li Kevin Camilleri kellu 4675-il sehem valur ta` Lm 1 kull sehem imhallsa sa 70% (fol 361).

Fil-kors ta` din il-kawza, ma nghatat l-ebda spjegazzjoni kif sar dan l-awment ta` ishma.

Fil-31 ta` Ottubru 1991, Kevin Camilleri rrizenja minn direttur tal-kumpannija (ara d-dokument a fol 49).

Fl-istess data, sar kuntratt ta` trasferiment ta` ishma fl-atti tan-Nutar Dottor Marco Farrugia fejn Kevin Camilleri ttrasferixxa lil Paolo Buffa 4655-il sehem valur ta` Lm 1 kull sehem imhallsa 70% minnhom. L-att ighid hekk :-

“In virtue of this deed appearer Kevin Camilleri hereby assigns, sells and transfers to Paolo Buffa who accepts, buys and acquires four thousand six hundred and fifty

five shares of one Maltese Lira (Lm 1) each seventy per cent of which are paid up of the limited liability company P Buffa and Company Limited duly registered ... ” (fol 66 sa 75).

Fl-14 ta` Novembru 1991, Paolo Buffa ttrasferixxa favur ir-rikorrenti l-ghadd ta` 230 sehem fil-kumpannija valur ta` Lm 1 kull sehem imhallsa sa 70%. Dan sar b`att notarili li kien iffirmit kemm minn Paolo Buffa kif ukoll mir-rikorrenti. Fl-att jinghad hekk :-

“In virtue of this deed, appearer Paolo Buffa hereby assings, sells and transfers to Catherine Grech Mallia who accepts, buys and acquires two hundred and thirty (230) shares of one Maltese lira (Lm 1) each seventy per cent of which are paid up of the limited liability company P Buffa and Company Limited duly registered ...” (fol 76 sa 77).

Kien prezentat ukoll dokument iffirmit mill-istess partijiet a fol 78 fejn jinghad :-

“By virtue of this private instrument, the undersigned Paolo Buffa 008316(A) (hereinafter called the “transferor”) transfers to the undersigned Catherine Grech Mallia Id 89248(G) (hereinafter called the “transferee”) who accepts and acquires partly paid 230 shares of Lm 1 each in P. Buffa & Company Limited C 9907, a limited liability company constituted and registered under the Laws of Malta and incorporated on the 13th September 1988 for the price of Lm 230 (in words) two hundred and thirty Maltese Liri.

It is hereby agreed that the transferee will hold the said shares under the same conditions as they were held by the transferor and all dividends and rights arising from the said shares shall vest in their entirety in the transferee.”

Fl-annual report li pprezentat P Buffa & Co Ltd ghas-sena 1992 (ara fol 94 sa 120, u fol 385 sa 408, in partikolari fol 119 u fol 407), u ffirmit minn Paolo Buffa, jirrizulta li sat-30 ta` Settembru 1992, l-ghadd ta` ishma f`isem Catherine Grech Mallia kienu 230, kollha b`valur nominali ta` Lm 1 kull sehem, 70% *paid up*.

Fil-prospett li ghamlet ir-rikorrent ghall-fini ta' *income tax* ghas-sena ta' stima 1992 (sena bazi 1991), tnizzel illi l-investment ta' 230-il sehem fil-kumpannija P Buffa & Co Ltd, izda kien dikjarat li l-ishma kienu 50% *paid up* (fol 439 sa 446).

Fil-prospett li ghamel ghas-sena ta' stima 1994 (sena bazi 1993), rega' kien indikat l-investment ta' l-230-il sehem fl-istess soċjeta' u ghal darb'ohra nghad illi kienu 50% *paid up* (fol 447 sa 465).

Il-Qorti tinnota li ghalkemm in-numru ta' l-ishma jaqbel ma' dak li qed tallega r-rikorrenti, kemm minnhom kienu *paid up* huwa disputat.

Minkejja dan kollu, imbaghad skont l-*annual return* tal-kumpannija li saret fl-14 ta' Jannar 1994, jirrizulta li 4,675-il sehem kienu trasferiti fil-31 ta' Ottubru 1991 lil Paolo Buffa mentri 4,675 kienu trasferiti fl-14 ta' Novembru 1991 lil Catherine Grech Mallia (fol 46, u fol 262 sa 266). L-*annual return* hija ffirmata minn Paolo Buffa.

Fil-31 ta' Dicembru 1993, kien terminat l-impjieg tar-rikorrenti minn ma' P. Buffa & Co. Limited (fol 270 sa 272, ghalkemm fid-dokument a fol 272 id-data tat-tmiem ta' l-impjieg hija zbaljata). Fl-1 ta' Jannar 1994, bdiet tahdem ma' Building Market Linea Bianca Co Ltd (li kienet kumpannija ohra li fiha kien involut Paolo Buffa) [ara fol 268 sa 269]. Fit-30 ta' Novembru 1995, intemm l-impjieg taghha minn ma' din l-ahhar soċjeta' (ara fol 200, 201 u 267).

Fl-24 ta' Frar 1998, bis-sahha ta' rizoluzzjoni straordinarja tat-23 ta' Frar 1998 iffirmata minn Nadine de Conti Manduca u Joseph de Conti Manduca, kien dikjarat illi P. Buffa & Co. Limited kienet sejra tkun regolata bil-Kap 386, u li kellu jigi registrat *memorandum* u *articles of association* rivedut u aggornat (fol 34).

Dawn l-atti kienu pprezentati fl-24 ta' Frar 1998 (fol 35 sa 42) fejn inghad illi l-*authorized share capital* tal-kumpannija huwa ta' Lm 20,000 divizi f'20,000-il sehem ordinarju ta' Lm 1 kull sehem. Kien dikjarat wkoll illi l-*issued share capital* huwa ta' Lm 10,000 divizi f'10,000 sehem ta' Lm 1 kull sehem. Minnhom 480 huma *fully paid up* u 4845 huma 20% *paid up* fl-isem ta' isem Nadine de Conti Manduca ; u 20 sehem *fully paid up* u 4,655-il sehem 20% *paid up* fl-isem tar-rikorrenti. Id-diretturi kienu Paolo Buffa u Nadine de' Conti Manduca mentri l-*company secretary* kien Joseph de Conti Manduca. Dawn il-*memorandum* u *articles of association* gew senjalati u ffirmati minn Joseph de Conti Manduca bhala *certified true copy*.

Fit-18 ta` April 2002, Nadine Buffa u Paolo Buffa rrizenjaw minn diretturi (fol 31 u 32).

Kienu prezentati *memorandum* u *articles of association* ohra mnejn jirrizulta li l-*issued share capital* kien ta` Lm 10,000 divizi f`10,000 sehem ta` Lm 1 kull sehem maqsuma in kwantu ghal 480 sehem *fully paid up* u 4845 sehem *20% paid up* fl-isem ta` Nadine de Conti Manduca u in kwanru ghal 20 sehem *fully paid up* u 4,655 sehem *20% paid up* fl-isem ta` Catherine Grech Mallia. Id-dokumenti kienu ffirmati bhala *certified true copy* minn Nadine de Conti Manduca (fol 23 sa 30).

Fid-29 ta` Jannar 2015, din il-Qorti ordnat ix-xoljiment u l-istralc ta` P Buffa & Co Limited. Ir-Ricevitur Ufficjali kien mahtur stralcjarju (fol 10 sa 18).

Fis-7 ta` Lulju 2015, fil-kors tal-procediment ta` stralc, il-Qorti kienet infurmata illi l-uniku attiv li ghandha l-kumpannija xjolta huwa li l-azzjonisti jhallsu l-*unpaid up share capital*. Nadine de Conti Manduca ghamlet il-hlas dovut fl-ammont ta` EUR 9,047.28c. Min-naha taghha, Catherine Grech Mallia kellha thallas l-ammont ta` EUR 8,674.58c (fol 89).

Ir-rikorrenti wiegbet ghat-talba tal-istralcjarju biex teffettwa l-hlas b`ittra tal-avukat taghha tal-5 ta` Ottubru 2015 (fol 90 sa 91) fejn sostniet illi hija kellha biss 230 sehem fil-kumpannija, u qatt ma tat il-kunsens taghha sabiex tigi assenjata aktar ishma. Bil-preciz jinghad hekk :

“Our client would first like to inform you that the shareholding which she acquired in P Buffa & Co Limited by means of a share transfer dated 14 November 1991 was of 230 ordinary shares of Lm 1, now EUR 2.32, each. This would have amounted to a total share capital of five hundred and thirty five Euro and seventy five cents (EUR 535.75) if fully paid up. At no point in time did our client accept, whether verbally or in writing, that she acquire or that P. Buffa & Co, Limited transfer to her a shareholding in the same company which consisted of a share capital of eight thousand, six hundred and seventy four Euro and fifty eight cents (EUR 8,674.58) or more, and she never signed any share transfer agreement or other document in this sense.”

Fl-istess ittra, inghad ukoll illi meta r-rikorrenti kienet ghadha fil-kumpannija hija sabet li kien hemm zball fid-dokumentazzjoni fis-sens li kien hemm imnizzel li ghandha 4,675 sehem. Billi ma baqghetx tahdem mal-kumpannija, ma setghetx tivverifika jekk dak l-izball kienx rettifikat. Bil-preciz inghad hekk :-

“However, our client does concede that, when during her period of employment with P. Buffa & Co Limited, she became aware that there was an error in the documentation pertaining to the same company in the sense that her shareholding was being indicated as that of 4,675 ordinary shares. In fact, and as can be seen from the documentation attached, on the 3 January 1995, she communicated by means of fax with Mr Andrew Pullicino, a representative of the company’s appointed accountants at the time, and indicated that changes should be made to the company’s annual return for the year 1995 to reflect the company’s true position, including its shareholding.

It is also clear from the documentation attached that, on the 28th December 1995, the corrected annual return was forwarded to the director of P. Buffa & Co Limited by Mr Andrew Pullicino, with clear instructions to sign the same. However, by November 1995, our client was no longer employed with the company and therefore, she had no opportunity to follow up whether the same correction was effected and the annual return signed.”
(fol 90 - 91).

Ir-rikorrenti kitbet ukoll lir-Registratur tal-Kumpanniji fl-20 ta` Ottubru 2015 fejn rega` spjegat il-pozizzjoni taghha u talbet li ssir laqgħa biex jigu korretti d-dokumenti mizmuma mir-Registratur dwar is-share capital ta` P Buffa & Co Ltd. (fol 92 sa 93).

L-ahhar pass tar-rikorrenti kienet il-kawza tal-lum.

IV. L-Art 312 tal-Kap 386

Ir-rikorrenti qegħda ssejjes il-kawza abbazi tal-**Art 312 tal-Kap 386** li – fit-test Malti – jaqra hekk :-

1) *Id-disposizzjonijiet ta` dan l-artikolu ghandhom japplikaw jekk waqt l-istralc ta` kumpannija sew jekk bil-qorti jew volontarjament ikun jidher li persuna li –*

(a) *tkun jew kienet ufficjal tal-kumpannija ;*

(b) *kienet tagixxi bhala stralcjarju tal-kumpannija ; jew*

(c) *ma tkunx persuna li taqa` taht il-paragrafi (a) u (b), ikollha jew kellha x`taqsam ma`, jew hadet sehem fil-promozzjoni, formazzjoni jew direzzjoni tal-kumpannija,*

tkun uzat hazin jew zammet jew saret responsabbli ghal, xi flus jew proprjeta` ohra tal-kumpannija jew kienet hatja ta` xi ezercizzju hazin tal-awtorita` taghha jew ta` ksur ta` dmir dwar il-kumpannija.

(2) *Il-qorti tista`, fuq rikors tar-ricevitur ufficjali jew talistralcjarju, jew ta` xi kreditur jew kontributorju, tezamina l-imgieba ta` xi persuna li taqa` taht is-subartikolu (1) u ggieghel –*

(a) *thallas lura, taghti lura jew taghti kont tal-flus jew proprjeta` jew xi parti minnha, b`imghax b`dik ir-rata li l-qorti jidhrilha gust ; jew*

(b) *li tikkontribwixxi dik is-somma lill-attiv tal-kumpannija bhala kumpens dwar l-ezercizzju hazin jew ksur ta` dmir kif il-qorti jidhrilha gust.*

Fit-test bl-Ingiliz l-Art 312 jaqra hekk :-

(1) *The provisions of this article shall apply if in the course of the winding up of a company, whether by the court or voluntarily, it appears that a person who -*

(a) *is or has been an officer of the company ;*

(b) *has acted as liquidator of the company ; or*

(c) *not being a person falling within paragraphs (a) and (b), is or has been concerned, or has taken part in the promotion, formation or management of the company,*

has misapplied or retained or become accountable for, any money or other property of the company, or been guilty of any improper performance or breach of duty in relation to the company.

(2) The court may, on the application of the official receiver or the liquidator, or of any creditor or contributory, examine the conduct of any person referred to in subarticle (1) and may compel him -

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks fit ; or

(b) to contribute such sum to the company's assets by way of compensation in respect of the improper performance or breach of duty as the court thinks fit.

Jidher illi l-mudell ghal din id-disposizzjoni kien l-Art 212 tal-Insolvency Act 1986 tal-Ingilterra fejn jinghad hekk :-

(1) This section applies if in the course of the winding up of a company, it appears that a person who –

(a) is or has been an officer of the company ;

(b) has acted as liquidator of the company ; or

(c) not being a person falling within paragraphs (a) or (b), is or has been concerned, or has taken part in the promotion, formation or management of the company,

has misapplied or retained or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) The reference in subsection (1) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted as a liquidator of the company any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his functions as liquidator of the company.

(3) *The court may on the application of the official receiver or the liquidator or of any creditor or contributory, examine into the conduct of the person falling within subsection (1) and compel him :-*

(a) *to repay, restore, or account for the money or property or any part of it, with interest at such rate as the court thinks just or*

(b) *to contribute such sum to the company's assets by way of compensation in respect of misfeasance or breach of fiduciary or other duty as the court thinks just.*

Fil-Blackstone's Civil Practice 2013 : The Commentary (OUP – pg 1413) Prof Stuart Sime, The Rt Hon Lord Justice Maurice Kay, Derek French u Maurice Ray ighidu hekk :-

The Insolvency Act 1986 s 212 and Schedule B1 para 75 provide that some claims by a company which is being wound up may be pursued by an application in the winding up proceedings. Application under these provisions are known as misfeasance proceedings and they are an optional alternative to an ordinary claim. There are limits on which defendants and which causes of action may be pursued in misfeasance proceedings.

By S 212(1) the only person whom misfeasance proceedings may be taken under S 212 are persons who :

(a) *are or have been officers of the company ;*

or

(b) *have acted as a liquidator or administrative receiver of the company*

or

(c) *are or have been concerned or have taken part in the promotion, formation or management of the company.*

The only causes of action which may be pursued in s 212 misfeasance proceedings are those who allege that the defendant has misapplied or retained,or

become accountable for, any money or other property of the company or has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company. (s 212(1)). Where the defendant has acted as a liquidator of the company, this includes any misfeasance or breach of duty in connection with the carrying on of his or her functions as liquidator. (S. 212(2)). “

Fl-istess sens, Lee Roach fil-pag 659 ta` l-ktieb **Card & James` Business Law** (OUP – 2009) ighid :-

Section 212 of the Insolvency Act 1986 applies where during the course of a winding up, it appears that an officer of the company, a liquidator, an administrative receiver, or other person involved in the promotion, formation or management of the company has misapplied or retained or become accountable for, any money or other property of the company or has been guilty of any misfeasance (meaning improper or unlawful performance of a lawful act) or breach of any fiduciary or other duty in relation to the company. In such a case, the court may examine the conduct of the above persons, but only upon an application from the liquidator, the official receiver, a creditor or a contributory.

Fil-pag 490 tal-ktieb **Company Law** (OUP) Alan Dignam & John Lowry jirreferu ghad-decizjoni *in re Central Crest Engineering Ltd (2000)* u jsostnu li *the Inland Revenue brought proceedings against the liquidator under s 212. The liquidator had allowed the company to continue to trade for 27 months after it had gone into compulsory liquidation. At the time of the liquidation the shortfall for creditors was £25000. Following the trading, the liquidator sold the company`s assets to its directors for £ 6,500. As a result of the trading, £ 73,230 was left owing to the Inland Revenue. It was held that the liquidator`s misfeasance had two elements: first, allowing the company to continue to trade without the sanction of the court or liquidation committee; second allowing, the company to continue to trade when it was apparent that she should have realized its assets soon after her appointment. The liquidator was therefore liable to compensate the company for its losses of £ 120,826 incurred during the trading period.*

Andrew Amos li associate ma` d-ditta ta` legali bl-isem *Insolvency and Corporate Restructuring* ippubblikat kummentarju bl-isem : **Breach of duty claims against the liquidator** : dwar id-decizjoni tal-Privy Council tar-Renju Unit tal-2008 fil-kaz ta` **Hague & Anor v Nam Tai Electronics**. Ighid :-

... the Privy Council ruled that a creditor's claim of breach of duty against the liquidator was misconceived because liquidators do not owe a duty of care to individual creditors. In the light of this decision, this briefing considers the other remedies that are open to individual creditors who wish to allege breach of duty by a liquidator. The conclusion is that individual creditors can bring misfeasance proceedings against the liquidator under s. 212 of the Insolvency Act 1986 (the 1986 Act) if the company has suffered loss as a result of a breach of duty by the liquidator. As such, proceedings are brought by the creditor on behalf of the company and any damages will be distributed among all creditors in the usual way according to the statutory priority of payments. Any junior creditor contemplating a claim under s212 is therefore advised to first secure agreement for an increased share of the proceeds of the claim from other creditors.

Kaz iehor l-Ingilterra li ttratta procediment skont l-Art 212 tal-Insolvency Act 1986 kien "**Top Brands Limited & Ors v. Sharma & Ors**". Kien kaz bin-nru 8570/2013 deciz mill-High Court of Justice - Chancery Division - Birmingham fl-4 ta` Awissu 2014. Hemm *the applicants, creditors of a company in creditors' voluntary liquidation (the "Company")*, applied for an order pursuant to Section 212 of the Insolvency Act 1986 that, in breach of fiduciary duty, the former liquidator of the Company (the "Liquidator") negligently authorised a series of payments of Company monies amounting to £548,074.56 (the "Monies") to a third party. Il-pretensjoni kienet l-kondotta tal-istralcjarju precedenti *had fallen well short of the standard to be expected and she had paid away substantial sums which would otherwise be available to creditors.*

Kien ritenut illi :-

The Liquidator had failed to properly consider the Company and its affairs before negligently authorising payment of the Monies: there was a clear lack of understanding and competence in her handling of the liquidation.

The Court considered, obiter, that the Liquidator had shown such conscious disregard for the assets in her charge on a material scale that payment of the Monies amounted to breach of fiduciary duty.

It was no defence that the Liquidator had obtained and acted on legal advice from an experienced insolvency lawyer in relation to the Monies, as the advice had been given in the context of incorrect and inadequate instructions.

Tajjeb jinghad illi l-azzjoni skont l-Art 312 tal-Kap 386 hija procediment ta' gravita'. Il-margin note tad-disposizzjoni fit-test Ingliz tal-ligi taghna tghid : *Remedy against **Dilinqent** directors, liquidators etc* (enfasi u sottolinear ta' din l-qorti).

Ghalhekk sabiex tirnexxi azzjoni skont din id-disposizzjoni, irid jigi pruvat li kien hemm agir illegali tant gravi li jkun sewwa li jinghataw ir-rimedji hemm stipolati. Mill-kazi citati aktar kmieni, jidher illi l-Qrati Inglizi laqghu talbiet skont l-Art 212 ta' l-Insolvency Act 1986 **biss** fil-kaz ta' cirkostanzi palesement gravi.

Fl-sit elettroniku bl-indirizz : <https://www.ndandp.co.uk/insolvency-litigation-news-and-comments/directors-under-continued-attack-by-insolvency-claims-from-liquidators/> dehret il-kitba : **Directors under continued attack by insolvency claims from Liquidators**. Kien ribadit illi l-Art 212 tal-Insolvency Act 1986 huwa "*in essence, a summary remedy against delinquent directors*".

Jinghad hekk :-

"A company director owes the company the statutory duties that are set out in sections 171 to 177 of the Companies Act 2006. In considering how to act, the director is required to have regard to various matters which include:

– The duty to exercise director's powers in accordance with and for the purposes conferred by the company's constitution.

– The duty to promote the success of the company in good faith: section 172.

– The duty to exercise reasonable care, skill and diligence: section 174(1).

– The duty to further the company's business relationships with suppliers, customers and others.

– The duty to avoid direct or indirect conflicts of interest between his position and that of the company: section 175.

– The desirability of the company maintaining a reputation for high standards of business conduct.

– The duty to consider the impact of the company's operations on the community and the environment.

Other duties imposed, by (for example) the Companies Act 2006, on the director include the duty to maintain, preserve and keep proper and adequate books and records of the company.

The Insolvency Act 1986 imposes additional obligations on directors, to include obligations not to enter into Transactions at an Undervalue or make Preferences.

In times of financial difficulty the focus of the duty of directors under section 172 (i.e. to promote the success of the company) shifts to the interests of creditors. Section 172(3) provides that:

The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors (emphasis added) of the company.”

Ikompli jigi spjegat illi :-

“A Court will, at or after the point of insolvency, examine the director's conduct with particular care and will not necessarily accept all that is said about the reasons and the motivation for the transaction in question, particularly if it is not obviously in the interests of creditors and is for the benefit of the director or persons connected to him or the company.

....

Recently, we have seen the following actual examples of the type of conduct that is alleged by administrators and liquidators to be breaches of duty by directors, all of which are coupled with a claim for repayment to the

liquidator plus interest on the sums claimed (and said to result from the breach) plus legal costs:

– Non-payment of Crown debt by the company, in the period leading up to formal insolvency, with those funds being used for the benefit of other connected persons or companies. This is said to amount on the facts of that particular case to wrongful trading, as defined by section 214 of the Insolvency Act 1986 (there is a statutory defence to such a claim in section 214(3) of the Insolvency Act 1986).

– Repayment of directors loans in the period leading up to formal insolvency.

– Payment of so-called `illegal dividends`.

– Sale of company assets, often to parties associated to the director, at an alleged undervalue or in a manner prejudicial to the interests of all creditors of the company.

– Payments and transfers of the company`s property to the director (and a quite separate company controlled by him) after the date of presentation of a Winding-Up Petition against the company, where it is said that those transfers were void, pursuant to section 127 of the Insolvency Act 1986 and misfeasant pursuant to section 212 of the Insolvency Act 1986.

Fil-kitba : **Directors` Liability in Insolvency : The Position in the United Kingdom** l-awtur Paul J. Omar (International Insolvency Institute)
ighid :-

“5.8. A summary procedure contained in the law is available to compel a director to contribute to the company`s assets, where the company is in liquidation and the director has misapplied or retained company money or property or has been guilty of misfeasance or a breach of a fiduciary or other duty. The application may be brought by the liquidator, creditor or, with the leave of the court, any contributory against a director with view to compelling an account for the money or property misapplied, together with any interest, as well as compensation in respect of the misfeasance or breach of duty. (Section 212)

Misfeasance has been defined as conduct which falls between the breach of the duty of care and skill, on the one hand, and the fiduciary duty, on the other. The court does have a discretion to absolve an honest and reasonable director for a breach of duty. This is so even if the breach was negligent in nature. (Re D`Jan of London Ltd [1993] BCC 646. Re Produce Marketing Consortium [1989] BCLC 513 does, however, state that the provision allowing for relief does not apply to actions initiated under section 214, Insolvency Act 1986.) The procedure is termed summary because it does not create any new cause of action which was not already available to the company while it was solvent, although it may not have been interested in pursuing a claim. (C. Hanson and P. Wilkinson, England and Wales, Chapter 7 in A. Sorensen (ed), Directors` Liabilities in Case of Insolvency (1999, Kluwer Law International, London) at 195.)” (<http://www.iiiiglobal.org/component/jdownloads/viewcategory/647.html>)

Fil-kitba intestata : **Insolvency update : Delinquent directors beware !** : l-awtrici **Nicola Ross** ittrattat *misfeasance claim* li ssir fil-kuntest tal-Art 212 ta` l-Insolvency Act 1986 fil-kuntest ta` kaz specifiku li kien deciz mill-qrati. Jinghad hekk :-

“SECTION 212 - MISFEASANCE CLAIM

Challenges under sections 242 and 243 are not the only weapons in the liquidator`s arsenal. The liquidator can also look to section 212 of the Act. That section gives a remedy against a director of the company (or, as the heading given to section 212 in the Act notes, a remedy against `delinquent directors`). That section applies where a person who is or has been an officer of the company has "misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary duty in relation to the company." Where the section applies, the court can make an order against the director for payment to the company.

THE LIQUIDATOR OF GLASGOW AND WEIR BLACKSMITHS LIMITED V DAVID FRASER GLASGOW

The recent case of The Liquidator of Glasgow and Weir Blacksmiths Limited v David Fraser Glasgow deals with a case brought under section 212 and provides an example of how useful section 212 can be.

In the case the liquidator of Glasgow and Weir Blacksmiths Limited established that certain payments that ought to have been made to the company were diverted so that, instead, those payments were made to another company - of which the director, coincidentally, was also a director and controlled (alongside his former wife). This all happened at a time when the company was insolvent, although wasn't yet in liquidation. A note to the sheriff was submitted under section 212 seeking payment from the director of the funds which had been diverted from the company. The sheriff at first instance reached the conclusion that the director had misapplied the funds (albeit without acting dishonestly) and therefore made an order for payment against the director for the sums diverted from the company.

The director appealed the decision. He argued that (1) section 212 was simply procedural and so did not provide a remedy in law; and (2) in any event, the measure of payment should be the loss to the company and in this case there was no loss to the company since by making the payments to the third party the sums owed by the company to that third party were reduced.

The Sheriff Principal of Lothian and Borders rejected both arguments.

Delivering her judgment, she found that, although section 212 is procedural (since it relies on there being a wrong or a breach of duty already in existence rather than creating a new duty), importantly it provides a summary remedy for any such breach. She said that "it is correct to characterise the section as providing a mechanism in the context of a liquidation to obtain a summary remedy where there has been a wrongful act by a director or other officer of the company".

She also found that there was no requirement for the court to have regard only to the actual loss to the company when assessing the order to be made against

the director. She said that the court is required to examine the conduct of the director and then consider a remedy under section 212(3). Section 212(3) is not confined to making an order in respect of the actual loss sustained by the company. In this case the court considered that the funds diverted to the director's other company should have been available to the liquidator for the benefit of other creditors of the company and noted that the court is entitled, under the section, to make an order for compensation of such sum ... as the court thinks fit".

Dwar *misfeasance proceedings in a winding up*, **Charlesworth & Cain** fil-ktieb **Company Law** (Twelfth Edition) ighidu :-

"... if in a winding up it appears that any promoter, past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or became liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the Official Receiver, the liquidator or any creditor or contributory, examine the conduct of such promoter, director, manager, liquidator or officer, and order him to repay or restore the money or property with interest, or to contribute to the assets of the company such sum as the court thinks just.

...

*Instances of misfeasance are the improper receipt by a director of his qualification shares from a promoter (which occurred in *Eden vs Ridsdales Railway Lamp Co Ltd* (1889) 23 Q B D 368 CA); or of an *ex gratia* payment in lieu of pension on the eve of liquidation (*Gibson's Executor vs Gibson* 1978, SC 197 OH); the certifying by an auditor of erroneous accounts whereby dividends were paid out of capital (See *Re Kingston Cotton Mill Co (No 2)* 1896 2 Ch 279 C.A.), the receipt by the secretary of a secret profit from a person who sold a mine to the company (*Mc Kay's case* 1875 2 Ch. D. 1 C. A), the acts of a director in procuring the company to buy shares in another company from himself at an over-value and making an unsecured loan to enable him and his co-directors to pay calls (*Re VGM Holdings Limited* 1942 Ch 235 CA) and failure by a*

liquidator to make proper provision for the equal ranking and payment of all preferential claims (Lord Advocate v Liquidators of Purvis Industries Limited 1958 SC 338 OH)."

Dwar l-istess procedura fil-Pennington`s Company Law (Eight Edition), jinghad illi :-

"In the winding up of a company an application may be made to the court ...for an order against any present or past officer of the company, any person who has acted as liquidator, administrator or administrative receiver of the company or any other person who has been concerned or taken part in the promotion, formation or management of the company and who has misapplied or retained or become accountable for any money or property of the company or has been guilty of any misfeasance or breach of any fiduciary or ther duty in relation to the company; the order of the court sought against the respondent will be either that he shall repay money for which he is accountable, or that he shall account for the value of property which he has misapplied or retained together in either case with interest at such rte as the court orders, or that he shall resotre money or property which he has misapplied or retained or any part of it, or that he shall contribute such sum to the company`s assets by way of compensation for the misfeasance or breach of duty for which he is responsible as the court thinks just.

...

The only orders which the court may make in misfeasance proceedings are for the payment or return of money or property to the company or for the payment of compensation or damages for losses wrongfully inflicted on it. Consequently, the court cannot rescind a contract, or order payment of a debt owed to the company in misfeasance proceedings. Nor can the court order a director to make a payment to the company, unless he has misappropriated its property or has caused it loss by failing to perform a duty which he owed to it. Consequently, misfeasance proceedings cannot be brought against a director who failed to acquire his share qualifcator fixed by the articles, because he is under no obligation imposed by law to

take them from the company and he may obtain them from other existing shareholders. On the other hand, such proceedings may be brought to recover a secret profit made by a director, even though the company has suffered no loss, because the profit belongs to the company and the director is accountable for it.

... If a respondent in misfeasance proceedings is found to be guilty of a breach of duty to the company which has caused it loss, the court has a discretion in fixing the amount of compensation which he is ordered to pay to the company and it need not require him to make good the whole of the resulting loss.”

V. Locus standi

i) Ir-rikorrenti

Skont l-Art 312 tal-Kap 386, azzjoni ta` din xorta tista` titressaq waqt l-istralc ta` kumpannija, fuq rikors tar-ricevitur ufficjali jew tal-istralcjarju jew ta` xi kreditur jew kontributorju.

Jirrizulta li P. Buffa & Co Limited hija kumpannija xjolta b`ordni tal-qorti li ordnat ukoll l-istralc. Dan il-procediment ghadu mhux konkluz.

Jirrizulta li r-rikorrenti hija kreditrici tal-kumpannija bis-sahha ta` sentenza moghtija minn din il-Qorti diversament presjeduta tad-29 ta` Mejju 2001 fil-kawza fl-ismijiet **Catherine Grech Mallia vs. P. Buffa & Company Limited.**

Jirrizulta li l-ishma tar-rikorrenti bhala azzjonista tal-kumpannija mhumieq *fully paid up*. Ai termini ta` kuntratt ta` l-14 ta` Novembru 1991 fl-atti tan-Nutar Dr Marco Farrugia, ir-rikorrenti nghatat 230 sehem ta` valur nominali ta` Lm 1 kull sehem, 70% *paid up*.

Billi ghad hemm 30% *unpaid issued share capital*, ir-rikorrenti tikkwalifika bhala kontributorju skont l-Art 215 tal-Kap 386.

Mela r-rikorrenti ghandha locus standi biex tistitwixxi l-azzjoni odjerna.

ii) **L-intimati**

L-Art 312 jistabilixxi l-identita` tal-kontradittur f` azzjoni ta` din ix-xorta.

Id-disposizzjoni tindika :

- a) l-ufficjali tal-kumpanija,
- b) stralcjarju tal-kumpanija
- c) persuna li jkollha jew kellha x`taqsam ma` jew hadet sehem fil-promozzjoni, formazzjoni jew direzzjoni tal-kumpanija.

L-intimati Paolo Buffa, Nadine Buffa u Joseph de Conti Manduca jikkwalifikaw bhala legittimi kontraditturi tar-rikorrenti.

Infatti (i) Nadine Buffa kienet azzjonista maggoritarja u anke direttur tal-kumpanija ; (ii) Joseph de Conti Manduca kien *company secretary* ; u (iii) Paolo Buffa kien direttur u azzjonista f` din il-kumpanija.

Nigu issa ghall-istralcjarju Dr Kevan Azzopardi.

Il-Qorti tqis partikolarment illi fir-raba` talba r-rikorrenti qeghda titlob illi z-zewg intimati Buffa u l-intimat de Conti Manduca jew min minnhom jikkontribwixxu dik is-somma ghall-attiv tal-kumpanija bhala kumpens ghall-ezercizzju hazin ta` l-awtorita` taghhom jew min minnhom u/jew tal-ksur ta` dmir taghhom jew min minnhom dwar l-istess kumpanija.

Il-Qorti tqis illi ghall-fini ta` integrita ta` gudizzju, fl-eventwalita` li din it-talba tigi milqugha, l-istralcjarju ntimat huwa l-persuna idoneja tircievi l-effetti tal-akkoljiment ta` dik it-talba.

Fis-sentenza ta` din il-Qorti diversament presjeduta fil-kawza **Dormax Press Company Limited vs Frank Dimech pro et noe** deciza fit-18 ta` Jannar 2001 inghad illi skont l-Art 295 tal-Kap 386, is-setghat kollha ta` l-ufficjali tal-kumpanija jieqfu mal-hatra ta` l-istralcjarju b`dana illi l-istess stralcjarju ikollu r-rapprezentanza wahdanija tal-kumpanija.

Dan premiss, il-Qorti tghid illi jkun x`ikun l-esitu, l-istralcjarju fil-vesti ta` r-rapprezentant ex lege tal-kumpanija m`ghandux ibati spejjez fil-

procediment tal-lum billi dak li wassal ghal din il-kawza mhuwiex imputabbli ghal xi att jew omissjoni tieghu.

VI. L-ewwel (1) u t-tielet (3) talbiet

Bl-ewwel domanda, ir-rikorrenti talbet dikjarazzjoni u decizjoni mill-qorti illi l-informazzjoni kontenuta fid-dokumenti mizmuma mir-Registratur tal-Kumpanniji, fejn juru li r-rikorrenti nghatat xi azzjonijiet li huma oghla jew b'xi mod ivarjaw minn 230 sehem ta' LM 1.00, illum €2.32, `il wiehed, b'70% kapital azzjonarju mhallas, kemm fl-14 ta' Novembru 1991 u fi kwalunkwe data ohra, hija zbaljata u falza.

Imbaghad fit-tielet domanda, ir-rikorrenti talbet dikjarazzjoni fis-sens li hija ghandha biss 230 sehem ta' Lm 1.00 `il wiehed b'70% kapital azzjonarju mhallas fil-kumpannija P. Buffa & Co Ltd.

Il-Qorti taghmel referenza ghall-esposizzjoni tal-fatti li ttrattat aktar kmieni.

Jidher bic-car li d-dokumenti ufficjali mizmuma mir-Registratur tal-Kumpanniji ma jikkorraborawx il-kontenut tal-kuntratt datat 14 ta' Novembru 1991 atti tan-Nutar Dottor Marco Farrugia, mnejn jirrizulta li l-intimat Paolo Buffa ghadha lir-rikorrenti 230 sehem ta' Lm 1 `il wiehed b'70% kapital azzjonarju mhallas.

Ma tressqux bhala prova xi att notarili iehor jew xi dokument iehor li jixhet dawl ta' kif allegatament ir-rikorrenti spiccat b'4,675-il sehem fil-kumpannija P. Buffa & Company Limited fl-14 ta' Novembru 1991.

L-intimati Buffa u de Conti Manduca laqghu ghat-talbiet tar-rikorrenti billi lkoll eccepew li mid-dokumenti ezebiti jidher li dak li qed tallega r-rikorrenti huwa kollu minnu, ghalkemm isostnu li d-dokumenti ma kinux fil-pussess taghhom u ghalhekk ma kellhomx l-opportunita' li jaghmlu verifika ta' l-veracita ommeno taghhom.

Il-Qorti tqies li hija sodisfatta bil-veracita' tal-atti notarili ezebiti mir-rikorrenti.

Jigi osservat li din il-Qorti hadet konjizzjoni ta` l-argumenti mressqa fit-trattazzjoni finali da parti tal-intimati Buffa u Joseph De` Conti Manduca fejn kien allegat li Catherine Grech Mallia kellha l-kontroll kollu tal-kumpannija intimata u li huma javvanzaw is-suspett illi din kienet hadet l-ishma kollha tal-kumpannija izda mbaghad xhin rat li l-kumpannija kienet sejra hazin qabdet u zammet biss dawk l-230 sehem li kienu registrati.

Il-Qorti ma tistax toqghod fuq suspetti jew kongetturi. Ma tressqux provi cari u nkonfutabbli. Huwa minnu li dak iz-zmien ma kienx hemm l-oberi li hemm illum dwar kif issir ir-registrazzjoni ta` ishma, izda daqshekk ma jfissirx li r-rikorrenti hadet l-ishma kollha. Id-dokumenti ezebiti juru xort`ohra. Din il-Qorti ma gietx konvinta li ghandha tiskarta l-atti pubblici li jghidu li r-rikorrenti kellha biss 230 sehem minn din il-kumpannija li kienu *70% paid up*.

Il-Qorti sejra tilqa` l-ewwel (1) u t-tielet (3) talbiet tar-rikorrenti.

VII. It-tieni (2) talba

Fit-tieni domanda, ir-rikorrenti talbet dikjarazzjoni li meta l-intimati Paolo Buffa, Nadine Buffa u Joseph de` Conti Manduca, jew min minnhom, issottomettew dokumenti b`informazzjoni zbaljata u falza lir-Registatur tal-Kumpanniji, dan ghamluh b`ezercizzju hazin ta` l-awtorita` taghhom jew min minnhom u/jew bi ksur ta` dmirijiet taghhom jew ta` min minnhom dwar il-kumpannija ai termini ta` l-Art 312(1) ta` l-Kap 386.

Wara li l-Qorti rat id-dokumenti esebiti, jidher li fir-rapport iffirmit minn Paolo Buffa ghall-1992, tnizzel illi sat-30 ta` Settembru 1992, Catherine Grech Mallia kellha 230 sehem fil-kumpannija li kienu *70% paid up*. Kien fl-*annual return* li saret fl-14 ta` Jannar 1994, ukoll iffirmata minn Paolo Buffa, li tnizzel illi fil-31 ta` Ottubru 1991 huwa kellu 4675-il sehem li kienu gew trasferiti lilu dakinhar ; imbaghad fl-14 ta` Novembru 1991 dawk l-4675 sehem gew trasferiti lil Catherine Grech Mallia.

Minn dakinhar `il quddiem, id-dokumenti gew iffirmati bhala vera kopja ta` l-original minn Nadine Buffa u Joseph de` Conti Manduca precizament dawk a fol 35 sa 42, u a fol 23 sa 30, li gew sottomessi fl-24 ta` Frar 1998 u 18 ta` April 2002 rispettivament. Bdeu jirriflettu dak li kien iffirma ghalih precedentement Paolo Buffa ossija li Catherine Grech Mallia kellha 4655-il sehem fil-kumpannija li kienu *party paid up*. L-unika differenza bejn dawn id-dokumenti a fol 35 u 42 u a fol 23 sa 30 u d-dokument datat 14 ta` Jannar 1994 huwa li dawn il-4655-il

sehem tnizzlu bhala 20% *paid up* mentri fid-dokument datat 14 ta` Jannar 1994, kienu 70% *paid up*.

Din il-Qorti qieset ix-xiehda li taw l-intimati.

Il-Qorti temmen li Paolo Buffa ma kienx jinvolvi lil martu l-intimata fin-negozju u fl-operat tal-kumpannija intimata. Daqstant iehor ma kienx jinvolvi lil Joseph de Conti Manduca. Fir-realta` kienu r-rikorrenti u Paolo Buffa li kienu jiehdu hsieb ta` kollox. Il-Qorti ma temminx li Paolo Buffa ma kienx jaf x`kienet taghmel Catherine Grech Mallia u li huwa kien jiffirma kollox minghajr ma joqghod jivverfika l-kontenut ta` l-istess. Il-fatt li forsi kien jaf it-Taljan biss ma jfissirx li ta` madwaru ma kienux jafu jesprimu ruhhom bit-Taljan jew ma kienux ifehmuh x`kien qed jiffirma. Paolo Buffa kien bniedem li beda negozju Malta *from scratch* u ma jaghtix l-impressjoni li kien xi persuna li tghaddieh *min ghajn il-labra* bla ma jaf x`qed jiffirma. Din mhix kwistjoni ta` fiducja f`ta` madwaru izda ta` sens ta` negozju.

Tajjeb jinghad illi Paolo Buffa rrizulta li kien involut f`kumpanniji ohra fosthom Building Market Linea Bianca Limited C15290 fejn kien direttur u azzjonista (fol 148 sa 163) u Nuova Dimensione Limited C13517 fejn ukoll kien direttur u azzjonista (fol 164 sa fol 198). Ghalhekk mhux verosimili li kien xi wiehed li jhalli kollox f`idejn haddiehor u jaqbad u jiffirma kollox b`ghajnejh maghluqa. Jidher ukoll li meta harget mix-xena Catherine Grech Mallia, huwa xorta baqa` ghaddej ghal ftit snin ohra bl-operat tal-kumpannija intimata u kien hu li ffirmaw d-dokumenti fejn hareg illi l-ishma appartenenti lil Catherine Grech Mallia kienu ferm aktar minn 230 sehem.

Il-Qorti hija moralment konvinta illi c-caqlieq fl-ghadd tal-ishma fl-isem tar-rikorrenti kien xoghol Paolo Buffa wahdu. Bil-firma tieghu fuq l-atti li marru ghand ir-Registatur tal-Kumpanniji ha r-responsabilita` tal-atti tieghu.

Tqis illi martu u missierha mxew fuq dak li sabu wara li Paolo Buffa telaq lejn l-Italja u halla dissest warajh fil-kumpannija. Dak li tista` tirrimarka biss il-Qorti fir-rigward ta` Nadine Buffa u missierha huwa kif dawn accettaw li jiffirmaw vera kopja ta` l-original ta` dokumenti li kienu juru li l-ishma kienu biss 20% *paid up* meta mid-dokumenti precedenti kien jirrizulta li kienu ishma li kienu 70% *paid up*.

Din il-Qorti zammet quddiem ghajnejha li Nadine Buffa u missierha kienu ufficjali fi hdan il-kumpannija u ghalhekk ma kellhomx joqghodu mpassibbli ghall-mod spregudikat kif Paolo Buffa kien imexxi n-negozju. Qieset ukoll li fix-

xiehda taghha Nadine Buffa sostniet li hija kienet iltaqgħet ma` dokument li kien jindika li Catherine Grech Mallia kellha biss 230 sehem fil-kumpannija intimata, izda mbagħad mix-xiehda taghha ma rrizultax iz-zmien meta hija saret taf b`dan, ossija kienx qabel jew wara li ffirmat il-vera kopja.

Madanakollu, kif iddelinjat iktar kmieni, il-Qorti tifhem li azzjoni skont l-Art 312 tal-Kap 386 hija applikabbli fil-kazi estremi u gravi ta` delinkwenza.

Il-Qorti ma tarax li fil-konfront ta` Nadine Buffa u Joseph de Conti Manduca kien hemm xi agir ta` din ix-xorta ghaliex irrizulta ppruvat illi dawn it-tnejn spicaw fit-tahwid u fil-konfuzjoni ta` dokumenti, ippruvaw jagħmlu l-almu tagħhom biex isibu tarf bil-ghan li jxolju l-kumpannija.

Mhux hekk tahsibha dwar Paolo Buffa.

Hija konvinta li dan huwa responsabbli għal dak li sehh. Huwa kien konsapevoli ta` kemm ir-rikorrenti kellha ishma fir-realta` izda huwa għadda biex issottometta dokumenti kontenenti nformazzjoni zbaljata u falza lir-Registatur tal-Kumpannija. Dan kollu sehh b`ezercizzju hazin ta` l-awtorita` tieghu u bi ksur ta` dmirijiet tieghu bhala ufficjal tal-kumpannija intimata.

Paolo Buffa bhala direttur kellu obbligi skont l-Art 136A tal-Kap 386. Kellu jagixxi b`onestà u bona fide fl-ahjar interessi tal-kumpannija. Huwa kellu jippromwovi l-benessere tal-kumpannija u jkun responsabbli għal : (a) it-tmexxija generali tal-kumpannija u l-amministrazzjoni u l-immaniggjar tagħha ; u (b) s-sorveljanza generali tal-affarijiet tagħha.

B`zieda ma` dan :-

(a) kien obligat li jezercita kura, diligenza u hila li jkun ezercitat minn persuna ragonevolment diligenti li jkollha - (i) kemm it-tagħrif, il-hila u l-esperjenza li jkunuragonevolment mistennija minn persuna li tkun qed taqdi l-istess funzjonijiet li jkunu moqdiya jew fdati lil dak id-direttur dwar il-kumpannija ; (ii) kif ukoll it-tagħrif, il-hila u l-esperjenza li jkollu d-direttur;

(b) ma kellux jagħmel profitti sigrieti jew personali mill-pozizzjoni tieghu mingħajr il-kunsens tal-kumpannija, lanqas ma jagħmel gwadan personali minn informazzjoni konfidenzjali tal-kumpannija;

(c) kellu jassigura li l-interessi personali tieghu ma jkunux f`konflitt mal-interessi tal-kumpannija;

(d) ma kellux juza xi proprjetà, informazzjoni jew opportunità tal-kumpannija għall-beneficju tiegħu stess jew ta` xi hadd iehor, jew jiehu xi beneficju b`xi mod iehor b`konnessjoni mal-ezercizzju tas-setghat tiegħu, hlief bil-kunsens tal-kumpannija f`laqgħa generali jew hlief kif permess mill-memorandum u l-istatut ta` assocjazzjoni tal-kumpannija;

(e) kellu jezercita s-setghat mogħtija għall-finijiet li jkunu ngħataw is-setghat u m`għandhux juza hazin dawk is-setghat.

Dak li rrizulta li għamel Paolo Buffa kien li nizzel informazzjoni zbaljata fuq dokumenti ufficjali. B`hekk deher illi ma kienx għadu azzjonista tal-kumpannija intimata. Mhux eskluż li Paolo Buffa basar illi l-kumpannija intimata ma kienx ser jirnexxilha tiskansa l-maltemp u għalhekk, dawwar l-ishma fuq isem fuq Catherine Grech Mallia li kienet impjegata vicin tiegħu forsi bit-tama – zbaljata - li seta` jehles mir-responsabilitajiet tiegħu jekk ma jibqax azzjonista.

Fil-fehma tagħha jissussistu l-estremi tad-disposizzjoni limitatament fil-konfront ta` Paolo Buffa.

VIII. Ir-raba` (4) talba

Fir-raba` domanda, ir-rikorrenti talbet lill-Qorti sabiex tordna lill-intimati Paolo Buffa, Nadine Buffa u Joseph de` Conti Manduca, jew lil min minnhom, jikkontribwixxu dik is-somma lill-attiv tal-kumpannija intimata bhala kumpens għall-ezercizzju hazin ta` l-awtorita` tagħhom jew ta` min minnhom u/jew tal-ksur ta` dmir tagħhom jew ta` min minnhom dwar il-kumpannija intimata, u dan kif din l-Onorabbli Qorti jidhrilha gust, ai termini ta` l-Art 312(2) tal-Kap 386.

Qabel tippronunzja ruhha, il-Qorti sejra tqis l-ecezzjoni ulterjuri tal-preskrizzjoni skont l-Art 2156(f) tal-Kap 16.

a) Preskrizzjoni

Ecezzjoni simili għal din tal-lum kienet deciza minn din il-Qorti fit-8 ta` Marzu 2016 (u kkonfermata mill-Qorti tal-Appell fit-18 ta` Lulju 2017) fil-kawza fl-ismijiet **Ricevitur Ufficjali vs Steve Alamango et.**

Id-disposizzjoni in kwistjoni hemm kienet l-Art 316 tal-Kap 386 (*wrongful trading*). Kontra l-azzjoni kienu sollevati l-eccezzjoni tal-preskrizzjoni skont l-Art 2153 u l-Art 2156(f) tal-Kap 16.

Il-Qorti qalet hekk :-

...

Ghall-fini tad-decizjoni tal-lum, tajjeb li jigi osservat illi l-Art 316 jaghmel parti mill-Kapitolu V tal-Kap 386 li jittratta reati qabel xoljiment jew waqt l-istralc.

Tajjeb jinghad ukoll li ghalkemm l-Art 316 jaghmel parti mill-Kapitolu V, il-legislatur ma stabilixxa l-ebda piena kriminali jekk jirrizulta ppruvat dak li tghid id-disposizzjoni. Il-legislatur m`ghamilx l-istess fil-kaz ta` kummerc bi frodi (Art 315) ; hemm impona piena kriminali. L-istess ghamel fil-kaz ta` disposizzjonijiet ohra fl-istess kapitolu.

Ghalkemm it-tul ta` l-preskrizzjoni ma tistax tigi determinata skont in-natura tal-piena propju ghaliex piena ma hemmx fil-kaz tal-Art 316, jibqa` l-fatt li l-Legislatur xorta wahda deherlu li kellu jittratta l-kummerc hazin bhala "reat" skont il-Kapitolu V. Din il-kostatazzjoni tassumi rilevanza meta l-Qorti tigi biex tittratta specifikament l-artikoli tal-ligi li abbazi taghhom l-intimati nvokaw il-preskrizzjoni tal-azzjoni attrici.

2) Il-prova tal-preskrizzjoni

*Fis-sentenza ta` din il-Qorti tat-30 ta` Ottubru 2003 fil-kawza **"Stencil Pave (Malta) Ltd vs Dr. Maria Deguara noe"** kien ritenut illi –*

"hija regola ewlenija fil-procedura li l-prova li l-azzjoni hija preskritta trid issir minn min iqanqal l-eccezzjoni, u ghalkemm il-parti attrici tista` tressaq provi biex tittanta xxejjen dawk tal-parti mharrka billi tmeri li ghadda z-zmien jew billi ggib `il quddiem provi li juru li l-preskrizzjoni kienet sospiza jew interrotta, il-piz jaqa` principalment fuq min jallega l-preskrizzjoni.

Hi l-parti mharrka li trid tipprova li l-parti attrici ghaddhjelha z-zmien utli biex tressaq il-kawza, u dan

minn zmien minn meta dik il-kawza setghet titressaq". (ara wkoll **"Holland noe vs Chetcuti"** – Qorti tal-Appell – 25 ta` Frar 2000 ; **"Vella vs Cefai"** – Qorti tal-Appell - 5 ta` Ottubru 2001 ; **"Portelli vs Psaila"** - Prim`Awla tal-Qorti Civili - 29 ta` Mejju 2003 ; **"Causon noe vs Sheibani"** – Qorti tal-Kummerc – 4 ta` Dicembru 1987 ; **"Camilleri vs Frendo"** (Kollez. Vol. XII.144) ; **"Borg vs Testaferrata Bonici"** – Qorti tal-Appell – 24 ta` Marzu 1958).

*In partikolari fis-sentenza **"Causon vs Sheibani noe"** il-Qorti qalet –*

"Illi min jeccepixxi l-preskrizzjoni hu obbligat li jaghmel prova sodisfacenti tad-data meta l-perijodu tal-preskrizzjoni jibda jiddekorri ghaliex diversament il-Qorti qatt ma tkun f`posizzjoni li tikkonstata jekk il-perijodu applikabbli tal-preskrizzjoni jkunx iddekorra jew le".

*Wara li l-eccipjent jaghmel il-prova, ikun imbaghad imiss lill-attur illi jipprova illi l-kors tal-preskrizzjoni ma jkunx ghadha (ara **"Calleja vs Vella"** – Qorti tal-Appell – 15 ta` April 1964).*

3) Tifsira restrittiva

*Il-preskrizzjoni ghandha tinghata nterpretazzjoni restrittiva u ghalhekk jekk ikun jezisti xi dubbju dwar l-applikabilita` taz-zmien preskrittiv, dak id-dubbju ghandu jmur kontra min ikun eccepixxa l-preskrizzjoni (**"Alf Mizzi & Sons (Marketing) Limited vs Dismar Company Limited"** deciza minn din il-Qorti fit-12 ta` Ottubru 2004, u **"Ellul noe vs Vella noe"** deciza mill-Qorti tal-Appell fit-8 ta` Mejju 2001).*

Il-preskrizzjoni hija istitut li min-natura tieghu, irid jitqies fil-limiti stretti li tapplika ghalih il-ligi, u jitfisser dejjem b`mod li ma jgibx fix-xejn il-ghan li ghandu jsir haqq fuq is-sustanza tal-kwistjoni.

4) Dekorrenza

L-Art 2137 tal-Kap.16 ighid –

Bla hsara ta` disposizzjonijiet ohra tal-ligi, il-preskrizzjoni ta` azzjoni tibda minn dakinhar li din l-

azzjoni tista` tigi ezercitata minghajr ma jittiehed qies ta` l-istat jew tal-kondizzjoni tal-persuna li lilha l-azzjoni tmiss.

Huwa principju tad-dritt illi d-data li taghti bidu ghall-preskrizzjoni hi determinabbli oggettivament (“**Scicluna vs Tracey**” : Qorti tal-Appell : 22 ta` Gunju, 1900 [Vol.XVII.I.151] ; u “Caruana vs Runza” – PA - 7 ta` Mejju, 1999).

L-awturi Baudry-Lacantinerie u Tissier (**Trattato Teorico-Pratico di Diritto Civile : Della Prescrizione** - Cap XII, para 364 pag 279) jaffermau illi –

“Quanto alla prescrizione estintiva, il suo corso comincia in principio a partire dal giorno in cui e` nato il diritto o l'azione che e` destinata ad estinguere.”

Izjed `l quddiem (para 393 bis, pag 306, op.cit.) ighidu hekk –

“La prescrizione estintiva in materia di diritti eventuali non decorre evidentemente se non dopo il verificarsi dell'evento che fa nascere il diritto rimasto finallora puramente eventuale”

5) Interruzzjoni

L-interruzzjoni tal-preskrizzjoni tkun tirrizulta jekk issir il-prova tal-presentata u notifika ta` att gudizzjarju kontra d-debitur (ara l-Art 2128 tal-Kap 16). Inkella ssir il-prova li bl-impiegba tieghu, id-debitur iqieghed lilu nnifsu go sitwazzjoni li tirrendi nkompatibbli l-posizzjoni guridika tieghu mal-presunzjoni kostitwenti l-bazi tal-preskrizzjoni.

6) L-Art 2153 tal-Kap 16

L-Art 2153 tal-Kap 16 jaqra :-

L-azzjoni ghall-hlas tal-hsarat mhux ikkagunati b`reat taqa` bi preskrizzjoni bl-eghluq ta` sentejn.

Hija l-fehma konsiderata tal-Qorti illi din id-disposizzjoni ma tistax tigi nvokata fil-procediment tal-lum.

Dan tal-lum huwa procediment sui generis volut minn lex specialis u cioe` il-Kap 386 tal-Ligijiet ta` Malta.

Ghal dan il-procediment ma tistax tigi estiza l-preskrizzjoni tas-sentejn skont id-disposizzjoni citata mill-intimati ghal zewg ragunijiet ewlenin.

Fl-ewwel lok, din tal-lum mhijiex azzjoni ghal hlas ghal hsarat komunement maghrufa bhala danni.

Minn qari akkurat tal-Art 316(2) tal-Kap 386, jirrizulta li jekk il-Qorti ssib li huma sodisfatti l-rekwiziti tas-subartikolu (1) allura dak li tista` taghmel il-Qorti huwa li tiddikjara li persuna li kienet direttur ... tkun responsabbli li taghmel pagament favur l-attiv tal-kumpannija kif il-qorti jidhrilha xieraq.

Id-disposizzjoni mhijiex titkellem dwar hlas ghal hsarat izda dwar pagament.

Il-kwistjoni mhijiex wahda ta` what`s in a name izda wara l-uzu talkelma pagament hemm hsieb car u manifest ta` x`ried il-Legislatur.

Huwa evidenti illi l-Legislatur ma riedx illi jkun hemm kwantifikazzjoni ta` danni skont il-parametri previsti mill-Kap 16 izda ried ihalli lill-Qorti diskrezzjoni illi anke fil-kaz li tkun sodisfatta li jirrizultaw ir-rekwiziti tas-subartikolu (1) tkun il-Qorti (a) li taghzel li jsir pagament u (b) jekk taghzel li jsir hekk, kemm ghandu jkun il-quantum.

Il-lex generalis tad-danni skont id-disposizzjonijiet tal-Kap 16 mhux hekk tahdem.

Ghalhekk dawh id-disposizzjonijiet mhux applikabbli ghall-kaz tallum.

Fit-tieni lok, abbazi tal-lex specialis dak kontemplat mill-Art 316 huwa reat kif fissret il-Qorti aktar kmieni. Anke ghalhekk l-Art 2153 tal-Kap 16 ma jistax jigi nvokat. Ghalhekk il-Qorti qeghda tichad l-eccezzjoni tal-preskrizzjoni skont l-Art 2153 tal-Kap 16.

7) L-Art 2156(f) tal-Kap 16

Il-Qorti sejra tibda in linea generali.

*Dwar il-preskrizzjoni skont l-Art 2156(f) inghad fil-kawza “**Saliba et vs Grech**” deciza mill-Qorti tal-Appell fis-7 ta` Frar 1949 illi –*

“... fejn fl-artikolu 2156(f) jinghad “ghall-hlas ta` kull kreditu iehor...” dik il-kelma “iehor” turi bic-car illi l-legislatur qieghed jikkommetti din id-disposizzjoni mas-sezzjonijiet precedenti, fejn huma ndikati krediti specifici w ghalhekk dak il-kreditu ghandu jkun eiusdem generis skond ir-regola komunement accettata fil-gurisprudenza.”

Huwa ghalhekk principju stabbilit fil-gurisprudenza li l-preskrizzjoni taht l-Artikolu 2156(f) hija soggetta ghal interpretazzjoni eiusdem generis.

Ghaldaqstant, il-kelma “kreditu” minhabba fir-restrizzjoni tar-regola ta` interpretazzjoni ta` eiusdem generis, tigbor fiha biss jeddijiet li huma talistess natura bhal jeddijiet l-ohra msemmija fl-Art 2156.

Dan ifisser li din il-preskrizzjoni tapplika ghal zewg ordni ta` krediti - il-prestazzjonijiet accessorji jkunu liema jkunu, u whud mill-prestazzjonijiet ewlenin jew principali. Ta` l-ewwel jirrigwardaw dejjem oggett li jkun flus, filwaqt li tat-tieni jirrigwardaw flus jew haga fungibbli bhal ma huma flus.

Nigu issa ghall-kaz tal-lum.

Il-common denominator tad-diversi sub-paragrafi tal-Art 2156 tal-Kap 16 hija r-relazzjoni ex contractu. Fil-fehma konsiderata tal-Qorti r-raison d`etre ta` l-azzjoni skont l-Art 316 tal-Kap 386 mhijiex naxxenti minn relazzjoni guridika ex contractu. Tutt`altro kif diga` rrilevat aktar kmieni.

Ghalhekk il-Qorti qeghda tichad l-eccezzjoni tal-preskrizzjoni skont l-Art 2156(f) tal-Kap 16.”

Il-Qorti tghid illi dan ir-ratio decidendi jghodd mutantis mutandis ghall-fini tal-eccezzjoni tal-preskrizzjoni li nghatat fil-kawza tal-lum.

Ghalhekk qeghda tichad l-eccezzjoni tal-preskrizzjoni skont l-Art 2156(f) tal-Kap 16.

b) Evalwazzjoni fil-mertu

Il-Qorti tqis illi r-raba` talba ghandha tkun milqugha limitatament fil-konfront ta` Paolo Buffa.

L-Art 312 tal-Kap 386 jaghti lill-Qorti **d-diskrezzjoni** (innota l-uzu tal-kelma *tista` mhux il-kelma ghandha*) li wara li tezamina l-imgieba ta` xi persuna li taqa` taht is-subartikolu (1), iggieghel lil dik il-persuna (a) li thallas lura, taghti lura jew taghti kont tal-flus jew proprjeta` jew xi parti minnha, b`imghax b`dik ir-rata lill-Qorti jidhrilha gust ; **jew** (b) li tikkontribwixxi dik is-somma lill-attiv tal-kumpanija bhala kumpens dwar l-ezercizzju hazin jew ksur ta` dmir kif il-Qorti jidhrilha gust.

Wara li qieset il-fatti kollha tal-kaz, in partikolari d-dokumenti esebiti, il-Qorti sejra tezercita d-diskrezzjoni taghha billi tapplika t-tieni rimedju kontra Paolo Buffa.

Ghal dak li huwa l-quantum tal-kontribuzzjoni, il-Qorti tghid illi, minkejja differenzi sostanzjali li rrizultaw fid-dokumenti, il-figura li tqis bhala l-aktar affidabbli u li tirrifletti apprezzament korrett tal-provi fuq bilanc ta` probabilitajiet hija li l-ishma kienu kollha 70% *paid up*. Ghalhekk ghar-rigward tal-4,445-il sehem (4675 – 230) illi rrizulta li ma kellhomx ikunu tar-rikorrenti, Paolo Buffa ghandu jaghmel kontribuzzjoni ta` 30% (ladarba 70% minnhom kienu *paid up*). Dan ifisser li ghandu jhallas is-somma ta` **€3.093.72** i.e. 4,445 x €2.32 x 30%

Provvediment

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tipprovdi billi :-

Tichad l-eccezzjoni ulterjuri tal-preskrizzjoni skont l-Art 2156(f) tal-Kap 16.

Tilqa` l-eccezzjonijiet limitatament u safejn dawn jirrigwardaw lill-intimati Nadine Buffa u Joseph de Conti Manduca.

Tichad l-eccezzjonijiet safejn dawn jirrigwardaw lill-intimat Paolo Buffa.

Tilqa` l-ewwel (1) u t-tielet (3) talbiet.

Tilqa` t-tieni (2) talba limitatament fil-konfront tal-intimat Paolo Buffa.

Tilqa` r-raba` (4) talba limitatament fil-konfront tal-intimat Paolo Buffa billi tordna lill-istess intimat Paolo Buffa sabiex a tenur tal-Art 312(2) tal-Kap 386 jikkontribwixxi l-ammont ta` tlitt elef u tlieta u disghin Ewro tnejn u sebghin centezmu (€3,093.72) lejn l-attiv tal-kumpannija intimata bhala kumpens ghall-ezercizzju hazin u ksur ta` dmirijiet tieghu.

Tordna lill-intimat Paolo Buffa sabiex ihallas l-ispejjez kollha ta` din il-kawza.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**