MALTA

QORTI CIVILI
PRIM'AWLA

ONOR. IMHALLEF
SILVIO MELI

LL.D.; Dip. Stud. Rel.; Dip. Can. Matr. Jur. & Proc.;
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Illum l-10 t'April, 2018.

Rikors Numru 976/2008 SM

Suncrest Hotels p.l.c.
(C – 8643)

vs.

Roger Degaetano (ID Nru. 374660 M)
Link School of English Limited
(C – 14849)

Il-Qorti,

1.0. Rat ir-rikors guramentat promotur datat it-30 ta' Settembru, 2008, li permezz tieghu s-socjeta` rikorrenti sintetikament esponew is-segwenti, (ara foll 1):

1.1. Illi fid-29 t'April, 2008, il-kontendenti ftehmu fuq il-provvista ta' servizzi t'akkomodazzjoni u servizzi relatati;

1.2. Illi waqt li beda jinghata dan is-servizz l-intimati irrifjutaw li jhallsu l-ammonti dovuti lis-socjeta` rikorrenti *ai termini* tal-kuntratt fuq riferit;

1.3. Illi permezz t'ittra datata l-1 t'Awwissu, 2008, is-socjeta` rikorrenti ikkancellat is-servizzi u l-gruppi li kien ghad baqa' li jasslu;

1.4. Illi ghalkemm interpellati biex ihallsu ghas-servizzi rezi u ghall-*"cancellation fees"*, l-intimati baqghu inadempjenti;

1.5. Illi minflok, l-intimat Degaetano idepozita €14,824.77 taht l-awtorita` ta' din il-qorti bil-kundizzjoni li jigu zbankati biss ghas-saldu ta' kull pretensjoni;

1.6. Illi l-intimati ghadhom debituri tas-socjeta` rikorrenti fl-ammont komplessiv t'erbghin elf disa' mija u hamsa u tmenin euro u sebgha u disghin centezmu, (€40,985.97), (ara foll 4), u ghall-imghaxijiet *ai termini* tal-artiklu 26A tal-Kodici tal-Kummerc, applikabbli mit-13 t'Awwissu, 2008, data tan-notifika tal-ittra ufficjali tat-8 t'Awwissu, 2008, (ara foll 6);

1.7. Illi ghaldaqstant aderiet din il-qorti biex l-intimati jghidu ghaliex din il-qorti m'ghandiex:

1.7.1. Tiddikjara li l-intimati solidalment jew min minnhom kienu inadempjenti fl-obbligi taghhom u b'hekk responsabbli li jhallsu lis-socjeta` rikorrenti l-ammont ta' €40,985.97, oltre l-imghaxijiet legali skont l-artiklu 26A tal-Kodici tal-Kummerc;

1.7.2. Tordna lil-intimati solidalment jew min minnhom ihallsu l-ammont indikat fil-paragrafu precedenti lis-socjeta` rikorrenti, oltre l-imghax hemm ukoll riferit;

1.7.3. Bl-ispejjez kif dedotti fl-istess rikors guramentat promotur;

2. Rat id-digriet taghha datat it-2 t'Ottubru, 2008, li permezz tieghu appuntat l-istess rikors promotur ghas-smigh ghall-udjenza hemm riferita, (ara foll 7);

3.0. Rat ir-risposta guramentata datata l-21 ta' Novembru, 2008, li permezz taghha l-intimati sintetikament irrispondew is-segwenti, (ara foll 11):,

3.1. Illi preliminarjament jissollevaw is-segwenti:

3.1.1. Illi s-socjeta` intimata, (proprjament imsejha *Link School of Languages Limited*, m'ghandha l-ebda relazzjoni guridika mas-socjeta` rikorrenti;

3.1.2. Illi ghalhekk ghandha tigi liberata mill-osservanza tal-gudizzju, bl-ispejjez;

3.2. Illi fil-mertu jissollevaw is-segwenti:

3.2.1. Illi t-talbiet tas-socjeta` rikorrenti huma infondati;

3.2.2. Illi l-ammont dovut lis-socjeta` rikorrenti jammonta biss ghal hmistax -il elf u sebghin euro u disghin centezmu, (€15,070.90);

3.2.3. Illi l-ammont indikat fil-paragrafu precedenti gie depozitat taht l-awtorita` tal-qorti wara li kien rifjutat mis-socjeta` rikorrenti, (ara foll 15);

3.2.4. Illi ghandhom jitnaqqsu l-ispejjez tac-cedola ta' depozitu *de quo*;

3.2.5. Illi m'ghandhomx ghalhekk ibatu spejjez;

4. Rat id-digriet taghha diversament preseduta datat it-18 ta' Jannar, 2011, li permezz tieghu hatret lill-assistent gudizzjarju hemm indikat, (ara foll 83);

5. Rat is-sentenza preliminari taghha datata l-20 ta' Marzu, 2012, (ara foll 122);

6. Rat id-digriet taghha datat it-28 ta' Novembru, 2014, li permezz tieghu, wara talba appozita tal-abbli rapprezentanti legali tal-intimati appuntat assistent gudizzjarju hemm indikata ghall-iskop hemm indikat, (ara foll 363);

7. Rat id-digriet taghha datat it-3 ta' Novembru, 2016, li permezz tieghu, wara talba appozita tal-abbli rapprezentanti legali tal-partijiet, awtorizzat lill-istess biex jittrattaw il-procedura *de quo* bil-modalita` u fit-termini hemm indikati, (ara foll 425), u kif sussegwentement estiza, (ara foll 435 u 436);

8. Semghet ix-xhieda prodotta;

9. Ezaminat id-dokumenti esebiti, inkluzi d-dikjarazzjonijiet guramentati ipprezentati *in atti*;

Ikkunsidrat:

10.0. Illi l-fatti li taw lok ghall-procedura odjerna jistghu jigu sintetikament elenkati bil-mod segwenti:

10.1. Illi permezz ta' skrittura datata d-29 t'April, 2008, is-socjeta` rikorrenti u r-rikorrenti Roger DeGaetano ghan-nom u in rapprezentanza tas-socjeta` *Link School of English* ftehmu fuq servizz t'akkomodazzjoni u servizzi ohra relatati (ar foll 21 u 152);

10.2. Illi jirrizulta li waqt l-esekuzzjoni tal-istess ftehim, il-pagamenti pattwiti dovuti lis-socjeta` rikorrenti twaqqfu;

10.3. Illi ghalhekk is-socjeta` rikorrenti qeghda hawn issosstni li l-intimati mhux qed jonoraw il-ftehim fuq riferit, u konsegwentement, qed tfittixhom ghall-ammont li hi ssosstni li hu minnhom dovut;

10.4. Illi ghalhekk, permezz t'ittra datata l-1 t'Awwissu, 2008, is-socjeta` rikorrenti infurmat lill-intimati li kienet anke ser tikkancella s-servizzi kollha b'effett minn tliet (3) ijiem mid-data tal-istess ittra, (ara foll 179);

10.5. Illi wara li kienu interpellati, l-intimati offrew is-somma ta' €14,824.77 lis-socjeta` rikorrenti li irrifjutatha, u minflok, ipprocediet bil-kawza odjerna;

10.6. Illi l-intimati jeccepixxu:

10.6.1. Zbalji fil-fatturi;

10.6.2. Tortijiet imputabbli lis-socjeta` rikorrenti fis-servizzi minnha rezi;

Ikkunsidrat:

11. Illi jigi sottolineat li fir-rigward tal-ewwel (1) eccezzjoni preliminari sollevata mill-intimati, diga inghatat sentenza datata l-20 ta' Marzu, 2012, (ara rispettivament foll 11 u 122);

12. Illi permezz tal-istess sentenza s-socjeta` intimata *Link School of English Limited* giet liberata mill-osservanza tal-gudizzju *stante* li m'ghandha l-ebda relazzjoni guridika mas-socjeta` rikorrenti;

Ikkunsidrat:

13.0. Illi dwar il-mertu jinghad sintetikament is-segwenti:

13.1. Illi s-socjeta` rikorrenti qed tirrikjama l-hlas ta' €40,985.97 ghal servizzi rezi u ghall-ammonti ohra dovuti ghall-kancellament t'ordnijiet;

13.2. Illi r-rikorrenti rimanenti min-naha tieghu jeccepixxi li l-ammont minnu dovut hu ta' €15,070.90, liema ammont gie depozitat il-qorti biex b'hekk lanqas m'hemm dovut imghax;

Ikkunsidrat:

14.0. Illi fir-rigward tat-tieni (2) eccezzjoni sollevata mill-intimat odjern (ara foll 11) jinghad sintetikament is-segwenti:

14.1. Illi hawn l-intimat jirreklama zbalji fil-fatturi ppreparati mir-rikorrenti;

14.2. Illi r-relazzjoni bejn il-kontendenti hi naxxenti mill-ftehim datat id-29 ta' Settembru, 2008, (ara foll 21 u 152);

14.3. Illi r-rati stabbiliti bejn il-kontendenti jirrizultaw elenkati f'dokument datat l-14 ta' Lulju, 2008, (ara foll 59);

14.4. Illi *nonostante* l-istess rati hekk stabbiliti, jirrizulta li l-istess socjeta` rikorrenti applikat is-segwenti rati differenti:

14.4.1. **Fattura a foll 64:**

14.4.1.i. Illi giet applikata rata zbaljata ta' €141.48 kuljum minflok dik ta' €27.95 kuljum ghal *triple room*;

14.4.1.ii. Illi giet applikata rata zbaljata ta' €33.77 kuljum ghal *twinroom*;

14.4.1.iii. Illi giet applikata rata zbaljata ta' €39.60 kuljum ghal *single room*;

14.4.1.iv. Illi allura fil-kumpless hawn ezaminat jirrizulta zball ta' **€1,522.00**;

14.4.2. **Fattura a foll 69:**

14.4.2.i. Illi giet applikata rata zbaljata ta €55.15 u €62.65 kuljum minflok ir-rata skont il-kuntratt ta' €39.60 kuljum ghal *single room*;

14.4.2.ii. Illi allura jirrizulta zbal ta' **€439.05**;

14.4.3. **Fattura a foll 70:**

14.4.3.i. Illi giet applikata rata zbaljata ta' €65.05 u €72.55 kuljum minflok ir-rata tal-kuntratt ta' €39.60 ghal *single room*;

14.4.3.ii. Illi allura jirrizulta zball ta' **€423.80**;

14.4.4. **Fattura a foll 71:**

14.4.4.i. Illi giet applikata rata zbaljata ta' €109.60 u €124.60 kuljum minflok ir-rata ta' €33.77 kuljum ghal *twin room*;

14.4.4.ii. Illi allura jirrizulta zball ta' **€723.84**;

14.4.5. **Kamra Rizervata ghas-*Supervisors* a foll 196:**

14.4.5.i. Illi giet applikata rata zbaljata *stante* li din kellha tinghata minghajr hlas, (ara foll 196);

14.5.5.ii. Illi dan jirrizulta wkoll mix-xhieda a foll 368B;

14.5. Illi tenut kont tas-suespost jirrizulta ghalhekk li hemm zball komplessiv ta' **€4,360.69** mill-ammont reklamat mis-socjeta` rikorrenti;

Ikkunsidrat:

15.0. Illi dwar il-***Cancellation Fees*** jinghad sintetikament is-segwenti:

15.1. Illi s-socjeta` rikorrenti issosstni li dawn huma kollha dovuti lilha mill-intimat;

15.2. Illi min-naha tieghu l-intimat jghid li dawn huma ingustifikati u allura mhux dovuti;

15.3. Illi effettivament jirrizulta pacifiku li s-socjeta` rikorrenti ikkancellat is-servizzi taghha lill-intimat;

15.4. Illi pero` jirrizulta li ghamlet dan ghaliex l-intimat naqas ihallas il-pendenzi tieghu skont il-klawsola numru 2d tal-ftehim fuq indikat, (ara foll 21 u 152);

15.5. Illi din il-klawsola tistabbilixxi s-segwenti:

> "... the client accepts that failure to accept the payments within the stipulated time will entitle the Hotel at its sole discretion and with immediate effect to suspend or cancel some or all services provided as per this agreement, as well as cancel all further groups governed by this agreement only having sent notice in writing to the client and to advise at least 3 days beforehand. The hotel would have no obligations, if on re applying for accommodation, rooms are not available";

15.6. Illi in vista tal-istess jinghad li meta s-socjeta` rikorrenti ikkancellat is-servizzi pattwiti wara li l-intimat ma kienx hallas fil-hin, hi kienet qed tagixxi skont il-klawsola fuq riprodotta meta permezz tal-ittra datata l-1 t'Awwissu, 2008, itterminat l-istess servizzi, (ara foll 179);

15.7. Illi fir-rigward tal-fattura a foll 66 l-intimat jghid li l-gruppi ma kienux ikkonfermati;

15.8. Illi f'dan ir-rigward issir referenza ghall-*e-mail* datata l-21 ta' Lulju, 2008, (ara foll 268), fejn jirrizulta li la kien hemm il-kancellament allura ovvjament kien hemm il-"*booking*";

15.9. Illi ghalhekk l-intimat m'ghandux ragun isostni t-tezi tieghu fir-rigward u konsegwentement, il-"*cancellation fee*" tapplika;

15.10. Illi jigi sottolineat li l-"*cancellation fees*" huma wkoll dovuti fuq il-grupp li kien ikkancellat f'inqas minn 14 -il gurnata minn meta jkollu jasal l-istess grupp;

15.11. Illi l-fatturi a foll 65, 66, 67 u 68 jirrigwardaw fatturi dwar gruppi kkancellati u ghalhekk, gialadarba s-socjeta` rikorrenti hassret il-kuntratt minhabba l-inadempjenza tal-intimat, il-*cancellation fee* hi dovuta lill-istess socjeta` rikorrenti;

Ikkunsidrat:

16.0. Illi dwar is-*Servizzi* jinghad sintetikament is-segwenti:

16.1. Illi l-intimat isosstni li s-servizzi rezi mis-socjeta` rikorrenti kienu rezi hazin jew addirittura ma kienux rezi ghal kollox, (ara foll 217 u 330);

16.2. Illi min-naha taghha s-socjeta` rikorrenti taghmel referenza ghal rapport tad-Dipartiment tat-Turizmu datat it-22 t'April, 2008, li wara spezzjoni fuq ilment ricevut ikkonkluda li l-ilment kien ingustifikat, (ara foll 336);

16.3. Illi ssir referenza ghall-klawsola 6 tal-ftehim tad-29 t'April, 2008, fuq riferit li tistipula s-segwenti, (ara foll 21 u 152):

> "... under no circumstance will the Hotel be liable for compensation unless the Hotel admits liability in writing in respect of any claim for any breach of this Agreement alleged to have been committed by the Hotel";

16.4. Illi konsegwentement jinghad li ghall-fini tal-kawza odjerna l-ammont rikjamat mis-socjeta` rikorrenti jibqa' lilha dovut *nonostante* l-allegazzjoni tal-intimat, li bl-ebda mod ma jista' arbitrarjament jirrifjuta li jonora l-obbligi tal-hlas minnu assunti;

Ikkunsidrat:

17.0. Illi finalment, fir-rigward tal-allegazzjoni tal-intimat rigwardanti l-**produzzjoni tardiva tal-fatturi**, jinghad sintetikament is-segwenti:

17.1. Illi f'dan ir-rigward issir referenza ghall-klawsola numru 2 tal-ftehim in dizamina, (ara foll 21 u 152), minn fejn jirrizulta li l-partijiet ftehmu li:

"a. The client shall pay the hotel by way of deposit on account 50% of the total amount due upon arrival of each group";

"b. Payments of all balances due shall be made three (3) days prior to departure of each group....";

"c. The client accepts that failure to effect the payments within the stipulated time will entitle the hotel at its sole discretion and with immediate effect to suspend or cancel some or all services provided as per this Agreement, as well as cancel all further groups governed by this Agreement only after having sent a notice in writing to the client and to advise at least 3 days beforehand";

17.2. Illi in vista tal-klawsola fuq riprodotta *in parte* jirrizulta li l-partijiet ftehmu dwar il-modalita` tal-pagament u fir-rigward ta' x'kellhom ikunu l-konsegwenzi tan-nuqqas ta' pagament;

17.3. Illi ghalhekk issir referenza ghall-ittra datata l-1 t'Awwissu, 2008, (ara foll 179), fejn l-intimat kien infurmat mis-socjeta` rikorrenti li din kienet qed tikkancella l-kuntratt:

> "...due to the failure on your part to abide by the agreed terms of payment, our company has no option other than to invoke Clause 2(d) of the Agreement...";

17.4. Illi in vista tal-premess, l-ilment tal-intimat meta jissottometti li l-fatturi kienu tardivi mhux gustifikat, (ara foll 438);

17.5. Illi l-ftehim dwar il-modalita` tal-pagament jirrizulta car, u allura, la darba r-rati kienu miftehma minn qabel, (ara foll 59), flimkien mal-modalita` tal-pagament, (ara foll 21), ma jirrizulta li hemm l-ebda gustifikazzjoni ghan-nuqqas tal-hlas reklamat;

Ikkunsidrat:

18. Illi in vista tas-suespost din il-qorti hi sodisfatta li s-socjeta` rikorrenti ipprovat il-kaz taghha skont il-ligi fil-limiti fuq indikati, u konsegwentement:

DECIDE:

18.1. Tilqa' t-talbiet tas-socjeta` rikorrenti limitatament kif stabbilit;

18.2. Tirrespingi l-eccezzjonijiet rimanenti tal-intimat;

18.3. Tiddikjara li l-intimat Roger Degaetano kien inadempjenti fl-obbligi tieghu fil-konfront tas-socjeta` rikorrenti;

18.4. Tiddikjara li l-istess intimat ghandu ghalhekk jaghti l-ammont ta' sitta u tletin elf sitt mija u hamsa u ghoxrin euro u tmienja u ghoxrin centezmu, (€36,625.28), lis-socjeta` rikorrenti;

18.5. Tikkundanna lill-istess intimat ihallas l-ammont hekk likwidat lis-socjeta` rikorrenti;

18.6. Bl-ispejjez kif dedotti fl-istess rikors guramentat promotur kontra l-intimat.

Onor. Imhallef Silvio Meli

DECIZJONI FINALI