



FIRST HALL OF CIVIL COURT

JUDGE

THE HON. TONI ABELA LL.D.

Today, the 30th day of May, 2018

Application number 767/18 TA

Rock Intention Malta Limited

vs

Ivonne Montealegre f'isimha proprio u ghan-nom u in rappreżentanza ta' Marketing Costa Rica S.A. socjeta` barranija b'ufficcju registrat 11, Centro Comercial Trejos Montealegre, Escazu, San Jose, Costa Rica.

The Court;

Having seen the application of applicant Company;

Having seen the answer of the respondent;

Having seen all the documents exhibited during the course of the hearing of this application;

Having taken in consideration all the evidence adduced by both parties;

Having heard counsels of both contenders to the application make their final submissions;

Now therefore the Court has made the following considerations.

The applicant Company is trying to restrain the respondent from directly or indirectly organizing any kind of poker tournament in Malta, including the Battle of Malta, since this would amount to direct competition with those organized by applicant Company.

The Court examined the consultancy services agreement of the 28th of February 2017. The agreement is entitled “**Consultative Services Agreement-Battle of Malta**”. Respondents were engaged to give their services in connection with the ‘event’, meaning “The Pokerlisting Battle of Malta Poker Tournament”. Respondents’ duties are clearly set out in the annex to the above mentioned agreement and these specifically relate to the ‘event’, meaning the poker tournament Battle of Malta.

During the hearing it transpired, that the concept of this event, known as Battle of Malta, was transferred to Casino Malta Ltd, being a Company belonging to Eden Leisure Group by virtue of a contract dated 9th February 2018. This contract was not exhibited . After this transfer, by means of an agreement dated

2nd April 2018, applicant Company agreed to render services to Casino Malta Ltd to market poker game activities consisting in the operation of the brand the Battle of Malta Poker Game.

During his deposition, representative of the applicant stated clearly, that the concept now belongs to Casino Malta Ltd.

From a close examination of what the applicant Company submits in its application, at no moment in time was there a reference, even minimally, to the fact, that this concept had been transferred by applicant Company, by virtue of the above mentioned agreement, to a third party. Indeed, when reading the application, one is given to understand that the concept still belonged to applicant Company, when it is not the case.

It was only in the answer of respondents and during the hearing of the 24th of May 2018 that certain facts came to light. This means that the substantive parts of the narrative of the application and demands, do not match the facts that surfaced during the hearing of the application. The demands of the applicant Company stand on the facts as stated in the application and not on those that emerged during the hearing. A legal prerequisite of any judicial act is that the facts that emerge during the case must substantially fit in the narrative and request of the person making the claim in the judicial act, in this case the application requesting the issue of prohibitory injunction. Furthermore, the Court

notices that the agreement of 28th February 2017 between the parties makes no provision as to what would be the effect of that agreement on the parties should the concept, the subject matter of that agreement, be transferred to third parties as in fact has happened.

Consequently, the request of the applicant Company, at least as regards the manner of how the facts were exposed **in the present application**, cannot be upheld.

In view of the above, having seen article 873(2) of Chapter 12 of the laws of Malta, the Court finds that the necessary legal requisites to accede to the requests of applicant Company do not exist.

Now therefore:

The Court, for the above mentioned reasons, rejects all applicant's requests to issue a prohibitory injunction against respondents and is hereby also revoking the temporary order of prohibition of the 10th of May 2018.

Expenses of the present procedure to be borne by applicant Company.

Given today, the 30th day of May, 2018.

Judge Toni Abela