QORTI CIVILI
(SEZZJONI TAL-KUMMERC)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum it-Tlieta 26 ta` Frar 2019

Kawza Nru. 9
Rikors Nru. 7/2018 JZM

Paul Cauchi (K.I. 299860M)

kontra

X

Il-Qorti :

Rat ir-rikors li kien prezentat fit-2 ta`Lulju 2018 li jaqra :–

Illi huwa direttur u azzjonista fis-socjeta` GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED li ghandha in-numru ta` registrazzjoni C-36865.

Illi is-socjeta` hija formata minn zewg azzjonisti u l-azzjonist l-iehor hija is-socjeta` GEOCON LIMITED – C 7891 bl-indirizz registrat

"Cor Jesu" Flat 3, Valley Road Msida.

Illi din l-ahhar socjeta (l-azzjonista) kienet rappresentata fuq is-socjeta` GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED tramite id-direttur ewlieni taghha u cioe Giovann Farrugia li kellu il-karta tal-identita bin-numru 628656M.

Illi dan Giovann Farrugia kien ukoll id-direttur mar-rikorrenti fuq is-socjeta GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED.

Dan kollu skond ma jirrizulta mill-kopja tal-Istatut taghha hawn annessa u markata bhala Dokument PC1.

Illi l-istess Giovann (John Baptist) Farrugia gie nieqes recentement u cioe aktar precisament fil-16 ta` Jannar 2018.

Illi ghadu hadd ma gie nominat floku mill-GEOCON LIMITED sabiex jirrapresentaha fuq il-bord tad-diretturi ta` GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED u kull meta l-esponenti kellem lill-presunti werrieta ta` Farrugia, dawn jirrisponduh fis-sens li ghadhom ma iddecidewx jekk humiex ser jaccettaw l-eredita` tieghu.

Illi skond l-istatut tas-socjeta GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED u aktar precisament taht l-intestatura "BOARD OF DIRECTORS" hemm miftiehem illi "The management and administration of the company are entrusted to a Board of Directors, unless and until otherwise determined by the Company in General meeting, composed of two directors."

Illi sa fejn jaf l-esponenti, u dan ilu jokkupa il-kariga ta` direttur minn meta giet registrata is-socjeta`, il-kumpanija qatt ma biddlet dak hawn fuq miftiehem.

Illi, inoltre, skond l-istess statut tal-istess socjeta` u aktar precisament taht l-intestatura "REPRESENTATION OF THE COMPANY" hemm miftiehem illi "The legal representation of the Company shall be vested in all the Directors of the Company acting jointly together".

Illi ghalhekk sabiex l-istess socjeta` tkun marbuta legalment, validament, ma` terzi persuni, hemm il-htiega tal-firma ta` zewg diretturi – direttur uniku ma jistax jorbot validament lis-socjeta`.

Illi meta l-esponenti avvicina lill-awditur tal-kumpanija sabiex jiffinalizza l-audited accounts tal-kumpanija sabiex jkunu konformi mal-ligi kemm dik statutorja tal-kumpaniji kif ukoll mad-dipartiment tat-Taxxi Interni, l-awditur talab assigurazzjoni minghand is-socjeta` dwar il-hlas ghas-servizzi professjonali tieghu.

Illi l-esponenti jixtieq jissodisfa lill-awditur u jaghtih dan is-serhan tal-mohh izda, wahdu, ma jistax jorbot lis-socjeta`, ghax kif intqal fuq, din hija rappresentata legalment minn zewg diretturi u wiehed mill-imsemmija diretturi jinsab mejjet.

Illi ghalhekk l-esponenti ma ghandux triq ohra ghajr li jadixxi din il-Qorti ghad-direzzjoni taghha.

Illi l-esponenti lest li jikkonferma bil-gurament is-suepost, jekk hekk jigi ordnat mill-Qorti.

Ghaldaqstant ai termini tal-artiklu 132 tal-Kap. 386 tal-Ligijiet ta` Malta l-esponenti, fil-kwalita tieghu ta` uniku direttur tas-socjeta GENERAL ENGINEERING & CONSTRUCTION [GEOCON] INTERNATIONAL LIMITED jitlob bir-rispett illi din il-Qorti joghgobha tordna iz-zamma tal-laqgha tal-kumpanija u tawtorizza lill-esponenti sabiex, wahdu, jiffirma u allura jorbot lill-kumpanija sabiex jigi assigurat illi sejra thallas id-drittijiet professjonali tal-awditur ghall-iskopijiet li huma necessarji u cioe sabiex jithallas l-istess awditur wara li jlesti l-audited accounts tal-kumpanija – kollox isir taht dawk id-direttivi li din il-Qorti joghgobha timponi.

Rat id-dokument li r-rikorrent ipprezenta mar-rikors promotur.

Rat id-digriet taghha tad-9 ta` Lulju 2018, fejn *inter alia* kienet ordnata n-notifika tar-rikors lil Geocon Limited.

Rat illi Geocon Limited, ghalkemm notifikata ghall-finijiet u effetti kollha tal-ligi, ma pprezentatx risposta.

Semghet lir-rikorrent bil-gurament fl-udejnza li saret ilbierah.

Rat id-digriet li nghata l-bierah fejn il-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

Ikkunsidrat :

<u>L-Art 132(1) tal-Kap 386</u> li abbazi tieghu r-rikorrent ressaq l-istanza tal-lum jaqra hekk :

Jekk ghal xi raguni ma jkunx prattikabbli li tissejjah laqgha ta` kumpannija bil-mod li bih jistghu jissejhu laqghat tal-kumpannija, jew li jitmexxew il-laqghat ta' dik il-kumpannija bil-mod stabbilit bl-istatut jew b'dan l-Att, il-qorti tista', jew minn rajha jew fuq it-talba ta' xi wahda mill-partijiet fil-procedimenti waqt dawk il-procedimenti jew, fin-nuqqas ta' xi procedimenti, fuq rikors ta' xi direttur tal-kumpannija jew ta' xi membru tal-kumpannija li jkollu dritt jivvota fil-laqgha, tordna li laqgha tal-kumpannija tissejjah, tinzamm u titmexxa b'dak il-mod li l-qorti jidhrilha xieraq, u meta jinghata xi ordni bhal dan, tista' taghti dawk id-direttivi ancillari jew konsegwenzjali li jidhrilha xieraq, inkluza d-direttiva illi membru wiehed tal-kumpannija prezenti personalment jew bi prokura jitqies li jikkostitwixxi laqgha.

Ikkunsidrat :

Fil-Pag 1045 ta` **<u>Principles of Maltese Company Law</u>** (MUP – 2007) **<u>Andrew Muscat</u>** ighid hekk b`riferenza ghall-Art 132(1) tal-Kap 386 –

General meetings may also, in particular circumstances, be convened, held and conducted as directed by the Civil Court. The court may exercise this power if, for any reason, it is impracticable (i) to call a meeting of a company in any manner in which meetings of the company may be called or (ii) to conduct the meeting in the manner prescribed by the articles or the Companies Act. ***The court should be entitled to direct that a meeting be held when it is <u>impossible</u> to hold a general meeting because of the persistent absence of a quorum at general meetings*** (enfasi u sottolinear tal-qorti)

…

Indeed the legislative provision is designed to empower the court to ensure that meetings are held but not to alter the result that is likely to follow from that meeting.

Where however the provisions of the articles are cynically exploited by some shareholders to block an effective meeting, the court should be able to exercise its powers. The court may exercise its power

…

on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting. The court may order that the meeting be called, held and conducted in such manner as it thinks fit, and it may, whenever any such order is made, give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy is to be deemed to constitute a meeting.

L-iskop ta` disposizzjoni ta` din ix-xorta huwa l-ahjar interess tal-kumpannija.

Ikkunsidrat :

Il-Qorti semghet lir-rikorrent jixhed *viva voce.*

Fehmet it-thassib tieghu.

Rat il-*Memorandum* u l-*Articles of Association* tal-kumpannija de qua.

Tifhem illi **<u>wahdu</u>** r-rikorrent bhala azzjonista ma jista` jaghmel xejn biex icaqlaq l-*status quo* li nholoq bil-mewt tal-persuna li kienet tiehu hsieb l-interess tal-azzjonista l-ohra, li rrizulta li ma kienet qatt sostitwita.

Tqis ukoll li l-azzjonista l-ohra ghazlet li tippartecipax fil-procediment tal-lum.

Tapprezza l-animu li wassal lir-rikorrent sabiex jipprezenta r-rikors odjern mhux biss sabiex ihares l-interess tieghu izda anke dak tal-kumpannija de qua.

Ikkunsidrat :

Thares mnejn thares, il-mewt ta` persuna hija tragika bhala fatt.

Hija tragika l-aktar ghall-familjari gheziez ta` dik il-persuna.

Huwa mill-aktar evidenti li l-Qorti qeghda tirrestringi l-kuntest ta` dan kollu ghall-persuna ta` Giovanni sive` John-Baptist Farrugia.

Dan premess, il-mewt ta` persuna tista` tincidi fuq dawk il-persuni kollha (mhux familjari) li jista` jkollhom negozju mal-mejjet.

Fil-kaz tal-lum, il-persuna koncernata hija r-rikorrent.

Premess dan kollu, il-Qorti tibqa` skoncernata bil-fatt illi min ghandu interess fis-socjeta` Geocom Limited jibqa` qisu qatt ma kien xejn minkejja kull opportunita` li nghata sabiex ighidu tieghu.

Ikkunsidrat :

Il-ligi la tista` u lanqas m`ghandha tippremja lil min ma jiehux hsieb ta` hwejgu jew addirittura joqghod inattiv dment li jehu hsieb jew addiritturta jhallas haddiehor.

Ghal din il-Qorti dan mhuwiex accettabbli.

<u>Decide</u>

Wara li hadet kont ta` kollox, din il-Qorti hija tal-fehma li t-talba tar-rikorrent hija gustifikata u timmerita l-konsiderazzjoni shiha taghha.

Bl-applikazzjoni tal-Art 132(1) tal-Kap 386 tal-Ligijiet ta` Malta, qeghda taqta` u tiddeciedi dan il-procediment billi tilqa` t-talba tar-rikorrent kif dedotta.

Ghalhekk qeghda tordna li nhar il-Hamis 28 ta` Marzu 2019 fil-11.00 a.m. issir laqgha generali tal-azzjonisti tal-kumpannija de qua.

Il-laqgha generali ghandha ssir fit-tieni sular tal-bini tal-Qrati tal-Gustizzja, Valletta.

Fl-eventwalita` li r-rikorrent ikun l-uniku azzjonista prezenti ghal-laqgha, allura qeghda tawtorizza lir-rikorrent sabiex wahdu jiffirma u jorbot lill-kumpannija de qua unikament ghall-fini tal-hlas tal-awdituri tal-kumpannija de qua mill-assi tal-kumpannija de qua.

Jekk jirrizulta li ma jkunx hemm assi bizzejjed tal-kumpannija de qua mnejn jithallsu l-awdituri, allura l-bilanc ta` dak dovut lill-awdituri ghandu jithallas mir-rikorrent de proprio.

Tordna lir-rikorrent sabiex ihallas l-ispejjez kollha ta` din il-kawza.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur