QORTI ĊIVILI
PRIM'AWLA

ONOR. IMĦALLEF
ROBERT G. MANGION

ILLUM IT-30 TA' MEJJU 2019

Kawza Numru: 8

Rik. Gur. 234/2016 RGM

Nicholas Spiteri (K.I. 402477M)

vs.

GeoSYS Limited (C-52196)

Il-Qorti:

Rat ir-**rikors guramentat ta' Nicholas Spiteri** prezentat fit-22 ta' Marzu, 2016 li permezz tieghu ippremetta u talab is-segwenti:

1. "Illi l-esponent kien impjegat mas-socjeta` intimata GeoSYS Limited, gja Integrated Business Systems Ltd, permezz ta' kuntratt datat 3 ta' Ottubru 2003 (Dok A);

2. Illi tul dan il-perjodu ta' mpieg, is-socjeta` intimata waqghet lura fil-hlas tal-paga dovuta lill-esponent u sahansitra anke sselfet somma flus minghand l-esponent minhabba problemi finanzjarji illi ilha taffaccja;

3. Illi bi skrittura tat-8 ta' Jannar 2015 (Dok B), is-socjeta` intimata rrikonoxxiet dan kollu, ossia illi l-esponent ghandu jithallas is-somma ta' wiehed u sebghin elf ewro (€71,000) f'pagi b'lura u s-somma ta' ghoxrin elf u sitt mitt ewro (€20,600) rapprezentanti self;

4. Illi ai termini tal-istess skrittura, is-socjeta` intimata kellha thallas is-somma ta' wiehed u sebghin elf ewro (€71,000) rapprezentanti f'arretrati ta' paga, b'rati mensili sa minn Jannar 2015, u dan mal-paga dovuta kull xahar;

5. Illi sal-lum ghadu ma sar ebda hlas u s-socjeta` intimata ilha ghal dawn l-ahhar sena u tliet xhur tikser il-ftehim u l-promessa minnha maghmula;

6. Illi konsegwentement, bil-ksur tas-socjeta` intimata tal-obbligi minnha assunti, huwa legittimu da parti tal-esponenti illi jitlob illi s-socjeta` intimata titlef il-beneficcju tat-terminu u tkun obbligata thallas l-ammont minnha dovut kollu f'salt;

7. Illi minhabba nuqqas ta' hlas tal-paga anke fis-sena 2015, l-esponent ma kellux alternattiva ghajr li jirrizenja anke mill-impjieg tieghu kmieni fis-sena 2015, b'dan illi l-hlas tal-arretrati fl-ammont ta' wiehed u sebghin elf ewro (€71,000) ma baqghux issa marbuta mal-hlas tas-salarju li in ogni caso, is-socjeta` intimata kienet fi ksur tal-kuntratt taghha mal-esponent dwaru wkoll;

8. Illi minhabba s-sitwazzjoni finanzjarja prekarja tas-socjeta` intimata, huwa wkoll opportun illi s-socjeta` intimata tigi wkoll ordnata thallas lura s-self imsemmi fl-imsemmija skrittura f'daqqa.

9. Illi interpellata sabiex taghmel dan permezz ta' ittra ufficjali tal-5 ta' Marzu 2015, is-socjeta` intimata naqqset milli tonora l-obbligi taghha u ghelhekk kellha ssir din il-kawza.

Ghaldaqstant, ghar-ragunijiet hawn fuq esposti, din l-Onorabbli Qorti qed tintalab:

(a) Tiddikjara illi s-socjeta` intimata ma hallset xejn min dak minnha promess skont il-ftehim tat-8 ta' Jannar 2015, u konsegwentement tilfet kull vantagg tal-beneficcju tat-terminu li seta' kellha.

(b) Tordna lis-socjeta` intimata ghalhekk thallas lir-rikorrent l-ammont ta' wiehed u sebghin elf ewro (€71,000) rapprezentanti arretrati ta' paga dovuta kif fuq premess.

(c) Tiddikjara illi jimmertita, ghar-ragunijiet espressi fil-premessi, illi s-socjeta` intimata tigi kkundannata thallas issa wkoll is-somma ta' ghoxrin elf u sitt mitt ewro (€20,600) lir-rikorrent rapprezentanti hlas lura ta' flus mislufa.

(d) Tordna lis-socjeta` intimata thallas ukoll lir-rikorrent is-somma ta' ghoxrin elf u sitt mitt ewro (€20,600) ai termini tat-tielet talba hawn fuq maghmula, bl-imghax ta' 4% skont l-iskrittura tat-8 ta' Jannar 2015 mill-istess data sad-data tal-pagament effettiv.

Bl-ispejjez kollha nkluz dawk tal-ittra ufficjali tal-5 ta' Marzu 2015 u tal-Mandat ta' Sekwestru kawtelatorju pprezentati kontestwalment u bl-imghax legali fuq is-somma ta' wiehed u sebghin elf ewro (€71,000) mid-data tal-ittra ufficjali msemmija sad-data tal-hlas effettiv, kontra s-socjeta` intimata li hija minn issa ngunta ghas-subizzjoni.

Rat **ir-risposta guramentata tal-kumpanija intimata GeoSYS Limited** prezentata d-9 ta' Mejju, 2016 fejn jinghad dan li gej:

Id-Difiza

1. L-obbligazzjoni tal-kumpanija GeoSYS Limited (C 52196) skont il-ftehim ipprezentat bhala Dok "B" mar-Rikors Guramentat qatt ma ezistew peress illi kienu soggetti ghall-kundizzjoni sospensiva li l-attur jigi mpegat mal-GeoSYS Limited (C 52196).

2. Minghajr pregudizzju ghas-suespost, l-azzjoni tal-attur huwa prematur peress illi l-istess attur kien dahal fi ftehim mal-kumpanija intimata fit-8 ta' Jannar 2015 (ara dokument "B" anness mar-rikors guramentat), sabiex jaghti l-istess kumpanija l-beneficcju taz-zmien.

3. Minghajr pregudizzju ghas-suespost, l-ammont globali dovut taht l-iskrittura privata msemmija huwa maqsumin fi tnejn, cioe` l-ammont ta' €71,000 (wiehed u sebghin elf Euro) li ghandu jithallas bir-rata ta' €1,000 fix-xahar ghal 71 xhar mid-data tal-ftehim; u l-ammont ta' €26,000 (sitta u ghoxrin elf Ewro) li ghandu jithallas fi zmien erba' snin mid-data tal-ftehim. Illum, ghaddew biss 16 -il xahar mid-data tal-ftehim.

4. Minghajr pregudizzju ghas-suespost, il-kundizzjonijiet ghal kif isiru l-pagamenti tal-€71,000 (wiehed u sebghin elf Ewro) u s-€26,000 (sitta u ghoxrin elf Ewro) huma separati u allura l-beneficju taz-zmien ghandu jitqies separatament.

5. Salv eccezzjonijiet ulterjuri.

Il-Fatti

6. Fir-rigward ta’ l-ewwel paragrafu tar-rikors guramentat, is-socjeta` intimata ticcara illi l-kumpaniji Integrated Business Systems Limited (C 18440) (“**IBS**”) u GeoSYS Limited (C 52196) (“**Geosys**”) huma zewg kumpaniji separati. L-attur kien impjegat mal-kumpanija IBS.

7. Fir-rigward tat-tieni paragrafu, l-kumpanija intimata ticcara illi l-attur qatt ma kien impjegat taghha u qatt ma kellha obbligazzjonijiet ta’ hlas ta’ paga lejn l-istess attur. Ticcara wkoll illi qatt ma selfet flus mill-attur.

8. Fir-rigward tat-tielet paragrafu, l-kumpanija intimata tirrispondi illi huwa minnu li kienet qablet biex tiehu l-obbligi tal-hlas tal-pagi u ammont misluf minn IBS (kif jidher f’Dok “B” anness mar-Rikors Guramentat) izda dan il-ftehim kien soggett ghall-kondizzjoni sospensiva li l-attur jigi mpjegat ma’ Geosys.

9. L-attur ma kienx accetta l-impjieg mal-Geosys.

10. Fir-rigward tal-paragrafi numru erbgha u hamsa, l-kumpanija intimata tirrispondi illi l-obbligazzjonijiet taghha ai termini ta’ l-iskrittura msemmija qatt ma dahlu fis-sehh minhabba l-kundizzjoni sospensiva kif spjegat.

11. Fir-rigward tas-sitt paragrafu, l-kumpanija intimata tirrispondi illi ma ghandhiex obbligi lejn l-attur u anki jekk hemm, ma hemmx ragunijiet validi ghalfejn ghandu jintilef il-beneficcju taz-zmien.

12. Fir-rigward tas-seba’ paragrafu, l-kumpanija intimata ticcara illi l-attur kien telaq mill-impjieg tieghu mal-IBS. Geosys ticcara wkoll illi qatt ma kien hemm kuntratt t’impjieg bejnha u bejn l-attur.

13. Fir-rigward tal-fatti esposti fit-tmien paragrafu, l-kumpanija intimata ssostni illi minhabba li ma hemmx hlasijiet dovuti minnha, ma hemmx lok li jsir studju fuq il-likwidita` taghha u anki li kieku, ghal grazzja ta’ l-argument, kien hemm ammonti dovuti minnha, jrid jigi ppruvat jekk is-sitwazzjoni finanzjarja tal-Geosys hijiex, fil-fatt, prekarja.

14. Fir-rigward tad-disa’ paragrafu, l-kumpanija intimata ticcara illi l-obbligi taghha kienu jidhlu fis-sehh biss kemm -il darba l-attur kien jigi mpjegat maghha peress illi l-ftehim kien soggett ghall-kondizzjoni sospensiva.

B’rizerva ghal kull azzjoni kontra l-attur."

Rat in-nota kongunta tal-partijiet prezentata fl-udjenza tal-5 ta' Frar 2019 li permezz taghha pprezentaw l-iskrittura ta' transazzjoni ta' bejniethom li taqra kif gej:-

" Agreement entered into between:

Nicholas Spiteri, I.D. No 402477(M) of 6, Alley 2 Main Street, Siggiewi

and

GeoSys Ltd (C52196) and Integrated business Systems (‘IBS’) Ltd as duly represented by **Mr Timothy Camilleri**, ID No. 647563(M)

Whereas:

- GeoSys Limited and Nicholas Spiteri enetered into a private writing on 8 January 2015, in terms of which the amount of €71,000 and €20,600 respectively were recognized as due to Nicholas Spiteri over a period of time.

- That following the private writing, a dispute between the parties arose.

- That the dispute led Nicholas Spiteri to file a Garnishee Order (464/2016) against same GeoSys Ltd for the sum of the amounts shown above and simultaneously institute proceedings against GeoSys Ltd (234/16JPG).

- That the parties are willing to settle their dispute and have thus agreed to the following:

a) GeoSys Ltd is presently paying Nicholas Spiteri, who accepts, the sum of twenty thousand six hundred Euros (€20,600), paid by cheque No. 1027, which payment is being made by way of re-imbursement of the same said amount lent to GeoSys Ltd by Nicholas Spiteri, which amount forms a part of the claim put forward in the mentioned legal proceedings. In this respect Nicholas spiteri waives any right to legal interests that may have occurred on the same said sum.

b) The parties agree that upon the signing of this agreement, Nicholas Spiteri will provide GeoSys Ltd with a signed counter-warrant so that the above mentioned garnishee order is ceded and withdrawn. The parties further agree that the law suit will however remain pending until final payment is made and all dues are settled to the satisfaction of same Nicholas Spiteri.

c) Geosys Ltd will pay to Nicholas Spiteri, as from the 1st December 2016 and on every subsequent first day of each consecutive calendar month, the amount of one thousand five hundred Euros (€1500) by way of payment of the remaining balance of seventy one thousand Euros (€71,000), subject to a 6% interest charge. The agreed legal interest shall accrue from the 1st April 2016, and to this effect, should the payments be regularly made as above agreed, appearer Nicholas Spiteri is hereby waiving his right to interests on the said sum for any period prior to the said date. The parties further agree that the legal interests will be calculated together with the last payment due if GeoSys Limited honors its obligations herein undertaken or upon forced payment in terms of the clauses hereunder agreed to.

d) The parties hereby agree that should Geosys Ltd be in default of payment due in terms of (c) above for two consecutive months or for an amount which is equivalent to two full months' repayment, the Geosys Limited will lose the benefit of time and the whole remaining balance shall become due to Nicholas Spiteri at once, inclusive of any accumulated and accrued legal interest agreed to in this writing. Upon such occurrence Nicholas Spiteri will be entitled to ask the Court to re-appoint the pending case and obtain judgement.

e) Furthermore the parties agree that should Geosys Ltd be in default of payment as stipulated in clause (c) above, the GeoSys Ltd shall unconditionally renounce to the pleas filed in the pending case 234/16JPG and register an admission on the remaining balance due to Nicholas spiteri at that time.

f) The parties further agree that Integrated business Systems ('IBS') Limited, as duly represented on this agreement by the same Timothy Camilleri, is presently involved in pending litigation with third parties. To this effect, IBS Limited hereby declares that should it receive any payment it claims is due to it, then such payment or part thereof will be used to settle any amounts left outstanding or any part thereof under this agreement at once.

g) The parties agree that upon signing of this agreement, GeoSys Ltd will re-imburse unto Nicholas Spiteri all the legal costs relative to the issuing of the Garnishee Order, whereas the counter-warrant will be issued at the expense of GeoSys Ltd.

This agreement shall be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts (including fax copies) were on a single copy of this Agreement.

Upon cessation or decision in respect of the pending case as the case may be,GeoSys Ltd shall reimburse all legal and judicial costs incurred by Nicholas Spiteri.

The parties declare to have read and accepted the terms of this agreement.

Date: 2 November 2016

(ft) Nicholas Spiteri (ft) TimothyCamilleri o.b.o. GeoSys Ltd and IBS Ltd."

Rat il-verbal tal-udjenza tal-5 ta' Frar 2019.

Rat illi l-kawza ma gietx ceduta sal-5 ta' Mejju 2019.

Rat li l-kawza thalliet ghallum ghas-sentenza in difett ta' ostakolu.

DECIDE.

Ghal dawn il-motivi l-Qorti taqta u tiddeciedi l-kawza billi prevja li tiddisponi mill-eccezzjonijiet tas-socjeta' konvenuta konformement mal-ftehim milhuq bejn il-partijiet:-

1. Tilqa' t-talbiet attrici fit-termini tal-istipulazzjonijiet mifthema bejn il-partijiet kif fuq riprodotti.

Bl-ispejjez kontra s-socjeta' konvenuta.

Onor. Robert G. Mangion
Imhallef
30 ta' Mejju 2019

Lydia Ellul
Deputat Registratur
30 ta' Mejju 2019