QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum it-Tnejn 1 ta` Lulju 2019

Kawza Nru. 1
Rik. Gur. Nru. 564/17 JZM

L-Avukat Dr Malcolm Mifsud [405168(M)] u L-Avukat Dr Cedric Mifsud [196979(M)]

kontra

OpusTrust Sp. z.o.o ta` Centrum Zielna, budynek B ul. Zielna, 37, 00-108, Warsawa, Polska,
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u

b`digriet tas-26 ta` Gunju 2018 gew nominati l-Av Dr Josette Sultana LL.D. u l-Prokuratur Legali Doreen Aquilina biex jirraprezentaw lis-socjeta` intimata

Il-Qorti :

I. **Preliminari**

Rat ir-rikors guramentat prezentat fit-23 ta` Gunju 2017 li jaqra hekk :–

1. Illi r-rikorrenti joffru servizzi professjonali ta` natura legali lis-socjeta` intimata Opus Trust Sp. z.o.o, socjeta` Pollakka ta` Centrum Zielna, budynek B ul. Zielna, 37, 00-108, Warsawa, Polska u dana ai termini tal-Letter of Engagement datata nhar it-tmintax (18) ta` Settembru elfejn u tnax (2012) mibghuta mir-rikorrenti u ffirmata mis-socjeta` intimata (hawn annessa u mmarkata bhala Dok A) u ai termini ta` dan il-ftehim ir-rikorrenti kellhom jithallsu l-ammont ta` sebgha mija u hamsin Ewro (€750) fix-xahar bhala retainer fee u ma dan l-ammont kellu jizdied il-VAT;

2. Illi ir-rikorrenti hargu diversi fatturi rapprezentanti dawn l-imsemmijin servizzi professjonali li ma gewx ikkontestati mis-socjeta` intimati u li izda sal-gurnata tal-lum ghadhom ma gewx mhallsa (hawn annessi u mmarkati bhala Dok B – Dok N);

3. Illi komplessivament l-ammonti tal-imsemmijin fatturi li jirriflettu is-servizzi legali moghtija lis-socjeta` intimata mir-rikorrenti u li ghadhom pendenti huwa ta` dsatax-il elf tliet mija u tnejn u sebghin Ewro (€19,372);

4. Illi minkejja l-fatt illi ir-rikorrenti interpellaw diversi drabi lis-socjeta` intimata sabiex tersaq ghal hlas tal-fatturi relattivi, hija baqghet inadempjenti u ghaldaqstant is-socjeta` intimata hija debitrici tar-rikorrenti fis-somma ta` dsatax-il elf tliet mija u tnejn u sebghin Ewro (€19,372);

5. Illi l-imsemmi ammont ta` dsatax-il elf tliet mija u tnejn u sebghin Ewro (€19,372) huwa dejn cert, likwidu u dovut u li ma jikkostitwix fl-ezekuzzjoni ta` xi fatt, mis-socjeta` intimata lir-rikorrenti u ghalhekk fil-fehma tar-rikorrenti jikkonkorru l-elementi preskritti mill-Artikolu 167 et sequitur tal-Kap 12 tal-Ligijiet ta` Malta, sabiex din il-kawza tigi deciza bid-dispensa tas-smigh, billi fl-umli

fehma tal-istess rikorrenti, is-socjeta` intimata ma ghandhiex eccezzjonijiet validi xi tressaq kontra t-talba ghall-hlas tal-imsemmi ammont;

Tghid ghalhekk is-socjeta` intimata ghaliex dina l-Onorabbli Qorti ma ghandhiex :-

1. Taqta` l-kawza bid-dispensa tas-smigh ai termini tal-Artikoli 167 et sequitur tal- Kap 12 tal-Ligijiet ta` Malta;

2. Tiddikjara illi s-socjeta` intimata hija debitrici tar-rikorrenti ghas-somma ta` dsatax-il elf tliet mija u tnejn u sebghin Ewro (€19,372) rapprezentanti diversi servizzi professjonali ta` natura legali illi ir-rikorrenti offrew lis-socjeta` intimata;

3. Tikkundanna lis-socjeta` intimata Opus Trust Sp z.o.o. sabiex thallas lir-rikorrenti is-somma ta` dsatax-il elf tliet mija u tnejn u sebghin Ewro (€19,372) ghar-ragunijiet kif fuq dettaljati;

Bl-ispejjez u l-imghaxijiet kontra s-socjeta` intimata li tibqa` minn issa ngunta ghas-subizzjoni.

Rat il-lista tax-xhieda u l-elenku ta` dokumenti.

Rat id-digriet li tat din il-Qorti diversament presjeduta fis-26 ta` Gunju 2018 fejn l-Av. Dr. Josette Sultana u l-P.L. Doreen Aquilina kienu mahtura bhala kuraturi deputati sabiex jirrapprezentaw lill-kumpannija konvenuta.

Rat ir-risposta li pprezentaw il-kuraturi deputati fit-22 ta` Novembru 2018 li taqra hekk :-

i. Illi f`dan l-istadju l-esponenti mhumiex edotti mill-fatti u ghalhekk jirriservaw li jipprezentaw risposta ulterjuri fi stadju ulterjuri tal-proceduri jekk ikun il-kaz;

ii. Illi minghajr pregudizzju ghal premess ghandha tinghata prova ta` notifika tal-konvenuti stante li ghandhom is-sede f`Polonja li huwa pajjiz fl-Unjoni Ewropea;

iii. Salv eccezzjonijiet ulterjuri.

Rat il-lista tax-xhieda.

Rat il-verbal tal-udjenza tal-10 ta` Dicembru 2018 senjatament il-parti fejn il-Qorti ddikjarat li kienet sejra tkompli tqis il-kawza bil-procedura ordinarja (mhux bil-procedura sommarja specjali), u l-parti fejn kienet mahtura l-Assistent Gudizzjarju, Av. Dr. Anna Mifsud Bonnici, sabiex tigbor il-provi.

Rat il-provi li ngabru mill-Assistent Gudizzjarju, kif ukoll dawk il-provi l-ohra li jaghmlu parti mill-atti.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti l-ohra.

II. Provi

L-attur Av. Dr. Malcolm Mifsud xehed illi huwa l-founding partner ta` Mifsud & Mifsud Advocates u direttur ta` Aegis Corporate Services. Ir-relazzjoni mas-socjeta` konvenuta bdiet fil-bidu tal-2013, meta huwa kien mar Warsavja fl-ufficcju taghha. Is-socjeta` konvenuta bdiet tuza l-ufficju legali taghhom sabiex jaghtuhom pariri legali u jigu nkorporati kumpanniji u socjetajiet ohra ghal klijenti tas-socjeta` konvenuta. Fl-2014 u 2015, huma bdew jindunaw li s-socjeta` konvenuta, li kellha ufficcju f`Malta, kienet qed iddum biex thallas il-fatturi tal-prestazzjonijiet taghhom.

Kompla jixhed illi fi Frar 2016, huwa kien mar Warsavja u kien iltaqa ma` Agnieszka Rzepecka, li kienet assiguratu li kienet se tibaghat programm ta` kif kienu se jithallsu l-kontijiet taghhom li kienu pendenti. Qaltlu li kienet konxja li kien hemm kontijiet pendenti u li riedet thallashom.

L-attur Av. Dr. Cedric Mifsud xehed illi huwa wiehed mill-partners ta` Mifsud & Mifsud Advocates u n-natura tas-servizzi li huma pprestaw lis-socjeta` konvenuta kienu ta` natura legali partikolarment dwar inkorporazzjoni ta` kumpanniji u socjetajiet f`Malta. Kienu waslu fi ftehim li s-socjeta` konvenuta thallashom ammont fiss (*retainer*) fix-xahar ta` seba` mija u hamsin Ewro (€750), skont engagement letter datata 17 ta` Settembru 2012 (Dok A).

Stqarr illi l-problemi bdew minn Mejju 2013. Huma komplew johorgu invoices sa Awissu 2016. Is-socjeta` konvenuta qatt ma kkontestat l-invoices taghhom. Kien hemm komunikazzjoni bejniethom permezz ta` emails, li fihom Agnieszka Rzepecka kienet ghamlet proposta ghal hlas, liema proposta izda ma gietx accettata minnhom. Baqghu ma sarux hlasijiet u l-ammont ghadu dovut.

Fil-kontroezami, fisser illi dwar hlasijiet huwa dejjem ikkomunika ma` Rzepecka. Dwar dettalji ta` nies ohra li kienu jahdmu mas-socjeta` konvenuta stqarr illi hemm ukoll Aneta Turek u Valentina Sammut. Dawn kienu joperaw minn Fino Building, l-Imriehel, ghalkemm ma jafx jekk ghadhomx hemm. Ikkonferma li l-ahhar komunikazzjoni ma` Agnieszka Rzepecka kienet permezz ta` email fl-2017 (Dok CM1).

Il-kuratur deputat Av. Dr. Josette Sultana ipprezentat tlett dokumenti permezz ta` nota datata 19 ta` Frar 2019.

Fost dawn id-dokumenti hemm email ta` Kinga Labanowski datata 14 ta` Frar 2019, fejn inkiteb hekk :-

" .. the Company is aware of the proceeding in question, due to the fact that the warrants of seizures were issued (in 2017 and 2018, respectively regarding the companies: Opus Managment Limited, Avix Management Limited and Imess Management Limited) and also, because of an inept attempt to deliver some court documentation, that the Company refused to accept. It is worth noticing, that the Company is not aware of civil procedure under Maltese Law, but the following argumentation against the claim is based on general procedural rules, that would be applicable under Polish law and seem more less accurate in this proceeding as well.

Our understanding is, that the Mifsuds (applicants) claim remuneration for provision of legal services allegedly provided between May 2013 and August 2016.

It should be noted, that as far as the Company is concerned, the alleged services were never provided.

What is more, the Company have most likely never received the invoices mentioned in the list of documents in question. The invoices revealed as evidences do not appear as costs in the Company accounts.

…

The applicants repeatedly used the old registered address of the Company, despite the fact that there were repeatedly informed, that over the years, the Company had moved its office twice. Such information is not only easily available in the Polish register of companies but also visible on the Company`s webpage."

Kien prezentat ukoll dokument datat 17 ta` April 2018 bl-isem "*Declaration of refusal to accept documents*" ffirmat minn Agnieszka Rzepecka u dokument iehor bl-istess isem datat 20 ta` Settembru 2018.

III. <u>It-tieni eccezzjoni</u>

Fit-tieni eccezzjoni qed ikun eccepit illi kellha tinghata prova tan-notifika tal-konvenuta. Jirrizulta li meta kien prezentat ir-rikors guramentat fit-23 ta` Gunju 2017, l-indirizz li nghata mill-atturi ghan-notifika tas-socjeta` konvenuta kien : "Centrum Zielna, budynek B ul. Zielna, 37, 00-108, Warsawa, Polska. Dan jidher li huwa l-istess indirizz li hemm fl-engagment letter (Dok A). Jidher li dan huwa l-indirizz li huwa ndikat fl-invoices kollha li gew prezentati mill-atturi.

B`rikors tas-6 ta` Novembru 2017, l-atturi talbu sabiex in-notifika tal-konvenuta ssir permezz tal-ufficcju tal-Avukat Generali f`indirizz gdid li huma kellhom, u cioe` : Moniuszki 1A, 00-014, Warszawa, Polska. Kif jidher min-nota li kienet prezentata mill-ufficcju tal-Avukat Generali (ara fol 75), jidher li kien hemm diffikultajiet sabiex issir in-notifika. Kif jidher mid-dokumenti li pprezenta l-Avukat Generali, kienet qed issir notifika tar-rikors guramentat bil-Malti u bl-Ingliz.

B`rikors li pprezentaw fit-22 ta` Mejju 2018, l-atturi talbu l-hatra ta` kuraturi deputati sabiex jirrapprezentaw lill-konvenuta, peress li hija assenti minn dawn il-Gzejjer, billi n-notifika tramite l-Ufficcju tal-Avukat Generali ma wasslet ghall-ebda rizultat.

Mill-atti huwa evidenti li l-atturi ghamlu t-talba wara sitt xhur li l-Ufficcju tal-Avukat Generali kien ittrenta n-notifika.

In segwitu b`nota tal-Avukat Generali tal-5 ta` Ottobru 2018, gie kien prezentat certifikat li gie mill-Agenzija tal-Polonja, addetta min-notifika tal-atti gejjin minn barra l-pajjiz, fejn jidher illi s-socjeta` konvenuta rrifjutat li taccetta r-rikors guramentat ghal raguni ta` lingwa. Il-Qorti tosserva li kif jirrizulta minn fol 77, l-att intbaghat kemm bil-Malti kif ukoll bl-Ingliz.

Ir-rikors ghall-hatra ta` l-kuraturi deputati kien notifikat lil Stefania Cardona li, kif jidher minn Dok MM1, kellha flimkien ma` Agnieszka Rzepecka, ir-rapprezentanza legali tas-socjeta` konvenuta.

Billi hadd ma accetta l-kurazija, il-Qorti laqghet it-talba ghall-hatra ta` kuraturi deputati tant li kienu mahtura l-Av. Josette Sultana u l-P.L. Doreen Aquilina.

Kif jirrizulta b`mod inekwivoku mid-dokument li kien esebit mill-Avukat Generali, a tergo ta` fol 135, in-notifika fil-fatt kienet saret b`mod regolari, u kienet s-socjeta` konvenuta li rrifjutat li taccetta l-att.

Ghalhekk l-eccezzjoni qeghda tkun <u>respinta</u>.

IV. <u>Mertu</u>

L-atturi qeghdin jitolbu hlas ghal servizzi professjonali li pprestaw lis-socjeta` konvenuta.

Il-quantum tal-hlas pretiz huwa ta` €19,372, skont il-fatturi Dok B sa Dok N.

Jirrizulta ppruvat li s-socjeta` konvenuta kienet konxja li kien hemm hlas dovut, ghalkemm fl-email Dok JS 03 (esebit minn Dr Josette Sultana noe) inghad min-naha tas-socjeta` konvenuta li ma kienx inghata servizz mill-atturi u allura xejn ma kien dovut. Din ic-cahda tikkontrasta ferm mal-email Dok CM1 (fol 172) fejn Agnieszka Rzepecka tant ma kkontestatx li kien inghata servizz mill-atturi, u li l-hlas pretiz minnhom kien dovut, li pproponiet modalita` ta` hlas.

Din il-Qorti tghid illi fuq bilanc ta` probabilitajiet l-atturi ppruvaw il-pretensjoni taghhom kif trid il-ligi u sal-grad rikjest mil-ligi.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :

Tiddikjara illi l-ewwel talba mhux sejra tinghata aktar konsiderazzjoni.

Tichad l-eccezzjonijiet tal-kuraturi deputati.

Tilqa` t-tieni talba.

Tilqa` t-tielet talba u tordna li l-ammont dovut lill-atturi jithallas bl-imghax legali b`effett mit-23 ta` Gunju 2017 sad-data tal-hlas effettiv.

Tikkundanna lis-socjeta` konvenuta sabiex thallas l-ispejjez ta` din il-kawza.

Il-kuraturi deputati jithallsu skont il-ligi.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur