



**QORTI CIVILI  
(SEZZJONI TAL-KUMMERC)**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT McKEON**

**Illum it-Tlieta 30 ta` Lulju 2019**

**Rik. Nru. 1153/2014 JZM**

**Fl-atti tal-istralc tal-  
kumpannija Erom Trading  
Limited  
(C65591) li kienet  
dikjarata xjolta bi  
provvediment tal-  
Prim` Awla tal-Qorti  
moghti fit-30 ta` April 2015**

**Dan huwa digriet dwar rikors li pprezenta r-Ricevitur Ufficjali  
bhala stralcjarju tal-kumpannija  
Erom Trading Limited (C65591) fl-20 ta` Mejju 2019.**

**Il-Qorti :**

Rat ir-rikors.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat id-digriet taghha tal-21 ta` Mejju 2019.

Rat illi ghalkemm l-kumpannija F.A.D. Enterprises Ltd (C71214) kienet notifikata bid-digriet tal-21 ta` Mejju 2019 ma pprezentatx risposta.

Rat ir-risposta li pprezentat l-kumpannija Tal-Lira Limited (C42598) fis-6 ta` Gunju 2019.

Rat id-dokument li kien prezentat mar-risposta ta` Tal-Lira Limited.

Rat il-verbal tal-udjenza tal-istralc tal-1 ta` Lulju 2019.

Rat l-atti l-ohra tal-kawza.

### **Ikkunsidrat :**

L-istralcjarju talab lill-qorti sabiex :

1. *Tiddikjara li F.A.D. Enterprises Ltd C71214 u Tal-Lira Limited C42598 qed izommu f`idejhom xi flus, jew propjeta` kif jidher fid-dokumenti annessi li prima facie ghandha jedd ghalihom il-kumpannija xolta Erom Trading Ltd C65591 ;*

2. *Tordna lil F.A.D. Enterprises Ltd C71214 u Tal-Lira Limited C42598 sabiex tramite d-diretturi u/jew ir-rappresentanti taghha jikkonsenjaw, jittrasferixxu jew xort`ohra jghaddu dawk il-flus jew*

*propjeta` lill-esponenti stralcjarju minnufih jew f`dak iz-zmien kif tordna dina l-Onorabbli Qorti.*

Sabiex isostni dawn it-talbiet, l-istralcjarju joqghod fuq l-**Art 250 tal-Kap 386** li jaqra :

*Il-qorti tista', f`kull żmien wara ordni għal stralc, teħtieġ -*

*(a) kull kontributorju li għal dak iż-żmien ikun fuq il-lista tal-kontributorji ; u*

***(b) kull persuna li tkun qed iżzomm f`idejha xi flus, proprjetà jew records tal-kontijiet u dokumenti li prima facie jkollha jedd għalihom il-kumpannija, li tħallas, tikkonsenja, tittrasferixxi jew xort'oħra tgħaddi dawk il-flus, proprjetà, records tal-kontijiet jew dokumenti lill-istralcjarju minnufih jew f`dak iż-żmien kif tordna l-qorti.***

**Fit-test bl-Ingiliz** id-disposizzjoni taqra :-

*The court may, at any time after making a winding up order, require -*

*(a) any contributory for the time being on the list of contributories ; and*

***(b) any person who holds any money, property or accounting records and documents in his hands to which the company is prima facie entitled, to pay, deliver, convey, transfer or otherwise hand over such money, property, accounting records or documents to the liquidator forthwith or within such time as the court directs.***

Meqjusa l-fattispeci tal-kaz tal-lum, jidher li l-istralcjarju qieghed jibbaza ruhu fuq il-**paragrafu (b)** tad-disposizzjoni.

Minn qari tal-**Art 250(b) tal-Kap 386** jirrizulta :

**fl-ewwel lok :**

li trid issir il-prova sal-livell ta` *prima facie* li flus, propjeta` jew *records* ta` kontijiet u dokumenti li tkun qed izzomm persuna jkollha jedd ghalihom il-kumpannija ;

**fit-tieni lok :**

li din il-prova trid issir mill-istralcjarju ;

**fit-tielet lok :**

li anke jekk din il-prova ssir, tibqa` diskrezzjoni tal-qorti jekk taghtix l-ordni sabiex il-persuna koncernata tħallas, tikkonsenja, tittrasferixxi jew xort'oħra

tgħaddi dawk il-flus, proprjeta`, *records* tal-kontijiet jew dokumenti lill-istralcjarju jew minnufih jew fi zmien li jkun stabbilit mill-qorti.

**Ikkunsidrat :**

L-**Insolvency Act 1986** tar-Renju Unit tindirizza l-kwistjoni f` **Section 144** (custody of company`s property), **Section 145** (vesting of company property in liquidation) u **Section 234** (getting in the company`s property).

Qeghda tirriproduci dak mid-disposizzjonijiet li jista` jkun rilevanti għall-kaz tal-lum :-

**Section 144(1) :-**

*When a winding-up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional*

*liquidator (as the case may be) shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.*

**Section 145 :-**

- (1) *When a company is being wound up by the court, the court on the application of the liquidator by order direct that all or any of the property of whatever description belonging to the company or held by trustees on its behalf shall vest in the liquidator by his official name ; and thereupon the property to which the order relates vests accordingly.*
- (2) *The liquidator may, after giving such indemnity (if any) as the court may direct, bring or defend in his official name any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.*

**Section 234 :**

1. *This section applies in the case of a company where –*

...

- (c) *the company goes into liquidation*

*and "the office-holder" means ... the liquidator ... as the case may be*

2. *Where any person has in his possession or control any property, books, papers or records to which the company appears to be entitled, the court may require that person forthwith (or within such period as the court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.*

Fil-Pag 269 tal-ktieb "**Insolvency Law**" (Pearson – 2003)  
**Andrew Keay u Peter Walton** ighidu hekk :-

*An important task of the liquidator when appointed is to take custody, or have control, of all the property to which the company is, or appears to be, entitled [section 144(1)] It is the liquidator`s duty to immediately take possession of the books, deeds and documents of the company ; and investigate where any missing assets are, as well as obtaining possession of the assets of the company. With respect to assets of which physical possession cannot be obtained, e.g. book debts owing to the company, the liquidator should perfect his or her title as far as possible.*

*To assist liquidators, section 234 ...*

*In order to collect some property or money, it might be necessary for a liquidator to take legal proceedings.*

### **Ikkunsidrat :**

Sabiex isostni l-pretensjoni tieghu, l-istralcarju pprezenta mar-kors promotur ghaxar dokumenti (Dok KA1 sa Dok KA10).

Il-qorti tqis li d-dokumenti ewlenin huma Dok KA1 u Dok KA 10. Id-dokumenti l-oħra huma accessorji.

Bejn Dok KA1 u Dok KA10, id-dokument l-aktar rilevanti għall-fini tal-procediment odjern huwa Dok KA1 li hija d-dikjarazzjoni allegatament iffirmata minn Darren Casha. Minn dan id-dokument ma jirrizultax f`liema kapacita` Casha għamel id-dikjarazzjoni. Inoltr kienet x`kienet il-kapacita`, id-dikjarazzjoni ta` Casha mhijiex konfermata bil-gurament. L-intimata Tal-Lira Limited tishaq fuq dan il-fatt fir-risposta tagħha tagħha. Għal din il-qorti, l-assenza ta` l-gurament ta` Darren Casha li jsostni d-dikjarazzjoni tieghu ma jistax iwassal għall-prova tal-kontenut sal-livell ta` *prima facie*.

Ghal din il-qorti huwa wkoll sinjifikattiv il-fatt li waqt li Dok KA1 ma kienx konfermat bil-gurament, Dok KA10 kien guramentat, izda l-fatt li Dok KA10 kien konfermat bil-gurament ma jistax ipatti ghan-nuqqas mill-aktar manifest ta` Dok KA1 ghaliex fl-affidavit tieghu l-istralcjarju jixhed dwar dak li ra. Ma setax jixhed dwar ta` min kienet il-propjeta` tal-oggetti in kwistjoni. Ghalhekk lanqas Dok KA10 ma jista` jwassal ghall-prova *prima facie*.

Di piu` din il-qorti tishaq illi d-dokumenti l-oħra lanqas ma huma konfermati bil-gurament. Dan premess, u fi kwalunkwe kaz, anke li kieku kienu hekk konfermat, billi huma accessorji jaqghu b`effett *domino* billi Dok KA1 u Dok 10 ma jistghux jissoddisfaw il-prova *prima facie*.

## **PROVEDIMENT**

**Ghar-ragunijiet kollha premessi, il-Qorti qeghda tichad it-talbiet tal-istralcjarju.**

**Spejjez ghall-istralcarju.**

**Jibqa` mpregudikat id-dritt tal-istralcjarju li *per via di azione ad hoc* jaghmel il-prova tal-allegat jedd tal-kumpannija xjolta ghall-oggetti in kwistjoni.**

**Onor. Joseph Zammit McKeon  
Imhallef**

**Amanda Cassar**

## **Deputat Registratur**