



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

**ONOR IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 30 ta` Jannar 2020

**Kawza Nru. 4
Rikors Nru. 27/18/1 JZM**

**Fl-atti tar-rikors li qed jigi ntavolat
kontestwalment fl-ismijiet:**

**Ahmed Amine Boureghda
(detentur ta` Passaport Franciz
09P198983)**

kontra

**Alfonso Paulo Fernandes Duart
Loureiro bhala direttur tas-
socjeta` Pessoa One Limited**

u

Pessoa One Limited (C729037)

Dan huwa provvediment dwar rikors li pprezenta Ahmed Amine Boureghda fis-6 ta` Dicembru 2018 fejn talab li jinghata ordni *interim* pendenti l-esitu finali tal-kawza fil-mertu.

Il-Qorti :

Rat ir-rikors li jaqra hekk –

Illi kontestwalment ma` dan ir-rikors ir-rikorrent intavola procedura ai termini tal-artikolu 402, fl-istess ismijiet.

Illi l-lanzanzi tar-rikorrent huma msemmin fid-dettal fir-rikors imsemmi, fejn ghandu jirrizulta li hemm bazijiet iktar minn bizzejjed sabiex din il-Qorti ssib li hemm diversi atti li huma "oppressivi b`mod mhux gust, diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju" ghall-istess rikorrent.

Illi l-iskop li ghalih giet inkorporata s-socjeta` Pessoa One Limited ser jispicca ghal kollox fl-ahhar tas-sena 2019 – stante li din is-socjeta` giet inkorporata sabiex izzomm fi hdanha ishma ta` socjeta` ohra li qed tizviluppa 21 appartamenti fil-Portugall, li gia` nbieghu fuq konvenju u li l-kuntratt finali taghhom ser isir sal-ahhar ta` Dicembru 2019. B`hekk sal-ahhar tas-sena 2019, il-flus kollha rikavati li ser ikunu hargu minn hdan is-socjeta` Pessoa One Limited.

Illi fost ir-rimedji li qed jitlob l-esponent fir-rikors tieghu hemm il-hatra ta` direttur uniku indipendenti sabiex imexxi hu s-socjeta` Pessoa One Limited, u sabiex ir-"wrongdoers" ma` jibqghux jikkontrollaw.

Illi l-htiega ta` dan ir-rimedju hija mmedjata u ghal kull gurnata li ser jibqa` direttur tas-socjeta` Pessoa One Limited, Paolo Loureiro, ir-rikorrent qed ikun ippregudikat b`mod sfaccat.

Illi jekk jilhqu jinbieghu l-appartamenti kollha, ir-rikorrent ser jigi ppregudikat irrimedjabilment u ser jitlef l-introjtu li ghalih hu ntitolat.

Ghaldaqstant, l-esponent umilment jitlob li t-tieni talba tieghu, tigi deciza, almenu fuq bazi provvizorja, b`mod immedjat, qabel ma l-kawza tinstema` fl-intier taghha, ghax jekk dan ma jsirx imbaghad ser ikun troppo tardi. Din it-talba taqra hekk :

"Tahtar direttur indipendenti, u uniku, ghas-socjeta` Pessoa One Limited, minflok id-direttur prezenti jew xi direttur iehor li jista` jigi mahtur mill-intimati pendente lite, liema direttur appuntat mill-Qorti ikollu s-setgha li wahdu jiddeciedi kif ghandha titmexxa s-socjeta` Pessoa One Limited, u li jkollu kull kontroll fuq il-kontijiet bankarji tas-socjeta` Pessoa One Limited."

Rat id-digriet taghha tal-10 ta` Dicembru 2018.

Rat ir-risposta prezentata fil-21 ta` Jannar 2019 li taqra hekk –

INTRODUZZJONI

1. *Illi dan ir-rikors ghandu jigi michud ghar-ragunijiet segwenti, li ser jigu spjegati f` aktar dettal f` din ir-risposta :*

i) *jekk tintlaqa` t-talba, ser ikun qed jigi deciz il-mertu tal-proceduri ibbazati fuq l-artikolu 402 tal-Kap.386 minghajr ma jkun nstemghu l-proceduri ;*

ii) *ma tirrizulta l-ebda urgenza abbazi ta` liema ghandha tintlaqa` t-talba ;*

iii) *hemm rimedji ohra disponibbli lir-rikorrent ; u*

iv) *ir-rikorrent talab li jitnehha l-intimat direttur, u jinhatar direttur iehor, minghajr ma semma ppropona jew ta` alternattiva ta` min jista` jissosstitwixxi lill-intimat bhala direttur.*

IL-FATTI

2. *Is-socjeta` Pessoa One Limited ("Pessoa") giet irregistrata fis-6 ta` Novembru 2015 bhala private non-exempt limited liability company.*

3. *Meta giet irregistrata Pessoa, ir-rikorrent u l-intimat Alfonso Paulo Fernandes Duart Loureiro ("PL") kienu l-unika azzjonisti.*

4. *PL inhatar bhala direttur b`effett mit-8 ta` Mejju 2017 (bil-vot u l-kunsens tar-rikorrent), u qabel din id-data ma kienx involut fil-gestjoni ta` Pessoa.*

5. *Bhala private non-exempt limited liability company, is-socjeta` kellha tispecifica `main activity` – din kienet identifikata fl-istatut tas-socjeta` bhala: "The main activity of the Company is to hold the shares of subsidiary companies, including but not limited to, the shares of a Company registered in Portugal;"*

6. *Pessoa giet irregistrata f`Malta sabiex isservi bhala special purpose vehicle u zzomm l-ishma ta` socjeta` Portugiza, jigifieri Brave Return Lda, li giet stabbilita bl-ghan ta` zvilupp residenzjali fil-Portugall li beda f`Dicembru 2015 u huwa progettat li ser jitlesta madwar Settembru tal-2019.*

L-iskop ewlieni kien u huwa li, l-azzjonisti jghamlu kontribut lill-kapital tas-socjeta` u, meta jigi rrealizzat l-investment fil-livell ta` Brave Return Lda, dan jghaddi l-ewwel lil Pessoa, imbaghad lill-azzjonisti ta` Pessoa permezz ta` dividends. Il-kontribut lejn il-kapital ta` Pessoa l-investituri kellhom jehduh lura permezz tat-tnaqqis tal-kapital azzjonarju mahrug ta` Pessoa.

Fi ftit kliem, Pessoa kienet u hija intenzjonata li topera bhala investment fund.

7. *Brave Return Lda hija wahda minn tmien socjetajiet Portugizi, li kollha jinvestu fi zviluppi ta` proprjeta` immobbli u li huma gestiti mill-intimat PL (wahdu jew ma` ohrajn), ghall-beneficcu tad-diversi investituri li jinvestu fl-imsemmija zviluppi. Hemm ftit investituri li huma nvestiti kemm fi Brave Return Lda (indirettament tramite Pessoa) u kif ukoll fis-socjetajiet l-ohrajn imsemmija f` dan il-paragrafu. Ir-rikorrent huwa nvestit biss f` Pessoa.*

8. *Hija biss Brave Return Lda li tuza l-istruttura ta` holding company Maltija. Fis-seba` socjetajiet l-ohra, l-investment sar mill-investituri direttament f` socjeta` Portugiza.*

9. *Din l-istruttura (ta` holding company Maltija b` sussidjarja Portugiza) giet ikkrejata specifikatament sabiex ir-rikorrent ma jbaghtix taxxa fil-Portugall u fi Franza. Ghall-azzjonisti l-ohra ma kienet ser taghmel l-ebda differenza minn perspettiva ta` taxxa jekk jircievu dividendi minn Pessoa jew inkella direttament mis-socjeta` Portugiza.*

10. *Pessoa m` ghandhiex impjegati u lanqas topera, hlief sabiex tirritorna l-investment lill-azzjonisti taghha.*

11. *Pessoa giet inkorporata b` zewg klassijiet ta` ishma.*

Tramite l-Ordinary B shares, l-azzjonisti ta` dawn l-ishma jircievu dividend proporzjonali ghall-ammont investit fil-kapital azzjonarju ta` Pessoa.

L-intiza tal-Ordinary A shares kienet sabiex ir-rikorrent, PL u Jean-Francois Desire Alain Buret (l-unici tlett azzjonisti li qatt kellhom u ghandhom Ordinary A shares) jigu remunerati tax-xoghol, involviment u gestjoni ta` Brave Return Lda matul l-izvilupp residenzjali hawn fuq imsemmi. Izda l-intenzjoni dejjem kienet li din il-performance fee jehduha fl-ahhar tal-progett, u mhux qabel. Dan johrog car mit-term

sheet li kienet iccirkolata lill-investituri prospettivi (kopja hawn annessa u mmarkata "Dok.1") li tipprovdi illi :

"Louvre Capital Fee structure is straightforward :

- *Finder`s fee: 0%*
- *Management fees: 0%*
- *Performance fees: 25%; calculated on net profit after tax at completion of the project*¹
- *No "hidden" fees"*

DIFIZA

12. *Fir-rikors odjern, ir-rikorrent jesponi illi "ghandu jirrizulta", mir-rikors 27/2018, li "hemm bazijiet iktar minn bizzejjed sabiex din il-Qorti ssib li hemm diversi atti li huma "oppressivi b`mod mhux gust, diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju"" lejn ir-rikorrent.*² *Ghalhekk, ir-rikorrent qed jitlob lil din l-Onorabbli Qorti sabiex it-tieni talba tieghu fir-rikors bin-numru 27/2018 tigi deciza, "...almenu fuq bazi provvizorja, b`mod immedjat..."*.

13. *It-talba li r-rikorrent qed jitlob lil din l-Onorabbli Qorti tiddeciedi dwarha immedjatament hija dik tat-tnehhija ta` l-intimat direttur, u l-hatra ta` direttur iehor. Din it-talba, flimkien mal-ewwel u l-hames talba fir-rikors bin-numru 27/2018, iggorr l-aktar piz fost it-talbiet kollha tar-rikorrent.*³

14. *L-intimati ser jispjegaw ghalfejn l-Onorabbli Qorti m`ghandhiex tilqa` t-talba fir-rikors odjern.*

(i) Jekk tintlaqa` t-talba, ser ikun qed jigi deciz il-mertu tal-proceduri ibbazati fuq l-artikolu 402 tal-Kap.386.

¹ Emfazi mizjuda.

² Ghall-finijiet ta` din ir-risposta, l-intimati ser juzaw it-terminu "oppressiv/i" sabiex jirreferu ghat-termini "oppressivi b`mod mhux gust, diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju".

³ L-intimati ser jirrispondu dwar dawn it-talbiet, u kif ukoll ghall-ghaxar talba, fir-risposta ghar-rikors bin-numru 27/2018.

15. *Effettivamente, per mezzo tar-rikors de quo, ir-rikorrent qed jitlob lil din l-Onorabbli Qorti tiddeciedi, jew ahjar tippregudika qabel ma tisma` l-ebda prova, dwar il-mertu tal-proceduri ibbazati fuq l-artikolu 402 tal-Kap.386.*

16. *Ir-rikorrent qed jghid illi, mad-daqqa t`ghajn u biss billi l-Qorti thares lejn ir-rikors odjern, ghandu jirrizulta li l-intimati wettqu diversi atti li kienu oppressivi fil-konfront tar-rikorrent. Skont ir-rikorrent, l-Onorabbli Qorti m`ghandhiex ghalfejn tisma` l-ebda prova, u kwazi lanqas ghandha ghalfejn tikkonsidra r-risposta tal-intimati, ghaliex mir-rikors "ghandu jirrizulta"⁴ lill-Qorti li twettqu diversi atti oppressivi mill-intimati. U dan abbazi ta` rikors li lanqas biss huwa guramentat.*

17. *L-intimati jirrispondu illi, jekk tintlaqa` t-talba, anke fuq bazi provvizorja, il-mertu tal-proceduri bbazati fuq l-artikolu 402 ikun qed jigi deciz minghajr ma r-rikorrent ikun sostna u pprova li veru jezisti xi agir oppressiv biex jitlob tali rimedju, u cioe` rimedju li huwa l-istess bhal dak mitlub fir-rikors fil-mertu.*

(ii) Nuqqas ta` urgenza

18. *Ir-rikorrent, ghalkemm jitlob lill-Qorti tilqa` t-talba b`mod immedjat, ma jispjegax x`inhi l-urgenza tat-talba, hlief li jghid, b`mod proprju gratuwtu, li jekk jibqghu jinbieghu l-appartamenti li huwa jirreferi ghalihom fir-rikors, huwa ser jigi "ppregudikat irrimedjabilment u ser jitlef l-introjt u li ghalih hu intitolat".*

19. *Hawnhekk ukoll ir-rikorrent jippretendi li l-Onorabbli Qorti ghandha tiehu din l-istqarrija (mhux guramentata) at face value,*

⁴ Emfazi mizjuda.

minghajr l-ebda prova ta' pregudizzju irrimedjabbli, u tipprocedi sabiex tilqa' t-talba.

20. Ir-rikorrent mhux qed jallega li d-direttur intimat kien qed jimmizapproprja l-flus jew jiddefrawda l-azzjonisti. Qed jghid biss li qed jinbieghu l-appartamenti li jiffurmaw parti mill-izvilupp – dan huwa proprju l-intiza tas-socjeta' Pessoa. Dan huwa li suppost jifforma l-bazi tal-urgenza tar-rikors.

Barra minn hekk, l-istqarrija tar-rikorrent (li ser jitlef l-introjtu li ghalih hu intitolat) mhijiex korretta, ghaliex l-introjtu li ghalih huwa intitolat fir-rigward tal-A shares jista' jiehu biss meta l-progett ikun kompletat (vide para 11 ta' din ir-risposta). Jigifieri anke jekk jitbiddel id-direttur, xorta mhuwiex ser jircievi issa l-introjtu li hu qed jghid li huwa intitolat ghalih (anzi, jekk jitbiddel id-direttur, x'aktarx li l-progett jittawwal jekk l-intimat jigi ssostitwit minn persuna mhux xierqa – aktar dwar dan il-punt fil-parti (iv) hawn isfel).

21. Addizzjonalment, harsa lejn ir-rikors bin-numru 27/2018 juri li dak li jilmenta dwaru r-rikorrent gara fis-sena 2017 u fil-bidu tas-sena 2018. Kif jista' r-rikorrent issa jiggustifika t-talba prezenti bhala wahda li ghandha tintlaqa' provvizorjament u qabel jinstemghu l-proceduri ghax inkella, skont hu, "ser ikun troppo tardi" ? Jekk vera tezisti l-urgenza li tiggustifika li jintlaqa' dan ir-rikors provvizorjament, ghalfejn stenna s' issa r-rikorrent ?

(iii) Rimedji ohra disponibbli lir-rikorrent

22. Jekk ir-rikorrent irid inehhi d-direttur, ghandu disponibbli r-rimedju ordinarju li tipprovdlu l-ligi ai termini tal-artikolu 140 tal-Kap 386.. Proceduri ai termini tal-artikolu 402 huma ta' natura straordinarja, u r-rikorrent kellu l-ewwel jezwawrixxi r-rimedji li ttih il-ligi qabel jirrikorri quddiem din l-Onorabbli Qorti.

(iv) Min ser jiehu post id-direttur intimat ?

23. *Minghajr pregudizzju ghas-suespost, hemm ukoll il-problema prammatika li biex jigi appuntat direttur tas-socjeta`, il-persuna trid tkun xi hadd bl-esperjenza dwar is-suq partikolari tal-investimenti u zviluppi immobiljari fil-Portugall. Id-direttur intimat huwa bbazat il-Portugall, u ghandu l-gharfien u l-esperjenza mehtiega dwar l-izvilupp li qed isir mis-sussidjarja Portugiza. L-investment huwa wiehed f`suq partikolari. Ma tistax tkun persuna kwalunkwe li tinhatar ghal din il-pozizzjoni.*

24. *Ir-rikorrent qed jitlob li jitnehha d-direttur u li l-Qorti tappunta direttur iehor li "jiddeciedi wahdu" kif ghandha titmexxa s-socjeta`, minghajr ma r-rikorrent jaghti ebda alternattiva (ahseb u ara alternattiva vjabbli) ta` min tista` tkun din il-persuna li tiehu l-post tal-intimat direttur.*

25. *L-istadju avanzat tal-izvilupp fil-Portugall irendi s-sitwazzjoni wahda aktar akuta. Ir-rikorrent stess jghid fir-rikors li l-iskop li ghaliha giet inkorporata Pessoa ser jispicca ghal kollox fl-ahhar tas-sena 2019. Peress illi l-izvilupp fil-Portugall lahaq stadju kritiku, is-socjeta` ma tistax tkun f`pozizzjoni fejn il-persuna li tkun responsabbli ghall-gestjoni taghha potenzjalment tippregudika dak kollu li nkiseb s`issa. L-interessi tas-socjeta` u tal-azzjonisti kollha, inkluz ir-rikorrent, jezigu li d-direttur intimat ma jitnehhix mill-pozizzjoni tieghu.*

26. *Semmai, u biss ghall-grazzja tal-argument, ir-rikorrent kellu jitlob lill-Onorabbli Qorti taghti direzzjonijiet lid-direttur intimat, u mhux jitlob l-agir drakonjan tat-tnehhija tad-direttur. F`dan ir-rigward, id-direttur intimat ikun dispost illi jaghti kwalunkwe rendikont lil din l-Onorabbli Qorti li hija jidhrilha opportun.*

Ghaldaqstant, abbazi tas-suespost, l-intimati jirrispondu li din l-Onorabbli Qorti ghandha tichad it-talba fir-rikors, bl-ispejjez kontra r-rikorrent.

Ghall-kull buon fini, ser tigi pprezentata wkoll traduzzjoni ghall-Ingiliz ta` din ir-risposta.

Rat id-dokumenti li kienu prezentati mar-risposta.

Semghet ix-xhieda u rat il-provi l-oħra li tressqu fil-kors tas-smigh tar-rikors.

Semghet is-sottomissjonijiet li ghamlu d-difensuri fl-udjenja tas-26 ta` Novembru 2019.

Rat illi r-rikors thalla ghal provvedimenti ghal-lum.

Rat l-atti l-oħra.

Ikkunsidrat :

Bosta fl-ghadd kienu d-drabi fejn inghataw provvedimenti mill-Prim` Awla tal-Qorti Civili kif presjeduta bejn l-2009 u l-2018, u minn din il-Qorti kif presjeduta wara l-2018, dwar talbiet ghal *interim orders* fil-kuntest ta` kawzi ntavolati abbazi tal-Art 402 tal-Kap 386.

Tista` tghid f`dawn il-provvedimenti kollha hemm referenza ghal dak li kien kiteb **Andrew Muscat** dwar *interim orders* fl-**Ewwel Edizzjoni** ta` "**Principles of Maltese Company Law**" (MUP – 2007).

Issa fit-**Tieni Edizzjoni** ta` "**Principles of Maltese Company Law**" (MUP – 2019) **Andrew Muscat** aggorna l-istat tad-dottrina dwar dan il-qasam, billi ghamel riferenza wiesgha ghall-gurisprudenza tal-grati taghna mill-2009 sal-lum, u ghamel ir-riflessjonijiet tieghu.

Sejra tirreferi ghal xi brani minn dak li nkiteb fil-**Pag 1357 sa 1364** tat-**Tieni Edizzjoni** relattivament ghall-materja mertu tal-

provvediment tal-lum, billi huma riflessjoni dwar l-istat tad-dritt sal-lum, bil-konfort tal-gurisprudenza.

Andrew Muscat ighid hekk :

a preliminary question should be considered : whether a court may issue an interim order pending final judgement. The position in English law is that English courts do, where appropriate, have the power to issue interim orders – usually orders for payment on account or orders designed to preserve the status quo. The Maltese Companies Act is silent on the question of whether a court, seized of an issue under article 402, is entitled to issue an interim order. Nor does any jurisdiction result from any general provision in the Code of Organisation and Civil Procedure.

At first sight it may be thought the courts do not the power to issue interim orders in the context of an article 402 action. In support of such a contention, it may be argued that where the legislator wished to grant to a court the power to make interim orders, the legislator did so by express provision, as with the power of the court to issue a "provisional order" under article 37(5) of the Merchant Shipping Act (prohibiting dealings in a ship until the court definitely decides on the merits) and the power of the court to initially issue a warrant of prohibitory injunction for an "interim period" under article 875(2) of the Code of Organisation and Civil Procedure.

The absence of an express provision under article 403 empowering the courts to make interim orders has not however impeded the courts from granting such orders. Indeed the courts have issued interim orders without much need to conceptually justify their power to do so.

... the trend of the Maltese courts has clearly been to resist the temptation to adopt a rigid and inflexible approach simply because the Companies Act is silent on this matter.

Fuq l-iskorta ta` dak li nghad mill-qrati matul dawn l-ahhar snin, **l-awtur** jaccenna ghall-iskop wara l-hrug ta` *interim orders* :

... temporary orders that serve to preserve the status quo until the issue between the shareholders is examined by the court on the merits or until the conflict situation within the company is otherwise resolved.

... temporary orders that serve to protect a company against irreversible, traumatic or negative consequences until the issue brought before the court in the article 402 action is examined and decided by the court or until the conflict situation is otherwise resolved.

... where the interest of the company in its totality, compared with the interest of the member who requested the interim order, requires restraint, even on the part of the court, the court should exercise its discretion and not go for an interim order ... the wider the discretion a court has, the greater the caution that needs to be exercised by it, in particular where it needs to provide for a sometimes delicate balance between the general interests of the company and those of its shareholders.

Andrew Muscat jirreferi ghas-sentenza li kienet tat il-House of Lords fil-kawza "**American Cyanamid Co vs Ethicon Ltd**" (1975) li kienet segwita mill-Court of Appeal fil-kawza "**Pringle vs Callard**" (2008), it-tnejn kienu citati fi provvedimenti moghtija mill-Prim` Awla tal-Qorti Civili kif presjeduta. Il-House of Lords kienet tat linji gwida dwar kif il-qrati Inglizi kellhom jittrattaw *interim injunctions*.

Dawn il-linji gwida huma :

(i) that it was not the courts` role to consider conflicting evidence in respect of an interim application – this was a matter for trial on the merits ; (ii) that the plaintiff must limit himself to producing evidence to show that there is a basis for his allegation ; and (iii) that the court should consider whether an alternative adequate remedy was available if the request for an interim order was not granted ; if an alternative remedy was available, the court should not grant an interim remedy.

L-awtur ikompli jghid :-

The legal position is now well settled : the courts are empowered, in their discretion, to grant an interim order wherever they deem it necessary to protect the interests of the complainant or of the company. This power, as exercised by the courts, has turned out to be another helpful tool in the court`s arsenal against oppressive, unfairly prejudicial or unfairly discriminatory conduct.

...

When considering whether to grant an interim order, a court does well to ensure that the relative decree does not impinge on the merits of the case because those merits should remain to be decided in the final judgement after all evidence has been heard. This point has, quite rightly, been repeatedly made in a number of decisions ... In granting interim orders, the courts have indeed consistently stressed that they are given without prejudice to the merits of the case that will need to be decided at a future stage ...

... the issue of an interim order should not be taken to mean that the court is expressing itself on the merits of the main article 402 action.

Ikkunsidrat :

Fil-procediment odjern, ir-rikorrent qed jitlobha taghti *interim order* billi, b`mod immedjat, taghti decizjoni dwar it-tieni talba fil-kawza principali, anke jekk fuq bazi provvizorja, qabel ma l-kawza principali tinstema` fl-intier taghha, ghaliex ir-rikorrent jikkontendi li jekk dan ma jsirx ikun tard wisq.

Ir-rikors odjern kien prezentat kontestwalment mal-kawza principali. Kienet ghazla tal-partijiet, ghazla li l-qorti kkonfermat, li qabel jingabru l-provi fil-kawza principali, jinstemghu l-provi dwar ir-rikors. Fil-fatt fil-kawza dwar il-mertu, ghajr ghall-atti li kienu prezentati mar-rikors promotur tal-azzjoni u mar-risposta, ma tressqu provi ohra. Fil-kors tas-smigh tar-rikors odjern, tressqu provi estensivi miz-zewg nahat, li kjarament imorru ben oltre l-parametri tal-iskop ta` l-procediment tal-lum. Infatti diga` qeghda tipprevedi li jkun x`ikun l-esitu tar-rikors, `il quddiem meta jibda l-gbir tal-provi fil-kawza

principali, ssirilha talba minn naha jew minn ohra jew mit-tnejn sabiex mal-atti tal-kawza principali jigu allegati bhala prova l-atti kollha tar-rikors odjern.

Qeghda tissofferma fuq il-metodu ta` kif kien kondott l-*iter* tal-procediment odjern miz-zewg nahat, izda principalment mir-rikorrent, minhabba l-fatt li ghaliex ir-rikorrent talabha tippronunzja ruhha dwar it-tieni talba, ikun bil-wisq difficli ghaliha li zzomm strett mal-finalita` tar-rikors odjern, bla ma tiskonfina fil-mertu tal-kawza principali ; lanqas jekk ir-rikorrent ighid li jikkuntenta bi provvediment provvizorju.

Tghid dan ghaliex, kif inghad b` mod konsistenti fi pronunzjamenti taghha f`azzjonijiet intavolati abbazi tal-Art 402 tal-Kap 386, sabiex tinghata ordni kif previst fis-subartikoli (3), (4) u (5) ta` l-Art 402, hija tassattiva l-prova tal-att li minnu jkun qed jilmenta r-rikorrent. Dan ifisser illi jekk abbazi tal-provi, tkun sodisfatta li jirrizulta dak previst fis-subartikolu (1), allura tghaddi mbaghad biex taghti l-ordni li jidhrilha gusta u ekwa skont is-subartikoli l-ohra. Jekk ma jkunx irrizulta dak previst mis-subartikolu (1), allura trid tieqaf hemm, u ma taghmel ebda ordni.

Dawn il-konsiderazzjonijiet qeghdin isiru ghaliex mill-mod kif tfassal ir-rikors odjern, ir-rikorrent qieghed kjarament ighidilha sabiex tiehu posizzjoni dwar il-mertu billi, skont hu, il-lanzjanzi tieghu kif dedotti fil-kawza principali huma aktar minn bizzejjed sabiex issib ksur ta` dak previst fis-subartikolu (1) tal-Art 402.

Evidentement fi procediment ta` din ix-xorta, ir-rikorrent ma jistax jaghmel dan. Ghalhekk mhijiex sejra tiehu l-binarju li xtaqha tieghu r-rikorrent fil-procediment odjern.

Il-komplessita` ta` provi li tressqu fil-kors tas-smigh tar-rikors ikollhom certament siwi meta tigi biex tqis il-mertu tal-kawza principali izda m`ghandhomx piz bizzejjed biex iwassluha taghti l-*interim order* li qed jitlob ir-rikorrent.

Dan qed jinghad mhux biss ghar-ragunijiet li kienu mfissra aktar kmieni izda wkoll anke minhabba t-tempestivita` tal-mizura li jrid jikseb ir-rikorrent.

Semplicement bhala konsiderazzjoni limitata ghall-procediment odjern, ma tarax l-utilita` tal-mizura li qed jitlob ir-rikorrent.

Skont ir-rikorrent, l-iskop li ghalih giet inkorporata Pessoa One Limited kellu jispicca ghal kollox fl-ahhar tal-2019, billi kienet kostitwita unikament sabiex izzomm l-ishma ta` kumpannija mmobbiljari registrata fil-Portugall li kienet qeghda tizviluppa numru ta` appartamenti fil-Portugall.

Skont ir-rikorrent, sar konvenju fir-rigward tal-appartamenti kollha, u l-kuntratti ta` trasferiment taghhom kollha kellhomx isiru wkoll sal-ahhar tal-2019.

Mill-atti tar-rikors, anke wara l-udjenza fejn ir-rikors thalla ghall-provvediment tal-lum, ma ngieb ghall-konjizzjoni taghha l-ebda fatt gdid li juri jew jixhed bdil sostanzjali li jincidi fuq il-gudizzju taghha f` din ir-*roadmap* jew skeda tan-negozju tal-kumpannija sussidjarja Portugiza li taghha l-kumpannija Maltija ghandha l-ishma kollha.

Jekk ikun ippruvat li d-direttur attwali, li huwa wkoll azzjonista, ma jkunx qaghad jew ottempera ruhhu mal-obbligi tieghu, ikun passibbli ta` proceduri gudizzjarji li jinvolvu responsabilita` personali, proceduri dawn li jkunu ghad-disposizzjoni ta` kull jiprova li jkun garrab dannu jew pregudizzju, inkluz ir-rikorrent, ikkagunati mill-allegat agir hazin tal-imsemmi direttur.

Ghall-fini tal-procediment odjern, is-siwi tal-hatra ta` direttur gdid in sostituzzjoni ta` dak attwali fil-konguntura attwali li tinsab fiha Pessoa One Limited illum ma kienx ippruvat b` mod konvincenti mir-rikorrent ghas-sodisfazzjon taghha.

Premess dan kollu, tirriafferma dak li kellha okkazjoni tghid fi provvedimenti oħra li ngħataw fil-passat illi dak li sejra tipprovdi llum jolqot biss u unikament dak li qieghed jintalab mir-rikorrent fir-rikors odjern mhux il-mertu, għaliex dwar dan tipprovdi biss wara li jsir u jkun konkluz il-gbir tal-provi kollha fil-kawza principali.

Provvediment

Għar-ragunijiet kollha premessi, il-Qorti qegħda tichad it-talba tar-rikorrent kif dedotta fir-rikors li pprezenta fis-6 ta` Dicembru 2018. L-ispejjez ta` dan il-procediment jibqgħu rizervati għall-gudizzju finali fil-kawza dwar il-mertu.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registratur**