



QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum it-Tnejn, 24 ta' Frar 2020

Rikors Nru. 85/2020

Fl-atti tar-Rikors Guramentat Nru. 351/2017

fl-ismijiet

eHealth Limited

vs

**Sergio Giglio, Bruno Giglio u S.S. Giovanni e Paolo S.r.l. u
Permira Advisers Holdings Ltd, Permira Advisers LLP, Pantheon Holdco
Limited u Permira Associati SpA**

Il-Qorti,

Rat ir-rikors ghar-revoka ta' mandat ta' qbid kawtelatorju 1704/2019 mahrug fuq talba tas-socjeta eHealth Limited kontra erba' socjetajiet esteri fost konvenuti ohra fil-kawza eHealth Limited vs Sergio Giglio et (kawza 351/2017). L-esekuzzjoni tal-mandat senjatament l-ishma tas-socjetajiet esteri intalbet li issir kontra dawn is-socjetajiet li huma registrati l-Ingilterra u l-Italja rispettivament u dan skont artikolu 35 tar-Regolament 1215/2012 li jghid hekk:

Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

Is-socjetajiet lanjanti qed jissottomettu illi dan il-mandat hu null ghax din il-Qorti ma kinitx munita bil-kompetenza necessarja li tohrog il-mandat fl-assenza ta' gurisdizzjoni territorjali fuq l-oggetti mertu tal-mandat.

Is-socjeta eHealth ma taqbilx ma dan l-argument u tqis li r-recital fil-paragrafu 33 tar-Regolament 1215/2012 jaghti dan id-dritt. Ir-recital jghid hekk:

Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

Din il-Qorti hi tal-fehma illi l-artikolu 35 tar-Regolament 1215/2012 jaghti l-kejl tal-limitazzjoni tal-applikazzjoni territorjali ta' mizuri provvizorji. Dan l-artikolu jaghti s-setgħa li jinhargu mizuri provvizorji fi stat membru anki jekk dak l-istat membru ma ghandux gurdizzjoni fuq is-sustanza tal-azzjoni. Il-principju ovvju li r-regolament ma ghandux ghaliex ifissru hu li stat membru li ghandu gurdizzjoni fuq is-sustanza ta' azzjoni jista' johrog mizuri provvizorji in konnessjoni mal-istess azzjoni skont ir-regoli nazzjonali. Dan pero ma jfissirx, kif donnu tippretendi eHealth li din il-Qorti ghandha gurdizzjoni fuq proprjeta ta' parti f'gurdizzjoni ohra peress li ma ghandhiex il-kontroll fuqhom u mhix il-forum idoneju li tisma u tiddeciedi.

Dan hu l-principju li jidher li gie milqugh fil-kaz **Van Uden Maritime BV vs Deco-Line** (C-391/15, 17 November 1998) fejn intqal:

39 In that regard, the Court held at paragraph 16 of Denilauler that the courts of the place — or, in any event, of the Contracting State — where the assets subject to the measures sought are located are those best able to assess the circumstances which may lead to the grant or refusal of the measures sought or to the laying down of procedures and conditions which the plaintiff must observe in order to guarantee the provisional and protective character of the measures authorised.

40 It follows that the granting of provisional or protective measures on the basis of Article 24 (illum artikolu 35) is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought.

Dan l-istess principju kien gia gie affermat fid-decizjoni **Bernard Deinilauler vs SNC**

Couchet Frères (C-125/79) fejn intqal hekk:

15 An analysis of the function attributed under the general scheme of the Convention to Article 24, which is specifically devoted to provisional and protective measures, leads, moreover, to the conclusion that, where these types of measures are concerned, special rules were contemplated. Whilst it is true that procedures of the type in question authorizing provisional and protective measures may be found in the legal system of all the Contracting States and may be regarded, where certain conditions are fulfilled, as not infringing the rights of the defence, it should however be emphasized that the granting of this type of measure requires particular care on the part of the court and detailed knowledge of the actual circumstances in which the measure is to take effect. Depending on each case and commercial practices in particular the court must be able to place a time-limit on its order or, as regards the nature of the assets or goods subject to the measures contemplated, require bank guarantees or nominate a sequestrator and generally make its authorization subject to all conditions guaranteeing the provisional or protective character of the measure ordered.

16 The courts of the place or, in any event, of the Contracting State, where the assets subject to the measures sought are located, are those best able to assess the circumstances which may lead to the grant or refusal of the measures sought or to the laying down of procedures and conditions which the plaintiff must observe in order to guarantee the provisional and protective character of the measures ordered. The Convention has taken account of these requirements by providing in Article 24 that application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under the Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.

17 Article 24 does not preclude provisional or protective measures ordered in the State of origin pursuant to adversary proceedings — even though by default — from being the subject of recognition and an authorization for enforcement on the conditions laid down in Articles 25 to 49 of the Convention. On the other hand the conditions imposed by Title III of the Convention on the recognition and the enforcement of judicial decisions are not fulfilled in the case of provisional or protective measures which are ordered or authorized by a court without the party against whom they are directed having been summoned to appear and which are intended to be enforced without prior service on that party. It follows that this type of judicial decision is not covered by the simplified enforcement procedure provided for by Title III of the Convention. However, as the Government of the United Kingdom has rightly observed, Article 24 provides a procedure for litigants which to a large extent removes the drawbacks of this situation.

18 The reply to Questions 1 and 2 should therefore be that judicial decisions authorizing provisional or protective measures, which are delivered without the party against which they are directed having been summoned to appear

and which are intended to be enforced without prior service do not come within the system of recognition and enforcement provided for by Title III of the Convention.

Tal-istess fehma hu l-awtur **Pretelli**, 'Provisional and Protective Measures in the European Civil Procedure of the Brussels I System' in V. Lazic and S. Stuij (eds.) *Brussels Ibis Regulation* (T.M.C. Asser Press, 2017) fejn qal:

Precautionary measures issued on grounds of Article 35 Brussels Ibis Regulation are not able to cross the borders of the issuing State and, in particular, they may not be imposed on the judge who has "wider" jurisdictional power since he or she is responsible for a decision on the merits of the dispute. Logically, the first shall not interfere with or impose a measure on the second (p. 113).

Kif ukoll **Garcimartin**, 'Provisional and Protective Measures in the Brussels I Regulation Recast', *Yearbook of Private International Law*, Vol. 16 (2014/2015) fejn qal hekk:

... the result under the Recast Regulation coincides to a large extent with the one that the CJEU had reached under the 2001 Regulation and the "genuine link condition": "[...] the court of the place where the assets subject to the measures sought are located are those best able to assess the circumstances which may lead to the grant or refusal of the measures sought or to the laying down of procedures and conditions which the plaintiff may observe in order to guarantee the provisional and protective character of the measures authorised" (p. 78).

Decide

Ghalhekk il-Qorti tqis illi s-socjetajiet rikorrenti ghandhom ragun fit-talba ghar-revoka u kwindi din il-Qorti qed tirrevoka l-mandat ta' qbid 1704/2019 billi ma ghandhix gurisdizzjoni territorjali fuq l-oggetti mertu tal-mandat. Spejjez ghas-socjeta eHealth Limited.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur