QORTI CIVILI
(SEZZJONI TAL-KUMMERC)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum il-Hamis 18 ta` Gunju 2020

Kawza Nru. 1
Rikors Nru. 14/2020 JZM

Anne J Pace (K.I. 602358M)

kontra

X

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors li kien prezentat fit-<u>22 ta` Mejju 2020</u> li jaqra :–

1. Illi hija ghandha azzjoni wahda fis-socjeta` MOSTA AUTO DEALERS LIMITED liema socjeta` tinsab registrata mar-Registratur tas-Socjetajiet bin-numru C-3923.

2. Illi l-uniku azzjonista iehor huwa Charles Pace li kellu l-karta tal-identita` bin-numru 398852(M) – dan kellu l-azzjonijiet l-ohra kollha u cioe` 357,936 – kollox skond ma jirrizulta dettaljatament mill-Istatut tas-socjeta` li kopja tieghu hija hawn esebita bhala Dokument "A".

3. Illi l-imsemmi Charles Pace (li kien jigi r-ragel tar-rikorrenti) gie nieqes fit-3 ta` Frar 2020 skond ma jirrizulta mid-Dokument "B" hawn esebit.

4. Illi skond ma jirrizulta mill-Istatut tas-socjeta` (Dok "A") l-imsemmi Charles Pace kien l-uniku direttur tas-socjeta` u dan kellu wkoll ir-rappresentanza guridika u legali taghha, apparti li kien ukoll is-segretarju taghha – fi ftit kliem kien jamministra f`kollox hu.

5. Illi qabel ma gie nieqes Charles Pace u aktar precisament fit-30 ta` Jannar 2020 kienet saret laqgha tal-Bord tad-diretturi tal-istess socjeta` u dan hatar lil Pace (ibnu mar-rikorrenti) sabiex dan jirrappresenta lill-istess socjeta` fit-trasferiment tal-propjeta` identifikata hehh u cioe` "officially marked with the number one hundred and fifty nine (159) bearing the name "No Problem" in Constitution Street Mosta or more accurate description" bil-fakoltajiet l-ohra kollha li jinsabu mnizzla fl-istess rizoluzzjoni li kopja taghha tinsab hawn mehmuza u markata bhala Dokument "C".

6. Illi fil-21 ta` Novembru 2019 kien gie ffirmat ukoll konvenju ghat-trasferiment tal-istess propjeta` lil Elisia Buhagiar li ghandha l-karta tal-identita` bin-numru 402092M bil-prezz u taht il-kondizzjonijiet li jirrizultaw mill-konvenju debitament iffirmat mill-partijiet (u ghas-socjeta` kien deher id-direttur Charles Pace) u li jinsab registrat mal-Kummissarju tat-Taxxi – kopja tal-istess konvenju tinsab hawn esebita u markata bhala Dokument "D".

7. Illi issa li miet id-direttur uniku tas-socjeta` ma hemmx min jista` jidher ghall-istess socjeta` biex jonora l-konvenju riferut.

8. Illi l-esponenti tixtieq tuzufruwixxi ruhha minn dak li jipprovdi l-artikolu 132 tal-Kap 386 tal-ligijiet nostrani sabiex l-istess

konvenju jista` jigi onorat ghal mija fil-mija minghajr ebda tfixkil ta` xejn.

9. Ghaldaqstant l-esponenti titlob umilment sabiex, fid-dawl ta` dak li jipprovdi l-artiklu 132 tal-Kap 386 tal-ligijiet taghna, din il-Qorti joghgobha taghti dawk id-direttivi u ordnijiet kollha li jidhrilha xierqa u opportuni fic-cirkostanzi sabiex il-konvenju hawn fuq riferit tal-21 ta` Novembru 2019 jista` jigi attwat u li ghalhekk ghal dan l-iskop jinhatar peresuna – possibilment l-istess Karl Pace – bhala r-rappresentant legali tas-socjeta` ghall-finijiet biss tat-trasferiment tal-propjeta`, mertu tal-konvenju, b`dan illi l-istess propjeta` tista` tigi validament trasferita lil Elisia Buhagiar hawn fuq imsemmija fit-termini u taht il-kondizzjonijiet imsemmija fl-imsemmi konvenju – kollox isir taht dawk il-provvedimenti opportuni u xierqa li din il-Qorti thoss li ghandha timponi fic-cirkostanzi.

Rat id-dokumenti li kienu esebiti mar-rikors.

Rat id-digriet taghha tat-8 ta` Gunju 2020.

Semghet ix-xiehda tar-rikorrenti u ta` Karl Pace fl-udjenza tal-lum.

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

Rat l-atti l-ohra.

II. <u>L-Art 132(1) tal-Kap 386</u>

Abbazi tal-fatti kif irrizultaw, ir-rikorrenti qeghda taghmel it-talba abbazi tal-<u>Art 132(1) tal-Kap 386</u> li taqra hekk :

Jekk ghal xi raguni ma jkunx prattikabbli li tissejjah laqgha ta` kumpannija bil-mod li bih jistghu jissejhu laqghat tal-kumpannija, jew li jitmexxew il-laqghat ta` dik il-kumpannija bil-mod stabbilit bl-istatut jew b`dan l-Att, il-Qorti tista`, jew minn rajha jew fuq it-talba ta` xi

wahda mill-partijiet fil-procedimenti waqt dawk il-procedimenti jew, fin-nuqqas ta` xi procedimenti, fuq rikors ta` xi direttur tal-kumpannija jew ta` xi membru tal-kumpannija li jkollu dritt jivvota fil-laqgha, tordna li laqgha tal-kumpannija tissejjah, tinzamm u titmexxa b`dak il-mod li l-qorti jidhrilha xieraq, u meta jinghata xi ordni bhal dan, tista` taghti dawk id-direttivi ancillari jew konsegwenzjali li jidhrilha xieraq, inkluza d-direttiva illi membru wiehed tal-kumpannija prezenti personalment jew bi prokura jitqies li jikkostitwixxi laqgha.

Is-subartikolu (1) jirrigwarda **<u>biss</u>** *laqghat tal-kumpannija.*

Hemm imbaghad is-subartikolu (2) li **<u>jestendi</u>** dak li jahseb ghalih is-subartikolu (1) **<u>ukoll</u>** ghal *sejhiet ta` laqghat tal-bord tad-diretturi ta` kumpannija.*

Fil-kaz tal-lum huwa evidenti li l-Art 132(2) ma japplikax ghaliex ma hemmx bord tad-diretturi x`jissejjah billi l-bord kien kompost minn direttur wiehed, li kien il-mejjet Charles Pace. Ghalhekk bil-fatt li gie nieqes, il-kumpannija spiccat bla diretturi.

Il-mudell ghall-Art 132(1) tal-Kap 386 kienet Sec 371(1) tal-Companies Act Ingliza 1985, li llum saret Sec 306 tal-Companies Act Ingliza 2006. Tajjeb jinghad illi fil-ligi Ingliza ma kienx hemm disposizzjoni bhall-Art 132(2) taghna. Infatti fil-ligi Ingliza s-setgha tal-qorti hija limitata ghall-*convening of general meetings* mhux ghal *meetings of the board of directors.*

Fil-Pag 1427-1428 ta` **<u>Principles of Maltese Company Law</u>** (Second Edition – Volume Three – 2019 – MUP) **<u>Andrew Muscat</u>** ighid hekk b`riferenza ghall-Art 132(1) tal-Kap 386 –

General meetings may also, in particular circumstances, be convened, held and conducted as directed by the Civil Court. The court may exercise this power if, for any reason, it is impracticable (i) to call a meeting of a company in any manner in which meetings of the company may be called or (ii) to conduct the meeting in the manner prescribed by the articles or the Companies Act. The court should be entitled to direct that a meeting be held when it is impossible to hold a

general meeting because of the persistent absence of a quorum at general meetings. The court should not however direct that a meeting be convened simply because the directors had rejected a request by a member to call a meeting. Nor should the court use its powers to overcome a deadlock in the company`s affairs where the deadlock is the result of a deliberately created parity of votes between two members. Indeed the legislative provision is designed to empower the court to ensure that meetings are held but not to alter the result that is likely to follow from that meeting.

Where however the provisions of the articles are cynically exploited by some shareholders to block an effective meeting, the court should be able to exercise its powers. The court may exercise its power either (i) on its own motion or on the demand of either of the parties to proceedings before it during the course of such proceedings, or (ii) in the absence of such proceedings, on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting. The court may order that the meeting be called, held and conducted in such manner as it thinks fit, and it may, whenever any such order is made, give such ancillary or consequential directions as it thinks expedient, including a direction that one member of the company present in person or by proxy is to be deemed to constitute a meeting.

III. **Konsiderazzjonijiet tal-Qorti**

Fil-kaz tal-lum, jirrizulta li Charles Pace mhux biss kellu l-ishma kollha ta` Mosta Auto Dealers Limited (hlief ghal sehem wiehed), izda kien ukoll **l-uniku** direttur. Ir-rikorrenti kellha s-sehem l-iehor ta` Mosta Auto Dealers Limited pero` ma kenitx direttur. L-ishma kollha kienu *ordinary shares* u kollha kellhom *voting rights.*

Il-konvenju in kwistjoni dwar bejgh ta` propjeta` ta` Mosta Auto Dealers Limited kien iffirmat fil-21 ta` Novembru 2019. Ghall-kumpannija deher Charles Pace li kellu wkoll ir-rapprezentanza legali taghha.

Jirrizulta li erbat ijiem qabel miet Charles Pace, saret laqgha tal-bord tad-diretturi tal-kumpannija, li fiha kien mahtur Karl Pace, li jigi iben Charles Pace u r-rikorrenti, sabiex jidher ghal Mosta Auto Dealers Limited meta jigi biex isir il-kuntratt li jirrelata mal-konvenju de quo.

Bil-mewt ta` Charles Pace fit-3 ta` Frar 2020, id-delega li kellu ibnu Karl Pace m`ghadx ghandha sahha legali.

Hija l-laqgha generali tal-azzjonisti li tahtar (jew tikkonferma) d-diretturi. **<u>L-Art 139(4) tal-Kap 386</u>** ighid illi : *Unless otherwise provided in the memorandum or articles of a company, a director of a company other than the first directors shall be appointed by ordinary resolution of the company in general meeting.* Billi l-*Memorandum* u l-*Articles of Association* tal-kumpannija ma jipprovdux dwar il-metodu ta` hatra ta` diretturi, tapplika l-ligi. Billi fil-kaz tal-lum, dan ma jistax isir, ikollha tintervjeni l-Qorti.

Din il-Qorti tikkondividi l-fehma tar-rikorrenti li d-disposizzjoni li tindirizza l-kwistjoni li temergi mir-rikors hija l-**<u>Art 132 tal-Kap 386</u>**. In partikolari ghall-kaz odjern japplika s-subartikolu (1).

Ghalkemm ir-rikorrenti ghandha biss sehem wiehed, hija *membru* tal-kumpannija u ghandha *voting rights.* Fl-istess hija wahedha ma tistax issejjah laqgha generali billi skont Para. 9 tal-*Articles of Association* : *The quorum of any shareholders`s meeting shall be two members in person or by proxy holding not less than 70% of the issued paid up ordinary shares of the Company.* Tifhem ghalhekk illi fil-prezent ir-rikorrenti bhala azzjonista ma tista` taghmel xejn biex icaqlaq l-*status quo* li nholoq bil-mewt ta` zewgha. Ma rrizultax li sal-lum l-ishma li kellu Charles Pace f`Mosta Auto Dealers Limited ghaddew *by transmission* lill-*aventi diritto.*

Il-Qorti tapprezza l-animu li wassal ghall-prezentata tar-rikors odjern u cioe` principalment illi jithares l-interess tal-kumpannija de qua. Il-mewt ta` persuna fuq livell personali u affettiv hija fatt tragiku, l-aktar ghall-membri tal-familja. Fl-istess waqt mewt ta` persuna jista` jkollha wkoll effetti negattivi determinanti fil-kaz ta` kumpanniji zghar *a conduzione familiare* fejn prattikament kollox jitmexxa mill-bidu sal-ahhar mill-*capo famiglia,* kif kien il-kaz tal-lum, u fejn allura kif dan jigi nieqes jinholqu problemi mhux mistennija, specjalment ghal dawk bhar-rikorrenti li rrizulta li ma kenitx involuta *in prima persona* fin-negozju ta` zewgha u tal-kumpannija.

Tqis ukoll li fil-kaz odjern il-mewt ta` Charles Pace ghandha konsegwenzi wkoll ghal terzi u cioe` l-parti l-ohra fil-konvenju li l-Qorti tifhem li ghandha kull interess li jsir il-kuntratt skont il-pattijiet u l-kondizzjonijiet li kienu miftehma fil-konvenju.

Meta tqis l-assjem ta` fatti u cirkostanzi, il-Qorti sejra tilqa` favorevolment it-talba tar-rikorrenti.

<u>Decide</u>

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

Bl-applikazzjoni tal-Art. 132(1) tal-Kap. 386 tal-Ligijiet ta` Malta, u bla hsara ghad-disposizzjonijiet tal-Memorandum u tal-Articles of Association tas-socjeta` Mosta Auto Dealers Limited (C3923):

Tordna li nhar it-Tnejn 22 ta` Gunju 2020 f`nofsinhar issir laqgha generali tal-kumpannija Mosta Auto Dealers Limited (C3923) fl-ufficcju Vincenti Buildings, 19/20, Strait Street, Valletta, b`item wiehed biss fuq l-agenda u cioe` li l-laqgha generali tahtar u tappunta lil Karl Pace (Karta tal-Identita` Numru 28686M) bin il-mejjet Carmel sive Charles Pace u r-rikorrenti Anna nee` Galea sabiex fil-vesti ta` rapprezentant tal-kumpannja Mosta Auto Dealers Limited (C3923) jidher ghall-finijiet u effetti kollha tal-ligi ghall-kumpannija Mosta Auto Dealers Limited (C3923) fuq il-kuntratt finali ta` bejgh u xiri tal-fond mertu tal-konvenju datat 21 ta` Novembru 2019 (Dokument "D" a fol 14 sa 17 tal-process) skont il-pattijiet u kondizzjonijiet hemm patwiti, liema konvenju jaghlaq fit-30 ta` Gunju 2020.

Tawtorizza lir-rikorrenti sabiex fl-imsemmija laqgha

generali tivvota kemm f`isimha propju, kif ukoll f`isem l-eredi (sal-lum mhux maghrufa) tal-ishma li Carmel sive Charles Pace kellu fl-istess kumpannija.

Tordna lir-rikorrenti sabiex thallas l-ispejjez kollha ta` din il-kawza.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur