MALTA

QORTI CIVILI, PRIM AWLA
MALTA

ONOR. IMHALLEF
MAGRI ALBERT J.

Seduta ta' 02 ta' Ottubru, 2002

Citazzjoni Numru. 474/1991/1

Mohammed Nuriddin Yunes ghan-nom u in rappresentanza tas-socjeta' estera "Five Brothers Limited"

Vs

Paul Tabone f'ismu proprju u ghan-nom u in rappresentanza tas-socjeta' 'Caral Limited'

Il-Qorti,

Rat ic-citazzjoni presentata fit-23 ta' April 1991 li permezz taghha l-attur wara li ppremetta illi skond tlett skritturi privati tal-15 ta' April 1989, 3 ta' Ottubru 1989 u 21 ta' Frar 1990 (Dok A, B u C) il-konvenut proprio et nomine ghandu jrodd lura is-somma ta' tnax-il elf erba' mija u hamsin lira (LM12,450.00) mhallsa mis-socjeta' attrici bhala depositu fuq xiri li ma sehhx tal-lukanda "Sport Hotel" jew fuq azzjonijiet tas-socjeta' konvenuta proprjetarja tal-istess lukanda; illi skond l-istess dok C il-konvenut proprio et nomine ghandu jhallas ukoll il-prezz ta' spiriti u xorb ammontanti ghal tlett mija u ghoxrin lira (LM320) mibjugha

u kkonsenjata lill-istess lukanda; illi ghalhekk il-konvenut proprio et nomine ghandu jhallas lis-socjeta attrici LM12,770; talab li din il-Qorti:-

1. tikkundanna lill-konvenut ihallas lill-attur nomine s-somma totali ta' tnax il-elf seba' mija u sebghin lira maltin (LM12,770.00) dovuta kif fuq inghad.

Bl-ispejjes inkluzi dawk tal-ittra ufficjali tal-11 ta' Settembru 1989 u tad-9 ta' Lulju 1990, tas-sekwestru 1202/91 u 1204/91, u bl-imghax legali mill-21 ta' Mejju 1990 kontra l-konvenut proprio et nomine ngunt ghas-subizzjoni.

Rat id-dikjarazzjoni, l-lista tax-xiehda u d-dokumenti ezebiti mill-attur.

Rat in-nota tal-konvenut tal-5 ta' Awissu 1991 li permezz taghha eccepixxa:-
1. illi t-talba attrici hija inammissibbli stante li ma gietx preceduta b'talba ghad-dikjarazzjoni u talba ghal-likwidazzjoni tal-ammonti li setgha kienu dovuti lill-atturi.
2. Illi l-bejgh propost ma sehhx ghal ragunijiet imputabbli lill-atturi u mhux a kawza li ma xi (sic ?) permess mill-Bank Centrali.
3. Illi l-iskrittura tal-21 ta' Frar 1990 hija nulla peress li giet firmata mill-eccipjent taht violenza morali u cioe taht theddid u minacci tal-atturi li ma riedux jikkonsenjaw ic-cwievet tal-lukanda nonostante li ma riedux lanqas jibqghu joperw l-istess lukanda.
Rat id-dikjarazzjoni u l-lista tax-xiehda tal-konvenut.

Rat id-digriet taghha tas-7 ta' Ottubru 1991 meta gie mahtur Dr Marco Grixti bhala perit legali.

Rat id-digriet (bla data) ta' din il-Qorti diversament preseduta meta l-kawza giet mibghuta quddiem din il-Qorti ghas-sduta tat-13 ta' Novembru 1996 stante l-astensjoni tal-Imhallef Noel Arrigo.

Rat id-digriet taghha tad-29 ta' Ottubru 1999 meta giet mahtura Dr. Maria Dolores Gauci bhala assistent

gudizzjarju biex tigbor il-provi tal-partijiet stante li l-perit legali rrinunzja ghall-inkarigu.

Hdaet konjizzjoni tal-provi prodotti u d-dokumenti ezebiti.

Rat il-verbal ta' l-udjenza tat-8 ta' Mejju 2002 meta l-kawza giet imhollija ghas-sentenza ghas-seduta tal-lum.

Ittrattat il-kawza.

Ikkunsidrat:

Bi skrittura tal-15 ta' April 1989 s-socjeta' Caral Limited kienet obbligat ruhha li tbiegh u tittrasferixxi lis-socjeta' attrici "*the entire furniture, furnishings and fuxtures existing in Sport Hotel at number 133, in Saint George's Road, St. Julians which furniture and fixtures include kitchen fridges, freezers and other similar equipment....*" Dan il-bejgh kien qed isir bil-prezz konvenut ta' LM14,500, mil-liema somma s-socjeta' attrici hallset fuq l-iskrittura l-ammont ta' LM12,450. Gie konvenut ukoll li "*the balance of LM2050 shall be paid in its entirety by not later than the 31st day of May, 1989 which sale is to coincide and shall not be effected before the transfer of shares to be effected by vendor company to purchaser company which promise of transfer of said shares was entered into by a separate private agreement between the said parties bearing today's date.*" Dan il-ftehim jghalaq hekk: "*Should the other agreement, that is the transfer of shares of Caral Limited to Five Brothers Limited not take place, then the said sale of moveables shall not be concluded <u>and the sum deposited with the vendor company above referred to shall be refunded to the purchaser company in toto.</u>*"

Fis-26 ta' Awissu 1989 saret addenda fuq l-iskrittura tal-15 ta' April 1989 billi l-partijiet qablu li f'kaz li n-negozju dwar il-bejgh tas-shares u l-effetti mobili ma jirnexxix, is-socjeta' Five Brothers Limited obbligat ruhha "*to pay to Mid Med Bank Limited on behalf of Caral Limited all interests due to the said bank by Caral Limited from September 1988 up to end September 1989;*" u jkomplu "*the said undertaking is being made with the understanding that if*

the said sale or share transfer will fall through, Mister Younes nomine will be reimbursed the sum so far paid to Caral Limited by him on account of said sale that is the deposit paid by him to Caral Limited above mentioned."

Fit-3 ta' Ottubru 1989 giet iffirmata skrittura mill-konvenut u martu ghat-trasferiment ta' 500 share fis-socjeta' Caral Limited lis-socjeta' attrici versu l-prezz ta' LM22,500 "*of which the transferee has already paid LM12,450 whilst the balance of LM10,050 is to be paid within one month from the obtainment of exchange control permission for this share transfer from the Central Bank."* Ghalkemm b'mod zbaljat billi hawn it-trasnferor kienu l-konjugi Tabone u mhux is-socjeta' Caral Limited li kienet irceviet d-depositu ta' LM12,450, l-kontraenti fuq l-imsemmija skrittura regaw ghal darb ohra rribadew l-htiega tar-rifuzjoni tad-depositu maghmul meta qalu "*Should the necessary exchange control permits not be obtained within two months from today the transferor binds himself to refund the said sum of LM12,450 to the transferee."*

Eventwalment irrizulta li l-permess ma setghax jinghata billi l-Ministeru tat-Turismu kellha "policy" li ma jinghatawx permessi ghall-estensjoni ta' hotels ezistenti, u billi l-istess Hotel kellu biss 32 sodda ma kienx jissodisfa r-rekwiziti tal-Ministeru tal-Finanzi ghat-trasferiment ta' hotels lill-barranin. Inoltre d-direttur tad-dipartiment tal-Kummerc oggezzjona ghall-bejgh tas-shares billi: "*some of the object clauses in the Memorandum of Association of the above company enable the company to carry on activities which are strictly reserved for maltese nationals."* Id-dipartiment ghalhekk issugerixxa li jkun hemm kambjamenti fl-istatut tas-socjeta' biex tkun tista' tilqa' socji ta' nazzjonalita' barranija.

Jidher pero' li s-suggeriment tad-Direttur tad-Dipartiment tal-Kummerc ma giex attwat u l-"*konvenji"* thallew jiskadu. Kien ghalhekk li fil-21 ta' Frar 1990 f'laqa' fl-ufficcju tal-Avukat Dr. Godwin Aquilina giet iffirmata skrittura ohra bejn is-socjetajiet involuti fil-kawza kif ukoll mill-konvenut personalment u f'isem martu Antida fejn l-partijiet rrevokaw li skritturi kollha li kienu saru bejniethom u anke

rregolaw l-kwistjoni tad-depositu maghmul billi gie miftiehem li:
(1) *"Paul Tabone proprio et nomine binds himself to refund Yunes Ahmed Yunes proprio et nomine the sum of twelve thousand four hundred and fifty liri (LM12,450) which sum represents the deposit paid by Yunes Ahmed Yunes to Paul Tabone for the purchase of the premises Sport Hotel and shares in Caral Limited which transfers have been rejected by the Central Bank."*

F'dik l-okkazzjoni l-partijiet qablu dwar meta kellha tithallas lura l-imsemmija somma.

Fl-istess skrittura jinghad li c-cwievet tal-hotel kienu qed jigu ritornati lill-konvenut li ddikjara li l-hotel kien jinsab fi stat tajjeb. Qablu wkoll li l-Yunes Ahmed Yunes jithallas, fi zmien gimgha, il-valur tal-istokk tax-xorb li kien jinstab fil-bar.

Fl-ahharnett jinghad li "*All expenses incurred by Yunes Ahmed Yunes proprio et nomine for the running of the Sport Hotel from September 1988 to today are being set off against any claim that Paul Tabone proprio et nomine had against Yunes Ahmed Yunes for the use of the above hotel."*

Ikkunsidrat:-

Il-konvenut qed jilqa' ghat-talba attrici fejn s-socjeta' Five Brothers Limited qedha titlob ir-rifuzjoni tad-depositu fl-ammont ta' LM12,450 billi qed jigi eccepit:-
1. in-nullita' tac-citazzjoni billi ma hemmx talba ghal dikjarazzjoni u talba ghall-likwidazzjoni tal-ammonti mitluba. Illi din l-eccezzjoni mhux gustifikata fir-rigward tat-talba ghar-rifuzjoni tad-depozitu billi l-ammont dovut u r-raguni lghala dan huwa dovut jirrizulta bl-aktar mod car mill-iskrittura iffirmata mill-kontendenti. Fir-rigward tat-talba ghal hlas tal-prezz tal-ispiriti, din l-eccezzjoni hija gustifikata.
2. Illi l-bejgh ma sehhex tort tal-atturi. Il-provi juru x'ort ohra billi jirrizulta li l-konvenut naqas li jizvela lill-attur l-kondizzjoni li ma tistax tbiegh Hotel lil-barrani jekk dan

jkollu anqas minn hamsin sodda. Jirrizulta ukoll li l-konvenut naqas li jaghmel dawk il-kambjamenti mehtiega fil-att kostituttiv tas-socjeta' konvenuta biex jaghmilha possibbli li jkun hemm socjii ta' nazzjonalita' stranjira. Din l-eccezzjoni ghalhekk qed tigi michuda.

3. In-nullita' tal-iskrittura tal-21 ta' Frar 1990. Il-konvenut qed jghid li l-iskrittura imsemmija fejn intrabat li jhallas lura l-ammont depositat hija nulla billi huwa gie mgheddet biex jiffirmaha. Infatti dan jghid li missier l-attur u cioe l-persuna li kienet ghamlet id-depositu originali, kien gheddu b' rivolver biex tigi iffirmata l-imsemmija skrittura. Din il-Qorti tosserva fl-ewwel lok li l-prova li tella fir-rigward tat-tgheddida kienet wahda dghajfa u mhux korroborata minn hadd. Inoltre jinghad li l-obbligazzjoni fl-iskrittura tal-21 ta' Frar 1990 ma hi xejn aktar milli rikonoxximent tal-obbligu espress ripetutament fi skritturi precedenti b'zieda tal-modalita' tal-pagament. Issa l-konvenut kien f'diversi okkazzjonijiet obbliga ruhhu li jirrifondi l-ammont mhallas bhala depositu lura kemm-il darba ma johrog il-permess mehtieg ghat-trasferiment tal-Hotel - kundizzjoni din li avverat ruhha. Il-konvenut ma jghidx li dawn l-iskritturi privati precedenti ghal dik tal-21 ta' Frar 1990 saru taht tgheddida u ghalhekk l-obbligazzjoni tibqa.

Illi dwar l-allegazzjonijiet maghmula mill-konvenut waqt ix-xhieda tieghu u cioe dwar pretensjonijiet tieghu kontra s-socjeta' konvenuta ghall-kumpens ghall-perjodu kollu li l-Hotel baqa' f'idejn l-atturi, jigi rilevat li f'dawn il-proceduri ma hemm ebda kontro talba, fi kwalunkwe kaz tpaccija tista' ssehh biss fejn zewg debiti reciproci huma certi, likwidi u dovuti, haga li zgur ma tirrizultax fl-ammont pretiz mill-konvenut. Finalment kull pretensjoni tal-konvenut ghall-kumepns hija regolata u cirkoskritta b'dak li jinghad fl-ahhar klawsola tal-iskrittura tal-21 ta' Frar 1990 kif riportata hawn fuq fejn l-ispejjes tal-attur ghat-tmexxija tal-Hotel gew konvenzjonalment pacuti kontra kull kreditu li Tabone seta' kellu kontra l-attur ghal gestjoni tal-Hotel.

Illi dwar it-talba ghal hlas tas-somma ta' LM320 prezz ta' spiriti u xorb ma ingiebetx prova sufficjenti fir-rigward. Infatti t-talba in kwistjoni hija marbuta ma dak li jinghad fil-

klawsola (4) tal-iskrittura tal-21 ta' Frar 1990. Din tghid hekk: "*The value of stock of liquers and drinks present in the bar of Sport Hotel today are also to be refunded to Yunes Ahmed Yunes within one week from today*" Fic-citazzjoni ghalhekk l-attur ppremetta "*illi skond l-istess Dok C il-konvenut proprio et nomine ghandu jhallas il-prezz ta' spiriti u xorb ammontanti ghal LM320 mibjugha u kkonsenjata lilu fl-istess lukanda.*" Izda l-unika prova li tressqet fir-rigward kienet d-dok PT a fol 68 tal-process fejn tissemma l-figura ta' LM320 izda kontra l-kliem "Stock left over by Caral Ltd. - Stock left in hotel on 7.09.88." Din ma tikkombacjax ma dak li jinghad fl-iskrittura tal-21 ta' Frar billi d-data hija hazina, u t-talba hija ghal stock li halliet s-socjeta' attrici u mhux s-socjeta' konvenuta. Din it-talba ghalhekk ser tigi michuda.

Ghar-ragunijiet fuq moghtija l-Qorti filwaqt li tichad l-eccezzjonijiet tal-konvenuti, tipprovdi dwar it-talba attrici billi tikkundanna lill-konvenut proprio et nomine jhallsu lis-socjeta' attrici limitatament is-somma ta' tnax-il elf erba' mija u hamsin lira (LM12,450) in rifuzjoni ta' depositu maghmul in konnessjoni man-negozju fuq li Sport Hotel li ma sehhx, u dana bl-imghax legali kif mitluba u bl-ispejjes kollha kontra l-konvenut proprio et nomine.

Onor Imhallef Albert J. Magri