



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

**ONOR. IMHALLEF  
JOSEPH ZAMMIT McKEON**

**Illum il-Hamis 28 ta` Jannar 2021**

**Kawza Nru. 3  
Rikors Nru. 75/2015/JZM**

**Fl-atti tal-istralc tal-kumpannija  
Cassar & Schembri Marketing Ltd  
(C-33174) li kienet dikjarata xjolta  
bi provvedimenti tal-Prim`Awla tal-  
Qorti Civili tat-3 ta` Novembru 2015  
u kien ordnat l-istralc taghha**

**Il-Qorti :**

**Dan huwa digriet dwar rikors li pprezenta l-istralcjarju fit-2 ta`  
Dicembru 2020 a tenur tal-Art 224(2) tal-Kap 386 tal-Ligijiet ta`  
Malta.**

**I. Preliminari**

Ghar-ragunijiet li huma specificati fir-rikors, l-istralcjarju talab lill-qorti  
sabiex bl-applikazzjoni tal-**Art 224(2) tal-Kap 386** :

- Tiddikjara li l-mandati bin-nru 1621/2015, 1393/2016 u 1399/2016 huma irriti u nulli ; u
- Prevja li tinghata ordni ghall-hrug ta` kontromandati, tordna lir-Registratur tal-Qorti sabiex immedjatament jirrilaxxa favur l-istralcjarju l-fondi li kienu depozitati taht l-awtorita` tal-qorti bic-cedola ta` depozitu numru 1231/2019.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat id-digriet taghha tad-9 ta` Dicembru 2020.

Rat ir-risposta li pprezenta d-Direttur Qrati Civili u Tribunali fit-18 ta` Dicembru 2020.

Rat id-digriet taghha tal-4 ta` Jannar 2021.

Rat il-verbal tal-udjenza tas-7 ta` Jannar 2021.

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

Rat l-atti l-ohra.

## **II. L-Art 224(2) tal-Kap 386**

In sostenn tat-talbiet, l-istralcjarju qed jinvoka l-applikazzjoni tal-Art 224(2) tal-Kap 386 li jaqra hekk :-

*Meta jkun sar ordni ghal stralc jew ikun inhatar amministratur provvizorju, skont id-disposizzjonijiet tal-artikolu 228, ma tista` tittiehed ebda azzjoni jew jinbdew xi proceduri kontra l-kumpanija jew il-proprjeta` taghha hlief bil-permess tal-qorti u taht dawk il-kondizzjonijiet li tista` timponi l-qorti.*

Din id-disposizzjoni tghodd ghall-kaz ta` Cassar & Schembri Marketing Ltd ghaliex sar ordni ta` stralc fil-konfront ta` din il-kumpanija mill-

Prim`Awla tal-Qorti Civili. Jidher illi l-mandati eżekuttivi li għalihom qieghed jirreferi r-rikors kienu prezentati wara li sar l-ordni ta` stralc.

### **III. L-Art 130(2) tal-Insolvency Act 1986**

L-Art 224(2) tal-Kap 386 huwa mfassal fuq l-Art 130(2) tal-Insolvency Act 1986 tal-Ingilterra li jaqra hekk :-

*When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property except by leave of the court and subject to such terms as the court may impose.*

### **IV. In-natura kollettiva ta` procediment ta` stralc**

Fil-pag 501 tal-ktieb "**The Law of Insolvency**" (Sweet & Maxwell - 1998) **Ian Fletcher** ighid hekk :-

**"The fundamental principle upon which winding up is based is the collective nature of proceedings.** *The objective underlying the relevant legal provisions is to ensure that an orderly regime is imposed upon all interested parties, so that none of them individually may contrive to enhance his position by exploiting some fortuitous circumstance which may yield some personal advantage, in the form of a larger proportional return on debts which are due, or a direct and more rapid recovery of payment, than would result from participated in the processes of the winding up, and receiving dividend in common with all other creditors whose debts carry an equal ranking in order of priority ... In order to ensure that the above objective is achieved the law establishes a series of barriers to the exercise by a company of its normal rights and remedies when it is prospectively or actually in litigation. By this means, the remaining assets of the company are maintained intact so that they may be administered in accordance with the principles of insolvency law".* (enfasi u sottolinear ta` din il-qorti).

Issir ukoll riferenza għal Pg 913-914 ta` **Boyle & Birds` Company Law** – 8<sup>th</sup> Edition – 2011 fejn jinghad illi :

*Unpaid creditors of a company may consider commencing winding-up proceedings against the company as an alternative to suing for payment. As*

*a debt collection mechanism, winding up proceedings may be swifter and, for the individual creditor, less expensive than a claim that may come to trial for some time ; **on the other hand, winding up is a collective procedure for the benefit of creditors generally and it does not benefit specific creditors individually (F. Odith "Winding Up Recalcitrant Debtors" 1995 LMCLQ 107)** ... (enfasi u sottolinear ta` din il-qorti)*

## **V. Id-diskrezzjoni tal-qorti**

**Fil-kaz odjern ma ntlab ebda permess mill-qorti sabiex jigu prezentati l-mandati in kwistjoni.**

**Pero` anke li kieku ntlab permess, tajjeb jinghad li l-qrati ghandhom diskrezzjoni wiesgha.**

Il-qorti tirreferi ghall-gurisprudenza tal-qrati Inglizi.

Fil-kawza **In Re Aro Ltd** – 1980 Ch. 196, inghad illi :-

*"In determining whether, in a compulsory liquidation, leave should be given to proceed with a claim, the court has an extensive discretion, it is free to do what is right and fair in the circumstances."*

Fil-kawza **In Re Exchange Securities & Commodities Ltd** (1983) BCLC 186, inghad illi :-

*"Generally leave will only be given where some question arises that cannot properly be determined in the winding up and where litigation is needed to resolve matters"*

Fil-kawza **In Re David Lloyd & Co** (1877) inghad illi :-

*"There are several circumstances where, generally, the court will allow the action to proceed. One is when the plaintiff is seeking to enforce his security, because a secured creditor is in a position where he can fairly claim that he is independent of the liquidation, since he is enforcing a right, not against the company, but to his own property."*

Fil-kawza **In Re Barrow (Leeds) Ltd** (1982) inghad illi :-

*"Leave will readily be given if the plaintiff undertakes not to enforce against the company any judgment he may obtain, without leave of the court".*

## **VI. Konsiderazzjonijiet**

**Il-qorti hija tal-fehma li t-talbiet tal-istralcjarju huma fondati tajjeb fid-dritt waqt li dawk tad-Direttur Qrati Civili u Tribunali fil-funzjoni tieghu bhala Registratur tal-Qrati ta` Kompetenza Civili jippekkaw fis-sostenibbilita` legali taghhom tenut kont tal-fatt li stralc ta` kumpannija huwa procediment specjali regolat b`ligi specjali, li ghaliha ma jghoddux disposizzjonijiet applikabbli fi procedimenti ordinarji.**

Sentenza li tat il-Qorti tal-Kummerc fis-7 ta` Lulju 1960 fil-kawza **Antonio Caruana et vs Joseph Debono et** tfisser bl-aktar mod limpidu dak li jsir fi stralc.

Dan huwa pronunzjament gudizzjarju li ghadu jghodd anke llum.

L-istralc kien deskritt mill-qorti bhala :

*dak il-perijodu transitorju mehtieg appuntu ghad-determinazzjoni tal-attiv b`serje ta` operazzjonijiet intizi biex jillikwidaw l-affarijiet u biex jigu rizoluti l-pendenzi pendenti. L-istralcjarju hu l-mandatarju maghzul mis-soci jew mill-Qorti biex igib ghat-terminu l-operazzjonijiet in corso, jezigi l-krediti u jestingwi l-passivitajiet, u b`hekk jikkjarixxi l-affarijiet tas-socjeta` biex jasal ghal rizultat cert li juri jekk hemmx attiv x`jinqasam jew passiv li ghandu jigi sopportat. Hu ma jistax jaghti hajja ghal operazzjonijiet godda, ghaliex appuntu l-funzjoni tieghu hi dik li jillikwida l-affarijiet ga mibdijin, u ghaldagstant ghal hekk ghandu jigi limitat l-inkariku tieghu.*

Hija l-fehma ta` din il-qorti illi wara li kumpannija tigi xjolta b`ordni tal-qorti, u jsir l-ordni ta` stralc, il-procediment ta` stralc ma jistax jitqies bhallieku kien kawza li finalment sejjer iwassal ghal sentenza. Huwa procediment *ad hoc* mahluq b`ligi specjali, b`funzjoni u ghanijiet precizi. Il-process ma jigix konkluz b`sentenza. L-ordnijiet, direzzjonijiet u provvedimenti li taghti l-qorti fil-kors tal-istralc sakemm tigi biex taghlaq l-

istralc ghandhom jitqiesu f` din l-ottika partikolari, u anke ghalhekk mhumiex sentenzi.

L-argumenti li gab id-Direttur sabiex jikkontesta t-talbiet tal-istralcjarju kienu jaghmlu sens guridiku li kieku saru f`kuntest ta` procediment ordinarju. Il-kuntest odjern pero` mhuwiex ordinarju izda huwa regolat b` *lex specialis* li tidderoga mil-ligi generali.

**Bis-sahha ta` ordni ta` stralc, jiskatta a collective procedure for the benefit of creditors generally (inkluz ir-Registratur). Li kieku l-qorti kellha tippermetti li kull kreditur waqt stralc "jigri" biex jiehu taht il-kontroll tieghu assi ta` kumpannija li tkun qeghda tigi stralcjata, jigi fix-xejn il-beneficcju tal-kollettivita` ta` kredituri. Waqt stralc jipprevalu d-drittijiet mhux min "jigri" l-aktar jew min ghandu "nifs" l-aktar.**

### **Provvediment**

**Ghar-ragunijiet kollha premissi, u bl-applikazzjoni tal-Art 224(2) tal-Kap 386 tal-Ligijiet ta` Malta, il-qorti qeghda tipprovdi billi :**

**Tiddikjara li l-mandati bin-numru 1621/2015, 1393/2016 u 1399/2016 huma rriti u nulli ;**

**Tordna b`effett mil-lum il-hrug tal-kontromandati opportuni sabiex il-mandati li ghalihom hemm riferenza fil-paragrafu precedenti ma jibqghux fis-sehh.**

**Tordna lid-Direttur Qrati Civili u Tribunali fil-funzjoni tieghu bhala Registratur tal-Qrati b`Kompetenza Civili sabiex b`effett mil-lum jirrilaxxja favur l-istralcjarju l-fondi li kienu depozitati taht l-awtorita` tal-qorti bic-cedola ta` depozitu numru 1231/2019.**

**Tordna li l-ispejjez kollha ta` dan il-procediment jithallsu mid-Direttur Qrati Civili u Tribunali.**

**Onor. Joseph Zammit McKeon  
Imhallef**

**Amanda Cassar  
Deputat Registratur**