

*fi proċeduri arbitrali li mhumex mandatorji m'hemmx dritt ta' appell fuq punti ta' fatt –  
l-artikoli 70A u 70B tal-Kap. 387 – ammissibilità tal-appell*



MALTA

**QORTI TAL-APPELL**  
**(Kompetenza Inferjuri)**

**ONOR. IMĦALLEF**  
**LAWRENCE MINTOFF**

Seduta tat-3 ta' Frar, 2021

Appell Inferjuri Numru 87/2019 LM

**Grenke Renting Limited (C 57282)**  
*("l-appellanta")*

**vs.**

**Top Group Malta Limited (C 76176) u**  
**Dorothy Ciantar (K.I. 253591M)**  
*("l-appellati")*

**Il-Qorti,**

**Preliminari**

1. Dan huwa appell magħmul mis-soċjetà rikorrenti **Grenke Renting Limited (C 57282)** [minn issa 'l quddiem "is-soċjetà appellanta"] minn lodo

arbitrali mogħti fl-Arbitraġġ numru 5195/2017 tas-6 ta' Settembru, 2019, [minn issa 'l quddiem "il-lodo arbitrali"], mit-Tribunal tal-Arbitraġġ [minn issa 'l quddiem "it-Tribunal"] fiċ-Ċentru dwar l-Arbitraġġ ta' Malta [minn issa 'l quddiem "iċ-Ċentru"], li permezz tiegħu ddeċieda billi ċaħad it-talbiet kollha tagħha fil-konfront tas-soċjetà intimata **Top Group Malta Limited (C 76176)** u **Dorothy Ciantar (K.I. nru 253591M)** [minn issa 'l quddiem l-appellati], bl-ispejjeż kontiha.

## **Fatti**

2. Il-fatti tal-każ odjern jirrigwardaw tliet ftehim għall-kiri ta' apparat teknologiku li s-soċjetà appellanta qiegħda tgħid li hija ffirmit mas-soċjetà appellata u mal-appellata Dorothy Ciantar bħala garanti. Is-soċjetà appellanta tgħid li hija tterminat, u dan bla ebda avviż, l-imsemmija ftehim *ai termini* tal-klawsola 14 tagħhom stante ksur min-naħa tal-appellati tal-obbligu tagħhom għall-ħlas tal-kiri ta' dak l-apparat. Għalhekk hija kienet qiegħda tfittex għall-ħlas tas-somma pretiża ta' tmienja u għoxrin elf mitejn erbgħa u sebgħin Euro u wieħed u għoxrin ċenteżmu (€28,274.21) rappreżentanti dik is-somma dovuta bħala riżultat tal-ksur tat-tliet ftehim ta' bejn il-partijiet, u dan flimkien mal-imgħaxijiet u l-ispejjeż tal-proċedura.

## **Mertu**

3. Is-soċjetà appellanta intavolat il-proċeduri arbitrali permezz ta' Avviż tal-Arbitraġġ u Dikjarazzjoni li ġew ippreżentati fil-31 ta' Ottubru, 2017, fil-konfront tal-appellati, fejn filwaqt li allegat li hija kienet dovuta l-ammont komplessiv ta' tmienja u għoxrin elf mitejn erbgħa u sebgħin Euro u wieħed u għoxrin ċenteżmi (€28,274.21) mingħand l-appellati *ai termini* ta' tliet ftehim, talbet lit-Tribunal tal-Arbitraġġ sabiex:

- "1. **Declare** that the Respondent Company Top Group Malta Limited defaulted in payments to the Claimant in accordance with the Agreements;*
- 2. **Declare** that the Respondent Company Top Group Malta Limited failed to observe the provisions of the Agreement relating to the default in payments;*
- 3. **Declare** that the Respondent Dorothy Ciantar failed to observe her duties and obligations as guarantor jointly and severally with the Respondent company Top Group Malta Limited;*
- 4. Subsequently and consequently to the above, **Order** the Respondents or whosoever from the Respondents, to return the equipment rented by the Claimant to the Respondent company Top Group Malta Ltd in a good state within a peremptory period to be decided by this Honourable Arbitration Tribunal, and, in the event that the Respondents default in doing so, **Authorise** the Claimants, if possible, to affect the taking as such equipment's possession themselves at the cost of the Respondents as this Honourable Arbitration Tribunal may direct;*
- 5. Subsequently and consequently to the above, **Order** and **Condemn** the Respondents or whosoever from the Respondents, to pay to the Claimant the amount of twenty eight thousand, two hundred and seventy four Euros and twenty one cents (€28,274.21) as arising from the Respondents default in terms of the Agreements, with costs and interests (in terms of Section 14 of the Rent Contracts and L.N. 272 of 2012), and in the event that the equipment for some reason, could not be returned in the possession of the Claimants **Liquidate** the damages suffered by the Claimant as the Arbitration Tribunal deems fit (if necessary by means of a technical expert nominated by this Arbitration Tribunal*

*accordingly) and subsequently **Order and Condemn** the Respondents or whosoever from the Respondents to pay such liquidated damages to the Claimant over and above the amounts being claimed herein;*

*With costs and interests (in terms of Section 14 of the Rent Contracts and L.N. 272 of 2012) from the date of default.”*

4. L-appellati wiegħbu fil-15 ta' Diċembru, 2017, fejn talbu sabiex it-talbiet tas-soċjetà appellanta jigu miċħuda, bl-ispejjeż kontriha.

## **Il-Lodo Arbitrali**

5. L-Arbitru wasal għal-lodo arbitrali wara li għamel is-segwenti konsiderazzjonijiet rilevanti għal dan l-appell:

*“These proceedings have been filed by Grenke Renting Malta Limited against Top Group Malta Limited, jointly and in solidum, with Dorothy Ciantar on the basis of the agreements marked GR1, GR2 and GR3, a copy of which were exhibited together with the Statement of Claim.*

*Claimant is demanding that this Tribunal finds that Respondent Company (1) defaulted in the payments due as per the Agreements referred to, (2) failed to observe the provisions of the Agreements relating to the default in payments (3) declare that Dorothy Ciantar alone failed to observe her duties and obligations as guarantor, jointly and severally with Respondent Company, (4) order the Respondents to return the equipment rented to Respondent Company in a good state and condition within the peremptory period to be decided by this Tribunal and in default to authorize Claimant, if possible, to effect the taking of such equipment's possession themselves at the cost of Respondent Company, (5) order and condemn Respondents to pay Claimant the sum of €28,274. 21 as arising from Respondents' default in terms of the Agreements in terms of section 14 of the Rent Agreements and L.N. 272 of 2012 and in the event that the equipment, for some reason, could not be returned to Claimant to liquidate the damages suffered by Claimant as the Tribunal shall liquidate and order and condemn Respondents to pay such liquidated*

*damages to the Claimant over and above the amounts being claimed – with costs and interest in terms of Section 14 of the said Rent Contracts and L.N. 272 of 2012.*

*Respondents contested the claims filed against them on the basis of several grounds as amply described in the Reply which has been filed by them.*

*The first two pleas raised by Respondents have already been disposed of through the Preliminary Ruling which was given earlier on in these proceedings (on 09<sup>th</sup> May 2018) and as a result of which these proceedings could continue.*

*The Tribunal shall therefore proceed to consider the full merits of these proceedings in the light of the other pleas raised in defence.*

*Respondent is pleading that Claimant company should produce proof as to the termination of the Agreements referred to.*

*Without prejudice to this plea, the guarantees which were signed personally by Respondent Dorothy Ciantar refer to different contracts from those which are the basis of this claim and thus Claimant's demands may not be entertained against her in her personal capacity.*

*Moreover the said guarantees are intended for a limited amount and for a particular purpose and therefore they could not be extended further than for what they were intended.*

*Claimant's demand for the payment of the penalties is not legal and unsupported both in fact and at law, in that it is claiming the payment of these penalties as a consequence of the fact that Claimant company failed to pay the rent agreed upon, which consequence is prohibited by law in terms of section 1139 of the Civil Code and from jurisprudence.*

*A copy of the first Rental Agreement is that exhibited and marked as GR1 bearing number 146-00595 between the Reseller/Supplier, identified as OFFICE GROUP LIMITED and the Lessee company TOP GROUP MALTA LIMITED. Document GR2 which bears number 146-00581 and Document GR3 bearing number 146-00557 are the other two Rental Agreements which are also entered into between OFFICE GROUP LIMITED and TOP GROUP MALTA LIMITED.*

*The documents concerned are signed respectively by the director (Dorothy Ciantar) of TOP GROUP MALTA LIMITED and by a representative of GC RENTING MALTA LIMITED, which is not Claimant Company and which is defined to be "acting in its own name but for the account of GRENKE FINANCE PLC of Dublin."*

*The proceedings are instituted solely in the name of GRENKE RENTING MALTA LIMITED or indeed GRENKE RENTING LIMITED which is identified as LESSOR – they are not instituted in the name of GC RENTING MALTA LIMITED.*

*In terms of Document GR5 Respondent Dorothy Ciantar declared herself to be personally liable, jointly and severally with the Company Top Group Malta Limited, for “all amounts due to GC Renting Malta Limited including any interests incurred arising from the above mentioned agreement and or its termination, including any costs and expenses arising from the Company’s breach of contract together with any legal expenses involved.....”*

*Documents GR1, GR2 and GR3 have been identified with the following Rent Contract Numbers 146 – 00595; 146-00581 and 146-00557 respectively whereas the “Debt Guarantee Agreements” signed by Dorothy Ciantar refer to Rent Request Number 146-00791 and 146-00775.*

*From the Affidavits produced by Claimant company which were confirmed on oath by Paolo Dellamano [who holds the office of Managing Director of Claimant Company] and by Elisabetta Romanini [who holds the office of internal sales employee], it emerges that the rental agreements were for a period of 60 months for the amounts indicated therein and in accordance with the terms and conditions emanating from the contracts. They furthermore declared that Respondent Ciantar, in her personal capacity, guaranteed jointly and severally with the company, the payment due and this on the basis of the documents marked as GR5 and GR6. Moreover they assert that the contracts were terminated through the issuance of the notice letter (marked as GR7). They explained that the Lessee failed completely to honour the Rental Agreement and therefore the Company proceeded against both Respondents with the full force of the Agreements.*

*Claimants produced other witnesses who testified viva voce in front of the Arbiter and whose evidence is reproduced above.*

*In terms of Clause 14 of the said Agreements - which is entitled “CONSEQUENCES OF DEFAULT, TERMINATION WITHOUT NOTICE” - it is stipulated that “if the Lessee is in arrears with contractually agreed payments, outstanding rent instalments and other amounts owed will be subject to interest as calculated in terms of the provisions of Directive 2011/7/EU as incorporated into Maltese Law by virtue of L.N. 272 of 2012. The Lessor is entitled to terminate the Rent Contract without notice, if the Lessee is in arrears with one rent instalment (or part thereof). .....”*

*There is no doubt in the Arbiter’s mind that the Lessee was in arrears of the payments due by it and that as a result thereof Claimant Company exercised its*

*rights to terminate the said Rental Agreements. These two facts, in the considered opinion of the Arbiter, have been proven.*

*It is pertinent to point out that there is a conglomeration of Companies in these proceedings in that the supplier of the goods is identified as being OFFICE GROUP LIMITED, whereas the Contract is signed by GC RENTING MALTA LIMITED, which is also considered to be acting in its own name but for the account of GRENKE FINANCE plc of Dublin. No mention whatsoever, so far, is made to Claimant Company.*

*It does not result that GC RENTING MALTA LIMITED acted for and on behalf of Claimant Company*

*In terms of the said Agreements the invoicing is provided also by the same company GC RENTING MALTA LIMITED but the proceedings are instituted by GRENKE RENTING MALTA LIMITED which, in terms of law, once that it is identified with its own particular name and its own particular registration number is another juridical person altogether, independent and distinct from GC Renting Malta Limited.*

*There does not seem to be any explanation as to how Claimant's company comes into the picture at all, i.e. that it has any contractual relationship with either or both of Respondents. When Paolo Dellalano testified during the sitting of 28<sup>th</sup> June 2018, he stated that he is the Managing Director of Claimant Company. He stated as much as well in his Affidavit. There is no reason to doubt that statement and I am sure that if that is the case his name would appear on the Memorandum and Articles of Association which is registered with the Registrar of Companies.*

*He states that Claimant Company signed three contracts with Respondent Company. From a careful examination of the contracts which have been exhibited during these proceedings there is not even one of them which is signed with Claimant Company. They are, indeed, signed by a representative of GC Renting Malta Limited.*

*It might as well happen that Mr Dellalano is a Director also of this other Company, i.e. GC Renting Malta Limited, but that has not only not been asserted but no proof has been forthcoming in that respect. Even if such proof had been produced, it would not have changed the legal position of Claimant Company whatsoever.*

*As is most obvious to all, and as results most unequivocally at law and in all jurisprudence, all companies have, each, individually, their own legal personality, distinct the one from the other. Hence the reason that each company has its own*

*name, its own registered company (sic), its own Statute, in a few words its own separate and independent identity. No one company may be mixed with the other.*

*GRENKE RENTING MALTA LIMITED or, as it is also sometimes identified, GRENKE RENTING LIMITED is not mentioned once in the Agreements which form the basis of the claim filed against both Respondents. It is neither the Reseller/Supplier (and that is understood) but it is NOT the signatory to the Agreement.*

*The Reseller/Supplier is OFFICE GROUP LIMITED and the signatory to the Agreement is GC RENTING MALTA LIMITED.*

*From the records of these proceedings it is not even at least hinted – even though most likely this is not the case - that there was a change in the name of the company from “GC RENTING MALTA LIMITED” (signatory to the Rental Agreement) to Claimant’s company’s name (Grenke Renting Malta Limited” or “Grenke Renting Limited”) if, indeed, that had been the case.*

*From the Guarantee Agreements exhibited in these proceedings and identified as GR5 the agreements to which Respondent, in her personal capacity, has entered into as guarantor do not tally with the Numbers of the Rental Agreements signed by the Parties in that in the Personal Guarantee the Agreements to which the Guarantor has accepted to act as such are completely different from those on the Rental Agreements – as has already been explained supra.*

*Thus whereas there does not seem to be any doubt that in actual fact Respondent Company has not honoured the Rental payments due to GC Renting Malta Limited and much less did Respondent personally honour any payments herself, in her alleged capacity as guarantor of the debtor company for the amounts for which she undertook the guarantee, the claims, as formulated whether by Grenke Renting Malta Limited or by Grenke Renting Limited may not be entertained because not only none of the Respondents has any juridical relationship with Claimant Company but, even if there had been such juridical relationship, Respondent personally has absolutely no obligation to pay any amount because she has not personally accepted to honour the Agreements which form the basis of these proceedings, i.e. those numbered 146-00595, 146-00581 and 146-00557. If at all, Respondent personally had accepted to guarantee the Rental Contracts numbered 146-00791 and 146-00775.*

*The latter two contracts do not form part of the merits of these proceedings.*

*In the circumstances, therefore, The Arbiter has no other option but to dismiss all the claims filed by The Respondents.”*



## **L-Appell**

6. Is-soċjetà appellanta intavolat ir-rikors tal-appell tagħha fit-3 ta' Diċembru, 2019, fejn qiegħda titlob lil din il-Qorti sabiex tħassar u tirrevoka l-lodo arbitrali. Tgħid li l-aggravji tagħha huma is-segwenți:

- “a. Kunsiderazzjonijiet tat-Tribunal tal-Arbitraġġ dwar liema ma tressqux eċċezzjonijiet mill-Appellati – in ogni każ ir-relazzjoni ġuridika li di fatti teżisti bejn il-partijiet;*
- b. Talbiet tal-Appellanta illi ġew injorati fl-intier tagħhom mingħajr ebda raġuni;*
- c. Applikazzjoni skorretta tal-liġi – Artikolu 1139 tal-Kap. 16 tal-Liġijiet ta' Malta;*
- d. Nuqqas ta' apprezzament ta' provi inekwivoċi li jirriżultaw maddaqqqa t'għajn tal-atti; u*
- e. Deċiżjoni li m'hijiex ekwa u ġusta”*

7. L-appellati għażlu li ma jwegbux.

## **Konsiderazzjonijiet ta' din il-Qorti**

8. Peress li ma jirriżultax, kif sewwa jirrileva l-abbli avukat difensur tal-appellati waqt it-trattazzjoni li saret quddiem din il-Qorti, li l-proċeduri tal-arbitraġġ kienu mandatorji fejn hemm dritt ta' appell fuq punti ta' fatt, il-Qorti ser tgħaddi qabelxejn sabiex tikkonsidra l-ammissibilità tal-appell odjern fid-dawl ta' dak li jiddisponu l-artikoli 70A u 70B tal-Kap. 387 tal-Liġijiet ta' Malta, meħud inkonsiderazzjoni kull wieħed mill-ħames aggravji mressqa mis-soċjetà appellanta.

9. Il-Qorti tikkonsidra dak li jiddisponi għalih is-subartikolu 70A(3) tal-Kap. 387 fir-rigward ta' dawk l-appelli li huma ammissibbli fuq punt ta' liġi:

*“(3) Il-Qorti tal-Appell għandha tikkunsidra l-appell biss jekk il-Qorti tkun sodisfatta -*

*(a) li d-deċiżjoni dwar il-punt ta' liġi taffettwa sostanzjalment id-drittijiet ta' waħda jew iktar mill-partijiet;*

*(b) li l-punt ta' liġi huwa wieħed li t-tribunal kien mitlub jiddeċiedi fuqu jew mod ieħor iddependa fuqu biex jasal għad-deċiżjoni;*

*(ċ) li fuq il-bażi ta' dak li jirriżulta mill-fatti fid-deċiżjoni, id-deċiżjoni tat-tribunal dwar il-punt ta' liġi hija prima facie miftuħa għal dubju serju;*

*(d) li abbażi ta' reviżjoni tar-rikors, kull risposta u d-deċiżjoni, l-appell ma jidhirx li hu dilatorju u vessatorju,*

*u fil-każijiet l-oħra kollha il-Qorti għandha tiċċad l-appell”*

10. Filwaqt li tagħraf li skont dawn id-dispożizzjonijiet, hija m'għandhiex il-kompetenza li tisma' u tiddeċiedi kull appell minn lodo arbitrali, din il-Qorti qabelxejn ser tgħaddi sabiex tindaga jekk l-appell interpost mis-soċjetà appellanta għandux jiġi mismugħ jew saħansitra miċħud mill-ewwel.

11. Issa l-artikolu 70B tal-istess liġi jkompli jgħid li fil-każ ta' appell taħt l-artikolu ta' qablu, għandu jiġi identifikat il-punt ta' liġi li dwaru qiegħda tintalab deċiżjoni u anki liema hija t-tifsira korretta. Il-Qorti mill-ewwel tgħid li l-ebda wieħed mill-aggravji tal-appellanta ma jissodisfa dak li qed jitlob l-artikolu 70B tal-Kap. 387.

12. Il-Qorti tirrileva li t-Tribunal ċaħad it-talbiet kollha tas-soċjetà appellanta fil-konfront tal-appellati, wara li osserva li *“...the claims, as formulated whether by Grenke Renting Malta Limited or by Grenke Renting Limited may*

*not be entertained because not only none of the Respondents has any juridical relationship with Claimant Company but, even if there had been such juridical relationship, Respondent personally has absolutely no obligation to pay any amount because she has not personally accepted to honour the Agreements which form the basis of these proceedings...". B'hekk kull punt ta' liġi li jista' jiġi appellat għandu jkun marbut ma' din id-deċiżjoni.*

13. Madankollu huwa biss fl-ewwel aggravju tagħha li s-soċjetà appellanta tittenta li torbot l-istess aggravju ma' din id-deċiżjoni, imma l-Qorti xorta waħda tosserva li l-ebda punt ta' liġi ma qed jiġi identifikat mis-soċjetà appellanta għall-konsiderazzjoni tagħha. Meta tispjega dan l-aggravju, is-soċjetà appellanta tirrileva li l-konklużjoni tat-Tribunal kienet ħażina għaliex mid-dokumenti esebiti kien jirriżulta mod ieħor u għalhekk mill-ewwel ma żammitx mal-parametri stabbiliti mil-liġi. It-tieni aggravju tas-soċjetà appellanta huwa li t-talbiet tagħha ġew injorati kollha kemm huma, u dan allegatament mingħajr raġuni. Is-soċjetà appellanta hawnhekk ma tidentifika l-ebda punt ta' liġi li dwaru qiegħda titlob lil din il-Qorti sabiex tiddeċiedi dwaru, u għalhekk l-aggravju mhux ammissibbli. L-istess jingħad għat-tielet aggravju, fejn għalkemm tilmenta li saret applikazzjoni skorretta tal-artikolu 1139 tal-Kap. 16, tagħmel sottomissjonijiet fil-mertu dwar l-interpretazzjoni tal-ftehim tal-kiri fejn dan jipprovdi għal penali. Tqis ukoll li għalkemm it-Tribunal għamel xi osservazzjonijiet dwar il-mertu, ma ddeċidiex dan il-punt sollevat f'dan l-aggravju b'mod finali għaliex fil-lodo arbitrali, kif diġà ngħad, mill-ewwel iddeċieda li ma kienx hemm relazzjoni ġuridika bejn il-partijiet. Ir-raba' aggravju tas-soċjetà appellanta jirrigwarda n-nuqqas ta' apprezzament

ta' provi inekwivoċi min-naħa tat-Tribunal u ma tqajjem l-ebda punt ta' dritt. L-istess għandu jingħad fir-rigward tal-ħames aggravju fejn is-soċjetà appellanta tikkontendi li fid-dawl ta' dak kollu li ngħad fir-rikors tal-appell, jirriżulta kif il-lodo arbitrali mhux ekwu u ġust.

14. Għaldaqstant din il-Qorti tqis li l-appell intavolat mis-soċjetà appellanta mhux ammissibbli *ai termini* tal-artikolu 70B tal-Kap. 387.

### **Decide**

**Għar-raġunijiet premessi l-Qorti tiddikjara l-appell bħala irritu u null u tastjeni milli tiegħu konjizzjoni ulterjuri tiegħu.**

**L-ispejjeż tal-imsemmi lodo arbitrali jibqgħu kif deċiżi mit-Tribunal, filwaqt li dawk tal-appell odjern għandhom ukoll jithallsu mis-soċjetà appellanta.**

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.  
Imħallef**

**Rosemarie Calleja  
Deputat Registratur**