



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

**ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON**

Illum il-Hamis 18 ta` Marzu 2021

**Kawza Nru. 1
Rikors Nru. 657/2017 JZM**

Adonis Brace [KI 437581 M]

kontra

Braai Masters Co Ltd [C 74042]

Angelo Pullicino [KI 95667 M]

Stephen Bonavia [KI 261471 M]

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fil-11 ta` Awwissu 2017 u li jaqra :-

1. Illi dan huwa rikors a tenur tal-art 402 tal-Att Dwar Il-Kumpanniji (Kap 386) fejn ir-rikorrenti huwa membru tal-kumpannija Braai Masters Co Ltd [C 74042] fejn jiddetjeni 450 [erba mija u hamsin] sehem ordinarju ta` klassi B u qed jilmonta li l-affarijiet tal-kumpannija tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li, jew li xi att jew ommissjoni tal-kumpannija kienu jew huma jew x`aktarx se jkun, oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkun kontra l-interessi tal-membri in generali;

2. Illi Braai Masters Co Ltd [C 74042] ghandha kapital ta` € 1500 maqsuma f`1500 sehem ta` € 1 kull sehem, fejn hemm 600 sehem ta` klassi A f`isem Angelo Pullicino, u 900 sehem ta` klassi B f`isem Stephen Bonavia u Adonis Brace fi kwoti indaqs, kif jidher fil-Memorandum and Articles of Association hawn anness [Dok A];

3. Illi fil-11 ta` April 2016 sar self minn Mamma Mia Company Limited li l-azzjonisti taghha huma l-istess Angelo Pullicino u Stephen Bonavia lil Braai Masters Co Ltd, b` Adonis Brace, Angelo Pullicino u Stephen Bonavia jidhru fil-kapacita personali taghhom bhala garanti, fl-ammont ta` € 400,000 [erba mitt elf Euro], liema self ghandu jithallas ratealment fi zmien tlett snin f`pagamenti ta` € 11,111.11 kull xahar, u fin-nuqqas jiddekorri imghax ta` 8% hawn anness [Dok B];

4. Illi r-rikorrenti kien jahdem bhala kok fir-restaurant gestit mill-kumpannija, u Angelo Pullicino arbitrarjament u minghajr raguni valida ordna lir-rikorrenti biex ma jersaqwx aktar fil-post in kwistjoni;

5. Illi r-rikorrenti m`ghandu ebda informazzjoni dwar kif qed jigi gestit il-post, ossia qatt ma saru jew gew prezentati managment accounts, cash flow statements, profit and loss ghal perijodu/i, lista ta` kredituri, lista ta` debituri, u pagamenti li saru bhala loan repayment lil Mamma Mia Company Limited;

6. Illi r-rikorrenti huwa l-aktar inkwetat ghal fatt li Angelo Pullicino fil-prezenza ta` Stephen Bonavia infurmah li l-kumpannija qed

tfalli u sejra hazin, izda ma ta ebda informazzjoni ghajr ghal fatt li jaghlaq il-kumpannija u kulhadd ihallas id-dejn;

7. Illi r-rikorrenti, meta rinfacjat bil-fatt li mhux edott b`informazzjoni dwar il-kumpannija u imbezza li l-kumpannija tfalli, specjalment fid-dawl li hu garanti, offra li l-intimati jew min minnhom jakkwista l-ishma tieghu versu l-prezz identiku tas-self li kien ghamel fl-ammont ta` cirka € 50,000 [hamsin elf Euro] fl-att tal-11 ta` April 2016, u dan anke fid-dawl li s-sehem tieghu fil-kumpannija huwa dak ta` azzjonist minoritarju izda garanti b`mod solidali;

8. Illi fid-dawl li l-kumpannija kienet obbligata li thallas pagamenti ta` €11,111.11 kull xahar lil Mamma Mia Company Limited li hija proprjeta` ta` Angelo Pullicino u Stephen Bonavia, u l-fatt li ma saru ebda tali ripagamenti, u l-fatt li Angelo Pullicino fil-presenza ta` Stephen Bonavia infurma lill-esponenti li l-kumpannija qed tfalli, u l-fatt li l-esponenti huwa garanti personalment, jwasslu lill-esponenti li jipprotegi l-posizzjoni tieghu ghal pregudizzju mhux gust;

9. Illi l-kumpannija mhux qed titmexxa b`mod tajjeb inter alia ai termini tal-Art 136A tal-Kap 386, u dan kontra l-interessi tal-azzjonist;

10. Illi r-rikorrenti, fid-dawl tas-suespost, qieghed jitlob ai termini tal-Art 402 (3) tal-Kap 386 sabiex din l-Onorabbli taghti l-provedimenti opportuni, inter alia l-Art 402 (3)

(a) li jirregola t-tmexxija tal-affarijiet tal-kumpannija fil-futur;

(b) jirrestringi jew jipprojbixxi l-ghemil ta` xi att propost jew;

(c) jehtieg lill-kumpannija li taghmel xi att li r-rikorrent ikun ilmenta li kienet naqset li taghmel; jew

(d) jipprovdi ghax-xiri tal-azzjonijiet ta` xi membri tal-kumpannija minn membri ohra tal-kumpannija jew mill-kumpannija nnifisha u, f`kaz ta` xiri mill-kumpannija, ghat-tnaqqis li jkun mehtieg fil-kapital azzjonarju mahrug tal-kumpannija;

(e) xolji l-kumpanija u jipprovdi għall-istralc konsegwenzjali tagħha

Għaldaqstant l-esponenti, jitlob bl-akbar rispettt lil din l-Onorabbli Qorti sabiex :

1. Tiddikjara li r-rikorrenti għandu dritt jitlob l-intervent u l-azzjoni ta` din l-Onorabbli Qorti ai termini tal-Art 402 (1) u (3) u

2. Tordna u tagħti dawk id-direttivi li jidhrilha xierqa u opportuna fl-interess tar-rikorrenti fid-dawl ta` dak kollu preambulat u premess ai termini tal-Art 402 (1) u (3), u taħt il-provvedimenti li din il-Qorti jgħobha tagħti.

Bl-ispejjez inkluz l-ittra ufficjali u l-mandat ta` sekwestru, kif ukoll l-imghax kontra l-intimat, li minn issa huwa ingunt għas-subizzjoni.

Rat il-lista tax-xhieda.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezentaw l-intimati flimkien fl-20 ta` Settembru 2017 li taqra :-

1. Illi, fl-ewwel lok, l-intimati jichdu l-allegazzjonijiet kontenuti fir-rikors promotur tal-rikorrent relattivi għall-qagħda finanzjarja tal-kumpanija intimata, kif ukoll dawk relattivi għal xi forma ta` nuqqasijiet da parti tal-intimati l-ohra fil-kwalità u fil-kapacita tagħhom ta` Diretturi tal-istess kumpanija, bhala manifestament infondati fil-fatt u fid-dritt, u dan kif se jirrizulta waqt it-trattazzjoni tal-mertu tal-kawza odjerna.

2. Illi, mingħajr pregudizzju għas-suespost, jigi rrilevat li l-azzjoni tar-rikorrent hija intempestiva stante li, tenut kont ukoll tac-

cirkostanzi dettaljati f`din ir-Risposta, l-intimati qatt ma gew rinfaccjati b`talba formali ghall-ghoti ta` rendikont relattiv ghall-gestjoni tal-kumpannija intimata.

3. Illi, b`zieda mas-suespost, jigi rrilevat li, a kuntrarju tal-impresjoni li jipprova jaghti r-rikorrent fir-rikors promotur tieghu, hu ma gie assoggettat ghal ebda agir jew kondotta ingusta da parti tal-kumpannija intimata jew tal-addetti taghha, u, fil-verità, ma soffra l-ebda pregudizzju tenut kont tac-cirkostanzi u tal-konsiderazzjonijiet spjegati f`din ir-Risposta.

4. Illi, b`zieda mas-suespost, jigi rrilevat li, fil-verità, u a kuntrarju tal-impresjoni li jipprova jaghti r-rikorrent fir-rikors promotur tieghu, hu qatà kull rabta fattwali mal-kumpannija intimata relatata mal-gestjoni taghha, u dan sforz il-komportament u l-agir tieghu fuq il-post tax-xoghol, li bl-ebda mod ma jistà jitiqies bhala kompatibbli mal-obbligu tieghu qua Direttur ai termini tal-Artikolu 136A tal-Kapitolu 386 tal-Ligijiet ta` Malta.

F`dan ir-rigward, jigi rrilevat li r-rikorrent kien impjegat mal-kumpannija intimata bhala kok li, in parte, kellu responsabbilità kbira relattiva ghall-gestjoni kwotidjana tal-istabbiliment bl-isem White Rock gewwa Bahar ic-Caghaq, liema stabbiliment huwa gestit mill-kumpannija intimata. Madankollu, ir-rikorrent ghazel li jabdika mir-responsabbiltajiet tieghu, kemm bhala Direttur, kif ukoll bhala impjegat tal-istess kumpannija, u, minflok, ghazel li jaqtà kull rabta mal-istess kumpannija, kif ukoll kull forma ta` komunikazzjoni mal-intimati, u, sahsitra, ma baqax jirrapporta ghax-xoghol minghajr l-ebda forma ta` pre-avviz f`dan ir-rigward.

B`konsegwenza ta` dawn in-nuqqasijiet, il-kumpannija intimata sofriet danni, kif ukoll hsara lir-reputazzjoni taghha, u qieghdha tirrizerva kull dritt ta` azzjoni spettanti lilha skond il-ligi fdan ir-rigward.

5. Illi, a kuntrarju ta` dak li jinghad mir-rikorrent fil-paragrafu bin-numru sebgha (7) tar-rikors promotur tieghu, u b`referenza ghal dak iddikjarat minnu fit-tielet (3) paragrafu tal-istess Rikors, jigi rrilevat li m`hu veru assolutament xejn li r-rikorrenti kkonceda circa hamsin elf

Ewo (€ 50,000.00) b` titolu ta` self ai termini tal-att pubbliku datat hdax ta` April tas-sena elfejn u sittax (11.04.2016), li ssir referenza ghalih f` dawn iz-zewg paragrafi u li kopja tieghu jinsab anness mal-istess rikors.

Fil-fatt, kif iddikjarat u rikonoxxut mir-rikorrent stess fil-paragrafu bin-numru sebgha (7) tar-rikors promotur tieghu, ir-rikorrent kien semplicement ikkostitwixxa ruhu bhala garanti solidali ghall-ezekuzzjoni tal-obbligu principali stipulat fl-imsemmi kuntratt, ossia r-radd lura ta` erbà mitt elf Ewro (€ 400,000.00) da parti tal-kumpannija Braai Masters Company Limited (C 74042), liema self inghata mill-kumpannija Mamma Mia Company Limited (C 32995) lill-istess kumpannija intimata sabiex tali ammont iservi ta` ghajjuna finanzjarja sabiex l-istess kumpannija debitrici tkun tistà tonora l-`business commitments` taghha, kif, del resto, iddikjarat fl-istess kuntratt.

6. Illi, in vista tal-konsiderazzjonijiet suesposti, bl-ikbar rispettt jigi rrilevat li r-rikorrent, fil-verità, ippretenda li ghandu xi dritt legali li jezigi r-rifuzjoni tax-share capital u tal-flus (capital injection) li kien vversa fil-kumpannija intimata.

Bl-ikbar rispettt jigi rrilevat li r-rikorrent qed jipprova jinqeda b`dawn il-procedimenti sabiex ipingi lilu nnifsu bhala azzjonista minoritarju li sofra xi forma ta` trattament ingust u oppressiv, liema allegazzjonijiet qed jigu kkontestati bil-qawwa mill-intimati in vista tal-agir tal-istess rikorrent, senjatament l-abdikar tieghu mir-responsabbilitajiet spettanti lilu ai termini tal-Artikolu 136A tal-Kapitolu 386 tal-Ligijiet ta` Malta.

Bl-istess mod jinghad li l-intimat qed jipprova jinqeda b`dawn il-procedimenti sabiex jabdika mir-responsabbilitajiet tieghu qua garanti ai termini tal-att pubbliku surreferit datat 11 ta` April, 2016.

7. Salv eccezzjonijiet ohra.

Semghet ix-xhieda u rat il-provi l-ohra li tressqu fil-kors tal-kawza.

Rat in-noti ta` osservazzjonijiet.

Semghet is-sottomissjonijiet tal-ahhar bil-fomm.

Rat illi l-kawza thalliet ghal provvedimenti ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

1. Fatti

Angelo Pullicino ("**Pullicino**") u Stephen Bonavia ("**Bonavia**") huma s-sidien tal-Mamma Mia Restaurant fejn ir-rikorrent ghamel xi zmien jahdem bhala chef. Il-partijiet kellhom interess komuni fis-settur tal-*catering* u minn hemm tweled il-hsieb illi jaghmlu negozju t-tliet flimkien. Braai Masters Co. Ltd ("**il-kumpannija**") kienet kostitwita minnhom it-tlieta fit-22 ta` Jannar 2016 sabiex topera fis-settur tal-*catering* bl-ufficcju registrat taghha fl-istess indirizz tal-Mamma Mia Restaurant, Ta` Xbiex bl-ishma jinqasmu in kwantu ghal 600 Ordinary A Shares : Pullicino, in kwantu ghal 450 Ordinary B Shares : Bonavia ; u in kwantu ghal 450 Ordinary B Shares : ir-rikorrent. It-tliet azzjonisti kienu wkoll id-diretturi tal-kumpannija. *Company secretary* inhatar Av. Dr. Jesmond Manicaro.

Il-kumpannija fethet il-White Rock Restaurant f`Bahar ic-Caghaq wara li b`kuntratt tal-1 ta` Frar 2016 kriet il-proprjeta` minghand Francis sive Frankie Grima. It-tliet diretturi dehru ghall-kuntratt tal-kirja. Il-fond kien jirrikjedi xoghol estensiv sabiex jilhaq l-*istandard* li riedu t-tlieta u sabiex seta` jiftah ghall-pubbliku. Sabiex tkopri parti mill-ispejjez tal-progett, il-kumpannija hadet b`self minghand Mamma Mia Company Limited (li taghha Pullicino u Bonavia kienu l-azzjonisti u diretturi) is-somma ta` €400,000 b`kuntratt tal-11 ta` April 2016 fl-atti tan-Nutar Dottor Anton Borg. L-ammont misluf kellu jithallas lura lil Mamma Mia Company Limited fuq medda ta` tlett snin permezz ta` pagamenti rateali

mensili ta` €11,111.11 minghajr imghax dment li ma jintlahaqx ftehim differenti bejn il-partijiet dwar rata ta` imghax. Billi l-kumpannija kellha biss il-kirja, is-self kien garantit minn Pullicino, Bonavia u r-rikorrent fil-kwalita` personali tagghom. Wara li r-restaurant fetah ghall-pubbliku fis-16 ta` Ottubru 2016, baqa` jopera sal-31 ta` Dicembru 2017.

2. **Xiehda**

Ir-rikorrent xehed illi qabel saret il-kumpannija Pullicino u Bonavia kienu tawh zewg ghazliet : jew li jibda jahdem fil-White Rocks Restaurant bhala chef u jkollu paga tajba ; inkella jkun azzjonista fil-kumpannija u b`hekk ikun intitolat ghal dividends. Huwa ghamel it-tieni ghazla u ghalhekk kien abbozzat l-M&A tal-kumpannija bih bhala azzjonista. Inghata kopja tal-abbozz tal-M&A li ommu hadet ghand in-Nutar Dr. Malcolm Licari ghal parir.

Xehed illi fiz-zmien ta` meta kienu qeghdin isiru x-xogholijiet fir-*restaurant* ir-relazzjoni bejn l-azzjonisti kienet tajba. Dak iz-zmien kien jitkellem ma` Pullicino dwar x`appart kien mehtieg fil-kcina. Imbaghad Pullicino kien jiehu hsieb jittratta l-akkwist tal-makkinarju. Pullicino kien ukoll jiehu hsieb il-progett b`mod generali billi jara x`kien mehtieg sabiex il-post jitlesta minn kollox halli r-*restaurant* jibda jopera.

Stqarr illi huwa kien inkarikat mill-kcina fis-sens illi kellu jiehu hsieb il-menu u t-tisjir. Kien ukoll jigi kkonsultat fl-istadju tal-akkwist tal-makkinarju ghall-kcina. Fil-fatt kien anke ltaqa` ma` rapprezentanti tal-Catering Centre mnejn inxtara t-taghmir ghall-kcina. Ighid illi hu qatt ma ra l-kontijiet tal-progett ; madanakollu kien jisma` lil Pullicino jilmenta mill-fatt illi l-progett kien sewa hafna flus ghaliex it-taghmir kien ta` livell gholi hafna bi kcina lussuza.

Dwar is-self xehed illi l-flus ghaddew minghand kumpannija ghal ohra permezz ta` *bank transfer*. Apparti l-€400,000 li l-kumpannija hadet b`self minghand Mamma Mia company Limited, it-tliet azzjonisti hargu wkoll flus minn tagghom li kienu nvestiti fil-progett. B`kollox hargu bejniethom is-somma ta` €200,000. Minnha huwa hareg is-somma

ta` €52,500 fi tliet pagamenti : wiehed ta` €30,000, iehor ta` €15,000 u l-bilanc ta` €7,500 f`pagament iehor. Dak iz-zmien ma kellux flus x`jinvesti ; ghalhekk talab flus lin-nanna tieghu Doris Mallia u din taghtu s-somma ta` €45,000. Il-bqija tal-investment tieghu u cioe s-somma ta` €7,500 hallashom mill-paga tieghu. Qatt ma nghata ricevuta tal-hlas li ghamel hu.

Kompla jixhed illi l-ahhar li huwa hademk bhala chef fil-White Rocks Restaurant kien fit-2 ta` Marzu 2017. Pullicino u Bonavia biddlu s-serraturi tar-*restaurant* tant li meta mar biex jiftah sab illi ma setax jidhol. Fiz-zmien li dam jahdem hemm bhala chef u cioe mis-16 ta` Otturbru 2016 sat-2 ta` Marzu 2017 huwa thallas biss zewg pagi ammontanti kull wahda ghal madwar €600 fix-xahar. Billi kien direttur, ma kellux dritt ghall-paga. L-ammont li thallas kien stabbilit minn Pullicino. Ghalkemm ma kienx kuntent bl-ammont li rcieva, fl-ahhar mill-ahhar accetta l-pagament.

Stqarr li t-tmexxija tal-affarijiet tal-kumpannija kienet kollha fdata f`idejn Pullicino. Jishaq illi hu qatt ma kien jinghata ebda tip ta` nformazzjoni. Ghalhekk qatt ma ntwera karti ta` kontijiet ghall-utilitajiet jew pagamenti ghat-taghmir u xoghol li kien qed isir fil-post. Lanqas ma kellu informazzjoni dwar il-finanzi tal-kumpannija. Lanqas ma kien jaf jekk il-kumpannija kenitx bdiet thallas lura d-dejn li kellha ma` Mamma Mia Company Limited.

Dwar il-kirja tal-post, xehed illi ghalkemm kien jaf li l-kirja saret ma` certu Frankie Grima, huwa ma kienx involut. Lanqas ftakar li ffirmat l-kuntratt tal-kera. Stqarr minn naha l-wahda li ma kienx jaf x`kien ghaddej fin-negozju u min-naha l-oħra fisser li Pullicino u Bonavia kienu jitolbu l-fehma tieghu dwar kif in-negozju seta` jitmexxa ahjar.

Angelo Pullicino xehed illi meta kien hemm il-hsieb li jifthi *restaurant* bi shab bejniethom, it-tliet azzjonisti kienu ta` kuljum isibu l-hin sabiex jiddiskutu l-progett. Dan kien facilitatmill-fatt illi t-tlieta li huma kienu jkun ta` kuljum qeghdin fil-Mamma Mia Restaurant. Xehed illi ghalih in-negozju tal-*catering* ma kienx biss investment izda delizzju wkoll. Ighid illi hu involut b`mod attiv hafna fin-negozju u flimkien ma`

Bonavia hadmu hafna sabiex in-negozju taghhom jirnexxi. Qal illi lejn l-ahhar tal-2015 il-partijiet flimkien raw diversi proprjetajiet sakemm ghazlu dak ta` Bahar ic-Caghaq.

Fisser illi principalment kien hu stess illi kien qieghed jaghmel il-kuntatti u jiehu hsieb il-*paperwork* ghat-twaqqif tal-kumpannija u l-kuntratt tal-kiri tal-post. Dak iz-zmien kien ghamilha cara lir-rikorrent li l-ishma tal-kumpannija kienu sejrin ikunu divizi in kwantu ghal 30% ghar-rikorrenti, 30% ghal Bonavia u 40% ghalih. Ir-rikorrent accetta u offra li johrog is-somma ta` €30,000. Ghalhekk ftehm u li ghall-ewwel jigu nvestiti €100,000 bejn l-azzjonisti kollha.

Kompla jixhed illi f` Jannar 2016 u cioe` qabel saret il-kumpannija, huwa ppropona lir-rikorrent zewg ghazliet : jew jahdem bhala chef b` paga tajba ; inkella jidhol ghan-negozju u jkun lest ghall-konsegwenzi kollha sew jekk ikun success u sew jekk ikun falliment. Dam jishaq mar-rikorrent sabiex jaghraf jiehu decizjoni tajba qabel jaghmel l-ghazla tieghu. Billi r-rikorrent ried jidhol ghan-negozju u mhux jikkuntenta bil-paga ghamel l-ghazla tan-negozju.

Stqarr illi meta jhares lura lejn dak li sehh, kien jidher li r-rikorrent ma kienx fehem sewwa sew kif tahdem kumpannija u x` tinvolti.

Qal illi wara li kien iffirmit l-M&A tal-kumpannija, sari l-kuntratt tal-kera tal-post li kellu jkun ir-ristorant. Qabel kien iffirmit il-kuntratt, ir-rikorrent talab li ommu tara l-kuntratt. Fil-fatt din marret ghand nutar tal-ghazla taghha u hadet parir minghandu.

Kompla jixhed illi meta tfassal l-abbozz tal-kuntratt tal-kera kienu prezenti hu, ir-rikorrent, omm ir-rikorrent u n-nutar maghzul minn omm ir-rikorrent. Tkellmu wkoll dwar l-M&A tal-kumpannija. Ir-rikorrent u ommu nghataw kopja tad-dokumentazzjoni kollha illi kienet ser tigi ffirmata. Ir-rikorrent kellu zmien bizzejjed biex jahsibha qabel jiehu d-decizjoni tieghu.

Stqarr li r-rikorrent ikkonferma li ried jippartecipa fil-progett.

Fi Frar 2016 kien iffirmit il-kuntratt tal-kera. Fl-istess xahar ukoll marru t-tlieta l-bank u fil-prezenza ta` xulxin iddepozitaw il-flus f`kont bankarju li nfetah apposta. Bonavia u r-rikorrent iddepozitaw €30,000 kull wiehed mentri hu ddepozita €40,000. Fil-kont kien hemm diga` depozitata s-somma ta` €1,500, b`kull wiehed minnhom it-tlieta johrog is-sehem tieghu bhala kapital ghax-xiri tal-ishma. Dak il-hin stess illi kienet depozitata s-somma ta` €100,000 il-partijiet talbu lill-bank johrog cheque ta` €64,500 li kienet ser tithallas lil Frankie Grima bhala hlas ghal sitt xhur kera li ghalkemm pagabbli bil-quddiem u li kellha tibda tghodd minn Mejju tal-2016.

Kompla jixhed li l-post li nkera kellu daqs ta` 800 metru kwadru pero` kien jehtieg xoghol estensiv. Ghalihom kienet girja kontra l-hin ghaliex il-hsieb kien li l-post ikun lest sabiex jopera sa Mejju 2016 u cioe sa meta kellha tibda tiddekorri l-kirja. Ix-xogholijiet ma mxewx kif kienippjanat u bdew jaqghu xi ftit lura fiz-zmien li kienu fasslu ghat-tlestija. Peress li riedu jghagglu, lanqas kien hemm zmien bizzejjed sabiex iduru ghal stimi minn persuni differenti ghax-xoghol li kellu jsir.

Stqarr illi huwa ppropona li x-xoghol ikun finanzjat permezz ta` self ta` €400,000 li l-kumpanija kellha tiehu minghand Mamma Mia Co. Ltd. Wara diskussjoni, it-tlieta qablu. Ghalkemm il-process kollu mexa b`pass mgħaggel, il-kuntratt dwar id-debitu nqara u kien spjegat lill-partijiet min-Nutar Dottor Anton Borg. Ilkoll qablu ma` dak illi tnizzel fil-ftehim inkluz ukoll illi kienu qeghdin jidhlu garanti ghas-self personalment. Hadd mit-tliet azzjonisti ma esprima xi thassib.

Kompla stqarr illi fid-9 ta` Settembru 2016 sar self iehor, din id-darba fl-ammont ta` €300,000, minn Mamma Mia Co. Ltd favur il-kumpanija. Din id-darba pero` ma sar ebda kuntratt dwar kostituzzjoni ta` debitu. Ir-rikorrent kien jaf b`dan is-self.

Xehed li wara li fethu r-restaurant, in-negozju fil-bidu mhux dejjem kien tajjeb. Gieli ken hemm granet tajbin u ohrajn fejn ma kienx ikun

hemm klijenti. Fil-frattemp kien ghad hemm hafna spejjez x` jithallsu b` rabta max-xogholijiet estensivi li saru sabiex il-post ikun konvertit ghal *restaurant*. Meta wasal iz-zmien illi tithallas il-kera huwa qal lill-azzjonisti l-ohra biex kull wiehed ihallas is-sehem tieghu mill-kirja. Ir-risposta tar-rikorrent kienet illi qabel xejn ried ihallas lura lil ommu u lin-nanna tieghu ghal flus li kienu silfuh sabiex jinvesti fil-kumpanija. Pullicino sejjah laqgħa sabiex jiddiskutu dan izda r-rikorrent ma marx għal-laqgħa. Fl-assenza tar-rikorrent, kien deciz illi Mamma Mia Co. Ltd. tixtri total ta` €401,032.11 f` makkinarju mingħand il-kumpanija u b`hekk jithallas parti mid-dejn li l-kumpanija kellha ma` Mamma Mia Co. Ltd. Ghalkemm il-makkinarju baqa` fil-White Rocks Restaurant, kien sar propjeta` ta` Mamma Mia Co. Ltd. Fil-frattemp kisbu rifuzjoni ta` VAT fl-ammont ta` €61,000. B`dak l-ammont saret tpacija mal-ammont li kienu hallsu aktar kmieni bhala kera. Il-hlas tal-kera għall-2017 sar permezz ta` zewg cheques li thallsu minn Mamma Mia Co. Ltd. lis-sid.

Kien prezentat prospett dettaljat bil-fatturi.

Jirrizulta li sabiex saru x-xogholijiet fil-post, sar ir-reklamar u thallset il-kera minn Mejju 2016 sa Dicembru 2017 kienet inkorsa spiza fl-ammont komplessiv ta` €1,166,602.47.

Qal li f` Jannar u Frar 2017, in-negozju ma kienx tajjeb. Talab lir-rikorrent lil Brace sabiex jibdel il-menu bit-tama illi l-post jattira klientela akbar. Ir-rikorrent kaxkar saqajgh u l-menu baqa` li kien. F` Marzu 2017 l-azzjonisti tlewmu. Huwa offra lir-rikorrent li jixtri l-ishma tieghu fil-kumpanija. L-argumenti komplew u r-rikorrent qabad u telaq. Ir-*restaurant* beda sejjer tajjeb lejn l-ahhar ta` April 2017 izda f` Mejju u Gunju 2017 ma mar tajjeb xejn.

Kompla jghid illi kien wasal iz-zmien li terga` tithallas il-kera u peress illi kien hemm bizzejjed flus fil-kont tal-kumpanija il-kera kienet ser tithallas direttament minn dawk il-flus. Fil-fatt hareg cheque bl-ammont tal-kera. Ic-cheque dam ma ssarraf. Gara li ntant ir-rikorrent lahaq u kiseb il-hrug ta` mandat ta` sekwestru li bih inqabdu l-flus tal-kumpanija li kienu depoiztati l-bank. Konsegwenza ta` dan, ic-cheque

tal-kera ma setax jithallas u l-kera ta` €65,000 spiccat hallsithom Mamma Mia Co. Ltd.

Stqarr illi wara Marzu 2017 ir-rikorrent mar il-White Rocks Restaurant darbtejn. Darba minnhom mar sabiex jigbor lura xi skieken. Prezenti fuq il-post kien Bonavia li spjega lir-rikorrent li hu kien ghadu parti mill-kumpannija u li ghalhekk ma kellux ghalfejn jiehu hwejjgu lura. Darb`ohra mar u talab rimbors ta` €36,000 ghaliex ghalkemm kien investa b`kollox €45,000 huwa kien kuntent illi jiehu lura €36,000 u johrog mill-kumpannija. Pullicino offrielu zewg ghazliet : li jbiegh is-sehem tieghu inkella jaghti nifs lill-kumpannija halli tara kif kien ser imur in-negozju fix-xhur tas-sajf. Il-hsieb kien li jekk in-negozju jibqa` ma jaqbadx allura jkun aktar ghaqli illi jaghlaq ghal kollox. Minn hemm ir-rikorrent tilef kull kuntatt ma` l-kumpannija u magghom bhala azzjonisti tant illi lanqas imqar ghamel tentattiv sabiex jerga` jidhol lura ghax-xoghol. Lanqas ma ha nteress biex jara jekk kienx hemm pendenzi x`jithallsu.

Kompla fisser illi fis-sajf tal-2017 in-negozju baqa` jmur lura. Ghalhekk kien deciz li r-restaurant jaghlaq. Ghalhekk fl-1 ta` Awwissu 2017 is-sid kien avzat li l-post kien ser jaghlaq fil-31 ta` Dicembru 2017.

Xehed illi mill-post ittiehdu biss l-oggetti mobbli. It-taghmir l-iehor bhal finituri tal-injam u *fixtures* simili kellhom jithallew fil-post. It-taghmir immobbli kellu valur komplessiv ta` €765,570.36 (ara l-prospett u l-fatturi). Dwar l-accounts tal-kumpannija xehed illi d-day-to-day management kien jiehu hsiebu certu Gabriel Suda li mbaghad kien jghaddi kollox lill-awditur Chris Spiteri. Fil-kont bankarju tal-kumpannija kien hemm is-somma ta` €53,318. Wara l-mandat ta` sekwestru tar-rikorrent ghall-figura ta` €53,000, il-bank sekwestrarju ddepozita l-ammont ta` €53,000 taht l-awtorita` tal-qorti. B`hekk fil-kont tal-kumpannija kien fadal biss €318.

Stephen Bonavia xehed illi kollox beda minn ambizzjoni li jinfetah restaurant bi shab fejn ir-rikorrent ikun inkarigat mill-kcina, hu jmexxi r-restaurant u Pullicino jikkordina x-xoghol kollu. Il-bicca l-kbira tad-decizjonijiet kienu jittiehdu minn Pullicino u r-rikorrent. Huwa kien jafda

lil Pullicino u kien ihalli kollox f` idejh. L-investment originali sar fi kwoti ta` 30% kull wiehed minn Bonavia u r-rikorrent, u r-rimanenti 40% harighom Pullicino.

Spjega illi wara li fetah ir-ristorant, huwa kien jiehu hsieb jaghlaq u kien jiehu hsieb jigbor l-inkass tal-gurnata. Kull nhar ta` Tnejn kienu jiltaqghu sabiex jaghmlu rendikont tal-gimgha. Ghal dawn il-laqghat kienu dejjem ikunu prezenti hu u Pullicino. Ghalkemm ir-rikorrent dejjem kien ikun infurmat bil-laqghat illi maz-zmien saru procedura regolari, ir-rikorrent ma kienx juri interess u ma kienx jattendi. Kien jitkixxef dwar id-dhul tal-kumpanija billi jistaqsi lilu dwar dan meta kien ikun imissu xoghol. Matul il-laqghat ta` nhar ta` Tnejn kien jigi diskuss ukoll dak illi forsi seta` jsir sabiex in-negozju jibda jiggenera d-dhul anke ghaliex kienet intefqet somma konsiderevoli fil-progett. Madanakollu ma kienx hemm entuzjazzmu mill-haddiema fil-kcina u fuq kollox mir-rikorrent sabiex jinbidlu l-affarijiet.

Kompla fisser illi wara li nqala` disgwid u r-rikorrent qabad u telaq ir-ristorant, il-gestjoni giet kompletament f` idejh u f` idejn Pullicino. Meta huma t-tnejn raw li n-negozju ma kienx sejjer tajjeb, hadu d-decizjoni illi jhallsu d-djun kollha li kellhom u jaghlqu. Ghad-djun ghamlet tajjeb Mamma Mia Co Ltd billi bi tpacija tal-ammont li kien sellfet lill-kumpanija hadet il-makkinarju li kien hemm fir-ristorant. Parti minn dan il-makkinarju ttiehed il-Mamma Mia Restaurant sabiex jintuza hemmhekk izda kien hemm affarijiet ohra illi kienu mahzuna go garage.

Raymond Schembri mid-ditta R Schembri Woodworks xehed illi d-ditta tieghu pprovdiet lill-kumpanija b`xoghol fl-injam bhal bibien, *flooring* u finituri ohra. Il-ftehim dwar ix-xogholijiet sar kollu ma` Pullicino. Ix-xoghol mitlub kien wiehed estensiv. Skont il-fatturi, l-ispiza globali kienet ta` €94,000. Is-somma thallset kwazi kollha hlief ghal pendenza zghira ta` €900.

Simon Felice xehed illi huwa kien direttur ta` Felix Services and Installations Limited li illum ghalqet. Kienet ipprovdiet lill-kumpanija b`xoghol ta` elettriku, ilma u katusi tad-drenagg ghar-restaurant ta`

Bahar ic-Caghaq. Il-ftehim dwar ix-xoghol sar ma` Pullicino. L-ispiza kompleksiva kienet ta` €73,705.68 li thallsu kollha.

Andre` Sammut mid-ditta Alberta xehdet li Pullicino ghall-kumpannija tahopm l-inkariku li jaghmlu stallazzjoni ta` sistema tas-sigurta` fir-ristorant li l-kumpannija kellha Bahar ic-Caghaq. L-appalt kien jiswa €20,150.18 u thallas kollu.

Reuben Formosa minn The Workshop Architecture and Design Limited xehed illi huma pprovdew xoghol ta` disinn u ta` imports lill-kumpannija ghar-ristorant li kellha Bahar ic-Caghaq. Il-ftehim sar mat-tliet diretturi tal-kumpannija nkluz ir-rikorrent li ppartecipa b`mod attiv. Il-prestazzjonijiet kollha kienu swew €44,746.92 li thallsu kollha mill-kumpannija.

Victor Scerri mid-ditta St Anthony Woodworks xehed illi huma ghamlu xoghol ta` injam jiswa €62,000 fir-ristorant tal-kumpannija Bahar ic-Caghaq li thallas kollu mill-kumpannija.

Bartolomea sive` Betty Calleja - General Manager ta` The Catering Centre Limited - xehdet illi hija tiehu hsieb il-bejgh tal-makkinarju lir-*restaurants*. Id-diskussjonijiet saru mad-diretturi kollha tal-kumpannija nkluz ir-rikorrent li ha sehem attiv fid-diskussjonijiet li kienu ghaddejjin. Il-makkinarju li kien supplit fir-ristorant ta` Bahar ic-Caghaq kien jiswa €300,000. Il-bicca l-kbira thallas hlief ghal pendenza ta` €15,074.72.

Marthese Mallia xehdet illi hija tigi omm ir-rikorrent. Spjegat illi hija kienet gabret dokument minghand l-Av. Jesmond Manicaro u marret hadet parir dwaru minghand in-Nutar Licari. Ma tiftakarx x`kien id-dokument. Dak iz-zmien ir-rikorrent kien ser jidhol bi shab fin-negozju u kellu bzonn madwar €50,000. Tghid illi hija tat lir-rikorrent is-somma ta` €45,000. Ziedet tghid illi Pullicino ma xtaqx lir-rikorrent bhala sieheb fin-negozju izda riedu jahdem fir-*restaurant* bhala chef.

III. L-Art 402 tal-Kap 386

Ir-rikorrent mexxa l-azzjoni odjerna abbazi tal-Art 402 tal-Kap 386.

Il-qorti sejra taghmel riferenza ghal dawk mis-subartikoli tal-Art 402 li tqis rilevanti ghall-istanza tal-lum :-

(1) Kull membru ta` kumpannija li jilmenta li l-affarijiet tal-kumpannija jkun tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li, jew li xi att jew ommissjoni tal-kumpannija kienu jew huma jew x`aktarx se jkunu, oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi tal-membri in general, jista` jaghmel rikors lill-qorti ghal ordni taht dan l-artikolu.

...

(3) Jekk dwar rikors maghmul skond is-subartikolu (1) ... il-qorti tkun tal-fehma li l-ilment ikun bazat sewwa u li jkun gust u ekwu li hekk taghmel, il-qorti tista` taghmel ordni taht dawk il-kondizzjonijiet li jidhrilha xierqa -

(a) li jirregola t-tmexxija tal-affarijiet tal-kumpannija fil-futur ; jew

(b) jirrestringi jew jipprojbixxi l-ghemil ta` xi att propost ; jew

(c) jehtieg lill-kumpannija li taghmel xi att li r-rikorrent ikun ilmenta li kienet naqset li taghmel ; jew

(d) jipprovdi ghax-xiri tal-azzjonijiet ta` xi membri tal-kumpannija minn membri ohra tal-kumpannija jew mill-kumpannija nnifisha u, f`kaz ta` xiri mill-kumpannija, ghattnaqqis li jkun mehtieg fil-kapital azzjonarju mahrug tal-kumpannija ; jew

(e) *jordna lill-kumpannija li tibda, tiddefendi, tkompli jew ma tkomplix procedimenti tal-qorti, jew jawtorizza lil membru jew membri tal-kumpannija li jibdew, jiddefendu, ikomplu jew ma jkomplux procedimenti tal-qorti f` isem u ghan-nom tal-kumpannija ; jew*

(f) *jipprovdi ghall-hlas ta` kumpens minn dik il-persuna li tista` tkun instabet responsabbli mill-qorti ghal telf jew danni li jkun ggarbu minhabba att jew nuqqas li dwaru jkun sar ilment lill-persuna li tkun garrbet dak it-telf jew danni ; jew*

(g) *ixolji l-kumpannija u jipprovdi ghall-istralc konsegwenzjali taghha.*

(4) *Meta jsir ordni ghax-xoljiment ta` kumpannija skond is-subartikolu (3)(g), il-kumpannija ghandha titqies li tkun xoljiet fid-data meta jkun sar l-ordni u d-disposizzjonijiet tas-Sub-Titoli I u III tat-Titolu II tat-Taqsima V ta` dan l-Att li jirregolaw l-istralc ta` kumpanniji ghandhom japplikaw.*

(5) *Ordni maghmul taht dan l-artikolu jista` jehtieg lil kumpannija biex ma taghmilx xi emenda, jew li taghmel emenda mehtiega, fil-memorandum jew fl-istatut taghha.*

Ghalkemm id-dicitura tal-Art 402(1) ittiehdet testwalment minn disposizzjoni simili li tirrizulta fil-Companies Act ta` New Zealand, tajjeb jinghad illi l-ligi ta` New Zealand segwiet l-izvilupp legislattiv tar-Renju Unit. Fl-Ingilterra, id-disposizzjoni li kienet tirregola l-*unfair prejudice action* fil-Companies Act 1985 kienet Sec 459. Meta saret il-Companies Act 2006, l-azzjoni bdiet tigi regolata b` Sec 994(1) fis-sens illi Sec 459 thassret ghal kollox mill-Companies Act 1985 u dahlet ezatt kif inhi f` Sec 994(1) tal-Companies Act 2006.

Fil-pag 485 tal-ktieb **Company Law** (Fourth Edition – 2016 – OUP) **Brenda Hannigan** tghid :-

"Where the court is satisfied that a petition under s. 994 is well founded, it may make such order as it thinks fit for giving relief in respect of matters complained of [s 996(2)]"

Sabiex tinghata ordni skont kif previst fis-subartikoli (3), (4) u (5) tal-Art 402, hija tassattiva l-prova tal-att li minnu jkun qed jilmenta r-rikorrent.

Dan ifisser illi jekk abbazi tal-provi, il-qorti tkun sodisfatta li jirrizulta dak previst fis-subartikolu (1), allura tghaddi mbaghad biex taghti l-ordni li jidhrilha opportuna skont is-subartikoli l-ohra. Jekk il-prova tkun insodisfacjenti ghaliex ma jkunx irrizulta dak previst mis-subartikolu (1), allura l-qorti ghandha tieqaf hemm, u m`ghandhiex tapplika s-subartikoli l-ohra. Ghalhekk il-prova tas-sussistenza legali u fattwali ta` dak li jipprovi s-subartikolu (1) huwa pregudizzjali ghall-prosegwiment tal-azzjoni.

IV. Il-prova

Fil-Pag 1317 ta` **Principles of Maltese Company Law** (Volume Three : Second Edition : MUP : 2019) **Andrew Muscat** ighid illi fuq ir-rikorrent jistrieħ il-piz tal-prova li l-att jew omissjoni lamentata jaqa` fl-ambitu tas-subartikolu (1).

Ighid –

"This wording (tal-subartikolu 1) clearly suggests that the member need only prove one effect of the conduct, act or omission, that is, that such conduct, act or omission, has been, is or is likely to be "oppressive" or "unfairly discriminatory" or "unfairly prejudicial" (to a member or members) or contrary to interests (of the members as a whole)."

Fis-sentenza li tat il-Prim`Awla tal-Qorti Civili fit-30 ta` Jannar 2008 fil-kawza "**Cutajar pro et noe et v. S.C. & Company Limited et**" inghad hekk :-

Illi l-prova biex tirnexxi dina l-azzjoni tispetta lir-rikorrenti li ressqu dina l-azzjoni. Huma jridu jippruvaw li (a) l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod li... (b) jew li xi att jew omissjoni tal-kumpanija kienu jew huma jew x`aktarx se jkunu, oppressivi b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju, ghal membru jew membri jew b`mod li jkunu kontra l-interessi tal-membri in generali.

Il-ligi taghna ma taghtix spjegazzjoni ta` x`inhu oppressiv b`mod mhux gust diskriminatorji kontra, jew b`mod mhux gust ta` pregudizzju. Kull kaz ghalhekk irid jigi trattat u deciz fuq il-mertu tieghu proprju, u dana kaz b`kaz. L-iskop tal-ligi hu biex il-Qorti tkun tista` tintervjeni f`dawk il-kazijiet fejn hemm bzonn li jinghata rimedju minhabba unfair dealing fejn jigi pruvat li kien hemm azzjonijiet jew omissjonijiet li ma kienux gusti u li kienu ta` pregudizzju jew li l-affarijiet tal-kumpanija mhux qed jitmexxew sew.

Fil-pag 492 ta` **Company Law** (op. cit.) **Brenda Hannigan** tkompli tirrimarka :-

"Whether the company`s affairs are being or have been conducted in a manner which is unfairly prejudicial to the petitioner`s interest is an objective, not a subjective, matter. The prejudice must be real, rather than merely technical or trivial, and the petitioner does not have to show that the persons controlling the company have acted deliberately in bad faith or with a conscious intent to treat him unfairly. The conduct complained of must be prejudicial in the sense of causing prejudice or harm to the relevant interest of the member (usually, but not limited to financial damage) and also unfairly so (usually connoting some breach of company law or the constitution but not limited to that) and it is not sufficient if the conduct satisfies only one of these tests."

V. Legittimu Kontradittur

Fil-“**Principles of Maltese Company Law**” (op. cit.) **Andrew Muscat** jitratta l-kwistjoni ta` kontra min tista` tkun promossa azzjoni ta` din ix-xorta.

Fil-pag. 995 tal-ktieb ighid hekk :-

The Companies Act does not specify the person or persons against whom an action under article 402 is to be brought. It does well not to do so. The reason is that the choice of the defendant or defendants depends on the facts of the case and on the type of relief sought.

... the persons responsible for the conduct complained of would typically vary from the current or past majority shareholder to the managing director or the controlling directors acting on behalf of company. Control may also be vested in a shadow director, a provisional administrator, a liquidator, an official receiver and even the pledgee of shares in the company, who, in terms of the pledge agreement, may exercise the shareholder`s voting rights or appoints directors on the board.

*Moreover, as will be noted in the following pages, the forms of relief that may be granted by the court are considerably wide-ranging; a court order could be issued against a number of persons, typically the company itself and one or more shareholders. In **Joseph Calleja vs Vincent Calleja**, an article 402 was filed only against one of the shareholders. The company itself was not a party. The defendant pleaded that the company itself were wrongly instituted, as the action had to be filed against the company and not against himself as a member. The Court, in a judgement in parte, considered article 402 to provide a flexible and equitable remedy and agreed with the applicant`s submissions that an article 402 action had to be instituted against the person or persons who were allegedly responsible for the wrongdoing and that the court`s order need not in all cases be issued against the company itself. The Court remarked that as the applicant`s allegations of wrongdoing were directed towards the defendant, it was clear that the defendant was a proper party to the proceedings. It also stated that the fact that*

the action was not also filed against the company did not nullify the proceedings.

... Given the fundamental principle of Maltese procedural law that no person can be bound by a court`s decision or judgement unless he is a party to the relative proceedings, it is important for the complainant to carefully identify the person or persons against whom the action is to be filed.

Fil-Pag 218 tal-Kap 6 tal-ktieb **Minority Shareholders : Law, Practice and Procedure, Victor Joffe** jikteb :-

*The petitioner will be the member seeking relief, and the company of which he is a member and in relation to whose affairs he alleges unfairly prejudicial conduct will be made a respondent. Additionally, every member of the company (other than the petitioner) whose interests might be effected by the relief sought should be joined as a respondent, whether or not allegations of unfairly prejudicial conduct are made against him: in the case of a small private company, this will usually mean that every member ought to be joined as a respondent to the petition. The category of potential respondents (other than the company) is not, however, limited to members of the company. In an appropriate case, relief may be sought against a non- or former member. The width of the category of potential respondents is indicated by *Lowe vs Fahey* ((1996) 1 BCLC 262), where it was held that if the unfairly prejudicial conduct alleged was a diversion of corporate funds, a petitioner could seek relief not only against members and former members, but also against directors involved or third parties who knowingly received or improperly assisted in the diversion. Even a person who is not actively involved in the conduct of the affairs of the company complained of may be made a respondent, at least if he would be affected by the relief sought.*

VI. L-Art 402(1) tal-Kap 386

1. Gurisprudenza

Fis-sentenza li tat il-Qorti ta` Ghawdex (Gurisdizzjoni Superjuri) fl-4 ta` Frar 2009 fil-kawza "**Ellis v. Ellis**" inghad hekk :-

Jibda biex jinghad li dan il-provvediment jista` jigi nvokat mill-membri kollha, u mhux biss minn membri minoritarji u m`hemmx dubju li d-diskrezzjoni u l-poteri moghtija lill-qorti f`dan il-kuntest huma wesghin. Minn dan il-provvediment hu evidenti li :

(a) Dan il-provvediment japplika wkoll f`kaz ta` att jew ommissjoni izolata ;

(b) Ir-rimedju jista` jinghata kemm ghal dak li jkun gara fil-passat u wkoll xi att propost li jsir fil-futur ;

(c) L-ilment jrid ikun fuq it-tmexxija tal-affarijiet tal-kumpanija jew fuq att jew ommissjoni tal-kumpanija.

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza "**Vella et v. Vella Brothers Ltd et**", il-Qorti tal-Appell qalet hekk :-

... l-Artikolu 402 tal-Att dwar il-kumpaniji jaghti diskrezzjoni pjuttost wiesa` lill-Qrati u dan ghalix dawn il-provvedimenti ghandhom l-ghan li jissalvagwardjaw u jiprotegu lill-azzjonisti ta` socjeta` kummercjali, partikolarment lil dawk li huma minoritarji u li ghalhekk qeghdin fl-impossibilita` li jirregolaw il-mod li bih tkun qed titmexxa s-socjeta` li fiha huma jkollhom interess

...

din id-disposizzjoni, li hija bbazata fuq l-Art.459 tal-Companies Act (1985) Ingliza, hija ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legalistici biex ikun jista` jigi moghti rimedju. Dak li hu necessarju hu li l-azzjonista jipprova li minhabba l-gestjoni tas-socjeta` partikolari hu qed isofri, jew ukoll jista` jsufri, pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi sempliciment ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju

*jista` jirreferi ghall-azzjonist li qed jippromwovi l-proceduri, ghal xi azzjonist iehor jew ghall-interest in generali tal-azzjonisti. Ma hemmx ghalfejn li huwa jipprova li huwa zgur ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` possibilita` ("**Vincent Monreal et v. Lino Delia noe**" deciza mill- Prim`Awla tal-Qorti Civili fit-13 ta` Mejju,1999). Infatti gie deciz mill-Qrati Inglizi fil-kawza in **re Bovey Hotel Ventures Ltd** [(1983) B.C.L.C. 290] li `the Court will not give a list of situations when this remedy may be resorted to however one principle remains clear. A shareholder may make use of this article when his shareholding in the company has been seriously diminished at least seriously jeopardized by reason of a course of conduct or the part of those who have the de facto control of the company, which has been unfair to the member concerned".*

...

*Fid-decizjoni **O`Neill v Phillips** moghtija mill-House of Lords fl-20 ta` Mejju 1999, gie ritenut illi l-legislatur ried illi biex jinghata rimedju taht l-artikolu jigi kkunsidrat il-kriterju ta` dak li huwa `fair`. Izda Lord Hoffman izid ighid li - "Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used ... The requirement that prejudice must be suffered as a member should not be too narrowly or technically construed."*

Fid-decizjoni **In Re Bovey Hotel Ventures Ltd**. (1983) Slade J ighid hekk dwar *unfair prejudice* :-

The test for unfairness must, I think, be an objective, not a subjective, one. In other words it is not necessary for the petitioner to show that the persons who have de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith ; the test, I think is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner`s interests.

Fis-sentenza "**Monreal et vs Delia noe**" (op. cit.) inghad :-

Dawn il-provedimenti huma ta` salvagwardja u ta` protezzjoni ghall-azzjonisti ta` socjeta` kummercjali, b`mod partikolari ghal dawk li huma minoritarji. Ir-rimedji li johorgu minn dawn il-provedimenti huma moghtija lil kull azzjonist ta` socjeta` kummercjali. Kull azzjonist, anke jekk hu minoritarju, ta` socjeta` kummercjali, anke jekk hi pubblika, jista` jitlob li jinghataw l-ordnijiet kollha necessarji u opportuni, f`kaz li jirnexxielu jipprova illi minhabba l-gestjoni tal-istess socjeta` huwa qed isofri jew ukoll jista` jsofri xi pregudizzju ta` natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista` tirreferi semplicement ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista` jirreferi ghall-azzjonist li qed jippromuovi l-proceduri, ghal xi azzjonist iehor jew ghall-interessi in generali tal-azzjonisti. In vista ta` dan kollu jista` jinghad li hu bizzejjed li l-azzjonista jipprova li huwa qed isofri jew eventwalment jista` jsofri xi pregudizzju minhabba xi agir tas-socjeta` li taghha huwa jippossjedi xi ishma. Ma hemmx ghalfejn li huwa jipprova li huwa zgur li ser isofri xi pregudizzju fil-futur. Tali prova tista` ssir fuq bazi ragjonevoli ta` probabbilita`. Inoltre, skond dak li hemm provdut fis-subartikolu (3) tal-istess artikolu 402, il-Qorti tista` tipprocedi biex taghmel kull ordni necessarja u opportuna skond dawn il-provedimenti, jekk jirrizulta li l-ilment tal-azzjonista hu sewwa bbazat u jekk il-Qorti thoss li huwa ekwu u gust li taghmel.

Fis-sentenza taghha tal-31 ta` Jannar 2003 fil-kawza "**Ellul v. Ellul pro et noe**", il-Qorti tal-Appell qalet hekk :-

*... Fil-ligi Ingliza (ara Art 459 tal-Companies Act, 1985) jinstab rimedju simili li hu maghruf bhala "The Unfair Prejudice Remedy". Il-Qorti tal-Appell Ingliza stabbiliet fil-kaz "**in Re Saul D. Harrison & Sons plc** ([1995]) 1BCLC 14)" il-linji ta` gwida dwar kif kellu jkun l-operat biex ikun jista` jigi kkwalfikat bhala, "unfairly prejudicial" (fit-test tal-Ligi Maltija din il-frazi hi tradotta "b`mod mhux gust ta` pregudizzju"). Wiehed kellu, fl-ewwel lok, jara jekk dak l-operat kienx jew le skond l-istatut tal-kumpanija. Izda fl-applikazzjoni tal-imsemmija dispozizzjoni -*

*ispirata fuq principji ta` ekwita` aktar milli minn drittijiet strettament legali – il-Qorti tiehu in konsiderazzjoni l-aspettattivi legittimi (“legitimate expectations”) li r-rikorrent jista` jkollu u li sikwiet ikunu ferm aktar wiesgha mid-drittijiet strettament legali li johorgu mill-istatut ta-ssocjeta`. Dawn l-aspettattivi legittimi jitwiieldu minn xi relazzjonijiet personali partikolari bejn l-azzjonisti. Fil-kaz **Ebrahimi vs Westbourne Galleries Ltd.** ([1973] AC 360) Lord Wilberforce elenka numru ta` sitwazzjonijiet fejn dan ir-rimedju jista` jinghata, sitwazzjonijiet dawn li x`aktarx jinstabu f` kumpaniji zghar privati li ta` sikwiet jissejhu “quasi partnerhsips”, fosthom is-segwentanti :-*

“(i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company

(ii) an agreement, or understanding, that all, or some (for there may be “sleeping members”) of the shareholders shall participate in the conduct of the business ;

(iii) restriction upon the transfer of the members` interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere”.

Fid-decizjoni tal-Prim` Awla tal-Qorti Civili moghtija fis-7 ta` Ottubru 2016 fil-kawza **Av. Dr. Pio M. Valletta noe v. Jenó Torocsik et** inghad illi sabiex ikun hemm *unfair prejudice*, (a) *it-test irid ikun wiehed oggettiv ;* (b) *m`hemmx htiega li l-attur jipprova l-mala fede ;* (c) *m`hemmx htiega li l-attur jipprova li kien hemm intenzjoni li tikkawza pregudizzju ;* (d) *mhux gust ma jfissirx bilfors li l-agir irid ikun illegali ;* u (e) *l-agir irid ikollu effett negattiv fuq l-attur bhala azzjonist.*

Fid-decizjoni **Re Coroin Ltd** – 2012 – All ER (d) 58(Feb) – EWHC 129 (Ch) – moghtija mic-Chancery Division tal-Ingilterra – David Richards J. qal hekk :-

"630. Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member ... The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section.

631. Where the acts complained of have no adverse financial consequences, it may be more difficult to establish relevant prejudice. This may particularly be the case where the acts or omissions are breaches of duty owed to the company rather than to shareholders individually. If it is said that the directors or some of them had been in breach of duty to the company but no loss to the company has resulted, the company would not have a claim against those directors. It may therefore be difficult for a shareholder to show that nonetheless as a member he has suffered prejudice ..."

2. **Dottrina**

Fil-pag. 449 ta` **Farrar`s Company Law** (Fourth Edition) jinghad illi :-

A member`s interests are not necessarily limited, therefore, to his strict legal rights under the Articles and the Companies` Act but can extend also to legitimate expectations as to the conduct of the company`s affairs arising from the nature of the company and the agreements and understandings between the parties.

Fil-pag. 464 tat-Third Edition ta` **Farrar`s Company Law** jinghad illi :-

... The position will vary greatly from the small private companies, commonly called quasi-partnerships, to public companies of considerable size. As a quasi-partnership, the company will usually have been formed or continued on the basis of a personal relationship involving mutual confidence. There may be an agreement or understanding that all or some of the shareholders are to participate in the conduct of the business. Restrictions on the transfer of shares will be the rule rather than the exception. The individuals involved may also have made relatively substantial capital contributions to the company. Shareholders in such companies will be a small close-knit group, actively involved in many instances in the daytoday operations and financially and personally committed to the company. Here the scope for legitimate expectations beyond their strict legal rights is obviously greatest.

However, as Lord Wilberforce stressed in **Ebrahimi v Westbourne Galleries Ltd**, the case for giving effect to equitable considerations must be made in each instance and it is not sufficient simply to assert that the company is small or private, for in many cases the basis of the relationship will be adequately and exhaustively laid down in the articles. If it is so defined by the articles or, for example, by the articles supplemented by a shareholders` agreement, then there is little room for finding further legitimate expectations beyond those outlined in the documents.

The interests of shareholders in larger private and public companies, on the other hand, are likely to be quite different from those of shareholders in quasi-partnerships and considerably more restricted. In these larger companies there is usually no underlying personal relationship, employment is rarely an issue and the shareholders are more interested in such matters as dividend yield and capital appreciation than involvement in the day-to-day running of the company. If they become dissatisfied, especially if it is a public company, they can sell their shares and withdraw from the company. Here the members rarely have expectations beyond their strict legal rights as provided by the articles.

"That is not to say that s.459 does not apply to larger private companies and public companies for the section is clearly not limited to quasi partnerships. The point is that it may be harder to establish conduct which is unfairly prejudicial to the interests of the members in such companies.

Fil-pag 409 ta` **Cases and Materials on Company Law** (Fifth Edition) l-awturi **Hicks and Goo** jirrimarkaw illi :-

*In the early days of S.459, it was thought that the petitioner must have unfairly suffered prejudice to an interest as a member only (and not eg. as a director). This requirement has never been relaxed in that the Court is prepared to recognise that members may have different interests having regard to their rights, expectations and obligations (**Re a company** (No 00477 of 1986 [1986 BCLC 376; **O`Neill v Phillips**. [1999] 1 WLR 1092). This is particularly so in quasi-partnership cases where a minority is excluded from management. But where the articles make detailed provision for any departing members to sell their shares at a fair price, the position may be different ...Section 459 has proved to be a powerful weapon for minority shareholders, particularly in the case of quasi-partnerships. In such companies, minorities who are excluded from management participation or who unfairly suffer loss as a result of wrongdoing by directors or majority shareholders may get relief under the section.*

Fil-pag 506 ta` **Company Law** (op. cit.) **Brenda Hannigan** tirrimarka li :-

"Mere deadlock between the parties who have lost trust and confidence in one another is insufficient then to merit relief under CA 2006, s 994, in the absence of prejudicial conduct."

Fil-pag 711 ta` **Boyle & Birds` Company Law** (Eight Edition – 2011 – Jordans) jinghad :-

"The term "unfair prejudice" whether analysed as a `standard` or a `concept` is a relatively more objective one which is concerned with running the company in a way that is clearly unfair in its consequences to the complaining shareholder, even if the respondents can claim to have acted in the best of good faith."

Fil-pag 691-692 tal-ktieb **Gower and Davies - Principles of Modern Company Law** (Eighth Edition – 2008 – Sweet & Maxwell) jinghad illi :-

*" ... the courts recognised that sec 994 protects expectations and not just rights. Borrowing from public law, it is sometimes said that the section protects the "legitimate expectations" of the petitioner, though more recently the courts have preferred the private law phrase "equitable considerations" [Qorti tal-Appell Ingliza fil-kawza "**Saul D Harrison & Sons plc**" – 1995 – ghall-uzu tal-frazi "legitimate expectations" ; House of Lords – "**O`Neill vs Phillips**" – 1999 – ghall-uzu tal-frazi "equitable considerations"] Whatever the language used, the difficult issue is to distinguish those expectations of the petitioner which are to be classified as "legitimate" or which considerations are to fall within the category of "equitable considerations" and so as deserving of legal recognition and protection from those expectations which the petitioner may harbour as a matter of fact but which the courts will not protect."*

Fil-pag 569-570 tal-ktieb **Company Law** (26th Edition – 2009/2010 – OUP) l-awturi **Mayson, French & Ryan** ighidu hekk b`riferenza ghad-decizjoni ta` *Re Saul D Harrison and Sons* citata aktar kmieni :-

"The words `unfairly prejudicial` are general words and they should be applied flexibly to meet the circumstances of the particular case ... The conduct [being complained of] must be both prejudicial [in the sense of causing prejudice or harm to the relevant interest) and also unfairly so ; conduct may be unfair without being prejudicial or prejudicial without being unfair,

and it is not sufficient if the conducts satisfies only one of these tests."

Ikomplu billi jaghmlu riferenza ghal "**O`Neill vs Phillips**" (op. cit.) in partikolari dwar l-ghazla li ghamel il-Parlament Ingliz –

"Parlament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief ... it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. Although fairness is a notion which can be applied to all kinds of activities its content will depend upon the context in which it is being used."

3. Risultanzi

Il-qorti sejra tqis jekk l-ilment tar-rikorrent jissodisfax il-vot rikjest fl-Art 402(1).

Tajjeb li jkun ribadit illi sabiex ikun sodisfatt il-vot tal-ligi huwa bizzejjed jekk tirrizulta mqar wahda mic-cirkostanzi ndikati fid-dispozizzjoni. Tant hu hekk illi l-legislatur ghazel il-konguntiv jew mhux l-konguntiv u fid-disposizzjoni. Ghalhekk ir-rekwiziti huma alternattivi mhux kumulattivi.

a) Sfond

L-intimati Pullicino u Bonavia huma azzjonisti u diretturi tas-socjeta` Mamma Mia Co. Ltd. li tiggstixxi r-ristorant Mamma Mia Ta` Xbiex fejn ir-rikorrent hadem ghal numru ta` snin bhala chef. Sia r-

rikorrent u kif ukoll l-intimati Pullicino u Bonavia xtaqu jidhlu ghal negozju flimkien fil-qasam tal-*catering* u ghalhekk kienet iffurmata l-kumpannija fit-22 ta` Jannar 2016 : ir-rikorrent u Bonavia bi 30% kull wiehed tal-ishma u 40% tal-ishma Pullicino. Identifikaw post go Bahar ic-Caghaq li seta` jkun konvertit f` ristorante. Il-progett kien jinvolvi nefqa qawwija kemm ghall-kiri tal-post u kif ukoll sabiex il-post ikun *refurbished* u jsir ristorante mghammar b` taghmir u *furnishings* tal-ogħla livell. Il-progett pero` ma marx kif kien progettat u mixtieq ghaliex ma bediex jiggenera bizzejjed dhul li bih seta` jpatti għall-investiment kapitali li kien sar u għall-ispejjez tal-gestjoni. Il-progett tant mar hazin li r-ristorant baqa` miftuh sena u nofs biss. Jidher illi r-ragunijiet principali ghaliex in-negozju falla kien fl-ewwel lok il-lokalita` fejn kien ghax ma kienx ma kienx milhuq bizzejjed min-nies u fit-tieni lok ghaliex kien mirat lejn klijentela raffinata li ma kkonorrietx daqs kemm kien mistenni biex taghmel tajjeb għall-investiment.

L-ilment li fuqu r-rikorrent sejjes il-kawza abbazi tal-Art 402(1) tal-Kap 386 kien semplicement ghaliex ma nghatax bizzejjed informazzjoni dwar kull ma kellu x`jaqsam mar-ristorant li prattikament kien l-uniku *object* li ghalih kien giet kostitwita l-kumpannija.

Tajjeb jinghad illi fix-xieħda tieghu r-rikorrent stqarr illi huwa qatt ma talab informazzjoni dwar il-qagħda finanzjarja tal-kumpannija.

Xehed illi ghalkemm meta saret il-kumpannija kif ukoll meta issellfet minghand Mamma Mia co Ltd kien mitlub jiffirma xi dokumenti qal li ma jafx m`kien hemm miktub fil-karti u li ghaliex hekk kien mitlub iffirmahom.

Ir-raguni li gab kienet semplicement li dak iz-zmien hu kien jafda hafna lil Pullicino u lil Bonavia u ghalhekk kien ikompli magħhom.

Jidher illi r-relazzjoni ta` bejn it-tliet azzjonisti bdiet tixxellef meta Pullicino għamel arrngamenti sabiex ir-rikorrent imur għal perijodu ta` ghaxart ijiem għal tirocinju f` ristorante gewwa Amsterdam fi zmien meta r-ristorant ma kienx għadu fetah ghaliex kien għaddej ix-xogħol. Jidher li

r-rikorrent iddejjaq meta mar hemm ghaliex qal fejn intbaghat kienu jqabbdueh iqattal-basal. Ghalhekk wara erbat ijiem xoghol telaq minn dak ix-xoghol u qatta` s-sitt ijiem ta` wara qabel gie lura Malta jdur bir-rotta gewwa Amsterdam. Din l-imgieba tar-rikorrent ma jidhirx li nizlet tajjeb ma` Pullicino. Fil-fatt ir-rikorrent xehed li wara dak l-episodju Pullicino offra li jixtri minghand ir-rikorrent l-ishma li kellu u jibqa` jahdem fir-ristorant ta` Bahar ic-Caghaq bhala chef. Ir-rikorrent irrifjuta l-proposta ta` Pullicino.

Ir-rikorrent ighid illi huwa hareg b`kollox is-somma ta` €52,500 li €7,500 minnhom thallsu mill-paga tieghu. Pullicino stqarr li l-investment ta` r-rikorrent kien ta` €45,000. Bhala fatt l-ammonti sborsati mir-rikorrent kienu investment sabiex jibda n-negozju. Bhala fatt ukoll ir-rikorrent ma kellux flus u ghalhekk lanqas ma seta` jaghmel tajjeb ghad-djun tal-kumpannija li spiccaw thallsu minn Mamma Mia Co. Ltd u cioe` is-socjeta` li taghha Pullicino u Bonavia kienu l-azzjonisti.

Filwaqt li r-rikorrent jilmenta li ma kellux informazzjoni dwar il-finanzi tal-kumpannija, fl-istess waqt xehed illi Pullicino u Bonavia kienu jikkonsultaw mieghu u anke kienu juruh xi ricevuti u dokumenti ohra relattivi ghal-investment li kien qieghed isir. Il-qorti tosserva wkoll kif bl-aktar mod dirett u skjett ir-rikorrent stqarr illi huwa ma kienx jitlob ghal informazzjoni. Dan jirrizulta ppruvat ukoll mix-xiehda ta` Pullicino u Bonavia li kkonfermaw illi r-rikorrent tant ma kienx jiehu nteress li lanqas biss kien jattendi ghal-laqghat ta` kull nhar ta` Tnejn fejn kien jigi trattat l-andament tan-negozju. Mix-xiehda tar-rikorrent jidher bic-car illi anke jekk kellu x-xewqa illi jidhol f`negozju, huwa dahal ghalih bla ma kien preparat u minghajr wisq hsieb, u apparti li ha l-involviment tieghu fin-negozju b`mod wisq legger. Imqar ipprova jifhem aktar u ahjar sewwa sew xi jfisser illi tkun involut fin-negozju bl-obbligi, il-problemi u r-responsabilitajiet li dak it-tip ta` xoghol jinvolvi.

Ir-rikorrent stqarr illi ma kien fehem il-kontenut tad-dokumenti li kien mitlub jiffirma izda fl-istess waqt ma pprovaw imqar jistaqsi jew jiehu parir dirett mhux tramite haddiehor sabiex jifhem ahjar. Ighid semplicement illi kien jafda lil Pullicino u Bonavia li magghom kellu relazzjoni tajba u allura kien jimxi mal-kurrent u jaqbad u jiffirma fejn mitlub. F`dan il-kuntest huwa ta` rilevanza kbira l-fatt illi r-rikorrent

talab l-ghajnuna ta` ommu mhux daqstant ghall-iffinanzjar tas-sehem tieghu fil-kumpanija izda wkoll sabiex tiehub parir legali ndipendenti fuq dak li kien propost lil binha biex jiffirma u dwar li kien jinvolvi ghalih. Madanakollu r-rikorrent jammetti illi lanqas imqar f`dan il-kuntest ma nteressa ruhu jistaqsi lill-ommu dwar x`parir kienet inghatat u mid-deposizzjoni taghha f`din il-kawza ma tantx jidher li fehmet il-parir li kienet inghatat. In-nuqqasijiet tar-rikorrent huma lampanti, ghandhom piz fuq l-esitu ta` din il-kawza u ma jistghux jghaddu inosservati.

Il-qorti ssib illi fil-vicenda kollha ta` kif zvolgew il-fatti huwa ta` sinifikat kbir anke l-mod ta` kif ir-rikorrenti hareg mix-xena. Jidher illi kollox skatta minn argument. Ir-rikorrent qabad u telaq `il barra mir-ristorant u ma marx lura. Bil-mod kif telaq mix-xoghol habta u sabta, kellu jigi rimpjazzat sabiex ir-ristorant seta` jkompli jopera. Ma jirrizultax li pprova jsib tarf tal-problemi li kienu qeghdin jinjalghu ma` shabu. Is-soluzzjoni tieghu kienet li jaqbad u jabbanduna l-progett nonkuranti tal-konsegwenzi.

Nonostante l-imgieba censurabbli tieghu, ir-rikorrent jilmenta li Pullicino u Bonavia hadu decizjonijiet minghajr ma nvolvewh fihom. Ighid dan partikolarment fir-rigward tad-decizjoni li t-taghmir tal-kumpanija (ghalkemm baqa` fir-ristorant) kien sar proprjeta` ta` Mamma Mia Co Ltd sabiex ipatti ghal parti mid-dejn li l-kumpanija kellha maghha. Ir-rikorrent jilmenta wkoll dwar il-fatt illi in segwitu Pullicino u Bonavia hadu d-decizjoni li jaghlqu r-ristorant minghajr ma kkonsultaw mieghu. Ir-ristorant kien inghalaq ghaliex l-ispiza biex jinzamm miftuh ma kenitx aktar sostenibbli. Kienet decizjoni tal-bord tad-diretturi waqt laqgħa (fost bosta ohra) fejn ir-rikorrent ma ppartecipax fihom. Il-fatt li ttiehdet dik id-decizjoni b`maggoranza ma jfissirx li t-tmexxija tal-affarijiet tal-kumpanija saret b`mod u manjiera li l-Art 402(1) ma jridx li ssir. Ir-rikorrent ha rwol passiv anke meta kien kisirha ma` shabu. Il-qorti tosserva wkoll illi anke wara li telaq `il barra mir-ristorant baqa` jokkupa l-kariga ta` direttur. Imqar indaga dak il-komportament ghal xiex kien qed jesponih għall-finijiet u effetti tal-ligi. Eppure baqa` ma rrizenjax minn direttur.

Il-qorti tqis illi r-rikorrent lanqas ma jista` joggezzjona għad-decizjonijiet li ttiehdu mill-bord tad-diretturi fuq is-semplici bazi li hu kien

personalment garanti ghad-dejn tal-kumpanija. Dan il-fatt ma jidhirx illi qatt kien ta` thassib ghar-rikorrent ghaliex li kieku kien certament ir-rikorrent kien jaghraf jimxi bil-wisq aktar b` ghaqal fid-decizjonijiet kollha tieghu. Jekk ir-rikorrent ried jevita sitwazzjoni bhal din allura kien messu baqa` involut fin-negozju u jirrikorri ghall-intervent tal-qorti bih ghadu involut sabiex tindirizza l-ilment tieghu. L-ghazla tieghu kienet diversa.

Tajjeb wiehed jinnota illi fit-trapass taz-zmien ta` bejn it-2 ta` Marzu 2017 meta telaq mir-ristorant sal-11 ta` Awwissu 2017 meta kienet istitwita din il-kawza r-rikorrent baqa` passiv ghal kollox. Ma ha ebda pass ghall-gid tas-socjeta`. Hsieb ir-rikorrent wara li telaq `il barra kien biss dwar kif se jigbor lura l-investment illi ghamel ; ghalhekk il-quantum tal-mandat ta` sekwestru kawtelatorju. Zgur illi bl-atteggjament tieghu ir-rikorrent mhux talli abdika mir-responsabilitajiet tieghu bhala direttur skont l-Art 136A tal-Kap 386 talli wera bl-aktar mod inekwivoku nonkuranza grossolana.

Fuq l-iskorta tal-provi meqjusa fl-assjem taghhom, il-qorti qeghda ssib illi l-agir lamentat mir-rikorrent mhuwiex ippruvat u ma jissodisfax il-vot tal-ligi. Tajjeb jigi ribadit illi r-rwol tal-qorti mhuwiex li toffri soluzzjoni izda li tistabilixxi jekk abbazi tal-provi akkwiziti jirrizultawx fondati t-talbiet tar-rikorrent skont l-Art 402(1) tal-Kap 386. Ma jirrizultax ippruvat li r-rikorrent garrab u wisq anqas x` aktarx ser iggarab *unfair prejudice*. Ladarba mhijiex ippruvata l-vjolazzjoni tal-Art 402(1), il-qorti sejra tieqaf hawn u mhijiex sejra tghaddi ghall-konsiderazzjoni tar-rimedji li jahseb ghalihom l-Art 402(3) tal-Kap 386.

Provvediment

Ghar-ragunijiet kollha premissi, il-qorti qeghda tipprovdi dwar it-talbiet u dwar l-eccezzjonijiet billi :-

Tilqa` l-eccezzjonijiet kollha tal-intimati.

Tichad it-talbiet kollha tar-rikorrent.

Tordna lir-rikorrent sabiex ihallas l-ispejjez kollha ta` din il-kawza.

**Onor. Joseph Zammit McKeon
Imhallef**

**Amanda Cassar
Deputat Registratur**