

– TALBA GHAL HLAS GHAL SERVIZZI TA' REKLAMAR –
– OBBLIGAZZJONI KUNTRATTWALI –
– ADEMPIMENT U INADEMPIMENT –
– DEFINIZZJONI TA' "INTERVISTA" –
– SERVIZZ MHUX MOGHTI SKOND L-ARTI U S-SENGHA –
– ART. 992 TAL-KODICI CIVILI –
– PRINCIPJU TA' KORRETTEZZA U BONA FIDI F'KUNTRATTAZZJONI –



TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR

AVV. DR. KEVIN CAMILLERI XUEREB

Udjenza ta' nhar it-Tnejn, 30 ta' Mejju, 2022

Avviz tat-Talba numru: **19 / 2020**

MBR PUBLICATIONS LIMITED

[REG. NRU. C-66371]

VERSUS

TESTA CATERING CONCEPTS LIMITED

[REG. NRU. C-56923]

B'Avviz tat-Talba introdott fil-21 ta' Jannar, 2020, l-attrici talbet li l-konvenuta tigi kkundannata ghall-hlas tas-somma ta' sitt mija u disa' u erbghin ewro (€649.00c) u dan wara li ppremettiet hekk:

- 1) Illi s-socjetà konvenuta hija debitrice tas-socjetà attrici fis-somma ta' sitt mija u disa' u erbghin euro (€649) rapprezentanti servizzi ta' pubblikazzjoni u reklamar li gew debitament rezi lilha mill-attrici fuq struzzjonijiet tal-istess socjetà konvenuta u dan kif jirrizulta ahjar mill-fattura hawn annessa u mmarkata bhala "Dok: A";
- 2) Illi s-socjetà konvenuta, minkejja li giet debitament interpellata thallas lis-socjetà attrici, baqghet inadempjenti;
- 3) Illi ghalhekk kellha tigi addottata din il-procedura;

Tghid ghalhekk is-socjetà konvenuta ghaliex ma ghandhiex tkun ikkundannata minn dan ir-rispettabbli Tribunal thallas lis-socjetà attrici s-somma ta' sitt mija u disa' u erbghin euro (€649), u dan prevja kull provvediment jew dikjarazzjoni ohra.

Bl-ispejjez u bl-imghax mid-data tal-fattura sal-jum tal-hlas effettiv kontra s-socjetà konvenuta li r-rapprezentanti taghha minn issa jibqghu ngunti ghas-subizzjoni.

Bi twegiba ghall-pretiza attrici, l-konvenuta ressqet Risposta datata 12 ta' Frar, 2020 (a *tergo* ta' fol. 9) fejn eccepjet hekk:

1. Illi t-talbiet attrici huma infondati fil-fatt u fid-dritt;
2. Illi s-socjetà intimata m'għandha tagħti xejn lis-socjetà attrici b'mod speċjali ammonti għal xi servizzi ta' pubblikazzjoni u reklamar li s-socjetà attrici qed tallega li gew rezi stante li s-servizz rez ma kienx kif pattwit;
3. Illi fil-fatt il-ftehim bejn il-partijiet kien illi r-rappreżentant tas-socjetà konvenuta jigi intervistat u dan billi gurnalist imur għandu direttament u jagħmillu xi mistoqsijiet jew qabel jigi pubblikat l-artikolu kelli jintbghat lis-socjetà konvenuta għall-approvazzjoni u dan kif jirrizulta minn emails datati 12 ta' Settembru 2019 sa 19 ta' Settembru 2019 li qed jigi hawn annessi u mmarkati bhala Dokument JP1;
4. Illi s-socjetà attrici stess ammettiet illi tali servizzi rezi u pubblikati ma kienux ta' kwalità tajba u skond kif gie pattwit kif jirrizulta wkoll mill-email tal-31 ta' Ottubru 2019 li qed tigi hawn annessa u mmarkata bhala Dokument JP2 fejn rappreżentant tas-socjetà rikorrenti stqarret: *"You are right that we should have sent artworks for you to review and re-send, however, this was an oversight from my part and I apologise for this shortcoming."*;
5. Illi għaldaqstant, is-socjetà konvenuta m'hijiex debitrici tal-kumpannija attrici u dan kif ser jirrizulta fit-trattazzjoni tal-kawza.

Il-provi ta' l-attrici gew formalment dikjarati konkjuzi fl-udjenza ta' l-24 ta' Novembru, 2020 filwaqt li dawk tal-konvenuta gew dikjarati magħluqa fl-udjenza ta' l-24 ta' Frar, 2021. Fl-udjenza tat-3 ta' Mejju, 2021 – wara li l-avukati difensuri tal-partijiet sostnew li ma kellhomx sottomissjonijiet xi jressqu dwar il-kaz peress li kienu sejrjn jistrieħu fuq l-atti processwali – il-procediment thalla għad-decizzjoni, illi qed tigi mogħtija illum.

It-Tribunal, ikkunsidra l-provi dokumentarji mressqa mill-kontendenti u anke dawk testimonjali u ra u ezamina l-atti kollha ta' dan il-process.

It-Tribunal jikkunsidra;

L-odjerna kontiza hi dwar il-hlas marbut ma' servizzi ta' promozzjoni u reklamar prestati mill-attrici lill-konvenuta dwar l-operat kummerċjali ta' din ta' l-ahhar. L-attrici qed tfitteħ sabiex tithallas ta' tali prestazzjoni tagħha, filwaqt li l-konvenuta qed tghid li tali servizzi ma gewx effettivament mogħtija kif imwiegħed jew kif originarjament maqbul bejniethom u, effettivament, li l-istess servizzi ma kienux skond l-arti u s-sengħa u li għalhekk m'hemm xejn x'jithallas lill-attrici.

Fattur important f'dawn il-proceduri huwa li jigi ben individwat il-ftehim li gie konkjuż bejn il-partijiet u li minnu wieħed jara ezattament x'kienu l-aspettattivi u r-responsabbilitajiet taz-zewg partijiet, kemm dawk rigwardanti l-parti li kienet ser tippresta s-servizz u kif ukoll dawk ta' dik il-parti li kienet ir-recipient ta' l-istess servizz.

Huwa important li dan jigi ben inkwadrat stante illi f'din il-kawza toħrog lampanti u palezi d-diskordja bejn l-aspettattivi reciproci taz-zewg partijiet, ossia: (a) l-attrici temmen li xogħolha kien li tirreklama s-servizzi tal-konvenuta abbazi ta' l-informazzjoni li kellha tigi provduta esklussivament mill-istess konvenuta; (b) filwaqt li

I-konvenuta kienet qed tippretendi li ssir intervista mad-direttur taghha u li tali intervista, wara li ssir, tigi ridotta f'wahda traskitta sabiex tiffirma parti minn artikolu gewwa l-*magazine* bl-isem ta' "Malta Business Review" (harga nru. 15 tal-2019).

Ghalhekk, l-inadempjenza li l-partijiet qed jimputaw lil xulxin, trid tigi mistharrga fl-isfond ta' l-obbligi rispettivi li kellhom, *in primis*, jigu onorati mill-istess partijiet skond dak minnhom mifthiem.

Huwa bil-wisq naturali, ghas-success ta' l-istanza attrici, li din turi illi s-servizz minnha moghti kien skond il-kanoni u t-termini ta' dak tassew mifthiem mal-konvenuta. Jekk dan jigi debitament muri, ghandna l-adempiment taghha fil-kontrattazzjoni in dizamina u allura ghandu jsegwi li l-istess attrici ghandha, necessarjament u *di regola*, tithallas tal-prestazzjoni taghha. Min-naha l-ohra, jekk tigi riskontrata dik l-inadempjenza allegata mill-parti konvenuta, it-tezi tal-konvenuta ghandha tinghata widen u l-istanza attrici tehtieg tigi, totalment jew parzjalment, rigettata stante li l-inadempiment, totali jew parzjali, ma jistghax jigi premjat jew kumpensat.

Allura, il-kwezit fundamentali li jrid jigi indirizzat f'dan l-istadju huwa dan: x'kien ezattament dak rikjest mill-attrici da parti tal-konvenuta u x'wettqet l-attrici u kif dan twettaq?

Li kieku l-partijiet iffirmaw kuntratt jew ftehim veru u proprju, tali kwezit kien ikun facilment dezumibbli mit-termini u mill-kundizzjonijiet pre-stabbiliti. Madanakollu, f'dan il-kaz il-partijiet ma ghalzlux li jirregolaw l-inter-relazzjoni taghhom b'tali mod. Ghalhekk, biex tipprova tinghata twegiba ghall-kwezit hawn fuq postulat, wiehed ghandu jistudja sew kemm l-*emails* precedenti li ghaddew bejniethom u kif ukoll l-ohrajn li gew skambjati bejn il-partijiet *ex post facto* stante li l-istess *emails* huma l-unika indikazzjoni ta' x'ezattament ftehm u l-partijiet kontendenti. Minn tali *emails* wiehed jittenta jirrikostrowixxi x-xenarju dwar is-servizz mistenni (mill-konvenuta) u dak li kellu jigi prestat (mill-attrici).

Is-segweni huwa epilogu kronologiku ta' tali korrispondenza elettronika mwettqa minn dan it-Tribunal abbazi tal-materjal probatorju lill-offrut b'evidenza:

- (a) email tat-12 ta' Settembru, 2019 mill-attrici lill-konvenuta fejn gie propost il-prezz ta' €550 (+ VAT) ghal *double page interview* fil-*magazine* "Malta Business Review" tal-harga t'Ottubru, 2019. Hemm ukoll propost illi "*Once you confirm I will ask Martin Vella our editor to prepare the questions. Also, please let me know with whom the interview will be. Kindly provide name, surname and designation [...] Kindly advice at your earliest.*" (a fol. 52 jew a fol. 89);
- (b) fit-18 ta' Settembru, 2019 intbghat email mill-attrici lill-konvenuta bhala *reminder* ta' l-email senjalat hawn fuq (a fol. 52);
- (c) fl-istess data tat-18 ta' Settembru, 2019, il-konvenuta wiegbet u d-direttur taghha (Jean Paul Testa) kiteb hekk: "*Confirmed please go ahead and forward us your interview questions. Thanks in advance.*" (a fol. 52 jew a fol. 89);

- (d) fid-19 ta' Settembru, 2019 l-attrici irringrazzjat lill-konvenuta tal-konferma (a fol. 58 jew a fol. 91) u fl-istess gurnata d-direttur tal-konvenuta (Jean Paul Testa) kien provda l-irwol tieghu fi hdan il-kumpannija konvenuta. Hu kien kiteb hekk: "*My designation in the group is Chief Executive Officer and Chairman of the Board of Directors*" u sostna wkoll hekk: "*I'm available most of the days next week in the mornings after 10:30.*" (a fol. 58 jew a fol. 91);
- (e) fl-istess gurnata tad-19 ta' Settembru, 2019 l-attrici staqsiet lid-direttur tal-konvenuta (Jean Paul Testa) hekk: "*Could you please let us know some pointers of what you wish to be included in the interview?*" (a fol. 58 jew a fol. 91);
- (f) fl-24 ta' Settembru, 2019, id-direttur tal-konvenuta (Jean Paul Testa), permezz ta' email, wiegeb u offra seba' (7) spunti dwar tematici tan-negozju tal-kumpannija tieghu biex ikunu is-sinsla ta' l-intervista ma' l-attrici (a foll. 57–58 jew a fol. 92);
- (g) dakinhar stess tal-24 ta' Settembru, 2019, l-attrici bidlet tali seba' punti f'domandi f'forma aktar artikulata u bghatithom lura lid-direttur tal-konvenuta u fl-email relattiv l-attrici kitbet hekk: "*Max word count: 900 words. Must be complimented with FC photo and three other good images of the interviewee.*" Tali email tghid ukoll hekk: "*Kindly find the questions hereunder – please send us back the answers by not later than end of September.*" (a foll. 56–57 jew a fol. 93);
- (h) fis-27 ta' Settembru, 2019 l-attrici bghatet email fejn tablet lid-direttur tal-konvenuta jimla' l-*booking form* ghall-advert/riklam. Fl-email insibu hekk: "*Kindly find attached your booking form for this advert – Please fill in VAT number and mobile number and send it back to me. Please send me the answers by Monday.*" (a fol. 56 jew a fol. 94);
- (i) il-*booking form* li tissemma f'tali email hi sempliciment formola 'pro forma' illi fiha kellhom jigu indikati certu dettalji tal-kumpannija konvenuta bhala klijenta, bhal per ezempju, il-*contact name*, id-data tal-*booking* u t-tip ta' *booking*, l-isem tal-kumpannija jew tan-negozju, l-email address tal-klijent, in-numru tal-VAT u tac-cellulari tal-klijent u l-prezz tar-riklam fil-*magazine*. Fl-ahhar hemm il-firma tas-*salesperson* ta' l-attrici (Eliza Galea) u d-data relattiva. Fuqha m'hemmx il-firma tal-klijent, li f'dan il-kaz kienet is-socjeta' mharrka (a fol. 59);
- (j) fl-1 ta' Ottubru, 2019 l-attrici bghatet *reminder* b'email lill-konvenuta dwar l-ahhar email (a fol. 56 jew a fol. 94);
- (k) l-ghada, 2 ta' Ottubru, 2019, l-attrici regghet bghatet *reminder* b'email lill-konvenuta dwar l-email tas-27 ta' Settembru, 2019, u fiha jinghad hekk: "*Dear Jean Paul, Could you please send us the update for the below?*" (a foll. 55–56 jew a fol. 94);
- (l) fit-3 ta' Ottubru, 2019 l-attrici regghet baghtet email lill-konvenuta fejn fiha talbet hekk: "*Kindly send asap.*" (a fol. 94);

- (m) fl-istess data tat-3 ta' Ottubru, 2019 id-direttur tal-konvenuta (Jean Paul Testa), b'email, stqarr mall-konvenuta hekk: *"Dear Eliza, I have consulted beefbar international and also my marketing team and they both suggest we skip for this time as we have too much going on in terms of¹."* (a fol. 96);
- (n) fl-imsemmija gurnata tat-3 ta' Ottubru, 2019, bhala twegiba ghall-email precedenti tad-direttur tal-konvenuta (Jean Paul Testa), l-attrici kitbet, *inter alia*, hekk: *"Kindly note that the Malta Business Review has been ready to print and printers are only awaiting your two pages. May we draw your attention that you had confirmed booking by email and so we had reserved two pages as requested. In view you have sent cancellation at such a late stage, we cannot have two blank pages on the publication, and would kindly request you to maintain your commitment as this will be causing great inconvenience both to printers and to publishers. Furthermore, since we have your confirmation, any cancellation incurs a charge of 30% on actual amount, as per booking caluses. Please confirm if [we] can go ahead with your interview in order [to] avoid [an] unwanted situation, as otherwise we have no alternative but to charge penalty on cancellation."* (a fol. 96);
- (o) jidher illi fis-7 ta' Ottubru, 2019, kienu intbghatu, tramite email, it-twegibiet ghall-mistoqsijiet li gew deskritti taht il-paragrafu (g) t'hawn fuq (a fol. 100 u a tergo tal-istess folio);
- (p) ukoll fis-7 ta' Ottubru, 2019, l-attrici regghet bghatet email in kollegament mal-booking form lill-konvenuta u staqsiet hekk: *"Dear Jean Paul, Could you please sign the attached and fill in Vat number? I need it asap."* (a fol. 55 jew a fol. 95);
- (q) l-ghada, 8 ta' Ottubru, 2019, l-attrici, ghal darb'ohra, bghatet email illi fih qalet dan: *"Dear Jean Paul, Could you please return the attached signed? We also need payment to be transferred as soon as possible. Please also find invoice² attached."* (a fol. 55 jew a fol. 95);
- (r) fl-istess data tat-8 ta' Ottubru, 2019, u bi twegiba ghall-ahhar imsemmija email *supra*, id-direttur tal-konvenuta (Jean Paul Testa) wiegeb hekk: *"Hi Eliza, We issue payments end of months, we do not issue payments randomly. Sorry about that but when we discussed this was not mentioned. I will be in the office on Friday and can send you the signed form."* (a foll. 54–55 jew a fol. 95);
- (s) ukoll fl-istess gurnata tat-8 ta' Ottubru, 2019, l-attrici wiegbet hekk lid-direttur tal-konvenuta (Jean Paul Testa): *"Hi Jean Paul. Thank you – we await payment end of month. If you can give me your VAT number in the meantime would be great."* (a fol. 54 jew a fol. 85);

¹ L-email ma tkomplx peress li d-dokument ma giex ezibit fl-intier tieghu.

² Tali fattura tinsab ezibita a fol. 60.

- (t) fil-31 ta' Ottubru, 2019 id-direttur tal-konvenuta (Jean Paul Testa) bghat dan l-email lill-attrici: *"I have just seen the publication that just came out! We agreed you send me the write up before it had to be issued! Also, you just picked a photo from facebook and cropped it?? Who as the journalist that took care of this? She just copied and pasted what I sent? No correction of any sort? You asked me for questions and after you asked me for answers! Copy paste! Unbelievable, I'm not a journalist I expected professionalism from your end! I asked to see the article before it was sent for print!"* (a fol. 62 jew a fol. 85 jew a fol. 86);
- (u) fil-31 ta' Ottubru, 2019 l-attrici wiegbet l-email t'hawn fuq u sostniet, testwalment, dan: *"Dear Jean Paul, reference your email regarding DPS on MBR October issue. Firstly, please allow us to point out that in view we were running late and publication already gone to print, upon receiving your details, designer proceeded to layout artworks design, which is in good order, and inserted the same content you gave us to insert. The image had to be replaced as the one you sent us below was low resolution and not good for print. It is not the write-up we had to send before it had to be issued, rather the artworks. It is the designer's work to layout artwork design and insert content. Should you required any editing or correction, you should have requested us and informed us to appropriate corrections and modify wherein relevant – in view we were running late, we simply passed on artworks to printer, as we were not aware you required editing. You are right that we should have sent artworks for you to review and re-send, however, this was an oversight from my part and I apologise for this shortcoming. In this regard, I am authorized to give you a free full page advert on our next November issue of MBR as compensation to the above. Trust this is acceptable. Should you need, I can ask our Lead Journalist and Chief Editor, who is EU accredited journalist with GOPA, to come and conduct a complimentary restaurant review by dining at Beef Bar. Thanking your kind attention. Best regards. Eliza."* (a foll. 61–62 jew a foll. 86–87);
- (v) fl-istess data tal-31 ta' Ottubru, 2019, id-direttur tal-konvenuta (Jean Paul Testa) bghat dan l-email responsiv ghall-ahhar wiehed appena citat: *"I'm not an editor or journalist and expect that you get what I wrote and put it in nice wording and good grammar! This is a disgraceful interview even the photo is poor!"* (a fol. 61 jew a fol. 87);
- (w) bi twegiba ghal din l-ahhar email, ukoll fil-31 ta' Ottubru, 2019 – izda din id-darba kien Martin Vella, li wiegeb ghan-nom tal-attrici – l-attrici risponndiet b'dan il-mod: *"Dear Jean Paul, In all fairness, I think that you should have tackled the content with the original writer/author in the firs place ... Eliza has apologized for an oversight, as she is not a journalist or editing specialist, and has also offered you with a free page Ad worth over Eur 550 + VAT. We will review the content and redo artwork, can you send us a high res image to insert, so we may upload online and re-send you new artworks?"* (a fol. 63 jew a fol. 88);

- (x) fl-istess datat, ossia l-31 ta' Ottubru, 2019, u fid-dawl ta' l-email appena citata, id-direttur tal-konvenuta (Jean Paul Testa), permezz t'email, staqsa hekk: *"But is the publication out or not?"* (a fol. 88);
- (y) Ftit mumentu wara, dejjem fil-31 ta' Ottubru, 2019, Martin Vella, rapprezentant ta' l-attrici, bghat email lill-imsemmi Jean Paul Testa li kienet tghid dan: *"Yes it was published as printers were waiting on the artworks to your DPS and went into overtime to finish print on time We can redo new artworks if you wish?!"* (a fol. 88);
- (z) fit-8 ta' Novembru, 2019 l-attrici bghatet email lill-konvenuta fejn fiha qalet dan: *"Hi Jean Paul, Good afternoon. There is an outstanding balance of Euros 649, invoice number 3044 dated 7th October 2019. Can I kindly pick up the payment?"* (a foll. 65–66);
- (aa) ffit mumentu wara, ukoll fit-8 ta' Novembru, 2019, id-direttur tal-konvenuta (Jean Paul Testa) bghat email illi tghid hekk: *"For sure no with that disaster article that went out!"* (a fol. 65);
- (bb) fl-istess guranata tat-8 ta' Novembru, 2019, Martin Vella, in rapprezentanza ta' l-attrici, bghat email lid-direttur tal-konvenuta (Jean Paul Testa) li taqra hekk: *"Dear Jean Paul, I refer to your below reply to Margaret's email today and also the below email, wherein we offered you complimentary compensation to your complaint and claim on content, which is not that very bad as you light it up. We are still awaiting your reply to the below."* Fl-istess email hemm dak diga asserit fl-email tal-attrici lill-konvenuta tal-31 ta' Ottubru, 2019, ossia, *"In all fairness, I think that you should have tackled the content with the original writer/author in the firs place ... Eliza has apologized for an oversight, as she is not a journalist or editing specialist, and has also offered you with a free page Ad worth over Eur 550 + VAT. We will review the content and redo artwork, can you send us a high res image to insert, so we may upload online and re-send you new artworks?"* (a foll. 64–65);
- (cc) fl-14 ta' Novembru, 2019 Martin Vella, dejjem in rapprezentanza ta' l-attrici, bghat email lid-direttur tal-konvenuta (Jean Paul Testa) li tghid dan: *"Good morning JP, We kindly request you to confirm your position regarding proceeding with complimentary compensation allowed by the Board of MBR with regards to your complaint. Your reply is appreciated in view we are closing down December issue of MBR in a week's time."* (a fol. 64);

Spjanat dan it-terren, it-Tribunal jikkunsidra kif gej;

Ikollu jigi mistqarr illi nonostante l-kwantità apprezzabbli ta' skambji ta' ittri elettronici (*emails*) bejn il-partijiet, sfortunatament tonqos dik id-debita kwalità u precizjoni li ben tidentifika x'kien rikjest minn parti u minn ohra f'din ir-rabta kuntrattwali taghhom. Il-partijiet donnhom intilfu f'hafna komunikazzjonijiet bla ma hassew necessarju illi mill-bidu nett jikkwalifikaw u jiddeskrivu ezattament x'kienet ser twettaq l-attrici ghall-konvenuta u x'kienet qed tistenna l-konvenuta mighand il-kumpannija attrici. Kollox thalla fi stat incertezza, fejn parti assumiet li l-parti l-ohra kienet qed tifhem x'kien rikjest. Kien imbaghad meta mmaterjalizzat l-pubblikazzjoni in dizamina illi partijiet

bdew jartikolaw dak li kien mistenni (mill-konvenuta) u/jew dak li kien kellu jitwettaq (mill-attrici). Dan huwa palezi minn dik is-serje ta' emails precedenti l-pubblikazzjoni u dawk li gew wara l-istess publikazzjoni. F'ta' l-ewwel kategorija inghad hafna bejn il-partijiet izda fundamentalment ma inghad xejn bi precizjoni, filwaqt li fit-tieni kategorija l-posizzjonijiet tal-partijiet hadet sura alkwantu cara, kemm da parti ta' l-attrici u kemm da parti tal-konvenuta.

Hekk kif il-Qorti ta' l-Appell citat lill-poeta Ingliz John Milton [i.e., kwotazzjoni mill-poema "Paradise Lost" (ii., linja §996) fejn taqra hekk: «Confusion worse confounded»] fis-sentenza *in re John Grech pro et noe v. Christine Hellermann* (Appell Superjuri, 15 ta' Frar, 2015) biex tesprimi s-sens ta' konfuzjoni fl-andament ta' provi f'dik l-istanza gudizzjarja,³ il-prezenti Tribunal, jaghmel l-istess u b'riferenza ghat-tagħlim – semplici izda intens u effikacji – ta' Ezopu, fejn dan jghid: "*Beware lest you lose the substance by grasping at the shadow.*" Dak huwa li gara bejn il-partijiet kontendenti, u cioè illi, nonostante hafna *emails*, l-attrici ma indenjatx, almenu, tiddeskrivi ezattament x'servizz kien ser jinghata u kif ser jinghata lill-konvenuta u l-konvenuta qatt ma staqsiet lill-attrici ezattament x'sura ta' servizz ser jigi mwettaq, kif ezattament ser jigi mwettaq u/jew x'kien precizament rikjest minnha. Kif diga' inghad, ghalkemm gew mibghuta numerevoli *emails* bejniethom, l-incertezza baqghet imperanti, u parti assumiet li l-parti l-ohra kienet qed tifhem x'kien mistenni. Il-kaz present juri altrimenti!

Bejn il-partijiet ma giex redatt kuntratt, izda l-legam bejniethom huwa ndubbjament wiehed kuntrattwali. Kuntratt, veru u proprju – anke jekk mhux necessarjament wiehed dettaljatismu – almenu, kien ben jidentifika is-servizz li kien ser jigi mwettaq u kif ser jigi moghti u dak li l-konsumatur ikun qed jippretendi u l-istess ikun jaf ghal xiex qed ihallas. Kuntratt, almenu, kien jispecifica certu termini u kundizzjonijiet u kien ikun ghodda bazilari għall-kontraenti sabiex dawn ikunu jafu bi precizjoni fejn jinsabu wiehed fir-rigward ta' l-iehor. Tali kuntratt, kien jaf jiskansa pretensjonijiet jew ilmenti frivoli u kif ukoll litigji gudizzjarji. Il-*Booking Order* li giet ezibita f'din il-kawza (*a fol.* 59) solament tidentifika li hemm rabta ta' indoli kuntrattwali bejn l-attrici u l-konvenuta u dettalji dwar il-pagament, izda xejn oltre dan.

B'dan kollu registrat, it-Tribunal jikkunsdra ulterjorment hekk kif gej;

Hawnhekk ninsabu fil-kamp ta' l-adempiment ta' obligazzjoni prekostitwita bejn tnejn min-nies. Obligazzjoni kuntrattwali, min-natura tagħha u implicitament fiha, tipresupponi, u taghti lok għal, l-adempiment tagħha. Il-konsegwenza negattiva, ossia n-nuqqas f'tali kondotta, tissarraf fl-inadempiment, dik li dottrinalment hi deskritta bhala "*la mancata o inestatta esecuzione della prestazione dovuta*".⁴ Fuq wicc ta' l-istess munita għandna l-adempiment u fuq il-wicc l-iehor għandna l-inadempiment.

³ Għat-thaddin ta' dan il-bran celebri ara, *inter alia*, s-sentenzi *in re Il-Pulizija v. Anthony Joseph Portelli* (Appell Kriminali, 22 ta' Dicembru, 2006 *per* Imh. V. De Gaetano); *in re The Republic of Malta v. Steven John Lewis Marsden* (Appell Kriminali, Superjuri, 23 ta' Ottubru, 2008); *in re The Police v. Ismail Guclu* (Appell Kriminali, Inferjuri, 14 ta' Settembru, 2011); u *in re Anthony Joseph Portelli v. L-Avukat Generali* (Prim'Awla [sede kostituzzjonali], 15 ta' Dicembru, 2011).

⁴ **Luigi Viola**, "Inadempimento Delle Obbligazioni" (CEDAM editori, 2010; p. 69).

L-adempiment jikkonsisti f'ezekuzzjoni a favur tal-kreditur tal-prestazzjoni dovuta mid-debitur. L-adempiment jestingwi l-obbligazzjoni u cioè l-kreditur ikun sodisfatt u d-debitur jisfa liberat mill-vinkolu. Biex dan ikun hekk, l-adempiment irid ikun ezatt u cioè konformi ghal dak indikat a bazi ta' l-obbligazzjoni bejn il-partijiet; intier u cioè konformi ghan-normi mifthema, generici jew specifici, ta' kwalità u kwantità; fil-post jew fiz-zmien previsti ghall-adempiment ta' l-obbligazzjoni.⁵ Min-naha l-ohra, l-infrazzjoni ta' l-adempiment taghti spazju ghall-inadempiment kuntrattwali, ossia d-devjazzjoni fil-kondotta ta' kontraent di fronti ghal dak il-programm stabbilit fil-legam li jorbot lill-kontraenti. Tali devjazzjoni taf tirrigwarda l-entità tal-prestazzjoni (taghti jew taghmel anqas minn dak kontrattat); il-mod (taghti jew taghmel aghar minn dak kontrattat); jew iz-zmien (tonqos milli taghti jew taghmel fil-hin dak mifthiem).⁶

F'tali xenarju, entrambi l-kontraenti huma, fl-istess zmien u waqt, debitur u kreditur fil-konfront ta' xulxin. Fil-kaz prezenti, l-attrici kienet kreditrici tal-konvenuta ghax minghandha tistenna li tithallas ghas-servizzi li ntrabtet illi twettaq u fl-istess hin kienet debitrici taghhom ghax assoggettati lilha nnifisha li tghaqdi l-ezigenzi tal-konvenuta. Hi, kienet debitrici (f'sens wiesgha tal-kelma) tal-konvenuta ghax kien minnha mistennija certa prestazzjoni in adempiment ta' dak li hi talvolta kienet tippretendi li tithallas tieghu. Il-konvenuta tinsab fl-istess posizzjoni, ossia kienet, fl-istess mument, kreditrici u debitrici di fronti ghas-socjetà attrici. Kienet debitrici taghha ghax assoggettati ruhha li thallas prezz ghal servizzi li kellhom jinghataw lilha. Kienet ukoll kreditrici taghha ghax minghandha kienet qed tistenna u tippretendi li jinghataw is-servizzi lilha kkummissjonati.

Fi kliem iehor, l-attrici kienet debitrici tal-konvenuta kreditrici fis-sens li hi kellha tadempixxi dawk l-obbligi assunti fir-rabta taghhom u cioè li tirreklama n-negozju gestit mill-konvenuta fil-*magazine* "Malta Business Review". L-attrici kellha taghmel intervista mad-dirigent tal-konvenuta, liema intervista kellha tigi sussegwentement pubblikata fl-imsemmi gurnal f'forma ta' domanda u risposta (*question & answer form*). L-adempiment ta' tali obbligi kien jaghmel lill-attrici kreditrici tal-konvenuta debitrici fl-ammont ta' €649.00c (VAT inkluza) skond il-*Booking Order* tat-18 ta' Settembru, 2019 (*a fol.* 59). Il-konvenuta kienet kreditrici ta' l-attrici debitrici fis-sens li hija kellha tircievi minghandha dak pattwit bejniethom u cioè pubblicità tan-negozju minnha mmexxi fuq l-indikat *magazine*. In kontro-kambju ta' l-adempiment ta' tali prestazzjoni da parti ta' l-attrici, il-konvenuta kienet debitrici taghha fl-ammont imsemmi aktar kmieni. Mela allura naraw kif l-obbligi tal-partijiet kienu katenati flimkien u inter-dipendenti, ossia sitwazzjoni, jew xenarju, li entrambi l-partijiet kienu qed jippretendu u jezigu xi haga – ghalkemm f'forom diversi – minghand xulxin. L-attrici li tippresta servizz lill-konvenuta bil-ghan li tithallas tieghu minghandha u l-konvenuta li tinghata dawk is-servizzi mill-attrici u li thallas ghalihom.

Spezzettat hekk tali xenarju minn ottika teoretika, wiehed idawwar harstu lejn il-fatti tal-vicenda odjerna. Wiehed jibda' billi jiddomanda jekk is-servizzi kontrattati bejn il-partijiet *de quo*, u li taghhom l-attrici qed tezigi li tigi kumpensata u mhallsa, twettqox u inghatawx mill-attrici lill-konvenuta skond dak bejniethom pattwit. Stabbilit dak,

⁵ Ghal approfondiment ara "Inadempimento Delle Obbligazioni" ta' **LUIGI VIOLA** (CEDAM editori, 2010; p. 67 *et seqq.*).

⁶ Ghal studju ulterjuri fuq din il-materja ara "La Risoluzione Per Inadempimento" ta' **MARCO ROSSETTI** (Giuffrè editori, 2012; p. 99 *et seqq.*).

wiehed imbaghad jghaddi biex jara aspett iehor divers, cioè r-raguni l'ghaliex il-konvenuta qed tirrezisti li tadempixxi l-kontroprestazzjoni taghha li thallas lill-attrici ghall-imsemmija servizzi.

Effettivament – u bhala fatt oggettiv, konkordat bejn iz-zewg partijiet u li johrog mill-provi akkwiziti – ir-riklam gie inwettag u pubblikat, hekk kif jirrizulta minn pagni 22 u 23 tal-*magazine* “Malta Business Review”(ezibit a fol. 26).

Id-diskordja bejn il-partijiet f'dan il-kaz hija illi l-konvenuta kienet qed tippretendi li qabel ma jixxandar tali reklam, kellha ssehh intervista, vera u propria, fejn l-intervistatur jistaqsi lid-dirigent tal-konvenuta dwar in-negozju u dan tal-ahhar iwiegeb ghad-domandi. Eventwalment tali intervista, f'*format* traskritt ta' “question-and-answer”, tigi pubblikata f'tali *magazine*, akkompanjata minn xi fotografiji tar-ristorant. Dan, izda ma sehxx. Dak li sehxx kien – u hekk kif johrog mill-elenku ta' skambju t'emails riportat aktar kmieni – illi l-attrici, fuq spunt da parti tal-konvenuta, kitbet numru ta' mistoqsijiet dwar in-negozju tal-konvenuta, u l-istess gew imwiegba bl-iskritt mill-konvenuta. Il-konvenuta wiegbet ghal tali domandi bla ebda harsien ghal *sentence structure*, lessiku preciz u grammatika peress li hi kienet qed tistenna li tali risposti taghha jigu – ai finijiet ta' publikazzjoni eventwali – debitament ezaminati u revizjonati mill-attrici ghal dak li jikkoncerna dizzjon, ortografija, grammatika, struttura tal-frazi, ecc. Jidher illi dan ma sehxx u t-twegibiet tal-konvenuta, kif mibghuta mill-konvenuta stess, sabu ruhhom fil-pubblikazzjoni tar-reklam gewwa l-indikat *magazine*. Di fatti, Margaret Brincat (*sales director* fi hdan is-socjetà attrici) tghid illi “*Mhux ghax ghamilna zball ahna, ghax ahna ma ghamilniex zbalji. Ghax ahna ppubblikajna ezatt kelma b'kelma li tana hu*” (a fol. 75) u “*ahna ktibna kelma b'kelma l-artikolu li bghatilna hu*” (a fol. 76). Skond id-direttur tas-socjetà konvenuta, kien mistenni intervent professjonali da parti ta' l-attrici sabiex it-twegibiet ikunu korretti, peress li ma kienx kompitu tieghu li jara, *inter alia*, li l-grammatika ta' l-artikolu jkun korrett (*vide* xhieda tieghu fl-udjenza ta' l-24 ta' Frar, 2021, a fol. 83 et seqq.).

It-Tribunal ikollu jaqbel mal-konvenuta hawnhekk. Kif diga' nnutat *supra*, fl-email tat-12 ta' Settembru, 2019, spedit mill-attrici lill-konvenuta, kien gie propost il-prezz ta' €550 (+ VAT) ghal *double page interview* fil-*magazine* “Malta Business Review” ghall-harga t'Ottubru, 2019 u fejn hemm ukoll propost illi “*Once you confirm I will ask Martin Vella our editor to prepare the questions. Also, please let me know with whom the interview will be. Kindly provide name, surname and designation [...] Kindly advice at your earliest.*” (a fol. 52 jew a fol. 89). L-enfazi hawnhekk ghandha tkun fuq il-kelma “interview”. Allura, wiehed jista' jifhem u jiggustifika lill-konvenuta li din stenniet u pretendiet intervista fil-veru sens tal-kelma.

Jekk wiehed jiehu d-definizzjoni semplici, skond il-“**Collins English Dictionary**” (Collins, 6th Edition, 2006; p. 825) il-kelma «interview» hi definita b'dan il-mod: “*a conversation with or questioning of a person, usually conducted for television or a newspaper.*” Etimologikament, skond l-“**Oxford Dictionary of Word Origins**” (Oxford University Press, 2002; p. 239) il-kelma «interview» ghandha din l-origini: “*comes from French entrevue, from s'entrevoir, meaning 'to see each other'.*” Inoltre, skond id-“**Dizionario Etimologico**” (Rusconi Libri, 2004; p. 527) il-kelma «intervista» hi etimologikament deskritta hekk: “*dall'inglese interview, che deriva dal francese entrevue, dal verbo entrevoir (= intravedere); SIGNIFICATO serie di domande poste a*

un giornalista a qualche personaggio ritenuto importante.” Fil-gurnalizmu, l-intervista – li tikkostitwixxi generu t’artikolu gurnalistiku partikolari – hi r-riproduzjoni skritta ta’ djalogu orali, fejn il-gurnalista jpoggi numru ta’ domandi bil-ghan li jottjeni xi informazzjoni minghand l-intervistat. L-intervista hi test skritt espozittiv fejn l-informazzjoni ottenuti jigu prezentati skond il-kriterju ta’ domanda u risposta. L-intervista hija teknika gurnalistika biex tigbor l-opinjoni/jiet ta’ persuna determinata dwar xi fatt jew xi problema, bl-iskop li jitwasslu ghall-lettur f’forma skritta tal-konversazzjoni akkaduta bejn gurnalist u intervistat. Minn dan kollu huwa manifest li l-intervista, ossia l-“interview”, isseh di persona.

Taht dan il-profil, ghandha ragun tilmenta l-kumpannija konvenuta. L-attrici tkellmet dwar intervista u allura kellha ssir intervista.

Ghalkemm l-impjegata ta’ l-attrici tkellmet dwar “interview”, din effettivament qatt ma sehhet. Minflok giet adoperata sistema oħra, ossia li l-ewwel l-attrici staqsiet lill-konvenuta biex taghtiha xi ideat dwar xi mistoqsijiet li kellhom eventwalment isirulha [vide para. (e) supra] u wara li inghatat tali spunti [vide para. (f) supra], l-attrici kkonvertiet l-istess punti f’forma ta’ domandi aktar dettaljati u artikolati u bghatithom lura lill-konvenuta sabiex din twiegeb ghalihom [vide para. (g) supra].

Eventwalment, il-konvenuta rrispondiet ghal tali domandi [vide para. (o) supra] u jirrizulta illi tali risposti sabu ruhhom awtomatikament u ‘lock stock and barrel’ fil-pubblikazzjoni tal-*magazine* “Malta Business Review”. Meta imbaghad id-dirigent tal-konvenuta sar konxju tal-pubblikazzjoni u qara l-intervista kif ippubblikata, hassu alkwantu aggravat bil-fatt illi r-risposti li hu kien għadda lill-attrici lanqas ma kienu gew *vetted* ghal dak li jikkoncerna grammatika, ecc. qabel il-pubblikazzjoni relattiva.

Anke taht dan il-profil, il-kumpannija konvenuta ghandha ragun li tilmenta.

It-Tribunal qara attentement ir-riklam u l-“interview” relattiva fil-*magazine* “Malta Business Review” u jkollu jistqarr illi l-istess tikkontjeni frazijiet alkwantu infelici u sentenzi strutturati hazin.

Is-segweni huwa eżempju tal-verzjoni kif originarjament ippubblikata fil-*magazine* u ta’ dik kif – dejjem fil-fehma ta’ dan it-Tribunal – il-verzjoni kienet tkun aktar preciza u fejn taghmel aktar sens logiku-grammatikali:

Verzjoni pubblikata: *MBR: What has been the key to the creators of Testa Catering's growth and success?*

JPT: Testa Catering Concepts Ltd was created in the year 2012 together with my wife. We wanted to come up with food Concepts that were original and run them in a professional way We started with a casual dining, value for money restaurant that changed the traditional restaurant to a more open mind, well priced fresh home food cooking. Few months later we also created a French cafe. The trend at that time were the Italian coffee shops, but we wanted to create something original.

Verzjoni aktar korretta: *MBR: What has been the key for the creators of Testa Catering's growth and success?*

JPT: My wife and I created Testa Catering Concepts Ltd in 2012. We wanted to come up with food concepts that were original and run them in a professional way. We started with a casual dining, value-for-money restaurant that changed the traditional restaurant concept into a less restrictive one, offering well-priced, fresh home cooking. A few months later we also created a French café. The trend at that time was Italian coffee shops, but we wanted to create something different.

Verzjoni pubblikata:

MBR: What was your vision in introduction of high end brand to the Maltese islands and why?

JPT: We feel Malta has great potential. Fantastic people, good: and high end tourist loads of expats that come to Malta for work or retirement. We sell high end property but there are no high end brands in Malta, both in the restaurant and the retail sector. We want to make a change and upgrade the food industry by bringing in famous names to our amazing island.

Verzjoni aktar korretta:

MBR: What was your vision for the introduction of high-end brands to the Maltese islands, and why?

JPT: We feel Malta has great potential. Fantastic people, good quality and high-end tourist, with a great number of expats coming to Malta for work or retirement. We sell high-end property but there are no high-end brands in Malta, both in the restaurant and retail sectors. We want to make a change and upgrade the food industry by bringing in famous names to our amazing island.

Verzjoni pubblikata:

MBR: Will you discuss the history and heritage of Testa Catering Concepts Co Ltd and how the company has evolved, especially with regards to the importation of raw material?

JPT: Testa Catering started by being a local company coming up with well designed and created concepts to a future of high end brands that will take over. Rossopomodoro to take over Cibo, Laduree to take over French Affaire and our new location with the Beefbar on the beach concept.

Verzjoni aktar korretta:

MBR: Can you discuss the history and heritage of Testa Catering Concepts Co Ltd and how the company has evolved, especially with regard to the importation of raw materials?

JPT: Testa Catering started as a local company coming up with well-designed and created concepts and is now transitioning towards a future of high-end brands that will eventually take over: Rossopomodoro to take over Cibo, Laduree to take over French Affaire, as well as our new location and concept, the Beefbar on the beach.

Verzjoni pubblikata:

MBR: How does Testa Catering Concepts engage its people in its diversity efforts and how significant are the product offering, service and expertise?

JPT: We have made this change as we feel that the expertise, creativity and originality of these brands and the piece of mind that comes with the brands are priceless. The raw materials and the know-how are delivered on a

regular basis to make sure we keep up with the fast pace the world of food is going through.

Verzjoni aktar korretta: MBR: How does Testa Catering Concepts engage its people in its diversity efforts and how significant are the product offerings, service, and expertise?

JPT: We have made this change as we feel that the expertise, creativity, and originality of these brands, as well as the peace of mind that these brands offer, are priceless. The raw materials and the know-how are provided on a regular basis to ensure that we keep up with the fast pace the contemporary food world.

Verzjoni pubblikata: MBT: *How critical is culture to the strength and leadership of the company?*

JPT: We feel we come from a culture where food is sacred, but we still need to understand quality. It is very hard to get people understand how important precision and quality are and that they come at a price. This is not only in the serving and preparation of the food, but even the way a company is structured.

Verzjoni aktar korretta: MBT: How critical is culture to the strength and leadership of the company?

JPT: We feel we come from a culture where food is sacred, but we still need to understand quality. It is very hard to get people to understand how important precision and quality are and that they also come at a price. This not only concerns the serving and preparation of the food, but even the way a company is structured.

Verzjoni pubblikata: MBR: *How would you describe Testa's Decor value proposition?*

JPT: We are evolving our company to international standards. We are also in the process of changing our website and head office to set them up to international standards.

Verzjoni aktar korretta: MBR: How would you describe Testa's decor value proposition?

JPT: We are evolving our company according to international standards. We are also in the process of changing our website and head office to get them in line with international standards.

Verzjoni pubblikata: MBR: *What is the reason for choosing St Paul's Bay – was this a strategic choice?*

JPT: We have been on the look out for a site like this for the past 5 years. This location is perfect for our Concept, as we wanted a getaway from the usual comfort zone of Sliema and St Julian's: we wanted people to get out of the everyday routine. Have a place that is by the sea, pleasant for boat swimmers and to anchor a boat whilst enjoying the day at the Beefbar.

Verzjoni aktar korretta: MBR: What is the reason for choosing St Paul's Bay? Was this a strategic choice?

JPT: We have been on the lookout for a site like this for the past five years. This location is perfect for our concept, as we wanted a getaway from the more usual comfort zone of Sliema and St Julian's; we wanted people to change their habitual routines in this respect; to have a place that is by the sea, pleasant for boat swimmers, and to anchor a boat whilst enjoying the day at the Beefbar.

Verzjoni pubblikata:

MBR: Do you think parking is a drawback?

JPT: Yes that is why we are telling our customers to come by cab or by boat and we will take care of their return. The experience we want to offer starts when the guests leave their home.

Verzjoni aktar korretta:

MBR: Do you think parking is a drawback?

JPT: Yes, that is why we are telling our customers to come by cab or by boat and we will take care of their return. The experience we want to offer starts when the guests leave their home.

Verzjoni pubblikata:

MBR: When you look at Testa Catering's portfolio today, are the developments similar in size and scale, and what drives the principle concept for now and the future?

JPT: Today Testa Catering has a very nice blend of brands: from casual dining, high end tea room but affordable to all pockets and a high end beach and restaurant that has the most elegant decor and serves the best meat cuts from all around the world.

Verzjoni aktar korretta:

MBR: When you look at Testa Catering's portfolio today, are the developments similar in size and scale, and what drives the principle concepts for now and the future?

JPT: Today, Testa Catering has a very nice blend of brands: from casual dining, a high-end tea room, albeit one that is affordable to all pockets, and a high-end beach restaurant that has the most elegant decor and serves the best meat cuts from all over the world.

Minn tali ezercizzju jidher illi l-attrici ma haditx l-izbriga li tivverifika l-korrettezza, l-ezattezza u l-adegwatezza grammatikali jew lessikali kemm tal-mistoqsijiet taghha u kif ukoll tat-twegibiet relattivi lilha mgħoddija mid-dirigent tal-konvenuta. Ikollu jigi konfessat li huwa mistenni li f'pubblikazzjoni bhal ma' hi dik in kwistjoni, l-intervisti jsehhu u jigu mwassla lill-qarrejja b'certu livell professjonali – haga illi l-“intervista” *de quo* tippekka kemmxejn fiha. Jekk kien hemm pressjoni ta' hin, dan ma kienx inezza lill-attrici mill-obbligu taghha li twettaq prestazzjoni adegwata u skond il-kanoni tal-bwon arti u s-sengha. Jekk kien hemm tali pressjoni, l-attrici kellha tadatta ruhha mod iehor, izda certament mhux billi taqbad u b'ghajnejha magħluqa taccetta li tippubblika “intervista” bla ma tqis l-idonejtà taghha.

Għal tali pubblicità l-attrici qed tippretendi li tigi kkumpensata l-ammont ta' €550 (+ VAT). Tali cifra intrinsikament tikkontempla l-prestazzjoni ta' servizz li huwa komplet u shih, adegwat u sodisfacenti u li jirrispekkja l-kanoni ta' l-arti u s-sengha fis-settur relattiv. Madanakollu, hareg car minn dawn il-proceduri li tali obbligu ma sehnx fil-kompletezza tiegħu. Anzi, ikollu jigi mistqarr – u dan hareg mill-provi dokumentarji

aktar 'il fuq katalogati kronologikament– illi l-attrici kienet konsapevoli li ma rrendietx servizz perfett. Infatti, it-Tribunal jemmen li Eliza Galea (ex impjegata ta' l-attrici) kienet offriet lill-kumpanija konvenuta reklam iehor b'xejn peress li kienet irrealizzat li sar nuqqas fil-konfront tal-konvenuta. Huwa alkwantu stramb li wiehed jikkontendi li kien inghata servizz professjonali u sew izda mbaghad joffri servizz b'xejn biex donnu jaghmel tajjeb ghal xi haga ohra. Is-servizz *gratis* ulterjuri kien intiz biex ikopri xi zvista professjonali precedenti.

Addizzjonalment, tali ammont ta' €550 (+ VAT) kien jirrispekkja l-korrispettiv ta' adempiment t'obbligu intier u sodisfacenti di fronti ghall-ezidenti tal-konvenuta. Dan kellha taghmlu aktar u aktar meta wiehed jikkunsidra illi l-legam huwa wiehed kuntrattwali u, ghalhekk, dejjem b'rispett ghall-ftehim implicitu krejat mal-konvenuta, kien doveruz ghall-attrici li trendi servizz idoneju u *al altezza*. B'hekk jigu rispettati n-normi ta' korrettezza u ta' bona fidi insita fil-legam li kien jorbot liz-zewg partijiet.

F'dan l-istadju t-Tribunal ihossu kostrett jaghmel is-segweni osservazzjonijiet.

Il-kuntratt (interpretat f'sens wiesa') jiggenera bejn il-partijiet, awturi liberi tieghu, vinkolu guridiku u tali legam guridiku jipproduci effetti li jitraxxendu l-volontà tal-partijiet, liema effetti jridu jigu minnhom subiti u liema effetti – salv kazijiet eccezzjonali – ma jistghux jigu respinti. Dan hu hekk l'ghaliex il-kuntratt jimplika akkordju, cioè l-volontà tal-partijiet li jaccettaw programm specifiku definit f'regolament kontrattwali minnhom imfassal u li ghalih jissottoskrivu. Madanakollu, l-akkordju bejn il-partijiet ma jistax jitraxxendi u jissorvola l-komportament rett tal-partijiet ta' kif jhaddmu l-kontrattazzjoni fir-realtà. Il-pattwizzjonijiet skritti ma jistghux ma jigux kommizzurati mad-debita bona fidi ezercitata mill-kontraenti, li ghandhom jimxu b'manjiera mhux biss egoistika izda wkoll b'atitudni altruwistika, b'harsien ghall-interessi tal-kontraent l-iehor.

Dan it-Tribunal, kif presjedut, diga' kellu l-opportunità li jitkellem fil-fond dwar il-kuncetti ta' korrettezza u ta' bona fidi f'kontrattazzjonijiet, hekk kif riflless, *inter alia*, fid-decizjoni tat-2 ta' Lulju, 2018 *in re Charles Seisun v. Joseph Vancell et.* Ma' dak misjub fl-appena citata decizjoni, jizdied jinghad dak li affermat il-Qorti ta' Kassazzjoni Taljana (sentenza n. 2284 tal-15 ta' Marzu, 1999), u cioè li, "*diritti e obblighi, seppure specificatamente regolati da norme che li prevedono, non possono mai prescindere dall'osservanza dei principi di correttezza e di buona fede, operanti all'interno delle posizioni soggettive, non potendo l'autore di un comportamento scorretto trarre da esso utilità con altrui danno [...] Ne consegue che il dovere di correttezza è operante in ogni forma di responsabilità, e, quindi, segnatamente anche in tema di responsabilità contrattuale [...] In tema di esecuzione del contratto, la buona fede si attegga come un impegno od obbligo di solidarietà, che impone a ciascuna parte di tenere quei comportamenti che, a prescindere da specifici obblighi contrattuali e dal dovere extracontrattuale del *neminem laedere*, senza rappresentare un apprezzabile sacrificio a suo carico, siano idonei a preservare gli interessi dell'altra parte.*"⁷ Fi kliem iehor, in-normi ta' korrettezza u ta' bona fidi jippervadi kwalsiasi rapport interkorrenti bejn tnejn jew aktar min-nies li huma

⁷ *cfr.* LUIGI VIOLA, "Inadempimento Delle Obbligazioni" (CEDAM editori, 2010; p. 124). Ara wkoll GIORGIO BIANCHI, "Il Contratto Di Vendita" (UTET Giuridica, 2009; p. 34).

vicendevolment vinkolati b'xi mod u manjiera. Tali principji huma ntizi bhala rekwiziti etici bazilari fil-kondotta tal-partijiet f'kull rapport obbligatorju, ossia bhala kriterji ta' reciprocità, finalizzati, in sostanza, biex izommu r-rapport guridiku ezistenti bejn il-partijiet f'binarju wiehed, gust, ekwilibrat u proporzjonali. B'dan rilevat, tali principji jsejhu lill-kreditur biex jiehu qies ta' l-interessi tad-debitur u, fl-istess waqt, jirrikjamaw l-attenzjoni tad-debitur ghall-interessi tal-kreditur.

B'dan kollu rilevat, jibqa' xorta wahda l-fatt li l-attrici offriet servizz lill-konvenuta illi ghalkemm mhux perfett f'kull aspekt tieghu, ma jistax jigi kunsidrat minn dan it-Tribunal bhala inadempiment totali u assolut ta' l-obbligi taghha. Il-pubblicità giet konfezzjonata f'zewg pagni fil-*magazine* relattiv b'manjiera pjacevoli ghall-ghajn ghal dak li jikkoncerna l-fattur estetiku. Il-qarrej medju ta' tali *magazine* xorta wahda seta' jislet l-element ta' pubblicità kif konfezzjonata u kif imwassla, u dan nonostante l-imperfezzjonijiet grammatikali riskontrati.

Fid-dawl ta' kollox, b'tali pubbilkazzjoni xorta wahda kien hemm forma ta' pubblicità tan-negozju tal-konvenuta u, *ergo*, il-konvenuta xorta wahda otteniet pubblicità u certament kisbet beneficcju mir-riklam fil-*magazine*, nonostante d-deskritti imperfezzjonijiet. Ta' dan l-attrici ghandha tigi kumpensata, izda mhux fl-ammont minnha rikjest f'dawn il-proceduri.

Ghalhekk, fl-isfond ta' dak fuq rilevat, it-Tribunal jemmen li entrambi l-partijiet wrew nuqqasijiet f'din il-grajja. Min-naha, ghalkemm iffirmit ghal certu termini u kundizzjonijiet, il-konvenuta hadet atteggjament alkwantu passiv u jidher li attivat ruhha biss meta giet imsejjha biex thallas. Min-naha l-ohra, l-attrici kienet solament kuntenta li timla zewg pagni minn *magazine*, bla ebda harsien lejn il-kwalità intrinsika ta' dak li kien qed jigi pubblicizzat u li, xorta wahda, tippretendi hlas shih ta' servizzi moghti imperfettament jew b'imperfezzjonijiet.

Kunsidrat kollox u l-partikolarità tal-fatti ta' din il-vicenda, in forza ta' dik il-gustizzja ekwittativa rivestita f'dan it-Tribunal, l-istess jemmen li t-talba attrici m'ghandhiex tigi akkolta fl-ammont mitlub. Kif gja puntwalizzat, ic-cifra ta' €550 (+ VAT) kienet tikkontempla l-kumpens ghal prestazzjoni ta' servizz komplet, shih, adegwat u idoneju da parti tal-attrici versu l-konvenuta (haga li ma sehhitx kif muri hawn fuq). Fil-fehma ta' dan it-Tribunal, ikun ferm ingust li xi hadd – anke jekk teknikament wera' xi passività – jigi kundannat ghall-adempiment shih meta l-parti l-ohra wriet hi wkoll certa inerzja u imperizja f'ghemilha.

Ghalhekk, fid-diskrezzjoni ekwittativa ta' dan it-Tribunal u *arbitrio boni viri*, l-attrici ghandha tircievi nofs ($\frac{1}{2}$) ta' dak minnha domandat f'dawn il-proceduri, u cioè mitejn u hamsa u sebghin ewro (€275.00c), li magghom tizdied it-taxxa fuq il-valur mizjud (i.e., €49.50c). Kif jaraha dan it-Tribunal, ic-cifra komplessiva ta' €324.50c ghandha sservi ta' kumpens xieraq u adegwat ghall-attrici li fir-realtà ma fornietx servizz li lahaq il-milja tieghu.

Ghaldaqstant, it-Tribunal qed jaqta' u jiddeciedi dan il-kaz billi, fid-dawl tal-kunsiderazzjonijiet maghmula hawn fuq, jilqa' t-talba ta' l-attrici limitament ghas-somma ta' mitejn u hamsa u sebghin ewro (€275.00c) li magghom tizdied it-taxxa fuq

il-valur mizjud (i.e., €49.50c), bl-imghax fuq l-ammont ta' €275.00c (u mhux fuq €324.50c⁸) dekorribli mid-data ta' din is-sentenza sad-data tal-hlas effettiv u finali.

L-ispejjez gudizzjarji marbuta ma' dawn il-proceduri – minhabba n-natura tal-kaz, l-fatt li l-pretiza attrici ma gietx akkolta fl-ammont originarjament propost u b'applikazzjoni ta' l-Art. 10(1) tal-Kapitolu 380 tal-Ligijiet ta' Malta – ghandhom jibqghu bla taxxa bejn il-partijiet.

ft. Avv. DR. KEVIN CAMILLERI XUEREB
Gudikatur

ft. ADRIAN PACE
Deputat Registratur

⁸ Peress li ma jistghux jghaddu imghaxijiet fuq l-ammont ta' import fiskali ta' €360 stante li huma bhala VAT. F'dan is-sens ara *in re* **Peter Attard v. Lawrence Fino et** (Appell Inferjuri, 28 ta' Marzu, 2017).