



# QORTI ĊIVILI PRIM' AWLA

**ONOR IMHALLEF  
DR FRANCESCO DEPASQUALE  
LL.D. LL.M. (IMLI)**

**Seduta ta' nhar it-Tlieta  
Disgha u ghoxrin (29) ta' Novembru 2022**

**Rikors Numru 855/18 FDP**

Fl-ismijiet

**Cosmin Liviu Balan (K.I. 49144A))**

**Vs**

**Alex Vladimir Badic (KI Rumena RR574732)  
Alexandra Ioana Scutelnicu (KI Rumena RX 381917)**

## **Il-Qorti:-**

1. Rat ir-rikors tar-rikorrenti datat 22 ta' Awissu 2018, li permezz tiegħu r-rikorrenti talab is-segwent:

1. *Illi l-esponenti kien għall-ħabta ta' Frar tas-sena li għaddiet daħal fi ftehim mal-intimat Alex Vladimir Badic sabiex dan tal-aħħar pero' bi flus maħruġin biss mill-esponenti jirreġistrata hawn Malta soċjeta' kummerċjali u ċioe' Petite Maison Company Limited (C74781) f'liema soċjeta' l-partijiet kienu ftehm u illi s-shareholder tagħha mal-inkorporazzjoni jkun l-intimat Alex-Vladimir Badic li wkoll ġie miftiehem li jkun l-uniku direttur tas-soċjeta' bl-intendiment pero' illi l-quddiem ix-shareholders ta' din il-kumpanija kif ukoll id-diretturi tagħha jkun tlieta b'ishma indaqs bejniethom u ċioe' l-esponenti Balan, l-intimat Badic u ċertu Ciprian Schiopu. Ara bħala estratt maħruġ mill-MFSA rigward min għandu l-ishma, min hu direttur, kemm hemm ishma u dettalji oħra rigwardanti din is-soċjeta' Dokument A hawn anness.*

2. *Illi l-ftehim intiż kien ukoll illi l-flus kollha li kellu johroġ u fil-fatt hareġ l-esponenti fl-interess ta' din is-soċjeta' biex jiġi ffinanzjat il-proġett miftiehem u liema proġett ser jissemma fil-paragrafu ta' wara dan*

*kellhom jiġu lilu mrodda għal terz kull wieħed mill-intimat Alex-Vladimir Badic u minn Ciprian Schiopu fi żmien li kellhom jistabbilixxu dawn it-tlett persuni wara l-inkorporazzjoni tas-soċjeta' u wara illi l-ishma tal-kumpannija kellhom jiġu ntestati kwantu għal terz kull wieħed mill-imsemmija tlett persuni li kellhom ukoll jiġu eletti bħala diretturi fl-imsemmija soċjeta' sabiex ix-shareholding il-ġdid ikollu direttur kull wieħed.*

- 3. Illi in segwitu għal dan il-ftehim u waqt illi s-soċjeta' kienet qed tiġi ffurmata l-esponenti u Badic flimkien ma' Ciprian Schiopu kienu akkwistaw il-kirja tal-Bakery Petite Maison St. Augustine Street, St. Julians mingħand il-persuna li kienet tikri u tiġġestixxi l-bakery ċertu Mourad Ahmed Jaloul versu r-rigal lilu mħallas minn flus l-esponenti u bi flusu biss u ċioe' l- ammont ta' €18,000.*
- 4. Illi sabiex il-bakery terġa' tibda tiġi ġestita issa mis-soċjeta' fuq imsemmija kien hemm bżonn li jintefqu spejjeż biex tiġi modernizzata l-bakery u biex jinxtrow ukoll ċertu appliances liema spejjeż kienu jammontaw għas-somma ta' €7,000 ukoll maħruġa unikament mill-esponenti.*
- 5. Minbarra dawn l-ispejjeż l-esponenti ħareġ ukoll s-somma ta' €3,700 bħala arretrati ta' kera u kera dovut lil sid il-kera tal-bakery, Entertainments Limited kif ukoll kien silef brevi manu lill-intimat Badic somma oħra fl-ammont ta' €2,600 liema somma Badic kien ipprometta li jirrifondiha lura lill-esponenti fi żmien qasir.*
- 6. Ġara pero' illi f'it xhur wara li sar dan il-ftehim bl-esponenti jgħaddi lill-intimat Badic is-somma totali ta' €36,000 dan skopra illi mhux talli l-intimat Badic baqa' ma' onorax il-ftehim raġġunt bejnu u bejn l-esponenti u Ciprian Schiopu u allura ttrasferixxa terz tal-ishma fil-kumpannija lill-esponenti u terz ieħor lil Schiopu kif lanqas ma appunta lill-attur u lil Schiopu bħala diretturi miegħu fl-istess soċjeta'; kif lanqas ukoll ma ħallas terz tal-flejjes maħruġa mill-esponenti kif fuq intqal kif lanqas ma' rritorna ta' €2,600 lilu mislufa brevi manu kif fuq intqal. Minflok l-intimat Badic b'qerq u minn wara dahar l-esponenti u b'mod kriminuż ittrasferixxa 50% tal-ishma fil-kumpannija msemmija lis-sieħba tiegħu, l-intimata l-oħra Alexandra Ioana Scutelnicu u aghar u f'it wara li għamel dan it-trasferiment, biegh u ttrasferixxa l-interess li l-kumpannija kellha fil-bakery lil terzi versu rigal/prezz sal-lum injot bl-ammont li rċieva għal dan it-trasferiment iżzommuh unikament iż-żewġ intimati kollox kif jiġi spjegat dettaljatament waqt it-trattazzjoni tal-kawża.*
- 7. Illi appena l-esponenti sar jaf b'dawn ir-raġġiri illegali, frawdolenti u kriminużi da parti taż-żewġ intimati talabhom immedjatament jirritornawlu s-somma komplessiva u fuq imsemmija ta' €36,000 li l-esponenti kien ħareġ minn butu fl-interess tal-kumpannija u abbażi tal-ftehim milħuq u msemmi supra bl-intimati, filwaqt li dejjem jippromettu li jħallsuh l-ammont kollu ta' €36,000 fi żmien qasir baqgħu sal-lum lanqas biss ħallsu ewro wieħed lura.*

8. *Meta l-esponenti tilef kull tama illi l-intimati jroddulu lura s-somma ta' €36,000 li huwa kien ħareġ minn butu kif fuq intqal u wara li ħa parir legali dwar x'kellu jagħmel biex jieħu flusu lura, huwa għamel rapport tal-akkadut lill-Kummissarju tal-Pulizija kif ukoll kwerela fejn talab lill-Pulizija jieħdu azzjoni kriminali kontra l-intimati, ara kwerela hawn annessa u mmarkata Dokument B bil-Pulizija jwiegħdu illi fil-futur qarib huma ser imexxu kriminalment kontra l-intimati abbażi tal-kwerela annessa.*

**GHALDAQSTANT L-ESPONENTI JITLOB BIR-RISPETT LIL DIN L-ONORABBLI QORTI SABIEX IN VISTA TAL-PREMESS:**

1. *Tiddikjara u tiddeċiedi illi bl-aġir illegali, frawdolenti u kriminuż tagħhom l-intimati jew min minnhom iffrodaw lill-esponenti billi dawru għalihom u fl-interess tagħhom is-somma ta' €36,000 mgħoddija lill-intimat Badic skond il-ftehim u għar-raġunijiet fuq imsemmija minflok użawha għar-raġuni li kienet intiża li tintuża b'dan li wkoll ikkomettew ir-rejat ta' messa in xena.*
2. *Tiddikjara u tiddeċiedi illi l-kunsens tal-esponenti meta għadda lill-intimat Badic l-ammont ta' €36,000 kien ivvizjat minħabba frodi pperpetrat kontra tiegħu mill-intimati jew min minnhom.*
3. *Konsegwentement tikkundanna lill-intimati flimkien u in solidum bejniethom biex jirritornaw lill-esponenti s-somma msemmija ta' €36,000 mgħoddija lill-konvenut Badic kif fuq intqal.*
4. *Tillikwida d-danni sofferti mill-esponenti minħabba l-aġir abbużiv, frawdolenti u allura kriminuż da parti tal-intimati kontra l-esponenti liema danni għandhom jinkludu wkoll telf ta' profitti sofferti mill-esponenti li jiġu likwidati jekk hemm bżonn permezz ta' periti nominandi piu' l-imgħax legali fuq is-somma ta' €36,000 meħuda frawdolentement mingħand l-esponenti kif fuq intqal mid-data ta' meta s-somma fil-partijiet tagħha kif fuq imsemmija giet imħallsa mill-esponenti lill-intimat Badic sad-data tal-pagament effettiv.*
5. *Tordna konsegwentement lill-intimati flimkien u in solidum bejniethom iħallsu lill-esponenti s-somma ta' €36,000 piu' dik is-somma rappreżentanti d-danni sofferti mill-esponenti skont kif dawn jiġu likwidati minn din il-Qorti.*

*Bl-ispejjeż inklużi dawk tal-mandat ta' sekwestru maħruġ kontestwalment mal-prezentata ta' dan l-att kontra l-intimati minn issa ngunti għas-subizzjoni.*

2. Rat illi fit-8 ta' Lulju 2019 l-intimati irrispondew għal dak mitlub billi qajmu is-segweni difiżi:
  1. *THAT plaintiffs demands are unfounded in fact and at law;*

2. *THAT furthermore the first and the second judicial demands are contradictory;*
3. *THAT whilst defendants confirm that the business venture described by plaintiff was entered into by the parties and by third party Schiopu, the sworn application is incorrect in that:*
  - (a) *all parties involved entered into the business venture described by plaintiff in good faith;*
  - (b) *the company was formed as per instructions of plaintiff Balan and of third party Schiopu, but lease was transferred to the name of defendant Badic only, by agreement among all parties;*
  - (c) *the funds invested by plaintiff Balan were considerably inferior to the sums alleged;*
  - (d) *it omits to detail the substantial investment into the venture made by defendants themselves, and*
  - (e) *it conveniently neglects to mention the fact that plaintiff Balan and third party Schiopu never contributed their share of labour in terms of the parties' understanding, with the result that the concern suffered and that defendants were obliged as company directors to liquidate the venture with significant losses for all concerned;*
4. *THAT far from being liable towards plaintiff, it is defendants who suffered damages due to contractual default of plaintiff; the facts of the case are better described in the attached sworn counter-claim, which defendants are filing together with this sworn application in terms of S.396(a) of Chapt.12 of the Laws of Malta.*

*Saving additional pleas.*

3. Rat illi fit-8 ta' Lulju 2019, l-intimati pprezentaw kontro-talba fejn talbu s-segwent:

  1. *THAT the parties Balan and Badic and a certain Ciprian Schiopu entered into a verbal agreement to take on the operation of a leased bakery, Petite Maison Bakery in St Augustine Street, St Julians, and to operate it by means of a limited liability company; they also agreed as to the manner in which the investment required and the manual work involved was to be equitably shared and contributed by each party: on the part of Balan and Schiopu this was to involve one third each of the initial investment and manual work and materials for refurbishment and to provide marketing, deliveries and the provision of help personally or through third parties once operational, whilst defendant Badic was to provide one third of the initial capital and manual work during the refurbishment, and to work at the bakery on a full-time basis once this was operational; defendant Scutelnicu promised to help out until the business was launched without*

*claiming payment, but agreement on full-time employment or otherwise was to be discussed later;*

2. *THAT whilst all the parties more or less contributed the agreed initial investment and carried out their share of the refurbishment works, plaintiff Balan and third party Schiopu subsequently failed to keep up their commitments, in such a way that all the work of the bakery ended up being done only by defendants, with the result that it was impossible to keep the bakery open for all the hours necessary to keep it viable; furthermore, the clients promised by Badic and Schiopu never materialised, and the promised transport for deliveries was never made available;*
3. *THAT the profit on generated sales was not always enough to pay the rent and taxes and expenses and defendants/counterclaimants were working at the bakery in conditions similar to indentured servitude, and the indebtedness of the company started rising progressively;*
4. *THAT during all this, plaintiff Balan and third party Schiopu kept promising to send help, which never arrived except for a short period of time, and eventually agreed to find a buyer for the venture; at this point however, the price that plaintiff Balan and third party Schiopu started asking for the business, in order to recoup outlay, pay creditors and make a profit, was unrealistic, and one buyer after another was turned away;*
5. *THAT finally the pressure mounting in terms of tax dues and unpaid creditors led to defendants/counterclaimants being given the advice that it was their legal obligation to cease operations and to liquidate the concern in view of their personal responsibilities as directors of the company, which liquidation defendants/counterclaimants carried out to the best of their ability but which did not leave any profits and on the contrary left all parties concerned significantly out of pocket;*
6. *THAT whilst defendants/counterclaimants did all that was in their power to minimise losses for all parties involved, they humbly submit that all parties involved lost their initial investment, lost the fruit of their labour and suffered loss of profits as a result of the failure on the part of plaintiff Balan and third party Schiopu to support the business as they had promised to do, thereby rendering it impossible for the business to operate as intended;*
7. *THAT defendants/counterclaimants therefore suffered damages as a result of contractual breach on the part of plaintiff Balan and of Schiopu, and are hereby submitting this counter-claim for this Honourable Court to determine the share of said damages caused by plaintiff Balan, within the context of his action against defendants;*

*For the reasons explained, respondent plaintiff is hereby called upon to say why should not this Honourable Court, after all necessary and fit declarations:*

- i. *Declare and decide that parties Balan, Badic and Scutelnicu, and third party Ciprian Schiopu, made significant investments in terms of capital, materials and/or labour in connection with the concern known as 'Petite Maison Bakery', based on various verbal undertakings made by all parties involved;*
- ii. *Declare and decide that the said concern failed and had to be liquidated by defendants Badic and Scutelnicu as a result, in part, of the failure of plaintiff Balan to support the operations of the concern as agreed and undertaken;*
- iii. *Declare and decide that as a result of plaintiff Balan's contractual default, defendants/counterclaimants Badic and Scutelnicu suffered damages, consisting in the loss of their initial investment and labour and the loss of profits;*
- iv. *Liquidate, and order plaintiff Balan to pay unto defendants/counterclaimants, such share of the said damages incurred by defendants/counterclaimants, as this Honourable Court shall find plaintiff Balan responsible for;*

*With legal costs and interests, with any further legal action reserved, and with the injunction as of now of the respondent for the purposes of a reference to the oath of the respondent.*

8. Rat illi fl-4 ta' Novembru 2019, ir-rikorrenti irrispondew ghal dak mitlub fil-kontro-talba billi:

*That the counter-claims made against him are manifestly unfounded in fact and in law and ought to be rejected with costs against the defendants for the following reasons:*

1. *That with reference to the first counter-claim it is manifestly untrue that Badic and Scutelnicu made any significant investment in terms of capital, materials and/or labour in connection with the bakery 'Petite Maison Bakery';*
2. *That plaintiff Balan was not in any way responsible for the fact that the concern eventually had to be liquidated. The plaintiff did carry out all the refurbishments that he had bound himself to carry out and further invested all the sums that he had promised to invest and more. The failure of the concern to produce the intended result was none other than the result of the defendant's failure to carry out their respective duties.*
3. *That the plaintiff Balan was not in any contractual default with Badic and Scutelnicu, did not cause them any damages and consequently there are no damages to be liquidated as having been caused by plaintiff Balan.*
4. *Consequently there are no damages that plaintiff Balan has to be deemed to be responsible for, or for the payment of.*

*With costs against the counter claimants.*

9. Rat illi fl-24 ta' Ġunju 2021, il-Qorti ordnat illi l-proċeduri jistemgħu u jigu deċiżi fil-lingwa Maltija, li hija l-lingwa uffiċċjali tal-Qrati Maltin.

### **Provi:**

10. Rat in-nota tal-attur ippreżentata fis-7 ta' Ottubru 2020 li permezz tagħha r-rikorrent ippreżenta affidavit tiegħu stess, li ġie sfilzat mill-Qorti permezz ta' digriet tat-12 ta' Lulju 2022, riżultat tal-assenza tar-rikorrent stess sabiex issirlu l-kontro eżami meta mħarrek għal dan il-għan.
11. Rat ix-xhieda tas-**Surgent 2198 Jennifer Caruana** stazzjonata l-Għassa Sliema datata 27 ta' April 2021 u li eżebiet żewġ rapporti (fol 102 JC1 u JC2 fol 106).
12. Rat ix-xhieda tal-**Ispettur Claire Vella Borg** datata 24 ta' Novembru 2021 (fol 137).
13. Rat l-affidavit ta' **Alex Vladimir Vlad Badic** ippreżentat fit-12 ta' Mejju 2022 (fol 162).
14. Rat li fit-12 ta' Lulju 2022, il-kawża tħalliet għas-sottomissjonijiet finali wara li nġhalqu l-provi.
15. Rat in-nota ta' sottomissjonijiet finali ta' Alex Vladimir Badic et ippreżentata fit-3 ta' Ottubru 2022.

### **Fatti tal-każ**

16. Jirriżulta li l-partijiet kollha, flimkien ma' ċertu Ciprian Schiopu, kienu ftehm u li jifitħu kumpanija ġewwa Malta bl-isem ta' Petite Maison Company Limited f' Mejju 2016. Fil-fatt, ġie eżebit Dok A fol 9, ishma u dettalji oħra dwar is-soċjeta' Petite Maison Company Limited.
17. Jingħad li Balan u Schiopu kienu ddeċidew li l-intimati jzommu r-responsabbiltà li jzommu l-ishma tal-partijiet kollha fuq isimhom, u li joqogħdu bħala diretturi ta' l-imsemmija kumpanija.
18. Jirriżulta li fir-rikors promotur, ir-rikorrent qed jallega li l-intimat Badic biss kellu jkun azzjonist u Direttur tal-kumpanija, u ġie allegat li Badic involva lil Scutelnicu bħala azzjonista u direttriċi mingħajr il-kunsens ta' Balan, b'hekk ir-rikorrenti fil-premessi u fir-rikors tiegħu qed jallega li l-intimat Badic iffroda lil Balan ir-rikorrent.
19. Jirriżulta wkoll, li r-rikorrent kien ippreżenta kwerele bil-Pulizija, liema kwerele qiegħda ppreżentata Dok B fol 12 fejn talab lill-Pulizija jieħdu passi kontra l-intimati – ma jirriżultax illi tali proċeduri qatt ittiehdu.

### **Kunsiderazzjonijiet fil-mertu**

20. Permezz tal-każ odjern, ir-rikorrent qed jitlob li l-Qorti tiddikjara li l-aġir tal-intimati kien frawdolenti u kriminuż, billi dawru għalihom fl-interess tagħhom is-somma ta' €36,000 allegatament mghoddija lill-intimat Badic. Konsegwentement, intalab li l-intimati flimkien u *in solidum* bejniethom biex jirritornaw lill-intimati s-somma ta' Ewro 36,000. U sabiex jiġu likwidati d-danni sofferti, biex flimkien u in *solidum* bejniethom iħallsu s-somma ta' € 36,000.
21. Minn naħa l-oħra, ġie eċċepit mill-intimati li t-talbiet tar-rikorrent huma infondati fil-fatt u fid-dritt, li l-ewwel żewġ talbiet huma kontradittorji, u li minflok huma l-intimati li sofrew danni.
22. L-intimati, da parte tagħhom, ipprezentaw kontro talba fejn allegaw illi l-operazzjoni kummerċjali illi kellhom bejniethom il-partijiet falliet riżultat ta' nuqqasijiet imputabbli esklussivament lir-rikorrent, li għalhekk kellu jinsab responsabbli għad-danni minnhom sofferti.
23. Din il-Qorti ser tirrileva, li f'dan il-każ, ir-rikorrent wara l-intavolar tar-rikors, ma wera ebda interess fil-kawża kif kellu obbligu li jagħmel, sabiex *del resto* jipprova l-każ tiegħu, u minkejja li preżenta affidavit, sentejn u nofs wara li bdiet il-kawża, huwa naqas milli jidher quddiem il-Qorti sabiex isirlu l-kontro eżami u għalhekk ix-xhieda tiegħu giet debitament sfilzata.
24. Di fatti, wara ħafna dewmien, din il-Qorti fit-12 ta' Mejju 2022, osservat, li r-rikorrent naqas li jidher għal diversi seduti wara l-prezentata tal-affidavit tiegħu, u għamlitha ċara li jekk ma jidhirx fis-seduta li jmiss u jsirlu l-kontro-eżami, jitqies bħala nuqqas ta' interess fil-kawża. In segwitu, fis-seduta tal-25 ta' Novembru 2021, il-Qorti irriteriet li r-rikorrent mhuwiex juri interess fil-kawża, għalhekk il-Qorti għaddiet biex tisfilza mill-atti l-affidavit tal-istess rikorrent Cosmin Liviu Balan li jidher minn fol 67 sa 96 tal-proċess. F'dak l-istess verbal, il-Qorti akkordat lir-rikorrent terminu sabiex jipprezenta s-sottomissjonijiet tiegħu bil-miktub. Madankollu, l-ebda sottomissjonijiet da parti tar-rikorrent ma ġew ipprezentati.
25. Jiġi puntwalizzat, li sta għar-rikorrent li pprezenta l-każ li jipprova l-allegazzjonijiet tiegħu. Fil-każ in eżami, dan ma sarx. Anzi wara l-prezentata tar-rikors u wara l-prezentata tal-affidavit, ir-rikorrent ma deherx għan-numru ta' seduti miżmuma tant li din il-Qorti kellha tiegħu l-provvedimenti ulterjuri li fil-fatt ittiegħdu f'dan il-każ, kif imsemmi aktar 'il fuq. Minħabba l-inadempjenza tar-rikorrent, il-Qorti ma tistax tiegħu konjizzjoni tat-talbiet tar-rikorrenti għaliex huwa mhux biss naqas li jipprova, iżda naqas milli juri l-interess meħtieġ f'dan il-każ.
26. F'dan il-kuntest, ta' min jgħid li hija regola ġenerali li l-piż tal-prova huwa fuq min jafferma fatt; *onus probandi incubit ei qui dicit non ei qui negat*. (Ara **Joseph Zammit vs Joseph Hili** Vol. XXXVII-I-578).
27. Huwa fundamentali, li min jallega jrid jipprova. Ir-rikorrent wara l-allegazzjonijiet tiegħu li l-atti tal-intimati kienu frawdolenti u kriminużi, u li allegatament sofra danni konsegwenza ta' dan l-aġir ma pprova xejn. Fil-karenza tal-prova, din il-Qorti tiċhad it-talbiet kollha tar-rikorrent.

## Kontro-talba



28. Fil-kontro-talba, l-intimati talbu li jiġi dikjarat li Balan, Badic, Scutelnicu u Schiopu għamlu investimenti għall-kumpanija, li l-kumpanija kellha tiġi likwidata minhabba li Balan ma żammx kelmtu li joffri s-support kif miftiehem. Konsegwentement, qed jintalab li Badic u Sculenicu sofrew danni, b'hekk qed jitlab li jiġu likwidati id-danni sofferti.
29. Din il-Qorti tosserva, li l-kontendenti isostnu diversi fatti li jemerġu mill-ftehim li kien sar bejniethom sabiex tiġi fformata l-kumpanija Petite Maison Company Limited. Izda, ma jirriżultax imkien mill-atti tal-każ, li kien sar ftehim bil-miktub bejn il-partijiet. Il-ftehim kien evidentement wieħed verbali.
30. Fil-karenza ta' prova dokumentarja u in vista tal-fatti kunfligġjenti u d-divergenza tal-allegazzjonijiet da parti tal-kontendenti, din il-Qorti tiddeđu, li huwa ferm diffiċli li tistrieħ fuq il-verżjoni tal-intimati, proprju għaliex mhijiex korroborata bi provi għas-sodisfazzjoni tal-Qorti.
31. Jiġi osservat li, filwaqt li l-intimati jsostnu li r-rikorrent naqas milli jinvolvi fil-każ lil Ciprian Schiopu, u li ma tellgħux jixhed, l-istess argument japplika wkoll għall-intimati li huma wkoll kellhom l-opportunita` li jtellgħu lill-istess Schiopu sabiex jixhed iżda naqsu li jagħmlu dan. Għalhekk, din il-Qorti, ċertament ma tistax toqgħod fuq affermazzjonijiet u allegazzjonijiet ta' l-intimati li mhumiex ippruvati.
32. Il-Qorti tosserva illi mhuwiex ikkontestat, li l-investment inizjali li sar ma rnexxiex. Dan jinsab ikkonfermat mill-partijiet. In fatti, hekk ġie kkonfermat mill-intimat Badic, u Balan fit-tieni eċċezzjoni tiegħu għar-risposta tal-kontro-talba ikkonferma li l-investment għall-kumpanija ma rnexxiex. Madankollu, ma saritx il-prova neċessarja dwar dak miftiehem u dwar il-fondi x'sar minnhom matul l-andamant tan-negożju qabel ma sfaxxa kollox. Inoltre, l-aktar punt saljenti huwa li Schiopu li kien involut mal-partijiet, ma tressaqx bħala xhud lanqas mill-intimati.
33. Referibbilment għall-allegazzjoni ta' l-intimat Badic fil-kontro-talba li huwa ħareġ il-flus u għall-istatements eżebiti wara l-affidavit ta' Badic stess ta' Garanti Bank fir-Rumanija, jidher evidentement li din mhijiex prova suffiċjenti għal dak li qed jingħad b'referenza għall-investimenti li nħarġu għall-kumpanija Petite Maison Company Limited. Dan fil-fatt, ġie kkonfermat mill-Ispettur Claire Borg, li investigat il-każ wara kwerela tar-rikorrent, fejn stqarret li ma mexxewx għax m'għandhomx biżżejjed provi f'idejhom.
34. L-Ispettur Claire Vella Borg xehdet hekk:

*“Imma minhabba l-fatt li agreement ma hemmx bil-miktub...kull ma hemm...almenu sa dak iż-żmien kull ma għandna hu a verbal agreement. Il-flus kif għaddew ma għandniex records tagħhom. Għandna lack of evidence f'idejna.”*
35. Il-Qorti tosserva li, l-allegazzjoni ta' Badic li kellhom jinħarġu ammont ta' flus kemm mir-rikorrent kif ukoll minn Ciprian Schiopu ma jirriżulta minn imkien u mhijiex korroborata bil-provi.
36. Huwa prinċipju stabbilit fil-ġurisprudenza li l-kuntratti għandhom jiġu eżegwiti in bona fede u li jobbligaw mhux biss dak li jingħad fihom, iżda wkoll għall-

konsegwenzi kollha li gġib magħha tali obligazzjoni. (Ara **Fenech Salvu vs Malta Dairy Products Limited** deċiża mill-Prim' Awla Qorti Ċivili fit-30 ta' Ottubru 2003).

37. Fil-każ in eżami, ma sar ebda kuntratt bil-kitba bejn il-kontendenti dwar l-ishma u dwar il-flus li nħarġu għall-investment. Għalhekk din il-Qorti hija għal kollox sprovvista mill-ftehim li seta' seħħ, tenut kont ukoll li r-rikorrent ma weriex interess u lanqas deher għall-kontro eżami tiegħu stess u wisq anqas ressaq provi, u tenut kont li Schiopu ma xehed imkien f'din il-proċedura.
38. L-intimati tramite l-kontro-talba, qed jitolbu wkoll id-danni sofferti konsegwenza tal-aġir tar-rikorrent. Fis-sottomissjonijiet tagħhom, l-intimati ma elaborawx dwar din il-kwistjoni ta' danni proprju għaliex din il-kwistjoni ma tirriżulta bl-ebda mod ippruvata mill-atti tal-każ.
39. Jiġi osservat, li l-intimati ma ressqux xhieda dwar dan. Madankollu, din il-Qorti hija tal-fehma li din il-pretensjoni għad-danni mhijiex mistħoqqa.
40. F'materja ta' danni, trid issir il-prova tan-ness ta' kawża u effett, skont l-artikolu 1045 tal-Kodiċi Ċivili, li ma jirriżultax li saret f'dan il-każ.
41. In vista ta' dawn il-fatti u ċirkostanzi, dak sostnut mill-intimati in sostenn għat-talbiet fil-kontro-talba tagħhom ma jistax jintlaqa'.

## **Konkluzjoni**

Il-Qorti,

Wara illi rat l-atti kollha proċesswali ppreżentati quddiemha;

Rat is-sottomissjonijiet tal-intimati;

Tgħaddi biex taqta' u tiddeċiedi l-vertenza odjerna billi:

**Tiċhad** it-talbiet kollha tar-rikorrent għall-motivi spjegati.

**Tilqa'** l-eċċezzjonijiet tal-intimati fil-mertu.

**Tiċhad** it-talbiet kollha rikonvenzjonali tal-intimati.

La darba ebda mill-partijiet ma għamlu sforz sabiex iressqu xhieda suffiċjenti in sostenn tat-talba tagħhom, **kull parti għandha tbaġhti l-ispejjeż tagħha.**

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Imħallef

**Rita Sciberras**

Deputat Registratur