



FIRST HALL OF THE CIVIL COURT

THE HON. MR JUSTICE ROBERT G. MANGION

SITTING OF THE 25TH APRIL, 2023

Sworn Application no. 1278/2011

Agenzija Heritage Malta

Vs

Maltaticket.com Limited

The Court,

Having examined the application filed by plaintiff agency on the 8th February, 2023 requesting an order for David Pollina to be joined in this court case as a defendant in terms of article 691 of Chapter 12 of the Laws of Malta;

Having examined the reply filed by Dr David Pollina on the 23rd of March, 2023 objecting to the request;

Having considered that plaintiff agency's request is based on the fact that it has recently found out that on the 24th of April 2020 defendant company was struck off from the Malta Business Registry as "Defunct".

Having considered that in terms of Article 325 (4) of the Companies Act, once a company is struck off any shareholder or creditor of the company or any other person who feels aggrieved by the fact that the company has been struck off the register may file an application in court requesting that the company's name be restored to the register.

Having considered that plaintiff agency is basing its request **on sub article 6 of article 325 of Chapter 386** which states that:

(6) Notwithstanding that the name of the company has been struck off the register in terms of the preceding provisions of this article, the liability, if any, of every director or other officer of the company and of every member of the company shall continue and may be enforced as if the name of the company had not been struck off the register.

Having considered that there is no doubt that the sub article invoked by plaintiff agency is not applicable in this case since it does not result that on the day defendant company was struck off, Dr David Pollina was being sued in his personal capacity. The words “shall continue” in sub article 6 above quoted clearly show that the law is referring to cases where a director is already being held personally responsible when the company is struck off; which responsibility will not be affected by the striking off of the company.

Plaintiff agency’s submission that according to sub article 6 once a company is struck off the register, then the directors become personally responsible for the debts of the company is not correct and is a wrong interpretation of the law.

Once defendant company has been struck off the register, plaintiff agency may request that defendant company be reinstated on the register. It is in its discretion whether to pursue such a path; but may not for the sole reason of the striking off of the company hold its director personally liable for the company’s debts.

Since plaintiff’s claims are directed against defendant company which has since been struck off and never against its director

personally, plaintiff's application of the 8th February cannot be acceded to.

The Court also took note of the declaration made by Dr Pollina in his reply that he shall be taking the necessary action to request that the name of defendant company be restored to the register.

In the meantime, once the name of defendant's company has been struck off the register its juridical personality has ceased¹. As

Article 4 (4) of the Companies Act provides:

A commercial partnership has a legal personality distinct from that of its member or members, and such legal personality shall continue until the name of the commercial partnership is struck off the register, whereupon the commercial partnership shall cease to exist.

Since at present defendant company has no juridical personality, the hearing of the present court case may not proceed, pending the final outcome of the request for the name of defendant company to be restored to the register.

¹ Principles of Maltese Company Law - Profs. Andrew Muscat - 1st Edition. – pg. 937

Decrees as follows,

- 1. For the reasons outlined above, the Court rejects plaintiff's application of the 8th February, 2023.**
- 2. The case shall be adjourned pending the final outcome of the request for the reinstatement of the name of defendant company on the register.**
- 3. Costs deferred for final judgment.**

Hon. Mr Justice Robert G. Mangion

25th April, 2023