



**FIL-QORTI ĊIVILI
SEZZJONI TAL-KUMMERĊ**

**ONOR. IMĦALLEF
IAN SPITERI BAILEY LL.M. LL.D.**

Illum, il-Ġimgħa, 19 ta' April, 2024

Fi-atti tal-istralċ bin-numru 107/2021 ISB fl-ismijiet:

bet-at-home.com Entertainment Limited (C-35055)

vs

X

DAN huwa digriet mogħti in camera għar-Rikors tar-Riċevitur Uffiċjali Dr Ingrid Hamilton tal-4 ta' Ottubru 2023 (fol 230)

Il-Qorti,

Rat ir-Rikors tar-**Riċevitur Uffiċjali** tal-4 ta' Ottubru 2023 u li permezz tiegħu hija talbet illi jitneħħew minn fuq il-lista tal-kredituri l-persuni hemmhekk msemmija, senjatament il-lagħba li fil-passat lagħbu u tilfu flus mal-kumpannija bet.at.home Entertainment Limited u li qed jagħmlu talbiet għall-irkupru ta' dan it-telf, liema talba qed issir fuq il-baži illi ai termini tal-Artikolu 56A tal-Att dwar il-Logħob, bħala prinċipju ta' ordni pubbliku l-ebda azzjoni ma tista' tingiebb fil-konfront ta' din il-kumpannija fir-rigward ta' talbiet relatati mal-provvista ta' servizz ta' logħob li tirrigwarda attivita' awtorizzata taħt dan l-Att u l-Qorti għandha tirrifjuta r-rikonoxximent u jew l-infurzar f'Malta ta' kwalunkwe sentenza jew deċiżjoni barranija mogħtija fir-rigward ta' tali azzjonijiet. Ir-Riċevitur Uffiċjali tiddikjara illi l-ammont komplessiv rispettiv għall-istess ġukaturi jammonta għal €25,444.227.

Rat id-digriet provvizorju tagħha tad-9 ta' Ottubru 2023;

Rat dak li kellhom xi iġhidu il-partijiet interessati u notifikati:

Il-kreditriċi **Laura Eisendle nee` Niederbacher**, anke permezz ta' rikors li qed jiġi degretat kontestwalment ma' dan permezz ta' digriet ieħor separat, tgħid illi hija kreditriċi tas-soċjeta' stralċjata fl-ammont ta' €580,293.01 kif ikkristallizat b'sentenza ta' Qorti Awstrijakka skont ċertifikat maħruġ ai termini tal-Art 53 tar-Regolament 1215/2012.

Tikkontendi illi in segwitu għall-proċeduri meħuda f'Malta, 804/2022TA, is-sentenza tagħha tal-Awstrija għandha tkun awtomatikament enforzabbli f'Malta kontra l-kumpannija stralċjata, u kien biss l-għada illi otteniet is-sentenza msemmija illi l-istat Malti introduċa l-Artikolu 56A fuq imsemmi.

Tgħid illi fil-5 ta' Settembru 2022 hija kienet bagħtet l-atti rilattivi kollha lill-istralċjarju u li l-emenda għall-Att dwar il-Logħob huwa inkonsistenti mar-Regolament 1215/2012 u b'hekk din il-Qorti ma għandhiex tagħti effett lill-emenda msemmija. Tgħid illi ma hemm xejn fis-sentenza tagħha illi huwa kontra l-ordni pubbliku, anzi ssostni illi huwa kontra l-ordni pubbliku jekk persuna illi sofriet danni minħabba operazzjoni illeċita ta' ħaddieħor ma tithalliex tieħu rimedju.

Roman Dreher, min-naħa tiegħu, ukoll jikkontesta t-talba tar-Riċevitur Uffiċjali u ukoll iġhid illi l-Artiklu 56A tal-Att dwar il-Logħob illi r-Riċevitur Uffiċjali tibbaza t-talba tagħha fuqu jmur kontra r-Regolament 1215/2012. Jikkontendi illi fi kwalunkwe kaz, l-artikolu 56A ma għandu ebda implikazzjoni fuq kredituri fi proċess ta' stralċ ta' kumpannija. Isostni illi wieħed ma jistax *a priori* jiskarta l-krediti tal-imsemmija kredituri mingħajr ma wieħed jidhol fil-każ u jsostni illi jekk huma jigu mneħħija mil-lista tal-kredituri, allura jkun hemm vjolazzjoni ta' smiġħ xieraq tagħhom.

Rat l-atti kollha:

Ikkunsidrat:

Illi r-rikorrenti ssejjes it-talba tagħha ai termini tal-Artikolu 56A tal-Att dwar il-Logħob, li iġhid testwalment hekk:

56A. Minkejja kwalunkwe dispożizzjoni tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u ta' kull liġi oħra, bħala principju ta' ordni pubblika:

(a) l-ebda azzjoni ma tista' tingieb fil-konfront ta' detentur ta' liċenzja u, jew uffiċjali u, jew persuni rilevanti, prezenti jew passati, ta' detentur ta' liċenzja fir-rigward ta' materji relatati mal-provvista ta' servizz tal-logħob,

jew fil-konfront ta' ġugatur għax irċieva tali servizz tal-logħob, jekk dik l-azzjoni:

(i) tikkonfliġġi ma', jew timmina, il-legalità tal-provvista ta' servizzi tal-logħob ġewwa jew minn Malta permezz ta' liċenzja maħruġa mill-Awtorità, jew il-legalità ta' kwalunkwe obbligu legali jew naturali li jirriżulta mill-provvista ta' tali servizzi tal-logħob; u

(ii) tirrigwarda attività awtorizzata li hija legittima fit-termini tal-Att u strumenti regolatorji oħra;

U

(b) il-Qorti għandha tirrifjuta r-rikonoxximent u, jew l-infurzar ġewwa Malta ta' kwalunkwe sentenza u, jew deċiżjoni barranija mogħtija fir-rigward ta' azzjoni tat-tip imsemmi fis-subartikolu (a).

Il-Qorti tibda biex tirreferi għar-Rapport tar-Riċevitur Uffiċjali tal-4 ta' Ottubru 2023 (fol 163) u senjatament għal-lista tal-kredituri hemmhekk ppreparata u l-*item* "**Customer Claims**", fir-rigward ta' liema qed isir dan ir-rikors. Minn hemmhekk ma jirriżultax li hemm lista dettaljata bin-numru ta' ġukaturi.

B'danakollu mill-minuti tal-laqqgħa tal-kredituri miżmuma fis-27 ta' Novembru 2023, il-Qorti qed tifhem illi jidher illi hemm *claims* minnhom illi addirittura huma in effetti jew jistgħu huma rikonoxxuti mill-Qrati Maltin u oħrajn li għadhom le u li pero`, in ogni caso, f'dawn il-każijiet il-kredituri jsostnu illi s-sentenzi esteri għandhom effett bis-saħħa tar-regolamenti Ewropej. Jidher pero` illi kien hemm *consensus* f'dik il-laqqgħa illi jkun hemm direzzjoni tal-Qorti.

Din il-Qorti għalhekk sejra tagħti d-direzzjoni issa għall-finijiet tal-ahjar andament u prosegwiment ta' dan l-istralċ, b'dan pero` illi jekk u fl-eventwalita' illi Qorti suprema, jew Qorti oħra jew addirittura Qorti Ewropeja tagħti direzzjoni aktar definittiva illi jkun jimmerita illi dan id-digriet jiġi varjat qabel l-egħluq tal-istralċ, allura din il-Qorti qed tirriżerva illi tvarja d-digriet hawnhekk mogħti.

Il-Qorti tqis illi d-diċitura tal-liġi, senjatament l-Artikolu 56A huwa ċar, fis-sens illi Qorti, inkluż allura din il-Qorti, **għandha** tirrifjuta illi tirrikonoxxi sentenza jew deċiżjoni mogħtija minn Qorti barranija fil-parametri msemmija fl-istess liġi, applikabbli hawnhekk. Huwa għalhekk illi din il-Qorti ma għandhiex għażliet - hija kostretta illi tagħmel hekk.

Issa huwa minnu illi qed tqum id-diskussjoni dwar ir-regolament Ewropew 1215/2012, u f'dan il-kuntest il-Qorti trid tirreferi mhux biss għad-digriet hawn taħt riferit imma ukoll għal kummentarju¹ tal-illustri Professur tal-Liġi Kevin Aquilina, meta kkumenta hekk

¹ The Malta Independent on Sunday - 20 August 2023

fuq digriet mogħti mill-Prim'Awla tal-Qorti Civili fis-26 ta' Lulju 2023 fil-proċeduri
Christian Felsberger et vs TSG Interactive Gaming Europe Ltd:

On 26 July 2023, the Civil Court, following receipt of an application by the applicant Felsbereg et delivered a second, more elaborate, decree wherein it stated that once the foreign judgment fell under article 56A aforesaid, that is, the action was against a Maltese gaming licence holder and concerned matters related to the provision of gaming services in Malta, the court was legally debarred from hearing that case. The applicant was basing his request for the enforcement of the foreign judgment on regulation (EU) No 1215/2012 of the European Parliament and the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This regulation is applicable in Malta as part of EU Law. It is also part of Maltese Law. Indeed, rule of court 17 of the Court Practice and Procedure and Good Order Rules, Subsidiary Legislation 12.9, refers to its predecessor, Regulation (EC) No. 44/2001 of 22 December 2000, when it provides for the recognition and enforcement of judgments at EU level. Nevertheless, this rule needs to be updated by the Rule Making Board so that it now refers to Regulation (EU) No 1215/2012 which is the EU regulation that the Civil Court ruled upon. Chief Justice please note before you receive another publicly advertised letter from your newly acquired pen pal (the Prime Minister) to this effect!

What is, however, interesting about this decree is the part concerning the supremacy of the Constitution of Malta over European Union law. The Court noted that, on the one hand, article 95(1) of the Constitution establishes Superior Courts whose jurisdiction is to be regulated by such law that may be in force in Malta, in this instant case, article 56A of the Gaming Act. On the other hand, article 825A of the Code of Organization and Civil Procedure provides that: 'Where regulations of the European Union provide, with regard to the matters regulated under this title, in any manner different than in this title, the said regulations shall prevail, and the provisions of this Title shall only apply where they are not inconsistent with the provisions of such regulations or in matters not falling within the ambit of such regulations'. The EU regulation in question is 1215/2012 referred to above. The title of the Code of Organization and Civil Procedure in question refers to the enforcement of foreign judgments. As to article 825A, the Court agreed that this provision affirmed the supremacy of European Union Law over Maltese Law. However, the Court noted that Article 6 of the Constitution declared the Constitution to be superior to any other law when it provides that 'if any

other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void’.

The Court argued that when article 6 is analysed, it was clear that when the constitution was amended when Malta was in the process of acceding to the European Union, no reservation was made in relation to the obligations assumed by Malta on accession through the European Union Act, the latter being an ordinary law. Indeed, the Court correctly argued that it should have been in article 6 of the Constitution that a declaration should have been made declaring the Constitution subordinate to European Union Law. Indeed, where European Union Law was to be explicitly saved, this was stated to be so. As examples, the Court quoted articles 46, 50(2)(b), and 56 of the Code of Organization and Civil Procedure.

The Court, therefore, concluded that where there is a conflict between the fundamental law of Malta – the Constitution – and the European Union Act – an ordinary law – it was the former that has the upper hand. Indeed, in this case, the conflict was between article 56A of the Gaming Law that was giving effect to article 95(1) of the Constitution, on the one hand, and EU regulation 1215/2012 that was being given effect through the European Union Act, on the other hand. Article 56A – that enjoyed the protection of the Constitution – was therefore not subject to the EU regulation precisely because of the supremacy of the Constitution.

From a Maltese constitutional perspective, I fully agree with the Court’s motivation of its decree bearing in mind also that the Civil Court was seized only of a garnishee order, not of a constitutional matter. Hence, the Civil Court, First Hall, was incompetent to determine in its decree whether article 56A of the Gaming Act was or not in conformity with article 65(1) of the Constitution that requires the Parliament of Malta to enact laws that are in full compliance with the treaty of accession to the European Union.

Din il-Qorti ma għandha xejn x’iżżid ma’ dan, u tagħmel tagħha mhux biss dak illi qalet il-Qorti Ċivili Prim’Awla fid-digriet tagħha tas-26 ta’ Lulju 2023 hawn fuq imsemmi, imma ukoll il-kummentarju tal-Prof. Kevin Aquilina fir-rigward, u allura, illi din il-Qorti, almenu sal-lum, hija marbuta illi tapplika l-liġi ordinarja kif kontemplata fl-Artikolu 56A tal-KAP 583 tal-Liġijiet ta’ Malta.

GĦALDAQSTANT, għar-raġunijiet hawn fuq mogħtija, il-Qorti qed tgħaddi sabiex f’dan l-istadju tilqa’ t-talba tar-Riċevitur Uffiċjali.

Ian Spiteri Bailey
Onor. Imħallef

Amanda Cassar
Deputat Reġistratur