



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tat-23 ta' Ottubru, 2024

Appell Inferjuri Numru 111/2020 LM

Dr Jean Paul Demajo (K.I. nru. 88680M)
li jeżerċita l-kummerċ bħala Drs Demajo Dental Clinics
(‘ir-rikorrent’)

vs.

Mohsen Al Hawary sive Al Hawary Mohsen
sive Al Hawary Mohsen Selim Mansour (K.I. 158340A)
(‘l-intimat’)

Il-Qorti,

Preliminari

1. Dan huwa appell magħmul mir-rikorrent **Dr Jean Paul Demajo (K.I. nru. 88680M)** eżerċenti l-kummerċ bħala **Drs Demajo Dental Clinics** [minn issa ‘l quddiem ‘ir-rikorrent’], segwit minn appell inċidentali ipprezentat mill-intimat **Mohsen Al Hawary sive Al Hawary Mohsen sive Al Hawary Mohsen Selim**

Mansour (K.I. nru. 158340A) [minn issa 'l quddiem 'l-intimat'], mis-sentenza mogħtija fl-4 ta' Ottubru, 2023 [minn issa 'l quddiem 'is-sentenza appellata'], mill-Qorti tal-Maġistrati (Malta) [minn issa 'l quddiem 'l-Ewwel Qorti'], li ddeċidiet kif ġej:

“Therefore, on the basis of the above, the Court is deciding this present case by acceding, in part, to the plaintiff’s request and condemns the defendant Mosen Al Hawary sive Al Hawary Mohsen sive Al Hawary Mohsen Selim Mansour to pay the sum of seven thousand, eight hundred and seventy-seven Euros (€7,877) to the plaintiff with the interests running from the date of this judgment.

Defendant is to pay 2/3 of the costs of the judicial letter number 188/2019, the precautionary warrant and of these proceedings while the plaintiff is to pay the remaining 1/3 of the said costs.”

Fatti

2. Ir-rikorrent istitwixxa proċeduri quddiem l-Ewwel Qorti, fejn talab li l-intimat jiġi kkundannat iħallas is-somma ta' erbatax-il elf, tmien mija u ħamsin Euro (€14,850) rappreżentanti bilanċ minn somma akbar dovuta għal servizzi professjonali ta' dentistrija debitament reżi fuq struzzjonijiet tal-istess intimat.
3. L-intimat wieġeb li t-talbiet tar-rikorrent huma infondati fil-fatt u fid-dritt, u għalhekk għandhom jiġu miċħuda bl-ispejjeż. Spjega li huwa jgawdi l-*privilegium fori*, u kif jirriżulta mill-indirizz tan-notifika fl-avviż promutur indikat mir-rikorrent innifsu, huwa jabita fil-gżira ta' Għawdex, u għalhekk b'applikazzjoni tal-artikolu 741(ċ) u 767 tal-Kap. 12 tal-Liġijiet ta' Malta, il-kawża kontra tiegħu għandha tinstema' quddiem il-Qorti tal-Maġistrati (Għawdex). L-intimat qal ukoll li mhux minnu li huwa fadallu jħallas xi flus lir-

rikorrent kif qiegħed jiġi pretiż. L-eċċezzjoni tal-intimat dwar il-*privilegium fori* ġiet sussegwentement irtirata.

Is-Sentenza Appellata

4. Permezz tas-sentenza mogħtija fl-4 ta' Ottubru, 2023, l-Ewwel Qorti iddeċidiet li l-intimat għandu jhallas lir-rikorrent is-somma ta' €7,877, bl-imgħaxijiet mid-data tad-deċiżjoni, u dan wara li għamlet dawn il-konsiderazzjonijiet:

“Considers:

That the plaintiff is a dentist and practices his profession through the clinic named Drs Demajo Dental Clinics. Further to his profession, he provided dental services to the defendant and his ex-wife Svetlana Yolanda Al Hawary, which dental services included a full mouth rehabilitation. The plaintiff claims that there still remains a pending balance of €14,850 for these treatments. This balance, however, is being challenged by the defendant on the basis that he paid all amounts due.

In his testimony (fn. 1: Vide the testimony tendered on the 20th September, 2021 at fol. 45 of the acts of the proceedings), the plaintiff stated that this was an extensive procedure which included surgery, implantology and new teeth. It is a very lengthy procedure which, at times, may span over six months or even a year. Due to the length of time, he sent various invoices as they went along with the treatment and a final invoice at the conclusion of the treatment in the amount claimed in these proceedings. He stated that the defendant did not want to pay this final balance as he stated that all amounts were settled. Furthermore, the plaintiff stated that although the defendant told him that he had an insurance cover, he was never presented with any claim form and was never told the name of the insurance company.

In his affidavit (fn. 2: vide Dok. JPD1 at fol. 127 of the acts of the proceedings), the plaintiff confirms that he received a total of €27,125 from the defendant. He stated that the total bill was of €42,000 and that at the outset he explained how much these treatments would cost. He stated that Bart Enterprises Limited is the clinic's main dental supplier. The €15,000 transfer to Bart Enterprises Limited made by the defendant represented payment for dental supplies and it was divided as to €5,000

in respect of the defendant and €10,000 in respect of his ex-wife. Contrary to what the defendant is stating, there was no extra payment of €15,000. At the end of the treatment, the defendant was told that the balance was zero but at the time the treatment was not complete and there were interventions that were not yet billed. At the completion of the treatment, the plaintiff issued a final bill and defendant was asked to pay. He stated that the defendant gave a number of excuses so as not to pay. At first he said that he was told the balance was zero, then he said that the insurance company did not want to pay citing fraud and that he was in arbitration proceedings with them. The defendant had asked the plaintiff to produce an affidavit in connection with the arbitration proceedings but ultimately, the insurance excuse turned out to be a sham. Prior to opening these proceedings, the plaintiff asked defendant to pay the balance and at no point did he state that he overpaid. He confirmed that the sum of €14,875 was still due.

In his cross-examination (fn. 3: vide the testimony tendered on the 19th May, 2023), the plaintiff said that he explained to the defendant how much his and his ex-wife's procedure would cost and the defendant said he would pay both bills himself. With regards to billing, they do not input the full amount at the beginning of the procedures but add on the bill as the work goes by and issue invoices as they go along. Although there was an instance where the person behind the front desk confirmed to the defendant that his account was marked as zero, this was because some of his interventions had not yet been inputted in the system and therefore were not billed. With regard to payments made, the clinic would input them in their computer system. It was also common practice for the clinic to write down payments made in the patient's medical chart. However, these would be written in the financial part of the chart, such as that at fol. 35 of the acts of the proceedings. He was instructed by the defendant to issue invoices to him for the interventions done on him and on his ex-wife. The document dated 8th August, 2017 (at fol. 108) is a brief description of the interventions done on the defendant and his ex-wife and the amounts quoted are all found in their respective Clinical Charts.

The defendant stated in his testimony (fn. 4: vide the testimony tendered on the 24th May, 2022 at fol. 64 of the acts of the proceedings), that he approached Drs. Demajo Dental Clinics on the 2nd December, 2015 for a major dental intervention and was given a quotation in the amount of circa €22,000. (fn. 5: Vide Dok. "MH1" at fol 80 of the acts of the proceedings). He stated that in February 2016 he had a major operation at their clinic and on that day he forwarded him €10,000. (fn. 6: The transaction appears to be indicated at fol. 84 and fol. 25 of the acts of the proceedings). He was very impressed with the plaintiff's professionalism. His ex-wife

also needed an intervention and the defendant took her to the plaintiff's clinic for her intervention. The plaintiff examined her and issued a quotation for €15,000, which amount was then transferred by the defendant. He also stated to have paid €2,000 (fn. 7: Vide Dok. "MH4" at fol.83 which is also reflected at fol. 26 of the acts of the proceedings), and made another payment of €5,000. (fn. 8: Vide Dok. "MH5" at fol. 85 which is also reflected at fol. 27 of the acts of the proceedings). In all, the defendant claims to have paid the sum of €44,125 to the plaintiff, which were transferred at different times and to different accounts. In support of this, he submitted his calculations of the payments he made amounting to €44,125. (fn. 9: vide Dok. "MH8" at fol. 88 of the acts of the proceedings).

He states that in the statement presented to him (fn. 10: Vide Dok. "MH6" at fol. 86 which is also reflected at fol. 30 of the acts of the proceedings) there is no indication of a pending sum of €11,000 nor is there any indication of the payments of €15,000, €5,000, €2,125 and €2,000 made, but only shows the payment of €10,000. He further states that he made a payment of £7,925.95 (fn. 11: Vide Dok MH7 at fol. 87 of the acts of the proceedings) (equivalent to €10,217.34). (fn. 12: £7,925.95 x 1.2891 = €10,217.34 (the exchange rate of 1.2891 is the conversion rate from UK STG to Euro on the 8th February, 2016, obtained from <https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/qbp/GBP-to-EUR2016>).

The defendant further testified (fn. 13: Vide the testimony tendered on the 17th October 2022, at fol. 97 of the acts of the proceedings) that the plaintiff indicated a total cost for both his and his ex-wife's interventions of €36,500. He stated that the medical intervention lasted till the end of 2016. His ex-wife's medical intervention lasted between the 28th October 2016 and 26th June 2017. (fn. 14: vide dok. "MH13" at fol. 104 of the acts of the proceedings). He submitted an email sent to him by the plaintiff on the 8th August 2017 (fn. 15: vide Dok. "MH14" at fol. 107 of the acts of the proceedings) containing a breakdown, payment and balance, which indicates the total cost.

In his cross-examination (fn. 16: vide the testimony tendered on the 16th January, 2023, at fol. 119 of the acts of the proceedings) he confirmed that the payment of €15,000 was made by his partner Jacqueline Sandra Ann Cox. He said that his insurance refused to pay for the intervention, yet he has no letter with this confirmation.

Considered;

That from the evidence produced by the plaintiff, it results that sum of €14,850.00 requested in these proceedings is composed of the balance of €3,850 allegedly due

for the interventions carried out on the defendant (fn. 17: Vide fol. 30 – 31 of the acts of the proceedings) and the balance of €11,000 allegedly due on those carried out by his ex-wife. (fn. 18: vide fol. 35 of the acts of the proceedings). The defendant told the plaintiff that he will pay both his and his ex-wife's bill for the interventions.

In his testimony, the defendant stated that the agreed total cost for both interventions was to be of €36,500 and he refers to an email sent to him by the plaintiff on the 8th August, 2017. This email contains a very brief description of the treatments executed on both the plaintiff (totalling to €21,000) and on his ex-wife (incidentally, also amounting to €21,000) for a total of €42,000.

In his testimony, the plaintiff stated that the clinical chart is a medical record and it is common practice for the clinic to keep note of payments made in the clinical chart of the patient. In fact, from the clinical chart pertaining to the defendant, there is noted a payment of €5,000 dated 2nd November 2016 and another payment of €10,000 dated 5th December 2016. From the clinical chart pertaining to the defendant's ex-wife, Svitlana Al Hawary, there is noted a payment of €10,000 dated 2nd November 2016.

Upon an examination of what appears to be a statement of account attached to the clinical chart of the defendant, there only results one payment (of €10,000) dated the 11th February 2016 and no record of any other payments. More surprisingly, the statement of account attached to Svitlana Al Hawary's clinical chart carries no record of any payment made. Both statements of account are dated the 24th August 2018 – nearly a year after the defendant's treatment was complete and more than a year after Svitlana Al Hawary's treatments were complete.

Moreover, the figures quoted by the plaintiff in his brief description of the treatments dated the 8th August 2017 are not in any way reflected in the statement of accounts mentioned above.

From the documents submitted and examination of figures, it is abundantly clear to the Court that the plaintiff's management of the defendant's account leaves a lot to be desired and does not provide a clear and truthful picture of the defendant's financial position with his practice. Although, understandably, the plaintiff stated that the clinic bills as they go along, it is evident that in this case this procedure was not strictly adhered to. In fact, there was an instance where the defendant was told, at the completion of the interventions, that the bill was zero.

Considered;

That our Courts have repeatedly retained that:

“Min jallegra l-pagament għandu jippruvah għas-sodisfazzjon tal-Qorti, u fid-dubju fin-nuqqas ta’ irċevuta għandha tipprevali l-preżunzjoni li d-dejn ma tħallasx (Kollez. XXXVII.I.535), jekk ma jiġix pruvat, kif del resto ma sarx, b’mezzi oħra li l-attur huwa sodisfatt (Kollez. XXXV.iii.604; App. Inf. In re “Cassar vs. Agius”, deċiż fid-9 ta’ Lulju, 1924; P.A. in re “Cricchiola vs Pulis” deċiża fid-19 ta’ Jannar, 1965).” (fn. 19: **Giuseppe Darmanin vs Salvatore Muscat**, Qorti Ċivili, Prim’Awla, 23 ta’ Frar, 1956).

In this case, the defendant stated that all the amounts due were paid by him. In light of this allegation, the Court shall examine the proof brought in this case in regard to the payments made by the defendant.

From the handwritten notes submitted by the defendant as doc. MH8, it would appear that the defendant paid a total of €44,125. However, when the figures were compared with the evidence submitted in these proceedings, it results that the defendant paid:

€	Description	Fol. No.
15,000	Paid to Bart Enterprises Ltd	24, 81, 82
10,000	Paid from Santander Account	25, 84, 86, 87
2,000	No date indicated, but before 11 Dec 2015	26, 83
5,000	From Defendant’s clinic chart	85
2,123	From Defendant’s clinic chart	80
34,123	Total paid by the defendant	

There is an entry in the defendant’s notes of a payment of €10,000 which is marked as “no date” in the same notes and which was not proven by the defendant from any other document or statement.

Therefore, from the acts of the proceedings it results that the defendant paid a total of €34,123 to the plaintiff, thus leaving a balance of €7,877 in favour of the plaintiff. No proof was provided by the defendant that this amount was paid and therefore, it is the Court’s view that this amount is still outstanding.”

L-Appell

5. Fir-rikors tal-appell imressaq fit-3 ta’ Novembru, 2023, ir-rikorrent talab lil din il-Qorti jogħgobha tirrifirma s-sentenza tal-Ewwel Qorti fl-ismijiet

premessi, u dan billi tikkonfermaha in kwantu ddikjarat li l-intimat huwa debitur tar-rikorrent, iżda tvarja l-ammont dovut għal dak mitlub mir-rikorrent, jiġifieri s-somma ta' €14,850, bl-imgħaxijiet kif mitluba fir-rikors promutur, bl-ispejjeż taż-żewġ istanzi kontra l-intimat.

6. Ir-rikorrent spjega li huwa ħassu aggravat bis-sentenza tal-Ewwel Qorti, li ddeċidiet li l-intimat għandu jhallas is-somma ta' sebat elef, tmien mija u sebgħa u sebgħin Euro (€7,877), u li l-intimat għandu jhallas ukoll 2/3 tal-ispejjeż tal-ittra uffiċjali numru 188/2019, tal-mandat kawtelatorju, u tal-proċeduri, filwaqt li r-rikorrent għandu jhallas 1/3 tal-ispejjeż.

7. Ir-rikorrent sostna li l-Ewwel Qorti, meta ppruvat testrapola u tikkalkola l-pagamenti varji mertu tal-kawża, giet indotta fi żball, u rizzultat ta' dan ikkonkludiet li s-somma bilanċjali dovuta lir-rikorrent kienet inqas minn dik reklamata minnu. Qal li l-Ewwel Qorti kienet korretta meta kkonkludiet li l-oneru tal-prova jinkombi fuq dak li jallega l-pagament. Qal li l-intimat allega li fil-fatt ħallas kull ma kien dovut, u għalhekk il-prova tal-ħlas tispetta lilu. Qal li l-intimat ma rnexxilux jipprova li ħallas il-bilanċ mitlub minnu, u pprova saħansitra jgħid li kien hemm pagamenti li huwa effettwa darbtejn. Ir-rikorrent qal li skont l-Ewwel Qorti kien hemm ħames pagamenti li jirriżultaw mill-atti proċesswali, u huwa jaqbel ma' tlieta minnhom - €15,000, €10,000 li tħallsu mill-kont bankarju tal-intimat, u €2,125, imma li huwa ma jaqbilx li kien hemm ħlas ta' €5,000 u ta' €2,000. Qal li dawn l-aħħar żewġ pagamenti jiffurmaw parti minn somom akbar li sejrjn jiġu indikati minnu f'dan l-appell.

8. Ir-rikorrent spjega li s-somma ta' €5,000 tirriżulta li hija parti mill-ewwel pagament ta' €15,000, liema pagament kien sar lill-kumpannija Barts

Enterprises Limited li kienet ħadmet fuq il-varji implants li kellhom isiru fuq l-intimat u l-ex-mara tiegħu. Żied jgħid li dan il-pagament kien gie allokat fuq il-*clinical charts* tal-intimat u tal-ex-mara tiegħu, u fil-fatt €10,000 jidhru mmarkati fuq il-*clinic chart* tal-ex-mara tal-intimat. Ir-rikorrent spjega li d-dokument ipprezentat mill-intimat *a fol.* 82 tal-proċess, jindika li fl-1 ta' Novembru, 2016, il-*partner* tal-intimat, Jacqueline Sandra Ann Cox ħallset l-ammont ta' €15,000 lil Bart Enterprises Limited, u dan jirriżulta wkoll mixxhieda tal-intimat. Qal li jekk wieħed iqabbel in-numru tal-IBAN ta' fejn sar dan il-pagament, ma' dak li joħroġ mill-*email* esebita *a fol.* 93 u 110, għandu jirriżulta li l-pagament sar lil Bart Enterprises Limited. Qal li fil-fatt hemm ġurnata differenza bejn l-ammont li jidher fuq il-kont bankarju tas-sinjura Cox u l-*clinic chart*, għaliex il-pagament m'għaddiex fl-istess ġurnata. Kompla jgħid li l-*payment slip* ipprovduta minnu mhijiex datata għaliex dawn it-tip ta' *payment slips* ma jkollhomx data fuqhom. Qal iżda li m'hemm l-ebda dubju li Bart Enterprises Limited kienu nfurmawh li rċevew il-pagament. Qal li huwa rrikonoxxa l-ħlas u alloka fuq il-*clinic charts* relattivi tal-klijenti tiegħu fit-2 ta' Novembru, 2016. Spjega li għalhekk m'għandu jkun hemm l-ebda dubju li dawn il-€5,000 indikati bħala pagament separat, huma fil-fatt parti mill-pagament ta' €15,000 li sar lil Barts Enterprises Limited.

9. Ir-rikorrent qal li l-intimat ipprova jitfa' dubju dwar dan, billi qal li xi pagamenti saru direttament fil-kontijiet bankarji ta' terzi. Żied jgħid li l-intimat ġab biss prova ta' *bank transfer* wieħed, u ma ġabx prova ta' *bank transfers* oħra fir-rigward tal-ammonti ta' €10,000 u €5,000, u għal dawn il-pagamenti jistrieħ fuq dak li jirriżulta mill-*clinic charts*. Qal li fil-*clinic charts* huwa alloka l-ħlas originali ta' €15,000, billi qasam l-ammont bejn l-intimat u l-ex-mara

tiegħu. Żied jgħid li kien l-intimat li kellu obbligu jipprova l-ħlas kollu li qed jgħid li għamel, xi ħaġa li m'għamilx. Ir-rikorrent qal li t-trattament li rċevew l-intimat u l-ex-mara tiegħu, dam għaddej madwar sena u nofs, u ma kellux ikun diffiċli għall-intimat li jintraċċa l-pagamenti li għamel, billi jesebixxi l-kontijiet bankarji tiegħu. Qal ukoll li ħlief għall-ammont ta' €125 li tħallas bi *credit card*, l-intimat jgħid li l-pagamenti għamilhom kollha bi trasferimenti bankarji, u dawn kellhom jirrizultaw mill-*statements* bankarji. Qal li l-intimat stess irrikonoxxa li r-rikorrent dejjem kien jipprovdilu l-IBAN ta' fejn għandu jagħmel il-pagament, u l-intimat kellu jitlob ħlas mingħand il-kumpanija tal-assigurazzjoni għal dawn il-pagamenti. Ir-rikorrent qal li hawnhekk ma jistax ma jirrivevax li l-intimat oriġinarjament kien irrifjuta li jħallas bl-iskuża li kellu diffikultajiet mal-kumpanija tal-assikurazzjoni tiegħu, li kienet bdiet proċeduri kontrih għal allegata frodi. Qal li kien ipprepara *affidavit*, fejn spjega din is-sitwazzjoni, u kien baġtu lill-intimat.

10. Fir-rigward tas-somma ta' €2,000, ir-rikorrent qal li din hija l-istess somma ta' €2,125 imnizzla fil-*clinic chart*, li tħallset f'Diċembru 2015. Qal li fil-fatt l-intimat kien ħallas bi *credit card* l-ammont ta' €125 fis-7 ta' Diċembru, 2015, u €2,000 fil-11 ta' Diċembru, 2015 permezz ta' *bank transfer*, u l-intimat eosebixxa l-istess dokumenti li kien ipprezenta hu, iżda alterahom billi neħħa d-data.

11. Ir-rikorrent qal li l-uniċi pagamenti li jirrizultaw u li jammontaw għal €27,125, huma €15,000 imħallsa mis-Sinjura Cox fl-1 ta' Novembru, 2016; €10,000 imħallsa mill-kont bankarju li l-intimat għandu ma' Santander u li ġew mħallsa fit-8 ta' Frar, 2016, u €2,125 imħallsa f'Diċembru 2015. Qal ukoll li l-

intimat illimita ruħhu għad-dokumenti pprezentati minnu. Ir-rikorrent qal li l-prezz totali għat-trattament li kellhom jirċievu l-intimat u martu, jammonta għal €42,000, li jikkonsistu f'€21,000 tal-intimat u €21,000 tal-ex-mara tiegħu, u l-kontijiet tat-tnejn kellhom jiġu indirizzati lill-intimat. Qal li fuq l-istess *clinic chart* hemm imnizzla l-*quotation* għat-trattament li kien ser jagħmel l-intimat, li tammonta għal aktar minn €21,000. Ir-rikorrent qal li l-intimat mhux jikkontesta l-kont u lanqas m'huwa jikkontesta s-servizzi professjonali tar-rikorrent, u l-intimat tant kien sodisfatt bix-xogħol li għamel ir-rikorrent, li ħa lill-ex-mara tiegħu għat-trattament għandu. Ir-rikorrent qal li s-servizzi professjonali mogħtija lill-intimat u lill-ex-mara tiegħu kienu estensivi, li jinvolvu implantologija, kirurgija u snien ġodda, u dan it-trattament dam għaddej diversi xhur, kienu meħtieġa diversi appuntamenti, u għalhekk ir-rikorrent ma setax joħroġ kont wieħed. Ir-rikorrent qal li l-intimat stess ipprezenta *statement* finali tat-trattament li sar kemm fuqu kif ukoll fuq l-ex-mara tiegħu, u dawn is-servizzi mhumiex ikkontestati, b'tali mod li m'hemm l-ebda dubju li l-ammont globali dovut lir-rikorrent huwa €42,000.

Ir-Risposta tal-Appell u l-Appell Incidentali

12. L-intimat wieġeb li r-rikors tal-appell huwa irritu u null, għaliex il-proċeduri quddiem l-Ewwel Qorti saru bil-lingwa Ingliża, u għalhekk qal li r-rikors tal-appell ukoll kellu jsir bil-lingwa Ingliża. L-intimat qal li r-rikorrent ħassu aggravat għaliex huwa tal-fehma li l-Ewwel Qorti kkomputat b'mod żbaljat l-ammont li tħallas u dak li għadu ma tħallasx minnu. L-intimat qal li sa minn qabel inbdew il-proċeduri quddiem l-Ewwel Qorti, huwa dejjem saħaq li huwa kien tħallas l-ammont dovut minnu fl-intier tiegħu. Qal ukoll li filwaqt li l-oneru

tal-prova jinkombi lil min jallega li għamel pagament, dan il-prinċipju joħloq relazzjoni reċiproka, fis-sens li qabel ma l-intimat iressaq provi li huwa ħallas id-dejn kollu, ir-rikorrent għandu obbligu jikkonvinċi li hemm dejn li jeżisti. L-intimat qal li r-rikorrent ma gābx biżżejjed provi sabiex juri li l-ammont pretiż minnu ta' €14,850 verament huwa dovut. L-intimat qal li anki l-Ewwel Qorti għamlet riferiment għal dan meta qalet li l-mod kif ir-rikorrent iġġestixxa l-kontijiet tal-intimat, ma kienx wieħed li jagħti stampa ċara u veritiera tal-pożizzjoni finanzjarja tal-intimat fil-konfront tar-rikorrent. Qal ukoll li l-Ewwel Qorti ħasset il-ħtieġa li tenfasizza l-fatt li l-mod kif ir-rikorrent kien iżomm rendikont ta' dak li huwa dovut lil mill-klijenti tiegħu, huwa dubjuż. L-intimat qal li l-Ewwel Qorti ddeċidiet li l-ammont reklamat mir-rikorrent minn għandu, mhuwiex konvinċenti u huwa dubbjuż, hekk kif il-persuna tal-*front desk* tal-klinika tar-rikorrent, kienet ikkonfermatlu li huwa ma kien għad fadallu l-ebda kontijiet x'ihallas. Qal ukoll li dan juri li r-rikorrent mhux affidabbli. Qal li fil-kontro-eżami, u anki permezz ta' *email* li ntbagħtitlu, ir-rikorrent kien ikkonferma li l-ammont dovut għas-servizzi huwa ta' sitta u tletin elf u ħames mitt Euro (€36,500) u mhux ta' tnejn u erbgħin elf Euro (€42,000), u t-tibdil fl-ammont totali u d-diskrepanza fl-*invoices* juru l-inaffidabbiltà tar-rikorrent.

13. L-intimat qal li l-Ewwel Qorti għamlet riferiment għall-pagamenti li saru minnu permezz ta' skeda fit-tmien pagna tas-sentenza appellata. Żied jgħid li l-Ewwel Qorti spjegat li kien hemm nuqqas ta' pagament ta' għaxart elef Euro (€10,000) fl-iskeda pprovduta, hekk kif dan kien l-uniku pagament li ma kellux data, u ma ġiex ippruvat b'mod sodisfaċenti li kien sar dan il-pagament. L-intimat qal li r-rikorrent fir-rikors tal-appell, jgħid li minbarra l-għaxart elef Euro (€10,000) msemmija, mhuwiex minnu li ċerti ammonti oħra tħallsu mill-intimat

minħabba nuqqas ta' provi konvinċenti, u l-fatt li dawn il-pagamenti saru lil terzi persuni. L-intimat qal li wara li huwa xehed li l-*invoices* mibgħuta lilu, kellhom diversi pagamenti neqsin, u l-ammont totali mertu tal-proċeduri kien inbidel, huwa qal li ċerti pagamenti kellhom isiru lil Bart Enterprises Limited fuq id-direzzjoni tar-rikorrent stess. Kompla jgħid li għalhekk huwa għamilha ċara li kwalunkwe pagament mitlub lilu dejjem sar. Qal ukoll li r-rikorrent qiegħed jipprova jħammeg il-kredibbilità tiegħu, billi jgħid li huwa kien jivvinta l-iskużi biex ma jħallasx, imma l-kwistjoni li huwa kellu mal-kumpannija tal-assikurazzjoni hija kompletament irrilevanti ladarba l-pagamenti kienu saru.

14. L-intimat qal li huwa ħassu aggravat ukoll bil-parti tas-sentenza tal-Ewwel Qorti li laqgħet parzjalment it-talbiet tar-rikorrent, u kkundannat lill-intimat iħallas ukoll parti mill-ispejjeż. Qal li l-oneru tal-prova jinkombi fuq min jallega pagament, u dan il-prinċipju joħloq relazzjoni reċiproka fuq min jallega li d-dejn huwa dovut. Qal li s-sistema ta' kif ir-rikorrent iżomm nota ta' min iħallsu u min ma jħallsux, mhijiex professjonali. L-intimat qal li l-iskambju li sar waqt il-kontro-eżami tar-rikorrent, juri li r-rikorrent kien konfużjonarju fil-mod kif iżomm l-affarijiet finanzjarji tiegħu, u huwa ma jistax jifhem kif l-Ewwel Qorti sabet li kien hemm biżżejjed provi fil-kawża mressqa mir-rikorrent, anki meta dan qal li kien iżomm nota tal-pagamenti fuq il-*clinical charts* tal-klijenti iegħu, li huma dokumenti mediċi. Qal li kien ir-rikorrent stess li talbu jagħmel ħlasijiet lil kumpannija terza, u r-rikorrent ma gābx biżżejjed provi sabiex jissostanzja t-talbiet tiegħu, kien konfużjonarju għall-aħħar, u għamel numru ta' asserzjonijiet mingħajr sustanza fil-konfront tal-intimat sabiex jieħu xi forma ta' vantaġġ fuqu. L-intimat qal li anki l-*statements* bankarji ppreżentati mir-rikorrent, juru li dawn ġew ippreżentati mingħajr ma ġie rispettata il-prinċipju tal-aħjar prova, u

dawn ma ġewx ipprezentati fl-intier tagħhom b'mod qarrieq. Għaldaqstant l-intimat, bl-appell incidentali tiegħu talab lil din il-Qorti tiċhad it-talbiet tar-rikorrent fl-intier tagħhom, tikkundanna lir-rikorrent iħallas l-ispejjeż kollha tal-kawża odjerna, bl-imgħaxijiet relattivi, u bl-ispejjeż taż-żewġ istanzi kontra tiegħu.

Ir-Risposta għall-Appell Incidentali

15. Ir-rikorrent wieġeb li filwaqt li l-intimat għamel riferiment għall-ġurisprudenza in sostenn tal-argument tiegħu li l-oneru tal-prova jinkombi fuq min jallega pagament, dan l-oneru jinkombi wkoll fuq min jallega li d-dejn huwa dovut. Ir-rikorrent iċcita każistika dwar l-oneru tal-prova, u dwar il-ħtieġa li titressaq dejjem l-aħjar prova. Qal li huwa ressaq diversi provi li jikkontradixxu l-pożizzjoni li qiegħed jieħu l-intimat, li qiegħed jgħid li ħallas l-ammont ta' €44,125, iżda ma ġab l-ebda prova sabiex juri li huwa għamel dawn il-ħlasijiet. Qal li l-Ewwel Qorti għamlet elenku tad-diversi ammonti li l-intimat qed jallega li ħallas, u dawn lanqas biss jammontaw għall-ammont imsemmi minnu. Qal li l-ammont ta' €10,000 u €5,000 elenkati separatament huma l-istess €15,000 imniżżla fl-elenku, u dan għaliex dawn l-ammonti kienu mqassma fuq żewġ kontijiet tal-intimat u tal-ex-mara tiegħu għad-diversi trattamenti li kienu qegħdin jirċievu mingħand ir-rikorrent. Ir-rikorrent qal li l-intimat ipprova jizvija lill-Qorti meta pprova joħloq argument fuq dak sottomess mir-rikorrent, u qal li l-intimat stess ressaq noti miktuba bl-idejn, meta l-pagamenti saru b'ċekk jew *bank transfer*. Qal li l-intimat kellu l-obbligu li jgħib il-prova tal-ħlas li kien qiegħed jgħid li għamel, u li kieku verament ħallas, kien ikollu l-*bank statements* bħala prova. Qal li l-aħjar prova kienet tkun il-*bank statements* tal-kontijiet

minn fejn saru dawn il-pagamenti, imma dawn il-provi ma ġewx prodotti għaliex ma jeżistux.

Konsiderazzjonijiet ta' din il-Qorti

16. Din il-Qorti ser tgħaddi sabiex tikkunsidra l-aggravju mressaq mir-rikorrent fir-rikors tal-appell tiegħu, u sussegwentement ser tgħaddi sabiex tikkunsidra l-aggravju mressaq mill-intimat fl-appell inċidentali tiegħu, u dan fid-dawl tal-konsiderazzjonijiet magħmula mill-Ewwel Qorti fis-sentenza tagħha, u tas-sottomissjonijiet li saru mill-partijiet.

L-Aggravju fl-appell prinċipali: *[L-Ewwel Qorti għamlet komputazzjoni żbaljata tal-ammonti li huma dovuti mill-intimat]*

17. Ir-rikorrent jgħid li huwa istitwixxa dawn il-proċeduri għaliex l-intimat għad għandu pendent bilanc ta' erbatax-il elf tmien mija u ħamsin Euro (€14,850) dovut għal servizzi dentali mogħtija mir-rikorrent lilu u lill-ex-mara tiegħu. Jgħid li filwaqt li l-ammont totali dovut għall-imsemmija servizzi dentali lill-intimat u l-ex-mara tiegħu, kienu jammontaw għal tnejn u erbgħin elf Euro (€42,000), huwa rċieva mingħand l-intimat ħlas fl-ammont ta' sebgħa u għoxrin elf, mija u ħamsa u għoxrin Euro (€27,125) biss, u għalhekk għadhom dovuti l-ammonti ta' ħdax-il elf Euro (€11,000) għal servizzi dentali fir-rigward tal-ex-mara tal-intimat, u tliet elef, tmien mija u ħamsin Euro (€3,850) fir-rigward tal-intimat innifsu. L-Ewwel Qorti ddeċidiet li mill-erbatax-il elf, tmien mija u ħamsin Euro (€14,850) pretiżi mir-rikorrent, huwa dovut biss l-ammont ta'

sebat elef, tmien mija u sebgħa u sebgħin Euro (€7,877), u dan għaliex mit-total pretiż mir-rikorrent, ġie intraċċat ħlas ta' erbgħa u tletin elf, mija u tlieta u għoxrin Euro (€34,123), konsistenti fi ħmistax-il elf Euro (€15,000) li tħallsu lil Bart Enterprises Limited, għaxart elef Euro (€10,000) li tħallsu lir-rikorrent mill-kont tal-intimat ma' Santander, elfejn Euro (€2,000) li tħallsu qabel il-11 ta' Diċembru, 2015, ħamest elef Euro (€5,000) u elfejn, mija u tlieta u għoxrin Euro (€2,123) li jidhru li tħallsu skont ma hemm imniżżel fil-*clinic charts* tal-intimat u tal-ex-mara tiegħu. L-Ewwel Qorti ddecidiet li ladarba dawn il-ħlasijiet ġew intraċċati, mit-total ta' tnejn u erbgħin elf Euro (€42,000) għad hemm dovuti biss sebat elef, tmien mija u sebgħa u sebgħin Euro (€7,877). L-Ewwel Qorti waslet għal din il-konklużjoni tagħha wara li rrimarkat b'mod negattiv dwar il-mod kif ir-rikorrent kien iżomm il-kotba u l-affarijiet finanzjarji tiegħu, u f'dan ir-rigward din il-Qorti taqbel mal-konklużjoni li waslet għaliha l-Ewwel Qorti. Għalkemm qegħdin ngħixu f'era diġitali, u minkejja li kellu jkun faċli għall-partijiet li jressqu l-aħjar provi sabiex jissostanzjaw il-pożizzjoni rispettiva tagħhom, dan baqa' ma sarx, u kien biss wara ħafna tqabbil ta' dokumenti li ġew esebiti, u wara evalwazzjoni dettaljata tax-xhieda li ngħatat quddiem l-Ewwel Qorti, li din il-Qorti setgħet tagħmel il-konstatazzjonijiet tagħha b'riferiment għall-pożizzjoni rispettiva li ħadu kull wieħed mill-partijiet.

18. Il-Qorti tibda billi tosserva li l-aktar prova rilevanti għar-rigward tal-pretensjoni tar-rikorrent tinsab fil-*clinical charts* esebiti mir-rikorrent innifsu, kemm għar-rigward tal-ħlas li għadu dovut mill-intimat, kif ukoll għar-rigward tal-ħlas li għadu dovut fir-rigward tal-ex-mara tiegħu Svitlana Al Hawary. Il-Qorti tirrileva li l-kawża tar-rikorrent hija mibnija fuq id-dokumenti esebiti minnu *a fol.* 24, 25 u 26 tal-proċess, kif ukoll fuq il-*clinical charts* tal-intimat u martu, u

I-bilanċi li jirriżultaw li għadhom dovuti min-notamenti fuq l-imsemmija *clinical charts*. Id-dokument li jindika l-ħlas ta' €15,000 lil Bart Enterprises Limited, jinsab esebit *a fol.* 24 tal-proċess, li ma jindika l-ebda data¹, filwaqt li l-*statement* bankarju esebit *a fol.* 82 jindika l-istess ħlas li sar minn Jacqueline Sandra Ann Cox lil Bart Enterprises Limited.²

19. Il-ħlas ta' €10,000, li jirriżulta li sar permezz ta' *cheque*, huwa dak indikat fid-dokumenti *a fol.* 25, 84, 86 u 87 tal-proċess, u għalhekk il-Qorti tinsab sodisfatta mill-provi miġjuba fir-rigward ta' dan il-ħlas, li jirriżulta li sar permezz ta' *online transfer* minn Santander Bank. L-Ewwel Qorti kienet sodisfatta wkoll li kien hemm ħlas separat ta' €2,000 xi żmien qabel il-11 ta' Diċembru, 2015, kif jirriżulta mid-dokumenti esebiti *a fol.* 26 u 83 tal-proċess. Anki r-rikorrent jaqbel li huwa rċieva dan il-ħlas, u fil-fatt jidher li m'hemm l-ebda kontestazzjoni fir-rigward tal-konklużjonijiet tal-Ewwel Qorti fir-rigward ta' dawn il-ħlasijiet.

20. Din il-Qorti però ma taqbilx mal-konklużjoni tal-Ewwel Qorti fir-rigward tal-ħlas ta' €5,000, li jirriżulta mid-dokument esebit *a fol.* 85, li fi kwalunkwe każ huwa biss estratt tal-*clinical chart* tal-intimat, u mhux kopja kompluta tal-istess. Mill-istess dokument jirriżulta li dawn il-€5,000, ir-rikorrent allokahom bħala ħlas akkont ta' dak dovut lil mill-intimat, minn dak li l-intimat kien ħallas lil Bart Enterprises Limited. Fil-fatt, fuq l-istess dokument jidher li għadu dovut l-ammont ta' €3,875 fir-rigward tat-trattament li ngħata l-intimat mir-rikorrent, u dan huwa l-bilanċ indikat bħala dovut fin-notamenti esebiti mir-rikorrent. Filwaqt li l-*statement* li jindika ħlas lil Bart Enterprises Limited huwa mingħajr

¹ Riprodott ukoll *a fol.* 81 tal-proċess.

² M'hemm l-ebda inidkazzjoni tad-data ta' meta sar dan il-ħlas lil Bart Enterprises Limited, għalkemm dan jidher li sar xi żmien qabel l-1 ta' Novembru, 2016.

data, għalkemm l-indikazzjoni hija li t-trasferiment sar qabel l-1 ta' Novembru, 2016, in-notament li jindika li sar ħlas ta' €5,000, iddaħħal fil-*clinical chart* tal-intimat fit-2 ta' Novembru, 2016. Notament identiku bl-istess data tat-2 ta' Novembru, 2016, huwa indikat fuq il-*clinical chart* ta' Svitlana Al Hawary, u din id-darba l-ħlas indikat huwa ta' €10,000. Ir-rikorrent spjega li huwa qasam il-€15,000 li tħallsu lil Bart Enterprises Limited, billi alloka €5,000 fuq il-kont tal-intimat u €10,000 fuq il-kont tal-ex-mara tiegħu. Għaldaqstant il-Qorti hija tal-fehma li l-€5,000 li l-Ewwel Qorti kkonkludiet li tħallsu b'riferiment għal dak li jirriżulta mid-dokument esebit *a fol. 85*, fil-fatt kienu parti mill-ħlas li sar lil Bart Enterprises Limited, u mhux xi ħlas appartu li sar mir-rikorrent. B'hekk dawn il-€5,000 li l-Ewwel Qorti kkonkludiet li tħallsu, fil-fatt jirriżulta li għadhom dovuti.

21. B'riferiment għall-ħlas ta' €2,123, li l-Ewwel Qorti kkonkludiet li sar abbażi ta' dak li jindika d-dokument esebit *a fol. 80* tal-proċess, il-Qorti tirrileva li dan huwa biss estratt minn *quotation* li ngħata l-intimat qabel beda t-trattament, għaliex it-trattament jidher li beda mid-data meta bdew jinżammu l-*clinical charts* esebiti. Ir-rikorrent fir-rikors tal-appell tiegħu, jispjega li dan huwa l-istess pagament indikat *a fol. 26* tal-proċess, u fil-fatt id-dati huma bejn wieħed u ieħor l-istess. Id-dokument *a fol. 26* jindika li l-ħlas sar qabel il-11 ta' Diċembru, 2015.

22. Ir-rikorrent esebixxa wkoll il-*clinical chart* tal-ex-mara tal-intimat, minn fejn jirriżulta li għat-trattament li ngħatat bejn Ottubru tal-2016 u Ġunju tal-2017, għad hemm pendenti il-bilanċ ta' €11,000. Il-ħlasijiet l-oħra li r-rikorrent indika li saru fuq l-istess *clinical chart*, fil-fatt mhumiex pretiżi minnu. Min-naħa l-oħra, l-intimat fix-xhieda tiegħu qal diversi drabi li huwa ħallas l-ammont ta'

€42,000 pretiżi mir-rikorrent, minkejja li xi drabi fix-xhieda tiegħu qal li qabel beda jingħata s-servizz, huwa kien ingħata *quotation* bil-prezz ta' €36,500. Il-Qorti ssibha ferm diffiċli li temmen din il-verżjoni tal-intimat, kemm għaliex huwa verosimili li li l-*clinical charts* bdew jiġu aġġornati hekk kif ir-rikorrent beda jagħti s-servizzi tiegħu, u beda jikkonstata tul iż-żmien x'tip ta' *trattament* kellhom bżonn ir-rikorrent u martu, kif ukoll għaliex minkejja li l-intimat jgħid li huwa ħallas lir-rikorrent l-ammont ta' €42,000, ma ġab l-ebda provi ta' dawn il-ħlasijiet li jgħid li għamel, u jipprova jikkonvinci li dan kien sar billi jgħid li saru ħlasijiet lil terzi, għal liema ħlasijiet iżda ma ġabx provi. Fin-nuqqas ta' provi aktar konvinċenti u fin-nuqqas ta' spjegazzjonijiet aktar plawsibbli, il-Qorti tikkonkludi li l-aggravju sollevat mir-rikorrent fir-rikors tal-appell tiegħu, għandu jintlaqa', u l-ammont dovut lir-rikorrent huwa dak li jidher fil-*clinical charts* esebiti minnu, jiġifieri t-total ta' erbatax-il elf, tmien mija u ħamsin Euro (€14,850). Ladarba l-Qorti qiegħda tilqa' dan l-aggravju, isegwi li l-aggravju sollevat mill-intimat fl-appell incidental ta' tiegħu, m'għandux jintlaqa'.

Decide

Għar-raġunijiet premeżsi, il-Qorti tiddisponi mill-appell incidental ta' l-intimat billi tiċħdu, filwaqt li tilqa' l-aggravju mressaq mir-rikorrent fl-appell tiegħu, u b'hekk tiddikjara li l-intimat huwa debitur tar-rikorrent fis-somma ta' erbatax-il elf, tmien mija u ħamsin Euro (€14,850.00), liema ħlas irid isir fi żmien ħmistax (15)-il jum mid-data ta' din is-sentenza.

L-ispejjeż ta' dawn il-proċeduri fiż-żewġ istanzi, għandhom jithallsu mill-appellat.

Moqrija.

Onor. Dr Lawrence Mintoff LL.D.
Imħallef

Rosemarie Calleja
Deputat Registratur