

Kopja Informali ta' Sentenza



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
MIRIAM HAYMAN**

Seduta tas-7 ta' Novembru, 2007

Numru. 255/2002

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR MIRIAM HAYMAN LL. D.

Case Number 255/02

Today 7th November, 2007.

**The Police
(Insp. A Mamo)
(Insp. E. M Camilleri)
(Insp. S. Zarb- Immigration Officer)**

v

FREDRIK SCHELL 57 years, son of Otto and Birgit nee' Sjunnesson born on the 18.4.44, in Stockholm Sweden and residing at PL2566 Angelbackstrand, se-26900 Bastad. In Malta residing at Warwick House Tal-Ibragg St. Andrews. Holder of Swedish Passport 12956486 personal details 440418 -1010;

The Court ,

Has seen the charges brought against the above mentioned Frederick Schell with having in these Islands, in these last years, with various acts committed at different times and which breach the same provisions of law made with one resolution:

a. Misapplied, converting to his own benefit or to the benefit of any other person, anything which has been delivered to him under a title, which implies an obligation to return such thing, or to make use thereof for a specific purpose; i.e. misapplied monies that WWW Travel TV plc collected from the employees of the same company after a monthly amount has been deducted from the employees in the form of tax due to the Government of Malta, and in order that the same amount of money collected as tax from the employees of the same company be paid to the Inland Revenue Department within the time prescribed by law which money amount to more than LM 50,000, due to the Inland Revenue Department and the Government of Malta, and which amount of money had been entrusted and/or delivered to him as Director of WWW Travel TV plc under a title which implies an obligation to return such thing and/or to make use thereof for a specific purpose, and this by reason of his profession, trade, business, management, office, or service, or in consequence of a necessary deposit and this in breach of Article 293 and 294 of Chapter 9 of the Laws of Malta.

b. In the name of the Commissioner of Inland Revenue we also accuse him of having in these Islands during these last years, in his office as Director of WWW Travel plc, with various acts committed at different at different times and made with one resolution, as an employer and/or manager, and/or principal officer and/or payer, and therefore responsible according to Section 23 (1) of the Income Tax Management Act, Chapter 372, (herein after referred to as the 'Act'), and Regulation 30 of the 1998 Regulations on the 'Final Settlement System' (FSS) (hereinafter referred to as 'The Regulations'), after having been paid income taxable under Section 4 (1) (b) and/or (d) of the Income Tax Act, (Chapter 123) in breach of the provisions hereinafter mentioned:

1. Failed to remit to the Commissioner of the Inland Revenue, within the time prescribed by law, the Tax deducted from the same income as obliged to do so under Section 23(1) of the Act and Regulation 15 (1) of the Regulations, covering the period from April 2000 till November 2001, and this with respect to the sum of sixty thousand Maltese liri (LM60,000)

2. Failed to remit to the Commissioner of Inland Revenue within the time prescribed by law, the detailed prospects according to Section 23 (2) of the Act and Regulation 15(1) of the Regulations and this with respect to the prospect/s covering the period from April 2000 till November 2001.

3. Failed to remit within the prescribed time the annual returns (the prospects, document/s) which consist of FS 3 and FS 7 forms for the year two thousand (2000).

4. For having exercised any profession or occupation or held any appointment or been employed by any other person or engaged in business without a licence from the Minister responsible for Immigration and this in breach of Section 11 (1) of Chapter 217 of the Laws Malta.

The Court is kindly requested, apart from awarding punishment prescribed by law, in the name of the

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Commissioner of Inland Revenue, to order Fredrik Schell to abide by the Income Tax Law and this in accordance with Section 23, (9) of the Income Tax Management Act.

The Court is kindly requested, apart from awarding punishment prescribed by law, to declare Fredrik Schell prohibited immigrant and to issue a removal order against him, and this in terms of Section 15 of Chapter 217 of the Laws of Malta.

Therefore, after exhibiting the Conviction Sheet as well as the Swedish passport of Fredrik Schell bearing number 12956486, we pray that this case be investigated according to law.

Has seen the charges brought against the abovementioned Frederick Schell

Seen that on examination of the accused (without the administration of the oath) he replied that he was not guilty to the charges brought against him.

In view of the charges proffered, seen also the request to prosecute issued by the Commissioner of Inland Revenue (folio 38) and

Seen also the sections of the law under which the Attorney General thought that Frederick Schell might be found guilty, that is

- (a) Section 18, 293, 294 of Chapter 9
- (b) Section 18, 23(1)(2) of Chapter 372 and 15(1), 30 of the Final Settlement System and Regulation 1998, 4(1)(b)(d) of Chapter 123 of the Laws of Malta
- (c) Section 11(1) of Chapter 217 of the Laws of Malta.

Seen also that when the abovementioned articles were read, the accused registered his non objection for the case to be decided by summary proceedings.

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Seen all the records of the case.

Heard all the submissions.

Considers

That in order to establish whether the facts produced in evidence are sufficient at law to arrive at the accused's guilt as suggested by the Prosecution, it is necessary that the evidence produced be synthesised.

Thus Michael Grech testified for the Department For Citizenship and Expatriates. Grech testified that a work permit (in view that Frederick Schell was then a director of WWW Booking Ltd.) to accused which was valid till 31st August, 2001. On the 16th February, 2001 Frederick Schell himself applied for an extension of his work permit. The application was signed by the accused as a director of the abovementioned company. The work permit was however not extended due to the fact that the department above premised did not receive a no objection from the Tax Department.

Joseph Treeby Ward, himself the Director of the Citizens Expatriates and Affairs, testified that Mr Schell's only working permit was valid till the 31st August, 2001. He explained that since no confirmation was received from the Inland Revenue Department, no extension to the working permit could be issued.

In fact such an extension was subject to the confirmation from the Inland Revenue that the applicant was compliant with the taxes due.

Be it also premised that two sets of Memoranda & Articles were exhibited in relation to WWW Travel TV Public Limited Company (Dok A) and WWW Booking Ltd. (Dok B), showing that the accused was a director and/or shareholder of the mentioned companies.

Seen also a true copy of the original of a letter sent by Dr A. Borg Cardona sent to the Commissioner of Inland

Revenue in the name of the employee therein mentioned purporting to report that said employees had the FS Tax and Social Security Contributions deducted from their wages, which deductions were not in fact paid to the Inland Revenue Department. It should be noted that said written complaint (fol 33 and 34) was written in respect of a certain Ronny Sjoelander.

It thus results from the evidence tendered by Inspector Camilleri that proceedings against the accused were initiated due to a fax transmission received from Dr A. Borg Cardona (Dok EMC already referred to above fol 28 – fol 33). The same inspector always exhibited the statement released by the accused, vide Dok FS folio 35 – 37.

As well pointed out by the Prosecution in these submissions, a representative of the Inland Revenue Department, Kitiene Camilleri gave a detailed recount of the obligations at law of an employer with regards to the tax returns and registration with reference to his employees, as also the documents (warnings) that the department would issue in case of such infringements. Such default, demand note and judicial letter in respect of Frederick Schell was sent to the accused by the department of Inland Revenue were exhibited by the witness and marked as Dok CIR 6. These were thus issued in relation of WWW Travel TV plc. The witness always testified that prior to Mr Schell becoming a director of the Company, the department recognised as such a certain Mr Forstuber.

Miss Camilleri also testified that in respect of WWW Travel Ltd. the outstanding Tax and NI Contribution due, inclusive of the penalty would amount to sixty thousand Maltese liri (Lm 60, 000). Obviously the department pretends this amount to be paid by the accused due to his position as director at the time the tax and NI were due. This estimation is worked by the department on their knowledge of the twenty five employees registered with WWW Travel Ltd.

As regards the company WWW Booking Ltd. Camilleri testified that it was the accused who had registered with the Inland Revenue Department, the application to engage employees with the said company, in this case three employees (vide Dok CIR8 folio 73).

Even with regard of this last mentioned company a default in compliance with the regulation (thus also payment) resulted and the Inland Revenue sent the premised default and demand notices and judicial letter to Mr Schell (Dok CIR9 folio 75 -79. Inclusive of the penalty, the sum due with regard to Booking Ltd. would globally amount to fifty one thousand six hundred and seventy one Maltese lira (Lm 51, 671).

Of interest in determining this case would be the evidence tendered by the employees of either or both companies abovementioned. Thus Coryse Borg testified that between February 2000 and September 2001 she was employed with WWW Travel. She recalls that she became aware around April, 2000 that their (inclusive of other employees) taxes were not being paid and she thus repeatedly asked for the FS3 to Mario Magri the company's accountant. This in vain. She recalled that her wages were previously signed by Andreas Forstuber and later by Ronnie Sjoelander. She also reiterated that it was Sjoelander who signed the FS3 and was involved with the effective day to day running of the company adding that the accused was not in the company's office as frequently as Sjoelander.

Pia Zammit was also employed at WWW Travel Ltd. She recalled the accused as being a shareholder and Director in the Company. She spoke about the fact that in May 2001 there was an electricity cut in the company, to be precise the electricity provision was suspended by Enemalta. Eventually even the telephone connections were stopped. She also recalled that initially Andreas Forstuber managed the company, later to be replaced by Sjoelander who also signed her FS3. She stated that she had no documents signed by the accused.

Jean Mark Galea was still in the employment of Travel Ltd. at the time he gave evidence. Again Mr Galea reiterated that the accused was rarely at the company and that the FS3 were signed first by Forstuber then by Sjolander. It was according to Galea the accountant who deducted the tax and N.I. contribution from his wage.

Mario Magri testified that he was the accountant of WWW Travel. His functions being general book keeping including the payroll. Asked who would authorise the payments to be issued to the employees of the company he answered Ronnie Soejlander and the board in Sweden, of which Schell was a member.

He spoke about the times where the companies, Travel and Booking were going through financial problems. He spoke that there were never enough funds to cover the net amount of wages owed let alone the national insurance contributions and the payee owed. He said in fact that this was not a question of a physical deduction of money withheld at source, what would thus have been the said contribution and tax, but just a deduction of figures on paper. In fact asked by the Court where the deducted monies had gone, he simply answered "They (with reference to money) were never there" (folio 136). "In money terms they were never there. For bookkeeping purposes it was money owed to the income tax department" (ibid).

He also testified that he had informed his superiors with regards these problems and here he mentioned specifically Ronnie Soejlander. He also recalled that he had in fact been accompanied by Sjoelander to the Income Tax Department to discuss their financial problems. In fact he stated that it was Soejlander who actually was hands on involved in the running of the company.

He also stated that he had spoken to Mr Schell in regards to the financial problems of the companies, about the financial problems as a whole. In fact he mostly communicated with the Swedish Mother Company through

e mail, so much that the Swedish company transferred funds to make up this shortage.

Of importance is the fact that Magri seemed to have entered an agreement with the Department, now knowledgeable about the lack of funds in both companies that the FS forms were still to be transmitted to Inland Revenue regardless of the fact that no monies were being paid to the said department. This situation, according to the accountant, subsisted till the companies were out of office physically due to the fact that there was no electrical service and ultimately no premises to work from as the landlord was owed over twenty five thousand Maltese liri (Lm 25,000) in rent.

Under cross examination Mr Magri also recalled that the Swedish Mother Company Ltd. transferred two hundred and fifty thousand Maltese liri, to help alleviate the companies' financial problems. However, Mr Forstuber, then the General Manager of the Companies, chose to spend such sum on equipment. He also reiterated that Mr Schell had always answered him that financial help would emanate from the Swiss Mother company.

Mr Pierre Mallia testified that together with Mr Soejlander there was a time when he was managing www Booking, this after Mr Forstuber's departure from this role. He confirmed that problems had arisen with Forstuber because of the buying of equipment and that Schell had also been involved in raising funds with the Swedish mother company to support the two companies in Malta.

Julian Esposito was an employee with www booking Ltd. She also spoke of the direct involvement Ronnie Soejlander had in the day to day management of the company stating that Schell occupied a highest level management of the company, with whom she had little contact at all. She exhibited a set of documents signed by Soejlander himself during her employment, being a letter addressed to the employees and the payee and FSS relative to her employment with Booking Ltd. (Dok JE, JE1, JE2, JE3, JE4 folio 181 - 192).

Similarly, another witness Carmelo Romano, also an employee with www Booking Ltd. also spoke of the help Schell tried to bring to the company. He also produced documents being FS3 and payees issued by the company in his regard and signed by R. Soejlander (Dok CR folio 201 -215).

The same nature of documents were presented by another witness, Trevor Axiaq also an employee of www Booking Ltd., these FS3 and payees and letters were also signed by Ronnie Soejlander (Dok TA – TA2 folio 222 – 232).

Frederick Schell chose to give evidence at length besides releasing a statement to the investigating police. In the statement he admits to being one of the directors of www Travel plc together with Mr Bodell, Mr Soejlander, Mr Forstuber (the latter having resigned).

Asked whether he was aware of the fact that the company mentioned www travel plc had deducted taxes due from the employee's wages which amount had not been paid to the Inland Revenue and that the company had failed to file the FS7 documents for the year 2001, Schell simply answered "I can't because I don't know" (folio 36). Asked whether he could explain what happened to the money deducted as aforesaid he answered "... I don't understand the question as I am not involved in the daily business" (fol 36).

He was not in position to explain what happened to the monies deducted as aforesaid. He did admit that he had been made informed of problems with the Inland Revenue Department.

Schell gave evidence as premised viva voce. In brief he explained that as from 1999 it was Forstuber who had responsibility for payments of the deducted taxes. Here he was giving evidence about www Booking Ltd. He said that as far as he was concerned there was nothing suspicious with the running of this company. However

this could not be said for the www Travel plc. As he was representing the Scandinavian mother company, Forstuber managing the Booking company in Malta had approached him with an idea to be proposed to the mother Scandinavian company. This idea was the acquisition of a TV Channel programming Travel programmes. It was because of the idea that www Travel plc was created once the Scandinavian parent company approved. Mr Schell also explained that Forstuber had insisted on being given a shareholding in the Booking Ltd. Schell also explained that in the Memorandum and Article of the Travel Ltd. there was the inclusion of a clause that shareholders had the right of first refusal. Furthermore once the company had been registered and he had re-seen the memorandum and articles he realized that this had been amended in the sense that what previously had read 75% now was amended to read 90%. This change thus gave effective control to Forstuber in the company. Here the accused was referring to Dok AC Memorandum and Articles of Travel Ltd.) (at folio 79) thereof, the highlighted part of the said document.

Asked about the monies owed, Schell answered that the Swedish Board found out that Booking Ltd. owed a substantial amount of money. Schell intervened with the mother company and the amount of 250,000 pounds was deposited with Bank of Valletta in Malta Schell said that this money sent had to be withdrawn against the signature of two directors, these were instructions the mother company issued to the Bank of Valletta. He explained that these instructions were made clear to the bank by a board resolution, exhibited as Dok FS at folio 399. The actual instructions given by the mother company to the bank with regards to the deposit were that any withdrawals were to be signed by two directors and that the managing director was not allowed to spend five thousand pounds without the consent from the others.

Realizing that Mr Forstuber was not compliant with the mother company's instructions, Mr Schell himself flew over to Malta and spoke to the bank Manager Martin Mangion. Mr Mangion had informed Mr Schell that the

latter's intervention was too late since the money was already withdrawn. It transpired was Mr Schell's investigations that Mr Forstuber had used that money for equipment intended for his TV station. Subsequent to this Forstuber was fired by two members from the Swedish board. Regardless of the Mr Forstuber retained his position on the board because of his meddling with the percentages as Mr Schell had prementioned in relation to Dok A. (Memorandum and Articles of www Travel).

Mr Schell also deposed that once he became aware of the tampering of Forstuber with the mentioned Memorandum and Articles he had consulted the legal firm of Camilleri Preziosi whose advice was the company would be stalled. He testified that he had also met Forstuber who refused to change the percentages aforementioned. As said he was fired and two other individuals were appointed Ronnie Sjoelander and Pierre Mallia. These two jointly managed the company during the period of 2000. He listed further problems created by this Forstuber person. In fact it also resulted that though Forstuber had let the mother company to believe that www Travel had a licence to broadcast, a visit to the Wireless and Telegraphy Department negated this affirmation. Forstuber had also invested Lm 100,000 in a bigger office for the company, which investment went down the drain because no MEPA permit was issued with regards to these premises.

This obviously being a short summary of the problems suffered by the company at Forstuber's hands, according to Mr Schell.

Asked when he became aware of the Inland Revenue Problem, Schell answered that this happened when on landing on the islands he was stopped by the Police. He had then called up the company and here he was informed about the pending issues with the Inland Revenue. He added that he actually became aware of the situation a few days before the police intervention, and because Sjoelander had spoken to him.

Asked directly who was responsible in his opinion for managing the company he answered Forstuber and Sjoelander. Asked who kept the monies due to the Inland Revenue he answered:

“I have no idea. The only thing I know is that we sent down and I was helping because I was in Sweden to collect money, send money, because they were asking for money and we make share issues in the mother company to raise more money to send the money down to Malta and I do not know acutally because I have never ever seen the book keeping even if I have been asking for it many times (folio 409).

About this book keeping issue he deposed that Sjoelander had ordered him to go to him if he needed to check the company's books. As it resulted during the hearing of the case, and as was evidenced by a representative of the Inland Revenue, Ludgardo Mercieca. Mr Schell had paid the amounts due to the same department with regards to www Travel plc. Asked why who had effected such payment, he replied the board of directors of the mother company because they did not want their reputation in Malta to be tainted. (vide Dok LM folio LM).

In corroboration to what Mr Schell deposed as regards Mr Forstuber's tampering of the www Travel Memorandum and Articles, Dr Henri Mizzi gave evidence and recalled a situation concerning the amendment of the memorandum and articles of www Travel and Mr Forstuber retaining a number of shares.

Dr Mizzi though not quite sure of the exact nature of the problem, due to lack of recollection, did evidence that there were negotiations with Mr Forstuber due to his shareholding. Dr Mizzi infact deposed about the contents fo Dok FS folio 455.

Another witness corroborating Mr Schell's deposition about the altered Memorandum and Articles was a certain John Bonello, a certified Public accountant and Director of Price Waterhouse Malta. Mr Bonello confirmed the fact

taht Mr Schell had sought his advice regarding an allegation that Mr Forstuber had tampered and altered the Memorandum and Articles of www Travel. As this witness recalled Mr Forstuber thus had a control over the altering of these Memorandum and Articles and was also under the impression that Forstuber had demanded money for this situation to be rectified.

Another witness corroborating part of the accused's deposition was Martin Mangion a Bank of Valletta Bank Manager, than at the time of the incident subject of his testimony, at the Msida Branch. He did recall that a substantial amount of money was transferred from Sweden, he recalled the sum to be to the amount of Lm 200,000. He recalled that this transfer was effected through a swift transfer, as also that the monies were to be disposed of as instructed by the board. He did not however recall the instructions. He did testify that Forstuber seemed to have complete control of the company as also that a substantial amount of the deposited money (circa Lm 115,000) was spent by Forstuber on equipment from Forestals. This witness also recalled that Mr Schell was upset about this occurrence.

Another witness produced by the Defence was Robert Borg also a certified accountant appointed by www Travel TV plc; Mr Schell being one of the signatories, as a Provisional Administrator of the mentioned Company for the winding down of the said company (vide Dok RB folio 443). This appointment occurred on May 2003. Mr Borg opined that the actual control of the company fell in the hands of Mr Sjoelander so much so that Sjoelander was the one to give him assurances (all be it incorrect) about the company's solvency. Asked therefore if Sjoelander was portraying a correct and proper image to the witness he answered:

"No unfortunately, I can say that at that moment when I was engaged the accounting system was inexistent. The fact of the day that I accumulated during my assignment was brought directly from third parties. So the accounting

system. I even requested the accounting system to the accountant of that time, I remember his name is Mr Mario Magri, and he never gave me a back-up of the accounting system. There was no accounting system. It's based on ifs and assumptions..." (fol 438).

Mr Robert Borg also gave evidence about a VAT refund due to Travel Ltd. This amount of Lm 45,000 was paid by the department to the company, and instead of it being used to satisfy the privileged creditors, it was paid in a separate account, and the majority thereof was taken by Mr Soejlander.

Seen also the note of submissions drawn up and filed by both parties.

Considers

The sections of the law under which the Attorney General opined that Schell is guilty are now to be considered in order to determine whether all requisites thereof have been satisfied.

The first set of offences are that of misappropriation and its aggravating circumstances under section 293 and 294 of Chapter 9 (Criminal Code).

Section 293 of the Criminal Code necessitates various requisites in order that the crime therein described subsists.

The first requisite under this section is that anything, so also money is entrusted to the agent of this crime under the pretext that such entrusted object be used for a specific purpose – the situation of an employee contracting with his employer that deductions are to be made from the payroll, at source, which deductions are to be paid to the Inland Revenue as tax and NI contributions, definitely satisfies this requisite.

The law however necessitates another requisite for this crime to be constituted, that the entrusted persons, in our

case the employer "...misapplies, converting to his own benefit or to the benefit of and other person... (section 293 Chapter 9). It is with regards to this requisite that the Court encounters certain difficulties as well pointed out by Defence Counsel.

It has been amply proved that both companies, www Travel and www Booking suffered badly from lack of liquidity. Moreover Mario Magri the accountant of Travel Ltd. was adamant and clear in his evidence in saying that the deductions of money allegedly misappropriated was just a deduction and that physically the green paper, as he aptly called it, was never physically present.

Moreover, if ever the monies were physically present, no sufficient evidence was brought forward to proof beyond reasonable doubt that Frederick Schell misapplied as above mentioned such money.

Therefore it is the opinion of this Court that Frederick Schell cannot be found guilty of the crime of misappropriation and should be duly acquitted from such charge, that is from sections 293 and 294 of Chapter 9 as aforepremisses.

The next charge brought against Frederick Schell is under Chapter 372 of the Laws of Malta and the Financial Statement System and Regulations 1998, and Chapter 123 of the Law of Malta.

It has been above evidenced by the employees to both companies that accused was not as present in the running of the companies as prosecution would want us to believe. So much so that most employees referred to Sjoelander as being the person having hands on running of the company. FS3 formulae were also exhibited signed by Mr Sjoelander. This was also evidenced by Mr Robert Borg the provisionally appointed administrator. True as the Prosecution pointed out and proved in Dok A and B that Schell was a director and shareholder in the companies in question but his knowledge of the running thereof has been proven to be very scant.

Mr Robert Borg himself, appointed administrator found difficulty in acquiring the accounts of the company (Travel in this case) from Sjoelander and was directed to speak only to Sjoelander and never to the employees. True documents (few) have been presented bearing Schell's signature but it is the opinion of the Court that the accused, was very far removed from the actual management of both companies. This becomes more evident considering that he was not even able to halt Forstuber from squandering the monies the Swedish mother company had transferred to both companies to solve any financial problems. Neither does the fact that Sjoelander pocketed a large sum of a VAT return, fully conscious of pending problems with the Inland Revenue, credit the accused with managerial control within the companies.

Clearly Frederick Schell was aware of the financial problems afflicting the companies, especially Travel Ltd. In fact he seems to be the only person qua director, and in accordance with the Swedish board who raised monies on several occasions to alleviate the financial problems. It also results that his efforts were very much in vain due to Forstuber's abovementioned intervention. However, it is the opinion of the Court that Schell's knowledge of the financial situation was not that acute since he was removed from day to day management. In fact he was never even that present at the offices premises. The synopsis of the evidence above premised clearly establishes this. It must also be kept in mind that Prosecution managed to prove that Magri the accountant and Sjoelander definitely knew about the tax problems, so much so that they had even had meetings in this regard with the Inland Revenue. Schell as one of the Directors had no involvement in these meetings, if he was even aware of them in the first place.

The Court thus in view of the above outlined is of the opinion that Frederick Schell had no effective control of the day to day management of the companies, which control would have given him effective knowledge of the

day to day mismanagement of the affairs of the company/companies as opposed to having knowledge of the broader picture of financial difficulties of the company/companies. One must also keep in mind that Schell himself testified that he became correctly aware of the declared problems close to his arrest and was so elucidated by Sjoelander himself.

The development of the above arguments are also necessary in view of article 13 of the Interpretation Act (Chapter 249 of the Laws of Malta). This section, as well pointed out by the Prosecution, places criminal responsibility of any crime committed by a juridical entity (Limited Liability Company as the case in question) on any director, manager, secretary or other official of the company, in this case Frederick Schell.

Section 13 creates in this respect a *iuris tantum* presumption in favour of the accused if he can prove that the crime was committed without his knowledge and (Court's emphasis) that the person exercised all the due diligence necessary to avoid this crime from being committed.

The Court already opined that Schell did not have sufficient knowledge of the details of the affairs of the companies in connection with the Inland Revenue Department. In satisfaction of the *iuris tantum* rebuttal favouring the accused under the Interpretation Act, Schell having knowledge of the financial difficulties, raised monies to the amount of Lm 250,000 to be transferred to the Maltese stricken company, tried to stop the squandering of such funds and ultimately also paid part of the monies owed to the Inland Revenue.

It is the opinion of the Court that the presumption was well rebutted by the evidence tendered.

Another problem which the Court had encountered under Chapter 372 of the Laws of Malta are the actual changes originally brought by the Prosecution in respect of the company *www Travel TV plc*, whereas the letter to

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prosecute issued by the Commissioner of Inland Revenue refers to the company www Booking Ltd. (article 56 of Chapter 372 of the Laws of Malta).

The Court thus acquits Frederick Schell from the charges brought against him under Chapter 372 and 123 of the Laws of Malta as also those brought against him under the Final Settlement System and Regulation 1998.

The final charge deduced as an accusation against Frederick Schell was under section 11(1) of Chapter 217 of the Laws of Malta.

Evidence has been tendered by Mr Treeby Ward himself, that accused had a valid work permit up till August 2001. Though an extension thereof was applied for by Schell under his signature, this was not issued because the Inland Revenue did not give their clearance due to the mentioned pendencies with this department.

However, Schell had a personal responsibility to ensure that he was duly licenced to act as a director, a position he was still occupying after 2001, vide his own evidence. Thus the court finds him guilty as charged under section 11 of Chapter 217 of the Laws of Malta. Seen also section 32 of the said Chapter and fines Frederick Schell the sum of five hundred Maltese liri (Lm 500).

< Sentenza Finali >

-----TMIEM-----