MALTA

# QORTI CIVILI
# PRIM' AWLA

## ONOR. IMHALLEF
## GEOFFREY VALENZIA

Seduta tas-6 ta' April, 2009

Citazzjoni Numru. 321/2007

**HSBC Bank Malta plc**
**-vs-**
**Martha Ciantar**

**Il-Qorti**

**Preliminari**

**Rat ir-rikors tas-socjeta' HSBC Bank Malta p.l.c. li bih ppremetta:**

1. Illi s-socjeta' rikorrenti toffri servizzi bankarji, fosthom dawk ta' self ta' flus;

2. Illi l-intimata hi debitrici tas-socjeta' attrici fl-ammont komplessiv ta' hmistax il-elf tmien mija u erbgha

u hamsin liri Maltin u sbatax il-centezmi (Lm15,854.17) ekwivalenti ghal sitta u tletin elf, disa' mija u tletin Ewro u tmienja u ghoxrin centezmi (€36,930.28) liema ammont huwa dovut skond garanzija personali datata 9 ta' Awissu 1999 moghtija mill-istess intimata (dokument A);

3. Illi di piu' l-intimata ffirmat ukoll kuntratt fl-atti tan-Nutar Dottor Patrick Critien datat ukoll 9 ta' Awissu 1999 fejn tat garanzija ipotekarja lil Bank rikorrent fl-ammont ta' ghoxrin elf lira maltija (Lm20,000) ekwivalenti ghal sitta u erbghin elf, hames mija u sebgha u tmenin Ewro u sitta u erbghin centezmi (€46,587.46);

4. Illi dan is-self kien ittiehed minn Tonio Ciantar bhala debitur principali fuq is-segwenti kontijiet:

(a) Lm8,134.33 in kwantu ghal Lm7,040.29 rapprezentanti sorte u in kwantu Lm1,094.04 rapprezentanti imghaxijiet legali bit-8% fis-sena mit-23 ta' Frar 2007 sad-data tal-pagament effettiv dovuti fuq *loan account* bin-numru: 044-022580-300;

(b) Lm4,971.00 in kwantu ghal Lm3,658.98 rapprezentanti sorte u in kwantu Lm1,312.02 rapprezentanti imghaxijiet legali bit-8% fis-sena mit-23 ta' Frar sad-data tal-pagament effettiv dovuti fuq *re-scheduled overdraft account* bin-numru: 044-022580-340;

(c) Lm2,748.84 in kwantu ghal Lm2,413.20 rapprezentanti sorte u in kwantu Lm335.64 rapprezentanti imghaxijiet legali bit-8% fis-sena mit-23 ta' Frar 2007 sad-data tal-pagament effettiv dovuti fuq *re-scheduled overdraft account* bin-numru: 044-022580-341;

5. Illi fil-fehma tas-socjeta' rikorrenti dan id-dejn huwa cert, dovut u likwidu, u l-intimat m'ghandux eccezzjonijiet x'jaghti f'dan ir-rigward kontra t-talbiet rikorrenti;

Illi ghalkemm interpellata sabiex thallas l-ammont dovut l-intimata ma hallsitx.

Ghaldaqstant titlob is-socjeta' attrici li din l-Onorabbli Qorti:

1. Taqta' u tiddeciedi dina l-kawza bid-dispensa tas-smiegh, ai termini tal-Artikolu 167 tal-Kap. 12 tal-Ligijiet ta' Malta;

2. Tiddikjara illi l-intimata hija d-debitrici tas-socjeta' rikorrenti fis-somma komplessiva ta' hmistax il-elf tmien mija erba' u hamsin liri Maltin u sbatax il-centezmi (Lm15,854.17);

3. Tikkundanna lill-intimata thallas lis-socjeta' attrici l-ammont ta' hmistax-il elf tmien mija erba' u hamsin liri Maltin u sbatax il-centezmi (Lm15,854.17) oltre l-imghaxijiet legali mit-23 ta' Frar 2007 liema ammont huwa dovut kif fuq spjegat:

Bl-ispejjez kontra l-intimata li hi minn issa ngunta ghas-subizzjoni. Bl-imghax ulterjuri skond il-ligi sad-data tal-pagament effettiv.

Rat id-degriet ta' dina l-Qorti tat-18 ta' April 2007 li bih kkoncediet lill-intimata d-dritt li tikkontesta l-kawza u fil-waqt li ordnat li l-kawza timxi bil-procedura normali, awtorizzat lill-intimata tipprezenta r-risposta guramentata taghha.

**Rat ir-risposta ta' Martha Ciantar a fol. 14 tal-process li permezz taghha eccepiet:**

Illi t-talbiet attrici huma nfondati fil-fatt u fid-dritt stante li l-garanzija li l-konvenuta tat lill-bank attur ghad-debitu ta' Tonio Ciantar, kien limitat biss ghall-mutwu ta' Lm20,000 minn liema mutwu fadal biss bilanc ta' Lm7,040.29. Illi dana jirrizulta wkoll min-negozjati u l-ftehim bejn il-partijiet liema ftehim gie formalizzat f'att pubbliku, fl-atti tan-Nutar Patrick Critien, tad-9 t'Awissu 1999, gia' esebit mill-atturi bhala Dok. B.

Illi fil-fatt l-istess konvenuta bagghtet toffri li thallas is-somma ta' Lm7,040.29 izda l-bank attur ried, illegalment u abbuzivament, japproprja dan il-hlas kontra debiti li ghalihom il-konvenuta ma hijiex responsabbli ghall-imghaxijiet, jew l-ispejjez ta’ din il-procedura.

Illi fil-fatt id-debiti l-ohra msemmija fir-rikors huma debiti li l-konvenuta m’ghandhiex x’taqsam maghhom u li kienu gia’ ezistenti meta l-konvenuta dahlet f’relazzjoni guridika mal-bank, u li meta sar il-ftehim bejn il-partijiet ma sar l-ebda accenn ghalihom.

Illi in vista tas-suespost it-talbiet attrici ghandhom jigu michuda bl-eccezzjoni tal-hlas tas-somma ta’ Lm7040.29 li l-konvenuta gia’ offriet li thallas.

Rat l-atti kollha tal-kawza u d-dokumenti ezibiti ;

Semghet ix-xhieda bil-gurament ;

Rat in-noti tal-partijiet ;

**Kontestazzjoni**

L-intimata qed issostni li l-garanzija li hija tat lill-bank ghad-debitu ta’ Tonio Ciantar kienet limitata ghall-*loan* ta’ Lm20,000 biss li minnhom fadal bilanc ta’ Lm7,040.29. Tonio Ciantar jghid li kienipprova jhallas dana l-ammont lill-Bank izda l-bank ried jappropprja dan il-hlas kontra l-bilanc li kien dovut fuq *overdrafts* ohra li kellu mal-bank.  L-intimata issottomettiet li hija ma ggarantitx dawn l-*overdrafts* billi dawn kienu ezistenti qabel ma hija ffirmat il-garanzia lill-bank.

Il-bank rikorrent jirritjeni li garanzija mal-*loan account* (ara fol 4) hija *for the whole amount due or owing to you or which may hereafter at any time become due or owing to you.* Skond ir-rikorrenti dan il-kliem hu vast hafna u jkopri anke l-ammonti dovuti minn Tonio Ciantar fuq l-*overdrafts*, anke dawk li kienu pre-ezistenti ghal meta l-intimata ghamlet il-garanzija. Il-Bank jirritjeni li intimata ma tistax igib bhala difiza l-fatt li ma kienitx taf li Tonio Ciantar kellu dejn iehor mal-bank billi kien l-obbligu ta' Tonio Ciantar li jinfurmaha b'dana u mhux il-bank.

**Konsiderazzjonijiet**

Fil-kaz in ezami l-Qorti trid tiddeciedi jekk l-intimata bil-garanzija li ffirmat kelliex taghmel tajjeb ghall-*loan* biss jew ghall-*overdrafts* ta' Tonio Ciantar ukoll.

Illi f'dina l-kawza xehed Keith Cilia, manager mas-socjeta' rikorrenti, u qal li Tonio Ciantar ma ghamel ebda offerta' biex ihallas il-balanc ta' Lm7000 li fadal u lanqas m'ghandu fil-file, record li qatt saret dina l-offerta'. Hu jghid li Martha Ciantar ghamlet tajjeb ghad-dejn kollu ta' Tonio Ciantar billi l-garanzija li ghamlet kienet wahda generali u ma hi marbuta ma ebda kont partikolari ghax hija *a continuing security* li taghmel tajjeb ghall-*loan* u *overdrafts*. Illum hemm tlett *loans* ghax l-overdrafts gew konvertiti f'*loans*. Fuq l-*overdrafts* ma kienx hemm *security* ta' *third party* u Martha Ciantar dahlet f'relazzjoni mal-bank meta ffirmat ghall-*loan* ta' Lm 20,000.

Anthony Cuschieri li kien il-manager responsabbili meta nghatat il-*loan* ta' Lm20,000 lill-Tonio Ciantar meta gie mistoqsi jekk kienx spjega lill Tonio Ciantar (jew lill-Martha Ciantar) li l-garanzija kienu se juzawha ghall affarijiet ohra wkoll barra l-*loan*, wiegeb li ma jahsibx li qatt gie d-diskors u ma gietx is-sitwazzjonji fejn kellu jispjegalu l-mod u manjiera tal-kundizzjonijiet tal-garanzija. Mistoqsi jekk il-bzonn tal-garanzija ta' l-intimata qamx meta Tonio Ciantar kien ser jiehu din il-*loan* partikolari ta' Lm20,000, hu wiegeb "*As far as I am concerned ghax jien hrigtlu l-loan, Iva*." (Fol 97). Qal ukoll li ma jiftakarx ghal x'hiex inghata dana l-loan, jekk hux biex jigu konsolidati l-bilanci.

Martha Ciantar xehdet li hi ghamlet il-garanzija ghall-Lm20,000 u hadd ma kien kellimha fuq xi djun ohra ta' Tonio Ciantar jew li kellha taghmel tajjeb ghalihom hi.

Tonio Ciantar xehed li hu kellu *overdrafts* mad-Sliema branch tal-HSBC u ghal dan l-*overdrafts* ma kienx hemm garanzija jew *security*. Imbaghad kien ha l-*loan* ta'

Lm20,000 bil-garanzija ta’ Martha Ciantar. Wara xi zmien il-Bank qabad l-*overdrafts* tieghu u dawarhom f’loans u hu ntalab jaghmel zewg pagamenti, wahda ghall kull *loan*. Kien talab il-bank biex ikun jista’ jhallas l-ewwel il-loan garantita minn Martha Ciantar imbaghad ihallas il-*loans* l-ohra tieghu li ma kienux hekk garantiti izda l-bank ma accettax ghax ried s-*security* ta’ Martha Ciantar.

Illi jirrizulta mid-dokument ezibit a fol 4, li hi garanzija ffirmata mill-intimata, li dina hija ***a continuing security*** *for the whole amount now due or owing to you (*lill-bank) *or which may hereafter at any time become due.*

Din it-tip ta’ *continuing security* gie spjegat b’dan il-mod:

“*A guarantee may relate to one or more specific transactions or it may be framed to apply to a series of indefinite transactions. Guarantees which extend to a single transaction are often called “discrete” or “specific” guarantees, while guarantees extending to a series of transactions are called “continuing guarantees”. The nature of the guarantee depends upon the intention of the parties as evidenced by a variety of considerations, such as the language which they have used in framing the guarantee. When the wording of a particular guarantee is ambiguous <u>(and only in such cases)</u> reference may be made to the surrounding circumstances in which the surety was made*”. (The Law of Guarantee. Kevin Patrick McGuinness).

Royston Miles Goode fil-ktieb tieghu Legal problems of credit and security jispjega dina l-*continuing security* hekk:

“*Just as personal security, such as a guarantee, may be given either for a specific advance, so that it terminates on repayment, or as a continuing guarantee, which covers the ultimate debit balance due on closure of the account between debtor and creditor and is not satisfied by any intermediate payment, so also real security, such as mortgage or charge, may secure a specific debt or be a continuing security for an ultimate debit balance. The* *latter is the common situation where the credit extended to the principal debtor is revolving credit, such as a bank overdraft. While the quantum of the security can never exceed what is due to the bank at any particular time, the security is not discharged merely because the debit balance is reduced to zero or the account goes into credit. This form of credit is a continuing facility, the debtor being free to draw on it as and when he chooses within the terms of the facility, not fixed-sum credit, which is granted at the outset for a specific amount and is discharged when that amount is paid. Security for a continuing facility itself continues at least until such time as the facility is ended and the debtor's ultimate obligation is discharged*".

Illi fil-kaz in ezami l-*loan* li ghamlet tajjeb ghaliha l-intimata kienet ghall Lm20,000 u dana l-ammont qatt ma setgha jinqabez, izda l-garanzija li tat kienet wahda li kellha tkompli sakemm Tonio Ciantar ihallas id-dejn li kellu pendenti mal-bank. L-ammont tal-garanzija pero' ma setghax jeccedi l-Lm20,000. Is-*security* kellha tibqa' sakemm tispicca l-facilita' bankarja. Il-Bank ta l-*loan* ta' Lm20,000 izda ried *security* li tkopri l-*overdrafts* li Tonio Ciantar kellu.

Kif jghid McGuinenness « *It is not uncommon for a surety to stipulate that his liability will not exceed a certain amount. A limitation upon the amount for which a surety may be held liable does not necessarily mean that the guarantee is not of a continuing nature* ».

Ghalhekk il-bank setgha japproprja l-pagamenti li saru minn Tonio Ciantar biex l-ewwel jaqta' l-*loans* antiki u wara japproprja fuq il-kont l-iehor li kienet qed taghmel tajjeb ghalih l-intimata.

Veru li l-*guarantee form* u l-kuntratt tal-*loan* tat 9 ta' Awissu 1999 ghal Lm20,000 gew iffirmati flimkien izda r-referenza ghall-kuntratt hija ghall-ammont garantit mhux ghas-*security* li giet indikata bhala *continuing*. Fil-garanzija hemm imsemmi x'tip ta' garanzija kienet qed tiffirma Martha Ciantar. Keith Cilia spjega li din kienet tkopri anke l-ammonti dovuti qabel minn Tonio Ciantar.

Jinghad ukoll li “*Sureties are well-adivised to make it clear that their guarantees are limited to a specific transaction, if that is in fact their intention*”. (The Law of Guarantee. Kevin Patrick McGuinness. pagna 159).

Ghalhekk dwar il-fatt li skond l-intimata hadd ma spjegalha x’kienet timplika l-garanzija li hija ffirmat, il-Qorti tirrileva li kien jinkombi lil intimata li tkun taf x’qed tiffirma u lill-Tonio Ciantar li jispjegalha li hu kellu dejn iehor mal-bank. Jekk l-intimata ma apprezzatx l-import legali ta’ dak li ffirmat, it-tort ma hu ta' hadd hlief taghha stess, ghax qabdet u ffirmat dokument ta' piz legali mhux zghir, minghajr ma hadet parir professjonali dwar l-effetti tieghu. Dan il-fatt mhux raguni wahdu ghat-thassir tal-garanzija. Fil-kawza Borg noe v. Grima noe et, deciza mill-Qorti tal-Kummerc fit-3 ta' Gunju 1994, il-konvenut kien allega li mhux marbut b'garanzija solidali ghad-dejn li nghata lill-konvenut l-iehor, ghax meta ffirma l-iskrittura relattiva kien taht "l-impressjoni" li kien qed jiffirma dokument iehor. Il-Qorti, pero` ma accettatx dan l-argument ghax qalet li, f'kull kaz, zball irid ikun skuzabbli, u jekk hu veru li haseb hekk, "jibqa' li kien traskurat ghax iffirma minghajr ma qara l-karta jew talab li tigi spjegata lilu."

Illi ghalhekk l-ammont mitlub fir-rikors huwa dovut. Ma giex pruvat sodisfacentement mill-intimata li kienet saret xi offerta ta’ hlas ta’ Lm7,040.29 lill-Bank u lanqas ma gew prodotti bhala xhieda l-persuni li suppost ghamlu dina l-offerta ghan-nom ta’ Tonio Ciantar. Lanqas ma jirrizulta li l-flus offerti gew depozitati l-Qorti.

Dwar il-kwantum ta’ l-ammont mitlub ma jirrizultax li hemm xi kontestazzjoni.

**Decizjoni**

Ghal dawn il-motivi
Il-Qorti tiddeciedi billi
Tiddikjara illi l-intimata hija d-debitrici tas-socjeta’ rikorrenti fis-somma komplessiva ta’ sitta u tletin elf disgha mija u tletin Ewro u tmienja u ghoxrin ewro centezmu (Ewro

36,930.28) ekwivalenti ghall-hmistax il-elf tmien mija erba' u hamsin liri Maltin u sbatax il-centezmi (Lm15,854.17);
Tikkundanna lill-intimata thallas lis-socjeta' attrici l-ammont ta' sitta u tletin elf disgha mija u tletin Ewro u tmienja u ghoxrin ewro centezmu (Ewro 36,930.28) oltre l-imghaxijiet legali mit-23 ta' Frar 2007 sad-data tal-pagament effettiv.

Bl-ispejjez kontra l-intimata.

**< Sentenza Finali >**

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