MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
GEOFFREY VALENZIA

Seduta ta' l-20 ta' April, 2009

Citazzjoni Numru. 9/2008

Susan M. Waitt
-vs-
Peter B. Lloyd u Deborah Marshall Warren

Il-Qorti

Preliminari

Rat ir-rikors mahluf ta' Susan M. Waitt li permezz tieghu tesponi:

Illi l-attrici hija kreditrici tal-konvenuti fis-somma ta' tlieta u erbghin elf u wiehed u sebghin lira u sittin centezmu (Lm43,071.60) jew sebghin elf sterlina (£70,000) rapprezentanti din is-somma self maghmul mill-attrici lill-konvenut;

Illi l-konvenut baqa' ma hallasx din is-somma;

Illi l-attrici talbet u ottjeniet provizorjament il-hrug ta' Mandat ta' Inibizzjoni numru 1876/07 kontra l-konvenut sabiex jigi inibit milli jittrasferixxi jew jiddisponi *inter vivos* sew b'titolu oneruz jew gratwitu il-proprjetajiet 9 11, St Angelo Mansions, Fort St Angelo, Vittoriosa, 9 21 St Angelo's Mansions, Fort St Angelo, Vittoriosa u 14/15 Biccieni Alley, Zabbar sabiex tikkawtela l-kreditu hawn fuq imsemmi kontra l-konvenut;

Illi jezistu l-elementi kollha rikjesti mill-ligi a tenur tad-dispozizzjonijiet ta' l-artikoli 167 sa 170 tal-Kodici ta' Procedura Civili stante illi d-dejn hawn fuq indikat huwa cert, likwidu u dovut u fil-fehma tal-attrici l-konvenut ma ghandu ebda eccezzjoni xi jressaq kontra t-talba ghall-hlas ta' l-imsemmi ammont u l-attrici qed tannetti wkoll ma' dan l-att, affidavit immarkat Dok. A a tenur ta' l-imsemmija artikoli tal-Kodici tal-Procedura Civili;

Ghaldaqstant l-attrici titlob bir-rispett lil dina l-Onorabbli Qorti joghgobha:

1) Tiddeciedi skond it-talba bid-dispensa tas-smigh tal-kawza a tenur ta' l-artikoli 167 sa 170 tal-Kodici tal-Procedura Civili;

2) Tikkundanna lill-konvenut ihallas lill-attrici s-somma ta' tlieta u erbghin elf u wiehed u sebghin Lira u sittin centezmu (Lm43,071.60) jew sebghin elf Sterlina (£70,000) rapprezentanti din is-somma self maghmul mill-attrici lill-konvenut;
Bl-ispejjez kontra l-konvenut inkluz tal-Mandat ta' Inibizzjoni numru 1876/07, minn issa ngunt in subizzjoni.
B'digriet ta' dina l-Qorti gie koncess lill-intimati d-dritt li jikkontestaw l-kawza u fil-waqt li ordnat li l-kawza timxi bil-procedura normali, awtorizzat lill-intimati jipprezentaw ir-risposta guramentata taghhom.

Rat ir-risposta mahlufa ta' Peter B. Lloyd et. a fol. 10 tal-process li permezz taghha jesponu:
1. Illi in linea preliminarja n-nullita tar-rikors promotur stante li ma tissodisfax ir-rekwiziti stabbiliti mill-Artikolu 156 tal-Kapitolu 12 tal-Ligijiet ta' Malta;

2. Illi, in linea preliminari u ghal dak li jirrigwardja unikament lill-eccipjent Deborah Marshall Warren, hija tecepixxi li hija ghandha tigi lliberata mill-osservanza tal-gudizzju u dana stante illi l-eccipjenti qatt ma kellha relazzjoni ta' kwalsiasi natura ma' l-attrici, u illi l-attrici ma ghandha l-ebda dritt ta' azzjoni kontra taghha;
3. Illi, fil-meritu l-konvenuti mhumiex krediturі tal-attrici fis-somma ta' tlieta u erbghin elf u wiehed u sebghin Lira Maltin u sittin centezmu (Lm43,071.60) jew sebghin elf Sterlina (£70,000) kif qed jigi allegat fir-rikors promotur;
4. Illi bla pregudizzju ghal-eccezzjonijiet suesposti, kwalsiasi ammont dovut mill-konvenuti jew min minnhom mhuwiex dovut ghal issa izda huwa dovut mal-bejgh ta' proprjeta' li tappartjeni lill-konvenuti;
5. Illi t-talbiet attrici huma nfondati fil-fatt u fid-dritt;
6. Salv eccezzjonijiet ulterjuri.

Preliminary observations

As both parties are English speaking persons the Court conducted the proceedings in the English Language.
The first plea raised by respondent was rejected by the Court in its judgment of the 14th April 2008[1].
The Court also ordered the attachment of the act of the warrant of prohibitory injunction which was obtained by applicant against respondents[2].

Defences

Respondent Deborah Marshall Warren has pleaded that there is no juridical relation with applicant and therefore applicant has no right of action against her. Whenever a party raises such a plea it is that party who raised such plea that has to prove that there is no juridical relationship between them.[3]

Respondent Marshall Warren submits that she did not know of Mrs. Waitt's loan until after it had been made, nor did she know of the loan agreement. However in her evidence she stated that her husband had informed her that he had obtained a short-term loan from Mrs. Waitt to

[1] Page 42.
[2] Page 18.
[3] App. Bartolo vs McEwen 28th November 2008.

enable them to make the second 10% deposit on their new home at St. Pancras in London.

According to law, the ordinary administration of the acquests and the right to sue or to be sued in respect of such ordinary administration vest in either spouse[4]. On the other hand, the right to exercise acts of extraordinary administration, and the right to sue or be sued in respect of such acts, vest in the two spouses jointly. Examples of acts of extraordinary administration are the following: (*a*) acts whereby real rights over immovable property are acquired, constituted or alienated; (*f*) borrowing or lending of money, other than the deposit of money in an account with a bank[5].

It is provided in our law[6] that normal acts of management of a trade, business or profession exercised by one of the spouses, shall vest only in the spouse actually exercising such trade, business or profession even where those acts, had they not been made in relation to that trade, business or profession, would have constituted extraordinary administration. But in those acts which require the consent of both spouses but which are performed by one spouse without the consent of the other spouse, these may be annulled at the request of the latter spouse where such acts relate to the alienation or constitution of a real or personal right over immovable property[7] and an action for such annulment may only be instituted by the spouse whose consent was required within the peremptory term of three years.

In the present case respondent Deborah Marshall Warren was aware of the transaction being carried out by her husband and she did nothing to annul this transaction. On the contrary she ratified it so much so that she states in her evidence that she made the first repayment when she obtained the mortgage money on their house in Zabbar. Therefore this plea is being rejected.

[4] Section 1322 Chapter 16.
[5] Section 1322 Chapter 16.
[6] Section 1324 Chapter 16.
[7] Section 1326.

Contestation

Respondent Peter Lloyd claims that he has never denied that there is an amount due to applicant but not in the amount being claimed. He is not contesting the fact that he was given a loan by applicant, but he is claiming that there was a loan agreement and that the repayment was subject to various conditions. He also submits that he paid applicant substantial amounts of money for her personal use and other sums, which were due to her, were invested on her instructions into a joint business venture.

In her evidence applicant states that in March 2007 she agreed to make a loan of £70,000[8] to respondent Peter Lloyd on condition that the loan had to be repaid in two installments, the first being for 50% of the loan value. She insists that the loan agreement presented in Court by respondent was not signed by her, though she agrees that she transferred the money when she received that agreement from respondent. This she did only after much pressuring from him to lend him the money which he needed as a deposit on the house in London[9]. According to applicant she accepted to give him the loan because respondent promised her that he would divorce his wife and would live with her. She claims that this was a personal loan made to respondent in order to buy the property in London and was not meant for his business. She contends that respondent has not made any repayments on this loan and the whole amount is still due. As to the money Lloyd says that he paid to her divorce lawyer, applicant says that this was all in his concern and was paid out of her money.

Respondent Peter Lloyd (Deborah Marshall Warren repeats what he says) is contending that he repaid one half of the loan and the other half is not yet due according to the loan agreement. He states that according to this agreement half of the money had to be repaid as soon as he received the mortgage funds on the house in Zabbar, and the other half was to be repaid after he sold the same property. The first installment of £34,250 was made

[8] Dollars 140,000 see page 27 and the affidavit of W. Hinckley Waitt on page 28.
[9] See Email dated 19th February 2007 on page 32.

available to Mrs. Waitt in April 2007. He says that on her instructions some of the money was transferred to her account in the U.S.A., some of it was used to pay her personal bills; some of it was spent by her with a credit card that he gave her, and the rest, the bulk of £26,000 was invested under her instructions in their joint business, the Metageum conference. Therefore, about £8392.76[10] were used by applicant for her personal use, and £26,000 were invested in the conference. Respondent claims that applicant gave her consent to the use of her money for all these expenses which were incurred during the period 30th May to 8th November 2007[11]. The total identified costs of running and promoting the conference amounted to £53,000.77 of which £25,857.27 were spent using Mrs. Waitt's money. Respondent contends that applicant had a significant role in the conference and was an investor in it. She understood that her money was being held by him not as a personal loan, but on her behalf and to be used as working capital invested in the business that she half-owned. The conference, however, made a large loss, and nothing remained to be paid to Mrs. Waitt out of the 1st installment. As regards the second installment, he states that this will be paid when the property in Zabbar is sold.

Considers

Respondent Peter Lloyd has not denied that there is an amount due to applicant but not in the amount being claimed. He claims that applicant invested the money in a speculative business venture and now, that their relationship has ended and the business venture has failed she is trying to recover her investment.

Though respondent Lloyd does not mention anything in his affidavit and evidence in Court, the Court has to point out that the relationship between applicant and respondent Lloyd was not just a business relationship but there was also a love affair going on between them which underlined their dealings and accounts for certain transactions which otherwise would be hard to understand. The money lent by applicant as a deposit on the house in London was made in this context and on

[10] Page 60.

[11] Lloyd says that these figures are incomplete because the laptop containing all the information was taken by Mrs.Waitt and is still in her possession.

applicant obtaining divorce from her husband and funds from him to finance her new relationship with respondent Lloyd, her lover, who promised her that he would leave his wife and go to live with her[12].

There is no contestation that applicant actually gave respondent £70,000[13]. There is no contestation also that the loan agreement presented in Court by Lloyd was not signed by applicant so that according to law she is not bound by it. Neither can it be said that applicant tacitly consented to this agreement because she is contesting several conditions mentioned in the agreement. However, it results from the evidence produced that applicant sent the money after she received a copy of this loan and consultancy agreement prepared by respondent Lloyd.

It is to be noted that according to applicant's evidence the loan was given by her despite advice given to her to the contrary[14]. However, the Court here observes again that it was in the context of their love relationship that applicant accepted to give respondent the money with very few guarantees that she would get her money back. It is to be noted that the loan was to be paid back interest free. The first installment had to be repaid once respondents got their mortgage funds. These were obtained in April 2007. Respondents are claiming that the first installment was in fact paid back. Deborah Marshall Warren testified that she gave the mortgage funds to her husband to pass them on to applicant, however later she got to know that her husband did not pass this installment to applicant[15] and instead told her that he had instructions from applicant to keep this installment and money for her and to manage it on her behalf. Applicant denies that she ever gave such instructions and insists that she never received this installment. In fact respondent Lloyd did not exhibit any documentary evidence, amidst the volume of documents that he produced, showing the instructions he is supposed to have received to keep applicant's money and use them in the way he did, and invest them in the business

[12] See emails on page 116 Doc. 11; page 118 Doc. 12.
[13] The loan was of 140,000 dollars see Doc. 17 on page 125.
[14] See Doc. 12 page 118.
[15] Deborrah Marshall Warren is supposed not to have known what was going on between her husband and applicant.

venture. There is no indication and no mention, either verbally or in writing, that he had informed applicant that he was going to use the first repayment for her personal use and to invest it on her behalf.
Respondent Lloyd presented in Court various receipts for expenses (e.g. air tickets, hotel accommodation, taxis, etc., paid by him supposedly on behalf of applicant for her personal needs. In all, about £8,392.76[16] . He says that he spent the money on her instructions, however, from the evidence produced it does not appear that respondent had informed applicant that he was using the money which represented the repayment of the first installment. It is to be noted also that respondent himself benefited from these expenses e.g. travelling with applicant, staying in the hotel with her. These were expenses made in respondent's name in the context of his affair with applicant which expenses the Court decides that he cannot claim back. Moreover, if respondent is pretending that these expenses have to be deducted or set off with any amount due by him, this is not possible because according to law for set off to take place the amount claimed must not be in contestation[17]. Moreover, In the present case respondent has made no counter-claim for these amounts[18]. Applicant has always insisted that these expenses did not form part of the loan repayment.

Respondent is also claiming that the rest of the first installment, that is, the sum of £26,000 was invested under applicant's instructions, in their joint business, that is, the Metageum conference. However no document has been forthcoming showing any specific instructions by applicant for the loan repayment to be made use of in this manner. There is no evidence indicating that applicant gave her specific consent to this investment. Nor is there any evidence verbally or in writing indicating that respondent Lloyd had informed applicant that he was going to use the first repayment as an investment in the conference. Moreover the Court has already decided that the loan agreement which he presented in Court is not

[16] Page 60.
[17] Section 1197 Chapter 16.
[18] Respondent Lloyd is claiming £8,392.76 in this regard. See page 60.

binding on applicant as it was not signed by her. All the payments exhibited by respondent with regard to this conference were made in his name, and applicant's name does not appear anywhere. Moreover in the email exhibited on page 44 sent in October 2007, almost at the end of the conference, respondent is admitting that he still owes applicant £70,000 therefore this means that the expenses he had made before October 2007 with regard to applicant's personal needs, the conference and the company Metatopia (Malta) Limited were not part of the loan money or repayment of the first installment as otherwise he would have certainly deducted these expenses and would not have stated that he owed applicant £70,000. Respondent has not contested the contents of this email.

Respondent is claiming the payment made by him for the formation of the company Metatopia (Malta) Limited which was co-owned by himself and applicant. From the evidence it does not result that applicant was involved in the formation of the company or that she consented to her money being used for the benefit of this company. It is true that applicant was a shareholder in this company but it has not been proved that she had to pay for these shares from her loan money. In fact Dr. L. Cachia Caruana gave evidence in the sense that the money was paid by respondent and the personal loan of 140,000 dollars was not mentioned in connection with this company. There is also no evidence that respondent informed applicant that he was going to use her money for the formation of the company.

Respondent also mentions the fact that the repayment of the first installment was made available to applicant in April 2007 and she only asked for this money when their relationship ended. The Court is prone to accept the applicant version that the money was not claimed before because of the relationship between them and the fact that the loan money was intended for the purchase of the house in St. Pancras intended as the place where she and respondent were meant to live after respondent divorced his wife. However, the truth is that up till October

2007 respondent was still admitting that he owed her £70,000 and that he had paid nothing back.

As regards the claim by respondent that the second installment is not due before he sells the house in Zabbar, the Court cannot accept this argument because respondent is admitting that he owes her £70,000 and also because the loan agreement is not binding on applicant.

The Court is of the opinion that from the £70,000, the sum of $3000 for divorce lawyer's fees paid by respondent Lloyd, has to be deducted first of all because this amount has been admitted by applicant, and secondly because it was mainly in applicant's interest that the amount was paid.

Respondents mention in their defense[19] the arbitration clause which is included in the loan agreement, however, as the Court has already decided that this loan agreement is not binding on applicant, therefore this clause is not applicable. Moreover, no plea was raised in this sense and from the note mentioned it does not emerge clearly whether respondents are actually accepting or contesting to the jurisdiction of this Court. This plea was never mentioned by respondents during the proceedings, and they always accepted the fact that their case be tried by this Court.

Decision

For these reasons the Court decides that applicant's demands are justified;

Therefore the Court condemns respondents to pay applicant the sum of $137,000 or their equivalent in Ewro[20] in the amount of 93,026.41.

With costs against respondents

Interest is due from date of filing of the present case.

[19] See their note of submissions.

[20] Value of Euro against Sterling and Dollar against Sterling at the time of filing of this case – 4th January 2008. Rate of Exchange Dollar to Euro 1.4727; Sterling to Euro 0.74495.

It is to be noted that in the Email on page 44 respondent admits that he owes applicant £70,000 (sterling).

< Sentenza Finali >

----------TMIEM----------