MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) GURISDIZZJONI SUPERJURI

MAGISTRAT DR. ANTHONY ELLUL

Seduta tas-26 ta' Mejju, 2009

Citazzjoni Numru. 32/2009

Joseph u Evangelista sive Marisa Grech

Vs

Hunky Dory Limited

Permezz ta’ din il-kawza l-atturi qeghdin jitolbu:-

1. Dikjarazzjoni li s-socjeta konvenuta hi debitrici taghhom fis-somma ta’ erbgha u tletin elf u ghaxar ewro u sebgha centezmi (€34,010.07), rapprezentanti hlas ta’ kera u telf ta’ kera ghall-perjodu ta’ sentejn.
2. Tikkundanna lis-socjeta konvenuta thallas l-imsemmi ammont.

Dan wara li l-atturi ppremettew li permezz ta’ skrittura privata tat-8 ta’ Gunju 2007 kienu krew il-fond Café Roma, Triq Fortunato Mizzi, Victoria lis-socjeta konvenuta versu kera ta’ sitta u erbghin ewro u disgha u hamsin centezmu

(€46.59) kuljum. Skond l-istess ftehim il-perjodu lokatizju kien ta’ sena *di fermo* u sentejn *di rispetto*. Min-naha taghha s-socjeta konvenuta kienet accettat li tidhol ghat-tieni perjodu ta’ kera, izda wara xi zmien inghalaq in-negozju.

Is-socjeta konvenuta ghalkemm jidher li giet notifikata bl-atti fl-ufficcju registrat u l-atturi ddikjaraw li huma sodisfatti li s-socjeta konvenuta giet notifikata skond id-disposizzjonijiet li nsibu fil-Kap. 12 tal-Ligijiet ta’ Malta, baqghet ma deheritx sabiex tikkontesta t-talba. Fir-realta’ rrizulta li wiehed mid-diretturi (Raymond Leon Rose) kien irrizenja u d-direttrici l-ohra hi assenti minn Malta.

Skond klawzola 4 tal-kuntratt ta’ lokazzjoni li jgieb id-data tat-8 ta’ Gunju 2007 (fol. 6):

“The lease shall be valid for a period of five years from the date of commencement thereof. The period of the first one year shall be di fermo and the remaining four years shall be di rispetto. Grantee shall be entitled to dissolve and terminate the lease upon the expiry of the first year and third year, without incurring any penalties or liabilities, provided that it gives three months prior written notice to the grantors of its intention to do so. Should such notice not be given in the period herein mentioned, the lease shall be considered to have been automatically renewed for the next two year period.”.

Hu evidenti li l-atturi qeghdin jitolbu l-hlas ghat-tieni u tielet sena tal-kera in kwantu jsostnu li ma nghatax l-avviz skond klawzola 4 tal-ftehim li l-kumpannija ma kenitx behsiebha tkompli fil-kirja. Raymond Leon Rose, li kien direttur tal-kumpannija konvenuta, xehed: *“I confirm that clause four (4) was explained to me in the sense that if I did not give a written notice (of) three (3) months prio to the expiry of the first year or of the third (3rd) year, the lease would continue to run and the defendant company would be bound by the contractual obligations.”* (fol. 44). Ikkonferma wkoll li c-cwievet tal-fond inghataw f’Ottubru 2007 u li hu qatt ma ta avviz lill-atturi kif hemm kontemplat fi klawzola 4 tal-ftehim. Zied ighid li hu kien irrizenja mill-

kariga ta' direttur fil-5 ta' Dicembru 2007 u li fil-5 ta' Novembru 2008 inghalaq ir-restaurant. Data meta vvaka minn gewwa l-fond.

Mill-provi rrizulta li wara l-ewwel sena l-post baqa' fil-pussess tas-socjeta konvenuta u li l-atturi qatt ma nghataw avviz bil-miktub li l-inkwilina qeghda taghzel li ma tkomplix bil-kirja. Sussegwentement il-fond gie abbandunat u sahansitra Raymond Rose iddepozita c-cwievet tal-fond taht l-awtorita' tal-qorti wara li rcieva ittra legali datata 4 ta' Novembru 2008 mibghuta ghan-nom ta' Tami Theuma (id-direttrici l-ohra). Hu evidenti li l-kumpannija konvenut waqfet topera u m'hemmx dubju li qeghda fi stat ta' insolvenza. Billi ma nghatax l-avviz li s-socjeta konvenuta mhux ser tkompli bil-perjodu *di rispetto*, avviz li kellu jinghata tlett xhur qabel tibda t-tieni sena, il-kumpannija konvenuta intrabet ghat-tieni u tielet sena in forza tal-ftehim lokatizju. Ghalhekk jidher li l-pretensjoni tal-atturi hi gustifikata.

Ghal dawn il-motivi l-qorti qeghda taqta' u tiddeciedi l-kawza billi tilqa' t-talbiet tal-atturi u tikkundanna lis-socjeta konvenuta thallas is-somma ta' erbgha u tletin elf u ghaxar ewro u sebgha centezmi (€34,010.07) konsistenti f'kera dovuta u telf ta' kera ghall-perjodu ta' sentejn, bl-imghax skond il-ligi. Spejjez a karigu tas-socjeta konvenuta.

< Sentenza Finali >

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