MALTA

QORTI TA' L-APPELL

ONOR. IMHALLEF
PHILIP SCIBERRAS

Seduta tas-26 ta' Frar, 2010

Appell Civili Numru. 23/2009

Alfred Vella

vs

AX Construction Limited u
General Precast Construction Limited

Il-Qorti,

Fil-15 ta' Settembru, 2009, l-Arbitru fic-Centru Malti ta' l-Arbitragg ippronunzja s-segwenti lodo fl-ismijiet premessi:-

> **"*Preliminary***
>
> *The claims made by Alfred Vella against AX Construction Ltd as per Arbitration Agreement dated 10 August 2004, amount to Lm 41,254.87 and were made up as follows:*

a) an amount of Lm 6,564.95, representing a balance due following a barter agreement involving AX Construction Ltd, Perit Ivan Tonna and Alfred Vella himself, plus the sum of Lm 600 representing interest that was agreed to be payable by AX Construction Limited.

b) an amount of Lm 2,150, representing payments claimed to be made by Alfred Vella to General Precast Concrete Ltd (a company related to AX Construction Ltd) that were omitted from his account in AX Construction Ltd's books of account following the set off resulting from the barter agreement as set out in (a) above.

c) an amount of Lm 2,628, representing bills of exchange drawn on AX Construction Ltd, that are still in his possession and not honoured by AX Construction Ltd.

d) an amount of Lm 29,311 representing invoices for materials supplied to AX Construction Ltd at various sites, was never included in his account in AXC's books and never paid.

The claims made by AX Construction Ltd and General Precast Concrete Ltd, were as follows:

a) that the amount of Lm 6,564.95 being claimed by Vella, with respect of the barter agreement involving Perit Coleiro, is to be reduced by Lm 4,662.92, whilst the sum of Lm600 representing interest is payable.

b) that the amount of Lm 2,150 being claimed by Vella to have been paid to GPC, is not due and that the claim is unfounded and disputed.

c) that the amount of Lm 2,628 representing unpaid bills of exchange is not due as the bills of exchange were in fact paid and that Vella never

returned the bills of exchange to AXC upon payment.

d) that the amount being claimed by Vella for stone deliveries that he claims were not entered in AXC's books and not paid, is not due as these invoices have in fact been taken into account in their accounting records or that these invoices refer to other sites not connected to AXC, GPC or the AX Holdings Group of Companies.

Consideration

Claim (a)

This claim refers to a barter agreement entered into by AXC, Perit Ivan Coleiro and AV, whereby AXC agreed to provide construction services to Perit Coleiro, whilst Perit Coleiro was to pay part of the amount due for such works to AV instead of paying AXC, thereby settling part of the amount due by AXC to AV.

It is important to point out that the facts and figures relating to this claim as given by the AV and AXC agree in most respects except for one point, which is the value of the stone supplied by AV to the project. However Doc AXC 4 shows that at a later point, the amount due to AV for the stone supplied was to be paid by Perit Coleiro.

AV is claiming that following the above mentioned barter agreement a balance of Lm 6,564.95 is still owing to him. In addition to this, the sum of Lm600 was agreed by the parties to be due by AXC to AV by way of interest.

AXC claims that, for reasons set out in the counter claim, they are only willing to accept to pay the sum of Lm 2,690.75 plus the Lm 600 due by way of interest. AXC states in its counterclaim that from

this amount the sum of Lm 792.72, being the balance due by AV to GPC Ltd (a company related to AXC), is to be deducted.

The facts of this claim are as follows:

AXC owed AV the sum of Lm 35,112.61 (vide summary of statement of AV's account with AXC and copy of the agreements entered into between the parties to the barter agreement on the 15 September 1998 and subsequently on the 28 July 2003).

AXC carried out works for Perit Coleiro for the amount of Lm 49,895,66.

It was agreed that Perit Coleiro (PC), was to pay AV the sum of Lm 32,007.25, and AXC were to pay AV Lm3,105.36, (being the difference between the balance due to AV in their books at the time, ie Lm35,112.61 and the amount that was to be paid by PC, ie Lm 32,007.25), plus an additional sum of Lm3459.59, representing the value of materials (stones) supplied by AV to the PC project. The total amount payable by AXC was Lm6,564.95.

From AXC's counterclaim, it transpires that of the Lm 49,895,66, Perit Coleiro paid AXC the sum of Lm 21,348 and had to pay the balance of Lm 28,547.66 to AV on account of the amount due by AXC to AV.

It is important to note, at this point, that Perit Coleiro had originally agreed to pay the sum of Lm 32,007.25 to AV. For some reason, the sum of Lm3459.59, being the value of materials delivered to the site by AV, was short paid by Perit Coleiro.

The set off entered in AV's account with AXC amounted to Lm 31,238.41 and not the amount of Lm 28,547.66 that was actually paid by Perit Coleiro to AV.

For this reason, in their counterclaim, AXC accept to pay AV the difference between the amount of the set off (Lm 31,238.41) and the amount Perit Coleiro actually paid AV (Lm 28,547.66), ie Lm 2,690.75, plus the interest agreed less the sum owed by AV to GPC.

Presumably, AV did receive the payment of Lm3459.59, from Perit Coleiro, as he is not claiming this amount that was due to him over and above the balance of Lm 35,112.61.

What is important to consider here is that the barter is only a form of payment and in this case, the adjustment that is required in AXC's books is the correction of the difference between the amount set off between AV's account and Perit Coleiro's account and the actual amount that Perit Coleiro paid AV.

Conclusion for this claim

In view of the above the balance due to AV by AXC amounts to Lm 2,690.75 (ie Lm 31,238.41 less Lm 28,547.66), plus the Lm 600 in interest as agreed, ie a total of Lm 3,290.75.

Claim (b)

AV is claiming that a payment he made to GPC of Lm2,150, has been omitted from his account with GPC and therefore AXC owes him that sum. AV submitted doc AV7 in support of this claim.

Doc AV7 shows the breakdown of the balance due by AV to GPC as follows:

1. List of invoices issued by GPC to AV for slabs supplied to him amounting to Lm6134.28.

2. Payments made by AV totaling Lm 2,183.85.

3. Discount allowed by GPC of Lm 40.01.

4. Amount of Lm 3,117.70 that was set off against balances due to AV by AXC, as shown in the books of AXC.

5. Net balance due by AV to GPC of Lm 792.72.

The payment AV claims to have made for the sum of Lm 2,150 is not shown in the statement and AV has not provided any evidence to show that this payment was actually made.

AV has not claimed that any of the other amounts shown in the statement, including the value of invoices for the supply of slabs, are incorrect.

The amount of Lm 3,117.70 set off with balances due to AV by AXC in AXC books has been traced to the statement of account of AV in AXC books, (vide page 7 of Doc AXC-1.

Conclusion for this claim

In view of the above I therefore conclude that the balance of Lm 792.72, due by AV to GPC is correct and that the sum of Lm 2,150 is not payable to AV.

Claim (c)

AV is claiming that he is still in possession of three bills of exchange amounting to Lm 2,628 and that these were still unpaid by AXC. On the other hand AXC are claiming that all the bills of exchange were paid and that AV should have handed over the bills of exchange to them upon payment. AXC claim further that AV withheld these three bills and is now claiming that they are not paid.

It should be noted that the proper accounting treatment for bills of exchange is that the amount covered by the bills of exchange is transferred from the account of the creditor in question (in this case, AV's account in AXC's books) to another account in the name of the same creditor. In this way the amount equivalent to the value of the bills of exchange is shown as paid in the creditor account and as due in the other account in the name of the creditor. Interest is to be accounted for separately.

Alternatively, no entry is made in the books and the bills of exchange are used as a method of safeguarding payment by the creditor to the debtor.

In our case, the latter method was used and the interest was credited to AV's account in AXC's books as part of the opening balance as at the beginning of the financial year 1996/1997.

Since the balance on this account is eventually all paid, resulting in a NIL balance as at March of 2001, it follows that all the amount covered by the bills of exchange was paid by AXC to AV, including the interest agreed thereon.

Conclusion for this claim

The claim by AV for the payment of the three bills of exchange is incorrect and no amount is payable. For correctness sake, such bills should be handed over to AXC.

Claim (d)

In the statement of case of Alfred Vella, this claim was split into two and discussed in paragraphs 1, 2 and 3 and paragraph 5. The two cases are similar in nature in that they both claim that invoices for supplies of materials by AV to AXC

were omitted from AXC's books and are still unpaid. The basic difference in these two cases, is the time of supply of the materials in question.

Paragraphs 1, 2 and 3 of AV's Statement of Case.

Paragraphs 1 and 2 of the statement of case of Alfred Vella refer to the balance due by AXC to AV as at 30 May 1994 of Lm 8845.50 as per Doc AV1 and Lm 30.379.48 as at 31 October 1996 as per Doc AV - 2 and Doc AXC - 1.

Paragraph 3 of the statement of case states that invoices (vide Dok AV - 3) covering the sale to AXC of material (gebel u vazi) to a number of sites, were omitted from AXC's books. AV claims that there was an agreement with AXC that such invoices were not to be entered in the books. AV claims however that the payment of bills of exchange covering the settlement of such supplies, were debited to his account in AXC's books thereby settling other invoices entered therein.

AXC deny that there was ever any agreement not to enter the invoices for the supply of materials shown in doc AV - 3 in the books of account.

Furthermore AXC claim that the invoices as per Doc AV - 3, were in fact accounted for and paid.

In accounting terms, the only way to prove whether the invoices in question were entered into the books of account or not, is to check whether these invoices are included in the statement of account in question.

During the compilation of information it was very difficult to obtain a statement of movements on AV's account in AXC's books to cover the period when the supplies allegedly took place, because AXC claim that they had changed their accounting

system and the records in the old system were inaccessible. The first statement available covers the period January 1994 to May 1994. This statement was made available by AV (vide Doc AV - 1). The next statement is from the AXC's new accounting system and covers November 1996 to March 2001 (vide Doc AXC-1).

It was crucial to obtain the details of entries in AV's account between May 1994 and November 1996 in order to confirm the truth or otherwise of AV's claim.

In their counterclaim, AXC produced a statement showing how the opening balance as at October 1996 of Lm 30,379.48 was made up but this did not show enough detail to be able to confirm the validity or otherwise of AV's claim no 3.

Doc AV - 4, an excel spreadsheet dated 4 Aug 1997, entitled 'Reconciliation', shows the movements in AV's account in AXC books for the period September 1994 and October 1996.

During the arbitration meetings, AV produced another document, a 'purchase transaction list' covering the period May 1994 to November 1994.

Whilst both documents originated from AXC, they were supplied by AV.

The ‘purchase transaction list’ covering the period May 1994 to November 1994, shows and opening balance of Lm 8845.05 and a list of invoices and payments for the period covered. The amount of Lm 8845.05 agrees to the closing balance shown in Doc AV - 1 and the last nine invoices in the list are the first nine invoices in the document called 'Reconciliation' (AV - 4).

The excel spreadsheet dated 4th August 1997, entitled 'Reconciliation' effectively gives a

breakdown of the opening balance of Lm 30.379.48 and does so by showing the movements on AV's account in AXC's books for the period September 1994 and October 1996.

The information in the two documents clearly bridged the time gap between Doc AV-1 and Doc AV-2/Doc AXC-1.

During the course of the arbitration meetings, AXC insisted that the information thus obtained was not complete and therefore did not show all the movements between the two parties but failed to provide such a statement themselves.

Having built a statement of account showing the movements between AV and AXC one can ascertain whether the invoices produced by AV in Doc AV3 were actually included in AXC's books.

In fact, of the invoices in question, only two are traced in the statement. Invoice number 239, having a total of Lm 528 excluding VAT, is shown in AXC's books at Lm 528, whilst invoice number 1310, having a total of Lm 962 excluding VAT, is shown in AXC's books at Lm 1106.30, ie Lm 962 plus VAT of Lm 144.30.

Conclusion for this part of the claim

The list of invoices shown in AV - 3, totals Lm 28,970.25 of which Lm1,490 were entered in AXC's books, leaving a balance of Lm 27,480.25 that were omitted from the books and consequently are still due to be paid to AV.

Paragraph 5 of AV's Statement of Case.

AV is claiming that invoices he issued to AXC for deliveries to various localities have been omitted from AXC's books and have not been paid.

The invoices in question are invoices numbered 601 to 610, 612 to 615, 617 and 624 to 626 as shown in Doc AV6 that includes copies of the invoices and relevant purchase orders.

I have traced the said invoices to the statement of account of AV in AXC books marked Doc AXC 1 (pages 6 & 7) and therefore can conclude that AV's claim in this respect is completely wrong.

Besides the claim that the invoices have not been entered in the books by AXC, AV is claiming that they have not been paid. The fact that the invoices have in fact been entered in AV's account in AXC's books and the fact that the balance at the end of the statement is NIL, is evidence that these invoices have been paid.

In addition, AV claims that the sum of Lm24,628 has to be credited to his account in AXC's books. This amount is the subject of another claim and represents the value of bills of exchange accepted by AXC and payable to AV.

Again this claim is completely wrong because bills of exchange are a method of payment or maybe a way of guaranteeing payment of invoices due and should not be shown in the debtor account as AV is claiming.

Conclusion for this part of the claim

This claim is invalid on the grounds that:

a) the invoices being claimed to have been omitted from AXC's books have actually been entered in AV's account in AXC's books and have in fact been paid, and,

b) the bills of exchange should not have been shown in AV's account in AXC books of account as already explained.

Overall Conclusion

The amount due by AX Construction Limited to Alfred Vella as detailed above is as follows:

Claim (a) Lm 2,690.75 plus interest of Lm 600 as previously agreed by the parties.

Claim (b) Lm NIL

Claim (c) Lm NIL

Claim (d)(i) Lm 27,480.25 plus interest accruing from 1st of January 1997.

Claim (d)(ii) Lm NIL

The amount due by Alfred Vella to General Precast Concrete Ltd as detailed above is as follows:

Claim (c) Lm 792.72 plus interest accruing from 1st of January 2001.

The Costs of this arbitration shall be borne equally by the parties.**"**

Fil-kontestazzjoni ta' din id-decizjoni s-socjetajiet rikorrenti jelenkaw is-segwenti motivi ta' aggravji:-

(1) Una volta li l-Arbitru identifika li seta` kellu konflitt ta' interess, ma kienx messu baqa' ghaddej 'il quddiem u jippronunzja ruhu fuq il-materja. Fil-kuntest huma jillanjaw minn ksur ta' l-Artikolu 24 tal-Kapitolu 387 applikabbli ghal rikusazzjoni bl-abbinament ta' l-Artikolu 70 (1) (iv) ta' l-istess Kapitolu;

(2) Similment u ghall-istess raguni taht punt (1), l-inosservanza tal-procedura tar-rikuza jikkostitwixxi punt ta'

ligi fit-termini tal-klawsola 10 tal-Ftehim Arbitrali tal-10 ta' Awissu, 2004;

(3) Il-lodo jmur oltre dak miftiehem bejn il-partijiet li kien rimess ghall-gudizzju ta' l-Arbitru. Ir-raguni hawn moghtija hi dik li kienu qeghdin jingiebu provi li ma kienux jirrelataw ma' ebda wahda mill-kwesjtonijiet referiti mill-partijiet. Skond l-appellanti l-lodo jitratta fatti illi l-partijiet ma xtaqux li jkunu sottomessi lill-Arbitru;

(4) Il-proceduri ma tmexxewx b'harsien ghall-provvedimenti tal-ligijiet procedurali. Hawnhekk l-appellanti jissollevaw il-punt illi huma kienu talbu ghall-hatra ta' perit legali u, tali, ma gietx ikkonsidrata mill-Arbitru;

(5) Fl-ahharnett ukoll kien hemm ksur ta' l-istess ligijiet procedurali billi ma nghatawx l-opportunita` li jipproducu l-provi kollha in sostenn ghad-difiza taghhom;

L-atti tal-kaz juru illi l-partijiet permezz ta' ftehim datat 10 ta' Awissu, 2004 (fol. 25) irrikorrew ghal gudizzju arbitrali minflok dak tal-gurisdizzjoni ordinarja biex tigi deciza l-kontroversja ta' bejniethom. Huma ghalhekk, u bi qbil bejniethom, irredigew it-*terms of remit* billi individwaw l-oggett u l-kontenut tal-kwestjonijiet konflittwali ghad-deliberazzjoni u decizjoni mill-Arbitru prexxelt. Fl-istess ftehim kompromissorju huma qablu wkoll illi l-proceduri jitmexxew skond ir-regoli tal-Kodici ritwali (klawsola 8) u li, inoltre, l-Arbitru kellu jiddeciedi l-kwestjonijiet skond ir-regoli tal-ligijiet sostantivi u mhux bhala "*aimable compositeur"* (klawsola 10);

B'osservazzjoni generali u preliminari ghandu jinghad illi mill-kontenut tal-ftehim arbitrali, u l-aktar dak ta' l-individwazzjoni tal-kontroversji, id-determinazzjoni ta' l-oggett litigjuz kienet tissuggerixxi lill-partijiet illi kellu jigi nominat minnhom biex jarbitra espert komputista, trattasi li l-ezercizzju li kellu jsir skond it-*terms of remit* kien

wiehed essenzjalment matematiku bazat l-aktar fuq id-dokumenti prodotti mill-partijiet;

Dan ipprecizat, il-Qorti jidhrilha li b'introduzzjoni ghall-ewwel zewg aggravji ghandha qabel xejn tirregistra dawn il-premessi:-

1. Fuq il-kronologija ta' l-atti, wara li ngabru l-provi u tqajmet ukoll tilwima fuq ir-rilevanza ta' certi provi, l-Arbitru kiteb lir-Registratur tac-Centru fejn, *inter alia*, informah illi "*since the last sitting circumstances have put me in a situation of conflict of interest*" (ara ittra tieghu datata 28 ta' Lulju, 2008 a fol. 149). Jigi notat illi l-Arbitru ma ddivulgax il-kontenut ta' dawk ic-cirkostanzi;

2. Permezz ta' l-Avukat tieghu Alfred Vella kiteb lill-Arbitru (ittra datata 18 ta' Awissu, 2008) illi jekk hu jinsab f'qaghda li jestendi l-lodo, cionostante il-konflitt ta' interess, huwa ghandu jaghmel dan. Mhux l-istess haga ghamlu s-socjetajiet appellanti in kwantu dawn wiegbu b'ittra tal-konsulent legali taghhom tad-29 ta' Awissu 2008 illi l-Arbitru ghandu jigi sostitwit. Ghal din irreplika l-Avukat ta' l-imsemmi Alfred Vella b'ittra tas-17 ta' Settembru 2009 (fol. 152);

3. Fil-31 ta' Ottubru, 2008 (fol. 155) l-Arbitru kiteb lic-Centru illi wara li ezamina l-iskambju tal-korrispondenza bejn iz-zewg legali hu kien iddecieda li jkompli fil-hatra tieghu, u li kien ser jghaddi 'l quddiem biex jestendi l-lodo tieghu;

4. Fil-5 ta' Jannar, 2009, Dr Galea ghall-kumpanija appellanti intavola Nota ghar-rikuza ta' l-Arbitru nominat (ara fol. 157);

Skond l-Att ta' l-1996 dwar l-Arbitragg (Kapitolu 387) ir-rikuza hija kkontemplata fl-Artikolu 24 tieghu. Kombinati flimkien iz-zewg subincizi tieghu l-qaghda li tinzel minnhom hi din:-

i. Ir-rikusazzjoni ta’ l-Arbitru trid issir fejn jezisti dubbju gustifikabbli dwar l-imparzjalita` u l-indipendenza tieghu;

ii. Di regola din ir-rikusazzjoni ma tistax issir fir-rigward ta’ l-Arbitru nominat mill-parti, salv u b’eccezzjoni l-kaz fejn tirrizulta xi raguni sopraggunta wara din il-hatra. In parentesi, irid jigi kkummentat hawnhekk illi din id-disposizzjoni tal-ligi mhix minghajr rilevanza. Parti ma tistax tilmenta minn dak li hi stess volontarjament ikkontribwit ghar-realizzazzjoni tieghu, ammenokke mhux ghal xi motiv sopravvenut. Mhux dan biss pero`, ghaliex anke f’din il-kontingenza l-motiv irid dejjem ikun sopportat minn kawza gustifikabbli, serja u gravi;

B’zieda ma’ dan konsiderat. Il-Qorti hi wkoll tal-fehma illi l-motivi ta’ rikusazzjoni ma jipproducux inkapacita assoluta ghall-ezercizzju mill-Arbitru tal-funzjonijiet tieghu u, allura, jekk ma jigux eccepiti tempestivament u fl-istadju li messhom tqajmu, ma jistghux jissarfu f’motivi validi ta’ impunjazzjoni fl-istadju ta’ l-appell li jgibu s-sitwazzjoni li d-decizjoni titwarrab skond id-disposizzjonijiet ta’ l-Artikolu 70 ta’ l-Att. Dan, ammenokke, ma jkunx jinstab li l-Arbitru kellu xi interess personali fl-ezitu tal-lodo, li hawnhekk ma jinsabx dedott;

Maghdud dan, ma jistax ma jigix ukoll osservat illi *ictu oculi* minn Nota pprezentata mis-socjetajiet appellanti fil-5 ta’ Jannar 2009 huma ma avvanzaw ebda raguni plawsibbli l-ghala kienu qed jitolbu r-rikuza, kif hekk irid l-Artikolu 25 (2) tal-ligi. Ankorke dik ir-raguni mhux espressa kienet timporta dik tad-dikjarazzjoni ta’ l-istess Arbitru tac-cirkostanzi li gabuh f’sitwazzjoni ta’ konflitt, ossija fl-espressjoni ta’ l-appellanti tat-“*twist of events*”, allura ghandu jigi osservat illi minn dak li jinzel mill-Artikolu 26 ta’ l-Att jekk il-kontroparti ma taqbelx mar-rikuza u l-Arbitru rikuzat ma jirtirax, id-decizjoni jehodha c-Chairman tal-Bord tal-Gvernaturi tac-Centru u tali tkun wahda finali u konkluziva. Ghalkemm l-atti ma jurux b’mod espress l-ezistenza ta’ decizjoni bhal din wiehed

ghandu ragonevolment jassumi illi, almenu tacitament, ic-Chairman akkwiexxa ghal dak sottomess mill-Arbitru lic-Centru bl-ittra tal-31 ta' Ottubru, 2008 u akkonsentixxa li hu jkompli bl-inkariku tieghu, kif hekk fil-fatt sehh bil-prezentata tal-lodo fit-18 ta' Settembru 2009 (ara ittra tar-Registratur ta' l-istess data mibghuta lill-partijiet u lill-Avukati difensuri);

Apparti dan li nghad, fl-assenza ta' taghrif preciz dwar x'wassal lill-Arbitru biex jesprimi dik il-fehma tieghu bl-ittra inizzjali tat-28 ta' Lulju, 2008 (fol. 149), il-Qorti mhix sodisfatta mill-validita` tal-lanjanza tar-rikusazzjoni, tant ghaliex l-istess Arbitru, fl-ahhar mill-ahhar, ma hassx li kellu jabdika mill-qadi ta' l-impenn minnu assunt, tant ghaliex ukoll ma tissussisti ebda raguni konkreta u ta' sustanza biex l-ilment jigi milqugh. Dan qed jigi sottolinejat ghaliex, fil-hsieb tal-Qorti, jekk verament is-socjetajiet appellanti kienu xjenti minn ragunijiet gustifikabbli dan huma messhom ressquhom 'il quddiem, u dan huma ma ghamluhx. Mhux ghal din il-Qorti li tikkontempla u tiddeciedi materja hekk serja ta' rikuza fl-astratt. L-obbjezzjoni sottomessa bl-ewwel zewg aggravji qeghda konsegwentement tigi respinta;

Fuq it-tielet motiv ta' aggravju l-appellanti qeghdin jghidu illi kien hemm da parti ta' l-Arbitru pronunzjament li jmur 'l hinn mil-limiti tal-ftehim kompromissorju. Evidentement b'din is-sottomissjoni l-appellanti qeghdin jipprospettaw ksur tas-subpara (iii) ta' l-Artikolu 70(a) ta' l-Att li jikkontempla l-pronunzjament *ultra compromissum*. Il-principju ma jippartecipax tant minn ezami ta' extra jew ta' ultra petizzjoni daqskemm pjuttost hu inerenti ghall-kwestjoni ta' kompetenza, ossija jekk l-Arbitru esorbitax ruhu mit-*terms of remit*;

Fil-kaz in ezami din il-Qorti ma ssibx serjeta` f'dan l-ilment in kwantu s-socjetajiet appellanti ma identifikawx liema hi l-kwestjoni prospettata mill-Arbitru li ma kienetx taqa' fit-termini tal-kweziti effettivament proposti mill-partijiet. Il-

fatt li huma jargomentaw illi l-Arbitru sema' provi li ma kellhomx x'jaqsmu mal-kaz ma jfisserx, lanqas lontament, vjolazzjoni tal-predett principji, ossija li l-Arbitru mar oltre l-mitlub. Kif drabi ohra osservat minn din l-istess Qorti, ir-raguni hekk dedotta tista' tutt'al pju, tammonta ghall-argoment difensiv izda tali ma jista' qatt jinkwadra ruhu fl-ipotesi tal-predett artikolu tal-ligi. Ara "**Casino Employees Union *et* -vs- Dragonara Casino Limited**", Appell Inferjuri, 12 ta' Dicembru, 2007. Oggettivament, zgur, fuq il-verifiki maghmula, il-Qorti lanqas ma ssib illi l-lodo, meta mkejjel mat-*terms of remit*, ma kienx jaqa' fl-ambitu ta' dawk il-kweziti, konsiderati fl-estensjoni shiha taghhom. Ukoll dan il-motiv ta' aggravju qed jigi rigettat;

L-ahhar zewg motivi ta' aggravji jistghu jigu investigati flimkien gjaladarba fit-tnejn jitqajmu censura ta' inosservanza tar-regoli procedurali;

L-ilment kostitwit bir-raba' aggravju fis-sens illi giet injorata t-talba tieghu fil-kors tal-procediment arbitrali ghan-nomina ta' perit legali ma tidherx li hi gustifikata. Apprezzati fil-limiti gusti taghhom, it-*terms of remit* kienu tendenti ghall-espressjoni mill-Arbitru ta' l-opinjoni teknika u kwalifikata tieghu. Ma kienetx kwestjoni fejn il-funzjoni tieghu kienet dik li jogbor il-provi u mbaghad jirrelata dwarhom u jissottometti l-pariri tieghu anke fuq il-kwestjoni legali sottomessa mill-partijet ghal konsiderazzjonijiet tieghu (ara "**Paolo Calleja -vs- Luigi Vella**", Appell Kummercjali, 15 ta' Gunju, 1964). Kienet ghall-kuntrarju, kif gja aktar 'il fuq rivelat, kwestjoni essenzjalment ta' ezercizzju matematiku, bazata fuq dokumenti prodotti mill-partijiet, liema ezercizzju kien verifikabbli u seta' jigi facilment emendat jekk ingiebet prova kuntrarja (ara "**Mary Grech -vs- Prokuratur Legali Joe D'Amato *et***", Appell, 3 ta' Dicembru, 1999, u fejn ukoll kien tqabbad perit komputista). Fir-realta` l-hatra ta' espert legali ma kienetx ser issolvi xejn ghaliex, jekk hemm bzonn jigi ripetut, il-kwestjoni kienet wahda oggettivament ta' kalkoli estratti mid-dokumenti dwar

x'kien ghad baqalu jircievi l-appellat mill-kontrattazzjoni negozjali bejn il-partijiet;

Indubbjament, kwantu ghall-aggravju ultimu, il-lodo jitqies null jekk ma jkunx rispettat il-principju ta' smigh xieraq. Dan ghaliex il-principju hu regola processwali inderogabbli u ta' ordni pubbliku u, konsegwentement, japplika dejjem, ankorke l-Arbitru jkun inghata l-fakolta li jiddeciedi skond l-ekwita` jew, ukoll, minghajr il-htiega ta' l-osservanza rigida tad-disposizzjonijiet ordinarji ta' procedura;

Ankorke, il-procedura kellha f'dan il-kaz titmexxa skond ir-regoli tal-Kodici ritwali (klawsola 8 tal-ftehim arbitrali), ma jirrizultax mill-atti illi l-ilment ta' l-appellanti f'dan il-kuntest hu wiehed fondat. Il-partijiet, fuq firxa ta' erba' snin, inghataw zmien sufficjenti biex jipproducu l-provi u li jaghmlu s-sottomissjonijiet taghhom. Manifestament, l-atti juru li z-zewg partijiet kienu jafu bir-rizultanzi kollha istruttorji li l-Arbitru kien behsiebu jezamina (ukoll wara li ntalbu minnu xi skjarimenti) ghall-formazzjoni tal-konvinciment tieghu. F'dan il-kumpless ma jistax legittimament jinghad illi ma gewx rispettati d-drittijiet tad-difiza tal-partijiet. Minn din l-ottika l-Qorti ma tirravviza ebda ksur tal-provvediment procedurali;

Fl-ahharnett, u kuntrarjament ghal dak dedott mill-appellanti, lanqas ma tirrizulta fil-fehma tal-Qorti vjolazzjoni tan-normi tad-dritt sostanzjali, anke ghaliex, fl-ahhar mill-ahhar, il-mertu kien wiehed merament ta' accertamenti teknici u ta' decizjoni fuq kwestjonijiet ta' fatt u ta' kontabilita`.

Ghal motivi kollha predetti din il-Qorti qed tirrespingi l-appell fl-aggravji kollha tieghu u konsegwentement tikkonferma *in toto* l-lodo ta' l-Arbitru nominat, bl-ispejjez ta' din il-procedura jitbatew mis-socjetajiet appellanti.

< Sentenza Finali >

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