



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
ANNA FELICE**

Seduta tas-26 ta' Ottubru, 2011

Citazzjoni Numru. 1199/2009

Portomaso Leasing Company Limited (C-33110)

vs

AVMT Holdings Limited (C-25140)

Il-Qorti:

Rat ir-rikors gumentat tas-socjeta' Portomaso Leasing Company Limited, li permezz tieghu, wara li ppremettiet illi:

Is-socjeta' attrici hija kreditrici tas-socjeta' konvenuta fis-somma komplessiva ta' hamsa u erbghin elf, mija u tnax-il Ewro u sebgha u erbghin centezmu (€45,112.47), kwantu ghas-somma ta' erbatax-il elf tlett mija u hamsa u sebghin Ewro u hamsin centezmu (€14,375.50), rapprezentanti prezz ta' elettriku, *common costs*, *service charge*, u *extras* relattivi ghal Level 15, Portomaso Business Tower,

Portomaso Complex, San Giljan ghas-sena 2006 skond ma jirrizulta mill-annessi fatturi mmarkati bhala dokumenti "A" u "B" u *l-credit note* mmarkat bhala dokument "C"; kwantu ghas-somma ta' erbatax-il elf erba' mija u sitta u tmenin Ewro u tmienja u hamsin centezmu (€14,486.58), rapprezentanti prezz ta' elettriku, *common costs*, *service charge*, u *extras* relattivi ghal Level 15, Portomaso Business Tower, Portomaso Complex, San Giljan ghas-sena 2007 skond ma jirrizulta mill-annessi fatturi mmarkati bhala dokumenti "D" u "E" u *l-credit note* mmarkat bhala dokument "F"; u kwantu ghas-somma ta' sittax-il elf u mitejn u hamsin Ewro u disgha u tletin centezmu (€16,250.39), rapprezentanti prezz ta' elettriku, *common costs*, *service charge*, u *extras* relattivi ghal Level 15, Portomaso Business Tower, Portomaso Complex, San Giljan ghas-sena 2008 skond ma jirrizulta mill-annessi fatturi mmarkati bhala dokumenti "G", "H" u "I";

Ghalkemm debitament interpellata sabiex thallas dan l-ammont, is-socjeta' konvenuta baqghet ghal kollox inadempjenti;

Inoltre l-esponent nomine jiddikjara u jikkonferma illi jaf b'dawn il-fatti personalment;

Ghalhekk kellha ssir dina l-kawza.

Talbet is-socjeta' konvenuta tghid ghalfejn din l-Onorabli Qorti m'ghandhiex:

Tikkundanna lis-socjeta' konvenuta sabiex thallas lis-socjeta' attrici s-somma kompleksiva precitata ta' hamsa u erbghin elf, mija u tnax-il Ewro u sebgha u erbghin centezmu (€45,112.47), dovuta kif fuq intqal oltre l-imghaxijiet mid-dati tal-fatturi relattivi hawn fuq imsemmija sal-hlas effettiv u bl-applikazzjoni tad-disposti tal-Avviz Legali 233 tal-2005.

Bl-ispejjez komprizi dawk tal-ittra ufficjali tas-26 ta' Mejju 2009 kontra s-socjeta' konvenuta li hija ingunta minn issa stess ghas-subizzjoni.

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Rat id-dokumenti esebiti.

Rat ir-risposta tas-socjeta' AVMT Holdings Limited, li in forza eccepjet illi:

Fl-ewwel lok, is-socjeta' attrici m'ghandhiex *locus standi* fil-kawza odjerna stante li s-socjeta' konvenuta m'ghandha ebda rabta legali mas-socjeta' attrici;

Fit-tieni lok, is-socjeta' konvenuta qatt ma ntraprendiet xi kuntratt jew forma ohra ta' relazzjoni kummercjali jew legali mas-socjeta' attrici;

Fit-tielet lok, is-socjeta' konvenuta m'ghandha ebda taghrif dwar il-bazi li permezz tieghu, is-socjeta' attrici tivvanta l-pretensjonijiet taghha stante li s-socjeta' konvenuta qatt ma talbet jew ingaggat lis-socjeta' attrici sabiex tipprovdi s-servizzi li ghalihom qeghda titlob il-hlas;

Fir-raba' lok, is-socjeta' konvenuta qatt ma giet mistiedna mis-socjeta' attrici sabiex tippartecipa f'xi laqgha tas-sidien u detenturi tas-sulari fil-Business Tower ta' Portomaso sabiex tahtar lis-socjeta' attrici bhala amministratur ghall-perjodu mertu ta' din il-kawza u ghalhekk ukoll m'ghandha ebda rabta ta' ebda natura mas-socjeta' attrici;

Fil-hames lok, is-socjeta' konvenuta akkwistat is-sular numru hmistax minghand is-socjeta' Spinola Development Company Limited b'sahha ta' kuntratt datat 30 ta' Settembru 1999 fl-atti tan-Nutar Dr. Joseph Tabone. Is-socjeta' attrici ma kinitx u m'hiex parti ghal dak il-kuntratt u ai termini tal-istess kuntratt, is-socjeta' Spinola Development Company Limited biss hija unikament responsabbli ghall-ezekuzzjoni tal-obbligi minnha assunti nonostante u indipendentement mid-dritt li rrizervat permezz tal-istess kuntratt li tiddelega l-ezekuzzjoni ta' dawk l-obbligi ghan-nom taghha lil xi terza persuna jew entita';

Fis-sitt lok, u, subordinatament u minghajr pregudizzju ghas-suespost, sia l-ammont totali ta' hamsa u erbghin

elf, mija u tnax-il Ewro u sebgha u erbghin centezmu (€45,112.47), kif ukoll l-ammonti singolari ghas-snin 2006, 2007 u 2008 li flimkien jaghmlu dan it-total kif indikat mis-socjeta' attrici m'huwiex u m'humieq dovuti u wisq anqas certi u likwidi. Is-socjeta' konvenuta hija obbligata thallas sehemha ta' spejjez ta' "maintenance and upkeep of the common parts of the Tower" hekk kif jipprovdi l-kuntratt tal-akkwist fuq citat u dana biss wara li Spinola Development Company Limited tassigura li dawn l-ispejjez huma soggett ghal "audit". Is-socjeta' konvenuta ma ngatatx sodisfazzjon f'dan is-sens la minghand Spinola Development Company Limited kif tenuta taghmel skond il-kuntratt tal-akkwist u wisq anqas minghand is-socjeta' attrici;

Fis-seba' lok, u dejjem subordinatament u minghajr pregudizzju ghas-suespost, it-talba ghall-hlas tal-fatturi annessi mar-rikors promotorju hija infondata fil-fatt u fid-dritt stante li l-fatturi huma skorretti mhux biss ghaliex jirraprezentaw spiza li mhix "audited" kif jitlob il-kuntratt tal-akkwist izda ghaliex jirriflettu somma globali ta' spejjez li m'ghandhomx jigu attribwiti lis-sidien jew detenturi tas-sulari fil-Business Tower, Portomaso kif jirrizulta waqt it-trattazzjoni tal-kawza;

Dwar il-fatti:

i. Illi waqt is-smiegh ta' kawza fl-ismijiet Spinola Development Company Limited v. AVMT Holdings Limited (Rik. Gur. Nru. 902/2005 AF), liema kawza ghandha mertu simili ghal dak fl-ismijiet premissi, jirrizulta li s-socjeta' Spinola Development Company Limited tiffattura darbtejn ghall-istess oggett u cioe' per ezempju tiffattura l-ispiza tal-impjegati taghha li jikkontribwixxu ghall-amministrazzjoni u manutenzjoni tat-torri kif ukoll ghall-ghotja tas-servizzi ghall-partijiet komuni tal-Business Tower, Portomaso u fl-ahhar tas-sena terga' tiffattura b'mod mekkaniku u kliniku l-"maintenance charge" ta' 15% fuq dik l-istess spiza kif indikat fil-kuntratt tal-akkwist.

ii. Ezempju iehor li jindika b'mod oggettiv u ragjonevoli li fatturi tas-socjeta' Spinola Development Company Limited

jew id-delegati taghha m'humix serji u sostenibbli jirrizulta minn relazzjoni redatta fis-sena 2007 meta s-socjeta' konvenuta inkarigat awditur Steve Mifsud *ex parte*, li m'huwix l-awditur pero' tas-socjeta' konvenuta, sabiex jaghmel ezercizzju ta' rikonciljazzjoni mas-socjeta' Spinola Development Company Limited dwar il-kontijiet ghall-ispiza tal-partijiet komuni ghas-snin 2002, 2003, 2004 u 2005. Mir-relazzjoni ta' dan l-awditur li hija hawn annessa bhala Dok. SM1 datata 26 ta' Gunju 2007, irrizulta li kien sar "overcharging" da parte ta' Spinola Development Company Limited ghall-ammont ta' circa hamest elef Liri Maltin (Lm5000) [cioe' illum €11,650] fuq medda ta' erba' snin u fuq kont totali ghall-AVMT Holdings Limited ta' Lm20,557 ghal dak il-perjodu. Di piu', dan l-istharrig mhux komplut kif jirrizulta mill-istess relazzjoni stante li s-socjeta' Spinola Development Company Limited effettivament waqfet tikkollabora billi ma taghtx aktar access ghad-dokumenti finanzjarji taghha relattivi ghall-ispejjez tal-partijiet komuni tal-Business Tower, Portomaso, ghal dawk is-snin. Dawn l-istess dokumenti u cioe' dawk li jissejhu "underlying and supporting financial documentation" ghall-ispejjez li jkunu saru matul is-sena partikolari ukoll ma nghatawx lis-socjeta' konvenuta la minghand Spinola Development Company Limited u wisq anqas mis-socjeta' attrici sal-lum.

iii. Ezempju iehor li jindika li l-fatturi li abbazi taghom qed issir din il-kawza, huma skorretti, huwa l-fatt li t-torri ta' Portomaso, kif jaf kulhadd min jghix Malta, ghandu estern tal-hgieg u dawn l-aperturi ilhom ma jinhaslu mill-anqas minn circa 2005. Izda madanakollu, l-amministratur imqabbad mis-socjeta' attrici ossia minn Spinola Development Company Limited xorta wahda jiffattura ghall-hasil tat-torri.

iv. Illi matul is-snin 2008 u 2009, Spinola Development Company Limited u/jew min minnha nkarigat biddlet it-tlett "lifts" kollha tal-Business Tower u dana ghaliex kien ammess minnha stess li dawk li gew installati fil-bidu mal-kostruzzjoni tat-torri ma kinux jahdmu skond is-sengha. Fil-fatt, fil-perjodu 2002 sa 2005, Spinola Development Company Limited iffatturat Lm24,592 bhala "Lifts

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Maintenance, Services & Spare Parts” u din is-somma ma tinkludix, ghaliex mhix akkompanjata bi spjegazzjoni, somma ohra li tidher taht il-vuci “Mechanical” li tammonta ghal Lm9206 li jista’ jaghti l-kaz li tinkludi xi spiza in konnessjoni mal-lifts li kien hemm dak iz-zmien. Dawn ic-cifri ma jinkludux ukoll somma ohra ghall-istess perjodu ta’ Lm21,814 li tinsab taht il-vuci “Repairs and Maintenance Payroll” naturalment ghal dak li jirrigwarda t-torri.

v. Illi fil-perjodu 2006, 2007 u 2008, Spinola Development Company Limited iffatturat Lm25,373 bhala “Lifts Maintenance, Services & Spare Parts” u din is-somma ma tinkludix, ghaliex mhix akkompanjata bi spjegazzjoni, somma ohra taht il-vuci “Mechanical” li tammonta ghall-istess perjodu ghal Lm18,762 li jista’ jaghti l-kaz li tinkludi xi spiza in konnessjoni mal-lifts li kien hemm dak iz-zmien. Dawn ic-cifri ma jinkludix ukoll somma ohra ghall-istess perjodu ta’ Lm42,400 li tinsab taht il-vuci “Repairs and Maintenance Payroll” naturalment dawn kollha ghal servizzi li huwa allegat minn Spinola Development Company Limited u/jew is-socjeta’ attrici li jikkoncernaw it-torri.

vi. Qieghed jigi anness ukoll kopja tal-fattura li ntbghatet minn Spinola Development Company Limited u mhux mis-socjeta’ attrici sabiex is-socjeta’ konvenuta thallas is-somma ta’ €10,884.32 (vat inkluz), li allegatament hija pretiza mis-socjeta’ konvenuta ghall-sitallazzjoni ta’ tlett lifts godda fil-Business Tower, Portomaso, anqas minn ghaxar snin wara li kienu gew installati l-ewwel sett ta’ tlett lifts fit-torri li kienu tlestew ghall-habta ta’ 2005 u li kienu godda u, wiehed ghandu ragjonevolment jassumi taht garanzija.

Ghaldaqstant, it-talbiet tar-rikorrenti ghandhom jigu michuda bi spejjez kontra l-istess rikorrenti.

Rat l-affidavit prodotti.

Rat l-atti tal-kawza.

Rat il-verbal tas-seduta tat-23 ta' Gunju 2010, li permezz tieghu din il-Qorti ddiferiet il-kawza ghas-sentenza fuq l-ewwel zewg eccezzjonijiet tas-socjeta' intmata.

“In linea ta' principju procedurali ma ghandux ikun kontrovers illi s-soggett legittimat li jstitwixxi l-azzjoni huwa dak interessat li jinvoka mill-qorti t-tutela gurdizzjonali tad-dritt personali tieghu. Dan fis-sens illi hu rimess lilu d-dritt li jitlob dik it-tutela in relazzjoni ghat-talba minnu proposta u , konsegwentement, ghall-otteniment tal-gudizzju dwarha. Innegabilment, din il-legittimazzjoni tikkostitwixxi kondizzjoni importanti tal-azzjoni fil-ksib mill-attur ta' decizjoni fil-mertu skond dak prospettat minnu bit-talba jew talbiet fl-isfond tar-rapport sostanzjali dedott fil-gudizzju. Naturalment, meta tinsorgi l-eccezzjoni, konsimili ghal dik f'dan il-kaz, jispetta lill-qorti adita li tivverifika jekk l-attur, u, ukoll, il-konvenut, humiex effettivament parti attiva u passiva f'dak ir-rapport. F'dan l-ezercizzju, il-qorti hi vinkolata mhux biss mill-fatti allegati u provati izda ukoll mit-talbiet li fuqhom dawk il-fatti jkunu bazati”, (“Vella Falzon Capital Projects Ltd vs Roderick Bonnici, deciza mill-Qorti tal-Appell fit-23 ta' Jannar 2009).

Ikkunsidrat illi jirrizulta mill-provi prodotti li s-socjeta' intimata akkwistat minghand Spinola Development Company Limited proprjeta' fil-Portomaso Business Tower. Skond l-istess kuntratt datat 30 ta' Settembru 1999, is-socjeta' intimata obligat ruhha li thallas sehem pro rata tal-ispejjez relatati mal-partijiet komuni u servizzi. B'effett mill-1 ta' Jannar 2006, is-socjeta' Spinola Development iddelegat lis-socjeta' rikorrenti biex tiehu hsieb dak kollu li kellu x'jaqsam mal-partijiet komuni u servizzi, kif ukoll li tigbor hlasijiet relatati.

L-imsemmija Spinola Development Company Limited ghamlet dan in forza tal-klawzola (r)(iv) tal-kuntratt ta' bejgh.

“Without prejudice to what has been stipulated above, for the purposes of calculation of the maintenance cost of the common parts, areas and services within the Tower, blocks of apartments and within the whole residential

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complex, it is agreed that fifteen per cent (15%) management charge shall be charged on the Actual Audited Costs. Said actual costs shall be based on the principles agreed in the clause.

The maintenance fee due shall be paid in advance annually on the second day of January of each year or within fifteen days of the presentation of audited accounts, provided the Vendor or its representative or delegate shall present audited accounts of the expenses incurred for the previous twelve months at least fifteen days prior to the date when payment of maintenance fee is due. For the first year, the maintenance fee due shall be paid in arrears; thereafter the maintenance fee shall be paid in advance with the amount due being based on the audited accounts of the previous 12 months to be finalised and adjusted when the next payment falls due.

All the maintenance repair and upkeep of common parts areas and services with the Tower, shall be provided by the Vendor or by any other person physical or legal appointed by him for this purpose. The Vendor undertakes to keep appoint an administrator who shall ensure the proper maintenance and upkeep of all common areas and services within the Tower at all times.”

Il-kuntratt ta' bejgh jistipula ukoll illi:

“The Vendor or its successor in title or the administrator appointed by the Vendor shall have the right to take all necessary steps to ensure that the maintenance fees are regularly paid in advance as above stipulated and that the obligations imposed on the Purchaser are observed at all times by Purchaser or its successors in title.”

Sussegwentement, is-socjeta' Portomaso Leasing infurmat lis-socjeta' intimata b'dan permezz ta' ittra ufficjali datata 4 ta' Novembru 2009, notifikata fid-9 ta' Novembru (ara fol. 73). Dan sar a tenur tal-Art. 1471 tal-Kodici Civili li jipprovdi illi:

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“1471. Ic-cessjonarju ma jistax, kwantu ghat-terzi, jezercita l-jeddijiet lilu ceduti, hlief wara li c-cessjoni tkun giet imgharrfa lid-debitur b’att gudizzjarju, mic-cessjonarju nnifsu jew mic-cedent.”

Fic-cirkostanzi, ghaldaqstant, il-Qorti taqta’ u tiddeciedi billi tichad l-ewwel zewg eccezzjonijiet tas-socjeta’ AVMT Holdings Limited.

L-ispejjez relatati ma’ dawn iz-zewg eccezzjonijiet jithallsu minn AVMT Holdings Limited.

< Sentenza In Parte >

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