

Kopja Informali ta' Sentenza



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

Seduta tal-11 ta' Gunju, 2012

Citazzjoni Numru. 125/2012

AJSP Zammit Ltd (C25602)

kontra

X

II-Qorti :

I. Preliminari

Rat ir-rikors prezentat minn J.S. Zammit & Co Ltd (C3196), Antoine Zammit (441468M), Joseph Zammit (236570M) Prentiss Zammit (429676M) u Stephen Zammit (390974M) fis-7 ta' Frar 2012 li jaqra hekk –

Kopja Informali ta' Sentenza

Illi huma diretturi (in kwantu l-ahhar erba` rikorrenti) u azzjonisti fis-socjeta` kummercjali AJSP Zammit Ltd (vide Doc A anness).

Illi kif jidher mill-anness Rapport Annwali, il-kumpannija tinsab fi stat ta` insolvenza (Doc B anness).

Illi jixtiequ illi l-istess tigo stralcjata.

Ghaldaqstant jitolbu umilment illi din l-Onorabli Qorti tordna l-istralc tas-socjeta` AJSP Zammit Ltd u tinnomina lill-avukat sottoskritt bhala stralcjarju ghall-finijiet u effetti kollha tal-ligi.

Rat id-dokumenti li kienu esebiti mar-rikors promotorju.

Rat id-digriet taghha tal-21 ta` Frar 2012.

Rat in-nota tat-28 ta` Frar 2012 fejn ir-rikorrenti indikaw illi huma pprezentaw ir-rikors promotur abbazi tal-Art.218(1)(a) tal-Kap.386.

Rat id-digrieti taghha tal-5 ta` Marzu 2012 u tas-16 ta` Marzu 2012.

Rat in-noti b`dokumenti li kienu prezentati mir-rikorrenti fit-3 ta` April 2012 u fit-8 ta` Mejju 2012.

Rat id-digriet taghha tal-14 ta` Mejju 2012 fejn appuntat ir-rikors promotorju ghas-smigh ghall-udjenza tal-lum..

Rat il-verbal tal-udjenja tal-lum.

Rat id-digriet taghha tal-lum fejn halliet il-kawza ghal provvediment ghal-lum stess.

Rat l-atti ta` dan il-procediment.

Ikkunsidrat :

II. Dritt

Bil-procedura tal-lum, ir-rikorrenti qeghdin jitolbu lil din il-Qorti sabiex tordna l-istralc tal-kumpannija AJSP Zammit Ltd. u tahtar stralcjarju. Huma ddikjaraw illi qeghdin jaghmlu din it-talba abbazi tal-**Art.218(1)(a) tal-Kap.386** li jaqra hekk –

Talba lill-qorti (aktar 'il quddiem imsejha "rikors ghal stralc") ghal –

(a) stralc ta' kumpannija mill-qorti skond l-artikolu 214(1)(a)

*...
ghandha ssir b'rikors li jista' jsir jew mill-kumpannija wara decizjoni tal-laqgħa generali jew mill-bord tad-diretturi tagħha jew minn xi detentur ta' obligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji.*

Fil-kaz tal-lum, il-procediment kien inizjat mill-azzjonisti kollha u diretturi tal-kumpannija AJSP Zammit Ltd. Għalhekk il-procediment jinkwadra ruhu f'dak illi jipprovdi l-Art.218(1)(a) tal-Kap.386.

Id-disposizzjoni tirreferi ghall-**Art.214(1) (a) tal-Kap.386** li taqra hekk –

Kumpannija xxolji u konsegwentement tigi stralcjata fil-kazijiet li gejjin –

...
(a) *il-kumpannija tirrisolvi b`rizoluzzjoni straordinarja li l-kumpannija ghandha xxolji u tkun stralcjata mill-qorti ;*

Mela b`riferenza ghat-talba tar-rikorrenti kif dedotta, fil-kaz illi din il-Qorti tiddeciedi illi tordna l-istralc tal-kumpannija de qua, dik l-ordni tkun **preceduta** mill-ordni ta` xoljiment tal-istess kumpannija de qua.

Fil-kaz tal-lum, jirrizulta illi fis-6 ta` Frar 2012 sar *extraordinary general meeting* tal-kumpannija de qua (a fol 43) fejn il-membri kollha taghha hadu risoluzzjoni li kienet *unanimously approved to wind up the company in terms of Subtitle I to Title II of the Companies Act 1995 entitled Winding up by Court.*

Kif jirrizulta mir-referta a tergo ta` fol 46 tal-process, ir-Registratur tal-Kumpanniji kien notifikat b`kopja tar-rikors promotur skond l-**Art.218(8)** tal-Kap.386.

L-**Art.214** tal-Kap.386 jirregola x-xoljiment u l-istralc ta` kumpanniji.

Issa hemm kazi specifikati fil-ligi stess fejn xoljiment u stralc ***ghandhom (shall)*** jigu ordnati, u ohrajn fejn xoljiment u stralc ***jistghu (may)*** jigu ordnati.

Il-kazi fejn topera s-***shall*** huma dawk indikati fil-paragrafi (a) u (b) tas-subinciz (1) tal-Art.214.

Fil-kaz tal-lum, it-talba qeghda ssir fuq dak li jipprospetta l-paragrafu (a) u cioe` x-xoljiment u stralc mill-qorti.

Dan qiegħed jingħad għaliex l-unika differenza bejn l-(a) u (b) tas-subinciz (1) tal-Art.214 hija li filwaqt li fl-(a) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc għandu jsir mill-qorti, fil-kaz tal-(b) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc għandu jsir volontarjament.

Issa l-kazi fejn topera l-**may** huma dawk indikati fis-subparagrafi (i) u (ii) tal-paragrafu (a) tas-subinciz (2) tal-Art.214. Ir-rikorrenti mhix tagħmel talba skond dawn id-disposizzjonijiet.

Għalkemm mhuwiex il-kaz tal-lum, is-**shall** topera wkoll (din il-Qorti tghid **b`riserva**) fil-kazi indikati fil-paragrafi (i) sa (iv) tal-paragrafu (b) tas-subinciz (2) tal-istess Art.214. Din il-Qorti tagħmel riserva għar-raguni li l-Art.214(2)(b) jtkellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifikati. Dan huwa hekk għax b`effett tal-Art.214(3) **l-istralc** huwa diskrezzjoni tal-qorti f`dawk l-erba` kazi.

Ikkunsidrat :

III. Risultanzi

Mill-provi akkwiziti, jirrizulta l-kumpannija **AJSP Zammit Ltd** giet registrata bin-Nru.C25602 fis-17 ta` Dicembru 1999 (Dok B – minn fol 27 sa fol 38).

Mill-memorandum u l-articles of association taghha jirrizulta l-objects principali taghha kienu 1(a) to set up, develop and carry on horticultural and agricultural activities including the cultivation of land, growing or acquisition, even importation of any plant life for sale in Malta or abroad u 1(b) to carry on the business of importers, exporters, manufacturers, agents, merchants, and dealers in goods of any type or description, including edible consumable goods, and whether wholesale or retail.

L-authorized share capital taghha kien ta` Lm5000 divided into 5000 (five thousand) ordinary shares of Lm 1 each waqt li l-issued share capital kien ta` Lm1000 ordinary shares of Lm 1 each fully paid-up.

L-ishma kienu maqsuma in kwantu ghal 100 tar-rikorrent Antoine Zammit, in kwantu ghal 100 tar-rikorrent Joseph Zammit, in kwantu ghal 100 tar-rikorrent Stephen Zammit, in kwantu ghal 100 tar-rikorrent Prentiss Zammit u in kwantu 600 tar-rikorrenti J.S. Zammit & Co. Limited. B`kollox 1000 sehem. In-numru ta` diretturi huwa rifless tan-numru ta` azzjonisti. Infatti skond il-memorandum, each shareholder will have the right to appoint one (1) director.

Skond l-istess memorandum, il-Bord tad-Diretturi huwa kompost minn hames diretturi. L-ewwel diretturi tal-kumpannija kienu r-rikorrenti Antoine Zammit, Joseph Zammit, Stephen Zammit, Prentiss Zammit u Richard Zammit. Tal-ahhar huwa wkoll Segretarju tal-kumpannija.

Jirrizulta illi, ghalkemm huwa azzjonista u direttur, Richard Zammit mhuwix rikorrent fil-procediment tal-lum.

Inoltre Antoine Zammit, ghalkemm baqa` azzjonista, irrizenja minn direttur fl-14 ta` Ottubru 2010 u ma appunta

Kopja Informali ta' Sentenza

lil hadd minflok. Ghalhekk wara l-14 ta' Ottubru 2010, il-Bord tad-Diretturi baqa' jiffunzjona b'erba' diretturi ghalkemm il-*memorandum* ighid illi l-Bord ghandu jkun kompost minn hames diretturi. Fi kwalunkwe kaz, kwistjoni ta' dik ix-xorta hija interna bejn l-azzjonisti tal-kumpannija ghaliex fil-konfront ta' terzi l-agir tal-Bord b'erba' diretturi jibqa' jorbot lill-kumpannija.

Skond l-articles (ara klawsola 10) the quorum at any shareholders' meeting shall be member/s in person or by proxy holding not less than 75% of the issued share capital filwaqt illi (ara klawsola 11) any alteration in the Memorandum and Articles of Association of the Company, the issue or conversion of shares and the dissolution of the Company shall require the consent of members holding not less than 75% of the Issued paid up share capital of the Company.

Jirrizulta illi r-risoluzzjoni kienet approvata mill-membri kollha. U ghalhekk hija valida ghall-finijiet u effetti kollha tal-ligi.

Fl-affidavit kongjunt taghhom, ir-rikorrent Joseph Zammit, u Richard Zammit (li huwa azzjonista u direttur) iddikjaraw bil-gurament taghhom illi –

l-Bord tad-Diretturi tal-istess kumpannija ddecidejna illi nitolbu illi l-kumpannija tigi stralcjata peress illi ma hemmx lok illi tibqa' topera. Peress li ma nistghux certi jekk hemm kredituri u ghalhekk ma stajniex naghmlu 'declaration of solvency' hassejna li jkun ahjar illi naghmlu dan permess ta' rikors quddiem l-Onor. Qorti Civili.

Kuntrarjament ghal dak illi jinghad fl-affidavit, ma kienx il-Bord tad-Direttur illi talab illi jsir l-istralc. Ir-risoluzzjoni li l-kumpannija tmur ghax-xoljiment kienet tal-azzjonisti kollha *in extraordinary general meeting*. U t-

Kopja Informali ta' Sentenza

talba biex jinbeda l-procediment saret in linea mad-disposizzjonijiet digà citati tal-Kap.386.

Kienu esebiti l-*financial statements* tal-kumpannija de qua li jkopru s-sena li ghalget fil-31 ta` Dicembru 2010 (fol 5 sa fol 17). Dawn il-*financial statements* kienu ffirmati minn tnejn mid-diretturi u cioe` ir-rikorrenti Joseph Zammit u Prentiss Zammit.

Mid-Directors` Report jirrizulta li *the company did not register any trading activities during the year under review and suffered a loss for the year amount to €763.*

Dan huwa konfermat fl-*income statement* fis-sens illi fl-2009 u fl-2010 la kien hemm *revenue* u lanqas *sales*. Ma kien l-ebda profit. U kien hemm biss spejjez amministrattivi fl-ammont ta` €1341 ghall-2009 u €763 ghall-2010.

Fil-*balance sheet* jirrizulta illi l-kumpannija kellha *total liabilities* fl-2009 ta` €4076 u fl-2010 ta` €4839.

Hemm imbaghad in-*notes to the financial statements*. Fosthom insibu miktub hekk – *The company`s ability to continue as a going concern is dependent upon its ability to attain profitable operations and generate sufficient funds therefrom and to continue to obtain borrowings from shareholders sufficient to meet current and future obligations. The shareholders have intimated their willingness to continue to support the company and not to demand payment of the loans due to them.* Jirrizulta illi fl-2009 u fl-2010 il-*loans from related parties* baqa` l-istess u cioe` minghand l-azzjonisti ta` €2801 u minghand ir-*related companies* kienu €65.

Taht il-*heading - Contingent Liabilities*, insibu miktub hekk – *During 2003, an insurance company instigated proceedings against the company for damages performed by a related company. Total damages claimed by the insurance company amounted to €7,025. The company's lawyers have advised that they do not consider that the suit has merit, and have recommended that it not be contested. No provision has been made in these financial statements as the company's management does not consider that there is any probable loss.*

Imbaghad taht il-*heading – Related party*, jinghad hekk – *The company has related party relationships with another two companies. One of these companies has similar ownership and directorship while the other one has shares in the Company. During the year ending 31 December 2010 the Company did not do any business transactions with its related companies.*

Irrizulta li n-negozju tal-kumpannija AJSP Zammit Ltd huwa wieqaf. Ilu hekk wieqaf tal-inqas mill-2009. Ghax ma hemmx attivita` ekonomika, ma hemmx *revenue*. Azjenda kummercjali inattiva jew illi ma toperax ma tistax tiggenera dhul. Ghalhekk ghandha biss dejn li ghalkemm mhuwiex xi haga esorbitanti fl-ghadd jista` jithallas biss jekk ikun hemm injezzjoni diretta ta` flus mill-azzjonisti. Fil-fatt l-azzjonisti kienu taw ukoll self lill-kumpannija. Id-decizjoni unanima tal-azzjonisti evidentement kienet illi ma jibqghux jaghtu flus minn taghhom lill-kumpannija u minflok ighaddu ghax-xoljiment taghha.

Kwindi din il-Qorti hija tal-fehma illi ghandha tghaddi ghax-xoljiment u stralc tal-kumpannija de qua.

In vista tal-premess, din il-Qorti qeghda, bl-applikazzjoni tal-Art.218(1)(a) u l-Art.214(1)(a) tal-

Kopja Informali ta' Sentenza

Kap.386, tilqa` t-talba tar-rikorrenti, qeghda tordna x-xoljiment u l-istralc tal-kumpanija AJSP Zammit Ltd (C25602) b`effett mis-6 ta` Frar 2012 kif ighid it-tieni proviso tal-Art.223(1) tal-Kap.386, qeghda tahtar lill-Avukat Dottor Andrew Borg Cardona bhala stralcjarju bis-setghat u d-dmirijiet kif huma definiti fil-Kap.386 u qeghda tordna li l-ispejjez kollha jithallsu mir-rikorrenti.

< Sentenza Finali >

-----TMIEM-----