



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tal-15 ta' Jannar, 2013

Citazzjoni Numru. 1123/2010

**Terres Co. Ltd. u
Gauci Holdings Co. Ltd**

vs

**L-Ghajn Construction Company Limited, u
Ideal Constructions Ltd**

Il-Qorti,

Rat ir-rikors gurantat tas-socjetajiet attrici tat-2 ta' Novembru 2010 li jghid hekk:

1. Illi pernezz ta' kuntratt fl-atti tan-Nutar Dottor Carnel Mangion tal-4 ta' Marzu 1992 (ara Dokurnent 'A' hawn anness) is-socjeta konvenuta Ideal Constructions Ltd - li f'dak iz-zmien l-azzjonisti taghha kienu L-Ghajn Construction Company Ltd, Terres Company Ltd u Si Si Company Ltd. skond ma jirrizulta mill-anness dokument 'B' li huwa l-Memorandum and Articles of Association tal-

kumpanija f'dak iz-zmien - kienet ittrasferiet a favur ta' L-Ghajn Construction Company Ltd inter alia l-appartament internament immarkat numru 12 fis-sitt sular fi Block 2 ta' zvilupp jismu 'Rocklands' f'Windsor Terrace, Sliema, minghajr l-arja tieghu, u bid-dritt ta' uzu tal-bejt tal-Block 2;

2. Illi sussegwentement permezz ta' kuntratt tal-10 ta' Marzu 1992 fl-atti tan-Nutar Carmel Martinelli (ara kopja hawn annessa bhala Dokument 'C') l-istess Ideal Constructions Ltd ittrasferiet a favur ta' Terres Co. Ltd. xi units mill-istess zvilupp fuq imsemmi liema trasferiment kien jinkludi ukoll l-arja tal-Block 2 fuq imsemmi a favur ta' Terres Co. Ltd.;

3. Illi sussegwentement permezz ta' kuntratt fl-atti tan-Nutar Carmel Martinelli tas-17 ta' Lulju 1992 (ara kopja hawn annessa bhala Dokument 'D') Terres Co. Ltd. ittrasferiet a favur ta' Gauci Bros. Limited (li ilium hija Gauci Holdings Co. Ltd.) xi units fl-imsemmi zvilupp inkluz l-arja tal-Block 2 fuq imsemmi;

4. Illi ghalhekk illum il-gurnata l-proprjetarja tal-arja tal-Block 2 tal-izvilupp imsemmi 'Rocklands' f'Windsor Terrace, Sliema hija Gauci Holdings Co. Ltd.;

5. Illi difatti fil-kuntratt tal-4 ta' Marzu 1992 li gie insinwat fir-Registru Pubbliku permezz tan-nota ta' insinwa numru 3480/1992 (ara Dokument 'E' hawn anness) l-appartament numru 12 fi Block 2 gie insinwat bhala trasferit 'without its overlying airspace, with all its rights and appurtenances, including the right of use of the airspace overlying the roof of the said two block (2)', kif kienet l-intenzjoni tal-partijiet fuq il-kuntratt u kif tnizzel fl-istess kuntratt;

6. Illi pero jirrizulta illi waqt l-imsemmi kuntratt tal-4 ta' Marzu 1992, f'wahda mill-postilli numeruzi illi saru waqt ir-redazzjoni tieghu, u senjatament il-postilla numru 14, gie mnizzel illi kienet qieghda tigi trasferita ukoll l-arja sovrastanti l-Blokk 2, u dana kjarament gie imnizzel b'rizultat ta' zball jew lapsus calami, tant hu hekk illi l-istess kumpanija Ideal Constructions Co. Ltd. sussegwentement ittrasferiet dik l-istess arja lil Terres Co.

Ltd, u dana meta l-istess persuni li dehru fuq il-kuntratt tal-4 ta' Marzu 1992 dehru ukoll fuq il-kuntratt tal-10 ta' Marzu 1992 u fi zmien meta kemm L-Ghajn Construction Company Ltd (il-kumpratrici fuq il-kuntratt tal-4 ta' Marzu 1992) kif ukoll Terres Co. Ltd. (il-kumpratrici fuq il-kuntratt tal-10 ta' Marzu 1992) kienu azzjonisti fil-kumpanija li kienet qiegħda tittrasferixxi, cioe' Ideal Constructions Co. Ltd.;

7. Illi mill-pjanti annessi mal-kuntratti in kwistjoni jirrizulta ukoll li t-trasferiment bejn Ideal Constructions Ltd u L-Ghajn Construction Company Limited ma kienx jinkludi l-arja fuq il-Block 2 - ara inkartament hawn anness bhala Dokument 'F';

8. Illi n-nota ta' insinwa tal-akkwist minn Terres Co. Ltd. tindika ukoll illi l-arja fuq Blokk 2 giet trasferita lill-istess Terres Co. Ltd. permezz tal-kuntratt tal-10 ta' Marzu 1992 - ara Dokument 'G' hawn anness;

9. Illi L-Ghajn Construction Company Limited u/jew rapprezentanti tagħha ricentement bdew ivantaw drittijiet fuq l-arja tal-Block 2 u dan minkejja li fil-passat qatt ma kien hemm problema bejn il-partijiet fis-sens li L-Ghajn Construction Company Limited dejjem irrikonoxxiet li l-arja fuq il-Block 2 kienet tappartjeni lil Gauci Holdings Co. Ltd (gia' Gauci Bros. Limited) u l-predecessur tagħha fit-titolu Terres Co. Ltd.;

10. Illi s-socjetajiet rikorrenti għandhom interess li dan l-izball li sar fuq il-kuntratt tal-4 ta' Marzu 1992 jigi korrett fis-sens illi r-referenza għat-trasferiment tal-arja tal-Blokk 2 lil L-Ghajn Construction Company Ltd. tigi eliminata;

Għaldaqstant jitolbu bir-rispett lil dina l-Onorabbli Qorti sabiex jogħgobha, salv kwalsijasi dikjarazzjoni oħra opportuna,

1. Tiddikjara u tiddeciedi li bil-kuntratt tal-4 ta' Marzu 1992 fl-atti tan-Nutar Carmel Mangion Ideal Constructions Ltd ma ttrasferietx a favur ta' L-Ghajn Construction Company

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Limited l-arja fuq Blokk 2 tal-izvilupp jismu 'Rocklands' f'Windsor Terrace, Sliema;

2. Tiddikjara u tiddeciedi illi fejn fuq dan l-imsemmi kuntratt hemm imnizzel li t-trasferiment jinkludi l-arja ta' Block 2 dan huwa zball u/jew ma jirriflettix l-intenzjoni tal-partijiet fuq l-istess kuntratt, u konsegwentement il-postilla numru 14 fl-istess kuntratt tal-4 ta' Marzu 1992 u kwalsijasi referenza oħra fl-istess kuntratt għat-trasferiment tal-arja tal-Block 2 a favur ta' L-Ghajn Construction Company Limited għandha titnehha;

3. Konsegwentement tordna lill-intimati jaddivjenu għal kuntratt ta' korrezzjoni opportuna u tinnomina Nutar sabiex jippubblika l-kuntratt relattiv fil-jum u hin li din l-Onorabbli Qorti jogħgobha tistabilixxi, u tinnomina kuraturi deputati sabiex jidhru għall-eventwali kontumaci;

Bl ispejjez kontra l-intimati li huma minn issa ingunti għas-subizzjoni.

Rat ir-risposta guramentata li tghid hekk:

1. Illi t-talbiet tar-rikorrenti huma infondati fil-fatt u fid-dritt u għandhom jigu michuda bl-ispejjez stante illi huma legalment insostenibbli w imfassla fuq premissi totalment inveritjeri;

2. Illi fl-ewwel lok mhux minnu illi s-socjeta rikorrenti Gauci Holdings Co. Ltd hija l-propjretarja tal-arja ta' fuq il-Block 2 tal-izvilupp bl-isem 'The Rocklands' f'Windsor Street, Sliema. Illi fil-fatt din l-arja hija proprjeta tas-socjeta esponenti L-Ghajn Construction Company Limited li akkwistat l-istess arja permezz ta' kuntratt datat 4 ta' Marzu 1992 fl-atti tan-Nutar Charles Mangion;

3. Illi kif gie premiss mir-rikorrenti stess, ir-rikorrenti qed jivvantaw drittijiet fuq l-arja de quo naxxenti minn kuntratt datat 10 ta' Marzu 1992, u cjoewara illi l-arja kienet għa għet trasferita lis-socjeta esponenti L-Ghajn Construction Co. Ltd, u għalhekk għandu isegwi illi t-trasferiment tal-arja de quo fl-10 ta' Marzu 1992 mis-socjeta Ideal Construction Company Limited lis-socjeta rikorrenti Terres

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Co. Ltd. huwa null stante illi f'dak l-mument l-arja relattiva ma kienitx ghadha proprjeta tal-imsemmija socjeta Ideal Construction Company Limited u ghalhekk ma setghetx tittrasferiha;

4. Illi l-allegazzjoni tar-rikorrenti illi t-trasferiment tal-arja de quo lis-socjeta esponenti L-Ghajn Construction Co. Ltd. sar bi zball hija allegazzjoni frivola ghal kollox, u semmai l-izball illi sar kien meta s-socjeta Ideal Construction Company Limited regghet ittrasferiet l-istess arja lis-socjeta rikorrenti Gauci Holdings Co. Ltd. fl-10 ta' Marzu 1992;

5. Illi ai termini tal-artikoli 1002 et seq. tal-Kap. 12 tal-Ligijiet ta' Malta, gia la darba mill-kuntratt fl-atti tan-Nutar Carmel Mangion tal-4 ta' Marzu 1992, jirrizulta espressament illi l-arja relattiva giet trasferita lill-esponenti L-Ghajn Construction Ltd., il-Qorti, bir-rispett kollu, hija ezawtorata milli tinterpreta jew sahansitra tirrevoka dak li jirrizulta mill-kuntratt relattiv;

6. Salv eccezzjonijiet ulterjuri.

Rat l-atti kollha tal-kawza inklux in noti ta' sottomissjonijet;

Rat li l-kawza thalliet ghas-sentenza ghall-15 ta' Jannar 2013;

Ilkunsidrat

Din il-kawza hi dwar allegat zball li s-socjetajiet attrici qed isostnu li sehh fil-kuntratt datat 4 ta' Marzu 1992 atti Nutar Carmel Mangion (riportat fil-verzjoni l-aktar cara mill-kopji esebiti a fol. 332 et seq. tal-process) bejn is-socjeta Terres Company Limited u L-Ghajn Construction Company Limited. F'dan il-kuntratt qed jigi sottomess illi sar zball ghaliex is-socjeta L-Ghajn Construction Company Limited gie assenjata fost affarijiet ohra l-arja fuq il-penthouses ta' Block numru 2 fil-kumpless maghruf bhala The Rocklands, f'tas-Sliema meta dan ma kienx il-ftehim.

Is-socjeta L-Ghajn Construction cioe il-beneficjarja ta' din il-proprjeta qed tichad li sar xi zball u ssostni li l-kuntratt kien car u ma hemm ebda lok ghal interpretazzjoni jew korrezzjoni tieghu.

Fatti

Tajeb li biex jiftiehem x'wassal ghal kawza tigi spjegata r-relazzjoni bejn il-kumpaniji involuti. Ideal Construction Limited hi socjeta iffurmata minn tlett azzjonisti lkoll kumpaniji cioe Terres Co Ltd, L-Ghajn Construction Company Limited u Si Si Company Limited. Dawn it-tlett kumpaniji tramite s-socjeta Ideal akkwistaw il-Villa Rocklands f'tas-Sliema u zviluppawha fi tlett bokki ta' appartamenti. Dan kien fit-tmeninijiet. F'xi zmien u dwar dan ma hemmx kontestazzjoni jidher li zewg azzjonisti riedu jaqsmu xi whud mill-proprjetajiet mibnija u waslu biex isiru zewg kuntratti ta' 'datio in solutum'.

Ghal dan il-ghan jidher illi filwaqt li s-socjeta L-Ghajn Construction kienet tuza s-servizzi tan-Nutar Carmel Mangion biex isir il-kuntratt taghha, is-socjeta Terres uzat is-servizzi tan-Nutar Carmel Martinelli ghall-kuntratt taghha. Jidher ukoll illi ma saru ebda konvenji u illi n-Nutar Mangion gie pprezentat b'abbozz ta' kuntratt maghmul mill-avukat George Degaetano.

Iz-zewg kuntratti saru wiehed fl-4 ta' Marzu 1992 a favur L-Ghajn Construction u l-iehor fl-10 ta' Marzu 1992 a favur Terres. Fiz-zewg kuntratti deheru l-istess diretturi ta' Ideal Construction.

Qabel ma l-Qorti tifli x-xhieda tal-partijiet ser jigi riprodott il-partijiet rilevanti tal-kuntratt tal-4 ta' Marzu 1992 a favur L-Ghajn Construction. Billi f'dan il-kuntratt saru numru konsiderevoli ta' postilli, l-klawsoli ser jigu riportati hekk kif korretti bil-postilli sottolineati mill-Qorti:

In virtue of this deed, the first party assigns and transfers by title of 'datio in solutum' to the second party who accepts and acquires by same title, (a) the apartment/penthouse internally numbered thirteen (13) in block one (1), situated on the seventh (7th) floor, and

which forms part of a block of twelve apartments with underlying shops/garages/offices, forming part of the development called 'Rocklands' situated in Windsor Terrace, Sliema, without number and being bounded on the East by Stella Maris Street, on the North by Windsor Terrace and on the West by property of the Formosa formerly, with all its rights and appurtenances, freehold and with its overlying airspace, adjoining terrace which forms part of the roof area of the whole of Block one (1) and lies on the sixth floor level and forms an integral part of the said penthouse transferred. The said apartment is being shown in red on the plan annexed hereto and marked as document letter 'A'; (b) The apartment number twelve (12) in block two (2) situated on the sixth floor forming part said apartment of a block of twelve apartments with underlying shops/garages/offices which in turn forms part of the development without number called 'Rocklands' above described, at Windsor Terrace, Sliema without its overlying airspace, with all its rights and appurtenances including the right of use of the airspace overlying the roof of said block two (2) marked number twelve letter (c) (12c) marked in red/pink on the annexed plan marked document 'BB' hereinafter referred to as the apartments valued at fifty six thousand liri (Lm56,000).

Clause 8

The ownership of the airspace over the roof of the penthouses as well as the airspace over said Blocks 'one' and 'two' shall be the exclusive property of the second party, which shall have the right, subject to obtaining the permits from the competent authority to construct additional storeys on the roof or part thereof, and this without the payment of any compensation to the first party or other owners of apartments or other units of said block, and it is agreed that in any such event, the provisions contained in the second and third schedule hereto shall be construed so as to apply to and include any such additional storeys or construction made by the second party on the said roof.

Clause 9

Saving the provisions of clause 8 (8) above, the second party, in common with the other individual owners of the apartments of said Block 'one' and 'two' will be entitled to have access to, and make use of the roof overlying said Block 'one and two' and this for the purpose of maintenance of water tanks and television aerials as well as the hanging of clothes on the designated areas and such section of said roof that will be designated by the second party or in the event that the second party develops the whole of the roof space by constructing additional storeys, the said owners above mentioned will be entitled to have access to and make use of that section of the roof designated by the second party overlying such additional storeys; provided that if the second party develops only a section of the roof, the other owners in the said Block one will have access to and be entitled to make use of the roof overlying the newly developed section as herein provided. In all such cases the second party will be entitled to remove at its expense, individual water tanks/pipes and other items serving the apartments and have them placed on roof of such additional storey/s or sections as aforesaid.

Clause 10

The second party in his capacity as owner of apartment twelve in Block two above described and transferred together with the owners of the other apartments in said Block 'two' will be debarred from making any constructions, even in wood, or of a temporary nature on the roof, or any section thereof.

Clause 15

As the airspace of the penthouse and of the whole of the Block one is being transferred by virtue of this deed, then the second party is hereby assuming all the obligations already undertaken by first party in favour of the owners of the apartments in the same block, in so far as the use of the roof area and access thereto, as well as the extension of the lift to the new roof are concerned.

Furthermore it is agreed that the airspace of Block one transferred also includes the section of the roof of the penthouse used by the co-owners of the flats in Block

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'one' and the total airspace transferred is subject to the conditions that the spaces allocated for use to the first owners on the same block 'one' will be provided on the new roof so constructed including the spaces for water tanks and other services.

Inoltre n-nota tal-insinwa li kopja taghha hi esebita a fol. 351 b'kopja ufficjali esebita a fol. 439 turi illi fl-ewwel nota ma tnizzlitx it-trasferiment tal-arja ta' Block 1 u 2 izda giet korretta b'nota korrettorja mill-istess Nutar datata 18 ta' Ottubru 2010.

Ma hemm ebda nuqqas ta' qbil fuq l-proprjetajiet l-ohra trasferiti lil L-Ghajn Construction, senjatement appartament 13 fi Block 1 inkluz l-arja tieghu u t-terrazzin adjacenti u l-arja ta' Block 1 u l-appartament 12 fi Block 2.

Fl-10 ta' Marzu 1992 kif inghad sar il-kuntratt l-iehor ta' datio in solutum a favur Terres a fol. 35 et seq. tal-process. Fil-parti deskrittiva jinghad illi l-kumpanija Terres akkwistat minghand Ideal Constructions zewg penthouses numri 13 u 14 fi Block 2, l-appartamenti 2 u 4 fi Block 2 u erba' garages fil-kumpless The Rocklands:

8. The ownership of the airspace over the roof over said Block Two shall be the exclusive property of the assignee which shall have the right, subject to obtaining the permits from the competent authority to construct additional storeys on the roof or part thereof and this without the payment of any compensation to other owners of the apartments or other units of said Block and it is agreed that in any such event the provisions contained in the Second and Third Schedules hereto shall be construed so as to apply to and include any such additional storeys or constructions made by the assignee on said roof.

9. Saving the provisions of Clause eight (8) above. the assignee in common with the other individual owners of the apartments in said Block One (1) and Block Two (2) will be entitled to have access to and make use of the roof overlying said Block One and Block Two and in the event that the assignee develops the whole of the roof space by constructing additional storeys, the said owners above

mentioned will be entitled to have access to and make use of that section of the roof designated by the assignee overlying such additional storeys. provided that if the assignee develops only a section of the roof, the owners will have access to and be entitled to make use of the roof overlying the developed section as provided hereunder. In all such cases the assignee will be entitled to remove at its expense individual water tanks/pipes and other items serving the apartments and have them placed on the roof of such additional storeys or storeys or section as aforesaid and installed at its expense.

10. The assignee, its tenants and/or occupiers of the said penthouses/apartments and its assignees in title shall have the exclusive use of those sections of the roof overlying the penthouses assigned by this deed over said Block Two which sections are marked 'Penthouse B' and 'Penthouse C' and coloured pink on the plan hereto annexed and marked letter 'H' and which sections have an area of approximately five square metres and five point four square metres (5.4 m²) respectively and are accessible from the passage way marked in pink on the said plan 'H' and also the sections number two letter C and number four letter C on the aforementioned plan document 'H' and which have an area of approximately fifteen square metres (15 m²) which passage ways are to be used in common by the owners of the apartments in said Blocks One and Two.

11. It is further agreed that in the event that the assignee obtains the necessary permits to construct additional storeys overlying the existing penthouses, then in any such event, the assignee undertakes to grant to .its tenants/or occupiers of said apartment and its assignees in title the exclusive use of the roof sections over the said additional storey or storeys having the same areas as specified in the precedent clause; furthermore the assignee undertakes that the total roof area that shall remain unbuilt, and shall be retained for the several sections to be assigned for use by the different owners of the apartments in Block One and Two including the common passage ways, shall not be less than the area shown in said annexed plan and the assignee undertakes

to provide access to the new roof area by means of stairs and lift at its expense.

12. Notwithstanding the provisions of sections nine, ten and eleven of this deed, the Company is also transferring to the assignee which accepts, the airspace overlying the whole of Block Two of the said Rocklands Complex including the right to construct additional storeys provided that any additional construction that may be made by the assignee or its successors in title on the roof of the said Block Two or of the penthouses transferred shall be made subject to the conditions hereinbefore mentioned, and all the obligations of the Company Ideal Constructions Limited regarding access to the roof area and extension of lift shall be sole responsibility of the assignee or its successors in title; and further the airspace transferred also includes the section of the roof of the penthouses used by the owners of the flats in Block Two and Block One, and the total area so transferred is subject to the conditions that the spaces allocated for use to the flat owners in the same Block One and Block Two will be provided in the same roof or roofs so constructed, including the spaces for water tanks.

In-nota tal-Insinwa ta' dan il-kuntratt hi esebita a fol. 56 tal-process u hi dettaljata u tirrispekkja l-kuntratt.

Ghal kompletezza jirrizulta illi Terres assenjat b'kuntratt ta' datio in solutum lil Gauci Brothers Limited (illum Gauci Holdings) il-penthouses 13 u 14 fi Block 2 bl-arja ta' Block 2 bi kliem identiku ghal dak riportat fil-kuntratt tal-10 ta' Marzu 1992. Dan il-kuntratt sar fis-17 ta' Lulju 1992 atti Nutar Martinelli u qieghed a fol. 45 et seq. tal-process.

Jidher li d-dizgwid inqala' meta s-socjeta Gauci kienet fi trattativi biex tbiegh il-penthouse 14 fi Block 2 bl-arja taghha u n-Nutar waqt ir-ricerki irravviza d-diskrepanzi bejn il-kuntratti tal-4 ta' Marzu 1992 u 10 ta' Marzu 1992. minn hemm il-kontendenti ma sabu ebda mezz ta' ftehim u saret il-kawza.

Piju Camilleri li qed jidher ghal L-Ghajn Construction u deher fiz-zewg kuntratti msemmija mertu tal-vertenza jixhed li kienet dejjem l-intenzjoni tal-partijiet illi hu jiehu l-penthouse ta' Block 1 li kien ilu jghix fiha mill-1988 u l-arja ta' Block 1 u 2 peress illi hu ma riedx li s-sidien tal-appartamenti fi Block 1 juzaw l-arja fuq il-penthouse tieghu u ghalhekk ried li jkollu l-arja fuq Block 2 tant li s-servizzi tal-appartamenti qeghdin fuq Block 2. Izid illi l-kuntratt tal-10 ta' Marzu 1992 hu zbaljat u malli intebah bil-problema lejn l-2007 meta saret applikazzjoni ghal zvilupp fuq l-arja tal-penthouse ta' Block 2 ha passi gudizjarji. Zied ukoll illi kien hemm zmien meta s-socjeta L-Ghajn Construction talbet li tizviluppa l-arja ta' Block 2 u fit-fatt saru mandati ta' inibizzjoni kontriha bhala sid l-arja mis-sidien tal-appartament ta' Block 2 (ara pagni 325 u 327 tal-process).

Ibnu Ludvig Camilleri bin Piju Camilleri jghid li missieru dejjem qal li l-arja fuq Block 2 kienet taghhom, tant li bejn l-1992 u 1996 ippruvaw igibu permess ghal zvilupp izda l-pjan ta' zvilupp ma kienx jippermetti aktar zvilupp u gie rifjutat. Hadd qatt ma oggezzjoni li kienet is-socjeta L-Ghajn Construction li talbet li jsir l-izvilupp avolja l-MEPA notice twahhlet mal-faccata tal-Block.

Il-Perit Ludovigo Micallef ikkonferma li ghal habta tal-1994 Piju Camilleri ried jizviluppa l-arja ta' Block 1 u 2 u hu rrediga pjanti ghal MEPA fejn intalab dan l-izvilupp oltre li t-terrazzini tal-penthouses ta' Gauci fi Block 2 jinghalqu sal-linja ta' barra tal-bini b'mod li l-penthouses isiru appartamenti. Il-permess intalab f'isem it-tnejn fuq l-izvilupp kollu pero hu dejjem ha l-inkarigu tieghu minghand Piju Camilleri anki rigward il-pjanti ta' zvilupp. Ma' Gauci ma tkellimx ghax l-interess ta' Gauci kien biss ghat-terrazzini tal-penthouses. Il-permess kien gie rifjutat ghax ma kienitx konformi mal-local plan.

Philip Gauci direttur ta' Terres u deher ukoll fuq il-kuntratti in kwistjoni xehed illi n-Nutar Mangion li rrediga l-kuntratt tal-4 ta' Marzu 1992 kien jaf li l-arja fuq Block 2 ma kienitx ser tigi trasferita ghax il-partijiet kienu gia miftehmin x'ser jigi trasferit meta marru ghand in-Nutar izda tfixkel meta

kien qed jirredigi l-att cioe zied mal-abboz li kien inghata redatt mill-avukat Degaetano. Isostni li saru hafna postilli li ma nqrawx, (ghalkemm dan hu michud minn Nutar Mangion). Zied li s-sidien ta' Block 2 jafu li sid l-arja hi Terres peress li meta pperkola xi ilma fl-appartamenti, Piju Camilleri stess qalilhom jehduha ma' Philip Gauci ghax il-bejt kien tieghu.

In-Nutara li ghamlu l-kuntratti cioe n-Nutar Mangion li ghamel il-kuntratt tal-4 ta' Marzu 1992 u n-Nutar Martinelli li ghamel il-kuntratt tal-10 ta' Marzu 1992 isostnu li l-partijiet kienu miftehema fuq dak li riedu, ghalkemm in-Nutar Martinelli jghid li ma kienx jaf bil-kontenut tal-kuntratt tal-4 ta' Marzu 1992 fiz-zmien meta sar dak li ghamel hu sitt ijiem wara.

Alfred Cauchi li wkoll deher fuq il-kuntratti kemm dak tal-4 u dak tal-10 ta' Marzu 1992 f'isem Ideal Construction bhala wiehed mid-diretturi ta' Terres isostni illi l-izvilupp ta' Rocklands kien sar bejn tlieta cioe hu, Piju Camilleri u Philip Gauci. Meta saru l-kuntratti in kwistjoni l-intiza kienet li Piju Camilleri ghal L-Ghajn Construction jiehu penthouses fi Block 1 u l-arja taghha u hu u Philip Gauci ghal Terres jiehu zewg penthouses fi Block 2 bl-arja ta' Block 2. Il-kuntratti relattivi saru wara xulxin biex tigi kompletata l-qasma bejniethom u ma jkunx hemm ebda divergenzi bejn il-partijiet waqt li kienu jsiru l-kuntratti.

Waqt l-access li sar mill-Qorti fuq talba taghha stess gie verbalizzat bhala stat ta' fatt ezistenti fl-1992 illi l-penthouse fi Block 1 u 2 kienu mibnija u illi ghalkemm il-kuntratt tal-4 ta' Marzu 1982 mhux car ghal dak li jirrigwarda d-deskrizzjoni tat-terrazzin tal-penthouse fi Block 1, hemm qbil illi t-terrazzin kien jiffirma parti mill-penthouse ta' Block 1 fl-istess livell tal-penthouse.

Il-partijiet jaqblu illi l-penthouses kienu fl-istess livell u illi l-okkupanti ta' Block 1 kienu jitilghu fuq il-bejt tal-penthouse tal-Block biex jaqsmu ghal bjut ta' Block 2 minn fetha fil-hajt li jiddividi z-zewg bloklok sabiex ikunu jistghu jonxru.

Il-partijiet qablu illi l-appartament mehud minn L-Ghajn Construction fi Block 2 fil-kuntratt tal-4 ta' Marzu 1992 kien jigi ezatt taht wiehed mill-penthouses ta' Block 2.

Ligi

Il-kwistjoni kollha hi dwar jekk ghandhiex issir interpretazzjoni o meno tal-kuntratt li sar fl-4 ta' Marzu 1992 billi dak sussegwenti cioe 10 ta' Marzu 1992 bejn l-istess partijiet li hadu sehem fl-ewwel wiehed jidhru li ttrasferew l-arja ta' Block 2 li kien gie trasferit fil-kuntratt tal-4 ta' Marzu 1992.

Il-Qorti tirreferi ghas-sentenza tal-Qorti tal-Appell Inferjuri fl-ismijiet **Mark Bugeja et vs Geoffrey Camilleri**, deciza 29/03/2012 RCP, li enuncjat b'mod car il-principji regolatrici tal-kuntratt b'harsa dettaljata lejn il-gurisprudenza prevalenti. Hi qalet hekk:

Fil-fatt kif gie ritenut fis-sentenza "**Lay Lay Company Limited vs L-Ghajn Construction Company Limited**" (P.A. (RC) – 28 ta' Gunju 2011) u li kkonfermat dak li nghad fis-sentenza "**Anton Spiteri vs Alfred Borg**" (P.A. (RCP) - 30 ta' Novembru 2000) fuq is-suggett ta' interpretazzjoni ta' kuntratt inghad li "*ghalhekk hawn japplika l-principju stabbilit fl-artikolu 1002 tal-Kap 12, fejn meta il-kliem ta' konvenzjoni mehud fis-sens skond l-uzu tal-kuntratt, hu car, ma hemmx lok ta' interpretazzjoni, ghaliex tali interpretazzjoni, anke supplita minn xhieda, tista' tinghata biss sabiex telucida l-iskrittura jew il-kuntratt f'xi patt incidental jew accessorju taghha*" ("**Carmela Borg vs Bartolomeo Xuereb**" - A. C. 30 ta' Marzu 1997).

Illi kif inghad fis-sentenza "**Emmanuel Avallone vs Centru Speranza fl-Inkapacitati**" (P.A. (RCP) – 28 ta' Frar 2002) dan huwa wkoll konformi mal-principju '*contra scriptum non est argumentum*', li jibqa' japplika sakemm ma tingiebx prova li tali skrittura hija nieqsa minn xi element kostitutiv taghha, prova li tirrizultax li saret f'din il-pendenza.

Illi dan il-principju gie applikat konsistentement minn dawn il-Qrati u hawn issir riferenza ghas-sentenzi "**Bartolomeo Micallef vs JCR Limited**" (P.A. (RCP) – 29 ta' Jannar

2009) fejn inghad li la darba *“minn qari tal-istess kuntratt jirrizulta car li l-kliem tal-istess ftehim jindikaw b'mod preciz x'kienet l-intenzjoni tal-partijiet u dan kien li jigi trasferit bhala korp il-hanut hemm indikat, b'mod li ma hemm bzonn ta' ebda interpretazzjoni (artikolu 1002) “Avukat Dottor Joselle Farrugia vs Dr. Pascal Demajo et nomine” (P.A. (PS) -0 9 ta' Dicembru 2002)”* mela allura ghandu jigi ritenut li l-intenzjoni tal-partijiet hija manifestata b'dak li jipprovd i b'mod car l-istess kuntratt u ma ghandhux ikun hemm ebda lok ta' interpretazzjoni.

Illi fis-sentenza **“John Spiteri et vs Popeye Investments Limited”** (A.C. – 3 ta' Novembru 2006) inghad illi li kif *“ravvizat fis-sentenza fl-ismijiet Elena Micallef v. E. Ciantar (Vol.X.345) deciza fit-3 ta' Jannar 1884 “quando sorgono difficulta' sulla intelligenza delle condizjoni di un contratto e sulle conseguenze, la legge forinisce alcune norme indicattive e dimostrative e criteri diretti come mezzi d'interpretazione, senza vincolare la liberta del giudicante, tenuta a prendere in calcolo le circostanze speciali in ciascun caso”.*

“Hawhekk opportun li jigu ribaditi certi principji regolanti materji ta' kuntratti –

i) F'materja kontrattwali l-ftehim hu ligi ghall-partijiet kontraenti (Art. 992 (1) Kodici Civili; Carmelo Bajada noe v. Fr. S. Cachia et noe (A.K. deciz 16 ta' Lulju 1973);

ii) Ir-regola fundamentali hija dettata mill-Artikolu 1002 tal-Kodici Civili li jghid li meta l-kliem tal-kuntratt mehud fis-sens li ghandu skond l-uzu fiz-zmien tal-kuntratt, hu car m'hemmx lok ghall interpretazzjoni (Vol.XXXIV.i.p27). L-interpretazzjoni ghandha tittiehed mill-atti innifsu u mhux minn provi estraneji, speċjalment meta l-interpretazzjoni hija relattiva ghall-kwistjoni principali”.

iii) Illi meta s-sens letterali tal-kelma ma jaqbilx ma' l-intenzjoni tal-partijiet kontraenti kif tidher car mill-pattijiet mehudin flimkien, ghandha tipprevali l-intenzjoni. Dwar dan din il-Qorti, diversament presjeduta, spjegat illi “din irregola ghandha tigi sewwa apprezzata u applikata. Irid

*jirrizulta bla dubju li s-sens tal-kwalsola li tkun jista' biss jigi nterpretat b'mod univoko ghax hu car. Irid jirrizulta wkoll li dan is-sens car tal-kliem ma jkunx jaqbel ma' dak li kellhom f'mohhom il-partijiet kollha u mhux ma' dak biss li xi wahda mill-partijiet kellha f'rasha u dan irid jidher mill-pattijiet kollha tal-kuntratt mehudin flimkien (“**J. Bartolo et v. A. Petroni deciza 7 ta' Ottubru 1997**”)*”.

*iv) Fl-applikazzjoni tar-regoli ta' interpretazzjoni mhux linterpretazzjoni tal-kontendenti ghall kliem tal-ftehim jew is-sens divers li huma jaghtu lill-kliem li jiswa imma dak li huwa importanti “hu l-qari oggettiv tal-gudikant li jaghti lil kliem is-sens ordinarju tieghu fil-kuntest ta' kif gie uzat mill-kontraenti li ghandu jorbot (**J. Zammit v. Michael Zammit Tabone et noe – Appell Superjuri deciz 28 ta' Frar 1997**).*

Illi dan jikkonferma dak li nghad fis-sentenza “**Emanuel Cauchi et vs BCF Holdings Limited et**” (P.A. (RCP) – 28 ta' Gunju 2006) fis-sens “*li bl-aktar mod esplicitu gie ritenut li “l-principju kardinali li jirregola l-istatut tal-kuntratti jibqa' dejjem dak li l-vinkolu kontrattwali ghandu jigi rispettati u li hi l-volonta' tal-kontraenti kif espressa fil-konvenzjoni li kellha tipprevali u trid tigi osservata. “Pacta sunt servanda”. (A.C. 5 ta' Ottubru, 1998 – “**Gloria mart Jonathan Beacom et vs L-Arkitett u Inginier Civili Anthony Spiteri Staines**”)*”.

Illi hekk ukoll fis-sentenza “**Gemma Fenech vs John Bugeja**” (A.I.C. (PS) – 20 ta' Ottubru 2003) inghad li:-

“Tajjed li jigi osservat ukoll qabl kull konsiderazzjoni tal-meritu illi huwa pacifiku f'materja ta' interpretazzjoni ta' kuntratti illi meta d-dicitura tal-kuntratt hija wahda cara allua ma huwiex lecitu ghall-Qorti li tittanta tintpretah billi tindahal x'kienet il-motivazzjoni tal-kontraenti meta kkonkludew il-ftehim. Dan jinsab rispekkjat ukoll fl-Artikolu 1002 tal-Kap. 16”.

“Illi imbaghad ferm assodat bhala principju ta' interpretazzjoni illi “contra testimonium scriptum, testimonium non scriptum non aufetur”. Dan fis-sens illi

mhux ammess illi provi orali jfissru dak li fih innifsu huwa diga car (“Joseph Gatt vs Joseph Galea”, Appell Civili, 14 ta' April 1975) u l-kontraenti ma jkunux jistghu jipprovaw permezz ta' testimoni dak li ma jirrizultax, jew jirrizulta eskluż, mill-istess kuntratt (Vol. XXXIX.iii.p855 u r-rassenja ta' giurisprudenza f'din is-sentenza kontemplata”.

Konsiderazzjonijiet

Il-Qorti tqis illi mill-assiem tal-provi prodotti, il-kuntratt tal-4 ta' Marzu 1992 hu car f'dak li jirrizulta trasferit lis-socjeta L-Ghajn Construction. Hu minnu illi l-kuntratt fih hafna postilli u illi l-klawsola dwar l-arja fuq Block 2 ma hiex inkluza mad-deskrizzjoni tal-propjeta trasferita pero aktar il-quddiem fil-kuntratt. Pero dan ma jbidel xejn minn dak li juri x'qed jigi trasferit cioe illi L-Ghajn Construction bil-kuntratt tal-4 ta' Marzu 1992 gie assenjat l-arja ta' Block 2 u jigi mizjud illi din il-klawsola partikolari kienet wahda dispozittiva u mhux semplicement wahda deskrittiva jew kondizzjonata b'xi patt iehor.

L-atturi jikkontendu li sar zball pero dan l-izball ma jirrizultax minn xi fatt li jinnewtralizza dak miktub u ffirmat mill-partijiet. Ghalkemm l-intenzjoni tal-partijiet, skond l-atturi, hi li l-arja fuq il-penthouses ta' Block 2 tittiehed minn min akkwista l-penthouses ta' Block 2, cioe l-atturi, dan hu michud mill-istess socjeta konvenuta L-Ghajn Construction. Inoltre n-Nutar li rrediga l-att jikkonferma li l-att gie moqri lil partijiet u li l-partijiet kienu jafu x'qed jiffirmaw u qablu fuq dak li qed jiffirmaw. Del resto anki d-direttur Piju Camilleri offra spjegazzjoni plawsibbli daqs tal-atturi ghalfejn ried li l-arja fuq Block 2 tigi trasferita lilu.

Hu infelici li l-klawsola tat-trasferiment tal-arja ta' Blokk 2 ddahhlet aktar il-quddiem mill-parti dikjaratorja ta' dak li qed jigi trasferit fejn anki ssemma' l-valur, pero dan ma jbidilx mill-fatt innifsu li t-trasferiment tal-arja hu mnizzel u dan b'mod car. Hu wkoll infelici li n-nota tal-Insinwa hi wkoll zbaljata fis-sens li l-arja ta' Block 2 ma tnizzlitx bhala parti mit-trasferiment. Pero anki dan l-izball notarili kif intqal li kien mill-istess Nutar, ma jbidilx fil-portata u

sahha tal-klawsola kontrattwali tat-trasferiment tal-arja ta' Block 2 bejn il-partijiet li ghal dak li jirrigwarda l-istess partijiet cioe s-socjeta Ideal Constructions u L-Ghajn Construction kien trasferiment li jinkludi l-arja ta' Block 2. Inoltre kuntrarjament ghal dak sottomess mis-socjeta attrici, l-arja taz-zewg blokki hi evidenti fil-pjanti annessi mal-kuntratt tal-4 ta' Marzu 1992 billi f'wahda mill-pjanti jidhru l-penthouses fiz-zewg blokki u l-estensjoni kollha tal-bjut taz-zewg blokko.

Ghalkemm jista' jinghad ghal grazzja tal-argument li l-atturi setghu ma kellhomx intenzjoni jittrasferixxu l-arja pero dan mhux dak li ffirmaw ghalih u r-ripensament u l-inkriminazzjonijiet sussegwenti ma jistghux f'dan l-istadju jiggiovaw jew jagevolaw lill-atturi.

Jista' jinghad li kien hemm leggerezza fil-mod kif saru l-kuntratti u li l-partijiet striehu fuq certa fiducja f'xulxin u ma' xulxin pero dan kien kuntratt bejn kummercjanti f'negozji kbar bejniethom u midhla ta' trasferimenti u l-importanza ta' attenzjoni ghal dak li jkunu qed jobbligaw ruhhom ghalih.

Mhux lecitu ghall-atturi illi jinvokaw zball kommess minnhom li ma qrawx sew jew ma tawx attenzjoni sew ghal dak li kienu qed jittrasferixxu u b'daqshekk biss jitolbu lil Qorti tikkoregi dak li jidher li hu car u fejn ma jirrizultax minn provi ohra li dan kien frott zball genwin li l-partijiet kollha ammettew jew urewh li kienu konsapevoli tieghu.

Hu minnu illi sitt ijiem wara l-istess arja giet trasferita lis-socjeta Terres mill-istess socjeta li trasferilha sitt ijiem qabel. Hi l-fehma tal-Qorti li f'dawn ic-cirkostanzi jidher li l-izball sar f'dan il-kuntratt u mhux vice versa ghaliex sakemm ma jirrizultax nuqqas fil-kuntratt anterjuri japplika l-principju illi effett jinghata lill-kuntratt anterjuri ta' trasferiment a skapitu ta' dak li jirrizulta fil-kuntratt posterjuri. Kif ighid il-**Baudry** meta t-titolu ta' trasferiment jemani mill-istess bejjiegh ma jistax ikun hemm diffikulta ghax il-konflitt jigi determinat bl-anterjorita tat-titolu.

U dan hu dak li jirrizulta f'dan il-kaz. Ideal Construction Company Limited ittrasferiet l-istess oggett darbtejn u minghajr prova cara kontra dak li jirrizulta miktub, jippruvah l-ewwel trasferiment. Il-Qorti ma taqbilx mas-sottomissjoni tal-atturi illi hu kontrosens li l-appartament numru 12 fi Block 2 jigi trasferit lis-socjeta konvenuta bla arja pero bi dritt ta' uzu mentri fl-istess kuntratt giet trasferita l-arja ta' Block 2 lis-socjeta konvenuta. Il-Qorti tqis li l-intendiment jidher li kien li l-appartament assenjat ma jkollux drittijiet ta' proprjeta fuq l-arja tal-Block izda dan id-dritt inghata separatament u ghal rasu lis-socjeta konvenuta b'mod illi s-socjeta konvenuta setghet tiddisponi mill-arja f'isimha izda kieku riedet titrasferixxi biss l-appartament fil-futur dan kien ser jigi trasferit bla dritt ta' proprjeta fuq l-istess arja li kien proprjeta esklussiva tas-socjeta konvenuta.

L-istess jinghad ghall-argument imressaq mill-atturi rigward it-tieni kuntratt li sar fl-4 ta' Marzu 1992 fejn is-socjeta konvenuta giet assenjata xi garages bla arja. Il-Qorti tirravisa li ma ssemmiex f'liema Block kienu jinsabu dawn il-garages u in ogni kaz ebda argument favur l-atturi ma jista' jinstab mill-fatt li jissemma' li l-arja ser tibqa' tas-socjeta attrici Ideal Construction billi fil-kuntratt li sar fl-istess jum izda b'numru ta' registrazzjoni precedenti l-arja tal-Block 1 kienet gia giet trasferita lis-socjeta konvenuta bil-kuntratt tal-istess jum u l-Qorti tqis li l-argument japplika anki ghall-arja ta' Block 2. Kwindi dan l-argument ma jistax jirraforza t-tezi attrici.

Lanqas ma l-atturi jistghu jistrieu fuq fatti sussegwenti ghal kuntratt li juri bla ebda dubbju li ma kienitx l-intenzjoni tal-partijiet li jsir it-trasferiment tal-arja ta' Block 2 fil-kuntratt tal-4 ta' Marzu 1992. Piju Camilleri, ibnu u l-Perit tas-socjeta L-Ghajn Construction cioe il-Perit Micallef jixhdu illi xi snin wara ippruvaw jizviluppaw l-arja fuq Block 2 qua proprjeta ta' L-Ghajn Construction izda l-permess ma harigx minhabba restrizzjoni ta' gholi fid-development plan. Ma jidhirx li l-konvenuti ghamlu xi oggezzjoni jew opponew din il-prova bi provi ohra. Jidher li l-problemi qamu meta s-socjeta Terres ippruvat tbiegh il-penthouses fi Block 2 bl-arja tagghom fl-2006 u qamet il-kwistjoni tal-

Kopja Informali ta' Sentenza

arja. Dawn il-provi ma jwaqqghux il-prezunzjoni li kienet l-intenzjoni cara tal-partijiet li jassenjaw dak li jidher car fil-kuntratt tal-4 ta' Marzu 1992.

Decide

Ghal dan ir-ragunijiet il-Qorti tichad it-talbiet attrici, bl-ispejjez kontra taghhom.

< Sentenza Finali >

-----TMIEM-----