



**QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.  
FRANCESCO DEPASQUALE**

Seduta ta' l-14 ta' Jannar, 2013

Avviz Numru. 315/2009

**Dr Trevor Zammit Id No 499859(M)**

**Vs**

**George L Griscti Id No 171947(M ) u Matthew Vella Id  
No 279980(M) fil-kapacita' tieghu bhala l-Editur tal-  
Maltatoday On Sunday**

**Il-Qorti,**

Rat l-avviz ipprezentat fit-28 ta' Awissu 2009 fejn l-attur talab lill-Qorti sabiex tikkundanna lill-konvenuti sabiex ihallsu kull wiehed jew min minnhom is-somma ta' mhux aktar minn hames t'elef Liri Maltin (Lm5,000) bhala danni ai termini ta' l-Artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta u dana stante illi b'artikolu ippubblikat fil-gurnal Maltatoday ta' nhar il-Hadd, 16 ta' Awwissu 2009, intitolat 'Failures of

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the Emergency Vet Services' intkom jew min minnkom immalafamajtu lill-attur bil-ghan car li ttellfulu jew tnaqqisulur-reputazzjoni tieghu.

Rat ir-risposta ta' Matthew Vella ipprezentata fil-5 ta' Novembru 2009 fejn eccepixxa illi:-

Fl-ewwel lok, l-esponent jeccepixxi illi l-artikolu illi qieghed jillmenta minnu r-rikorrent ma kienx artikolu miktub minn xi gurnalist izda kienet ittra ta' qarrej ta' l-istess gurnal.

Fit-tieni lok u minghajr pregudizzju ghas-suespost, ir-rikorrent ghandu jindika ezattament liema huma dawk il-frazzjiet li bihom huwa hassu malafamat.

Fit-tielet lok u minghajr pregudizzju ghas-suespost, l-ittra de quo mhix ingurjuza stante li l-intimat l-iehor George L Griscti kien qieghed biss jikkummenta dwar fatti sostanzjalment veri dwar kwistjoni t'interess pubbliku, liema kummenti huma accettabbli f' socjeta demokratika, kif ukoll kemm taht il-Ligi ta' l-Istampa u wkoll taht il-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.

Rat ir-risposta ulterjuri ta' l-istess Matthew Vella ipprezentata fit-30 ta' Novembru 2009 fejn eccepixxa ulterjorment illi l-attur bl-ebda mod ma jista jilmenta li gie malafamant ghaliex ma giex indikat b'ismu u difficilment huwa identifikabbli mill-'average reader'.

Rat ir-risposta ta' George L Griscti ipprezentata fl-10 ta' Awwissu 2010 fejn eccepixxa illi:-

Fl-ewwel lok u minghajr pregudizzju ghas-suespost, ir-rikorrent ghandu jindika ezattament liema huma dawk il-frazzjiet li bihom huwa hassu malafamat.

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Fit-tieni lok u minghajr pregudizzju ghas-suespost, irrikorrent bl-ebda mod ma jista jilmenta li gie malafamant ghaliex ma giex indikat b'ismu u difficilment huwa identifikabbli mill-*'average reader'*

Fit-tielet lok u minghajr pregudizzju ghas-suespost, l-ittra de quo mhix ingurjuza stante li l-intimat l-esponent kiteb biss dwar fatti u cirkostanzi li ghadda minnhom hu personalment u kif ukoll ikkummenta fuq l-istess fatti, liema kummenti huma accettabbli f' socjeta demokratika, kif ukoll kemm taht il-Ligi ta' l-Istampa u wkoll taht il-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem.

Rat l-artikolu ippubblikat fil-Maltatoday on Sunday fil-harga tas-16 ta' Awwissu 2009 intitolat *'Failures of the emergency vet service'* ipprezentata a fol 2 tal-process.

Rat ix-xhieda ta' Dr Trevor Zammit moghtija fis-16 ta' Marzu 2011 u in kontro ezami fit-23 ta' Jannar 2012.

Rat ix-xhieda ta' Lou Anne Sammut moghtija fis-16 ta' Marzu 2011 u in kontro ezami fit-23 ta' Jannar 2012.

Rat ix-xhieda ta' George Griscti moghtija fl-10 ta' Ottubru 2011 u in kontro ezami fit-12 ta' Lulju 2012.

Rat ix-xhieda ta' Ann Marie Griscti moghtija fit-28 ta' Novembru 2011 u in kontro ezami fit-12 ta' Lulju 2012.

Rat illi fis-seduta tat-12 ta' Lulju 2012 il-kawza thalliet ghas-sentenza bil-fakulta' tan-noti.

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Rat in-nota ta' sottomissjoni tar-rikorrent ipprezentata fit-18 ta' Settembru 2012 u n-nota responsiva ta' George L. Griscti ipprezentata fil-5 ta' Novembru 2012.

### **Ikkunsidrat**

Bhala fatti li hargu mill-provi, jirrizulta illi l-intimat George Griscti kellu kelba tar-razza German Shepard illi kien marid hafna u kien qieghed jigi kkurat mill-Veterinarju tal-familja. Madanakollu, gurnata minnhom, il-kelba qalbet ghal aghar u, ghalhekk cempel lill-Emergency Vet Services sabiex jinghata servizz tal-Vet ta' l-Emergenza. Huwa inghata in-numru tat-telefon tar-rikorrent u cempillu.

Jirrizulta li meta l-intimat Griscti kellem lir-rikorrent, li introduca lilu niffsu bhala Dr Zammit, huwa talbu sabiex jigi jara il-kelba peress illi kienet mughgha sabiex iraqquadha biex jevitalha aktar ugiegh, izda r-rikorrent qallu illi kellu jgib il-kelba hu ghax ma jaghmilx visti hu. Minkejja li l-intimat qallu dwar il-kobor tal-kelba u l-istat illi kienet fiha, r-rikorrent baqa' jinsisti li hu ma jigix u ghalhekk l-intimat qata it-telefonata.

L-intimat reggha cempel lill-Emergency Vet Service, li kull telefonata tiswa €5.50, sabiex jara jekk kienx hemm xi Vet iehor u sabiex jindaga dwar il 'house visits' u dana gie mgharraf illi Dr Zammit kien l-unika Vet 'on call' u kienet prerogativa tieghu biss jekk jigix jew le.

L-ebda Vet ma gie jara lill-kelba dak il-lejl u l-gurnata ta' wara dina mietet.

Urtat minn dak kollu illi kien gara l-intimat baghat ittra lill-Maltatoday on Sunday sabiex jilmenta minn dak li kien gralu, liema ittra hija l-meritu tal-kawza odjerna.

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Ir-rikorrent, fix-xhieda tieghu, filwaqt illi kkonferma li l-intimat Griscti kien cempillu, cahad illi qatt qallu li ma jigix jara l-kelba, izda jghid li qallu li kien qieghed jopera dak il-hin u ghalhekk ma setax jigi u ma setax ihalli il-klinika wahedha. Huwa sahaq ukoll illi peress illi l-intimat qal “I shall keep his name in mind and tell all dog owners I know to avoid him like hell” daka kien malafamanti fil-konfront tieghu.

L-intimat, da parte tieghu, sahaq illi r-rikorrent, meta gie lilu spjegat is-sitwazzjoni minn Griscti, qalli kiesah u biered “jien ma nigix. Tigi int”. Huwa insista wkoll illi r-rikorrent qatt ma qallu illi kien qieghed jopera.

## Difiza

Sabiex jilqghu ghall-akkuzi maghmulha fil-konfront taghom l-intimati ressu zewg eccezzjonijiet principali, ossija illi r-rikorrent ma giex identifikat b'ismu u ghalhekk huwa difficilment identifikabbli mill-‘average reader’, kif ukoll illi Griscti kiteb biss fuq fatti u cirkostanzi li ghadda minnhom hu u ghalhekk il-kummenti li ghamel hu kienu ‘fair comment’ illi wiehed seta jaghmel liberalment.

Dwar l-ewwel difiza, sabiex jigi stabbilit jekk persuna hijiex identifikabbli jew le, il-principji stabbiliti huma s-segwenti (Gatley on Libel and Slander op. cit. paras 7.3 sa 7.5, pp. 184 sa 186.):

*“The issue of identification is to be decided on the same principles as those which govern the question of whether the words are capable of a defamatory meaning. Where the claimant is expressly identified by name, it is not necessary to produce evidence that anyone to whom the statement was published did identify the claimant. The question is not whether anyone did identify the claimant but whether persons who were acquainted with the*

*claimant could identify him from the words used...Where the claimant is referred to in an indirect way or by implication it will be a question of degree how far evidence will be required to connect the libel with him. At one extreme, if there is a libel on 'the Prime Minister' that officer does not need to produce witnesses to testify that they know who he is. At the other extreme, the claimant may only be identifiable by reason of extraneous facts which are not generally known, in which case there is no actionable publication unless it is shown that the words were communicated to persons with such knowledge. Even in the latter type of case, however, it is not enough that the recipients of the statement did understand it to refer to the claimant: the issue is whether reasonable people with their knowledge would so understand it...The general rule is that a statement is to be understood in the way in which a reasonable recipient would understand it at the time it is published: subsequent knowledge which makes the recipient look back on it in a different light will not make it defamatory...it is immaterial that the defendant did not intend to refer to the claimant, or did not even know of his existence. The question is: Would the words complained of be understood by reasonable people who knew the claimant to refer to him?"*

Jigi rilevati ukoll illi kif stqarrew l-awturi Price u Duodu fil-kitba tagħhom Defamation: Law, Procedure and Practice (para. 4-03, pp. 32 sa 33) il-principji ta' identifikazzjoni jew identifikabilità gew spjegati kif gejj:

*"Identification of the claimant can arise by virtue of the 'natural and ordinary' meaning of the words. In Watts, it was the juxtaposition of the photograph of the claimant with the defamatory words. More commonly it arises because certain readers have knowledge of particular matters, which lead them to understand the statement to refer to the claimant. This is known as identification by innuendo. In common with innuendo in relation to meaning, the particular matters necessary to make the identification may be known to a large number of readers, as was the case in Lloyd, or a limited number, as in*

*Morgan. The claimant must prove by direct evidence or inference that there are readers who have the necessary knowledge...The test is whether reasonable readers generally or a reasonable reader with the particular knowledge would understand the statement to refer to the claimant. Mere conjecture that it might refer to the claimant is insufficient...The test is objective and the intention of the defendant in this as in other areas is irrelevant for the purposes of proving the claimant's case..."*

Kif stqarr ukoll l-awtur P. Carey fil-ktieb tieghu Media Law 1996 pagna 43,

"The plaintiff must show that the words were published of and concerning him. It will be no defence that the plaintiff is not referred to by name if he would be capable of being identified by the reasonable person.... The test, in every case, is whether reasonable people would understand the words to point to the plaintiff personally."

Finalment, fil-qrati Maltin, il-kwistjoni dwar x'wiehed jifhem b'qarrej ordinarju gie diskuss fis-sentenza Dr. Alfred Sant vs Joseph Micallef deciza mill-Qorti ta' l-Appell (Inferjuri) fl-10 ta' Jannar 2003, fejn intqal

*"B'qarrej ordinarju wiehed necessarjament jifhem dak li fid-dutrina Ingliza, jissejjah 'right thinking person'. Persuna li ma toqghodx tissotolizza, imma tifhem il-kliem jew stampat iehor 'in their natural and ordinary meaning i.e. in the meaning in which reasonable men of ordinary intelligence, with the ordinary men's general knowledge and experience or wordly affairs would be likely to understand them' (Gately op.it pagna 47). Dedotti mill-istampat hemm imbaghad l-inferenzi 'which a reasonable reader guided not by any special but only by general*

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*knowledge and not fettered by any strict legal rules of construction would draw from the words. (Jones vs Skelton 1963)”.*

Issa fil-kaz in ezami, jirrizulta illi l-intimat Griscti, fl-ittra tieghu, ghamel referenza ghal zewg elementi illi jidentifikaw il-persuna illi huwa jaghmel referenza ghalha mar-rikorrent. Huwa jghid illi l-Vet li huwa cempel kien jismu “Dr Zammit” u jghid ukoll illi tali Vet jopera fil-klinika tieghu gewwa “Attard”.

Jirrizulta mill-provi illi r-rikorrent jopera klinika gewwa Attard bl-isem ta' ‘Trevor’s Veterinary Clinic’ u jirrizulta wkoll illi l-unika vet illi jopera gewwa Attard huwa r-rikorrent.

Jirrizulta wkoll illi, a kuntrarju ta' dak li qieghed jeccepixxi l-intimat Griscti, huwa ried illi l-qarrej ordinarju ikun jaf min kien ir-rikorrent, u tali intenzjoni tidher cara daqs il-kristall fl-artikolu inniffsu meta huwa jghid:-

“I shall keep his name in mind and tell all dog owners I know to avoid him like hell”

Il-fatt illi l-intimat uza tali kliem juri car illi l-intenzjoni ta' l-intimat kienet illi r-rikorrent jigi identifikat, kif attwalment sar, u ghalhekk certament ma huwiex minnu dak li qieghed jallega l-intimat illi r-rikorrent ma huwiex identifikabbli stante illi attwalment dik kienet l-intenzjoni tieghu.

Ghalhekk l-argument li r-rikorrent ma huwiex identifikabbli ma tregix.

It-tieni difiza imressqa mill-intimati kienet illi dak li inkiteb kien ‘fair comment’, peress illi l-intimat Griscti kiteb dak li kien attwalment gralu.



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Kif gie rilevati minn Gatley fil-kitba tiegħu "On Libel and Slander", Seventh Edition, para 719: "

A writer may not suggest or invent facts, or adopt as true the untrue statements of fact made by others, and then comment on them on the assumption that they are true. If the facts upon which the comment purports to be made do not exist the defence of fair comment must fail"

Dana għalhekk jiccara li għall-iskop biex tapplika d-difiza tal-fair comment, huwa necessarju li l-istampati ikun jikkontjenti mhux biss il-verità oggettiva tal-fatti izda wkoll il-korrettezza formali ta' l-esposizzjoni tagħhom. Huwa impellenti għalhekk illi qabel il-pubblikazzjoni l-fonti ta' l-istess fatti tigi diligentement varjata għall-fini ta' l-attendibilità tagħhom.

Kif ikompli jgħid il-Gatley,

"to succeed in a defence of fair comment the words complained of must be shown to be (i) comment; (ii) fair comment; and (iii) fair comment on some matter of public interest" (Gatley, op.cit. para. 704).

Dana huwa stabbilit ukoll fis-sistema guridika Taljana skond decizjoni tal-Qorti tal-Cassazione tal-25 ta' Mejju 2000, Numru 6877, fejn jingħad illi jehtiegu wkoll tliet elementi precizi, u cjoè, li

"(i) i fatti esposti sono veri, (ii) vi è un interesse pubblico alla conoscenza del fatto; u (iii) vi sia correttezza formale dell'esposizione che non travilichi lo scopo informativo".

Dawna l-elementi gew rikonoxxjuti mill-Qrati tagħna wkoll. Di fatti, is-sentenza fl-ismijiet Anthony Degiovanni et noe v. Mark Lombardo et, Appell Civili Nru. 966/01 deciza mill-

Qorti ta' l-Appell (Sede Inferjuri) fl-24 Novembru 2003, inghad illi:

*“huwa ghalhekk car li daqs kemm hija mehtiega l-libertà ta' l-espressjoni, hekk ukoll hija essenzjali u huwa wkoll dritt inaljenabbli, li wiehed jipprotegi l-fama tieghu, bil-mezzi legali kollha disponibbli ... kulhadd huwa liberu sabiex jaghti l-opinjoni tieghu u anke jaghti gudizzju tieghu, però tali espressjoni ma ghandha qatt twassal sabiex jigu attribwiti atti lil xi persuna, b'mod li jattakkaw ir-reputazzjoni ta' l-istess u l-fama tieghu, meta tali atti lanqas ikunu veri. Illi infatti fis-sentenza “Onor. Charles Buhagiar v. Ray Bugeja” (P.A. N.A. 19 ta' Jannar 1996) inghad li: “Il-linja medjana fejn proprio d-dritt ta' espressjoni libera taccedi dak ragonevoli u ghandha tigi punita, ghax issir minflok ksur tad-drittijiet ta' haddiehor; huwa proprio ... fejn l-espressjoni tigi bbazata fuq fatti skorretti”. Illi f'dan il-kuntest id-differenza bejn “allegazzjoni ta' fatt” u “comment” hija wahda illum stabbilita fil-gurisprudenza taghna. “F'materja ta' ingurija bl-istampa ghandha ssir distinzjoni bejn “allegation of fact” u dak li huwa “comment”. Biex tirnexxi d-difiza tal-verità tal-konvicju, il-fatt ghandu jigi ppruvat. Il-“comment” biex ikun gustifikat irid ikun “fair and bona fide” u ma jistax ikun “fair u bona fide” jekk il-fatt attribwit lill-kwerelant ma jkunx veru” (“Reginald Miller v. Harold Scory” – XXXVI.iv.843). Illi ghalhekk ma tistax tirnexxi l-eccezzjoni tal-“fair comment” “jekk ma jigux ippruvat sodisfacentement il-fatti addebitati lill-kwerelant, u ma tistax tirnexxi d-difiza tal-‘justification’ u jekk il-fatti ma jkunux veri, lanqas jista' jkun hemm ‘fair comment’ (“Anglu Camilleri v. Anthony*

*Zammit, Vol. XI.IV.1195; "Dr. Joseph M. Ciappara v. Joseph Zammit" JSP, Citaz. Nru. 929/90 – 3 ta' Ottubru 1991). Illi sabiex isir dan l-ezami wiehed irid jiehu l-kliem fis-sens normali u ordinarju taghho, u dan ifisser "in the meaning which reasonable or ordinary men of ordinary intelligence with the ordinary man's general knowledge and experience of world affairs, would be likely to understand them", dan jista' jinkludi "an implication or inference which a reasonable reader guided not by any special but only general knowledge and not fettered by any strict legal rules of construction would draw from the word". ("Jones v. Skelton" (1963) W.L.R. pg. 1371 (P.C)).*

Il-Qorti tinnota li mill-fatti kif esposti mill-partijiet, jirrizulta illi l-intimat ikkomunika mar-rikorrent f'mument meta huwa kien jinsab ferm inkwetat u koncernat dwar l-istat ta' sahha tal-kelba tieghu u dwar it-tbaghtija illi tali kelba kienet qieghda tghaddi minnha in vista ta' l-istat ta' sahha taghha. Huwa kien jutilizza servizzi ta' veterinarju ta' persuna ohra illi, f'dak il-mument, ma setax jigi kkuntattjat, u ghalhekk l-intimat ikkomunika mas-servizzi ta' l-emergenza illi tawh in-numru tar-rikorrent illi, dik il-gimgha, kien qieghed 'on call' bhala veterinarju ghal Malta kollha.

Il-Qorti tifhem illi la darba wiehed ikun 'on call' ghal Malta kollha, dana iwassal sabiex r-rikorrent ikun imhabbat aktar min-normal in vista tal-fatt illi jkollu ferm aktar xoghol min-normal. U di fatti, kif stqarr ir-rikorrent stess, meta huwa kien gie kkuntattjat mill-intimat, huwa kien qieghed fil-klinika tieghu u kien qieghed jopera fuq annimal iehor. Kien ghalhekk illi meta l-intimat talab lir-rikorrent sabiex jigi d-dar tieghu sabiex iraqquad il-kelba tieghu, l-istess rikorrent gharrfu illi dan ma setax jigi u kellu jigi l-intimat bil-kelb peress illi kien imhabbat.

L-intimat, fix-xhieda tieghu, jikkontendi illi ma kienx minnu li r-rikorrent kien qiegħed jopera fil-mument illi cempillu l-intimat izda jistqarr illi huwa tant infixel meta r-rikorrent qallu illi kellu jgib il-kelba għandu, li qata t-telefon mal-ewwel u regħha cempel bl-isperanza li jsib Vet iehor peress illi kien dizappuntat bir-reazzjoni tar-rikorrent. Tali verżjoni tikkombacja ma dak li stqarr ukoll ir-rikorrent fejn dana qal illi l-intimat lanqas biss tah cans jghidlu jekk setax jigi jara l-kelba aktar tard, peress illi “ssuppervja u qata' it-telefon”.

Tenut kont tal-fatti kollha kif fuq espost, jirrizulta ben ippruvat illi l-fatti kif deskritti mill-intimat fl-artikolu naqsu milli jindikaw illi r-rikorrent ma setax jattendi d-dar tal-intimat peress illi kien imhabbat b'xogħol iehor ta' emergenza u, di piu' ta' x'jifhem lill-qarrejja illi r-rikorrent agixxa b'mod kiesah u biered u mingħajr kompassjoni liema fatt, skond l-intimat huwa “a disgrace to his profession”.

Il-Qorti ma tistax ma tinnutax illi għalkemm l-intimat kien certament ferm dispjacut għal fatt illi kienet għadha kif mitietlu l-kelba wara marda, liema mewt certament wassal għal dieqa u niket fil-familja ta' l-intimat u l-intimat stess, dana ma jfissirx illi l-intimat kellu d-dritt illi, gimghatejn wara l-mewt tal-kelba, jippubblika ittra sabiex javza lil kull min għandu kelb sabiex ma juzawx is-servizzi ta' “certu Dr Zammit” illi jopera għewwa klinika f'Attard għax ma qdiehx meta huwa kellu bzonn, minhabba f'cirkostanzi illi huwa naqas milli jispjega - ossija illi r-rikorrent ma kienx f'pusizzjoni illi jigi d-dar tieghu dak il-hin għax kien qiegħed jopera f'emergenza!

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Il-Qorti ghalhekk ma tistax ma tikkonkludix illi l-kontenut ta' l-ittra ippubblikata mir-rikorrent ma hija xejn aktar minn attakk lejn l-integrita' u l-professjonalita' tar-rikorrent u ma hemm ebda 'fair comment' f'dak li qal.

Ghalhekk, id-difiza tal-fair comment ma tregix.

Konkluzjoni.

Il-Qorti

Wara illi rat il-provi kollha prodotti quddiemha u semghet ix-xhieda kollha filwaqt illi fehmet ic-cirkostanzi kollha tal-kaz,

Taqta u Tiddeciedi billi

Fl-ewwel lok tichad l-eccezzjonijiet kollha ta' l-intimati u billi

Fit-tieni lok tilqa' t-talbiet rikorrenti u tiddikjara illi l-pubblikazzjoni meritu tal-kawza odjerna hi libelluza u malafamanti fil-konfront tar-rikorrent u li tesponih ghad-disprezz u r-ridikolu tal-pubbliku u ghalhekk

Tikkundanna lill-konvenut George L Griscti ihallas lir-rikorrent is-somma ta' hames mitt Ewro (€500) filwaqt illi tikkundanna lill-konvenut Matthew Vella ihallas lir-rikorrent is-somma ta' mitt Euro (€100) u dana bhala danni likwidati ghal malafama b'applikazzjoni ta' l-artikolu 28 tal-Ligi ta' l-Istampa (Kap 248 tal-Ligijiet ta' Malta);

Spejjez kollha kontra l-intimat George L Griscti.

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**< Sentenza Finali >**

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