

Kopja Informali ta' Sentenza



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT MC KEON**

Seduta ta' l-24 ta' Jannar, 2013

Rikors Numru. 1053/2012

**One Blue Lemon Co Ltd (C35631)**

***kontra***

**X**

**II-Qorti :**

**I. Preliminari**

Rat ir-rikors prezentat Darry Grima u Nadine Darmanin (“ir-rikorrenti”) fit-22 ta` Ottubru 2012 li jaqra hekk –

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*Illi huma l-unici diretturi u azzjonisti tal-kumpannija rikorrenti (Dok A) u l-kumpannija tinsab fi stat ta' insolventa kif indikat fl-anness Dok B u d-diretturi rrizolvew illi l-istess tigo stracvjata (Dok C – risoluzzjoni tal-Bord).*

*Ghaldaqstant ai termini tal-Art.214(1)(a), 218(1)(a) u 223(1) tal-Kap 386 qeghdin jitolbu umilment illi l-Onor. Qorti joghgobha tordna x-xoljiment u l-istralc tal-kumpannija One Blue Lemon Co Ltd u tahtat lil Clive Caruana (4438M) ta' "Albea", Testaferrata Street, Msida, ghal dan il-ghan ukoll skond il-provvedimenti tal-Kap 386.*

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

Rat id-digriet taghha tat-8 ta' Novembru 2012.

Rat in-nota b'dokumenti li l-kumpannija Creative Refurbishing Centre (Malta) Limited (C22356) ipprezentat fis-16 ta' Novembru 2012.

Rat in-noti b'dokumenti li kienu prezentati mir-rikorrenti fit-23 ta' Novembru 2012.

Rat id-digriet taghha tad-29 ta' Novembru 2012 fejn appuntat ir-rikors promotorju ghas-smigh ghall-udjenza tas-17 ta' Jannar 2013 fid-09.00 a.m.

Rat il-verbal tal-udjenza tas-17 ta' Jannar 2013.

Rat id-digriet taghha tas-17 ta' Jannar 2013 fejn halliet il-kawza ghal provvediment ghal-lum.

Rat l-atti ta` dan il-procediment.

**Ikkunsidrat :**

**II. Dritt**

Bil-procediment tal-lum, ir-rikorrenti qeghdin jitolbu lil din il-Qorti sabiex tordna x-xoljiment u l-istralc tal-kumpannija One Blue Lemon Co Ltd (C35631) u tahtar stralcjarju. Huma ddikjaraw illi qeghdin jiprocedu 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' obbligazzjoni, kreditur jew kredituri, jew minn xi kontributorju jew kontributorji.*

Fil-kaz tal-lum, il-procediment kien inizjat mir-rikorrenti bhala unici diretturi u azzjonisti tal-kumpannija. Għalhekk il-procediment jinkwadra ruhu f`dak illi jipprovdi l-Art.218(1)(a) tal-Kap.386.

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

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

*...*

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(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, dik l-ordni tkun **preceduta** mill-ordni ta` xoljiment tal-istess kumpannija.

Kien esebit (a fol 5) mir-rikorrenti dokument iffirmit minnhom datat 11 ta` Ottubru 2012 li jaqra hekk –

*We the undersigned being the only directors of the company resolve in the light of the company`s financial situation to place the company into liquidation and to cause the relative application to be made to the Civil Court for this purpose. For all intents and purposes at law, the undersigned being also the only shareholders in the company, this resolution is to be taken as and when required by law to be a resolution of an Extraordinary General Meeting of the company passed unanimously.*

Intbaghat lir-Registratur tal-Kumpanniji l-avviz tax-xoljiment u stralc skond l-Art.265(1) tal-Kap.386 fl-20 ta` Novembru 2012 (fol 23). Ir-Registratur kien ukoll 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.

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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 qieghed jinghad ghaliex 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 ghandu jsir mill-qorti, fil-kaz tal-(b) ir-risoluzzjoni straordinarja tghid li x-xoljiment u stralc ghandu jsir volontarjament.

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

Ghalkemm mhuwix 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 taghmel riserva ghar-raguni li l-Art.214(2)(b) jittellem **biss** dwar xoljiment mhux ukoll dwar l-stralc fl-erba` kazi hemm specifikati. Dan huwa hekk ghax b`effett tal-Art.214(3) **l-istralc** huwa diskrezzjoni tal-qorti f`dawk l-erba` kazi.

**Ikkunsidrat :**

### **III. Risultanzi**

Mill-provi akkwiziti, jirrizulta li One Blue Lemon Company Limited kienet registrata bin-Nru.C35631. Il-*Memorandum* u l-*Articles of Association* kienu registrati

mar-Registratur tal-Kumpanniji fis-26 ta' Frar 2010. Diversi huma l-objects taghha fosthom *to operate specialised retail outlets to promote and support the Maltese Islands' heritage, oth directly and under franchise arrangements.*

*L-authorized share capital* huwa ta' €70,000 *divided into 70,000 (seventy thousand) ordinary shares of €1 each.* L-issued share capital huwa l-istess bhall-authorized share capital: €70,000 *divided into 70,000 (seventy thousand) ordinary shares of €1 each, 100% fully paid-up.*

L-ishma huma maqsuma in kwantu ghal 21,000 *Ordinary 'A' shares* u 21,000 *Ordinary 'B' shares* tar-rikorrent Darryl Grima, u in kwantu ghal 21,000 *Ordinary 'C' shares* u 7,000 *Ordinary 'D' shares* tar-rikorrenti Nadine Darmanin.

Il-Bord tad-Diretturi huwa kompost minn zewg persuni. Fil-kaz tal-lum, huma l-azzjonisti stess u cioe' r-rikorrenti. Ir-risoluzzjoni straordinarja li skattat dan il-procediment kienet approvata mill-Bord tad-Diretturi u miz-zewg azzjonisti. Kien ghalhekk sodisfatt l-Art.15 tal-*Articles of Association.*

Fl-affidavit kongjunt taghhom, ir-rikorrenti jaghtu l-isfond ta' dak li wassalhom biex jibdew dan il-procediment. Il-kumpannija bdiet topera fl-2010. Bdew *retail core business* wara li krew hanut fil-Bay Street Shopping Complex. Ighidu – *The financial results for the year 2010 showed a loss of €30,000 of which depreciation and amortization totalled approximately to €29,000.* Bil-ghan illi matul l-2011, idawwru t-telf ghal profitt, ir-rikorrenti jghidu li hadu mizuri biex inaqqsu l-ispejjez. Pero' l-mizuri li hadu ma kienux bizzejjed billi *in the first few months of the year 2011, the company's revenues from Bay Street outlet fell drastically thereby decreasing*

*the sustainability of the outlet.* Kienu kostretti jitolqu l-kirja tal-hanut pero` garrbu t-telf tar-rigal li hallsu fil-bidu tal-kirja u *all shop fits made in this outlet.* Ittentaw ipattu ghat-telf mir-*retail business* billi marru ghas-*supply of promotional products to corporate clients.* Bdew jirpiljaw pero` ma kienx bizzjed. Billi kellhom prodotti li jinbieghu go *museum shops* ippruvaw jaghmlu ftehim ma` Heritage Malta izda l-kondizzjonijiet li imponiet Heritage Malta kienu stretti wisq biex il-kumpanija tiggenera qligh. Ikomplu hekk – *During the year 2012 significant falls in sales, which could not be attributed to a seasonal drop,, led us to conclude in August of this year that there were no prospects of recovery for the company and that the company would shortly become insolvent.*

Ir-rikorrenti ma pprezentawx *financial statements.* Ipprezentaw pero` ittra datata 15 ta` Ottubru 2012 iffirmata minn Brian Tonna CPA ta` Nexia BT (Certified Public Accountants) li taqra hekk –

*Following our first review of the company`s financial statements for year ending 31 December 2011, we noted that the company`s financial position is one of a net deficiency. We have also received representation from the company`s directors and shareholders that the company`s activities ceased on 6 October 2012 and all employees were made redundant on the same date. We therefore reiterate that this will affect our audit opinion on the audit report of One Blue Lemon Company Limited (C35631) as this is clearly a situation where the company is no longer a going concern. Since the company is in a deficiency position and the company is insolvent in terms of the law, we recommend that the Board should act prudently in this regard.*

Jirrizulta li n-negozju tal-kumpanija huwa wieqaf. Il-kumpanija ghandha wkoll id-dejn inkluz dak ta` Creative Refurbishing Centre (Malta) Limited (ara fol 8 et seq) kif hija stess taccetta. Ghax ma hemmx attivita` ekonomika, mhux se jkun hemm *revenue* u wisq anqas

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qligh biex jithallas id-dejn. Ir-rikorrenti jaccettaw illi hekk hu. U hemm konferma mill-awdituri. Kienet f'waqtha d-decizjoni tar-rikorrenti li jadottaw ir-risoluzzjoni straordinarja tal-11 ta` Ottubru 2012 anke fl-interess tal-kredituri. Kwindi din il-Qorti hija tal-fehma illi ghandha tghaddi ghax-xolijment u stralc tal-kumpannija.

In kwantu ghall-hatra tal-istralcjarju, l-**Art.305(1) tal-Kap.386** jaqra hekk –

*Persuna ma tkunx kwalifikata li taghmilha ta` stralcjarju kemm-il darba ma tkunx avukat jew individwu li jkun accountant pubbliku certifikat jew accountant u awditur pubbliku certifikat, jew registrata mar-Registratur bhala persuna addattata u xierqa biex tezercita l-funzjoni ta` stralcjarju.*

Fir-rikors promotorju, ir-rikorrenti talbu l-hatra ta` Clive Caruana bhala stralcjarju. Billi r-rikorrenti taw biss in-numru ta` l-karta tal-identita` ta` din il-persuna u l-post tar-residenza jew negozju tieghu u xejn aktar, din il-Qorti m`ghandhiex prova li l-persuna koncernata tikkwalifika biex tinghata l-hatra ta` stralcjarju. Ghalhekk se tkun din il-Qorti li tahtar stralcjarju hi.

**In vista tal-premess, din il-Qorti qeghda –**

**Fl-ewwel lok, bl-applikazzjoni tal-Art.218(1)(a) u l-Art.214(1)(a) tal-Kap.386 tal-Ligijiet ta` Malta, tordna x-xoljiment u l-istralc tal-kumpannija One Blue Lemon Company Limited (C35631), b`effett mill-11 ta` Ottubru 2012, skond it-tieni proviso tal-Art.223(1) tal-Kap.386.**

**Fit-tieni lok, tahtar lill-Avukat Dottor Richard Galea Debono bhala stralcjarju bis-setghat u d-dmirijiet kollha kif inhuma definiti fil-Kap.386 tal-Ligijiet ta` Malta.**



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**Fit-tielet lok, tordna li l-ispejjez kollha jithallsu mir-rikorrenti.**

**< Sentenza Finali >**

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