MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON

Seduta ta' l-4 ta' Lulju, 2013

Rikors Numru. 534/2011

Francis J. Vassallo & Associates Limited (C22963)

kontra

L-Avukat Dr. Anthony Cutajar u l-Prokuratur Legali Gerald Bonello li b`digriet tas-7 ta` Frar 2013 gew nominati bhala kuraturi deputati sabiex jirraprezentaw il-kumpanniji Furnex Trade Limited (C38393) u Amanda International LLC 4010735

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fit-3 ta` Gunju 2011 li jaqra hekk –

Illi l-kumpannija rikorrenti hija azzjonista fil-kumpannija Furnex Trade Limited (C38393) u tiddetjeni sehem wiehed fl-imsemmija kumpannija. Il-bqija tal-azzjonijiet huma mizmuma mis-socjeta` estera Amanda International LLC, 4010735, 701 Renner Road, Wilmington, Delaware 19810, United States illi hija wkoll l-uniku direttur tal-kumpannija Furnex Trade Limited (C38393).

Illi l-kumpannija Francis J. Vassallo & Associates Limited (C22963) ma tridx tibqa` azzjonista fil-kumpannija Furnex Trade Limited (C38393) intimata izda l-mexxejja tal-kumpannija Furnex Trade Limited ma humiex jaghtu l-ko-operazzjoni taghhom ghat-trasferiment tas-sehem.

Illi ghal xi zmien il-kumpannija esponenti Francis J. Vassallo & Associates Limited (C22963) kienet tissuplixxi servizzi lill-kumpannija konvenuta Furnex Trade Limited (C38393). Dak iz-zmien kien hemm qbil illi l-kumpannija esponenti ghandha zzomm sehem fil-kumpannija intimata.

Illi kien hemm zmien meta l-kumpannija esponenti Francis J. Vassallo & Associates Limited (C22963) kienet tippermetti lill-kumpannija konvenuta tuza l-fond f`259, St. Paul Street, il-Belt Valletta VLT 1213 bhala l-indirizz registrat taghha.

Illi sal-gurnata tal-lum il-kumpannija konvenuta ghadha tuza l-indirizz '259, St Paul Street, il-Belt Valletta VLT1213' bhala l-indirizz registrat taghha.

Illi fl-2007 il-kumpannija Francis J. Vassallo & Associates Limited (C22963) waqfet milli taghti servizzi lill-kumpannija konvenuta. Illi ma tezistix ebda kommunikazzjoni bejn il-kumpannija esponenti u dik *intimata u l-prassi titlob illi l-kumpannija esponenti ghandha taghmel distakk shih mill-kumpannija intimata.*

Illi llum il-gurnata l-kumpannija Francis J. Vassallo & Associates Limited (C22963) trid tiddizassocja ruhha kompletament mill-kumpannija Furnex Trade Limited (C38393) ghaliex, inter alia, l-imsemmija kumpannija Furnex Trade Limited (C38393) ghandha l-gwaj mal-awtoritajiet fiskali.

Illi l-kumpannija Francis J. Vassallo & Associates Limited (C22963) ma tridx illi l-kumpannija intimata Furnex Trade Limited (C38393) tibqa` tuza l-fond illi jinstab 259, Saint Paul Street, Valletta VLT 1213 bhala l-indirizz registrat taghha.

Illi l-kumpannija Furnex Trade Limited (C38393) qed tuza l-imsemmi
ndirizz minghajr id-debitu permess, b`mod illegali, irregolari u abbuziv.

Illi d-dirigenti u azzjonisti tal-kumpannija Furnex Trade Limited (C38393) jafu b`dan kollu izda ma ghamlu xejn biex jirretifikaw is-sitwazzjoni.

Illi din il-kawza qed issir sabiex din il-Qorti tipprovdi ghax-xiri tal-azzjoni illi l-kumpannija rikorrenti tiddetjeni fil-kumpannija intimata Furnex Trade Limited (C38393).

Illi din il-kawza qed issir ukoll sabiex din l-Onorabbli Qorti tiddikjara illi l-kumpannija konvenuta Furnex Trade Limited (C38393) qed tuza bhala indirizz registrat taghha l-indirizz 259, Saint Paul Street, Valletta VLT 1213 b`mod illegali u abbuziv.

Illi din il-kawza qed issir sabiex din l-Onorabbli Qorti tordna lill-kumpannija konvenuta ma tibqax tuza l-imsemmi indirizz.

Illi jrid jigi puntwalizzat illi l-kaz odjern jinkwadra ruhu perfettament taht l-estremi tal-artikolu 402 tal-Kap 386 stante illi f`dan il-kaz :

(a) ‘Membru ta` kumpannija’ – Francis J. Vassallo & Associates Limited (C22963);

(b) ‘jilmenta li l-affarijiet tal-kumpannija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b`mod’ ...

(c) ‘ta` pregudizzju, ghal membru’

BILLI L-MEXXEJJA TAL-KUMPANNIJA FURNEX TRADE LIMITED QED JISTULIFIKAW IT-TRASFERIMENT TAS-SEHEM U T-TIBDIL FL-INDIRIZZ REGISTRAT TAL-KUMPANNIJA.

U dak illi ser jintalab huwa illi:

(a) Il-Kumpannija Furnex Trade Limited taghmel att (it-tibdil tal-indirizz registrat) illi r-rikorrenta tilmenta li kienet naqset li taghmel ; u

(b) Illi l-qorti tipprovdi ghax-xiri tal-azzjonijiet ta` xi membri tal-kumpannija (l-azzjoni tal-kumpannija rikorrenti f`dik intimata).

Ghaldaqstant ir-rikorrenta titlob illi dina l-Qorti joghgobha taghmel ordni
urgenti ai termini tal-Artikolu 402 tal-Att ta` 1995 dwar il-Kumpanniji sabiex :

(a) Tiddikjara illi l-affarijiet tal-kumpannija Furnex Trade Limited (C38393) qed jitmexxew b`mod li huwa ta` pregudizzju kontra r-rikorrenta.

(b) Tipprovdi ghax-xiri tal-azzjoni / sehem illi ghandha l-kumpannija Francis J. Vassallo & Associates Limited (C22963) fil-kumpannija Furnex Trade Limited (C38393).

(c) Tiddikjara u tiddeciedi illi l-kumpannija Furnex Trade Limited (C38393) qed tuza l-indirizz f`259, Saint Paul Street, Valletta VLT 1213 bhala l-indirizz registrat taghha b`mod illegali u abbuziv.

(d) Tordna lill-kumpannija Furnex Trade Limited (C38393) ma tibqax tuza l-indirizz f`259, Saint Paul Street, Valletta VLT 1213 bhala indirizz registrat taghha.

(e) Tinnomina Kuratur biex jidher ghall-eventwali kontumacja.

U dana kollu taht dawk it-termini, il-pattijiet u kundizzjonijiet ohra illi dina l-istess Onorabbli Qorti jidhrilha xierqa u opportuni illi timponi fic-cirkostanzi kollha tal-kaz ai termini tal-imsemmi artikolu 402 tal-Att dwar il-Kumpanniji.

Bl-ispejjez.

Rat il-lista tax-xhieda ndikati mill-kumpannija rikorrenti.

Rat ir-risposta tal-Kuraturi Deputati l-Avukat Dr. Anthony Cutajar u l-Prokuratur Legali Gerald Bonello prezentata fl-14 ta` Marzu 2013 li taqra hekk –

1. Illi f`dan l-istadju l-esponenti mhux edotti mill-fatti u ghalhekk jirriservaw li jipprezentaw risposta ulterjuri meta u jekk jirnexxilhom jikkomunikaw mas-socjetajiet minnhom rapprezentati, u f`dan ir-rigward minn issa jitolbu lir-rikorrenti tipprovdilhom kull informazzjoni li jista` ghandha dwar kull mezz ta` komunikazzjoni mas-socjetajiet intimati, u dan jekk ghandhom aktar informazzjoni minn dik diga` provduta fir-rikors.

Rat il-lista tax-xhieda ndikati mill-Kuraturi Deputati.

Rat ix-xiehda bl-affidavit ta` Adriana Camilleri Vassallo (u d-dokumenti li kienu annessi).

Semghet ix-xiehda *viva voce* ta` Francis J. Vassallo.

Rat id-dokumenti l-ohra li kienu esebiti fil-mori tal-kawza.

Semghet is-sottomissjonijiet tal-ahhar li saru fl-udjenza tal-21 ta` Mejju 2013.

Rat id-digriet taghha moghti fl-istess udjenza li permezz tieghu il-kawza thalliet ghas-sentenza ghal-lum.

Rat l-atti tal-kawza.

Ikkunsidrat :

II. L-Art 402 tal-Kap 386

Ir-rikorrenti qeghda tressaq it-talbiet taghha abbazi tal-**Art 402 tal-Kap 386**. Din il-Qorti sejra taghmel riferenza ghal dawk mis-subartikoli tal-Art 402 li tqis rilevanti ghall-istanza tal-lum –

(1) Kull membru ta' kumpannija li jilmenta li l-affarijiet tal-kumpannija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b'mod li, jew li xi att jew ommissjoni tal-kumpannija kienu jew huma jew x'aktarx se jkunu, oppressivi b'mod mhux gust diskriminatorji kontra, jew b'mod mhux gust ta' pregudizzju, ghal membru jew membri jew b'mod li jkunu kontra l-interessi tal-membri in generali, jista' jaghmel rikors lill-qorti ghal ordni taht dan l-artikolu.

…

(3) Jekk dwar rikors maghmul skond is-subartikolu (1) … il-qorti tkun tal-fehma li l-ilment ikun bazat sewwa u li jkun gust u ekwu li hekk taghmel, il-qorti tista' taghmel ordni taht dawk il-kondizzjonijiet li jidhrilha xierqa -

(a) li jirregola t-tmexxija ta' l-affarijiet tal-kumpannija fil-futur ; jew
(b) jirrestringi jew jipprojbixxi l-ghemil ta' xi att propost ; jew

(c) jehtieg lill-kumpannija li taghmel xi att li r-rikorrent ikun ilmenta li kienet naqset li taghmel ; jew

(d) jipprovdi ghax-xiri ta' l-azzjonijiet ta' xi membri tal-kumpannija minn membri ohra tal-kumpannija jew mill-kumpannija nnifisha u, f'kaz ta' xiri mill-kumpannija, ghat-tnaqqis li jkun mehtieg fil-kapital azzjonarju mahrug tal-kumpannija ; jew

(e) jordna lill-kumpannija li tibda, tiddefendi, tkompli jew ma tkomplix procedimenti tal-qorti, jew jawtorizza lil membru jew membri tal-kumpannija li jibdew, jiddefendu, ikomplu jew ma jkomplux procedimenti tal-qorti f'isem u ghan-nom tal-kumpannija ; jew

(f) jipprovdi ghall-hlas ta' kumpens minn dik il-persuna li tista' tkun instabet responsabbli mill-qorti ghal telf jew danni li jkunu ggarrbu minhabba att jew nuqqas li dwaru jkun sar ilment lill-persuna li tkun garrbet dak it-telf jew danni ; jew

(g) ixolji l-kumpannija u jipprovdi ghall-istralc konsegwenzjali taghha.

(4) Meta jsir ordni ghax-xoljiment ta' kumpannija skond is-subartikolu
(3)(g), il-kumpannija ghandha titqies li tkun xoljiet fid-data meta jkun sar l-ordni u d-disposizzjonijiet tas-Sub-Titoli I u III tat-Titolu II tat-Taqsima V ta' dan l-Att li jirregolaw l-istralc ta' kumpanniji ghandhom japplikaw.

(5) Ordni maghmul taht dan l-artikolu jista' jehtieg lil kumpannija biex ma taghmilx xi emenda, jew li taghmel emenda mehtiega, fil-memorandum jew fl-istatut taghha.

…

Fil-Pag 965 tal-ktieb ***<u>Principles of Maltese Company Law</u>*** (MUP – 2007) il-Professur Andrew Muscat ighid hekk –

Can the holder of just one share in a company (<u>kif inhu l-kaz taht ezami</u>) *file an action under article 402 of the Companies Act ? In Joseph M. Vella et vs Vella Brothers Limited et* (Qorti tal-Appell – 9 ta` Marzu 2007) *the Court appears to have accepted, without expressly addressing the issue, that a member is entitled to institute an action under article 402 of the Companies Act, irrespective of the number of shares held by him (and even if he holds only one share). In this case, the plaintiff* *company J.M. Limited was the holder of one share in the defendant company Express Trailers Limited. The plaintiff company was recognised to have locus standi in the article 402 action.*

Ghalkemm fil-kaz tal-lum ma kienx kontestat id-dritt tal-kumpannija rikorrenti li tistitwixxi l-azzjoni skond l-Art 402, fi kwalunkwe kaz din il-Qorti hija tal-fehma illi l-kumpannija rikorrenti ghandha jedd ta` azzjoni skond l-Art 402 billi tikkwalifika fit-tifsira generali ta` "*membru*" (ara l-Art.2) ghax hija azzjonista.

Fil-Pag 970 ta` ***Principles of Maltese Company Law*** (op. cit.), il-Professur Muscat jitfa` fuq ir-rikorrent il-piz tal-prova li l-att jew omissjoni jaqa` fl-ambitu tas-subartikolu (1) u jghid hekk –

This wording (tal-subartikolu 1) *clearly suggests that the member* ***need only prove one effect*** *of the conduct, act or omission, that is, that such conduct, act or omission, has been, is or is likely to be "oppressive" or "unfairly discriminatory" or "unfairly prejudicial" (to a member or members) or contrary to interests (of the members as a whole).* (enfasi u sottolinear tal-qorti)

Il-kumpannija rikorrenti qeghda tilmenta li l-affarijiet ta` Furnex Trade Limited tmexxew jew qeghdin jitmexxew jew x`aktarx jitmexxew bi **pregudizzju** ghaliha bhala membru.

Ghal din il-Qorti dan ifisser illi l-kumpannija rikorrenti stabbiliet il-parametri tal-ilment taghha fuq il-pregudizzju mhux gust biss u kwindi mhux fuq xi att jew omissjoni ta` natura oppressiva jew diskriminatorja.

Ghal din il-Qorti, dan ikompli jfisser illi l-kumpannija rikorrenti qeghda tqis il-kazi li ndikat fir-rikors bhala atti jew omissjonijiet ta` <u>pregudizzju mhux gusti</u> ghaliha.

Sabiex il-qorti taghti ordni skond kif previst fis-subartikoli (3) (4) u (5) ta` l-Art.402, hija tassattiva l-prova tal-att jew omissjoni li kkaguna jew ikkaguna jew x`aktarx jikkaguna <u>pregudizzju mhux gust</u> lill-kumpannija rikorrenti.

Fis-sentenza li ta` din il-Qorti (**<u>'PA/GV)</u>** tat-30 ta` Jannar 2008 fil-kawza "**<u>Cutajar pro et noe et vs S.C. & Company Limited et</u>"** inghad hekk –

Illi l-prova biex tirnexxi dina l-azzjoni tispetta lir-rikorrenti li ressqu dina l-azzjoni. Huma jridu jippruvaw li (a) l-affarijiet tal-kumpanija jkunu tmexxew jew qed jitmexxew jew aktarx jitmexxew b'mod li… (b) jew li xi att jew ommissjoni tal-kumpannija kienu jew huma jew x'aktarx se jkunu, oppressivi b'mod mhux gust diskriminatorji kontra, jew b'mod mhux gust ta' pregudizzju, ghal membru jew membri jew b'mod li jkunu kontra l-interessi tal-membri in generali.

Il-ligi taghna ma taghtix spjegazzjoni ta' x'inhu oppressiv b'mod mhux gust diskriminatorji kontra, jew b'mod mhux gust ta' pregudizzju. Kull kaz ghalhekk irid jigi trattat u deciz fuq il-mertu tieghu proprju, u dana kaz b'kaz. L-iskop tal-ligi hu biex il-Qorti tkun tista' tintervjeni f'dawk il-kazijiet fejn hemm bzonn li jinghata rimedju minhabba unfair dealing fejn jigi pruvat li kien hemm azzjonijiet jew ommissjonijiet li ma kienux gusti u li kienu ta' pregudizzju jew li l-affarijiet tal-kumpanija mhux qed jitmexxew sew.

Jekk abbazi tal-provi akkwiziti l-qorti tkun sodisfatta li jirrizulta l-pregudizzju mhux gust kif

jinghad fis-subartikolu (1), allura tghaddi mbaghad biex taghti l-ordni skond is-subartikoli l-ohra.

Jekk il-prova tkun insodisfacjenti, allura l-qorti ma ghandhiex tapplika dak previst mis-subartikoli l-ohra.

Ghalhekk f`dan l-istadju l-qorti sejra tirreferi ghall-provi li saru mir-rikorrenti fil-kuntest tal-kawzali li ndikat mis-subartikolu (1).

Ikkunsidrat :

III. Provi

a) Xhieda

Francis J. Vassallo, direttur tal-kumpannija rikorrenti ("FJVA") xehed *viva voce*. Huwa fisser is-servizzi li kienet taghti l-kumpannija rikorrenti lill-kumpannija Furnex Trade Limited ("Furnex"). Stqarr illi huwa ppartecipaw fil-formazzjoni tal-kumpannija, kien jiehdu hsieb il-hrug tal-invoices, jaghmlu l-accounts u jiehdu hsieb jipprezentaw ir-returns tal-VAT. Ipprovdew l-ufficcju taghhom (259, St Paul Street, Valletta) bhala l-ufficcju registrat ta` Furnex. Kif ukoll it-tifla tieghu Adriana Camilleri Vassallo, li kienet impjegata ma` FJVA, saret *company secretary* ta` Furnex. Wara xi zmien sabu li t-tmexxija ta` l-affarijiet ta` Furnex ma kienux mexjin kif suppost, u ghalhekk waqqfu kull kuntatt maghha. U anke Adriana Camilleri Vassallo irrizenjat minn *company secretary*. Ikkonferma li FJVA kellha sehem wiehed biss ta` Furnex. Ighid illi ghamlu li setghu biex jehilsu minn dak is-sehem.

<u>Ix-xhud</u> ighid hekk –

Because l-kumpanija ndunajna meta bdiet tahdem indunajna li dawn kien hawn a fraud embezzlement on VAT, ok ? Jien ovvjament il-posizzjoni tieghi bhala wkoll ex Gvernatur tal-Bank Centrali, meta rajt dawn l-affarijiet isiru immedjatament ikkuntattjajt il-VAT Department, ghidt dan hawnhekk, I can't understand, ma nistax nifhem kif kumpanija tixtri bi prezz, u tbiegh minn barra lil Malta, prezz inqas minflok minn fuq. Hawnhekk hawn skema ghaddejja tar-reimbursement tal-VAT, wara li dahlu dawn il-pajjiz ta' l-Est fil-VAT kien hemm il-permit scheme, ahna ndunajna immedjatament, disassaocjat ruhha minghand, ghal kumpanija, ikkontattjajnihom biex nghidulhom goodbye, jien irrappurtajt personalment lis-Sur Catania li kien is-second head tal-VAT personalment ghidtlu isma' dan huwa, investigawha malajr ghax hawnhekk hawn, ghaddejja skema ta' frodi, ahna ddissocjajna minn maghhom biss l-unika haga li fadal hija li m' hemmx rikors biex ahna nbidlu l-legal seat taghna allura.

Sar jaf illi Furnex kellha taghti VAT ta` `l fuq minn €1 miljun.

<u>Adriana Camilleri Vassallo</u> xehdet permezz ta` affidavit. Tghid illi FJVA tipprovdi *tax and corporate services to international clients.* In linea generali, hi tinhatar *company secretary.* Fil-kaz ta` Furnex, il-kompitu taghhom kien *to maintain accounting records and provide book-keeping services*. Id-diretturi kellhom *full responsibility for such records and book-keeping*. FVJA ma kellha l-ebda sehem fit-tmexxija u kontroll ta` Furnex, inkluz il-finanzi taghha..

Tkompli tixhed hekk –

5. FJVA in line with its engagement to assist with the book-keeping submitted numerous requests to the person representing the directors of Furnex to provide FJVA with all the necessary documentation to enable us *to prepare the book-keeping and to enable the compilation of the necessary information relating to the completion of the VAT returns.*

6. On receipt of some documentation/invoices, as is usual practice in our firm, we checked the validity of the VAT numbers quoted on the invoices and noticed that there were some irregularities. Further information and clarification was requested from the representative of the directors of Furnex, however, despite the number of our requests and various promises that our requests would be dealt with, our queries remained unanswered, leaving FJVA in a situation where neither the book-keeping nor the VAT returns could be completed.

7. In the light of the situation, and considering the fact that it became impossible to obtain the clarifications due to the absence of communication from the directors and / or their representative, the VAT returns which were due during the period of my appointement as company secretary were completed with the information available and such returns were submitted …

8. After filing the relevant VAT returns, I resigned with effect from 15 January 2007 from my position as company secretary … Following my resignation I had again tried to contact by registered mail the directors of Furnex to forward the statements issued by the VAT Department, however the letters were returned to sender.

9. … FJVA took legal steps in view of the fact that Furnex continued, without authority and title, to use the FJVA offices situated at 259, St. Paul Street, Valletta VLT1213, as its registered address.

b) Dokumenti

Kien esebit il-*memorandum* u l-*articles of association.* Furnex kienet iffurmata fis-7 ta` April 2006 bejn Amanda International LLC, kumpannija estera u

FVJA. L-*issued share capital* huwa *fully paid up* u kompost minn 2500-il sehem ta` €1 kull sehem. Amanda International LLC ghandha 2499-il sehem waqt li FVJA ghandha sehem wiehed. L-ufficcju registrat ta` Furnex kien stabbilit fil-fond 259 St. Paul Street, Valletta. Diversi huma l-objects. Komuni ghal kollha hemm li *the objects of the Company which are limited to trading activities with persons outside Malta who are not resident in Malta.* Il-bord tad-diretturi ma jistax ikun ta` inqas minn wiehed u mhux aktar minn hames membri. L-ewwel direttur kien Amanda International LLC waqt li Adriana Camilleri Vassallo kienet mahtura bhala *company secretary.* Fl-*articles of association*, hemm specifikata l-procedura tat-*transfer and transmission of shares*.

Kienu esebiti serje ta` emails li FVJA baghtet lil Furnex dwar l-obbligi fiskali u statutorji taghha. Diversi kienu s-solleciti biex Furnex tibghat taghrif li fuqu jistghu jigu kompletati l-VAT returns. Tidher risposta wahda minn Furnex illi kienet sejra tibghat it-taghrif mitlub.

Kienu prezentati dokumenti ohra. Fosthom l-att li permezz tieghu Adriana Camilleri Vassallo rrizenjat minn *company secretary* fil-15 ta` Jannar 2007. Fit-3 ta` Gunju 2010, il-Kummissarju tal-VAT baghat ittra ufficjali lil Furnex a tenur tal-Art 59(2) tal-Kap 406 fejn irreklama l-hlas ta` VAT fl-ammont ta` €1,354.707.38. Fl-14 ta` Gunju 2010, FVJA talbet lil Amanda International LCC biex tirregolarizza l-posizzjoni taghha u tottempera ruhha mal-obbligi taghha vis-à-vis Furnex. L-istess kienet ghamlet fit-23 ta` Frar 2009 b`ittra lil Amanda International LCC u lil Rachel Amy Erickson illi fil-15 ta` Jannar 2009 kienet inhatret bhala *company secretary* ta` Furnex.

Fil-15 ta` Jannar 2009, Adriana Camilleri Vassallo kitbet lill-VAT Dept dwar *statement of tax and administrative penalties* ta` Furnex li waslet 259, St Paul Street, Valletta. Tikteb hekk *inter alia* –

The undersigned is no longer an officer of the above captioned company … and the principal activities of the company are no longer being carried out from its registered address. The undersigned also wishes to ascertain the Commissioner that during office, everything had been done in order to prevent the said omission by the above captioned company in relation to the submissions of the VAT returns. Since the client did not produce the information required, despite the numerous requests which remains unanwered by the client, the undersigned resigned from office and was therefore unaware of the activities and of the omissions by the company in submitting the VAT returns.

Fl-istess ittra, taghti d-dettalji u l-indirizz ta` Rachel Amy Erickson.

Fil-31 ta` Mejju 2010, FVJA u Adriana Camilleri Vassallo pprezenta ittra ufficjali (fol 116) kontra l-Kummissarju tal-VAT fejn *inter alia* tghid *illi minghajr ebda titolu validu fil-ligi, ftehim kuntrattwali, akkwixenza jew kwalsiasi permess kemm esplicitu kif ukoll implicitu l-kumpannija Furnex Trade Limited (C38393) qed tuza l-fond 259 St Paul Street Valletta VT1213 bhala l-indirizz registrat taghha.*

Ikkunsidrat :

IV. <u>Risultanzi</u>

Fir-rikors taghha, FJVA **<u>identifikat il-pregudizzju taghha</u>** fl-atti li gejjin tal-intimati –

1. *Illi l-kumpannija Francis J. Vassallo & Associates Limited (C22963) ma tridx tibqa` azzjonista fil-kumpannija Furnex Trade Limited (C38393) intimata izda*

l-mexxejja tal-kumpannija Furnex Trade Limited ma humiex jaghtu l-ko-operazzjoni taghhom ghat-trasferiment tas-sehem.

2. *Illi l-kumpannija Francis J. Vassallo & Associates Limited (C22963) ma tridx illi l-kumpannija intimata Furnex Trade Limited (C38393) tibqa` tuza l-fond illi jinstab 259, Saint Paul Street, Valletta VLT 1213 bhala l-indirizz registrat taghha.*

3. *Illi l-kumpannija Furnex Trade Limited (C38393) qed tuza l-imsemmi ndirizz minghajr id-debitu permess, b`mod illegali, irregolari u abbuziv.*

4. *Illi d-dirigenti u azzjonisti tal-kumpannija Furnex Trade Limited (C38393) jafu b`dan kollu izda ma ghamlu xejn biex jirretifikaw is-sitwazzjoni.*

Imbaghad fl-udjenza tal-21 ta` Mejju 2013 (fol 138), id-difensur ta` FJVA ivverbalizza hekk –

Dr Attard jiddikjara illi l-kumpannija rikorrenti ttentat l-azzjoni skont l-Art. 402 tal-Kap. 386, ghar-raguni illi l-kondotta tal-azzjonista ta' maggoranza tal-kumpannija Furnex Trade Limited, li hija l-kumpannija Amanda International LLC, anke skont ma rrizulta mid-deposizzjoni ta' Francis Vassallo, hija ta' pregudizzju serju ghaliha ghaliex m'ghandha ebda kontroll fuq il-mod kif qieghda tespleta l-obbligi taghha skont il-ligi. Daqstant ghall-fini tal-ewwel subinciz tal-Art. 402. In kwantu ghat-tielet subinciz tal-istess disposizzjoni, Dr Attard qieghed jitlob li r-rimedju ewlieni li ghandha taghti din il-Qorti ghandu jkun il-bejgh tal-uniku sehem li ghandha din il-kumpannija fil-kumpannija Furnex Trade Limited, it-tnehhija tal-ufficcju registrat prezenti taghha, u kwalsiasi rimedju iehor li l-Qorti jidhrilha xieraq u opportun li ghandha taghti.

Fil-Pag 971 ta` ***<u>Principles of Maltese Company Law</u>*** (op. cit.) jinghad hekk –

Neither Maltese nor foreign legislation defines the term …"unfairly prejudicial" … Each case that comes before the courts must be viewed on its own facts and merits and it is impossible to distil from the judgements a very precise forecast as to how a court would tackle a particular scenario before it …

The unfair prejudice remedy is designed to allow the court to intervene in circumstances where there is a visible departure from the standard of fair dealing. (<u>enfasi tal-qorti</u>).

Din il-Qorti sejra tibda biex tghid illi l-premessa ta` l-kumpannija rikorrenti *illi llum il-gurnata l-kumpannija Francis J. Vassallo & Associates Limited (C22963) trid tiddizassocja ruhha kompletament mill-kumpannija Furnex Trade Limited (C38393) ghaliex, inter alia, l-imsemmija kumpannija Furnex Trade Limited (C38393) ghandha l-gwaj mal-awtoritajiet fiskali.*

Abbazi tal-fattispeci tal-kaz tal-lum, il-fatt li Furnex ghandha taghti `l fuq minn €1 miljun VAT *per se* mhuwiex agir *unfairly prejudicial* ghal FJVA. Infatti FJVA b`ebda mod ma hija esposta ghal Furnex skond l-**<u>Art 66(1) tal-Kap 406</u>**. Ghandha biss azzjonista ta` sehem wiehed minghajr ma hija nvoluta bl-ebda mod fit-tmexxija ta` Furnex. Meta Adriana Camilleri Vassallo kienet mahtura *company secretary* kienet hekk mahtura fil-kwalita` personali taghha, mhux bhala rapprezentant ta` FJVA sa ma rrizenjat mill-kariga b`effett mill-15 ta` Jannar 2007. Il-"gwaj" ta` Furnex mal-awtoritajiet fiskali ma jesponi lil FJVA ghal ebda pregudizzju mal-awtoritajiet.

Dwar *unfair prejudice* hekk jinghad fil-Pag 972 et seq ta` ***<u>Principles of Maltese Company Law</u>*** (op. cit.) –

When alleging unfair prejudice, the plaintiff must show that the conduct, act or omission is both unfair and prejudicial …

The test of unfairness is an objective and not a subjective one.

In deciding what is fair or unfair for the purposes of the unfair prejudice remedy, it is important to keep in mind that the notion of faairness is used in the context of a commercial relationship …

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza "**Vella et vs Vella Brothers Ltd et**", il-Qorti tal-Appell qalet hekk dwar l-Art 402 –

… *Dak li hu necessarju hu li l-azzjonista jipprova li minhabba l-gestjoni tas-socjeta' partikolari hu qed isofri, jew ukoll jista' jsofri, pregudizzju ta' natura oppressiva, ingusta jew diskriminatorja. Tali gestjoni tista' tirreferi sempliciment ghal xi att specifiku jew xi ommissjoni tal-kumpanija. Il-pregudizzju jista' jirreferi ghall-azzjonist li qed jippromwovi l-proceduri, ghal xi azzjonist iehor jew ghall-interess in generali ta' l-azzjonisti. Ma hemmx ghalfejn li huwa jipprova li huwa zgur ser isofri xi pregudizzju fil-futur. Tali prova tista' ssir fuq bazi ragjonevoli ta' possibilita' …*

Fid-decizjoni tal-House of Lords tal-20 ta` Mejju 1999 fil-kawza **"O'Neill v Phillips"** kien ritenut illi –

Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used … The requirement that prejudice must be suffered as a member should not be too narrowly or technically construed.

Fid-decizjoni "**Bovey Hotel Ventures Ltd"** [(1983) B.C.L.C. 290] kien inghad hekk –

The test of unfairness must, I think, be an objective, not a subjective one. In other words it is not necessary for the petitioner to show that the persons who have had the de facto control of the company have acted as they did in the conscious knowledge that this was unfair to the petitioner or that they were acting in bad faith ; the test, I think, is whether a reasonable bystander observing the consequences of their conduct, would regard it as having unfairly prejudiced the petitioner's interests.

Fil-Pag 449 ta` ***Farrar's Company Law*** (Fourth Edition) jinghad illi –

A member's interests are not necessarily limited, therefore, to his strict legal rights under the Articles and the Companies' Act but can extend also to legitimate expectations as to the conduct of the company's affairs arising from the nature of the company and the agreements and understandings between the parties.

Fix-xiehda tieghu, Francis J. Vassallo jaghmel allegazzjoni serja hafna, anke jekk stqarrha bil-gurament. Juza l-kliem *fraud embezzlement on VAT.* U jghid li ghamel rapport lid-Dipartiment tal-VAT biex jinvestiga r-rapport tieghu.

Eppure fl-istadju tal-provi taghha, FJVA ma ressqet l-ebda xhud mid-Dipartiment tal-VAT biex jikkorrabora li sar rapport min-naha ta` Francis J. Vassallo u sabiex jaghti hjiel dwar investigazzjonijiet.

Inoltre ghalkemm Francis J. Vassallo ghamel dik l-allegazzjoni, il-kumpannija rikorrenti ma ressqet l-ebda talba ghax-xoljiment u stralc ta` Furnex skond is-subartikolu (3)(g) tal-Art 402 minhabba ragunijiet li huma kontemplati fl-Art 214(2)(b)(iii) tal-Kap 386. Ghal din il-

Qorti mela dak mistqarr minn Francis J. Vassallo tibqa` allegazzjoni mhix pruvata jew korraborata.

FJVA tghid illi ma tridx izzomm is-sehem li ghandha fil-kumpannija Furnex. Tallega fil-premessi tar-rikors illi l-intimati njoraw it-talba ta` FJVA biex tiddisponi minn dak is-sehem. Fir-realta` pero` anke din tibqa` allegazzjoni mhux ippruvata. La jixhed dwarha Francis J. Vassallo u lanqas Adriana Camilleri Vassallo. Di piu` minn imkien ma jirrizulta li FJVA ttentat tittrasferixxi dak is-sehem skond il-procedura kontemplata mill-*articles of association* ta` Furnex. U kwindi FJVA ma tistax tippretendi li sehh *unfair prejudice* fil-konfront taghha meta mhux biss ma ezawrietx (izda lanqas tentat) il-procedura tat-trasferiment ta` dak is-sehem skond l-istatut socjatarju.

L-ilment dwar it-trasferiment tas-sehem qieghed ikun respint fil-kuntest tal-Art 402.

Ta` xejra differenti hija l-kwistjoni tal-ufficcju registrat.

Mhuwiex kontestat illi 259 St Paul Street Valletta huwa wkoll ufficcju ta` FJVA apparti l-ufficcju registrat ta` Furnex. Jirrizulta li ghajr ghal dak is-sehem wiehed, illum m`ghadx hemm relazzjoni bejn FJVA u l-intimati. FJVA m`ghadha tipprovdi l-ebda servizzi lill-intimati tal-inqas mill-15 ta` Jannar 2007. Mill-provi jirrizulta li dan sehh tort tan-nuqqasijiet ta` l-intimati. Eppure FJVA baqghet tircievi ittri mill-VAT Dept fi 259 St Paul Street Valletta ghaliex dak huwa r-registered address.

Mid-dokumenti esebiti jirrizulta wkoll li l-intimati ma huma qeghdin jaghmlu propju xejn biex izommu kuntatt ma` FJVA. Fl-istess waqt huwa komdu ferm ghall-intimati li l-indirizz registrat jibqa` fejn huwa llum u fejn minn dejjem kien. Il-Qorti tifhem li r-ragunijiet anke ta` l-*good* *repute* taghha vis-à-vis terzi ghala FJVA ma tridx li l-indirizz taghha jibqa` r-registered address ta` Furnex.

Fil-fatt fl-ittra taghha tal-14 ta` Gunju 2010 lil Amanda International LLC, FJVA tramite Adriana Camilleri Vassallo ttikteb li *the principal activities of the company are no longer being carried out from its registered office.* Hekk senjalata kif kienet, l-azzjonista ta` maggoranza kien messha hadet passi biex tibdel l-indirizz registrata.

Din il-Qorti ma tasalx biex tilqa` t-tielet talba ghaliex minn imkien – lanqas minn ebda dokument - ma rrizulta li FJVA ntimat lill-intimati li l-indirizz registrat kien abbusiv u llegali. U lanqas hadet passi – ghajr dawk tal-lum – biex tasserixxi l-jedd taghha.

Fl-istess waqt, u dan in kwantu ghar-raba` talba`, din il-Qorti tghid illi dak ma jfissirx illi accertat illi FIJV ma tridx li 259 St Paul Street Valletta jibqa` l-indirizz registrat ta` Furnex u l-azzjonista ta` maggoranza ma hi qeghda taghmel xejn biex takkomoda xelta li hija dettata minn ksur fir-relazzjonijiet fiducjarji li hekk ghandha tibqa` s-sitwazzjoni. Del resto FJVA ttronkat kull rabta mal-intimati ghal raguni serja u cioe` meta jirrizulta li dawn ma kkoperawx maghha fil-kwistjonijiet relatati mal-kompilazzjoni tal-VAT returns.

Din il-Qorti hija tal-fehma illi ghar-ragunijiet taghhom huwa komdu hafna ghall-intimati li jzommu r-*registered address* attwali ta` Furnex, Fl-istess waqt u bla hsara ghal dak illi qalet fir-rigward tat-tielet talba tar-rikorrenti, din il-Qorti hija sodisfatta li jkun *unfairly prejudicial* ghar-rikorrenti li r-*registered address* jibqa` dak li hu llum.

Bhal ma Furnex hatret *company secretary* alternattiv ghal Adriana Camilleri Vassallo fil-persuna ta` Rachel

Amy Erickson b`effett mill-11 ta` Settembru 2009 (fol 133) xejn ma jzomm lill-intimata milli jkollha indirizz registrat iehor minflok dak tal-lum.

Din il-Qorti tkompli ssostni l-fehma anke abbazi tal-fatt dokumentat illi ghalkemm il-kuratur deputat Av. Anthony Cutajar ittenta jaghmel kuntatt mal-azzjonista ta` maggoranza ghall-fini tad-difiza tal-intimati fil-procedimjent odjern, baqa` bla risposta.

Ghalhekk dwar l-ufficcju registrat din il-Qorti qeghda tilqa` l-ilment tar-rikorrenti u sejra tipprovdi in linea mar-raba` talba.

Provvediment

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda taqta` u tiddeciedi din il-kawza hekk –

Tilqa` l-ewwel talba limitatament ghal wahda biss mill-ilmenti tal-kumpannija rikorrenti.

Tichad it-tieni talba.

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tielet u l-hames talbiet.

Tilqa` r-raba` talba.

Tordna lill-kumpannija rikorrenti sabiex thallas l-ispejjez kollha ta` dan il-procediment.

Tordna n-notifika ta` dan il-provvediment, a spejjez tal-kumpannija rikorrenti, lir-Registratur tal-Kumpanniji

< Sentenza Finali >

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