



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tal-21 ta' Ottubru, 2013

Avviz Numru. 417/2010

**Soleil Group Holdings Limtied (C 38699), Exodus
Equities Limited (C 38702) u Exodus Capital Limited
(C 38697)
vs
David Lindsay
(13039A)**

Illum 21 ta' Ottubru 2013

Il-Qorti,

Rat l-avviz ippresentat fid 19 ta' Ottubru 2010 fejn is-socjetajiet rikorrenti ghamlu referenza ghal-artikolu intitolat '*Legal proceedings in Exodus scandal begin in Malta*' ippubblikat fil-harga ta' The Malta Independent on Sunday tas 26 ta' Settembru 2013 u talbu lill Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront taghhom u ghalhekk talbu lill-Qorti tikkundanna lill David Lindsay, bhala awtur ta' l-artikolu, ihallashom

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danni li ma jeccedux is-somma ta' hdax-il elf, sitt mija u sebgħa u sittin Euro.

Rat ir-risposta tal-intimat fejn laqa' għal dak allegat billi stqarr illi l-artikolu in kwistoni kien privileggjat ai termini ta' l-artikolu 33 (d) tal-Kap 248 peress illi huwa rapport fidil u gust ta' procedimenti fil-Qrati tal-Gustizzja.

Rat illi, permezz ta' digriet tad 19 ta' Jannar 2011, il-Qorti ordnat il-kapvolgiment tal-provi in vista tal-ecezzjoni ta' l-intimat.

Rat ix-xhieda ta' **Dr Joseph A Schembri**, mogħtija fis-6 ta' April 2011 fejn huwa kkonferma li huwa nieda proceduri fl-ismijiet '*Dr Joseph A Schembri fil-kwalita' tiegħu ta' mandatarju speċjali ta' Pat Huddleston li gie maħtur bhala "Receiver" mill-Qrati ta' Georgia, Atlanta fl-Istati Uniti, u danas sabexi jirrappresenta s-socjetajiet Coadum Advisors Inc, Mansell Capital Partners III LLC, Coadum Capital Fund I LLC, Coadum Capital Fund II LP, Coadum Capital Fun III LP u Mansell Acquisition Company LP vs Soleil Group Holdings Limited, Exodus Equities Limited u Exodus Capital Limited*' fit 28 ta' Mejju 2010, Citazzjoni Nru 543/10.

Rat ix-xhieda ta' **Dr Alexia Aquilina**, rappresentanta tad-Direttur, Qrati Civili u Tribunali, mogħtija fis 6 ta April 2011, illi fiha esebiet kopja tal-att promotur tal-kawza Citazz Nru 543/10 li dwarha xehed Dr Joseph A Schembri.

Rat l-affdavit tal-intimat **David Lindsay** ippresentat fil 5 ta' Dicembru 2011 flimkien mad-dokumentazzjoni minnu esebita.

Rat illi f l-14 ta' Dicembru 2011 l-itnimat iddikjara illi ma kelllux aktar provi u għalhekk seta jibda bil-provi r-rikorrent.

Semgħet il-kontro ezami ta' **David Lindsay** illi saret fit 23 ta' April 2012.

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Semghet ix-xhieda ta' **Michael John Turner**, Segretarju tal-kumpanniji rikorrenti, moghtija fl 4 ta' Gunju 2012.

Rat id-dokumentazzjoni ippresentata mis-socjeta rikorrenti fl 1 ta' Marzu 2013 fejn jirrizulta li, wara proceduri mibdija gewwa Svizzera fuq talba ta' awtoritajiet Amerikani kontra certu Keith Robert-Sampson Bristol u l-kumpanniji rikorrenti u li wasslet ghall-iffrizar ghal madwar erbgħa miljuni u nofs dollari amerikani, intlahaq ftehim fid 9 ta' Jannar 2013 fejn, fost hafna affarjiet fiha stabbili, il-fond gew rilaxxati favur l-artotajiet amerikani filwaqt illi proceduri mehudha kontra ir-rikorrenti u Keith Robert-Sampson Bristol kellhom jigu irtirati.

Rat ili fis 27 ta' Meju 2013 il-partijiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet fil 5 ta' Lulju 2013 wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Illi l-kawza odjerna tirrigwarda artikolu illi deher fil-harga ta' The Malta Independent on Sunday tas-26 ta' Settembru 2010 intitolata '*Legal proceedings in Exodus scandal begin in Malta*' fejn l-intimat jagħmel referenza għal-proceduri mibdija fil-Qorti Maltija kontra is-socjetajiet rikorrenti, liema proceduri inbdew, kif jgħid l-intimat:

with the aim of seeing defrauded American investors beginning to recoup the little that is left of the several millions of dollars sent to Malta after they were swindled in a Ponzi scheme.

Illi jirrizulta mill-fatti kif esposti, illi s-socjetajiet rikorrenti, kienu parti minn skema li kienet wasslet sabiex investuri amerikani jinvestu madwar tletin miljun dollaru amerikan (\$30,000,000), liema investimenti kellhom jgħaddu fil-kontijiet bankarji tas-socjeta maltija Exodus Equities Limited sabiex jigu utilizzati bi qliegh, izda li,

eventwalment spickaw biex jisparixxu f'kontijiet ohra a skapitu tal-investituri amerikani li eventwalment institwew il-procedui, kemm fl-Amerika, kif ukoll gewwa Svizzera u Malta.

Illi, jkun opportun, f'dana l-istadju, li jigi riprodott parti mill-att promotur li gew immedija f'Malta u li kienu s-suggett tal-artikolu meritu tal-kawza odjerna. Ir-rikors guramentat, ippreentat fit 28 ta' Mejju 2010, jghid is-segwent:

Illi, fit 3 ta' Jannar 2008, is-Securities and Exchange Commission tal-Istati Uniti tal-Amerika ghamlu talba quddiem il-Qrati f'Atlanta, Georgia, sabiex tinhareg Temporary Restraining Order kontra is-socjetajiet Coadum Advisors Inc, Mansell Capital Partners III LLC, Coadum Capital Fund I LLC, Coadum Capital Fund II LP, Coadum Capital Fund III LP u Mansell Acquisition Company LP, kif ukoll kontra l-individwi James A Jeffrey u Thomas E Repke, li kienu l-persuni wara s-socjetajiet imsemmija.

Illi r-raguni wara t-talba imsemmija kienet illi l-istess Securities and Exchange Commission kienet qed tallega illi l-imsemmija Thomas E Repke James A Jeffrey, tramite s-socjetajiet Coadum Advisors Inc u Mansell Capital Partners III LLC, kienu ddefradaw investituri fl-ammont ta' tletin miljun dollaru Amerika li kieny ctra w interessi fil-funds Coadum Capital Fund I LLC, Coadum Capital Fund II LP, Coadum Capital Fund III LP u Mansell Acquisition Company LP.

Illi l-istess Qorti ta' Atlanta, Georgia, laqghet it-talba tal-Securities and Exchange Commission fit 3 ta' Jannar 2008 stess u ordnat illi jigu ffrizati l-assi kollha tal-imsemmija Coadum Advisors Inc, Mansell Capital Partners III LLC, Coadum Capital Fund I LLC, Coadum Capital Fund II LP, Coadum Capital Fund III LP u Mansell Acquisition Company LP kif ukoll dawk ta' James A Jeffrey u Thomas E Repke.

Illi fl-istess digriet tat 3 ta' Jannar 2008, il-Qorti Amerikana hatret lill Pat Huddleston II bhala Receiver bil-kompitu li jjehu f'idejh il-kontroll tal-assi tas-socjetajiet Coadum

Advisors Inc, Mansell Capital Partners III LLC, Coadum Capital Fund I LLC, Coadum Capital Fund II LP, Coadum Capital Fund III LP u Mansell Acquisition Company LP.

Illi fis 7 ta' Lulju 2008, il-Qorti Amerikana approvat talba tar-Receiver sabeix ikun awtorizzat jirkupra assi tas-socjetajiet rappreentanti minnu w li jinsabu barra l-Istati Uniti tal-Amerika.

Illi b'sentenza tas-27 ta' Jannar 2010, il-Qorti Amerikana iddikjarat illi, mill bidu tas-sena 2006 sa Jannar 2008, is-socjetajiet Coadum Advisors Inc u Mansell Capital Partners III LLC, b'mod frawdolenti, kienu gabru is-somma ta' tletin miljun dollaru Amerikan minghand investituri li xtraw interessi f'Coadum Capital Fund I LLC kif ukoll tlett limited partnerships, u cioe Coadum Capital Fund II LP, Coadum Capital Fund III LP u Mansell Acquisition Company LP. Gie ritenur ukoll illi s-socjetajiet Coadum Advisors Inc u Mansell Capital Partners III LLC kienu kkontrollati minn James A Jeffrey u minn Thomas E Repke. Il-Qorti kompliet tghid illi s-socjetajiet Coadum Advisors Inc u Mansell Capital Partners III LLC u l-imsemmija James A Jeffrey u Thomas E Repke ghamlu rapprezentazzjonijiet foloz lill-investituri meta qalulhom illi l-flus investiti minnhom kienu protetti, illi dawn il-flus qatt ma hargu mill-escrow account, kif ukoll illi l-investment kien secured b'collateral.

Illi l-Qorti Amerikana, fis-sentenza taghha, kompliet tghid illi minn Lulju 2006 l-investituri kienu ddeposita cirka tletin miljun dollaru Amerikan fl-escrow account tas-socjetajiet Coadum Advisors Inc u Mansell Capital Partners III LLC, li kienu hatru bhala escrow agents, li da parti taghhom fuq ordni ta' Coadum Advisors Inc u Mansell Capital Partners III LLC, kienu ttrasferw l-maggor parti ta' dawn il-fond f'kontijiet bankarji kkontrollati mis-socjeta maltija Exodus Equities Limited, liema fondi kellhom jigu investiti f'fund fl-isem ta' Exodus Platinum Fund u, tramite s-socjeta maltija l-ohra Soleil Group Holdings Limited, liema konijiet bankarji infethu f'banek lokali u Svizzeri.

Illi l-flus imsemmija qatt ma gew hekk investiti, tant hu hekk illi l-Exodus Platinum Fund, li hija mutual fund company registrata f'Bermuda, qatt ma operat u qatt ma ghamlet qliegħ, filwaqt illi s-socjeta Soleil Group Holdings Limited, mhux talli qatt ma ghamlet qliegħ, izda talli lanqas biss kellha programm għall-investimenti.

Illi minkejja dan, is-socjetajiet Coadum Advisors Inc u Mansell Capital artners III LLC hargu statements mensili fejn kienu juru lill-investituri illi l-investimenti tagħhom kienu qed jinzammu escrow u li kienu qed jagħmlu qliegħ ta' cirka 4% fix-xahar, meta dan ma kien minnu xejn. In vista ta' dan ix-xenarju falz li kien qed jigi impingi għall-investituri, dawn ta' l-aħhar generalment kienu jispicaw biex jinvestu aktar flus.

Illi l-Qorti Amerikana iddikjarat illi minn din il-frodi James A Jeffrey kien personalment ibbenefika somma ta' \$1,228,739 filwaqt illi Thomas E Repke kien ibbenefika fl-ammont ta' \$2,739,862 u ordnat lill-istess sabiex ihallsu lura dawn il-flus flimkien ma' l-imghaxijiet relattivi.

Illi minn indagni illi saret mill-Securities and Exchange Commission tal-Istati Uniti tal-Amerika, u dana anke in kolloborazzjoni mal-Malta Financial Services Authority, irrizulta illi l-persuna illi kien imexxi diversi kumpanniji lokali illi kienu qed jintuzaw sabiex jigu cirkolati dawn il-flus, kien certu Keith Robert Sampson, u fost il-kumpanniji lokali li huwa kien imexxi, hemm is-socjetajiet intimati.

Illi mil-istess indagni illi saret mill-Malta Financial Services Authority, irrizulta illi l-parti l-kbira tal-fondi illi kienu gew trasferiti Malta, in parte intefqu u in parte gew trasferiti barra minn Malta.

....

Illi minkejja li r-rappresnetanti tas-socjetajiet intimati kienu ltaqghu ma' rappresentanti tal-Malta Financial Services Authority u minkejja li wegħdu l-ko-operazzjoni assoluta tagħhom inkluz li jikkonsenjaw il-fond li kellhom, dawba baqghu inadempjenti.

Illi, mill-estratt tal-att promotur hawn fuq indikat, jidher car illi, s-socjetajiet rikorrenti fil-proceduri odjerni kienu parti intrinsika minn skema adoperata gewwa l-Istati Uniti tal-Amerika u li wasslet sabiex persuni jitilfu ammont konsiderevoli ta' flus.

Illi jirrizulta li l-istess intimat, fis 27 ta' Jannar 2008 u fit 3 ta' Frar 2008, kien ippublika zewgt artikolu intitolati '*US Authorities sue as \$30 million go missing through Malta*' u '*Exodus vows "every cent" will be returned to investors*', ghall liema artikolu, Keith Roberts-Sampson Bristol, personalment u bhala direttur tal-kumpanniji rikorrenti fil-proceduri odjerni, kien irrisponda permezz ta' ittra ippubblikata mill-konsulenti legali tieghu fl-istess gurnal fl 10 ta' Frar 2008 fejn qal, fost affarjiet ohra:

"Indeed, not only did the United States Securities and Exchange Commission not institute any proceedings against our clients but, moreover, nowhere does the same Commission state, let alone allege, that our clients were either directly or indirectly involved in the alleged unlawful activities of the defendants in the case.

Indeed, even the injunctions subsequently filed by the US Courts on 23 January 2001(sic) were not issued against any of our clients. This clearly is a consequence of the fact that our clients where (sic) never considered to have participated in the alleged fraudulent scheme perpetrated by the defendants to the suit in the United States."

Illi, minkejja dak dikjarat mid-direttur tas-socjeta rikorrenti fi Frar 2008, l-Awtoritajiet Amerikani attwalment niedu proceduri kontra dana id-direttur kif ukoll il-kumpanniji rikorrenti, kif jidher indikat fl-istess *Settlement Agreement and Release* ppresentat mis-socjeta rikorrenti stess, fejn il-fondi kollha ta' dana Keith Robert-Sampson Bristol kif ukoll tas-socjeta rikorrenti gewwa l-Isvizzera gew kollha iffriżati u eventwalment rilaxjati mill-istess Bristol a favur tal-Awtoritajiet Amerikani.

Illi, jirrizulta wkoll mill-istess Agreement fuq indikat illi, la darba il-flejjes, osija ftit anqas minn erbgha miljuni u nofs dollari amerikani, gew rilaxxjati farvur l-Awtoritajiet Amerikani dawna, minn-naha taghhom kellhom jaghtu lill Bristol, fost affarjiet ohra, "*a signed statement ... retracting certain allegations of wrongdoing made by the Receiver about Bristol, Soleli, Exodus or Exodus Limited and certain of their affiliates in the course of the Investigation.*"

Illi, huwa interessanti li jigi riprodott, f'dana l-istadju, is-'*signed statement*' li gie miftiehem bejn id-direttur tas-socjetajiet rikorrenti fil-proceduri odjerni u l-Awtoritajiet Amerikani milhuq fid 9 ta' Jannar 2013, ossija ftit aktar minn sentejn wara illi gie ppubblikat l-artikolu u ftit anqas minn tlett snin wara illi gew innieda proceduri kontra s-socjetajiet rikorrenti mill-Awtoritajiet Amerikani f'Malta. Dana jghid is-segwenti:-

*"Reference is made to that certain Settlement Agreement and release ... among J Boyd Page, in his capacity as the court-appointed Receiver in '**Securities and Exchange Commission vs Coadum Advisors et al**' (the Receiver) and Keith Roberts-Sampson Bristol ('Bristol'), Exodus Platinum Genesis Fund Limited, a Bermuda company ("Exodus"), Exodus Platinum Limited ("Exodus Limited" and Soleil Group Holdings Limited (Malta), a Maltese Company ("Soleil") and collectively with the Receiver, Bristol, Exodus and Exodus Limited, each a "Party" and collectively the "Parties".*

It is the purpose of the Settlement Agreement to resolve any and all complaints, claims, defences or causes of action or allegations asserted by the Receiver in agencies including, without limitations, courts of the United States, the Swiss Confederation, Andorra or the Republic of Malta and upon any public record against Exodus, Exodus Limited, Soleil or Bristol, such persons being referred to collectively as KRSB. it is therefore incumbent on the receiver to state the following:

1. *the Receiver has made numerous allegations of or concerning KRSB in official and publicly filed reports to*

the United States District Court for the Northern District of Georgia - Atlanta Division ("Court") and other documents filed with the Court and/or released to media. Such allegations were repeated and restated in the Receivers' Eleventh Interim report dated 28th March 2012, which also discloses that on 29th February 2012 Thomas E Repke and James A Jeffrey were sentenced, on guilty pleas, respectively to 120 months and 87 months in federal prison, five years supervised release following prison and restitution totalling \$29,740,180 for fraudulent misappropriation of investor funds commonly known as a "Ponzi scheme". Also included in the 11th Report are allegations that KRSB was involved in money laundering activities and that he intended to defraud investors. The suggestions of money laundering and mispending and that he intended to defraud investors were provided, exclusively, by the convicted felons, Repke and/or Jeffrey.

2. *In accordance with the Settlement Agreement, the Receiver, through the issuance of this statement, hereby withdraws all allegations to the effect that Exodus and/or Solel entities were or are "purported" hedge funds, the use of the derogatory expression "Kip and his cohorts", reference in any documents prepared by or issued in the Receivers' name associating KRSB, including any officer, director or agent thereof, with a Ponzi scheme, bank scam, or other wrongdoing or engaged in activities that would support allegations of any wrongdoing including, without limitation, money laundering or that KRSB intended to defraud investors.*

3. *The Receiver's withdrawal of the allegations contained in the 11th Report and previous interim reports is intended by the parties to acknowledge that the exclusive source relied on by the Receiver was the above-mentioned convicted felons and the Receiver has no competent corroborating evidence that KRSB engaged in money laundering or that he intended to defraud investors.*

Ikkunsidrat

Illi dina l-Qorti hasset il-htiega illi jigi riprodott kemm dak illi kien gie mitlub lis-socjeta rikorrenti fil-kawza mibdija f'Mejju 2010 u li wassal ghal artikolu meritu tal-kawza odjerna, kif ukoll il-ftehim milhuq gewwa l-Amerika f'Jannar 2012, sabiex ix-xenarju kollu illi wassal ghall-pubblikazzjoni ta' l-artikolu meritu tal-kawza odjerna tkun aktar cara waqt il-kunsidrazzjonijiet ta' dina l-Qorti.

Illi jirrizulta mill-atti ppresentati, li flimkien ma' l-avviz promotur ippresentat fit 28 ta' Mejju 2010, gew ukoll ppresentati diversi atti gudizzjarji ippresentati gewwa l-Qrati amerikani tad-Distrett ta' Georgia, Atlanta, fejn, fost affarjiet ohra, jissemma li l-ammont ta' madwar tlettax-il miljun dollaru amerikan gew traferiti go kontijiet tas-socjetajiet rikorrenti bi frodi lill cittadini ta' ISTATI UNITI ta' l-Amerika u l-Kanada kif ukoll saru diversi trasferimenti minn tali kontijiet da parte tas-socjeta rikorrenti u min kien jiggestihom, ossija Keith Robert-Sampson Bristol. Tali atti, apparti li huwa atti gudizzjarji minnhom innfushom, huwa wkoll atti inkluzi fl-atti gudizzjari lokali u jiffurmaw parti mill-atti.

Ikkunsidrat

L-intimat, qajjem, bhala difiza, li dak minnu publikat kien privilegijat a tenur ta' l-Artikolu 33 tal- Kap 248 li jipprovdi illi:

“ma tista' tittiehed ebda azzjoni dwar il-pubblikazzjonijiet li gejjin ...

(d) publikazzjonijiet ta' rapporti ta' procedimenti f'qorti tal-gustizzja f'Malta, kemm il-darba daww ir-rapporti ikunu rapporti gusti tal-procedimenti u l-pubblikazzjoni ta' daww ir-rapporti jew proceduri ma tkunx projbita b'ligi jew mill-qorti”.

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Illi kif inghad fis-sentenza “**Ian Ciappara vs Islands Hotel Group**” tal-10 ta' Lulju 2000,

“li tali pubblikazzjonijiet privileggjati huma ntizi bhala rikonoxximent legislattiv tal-fatt li f'certi cirkostanzi dettati minn public policy jirrikjedi li bniedem ikun liberu minn kull responsabilita` ghall-pubblikazzjoni ta' kliem defamatorju jew libelluz. Ghalhekk isegwi li tali privilegg m'ghandux jigi estiz, hlief ghal kazi indikati mill-ligi, certament li fejn dan jezisti dan ghandu jigi ritenut bhala assolut”.

Illi kif jirrapporta l-awtur Gatley fil-ktieb tieghu “**On Libel and Slander**” :

“An absolute privilege attaches (inter alia) to the following:

- (1) Statements made in the course of judicial proceedings;*
- (2) Statements made in the course of quasi judicial proceedings;*
- (3) Statements contained in documents made in judicial or quasi judicial proceedings”.*

Illi ghalhekk, kif ikompli jghid l-istess awtur, ir-regola generali hija li

“no action will lie for defamatory statements whether and or written, made in the course of judicial proceedings before a court of justice or a tribunal ... The authorities establish beyond all question this: that either party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in offices, that no action for libel or slander lies whether against judges, counsel, witnesses, or parties for words spoken in the course of any proceeding before any court recognized by

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law and this although the words were written or spoken maliciously, without any justification or excuse ...”.

Illi tali privilegg jestendi mhux biss ghal kliem mitkellem jew miktub “*in the ordinary course of any proceeding before any court or tribunal recognised by Law*” izda wkoll a rigward ta “any matter incidental to the proceedings practically necessary for the administration of justice (para 383)”.

Illi, kif qalet il-Prim Awla fil-kawza '**Angelo Spiteri vs Joseph Bugeja**' deciza fl 1 ts' Ottubru 2002,

” ... hemm tlett kategoriji ta’ tali privilegg f’dak li jirrigwarda proceduri gudizzjarji u cioe`:

(a) “Coram Judice” dak li jsir proprio quddiem il-Qorti, bhal xhieda, trattazzjoni, dokumenti, noti ta’ osservazzjonijiet, etc;

(b) dak kollu li jsir mill-bidu tal-istess proceduri u testendi wkoll ghal kull dokument li jsir sabiex jaghti bidu ghall-istess proceduri, inoltre l-att tac-citazzjoni innifisha;

(c) atti preparatorji dawn xhieda sabiex jitressqu sabiex jaghtu tali xhieda quddiem Qorti kompetenti, ghalhekk din l-ahhar kategorija ibbazata fuq decizjoni tal-House of Lords f’ “Watson vs Evan” hija differenti sew sabiex taghti definizzjoni taghha.”

Ikkunsidrat

Illi, fil-kaz odjern, jirrizulta ben ippruvat illi l-artikolu illi kiteb l-intimat u meritu tal-kawza odjerna kien rizultat ta' atti gudizzjari illi sehew gewwa l-Amerika u li kopja taghhom gew esebiti fl-atti processwali gewwa Malta u, ghalhekk,

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jaqaw proprja taht id-definizzjoni ta' 'Coram Judice' indikata aktar 'l fuq.

Illi, jirrizulta wkoll, illi l-frazzjiet u fatti li jidher li s-socjeta rikorrenti kienet qed toggezzjona ghalihom, fosthom 'Ponzi Scheme', 'swindled' u 'defrauded', kienu attwalment kliem li intuzaw fil-Qrati Amerikani fl-atti esebiti fil-Qorti Maltija u atti sussegwenti u prova ta' dan hija l-ftehim illi l-istess socjetajiet rikorrenti esebew u li jindika li tali asserzjonijiet maghmulha mill-Awtoritajiet Amerikani kien issa ser jigu rtirati wara illi l-istess socjeta rikorrenti u diretturi taghha irrilaxjaw madwar erbgha miljuni u nofs dollari a favur tal-awtoritajiet Amerikani.

Illi ghalhekk il-Qorti ma tifthimx kif jistghu qatt is-socjetajiet rikorrenti jippretendu illi dak rappurtat mill-intimat, fuq atti hekk prodotti fil-Qrati Maltin, setghu qatt kienu libelluzi u defamanti fil-konfront taghhom meta attwalment kienu riflessjoni ta' stat ta' fatt illi kien qieghed jigri gewwa l-Qrati Amerikani u li gie rizolt biss wara illi l-istess socjetajiet rikorrenti irritornaw miljuni kbar ta' dollari amerikani illi kienu gew mehudha minn-investituri minn terzi b'qerq.

Ikkunsidrat

Illi, kif stqarret il-Prim'Awla tal-Qorti Civili fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** fit-23 ta' Marzu, 2009,

"f'kawzi bhal prezenti, u cioe f'kawza ta' libell, hemm bilanc li ghandu jinzamm bejn id-dritt f'socjeta' demokratika li wiehed jghid u jesprimi ruhu u jsemmi l-opinjoni tieghu bl-aktar mod liberu u bejn id-dritt ta' kull cittadin li jgawdi reputazzjoni u l-isem tajjeb tieghu u dan dejjem fl-isfond ta' socjeta demokratika."

Il-Qorti tal-Appell, imbgħad, fl-istess kawza deciza fit-3 ta' Frar, 2012 ziedet tghid li

“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f’socjeta’ demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa’ allegazzjoni mhux pruvata kif trid il-Ligi. F’dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista’ wkoll ikun tollerat.”

Din il-Qorti ma tistax ma tinnutax illi, fil-kawza odjerna, huwa car u minghajr ebda dubju li l-intimat, illi kien gia kiteb dwar dina l-kwistjoni serja xi sentejn qabel, kompli jikteb dwar tali kaz wara li nbdew il-proceduri gewwa Malta u bbaza l-artikolu tieghu fuq informazzjoni kif prodotta fil-Qrati. Il-Qorti ma ghandha ebda dubju wkoll illi dak li inkiteb kien rizultat ta’ gurnalizmu investigattiv u genwin u kien ta’ interess pubbliku.

Kif qalet il-Qorti Ewropea fil-kawza **Fresos & Roire vs France**

“the press plays an important role in a democratic society, although it must not overstep certain bounds, in particular in respect of reputation and rights of others. People exercising freedom of expression including journalists undertake duties and responsibilities.”

Dana gie anke ri-affermat mill-Qorti Maltij meta, fil-kawza **Caruana v. Mifsud**, deciza fl-24 ta’ Settembru 2004, intqal:

*“Il-liberta` ta’ espressjoni m’hijiex xi licenzja li wiehed ighid li jrid minghajr kontroll. Id-dritt invokat mill-appellant huwa suggett ghal certu kundizzjonijiet. Hekk per ezempju, fil-kaz *Bladet Tromso and Stensaas v. Norway* (20 ta’ Mejju 1999) il-Qorti Ewropeja tad-drittijiet tal-Bniedem esprimiet ruhha hekk:*

“Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the article the exercise of this freedom carries with it “duties and “responsibilities”, which also apply to the press. These “duties and responsibilities” are liable to assume significance when, as in the present case, there is a question of attacking the reputation of private individuals and undermining the “rights of others”...by reason of “duties and responsibilities” inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.” (para 65)

Huwa car illi, fil-kaz in ezami, l-intimat kellu dmir u dover illi jirrapporta l-kaz lill-pubbliku, peress illi kien ta' interess nazzjonali, u li ghamel tali rappurtagg abbazi ta' dokumentazzjoni riprodotta fil-Qrati u ghalhekk privileggjati f'ghajn il-Ligi

Ghalhekk, ma jirrizulta ebda kaz ta' libell kif mitlub

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u semghet it-trattazzjoni ta' l-abli avukati

Taqta u tiddeciedi l-kaz billi

Kopja Informali ta' Sentenza

Tilqa l-eccezzjonijiet kollha tal-intimat u tiddikjara illi l-artikolu meritu tal-kawza odjerna huwa privileggjat ai termini ta' l-artikolu 33 (d) tal-Kap 248, u ghalhekk

Tichad it-talbiet attrici

Spejjez kollha tal-proceduri odjerni ikunu kollha a kariku tas-socjeta rikorrenti in solidum bejniethom.

< Sentenza Finali >

-----TMIEM-----