



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

Seduta tas-7 ta' Jannar, 2014

Citazzjoni Numru. 502/2011

**Alberta Fire & Security Equipment Ltd (C-6606),
Sicuro Safety Solutions Limited (C-41991),
International Safety Training Centre Ltd (C-26022) u
P.T. Matic Environmental Services Ltd (C-17720),
maghrufin kollettivament bhala l-Alberta Group**

kontra

Mark Mifsud

Il-Qorti :

I. Preliminari

Rat ir-rikors gumentat prezentat fit-23 ta` Meju 2011 li jaqra hekk –

Kopja Informali ta' Sentenza

1. Illi l-konvenut Mark Mifsud kien impjegat tas-socjeta` attrici Alberta Fire & Security Equipment Ltd permezz ta` kuntratt ta` impjieg datat 26 ta` Marzu 2008 ;

2. Illi l-impjieg tal-konvenut kien gie terminat wara li l-istess konvenut kien approprja indebitament proprjeta` appartenenti lis-socjetajiet attrici, u kien ghamel hsara lis-socjetajiet attrici bl-uzu ta` informazzjoni kunfidenzjali li kien fil-pussess taghha waqt il-kors tal-impjieg tieghu, liema fatti waslu ghall-konkluzjoni tal-kuntratt datat 27 ta` Dicembru 2010 fl-atti tan-Nutar Timothy Ellis, li kopja tieghu tinsab hawn annessa, esebita u mmarkata bhala **DOK. A** ;

3. Illi l-obbligi ta` non-disclosure ta` informazzjoni dwar is-socjetajiet attrici, u li ma jigix attakkat il-client base tas-socjetajiet attrici, li bihom intrabat il-konvenut fil-kuntratt ta` impjieg tieghu, gew konfermati u estizi permezz ta` kuntratt in atti Nutar Timothy Ellis, datat 27 ta` Dicembru 2010, u dan nonostante t-terminazzjoni tal-impjieg tal-istess konvenut ;

Illi fil-konfront tal-konvenut Mark Mifsud, it-termini applikabbli huma s-segwenti :

"(6) The employee shall not during this contract or after the termination of this contract or after the termination of his employment with the Company divulge or communicate to any person or persons except those officials of the Company whose province it is to know the same, any information relating to the Company`s business affairs and dealings which comes to his attention during the course of his employment. In default the employee shall be obliged to pay a penalty of five thousand Malta Liri (Lm5,000) by way of preliquidated damages and this without prejudice to the other rights of the Company as emanating from this contract or from Law. The employee shall also be obliged to affect a proper and full hand-over

of his duties and to inform the company of any material fact which is in his knowledge related to the company and the other business undertaken by it.

(7) Should this employment be terminated mid-term for any reason by the Company for just and sufficient cause or by the employee for any reason whatsoever, the employee undertakes as of now that for a period of

nine months after the termination of his employment if he has been in employment for one year or less ;

twelve months after the termination of his employment if he has been in employment for over one year and not more than two ;

fifteen months after the termination of his employment if he has been in employment for over two years and not more than three ;

eighteen months after the termination of his employment if he has been in employment for over three years but not more than five,

he shall not for his own account or for any other person, firm, or Company solicit or interfere or endeavour to entice away from the Company any person who may be employed with the Company or may be a client of the Company. He shall also refrain from working with the any Company or person or for initiating business in competition to or related in general to the business run by the Company. In breach of this provision the Employee shall pay the Company by way of preiquidated damages the amount of five thousand Malta Liri (Lm 5000)" ;

5. Illi jirrizulta li l-konvenut kiser b`mod inekwivokabbli l-obbligi minnu assunti, meta l-ewwel impjega ruhu ma` socjeta` kompetitrici tal-atturi, b`uzu ta` informazzjoni, data u dettalji kunfidenzjali li gew a konoxxenza taghhom fil-kors tal-impjeg taghhom mal-atturi, u billi Mark Mifsud ikkostitwixxa kumpanija li tahdem fl-istess xoghol u tizvolgi l-istess attivita` bhal dik tal-atturi

u avvicina klijentela tal-atturi u dan bl-uzu ta` informazzjoni, data u dettalji kunfidenzjali li gew a konossenza tieghu fil-kors tal-impjeg tieghu mal-atturi ;

6. Illi s-socjeta` ISTS Limited giet inkorporata sabiex tagixxi bhala paraventu f`tentattiv kjarament frawdolenti biex taggira r-restrizzjoni kuntrattwali vinkolanti fuq il-konvenut Mark Mifsud, u dan b`dannu sostanzjali rekat ghall-atturi ;

7. Illi l-operat tal-konvenuti fix-xoghol minnhom intrapriz wara t-terminazzjoni tal-impjeg taghhom, u wara l-konkluzjoni tal-kuntratt pubbliku tas-27 ta` Dicembru 2010 mas-socjetajiet attrici kien tali li tmexxa `l quddiem fuq l-iskorta ta` informazzjoni kunfidenzjali li kellhom il-konvenuti dwar l-operat tas-socjetajiet attrici u kien tali li halqu kompetizzjoni zlejali u diretta mal-operat tal-istess socjetajiet attrici ;

8. Illi tenut kont dak hawn fuq premess, il-konvenuti, jew min minnhom, huma responsabbli ghad-danni kollha sofferti mill-atturi ;

9. Illi debitament interpellati sabiex jaghmlu tajjeb ghad-danni kollha sofferti mill-atturi, il-konvenuti baqghu inadempjenti;

10. Illi permezz ta` din il-kawza, l-atturi qeghdin jinvokaw id-drittijiet taghhom naxxenti mil-kuntratt pubbliku tas-27 ta` Dicembru 2010, u dan minghajr pregudizzju ghal kull azzjoni ohra, inkluz ghal danni, spettanti lilhom li talvolta ghandhom dritt ghaluha, u dan skont it-termini tal-istess kuntratti;

11. Illi ghalhekk kellha ssir din il-kawza;

Jghidu l-konvenuti ghalfejn dina l-Onorabbli Qorti m`ghandhiex :

- 1. Tiddikjara li l-konvenuti, jew min minnhom, kisru l-obbligazzjonijiet taghhom naxxenti mill-kuntratt ta` impjeg taghhom u wkoll mill-kuntratt tas-27 ta` Dicembru 2010 ;*
- 2. Tillikwida d-danni sofferti mis-socjetajiet attrici in segwitu ghall-ewwel talba ;*
- 3. Tikkundanna l-konvenut sabiex ihallas id-danni hekk likwidati.*

Bl-ispejjez, inkluz dawk tal-protest gudizzjarju datat 15 ta` April 2011 u tal-Mandati Kawtelatorji pprezentati kontestwalment ma` dan l-Att, u bl-imghax legali kontra l-konvenut, li huma minn issa ngunti ghas-subizzjoni.

Rat il-lista tax-xhieda ndikati mill-atturi u l-elenku ta` dokumenti esebiti mar-rikors guramentat.

Rat ir-risposta guramentata prezentata fit-12 ta` Lulju 2011 li taqra hekk –

- 1. Preliminarjament l-esponenti jissottometti illi hu ghandu jigi liberat mill-osservanza tal-gudizzju u dan peress r-rikors promutur huwa null minhabba li mhux car bizzejjed li jippermetti lill-esponenti jaghmel difiza, u partikolarment minhabba illi l-ksur li r-rikorrenti qed jallegaw li l-esponenti ghamel tal-obbligi tieghu huwa generiku u mhux identifikat u ma jirreferi ghal ebda fatt partikolari.*

2. *Sussidjarjament u minghajr pregudizzju għall-premess l-esponenti ma kiser ebda obbligu msemmi fil-paragrafu 4 tar-rikors gumentat u dan inter alia minhabba li fil-kuntratt tal-impjeg li l-esponenti kellu mas-socjeta` Alberta Fire & Security Equipment Ltd il-klawsoli kif riportati fir-rikors promutur ma jezistux.*

3. *Sussidjarjament u minghajr pregudizzju għal premess, illi l-esponenti qatt ma kellu xi relazzjoni ta` impjeg mas-socjetajiet atturi Sicuro Safety Solutions Limited, International Safety Training Centre Ltd u P.T. Matic Environmental Services Ltd. L-esponenti lanqas qatt ma kellu xi relazzjoni guridika ta` impjeg ma` dak li r-rikorrenti qed isejhu l-“Alberta Group”. L-unika relazzjoni ta` impjeg li l-esponenti kellu kienet mas-socjeta` Alberta Fire & Security Equipment Ltd, u magħha biss.*

4. *Sussidjarjament u minghajr pregudizzju għal-premess fi kwalunkwe kaz kull penali stipulata fil-kuntratt tal-impjeg hija nulla u bla effett u dan peress li tmur kontra d-disposizzjonijiet tal-Kap. 135, u inoltre anke l-obbligu fih innifsu li wiehed ma jikkompetix mas-sid wara t-terminazzjoni tal-impjeg huwa null u bla effett u dan peress illi jmur kontra l-ordni pubbliku.*

5. *Sussidjarjament u minghajr pregudizzju għal-premess ir-rikorrenti ma għandhom ebda dritt naxxenti mill-kuntratt pubbliku tas-27 ta` Dicembru 2010 li jagħti xi dritt bhal dak invokat minnhom fil-korp u talbiet tar-rikors promutur u kuntrarjament għal dak imsemmi fil-paragrafu 3 tar-rikors promutur bl-imsemmi att pubbliku ma saret ebda estensjoni tal-obbligi naxxenti mill-kuntratt tal-impjeg. Lanqas ma gew assunti xi obbligi ohra mill-esponenti ma` dawk li kellu skond il-ftehim ta` impjeg. Tabilhaqq il-hlas li sar fuq l-att pubbliku kien a saldu tal-pretensjonijiet tar-rikorrenti.*

6. *Sussidjarjament u minghajr pregudizzju ghal premiss fi kwalunkwe kaz l-esponenti ma kiser ebda obbligu naxxenti mill-kuntratt tal-impjieg li huwa kellu (anki jekk ghal grazzja tal-argument dawn l-obbligi huma validi) mas-socjeta` Alberta Fire & Security Equipment Ltd u lanqas ma kiser xi obbligu naxxenti mill-kuntratt tas-27 ta` Dicembru 2010, u dan la direttament u lanqas indirettament permezz ta` xi socjeta`. Mas-socjetajiet rikorrenti l-ohra, u cioe` Sicuro Safety Solutions Limited, International Safety Training Centre Ltd u P.T. Matic Environmental Services Ltd. l-esponenti ma kellu ebda relazzjoni jew kuntratt ta` impjieg.*

Ghalhekk it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez.

Salvi eccezzjonijiet ohra.

Rat id-dikjarazzjoni ta` l-fatti u l-lista tax-xhieda ndikati mill-konvenut.

Rat ix-xiehda bl-affidavit ta` Cedric Caruana.

Semghet ix-xiehda ta` Christian Borg u ta` Amanda Galea fl-udjenza tal-1 ta` Novembru 2011 u rat id-dokumenti li kienu esebiti fl-istess udjenza.

Semghet ix-xiehda ta` Arrigo Traversi, ta` Joanne Camilleri, tan-Nutar Timothy Ellis u ta` Joseph Schembri fl-udjenza tal-24 ta` Jannar 2012 u rat id-dokument li kien esebiti fl-istess udjenza.

Rat ix-xiehda bl-affidavit ta` Oliver Fenech.

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Rat id-dokument li l-atturi pprezentaw b`nota fl-udjenza tat-12 ta` Marzu 2012.

Semghet ix-xiehda ta` Cedric Caruana fl-istess udjenza.

Rat id-dokumenti li l-atturi pprezentaw b`nota fl-udjenza tal-10 ta` Mejju 2012.

Semghet ix-xiehda ta` Dr Derek Broadley fl-istess udjenza.

Semghet ix-xiehda ta` Christian Mangion fl-udjenza tas-6 ta` Novembru 2012,

Semghet ix-xiehda ta` Sarah Bondin u ta` Daniel Montebello fl-udjenza tal-31 ta` Jannar 2013.

Semghet ix-xiehda tal-konvenut fl-udjenza tat-23 ta` April 2013.

Semghet is-sottomissjonijiet tal-ahhar li saru fl-udjenza tat-8 ta` Ottubru 2013.

Rat id-digriet taghha moghti fl-istess udjenza fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

Ikkunsidrat :

II. Kumment generali

Il-Qorti tirrileva li mill-*occhio* tal-kawza, huwa evidenti illi l-atturi harrku biss konvenut **wiehed** u cioe` lil Mark Mifsud. Hi u ssegwi l-premessi tal-atturi kif dedotti fir-rikors guramentat, il-Qorti tosserva illi sas-sitt (6) premessa, l-atturi ilmentaw mill-agir ta` Mark Mifsud – li skond huma – jikkostitwixxi ksur ta` pattijiet kontrattwali li kellu magghom. Imbaghad mis-seba` (7) sal-ghaxar (10) premessi, firxu l-ilmenti taghom fuq pluralita` ta` konvenuti – bla ma ndikaw min huma. L-atturi baqghu fuq din il-linja – bla ma talbu ebda bidla fl-*occhio* – tant illi fl-ewwel domanda talbu mill-Qorti dikjarazzjoni ta` responsabilita` tal-*konvenuti jew min minnhom*. Imbaghad fit-tielet domanda talbu **biss** il-kundanna tal-konvenut Mark Mifsud. Kenitx zball ir-riferenza ghal pluralita` ta` konvenuti din il-Qorti ma tistax tghid. Lanqas ma tasal biex tghid li dan kien ezercizzju ta` *cut and paste* li ma sarx b`reqqa. Li pero` huwa cert huwa li din il-Qorti ghandha indikat bhala konvenut lil Mark Mifsud **biss** u ghalhekk li sejra taghmel fil-procediment tal-lum huwa li, wara li tittratta u tiddeciedi l-eccezzjonijiet preliminari, tistharreg – jekk ikun ghadu l-kaz – jekk il-pretensjonijiet tal-atturi kif dedotti fil-konfront ta` Mark Mifsud ghandhomx fundament fil-fatt u fid-dritt.

Ikkunsidrat :

III. L-ewwel eccezzjoni

Taqra hekk –

Preliminarjament l-esponenti jissottometti illi hu ghandu jigi liberat mill-osservanza tal-gudizzju u dan peress r-rikors promotur huwa null minhabba li mhux car bizzzejjed li jippermetti lill-esponenti jaghmel difiza, u partikolarment minhabba illi l-ksur li r-rikorrenti qed jallegaw li l-esponenti ghamel tal-obbligi tieghu huwa

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generiku u mhux identifikat u ma jirreferi ghal ebda fatt partikolari.

L-Art 156(1)(a) tal-Kap 12 ighid illi rikors gumentat ghandu jkun fih *dikjarazzjoni li tfisser b`mod car u sewwa l-oggett tal-kawza.*

Din id-disposizzjoni (anke kif kienet qabel l-emendi tal-1995 u tal-2005) inghatat fil-gurisprudenza interpretazzjoni wiesgha fis-sens li ma gietx adottata l-istrettezza li donnhom ifissru l-kliem tal-ligi.

Hekk fis-sentenza **“Moore noe vs Falzon et”** (Prim`Awla tal-Qorti Civili – **PA/AM** – 15 ta` Dicembru 1995) kien deciz li –

... l-ligi ma tirrikjedix kliem partikolari ghal kif ghandha ssir ic-citazzjoni, bizzejjed jiftiehem xi jkun qiegħed jitlob l-attur, b`mod li l-kawzali tista` tkun espressa lakonikament, u saħansitra tista` tkun anke ridotta mid-domanda (Kollez. XXXIV.I.501, XXIX.I.143 u XXXII.I.228).

Hekk ukoll inghad fis-sentenza tal-Qorti tal-Appell fil-kawza **“Bonnici vs Zammit noe”** deciza fl-20 ta` Jannar 1986 fejn it-tifsira tal-Art.156(1) kienet spjegata hekk –

Illi l-Artikolu 156(1) jipprovdi li l-oggett u r-raguni tat-talba gudizzjarja ghandhom ikunu mfissra car u sewwa fic-citazzjoni. Dan ma jfissirx pero` li kwalunkwe nuqqas da parte ta` l-attur ghandu mill-ewwel jigi meħud fis-sens li qed imur kontra d-dispost ta` l-Art.155(1) [illum 156(1) tal-Kap.12] u għalhekk igib mieghu n-nullita` tac-citazzjoni. Infatti biex citazzjoni tigi mwaqqfa jrid ikun hemm raguni gravi, u fost kollox, ghandu jigi ezaminat jekk ic-citazzjoni tkunx defungenti jew zbaljata b`mod li l-konvenut ikun jista` jigi pregudikat fid-difiza tieghu. Dan apparti li c-

citazzjoni ghandha tigi ezaminata fit-totalita` taghha u mhux spezzettata.

Fil-kawza “**Vella vs Cefai**” (Appell Civili – 4 ta` Novembru 1991 – Kollez. Vol.LXXV.II.467) il-Qorti tal-Appell sostniet li meta f`citazzjoni tezisti vjolazzjoni tal-forma in kontravvenzjoni tal-Art.156(1)(a) ghax ma jkunx fiha tifsir car u sewwa tal-oggett u r-raguni tat-talba, l-eccezzjoni tan-nullita` tac-citazzjoni tista` tigi milqugha biss kemm-il darba dik il-vjolazzjoni tkun giebet lill-parti li titlob in-nullita` pregudizzju illi ma jistax jissewwa xort`ohra hlief billi l-att jigi annullat. Inoltre l-Qorti komplet tafferma li f`dawn il-kazi huwa dejjem opportun li l-Qorti, kemm jista` jkun ghall-pratticita` u sabiex tigi evitata multiplikazzjoni ta` kawzi u spejjez zejda, tkun iebssa meta tilqa` l-eccezzjoni tan-nullita` u kemm jista` jkun issalva atti gudizzjarji, u att ta` citazzjoni ghandu jigi mwaqqa` u annullat biss ghal ragunijiet gravi. In-nullita` ta` l-atti gudizzjarji hija sanzjoni estrema li l-ligi trid li tigi mposta biss meta n-nuqqas – formali jew sostanzjali – fl-att ma jistax assolutament jigi tollerat minghajr hsara ghal xi principju ta` gustizzja procedurali.

Il-linja traccjata minn dawn il-Qrati hija li l-*formalizmu ezagerat ilu hafna li gie mnaqqas u limitat u bir-ragun il-ligi qeghda tkun aktar inklinata li tkompli tillimita l-formalizmu u n-nullitajiet ta` diversi forom li jnutruh* (“**Fino vs Fabri noe**” – Qorti tal-Appell – 28 ta` Frar 1997) u konsegwentement *l-atti ghandhom jigu salvati anziche` annullati jew dikjarati nulli* (“**Ellul vs Coleiro**” – Qorti tal-Appell – 24 ta` Jannar 1994). [Ara wkoll – “**Guillaumier Industries Ltd vs Fava et**” – Prim`Awla tal-Qorti Civili – PA/RCP – 28 ta` Ottubru 1998, “**Attard noe vs Galea**” – Qorti tal-Appell – 12 ta` Mejju 1998 u “**Aquilina vs Cassar**” – Vol.LXXVI.IV.666]

Jinghad ukoll li l-Art.156(1) ghandu jinqara ukoll flimkien ma` l-Art.789 tal-Kap.12. Infatti l-kazi li fihom l-eccezzjoni tan-nullita` ta` atti gudizzjarji tista` tinghata

huma dawk imsemmija fis-subartikolu (1) tal-Art.789. *L-erba` (4) cirkostanzi msemmija f`dak l-artikolu huma tassattivi fis-sens li biex dik l-eccezzjoni ta` nullita` ta` att gudizzjarju tirnexxi, trid bilfors taqa` taht il-parametri ta` xi wahda minnhom. (“**K.B. Real Estate Limited vs Silvio Felice Limited**” – Prim`Awla tal-Qorti Civili – PA/JRM – 13 ta` Marzu 2003). Fil-kaz tal-lum, din il-Qorti ma tarax li l-ewwel eccezzjoni tal-konvenuti ssib sostenn fl-Art.789 tal-Kap.12.*

Fl-istess sentenza “**K.B. Real Estate Limited vs Silvio Felice Limited**” (op. cit.) jinghad hekk dwar l-element tal-kjarezza fl-att tac-citazzjoni –

... il-ligi ma tinsistix fuq formola preciza jew kliem partikolari, u sakemm it-talba tkun tista` tiftiehem, ma jimputax jekk il-kawzali tkunx imfissra b`mod xott jew sahansitra mifhuma jew implikata mit-talba nnfisha.

... fejn ma jkunx hemm kontradizzjoni ghall-ahhar bejn il-premessi u t-talbiet jew bejn it-talbiet innfishom, il-Qrati ghandhom iqisu b`cirkospezzjoni eccezzjoni ta` nullita` ta` att gudizzjarju. Biex att ta` citazzjoni jghaddi mill-prova tal-validita` huwa bizzzejjed li t-talba tkun mfassla b`mod tali li l-persuna mharrka tifhem l-intenzjoni ta` min harrikha u li tali tifsila ma tkunx ta` hsara ghall-imharrek li jiddefendi lill-nnifsu mit-talba tal-attur.

... jekk id-difett fit-tfassila tal-att li bih tkun inbdiet il-kawza ma jgibx pregudizzju serju lill-parti mharrka, allura l-procedura tkun tista` tigi salvata basta dan ma jaffettwax is-sustanza tal-azzjoni jew l-eccezzjonijiet ...

Din il-Qorti taghmel taghha dawn l-insenjamenti.

U anke in vista tal-premess, tghid li n-nullita` eccepita mill-konvenut mhix gustifikata.

Bil-mod kif l-attur imposta l-istanza tieghu, il-konvenut ma garrab l-ebda pregudizzju. Tant dan huwa hekk illi bl-eccezzjonijiet l-oħra tieghu, il-konvenut imposta kjament id-difiza tieghu, u fisser ir-ragunijiet li jsostnu dik id-difiza ; abbazi ta` dawk ir-ragunijiet, ighid illi ghandhom jigu respinti t-talbiet attrici.

Fi kwalunkwe kaz, u dan in linea generali, ghandu jinghad li l-interess tal-gustizzja ikun generalment moqdi biss b`decizjoni fuq il-punti sostantivi tal-kawza u dak huwa li l-partijiet fil-verita` jkunu qed ifittxu. Ir-regoli tal-procedura qeghdin hemm primarjament sabiex id-dritt sostantiv jista` jitressaq ahjar u bis-sens. Id-dritt għall-gustizzja ma ghandux jippermetti li r-regoli tal-procedura jiehdu s-sovravvent, b`interpretazzjoni rigida u magħluqa, fuq id-dritt sostantiv b`mod li l-formalizmu jigi jiddetta t-twettieq tal-gustizzja skond il-ligi.

Għalhekk il-Qorti tichad l-ewwel eccezzjoni.

Ikkunsidrat :

IV. It-tieni eccezzjoni

Taqra hekk –

Sussidjarjament u minghajr pregudizzju għall-premess l-esponenti ma kiser ebda obbligu msemmi fil-paragrafu 4 tar-rikors guramentat u dan inter alia minhabba li fil-kuntratt tal-impjeg li l-esponenti kellu mas-socjeta` Alberta Fire & Security Equipment Ltd il-klawsoli kif riportati fir-rikors promutur ma jezistux.

a) Provi

Il-Qorti taghmel riferenza ghall-kontenut tar-rikors promotorju tal-azzjoni li kien konfermat bil-gurament minn Cedric Caruana, illi rrizulta li huwa c-Chief Financial Controller tal-kumpanniji attrici.

Max-xiehda tieghu bl-affidavit, Cedric Caruana pprezenta l-kuntratt tax-xoghol tal-konvenut (Dok B a fol 32 et seq).

Il-kuntratt kien datat 1 ta` Settembru 2008 (mhux kif kien **erroneament** indikat fir-rikors guramentat). Kien kuntratt ghal zmien definit ta` tliet (3) snin bl-ewwel sitt (6) ikunu bi prova. L-impieg tal-konvenut kien bhala *Stores Executive* mal-kumpannija Alberta Fire & Security Equipment Limited. **Fost il-klawsoli tal-kuntratt, ma kienx hemm dik li kienet erroneament indikata fir-raba` paragrafu tar-rikors guramentat.** Il-klawsola li kienet inserita fil-kuntratt tal-konvenut kienet dik markata bin-Nru 6 taht it-titolu *Non-Competition*. Il-klawsola taqra hekk –

(a) The employee acknowledges that he/she has received specialised training from the company in the field of engagement. The employee therefore obliges himself/herself to desist from providing services to any customers or clients of the Employer other than those assigned by the Employer in the course of the Employee`s Employment under this Agreement. The Employee binds himself to desist from poaching such customers or clients in any manner whatsoever or to render services of whatever nature, whether directly or indirectly to such customers and clients and such obligation shall extend not only during the course of Employee`s employment with Employer but also after termination, this whether directly or indirectly.

(b) Furthermore for a period of two years following termination of employment for whatever reason, the employee shall not accept employment whether in a direct or indirect manner with any company or body which

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is in direct competition with the Employer, where such employment is similar to the employment held by the Employee under this contract of service.

(c) In the event of the employee's breach of the obligations enlisted in the previous paragraphs 6(a) and 6(b) of this Agreement, the employee shall pay the company a penalty of Euros 12,000 for each and every breach. This without prejudice to the Employer's rights to damages caused by the employee to the Employer as a consequence of such breach.

b) Risultanzi

Setax kien *anke* dan kaz ta' *cut and paste* li mar hazin il-Qorti ma tistax tghid. Huwa pero` cert illi dak li jinghad fil-paragrafu 4 tar-rikors guramentat m`ghandu x`jaqsam propju xejn mal-kuntratt tax-xoghol tal-konvenut.

Ghalhekk il-Qorti qeghda tilqa` t-tieni eccezzjoni.

Ikkunsidrat :

V. It-tielet eccezzjoni

Taqra hekk –

Sussidjarjament u minghajr pregudizzju ghal premiss, illi l-esponenti qatt ma kellu xi relazzjoni ta` impjieg mas-socjetajiet atturi Sicuro Safety Solutions Limited, International Safety Training Centre Ltd u P.T. Matic Environmental Services Ltd. L-esponenti lanqas qatt ma kellu xi relazzjoni guridika ta` impjieg ma` dak li r-rikorrenti qed isejhu l-“Alberta Group”. L-unika relazzjoni ta` impjieg li l-esponenti kellu kienet mas-socjeta` Alberta Fire & Security Equipment Ltd, u maghha biss.

a) **Provi**

Il-Qorti terga` taghmel riferenza ghall-kuntratt tax-xoghol tal-konvenut (Dok B a fol 32 et seq). L-employer tal-konvenut kienet il-kumpannija attrici Alberta Fire & Security Equipment Limited. Fil-kuntratt tax-xoghol ma hemm l-ebda riferenza ghall-kumpanniji attrici l-ohra individwalment jew ghall-Alberta Group kollettivament.

Skond Cedric Caruana, l-impieg tal-konvenut kien terminat mill-principal tieghu fil-**31 ta` Awissu 2010** *on disciplinary grounds*. Skond it-tieni paragrafu tar-rikors guramentat, *l-impjeg tal-konvenut kien gie terminat wara li l-istess konvenut kien appropria indebitament proprjeta` appartenenti lis-socjetajiet attrici, u kien ghamel hsara lis-socjetajiet attrici bl-uzu ta` informazzjoni kunfidenzjali li kien fil-pussess taghha waqt il-kors tal-impjeg tieghu*. Kellux ragun il-principal illi jittermina l-impieg mhuwiex rilevanti ghall-konsiderazzjoni tat-tieni eccezzjoni.

Cedric Caruana pprezenta wkoll kopja ta` dikjarazzjoni li ghamel u ffirma l-konvenut fil-**31 ta` Awissu 2010** – u allura d-data tat-tmiem tal-impieg tieghu – Dok E – li taqra hekk :

I, the undersigned, Mark Mifsud, stores manager, holder of identity card numbered 22674M, a son of Carmel and Mary nee` Ellul born in Attard and residing Edera, Triq Tas-Silg, Marsaxlokk, declares and binds himself not to communicate directly or indirectly in any manner whatsoever with clients of Sicuro Safety Solutions Limited and Alberta Fire & Security Equipment Limited and P.T. Environmental Limited and International Safety Training Centre Limited and not to operate and/or work in the line of business of Sicuro Safety Solutions Limited and Alberta Fire & Security Equipment Limited and P.T. Matic Environmental Limited and International Training Centre

Kopja Informali ta' Sentenza

Limited in any manner whatsoever and this for a period of five (5) years and this under penalty of twenty thousand euro (€20,000) by way of preliquidated damages.

Cedric Caruana pprezenta wkoll kopja ta` kuntratt (Dok F) ukoll datat **31 ta` Awissu 2010** ippubblikat min-Nutar Dottor Joseph Smith La Rosa bejn Elizabeth Barbaro Sant ghal Sicuro Safety Solutions Limited minn naha wahda, u l-konvenut u ohrajn min-naha l-ohra. Fil-kuntratt, kien dikjarat illi l-konvenut u l-ohrajn kienu debituri solidali ta` Sicuro Safety Solutions Limited fl-ammont ta` €250,000 bl-obbligu li jhallsu dak l-ammont kollu sal-1 ta` Ottubru 2010 bl-imghax ta` 8% fis-sena b`effett mill-31 ta` Awissu 2010.

Mar-rikors guramentat kienet esebita kopja ta` kuntratt tas-**27 ta` Dicembru 2010** (Dok A) ippubblikat min-Nutar Dottor Timothy Ellis li sar bejn Cedric Caruana ghall-erba` kumpanniji attrici minn naha wahda u l-konvenut u ohrajn min-naha l-ohra. **L-istanza attrici hija bbazata fuq dan il-kuntratt.** (ara l-ewwel talba).

Ghaliex sar dak il-kuntratt mhuwiex rilevanti. Mill-klawsoli ta` dak il-kuntratt, tnejn biss huma rilevanti ghall-fini tat-tielet eccezzjoni.

Fl-ewwel lok dik li tolqot lill-kontraenti kollha u taqra hekk –

... the Parties hereby agree and declare that the said deed in the records of Notary Joseph Smith La Rosa of the 31st August 2010 as well as all/any private agreements between the Parties (collectively or separately) of whatever nature as above-mentioned are hereby rescinded, terminated and declared null and void by the Parties for all intents and purposes at law. The Parties declare to have no further rights or

claims arising out of the said deed and private agreements. (enfasi u sottolinear ta` din il-qorti)

Fit-tieni lok dik li tirrigwarda lill-konvenut wahdu u taqra hekk –

For the sake of clarity, the Parties are hereby confirming that ... clauses six and seven (6 and 7) of the employment contract datyed twenty-sixth (26th) day of March of the year two thousand and eight (2008) of appearer Mark Mifsud shall continue to have effect, insofar as applicabele, and this only in terms of the employment contracts. This present deed does not purport to affect in any manner the aforementioned clauses. (enfasi ta` din il-Qorti).

b) Risultanzi

Il-Qorti tibda billi tosserva illi, bhar-rikors guramentat, fil-kuntratt tas-27 ta` Dicembru 2010, id-data tal-kuntratt tax-xoghol tal-attur kienet indikata **hazin** u cioe` 26 ta` Marzu 2007 minflok dik tajba tal-1 ta` Settembru 2008.

Diga` kien rilevati ukoll illi l-kuntratt tax-xoghol tal-attur kien mal-kumpannija Alberta Fire & Security Equipment Limited **biss**.

Jekk bid-dikjarazzjoni tal-31 ta` Awissu 2010 li l-konvenut ghamel u ffirma (Dok E) *setghet* inholqot relazzjoni guridika bejn il-konvenut u l-kumpannija l-ohra attrici, dak ir-rapport guridiku **thassar** ghal kollox bil-klawsola fuq riferita **bi ftehim patwit bejn il-partijiet**.

Ghaldaqstant **wara** l-kuntratt tas-27 ta` Dicembru 2010, **l-unika** relazzjoni guridika li kien baqa` kienet dik

Kopja Informali ta' Sentenza

ta` bejn il-kumpanija attrici Alberta Fire & Security Equipment Limited u l-konvenut.

Ghalhekk il-Qorti qeghda tilqa` t-tielet eccezzjoni.

Ikkunsidrat :

VI. Il-mertu

Decizi l-ewwel tlieta (3) mill-eccezzjonijiet tal-konvenut, il-Qorti sejra tistharreg jekk fil-konfront tal-konvenut hemmx il-prova inkella le sal-grad rikjest mil-ligi tat-tliet (3) talbiet kif dedotti tal-kumpanija attrici Alberta Fire & Security Equipment Limited.

Mill-kuntratt tax-xoghol li l-konvenut kellu ma` Alberta Fire & Security Equipment Limited, **l-unici** zewg klawsoli li baqghu fis-sehh b`effett tal-kuntratt tas-27 ta` Dicembru 2010 fl-atti tan-Nutar Dottor Timothy Ellis kienu dik numerata sitta (6) li ghaliha diga` saret riferenza u dik numerata sebgha (7) bit-titolu *Confidentiality* li taqra hekk

—

The Employee shall treat all information, documentation and materials obtained in the course of his employment (relating to the employer or to its subsidiary or associated companies) in strict confidence and shall not disclose or divulge any such information, documentation and materials to third parties. This obligation shall survive the termination of this agreement. In the vent of any breach of this obligation, the Employee shall become liable to pay to Alberta by way of penalty a sum equivalent to the Employee`s gross salary in the particular year during which the default is discovered. The penalty shall not be subject to any form of abatement.

1) Sintesi tal-provi

Fil-hames paragrafu tar-rikors guramentat, jinghad hekk –

Illi jirrizulta li l-konvenut kiser b`mod inekwivokabbli l-obbligi minnu assunti, meta l-ewwel impjega ruhu ma` socjeta` kompetitrici tal-atturi, b`uzu ta` informazzjoni, data u dettalji kunfidenzjali li gew a konoxxenza taghhom fil-kors tal-impjeg taghhom mal-atturi, u billi Mark Mifsud ikkostitwixxa kumpanija li tahdem fl-istess xoghol u tizvolgi l-istess attivita` bhal dik tal-atturi u avvicina klijentela tal-atturi u dan bl-uzu ta` informazzjoni, data u dettalji kunfidenzjali li gew a konoxxenza tieghu fil-kors tal-impjeg tieghu mal-atturi.

Cedric Caruana xehed illi Alberta Fire & Security Equipment Limited tbiegh prodotti relatati mal-prevenzjoni u tifi ta` nar, sigurta`, energy saving u sistemi ta` monitoragg. Bhala parti mix-xoghol tieghu, il-konvenut kien jiehu hsieb l-istorage mhux biss ta` Alberta Fire & Security Equipment Limited izda anke tal-kumpanniji assocjati. Kien jaf kull kumpannija x`kienet taghmel, x`tipproduci u xi tbiegh. Kien ukoll midhla ta` informazzjoni kummercjali ta` natura rizervata ta` kull kumpannija. Il-konvenut tkecca mill-impieg wara li nqabad jisraq xoghol tal-kumpannija Sicuro Safety Solutions Ltd. Caruana ta dettalji ta` atti legali li saru wara t-tkeccija tal-konvenut. In segwitu sar ftehim fejn il-konvenut u haddiehor hallsu €179,197 biex ma jittiehdux passi kriminali kontra taghhom.

Kompla jixhed illi wara li tkecca mill-impieg, il-konvenut mar jahdem ma` Electro Fix Limited, li hija kumpannija li tipprovdi photovoltaic products, li huwa prodott li tbiegh Alberta Fire & Security Equipment Limited. Dan sar jafu fit-8 ta` April 2011 meta waslet ghandu email li Electro Fix Limited baghtet lil diversi nies

fosthom Alberta Fire & Security Equipment Limited biex tinfurmahom li l-konvenut ma kienx ghadu impjegat taghha (Dok G). Fl-4 ta` Frar 2011, il-konvenut waqqaf kumpannija bl-isem ISTS Co Ltd ; fil-kumpannija huwa azzjonista, direttur u company secretary. Din il-kumpannija bdiet taqdem f`kompetizzjoni diretta ma` P.T. Matic Environmental Services Ltd, li hija kumpannija assocjata ta` Alberta Fire & Security Equipment Limited. Ghamel ukoll kuntatt ma` suppliers taghhom barra minn Malta li sar jaf min kienu permezz tar-records li kellu access ghalihom meta kien impjegat ma` Alberta Fire & Security Equipment Limited. Ghamel ukoll kuntatt ma` Fahrenheit Freight Forwarders Limited li ggorr xoghol ta` skart ta` P.T. Matic Environmental Services Ltd barra minn Malta biex isir jaf ir-rotot li kienet tuza l-kumpannija. Rotta minnhom kienet Siracusa fejn topera l-kumpannija estera Raecycle SpA. Arrigo Raversi – Operations Manager ta` Raecycle SpA – ikkonferma li l-konvenut ghamel kuntatt maghhom, qalilhom li kien qed jaghmel xoghol simili ghal dak ta` P.T. Matic Environmental Services Ltd u talab il-prezzijiet. Il-konvenut kellu paga gross ta` €23,665.26 fis-sena.

Christian Borg mill-Korporazzjoni Xoghol u Tahrig ipprezenta l-employment history tal-konvenut (Dok ETC1). Jirrizulta li fl-1 ta` Settembru 2008 beda jahdem ma` Alberta Fire & Security Equipment Limited. Dak l-impieg intemm fil-31 ta` Awissu 2010. Hadem ghal rasu `part-time` bejn 1 ta` Dicembru 2009 u l-31 ta` Awissu 2010. Fl-14 ta` Dicembru 2010 beda jahdem bhala *purchasing officer* u *storekeeper* ma` Electro Fix Ltd, liema impieg intemm fil-15 ta` April 2011. Fid-19 ta` April 2011 qaleb *self-employed* u fir-records tidher il-kumpannija ISTS Ltd.

Amanda Galea mir-Registru tal-Kumpanniji ipprezentat il-Memorandum u l-Articles of Association ta` ISTS Company Limited (C51914) (Dok AG1). Il-kumpannija kienet registrata fl-4 ta` Frar 2011. In-negozju ewlieni taghha huwa *to import and export articles, raw material and goods of any nature whatsoever either as*

principals, agents, contractors, manufacturers, wholesales, retailers, brokers or otherwise and either by or through agents, sub-contractors or otherwise and eiether alone or in conjunction with others to acquire any type of machinery, equipment or materials. Il-konvenut huwa l-azzjonista ta` maggoranza ta` din is-socjeta`. Huwa l-uniku direttur taghha. Huwa s-Segretarju kif ukoll ghandu r-rapprezentanti gudizzjarja u legali.

Arrigo Traversi minn Raecycle SpA xehed illi Raecycle ghandha impjanti Ancora, Siracusa u Pavia fejn tirricikla taghmir elettroniku. Tixtri dak it-tip ta` taghmir minghand P.T. Matic Environmental Services Ltd. Din ir-relazzjoni kummercjali bdiet fl-2010. Sar jaf lill-konvenut l-ewwel darba meta lejn Marzu jew April 2011 rcieva email minghandu dwar progett ta` *waste treatment*, fis-sens illi ried ibiegh *electronic waste* ghall-impjant ta` Siracusa. Qabel dik l-okkazjoni qatt ma kellu kuntatt mal-konvenut. Il-konvenut staqsa jekk Raecycle kellhiex ftehim ta` esklussivita` ma` P.T. Matic Environmental Services Ltd., u Raecycle wiegbet illi hija kienet tittratta ma` kulhadd. Raecycle ghandha website u hija ben avviata fin-negozju. Raecycle uriet interess u baghtet quotation bit-tariffa taghha. Wara ma sarx aktar kuntatt mill-konvenut. Ikkomunika mieghu wkoll l-Ing Oliver Fenech minn P.T. Matic Environmental Services Ltd biex ikun jaf jekk il-konvenut kienx ghamel kuntatt mieghu u x-xhud wiegeb fl-affermattiv.

Joanne Camilleri minn WasteServ Malta Ltd xehdet illi bejn l-2008 u l-2012, ISTS Company Limited ikkompetiet f`hames sejhiet ghall-offerti li harget WasteServ Malta Limited fil-qasam tat-trattament ta` skart. Maghha kien hemm P.T. Matic Environmental Services Ltd. Minn dawn it-tenders, ISTS hadet wahda - *tender for the monitoring of gases from leachate monitoring points at the Ghallis Non-Hazardous Waste Landfill*. Is-sejha ghall-offerti kienet ippublikata bejn it-30 ta` Awissu 2011 u l-20 ta` Settembru 2011.

Joseph Schembri minn Electro Fix Limited xehed illi Electro Fix Limited hija kuntrattur tad-dawl u ilma. Il-konvenut kien impjegat magghom bhala storekeeper. L-impieg tieghu ntemm fil-perijodu tal-probation. Hemm kumpannija ohra jisimha Electro Fix Energy Limited li ggib u tistalla pannelli fotovoltaici u *solar water heaters*. Il-konvenut ma kienx impjegat ta` Electro Fix Energy Limited u ma kellu x`jaqsam xejn man-negozju taghha hlief illi bhala parti mix-xoghol tieghu bhala storekeeper ta` Electro Fix Limited kien jiehu hsieb ta` l-*storage* ta` Electro Fix Energy Limited.

Ing. Oliver Fenech xehed illi huwa mpjegat ta` P.T. Matic Environmental Services Ltd. Wara li l-konvenut tkecca mill-impieg ma` Alberta Fire & Security Equipment Limited, ghamel kuntatt ma` Fahrenheit Freight Forwarders Limited li ggorr l-iskart ta` P.T. Matic Environmental Services Ltd barra minn Malta biex isir jaf il-prezzijiet li P.T. Matic Environmental Services Ltd tas-servizz fuq certa rotot. Il-konvenut tkellem ma` Christian Mangion li min-naha tieghu tkellem max-xhud. Il-konvenut ghamel ukoll kuntatt ma` Raecycle SpA u kellem lil Arrigo Traversi.

Dr Derek Broadley xehed li huwa jaghmel parti mill-management team ta` Alberta. Il-konvenut kien responsabbli ghall-imhazen. Ikkonferma illi wara ntemm l-impieg tal-konvenut, dan ghamel kuntatt fil-qasam fejn topera P.T. Matic Environmental Services Ltd ma` Raecycle SpA u ma` Fahrenheit Freight Forwarders Limited.

Christian Mangion – route manager ta` Fahrenheit Freight Forwarders Limited – xehed illi l-konvenut ghall-kumpannija ISTS kien mar l-ufficcju taghhom fejn talab quotation ghall-prezz ta` garr ta` merkanzija konsistenti minn skart lejn diversi rotot barra minn Malta. Pero` l-

kuntatt waqaf hemm u negozju baqa` ma sarx. P.T. Matic Environmental Services Ltd kienu klijenti tagghom.

Sarah Bondin mill-kumpannija WastServ Malta Ltd xehdet illi kienet tiehu hsieb x-xoghol klerikali relatat mal-hrug ta` tenders bhall-ispedizzjoni ta` u l-ghoti ta` informazzjoni dwar tenders. Semmiet il-kumpanniji li huma assocjati fil-Grupp Alberta. Ma kenitx taf lill-konvenut di persona ; taf pero` li l-isem bhal dak tal-konvenut kien jidher hdejn il-kumpannija ISTS li gieli tefghet offerti.

Il-konvenut xehed li huwa kien imexxi u huwa *sole director* ta` l-kumpannija ISTS Company Limited li taghmel kummerc fosthom fil-qasam tal-immigjar tal-iskart. Ikkonferma li fl-1 ta` Settembru 2008 dahal jahdem ma` l-kumpannija Alberta Fire & Security Equipment Limited skond il-kuntratt a fol 32. Huwa kien jiehu hsieb l-istores. Ix-xoghol tieghu kien ta` natura esekuttiv mhux managerjali. Fl-istores, il-bulk tal-merkanzija kienet ta` Alberta Fire & Security Equipment Limited, pero` kien hemm ukoll tal-kumpannija Sicuro (li kien ta` natura ghal kollox differenti) li kien jinzamm segregat. Huwa kien jircievi d-delivery notes tal-merkanzija. Huwa tkecca mill-impieg tieghu li kellu ma` Alberta Fire & Security Equipment Limited. Dahlu l-avukati u saru kuntratti ; l-ahhar wiehed dak tas-27 ta` Dicembru 2010 li hassar dawk li saru qabel. Sitt xhur wara t-tkeccija beda jahdem bhala storekeeper mar jahdem ma` Electro Fix Limited. Il-generu tax-xoghol li taghmel Electro Fix Limited m`ghandu x`jaqsam xejn ma` ta` Alberta Fire & Security Equipment Limited.

2) Risultanzi

Diga` kien rilevati illi bhala fatt b`effett tal-kuntratt tas-27 ta` Dicembru 2010 fl-atti tan-Nutar Dottor Timothy Ellis, baqghu fis-sehh tnejn mill-klawsoli tal-kuntratt tax-

xoghol li l-konvenut kellu ma` Alberta Fire & Security Equipment Limited, u cioe` il-klawsola sitta (6) u l-klawsola sebgha (7). Minn qari ta` dak li jghidu z-zewg klawsoli huwa evidenti li ghandhom sfera ta` applikazzjoni distinta wahda mill-ohra. Anke l-intestatura hija differenti tant illi filwaqt li l-klawsola 6 tirreferi ghal *Non-Competition* il-klawsola 7 hija ntitolata *Confidentiality*. Iz-zewg klawsoli jahsbu ghall-imposizzjoni ta` penali fil-kaz ta` inadempjenza da parti tal-konvenut.

Il-konvenut laqa` ghall-azzjoni li qeghda ssir kontrih skond dawk iz-zewg klawsoli bir-raba` eccezzjoni fejn qed jallega illi dawk il-penali huma nulli u bla effett ghax imorru kontra d-disposizzjonijiet tal-Kap 135 u kontra l-ordni pubbliku.

a) Il-klawsola 6

Il-klawsola 6 titkellem fl-ewwel paragrafu dwar id-divjet illi l-impjegat jipprovdi servizzi *to any customers or clients of the Employer other than those assigned by the Employer in the course of the Employee's Employment under this Agreement*, id-divjet illi jaghmel *poaching such customers or clients in any manner whatsoever or to render services of whatever nature, whether directly or indirectly to such customers*. Id-divjet kellu jibqa` fis-sehh kemm waqt li l-konvenut kien ghadu mpjegat kif ukoll wara.

Fit-tieni paragrafu tittratta x`m`kellux jaghmel il-konvenut sa zmien sentejn wara t-tmiem tieghu tal-impieg u cioe` li ma jmurx jahdem *whether in a direct or indirect manner with any company or body which is in direct competition with the Employer, where such employment is similar to the employment held by the Employee under this contract of service*.

It-tielet paragrafu mbaghad jittratta l-quantum tal-penali fil-kaz ta' inadempjenza da parti tal-konvenut.

b) Il-klawsola 7

Din il-klawsola ghandha dimensjoni diversa. Qeghda tistabilixxi illi kemm waqt l-impieg, kif ukoll wara li jkun intemm l-impieg, l-impjegat ghandu zewg obbligi : fl-ewwel lok illi jittratta *all information, documentation and materials obtained in the course of his employment (relating to the employer or to its subsidiary or associated companies) in strict confidence* ; u fit-tieni lok id-divjet illi *disclose or divulge any such information, documentation and materials to third parties*. Il-klawsola timponi penali fil-kaz ta' ksur.

c) Ir-raba' eccezzjoni

F'dan l-istadju, il-Qorti mhijiex se taghti t-tifsira taghha ta' dawn iz-zewg klawsoli. Sejra tmur ghall-konsiderazzjoni tar-raba' eccezzjoni li hija ta' natura legali ghaliex il-konvenut qieghed jiddisputa l-legalita' taz-zewg klawsoli. Fl-ewwel lok, jikkontendi li hemm ksur tad-disposizzjonijiet tal-Kap 135. Fit-tieni lok, ighid li huma kontra l-ordni pubbliku.

Dwar l-ewwel parti tal-eccezzjoni, il-Qorti tghid illi ma tifhimx ghaliex il-konvenut jirreferi ghall-Kap 135. Tghid dan ghaliex il-Kap 135 huwa dak li kien l-Att tal-1952 li Jirregola l-Kondizzjonijiet tal-Impieg. Il-Kap 135 m'ghadux fis-sehh billi kien superat bl-Att tal-2002 dwar l-Impiegi u r-Relazzjonijiet Industrijali (Kap 452). Meta sar il-kuntratt tal-impieg tal-konvenut, il-ligi li kienet fis-sehh kienet il-Kap 452 u kwindi l-konvenut ma jstax jeccepixxi l-illegalita' ta' kuntratt skond ligi li ma kenitx ghadha fis-sehh ghaliex kienet sostwita b'ligi ohra.

Il-Qorti qeghda tichad l-ewwel parti tar-raba` eccezzjoni li tolqot il-Kap 135 tal-Ligijiet ta` Malta.

Dwar it-tieni parti tar-raba` eccezzjoni li tghid illi l-klawsoli in kwistjoni jmorru kontra l-ordni pubbliku, il-Qorti tirrileva illi waqt it-trattazzjoni tal-kawza, il-konvenut ghamel riferenza ghal gurisprudenza ; in partikolari jirreferi ghas-sentenza “**Vassallo Cesareo vs Cilia Pisani**” li kienet deciza minn din il-Qorti diversament presjeduta (**P/PS**) fil-31 ta` Jannar 2003, u konfermata mill-Qorti tal-Appell fit-3 ta` Marzu 2006.

Min-naha taghha, din il-Qorti sejra tirreferi ghall-awtur **Norman Selwyn** li fil-Kapitolu 19 tal-ktieb tieghu **Law of Employment (16th Edition 2011 – Oxford University Press)** taht it-titolu “*Duties of Ex-Employees*” jittratta estensivament minn pag.534 et seq l-kwistjoni mertu ta` din il-kawza.

Minn dan il-kapitolu, il-Qorti sejra tirreferi ghal fejn l-awtur jittratta l-materja “***Existing customers and connections***” kif ukoll “***Enticing existing employees***” (minn pag.543 sa 546).

Dwar “**Existing customers and connections**”
Selwyn ighid hekk –

19.32 An employer is entitled to have a limited protection against an ex-employee dealing with existing customers for this is part of the goodwill which has been built up over the years. A covenant can restrict the right to solicit or endeavour to entice away former customers, or to have post-employment dealing such customers, but it is likely that such clauses should be limited to customers with whom the ex-employee had some dealings for otherwise the restraint is likely to be regarded as to be

*designed to prevent competition (**Marley Tile Co Ltd vs Johnson** – 1982 IRLR 75, CA)*

*... In **GW Plowman & Sons Ltd vs Ash** (1964 – 2 All ER 10 - 1964 1WLR 568 - 108 Sol Jo 216, CA) the defendant was employed as a sales representative. He covenanted not to canvass or solicit orders from any person who was a customer of the firm for a period of two years after leaving his employment. It was held that the restraint was valid, even though it extended to customers whom the employee did not know or with whom he had no contact during his employment. It was argued that the restraint was bad because it could apply to those customers who had ceased to do business with the firm but the Court of Appeal thought that an employer was entitled not to abandon hope that such customers would return to business once more ...*

*19.33... A restrictive covenant that prevents an employee from soliciting or accepting business from his former employer`s customers will be unenforceable if it extends to customers with whom the employee personally had no dealings (**WRN Ltd vs Ayris** – 2008 – EWHC 1080 (QB) - 2008 IRLR 889 - 2008 152(23) SJLB 29)*

Dwar **Enticing existing employees**, Selwyn ighid hekk (pag 545) –

*19.40 A covenant which purports to restrict the right of an employee to solicit or entice other employees to leave the employer`s employment and to work for another employer is generally void. Thus in “**Hanover Insurance Brokers Ltd vs Schapiro**” (1994 – IRLR 82, CA) the defendant entered into a restrictive covenant with his employers which provided inter alia that for a period of 12 months after leaving his employment he would not ... solicit or entice any employees of the company to the intent or effect that such employee terminates that employment`. When defendant left his employment the employers sought an injunction to restrain him from acting in breach of the clause quoted. It was held that an*

employee has the right to work for any employer who is willing to employ him. Thus employees are not part of the assets of an employer like stock in trade or goodwill and customers. A restriction which is ought to prevent a person from poaching employees irrespective of their expertise, technical knowledge and/or juniority, and which could also apply to employees who were not in the particular employment when the defendant left was clearly a restriction against competition and therefore void (TCS Europe UK Ltd vs Massey – 1999 – IRLR 22).

Meta tapplika din id-dottrina għall-fattispece tal-kaz tal-lum, il-Qorti ssib li fuq il-pjan tad-dritt, l-infurzar taz-zewg klawsoli in kwistjoni għaz-zmien ta' **wara** li ntemm l-impieg tal-konvenut ma' Alberta Fire & Security Equipment Limited ma jaghtix garanziji tajba favur kompetizzjoni hielsa, kif imwettqa fil-ligijiet vigenti fil-pajjiz.

Il-Qorti **ssostni** l-fehma tagħha wara li hadet in konsiderazzjoni l-provi li tressqu fil-kawza tal-lum.

Fir-rigward tal-klawsola 6, **ma hemm prova ta' xejn** illi l-konvenut ittratta ma' *customers with whom the ex-employee had some dealings*. Anzi Alberta Fire & Security Equipment Limited – li kienet u baqghet l-employer tal-konvenut – ma rrizultax li garrbet xi sembjanza ta' prova ta' pregudizzju bl-agir tal-konvenut. Sahansitra meta l-konvenut impjega ruhu ma' Electro Fix Limited, irrizulta **bl-aktar mod car u inekwivoku** li l-*line of business* tagħha ma kellu x'jaqsam xejn ma' dak Alberta Fire & Security Equipment Limited u kwindi ma għamel xejn negattiv direttament kontra l-ex employer tiegħu.

Fir-rigward tal-klawsola 7, din il-klawsola **kif dedotta** tmur kontra l-ordni pubbliku għaliex hija ntiza biex tinvesti relazzjonijiet ma' terzi (u cioe' l-kumpanniji **allegatament**

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assocjati ma` l-employer tieghu) li magghom il-konvenut ma kellux rabta la *ex contractu* u lanqas ta` xejra ohra.

Dan apparti l-kwistjoni illi fuq il-pjan tal-provi akkwiziti, il-Qorti ma ssibx li fil-konfront tal-konvenut saret il-prova ta` inadempjenza sal-grad rikjest mill-ligi.

Il-Qorti qeghda tilqa` t-tieni parti tar-raba` eccezzjoni u konsegwentement qeghda tastjeni milli tiehu konjizzjoni ulterjuri tal-eccezzjonijiet l-ohra.

Decide

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

Tichad l-ewwel eccezzjoni.

Tilqa` t-tieni u t-tielet eccezzjonijiet.

Tichad dik il-parti tar-raba` eccezzjoni li tirrigwarda l-Kap 135 tal-Ligijiet ta` Malta,

Tilqa` dik il-parti tar-raba` eccezzjoni li tirrigwarda l-ordni pubbliku.

Bhala konsegwenza tal-premess, tastjeni milli tiehu konjizzjoni ulterjuri tal-eccezzjonijiet l-ohra.

Tichad it-talbiet attrici, bl-ispejjez kontra l-atturi.

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