MALTA

# QORTI CIVILI
# PRIM' AWLA

**ONOR. IMHALLEF**
**JOSEPH ZAMMIT MC KEON**

Seduta tat-23 ta' Jannar, 2014

Rikors Numru. 763/2013

**Carmel sive` Charlo Galea (ID 151668M)**

***kontra***

**1. Galea Ceramics Company Limited (C17068) ;**

**2. Galea Group Limited (C45564) ;**

**3. Silvio Galea (ID 400567M)**

**Il-Qorti :**

Rat ir-rikors promotorju fejn, wara li r-rikorrent ippremetta li bl-imgieba tal-intimat Silvio Galea, ghar-ragunijiet illi ndika, qed ikun hemm ksur tal-Art 402(1) tal-Kap 386, talab serje ta` rimedji mill-Qorti skond l-Art 402(3) tal-Kap 386.

Rat illi r-rikorrent u l-intimat Silvio Galea ghandhom f`ghadd indaqs l-ishma taz-zewg kumpanniji intimati.

Rat illi l-pern tal-lanjanza tar-rikorrent hija li l-intimata Galea Group Limited Limited hija propjetarja ta` blokk bini Nru 9, Galleon Street, Marsa. Skond ir-rikorrent, mill-bejgh ta` dak l-immobbli, jista` jithallas id-dejn kollu li l-intimata Galea Ceramics Company Limited ghandha mal-Bank of Valletta Limited u l-bilanc ikun jista` jinqasam bejn l-azzjonisti. Skond ir-rikorrent, l-intimat Silvio Galea qieghed ifixkel il-bejgh tal-immobbli li huwa fl-istess taghhom it-tnejn li l-bejgh isir.

Rat ir-risposta tal-intimati fejn kienu respinti l-allegazzjonijiet tar-rikorrent.

Rat il-verbal tal-udjenza tas-17 ta` Ottubru 2013.

Rat ir-rikors li r-rikorrent ipprezenta fis-6 ta` Jannar 2014 fejn fl-ewwel lok talab lill-Qorti sabiex tawtorizzah illi f`isem il-kumpanniji intimati jkun jista` jirreklama l-bejgh tal-immobbli de qua ma` estate agents rinomati fis-suq, u dan sabiex l-istess propjeta` tinbiegh bl-ahjar prezz li tista` ggib fis-suq, occorrendo anke wara li ssir valutazzjoni mill-istess estate agents jew nies professjonali, u fit-tieni lok, talab lill-Qorti sabiex tawtorizzah iressaq a konjizzjoni taghha kwalsiasi offerta serja jew interess serju illi jinholoq minn tali reklamar sabiex ikun hemm l-awtorizzazzjoni o meno tal-istess bejgh. Ir-rikorrent iddikjara li z-zewg talbiet tieghu jibqghu soggetti ghal kwalsiasi provvediment iehor li joghgobha taghti fl-ahjar interess tal-partijiet.

Rat ir-risposta li l-intimat Silvio Galea pprezenta fis-17 ta` Jannar 2014 fejn ghar-rigward tal-ewwel talba, fis-sostanza ma kienx qieghed jirregistra opposizzjoni, mentri fir-rigward tat-tieni talba, dik kienet opposta ghaliex

kwalsiasi decizjoni dwar bejgh ghandha tittiehed mill-bord tad-diretturi.

Rat id-digriet li din il-Qorti tat fl-udjenza tas-7 ta` Jannar 2014 fejn irriservat illi tipprovdi kameralment dwar it-talbiet tar-rikorrent kif dedotti fir-rikors tieghu tas-6 ta` Jannar 2014.

**Ikkunsidrat :**

Bit-talbiet li qieghed iressaq fir-rikors tieghu tas-6 ta` Jannar 2014, ir-rikorrent qieghed fis-sostanza jitlob mill-Qorti mizuri *interim* pendenti decizjoni dwar it-talbiet tieghu kif dedotti fir-rikors promotorju.

Il-Qorti tirrileva bhala fatt illi sal-lum ghadu ma bediex il-gbir tal-provi. Ghalhekk il-Qorti trid taghmilha cara li ghalkemm fil-provvediment taghha tal-lum hija sejra tirreferi ghall-Art 402 tal-Kap 386, fl-istess waqt qeghda tghid ukoll li dak li sejra tipprovdi llum jolqot **biss u unikament** dak li qieghed jintalab mir-rikorrent fir-rikors tieghu tas-6 ta` Jannar 2014 **u mhux** il-mertu ghax dak ghad irid jigi deciz `il quddiem wara li tisma` l-provi kollha.

Fil-Kapitolu 16 (minn pag 959 sa 1029) tal-ktieb **"Principles of Maltese Company Law"** (Malta University Press – 2007) il-Prof Andrew Muscat jittratta s-suggett ta` *Statutory Shareholder Remedies : Unfair Prejudice and Winding Up*. Minn pag 997, jittratta - *Remedies available under article 402*. In partikolari, iqis dawk maghrufa bhala *interim orders* u jghid hekk –

*Before examining the different types of order that can be made by the court, a preliminary question should be considered : whether a court may issue an interim order pending final judgement. The position in English law is that English courts do, where appropriate, have the power to issue interim orders – usually orders for payment*

*on account or orders designed to preserve the status quo.* ***<u>The Maltese Companies Act is silent on the question of whether a court, seized of an issue under article 402, is entitled to issue an interim order</u>.*** *Nor does any jurisdiction result from any general provision in the Code of Organisation and Civil Procedure. It is significant that where the legislator wished to grant to a court the power to make interim orders, the legislator did so by express provision, as with the power of the court to issue a "provisional order" under article 37(5) of the Merchant Shipping Act (prohibiting dealings in a ship until the court definitely decides on the merits) and the power of the court to initially issue a warrant of prohibitory injunction for an "interim period" under article 873(7) of the Code of Organisation and Civil Procedure.* ***<u>In practice, situations may sometimes arise where the issue of an interim order would be necessary to protect the interests of the complainant or of the company</u>.*** *The introduction of an amendment to article 402 would allow the court to issue interim orders would be another helpful tool in the court`s arsenal against oppressive, unfairly prejudicial or unfairly discriminatory conduct ...* (enfasi u sottolinear ta` din il-Qorti)

Relattivament ghall-kaz tal-lum, anke tenut kont tal-posizzjoni illi ha l-intimat fir-risposta tieghu ghar-rikors, din il-Qorti tghid li ma jidhrilhiex li ghadha tadotta posizzjoni rigida u nflessibbli fl-ghoti ta` *interim measures* ghaliex *the Maltese Companies Act is silent on the question of whether a court, seized of an issue under article 402, is entitled to issue an interim order* (kif sostna Prof Muscat).

Ghalkemm l-Art 402 tal-Kap 386 isib l-ghajn ta` riferenza tieghu fl-Art 459 tal-Companies Act Ingliza tal-1985, fejn jidher li dak l-artikolu kien intiz li jipprovdi rimedju <u>definittiv</u>, fl-istess waqt irid jinghad ukoll illi ma jistax jigi eskluz li tenut kont tac-cirkostanzi partikolari ta` kull kaz, ikun indikat illi l-Qrati jaghtu rimedji *interim*, jekk hekk ikun hekk mitluba jew jekk hekk ikun jidher ragonevoli jew opportun.

Il-protezzjoni tad-drittijiet tal-*minority shareholders* dejjem kienet fonti ta` thassib ghall-Qrati, u ghalkemm il-gurisprudenza lokali u dik Ingliza kienet toffri il-protezzjoni taghha, ir-rimedji dejjem kienu limitati u soggetti ghal diversi restrizzjonijiet (ara - is-sentenza ta' l-Qorti tal-Appell fil-kawza "**Bonnici Cachia vs Agius et**", deciza fis-6 ta' Novembru, 1991, u "**Falla vs Sorotos**" deciza ukoll mill-Qorti tal-Appell fit-12 ta' Marzu, 1976).

Kif qalet il-Qorti tal-Appell fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza "**Vella et vs Vella Brothers Limited et**" meta kkonfermat id-decizjoni fl-Ewwel Istanza -

*Il-hsieb wara dan l-artikolu* (u cioe` l-Art.402) *huwa li jiftah l-iskop ta' intervent da parti mill-Qorti, u din il-Qorti tkun qed taghmel "disservice" lill-azzjonisti minoritarji jekk tkun hi li terga taghlaq parzjalment il-bieb li fetah il-legislatur bl-Artikolu 402. Bis-sahha ta' dak l-artikolu, il-Qorti tista' taghti dak ir-rimedju li jidhrilha li jkun opportun, inkluz allura, rimedji u ordnijiet temporanji li jservu biex jigi rispettat l-istatus quo sakemm tigi mistharga kwistjoni jew sakemm tigi rizolta sitwazzjoni ta' konflitt fi hdan il-kumpannija.*
*Ovvjament, dan ma jfissirx li r-rimedju mitlub se jinghata, ghax il-Qorti ghad trid tisma' l-provi u t-trattazzjoni dwar il-kwistjoni li nqatghet, imma l-Qorti hi tal-fehma li rimedju jista' jinghata …*

Din il-Qorti sejra taghmel taghha dan l-insenjament, ghax hija tal-fehma li ghandu jigi applikat ghall-kaz tal-lum.

**Provvediment**

**Il-Qorti qeghda tipprovdi hekk dwar it-talbiet tar-rikorrent kif dedotti fir-rikors tieghu tas-6 ta` Jannar 2014 –**

**1) Taghti lir-rikorrent u lill-intimat Silvio Galea zmien hmistax-il (15) jum mil-lum sabiex kull wiehed jipprezenta b`nota fir-registru ta` din il-Qorti zewg (2) stimi guramentati tal-valur tal-immobbli in kwistjoni rilaxxjati rispettivament minn zewg (2) *estate agents* maghzula mir-rikorrent, u zewg (2) *estate agents* ohra maghzula mill-intimat Silvio Galea. In-nota biz-zewg (2) stimi presentata mir-rikorrent ghandha tkun notifikata lill-intimat Silvio Galea, waqt li n-nota biz-zewg (2) stimi presentata mill-intimat Silvio Galea ghandha tkun notifikata lir-rikorrent.**

**2) Tordna illi sa mhux aktar tard minn tliet (3) gimghat mil-lum, issir laqgha tal-bord tad-diretturi taz-zewg kumpanniji intimati fl-ufficcju registrat taghhom fejn, fuq l-iskorta ta` l-erba` (4) stimi fuq riferiti, jigi deciz u stabbilit il-prezz minimu li abbazi tieghu ghandu jinbiegh l-immobbli in kwistjoni. Id-decizjoni dwar il-prezz ghandha tittiehed permezz ta` risoluzzjoni tal-bord.**

**3) Tordna illi sa tliet (3) gimghat wara d-data tar-risoluzzjoni tal-bord, ir-rikorrent u l-intimat Silvio Galea, kemm individwalment kif ukoll flimkien, ikollhom c-cans li jqeghdu l-immobbli ghall-bejgh fis-suq. Jekk fi tmiem dawn it-tliet (3) gimghat jirrizulta li hemm offerti ta` akkwist tal-immobbli, allura ghandha ssir minnufih laqgha tal-bord tad-diretturi taz-zewg kumpanniji intimati fl-ufficcju registrat taghhom fejn tittiehed risoluzzjoni mill-bord li tistabilixxi li l-bejgh isir skond dak il-prezz.**

**4) Tirriserva li taghti provvedimenti ohra skond ic-cirkostanzi.**

**5) L-ispejjez jibqghu riservati ghall-gudizzju finali.**

Tordna l-komunika ta` dan id-digriet lill-Av. Kris Busietta u lill-Av. Carmel Chircop.

**< Sentenza In Parte >**

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