MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
ANNA FELICE

Seduta tat-12 ta' Frar, 2014

Citazzjoni Numru. 339/2006

DeeMedia.tv [C-27739]

vs

Brainbox Limited [C-36911]

Il-Qorti:

Rat ir-rikors ta’ DeeMedia.tv Limited, li permezz tieghu, wara li ppremettiet illi:

Is-socjeta’ attrici ghandha ftehim mas-socjeta’ konvenuta, f’liema ftehim, is-socjeta’ attrici obbligat ruhha versu s-socjeta’ konvenuta illi tirrendilha ‘studio services’ u dana sal-ahhar tax-xahar ta’ Gunju 2006 u cioe’ sal-gheluq tal-iskeda tal-programm televiziv illi s-socjeta’ konvenuta qieghda tipproduci fuq l-istazzjon televiziv ‘Television Malta’.

Is-socjeta’ konvenuta infurmat xi ftit ilu lis-socjeta’ attrici illi hija se tittermina l-ftehim t’appalt illi hemm bejn il-partijiet ghas-semplici raguni, li skont hija, is-socjeta’ konvenuta sabet rati ahjar ghal dawn is-servizzi minghand terzi.

Is-socjeta’ attrici tirrileva illi r-raguni moghtija mis-socjeta’ konvenuta ma tammontax ai fini u effett kollha tal-ligi ghal raguni valida halli s-socjeta’ konvenuta setghet tittermina l-appalt taghha mas-socjeta’ attrici u ghalhekk ai termini tal-Artikolu 1640 tal-Kapitolu 16 tal-Ligijiet ta’ Malta, is-socjeta’ konvenuta trid thallas dak li sar bhala xoghol sa issa mis-socjeta’ attrici, kif ukoll id-danni li ssubiet l-istess socjeta’ konvenuta minhabba tali terminazzjoni u liema somma ma tammontax ghal aktar mill-profitti li kienet se taghmel l-istess socjeta’ protestanti minn dan il-ftehim sad-data tat-terminazzjoni tal-imsemmi ftehim t’appalt.

Is-socjeta’ konvenuta giet interpellata mis-socjeta’ attrici permezz ta’ protest gudizzjarju datat 27 ta’ Marzu 2006 halli tersaq ghal-likwidazzjoni u hlas relattiv izda baqghet inadempjenti.

Talbet is-socjeta’ attrici tghid ghalfejn din l-Onorabbli Qorti joghgobha:

Prevja kull dikjarazzjoni ohra li dina l-Onorabbli Qorti thoss li ghandha tiehu fic-cirkostanzi, tiddikjara illi s-socjeta’ konvenuta tterminat il-kuntratt t’appalt li kellha mis-socjeta’ attrici minghajr ebda raguni valida fil-ligi u bi ksur ta’ dan miftiehem bejn il-kontendenti;

Tillikwida l-hlasijiet li ghandhom dovuti lis-socjeta’ konvenuta lis-socjeta’ attrici, kif ukoll tillikwida d-danni sofferti mis-socjeta’ attrici a kawza ta’ dan l-agir da parti tas-socjeta’ konvenuta liema somma tammonta sa mhux aktar mill-profitti li setghet ghamlet l-istess socjeta’ attrici mill-imsemmi ftehim mas-socjeta’ konvenuta;

Tikkundanna lis-socjeta’ konvenuta thallas lis-socjeta’ attrici s-somma tillikwida ai fini tat-tieni talba.

Bl-ispejjez, inkluzi dawk tal-protest gudizzjarju datat 27 ta' Marzu 2006, tal-Mandat ta' Sekwestru Kawtelatorju bin-Numru 556/2006 u tal-ittra ufficjali datata 10 ta' April 2006 li saret konsegwenza tal-imsemmi mandat u bl-imghax mid-data tal-protest gudizzjarju sad-data tal-pagament effettiv u rapprezentanti, diretturi u impjegati tas-socjeta' konvenuta minn issa ngunti ghas-subizzjoni.

Rat ir-risposta guramentata ta' Brainbox Limited, li in forza taghha eccepiet illi:

Preliminarjament, it-talbiet tas-socjeta' rikorrenti ghandhom jigu michuda minn din l-Onorabbli Qorti ghax ma jezisti ebda ftehim bejn il-partijiet illi jistipula xi durata ghall-forniment ta' *studio services* mis-socjeta' rikorrenti ghas-socjeta' intimata.

Preliminarjament ukoll, stante illi s-socjeta' rikorrenti ma esebixxiet l-ebda dokument mar-rikors promotur rigward il-pretensjonijiet taghha fil-konfront tas-socjeta' intimata, l-istess socjeta' intimata tirriserva l-pozizzjoni legali taghha wara li tanalizza d-dokumenti kollha prodotti mis-socjeta' rikorrenti f'dan ir-rigward.

Minghajr ebda pregudizzju ghall-premess, it-talbiet tar-rikorrenti huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda minn din l-Onorabbli Qorti stante illi r-ragunijiet illi minhabba fihom is-socjeta' intimata ma baqghetx tiehu s-servizzi minghand is-socjeta' rikorrenti huma validi skont il-ligi.

Salv eccezzjonijiet ohra ulterjuri illi jistghu jkunu kompetenti lis-socjeta' intimata skont il-ligi.

Bl-ispejjez, inkluzi dawk tal-kontroprotest gudizzjarju datat 30 ta' Marzu 2006 kontra s-socjeta' rikorrenti li r-rapprezentanti taghha huma minn issa ngunti ghas-subizzjoni.

Rat l-affidavit prodotti.

Rat id-dokumenti esebiti.

Semghet ix-xhieda viva voce.

Ikkunsidrat illi permezz ta’ din il-kawza, DeeMedia Limited qed titlob lill-Qorti tiddikjara li Brainbox Limited itterminat appalt minghajr raguni. Qed titlob hlas tal-profitti li kienet taghmel kieku baqa’ fis-sehh l-appalt. Is-socjeta’ intimata ssostni li ma kien hemm ebda ftehim fit-tul u kull ftehim li kien hemm thassar ghal ragunijiet validi.

Mill-provi jirrizulta li s-socjeta’ rikorrenti u dik intimata ftehmu sabiex dik rikorrenti tirrendi servizzi televizivi lil dik intimata. Ftehim miktub ridatt qatt ma gie ffirmat ghalkemm l-appalt beda jigi onorat u l-hlasijiet relattivi jsiru kif indikati fl-istess ftehim. Wara li kienu saru 65 programm, Brainbox gharrfet lil DeeMedia li kienet qed tittermina l-ftehim. Il-partijiet ma jaqblux fuq zewgt ihwejjeg – l-ewwel tirrigwarda d-durata tal-appalt moghti. Ir-rikorrenti ssostni li kellhom jigu prodotti 121 programm waqt li l-intimata dan tichdu. Il-verzjonijiet tal-partijiet jikkontrastaw ukoll dwar ir-raguni li wasslet ghat-terminazzjoni tal-ftehim.

<u>Il-Ftehim</u>

Jibda biex jinghad illi f’sitwazzjoni fejn ebda dokument ma gie ffirmat mill-partijiet, il-Qorti trid tezamina l-provi prodotti u c-cirkostanzi tal-kaz sabiex tistabilixxi l-ezistenza o meno tal-ftehim u l-kundizzjonijiet tieghu. F’dan l-ezercizzju, l-iskrittura mhux iffirmata li kienet giet redatta mill-partijiet tista’ sservi bhala prova, fost affarijiet ohra, ta’ dak li ftehmu l-partijiet.

Ma jezisti ebda dubju illi ftehim bejn il-partijiet kien intlahaq u kien beda jigi attwat regolarment. DeeMedia ssostni li dan kellu jipperdura sal-ahhar tal-istagun televiziv f’Gunju 2006. Nick Degiorgio, fl-affidavit tieghu jikkonferma:

“*Verbal agreement was reached between both parties based on a discounted rate of one hundred thirty seven Maltese liri and fifty cents (Lm137.50) [excluding Vat] per*

programme aired, that is, for the use of the studio facilities and based on the service offered four times a week until the end of the PBS TV schedule in June 2006 (vide copy of Agreement attached – marked addendum 1)."

L-iskrittura redatta mill-partijiet (li kunsiderazzjonijiet dwarha ser isiru aktar 'l isfel) tinkludi l-klawsola:

"***Whereas** The Client initially intends to broadcast two live programmes a week and two recorded programmes a week of 60 minutes called "**118**" to be transmitted on PBS during the months of December 2005 to end of June 2006.*"

Tghid inoltre:

"*In full consideration of the services, performance and execution of its obligations in the matters aforesaid, The Client has agreed to pay a fee of **Lm137.50** (one hundred and thirty seven Malta liri and fifty cents) – excluding Vat, per programme to cover the services offered during the period of December 2005 to end June 2006. The rate is subject to a minimum of four programmes being produced per week save where otherwise stated in this agreement.*"

Ma ngabet lill-Qorti ebda prova biex ixxejjen din l-affermazzjoni da parti ta' DeeMedia. Il-Qorti tinnota li l-hlasijiet ghall-programmi dejjem saru skont kif miftiehem, cioe' fl-ammont skontat minhabba d-durata konsiderevoli tal-appalt moghti u Lm137.50 minflok Lm150.

Ghar-rigward tar-raguni ghaliex il-ftehim ma giex iffirmat, Nick de Giorgio jixhed illi:

"*This Agreement was established and agreed upon verbally following a lunch time meeting discussion during which we had finally decided on each clause.this written document contained all the terms and conditions on which we had agreed upon and we therefore sent two copies, duly signed by me to Sabrina Mulligan for her signature on behalf of Brainbox Limited.*

We were continually assured by Sabrina Mulligan that the written document containing our agreement was not signed from her part, although there was no problem as the agreement was already being implemented. In the meantime, on a number of occasions I repeatedly asked Sabrina Mulligan to sign the written document and to return it to me. Her reply was always that there was no problem and that she would be seeing to it but this was only because she was too busy."

Din ix-xhieda qatt ma giet kontradetta mill-intimata. Anzi, Sabrina Mulligan tikkonferma illi:

"*Niftakar ukoll illi s-Sinjur de Giorgio kien baghtli abbozz ta' ftehim bil-miktub izda jiena dan il-ftehim qatt ma ffirmajtu u dan ma ridtx niffirmah. Ir-raguni ta' dan ma kienx ghax Brainbox ma kinitx taffordja jew kellha xi problemi finanzjarji, kif qieghed jallega s-Sinjur de Giorgio fl-affidavit tieghu. Jiena ma ridtx niffirmah ghax hekk kif bdiet il-provvista tax-xoghol minn DeeMedia.tv, jiena xejn ma kont kuntenta bil-kwalita' tal-istaff u l-kwalita' tal-programm. Biex nispjega ahjar, DeeMedia.tv kienet kritilna l-istudio u bdiet taghtina l-haddiema hekk kif ftehmna verbalment. Pero', wara ftit gimghat bdew ifeggu problemi serji hafna illi kienu jattakkaw intristikament il-kwalita' tax-xoghol taghna bhala Brainbox. Ahna tkellimna, bdiet il-provvista tax-xoghol u bdew ifeggu l-problemi mill-ewwel u jiena mill-ewwel ghidtilhom illi certu affarijiet ma kontx kuntenta bihom.*"

F'e-mail mibghutha minnha stess lil Nick de Giorgio fit-28 ta' Novembru 2005, hija tikkonferma:

"*All agreed just need to confirm something small from my end. It's the interest indicated in the agreement rather than the credit terms I thought were unnecessary.*

Have a good evening."

Dan jikkonferma illi hija ma kellha ebda nuqqas ta' qbil mal-kundizzjonijiet tal-ftehim. Il-Qorti hija ghalhekk moralment konvinta li l-ftehim bejn il-partijiet intlahaq bil-

kundizzjonijiet kollha riportati fl-iskrittura, li hija essenzjalment elenku tal-kundizzjonijiet tal-ftehim milhuq.

Il-Qorti tghaddi ghalhekk biex tikkonsidra t-terminazzjoni tal-appalt. Issa l-Art. 1640 tal-Kap. 16 jipprovdi illi:

"***1640.*** *(1) Min jaghti x-xoghol jista' jholl, meta jrid, il-kuntratt, ghalkemm ix-xoghol ikun diga' beda.*

(2) Jekk ma jkunx hemm raguni valida biex iholl il-kuntratt, min jaghti x-xoghol ghandu jhallas biss lill-appaltatur l-ispejjez kollha u x-xoghol kollu tieghu flimkien ma' somma li tigi meqjusa mill-qorti, skont ic-cirkostanzi, izda mhux izjed mill-qliegh li l-appaltatur seta' jaghmel b'dak l-appalt."

Sabrina Mulligan issostni li r-raguni ghat-terminazzjoni tal-ftehim kien iss-ervizz insodisfacenti li kienet qed tipprovdi DeeMedia. Fl-affidavit estensiv taghha hija ssemmi diversi okkazzjonijiet fejn fil-fehma taghha, is-servizz moghti ma lahaqx l-aspettattivi. Issemmi incident spjacevoli ma' mistiedna fil-programm. Tghid illi "*hafna drabi ma kienx ikollha character generator operator*". Issemmi wkoll li gieli kien qed jipprovdi servizz "*trainee director*" minflok direttur b'esperjenza, li kien qed jirrendi kwalita' ta' xandir "*fqir*". Hi tghid: "*Fi ftit kliem il-programm kien qieghed jirrizulta 'amateurish' u mhux professjonali ghall-ahhar*". Hi tghid ukoll li l-ilmenti taghha bdiet twassalhom lil DeeMedia.

Iz-zewg partijiet f'din il-kawza ressqu numru konsiderevoli ta' e-mails skambjati bejniethom tul ir-relazzjoni kummercjali ta' bejniethom. Kull ma sabet fihom il-Qorti li juri xi haga, l-elenku ta' nuqqasijiet ilmentati kien e-mail wiehed datat 30 ta' Jannar 2006 dwar id-direzzjoni ta' programm il-Hamis ta' qabel. Din il-Qorti ssibha difficli ghalhekk temmen lil Sabrina Mulligan meta ssostni li kienet qed issib dawn in-nuqqasijiet kollha. Ma jistax jitqies verosimili li persuna li tikkomunika regolarment mad-dirigenti tad-DeeMedia, ma ssemmi xejn dwar nuqqasijiet. Anzi, fil-fuq imsemmi e-mail tghid:

"*I only have one point which I would like to put forward and this after last Thursday's program broadcast.*"

Il-Qorti minn dan tifhem li sat-30 ta' Jannar 2006 ma kienx hemm ilment. Lanqas wara din l-okkazzjoni ma jirrizultaw ilmenti. Dak li sussegwentement jirrizulta illi Brainbox informat lil DeeMedia li kienet sabet min jaghtiha s-servizz bi prezz irhas (ara e-mail a fol. 52).

Din il-Qorti ghalhekk issib li Brainbox temmet il-ftehim li kellha ma' DeeMedia minghajr raguni valida. Hija ghandha ghalhekk thallas lil DeeMedia €3,875.50 ekwivalenti ghal Lm1,663.75 u dan skont kif miftiehem mill-bidu mill-partijiet kif ukoll €7,500.58 ekwivalenti ghal Lm3,220 li kien ikun il-qliegh kieku l-appalt baqa' jigi onorat fl-intier tieghu. Dawn l-ammonti gew kalkolati mir-rikorrenti u konfermati bil-gurament minn Janet Pisani mid-ditta ta' Grant Thornton li kienu inkarigati mill-kontijiet relatati ma' dan in-negozju.

Ghaldaqstant, il-Qorti taqta' u tiddeciedi billi, filwaqt li tichad l-eccezzjonijiet ta' Brainbox Limited, tilqa' l-ewwel talba; tilqa' t-tieni talba u tillikwida l-hlasijiet dovuti fl-ammont ta' hdax-il elf, tliet mija u sitta u sebghin ewro u tmien centezmi (€11,376.08); tilqa' t-tielet talba u tikkundanna lil Brainbox Limited thallas lil DeeMedia.tv Limited is-somma ta' hdax-il elf, tliet mija u sitta u sebghin ewro u tmien centezmi (€11,376.08), bl-ispejjez u imghaxijiet kif mitluba fir-rikors promotur.

L-ispejjez tal-kawza jithallsu minn Brainbox Limited.

< Sentenza Finali >

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