



QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
SILVIO CAMILLERI**

**ONOR. IMHALLEF
TONIO MALLIA**

**ONOR. IMHALLEF
JOSEPH AZZOPARDI**

Seduta tat-28 ta' Frar, 2014

Appell Civili Numru. 1036/2012/1

Gamologist Limited (C41638)

v.

Gaming VC Corporation Limited (C40551)

Il-Qorti:

Dan hu appell minn digriet moghti mill-Prim' Awla tal-Qorti Civili fit-22 ta' Mejju, 2013, li bih cahdet talba tas-socjeta` konvenuta maghmula b'rikors tal-24 ta' April 2013 ghall-kjamata fil-kawza ta' GVC New Limited.

Din il-kawza hija talba ghall-hlas ta' servigi rezi mis-socjeta` attrici lil dik konvenuta a bazi tas-Software Licence and Maintenance Agreement datat 21 ta' Awwissu, 2007. Is-socjeta` konvenuta qed titlob il-kjamata fil-kawza tas-socjeta` GVC New Ltd minhabba l-fatt illi (i) il-beneficcji u l-frott naxxenti mill-fuq imsemmi ftehim kienu qed imorru u jitgawdew minn din is-socjeta`, u (ii) li permezz ta' ftehim datat 3 ta' April, 2012, bejn is-socjeta` konvenuta u GVC New Ltd., dawn tal-ahhar kienu hadu l-obbligi kollha naxxenti mill-ftehim imsemmi.

Is-socjeta` konvenuta opponiet it-talba fuq il-bazi li l-ftehim li allegatament sar bejn is-socjeta` konvenuta u GVC New Ltd. huwa *res inter alios acta* ghalha, u ghax l-azzjoni taghha hija bazata fuq il-ftehim li ghandha mas-socjeta` konvenuta, u l-unika kundanna li jista' jkun hemm f'din il-kawza hija proprju a bazi ta' tali ftehim li tieghu certament is-socjeta` GVC New Ltd kienet estraneja.

Kif inghad, is-socjeta` konvenuta appellat mid-digriet tal-ewwel Qorti li cahdet it-talba taghha ghall-kjamata fil-kawza tas-socjeta` GVC New Ltd.

Din il-Qorti wara li ezaminat l-atti tal-appell u tar-risposta u semghet lid-difensuri tal-partijiet, tara li d-digriet tal-ewwel Qorti jimmerita konferma. Il-bazi ta' din il-kawza huwa s-Software Licence and Maintenance Agreement iffirmit bejn il-partijiet, u x'arrangement setghet ghamlet is-socjeta` konvenuta biex tghaddi l-frott ta' dan il-ftehim lil terzi huwa irrelevantu ghall-meritu tal-kawza, u estraneju ghas-sitwazzjoni tas-socjeta` attrici. Apparti dan, nonostante l-fatt li, milli jidher, l-awtorita` kompetenti approvat it-trasferiment tal-licenzji mis-socjeta` konvenuta ghal fuq GVC New Ltd., jibqa' l-fatt, kif tammetti l-istess socjeta` konvenuta, li l-ftehim ghadu ma giex konkruz, tant li tghid li ghadhom ma sarux in-“novazzjonijiet formali kollha mehtiega” biex is-socjeta` l-gdida tidhol fil-ftehim li s-socjeta` konvenuta ghandha ma' dik attrici. In-novazzjoni, hu veru, mhux mehtieg tirrizulta bil-miktub, pero`, ma tistax tkun prezunta u tehtieg, f'kull kaz, il-kunsens espress tal-kreditur tal-obbligazzjoni (Artikolu 1183 tal-Kodici Civili) li f'dan il-kaz ma jirrizultax li inghata.

Oltre dan, huwa patt espress tal-partijiet fil-ftehim meritu ta' din il-kawza illi *“neither party may assign this Agreement nor the rights granted hereunder without the prior written consent of the other,”* (Klawsola 16.5 tal-ftehim) u f'dan il-kaz lanqas ma biss hu allegat li nghata kunsens bil-miktub.

Il-ftehim bejn is-socjeta` konvenuta u GVC New Ltd. jista' ghandu “dimensjoni wiesa”, u jista' jkun li, b'dan il-ftehim, gew kreati “obbligazzjonijiet godda”, pero`, ghal dan kollu s-socjeta` attrici hi aljena. Kif jinghad fil-ktieb ta' Torrente e Sehlesinger, “Manuale di Diritto Privato” (Ediz. 2011 pagna 74), *“contrapposto al concetto di parte e` quello di terzo, che e` appunto colui il quale sia estraneo ad un determinate rapporto guiridico, intercorrente tra altri soggetti”*.

Is-socjeta` attrici hi estraneja ghal Licenced Business Transfer Agreement iffirmit fit-3 ta' April, 2012 bejn is-socjeta` konvenuta u GVC Ltd. Kif xehed Gerardo Ferlaino, direttur u rapprezentant tas-socjeta` attrici, *“That it must be said that our agreement strictly forbade such transfer, without our prior written consent. Gamologist never gave its consent, be it written form or otherwise, for the rights granted to defendant under this agreement to be transferred to a third party, and it was only after the transfer had been already effected that we were informed, by the third party, of this transfer.*

“That the said third party, namely GVC New Limited, never entered into any agreement be it written or otherwise with Gamologist. Any obligations allegedly undertaken by GVC New Limited were taken solely in regard to the Gaming VC Corp, and any dispute regarding that amount should be dealt with solely and strictly between them.”

Fid-dawl ta' din il-posizzjoni kif sa llum tirrizulta mill-atti, huwa car li s-socjeta` GVC New Ltd. ma ghandha, u ma assumiet ebda obbligi lejn is-socjeta` attrici u bl-ebda mod ma tista' titqies kontradittur legittima ghall-azzjoni attrici kif proposta.

Rapprezentant tas-socjeta` GVC New Ltd. xehed fi proceduri ohra u qal li wara li xtara l-licenzja u s-software, hu avvicina lis-socjeta` attrici u qallhom li s-software taghha ma kienx joghogbu, u ried ibiddel is-sistema wara zmien qasir, u ried li jkompli bil-kuntratt (ta' Awwissu 2007) ghal xi gimgha jew xahar. Is-socjeta` attrici lanqas biss taghtu sodisfazzjon, u skont dan l-ufficjal qaltlu biss "No, you are not our customer, we speak just to Gaming". Dan l-episodju jikkonferma li ghat-talba attrici tista' twiegeb biss is-socjeta` konvenuta, u ma hemm ebda ness guridiku bejn il-kawza kif proposta u s-socjeta` GVC New Ltd.

Ma hawn ebda prova ta' innovazzjoni valida, u dak l-arrangement li setghet ghamlet is-socjeta` konvenuta mas-socjeta` GVC New Ltd., ma jinteressax lis-socjeta` attrici; anke is-socjeta` konvenuta tammetti li n-novazzjoni formali ghadha ma saritx. Xi trid tifhem biha din is-socjeta` meta tghid li tezisti "*novazzioni de facto u mhux de jure*", mhux car, ghax jew hemm novazzjoni jew ma hemmx. In-novazzjoni, biex tkun valida, trid il-kunsens espress tal-kreditur tal-obbligazzjoni, u jekk dan hu nieqes, ghas-socjeta` attrici kollox ghadu kif kien, u ma ghandhiex din is-socjeta` tigi involuta fi kwistjoni li lilha ma tinteressahiex.

Lanqas a bazi tal-principju marbut mal-ekonomija tal-gudizzju ma ghandha, f'dan il-kaz, tithalla li ssir il-kjamata fil-kawza mitluba. Bejn is-socjeta` konvenuta u GVC New Ltd. jidher li hemm diversi kwistjonijiet, u s-socjeta` GVC New Ltd. qed tigi akkuzata b"*atteggjament abbuziv u illegali*", u ma jkunx xieraq li biex tigbor il-hlas taghha, is-socjeta` attrici trid toqghod tistenna sakemmm iz-zewg societajiet isolvu l-kwistjonijiet ta' bejniethom. Il-kawza li fethet is-socjeta` attrici ma ghandhiex tintilef f'matassa ta' provi li ma jinteressawhiex jew li tigi "hijacked" minn zewg societajiet bi kwistjoni marbuta mal-ftehim taghom u li ma jinteressax l-ezitu tal-azzjoni attrici.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell interpost mis-socjeta` konvenuta Gaming VC

Kopja Informali ta' Sentenza

Corporation Ltd. billi, almenu f'dan l-istadju, tichad l-istess u tikkonferma d-digriet tal-ewwel Qorti tat-22 ta' Mejju, 2013, bl-ispejjez kollha relatati ma' dan l-incident ikunu a karigu tas-socjeta` konvenuta appellanti.

L-atti qed jigu rinvjat lill-ewwel Qorti biex din tkompli tisma' l-kaz.

< Sentenza Finali >

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