



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tal-25 ta' Gunju, 2015

Citazzjoni Numru. 361/2015

Banif Bank (Malta) plc (C41030)

kontra

Comprod Group Ltd. (C28020) (bhala l-kumpanija debitrice principali)

u

Rodercik Falzon K.I. numru 328877M, u

Natasha Falzon K.I. numru 193480M

(it-tnejn bhala garanti in solidum mal-kumpanija debitrici principali)

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fl-20 ta` April 2015 li jaqra hekk-

1. *Illi l-kumpanija attrici hi bank kummercjali licenzjat taht il-Ligijiet ta` Malta biex fost l-ohrajn issellef flus lill-klijenti taghha;*

2. *Illi l-kumpanija debitrici principali hija klijent tal-kumpanija attrici u hadet minghandha self biex tiffinanzja n-negozju taghha;*

3. *Illi s-self kien jikkonsisti fis-segwenti:*

a. *Business Loan I €52,231,*

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- b. *Business Loan III €36,457,*
- c. *Business Overdraft €200,000;*

4. *Illi l-facilitajiet bankarji kollha nghataw ai termini ta` Credit Agreement datat 25 ta` Lulju tas-sena 2011 (ara Dok. 'A') u in kwantu l-Business Loan I u l-Business Overdraft, ukoll ai termini ta` zewg kuntratti datati 5 ta` Mejju 2010 u maghmula fl-atti tan-Nutar Dr Reuben Debono (ara Dok. 'B' u Dok. 'C' rispettivament);*

5. *Illi l-kumpannija debitrice principali naqset milli thallas lura dan is-self u konsegwentement, il-bilanc dovut minn din il-kumpannija hu kif gej:*

- a. *Sebghin elf, tmien mija u tlieta u tletin Euro u sebgha u hamsin centezmu (€70,833.57), dovuti fuq Loan Account numru 92886 71 001 u li sat-23 ta` Marzu 2015 kienu jinkludu imghaxijiet ta` disat elef, seba` mija u hamsa u sebghin Euro u tnejn u tletin centezmu (€9,775.32) (ara statement bankarju markat Dok. 'D'). Dan hu l-ammont dovut kwantu Business Loan I,*
- b. *Dsatax-il elf, erbghin Euro u disgha u erbghin centezmu (€19,040.49), dovuti fuq Loan Account numru 92886 71 002 u li sat-23 ta` Marzu 2015 kienu jinkludu imghaxijiet ta` hamest elef, erbgas` mija u disgha u ghoxrin Euro u tmienja u sebghin centezmu (€5,429.78) (ara statement bankarju markat Dok. 'E'). Dan hu l-ammont dovut kwantu Business Loan III, u*
- c. *Mitejn, wiehed u disghin elf, disa` mija u tnejn u hamsin Euro u dsatax-il centezmu (€291,952.19), dovuti fuq Current Account numru 92886 10 001 u li sat-23 ta` Marzu 2015 kienu jinkludu imghaxijiet ta` elf, tmien mija u tlieta u hamsin Euro u tmintax-il centezmu (€1,853.18) (ara statement bankarj markat Dok. 'F'). Dan hu l-ammont dovut kwantu l-Business Overdraft;*

6. *Illi in virtu` tas-suespost, l-ammont totali dovut sat-23 ta` Marzu 2015 kien ta` tliet mija u wiehed u tmenin elf, tmien mija u sitta u ghoxrin Euro u hamsa u ghoxrin centezmu (€381,826.25);*

7. *Illi l-ammont fuq imsemmi, sar dovut fl-intier tieghu mill-kumpannija debitrici principali lill-kumpannija attrici ai termini ta` Artikolu 9(t) tal-Credit Agreement fuq citat u dan ghax kif jistipula dan l-istess Artikolu, sehew wahda jew aktar mill-events of default imsemmijin f`dan il-Credit Agreement, partikolarment, izda mhux esklussivament:*

“a. Default by the Borrower / s in the payment of any amount of principal, interest, fees, charges due for payment in the manner stipulated in the agreement regulating the Facility,

b. The Borrower / s committing any other breach of or omitting to observe any other of the obligations and undertakings as expressed to be assumed by it in the agreement of regulating the Facility,

n. Any other event which in the Bank`s reasonable opinion gives grounds for belief that the Borrower / s may not perform all or any of the obligation / s under or otherwise comply with the terms of the agreement regulating the Facility”;

8. *Illi d-dejn kollu soppracitat hu wkoll dovut fl-intier tieghu mill-konvenuti l-ohrajn f`din il-kawza, ossija Roderick u Natasha Falzon u dan ghax kull wiehed minnhom dahal bhala garanti in solidum mal-kumpannija debitrici principali ghall-ammont ta` tliet mija u sittin elf Euro (€360,000). Dan sar permezz ta` zewg kuntratti f`dak ir-rigward, datati 27 ta` April 2010 u 31 ta` Dicembru 2010 (ara Dok. ‘G1’ u Dok. ‘G2’);*

9. *Illi l-kumpannija attrici ttentat tinterpella lill-konvenuti diversi drabi biex ihallsuha d-dejn, fosthom permezz ta` ittra ufficcjali numru 168/2011 datata 4 ta` Novembru 2011 (ara Dok. ‘H’), izda dawn baqghu inadempjenti;*

10. *Illi l-kreditu tal-kumpanija attrici huwa cert, likwidu u dovut u l-konvenuti m`ghandhomx eccezzjonijiet x`jaghtu f`dan ir-rigward kontra t-talbiet tal-kumpanija attrici;*

11. *Illi ghalhekk jezistu l-elementi kollha rikjesti mil-Ligi a tenur tal-Artikoli 167 et sequitur tal-Kapitolu 12 tal-Ligijiet ta` Malta.*

Ghaldaqstant u ghar-ragunijiet fuq premissi, il-kumpanija attrici titlob bir-rispett lil dina l-Onorabbli Qorti sabiex:

1. *Taqta` u tiddeciedi din il-kawza bid-dispensa tas-smigh, ai termini tal-Artikoli 167 et sequitur tal-Kap. 12 tal-Ligijiet ta` Malta;*

2. *Tiddikjara li l-konvenuti saru debituri tal-kumpanija attrici fl-ammont ta` €381,826.25, b`dana li l-eventwali hlas minn kull wiehed minn fost Roderick u Natasha Falzon personalment, ikun limitat ghall-ammont ta` €360,000 in virtu` tal-garanziji taghhom u msemija aktar `il fuq; u*

3. *Tikkundanna lill-konvenuti jhallsu lill-kumpanija attrici l-ammont ta` €381,826.25, b`dana li l-eventwali hlas minn kull wiehed minn fost Roderick u Natasha Falzon personalment, ikun limitat ghall-ammont ta` €360,000, in virtu` tal-garanziji taghhom u msemija aktar `il fuq.*

Bl-ispejjez, bank charges and fees u bl-imghaxijiet mit-23 ta` Marzu 2015 sad-data tal-pagament effettiv.

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Il-bank charges u fees qed jintalbu ai termini tal-Credit Agreement imsemmi f'din il-kawza u in kwantu l-Current Account biss, ai termini tat-Tariff of Charges relattivi (ara Dok. 'T). Dawn it-Tariff of Charges tqiesu li saru japplikaw ghal-konvenuti appena dawn naqsu milli jhallsu u l-Business Overdraft skada u sar dejn fuq il-current Account assocjat mieghu.

L-imghaxijiet qed jintalbu ai termini tal-imsemmi Credit agreement u dan kif gej:

1. *Bir-rata ta` ghaxra punt tnejn hamsa fil-mija (10.25%) fis-sena fuq l-ammonti dovuti in kwantu Business Loan i u Business Loan iii (ara marker bl-ahdar fuq Dok. 'A'), u*

2. *Bir-rata ta` ghaxra fil-mija (10%) fis-sena fuq l-ammont dovut fuq il-Current account li mieghu hu assocjat il-Business Overdraft (ara marker bl-ahdar fuq Dok. 'T).*

Il-konvenuti huma minn issa ngunti ghas-subizzjoni u dan b`rizerva ghal kull dritt iehor spettanti lill-kumpannija attrici fil-konfront tal-istess konvenuti.

Rat il-lista tax-xhieda ndikati mill-bank attur u d-dokumenti esebiti mar-rikors guramentat.

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Rat li l-atti tar-rikors guramentat kienu debitament notifikati lill-konvenuti skond il-ligi flimkien mal-avviz tas-smigh tal-kawza.

Rat il-verbal tal-udjenza tal-21 ta` Mejju 2015 fejn il-partijiet qablu illi hemm cirkostanzi illi juru illi din il-kawza m`ghandhiex timxi bil-procedura sommarja specjali izda ghandha titmexxa bil-procediment ordinarju, u ghalhekk il-Qorti tat lill-konvenuti ghoxrin gurnata zmien sabiex jipprezentaw risposta guramentata.

Rat illi l-konvenuti ma pprezentawx risposta guramentata, u minflok ipprezentaw nota ta` ammissjoni fl-udjenza tal-lum.

Rat in-nota ta` ammissjoni.

Ghaldaqstant, fuq ammissjoni tal-konvenuti, taqta` u tiddeciedi din il-kawza billi:

- 1. Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel talba;**
- 2. Tilqa` t-tieni talba u tiddikjara li l-konvenuti huma debituri tal-kumpannija attrici fl-ammont ta` tliet mija wiehed u tmenin elf, tmien mija sitta u ghoxrin Euro u hamsa u ghoxrin centezmu (€381,826.25), b`dana li l-eventwali hlas minn kull wiehed minn fost Roderick u Natasha Falzon personalment, ikun limitat ghall-ammont ta` tliet mija u sittin elf Euro (€360,000) in virtu` tal-garanziji taghhom u msemmija aktar `il fuq; u**

3. Tilqa` t-tielet talba u tikkundanna lill-konvenuti jhallsu lill-kumpannija attrici l-ammont ta` tliet mija wiehed u tmenin elf, tmien mija sitta u ghoxrin Euro u hamsa u ghoxrin centezmu (€381,826.25), b`dana li l-eventwali hlas minn kull wiehed minn fost Roderick u Natasha Falzon personalment, ikun limitat ghall-ammont ta` tliet mija u sittin elf Euro (€360,000), in virtu` tal-garanziji taghhom u msemmija aktar `il fuq.

4. Tikkundanna wkoll lill-konvenuti sabiex ihallsu l-ispejjez kollha tal-kawza, inkluzi l-*bank charges and fees*, u bl-imghaxijiet kif mitluba.

< Sentenza Finali >

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