



QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum II-Hamis, 8 ta' Ottubru, 2015

Numru 14

Rikors Guramentat Nru. 1101/2012

**The Performing Right Society Limited ta' Londra, I-Ingilterra
(Numru ta' Registrazzjoni 134396) rapprezentata f'Malta
mill-agenti u mandatrici taghha
Dingli Co. International Ltd.**

vs

Tal-Lira 2 Limited

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-1 ta' Novembru 2012 li jghid hekk:

Illi s-socjeta rikorrenti hija debitament awtorizzata mill-Bord dwar id-Drittijiet tal-Awtur, ai termini tar-Regolamenti tal-2004 dwar il-Kontroll tat-Twaqqif u l-Operazzjoni tas-Socjetajiet ghall-Amministrazzjoni Kollettva tad-Drittijiet tal-Awtur (Avviz Legali 425/2003) sabiex tagixxi f'Malta bhala collecting society (kif jirrizulta mill-estratt tal-Gazzetta tal-Gvern hawn anness u mmarkat bhala Dok. PRS-2).

Illi s-socjeta intimata esegwixxiet quddiem il-pubbliku, u ghadha qieghda tesegwixxi quddiem il-pubbliku, permezz tal-wiri ta' xogholijiet awdjovizivi fl-istabbiliment cinematografiku taghha "Tal-Lira Cinema", f'Gallarija Complex, il-Fgura, sa mis-6 ta' Marzu 2007 sa llum xogholijiet muzikali tutelati bid-drittijiet tal-awtur, ossija copyright, vestiti fis-socjeta rikorrenti, fir-rigward ta' liema xogholijiet l-istess socjeta rikorrenti tgawdi l-kontroll esklussiv tal-att tal-esekuzzjoni quddiem il-pubbliku, ossija tal-performing right, f'Malta skond il-ligi, u dana minghajr ma s-socjeta intimata kienet applikat ghal, wisq anqas ottjeniet minn ghand is-socjeta rikorrenti, il-licenzja mehtiega skond il-ligi.

Illi b'hekk is-socjeta intimata giet illi ttrasgredixxiet u ikkontravvjeniet, u ghadha qeghda tittrasgredixxi u tikkontravvjeni, id-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fl-istess socjeta rikorrenti.

Illi b'konsegwenza ta' din it-trasgressjoni u kontravvenzjoni da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xogholijiet muzikali fuq imsemmija, is-socjeta rikorrenti giet li sofriet danni konsiderevoli konsistenti senjatament fin-nuqqas tal-hlas tar-"royalties" lilha dovuti skond it-tariffa taghha vigenti, u cioe t-Tariffa "C" (Dok. PRS-3) waqt il-perjodu kollu ta' trasgressjoni, kif din l-istess tariffa hija wkoll debitament ufficjalment approvata mill-imsemmi Bord dwar id-Drittijiet tal- Awtur.

Illi minkejja illi saru diversi interpellazzjonijiet lis-socjeta intimata, anke permezz ta' numru ta' ittri ufficjali u cioe l-ittra ufficjali datata 14 ta' Ottubru 2007, l-ittra ufficjali datata 16 ta' Jannar 2008, kif ukoll tal-ittra ufficjali datata 10 ta' Ottubru 2011 (Dok. PRS-4A - PRS-4C), sabiex din tersaq ghall-likwidazzjoni u hlas tad-danni sofferti mis-socjeta rikorrenti bhala konsegwenza tal-fuq imsemmija trasgressjoni u kontravvenzjoni tad-drittijiet tal-awtur, l-istess socjeta intimata baqghet ghal kollox inadempjenti, u ghalhekk kellha ssir dina l-kawza.

Ghaldaqstant, u ghar-ragunijiet suesposti, ir-rikorrentititlob li din l-Onorabbli Qorti joghghobha:-

(1) Tiddikjara u tiddeciedi illi s-socjeta intimata ittrasgredixxiet u ikkontravvjeniet id-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fis-socjeta rikorrenti billi ezegwixxiet u ghadha qeghda tezegwixxi quddiem il-pubbliku, permezz tal-wiri ta' xogholijiet awdjovizivi fl-imsemmi stabbiliment taghha "Tal-Lira Cinema", f'Gallarija Complex, il-Fgura, sa mis-6 ta' Marzu 2007 sa llum xogholijiet muzikali tutelati bid-drittijiet tal-awtur, ossija copyright, vestiti fis-socjeta rikorrenti, fir-rigward ta' liema xogholijiet l-istess socjeta rikorrenti tgawdi l-kontroll esklussiv tal-att tal-ezekuzzjoni quddiem il-pubbliku, ossija tal-performing right, f'Malta skond il-ligi, u dana minghajr ma s-socjeta intimata applikat ghal, wisq anqas ottjeniet minn ghand is-socjeta rikorrenti l-licenzja mehtieqa skond l-istess ligi.

(2) Tillikwida d-danni sofferti mis-socjeta rikorrenti bhala konsegwenza ta' din it-trasgressjoni u kontravvenzjoni da parti tas-socjeta intimata fir-rigward tad-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fis-socjeta rikorrenti;

(3) Tikkundanna lis-socjeta intimata sabiex thallas lis-socjeta rikorrenti dik is-somma illi tigi hekk likwidata in linea ta' danni sofferti mis-socjeta rikorrenti bhala konsegwenza tat-trasgressjoni da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fis-socjeta rikorrenti ai termini tat-tieni talba; u

(4) Tinibixxi lis-socjeta intimata milli tezegwixxi quddiem il-pubbliku, permezz tal-wiri ta' xogholijiet awdjovizivi fl-imsemmi stabbiliment taghha, xogholijiet muzikali tutelati bid-drittijiet ta' l-awtur, ossija copyright, vestiti fis-socjeta rikorrenti, fir-rigward ta' liema xogholijiet l-istess socjeta rikorrenti tgawdi l-kontroll esklussiv tal-att tal-ezekuzzjoni quddiem il-pubbliku, ossija tal-performing right, f'Malta skond il-ligi, u dana sakemm ma tkunx applikat ghal u ottjeniet il-hrug tal-licenzja relattiva minn ghand is-socjeta rikorrenti a bazi u ghall-finijiet tad-disposizzjonijiet ta', kemm tal-Att dwar id-Drittijiet tal-Awtur (Kap. 415) kif ukoll tal-Att li Jirregola l-Infurzar ta' Drittijiet

ta' Proprjeta' Intelletwali (Kap. 488) taht il-pieni komminati mil-ligi ghall-hatjin ta' disprezz lejn l-Awtorita tal-Qorti ghal kull eventwali infrazzjoni tal-ordni li tigi moghtija fuq din id-domanda.

Bl-ispejjez, komprizi dawk tal-ittri ufficjali datati 14 ta' Ottubru 2007, l-ittra ufficjali datata 16 ta' Jannar 2008, kif ukoll tal-ittra ufficjali datata 10 ta' Ottubru 2011 u tal-mandat ta' sekwestru numru 1651/12 li qieghed jigi prezentat kontestwalment ma' dan ir-rikors, kontra s-socjeta intimata illi minn issa r-rapprezentanti taghha huma imharrkin ghas-subizzjoni

Rat ir-risposta guramentata tas-socjeta konvenuta li tghid hekk:

Illi t-talbiet tas-socjeta attrici ghandhom jigu respinti u dan ghas-segweni ragunijiet:

1. Preliminarjament, is-socjeta intimata ghandha tigi liberata mill-osservanza tal-gudizzju u dana stante li hija mhijiex il-legittimu kontraddittur u dana stante li hija ma tiggestixxi ebda stabbiliment cinematografiku bl-isem 'Tal-Lira Cinema' f'Gallarija Complex, il-Fgura.

2. Preliminarjament, u minghajr pregudizzju ghas-suespost, illi ttalbiet attrici huma preskritti ai termini tal-artikolu 2153 u 2156(f) tal- Kodici Civili.

3. Preliminarjament ukoll s-socjeta attrici ghandha tindika car liema drittijiet tal-awtur qieghda taghmel referenza ghalihom fil-kawza taghhom. Huma ghandhom ukoll jaghtu prova skond il-ligi effettivament jiddetjenu dawn id-drittijiet ta' l-awtur.

4. Illi l-attur nomine ghandu ukoll jipproduci kopji awtentici tad-deeds of assignment tad-drittijiet tal-awtur li jiddetienu u dwarhom qed jippretendu d-danni kif ukoll prova li c-cessjonanti setghu jiddisponu mill-jedd in kwistjoni.

5. Illi fil-meritu, dwar l-ewwel talba attrici: din it-talba ghandha tigi michudha u dana stante li hija nfondata fil-fatt u fid-dritt u dan ghas-segweni ragunijiet:

i. Illi fl-ewwel lok anke kieku jigi dikjarat li s-socjeta intimata tiggestixxi hija tali cinema (li mhux il-kaz), mhux minnu li s-socjeta intimata ghandha bzonn ta' xi licenzja partikolari minghand is-socjeta attrici sabiex tiggestixxi l-istabbiliment cinematografiku taghha 'Tal-Lira Cinema' f'Gallarija Complex, il-Fgura, u ghalhekk m'ghandha thallas l-ebda royalties u taxxa fuq il-valur mizjud (VAT) stante li l-ebda licenzja ma hi mehtiega ai termini tal-Kapitolu 415 tal-Ligijiet ta' Malta; kif ukoll li tali hlasijiet kieku stess isiru lil KRS Film Distributors Limited u mhux lis-socjeta rikorrenti.

ii. Illi fit-tieni lok is-socjeta intimata ma ghandha l-ebda relazzjoni mas-socjeta attrici u la hemm ebda htiega li l-partijiet ikollhom relazzjoni kuntrattwali flimkien u dana stante illi s-socjeta intimata ma ghandha ebda stabbiliment ta' cinema.

6. Illi dwar it-tieni u t-tielet talbiet ghall dak li jirrigwarda l-allegat danni subiti, is-socjeta intimata teccepixxi illi dawn it-talbiet ghandhom jigu michudha u dana peress li mhux minnu li s-socjeta attrici soffriet xi forma ta' dannu u dana peress li lanqas ma hu minnu li s-socjeta intimata trasgressat jew kontravveniet xi drittijiet li s-socjeta

attrici qieghda tippretendi li hija ghandha u dan kif ser jirrizulta fit-trattazzjoni tal-kawza.

7. Illi fir-rigward tar-raba talba, din it-talba hija legalment insostenibli u dana kif ritenut f'gurisprudenza ormai pacifika u dana peress li talba sabiex jigi kkonfermat in perpetwu stat inibizzjoni sic et simpliciter dejjem giet michudha mill-Qrati taghna stante li hija legalment improponibbli.

8. Salv risposti ulterjuri.

9. Bl-ispejjez kontra s-socjeta rikorrenti.

Rat l-atti u noti ta' sottomissjonijiet;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Provi

Charmaine Briffa, office manager, mas-socjeta Dingli & Co. Int. Ltd., agenta tas-socjeta estera 'The Performing Right Society Ltd' (PRS) ta' Londra xehdet li c-cinema fejn illum hemm tal-Lira Cinema qabel kien fidejn Eden Leisure Group Limited. FI-2000 dawn kienu infurmawhom li kienu se jikkancellaw il-licenzja taghhom u kienet kitbet lil tal-Lira Cinema li kienu dahlu minflokhom fejn infurmawhom li c-cinema kien jehtieglu licenzja tal-PRS. Kien iltaqa' l-licence inspector taghhom Anton Briffa, mas-Sur Sant ghas-socejta intimata u kien hallielu kuntratt/licenzja vojta biex timtela. Peress illi ma kienu semghu xejn minghand is-socjeta intimata, huma kienu pprezentaw ittri ufficjali u sussegwentement ircevev minghand Dr. Victor G. Axiak ghan-nom tas-socjeta intimata. Huma kienu infurmawhom lis-socjeta intimata li kienu se japplikaw l-istess tariffa li kienu applikaw mas-sidien precedenti. Dr. Axiak kien irrisponda li s-socjeta intimata ma kienet qed tittrasgredixxi ebda drittijiet tal-awtur vestiti fil-PRS u li ma hemm bzonn ta' ebda licenzja. F'Tal-Lira Cinema, f'Gallerija Complex, kienu jintwerew films li kienu jikkontjenu xogholijiet muzikali li d-dritt tal-awtur kien vestit fil-PRS u kienu qed jaghmlu hekk minghajr licenzja mehtiega minghandhom. Ezibit printouts tal-films li kienu qed jintwerew f'dan l-istabiliment fis-snin 2008,2009,2010,2012 (ara Dok. a fol. 492 et seq.). Kienu anke marru jaraw xi whud minn dawn il-films li kienu qed jigu reklamati fuq il-gazzetti (ara

Dok. CB1[h] u [i] a fol. 500, 501). Ghal wiri ta' dawn il-films kien hemm xi 40 persuna. Ezibit ukoll verifika tal-kontenut tax-xogholijiet muzikali (Dok. CB2A u CB2B a fol. 502 et seq.) u d-Deeds of Assignments (Dok. CBX).

Dr. Kevin Dingii xehed li xoghol muzikali ma jitlef xejn mill-karattru originali tieghu semplicement ghax jigi registrat f'xi sound recording jew xi soundtrack assocjat ma' xi film. Fil-kaz in ezami s-socjeta intimata rrifjutat li tinhareg licenzja favur taghha mill-PRS biex tkopri l-wiri jew esekuzzjoni fil-pubbliku ta' xogholijiet muzikali vestiti fil-PRS.

Karen Estelle Fishman, xehdet dwar l-operat tal-PRS in generali. Hi qalet li skond il-ligi Maltija 'musical work' is a separate and distinct type of work from an 'audiovisual work'. The exclusive rights enjoyed by the owner of the copyright in an audiovisual work is entirely separate from those enjoyed by the owner of the exclusive rights in any musical work that may have been copied on to the soundtrack of the audiovisual work. The fact that an exhibitor has a licence to display an audiovisual work does not absolve him from the requirement to obtain an equivalent licence from the owners of the relevant rights in any musical Works included in the audiovisual Works, namely the PRS. Accordingly Tal-Lira 2 Ltd still needs a licence. To lawfully exhibit an audiovisual work defendants therefore require not only the licence from the owners of the copyright in the audiovisual work, but also from the owner of the musical work embedded in that work.

Anton Pisani, financial controller ta' Gallerija Trading Ltd, xehed li l-kumpanija topera Tal-Lira Cinemas. Qal li huma ma kienux jafu li jezistu dawn id-drittijiet tal-awtur meta kienu qed juru l-films. Huma fil-fatt juru l-films li l-KRS jaghtu hom u meta l-muzika tidher fil-films d-drittijiet ikunu diga thallsu mill-produtturi tal-films. Huma juru l-film fl-intier taghhom u ma jaghzlux l-muzika ta' go fihom u ma jdoqquhiex separatament mil-film. Huma qatt ma kienu ffirmaw kuntratt mas-socjeta attrici. Ikkonferma li kienu jsiru reklami ghal films li kienu jintwerew fie-cinemas taghhom u fejn ir-reklam jidher bhala 'now showing' ifisser li l-film ikun qed jintwera. Normalment idum gimgha jintwera.

Konsiderazzjonijiet tal-Qorti

Ir-rikorrenti qed jitolbu li dina l-Qorti tikkundanna lis-socjeta intimata sabiex thallas dik is-somma illi tigi likwidata in linea ta' danni sofferti mis-socjeta rikorrenti bhala konsegwenza tat-trasgressjoni da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fis-socjeta rikorrenti u dana mis-6 ta' Marzu 2007 sa llum.

Is-socjeta wiegbet li hija ma qed titrasgredixxi ebda dritt tal-awtur vestit fil-PRS u li m' ghandha bzonn ta' ebda licenza.

Illi s-socjeta intimata kienet eccepjet li hija mihijjex il-legittimu kontraduttur stante li hija ma tiggstixxi ebda stabbiliment cinematografiku bl-isem 'Tal- Lira Cinema', f'Gallarija Complex, il-Fgura. Din l-eccezzjoni kienet gie michuda minn dina l-Qorti fis-sentenza preliminari taghha imsemmija, ghalhekk kull argument migjub is sa fil-mertu mis-s-socjeta f'dan ir-rigward hija bla mertu.

Is-socjeta intimata kienet ukoll eccepjet il-preskrizzjoni tal-azzjoni odjema u dina l-Qorti kienet iddecidiet b'sentenza preliminari tat-3 ta' Dicembru 2013 li relativament ghad-danni li jaqbzu s-sentejn mid-data tal-prezentata tal-ahhar ittra ufficjali, dawn kienu preskritti.

Is-socjeta intimata teccepixxi wkoll li hija ma ghandha ebda relazzjoni guridika mal-PRS stante li hija qatt ma ffirmat kuntratt mas-socjeta rikorrenti. Il-Qorti tirrileva pero li d-danni li qed titlob s-socjeta rikorrenti mhumix danni kuntrattwali imma danni extra-kuntrattwali sofferti mis-socjeta rikorrenti bhala konsegwenza tat-trasgressjoni da parti tas-socjeta intimata tad-drittijiet tal-awtur fix-xogholijiet muzikali vestiti fis-socjeta rikorrenti minhabba ksur tad-dritt tal-awtur meta hija kienet qed topera minghajr il-licenza mehtiega.

Illi s-socjeta intimata ssostni li s-socjeta rikorrenti ma gabet ebda prova li intwera xi wiehed mill-films mill-listi ezibiti minnha, f'Tal-Lira Cinema. Fil-fehma tal-Qorti dina l-prova saret u tirrizulta mix-xhieda ta' Charmaine Briffa u Estelle Fishman u d-dokumenti minnhom ezibiti kif gia rilevat aktar il-fuq. Is-socjeta intimata ma gabet

ebda prova konkreta kuntrarja u ghalhekk fuq bazi ta' probabilita ghandha tigi akkolta l-prova attrici.

Fil-mertu s-socjeta intimata teccepixxi li mhijjex mehtiega licenzja ghax-xogholijiet musikali meta jkun qed jintwera film f'stabiliment cinematografiku billi s-socjeta intimata thallas lid-distributori tal-films, il-KRS.

Is-socjeta rikorrenti ma taqbilx u skond Estelle Fishman, the fact that an exhibitor has a licence to display an audiovisual work does not absolve him from the requirement to obtain an equivalent licence from the owners of the relevant rights in any musical works included in the audiovisual works.

Is-socjeta intimata targumenta li huma juru l-films li l-KRS taghtihom u meta l-muzika tindaq fil-films, d-drittijiet tal-awtur tax-xoghol muzikali, ikunu diga thallsu mill-produtturi tal-films. Is-socjeta intimata turi l-films fl-intier taghhom u ma taghzilx il-muzika li tindaqq fihom.

L-artikolu 7 tal-Kap. 415 jipprovdi li:

(1) Id-drittijiet tal-awtur f'xoghol awdjoviziv, database, xoghol litterarju, muzikali jew artistiku jkunu d-dritt esklużiv li jawtorizza jew jipprojbixxi l-ghemil f'Malta dwar il-materjal protett fit-totalita tieghu jew f'parti sostanzjali minnu, sew fl-ghamla originali tieghu sew f'xi forma miksuba b'mod li jingharaf sew mill-originali ta' xi wiehed minn dawn li gejjin:

(g) il-wiri jew l-esekuzzjoni quddiem il-pubbliku.

"Xoghol awdjoviziv" hu definit fil-ligi taghna bhala: "xoghol li jikkonsisti f'serje ta' xbihat relatati li jaghtu l-impressjoni ta' moviment, flimkien ma' hsejjes li jakkumpanjaw jew minghajrhom, suxxettibbli li jsiru vizibbli u, meta dawn ikunu akkumpanjati bi hsejjes, suxxettibbli li jsiru li jistghu jinstemaw".

"xoghol muzikali" minn-naha l-ohra jfisser "kull xoghol muzikali, irrISPETTIVAMENT mill-kwalita muzikali, u tinkludi xoghlijiet komposti ghal akkompanjament muzikali".

L-awtur ta' xoghol muzikali ghandu dritt esklużiv li jawtorizza jew jipprojbixxi l-wiri jew esekuzzjoni tax-xoghol muzikali tieghu quddiem il-pubbliku, u "wirja " tfisser it-

twettiq dirett ta' xoghol quddiem il-pubbliku li jsir taht dawk ic-cirkostanzi li x-xoghlijiet li jintwerew ikunu jistghu jigu percepiti mill-pubbliku minghajr ebda komunikazzjoni intermedja".

Dwar jekk jezistiex dan id-dritt li qed tippretendi s-socjeta rikorrenti fil-konfront tas-socjeta intimata, l-awtur **Copinger** jikteb li:

"Notwithstanding that the soundtrack of a film is to be treated as part of the film, film soundtracks are entitled to copyright separately as sound recordings under the Act. The film producer should therefore ensure that he takes either as assignment of copyright from the soundtrack owner or a licence entitling him to reproduce the work in any material form.

The right to perform in public any music or lyrics (the 'performance right'), as opposed to the sound recording of that work, will invariably have been assigned by the composer (assuming he is British) to the Performing Right Society (the PRS). The assignment will also include the right to synchronise specially commissioned music with the film soundtrack. In an ideal world, the composer will be required in his agreement with the producer to procure the grant of such synchronisation right by the PRS to the producer. Since no royalty is collected for public performance in the US, the PRS in practice refuses to grant a film synchronisation licence unless the producer agrees to provide for payment of fees to the composer via the PRS in respect of the theatrical exhibition of the film in the U.S." (**Copinger & Skone James on Copyright** para. 26-239 page 1700).

Fl-artikolu "*If Radio can pay Royalties, Movie Theaters can pay too*" **Mark Northam**, jikteb li: "Movie theatres in the U.S. are completely out of step with most other developed countries where movie theatres must pay performance license fees like any other broadcaster that publicly performs music"¹. L-istess insibu fl-artikolu bl-isem '*Motion*' fejn jinghad li: "In many countries outside the U.S. motion pictures theatres are required to pay performance royalties for music used in theatrically distributed films. These fees are collected by performing rights societies. Theatre license fees vary by country and are usually a percentage of the box office receipts"².

Fl-istess sens xehdet Karen Estelle Fishman meta qalet li, The synchronisation licence does not of itself permit the music to be performed by means of the

¹ <http://www.filmmusicmag.com/?p=3978>

² <http://www.ascap.com/music-career/articles-advice/music-money/money-pictures.aspx>

performance of the audiovisual work soundtrack with which the music must be synchronised. This is because the right to publicly perform the musical work is a performing right and this right has been assigned to PRS by the composer (a fol. 1268).

Illi ghalhekk xoghol awdjoviziv huwa xoghol eligibbili ghad-drittijiet tal-awtur. L-istess huwa x-xoghol muzikali li huwa nkorporat fil-film (soundtrack). Illi l-fatt li x-xoghol muzikali huwa nkorporat fil-film, (jew bl-istess argument f'sound recording jew broadcast) ma jfissirx li x-xoghol muzikali ma jibqax eligibbili ghad-drittijiet tal-awtur u dana indipendentement mix-xoghol awdjovizi. Xoghol muzikali ikunu eligibbili ghad-drittijiet tal-awtur malli jinkiteb jew jinghata xi forma materjali u dan anke qabel ma jigi nkorporat f'xi xoghol awdjovisiv.

Is-socjeta attrici ippruvat illi hi 'collecting society' awtorizzata mill-Copyright Board sa mill-2007 (ara Dok. PRS2). Hi giet assenjata qua collecting society id-dritt ta' amministrazzjoni tal-wiri fil-pubbliku (il-public performance right biss) mill-membri taghha cioe l-kompozituri ossia l-proprietarji tad-dritt tal-awtur kif gie esebit fl-atti tal-kawza. Tali dritt johrog espressament mill-artikolu 52 tal-Kap. 415, u ovvjament is-socjeta attrici hi awtorizzata tamministra d-drittijiet tal-awturi ghall-gzejjer taghna. Mill-provi jirrizulta wkoll illi s-socjeta intimata wriet fil-pubbliku xogholijiet muzikali li huma soggetti ghal permess u konsegwenti obbligu ta' hlas ghal performing rights.

Ghalhekk l-eccezzjoni tas-socjeta intimata f'dan ir-rigward hija bla mertu.

Danni

La darba giet milqugha l-ewwel talba, is-socjeta attrici ghandha dritt li titlob id-danni. Illi l-ammonti mitluba mis-socjeta rikorrenti a fol. 1298 Dok. A fir-rigward tas-snin 2007 sad-data tal-ahhar ittra ufficjali huma preskritti.

Illi l-kawza gie prezenata fl-1 ta' Novembru 2012 u n-notifika tal-ahhar ittra ufficjali li ntbghatet saret fl-1 ta' Ottubru 2011. Ghalhekk il-perjodu li mhux preskritt huwa mill-1 ta' Ottubru 2011 sal-1 ta' Novembru 2012.

Charmaine Briffa xehdet li s-socjeta rikorrenti ma ghandhiex dettalji fuq id-dhul mill-ircevuti tal-box office ta' kemm is-socjeta intimata dahlet f'dak il-perjodu. In oltre Anton Pisani ghas-socjeta konvenuta xehed li l-prezzijiet taghhom huma katar baxxi minn dawk tal-Eden Century. Huma kienu jiccargjaw Lm1 ghal kull biljett mentri l-Eden Century Lm2.50.

Is-socjeta rikorrenti qed titlob l-istess ammont cioe €2,267.51 li kienet titlob lil Eden Century billi ex admissis is-socjeta rikorrenti ma nghatatx informazzjoni mis-socjeta intimata dwar id-dhul mill-box office fil-perjodu rilevanti. Dan l-ammont inhadem fuq it-tariffa l-antika cioe dik li saret fl-2007 u li kellha hajja ta' sentejn biss.

Is-socjeta intimata issostni li tali tariffa darba li ma ghadhiex in vigore ma tistax tigi applikata. Din il-Qorti ma taqbilx ghax il-legislazzjoni sussidjarja 415.01 li huma regolamenti ghal collecting societies tghid fir-regolament 6(1) illi tariffa approvata ghandha tkun effettiva sa dak iz-zmien li tigi approvata tariffa gdida. Din it-tariffa gdida ghadha ma gietx approvata.

Il-Qorti hi tal-fehma illi sakemm tigi approvata tariffa gdida t-tariffa li kienet in vigore ghandha tigi applikata bhala mizura li fuqha jinhadem id-dritt dovut. Altrimenti l-Qorti tqis li tinholoq sitwazzjoni incerta bi pregudizzju ghaz-zewg partijiet. Madankollu ghalkemm l-ammont mitlub ma hux bazat fuq ebda fatt konkret izda biss fuq fatti pertinenti ghal-predecessuri tas-socjeta intimata li kienet titlob hlas doppju ghal biljetti li titlob is-socjeta intimata, il-Qorti tqis li ghandha tuza d-diskrezzjoni taghha moghtija bl-artikolu 1135 tal-Kap. 16 u tillikwida t-telf soffert mis-socjeta rikorrenti fuq bazi arbitrio u boni viri fis-somma ta' €1,100 li jkopru l-perjodu mill-1 ta' Ottubru 2011 sal-1 ta' Novembru 2012.

Inibizzjoni

Illi s-socejta intimata eccepiet li fir-rigward tar-raba talba, din it-talba hija legalment insostenibli u dana kif ritenut f'gurisprudenza ormai pacifika u dana peress li talba sabiex jigi kkonfermat in perpetwu stat inibizzjoni sic et simpliciter dejjem giet michudha mill-Qrati taghna stante li hija legalment improponibbli.

Fir-rigward ta' dina l-ecezzjoni marbuta mal-ordni ta' inibizzjoni, din il-kwistjoni giet trattata fil-kawza **Dingli Co. International Ltd noe vs Smash Communications Ltd**, tat-30 ta' Novembru 1998 fejn eccezzjoni simili giet michuda wara li l-Qorti rregistrat dan il-hsieb:

Finalment is-socjeta appellanti hassitha aggravata bil-parti konklussiva tas-sentenza fejn l-ewwel Qorti qalet hekk: "tinibixxi lis-socjeta konvenuta milli xxandar jew iggiegheilil hadd iehor ixandar dawk ix-xoghlijiet kollha tutelati u kkontrollati mis-socjeta attrici u dana sakemm ma tkunx applikat ghal u ottjeniet l-hrug tal-licenzja relattiva minghand is-socjeta attrici." F'dan ir-rigward qed jigi sottomess li din il-projbizzjoni taghmilha impossibbli ghas-socjeta konvenuta ixandar, anke muzika li mhux koperta bid-drittijiet tal-awtur u ta' interess ghas-socjeta attrici, liema dritt gie moghti lilha mill-awtoritajiet kompetenti.

Decide

Ghal dawn il-motivi l-Qorti tiddeciedi billi tilqa' l-ewwel talba; tillikwida d-danni sofferti mis-socjeta rikorrenti fl-ammont ta' €1,100; tikkundanna lis-socjeta intimata sabiex thallas lis-socjeta rikorrenti s-somma hekk likwidata; tichad ir-raba talba.

Spejjez bin-nofs bejn il-partijiet stante li mhux it-talbiet kollha gew milqugha u lanqas l-ammont kollu mitlub.

Bl-imghax mid-data tal-prezentata tal-ittra ufficjali tal-1 ta' Ottubru 2011.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur