



QORTI CIVILI PRIM`AWLA

**ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON**

Illum il-Hamis 29 ta` Ottubru 2015

**Kawza Nru. 6
Rik. Nru. 875/14 JZM**

**Wara l-atti tal-kawza numru (sic)
deciza fl-4 ta` Lulju 2013**

**Anthony Gatt (201547M) u martu Catherine
Gatt (ID771553M) ghal kwalsiasi interess li
jista` jkollha**

kontra

**Philip Gatt (ID220255M) u martu Doris Gatt
(ID515464M) ghal kwalsiasi interess li jista`
jkollha u All Trading Vehicles & Spares
Limited (Registration No. C4155)**

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fis-7 ta` Ottubru 2014 li jaqra hekk :-

Illi kif irrizulta mill-atti ntavolati, ir-rikorrenti Anthony Gatt huwa azzjonista fil-kumpanija All Trading Vehicles & Spares Limited (C4155) ;

Illi rrizulta wkoll li r-rikorrent huwa detentur ta` 200 ossija 40% tal-azzjonijiet tal-imsemmija socjeta` filwaqt li l-bqija tal-azzjonijiet huma mizmuma minn huh Philip Gatt ;

Illi l-vertenza bejn il-partijiet (Citazzjoni Numru 34/2009) giet finalment deciza fis-seduta tal-4 ta` Lulju 2013 ;

Illi l-ezitu kien illi, kif talbu l-esponenti, bl-applikazzjoni tal-Art 402(3)(d) tal-Kap. 386, il-Qorti ordnat illi jinbieghu l-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpanija Att Trading Vehicles & Spares Limited (C4155) ; (Dok A sentenza)

Illi l-awditur Kevin J Mahoney irrediga r-rapport tieghu hawn anness Dok B fejn jirrizulta l-valur tal-istess ishma ;

Illi minkejja li r-rapport ta` l-Awditur tlesta u nhalef u thallas u illi l-intimat, permezz tal-avukat tieghu ntabab jersaq halli jsir il-bejgh, l-intimat qed jirrezisti illi jezegwixxi l-ordni ta` dina l-Onorabbli Qorti tant illi anke qed johloq xi pretensjonijiet frivoli ;

Illi l-esponenti huma anzjani u pensjonanti u ma jistghux jistennew snin twal sabiex jiehdw dak dovut lilhom ;

Illi ghalhekk ir-rikorrent qed jergghu jirrikorru lejn l-Awtorita` ta` dina l-Onorabbli Qorti halli jinghataw rimedju xieraq ;

Ghaldaqstant ir-rikorrenti umilment jitolbu illi dina l-Qorti joghgobha, ai termini tal-Artikolu 402 tal-Att dwar il-Kumpaniji Kapitolu 386 tal-Ligijiet ta` Malta u sabiex ir-rikorrenti jkollhom rimedju effettiv :

1. Tikkunsidra dan ir-rikors b`urgenza, filwaqt li taghti u tordna daww il-provedimenti kollha xierqa u opportuni halli l-esponent jinghataw dak illi huwa dovut lilu ;

2. *U dana kollu taht dawk it-termini, il-pattijiet u kundizzjonijiet ohra illi dina l-istess Onorabbli Qorti jidhrilha xierqa u opportuni illi timponi fic-cirkostanzi kollha tal-kaz ai termini tal-imsemmi artikolu 402 tal-Att dwar il-Kumpanniji.*

Bl-ispejjez.

Rat id-dokumenti li kienu annessi mar-rikors.

Rat id-digriet taghha tad-9 ta` Ottubru 2014 fejn ordnat in-notifika tar-rikors lill-intimati, tathom ghoxrin (20) jum min-notifika biex iwiegbu bil-miktub u appuntat il-kawza ghas-smigh ghall-udjenza ta` nhar it-Tnejn 10 ta` Novembru 2014 fid-9.00 a.m.

Rat ir-risposta prezentata fil-5 ta` Novembru 2014 li taqra hekk :-

1. *Illi fl-ewwel lok u preliminarjament, l-eccipjenti umilment jitolbu bir-rispett ir-rikuza tal-imhalled sedenti ghat-tenur tal-Artiklu 734(1)(d)(ii) tal-Kap 12 tal-Ligijiet ta` Malta, stante illi gja` ddecieda l-kawza fl-istess ismijiet u fuq l-istess mertu permezz ta` sentenza tal-4 ta` Lulju 2013 (Rik Nru 34/2009 JZM) ;*

2. *Illi fit-tieni lok u preliminarjament u minghajr pregudizzju ghas-suespost, jigi eccepit ir-res gudikata, billi jinkonkorru l-elementi kollha ghall-applikazzjoni tal-istess u konsegwentement, dina l-Onorabbli Qorti ghandha tastjeni milli tiehu konjizzjoni ulterjuri ta` dan ir-rikors bl-ispejjez kontra r-rikorrenti ;*

3. *Illi fir-rikors promotur tar-rikorrenti, gja` gie ammess minnhom illi l-vertenza bejn il-partijiet giet finalment deciza fis-seduta tal-4 ta` Lulju 2013 u ghalhekk, din il-vertenza ghaddiet in gudikat u m`hemm ebda lok illi l-istess vertenza tigi ritrattata jew tkun suggett ghall-proceduri civili godda ;*

4. *Illi in forza ta` zewg digrieti tal-15 ta` Settembru 2014, li kopja taghhom qed tigi hawn annessa u mmarkata Dokument "A" u "B" dina l-Onorabbli Qorti stess kienet iddikjarat illi billi s-sentenza fuq citata kienet ghaddiet in gudikat, kienet qed tastjeni milli tiehu konjizzjoni ulterjuri ta` zewg rikorsi pprezentati miz-zewg partijiet wara l-ghoti tas-sentenza, kif ser jigi ampjament ippruvat waqt it-trattazzjoni tal-kawza, u ghaldaqstant, l-istess ghandu japplika ghar-rikors odjern ;*

5. *Illi fit-tielet lok u minghajr pregudizzju ghas-suespost u fil-mertu, it-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra r-rikorrenti, stante illi ma tezisti ebda bazi ghall-applikazzjoni tal-Artiklu 402 tal-Kap 386 ;*

6. *Illi l-ordnijiet moghtija fis-sentenza fuq citata huma cari u ma jaghtu lok ghal ebda interpretazzjoni u, fi kwalunkwe kaz, l-esponenti Philip u Doris konjugi Gatt ottemperaw irwiehhom ma` dak kollu li gie ordnat lilhom in forza tas-sentenza fuq citata, kif ser jigi ampjament ippruvat waqt it-trattazzjoni tar-rikors ;*

7. *Illi, min-naha l-ohra, ma tirrizulta ebda prova illi r-rikorrenti ottemperaw irwiehhom ma` dak ordnat lilhom in forza tal-istess sentenza ;*

8. *Salv eccezzjonijiet ulterjuri.*

Rat id-dokumenti li kienu prezentati mar-risposta tal-intimati.

Rat il-verbal tal-udjenza tal-10 ta` Novembru 2014 fejn, wara li semghet is-sottomissjonijiet tad-difensuri, idderigiet lill-partijiet sabiex jittrattaw l-ewwel eccezzjoni. U hekk sar fl-istess udjenza.

Rat id-digriet li tat fl-istess udjenza fejn halliet il-kawza ghal provvediment dwar l-ewwel eccezzjoni.

Rat il-provvediment taghha tal-11 ta` Dicembru 2014 fejn cahdet l-ewwel eccezzjoni tal-intimati, spejjez ghall-intimati, fejn ordnat li l-kawza tibqa` tinstema` minn din il-Qorti hekk kif presjeduta, u fejn halliet il-kawza ghall-kontinwazzjoni ghall-udjenza ta` nhar it-Tnejn 19 ta` Jannar 2015 fid-9.00 a.m.

Rat il-verbal tal-udjenza tad-19 ta` Jannar 2015 fejn *inter alia* tat direzzjoni lill-partijiet sabiex jittrattaw it-tieni eccezzjoni.

Semghet is-sottomissjonijiet li ghamlu d-difensuri tal-partijiet fl-istess udjenza.

Rat id-digriet li tat fl-istess udjenza fejn halliet il-kawza ghal provvediment dwar it-tieni eccezzjoni.

Rat il-provvediment taghha tal-24 ta` Marzu 2015 fejn cahdet it-tieni eccezzjoni tal-intimati, spejjez ghall-intimati, u fejn halliet il-kawza ghas-smigh tal-provi tar-rikorrenti dwar il-mertu u dwar l-eccezzjonijiet l-ohra tal-intimati ghall-udjenza ta` nhar il-Hamis 21 ta` Mejju 2015 f nofsinhar.

Semghet ix-xiehda ta` l-intimat Philip Gatt u tar-rikorrent Anthony Gatt fl-udjenza tal-21 ta` Mejju 2015 u rat id-dokument li kien prezentat mir-rikorrenti.

Rat in-nota b`dokumenti li pprezentaw l-intimati fis-seduta tal-4 ta` Gunju 2015.

Semghet is-sottomissjonijiet tal-ahhar li ghamlu d-difensuri tal-partijiet fl-istess seduta.

Rat id-digriet li tat fl-istess seduta fejn halliet il-kawza ghas-sentenza *in difett ta` ostakolu*.

Rat illi ma hemmx ostakolu sabiex il-kawza tkun deciza llum.

Rat l-atti l-ohra tal-kawza.

II. Il-provvediment ta` l-4 ta` Lulju 2013 ta` din il-Qorti fil-kawza bejn l-istess partijiet fil-procediment bin-nru 34/2009 JZM

Mhux kontestat illi kopja ta` l-provvediment ta` din il-Qorti tal-4 ta` Lulju 2013 huwa dak esebit minn fol 3 sa fol 37 tal-process.

Dan premess, il-Qorti tirrileva li d-disposittiv ta` dak il-provvediment ighid hekk -

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda tiddisponi mit-talbiet u mill-eccezzjonijiet billi taqta` u tiddeciedi hekk –

Tilqa` l-ewwel talba.

Tastjeni milli tiehu konjizzjoni tat-tieni, tat-tielet u tal-hames talbiet.

Tichad ir-raba` talba.

Bl-applikazzjoni tal-Art 402(3)(d) tal-Kap 386, tordna illi jinbieghu l-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpannija All Trading Vehicles & Spares Limited (C4155). (enfasi ta` din il-qorti ghall-fini tal-procediment tal-lum)

Ghal dan l-iskop tordna li ma jsir l-ebda tibdil fil-memorandum u fl-articles of association tal-kumpannija sakemm jinbieghu dawn l-ishma.

Tordna lill-intimati Philip u Doris konjugi Gatt sabiex bhala diretturi tal-kumpannija All Trading Vehicles & Spares Limited (C4155) ilestu l-full audited accounts tal-kumpannija sal-31 ta` Dicembru 2012 u l-management accounts taghha sal-lum u jipprezentawhom fir-Registru ta` din il-Qorti sa mhux aktar tard minn erba` (4) xhur mil-lum.

Tahtar lill-Awditur Kevin J. Mahoney sabiex jistabilixxi l-prezz ta` kull sehem tal-kumpannija All Trading Vehicles & Spares Limited (C4155) fid-data tal-lum u abbazi ta` dak il-prezz, jinbieghu l-ishma tar-rikorrent Anthony Gatt skond il-procedura prevista mill-articles of association tal-kumpannija. (enfasi ta` din il-qorti ghall-fini tal-procediment tal-lum).

Taghti lill-Awditur Kevin J. Mahoney access shih ghall-full audited accounts ta` All Trading Vehicles & Spares Limited (C4155) sal-31 ta` Dicembru 2012 u talmanagement accounts taghha sal-lum.

Tordna lill-intimati Philip u Doris konjugi Gatt bhala diretturi tal-kumpannija All Trading Vehicles & Spares Limited (C4155) sabiex jaghtu lill-Awditur Kevin J. Mahoney kwalsiasi taghrif – kollox inkluz u xejn eskluż – li jkun jehrieg sabiex jaqdi l-inkariku tieghu.

Tordna lill-Awditur Kevin J. Mahoney sabiex jissorvelja – b`mod attiv u liberu – il-process kollu tal-bejgh u tat-trasferiment tal-ishma li r-rikorrent Anthony Gatt ghandu fil-kumpannija All Trading Vehicles & Spares Limited (C4155).

Tordna li l-ispejjez kollha ta` dan il-procediment, inkluz il-procedura tal-bejgh u trasferiment tal-ishma, u tal-inkariku tal-Awditur Kevin J. Mahoney, jithallsu mill-kumpannija All Trading Vehicles & Spares Limited (C4155).

Kien prezentat bhala prova (fol 38 sa 76) id-dokument li jixhed l-accertamenti tal-Awditur Mahoney skond kif kien dirett jaghmel bil-provvediment tal-4 ta` Lulju 2013.

III. L-istanza u d-difiza

Bl-istanza tal-lum, ir-rikorrenti qeghdin jikkontendu li ghad illi skond il-provvediment tal-4 ta` Lulju 2013 kien ordnat il-bejgh tal-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpannija All Trading Vehicles & Spares Limited (C4155), u ghad illi kien stabbilit il-valur tal-ishma skond l-istess provvediment, l-intimat Philip Gatt baqa` ma akkwistax l-ishma ta` Anthony Gatt b`mod li dak l-agir wassalhom sabiex jergghu jirrikorru quddiem din il-Qorti sabiex taghtihom rimedju effettiv skond id-disposizzjonijiet tal-Art 402 tal-Kap 386.

L-intimati laqghu ghall-istanza billi sostnew illi l-azzjoni tar-rikorrenti hija nfondata ghaliex huma ottemperaw ruhhom bis-shih mal-provvediment fuq riferit.

IV. L-articles of association tas-socjeta` All Trading Vehicles & Spares Limited (C4155)

Skond il-provvediment tal-4 ta` Lulju 2013, il-bejgh ta` kull sehem li ghandu r-rikorrent Anthony Gatt fis-socjeta` All Trading Vehicles & Spares Limited kellu jsir skond il-prezz stabbilit mill-Awditur Kevin J. Mahoney, u skond il-procedura prevista mill-*articles of association* tal-kumpannija.

Il-prezz ta` kull sehem kien iddeterminat mill-Awditur Mahoney (ara fol 38 sa fol 76).

Dwar il-procedura prevista mill-*articles of association* tas-socjeta`, il-Qorti tirreferi ghal Dok C, a fol 168 sa fol 183, in partikolari ghal dik il-parti ntitolata *transfer and transmission of shares*. Billi l-kaz tal-lum jirrigwarda *transfer* (mhux *transmission*) *of shares*, il-Qorti sejra tirreferi ghall-paragrafi 8 sa 10 fejn jinghad hekk –

8. *The right to transfer the shares in the company is restricted in the manner and to the extent prescribed in these Articles of Association, provided that in no case may a part of a share form the object of a transfer.*

9. *A share may only be transferred by a member of the company provided that the undermentioned procedure is followed :-*

(i) *Any member who intends to transfer any shares (herein called the proposing transferor) shall give notice in writing (herein called the transfer notice) to the company that he desires to transfer the same. The transfer notice*

shall constitute the company his agent for the sale of the shares and shall not be revocable except with the sanction of all the directors constituting the board of directors.

(ii) The shares specified in the transfer notice shall be offered by the board of directors at their 'fair value' to all the other members of the company who shall be invited to state in writing, within thirty days from the date of the offer, whether they are willing to purchase any, and if the affirmative, what maximum number of shares. At the expiration of the said thirty days, the board of directors shall allocate the said shares to/or amongst the member or members who shall have expressed a willingness to purchase as aforesaid, and if more than one, so far as may be in proportion to the number of shares then held by each of them respectively. Provided that no member of the company shall be obliged to take more than the maximum number of shares so notified by him as aforesaid.

(iii) (a) For the purposes of this article, 'fair value' shall be the value assessed by the auditors of the company.

(b) In order to assess the 'fair value' the auditors shall consider the latest audited accounts provided these are not more than eighteen months old, and all other material and relevant developments which may have a bearing on the financial situation of the company

(iv) In the event that not all the shares in the transfer are taken up by the existing members of the company, the proposing transferor may within three months of being notified of this, transfer the said shares to third parties at a price not less than their value above defined, unless all the other shareholders agree otherwise.

(v) The directors may, in their absolute discretion and without assigning any reason therefore, decline to register the transfer of any share and for this purpose no share transfers may be registered unless unanimously approved by the board of directors.

10. The procedures and restrictions defined in article 9 above shall not apply and the shares in question may be freely transferred in the following two cases :-

(i) where a member intends to transfer shares to the son of the ordinary shareholder ; and

(ii) where the proposed transfer of shares is approved in writing by all the other members.

V. Il-verbal tas-seduta tad-19 ta` Jannar 2015

Fl-udjenza tad-19 ta` Jannar 2015 (fol 110) kien hemm skambju ta` verbali bejn id-difensuri tal-partijiet.

Id-difensur tar-rikorrent irrileva –

Dr Attard jiddikjara li wara l-udjenza tal-11 ta` Dicembru 2014, ir-rikorrent Anthony Gatt talab il-hlas tal-ishma li ghandu fil-kumpannija intimata, fl-ewwel lok ghall-prezz stabbilit mill-Awditur Kevin Mahoney, skond is-sentenza ta` din il-Qorti tal-4 ta` Lulju 2013, u fit-tieni lok skond il-procedura stabbilita fl-istess sentenza u minkejja li saret din it-talba anke formalment, il-prezz kien rigettat.

Min-naha taghha Dr Sciberras Camilleri tiddikjara li kien hemm offerta minghajr pregudizzju fil-mori tad-differiment li giet rifjutata. Oltre dan taghmel riferenza ghad-decide tas-sentenza fejn din l-Onorabbli Qorti ordnat illi jinbieghu “l-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpannija “All Trading Vehicles & Spares Limited” u sabiex abbazi tal-prezz stabbilit mill-Awditur Kevin Mahoney “jinbieghu l-ishma tar-rikorrent Anthony Gatt skond il-procedura prevista mill-Articles of Association tal-kumpannija”. Dan ifisser li skond is-sentenza ma kien hemm ebda ordni fuq Philip Gatt biex jixtri dawk l-ishma.

VI. Ix-xiehda ta` l-intimat Philip Gatt

Fil-qosor, l-intimat xehed illi ma hemmx ftehim mar-rikorrent Anthony Gatt li jithallas tal-ishma kif irid hu. Inoltre meta sar azzjonista huwa qatt ma hallas ghall-ishma li ghandu. Tal-ishma li ghandu Anthony Gatt, huwa offra li jhallas prezz inferjuri ghal dak stabbilit mill-Awditur Mahoney skond is-sentenza ghaliex huwa ma jiflahx ihallas il-prezz stabbilit, apparti li ma kienx qabel mal-prezz stabbilit. L-offerta tieghu kienet rifjutata. Il-prezz tax-xiri li offra hu wasal ghalih wahdu mhux wara li ha parir. Il-prezz tieghu kien ta` €150,000, in-nofs ta` ghalqa li n-nofs l-iehor diga` huwa propjeta` tar-rikorrent bil-prezz tan-nofs ikun €20,000, u li ma jibqax jinsisti fuq il-hlas originali tal-ishma. Qal illi llum bil-kompetizzjoni kbira li hawn fis-suq, naqas ix-xoghol tal-kumpannija. Filwaqt illi kkonferma li r-rikorrent mhuwix direttur tas-socjeta`, huwa ma marx ghall-ahhar laqgħa generali tal-azzjonisti. L-ahhar dividend li thallas kien dak għall-2012.

VII. Ix-xiehda ta` r-rikorrent Anthony Gatt

Fil-qosor, ir-rikorrent xehed li huwa jrid li l-ishma tieghu jinbieghu ghall-prezz li kien stabbilit mill-qorti. Meta ha l-erbghin fil-mija (40%) tal-ishma, hu u martu ghamlu tajjeb bid-dar taghhom ghal dejn ta` Lm 17,000 li kellha l-kumpannija. Ghalhekk ma kien obligat ihallas xejn ghal dawk l-ishma. Qabel sar azzjonista, huwa kien ghamel sena impjegat tal-kumpannija. Sar azzjonista wara telaq Joseph Coleiro li kien azzjonista qabel. Ma jafx meta thallas id-dejn tas-Lm 17,000 pero` d-dar tieghu damet madwar ghoxrin (20) sena bl-ipoteka registrata fuqha. Illum l-ipoteka tnehhiet. Huwa ma offriex l-ishma lil haddiehor apparti l-intimat. L-intimat ried jixtri izda bi prezz orhos minn dak li kien stabbilit.

VIII. Dokumenti ohra

Apparti d-dokumenti li l-Qorti diga` rreferiet ghalihom, kienu prezentati dawn id-dokumenti l-ohra :-

1) A fol 151, ittra ufficjali tar-rikorrenti bid-data tad-19 ta` Novembru 2014 fejn widdbu lill-intimati biex joqghodu mas-sentenza tal-4 ta` Lulju 2013.

2) A fol 165 u a fol 167, zewg ittri ufficjali tal-intimati bid-dati tal-14 ta` Lulju 2014 u tas-27 ta` Awissu 2014 fejn interpellaw lir-rikorrenti sabiex ihallsu l-prezz li bih dawn kienu akkwistaw l-ishma.

3) A fol 185 u 186, skambju ta` emails dwar il-bejgh tal-ishma.

4) A fol 187 et seq, il-full audited accounts tas-socjeta` ghas-sena li ghalqet fil-31 ta` Dicembru 2012 u l-management accounts sal-4 ta` Lulju 2013.

IX. Konsiderazzjonijiet

Fid-decizjoni taghha tal-4 ta` Lulju 2013 fil-kawza l-ohra bejn il-partijiet, din il-Qorti ghamlet analizi tad-disposizzjonijiet li jirregolaw il-kwistjoni taht ezami, tad-dottrina li kompliet tispjega dawk id-disposizzjonijiet, u tal-gurisprudenza li kompliet tisvolgi dawk id-disposizzjonijiet. A skans ta` repetizzjoni, din il-Qorti tirreferi ghal dak li nghad fid-decizjoni, u li kopja taghha kienet esebita mir-rikorrenti mar-rikors promotur.

Sabiex jiskatta l-intervent tal-Qorti skond l-Art 402(3) tal-Kap 386, ir-rikorrent irid jaghmel il-prova li l-fatti tal-kaz taht ezami jissoddisfaw ir-rekwiziti tal-Art 402(1) tal-Kap 386.

Ghad-determinazzjoni tal-kaz tal-lum, trid necessarjament issir riferenza ghad-disposittiv tal-provvediment li tat din il-Qorti fil-kawza bejn il-partijiet tal-4 ta` Lulju 2013.

Dan qiegħed jingħad mhux għaliex għall-fini tal-provvediment tal-lum hija sejra tiftah berah il-fatti u għac-cirkostanzi li wassluha sabiex tistabilixxi li kien hemm ksur tal-Art 402(1), u allura li kien hemm lok li tipprovdi skond l-Art 402(3). Xejn minn dan.

Izda għaliex il-vera kwistjoni tal-lum hija t-twettieq ta` dik il-parti tal-provvediment li tirrigwarda t-trasferiment tal-ishma ta` Anthony Gatt fil-kumpannija.

Fil-kaz tal-lum, ir-rikorrenti qegħdin jilmentaw illi bil-fatt illi l-intimati rrifjutaw li jixtru l-ishma li r-rikorrent għandu fis-socjeta` għall-prezz li kien stabbilit skond il-provvediment tal-4 ta` Lulju 2013 huma garrbu ksur tal-Art 402(1) u talbu lill-Qorti sabiex tipprovdi skond l-Art 402(3). Min-naha tagħhom, l-intimati, għalkemm jaccettaw illi huma ma xtawx l-ishma għall-prezz stabbilit skond il-provvediment tal-4 ta` Lulju 2013, huma qagħdu mal-procedura ndikata fl-*articles of association* del resto kif ighid l-istess provvediment.

Meta l-Qorti tqis l-assjem tal-fatti li sehew wara l-4 ta` Lulju 2013, issib li bl-agir tagħhom, l-intimati konjugi Gatt mexxew l-affarijiet tal-kumpannija b`mod mhux gust ta` pregudizzju fil-konfront tar-rikorrent Anthony Gatt.

Fil-pag 569 – 570 ta` **Mayson, French & Ryan on Company Law** (26th Edition – Oxford – 2009/2010) jingħad hekk dwar *unfair prejudice* –

In “O’Neill v Phillips” (1999) 1 WLR 1092, Lord Hoffman emphasised that equitable jurisdiction must be exercised in a principled way, saying, at p.1098 :

“In (s.994) Parliament has chosen fairness as the criterion by which the court must decide whether it has jurisdiction to grant relief. It is clear ... that it chose this concept to free the court from technical considerations of legal right and to confer a wide power to do what appeared just and equitable. But this does not mean that the court can do whatever the individual judge happens to think fair. The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles ... Although fairness is a notion which can be applied to all kinds of activities, its content will depend on the context in which it is being used.” ...

In Re Guidezone Ltd (2000) 2 BCLC 321, Jonathan Parker J said at p.355 that it has been established by O'Neill v Phillips that :

“ ... ‘unfairness’ for the purposes of [s 994] is not to be judged by reference to subjective notions of fairness, but rather by testing whether, applying established equitable principles, the majority has acted, or is proposing to act, in a manner which equity would regard as contrary to good faith.”

Jirrizulta li l-intimati huma d-diretturi tal-kumpanija. Ghalkemm fil-kwistjoni tat-trasferiment tal-ishma, mertu ta` dan il-procediment, jishqu fuq il-pretensjoni li huma qaghdu ma` dak li jipprovdu l-articles of association, fir-realta` ma rrizultax li gara hekk.

Il-Qorti aktar kmieni ndikat il-partijiet rilevanti tal-articles of association li jirrigwardaw the transfer of shares. Ma rrizulta minn imkien li l-intimati Gatt bhala diretturi qaghdu ma` dak hemm provdut. Ma gabu l-ebda prova tal-minuti tal-bord tad-diretturi. Ghalhekk ma jistghux dawn isostnu li Anthony Gatt kien inadempjenti li ma offriex il-bejgh tal-ishma tieghu lil terzi jekk sabiex tiskatta l-possibilita` tal-offerta minn Anthony Gatt lil terzi kellha l-ewwel tkun osservata l-procedura tal-articles of association mill-bord tad-diretturi.

Minghajr l-icken dubbju, ma jirrizultax li kienet osservata mill-intimati.

Il-konsegwenza ta` dan kollu hija li l-intimati konjugi Gatt baqghu ghaddejjin qisu l-kumpanija hija taghhom kollha. Il-laqghat generali ma nzammux skond il-ligi ; jattendix Anthony Gatt jew le ghal dawk il-laqgha huwa rrilevanti. Il-hlas tad-dividends ma baqax regolari. Baqghu jmexxu minghajr xkiel ghax ghandhom il-maggoranza tal-ishma li jfisser li jahtru huma d-diretturi u cioe` lilhom innfushom.

Il-pregudizzju ta` Anthony Gatt jirrizulta mill-fatt illi dak li pprovdiel il-Qorti fid-decizjoni tal-4 ta` Lulju 2013 dwar it-trasferiment tal-ishma kien stultifikat bl-agir tal-intimati Gatt.

Kif jinsabu llum, l-intimati konjugi Gatt huma komdi ghaddejjin xorta minkejja l-litigazzjoni tar-rikorrenti.

Billi l-Qorti ssib li kien hemm ksur tal-Art 402(1) tal-Kap. 386 sejra tipprovdi skond l-Art 402(3).

Fil-kaz tal-lum il-Qorti ghandha *fair value* tal-ishma ta` Anthony Gatt skond id-decizjoni tal-4 ta` Lulju 2013.

Ghall-fini tal-provvediment tal-lum, il-Qorti tqis bhala ragonevoli l-valur indikat mill-Awditur Mahoney.

Il-Qorti trid illi l-kostatazzjonijiet tal-Awditur Kevin Mahoney a fol 38 sa 76 tal-process ighoddu bis-shih ghall-fini tal-provvediment tal-lum.

Bhal rimedju ghas-sitwazzjoni li wasslet ghall-procediment tal-lum, il-Qorti taghmel riferenza ghall-pag 727 u 728 ta` **Boyle & Birds' Company Law** (Eighth Edition – Jordans – 2011) fejn jinghad hekk –

*It is not surprising that in the case of most successful petitions the remedy sought by the petitioners, and granted by the court, is that of purchase of the minority's shares by the majority. As a solution to intra-corporate disputes in small private companies this is till the most attractive choice among the remedial solutions offered by s.996. The Court of Appeal in "**Grace v. Biagola**" [2006. 2. BCLC 70, at 96-97] explained the policy considerations which guide the court in choosing an order for the purchase of the minority's shares :*

"In most cases, the usual order to make will be the one requiring the respondents to buy out the petitioning shareholder at a price fixed by the court. This is normally the most appropriate order to deal with the inter-corporate disputes involving small private companies ... The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the business and assets in return for foregoing any future right to dividends. The company and its business will be preserved for the benefit of the respondent shareholders, free from his claims and the possibility of future difficulties between shareholders. In most cases of serious prejudice and conflict between shareholders, it is unlikely that any regime of safeguards which the court can impose will be as effective to preserve the peace and safeguard the rights of the minority".

Provvediment

Ghar-ragunijiet kollha premessi, din il-Qorti qeghda tiddisponi mit-talbiet tar-rikorrenti, u mill-bqija tal-eccezzjonijiet tal-intimati, billi taqta` u tiddeciedi hekk –

Issib illi jirrizultaw sodisfatti r-rekwiziti tal-Art 402(1) tal-Kap 386 tal-Ligijiet ta` Malta.

Ghalhekk bl-applikazzjoni tal-Art 402(3) tal-Kap 386 :-

1) Tordna l-bejgh ta` l-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpannija All Trading Vehicles & Spares Limited (C4155). Ghal dan l-iskop tordna li ma jsir l-ebda tibdil fil-*memorandum* u fl-*articles of association* tal-kumpannija sakemm jinbieghu dawn l-ishma.

2) Tordna lill-intimati Philip u Doris konjugi Gatt sabiex, sat-terminu perentorju ta` tliet (3) xhur mil-lum, jixtru u jakkwistaw l-ishma kollha li r-rikorrent Anthony Gatt ghandu fil-kumpannija All Trading Vehicles & Spares Limited (C4155) ghall-prezz li kien stabbilit u determinat mill-Awditur Kevin J. Mahoney fir-relazzjoni tieghu li tinsab esebita minn fol 38 sa fol 76 tal-process.

3) Tordna lill-partijiet, kemm jekk individwalment jew kemm jekk flimkien, sabiex fil-kaz illi jkun sar l-akkwist tal-ishma skond il-paragrafu precedenti, sabiex jassikuraw li tkun prezentata nota fejn jigi dikjarat li sar dak l-akkwist kif jipprovdi l-paragrafu precedenti.

4) Fil-kaz biss illi l-intimati Philip u Doris konjugi Gatt ma jakkwistawx l-ishma kollha tar-rikorrent Anthony Gatt fil-kumpannija All Trading Vehicles & Spares Limited (C4155) skond kif hemm ipprovdot fil-paragrafu numru tnejn (2) ta` dan il-provvediment, allura f`dak il-kaz tordna x-xoljiment u l-istralc ta` l-kumpannija All Trading Vehicles & Spares Limited (C4155) ghall-finijiet u effetti kollha tal-ligi b`effett mid-29 ta` Jannar 2016.

5) Fil-kaz biss illi javvera ruhu dak li jipprovdi l-paragrafu numru erbgħa (4) ta` dan il-provvediment, allura tahtar lill-Av. Dr. Richard Galea Debono bhala stralcjarju bis-setghat u d-dmirijiet previsti fil-Kap 386 tal-Ligijiet ta` Malta.

Tikkundanna lill-intimati sabiex – in solidum bejniethom – ihallsu l-ispejjez kollha ta` din il-kawza, komprizi l-ispejjez kollha tal-istralc – xejn eskluż – jekk ikun il-kaz.

**Onor. Joseph Zammit McKeon
Imhalled**

**Amanda Cassar
Deputat Registratur**