

Qorti tal-Appell

(Kompetenza Inferjuri)

Imhalef Anthony Ellul

Appell numru: 14/2013AE

**MaltaTicket.com Limited**

**vs**

**Heritage Malta**

L-Erbgha, 23 ta' Marzu 2016.

Permezz ta' talba bil-miktub prezentata fic-Centru Malti tal-Arbitragg, MaltaTicket.com Limited (appellanti) talbet dikjarazzjoni li:-

*"l-avviz ta' kancellament tal-ftehim kummercjali bejn il-partijiet min-naha tal-intimat, debitament ircevt mir-rikorrent fis-27 ta' Gunju 2011, ma pprekludix lill-istess ftehim kummercjali milli jkun fil-process li jgedded awtomatikament ghal erba' (4) snin ohra wara l-20 ta' Dicembru 2011".*

Permezz ta' decizjoni li giet pubblikata fit-3 ta' April 2013, l-Arbitri ddecidew:-

*"the claimant's request for a decision to the effect that the notice of cancellation received on the 27th June 2011 has not validly cancelled the automatic extension of the agreement for a further four year period is to be denied. With costs against the claimant".*

Decizjoni li kien bazata fuq dan ir-ragunament:-

1. Kien inghata avviz ta' kancellament b'email datata 17 ta' Gunju 2011 li tikkwalifika bhala "*written notice of cancellation*" a tenur ta' klawzola numru 1 tal-kuntratt. Dan meqjus ukoll dak li jipprovdu Artikoli 3 u 5 tal-Kap. 426 dwar komunikazzjoni elettronika. Inoltre, mill-provi rrizulta li l-partijiet kienu mplicitament ftehemu li jikkomunikaw b'dan il-mod.
2. L-ittra mibghuta bl-email tikkwalifika bhala "*personal delivery*", li kien wiehed mill-modi ta' kif, skond klawzola numru 9, kellha ssir in-notifika ta' avviz.
3. David Pollina, direttur tas-socjeta appellanti, kien ghamel manuvri biex jevita n-notifika tal-ittra registrata fil-perjodu li fih kellu jinghata avviz ta' kancellament. Atteggament li juri element car ta' *mala fede*, u dan kontra dak li jipprovdi l-Artikolu 933 tal-Kodici Civili.

Illi minn din is-sentenza appellat is-socjeta' attrici MaltaTicket.com Limited, bl-aggravji:-

1. fuq punti ta' ligi, s-sejba f'paragrafu numru sitta u tletin (36) tad-Decizjoni tat-Tribunal tal-Arbitragg fis-sens li l-email datat sbatax (17) ta' Gunju elfejn u hdax (2011) mibghut mill-Appellata lill-Appellanta jikkostitwixxi "written notice of cancellation" ai termini tal-Klawzola numru wiehed (1) tal-ftehim, hi manifestament erroneja.
2. fuq punti ta' ligi, is-sejba f'paragrafu numru sebgha u tletin (37) tad-Decizjoni tat-Tribunal tal-Arbitragg fis-sens li l-anness mibghut bl-email fl-isbatax (17) ta' Gunju tal-elfejn u hdax (2011) mill-Appellata lill-Appellanta tikkostitwixxi "personal delivery" ai termini tas-sitt (6) bullet point fi klawzola numru disgha (9) tal-ftehim, hija manifestament skorretta;
3. is-sejbiet f'paragrafi numri tmienja u tletin (38) sa tlieta u erbghin (43) tad-Decizjoni tat-Tribunal tal-Arbitragg, fis-sens globali li l-Appellanta agixxiet in mala fede billi xjentement eludiet il-konsenja tal-ittra registrata ghal data li kienet issarra f'anqas.

L-appellata wiegbet li l-appell hu bazat fuq interpretazzjoni frivola u vessatorja ta' klawzola fil-kuntratt dwar avviz ta' terminazzjoni ta' kuntratt. L-appellanti kienet giet infurmata b'avviz ta' terminazzjoni, kemm verbalment u bil-posta elettronika. Pero' tibqa' ssostni li l-avviz bil-posta registrata kien tardiv. Dwar in-notifika bil-posta registrata rrizulta li fit-22 ta' Gunju 2011 David Pollina kien cempel Maltapost u talab li l-konsenja ssir fis-27 ta' Gunju. Ghalhekk intervjena intenzjonalment biex jittardja n-notifika bil-posta. 'Il fatt li talab li l-konsenja ssir fis-27 ta' Gunju tikxef mala fede u hsieb ulterjuri.

### **Konsiderazzjoni.**

1. Il-kwistjoni hi dwar klawzola 1 ta' ftehim li l-partijiet iffirmaw **fil-21 ta' Dicembru 2007** u li taqra:-

*"This Agreement shall be for a period of 4 years (four) from the date hereof, which term will automatically renew for additional terms of 4 years (four) each at the expiration of the initial term or any renewal **unless written notice of cancellation by either party to the other, one hundred and eighty (180) days prior to the expiry of this Agreement or any subsequent renewal**".*

Fil-ftehim jinghad ukoll li:-

*"notices required will be personally delivered or sent by registered mail"* (ara klawzola 9).

2. Jirrizulta li:-

- i. Fis-17 ta' Gunju 2011 intbaghatet email lil David Pollina, direttur tas-socjeta rikorrenti, li kienet taqra: *"Dear Dr Pollina, Kindly note the attached. A hard copy follows by hand delivery to your office"*. Fl-email kienet hemm attachment, ittra ffirmata<sup>1</sup> datata 17 ta' Gunju 2011 li taqra hekk:

*"Dear Sirs,*

*In terms of the Agreement currently in force between Heritage Malta and Maltaticket.com Limited Co (Reg. C40185), we are hereby serving you with formal notice of cancellation of the said Agreement.*

*Please acknowledge receipt of this and be guided accordingly"*.

- ii. David Pollina wiegeb dakinhar stess fejn qal li kien konfuz u ried kjarifika ghaliex kienu ftehemu li jgeddu l-ftehim b'fee ridotta. Sahansitra qal li kien gie abbozzat ftehim ta' tigidid. Kompla:-

*"Now you're saying you intend to serve a cancellation notice as per the emailed draft ? Whilst referring you to the agreement, I await service of such by registered post should you desire to give it, but you are aware of the company address change many months ago...."*.

- iii. L-ghada l-appellata wiegbet, permezz ta' email ohra, li d-diskussjonijiet kienu bdew fil-bidu ta' Mejju u kien ghadu ma ntlehaqx ftehim; *"If we are not to extend/renew the agreement, then we are due to give you six months notice, i.e. by end of June 2011 which is only a few working days away. The notice of cancellation that we have served you is to be seen in the above light. We are looking forward to receiving your confirmation (by Monday 20<sup>th</sup> June) that you are accepting our proposed draft for a renewal/extension in which case the notice of cancellation will be reviewed accordingly"*.
- iv. Fis-27 ta' Gunju 2011 l-avviz gie notifikat lis-socjeta appellata. F'dan ir-rigward dakinhar stess David Pollina baghat email li Frank Mifsud u ohrajn fejn ikkonferma li: *"... we were served with your notice of cancellation under Section 1 of our Agreement, said notice to be effective under the terms thereof"*.

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<sup>1</sup> L-ittra ffirmata minn Frank Mifsud, Segretarju u Kap Ezekuttiv tal-appellata.

L-appellanti qeghda ssostni li fic-cirkostanzi ma nghatax pre-avviz ta' 180 gurnata qabel skada l-ftehim li ffirmaw fil-21 ta' Dicembru 2007.

3. M'hemmx dubju li bl-email tas-17 ta' Gunju 2011, is-socjeta appellanti nghatat "*written notice of cancellation*". Fil fatt l-ittra li ntbaghatet bl-email kienet ffirmata mill-Kap Ezekuttiv tal-appellata. Ghalhekk il-qorti ma taqbilx ma' dak li kiteb David Pollina li l-ittra kienet '*draft*'<sup>2</sup>.
4. Hu fatt li l-kuntratt jikkontempla li: "*Notices required will be personally delivered or sent by registered post*". Il-qorti tifhem, kuntrarju ghall-arbitri (ara paragrafu 37 tad-decizjoni<sup>3</sup>), li l-kliem "*personally delivered*" tfisser "*delivery by hand*". Il-kliem *personally delivered* jirreferu mhux ghall-*addressee* (is-socjeta appellanti) imma ghal min qieghed jaghti l-avviz (l-appellata).
5. Il-qorti tifhem li l-ghan wara l-klawzola dwar kif kellhom jigu notifikati avvizi, kien sabiex jigi zgurat li l-*addressee* jircievi l-avviz u b'hekk ikun hemm prova certa li l-avviz inghata. Ma sar l-ebda argument li jaghti lill-qorti xi raguni ohra. Hu fatt li avviz permezz ta' email jaghti lok ghal incertezzi. Tista' per ezempju bi zball tithassar jew min jirceviha ma jindunax biha jew tqum kontestazzjoni dwar jekk l-*addressee* rcevihiex. Dan iwassal ghal kwistjonijiet bla bzon. Zgur li kieku kien jezisti l-icken dubju dwar jekk Pollina rceviex l-email tas-17 ta' Gunju 2011 li kien fiha *notice of cancellation*, il-qorti kienet tiskarta ghal kollox l-avviz li ntbaghat bl-email. Pero' f'dan il-kaz m'hemmx dubju li l-*addressee* (MaltaTicket.com Limited) irceviet l-avviz fis-17 ta' Gunju 2011, permezz ta' email. Dakinhar kien iktar minn 180 gurnata qabel: "*the expiry of this Agreement...*" (klawzola 1). Fil-fatt David Pollina xehed:-

"14. Illi fis-17 ta' Gunju 2011, is-Sur Frank Mifsud, ghan-nom ta' Heritage Malta, baghat email b'dokument anness. Hemmhekk huwa specifikatament qal ukoll li kienet ser tigi segwita b'kunsinna manwali<sup>4</sup>" (ara affidavit).

Il-qorti taqbel mal-arbitri li: "***The letter is clear as to its purpose leaving no room for ambiguity and is addressed correctly to the claimant company***". Il fatt li l-indirizz m'huwiex shih, mhux ta ebda konsegwenza.

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<sup>2</sup> Ara email li baghad David Pollina datata 17 ta' Gunju 2011.

<sup>3</sup> "*The panel also holds that the emailed attachment does qualify as personal delivery which is one of the contractually binding modes of providing required notices in terms of bullet point 6 in Clause 9 of the agreement in that it was sent to David Pollina's personal e-mail address ([david@migna.com](mailto:david@migna.com)) and receipt was duly acknowledged by e-mail on the same day (17<sup>th</sup> June 2011 – 20:21)*".

<sup>4</sup> Hanwhekk ix-xhud kien qieghed jirreferi ghall-avviz ta' kancellament.

6. Hu minnu li fl-email ta' Frank Mifsud tas-17 ta' Gunju 2011 jinghad li: "*A hard copy follows by hand delivery to your office*", pero' b'daqshekk ma jfissirx li l-avviz moghti bl-email tas-17 ta' Gunju 2011 qiesu qatt ma nghata. Il-qorti tifhem li l-appellata kienet konxja b'dak li jipprovdi l-kuntratt dwar notifika ta' avviz, u ghalhekk baghatet l-avviz ukoll bl-idejn. Jibqa' pero 'l fatt li bl-email tas-17 ta' Gunju 2011 kien car daqs il-kristall li l-appellata tat avviz lill-appellanti li kienet qeghda tikkancella l-kuntratt u b'hekk ma kinitx ser iggedded il-kuntratt ghal erba' (4) snin ohra. L-ittra li eventwalment giet konsenjata bil-posta fis-27 ta' Gunju 2011 kienet identika ghal dik li l-appellanti irceviet b'email fis-17 ta' Gunju 2011, u ghalhekk ma kien hemm xejn gdid li l-appellanti ma kinitx diga' taf.
  
7. Ghal dak li jirrigwarda l-*bona fede* ta' David Pollina, gialadarba l-qorti kkonkludiet li fis-17 ta' Gunju 2011 is-socjeta appellanti giet notifikata bl-avviz kontemplata fi klawzola 1 tal-kuntratt tal-21 ta' Dicembru 2007, dan l-aggravju ma jista' jkollu ebda mpatt fuq l-ezitu tal-appell. F'kull kaz l-arbitri ghamlu l-apprezzament tal-provi li kellhom jaghmlu u l-appellanti ma wriet l-ebda punt ta' ligi li fuqu bbazat it-tielet aggravju (Artikolu 70B tal-Att dwar l-Arbitragg, Kap. 387).

**Ghal dawn il-motivi tichad l-appell bl-ispejjez kontra l-appellanti.**

Anthony Ellul.