



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Hamis sittax ta' (16) ta' Gunju 2016

Rikors Numru 402/11 FDP

Vince Farrugia (ID 847544M) fil-kapacita' tieghu ta' Direttur Generali tal-Kamra Maltija ghan-Negozji Zghar u Medji (GRTU)

vs

Perit Michael Falzon  
(ID 680745M)

Il-Qorti:-

Rat ir-rikors promotur intavolat mir-rikorrent fil-kwalita' tieghu ta' Direttur Generali tal-GRTU fit 2 ta' Dicembru 2011 fejn, filwaqt illi ghamel referenza ghall-artikolu intitolat "*A Cuckoo's Nest*", li tieghu l-intimat kien l-awtur, u ppubblikat fil-gazzetta Malta Today tal-25 ta' Novembru 2011, talab lill-Qorti tiddikjara illi l-kontenut tal-artikolu kien libelluz u malafamanti fil-konfront tar-rikorrent, u ghalhekk tordna lill-intimat ihallsu danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu, intitolat '*A Cuckoo's Nest*', illi kien jghid dan li gej:

*The Malta Developers Association was set up over a year ago and its first annual general meeting will be held within a few days.*

*As President, I dedicate some of my time to the association because I feel that my input could be valuable at this juncture. I do not have any income from this responsibility and have no intention to keep at it for a long number of years. I will, in fact, withdraw from this post - without any golden handshakes - as soon as it is up and running and its teething problems are over.*

*When it was set up at the end of September last year, it was felt that MDA had first to find its feet and draw up a vision of its mission before it starts lobbying for certain measures that would be useful both for the economy in general and for developers. With this in mind, we refrained from making any proposals for last year's budget as budget day that year was too soon for us to be able to come out with innovative proposals and to persuade government to take them up.*

*This year, the situation was different. We started lobbying earlier, explaining why we thought certain measures should be put into effect. Our suggestions were first made in an informal way during a meeting with the Prime Minister on 29 April and then formally through a letter to the Minister of Finance in June, which was followed by a meeting with the minister when these suggestions were discussed with him. We were assured that most of our suggestions merited consideration, albeit no assurance about their adoption could be given. The scheme announced in the budget for the granting of several fiscal incentives in the case of the restoration and rehabilitation of properties sited within urban centres was, in fact, one of several suggestions made the MDA.*

*The government has also partially adopted a suggestion it made on the rental market in the case of taxation of rents received from tenants who qualify for subsidies in their rent. MDA had asked government to introduce a system of withholding tax for all income from rents with a less onerous consideration in the case of rents subsidised by the State for social reasons.*

*So it was quite a surprise to see that on the eve of the budget, the GRTU announced that it felt that government should think of granting tax incentives for home owners and young families to be able to move into vacant properties and for first time buyers, as well as for vacant properties to be used as offices or tourist accommodation. This was a hotchpotch of what had already been indicated by government in the pre-budget document and in MDA's suggestions to government that were spelled out publicly in a breakfast meeting held on 11 October by MDA and three other entities whose members are involved in the construction and property sector.*

*The mind boggles. The GRTU couched their 'demands' as in the interest of small businesses or young people, no doubt because the GRTU today has hardly more than four paying members with a direct interest in the property market. If I am wrong on this one, the GRTU could always publish the names of its paying members on its website as the MDA does. The GRTU made other suggestions to government that do not concern the property market, but the fact that at the last minute it added suggestions related to the property market is intriguing.*

*It is obvious that the GRTU tried to take a free ride on what was going to be announced in the budget as a result of MDA's consistent lobbying. Following the budget speech, GRTU director Vince Farrugia implied that government had partially accepted his organisation's demands, as this excerpt from his official reaction published in The Times last Tuesday shows: "[The GRTU] made a number of proposals to incentivise the use of vacant property in Malta and Mr Farrugia regretted these were not all taken up. However, it was pleased the government was giving an extra push to property owners to put it on the market, to rent out or to put it up for sale through fiscal incentives."*

*Mr Farrugia did not follow up the recent leader in the GRTU's electronic newsletter that had claimed that the government is subservient to the political clout of developers, but instead depicted the developers' suggestions to government as his own, even though there is no record of the GRTU having lobbied for these measures... except, of course, three days before Budget Day, a full month after MDA's suggestions had been made public and when there was an inkling on what was going to be adopted by government.*

*This silly manoeuvre is petty and puerile and exposes the shameless posturing behind*

*the way that the GRTU works. Indeed, the best description of the GRTU today is probably 'a cuckoo's nest'. The cuckoo has no nest, of course, but takes over other birds' nests and makes them its own.*

*Insiders know that the GRTU's real paying membership figures have dwindled dramatically over the years and in fact the number is much less than the vaunted 7,000/8,000 members. However, its income was boosted as a result of the distributed monies from the reserves of the Malta Trade Fair Corporation, of which the GRTU is a shareholder; and now comes also from government handouts under some guise or another; and its commercial venture Green MT Ltd, through which it competes with potential members!*

*These money sources are a veritable flood of funds when compared with the GRTU's previous level of income, mainly from membership fees. Inevitably, a supply of money leads to the need to spend. At one point, questions were being asked but no answers were given. Many of those who made questions - including the Treasurer himself - were voted out when eventually a block vote was organised in the annual elections. The show became more of a one-man show after the system of the election of the GRTU Council members was radically changed. Many feel that the GRTU has now practically lost much of what had been built over the years - all for the pride of one man.*

*Incidentally, Green MT Ltd is owned by the GRTU but has the Director-General's son - who is also one of the GRTU's legal advisors - as company secretary with quite a good hold on its judicial and legal representation powers.*

*In other circumstances, this would be called nepotism but then, charity begins at home - as any cuckoo would say! (frazijiet b'tipa aktar skura indikati bhala malafamanti mir-rikorrent)*

Rat ir-risposta ta' l-intimat ippresentat fl-24 ta' Frar 2012 fejn sahaq illi dak minnu mitkub ma kienx libelluz, u li jikkonsisti f'*fair comment* u espressjoni ta' opinjoni jew *value judgment* fejn referenza ghar-rikorrent qiegħda ssir bhala persuna li jokkupa kariga pubblika u li għalhekk huwa suggett għall-livelli ta' kritika oghla jekk mhux harxa.

Semgħet ix-xhieda ta' **Paul Abela** mogħtija fil 25 ta' Gunju 2012.

Rat l-affidavit ta' **Joseph Attard** ippresentat fit 12 ta' Novembru 2012 u sema x-xhieda ta' l-istess mogħtija fl-24 ta' Gunju 2013.

Ra ill fis-7 ta' Ottubru 2013 il-Qorti ddikjarat il-provi rikorrenti bhala magħluqa wara illi tali seduta kienet differita għal-egħluq provi rikorrenti u hadd ma deher.

Semgħet ix-xhieda in kontro ezami ta' Paul Abela mogħtija fit-2 ta' Dicembru 2013 u d-dokumentazzjoni minnu esebita.

Semgħet ix-xhieda in kontro ezami tar-rikorrent Vincent Farrugia mogħtija fl-10 ta' Ottubru 2014 u fit 23 ta' Frar 2015.

Semgħet ix-xhieda in kontro ezami ta' Joseph Attard mogħtija fit 13 ta' April 2015.

Semghet ix-xhieda ta' l-intimat **Perit Michael Falzon** moghtija fl-1 ta' Gunju 2015 u fit-13 ta' Lulju 2015 u rat id-dokumentazzjoni minnu esebita.

Rat l-affidavit ta' **Keith Pillow** ippresentat fit 13 ta' Lulju 2015.

Rat l-affidavit ta' **Hubert Agius** ippresentat fit 13 ta' Lulju 2015.

Rat l-affidavit ta' **Carmel sive Charles Busuttil** ippresentat fit 13 ta' Lulju 2015.

Ra l-affidavit ta' Mario Schembri, ippresentat fl-atti tal-kawza '*Green Dot Malta Limited vs MEPA*', Rik Nru 387/11 u esebita mill-intimat.

Semghet ix-xhieda ta' **Claude Cuschieri**, rapprezentant tas-Segretarju Permanenti fi hdan il-Ministeru tal-Finanzi, moghtija fit 30 ta' Novembru 2015.

Semghet ix-xhieda ta' **Mark Saliba**, gia Tezorier tal-GRTU, moghtija fit 30 ta' Novembru 2015.

Semghet ix-xhieda in kontro ezami ta' Joseph Attard, moghtija fit 30 ta' Novembru 2015 u rat id-dokumentazzjoni minnu esebita.

Rat illi fl-14 ta' April 2016 l-intimat iddikjara illi ma kellux aktar provi x'jippresenta u ghalhekk il-kawza giet differita ghas-sottomissjonijiet finali.

Semghet it-trattazzjoni tal-konsulent legali ta' l-intimat fis 26 ta' Mejju 2016, stante illi fil-gurnata u hin differita ghas-sottomissjonijiet finali, la r-rikorrent u wisq anqas il-konsulent legali tieghu ma deheru.

Rat illi fis 26 ta' Mejju 2016 il-kawza giet differita ghas-sentenza u sa llum ma saret ebda talba da' parte tar-rikorrenti sabiex jaghmel xi sottomissjonijiet.

## **Ikkunsidrat**

Jirrizulta, mill-provi prodotti quddiem dina l-Qorti, illi r-rikorrent kien id-Direttur Generali tal-GRTU, u hassu malafamat mill-kontenut ta' l-artikolu illi kien miktub mill-intimat, li dak iz-zmien kien il-President tal-Malta Developers' Association, illi kienet giet iffurmata, fi kliem ir-rikorrenti stess, wara illi Sandro Chetcuti, li kien Vici President tal-GRTU, kien telaq mill-GRTU wara glieda, ampjament irrappurtata fil-Qrati u fuq il-mezzi tax-xandir, bejn ir-rikorrent u l-istess Chetcuti.

Jirrizulta, di fatti, illi r-rikorrent jinsinwa illi tali artikolu ghandu "*hidden agenda*" cara, ossija illi jwaaqqa r-reputazzjoni tar-rikorrent sabiex tibbenefika l-Malta Developer's Association.

Jirrizulta, illi r-rikorrent jilmonta illi ma kienx minnu li l-GRTU ghamlet taghha l-proposti maghmulha mill-MDA meta l-Gvern tal-gurnata, fil-Budget tas-sena 2012, kien introduca incentivi ta' taxa ghal 'first-time buyers' u ta' propjetajiet vakanti, u sahaq illi l-GRTU kienet ilha taghmel tali proposti minn snin qabel.

Jirrizulta wkoll illi r-rikorrent jinsisti li l-fatt li l-intimat sejjah il-GRTU bhala 'a cuckoo's nest', kienet malafamanti ghalih peress illi hija intiza sabiex "iccekken il-fama tieghi u tirredikolani", kif jishaq l-istess rikorrent.

Jirrizulta illi r-rikorrenti jinsisti li ma kienx minnu li n-numru tal-membri tal-GRTU naqsu, kif kien qieghed jallega l-intimat, izda anzi kienu qed jizdiedu bil-bosta.

Jirrizulta wkoll illi r-rikorrent jiddeskrivi bhala 'hrafa kbira' il-fatt illi l-GRTU kienet qed tircievi pagamenti mill-Gvern u li t-Terzorer kien telaq mill-GRTU peress illi ma kienx qed jinghata risposti dwar il-mod kif kienu qed jintefqu l-flus.

Jirrizulta illi r-rikorrent hassu malafamat bil-fatt illi gie allegat li t-tifel tieghu Dr Jan Karl Farrugia, gie deskritt bhala illi ghandu kontrol tajjeb hafna tar-rappresentanza legali u guridika tad-ditta Greem MT, u sahaq illi a differenza ta' dak allegat mill-intimat, it-tifel tieghu ma ghandu ebda kontroll fuq tali kumpannija.

## **Ikkunsidrat**

Jirrizulta illi l-intimat, fid-difiza tieghu, sahaq illi dak minnu miktub kien pubblikazzjoni ta' fatti sostanzjalment korretti u jikkonsisti f'fair comment u espressjoni ta' opinjoni jew value judgment fuq l-istess fatti.

Jirrizulta, ghalhekk, illi qabel ma jigu kkunsidrati l-provi migjuba mill-intimat, ikun opportun illi certi principju legali relavanti ghad-difiza ta' l-intimat jigu kkunsidrat.

Fl-ktieb **Gatley on Libel and Slander** (Sweet & Maxwell (London), 1981) jinghad hekk dwar in-natura ta' kumment:

*A comment is a statement of opinion on facts. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised. "A libellous statement of fact is not a comment or criticism on any thing". But while a comment is usually a statement of opinion as to the merits or demerits of conduct, an inference of fact may also be a comment. There are, in the cases, no clear definitions of what is comment. If a statement appears to be one of opinion or conclusion, it is capable of being comment. (para. 697, pagina 294).*

L-istess **Gatley on Libel and Slander** dwar id-difiza ta' 'fair comment', imbgħad, jghid dan li gej:

*To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.*

Fil-kawza **Brent Walker Group plc v Time Out Ltd** [1991] 2 QB 33 deciza mill-Qorti tal-Appell Ingliza, il-bazi tal 'fair comment' giet kunsidrata minn Bingham LJ li dwarha qal is-segwent:-

*"The civil law of libel is primarily concerned to provide redress for those who are the subject of false and defamatory factual publications. Thus in the simplest case A will be entitled to relief against B if B publishes a defamatory factual statement concerning A which B cannot show to be true. The law is not primarily concerned to provide redress*

*for those who are the subject of disparaging expressions of opinion, and freedom of opinion is (subject to necessary restrictions) a basic democratic right. It is, however, plain that certain statements which might on their face appear to be expressions of opinion (as where, for example, a person is described as untrustworthy, unprincipled, lascivious or cruel) contain within themselves defamatory suggestions of a factual nature. Thus the law has developed the rule already mentioned that comment may only be defended as fair if it is comment on facts (meaning true facts) stated or sufficiently indicated. Failing that, the comment itself must be justified.”*

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza mill-Prim Awla tal-Qorti Civili fit 30 ta' April 2015, intqal is-segwenti :

*... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment gust tkun tghodd, jeħtieg li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tghajir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegg'a' lil dak li jkun.*

Tali tagħlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, Lord Phillips għamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

*A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively “fair”; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant’s honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant’s honesty was assumed unless the plaintiff could disprove it by establishing malice.*

Il-Qorti thoss illi għandha wkoll tagħmel referenza ukoll għad-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbraccjata mill-Qorti Maltin li tirrigwarda il-livell ta' kritika li politiku tista ssirlu, u dana peress illi ma għandu jkun hemm ebda dubju illi r-rikorrent huwa persuna pubblika involuta fil-kamp politiku u għalhekk għandu jkun soġġett għall-libelli ta' kritika oghla, kif gie stabbilit fil-kawza fuq imsemmija fejn intqal illi:-

*Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.*

*The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both*

*journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.*

## **Ikkunsidrat**

Jirrizulta, mill-provi prodotti mill-intimat, illi l-intimat, bhala President tal-Malta Developer's Association, fl-20 ta' Gunju 2011 kien baghat ittra (fol 94) lill-Ministru tal-Finanzi ta' dak iz-zmien fejn, filwaqt illi ghamel referenza ghall laqgha illi kellhom fit 23 ta' Frar 2011 u fid 29 ta' April 2011 dwar proposti ghall-Budget ghas-sena 2012, u elenka ghal darba ohra il-proposti taghhom, fosthom incentivi ta' taxxa ghal 'first-time buyers' u ghal mien kien ser jixtri propjetajiet vakanti.

Jirrizulta, wkoll illi l-GRTU, bhal entitajiet ohra, kienet qieghda tibbenefika minn fond illi kien inghatalha mill-Gvern bhala rizultat tad-dhul ta' Malta fl-Unjoni Ewropeja.

Jirrizulta, dejjem mill-provi prodotti mir-rikorrent, illi t-Tezorer tal-GRTU, Mark Saliba, illi kien tezorier ghas-snin 2008 - 2009, kien ilmenta regolarment mar-rikorrent kif ukoll mal-amministrazzjoni tal-GRTU illi huwa kien qieghed jinzamm fl-ghama tal-amministrazzjoni tal-finanzji tal-GRTU u infatti, gimghatejn qabel l-Laqgha Generali Annwali tal-GRTU, huwa kien irrozenja peress illi ma setax ikompli jopera bhala Tezorier minghajr ma jkun qieghed jinghata access ghad-dokumentazzjoni necessarji da' parte tal-amministrazzjoni tal-GRTU.

Jirrizulta illi tali allegazzjoni ta' Mark Saliba gew anke korroborati mix-xhieda ta' Charles Busuttil, li kien ghamel zmien bhala President tal-GRTU, fejn dana zied jghid li Saliba kien inghata parir mill-avukat tieghu biex jirrozenja peress illi "bhala Tezorier jitsa jinzamm responsabbli ta' xi nuqqasijiet li jistghu jiffaccaw 'il quddiem".

Jirrizulta, mill-provi prodotti, illi fil-Memorandum and Articles of Association tal-kumpannija Green MT Limited, illi hija kumpannija tal-GRTU li tipprovdi servizzi varji fil-qasam tar-riciklagg u l-gbir tieghu, fejn jirrigwarda 'Judicial and Legal Representation', huwa pprovdut illi tali poter ghandu jkun:

*"unlimited and shall be exercised by any two (2) Directors of the Company jointly with Doctor of Laws Jan-Karl Farrugia"*

## **Ikkunsidrat**

Jirrizulta, mill-provi kollha imressqa mill-intimat, illi l-fatti minnu allegati kienu sostanzjalment korretti.

Jirrizulta, di fatti, illi l-Malta Developers' Association kienet ghamlet proposti lill-Gvern dwar ghajnuna ghal min kien ser jixtri post, fatt illi r-rikorrent insista illi huwa ghamel ukoll izda ma esebixxa ebda tip ta' dokumentazzjoni sabiex tissustanza dak minnu allegat, a differenza ta' l-intimat illi ppresenta dokument biex jissustanza dak minnu allegat.

Jirrizulta illi, ghalkemm ir-rikorrent hassu malafamati bi-fatt illi kien qed jigi allegat illi n-numru ta' membri tal-GRTU kienu qed jonqsu, huwa ma ressaq ebda tip ta' dokumentazzjoni biex jisustanza l-argumentazzjoni tieghu illi n-numru tal-membri kienu qed jizdiedu u ghalhekk, la darba, kif staqrr

I-intimat stess, il-lista tal-Membri ma humiex accessibbli lill-hadd, kien jispetta lir-rikorrent jipprova li ghandhom numru kbir ta' membri, kif sahaq r-rikorrent.

Jirrizulta illi, a differenza ta' dak illi ddeskriva r-rikorrent bhala "hrafa", il-GRTU kienet tippercepixxi pagamenti minghand il-Gvern, kemm bhala ghajnuna ghall-EU, kif ukoll bhala pagamenti dovuti lill-Green MT, kif hareg mill-provi, u ghalhekk jidher car illi, apparti l-hlas tal-membri, il-GRTU tippercepixxi dhul minn postijiet ohra, fosthom il-Gvern u entitajiet relatati mal-Gvern.

Jirrizulta, finalment, illi t-tifel tar-rikorrenti, illi ma huwiex parti mill-proceduri odjerni u li ghalhekk kellu jkun l-istess Dr Jan Karl Farrugia, semmai, illi jhossu malafamat u mhux ir-rikorrent, inghata kontroll fuq ir-rappresentanza legali tal-kumpannija Green MT peress illi kull min jinghata d-dritt ta' rapprezentazzjoni ghandu jaghmel dan flimkien mieghu.

Jirrizulta, ghalhekk, illi dak li kien qieghed jikkummenta dwaru l-intimat kien ibbazat fuq fatti sostanzjalment korretti u ghalhekk ma jstax jitqies bhala libellux u malafanti fil-konfront tar-rikorrent stante illi huma kummenti illi l-intimat, bhala cittadin ta' Malta, illi huwa pajjiz bbazat fuq principji demokratici, kellu kull dritt illi jaghmel bhala parti mid-dritt tieghu illi jesprimi l-veduti w il-hsibijiet tieghu dwar affarjiet illi kienu jirrigwardaw entita' li ma tistax ma titqiesx bhala 'persuna politika', ossija il-GRTU u l-azzjonijiet tal-persuna illi, dak iz-zmien, kien qieghed imexxija, ossija r-rikorrent, li ghandu jitqies bhala persuna pubbliku u li ghalhekk huwa soggett ghall-livell ta' kritika oghla, jekk mhux harxa, u dana fl-interess suprem tal-verita' li l-pubbliku in generali, u l-qarrejja tal-Malta Today, fi-kaz in kwistjoni, kellhom kull dritt illi jigi lilhom espost.

## **Konkluzjoni**

Wara illi semghet il-provi kollha prodotti quddiemha u rat id-dokumentazzjoni kollha esebita,

Wara illi semghet it-trattazzjoni ta' l-abbli difensuri ta' l-intimat

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tilqa** l-eccezzjonijiet kollha ta' l-intimat,

**Tichad** it-talbiet attrici.

Spejjez tal-proceduri odjerni ikunu kollha a kariku tar-rikorrent.

**Magistrat Francesco Depasquale**

**Marisa Bugeja**  
Deputat Registratur