



QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum It-Tlieta, 4 ta' Ottubru, 2016

Numru 18

Rikors Guramentat Nru. 337/2014

**L-Avukat Dottor Joseph Camilleri,
bhala mandatarju specjali tal-kumpanija estera
Ideal Standard S.A. tal-Grecja**

vs

Josies Bathroom Centre Limited

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-21 ta' April 2014 li jghid hekk:

1. Illi l-kumpanija rikorrenti hija kumpanija Griega illi tipproduci u tbiegh il-kmamar tal-banju u accessorji relatati, waqt illi l-kumpanija intimata hija kumpanija lokali li timporta u tbiegh dawn il-prodotti f'Malta.
2. Illi l-intimata hija debitrici tar-rikorrenti fis-somma ta' sebgha u hamsin elf mitejn u dsatax-il ewro u wiehed u ghoxrin centezmu (€57,219.21), bilanc minn somma akbar prezz ta' merkanzija mibjugha u ikkonsenjata kif inghad [Dok IS1: prospett ta' ammonti dovuti; Dok. IS2: faxxikolu b'kopji ta' fatturi u dokumenti relatati].
3. Illi ghalkemm saru diskussjonijiet bejn il-partijiet sabiex jigu evitati dawn il-proceduri, dawn ma wasslu mkien u l-bilanc imsemmi baqa' dovut anke wara li l-intimata giet debitament interpellata b'ittra legali fid-9 ta' Lulju, 2012 (Dok. IS3) u ittra ufficjali f'Jannar 2013 (Dok. IS4).
4. Illi ghalhekk qieghda ssir din il-kawza.

Ghaldaqstant, il-kumpanija rikorrenti umilment titob li, prevja kwalsiasi dikjarazzjoni necessarja u opportuna, din l-Onorabbli Qorti jogghobha:

(i) Tiddikjara li l-intimata Josies Bathroom Centre Limited hija debitrice tal-kumpanija rikorrenti fis-somma ta' sebgha u hamsin elf mitejn u dsatax-il ewro u wiehed u ghoxrin centezmu (€57,219.21), bilanc minn somma akbar, prezz ta' merkanzija mibjugha u ikkonsenjata fuq ordni tal-istess intimata.

(ii) Tordna lill-intimata Josies Bathroom Centre Limited thallas lill-kumpanija rikorrenti l-imsemmija somma ta' sebgha u hamsin elf mitejn u dsatax-il ewro u wiehed u ghoxrin centezmu (€57,219.21).

Bl-ispejjez gudizzjarji inkluz tal-ittra ufficjali tat- ta' Jannar, 2013 u bl-imghaxijiet legali bl-oghla rata ghal debiti kummercjali skond il-Kap. 13 tal-Ligijiet ta' Malta, mid-data ta' kull fattura sal-pagament effettiv, kontra l-intimata minn issa ngunta ghas-subizzjoni.

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

1. Illi d-domandi attrici huma nfondati fil-fatt u fid-dritt stante illi l-ammont reklam mill-attur nomine mhumieq dovuti kif jirrizulta mill-pagamenti maghmula mill-istess socjeta intimata, li kopji taghhom qeghdin jigu hawn annessi u mmarkati bhala Dokumenti JB1 sa JB6 u ghalhekk it-talba attrici ma tistax tigi sostnuta stante illi l-bilanc li talvolta jista' jkun dovut jammonta ghal €26,044.44 u dan skond statement of account hawn anness u mmarkat bhala Dok. JB8 u l-intimat ghandu jigi liberat mill-osservanza tal-gudizzju.

2. Illi bla pregudizzju ghal premiss, is-socjeta konvenuta soffriet danni minhabba li l-attur nomine nehha l-agenzija lis-socjeta konvenuta taht il-brand name "Dolomite" kellha ghal iktar minn hamsa u ghoxrin sena, b'mod kiesah u biered, minghajr ma giet moghtija n-notice xierqa kif stabbilit fil-ligi bi ksur tal-artikolu 78B tal-Kap. 13 tal-Ligijiet ta' Malta u l-Att IX tal-2003, konsegwenti ghad-Direttiva tal-Unjoni Ewropea 86/653/EEC ossia l-artikolu 17.3 tal-istess direttiva u ghalhekk l-intimat b'kontrotalba li qed tigi prezentata ma' din ir-risposta guramentata, qed jitlob li jigi indennizzat mhux biss ghat-tnehhija ta' din l-Agenzija, kif ukoll ghad-danni minnu sofferti konsistenti f'marketing maghmul minnu issa a vantagg ta' terzi, u ta' stock mejjet konsistenti f'oggetti li gew mhollija fil-pussess tieghu minkejja ftehim mar-Rapprezentant tas-socjeta attrici Antonis Mourikis - skond Dok. JB7 hawn anness u li ma jistghux jinbieghu minnu u dan bi ksur tal-artikolu 780(3) tal-Kap. 13 tal-Ligijiet ta' Malta u tad-direttiva fuq imsemmija.

3. Illi ghalhekk l-intimat ghandu mhux biss jigi indennizzat ghan-nuqqas ta' notice lilu moghti, imma wkoll ghandu jigi moghti d-danni illi huwa soffra sia ta' reklamar, kif ukoll li huwa ghad ghandu oggetti mixtrija minnu minghand is-socjeta attrici u li kellhorn jittiehdu mill-agent il-gdid.

4. Illi l-oggetti illi kellhom jittiehdu mill-Agent il-gdid bi ftehim mlhuq mal-attur nomine, jammontaw ghal €49,931.68 u dan skond statement hawn anness u mmarkat bhala Dok. JB9 biex b'hekk l-intimat mhuwiex debitur tal-attur nomine, imma huwa l-attur nomine li huwa debitur tal-intimat.

5. Illi apparti l-ftehim milhuq, huwa prattika fin-negozju illi meta agent jispicca mill-Agenzija tieghu, il-principal tramite l-agent il-gdid jiehu lura l-oggetti li l-intimat ikun ghad fadallu in magazzinagg, liema oggetti jigu mghoddija lill-Agent il-gdid biex b'hekk, l-intimat ma jibqax maqbud b'oggetti li ma jistax ibiegh u biex jigi mminimizzat id-dannu minnu soffert. Konsegwentement, gia la darba dan ma sarx, huwa ghandu jigi moghti l-kumpens dovut minhabba d-dannu soffert.

6. Salv eccezzjonijiet ulterjuri.

Rat il-kontrotalba tas socjeta konvenuta li tghid hekk:

1. Illi l-intimat rikonvenzjonant kien agent tal-attur rikonvenzjonat ghal circa hamsa u ghoxrin sena f'biegh ta' diversi kmamar tal-banju u accessorji relatati tad-ditta "Dolomite" li hija kienet timporta u tbiegh hawn Malta ghan-nom u fl-interess tas-socjeta attrici rikonvenzjonata.

2. Illi habta u sabta, fis-sena 2009, l-attur rikonvenzjonat gie mwaqqaf milli jkompli jirrapprezenta u jbiegh l-oggetti tad-ditta "Dolomite", liema agenzija l-intimat rikonvenzjonant kellu ghal dawn is-snin kollha.

3. Illi l-intimat rikonvenzjonant ma giex moghti n-notice rikjest mill-ligi a tenur tal-artikolu 78B tal-Kap. 13 tal-Ligijiet ta' Malta u ghalhekk ghandu jigi indennizzat a tenur tal-artikolu 78D tal-Kap. 13 tal-Ligijiet ta' Malta ghat-tnehhija ta' din l-Agenzija.

4. Illi barra minn hekk, gie miftiehem ma' Antonis Mourikis illi l-Agent il-gdid kellu jiehu l-oggetti illi l-intimat rikonvenzjonat kellu fl-imhazen tieghu, ammontanti ghal €49,931.68 - skond JB9 fil-process.

5. Illi in oltre hija prattika kummercjali illi meta l-agenzija tintilef jew tigi mehuda minn terzi, l-oggetti li ghad ikun ghad fadallu fil-magazzinagg tieghu agent, jigu mghoddija lli agent il-gdid bi ftehim milhuq bejn l-attur rikonvenzjonat u l-intimat rikonvenzjonant.

6. Illi konsegwentement ghandhorn jigu likwidati d-danni sofferti mill-intimat rikonvenzjonant konsistenti f'reklamar illi huwa kien ghamel a vantagg tas-socjeta attrici rikonvenzjonata, kif ukoll l-valur tal-oggetti li huwa ghad fadallu fil-magazzinagg tieghu u li ma jistghux jigu minnu mibjugha, issa, li l-agenzija giet mghoddija lil terzi, oltre kumpens ghall-okkupazzjoni tal-istess warehouse bl-oggetti tad-ditta attrici.

7. Illi ghalhekk, l-intimat rikonvenzjonant ghandu jigi kompensat u indennizzat mhux biss ghan-nuqqas ta' notice moghti skond il-ligi mis-socjeta attrici rikonvenzjonata imma wkoll ghandu jigi likwidat id-danni minnu sofferti, kif fuq spejgat u ghar-ragunijiet ohra li jigu murija u spjegati waqt it-trattazzjoni tal-kawza, minhabba l-azzjoni tas-socjeta attrici rikonvenzjonata.

Ghaldaqstant, jghid l-attur rikonvenzjonat ghaliex din il-Qorti ma ghandhiex prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premissi:

1. Tiddikjara u tiddeciedi illi l-attur rikonvenzjonat huwa responsabbli biex jindennizza u jhallas danni sofferti mill-intimat rikonvenzjonant, sia ghan-nuqqas ta' notice moghtija mis-socjeta attrici lis-socjeta intimata fit-tnehhija tal-agenzija ghal bejgh ta' kmamar tal-banju u accessorji relatati, kif ukoll ghar-reklarnar illi huwa ghamel ghas-socjeta attrici rikonvenzjonata, kif ukoll ghal oggetti li s-socjeta rikonvenzjonanta kellha u ghad ghandha fil-pussess taghha waqt li kienet agent tas-socjeta attrici rikonvenzjonata u li kellhom jittiehdu mill-agent il-gdid bi ftehim milhuq mas-socjeta attrici rikonvenzjonata, kif ukoll ghall-immagazzinar tal-istess oggetti u ghar-ragunijiet ohra li jigu murija waqt it-trattazzjoni tal-kawza.

2. Tillikwida l-indennizz u l-hsara sofferti mill-intimat rikonvenzjonant kif fuq spjegat jekk hemm bzonni bl-opera ta' periti nominandi.

3. Tikkundanna lill-attur rikonvenzjonat ihallas is-somma hekk likwidata ta' indennizz u hsara sofferti mill-intimat rikonvenzjonant, konsistenti mhux biss fin-nuqqas ta' notice moghti lill-intimat rikonvenzjonant, imma wkoll ghal hsara minnu sofferti fit-tnehhija tal-istess agenzija, meta huwa rrekjama ghan-nom tas-socjeta attrici rikonvenzjonata qabel it-tnehhija tal-istess agenzija, kif ukoll ghal oggetti li kellhom jittiehdu mill-attur rikonvenzjonat wara t-tnehhija tal-agenzija u li l-intimat rikonvenzjonant ghad fadallu fil-pussess tieghu u li ma jistghux jinbieghu minhabba t-tnehhija tal-istess agenzija, kif ukoll spejjez ghall-immagazzinar tal-istess.

4. Bl-ispejjez u bl-ingunzjoni tal-attur rikonvenzjonat ghas-subizzjoni

Rat ir-risposta guramentata ghall-kontrotalba tas-socjeta attrici li tghid hekk:

1. Illi qabel xejn it-talbiet attrici huma nfondati fil-fatt u fid-dritt ghaliex mhux minnu li bejn il-partijiet qatt kien hemm xi ftehim ta' agenzija jew relazzjoni ta' principal-agent skond il-ligi;

2. Illi minghajr pregudizzju ghas-suespost, anke jekk ghall-grazzja tal-argument Josies Bathroom Centre Limited wettqet xi attivitajiet ta' agent, dawn kienu sekondarji [fit-tifsira tal-artikolu 70(2)(c) tal-Kap. 13 u l-Iskeda relattiva]. Ghalhekk xorta ma japplikawx l-artikoli tal-Kodici tal-Kummerc citati mill-konvenuta rikonvenzjonanti;

3. Illi minghajr pregudizzju ghas-suespost, il-konvenuta rikonvenzjonanti fi kwalunkwe kaz iddekadiet mill-jedd li seta' kellha li titlob xi kumpens jew danni billi naqset li jaghti avviz lill-esponenti fi zmien sena mill-allegata terminazzjoni ai termini tal-artikolu 780(7) tal-Kodici Kummercjali:

4. Illi minghajr pregudizzju ghas-suespost, stante li qed jintalbu kumpens u danni, l-attrici rikonvenzjata Ideal Standard S.A. teccepixxi l-preskrizzjoni biennali ai termini tal-artikolu 2153 tal-Kodici Civili (Kap. 16), u f'kaz illi t-talba li titqies li hija ghal danni kuntrattwali dik kwinkwennali ai termini tal-artikolu 2156(f) tal-istess Kodici;

5. Illi, fil-mertu, u b'zieda ma' dak li gia ntqal, ebda kumpens jew danni ma huma dovuti stante illi:

[i] ma kien hemm ebda ftehim ta' agenzija u ghalhekk Josies Bathroom Centre Limited ma kellha ebda jedd ghal notice u/jew indennizz;
[ii] safejn qed jintalbu "danni f'reklamar" dawn mhumiex dovuti ghaliex ir-reklamar sar volontarjament mill-konvenuta rikonvenzjonanti u semmai fl-interess taghha wkoll;
[iii] safejn qed jintalbu danni ghal dak li qed jissejjah "stokk mejjet", jinghad illi dan l-istokk kien inxtara minn Josies Bathroom Limited li ghalhekk ghandha thallas ghalih.

6. Minghajr pregudizzju ghas-suespost, jehtieg li ssir prova tad-danni u/jew kumpens allegati;

7. Salv eccezzjonijiet ulterjuri.

Rat l-atti u n-noti ta' sottomissjonijiet;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Provi

Antonios Mourikis testified that he joined Ideal Standard as sales manager in 1995. Presently he is sales director responsible for the Middle East market, whereas before he was sales director for the Mediterranean, which included Malta. He used to visit customers at least six to seven times a year. As far as he is aware Ideal Standard S.A never had nor does it currently have any agency agreement, whether exclusive or not, with any company in Malta. However, it does have regular clients who import and sell its products in Malta. The principal client is Satariano who has been a long standing customer for about 50 to 60 years who sells primarily their flagship brand 'Ideal Standard' as well as one of their other brands, 'Armitage Shanks'. On a lesser extent, they used to supply products to Josies Bathroom Ltd. They were not their main customer and their orders were not substantial. They used to buy from them the product 'Ceramica Dolomite'. This was just one of several brands which they sold. Josies had other ranges of products of companies and brands which were in competition with them, such as Roca-Gala and Nobilia Bathrooms.

On his visits to Malta he used to meet John Aquilina. Josies tended to pay their invoices late. The real problems started in 2008 when Satariano asked them if they could place an order for Ceramica Dolomite. He informed Aquilina of their intention to supply Satariano with some Dolomite products but he did not like this fact even

though they were not going to stop selling to Josies, Dolomite products. After that Josies stopped buying from them and also stopped paying the balances which were due on their accounts. He tried to solve the situation but when pressed to settle their dues Josies suggested that we buy back the Ceramica Dolomite products which they had in their stores or that we insist with Satariano to do this. Although they considered this suggestion, it did not make business sense as several of their products belonged to lines which were discontinued. They informed Josies about this. They have been now selling Dolomite products to Satariano since 2008 but the sales are not substantial.

Under cross examination witness answered that they had an exclusivity agreement with Satariano and even when Satariano asked for products of Ceramica Dolomite there was no intention on their part to give them exclusivity on that product. Josies could ask to buy that product from them, but as circumstances were, Josies had overdue amount which kept showing in their books. They never said that they were going to stop supplying Josies. It was a question of payment. As long as they settled the payments they were ready to supply them. They would not stop supplying immediately. Josies were paying monthly but they had an overdue amount all the time which was open. Most of the stock which they had was obsolete.

Re-examined, witness answered that Ideal Standard has several brands. Josies did not continue selling Dolomite came because they had informed them that Satariano wanted to sell Dolomite also. Aquilina did not accept that both of them sell Dolomite. Then he came with the suggestion to get rid of what stock they had and not to continue importing Dolomite. They did not know what stocks Josies had. Dolomite is a small brand and is not a complete bathroom. Josies were buying 3 or 4 models which they were selling and kept the rest in their stores.

Georgios-Emmanouil Theodosiou testified that in 2004 he was appointed managing director for Greece and the Mediterranean including Malta. Ideal Standard is the flagship brand but it also produces and markets a number of different brands including Ceramica Dolomite. In the Maltese market Ideal Standard SA never had nor does it currently have any agency agreement, whether exclusive or not. Its main

client in Malta was and still is Satariano who has been their main client since the late 1960's. They started dealing with Josies Bathrooms when Ceramica Dolomite was included in Ideal Standard's portfolio of brands, that is, in the late 1990s. Their relationship with Josies was good although possibly not as much as they wished. In fact they did not buy large quantities and tended to be late in their payments, much later than the credit limit given to them. But they were quite happy to keep this customer.

The problem with Josies started in 2008. At that time, Satariano asked if they could place an order for Ceramica Dolomite products. Mr. Mourikis informed Mr. J. Aquilina (of Josies), about their intention even though our company had no exclusivity agreement with Josies. and Mr. Aquilina became offended at this. They did not want Ideal Standard selling Ceramica Dolomite products to Satariano who was their competitor. It was never their intention to stop selling products to Josies and they informed them as much. Josies stopped placing orders and also stopped paying, leaving the balance which is being claimed in this case. We chased Josies for payment. they suggested that Ideal Standard or Satariano buy back the Ceramica Dolomite products still in their possession. However, this was not feasible because as the type of products they bought were fast selling items and some lines had been discontinued and they were not sellable. Ideal Standard sold some Dolomite products to Satariano but on a minor scale, due to Dolomite being a weaker brand than Ideal Standard.

As to the balances due there is the statement Dok. IS1 and attached invoices. All payments received from Josies are accounted for and included in the calculations.

Under cross-examination witness replied that Satariano is the sole importer of Ideal Standards bathrooms and as such he has exclusivity and there is this verbal agreement not to sell Ideal Standard products to anybody else. They let Satariano import Dolomite products as Joseis were not selling much of this product in Malta. They were not going to give exclusivity to Satariano on Dolomite as Satariano knew that Josies were importing Dolomite and that Josies would continue to import, if they

so wished. Ideal Standard has no agreement with importers that in case of non sale of any item they can be returned.

He had discussed with their accountants the payment slips exhibited by Josies Dok. JB1-JB6. They had received those amounts, as Josies were making payments, but there is still an outstanding amount of €56,000 which still appears in their books which are audited and the auditors want to know what has happened to that amount. Statements were issued to Josies many times but they never received anything in writing from Josies.

John Aquilina, direttur tal-kumpanija intimata, xehed li ghal diversi snin kienu jimpurtaw prodott tad-ditta Ceramica Dolomite minghand Ideal Standard u kienu rapprezentanti ta'dina d-ditta ghal 25 sena u qatt ma kellhom problemi. FI-2008 kien gie infurmat li Ideal Standard ma kienux ser jibqghu jibghatulu xoghol ta' Dolomite ghax Satariano kien ser jiftah showroom bil-prodotti taghhom biss u ghalhekk ippreferew lilu u kienu ser jaghmluh ir-rapprezentat uniku taghhom. Hu ma kienx kuntent ghax kien ilu 25 sena jixtri u jirreklama l-prodott taghhom u spicca b'stock ta' €49,931 fl-istores tieghu. Kien tkellem ma' Antonis Mourkis u qablu li hu ma kienx ser jibqa rapprezentant tad-ditta Dolomite u li r-rapprezentat il-gdid kellu jiehu l-istock kollu li kellu. Dan kien ftehim verbali li sar bejniethom. Hu mbaghad qatt ma rega' sema minghand Ideal Standard hlief meta ircieva ittra bl-avukat fl-Lulju 2012 biex ihallas. Hu kien jaghmel diversi reklami ghad-ditta Dolomite fuq il-magazines, gazzetti u TV. Kienet ittiedditlu r-rapprezentanza tad-ditta minghajr ebda htija tieghu. Ghalkemm ma kienx hemm agency agreement per se, huwa kien l-uniku rapprezentant tad-ditta Dolomite f'Malta minn qabel ma din id-ditta giet akkwistata minn Ideal Standard.

Is-somma li qed titlob is-socjeta attrici hija inqas minn dik dovuta. Mis-somma ta' €57,219 hu diga hallas €31,175 u ghalhekk l-ammont dovut huwa ta' €26,044 (ara Dok JB1 sa JB6). Inoltre jekk kien ser jittiehed l-istock mir-rapprezentant il-gdid kull pagamenti rimanenti kien ser jigi pacut u s-socjeta attrici tigi li ghandha taghtih. Imma billi l-ftehim bejn is-socjeta attrici u Satariano sfaxxa issa qed iduru fuqu ghall-hlas.

Fuq kontroezami wiegeb li ma kienx hemm ftehim bil-miktub ma' Ideal Standard, dejjem imxew bil-punt tal-irguliya. L-arrangement kien li huma ihallsu b'credit invoices imbaghad ibieghu lill-konsumatur Malti. Kienu jixtru u Ideal Standard tibghat l-invoices. Cahad li Mourakis kien qallu li ha jaghtu il-prodott Dolomite lil haddiehor ukoll, imma hu qallu li d-ditta kien se jehodha haddiehor ghax ser jiftah showroom dedikata ghal prodotti taghhom biss. Dina s-showroom pero qatt ma nfethet. Josies qatt ma hadet passi kontra s-socjeta attrici qabel din a l-kawza ghal xi flus.

Patrick Spiteri, store manager mas-socjeta intimata, xehed li s-Sur Aquilina fil-2009/2010 kien qallu li kienu ser jieqfu jimpurtaw Ceramica Dolomite, u kien qallu biex jaghmel stock take. Id-Dok. JB9 a fol. 65 huwa l-istock kollu li kellhom tal-items tad-Dolomite fl-istores. Dak l-istock qieghed fuq l-ixkaffa, hu spariggat u ma jistax jinbiegh. Hu stock mejjet fuq l-ixkaffa. Qal li s-Sur Aquilina kien qallu li Dolomite kienu ser jiehdu l-istock.

Charmaine Zahra Delia, accounts clerk mas-socjeta intimata, xehdet li ghamlet verifiki fuq id-dokumenti IS1 prezentat mis-socjeta attrici. Mill-ezercizzju li ghamlet jonqos li jithallas biss l-ammont ta' 26,044.44 u mhux 57,219. Hi indikat l-invoice numbers, l-ammont dovut u l-ammont mitlub. Is-socjeta intimata hall set €41,543.60 kif jidher mid-dokumenti JBI sa JB6. John Aquilina kien qalilha li lanqas l-ammont ta' €26,044.44 ma kellu jithallas billi d-ditta Dolomite kienet ser tibda tigi impurtata minn Satariano. (Il-Qorti tirrileva li hafna mix-xhieda ta' dina x-xhud huwa detto del detto u assunzjonijiet gratwiti u li hija ma kinitx involuta fi diskuzzjonijiet direttament). Tghid li fis-snin 2006 sa 2008 Josies kienet nefqet somon ta' flus f'reklamar u marketing li kien jinkludi l-prodott Dolomite Dok. CDZ1 sa CDZ.

In kontroezami wiegbet li huma jkollom l-istatement tal-bank li t-transfer ikun ghadda u Ideal Standard thallset. Ideal Standard kienu baghtu aktar invoices minn dawk li hija ghamlet referenza ghalihom fl-affidavit taghha. L-ircevuta tal-bank mhux dejjem tindika li l-ammont kollu fuq l-invoice ikun thallas (ara l-ewwel invoice a fol. 109). Kien ikun hemm diversi invoices pendenti. Meta Ideal Standard jibghatu l-istatement suppost ikun hemm ir-reconciliation.

Kontestazzjoni

Illi s-socjeta attrici talbet li s-socjeta intimata Josies Bathroom Centre Limited tigi kkundannata thallas is-somma tal €57,219.21 bilanc minn somma akbar, prezz ta' merkanzija mibjugha u ikkonsenjata fuq ordni tal-istess intimata.

Is-socjeta intimata wiegbet li l-bilanc mitlub mhux dovut. Tghid li stock li kellha suppost kellu jittiehed mill-agent il-gdid bi ftehim milhuq mal-attur nomine, u dawn jammontaw ghal €49,931.68 (Dok. JB9) biex b'hekk l-intimata mhijiex debitur tal-attur nomine, imma huwa l-attur nomine li huwa debitur tal-intimata. L-intimata ssostni li tnehhitilha l-agenzija li kellha fuq il-brand Dolomite minghajr notice u ghalhekk hija pprezentat kontrotalba fejn talbet: (i) li tigi indennizzata ghat-tnehhija ta' din l-agenzija, (ii) tad-danni sofferti konsistenti f'marketing, u (iii) hlas ta' stock mejjet konsistenti f'oggetti li gew mhollija fil-pussess taghha minkejja ftehim mar-rapprezentant tas-socjeta attrici.

Is-socjeta attrici kkontestat il-kontrotalba tas-socjeta intimata bhala infondata fil-fatt u fid-dritt u eccepjet il-preskrizzjoni taht l-artikoli 2153 u 2156(f) tal-Kap. 16.

Konsiderazzjonijiet ta' dina Qorti.

Illi stante li l-eccezzjonijiet tal-socjeta intimata jiformaw in sostanza t-talbiet li hemm fil-kontrotalba taghha, dina l-Qorti ser tikkunsidra l-mertu tal-eccezzjonijiet u tal-kontrotalba flimkien.

Agenzija

Illi s-socjeta intimata tikkontendi li s-socjeta attrici tterminat minghajr notice l-agenzija li hija kellha tal-brand name "Dolomite" u minhabba hekk soffriet danni. Is-socjeta attrici tishaq li mhux minnu li bejn il-partijiet qatt kien hemm xi ftehim ta' agenzija jew relazzjoni ta' principal-agent skond il-ligi u ghalhekk ebda danni ma huma dovuti.

Fuq hekk Antonios Mourikis xehed li: "As far as he is aware Ideal Standard S.A never had nor does it currently have any agency agreement, whether exclusive or not, with any company in Malta. [We] used to supply products to Josies Bathroom Ltd. They were not [our] main customer and their orders were not substantial" .

L-istess Georgios-Emmanouil Theodosiou ukoll ighid li: "In the Maltese market Ideal Standard SA never had nor does it currently have any agency agreement, whether exclusive or not. Its main client in Malta was and still is Satariano who has been their main client since the late 1960's".

Minn naha tieghu John Aqulina ghal Josies xehed li:

"Ghall-diversi snin kienu jimpurtaw prodott tad-ditta Ceramica Dolomite minghand Ideal Standard u kienu rapprezentanti ta' dina d-ditta ghal 25 sena u qatt ma kellhom problemi.

Ghalkemm ma kienx hemm agency agreement per se, huwa kien l-uniku rapprezentant tad-ditta Dolomite f'Malta minn qabel ma din id-ditta giet akkwistata minn Ideal Standard.

Meta xehed in kontroezami huwa wiegeb li ma kienx hemm ftehim bil-miktub ma' Ideal Standard, u dejjem imxejw bil-punt tal-irguliya".

Illi fil-fehma tal-Qorti mill-provi prodotti ma jirizultax li s-socjeta intimata ppruvat li hija kellha l-agenzija tad-ditta Dolomite, imma hija kienet semplicement timporta dina l-brand fost diversi brands ohra li kellha s-socjeta attrici.

Illi f'dan il-kaz kollox jindika li l-arrangement bejn il-partijiet ma kienx wiehed ta' agenzija fis-sens li jrid il-Kodici Kummercjali fl-artikoli 70 sa 78. Il-fatt hu li s-socjeta intimata kienet impurtatrici tal-prodotti Ceramica Dolomite u anke jekk kienet 'impurtatrici esklussiva' ma kien hemm xejn li minnu wiehed seta' jiddezumi li s-socjeta attrici kienet ikkonferiet fuqha l-agenzja. Hija la kienet registrata bhala agent u lanqas kienet tircievi commission minghand is-socjeta attrici. Hi kienet semplicement impurtatrici li tbiegh il-prodott Ceramica Dolomite, fost ohrajn, bi profit ghaliha.

Il-kontendenti jaghtu zewg versjonijiet differenti dwar kif gie terminata r-relazzjoni kummercjali li kien hemm bejnithom.

Antonios Mourikis iddeskriva dak li gara hekk:

The real problems started in 2008 when Satariano asked them if they could place an order for Ceramica Dolomite. He informed Aquilina of their intention to supply Satariano with some Dolomite products but he did not like this fact even though they were not going to stop selling to Josies Dolomite products. After that Josies stopped buying from them and also stopped paying the balances which were due on their accounts.

Fl-istess sens xehed Georgios-Emmanouil Theodosiou.

John Aquilina jaghti versjoni differenti dwar kif graw il-fatti fir-rigward. Hu jghid:

Fil-2008 kien gie infurmat li Ideal Standard ma kienux ser jibqghu jibghatulu xoghol ta' Dolomite ghax Satariano kien ser jiftah showroom bil-prodotti taghhom biss u ghalhekk ippreferew lilu u kienu ser jaghmluh ir-rapprezentat uniku taghhom. Hu ma kienx kuntent ghax kien ilu 25 sena jixtri u jirreklama l-prodott taghhom u spicca b'stock ta' €49,931 fl-istores tieghu.

Illi fil-fehma tal-Qorti l-versjoni tas-socjeta attrici ghandha aktar mis-sewwa. Illi hu minnu li s-socjeta intimata kienet timporta l-prodott Ceramica Dolomite, imma kien meta s-socjeta attrici talbet lis-socjeta intimata biex Satariano ikun jista' jaghmel ordnijiet ukoll ghac-Ceramica Dolomite li s-socjeta' intimata hassitha offiza ghax kien ser jidhol kompetitur. Ghalkemm is-socjeta intimata ma kellha ebda exclusivity agreement mas-socjeta attrici din hasset li kellha tinforma lis-socjeta intimata bit-talba ta' Satariano, izda s-socjeta intimata hasset li ma kienx hemm post fis-suq ghal zewg importaturi tal-istess prodott u ghazlet li ma tkompliex timporta. Il-Qorti ma thossx li s-socjeta attrici qabdet u, habta u sabta, itterminat ir-relazzjoni li kien hemm bejniethom biex takkomoda lil Satariano. Lanqas il-Qorti ma temmen li s-socjeta attrici ma kinitx ser thalli lis-socjeta intimata tkompli timporta, jew li hi tbiegh, dak il-prodott jew tghinha biex tnehhi l-istock li fadlilha.

Stock

Dwar l-istock, il-Qorti hija wkoll tal-fehma lis-socjeta intimata ma rnexxiliex tipprova li kien intlaħaq ftehim mas-socjeta attrici li hi, jew l-agent il-gdid taghha, kellu jixtri lura l-istock li kellha s-socjeta intimata skond 'l-uzanza tal-industrija'.

John Aquilina xehed li: "Kien tkellem ma' Antonis Mourikis u qablu li r-rapprezentat il-gdid kellu jiehu l-istock kollu li kellu. Dan, skond hu, kien ftehim verbali li ntlahaq bejniethom. Hu mbaghad qatt ma rega' sema minghand Ideal Standards hliet meta ircieva ittra bl-avukat fl-Lulju 2012 biex ihallas".

Antonios Mourikis (u anke Georgios-Emmanouil Theodosiou) jghidu li

[Josies] suggested that we or Satariano buy back the Ceramica Dolomite products still in their possession. However, this was not feasible because as the type of products they bought were fast selling items and some lines had been discontinued and they were obsolete and not sellable.

Illi minn dawn il-provi ma jirrizultax li hemm xi prova li s-socjeta attrici accettat li tiehu lura l-istock skont ma qed issostni s-socjeta intimata. Wara kollox dan kien stock mejjet fuq l-ixkaffa. Lanqas ma gie b'xi mod pruvat li Satariano kien accetta li huwa jixtri l-istock. Is-socjeta intimata tghid li dan kien biss ftehim verbali, izda s-socjeta attrici tichad li hija qatt accettat li tiehu lura l-istock, imma kienet biss ikkunsidrat il-proposta li kien ghamel John Aquilina. Huwa daqsxejn stramb kif l-intimata tghid li kien hemm dak il-ftehim verbali u fl-istess hin la s-socjeta attrici u lanqas l-agent taghha qatt ma ressqu biex rtiraw dana l-istock jew li l-intimata f'xi mument ikkuntattjat jew insistiet mas-socjeta attrici biex tirtira l-istock. Mill-2008 sal-2012 is-socjeta intimata halliet kollox kif kien u lanqas ma hallset l-ammonti li kienu dovuti lis-socjeta attrici u l-istock baqa' dejjem ghandha.

Jigi rilevat ukoll li mill-provi prodotti jirrizulta li s-socjeta intimata kienet timporta u tixtri dana l-prodott permezz ta' credit u kienu jinhargu l-invoices li hija kienet thallas. Hi kienet tixtri dan il-prodott u ma kien hemm ebda ftehim li s-socjeta attrici kellha tiehu bhala return dak li ma jinbieghx. Is-socjeta intimata lanqas ma ppruvat l-ezistenza tal-prassi fl-industrija li hija semmiet. Ghalhekk safejn qed jintalbu danni ghal dak li s-socjeta intimata ssejjah "stokk mejjet" il-Qorti tiddeciedi li ghalkemm kien hemm diskussjonijet dwar dan l-istokk, ma giex pruvat li kien intlahaq xi ftehim li jorbot lil partijiet.

Reklamar

Is-socjeta intimata ssostni wkoll li ghandha tithallas tad-danni sofferti minnha ghal reklamar illi hija kienet ghamlet a vantagg tas-socjeta attrici. Illi fil-fehma tal-Qorti

dawn id-danni f'reklamar mhumiex dovuti ghaliex ir-reklamar sar volontarjament mis-socjeta intimata u dana fl-interess taghha. Hi qatt ma kellha l-awtorizzazzjoni tas-socjeta attrici biex taghmel dan ir-reklamar u anke kieku stess, is-socjeta intimata ma gabet ebda prova dwar l-ispejjez li allegatament hija sburzat. Lanqas ma gabet prova dwar xi danni ohra li hija tghid li sofriet jew il-qwantum tagghom.

Preskrizzjoni

Fir-risposta ghall-kontrotalba tas-socjeta intimata, is-socjeta attrici eccepjet il-preskrizzjoni biennali ai termini tal-artikolu 2153 tal-Kodici Civili (Kap. 16), u f'kaz illi t-talba titqies li hija ghal danni kuntrattwali dik kwinkwennali ai termini tal-artikolu 2156(f) tal-istess Kodici. Fin-nota ta' sottomissjonijiet taghha s-socjeta attrici ziedet id-dekadenza tat-talba ghall-indenniz jew kumpens fi zmien sena a tenur tal-artikolu 78D tal-Kap. 13.

Illi stante li l-Qorti ddecidiet li ebda danni jew kumpens ma hu dovut lis-socjeta intimata ghar-ragunijiet fuq esposti, proprjament ma hemmx lok li tigi deciza dina l-eccezzjoni, izda ghall kull buon fini l-Qorti qed tiddeciedi li anke kieku ghal grazzja tal-argument kellu jirrizulta li xi kumpens jew danni kienu dovuti lis-socjeta intimata, effettivament it-terminu biex issir it-talba ghal dawn id-danni jew kumpens ghadha billi s-socjeta intimata qatt ma interpellat ufficjalment lis-socjeta attrici mit-2008 biex tithallas ghal dak li allegat li hu dovut lilha. Hi qatt ma interpellat lis-socjeta attrici la wara l-ittra legali mibghuta mis-socjeta attrici fid-9 ta' Lulju 2012 jew wara l-ittra ufficjali tat-8 ta' Jannar 2013. Kien biss fl-2014 meta resqet il-kontrotalba taghha li resqet dina l-pretensjoni. Ghalhekk kemm jekk japplika t-terminu ta' sena taht l-artikolu 78D tal-Kap. 13, kemm jekk japplika l-artikoli 2153 u 2156 tal-Kap. 16, it-terminu illum ghadha.

Somma dovuta

Illi s-socjeta attrici qed titiob is-somma ta' €57,219.21 bilanc dovut mis-socjeta intimata. Hi pprezentat Dok. IS1 a fol. 5 fejn hemm prospett ta' ammonti dovuti u d-Dok. IS2 a fol. 6 li huwa faxxikolu b'kopji ta' fatturi u dokumenti relatati.

Is-socjeta intimata wiegbet li l-ammonti mitluba mhumieq dovuti kif ghandu jirrizulta mid-dokumenti JB1 sa JB6 ezibiti u l-bilanc li talvolta jista jkun dovut jammonta ghal €26,044.44 u dana skond Dok. JB8 a fol. 64.

Illi skond il-dokumenti ezibiti minn Josies (ara a fol. 63/4), hemm indikati l-ammonti li hija taccetta li ghadhom dovuti lis-socjeta attrici.

Illi tqabbil bejn id-dokumenti (Dok. IS1 u JB8) jirrizulta li hemm qbil bejn il-partijiet li s-segwenti ammonti ghadhom ma thallsux u ghalhekk ghadhom dovuti lis-socjeta attrici:

€3,141.20; €544.80; €118.72; €1,510.40; €16,378.60; €2,543.60.

Is-socjeta intimata tghid ukoll li fug invoice 4917 hija hallset €13,244.40 u ghalhekk ghad ghandha taghti €10,000 fuq dik l-invoice (ara fol. 64).

Is-socjeta intimata tissottometti li l-invoices l-ohra huma mhallsin.

L-invoice 4867 fl-ammont ta ' €547.28 thallset fil- 29/05/2008 (ara fol. 63).

L-invoice 5821 fl-ammont ta' €21.5 thallset fit-08/04/2009 (ara fol. 64).

L-invoice 5989 fl-ammont ta' €9,430.50 thallset fl-20/03/2009 08/04/2009 (fol. 64).

Ghalhekk minn dawn l-invoices is-socjeta intimata tghid li jonqosha thallas €10,000 biss fuq invoice 4917 mentri t-tlett invoices l-ohra huma imhallsa.

Illi minn ezami tad-dokumenti ezibiti mis-socjeta attrici, partikolarment id-dokument a fol. 161 jirrizulta li kienu jinhargu invoices u jsiru pagamenti, imma ma giex indikat liema ammonti kienu qed jinqatghu meta jsir pagament imma dawn jigu akkreditati u jintnaqqsu mill-bilanc li jkun ghadu dovut.

Issa s-socjeta attrici mal-att promutur indikat a fol. 5 fid-Dok. IS1 l-ammonti li ghadhom dovuti. Issa mid-dokument a fol. 161 jidher li per ezempju fis-07/03/2008

kien hemm invoice ta' €23,244.60 u li fil-16/04/2008 hemm incoming payment ta' €14,163.65 li jidher li jinkludi l-ammont ta' €13,244.60 li s-socjeta intimata tghid li hallset.

L-ammont ta' €547.28 la jidher fuq id-dokumenti tas-socjeta attrici u lanqas fuq dak tas-socjeta intimata, ghalkemm a fol. 63 hi tghid dan thallas fit-08/04/2009.

Wara l-invoice 5989 fl-ammont ta' €9,430.50 datata 27/10/2008 hemm incoming payment ta' €15,520.33 datat 03/11/2008 u dan suppost kellu jikopri l-ammont ta' €9,430.50 li s-socjeta intimata tghid li hallset.

Illi s-socjeta intimata targumenta li l-ammonti partikolari li s-socjeta attrici tghid li ghadhom pendenti fid-Dok. IS1, kienu inkluzi fil-pagamenti li ghadha kemm saret referenza ghalihom. Illi huwa minnu li s-socjeta attrici tghid li hemm bilanc akbar, izda hija fl-att promotur irreferiet biss ghal dawk l-invoices partikolari, u l-Qorti hija tal-fehma, li s-socjeta intimata gabet prova sufficjenti li dawk l-ammonti li hija tghid li hallset, fil-fatt kienu thallsu, barra dawk li hija tammetti li ghandhom ma thallsux.

Decide

Ghal dawn il-motivi l-Qorti tiddeciedi billi tilqa' t-talbiet tas-socjeta attrici limitatament ghas-somma ta' €34,237.32, u tikkundanna lis-socjeta intimata Josies Bathroom Centre Limited thallas lis-socjeta attrici s-somma ta' erbgħa u tletin elf, mitejn u sebgha u tletin ewro u tnejn u tletin centezmu (€34,237.32).

Bl-ispejjez gudizzjarji kwantu ghal zewg terz ghas-socjeta intimata, u terz ghas-socjeta attrici, u bl-imghaxijiet kummercjali mid-data tal kull fattura sal-pagament effettiv, kontra s-socjeta intimata.

Tichad il-kontrotalba tas-socjeta intimata bl-ispejjez kollha kontra tagħha.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur