



MALTA

**QORTI CIVILI
PRIM'AWLA**

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Illum l-20 t'Ottubru, 2016.

Rikors Numru 930/2012 SM

**J.F. Security & Consultancy
Services Limited
(C – 13768)**

vs.

**C & F Building Contractors Limited
(C – 15308)**

**u skont id-digriet datat is-27 ta' Novembru,
2012, giet kjamata fil-kawza s-socjeta`
*The General Soft Drinks Company Limited***

Il-Qorti,

- 1.0. Rat ir-rikors gumentat promotur datat is-17 ta' Settembru, 2012, li permezz tieghu r-rapprezentant tas-socjeta` rikorrenti sintetikament espona s-segwenti:
 - 1.1. Illi s-socjeta` rikorrenti pprestat servizzi ta' sigurta` lis-socjeta` intimata C & F Building Contractors Limited;
 - 1.2. Illi l-istess socjeta` intimata ghandha ghalhekk thallas lis-socjeta` rikorrenti l-ammont t'erbatax- il elf, tlett mija sitta u erbghin euro u sitta u tmenin centezmu, (€14,346.86), ghall-istess servizzi minnha lilha rezi;
 - 1.3. Illi *nonostante* li interpellata biex thallas l-ammont *de quo*, is-socjeta` intimata baqghet inadempjenti;
 - 1.4. Illi ghaldaqstant, is-socjeta` rikorrenti kienet kostretta tintavola l-procedura odjerna;
 - 1.5. Illi fil-fehma tal-istess socjeta` rikorrenti, s-socjeta` intimata m'ghandha l-ebda eccezzjonijiet ghat-talbiet taghha u ghalhekk, titlob li l-kawza tigi deciza bid-dispensa tas-smiegh;
 - 1.6. Illi konsegwentement titlob lil din il-qorti:
 - 1.6.1. Tiddeciedi din il-kawza bid-dispensa tas-smiegh *ai termini* tal-artiklu 167 tal-Kap 12 tal-Ligijiet ta' Malta;
 - 1.6.2. Tiddikjara li s-socjeta` rikorrenti pprestat servizzi ta' sigurta` u servizzi relatati lis-socjeta` intimata fuq inkarigu taghha stess;
 - 1.6.3. Tiddikjara wkoll li ghal dawn is-servizzi s-socjeta` intimata ghandha thallas lis-socjeta` rikorrenti s-somma t'erbatax- il elf, tlett mija sitta u erbghin euro u sitta u tmenin centezmu, (€14,346.86);
 - 1.6.4. Bl-ispejjez u bl-imghaxijiet bir-rata ta' tmienja fil-mija, (8%), fis-sena, kontra s-socjeta` intimata;

2. Rat id-digriet taghha datat id-9 t'Ottubru, 2012, li permezz tieghu, wara li semghet lill-partijiet fir-rigward tal-ewwel talba tas-socjeta` rikorrenti, kkoncediet il-perjodu hemm indikat lis-socjeta` intimata biex tipprezenta r-risposta guramentata taghha;
- 3.0. Rat ir-risposta guramentata tas-socjeta` intimata C & F Building Contractors Limited datata t-18 t'Otturu, 2012, li permezz taghha d-direttur manigerjali tal-istess sintetikament irrisponda bil-mod segwenti:
 - 3.1. Illi preliminarjament m'ghandha l-ebda relazzjoni guridika mas-socjeta` rikorrenti *stante* li l-ftehim riferit fir-rikors guramentat promotur ma sarx maghha izda mas-socjeta` *General Soft Drinks Limited*;
 - 3.2. Illi ghalhekk is-socjeta` intimata ghandha tigi liberata mill-osservanza tal-gudizzju;
 - 3.3. Illi preliminarjament ukoll il-procedura bid-dispensa tas-smigh mitluba mis-socjeta` rikorrenti hi abbużiva *stante* li kienet infurmata li s-socjeta` intimata qatt ma kienet dahhlet fi ftehim maghha;
 - 3.4. Illi ghalhekk l-ebda ammont mhux dovut mis-socjeta` intimata *de quo* lis-socjeta` rikorrenti;
 - 3.5. Illi fid-dawl tal-istess it-talbiet tas-socjeta` rikorrenti ghandhom jigu respinti;
 - 3.6. Salv risposti ulterjuri;
4. Rat id-digriet taghha datat is-27 ta' Novembru, 2012, li permezz tieghu, wara li rat ir-rikors tas-socjeta` rikorrenti datat is-26 ta' Novembru, 2012, (ara foll 15), u semghet in-nuqqas t'opposizzjoni tar-rapprezentant legali tas-socjeta` intimata fir-rigward, (ara foll 16), ordnat il-kjamata in kawza tas-socjeta` *General Soft Drinks Company Limited*, (ara foll 16);
- 5.0. Rat ir-risposta tas-socjeta` kjamata in kawza fuq indikata datata l-20 ta' Dicembru, 2012, li permezz tieghu sintetikament esponiet is-segwenti:

- 5.1. Illi mhiex il-legittimu kontradittur *stante* li l-ammonti minnha dovuti lis-socjeta` rikorrenti kienu ilhom li kienu gew saldati;
- 5.2. Illi l-ammont dovut hu dovut mis-socjeta` *C & F Building Contractors Limited* li kienet obligat ruhha li thallas nofs l-ispejjez tas-sigurta` fuq il-lant tax-xoghol li kienet qed twettaq favur is-socjeta` kjamata in kawza;
- 5.3. Salv risposti ulterjuri;
6. Rat id-digriet taghha datat l-24 ta' Novembru, 2015, li permezz tieghu, wara talba appozita tal-abbli rapprezentanti legali tal-partijiet, awtorizzat lill-istess biex jittrattaw il-kaz bil-modalita` u fit-termini hemm indikati, (ara foll 124);
7. Rat in-nota ta' sottomissjonijiet tas-socjeta` rikorrenti datata t-3 ta' Frar, 2016, (ara foll 125), flimkien ma' dik tas-socjeta` intimata datata t-8 t'April, 2016, (ara foll 130), u dik tas-socjeta` kjamata in kawza datata wkoll it-8 t'April, 2016, (ara foll 137);
8. Semghet ix-xhieda prodotta;
9. Ezaminat id-dokumenti kollha esebiti, inkluzi d-dikjarazzjonijiet guramentati prodotti;
10. Semghet lill-abbli rapprezentant legali tal-partijiet jittrattaw il-kaz b'mod finali;

Ikkunsidrat:

- 11.0. Illi l-kawza odjerna sintetikament tikkonsisti fis-segwenti:
 - 11.1. Illi s-socjeta` rikorrenti qed titlob l-ammont minnha indikat fir-rikors guramentat promotur, (ara paragrafu numru wiehed punt sitta punt tlieta, (1.6.3.), aktar qabel), mis-socjeta` intimata, u dan, ghal servizzi ta' sigurta` minnha lilha pprestat;
 - 11.2. Illi min-naha taghha s-socjeta` intimata wiegbet sintetikament bil-mod segwenti:

- 11.2.1. Illi m'ghandha l-ebda relazzjoni guridika mas-socjeta` rikorrenti;
- 11.2.2. Illi r-relazzjoni li hi kellha kienet mas-socjeta` kjamata in kawza;
- 11.2.3. Illi ghalhekk m'ghandha taghti l-ebda ammont lis-socjeta` rikorrenti;
- 11.3. Illi s-socjeta` kjamata in kawza tissottolinea sintetikament is-segwenti:
 - 11.3.1. Illi mhiex il-legittimu kontradittur ghat-talbiet tas-socjeta` rikorrenti;
 - 11.3.2. Illi hi gia` saldat kwalunkwe ammont li kien minnha dovut lis-socjeta` rikorrenti ghas-servizzi lilha minnha rezi;
 - 11.3.3. Illi ghalhekk l-ammont rikjamat mis-socjeta` rikorrenti hu interament dovut mis-socjeta` intimata *C & F Contractors Limited stante* li kienet obligat ruhha li thallas nofs l-ispejjez tas-sigurta` fuq il-lant fejn kien qed isir ix-xoghol in dizamina;

Ikkunsidrat:

- 12.0. Illi wara ezami akkurat tax-xhieda, dikjarazzjonijiet guramentati u tad-dokumenti esebit, jigi sottolineat li z-zewg socjetajiet intimati:
 - 12.1. La jikkontestaw il-veradicità` tal-allegazzjoni tas-socjeta` rikorrenti li hi pprestat is-servizzi ta' sigurta` fuq il-lant tax-xoghol in dizamina;
 - 12.2. Lanqas jikkontestaw l-ammont mitlub ghall-istess servizz moghti mis-socjeta` rikorrenti;

Ikkunsidrat:

- 13.0. Illi mill-analisi tal-fatti esposti in atti jirrizulta sintetikament is-segwenti:
 - 13.1. Illi s-socjeta` intimata C & F Building Contractors Limited kienet giet inkarigata mis-socjeta` kjamata in kawza. The General Soft Drinks Limited biex tibni fabbrika gdida fil-Marsa ghal din is-socjeta`;
 - 13.2. Illi s-servizzi ta' sigurta` pprovduti mis-socjeta` rikorrenti kienu effettivament ipprovduti f'dan is-sit li s-socjeta` kjamata in kawza kienet qed tibni fil-Marsa;
 - 13.3. Illi allura, filwaqt li s-socjeta` intimata C & F Building Contractors Limited kienet impenjata fix-xoghol ta' kostruzzjoni tas-sit in dizamina, u filwaqt li s-socjeta` rikorrenti J.F. Security & Consultancy Services Limited kienet impenjata fuq xoghol ta' sigurta` fuq l-istess sit, jirrizulta li kien hemm ukoll is-socjeta` Titan International Limited involuta fl-istess kostruzzjoni, (ara foll 42, 47, 53, 61, 79, 80, 91, 106 u 120), liema socjeta` tiffirma "...parti minn grupp ta' The General Soft Drinks Company Limited", (ara foll 80);

Ikkunsidrat:

14. Illi s-socjeta` intimata C & F Building Contractors Limited issostni li kellha timpjega zewg (2) persuni bhala *security* fuq is-sit tal-kostruzzjoni in kwistjoni, u dan, skont il-kuntratt li hi kellha mas-socjeta` kjamata in kawza, (ara foll 91);
15. Illi s-socjeta` kjamata in kawza ssostni li dawn l-ufficjali tas-sigurta` kienu impjegati biex jiprotegu l-makkinarju, (ara foll 105);
16. Illi hekk kif beda javvanza x-xoghol fis-sit in dizamina u bdew jiddahhlu aktar makkinarju, ix-xoghol tas-servizz tas-sigurta` sar aktar intensiv, (ara foll 105);
17. Illi kif isostni l-*general manager* tas-socjeta` Titan International Limited – liema socjeta` tiffirma parti mill-grupp ta'

kumpaniji appartenenti lis-socjeta` kjamata in kawza, (ara foll 80):

“Il-klijent taghna, The General Soft Drinks Company Limited, kienet avvicinatna biex nesploraw il-possibilita` u naraw jekk setax ikun hemm sigurta` moghtija minn kumpanija wahda”;

18. Illi sussegwentement dan l-inkarigu inghata lis-socjeta` rikorrenti;
- 19.0. Illi jirrizulta li s-socjeta` kjamata in kawza fuq indikata tat struzzjonijiet lis-socjeta` rikorrenti biex l-ammonti minnha lilha dovuti ghas-servizzi pprestati jinqasmu fi tlett (3) fatturi, senjatament: (ara foll 44);
 - 19.1. 25% ikun fil-konfront tas-socjeta` The General Soft Drinks Limited;
 - 19.2. 25% ikun fil-konfront tas-socjeta` Titan International Limited; u
 - 19.3. 50% ikun fil-konfront tas-socjeta` C & F Building Contractors Limited;
20. Illi dawn l-istruzzjonijiet rigwardanti l-approzzjonament tal-ammonti dovuti mis-socjetajiet indikati fil-paragrafu precedenti hu wkoll ikkonfermat fid-deposizzjoni guramentata tad-direttur tas-socjeta` rikorrenti, (ara foll 87);
21. Illi konsegwenza tal-istess jirrizulta assodat mill-provi prodotti illi anke s-socjeta` Titan International Limited espremiet il-kunsens taghha mal-apporzjonament indikat mis-socjeta` kjamata in kawza, (ara paragrafu dsatax, (19.), aktar qabel, u foll 44), fejn b'hekk jirrizulta li l-pagamenti involuti ghas-servizzi moghtija mis-socjeta` rikorrenti kellhom jirriflettu l-involviment tat-tlett (3) socjetajiet imsemmija li kellhom jaghmlu tajjeb ghall-istess;

Ikkunsidrat:

22. Illi *nonostante* s-suespost, ghandu jigi immedjatament rilevat li ma jirrizulta li ma kien hemm l-ebda ftehim li ghalih s-socjeta`

intimata C & F Building Contractors Limited kienet partecipi fih biex il-pagamenti ghas-servizzi ta' sigurta` ezercitat mis-socjeta` rikorrenti fuq is-sit in dizamina kellhom jaghmlu tajjeb ghalih it-tlett (3) socjetajiet indikati fil-kwoti indikati aktar qabel;

23. Illi ghalhekk l-apporzjonament fuq indikat tirrizulta li kienet decizjoni unilaterali tas-socjeta` kjamata in kawza The General Soft Drinks Company Limited li maghha kien hemm traxxinata is-socjeta` intimata C & F Building Contractors Limited;

24. Illi f'dan ir-rigward issir referenza ghad-deposizzjoni tar-rapprezentant tas-socjeta` rikorrenti fejn qal:

“Nikkonferma illi l-kuntratt illi s-socjeta` li jien qed nirrapprezenta, senjatament dik rikorrenti J.F. Security & Consultancy Services Limited, ghamlitu direttament mal-General Soft Drinks Company Limited”;

Ikkunsidrat:

25. Illi tenut kont tas-suespost, ghandu jkun pacifika li l-ftehim in dizamina kien biss bejn is-socjeta` rikorrenti u dik kjamata in kawza;

26. Illi rizultat tal-istess, jirrizulta li s-socjeta` Titan International Limited aderiet ghall-istess u fil-fatt halset il-porzjon lilha assenjat, (ara foll 87), bhal ma *del resto* ghamlet ukoll l-istess socjeta` kjamata in kawza, (ara wkoll foll 87);

27. Illi *nonostante* l-ftehim hekk konkluz bejn it-tlett (3) socjetajiet in dizamina, jirrizulta li kienet biss is-socjeta` intimata C & F Building Contractors Limited li m'aderitx ghalih u naqset li thallas is-sehem lilha hekk apporzjonat lis-socjeta` rikorrenti ghas-servizzi minnha rezi, (ara foll 87);

28.0. Illi pero` ghandu wkoll jigi sottolineat is-segwenti:

28.1. Illi s-socjeta` rikorrenti ma kienitx tibghat fatturi lis-socjeta` C & F Building Contractors Limited;

- 28.2. Illi ma jirrizulta li kien hemm l-ebda ftehim fir-rigward bejn is-socjeta` rikorrenti u dik indikata fil-paragrafu precedenti;

Ikkunsidrat:

29. Illi r-risoluzzjoni tal-vertenza tippernja fuq l-artiklu 1001 tal-Kap 16 tal-Ligijiet ta' Malta li jstipula s-segwenti:

“Il-kuntratti ghandhom effett bejn il-partijiet li jikkuntrattaw biss, u ma jstghux ikunu ta' hsara jew ta' gid ghal haddiehor, hlief fil-kazijiet li tghid il-ligi”;

30. Illi f'dan ir-rigward fis-sentenza taghha datata l-**10 ta' Novembru, 2004**, fl-ismijiet **Doris Caruana vs. Lina Pisani**, il-**Prim' Awla tal-Qorti Civili** issosstni s-segwenti:

“Min dan kollu jitnissel illi l-obbligi u d-drittijiet naxxenti minn kuntratt, bhal ma' hu dak tal-vendita in diskussjoni, jintercedu bejn il-kontraenti biss. Dan hu logikament argumentat mill-kontenut tal-artiklu 992 (tal-Kodici Civili), li jipprovdi li l-kuntratt hu ligi ghal dawk li jaghmluh, u l-artiklu 1001 tal-Kodici Civili, li jsostni li l-kuntratt ghandu effett bejn il-partijiet li jikkuntrattaw biss. Ghalhekk l-effetti li jsemmi l-artiklu 1001 huma l-konsegwenzi guridici li jikkostitwixxu l-kontenut tal-atti”;

Ikkunsidrat:

31. Illi minn ezami tal-atti il-ftehim li jirrizulta hu wiehed naxxenti biss bejn is-socjeta` rikorrenti u dik kjamata in kawza;
32. Illi konsegwentement, in vista tad-duttrina riferita u tal-principju “*res inter alios acta*” fuq accennat, dan il-kuntratt bl-ebda mod ma jobbliga lis-socjeta` intimata C & F Building Contractors Limited *stante* li hi estranea ghall-istess;
33. Illi ghalhekk ghandu jkun pacifiku li s-socjeta` intimata C & F Building Contractors Limited mhix marbuta mill-istess ftehim fuq riferit;

34. Illi in vista tal-premess l-ftehim *de quo* ghandu effett biss bejn il-kontraenti involuti u konsegwentement, la jista` jkun ta' gid u lanqas ta' hsara ghas-socjeta` intimata C & F Building Contractors Limited;
35. Illi *di piu`*, ghandu wkoll ikun pacifiku li s-socjeta` kjamata in kawza The General Soft Drinks Company Limited, ma setghetx unilateralment tassenja obbligu fuq is-socjeta` intimata C & F Building Contractors Limited minghajr il-kunsens taghha kif ittentat li taghmel meta assenjat il-pagamenti dovuti lis-socjeta` rikorrenti fl-*email* taghha datata t-3 ta' Jannar, 2008, (ara foll 44);
36. Illi *stante* li s-socjeta` C & F Building Contractors Limited m'ghandha l-ebda obbligu kontrattwali favur is-socjeta` rikorrenti hi allura, s-socjeta` kjamata in kawza The General Soft Drinks Company Limited li hi unikament obligata taghmel tajjeb ghat-talbiet tas-socjeta` rikorrenti;

DECIDE:

- 37.0. Illi in vista tal-premess, din il-qorti taqta` u tiddeciedi l-vertenza in dizamina bil-mod segwenti:
 - 37.1. Tilqa` l-ewwel risposta preliminari tas-socjeta` intimata C & F Building Contractors Limited u konsegwentement tillibera lill-istess socjeta` intimata mill-osservanza tal-gudizzju;
 - 37.2. Tirrespingi l-ewwel risposta preliminari tas-socjeta` kjamata in kawza The General Soft Drinks Company Limited;
 - 37.3. Takkolji t-talbiet tas-socjeta` rikorrenti J.F. Security & Consultancy Services Limited fil-konfront tas-socjeta` kjamata in kawza indikata fil-paragrafu precedenti, u konsegwentement:
 - 37.3.1. Tiddikjara li s-socjeta` rikorrenti pprestat servizzi ta' sigurta` u servizzi relatati lis-socjeta` kjamata in kawza fuq inkarigu tal-istess socjeta` kjamata in kawza;

- 37.3.2. Tiddikjara li ghal dawn is-servizzi s-socjeta` kjamata in kawza ghandha thallas is-somma t'erbatax- il elf, tlett mija sitta u erbghin euro u sitta u tmenin centezmu, (€14,346.86), lis-socjeta` rikorrenti;
- 37.3.3. Bl-ispejjez u bl-imghaxijiet bir-rata ta' tmienja fil-mija, (8%), fis-sena, kontra s-socjeta` kjamata in kawza The General Soft Drinks Company Limited, u dan, mid-data tal-prezentata tar-rikors guramentat promotur in dizamina senjatament iz-17 ta' Settembru, 2012.

Onor. Imhalledf Silvio Meli

DECIZJONI FINALI