



QORTI CIVILI PRIM`AWLA

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum il-Hamis 15 ta` Dicembru 2016

Kawza Nru. 9
Rik. Gur. Nru. 541/14 JZM

Tucan Investments Limited [C33150]

kontra

**Mario (ID737254M) u Maria Camilleri
(566882M) ;**

Mariolot Limited C33086

Il-Qorti :

I. Preliminari

Rat ir-rikors guramentat prezentat fl-20 ta` Gunju 2014 li jaqra :-

1. *Illi matul is-sena 2004, l-intimati kienu ressu proposta lis-socjeta` rikorrenti sabiex l-istess socjeta` rikorrenti takkwista nofs is-sehem (equity) illi s-socjeta` rikorrenti kien ser ikollha fis-socjeta` The Players Group Limited, liema socjeta` kellha u ghad ghandha 24% investiment fl-ekwita` tal-kumpannija Maltco Lotteries Limited;*

2. *Illi l-patti maqbula sabiex is-socjeta` Tucan Investments takkwista nofs is-sehem (equity) fis-socjeta` intimata kien fis-sens illi:*

a) *Is-socjeta` rikorrenti tinvesti l-ammont ta` Liri Maltin mija u tlieta u ghoxrin elf (Lm123,000) f`kapital fil-kumpanija, u dan tramite l-allokkazzjoni ta` mija u tlieta u ghoxrin elf sehem ordinarju tal-valur nominali ta` Lira Maltija kull sehem;*

b) *Is-socjeta` rikorrenti tislef lill-intimati Mario u Maria konjugi Camilleri l-ammont ta` Liri Maltin mija u tlieta u ghoxrin elf (Lm123,000), intizi sabiex l-istess intimati Mario u Maria konjugi Camilleri jinvestu l-istess ammont f`kapital socjetarju fil-kumpanija intimata Mariolot Limited;*

c) *Is-socjeta` rikorrenti tipprowdi garanzija bankarja fl-ammont ta` Liri Maltin sebgha u tmenin elf disa` mija u tletin (Lm87,930), liema garanzija kienet intiza sabiex is-socjeta` intimata Mariolot Limited tuzaha sabiex hija tonora l-obbligi assunti minnha versu l-investment illi l-istess socjeta` intimata Jeanlot Limited kellha fis-socjeta` The Players Group Limited, liema socjeta` kellha investment fil-kumpanija Maltco Lotteries Limited;*

d) *David Curmi jkun appuntat fuq il-Bord tad-Diretturi tal-kumpanija intimata.*

3. *Illi s-socjeta` rikorrenti kienet dahlet fi ftehim, (kopja ta` liema hija hawn annessa u markata Dok. IJS1) mal-intimati ntiza sabiex l-istess socjeta` rikorrenti takkwista kapital azzjonarju fis-socjeta` intimata Mariolot Limited, kif ukoll sabiex hija tislef kapital lill-intimati Mario u Maria Camilleri sabiex dawn ikollhom il-kapital necessarju sabiex huma jzidu l-kapital taghhom fis-socjeta` Mariolot Limited, u kif ukoll sabiex is-socjeta` Mariolot Limited ikollha garanzija bankarja ntiza sabiex tigi uzata sabiex tiggarrantixxi l-obbligi taghha versu terzi, u senjatement is-socjeta` The Players Group Limited;*

4. *Illi l-intimati kienu assumew obbligu ta` fiducja b`dan il-ftehim li huma jittrattaw il-kumpanija daqslikieku l-kapital taghha kien jappartjeni nofs lir-rikorrenti u nofs lilhom;*

5. *Illi fuq din il-fiducja li r-rikorrenti rriponew fl-intimati u fuq l-assikurazzjonijiet anke bil-miktub tal-istess intimati r-rikorrenti ghamlu l-investment fuq imsemmi fis-socjeta` intimata, ghamlu s-self rikjest u avvanzaw il-garanziji kif pattwiti;*

6. *Illi in partikolari gie stipulat li rrispettivament minn meta jigu mahruqa l-ishma formalment is-socjeta` rikorrenti tippartecipa fil-qligh u jkollha sehem fit-tmexxija tas-socjeta` daqs li kiekuewa dawk l-ishma kienu gew mahruqa u registrati fis-socjeta`;*

7. *Illi minhabba ragunijiet attribwibbli unikament lill-intimati, u cioe` minhabba r-raguni illi huma ma ridux illi b`xi mod ixekklu r-rapporti u r-relazzjoni illi huma kienu ghandhom kemm bdew mal-azzjonisti l-ohra fis-socjeta` The Players Group Limited, kien intlahaq ftehim illi l-azzjonijiet versu s-socjeta` rikorrenti ma jigux mill-ewwel registrati f'isem ir-rikorrenti izda dan isir fi zmien futur u dan sabiex l-intimati jkollhom iz-zmien sabiex jinfurmaw lis-socji l-ohra fil-kumpannija The Players Group Limited illi huma kienu ntroducew terzi, u cioe` s-socjeta` rikorrenti, fil-kumpannija taghhom ; b`dana kollu gie stipulat li l-partijiet fir-relazzjonijiet taghhom mal-intimati kellhom igawdu d-drittijiet kollha daqs li kieku kienu socji paritarji;*

8. *Illi in segwitu ta` dan l-istess ftehim is-socjeta` rikorrenti ppovdjet lill-intimati:*

a) *L-ammont ta` mija u tlieta u ghoxrin elf Liri Maltin intizi sabiex ikopru s-sehem tas-socjeta` rikorrenti fil-kapital fil-kumpannija intimata, u dan tramite l-allokkazzjoni ta` mija u tlieta u ghoxrin elf sehem ordinarju tal-valur nominali ta` Lira Maltija kull sehem, liema allokkazzjoni pero` ma gietx registrata sakemm l-intimati javzaw is-socji l-ohra tal-kumpannija The Players Group Limited;*

b) *Self lill-intimati Mario u Maria Camilleri fl-ammont ta` Liri Maltin mija u tlieta u ghoxrin elf (Lm123,000), intizi sabiex l-istess Mario u Maria Camilleri jinvestu l-istess ammont f'kapital soċjetarju fil-kumpannija ntimata Mariolot Limited, liema allokkazzjoni saret immedjatament mal-iffirmar tal-ftehim, u giet debitament registrata mar-Registratur tal-Kumpanniji;*

c) *Garanzija bankarja fl-ammont ta` Liri Maltin sebgha u tmenin elf disa` mija u tletin (Lm87,930), liema garanzija ntuzat mis-socjeta` intimata Jeanlot Limited sabiex hija tonora l-obbligi assunti minnha versu l-investment illi l-istess socjeta` intimata Mariolot Limited kellha fis-socjeta` The Players Group Limited, liema kumpannija kellha nvestment fil-kumpannija Maltco Lotteries Limited;*

9. *Illi d-dokumentazzjoni sabiex tkun tista` tigi effettwata z-zieda fil-kapital tas-socjeta` intimata a favur tas-socjeta` rikorrenti, kif ukoll sabiex David Curmi jigi appuntat direttur fil-kumpannija intimata, giet ippreparata u ffirmata mill-intimati, u l-originali tal-istess dokumentazzjoni thallew ghand l-avukat Ian Stafrace sabiex dawn ikunu jistghu jigu registrati fi stadju ulterjuri;*

10. *Illi matul il-kors taz-zmien il-ftehim bejn ir-rikorrenti u l-intimati gie onorat mill-partijiet kollha, eccetto dak pattwit fil-hames parti tal-istess ftehim, u dan minkejja li f'bosta okkazjonijiet is-socjeta` rikorrenti talbet, verbalment, lill-intimati sabiex il-mija u tlieta u ghoxrin elf sehem ordinarju tal-*

valur nominali ta` Lira Maltija kull sehem jigu registrati fisem is-socjeta` rikorrenti;

11. *Illi matul laqgha li saret fis-sena 2010 bejn is-socjeta` rikorrenti u l-kumpannija intimata u l-intimat Mario Camilleri, fil-prezenza ta` numru ta` persuni ohra, u liema laqgha ssejhet sabiex matulha tigi diskussa n-nuqqas da parti tal-intimati li jirregistraw l-ishma fisem is-socjeta` rikorrenti, kienet issemmiet bhala raguni ghal dan in-nuqqas da parti tal-intimati, il-fatt illi l-kumpannija Maltco Lotteries Limited, li taghha hija socja l-kumpannija The Players Group Limited, u li taghha hija socja l-kumpannija intimata, kienet fl-istadju li titfa` l-offerti taghha sabiex hija tinghata koncessjoni ulterjuri minghand il-Gvern ta` Malta sabiex hija tibqa` topera l-Lottu u l-Lotteriji, u ma kienx ghalhekk zmien opportun li ssir tali registrazzjoni;*

12. *Illi sussegwentement, u cioe` wara li l-istess kumpannija Maltco Lotteries Limited inghata koncessjoni ulterjuri, regghet saret talba verbali sabiex issir tali registrazzjoni, liema talba, din id-darba ma kellhiex risposta;*

13. *Illi sussegwentement, il-kumpannija rikorrenti ufficjalment interpellat lill-intimati, tramite ittra ufficjali tas-27 ta` Gunju 2013 (Dok. IJS2), sabiex l-allokazzjoni ta` mija u tlieta u ghoxrin elf sehem ordinarju tal-valur nominali ta` Lira Maltija kull sehem issir a favur tal-kumpannija rikorrenti u dan kif pattwit fil-ftehim suriferit;*

14. *Illi l-intimati rrispondew ghal tali talba billi cahdu t-talba tal-kumpannija rikorrenti, u dan tramite ittra ufficjali tas-27 ta` Gunju 2013 (Dok. IJS3), u ghaldaqstant l-intimati baqghu inadempjenti;*

15. *Illi l-intimati kellhom obbligu ta` fiducja versu r-rikorrenti li juzaw il-flus tar-rikorrenti bil-mod fdat lilhom u mhux altrimenti;*

Jghidu ghalhekk l-intimati ghaliex m`ghandhiex din l-Onorabbli Qorti :-

1. *Tiddikjara illi l-kumpannija rikorrenti hija ntitolata ghall-ammont ta` azzjonijiet fil-kumpannija intimata ekwivalenti ghal mija u tlieta u ghoxrin elf sehem ordinarju tal-valur nominali ta` Lira Maltija kull sehem, u cioe` numru ta` ishma li jirraprezentaw nofs l-ekwita azzjonarja tal-kumpannija intimata;*

2. *Preuja dikjarazzjoni illi l-intimati ma onorawx il-ftehim mal-kumpannija rikorrenti, kif ukoll dikjarazzjoni li l-intimati naqsu mill-obbligi fiducjarji minnhom assunti versu r-rikorrenti, tordna illi l-istess intimati, jew*

min minnhom, jirregistraw tali allokazżjoni, kif ukoll il-hatra ta` David Curmi bhala direttur tal-kumpannija intimata, mar-Registatur tal-Kumpanniji, b`effett immedjat;

3. Tordna illi fl-inadempjenza li ssir tali registrazzjoni fit-termini hekk prefissi, il-kumpannija rikorrenti, jew dawk il-persuni hekk imqabba u awtorizzati minn dina l-Onorabbli Qorti, jirregistraw tali allokazżjoni ta` ishma u l-hatra ta` David Curmi fuq il-Bord tad-Diretturi tal-kumpannija intimata;

4. Tikkundanna lill-intimati jew min minnhom sabiex ihallsu l-penali patwita ghall-perijodu ta` nuqqas ta` adempiment tal-obbligi assunti jew ta` mora kif stabbilit fil-ftehim mertu tal-vertenza odjerna in vista tal-inadempjenza taghhom;

5. Tiddikjara lill-intimati responsabbli ghad-danni kollha kawzati lir-rikorrenti b`konsegwenza tan-nuqqasijiet taghhom, liema danni jigu likwidati f`gudizzju separat;

6. Tikkundanna lill-intimati Mario u Maria Camilleri jirrifondu lir-rikorrenti dawk l-ammonti li huma ppercepew bhala dividend minghand is-socjeta` intimata u li kienu fit-terminu tal-ftehim fuq imsemmi jispettaw lir-rikorrenti;

Bl-ispejjez inkluz dawk ta` mandati kawtelatorji li ser jigu pprezentati fil-mori tal-istess rikors, kif ukoll bl-imghax kontra l-intimati li huma ngunti in subizzjoni.

Rat il-lista tax-xhieda u l-elenku tad-dokumenti.

Rat ir-risposta guramentata prezentata fil-31 ta` Lulju 2014 li taqra :-

1. Preliminarjament in-nullita` tar-rikors promotur stante illi ma hux sufficjement car x`tip ta` azzjoni qed tigi ntentata.

2. Dejjem in linja preliminari u minghajr pregudizzju ghas-suespost in-nullita` tal-azzjoni tenut kont illi t-talbiet jikkontjenu kumulu ta` azzjonijiet inkompatibbli msejsa allegatament fuq artikoli differenti tal-ligi u li ma humiex identifikati. Mit-talbiet biss jirrizulta li hemm talbiet illi jikkoncernaw kwistjonijiet ta` inadempiment kuntrattwali, ksur ta` obbligi fiducjarji, talbiet li

huma rizervati ghal kamp ta` ligi socjetarja, talba ghad-danni kontrattwali, talba ghad-danni akwiljani u rifuzjoni ta` flejjes.

3. *Dejjem in linja preliminari u minghajr pregudizzju ghas-suespost il-kawza kif intavolata hija monka peress illi fit-tieni, tielet u s-sitt talba qed jintalab provvediment jew ordni fil-konfront ta` jew dwar li terz mhux parti fil-kawza ;*

4. *Illi minghajr pregudizzju ghas-suespost ma hemm ebda rabta kuntrattwali bejn il-partijiet stante illi l-ftehim originali kien wiehed ta` zewg ghotji separati ta` self li t-tnejn gew kompletament imhallsin lura lis-socjeta` attrici (ara prospett ta` pagamenti Dok 1);*

5. *Illi minghajr pregudizzju ghas-suespost minkejja illi f`dawn il-proceduri s-socjeta` attrici taghti l-impressjoni li dan il-ftehim kien wiehed ta` proposta ghal akkwist ta` sehemijiet u partecipazzjoni f`kumpannija, fil-mandat ta` inibizzjoni ntavolat fl-istess zmien tar-rikors promotur dan il-ftehim gie msejjah mill-istess socjeta` attrici bhala wiehed ta` "self" (ara kopja tal-mandat esebit Dok 2). Isegwi ghalhekk illi l-paragrafi 1-7 tar-rikors promotur huma kontradetti mis-socjeta` attrici stess fl-atti gudizzjarji taghha;*

6. *Illi minghajr pregudizzju ghas-suespost b`riferenza ghall-paragrafi 8 sa 15 tar-rikors promotur, il-verita` hi illi s-socjeta` attrici thallset is-self kollha lura, anzi kien hemm pagament zejzed favur is-socjeta` attrici li l-intimati ser jirkupraw mill-istess socjeta` attrici (ara protest Dok 3 anness);*

7. *Illi minghajr pregudizzju ghas-suespost l-ewwel interpellazzjoni ghall-optzjoni ghax-xirja ta` ishma kienet f`Gunju 2013 (mhux 2014 kif iddikjaraw bil-gurament l-atturi) u dan kien fi zmien meta s-self kollu kien thallas lura bi hlas zejda u meta allura l-obbligazzjoni kuntrattwali kienet ghal kollox sodisfatta u tterminata ai fini u effetti kollha tal-ligi. Mal-pagament effettiv u per saldu ta` dan is-self, is-socjeta` attrici ma ghamlet ebda rizerva u dejjem accettat il-pagament inkondizzjonatament;*

8. *Illi minghajr pregudizzju ghas-suespost, tant gie tterminat il-ftehim u thallsu l-ammonti kollha pattwiti illi sahansitra anke l-garanzija bankarja li harget is-socjeta` attrici favur l-intimati giet ikkancellata in toto snin ilu;*

9. *Illi minghajr pregudizzju ghas-suespost ma nholqu ebda obbligi fiducjarji u r-riferenza ghal Dr Ian Stafrace f`paragrafu 9 b`kull dovut rispettt ma taghmel ebda sens;*

10. Illi minghajr pregudizzju ghas-suespost kemm-il darba s-socjeta` attrici qed tippretendi nvolviment dirett jew indirett f`The Players Group Limited, tali talba ma tista` tigi qatt akkolta peress illi l-eccipjenti ma jzommu ebda nvestment interess jew ishma fl-istess socjeta`;

11. Illi l-atturi ma humiex intitolati llum, wara l-hlas kollu tas-self ghal ebda azzjonijiet (l-ewwel talba), allokazżjoni ta` ishma (it-tieni talba), registrazzjoni favur taghhom ta` xi ishma (tielet talba), pagament ta` xi penali (raba` talba), kumpens ghal danni (hames talba) jew hlas ta` xi dividend (sitt talba);

12. Illi minghajr pregudizzju ghas-suespost zgur li David Curmi (tieni u tielet talbiet), li ma hux parti f`din il-kawza ma ghandu ebda jedd ikun direttur tas-socjeta` intimata oltre li l-atturi ma jista` qatt ikollhom tali rimedju skont il-ligi;

13. Illi minghajr pregudizzju ghas-suespost is-socjeta` attrici tippretendi illi wara li thallset is-somma tas-self kollu lura lilha skont il-ftehim issa, takkwista b`xejn nofs l-ishma u l-investment tas-socjeta` intimata. Jekk dawn it-talbiet attrici effettivament jintlaqghu jkun gie mahluq indebitu u qligh mhux xieraq u gustifikat favur l-istess socjeta` attrici. Inoltr huwa car illi l-pretensjoni tas-socjeta` attrici llum hija illi takkwista sehmiijiet fil-kumpannija intimata b`xejn minghajr ebda konsiderazzjoni kwalunkwe;

14. Illi minghajr pregudizzju ghas-suespost il-kawza odjerna hija frivola u vessatorja u dan peress illi minkejja li s-socjeta` esponenti ghamlet il-pozizzjoni taghha cara permezz ta` protest risponsiv (ara Dok 4 u 5 anness) is-socjeta` attrici komplet fl-azzjoni taghha;

15. Illi minghajr pregudizzju ghas-suespost it-talbiet attrici huma kollha nfondati fil-fatti u fid-dritt.

Salv eccezzjonijiet ulterjuri.

Bl-ispejjez.

Rat il-lista tax-xhieda u l-eleku tad-dokumenti.

Rat id-direzzjoni li tat lill-partijiet fl-udjenza tas-6 ta` Ottubru 2014 fejn iddikjarat illi qabel ma tidhol fil-mertu hija kienet sejra tipprovdi dwar l-ewwel tliet eccezzjonijiet.

Rat id-decizjoni li tat fis-26 ta` Frar 2015 fejn cahdet l-ewwel tlett eccezzjonijiet tal-konvenuti bl-ispejjez kontra l-konvenuti.

Rat il-verbali tal-udjenzi l-ohra.

Semghet ix-xhieda u rat il-provi l-ohra li tressqu kemm fil-kawza tal-lum, u kif ukoll fil-kawzi bin-nru 542/2014 JZM u bin-nru 697/2014 JZM. It-tliet kawzi kienu qeghdin jinstemghu flimkien bi qbil bejn il-partijiet.

Rat in-noti ta` osservazzjonijiet.

Semghet is-sottomissjonijiet bil-fomm.

Rat id-digriet li tat fl-udjenza tal-20 ta` Gunju 2016 fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti l-ohra tal-kawza.

II. Provi

Neville Curmi – direttur tas-socjeta` attrici – ipprezenta affidavit.

Huwa spjega kif sar jaf lill-konvenut Mario Camilleri (“**Camilleri**”) fis-snin tmenin u kif wara saru hbieb.

Xehed illi wara s-sena 2000, Camilleri applika ma` haddiehor ghal licenzja li l-Gvern Malti kien ser johrog sabiex ikunu privatizzati l-lotterji.

Spjega li Camilleri kellmu biex jara jekk kienx ippreparat jew interessat jghinu billi jikseb il-flus li kellu bzonn biex ikun jista` jizgura sehmu ma` azzjonisti ohra fil-kumpannija The Players Group Limited (“**Players**”) li kellha tigi ffurmata minn persuni li kienu nteressati japplikaw ghal-licenzja.

Qal illi Camilleri gab mieghu lil certu Jean Paul Tabone (“**Tabone**”). Huwa kien jaf lit-Tabib Oftalmologu Mario Tabone li kien jigi missier Jean Paul Tabone.

Kompla jghid illi Camilleri u Tabone qalulu li huma kienu shab, u li Tabone kellu kuntatti kbar ma` kumpannija Griega bl-isem Intralot u li kienu fiducjuzi li kien ser jirnexxielhom jiksbu l-licenzja. Qalu li ma kellhom qaghad finanzjarja likwida u riedu jsibu l-flus kollha li kellhom bzonn biex ikopru sehemhom.

Qal illi huwa kien interessat izda s-somma li riedu kienet kbira wisq u ghalhekk indahal biex jinvolvi terzi halli flimkien jaslu ghas-somma globali.

Xehed illi sab terzi li kienu nteressati pero` dawn riedu jkunu jafu x`sejrin jiehdura lura mill-investment. Ghalhekk stqarr ma` Camilleri u Tabone li r-riskju kellu jkun kollu tagghom u kellhom ghalhekk joffru termini li jkunu tajbin bizzejjed sabiex ihajru lil investituri biex johorgu l-flus.

Qal illi sar ftehim fis-sens illi kellhom isibu l-flus kollha huma, bil-patt li l-flus kellhom jigu nvestiti in kwantu ghan-nofs fil-kumpanniji li kellhom jinvestu fi Players. Dawn il-kumpanniji kienu eventwalment kostitwiti bl-isem Mariolot Limited (“**Mariolot**”) u Jeanlot Limited (“**Jeanlot**”). Ladarba r-riskju kien ta` min kien qed johrog il-flus, l-investituri kellhom ikollhom sehem mill-frott tal-investment tagghom ukoll. In kwantu ghan-nofs l-iehor, dan kellu jigi investit bhala self minghajr imghax a favur ta` Camilleri u Tabone personalment.

Kompla jghid illi sar qbil li jsibu total ta` Lm492,000 b`kollox. Minnhom Lm246,000 kellha tigi utilizzata in kwantu ghal Lm123,000 bhala self lil Camilleri u Lm123,000 bhala self lil Tabone personalment. Dan sar sabiex dawn it-tnejn ikollhom bizzejjed flus biex jinvestu go Mariolot u Jeanlot rispettivament. Dan is-self kellu jkun minghajr imghax in vista tal-fatt li kien qed isir qbil li jsir investment fil-kumpanniji. Fil-fatt il-bilanc ta` Lm246,000 kellhom jigu investiti biex il-kumpannija Tucan Investments Limited (“**Tucan**”) li ghalhekk kienet kostitwita takkwista 50% tal-ishma ta` Mariolot (Lm123,000) u 50% tal-ishma ta` Jeanlot. Dan kollu kien accettat u sar ftehim sabiex fl-eventwalita` li Camilleri u Tabone flimkien ma` l-applikanti l-ohra fi Players ikunu *the best bidder* ghall-privitazzjoni tal-lotterija nazzjonali, il-bazi tal-ftehim kellu jkun nofs bhala investment u n-nofs iehor bhala self. Huwa ma kienx fiducjuz li Camilleri jew Tabone jew iz-zewg persuni l-ohra li eventwalment kienu ser ikun azzjonisti ta` Players kienu kapaci jew kienu jafu kif joperaw kumpannija li kellha topera l-lotteriji kollha ta` Malta, minkejja li kien hemm nies kapaci fi Players. Kien assikurat li kienu ghamlu shab ma` kumpannija Griega ossija Intralot li kellha rwol kbir fil-qasam, u wara verifiki li ghamlu,

kien ikkonfermat li tassew Intralot kienet operatur ewlenija fis-settur barra minn Malta.

Xehed li eventwalment kien iffurmata kumpannija bl-isem Maltco Lotteries Limited ("**Maltco**"), li taghha kemm Players kif ukoll Intralot kienu fost l-azzjonisti, u l-offerta mal-Gvern saret minn Maltco. Fil-fatt Players kellha 24% tal-ishma ta` Maltco waqt li l-bqija tal-ishma kienu ta` Intralot, hlief ghal 3% li kienu registrati fuq kumpannija bl-isem ta` Associated Supplies Limited. Bejn l-2003 u l-2004, Maltco rebhet it-*tender* ghall-privitazzjoni tal-lotterija nazzjonali.

Kompla jghid illi fit-28 ta` Jannar 2004, Camilleri ifforma Mariolot waqt li Tabone ifforma Jeanlot Limited sabiex jinvestu fi Players il-flus kollha li kienu ser jipprovdi hu u investituri ohra. Fil-5 ta` Frar 2004, hu u l-investituri l-ohra iffurmaw Tucan biex tkun hi li tghaddi l-finanzjament lil Camilleri, Tabone, Mariolot u Jeanlot. Tucan kienet sejra tiffinanzja Lm492,000.

Stqarr li Camilleri u Tabone infurmawh illi t-*tender* intrebah taht certu kundizzjonijiet fosthom li l-Gvern ried li ghal certu zmien is-*successful bidder* kellha tipproduci garanzija bankarja favur il-Gvern. L-azzjonisti kollha ta` Maltco ftehm li kulhadd johrog sehmu u Players kellha tipproduci garanzija bankarja ekwivalenti ghal 24% tat-total. Mariolot u Jeanlot kellhom jikkontribwixxu ghal din il-garanzija ukoll. Is-sehem ta` Mariolot u Jeanlot minn din il-garanzija kellu jkun ta` Lm87,930 kull wiehed izda dawn ma kellhomx flus. Camilleri u Tabone talbuh li minbarra s-somma ta` Lm492,000 (li kienet ser isservi ghall-investment kapitali), jinghataw din is-somma rapprezentanti sehemhom mill-garanzija. Spjega li huma accettaw li johorgu din is-somma peress li Maltco kienet rebhet it-*tender* u allura kienu certi li l-investment taghhom kellu bazi soda. Ghalhekk inharget is-somma ta` Lm87,930 ghal darbtjen liema somma kellha tigi rifiuta fi zmien sentejn jekk Maltco timxi kif kien previst mill-Gvern. Fil-fatt hekk gara u l-garanzija kienet cancellata fl-2006.

Qal illi skont il-ftehim taghhom bil-fomm, 50% tal-ishma ta` Mariolot u 50% ta` l-ishma ta` Jeanlot kienu ser jigu registrati mal-ewwel fl-isem ta` Tucan, izda wara li kien beda jigi abbozzat il-ftehim bil-miktub, irrizulta li kien hemm ftehim bejn is-*shareholders* kollha ta` Players fis-sens li jekk ikun hemm xi hadd mis-*shareholders* ta` Players li kien ser ivarja jew ibiegh jew jittrasferixxi l-ishma tieghu fi Players dan kellu joffrihom l-ewwel lis-*shareholders* l-ohra. Spjega li din kienet problema peress li l-50% tas-*shareholding* ta` Mariolot u Jeanlot ma setghux jigu trasferiti ghal isem Tucan minghajr ir-riskju li dawk l-ishma jinxtraw minn xi azzjonist iehor ta` Players, u ghalhekk Tucan tiflew l-opportunita` li takkwista dawk l-ishma. Spjega li instabet soluzzjoni fejn dawn il-50% tal-ishma ta` Mariolot u Jeanlot (li kienu effettivament destinati ghal Tucan skont il-ftehim) ma jinhargux fl-isem ta` Tucan mill-ewwel izda jigi

depozitat l-ammont ta` Lm123,000 f`kull wahda miz-zewg kumpaniji sabiex dawn jkunu jistghu jservu biex l-istess ammont jigi allokati fi *shares* fl-istess kumpaniji a favur ta` Tucan. Sar ukoll ftehim li tittiehed *pledge* jew *charge* fuq is-*shareholding* kollu ta` Mariolot u Jeanlot sakemm ikun tajjeb iz-zmien biex il-50% tal-ishma jigu registrati fuq Tucan kif kien miftiehem.

Qal illi ghaddiet risoluzzjoni fil-bord tad-diretturi ta` Mariolot u Jeanlot, u l-ishma kellhom jigu allokati mill-ewwel malli Tucan titlob biex dan isehh. Kienu ffirmati ukoll il-formoli necessarji minn Mariolot u Jeanlot sabiex din l-allokkazzjoni tkun tista` ssir mar-Registratur tal-Kumpaniji, meta Tucan titlob biex dan isir u kienu ffirmati ukoll ir-risoluzzjonijiet necessarji ta` kull kumpanija, kif ukoll memorandum u articles godda ghal kull kumpanija li jkun jirrifletti l-fatt li hemm zewg azzjonisti minflok azzjonist wiehed sabiex dawn ikunu lesti ghal meta l-ishma jigu registrati fuq Tucan. Spjega li kemm hu u ibnu David kif ukoll Camilleri u Tabone dejjem assumew li dawn il-50% tal-ishma ta` Mariolot u Jeanlot kienu dejjem proprjeta` ta` Tucan izda r-registrazzjoni ma setghetx issir mal-ewwel.

Xehed illi l-ftehim bil-miktub li jirrifletti dan kollu sar fid-29 ta` April 2004 b`zewg kuntratti separati ghal Mariolot u Jeanlot, u l-flus ghaddew skont il-kuntratt u cioe` Tucan harget Lm123,000 a favur ta` Camilleri f`ismu personali, Lm123,000 ohra hargu favur ta` Tabone f`ismu personali, Lm123,000 ohra hargu ghal Mariolot u Lm123,000 hargu ghal Jeanlot Limited (dawn l-ahhar tnejn biex jinxtraw il-50% tal-ishma ta` Mariolot u Jeanlot) u dan minbarra l-garanzija fl-ammont ta` Lm87,930 a favur ta` Mariolot u garanzija ohra fl-istess ammont a favur ta` Jeanlot.

Stqarr li kollox kien ibbazat fuq l-andament ta` Maltco li kien mistenni li tmur tajjeb u allura tibda thallas *dividends* mill-profitti li taghmel liema profitti kellhom jghaddu ghand is-*shareholders* ta` Maltco fosthom Players. Din tal-ahhar imbaghad kellha tghaddi d-*dividends* li tircievi lis-*shareholders* taghha. Mariolot u Jeanlot kellhom jghadduhom b`dan il-mod : 50% lil Tucan bhala *dividend* li jirrapprezenta dawk l-ishma li ghad li kienu destinati biex jigu registrati fl-isem ta` Tucan ma kinux ghadhom jistghu jghaddu minhabba l-ftehim bejn is-*shareholders* ta` Players, u 50% lil Camilleri jew Tabone rispettivament li min-naha taghhom, kienu marbuta li jzaw l-ammont hekk perceptit minnhom biex ihallsu s-self li ghamlet Tucan favur taghhom personalment.

Qal illi fil-bidu 100% tad-*dividend* li kienu qed jircievu Mariolot u Jeanlot beda jithallas lil Tucan. Dawn il-pagamenti saru b`mod regolari. Il-pagamenti tas-self li kellhom Camilleri u Tabone fl-isem personali taghhom personali baqghu jithallsu sakemm thallas is-self kollu ta` Lm123,000 kull wiehed minn Camilleri u Tabone. Spjega li wara li nqata` dan is-self, xorta wahda kellhom jibqghu jsiru pagamenti lil Tucan tal-50% tad-*dividends* li jircievu Mariolot u

Jeanlot, ghaliex b`dawn il-pagamenti Tucan kienet qeghda tithallas sehemha mid-*dividends* rilaxxjati minn Players lil Mariolot u Jeanlot skont il-ftehim tad-29 ta` April 2004. Fil-fatt hekk kien qed isir.

Fisser illi wara li thallsu il-*loans* ta` Camilleri u Tabone, fl-2009, Tucan irceviet ghal sentejn shah il-pagament tad-*dividends* li kienu sehemha mill-investment taghha (ossija l-investment ta` Tucan biex tixtri 50% ta` *shares* go Mariolot u Jeanlot). Fl-2010 Tucan thallset €72,683 u fl-2011 Tucan thallset €76,186.12 minghand kull wahda minn Mariolot u Jeanlot. Insista li dawn l-ammonti thallsu bhala *dividends* ta` sehem Tucan fil-kumpaniji Mariolot u Jeanlot, liema sehem Tucan kellha dritt li titlob li jigi registrat. Fl-2012 Maltco waqfet thallas *dividends* lis-*shareholders* taghha meta bdiet terga` tinnegozja mal-Gvern ta` Malta biex ittawwal iz-zmien tal-operat taghha. Spjega li kien hemm terzi li applikaw ukoll biex jiehdun din il-licenzja izda Maltco rnezzielha titfa` l-ahjar offerta u nghatat estensjoni tal-kuntratt. Maltco baqghet bl-istess *shareholders* li kellha qabel u Players zammet l-istess proporzjon ta` ishma li kellha qabel fi Maltco.

Stqarr li minn informazzjoni li ghandha Tucan, Maltco ma hallsitx *dividend* ghall-ewwel sena tat-tigdid tal-licenzja taghha ghaliex kellha spejjez kbar, izda fit-tieni sena tat-tigdid tat-*tender*, Maltco rega` bdiet thallas *dividends* bhalma kienet taghmel qabel. Ghal xi raguni, Mariolot u Jeanlot bdew icahhdu lil Tucan mid-*dividends* li kienet intitolata ghalihom u li kienu dovuti skont il-ftehim tad-29 ta` April 2004. Spjega li minkejja li thallsu *dividends* minn Maltco, il-50% ta` dawn id-*dividends* imhallsa lil Mariolot u Jeanlot qatt ma waslu ghand Tucan kif kien dovut. Spjega li Mariolot u Jeanlot qatghu ukoll kull komunikazzjoni dwar l-andament ta` Players, kuntrarjament ghal dak li kienu jaghmlu qabel fis-sens illi kienu jzomm lil Tucan informata b`kull zvilupp. Hu u ibnu David ippruvaw jirkellmu ma` Camilleri u Tabone izda dawn bdew jevitawhom u ma tawhomx hjiel ghalfejn kienu bidlu l-impiegba taghhom.

Xehed li meta raw dan kollu, hu u ibnu David talbu lil Camilleri u Tabone formalment biex jallokaw l-ishma ta` Mariolot u Jeanlot Limited skont il-ftehim biex jigu registrati fuq Tucan. Dan sar l-ewwel b`ittra fil-11 ta` Gunju 2013 u wara b`ittra ufficjali tad-19 ta` Gunju 2013. Mhux biss baqa` ma sar xejn izda skopra li addirittura Mariolot ittrasferiet l-ishma taghha fi Players lil Lattimer Limited biex hekk kull *dividend* issa beda jithallas lil Lattimer Limited li mhix parti fil-kuntratt tad-29 ta` April 2004. Dan it-trasferiment sar biss wara li Mariolot kienet interpellata talloka ishma lil Tucan.

Ighid illi Lattimer Limited kienet kostitwita apposta biex Mariolot tevita l-obbligi taghha lejn Tucan. Lattimer Limited giet kostitwita fit-3 ta` Ottubru 2013, tliet xhur wara li Mariolot kienet notifikata bl-ittra ufficjali tad-19 ta` Gunju 2013. Lattimer Limited hija kumpannija ta` Mark Camilleri li huwa iben Mario Camilleri. Mark Camilleri huwa l-uniku direttur u azzjonist ta` Lattimer

Limited. Mark Camilleri kien jaf tajjeb x`kien il-ftehim bejn Tucan u Mariolot Limited, u Mario Camilleri u martu, tant li kien ukoll involut fil-pagamenti li kienu jsiru skont il-kuntratt, u huwa stess kien jikkorrispondi mar-rapprezentanti ta` Tucan ghan-nom ta` Mariolot.

Ghalhekk kellha tittiehed azzjoni. L-ewwel saru l-kawzi 541/2014 u 542/2014 biex ikun ezegwit il-kuntratt tad-29 ta` April 2004 u jithallsu d-danni, flus u penali kollha dovuti lil Tucan. Meta mbaghad saret kawza kontra Mariolot u Lattimer Limited ghar-rexxizzjoni tat-trasferiment ta` l-ishma billi dak it-trasferiment sar bi frodi tad-drittijiet ta` Tucan. Biex jitharsu l-interessi ta` Tucan, Players giet mgħarrfa bis-sitwazzjoni permezz ta` ittra ufficjali. Spjega li barra mill-flus li Tucan qeghda tifleb bhala *dividends* qeghda ssofri wkoll hsara ghar-reputazzjoni tagħha billi attwalment mhi tircievi ebda introjtu mill-investment tagħha.

David Curmi pprezentat affidavit.

Xehed illi ilu direttur ta` Tucan minn mindu kienet kostitwita fil-5 ta` Frar 2004. Huwa azzjonista wkoll. Fid-29 ta` April 2004, Tucan ghamlet zewg skritturi : wahda ma` Mariolot, Camilleri u martu Mary Josephine Camilleri ; u ohra ma` Jeanlot, Tabone u martu Nicola Tabone. Il-laqghat inizjali kienu saru bejn missieru Neville Curmi, Camilleri, u Tabone u ghal xi laqghat kien prezenti wkoll Stefan Bonello Ghio li huwa l-awditur ta` Jeanlot, u sal-2008 kien ukoll l-awditur ta` Mariolot.

Xehed illi Tabone u Camilleri kienu jiffurmaw parti minn konsorzju li kien ser joffri fit-*tender* tal-Gvern relatata ma` l-operat tal-lotteriji. Players kienet iffurmata fl-2001 biex tippartecipa fil-konzorzju biex tissottometti *tender* flimkien ma` ohrajn. L-azzjonisti ta` Players kienu Mario Camilleri, Jean Paul Tabone, Michael Bianchi u Jeffrey Mizzi li kellhom 125 *shares* ta` Lm1 kull wiehed. Il-membri l-ohra tal-konsorzju kienu Intralot S.A. tal-Grecja u Associated Supplies Limited. It-tliet soċjetajiet flimkien kienu azzjonisti ta` Maltco. Players kellha 24% *tas-share capital*. Wara li l-licenzja harget lil Maltco, l-azzjonisti ta` Players ittrasferew l-ishma lil kumpanniji tagħhom : Michael Bianchi lil Investments Limited ; Jeffrey Mizzi lil Kastell Limited ; Jean Paul Tabone lil Jeanlot Limited u Mario Camilleri lil Mariolot Limited. B`hekk dawn il-kumpanniji saru l-azzjonisti ta` Players.

Qal illi Tabone u Camilleri ma kellhomx likwidita` u ghalhekk lil Neville Curmi sabiex jgħinhom fil-fondi. Meta t-*tender* intrebah, Camilleri u Tabone kellhom bzonn ta` Lm246,000 kull wiehed flimkien ma` garanzija bankarja ta` LM87,930 kull wiehed. Il-garanzija bankarja kienet rikjesta biex tipprovd sigurta` ghal self li Maltco kienet ser tiehu mill-Bank of Valletta. Fis-7 ta` Marzu 2003, harget sanction letter lil Maraco. Kien ser ikun hemm awment fis-*share*

capital ta` Maltco bl-issue ta` 4,100,000 *shares* ta` Lm1 kull wiehed. Dawn l-ishma l-godda kienu ser jinhargu lill-azzjonisti ezistenti ta` Maltco proporzjonalment skont l-ishma tagghom. Players kellha 24% minn Maltco u ghalhekk kellha tipprovdi Lm984,000 fi *share capital*. Spjega li Jeanlot u Mariolot gew iffurmati qabel l-awment fis-*share capital* ta` Maltco.

Qal illi kien inkarikat l-Av. George Abela u wara l-Av. Ian Stafrace biex jiehu hsieb l-aspett legali ta` l-ftehim.

Stqarr illi Tucan kienet kostitwita fil-5 ta` Frar 2004. Tucan kellha tkun azzjonista diretta ta` Mariolot u Jeanlot, izda Tabone u Camilleri kienu qalu li jekk kellha tigi registrata bhala azzjonista, kellhom isiru *due diligence tests* mill-Lotteries and Gaming Authority li kien ser itawwal il-process. Aktar tard sar jaf li kien hemm ftehim li jekk kien ser isir trasferiment ta` ishma, l-azzjonisti ta` Players kellhom dritt li jitolbu li jakkwistaw l-ishma huma stess. Camilleri u Tabone wegghduh li meta jkun iz-zmien, huma kienu ser jitolbu lill-azzjonisti l-ohra ta` Players sabiex l-ishma jigu trasferiti ghal Tucan. Talab xi tip ta` sigurta` u saret *pledge* favur Tucan tas-*shares* ta` Mariolot u Jeanlot. Kien miftiehem li Tucan tibda tircievi sehem mid-*dividends* li jiehd u Mariolot u Jeanlot, kif ukoll li ssir rizoluzzjoni tal-bord li tawtorizza s-*share issue* ghal Tucan.

Xehed illi Tucan obligat ruhha li taghti lil Mario Camilleri u Jean Paul Tabone self ta` Lm123,000 kull wiehed sabiex dawn jaghmlu l-investment fis-*share capital* ta` Mariolot u Jeanlot. Obligat ruhha li taghti lil Mariolot u Jeanlot somma ohra ta` Lm123,000 kull wiehed li kienu ntizi sabiex Tucan takkwista 50% ta` l-ishma izda dawn l-ishma ma setghux jigu registrati mill-ewwel fl-isem ta` Tucan minhabba l-*pre-emption rights* ta` l-azzjonisti l-ohra. Tucan kellha thallas ukoll Lm87,930 kull wiehed bhala parti mill-garanzija bankarja. Av. Ian Stafrace hejja l-abbozz ta` l-ftehim u anke ppropona lil Mario Camilleri u Jean Paul Tabone biex jinkarigaw avukat izda dawn irrifjutaw. Il-ftehim gew iffirmiti fid-29 ta` April 2004. Kienu ffirmiti rizoluzzjonijiet tal-Bord tad-Diretturi li awtorizza l-*allotment of shares* minn Mariolot Limited u Jeanlot Limited u registrazzjoni a favur ta` Tucan.

Ipprezenta lista tal-pagamenti kollha li rceviet Tucan fir-rigward tas-self li nghata lil Mario Camilleri u Jean Paul Tabone personalment liema pagamenti bdew f'Ottubru 2006.

Spjega li Mariolot u Jeanlot bdew ihallsu lil Tucan 50% tad-*dividends* li kienu qed jircievu minghand Players. L-awdituri ta` Tucan ma setghux inizzlu dawn il-pagamenti fl-*accounts* minghajr ma jsir l-*allotment* ta` l-ishma godda f'Mariolot u Jeanlot. Ghalhekk Tucan kienet u ghadha tehel penali ghax ma tistax tipprezenta l-*accounts* taghha lir-Registru tal-Kumpanniji. Tucan

attribwiet lil Camilleri u Tabone l-penali li kienet qed tinkorri u qalet b`dan lil Mark Camilleri, iben Mario, li jiehu qed jiehu hsieb in-negozju ta` Mario Camilleri. Camilleri u Tabone gieli hallsu dawn il-multi.

Sostna li l-ewwel pagament li sar ma kienx jirrifletti l-persentagg korrett mill-ammont li Maltco ghaddiet lil Players bhala dividend. Dan huwa kkonfermat fir-rapport ta` PWC li sar fl-2013. Id-differenza thallset wara. Camilleri u Tabone kienu hallsu €64,039.53 kull wiehed li kien kien ikopri mhux biss il-bilanc rimanenti fuq is-self li kien sar lilhom personalment izda ukoll il-multi li kienu ghaddejnin mal-MFSA. Mark Camilleri kien jaf b`dan kollu. Mal-pagament li sar fl-2009, Tucan irceviet ittra minghand Mariolot u Jeanlot datata 23 ta` Marzu 2009 li fiha kien inghad illi l-pagamenti kienu qed isiru ghall-2008 kienu *dividend* kif ukoll hlas tas-self lil Mariolot u Jeanlot. Dak pero` kien zball ghaliex is-self kien inghata lil Camilleri u Tabone personalment. Ghalhekk intbaghtet ittra fis-7 ta` April 2009 biex tissenjala dan l-izball.

Spjega li ghad-disa` snin ta` wara, kollox kien miexi skont il-ftehim u l-uniku pendenza li kien ghad fadal kienet li l-ishma jigu registrati fl-isem ta` Tucan. Meta l-kwistjoni kienet tigi diskussa, Camilleri u Tabone kienu jinsistu li kien ahjar li ghall-mument jibqa` kollox kif inhu u kulhadd izomm mal-ftehim ta` bejniethom kif kien qed isehh. Huwa kien inkwetat bil-fatt li l-accounts ta` Tucan ma setghux jigu pprezentati u meta tkellem ma` Vincent Curmi li kien l-awditur ta` Tucan, dan ippropona li ssir laqgħa. Kompla jghid li fil-fatt saret laqgħa fit-13 ta` Settembru 2010, fejn kienu prezenti Jean Paul Tabone, Mario Camilleri, l-awditur ta` Jeanlot, l-awditur ta` Mariolot, Mark Camilleri, Vincent Curmi u huwa. Fil-laqgħa sar ftehim li kienu ser jipprocedu bl-*allotment* ta` ishma godda fi Mariolot u Jeanlot u r-registrazzjoni tagħhom fl-isem ta` Tucan. Bagħat email f`dan ir-rigward lil Dr Ian Stafrace dakinhar stess. Saret laqgħa ohra li għaliha kien prezenti Dr Stafrace li fiha Mario Camilleri u Jean Paul Tabone kkonfermaw li kien wasal iz-zmien biex jsir l-*allotment of shares* u r-registrazzjoni fl-isem ta` Tucan Investments Limited.

Stqarr illi ftit taz-zmien wara, Mario Camilleri sostna mieghu li l-process tat-*tender* għall-estensjoni tal-licenzja kien għalaq u li ma kienx zmien tajjeb biex isir it-trasferiment tal-ishma lil Tucan Investments Limited. Camilleri kien insista li l-ishma jinhargu wara li jkun deciz jekk il-licenzja kinitx ser tingħata lil Maltco inkella le. Billi sa dak iz-zmien Camilleri u Tabone dejjem zammew il-kelma tagħhom, huwa accetta li jsir hekk. Intant il-ftehim baqgħu jigu onorati. Fil-fatt fl-2010 Mariolot Limited u Jeanlot Limited hallsu €72,683 kull wiehed u fl-2011 hallsu €76,186.12 kull wiehed. Dawn il-pagamenti kienu jirrigwardaw id-*dividends* li kienu qed isiru minn Maltco lil Players u minn dawn lil Jeanlot Limited u Mariolot Limited. Dan il-pagament sar xjentement tant li fl-email ta` l-20 ta` April 2011, Mark Camilleri kkonferma li s-sehem ta` Tucan mid-*dividends* kien ta` €76,186.12c.

Kompla jghid li fl-2012, Maltco ma hallsitx *dividends* minhabba n-negozjati ghal estensjoni tal-licenzja izda imbaghad hallset *dividends* fl-2013 ta' €1,505,505 li minnhom Players irceviet €361,321.20. Tucan kien imissha tircievi €90,330.30. Dan l-ammont qatt ma thallas lil Tucan Investments Limited. Lanqas id-*dividend* ta' l-2014 ma thallas lil Tucan. Sal-bidu tal-2013, ir-relazzjoni bejn il-partijiet kienet ghadha wahda regolari izda mbaghad ghal Marzu 2013, beda jitlob lil Mark Camilleri *dividend* u dan ma tax informazzjoni u zmien wara sar jaf li dan kien telaq minn Malta b`mod permanenti. Kiteb lil Camilleri u Tabone biex jezercita d-drittijiet li kien hemm ai termini tal-ftehim tad-29 ta' April 2004. Intbaghtu ittri ufficjali ukoll. Kien hemm risposta u kien deciz li PWC tinghata l-inkariku li tanalizza l-accounts ta' Mariolot u Jeanlot Limited. Wara bdew il-proceduri gudizzjarji.

Kompla jghid illi Camilleri, Tabone, Jeanlot Limited u Mariolot Limited insistew illi Tucan Investments Limited ma ghandhiex dritt ghall-ishma u li dak li Tucan ghamlet kien biss self lil Mario Camilleri u Jean Paul Tabone kif ukoll self lil Jeanlot Limited u Mariolot Limited, liema self skont huma thallas kollu. Mariolot u Jeanlot sostnew li kienu hallsu b'€517,485 lil Tucan Investments Limited. Huwa qal illi wara li thallsu l-*loans* li saru lil Tabone u Camilleri personalment, dawn baqghu jhallsu 50% tad-*dividends*. Fil-25 ta' Marzu 2009, sar pagament ta' €109,873.50 bhala sehem Tucan Investments Limited mid-*dividends* ta' Mariolot Limited u Jeanlot Limited. Ir-ragunament ta' l-konvenuti kien fallaci, minhabba l-fatt li skont dan ir-ragunament, Tucan kienet ser tircievi l-kapital investit fl-2004 minghajr ebda interessi. Dan ma kien jaghmel l-ebda sens fin-negozju partikolarment fejn si tratta ta' investment.

Temm jixhed illi fl-2014, Mariolot ittrasferiet l-ishma li kellha fi Players lil kumpanija bl-isem ta' Lattimer Limited li tappartjeni lil Mark Camilleri. Dan it-trasferiment sehh ftit wara li ntabab li jsir l-*allotment of shares* a favur ta' Tucan Investments Limited. Jidher li ma kienx hemm problemi ta' *pre-emption rights* ma' l-azzjonisti ta' Players Group. Mariolot Limited qatt ma talbet il-kunsens ta' Tucan Investments Limited ghal dak it-trasferiment.

Fil-**kontroezami**, xehed illi huwa qatt ma ra is-*shareholders' agreement* izda dawn il-*pre-emption rights* issemmev minn Tabone u Camilleri. Insista li huwa qatt ma kellu ghalfejn ma jemminhomx. Kien staqsa biex tingieb *waiver* minn dawn il-*pre-emption rights* izda kienu nformawh li ma kienx possibbli li jgibu tali *waiver* saz-zmien li kellhom bzonn il-flus. Camilleri u Tabone tawh assigurazzjoni verbali li l-*waiver* kien jirnexxielhom igibuha. Dan ma tnizzilx fil-ftehim ghaliex ma nhassx il-bzonn. Ikkonferma li l-*pledge* fuq is-*shares* saret in-konnessjoni mas-self personali.

Qal illi kien hemm diskors dwar it-tieni terminu tal-licenzja. L-intenzjoni dejjem kienet li l-investment jkun f' Mariolot Limited u Jeanlot Limited. Spjega li l-*equity* ma kellhiex terminu u l-kumpanija setghet tidhol ghal licenzji ohra

dment li l-azzjonisti jibqghu l-istess. Spjega li jekk il-licenzja tal-Maltco kellha tispicca u tapplika fuq kumpannija ohra, l-assi tal-Maltco kienu jibqghu assi tas-*shareholders* taghhom u dawk jigu likwidati u mhallsin lil Players bhala repayment of capital. Fil-ftehim kien hemm l-opzjoni biex is-self jigi konvertit f'*equity*. Il-kliem li sar ma` Tabone u Camilleri kienu dejjem fis-sens li jekk Maltco tirbah il-licenzja l-gdida, jibqghu sejr inhum, mentri jekk Maltco titlef, l-assi taghha jigu mhallsin u likwidati u Players Group tithallas il-parti taghha u mbaghad huma eventwalment jiehdu l-bicca taghhom.

Stqarr illi l-intenzjoni dejjem kienet li Tucan Investments Limited kienet sejra tkun azzjonista ta` Mariolot Ltd u ta` Jeanlot Ltd. Huwa kkonferma li fil-ftehim, hemm innizzel li Tucan kellha tiehu d-*dividends* immedjatament. L-ghazla kienet f'idejn Tucan. Jekk kienet ser tasal ghal sitwazzjoni fejn kien ser ikun hemm kontribuzzjoni ta` kapital, Tucan Investments Limited setghet taghti struzzjonijiet bil-miktub sabiex il-*convertible loan* tigi konvertita f'*share capital*. Din it-talba qatt ma saret ghax huma dejjem imxwew b'irgulija lejn Camilleri u Tabone. Il-ftehim kien li jekk ser jaghmlu pass, ahjar jaghmluh flimkien.

Sahaq illi Tucan Investments Limited bdiet tircievi l-flus bhala *dividend* minghand Mariolot Limited u Jeanlot Limited. Fil-kotba ta` Tucan riedet issir *double entry* fejn jitnizzel l-investment bhala *shares* u turi mbaghad id-*dividends*. Il-verita` kienet li dawk il-flus marru ghand Tucan Investments Limited bhala *dividends* meta Tucan ma kinitx ghadha shareholder. Insista li l-intenzjoni dejjem kienet li huma jkunu azzjonisti ta` Mariolot Ltd u ta` Jeanlot Ltd. Ma setghux jipprezentaw dawk il-flus bhala *dividends* ghaliex sa dak izmien kienu ghadhom mhumiex azzjonisti u ghalhekk bdew jinkorru multi. Fuq domanda ta` din il-Qorti, ikkonferma li ladarba kien jiddependi fuq Camilleri u Tabone meta seta` jsehh dan is-*share transfer* in vista li riedu jottjenu l-*waiver* Tucan Investments Limited ma riditx titef id-dhul mill-investment taghha u b'hekk bdiet tiehu *dividend* immedjatament minkejja li s-*shares* ma kinux ghadhom registrati f'isimha.

Qal li fl-iskrittura, ma kienx hemm xejn li jirregola d-dewmien ghaliex il-hsieb kien li ma jkunx hemm dak id-dewmien kollu. Huwa ma riedx li jigu pprezentati *accounts* li kienu hziena. Fl-istess waqt ma riedx jippregudika l-investment. Ma setax jipprezenta l-*accounts* ta` Tucan peress li fil-kotba ma setax jitnizzel la l-investment u la d-*dividend*. Informa lil Camilleri u Tabone bil-problema u dawn kienu anke hallsu l-multi li kienu qed jigu nkorsi.

Spjega li huwa qatt ma talab li jezercita d-dritt ta` *share option* sabiex ma jigix ippregudikat l-investment. Insista li l-multi kienu qed ihallsuhom Camilleri u Tabone. Spjega li l-*accounts* li parti minnhom jidhlu huma a fol 324 huma lista ta` pagamenti li saru fuq il-*loan balance* personali ta` Mario Camilleri u Jean Paul Tabone. Spjega li huwa kien jitkellem ma` Mario Camilleri u kienu ftehm li dak huwa l-bilanc li kellu jithallas rigwardanti

multi. Ma saritx distinzjoni bejn il-multi li kienu qed jircievu dwar l-accounts u l-multi li kienu qed jircievu dwar l-annual returns.

Insista li Mario Camilleri ma kienx jaghmel pass qabel ma` jinforma lil ibnu Mark, peress li Mark Camilleri kien imexxi l-affarijiet. Jaf li kien hemm zmien meta Mario Camilleri kien l-isptar izda ma setax ighid ezattament meta dan kien. Qatt ma ntbaghtet l-ittra ghall-opzjoni ta` *share capital* peress li dak iz-zmien il-kuntest kien wiehed amikevoli hafna. Barra minn hekk, il-penali kienu zghar hafna fl-ambitu ta` l-investment u r-returns li kienu qed jircievu.

Avukat Dottor Ian Stafrace xehed illi lejn l-ahhar tal-2003 u bidu ta` l-2004 huwa kien jahdem mad-ditta Abela & Stafrace and Associates u kien avvicinat minn Neville Curmi u sussegwentement ukoll minn David Curmi ghal parir dwar negozju. Curmi kienu gew offruti l-possibilita` li jinvestu u jippartecipaw f`kumpannija li finalment kellha nteress fil-kumpannija li kienet rebhet il-licenzja tal-lottu, ossija Maltco Lotteries. Dawn kienu qed jitkellmu ma` Jean Paul Tabone u ma` Mario Camilleri. Spjega li l-Maltco kellha 76% tas-*shareholding* ghand kumpannija Griega u 24% *shareholding* ghand il-kumpannija The Players Group. Din tal-ahhar kienet komposta minn erba` persuni ; tnejn minnhom kienu Tabone u Camilleri. Neville Curmi kien spjegalu li kien offrut il-possibilita` li jiehu 6% finalment mill-Maltco peress li Tabone u Camilleri kien ser jghaddilhom nofs l-involviment taghhom fil-Players Group. Curmi gew mitluba jiffinanzjaw parti mill-kapital li kellhom johorgu Tabone u Camilleri ghal involviment taghhom fil-Players Group kif ukoll jiffinanzjaw il-garanzija bankarja li Tabone u Camilleri kellhom johorgu. Meta Maltco hadet il-licenzja, kellu jizdied is-*share capital* anke fi The Players Group bil-konsegwenza li Camilleri u Tabone riedu johorgu izjed kapital, liema kapital kien ser jigi minghand Curmi.

Kompla jixhed illi huwa kellu l-inkariku li jassisti lil Curmi sabiex dan kollu li kien miftiehem bil-fomm isir b`mod legali u bil-miktub. Saru diversi laqghat ma` Tabone u Camilleri ghal dan il-ghan. Kien inghata parir li jinholqu Mariolot Limited u Jeanlot Limited minhabba li l-kapital kellu jibqa` gewwa bhala *equity* u mhux imur ghand l-azzjonisti. Imbaghad kellhom jinghataw Lm123,000 bhala self lil Tabone u Camilleri personalment sabiex dawn jintuzaw biex jitpoggew bhala *equity* f`The Players Group. Sar ukoll arrangement illi Lm123,000 l-ohra f`Jeanlot Limited u Mariolot Limited jinghataw b`self minn Tucan Investments Limited bl-opzjoni li dan is-self jigi konvertit f`*share capital*. Din kienet taghmel hafna sens peress li s-*shareholders* ezisteni ma kienu qed jiffinanzjaw xejn u peress li b`awment fis-*share capital* ma kinitx tithallas *capital gains tax* izda tithallas *stamp duty* biss. Ma ntaghzlitx l-ozzjoni li jizdied is-*share capital* immedjatament peress li f`The Players Group kien hemm *preemption rights* b`dana illi jekk wiehed mill-azzjonisti ried jittrasferixxi s-*share capital* tieghu lil terzi ried joffrih l-ewwel lill-azzjonisti shabu li diga` kienu fil-kumpannija. The Players Group kienu accettaw li s-*shareholding* ta`

Tabone u Camilleri ma jibqax personali izda jigi trasferit lill-kumpanniji tagghom.

Xehed li l-parir kien li tingieb *waiver* ta` dawn il-*pre-emption rights* biex tkun tista` tiddahhal Tucan Investments Limited izda Tabone u Camilleri ma xtaqax li jsir dan sabiex ma johlqux dizgiwd fiz-zmien meta Maltco kienet ghadha kemm hadet il-licenzja. Ghalhekk instabet is-soluzzjoni li Lm123,000 moghti kull wiehed lil Mariolot u Jeanlot jinghata bhala *loan convertible at the option of the creditor into share capital*. Kollox gie spjegat lil kulhadd.

Stqarr illi l-ftehim kien maqsum fi tlett partijiet : (i) parti li tirregola s-*share option* ta` Lm123,000 fis-sens li l-kreditur kellu l-opzjoni jew li jiehu l-flus lura minghajr interessi jew li jinghata *shares* ; (ii) parti li tirregola l-*loan* li kienet Lm123,000 u li kellha tithallas lura u ; (iii) parti li tirregola l-finanzjament tal-garanzija bankarja li kellha tinghata lura meta Maltco tkun tista` tbiddel din il-garanzija bankarja f`kapital.

Kompla jixhed li gew iffirmati wkoll id-dokumenti necessarji biex dik is-*share capital* issehh. Dawn saru peress li d-diskors bejniethom kien li malli Maltco tissahhah u tibda miexja, isiru diskussjonijiet biex tiddahhal Tucan Investments Limited. Huwa zamm l-originali ta` dawn id-dokumenti.

Kompla jghid li l-pagamenti saru u gew onorati d-*deadlines*. Madanakollu, huwa qatt ma nghata struzzjonijiet biex tigi mplimentata s-*share capital*.

Qal illi meta dahal-Ewro, David Curmi kien staqsih jekk kellhom jinbidlu d-dokumenti necessarji sabiex is-*share capital* issehh. Huwa qallu li ahjar isiru dokumenti godda, izda dawn baqghu qatt ma saru.

Xehed li kienet saret laqgha fl-ufficju ta` Vincent Curmi li kien l-awditur ta` Tucan Investments Limited fl-2011 li ghaliha attenda flimkien ma` l-awditur Curmi, Mario Camilleri, Mark Camilleri, Jean Paul Tabone u l-awdituri tagghom. Il-laqgha saret sabiex tinbidel id-dokumentazzjoni minhabba l-valuta u anke minhabba l-fatt li Tucan Investments Limited ma setghetx iddahhal Lm123,000 fil-kotba taghha u tiddikjarahom bhala *share capital* taghha peress li t-bdil minn *loan* ghal *share capital* kienet ghadha ma saritx. Fl-2011 kienu dahlu *value shift rules* u ghalhekk kellha tithallas ukoll *capital gains tax* fuq is-*share increase*. Ghalhekk il-laqgha ssejhet biex jigu diskussi l-multi li kienet qeghda tinkorri Tucan Investments Limited mal-MFSA minhabba nuqqas ta` prezentata ta` *accounts* u anke dwar il-problema ta` hlas ta` *capital gains tax* fuq *share increase*.

Stqarr li David Curmi kien talab li jsir *is-share increase* izda Camilleri u Tabone qatt ma gabu l-*waiver* minghand l-azzjonisti ta` The Players Group. Il-saret ghax din il-kwistjoni ma setghetx tibqa` titwal. Hadd qatt ma tkellem li kienet problema li d-dokumentazzjoni ssir fl-Ewro. Kulhadd fehem il-problemi li kien hemm izda ma gie mplimentat xejn waqt il-laqgħa ghalkemm kien hemm qbil li l-laqgħa tigi posposta billi Maltco kienet sejra terga` toffri għall-estensjoni tal-licenzja. L-unika raguni għalfejn ma sarx it-tibdil fis-*share capital* kien għaliex Maltco kienet ser tidhol fil-fazi li tagħmel l-offerta tat-tigdid ta` l-licenzja. Hadd ma pprezentalu *waiver* ta` l-*pre-emption rights* ta` The Players Group. Kien diskuss ukoll ma` l-awdituri ta` Jeanlot Limited u Mariolot Limited illi kellu jsir rapport minnhom li din il-*loan* kienet għadha dovuta sabiex imbagħad tigi konvertita f`*share increase*.. Fil-laqgħa saret diskussjoni ukoll għaliex fl-*accounts* ma setax jinkiteb li kienu qed jircievu *dividends* meta s-*share increase* kienet għadha ma saritx.

Xehed illi huwa gie avvicinat fl-2013 minn David Curmi li kien nqala` l-inkwiet u intbagħtu għalhekk ittri ufficjali. Madanakollu, ir-risposta li nghatat kienet li l-*loan* kienet effettivament thallset u li għalhekk, ma kienx hemm dritt li l-kreditrici tagħzel l-opzjoni ta` *share increase*.

Sostna li l-*bank guarantees* kienu gew ritornati u anke s-self personali ta` Lm123,000 kull wiehed kien gie ritornat.

Spjega li l-investment ta` Tucan Investments Limited kien illi mhux jiehdu interessi minn fuq is-somma ta` Lm123,000 (li fuqha kien hemm l-opzjoni li jsir *share increase*) izda li jiehdu sehemhom mill-qliegħ relatat ma` dak is-*share capital*. Fil-ftehim kien gie miftiehem li irrISPettivament meta tigi registrata s-*share increase* a favur Tucan, mid-data ta` dak il-ftehim, Tucan kienet intitolata li tibda tircievi 50% tad-*dividend* li tircievi Mariolot Limited u 50% tad-*dividend* li tircievi Jeanlot Limited. L-investment sar sabiex Tucan Investments Limited tippartecipa fil-profitti. Fil-fatt Tucan Investments Limited irceviet id-*dividend entitlement* sena b`sena mit-2004 `il quddiem. L-investment kellu profitt qawwi peress li Maltco tagħmel il-profitt.

Qal illi in segwitu kien infurmat illi Mario Camilleri kien zvesta ruhu mis-*shareholding* ta` Mariolot Limited a favur ta` Lattimer Limited.

Ikkonferma l-prospett li pprepara biex juri l-ispejjez u hsara li garrbet is-socjeta` attrici.

Ipprezenta wkoll ittra mill-MFSA datata 19 ta` April 2013, *statement* ta` kontijiet ta` l-Avukati Refalo & Zammit Pace ; u kontijiet ta` l-Avukati Refalo & Zammit Pace.

Fil-**kontroezami**, xehed illi huwa qatt ma ra l-ebda *waiver*. Il-persuni li l-izjed setghu jigu pregudikati bil-*pre-emption rights* kienu Tabone u Camilleri.

Spjega li huwa kien li hareg bl-istruttura ta` kif ghandha ssir it-transazzjoni u dan wara li kienu saru diversi laqghat mal-partijiet.

Spjega li Camilleri u Tabone kellhom *financial commitment* ma` The Players Group u avvicinaw lil Curmi fejn offrew illi jekk Curmi johorgu l-flus kollha huma, dawn kienu ser jghaddulhom nofs is-*share capital* li kienu ntitolati ghalih Camilleri u Tabone.

Qal illi fuq il-ftehim, kien hemm *loan* li hija cara li ghandha dik in-natura.

Spjega li kieku anke t-tieni parti kienet kostitwita b`*loan* ukoll, ma kienx ikun necessarju li ssir f`parti ohra tal-iskrittura.

Spjega li l-ftehim huwa maqsum parti f`*loan* u parti ohra f`*loan with an option for share capital*.

Qal illi l-intendiment kien car bejn il-kontendenti fis-sens li kellha tghaddi nofs l-equity. Dan it-tip ta` ftehim sar b`dan il-mod peress li meta kienu waslu fi stadju avanzat u kien anke sar il-ftehim kummercjament, Camilleri u Tabone kienu avzaw lilu u lil Curmi b`*shareholders agreement* li ma kienx parti mill-*memorandum* u *articles* ta` The Players Group konsistenti minn *pre-emption rights* fil-kaz ta` trasferiment ta` ishma. Camilleri u Tabone ntalbu jgibu *waiver* izda meta din ma ngabitx, kien deciz li jirrikorru ghall-opzjoni.

Spjega li l-*loan* li saret favur Camilleri u Tabone kienet minghajr interessi sakemm tigi mhallsa sal-perijodu indikat fil-ftehim. Fit-tieni parti, ma kienx tnizzel zmien sa meta kellu jsir is-*share transfer option* peress li meta kellha ssir din is-*share transfer* kien dependenti fuq is-*shareholders` agreement* ta` The Players Group. Dak iz-zmien, id-diskors bejn il-partijiet kien li lanqas hemm bzonn skrittura ghaliex kien hemm l-irgulija. Ma kienx iffissat terminu sa meta kellha tigi ezercitata din is-*share option* peress li dan kien dipendenti fuq meta Camilleri u Tabone jgibu l-kunsens talazzjonisti l-ohra ta` The Players Group. Il-ftehim gie ffirmat fl-istess zmien li Maltco nghatat il-licenzja u ghaddeu il-flus. Huwa kien jaf li l-licenzja li nghatat Maltco kellha terminu li jista` jkun kien ta` seba` snin.

Kompla jixhed li l-ftehim ma kienx marbut bl-ebda terminu. Il-*loan* relatata mas-*shareholding* kienet marbuta b`terminu kif kienet ukoll il-garanzija bankarja. Spjega li l-*equity* ma kienx marbut b`terminu fis-sena.. Ma kienx hemm ftehim li wara certu data, Curmi kellhom jbieghu lura s-*shares* lil Camilleri u lil Tabone. L-interess kien illi Curmi jiehdu s-*shares* f`Mariolot Limited u Jeanlot Limited sabiex meta Maltco jghaddilha t-terminu u terga` toffri offerta ghal tigidid tal-licenzja, Curmi jkollhom diga` l-*equity* tagghom registrat. Ikkonferma li sabiex Maltco terga` tiehu l-offerta, kellu jsir *tendering process* gdid. Hadd mill-partijiet ma semma li kellha tizdied klawsola dwar x`kellu jigri jekk Maltco ma tinghatax estensjoni ta` l-licenzja. Insista li l-intenzjoni tal-partijiet u dak li hemm miktub fl-iskrittura jirriflettu lil xulxin.

Qal illi fit-terminu tal-validita` ta` l-ewwel licenzja bejn l-2004 u 2011 qatt ma saret talba bil-miktub biex tigi ezercitata l-*option* tas-*share capital increase*. Ir-relazzjonijiet bejn il-partijiet kienu kordjali hafna fil-laqgha li saret fl-2011 u ma saritx it-talba f`dan ir-rigward peress li skont Camilleri, kien ahjar li l-affarijiet jibqghu kif inhuma f`dak il-perijodu li proprju fih kienet ser issir offerta ohra biex tiggdedd il-licenzja. Huwa ra s-*shareholders` agreement* vigenti bejn l-azzjonisti ta` The Players Group Limited. Hemm *pre-emption right* f`The Players Group Limited li tapplika sew ghal *share transfer* kif ukoll ghal *share increase*. Fil-*memorandum* u l-*articles of association* ta` The Players Group Limited hemm *pre-emption rights* li jaffettwaw *share increase* u *share transfer*. Intghazlet l-opzjoni ta` *share increase* peress li l-interess ta` Tucan Investments Limited kien li jinvestu f`Mariolot Limited u Jeanlot Limited. Ma ntghazlitx l-opzjoni li jixtru *shares* minghand Mario Camilleri u Jean Paul Tabone ghaliex jekk kienu sejr inxtraw, il-flus kienu ha jmorru ghandhom u ma kinux ser jibqghu f`Mariolot u Jeanlot sabiex imbaghad jigu nvestiti f`The Players Group u sussegwentement f`Maltco.

Qal illi ghalhekk kien issuggerit li Camilleri u Tabone ma jibqghux azzjonisti f`The Players Group f` isimhom personali izda f` isem kumpanija halli b`hekk il-*pre-emption rights* f`The Players Group ma tibqax problema. Spjega li meta l-azzjonista ta` The Players Group kienet Mariolot, setghet issir varjazzjoni fis-*share capital* ta` Mariolot. Kien imbaghad f`dak l-istadju li Camilleri u Tabone semmew is-*shareholders` agreement* ma` l-azzjonisti l-ohra ta` The Players Group Limited fejn irrizulta li lanqas is-*share capital* tal-kumpanija ma setghu jmissu. Dak is-*shareholders` agreement* wasal ghandu minghand Av Stefan Frendo. Intalbet il-*waiver* izda Camilleri u Tabone kienu nfirmawh illi huma ma kinux avzaw lill-azzjonisti l-ohra li kienu serjidhlu nies ohra.

Sahaq illi huwa qatt ma ra l-*waiver*. Fil-laqgha tal-2011, kien issemma li ma ntalbitx il-*waiver* halli ma joholqux intoppi. Skont il-ftehim, kellha tiskatta l-opzjoni tas-*share increase*, immedjatament meta Tucan Investments Limited tibghat ittra f`dan ir-rigward u titlob li trid l-ishma registrati f`isimha. Ikkonferma li kien sar ukoll *pledge* fuq is-*shares* izda din kienet tkopri l-parti tas-self li nghata personalment li Camilleri u Tabone. Ikkonferma li l-parti tas-

self li kellha tithallas kienet giet imhallsa izda huwa ma jafx ghalfejn il-*pledge* tas-*shares* baqghet registrata fir-Registru tal-Kumpaniji. Spjega li skont il-ftehim, kien hemm imnizzel li malli jithallas dak is-self, din il-*pledge* kellha titnehha.

Ikkonferma li wahda mir-ragunijiet ghalfejn issejhet il-laqgha ta` Settembru 2011 kienet minhabba l-problema li kellhom Tucan Investments Limited biex jirregistraw l-*accounts* taghhom. Kienu diskussi wkoll il-multi li kienet qed tinkorri Tucan Investments Limited minhabba n-nuqqas ta` registrazzjoni tal-*financial statements* taghha. Tabone u Camilleri kienu ghamluha cara li l-multa kellha tithallas minnhom peress li kien tort taghhom li ma giex registrat is-*share capital*. Huwa gie avzat minn Tucan Investments Limited illi l-*bank guarantee* kienet giet ritornata, is--self personali kien thallas u kienu bdew jircievu *dividends* li kellhom jiehd u bhala *share capital*. Tucan Investments Limited kienet kostitwita fl-istess zmien li kienu kostitwiti Mariolot u Jeanlot.

Emanuel Sciriha – Direttur Qrati Civili u Tribunali - xehed spjega li saret ittra ufficjali minn Tucan Investments Limited kontra Mariolot Limited bin-nru 1834/2013. Saret ittra ufficjali ohra minn Tucan Investments Limited kontra The Players Group bin-nru 2307/2014. Kien hemm cedola ta` depozitu nru 624/2015 fl-atti tal-mandat ta` sekwestru bin-nru 97/2015 fl-ismijiet Tucan Investments Limited vs Mariolot Limited. Ittri ufficjali ohra kienu dawk ta` Tucan Investments Limited kontra Jeanlot Limited bin-nru 1833/2014, u ta` Tucan Investments Limited kontra Stephen Ghio Bonello bin-nru 1621/2014. Kien akkordat il-hrug ta` mandat ta` inibizzjoni bin-nru 1070/2014 fl-ismijiet Tucan Investments Limited kontra Mariolot Limited. Mandat ta` inibizzjoni iehor kien dak ta` Tucan Investments Limited kontra Lattimer Limited bin-nru 1187/2014. Imbaghad irrefera ghat-tliet kawzi istitwiti minn Tucan li qeghdin jigu decizi illum fosthom dik odjerna.

Av. Dr. Amanda Poole – bhala rapprezentant tar-Registratur tal-Kumpaniji - ipprezentat id-dokumentazzjoni relattiva ghal The Players Group Limited.

Xehdet illi l-*financial statements* tal-2004 u l-2005 ma kinux gew ipprezentati.

Ipprezentat il-Form T mnejn jirrizulta li sar trasferiment minn Mariolot Limited ghal Lattimer Limited ta` 125 *ordinary shares* bid-data tat-28 ta` Marzu 2014. Kien hemm Form T li saret minn Jean Paul Tabone ghal fuq Jeanlot Limited fir-rigward ta` 125 *ordinary D shares* u ohra dwar trasferiment minn Mario Camilleri ghal fuq Mariolot Limited fir-rigward ta` 125 *ordinary C*

shares. Saret Form T ohra fir-rigward ta` t-trasferiment minn Jeanlot Limited lil Jean Paul Tabone fit-28 ta` Jannar 2004 fir-rigward ta` 125 *ordinary D shares*. Sar trasferiment iehor minn Mariolot Limited ghal Mario Camilleri fir-rigward ta` 125 *ordinary C shares* datata 28 ta` Jannar 2004, u trasferiment iehor minn Jean Paul Tabone ghal Jeanlot Ltd fir-rigward ta` 125 *ordinary D shares*. Kien hemm trasferiment iehor minn Mario Camilleri ghal Mariolot Limited ta` 125 *ordinary C shares* fit-28 ta` Jannar 2004.

Xehdet li kien hemm formoli ohra li saru fosthom il-Form Q li tirrigwarda bdil fl-indirizz u Form F dwar bdil fl-awdituri. Saru l-*annual returns* mill-2008 sal-2013.

Ipprezentat kemm id-dokumenti registrati kif ukoll dokumenti li mhumiex registrati inkluzi l-*annual returns* u *financial statements* ta` Jeanlot Limited u Mariolot Limited.

Ipprezentat ukoll l-*unabridged annual report* u *statements* ta` Maltco ghas-snin bejn 2004 sa 2013.

Qalet illi Lattimer Limited ghadha qatt ma pprezentat *financial accounts*.

Emanuel sive Lino Micallef Borg - rapprezentant ta` Maltco Lotteries Limited – xehed li Maltco thallas *dividends* lis-*shareholders* taghha fosthom Players. F`April, Mejju u Gunju ta` l-2006, il-kumpannija hallset €1,262,171 li minnhom Players hadet €302,921. Kien ikopri l-profitt li sar fl-2004 u fl-2005. F`April u Lulju 2007, hallset €3,043,662 li minnhom Players hadet €730,479. F`April u Lulju 2008, hallset €3,266,988 bis-sehem ta` Players ikun ta` €784,077. F`Marzu 2009, il-kumpannija hallset €3,662,463 li minnhom Players hadet €878,991. Fl-2010 hallset €2,422,774 li minnhom Players hadet €581,466. Imbaghad f`April 2011, hallset €2,539,537 li minnhom Players hadu €609,489. Players dejjem hadet 24% tad-*dividends* li jithallsu. Fl-2011, Maltco hallset *dividends* izda dawn marru lura ghandha bhala *shareholders contribution*. Fl-2013 thallsu €1,505,504 li minnhom il-Players Group hadu €361,321. B`kollox Players hadet €4,248,744. Matul iz-zmien kien darba biss illi saret jkontribuzzjoni mill-azzjonisti billi l-kumpannija kellha bzonn il-flus. Din il-kontribuzzjoni ma kenitx self. Qal illi ma jafx meta jmiss jinhareg *dividend* peress li dik kwistjoni li tigi deciza mid-direttur. Wara li kienet notifikata bil-mandati ta` sekwestru nru 96/2015 u 97/2015, id-*directors` remuneration* ta` Camilleri kien depozitat il-qorti.

Raphael sive Ralph Bianchi xehed illi ma jidhirlux li qatt kien iffirmit *shareholders` agreement* ta` The Players Group Limited. Lanqas qatt kien hemm xi restrizzjonijiet ghat-trasferiment ta` *shares* jew ta` *issue* ta` *shares*.

Fil-**kontroezami**, xehed illi jaf li hemm *shareholders` agreement* bejn Players u Intralot. Ma setax ighid jekk l-ishma ta` Mariolot Limited u ta` Jeanlot Limited kinux *freely transferable*.

Stefan Bonello Ghio minn PWC xehed illi Tucan Investments Limited inkarikathom jaghmlu *assessment* tar-relazzjoni bejn Jeanlot, Mariolot u Tucan vis-a-vis l-ftehim ta` bejniethom. Ghamlu rapport tal-*cashflows* bejn it-tlett partijiet u analizi tal-*financial statements* ta` Mariolot u Jeanlot matul il-perijodu tal-ftehim. Ipprezenta kopja tar-rapport. Mill-*financial statements* ta` Jeanlot u Mariolot ippruvaw jidentifikaw il-flus li rcevev bhala *dividends* jew ghaddew bhala interessi jew pagamenti lil Tucan Investments Limited. Skont l-accertamenti li saru, jidher li l-kuntratt ma kienx qed jigi ezegwit skont il-pattijiet tieghu u li Tucan Investments Limited kienet qeghda tbatu telf u pregudizzju.

Vincent Curmi xehed illi huwa socju fid-ditta VCA li tipprovdi servizz ta` *accounting* u audit. Kien mitlub minn Tucan Investments Limited biex jiehu hsieb il-kotba taghha. Neville Curmi jigi huh. Skont id-dokumenti li ghaddewlu, kien jidher li Tucan Investments Limited kellha ftehim ma` zewg kumpaniji u cioe` Mariolot Limited u Jeanlot Limited. Il-ftehim kien iffirmit qabel gie avvicinat hu. Il-ftehim kien jikkomprensi tlett aspetti u cioe` self li kien pagabbli skont l-istess ftehim ; provvista ta` garanzija bankarja kif ukoll self iehor li kellu jigi konvertit f`kapital azzjonarju ordinarju favur Tucan Investments Limited, kemm fil-kumpanija Mariolot Limited kif ukoll fil-kumpanija Jeanlot Limited.

Spjega li dawn it-tlett materji kellhom jigu rapportati fil-kotba u fil-*financial statements* ta` Tucan Investments Limited. Pero` kien hemm problema biex isir dan peress li t-transazzjonijiet dwar l-ishma li Tucan kien ser ikollha f`dawn is-socjetajiet kienu rapprezentati minn self li kellu jintuza sabiex jinhargu *shares* godda kemm fil-kumpanija Mariolot Limited kif ukoll fil-kumpanija Jeanlot Limited. Tucan Investments Limited kienet qeghda tircievi *dividends* minghand Mariolot Limited u Jeanlot Limited li kien jirrefletti s-*shares* li Tucan Investments Limited kellu jkollha fiz-zewg kumpanij, ghalkemm dawn kienu ghadhom ma gewx registrati f`isimha. Kien qed jithallas *dividend* lil Tucan Investments Limited skont il-ftehim minkejja li l-ishma li akkwistat fiz-zewg kumpaniji ma kinux ghadhom jidhru registrati fl-isem ta` Tucan.

Xehed li huwa kien qajjem il-problema ma` l-azzjonisti ta` Tucan Investments Limited peress li meta gie biex jirrikoncilja dak li kienet irceviet Tucan minghand Mariolot u Jeanlot, induna mill-*accounts* ta` Mariolot Limited u Jeanlot Limited li dawn ma kinux qed jitrattaw dawk il-flejjes bhala *dividend*.

Kien ghalhekk li ssejhet laqgha fis-sajf tal-2011 fl-ufficini ta` Curmi & Partners. Ghal din il-laqgha, attenda hu flimkien ma` David Curmi, Dr Ian Stafrace, Mario Camilleri, Mark Camilleri, Louis Padovani li kien l-awditur ta` Mariolot Limited, Jean Paul Tabone u Stefan Bonello Ghio li kien l-awditur ta` Jeanlot Limited. Ma kenitx dik l-unika darba li ltaqghu dwar dan is-suggett.

Qal illi l-kwistjonijiet li gew diskussi fid-diversi laqghat kienu t-talba ta` Tucan sabiex is-*shares* li hija kellha fi Mariolot u Jeanlot jigu registrati mar-Registatur tal-Kumpanniji u dwar kif kellu jigi trattat ghall-fini tal-kotba tal-kumpanniji il-hlas li kien qiegħed isir. Saret diskussjoni ukoll dwar il-multi li kienet qed tinkorri Tucan Investments Limited ghax ma setghetx tirregistra l-kotba u *financial statements* tagħha. Saru diversi laqghat bejniethom kollha sabiex jigu diskussi dawn il-problemi u jigi deciz kif għandhom jigu registrati l-pagamenti ta` *dividends* fl-*accounts* ta` Tucan. Waqt dawn il-laqghat, kien accettat minn kulhadd li l-pagamenti li kienu saru kienu thallsu bhala sehem Tucan mid-*dividends* u mhux bhala *loan repayments*. Il-kwistoni kienet biss wahda dwar kif kellhom jigu riflessi dawk il-pagamenti fil-kotba ta` Mariolot u Jeanlot billi dawn kienu għadhom ma rregistrawx l-ishma kif mitlub minnhom.

Sahaq li d-diskussjonijiet kienu kordjali hafna u kulhadd wera determinazzjoni u xewqa li l-materja tigi konkluzi. Jiftakar izda li fil-laqghat ta` l-2011, Mario Camilleri kien qal li jkun izjed għaqli li wieħed jistenna ftit xhur oħra qabel ma jigu registrati s-*shares*, peress li Maltco kienet ha tidhol għat-*tender* sabiex tingħata koncessjoni għida tal-licenzja tal-lottu u lotteriji. Wera l-hsieb li jekk ikun hemm xi caqliq fis-*share capital* f`dak il-mument dak il-pass seta` jigi mifhum negattivament. Minhabba li Tucan Investments Limited kienet qed tehel multi minhabba n-nuqqas ta` registrazzjoni ta` l-*accounts* mal-MFSA, Mario Camilleri u Jean Paul Tabone intrabtu li jibqghu jhallsu huma dawn il-multi.

Xehed illi sar ftehim fis-sens illi kollox jigi pospost għall-2012 u sar ukoll diskors ma` Louis Padovani u Stefan Bonello Ghio sabiex jibdew jippreparaw is-section 73 *reports* kif ukoll il-valuations necessarji minhabba l-obbligi fiskali, halli meta jasal l-2012 issir ir-registrazzjoni. Wara li għadda xi zmien, David Curmi avzah li kien hemm problemi għaliex Mario Camilleri u Jean Paul Tabone kienu qed jghidu li huma ma kellhom l-ebda obbligu lejn Tucan Investments Limited. Baqa` sorpriz hafna dwar dan għaliex hadd minnhom ma kien qal xejn f`dak ir-rigward waqt il-laqghat li għalihom hu kien prezenti. Il-konsegwenza kienet li Tucan għadha ma tistax tagħlaq l-*accounts*.

Mario Camilleri xehed li hu u Tabone kienu qablu li javvicinaw lill-privat minflok xi bank biex ikunu jistghu jipprokuraw il-flus li kellhom bzonn fir-rigward tal-licenzja tal-Maltco. Kellhom bzonn ta` Lm247,000 kull wieħed. Kellem lil Neville Curmi. Sostna li qatt ma kien hemm ftehim jew arrangement dwar xi *share option*. Kien hemm *amicable agreement* bejniethom izda huma

kienu gabu avukat u kienet saret din *s-share option*. Il-ftehim kellu validita` ta` seba` snin li kien konness mal-ghoti tal-licenzja. Kienet l-ewwel darba li l-licenzja giet privatizzata. Hadd ma kien jaf x`kien ser jigri wara li jghaddu s-seba` snin billi ma kienx hemm ftehim mal-Gvern li l-licenzja setghet tigi mgedda awtomatikament. Infatti meta ghaddew is-seba` snin, hareg *tender* process gdid.

Ikkonferma li qabel l-ittra ufficjali ta` Gunju 2013, huwa qatt ma rcieva xi talba bil-miktub biex tigi ezercitata a favur ta` Tucan Investments Limited *s-share option*. Skont il-ftehim kull ma kien jidhol bhala *dividend* ghand Mariolot Limited, kellu jinghata kollu lil Tucan Investments Limited bhala pagament tal-*loan* ta` Lm246,000. Insista li l-*loan* kollu, ossija dak ta` Lm123,000 u l-iehor ta` Lm123,000 thallas kollu. Cahad li qatt ftiehem verbalment jew bil-miktub li l-penali dwar nuqqas ta` *filing* ta` *accounts* ta` Tucan Investments Limited jithallsua minnu jew minn Mariolot Limited jew minn Jeanlot Limited.

Qal illi kull laqgha li saret dwar Maltco dejjem kienet kordjali.

Stqarr illi billi ghal xi zmien fl-2010 kellu problemi ta` sahha, ibnu Mark ha hsieb in-negozjuen ha hsieb in-negozju tieghu ibnu Mark Camilleri. Sostna li saru *overpayments* ta` €200,000 bi zball. Ibnu baqa` jikkorrispondi ma` David Curmi fl-2012 u fl-2013 minkejja li kollox kien thallas sa l-2011, izda huwa ma staqsiex lil ibnu dwar dan ghalkemm ma ghandux dubju li Mark baqa` ghaddej fuq l-affarijiet u struzzjonijiet ta` David Curmi. Mark ma kienx involut fil-ftehim meta gie iffirmat.

Xehed li huwa ried jirringa certu affarijiet tal-familja tieghu u hass li kellu jaghmel trasferiment fuq il-kumpannija li ser tkun tat-tfal. Huwa ma talabx il-kunsens ta` Tucan Investments Limited biex jaghmel dan it-trasferiment a favur ta` Lattimer Limited ghaliex il-ftehim kien spicca. Kien hemm agenzija gdida u negozju gdid peress li harget *tender* gdida ghal licenzja tal-lottu u lotteriji. Li kieku ried seta` ma dahalx ghat-tieni offerta.

Fil-**kontroezami**, xehed illi l-ftehim ma` Curmi kien li jaghtuh self ta` flus. Ma jiftakarx li kien hemm zewg forom ta` avvanzi ta` flus, ossija parti minnhom self u parti partecipazzjoni fil-kumpannija. Tassew li Curmi kellhom cans li jiehd *shareholding* u riedu jaghmlu transfer. L-opzjoni li jiehd *s-shares* baqghet veljanti sakemm jithallas id-dejn. Il-ftehim kien li jsir avvanz ta` Lm246,000 izda din is-somma nqasmet f`zewg ammonti ghal ragunijiet ta` Tucan Investments Limited. Il-flus kollha kienu rifuzi permezz tad-dividends li kienu jmorru kollha a favur ta` Tucan Investments Limited. Huwa dejjem fehem li Curmi kienu ser jaghtuh Lm246,000 u li dawn kellhom jithallsu lura.

Kien mistoqsi ghalfejn baqa` jsir il-hlas, jekk l-intendiment kien biss li tithallas lura s-somma ta` Lm246,000. Wiegeb li dik il-bicca xoghol baqa` jiehu hsiebha t-tifel tieghu Mark Camilleri u baqghet issir ghax kien hemm xi imghax fuq il-flus.

Ikkonferma li kienet saret laqgha li ghaliha attenda Vincent Curmi u kkonferma li kien sar diskors dwar pagamenti li kienet qed taghmel Mariolot lil Tucan. Id-diskussjoni kienet ghaddejja bejn l-*accountants*. Sostna li kienet qeghda tigi trattata l-problema dwar kif kellhom isiru l-*accounts*. Sostna illi l-*loan* ta` Lm246,000 kellha tithallas mhux billi huwa jmur igib flus mill-bank tieghu izda kellha tithallas direttament mid-*dividends* li kienu qed jircievu mill-Maltco. Minn sena ghal sena, nofs id-*dividends* dejjem gew mghoddija lil Tucan Investments Limited.

Xehed illi sakemm thallas il-*loan* ta` Lm123,000, id-*dividends* kollha kienu jigi mghoddija lil Tucan Investments Limited u imbaghad baqghu jghaddu biss nofs id-*dividends*. Ibnu qatt ma ghamel pagament ta` multi imposti fuq Tucan Investments Limited. Huwa minnu li Tucan Investments Limited baghtet *breakdown* tal-penali li kienet qed tinkorri, izda huwa qatt ma accetta li jhallas il-penali.

Stqarr illi huwa qatt ma talab rifuzjoni ghal *overpayments* li nghataw lil Tucan Investments Limited.

Stqarr illi fil-fatt kien talab rifuzjoni meta rcieva l-ittra ufficjali izda ma saritx kawza dwarhom ghaliex kienet ghaddejja din il-kawza.

Qal li thallsu €220,000 zejda izda huwa hass li dawn kienu imghaxijiet fuq il-flus mislufa ai termini ta` l-iskrittura. Curmi ma kinux ser jidhlu fin-negozju biex ma jaghmlux qliegh u dak huwa parti mill-qliegh taghhom. Insista li l-kuntratt inkiteb mill-avukat taghhom u mhux l-avukat tieghu.

Moqrija lilu parti mill-iskrittura fejn hemm imnizzel li nofs is-self kellu jkun ekwivalenti ghal Lm123,000 f'*equity* f'Mariolot Limited, huwa sostna li b'dak huwa kien qed jifhem li Curmi kienu qed jiprotegu ruhhom fl-eventwalita` li s-self ma jithallas. Sostna li l-ftehim kien li jekk is-self ma jithallasx, isir tali trasferiment ta` *shares*. Curmi qatt ma agixxew.

Ikkonferma li kien hemm restrizzjonijiet ghal trasferiment ta` *shares* fil-livell tal-Maltco. Curmi li ddecidew li ma jaghmlux ir-registrazzjoni dak iz-zmien minhabba li n-negozju kien ghadu ma bediex, l-affarijiet li kienu ghaddejjin kienu ghadhom miftuha, u l-licenzja kienet ghadha ma gietx konkluza. Huwa

accetta kif riedu Curmi. Sostna li ma rregistrawx is-*shareholding* f'Mariolot Limited peress li riedu jevalwaw jekk kienx ta` profitt ghalihom jew le. Kien biss fl-2013 li rcieva minghandhom sabiex jigi registrat is-*shareholding*. Li kieku Curmi tassew riedu li ssir ir-registrazzjoni, setghu jaghmluha ghaliex kellhom il-karti kollha diga` ffirmati.

Sostna li s-self ta` Lm425,000 kien kollu riflless fl-*accounts* tal-kumpannija. L-ammont ta` Lm123,000 inghataw lilu personalment u poggihom bhala flus fi Mariolot Limited ; il-bqija nizzilhom bhala *shareholders` loan*. Ma jafx fejn gew rifllessi l-Lm123,000 l-ohra fl-*accounts*. Tucan Investments Limited ma ezercitatx l-opzjoni u thallset tal-flus kollha.

Jean Paul Tabone xehed li hu u Mario Camilleri kellhom bzonn jippartecipaw fit-*tender* tal-privatizzazzjoni tal-lotterija nazzjonali u kellhom bzonn jissellfu flus biex jippartecipaw. Iddecidew li jmorru ghand Curmi & Partners u sselfu Lm246,000 kull wiehed. Spjega li kif kien jidhol id-*dividend* go Jeanlot Limited, huwa kien ihallas dak id-*dividend* fl-intier tieghu lil Curmi sabiex jaqta` s-self li kellu magghom. Baqa` jhallas sal-2011 ghaliex imbaghad hallas is-self kollu u l-licenzja nghalqet u spiccat. Wara kien hemm tigidid tal-licenzja. Fiz-zmien li sar il-ftehim, hadd ma kien jaf ezatt x`ser jigri wara li jaghlaq l-ewwel kuntratt. Il-licenzja l-gdida harget wara li harget tender offer gdida.

Xehed li ma` Curmi l-ftehim kien ghal seba jew seba snin u nofs sabiex jithallas lura s-self. Curmi kellhom *share option* li jekk riedu ghaliex kellhom id-dokumenti f`idejhom, setghu jezercitaw tali opzjoni. Bl-ezercizzju tas-*share option*, Curmi kien ser ikollhom ekwivalenti ta` persentagg fil-kumpannija u jiehdur proporzjon mid-*dividend*.

Ma gharafx iwiegeb jekk f`kaz li tigi ezercita is-*share option*, kienx xorta jibqa` obligu fuq Jeanlot Limited li thallas is-somma ta` Lm123,000 lil Curmi.

Insista li dak li hu zgur kien li kien ihallashom lura billi hareg 50% mid-*dividend*. Li kieku ezercitaw is-*share option* u ma kienx hemm *dividend*, Curmi kienu jispicaw ma jiehdur xejn. Sostna li l-pagamenti li kien qed jaghmel kienu bhala hlas tas-self.

Spjega li meta ngatat il-licenzja lil Maltco, kulhadd kien jaf li ma kienx il-mument opportun li jsir dan it-trasferiment tal-ishma. In segwitu hadd ma cempillu u infurmah li ried li jsir it-trasferiment tal-ishma. Ircieva interpellazzjoni dwar dan b`ittra ufficjali fl-2013. Id-dritt li jezercitaw is-*share option* kien fid-diskrizzjoni ta` Curmi. Ma jafx ghaliex ma ezercitawx dak id-dritt izda jista` jkun li riedu jivverfikaw kif ser imur in-negozju. Huwa qatt ma ttratta

l-kwistjoni ta' *pre-emption rights*. Ma kienx hemm *shareholders' agreement* fil-livell ta' The Players Group Limited.

Isemmi laqgħa wahda fejn kienu trattati xi penali li Curmi kienu qed isofru minhabba nuqqas ta' *filing* ta' l-*accounts* tagħhom, izda din ma kinitx problema u huwa zgur qatt ma qal li kien ser ihallas il-penali inkorsi. Spjega li saret laqgħa kordjali fejn l-*accountants* iddiskutew bejniethom fuq xi kwistjonijiet li ma kinux qed jaqblu dwarhom izda qatt ma sar *follow up* ta' din il-laqgħa. Spjega li huwa qatt ma ta direzzjoni lil Mark Camilleri biex jitkellm għan-nom tiegħu mas-sinjuri Curmi.

Insista li l-ftehim skada għaliex inharget licenzja gdida. Kienu Curmi li qatt ma talbu li ssir is-*share option* u issa thallas kollox min-naha tiegħu. Spjega li s-self kien mingħajr imghax izda huwa spicca hallas madwar €200,000 zejda. Spjega li dan il-pagament zejzed sehħ wara s-sena 2009 u dana peress li minkejja li thallas is-self kollu, baqa' jithallas 50% mid-*dividend* bhala interessi. Spjega li l-kollega tiegħu kien infurmah li għandhom jibqgħu ihallsu 50% bhala imghax u għalhekk huwa baqa' jhallas. Spjega li huwa nduna bl-izball meta rcieva l-ittra ufficjali u kellew lil avukat.

In **kontroezami**, Jean Paul Tabone kkonferma li Tucan Investments Limited għamlet zewg avvanzi ta' flus wahda ta' Lm123,000 lilu personali u Lm123,000 lil Jeanlot Limited. Is-self li ngħata lilu personalment kien self bl-imghax. Mistoqsi dwar l-Lm123,000 li ngħataw lil kumpannija, huwa insista li l-ftehim ma kienx li dan jingħata biex jidhlu fi shab miegħu izda kellhom dritt jezercitaw is-*share option*. Spjega li Curmi kellhom riskju meta jieħdu tali *shares* u għalhekk dik kienet decizjoni tagħhom. Jekk ma jezercitawx l-opzjoni, huwa kellu jhallas Lm123,000. Huwa caħad li din is-*share option* saret għaliex kien hemm restrizzjonijiet fuq it-trasferibilita' ta' *shares*. Huwa qatt ma qal kliem f'dan is-sens lil Curmi. Quddiemu ma ntqal xejn dwar restrizzjoniet tat-trasferibilita' tas-*shares*, għalkemm jista' jkun li ntqal izda ma semax id-diskors.

Qal illi saret laqgħa fl-2011 biex jitkellmu l-*accountants* dwar problemi li kellhom bl-*accounts*. Spjega li kien hemm xi haga fl-*accounts* li ma kinitx qed tinsel tajjeb. Sostna li Lm123,000 li gew avvanzati lil Jeanlot gew riflessi fl-*accounts* tal-kumpannija u din dehret bhala li hu ta *loan* lil kumpannija. Fl-2004 deħru bhala *loan* personali tiegħu u *loan* oħra lill-kumpannija. Insista li s-self gie mnizzel bhala *shareholder's loan*. Kompla jghid li huwa jiffirma l-*accounts* tal-kumpannija izda huwa ma kienx tekniku u kien ihalli f'idejn l-*accountants*.

Zied jghid li hemm imnizzel li Lm123,000 gew dikjarati fil-*balance sheet* bhala *shareholding* izda kienet il-kumpannija li hadet is-self u mhux hu. L-*accounts* tal-2004 kienu pprezentati fl-2008. Jiftakar li ma kienx hemm qbil dwar kif kellhom isiru l-*accounts* u kien għalhekk li saret laqgħa flimkien ma' l-

accountants. Bil-miktub huwa qatt ma accetta li jhallas xi penali jew multi. Hallas fuq struzzjonijiet ta` Mariolot Limited u dan sabiex jaqtghu l-*loan* li kien baqa` ftit minnha x`titihallas.

Qal illi ma kienx jiftakar email li kien baghat lil David Curmi izda jista` jkun li r-raguni ghalfejn kien accetta li jhallas il-multi kienet ghaliex l-*accounts* tal-kumpannija tieghu gew prezentati fl-2008 u ghalhekk ipprezuma illi l-multi li inkorriet Tucan Investments Limited kienet tort tad-dewmien tal-prezentazzjoni ta` l-*accounts* tal-kumpannija tieghu. Skont l-*accountant* tieghu, Tucan Investments Limited xorta setghet tipprezenta l-*accounts* taghha. Tucan qatt ma ezercitat id-dritt taghha ta` *share option* u ghalhekk il-flus li thallsu kienu *loan repayments* u mhux *dividends*.

Stqarr illi Players ghandha 24% tas-*shareholding* ta` Maltco. Players ghandha erba` azzjonisti li kull wiehed ghandu 25% tal-ishma. Kull ma Players iddahhal bhala *dividends* minghand Maltco jinqasam indaqs bejn l-erba` azzjonisti wara li jinqatghu l-ispejjez. Ikkonferma li kien hemm sena minnhom li d-*dividend* li nghatat lura lil Maltco bhala kontribuzzjoni billi l-*majority shareholder* kellu bzonn li jsir hekk biex jiehu xi *tax benefit*. Ikkonferma wkoll li ghall-2014 id-*dividend* baqa` *undistributed*. Ikkonferma li The Players Group kienet notifikata bil-mandati ta` sekwestri ta` Tucan Investments Limited.

III. Fatti

The Players Group Limited ippartecipat ma` haddiehor fit-tender ghall-gestjoni tal-lottu u tal-lotteriji nazzjonali b`24% tal-ishma tas-socjeta` Maltco Lotteries Limited ("Maltco"). Maltco fil-fatt rebhet it-tender. Mario Camilleri tramite Mariolot Limited kellu 25% tal-ishma ta` The Players Group Limited izda kellu bzonn flus biex ikun jista` jkopri s-sehem tieghu. Billi ma kellux likwidita`, minflok ittratta ma` bank kummercjali, fittex risorsi finanzjarji ghand Neville u David Curmi.

Fid-29 ta` April 2004 kien iffirmit kuntratt bejn is-socjeta` attrici ta` Curmi minn naha wahda, u min-naha l-ohra Mario Camilleri, Mary Josephine Camilleri u Mariolot Limited (is-socjeta` ta` Camilleri). Permezz ta` dan il-ftehim, Tucan Investments Limited tat b`self lil Mario Camilleri l-ammont ta` Lm123,000, liema self kellu jkun minghajr imghax, dment li jithallas lura fiz-zmien tal-ewwel terminu ta` validita` tal-licenzja li Maltco Lotteries Limited kisbet mill-Gvern ta` Malta. Fin-nuqqas li jsir il-hlas, il-ftehim kien jistipola l-komputazzjoni ta` l-imghax. Kien hemm ukoll kondizzjonijiet ohra dwar dan is-self fosthom (i) li l-flus mislufa kellhom jigu adoperati biex l-ammont jigi konvertit f`ishma li jkunu *fully paid up* fil-kumpannija Mariolot Limited ; (ii) li ssir *pledge* favur Tucan Investments Limited fuq il-123,000 sehem li Mario

Camilleri kellu fi Mariolot Limited ; u (iii) illi s-self kellu jithallas lura mid-*dividends* li Mario Camilleri jircievi minghand Mariolot Limited.

Id-disposizzjonijiet rilevanti huma dawn :-

2 a. Tucan Investments Limited hereby grants by title of loan to Mario Camilleri, who accepts, the sum of one hundred and twenty three thousand Maltese Lira (Lm123,000) which sum is being forwarded to Mario Camilleri on the date of this agreement, for which amount, Mario Camilleri tenders due receipt.

b. This loan is being made and accepted under the following terms and conditions ;

i. The loan shall be for a period of the validity of the first term of the licence in favour of Maltco Lotteries Limited, provided that the term shall in no case exceed eight and a half years from the date of the issue of the licence ;

ii. Provided that the loan is paid in full within the said period referred to in (i) above, the loan shall be interest free ;

iii. Any balance of the loan still due after the expiry of the said period, shall become payable upon a simple demand in writing by Tucan Investments Limited to Mario Camilleri and shall bear interest at %% above the base rate of the Central Bank at the time (provided 8% minimum) per annum to be computed from the first day immediately after the expiry of the seven (7) year period until date of effective payment in full ;

iv. During the said period of seven (7) years the loan shall be paid to Tucan Investments Limited from all the dividends Mario Camilleri receives from Mariolot Limited in accordance with the provisions of section 5 of this agreement ;

v. Mario Camilleri shall, concurrently with the receipt of the amount being loaned to him, convert such an amount into one hundred twenty two thousand five hundred (122,250) fully paid up Ordinary Shares of one Maltese lira (Lm1.00) each in Mariolot Limited. Mario Camilleri shall furthermore, use the balance of the loan to pay up in full the five hundred (500) ordinary shares of one Maltese Lira (Lm1.00) each he currently holds in Mariolot Limited, which shares are currently twenty per cent (20%) paid up ;

(vi) In order to better guarantee the repayment of the loan, Mario Camilleri hereby binds himself to pledge the one hundred and twenty three thousand (123,000) Ordinary shares in Mariolot Limited in favour of Tucan Investments Limited.

2(2) In view of the above and for the payment of the loan mentioned in section 2 and the release of the bank guarantee mentioned in section 4, Mariolot

Limited binds itself to use the dividends it receives from its participation in The Players Group Limited as follows :

a. Upon receipt of dividend, 50% of the dividend received shall be credited in favour of Mario Camilleri, whereas the other 50% shall be credited in favour of Tucan Investments Limited ;

b. Mario Camilleri shall use the dividend credited in his favour to pay the loan referred to in section 2 of this agreement.

c. Once the option referred to in section 3 is exercised, Mariolot Limited shall declare dividends in favour of its shareholders, which dividend shall include all the amounts credited in favour of Mario Camilleri and Tucan Investments Limited as stated in (a) above, and Mario Camilleri hereby binds himself to use the dividend due to him to pay the loan referred to in section 2 of this agreement ;

d. Once the loan mentioned in section 2 is paid off, the dividends received by Mariolot Limited shall be used to release the bank guarantee referred to in section 4 of this agreement.

Abbazi tal-istess ftehim, kienet avvanzata lil Mariolot Limited s-somma ta` Lm123,000 bid-dritt li Tucan Investments Limited tezercita l-opzjoni li fi kwalsiasi mument jizdied l-*issued share capital* ta` Mariolot Limited billi 123,000 *fully paid up ordinary shares* ta` Lm1 kull wahda jigu allokatu lil Tucan Investments Limited. Din l-opzjoni setghet tigi ezercitata b`semplici talba bil-miktub. Interessi fuq din is-somma kienu previsti biss fil-kaz li minkejja li ssir it-talba bil-miktub, Mariolot Limited tonqos li talloka l-ishma lil Tucan Investments Limited. Kienet stabbilita wkoll penali ta` Lm1,000 sad-data li fiha l-ishma jigu registrati mar-Registatur tal-Kumpaniji. Is-socjeta` attrici zammet id-dritt li fid-diskrezzjoni taghha tikkancella t-talba li tezercita l-opzjoni u minflok titlob il-hlas lura tal-kapital. Mariolot Limited obligat ruhha li taghti *pledge* favur is-socjeta` attrici tal-ishma kollha li kellha fil-kumpanija The Players Group Limited bhala garanzija ghall-obbligi assunti bil-ftehim.

Fil-ftehim, gie ukoll patwit illi li sal-mument li tigi attwata l-opzjoni, is-socjeta` attrici kellha dritt tircievi nofs id-*dividend* percepit minn Mariolot Limited u wara li l-ishma jigu registrati fl-isem ta` Tucan Investments Limited, il-pagament ta` nofs id-*dividend* jibda jsir direttament lil Tucan Investments Limited bhala *dividend*.

Il-klawsoli relattivi ghall-avvanz tal-flus lil Mariolot Limited huma :-

3a. Tucan Investments Limited grants by title of loan to Mariolot Limited, which accepts, the sum of one hundred and twenty three thousand Maltese Liri (Lm123,000), which sum is being forwarded to Mariolot Limited on

the date of this agreement, for which amount, Mariolot Limited tenders due receipt.

3b. This loan is being made and accepted under the condition that at any moment Tucan Investments Limited shall have the right to exercise an option to increase the issued share capital of Mariolot Limited by an allotment in favour of Tucan Investments Limited of one hundred and twenty three thousand (123,000) fully paid up Ordinary Shares of one Maltese Lira each.

3c. The option to increase the issued share capital of the Mariolot Limited as aforesaid, shall be exercisable by means of a simple written request to be made by Tucan Investments Limited addressed to Mariolot Limited.

3d The said loan shall be interest free provided that interest at 5% above the base rate of the Central Bank at the time (provided 8% minimum) per annum shall be charged on the amount due if Mariolot Limited, upon it being requested to as aforesaid, fails to effect the increase in the issued share capital in favour of Tucan Investments Limited. Interest shall be computed from the date of the written request for the increase until the date when the said increase is registered with the registrar of Companies.

3e Without prejudice to the aforesaid, if Mariolot Limited, Mario Camilleri or Maria Camilleri, upon them being requested to increase the issued share capital of Company in favour of Tucan Investments Limited by the allotment of one hundred and twenty three thousand (123,000) fully paid up Ordinary Shares of one Maltese Lira (Lm1.00) each, fail to effect such increase within two (2) days from the date of such request, Mariolot Limited, Mario Camilleri and Mary Josephine Camilleri shall be jointly and severally liable towards Tucan Investments Limited to a daily penalty of one thousand Maltese Lira (Lm1,000) until the date of registration with the Registrar of Companies of the increase in share capital. Provided that in such an event, and without prejudice to its right to demand payment of the daily penalty, Tucan Investments Limited shall have the right to, at its sole discretion, cancel its request to exercise the share option and demand immediate payment of the balance due, in which case, the notice of payment is to be construed as having been given on the date the notice to exercise the option was given, and the provisions of paragraph (d) above shall apply.

3f In order to better guarantee the exercise of the option to increase the share capital, the repayment of the loan and the payment of the penalty, Mariolot Limited hereby binds itself to pledge all the shares held by it in The Players Group Limited in favour of Tucan Investments Limited ...

... 5(1) Tucan Investments Limited shall be entitled to receive 50% of the dividend received by Mariolot Limited from the date of this agreement. Upon the exercise of the option mentioned in section 3, such a payment shall accrue to Tucan Investments Limited by way of dividend.

Kien ukoll miftiehem li Tucan Investments Limited kellha tipprovdi garanzija bankarja ta` Lm87,930 a favur ta` Mariolot Limited (*4a. Tucan Investments Limited hereby grants Mariolot Limited a bank guarantee of the value of Lm87,930, which bank guarantee Mariolot Limited accepts and confirms receipt. Mariolot Limited hereby binds itself to use this bank guarantee limitedly and solely for the purpose of its involvement in The Players Group Limited.*)

Hemm qbil bejn il-partijiet illi l-ammonti li jissemmew fil-ftehim gew kollha avvanzati mis-socjeta` attrici, kif ukoll illi matul is-snin, is-socjeta` attrici rceviet flejjes, tant li kienet rtirata l-garanzija bankarja ta` Lm87,930 kif ukoll thallset ss-somma ta` Lm123,000 li kienet mislufa lil Camilleri.

Ma hemmx qbil bejn il-partijiet dwar il-flus li kienu avvanzati lil Mariolot Limited.

Huwa evidenti illi maz-zmien, inqala` dizgwid bejn il-partijiet u meta Mariolot Limited kienett interpellata b`ittra ufficjali tad-19 ta` Gunju 2013, sabiex tiehu hsieb taghmel l-allokkazzjoni tal-ishma fl-isem ta` s-socjeta` attrici, din baqghet inadempjenti ghax sostniet li l-ftehim ma kienx ghadu vigenti ; inoltre sostniet li kienet hallset l-ammonti kollha dovuti lis-socjeta` attrici addirittura b`*overpayments* ta` madwar €200,000.

Tucan Investments Limited mexxiet bit-talbiet li ghamlet fil-kawza tal-lum intizi sabiex jitolbu l-ezekuzzjoni tal-obbligi assunti mill-konvenuti fil-kuntratt fuq riferit.

IV. L-ewwel talba

Il-konvenuti laqghu ghall-ewwel talba kif dedotta billi kien eccepit minnhom illi ma hemm l-ebda rabta kontrattwali bejn il-partijiet stante li l-ftehim originali kien wiehed ta` zewg ghotjiet separati ta` self li t-tnejn thallsu lura bis-shih lis-socjeta` attrici. Il-ftehim ma kienx wiehed ta` proposta ghal akkwist ta` ishma u partecipazzjoni go kumpannija, izda biss ftehim ta` self. Inghad inoltre mill-konvenuti illi l-obbligazzjonijiet skont il-kuntratt tad-29 ta` April 2004 ma kienux aktar vigenti u ghalhekk il-pretensjonijiet tas-socjeta` rikorrenti kellhom jigu respinti.

Mill-mod kif kienu mpostati l-ewwel talba u d-difiza kontra dik it-talba, il-Qorti trid tistharreg il-ftehim tad-29 ta` April 2004 peress li l-vertenza bejn il-partijiet tista` tigi biss risolta fid-dawl ta` dak li gie miftiehem, aktar u aktar meta tinsab rinfaccjata b`verzonijiet nettament opposti fejn min-naha wahda, ir-rapprezentanti tas-socjeta` attrici jinsistu li huma ghamlu investment billi

Tucan Investments Limited kellha tipprovdi l-finanzjament mehtieg u tidhol tippartecipa fl-istess negozju, u min-naha l-ohra, is-socjeta` intimata Mariolot Limited u r-rapprezentanti taghha jsostni dak ta` bejn il-partijiet kien biss ta` self li thallas ; is-socjeta` rikorrenti kellha ghazla li jekk trid tippartecipa fin-negozju, izda gara li ghamlet l-ghazla fi zmien meta kellhiex aktar dak id-dritt.

1. L-interpretazzjoni ta` kuntratti

Il-Qorti taghmel riferenza ghall-Art 1003 sa 109 tal-Kap 16.

Il-principju ewlieni huwa li wiehed jasal ghal dik li kienet l-intenzjoni tal-partijiet kif espressa fil-kuntratt. Il-Qrati jridu jistabilixxu mhux dak li l-iktar jaghmel sens ghall-gudikant imma dak li kien l-iktar jaghmel sens ghall-partijiet fic-cirkostanzi li kienu fihom fil-mument tal-kuntratt – u dan dejjem abbazi ta` dak li jirrizulta miktub fil-kuntratt.

Fis-sentenza li tat il-Qorti tal-Appell fit-13 ta` Frar 1950 fil-kawza "Cuschieri noe vs Vincenti" inghad hekk :-

Illi fid-dritt dwar il-materja ta` interpretazzjoni tal-kuntratti, meta l-partijiet ma jkunux spjegaw ruhhom car, jew ikunu spjegaw ruhhom ekwivokament, jew fil-kaz li posterjorment ghall-kuntratt jintervojeni avveniment li jkollu bhala konsegwenza kwistjoni li ma tkunx preveduta u li hemm bzonn li tigi maqtugha, allura l-Qrati jkunu obligati jinterpretaw il-konvenzjoni; u din ghandha tigi primarjament interpretata skond l-intenzjoni komuni tal-partijiet li jkunu hadu parti fil-kuntratt u li tkun tidher car mill-kumpless tal-konvenzjonijiet (ara L. 34 ff. de regulis juris, Ulpiano - semper in stipulationibus, et in ceteris contractibus id sequimur quod actum est; aut si non appareat quid actum est, erit consequens ut id est; aut si non appareat quid actum est, erit consequens ut id sequamar quod in regione in qua actum est frequentatur. Quid sequamar quod in regione in qua actum est frequentatur. Quid ergo, si neque regionis mos appareat, quai varibus fuit? Ad id quod minimum est redigenda summa est). F`materja hekk difficili, bhal ma hija l-interpretazzjoni tal-kuntratti, il-legislatur, sabiex jevita l-konsegwenzi fatali dovuti ghall-arbitriju tal-gudikant, nizzel fil-ligi certi regoli li huma suffragati mill-gherf tad-Dritt Ruman u mill-esperjenza tas-sekoli, pjuttost bhala direttivi anzikke` bhala normi assoluti u inflessibili, b`mod li bhala normi direttivi dawk l-istess regoli skond ic-cirkostanzi jistghu ma jigux pedissekwament segwiti, kif qalet il-Qorti tal-Kassazzjoni ta` Franza fit-18 ta` Marzu `807 riportata mill-Merlin fir-Repertorju tieghu taht il-vuci "Convention", para. 7 fl-ahhar.

Il-Qorti tal-Appell fissret li dawn regoli li ghandhomx jigu applikati b`rigorozita` u b`mod absolut izda huma gwida ghall-qorti sabiex tasal ghall-

intenzjoni tal-partijiet. dak li huma l-iskop ewlieni ta` l-ezercizzju u cioe` l-intenzjoni tal-partijiet. Komplet tghid hekk :-

Infatti inghad li anki l-istess gurekonsulti romani rigward din il-verita`, kif jidher mill-L. 17 ff. de regulis juris, fejn hemm kanonizzat il-principju li "cum tempus in testamento adjicitur credendum est pro haerede adjectum nisi alia mens fuerit testatoris, sicuti in stipulationibus promissoris gratis fuerit testatoris, sicuti in stipulationibus promissoris gratia tempus adjicitur", u kif huwa konfermat mill-eccezzjoni ghar-regoli u definizzjonijiet proposti, "nisi mens testatoris obsistat. . ." tal-L. 19. para. 1 ff. de cond. et demonst. u bnadi ohra tad-Digest; u r-raguni guridika ghal dana l-adattament tinsab fil-fatt li r-regoli proposti ma jistghux ikunu nfiniti u adattabili ghall-kazi kollha u tant varjati u molteplici tal-manjeri kif il-bnedmin fil-hajja ordinarja jistghu jesprimu ruhhom. Kien ghalhekk li l-legislatur kwindi beda biex l-ewwelnett jiffissa l-principju li meta t-termini huma oskuri jrid jigi kunsidrat dak li l-partijiet kontraenti riedu; u jekk il-volonta` taghhom tista` tigi nterpretata per mezz ta` xi uzu ta` l-istess partijiet, jew tal-lokalita` jew regjoni fejn jghammru u ordinarjament imexxu x-xoghol taghhom, jew b`mezzi ohra, huwa konvenjenti li jigi segwit dak li huwa l-aktar verosimili skond dawk il-veduti anzikke` l-bniedem jattjeni ruhu ghas-sens letterali tal-kliem (ara l-L. 34 ff. "de regulis juris" fuq imnizzla "in extenso" u l-ligi 114 ff. "de regulis juris" li tghid "in obscures in speci solet quod verisimilius est, aut quod plerumque fieri solet"). Mill-banda l-ohra jinghad li hija norma ta` interpretazzjoni stabbilita mill-ligi illi meta l-espressjonijiet fil-konvenzjoni skond is-sens lilhom attribwit mill-uzu fl-epoka tal-kuntratt, huma cari, m`hemmx lok ghal ebda interpretazzjoni. Mhux lanqas ozjuz li jinghad li, stabbilit il-principju nkonkuss, logiku u naturali, li r-rabta tal-konvenzjonijiet titnissel necessarjament mill-unjoni tal-kunsens tal-kontraenti, il-konsegwenza hija li l-kliem tal-konvenzjoni ghandhom (1) jassumu s-sens li l-partijiet li jkunu ntrabtu jkunu manifestament riedu jaghtuhom, jew jassumu s-sinifikat li (2) il-manjera komuni ta` l-espressjoni "per se" tiddetermina, jew (3) il-verita` ta` l-operat tirrikjedi." (XXXIV.I.30)

Fis-sentenza li tat din il-Qorti (PA/RCP) fid-29 ta` Novembru 2001 fil-kawza "**General Cleaners Co. Ltd. vs Accountant General et**" inghad :-

Jibda biex jinghad illi bhala principju generali, l-ligi u senjatament l-artikolu 1002 tal-Kodici Civili jghid illi "Meta l-kliem ta` konvenzjoni, mehud fis-sens li ghandu skond l-uzu fiz-zmien tal-kuntratt, hu car, ma hemmx lok ghal interpretazzjoni".

"Il-principju kardinali li jirregola l-istatut tal-kuntratti jibqa` dejjem dak li l-vinkolu kontrattwali ghandu jigi rispettati u li hi l-volonta` tal-kontraenti kif espressa fil-konvenzjoni li kellha tipprevali u trid tigi osservata. Pacta sunt servanda". (A.C. 5 ta` Ottubru, 1998 - "Gloria mart Jonathan Beacom et vs L-Arkitett u Inginier Civili Anthony Spiteri Staines").

Tkompli tghid din is-sentenza ta` l-Onorabbli Qorti ta` l-Appell "Illi l-gurisprudenza nostrali hi kostanti filli rriteniet li ma hiex ammissibbli li prova

testimonjali kontra jew in aggjunta għall-kontenut ta' att miktub u hi talvalta ammassa biex tikkjarifika l-intenzjoni tal-partijiet meta din hi espressa b' mod ambigwu" (Vol. XXXIV, P. III., p. 746).

Jintqal inoltre illi "Il-Qrati jkunu obbligati jinterpretaw il-konvenzjoni meta f'kuntratt il-partijiet ma jkunux spjegaw ruhhom car jew posterjorment għall-kuntratt jintervejni avveniment li jkollu bhala konsegwenza kwistjoni li ma tkunx giet preveduta u li kien hemm bzonn li tigi maqtugħa, u din għandha tigi primarjament interpretata skond l-intenzjoni tal-partijiet li jkunu hadu parti fil-kuntratt u li tkun tidher car mill-kumpless tal-konvenzjonijiet" (Vol. XXIV, P. I., p.27) (ikkwotata fis-sentenza "Beacom vs Spiteri Staines" - ibid; "Suzanne Xuereb vs Gilbert Terreni" - P.A. RCP. 12 ta' Lulju 2001; "Anton Spiteri vs Alfred Borg" - P.A. RCP. 30 ta' Novembru 2000; "Emanuel Schembri vs Leonard Ellul" - P.A. RCP 30 t'Ottubru 2001)."

Kien rilevati ukoll illi :-

Jirrizulta, u din hi anke r-ratio tal-ligi, (art. 1004 tal-Kodici Civili) illi l-interpretazzjoni li trid tingħata, meta klawnsola tista' t'fisser haga w oħra, din għandha tinftiehem dik il-haga li biha jista' jkun hemm xi effetti milli dik il-haga li biha ma seta' jkun hemm ebda effett. Disposizzjoni li tirrifletti l-principju "in dubiis interpretatio capienda est, ut dispositio potius valeat quam pereat".

Konsistenti fl-ghadd kienu s-sentenzi fejn dawn il-principji kienu riaffermati fosthom : **Cassar et vs Cassar** : 15 ta' Dicembru 1995 : Kollez Vol LXXIX.II.704 ; **Vella Galea vs Vella** : 1 ta' Lulju 1985 ; **Mortimer vs Borg Olivier et noe** : 18 ta' Novembru 1957).

Giorgi jitratta l-kwistjoni fir-Raba' Volum ta' "**Obligazioni**" u jghid :-

"Puo' accadere, che le parole del contratto siano equivoche od ambigue; ed in tale presupposto tutta l'arte dell'interprete deve rivolgersi a trascegliere il piu' plausibile fra i due significati. Escluderne uno col dimostrarne le inammissibilita'; includerne l'altro, perche' piu' probabile e da preferirsi; e la perfezione dell'ermeneutica si raggiunge col riunire entrambi questi argomenti: giacche' in simile guisa la spiegazione del contratto rimane coartata al senso che si sostiene. Le regole piu' idonee per attuare questo metodo sono le seguenti. Chi fa un atto giuridico intende principalmente farlo valido ed efficace: percio', se una clausola e' suscettiva di due sensi, deve spiegarsi piuttosto in quello che puo' avere qualche effetto, anziche' nell'altro che non ne avrebbe alcuno." (p.200)

Ikompili jghid illi kuntratt għandu jigi kemm jista' jkun salvat u li l-kliem li jinkiteb m'għandhomx jigu trattati separatament izda għandhom jittieħdu fil-kuntest tagħhom :-

"Debbono quindi rigettarsi le interpretazioni, che a) produrrebbero la nullità del contratto, b) riuscirebbero contraddittorie al fine voluto dai contraenti, c) porterebbero a considerare costoro come persone stravanganti o di poco senno.

Scartate in questa guisa le interpretazioni inammissibili, per fissare la più vera o la più probabile intelligenza del contratto ambiguo ed equivoco, non è lecito scostarsi dal senso proprio e ricevuto delle parole. Per altro, queste si debbono intendere piuttosto secondo l'uso commune, che secondo la purità dei lessici." (p. 201)

Jissokta billi jelenka diversi fatturi li jistghu jghinu fl-interpretazzjoni tal-kuntratti. Jirreferi ghac-cirkustanzi kollha li jkunu pprecedew, akkumpanjaw jew segwew il-kuntratt, kif ukoll dak li jkun inghad mill-partijiet ma` terzi persuni :-

"Che se l'oscurità o l'ambiguità fossero assolutamente invincibili, si hanno per non opposte tutte le clausole non intelligibili, e nel dubbio il contratto s'interpreta contro colui, che ha stipulato, ed in favore di quello che ha contratta l'obbligazione." (p. 202)

"Fa d'uopo analizzare il contratto; esaminare le circostanze che lo hanno preceduto, accompagnato e seguito. Ponderato tutto questo, riescirà chiaro il carattere delle disposizione, e si capirà, se sia dimostrativa o restrittiva.

Fra gli elementi da cui può desumersi pure, che la volontà delle parti fu più o meno estesa nel senso letterale, abbiamo annoverato in secondo luogo il fatto delle parti medesime. E qui senza fermarci nuovamente sull'osservanza, quante volte le altre convenzioni che le parti abbiano fatte tra loro, le dichiarazioni che abbiano confidate a terze persone circa il senso del contratto, e gli obblighi che hanno inteso di assumere, bastano a rendere chiara la volontà dei contraenti. Senonché, essendo il contratto l'accordo di due volontà, è pienamente conforme ai principii di ragione, che nel ricercare fuori del contratto le prove di questa volontà, si tenga conto delle convenzioni, in cui sono intervenute tutte e due le parti, o almeno quella sola contro cui si reclama l'adempimento. L'uso poi delle parti stesse, cioè il loro modo di fare antecedente al contratto, quando abbia relazione necessaria con questo, può essere una face luminosissima per mettere in chiaro, se l'intendimento di entrambe fu diverso dal significato naturale delle parole." (p.209-210)

L-istess awtur jishaq ukoll li dak li wiehed ghandu jfittex waqt li jinterpreta kuntratt hija l-intenzjoni tal-partijiet:

"Ma possiamo dire liberamente qualche cosa di più. L'ufficio dell'interprete non consiste soltanto nel decifrare il senso oscuro delle parole sibbene comprende anche quello di indagare fino a qual segno il senso apparentemente chiaro delle parole concordi coll'intenzione dei contraenti, e di ricondurre mediante l'uso opportuno della interpretazione estensiva o restrittiva la

necessaria armonia fra la manifestazione esteriore fallace e il sentimento vero dei contraenti." (p.216)

2. In-natura ta` l-avvanz ta` Lm123,000 lil Mariolot Limited

Mariolot tinsisti illi Tucan qatt ma ezercitat l-opzjoni skont il-ftehim, u meta in effetti ezercitat l-opzzjoni, dan kien fi zmien li kien tardiv peress li l-ammonti kollha mislufa kienu thallsu lura.

Tinsisti li l-avvanz ta` flus favur taghha kien semplici self bid-differenza illi fir-rigward tas-self favur taghha kien hemm opzjoni li s-somma versata tkun konvertita f *equity* favur Tucan.

Inghad ukoll li fil-ftehim tnizzlet diversi drabi l-kelma "*loan*" barra li David Curmi jirreferi ghall-avvanz bhala "*loan*" fix-xiehda tieghu.

Il-persuna li abbozzat il-ftehim kien l-Av. Ian Stafrace li tkellem u ltaqa` diversi drabi mal-kontraenti.

Fix-xiehda tieghu Av Stafrace stqarr illi l-ftehim kien jipprospetta zewg tipi ta` avvanz ta` flus, li tnizzlu f taqsimiet differenti u separati fil-ftehim :-

1. Avvanz lil Camilleri personalment li fil-kuntratt tad-29 ta` April 2004 kien jinsab fil-parti enumerata "2" bl-intestatura "**Loan**".

2. Avvanz lis-socjeta` intimata Mariolot Limited bil-kundizzjoni li Tucan Investments Limited jkollha dritt tezercita ozzjoni sabiex 123,000 ishma f Mariolot Limited jigu trasferiti favur is-socjeta` rikorrent ; fil-kuntratt tad-29 ta` April 2004 jinsab fil-parti enumerata "3" bl-intestatura "**Option to acquire shares in Mariolot Limited**".

Irrizulta li s-self personali moghti lil Camilleri huwa regolat b`mod separat u bi klawsoli differenti minn dawk li hemm fir-rigward ta` l-avvanz ta` flus li ghadda ghand Mariolot Limited.

Dan jirrizulta minn qari tal-kuntratt tad-29 ta` April 2004 kif ukoll mir-rapport ta` PWC (ara fol 1049 tal-process tal-kawza bin-nru 697/2014).

Fir-rapport jinghad :-

By virtue of the agreements, Tucan also advanced loans of Lm123,000 to each of Jean Paul Tabone and Mario Camilleri in their personal capacity, the key relevant terms of which were as follows:

The loans were to be – provided they were repaid within the stipulated period – free of interest.

Jeanlot and Mariolot were to advance 50% of the dividend income from The Players to Jean Paul Tabone and Mario Camilleri respectively.

Jean Paul Tabone and Mario Camilleri were to advance any receipts (from these dividends) to Tucan up to, and until, the original loan balance of Lm123,000 had been repaid in full.

Thus to the extent that these loans had not yet been repaid in full, then Tucan should have been in receipt of 100% of the dividend income received by the Companies from The Players , of which:

50% was to be received directly from the Companies as income on the convertible loan notes and

50% was to be received indirectly via Jean Paul Tabone and Mario Camilleri as repayments of the personal loans.

Tajjed jigi rilevati ukoll illi fil-premessi, il-kuntratt tad-29 ta` April 2004 jghid :- *“Tucan Investments Limited is desirous of making the said funds and bank guarantee available to Mariolot Limited and Mario Camilleri, partly by way of loan amounting to one hundred and twenty three thousand Maltese Liri (Lm123,000) to Mario Camilleri and partly by way of participation by Tucan Investments Limited equivalent to one hundred and twenty three thousand Maltese Liri (Lm123,000) in the equity of Mariolot Limited ...”*

Il-Qorti tara sinjifikanti illi fil-klawsola 5.1 tal-ftehim, kien dikjarat li s-socjeta` rikorrenti kellha tippercepixxi nofs id-*dividends* li tircievi Mariolot Limited kif kien ser jibbenefika l-azzjonista ta` Mariolot Limited.

Huwa sinjifikanti wkoll il-fatt illi fil-ftehim, tnizzel kjarament illi fil-klawsoli dwar *“Shareholder Protection”*, is-socjeta` attrici nghatat awtorita` li jintalab il-kunsens taghha biex isiru tibdiliet fis-*share capital* jew biex tigi registrata xi *charge* fuq l-ishma ta` Mariolot Limited jew anke biex isir kwalunkwe ftehim. Il-klawsoli rilevanti huma :-

i. the share capital of the COMPANY shall not be raised without the prior written consent of Tucan Investments Limited ;

j. no charge shall be made by the COMPANY over any of its assets without the prior written consent of the Tucan Investments Limited ;

k. no charge shall be made by the shareholder of the COMPANY over the shares he holds in the COMPANY without the prior written consent of Tucan Investments Limited ;

l. no acquisition or merger involving the COMPANY shall take place without the prior written consent of Tucan Investments Limited ;

m. no fundamental change or decision in relation to the COMPANY structure, including a change in directors or strategy or any variation of the Memorandum and Articles of Association shall be made without the prior written consent of Tucan Investments Limited ;

n. the company will not enter into any agreement whatsoever without the prior written consent of Tucan Investments Limited.

Da parti taghhom, il-konvenuti sostnew li l-kundizzjonijiet tal-parti tal-kuntratt indikata bhala *Shareholder Protection* kienet taffettwa biss ir-relazzojni bejn Mariolot Limited u l-azzjonisti taghha u/jew terzi li jkollom xi drittijiet fir-rigward l-ishma ta` l-istess kumpannija. Sar ukoll l-argument illi t-trasferiment ta` l-ishma minn Mariolot Limited lil Lattimer Ltd sar f`The Players Group Limited li ma kinitx parti mill-kuntratt tad-29 ta` April 2004. Ghalhekk ma kien hemm l-ebda projbizzjoni sabiex jigu trasferiti l-ishma ta` Mariolot Limited hlief li jinghata kunsens mill-azzjonisti l-ohra f`The Players Group Limited.

Kuntrarjament ghal dak allegat mill-konvenuti, din il-Qorti tifhem li l-klawsoli dwar "*Shareholder Protection*" saru peress li s-socjeta` attrici kienet qed tigi trattata bhala d-destinatarja ta` l-ishma ta` Mariolot Limited u kellha interess li tara li fuq dawk l-ishma ma jigux registrati pizijiet.

Ta` l-istess portata kienet il-klawsola fil-ftehim fejn tnizzel li David Curmi, rapprezentant ta` Tucan Investments Limited, kellu jigi appuntat direttur ta` Mariolot Limited, kondizzjoni din li saret biex Tucan Investments Limited tkun tista` tippartecipa b`mod shih fl-ekwita` ta` Mariolot Limited inkluz id-*day to day affairs* tal-kumpannija.

Il-Qorti taghti qies dovut ghal dak li kien diskuss waqt il-laqgha bejn il-partijiet fil-presenza tal-accountants u/jew awdituri taghhom u Av. Ian Stafrace, fejn minn naha wahda Mario Camilleri u Jean Paul Tabone ma tawx dettalji dwar dak li ntqal izda qalu semplicement illi kien hemm diskussjoni ghaddejja bejn *l-accountants* rispettivi tal-partijiet, u min-naha l-ohra r-rapprezentanti tas-socjeta` rikorrenti, Av. Stafrace u Vincent Curmi jaghtu dettalji ta` dak li sar fil-

laqgħa, partikolarment intwera b`mod car illi l-allokkazzjoni tal-ishma kienet fatt li skont il-ftehim is-socjeta` attrici kienet intitolata għaliha izda kien mehtieg li dan isehh wara li l-licenzja tal-Maltco terga` tigi mgedda. Fil-laqgħa ma nghadx illi l-ftehim kien limitat għal perijodu ta` licenzja wahda u lanqas li l-avvanz ta` flus lil Mariolot Limited kien biss self u mhux partecipazzjoni tas-socjeta` rikorrenti fl-ekwita` ta` Mariolot Limited.

Ghandu piz fl-assjem ta` l-grajjiet li għaddew bejn il-partijiet il-fatt li s-socjeta` konvenuta ma ressqitx bhala xhud lill-*accountant* tagħha li kien ukoll prezenti għal-laqgħa sabiex jagħti dettalji u forsi jikkorrabora l-verzjoni ta` Mario Camilleri u Jean Paul Tabone, li kienet kontradetta mill-kontroparti

Tajjeb jingħad ukoll fir-rapport ta` PWC (op. cit.) hemm mitkub illi :-

Tucan granted convertible loan notes to each of the Companies (b`referenza għal Mariolot Limited u Jeanlot Limited). These loan notes are not repayable or redeemable, and may only be extinguished through a conversion into share capital of each of the Companies.

Based on the terms of the relevant contracts, and on the requirements of IAS 32, the convertible loan notes entered into between Tucan and the Companies are, from an accounting point of view, considered to be equity instruments, rather than liabilities of the Companies,

... The companies` funding amounted to Lm246,000 each; this amount was re-invested in The Players. Of this amount, funding amounting to Lm123,000 was issued as share capital to the existing shareholders (unrelated to Tucan), while the remaining Lm123,000 was provided by Tucan to each of the Companies.

Rather than issue equity shares to Tucan, Jeanlot and Mariolot each issued a Lm123,000 convertible loan note; the loan was convertible into 123,000 equity shares of each of the Companies at Tucan`s sole discretion.

The conversion feature does not expire, and the loans can only be extinguished through a conversion into equity shares. The convertible loan notes do not bear conventional interest. They however entitle Tucan to receive 50% of any dividends that Jeanlot and Mariolot receive from The Players. This applies both before, as well as after, the conversion. Jeanlot and Mariolot have no contractual ability to avoid settlement of Tucan`s 50% share of the dividends.

In the event that Tucan were to exercise its right to convert the loan notes into equity shares, but the Companies do not honour their obligation to issue the shares, then Tucan has the option to request repayment of the loans (plus a daily penalty) as an alternative to being granted new equity shares by each of the Companies. Such an election to opt for a repayment can only be made at Tucan`s sole discretion, and cannot be enforced upon Tucan by the Companies.

Kuntrarjament ghal dak allegat mill-konvenuti, dawn l-assjem ta` fatti u cirkostanzi juri li l-avvanz ta` Lm123,000 lil Mariolot Limited ma kienx self.

Ghal din il-Qorti, ma jaghmilx sens li socjeta` ta` investment bhal ma kienet dik attrici taghmel avvanz finanzjarju daqshekk konsiderevoli minghajr ebda imghax u minghajr ebda gwadann.

Skont kif ghamlu l-argument il-konvenuti,, is-socjeta` attrici spiccat tat dan l-ammont minghajr ma kienet ser taqla` lura xejn in kambju hlief li tithallas lura l-kapital minghajr ebda imghax.

Ghall-Qorti, tenut kont ta` kollox, jidher car li l-iskop ta` l-finanzjament kien sabiex dawk il-flejjes jidhlu fi Mariolot Limited biex imbaghad Tucan tippartecipa fl-ekwita`.

Hija bla fundament l-allegazzjoni li addirittura mhux tali Mariolot ma hallsitx lura l-avvanz ta` Lm123,000 lil Tucan izda hallset *overpayment* ta` €200,000, peress li l-avvanz kollu moghti lil Mariolot kien thallas sal-24 ta` Marzu 2009. Mario Camilleri ipprova jiggustifika dan billi sostna li huwa kien qed jahseb li dak kien hlas ta` imghax dovut lis-socjeta` rikorrenti in vista ta` l-investment li ghamlet. Din l-allegata gustifikazzjoni mhijiex verosimili peress li anke jekk forsi kien hemm xi *misconception* da parti ta` Mario Camilleri, certament li kien fl-obbligu li jara li jikkjarifika tali *misconception* u jwaqqaf il-pagamenti u mhux jibqa` sejjer ihallas. Fil-verita`, il-hlasijiet baqghu sejr in peress li kif qal tajjeb Jean Paul Tabone fix-xiehda tieghu tat-13 ta` Ottubru 2015, il-pagamenti dejjem saru ai termini tal-ftehim. Il-ftehim kien jistipola car li nofs id-*dividends* li Mariolot Limited tithallas minn The Players Group Limited imorru ghand Tucan immedjatament ma` l-iffirmar tal-ftehim u minkejja li ma kienx hemm registrazzjoni ta` ishma fl-isem ta` Tucan.

Fil-fehma ta` l-Qorti, is-socjeta` attrici mxiet tajjeb, u ma kinitx ser taccetta li tinvesti l-flejjes u l-ishma ma jkunux registrati f` isimha biex taghmel pjacir lill-intimati u “*not to rock the boat*”. Minn fuq imbaghad tbati li titef is-sehem taghha mid-*dividends*.

Kien ghalhekk li saret dik il-klawsola li s-sehem tas-socjeta` attrici mid-*dividends* jigi percept immedjatament u irrispettivament minn meta jigu trasferiti l-ishma. B`dak il-mod, is-socjeta` rikorrenti kienet qed tagixxi (i) b`lealta` fil-konfront ta` l-intimati li riedu aktar zmien qabel isir ir-registrazzjoni ta` l-ishma fl-isem ta` Tucan u (ii) b`mod li kien jaqbel lilha u ghall-investment taghha. Is-socjeta` attrici kellha fil-pussess taghha d-dokumentazzjoni

necessarja sabiex mill-ghada li gie ffirmat il-ftehim, tipprezenta d-dokumenti lil Registratur tal-Kumpanniji u tirregistra l-ishma. Madanakollu l-korrettezza kienet tiddetta mod iehor peress li Camilleri u Tabone kienu saħqu kemm-il darba illi ma kienx iz-zmien opportun li jkun hemm ir-registrazzjoni tal-ishma.

Da parti tagħhom, l-intimati sostnew li s-socjeta` rikorrenti gabet skużi fittizji u inveritieri biex tiggustifika d-dewmien li titlob li ggib fis-seħh is-*share option*. Qal li ma kien hemm l-ebda *shareholders` agreement* la fil-livell ta` Maltco u lanqas fil-livell ta` The Players Group li jipprojbixxi l-hrug ta` ishma kemm diretti kif ukoll indiretti fi Mariolot Limited. Lanqas fl-istatuti ta` The Players Group u Maltco ma kienu jezistu *pre-emption rights* li setghu jaffettwaw id-dritt tas-socjeta` rikorrenti li tezercita` s-*share option* fi Mariolot Limited, peress li skont l-intimati, id-drittijiet jew ir-restrizzjonijiet li kellhom l-azzjonisti fuq it-trasferiment u/jew il-hrug ta` ishma kienu nfurzabbli biss bejn l-azzjonisti diretti ta` The Players Group Limited. L-uniku ftehim kien il-*consortium agreement* tat-8 ta` Awissu 2001 li kien iffirmat mill-azzjonisti ta` Maltco li - skont l-intimati - ma kienx jikkompreni drittijiet ta` *pre-emption* li setghu jaffettwaw b`xi mod jew iehor l-ezercizzju tas-*share capital option* min-naha ta` Tucan Investments Limited fi Mariolot Limited. Skont il-konvenuti, ir-restrizzjonijiet tal-*consortium agreement* kienu japplikaw fir-rigward tal-partijiet originali tal-ftehim u cioe` Intralot S.A., The Players Group Limited u Associated Supplies Limited.

Din il-Qorti mhijiex ser tindaga jekk tassew kinux jezistu ragunijiet validi għalfejn it-trasferiment matul iz-zminijiet ma kienx opportun li jsehh.

Huwa fatt li hareg bic-car mill-provi illi r-relazzjoni bejn ir-rapprezentanti ta` Mariolot Limited u ta` Tucan Investments Limited kienet tajba, kordjali u amikevoli.

Dan huwa fatt accettat minn kulhadd. Il-partijiet kienu joqghodu hafna fuq il-kelma ta` xulxin u kienu anke jafdaw lil xulxin. Li kieku ma kienx hekk, certament li s-socjeta` rikorrenti ma kienet qatt tinvesti daqstant flejjes għand persuna li ma kellhiex hjiel jekk kienx affidabbli. Għalhekk, għal din il-Qorti, huwa verosimili hafna li s-socjeta` rikorrenti b`lealta` baqgħet izzomm lura milli tezercita l-ghazla tagħha għax Camilleri u Tabone kienu qed jinsistu li dak iz-zmien ma kienx iz-zmien propizju.

Mhijiex konvincenti x-xieħda ta` Mario Camilleri meta jghid illi ma kienx minnu li qatt intqal lis-socjeta` rikorrenti biex “*we don`t rock the boat*”, ossija dik il-frazi li ssemmiet li kienet tintuza minn Camilleri biex jikkonvinci lis-socjeta` rikorrenti tistenna ffit iehor.

Lanqas ma hija sodisfatta bix-xieghda ta` Jean Paul Tabone fejn dan sostna li huwa qatt ma qal lis-socjeta` rikorrenti li ma kienx opportun li jigu trasferiti l-ishma, izda imbaghad lanqas ma kien komdu jiddikjara li qatt ma sema` kliem f`dak is-sens jinghad lis-socjeta` rikorrenti minn persuni ohra.

Din il-Qorti hija konvinta li s-socjeta` attrici ma talbitx t-twettieq ta` l-ghazla moghtija lilha fil-ftehim tad-29 ta` April 2004 sabiex ma tohloqx problemi u intoppi lin-negozju u dana fuq suggeriment ta` r-rapprezentant ta` Mariolot Limited stess.

Ix-xieghda tal-Av. Ian Stafrace hija vitali u importanti ferm ghaliex tikkorrabora b`mod kredibbli u attendibbli l-verzjoni tas-socjeta` attrici. Huwa minnu li Dr Stafrace inghata l-inkariku li jirredigi bil-miktub il-ftehim bejn il-partijiet, izda b`daqshekk ix-xieghda tieghu ma ssirx anqas affidabbli tenut kont tal-fatt li hu li sema` liz-zewg nahat fil-laqghat li saru qabel tfassal il-ftehim bil-miktub, u anke ppartecipa ghal fil-laqghat li saru wara li l-ftehim kien ffirmat u beda jigi mplimentat. Ghalkemm waqt id-deposizzjoni tieghu, huwa rrefera ghal xi punti dwar *shareholders` agreement* huwa in segwitu kkjarifika dawk il-punti fir-rikors li pprezenta fis-17 ta` Gunju 2015.

Tajjeb jinghad illi l-hlasijiet li kienu qed isiru fir-rigward tal-finanzjament tal-Lm123,000 lil Mariolot Limited kienu jirraprezentaw hlas tad-*dividends* nfushom, ossija nofs id-*dividends* li kellha tippercepixxi s-socjeta` rikorrenti direttament li kieku l-ishma gew registrati f`isimha. Infatti s-somma li kienet tithalla perjodikament lil Tucan kienet tvarja skont il-quantum tad-*dividends* li kienu jaslu. Ovvjament, fil-klawsola 5.1 tal-kuntratt tad-29 ta` April 2004, dawn il-flejjes ma gewx imnizzla bhala *dividends* sakemm Tucan Investments Limited ma tigix registata bhala azzjonista ta` Mariolot Limited izda tnizzel illi Tucan “*shall be entitled to receive 50% of the dividend received by Mariolot Limited from the date of this agreement.*”

Fil-fehma ta` l-Qorti, jirrizulta illi l-hlasijiet li kienu qed isiru minn Mariolot Limited fir-rigward ta` dan l-avvanz, kienu jirraprezentaw hlas ta` *dividends* u mhux rifuzjoni ta` pagamenti ta` self.

Lanqas ma tghid li kien kaz fejn fil-kaz li jsir il-hlas, Tucan kienet tilef l-opzjoni ta` l-ishma. Li kieku tassew kien il-kaz kif qed ighidu l-konvenuti, allura fil-ftehim ta` April 2004 kien ikun hemm imnizzel li fil-kaz li jkun sar xi hlas mill-intimata Mariolot Limited, dak kellu jonqos mill-ghadd tal-*equity* skont kemm ikun sar hlas. Pero` ma sar l-ebda kliem f`dan is-sens peress li l-hlas li kienet qegha taghmel Mariolot Limited kien qed isir bhala hlas ta` *dividends* u mhux bhala hlas akkont tal-avvanz ta` flus li kienet irceviet. Li kieku kellha tkun accettata bhala kredibbli l-verzjoni tal-konvenuti, kien iwassal ghal sitwazzjoni fejn is-socjeta` attrici setghet l-ewwel toqghod tistenna li tircievi

hafna pagamenti u imbaghad xhin tkun waslet biex tithallas is-somma kollha ta` Lm123,000, tezercita d-dritt ta` *share transfer* u b`hekk tkun iggwadanjat l-ishma kollha ammontanti fi Lm123,000 kif ukoll l-bicca l-kbira mis-somma li tkun avanzata u, allura bl-argument stess tal-konvenuti, is-socjeta` rikorrenti kienet tispicca tiehu l-ishma b`xejn ghaliex tkun diga` thallset ta` kwazi l-ammont intier li kienet avanzat. Dan ma kienx ikun jaghmel sens u l-Qorti hija li l-konvenuti ma kienux sejrjn jaccettaw qatt xenarju ta` dak it-tip. Mill-banda l-ohra, dak li spjegat is-socjeta` rikorrenti jaghmel hafna sens – u cioe` kienet soma flus sostanzjali, u peress li l-ishma ma setghux jigu trasferiti immedjatament fuq l-isem tas-socjeta` rikorrenti, din bdiet tircievi sehemha mid-*dividends* u tistenna zmien l-aktar konvenjenti l-aktar ghall-konvenuti sabiex jigu registrati l-ishma f` isimha.

Barra minn dan, kien hemm *emails* skambjati ma` Mark Camilleri, iben Mario Camilleri, kif ukoll direttur u uniku azzjonist ta` Lattimer Limited, fl-email tal-20 ta` Marzu 2009, Mark Camilleri kiteb ghal Mariolot Limited : *“MaltCo Ltd has paid a dividend of Euro 878,991 to Players Group Ltd, which has in turn distributed the amount between the 4 shareholders in equal payments of €219,747. Half of the Mariolot share is payable to Tucan (Euro 109, 873.5) whilst the other half belongs to Mariolot for it to settle its dues etc. As per our last meeting on this subject, there is an outstanding loan balance of Euro 63,826.32, so on Monday I will be paying these 2 amounts. Would you rather have 1 draft for Euro 173, 699.82 or 2 separate ones?”* (ara fol 325 tal-process tal-kawza bin-nru 697/2014)

Fl-ittra datata 25 ta` Marzu 2009 (fol 328 tal-process tal-kawza bin-nru 697/2014), Mark Camilleri wkoll ghal Mariolot Limited jikteb lis-socjeta` attrici u jghid :-

“Enclosed please find 4 bank drafts made out to Tucan Investments Limited. These represent the Dividend and Loan payments related to Mariolot & Jeanlot for the year ended 2008 and breakdown is shown below:

<i>Draft</i>	<i>Amount</i>	<i>Details</i>
<i>725234</i>	<i>109,873.50</i>	<i>Tucan` s share of Mariolot`s 2008 Dividend</i>
<i>725235</i>	<i>64,039.53</i>	<i>Full and final repayment of Mariolot loan</i>
<i>725232</i>	<i>109,873.50</i>	<i>Tucan` s share of Jeanlot`s 2008 Dividend</i>
<i>725233</i>	<i>64,039.53</i>	<i>Full and final repayment of Jeanlot`s Loan</i>

Izda Tucan Investments Limited iccarat il-kontenut ta` dik l-ittra billi b`ittra datata 7 ta` April 2009 (fol 329 tal-process tal-kawza bin-nru 697/2014) spjegat lil Mariolot Limited illi : *“I refer to your letter dated 25 March 2009, which enclosed a number of cheques due to Tucan for dividends and repayment of loans given by Tucan. For the sake of clarity please note that the loans to*

Mariolot and Jeanlot but those to Mario Camilleri and Jean Paul Tabone personally.”

Email iehor kien dak mibghut fl-20 ta` April 2011 minn Mark Camilleri fejn kiteb: *“We are in receipt of the Maltco dividend and I am attaching a copy of the cheque as well as the dividend certificate. The entire Players Group dividend was €609,489 and Mariolot’s 25% equates to €152, 372.25.”*

F`dan ir-rigward, is-socjeta` konvenuta taghmel l-argument illi skont il-klawsola numru 3(e) tal-kuntratt tad-29 ta` April 2004, fl-eventwalita` li s-socjeta` intimata ma tirregistrax iz-zieda tal-kapital mahrug fi Mariolot Limited favur Tucan Investments Limited fiz-zmien ta` jumejn mid-data tat-talba, is-socjeta` rikorrenti kellha l-ghazla li tikkancella t-talba taghha sabiex tigi ezercitat s-*share option* u minflok titlob li l-pagament tal-bilanc dovut u cioe` l-bilanc tas-self. Per konsegwenza, l-intimati jghidu illi sal-mument meta Tucan kellha taghzel jekk tezercitax l-ozzjoni jew le, il-pagamenti li saru lilha minn Mariolot Limited kienu qed jigu kkunsidrati bhala hlas tas-self u mhux bhala hlas ta` *dividends* ta` l-ishma li kienu ghadhom mhux registrati.

Din il-Qorti ma taqbilx li l-kliem utilizzati fi klawsola 3(e) tal-ftehim tad-29 ta` April 2004, ossija *“immediate payment of the balance due”* jfisser li l-ammonti li kienu thallsu precedentement kellhom jigu mnaqqsa mill-ammont avanzat ta` Lm123,000.

Din il-Qorti tghid illi l-avvanz ta` Lm123,000 lil Mariolot Limited sar bl-intiza li dik is-somma tigi konvertita f`ekwita f`Mariolot Limited.

Kienet cara l-intiza illi mmedjatament ma` l-iffirmar ta` l-iskrittura, jibdew jithallsu lil Tucan Investments Limited nofs id-*dividends* li kienu jispettaw lilha li kieku l-ishma kienu diga` registrati f`isimha. Tucan kellha l-fakolta` li tiddeciedi li titlob is-somma avanzata minflok tezercita d-dritt taghha li jkollha ishma registrati f`isimha, izda dan meta s-socjeta` intimata ma tirregistrax iz-zieda tal-kapital ta` Mariolot Limited favur Tucan Investments Limited fiz-zmien jumejn mid-data tat-talba hekk maghmula minn Tucan. F`dak il-kaz, Tucan Investments Limited kellha l-ghazla jew li titlob il-hlas lura ta` l-avvanz ta` flus dovuti ossija s-somma ta` Lm123,000 jew inkella tibqa` tinsisti sabiex issir din iz-zied tal-kapital.

Konsegwentement, in vista ta` dan kollu, il-Qorti ma taqbilx mas-sottomissjonijiet ta` Mariolot Limited fis-sens li tali avanzat ta` flus lilha kellu jigi interpretat bhala semplici self ta` flus.

Waqit it-trattazzjoni, Mariolot Limited taghmel l-argument illi ladarba l-kuntratt jsemmi self, jekk verament Mariolot Limited ma setghetx thallas lura s-somma li kienet issellfet izda kienet marbuta li minghajr ir-registrazzjoni ta` Tucan Investments Limited bhala azzjonista, kellha tibqa` thallas nofs id-*dividends* lis-socjeta` Tucan Investments Limited, dan kien jammonta ghal uzura.

Din il-Qorti tirrileva li ma kenitx ecepita l-uzura.

B`zieda ma` dan, tghid illi fil-fehma taghha l-avvanz tal-flus ma kienx semplici self, kif qed jallegaw l-intimati, izda kien avvanz bl-iskop li jigi konvertit f`ekwita.

Sar ukoll l-argument illi skont it-tieni proviso tal-**Art 122(14) tal-Kap 386**, id-*dividends* li irceviet lil Mariolot Limited minn The Players Group Limited u li thallsu lil Tucan Investments Limited ma jistghux jigu kkunsidrati bhala xejn aktar hlief pagament tal-kapital tas-self.

It-tieni proviso tal-Art 122(14) tal-Kap 386 ighid :-

Izda wkoll, sakemm il-persuna li tirhan u dik li favur taghha jsir ir-raham ma jkunux ftehm mod iehor fil-ftehim tar-raham u avviz ma jkunx gie moghti lill-kumpanija, dividendi jew hlasijiet ta` imghax dovuti fuq sigurtajiet mruhna ghandhom, matul iz-zmien li r-raham ikun registrat fir-registru tad-detenturi tas-sigurtajiet rispettivi, jithallsu mill-kumpanija lill-persuna li favur taghha jsir ir-raham, li ghandha taghmel dawk l-ammonti ricevuti ghall-imghax dovut fuq id-dejn assigurat bir-raham, u jekk ikun hemm ecess ghall-kapital.

L-argument sar mill-konvenuti sabiex isostnu l-pretensjoni taghhom illi l-avvanz kien self ghaliex altrimenti ma setax isir *pledge*.

Din il-Qorti ma tikkondividix l-argument.

Tajjeb irrilevat is-socjeta` attrici illi skont l-**Art 122(1) tal-Kap 386**, il-*pledge of securities* tinghata *as security for any obligation*, irrISPettivament jekk kenitx pagament ta` self jew inkella obligazzjoni ta` natura ohra. Id-disposizzjoni fil-fatt taqra : “*Sigurtajiet jistghu, kemm-il darba ma jkunx provdut xort`ohra fil-memorandum jew fl-istatut tal-kumpanija jew taht il-kondizzjonijiet tal-hrug ta` dawk is-sigurtajiet, ikunu mirhuna mid- detentur taghhom favur xi persuna bhala garanzija ghal xi obbligu...*”

Tajjeb jinghad ukoll illi **Andrew Muscat** fil-“**Principles of Maltese Company Law**” – Pag 649 – jirrimarka li :- “*A pledge is a contract creating a security for an obligation. The pledge may be given either by the debtor himself or by a third party for the debtor.*”

Ghalhekk lanqas dan l-argument ma jghin it-tezi tal-konvenuti.

3. It-terminu ta` validita ta` l-iskrittura tad-29 ta` April 2004

Mariolot Limited sahqet hafna fuq il-fatt illi Tucan qatt ma ezercitat l-opzjoni skont il-ftehim, u li meta in effetti ezercitat l-opzjoni, dak sar tardivament, ghaliex il-ftehim kien skada billi iz-zmien tal-ewwel licenzja kien skada.

Mariolot Limited tghid li l-licenzja sabiex Maltco topera l-lotterija nazzjonali kienet koncessa ghal zmien seba` snin minghajr tigidid awtomatiku. Issostni li wara l-eghluq ta` s-seba` snin, kienet harget sejha gdida ghall-offerti. Issostni li fiz-zmien meta sari l-kuntratt tal-2004, hadd ma seta` jipprevedi li Maltco kienet ser terga` toffri u tintghazel mill-gdid. Ghalhekk tghid illi l-kuntratt tad-29 ta` April 2004 kien marbut mal-ewwel licenzja li nghatat Maltco Lotteries Limited u li kif appena ghalqet dik il-licenzja, il-ftehim bejn il-partijiet spicca.

Minn ezami tal-ftehim, jidher li kien hemm terminu sa meta kellu jithallas is-self moghti personalment lil Mario Camilleri izda mhux terminu sa meta kellha ssir l-allokkazzjoni ta` l-ishma.

L-intimati lanqas ma jistghu jsostnu d-difiza taghhom abbazi tal-fatt li l-garanzija bankarja kienet spiccat u allura kienet spiccat kull relazzjoni kontrattwali bejn is-socjeta` rikorrenti u l-intimati. Dik il-garanzija kienet inghatat skont ir-raba` parti tal-ftehim li hija ben distinta mill-partijiet l-ohra, inkluza l-parti dwar l-avvanz ta` Lm123,000 lil Mariolot Limited.

Fil-fehma ta` din il-Qorti, l-iskrittura kienet ghalhekk ghadha vigenti u dan kien maghruf minn Mariolot Limited tant li l-istess giet interpellata biex toqghod ma` l-obbligi assunti minnha ai termini tal-ftehim permezz ta` ittra ufficjali.

4. Konkluzjoni

Tenut kont tal-premess, il-Qorti qeghda tilqa` l-ewwel talba.

V. It-tieni talba

Fejn si tratta ta` obbligi fiducjarji, il-Qorti tirreferi ghall-**Art 1124A tal-Kap 16.** Taghmel riferenza ghas-sentenza ta` din il-Qorti (**PA/FS**) tal-24 ta` Settembru 2010 [ara wkoll is-sentenza tal-Qorti tal-Appell tat-28 ta` Frar 2014] fil-kawza "**Anthony Caruana & Sons Limited et vs Christopher Caruana**" fejn inghad :-

L-Artikolu 1124A (1) tal-Kodici Civili jghid hekk :

“Obbligazzjonijiet fiducjarji jinqalghu bis-sahha tal-ligi, kuntratt, kwazi kuntratt, trust, assunzjoni ta` kariga jew imgieba fejn persuna (il-"fiducjarju") –

(a) ikollha d-dmir li thares l-interessi ta` persuna ohra, jew

(b) izzomm, tezercita kontroll jew ikollha setghat ta` disponiment fuq proprjeta` ghall-beneficju ta` persuna ohra, inkluz meta din tkun vestita bhala sid ta` dik il-proprjeta` ghal dan l-ghan, jew

(c) tircievi taghrif minghand persuna ohra marbuta bid-dmir tal-konfidenzjalita` dik il-persuna tkun taf, jew fic-cirkostanzi kollha b`mod ragonevoli ghandha tkun taf, li l-uzu ta` dak it-taghrif huwa intiz li jkun ristrett.”

Il-fiducjarju huwa obligat li jzomm taghrif li jircievi b`mod kunfidenzjali. Hu ghandu d-dover ta` lealta` fl-amministrazzjoni u li jhares l-interessi tal-persuna li tkun inkarigatu. Ghandu jiehu hsieb ta` l-affarijiet ta` min qabdu b`mod onest u b`kontabilita` u lealta`. Ghandu jezercita d-diligenza ta` bonus pater familias biex iwettaq l-obbligazzjonijiet tieghu u m`ghandux ikollu konflitti ta` interess. Ghandu dejjem jagixxi fl-interess ta` min qabdu. M`ghandux jircievi xi profitt mhux awtorizzat.

Fis-sentenza ta` din il-Qorti [mhux appellata] tat-2 ta` Dicembru 2013 fil-kawza "**Carmen Xuereb v. L-Avukat Anton Micallef**" inghad :-:

“ ... Fiducjarju ghandu l-obbligu li jzomm u jittratta taghrif li jircievi b`mod kunfidenzjali. Ghandu d-dmir ta` lealta` fl-amministrazzjoni. Ghandu d-dover li jhares l-interessi tal-persuna li tkun tatu l-inkariku. Ghandu jiehu hsieb b`onesta` u b`kontabilita` l-affarijiet ta` min ikun tah l-inkariku. Ghandu jezercita d-diligenza ta` bonus pater familias fit-twettieg ta` l-obbligazzjonijiet tieghu. M`ghandux ikollu konflitti ta` interess, ghandu dejjem jagixxi fl-interess ta` min tah l-inkariku u m`ghandux jircievi profitt mhux awtorizzat.”

Fis-sentenza ta` din il-Qorti (**PA/MCH**) tat-13 ta` Novembru 2014 fil-kawza "**Vascas Enterprises Limited vs Adrian Ellul**" inghad hekk :-

Kif taraha din il-Qorti, il-kwisjtoni legali li trid tigi indirizzata tirrigwarda d-doveri fiducjarji u d-doverita` fedelta relattivi ghal kuntratt ta` impjieg bejn il-konvenut u s-socjeta attrici. Jibda biex jinghad illi l-ligi Ingliza taghmel distinzjoni bejn iz-zewg doveri. Il-Qorti tirreferi ghal zewg appelli moghtija wahda mill-Qorti tal- Appell Ingliz fl-ismijiet Jeremy Michael Ranson vs Customer Systems plc deciza fis-27 ta` Gunju 2012 u ohra moghtija mill-Qorti tal-Appell ta` Singapore fl-ismijiet Smile Incorporated Dental Surgeons Pte Ltd vs Lui Andrew Stewart deciza fil-31 ta` Lulju 2012. Il-kawzi huma b`fatti simili ghal kawza sub iudice u fihom saret espozizzjoni erudita u kwazi identika tal-principju regolatur in materja.

Fl-appell Ranson il-Qorti tal-Appell Ingliz trattat il-kwistjoni ta` impjegat f`pozizzjoni manigerjali li rrezinja biex jiftah ghal rasu fl-istess sfera tal-impjieg tieghu u fil-perjodu talimpjieg fetah il-kumpanija tieghu, tkellem ma` kuntatti tad-ditta li kienet timpjegah, ma qal xejn dwar dan lil principal tieghu u fil-fatt wara li ttermina l-impjieg accetta xoghol minghand l-imsemmija kuntatti.

Il-Qorti tal-Appell qalet hekk :

A "fiduciary" duty should not be confused with a duty of "fidelity". The duty of fidelity may be expressly set out in the contract but if not, it will be implied. All employment contracts contain an implied term that an employee will serve their employer in good faith and with fidelity (duty of fidelity) meaning that during employment, the employee should act in their employer`s interests and not use the time for which he is paid by the employer in furthering their own interests. However, it also means that whilst the employee must have regard to their employer`s interests, it does not in general amount to a "promise to give his employer the benefit of every opportunity within the scope of its business"

A fiduciary duty exists where there is fiduciary relationship, such as between a director and the company of which the director is an officer. Directors are under a fiduciary duty (partially set out in the Companies Act 2006) which requires the director to owe a "single-minded duty of loyalty to the company and act in the company`s best interests`

Il-Qorti tal-Appell qalet in oltre li l-impjegat hu f`pozizzjoni differenti u ma jassumiex, semplicement qua impjegat, obbligi fiducjarji lejn il-principal. Anki jekk jitqies bhala fiducjarju, mhux kull fiducjarju jassumi l-istess doveri f`kull cirkostanza. Il-fonti ghandu jkun il- kuntratt ta` impjieg. Obbligi fiducjarji jinsorgu fejn obbligazzjonijiet spcifici kuntrattwali jpoggu lill-impjegat f`sitwazzjoni fejn il-ligi ghalhekk tramite dawn l-obbligi timponi fuqu doveri addizzjonali aktar rigoruzi.

Ma` dan jizdied illi impjegati ta` certa livell jistghu jkunu suggetti ghal doveri fiducjarji impost mill-kuntratt ta` impjieg pero ma jistghux jitpoggew fil-

keffa ta` diretturi u d-doveri fiducjarju impost fuqhom. Dover fiducjarju ta` direttur inghad fil-kawza Fishel imsemmija fid-decizjoni kkwotata illi :

“the hallmark of a fiduciary is a single-minded duty of loyalty. The duty of loyalty in that context has a precise meaning: `namely the duty to act in the interests of another”. As mentioned, this is not a feature of an employment relationship. In the employment context the duty of loyalty, although given the same label, “is one where each party must have regard to the interests of the other, but not that either must subordinate his interests to those of the other.”

... llum bl-introduzzjoni tal-artikolu 1124(A) tal-Kap. 16 dwar obbligi fiducjarji, giet kristallizzata dak li l-Qrati taghna kienu jsostnu cioe illi certi kuntratti minn natura taghhom jimponu obbligi addizzjonali ghal dawk kuntrattwali fosthom il-kuntratt ta` impjeg. L-artikolu 1124(A)(a) fil-fatt jasserixxi li hemm obbligi fiducjarji meta dawn jirrizultaw mill-istess ligi, minn kuntratt u fost affarijiet ohra msemmija, minn assunzjoni ta` kariga fejn fost elementi ohra persuna jkollha d-dmir li thares l-interessi ta` persuni ohra.

Kwindi, hu car illi fil-ligi Maltija, rapport kontrattwali jew/u anki f`assunzjoni ta` kariga (kif certament il-kaz odjern jiccentra) hemm obbligu fiducjarju fejn hemm id-doveri li wiehed ihares l-interess ta` haddiehor.

Hi l-fehma ta` din il-Qorti li dan l-artikolu ma hu xejn ghajr l-applikazzjoni generali tal-ligi illi fil-qadi tad-doveri tieghu, impjegat irid iqis l-interess tal-principal tieghu u jagixxi bid-diligenza kollha fil-qadi ta` dmiru u aktar ma hi holja l-pozizzjoni jew il-kariga, aktar jassumi piz l-obbligu ta` fedelta, lealta, onesta u buona fede fil-konfront tal-principal u aktar hu ta` importanza li dak li ghandu kariga jagixxi bid-diligenza ta` bonus pater familias. Tradott f`termini semplici l-impjegat speċjalment fil-karigi esekuttivi ma jridx jaghmel hsara, jew jagixxi b`detriment jew pregudizzju jew b`dannu ghall-interess tal-principal tieghu. Dawn id-doveri ghandhom jitqiesu b`zieda ma` kull kondizzjoni ohra kontrattwali fir-rapport ta` impjeg bejn il-principal u l-impjegat.

Huma in-natura tal-kariga, ir-responsabilitajiet u poteri afdati oltre kundizzjonijiet specifici tal-kuntratt ta` impjeg li jiddeterminaw u jiddelineaw il-qies tal-fiducja riposta u mistennija u ghalhekk huma dawn l-fatturi li jriedu jittiehdu in konsiderazzjoni meta jigi kunsidrat allegazzjoni ta` nuqqas ta` dover kemm esplicitu jew implicitu liema nuqqas igib mieghu il-konsegwenza ta` responsabilita ghal hsara li tkun allegatament giet kommissa a dannu tal-principal.”

Rilevanti huwa dak li kiteb **Max Ganado** bit-titolu ‘*Fiduciary Obligations under Maltese Law*’ fil-ktieb “**Trusts e Attivita` Fiduciarie 2013**” :

Two fiduciary obligations, that of acting with utmost good faith and acting honestly, are absolute and cannot be waived or otherwise tampered with ... All fiduciaries must act with utmost good faith as they have no interest to act

otherwise as they are acting for the benefit of someone else. This is an obligation that cannot be waived or reduced either... Article 1124A (4) states :

Without prejudice to the duty of a fiduciary to carry out his obligations with utmost good faith and to act honestly in all cases, a fiduciary is bound, subject to express provision of law or express terms of any instrument in writing excluding or modifying such duty, as the case may be – “and then lists the obligations one by one in subparagraphs ... These feature singly or even in groups, in other parts of the Code and in other laws and are not a statement of new law but a summary of existing law which is spread out all over the legal system and court judgements.

Some of these obligations apply only in some contexts and not others. It should also be noted that this list is not exhaustive and there could be other fiduciary obligations which emerge from the context ... The list is as follows :

(a) to exercise the diligence of a bonus pater familias in the performance of his obligations ;

(b) to avoid any conflict of interest ;

(c) not to receive undisclosed or unauthorised profit from his position or functions;

(d) to act impartially when the fiduciary duties are owed to more than one person;

(e) to keep any property as may be acquired or held as a fiduciary segregated from his personal property and that of other persons towards whom he may have similar obligations ;

(f) to maintain suitable records in writing of the interest of the person to whom such fiduciary obligations are owed ;

(g) to render account in relation to the property subject to such fiduciary obligations ; and

h) to return on demand any property held under fiduciary obligations to the person lawfully entitled thereto or as instructed by him or as otherwise required by applicable law.

Fuill-pubblikazzjoni “**Recent Developments on Trusts and Fiduciary Obligations in Malta 2009-2013**” **Max Ganado** ighid :-

“Fiduciary obligations do not arise in a commercial transaction (except when used to support it) ... When there is a commercial agreement, one does not find fiduciary obligations as in commercial agreements no one protects each other and each party promotes his own personal interest. The principle of caveat

*emptor in the case of a sale is a good example of this : everyone must watch his own interests ... The reason for this is the fact that in commercial transactions there is a strong element of self interest on the part of the provider as he seeks to make profit from the deal. Of course remuneration also features in the services of a lawyer or a broker, but in those cases it is clear that the dominant purpose of engaging a lawyer is the protection of the client's rights and the remuneration of the lawyer or broker is secondary if not irrelevant. Of course the same happens when a depository or a custodian or an investment manager and other are engaged to hold or manage investments for a customer. **On the other hand when a trust is specifically installed as part of the commercial transaction, then the fiduciary obligations emerge from that specific arrangement and in that case there is no inconstancy.**" (enfasi ta` din il-qorti).*

Dan premiss, il-Qorti tghid illi tikkondividi s-sottomissjoni tas-socjeta` attrici illi l-ishma li kellhom jigu allokati lil Tucan Investments Limited ma setghux jigu trattati mill-intimati bhal li kieku kienu taghhom semplicement ghax kienu f'isimhom.

Mid-dokumenti registrati ma` l-MFSA dwar Mariolot Limited ezebiti a fol 99 tal-process tal-kawza bin-nru 697/2014 irrizulta li Mariolot Limited ghandha *authorized shares* fl-ammont ta` 246,000 ekwivalenti ghal €573,025.76c mentri hemm *issued shares* fl-ammont ta` 123,000 ekwivalenti ghal €286,512.88.

Tinnota ukoll li fil-kuntratt tad-29 ta` April 2004, Mariolot Limited ma setghetx taghmel li trid bl-ishma taghha minghajr il-kunsens tas-socjeta` rikorrenti.

Dan kollu juri li kien hemm obbligi fiducjarji involuti u li l-persuna li tkun fiducjarja hija tenuta li ma tirceviz xi profitt mhux dikjarat jew mhux awtorizzat mill-kariga jew funzjonijiet taghha.

Din il-Qorti ma taqbilx mal-argument ta` l-intimati fejn dawn sostnew illi l-kapital awtorizzat fis-socjeta` intimata Mariolot Limited zdiel sabiex jilhaq l-ammont ta` Lm246,000 – 123,000 ishma ta` Lm1.00 kull sehem mahruga u registrati fl-isem ta` Mario Camilleri , izda l-123,000 ishma l-ohra kienu johorgu biss jekk Tucan Investments Limited ezercitat is-share option taghha.

L-intimati jsostnu li l-ishma li kellhom jigu allokati lil Tucan Investments Limited ma kinux fl-isem Mario Camilleri li kien qieghed izommhom ghall-beneficju ta` Tucan Investments Limited sakemm dawn jigu registrati fl-isem din tal-ahhar. L-ishma li setghu jigu allokati lil Tucan Investments Limited kellhom johorgu mill-kapital awtorizzat tas-socjeta` intimata. L-intimati

insistew illi sakemm dawk l-ishma jsiru parti mill-*issued share capital* ta' s-socjeta', dawn ma jappartjenu lil hadd u ghalhekk bl-ebda mod ma seta' jkun hemm xi relazzjoni fiducjarja bejn Tucan Investments Limited u Mariolot Limited u/jew Mario Camilleri in konnessjoni ma' kapital li kien biss awtorizzat u mhux mahrug.

Ghalkemm huwa minnu li l-*issued share capital* kien ta' Lm123,000, il-fatt jibqa' li s-somma addizzjonali ta' Lm123,000 giet avvanzata mis-socjeta' rikorrenti lis-socjeta' intimata sabiex ikun hemm *authorized share capital* ta' Lm246,000 bil-ghan li fil-futur ikunu jistghu jinhargu *shares* godda.

Huwa fatt li l-kumpannija kellha fil-pussess taghha l-flus li jikkorrispondu ghal dak is-*share capital* li kien *authorized* izda li kien ghadu ma kienx *issued*.

L-*authorized share capital* kien ikopri l-ammont li kienet harget is-socjeta' rikorrenti a favur tas-socjeta' intiamta.

Is-socjeta' intimata kellha l-obbligu fiducjarju li tiehu hsieb illi tghaddi lis-socjeta' rikorrenti 50% tad-*dividends* li tircievi mid-data ta' l-iskrittura. Il-mument li s-socjeta' intimata waqfet milli tghaddi dan l-ammont ta' *dividend* lis-socjeta' rikorrenti, hija naqset mill-obbligi kontrattwali taghha.

Naqset ukoll meta ttrasferiet l-ishma taghha fil-The Players Group Limited lil Lattimer Limited biex b'hekk hija ma baqghetx tircievi d-*dividends* minghand The Players Limited u ghalhekk waqfet milli tghaddi s-sehem dovut lis-socjeta' rikorrenti.

Il-Qorti sejra tilqa l-ewwel parti tat-tieni talba.

Riferibbilment ghat-tieni parti tat-tieni talba, fejn din tirrigwarda l-hatra ta' David Curmi bhala direttur ta' Mariolot Limited, il-Qorti tghid illi minn qari tal-ftehim tad-29 ta' April 2004, jirrizulta li l-obbligu li jinhatar David Curmi bhala Direttur fuq il-Bord tad-Diretturi ta' Mariolot Limited tnizzlet fit-taqsima rigwardanti s-self personali maghmul lil Mario Camilleri, ossija dik il-parti enumerata bin-numru 2 u intestata "*Loan*". Irrizulta li s-self thallas fl-intier tieghu. Ghaldaqstant il-klawsola mhijiex aktar veljanti. Dik il-klawsola kellha tigi attwata kif kien jimponi l-ftehim "*as soon as practically possible*" u kemm dam pendenti s-self li sar lil Mario Camilleri personalment.

Il-Qorti tinnota li fit-taqsima enumerata 3 u ntestata “*Option to acquire shares in Mariolot Limited*” ma jirrizulta l-ebda obbligu simili ghal hatra ta` David Curmi bhala direttur fis-socjeta` intimata.

Wara tant insistenza da parti tas-socjeta` attrici li l-ftehim kien maghmul minn taqsimiet separati u distinti minn xulxin, il-Qorti ma tistax tqis li l-klawsola dwar hatra ta` David Curmi bhala direttur fis-socjeta` intimata ghandha tkun estiza sabiex tapplika ukoll ghat-taqsima enumerata 3.

Tajjeb jinghad ukoll illi fil-parti tal-ftehim enumerata 5 u intestata “*Payments and Guarantees*”, jinghad fl-artikolu 3 illi :

Tucan Investments Limited shall have the right to appoint a director to the Board of Mariolot Limited upon the grant of the loan mentioned in section 2 of this agreement. If the director appointed by Tucan Investments Limited is removed from the Board of Mariolot Limited, Mariolot Limited, shall be liable to pay a daily penalty of Lm1,000 to Tucan Investments Limited to be computed from the date such a director has been removed until the date a director nominated by Tucan Investments Limited is re-appointed to the Board of Mariolot Limited.”

Anke ghar-rigward ta` din il-klawsola, ir-referenza kienet cara, ossija li kellu jigi inkarigat direttur minn Tucan Investments Limited ma` l-ghoti tas-self personali moghti lill-intimat Mario Camilleri.

Ghalhekk il-Qorti sejra tichad it-tieni parti tat-tieni talba safejn din tirrigwarda l-hatra ta` David Curmi bhala direttur ta` Mariolot Limited.

VI. It-tielet talba

Il-Qorti qeghda tilqa` t-tielet talba.

VII. Ir-raba` talba

Il-Qorti taghmel riferenza ghall-klawsola 3(e) tal-kuntratt tad-29 ta` April 2004 :-

Without prejudice to the aforesaid, if Mariolot Limited, Mario Camilleri or Maria Camilleri, upon them being requested to increase the issued share capital of Company in favour of Tucan Investments Limited by the allotment of one

hundred and twenty three thousand (123,000) fully paid up Ordinary Shares of one Maltese Lira (Lm1.00) each, fail to effect such increase within two (2) days from the date of such request, Mariolot Limited, Mario Camilleri and Mary Josephine Camilleri shall be jointly and severally liable towards Tucan Investments Limited to a daily penalty of one thousand Maltese Lira (Lm1,000) until the date of registration with the Registrar of Companies of the increase in share capital. Provided that in such an event, and without prejudice to its right to demand payment of the daily penalty, Tucan Investments Limited shall have the right to, at its sole discretion, cancel its request to exercise the share option and demand immediate payment of the balance due, in which case, the notice of payment is to be construed as having been given on the date the notice to exercise the option was given, and the provisions of paragraph (d) above shall apply.

Irrizulta illi l-ittra ufficjali kienet prezentata fid-19 ta` Gunju 2013.

Il-penali ghandha tigi kalkolata mit-22 ta` Gunju 2013.

Sal-lum ghaddew tliet snin. L-2016 kienet *leap year*.

Ghaddew b`kollox 1,242-il jum.

Ghalhekk li kieku l-penali ta` Lm1,000 kuljum hekk kif pattwita fil-ftehim kellha tigi applikata, tkun tammonta ghal Lm1,242,000 ekwivalenti ghal €2,893,081.76.

Qabel tasal ghal decizjoni dwar penali, din il-Qorti jidhrilha li ghandha tirreferi ghan-natura ta` klawsoli dwar penali u l-effetti tagghom.

Fis-sentenza li tat din il-Qorti ((**PA/MH**) fit-12 ta` Frar 2016 fil-kawza "**2R`s Limited (C-61760) vs Issa Isslam Tawfik**") inghad hekk :-

Dwar il-penali mitluba l-Qorti ta` l-Appell fil-kawza fl-ismijiet Emmanuel Borg vs The Two Divers Company Limited deciza fis-27 ta` Frar, 2008, qalet :

"M`hemmx dubbju illi klawsola penali f`kuntratt ghandha funzjoni essenzjalment rizarcitorja intiza biex tiffissa b`mod preventiv, u anke b`mod vinkolanti, l-ammont tad-dannu f`kaz ta` dewmien jew ta` inadempiment. F`dan is-sens jinsab ritenut illi l-klawsola penali "è una convenzione accessoria che serve di mezzo per rafforzare la obbligazione principale e rappresenta la valutazione convenzionale dei danni sofferti dal creditore per l` inadempimento o per la mora. Essa quindi riveste il triplice carattere di obbligazione accessoria, di mezzo

coercitivo e di indennizzazione convenzionale” (“Goffredo Chretien nomine et -vs- John Ciancio”, Appell Kummercjali, 13 ta` April, 1921).”

Fis-sentenza li tat din il-Qorti (**PA/GC**) fil-kawza “**Adams Investments Company Ltd vs Fra Fen Construction Limited**” inghad hekk :-

Di piu gie ritenut ukoll li meta jkun hemm ksur ta` kuntratt, l-obbligat ikun responsabbli ghad-danni. Dawn id-danni jistghu jkunu jew konvenzjonali jew gudizzjali. Ta` l-ewwel huma danni pre-likwidati, fejn il-kontraenti jiftiehm minn qabel li, f`kaz ta` ksur tal-kuntratt, id-danni rizarcibbli jkunu tant, kwantifikati minn qabel. F`dan il-kaz, dawk id-danni jkunu dovuti minghajr htiega li ssir il-prova li dawk id-danni gew fil-fatt sofferti. Meta l-ftehim jistabilixxi illi l-parti li tonqos mill-esekuzzjoni tieghu ghandha thallas somma determinata bhala danni, ma tistax tigi moghtija lill-parti l-ohra somma akbar jew izghar. Gie dejjem ritenut li l-Qorti ma tistax tissostitwixxi d-diskrezzjoni soggettiva taghha ghar-rieda tal-partijiet li diga` stabbilew bejniethom ilquantum tad-danni li l-attur isofra minhabba linadempjenza tal-parti l-ohra fl-esekuzzjoni talobbligazzjoni assunta minnha. Meta l-partijiet jiftiehm minn qabel l-ammont ta` danni, ma tistax ikun hemm temperament fil-quantum, liberament miftiehma u assunta.”

Fis-sentenza li tat din il-Qorti (**PA/MCH**) fil-kawza “**Dr Malcolm Pace vs Karl Azzopardi pro et noe**” kien applikat l-insenjament li meta n-nuqqas ikun *de minimis*, ma jkunx jisthoqq l-applikazzjoni tal-klawsola tal-penali. Hemm inghad :

Il-Qorti ma tqis li b`daqshekk il-konvenut ma onorax l-obbligi ta` ripristinu fl-istat strutturali originali u n-nuqqas ta` irfinar hu wiehed de minimis u ma jisthoqq lux is-sanzjonar talklawsola miftehma u penali dovuta fin-nuqqas ta` ripristinar.”

Fl-istess kawza, dwar talba ghal danni prelikwidati minhabba nuqqas ta` ottemperanza mal-kundizzjonijiet tal-ftehim, intqal hekk :

... din il-Qorti tqis illi l-applikazzjoni tal-klawsola ta` penali fl-ammont imsemmi fil-klawsola sad-data tal-esekuzzjoni tal-obbligazzjoni senjatament f`dan il-kaz il-hlas tal-management fee tmur kontra l-principju `in omnibus quidem, tamen maxima in jure, aequitas spectandi sit` applikat b`success fil-kawza precitata Pace vs Micallef (App Civ 15/12/2004) u ricentement fl-Appell Civili Bergedahl nomine vs Francis Formosa (30/09/2011).

Din il-klawsola ta` penali tinsorgi mid-dispost tal-artikolu 1120 tal-Kap. 16 li jghid hekk: (1) Il-penali hija l-kumpens tal-hsara li jbati l-kreditur minhabba n-nuqqas tal-esekuzzjoni tal-obbligazzjoni principali. (2) Il-kreditur jista` jagixxi ghall-esekuzzjoni tal-obbligazzjoni principali minflok ma jitlob il-

penali li fiha jkun waqa` d-debitur. (3) Hu ma jistax jitlob il-haga principali u l-penali flimkien, hliet meta l-penali tkun giet miftiehma ghad-dewmien biss.

Pero tali dispost ghandu jinqara flimkien mal-artikolu 993 tal-Kap. 16 fejn il-kuntratti ghandhom jigu ezegwiti in bona fede u jobbligaw mhux biss ghal dak li jinghad fihom izda ukoll ghal konsegwenzi kollha li ggib maghha l-obbligazzjoni skond ix-xorta taghha, bl-ekwita, bl-uzu jew bil-ligi. Kif qalet il-Qorti tal-Appell Pace vs Micallef (15/12/2004):

Din il-Qorti tifhem li fil-kuncett tal-bona fidi jidhol ukoll certu element ta` ekwita` kif ukoll ta` sens Prattiku u morali li jigi vjolat mhux biss meta konfrontat b`agir specifiku doluz biex jaghmel il-hsara, izda wkoll b`dak il-komportament li jkun ghal kollox spoporzonat u li ma jkunx accettabbli skond in-normi stabbiliti tas-socjeta u tal-logika juridika.

Ovvjament kull kaz hu differenti u c-cirkostanzi jridu jittiehdu in kunsiderazzjoni skond in-natura tal-kaz. Il-Qorti tqis illi hemm spoporzon kbir bejn l-ammont ta` penali u l-management fee pattwita. In oltre l-Qorti hi ferm riluttanti li taccetta ottemperanza ma tali impozizzjoni ta` penali meta l-attur dam disa` snin biex ressaq talba ghal non osservanza talhlasijiet dovuti meta bhala kreditur hu fid-dover li jimminimizza d-danni. Fil-fehma tal-Qorti jekk dato non concesso l-penali kienet applikabbli, il-penali imposta hi wisq eccessiva u l-pretensjoni taghha mill-attur tirrasenta l-arrikiment indebitu.

Ta` l-istess portata kienu d-decizjonijiet ta` din il-Qorti (**PA/MCH**) tat-28 ta` Ottubru 2013 fil-kawza "**A.M.Developments Limited et vs Pauline Micallef**" u (**PA/JRM**) tat-8 ta` Marzu 2005 fil-kawza "**Mary Rose Falzon Manduca vs Mario Grima**", kif ukoll id-decizjoni tal-Qorti tal-Appell tal-15 ta` Dicembru 2004 fil-kawza "**Michael Pace v. Richard Micallef pro et noe**".

Hija evidenti x-xejra fil-gurisprudenza li penali jistghu jigu jistghu jigu riveduti.

Fil-fehma tal-Qorti, din it-tendenza hija l-aktar li taghmel gustizzja in kwantu tizgura li rrispettivament minn dak li jkun ftehm u l-partijiet, ma tinholqx il-possibilita` li jkun hemm konsegwenzi li ma jaghmlux sens.

Fil-kaz in ezami huwa evidenti li l-penali li giet mitluba hija bbazata fuq l-inadempjenza da parti ta` l-intimati milli jirregistraw 123,000 ishma f'isem Tucan Investments Lintied.

Din il-Qorti tikkondividi l-insenjamenti fuq rapportati li penali eccessivi jistghu jigu riveduti u mibdula anke fil-kaz ta` penali ghall-inadempjenza u

mhux biss ghad-dewmien meta fil-fehma tal-Qorti, irrispettivament minn dak li jkunu ftehm u l-partijiet, tista` tinholoq il-possibilita` li jkun hemm konsegwenzi assurdi.

Dan huwa proprju dak li ghandu japplika fil-kaz tal-lum : *in omnibus quidem, maxime tamen in jure, aequitas spectanda sit.*

Dwar ir-riduzzjoni fil-penali, tenut kont tal-punti kollha fuq esposti, din il-Qorti hija tal-fehma illi n-nuqqas tal-intimati li jonoraw l-obbligi taghhom kien ta` entita` gravi u serja.

Fl-istess waqt din il-Qorti ghandha tqis li l-avvanz maghmul mis-socjeta` rikorrenti lis-socjeta` intimata kien ta` Lm123,000, u li din dejjem inghatat sehemha mid-*dividends* hlief mill-2013 `il quddiem.

Ghandu jitqies ukoll li s-socjeta` attrici damet ukoll sena wara li baghtet l-ittra ufficjali bit-talba taghha ghall-allokkazzjoni ta` l-ishma a favur taghha, sabiex tipprezenta din il-kawza odjerna.

Fil-fehma ta' l-Qorti, tqis illi jkun gust u ragonevoli li - irrispettivament minn dak stipulat fil-ftehim - ghandha tikkalkola li l-penali bhala li ghandha tibda tiddekorri b`effetta mid-data tan-notifika ta` din il-kawza ossija fit-28 ta` Lulju 2014.

B`hekk l-ghadd tal-granet ghandu jinzal minn 1,242 granet ghal 871.

B`hekk il-quantum ghandu jkun ta` Lm261,300 ekwivalenti ghal €608,665.27.

VIII. Il-hames talba

Saret riferenza ghall-**Art 1069 tal-Kap 16.**

Din il-Qorti tara li ghandha tapplika din id-disposizzjoni ta` ligi tenut kont tal-fatt li l-intimati kienu jafu ben tajjeb il-kontenut tal-ftehim mas-socjeta` rikorrenti.

Meta kellhom bzonn lis-socjeta` rikorrenti sabiex din tiffinanzjahom, kienu r-rikorrenti li rrikorrew ghalha. Meta mbaghad wasal iz-zmien li s-socjeta` rikorrenti tkompli tgawdi minn dak li kienet investiet, l-intimati li issa kellhom likwidita` ta` flus in vista tad-*dividends* li kienu qed jircievu mill-ishma li kellhom fil-The Players Group Limited, dehrilhom li ghandu jinbidel dak li kienu ftehm. Kif qalu l-istess intimati, setghu kieku riedu, avvicinaw bank u hadu self, izda dan ma ghamluhx ; invece avvicinaw lis-socjeta` rikorrenti li waslet fi ftehim magghom. Dak il-ftehim ma jistax jigi skartat. Din il-Qorti tara li ghalhekk l-intimati ghandhom ukoll jinzammu responsabbli ghad-danni kkagunati lis-socjeta` rikorrenti.

Dwar l-entita` ta` d-danni, is-socjeta` rikorrenti sostniet li gew inkorsi penali mal-Malta Financial Services Authority (MFSA) minhabba li l-accounts ma setghux jiddahhlu kif suppost billi l-allokkazzjoni tal-ishma qatt ma giet regolarizzata u l-hlas ta` *dividends* qatt ma seta` jigi mnizzel bhala tali.

Mill-provi akkwiziti, irrizulta li Mariolot Limited hallset ghal xi uhud minn dawn il-penali inkorsi mis-socjeta` rikorrenti minhabba dan id-dewmien.

Da parti tagghom, l-intimati jinsistu li tali hlas ta` uhud minn dawn il-penali ma jfissirx ammissjoni ta` responsabbilita` da parti tagghom dwar l-istess penali.

Skont l-intimati, kien obbligu tad-diretturi tas-socjeta` rikorrenti illi jippreparaw tali *accounts*. Ikomplu billi jikkontestaw li l-accounts tas-socjeta` rikorrenti ma setghux isiru. Skont l-intimati, dawn l-accounts setghu isiru billi l-investment li sar juruh bhala self bhalma kien.

Din il-Qorti diga` ghamlet l-osservazzjonijiet taghha dwar il-fatt li hija taqbel li dan l-avvanz ta` flus ma kienx self semplici u ghalhekk taqbel mas-socjeta` rikorrenti li tenut kont ta` dawn il-flejjes u tan-natura ta` l-investment, ma kienx possibbli li jigu pprezentati *accounts* li jirriflettu dak li kien qed isehh fir-realta`.

L-intimati jittentaw jaqbd mal-fatt li l-ewwel ammont ta` flus moghti minn Mariolot Limited lis-socjeta` rikorrenti wasal f'Awissu 2006 u minkejja dan, is-socjeta` rikorrenti xorta wahda qed tippretendi li tithallas il-penali ghan-nuqqas taghha li tippresenta l-accounts taghha bejn l-2004 u l-2006.

Din il-Qorti tara li dan l-argument mhwiex fondat, peress li fl-2004 u fl-2006, xorta wahda kellu jitnizzel l-investment li nghata f'Mariolot Limited, izda dan ma setax jitnizzel f'dak l-istadju.

Din il-qorti tara li din il-problema kienet dejjem meqjusa mis-socjeta` rikorrenti tant li Mario Camilleri stess jaccetta li sa mill-2009, ir-rapprezentant tas-socjeta` rikorrenti kien semmielu din il-problema dwar kif kellhom jsiru l-accounts tal-kumpanniji.

Gie ezebit email datat 6 ta` Settembru 2010 mibghut mir-rapprezentant tas-socjeta` rikorrenti lil Mario Camilleri , Jean Paul Tabone u Mark Camilleri li fih kienet giet spjegata li kellha ghalhekk issehh laqgħa biex tigi diskussa l-problema (ara fol 330 tal-process tal-kawza bin-nru 697/2014).

Kien hemm ukoll ammissjoni li fil-laqgħa li sehhet fiz-zmien meta kienet ser issir t-tieni tender dwar il-lotterija nazzjonali, kienet giet diskussa din il-problema anke bejn l-accountants tas-socjetajiet involuti.

In-nuqqas ta` precizjoni u ta` spjegazzjoni dwar x`kien intqal fis-sena 2009 meta r-rapprezentant tas-socjeta` rikorrenti semma l-problema u dwar x`kien intqal waqt din il-laqgħa bejn l-accountants, juri kemm l-intimati ttentaw jahbu dak li effettivament gara, ossija li huma kienu accettaw li tali penali jithallsu minnhom.

L-intimati setghu ressqu lil Mark Camilleri biex jixhed dwar ir-raguni għalfejn thallsu parti mill-penali nkorsi mis-socjeta` rikorrenti, izda l-intimati għazlu li lil dan lanqas biss iressquh bhala xhud.

Dan kollu jimmilita kontra l-argumentazzjoni tal-intimati.

Madanakollu, din il-Qorti ma taqbilx illi l-intimati għandhom jinzammu responsabbli għal penali nkorsi mis-socjeta` rikorrenti fir-rigward tad-dewmien fil-prezentazzjoni ta` l-annual returns għas-snin 2005, 2006 u 2007.

Fis-stanza dawn l-annual returns huma formoli stabbiliti mil-ligi li jigu pprezentati kull sena dwar l-istruttura tas-socjeta` u ma għandhomx x`jaqsmu ma` investimenti.

Mistoqsi dwar dan, waqt il-kontroezami tiegħu, David Curmi m`gharafx iwiegeb b`mod adegwat fis-sens illi kemm iddikjara li huwa ma għamilx distinzjoni bejn il-multi u r-ragunijiet għalfejn gew imposti.

Per konsegwenza, din il-Qorti tara li mir-rendikont ezebit a fol 324 tal-process tal-kawza konnessa bin-nru 697/2014 ghandhom jitnaqqsu :-

- i. delay in filing Annual Return 2007 Lm58.00
- ii. delay in filing annual return 2005 Lm83.00
- iii. delay in filing annual return 2006 Lm83.00

Din il-Qorti tinnota li meta sar l-affidavit ta` David Curmi, dan ipprezenta ittra mill-MFSA li kienet tikkoncerna biss penali inflitti minhabba dewmien fil-prezentazzjoni ta` l-accounts.

Ghalhekk, jidher li anke s-socjeta` rikorrenti accettat indirettament li ghal penali minhabba nuqqas ta` prezentazzjoni ta` annual returns, dan ma kienx ammontanti ghal danni kkagunati mill-agir ta` l-intimati jew min minnhom.

Ghall-bqija, il-Qorti taqbel li l-intimati ghandhom jinzammu responsabbli ghad-danni kollha kawzati lir-rikorrenti mis-socjeta` Mariolot Limited, inkluzi kwalunkwe spejjez inkorsi minnhom ghal assistenza legali, ghal spejjez gudizzjarji kif ukoll ghal mizati mhallsa lil esperti inkarigati minnhom fosthom il-PriceWaterhouseCoopers. Sar accenn ghal dan kollu fil-lista ezebita a fol 74 u 75 tal-process.

Ladarba ma saritx talba esplicita ghal kundanna ta` hlas, izda addiritturajissemma fil-hames talba illi d-danni ghandhom jigu likwidati f`gudizzju separat, din il-Qorti hija prekuza milli tghaddi ghal likwidazzjoni ta` danni.

IX. Is-sitt talba

Skont il-ftehim is-socjeta` rikorrenti kellha tithallas nofs id-*dividends* li s-socjeta` intimata tircievi minghand The Players Group Limited.

Is-socjeta` rikorrenti sostniet li hija ma thallsitx aktar sehemha mid-*dividends* mis-sena 2013 `il quddiem.

Irrizulta mix-xiehda tar-rapprezentant ta` Maltco Lotteries Limited li fl-2013, il-kumpanija hallset €1,505,504 li minnhom il-Players Group hadu €361,321.

Minn dan l-ammont, kienet dovuta lis-socjeta` rikorrenti s-somma ta` €45,165.15c.

Mill-provi ma rrizultax li gew imhallsa xi *dividends* ohra minn Maltco Lotteries Limited.

Irrizulta li d-*dividends* li nghataw lil The Players Group Limited ilkoll gew imqassma lill-azzjonisti taghha.

in il-Qorti ghalhekk tara li effettivament l-intimati konjugi Camilleri li huma l-azzjonisti fis-socjeta` intimata ghandhom ihallsu lis-socjeta` rikorrenti dik is-somma ta` €45,165.15 li kienet dovuta.

Dwar interessi fuq tali somma, minn imkien ma rrizulta meta kienet id-data li effettivament thallset din is-somma lill-intimati konjugi Camilleri u lis-socjeta` intimata.

Per tanto, il-Qorti sejra tordna li kwalunkwe imghax fuq din is-somma ta` *dividend* ghandu jibda jiddekorri mil-lum.

X. Responsabilita` ta` l-konvenuti Camilleri

Is-socjeta` rikorrenti taghmel l-argument illi meta Camilleri saru garanti tal-obbligi ta` Mariolot Limited fuq il-kuntratt, saru garanti ghal kull obbligu fiducjarju li daww il-kumpaniji kienu dahlu ghalihom b`rizultat ta` l-kuntratt.

Il-Qorti tirreferi ghall-klawsola enumerata 5(4) tal-kuntratt.

Billi Camilleri kienu agixxew bhala garanti solidali ma` Mariolot Limited ghal adempjenza ta` l-obbligi kontrattwali assunti fil-ftehim ta` April 2004, dawn ghandhom jinzammu responsabbli flimkien ma` Mariolot Limited ghad-danni subiti kif ukoll ghal penali li ghandha tigi mposta fid-dawl tar-raba` talba attrici.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda tippovdi dwar it-talbiet, u dwar l-eccezzjonijiet li baqghu mhux decizi bis-sentenza taghha tas-26 ta` Frar 2015, billi qeghda taqta` u tiddeciedi hekk :-

Tilqa` l-ewwel talba.

Riferibbilment ghat-tieni talba, fl-ewwel lok tiddikjara li l-konvenuti ma onorawx il-ftehim mal-kumpannija attrici, fit-tieni lok tiddikjara li l-konvenuti naqsu mill-obbligi fiducjarji tagghom lejn il-kumpannija attrici, u fit-tielet lok tordna lill-konvenuti sabiex, sa zmien xahar mil-lum, jaghmlu allokazzjoni favur il-kumpannija attrici ta` mija u tlieta u ghoxrin elf (123,000) sehem ordinarju tal-valur nominali ta` zewg Ewro u tlieta u tletin centezmu (€2.33)ⁱ kull sehem fil-kumpannija Mariolot Limited (C33086) u jirregistraw fl-istess terminu ta` xahar mil-lum din l-allokazzjoni ta` ishma mar-Registratur tal-Kumpanniji.

Tichad dik il-parti tat-tieni talba li tirrigwarda l-hatra ta` David Curmi bhala direttur tas-socjeta` konvenuta.

Tilqa` t-tielet talba billi fil-kaz li jkun hemm nuqqas jew inadempjenza fl-allokazzjoni u registrazzjoni ta` l-ishma fit-terminu ta` xahar mil-lum kif fuq inghad, allura qeghda tahtar u tawtorizza lill-Avukat Dottor Anna Mifsud Bonnici sabiex tirregistra l-allokazzjoni ta` l-ishma fil-kumpannija Mariolot Limited (C33086) favur il-kumpannija attrici mar-Registratur tal-Kumpanniji.

Tilqa` r-raba` talba billi tikkundanna lill-konvenuti sabiex ihallsu lill-kumpannija attrici s-somma ta` sitt mija u tmint elef sitt mija hamsa u sittin Ewro u sebgha u ghoxrin centezmu (€608,665.27) bhala penali pattwita ghall-perijodu ta` nuqqas ta` adempiment tal-obbligi assunti, bl-imghax legali b`effett mil-lum sad-data tal-effettiv pagament.

Tilqa` l-hames talba.

Tipprovdi dwar is-sitt talba billi tikkundanna lill-konvenuti sabiex ihallsu lis-socjeta` rikorrenti s-somma ta` hamsa u erbghin elf mija hamsa u sittin Ewro u hmistax-il centezmu (€45,165.15), bl-imghax legali b`effett mil-lum sad-data tal-effettiv pagament, liema somma kienet percepita bhala *dividend* mis-socjeta` konvenuta, u li skont il-ftehim tad-29 ta` April 2004 kienet tispetta lill-kumpannija attrici.

Tordna li l-ispejjez kollha ta` din il-kawza, inkluzi dawk tal-mandati kawtelatorji kollha li gew ipprezentati mis-socjeta` rikorrenti, ghandhom jithallsu mill-konvenuti.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur

ⁱ B`digriet moghti fis-7 ta` Marzu 2017 il-kliem “zero punt erbgha tnejn disgha tlieta Ewro (€0.4293)” gie mibdul ghal “zewg Ewro u tlieta u tletin centezmu (€2.33)”