

Qorti tal-Appell  
(Kompetenza Inferjuri - Ghawdex)

Seduta tat-12 ta' Ottubru, 2018.

Imħallef Anthony Ellul

Appell numru: 8/2015

**Mary Xiberras (appellata)**

**vs**

**Classic Real Estate Limited (appellanti)**

- 1. Din hija kawza għall-hlas ta' €4,250.33 li l-attrici tippretendi bhala kumpens għal-leave mhux utilizzat fil-perjodu tal-impieg.**
2. Fir-rikors tagħha pprezentat fil-11 ta' Gunju 2015 fil-Qorti tal-Magistrati (Ghawdex) Inferjuri, l-attrici talbet li s-socjeta' konvenuta tigi kkundannata thallasha s-somma ta' €4,230.33 in linea ta' "*pagi u beneficcj*" rigwardanti mpieg li kellha magħha. Bl-ispejjez kollha kontra l-istess socjeta' konvenuta.
3. Fir-risposta prezentata fit- 2 ta' Lulju 2015 is-socjeta' konvenuta eccepjet illi t-talbiet huma nfondati fil-fatt u fid-dritt, u li l-azzjoni hija preskritta ai termini tal-Artikolu 2147(c) tal-Kodici Civili.
4. Fis-sentenza tat-22 ta' Settembru 2016, il-Qorti tal-Magistrati (Ghawdex) Inferjuri cahdet l-eccezzjoni tal-preskrizzjoni tas-socjeta' konvenuta ai termini tal-Artikolu 47(1) tal-Kap. 452 tal-Ligijiet ta' Malta u laqghet l-eccezzjoni tal-preskrizzjoni *ai termini* tal-Artikolu 2147(c) tal-Kap. 16 tal-Ligijiet ta' Malta u konsegwentement cahdet it-talba tal-attrici. Bl-ispejjez kontra l-istess attrici.
5. L-attrici Mary Xiberras appellat minn dik is-sentenza u permezz tas-sentenza tagħha tat- 3 ta' Marzu, 2017, din il-Qorti kkonfermat is-sentenza tal-ewwel qorti fejn din cahdet l-eccezzjoni (ulterjuri) tal-preskrizzjoni skont l-Artikolu 47(1) tal-Kap. 452 tal-Ligijiet ta' Malta u hassritha fil-kumplament, filwaqt li cahdet it-tieni eccezzjoni tas-socjeta' konvenuta u baghtet lura l-atti lill-ewwel qorti għall-kontinwazzjoni u decizjoni dwar il-mertu, bl-ispejjez taz-zewg istanzi a karigu tas-socjeta' konvenuta.

6. Filwaqt li l-Qorti tal-Magistrati (Ghawdex) Inferjuri fis-sentenza taghha tat-13 ta' Marzu, 2013, ghamlet referenza ghall-Artikolu 22(2) tal-Kap. 452 tal-Ligijiet ta' Malta, osservat li fit-tmiem tal-impjieg il-ligi stess tipprovdi ghall-hlas tal-kumpens dovut ghal-*leave* li ma jkunx ittiehed mill-impjegat. Ikkunsidrat (i) l-attrici kienet ipprezentat rendikont li fih hemm deskrizzjoni tal-kumpens dovut ghal-*leave*. Il-*leave* ta' kull sena sar skont ir-rata ta' paga applikabbli ghas-sena partikolari; (ii) ma tressqet l-ebda prova mis-socjeta' konvenuta biex tikkontradixxi lill-attrici; (iii) is-subregolamenti 8(1) u 8(3) tal- L.S. 452.87 ma jnaqqsu mid-dritt tal-attrici li tippercepixxi l-kumpens mitlub; (iv) l-argument tas-socjeta' konvenuta li d-direttur taghha kien iheggeg lill-attrici tiehu l-*leave* u li qatt ma zammha milli taghmel dan, ma kienx iregi. B'hekk iddecidiet:

*"Ghaldaqstant billi rrizulta li t-talba attrici hija gustifikata, tiddeciedi dwar il-mertu billi, filwaqt illi tichad ukoll l-ewwel eccezzjoni tas-socjeta' konvenuta, tilqa' t-talba attrici u tikkundanna lis-socjeta' konvenuta sabiex thallas lill-attrici s-somma ta' erbat elef mitejn u hamsin ewro u tlieta u tletin centezmu (€4250.33c), bl-imghaxijiet relattivi b'effett mill-ewwel ta' April 2014, u bl-ispejjez, oltre dawk gia decizi mill-Qorti tal-Appell fis-sentenza taghha tat- 3 ta' Marzu, 2017, ikunu a karigu tal-istess socjeta' konvenuta".*

7. Fit- 2 ta' April 2018 is-socjeta' konvenuta appellat mis-sentenza fejn iddikjarat:

*"Illi l-aggravji huma cari u manifesti u principalment assocjati ma' evalwazzjoni skorretta tal-provi li kellha quddiemha l-Ewwel Onorabbli Qorti u nterpretazzjoni erronea tal-artikolu tal-ligi applikabbli. Fil-fatt, l-esponenti temmen li la fattwalment u lanqas legalment, l-ewwel Onorabbli Qorti ma setghet tasal ghad-decizjoni li waslet ghalha. "*

Filwaqt li ghamlet referenza ghas-subregolamenti 8(1) u 8(3) tal- L.S. 452.87, issottomettiet li is-sighat ta' *leave* li ma jittehidx fis-sena meta l-impieg jigi tterminat ma setghux jigu kkumpensati bi hlas, pero' bi ftehim bejn il-haddiem u min ihaddem hamsin fil-mija (50%) minn dak il-*leave* seta' jigi trasferit darba biss ghas-sena ta' wara. Insistiet li fil-kaz in ezami ma kien hemm l-ebda ftehim bejn il-partijiet biex isir dan.

8. Fil-21 ta' Mejju 2018, l-attrici pprezentat ir-risposta fejn talbet li l-appell tas-socjeta' appellanti ghandu jigi michud bl-ispejjez taz-zewg istanzi kontra s-socjeta' appellanti.

9. Il-qorti qrat l-atti.

10. L-artikolu 22(2) tal-Kap. 452 tal-Ligijiet ta' Malta jipprovdi li:

*"Mat-tmiem ta' kuntratt ta' servizz il-pagi kollha li jkun ghadhom ma thallsux u **kull kumpens li ghandu jithallas lill-impjegat ghal-leave mhux mehud** ghandhom jithallsu mad-data tal-jum tal-paga li tigi minnufih wara ffissata skont is-subartikolu (1) bhallikieku l-kuntratt ma ntemmx".*

11. Minn dan is-subartikolu johrog id-dritt li jithallas kumpens lill-impjegat ghal-*leave* li ma jkunx ittiehed meta jispicca l-kuntratt tas-servizz tieghu. L-ewwel qorti qalet li l-ligi stess "*tipprovdi ghall-hlas tal-kumpens dovut ghal-leave li ma jkunx ittiehed, mat-tmiem tal-impjeg*".
12. L-argument tas-socjeta' appellanti hu li din ma kinitx l-intenzjoni tal-legislatur li dehrlu li l-haddiem kellu dritt tal-mistrieħ aktar minn kumpens, u xhieda ta' dan hi l-ligi stess in partikolari r-regolament 8(1) u 8(3) tal- L.S. 452.87. Tkompli tispjega li dan ir-regolament ta' l-ahhar ma jhallix aktar minn hamsin fil-mija (50%) tal-*leave* ta' sena jigi trasferit ghas-sena ta' wara, jigifieri darba wahda biss, u dan dejjem suggett ghall-ftehim bejn il-haddiem u min ihaddem. In vista ta' dak li jipprovdu dawn iz-zewg regolamenti, l-appellanti sostniet li l-frazi "*meta impjeg jigi tterminat*" tas-subartikolu 22(2) tal-Kap. 452 tal-Ligijiet ta' Malta ghandha tigi meqjusa li qed taghmel referenza ghall-ammont pendenti f'dik is-sena biss. B'hekk l-attrici appellata ma setghetx titlob kumpens ta' aktar minn sena *leave* mhux mehud, anzi 50% minnu u sakemm kienet accettat is-socjeta' appellanti.
13. Skont l-imsemmi regolament impjegat fir-rigward ta' mhux iktar minn 50% tal-*leave* li hu ntitolat ghalih f'sena partikolari, jista' bi ftehim mal-principal, jittrasferih ghal darba wahda biss ghas-sena kalendarja li jmiss; "*Dan il-leave li jigi mghoddi 'l quddiem mis-sena ta' qabel ghandu jittieħdu l-ewwel u ma jistax jerga' jigi mghoddi 'l quddiem mill-gdid*".
14. L-ewwel qorti rragunat li dan ir-regolament ma jnaqqasx id-dritt tal-attrici li tircievi l-kumpens ghalieħ l-artikolu 22 jaghmel eccezzjoni specifika ghal meta l-impjeg jintemm, u ma jirrizultax li kien hemm il-ftehim kontemplat fir-regolament 8. Din il-qorti ma taqbel xejn mar-ragunament tal-ewwel qorti. Mir-regolament 8 hu evidenti li *leave* ma jistax jigi trasferit minn sena ghall-ohra jekk mhux bi ftehim bejn il-principal u l-impjegat. Ghalhekk ir-regola generali hi li dak il-*leave* li ma jkunx gie utilizzat mill-impjegat, **jintilef**. Pero' jekk ikun hemm ftehim bejn il-principal u l-impjegat, *leave* li ma jkunx ittiehed matul sena jista' sa massimu ta' 50% jigi trasferit ghas-sena sussegwenti, u ma jistax jerga' jigi trasferit ghas-sena ta' wara. Meta tikkunsidra dan ir-regolament ghal din il-qorti l-artikolu 22 tal-Kap. 452 qieghed jirreferi ghal dak il-kumpens li l-impjegat ikun intitolat ghalih ghal-*leave* li jkun ghadu m'utilizzax izda mhux li jkun intilef minhabba li l-impjegat ma jkunx hadu. Fil-fatt fit-test Ingliz jissemma "*leave entitlement unavailed*". Il-qorti tifhem li *leave* li jkun intilef ma jaqax fil-*leave entitlement* li jissemma fl-artikolu 22. Ghaldaqstat, il-qorti tifhem li dik id-disposizzjoni tapplika ghal dak il-*leave* li ghadu disponibbli lill-impjegat.
15. Kien fl-interess tal-appellata li tizgura li tiehu l-*leave* li kellha jedd ghalih. Ghalkemm qalet li kellha hafna x'taghmel, mill-provi ma rrizultax li kienet qeghdha titlob il-*leave* u l-principal kien jichad it-talba. L-attrici stess in kontro-

ezami xehdet li Joseph Dimech kien jaf li ma kinitx qeghdha tiehu l-leave kollu li kienet intitolata ghalih f'sena, **u kien ighidilha biex tehodhom** (fol. 94). L-attrici argumentat li ma haditx il-leave, "*b'responsabbilta min-naha tal-impjegata li kienet tara l-bzonn*".<sup>1</sup> Dan mhuwiex bizzejjed. Fil-fatt fis-sentenzi **Gerhard Schultz-Hoff (C-350/06) v Deutsche Rentenversicherung Bund** u **Mrs C. Stringer and Others (C-520/06) v Her Majesty's Revenue and Customs** tal-20 ta' Jannar 2009, il-Qorti tal-Gustizzja tal-Unjoni Ewropea qalet:

" 42 *A provision of national law setting out a carry-over period for annual leave not taken by the end of the leave year aims, as a rule, to give a worker who has been prevented from taking his annual leave an additional opportunity to benefit from that leave. The laying down of such a period forms part of the conditions for the exercise and implementation of the right to paid annual leave and therefore falls, as a rule, within the competence of the Member States.*

43 *It follows that Article 7(1) of Directive 2003/88 does not preclude, as a rule, national legislation which lays down conditions for the exercise of the right to paid annual leave expressly conferred by the directive, **including even the loss of that right at the end of a leave year or of a carry-over period, provided, however, that the worker who has lost his right to paid annual leave has actually had the opportunity to exercise the right conferred on him by the directive.***

44 *It must therefore be held that a worker, who, like the appellant in the main proceedings in Case C-350/06 in relation to the year 2005, is on sick leave for the whole leave year and beyond the carry-over period laid down by national law, is denied any period giving the opportunity to benefit from his paid annual leave .....*

49 *It follows from the above that Article 7(1) of Directive 2003/88 must be interpreted as meaning that it precludes national legislation or practices which provide that the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law even where the worker has been on sick leave for the whole leave year and where his incapacity for work persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave".*

16. Fil-kaz in ezami ma kienx hemm cirkostanza simili ghal dik fil-kawzi fuq imsemmija. Kien fl-interess tal-appellata li tizgura li kull sena tiehu l-leave li mill-provi ma jirrizultax li l-principal cahhadha minnu.

17. Fil-kaz **Conley King v The Sash Window Workshop Ltd** deciz mill-istess qorti fid-29 ta' Novembru, 2017, il-principal ma kienx ippermetta lill-impjegat li jiehu l-leave bi hlas. Il-jedd li fit-tmiem tal-impjieg wiehed jircievi l-kumpens ghal-leave li ma jkunx ittiehed, hu garantit fir-rigward ta' leave li l-impjegat ma hax fil-kors tal-impieg minhabba **ragunijiet li ma kellux kontroll fuqhom**, b'mod partikolari minhabba mard. Il-qorti qalet:

"58. *First, according to the Court's settled case-law, the right to paid annual leave cannot be interpreted restrictively (see judgment of 22 April 2010 Zentralbetriebsrat der Landeskrankenhäuser Tirols, C-486/08,*

---

<sup>1</sup> Ara nota ta' sottomissjonijiet li pprezentat fl-ewwel qorti (fol. 112).

EU:C:2010:215, paragraph 29). Thus, any derogation from the European Union system for the organisation of working time put in place by Directive 2003/88 must be interpreted in such a way that its scope is limited to what is strictly necessary in order to safeguard the interests which that derogation protects (see, to that effect, judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 40 and the case-law cited).

59. In circumstances such as those at issue in the main proceedings, protection of the employer's interests does not seem strictly necessary and, accordingly, does not seem to justify derogation from a worker's entitlement to paid annual leave.

60. It must be noted that the assessment of the right of a worker, such as Mr King, to paid annual leave is not connected to a situation in which his employer was faced with periods of his absence which, as with long-term sickness absence, would have led to difficulties in the organisation of work. On the contrary, the employer was able to benefit, until Mr King retired, from the fact that he did not interrupt his professional activity in its service in order to take paid annual leave.

61. Second, even if it were proved, the fact that Sash WW considered, wrongly, that Mr King was not entitled to paid annual leave is irrelevant. Indeed, it is for the employer to seek all information regarding his obligations in that regard.

62. Against that background, as is clear from paragraph 34 of the present judgment, the very existence of the right to paid annual leave cannot be subject to any preconditions whatsoever, that right being conferred directly on the worker by Directive 2003/88. Thus, as regards the case in the main proceedings, it is irrelevant whether or not, over the years, Mr King made requests for paid annual leave (see, to that effect, judgment of 12 June 2014, *Bollacke*, C-118/13, EU:C:2014:1755, paragraphs 27 and 28).

63. It follows from the above that, unlike in a situation of accumulation of entitlement to paid annual leave by a worker who was unfit for work due to sickness, **an employer that does not allow a worker to exercise his right to paid annual leave must bear the consequences.**

64. Third, in such circumstances, in the absence of any national statutory or collective provision establishing a limit to the carry-over of leave in accordance with the requirements of EU law (see, to that effect, judgments of 22 November 2011, *KHS*, C-214/10, EU:C:2011:761 and of 3 May 2012, *Neidel*, C-337/10, EU:C:2012:263), the European Union system for the organisation of working time put in place by Directive 2003/88 may not be interpreted restrictively. Indeed, if it were to be accepted, in that context, that the worker's acquired entitlement to paid annual leave could be extinguished, that would amount to validating conduct by which an employer was unjustly enriched to the detriment of the very purpose of that directive, which is that there should be due regard for workers' health.

65. It follows from all the foregoing considerations that the answer to the second to fifth questions is that Article 7 of Directive 2003/88 must be interpreted as precluding national provisions or practices that prevent a worker from carrying over and, where appropriate, accumulating, until termination of his employment relationship, paid annual leave rights not exercised in respect of several consecutive reference periods **because his employer refused to remunerate that leave**".

18. Il-hlas li tippretendi l-attrici jirreferi ghas-snin 2004 sal-2012 (ara dokument MXA1 a fol. 103). F'Marzu 2014 l-attrici tterminat l-impjeg. L-attrici xehdet:

"Rigward il-flus tal-leave kont infurmajtu lil Joseph Dimech illi ghandi niehu dak l-ammont. Kien jaf ben tajjeb illi jiena leave ma tantx kont hadt ghax ma stajtx naghmel mod iehor. U meta hadt il-leave xorta spiccajt nidhol xoghol. Bhal ma diga spjegajt kien ta' kull sena jkun infurmat kemm il-gurnata hadt leave u kemm ma hadt. Ghall-ewwel kien qalli li mhux se jaghtini l-ammont kollu. **Imbaghad qalli li kien se jikkuntatjani hu halli jhallasni.** Ghaddew xahrejn u baqa' ma kkuntatjanix. Kont nerga nikkuntattjah jien u kien ighidli illi se jkellimni hu. Imbaghad fis-6 ta' Jannar 2015 baghatli messagg minn fuq in-numru 99492515 ghal fuq in-numru tieghi 79551151 fejn kien qalli biex f'jum il-gimgha ta' dik il-gimgha fil-11.00 am jiena mmur l-ufficcju halli jaghtini xi haga tal-flus. Jien hekk ghamilt. Joe Dimech lanqas kien hemm. Hallieli envelope ma' certa Micke Right. Dan l-envelope kien fih erba' mitt Ewro. Jien ma ntlabtx

*naghti ricevuta taghom. Kopja tal-messagg mibghut kif gie pprintjat lili minn Go plc qed nesebih bhala dokument MX5".*

19. Verżjoni li ma gietx kontradetta minn Joseph Dimech. Ghalhekk jidher li Dimech eventwalment kien accetta li l-attrici tithallas tal-leave li ma kinitx hadet matul is-snin 2004 sa 2012. Ghalkemm irrizulta li ftit xhur wara sar hlas biss ta' €400, mhemmx prova li dik is-somma giet offruta lill-appellata *in full and final settlement*. Ezempju mhemmx prova li l-appellanti talbet tiffirma ricevuta li l-hlas kien ghas-saldu. Ghaldaqstant, irrispettivement minn dak li nghad hawn fuq il-qorti ma tara l-ebda raguni ghalfejn l-appellanti m'ghandhiex twettaq dak li weghdet li ser taghmel.
20. Fl-ahharnett il-qorti tosseva li l-appellata pprezentat rendikont ta' dak kollu dovut lilha fejn indikata sahsantira l-granet ta' *vacation leave* mhux mehud ghal kull sena minn 2004 sa 2012. Kif sewwa osservat il-Qorti tal-Magistrati (Ghawdex) Inferjuri, l-appellanti ma ressqitx provi sabiex tikkontradixxi b'xi mod dan id-dokument la fir-rigward tan-numru tal-granet elenkati jew fir-rigward tal-ammont rispettiv dovut. Ghalhekk il-qorti ma ssib l-ebda raguni ghalfejn m'ghandhiex taccetta r-rendikont li pprezentat l-attrici.

**Għal dawn il-motivi tiċhad l-appell bl-ispejjeż taz-zewg istanzi kontra s-socjeta' konvenuta.**

(ft.) Anthony Ellul  
Imhallef

(ft.) Maureen Xuereb  
D/Registrator

Vera kopja

D/Registrator