



Qorti tal-Appell Kriminali

Onor. Imhalled Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appelli Numri: 65/2018

Il-Pulizija

(Spettur Anne Marie Micallef)

vs

Donald Micallef

Omissis

Illum, 1 ta' Settembru, 2020

Il-Qorti,

Rat l-imputazzjonijiet migjuba fil-konfront ta' Donald Micallef detentur tal-Karta tal-Identita numru 207082M u Omissis quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali talli:

Fi Frar, 2011 u fix-xhur ta' qabel, f'dawn il-Gzejjer, b'diversi atti maghmulin fi zminijiet differenti, izda li jksru l-istess dispozizzjoni tal-Ligi u li gew maghmula b'rizoluzzjoni wahda, personalment u/jew fil-kapacita' taghhom ta' diretturi jew ufficjali tal-kumpanija Market Handle Limited (reg. No. C 49546)

1. Approprijaw ruhom, billi dawwru bi profit ghalihom jew ghal-persuna/i ohra, is-somma ta' aktar minn elfejn tlett mija u disgha u ghoxrin ewro u sebgħa u tletin centezmu (€2,329.37) għad-dannu ta' WE Advertise Limited, liema somma giet fdata

jew ikkunsinnata lilhom taht titolu illi jgib mieghu l-obbligu tar-radd tal-haga jew li jsir uzu minnha specifikat, u l-istess somma giet fdata lilhom minhabba l-professjoni, industrija, kummerc, kariga, jew servizz taghhom;

Lil Donald Micallef wahdu:

2. B'mezzi kontra l-ligi jew billi ghamel uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi nqeda b'qerq iehor, ingann, jew billi wera haga b'ohra sabiex igieghel jitwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti mmaginarji, jew sabiex iqanqal tama jew biza' dwar xi grajja kimerika, ghamel qliegh b'qerq ta' mhux aktar minn mitejn u tnejn u tletin ewro u erbgħa u disghin centezmu (€232.94) għad-dannu ta' Adrian Galea u ta' l-istabbiliment YAL Home and Electronics;

3. U aktar talli fl-istess data u cirkostanzi, għad-dannu ta' Adrian Galea u ta' l-istabbiliment YAL Home and Electronics, għamel qliegh b'qerq ta' mhux aktar minn mitejn u tnejn u tletin ewro u erbgħa u disghin centezmu (€232.94);

4. U aktar talli għamel falsifikazzjoni f'att awtentiku u pubbliku, jew fi skrittura kummercjali jew ta' bank privat, b'falsifikazzjoni jew tibdil fl-iskrittura jew fil-firem, billi holoq pattijiet, dispozizzjonijiet jew obbligi foloz jew helsien falz minn obbligi, jew billi dahhal dawn il-pattijiet dispozizzjonijiet, obbligi jew helsien minn obbligi f'dawk l-atti jew skritturi wara li jkunu gew iffurmati, inkella billi zied jew biddel klawsoli, dikjarazzjonijiet jew fatti, illi dawk l-atti jew skritturi kellhom ikollhom fihom jew kellhom jippruvaw;

5. U aktar talli xjentement għamel uzu minn att, kitba jew skrittura falza;

6. U aktar talli, għamel jew ta' dikjarazzjoni falza jew certifikat falz.

Il-Qorti giet gentilment mitluba sabiex fil-kaz ta' htija, barra li tinfliggi l-pieni stabbiliti mill-ligi, tordna wkoll il-konfiska tal-oggetti kollha esebiti.

Il-Qorti hija wkoll gentilment mitluba sabiex f'kaz ta' htija tikkundanna l-akkuzati

ghall-hlas ta' spejjez li jkollhom x' jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplati fl-Artikolu 533 tal-kapitolu 9 tal-Ligijiet ta' Malta.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali moghtija fit-30 ta' Jannar, 2018 fejn il-Qorti illiberat lill-ommissis mill-akkuzi migjuba fil-konfront taghha u fir-rigward ta' Donald Micallef wara li rat l-artikoli 293, 294, 308, 309, 189 and 190 tal-Kapitolu 9 tal- Ligijiet ta' Malta, sabet lill Donald Micallef hati u kkundannatu ghal disa' xhur prigunerija.

Rat ir-rikors tal-appellant Donald Micallef prezentat minnu fis-sebgha (7) ta' Frar tas-sena elfejn u tmintax (2018) fejn talab lil din il-Qorti joghghobha:

1. Thassar, tannulla u tirrevoka is-sentenza moghtija mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fir-rigward tieghu fl-ismijiet *The Police v. Donald Micallef et* deciza fit-tletin (30) ta' Jannar tas-sena elfejn u tmintax (2018) u dan billi tiddikjara li l-appellant mhux hati tal-imputazzjonijiet mighuba kontra tieghu u tilliberah minn kull imputazzjoni migjuba kontra tieghu;

2. Illi minghajr pregudizzju ghas-suespost, fil-kaz li l-ewwel talba tal-appellant ma tigix milqugha, din l-Onorabli Qorti hija mitluba sabiex tirriforma s-sentenza appellata fil-parti tal-piena inflitta fuq l-appellant u timponi piena skont il-ligi u aktar idonea fic-cirkostanzi tal-kaz u f'dan il-kaz mhux ta' terminu ta' prigunerija effettiva.

Illi l-aggravji tal-appellant Donald Micallef huma cari u manifesti u jikkonsistu fis-segwenti:

1. The facts of the instant case do not lead to the material elements of the crime of misappropriation

- 1.1. It is amply clear that the facts which led to the filing of charges against Celine Lee Bentley and appellant do not lead to the material elements of the crime of misappropriation;
- 1.2. For there to be the crime of misappropriation by appellant, the prosecution had to prove beyond reasonable doubt that appellant was entrusted with a sum of money for the specific purpose of paying that specific sum of money unto third parties, namely WE Advertise Limited. In the criminal complaint exhibited at fol. 42 of the records of this court case, the allegation made by WE Advertise Limited is that appellant acted as **agent** of WE Advertise Limited thus implying that any money collected was collected on behalf of WE Advertise Limited and should have been on forwarded to the same;
- 1.3. This allegation is **incorrect**, **unfounded** and **made frivolously and vexatiously** and this for the following reasons:
 - (i) from the evidence produced it resulted that Market Handle Limited sold advertising space to Adrian Galea of YAL Home and Electronics and invoiced him accordingly. Reference is made to the invoice exhibited at fol. 32 of the records of the case. From this invoice it is evident that the advertising space sold by Market Handle Limited to Adrian Galea included advertising space on Television Malta (TVM), advertising space on Vibe FM Radio and product design cost. It is therefore clear that Adrian Galea and Market Handle Limited had a direct juridical relationship. It further resulted that with regards to this particular sale, Adrian Galea did not have any juridical relationship with WE Advertise Limited. From the deposition of Adrian Galea given by him before the first Court during the sitting held on the 18th June, 2012 at fol. 25 and following of the records of the case as well as the documents exhibited, it results that the juridical relationship was between Market Handle Limited and the said Adrian Galea. Adrian Galea also confirmed that all advertisements paid for were

indeed aired and this in accordance to a schedule presented by this witness;

- (ii) all this was further confirmed by the said Adrian Galea during his cross-examination held during the sitting of the 24th February, 2014 at fol. 269 of the records of the case where he replied thus to the questions put to him by counsel to defense:

Dif: [...] Issa ara taqbilx miegħi li n-negozju tiegħek kien direttament ma' l-kumpannija Market Handle Limited?

Xhud: Iva.

Dif: Taqbel li l-ħlasijiet li kellhom isiru u fil-fatt saru minnek saru lil kumpannija Market Handle Limited?

Xhud: Iva.

Dif: Taqbel ukoll illi bhala ħlasijiet intom ftehemtu parti flus u parti barter?

Xhud: Iva.

[...]

Dif: Inti ordnajt reklam hux hekk?

Xhud: Iva.

Dif: U r-reklami ordnajthom mingħand Market Handle biex tagħmilhomlu f'diversi mezzi tax-xandir.

Xhud: Iva.

Dif: Issa nkun qed ngħid sew li fost dawn il-mezzi ta' x-xandir kien hemm ukoll l-istazzjon tar-radio Vibe FM?

Xhud: Iva

Dif: U kien hemm it-television ta' l-Where's Everybody, hux hekk?

Xhud: Iva

Dif: U taqbel li fil-fatt dawn ir-reklami saru?

Xhud: Saru iva.

- (iii) it is therefore completely erroneous for WE Advertise Limited to claim that Market Handle Limited was acting as its agent and collecting money

on its behalf as an agent. It is crystal clear that no agency agreement existed. It is also crystal clear that when invoicing and collecting money, Market Handle Limited was doing so as an autonomous entity, in its own right and on its own behalf and not as an agent, for and/or on behalf of WE Advertise Limited;

- (iv) furthermore, both the prosecution and WE Advertise Limited failed to prove the existence of an agency agreement and this for the sole reason that no such agreement existed;
- (v) it is not true and neither is it correct for WE Advertise Limited to say that Market Handle Limited was acting as its agent. From the invoice exhibited by Adrian Galea at fol. 32 of the records of the case, it results that the services that he was being invoiced for by Market Handle Limited were not limited to advertising space which WE Advertise Limited are claiming to be involved in. In fact, **it resulted that Market Handle Limited invoiced Adrian Galea for services which did not refer only to services which WE Advertise Limited claims to be involved in but also services rendered by third parties - namely Vibe FM - and product design cost which refers to the services rendered solely and exclusively by Market Handle Limited;**
- (vi) it appears *ictu oculi* that WE Advertise Limited merely claimed that Market Handle Limited was acting as its agent in order to establish a basis to falsely claim that it was the victim of the crime of misappropriation;
- (vii) the two separate and distinct tiers of juridical relationship namely that between Market Handle Limited and Adrian Galea and the different one between Market Handle Limited and WE Advertise Limited was further accentuated during the cross examination of Marouska Pisani Bugeja during the sitting held before the first Court on the 24th Febraury, 2014

where she replied as follows to the questions put to her by defense counsel:

Def: Regarding Adrian Galea, are you in agreement that he was a client of Market Handle Limited and he was not involved with you directly.

Wit: Not at the time.

Def: So am I correct in stating that even if Adrian Galea did not pay Market Handle Limited, Market Handle Limited would have to pay you.

Wit: Yes definitely.

[...]

Wit: Yes, the agreement was with market Handle, irrelevant of who the client is.

[...]

Def: [...] Am I correct to state that Vibe FM, the radio station has nothing to do with your company?

Wit: No.

Def: Let me show you the invoice which Market Handle Limited issued to YAL Malta at page 32 of the records of the case and would you kindly confirm that the entry stating Vibe FM has nothing to do with your claims in this case.

Wit: No.

(viii) it is therefore evident that Market Handle Limited contracted directly with Adrian Galea who paid his dues to Market Handle Limited and that WE Advertise Limited was in no way involved in this agreement. Furthermore, if it is held that Market Handle Limited contracted with WE Advertise Limited and not with Public Broadcasting Services Limited, then it contracted directly with WE Advertise Limited in its own right and not as agent: so much so that even in the event that Adrian Galea did not pay Market Handle Limited, Market Handle Limited was still bound to pay WE Advertise Limited the amount invoiced. It is therefore incorrect for WE Advertise Limited to state that Market Handle Limited was merely acting as its agent;

- (ix) therefore Market Handle Limited had every right to use the money it was paid for its services as it deemed fit and was under no obligation to forward the monies derived from its business activities with Adrian Galea to WE Advertise Limited. This as explained by appellant during his testimony. The fact that WE Advertise Limited might be a creditor is a separate, civil matter and there is nothing which disallows the said company from taking civil proceedings. It is wrong however to claim that monies were misappropriated. This is definitely false;
- (x) furthermore and without prejudice to the above, despite the prosecution having taken more than its time to bring forth its evidence in these proceedings, **the prosecution failed altogether to bring forth any evidence substantiating the claim made by WE Advertise Limited. Indeed the prosecution and the representative of WE Advertise Limited failed altogether to submit any kind of documentation whatsoever to substantiate the agreement and the credit vaunted together with the claim of misappropriation. Indeed the only document submitted was that presented at fol. 44 of the records of the case which is a booking form issued by Market Handle Limited to Public Broadcasting Services Limited and not to WE Advertise Limited. Indeed, the relationship contractual or otherwise with WE Advertise Limited was not established, let alone established enough for the finding of guilt of either co-accused Celine Lee Bentley or appellant.** In addition, this booking form does not refer in any manner to Adrian Galea and the advertising time allocated to him. **In any case, it cannot be availed of as the basis of the complaint by WE Advertise Limited as it is not addressed to it but to Public Broadcasting Services Limited;**

1.4. In addition to all of the above, it also resulted that the money paid by Adrian Galea of YAL Home and Electronics were paid not unto appellant but unto

Market Handle Limited with whom the said Adrian Galea had a direct juridical relationship. Furthermore, the appellant humbly submits that he duly explained in his statement released on the 26th February, 2012, in particular at fol. 77, the manner in which monies were paid unto and by Market Handle Limited. He explained thus: *Le, Adrian Galea hallas għas-servizzi ta' Market Handle, jekk Market Handle kella d-dejn ma' terzi parti dak ma kellux jaqsam mal-pagament li Adrian kellu jgħati lil Market Handle. Market Handle kienet dejjem tkun hi l-kumpannija li jew għandha tiegħu jew inkella għandha tagħti [...] Iva però ahna meta niġbru l-pagamenti ma nkunux qed niġbruhom biex nħalsuhom immedjatement lin-nies li jkunu għamlulna x-xogħol fuq dak il-proġett stess. Hemm pagi x'jithalsu, renti, u suppliers oħrajn li jkollhom jieħdu flus iktar antiki. Allura dawn jieħdu preċedenza.* Appellant further explained this as follows during his testimony given during the sitting of the 11th May, 2015, in particular at fol. 299, where he testified as follows: *The thing is this, when you collect money from clients irrespective which client it is, sometimes we have bills which are being expected to be on the same date or they were already meant to have been paid so we just take, I was the one in charge, just take the money that there was and pay whatever was needed to be paid immediately like for example in certain stages it was wages;*

- 1.5. Once Market Handle Limited was not collecting money as agent for and on behalf of third parties, Market Handle Limited was simply being paid by its clients, depositing the money received and paid unto it and in turn paying its creditors. The money paid by Adrian Galea was paid unto Market Handle Limited *de proprio* and in its own right. There was therefore no obligation to return that money or make use thereof for a specific purpose. In other words, Market Handle Limited was under no obligation to on forward that money to third parties;
- 1.6. It is here where the first Court erred in its judgment for it did not consider all of the above factual and juridical considerations arising from the instant case. The first Court held the following: *With reference to the first charge being aggravated*

misappropriation of funds, Market Handle was appointed by YAL in order to provide advertisements, which advertisements were then presented by We Advertise Ltd, which was then approached by Donald Micallef on behalf of Market Handle. Adrian Galea states that he had paid the full amount to Market Handle for the advertisement which was produced by We Advertise, and this is confirmed by invoice which is exhibited at fol 32 of these acts. It clearly shows that the balance was 0 at the end and the signature of Donald Micallef next to said balance. Instead the payments that were affected by Adrian Galea for that specific service, were used elsewhere by the company, amongst which Donald Micallef confirms that he paid his car instalments to Dr. Malcolm Cassar by means of cheque no. 827 issued by Bank of Valletta with the amount of €3273. Celine Lee Bentley had signed on the back part of the cheque since it was payable to Market Handle Ltd (vide fol 37 and fol 38) before handing the cheque to Dr. Cassar LL.D. This extract from the first Court's judgment shows that the first Court did not consider any of the points raised above in this appeal application and which points had been raised in a note of submissions filed by defence before the first Court. The first Court did not consider the nature of the juridical relationship between all the parties involved, did not consider the fact that the monies due were in fact due to Market Handle Limited and did not consider that the complainant WE Advertise Limited did not produce a shred of evidence proving its juridical relationship in all the dealings. Appellant reminds that the booking form issued by Market Handle Limited was addressed to Public Broadcasting Services Limited and not to WE Advertise Limited. Furthermore, the fact that Dr. Malcolm Cassar was paid an installment for the sale of a car does not mean that money was being misappropriated: Adrian Galea paid what he owed unto Market Handle Limited which money was then used to pay various third parties;

- 1.7. For these reasons the elements of the crime of misappropriation do not subsist and appellant humbly submits that this Honorable Court should acquit and discharge him from the relative charge proffered against him;

2. The prosecution furthermore failed to prove the intentional element of the crime of misappropriation

2.1. The prosecution also failed to prove the formal element of the crime of misappropriation on the part of appellant;

2.2. As held in the judgment given by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on the 21st July, 2016 in the names **Il-Pulizija v. Victor Camilleri** *Irid ikun hemm ukoll l-intenzjoni tas-suggett attiv tar-reat li japproprja ruhu mill-oggett li jkun jaf li huwa ta' haddiehor" (Il-Pulizija vs Marbeck Cremona - Qorti tal-Magistrati (Ghawdex) - 15/02/2007);*

2.3. No such intention was proved by the prosecution. For one thing, it results without any shred of doubt that the money in question appertained to Market Handle Limited and no one else as explained in detail above. Hence the formal element of misappropriation as described in our jurisprudence, that is, to appropriate another person's money or object could not subsist for the reason that the money appertained to Market Handle Limited;

2.4. The prosecution is failing altogether to appreciate that since Market Handle Limited contracted in its own right and for its own behalf, the money received appertained to it and therefore was free to pay any creditors. This happens everyday in the normal course of business;

2.5. It is therefore the humble submission of appellant that he cannot but be acquitted of the charge of misappropriation brought against him;

3. The elements of the crime of fraud and of other cases of fraudulent gain do not subsist

- 3.1. Appellant was also charged and found guilty of the crimes of fraud and of making a fraudulent gain in terms of articles 308 and 309 of Chapter 9 of the Laws of Malta and this with respect to a sum not exceeding two hundred and thirty two Euro and ninety four cents (€232.94) to the detriment of Adrian Galea of YAL Home and Electronics;
- 3.2. These second and third accusations were given alternatively and not cumulatively and the appellant notes that, without prejudice to the submissions made hereunder, he could not have been found guilty of both;
- 3.3. Appellant furthermore submits that he did not commit any fraud or make a fraudulent gain to the detriment of Adrian Galea. The elements of the crime of fraud were illustrated in the judgment given by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on the 21st July, 2016 in the names **Il-Pulizija v. Victor Camilleri** wherein the following exhaustive exposition of the elements of the said crime was made:

Artikolu 308 jitratta frodi b'ghemil qarrieqi.

Illi biex jissussisti ir-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-Qrati taghna illi jridu jikkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u s-suggett passiv tar-reat u cioé bejn min qiegħed jikkommetti r-reat u l-vittma. Hemm imbagħad l-element materjali ta' dana r-reat u cioé l-uzu ta' ingann jew raggieri li jwasslu lill-vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li jkun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg għalih innifsu. Jekk xi wieħed jew iktar minn dawn l-elementi huma nieqsa, allura r-reat tat-truffa ma jistax jissussisti.

*Illi f'sentenza fl-ismijiet **Il-Pulizija vs. Charles Zarb** mogħtija fit-22 ta' Frar 1993, il-Qorti tal-Appelli Kriminali għamlet esposizzjoni ferm preciza, studjata u dettaljata*

ghar-rigward tal-elementi ta' dana r-reat. Il-Qorti bdiet sabiex esprimiet ruhha b'dan il-mod ghar-rigward ta' dana r-reat:

“Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inpropriji u hu dak li fl-iskola u fil-legislazzjoni Rumana kien maghruf bhala steljolat u li jikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Franciz. [...]

Id-disposizzjonijiet tal-Kodici taghna kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 tal-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi [...].

Skont guriprudenza kostanti, l-ingredjenti tal-element materjali ta' dan id-delitt ta' truffa, huma dawn li gejjin.

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' ikun kulhadd.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal-fiducja reciproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu tal-ingann u tar-raggieri li jinducu bniedem jiddisponi minn gid li fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa u jikkommetti d-delitt tat-truffa kull min:

- a) b'mezzi kontra l-ligi, jew*
- b) billi jaghmel uzu minn ismijiet foloz jew*
- c) ta' kwalifiki foloz jew*
- d) billi jinqeda b'qerq iehor u*
- e) ingann jew*
- f) billi juri haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz,*

- g) jew ta' hila;
- h) setgha fuq haddiehor jew
- i) ta' krediti immaginarji jew
- j) sabiex iqanqal tama jew biza dwar xi grajja kimerika, jaghmel qliegh bi hsara ta' haddiehor.

[...] Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuori jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacija ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi. [...]

Dwar l-artifizzji intqal mill-Qorti illi "hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem ikun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti tal-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kollegjalment komposta fil-kawza "Reg vs. Francesco Cachia e Charles Bech (03.01.1896 – Kollez.XV.350) li fiha intqal illi "quell' articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede".

Illi fid-decizjoni fl-ismijiet **Il-Pulizija vs. Charles Zarb** kwotata hawn fuq, il-Qorti tal-Appell Kriminali ccitat lill-Imhalled Guze Flores fejn qal illi:

"kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghall-verosimiljanza tal-falsita' prospettata bhala vera u b'hekk bhala mezz ta' qerq. Mhuwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-ffermazzjonijiet menzjonjieri tal-frodatur. Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi teatrali, li tissupera il-kawtela ordinarja kontra s-semplici u luzingi, u li taghti li daww l-esterjorita' ta' verita' kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene".

L-istess Imhallel Flores kompli jghid li:

“...Kwantu jirrigwarda l-element formali, cioè kwantu jirrigwarda d-dolo ta’ dan ir-reat ta’ truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b’ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-Artikolu 308 tal-Kodici Kriminali fejn il-kliem “bi hsara ta’ haddiehor” ma jhallux dubju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta’ truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu ikun konxju tal-ingustizzja tal-profitt u b’dan il-mod il-legittima produttivita’ tal-profitt hija bizzzejjed biex teskludi d-dolo.”

Illi minn dina l-esposizzjoni maghmula mill-Qorti tal-Appell li ccittat diversi sentenzi ohra tal-Qrati taghna jidher illi l-elementi rikjesti sabiex jissussisti ir-reat tal-frodi baqghu invarjati fiz-zmien.

Illi f’sentenza moghtija mill-Corte di Cassazione Penale gie deciz illi element ewlieni fir-reat tal-frodi huwa “l’elemento del danno patrimoniale”. Biex imbaghad jissussisti dana t-tip ta’ reat huwa necessarju illi jezistu “I tre momenti di cui si compone il reato e’ cioè la produzione dell’artificio, nella successive induzione in errore e nella consequenziale produzione dell’ingiusto profitto per l’agente” (Cassazione Penale Sez. II 3 Ottobre 2006 n. 34179).

Illi, ghar-rigward ta’ dana l-element soggettiv tar-reat tat-truffa, kif gie ritenut mill-awtur Francesco Antolisei, ikkwotat f’sentenza ohra moghtija mill-Qorti tal-Appell Kriminali, cioè Il-Pulizija vs. Patrick Spiteri, deciza fit-22 ta’ Ottubru 2004:

“L’agente [...] deve volere non solo la sua azione, ma anche l’inganno della vittima, come conseguenza dell’azione stessa, la disposizione patrimoniale, come conseguenza dell’inganno e, infine, la realizzazione di quel profitto che costituisce l’ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volontà sia accompagnata

dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizia del profitto avuto in mira e del danno che ne deriva all'ingannato."

- 3.4. As emphasized in the judgment delivered by the Court of (Magistrates) as Court of Criminal Judicature on the 11th August, 2016 in the names **Il-Pulizija v. Walter Zammit et:**

Kif ritenut mill-Qorti tal-Appell Kriminali fis-sentenza tagħha tat-12 ta` Frar, 1999 fl-ismijiet Il-Pulizija v. Anthony Francis Willoughby li:

"Fil-ligi tagħna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta` ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex tagħmel jew tonqos milli tagħmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh għall-agent (Il-Pulizija v. Emmanuele Ellul, App. Krim., 20/6/97; ara wkoll Il-Pulizija v. Daneil Frendo, App. Krim., 25/3/94).

- 3.5. Indeed, as it has been clearly states in the judgment delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 2nd December, 2014 in the names **Il-Pulizija v. Herman Mizzi et:**

F'kawża bħal din, wieħed irid joqgħod attent illi jistabilixxa b'ċerta preċiżjoni l-linja ta` demarkazzjoni bejn każijiet li huma strettament ta` natura ċivili bħal ma` din il-Qorti taħseb li huwa dan il-każ, minn każijiet oħra li huma ta` natura kriminali u li għalihom jirreferi l-Artikolu 308.

- 3.6. Therefore, for the crime of fraud to subsist, it is necessary to prove beyond reasonable doubt the use of any fictitious name, or the assumption of any false designation or the employment of any other words, in other words the *mise-en-scene*;

- 3.7. With regard to the present case, it clearly results that none of these means were adoperated, let alone proved beyond reasonable doubt. The first Court appears to have found appellant guilty of these charges after making the following observations: *From the evidence produced it results that the accused Donald Micallef gave Adrian Galea a cheque (fol 36) when he had no rights to issue company cheques as the sole signatory for company cheques was Celine Lee Bentley. This was confirmed by the bank official Ms. Audrey Ghigo and with the Appointment of Bankers-Companies which document is attached at fol 139. As part of the mise en scene Donald Micallef gave the impression to Adrian Galea that he was the person in charge of Market Handle, and in fact he never mentioned Celine Bentley with him. The accused's testimony gives the impression that he was the person who managed and co-ordinated everything within the company;*
- 3.8. Appellant took care of most of the dealings of the company Market Handle Limited as a state of fact. This was no *mise-en-scene*. In fact it resulted from the evidence submitted that he took care of dealing with Adrian Galea of YAL Home and Electronics, that he was doing this on behalf of Market Handle Limited as duly authorized and that this was a matter which was not being put in doubt. The sole director of the company, Celine Lee Bentley, confirms in her statement given to the Executive Police on the 29th March, 2012 exhibited at fol. 54 et seq. of the records of the case that appellant was engaged as a freelance Chief Executive Officer. This was also confirmed by the appellant himself during his deposition before the first Court. Appellant was duly authroised to represent Market Handle Limited. The situation would have been totally different had appellant represented himself as being authorized while in fact it resulted that he was not. For these reasons, appellant humbly submits that the first Court erred in holding that there was *mise-en-scene* when in reality he represented a state of fact;
- 3.9. Furthermore, it also resulted that appellant did not make any gain. Appellant was representing Market Handle Limited as its Chief Executive Officer and the

fact that a cheque of one hundred and twelve Euro and seventy two cents (€112.72) exhibited at fol. 36 of the records of the case was referred to drawer does not mean that appellant personally made a gain by means of fraud or deceit. Appellant states in categorical terms that he made absolutely no gain therefrom. The cheque was a cheque belonging to Market Handle Limited and appellant made no gain whatsoever;

3.10. It is true that appellant signed the cheque above referred to himself. However even though he was not expressly authorized by the appropriate bank forms, this does not mean that he committed an act of fraud to the detriment of Adrian Galea. One reason is that the sole director of Market Handle Limited, Celine Lee Bentley, had no objection to the use made by appellant of the cheque for the exigencies of the company. In fact she never reported him for abuse. The bank form mentioned by the first Court in its judgment is a question of formality. The fact that the cheque was not encashed but was referred to drawer was not for the fact that appellant signed it but for the reason that Market Handle Limited did not have sufficient funds in the relative bank account. In this regard, appellant makes reference to the testimony of Audrey Ghigo, a representative of HSBC Bank Malta p.l.c., given during the sitting of the 12th March, 2015 at fol. 288 et seq. In other words, even if co-accused Celine Lee Bentley would have signed the cheque herself, it would have still been referred to drawer as there were not sufficient funds deposited. Furthermore, the prosecution failed altogether to prove that appellant was aware of the lack of funds at the particular moment in time when he issued the cheque;

3.11. For these reasons appellant humbly submits that he could never have been found guilty of the crime of fraud and of making a fraudulent gain;

4. The first Court erred in referring to articles 189 and 190 of Chapter 9 of the Laws of Malta and finding appellant guilty in terms of the same due to the fact

that none of the charges proffered against appellant were in terms of the said articles of the law

- 4.1. The fourth, fifth and sixth charges proffered against appellant refer to the crimes contemplated in articles 183, 184 and 185 (2) of Chapter 9 of the Laws of Malta, namely, the crimes of forgery of public, commercial or private bank documents by person not being a public officer, of malicious use of false document and of issue of false declarations or certificates;
- 4.2. This is not only evident from the wording of the charges but also from a note at the end of the charge sheet indicating the articles of the law wherefrom the charges brought against appellant emanate;
- 4.3. In the *decide* of the judgment of the first Court, the Court found appellant guilty of all charges but in quoting the article of the law relating to forgery, the first Court erred and instead of quoting articles 183, 184 and 185 (2) of Chapter 9 of the Laws of Malta, it quoted articles 189 and 190 of Chapter 9 of the Laws of Malta. A simple reading of these articles of the law shows that these were not the articles under which the charges were brought against appellant and that the same are not applicable to the case at hand;
- 4.4. Even a look at the note of the Attorney General at fol. 240 where the articles of the law were quoted reveals that the appellant was never accused of any crime emanating from articles 189 and 190 of Chapter 9 of the Laws of Malta but of the crimes contemplated in articles 183, 184 and 185 (2) of Chapter 9 of the Laws of Malta;
- 4.5. Therefore, with regard to the charges of forgery, the first Court quoted articles of the law which were not applicable;

4.6. This defect leads to the nullity of the judgment appealed from limitedly to the part of the charges relating to forgery, that is, the fourth, fifth and sixth charges proffered against appellant. The appellant makes ample reference to the judgment delivered by this Honorable Court on the 23rd February, 2017 in the names **The Police v. Beres Szabales Sandor** wherein this Honorable Court held the following: *That appellant in his first grievance raises the plea of nullity of the decision of the First Court on the ground that the article of law cited in the decisive part of the judgment refers to an offence which was not imputed to accused. This error seems to have found its basis in the charge sheet itself wherein the Prosecuting Officer after preferring the charges against appellant indicates that the offence contemplated in the first charge is based on article 328(d) of the Criminal Code which section of the law, however, contemplates the offence of involuntary damage to property and not that of involuntary bodily harm as contemplated in article 226 of Chapter 9 of the Laws of Malta. The Attorney General from his part concurs with the arguments raised by appellant as it clearly results that the First Court in finding the appellant guilty of the offence of involuntary bodily harm erroneously refers to the wrong section of the law indicating another offence, being as already premised, that of involuntary damage to property. Although this seems to be a lapsus computetri on the part of the First Court, however it is abundantly clear that the facts of this case did not refer to involuntary damage to property and there is no evidence to be adduced to such an offence, rather all evidence pointing toward the offence of bodily harm albeit of an involuntary nature. It has been established both juridically and legally that this error on the part of the First Court necessarily carries with it the sanction of nullity. In fact article 382 of the Criminal Code clearly states that: "The court, in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of this Code or of any other law creating the offence." Having thus premised it is therefore evident that this Court cannot proceed with the hearing of an appeal from a judgment which of its very nature is legally null and void, the article of law quoted creating another offence totally different from the offence of which appellant has been tried and found guilty of;*

4.7. Therefore appellant humbly submits that he should also be discharged and acquitted from the fourth, fifth and sixth charges proffered against him;

5. The elements of the crimes of forgery of public, commercial or private bank documents by person not being a public officer, of malicious use of false document and of issue of false declarations or certificates do not subsist

5.1. Without prejudice to the previous ground of appeal, appellant humbly submits that the elements of the crimes of forgery of public, commercial or private bank documents by person not being a public officer, of malicious use of false document and of issue of false declarations or certificates do not subsist in the instant case;

5.2. The first Court made a detailed exposition of the institute of forgery under our Criminal Code. As the first Court correctly pointed out, the crime of forgery can subsist (a) when a person counterfeits a document, that is, makes a false document in whole or in part or (b) when a genuine document is altered;

5.3. In the instant case, it is true and not contested that appellant signed a cheque belonging to the company Market Handle Limited. He signed the said cheque by means of his signature and did not imitate or forge anyone else's signature;

5.4. It is therefore evident that appellant neither made a false document nor did he alter a genuine document. He could not therefore have been found guilty of the crimes of forgery;

5.5. It is important to note that whilst the first Court made a detailed exposition of the crime of forgery under our law, such exposition was made *in vacuo* as although appellant was found guilty of the relative charges, the first Court did

not state anywhere in the judgment appealed from why appellant was being found guilty of these charges;

- 5.6. Article 183 of Chapter 9 of the Laws of Malta states that: *Any other person who shall commit forgery of any authentic and public instrument or of any commercial document or private bank document, **by counterfeiting or altering the writing or signature**, by feigning any fictitious agreement, disposition, obligation or discharge, or by the insertion of any such agreement, disposition, obligation or discharge in any of the said instruments or documents after the formation thereof, or by any addition to or alteration of any clause, declaration or fact which such instruments or documents were intended to contain or prove, shall, on conviction, be liable to imprisonment for a term from thirteen months to four years, with or without solitary confinement.* It was proved that appellant did not counterfeit or alter the signature but used his own signature. Hence he could not have been found guilty under this provision of the Criminal Code;
- 5.7. Article 184 of Chapter 9 of the Laws of Malta states that: *Any person who shall knowingly make use of any of the false acts, writings, instruments or documents mentioned in the preceding articles of this sub-title, shall, on conviction, be liable to the punishment established for the forger.* As stated above, the cheque in question was not forged and therefore the crime contemplated by this article of the Criminal Code cannot subsist. This apart from the fact that the charge under this article is evidently alternative not cumulative to the charge under the article quoted in the previous paragraph;
- 5.8. Article 185 (2) of Chapter 9 of the Laws of Malta deals with punishment rather than establishing an offence;
- 5.9. Appellant makes reference to the following jurisprudential teaching contained in the judgment delivered by the Court of Magistrates (Malta) as a Court of

Criminal Judicature on the 14th November, 2013 in the names **Il-Pulizija v. Joseph Tabone**:

Il-gurisprudenza fuq il-materja ta' falsifikazzjoni ssegwi lillawturi taljani u d-dottrina taghhom, u hija kopjuza ferm. Hekk, per ezempju, gie riprodott fis-sentenza tal-Qorti talMagistrati, fil-kawza fl-ismijiet "Pul. V. Michael Carter", deciza fit-23 ta' April, 2001:

"Fis-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar s-sittax ta' Marzu, 1999 fl-ismijiet Il-Pulizija v Alfred Sammut gie ritenut li fil-ligi taghna u fuq l-iskorta tad-dottrina kontinentali, il-falsifikazzjoni "falz materjali, tista ssir sew billi jigu falsifikat dokument, kollu jew parti, kif wkoll billi jigi alterat d-dokument genwien."

Fi kliem iehor, Sir Anthony Mamo fl-appunti tieghu jghid:

"Our Criminal Code like the models on which it was originally framed, does not give a general definition of forgery, only in respect of certain of the crimes of forgery of public and private writings it specifies the special ways in which the particular crimes may be committed. In two ways may in general a forgery be committed; either by making in whole or in part a false document (counterfoiling) or by altering a genuine document (Lecture in Criminal Law)."

"Francesco Antolisei fil-ktieb tieghu Manuale di Diritto Penale (para 135 of 1977 Ediz.) jghid:

"In genere il termine falso e' precisamente alla differenza tra non genuinita e non veridicita. Secondo l'insigne autore. Il falzo materiale si ha quando il documento non e' genuino, Il falzo ideologico allorche il documento e' bensi genuino ma non e' veridico perche colui che lo ha formato gli fa dire cose contrarie al vero Per alterazione si devono intendere le modificazioni di qualsiasi specie (aggiunte, cancellate, ecc) che al documento autentico vengono apportate dopo le sue definitive formazioni."

“Kenny l-awtur ingliz fil-ktieb Outlines of Criminal Law pg. 239 jaghti definizzjoni tal-kelma falsifikazzjoni. Huwa jghid:

"It has been stated that a document is not a forgery when it merely contains statements which are false, but only when it falsely purports to be itself that which is not. The simplest and most effective phrase by which to express this rule is to state that for the purposes of the law of forgery the writing must tell a lie about itself."

“Skond Glanville Williams l-awtur fil-ktieb tieghu Textbook of Criminal Law taht il-Kapitolu 40 Forgery a fol 876 jghid illi huwa necessarju illi:

"the maker must make the document 'in order that it may be used as genuine and secondly, there must be at least the intent to deceive.' The second requirement renders the first otiose".

“Huwa necessarju illi ghalhekk li l-imputat ikollu l-intenzjoni biex jiffalsifika id-dokument sabiex l-allegat vittma jemmen li d-dokument kien genwin. Illi ghalhekk irid jirrizulta d-dolo, mera negligenza mhiex bizzejjed.

“L-awtur taljan famus Mirto fil-ktieb tieghu La Falsita` in Atti f`pagna 467 jghid:

"Il delitto di falsita` in atti si imputa soltanto a titolo di dolo. E` questa un assunto costante della dottrina e della pratica sin dalla antichita`, la quale aveva formulato il principio non nisi dolo mal falsum."

5.10. Appellant confirmed in his statement released to the prosecuting officer on the 29th March, 2012 exhibited at fol. 61 et seq. that: *Jiena kont sirt naf meta ċempilli xi hadd mill-bank HSBC u kien qalli minhabba l-firma li kien hem fuq iċ-cheque u dan għax ma kienetx taqbel ma' ta' Celine. Infatti jiena kont wegibtu li ma taqblix ma ta' Celine għax kienet infatti tiegħi fejn imbagħad kienu kkonfermawli li l-karta sabiex jiena nkun firmatarju qatt ma kienet saret;*

5.11. This shows that neither the material nor the formal elements of the crimes of forgery subsist. Appellant neither forged, altered or counterfeited a signature or document nor did he knowingly make use there of or had any criminal intent;

5.12. Therefore appellant humbly submits that he should have been acquitted and discharged from the charges merit of this ground of appeal;

6. In any event the punishment inflicted is too harsh

6.1. In any event and without prejudice to all considerations made above, the appellant humbly submits that the punishment inflicted upon him is way too harsh;

6.2. Even assuming for the sake of argument alone that appellant is guilty as charged, that is, of committing an act of misappropriation of a very small unspecified and uncorroborated amount and an act of fraud of one hundred and twelve Euro and seventy two cents (€112.72) certainly does not merit an effective prison term;

6.3. There are therefore grounds that even if this Honorable Court considers appellant guilty, a more considerate punishment is imposed;

Rat ir-rikors tal-appell tal-Avukat Generali, pprezentat fir-registru ta' din il-Qorti fit-22 ta' Frar, 2018 fejn talab lil din l-Onorabbli Qorti, wara li tikkunsidra l-evidenza kollha u tisma' l-argumenti gia migjuba u dawk li ser jingibu matul il-proceduri tal-appell:

A. Tirrevoka u tannulla is-sentenza appellata u minflok tghaddi biex tezamina l-kawza billi tiddikjara z-zewg akkuzati hatja u taghti l-piena korretta ai termini tal-

ligi;

jew, alternattivament,

B. Jekk din l-Onorabbli Qorti ma tilqax l-ewwel aggravju sottomess mill-Avukat General li jirrigwarda n-nullita' tas-sentenza appellata, tirrifirma l-istess sentenza billi:

i. Tikkonferma dik il-parti tas-sentenza fejn il-Qorti tal-Magistrati (Malta) sabet lil Donald Micallef hati tal-akkuzi mijguba fil-konfront tieghu;

ii. Tirrevoka dik il-parti tas-sentenza fejn il-Qorti kkundannat lil Donald Micallef ghall-piena ta' prigunerija ta' disa' xhur u minflok tinfliggi piena idonea fil-konfront ta' Donald Micallef li tkun fil-parametri tal-ligi, ghall-dawk l-akkuzi li taghhom instab hati;

iii. Tirrevoka dik il-parti tas-sentenza fejn il-Qorti ma sabitx lil Celine Lee Bentley hatja tal-akkuzi mijguba fil-konfront taghha u lliberata u minflok issib lil Celine Lee Bentley hatja tal-akkuzi mijguba fil-konfront taghha u tikkundannaha ghall-piena ai termini tal-ligi.

Rat li l-Kummissarju tal-Pulizija gharraf lil Qorti li kien bi hsiebu jappella s-sentenza tal-Ewwel Qorti;

L-Avukat Generali ircieva l-atti tal-proceduri u hassu aggravat bis-sentenza tal-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali.

Rat l-aggravji tal-appellant Avukat Generali li jikkonsistu f'li:

i. the judgment is null and void on account of the fact that it does not include one of the requisites *ad vadilitatem*;

- ii. In subsidium, and without prejudice to the above, that the the punishment meted out in this case in respect of Donald Micallef is not within the parameters of the law for the offences of which he has been found guilty;
 - iii. In subsidium, and without prejudice to the above, that the Court arrived at its abovementioned judgment in respect of Celine Lee Bentley in consequence of a wrong application of the law and a wrong appreciation of the evidence brought before it.
- i. **the judgment is null and void on account of the fact that it does not include one of the requisites *ad vadilitatem*.**

Article 382 of the Criminal Code provides that a court in delivering judgment against the accused, shall state the facts of which he has been found guilty, shall award punishment and shall quote the article of the law creating the offence. In this particular case, however, the Court failed to mention all the articles on which the accused was found guilty.

It transpires from the judgement that the accused Donald Micallef was found "guilty as charged". The Court however condemned the accused under Articles 293, 294, 308, 30, **189** and **190** of Chapter 9 of the Laws of Malta. The applicant humbly contends that in the circumstances, this declaration by the Court is contradictory in that the accused was charged with having committed the offences mentioned in Articles 293, 294, 308, 309, **183**, **184** and **185(2)** of Chapter 9 of the Laws of Malta. In pronouncing judgement, the Court failed to mention Articles 183, 184 and 185(2) in the operative part of the judgment even though it found the accused Donald Micallef guilty as charged. Instead it mentioned Articles 189 and 190 when these were not included in the charges brought against the accused and they were not in any way referred to by the court in its considerations.

In the applicant's humble opinion, these two factors taken together render the judgment null and void in terms of law. That this also renders the judgment null and void in respect of Celine Lee Bentley given that Micallef and Bentley were charged together and one judgement was pronounced in relation to both. This is being stated without prejudice to the submissions made in the following grievances.

ii. In subsidium, and without prejudice to the submissions made above, the punishment meted out in this case in respect of Donald Micallef is not within the parameters of the law for the offences of which he has been charged and found guilty.

It is an established principle that this Honourable Court, as a Court of Criminal Appeal, does not normally substitute the discretion exercised by the Court of Magistrates in administering the appropriate punishment as long as the punishment is meted out within the parameters of the law. That the applicant humbly contends that in this case, in view of the fact that the court found the accused Donald Micallef guilty as charged, it could not proceed to condemn the accused to the term of nine months imprisonment given that this punishment is below the minimum prescribed by law for the offences of which the accused has been charged.

That in view of the fact that the accused was charged with having committed the offences mentioned in Articles 293, 294, 308, 309, **183, 184** and **185(2)** of Chapter 9 of the Laws of Malta, even if one were to consider the punishment for the offence contemplated in Article 183 by itself the applicable punishment is that of a minimum of thirteen months and a maximum of four years. Therefore the applicant humbly contends that the punishment imposed by the Court of Magistrates is below the minimum prescribed by law for the offences of which Donald Micallef has been charged and found guilty.

iii. In subsidium, and without prejudice to the submissions made above, the Court arrived at its abovementioned judgment in respect of Celine Lee Bentley in consequence of a wrong application of the law.

That it transpires from the acts of the proceedings that Celine Lee Bentley is the sole Director of the company Market Handle Limited (C 49546)¹. As sole Director of the company she was responsible for the management of the company. Qua Director, she is presumed to be responsible for the management of the company and for the acts committed by this legal entity. This position, though for different legal reasons, is reflected under the Companies Act (Chapter 386 of the Laws of Malta) as well as under the Interpretation Act (Chapter 249 of the Laws of Malta).

Directors, whether executive or otherwise, have various duties under the Companies Act. Indeed according to Article 136 A of the Companies Act a director of a company shall be bound to act honestly and in good faith in the best interests of the company. The directors of a company shall promote the well-being of the company and shall be responsible for the general governance of the company and its proper administration and management and the general supervision of its affairs. In particular, but without prejudice to any other duty assigned to the directors of a company, or to any one of them, by the memorandum or articles of association or by this Act or any other law, the directors of a company shall be obliged to exercise the degree of care, diligence and skill which would be exercised by a reasonably diligent person having both - (i) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and (ii) the knowledge, skill and experience that the director has. Moreover, directors are obliged not use any property, information or opportunity of the company for their own or anyone else's benefit, nor obtain benefit in any other way in connection with the exercise of their powers, except with the consent of the company in general meeting or except as

¹ Vide testimony of **Dr. Edward Dalmas in representation of the Registrar of Companies** inserted at fol 82 of the acts of the proceedings and the *Memorandum and Articles of the company* at fol 84 of the acts of the proceedings;

permitted by the company's memorandum or articles of association or else exercise the powers they have for the purposes for which the powers were conferred and shall not misuse such power.

Furthermore Article 13 of the Interpretation Act provides that :-*"Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a **director**, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence **unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence:**"*²

That therefore it is not disputed that as the Court of Magistrates correctly pointed out, the applicable provision of the law is Article 13 of the Interpretation Act of the Laws of Malta. Likewise it is not disputed that as the Court pointed out in its considerations :-*"On the basis of the above mentioned article 13 of the Interpretation Act, both Celine Lee Bentley and Donald Micallef are to be held accountable for the wrongdoings and shortcomings of the company. Celine Lee Bentley must prove that she had no knowledge of the offences in question and that she had exercised all due diligence to prevent the same offence from taking place."* However, even though the Court of Magistrates made these initial considerations, it then proceeded to declare at a later stage in the same judgment that :-*"The prosecution and the parte civile failed altogether to prove that Celine Lee Bentley was in any way aware of the facts leading to this court case. **With all due respect, the undersigned begs to differ with these considerations.***

The articles of the law above referred to, create a iuris tantum presumption of responsibility and liability on directors, which can be rebutted by the director proving lack of knowledge about the commission of the offence and the exercise of all due diligence to prevent the commission of the offence. Indeed both laws require both prevention as well as action on the part of the director. In this particular case the accused Celine Lee Bentley performed neither one nor the other.

² Emphasis added by the applicant

In this case the accused, qua director failed to prove that she had lack of knowledge about the commission of the offence. With all due respect to the line of argumentation adopted by defence counsel and by the Court in its judgment, the fact that there might have been other persons who were involved in the management of the company, does not exonerate the responsibility of the accused qua director. As a director she was duty bound to take the proactive stance to know what the company was doing, and what the other officers of the company were doing. Indeed **she did not prove on a balance of probabilities that the offence of misappropriation was committed without her knowledge. From the records of the proceedings, the opposite transpires.**

That primarily even though **Adrian Galea of YAL Home Electronics** stated that he gave the relative payments to Donald Micallef of Market Handle Limited, it transpires that as pointed out by the Court of Magistrates itself one of these cheques was signed at the back by Celine Lee Bentley herself. In fact if one were to refer to the cheque images inserted at fol 37 and 38 of the acts of the proceedings, it results that on the 6th November 2010 Adrian Galea issued a cheque for the amount of three thousand two hundred and seventy three euros (Eur 3273) payable to Market Handle Limited. Adrian Galea confirms in his testimony at fol 25 *et seq* that he issued this payment to Market Handle Limited in order to pay the deposit on an invoice representing a larger balance due to Market Handle Limited for advertising space purchased from the same company. That even though the Court of Magistrates in its considerations stated that "*Celine Lee Bentley had signed on the back part of the cheque since it was payable to Market Handle Limited (vide fol 37 and 38) before handing the cheque to Dr. Cassar*"³ the court failed to give any further consideration to this fact. It must also be noted that Adrian Galea himself stated on the witness stand that even though he used to speak to Donald Micallef, he used to see Celine Lee Bentley in the company of Donald Micallef.

³ Vide the page before the last of the judgement

That furthermore **Marouska Pisani Bugeja**, in her capacity of **Sales and Marketing Manager of We Advertise Limited** testified on the 18th June 2012 and she stated that⁴ she could recognise Celine Lee Bentley because she had met her together with her financial controller. She stated that she went to meet Donald Micallef and Celine Bentley with her financial controller to do a payment schedule and the payments were not honoured.

That in the **statement⁵ released by Celine Lee Bentley** she also confirmed that as a Director she had access to the company's accounts. She also stated that the accounts of Adrian Galea were closed and that there was nothing pending with Adrian Galea. She also confirmed that she met Marouska Pisani Bugeja of We Advertise Limited in relation to the pending bills with the same company. In the humble opinion of the Attorney General this clearly means that Celine Lee Bentley was perfectly aware of the fact that her company had received all the payments due from Adrian Galea and that the corresponding payments were then subsequently not made to We Advertise Limited but were misappropriated !

That **Audrey Ghigo in representation of HSBC Bank Malta p.l.c.** also confirmed that in terms of the appointment of bankers mandate form marked as Doc AM 10⁶ Celine Lee Bentley is the sole authorised signatory for bank documents. Therefore she was perfectly aware of what money was deposited and debited from her bank accounts. It follows that she was also perfectly aware that even though there were no pending balances with Adrian Galea as stated by herself in the abovementioned statement, the money paid by the same Galea to Market Handle Limited never found its way into the company's accounts and it was never paid to We Advertise Limited.

It must also be noted that Celine Lee Bentley opted not to testify in these proceedings. She also did not bring forward any evidence to show that the offence was committed without her knowledge and that she exercised all due diligence to prevent the commission of the offence.

⁴ Vide fol 46 of the acts of the proceedings

⁵ Vide fol 55 et seq of the acts of the proceedings

⁶ Vide fol 139 of the acts of the proceedings

Therefore in the humble opinion of the Attorney General the prosecution proved beyond reasonable doubt that Celine Lee Bentley was the sole Director of Market Handle Limited at the time when the offences were committed, which fact was not denied by Bentley herself in her own statement. That even though in terms of Article 13 of the Interpretation Act the onus of proof rested on Celine Lee Bentley to prove that the offences were committed without her knowledge and that she exercised all due diligence to prevent the commission of the offence, the prosecution did more than requested in terms of law when it brought forward evidence in court to show her involvement. That Celine Lee Bentley failed to prove that the offence of misappropriation was committed without her knowledge and that she exercised the required due diligence and therefore she failed to rebut the iuris tantum presumption of responsibility and liability on directors. Therefore she should have been found guilty of the charges brought against her.

Rat l-atti;

Rat il-fedina penali aggornata tal-akkuzat Donald Micallef;

Ikkunsidrat;

Illi in segwitu tas-sentenza ta' din il-Qorti datata s-sebgha (7) ta' Mejju tas-sena elfejn u dsatax (2019) fejn permezz taghha giet annullata s-sentenza tal-Ewwel Qorti limitatament ghal dak li jirrigwarda l-appellant Donald Micallef, din il-Qorti sejra tiddeciedi l-kaz mill-gdid u sejra ghalhekk permezz ta' din is-sentenza tqis iz-zewg appelli u cioe' dak intavolat mill-Avukat Generali u dak intavolat mill-akkuzat Donald Micallef. Ghal dak li jirrigwarda t-tielet aggravju fl-appell tal-Avukat Generali u cioe' dak indikat bin-numri 'iii', dwar li l-Ewwel Qori ma sabitx htija rigwardanti il-ko-imputata Celine Lee Bentley, din il-Qorti sejra tastjeni milli tiehu konjizzjoni ta' dak l-aggravju gialadarba fis-seduta ta' quddiem din il-Qorti datata l-ghoxrin (20) ta' Novembru tas-sena elfejn u tmintax (2018) gie verbalizzat is-segwent:

'Dr Mercieca declares that he is withdrawing the grievance with respect to Celine Lee Bentley which concerns the nullity of the judgement of the first Court given with respect to Celine Lee Bentley. At the same time he is insisting that the grievance given for nullity with respect to Donald Micallef remains in the acts.'

Fl-istess seduta din il-Qorti ddegretat fl-istess verbal li

'The Court consequently abstains from taking further cognisance of the appeal of the Attorney General with regards to Celine Lee Bentley and therefore takes the judgment of the first court in her regard as confirmed.'

Ghalhekk din il-Qorti mhijiex sejra tqis l-ecezzjoni preliminari imressqa minn Dr William Cuschieri ghan-nom ta' Celine Bentley fis-seduta ta' quddiem din il-Qorti tal-wiehed u tletin (31) ta' Lulju tas-sena elfejn u tmintax (2018). Din is-sentenza tirrigwarda limitatament l-appell ta' Donald Micallef u l-appell tal-Avukat Generali rigwardanti l-piena fil-konfront ta' Donald Micallef.

Illi in breve, il-fatti kienu s-segwent:

1. Il-Prosekuzzjoni kienet irceviet kwerela⁷ ghan-nom ta' WE Advertise Limited fejn gie allegat li wara li Donald Micallef kien xtara numru ta' spots ghal riklamar minghand WE Advertise Limited huwa naqas milli jhallas lil WE Advertise Limited nonostante l-fatt li kien thallas minghand il-klijent tieghu Adrian Galea ta' YAL Home and Electronics;
2. Flimkien mal-kwerela intbaghtet booking form ta' Market Handle indirizzaa lil Public Broadcasting Services 'Attn: Marouska Bugeja';
3. Il-Pulizija tkellmu ma numru ta' persuni fosthom tkellmu ma' Cherianne Farrugia u ma Dr Malcolm Cassar, li kienu sarfu cekk kull wiehed mahrug minn Adrian Galea ta' YAL Home and Electronics;
4. Adrian Galea meta mitkellem mill-Pulizija informahom ukoll li hu kien hallas dak dovut ghar-riklamar fejn kien hallas permezz ta' cekkijiet u anke permezz ta' tpartit u cioe' fejn ta' televizionijiet. Gie allegat li Adrian Galea kien ta' aktar televizionijiet mill-ammont dovut u ghalhekk Donald Micallef kellu jirritorna televizjoni u kien ta

⁷ Din tinsab a fol 42.

cekk indirizzat lil YAL. Minkejja li Adrian Galea prova jsarraff dan ic-cekk, dan ma setax jissarraff;

5. Irrizulta li dan ic-cekk li jinsab a fol 49 u mmarkata bhal Doc AG2 gie ffirmat mill-appellant nonostante l-fatt li huwa ma kienx il-firmatarju rikonoxxut mal-bank HSBC f'kontinjet bankarji tal-kumpanija Market Handle Limited;

6. Illi ghalhekk inhargu l-imputazzjonijiet fil-konfront tal-appellant.

Illi l-ewwel imputazzjoni migjuba fil-konfront tal-appellant taqra *'Approprijajtu ruhkom, billi dawwartu bi profit ghalikhom jew ghal prsunafi ohra, is-somma ta' aktar minn elfejn tliet mija u disgha u ghoxrin euro u sebgha u tletin centezmu (€2,329.37) ghad-dannu ta' WE Advertise Limited, liema somma giet fdata jew ikkunsinnata lilkom taht titolu illi jgib mieghu l-obbligu tar-radd tal-haga jew li jsir uzu minnha specifikat, u l-istess somma giet fdata lilkom minhabba l-professjoni, industrija, kummerc, kariga, jew servizz taghkom;'*

Permezz ta' din l-imputazzjoni, l-appellant huwa akkuzat li kkommetta aproprijazzjoni in debita u dan a detriment ta' WE Advertise Limited. In succinct l-Ispettur Anne Marie Micallef fis-seduta tal-hmistax (15) ta' April tas-sena elfejn u tlettax (2013) spjegat li kienu ircevev complaint u cioe' kwerela minn Dr Mark Vassallo ghan-nom ta' WE Advertiser limited dwar li allegatament wara li Market Handle talbu s-servizz ta' WE Advertise Limited, u wara li klijent hallas lil Market Handle, il-flus ma kienux gew mgghoddija lil WE Advertise Limited. L-Ispettur xehdet li Marouska Pisani Bugeja bhala l-persuna responsabbli ta' WE Advertise Limited kienet spjegat li giet avvicinata minn certu Clive Pickard li dak iz-zmien kien impjegat ta' Market Handle fejn talab quoations ta' riklami *'to be transmitted during their programmes for one of their clients being Adrian Galea of Vjal Malta. Pisano Bugeja continued saying that she was invited to attend a presentation at Market Handle were the offices were in Birkirkara were there she met Donald Micallef who at that time introduced himself as the Director of Market Handle to her.'* L-Ispettur xehdet li l-kampanja ta' riklamar kien jammonta ghal €6202.55. Spjegat li *'The booking form was exhibited at fol*

44 of these proceedings. The necessary bookings were actually made with PBS and all adverts were aired as requested. The PBS received the payments from WE Advertise Limited but the payment from Market Handle never reached the WE Advertise Limited. Consequently Marouska Pisani Bugeja contacted Adrian Galea who was the person in charge of Vial to enquire whether he made the necessary payments were he confirmed that he effected the payments by means of two BOV cheques. Cheque number 827 which was payable to Market Handle Limited with the amount of € 3273 and cheque number 860 was payable to Sherry Ann Farrugia with the amount of € 3800. Further more Marouska Pisani Bugeja told us as well that when she enquired with Donald about Clive Pickard because he was the person who approached WE Advertise Limited he was told, she was told that Pickard was no longer an employee at Market Handle because he was on a long study leave were later on it was confirmed that Clive Pickard left Market Handle because he was not being paid his salary.'

Spjegat li s-Sinjura Pisani Bugeja spjegatilha li 'during the meeting that she had at Market Handle, Donald Micallef had requested some advertisement job as well and she had this €25,000 amount still pending. But in regards of this €25,000 they had signed bills of exchange hence she was not claiming this during this investigation.'

Spjegat li tkellmu ma' Adrian Galea li kkonfermat il-verzjoni gia moghtija minn Marouska Pisani Bugeja li kien ghamel il-pagamenti kollha u li kellu 'unsettled matters with Donald in regards that he had requested some TV's to be published and to be given as prizes during a lottery which he did not paid. He also stated that as far regarding the advertisements he had already made his necessary payments. We searched for Clive Pickard in our records and after finding same we spoke to him where he stated he was the person who approached WE Advertise Limited, he made all the necessary arrangements for the advertisements to be aired but he did not continue following the case because he stopped working at Market Handle because he as not being paid. Asked who was taking care of Market Handle at time he told us that Celine Lee Bentley was the Director but it was Donald Micallef who took all the decisions with regards the Company. Also Sherry Ann Farugia who is the person who had one of the cheques written on her name was also spoken to where she stated that when she went to pick up the money from Adrian Vella she was instructed by Donald Micallef to have the cheque written on her name in order to proceed to the offices of Adrian Vella directly to BOV to encash the cheque as he needed the money in cash for another supplier to be paid. She was

also asked who was actually in charge of Market Handle, she also stated that Celine Bentley was the Director but it was Donald Micallef who took care of the business.'

L-Ispettur Anne Marie Micallef spjegat fost affarijiet ohra li *'According to her the other supplier was supposed to be a certain Sebastian Agius. In the meantime a request was made to Bank of Valletta in order to check who encashed both cheques the 1827 and the other 1860. And it resulted that cheque number 1827 which is dated 6th November 2010⁸ was encashed by Dr Malcolm Cassar whilst the other was encashed in fact by Sherry Ann Farrugia.'* L-Ispettur spjegat li tkellmu ma Dr Malcolm Cassar u gie mistoqsi dwar ic-cheque li jinsab a fol 37 u qal li Donald Micallef kien xtara karozza minghandu u kien tah cekk biex jissaraf u zamm seba' mija (700) bhala instalment ghal karozza u tah il-kumplement cash lil Donald Micallef. Xehdet li *'he further stated that Donald Micallef was actually a client of his and that is why he entrust him with this cheque.'* Xehdet ukoll dwar stqarrijiet rilaxxati minn Donald Micallef u Celine Bentley. Spjegat ukoll li *'Adrian Galea u Vial made contact with us where he infomed us about a cheque which was issued to him by Donald Micallef. The cheque was issued in the company's bank account Market Handle with the amount of hundred twenty which cheque is exhibited which is hundred and twelve and seventy two cents, where the signatory of this cheque is Donald Micallef. After checking with HSBC it was resulted that the sole signatory of Market Handlet was actually Celine Bentley.'* Spjegat li Donald ikkonferma li iffirma dan ic-cekk u anke kiteb in-numru tal-karta tal-identita' fuq wara tac-cekk u spjega li *'he gave the cheque to Adrian as he thought that he could sign the company's cheques.'* Prezentat ukoll dokumentazzjoni immarkata bhala Doc AM10 a fol 139 et sequitur li tikkonferma li kienet Celine Lee Bentley li setghet tiffirma cekkijiet. Gew prezentati ukoll informazzjoni dwar il-kontijiet bankarji ta' Market Handle Limited flimkien ma' statements bankarji mal-HSBC.

Adrian Galea fis-seduta tat-tmintax (18) ta' Gunju tas-sena elfejn u tnax (2012) spjega li ghandu hanut jismu YAL Home Electronics fin-Naxxar fejn spjega li kien gie rapprezentant tal-Market Handle biex ihajru jaghmel riklami magghom. Dan ir-

⁸ Skont l-atti u cioe' a fol 249 immarkat bhaa Dok RA1 ic-cekk indirizzat lil Market Handle ghandu n-numru '000827' filwaqt li c-cekk indirizzat lil Cherianne Farrugia ghandu n-numru '000860';

rapprezentant kien jismu Clive. Kien gie spjegat lilu li jaghmlu pakett ta' riklami, fuq ir-radio, fuq television u eventwalment accetta l-pakett u ghamluhom. Huwa kkonferma l-ittra elettronika immarkata bhala AG1 bhala ittra li baghat hu lil Pulizija. Xehed li l-ammont totali kien ta' ghaxart'elef u disa' mitt Ewro. Jghid li l-invoice datata l-hdax (11) ta' Awissu tas-sena elfejn u hdax (2011)⁹. Thallas id-depозitu u l-bilanc gie mhallas permezz ta' cekkijiet u parti minnhom billi ta' prodotti tieghu lil Donald Micallef li beda jigi f'isem il-Market Handle. Ma jafx ghala ried televisions, jghid li xtaq jithallas hekk. Jghid *'l-ammont tat-televisions spiccajna tghajna iktar mill-ammonti li kont dovut li naghti bil-weghda li jgibli wiehed minnhom lura. Taghni parti minn cheque li qiegheed hawnhekk esebit ukoll.'* B'referenza ghall dok AG2 spjega li *'Dan ic-cheque huwa parti minn dan it-television extra li kont imwieghed li jinghata lura u filfatt umbaghad ma ssarrafx.'* Ic-cheque iffirmah Donald Micallef u ghaddieh lilu lil Adrian Galea. Prova jsarfu u ma ssarrafx u prova jaghmel hafna tentativi u telefonati lil Donald Micallef u r-risposti tieghu kien li gej. Jghid li mar anke f'post ta' Xbiex fejn qallu li id-driver hadlu c-cheque book. Donald Micallef irrapprezenta ruhu bhala il-boss tal-kumpanija. Mill-kumpanija ta' Market Handle Limited, dan ix-xhud kien tkellem ma' Clive, Donald u s-Sur Stewart li kien il-mohh tad-designing tal-mod kif ha jigu r-riklami. Ikkonferma li kienet giet is-Sinjura Farrugia f'isem il-Market Handle tigbor l-flus. Xehed ukoll li Marouska minn Where's Everybody qaltlu li r-riklami saru u hi ma rcevitx il-flus ta' dak kollu li ghamlu minn tieghu.

Adrian Galea xehed in kontro-ezami fis-seduta tal-erbgħa u ghoxrin (24) ta' Frar tas-sena elfejn u erbatax (2014) fejn ikkonferma li n-negozju tieghu kien direttament ma' Market Handle Limited. Ikkonferma li bhala hlasijiet ftehm u parti flus u parti barter. Parti cekkijiet, kienu tnejn, deposit, parti cheque u kien saqsieh li jipreferi jiehdu televisions bhala l-kumpliment ta' pagament. Jghid li ha b'aktar ammont ta' televisions mill-proprja pagament kemm kellu. Jghid li *'kien tani erba' mija minn seba' mija u xi haġa li kien fadal. Prattikament fadal xi tliet mija u hamsin speci minn taħt.'* Ma

⁹ Din il-Qorti tinnota li l-invoice li tinsab a fol 32 indirizzata lil Yal Malta hija datata il-hdax (11) ta' Awissu tas-sena elfejn u ghaxra (2010) u tammonta għal €10,910.28

ftakarx jekk ic-cekk a fol 36 Donald Micallef tahulu biex jaghmel tajjeb ghal din id-differenza u lanqas ftakar li tahulu post dated. Spjega li *'Ghandi l-lista shiha ta' bejn wiehed u iehor kif grat, naf li fl-ahhar meta konna ghalaqniha bit-televisions qalli jimporta niehu, kienet xi haġa per eżempju xi haġa ammont ta' television akbar u tani pay lura, daww ma ġewx lura u bqajt qisni nistenna'* Ikkonferma li l-ftehim kien li ha jtih xi television lura. Ikkonferma li fost dawn ir-rikلامي kien hemm ukoll mal-istazzjon tar-radio Vibe FM u television tal-Where's Everybody. Ikkonferma li r-reklamli saru u saru a sodisfazzjoni tieghu. Dwar meta iltaqa ma' Marouska Pisani Bugeja mill-Where's Everybody ikkonferma li giet il-hanut tieghu biex tbieghlu rikلامي, l-istess tip ta' negozju. Jghid li baqa jibza' mir-reklamli. Dwar fol 39 cekk mahrug lil Charienne Farrugia qal li giet ghandu tigbor f'isem Market Handle. Ma qaltlux li kellha vertenza ma' Market handle dwar nuqqas ta' hlas ta' pagi.

In ri-ezami ikkonferma li ghandu kopja tal-ircevuta a fol 33 tal-process, spjega li n-notament inkiteb li parti tal-bilanc li jkun fadal, li Charianne farrugia kitbitha u ma jafx ghala kitbet li cash to pay supplier as stated by Donald.

Krucjali hija x-xhieda ta' Marouska Pisani Bugeja datata t-tmintax (18) ta' Gunju tas-sena elfejn u tnax (2012) li xehdet li hija Sales u Marketing Manager mal-Where's Everybody fejn il-kumpanija jisimha We Advertise Limited. Hi spjegat li *'As an advertising company sometimes we get our clients direct or sometimes we get them through advertising agency. The purpose of an advertising ageency is to get us the actual clients, they gather the money themselves, they will give them to us and keep their 15% share. On one particular day I was called by one's of Donald's employees. His name is Clive, if I am not mistaken, and he asked for the rate cards.'* Marret l-ufficini tagghom u ltaqghet ma' Clive u Donald u ddiskutew rikلامي, target markets. Donald qalilha li kien responsabbli ghal operations tal-kumpanija. Tghid li *'He told me that eventually he will get us more business and he also mentioned a campaign of 25,000 Euros.'* Spjegat li *'Eventually two campaigns went. One of YAL which was a television production of television companies. I mean television sets not television commercials, and a further campaign of 25000 Euros to adverstise Contact Handle, which at that stage he had told us that it was a competitor of*

Yellow Pages. We issued the invoices. Obviously the invoices were the amounts plus the VAT and less their 15% commission, and we started to chase the payments. Once we started to chase the payments we've been promised over and over again yes the payments will be coming, trust me, don't worry. Then I went to meet them with my financial controller to do a payment schedule. They signed the payment schedule. It wasn't honoured the first payment because there were two different invoices and obviously from our end we started legal procedures through our lawyer. Eventually we usually chase clients constantly and we met this guy of YAL. I believe his name was Adrian. We went to him. We never met him before. This was the first time, and he told me as I insisted to meet you because my end I had done once a campaign with you and I paid it. And for me that was new. And he told me yes I did, I paid Donald. But the money never reached us.' Xehdet li ma thallas l-ebda ammont. L-ammont kien madwar sitt'elef u spjegat li *'We had to reduce the 15% commission because you have to give them their share.'* Dwar Doc AG1 qalet li *'This is of YAL. This is a booking form. Normally when advertising is sold we don't make an actual contract. The booking form is the actual contract which includes all the details, station, the number of commercials, this is the one.'* Ma rceview l-ebda ammont. Saret referenza ghal kwerele immarkata bhala Document A. Spjegat li l-booking form hija indirizzata lil Public Broadcasting services ghax il-kuntratt sar tramite l-PBS. Mistoqsija sarux pagamenti tramite il-Public Broacasting Services wiegbet *'No. Public Broadcasting Services have a procedure of filling in the credit approval forms. Since this was a new agency there had to be certain research done and from our end we decided to take it over our company and go through We Advertise Limited instead we go through Public Broadcasting Services. So Donald can have his 15% share'* Kienu huma stess li halsu lil Public Broadcasting Services.

Marouska Pisani Bugeja xehdet in kontro-ezami fl-erbgha u ghoxrin (24) ta' Frar tas-sena elfejn u erbatax (2014) fejn ikkonfermat li r-relazzzjoni guridika kienet bejn We Advertise Limited u Market Handle Limited u mhux ma' Adrian Galea. Mistoqsija tispjega r-relazzzjoni guridika bejn Market Handle Limited, We Advertise Limited u PBS spjegat li *'Basically We Advertise is a company which buys the air time or have air time available on PBS which is the national station. We produce various programs. And Market Handle approached myself on behalf of We Advertise Limited to advertise on our programs as*

an agency. They don't advertise their services, they were representing someone else.' Mistoqsija jekk il-booking kien sar direttament ma' PBS mhux magħhom jigifieri minn Market Handle sottomessa direttament ma' PBS wiegbet 'Initially yes but then Donald decided to change the booking form to We Advertise. It is a standard procedure that we do not know the client, however we know the agencies.' Ma kienx hemm ftehim miktub tghid li 'the normal procedure when it comes to advertising agencies is that they issue a booking form to the company, in this case our company.' Tghid li 'We have the booking form and that is enough to book advertising with our company,' Bhal credit terms tghid li normalment jinghata 30 sa 60 gurnata credit terms u kkonfermat li dawn gew offruti anke lil Market Handle. Mistoqsija 'am i correct in stating that even if Adrian Galea did not pay Market Handle Limited, Market Handle Limited would have had to pay you.' wiegbet 'Yes definitely.' Mistoqsija 'And am I also correct to state that Adrian Galea was in no way, or rather Market Handle Limited was in no way bound or obliged to ask Adrian Galea to issue payments in the name of your company?' wiegbet 'No I think I must clarify this to the Court: the role of the agency is to approach our company or any other media company and book advertising. In our case we might know the client or not but in this case we have never met the client. The company in this case Market Handle would collect payment, keep the fifteen percent and pass the rest to our company.' Ikkonfermat li anke jekk Adrian Galea ma hallas lil Market handle, Market handle xorta kellha thallas il-kumpanija. Spjegat li 'the agreement was with Market Handle, irrelevant of who the client is.' Ikkonfermat li Market Handle Limited ma kinitx se ssaqsi lil klient johrog pagament f'isem We Advertise Limited. Ikkonfermat li aktar il-quddiem avviciinat lil Adrian Galea personalment, li 'I had no idea that Adrian was our client because when there was the promotion this was never promoting YAN, it was promoting a product that YAN was, so I have never known that I am talking to the same person, however when I went for the meeting he told me 'your company and myself we are in a bit of a bad taste', and he explained'. Ikkonfermat li Vibe FM ma ghandux x'jaqsam mal-kumpanija tagħhom. Ikkonfermat li l-invoice f'pagna 32 fejn hemm innizzel Vibe FM ma ghandux x'jaqsam mal-claims tagħhom.

In ri-ezami kkonfermat li ma ltaqghetx ma' Celine Bentley qabel izda iltaqghet maghha darba go cafeteria taht l-ufficji tagghom f'Valley Road Birkirkara fejn kellhom meeting hi u l-financial controller dwar pagamenti.

Edward Dalmas in rapprezentanza tar-Registratur tal-Kumpannija fis-seduta tattlieta u ghoxrin (23) ta' Lulju tas-sena elfejn u tnax (2012) prezenta l-articles u l-memorandum of association tal-kumpanija Market Handle Limited bin-numru tal-kumpannija C 49546 fejn jirrizulta li d-Direttur ta' din il-Kumpannija kienet Celine Lee Bentley u anke r-rapprezentanta guridika, legali u kontrattwali hija f'idejn id-Direttur.

Sherry Ann Vassallo¹⁰ xehdet fis-seduta tal-hmistax (15) ta' April tas-sena elfejn u tlettax (201) fejn spjegat li kienet impjegata ma' Market Handet minn Novembru tas-sena elfejn u ghaxra (2010) sa Frar tas-sena elfejn u hdax (2011) u waqfet taqdem maghhom ghax suppliers li ma thallsux nehhewlhom l-ghamara kollha u ma bdewx jithallsu, ma kellhomx computers fuq xiex jahdmu. Spjegat li Donald Micallef kien ic-CEO u Celine Bentley is-sid tal-kumpanija. Spjegat li *'I was dealing with another supplier Sebastian Agius which I bought material for another client from and he wasn't paid for this material. Donald had asked me to go and collect the cheque from Vial and put it under my name so that I can cash it. And I thought that I could pay Sebastian Agius the supplier which I had bought the other material from. This didn't happen and, I don't know what Donald did with the money I handed to him'*. Ikkonfermat li ic-cekk jinsab a fol 39. Ikkonfermat li hemm il-firma u numru tal-karta tal-identita taghha fuq wara taccekk. Spjegat li kitbet nota li qieghda issarfu fuq isimha biex jithallas supplier u dan peress li hasset li ahjar tikteb hekk peress li ma kinitx qieghda tithallas u kienet ila tigrari warajh biex jithallas is-supplier Sebastian Agius.

Cherianne Vassallo xehdet in kontro-ezami fis-seduta tal-erbgha (4) ta' Gunju tas-sena elfejn u erbatax (2014) fejn spjegat li hadet proceduri kontra d-direttur tal-kumpanija u Donald Micallef dwar salarji li ma thallsux. Ikkonfermat li gew liberati.

¹⁰ Fl-atti xi kultant imsejha 'Cherianne Vassallo' u 'Cherianne Farrugia'.

Tghid li kellha lista ta' nies *'that Donald had asked me to go and collect money and keep them instead of the wage because he didn't have money to pay me.'* Spjegat li *'I had had the permission from Donald to go and collect certain money and keep it because he didn't pay me for a long time.'* Spjegat li dawk li hadet ghalha ghamlithom f'isimha. Dwar ic-cekk li jinsab a fol 39 tghid li sarfitu in-Naxxar u cahdet li zammet il-flus. Spjegat li *'Donald just sent me for the money which it wasn't even my job to go and collect the money but he promised me he was going to pay my supplier which was chasing me for the money'*. Spjegat li *'he had sent me to collect this cheque to Etial because they did some work for them which I don't even or i wasn't even involved and they had a supplier who was chasing me for the money because he printed some material for another client and Donald kept promising me that he is going to pay this supplier, the supplier was chasing me for the money because he wasn't paid, so he asked me to go and collect the money, get them in cash, and he promised me he will pay this supplier.'* Dan is-supplier kien jismu Sebastian. Tghid li kienet tafda lil Donald ghax kienet tahdem ghalih. Mistoqsi *'Yes or no jigifiri ok you trusted Donald'*, wiegbet li *'Yes and no because honestly even here I said let me write to be sure because it was a big amount..'*; Tghid li weghda li kien ser ihallas il-flus lis-supplier li baqa jigri warajha ghal flus. Baqghet tigr warajh, qal li se jaghtih lis-supplier izda ma ghamilx dak li wieghed u s-supplier baqa jigri warajha, icempillha, u jsegwiha. In ri-ezami qalet li qatt ma baghtha tigbor cekkijiet, kemm dan. Ic-cekk ta' Adrian Galea ma kitbux fuq Donald Micallef izda f'isimha ghax Donald qalilha tmur tigbor ic-cekk u hallas lis-supplier. Peress li kien kaz urgenti li kellu jithallas s-supplier, biex ma jintilifx hin, qaltlu jpoggih f'isimha u ssarfu u jkollu l-flus f'idejh biex meta jigi s-supplier jigbor il-flus tkun ehfef. Ma tahsibx li Yal kellhom problema li johorgu c-cekk fuq Donald. Tahseb li c-cekk issarraff HSBC izda ma tiftakarx ezattament. Xehdet li ma tafx kemm kien l-ammont ta' pagi tal-claim li ghamlet izda kienu eluf.

Clive Pickard fis-seduta tal-hmistax (15) ta' April tas-sena elfejn u tlettax (2013) xehed li *'I was in a position that of a Marketing Executive. Mainly my job basically was to get clients and eventually get them to purchase and but the service we offer which is basically related to Marketing whether signage, posters, websites and I was employed by Celine Bentley.'* Spjega li kien hemm klijent partikolari fejn biegh hdax-il elf ewro f'materjal

ta' marketing b'televizjonijiet u publicita'. Mar ghand il-klijent u staqsieh ghal depozitu. Dan il-klijent huwa Yal Malta. Spjega li huma taw is-servizz, huma talbu lil Where's Everybody biex iwasslu dawn it-TV Commercials. Huwa kien tkellem ma Marouska Bugeja minn Where Everybody. Ma jafx jekk sarx xi pagament lil Where's Everybody. Huwa kien sussegwentement telaq il-kumpanija, ghalhekk ma jafx dwar pagamenti lil Where's Everybody. Kellu jitlaq mill-kumpanija ghax ma kienx imhallas. Dwar Donald spjega li *'He was basically in charge, he was from logistic point of review he was Managing the Company, the operations everything. Appointing people, clients. He was basically the man to refer to.'* Dan kien lejn l-ahhar tas-sajf tas-sena elfejn u ghaxra (2010). Spjega li *'I asked Marouska to come over the offices in order to give us a brief of their sort of, what the services are, what they can offer. Everyone was present except Celine Bentley.'* Ikkonferma li kien prepara booking forms ghal YAL u gharaf dokument 44. Spjega li hija booking form biex jaghmlu booking ta' TV Commercials li kien pjana ghal klijent.

Audrey Ghigo fis-seduta tal-hmistax (15) ta' April tas-sena elfejn u tlettax (2013) xehdet in rapprezentza ta' HSBC Malta plc. B'referenza ghal dokument AM 10 spjegat li *'Doc AM 10 is the mandate for the signing officer of accounts held in the names of Market Handle Limited'* u li *'According to this mandate Miss Celine Lee Bentley will sign for the bank documents'* u d-dokumenti l-oħra huma bank statements ta' Market Handle Limited bin-numru ta' registrazzjoni C 49546.

Audrey Ghigo xehdet fis-seduta tas-sitta u ghoxrin (26) ta' Jannar tas-sena elfejn u hmistax (2015) dwar cekk a fol 36, spjegat li *'The transaction is not being shown on the bank statement however it may be that someone had presented the cheque and it went in a suspense account of HSBC Bank Malta plc and then the cheque was returned referred to drawer'*. Xehdet li fit-tlieta (3) ta' Marzu tas-sena elfejn u sebgha (2007) kien hemm bilanc ta' hdax-il centemzu, b'referenza ghal fol 189. Mistoqsija *'So it couldn't have been encashed because there were no funds?'* wiegbet *'Yes it could be because there were funds in the account'*. Il-firmatarja tal-kont kienet Celine Lee Bentley. Ma tafx jekk il-bank waqqafx cekkijiet minhabba il-firma fuq dak ic-cek. Spjegat li *'the signing*

officer of this company of the Market handle Limited was Celine Lee Bentley, she was the only person that she was able to represent the cheques'.

Audrey Ghigo regghet xehdet fis-seduta tat-tnax (12) ta' Marzu tas-sena elfejn u hmistax (2015) dwar cekk numru 76 mill-kont 085125755002 spjegat li *'was returned referred to drawer on the 17th February 2011 and I've been asked regarding the reason why it was sent to referred to drawer. Referred to drawer can include any reason because the bank is telling the payee to go the drawer and if something is wrong with the cheque the drawer must notice.'* Skont l-kont bankarju dak iz-zmien ma kienx hemm flus f'dak il-kont. Il-firmatarju tal-kont kienet Celine Lee Bentley. Jista' jkun meta l-firmi ma jaqblux ma jissarrafx izda ma tafx jekk kinitx dik ir-raguni li ma ssarafx ic-cekk.

Romwald Attard fis-seduta tal-hmistax (15) ta' Lulju tas-sena elfejn u tlettax (2013) xehed in rappresentanza ta' Bank of Valletta. Spjega li *'cheque number 860 issued from account number 40014617795 for the amount of three thousand eight hundred (3,800) was effectively encashed by holder of ID card number 52178M...'* Spjega li *'the other cheque 827 issued from account number 40014617795 for the amount of three thousand two hundred seventy three (3,273), it was encashed by holder of ID card number 630982M pertaining to Dr Malcolm Cassar.'* Ikkonferma li xehed dwar RA1. Gew ipprezentati zewg dokumenti u cioe' kopji tac-cekkijiet a fol 249 immarkata bhal Dok RA1 u ittra b'informazzjoni indirizzata lil Kummissarju tal-Pulizija a fol 250 u mmarkata bhala Dok RA2.

Dr Malcolm Cassar xehed fis-seduta tal-hmistax (15) ta' Lulju tas-sena elfejn u hmistax (2015) fejn spjega li kien ircieva telefonata minghand Spettur dwar cheque u kien mar id-Depot u kien biegh karozza lil Donald b'pagamenti mensili u dawn mhux dejjem kienu onorati u jaf kien hemm ammont ikbar minn tlett mija u hamsin ewro (350) li kien jaghtih fix-xahar. Spjega li *'He told me, "I don't have any cheques, so you may have this cheque, I'll cash it." I told him, "it's better if I cash it and give you the rest that I am owed." And that is basically the story.'*

Joseph Saliba in rappreżentanza tal-Employment and Training Corporation fis-seduta tal-hmistax (15) ta' Lulju tas-sena elfejn u tlettax (2013) prezenta l-employment history tal-imputati. Market Handle Limited ma tirrizultax f'din l-employment history prezentata a fol 255. Giet prezentata lista ta' impjegati ma' Market Handle, f'din il-lista ma jirrizultax isem l-akkuzat Donald Micallef.

L-appellant Donald Micallef ha l-pedana tax-xhieda fis-seduta tal-hdax (11) ta' Meju tas-sena elfejn u hmistax (2015) u spjega li *'Market Handle Limited which was a communications company taking care of advertising and marketing campaigns for clients had employed me to be a freelance Chief Executive Officer for the Company'*. Fost affarijiet ohra spjega li *'as a start up it was very hard, we were trying to compete with companies which were established and had a name within our islands, we were managing to start creating attention in fact we had many important people who called us themselves for meetings.'* Spjega li *'We advertise where's everybody and they have a few programmes on TV including Xarabank, Bondi Plus they have a whole list of programs and they were our suppliers. They had advertising space which we used to book from them and Yal was a client he was going to start importing a new brand of TVs.'* Spjega li *'Where's Everybody were suppliers to us, they had advertising space which we used to book for us or our clients that's basically it. We used to like any other supplier, we used to book work from them'*. Kien hemm 90 gurnata credit bhal il-maggorparti ta' kumpaniji ta' riklamar. Spjega li *'although we're booking for clients they always bill Market Handle because Market Handle is the client not our client for them'*. Spjega li *'Yal Home and Electronics was a client that one of our brand executives one of the employees got us as a key client in the company, he wanted to launch a new brand in Malta of TVs called AOC and he basically booked our services for branding, marketing, advertising and that include obviously booking adverts around like bill boards, radios in fact I remember that AOC didn't only for the campaign of AOC of Yal we didn't only book Where's Everybody, we booked bill boards, we booked radio where the number of advertising mediums which we used'* Yal Home and Electronics kienu l-uniku klijent ma' Where's Everybody izda Market Handle Limited kellhom klijenti ohra.

Spjega li *'we basically invoiced the clients some clients we asked them for a deposit upfront and then the balance within ninety days from project finishing. Every client had a different agreement because it depends on what they required, if they require a one time job which is going to take us a month to produce such as a website we charge them half upfront and half on deliver but if it is a campaign that is on going for like three months or six months or a key client which we have for a year, we charge them for a monthly basis most of the time, it depends on the client really'*. Spjega li *'The money goes into Market Handle's account because at the end of the day they are paying Market Handle and Market Handle used the money to pay whatever Market Handle needs to pay.'* Market Handle kienet tuza l-BANIF bank u kellhom sittin elf overdraft li inqasmet bejn overdraft u loan ma Banif Bank. Mistoqsi *'And when you say that the money which you collected from clients went into the Banif bank account are you referring to the overdraft account or to any other account?'* wiegeb *'It usually goes to the overdraft account said that sometimes we had clients who had just paid us there and then and co incidentally we needed to pay the supplier there and then so the money wouldn't go through any banks and we just paid in cash. It was quiet common practise that a company which has just started we sometimes didn't have the time to go to the bank and then send the transfer.'* Spjega li Market Handle mal-ewwel gurnata affacjat diffikultajiet finanzjarji. Spjega li fil-hmistax (15) ta' Jannar Alfa Company Limited wiehed mis-suppliers li kien jissuplixxihom b'ghamara, ghamlet mandat. Hadulhom l-assi, l-ghodda li setghu uzaw biex ihallsu d-dejn. Jghid li hemm kawza pendentu kontra Alfa Company Limited ghad-danni sofferti. Spjega li *'when you collect money from clients irrespective which client it is, sometimes we have bills which are being expected to be on the same date or they were already meant to have been paid so we just take, I was the one in charge, just take the money that there was and pay whatever was needed to be paid immediately like for example in certain stages it was wages'*.

Spjega li Dr Malcolm Cassar kien wiehed mill-Avukati tal-kumpanija. Ikkonferma li c-cekk a fol 249 tah lil Dr Malcolm Cassar peress li kien jaghmel il-'legal paper work' bhal kuntratt tal-impjieg u kien anke xtara karozza minghand Malcolm Cassar u fuq livell personali li ma kellha x'taqsam xejn mal-kumpanija u gieli kien ihallsu bi flus tal-kumpanija. L-akkuzat Donald Micallef qatt ma ha paga, kellu ftit flus l'hemm u

l'hawn ghax l-ewwel kienu jhallsu l-impjegati l-ohra. Ikkonferma li Cheryanne Farrugia kienet impjegata mal-kumpanija u li kienet fethet kawza fejn qalet li ma thallsitx il-fuq minn sittax-il elf ewro f'pagi. Jghid li l-Qorti xehdet li kienet gabret xi flus minghandhom, hadet ic-cekk ghalha innifisha. Hadet flus minghandu tramite Market Handle Limited u anke sarfet cekkijiet minghand klijenti u zammithom ghalha biex tkopri l-paga taghha. Jghid li ma kinitx Prattika ta' Market Handle, li c-cekkijiet kienu jkunu fuq Market Handle Limited, jghid li *'I'm not going to say if this was a one off case when she was taking care of payments and maybe she put it on it, I'm not sure, but if I recall well it wasn't the case, she just put the cheque on her name and she put other cheques on her name'*.

Jghid li ltaqa ma Adrian Galea f'numru ta' okkazzjonijiet. Jghid li *'were promoting our own product a company product was called Contact Handle, was a local directory and we were giving out some prizes during Christmas time as part of his payment had awarded us with a number of tv sets which we had given away during a program of Where's Everybody and I believe it was Hadd Ghalik.'* It-televizjonijiet kienu moghtija bhala rigali minghand Market Handle Limited li kienet qieghda tirraprezenta prodott taghhom stess Contact Handle matul program li jismu *Hadd ghalik*, program ta' Where's Everybody. Dwar jekk hemm bilanc bejn Market handle u Adrian Galea jew Yal Home and Electronics, wiegeb li *'I believe in the end we were short because once he gave us the fees, we were short of something like just over a hundred euros which were to award to Mr. Galea but if I'm not mistaken and I remember apart from having paid all that Mr. Galea once he gave us the fees to give them out as prizes Market Handle was actually in due with the gentleman of something like something of one hundred euros again this is if I'm not mistaken.'* Market Handle ma halsitx ghax kien hemm sekwestru u waqfet topera, ma setghux joperaw aktar. Jikkonferma li ghadhom fl-istess sitwazzjoni.

In kontro-ezami qal li kien freelance employee ma' Market handle. Jghid li ma kellux ghalxiex jirregistra l-impjieg ghax huwa self employed. Ikkonferma li ghandu pendenza ta' l fuq minn sittin elf bhala pagi izda ma prezentax ilment. Ikkonferma li ghandu anke sekwestru f'ismu. Mistoqsi jekk kien ghalhekk li ma kellux cekkijiet

f'ismu wiegeb li *'No Donald Micallef cannot, I cannot take cheques on my names on the company, apart from that if I had cheques addressed to Donald Micallef I can still go to the bank and cash them'*. Jghid li xorta jista jmur il-bank u jsarfu, li ma jistax huwa jiddepozitah. Mistoqsi min kien il-firmatarju tal-kontijiet ta' Market Handle wiegeb *'Originally Celine had signed a paper were I could as well sign on behalf of the company but that paper fell through and I wasn't so Celine was finally the only signatory allowed. We got to know that because the bank had called us to advise me.'* Il-karti kienu dejjem jghaddu tramite l-accounting firm, rari tkellem mal-bank, l-accountancy firm ghamlet kollox. Jikkonferma li hareg u ffirmata cekkijiet mahruqa mill-kumpanija, jghid li *'Yes and most of them came back because there was my signature and not that of Celine'*. Mistoqsi jekk staqsiex lil bank qabel ma qabad jiffirma c-cekkijiet qal *'With Nexia BT our accountancy firm because Celine would have been abroad for quite some time she had asked them to put me as a signatory but somehow I wasn't a signatory and I learnt that afterwards'*. Ikkonferma li kien irrilaxxa stqarrija u kien mistoqsi dwar ic-cekk a fol 36. Jikkonferma li kien iffirmata cekkijiet u dawn intbghatu lura mill-bank jew ghax kien iffirmata hu jew ghax f'mument ma kienx hemm flus fil-kontijiet meta support kellu jkun hemm. Xehed li *'Yal was paying for our service Market Handle's service and advertising in marketing.'* Spjega li *'We produce advertising for Market Handle Limited not for Yal'* Mistoqsi jekk il-pagament ta' Yal lil Market Handle jinkludix ir-riklam maghmul minn WI wiegeb *'it will include a 360 approach to what we built them including the advertising too yes'*. Mistoqsi ghala ic-cheques maghmula minn Yal lil Market Handle li kienu jinkludi riklam minn 'WI'¹¹, 'Wi' qatt ma thallset ghar-riklam wiegeb li *'as a company with a company with Where's Everybody, we had an agreement where we paid within ninety days for example I'm not sure if it was ninety days with Where's Everybody but with most companies that was the case. What we do is when we get payments we put them into our company account, whether in bank or whether to other debts that the company has immediate debts. What happened is that by the time that it was the time that Where's Everybody to get paid, the company went into a granishee so we couldn't collect any more money and therefor pay Where's Everybody'*. Ma kienx inkarigat minn accounts, kellhom accountant ghal dak. Spjega li *'this is money coming into our*

¹¹ Ghalkemm fit-traskrizzjoni hemm imnizzel 'Wi', din il-Qorti qiegħda tifhem li għandha taqra 'WE'.

account, now our account most of the time was with a minus because we started off with a sixty thousand loan from the bank So any money that comes in used to go either to this loan or else towards other debts that the company has. So it's not because Mr. X booked a service from us and for us to produce that service we had to use Mr. Y and that the money of Mr. X needs to go to Mr. Y. We take the money and we give the money to the first person that is due that money first, because they're not paying Mr. Y, they are paying us'. Jghid li 'wi knew about the garnishee about everything from day one...' Qalilhom li 'as soon as we finished the Court case against Alpha Comany Limited and at that time there was Fahrenheit Company Limited, I said you will be the first to be paid'. Ma qalilhomx li kienu qed joperaw b'minus. Mistoqsi 'But they never were aware that, or you informed them that you won't be paying immediately or there would be some problems in paying them' wiegeb 'If I ever did that would have never worked with any company, it's business hux'. Dwar ic-cekk msarrafminn Dr Malcolm Cassar rega qal li kien jiproducti xoghol ghal Market Handle.

Dwar l-allegazzjoni tieghu li Cheryanne kienet hadet cekkijiet f'isimha li suppost kienu pagabli lil Market Handle qal li ma ghamilx rapport ghax jghid li *'when we countered the amount which she had taken and the amount that she was due from the company, she was still in a slight minus with us.'* Gie mistoqsi dwar li fl-istqarrija qal li jista' jkun li kellu bzonn li Cheryann tmur il-bank minhabba li kien imhabbat u li allura taghha l-abbilta' li taghmlu f'isimha, jghid li hija possibilita.

Din il-Qorti sejra anke taghmel referenza ghall-istqarrijiet rilaxxati mill-akkuzat Donald Micallef fis-sitta u ghoxrin (26) ta' Frar tas-sena elfejn u tnax (2012) u fid-disgha u ghoxrin (29) ta' Marzu tas-sena elfejn u tnax (2012) u fejn ghalkemm ma nghatax id-dritt li jkollu Avukat prezenti waqt it-tehid ta' dawn l-istqarrijiet, ma tirrizultax kontestazzjoni dwar l-ammissibilita' ta' din il-prova. Fl-istqarrija rilaxxata fis-sitta u ghoxrin (26) ta' Frar tas-sena elfejn u tnax (2012) xehed li jiehu hsieb Contact Handle.com, business directory website. Qed jahdem ukoll fuq Share Handle.com u Media Handle.com. Dan huwa l-impjeg tieghu. Spjega li 'F'Jannar 2011 Market Handle sofriet mandat ta' qbid li waqfita milli taghmel iktar negozju. Ghall-

habta ta' Gunju 2011 meta dan il-mandat gie deciz fejn ahna niehdu l-affarijiet taghna fosthom computers, servers, ghamara, u affarijiet li kellha bzonn u li kienet topera bihom l-Market Handle, meta morna nigbru l-affarijiet minn ghand il-Fahrenheit qalulna li l-container kienu caqalquh mill-post fejn kienu suppost zammewh bil-Qorti li kien gewwa Attard u minflok mexxewh ghal B'Bugia. Kienu qalulna ukoll li dan il-container gie miftuh minn persuni mhux maghrufa u rrizulta li bosta oggetti kien misruqa. Sal lum ftahna mandat lil Fahrenheit ta' €450 000 u ukoll bhalissa l-awdituri li huma Nexia BT qed janalizzaw il-hsara kollha li saret lil kumpanija kif ukoll lil terzi persuni li kienu nvoluti fil-kumpanija biex nippresentaw estenzjoni tal-mandat li ha taqbez probabilment il miljun u mitejn elf euro. Bhala advertising agency ahna, Market Handle Ltd, kienet tiehu hsieb numru ta' progetti ghal bosta klienti. Wiehed minn dawn il-klijenti kien YAL filkaz ta' dan il-klijent kien hallas deposit li ma niftakarx l-ammont kemm kien minn quddiem, li Celine li hija d-direttrici tal-kumpanija Market Handle kienet awtorizzatni li nuza parti minn dan id-deposit bhala paga tieghi. Apparti d-deposit YAL kien hallas d-differenza tal-flus bhala barter f' televisions li ntuzaw ghal premijiet u kompetizzjonijiet li ghamilna ma WE stess fuq il-programm Hadd Ghalik. Where's Everybody sal lum ghadhom ma thallsux ghax minhabba li nqala dan il-Mandat u l-kaz ma Farheneit qed nistennew biex jinqata l-kaz u bazikament nhalsu lil kullhadd. Sa frattant jiena personali offret lil Where's Everybody biex l-kumpanija Market Handle Ltd, tiffirmalhom kuntratt fejn mill-flus li jintrebhu minn dan il-kaz meta jispicca jiehdu s-somma taghhom mmedjatament. Kull ma konna ghamilna kienu kambjali li ffirmajt ghalijhom jiena dak iz-zmien, li ma gewx onorati minhabba li ghadna ma gabrniex l-flus u minhabba li l-kumpanija m' hiex topera u l-ftit l-flus li kien hemm kemm tal-Kumpanija kif ukoll flus personali tgahna jigifieri tieghi u ta' Celine gew uzati bhala spejjez legali fil-Qorti u dan mhux biex jithallsu Where's Everybody imma kullhadd.'

Mal-kumpanija Market Handle Ltd kien jahdem bhala free lance consulatant bit-titlu ta' Chief Executive Officer. Xohghlu kien jinkludi '360 degrees kull ma jigri fil-kumpaniji, pratikament kollox. Id-decizjonijiet kont nohodhom 100% jiena.' Mistoqsi dwar li r-rapprezentanti tal-kumpanija WE Advertise Ltd rrapurtaw ukoll li hu personali f'isem l-kumpanija Market Handle LTD talabha li jsir xoghol ta' reklamar ghall-kumpanija contact handle fejn l-ammont ta' €25,000 ghadu pendent minn naha tieghu wiegeb li 'Contact Handle sofriet danni kbar minhabba dan il-mandat fuq Market

Handle Ltd, u dan kien jinkludi t-turnishing tad-ditta minhabba fl-assocjazzjoni taz-zewg kumpaniji. It-tnejn li huma ghandhom Handle fuq wara, gew rriklamati flimkien u huma assocjati li huma l-istess haga fejn fir-realta m'humiex. Il-flus ghadhom pendenti minhabba l-fatt li fil-present m'hemmx flus. Market Handle u Contract handle ma ghandhom x'jaqsmu xejn ma xulxin. Fi zmien li Market handle kienet topera bhala kumpanija, kienet timmanigja l-Contact Handle pero ma kinitx l-proprjetarja taghha.' Mistoqsi x'ghamel bil-flus migbura minghand Adrian Galea tal-Yal wiegeb, 'Bhal kull flus ohra li nigbru ghal kumpanija f'dan il-kaz l-market handle kienu jigu mhalsin djun pendenti li kien ikollha l-kumpanija stess. F'dan il-kaz niftakar li kont halast parti minn dak l-ammont li gbarna minghand il-YAL jiena personali ghax kelli xi pagamenti li kelli bzonn naghmel u kelli niehu l-flus mill-kumpanija stess. L-pagamenti personali kien jinvolvi xi pagamenti tal-karozza tieghi. L-bqija tal-flus thallsu xi nies ohrajn li kellhom jiehdu minghand Market Handle.'

Mistoqsi jekk fil-board meeting ma Maroushka Pisani kienx prezenta ruhu bhala direttur tal-kumpanija Market Handle wiegeb 'Meta ppresentajt ruhi ma Maroushka ppresentajt ruhi bhala Chief Executive Officer, kif filfatt kienet tghid l-business card tieghi. Tant hu vera li anke fuq magazine's lokali bhal l-Economic Update jiena dejjem gejt indirizzat bhala Chief Executive officer u Celine Lee Bentley bhala direttrici.' Spjega li fil-kaz ta' Where's Everybody meta sar il-mandat lanqas biss kienu ghaddew id-disghin gurnata kif normalment jithallas biha l-industrija tal-advertising. Ma jiftakarx jekk kienx hemm miktub izda hekk jihallsu normali bl-indsstijra tal-advertising. Spjega li l-pagamenti li jigbru, jigbruhom ghal accounts ta' Market Handle Ltd biex meta jasal iz-zmien jithalsu terzi parti. Minhabba li minn Jannar tat-2011 ma baqghux joperaw ma ngabrux iktar flus jew kwazi ma ngabar xejn aktar flus u allura l-fondi li kien hemm fil-Kumpanija intuzaw biex jithalsu kemm kredituri ohrajn kif ukoll affarijiet legali. Stqar li l-kumpanija Market Handle Ltd qieghda fi processi legali kontra fahrenheit u ukoll qieghda fi processi legali kontra l-kumpanija ghax xi persuni qed ifittxu lil Kumpanija Market Handle, bhal f'dan il-kaz Where's Everybody.

Mistoqsi dwar ic-cekk tal-Bank of Valletta numru 827 bl-ammont ta' €3273 imsarraf mill-Avukat Malcolm Cassar fis-sitta (6) ta' Novembru tas-sena elfejn u ghaxra (2010)

meta hu mahrug f'isem Market Handle Ltd minn Adrian Galea gie spjegat li 'Malcolm bhalma spjegajt qabel kellu jiehu xi flus minghandi rigward pagamenti ta' karozza, sarraf ic-cekk u tghani d-differenza. Qieghed nigi muri wara tac-cekk u mistoqsi jekk narafx xi firem jiena nirrispondi li qieghed naraf l-firma ta' Celine Bentley o.b.o Market Handle Ltd.' Dwar cekk tal-Bank of vallta bin-numru 860 bl-ammont ta' 3800 datat is-sbatax (17) ta' Dicembru tas-sena elfejn u ghaxra (2010) mahrug f'isem Cherianne Farrugia minn Adrian Galea, u ghala hareg f'isimha wiegeb li 'Cherianne Farrugia kienet mpjegata ta' Market Handle Ltd., bhala Sales Executive u l-probabilita kienet li hadt dak ic-cekk bhala l-paga taghha. Bl-istess mod ma niftakarx ezatt x'kienet is-sitwazzjoni.' Mistoqsi jekk qalx lil Cherianne Farrugia sabiex taghmlu f'isimha, issarfu immedjatament kif tiehdu u tghaddilu l-flus kollha cash wiegeb 'Jista' jkun li kelli bzonn li Cherianne tmur l-bank minhabba li jiena kont mhabbat u allura tajta l-abilita' li taghmlu fuq isimha. Jista' jkun li flus ridthom biex nhalsu xikredituri tal-kumpanija.' Mistoqsi dwar invoice bin-numru 00124 datat 11/08/2010 mahrug minn Market Handle Ltd lil Yal Malta bl-ammont ta' €7,637.28, wiegeb 'Iva nikkonferma li hemm l-firma tieghi u qieghda fuq il-kliem Client's Signature fejn jiena ffirmajt minhabba ammont ircevut ta' flus minghand Adrian Galea. Qieghed naraf l-firma tieghi ukoll hdejn kull ammont ircevut. Apparti l-firma ta' Cherianne hdejn l-ammont ta' €3800 u hemm indikat cekk BOV 860. Fl-ahhar tad-dokument hemm mnizzel 0 fejn jindika li l-bilanc ta' Adrian Galea f'isem Yal ma Market Handel gie xejn, igifieri thallas kollox.' Mistoqsi jekk Adrian Galea f'isem YAL kien tah dak l-ammont specifikament sabiex hu jhallas il-WE ghax-xoghol ta' reklamar li kien sar ghalih wiegeb 'Le, Adrian Galea hallas ghas-servizzi ta' Market Handle, jekk Market Handle kella d-dejn ma terzi parti dak ma kellux jaqsam mal-pagament li Adrian kellu jghati lil Market Handle. Market Handle kienet dejjem tkun hi l-kumpanija li jew ghandha tiehu jew inkella ghandha tghati.' Ikkonferma li kieku il-flus li hallas Adrian Galea lil Market handle ghas-servizz ta' reklamar ghaddew lil WE Advertise Ltd ghax-xoghol li kienu ghamlu tal-YAL, ma kienx ikun hemm l-ammont ta' aktar minn €6000 pendenti fuq dan il-kaz izda jghid li 'meta nigbru l-pagamenti ma nkunux qed nigbruhom biex nhalsuhom mmedjatament lin-nies li jkun ghamlulna x-xoghol fuq dak il-progett stess. Hemm pagi x'jithalsu, renti, u suppliers ohrajn li jkollhom jiehd u flus iktar antiki. Allura dawn jiehd u precedenza.' Celine Lee Bentley kienet thalli f'idu biex imexxi l-kumpanija

bl-ahjar mod possibli kif kien l-inkarigu tieghu. Celene ma kintix tidhol fid-detta tal-kaz li jkollhom, hija kienet tara li flus dehlin u flus hergin.

L-akkuzat Donald Micallef rega rrilaxxa stqarrija ohra, din id-darba fid-disgha u ghoxrin (29) ta' Marzu tas-sena elfejn u tnax (2012) mistoqsi kellux access ghal kont bankarju tal-kumpanija Market Handle wiegeb 'Kelli kemm online access bl-internet banking, kif ukoll through Celine. Jiena kont naghmel uzu mid-dongle ta' Celine li kienet ghandi peress li l-account tal-kumpanija kien jsejjah lil Celine. Pero issa qieghed niftakar li jiena kont niccekja u nidhol online fuq l-accounts tal-Banif u il-password tal-Banif kelli ukoll. L-account tal- Banif kien fuq Celine ukoll ghax kien tal-kumpanija. Transfers tal-pagi konna nghaddihom jiena mill-kont tal-Banif.' Adrian Galea tal-YAL kien klijent tagghom. Mistoqsi jekk xtara xi affarijiet minghandu u halsu b'cheque wiegeb 'Mhux ezatt, ma Adrian jiena kont mort f'isem il-kumpanija Market Handle, fejn ghamilna barther bejn xi Televisions li ntuza bhala barther mal-kont li Adrian kellu jghati lil Market Handle Ltd ghal xi xoghol li ghamilna ghalih. It-Televisions kienu tad-ditta AOC kemm LCD u LED, 32 '' u 42'' jekk mhux sejjer zball u bhala kwantita m'ghandhiex idea bl-ammont'. Ikkonferma li c-cek tal-HSBC bin-numru 76 bl-ammont ta' €112. 72 pagabbli lil YAL hargu hu u l-firma hija tieghu. Hargu ghax kien hemm xi haga pendent ma Adrian. Jghid li 'Ic-cheque kien qieghed post dated u ma kellux jigi msarraff ghax kelli nehodlu TV lura minhabba li konna hadnieh zejzed. Meta ghamlulna l-mandat li kien qrib tal- 15 ta' Jannar 2011, li kien biss jumejn jekk mhux gurnata wara li kont hadt xi televisions minghand Adrian u wkoll kont hrigt dan ic-cek kienu sparixxew tnejn minn dawn it-televisions minn go l-uficju ta' Market Handle. Allura t-television ma setgha jinghata lura qatt. Ukoll minhabba li kien hemm dan il-mandat Market Handel ma setghatx tibqa topera u giet f' posizzjoni difficli biex thallas l-kredituri taghha u tonora l-pagamenti bhal fil-kaz ta' dan ic-cheque.'

Mistoqsi jekk ma setghax johrog cheques b'dan ic-cheque book ghax l-unika firmatarja ta' dan il-kont kienet Celine Bentley wiegeb 'Jiena kont sirt naf meta cempilli xi hadd mil-bank HSBC u kien qalli minhabba l-firma li kien hemm fuq ic-cheque u dan ghax ma kienetx taqbel ma ta' Celine. Infatti jiena kont wegibtu li ma taqbilx ma ta' Celine ghax kienet infatti tieghi fejn imbaghad kienu kkonfermawli li l-karta sabiex jiena nkun firmatarju qatt ma kienet saret.' Jaf li kellhom l-karta biex kemm jimlewha halli hu u anke l-

accountant ikollhom l-access biex jiddeposittaw u jiffirmaw f'isem il-kumpanija Market Handle, ghal xi raguni jew ohra l-karta qatt ma kienet saret probabli ghax nessesha. Kien bl-impresjoni li l-karta ghaddiet u ssoltu kien ikollu c-cheque book iffirmit diga minghand Celine u hu kemm jimla l-bqija, infatti fuq wara tac-cheque nizzel l-id card tieghu stess. Ikkonferma li ghandhom xi bilanc ta' €300 li ghadhom ma halsux lil Adrian Galea, jghid li ftakar fih l-ahhar li kien hawn f'dan l-ufficju u kellu intenzjoni li fl-ahhar ta' dan ix-xahar jew fl-ewwel ffit granet tax-xahar li gej imur ihallsu. Ma hallsux ghax ma kellhomx flus u ma Galea kien hemm numru ta' nies li kellhom jiehdu mill-kumpanija inkluzi haddiema. Ic-cheque books dejjem kienu jkunu ghandu ghax kien jiehu hsieb il-kredituri hu. Celine kienet bhala business analyst u dak iz-zmien kienet tkun hafna msiefra ghax kienet qed tigradwa. Illum jiehu hsieb Contact Handle, jghaddu finanzjarjament bil-qliegħ li tagħmel il-website.

Din il-Qorti mhijiex sejra tagħmel referenza għas-stqarrijiet rilaxxatti mill-komputata Celine Lee Bentley stante li dawn ma jagħmlux prova fil-konfront tal-akkuzat Donald Micallef.

Ikkunsidrat;

Illi skont l-ewwel imputazzjoni, il-vittima tar-reat ta' approprjazzjoni in debita kienet il-kumpanija WE Advertise Limited. Mill-atti jirrizulta li YAL Home and Electronics kienu talbu s-servizz ta' riklamar minghand Market Handle Limited, u Market Handle Ltd kienet ftehmet mal-Where's Everybody u cioe' mal-WE Advertise Limited sabiex isiru riklami abbinati ma numru ta' programmi tagħhom. Jirrizulta għalhekk li parti minn ammont li YAL Home & Electronics hallas lil Market Handle Limited kellu jithallas lil WE Advertisement Limited u li Market Handle kellha d-dritt li zzomm 15% tal-prezz tar-riklami mal-Where's Everybody.

Jirrizulta li minkejja li Adrian Galea f'isem il-YAL hallas dak kollu dovut u dan kemm tramite cekkijiet u anke permezz ta' televizionijiet, Where's Everybody u cioe'

WE Advertise Limited baqghet ma thallsitx. Jirrizulta li l-booking form ta' Market Handle prezentata kienet mal-Public Broadcasting Services, jirrizulta mix-xhieda ta Maroushka Pisani Bugeja ghan-nom ta' WE Advertise Limited li kienet il-WE Advertise Limited li hallset lil Public Broadcasting Services izda li Market Handle baqghet ma halsitx lil WE Advertise Limited u dan stante li uzat dawn il-flejjes ghal ragunijiet ohra kif jirrizulta mill-atti. L-akkuzat Donald Micallef jishaq li ma kien hemm l-ebda obbligu li l-flus li jircievi minghand klijent ghal progett partikolari kellu jithallas mal-ewwel u jintuza biss biex f'dan il-kaz jithallas WE Advertise Limited stante li huma kienu jhallsu skont il-priorita' u cioe' fosthom djun u pagi.

Ghalkemm l-akkuzat Donald Micallef ma kienx id-direttur tal-kumpannija Market Handle Limited, jirrizulta li kien huwa li kien jiehu hsieb l-operat tal-kumpannija minkejja li jghid li l-kariga tieghu kienet ta' Freelance Chief Executive Officer. L-akkuzat Donald Micallef fl-appell tieghu jissottometti li l-prosekuzzjoni kellha tipprova minghajr dubju dettat mir-raguni li gie fdat somma ta' flus biex tintuza ghal raguni specifika u cioe' biex tithallas lil terza persuna fdan il-kaz WE Advertise Limited. L-akkuzat Donald Micallef jichad li huwa kien qieghed jagixxi bhala agent ta' WE Advertise Limited bil-konsegwenza li flus li jigbor kienu ghan-nom ta' WE Advertise Limited u li kellhom jinghataw lilhom. Jissottometti li Market Handle Limited bieghet riklamar lil Adrian Galea ta' YAL Home and Electronics u dan kien jinkludi advertising space fuq Television Malta, Vibe FM Radio u product design cost. Li ghalhekk huwa car li Adrian Galea u Market Handle Limited kellhom relazzjoni guridika diretta. Li Adrian Galea ma kellux relazzjoni guridika ma WE Advertise Limited. Jissottometti li ma kienx hemm agency agreement, li fl-invoicing u gbir ta flus Market Handle Limited kienet qieghda taghmel dan f'isimha u mhux bhala agent u lanqas ghan-nom ta' WE Advertise Limited. Gie sottomess li ma gie prezentat l-ebda agency agreement u dan peress li ma jezistix. Jaghmel referenza ghax-xhieda in kontro ezami ta' Marouska Pisani Bugeja li tikkonferma li kieku Adrian Galea ma hallas lil Market Handle Limited, Market Handle Limited xorta kien ikollha thallas. Jemfasizza li Market Handle Limited kellha kull dritt li tuza l-flus kif riedet hi u ma kelliex obligazzjoni li tghaddi dawn il-flus migbura mill-

attivitajiet ta' business ma Adrian Galea lil WE Advertise Limited. Gie sottomess li l-prosekuzzjoni naqset milli tressaq prova u cioe dokumentazzjoni biex tissustanza il-ftehim u credit u l-allegazzjoni ta' approprjazzjoni in debita. Li l-unika dokumentazzjoni kienet booking form mahruga minn Market Handle Limited lil Public Broadcasting Services Limited u mhux lil WE Advertise Limited. Li r-relazzjoni kontrattwali ma WE Advertise Limited ma gietx stabbilita. Jissottometti li l-flejjes imhallsa minn Adrian Galea lil Market Handle Limited ma kien hemm l-ebda obligazzjoni biex jigu ritornati flus jew li jsir uzu specifiku minnu. Gie sottomess ukoll li l-prosekuzzjoni naqset milli ttiprova l-element intenzjonali tar-reat ta' approprjazzjoni in debita.

L-artikoli 293 u 294 tal-Kapitolu 9 tal-Ligijiet ta' Malta jipprovdu:

'293. Kull min japproprja ruhu, billi jdawwar bi profitt għalih jew għal persuna oħra, minn haġa ta' haddiehor li tkun giet fdata jew ikkunsinnata lilu taht titolu illi jgħib miegħu l-obbligu tar-radd tal-haġa jew li jsir uzu minnha specifikat, jehel, meta jinsab hati, il-piena ta' prigunerija minn tliet xhur sa tmintax-il xahar:

Izda ebda procediment kriminali ma jista' jinbeda għal dan id-delitt, hliel bi kwerele tal-parti.

294. Madankollu, meta d-delitt imsemmi fl-aħħar artikolu qabel dan jiġi magħmul fuq haġa fdata jew ikkunsinnata lill-hati minhabba l-professjoni, industrja, kummerç, amministrazzjoni, kariga jew servizz tiegħu, jew minhabba depożitu neċessarju, l-azzjoni kriminali titmexxa ex officio, u l-piena tkun ta' prigunerija minn seba' xhur sa sentejn.'

Fis-sentenza fl-ismijiet **'Il-Pulizija versus Enrico Petroni u Edwin Petroni'**¹² dwar l-artikolu 293 tal-Kapitolu 9 tal-Ligijiet ta' Malta gie meqjus li:

"Dana ir-reat isehh meta wiehed (1) jircievi flus jew xi haġa oħra minghand xi hadd; (2) bl-obbligu li jrodd daww il-flus jew dik ix-xi haġa lura jew li jagħmel uzu minnhom b'mod specifiku; (3) u minflok ma jagħmel hekk idawwar daww il-flus jew dak l-oġġett bi profitt għalih jew għal haddiehor."

¹² Deciza mill-Qorti tal-Appell Kriminali nhar id-9 ta' Gunju, 1998

Fis-sentenza fl-ismijiet **'The Police (Inspector Sylvana Briffa) vs. Keith Arthur Mayho'**¹³ gie meqjus li:

*'That, as regards the present case, if reference is made to the three elements mentioned in the judgment above- referred to, **Il-Pulizija vs. Enrico Petroni u Edwin Petroni**, whereas from the evidence brought forward it can safely be said that the first two elements have been satisfied, the same cannot be said as regards the third element. The proof that the accused has converted to his benefit or to the benefit of any other person is surely lacking. It should also be noted that no proof whatsoever was brought forward as to what actually happened to the freezer in question and who actually removed it, which the accused says was removed by someone when he was abroad on a holiday and who had removed the freezer without him knowing. As regards the fact that there was a time when the accused used to use the freezer to store some ice cubes in it, when he was not permitted to do so, not even this can be considered as misappropriation.'*

Fis-sentenza fl-ismijiet **'Il-Pulizija (Spettur Rennie Stivala) vs Peter K/A Pierre Falzon (ID: 535060M)'**¹⁴ fejn fost numru ta' konsiderazzjonijiet, gie kkunsidrat li:

*'Il-Qorti tal-Appelli Kriminali fis-sentenza fl-ismijiet Il-Pulizija v. George Grech deciza 22 ta' April 2009 ghamlet referenza ghal dak li qal l-Awtur Taljan **Luigi Maino**¹⁵ u dan spjega li :*

“Finalmente, a costituire il delitto di appropriazione indebita e` necessario il dolo. Trattandosi di delitto contro la proprieta`, a scopo d`indebito profitto per se` o per un terzo, il dolo sara` costituito dalla volontarieta` della conversione con scienza della sua illegittimita`, e dal fine di lucro: onde colui che si appropria o rifiuta di consegnare, nella ragionevole opinione d`un diritto proprio da far valere, non commette reato per difetto di elemento intenzionale. Per la stessa ragione, e per difetto inoltre di elemento obiettivo, non incorrera`

¹³ Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fl-4 ta' Frar, 2013 (Numru: 143/2012)

¹⁴ Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fis-16 ta' Gunju, 2016 (Kumpilazzjoni Nru: 551/13)

¹⁵ Commento al Codice Penale Italiano, UTET (1922), Vol. IV, para. 1953, pag. 105 – 106. Illum, 16 ta' Gunju, 2016. Magistrat Dr. Consuelo Scerri Herrera LL.D. (Din hija l-ewwel nota ta' qiegh il-pagna fis-sentenza citata)

in reato chi nel disporre della cosa altrui abbia avuto il consenso del proprietario o ragionevole opinione del consenso medesimo Il dolo speciale nel reato di appropriazione indebita e` (come nel furto e nella truffa) l'animo di lucro, che deve distinguere appunto il fatto delittuoso, il fatto penale, dal semplice fatto illegittimo, dalla violazione del contratto, dell'inadempimento della obbligazione: osservazione questa non inopportuna di fronte alle esagerazioni della giurisprudenza ed ai devianti della pratica giudiziale, che diedero spesso volte l'esempio di contestazioni di indole civile trasportate affatto impropriamente in sede penale. Rettamente pertanto fu giudicato non commettere appropriazione indebita (e neppure il delitto di ragion fattasi, per mancanza di violenza) il creditore che trattiene un oggetto di spettanza del suo debitore a garanzia del credito; l'operaio che avendo ricevuto materiale prima di lavorare, si rifiuta, perche` non pagato dal committente, di proseguire nel lavoro e di rendere la materiale ricevuta; l'incaricato di esigere l'importo di titoli, che non avendo potuto compiere tale esazione, trattiene i titoli a garanzia del dovutogli per le pratiche inutilmente fatte allo scopo di esigere. In generale la giurisprudenza e` costante nel richiedere come elemento costitutivo imprescindibile il dolo."

In generali jinghad li fid-dottrina b'approprazzjoni indebita wiehed jifhem dik il-vjolazzjoni ta' dawn il-kuntratti li bazati kif inhuma fuq il-fidjucja, jissejjah kuntratt fiducjarju , u essenzjalment jikkonsisti fl-istorn tal-haga fdata ghal skop determinat (ara Crivellari dei reati contra la proprieta - pg. 498; ediz. 1998).

*Il-Carminiani fil-ktieb tieghu **Elementi Iuris Criminali** - (para 1020) jiddefinixxi dan ir-reat li huwa jsejjahlu bhala:- "il fatto de quo lui, che avendo ricevuto dal propretario mediante contratto non transiattivo di dominio, una cosa immobile, questa contro i patti e contro la volonta' del propretario stesso e converta in uso proprio con animo di appropriarsela o la distrugge e a proprio lucro e commodo."*

*Carrara fil-ktieb tieghu **Diritto Penale** taht t-titolu Esposizione dei delitti inspecie (vol 4. para 284) li wkoll jissejjah dan ir-reat truffa b'mod l-aktar sintetiku, jiddefinixxi dan ir-reat bhala:-*

"la dolosa appropriazione di una cosa altrui che si e' ricevuto del propretario per una convenzione non translattiva di domino e da uzo determinato."

Fis-sentenza fl-ismijiet **'Il-Pulizija versus John Gauci'**¹⁶ dwar l-artikolu 293 tal-Kodici Kriminali gie kkunsidrat li:

'Minn ezami ta' dan l-artikolu jidher ċar li wieħed mill-elementi essenzjali ta' l-appropriazzjoni indebita, fil-kuntest tal-każ preżenti, huwa kostitwit mill-frazi: "... taht titolu illi jgħib miegħu l-obbligu ... li jsir użu minnha speċifikat ...". Speċifikat minn min? Ovvjament minn min ikun ikkonsenja l-haġa lill-aġent u minn hadd iżjed. Hija l-persuna li tikkonsenja l-haġa u hadd hliefha li jkollha jedd timponi l-obbligu ossia tispeċifika lill-aġent dwar kif ikollu jagħmel użu mill-oġġett ikkonsenjat lil minnha. Jekk il-konsenjatur jagħti flus lill-aġent biex dan bihom jixtrilu dar, l-aġent jikkommetti r-reat ta' appropriazzjoni indebita jekk minflok jagħtihom karita'. Jekk il-konsenjatur jagħti flus lill-aġent biex dan jixtrihom armi bi skop ta' serq, l-aġent ikun approprija ruħu mill-flus indebitament jekk jagħtihom karita', apparti l-kwistjoni tal-moralita'. Jekk jixtrihom armi, allura l-aġent ikun għamel użu mill-flus kif speċifikat. F'kull każ, fl-indaġini dwar il-ħtija jew le ta' appropriazzjoni indebita, għandha ssir prova ta' l-użu tal-haġa speċifikata mill-konsenjatur, u prova ta' jekk l-aġent ma ikunx għamel mill-haġa dak l- użu jew użu divers.'

Fis-sentenza fl-ismijiet **'The Police (Inspector Angelo Gafa') Vs Artur Arakelyan, 43 years, son of Robert and Elmira nee' Vardanyan, born in Yerevan, Armenia, on the 11th February 1970, residing at 72/2, Duke Apartments, Victor Denaro Street, Msida, and holder of Maltese ID card number 18658A and Almerian passport number AG0644567 issued in Armenia on the 2nd February 2006'**¹⁷ gie kkunsidrat li:

'In a judgment delivered by the Court of Magistrates (Gozo) it was decided:

"Skond giurisprudenza kostanti u anke skond awturi, generalment huwa ritenut li l-estremi ta' dan r-reat ta' appropriazzjoni indebita huma dawn li gejjin:

1. Illi l-pussess tal-haġa jkun gie trasferit lis-suggett attiv tar-reat voluntarjament mill-proprjetarju jew detentur, ikun min ikun. Jigi speċifikat hawnhekk biex ma

¹⁶ Deciza mill-Qorti tal-Appell Kriminali nhar l-14 ta' Frar, 1997

¹⁷ Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fis-17 ta' Lulju, 2013 (Numru: 77/2019)

jkunx hemm ekwivocita, li l-konsenja da parti tal- proprjetarju jew detentur lil agent jew lis-suggett attiv tad-delitt, trid tkun maghmula con l'animo di spostarsi del possesso, ghax altrimenti jiffugura mhux r-reat tal-appropriazzjoni ndebita, imma s-serq.

2. Illi t-trasferiment tal-pussess ma jridx wkoll ikun jimporta t-trasferiment tad-dominju cioe tal-proprjeta' ghaliex f'dan il-kaz ma jiffugurax l-element tal-azzjoni ndebita.

3. Illi l-oggett irid ikun mobbli;

4. Illi l-konsenjarju in vjolazzjoni tal-kuntratt jaghmel tieghu il-haga cioe japproprja ruhu minnha, jew jbiegha, jew jiddistruggiha a proprio commodo o vantaggio;

5. Irid ikun hemm wkoll l-intenzjoni tas-suggett attiv tar-reat li japproprja ruhu mill-oggett li jkun jaf li huwa ta' haddiehor" (The Police vs Marbeck Cremona – 15/02/2007)

Also in another judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction, the Court listed the legal elements which constitute the crime of misappropriation (The Police vs Enrico Petroni and Edwin Petroni – 09/06/1998).

"Dana ir-reat isehh meta wiehed (1) jircevi flus jew xi haga ohra minghand xi hadd; (2) bl-obbligu li jrodd dawk il-flus jew dik ix-xi haga lura jew li jaghmel uzu minnhom b'mod specifiku; (3) u minflok ma jaghmel hekk idawwar dawk il-flus jew dak l-oggett bi profitt ghalih jew ghal haddiehor."

Consequently for the prosecution of the crime to be successful, the author of it must have the specific intention to make use of the object entrusted to him for a specific purpose, as if he were the owner and therefore make use thereof or disposing of the same, at a resultant profit for himself or for others. The jurist Francesco Antolisei explains:

"La vera essenza del reato [di appropriazione indebita] consiste nell'abuso del possessore, il quale dispone della cosa come se ne fosse proprietario (uti dominus). Egli assume, si arroga poteri che spettano al proprietario e, esercitandoli, ne

danneggia il patrimonio” (Manuale di Diritto Penale, Giuffre` (Milano), 1986, Parte Speciale, Vol. 1, p. 276)¹⁸

The key phrases in the law lie in the words “under a title which implies an obligation” and “to make use thereof for a specific purpose” – a purpose specified by the person delivering the object to the agent or agents, which person has the right to impose an obligation on the agent regarding the use to be made of the object entrusted to his care. If the agent proves that he has made use of such object according to the instructions given to him, then he cannot be found guilty of the commission of this offence.

*Finally the mens rea or the intention of the agent must be proven beyond reasonable doubt – the intention to make a gain or profit from the misappropriation of the object entrusted to him. In another judgment delivered by the Court of Criminal Appeal in its inferior jurisdiction in the case *The Police vs Dr. Seigfried Borg Cole* (23 December 2003) the Court quoted the jurist Luigi Maino with regards to the intentional element necessary for the commission of this crime. (**Commento al Codice Italiano UTET (1922)** Vol IV para 1951 pagna 105 – 106):*

“Finalmente, a costruire il delitto di appropriazione indebita e' necessario il-dolo. Trattandosi di delitto contro la proprieta', a scopo d'indebito profitto per se' o per un terzo, il dolo sara' costituito dalla volontarieta', della conversione con scienza della sua illegittimita'e dal fine di lucro; onde colui che si appropria o rifiuta di consegnare, nella ragionevole opinione d'un diritto proprio da far valere, non commette reato per difetto di elemento intenzionale. Per la stessa ragione, e per difetto inoltre di elemento obiettivo, non incorrera in reato chi ne disporre della cosa altrui abbia avuto il consenso del proprietario o ragionevole opinione del consenso medesimo ... il dolo speciale nel reato di appropriazione indebita e' [come nel furto e nella truffa] l'animo di lucro, che deve distinguere appunto il fatto delittuoso, il fatto penale, dal semplice fatto illegittimo, dalla violazione del contratto, dell'inadempimento della obbligazione: osservazione questa non inopportuna di fronte alle esagerazioni della giurisprudenza ed ai devianti della pratica giudiziale che diedero spesse volte l'esempio di contestazioni di indole civile

¹⁸ *The Police vs Francis Camilleri - 25 June 2001 – Court of Criminal Appeal (Inferior) (Din ir-referenza tinsab fit-tieni (2) nota ta' qiegh il-pagna tas-sentenza citata.)*

trasportate affatto impropriamente in sede penale. Rettamente pertanto fu giudicato non commettere appropriazione indebita [e neppure il delitto di ragion fattasi, per mancanza di violenza] il creditore che trattiene un oggetto di spettanza del suo debitore a garanzia del credito; l'operaio che avendo ricevuto materia prima da lavorare, si rifiuta, perche' non pagato dal committente, di proseguire nel lavoro e di rendere la materia ricevuta; l'incaricato di esigere l'importo di titoli, che non avendo potuto compiere tale esazione, trattiene i titoli a garanzia del dovutogli per le pratiche inutilmente fatte allo scopo di esigere. In generale la giurisprudenza e' costante nel richiedere come elemento costitutivo imprescindibile il dolo."

Consequently from the above it results that the crime of misappropriation is based on the abuse of trust given to the agent, which abuse results in the consequent mishandling of any object by making use of the same for personal gain or profit whether financial or otherwise."

Fl-atti jirrizulta li giet ipprezentata invoice a fol 32 tal-atti processwali mahruġa minn Market Handle versu Yal Malta, din hija datata il-hdax (11) ta' Awissu tas-sena elfejn u ghaxra (2010). Giet ipprezentata ukoll statement mahruġa minn Market Handle Ltd versu Yal Malta kif ukoll bhal kalendarju b'ismijiet ta' programmi miktubin f'dati diversi. Gew prezentati ukoll kopji ta' numru ta' cekkijiet u cioe' a fol 36 gie prezentata cekk tal-HSBC mahruġ minn Market Handle Limited versu Yal¹⁹, a fol 37 cheque mahruġ minn Adrian Galea u Louise Galea versu Market Handle Ltd u cekk iehor a fol 39 mahruġ minn Adrian Galea u Louise Galea indirizzat lil Cherianne Farrugia, li mill-atti irrizulta li kienet impjegata ta' Market Handle Limited. Jirrizulta ukoll li mal-kwerela giet ipprezentata booking order indirizzata lil Public Broadcasting Services. Fil-kwerela gie spjegat li 'Micallef xtara numru ta' spots ghal diversi klijenti sabiex jixxandru r-reklami ta' dawn il-klijenti fuq il-programmi tal-klijenti tieghi. Il-booking order ikun indirizzat lil Public Broadcasting Services Limited illi hija inkarigata li xandar ir-reklami' u li 'dan il-booking partikolari sar ghan-nom ta' certu Adrian Galea... ta' YAL Home and Electronics ta' 72, Triq l-Emigranti, Naxxar.' Tnizzel ukoll li bhala agent is-Sur Micallef huwa intitolat li jzomm 15% bhala agency

¹⁹ Ic-cekk originali jinsab a fol 49 u mmarkat bhala Doc AG2, dan gie referred to drawer.

commission mill-ammont shih. Kopja tal-booking form li tinsab a fol 44 hija indirizzata lil:

'PUBLIC BROADCASTING SERVICES

75, St. Luke's Road,

G'Mangia MSD 09

Malta

Attn: Marouska Bugeja'

Meta xehdet Marouska Pisani Bugeja in rapprezentanza ta' We Advertise Limited in kontro-ezami fis-seduta tal-erbgha u ghoxrin (24) ta' Frar tas-sena elfejn u erbatax (2014) mistoqsija:

'Def: Am I correct to state that the booking was submitted directly with PBS, not with yourselves? From Market Handle it was submitted directly with PBS.

Wit: Initially yes but then Donald decided to change the booking form to We Advertise. It is a standard procedure that we do not know the client, however we know the agencies.

Def: Is there any form or written agreement, was there any written form of agreement apart from the booking form which Market Handle issued to Public Broadcasting Services?

Wit: No, the normal procedure when it comes to advertising agencies is that they issue a booking form to the company, in this case our company.

Def: And your company does not have a standard form agreement to sign, to agree on the credit terms, to agree on the amount due? Are you telling the Court that on this case there was absolutely no form of written agreement except the booking form?

Wit: It is a normal procedure that the client

Def: OK I understood that, a yes or a no answer please, that is was there or was there not any other form of written agreement in this case?

Wit: We have the booking form and that is enough to book advertising with our company.

Def: Can you explain whether Market Handle Limited was granted any credit terms on the amount due and if yes what were those credit terms?

Wit: Yes we normally grant thirty to sixty days.

Def: And apart from the booking form you are saying to the Court that there is no written agreement? Would you issue any statements on a monthly basis or on a regular basis?

Wit: I am not the financial controller. My role is a sales and marketing manager and my role specifically requires a booking form.'

Illi ghalkemm mix-xhieda gie stabbilit li l-akkuzat Donald Micallef tramite Market Handle kien ftiehem ma WE Advertise Limited u kellu jzomm 15% mill-ammont dovut lil WE Advertise Limited, jirrizulta li ma gietx ipprezentata booking form jew xi forma ta' ftehim li kien hemm bejn Market Handle Ltd u We Advertise Limited. Kif gia inghad il-booking form prezentata hija mahruqa minn Market Handle u indirizzata lil Public Broadcasting Services 'Attn: Marouska Bugeja'. F'din il-booking form datata l-hdax (11) ta' Ottubru tas-sena elfejn u ghaxra (2010) ma hemmx imnizzel kif u meta kellu jithallas il-15%. Filfatt tnizzlu qabel u matul liema programmi kellhom jidhru r-riklami flimkien mal-ammont dovut u tnizzel ukoll 'Less 15% Agency Commission'. Ghalhekk din il-Qorti tqis li sabiex jigi kkunsidrat jekk kien hemm approprjazzjoni in debita, din il-Qorti kien jehtieg li jkollha quddiemha il-kundizzjonijiet relatati mal-ftehim li sar bejn Market handle u WE Advertise Limited. Kellu jigi stabbilit il-credit terms u cioe' sa meta kellha tithallas WE Advertise Limited, kellu jigi stabbilit il-modalita tal-hlas u dan sabiex jigi stabbilit jekk fil-mument li Market Handle Limited irceviet l-ammont minghand ill-klijent taghha kinitx obligata li tghaddi dak il-pagament direttament lil WE Advertise Limited. Ma jirrizultax ikkontestat li ghalkemm Market Handle Limited irceviet il-hlas minghand il-klijent taghha Adrian Galea tal-YAL, We Advertise Limited baqghet ma thallsitx u li Market Handle Limited ghamlet uzu tal-flejjes imhallsa minn Adrian Galea ghal ragunijiet ohra.

Jirrizulta li Adrian Galea ma kienx parti mill-ftehim maghmul bejn l-akkuzat Donald Micallef jew Market Handle Limited u l-WE Advertise Limited filfatt anke jekk din

il-Qorti kellha tqis il-booking form ta' Market Handle versu il-Public Broadcasting services fejn taht 'Tax Date' hemm imnizzel il-hdax (11) ta' Ottubru tas-sena elfejn u ghaxra (2010), Adrian Galea jew Yal Home and Electronics ma jissemmew imkien. Filwaqt l-invoice ta' Market Handle indirizzata lil Yal Malta fejn taht 'Due date' hemm imnizzel '11/8/2010' fl-istess invoice tnizzlu deskrezzjonijiet fosthom 'TVM Packages 28 Commercial Adverts for the duration of 7 weeks', 'Vibe FM 4 Spots EveryDay 10 sec each for 60 Days', 'Radio Production Fee', '1 Spot Every Morning Peak Hours for 60 Days', 'Design Production Cost' u 'Tabaxable Sales 18% on sales'.

Ghalhekk jirrizulta li din ma kinitx transazzjoni wahda u cioe' fejn kemm WE Advertise Limited, Market Handle Limited u Adrian Galea ghan-nom ta' YAL Malta Limited kienu parti tal-istess ftehim. Adrian Galea jew YAL ma kinitx parti tal-ftehim ta' bejn WE Advertise Limited u Market Handle Limited. Filfatt mix-xhieda ta' Marouska Pisani Bugeja jirrizulta li irrISPettivament ta' jekk il-klijent ta' Market Handle Limited ikunx hallas lil Market Handle Limited, Market Handle Limited xorta kienet obligata li thallas lil WE Advertise Limited. Ghalhekk l-obbligazzjoni li Market Handle Limited kellha li thallas lil WE Advertise Limited kienet indipendenti mill-fatt jekk il-klijent ta' Market Handle Limited f'dan il-kaz Adrian Galea ikunx hallas lil Market Handle Limited.

Din il-Qorti ghalhekk tqis li minkejja li rrizulta li Adrian Galea ghan-nom ta' Yal hallas dak kollu dovut minnu lil Market Handle Limited, ma jfissirx li stante li Market Handle Limited baqghet ma halsitx lil WE Advertise Limited jwassal ghar-reat ta' approprjazzjoni in debita. Ir-relazzjoni guridika ta' bejn Adrian Galea ghan-nom ta' YAL u Market Handle Limited hija separata u distinta mir-relazzjoni ta' bejn Market Handle Limited u WE Advertise Limited. Din l-imputazzjoni ghalhekk ma tirrizultax. Jibqa mhux mittiefes id-dritt ta' WE Advertise Limited li tiprocedi civilment fil-konfront ta' Donald Micallef u/jew Market Handle Limited ghall-ammonti dovuti lilha.

Ikkunsidrat;

Illi t-tieni u t-tielet imputazzjonijiet jaqraw:

'2. B'mezzi kontra l-ligi jew billi ghamilt uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi inqdejt b'qerq iehor, ingann, jew billi wrejt haga b'ohra sabiex igieghel jitwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila jew setgha fuq haddiehor jew ta' krediti immaginarji, jew sabiex tqanqal tama jew biza' dwar xi grajja kimerika, ghamilt qligh b'qerq ta' mhux aktar minn mitejn u tnejn u tletin euro u erbgha u disghin centezmu (€232.94) ghad-dannu ta' Adrian Galea u ta' l-istabiliment YAL Home and Electronics.'

3. U aktar talli fl-istess data u cirkostanzi, ghad-dannu ta' Adrian Galea u ta' l-Istabiliment YAL Home and Electronics ghamilt qliegh b'qerq ta' mhux aktar minn mitejn u tnejn u tletin euro u erbgha u disghin centezmu (€232.94)'

L-akkuzat Donald Micallef jissottometti li dawn l-imputazzjonijiet huma alternattivi u mhux kumulattivi u li ghalhekk ma setghax jinstab hati tat-tnejn li huma. Jissottometti li ma kkommetta l-ebda frodi u lanqas ma ghamel gwadann a detriment ta' Adrian Galea. Dwar ic-cekk ta' €112.72 mahrug minn Market Handle Limited, jissottometti li Donald Micallef ma ghamel l-ebda gwadann personali permezz ta' frodi jew ingann. Li ma ghamel l-ebda gwadann u li c-cheque kien dak ta' Market Handle Limited u li huwa ma ghamel l-ebda gwadann. Jissottometti li ghalkemm ma kienx awtorizzat jiffirma c-cekk ma jfissirx li kkommetta frodi a detriment ta' Adrian Galea, li Celine Lee Bentley ma kelliex oggezjoni sabiex l-appellant Donald Micallef juza cekk ghal esigenzi tal-kumpanija. Jissottometti li c-cheque ma ssarrafx mhux ghax iffirma l-appellant izda ghax ma kienx hemm fondi bizzejjed f'dak il-mument u li l-prosekuzzjoni naqset milli tipprova li l-appellant Donald Micallef kien jaf li ma kienx hemm bizzejjed fondi.

Fis-sentenza fl-ismijiet **'Il-Pulizija (Spettur Maurice Curmi) vs George Debono ta' 49 sena, bin il-mejjet Mario u l- mejta Maria Victoria nee' Zammit imwieled B'Kara fid- 9 ta' Mejju 1959 u joqghod 13, Dar il-Hena, Triq Karm Sammut, B'Kara detentur tal-karta ta' l-identita' numru 330859(M)**²⁰ gie kkunsidrat li:

'Biex jissussti ir-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-Qrati taghna illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm

²⁰ Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali fl-14 ta' Lulju, 2010 (Numru: 154/2009)

ness bejn is-suggett attiv u is-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il- vittma. Hemm imbaghad l-element materjali ta' dana ir- reat u cioe' l'uzu ta' ingann jew raggieri li jwasslu lil vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li jkun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jisussisti. Illi f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali (per Imhallef Carmel. A. Agius) deciza fit-22 ta' Frar 1993, fl-ismijiet Il-Pulizija vs Charles Zarb, il-Qorti ghamlet esposizzjoni ferm preciza studjata u dettaljata ghar-rigward ta'l-elementi ta' dana ir-reat. Il-Qorti bdiet sabiex esprimiet ruhha b'dan il-mod ghar-rigward ta' dana ir-reat:

***“Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inpropriji u hu dak li fl-iskola u fil-legislazzjoni Rumana kien maghruf bhala steljolat u li jikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Francis ... Id- disposizzjonijiet tal-Kodici taghna li jikkontemplaw ir- reat ta' truffa kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 ta'l-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi*”.** Skond gurisprudenza kostanti, l-ingredjenti ta'l-element materjali ta' dan id-delitt ta' truffa, huma dawn li gejjin.

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' ikun kulhadd.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal- fiducia reciproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu ta'l-ingann u tar-raggieri li jinducu bniedem jiddisponi minn gid li fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa u jikkometti d-delitt tat-truffa kull min:

a. b'mezzi kontra l-ligi, jew

b. billi jaghmel uzu minn ismijiet foloz jew

c. ta' kwalifiki foloz jew

d. billi jinqeda b'qerq iehor u

e. ingann jew

f. billi juri haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz,

g. jew ta' hila

h. setgha fuq haddiehor jew

i. ta' krediti immaginarji jew

j. sabiex iqanqal tama jew biza dwar xi grajja kimerika, jaghmel qliegh bi hsara ta' haddiehor.

.... Hu necessarju biex ikun hemm ir-reat ta' truffa, li l- manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl- assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil- ligi."

Dwar l-artifizzi intqal mill-Qorti illi **"hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti ta' l-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kollegjalment komposta fil-kawza "Reg vs Francesco Cachia e Charles Bech (03.01.1896 - Kollez.XV.350) li fiha intqal illi "quell' articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede."**

Ghar-reati ta' truffa komtemplat fl-artikolu 308 tal-Kodici kriminali, il-Qorti iccitata lill-Imhallef Guze Flores fejn qal illi **"kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghall-verosimiljanza tal- falsita prospettata bhala vera u b'hekk bhala mezz ta'**

qerq. Ma huwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l- affermazzjonijiet menzjonjieri tal-frodatur. Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi teatrali, li tissupera il-kawtela ordinarja kontra s-semplici u luzingi, u li taghti li daww l-esterjorita ta' verita kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene."

"...Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubbju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu ikun konxju ta' l-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita tal-profitt hija bizzejjed biex teskludi d-dolo."

Illi minn dina l-esposizzjoni maghmula mill-Qorti ta'l-Appell li iccittat diversi sentenzi ohra tal-Qorti taghna jidher illi l-elementi rikjesti sabiex jisussisti ir-reat tal-frodi baqghu invarjati fi-zmien.

Illi ghar-rigward ta'l-element soggettiv tar-reat tat-truffa, kif gie ritenut mill-awtur Francesco Antolisei, ikkwotat f'sentenza ohra moghtija mill-Qorti ta'l-Appelli Kriminali (Il-Pulizija vs Patrick Spiteri deciza 22/10/2004) : "L'agente ... deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stess, la disposizione patrimoniale, come conseguenza dell'inganno e, infine, la realizzazione di quell profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volonta sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizia del profitto avuto in mira e del danno che ne deriva all'ingannato."

Fis-sentenza fl-ismijiet **Il-Pulizija kontra Philip Petroni**²¹ fejn fost numru ta' kunsiderazzjonijiet, il-Qorti ikkunsidrat li:

²¹ Deciza mill-Qorti tal-Appell Kriminali fis-16 ta' Marzju, 1999 (Appell Numru 215/98, 217/98)

'Kif inghad, f' dan il-kaz il-qerq konsistenti fil-hrug taz-zewg cekkijiet li ma setghux jissarfu b'ebda mod ma wassal lis-socjeta' P. Cutajar & Co. Ltd. biex taghmel jew tonqos milli taghmel xi haga li gabtilha telf bil-konsegwenti arrikkiment tal-appellant Petroni. Ghalhekk anqas ma jikkonfigura r-reat ta' lukru frawdolent innominat kontemplat fl-Artikolu 309 tal-Kodici Kriminali.

Din il-Qorti fl-ahharnett tosserva li qed jigu spiss quddiemha kazijiet fejn jidher li l-pulizija qed tipprocedi kontra dak li jkun fuq akkuza ta' frodi fuq l-insistenza tal-avukat jew avukati tal-allegat vittma meta ezami oggettiv u spassjonat tal-fatti ghandu juri li l-kaz ikun wiehed purament civili jew kummercjali u mhux ta' natura penali. Il-pulizija ghandha, ghalhekk, qabel ma tmexxi f'kazijiet bhal dawn tezamina sew il-fatti biex tara jekk verament jikkonkorru l-elementi kollha tar-reat ipotizzat u mhux tissokkombi ghall-pressjonijiet li jsirulha mill-avukati, ghax altrimenti jista' jigri li l-proceduri penali jibdedw jintuzaw bhala forma ta' pressjoni jekk mhux addirittura ta' rikatt fuq dak li jkun biex ifittex ihallas id-debitu civili jew kummercjali li jkollu ma terzi. Hu appena necessarju jinghad li l-proceduri penali ma ghandhom qatt jigu strumentalizzati ghal dan il-fini.'

Fis-sentenza fl-ismijiet **'Il-Pulizija [Spettur Maurice Curmi] vs Anthony Fountain u Stephen k/a Steve Abela'**²² gie kkunsidrat:

'Illi d-differenza bejn r-reati ipotizzati f'l-artikoli 308 u 309 tal-Kodici Kriminali, kif ukoll l-elementi rikjesti biex jissussistu dawn ir-reati, hija ben stabbilita fil-gurisprudenza taghna.

Fil-Ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta' ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent ... jekk l-ingann jew qerq ikun jikkonsisti f'raggiri jew artifizji - dak li fid-dottrina jissejjah ukoll mis en scene - ikun hemm it-truffa; jekk le ikun hemm hemm ir-reat minuri ta' frodi innominata (jew lukru frawdolenti innominat)²³.

²² Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali fil-15 ta' Dicembru, 2011 (Numru: 688/2009)

²³ Ref Pulizija ve Carmela German AK deciza 30.12.2004 u l-gurisprudenza hemm kwotata. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata sebgha (7) fis-sentenza citata)

Illi x'jikostitwixxi r-raggiri u l-artifizji ukoll huwa ben stabbilit fil-gurisprudenza taghna. Fi kliem Antolisei²⁴

artificio e' ogni studiata trasfigurazione del vero, ogni camuffamento della realta' effettuato sia simulando cio che non esiste, sia dissimulando ... cioe che esiste. Il raggiro d'altra parte e un avvolgimento ingenuo di parole, destinate a convincere: piu precisamente una menzogna corredata da ragionamenti idonei a farla scambiare per verita. E certo che l'espressione del codice di per se' richiama l'idea di una certa astuzia o di un sottile accorgimento nel porre l'inganno in opera.

Antolisei jkompli jghid pero li

nell'applicazione pratica della legge questa idea e' andata sempre piu affievolendosi, fin quasi a scomparire del tutto. Per tal modo si e' finito con l'ammettere che anche la semplice menzogna puo bastare per dare vita alla truffa²⁵.

Illi f'dan is-sens anke l-Qorti ta' l-Appell Kriminali qalet hekk dwar il-messa in xena:

Il-Ligi taghna ma tirrikjedix li l-messa in xena, cioe daww l-artifizji jew raggiri, ikunu xi haga kkumplikata jew arkittetta b'hafna pjanijiet²⁶.

Illi fil-kaz in ezami jirrizulta li l-imputati verament kienu diretturi tas-socjeta Bahia Estates Limited liema socjeta verament kienet akkwistat propjeta biex tizvilluppaha f'binja gdida. Jirrizulta wkoll li fil-fatt din il-propjeta giet zviluppata bil-mod kif kellha tigi zviluppata. Huwa pacifiku li s-socjeta Bahia Estates Limited kellha diffikoltajiet biex tottjeni il-kancellamenti minghand l-APS Bank Limited biex tkun tista' tbiegh parti mill-binja zviluppata lill-parte civile. Pero huwa pacifiku ukoll li l-parte civile kienu jafu b'dawn id-

²⁴ Manuale Di Diritto Penale (Giuffre) pagna 356. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata tmienja (8) fis-sentenza citata)

²⁵ Op cit pagna 357 (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata disgha (9) fis-sentenza citata)

²⁶ Ref Pulizija vs Emanuel Ellul deciza 20.06.1997. (Din ir-referenza tinsab fin-nota ta' qiegh il-pagna enumerata ghaxra (10) fis-sentenza citata)

diffikoltajiet u xorta baqghu iggeddu l-konvenju. F'dan il- kwadru ta' fatti ma tirrizulta l- ebda messa in xena, u lanqas ma jirrizulta xi ingann perpetrat da parti tas-socjeta Bahia Estates Limited li permezz tieghu induciet lill-parte civile biex jaghmlu l-pagamenti li fil-fatt ghamlu.

Illi tenut kont ta' dan, fid-dawl tal-provi kollha prodotti, fil- fehma tal-Qorti r-reati kontemplati f'l-artikoli 308, 309 u 310(1)(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta lanqas ma gew pruvati.'

Fis-sentenza fl-ismijiet **Il-Pulizija versus George Manicolo**²⁷, gie kkunsidrat li:

“Illi l-ġurisprudenza nostrali dejjem kienet illi sabiex jissussisti r-reat ta' truffa mhix biżżejjed is-sempliċi gidba, il-kliem menzjonier, izda hu neċessarju u essenzjali li jkun hemm ukoll l-apparat estern li jagħti fidi u kredibilita' lil dik il-gidba. Dan l-att estern jista' jiehu diversi forom, kultant anke att teatrali. Irid ikun att, jew atti, li jimpressjonaw bniedem ta' intelligenza u prudenza ordinarja u normali, għandhom ikunu atti frawdolenti li neċessarjament iqajmu sentimenti kif indikat fl-artikolu 308 tal-Kap. 9. Irrid ikun hemm il-messa in xena u għalhekk, kif intqal, il-gideb waħedhom mhumiex suffiċjenti. Iridu jkunu atti, inkluż kliem helu u perswassiv, li jwasslu lil xi hadd jemma l-eżistenza ta' xi haġa msemmija mil-frodatur, liema haġa, in realta', ma teżistix. Minbarra l-gideb għalhekk, irid ikun hemm l-ingann, ir-raġġiri jew is-simulazzjoni li jwasslu sabiex il-vittma jemma jew ikollu fidi f'dak li qed jiġi lilu mwiegħed mill-frodatur. Dan l-ingann, għalhekk, għandu jkun akkumpanjat b'artifizji kwazi teatrali, u mhux semplicement wegħdiet, promessi u kliem sempliċi. Dan hu element ferm importanti fir-reat ta' frodi. Biex ikun hemm dawn l-artifizji, mhux biżżejjed il-kliem waħdu, izda dan il-kliem għandu jkun elokwenti, studjat u perswassiv; ma' dan it-tip ta' kliem għandu jkun hemm xi haġa esterna li apparentement tikkonferma u tipprova l-fatti assenti, ċjoe' apparat estern li jirrivesti bi kredibilita' l-affermazzjoni menzjoniera tal-frodatur;

Din il-messa in xena hi magħmula minn dawn l-artifizji jew raġġiri idonei li jinduċu u fil-fatt ikunu induċew lill-vittma fi żball li bħala rizultat ta' dan l-iżball, il-vittma taġħmel jew tonqos li taġħmel xi haġa li gġibilha telf patrimonjali bil-korrispondent qligħ għall-aġent

²⁷ Deciza mill-Qorti tal-Appell Kriminali nhar il-31 ta' Lulju, 1998

frodatur;

Kif gie stabbilit u riaffermat fil-Qrati taghna, ikun hati ta' truffa minn jaghmel uzu minn kwalita' falza sabiex jaghmel qligh ghad-dannu ta' haddiehor;

Din il-Qorti tqis li ghalkemm l-akkuzat Donald Micallef ma kienx direttur tal-kumpanija Market Handle Limited, kien huwa li kien jmexxi l-kumpanija u jiehu d-decizjonijiet rigwardanti l-kumpanija. Kien huwa ukoll li hareg ic-cekk ta' Market Handle Limited li jinsab a fol 49 fl-envelope immarkat bhala DOK AG2, liema cekk huwa datat it-tmienja (8) ta' Frar tas-sena elfejn u hdax (2011) fl-ammont ta' mija u tnax-il ewro u tnejn u sebghin centezmu (€112.72). Din il-Qorti tqis li gie ppruvat li kienet Celine Lee Bentley li kienet il-firmatarja awtorizzata ta' cekkijiet u ghalhekk l-akkuzat Donald Micallef ma kienx rikonoxxut bhala firmatarju mal-bank. Donald Micallef fl-istqarrija tad-disgha u ghoxrin (29) ta' Marzu tas-sena elfejn u tnax (2012) mistoqsi kellux access ghal kont bankarju tal-kumpanija Market Handle wiegeb *'Kelli kemm online access bl-internet banking, kif ukoll through Celine. Jiena kont naghmel uzu mid-dongle ta' Celine li kienet ghandi peress li l-account tal-kumpanija kien jsejjah lil Celine. Pero issa qieghed niftakar li jiena kont niccekja u nidhol online fuq l-accounts tal-Banif u il-password tal-Banif kelli ukoll. L-account tal- Banif kien fuq Celine ukoll ghax kien tal-kumpanija. Transfers tal-pagi konna nghaddihom jiena mill-kont tal-Banif.'* Ikkonferma li c-cekk tal-HSBC bin-numru 76 bl-ammont ta' €112. 72 pagabbli lil YAL hargu hu u l-firma hija tieghu. Hargu ghax kien hemm xi haga pendenti ma Adrian. Jghid li *'Ic-cheque kien qieghed post dated u ma kellux jigi msarraff ghax kelli nehodlu TV lura minhabba li konna hadnieh zejjed. Meta ghamlulna l-mandat li kien qrib tal- 15 ta' Jannar 2011, li kien biss jumejn jekk mhux gurnata wara li kont hadt xi televisions minghand Adrian u wkoll kont hrigt dan ic-cekk kienu sparixxew tnejn minn dawn it-televisions minn go l-uficju ta' Market Handle. Allura t-television ma setgha jinghata lura qatt. Ukoll minhabba li kien hemm dan il-mandat Market Handel ma setghatx tibqa topera u giet f' posizzjoni difficli biex thallas l-kredituri taghha u tonora l-pagamenti bhal fil-kaz ta' dan ic-cheque.'*

Mistoqsi jekk ma setghtax johrog cheques b'dan ic-cheque book ghax l-unika firmatarja ta' dan il-kont kienet Celine Bentley wiegeb *'Jiena kont sirt naf meta cempilli xi hadd mil-bank HSBC u kien qalli minhabba l-firma li kien hemm fuq ic-cheque u dan ghax*

ma kienetx taqbel ma ta' Celine. Infatti jiena kont wegibtu li ma taqbilx ma ta' Celine ghax kienet infatti tieghi fejn imbaghad kienu kkonfermawli li l-karta sabiex jiena nkun firmatarju qatt ma kienet saret.' Jaf li kellhom l-karta biex kemm jimlewha halli hu u anke l-accountant ikollhom l-access biex jiddeposittaw u jiffirmaw f'isem il-kumpanija Market Handle, ghal xi raguni jew ohra l-karta qatt ma kienet saret probabli ghax nessesha. Kien bl-impresjoni li l-karta ghaddiet u ssoltu kien ikollu c-cheque book iffirmit digha minghand Celine u hu kemm jimla l-bqija, infatti fuq wara tac-cheque nizzel in-numru tal-karta tal-identita' tieghu stess. Adrian Galea fix-xhieda tieghu tat-tmintax (18) ta' Gunju tas-sena elfejn u tnax (2012) xehed li *'l-ammont ta' televisions spiccajna tghajna iktar mil-ammonti li kont dovut li naghti bil-weghda li jgibli wiehed minnhom lura. Taghni parti minn cheque li qiegheed hawnhekk esebit ukoll.'* Dwar ic-cekki immarka bhala Dok AG2 spjega li *'Dan ic-cheque huwa parti minn dan it-television extra li kont imwieghed li jinghata lura u filfatt umbaghad ma ssarrafx.'* Kien prova jsarfu u ma ssarrafx. Fl-ittra elettronika immarkata bhala Dok AG1 li tinsab a fol 30 li hija ittra elettronika mibghuta minn Adrian Galea lis-Surgent Johann Mifsud fost affarijiet ohra spjega li *'Story ended up by he wanted to replace a TV which he never returned & paid part by cheque attached which bounced. I made hundred of phone calls each one promising me that he is coming to pay...'*

Din il-Qorti tqis li gialadarba li Donald Micallef kienu jiehdus hsieb tista' tghid kollox tal-kumpanija, ma taghmel l-ebda sens li ma kienx jaf li ma kienx hemm fondi bizzejjed fil-kont bankarju tal-kumpanija u in oltre din il-Qorti tqis ukoll li gie ppruvat li l-akkuzat Donald Micallef iffirma dan ic-cekki minkejja li l-firma tieghu ma kinitx rikonoxxuta mal-banek. Donald Micallef kellu jkun jaf li ma hemmx bizzejjed fondi la darba ghazel li jiffirma dan ic-cekki. Din il-Qorti ghalhekk tqis li l-messa in scena tikkonsisti fil-fatt li Donald Micallef mhux biss iffirma meta ma kienx il-firmatarju awtorizzat mill-Bank izda li in oltre irrizulta li ma kienx hemm fondi bizzejjed lanqas meta inhareg dan ic-cekki. Din il-Qorti tqis li Donald Micallef ma huwiex kredibbli meta jipprova jaghti x'jifhem li ma kienx jaf li ma setghax jiffirma cekki jiet tal-kumpanija Market Handle Limited.

Ghalhekk il-qliegħ jikkonsisti fil-fatt li minkejja li l-kumpanija Market Handle Limited kienet irceviet aktar televizjonijiet mill-ammont dovut, la t-televizjoni ma nghatax lura lil Yal Home and Electronics u lanqas il-pagament ma sar. L-akkuzat Donald Micallef jghid li dan ic-cekk kien post dated u li ma kellux jigi msarraġ peress li kellu jagħti lura televizjoni. Din il-Qorti tqis li fil-mument li huwa ffirma u hareg dan c-cheque, l-akkuzat Donald Micallef għamel ta' bir-ruhu li kien awtorizzat li jiffirma dan ic-cekk, għamel ta' bir-ruhu li kien hemm fondi fil-kont meta ma kienx hemm u nonostante l-fatt li c-cekk kien tal-kumpanija u mhux tiegħu f'ismu personali, għaladarba huwa kien imexxi u jiehu d-decizjonijiet kollha tal-kumpanija fejn fix-xhieda tiegħu jghid li *'I never had a wage from the company I only had a little money here and a little money there because first we used to pay the other employees'*, tqis li kwalunkwe qliegħ jew telfien tal-kumpanija kien ser jitlef jew jigwadanja l-akkuzat Donald Micallef.

Il-Qorti għalhekk qiegħda ssib lil Donald Micallef hati tat-tieni imputazzjoni u cioe' taht l-artikolu 308 tal-Kapitolu 9 tal-Ligijiet ta' Malta izda mhux tat-tielet (3) imputazzjoni u cioe' taht l-artikolu 309 tal-Kapitolu 9 tal-Ligijiet ta' Malta stante li t-tielet (3) imputazzjoni hija kompriza u involuta fit-tieni (2) imputazzjoni.

Ikkunsidrat;

Illi r-raba' (4), il-hames (5) u s-sitt (6) imputazzjonijiet jaqraw:

'4. U aktar talli għamilt falsifikazzjoni f'att awtentiku u pubbliku, jew fi skrittura kummerċjali jew ta' bank privat, b'falsifikazzjoni jew b'tibdil fl-iskrittura jew fil-firem billi hloqt pattijiet, disposizzjonijiet jew obbligi foloz jew ħelsien falz minn obbligi, jew billi dahhalt dawn il-pattijiet, disposizzjonijiet, obbligi jew ħelsien minn obbligi f'dawk l-atti jew skritturi wara li jkunu ġew iffurmati, inkella billi zidt jew biddilt klawnsoli, dikjarazzjonijiet jew fatti, illi dawn l-atti jew skritturi kellhom illhom fihom jew kellhom jippruvaw;

5. U aktar talli xjentement għamilt użu minn att, kitba jew skrittura falza;

6. *U aktar talli, ghamilt jew tghajt dikjarazzjoni falza jew ċertifikat falz;*'

Stante li l-Ewwel Qorti indikat artikoli mhux imnizzla fin-nota tal-Avukat Generali u ma ndikax artikoli ohra fil-parti dispositiva, l-akkuzat Donald Micallef ressaq aggravju dwar in-nullita' ta' parti tas-sentenza. Din il-Qorti qieghda tastjeni milli tiehu konjizzjoni ta' dan l-aggravju dwar in-nullita' tas-sentenza u dan stante li din il-Qorti ġia annullat is-sentenza appellata fis-sentenza moghtija minn din il-Qorti fis-sebgha (7) ta' Mejju tas-sena elfejn u dsatax (2019) u qieghda permezz ta' din id-decizjoni tiddeciedi l-kawza mill-gdid.

L-akkuzat Donald Micallef jissottometti li r-reat ta' falsifikazzjoni u cioe' forgery ma jissustix f'dan il-kaz stante li sabiex ikun hemm dan ir-reat jehtieg li persuna taghmel dokument falz f'parti jew kollu jew inkella li dokument genwin jigi alterat. Huwa ma jikkontestax li huwa ffirmat cheque li jappartjeni lil kumpanija Market Handle Limited izda li ffirmat bil-firma tieghu u ma pruvax jimmita l-firma ta' haddiehor. Li ghalhekk l-akkuzat la ghamel dokument falz u lanqas ma altera dokument genwin. Jissottometti li ma setghax jinstab hati taht l-artikolu 183 tal-Kapitolu 9 tal-Ligijiet ta' Malta stante li Donald Micallef ma ffalsifikax u lanqas biddel firma izda li ffirmat bil-firma tieghu. Li skontu lanqas r-reat taht l-artikolu 184 tal-Kapitolu 9 tal-Ligijiet ta' Malta ma jirrizulta u dan stane li c-cekk ma kienx falsifikat. Jissottometti ukoll li dawn l-imputazzjonijiet huma alternativi mhux kumulattivi. Filwaqt li jissottometti li l-artikolu 185(2) jistabilixxi piena mhux reat.

Ikkunsidrat;

Illi l-Avukat Generali fin-nota li tinsab a fol 240 tal-atti processwali indika l-artikoli 183, 184, 185(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta u ghalhekk din il-Qorti trid tqis jekk ir-reati kontemplati permezz ta' dawn l-artikoli jirrizultawx.

Dawn jaqraw:

'183. Kull persuna oħra li taġmel falsifikazzjoni f'att awtentiku u pubbliku, jew fi skrittura kummerċjali jew ta' bank privat, b'falsifikazzjoni jew b'tibdil fl-iskrittura jew fil-firem, billi toħloq pattijiet, dispożizzjonijiet jew obbligi foloz jew ħelsien falz minn obbligi, jew billi ddaħħal dawn il-pattijiet, dispożizzjonijiet, obbligi jew ħelsien minn obbligi f'dawk l-atti jew skritturi wara lijkunu ġew iffurmati, inkella billi żżid jew tbiddel klawnsoli, dikjarazzjonijiet jew fatti, illi dawk l-atti jew skritturi kellhom kollhom fihom jew kellhom jippruvaw, tehel, meta tinsab hatja, il-piena ta' priġunerija minn tlettax-il xahar sa erba' snin, bir-rekluzjoni jew mingħajrha.

184. Kull persuna li xjentement taġmel użu minn att, kitba jew skrittura falza msemmija fl-artikoli ta' qabel ta' dan is-sub-titolu, tehel, meta tinsab hatja, il-piena stabbilita għall-awtur tal-falsifikazzjoni.'

Filwaqt li l-artikolu 185(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta jaqra:

'Meta l-falsifikazzjoni ssir minn xi persuna li mhix uffiċjal jew impjegat pubbliku b'abbuż ta' awtorità, il-piena tkun ta' priġunerija minn seba' xhur sa sentejn.'

Fis-sentenza fl-ismijiet **Il-Pulizija (Spettur Maurice Curmi) Vs OMAR CARUANA u KURT GATT**²⁸ gie kkunsidrat li:

'Jingħad bla tlaqliq li biex ikun hemm il-falsifikazzjoni jinħtieg li jkun hemm (a) dokument; (b) li jew ikun hemm 'counterfeiting' (contraffacimento) jew it-tibdil (alterazione) ta' dokument genwin.

Minħabba li l-Ligi Maltija ma taġhtix definizzjoni ta' 'Falsifikazzjoni', il-**Professur Mamo fin-Noti** tiegħu jikkwota lill-awtur Pessina kif geġ:

'I mezzi onde al vero si puo' sostituire cioe' che non e' tale si riducono sempre a due, come il formare ex integro un imitazione o il modificare qualche obbietto, qualche atto, qualche scrittura vera di guisa che per effetto della trasformazione indichi tutt'altro che il vero. Il primo modo piglia nome di contraffacimento dove che l'altro dicesi alterazione.' (

²⁸ Deciza mill-Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali fis-7 ta' Ottubru, 2010 (Numru: 68/2002)

Prof.Mamo Anthony Notes on Criminal Law Part II pagina 153).

*Għal x'għandu jitqies bħala dokument, il-Qorti tghamel referenza għas-sentenza mogħtija minn din il-Qorti diversament preseduta fis-sentenza fl-ismijiet **Il-Pulizija (Spettur Jesmond Borg) Vs John Busuttil** mogħtija nhar l-24 ta' Frar 2010 fejn għamlet referenza għal dak li qalet il-Qorti ta' l-Appell Kriminali fil-kaz: '**Il-Pulizija vs Paul Galea**' nhar is-17 ta'Ottubru, 1997.*

F'dak il-kaz il-Qorti kienet qiset bħala 'dokument' 'kull fejn hemm kitba, attribwibbli għal persuna identifikabbli, liema kitba tkun tikkontjeni espożizzjoni ta' fatti jew dikjarazzjoni ta' volonta'. B'kitba wieħed ma jifhimx biss is-sinjali alfabetici iżda tinkludi dawk numerici, stenografici w anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies. Il- ktiba f'dan is-sens tista' ssir kemm bl-id kif ukoll b'mezzi mekkanici, b'mezz indelibbli jew li jista' jithassar u fuq kwalsiasi mezz li jista' jieħu imqar temporanjament il-messagg.'

Abbazi ta' din id-dottrina, cheque għandu jitqies bħala dokument.

Fl-istess kaz fuq imsemmi il-Qorti segwiet id-dottrina dwar il-falso ideologico u il-falso materiale abbraccjata kemm minn Antolisei kif ukoll minn Manzini. Fi kliem Manzini jkun hemm falsita' materjali meta d-dokument ikun wieħed mhux genwin (jigifieri jew meta l-awtur apparenti ma jkunx l-awtur reali tad-dokument jew meta d-dokument ikun issubixxa alterazzjonijiet wara l-forma definittiva tiegħu). Min-naħa l-oħra l-falz ideologiku meta għalkemm id-dokument ikun genwin 'non e' verido, perche' colui che lo ho formato gli fa dire cose contrarie al vero.'

L'Antolisei jelabora fuq dan il-punt u jgħid:

'Dal fin qui detto si desume che il falso materiale, in quanto esclude la genuinita' del documento, puo' presentarsi solo in due forme: nella forma della contraffazione, la quale si ha allorche' il documento e' posta in essere da persona diversa da quell ache provenga, e nella forma dell'alterazione, la quale si verifica quando il documento, redatto dall'autore apparente, ha subito una di quelle modificazione di cui ora abbiamo parlato.' (***Antolisei F. Manuale di Diritto Penale Parte Speciale II pagina 606***).

Il-Professur Mamo jikkwota wkoll b'approvazzjoni dak li jgħid l-awtur Inġliż **Kenny**.

'Accordingly an instrument is not a forgery when it merely contains statements which are false, but only when it falsely purports to be itself that which it is not....Thus a forgery is a document which not only tells a lie, but tells a lie about itself.' (Prof Mamo Anthony Notes on Criminal Law Part II pagina 161)

L-istess kummentatur jirreferi għad-dottrina Taljana msemmija aktar 'il fuq fejn jingħad *'that the forgery must be in the 'materialita' della scrittura', that is, the public or private writing in its external conditions as a document.'* (Professur Mamo Anthony op.cit. pagina 161.)

Il-punt li jitkellem fuqu Kenny johrog minn dan il-bran li jidher fl-edizzjoni ta' l-**Archbold** ta' l-1975 : (Archbold ed.1997 pagina 1901 22-8):

'The concept of forgery and the rationale of the offence were summarised in paragraphs 41 to 43 of the Law Commission Report: 'By the middle of the nineteenth century it was established that for the purpose of the law of forgery the fact that determined whether a document was false was not that it contained lies, but that it told a lie about itself. It was in R versus Windsor (1865) that Blackburn J said: 'Forgery is the false making of an instrument purporting to be that which it is not, it is not the making of an instrument which purports to be what it really is, but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing.' This test was applied in the Court of Appeal in R versus Dodge and Harris..... As we have said...the primary reason for retaining a law of forgery is to penalise the making of documents which, because of the spurious air of authenticity given to them are likely to lead to their acceptance as true statement of the facts related in them. We do not think that there is any need for the extension of forgery to cover falsehoods that are reduced to writingThe essential feature of a false instrument in relation to forgery is that it is an instrument 'which tells a lie about itself' in the sense that it purports to be made by a person who did not make it (or altered by a person who did not alter it) or otherwise purports to be made or altered in circumstances in which it was not made or altered. In R versus Moore the House of Lords construed the 1981 Act in accordance with the concept of forgery set out in the Law Commission Report.'

Il-Qorti hasset li kellha tidhol a fondo f'din il-problema minhabba li waqt li l-kazistika tal-Qorti tagħna kemm-il darba dahlet primarjament f'zewg kwistjonijiet (i) jekk dokument hux pubbliku jew privat (Ara fost l-ohrajn: 'Il- Pulizija vs Carmelo Borg 26 ta' Jannar 1984 dwar jekk bank draft tas-Central Bank kienx dokument pubbliku jew le, 'Il-Pulizija vs Paul Bonnici' tat-30 ta' Gunju 1961dwar jekk licenzja tas-sewqan hix dokument pubbliku jew le u 'Il-Pulizija vs Patrick Spiteri' (22 t'Ottubru, 2004 dwar l-elementi ta' dokument pubbliku) jew (ii) jekk xi oggett hux dokument jew le (Ara: Regina vs SQ et 13 ta' Dicembru, 1954 u Il-Pulizija vs Paul Galea (ritratt ta' landrover ta' l-imputat appellant bin-numru K-2128 flok il-veru B-0544).

Fil-kaz odjern il-Qorti ma tistax tasal għall-konlużjoni li l- imputat holoq xi strument ex integro kif sar fil-kaz li għadu kif issemma. Pero' l-Qorti tirravviza li l-imputat Gatt biddel xi haga li kien hemm fid-dokument, u cioe' mela c- cheque li ma kienx tieghu u ffirmja falz, sabiex igieghel lill- venditur jemmen li c-cheque kien tieghu u li kellu flus biex jagħmel tajjeb ghax-xiri li kien qed jagħmel. Għalhekk jista' jinghad li l-imputat għamel falsifikazzjoni, w holoq ex integro tagħrif li biddel id-dokument.¹

Din is-sentenza giet ikkonfermata mill-Qorti tal-Appell Kriminali.²⁹

Din il-Qorti tqis li sabiex setgħet tinstab htija taht l-artikolu 183 tal-Kapitolu 9 tal-Ligijiet ta' Malta kien mehtieg li l-firma tkun wahda falza u cioe' li l-akkuzat ikun iffalsifika firma u cioe' li jkun iprova jimmita firma li mhijiex tieghu. F'dan il-kaz partikolari ma jirrizultax li li Donald Micallef immita firma ta' haddiehor izda jirrizulta li huwa ffirmja nonostante li ma kienx il-firmatarju rikonoxxut mal-Bank bil-konsegwenza li c-cheque ma kien jiswa xejn bil-firma tieghu. Tant kemm ma jirrizultax li huwa ffalsifika dan ic-cheque u cioe' li ma provax jimmita firma ta' haddiehor, li hemm indikat in-numru tal-karta tal-identita' ta' Donald Micallef fuq wara tac-cheque.

Għalhekk din il-Qorti tqis li ma tistax tinstab htija tal-imputazzjonijiet kontemplati taht ir-raba' (4), il-hames (5) u s-sitt (6) imputazzjonijiet.

²⁹ Fis-sentenza fl-ismijiet 'Il-Pulizija (Spt. Maurice Curmi Vs Omissis Kurt Gatt' deciza fl-14 ta' Frar, 2011 (Appell Kriminali Numru: 425/2010)

Ikkunsidrat;

Illi ghal dak li jirrigwarda l-piena, kemm l-appellant Avukat Generali u anke l-akkuzat Donald Micallef fl-appelli taghhom appellaw mill-piena inflitta mill-Ewwel Qorti. Stante li l-akkuzat qieghed jinstab hati biss tat-tieni imputazzjoni u cioe' dik ai termini tal-artikolu 308 tal-Kapitolu 9 tal-Ligijiet ta' Malta, din il-Qorti sejra tqis il-piena idonea u fil-parametri tal-ligi li ghandha tigi inflitta.

Jirrizulta li l-ammont mertu tac-cekk li jinsab a fol 49 immarkat bhala Dok AG2 li baqa' ma ssarafx kien fl-ammont ta' mija u tnax-il ewro u tnejn u sebghin centezmu (€112.72). Jirrizulta ukoll mill-fedina penali li l-akkuzat xellef difru mal-gustizzja kemm il-darba izda ma huwiex akkuzat li huwa recediv. Ghaldaqstant din il-Qorti tqis li ghalkemm ghandha tikkundanna lil akkuzat ghal piena ta' prigunerija, din il-piena ma ghandhiex tkun wahda effettiva. Din il-Qorti tqis li fiz-zmien ta' meta sehh ir-reat l-artikolu 308 tal-Kapitolu 9 tal-Ligijiet ta' Malta kien jistabilixxi piena ta' bejn seba' (7) xhur sa sentejn prigunerija. L-artikolu 310 tal-Kapitolu 9 tal-Ligijiet ta' Malta kien jistabilixxi skala tal-piena skont l-ammont tal-hsara, b'dan li jirrizulta li filwaqt li l-artikolu 310(1)(b) kien jirrigwarda l-valur ta bejn €232.94 u €2,329.37 fejn il-piena kienet dik ta' prigunerija minn hames (5) xhur sa tliet (3) snin jekk il-piena stabbilita fl-artikoli precedenti ma tkunx oghla minn din il-piena u l-artikolu 310(1)(c) kien jirrigwarda meta l-ammont tal-hsara ma tkunx aktar minn €23.29 fejn f'dak il-kaz il-piena ta' prigunerija kienet ta' mhux aktar minn tlett (3) xhur, ma kien hemm l-ebda subartikolu li jistabilixxi l-piena li kellha tigi inflitta f'kaz li l-hsara tkun aktar minn €23.29 izda anqas minn €232.94 bhal kif inhu dan il-kaz, fejn ic-cekk in kwistjoni li jinsab a fol 49 u mmarkata bhal Doc AG2 kellu l-valur ta' €112.72. Illum il-gurnata l-artikolu 310(1)(c) tal-Kapitolu 9 tal-Ligijiet ta' Malta jistabilixxi piena ta' mhux aktar minn sitt (6) xhur prigunerija f'kaz fejn il-hsara tkun anqas minn €500. Ghalhekk f'dan il-kaz din il-Qorti tqis li l-piena trid tkun skont il-parametri moghtija fil-ligi u gjaladarba fiz-zmien ta' meta sehh ir-reat l-artikolu 310(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta ma kienx jistabilixxi x'kienet il-piena meta l-hsara tkun aktar minn €23.29 izda anqas minn €232.94, sejra ghalhekk tikkundanna lill-akkuzat skont dak li kien jiprovdi l-artikolu 310(1)(c) tal-Kapitolu 9 tal-Ligijiet ta' Malta fiz-zmien ta' meta

sehh ir-reat u dan nonostante li l-valur huwa aktar minn €23.29 izda anqas min €232.94.

Ghal dawn il-motivi, din il-Qorti ma ssibx lill-akkuzat Donald Micallef hati tal-ewwel (1), ir-raba' (4), il-hames (5) u s-sitt (6) imputazzjonijiet, tastjeni milli tiehu konjizzjoni tat-tielet (3) imputazzjoni stante li din hija kompriza u involuta fit-tieni (2) imputazzjoni u wara li rat l-artikolu 308 u l-artikolu 310(ċ) tal-Kapitolu 9 tal-Ligijiet ta' Malta kif kienu jaqra meta sehh ir-reat in kwistjoni issib lill-appellant hati tat-tieni (2) imputazzjoni u tikkundanna lill-akkuzat Donald Micallef ghal tlett (3) xhur prigunerija li permezz tal-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta dan il-perjodu qieghed jigi sospiz ghal zmien sentejn mil-lum.

Din il-Qorti spjegat il-portata ta' din is-sentenza u l-konsegwenza jekk l-akkuzat Donald Micallef jikkommetti reat iehor fi zmien sentejn mil-lum.

(ft) Consuelo Scerri Herrera

Imhalled

VERA KOPJA

Franklin Calleja

Deputat Registratur