FIT - TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr. Marouska Debono LL.D; M.A. in Law

Seduta ta' nhar it-Tlieta, 12 ta' April, 2022

Talba Nru: 42/2021MD

Simonds Farsons Cisk plc (C-113)

Vs

1. **Tapaz Malta Limited (C-79769)**
2. **McKay Christopher (Ki Nru. 32891M)**

It-Tribunal,

Ra l-avviz fl-ismijiet premessi pprezentat fid-9 ta' Frar, 2021[1] permezz ta' liema s-socjeta' attrici talbet li l-konvenuti jhallsu s-somma kumplessiva ta' elfejn, mitejn u zewg Ewro u sitta u sebghin centezimu (€2,202.76) rapprezentanti merca li giet mibjugha u kkonsenjata lil konvenuti, liema somma qatt ma giet imhallsa; bl-ispejjez, u d-drittijiet u l-imghaxijiet legali inkluz dawk tal-ittra ufficjali bin-numru 867/2020, b'riserva ghal kwalsiasi ammont ulterjuri li talvolta jista jkun dovut lis-socjeta' attrici.

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[1] *A fol* 1 *et seq* tal-process.

Ra r-risposta tal-konvenut Christopher McKay pprezentata fid-29 ta' April, 2021[2] li eccepixxa s-segwenti:

It-talba tas-socjeta' attrici ghandha tigi michuda, bl-ispejjez kontra l-istess, u dan ghaliex:

1. Illi in linea preliminari, l-esponenti ma huwiex il-legittimu kontradittur u dan 'l ghaliex m'ghadux jokkupa l-kariga ta' direttur tas-socjeta' Tapaz Malta Limited (C-79769), u ghaz-zmien indikat fl-istatement, ma kienx direttur anqas, u ghaldaqstant ghandu jigi liberat mill-osservanza tal-gudizzju.

2. Fit-tieni lok, u minghajr pregudizzju ghas-suespost, l-esponenti fil-'*credit application*' esebita mis-socjeta' attrici stess, iffirma fil-kapacita' tieghu ta' direttur tas-socjeta' Tapaz Limited u mhux fil-kapacita' personali tieghu. Tabilhaqq ukoll, fl-istess dokument ma hemm l-ebda isem jew firma ta' garanti u ghalhekk l-anqas f'dan ir-rigward ma hija dovuta minnu is-somma ta' elfejn, mitejn u zewg Ewro u sitta u sebghin centezmu (€2202.76c).

3. Mill-bqija, it-talba tal-attrici hija nfondata fil-fatt u fid-dritt.

Bl-ispejjez kontra s-socjeta' attrici.

Ra li mill-atti jirrizulta li ghalkemm is-socjeta' konvenuta Tapaz Malta Company Limited giet debitament notifikata, ma kkontestatx il-kawza fit-termini preskritti mil-ligi u lanqas ma deher hadd jirraprezentaha ghas-seduti li nzammu quddiem it-Tribunal.

[2] *A fol* 14 *et seq* tal-process.

Ra l-atti kollha tal-kawza.

Ra d-dokumenti li gew esebieti in atti.

Ra x-xhieda prodotta mill-partijiet.

Ra s-sottomissjonijiet li ghamlu l-partijiet.

Ra li l-kawza thalliet ghas-sentenza.

Fatti fil-Qosor

Is-socjeta' konvenuta Tapaz Malta Limited kienet tixtri prodotti minghand is-socjeta' attrici. F'dan iz-zmien is-socjeta' konvenuta avvicinat lis-socjeta' attrici u talbet tletin gurnata kreditu, u s-socjeta' attrici accettat. Il-*credit application* giet iffirmata minn Christopher McKay, kemm f'ismu personali u kemm f'isem is-socjeta' konvenuta. Bhala parti mill-process taghhom, is-socjeta' attrici titlob li min ikun qed jiggestixxi n-negozju jidhol responsabbli personalment anke huwa. Is-somma ta' elfejn, mitejn u zewg Ewro u sitta u sebghin centezimu (€2,202.76) ghadha dovuta.

Provi prodotti

Ra x-xhieda ta' **Rita Gatt**[3] li tahdem bhala *credit control executive* fi hdan is-socjeta' attrici. Qalet li s-socjeta' konvenuta Tapaz Malta Limited kienet tixtri prodotti minghand is-socjeta'

[3] *A fol* 32 *et seq* tal-process; datata 22 ta' Settembru, 2021.

attrici. F'dan iz-zmien is-socjeta' konvenuta avvicinat lis-socjeta' attrici u talbet tletin gurnata kreditu, u s-socjeta' attrici accettat. Il-*credit application* giet iffirmata minn Christopher McKay, kemm f'ismu personali u kemm f'isem is-socjeta' konvenuta. Bhala parti mill-process taghhom ghal *credit application*, is-socjeta' attrici titlob li min ikun qed jiggestixxi n-negozju jidhol responsabbli personalment anke huwa. Is-somma ta' elfejn, mitejn u zewg Ewro u sitta u sebghin centezimu (€2,202.76) ghadha dovuta, li jirrizultaw mill-bilanc dovut, mill-ammont in vista tat-*thirty day credit* li giet iffirmata mill-istess konvenuti. Ikkonfermat l-*istatement* u l-*credit application form* annessi mar-rikors promotur.[4] Ikkonfermat li dan kien l-uniku ftehim. Skontru min-naha tal-konvenuti ma kienx hemm u lanqas sar xi tentattiv ta' hlas.

Fil-kontro-ezami[5] qalet li l-*credit application* hija *standard form* u li kull ma taghmel is-socjeta' attrici hi li tadatta il-*credit terms* u l-*credit limit* u jibghatuha lil klijent sabiex jimla d-dettalji tieghu. Anke meta jkun hemm cirkostanza fejn persuna tkun rikjesta tkun garanti fir-rigward tal-*credit* li jkun inghata. Qablet li hemm kaxxa li trid tigi mimlija mill-garanti personali u li f'dan il-kaz din il-kaxxa ma ntlietx. Qablet ukoll illi l-*invoice* li harget kienet f'isem is-socjeta' konvenuta esklussivament. L-*istatement* hareg wara li harget il-*credit application* u l-*istatement* hareg biss fil-konfront tas-socjeta' konvenuta. Qalet li l-*invoices* indikati fl-*istatement* jirreferu ghas-sena 2019.

Ra x-xhieda ta' **Christopher McKay**[6] fejn qal li s-socjeta' Tapaz Malta Limited kienet kumpanija li fetah huwa fis-sena 2017, pero' wara madwar ghaxar xhur minn meta fetah tali kumpanija kien hemm persuna ohra li hadet over hija, u ghalhekk ilu ma huwiex involut f'tali kumpanija minn Frar/Marzu, 2018. Warajh dahlet persuna ta' nazzjonalita Svediza bl-isem ta'

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[4] *A fol* 2 *et seq* tal-process.
[5] *A fol* 33 tal-process, datat 22 ta' Settembru, 2021.
[6] *A fol* 35 *et seq* tal-process, datata 1 ta' Ottubru, 2021.

Patrick Bo Alfvegren, u esebixxa diversi dokumenti inkluz estratt mill-MFSA.[7] Kompla jispjega li minn dawn id-dokumenti hemm indikat minn huma l-persuni ufficjali fi hdan is-socjeta konvenuta u li m'ghandu l-ebda involvement ma din is-socjeta'. Fuq parir legali li kien ha dak iz-zmien hu kien iffirma skrittura mal-persuna li eventwalment akkwistat l-ishma tal-kumpanija konvenuta u li permezz taghha huwa ddikjara li fir-rigward tad-djun u krediti tal-istess socjeta' huwa ma kellu xejn x'jaqsam iktar u kien ser ikun responsabbli ghalihom l-istess persuna li xtrat il-kumpanija minghandu.[8] Qal ukoll li fiz-zmien li kien hemm huwa, ma halliex djun, u li sa fejn jaf hu djun tal-kumpanija ma kienx hemm. Kompla jispjega li jekk kien hemm djun dawn kienu djun noramli assocjati mal-operar tal-istess kumpanija minn zmien ghal zmien. Fuq l-*istatement* li jidher li hareg mis-socjeta' attrici, u rrefera ghad-data indikata u cioe' Settembru, 2019, spjega li dak iz-zmien kien ilu li waqaf mis-socjeta' konvenuta. Kien iffirma d-dokument peress li l-agent stess tax-xoghol kien qallu li sabiex jibdew jaghtuhom ix-xoghol kellu jiffirma d-dokument datat 31 ta' Mejju, 2017, u kien qed jiffirmah f'isem is-socjeta' konvenuta meta bdew l-operat, u kien ghadu direttur tal-kumpanija. L-agent kien qallu li din kienet xi haga normali. Fir-rigward tal-*personal guarantee,* ma hemmx il-firma tieghu u ta' hadd. Lilu hadd ma talbu sabiex ikun personalment responsabbli ghad-djun tal-kumpanija. Kompla jispjega li kellu relazzjonijiet ohrajn f'kumpaniji ohra ma' Farsons, u suppost ghandu reputazzjoni tajba maghhom.

Konsiderazzjonijiet

Il-kawza odjerna si tratta fuq hlas ta' merca li giet mibjugha u kkonsjenata lil konvenuti, liema somma qatt ma giet imhallsa.

[7] *A fol* 37 *et seq* tal-process.
[8] *A fol* 40 tal-process.

Ikkunsidra li l-konvenut Christopher McKay kien irregistra lis-socjeta' konvenuta fis-sena 2017 fejn jirrizulta li s-socjeta' konvenuta giet irregistrata fit-28 ta' Frar, 2017[9]. Il-konvenut Christopher McKay fix-xhieda tieghu qal:

> *… warajja dahal persuna ta' nazzjonalita' Svediza Patrick Bow Alfiden. Ilni mhux involut f'din il-kumpanija minn Frar / Marzu tal-2018.*

Mir-Registru tal-Kumpaniji jirrizulta illi d-Direttur, rapprezentant legali u rapprezentat gudizzjarju huwa Bo Patrick Alfvegren (K.I. 39421A) filwaqt illi s-*shareholder* hija Mindy Elsebeth Alfvegren (K.I. 183139A).[10]

Ikkunsidra x-xhieda ta' Rita Gatt li qalet:

> *At a point in time nghid illi s-socjeta' Tapaz avvicinat lis-socjeta' taghna u talbet thirty days credit. Ahna konna accettajna. Nghid li wara din l-accettazzjoni giet iffirmata credit application. Din il-credit application giet iffirmata minn Christopher McKay, u dan kemm f'ismu personali kif ukoll f'isem is-socjeta' intimata. Fuq mistoqsija tat-Tribunal nghid illi ahna bhala parti mill-process taghna ghal credit application nitolbu illi min ikun qed jiggestixxi n-negozju jkun rez anke hu personalment responsabbli. Ikun ghalhekk illi l-credit application tigi ffirmata f'ismu u f'isem il-kumpanija…*

[9] *A fol* 19 tal-process u *a fol* 38 tal-process rispettivament.
[10] *A fol* 20 tal-process u *a fol* 39 tal-process rispettivament.

Qed issirli referenza ghal fol 5 u naqbel ma' dak li qed jigi suggerit lili illi hemm kaxxa li trid tigi mimlija mill-garanti personali. Naqbel ukoll illi f'dan il-kaz din il-kaxxa ma ntlietx.

Ikkunsidra l-*credit application* u l-awtorizzazzjoni ghall-Informazzjoni tal-Bank u Referenza[11] datati 31 ta' Mejju, 2017 u ffirmati mill-konvenut Christopher McKay. Ra li klawsola 8 tat-*Terms & Conditions of Credit* jghid is-segwenti:

8. Credit Terms Personal to Reseller

The Reseller accepts that any credit terms granted by the Creditor Company apply only to the Reseller and undertakes to inform the Creditor Company in writing, within 7 days, of any change in the ownership, management or responsibility of the business from which the Reseller sells the Products. The Reseller shall lose the benefit of the credit terms hereunder, in the event that the Reseller fails to inform the Creditor Company of any such change, or in the case of a breach of any clause in these Terms of Credit.[12]

Ikkunsidra li l-konvenut Christopher McKay iffirma d-dikjarazzjoni li tghid:

I/we have read the attached terms of sale and accept and agree to comply with your payment terms of 60 days from invoice month end (unless otherwise agreed by you

[11] *A fol* 3 *et seq* u 6 tal-process rispettivament.
[12] *A fol* 4 tal-process.

in writing) and to adhere to the credit limits imposed pn each individual group company.

I/we give my/our consent to initiate a debt recovery process to which I/we will cooperate fully.[13]

Izda ma ffirmax id-dikjarazzjoni li tghid:

The Guarantor hereby constitutes himself/herself, a joint and several debtor with the Reseller, in favour if the Creditor Company, which accepts, in respect of the Reseller's obligations under these Terms of Credit. All the parties to this Agreement that the Creditor Company has the right, at its option, to proceed for the recovery of any balance due hereunder against either the Reseller or the Guarantor or against both the Reseller and the Guarantor at the same time.[14]

Ikkunsidra li ghalkemm hemm ksur tal-ftehim redatt bejn is-socjeta' attrici u l-konvenut McKay ghaliex ma jirrizultax li McKay informa lis-socjeta' attrici bit-tibdil li sar fis-socjeta' konvenuta, certament ma jirrizultax illi l-konvenut dahal garanti personalment ghal djun li seta' jew jista jkollha s-socjeta' konvenuta.

Ikkunsidra li fl-iskrittura datata 4 ta' Settembru, 2018[15] Bo Patrick Alfvegren, filwaqt li ghamel referenza ghal kumpanija Tapaz Malta Limited iddikjara li:

[13] *A fol* 5 tal-process.
[14] *Ibid.*
[15] *A fol* 40.

… I will personally irrevocably and unconditionally assume ***ALL responsibility and liability*** *for any current or future claims, dues, debts, penalties, fees and interest related to* ***TAPAZ Malta Ltd*** *with regard to any suppliers, inland revenue, antional insurance, vat and any other third party and/or government authority. I will assume* ***ALL retroactive responsibility and liability*** *of* ***TAPAZ Malta Ltd.*** *and will indemnify and keep indemnified Mr. Chris McKat holder of Identity card number 32891M and resident at 19, Triq il-Farfett, Marsa for all matters related to* ***TAPAZ Malta Ltd. for any present claims and any other claims which may arise in the future***

Ikkunsidra li d-data tal-fattura ghall-ammont reklamat mis-socjeta’ iggib id-data 14 ta’ Jannar, 2021 u cioe’ data ferm wara l-iskrittura ffirmata minn Bo Patrick Alfvegren. Ghalhekk jirrizulta li Bo Patrick Alfvegren assuma kwalunkwe debiti li kien hemm qabel l-4 ta’ Settembru, 2018 u debiti futuri fir-rigward tas-socjeta’ konvenuta Tapaz Malta Ltd.

Mill-fattura datata 14 ta’ Jannar, 2021 jirrizulta illi tali fattura[16] harget fil-konfront ta’ Tapaz Restaurant & Bar, Tapaz Malta Ltd fl-ammont ta’ elfejn, mitejn u zewg Ewro u sitta u sebghin centezimu (€2,202.76) liema somma ghadha dovuta.[17]

Decide

Ghaldaqstant, it-Tribunal qieghed jiddisponi minn dan il-kaz billi jichad it-talba attrici fil-konfront tal-konvenut Christopher McKay filwaqt li jilqa’ l-eccezzjonijiet kollha tal-istess

[16] *A fol* 2 tal-process.
[17] Ara xhieda ta’ Rita Gatt, *a fol* 32 tal-process, datata 22 ta’ Settembru, 2021.

konvenut, u jikkundanna lis-socjeta’ konvenuta Tapaz Malta Limited thallas lis-socjeta’ attrici s-somma ta’ elfejn, mitejn u zewg Ewro u sitta u sebghin centezimu (€2,202.76), bl-imghax legali mid-9 ta’ Frar, 2021[18] sad-data tal-pagament effettiv.

L-ispejjez tal-kawza jithallsu unikament mis-socjeta’ konvenuta Tapaz Malta Limited inkluz dawk tal-ittra ufficjali bin-numru 867/2020.

Avukat Dr. Marouska Debono LL.D. M.A. in Law

Gudikatur

[18] Skont ir-rikors promotur.