MALTA

QORTI CIVILI, PRIM AWLA
MALTA

ONOR. IMHALLEF
VALENZIA GEOFFREY

Seduta tas-27 ta' Novembru, 2002

Citazzjoni Numru. 1657/2000/1

Iris Cutajar bhala mandatarja specjali tal-assenti Gordon u Jean, konjugi Browne

Vs

John u Pauline, konjugi Dingli; John u Carmen konjugi Gauci

Il-Qorti.

PRELIMINARI

Rat **l-att tac-citazzjoni** li permezz taghha gie premess illi l-attrici nomine hija l-mandatarja tal-assenti Gordon u Jean, konjugi Browne, u dan in forza ta' prokura redatta min-Nutar Dr. Pierre Falzon LL.D. u datata 26 ta' Jannar, 2000 li kopja taghha tinsab hawn annessa bhala Dok. "A" ;

Premess illi l-assenti Gordon u Jean, konjugi Browne kienu awtorizzaw lill-konvenut Joseph Gauci sabiex jidher f'isimhom u ghan-nom taghhom fuq konvenju ghax-xiri u l-akkwist tal-fond ossija appartament numru hamsa (5) fil-blokk t'appartament bin-numru 21 u bl-isem "Sunset Court " fil-Mellieha minghand il-konvenuti l-ohra John u Pauline, konjugi Dingli u dan versu l-prezz ta' dsatax-il elf lira Maltija (Lm19,000);

Premess illi ghal dan il-ghan l-assenti Gordon u Jean, konjugi Browne, kienu ghaddew lill-konvenut John Gauci '*bank draft*' datat 7 ta' Settembru, 1999 (Numru 0039291 44266 00269600233) u intestat lill-konvenut l-iehor John Dingli ghas-somma ta' elf u disa' mitt lira Maltija (Lm1,900), li kopja tieghu qed tigi hawn annessa u mmarkata bhala Dok. "B" (ara wkoll Dok. "C") u kif jirrizulta wkoll mill-vera kopja tal-ittra datata l-1 ta' Settembru, 1999 mibghuta mill-assenti Gordon u Jean, konjugi Browne lil certa Ruby Schembri, funzjonarja tal-HSBC Bank Malta plc (dak iz-zmien Mid-Med Bank plc), hawn annessa u mmarkata bhala Dok. "D" ;

Premess illi effetivament fil-15 ta' Settembru, 1999 kien sar att tal-konvenju bil-ministeru tan-Nutar Dr. Pierre Falzon LL.D. in rigward tal-immobbli fuq imsemmi (vide Dok. "E") fuq liema konvenju kienu dehru l-konvenuti John u Pauline, konjugi Dingli bhala l-vendituri prospettivi u l-konvenut John Gauci, f'ismu proprju u f'isem u ghan-nom tal-konvenuta martu Carmen Gauci, bhala x-xerrejja prospettivi ;

Premess illi fuq l-imsemmi konvenju thallset is-somma ta' elf u disa' mitt lira Maltija (Lm1,900) mill-prezz komplessiv mill-konvenut John Gauci pro et noe lill-konvenuti l-ohra John u Pauline, konjugi Dingli, u dan permezz tal-fuq imsemmi '*bank draft*' mahrug mill-assenti Gordon u Jean, konjugi Browne a favur tal-konvenut John Dingli u minnhom mghoddi lill-konvenut l-iehor John Gauci;

Premess illi l-imsemmi '*bank draft*' gie msarraf fis-17 ta' Settembru, 1999 fil-fergha tar-Rabat tal-HSBC Bank Malta plc. (dak iz-zmien Mid-Med Bank plc.) (vide Dok. "F");

Premess illi l-konvenju fuq imsemmi (Dok. “E”) kellu validita’ sa l-ahhar ta’ Gunju, 2000 u dan skond klawsola sebgha (7) tal-istess konvenju, pero’ l-kuntratt finali qatt ma gie ippubblikat;

Premess illi ghaldaqstant l-attrici nomine ghandha d-dritt illi tiehu lura s-somma ta’ elf u disa’ mitt lira Maltija (Lm1, 900) kif fuq espost;

Premess illi ghalkemm il-konvenuti gew interpellati diversi drabi biex jirrifondu lill-attrici nomine s-somma ta’ elf u disa’ mitt lira Maltija (Lm1,900) kif fuq espost, u dan anke permezz ta’ ittra ufficjali tat-8 ta’ Frar, 2000 (vide Dok. “G”), il-konvenuti baqghu inadempjenti u ghalhekk kellha ssir din il-kawza;

Ghaldaqstant l-attrici talbet lil din il-Qorti, ghar-ragunijiet premessi:

(1) Tiddikjara illi l-konvenuti, huma jew min minnhom, huma responsabbli biex ihallsu u jirrifondu lill-attrici nomine s-somma ta’ elf u disa’ mitt lira Maltija (Lm1,900) ghar-ragunijiet fuq esposti ; u

2. Tikkundanna lill-konvenuti, huma jew min minnhom, biex ihallsu u jirrifondu lill-attrici nomine l-imsemmija somma ta’ elf u disa’ mitt lira Maltija (Lm1,900).

Bl-ispejjez kollha inkluz dawk tal-ittra ufficjali tat-8 ta’ Frar, 2000 u l-imghax legali sad-data tal-hlas effettiv.

Rat id-dikjarazzjoni guramentata tal-attrici nomine a fol. 3 tal-process;

Rat in-**nota tal-eccezzjonijiet** tal-konvenuti John u Carmen konjugi Gauci a fol. 19 fejn eccepew:

Illi t-talbiet attrici safejn jikkoncernaw l-eccipjenti huma nfondati fil-fatt u fil-fatt;

Illi l-eccipjenti ma humiex il-legittimi kontradittturi ta’ din l-istanza, stante li huma ma kienu xejn ghajr intermedjarji u agenti tal-konjugi Browne stess;

Illi l-eccipjenti qdew il-mandat lilhom moghti minn Gordon u Jean Browne skrupolozament stante li huma la ressqu ghall-kuntratt finali kontemplat fil-konvenju tal-hmistax (15) ta’ Settembru, 1999 esibit fl-atti ta’ din il-kawza bhala “Dok. E”, u lanqas interpellaw lil John u Crocefissa konjugi Dingli sabiex jaghmlu dan in vista ta’ istruzzjonijiet precizi moghtija minn Gordon u Jean konjugi Browne f’dan is-sens;

4. Illi ghalkemm interpellati mill-attrici noe sabiex jirrifondu s-somma ta’ elf u disa’ mitt lira Maltija (Lm1,900) allegament avvanzati lilhom minn Gordon u Jean konjugi Browne, tali flejjes qatt ma gew avvanzati lilhom, izda gew avvanzati direttament lil John u Crocefissa konjugi Dingli, mentri l-mandat tal-mittenti kien jikkonsisti esklussivament f’mandat sabiex jidhru fuq il-konvenju de quo u jassumu l-obbligu li jixtru u jakkwistaw il-proprjeta’ msemmija fl-istess konvenju u jaccettaw il-promessa tal-konjugi Dingli fis-sens invers, u dan b’mod illi jkunu jistghu eventwalment jissostitwixxu ruhhom fl-obbligu tax-xiri ma’ terzi li kellhom jigu indikati mill-konjugi Browne, ghall-finijiet u l-iskopijiet ta’ l-istess konjugi Browne, li fihom l-eccipjenti ma ghandhom l-ebda interess;

Illi l-eccipjenti qatt ma nghataw struzzjonijiet mill-konjugi Browne sabiex jinterpellaw lill-konvenuti John u Crocefissa konjugi Dingli ghar-restituzzjoni tas-somma mitluba, u anzi in segwitu ghall-intavolazzjoni ta’ din il-kawza intimaw lil Iris Cutajar noe permezz ta’ ittra ufficjali datata 25 ta’ Settembru, 2000 illi f’kaz illi tkun ix-xewqa tal-konjugi Browne illli l-mittenti jkomplu jespletaw l-inkarigu taghhom li jiehdu hsieb l-interessi tal-konjugi Browne in relazzjoni mal-konvenju msemmi, din id-darba billi jinterpellaw lil John u Crocifissa konjugi Dingli sabiex jirrifondu d-depositu mhallas akkont tal-prezz stipulat fl-istess konvenju, huma jkunu disposti li jaghmlu dan, a spejjez ta’ l-istess konjugi Browne, sabiex jesimu ruhhom minn kull responsabilita’.

Salv eccezzjonijiet ulterjuri.

Rat in-**nota ta' eccezzjonijiet** tal-konvenut John Dingli a fol. 30 fejn eccepixxa li:

(Dwar l-ewwel eccezzjoni inghata degriet ara fol. 34).

Fit-tieni eccezzjoni jinghad li John Dingli ghandu jigi liberat mill-osservanza tal-gudizzju ghax l-attrici noe m'ghandha l-ebda relazzjoni guridika mieghu u ghalhekk huwa m'ghandu x'jaqsam xejn fil-kwistjoni li l-attrici noe jista' jkollha mal-konvenuti John u Carmen konjugi Gauci;

Il-kawza hija nulla billi hija bazata fuq premessa nulla a termini tal-ligi.

L-eccpipjent m'ghandu jaghti xejn ghall-obbligi mehuda mill-konvenuti John u Carmen konjugi Gauci u ghalhekk m'ghandhomx ibaghtu konsegwenzi finanzjarji.

Salv eccezzjonijiet ohra.

PROVI

Jean Brown *stated that defendant Gauci had the keys of the flat which they wanted to buy and which he showed them. He phone the owner Mr. Dingli who was abroad and he said that the owner was asking Lm19,000. They accepted the price and Gauci asked for a deposit which they paid (See instructions to the bank dok D fol. 11). The cheque was sent to Mr. Gauci's house, to be passed to Mr. Dingli. They knew of the government stipulation that foreigners can only buy immovable property in Malta for the sum of Lm30,000 upwards. They were under the assumption that the Lm30,000 limit would be brought down. So they agreed with Mr. Dingli, his wife, and Notary Falzon, that if this limit was not brought down, the sale would not go through. As the situation did not change they asked Mr. Dingli if he could hold the property until the situation changed but he wanted the whole amount, so they declined to go on with the sale and asked*

Mr. Dingli for the money back. At a later stage Mr. Dingli told them that he would only pay the deposit back after he sold the flat. This conversation took place at Mrs. Cutajar's place.

Mr. Gauci was acting as a friend in this deal. They gave him a power of attorney before the promise of sale. Mr. Gauci never had any of their money in his possession. The draft was made in Mr. Dingli's name and was passed to him by Mr. Gauci. Mr. Gauci always followed their instructions as given to him. She assumed that the clause about the change in government policy was included in the promise of sale. She was not in Malta when the promise of sale was signed so she cannot know if this clause was included. This clause had been discussed before. They knew what the government policy was when they paid the deposit but they were hearing that government policy could possibly be changed.

Gordon Steward Brown ikkonferma ix-xhieda li tghat martu. *He confirmed that Mr. Dingli said that he would pay the deposit back as soon as he sold the flat. "Mr. Gauci never had any monies of ours in his possession. He never refused to carry any of my instructions. I never instructed Mr. Gauci to proceed against Mr. Dingli to recover the deposit."*

Nutar Pierre Falzon ikkonferma l-konvenju a fol. 12/13. John Dingli kien ser ibiegh il-proprjeta' lill koppja Ingliza. Billi dak iz-zmien kien hemm dicerija li l-AIP *permit* kellu jinbidel, jigifieri, li l-valuri kellhom jintaqqsu, dawn iddecidew li jaghmlu l-konvenju. Billi l-ligi ma kinietx ghadha inbidlet, kien deher John Gauci personali pero' fil-klawsola (9) kien hemm li kellu dritt li jissostitwixxi ruhhu biex imbaghad il-kuntratt isir mal-koppja Ingliza. Wara sar il-*Budget* izda l-posizzjoni ma tbiddlitx u ghalhekk il-koppja Ingliza ddecidew li ma jixtrux. Dak kien l-*understanding* mill bidu nett. Kien kellem lill John Dingli u dan qallu li meta jbiegh il-flat jirrifondilhu l-Lm1,900. Il-flus kienu harguhom il-konjugi Inglizi. Gauci kien dahal fil-konvenju biex jaghmel pjacir lill Inglizi, anzi liz-zewg nahat billi kienu hbieb.

John Gauci xehed li hu kien indika lill konjugi Browne dwar il-problema li barranin ma setghux jixtru taht certu ammont billi l-prezz tal-flat kien Lm19,000. Browne kien ghamlu l-konvenju u stennew biex jaraw jekk il-ligi tinbidilx wara l-*Budget*. Hu kien deher ghalihom fil-konvenju. Kien ghadda c-*cheque* lill Dingli. Il-konvenju skada u Browne riedu l-flus lura. Meta kellem lill Dingli dan qallu li kien lest li jirrifondi l-flus wara li jbiegh il-flat lill haddiehor. Dan id-diskors rega' rripetih fil-presenza tieghu ghand Mrs. Cutajar. Ma kienx irceva ittra ufficjali biex jersaq ghall kuntratt.

L-attrici xehdet il-fatti kif graw. Hi qalet li wara li ma setghax isir il-kuntratt Gauci u Dingli kien marru ghandha u Dingli kien qallha li meta jbiegh il-flat kien lest li jirrifondi l-Lm1,900. Kull darba li kien jaraha dejjem kien jghidilha l-istess diskors.

Il-konvenut John Dingli xehed li Gauci kien sensar u kien bieghlu l-flat li kellu. Hu tah Lm1,900 *deposit*. Xi tlett xhur wara sar jaf lill dawn Browne ghax Gauci qallu li kien qed jipprova jbiegh il-flat lihom. Hu estenda l-konvenju mbaghad inqalghet kwistjoni bejn Gauci u Browne u Gauci rtira mill-konvenju. Kien baghtlu ittra biex jigi ghall kuntratt izda baqa' ma resaqx. Hu qatt ma ghamel negozjati jew ftehim ma Browne.

Fuq kontroezami wiegeb li l-kwisjtoni tas-ceiling inqalghet meta marru biex igeddu l-konvenju. Hu ma kienx ghamel kawza biex Gauci jersaq ghall-konvenju. Ma kienx jaf li l-flus kienu ta' Brown, sar jaf qabel bdiet dina l-kawza. Hu kien irceva ittra minghand Dr. Cilia biex jirritorna l-Lm1,900.

Hu qatt ma tkellem ma Iris Cutajar. Qatt ma mar ghandha jkellimha. Gauci kien hadu ghand Browne u dan kien ghand Mrs. Cutajar. Bdew jargumentaw. Lil Browne kien qallu li ma kienx iddilja mieghu. Browne ried il-flus minghandu. Hu qed izomm il-Lm1,900 bhala kapparra tal-konvenju.

KONSIDERAZZJONIJIET

Bhala fatti jirrizulta li kien sar ftehim bejn il-konjugi Browne u l-konvenut Joseph Gauci, li billi huma ma setghux jixtru l-flat in kwistjoni minhabba AIP *permit*, Gauci kellu jixtri l-flat ghalihom u meta tinbidel il-ligi (huma kellhom informazzjoni li l-ligi kienet ser tinbidel imminentement) Gauci kellu jissostitwixxi ruhhu maghhom fuq il-konvenju. Kienet saret klawzola (9) f'dan is-sens fil-konvenju ara fol. 12/13. Billi l-ligi ma tbiddlitx Browne ma setghux jersqu ghall kuntratt u l-konvenju skada u l-konvenut John Dingli zamm ghandu d-depozitu li kien sar fuq il-konvenju. Il-konjugi Browne talbu r-rifuzjoni tad-depozitu minghand Dingli izda dana rrifjuta li jirritornah.

Illi jirrizulta mill-provi li l-konvenju kien sar bejn Dingli u Gauci u mhux Browne u dan Gauci kien qed jidher "*in his own name and also on behalf of his wife Carmen Gauci*" Fol. 12.

Jirrizulta wkoll li kien sar *deposit* ta' Lm1,900 mill konjugi Browne b'*cheque* mahrug fuq isem John Dingli u dana c-*cheque* nghata lill Gauci u dan ghaddih lill Dingli li sarfu.

Illi l-konvenju kien skada u Dingli ma interpellax qabel l-iskadenza tal-konvenju lill Gauci biex jersaq ghall kuntratt u lanqas ghamillu kawza biex jaddivjeni ghall kuntratt. Dingli ma jistax izomm id-depozitu ghandhu lanqas bhala kappara billi ma hemm xejn fil-konvenju f'dan is-sens.

Dingli qed jissottometti li hu qatt ma nnegozja jew ftiehem ma Browne u ghalhekk lill Browne m'ghandu jirrifondilu xejn.

Illi mill-provi prodotti pero' jirrizulta li meta l-kuntratt ma setghax isir minhabba l-kwistjoni li nghalqet minhabba l-AIP *permit*, Dingli kien gie avvicinat mill-partijiet kollha biex jirrifondi l-flus moghtija lilu bhala depozitu u skond dawn ix-xhieda kollha Dingli kien accetta li jirritorna l-flus wara li jbiegh il-flat.

In-Nutar Pierre Falzon xehed li kien kellem lill John Dingli u dan qallu li meta jbiegh il-flat jirrifondilu l-Lm1,900.

Jean Browne xehded li "*At a later stage Mr. Dingli told them that he would only pay the deposit back after he sold the flat. This conversation took place at Mrs. Cutajar's place*."

Gordon Steward Brown ikkonferma "*that Mr.Dingli said that he would pay the deposit back as soon as he sold the flat*".

L-attrici xehdet li wara li ma setghax isir il-kuntratt Gauci u Dingli kien marru ghandha u Dingli kien qallha li meta jbiegh il-flat kien lest li jirrifondi l-Lm1,900. Kull darba li kien jaraha dejjem kien jghidilha l-istess diskors.

Joseph Gauci qal li l-konvenju skada u Browne riedu l-flus lura. Meta kellem lill Dingli dan qallu li kien lest li jirrifondi l-flus wara li jbiegh il-flat lill haddiehor. Dan id-diskors rega' rripetih fil-presenza tieghu ghand Mrs. Cutajar

Illi l-konvenut ma jsemmi xejn dwar dana id-diskors fejn assuma obbligu li jirritorna l-flus, u l-Qorti m'ghandiex raguni ghaliex ma temmienx lill dawn ix-xhieda kollha u temmen lill konvenut Dingli li ma qal xejn fuq hekk.

Ghalhekk id-depozitu ghandhu jigi ritornat mill-konvenuti Dingli lill attrici noe.

Kwantu ghall konvenut Gauci jirrizulta mill-provi li dana ma ha ebda flus, u hu mexa dejjem skond l-istruzzjonijiet li tawh il-konjugi Browne.

DECIZJONI

Ghal dawn il-motivi l-Qorti tiddeciedi:

billi tilqa' t-talbiet attrici u tiddikjara illi l-konvenuti Dingli responsabbli biex ihallsu u jirrifondu lill-attrici nomine s-somma ta' elf u disa' mitt lira Maltija (Lm1,900) ghar-ragunijiet fuq esposti ; u

tikkundanna lill-konvenuti Dingli biex ihallsu u jirrifondu lill-attrici nomine l-imsemmija somma ta' elf u disa' mitt lira Maltija (Lm1,900);

tillibera lill konjugi Gauci mill-osservanza tal-gudizzju.

Spejjez kollha ghall konvenuti Dingli.

ONOR. IMHALLEF GEOFFREY VALENZIA B.A., LL.D

Frankie Mercieca
Deputat Registratur.