



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
RAYMOND C. PACE**

Seduta tad-29 ta' April, 2003

Citazzjoni Numru. 402/2001/1

Svetlana Minaeva Ciangura

vs

Aldo Ciangura

Il-Qorti,

I. PRELIMINARI.

Rat ic-citazzjoni attrici a fol. 1 fejn gie premess:-
Illi l-kontendenti zzewgu fir-Registru taz-Zwigijiet ta' Malta fid-29 ta' Novembru 1997 (Dok. "A");

Illi fil-mument tal-kontrattazzjoni taz-zwieg taghhom, il-kunsens ta' wiehed jew wahda mill-kontendenti kien vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga jew fuq id-drittijiet u d-dmirijiet essenzjali taghha jew b'anomalija psikologika serja li taghmilha

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impossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg;

Illi fil-mument tal-kontrattazzjoni taz-zwieg taghhom, il-kunsens tal-kontendenti jew wiehed jew wahda minnhom, kien vizzjat bl-eskluzjoni pozittiva taz-zwieg innifsu jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga jew tad-dritt ghall-att taz-zwieg;

Illi l-kunsens ta' l-attrici ghaz-zwieg inkiseb b'qerq dwar xi kwalita` tal-konvenut li setghet mix-xorta taghha tfixkel serjament il-hajja mizzewga;

Illi z-zwieg tal-partijiet ma giex ikkunsmat;

Illi ghalhekk iz-zwieg tal-kontendenti huwa null *ai termini* ta' **l-artikolu 19(A)(i), 19(1)(c)(d) u (f) tal-Kap. 255 tal-Ligijiet ta' Malta.**

Illi ghalhekk iz-zwieg tal-kontendenti huwa null.

Illi ghalhekk tghid l-istess attrici lil din l-Onorabbli Qorti:-

1. Tiddikjara z-zwieg tal-kontendenti ikkuntrattat fir-Registru taz-Zwigijiet ta' Malta fid-29 ta' Novembru 1997 null u bla effett ai termini ta' l-artikolu **19(A) (i), 19(1) (c) (d) u (f) tal-Kap. 255** tal-Ligijiet ta' Malta;

2. Tawtorizza lill-attrici tirreverti ghal kunjom xubitha 'Minaeva.'

Bl-ispejjez kontra l-konvenut li jibqa` ngunt ghas-subizzjoni.

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

Rat il-lista ta' xhieda u d-dokumenti esebiti a fol. 4 sa 8 tal-process;

Rat in-nota ta' l-eccezzjonijiet tal-konvenut tas-17 ta' Dicembru 2001 a fol. 17 fejn gie exceptit:-

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Illi l-eccipjent jaqbel illi z-zwieg in kwistjoni ghandu jigi dikjarat null pero` dan abbazi ta' gudizzju fuq il-hajja mizzewga u fuq id-dmirijiet essenzjali taghha da parti ta' l-attrici nnifisha u mhux kif allegat minnha fil-premessi tac-citazzjoni.

Rat id-dikjarazzjoni u l-lista tax-xhieda tal-konvenut a fol. 17 u 18 tal-process;

Rat l-avviz tat-13 ta' Frar 2002 fejn il-kawza giet differita quddiem din il-Qorti kif diversament presjeduta mill-Onor. Imhallel Raymond Pace;

Rat in-nota ta' l-attrici tat-18 t'April 2002 li biha esebiet affidavit ta' Valentina Minaeva;

Rat il-verbali tas-seduti tas-16 ta' Mejju 2002 fejn gie nnominat Dr. Kenneth Gulia bhala Assistent Gudizzjarju; tat-22 ta' Novembru 2001; tal-5 ta' Novembru 2002 fejn il-Qorti ordnat li tinzamm seduta ghall-konkluzjoni tal-provi tal-konvenut; u tal-5 ta' Frar 2003 fejn il-kawza giet differita ghas-sentenza ghad-29 t'April 2003.

Rat is-seduti mizmuma quddiem l-Assistent Gudizzjarju nhar l-10 t'Ottubru 2002; tal-21 t'Ottubru 2002; tad-19 ta' Novembru 2002.

Rat ir-rikors ta' l-attrici tas-17 t'Ottubru 2003 fejn titlob lil din l-Onorabbli Qorti sabiex tawtorizza lill-Assistent Gudizzjarju Dr. Kenneth Gulia sabiex izomm seduta fil-21 t'Ottubru 2002 ghall-kontroezami tax-xhud Valentina Minaeva u ghax-xhieda kollha li fadal tal-partijiet u tinnomina lil Anna Pnitskev bhala interpretu sabiex tittraduci x-xhieda ta' l-istess xhud mill-lingwa Russa ghall-lingwa Ingliza; rat id-digriet tat-18 t'Ottubru 2002 fejn il-Qorti tilqa` t-talba.

Rat in-nota tal-konvenut li permezz taghha pprezenta l-affidavit tieghu stess;

Rat id-dokumenti esebiti;

Rat l-atti kollha l-ohra tal-kawza.

II) KONSIDERAZZJONIJIET.

I) PROVI PRODOTTI.

L-attrici fl-affidavit taghha tghid:-

"I met my husband Aldo when I visited Malta on holiday some years ago. I met him at a bar in Paceville. We started going out together with his friends and soon I found myself spending more and more time with him.

I returned to Malta quite regularly in the following years, always on holiday.

In October 1997, Aldo and I decided to get married. The decision was taken extremely fast, as before this I had not taken the relationship seriously at all. In fact I considered him to be more a friend than a partner and never discussed a relationship with him in any manner. I visited Malta for short breaks and did not have the time or inclination to settle down. I met Aldo only causally and always in the accompaniment of friends.

Aldo and I decided to get married in October 1997 after spending two days together. He had invited me to stay at his house upon my arrival to Malta and we had sexual relations there. It was then that he suggested we get married and for some reason which from hindsight I cannot understand today, I said yes. I did not love Aldo nor did I have any intention to spend my life with him but I think that I got caught in the excitement of the moment and just decided to take the plunge. I did not think about the consequences for even one moment.

Previously to this, I had been in and out of a number of short relationships in Russia but never anything serious.

So after we decided to get married, Aldo came with me to Moscow to see my family. There he met my parents who were very surprised to hear about my plans. They liked Aldo very much as he is a lively and charismatic character

- two traits which also had an effect on me as I like to enjoy life.

Aldo is a self-declared homosexual. At the time, Aldo had admitted to me that he was bi-sexual but that he wished to live the normal life of a man. After marriage I discovered that Aldo also liked to dress up in woman's clothes but he had not told me this at the time.

Even knowing the risks of having a relationship with a bi-sexual man, I still decided to take up the marriage offer but never really took the matter seriously.

Without any engagement formalities, we just set a date - for 29th November 1997 and organised a civil marriage ceremony to which we invited a few of Aldo's friends as well as my parents and some friends of mine. I got a wedding dress from Moscow and as the date approached, we simply drifted. Aldo and I did not discuss family life in any detail but he did say that he wished to buy a home with me and have children. I was 24 years old at the time and considered the prospect of settling down with children as too remote to consider.

On our wedding day, we went to Valletta to get married. My witness was Mark Felice and Aldo's was someone called Alex. We went to eat at the Bouzouki restaurant after the ceremony.

That night, Aldo booked a room at the Corinthia San Gorg. I was surprised by this as I did not know about it before. We arrived at the hotel late at night. Suddenly, as I drank some champagne, Aldo started crying. When I asked him what was wrong he stated that he wished he were man enough for me and could have sex with me. He explained that he needed some time to discover what he really needed sexually. He was totally confused and I said that I understood. We just went to sleep without consummating the marriage.

The next day, after breakfast, Aldo took me to see some properties which we had planned to buy after obtaining a bank loan.

In the following days, Aldo still had the same sexual problem in my regard but I preferred not to discuss the issue with him. We still however got on well on a friendly basis and partied together with other friends.

After some time I came to realize that Aldo's homosexuality was what was preventing him from having a normal relationship with me. Aldo openly told me that he preferred men to women - this did not offend me as I knew before marriage that he was at least bi-sexual so I was not surprised by his admission. He was however quite possessive if some man or other, even friends, gave me any attention.

After a few months, the situation started to annoy me. I realized I had made a big mistake in getting involved with a homosexual man. Aldo and I began to argue about small matters - particularly when I felt that he was ignoring me altogether. He never had any relationships in the house we were living in (at least not in my presence) but it was clear that he was hanging around with other homosexual men.

I left Aldo in 1998 after a few months of marriage and later separated by contract in October 1999.

Aldo and I never consummated our marriage and I am today certain that neither of us was prepared to enter into a true and permanent married and family life together. Although knowing the risks of getting involved with a man who was bi-sexual, I took the matter lightly and without caring about the future.

Aldo has today publicly declared his homosexuality on the programme 'Xarabank' on Maltese TV and stated that he had in the past wanted to try out relationships with women to discover his true self.

I today enjoy a good friendly relationship with Aldo as in truth, I did not have any serious problems with him as a person other than the fact that we could never, even from the start, really live like normal married couples.

Today I am involved with another man and so is Aldo.”

Omm l-attrici, **Valentina Minaeva** fl-affidavit taghha tghid:

“I am a Russian national with Passport 60 No. 0652768. I am the mother of Svetlana Minaeva. She is my only daughter and was born on the 28th March 1973.

Some years ago, I recall that Svetlana called me from Malta to tell me that she was getting married. Svetlana had been visiting Malta for some months previously and had a few weeks before informed me that she had met some man there. When she told me this, I was shocked as I never expected Svetlana to get married so fast and to someone she hardly knew. At that moment, I remember that I did not comment to her or show her my concern as I did not want to spoil things for her. But I specifically recall that my daughter did not sound extremely excited over the phone as I would have expected her to be.

Some weeks after Svetlana came to Moscow and told me that her husband to be was coming to visit us. She wanted to introduce us to him. In fact, Aldo Ciangura visited our home in Moscow in September 1996. This was a few weeks before they were supposed to get married.

During his stay at our home, things went on quite well. The only thing that I was surprised about, was that my daughter told me that she and Aldo were not having sex because he was shy of us and also because he was a Catholic and did not want to have sex before marriage. I found this to be strange but accepted it as Aldo came from a different country.

I have a very open relationship with my daughter and she tells me everything. We discuss sexual matters openly. This is the way I brought her up.

Another strange thing I remember is that one day Aldo and Svetlana came back from a disco in Moscow. I think it was his birthday. When they got back home. Aldo was crying a lot. I asked what had happened and Svetlana explained that they had been stopped in the street by traffic Police and that Aldo was very upset because he had been frisked by the Police. I was very surprised at Aldo's reaction to this as I did not expect him to cry so much because of this incident.

A few weeks later, I went to Malta for the marriage of my daughter to Aldo. I did not participate in any way in the preparations for this. The wedding was a private civil wedding followed by dinner at a restaurant. The wedding was enjoyable but unremarkable. There was no honeymoon planned.

A day after the wedding, Svetlana told me about her wedding night and what happened to her. She told me that Aldo was crying in the night because he felt he could not have sex with her. I was shocked at this, as it is not a normal thing for a newly married couple.

A few days later I was alone in the house of Aldo and Svetlana (they went to live in Aldo's house) and I started to clean up to help Svetlana. I found some photographs in a drawer. These showed Aldo dressed up in a woman's costume. When Svetlana came back to the house, I asked her whether she knew about the photos and Svetlana said that she knew nothing about these. So I showed the photos to Svetlana and she too was shocked. Svetlana told me that she was going to ask Aldo about the photographs.

In the days that followed, I started noticing that the friends of Aldo acted like they were homosexuals. I confronted Svetlana with this too and she explained to me that she thought Aldo was bi-sexual.

I know that after some time, Svetlana and Aldo decided to separate. Svetlana told me that she had discovered that Aldo was an active homosexual and that she had not had sexual relations with Aldo because of this. I know that Svetlana and Aldo separated in 1997.

Today Svetlana is involved with a Maltese man and has a child who is five months old. I am happy that she has settled down in her role as a mother.”

Il-konvenut fl-affidavit tieghu jghid:-

“Illi jiena fil-fatt kont iltqajt ma’ Svetlana Minaeva l-ewwel darba fil-bar ‘Loose Ends’, f’Paceville fejn jien dak iz-zmien kont qed nahdem bhala part-time barman. Huwa minnu li jiena xi drabi fis-snin ta’ qabel kont gieli rajtha Paceville pero’ f’dawk id-drabi jien qatt ma kont introducejt ruhi maghha u lanqas hi - semplicement kont naraha bhal hafna nisa ohra li kienu jiffrenkwentaw il-bars f’Paceville. Ghandi nghid ukoll illi dan il-bar fejn jient kont part-time u cjoe` il-‘Loose Ends’, dak iz-zmien kien rinomat bhala ‘gay bar’ u fil-fatt kien ikun iffrekwentat kwazi esklussivament minn rgjel ‘gay’ , u xi kultant anke nisa ‘gay’, pero’ fil-maggoranza rgjel.

Meta fil-fatt iltqajt maghha go dan il-bar, kienet Svetlana nnifisha li ntroduciet ruhha mieghi u jien qbadt inpacpac maghha. Dakinhar fil-fatt ahna bqajna nitkellmu kontinwament sakemm spiccajt mix-xoghol u minn hemm tlaqna jiena u hi biss lejn il-‘Golden Sands’ fejn inzilna nghumu flimkien u minn hemm spiccajna d-dar tieghi u dak il-lejl stess kellna x’naqsmu l-ewwel darba. Kif ghidt, dan kien Gunju tan-1997. Dakinhar li ltaqjna hi kien fadlilha xi hamest ijiem ohra Malta vakanzi qabel ma tmur lura r-Russja u f’dawk il-hamest ijiem konna niltaqghu prattikament kuljum billi tigi meta jien inkun xoghol il-bar ‘Loose Ends’ jew inkella nohorgu nieklu meta jien ma nkunx xoghol. Insomma f’dawk il-hamest ijiem iltqajna kuljum u kuljum spiccajna d-dar ghandi u kuljum kien ikollna x’naqsmu.

Illi mbaghad wara dawn il-hamest ijiem hi telqet lura r-Russja. Wara xi tlett jew forsi erba' gimghat, Svetlana regghet giet lura ghal xi gimgha u ergajna bdejna niltaqghu. Fil-fatt din id-darba hi qaghdet ghandi, u naturalment konna nohorgu frekwentement flimkien - generalment immorru f'dak il-bar 'Loose Ends'. Hemmhekk anke bdejt inlaqqaghha ma' hbiebi illi kienu kollha 'gay'. Ghalhekk jien fic-cert illi Svetlana kienet taf kwazi sa mill-bidu nett il-karattru tieghi u t-tendenzi tieghi. F'din l-okkazzjoni ukoll kellna x'naqsmu pero` forsi mhux bl-istess frekwenza li kien gara qabel. Ghalhekk jiena fic-cert li Svetlana kienet taf sa mill-bidu nett illi jien kelli tendenzi ta' 'bi-sexual'.

Illi kien propju f' din it-tieni okkazzjoni tat-tieni gita taghha f' Malta illi ahna konna ddecidejna illi nizzewwgu u allura hi kienet stednitni mmur ir-Russja biex niltaqa` mal-genituri taghha. Meta kienet stednitni jien kont anke staqsejtha jekk fir-Russja kienx hemm 'gay bars' u, tant hi kienet taf bit-tendenzi tieghi, illi fil-fatt hemmhekk kienet haditni f'zewg bars ta' din il-kwalita`. Jien ma nafx ezatt min issuggerixxa li nizzewwgu pero' l-impressjoni tieghi hija illi hi xtaqet tizzewweg u jien minn naha tieghi, malli staqsietni, accettajt mill-ewwel ghaliex jien minn dejjem xtaqt li jkolli t-tfal.

Illi jiena meta hi staqsietni biex nizzewwgu, mill-ewwel ghaddieli l-hsieb illi kif kienu qed jaghmlu nisa ohra Russi, Svetlana riedet ukoll tizzewweg biex tkun tista tibqa` Malta. Allura nerga nghid illi minkejja li ghaddieli dan il-hsieb jien minn naha tieghi accettajt propju minhabba r-raguni illi xtaqt it-tfal.

Illi meta mort Moscow qaghdna ghand il-genituri ta' Svetlana. Fil-fatt, biex inkun preciz, il-flat milli jidher kien ta' Svetlana u l-genituri taghha kienu joqghodu fil-flat taghha. Jiena naqbel li hemmhekk jiena u Svetlana ma kellniex x'naqsmu izda din ma kenitx minhabba l-fatt illi jiena ma xtaqtx ikolli x'naqsam qabel iz-zwieg kif qalet omm Svetlana izda minhabba certu nuqqasijiet ta' igene li bdejt ninnota fi Svetlana. Inoltre ommha semmiet li jiena kont spiccajt imbikkem meta kienu waqqfuna l-Pulizija

hemmhekk. Ma kien hemm xejn stramb illi jien spiccajt imbikkem ghaliex jien hassejt l-atmosfera go Mosca stressanti hafna u dakinhar li waqqfuni l-Pulizija dawn sahsitra kienu riedu jarrestawni peress li jien ma kontx qed ingorr mieghi dokument li jindika f'liema hotel kont qed noqghod. Ovvjament jiena ma stajtx ikolli dan it-tip ta' dokument peress illi kont qed nghix fil-flat ta' Svetlana. Dan l-incident spicca wara illi Svetlana rrangat xi haga mal-Pulizija stess bil-lingwa taghhom. Jien hassejtni milqj mill-genituri ta' Svetlana tant illi waqt li kont hemm kelli l-birthday u fil-fatt ghamluli ikla u anke gabu xi hbieb taghhom ghal din l-okkazjoni.

Illi allura mbaghad jien u Svetlana gejna lura Malta u bdejna nippreparaw ghat-tieg. Ghandi nghid f'dan il-kuntest illi meta Svetlana kienet originarjament staqsietni biex nizzewwigha u jiena kont accettajt, jien ghedtilha li s-sitwazzjoni finanzjarja tieghi ma kenitx tajba u li allura ma stajtx nonfoq spejjez ghat-tieg. Svetlana pero` minn naha taghha offriet illi tohrog il-flus hi minn jeddha u fil-fatt kienet hi illi hallset il-maggoranza ta' l-ispejjez ghal din l-okkazjoni nkluz sija l-arlogg illi lili tatni fl-okkazjoni tat-tieg u sija c-curkett tat-tieg taghha nnifisha. Niftakar illi dan ic-curkett kienet xtratu minn Malta stess u kien jiswa madwar sitt mitt lira.

Illi ahna allura zzewwigna fid-29 ta' Novembru 1997 u konna noqghodu fil-post tieghi li jien kont nikri fil-Mosta. Peress lili Svetlana riedet post ikbar ahna mill-ewwel bdejna nduru naraw insibux flat ikbar biex inkunu nistghu nixtruh u anke niehdu self mill-bank ghalih. Fil-fatt konna sibna flat Bahar ic-Caghaq u fit-18 ta' Dicembru 1997 anke ffirmajna konvenju biex nixtru dan il-flat. Dan il-konvenju ghalhekk sar bejn gimghatejn u tlett gimghat wara illi konna zzewwigna”.

Dwar dakinhar tat-tieg jien fil-fatt kont ibbukjat kamra il-Corinthia San Gorg u wara t-tieg spiccajna hemm jiena u Svetlana pero` jiena kont xrobt hafna dakinhar u allura kien minhabba dan u ghall-ebda raguni ohra illi jien u Svetlana dak il-lejl ma kellniex x'naqsmu. L-ghada ahna, kif ghidt, morna lura nghixu fil-flat illi kont krejt u fejn anke omm Svetlana baqghet toqghod peress illi baqghet Malta

ghal xi flit granet wara it-tieg. F' dawn il-granet pero` il-relazzjoni tieghi u ta' Svetlana bdiet tinbidel u bdejna nzommu il-boghod minn xulxin. Wara illi ommha siefret giet ukoll habiba ta' Svetlana u allura giet anke toqghod maghna fl-flat u ghamlet ukoll xi flit granet hemmhekk sakemm gara l-incident illi minhabba fih Svetlana qabdet u telqet mid-dar.

Illi dan l-incident gara xi ffit granet wara li konna fflrmajna l-konvenju u cjoe` xi jumejn jew tlett ijiem qabel li-Milied tan-1997. Dakinhar li gara l-incident, li kien gara, kien, illi jiena kont iddecidejt illi naghmel ikla d-dar u apparti Svetlana u din il-habiba taghha, stedint ukoll xi hbieb tieghi kollha 'gay' u cjoe` lil certu Mark Felice u l-boyfriend tieghu Tristel u Katia Saunders. Ahna dakinhar filli konna qed nitkellmu bl-Ingliz, ovyjament biex kulhadd jista' jifhem, filli f'daqqa wahda Svetlana u habibitha qabdu u telqu gol-bedroom. Jien hassejt illi l-agir taghha kien daqsxejn insolenti u dhalt fil-bedroom biex inkellimha. Imbaghad qbadna nargumentaw u hi qabdet libset u telqet il-barra flimkien ma' habibitha u minn dakinhar m'ergajniex ghaxna flimkien. Ghalhekk kull m'ghamilna flimkien mit-tieg kien madwar erba' gimghat. Dakinhar b'vendikazzjoni Svetlana kienet marret l-ghassa tal-Pulizija u ghamlet rapport illi ahna konna qeghdin inpejpu l-haxixa d-dar. Fil-fatt tard filghaxija kienu gew il-Pulizija d-dar waqt li jien kont qed innaddaf wara l-ikel, u wara li l-hbieb li kellna kienu diga` telqu u ghamlu tftxija wara li nsistew li jfittxu d-dar ghall-haxixa u jien ippermettejt ilhom, pero` fl-fatt ma sabu xejn. Imbaghad kellimt wiehed mill-Pulizija u dan qalli li marti kienet marret l-ghassa u kienet ghamlet dan ir-rapport. Jien irrispondejtu illi kien minnu illi ahna dakinhar kellna argument bejnietna pero` jiena ghidtlu illi jekk Svetlana riedet tigi lura jien kont lest illi nilqaghha lura.

Illi effettivamente pero` Svetlana la giet lura dakinhar u lanqas wara. Fil-fatt hi marret toqghod il-hotel Milano Due. Minn hemm qbadna t-triq illi wasslet biex ghamilna s-separazzjoni bonarja bejnietna fil-15 ta' Ottubru 1998 (u mhux tas-sena 1999 kif qalet Svetlana). Fil-perjodu meta hi telqet mid-dar sa meta ffirmajna s-separazzjoni

Svetlana baqghet tinsisti biex iggib ic-cittadinanza Maltija. Fil-fatt sakemm gejna biex nisseparaw kienet diga` ottenietha. Ma dan l-affidavit fil-fatt jien qed nipprezenta kopja tal-kuntratt ta' separazzjoni konsenswali ta' bejni u Svetlana li qed jigi mmarkat Dok "AC 1". Nigbed l-attenzjoni ghall-fatt illi fid-dettalji ta' Svetlana hemm indikata anke l-'Identity Card' illi kienet lahqet otteniet qabel gejna biex nisseparaw. Fil-fatt sa fejn naf jiena, qabel is-separazzjoni Svetlana anke ivvutat fl-elezzjoni generali ta' Malta li kienet saret f' Settembru cjo` xahar qabel is-separazzjoni. Jien ma nistax inkun preciz hafna dwar meta gabet ic-cittadinanza Maltija pero` li nista nghid huwa illi sahsitra f' dawk l-erba' gimghat illi ghamilna flimkien wara li zzewwigna, hi mill-ewwel hadet l-interess li tapplika ghac-cittadinanza u jien fil-fatt anke kont akkompanjajtha fid-dipartiment governattiv f' Kastlija biex hi tkun tista tapplika ghalha.

Illi naf li galadarba otteniet ic-cittadinanza Maltija, anke wara s-separazzjoni, Svetlana baqghet tghix Malta u fil-fatt qabdet relazzjoni ma' xi haddiehor. Naf li minn dan ix-xi hadd iehor illum ghandha tarbija.

Illi dwar l-allegazzjonijiet taghha li hi kienet surpriza b'xi mod bit-tendenzi tieghi, apparti dak li diga` ghidt dwar il-hbieb tieghi illi introducejtha maghom sa minn qabel ma zzewwigna u anke l-'bar' li flh hi giet tiltaqa` mieghi, nixtieq insemmi zewg affarijet ohra. Kif fil-fatt qalet hi fl-affidavit taghha ix-xhud taghha kien Mark Felice persuna li tinduna mill-ewwel li hu 'gay' malli titfa` ghajnejk fuqu. Dwar l-incident imsemmi minn Svetlana u minn ommha dwar xi ritratti illi ommha qalet illi skopriet fid-dar tieghi, jiena dan l-incident ma nafx bih bl-ebda mod u m'huwiex minnu li Svetlana qatt ikkonfrontatni b'dawn ir-ritratti illi semmiet. Ghandi nghid pero` illi dwar li-fatt illi jiena gieli ilbist hwejjeg ta' tfajla, kif tidhol id-dar tieghi fuq wiehed mill-mobbli fl-ewwel kamra hemm ritratt tieghi li ilu ghandi snin twal ta' meta kont hafna izghar u fih jien nidher propju liebes b'dan il-mod. Jien ma' dan l-affidavit qieghed nipprezenta kopja ta' dan ir-ritratt Illi qed jigi markat bhala Dokument "AC2".

Kopja Informali ta' Sentenza

Illi apparti dan sar kontro-ezami ta' l-attrici fl-10 ta' Ottubru 2002 u wkoll ix-xhieda ta' Mark Felice tad-19 ta' Novembru 2002.

II) PRINCIPJI LEGALI.

Illi dawn it-tlett premessi li fuqhom hija bbazata l-azzjoni attrici huma kkontemplati fl-**artikolu 19 (1) (c), (d) u (f) tal-Kap 255 tal-Ligijiet ta' Malta** u cjoe` l-Att dwar iz-Zwieg.

Illi l-attrici l-ewwel tissottometti illi z-zwieg bejnha u bejn il-konvenut ghandu jigi dikjarat null inter alia a bazi ta' l-**artikolu 19 (1) (c) tal-Kap 255** li jghid:-

19 (1). *“B'zieda mal-kazijiet fejn zwieg ikun null skond xi dispozizzjoni ohra ta' dan l-Att, zwieg ikun null:*

(c) jekk il-kunsens ta' xi wahda mill-partijiet ikun inkiseb b'qerq dwar xi kwalita` tal-parti l-ohra li tista' mix-xorta taghha tfixkel serjament il-hajja mizzewga”.

Il-Qrati taghna dejjem sostnew illi taht dan is-subartikolu:-

*“Iz-zwieg huwa null jekk wahda mill-partijiet taghti kunsens taghha ghax tkun giet imqarqa jew mill-parti l-ohra jew minn xi hadd iehor dwar xi kwalita` tal-parti l-ohra” (“**Sh A mart A Fattah xebba Perry vs Dr A Mifsud u PL Mifsud Bonnici**” – P.A. 22 ta' Novembru 1982).*

Illi element importanti ta' dan is-subartikolu hu li l-qerq irid ikun serju bizzjed li jfixkel serjament il-hajja mizzewga, u huwa mmaterjali jekk tali qerq jorigina minn naha l-ohra jew minn terzi persuni, ghaliex li huwa mportanti u determinanti huwa li l-qerq ikun sar sabiex jahbi xi kondizzjoni, fatt, jew element serju fuq il-persuna jew il-hajja ta' wiehed mill-konjugi li jkun tali li jista' jaghti lok ghal disgwid serju ghal *consortium vitae* tant necessarju ghall-hajja mizzewga.

Illi fil-fatt **George V. Lobo** f’**“The New Marriage Law”** jghid li *“As t. J. Green puts it: “The basic issue is not so*

much the fraud but rather the presence of a factor significantly disturbing the 'consortium vitae.....if one judges from a contractualist perspective, fraud is juridically significant since the law seeks to protect one party from the machinations of the other distorting the agreement. However, from a personalist standpoint, the real issue is the disturbance of the 'consortium vitae' and the source of the error is juridically irrelevant".

Illi wkoll il-legislatur Malti llimita l-qerq fuq "xi kwalita tal-parti l-oħra li tista' mix-xorta tagħha tfixx serjament il-hajja mizzewga". Din il-kawzali giet ikkonsidrata minn din il-Qorti diversament presjeduta fil-kaz "**John Borg vs Paula sive Polly Borg**" (P.A. (VDG) 22 ta' Mejju 1995 - Cit. Nru. 591/94VDG) fejn gie osservat li:-

"kieku dak il-paragrafu 19(1)(c) gie formulat b'mod differenti, wiehed ikun jista' jghid li japplika ghaz-zwieg civili l-art.981 tal-Kodici Civili li evidentement hu aktar wiesgha fil-portata tieghu. Il-legislatur Malti, izda, ghazel li jllimita l-qerq, bhala kawza ta' nullita` ta' zwieg, għall-qerq dwar dawk il-kwalitajiet, oggettivament gravi, li jincidu fuq l-essenza, il-propjetajiet u l-ghanijiet taz-zwieg".

*"The object of deceit must be a quality of the other contracting party which, in itself, will have to cause serious disturbance in the partnership of conjugal life; with this formula, the legislator intends that the quality **must be** objectively grave and establishes the partnership of conjugal life as an objective point of reference for the gravity of the quality so that the qualities are related to the essence, properties and ends of marriage. Therefore, those subjective qualities which cannot be objectively reconciled with conjugal partnership are irrelevant and, in this sense, they are merely arbitrary or trivial". (Viladrich P.J. Matrimonial Consent. Code of Canon Law Annot. - Caparros, E. et al. ed)1993, Wilson and Lafleur , Montreal).*

Illi l-Qrati tagħna, nkluz fis-sentenza "**Carmelo Mifsud vs Anna Mifsud nee' Ignacakova**" (P.A. (RCP) 13 ta' Novembru 2002), dejjem sostnew li z-zwieg ikun null

skond dan is-sub-artikolu jekk wahda mill-partijiet taghti l-kunsens taghha ghax tkun giet imqarqa jew mill-parti l-ohra jew minn xi haddiehor dwar xi kwalita tal-parti l-ohra ("**Fattah xebba Perry vs Dr.A. Mifsud et**" (P.A. 22 ta Novembru 1982). Skond il-gurisprudenza fuq citata, element importanti ta' dan is-subartikolu hu li l-qerq irid ikun serju bizzejjed li fixkel serjament il-hajja mizzewga.

L-attrici ssostni wkoll li l-kunsens tal-partijiet kien null a bazi ta' l-**artikolu 19 (1) (d)** li jghid:

"(d) jekk il-kunsens ta' xi wahda mill-partijiet ikun vizzjat b'difett serju ta' diskrezzjoni ta' gudizzju fuq il-hajja mizzewga, jew fuq id-drittijiet u d-dmirijiet essenzjali taghha, jew b'anomalija psikologika serja li taghmilha mpossibbli ghal dik il-parti li taqdi l-obbligazzjonijiet essenzjali taz-zwieg".

Illi dwar dan is-subartikolu din il-Qorti kif presjeduta diga` kellha okkazzjoni tezaminah, u ghalhekk taghmel referenza ghas-sentenza "**Joseph Borg vs Maria Nicolina Cutajar gia` Borg**" (Cit Nru 1564/97/RCP – deciza fil-21 ta' Ottubru 1999) u ghall-principji hemm enuncjati.

Illi fis-sentenza "**Kevin Spiteri vs Avukat Dr Renzo Porella Flores et noe**" (Cit Nru 2443/97/RCP – deciza 18 ta' Jannar 2000) il-Qorti ghamlet referenza ghall-esposizzjoni ta' **Viladrich**:-

"Thus, there is grave lack [of discretion of judgement] when it is proven that a contracting party lacks intellectual and volitional maturity necessary to discern, in view of binding oneself in an irrevocable manner, the essential rights and duties of marriage, which are the object of mutual surrender and acceptance. The discretion of judgement refers to that degree of maturity of comprehension and of will of the contracting parties which enables them to give and receive each other, through a juridical bond, in a unique community of life and love. This community is indissolubly faithful, ordered to the good of the spouses as well as to the procreation and education of

the offspring" (**Viladrich, P.J., Matrimonial Consent in Code of Canon Law Annotated** (Montreal, 1993), p. 686).

Illi kwantu ghall-obbligazzjonijiet essenzjali taz-zwieg, din il-Qorti tifhem li, fin-nuqqas ta' definizzjoni jew indikazzjoni fil-**Kap. 255**, dawn l-obbligazzjonijiet essenzjali huma dawk li fis-socjeta` Maltija dejjem u invarjabbilment gew ritenuti bhala l-obbligazzjonijiet essenzjali taz-zwieg. Dawn huma "*the obligation concerning the conjugal act or carnal union, as bodily union and basis of procreation; the obligation of the community of life and love as an expression of the union between man and woman, mutual well-being, which is inseparable from the provision of an environment conducive to the reception and education of children; and the obligation to receive and bring up children within the context of a conjugal community. It is important to remember that these essential obligations must be mutual, permanent, continuous, exclusive and irrevocable so that there would be incapacity if one of the contracting parties should be, due to a psychological cause, incapable of assuming these obligations with these essential characteristics*" (**Viladrich, P.J.**, op.cit., p. 687).

Illi dwar l-ahhar premessa ta' l-attrici bbazata fuq l-**artikolu 19 (1) (f)**, dan jipprovdi li z-zwieg ikun null:-

19 (1) (f) "*jekk il-kunsens ta' xi wahda mill-partijiet ikun inkiseb bl-eskluzjoni pozittiva taz-zwieg innifsu jew ta' xi wiehed jew aktar mill-elementi essenzjali tal-hajja mizzewga, jew tad-dritt ghall-att taz-zwieg*".

Illi dan is-sub-artikolu wkoll gie diskuss u ezaminat fis-sentenza "**Nicolai Balzan vs Simone Cremona**" minn din il-Qorti kif presjeduta (Cit Nru 1019/98/RCP – deciza fid-9 ta' Marzu 2000) u a skans ta' ripetizzjoni qed issir referenza ghall-principji hemm enuncjati. Illi inoltre fis-sentenza "**Theresa Taguri nee Spiteri vs Avukat Christopher Cilia et noe**" (Cit Nru 3130/96/NA – deciza fl-10 ta' Novembru 1999) gie ritenut illi:

“Fl-interpretazzjoni ta’ dan is-sub-inciz gie ritenut mill-Qorti taghna illi l-eskluzjoni posittiva ma kellhiex neccesarjament tirrizulta biss minn xi haga espressa direttament izda setghet tigi espressa bl-imgieba ta’ xi parti fil-perjodu immedjatament qabel u wara li jkun inkiseb l-istess kunsens”.

Illi mill-provi prodotti jidher li t-talbiet attrici ghandhom jigu milqugha abbazi tal-**artikolu 19 (1) (d) u (f) tal-Kap 255 tal-Ligijiet ta’ Malta**, u dan peress li din il-Qorti hija konvinta mix-xhieda fuq riportatata u minn dik li inghatat *viva voce* quddiem l-Assistent Gudizzjarju Dr. Kenneth Gulia li l-partijiet ma ma kellhomx id-diskrezzjoni necessarja sabiex fl-ewwel lok jifhmu l-kuncett ta’ zwieg fil-ligi taghna, u wkoll kellhom difett fil-kunsens rispettiv taghhom ghall-istess zwieg *stante* li pozittivament eskludew l-elementi essenjzali tal-hajja mizzewga fil-hajja taghhom, u fil-fatt l-istess zwieg taghhom dam biss ffit gimghat.

Illi jekk wiehed ihares lejn ix-xhieda prodotta f’dan il-process, lanqas ghandu jkun sorpriz b’dan *stante* li l-Qorti hija konvinta mill-kumpless tal-provi li l-unika raguni ghaliex l-istess attrici zzewget kienet biss sabiex totjeni ic-cittadinanza Maltija, tant li kif din ottjenietha wara ffit abbandunat id-dar konjugali; l-attrici fil-fatt dahlet ghal din l-unjoni konxja mill-fatt, li l-konvenut kien ommossesswali, u fil-fatt dan il-konvenut qatt ma hbieh mill-attrici, ghalkemm hija sostniet li huwa kien qalilha li kien bi-sesswali, pero` min-naha l-ohra kemm qabel u wara z-zwieg qatt ma jidher li kellu relazzjoni maghha.

Illi minn naha l-ohra l-konvenut jammetti li kien u huwa ommossesswali pero’ accetta li jizzewweg lill-attrici ghaliex qal li xtaq ikollu t-tfal, u certament li minn din l-ammissjoni jidher car li l-elementi l-ohra essenjzali taz-zwieg gew kollha injorati minnu u certament li l-istess konvenut qatt ma seta` fil-fatt jaderixxi ruhhu ghalihom.

Illi in vista ta’ dan kollu jidher car li z-zwieg bejn il-kontendenti ghandu jigi ddikjarat null fuq il-bazi hawn ezaminata, pero’ mhux fuq il-bazi tal-**artikolu 19 (1) (c) *stante*** li l-konvenut qatt ma heba l-omosswalita` tieghu

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mill-attrici, u dan anke mill-postijiet u hbieb li kien jiffrekwenta li laqqa` ma' l-attrici wkoll.

Illi dwar l-**artikolu 19 A (1) tal-Kap 255** dan jipprovdi li:-

“Iz-zwieg validu jista' jigi annullat fuq talba ta' parti mizzewga wkoll minhabba li l-parti l-ohra tkun irrifjutat tikkonsma l-istess zwieg”.

Illi hawn il-Qorti tirreferi ghas-sentenza **“Carmela Barbara vs Fathy abd el-Halim el Khouly et”** (P.A. (RCP) 30 ta' Ottubru 2002) fejn inghad li:-

“wara dak li intqal aktar il-fuq din hija biss kwistjoni akkademika, pero' din il-Qorti thoss li dan l-artikolu japplika biss fil-kaz ta' zwieg li jkun validu ghall-finijiet u effetti kollha tal-ligi, u ghalhekk la darba dan iz-zwieg gja gie ddikjarat iktar il-fuq li huwa null minhabba difett fil-kunsens, mela allura dan l-artikolu ma jstax jigi applikat ghall-kaz de quo u allura t-talba fuq il-bazi ta' dan l-artikolu ghandha tigi michuda”.

III. KONKLUZJONI.

Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**, billi filwaqt li tichad l-eccezzjonijiet tal-konvenut inkwantu l-istess huma inkompattibli ma' dak hawn deciz, **tilqa' t-talbiet attrici** b'dan illi:-

1. Tiddikjara z-zwieg tal-kontendenti ikkuntrattat fir-Registru taz-Zwigijiet ta' Malta fid-29 ta' Novembru 1997 null u bla effett ai termini ta' l-artikolu **19(1) (d) u (f) tal-Kap. 255** tal-Ligijiet ta' Malta ghar-ragunijiet imputabbli liz-zewg partijiet.

2. Tawtorizza lill-attrici tirreverti ghal kunjom xubitha 'Minaeva.'

Bl-ispejjez jinqasmu bin-nofs bejn iz-zewg partijiet.

Moqrija.

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