



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
GEOFFREY VALENZIA**

Seduta tad-29 ta' Marzu, 2004

Citazzjoni Numru. 1196/2003

Thomas Gehrman pro et noe

vs

Maltacom plc

The Court,

Having seen the writ of summons;

Having seen the application of Maltacom plc on page 29 of the acts where they asked the Court to order a fresh service of the summons as the service made was not a valid one.

Having seen the reply of plaintiff on page 33 where he states that the service was validly made.

Having heard the evidence produced by both parties.

Having seen the documents exhibited and the other acts of the proceedings;

Considers

Maltacom, in their application, and even through the sworn evidence of Jean Pierre Busutill L.P. are contending that the service of the summons was not valid as Mr. Busutill categorically denies that he was personally notified by the Court Marshall. He exhibited an affidavit to confirm this fact (see page 30). Moreover applicants insist that even if Mr. Busutill was served with the summons, as stated by the Court Marshall (which he was not) in actual fact the service was not made at the registered office of the applicant company as indicated in the summons.

Plaintiff, on the other hand, submits that the proper procedure which applicants had to adopt was that indicated in Article 158(10) of Chapter 12 of the Laws of Malta as applicants were in default.

Moreover Mr. Busutill was properly served with the summons, personally, as according to articles 181A (2) of Chapter 12 he was a person authorised by Maltacom to file judicial acts on its behalf or to make any such declaration, statement or pleading.

Plaintiff states also that the Court Marshal Victor Agius noted on the Court documents that he had personally served P.L.Busutill with the summons and this has to be accepted by the Court.

Mr. Busutill testified in Court that he had not been served personally by the Court Marshall and in actual fact he had not signed any document which showed that he had received the summons. He did not recall having been notified by the Court Marshall. He had received precise orders from Maltacom not to accept notifications or writ of summons for Maltacom.

With reference to document MLC2, Dr. I. Young testified that on one occasion a Court Marshall had left served her with a Court document and the Marshall had written on his notes that he had served P.L. Noel Scerri instead. This was confirmed by Mr. Noel Scerri who testified that he had never been personally served with the document though the service document showed otherwise.

Court Marshall Victor Agius testified that he had served Mr. Busutill personally in the Court registry. He knew that Mr. Busutill used to work for Maltacom. He did not take Mr. Busutill's signature to confirm that he had served him with the summons as this was not necessary. He noted this in his notes and after a few hours put down on the court document that he had served Mr. Busutill with the summons.

Considers

According to Art 187(4) of the Code of Organisation and Civil Procedure, in the case of a body having a distinct legal personality, service on such body shall be effected by leaving a copy of the pleading:

(a) at the registered office, principal office, or place of business or postal address of such body.

In actual fact, in the present case, the service was not effected in any of these places, but personally to Mr. Busutill at the registry of the Court.

However, para (b) of this subsection, also provides that service can also be effected with any of the persons mentioned in sub-article (2) of article 181 A in the manner provided for in sub-article (1) of this article.

Where a written pleading is filed by or against a body having a distinct legal personality, any pleading.....can be served on the person or persons vested with the legal or judicial representation thereof or by any company secretary or by any other person authorised in writing by such body to file judicial acts on its behalf or to make any such declaration, statement or pleading.

Plaintiff is contending that Mr Busutill was the person authorised by Maltacom to file judicial acts on its behalf or to make any such declaration, statement or pleading.

From the evidence produced in court, however, it results that Mr. Busutill had instructions from Maltacom not to accept notifications or writ of summons for Maltacom and was not authorised in writing to receive such service of writ of summons. He was not vested with the legal or judicial representation of the company. He stated that usually service is made on Mr. Noel Scerri L.P. All this, apart from the fact that Mr. Busutill did not recall actually being served with the summons.

Decision

In view of the above, the Court decides that defendant company has not yet been properly served with the writ of summons and consequently orders that a fresh service be made of same.

Costs are reserved for final judgement.

< Sentenza In Parte >

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