

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
GEOFFREY VALENZIA**

Seduta tal-11 ta' Gunju, 2004

Citazzjoni Numru. 1143/1997/1

**Philip Gatt f'ismu personali kif ukoll bhala Direttur  
ghan-nom u in rappreżentanza ta' Resort Hotels Ltd.,  
Resort Hotels Holdings Ltd., Rockleys Properties Ltd.  
u Finvest International Ltd.**

**vs**

**Associated News Ltd.**

**Il-Qorti,**

**PRELIMINARI**

Rat **I-att tac-citazzjoni** fejn gie premiss:

“Illi fi stqarrija ghal-istampa mahruġa mis-socjeta' konvenuta nhar il-15 ta' Mejju, 1997 (Dok. “A”), liema stqarrija giet rappurtata fil-gazzetti ewlenin, gew attribwiti

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fatti deteminanti li huma foloz, malafamati fil-konfront tal-attur pro et noe, li jesponuh mhux biss ghad-disprezz tal-pubbliku, izda huma ntizi wkoll sabiex ikissru in-negozju tieghu, appart li jweggghu, u jkissru r-reputazzjoni tieghu;

Premess illi is-socjeta' konvenuta hija l-awtrici ta' l-istqarrija ghall-istampa imsemmija;

Premess illi l-attur pro et noe, bhala parti malafamata u danneggjata ghandu d-dritt ghad-danni kkontemplati fl-Artikolu 28 tal-Ligi ta' l-Istampa, Kap 248 tal-Ligijiet ta' Malta;

L-attur talab li din l-Onorabbli Qorti:

1. Tiddikjara u tiddeciedi illi l-pubblikazzjoni suriferita hija libelluza u malafamanti fil-konfront ta' l-attur pro et noe u li jesponuh gha-disprezz tal-pubbliku;

2. Tiddikjara li l-attur pro et noe sofra danni minhabba l-agir tas-socjeta' konvenuta;

3. Tillikwida, d-danni li sofra l-attur pro et noe minhabba s-suriferita publikazzjoni, jekk hemm bzonn permezz ta' periti nominandi.

4. Tikkundanna lis-socjeta' konvenuta sabiex ihallsu lill-attur dawn id-danni hekk likwidati.

5. Tikkundanna in oltre l-istess socjeta' konvenuta sabiex thallas lill-attur pro et noe danni ulterjuri, konsistenti f'dik s-somma li tiffissa l-istess Qorti f'ammont li ma jeccedix hamest elef lira (Lm5,000) b'applikazzjoni ta' l-istess artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta.

Bl-ispejjez u bl-interessi legali kontra s-socjeta' konvenuta.

**Rat in-nota tal-eccezzjonijiet tas-socjeta' konvenuta a fol. 97 fejn eccepjet:**

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Preliminarjament, il-fatt illi l-Ligi tal-Istampa, Kap. 248, tal-Edizzjoni Riveduta tal-Ligijiet ta' Malta, ma tapplikax ghas-socjeta' konvenuta.

Sussidjarjament u minghajr pregudizzju ghas-suespost il-fatt illi l-kontenut tal-istqarrija allegatament falsa u malafamanti ma gietx redatta mis-socjeta' konvenuta, izda minn Adrian Busietta, u ghalhekk jehtieg illi jigi kjamat fil-kawza l-istess Adrian Busietta.

Sussidjarjament u minghajr pregudizzju ghas-suespost il-fatt illi l-kontenut tal-istqarrija allegatament falsa u malafamanti tikkostitwixxi rapport fidil u korrett ta' digriet ta' din L-Onorabbli Qorti;

Sussidjarjament u minghajr pregudizzju ghas-suespost, il-fatt illi l-istqarrija la hija libelluza, la hija malafamanti, la tesponi lill-attur pro et nomine ghad-disprezz publiku, u kwindi l-attur pro et nomine ma sofra l-ebda dannu.

Salv eccezzjonijiet ulterjuri.

Rat id-decizjoni preliminari a fol. 88;

Rat in-nota a fol. 205;

Semghet lill-Avukati difensuri jittrattaw:

## **KONTESTAZZJONI**

L-attur qed jissottometti li fil-15 ta' Meju, 1997 s-socjeta' konvenuta harget stqarrija lill-istampa lokali Dok. A a fol. 5 liema stqarrija kienet mimlija inezattezzi li kkawzaw hafna hsara fir-relazzjonijiet kummercjali tieghu.

Fl-istqarrija jinghad li l-*hotel* St Julien ghaddiet f'idejn *official receiver* u b'hekk inghatat l-impressjoni li l-lukanda falliet u ttiehdet minn taht il-kontrol ta' l-attur noe sabiex jithallsu d-debiti pendenti. Intuzaw ukoll il-kliem fl-ahhar tal-istqarrija "to settle the issue" u dan il-kliem ukoll kien intiz sabiex tinghata l-impressjoni ta' falliment. Fil-fatt dak

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li attwalment gara kien li gie nominat sekwestratarju gudizzjarju sabiex jiehu hsieb l-ishma in kwistjoni.

Skond l-attur dina l-istqarrija li giet pubblikata f'diversi gazzetti lokali (Dok B,C,D) bi prominenza kbira, kkawzatlu hsara rreparabbli tant li hu rceva *call in* mill-bank tieghu (Dok. E fol. 20); kellu *tour operator* li rrifjuta jerga' jiffirma *booking contract* (Dok. F fol. 21) u debituri ohrajn lissnu t-thassib taghhom (Dok. G a fol. 22) apparti telf iehor ta' negozju mhux facilment likwidabbli, dan apparti l-hsara rreparabbli fir-reputazzjoni ta' l-attur.

Minn naha l-ohra l-konvenut qed jissottometti li hu kien ivverifika l-istqarrija mad-digriet tal-Qorti u flok il-kliem *official receiver* fid-digriet kien hemm kliem iehor (sekwestratarju gudizzjarju) li ma setghax jittraducieh facilment u bidel il-kelma billi ma kinitx tintuza. Kien iddiskutiha ma' Adrian Busietta u ma' persuna legali izda dan ma kienx tah kelma ezatta ghax kien hemm dubbji, ghalhekk hu ddecieda li juza l-kelma *receiver*. Biex uza dak it-terminu kien anke kkonsulta mal-Financial Times. Hu qal li *receivership* mhux bil-fors hi riferenza ghall-kumpanija falluta. Il-kliem li ma kienx fid-digriet u deher fl-istqarrija kien ta' Busietta.

## **KONSIDERAZZJONIJIET**

L-attur qed joggezzjona ghas-stqarrija billi hija inezatta u malafamanti. Hu jghid li d-digriet tal-Qorti ma jtkellimix dwar *receivership* imma dwar sekwestratarju gudizzjarju u ma tissemmiex il-lukanda izda *shares* ta' kumpanija kummercjali.

Jigi rilevat li l-attur ma esebiex kopja tad-digriet in kwistjoni izda biss l-istqarrija li ghamlu l-konvenuti ghalhekk il-Qorti ma tistax taghmel ezami tad-differenzi li hemm bejn l-istqarrija u d-digriet tal-Qorti. Li qed jaqblu l-partijiet pero' huwa li d-digriet isemmi li Dr.G.Muscat Azzopardi gie nominat bhala sekwestratarju gudizzjarju mentri fl-istqarrija dina giet tradotta ghal *official receiver* u hekk dehret fil-gazzetti u f'gazzetta minnhom dehret anke

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bhala “went into receivership”. L-attur qed joggezzjona ghall-uzu ta’ dana l-kliem u l-Qorti ser tillimita l-konsiderazzjoni taghha ghal dana l-ilment biss li sar dwar l-istqarrija li l-partijiet jaqblu fuqu.

L-oggezzjoni ta’ l-attur ghall-istqarrija ghalhekk hija dwar l-uzu tal-kliem *official receiver* li dehru fl-istqarrija billi l-uzu ta’ dan il-kliem tah *ad intendere* lill-pubbliku li l-lukanda falliet u ttiehdet minn taht il-kontrol ta’ l-attur noe sabiex jithallsu d-debiti pendenti. Din l-impressjoni, skond l-attur tohrog ukoll mill-kliem fl-ahhar ta’ l-istqarrija “ to take over the hotel and settle the issue”.

**Il-Gately (“On Libel and Slander”)** jiddefinixxi l-libell bhala “*Any written or printed words which tend to lower a person in the estimation of a right-thinking man or cause him to be shunned or avoided or expose him to hatred, contempt or ridicule*”.

Jghid ukoll l-istess awtur li:

*“The rule is well settled that the true intention of the writer of any document, whether it be contract, will or libel, is that which is apparent from the natural and ordinary interpretation of the written words.” The rule is the same in slander. The meaning in which the defendant intended the words to be understood, though material on the question of damages, is immaterial in determining whether the words are defamatory or not. The question is not what the defendant intended, but what reasonable men, knowing the circumstances in which the words were published, would understand to be the meaning. “Liability for libel does not depend on the intention of the defamer, but on the fact of the defamation.” “The question is not what the writer of an alleged libel means, but what is the meaning of the words he has used.” “It is not the defendant’s intention, or the meaning in his own mind, that makes the sense of a libel,” but “what was the meaning and inference that would naturally be drawn by reasonable*

*and intelligent persons reading it.”*<sup>1</sup> (ara wkoll Rizzo Naudi vs Agius App 13/5/1997).

Il-konvenut qed jeccepixxi li l-kontenut ta' l-istqarrija jikkostitwixxi rapport fidil u korrett ta' digriet tal-Qorti u li l-istqarrija mhix libelluza jew malafamanti u ghalhekk l-attur ma soffra ebda danni.

Regola tal-*Common law* ingliza li fuqha l-istatut Malti hu modellat hi:

*“The rule of law is that where there are judicial proceedings before a properly constituted judicial Tribunal exercising its jurisdiction in open Court, then the publication without malice of a fair and accurate report of what takes place before that Tribunal is privileged”.*

Il-privilegg ta' l-immunita' mill-prosekuzzjoni hu certament ispirat mill-interess pubbliku ghall-informazzjoni biex ikun aggnat dwar dak li jigri fil-qrati tal-gustizzja fejn spiss jigi trattat mertu li jolqot lill-ordni socjali, mertu ta' nteress generali, civili, kummercjali, kriminali u xort'ohra. Il-privilegg allura ma hu bl-ebda mod marbut mal-persuna ta' min ilissen il-kliem oggettivament ingurjuz, imma mad-dritt tal-kollettivita' ghall-informazzjoni.

Gie allura ritenut illi *“Since the rationale of the fair report privilege is that the reporter acts as a substitute for the citizen’s personal observation of public proceedings, the privilege is lost if the report is not an accurate and fair summary of what transpired”.* Hogan vs. New York Times 1963). Hu generalment accettat illi dak li hu mehtieg hu illi r-rapport tal-proceduri jkunu “substantially accurate”. (Ara sentenza App Lino Debono vs Dr.T.Abela 6/10/200).

L-awtur Gately jispega aktar fid-dettal x'ifisser li rapport irid ikun *substantially accurate*. Hu jghid li: *It is not necessary that the report should be verbatim; an abridged or condensed report will be privileged, provided it gives a correct and just impression of what took place in court. It is sufficient to publish “a fair summarized account”.* *“The privilege of publishing reports of proceedings in courts of justice, would be useless if it is necessary to set out every word of the evidence and of the speeches and of what*

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<sup>1</sup> *op. cit.* para. 89, pp. 45-46.

*was said by the judge. .. that is not necessary; if what is stated is substantially a fair account of what took place, there is an entire immunity for those who publish it".... Where the inaccuracy is of a substantial kind, the report is not privileged, although the publisher exercised reasonable care and diligence in endeavoring to ascertain the facts, and though the mistake was an honest mistake.*

Fil-kaz in ezami jidher li kollox hu marbut mal-kliem uzat *official receiver*. L-attur qed isostni li l-kliem li ntuza kien sar apposta biex jaghmel hsara lill-kumpaniji ta' l-attur waqt li l-konvenut spjega li Adrian Busietta kien gablu l-istqarrija u hu kien ivverifikaha mad-digriet tal-Qorti u sab li kienu jaqblu. Hu kien sab diffikolta' biex jittraduci l-kliem sekwestratarju gudizzjarju ghalhekk kien uza l-kliem *official receiver* wara li ha parir legali u anke kkonsulta mal-Financial Times.

Il-Qorti trid tara *what reasonable men, knowing the circumstances in which the words were published, would understand to be the meaning.*

Fil'Oxford Dictionary of Law (3<sup>rd</sup> Ed.) **receiver** hu definit bhala "A person appointed by the court to preserve and protect property that is at risk, to enable another person to obtain the benefit of rights over the property or to obtain payment of a debt if the common-law remedy is inadequate". **Official receiver** huwa "the person appointed by the Department of Trade and Industry who acts in bankruptcy matters as interim receiver and manager of the estate of the debtor, presides at the first meeting of creditors, and take part in the debtor's examination. In the compulsory winding-up of a company, he often becomes provisional liquidator when a winding-up order is made".

Jidher ghalhekk li l-uzu tal-kliem *official receiver* bhala distint minn *receiver* jirreferi ghal materja ta' *bankruptcy* u *liquidation* ta' kumpaniji. Il-kelma *receiver* aktar tavvicina l-funzjoni ta' sekwestratarju gudizzjarju. Jirrizulta wkoll li wahda mill-gazzetti (The Times) fehmet li l-Hotel "went into receivership" li huwa t-terminu li jintuza ghall-*liquidation*.

Ghalhekk “A report which contains an untrue statement as to the effects of the judgement in an action is not a fair and accurate report” [Richards vs Sun Newspapers (1931)] Fil-kaz in ezami l-kliem li ntuza mill-konvenut, ghal bniedem ragjonevoli, *knowing the circumstances in which the words were published* ifissru li l-lukanda kienet fi stat ta' likwidazzjoni.

Mhux eskluż li minhabba dina l-istqarrija l-attur personalment u anke nomine sofra xi danni, izda kif xehed l-istess l-attur dawn mhux facilment likwidabbili.

Kwantu ghad-danni li dina l-Qorti ser takkorda lill-attur il-Qorti hi tal-fehma li serja kemm hi serja l-malafama, l-Qorti ma tistghax tghid li f'dan il-kaz ghalkemm l-istqarrija ma kinitx rapport preciz tal-proceduri fil-Qorti izda jirrizulta li l-konvenut qabel ma ppubblika, kien ivverifika l-fatti billi qabbel l-istqarrija mad-digriet tal-Qorti u fejn sab diffikolta' fit-traduzzjoni ta' kelma pjuttost difficili, sekwestrarju gudizzjarju, kkonsulta ruhhu ma' persuna legali li wkoll kellha d-dubji taghha. Il-konvenut anke kkonsulta mal-Financial Times. Kien il-konvenut li ddecieda fuq il-kliem li kellu juza. Dan juri atteggiament ta' persuna li hadet hsieb u ma qabdix tippublika kif gie gie. Kif jghid l-awtur Gately, “a report in a daily newspaper is not to be judged by the same strict standard of accuracy” as a “report coming from the hand of a trained lawyer”. “Unless a fair and reasonable latitude is given there would be no safety in reporting the proceedings in courts of justice”. Fl-ahhar nett jigi rilevat ukoll li l-kumpanija u l-lukanda ma kinitx biss ta' l-attur noe imma ta' Busietta wkoll li kellu sehem fihom u ghalhekk ma kienx fl-interess tieghu li jaghti isem hazin lill-assi li kienu tieghu wkoll.

## **DECIZJONI**

Ghal dawn il-motivi  
il-Qorti tiddeciedi  
billi tilqa' l-ewwel talba attrici  
u tikkundanna lis-socjeta' konvenuta sabiex thallas lill-attur pro et noe s-somma ta' tlett mitt lira Maltin (Lm300)



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b'applikazzjoni tal-artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta.

Tichad it-tieni, tielet u raba' talba billi dawn ma gewx pruvati.

Bl-ispejjez bin-nofs stante li mhux it-talbiet kollha gew milqugha.

**< Sentenza Finali >**

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