MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
JOSEPH AZZOPARDI

Seduta tad-9 ta' Gunju, 2004

Rikors Numru. 373/2002/1

Joe Cilia bhala membru, kontributorju u direttur tas-socjeta' kummercjali Rosita Limited.

-vs-

Rosita Limited.

Il-Qorti;

Rat ir-rikors ta' Joe Cilia pprezentat fl-4 ta' April 2002 li permezz tieghu espona bir-rispett:

Illi r-rikorrent huwa wiehed miz-zewg azzjonisti fis-socjeta' Rosita Limited tant li huwa proprjetarju ta' 250 sehem mill-

500 sehem bhala *issued share capital* tas-socjeta' ntimata.

Illi r-rikorrent u l-azzjonista l-iehor huma wkoll l-unika zewg diretturi tas-socjeta' ntimata.

Illi r-relazzjoni ta' bejn ir-rikorrent u bejn id-direttur l-iehor iddetorjat tant illi sar impossibli illi dawn jitkellmu u jikkomunikaw bejniethom u bhalissa hemm stat ta' animosita' kbira bejniethom.

Illi minhabba dan kollu r-rikorrent m'hux f'pozizzjoni li jiggestixxi n-negozju ta' l-istess socjeta' ntimata.

Illi dan kollu jipprekludi u jaghmel impossibbli kull possibilta' ta' rikonciljazzjoni u koperazzjoni bejn dawn iz-zewg diretturi.

Illi fil-fehma tar-rikorrent dan kollu jikkostitwixxi raguni gravi bizzejjed li tiggustifika ix-xoljiment u konsegwentament l-istralc tas-socjeta' ntimata.

Illi r-rikorrent jaghmel ampja riferenza ghal dak li qal il-gurista eminenti Ingliz John H Farrar rigward il-kwistjoni in disamina (Farrar's Company Law – JH Farrar & BM Hanningan – Fourth Edition – Pagna 444 et seq.):

" An important basis for winding up on the just and equitable ground was where the court decided that the company in question was really an incorporated or quasi-partnershio and the personal relationship between the parties had broken down so making continuation of the business impossible. Generally the company would have a small number of shareholders, most if not all of whom participated in the management of the company and who were prevented by restrictions in the articles from freely transferring their shares."

Illi r-rikorrent jirreferi wkoll ghal gurisprudenza Ingliza bhal Re Yenidje Tobacco Co. Ltd. (1916) (Farrar's Company Law Pagna 444 et seq) u numru ta' kazijiet ohra bhal Symington kontra Symington Quarries Ltd. (1906), Re Davis and Collett Ltd. (1935) u Re Wondoflex Textiles Pty Ltd (1951) li addottaw dan l-istess principju fejn il-Farrar jikkummenta u jirraporta illi:

"The court found that the company was in essence a partnership and that there was such a state of animosity between the parties as to preclude all reasonable hope of reconciliation or friendly co-operation. In such circumstances the court would order that it be wound up."

Illi minn ezami tal-*Memorandum of Association* tas-socjeta' ntimata, liema dokument qed jigi hawn anness u mmarkat bhala Dok. A, kif ukoll mir-relazzjoni de facto ta' bejn iz-zewg azzjonisti u diretturi, johrog bic-car illi s-socjeta' kummercjali in disamina hija fl-essenza taghha *partnership* bejn iz-zewg diretturi u xejn aktar.

Illi in oltre' l-fatti spjegati aktar 'il fuq jikkostitwixxu *deadlock* totali fil-gestjoni ta' l-affarijiet tas-socjeta' ntimata minhabba li dan kollu jaghmilha impossibli ghal din is-socjeta' illi tkompli topera.

Illi r-rikorrent jaghmel ukoll ampja riferenza ghal gurisprudenza Ingliza fejn intuza dan it-test tad-*deadlock* sabiex tigi gustifikata l-likwidazzjoni ta' socjeta' kummercjali.

Illi fil-kaz American Pioneer Leather Co. (1918), il-Qorti Ingliza qalet illi f'kaz li jinholoq *deadlock* fil-gestjoni tal-hwejjeg tas-socjeta' kummercjali dan jikkostitwixxi raguni gravi bizzejjed sabiex il-Qorti tordna l-likwidazzjoni ta' l-istess socjeta'.

Illi dan il-principju gie adottat ukoll fil-gurisprudenza nostrali u ghalhekk ir-rikorrent jaghmel riferenza ghal decizjoni tal-Qorti ta’ l-Appell datata 27 ta’ Gunju 1990 fl-ismijiet ‘Coleiro kontra Mifsud’ fejn il-Qorti adottat dan it-test sabiex tiggustifika ordni ghal-likwidazzjoni ta’ socjeta’ kummercjali.

Ghaldaqstant ir-rikorrent jitlob bir-rispett lil din l-Onorabbli Qorti sabiex:

i. a tenur ta’ l-Artikolu 214 sub-artikolu 2 (b) (iii) ta’ l-Att Numru XXV ta’ l-1995 joghgobha tahtar stralcarju u tiehu dawk il-proveddimenti opportuni sabiex is-socjeta’ Rosita Limited tigi likwidata skond il-ligi.

Bl-ispejjez.

Rat illi s-socjeta’ intimata ma irrisponditx ghall-istess rikors.

Rat l-atti processwali.

Rat il-verbal tas-seduta tal-15 ta’ Marzu 2004 illi permezz tieghu ir-rikors thalla ghas-sentenza;

Ikkunsidrat.

Illi r-rikorrent qed jitlob li jigi nominat stralcjarju biex jipprocedi ghal-likwidazzjoni tas-socjeta’ Rosita Limited.

Jidher mill-atti processwali li s-socjeta in kwistjoni hija propjeta’ tar-rikorrent u ta’ Charles Chetcuti u jidher li ilha ma tinnegozja ghal numru ta’ snin. Mid-deposizzjoni tar-rikorrent illi ma gietx kontestata jidher li ma hemm ebda komunikazzjoni bejn il-propjetarji tal-kumpanija.

Kif tajjeb irrimarka r-rikorrent fl-istess rikors promotur, il-gurisprudenza kemm lokali u kemm ingliza hija fis-sens li disgwid

bejn id-diretturi jew azzjonisti hu raguni bizzejjed gravi biex tkun gustifikata talba ghall-stralc. Dan specjalment meta l-azzjonisti jkunu tnejn biss u allura ma jkun ebda rimedju ghall-impass bejnithom hlief li s-socjeta' tigi likwidata. Il-Qorti a skans ta' ripetizzjoni taghmel riferenza ghas-sentenzi citati mir-rikorrent.

Ghaldaqstant il-Qorti tilqa' t-talba tar-rikorrenti u tinnomina bhala stralcjarju ai termini tal-Att Numru XXV tal-1995 lill-Avukat Dottor Rueben Balzan bil-fakoltajiet soliti.

Moqrija.

< Sentenza In Parte >

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