

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
GEOFFREY VALENZIA**

Seduta tas-27 ta' Gunju, 2005

Citazzjoni Numru. 235/2003

**RGB TELEVISION PRODUCTIONS Ltd.**

**Vs**

**ALFRED ZAHRA DE DOMENICO ID NRU. 561743(M)  
u s-SOCJETA' AZ Ink Co. LTD.**

**Il-Qorti.**

**Preliminari**

Rat **I-att tac-citazzjoni** li permezz taghha l-attur ippremetta:

Peress illi s-socjeta konvenuta AZ Ink Co. Ltd. tinsab debitrici tas-socjeta' attrici fis-somma ta' hamest elef u sitta u tletin Liri Maltin u hmistax il-centezmu (Lm5,036.15) rapprezentanti l-bilanc tal-prezz ta' servizzi ta'

Pagna 1 minn 8

Qrati tal-Gustizzja

produzzjonijiet televizivi rezi mis-socjeta' attrici fuq l-inkarigu u ghall-benefiicju tal-istess socjeta' konvenuta.

Peress illi fost il-hlasijiet effettwati mis-socjeta' konvenuta, sar pagament illi gie offruta mis-socjeta' konvenuta lis-socjeta' attrici akkont ta' l-istess debitu, permezz ta' cekk mahrug taht il-firma tal-konvenut Alfred Zahra De Domenico, bhala direttur ta' l-istess socjeta' konvenuta, liema cekk izda baqa' ma giex onorat mill-bank;

Peress illi dan ic-cekk gie pprezentat mill-konvenut Alfred Zahra De Domenico, fil-kwalita' tieghu ta' direttur tas-socjeta' konvenuta AZ Ink Co Ltd, f'cirkostanzi fejn l-istess konvenut Alfred Zahra De Domenico kien jaf dwar l-istat finanzjarju ta' l-istess socjeta' konvenuta, oltre li bl-agir doluz tieghu b'diversi modi u f'diversi okkazzjonijiet l-istess konvenut Alfred Zahra De Domenico xjentement u dolozament kompli rrenda lis-socjeta' konvenuta – rapprezentata unikament minnu - f'pozizzjoni li ma setghetx tonora l-obbligi li dahlet ghalihom l-istess socjeta' konvenuta mas-socjeta' attrici, naxxenti mill-ordnijiet li saru minn zmien ghal zmien ghas-servizzi hawn fuq spjegati;

U peress illi ghalhekk bl-agir doluz tieghu, il-konvenut Alfred Zarha De Domenico irrenda ruhu responsabbli, in solidum mas-socjeta' konvenuta, ghall-hlas tas-somma dovuta lis-socjeta' attrici, kif hawn fuq spjegat.

Peress illi nonostante interpellati sabiex ihallsu dan l-ammont, il-konvenuti baqghu inadempjenti minghajr ebda raguni valida fil-ligi.

U peress illi jezistu l-elementi kollha rikjesti mill-ligi, a tenur tal-Artikoli 167 sa 170 tal-Kodici ta' Organizzazzjoni u Procedura Civili (Kap 12) billi l-kreditu tas-socjeta' attrici huwa cert, likwidu u dovut u s-socjeta attrici pprezentat dikjarazzjoni illi bih id-direttur taghha David Azzopardi kkonferma illi l-konvenuti ma ghandhom l-ebda raguni jew eccezzjoni valida kontra t-talba tas-socjeta' attrici ghall-hlas tas-somma dovuta.

Ghaldaqstant jghidu l-konvenuti l-ghaliex m'ghandhiex dina l-Onorabbli Qorti, ghar-ragunijiet premissi u b'dispensa tas-smiegh tal-kawza a tenur tal-Artikoli 167 sa 170 tal-Kodici ta' Organizzazzjoni u Procedura Civili (Kap 12):-

1. Tiddikjara illi, bl-agir doluz tieghu kif hawn spjegat, il-konvenut Alfred Zahra De Domenico irrenda ruhu responsabbli in solidum mas-socjeta' konvenuta ghall-hlas tad-debitu dovut mas-socjeta' konvenuta AZ Ink Co. Ltd lis-socjeta' attrici bhala bilanc ta' prezz ta' servizzi ta' produzzjonijiet televizivi rezi mis-socjeta' attrici fuq l-inkarigu u ghall-beneficcju ta' l-istess socjeta' konvenuta;
2. Konsegwentement tikkundanna lill-konvenuti in solidum bejniethom, jew lil min minnhom, ihallsu lis-socjeta' attrici l-imsemmija somma ta' hamest elef u sitta u tletin Liri Maltin u hmistax il-centezmu (Lm5,036.15) rapprezentanti il-bilanc tal-prezz ta' servizzi ta' produzzjonijiet televizivi rezi fuq l-inkarigu u ghall-beneficcju tal-istess socjeta' konvenuta mis-socjeta' attrici.

Bl-ispejjez, inkluzi dawk tal-Mandat kawtelatorju ta' Sekwestru ipprezentat kontestwalment, u bl-imghaxxijiet legali b'effett mid-data tal-kull invoice relattiva sal-effettiv pagament, kontra l-konvenuti illi huma minn issa ngunti ghas-soluzzjoni.

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

**Rat in-nota ta' l-eccezzjonijiet tal-konvenut Alfred Zahra De Domenico** a fol. 14 tal-process fejn eccepixxa:

1. Illi d-domandi tas-socjeta' attrici fil-konfront tal-eccepjenti huma infondati fil-fatt u fid-dritt stante li:

(a) L-eccepjenti m'huwix debitor tas-socjeta' attrici fl-ebda ammont izda hija biss is-socjeta' AZ Ink Co Limited li kellha relazzjoni kummercjali mas-socjeta' attrici;

(b) L-eccepjenti qatt ma assumu jew igarantixxa d-dejn tas-socjeta' AZ Ink Co. Limited;

(c) L-eccepjenti ma ghamel xejn doluz kif allegat u c-cheque dok B m'huwix wiehed personali izda tas-socjeta'

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AZ Ink Co Limited u anki kieku huwa ghal Lm1,000 u mhux Lm5,036.15 kif mitlub.

2. Salvi eccezzjonijiet ulterjuri.

**Rat in-nota ta' ammissjoni tas-socjeta' konvenuta a fol 17;**

Rat l-atti kollha tal-kawza u d-dokumenti ezibiti;

Semghet ix-xhieda bil-gurament;

Semghet lill Avukati difensuri jittrattaw:

## **KONTESTAZZJONI**

F'dina l-kawza l-atturi qed jitolbu li dina l-Qorti tiddikjara illi, bl-agir doluz tieghu, l-konvenut Alfred Zahra De Domenico irrenda ruhu responsabbli in solidum mas-socjeta konvenuta ghall-hlas tad-debitu dovut mis-socjeta konvenuta AZ Ink Co. Ltd lis-socjeta' attrici.

Il-konvenut qed jeccepixxi li hu personalment ma kellu ebda relazzjoni kummercjali mas-socjeta' attrici u qatt ma ggarantixxa d-dejn tas-socejta' konvenuta. Inoltre hu ma ghamel xejn doluz kif allegat u c-cheque dok B m'huwix wiehed personali izda tas-socjeta' konvenuta u anki kieku huwa ghal Lm1,000 u mhux Lm5,036.15 kif mitlub.

## **KONSIDERAZZJONIJIET**

L-atturi qed isostnu li l-konvenut kien hallas Lm1,000 b'cheque u dan gie *referred to drawer*. Ghalkemm il-konvenut kien dahhal flus minghand kljenti dan qabad u ma ddepozitahomx fil-kont tas-socjeta' konvenuta. L-attur iproducew bhala xhud lill Brenda Calleja Smith li xehdet li meta saru l-ordnijiet mis-socjeta' konvenuta l-istat finanzjarju taghha kien diga mhux tajjeb (ara xhieda a fol 195). Qalet ukoll li kemm damet impjegata, il-kumpanija qatt ma kienet fi stat ta' *profit* u qatt ma kienet f'posizzjoni li thallas id-debiti kollha taghha.

Il-konvenut min naha l-oħra ssottometta li s-socjeta' konvenuta harget ic-cheque ta' Lm1,000 akkont u billi fil-frattemp kien inhareg *post dated cheque* mill-accounts clerk li huwa ma kienx jaf bih, gara li c-cheque li hareg, bbownsja. Hu kien iddepozita Lm10,000 / Lm12,000 fil-bank meta hareg dan ic-cheque (ara HSBC *statement* datat 20 ta' Frar 2003 fol 76 ) u ma kienx johrog ic-cheque kieku ma kienx hemm fondi.

Il-konvenut xehed li l-kumpanija m'ghandiex topera lllum imma safejn jaf hu qeda fi stat solventi. Hu kien beda bil-mod il-mod jigbor il-flus, jissettilja l-accounts u l-hrug ta-cheque ta' Lm1,000 kien parti minn dina l-operazzjoni. Sfortunatament gie mwaqqaf milli jkompli dina l-operazzjoni billi saru s-sekwestri u bdew isiru allegazzjonijiet li qed jiehu l-flus flok jiddepozitahom.

### **Tikkunsidra**

Il-Qorti f'din il-kawza trid tistabilixxi jekk mill-premessi li fuqhom hija bbazata l-azzjoni tistax tigi addebitata responsabilita personali lill konvenut in kwantu qed jigi allegat li dana qua direttur tas-socjeta konvenuta agixxa dolozament b'mod li ppregudika id-drittijiet tas-socjeta attrici bl-agir abbużiv tieghu.

L-atturi qed jitolbu li l-konvenut jigi dikjarat personalment responsabbli u dan solidalment mal-kumpanija ghad-dejn tas-socjeta konvenuta li hija, effettivament ammettiet (ara fol 17). L-atturi qed jallegaw li l-konvenut agixxa dolozament meta hareg cheque ta' Lm1,000 meta kien jaf li ma hemmx fondi fis-socjeta' konvenuta u meta kien jaf li l-kumpanija ma setghax tissodisfa d-debiti li kien hemm. L-atturi jsostnu li l-konvenut kien jaf li l-kumpanija kienet fi stat ta' falliment u nonostante dana baqa' jopera.

L-agir tal-konvenut jista' jwassal ghal dikjarazzjoni ta' responsabilita' personali ta' direttur meta kumpanija tkun fi process ta' likwidazzjoni a tenur ta' l-artikoli 315 u 316 tal-Kap 386 (Att dwar il-Kumpaniji).

L-artikolu 315(1) jipprovdi li

**Responsibility for fraudulent trading.**

315. (1) If in the course of the winding up of a company, whether by the court or voluntarily, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner

aforsaid be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.

**Wrongful trading.**

**316.** (1) The provisions of this article shall apply where a company has been dissolved and is insolvent and it appears that a person who was a director of the company knew, or ought to have known prior to the dissolution of the company that there was no reasonable prospect that the company would avoid being dissolve due to its insolvency.

(2) The court, on the application of the liquidator of a company to which this article applies, may declare the person who was a director referred to in subarticle (1) liable to make a payment towards the company's assets as the court thinks fit.

(3) The court shall not grant an application under this article if it is satisfied that the person who was a director knew that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency and accordingly took every step he ought to

have taken with a view to minimising the potential loss to the company's creditors.

(4) For the purposes of subarticles (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take, are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both –

(a) the knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by or entrusted to that director in relation to the company; and

(b) the knowledge, skill and experience that the director has.

F'dina l-kawza l-atturi ma ressqu ebda talba ghal likwidazzjoni tal-kumpanija konvenuta u dina l-kumpanija mhiex fi proceduri ta' stralc. Ghalhekk il-Qorti mhiex f'posizzjoni li tista' taghti dawk l-ordnijiet ghal istralc tal-kumpanija u jekk ikun il-kaz, tipprovdi dwar ir-responsabilita' tad-direttur ghal *fraudulent trading* (art 315) jew *wrongful trading* (artikolu 316) skond il-kaz. Minhabba f'hekk il-Qorti ma tistax tiddikjara jekk il-konvenut hux personalment responsabbli a tenur ta' l-artikoli citati (ara wkoll sentenza PA Theuma vs Cachia 14/10/2004).

Inoltre jigi rilevat li meta jinstab li kien hemm jew *fraudulent trading* jew *wrongful trading* u ssir talba ghar-responsabilita' personali ta' direttur “*the contribution from the directors is to the assets of the company generally and not to the particular benefit of those who became creditors of the company during the period of wrongful trading*” (Gower: Principles of Modern Company Law 6<sup>th</sup> Ed: page 155).

Ghal kull buon fini pero' l-Qorti hi tal-fehma li f'dana l-kaz l-atturi, anke kieku, ma rnexxilhomx jippruvaw: “*That the person (konvenut) realised at the time the debts were incurred that there was no reason for thinking that funds*

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*would be available to pay the debt in question*" u li *"there was dishonesty"* - l-agir doluz imsemmi fil-premessi tac-citazjoni [Ara Company, A, Re (No 001418 of 1988 [1990] BBC 526 High Court)].

Fil-fatt l-atturi ma ppruvawx dak allegat minnhom u cjoe li l-konvenut kien qed jiehu flus tal-kumpanija u li qed jiddepozitahom fil-kont personali tieghu. Ma hux eskluż u ma giex kondradett dak li qal il-konvenut li meta hareg *ic-cheque* ta' Lm1,000 kien lahaq inhareg *post dated cheque* minn haddiehor li sserraf qabel. Inltre jidher almenu mill-provi prodotti li c-cheque ta' Lm1,000 kien l-uniku wiehed li ma ssarrafx u bbownsja. Il-konvenut esebixxa *statements* tal-bank fejn jirrizulta li hu kien ghamel *deposits* u anke li kellu min jaghtih, izda minhabba n-nuqqas ta' *income* ma setghax jkompli jigri wara min kellu jaghtih.

Il-Qorti ghalhekk tikkonkludi li l-konvenut ghar-ragunijiet fuq imsemmija ma jistax jinstab responsabbli personalment ghad dejn tal-kumpanija.

## DECIZJONI

Ghal dawn il-motivi

Il-Qorti tiddeciedi

Billi, fuq ammissjoni, tilqa' t-talba kif dedotta kontra s-socjeta' konvenuta AZ Ink Co.Ltd;

U tillibera lill konvenut Alfred Zahra De Domenico personalment mill-osservanza tal-gudizzju;

Bl'ispejjez kollha u bl-imghax kif mitluba kontra s-socjeta' konvenuta.

< Sentenza Finali >

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