MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
GEOFFREY VALENZIA

Seduta tas-16 ta' Dicembru, 2005

Citazzjoni Numru. 478/2004

W & N Zammit Tabona Limited

VS

Lawrence Borg ghan-nom u in rappresentanza tas-socjeta' estera
South Rays Holidays Limited; l-istess Lawrence Borg; Marsascala Holiday Complex Limited

Il-Qorti

Preliminari

Rat **l-att tac-citazzjoni** li permezz taghha s-socjeta' attrici ippremettiet illi:

PREMESS illi s-socjeta' attrici hija kreditrici tas-socjeta' konvenuta *"South Rays Holidays Limited"* fis-somma ta' wiehed u erbghin elf u hamsa u tletin Lira Maltija

(Lm41,035*)* import ta' prezz ta' akkomodazzjoni fil-Fortina Hotel, li tinsab Tigne' Seafront Sliema, li nghatat lil turisti mibghuta kif ikkuntrattat mill-imsemmija socjeta' konvenuta.

PREMESS illi dan id-dejn gie garantit mill-konvenuti l-ohra kif jigi ppruvat flimkien u solidalment mas-socjeta' "*South Rays Holidays Limited"* u dan meta, minhabba nuqqas ta' hlas, s-socjeta' attrici kienet ser twaqqaf il-provvista ta' akkomodazzjoni mitluba mis-socjeta' "*South Rays Holidays Limited" u* per konsegwenza allura, regghet ikkoncediet din il-facilita' bhala rizultat ta' l-intervent tal-konvenuti l-ohra.

PREMESS illi l-konvenuti diversi drabi weghdu l-hlas tal-fuq imsemmi kreditu u sahansitra nhargu a favur is-socjeta' attrici numru ta' "*post-dated cheques"* in garanzija ta' hlas sabiex is-socjeta' attrici terga' tipprovdi servizz ta' akkomodazzjoni kif intqal li, liema "*cheques*'' imbaghad ma gewx onorati.

PREMESS illi nterpellati sabiex ihallsu l-imsemmi dejn, il-konvenuti baqghu inadempjenti.

PREMESS illi d-dejn fuq imsemmi huwa cert, likwidu u dovut ai termini ta' l-Artikoli 167 et seq tal-Kapitlu 12 tal-Ligijiet ta' Malta.

Jghidu ghalhekk il-konvenuti ghaliex m'ghandhiex din il-Qorti;

1. Tiddeciedi l-kawza bid-dispensa tas-smiegh u dan ai termini ta' l-Artikolu 167 et seq tal-Kapitlu 12 tal-Ligijiet ta' Malta.

2. Tikkundanna lill-konvenuti jhallsu lis-socjeta' attrici flimkien u solidalment bejniethom is-somma ta' erbghin elf u hamsa u tletin Lira Maltin rapprezentanti il-bilanc tal-prezz dovut ghal akkomodazzjoni pprovduta mis-socjeta' attrici.

Bl-ispejjez inkluzi dawk ta' l-ittra legali tas-27 ta' Mejju 2003 u bl-imghaxijiet mid-data tal-fattura.

Il-konvenuti ngunti minn issa ghas-subizzjoni.

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

Rat **in-nota tal-eccezzjonijiet tal-konvenut** a fol.11 tal-process fejn eccepew:

1. illi fl-ewwel lok huwa ma ghandux rapprezentanza guridika tal-kumpanija *South Rays Holidays Ltd* li hija kumpanija registrata l-Ingilterra u la huwa direttur u lanqas *shareholder* fiha.

2. illi d-debitu mhux dovut la minn Lawrence Borg u lanqas minn *Marsascala Holiday Complex Ltd* u lanqas huma garanti ta' *South Rays Holidays Ltd* stante illi *Marsascala Holiday Complex Ltd* kienet biss *handling agent* ghal *South Rays Holidays Ltd.*

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

Semghet ix-xhieda bil-gurament;

Semghet lill Avukati difensuri;

Kontestazzjoni

L-atturi qed jitolbu is-somma ta' Lm41,035 rapprezentanti il-bilanc tal-prezz dovut mill-konvenuti ghal akkomodazzjoni pprovduta mis-socjeta' attrici.

Il-konvenut Lawrence Borg fl-ewwel lok eccepixxa li huwa m'ghandux rapprezentanza guridika tal-kumpanija South Rays Holidays Ltd li hija kumpanija registrata l-Ingilterra u la huwa direttur u lanqas *shareholder* fiha.

Lawrence Borg xehed li South Rays hija kumpanija registrata gewwa l-Ingilterra u huwa qatt ma kien imdahhal fis-South Rays Holidays Ltd la bhala *Chairman*,

la bhala *managing director* u lanqas bhala segretarju. Il-*managing director* kienet Mrs. Gilian Harcourt Young imbaghad kien hemm Mrs. June Portelli u Victor Portelli bhala segretarju. Ic-*Chairman* kien Carmelo Montebello. Hu managing director tal-Marsascala Holiday Complex Ltd (ara dokumenti ezibiti minn fol 36 'l quddiem).

Minn naha l-ohra l-atturi ma gabu ebda prova biex jikkontradicu dak li xehed Lawrence Borg jew prova li fil-fatt Borg kellu r-rapprezentanza tal-kumpanija South Rays Holidays Ltd. Il-fatt li Clifford Agius xehed li Borg dejjem tah l-impressjoni li huwa l-*owner* ta' South Rays (ara fol 24) mhiex prova li fil-fatt huwa hekk kien. Lanqas il-fatt li Borg kien il-persuna wara l-operazzjonijiet ta' South Rays.

Ghalhekk dina l-eccezzjoni ghandha tinlaqa'.

Fit-tieni eccezzjoni tieghu l-konvenut Borg eccepixxa illi d-debitu mhux dovut la minn Lawrence Borg u lanqas minn Marsascala Holiday Complex Ltd u lanqas huma garanti ta' South Rays Holidays Ltd stante illi Marsascala Holiday Complex Ltd kienet biss *handling agent* ghal South Rays Holidays Ltd.

Clifford Agius, Sales u Marketing Manager mas-socjeta' attrici xehed li kienu bdew jircievu turisti minghand South Rays Travel Limited. Hu qal li "*although this company appeared to be based in the United Kingdom by way of jurisdiction, we dealt with the appointed representative in Malta i.e. Carmel Montebello as Operations Manager. Mr. Montebello maintained an office in Malta from the Cerviola Hotel in Marsascala. In fact we were informed that although the official registered office of South Rays was in the U.K. the administration centre of this company was at the Cerviola Hotel because the owner Lawrence Borg, was also the sole beneficial owner of South Rays. As far as we were concerned we were dealing with a Maltese set-up, with a foreign frame work formed for their own purpose and convenience. In effect we were receiving guest booked by South Rays through Cerviola Hotel office.*

Hu kompla ighid li: "*Late in summer of 2002 we encountered payment difficulties and we indicated that no further bookings would be accepted. Lawrence Borg personally intervened with me, guaranteeing me that payment would be effected, and as a further means of reassurance he gave me a series of post dated cheques issued by Marsascala Holiday Complex Ltd. For this reason we accepted to extend credit to Lawrence Borg's set up. We did this solely on the basis of the guarantee accorded to us by Lawrence Borg personally and on behalf of Marsascala Holiday Complex Ltd.*"

Carmelo Montebello xehed li: "*he was contracted with Lawrence Borg as Operations Manager of various interests **owned** by Lawrence Borg* (fol. 21) *among them South Rays Holidays Limited.* Hu kien gie appuntat Chairman ta' South Rays u f'dik il-kapacita kien jiddilja ma Clifford Agius ghal Fortina Hotel *"to arrange accommodation for incoming tourists booked by South Rays and handled locally by Marsascala Holiday Complex Ltd. It was clear in our dealings with Clifford Agius that although South Rays was technically the tour operator, this was in effect a local operation under the umbrella of Lawrence Borg. As my principal Lawrence Borg was not only aware of what was being contracted with Fortina, but all rates and bookings, as well as marketing with Fortina Hotel was sanctioned by him personally and no one else*".

Lawrence Borg xehed li hu kien imhallas minn South Rays Holidays Ltd biex jiehu hsieb bhala *handling agent* tat-turisti li dawn kienu jibaghatu hawn Malta. South Rays kienu jibaghatulu l-flus mill-Ingilterra u kien ihallas lill atturi permezz ta' *cheques* mill-flus li kien jircievi. Meta hareg il-*post dated cheques* dan ghamlu ghad data li kienu ser jaslu l-flus. Il-*bookings* kienu jsiru minn South Rays u l-kontijiet kienu jmorru ghand Montebello ic-*chairman*. Marsascala Holiday Complex qatt ma ghamlet ordnijiet f'ismiha jew kienet iggib turisti hi. Il-process kien kollu minn barra minn Malta minn South Rays.

KONSIDERAZZJONIJIET

Il-kwistjoni kollha f'dina l-kawza tiddependi fuq in-natura tar-rapport guridiku li kien hemm bejn South Rays, Lawrence Borg u l-atturi.

Il-konvenut Borg jirritjeni li l-*bookings* kienu jsiru minn South Rays mentri huwa kien biss *handling agent* li kien ihallas lill atturi tal-*bookings* meta kien jircievi l-flus minghand South Rays.

Mix-xhieda prodotta jirrizulta li ghalkemm fl'apparenza kienet qed tidher kumpanija registrata l-Ingilterra South Rays li kienet qed tikkuntratta ma' l-atturi, effettivament l-operazzjoni kienet wahda lokali cjoe f'Malta, u kollox kien immexxi minn Lawrence Borg. Ic-chairman ta' South Rays ta' dak iz-zmien, Carmelo Montebello xehed li hu kien tpogga hemm minn Borg li kien il-principal tieghu u skond Montebello South Rays kienet tappartjeni lill Borg. Hu jghid li l-konvenut kien jaf x'kien qed jigi ibbukjat u anke r-rati li kienu qed jigu ccargjati u kollox kien irid l-approvazzjoni tieghu. Mill-provi prodotti jirrizulta li d-direzzjoni ta' South Rays kienet f'idejn Lawrence Borg u li hu kien il-persuna wara l-operazzjonijiet taghha.

Ghalkemm sa certu stadju jirrizulta li Lawrence Borg kien qed jagixxi bhala *handling agent* ta' South Rays biss, izda meta l-pagamenti ma bdewx jaslu minghand South Rays u l-atturi ma riedux ikomplu jipprovdu akkomodazzjoni aktar, Lawrence Borg kien indahal personalment fil-kwistjoni u assikurahom li kienu ser isiru l-pagamenti u bhala prova kien tahom *post dated cheques* ta' Marsascala Holiday Complex Ltd. biex in negozju jkun jista' jkompli. L-atturi ghalhekk taw aktar *credit* lill Borg. Illi f'dak l-istadju Borg ma baqax izjed *handling agent* biss, imma dahal responsabbli ghall pagamenti li kellha taghmel South Rays, u jekk din tonqos kellu jaghmel tajjeb hu jew il-kumpanija tieghu. Stante li l-pagamenti ma waslux, l-ammont seta' jigi reklamat mis-socjeta' attrici minghand il-konvenut Borg.

Il-Qorti lesta li taccetta l-versjoni ta' l-atturi li l-konvenut kien hareg il-*post dated cheques* biex jassikura lill atturi li

hu kien ser jaghmel tajjeb ghall pagamenti li kellhom isiru minn South Rays, u li l-konvenut kien ghamel hekk biex ikun jista' jkompli jakkomoda t-turisti li kellhom jigu Malta u jinghata *credit*.

DECIZJONI

Ghal dawn il-motivi
Il-Qorti tiddeciedi
Billi tiqa' t-talba attrici fil-konfront ta' Lawrence Borg f'ismu u f'isem Marsascala Holiday Complex Ltd.
Bl-ispejjez kontra l-konvenut Lawrence Borg f'ismu u f'isem Marsascala Holiday Complex Ltd.
Is-socjeta' South Rays qed tigi liberata mill-osservanza tal-gudizzju
Spejjez ghall konvenut Borg pro et noe.
Bl-imghax mid-data tal-fatturi.

< Sentenza Finali >

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