

FIL-PRIM'AWLA TAL-QORTI CIVILI

**IMHALLEF
ONOR. GEOFFREY VALENZIA B.A., LL.D.**

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Michele Peresso Limited

vs

Elisabeth Saguna

Il-Qorti,

PRELIMINARI

Rat l-att tac-citazzjoni li permezz taghha is-socjeta' attrici ippremettiet illi permezz ta' skrittura privata (Dok. A) is-socjeta' attrici impjegat lill-konvenuta b'kuntratt ta' xoghol ghal zmien definit u precisament ghal prejodu ta' sentejn li bdew jiddekorru fil-hamsa w ghoxrin (25) ta' Novembru 1996 u dan versu l-pattijiet u l-kundizzjonijiet imsemmija fl-istess skrittura privata fosthom versu s-salarju gross ta' Lm350 (tlett mija u hamsin liri Maltin) fix-xahar, liema salarju kellu jitla ghal Lm375 (tlett mija, hamsa u sebghin liri Maltin) wara li jghaddi l-perjodu ta' probation ta' sitt xhur u sussegwentement jizdied ghal Lm400 (erba' mitt lira Maltin) fix-xahar wara sena mill-bidu ta' l-impjieg u jerga jizdied, din id-darba ghal Lm425 (erba' mija, hamsa u ghoxrin liri Maltin) wara tmintax-il xahar mill-bidu ta' l-impjieg.

Premess illi permezz ta' ittra datata tmintax (18) ta' Settembru, 1997 (Dok. B) is-socjeta' attrici giet infurmata illi l-konvenuta "mhux ser tkompli fl-impjieg b'effett immedjat".

Premess illi l-konvenuta ma kelliex raguni tajba u bizzejjed sabiex titlaq mis-servizz.

Premess illi ghalhekk il-konvenuta ghandha thallas lis-socjeta' attrici somma li tkun daqs nofs il-paga kollha li ghaliha hija kien ikollha jedd kieku hija baqghet fis-servizz ghall-bqija taz-zmien hekk espressament miftiehem kif fuq inghad, liema somma tammonta ghal Lm2,984.79 (elfejn, disa' mija, erbgha u tmenin liri Maltin u disgha u sebghin centezmu u dan kif jirrizulta mill-anness prospett immarkat Dok. C.

Premess illi a tenur ta' klawsola tnejn ta' l-istess kuntratt (Dok A) is-socjeta' attrici rriservat id-dritt li tesigi minghand il-konvenuta "any monies which it has invested in the said Employee with regard to any Product Training abroad including air fares, accommodation and any other spending money given to the Employee during the duration of such training" u ghalhekk is-socjeta' attrici ghandha dritt tesigi minghand il-konvenuta l-hlas tas-somma ta' Lm291.75 (mitejn, wiehed u disghin liri Maltin u hamsa u sebghin centezmi) li hi 'investit' fil-konvenuta bil-mod kif previst fl-istess klawsola tnejn u dan kif jigi ppruvat waqt it-trattazzjoni tal-kawza.

Premess illi ghalhekk il-konvenuta ghandha thallas lis-socjeta' attrici globalment is-somma ta' Lm3,276.54 (tlett elef, mitejn, sitta u sebghin liri Maltin u erbgha u hamsin centezmi).

Ghar-ragunijiet premissi u dispensat is-smiegh tal-kawza a tenur ta' l-artikolu 167 et seq tal-Kodici ta' Organizzazzjoni u Procedura Civili u in vista ta' l-affidavit ta' Derek Mifsud Speranza (Dok. D), is-socjeta' attrici talbet li din l-Onorabbli Qorti:

1. Tikkundanna lill-konvenuta thallas lis-socjeta' attrici s-somma ta' Lm3,276.54 (tlett elef, mitejn, sitta u sebghin liri Maltin u erbgħa u hamsin centezmi) fuq imsemmija.

Bl-ispejjez u bl-imghax legali kontra l-konvenuta.

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

Rat in-nota tal-eccezzjonijiet tal-konvenuta a fol 16 fejn eccepjet:

Illi t-talba attrici hija nfondata u għandha tigi michuda bl-ispejjez. Peress illi l-konvenuta kienet gustifikata li tittermina l-impjeg tagħha mas-socjeta' attrici u dana għal ragunijiet attribbwiti lill-istess socjeta' attrici.

Riserva t'eccezzjonijiet ohra.

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

Semgħet ix-xhieda bil-gurament;

Rat li ma saret ebda talba għas-sospensjoni tal-prolazzjoni tas-sentenza;

TALBA

L-atturi qed jitolbu li dina l-Qorti tikkundanna lill-konvenuta thallas lis-socjeta' attrici s-somma ta' Lm3,276.54 (tlett elef, mitejn, sitta u sebghin liri Maltin u erbgħa u hamsin centezmi) konsistenti f'Lm2,984.79 (elfejn, disa' mija u erbgħa u tmenin liri Maltin u disgħa u sebghin centezmi) daqs nofs il-paga kollha li għaliha l-konvenuta kien ikollha jedd kieku hija baqgħet fis-servizz għall-qbija taz-zmien tal-impieg miftiehem; u Lm291.75 (mitejn, wiehed u disgħin liri Maltin u hamsa u sebghin centezmi) din li s-socjeta' attrici investit fil-konvenuta b'mod previst fil-klawsola tnejn tal-kuntratt Dok A fol 8.

ECCEZZJONIJIET

Il-konvenuta eccepjet li hija kienet gustifikata li tittermina l-impieg taghha mas-socjeta' attrici u dana ghal ragunijiet attribwibbli lill-istess socjeta' attrici. Illi hija kienet kostretta fuq parir mediku li tittermina l-impieg ghaliex it-trattament illi ghalih is-socjeta' attrici ssoqgettata kien tali li marradha u l-eccipjenti ma kienitx fi stat li tissapporti iktar tali trattament.

KONSIDERAZZJONIJIET

Is-socjeta' attrici kienet impjegat lill-konvenuta b'kuntratt ta' xoghol ghal zmien definit ghal perjodu ta' sentejn. Permezz ta' ittra datata tmintax (18) ta' Settembru, 1997, Dok B a fol 10, il-konvenuta kienet infurmat lis-socjeta' attrici li hi ma kienitx ser tkompli fl-impieg b'effett immedjat. L-atturi qed isostnu li Il-konvenuta ma kelliex raguni tajba sabiex titlaq mis-servizz ghalhekk qed jitolbu s-sommom imsemmija fic-citazzjoni (Ara prospett Dok a fol 10a). Ix-xoghol tal-konvenuta kien li tippromuovi l-prodotti ta' l-atturi fi klinici privati u fl-isptar. Kellha tiehu hsieb it-tenders. Il-konvenuta, apparti s-salarju kellu allowances ohra.

L-atturi taw zewg ragunijiet ghaliex fil-fehma taghhom kienu hzienu r-relazzjonijiet bejn il-partijiet. Wahda kienet fuq *il-Handling of Tenders* . A fol 54 l-atturi jsemmu dawn il-kazijiet:

Kaz tal-Factor 8 tender

Kaz tal-Heptatis B tender

Kaz ta' Reagent Kits tender

F'kull kaz is-socjeta' attrici akkuzat lill-konvenuta "of lack of care in the handling of tenders".

Raguni ohra kienet il-kaz dwar il-*poaching* ta' impjegati tad-ditta attrici mill-kompetituri taghha.

Fl-ittra a fol 48, Derek Mifsud Speranza jispjega l-posizzjoni kif zviluppat. Hu jikteb hekk lill-konvenuta:

You have hinted that it could have been that incident with the doctor who tried to entice you to go to work for a rival firm. Indeed, this might have unnerved the Managing Director, and he is certainly not to blame for this..... However, the real cause of the change was the series of your shortcomings which might have contributed to the loss of important tenders, but then even this could have been smoothed out if you had had the good sense to admit where you had slipped and apologized. Instead you reacted in a stupid and arrogant manner which does not go with the status and degree you bear. Even so, had you, belatedly, realized how you had slipped, you could have still calmed matters down with an apology. Instead you continued to add insult to injury when even in my presence, you told the Managing Director that you did not trust him.”

L-atturi pprezentaw certifikat/rapport li kien hareg it-tabib tal-kumpanija Dr. W.Galea li qal li:

Ms. Seguna describes somatic symptoms which are suggestive of anxiety... The problem is not anxiety as symptom of an illness but anxiety due to problems in the employee/employer relationship... Miss Seguna should discuss the relationship in the hope of solving it... In my opinion there is a relationship problem between an organization and an employee and I cannot justify sick leave.

Minn naha taghha l-konvenuta qed tichad dawn l-akkuzi u qed issostni li fil-bidu (ara ittra taghha a fol 50) :

The situation went suddenly out of hand when I reported to the Managing Director that a doctor from a private competitor had indirectly asked me to work for his

competitor. By doing so I thought I was showing my loyalty to MPL knowing the rivalry between the two companies.....Because I did not sign a declaration, I was accused of being unloyal to the company and lacking trust in the managing director, even though I explained to him that I was prepared to state everything verbally in front of anyone including the doctor himself. Since that day the situation changed and I found continual hurdles being made in my work.

Dwar il-kwistjoni tat-tenders hi kitbet hekk:

I have been accused of lack of care in the handling of tenders... I have treated each tender with utmost care under the guidance of my superiors. I was still being coached by experienced superiors in monitoring unawarded tenders, so I cannot see how the blame was thrown on to me.

Fuq it-tender tal Hepitatis B kitbet li:

It was not that I had not monitored the tender well but that I was misinformed from the other end.

Fuq it-tender ta' Reagent Kits kitbet hekk:

The meeting was left to after working hours on my last day before my leave and a problem cropped up in the quotation. The Managing Director lumped me with a Lm150,000 (one hundred and fifty thousand Maltese Liri) tender in my hands, walking out of the office and leaving the company. I worked till 9 p.m. that night. I finalized everything leaving only the cost value to be entered in blank. I left the tender complete in the Managing Director's office stating that only the value had to be written in.

On my return to work.. I was accused of neglecting my work.. and left pending work. I was also insulted.

KONSIDERAZZJONIJIET

Il-konvenuta qed issostni li hija kienet gustifikata li tittermina l-impieg taghha mas-socjeta' attrici ghal ragunijiet attribwibbli lill-istess socjeta attrici. Illi hija kienet kostretta fuq parir mediku li tittermina l-impieg ghaliex it-trattament illi ghalih is-socjeta' attrici ssoggettata kien tali li marradha u l-eccipjenti ma kienitx fi stat li tissapporti iktar tali trattament.

Jirrizulta mill-provi li meta l-konvenuta kienet telqet mix-xoghol u nehhet il-medicini hi bdiet tirkupra u ma baqghatx ikollha sinjali ohra ta' mard.

Il-kwistjoni kienet wahda kif qal Dr.Galea ta' tihzien ta' relazzjonijiet bejn il-konvenuta u l-Managing Director. Il-Qorti trid tara x'kienet ir-raguni ghal dan it-tibdil fir-relazzjoni bejn il-partijiet.

Issem mew zewg ragunijiet. Il-konvenuta tghid li l-inkwiet beda fuq l-incident tat-tabib li offrilha job ma' kompetitur tal-atturi u hi rrifjutat li taghmel dikjarazzjoni bil-miktub kontra t-tabib. Minn hemm imbaghad beda l-inkwiet. L-atturi ma jichdux li kien gara dak li qalet il-konvenuta. Izda jzidu li l-konvenuta kienet ukoll traskurata fix-xoghol taghha u dana kien qed ikun ta' detriment finanzjarju ghall-kumpanija. Huma semmew il-kaz tat-tenders li l-konvenuta ma kienitx kompetenti fihom.

Minn naha l-ohra l-konvenuta spjegat ic-cirkostanzi li fihom hija kienet qed tahdem dawn it-tenders. Hi qed tissottometti li jekk saru xi zbalji dana ma kienx tort taghha billi hija kienet qed tigi sorveljata u l-atturi kienu konsapevoli x'qed isir. Fil-fatt Emanuel Peresso ikkonferma li hu kien jittrenja lill-konvenuta u juriha x'ghandha taghmel.

Dwar it-tender ta' Reagent Kits il-Qorti hi tal-fehma li ghandha taccetta l-ispjegazzjoni li tat il-konvenuta dwar ic-cirkostanzi li fih inhadem dan it-tender. Ma kienx prudenti u ghaqli li thalli tender ta' dika l-portata fuq persuna wahda u li sa ffit qabel kienet ghadha kemm spiccat probation period. Jidher li ma kienx tort tal-

konvenuta jekk ix-xoghol fuq dana t-tender baqgha sa l-ahhar gurnata. Il-konvenuta ghamlet li setghet biex tikkonkludi dan it-tender.

Ghalhekk il-Qorti tikkonkludi li l-atturi ma rnexxilhomx jippruvaw li t-terminazzjoni tal-impieg tal-konvenuta ma kien attribwibbli ghal xi tort ta' konvenuta.

DECIZJONI

Ghal dawn il-motivi, il-Qorti tiddeciedi prevja li tilqa' l-eccezzjoni tal-konvenuta, tichad it-talba attrici bl-ispejjez kontra l-atturi.

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**Frankie Mercieca
DEPUTAT REGISTRATUR**