



MALTA

QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO**

**ONOR. IMHALLEF
ANTON DEPASQUALE**

**ONOR. IMHALLEF
ALBERT J. MAGRI**

Seduta tas-27 ta' Gunju, 2006

Appell Civili Numru. 92/2006/1

**Fl-atti ta' l-appell tas-socjeta` Zeturf Limited (C 35469)
tal-10
ta' April 2006 mid-digriet tal-Prim Awla tal-Qorti Civili
tas-16 ta' Marzu 2006 fl-ismijiet:**

**GIE Pari Mutuel Urbain (PMU) socjeta` estera
(Numru ta' Registrazzjoni 775 671 258 fir-Registru tal-
Kummerc u
Kumpaniji ta' Parigi, Franza)**

v.

Zeturf Limited (C 35469)

Il-Qorti:

1. Dan hu provvediment – it-tieni wiehed wara dak tas-6 ta' Gunju 2006 (fol. 339 tal-atti) – li din id-darba hu limitat ghal zewg kwistjonijiet: (1) jekk l-Awtorita` dwar Lotteriji u Loghob (hawn aktar 'l quddiem l-ALL) bhala “terz interessat” tistax tinterponi appell mill-provvediment ossia digriet tal-Prim Awla tal-Qorti Civili tas-16 ta' Marzu 2006 li permezz tieghu laqghet it-talba kontenuta fir-rikors tat-23 ta' Frar 2006 tas-socjeta` GIE Pari Mutuel Urbain u ddikjarat illi d-decizjoni tal-Qorti ta' l-Appell ta' Parigi, Franza, moghtija fl-4 ta' Jannar 2006 ghandha tigi infurzata kontra s-socjeta` Zeturf Limited skond il-*Council Regulation (EC) 44/2001* (hawn aktar 'l quddiem ir-Regolamenti) u ordnat in-notifika tad-decizjoni taghha lis-socjeta` intimata cioe` lill-istess Zeturf Limited; u (2) dwar l-ammissibilita` u/jew rilevanza tax-xhieda li trid tipproduci f'dana l-istadju s-socjeta` appellanti Zeturf Limited.

2. Din il-Qorti, ezaminati l-atti kollha, u wara li ddeliberat anke fid-dawl tas-sottomissjonijiet maghmula mill-abbili difensuri tal-partijiet kollha fl-udjenzi precedenti u speċjalment fl-udjenza tas-16 ta' Gunju 2006, waslet ghas-segwenti konkluzjoni:

Dwar jekk l-ALL tistax tinterponi appell bhala “terz interessat”

3. Ma hemmx dubbju li l-ALL, bir-rikors taghha tas-7 ta' April 2006 (fol. 2), mhux biss qed tikkwalifika lilha nnifisha bhala “terz interessat” – u allura dan ifisser li ma kienitx parti fil-proceduri quddiem il-prim istanza – izda qed tappella mid-digriet, moghti fil-proceduri bejn iz-zewg socjetajiet kontendenti, li permezz tieghu gie ordnat li s-sentenza tal-Qorti ta' l-Appell ta' Parigi (aktar 'l fuq imsemmija) ghandha tigi infurzata skond ir-Regolamenti 44/2001. Is-socjeta` PMU, permezz tar-risposta taghha tat-8 ta' Mejju 2006 (fol. 131 *et seq.*), qed tikkontendi li l-imsemmija Awtorita` ma ghandhiex dritt ta' appell f'dawn il-proceduri peress li, skond hi, tali dritt jispetta biss lill-partijiet (i.e. lil Zeturf Limited u, kieku d-decizjoni tal-Prim Awla kienet differenti, lilha, cioe` lill-istess PMU). Din il-Qorti tara li din is-sottomissjoni hija ben fondata. L-Artikolu

43(1) tar-Regolamenti jipprovdi: “*The decision on the application for a declaration of enforceability may be appealed against **by either party***” (enfazi ta’ din il-Qorti). Huwa veru li, kif tajjeb issottometta l-abbili difensur ta’ l-Awtorita`, il-paragrafu (3) ta’ dan l-Artikolu jipprovdi li “*The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters*”, izda qabel ma jibda hekk jigi trattat “*...in accordance with the rules governing procedure in contradictory matters*” irid l-ewwel jigi stabbilit jekk hemmx tali dritt ta’ appell tat-terz interessat fi proceduri bhal dawk in dizamina. Apparti li, kif tajjeb gie osservat mill-abbili difensur ta’ PMU, meta r-Regolamenti riedu jirreferu ghal partijiet li ma jkunux irrikorrent u l-intimat dan jghiduh espressament – ara, per eżempju, ir-Regolament 33(2) – il-Qorti Ewropea tal-Gustizzja (ECJ) diga` kellha l-opportunita` li tesprimi ruhha in materja fis-sentenza taghha tat-2 ta’ Lulju 1985 fl-ismijiet ***Deutsche Genossenschaftsbank v. SA Brasserie du Pêcheur***. F’dik is-sentenza, li pero` kienet tikkoncerna l-Artikolu 36 tal-*Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters* tal-1968 – l-istrument predecessur tar-Regolamenti odjerni – l-ECJ qalet hekk:

“The effect of Article 36 of the Convention is that domestic law may not be relied upon to supplement the right of appeal provided by that provision. Any action by a third party would only prolong the enforcement procedure, which would be contrary to the spirit of the Convention...It is appropriate to recall first that in its judgment of the 27 November 1984 (case 258/83 Calzaturificio Brennero SAS v. Wendel GMBH Schuhproduktion International (1984) ECR 3971) the Court stated that the Convention ‘provides for a very simple enforcement procedure whilst giving the party against whom enforcement is sought an opportunity to lodge an appeal’. It also stated that the principal objective of the Convention ‘is to simplify procedures in the State in which enforcement is sought’. In order to attain that objective the convention established an enforcement procedure which constitutes an autonomous and complete

system, including the matter of appeals. It follows that Article 36 of the Convention excludes procedures whereby interested third parties may challenge an enforcement order under domestic law. The Convention merely regulates the procedure for obtaining an order for the enforcement of foreign enforceable instruments and does not deal with execution itself, which continues to be governed by the domestic law of the court in which execution is sought, so that interested third parties may contest execution by means of the procedures available to them under the law of the State in which execution is levied...”

4. Kwantu ghad-differenza bejn il-lokuzzjoni adoperata fl-Artikolu 36 tal-Konvenzjoni msemmija u dik adoperata fl-Artikolu 43(1), l-aktar li wiehed jista' jghid hu li filwaqt li taht il-Konvenzjoni id-dritt ta' appell kien moghti biss lil *“...the party against whom enforcement is sought...”*, taht ir-Regolamenti dan id-dritt gie estiz anke ghall-parti li tkun applikat ghall-infurzar izda li t-talba taghha ma tkunx giet milqugha. Mill-bqija, pero`, jibqa l-principju tal-ispeditezza u s-semplificita` tal-procedura ta' inforzar. Kif jispjegaw l-awturi Jannet A. Pontier u Edwige Burg fil-ktieb taghhom *EU Principles on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial matters according to the case law of the European Court of Justice*¹:

“The principle of a swift and simple enforcement procedure would require the Court to interpret the rules pertaining to the enforcement procedure in a way that keeps the procedure as simple and as quick as possible. As is apparent from the following description of the Court’s case law, (a) the Court tends to consistently restrict the procedural requirements that are laid down in the Convention as far as possible, thereby attributing a great degree of weight to the principle of the free movement of judgments. However, as will be seen as we go along,

¹ T.M.C. Asser (The Hague) 2004.

it is evident from certain provisions of Title III of the Convention and from the Court's case law on the interpretation of these provisions that, (b) the principle of a swift and simple enforcement procedure finds its limitations in the guarantees that are needed to secure the rights of the defence...From the perspective of a simple and rapid enforcement procedure, it furthermore follows, as the Court observed in *Deutsche Genossenschaftsbank v. Brasserie du Pecheur*, that Article 36 excludes any procedure whereby interested third parties may challenge an enforcement order, even where such a procedure is available to third parties under the domestic law of the state in which the enforcement order is granted. This principle applies as well to a subsequent appeal brought under Article 37, second paragraph, as the Court argued in *Sonntag v. Waidmann...*"²

5. Ghal dawn il-motivi, hu evidenti li l-appell interpost mill-ALL huwa irritu u null, u din il-Qorti m'għandhiex tiehu aktar konjizzjoni tieghu.

Dwar l-ammissibilita` u/jew rilevanza tax-xhieda li trid tipproduci s-socjeta` appellanti Zeturf Ltd

6. Permezz tar-rikors tagħha tad-19 ta' Mejju 2006, is-socjeta` appellanti Zeturf Limited indikat hames xhieda (l-Onorevoli Prim Ministru Dott. Lawrence Gonzi, Onor. Segretarju Parlamentari Tonio Fenech, Dott. Anthony Axisa, l-Avukat Generali (jew rappresentant tieghu), u Emanuel de Rohan Chabot jew rappresentanti oħra tas-socjeta` Zeturf) u indikat l-oggett tal-prova ta' kull wiehed minnhom. B'nota ppresentata f'dik l-istess gurnata, l-imsemmija socjeta` appellanti ezibiet l-affidavits ta' Emanuel de Rohan Chabot u ta' Dott. Axisa (kif ukoll kopja tal-permess tax-xogħol tas-Sur de Rohan Chabot). B'risposta tat-23 ta' Mejju 2006, PMU oggezzjonat għal xi whud minn dawn ix-xhieda u/jew għal xi partijiet tal-oggett tal-prova, peress li fil-fehma tagħha dawn kienu

² Pagni 39, 41.

irrelevanti. B'rikors iehor, din id-darba tal-25 ta' Mejju 2006, is-socjeta` appellanti ziedet zewg xhieda ohra (u indikat ukoll l-oggett tal-prova), u cioe` l-Avukat Dott. Joseph Zammit Maempel u xhud iehor li gie indikat biss bhala "espert dwar il-ligi Franciza". Din il-Qorti kellha wkoll il-beneficcju tat-trattazzjoni erudita fuq din il-kwistjoni tal-Avukati Dott. Ian Refalo (ghas-socjeta` appellanti) u Dott. Franco Vassallo (ghal PMU) fl-udjenza tas-16 ta' Gunju 2006.

7. A propositu ta' din il-kwistjoni, din il-Qorti tosserva li, apparti l-limitazzjoni kontenuta fl-Artikolu 1 tar-Regolamenti³ -- limitazzjoni li s-socjeta` appellanti qieghdha wkoll tinvoka biex thassar id-digriet tal-Prim Awla -- ir-ragunijiet li abbazi taghhom din il-Qorti tista' tilqa' l-appell interpost huma limitati hafna. In fatti l-Artikolu 45 tar-Regolamenti jipprovdi illi "*The court with which and appeal is lodged...shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35...*". Fl-Artikolu 34, apparti disposizzjoni li tirreferi ghal certi aspetti ta' "*the rights of the defence*" (Art. 34(2)), jinghad ukoll li sentenza ma tigix rikonoxxuta jekk hija "*...manifestly contrary to the public policy in the Member State in which recognition is sought...*" (sottolinar ta' din il-Qorti). Fil-fehma ta' din il-Qorti, biex hija tiddeciedi jekk sentenza, li l-infurzar taghha jkun qed jintalab, hijiex manifestament kontra l-ordni pubbliku ta' Malta, ma hu b'ebda mod mehtieg li xi hadd jixhed dwar x'inhi l-"istrategija pubblika ta' Malta" fir-rigward ta' socjetajiet li jipprovdu servizzi fuq l-*internet* u b'mod partikolari servizzi ta' loghob. Hija l-Qorti li tiddetermina x'inhu kontra l-ordni pubbliku (jew, f'dan il-kaz, manifestament kontra tali ordni pubbliku) wara li tiehu konjizzjoni tal-ligijiet relevanti u tal-principji generali tad-dritt. Anqas ma huwa relevanti x'licenzji ghandha s-socjeta` Zeturf biex topera f'Malta. Ghalhekk, din il-Qorti ma tarax li x-xhieda ta' l-Onor. Prim Ministru, l-Onor. Tonio Fenech, Dott. Joseph Zammit Maempel u Dott. Anthony Axisa huma b'xi mod relevanti, u

³ "This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters."

konsegwentement mhix ser tammettihom bhala xhieda (ghalkemm ma tarax in-necessita` li jigi sfilzat l-affidavit ta' l-istess Dott. Axisa a fol. 192 tal-process). Kwantu, pero`, ghall-Avukat Generali jew rappresentant tieghu, Emanuel de Rohan Chabot u "espert dwar il-ligi Franciza", dawn ix-xhieda, fid-dawl tal-oggetta tal-prova kif dikjarat, jistghu jkunu relevanti fir-rigward ta' dak provvdut fl-Artikoli 1(1) u 34(1)(2) tar-Regolamenti. Konsegwentement dawn ix-xhieda qed jigu ammessi.

8. Ghall-motivi premessi, tipprovdi billi:

- i. tiddikjara l-appell interpost fis-7 ta' April 2006 mill-Awtorita` dwar Lotteriji u Loghob irritu u null, u tastjeni milli tiehu konjizzjoni ulterjuri tieghu; l-ispejjez, jekk hemm, konnessi ma' dan ir-rikors jithallsu mill-istess Awtorita`; u
- ii. tammetti bhala xhieda tal-appellant f'dana l-istadju ta' appell biss lill-Avukat Generali jew rappresentant tieghu, lil Emanuel de Rohan Chabot u lil "espert dwar il-ligi Franciza" biex jixhdu limitament skond l-oggett tal-prova kif ga dikjarat. Spejjez, hlief dawk konnessi mar-rikors ta' l-Awtorita` dwar Lotteriji u Loghob, u jekk hemm, jibqghu riservati.

< Sentenza In Parte >

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