

Kopja Informali ta' Sentenza



## **QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.  
JOSEPH A. APAP BOLOGNA**

Seduta tas-27 ta' Settembru, 2006

Avviz Numru. 656/2004

**Fl-atti tal-mandat ta' qbid numru 2103/2004 fl-ismijiet:**

**Union Print Co. Ltd**

**Vs**

**Valletta Publishing & Promotion Co. Ltd**

Il-Qorti,

Rat ir-rikors in esami li bih is-socjeta rikorrenti wara li ppremettiet illi s-socjeta' esponenti ghadha kif giet notifikata bil-mandat ta' qbid odjern.

Illi l-marixxalli nkarigati mill-ezekuzzjoni ta' l-imsemmi mandat infurmawha illi huma gew inkarigati mis-socjeta' kreditrici Union Print Co.Ltd. sabiex jesegwuh fuq ghamara u makkinarju illi jinsabu fl-ufficcju ta' Astoria

Kopja Informali ta' Sentenza

Company Limited u fil-fatt il-marixxalli gia' marru sabiex jeseqwixxu l-istess mandat.

Illi l-oggetti in kwistjoni huma proprjeta' tas-socjeta' Astoria Company Limited, u mhux proprjeta' tas-socjeta' esponenti.

Illi din il-Qorti f'okkazzjonijiet ohra ddikjarat illi mandat simili bhal dan ma jistax jigi esegwit stante li l-oggetti maqbuda ma jappartjenux lill-persuna kontra min sar il-mandat pero' lil socjeta' distinta (vide Doris Grima et noe vs Anthony Mc Kay et (Citazz numru 734/94RCP deciza fil-11 ta' Dicembru 2001).

Talbet bir-rispett illi din l-Onorabbli Qorti joghgobha ghar-ragunijiet premissi u bl-applikazzjoni ta' l-artikolu 283A tal-Kapitolu 12 tal-Ligijiet ta' Malta, thassar ghal kollox jew parzjalment il-mandat ta' qbid fl-ismijiet premissi u dan taht dawk il-provvedimenti li jidhrilha xierqa u opportuni.

Rat ir-risposta tas-socjeta' intimata (a fol 10 et seq ibid) u li biha esponiet umilment:-

1. Illi preliminarjament is-socjeta rikorrenti ghandha tipprova permezz ta' ricevuti li l-oggetti maqbuda bil-mandat ta' qbid precitat huma tassew ta' Astoria Limited u li nxtraw f'isimha;
2. Illi fil-meritu jigi sottomess is-segwent;

Qed jigu esebiti s-segwent dokumenti:

Dok. A – L-indirizz registrat ta' Valletta Publishing & Promotion Company Limited;

Dok B – Il-partijiet involuti fil-kumpanija Valletta Publishing & Promotion Company Limited;

Dok C – L-indirizz registrat ta' Astoria Limited;

Dok D – Il-partijiet involuti fil-kumpanija Astoria Limited;

Dok E – Il-Memorandum of Association ta' Astoria Limited.

Illi minn dawn id-dokumenti jirizulta car li hemm l-istess nies involuti fiz-zewg kumpaniji, li ghandhom l-istess indirizz registrat u li kif jixhed il-Memorandum of Association ta' Astoria Limited il-kumpanija Valletta Publishing & Promotion Company Limited hija l-majority shareholder f'Astoria Limited b'73.7% ta' l-ishma.

Il-ligi tal-Kumpanija Maltija hija bazata fuq dik Ingliza u l-gurisprudenza nostrali hi bazata fuq id-decizjonijiet Inglizi u dak li jghidu l-awturi Inglizi. Clive M. Schmithoff fl-artikolu *Salomon in the Shadow* (1978) riportat fil-*Journal of Banking Law* p.305 jikklassifika l-'judicial inroads' ghal-principju ta' 'separate corporate personality' fi tnejn (i) dawk il-kazi fejn il-Qrati Ingizi applikaw il-'principal and agent construction' u cioe fejn il-kumpanija tagixxi bhala agent ta' dak li jikkontrollaha; u (ii) dawk il-kazi fejn il-Qrati Inglizi sabu li kien hemm abbuz car tal-'corporate form' minhabba 'unlawful or improper use'.

Ezempju ta' l-ewwel kategorija huwa l-kaz *Smith, Stone & Knight v Birmingham Corporation* (1939) 4 All E.R. 116. Nikkwota lil Schmithoff li jghid:

'In this case the question was whether a holding company whose wholly-owned subsidiary carried on a business on a piece of land could claim compensation when the land was compulsorily acquired by the Corporation. The defence was the *Salomon* principle, i.e. that only the subsidiary, but not the holding company was entitled to the compensation. Atkinson J. rejected this defence: "*Indeed, if ever one company can be said to be the agent or employee, or tool or simulacrum of another, I think the Waste Company (i.e. subsidiary company) was a legal entity because this is all it was ..... I am satisfied that the business belonged to claimants (i.e. parent company): they were in my view the real occupiers of the premises.*"

It-tieni kategorija hija deskritta tajjeb hafna minn Michael Whincup fl-artiklu "Inequitable Incorporation – *the Abuse*

*of a Privilage'* rapportat f'2 *Company Lawyer* p.158.  
Whincup ighid:-

“Finally, and from the creditor’s point of view most hopefully, there is a group of decisions which might be called the ‘façade cases’. Here the courts have been willing to investigate allegations of fraud or **sharp practice by individuals seeking to hide behind a company front**, and they have made clear that fraud alone is the basis of their intervention. Notable examples include *Gilford Motor co. v Horne* (1933) All ER 109, where a former employee bound by a restraint of trade agreement set up a company in order to evade the agreement’s provisions. An injunction was granted against him and against his company, which was recognized and denounced as a “device, a stratagem ....a mere cloak or sham”. In *Wallersteiner v Moir* (1974) 3 All ER 217, **where the plaintiff was said to have used many companies as if they belonged to him, Lord Denning citing *Gilford*, argued that the court should be able to pull aside the veil and treat the companies as his creatures.**

The decisions or dicta are very important in expressly accepting the principle that the interests of equity or justice *per se* may justify intervention ..... The only rule we can advance with any confidence from the facts of these cases is that **on finding a company formed or used primarily to evade an existing liability or defeat the application of the law to existing rights, the court will look directly at the ‘realities of the situation’** (per Lord Read).’

Meta issa napplikaw dawn il-principji ghal kaz in ezami naraw li s-socjeta' debitrici Valletta Publishing & Promotion Company Limited hija s-shareholder maggoritarju f'Astoria Limited. Ir-rikorrenti qed jallegaw li l-oggetti maqbuda huma proprjeta ta' Astoria Limited. Illi bir-rispett dan qed jaghmluh biex jeludu d-drittijiet legali ta' l-esponenti. Illi l-agir jaqa' kemm taht il-principal and agent construction' kif ukoll taht abbuz car tal-'corporate form'. Jista jinghad li l-kumpanija Astoria Limited hija l-

Kopja Informali ta' Sentenza

agent ta' Valletta Publishing & Promotion Company Limited u s-socjeta rikorrenti qed tallega dan kollu biex teludi d-drittijiet legittimi tal-kumpanija esponenti.

Ukoll Valletta Publishing & Promotion Company Limited qed tuza a 'sharp practice' u qed tipprova tinheba wara il- 'façade' ta' Astoria Limited li taghha hija 'holding Company'. Is-socjeta rikorrenti qed tuza lis-socjeta Astoria Limited bhala l-kreatura taghha sabiex teludi d-drittijiet legittimi tas-socjeta esponenti. Iz-zewg socjetajiet ghandhom l-istess indirizz registrat u l-istess persuni jikkontrollawhom. Valletta Publishing & Promotion Company Limited ghandha 73.7% ta' l-ishma ta' Astoria Limited. Astoria Limited qieghda tintuza biss bhala faccata biex warajha tinheba s-socjeta rikorrenti Valletta Publishing & Promotion Company Limited. Fil-fatt Astoria Limited qed tintuza mis-socjeta rikorrenti 'to evade an existing liability or to defeat the application of the law to existing rights' u ghalhekk din l-Onorabbli Qorti ghandha tara the 'realities of the situation' u tichad it-talbiet attrici.

Ghaldaqstant it-talbiet tar-rikorrenti ghandhom jigu respinti bl-ispejjez kontra taghhom.

Rat kif ukoll id-dokumenti annessi mal-atti, mal-istess risposta a fol 13 sa fol 26.

Rat l-atti kollha tal-kaz.

Semghet ix-xhieda tar-rikorrenti nomine kif ukoll rat id-dokumenti esebiti minnu a fol 36 sa fol 52 tal-istess atti.

Rat l-atti tal-mandat in kwistjoni (fol 54 sa fol 60 ibid).

Rat in-nota tal-osservazzjonijiet sottomessa mis-socjeta rikorrenti (fol 61 et seq ibid).

### Ikkunsidrat

Illi meta xehed Anton Busuttill Dougall (fol 34 et seq ibid) in rappresentanza tas-socjeta rikorrenti dan specifika illi, in rigward l-oggetti maqbudin in esekuzzjoni tal-mandat in

esami (ara fol 59 ibid), dawn kollha jappartjenu lis-socjeta 'Astoria Company Limited' hliel ghal vettura li hi proprjeta ta' omm ix-xhud. In sostenn ta' dan hu esebixxa diversi dokumenti ossija kopji ta' rcevuti minn fejn, skond l-sitess xhud, jirrisulta illi l-istess oggetti, hliel ghall-imsemmija vetrina, kienu gew akkwistati mis-socjeta "Astonia Limited". Hu kompla jixhed billi qal illi z-zewg socjetajiet in kwistjoni ghandhom l-istess indirizz registrat. Inoltre l-azzjonisti tas-socjeta rikorrenti huma l-istess xhud u ibnu waqt li daww tas-socjeta "Astoria Limited" huma l-istess biz-zieda, pero', tal-istess socjeta rikorrenti.

Illi, s-socjeta intimata esebiet diversi dokumenti (fol 13 et seq ibid) sabiex turi li, dawn il-kumpaniji ghandhom l-istess 'registered address', kif di gja inghad, u l-istess azzjonisti waqt li jigi notat illi s-socjeta rikorrenti hi l-azzjonista maggoritarju fis-socjeta l-ohra li lilha, allegatament, jappartjeni l-oggetti in kwistjoni ossija kwazi kollha.

#### Ikkunsidrat

Illi din il-Qorti tara li, kif qed issostni l-istess socjeta intimata, ir-rikors in esami hu kaz tipiku ta' meta' "corporate personality is being blatantly used as a cloak for fraud or improper conduct" u meta' 'principally but not exclusively in the interests of the company's creditors, where there is a group of interconnected companies which it is thought should be treated as one' kif di gja gie ritenut minn din il-Qorti kif presjeduta f'sentenza mgohtija fit-23 ta' Frar 2004 fl-ismijiet 'Focal Maritime Services Company Limited vs J.M. Supplies Company Ltd' (Avviz numru 526/02 JAB). Difatti l-istess Qorti tikkonsidra dan il-kaz bhala tentattiv sabiex jigu elusi d-drittijiet akkwistati mis-socjeta intimata permezz tas-sentenza li fuqha inhareg il-mandat in esami ossija "abbuz car tal-'corporate form'" kif inghad korrettament fir-risposta tas-socjeta intimata a fol 11, l-ahhar paragrafu.

#### Ikkunsidrat

Kopja Informali ta' Sentenza

Illi, dwar il-vetrina msemija ma ngiebet ebda prova sodisfacjenti sabiex dan l-oggett tal-ghamara ghandu jigi kunsiderat bhala appartamenti lil terza persuna.

Ghal dawn il-motivi, l-Qorti tichad it-talba tas-socjeta rikorrenti bl-ispejjes kollha ta' din il-procedura jithallsu minn din is-socjeta.

**< Sentenza Finali >**

-----TMIEM-----