



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
JOSEPH AZZOPARDI**

Seduta tad-29 ta' Jannar, 2007

Citazzjoni Numru. 1279/1997/1

**The Malta Chamber of Commerce.**

**-vs-**

**Stephen Sammut.**

**Il-Qorti;**

Rat l-att taç-citazzjoni pprezentata fis-6 ta' Ġunju, 1997 li permezz tagħha s-soċjeta' attriçi ppremettiet:

Illi fis-sena 1995 il-konvenut kien impjegat mal-atturi bñala *Accounts Officer* responsabbli għall-*accounts* tal-atturi, u billi fil-perjodu li hu kien hekk impjegat u responsabbli, nstabet mill-awdituri *cash discrepancy* ta' sitt elef, seba' mija, tmienja u sebghin Lira (Lm6,778) (Dok. A); u billi l-konvenut,

ripetutament imsejjañ biex jiġġustifika l-flus neqsin li naqas li jagħti xi ġustifikazzjoni għal dan in-nuqqas; u billi, bħala uffiċjal responsabbli għall-accounts, huwa tenut li ma jkunx hemm *cash discrepancies*.

Għalhekk jitlob lil din l-Onorabbli Qorti għaliex m'għandhiex;

1. jiġi dikjarat responsabbli għall-*cash discrepancy* fuq riferita;

2. jiġi kundannat jirrifondi s-somma ta' Lm6,778 fuq imsemmija in lineam ta' danni.

Bl-imgħax mill-1 ta' Jannar, 1996 u bl-ispejjeż, kompriżi dawk tal-ittri nterpellatorji tas-6 ta' Lulju, 1996, tat-12 ta' Novembru, 1996 u tat-2 ta' April, 1997 kontra l-konvenut li jibqa' ngunt għas-subizzjoni.

Rat id-dikjarazzjoni tas-soċjeta' attriċi, maħlufa minn Joseph R. Darmanin, u l-lista tax-xhieda.

Rat in-nota tal-eċċezzjonijiet tal-konvenut, ippreżentata fl-4 ta' Mejju, 1998, li permezz tagħha eċċepixxa;

1. Illi t-talbiet attriċi huma nfondati fil-fatt u fid-dritt fil-konfront tiegħu peress illi hu ma kien responsabbli għal ebda *cash discrepancy* imsemmi fiċ-ċitazzjoni.

2. Illi l-eċċipjenti fil-perjodu li jagħmel impjegat tal-attur dejjem segwa l-proċedura li minn dejjem kienet tiġi maħduma mill-amministrazzjoni tal-organizzazzjoni attriċi u d-diretturi tagħha, partikolarment dawk tad-Direttur tal-Kamra tal-Kummerċ, Anthony Borg Cardona li għandu jiġu kjamat fil-kawża biex jispjega u wkoll jagħti rendikont tal-allegat *cash discrepancy*.

3. Salvi eċċezzjonijiet oħra.

Kopja Informali ta' Sentenza

Rat id-dikjarazzjoni tal-konvenut maħlufa u l-lista tax-xhieda.

Rat ir-relazzjoni tal-perit komputista' Roderick Grech assistit mill-perit legali Dr. Joseph Micallef Stafrace.

Rat l-atti proċesswali u l-verbal tat-8 ta' Novembru, 2006 li permezz tiegħu l-kawża tħalliet għas-sentenza wara li l-Avukati trattaw il-kawża.

Ikkunsidrat;

Illi l-atturi qed jitolbu li jiġihallsu s-somma msemmija fiċ-ċitazzjoni in linea ta' danni wara li skoprew diskrepanzi fil-kontijiet tagħhom għas-sena 1995 u cioe' meta l-konvenut kien impjegat magħhom bħala *accounts officer*.

Il-konklużjonijiet ta' l-espert komputista' huma miġbura a fol 140 *et sequitur* tal-proċess u huma kif gejj;

*"From a review of all the evidence presented it appears that the question of whether system administration and control was the responsibility of defendant is beyond question.*

*The Defendant failed to honour his responsibilities fully and diligently as was expected of him, both to ensure that all the financial records of the Chamber are recorded manually or otherwise much less to ensure 'that the standards are adhered to at all times and that office staff are suitably trained to make good use of the system'. It is condemnable that the defendant failed to effect material improvements in the system of control like proper password protection and maintenance and proper information security that was held electronically. Even worse, the defendant, whose responsibility included 'bank and cash' failed to ensure that bank reconciliations are properly and regularly held over a prolonged period, resulting in differences between the books of account and the actual bank and cash balance.*

*On the other hand, it must be pointed out and emphasised that the Chamber failed to take immediate action as soon as discrepancies became evident. It also seems to have taken no action over the points raised by its auditors after the 1994 audit to ensure that certain systems of controls are implemented. When faced with the defendants' failure to perform his duties, the Chamber did not present evidence of how the defendant was performing his duties, nor did the Chamber take corrective action of seeking to address the defendant's shortcomings as was evident from discrepancies experienced during 1994. Rather than adopting a zero tolerance attitude, failure to investigate the discrepancy immediately and thoroughly might have communicated the notion that errors are tolerated and possibly fuelled further lax attitude throughout.*

*It is not amiss to point out that one is not convinced that the defendant possessed the academic qualifications and experience that his job obviously entailed. It was the employer's duty to ensure that the duties emanating from the job description were being assigned to competent personnel.*

*In the circumstances, it is felt that although the defendant failed to perform the duties that were expected of him, the absence of proper internal control systems, certain tolerance of discrepancies in the way the Chamber managed the accounting department and the ambiguous lines of responsibilities which were not properly communicated to one and all makes the Chamber co-responsible for the state of affairs.*

*One cannot apportion responsibility between the parties with mathematical precision even though the quantum requested by plaintiffs cannot as such be faulted. Here a discretion is necessitated by a likwidazzjoni ekwittattiva – an area best left exclusively in the hands of the honourable Court.”*

Il-Qorti ma tistax ma taqblix ma' dawn il-konklużjonijiet illi

huma sorretti mill-provi li ngabru. Fil-waqt li wieħed jistenna li ufficjal inkarigat mill-finanzi ta' soċjeta' ikun responsabbli għall-mod kif jinżammu r-rekords tal-moviment tal-flus ta' l-istess soċjeta' u allura jkun tenut responsabbli għal kull nuqqas, l-atturi kellhom diversi nuqqasijiet kif sewwa semma l-espert komputista'. L-ewwelnett ma jidhirx li nvestigaw il-kwalifiki tal-konvenut li mill-mod kif ħadem jidher li ma kinux kif wieħed jistenna. Imbagħad ittolleraw ċerti sitwazzjonijiet u kien meta l-problema bdiet tikber li aġixxew. Infatti anke fis-sena ta' qabel dik il-kwistjoni, kien hemm somma ta' erbat elef Lira Maltin (Lm4,000) li tagħha ma kienx hemm kont – *not accounted for* – u għalhekk giet *written off*. Imbagħad il-prattici viġenti fir-rigward kienu ridikoli – per eżempju li ċ-ċavetta *tas-safe* kienet tkun imdendla b'mod li kull impjegat seta' jeħodha u li s-sistema tal-*computer* kellha *password* li kien jaf biha kulħadd. Dan pero' ma jesonerax lill-konvenut għaliex professjonist ta' l-affari tiegħu kien jieħu ħsieb jirranġa l-affarijiet l-iktar meta finalment kien jispicċa responsabbli hu.

Għalhekk il-Qorti tħoss li l-konklużjonijiet milħuqa mill-perit tekniku ma għandhomx jiġu disturbati; kif qalu spiss il-Qrati il-konklużjonijiet ta' l-espert tekniku nominat minnha għandhom biss jiġu modifikati fis-sentenza f'każijiet eċċezzjonali fejn il-Qorti tirravvisa xi ingustizzja partikolari jew nuqqas ta' applikazzjoni tal-liġi (ara l-iktar sentenza riċenti Agius vs Mifsud deċiża minn din il-Qorti fis-6 ta' Novembru, 2006 u li ċċitat sentenza tal-Qorti ta' l-Appell mogħtija fl-1994 fl-ismijiet Bonnet vs Lewis).

Għalhekk il-Qorti se tadotta in toto l-konklużjonijiet ta' l-espert tekniku u kwindi tilqa' t-talba attrici iżda neċessarjament se jkollha taqsam ir-responsabilita' *arbitrio boni viri* u għalhekk se żżomm lill-konvenut responsabbli kwantu għal terz tas-somma mitluba u

Kopja Informali ta' Sentenza

għalhekk elfejn, mitejn, disgħa u ħamsin Lira Maltin u tlieta u tletin ċenteżmu (Lm2,259.33).

**Għaldaqstant il-Qorti fil-waqt li tiċhad l-eċċezzjonijiet tal-konvenut ħlief kif se jingħad, tilqa' t-talbiet attriċi u tikkundanna lill-konvenut iħallas lis-soċjeta' attriċi s-somma ta' elfejn, mitejn, disgħa u hamsin Lira Maltin u tlieta u tletin ċenteżmu (Lm2,259.33).**

**L-ispejjeż l-oħra kollha tal-kawża, biex jiġu evitati ratizzazzjonijiet komplikati għandhom ikunu mħallsa żewġ terzi mill-atturi u terz mill-konvenut.**

**Moqrija.**

**< Sentenza Finali >**

-----TMIEM-----