



QORTI TA' L-APPELL

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

**ONOR. IMHALLEF
ALBERT J. MAGRI**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tas-27 ta' Lulju, 2007

Appell Civili Numru. 473/2004/1

**i World Group Holdings Europe plc; iWorld Group
Management Ltd; iModel Music Holdings Ltd**

v.

Bettina Vossberg

II-Qorti:

Rat ic-citazzjoni pprezentata mis-socjetajiet attrici li tghid hekk:

"PERESS illi l-konvenuta kienet Direttrici tas-socjetajiet attrici iWorld Group Europe Holdings plc, iWorld Group Management Ltd. u kif ukoll iModel Music Holdings Ltd;

"PERESS illi l-konvenuta fil-kwalita` ta' Direttrici wettqet atti, li kienu bi ksur car ta' l-obbligi li kella qua Direttrici tas-socjetajiet fuq imsemmija u dan kif ser jigi ppruvat b'dokumenti u xiehda fil-kors ta' din il-kawza;

"PERESS li kien hemm zmien li meta l-konvenuta kienet hekk Direttrici l-iskop principali li kellha kien li tipprotegi, tippromwovi u thares l-interessi personali taghha, b'mod li bl-agir taghha kkonduciet u amministrat is-socjetajiet attrici b'konfitt car ta' interess, tant li affetwat b'mod drastiku l-interessi u l-operat tas-socjetajiet imsemmija;

"PERESS li b'ghemilha, il-konvenuta kkagunat danni ingenti lit-tlett socjetajiet attrici mhux biss ta' amministrazzjoni izda wkoll in addizzjoni mad-danni msemmija, it-telf ta' negozju u qliegh, li wasslu ghattnaqqs fil-valur, tat-tlett socjetajiet attrici;

"PERESS illi oltre dak kollu premess, il-konvenuta abbuzat slejament mill-posizzjoni taghha qua direttrici tas-socjeta` iWorld Group Management Limited biex taghmel u jew tipprokura minn ufficjali tas-socjeta` attrici, pagamenti sostanzjali lil terzi socjetajiet li fihom kellha interess personali;

"PERESS li allura sabiex twettaq il-pjanijiet personali taghha, il-konvenuta ma agixxietx b'mod onest, u agixxiet in malafede u di piu` marret kontra l-interess tas-socjetajiet attrici b'mod li kellha konflitt t'interess car;

"Tghid ghalhekk il-konvenuta ghaliex din il-Qorti m'ghandhiex ghar-ragunijiet fuq imsemmija prevja kull dikjarazzjoni necessarja u opportuna:

"1. tiddikjara li l-agir tal-konvenuta meta kienet tokkupa l-kariga ta' Direttrici fis-socjetajiet iWorld Group Europe Holdings Plc u iWorld Group Management Ltd. u iModel Music Holdings Ltd., kissret l-obbligi taghha qua direttrici kif fuq spjegat;

Kopja Informali ta' Sentenza

"2. tiddikjara li l-agir taghha kien ghal kollox illegali, abbuziv u kontra l-ligi fil-konfront tat-tlett (3) socjetajiet attrici;

"3. sussegwentement tiddikjaraha responsabbli ghad-danni li sofriet kull wahda mis-socjetajiet attrici;

"4. tillikwida d-danni sofferti minn kull wahda mis-socjetajiet attrici, okkorrendo b'opera ta' periti nominandi;

"5. tikkundanna lill-konvenuta thallas rispettivament lil kull wahda mis-socjetajiet attrici d-danni rispettivament sofferti minn kull wahda minnhom, kif jigi stabbilit fit-talba precedenti, bl-imghaxijiet (a) kwantu ghal flejjes versati mis-socjetajiet attrici fi proceduri legali minn meta saru tali versamenti; (b) kwantu ghal flejjes imhallsa lil terzi socjetajiet illegalment, mid-data ta' meta saru l-pagamenti u dana sa fejn jirrigwarda lil iWorld Group Management Ltd., (c) kwantu ghal danni sofferti mid-data ta' meta gew hekk sofferti mis-socjetajiet attrici, sal-pagament effettiv. Kull imghax imsemmi sal-pagament effettiv.

"Bl-ispejjez inkluzi dawk tal-mandati ta' sekwestru u inibizzjoni li qed jigu pprezentati kontestwalment u bil-konvenuta minn issa ingunta ghas-subizzjoni, u b'riserva ghal kull azzjoni u dritt ta' azzjoni ohra spettanti lis-socjetajiet attrici."

Rat in-nota ta' l-eccezzjonijiet tal-konvenuta li in forza taghha eccepjet:

"1. In-nullita` tac-citazzjoni ai termini ta' l-Artikolu 156 tal-Kodici ta' l-Organizzazzjoni u Procedura Civili stante li r-rekwiziti hemm imsemmija mhumiex inkluzi fic-citazzjoni;

"2. Il-preskrizzjoni ta' sentejn skond l-Artikolu 2152(3) tal-Kodici Civili;

"3. Illi l-kumpanija attrici kienu rtiraw u rrinunzjaw ghal kwalunkwe dritt li huma kellhom kontra l-konvenuta 'si et quatenus' meta fil-proceduri gudizzjali f'Malta kienu fl-24 ta' Ottubru 2003, irtiraw l-istess azzjonijiet bla riserva kwalsiasi kontra l-konvenuta;

"4. Illi t-talbiet tal-kumpaniji attrici ghandhom jigu michuda peress illi huma kompletament u totalment michuda u infondati fid-dritt u fil-fatt.

"Salv eccezzjonijiet ulterjuri kif permessi fil-ligi.

"Bl-ispejjez u b'riserva ghad-danni kontra l-kumpaniji attrici."

Rat is-sentenza moghtija mill-Prim Awla tal-Qorti Civili, fil-21 ta' Novembru 2006, li in forza taghha ddecidiet il-kawza fis-sens li, wara li cahdet l-eccezzjonijiet preliminari tan-nullita` tac-citazzjoni, ta' rinunzja ghall-azzjoni u ta' preskrizzjoni, ghaddiet biex tichad *in toto* t-talbiet attrici; l-ispejjez relatati ma' l-eccezzjoni ta' nullita` u rinunzja jithallsu mill-konvenuta, waqt li l-ispejjez l-ohra jithallsu mill-atturi *in solidum*.

Dik il-Qorti tat is-sentenza taghha wara li ghamlet is-segwenti konsiderazzjonijiet:

"The factual background to this case is ably described in plaintiff's note of submissions, as reproduced hereunder:

"Defendant Vossberg was a director of the company iWorld Group Europe Holdings plc. She had been appointed by the majority shareholder. This company had a complicated structure with a number of subsidiaries, some of which also had a role in the administrative structure of the parent company. Amongst these subsidiaries the two most important ones were: iWorld Group Management Limited and iModel Music Holdings Limited. iWorld Group Management Limited carried out most of the administrative functions of the parent company, including managing the accounts. All staff were employed by iWorld Group Management Limited.

"iModel Music Holdings Limited on the other hand was one of the major businesses being carried out by the parent company and had a number of major clients, including the singer Britney Spears.

"The main shareholder of the parent company was the so-called Perikles Trust which held voting rights of 84.6% in the company and was the majority shareholder in the company. It was originally managed by Abacus Holdings Ltd and subsequently (on the 2nd December 2004 [recte 2002]) by Medfinco. By way of clarification, Andreas Gerdes is the sole settlor of the Perikles Trust. Less than 15 % of the shares of iWorld Group Europe Holdings plc were owned by a number of institutional and private investors.

"The iWorld Group Europe Holdings plc had in fact been founded by Andreas Wilhelm Gerdes in 2000, four years after his marriage to Bettina Vossberg. He was the face, voice and visionary of the company. On the 22 August 2002 the couple were formally separated, though they were informally separated for more than three years before that. From 2000 to 2002, when matters came to a head, the whole relationship between Gerdes and Vossberg had evolved, or possibly degenerated."

"We may add, further, that, due to issues of personality, the management of the companies was paralysed and, as a consequence, the business operations had come to a virtual standstill. The situation was such that the institutional shareholders were threatening to either withdraw their investments or to take over management of the companies, as they were entitled to do. The officers of the company had reached the conclusion that the personality causing the problems was that of Andreas Gerdes, who apparently considered the companies as a personal fiefdom. Indeed, an internal audit carried out on the initiative of a legal officer of the company revealed that Gerdes had made improper use of company funds in his own interest.

"Eventually, the directors decided to remove Gerdes from the board and from his position of authority; this decision was implemented during a board meeting held on the 3 December 2002. Although, during the course of the present proceedings, plaintiffs voiced doubts on the validity of that meeting and of the decisions taken thereat,

they produced no evidence that a judicial declaration of invalidity was ever pronounced and, therefore, for the purposes of today's proceedings, the decisions taken during that board meeting must be deemed to be valid.

"The main issues in this case are two, namely, (i) whether improper payments were made to defendant per interposita persona, and (ii) whether defendant committed a breach of her duties as director.

"Before considering these issues, however, we have to deal with the procedural pleas raised by defendant and with the plea of prescription.

"The first plea is that of invalidity of the writ of summons because it lacks the requirements set out in art. 156 of the Code of Organisation and Civil Procedure, which, at the relevant time, read as follows:

"156. (1) The writ of summons shall be prepared by the plaintiff and shall contain -

"(a) a clear and correct statement of the subject-matter and the cause of the claim;

"(b) the claim or claims, which shall be numbered.

"The plea of nullity is regulated by art. 789 of the Code:

"789. (1) The plea of nullity of judicial acts is admissible -

"(a);

"(b);

"(c) if the act contains a violation of the form prescribed by law, even though not on pain of nullity, provided such violation has caused to the party pleading the nullity a prejudice which cannot be remedied otherwise than by annulling the act;

"(d) if the act is defective in any of the essential particulars expressly prescribed by law:

"Provided that such plea of nullity as is contemplated in paragraphs (a), (c) and (d) shall not be admissible if such defect or violation is capable of remedy under any other provision of law.

"The court is satisfied that the writ of summons does contain a clear if concise statement of the subject-matter and the cause of the claim. If the writ and the accompanying declaration did not contain sufficient details for defendant to prepare her defence, this shortcoming was remedied following the decree of the 26 July 2004, before service of the writ and accompanying act on defendant. In fact defendant prepared a comprehensive defence and she suffered no prejudice as a result of any possible defect of form.

"The plea of nullity is therefore dismissed.

"The next preliminary plea is that of renunciation to plaintiffs' claims.

"This plea is based on the argument, reproduced in defendant's note of submissions, "that all court cases [between the parties] had been withdrawn without any reservation".

"The withdrawal of an action is not tantamount to a renunciation of the claim. Indeed, the law expressly provides, in art. 2132(2) of the Civil Code, that an action, once withdrawn, may be re-instituted. This applies with even greater force when the proceedings which were withdrawn were merely precautionary warrants, as in the present case, and not an action.

"The plea of renunciation is therefore dismissed.

"Defendant also pleaded prescription under art. 2152(3) of the Civil Code. Art. 2152 reads as follows:

"2152. (1) Advocates and legal procurators are released from any obligation to account for papers relating to lawsuits or advice on the expiration of one year from the day when such lawsuits have been decided or otherwise disposed of, or such advice given.

"(2) They are likewise released from any obligation to account for any papers which may have been delivered to them for the purpose of commencing a lawsuit, on the expiration of two years from such delivery, if within such time the lawsuit has not been commenced.

"(3) They may, however, be called upon to declare on oath whether they are in possession of such papers, or whether they know where such papers are to be found.

"It is evident that the prescription under art. 2152 is totally unconnected with the merits of the present action. Presumably, defendant had art. 2153 in mind:

"2153. Actions for damages not arising from a criminal offence are barred by the lapse of two years.

"Apart from the fact that the court cannot raise the plea under art. 2153 ex officio, that particular prescription is also not applicable to the present case.

"Art. 2153 concerns actions for damages not arising from a criminal offence, whereas plaintiffs are in effect alleging that defendant misappropriated company funds, which is a criminal offence. The allegations of breach of directors' duties, while not necessarily a criminal offence, refers to events which took place between the summer and December of 2002, whereas the action was filed on the 25 June 2004, within the two year period.

"The plea of prescription is therefore also dismissed.

"We can now move on to consider the main issues, the first of which concerns the matter of unauthorised payments.

"There was an agreement between the parties — which was implemented and put in practice before it was formalised in writing — that defendant was to be paid for services rendered by her to iWorld Group Management Limited. These payments were effected through a third company in which defendant held a controlling interest. The practice was for defendant's company to issue an invoice which was then processed for payment by iWorld Group Management Limited. Although it is true that on occasions the authorisation for payment was countersigned by defendant herself, all the witnesses heard by this court, including those summoned by plaintiffs themselves, testified that all payments were issued after rigorous internal checks by plaintiff company officers, and on no occasion was an improper request for payment made or authorised. These requests were scrutinised not only before payment was authorised but also in an internal audit held afterwards. Indeed, the only irregularities revealed in that audit were those committed by Andreas Gerdes.

"It is also true that there were payments which were effected at a time when the agreement was not yet formalised in writing. Nevertheless, the checks carried out prior to payment and also subsequently leave no doubt that the service for which payment was effected had in fact been rendered to the benefit of plaintiffs and with the consent of both parties. Denying payment to defendant in such circumstances would be tantamount to bad faith, and an attempt at unjustified enrichment.

"This court, after having seen the records and having heard the witnesses, is more than satisfied that plaintiff's claims in this regard are completely unfounded and should be dismissed without further ado. Indeed, the view of this court is that plaintiffs' claims are based solely on flimsy and unsubstantiated allegations.

"The next question concerns the matter of breach of directors' duties. Plaintiffs' arguments in this regard are based on an allegation that defendant "conspired" to have Andreas Gerdes removed from any rôle in the

management of the company and that, by so doing, she severely crippled the operations of the company.

"In the first place it must be pointed out that the validity of the board meeting of the 3 December 2002, and of the decisions taken at that meeting, are not at issue in these present proceedings. For all purposes of this action, that meeting must be deemed to have been validly convened and held.

"The allegations of a conspiracy are based on plaintiffs' suspicions that defendant, in league with other directors and company officers, plotted the removal of Andreas Gerdes in advance of the meeting.

"If this were indeed the case it is hardly surprising that the company's directors and officers, understandably concerned at the lack of progress in business operations, put their heads together to try to identify the cause of the problem and its possible solution. Nor would it be surprising if, having identified what, in their view, was the cause of the problem, they agreed on a way to remove it. Such a course of action is neither surprising nor illegal; indeed, the directors would have been in breach of their duties to the company if, having identified the problem, they took no steps to resolve it. That they thought out their strategy beforehand is not evidence of bad faith.

"What is at issue here is not whether the decision to remove Andreas Gerdes from positions of responsibility was a sound commercial decision but whether it was legitimate. Considering that it was held in a validly convened board meeting, in the absence of evidence of bad faith it cannot be held to be otherwise.

"Plaintiffs also accuse defendant of being more concerned with the interests of the institutional shareholders than with the interests of the company.

"What plaintiffs fail to realise is that it was in the interests of the company to satisfy the institutional shareholders that the company was still operational and viable, thereby

dissuading them from withdrawing their investment or taking a direct role in management. Defendant attempted to achieve this not, as plaintiffs allege, by promoting the interests of the institutional shareholders when these were in conflict with the interests of the company, but by attempting to reassure them that their investment was safe.

"That defendant did not place the interests of the institutional shareholders above those of the company is evidenced by the fact that she did not disclose the improper transactions carried out by Andreas Gerdes himself when these were revealed in the internal audit. This was not necessarily a correct decision, because it was in the interests of the company itself, and not merely of its shareholders, that improper transactions carried out by a company officer be disclosed; however, even if defendant was at fault for this omission, the company did not incur any damage thereby because defendant still took prudent action to prevent any further improper transactions by taking steps to secure the removal of the person responsible for such transactions.

"Plaintiffs further allege that, by removing Andreas Gerdes from positions of responsibility in the company and, further, by cutting off all communications with him, defendant fatally damaged the prospects of successfully concluding a lucrative deal.

"Plaintiffs' argument is based on the premise that, but for the removal of Andreas Gerdes, the deal would have been successfully concluded. This premise has not, however, been proved. Indeed, the evidence shows that, at the time of the board meeting of the 3 December 2002, the operations of the company were not commercially viable; in the words of a witness produced by plaintiffs themselves, the company was at that time already a "dead duck".

"Furthermore, the decision to remove Andreas Gerdes from management rôles was a board decision and not a personal decision of defendant. Having decided to

remove him from positions of responsibility, the board acted consistently in also relieving him from any rôle in the discussions with prospective partners; it could hardly have been expected to do otherwise.

"For the above reasons, plaintiffs' claims based on allegations of breach of directors' duties on the part of defendant have not been proven, and the claims, also in this regard, are to be dismissed.

"Finally, a note on plaintiffs' lament that they were not allowed to produce the evidence of witnesses who are resident abroad.

"On the 26 May 2006 the court decreed that the hearing of all the oral evidence was to take place on the 24 and 26 October 2006. Since, due to a misunderstanding on the part of plaintiffs for which they were given the benefit of the doubt, the sitting of the 24 October was missed, an additional sitting was held on the 30 October 2006.

"On the 26 October 2006, plaintiffs filed an application for the taking of evidence by letters rogatory of seven witnesses, the address of only one of whom was known to plaintiffs.

"This application was, for very obvious reasons, dismissed. Plaintiffs were aware, as early as May of 2006, that the hearing was to be concluded by October of that year. The correct procedure would have been for them to file their application at the earliest possible opportunity so that the evidence by letters rogatory would have been available in good time for the hearing in October. Instead, they filed the application at the last possible moment, thereby ensuring, had their application been successful, that the case would not be concluded in terms of the decree of the 26 May 2006. In the best case, plaintiffs were procedurally negligent; in the worst case, they acted suspiciously like one whose true intention is to bog down the proceedings."

Kopja Informali ta' Sentenza

Rat ukoll id-digriet ta' din il-Qorti tas-26 ta' Ottubru 2006, li in forza tieghu cahdet talba ta' l-atturi biex iressqu numru ta' xhieda bil-procedura ta' l-ittri rogatorji;

Rat l-appell interpost mis-socjetajiet attrici li in forza taghha talbu:

"lil din l-Onorabbli Qorti toghgobha (a) thassar u tirrevoka l-provvediment tas-26 ta' Ottubru 2006, u ghalhekk tawtorizza l-esponenti biex jipproducu s-segwenti xiehda permezz ta' ittri rogatorji: Pauntea Morshedi, Christopher Apap, Andreas Gerdes, Jed Alpert, Richard Leitermann, Raphael Veit u Daniel Scalisi; kif ukoll l-affidavits tas-segwenti persuni Pauntea Morshedi, Andreas Gerdes, Christopher Apap, Jed Alpert, Richard Leitermann u Maria Micallef.

Kif ukoll (b) tbiddel u tirriforma s-sentenza premessa billi filwaqt li tikkonferma in kwantu cahdet l-eccezzjonijiet tan-nullita` tac-citazzjoni; tar-rinunzja ta' l-azzjoni; u tal-preskrizzjoni; tirriforma s-sentenza billi previa li tichad l-eccezzjonijiet l-ohra tal-konvenuti takkolji t-talbiet attrici bl-ispejjez kontra l-istess konvenuti; u (c) tirrimetti l-kawza quddiem l-ewwel Onorabbli Qorti ghall-kwantifikazzjoni tad-danni sofferti mill-esponenti."

Rat ir-risposta tal-konvenuta li fiha talbet ic-cahda ta' l-appell u l-konferma tas-sentenza appellata;

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

Semghet lid-difensuri tal-partijiet;

Ikkunsidrat;

Illi din il-Qorti sejra, fl-ewwel lok, titratta l-aggravju ta' l-appellant fir-rigward tad-digriet ta' l-ewwel Qorti tas-26 ta' Ottubru, 2006. Din il-Qorti tara li l-aggravju mhux misthoqq. Min jibda kawza ghandu, f'dak il-mument, ikun ippreparat li jressaq il-provi tieghu kollha, f'seduta wahda jew aktar skond ma tordna l-Qorti. Id-disponibilita` o meno tal-provi ghandha tkun maghrufa mill-bidu, u parti m'ghandhiex tibda kawza u ma tafx min se jixhed u kif.

F'dan il-kaz, l-atturi pprezentaw il-kawza fil-25 ta' Gunju 2004, b'numri kbar hafna ta' xhieda elenkati. L-ewwel Qorti riedet li l-atturi jkunu aktar specifici dwar il-modalita` ta' kif kienu bi hsiebhom imexxu l-kawza. B'nota tas-16 ta' Settembru 2004, l-atturi taw indikazzjoni aktar preciza tal-provi li kienu se jipproducu, u indikaw, fost affarijiet ohra, li kien hemm 8 persuni li kienu se jiddeponu b'affidavit. Avvolja ghamlu din l-istqarrija, jidher li dawn l-affidavits ma kienux f'idejn l-atturi, u ghal sentejn shah – sas-26 ta' Mejju 2006, data ffissata mill-ewwel Qorti ghall-ewwel smigh tal-kawza – baqghu ma ghamlu ebda talba biex iressqu l-prova ta' dawk ix-xhieda b'mod iehor. Fl-udjenza tas-26 ta' Mejju 2006, l-ewwel Qorti ffissat jum f'Ottubru 2006, ghall-provi ta' l-atturi. Fl-udjenza tas-26 ta' Ottubru 2006, l-atturi ressqu l-provi taghhom u hemmekk, ghall-ewwel darba, ressqu talba biex ix-xiehda tat-8 persuni indikati tittiehed bil-procedura ta' l-ittri rogatorji. L-ewwel Qorti cahdet it-talba u din il-Qorti taqbel magha.

Kawza ma titmexxiex biss fl-udjenzi quddiem il-Qorti, imma x-xoghol preparatorju u l-*follow-up* mehtieg irid isir qabel ma tinfetah il-kawza jew, ta' l-anqas, qabel ma jibda s-smigh tal-kaz. L-atturi, f'dan il-kaz, riedu x-xiehda ta' persuni assenti minn Malta; xtaqu li dawn jiddeponu bil-procedura ta' affidavit, izda jekk ix-xhieda ma kienux disponibbli ghal dan, kellhom jagixxu tempestivament, u mhux ihallu minn Gunju 2004 sa Ottubru 2006 biex jitolbu rimedju alternattiv. Forsi l-atturi kienu jkunu gustifikati jistennew f'it xhur ghall-affidavits, izda meta dawn baqghu ma gewx prodotti, kellhom obbligu sabiex, qabel ma l-Qorti tappunta l-kawza ghas-smigh, jitolbu, kif xtaqu, ittri rogatorji. L-atturi ghal aktar minn sentejn ma ghamlu xejn, jistennew guranta ghas-smigh minghajr ma jipprovdu ghall-provi li riedu. Kien biss dakinhar li kellhom igibu l-provi li l-atturi talbu li jinqdew bil-procedura ta' ittri rogatorji, u dan meta sa dakinhar il-Qorti ma kellha ebda hjiel dwar din it-talba. Fl-udjenza tas-26 ta' Mejju 2006, il-Qorti ffissat jumejn shah ghal gbir tal-provi, u da parti ta' l-atturi ma ntqal xejn dwar il-problema li kellhom biex jakkwistaw l-affidavits li riedu. Fis-seduti ffissati ghall-provi, l-atturi ppretendew li l-Qorti, li zgur kienet mehuda b'sorpriza bit-talba li saritilha, twaqqaf il-process kollu,

ippjanat xhur qabel, sakemm l-atturi jgibu l-provi li riedu minn barra! Bir-ragun, l-ewwel Qorti ma accettatx li tkun parti f'din l-ingustizzja li riedu jwettqu l-atturi! Din il-Qorti, fil-kawza **Micallef v. Cassar**, deciza fit-13 ta' April 2007, kienet diga` rrimarkat fuq il-htiega li l-partijiet ikunu ppreparati mill-bidunett fuq il-provi li jkunu se jipproducu, u f'dan il-kaz tara nuqqas kbir da parti tas-socjetajiet attrici f'din il-materja.

L-aggravju ta' l-atturi appellanti dwar il-provvediment tas-26 ta' Ottubru 2006 qed jigi ghalhekk michud.

Dwar il-meritu, fejn l-aggravju issa hu bazikament li l-ewwel Qorti ghamlet apprezzament skorrett tal-provi, ghalkemm it-talbiet attrici gew redatti b'mod ghall-kwantu vag, fuq ordni tal-Qorti, dawn gew specifikati li jirrelataw ghal zewg materji (i) jekk sarux mill-kumpanija *unauthorised payments* lill-konvenuta u/jew is-socjeta` taghha; u (ii) jekk il-konvenuta agixxiet bi ksur tad-doveri taghha *qua* direttrici tal-kumpanija iWorld Group Europe Holdings plc. Sunt tac-cirkostanzi ta' fatt li wassal ghal din il-kawza tinsab fis-sentenza ta' l-ewwel Qorti.

Ghar-rigward ta' l-ewwel materja, jirrizulta li kien sar ftehim bejn Andreas Gerdes, li kien il-mohh wara l-kumpanija u n-negozju taghha, u l-konvenuta, li din ta' l-ahhar kellha tithallas ghas-servizzi li hi u/jew il-kumpanija taghha kellha taghti lill-kumpanija iWorld Group Europe Holdings plc, u s-socjetajiet sussidjarji taghha. L-atturi allegaw li lill-konvenuta saru hlasijiet li ma kienux awtorizzati. Mill-provi prodotti, pero`, ma jirrizulta xejn minn dan. L-accounts tal-kumpanija jirrizulta li kienu soggetti ghal skrutinju ta' *audit* mill-ufficjali tal-kumpanija, u dawn sabu li qatt ma saret talba ingustifikata ghall-hlas mill-konvenuta. Quddiem l-ewwel Qorti, kemm Philip Lingard, li kien il-financial controller tal-kumpanija, kemm Kevin Valenzia ta' PriceWaterhouse Coopers, u kemm Joe Zammit Tabona, awditur li kien nominat mill-Prim Awla tal-Qorti Civili bhala Chairman tal-Bord ta' l-Amministrazzjoni tal-kumpanija (bord kostitwit wara disgwid li nholoq bejn Andreas Gerdes u l-konvenuta, u li wassal ghal *impasse* fit-tregija tal-kumpanija),

ikkonfermaw li l-pagamenti li saru lill-konvenuta sa Mejju 2003 (meta hi rrinzenjat minn direttrici) kienu kollha awtorizzati u korretti. Kevin Valenzia kien involut sa Dicembru 2002 u kkonferma li l-hlasijiet kienu kollha awtorizzati mill-Bord b'mod regolari. Joe Zammit Tabona, li beda l-involviment tieghu f'Dicembru 2002, wkoll xehed li ma sab ebda prova ta' *unauthorised payments* lill-konvenuta; hu jghid li l-hlasijiet kienu kollha '*legitimate expenses*'.

L-ewwel Qorti kienet f'posizzjoni li tisma' x-xhieda jiddeponu quddiemha, u kellha wkoll l-opportunita` tezamina d-dokumenti man mano li dawn kienu qed jigu pprezentati, u wara analizi li ghamlet ta' dawn il-provi kkonkludiet li l-Qorti "*is more than satisfied that plaintiffs claims in this regard are completely unfounded and should be dismissed without further ado*". Din il-Qorti, wara li ezaminat il-provi, ma tarax li ghandha tiddisturba din l-analizi li ghamlet l-ewwel Qorti li, fil-fehma taghha, hija wahda korretta.

Dwar it-tieni materja, din il-Qorti hija tal-fehma li anke hawn l-ewwel Qorti ghamlet apprezzament korrett tal-provi li kellha quddiemha. Hu veru li rrizulta li ufficjali tal-kumpanija "ikkonfoffaw" biex inehhu lil Andreas Gerdes minn direttur, pero`, kif xehed Joseph Zammit, "one has to actually bear in mind that I think the principal shareholders of the company lost fate (recte: faith) in Andreas Gerdes at the time, and they were actually trying to get their money back." L-azzjonisti principali kienu diversi ghaqdiet u banek internazzjonali li kienu investew bi kbir fil-kumpanija, u meta dawn heddeu li jirtiraw l-investment minhabba l-attitudini ta' Andreas Gerdes, il-bord tad-diretturi ma ghamilx hazin meta, biex jevita li l-kumpanija tikkrolla, ra kif nehha mix-xena dik il-persuna li kienet il-kawza tal-problemi kollha.

Lanqas l-allegazzjoni li l-konvenuta kienet qed tagixxi fl-interess ta' l-azzjonisti principali tal-kumpanija ma tista' twassal ghal dikjarazzjoni li ma kenitx qed tagixxi fl-interessi tal-kumpanija. Bl-investment kbir li ta' l-ewwel ghamlu fil-kumpanija, kien mehtieg li l-interessi taghhom

ma jigux imwarrba, u ma jirrizultax li waqt li l-konvenuta kienet qed izzomm quddiem ghajnejha l-interessi ta' l-investituri, dan kien ta' pregudizzju ghall-kumpanija. Kif jinghad fil-ktieb "**Farrar's Company Law**" (Betterworths 4th Edit 1998) f'pagna 381,

"Traditionally, this obligation to act bona fide in the interests of the company has been defined as an obligation to act in the interests of the shareholders and it is the directors' subjective opinion as to the interests of the corporators as a general body, balancing the short-term interests of the present members against the long-term interests of future members, which counts.

"Notwithstanding this subjective test, a decision by the directors may be set aside if it is such that no reasonable man could consider it to be bona fide in the interests of the company but the courts rarely interfere and the overall emphasis on a subjective test can be criticised as entrenching management to an unacceptable degree."

Ma jirrizulta xejn f'dan il-kaz li twassal lil din il-Qorti ticcensura l-mod kif agixxa l-bord.

Lanqas ma gie ppruvat li l-eventwali decizjoni li jitnehha Andreas Gerdes minn fuq il-bord tad-diretturi kienet ta' hsara ghall-kumpanija. Issemma' li seta' intilef kuntratt li kien qed jigi diskuss mal-kantanta Britney Spears, pero`, ma giex muri li dan il-kuntratt intilef b'rizultat dirett tat-tnehhija ta' Andreas Gerdes minn membru tal-Bord. Fuq kollox, ic-cirkostanza li t-tnehhija tieghu minn membru tal-Bord seta' wassal ghal telf ta' xi kuntratti, ma jfissirx li t-tnehhija tieghu ma kenitx fl-interess tal-kumpanija. Il-bord tad-diretturi hu munit b'obbligu li jikkunsidra l-"*wider picture*" tas-sitwazzjoni, u xi kultant ikun mehtieg li tittiehed decizjoni li *prima facie* tidher azzardata, izda li tkun fl-ahjar interessi tal-kumpanija – kollox jiddependi mic-cirkostanzi partikolari ta' kull kaz u l-htiega ta' protezzjoni ta' min ikollu '*legitimate interests*'. F'dan il-kaz jirrizulta li taht ic-Chairmanship ta' Andrea Gerdes, il-kumpanija kienet qed taghmel hafna spejjez bla htiega, agir li Joe Zammit Tabona seta' jikkontrolla wara t-tnehhija

Kopja Informali ta' Sentenza

tas-Sur Gerdes bhala membru tal-bord u l-hatra tieghu bhala Chairman tal-Bord ta' l-Amministrazzjoni.

Kwindi, anke dan it-tieni lment tas-socjeta` appellanti ma jirrizultax li hu misthoqq.

Ghaldaqstant, ghar-ragunijiet premissi, tidisponi mill-appell interpost billi tichad l-istess, u tikkonferma s-sentenza appellata, bl-ispejjez ta' din it-tieni istanza jithallsu kollha mill-appellanti *in solidum*.

< Sentenza Finali >

-----TMIEM-----