MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
IAN SPITERI BAILEY

Seduta tat-18 ta' Gunju, 2008

Talba Numru. 850/2007

Assocjazzjoni GS1 Malta

Vs

Three Barrels Limited (C-39068)

It-Tribunal,

Ra l-**Avviz** fl-ismijiet premessi pprezentat fis-7 ta' Novembru, 2007 fejn gie mitlub mill-Assocjazzjoni attrici s-somma ta' sitt mija sebgha u tletin Liri Maltin u ghoxrin centezmu (LM637.20) rappresentanti kontribuzzjonijiet dovut lilha mis-socjeta` konvenuta ghas-snin 2006 u 2007 ai termini ta' l-istatut ta' l-istess Assocjazzjoni (anness u mmarkat Dok D); Minkejja li s-socjeta` konvenuta giet interpellata thallas diversi drabi inkluz bl-ittra bonarja datata 28 ta' April 2007 (annessa u mmarkata Dok A), din baqghet inadempjenti; Qed jintalbu wkoll l-imghaxijiet dekorribbli mid-dati tal-fatturi relattivi (annessi u mmarkati Dok B u Dok C) sad-data tal-effettiv pagament, bl-oghla

rata permessa mil-ligi; Bl-ispejjes kontra s-socjeta` konvenuta, ngunta in subizzjoni.

Ra r-**Risposta** tal-15 ta' Frar tal-2008 tas-socjeta` konvenuta, fejn gie eccepit illi :
(1) m'hemm ebda kontestazzjoni dwar il-hlas tas-somma ta' seba` mija u tnejn u erbghin Euro u erbatax il-centezmu ta' l-Euro (€742.14) ekwivalenti ghal tlett mija u tmintax il-Lira Maltija u sittin centezmu (Lm318.60) rapprezentanti l-kontribuzzjoni dovuta lill-Assocjazzjoni rikorrenti ghas-sena elfejn u sitta (2006),
(2) illi m'hemm ebda kontestazzjoni ghas-somma ta' disgha u sittin Euro (€69) ekwivalenti ghal disgha u ghoxrin Lira Maltin u tnejn u sittin centezmu (LM29.62) rapprezentanti imghaxijiet legali mit-22 ta' Dicembru 2006 skond il-fattura prezentata mir-rikorrenti u mmarkata bhala 'Dok B',
(3) illi minghajr pregudizzju ghas-suespost, is-socjeta` intimata qeghda tikkontesta t-talbiet l-ohra ta' l-Assocjazzjoni rikorrenti u l-imghaxijiet relattivi fir-rigward tal-kontribuzzjonijiet pretizi minnha ghas-sena elfejn u sebgha (2007), u qeghda tqis tali talbiet bhala infondati fil-fatt u fid-dritt ghar-raguni, illi s-socjeta` intimata debitament ikkancellat l-abbonament li kellha ma' l-Assocjazzjoni rikorrenti, b'dana illi l-ahhar abbonament dovut kien ghas-sena elfejn u sitta (2006), u dan kif ser jigi ppruvat waqt is-smiegh ta' dina l-kawza;

Salv eccezzjonijiet ulterjuri u bl-ispejjez kollha ta' dawn il-proceduri kontra l-Assoccjazzjoni rikorrenti.

Ra l-verbali, d-dokumenti kollha esebit u l-atti kollha tal-kaz.

Semgha x-xhieda kollha prodotti u sema` t-trattazzjoni tad-difensuri tal-partijiet.

Ikkunsidra :

Illi s-somma mitluba mill-Assocjazzjoni attrici tirrapprezenta l-hlas dovut lilha bhala *membership fee* fl-Assocjazzjoni ghas-snin 2006 u 2007.

Illi mir-risposta ma jidhirx illi hemm kontestazzjoni fuq dak dovut ghas-sena 2006, izda l-kontestazzjoni tidher illi hija dwar il-*membership fee* ghas-sena 2007 – u dan ghax kif xehed **Jesmond Muscat** (14.05.2008) in rapprezentanza tas-socjeta` konvenuta, fi Frar 2007 kien informa lill-Assocjazzjoni li ma xtaqx jibqa` membru. Jghid ukoll illi anke meta kien rcieva ittra legali ghall-hlas, huwa kien gharraf lill-Avukat ta' l-Assocjazzjoni li ma kienx aktar interressat fil-membership. Mistoqsi in kontro-ezami dwar jekk kienx jaf x'fih l-istatut – hu ighid illi le, anke ghaliex ma tantx jaf jaqra u jikteb.
Minn naha l-ohra xehdet ghall-Assocjazzjoni **Margaret Camilleri**, (14.05.2008) u qalet illi s-socjeta` konvenuta kienet ilha membru taghha sa' mill-1995. Tispjega illi ai termini ta' l-istatut – meta membru ma jibqax, huwa tenut obbligat jibghat ittra registrata f'dan is-sens u jhallas il-membership tas-sena kurrenti li fiha jkun qed jirrizenja minn membru. F'dan is-sens gie esebit l-ahhar statut mmarkat DOK MC3, u ghamlet referenza specifika ghall-klawsola 7. Tispjega ukoll illi bhala regola aktar minn nofs il-membri ma jhallsux saz-zmien stipulat u f'dawk ic-cirkostanzi il-membri ma jitkeccewx izda jibqghu jigu mitluba jhallsu sa' l-ahhar tas-sena.

Illi dwar DOK MC 2, (il-barcode survey ghas-sena 2006), it-Tribunal ihoss illi dawn huma pjuttost irrelevanti in kwantu illi l-membership fee ghas-sena 2006 hija ammessa mis-socjeta` konvenuta.

Ikkunsidra ulterjorment :

Illi l-istatut (DOK MC3) jaghmel kuntratt bejn il-partijiet, ossia bejn l-Assoccjazzjoni u l-membri taghha. L-artiklu 7 tieghu jitkellem dwar – *Cessation of Membership*, u ighid :

1. A member is free to resign from the Association at any time, provided that this is done by means of a registered letter addressed to the Board of Directors. However, any resignation which is received during that year, will not exempt the member from paying

the subscription mentioned in section 6.1 for the year within which the resignation is tendered.

2. A member who, notwithstanding having been notified by GS 1 Malta after the 1st June by means of a registered letter (or fax/e-mail if registered mail is not received) that his membership subscription has fallen due, still fails to pay such a subscription within a month from notification, thereof, will have his name removed from the Register of Members of GS 1 Malta and this without prejudice to any arrears of any subscription owed by him to the association as at the time of such removal of his name. Continued use of GS 1 Malta's products and / or services after such removal shall be considered as a breach of the laws governing copyright and / or trademarks.

For the purpose of this clause, a registered letter (or fax/e-mail if the registered letter is not received) sent to the address or fax number or e-mail address indicated by the member on the application form shall be deemed sufficient confirmation of notification.

3. In the case of use of bar-coding, any member that decides to resign from the Association, shall ensure that no products featuring a barcode with as prefix issued by GS 1 Malta is present in the market. Companies will be liable to pay GS 1 Malta a fee equivalent to the annual license for the period that those products remain in the market place.

Li r-rapprezentant tas-socjeta` konvenuta ighid illi huwa ma jafx jaqra u jikteb u li allura u konsegwentament ma kienx jaf x'fih l-istatut ma hix skuza accettabbli sabiex jezonera ruhu mill-obbligi tieghu naxxenti mill-ftehim (statut) illi huwa ghandu mal-Assocjazzjoni.

Illi l-Artiklu kkwotat irid jinqara fl-intier tieghu u filwaqt illi l-Assocjazzjoni tibbaza l-pretensjoni taghha partikolarment fuq paragrafu 1, is-socjeta` konvenuta konvenuta tibbaza l-posizzjoni taghha aktar fuq paragrafu tnejn ta' l-istess Artiklu.

Il-paragrafu 1 huwa car – membru huwa hieles li jirrizenja minn membru b'dan pero` illi ghandu jaghti avviz permezz

ta’ ittra registrata indirizzata lill-Bord tad-Diretturi. Jirrizulta mix-xhieda ta’ Jesmond Muscat illi mhux biss ma baghtx l-ittra registrata – izda li addirittura qaghad jistenna illi jircievi hu telefonata mill-Assocjazzjoni sabiex jgharrafha illi kien qed jirrizenja. Definittivament mhux il-mod kif kellu jimxi kieku ried verament jirrizenja u ma jhallasx l-mizata ghas-sena 2007. L-istess paragrafu 1 ikompli jistipula illi meta rizenja ssir tul sena partikolari, il-mizata ghal dik is-sena trid tithallas xorta wahda. U allura anke kieku ghal grazzja ta’ l-argument it-Tribunal kellu jaccetta illi fi Frar tas-sena 2007, is-socjeta` konvenuta ressqet ir-rizenja taghha (haga li ghall-finijiet ta’ l-istatut ma ghamlitx), in kwantu illi is-sena kalendarja kienet bdiet, allura is-sena 2007 kellha tigi mhallsa mis-socjeta` konvenuta xorta wahda.

L-argument tas-socjeta` konvenuta illi una volta illi isimha gie ikkancellat minn fuq ir-registru in kwantu ma effettwatx il-hlas ghas-sena 2007 allura mhux dovut il-hlas, huwa illogiku u ma jwassal mkien – anke peress illi l-istess paragrafu 2 jistipula illi l-kancellament ta’ isem minn fuq ir-registru isir minghajr pregudizzju ghal kwalsiasi arrettrati li jistghu jkunu dovuti fuq il-hlas tal-*membership*.

Fid-dawl ta’ dan kollu kkonstatat, ma jistghax jinghad illi s-socjeta` konvenuta “*debitament ikkancellat l-abbonament*” kif tistqarr fit-tielet eccezzjoni taghha.

Ghaldaqstant, it-Tribunal, wara li qies ic-cirkostanzi kollha tal-kaz, wara li ezamina x-xhieda u d-dokumenti kollha esebiti, jaqta` u jiddeciedi billi filwaqt illi jichad it-tielet eccezzjoni tas-socjeta` konvenuta, jilqa` t-talba attrici u jikkundanna lill-istess socjeta` konvenuta thallas lill-Assocjazzjoni attrici s-somma ta’ elf, erba` mija u erba` u tmenin Euro u tmienja u ghoxrin centezmu (€1484.28) ekwivalenti ghal sitt mija u seba` u tletin Liri Maltin u ghoxrin centezmu (Lm637.20), bl-ispejjes u bl-imghax kif mitluba fl-Avviz.

< Sentenza Finali >

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