

Kopja Informali ta' Sentenza

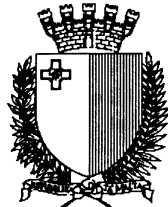


QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tal-15 ta' Ottubru, 2012

Avviz Numru. 96/2009



**QORTI TAL-MAGISTRATI (MALTA)
MAGISTRAT DR FRANCESCO DEPASQUALE LL.D.
LL.M. (IMLI)**

**Avviz Nru 96/2009 FDP
Fl-ismijiet:**

**William Carbonaro
(ID 12045M)**

vs

Raymond Vassallo

II-Qorti

Rat l-avviz ipprezentat fit-13 ta' Marzu 2009 fejn ir-rikorrent talab lill-Qorti sabiex tiddikjara illi l-email mibghuta mill-konvenut lil numru ta' persuni fis-6 ta' Frar 2009 hija libelluza u malafamanti fil-konfront ta' l-attur billi l-ahhar paragrafu tad-'Declaration' tikkonjeni allegazzjoni falza li ttellef jew tnaqqas ir-reputazzjoni ta' l-attur jew li tesponih ghar-redikolu jew ghad-disprezz tal-pubbliku u ghalhekk tikkundanna lill-istess konvenut ihallas lill-attur dik is-somma li tigi likwidata minn dina l-Qorti a tenur ta' l-Artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta.

Rat ir-risposta ta' l-intimat illi laqa' ghall-akkuzi maghmulha fil-konfront tieghu billi eccepixxa illi:-

1. L-Att dwar l-Istampa ma japplikax ghac-cirkostanzi tal-fatt in dizami u dan ghaliex il-lanzanza ta' l-attur tikkoncerna komunikazzjoni illi saret mid-Direttur tas-socjeta' kummercjali lid-diretturi l-ohrajn, fosthom l-attur innifsu, fuq materja illi fiha d-diretturi kollha kellhom interess komuni u ghaldaqstant, ma jissussistix l-element ta' pubblicita' rikjesta mil-Ligi.
2. Illi, minghajr pregudizzju u subordinatament, l-email tas-6 ta' Frar 2009 m'hijiex libelluza u malafamanti.
3. Illi, minghajr pregudizzju u subordinatament, l-email tas-6 ta' Frar 2009 tikkonsisti f'komunikazzjoni privileggjata.
4. Illi, minghajr pregudizzju u subordinatament, in-nuqqas ta' l-animus ingurjandi da' parti tal-konvenut.
5. Illi, minghajr pregudizzju u subordinatament, tenut kont tac-cirkostanzi kollha tal-kaz, fl-eventwalita pessima illi dina l-Qorti kellha tilqa' t-talbiet, ghandhom jigu likwidati biss danni nominali a favur ta' l-attur.

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Rat ix-xhieda tal-**Perit William Carbonaro** moghtija fid-9 ta' Marzu 2010 u fl-10 ta' Novembru 2010

Rat ix-xhieda tal-**Perit Edwin Micallef** moghtija fid-9 ta' Marzu 2010

Rat ix-xhieda ta' **Anthony Parlato Trigona** moghtija fid-9 ta' Marzu 2010

Rat ix-xhieda tal-**Perit Raymond Vassallo** moghtija fid-9 ta' Gunju 2010 u fit-2 ta' Marzu 2011

Rat id-dokumentazzjoni kollha ipprezentata mill-partijiet

Rat id-dikjarazzjoni mibghuta mill-intimat bhala "*Director & Company Secretary of Winex Holdings Ltd*" lir-rikorrenti William Carbonaro, flimkien ma' Edward Micallef u Anthony Parlato, liema email hija intitolata "*Deteriorating situation*"

Rat il-parti li giet indikata bhala inkriminatorja da' parte tar-rikorrenti, ossija il-parti tal-email illi tghid:-

The said Managing Director (Anthony Parlato Trigona), together with director Willy Carbonaro, have been conducting unrelated consular activity related to the issue of visas to Thailand, involving significant tax evasion, from the office purportedly leased to Winex, notwithstanding the persistent objections of director Raymond Vassallo

Ikkunsidrat

Illi jirrizulta li l-partijiet huma tnejn minn erbgha diretturi tas-socjeta Winex Holdings Limited, z-zewg diretturi l-ohra ikunu il-Perit Edward Micallef u Anthony Parlato Trigona, liema kumpannija topera mill-ufficcju taghha gewwa Bisazza Street, Sliema, u li taghha il-Managing Director huwa Anthony Parlato Trigona.

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Illi jirrizulta li r-rikorrent Carbonaro huwa wkoll Konslu ghat-Tailandia, liema konsolat ghandha l-ufficji taghha fl-istess bini fejn topera il-kumpannija Winex Holdings Limited, biswit l-ufficini taghha.

Illi jirrizulta li r-rikorrent kien ftiehem ma' Parlato Trigona, illi huwa l-prim kugin tieghu, illi Parlato Trigona jassistieh fir-rikjesti ta' hrug ta' visas illi l-konsolat jircievi regolarment minghand individwi, u ta' dan l-istess Parlato Trigona kien jithallas.

Illi jirrizulta li l-intimat, fil-kwalita' tieghu kemm ta' Segretarju kif ukoll bhala Direttur tal-kumpannija Winex Holdings Limited, kien ilu diversi snin jilmenta dwar ix-xoghol illi Parlato Trigona kien jaghmel ghal Carbonaro, peress illi s-socjeta Winex Holdings Limited kienet inkorriet diversi penalitajiet ta' taxxa minhabba f'dewmien sabiex jipprezentaw l-accounts kif trid il-Ligi, liema accounts kellhom jigu pprezentati minn Parlato Trigona, illi kien fi zmien jokkupa il-post ta' Financial Controller tas-socjeta Winex Holdings Limited, liema dewmien Vassallo jattribwixxi ghall-fatt li Parlato Trigona kien imhabbat aktar jiehu hsieb il-visa's ghat-Tailandia milli l-kontijiet tas-socjeta Winex Holdings Limited.

Illi jirrizulta li, kif stqarr ir-rikorrent stess, dak li semma l-intimat fl-email tieghu kienet haga li kien ilu jsemmi ghal madwar hames sa sitt snin.

Illi jirrizulta li, mument minnhom, fuq suggeriment ta' l-intimat stess, il-pusizzjoni ta' Parlato Trigona fil-kumpannija Winex Holdings Limited giet avvanzata minn dik ta' Financial Controller ghal dik ta' Managing Director ta' l-istess kumpannija, b'paga ferm aktar oghlja minn dik illi kellu precedentement. Apparti minn hekk, kien gie miftiehem li l-istess Parlato Trigona, bhala rizultat ta' tali avvanz, ma kellux jibqa' jahdem minn gewwa l-ufficji tal-Winex Holdings Limited illi kellhom fil-present, sabiex ma jibqax jaghmel aktar xoghol tal-konsolat tat-Tailanda, bil-ghan illi huwa jkun jista jikkoncentra aktar fuq ix-xoghol tal-kumpannija sabiex jigu evitati multi ohra.

Illi jirrizulta illi, ghalkemm Parlato Trigona gie elevat ghal posizzjoni ta' Managing Director u l-paga tieghu giet avvanzata ferm, huwa xorta baqa' jopera gewwa l-ufficji tal-Winex Holdings Limited gewwa Bisazza Street, Sliema, ossija biswit il-Konsolat tat-Tailandia, u xorta baqa' jaghmel ix-xoghol relatat mal-visas tal-konsolat tat-Tailandia, u dana kontra dak li kien gie miftiehem.

Illi jirrizulta illi tali sitwazzjoni wasslet ghal deterjorazzjoni ta' komunikazzjoni bejn id-diretturi, fosthom il-partijiet tal-kawza, u dina wasslet sabiex issir laqgħa tal-Bord tad-Diretturi ta' l-istess kumpannija Winex Holdings Limited illi, fuq l-agenda tagħha, kellha, fost affarjiet ohra, illi tigi diskussa l-kwistjoni li l-Managing Director, ossija Parlato Trigona, ma setax jaghmel xogħol iehor mingħajr l-approvazzjoni tad-Diretturi f'general meeting. Fl-istess laqgħa kellha wkoll tigi diskussa talba sabiex jitnehha l-intimat mill-post ta' Segretarju tal-Kumpannija Winex Holdings Limited.

Illi jirrizulta li l-intimat, meta rcieva l-agenda ta' dina l-laqgħa, għadda biex jaghmel il-kummenti tiegħu, liema kummenti kienu annessi ma' l-email datata 6 ta' Frar 2009, meritu tal-kawza odjerna. Fost tali kummenti, fejn l-intimat kien qieghed jikkummenta dwar item fuq l-agenda li tikkoncerna il-fatt li Direttur kien qed jaghmel uzu ta' assi tal-kumpannija a beneficcju tiegħu a skapitu tal-kumpannija, huwa għadda biex jikkummenta dwar l-operat tal-konsolat tat-Tailandia u għamel il-kummenti li r-rikorrent qieghed iqis bhala malafamanti fil-konfront tiegħu.

Ikkunsidrat

Illi fil-kaz in ezami, il-kontenut ta' dak illi qieghed jigi allegat bhala malafamanti kienet korrispondenza li giet skambjata bejn diretturi bhala rizultat ta' laqgħa illi kellha ssir tal-Bord tal-Kumpannija Winex Holdings Limited, liema kummenti kienu direttament jirrigwardaw items fuq l-agenda li kellhom jigu diskussi.

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Illi jirrizulta li bejn id-diretturi, partikolarment iz-zewgt diretturi partijiet ta' dina l-kawza, kien hemm differenzi kbar, liema differenzi wasslu sabiex l-istess partijiet mhux biss jaghmlu tali kawza ta' libel, izda sahanitra sabiex saru kawzi ohra, mhux quddiem dina l-Qorti, kif indikati mill-istess partijiet fix-xhieda taghhom - jigifieri jidher li hemm attrit kbir bejniethom.

Illi huwa fl-ottika ta' dawna z-zewg realtajiet illi l-Qorti ghandha tevalwa l-provi fil-kawza odjerna u tistabilixxi jekk il-kontenut ta' tali korrispondenza kienetx malafamanti jew le.

Dwar il-pubblikazzjoni, ma ghandu jkun hemm ebda dubju peress illi tali korrispondenza ma intbghatietx unikament lir-rikorrent, izda intbghatet ukoll liz-zewg diretturi ohra u ghalhekk, l-element tal-pubblikazzjoni gie ppruvat.

Dwar l-identifikazzjoni, dana ma ghandu jkun hemm ebda dubju wkoll, peress illi l-intimat, fil-kummenti tieghu, jaghmel referenza direttament ghar-rikorrent u ghal kariga tieghu bhala Konslu tat-Tailandia meta jghaddi il-kummenti meqjusa bhala malafamanti.

Il-kwistjoni tibqa jekk l-intimat kellux interess illi jaghmel tali kummenti b'mod illi, allura ghandhom jitqiesu bhala privileggjati, jew le.

Illi huwa fatt li fil-kaz odjern, il-privilegg li jista jibbenefika minnha l-intimat ma hijiex dik ta' privilegg assolut kif ikkontemplat fl-artikolu 33 tal-Kap 248, izda huwa privilegg kwalifikat. Di fatti, kif jghid **Carter- Ruck on Libel and Slander** jinghad li:-

“The occasions of absolute privilege are strictly defined and only occur in very special circumstances. There are other and more numerous occasions when the law affords a protection of a less extensive character of defamatory statements which are untrue. The protection thus given is known as qualified privilege. Where it exists an action will not succeed unless the plaintiff can prove that in publishing the words complained of the defendant was

actuated by express malice, that is to say by spite or ill will or some other wrong or improper motive. Herein lies the distinction between absolute and qualified privilege. Malice defeats a defence if qualified privilege; it is wholly irrelevant to absolute privilege”.

“Like absolute privilege qualified privilege exists not for the purpose of licensing the defamer but ‘for the common convenience and welfare of society’. There are occasions when persons should be at liberty to express themselves freely even if in so doing a third person is defamed. Social and commercial life would become intolerable if no one were ever protected in making a statement reflecting upon another unless he could prove that statement to be true. There are obviously occasions, other than those of absolute privilege, when it is essential that a person should be able to state without fear of legal consequences what he honestly believes to be true”.

Tali posizzjoni hija indikata wkoll mill-istess **Gatley “On Libel and Slander”** li jipprovdi li:-

“These occasions are called occasions of qualified privilege, for the protection which the law, on grounds of public policy, affords is not absolute but depends on the honesty of the purpose with which the defamatory statement is made. The rule is founded on the general welfare of society, new occasions for its application will necessarily arise with the continually changing conditions”.

Illi kif qalet I-Prim Awla tal-Qorti Civili fil-kawza "Angelo Spiteri vs Joseph Bugeja" - PA RCP - fl-1 ta' Ottubru 2002

"hemm diversi okkazzjonijiet fejn l-istess kwazi privilegg jista' jigi eccepjet, pero' dan bl-ebda mod ma jfisser li tali okkazzjonijiet jistghu jigu delineati b'mod preciz ghaliex kollox jiddependi fuq il-kaz partikolari, pero' dan certament jinkorpora incidenti fejn jsiru dikjarazzjonijiet meta wiehed ikun obligat li jaghmel dan f'termini kemm privati u kemm pubblici, bhal meta persuna f'kariga jaghmel rapport kontra impjegat anke ta' azzjenda privata, jew isir rapport

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minn individwu lil xi awtorita' kompetenti bhal per ezempju lill-Pulizija, jew lil xi awtorita' ohra sabiex l-istess kaz, ilment , allegazzjoni, anke di fronte ghall-persuna jigi nvestigat.

Illi dan l-obbligu jew necessita' li jsir rapport ta' din in-natura jista' ma jkunx legali izda obbligu morali jista' jkun bizzejjed, tant li inghad fil-kaz "Stuart vs Bell" li "I take a moral duty to mean a duty recognised by people of ordinary intelligence and moral principle, but at the same time not a duty enforceable by legal proceedings, whether civil or criminal.... Would the great mass of right-minded men in the position of the defendant have considered it their duty under the circumstances to make the communications? The true mode, said Kay L.J. "of judging upon the question is to put oneself as far as possible in the position of the defendant".

Illi pre-suppost ghall-applikazzjoni ta' dan il-principju huwa li l-obbligu tal-persuna li taghmel l-istess komunikazzjoni irid jezisti kontemporanjament ma' l-interess tal-persuna li lejha l-istess komunikazzjoni tkun diretta. Hekk kemm l-obbligu tal-persuna li taghmel l-istess dikjarazzjoni u l-interess tal-persuna li tircievi l-istess dikjarazzjoni jridu jkunu jezistu bhala fatt, u d-determinazzjoni ta' l-istess hija fiha nfisha kwistjoni ta' fatt.

"A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contain criminary matter which, without this privilege, would be slanderous and actionable" ("Harrison vs Bush" – "Duncan and Neill on Defantion" – page 93; Gatley – page 449)."

Illi l-istess Qorti tkompli tghid:-

Illi l-istess interess irid ikun legittimu u jrid jezisti dak li jissejjah 'reciprocity of interest' "in the party to whom the communication is made as well as in the person making it", u taht dan il-kategorija jaqaw komunikazzjonijiet li

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jsiru 'in the discharge of a duty" bhal per ezempju character referances ta' impjegati u ohrain, rapporti dwar temm ta' impjieg, rapporti ta' allegati abbuzi ta' persuni f'hi sfera partikolari ta' kummerc lill Awtoritajiet kompetenti, u hafna okkazjonijiet ohra, dment li l-istess dikjarazzjonijiet jsiru in bona fede.

Illi l-**Gately "On Libel and Slander"**, dwar 'reciprocity of interest' jghid:-

The point to bear in mind is that 'reciprocity of interest is essential' to found the privilege (qualified). Reciprocity of interest does not mean that there must be some special relationship between the defendant and the person to whom he makes the communication. All it means is that the interest must exist in the party to whom the communication is made as well as in the party making it. It is not sufficient that the defendant honestly and reasonably believed that the person to whom he made the communications had an interest in the subject matter thereof. If in fact, he had none, there is no privileged occasion. The interest, moreover, must be a legitimate interest. No privilege will attach where the common interest is one which springs from idle gossip or curiosity only." (397)

L-istess Gately, meta jigi biex jelenka ezempji ta' privileggi kwalifikati illi gew accettati peress illi bbazati fuq 'common interest, jindika bhala wahda mill-ezempji accettati:-

A statement made by a director of a company to his fellow directors or to the shareholders, as to the conduct of an officer of the company. A statement of a shareholder of a company to an officer of the company as to the character of an employee of the company or to his fellow shareholders in a letter, or at a general meeting, as to the conduct of a director of the company.

Illi jirrizulta fil-kaz odjern li l-kummenti li l-intimat kien qiegħed jagħmel kienu kummenti li huwa kien qiegħed jagħmel fil-kwalita' tieghu ta' Segretarju u Direttur tal-Kumpannija kif ukoll fl-ambitu ta' kwistjoni illi kienet ilha

hemm ghal aktar minn hames snin u li kienet wasslet sabiex tissejjah laqgha tal-Bord tal-kumpannija Winex Holdings Limited fejn tali ilmenti kellhom jigu diskussi u fejn, fost affarjiet ohra, kienet qed tintalab it-tnehhija tal-intimat mill-kumpannija.

Illi jirrizulta li dak attwalment allegat mill-istess intimat, ma kienx korrett, fejn tidhol il-kwistjoni ta' evazjoni tat-taxxa, peress illi jirrizulta skond il 'Vienna Convention on Consular Relations, 1963' stante illi skond l-artikolu 39 tal-istess konvenzjoni

The sums collected in the form of fees and charges ... and the receipts for such fees and charges shall be exempt from all dues and taxes in the receiving State.

Illi, madanakollu, jirrizulta illi l-intimat kien qiegħed jagħmel tali kummenti fil-kapacita tieghu ta' direttur u għax huwa kien

"genwinament ikkoncernat li jekk kien hemm xi abbuz minn din l-attività konsolari, din seta jkollha impatt negattiv fuq il-kumpannija Winex. Kien biss f'dan il-kuntest illi jiena ktibt dak li ktibt, ma ridt inwegga jew ningurja lill hadd"

Illi għalhekk jirrizulta illi, apparti li tali komunikazzjoni għandha titqies bħala wahda privileggjata fuq bazi kwalifikata peress illi saret bejn diretturi fl-ambitu ta' l-operat tal-kumpannija, tali komunikazzjoni lanqas ma għandha l-animus ingurjandi rikjesta peress illi saret unikament biex l-interessi tal-kumpannija illi tagħha l-intimat kien, dak iz-zmien, Segretarju u Direttur, jigu protetti.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti mill-partijiet u d-dokumentazzjoni kollha esebita.

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Wara illi rat il-kontenut ta' l-email inkriminatorja, partikolarment il-frazi indikata mir-rikorrent bhala dik malafamanti

Tghaddi biex taqta u tiddeciedi billi

Tichad l-ewwel eccezzjoni filwaqt illi tilqa' t-tieni, tielet u raba eccezzjoni ta' l-intimat u tastjeni milli tiehu konjizzjoni tal-hames eccezzjoni, u

Tichad t-talbiet attrici.

Bl-ispejjez kontra tieghu

< Sentenza Finali >

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