MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
MARK CHETCUTI

Seduta tal-5 ta' Dicembru, 2012

Citazzjoni Numru. 200/2011

Boarding School (Malta) Ltd

vs

Maizie Williams

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-25 ta’ Frar 2011 li jghid hekk:

1. Illi permezz ta' skrittura privata [kopja ta' liema qed tigi hawn annessa u mmarkata Dok 'A'] datata l-ewwel (1) ta' Lulju tas-sena elfejn u disgha (2009), Dr. Snezhana Bodishtianu, fisem RBSM International Boarding School, dahlet fi ftehim ma' certu Donavon Nelson, li kien qed jagixxi in rapprezentanza ta' Maizie Williams, rigward kuncert li kellu jinzamm nhar il-wiehed u tletin (31) ta' Dicembru tas-sena elfejn u disgha (2009) gewwa l-belt Ukrena ta' Feodosia;

2. Illi l-isem 'RBSM International Boarding School' huwa l-isem kummercjali li bih topera s-socjeta attrici;

3. Illi permezz ta' tali skrittura privata kien gie pattwit li l-grupp muzikali Boney M kellu jaghti wirja ta' sittin (60) minuta versu l-pagament ta' dsatax-il elf Lira Sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) - liema ammont thallas fl-intier tieghu - u dan bil-kundizzjonijiet kontenuti fl-istess skrittura;

4. Illi irrizulta li l-konvenuta, naqset milli tonora l-obbligi minnha assunti permezz tal-imsemmija skrittura privata, u dan peress li ghazlet li thassar l-arrangamenti kollha u li b'hekk il-grupp Boney M baqa' ma ta l-ebda wirja fid-data u l-post kif miftiehem;

5. Illi konsegwentement, il-pagament ta' dsatax-il elf Lira Sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) sar dovut lura lis-socjeta atttrici, flimkien mad-danni li l-istess socjeta inkorriet minhabba n-nuqqas da parti tal-intimata;

6. Illi minkejja il-varji interpellazjonijiet ghall-hlas tas-socjeta attrici, il-konvenuta xorta wahda baqghet inadempjenti;

7. Illi ghalhekk is-socjeta attrici kellha tintavola l-proceduri odjerni;

Ghaldaqstant tghid il-konvenuta ghaliex din l-Onorabbli Qorti m'ghandhiex:

1. Tiddikjara li l-konvenuta naqset milli jonora l-obbligi taghha ai termini tal-iskrittura privata datata l-ewwel (1) ta' Lulju tas-sena elfejn u disgha (2009);

2. Tiddikjara li s-socjeta attrici sofriet danni li kienu direttament ikkagunati minn tali nuqqas tal-konvenuta;

3. Tillikwida d-danni hekk sofferti mis-socjeta attrici;

4. Tordna lill-konvenuta thallas id-danni hekk likwidati lis-socjeta attrici;

5. Tiddikjara li s-somma ta' dsatax-il elf Lira Sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) li thallset mis-socjeta attrici lill-konvenuta hija dovuta lis-socjeta attrici;

6. Tordna lill-konvenuta thallas tali somma ta' tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) ekwivalenti ghal dsatax-il elf Lira Sterlina (£19,000) lis-socjeta attrici.

Bl-ispejjez u bl-imghax kontra l-konvenuta li hi minn issa ingunta ghas-subizzjoni.

Rat ir-risposta guramentata tal-konvenuta li tghid hekk:
1. Illi preliminarjament l-intimata qatt ma dahlet fl-ebda rabta mas-socjeta attrici, u ghalhekk din ma ghandha l-ebda interess guridiku f'dawn il-proceduri. Ghalhekk l-ewwel u qabel kollox l-allegazzjoni dwar it-tradename uzat mis-socjeta rikorrenti u n-ness guridiku bejn RBSM International Boarding School u Boarding School (Malta) Ltd ghandu jigi pprovat mis-socjeta rikorrenti. Ghandu jinghad ukoll illi fl-ebda punt qabel din il-kawza qatt ma giet imsemmija s-socjeta rikorrenti u daqstant iehor qatt ma ssemma jew intwera li hemm assocjazzjoni bejn RBSM International Boarding School u s-socjeta rikorrenti.

2. Illi minghajr pregudizzju ghas-suespost, hekk kif ser jirrizulta matul il-mori ta' din il-kawza, l-intimata ma hija hatja ta' l-ebda nuqqas f'dak illi ghandu jirrigwarda l-iskrittura privata illi giet annessa mar-rikors promotur u dan stante li hija ma naqset bl-ebda mod milli tonora xi obbligu li gie assunt minnha. Kienu semmai ir-rapprezentanti ta' RBSM International Boarding School u/jew l-organizzaturi inkarigati mill-kuncert li ma onorawx

l-obbligi u l-kundizzjonijiet provduti fl-istess skrittura kif ser jirrizulta matul il-mori ta' din il-kawza.

3. Illi, kwalsiasi danni allegatament sofferti minn RBSM International Boarding School jew is-socjeta attrici, (jekk kien hemm danni sofferti), gew sofferti unikament minhabba n-nuqqasijiet taghhom infushom minghajr ebda tort tal-intimata. Illi l-ebda danni ma ghandhom ghaldaqstant jigu likwidati minn din l-Onorabbli Qorti ghaf-favur tas-socjeta rikorrenti jew RBSM International Boarding School.

4. Illi konsegwentement, l-intimata ma ghandhiex tigi ordnata thallas ebda danni lis-socjeta attrici jew RBSM International Boarding School.

5. Illi s-somma ta' dsatax-il elf Lira Sterlina (£19,000) ekwivalenti ghal tnejn u ghoxrin elf, erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu (€22,462.88) li thallset minn RBSM International Boarding School mhix dovuta mill-intimata stante li in vista tan-nuqqasijiet li taghhom irrendiet ruhha hatja RBSM International Boarding School, ir-rapprezentanti taghha u/jew l-organizzaturi inkarigati mill-kuncert kif imsemmi fit-tieni eccezzjoni, dahlet fis-sehh il-penali provduta fl-istess skrittura li ppermettiet lill-intimata zzomm l-ammont in kwistjoni.

6. Illi ghandu jinghad ukoll illi sabiex hija tkun prezenti ghall-kuncert li kien ser jigi organizzat minn RBSM International Boarding School lejliet l-ewwel tas-sena, l-intimata kienet irrinuncjat ghal opportunitajiet ohra li ttella kuncert x'imkien iehor f'dik id-data stante li kienet zammet il-lejl tal-kuncert in kwistjoni rizervat ghall-avveniment li kien ser jigi organizzat. Il-kancellament tal-kuncert in kwistjoni ftit gimghat biss qabel id-data miftehma fisser li kien tard wisq ghaliha li tircievi offerti jew ittella' kuncert x'imkien iehor.

7. Illi ghar-ragunijiet imsemmija, l-intimata ma ghandhiex tigi ordnata thallas ebda somma la lis-socjeta attrici u l-anqas lil RBSM International Boarding School.

8. Salv eccezzjonijiet ohra.

Bl-ispejjez ta' din il-kawza kontra s-socjeta attrici li minn issa ghandha tigi ingunta ghas-subizzjoni.

Rat ir-risposta ulterjuri tal-konvenuta li tghid hekk:
1. Illi, b'zieda ma', izda minghajr pregudizzju ghall-eccezzjonijiet esposti fir-risposta guramentata taghha, qieghdha tippremetti illi, in vista tal-fatt illi l-konvenuta m'hijiex domiciljata hawn Malta, il-mertu tal-azzjoni proposta mis-socjeta attrici m'ghandux jigi investigat minn din l-Onorabbli Qorti, u dan stante in-nuqqas ta' gurisdizzjoni rikjesta mid-dettami tar-Regolament tal-Kunsill (KE) Nru. 44/2001 tat-22 ta' Dicembru 2000 dwar gurisdizzjoni u ezekuzzjoni ta' sentenzi f’materji civili u kummercjali.

2. Illi, ghaldaqstant, din l-Onorabbli Qorti ghandha tieqaf milli tiehu konjizzjoni tal-proceduri odjerni, prevja kwalsijasi dikjarazzjoni u/jew provvediment meqjus opportun.

3. Salvi eccezzjonijiet ohra permessi mil-Ligi.

Rat l-atti kollha tal-kawza;

Rat li l-kawza thalliet ghas-sentenza in parte fuq ir-risposta ulterjuri tal-konvenuta fejn qajmet l-eccezzjoni tal-gurisdizzjoni ta’ dawn il-Qrati ghall-5 ta’ Dicembru 2012.

Ikkunsidrat

Din is-sentenza hi limitata ghal kwistjoni tal-gurisdizzjoni tal-Qrati Maltin fil-vertenza bejn il-partijiet. L-eccezzjoni tal-gurisdizzjoni imqajma mill-konvenuta hi fis-sens li l-konvenuta mhix domiciljata f’Malta u ghalhekk il-mertu tal-azzjoni ma ghandux jigi investigat fil-Qrati Maltin u dan a bazi tar-Regolament tal-kunsill 44/2001 tat-22 ta’ Dicembru 2000 dwar il-gurisdizzjoni u esekuzzjoni ta’ sentenzi f’materji civili u kummercjali.

In sostenn ta' din l-eccezzjoni l-konvenuta pprezentat affidavit qasir biex issostni li hi domiciljata l-Ingilterra u pprezentat kopji ta' xi dokumenti bhala prova fattwali ta' din l-allegazzjoni.

L-artikolu relevant ital-EU Regulation 44/2001 hu l-artikolu 2(1) u jghid:
"Subject to this regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the Courts of that Member State".

Il-Qorti ma ghandhiex dubbju illi dan ir-regolament applikabbli ghal Malta bhala Membru tal-Unjoni Ewropea hu wkoll applikabbli ghal kaz in kwistjoni billi l-vertenza tirrigwarda azzjoni fuq nuqqas ta' adezjoni ta' pattijiet kontrattwali.

Il-Qorti tqis li qabel xejn ghandu jittiehed kont tal-iter processwali sa issa.

Jirrizulta mill-atti illi s-socjeta attrici pprovat tinnotifika lill-konvenuta fl-indirizz li jsemmi l-kuntratt esebit, cioe indirizz fir-Renju Unit.

Jidher li din in-notifika saret kif jidher a fol. 29 tal-process fl-indirizz li fih intalbet in-notifika fil-15 ta' Gunju 2011.

Fis-26 ta' Lulju 2011 giet prezentata risposta guramentata ta' Dr. Jeremy Debono qua prokuratur tal-konvenuta kif awtorizzat mill-istess konvenuta (fol. 58 tal-process). L-eccezzjonijiet huma li ma hemmx rabta guridika u eccezzjonijiet ohra fil-mertu.

Fis-seduta quddiem il-Qorti tat-8 ta' Novembru 2011 deher d-difensur tal-konvenuta u l-kawza thalliet ghal provi attrici ghas-6 ta' Frar 2012.

Fis-seduta tas-6 ta' Frar 2012 id-difensur tal-konvenuta qajjem ghall-ewwel darba l-eccezzjoni tal-gurisdizzjoni, u l-Qorti halliet il-kawza biex issir talba formali biex il-konvenuta tithalla ittella' eccezzjoni ulterjuri f'dan l-istadju.

Fil-5 ta’ Gunju 2012 il-Qorti ppermettiet lill-konvenuta li tqajjem eccezzjoni ulterjuri tal-gurisdizzjoni wara li semghet lid-difensuri tal-partijiet.

Accettazzjoni ghal gurisdizzjoni tal-Qrati Maltin

Hi l-fehma tas-socjeta attrici illi din l-eccezzjoni mressqa wara li tressqu eccezzjonijiet fil-mertu ghandha tigi skartata ghax messha tqajmet in limine litis u billi ma tressqitx f’dak l-istadju, il-konvenuta issokkombiet ghal gurisdizzjoni ta’ dawn il-Qrati.

Il-konvenuta sostniet li l-Qorti xorta ghandha gurisdizzjoni a bazi tas-segwenti sentenza.

Il-Qorti tal-Appell fil-kawza **Dr. Austin Sammut noe vs Silvio Mifsud noe** deciza fit-22 ta’ Gunju 1994 qalet hekk: il-konsegwenza ghall-fatt li konvenut ma jkunx eccepixxa in-nuqqas ta' gurisdizzjoni jew kompetenza meta ghandu jeccepiha, u fil-kaz li ghandha tigi eccepita in limine litis, ma jkunx eccepiha f’dak l-istadju, m'hijiex necessarjament iIli allura jkun issottometta ruhu ghall-gurisdizzjoni tal-Qorti li tkun. Dana qed jinghad principalment ghal zewg ragunijiet; l-ewwel ghax wahda mhux necessarjament issegwi ghall-ohra, u t-tieni ghaliex fi kwalunkwe kaz, kif sewwa gie osservat fir-risposta ta' l-appell, kwistjonijiet ta' gurisdizzjoni u ta' nuqqas ta' kompetenza jistghu jitqajjmu anke mill-Qorti ex officcio;

Qalet ukoll hekk:
Kwantu jirrigwarda n-natura ta’ din l-eccezzjoni ta’ nuqqas ta’ gurisdizzjoni tal-Qrati Maltin, u cjoe’ jekk hijiex wahda dilatorja jew perentorja, evidentement l-appellant qed jikkonfondi l-kwistjoni ta’ meritu u kwistjoni ta’ azzjoni. Dak illi qalet l-ewwel Qorti huwa fis-sens illi l-eccezzjoni in kwistjoni hija ta’ natura perentorja ta’ l-azzjoni quddiem dawn il-Qrati u dana qalitu biex tispjega illi effettivament setghet tiehu konjizzjoni ta’ l-eccezzjoni sollevata mill-konvenuti msemmija

Dan l-argument isegwi dak li qalet l-ewwel Qorti cioe illi:

L-eccezzjoni in kwistjoni hija kontra l-gurisdizzjoni cjoe' ta' inkompetenza assoluta in kuntrast ma’ u ghall-inkompetenza relattiva bejn id-diversi Qrati taghna. Mhix pero' assoluta fis-sens gurisdizzjonali, in kwantu l-Qrati taghna f'kazijiet bhal dawn - kieku ma kienx ghal ftehim bejn il-partijiet; kien ikollhom gurisdizzjoni konkomitanti ma' Qrati esteri;

Fil-kawza citata l-eccezzjoni tal-gurisdizzjoni nghatat ferm wara eccezzjonijiet fil-mertu fi stadju avvanzat tal-proceduri quddiem il-Qorti Prim’ Istanza.

Din il-Qorti pero tqis illi din is-sentenza inghatat qabel ma dahal in vigore r-Regolament 44/2001 u ghalhekk ir-relevanza taghha hi newtralizzata b’dak li jghid ir-Regolament u l-gurisprudenza Ewropea li tinterpretah.

L-artikolu 24 tal-Regolament 44/2011 ighid illi:
”Apart from jurisdiction derived from other provisions of this Regulation, a Court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another Court has exclusive jurisdiction by virtue of article 22.”

L-artikolu 22 isemmi sitwazzjonijiet ta’ gurisdizzjoni esklussiva li ebda wahda minnhom ma hi applikabbli ghal kaz in kwistjoni u ghalhekk qed jigi injorat ghall-iskop ta’ din il-vertenza.

Il-kwistjoni fil-fehma tal-Qorti tirrisolvi ruhha fl-interpretazzjoni ta’ dan l-artikolu tar-Regolament. L-aktar relevanti ghal din il-vertenza hu l-kaz 150/80 **Elefanten Schuh GmbH vs Pierre Jacqmain**, ECR1671 fejn il-Qorti Ewropea qalet hekk:

The Hof van Cassatie asks in this regard whether jurisdiction must be contested *in limine litis*. For the purposes of interpreting the Convention that concept is difficult to apply in view of the appreciable differences existing between the legislation of the Contracting States with regard to bringing actions before courts of law, the

appearance of defendants and the way in which the parties to an action must formulate their submissions. However, it follows from the aim of Article 18 that if the challenge to jurisdiction is not preliminary to any defence as to the substance it may not in any event occur after the making of the submissions which under national proc dural law are considered to be the first defence addressed to the court seised.

Article 18 of the Convention must be interpreted as meaning that the rule on jurisdiction which that provision lays down does not apply where the defendant not only contests the court's jurisdiction but also makes submissions on the substance of the action, provided that, if the challenge to jurisdiction is not preliminary to any defence as to the substance, it does not occur after the making of the submissions which under national procedural law are considered to be the first defence addressed to the court seised

Il-kawza 27/81 **Vienna Insurance Group vs Michal Bilas**, 111/09 il-Qorti Ewropea ziedet hekk:

That question concerns whether, even for disputes to which the rules of special jurisdiction provided for by Regulation No 44/2001 apply, such as those contained in Section 3 of Chapter II of that regulation in matters relating to insurance, the entering of an appearance by the defendant, who does not contest the jurisdiction of the court seised, amounts to a tacit prorogation of jurisdiction.

In this connection, it must be observed that the first sentence of Article 24 of Regulation No 44/2001 provides for a rule of jurisdiction based on the entering of an appearance by the defendant in respect of all disputes where the jurisdiction of the court seised is not derived from other provisions of that regulation. That provision applies also in cases where the court has been seised in breach of the provisions of that regulation and implies that the entering of an appearance by the defendant may be considered to be a tacit acceptance of the jurisdiction of

the court seised and thus a prorogation of that court's jurisdiction.

The second sentence of Article 24 of Regulation No 44/2001 provides for exceptions to that general rule. It determines that there is no tacit prorogation of jurisdiction of the court seised where the defendant contests the jurisdiction, thereby expressing his intention not to accept that court's jurisdiction, or where the dispute is one in respect of which Article 22 of that regulation provides for rules on exclusive jurisdiction.

According to the case-law relating to Article 18 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), a provision essentially identical to Article 24 of Regulation No 44/2001, in the situations which are not expressly included in the exceptions provided for in the second sentence of Article 18, the general rule on the tacit prorogation of jurisdiction applies. Ruling in proceedings where the parties had concluded an agreement on jurisdiction, the Court stated that neither the general scheme nor the objectives of that convention provide grounds for the view that the parties are prevented from submitting their dispute to a court other than that stipulated in the agreement (see Case 150/80 *Elefanten Schuh* [1981] ECR 1671, paragraph 10, and Case 48/84 *Spitzley* [1985] ECR 787, paragraphs 24 and 25).

Accordingly, since the rules on jurisdiction set out in Section 3 of Chapter II of Regulation No 44/2001 are not rules on exclusive jurisdiction, the court seised, where those rules are not complied with, must declare itself to have jurisdiction where the defendant enters an appearance and does not contest that court's jurisdiction

Din il-Qorti ghandha taghti l-importanza misthoqqha lil dawn il-pronunzjamenti tal-Qorti Ewropea fl-interpretazzjoni tal-artikolu relevanti ghal kaz in kwistjoni.

Jirrizulta b'mod car mill-atti illi meta l-konvenuta pprezentat l-eccezzjonijiet taghha ghal kawza quddiem il-Qorti Maltin, ma ghamlet ebda oppozizzjoni ghal gurisdizzjoni ta' dawn il-Qrati u fil-fatt l-eccezzjonijiet taghha kienu fil-mertu tal-azzjoni proposta. La darba l-konvenuta ma oggezzjonatx ghal gurisdizzjoni ifisser illi hi accettat li l-kawza tigi deciza mill-Qrati Maltin. La darba din kienet is-sitwazzjoni kritallizata bis-sottomissjoni implicita tal-konvenuta ghal gurisdizzjoni tal-Qorti Maltija ma tistax fi stadju sussegwenti tbiddel il-hsieb u titlob li l-kawza tinstema' minn Qorti ohra. Dan imur kompletament kontra l-ispirtu tar-Regolament 44/2001 u kontra l-insenjament tal-Qorti Ewropea li din il-Qorti tabbraccja.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-eccezzjoni tan-nuqqas ta' gurisdizzjoni mressqa mill-konvenuta billi hi implicitament kienet precedentement accettat il-gurisdizzjoni ta' dawn il-Qrati meta ghamlet ir-risposta guramentata taghha fil-mertu minghajr ebda riserva. Bl-ispejjez kontra l-konvenuta.

< Sentenza In Parte >

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