MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
ANTHONY ELLUL

Seduta tad-19 ta' Dicembru, 2012

Citazzjoni Numru. 942/2011

Agnes Gera de Petri Testaferrata Bonici Ghaxaq

Vs

Christopher Testaferrata Moroni Viani u Martin Testaferrata Moroni Viani u Carmen mart Josef Preziosi u Anna Maria mart John Spiteri Debono ghal kull interess li jista' jkollhom.

Rikors guramentat[1].

[1] Prezentat fit-30 ta' Settembru 2011.

Illi r-rikorrenti flimkien ma l-intimati Caren Preziosi u Anna Maria Spiteri Debono lkoll huma l-werrieta universali tal-mejta Nobbli Beatrice Testaferrata Moroni Viani, li mietet fis-sena elfejn u sebgha (2007), u dan skond l-artikolu disgha (9) ta' l-ahhar testment taghha datat sitta (6) ta' Lulju tas-sena elfejn u sebgha (2007) fl-atti tan-Nutar Dottor Hugh Grima, kopja ta' liema qed tigi hawn annessa u mmarkata bl-ittra "A";

Illi a tenur ta' l-artikolu tnejn (2) tal-fuq imsemmi testment, it-testatrici Nobbli Beatrice Testferrata Moroni Viani halliet b'titolu ta' legat lin-neputijiet taghha, l-intimati Christopher u Martin ahwa Testaferrata Moroni Viani, ulied Salvino u Monika von Ammerman, terz mis-sehem indiviz li hi kellha mill-Primogenituri Testaferrata, u cioe minn ottav indiviz li kienet tgawdi fuq il-proprjeta formanti parti minn dawn il-primogenituri;

Illi l-artikolu tnejn (2) fuq citat testwalment jghid hekk: "The testatrix is hereby bequeathing by title of legacy unto her nephews Christopher and Martin brothers Testaferrata Moroni Viani sons of the testarix's brother Salvino and Monika von Ammerman residing at Balzan and Sliema respectively and this in equal portions between them, said legacy to be operable immediately following the testatrix's death and in full and absolute ownership one third (1/3) of her one eighth ($1/8^{th}$) undivided share of the Primogenitures Testaferrata Moroni Viani being these Primogenitures previously held by her father the late Baron Pietro Paolo Testaferrata Moroni Viani and which devolved upon his death as to five eights ($5/8^{th}$) share by his son Salvino, one eighth ($1/8^{th}$) by Maria Testaferrata Bonici one eight ($1/8^{th}$)by Mario Testaferrata Moroni Viani and one eighth ($1/8^{th}$) by the testatrix.

The testatrix furthermore specifically includes in the said legacy her one eight ($1/8^{th}$) undivided share in the house known as Palazzo Testaferrata situated in Valletta Road, Paola which house forms part of one of the said primogenitures; Furthermore the testatrix decrees and orders that any expenses including duty on documents capital gains or final withholding tax if any, in the

fulfillment of this legacy is to be settled by the said legatees mentioned above and recipients of this legacy;

Illi l-intimati Christopher u Martin ahwa Testaferrata Moroni Viani qed jippretendu li huma rcevew b'titolu ta' legat minn ghand it-testatrici n-Nobbli Beatrice Testaferrata Moroni Viani s-sehem intier taghha ta' ottav indiviz tad-dar aktar il-fuq imsemmija maghrufa bhala Palazzo Testaferrata ufficjalment immarkata bin-numru 25, Valletta Road, Paola – din il-proprjeta tinsab mmarkata bil-kulur isfar fuq is-site plan hawn annessa u mmarkata bl-ittra "B";

Illi mill-istess kliem ta' l-artikolu tnejn (2) aktar il-fuq citat johrog car illi l-intenzjoni tal-mejta n-Nobbli Beatrice Testaferrata Moroni Viani, kienet dik illi tinkludi b'mod partikolari fil-legat mholli lill-intimati ahwa Testaferrata Moroni Viani permezz ta' l-ewwel paragrafu ta' dan l-artikolu, l-immobbli fuq deskritt u cioe li thalli b'titolu ta' legat lill dawn l-ahwa terz mis-sehem taghha ta' ottav indiviz fir-rigward ta' din id-dar ukoll, kif del resto hekk gie spjegat permezz tat-tieni paragrafu tat-tieni klawsola tat-testment fuq imsemmi;

Illi l-artikolu tnejn (2) aktar il-fuq citati ghandu jinqara u jinftiehem ukoll fid-dawl ta' dak li jghid l-artikolu tlieta (3) tal-fuq imsemmi, li testwalment jghid hekk:

"The testatrix is hereby bequeathing by title of legacy and in full and absolute ownership to her nephews and niece namely Peter Paul, Caroline, wife of Gerald Zammit and Paul Stephen all brothers and sister Testaferrata Moroni Viani children of the testatrix's brother the late Mario Testaferrata Moroni Viani and Jane nee Borg residing respectively at San Pawl tat-Targa, Ta' Xbiex and San Pawl tat-Targa and this in equal portions between them one sixth ($1/6^{th}$) of her one eight ($1/8^{th}$) undivided share of the Primogenitures Testaferrata Moroni Viani being these Primogenitures previously held by her father the late Baron Pietro Paolo Testaferrata Moroni Viani and which devolved upon his death as to five eights ($5/8^{th}$) share by his son Salvino, one eighth ($1/8^{th}$) by his daughter Maria

Testaferrata Bonici, a further one eight (1/8th)by her brother Mario Testaferrata Moroni Viani and the remaining one eighth (1/8th) by the testatrix."

Illi dan l-artikolu tlieta (3) ghalhekk jkompli jsahhah it-tezi tar-rikorrenti aktar il-fuq elucidata u dan ghaliex kieku t-testatrici n-Nobbli Beatrice Testaferrata Moroni Viani kellha l-intenzjoni li thalli is-sehem shih taghha ta' ottav indiviz (1/8) mid-dar maghrufa bhala Palazzo Tonna fuq deskritta lill-intimati, hija kienet espressament teskludi din id-dar mill-legat imholli lin-neputijiet taghha skond l-artikolu tlieta (3), izda m'hux hekk ghamlet. Dan ifisser li fil-legat imholli mit-testatrici favur in-neputijiet taghha Peter Paul, Caroline mart Gerald Zammit u Paul Stephen, hemm inkluz ukoll is-sehem ta' sest (1/6) indiviz mis-sehem ta' ottav indiviz li kien jappartjeni lit-testatrici mid-dar hawn imsemmija;

Illi ghalhekk in-nofs indiviz mis-sehem ta' ottav indiviz li kien jappartjeni lill-mejta Nobbli Beatrice Testaferrata Moroni Viani minn dawn l-immobbli, mal-mewt taghha, iddevolva favur ir-rikorrenti u hutha l-intimati Caren Preziosi u Anna Maria Spiteri Debono qua eredi universali taghha;

Jghidu ghalhekk l-intimati, prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi, ghaliex m'ghandhiex din il-Qorti, tiddeciedi billi tiddikjara li l-legat fuq imsemmi imholli mill-istess kompjanta Beatrice Testaferrata Moroni Viani lill-intimati Christopher u Martin ahwa Testaferrata Moroni Viani huwa legat wiehed u uniku u ma jinkludux fih in-nofs indiviz mis-sehem ta' ottav indiviz ta' l-immobbli fuq imsemmi u cioe: id-dar maghrufa bhala Palazzo Testaferrata ufficjalment immarkata bin-numru 25, Valletta Road, Paola, izda biss it-terz indiviz mis-sehem ta' ottav indiviz ta' dan l-istess immobbli u dan in vista tac-cirkostanzi fuq premessi u fi kwalsiasi kaz, stante id-diverbju bejn il-partijiet, tistabilixxi l-estensjoni preciza tal-fuq imsemmi legat.

Risposta mahlufa ta' Caren Preziosi u Anna Spiteri Debono[2].
Jirrimettu ruhhom ghas-savju gudizzju tal-qorti, izda m'ghandhomx ibaghatu spejjez.

Risposta Mahlufa tal-konvenuti Christopher Testaferrata Moroni Viani u (2) Martin Testaferrata Moroni Viani[3]**.**

1. *Eċċezzjoni Preliminari: Il-gudizzju mhux integru.*
2. *Eċċezzjoni fil-mertu – l-interpretazzjoni li l-atturi qed jagħtu lill-klawżola de quo hija zbaljata u t-talbiet ghandhom ghalhekk jigu michuda bl-ispejjeż*

Il-qorti rat in-nota ta' sottomissjonijiet li pprezentaw l-attrici u l-ahwa Moroni Viani. Semghet ukoll it-trattazzjoni li ghamel id-difensur tal-attrici waqt is-seduta tal-15 ta' Gunju 2012. Semghet ukoll ix-xhieda u rat l-atti kollha.

Konsiderazzjonijiet.

Il-kawza titratta dwar l-interpretazzjoni ta' disposizzjoni testamentarja fit-testment li ghamlet Beatrice Testaferrata Moroni Viani bint Pietro Paolo Testaferrata Moroni Viani fis-6 ta' Lulju 2007 fl-atti tan-nutar Dr Hugh Grima. It-testatrici mietet fl-2007. Fl-Artikolu 2 tat-testment jinghad:-

"The testatrix is hereby bequeathing by title of legacy unto her nephews Christopher and Martin brothers Testaferrata Moroni Viani sons of the testatrix's brother Salvino and Monika von Ammerman residing at Balzan and Sliema respectively and this in equal portions between them, said legacy to be operable immediately following the tesatrix's death and in full and absolute ownership one third (1/3) of her one eighth (1/8th) undivided share of the Primogenitures previously held by her father the late Baron Pietro Paolo Testaferrata Moroni Viani and which

[2] Fol. 20.
[3] Prezentata fl-1 ta' Novembru 2011, fol. 22.

devolved upon his death as to five eights (5/8th) share by his son Salvino, one eighth (1/8th) by Maria Testaferrata Bonici one eighth (1/8th) by Mario Testaferrata Moroni Viani and one eighth (1/8th) by the testatrix.

The testatrix furthermore specifically includes in the said legacy her one eighth (1/8th) undivided share in the house known as Palazzo Testaferrata situated in Valletta Road, Paolo which house forms part of one of the said primogenitures:

Furthermore the testatrix decrees and orders that any expenses including duty on documents capital gains or final withholding tax if any, in the fulfilment of this legacy is to be settled by the said legatees mentioned above and recipients of this legacy.”.

Jibda biex jinghad li fil-fehma tal-qorti l-gudizzju hu integru in kwantu l-werrieta tad-decujus huma Agnes Gera de Petri, Karen Preziosi u Anna Maria Spiteri Debono li huma kollha parti fil-kawza. Il-kawza titratta dwar l-interpretazzjoni tat-Tieni Artikolu tat-testment fejn it-testatrici halliet legat lill-ahwa Moroni Viani. Huma l-werrieta li jridu jaghmlu l-immissjoni fil-pussess tal-legat. F’dan il-kuntest ir-relazzjoni tal-konvenuti Moroni Viani bhala legatarji hi mal-werrieta tad-decujus u mhux ma’ terzi. Hu wkoll car li s-sehem ta’ parti minn tmienja (1/8) indiviza Ghalhekk apparti l-werrieta u l-legatarji Moroni Viani, meqjus l-interpretazzjoni li l-qorti taghti lit-Tieni Artikolu, m’hijiex tal-fehma li hemm il-htiega tal-prezenza ta’ nies ohra fil-kawza. Ghalhekk l-ewwel eccezzjoni ser tigi michuda.

Fir-rikors guramentat l-atturi ddikjaraw li:-

“Illi mill-istess kliem ta’ l-artikolu tnejn (2) aktar il-fuq citat johrog car illi l-intenzjoni tal-mejta n-Nobbli Beatrice Testaferrata Moroni Viani, kienet dik ili tinkludi b’mod partikolari fil-legat mholli lill-intimati ahwa Testaferrata Moroni Viani permezz ta’ l-ewwel paragrafu ta’ dan l-artikolu, l-immobbli fuq deskritt u cioe’ li ***thalli b’titolu ta’ legat lil dawn l-ahwa terz mis-sehem taghha ta’ ottav***

<u>indiviz fir-rigward ta' din id-dar ukoll</u>, *kif del resto hekk gie spjega permezz tat-tieni paragrafu tat-tieni klawsola tat-testment fuq imsemmi."* (enfazi tal-qorti).

Fit-twegiba guramentata il-konvenuti Moroni Viani jsostnu li:

"Illi l-eccipjenti jsostnu illi d-disposizzjoni testamentarja fuq imsemmija hija cara u tfisser illi t-testatrici hallitilhom bhala legat mhux biss terz tas-sehem taghha ta' ottav (1/3rd of 1/8th) tal-proprjetajiet provvenjenti mill-ga Primogenituri Testaferrata ***izda wkoll, addizzjonalment, legat iehor tal-intier ta' l-ottav tad-dar maghrufa bhala Palazzo Testaferrata ufficjalment immarkata bin-numru 25, Valletta Road, Paola.****"*.

Fir-rigward ta' interpretazzjoni ta' testmenti, ghandha ssir indagni biex jigi stabbilit x'kienet il-volonta tat-testatur. Pero meta l-kliem fit-testment hu car, ma ghandux ikun li dak il-kliem jinghata interpretazzjoni ta' x'setghet kienet il-volonta tat-testatrici. F'dan il-kuntest issir riferenza ghas-sentenza **Rose Alden et vs Raphael Pace** deciza fis-27 ta' Gunju 2003 minn din il-qorti (Imhallef P. Sciberras) fejn inghad :

*'Dan premess, hi norma principali fit-testmenti illi wiehed ghandu jirrikorri ghall-interpretazzjoni letterali. "Ove le parole del testamento siano per se stesse chiare, non e` lecito con prove estrinsiche restringere o ampliarne il senso; la disposizione deve restare quella che le parole del testamento importino' - "****Carmelina Mifsud et -vs- Matilde Pullicino et****". 13 ta' Gunju 1888 (****Vol. XI pag.633****). Fl-istess sens huma d-decizjonijiet fl-ismijiet "****Nutar Albert E. Micallef et -vs- Marietta Tonna****", Appell Civili, 30 ta' Ottubru 1950 u "****Farmacista George Mallia -vs- Carmela Mallia"****, Appell Civili, 18 ta' Marzu 1957.'*.

Fis-sentenza **Giuseppe Axiak vs Antonio Axiak et** deciza fis-26 ta' Frar 1945 (Volum XXXII.i.178) tas-26 ta' Frar 1945, gie osservat :-

‘F'materja ta' interpretazzjoni testamentarja, meta ddispozizzjoni hija cara, ghandha tircievi l-ezekuzzjoni taghha bhala ligi li t-testatur ried jimponi, u mhux permess li ssir interpretazzjoni tal-volonta tat-testatur hlief meta l-kliem minnu uzat ikunu certament kuntrarju ghall-volonta' tieghu. L-intenzjoni tat-testatur ghandha tingibed mid-dispozizzjoni ta' l-istess testment, konfrontati anki mad-dispozizzjoni ta' testmenti ohra tieghu, precedenti jew sussegwenti, u mhux minn materja estranea ghat-testment. U hemm bzonn li jkun hemm motivi tajba biex wiehed jirritjeni li l-kliem uzati mit-testatur kienu ntizi minnu f'sens divers mis-sens taghhom naturali.’.

Il-qorti ma taqbel mal-ebda wahda minn dawn l-interpretazzjonijiet, u tosserva:-

i. Ir-riferenza ghat-Tielet Artikolu tat-testment ma tistax isservi biex titfa’ dawl dwar l-interpretazzjoni tat-Tieni Artikolu. Bit-Tielet Artikolu t-testatrici halliet legat lin-neputijiet taghha Peter Paul, Caroline u Paul Stephen ahwa Moroni Viani *“.... in equal portions between them one sixth (1/6th) of her one eighth (1/8th) undivided share of the Primogenitures Testaferrata Moroni Viani......”*. Mit-testment hu altru milli evidenti li t-testatrici riedet li s-sehem indiviz li kellha f’Palazzo Testaferrata, cjoe’ 1/8, jiehduh il-konvenuti Dr Martin u Christopher Moroni Viani. Certament li fit-Tielet Artikolu t-testatrici ma kellix bzonn taghmel riferenza ghas-sehem taghha f’Palazzo Testaferrata gialadarba kienet diga’ pprovdiet dwaru fit-Tieni Artikolu. L-ezitu tal-vertenza ma jiddependix minn dak li jinghad fit-Tielet Artikolu imma biss dwar l-interpretazzjoni tat-Tieni Paragrafu tat-Tieni Artikolu tat-testment.

ii. Il-legat imholli lill-ahwa Testaferrata Moroni Viani hu **<u>wiehed</u>**, cjoe’ **terz (1/3) tas-sehem ta’ parti minn tmienja (1/8) tal-primogenituri** li t-testatrici ddikjarat li kienu jappartjenu lil missierha. Bit-tieni paragrafu t-testatrici sempliciment ipprovdiet li s-sehem indiviz ta’ 1/8 f’Palazzo Testaferrata ghandu jkun parti mil-legat. Imkien ma jinghad li kien qieghed jithalla legat iehor, kuntrarjament ghal dak li jippretendu l-konvenuti Moroni Viani f’paragrafu tlieta (3) ta’ dik il-parti tat-twegiba

guramentata fejn semmew il-fatti relatati mat-tieni eccezzjoni[4].

iii. Il-kliem ***"<u>specifically includes in the said legacy</u>"***, ifissru li s-sehem indiviz ta' 1/8 ta' Palazzo Testaferrata ghandu jkun parti mill-legat ta' terz (1/3) mis-sehem ta' parti minn tmienja (1/8) tal-primogenituri. Ghalhekk is-sehem ta' 1/8 li t-testatrici kellha fil-fond Palazzo Testaferrata thalla lill-ahwa Testaferrata Moroni Viani bhala akkont tas-sehem taghhom ta' terz (1/3) ta' parti minn tmienja (1/8) mill-primogenituri[5]. Dan il-paragrafu ma jistax jiftiehem mod iehor.

Jekk bit-tieni paragrafu tat-Tieni Artikolu tat-testment, kif tallega l-attrici fir-rikors guramentat, it-testatrici kienet qeghda sempliciment tghid li minn Palazzo Testaferrata l-ahwa Moroni Viani jkollhom ukoll 1/3 tas-sehem ta' 1/8 li kellha d-decujus, ma kien hemm l-ebda raguni ghalfejn jizdied dan it-tieni paragrafu, meta tqies li:-

i. Fit-testment, it-testatrici stess iddikjarat li Palazzo Testaferrata kien jifforma parti mill-primogenituri; u

ii. Ma tezisti l-ebda prova li kien hemm xi incertezza jew dizgwid dwar jekk Palazzo Testaferrata jifformax parti mill-primogenituri ta' Pietro Paolo Testaferrata Moroni Viani.

Bl-interpretazzjoni li tat l-attrici skond dak li ddikjarat fir-rikors guramentat, it-testatrici kienet tkun qeghda sempliciment tirrepeti l-ovvju u ghalhekk superfluwu. Pero'

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[4] Ara fol. 26.

[5] Alfred Gera de Petri, ir-ragel tal-attrici, xehed li t-testatrici kienet qaltlu li x-xewqa taghha kienet li *"....bhala parti minn dak it-terz tal-ottav taghha imholli lil Christopher u Martin jkun jikkomprendi s-sehem taghha kollu tal-palazz Rahal il-Gdid. Nikkonferma li hija kienet cara mieghi li dan riedet thallieh mhux bi zieda tas-sehem li riedet taghtihom izda akkont."* (fol. 40). Il-qorti qeghda taghmel riferenza ghal dan l-affidavit sempliciment biex tosserva li ma tifhimx kif fir-rikors guramentat l-attrici tat verzjoni differenti minn dik li ta zewgha, li hu xhud imressaq minnha. Sahansitra, mal-affidavit ta' zewgha pprezentat ukoll affidavit tan-nutar Hugh Grima, li ddikjara: *"Kien ukoll car ghalija li dan kien akkont tal-legat tat-terz minn ottav sehem. Kif ghidt hawn fuq, dan l-ottav kellu jittiehed akkont tas-sehem taghhom ta' terz ta' ottav mis-sehem ta' Beatrice fil-primogenituri imhollija b'legat."* (fol. 43). F'kull kaz il-qorti taghmilha cara li d-decizjoni qeghda tittiehed a bazi ta' dak li jinghad fit-Tieni Artikolu u mhux dak li xehed Alfred Gera de Petri jew in-nutar Hugh Grima.

minn qari tat-tieni paragrafu hu altru milli evidenti li din ma kenitx l-intenzjoni tat-testatrici.

Ghal dawn il-motivi l-qorti qeghda taqta' u tiddeciedi l-kawza billi:-

1. Tichad l-ewwel eccezzjoni tal-konvenuti Moroni Viani, bl-ispejjez kontra taghhom.

2. Tichad it-talba tal-attrici ghal dak li ghandu x'jaqsam mal-interpretazzjoni tat-Tieni Artikolu tat-testment tas-6 ta' Lulju 2007 fl-atti tan-nutar Dr Hugh Grima skond kif iddikjarata fir-rikors guramentat, kif ukoll l-interpretazzjoni li qeghdin jaghtu l-konvenuti Moroni Viani. Tiddikjara li l-interpetazzjoni ghandha tkun fis-sens li:-

i. Bit-Tieni Artikolu t-testatrici halliet legat wiehed lill-konvenuti ahwa Moroni Viani, cjoe' terz (1/3) mis-sehem ta' parti minn tmienja (1/8) indiviz tal-primogenituri ta' Pietro Paolo Testaferrata Moroni Viani, u liema sehem it-testatrici ddikjarat li sar taghha mal-mewt ta' missierha Pietro Paolo Testaferrata Moroni Viani.

ii. Is-sehem indiviz ta' parti minn tmienja (1/8) fil-fond Palazzo Testaferrata, Triq Valletta, Rahal Gdid ghandu jifforma parti mil-legat ta' terz (1/3) tal-parti minn tmienja (1/8) sehem indiviz tal-primogenituri imholli lill-konvenuti ahwa Moroni Viani. Ghalhekk a skans ta' kull ekwivoku is-sehem ta' parti minn tmienja (1/8) fil-fond Palazzo Testaferrata ghandu jittiehed mill-konvenuti ahwa Moroni Viani akkont tat-terz (1/3) ta' parti minn tmienja (1/8) mill-primogenituri ta' Pietro Paolo Testaferrata Moroni Viani.

Kull parti ghandha taghmel tajjeb ghall-ispejjez rispettivi taghha gialadarba l-qorti ma qablitx mal-interpretazzjoni li tat l-attrici fir-rikors guramentat u l-interpretazzjoni li taw il-konvenuti Moroni Viani fit-twegiba guramentata. B'dan li l-atturi ghandhom

jaghmlu tajjeb ghall-ispejjez ta' Caren Preziosi u Anna Spiteri Debono li hallew f'idejn il-qorti biex tinterpreta d-disposizzjoni u qatt ma ddikjaraw li jaqblu ma dak li qeghda ssostni l-attrici.

< Sentenza Finali >

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