

Kopja Informali ta' Sentenza



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT MC KEON**

Seduta tat-18 ta' Frar, 2013

Citazzjoni Numru. 421/2012

**FIMBank p.l.c. (C17003) gja maghruf bhala First  
International Merchant Bank p.l.c.**

***kontra***

**Almeco Limited (C20939)**

**II-Qorti :**

**I. Preliminari**

Rat ir-rikors prezentat fis-27 ta` April 2012 li jaqra  
hekk –

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*Illi permezz ta' sentenza moghtija minn dina l-Qorti fis-16 ta' Gunju 2003 fil-kawza fl-ismijiet "First International Merchant Bank p.l.c. vs Almeco Limited et" (Citaz. Nru. 1153/2002JA) kopja annessa, is-socjeta` rikorrenti giet kanonizzata kreditur tas-socjeta` intimata fis-sommom ta' Euro 844,899.00, GBP 845,877.00 u US\$5,842.00 liema sentenza ghaddiet in gudikat ;*

*Illi dan il-kreditu baqa` qatt ma gie saldat mis-socjeta` intimata ;*

*Illi matul l-ahhar snin saru diversi inkontri bejn il-kontendenti sabiex jinstab mezz ta` kif jista` jigi saldat il-kreditu tas-socjeta` rikorrenti izda minkejja diversi tentattivi u proposti da parti tas-socjeta` intimata, ma sar ebda zvilupp sostanzjali fil-qagħda finanzjarja tagħha ;*

*Illi huwa evidenti illi s-socjeta` intimata mhijiex f`qagħda li thallas il-kredituri tagħha u in vista tad-debitu sostanzjali li għandha fil-konfront tas-socjeta` rikorrenti, jidher car illi s-socjeta` intimata fic-cirkostanzi attwali mhijiex ser tkun f`qagħda li thallas ebda pagament akkont tad-djun li għandha ;*

*Illi fuq kollox is-socjeta` rikorrenti għandha x`tifhem illi s-socjeta` intimata mhijiex topera u n-negozju tagħha ilu sospiz zmien għal perjodu ta` aktar minn tnax-il xahar ;*

*Għaldaqstant l-esponenti jitolbu lil din l-Onorabbli Qorti sabiex :-*

*(1) Tiddikjara u tiddeciedi illi s-socjeta` intimata Almeco Limited mhijiex f`qagħda li thallas id-djun tagħha u li n-negozju tas-socjeta` intimata ilu sospiz għal perjodu bla waqfien ta` tnax-il xahar u konsegwentement tordna x-xoljiment u stralc konsegwenzjali tal-istess socjeta`*

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*intimata a tenur tal-Artiklu 214(2)(a)(i) u (ii) tal-Att XXV tal-1995 Dwar il-Kumpanniji.*

*(2) Taghti kull provvediment opportun sabiex jinhatar l-istralcjarju u jigi kondott l-istralc konsegwenzjali skond id-disposizzjonijiet tal-Att XXV tal-1995 Dwar il-Kumpanniji.*

*Bl-ispejjez.*

Rat id-dokumenti illi kienu annessi mar-rikors promotorju.

Rat id-digriet taghha tat-22 ta` Mejju 2012 fejn ordnat in-notifika tar-rikors promotorju lill-kumpannija intimata, tatha zmien ghoxrin (20) jum biex twiegeb, u appuntat il-kawza ghas-smigh ghall-udjenza tat-28 ta` Gunju 2012 fid-9.00 a.m.

Rat illi l-kumpannija intimata kienet notifikata bl-atti skond il-ligi (tergo ta` fol 35) izda ma pprezentatx risposta (ara fol 36).

Rat il-verbal tal-udjenza tal-20 ta` Novembru 2012.

Semghet id-deposizzjoni ta` Vincent Farrugia u ta` Carmel sive` Charles Borg fl-udjenza tal-20 ta` Novembru 2012 u rat id-dokumenti li kienet esebiti f` dik l-udjenza.

Rat in-nota ta` sottomissjonijiet tal-kumpannija intimata.

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Rat id-digriet fejn halliet il-kawza ghas-sentenza ghal-lum.

Rat l-atti tal-kawza.

**Ikkunsidrat :**

## **II. Provi**

Fis-16 ta` Ottubru 2003, il-bank rikorrent, li dak izmien kien jismu "First International Merchant Bank p.l.c." ipprezenta citazzjoni bin-Nru. 1153/2002 JA quddiem din il-Qorti diversament presjeduta kontra l-intimata Almeco Limited, u kontra Borg Holdings Limited, Alpha Colour Limited, Charles u Margaret konjugi Borg, Raymond u Rita konjugi Borg, Silvio u Patricia konjugi Borg, R.R.B. Limited u Karl Borg fejn talab lill-Qorti sabiex tikkundanna (1) lil Almeco Limited sabiex bhala debitur principali thallas €844,889, GBP 845,877 u US\$ 5,842 ; (2) lil Borg Holdings Limited, Alpha Colour Limited, Charles u Margaret konjugi Borg, Raymond u Rita konjugi Borg, Silvio u Patricia konjugi Borg, sabiex bhala garanti "*in solidum*" bejniethom, u flimkien mal-konvenuti kollha, ihallsu l-istess debitu globali ta` Almeco Limited kanonizzat sal-ammont massimu ekwivalenti ghal US\$ 2,300,000 ; u (3) lis-socjeta' attrici R.R.B. Limited u Karl Borg, bhala garanti "*in solidum*" bejniethom, u flimkien mal-konvenuti kollha, sabiex ihallsu l-istess debitu globali ta` Almeco Limited kanonizzat sal-ammont massimu ekwivalenti ghal US\$ 450,000, flimkien mal-imghaxijiet kummercjali mit-3 ta` Ottubru 2002, u bl-ispejjez nkluzi dawk tal-Mandat ta` Sekwestru Kawtelatorju tas-7 ta` Ottubru 2002, kontra l-konvenuti. It-talbiet attrici kienu ammessi mill-konvenuti kollha. U l-Qorti, b`sentenza moghtija fis-16 ta` Gunju 2003, laqghet it-talbiet kollha kif dedotti bl-ispejjez kontra l-konvenuti. Is-sentenza ghaddiet in gudikat.

**Vincent Farrugia**, Senior Manager tal-bank rikorrent, xehed illi wara kienet deciza l-kawza, il-kreditu li kellu l-bank fl-Sterlina bl-interessi sal-20 ta` Novembru 2012 kien tela` ghal GBP 1,700,815. Kreditu iehor li kellu l-bank fl-Euro, wara li saru xi pagamenti, nizel ghal €509,554 fl-20 ta` Novembru 2012. Kien prezentat rendikont li juri l-bilanci ta` flus dovuti lill-bank. Matul l-ahhar sitt snin, ma kienx hemm kuntatti bejn il-bank u d-diretturi tal-kumpannija intimata.

**Carmel Borg**, direttur tal-kumpannija intimata, xehed illi Almeco Limited kienet tesporta “aluminium profiles” li tahdem hi. Kienet topera minn fabbrika HF12 fil-Qasam Industrijali ta` Hal-Far li kienet tikri minghand il-Malta Development Corporation. Waqfet topera ghaliex il-Gvern ha pussess tal-fabbrika, skond ix-xhud, illegalment. Dan kien fl-1 ta` Dicembru 2007. Minn dakinhar il-kumpannija intimata waqfet topera. U baqghet ma toperax lanqas minn band`ohra. Hemm diversi kawzi pendenti bejn il-kumpannija intimata u l-Gvern dwar t-tehid tal-fabbrika. Ma setghetx topera minn band`ohra ghaliex il-Gvern qabad anke l-makkinarju. In segwitu saret anke hsara fis-sit. Koxjenti mill-fatt illi l-kumpannija kienet debitur ta` Fimbank, ippruvat tasal ghal ftehim maghha sabiex terga` tibda n-negozju pero` ma waslux ghal ftehim ghaliex kien hemm min poggiehom *in bad light* ma` Fimbank. Ma setax ighid jekk l-ahhar *statements* tal-bank kienux korretti nkella le ghaliex meta huwa ra dawk l-*statements* ghall-ewwel darba dakinhar tal-udjenza tal-20 ta` Novembru 2012 ghalkemm kienu ntalbu qabel mill-bank. Wara s-sentenza tas-16 ta` Gunju 2003, saru pagamenti fosthom wiehed ta` €250,000.

Kienu esebiti l-*accounts* tal-kumpannija ghas-sena li taghlaq 1 ta` Dicembru 1999 u kienu markati Dok LB1

**Carmel Borg** ikkonferma li dawk kienu l-ahhar *accounts* li ntbaghtu lir-Registratur tal-Kumpanniji. Skond

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ix-xhud, wara *accounts* ma sarux ghaliex il-karti nqabdu fil-fabbrika. Ikkonferma li l-kumpannija kellha kredituri ohra. Semma wiehed Thomas C Smith li, skond ix-xhud, ma kienx kbir komparat ma` dak tal-bank rikorrent. Sostna li l-kumpannija ma kellhiex assi.

Mistoqsi **specifikament** mill-Qorti jekk ladarba l-kumpannija kellha l-klijenti, u ladarba gralha dak li gralha mal-Gvern, ippruvat hi topera minn band ohra *with fresh capital* biex tinvesti f`makkinarju u tikkonserva n-negozju li kellha, **Carmel Borg** wiegeb li bil-*capital outlay* involut ma kienx possibbli li tibda *from scratch*.

Ix-xhud ikkonferma li l-Gvern mexxa bl-izgumbrament minhabba morzita` fil-hlas tal-kera da parti tal-kumpannija intimata.

**Ikkunsidrat :**

### **III. Risultanzi u Dritt**

Din hija kawza fejn qieghed jintalab minn din il-Qorti ordni ta` xoljiment u ta` stralc tal-kumpannija Almecco Limited (C20939).

Huwa evidenti mill-premessi tar-rikors promotorju illi l-kumpannija rikorrenti, bhala kreditrici tal-kumpannija intimata, qeghda tibbaza t-talba taghha skond l-**Art.214(2)(a) tal-Kap 386** tal-Ligijiet ta` Malta.

F`din id-disposizzjoni jinghad illi *kumpannija **tista'** xxolji u tkun stralcjata mill-qorti* f`zewg cirkostanzi li huma

—

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(i) jekk in-negozju tal-kumpannija jkun sospiz ghal perjodu bla waqfien ta' erbgħa u ghoxrin xahar ; jew

(ii) jekk il-kumpannija ma tkunx tista' thallas id-djun tagħha.

Din il-Qorti se tqis it-tieni cirkostanza l-ewwel.

Is-subinciz (ii) irid jinqara flimkien ma' l-**Art.214(5)** li jistabilixxi meta kumpannija għandha titqies li ma tkunx tista' thallas id-djun tagħha għall-finijiet ta' l-istess subinciz. Tnejn huma c-cirkostanzi definiti mil-ligi –

(a) jekk id-dejn dovut mill-kumpannija jkun baqa' ma thallasx għal kollox jew f'parti wara erbgħa u ghoxrin gimgha mill-ezekuzzjoni ta' titolu eżekuttiv kontra l-kumpannija b'xi wiehed mill-atti eżekuttivi msemmijin fl-artikolu 273 tal-Kodici ta' Organizzazzjoni u Procedura Civili ; jew

(b) jekk ikun ippruvat għas-sodisfazzjon tal-qorti li l-kumpannija ma tkunx tista' thallas id-djun tagħha, meta din tqis ukoll il-passiv kontingenti u prospettiv tal-kumpannija.

Il-kumpannija rikorrenti tghid illi l-kumpannija intimata mhijjex f'qagħda li thallas il-kredituri tagħha u in vista tad-debitu sostanzjali li għandha fil-konfront tas-socjeta` rikorrenti, jidher car illi s-socjeta` intimata fic-cirkostanzi attwali mhijjex ser tkun f'qagħda li thallas ebda pagament akkont tad-djun li għandha.

Meta tfassal il-mudell għal-ligi tagħna l-għdida dwar il-kumpanniji, il-qafas magħzul kien dak tal-Companies Act Ingliza 1985. Fil-ligi Ingliza, ix-xoljiment u l-istralc ta' kumpanniji kien trattat f'legislazzjoni *ad hoc* u cioe` l-Insolvency Act 1986. Meta fl-1995 saret il-ligi tagħna l-għdida dwar il-kumpanniji (illum Kap.386 tal-Ligijiet ta`

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Malta) li hadet post il-Commercial Partnerships Ordinance 1962, id-disposizzjonijiet li jolqtu x-xoljiment u l-istralc kienu integrati fl-Att tal-1995.

Fil-ligi taghna, li *kumpannija ma tkunx tista' thallas id-djun taghha* ghandu sinfikat preciz u definit mil-ligi stess fis-subinciz **(5)** tal-Art.214. Fil-ligi Ingliza, il-posizzjoni hija aktar wiesgha. Il-koncett ta` insolvenza fil-ligi taghna huwa aktar ristrett minn dak tal-ligi Ingliza ghalkemm hemm *overlaps*.

Fit-Tmien Edizzjoni (2012) ta` l-ktieb **Boyle & Birds` Company Law** (pubblikat minn Jordans) pg.859 et seq, jinghad hekk –

*There are two principal, although not exclusive or exhaustive, tests of insolvency : a company is insolvent if it unable to pay its debts as they fall due (“cash flow insolvency”) ; it is also insolvent if its liabilities exceed its assets (“balance sheet insolvency”) ...*

Fil-Kap.386, *cash flow insolvency* tista` tigi abbinata mas-subparagrafu **(a)** tal-Art.214(5) waqt li *balance sheet insolvency* tista` tigi abbinata mas-subparagrafu **(b)** tal-istess Art.214(5).

Fil-kaz ta` *cash flow insolvency* din il-Qorti tghid b`differenza mal-ligi Ingliza : fis-sens illi waqt li fil-Kap.386 huwa specificat bil-preciz x` m`ghandhiex taghmel kumpannija debitrice sabiex ma tkunx meqjusa li ma tistax thallas id-djun taghha, fil-ligi Ingliza il-kriterju huwa aktar generiku ghax ikun hemm dik it-tip ta` insolvenza *if it unable to pay its debts as they fall due*.

Fil-**Boyle & Birds` Company Law** (op. cit.) ikompli jinghad hekk –



*Failure to pay a debt which is due and not disputed amounts to evidence of cash flow insolvency. Thus a company which has a policy of late payment of bills could find itself the subject of a petition for a winding-up order or administration order. Such a petition will not be struck out at an early stage as a form of improper pressure and an abuse of the process of the court, because, as Staughton LJ explained in Taylor's Industrial Flooring (1990. BBC 44 at 51) creditors, not late payers, are more worthy of insolvency law's protection.*

*"Many people today seem to think that they are lawfully entitled to delay paying their debts when they fall due or beyond the agreed period of credit, if there is one ... This can cause great hardship to honest traders, particularly those engaged in small businesses recently started. Anything which the law can do to discourage such behaviour in my view should be done."*

*The position is different if there is a bona fide dispute about a debt. A petition based on a disputed debt will usually be dismissed because the procedure is ill-equipped to resolve factual matters. However it will not be dismissed where the petitioning creditor has a good arguable case and the dismissal would deprive the petitioner of a remedy, injustice would otherwise result, or there is some other sufficient reason for the petitioner to proceed.*

Fil-ktieb **Insolvency Law – Corporate and Personal** ta' Andrew Keay u Peter Walton (pubblikat minn Pearson Longman – 2003) pg.17 jinghad hekk dwar *cash flow insolvency* kif mifhuma fil-kuntest tal-Insolvency Act 1986 –

*The court, in examining whether a company is suffering cash flow insolvency, will consider whether the company is actually paying its debtors. Courts must take into account what current revenue the company has as well as what the company can procure by realising assets within a relatively short time ... A company can rely upon*

*money which might be obtained from the sale of assets or upon money which might be obtained on the strength of its assets ... It is possible that sometimes a debtor might be able to establish solvency by demonstrating that funds can be obtained through an unsecured loan. In considering whether a person or a company is insolvent, the debtor's whole financial position must be studied ... and a temporary lack of liquidity does not necessarily mean that the company is insolvent ...*

***At one time courts were rather strict on what they required to be established before they were willing to deem a person or a company insolvent, but in more recent times they have become more liberal as far as creditors are concerned and have held that a debtor is insolvent if a creditor is able to prove that he or she has not paid an undisputed debt after a demand has been made ... and this is the case even if there is other evidence which suggests that the value of the assets outweighs liabilities ...***

***Whether a company is cash flow insolvent is principally a question of fact and one which may be established in any number of ways, such as the existence of a large number of outstanding debts and unsatisfied judgments ... or there is lack of assets on which execution can be levied ...***

***It has been said that a debtor is not regarded as solvent just because if sufficient time were granted the debts could be paid off ...***

(enfasi ta` din il-qorti)

Ghar-rigward tal-paragrafu **(a)** tas-subinciz **(5)**, din il-Qorti tghid illi l-fatt **wahdu** li l-bank rikorrent kiseb sentenza favur tieghu kontra l-kumpanija intimata ma jissodisfax il-vot tal-paragrafu **(a)**. Huwa minnu li sentenza hija titolu ezequttiv pero` l-paragrafu **(a)** jitkellem dwar l-**ezequzzjoni** ta` dak it-titolu ezequttiv permezz ta` wiehed mill-atti ezequttivi. Fil-kaz tal-lum, ma rrizultax illi wara li l-

bank rikorrent kiseb is-sentenza favur tieghu kontra l-kumpanija intimata, ipprezenta xi atti eżekuttiv u ha hsieb l-eżekuzzjoni tieghu. Ghalhekk it-terminu ta` erbgha u ghoxrin (24) gimgha qatt ma skatta nonostante s-sentenza favur il-bank rikorrent.

Mela l-istanza tar-rikorrent ma tistax tirnexxi taht il-paragrafu **(a)**.

Dwar il-paragrafu **(b)** tas-subinciz **(5)**, din il-Qorti diversament presjeduta (**PA/GV**) fis-sentenza taghha tat-28 ta` Meju 2003 fil-kawza “**Axel John International AB vs Aluminium Extrusions Limited**” qalet hekk –

*Din il-kondizzjoni tista' tigi verifikata permezz tal-balance sheets wara li jigi kunsidrat jekk l-assets are less than its liabilities. Izda ... it is not sufficient for the company to be able to meet its current obligations if its total liabilities can ultimately be met only by the realisation of its assets over a lengthy period (Re : European Life Assurance Society 1869 LR 9 Eq 122). Ghalhekk ma hemmx raguni ghaliex il-kredituri ghandhom joqghodu jistennew sakemm il-kumpanija tbiegh l-assets taghha biex forsi xi darba jithallsu.*

Fil-kaz tal-lum, irrizulta li l-ahhar *accounts* li pprezentat il-kumpanija intimata kienu dawk tal-1999. Skond id-deposizzjoni ta` Carmel Borg, l-inkwiet taghha mal-Gvern skatta fl-1 ta` Dicembru 2007. Ma gab l-ebda raguni ghala ma sarux *accounts* ghas-snin 2000 – 2007. Ukoll minn kliem dan ix-xhud, il-kumpanija intimata m`ghandhiex assi. Nafu kemm ghandha taghti lill-bank rikorrent. U jirrizultaw kredituri ohra. Mhux biss jirrizulta li m`ghandhiex assi xi tbiegh biex tissoddisfa lill-kredituri izda rrizulta wkoll li l-kumpanija waqfet ghal kollox mill-operat taghha fl-1 ta` Dicembru 2007 u mhijjex ghalhekk qeghda tiggenera revenue biex thallas lill-kredituri taghha.

**Fuq l-iskorta tal-provi li ngabu a konjizzjoni taghha, din il-Qorti hija sodisfatta illi l-kumpanija ntimata mhijiex f'qagħda li thallas id-djun taghha abbazi tal-paragrafu (b) tas-subinciz (5) tal-Art.214.**

Din il-Qorti sejra tghaddi biex tqis il-provi fil-kuntest tal-paragrafu (i) tas-subinciz (a) tas-subartikolu (2) tal-Art.214.

L-object **principali** tal-kumpanija intimata jaqra hekk –

*To export aluminium billets and all types of aluminium products as well as by-products of such industry.*

*L-Authorised Share Capital huwa ta` fifty thousand Maltese Liri (Lm 50,000) divided into fifty thousand (50,000) Ordinary Shares of Lm 1 each. L-Issued Share Capital huwa ta` forty thousand Maltese Liri (Lm 40,000) divided into 40,000 Ordinary shares of one Malta lira each, the nominal value of each share being fully paid up. L-azzjonisti huma tnejn : Borg Holdings Limited in kwantu għal 39,999 –il sehem u Charles Borg in kwantu għal sehem wiehed.*

Ir-rekwiziti tal-paragrafu (i) huma s-**sospensjoni tan-negozju** tal-kumpanija għal perijodu **bla waqfien** ta` erbgha u ghoxrin **(24) xahar**. Dawn ir-rekwiziti huma materja ta` fatt. Jidher illi d-disposizzjoni kellha s-source taghha fl-Art.12(1)(d) tal-UK Insolvency Act 1986, liema disposizzjoni Ingliza m`ghadhiex taghmel parti mill-Act, għax kienet superata b`legislazzjoni aktar ricenti. Din il-Qorti sejra taghmel riferenza għad-dottrina Ingliza dwar '*failure to commence business or suspension of business*'.

Fil-**Palmer's Company Law** (Edition 25 - Sweet & Maxwell) jinghad hekk –

*The court's jurisdiction is discretionary and the fact that the petitioner can establish this ground does not give him an automatic right to an order (re. Metropolitan Railway Warehousing Co. Ltd 1887.36.LJCh 827). The court has refused to make an order where there are good reasons for the delay and where the great majority of members desire that the company shall continue. An order may however be made in appropriate circumstances against the majority's wishes. Where the business has merely been suspended the court must be satisfied of an abandonment or inability to carry on. In ascertaining such intention the court will have regard to the opinion and wishes of the majority of shareholders whose names appear on the register. Merely abandoning one of several objects is insufficient (re. Norwegian Titanic Iron Co. (1866) 35 Beav.223).*

Fil-kaz tal-lum, irrizulta li minkejja l-obbligi taghha u meta *prima facie* ma jidhirx li kienet fl-inkwiet, il-kumpannija intimata ma pprezentatx l-accounts taghha lir-Registratur tal-Kumpanniji wara l-1999. Skond Carmel Borg, l-inkwiet taghha beda lejn l-ahhar tal-2007. Carmel Borg ma ta l-ebda spjegazzjoni ghala kumpannija li taf l-obbligi taghha ma tipprezentax l-accounts taghha wara s-sena 2000, meta messha taf illi l-kummerc huwa bbazat fuq ir-regoli u l-fiducja.

Irrizulta bhala fatt illi l-kumpannija intimata waqfet topera ghal kollox fl-1 ta` Dicembru 2007. U hekk baqghet wieqfa minghajr interruzzjoni sal-gurnata tal-lum. Waqfet topera ghaliex, skond Carmel Borg, ghaliex sfat zgumbrata mill-fabbrika minn fejn kienet topera fil-Qasam Industrijali ta` Hal-Far, bil-makkinarju taghha maqbud ukoll. Din il-Qorti mhijjex sejra tidhol fil-kwistjoni jekk l-izgumbrament kienx fondat inkella le propju ghaliex dak huwa mertu ta` kawzi li huma pendenti quddiem qrati ohra. Jibqa` pero` l-fatt illi l-azzjoni kontra l-kumpannija intimata ttiehdet minhabba morozita` fil-hlas tal-kera.

Li huwa pero` rilevanti tassew ghal din il-Qorti huwa l-fatt illi minghajr l-ebda ombra ta` dubju rrizulta li l-inkwiet finanzjarju tal-kumpannija intimata beda ferm qabel l-izgumbrament taghha.

Tant hekk hu illi s-sentenza favur il-bank rikorrent inkisbet aktar minn erba` snin qabel. Eppure ghalkemm ghamlet hlasijiet akkont, il-kumpannija intimata qatt ma wriet sahha finanzjarja tali li tonora l-obbligi finanzjarji qawwija li kellha versu l-bank rikorrent.

Lanqas ma rrizulta li wara l-1 ta` Dicembru 2007, il-kumpannija intimata ghamlet tentattiv biex thaddem in-negozju taghha minn band`ohra jew b`mezzi ohra. Anzi ghamlet il-maqlub : mhux biss abbandunat l-*object* ewlieni tan-negozju taghha izda ma marritx ghal xi wiehed mill-*objects* l-ohra. L-iskuza li gabet kienet illi finanzjarjament ma kienx possibbli tkompli tahdem minn band`ohra. Ghal din il-Qorti dan mhuwiex bizzejjed. Hafna drabi l-*client base* huwa *asset* tal-kumpannija. Jidher pero` li dan ma kienx kultivat u allura ma serva ghal xejn.

Fil-fehma ta` din il-Qorti, l-imgieba tal-kumpannija intimata ma taghtix affidament. Kellha diffikultajiet finanzjarji serji li jxekklu l-operat u n-negozju taghha **ferm qabel** l-1 ta` Dicembru 2007. Bl-azzjoni li ttiehdet kontriha f`dik id-data, il-kumpannija intimata tpoggiet *out of business*. Fl-istess waqt ma ghamlet propju xejn *to get back into business* non-kuranti tal-fatt illi kellha kredituri li ttrattaw maghha tajjeb u *in bona fides* bl-erogazzjoni ta` ammonti qawwija ta` flus, bhal ma kien il-bank rikorrent. Huwa inaccettabbli ghal din il-Qorti li socjetajiet kummercjali, li ghandhom jattiraw il-fiducja tal-pubbliku propju ghaliex huma *limited liability companies*, jippruvaw jigbdu s-simpatija tal-Qorti billi jwahhlu f`kulhadd, u mhux fl-operat jew l-istrategija taghhom ghad-disavventuri jew infortuniji kummercjali taghhom. Din il-Qorti hija sodisfatta

li saret il-prova ta` dak rikjest mill-**Art.214(2)(a)(i) tal-Kap.386**.

Sodisfatti r-rekwiziti tal-Art.214(2)(a)(i), tal-Art.214(2)(a)(ii) u tal-Art.214(5)(b) tal-Kap.386, din il-Qorti hija tal-fehma illi mejqusa b`reqqa l-fatti u c-cirkostanzi tal-kaz, fl-isfond tal-konsiderazzjonijiet ta` dritt fuq riferiti, ghandha tordna x-xoljiment u l-istralc tal-kumpannija intimata.

Ghar-ragunijiet kollha premessi, din il-Qorti tippovdi dwar it-talbiet tal-kumpannija rikorrenti kif gej –

1) Tiddikjara li fir-rigward tal-kumpannija Almecco Limited (C20939) jirrizultaw ippruvati sal-grad rikjest mil-ligi r-rekwiziti tal-Art.214(2)(a)(i), tal-Art.214(2)(a)(ii) u tal-Art.214(5)(b) tal-Kap.386 tal-Ligijiet ta` Malta.

2) Tordna x-xoljiment tal-kumpannija Almecco Limited (C20939) b`effett mis-27 ta` April 2012 skond l-Art.223(1) tal-Kap.386 u tordna wkoll l-istralc taghha.

3) Tahtar lir-Ricevitur Ufficjali bhala stralcjarju bis-setghat u d-dmirijiet kollha skond l-Art.228 et seq tal-Kap.386 tal-Ligijiet ta` Malta b`dan illi l-istralcjarju ghandu wkoll, bla hsara ghall-generalita` ta` dawk is-setghat u dmirijiet –

a) wara li jikseb dikjarazzjoni dwar il-qaghda tal-kumpannija ntimata kif irid l-Art.226 tal-Kap.386 tal-Ligijiet ta` Malta jaghmel rapport lill-Qorti kif irid l-Art.227 tal-Kap.386 tal-Ligijiet ta` Malta.

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**b) jaghmel verifika dwar l-assi u d-djun tal-kumpanija ntimata u dwar il-gradwazzjoni tad-djun.**

**c) jiehu taht il-kustodja jew kontroll tieghu l-assi kollha tal-kumpanija ntimata kif ighid u jrid l-Art.237 tal-Kap.386 tal-Ligijiet ta` Malta.**

**d) jaghmel jew jiddefendi kull azzjoni jew procediment legali iehor fl-isem u fl-interess tal-kumpanija ntimata.**

**e) jirrelata dwar il-mizuri mehtiega ghall-harsien tal-assi tal-kumpanija intinata.**

**f) jipprezenta r-rapport tieghu mhux aktar tard minn tliet xhur mil-lum.**

**L-ispejjez jibqghu fl-intier taghhom a kariku tal-kumpanija intinata.**

**< Sentenza Finali >**

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