

Kopja Informali ta' Sentenza



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
JOSEPH ZAMMIT MC KEON**

Seduta tal-15 ta' Ottubru, 2013

Rikors Numru. 1269/2012

**CMV S.p.A gia` maghrufa bhala Casino Municipale di  
Venezia rapprezentata mill-mandatarju specjali taghha  
I-Avukat Dottor Louis Cassar Pullicino (K.I. 441061)**

*kontra*

**Vittoriosa Gaming Limited**

**II-Qorti :**

Rat ir-rikors ta` I-Amministratur Provvizorju tat-30 ta`  
Settembru 2013.

Rat id-digriet taghha tas-7 ta` Ottubru 2013.

**Ikkunsidrat :**

Illi bir-rikors tieghu tat-30 ta' Settembru 2013, l-Amministratur Provvizorju qiegħed jitlob lil din il-Qorti sabiex tagħtih access għal fondi tal-kumpannija Vittoriosa Gaming Limited, li huma kolpiti bi tliet Mandati ta' Sekwestru, li d-dettalji tagħhom huma ndikati fir-rikors.

Illi skond l-Amministratur Provvizorju huwa jehtieg dawk il-fondi bihom jagħmel hlasijiet akkont ta' debiti privileggjati bħal ma huma arretrati ta' pagi u spejjez generali tal-amministrazzjoni provvizorja, u dan billi fil-mument attwali Vittoriosa Gaming Limited m'għandha l-ebda forma ta' likwidita'.

Illi l-Amministratur Provvizorju qiegħed jimposta t-talba tieghu abbazi tal-**Art 224(2) tal-Kap 386** li jaqra hekk –

*Meta jkun sar ordni għal stralc jew ikun inhatar amministratur provvizorju, skond id-disposizzjonijiet ta' l-artikolu 228, ma tista' tittiehed ebda azzjoni jew jinbdew xi proceduri kontra l-kumpannija jew il-propjeta' tagħha hliel bil-permess tal-qorti u taht dawk il-kondizzjonijiet li tista' timponi l-qorti.*

Illi fit-test bl-Ingiliz id-disposizzjoni taqra hekk –

*Where a winding up order has been made or a provisional administrator has been appointed in accordance with the provisions of article 228, no action or proceeding shall be proceeded with or commenced against the company or its property except by the leave of the court and subject to such terms as the court may impose.*

Illi fl-**Insolvency Act 1986** tal-Ingilterra hemm disposizzjoni identika għal dik invokata mill-Amministratur

Kopja Informali ta' Sentenza

Provvizorju. Il-Qorti qeghda tirreferi ghall-**Art 130(2)** li jaqra hekk -

*When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.*

Illi fil-pag 248 et seq tal-ktieb "**Insolvency Law**" (Pearson – Longman 2003) l-awturi **Andrew Keay u Peter Walton** ighidu hekk dwar l-Art 130(2) tal-Insolvency Act 1986 –

*The rationale for this is that it is not appropriate for the liquidator to be harassed by litigants, which would diminish the estate of the company ; rather the liquidator is to preserve the limited assets of the company for distribution among all the persons who have claims upon them [In re David Lloyd & Co (1877) 6 Ch D 339 at 344]. Later cases have also indicated that the provision is intended to oblige all claimants to submit to the procedural scheme established in winding up. It is less expensive and more orderly if any claims against the company can be dealt with in the usual way that is used for the proving of claims [Ogilvie-Grant v East (1983) 7 ACLR 669 at 672] so the objects of section 130(2) are : to avoid the inconvenience and expense of litigation ; and to oblige all claimants to submit to the procedural scheme established in winding up (Ogilvie-Grant v East) which provides for an orderly process of winding up.*

Illi dwar il-kliem "proceeding" u "action", l-istess awturi jesprimu ruhhom hekk –

*These terms are not interpreted restrictively. The former has been said to be an inclusive term which may be used to include any kind of action [Re Keystone Knitting Mills` Trade Mark (1929) 1 Ch 92, 102] and*

*includes criminal proceedings [R v Dickson (1991) BCC 719]. Similarly "action" should be given a wide meaning [Langley Constructions (Brixham) Ltd v Wells (1969) 1 WLR 503,509]. It covers counterclaims [Langley Constructions (Brixham) Ltd v Wells (1969) 1 WLR 503 ; (1969) All ER 46] but it has been held that lodging an appeal [Humber & Co v John Griffiths Cycle Co (1901) 85 LT 141 (HL)] and apply for security for costs against the company [Pasdale Pty Ltd v Concrete Constructions (1996) 14 ACLC 554 ; BPM Pty Ltd v HPM Pty Ltd (1996) 14 ACLC 857] are not actions or proceedings for which leave of the court is required.*

Illi l-Qorti ghamlet din ir-riferenza *anke* ghall-fini ta` kompletezza ta` analizi tad-disposizzjoni citata mill-Amministratur Provvizorju u tal-hsieb wara d-disposizzjoni, speċjalment fil-kaz taghna, fejn sal-lum – almenu mir-ricerka li ghamlet il-Qorti – jidher illi l-qrati taghna ghadhom ma ppronunzjawx ruhhom dwar din id-disposizzjoni u kwindi sal-lum hemm assenza shiha ta` direzzjoni.

Illi meta jitqies dan l-isfond, fil-kuntest ta` dak illi talab l-Amministratur Provvizorju, din il-Qorti hija tal-fehma illi l-Art 224(2) tal-Kap 386 ma jippermettix lill-Qorti illi tordna l-hrug ta` kontromandati fir-rigward tal-Mandati li ndika fir-rikors sabiex b`dawk effetti tar-revoka tal-Mandati jkun jista` jizbanka l-fondi kolpiti bil-Mandati, u jiddisponi minnhom ghar-ragunijiet illi fisser.

Illi fl-istess waqt il-Qorti mhijiex sejra tippermetti illi - minghajr il-permess taghha - kredituri ta` Vittoriosa Gaming Limited jstitwixxu azzjoni jew jibdeu proceduri kontra l-kumpannija jew il-propjeta` taghha, ladarba mhux biss kien inizjat il-procediment fl-ismijiet premissi li huwa intiz ghax-xoljiment u ghall-istess tal-istess kumpannija izda kien mahtur ukoll Amministratur Provvizorju ghall-istess kumpannija.

Kopja Informali ta' Sentenza

Illi in kwantu ghal procedimenti li ghadhom pendenti, inkluzi mandati kawtelatorji, jew procedimenti fejn hemm involuti atti ezekuttivi, inkluzi mandati ezekuttivi, il-Qorti qeghda tinsisti fuq osservanza stretta tal-ligi, inkluz l-**Art 220 tal-Kap 386**.

Ghar-ragunijiet kollha premissi din il-Qorti qeghda tichad it-talba tal-Amministratur Provvizorju Av. Richard Galea Debono kif dedotta fir-rikors tieghu tat-30 ta` Settembru 2013. Jibqa` mpregudikat il-jedd tal-Amministratur Provvizorju li jitlob direzzjoni mill-Qorti dwar il-mod kif jaqdi ahjar l-inkariku tieghu skond il-ligi.

L-ispejjez ta` dan il-provvediment jibqgghu riservati ghall-gudizzju finali.

< Sentenza In Parte >

-----TMIEM-----