

Kopja Informali ta' Sentenza



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
JOSEPH ZAMMIT MC KEON**

Seduta ta' l-14 ta' Novembru, 2013

Rikors Numru. 581/2013

**Avukat Dottor Nicolai Vella Falzon (ID114474M) bhala
mandatarju specjali tal-assenti Evererdus Anthonius
Marie Maas ta` Rijksstraatweg 324F, AB Wassenaar
2242, Olanda detentur tal-passaport Olandiz numru
NXCL4RJL4**

kontra

Ir-Registratur tal-Kumpanniji

u

**Antonio Grech (ID23558M) gja stralcjarju tal-
kumpannija Riverbank Limited**

Il-Qorti :

I. Preliminari

Rat ir-rikors prezentat fl-14 ta' Gunju 2013 li jaqra hekk –

1. *Illi dan ir-rikors qed jigi mhejji a tenur tal-Artikolu 300B tal-Att dwar il-Kumpanniji (Kapitolu 386 tal-Ligijiet ta' Malta) ;*

2. *Illi l-esponent huwa awtorizzat jaghmel dan ir-rikors ghan-nom tal-mandatarju tieghu permezz ta' prokura moghtija lilu fit-3 ta' Mejju 2013 (kopja annessa u mmarkata **Dok EMM1**) ;*

3. *Illi r-rikorrent Evererdus Anthonius Marie Maas kien id-detentur ta' 145,004,999 sehem ordinarju "A" tal-valur nominali ta' Euro (€1) kull sehem fil-kumpannija Riverbank Limited (C41066) sakemm din ma giet xjolta u l-isem taghha ma gie mhassar b'effett mit-23 ta' Lulju 2012 (**Dok A**) ;*

4. *Illi dawn l-ishma jirraprezentaw l-ishma kollha tal-kumpannija hlief ghal sehem ordinarju "B" wiehed li kien mizmum minn azzjonista esteru iehor bl-isem "Stichting Administratiekantor de Toekomst" (41158785) ta' Rijksstraatweg 324F, AB Wassenaar 2242, Olanda (**Dok B**) ;*

5. *Illi l-kumpannija Riverbank Limited kienet giet xjolta permezz ta' resoluzzjoni straordinarja tal-kumpannija datata 30 ta' April 2011 a tenur tal-Artikolu 268(1) tal-Att dwar il-Kumpanniji (**Dok C**) ;*

6. *Illi l-istralcjarju tal-kumpannija kien l-intimat Antonio Grech li hejja r-rapport tieghu ghall-fini tal-istralc*

tal-kumpannija ossia l-Final Accounts and Scheme of Distribution tal-kumpannija sat-30 ta` April 2011 fit-22 ta` Dicembru 2011 (Dok D) u pprezenta l-istess lill-intimat Registratur tal-Kumpanniji permezz ta` ittra datata 3 ta` April 2012 (Dok E) ;

7. *Illi kif jirrizulta mill-istess rapport tal-istralcjarju, senjatament a fol. 9 u 16 tal-istess rapport il-kumpannija Riverbank Limited kellha surplus assets tal-valur ta` mija erba` u erbghin miljun tmien mija sitta u tmenin elf erba` mija wiehed u tletin Euro (€144,886,431) konsistenti fl-ishma kollha ta` kumpannija sussidjarja registrata gewwa l-Olanda bl-isem Vastegoed's Gravenhage B.V. ta` Rijkssstraatweg 324F, AB Wassenaar 2242, l-Olanda ;*

8. *Illi skont l-iskema ta` distribuzzjoni (kif debitament approvata mill-membri kollha tal-kumpannija fit-3 ta` April 2012 – Dok F) dawn l-ishma kellhom jigu distribwiti jew trasferiti lir-rikorrent Evererdus Anthonius Marie Maas li skont il-ligi u l-istatut tal-kumpannija kien (u ghadu) intitolat ghalihom ;*

9. *Illi peress illi l-iskema in kwistjoni huma ishma fi kumpannija registrata gewwa l-Olanda, sabiex jigi formalizzat it-trasferiment taghhom kellu jsir att notarili ta` trasferiment skont il-ligi tal-Olanda u dan kellu jkun iffirmit minn rapprezentant tal-kumpannija Riverbank Limited quddiem nutar gewwa l-Olanda ;*

10. *Illi jirrizulta illi bi zvista l-istralcjarju tal-kumpannija naqas milli jifformalizza t-trasferiment tal-ishma billi jidher fuq l-att notarili msemmi u jiffirma l-istess ghan-nom tal-kumpannija Riverbank Limited u nel frattemp wara li rcieva d-debiti dokumenti skont il-ligi l-intimat Registratur tal-Kumpanniji ghadda biex ihassar l-isem tal-kumpannija Riverbank Limited mir-Registru tal-Kumpanniji ;*

11. Illi b`rizultat ta` dan l-ishma fil-kumpannija Olandiza msemmija, li huma ta` valur materjali, effettivament kienu ghadhom fil-pussess tal-kumpannija Riverbank Limited fiz-zmien illi l-isem taghha gie mhassar mill-intimat Registratur tal-Kumpanniji fit-23 ta` Lulju 2012 u ghalhekk it-thassir sar qabel ma gie effettivament konkluz l-istralc u distribuzzjoni tal-assi tal-kumpannija ;

12. Illi filwaqt illi ma hemm ebda allegazzjoni ta` frodi jew abbuz fic-cirkostanzi jirrizulta illi t-thassir tal-isem tal-kumpannija Riverbank Limited sar b`mod irregolari jew illegali ghaliex sar qabel ma gew distribwiti l-assi kollha tal-kumpannija skont l-iskema ta` distribuzzjoni mhejji mill-istralcjarju tal-kumpannija u ghalhekk jissussistu l-elementi rikjesti mill-Artikolu 300B tal-Att dwar il-Kumpanniji sabiex l-isem tal-kumpannija jerga` jigi restitwit u l-istralc tal-kumpannija jerga` jinfetah u dan sabiex it-trasferiment tal-ishma fi Vastegoed`s Gravenhage B.V lir-rikorrent ikun jista` jigi formalizzat ;

13. Illi a tenur tal-Artikolu 300B tal-Att dwar il-Kumpanniji meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista` b`rikors, titlob lill-Qorti biex tordna li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah. Il-Qorti tista` tilqa` talba ta` din ix-xorti jekk tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b`illegalita` ta` natura materjali, u l-Qorti ghandha tfisser ir-ragunijiet u z-zmien ghal dan il-ghan u taghti d-direttivi u timponi dawk il-kondizzjonijiet li jidhrilha xieraq fic-cirkostanzi. Barra minn hekk il-ligi tghid illi l-Qorti ghandha tilqa` t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm ;

14. Illi peress illi sabiex ikun jista` jigi formalizzat it-trasferiment tal-ishma fil-kumpannija estera Vastegoed`s Gravenhage B.V. lir-rikorrent hemm bzonn illi l-kumpannija Riverbank Limited tidher fuq att notarili

gewwa l-Olanda l-uniku mod kif dan jista` jsehh huwa billi l-isem tal-kumpannija terga` titqiegħed fir-Registru tal-Kumpanniji u l-istralc jerga` jinfetah biex b`hekk l-istralcjarju tal-kumpannija jerga` jingħata rappreżentanza tal-istess kumpannija u jkun jista` jidher f`isimha fuq l-istess kuntratt ;

15. Illi dan huwa għalhekk l-uniku rimedju illi għandu r-rikorrent sabiex tigi sanata l-irregolarita` li nholqot fic-cirkostanzi odjerni u jkun jista` jingħalaq definittivament l-istralc tal-kumpannija skont il-ligi ;

Għaldaqstant ir-rikorrenti nomine jitlob bir-rispett illi din l-Onorabbli Qorti jogħgħobha :

1. Tiddikjara illi t-thassir tal-isem tal-kumpannija Riverbank Limited mir-registru tal-kumpanniji sar b`mod irregolari jew illegali għaliex sar qabel ma gew distribwiti l-assi kollha tal-kumpannija skont l-iskema ta` distribuzzjoni mhejjija mill-istralcjarju tal-kumpannija u għalhekk jissussistu l-elementi rikjesti mill-Artikolu 300B tal-Att dwar il-Kumpanniji sabiex l-isem tal-kumpannija jerga` jigi restitwit u l-istralc tal-kumpannija jerga` jinfetah ;

2. Tordna a tenur tal-Artikolu 300B tal-Att dwar il-Kumpanniji lill-intimat Registratur tal-Kumpanniji sabiex jerga` jqiegħed l-isem tal-kumpannija Riverbank Limited fuq ir-Registru tal-Kumpanniji ;

3. Tordna illi jerga` jinfetah l-istralc tal-istess kumpannija limitatament sabiex l-intimat Antonio Grech ikun jista` jifformalizza d-distribuzzjoni tal-ishma tal-assi tal-istess kumpannija ossia illi jagħmel dak kollu li hemm bzonn għan-nom tal-istess kumpannija sabiex jigi formalizzat it-trasferiment tal-ishma kollha illi għandha fil-kumpannija estera Vastegoed`s Gravenhage B.V. ;

4. Tordna lill-intimat Antonio Grech illi jaghmel dak kollu li hemm bzonn ghan-nom ta` Riverbank Limited sabiex jigi formalizzat it-trasferiment tal-ishma kollha illi ghandha fil-kumpannija estera Vastegoed`s Gravenhage B.V u dan taht dawk il-pattijiet u kundizzjonijiet kollha illi jidhrilha xierxqa fic-cirkostanzi.

Bl-ispejjez u bl-ingunzjoni tal-intimati in subizzjoni.

Rat ir-risposta guramentata tar-Registratur tal-Kumpanniji prezentata fit-2 ta` Awwissu 2013 li taqra hekk –

Illi meta l-esponent ircieva d-dokumentazzjoni rilevanti ghax-xoljiment u konsegwentement ghall-kancellament tal-kumpannija Riverbank Limited (C41066), wara illi kkonferma illi dawn huma konformi mal-Att dwar il-Kumpanniji 1995, huwa mexa sabiex irregistrhom skont kif jitlob minnu l-Artikolu 401 tal-istess Att.

Illi l-funzjoni tar-Registratur tal-Kumpanniji skont l-Att dwar il-Kumpanniji huwa illi jassigura illi l-Artikoli tal-Att jigu osservati b`mod preciz u ghalhekk ir-Registratur jirriveva illi huwa mexa b`mod korrett meta rregistra dawn id-dokumenti pprezentati lilu ghar-registrazzjoni.

Illi fil-kaz odjern il-kumpannija Riverbank Limited (C41066) qieghda tissolleva illi l-iskema tad-distribuzzjoni pprezentata giet maghmula b`mod irregolari u llegali peress li l-procedura proprja illi kellha twassal sabiex l-imsemmija ishma tas-socjeta` estera jghaddu f`isem ir-rikorrent ma saritx skont kif titlob il-ligi barranija.

Illi l-kumpannija ssostni illi l-isem tal-kumpannija gie mhassar minn fuq ir-Registru qabel ma giet formalizzata l-

procedura mehtiega izda dan qieghed jinghad meta l-esponent kien diga` rcieva d-dokumentazzjoni, illi wasslet ghall-kancellament tal-isem tal-kumpannija minn fuq ir-registru. Wiehed jifhem illi r-Registratur ma kellu ebda gharfien ta` tali nuqqas u wisq anqas ghandu xi obbligu legali illi jikkonferma illi fil-fatt dak kollu li kellu jsir qabel ma thejjiet u giet sottomessa ghar-registrazzjoni l-iskema ta` distribuzzjoni, effettivamente kien sar.

Illi l-kumpannija, fil-kaz odjern, qieghda titlob lil dina l-Onorabbli Qorti biex l-isem taghha jerga` jitqieghed fuq ir-Registru sabiex l-istralc jerga` jigi miftuh u l-istralcjarju jkun jista` jaghmel dawk il-proceduri necessarji f`isem il-kumpannija Riverbank Limited sabiex ikun jista` jsir it-trasferiment tal-imsemmija ishma favur ir-rikorrent.

Illi r-Registratur jirrimetti ruhu f`idejn din l-Onorabbli Qorti sabiex tiddetermina jekk il-fatt li ishma li kienu registrati barra ma gewx trasferiti skont il-ligi estera jikkostitwix l-element ta` "illegalita` ta` natura materjali" skont kif jitlob l-Artikolu 300B tal-Att u dan l-element kienx daqstant gravi illi jimmerita illi jinghata r-rimedju eccezzjonali u straordinarju illi jikkontempla l-istess Artikolu citat.

Illi minghajr pregudizzju ghas-suespost ir-Registratur ma joggezzjonax illi l-isem tal-kumpannija Riverbank Limited jerga` jitqieghed fuq ir-Registru u l-istralc taghha jerga` jigi miftuh sabiex l-imsemmija assi jghaddi ghand ir-rikorrent kif kellu jsir mill-bidu. Ir-Registratur umilment jissollewa illi dan il-process ghandu jsir skont direttivi u kondizzjonijiet illi dina l-Onorabbli Qorti jidhrilha xieraq fic-cirkostanzi partikolari ta` dan il-kaz. Ir-Registratur umilment jissuggerixxi illi din l-Onorabbli Qorti ghandha, fis-sentenza taghha, taghti terminu preciz u mprorogabbli biex l-istralc jigi rregolarizzat biex wara l-esponent ikun jista` jiprocedi sabiex l-isem tal-kumpannija jerga` jigi kancellat minn fuq ir-Registru minghajr dewmien bla bzonn. Dan sabiex jigi evitat illi

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jinholoq kwalunkwe element ta`ncertezza fl-istatus tal-kumpannija jew xi pregudizzju kontra terzi persuni.

Illi l-esponent m`ghandux jinzamm responsabbli ghal ebda spejjez gudizzjarji konnessi ma`dan il-kaz.

Rat ir-risposta ta' Antonio Grech prezentata fit-12 ta' Settembru 2013 li taqra hekk –

Illi l-fatti dikjarati fil-paragrafi 3 sa 15 tar-rikors promotur ma humiex kontestati ;

Illi ghaldaqstant l-esponent ma joggezzjonax ghat-talba tar-rikorrent nomine u ghalhekk jirrimetti ruhu ghad-decizjoni ta' dina l-Onorabbli Qorti dwar l-istess izda jissolleva bir-rispett illi jekk dina l-Onorabbli Qorti tilqa' t-talba rikorrenti, fid-decizjoni taghha ghandha taghti dawk id-direttivi kollha illi jidhrilha xierqa fic-cirkostanzi sabiex wara illi jigu ffirmati d-debiti kuntratti notarili u/jew dokumenti ohra ghat-trasferiment ta' l-ishma in kwistjoni skond il-ligi ta' l-Olanda, l-isem tal-kumpannija Riverbank Limited ikun jista' jerga jigi kancellat minn fuq ir-registru tal-kumpanniji minghajr dewmien u sabiex b' hekk l-esponent jinheles mill-obbligi legali tieghu in kwantu stralcjarju ta' l-istess kumpannija.

Rat il-verbal tal-udjenza tat-8 ta' Ottubru 2013.

Rat id-digriet taghha moghti fl-istess udjenza fejn halliet il-kawza ghas-sentenza tal-lum.

Rat l-atti tal-kawza

Ikkunsidrat :

II. Fatti

Il-mandant tar-rikorrent huwa Everardus Anthonius Marie Rijswijk (ara fol 5) – cittadin Olandiz – li jiddetjeni 145,004,999 –il sehem ordinarju “A” tal-valur nominali ta` Euro (€1) kull sehem fil-kumpannija Riverbank Limited (C41066). L-azzjonista l-iehor tal-istess kumpannija (ghax tiddetjeni sehem wiehed ordinarju “B”) hija kumpannija estera – bl-ufficcju registrat taghha sitwat fl-Olanda wkoll – Stichting Administratiekantoor de Toekomst (41158785) [ara fol 12].

Fil-11 ta` Marzu 2011 saret rizzoluzzjoni mill-azzjonisti tal-kumpannija sabiex din tigi xjolta u stralcjata *and that all its liabilities be paid and remaining assets be distributed amongst its shareholders according to the number of shares they possess* (fol 14). Bhala stralcjarju kienet mahtura Stichting Administratiekantoor de Toekomst. Jidher (fuq l-iskorta tal-*final accounts and scheme of distribution* – ara fol 15 et seq) illi x-xoljiment kellu jkun effettiv mit-30 ta` April 2011.

Jidher illi in segwitu kien mahtur l-intimat Antonio Grech bhala stralcjarju. Tlestew il-*final accounts and scheme of distribution*. Skond din l-ahhar (ara fol 25) jirrizulta li Riverbank Limited kellha *total assets* ta` €145,051,345 u *liabilities* ta` €164,915 ; in-*net assets* kienu €144,888,431 li kellhom imorru favur ir-rikorrent skond l-*scheme of distribution*. Dawn in-*net assets* kienu jikkonsistu mill-ishma kollha ta` kumpannija sussidjarja registrata gewwa l-Olanda bl-isem Vastegoed's Gravenhage B.V.

Jinghad a fol 36 illi *the immediate and ultimate controlling party of Riverbank Limited (in liquidation) is Everardus Anthonius Marie Rijswijk*.

Wara li kienu approvati *the audited liquidation accounts and scheme of distribution* tal-kumpanija fit-3 ta` April 2012 (ara fol 38) l-istralcjarju Antonio Grech kiteb lir-Registatur tal-Kumpaniji (fol 37) *to strike the name of the company off the register*. U hekk sar b`effett mit-23 ta` Lulju 2012 (fol 9).

Il-problema li qamet in segwitu kienet ir-registrazzjoni tan-*net assets* f`isem il-mandant tar-rikorrent. Billi n-*net assets* kienu ishma go kumpanija registrata fl-Olanda (u dan mhuwiex kontestat) it-trasferiment kellu jsir skond il-ligi Olandiza illi rrizulta (bla ma kien ikkontestat) li tesigi li trasferiment ta` ishma ta` dak ix-xorta jrid isir permezz ta` att notarili ta` trasferiment quddiem nutar gewwa l-Olanda liema att kellu jkun iffirmit mill-istralcjarju bhala r-rapprezentant tal-kumpanija Riverbank Limited.

Dan kollu ma sarx qabel mal-isem ta` Riverbank Limited thassar mir-registru.

Ikkunsidrat :

III. Dritt

Il-procedura tentata mir-rikorrent bil-kawza tal-lum hija maghrufa fil-ligi Ingliza bhala **restoration of dissolved companies to the register**.

Guristi awtorevoli tad-dritt soċjetarju Ingliz kellhom okkazjoni jaghmlu analizi mirquma tal-ligi li tirregola l-procediment, l-iskop tieghu, kif jithaddem u fejn iwassal.

Bhala introduzzjoni, il-Qorti sejra tirreferi ghal pagna 778 ta' **Sealy's Cases and Materials in Company Law** (9th Edition – OUP – 2010) fejn jinghad hekk –

Restoration of dissolved companies to register may be necessary if, for example, further assets are discovered, or someone wishes to bring a damages claim for which the former company was insured.

There are two procedures available for restoring companies to the register :

An administrative procedure available when companies have been incorrectly struck off as defunct under CA 2006 s 1000 or 1001 (see ii and vii above) requiring application to the registrar by the company's former directors or former members within six years of the date of dissolution (CA 2006 s 1024)

and

A judicial procedure, requiring application to court (CA 2006 s 1029) in all other cases. The application may be made by a wide class of people [s 1029 (2)] and must generally be made within six years of the dissolution of the company although there are various exceptions. For example there is no time limit where the application is for the purpose of bringing proceedings against the company for damages for personal injury (s 1030 1). The court has wide powers to make restoration including any case in which the court thinks it is just to do so (s 1031 1 c)

CA 2006 ss 1024-1034 provide detailed rules on the pre-conditions and consequences of the procedures, including special supplementary rules dealing with company names and with restoration of property that had vested in the Crown.

Gower and Davies fil-**Principles of Modern Company Law** (8th Edition – Sweet & Maxwell – 2008) jidhlu fl-isfond tal-legislazzjoni ta' qabel (Companies Act

1985) u ta` dik vigenti fil-prezent (Companies Act 2006), u jaghmlu analizi aktar dettaljata tal-procedura. Minn pag 1232 et seq ighidu hekk –

A contrast between the death of an individual and that of a company is that without divine intervention a dissolved company can be resurrected.

Following the CLR, the Act made two innovations in this area. First it introduced a limited form of administrative restoration to the register a result which had previously required a court order. Secondly a single method of court restoration replaced the formerly existing two methods which the courts had found some difficulty in making sense of and which overlapped to a considerable extent.

Administrative restoration

The new form of administrative restoration applies only where the company was dissolved by the Registrar under the provisions relating to defunct companies. Thus it does not apply to either voluntary striking off or to dissolution after winding up. The conditions for administrative restoration to the register confine it to situations where the company was carrying on business or in operation at the time it was struck. Thus the main purpose of administrative restoration is to deal more cheaply with reversing a striking off, which, ideally, should not have occurred in the first place. For probably the same reason, the application for restoration may be made only by a former director or former member of the company, but no application for restoration may be made more than six years after its dissolution. If any of the company`s property is vested in the Crown as bona vacantia, the Crown`s representative must consent and the applicant must offer to pay any costs of the Crown in relation to the application and more importantly dealing with the property during the period of dissolution. Finally the applicant must deliver to the Registrar such documents as are necessary to bring the company`s

public records up-to-date and to pay any penalties outstanding at the time the company was dissolved.

If these conditions are met the Registrar is under a duty to restore the company to the register. Notice of the decision must be given to the applicant and the restoration takes effect when that notice is sent. Public notice must be given of the restoration. The effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off. However any consequential directions, if necessary, for placing the company and all other persons in the position (as nearly as possible) as they would have been in, had the company not been struck off, are to be given, not by the Registrar, but by a court, to which application may be made within three years of restoration.

Restoration by the court

The two court-based restoration methods previously provided were contained sections 651 and 653 of the 1985 Act. The current provisions are based on those of section 653, the somewhat simpler procedure. The court-based procedure applies to all forms of dissolution and a much wider range of persons may apply for restoration. These include not just former directors or members but any creditor of the company at the time of dissolution, anyone who but for the dissolution would have been in a contractual relationship with it, any person with a potential legal claim against the company, any manager or trustee of an employee pension fund, and the Secretary of State. This caters for a much wider range of reasons for wanting to have the company restored to the register, a common one being in order to sue or assert a right against it. Normally such persons must act within six years of the date of dissolution, but a claim for restoration in order to bring a claim for damages for personal injury against the company may be made at any time.

The court has power to order restoration if (a) in the case of striking off of a defunct company, it was carrying on business or in operation at the time ; (b) in the case of

voluntary striking off, the conditions for such a striking off were not complied with ; and (c) in any other case the court thinks it just to do so. Restoration, if ordered, takes effect from the time the court's order is delivered to the Registrar and the Registrar must give publicity to the order in the usual way. The effect of restoration by the court is the same as with administrative restoration and the court may give the necessary directions to effect the principle that the company should be treated as if never dissolved.

Fil-Kap 386 tal-Ligijiet ta` Malta, id-disposizzjoni rilevanti hija l-**Art 300B** li kienet introdotta bis-sahha tal-Att IV tal-2003. Taqra hekk –

(1) *Meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista' b'rikors, titlob lill-Qorti biex tordna hi li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah.*

(2) *Meta, fuq rikors maghmul taht is-subartikolu (1), il-Qorti tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b'illegalità ta' natura materjali, il-Qorti tista' tordna li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah ghal dawk ir-ragunijiet u ghal dak iz-zmien li l-Qorti tispecifika fid-decizjoni taghha, u l-Qorti ghandha taghti dawk id-direttivi u timponi dawk il-kondizzjonijiet li jidhrilha xieraq.*

(3) *Il-Qorti ghandha tilqa' t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm.*

(4) *Fid-decizjoni taghha l-Qorti ghandha wkoll tiddeciedi jekk l-ordnijiet u d-direttivi taghha jkunux effettivi favur il-persuni kollha jew jekk ghandhomx japplikaw limitament ghal persuni specifiki indikati fid-decizjoni.*

(5) *Ma jista' jsir ebda rikors taht dan l-artikolu wara li jghaddu hames snin mid-data li fiha l-isem tal-kumpannija jkun thassar mir-registru.*

Apparti l-pronunzjamenti dwar id-disposizzjoni li tat din il-Qorti **kif presjeduta**, il-Qorti ltaqghet ma` zewg pronunzjamenti taghha ohra, meta kienet diversament presjeduta (**PA/GV**) :

L-ewwel wiehed huwa dak tat-2 ta` Frar 2007 fir-Rikors Nru 1108/2006 fl-ismijiet **“Rikors konguntiv ta’ George (401744M) u Maruccia (217951M) konjugi Muscat ai termini tal-Artikolu 300B ta’ l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta’ Malta)”**.

It-tieni wiehed huwa dak tad-19 ta` Novembru 2007 fil-kawza fl-ismijiet **“Salvatore Pisani vs Registratur tal-Kumpanniji”**.

Il-Qorti tghid mill-ewwel li dawn iz-zewg kazi kienu jirrigwarda socjetajiet *en nom collectif* mhux kumpanniji bhal fil-kaz tal-lum.

Fl-ewwel kaz, is-socji ddecidew li jxolju s-socjeta' in kwistjoni. Meta r-Registratur tal-Kumpanniji kien avzat bid-decizzjoni ta' xoljiment ha l-passi necessarji sabiex is-socjeta' tigi cancellata mir-Registru kif fil-fatt sar. Gara pero` li meta sar il-kancellament, is-socjeta` kien ghad kellha assi mmobbli registrati f'isimha li kienu ghadhom ma ddevolvewx fuq is-socji f'isimhom personali jew fuq terzi. Ghalhekk saret talba lill-Qorti sabiex is-socjeta` ma tibqax mhassra mir-registru sakemm tiddisponi mill-propjeta`, u mbaghad wara li dan isir, tithassar b`mod definittiv. Il-Qorti laqghet it-talba ghax sostniet li t-thassir tal-kumpannija sar bi zball.

Fit-tieni kaz, wiehed miz-zewg socji miet u ma nhatar hadd minfloku. Is-socju rimanenti xolja s-socjeta` meta s-socjeta` kien ghad kellha dejn x`jithallas lil terzi kif ukoll propjeta` mmobbli x`tigi trasferita. Ghalkemm sar l-avviz tax-xoljiment, l-ebda kreditur ma resaq biex jaghmel *claim* u s-socjeta` thassret mir-registru. Is-socju rimanenti

talab sabiex is-socjeta` terga` titpogga fir-registru sabiex jithallas id-dejn lil terzi u l-propjeta` mmobbli tigi trasferita lilu u mbaghad tithassar b`mod definittiv. Il-Qorti laqghet it-talba billi kienet tal-fehma l-procedura ghat-thassir tas-socjeta` kienet inkompleta.

Din il-Qorti trid tissottolinea li l-procedura skond l-Art 300B tal-Kap 386 (bhal dik skond l-Art 300A) ghalkemm huma proceduri distinti, u ghandhom jigu intavolati ghal ragunijiet kompletament diversi, fl-istess waqt ghandhom *a common denominator* u cioe` li jistghu jitressqu, wara li kumpannija tithassar mir-registru, u r-ragunijiet iridu jkunu eccezzjonali, fl-ambitu ta` dak li kull disposizzjoni tahseb ghalih distintament.

Fil-Principles of Maltese Company Law (MUP – 2007 – pag 43) hekk jikkummenta dwar l-Art 300B –

The amending Act introduced another novel provision dealing with the situation where the winding up and striking off of a company has been vitiated by fraud or illegality of a material nature. A typical example would be where the liquidator deliberately fails to take into account a pending claim against the company.

The new article (article 300B of the Companies Act) empowers the court, upon an application filed by any interested person to order that the name of the company be restored to the register and the winding up be reopened for such purposes and such period as the court specifies in its decision. The court is also entitled to give such directives and impose such conditions as it may consider appropriate. No application may be filed after the expiration of five years from the date on which the name of the company has been struck off the register. Prior to the introduction of article 300B, the Maltese courts had in a number of cases tackled situations where a claim against a company was not taken into account by the liquidator who proceeded to finalise the winding up and

have the company's name struck off the register. In these cases the courts applied a remedy involving the effective revival of the company.

It should be remarked that the courts have been willing to provide such a remedy even where the omission by the liquidator to take into account a pending claim against the company was purely inadvertent. Article 300B however empowers the court to grant a remedy where it is satisfied that "the winding up and striking off of the company has been vitiated by fraud or illegality of material nature". Would an inadvertent omission constitute "illegality". A wide interpretation ought to be afforded to the term "illegality". A liquidator who, whether negligently or fraudulently, fails to take into account a pending claim will, if it is submitted, have acted unlawfully. After all, in terms of general principles of law, a person who does not use the prudence, diligence and attention of a bonus paterfamilias and causes damage as a result is deemed to have acted unlawfully. Moreover a liquidator is clearly bound by law to take into account all pending claims against the company and if he fails to do so through negligence, imprudence or want of attention he should also be deemed to have acted unlawfully.

Ikkunsidrat :

III. Risultanzi

Huwa magħruf u miżmum fid-dritt soċjetarju li kumpannija tibqa' teżisti u tgawdi l-personalita' ġuridika tagħha sa dak il-ħin li isimha jiġi ttrassat mir-Registru tal-Kumpanniji. Meta l-isem ta' kumpannija hekk jiġi ttrassat, titqies legalment b'ħala persuna li tkun "mietet". Din il-qagħda tagħha tibqa' hekk sakemm ma jkunx hemm raġuni serja biżżejjed biex terġa' "tirxuxtaha" skond kif jipprovdi l-Art 300B tal-Kap 386.

Bhala principju generali, ir-ravvivar ta' kumpanija m'ghandux jigi facilment accettat. Irid jigi assikurat li l-kaz huwa wiehed genwin u m'ghandux jinghata lok ghall-abbuz jew xi forma ta' kolluzzjoni bejn il-partijiet interessati. Azzjonisti ta' socjeta' m'ghandhomx jiprocedu ghal-likwidazzjoni u thassir taghha b'mod legger, bl-idea *zbaljata* li jekk `il quddiem jinqala' l-kaz, il-kumpanija tkun tista' tigi ravvivata. Fil-kaz tal-ligi taghna, is-sitwazzjoni mhijex din. Il-Qorti hija prekluziva milli taccetta l-*irxuxtar* tal-kumpanija jekk ma jirrizultawx il-linji traccjati mill-Art 300B.

Meta wiehed iqabbel l-Art 300B mad-disposizzjonijiet prevalenti fil-ligi Ingliza isib li filwaqt li f'din tal-ahhar, ir-rimedju huwa miftuh ghal numru ta' persuni li lista taghom tirrizulta fil-ligi stess, fil-kaz tal-ligi taghna, il-legislatur ma llimitax ruhu ghal lista specifika jew ghal kategorija ta' persuni, izda fetah ir-rimedju ghal *kull persuna interessata* (ara is-subinciz 1 tal-Art 300B). Min jikkwalifika bhala *persuna interessata* jrid jitqies skond il-fatti u cirkostanzi ta' kull kaz.

Il-Qorti ma tarax il-htiega li fil-kaz tal-lum taghmel analizi ta' x`ried ifisser il-legislatur bil-frazi *kull persuna interessata* ghaliex ma hemmx dubju li l-mandant tarrikorrent u cioe` Evererdus Anthonius Marie Maas bhala detentur ta' 145,004,999 –il sehem ordinarju "A" tal-kumpanija Riverbank Limited (li isimha thassar mir-registru) ghandu kull interess li jippromwovi dan il-procediment, ladarba rrizulta li ghax ma kenitx osservata l-procedura skond il-ligi Olandiza ma jistghux iduru ghal fuqu l-ishma li Riverbank Limited kellha fil-kumpanija Vastegoed`s Gravenhage B.V. li hija registrata l-Olanda, ghalkemm hekk kellu jsir, skond l-*scheme of distribution* approvat mill-membri ta' Riverbank Limited.

Sodisfatt il-kriterju tal-interess skond is-subinciz 1 tal-Art 300B, il-Qorti sejra tara issa jekk humiex sodisfatti r-rekwiziti tas-subinciz 2 tal-Art 300B.

Il-Qorti teskludi mill-ewwel illi fil-kaz tal-lum saret xi allegazzjoni jew prova li l-istralc u thassir tal-kumpannija kien vizzjat bi frodi.

Eskluz il-vizzju bi frodi, il-Qorti trid tara jekk tirrizultax ir-rekwizit alternattiv tal-illegalita` ta` natura materjali.

Il-Kap 386 ma taghti l-ebda tifsira ta` x`tikkostitwixxi *illegalita`* ghall-fini tas-subinciz 2. Li jfisser li l-interpretazzjoni ta` *illegalita`* ghandha tkun wiesgha, mhux restrittiva ghal fergha jew ohra tad-dritt. B`*illegalita`* il-Qorti qeghda tifhem att mhux permess mil-ligi. L-unika restrizzjoni li tara l-Qorti hija li mhux kull *illegalita`* tiskatta l-jedd ghal rimedju skond is-subinciz 2 izda l-*illegalita`* trid tkun ta` *natura materjali*. X`hinu *materjali* jiddependi mill-fattispeci ta` kull kaz. Irid pero` jinghad illi l-materjalita` tal-illegalita` trid tkun tali li tivvizzja l-istralc u timpedixxi l-procediment milli jwassal fejn il-ligi tridu jwassal. Huwa propju ghalhekk li l-procediment skond l-Art 300B huwa specjali u straordinarju ghaliex li jigri b`dan il-procediment huwa li wara li jinghalaq l-istralc u jithassar l-isem tal-kumpannija mir-registru jintalab li l-isem jerga` jidhol fir-registru. Fil-ligi taghna (mhux daqstant taht il-ligi Ingliza) ir-ragunijiet ghat-talba huma ristretti u ghalhekk il-materjalita` tal-illegalita`.

Fil-kaz tal-lum, irrizulta bhala fatt dokumentat u nkontestat illi Riverbank Limited kellha *surplus assets* ta` €144,886,431 konsistenti fl-ishma kollha ta` kumpannija sussidjarja registrata gewwa l-Olanda bl-isem ta` Vastegoed`s Gravenhage B.V. L-ishma ta` din tal-ahhar huma registrati fl-Olanda wkoll. Irrizulta li skond l-iskema ta` distribuzzjoni approvata mill-membri kollha ta` Riverbank Limited, l-ishma kollha ta` Vastegoed`s Gravenhage B.V. kellhom jigu trasferiti lil Evererdus Anthonius Marie Maas. Wara l-approvazzjoni tal-iskema ta` distribuzzjoni u qabel it-thassir tal-isem ta` Riverbank Limited, it-trasferiment tal-ishma favur Evererdus

Antonius Marie Maas baqa` ma sarx. Meta gie biex isir it-trasferiment tal-ishma wara li kien thassar l-isem tal-kumpanija, l-awtoritajiet Olandizi ma accettawx ir-registrazzjoni tat-trasferiment tal-ishma ghaliex skond il-ligi Olandiza sabiex jigi formalizzat it-trasferiment, kellu jsir att notarili ta` trasferiment, iffirmit minn rapprezentant ta` Riverbank Limited, quddiem nutar fl-Olanda. Bil-procediment tal-lum qieghed isir tentattiv biex is-sitwazzjoni tigi regolarizzata ladarba llum ma hemm l-ebda rapprezentant ta` Riverbank Limited ladarba Riverbank Limited giet *struck off*..

Fl-ghaxar (10) paragrafu tar-rikors, ir-rikorrent jimputa dak li gara ghal *zvista* tal-istralcjarju. Il-Qorti tghid mill-ewwel illi jekk li gara kien unikament frott ta` “*zvista*” allura ma jstax jissussisti r-rekwizit tal-*illegalita` ta` natura materjali* ghaliex il-procediment skond l-Art 300B mhuwiex intiz biex jirrimedja ghal *zbalji* jew *zvisti*.

Meta l-Qorti qieset l-assjem tal-fatti, issib li dak tal-lum kien aktar minn semplici *zvista* izda nuqqas grossolan, att ta` *illegalita`* da parti tal-intimat Antonio Grech, li kien l-istralcjarju.

Il-Qorti tirrileva li l-istralcjarju ghandu funzjonijiet, setghat u allura responsabilitajiet kbar. Mhux kulhadd huwa eligibbli biex ikun stralcjarju. Il-persuna li taccetta l-hatra, speċjalment fi stralc volontarju bhal ma kien dak tal-lum, trid tkun taf mhux biss x`ghandha taghmel fl-ambitu ta` dak li jghidu l-ligijiet ta` pajjizna izda tkun edotta minn dak li jghidu ligijiet ta` pajjizi ohra in partikolari fejn hemm skond l-iskema ta` distribuzzjoni jista` jkun effetti barra minn Malta. L-istralcjarju *non puo` lasciare niente al caso* izda jrid juri kawtela, ikun vigilantanti – *mohhu hemm*, kif ighid il-Malti – biex il-process li jibda mix-xoljiment, ighaddi mill-istralc sa ma jintemm bl-*striking off* mhux biss ikun trasparenti u kondott b`kompetenza izda fuq kollox bl-osservanza tal-ligi.

Fil-kaz tal-lum, mhux hekk gara. Ladarba kien jaf li kellu jsir trasferiment ta' ishma registrati fl-Olanda, fuq l-istralcjarju kien jinkombi l-obbligu illi wara li jikseb l-approvazzjoni ta' l-iskema ta' distribuzzjoni, jifformalizza t-trasferiment tal-ishma billi jidher fuq l-att notarili fl-Olanda u jiffirma l-istess ghan-nom ta' Riverbank Limited qabel ma jibghat l-inkartament lir-Registatur tal-Kumpanniji sabiex isir l-*striking off* u jigi mehlus mir-responsabilitajiet tieghu. Dan ma sarx. Din mhijiex *zvista*. Huwa fl-ewwel lok att ta' negligenza grossolan u allura *illegalita'* [ara l-Art 1032 tal-Kap 16] u fit-tieni lok nuqqas evidenti fir-rwol tieghu bhala stralcjarju ghaliex ipproceda bit-thassir ta' Riverbank Limited qabel ma kien effettivament konkluz l-istralc u distribuzzjoni tal-assi tal-kumpannija – *illegalita'* ohra li l-Kap 386 ma jridx li tigr.

Accertat li saret *illegalita'* il-Qorti trid tara jekk kenitx ta' *natura materjali*. Il-Qorti m'ghandhiex l-icken dubju li hekk hi l-illegalita' kommessa mill-istralcjarju ghaliex kif inhi s-sitwazzjoni llum, Evererdus Anthonius Marie Maas ma jistax jikseb it-trasferiment tal-ishma ta' Vastegoed's Gravenhage B.V. ghaliex illum Riverbank Limited hija *struck off*. Hija *materjali* mhux biss minhabba l-effetti negattivi li gab in-nuqqas tal-istralcjarju izda wkoll minhabba l-valur gholi hafna tal-assi involuti.

Il-Qorti tghid illi huwa sodisfatt ir-rekwizit tas-subinciz 2 tal-Art 300B. Daqstant iehor huwa sodisfatt ir-rekwizit tas-subinciz 3 ghaliex huwa evidenti ghal din il-Qorti li dak tal-lum huwa l-uniku rimedju ghad-disposizzjoni tar-rikorrent. L-istess ighodd ghas-subinciz 5 stante li r-rikorrent ittenta dan il-procediment fit-terminu stabbilit mil-ligi.

Ghar-rigward tal-posizzjoni tar-Registatur tal-Kumpanniji, din il-Qorti ma ssib propju x`ticcensura fl-operat tar-Registru tal-Kumpanniji fil-kaz tal-lum. Koxjenti minn dak li jghid is-subinciz 4 tal-Art 300B, il-Qorti hadet kont tal-fatt illi r-Registatur tal-Kumpanniji mhux qieghed joggezzjona illi l-isem tal-kumpannija Riverbank Limited

jerga` jitqiegħed fuq ir-Registru u l-istralc tagħha jerga` jigi miftuh sabiex l-assi in kwistjoni jghaddu għand ir-rikorrent kif kellu jsir mill-bidu. Ir-Registratur pero` jinsisti li dan il-process għandu jsir skond direttivi u kondizzjonijiet illi l-Qorti jidhrilha xieraq fic-cirkostanzi partikolari ta` l-kaz – senjatament li tistabilixxi terminu preciz u mprorogabbli sabiex l-istralc jigi rregolarizzat. Wara dak it-terminu, ir-Registratur ikun jista` jipprocedi sabiex l-isem tal-kumpannija jerga` jigi kancellat minn fuq ir-Registru mingħajr dewmien u b`hekk jigi evitat illi tinholoq incertezza fl-istatus tal-kumpannija jew pregudizzju versu terzi.

Decide

Għar-ragunijiet kollha premessi, il-Qorti, b`applikazzjoni tal-Art 300B tal-Kap 386 tal-Ligijiet ta` Malta, qegħda taqta` u tiddeciedi din il-kawza hekk –

- 1) Tilqa` l-ewwel talba.**
- 2) Tilqa` t-tieni talba u tordna li l-isem tal-kumpannija Riverbank Limited (C41066) jerga` jitqiegħed fuq ir-Registru tal-Kumpanniji.**
- 3) Tilqa` t-tielet talba u tordna li jerga` jinfetħ l-istralc tal-kumpannija Riverbank Limited (C41066).**
- 4) Riferibbilment ukoll għat-tielet talba, tordna lill-intimat Antonio Grech sabiex jerga` jassumi l-funzjonijiet, is-setgħat u l-obbligi kollha ta` stralcjarju tal-kumpannija Riverbank Limited (C41066).**
- 5) Riferibbilment kemm għat-tielet kif ukoll għar-raba` talba, tordna lill-intimat Antonio Grech**

Kopja Informali ta' Sentenza

sabiex, sa zmien erba` xhur mil-lum, jifformalizza u jirrendi effettiv ghall-finijiet u effetti kollha tal-ligi t-trasferiment favur il-mandant tar-rikorrent tal-ishma kollha illi Riverbank Limited (C41066) ghandha fil-kumpannija estera Vastegoed`s Gravenhage B.V. ta` Rijksstraatweg 324F, 2242 AB, Wasenaar, l-Olanda.

6) Tordna lill-intimat Registratur tal-Kumpanniji sabiex b`effett mill-14 ta` Marzu 2014, ihassar b`mod definittiv l-isem tal-kumpannija Riverbank Limited (C41066) mir-Registru tal-Kumpanniji.

8) Tordna lill-intimat Antonio Grech sabiex ibati l-ispejjez kollha ta` dan il-procediment.

Onor. Joseph Zammit McKeon
Imhallef

Fiona Gatt
Deputat Registratur

< Sentenza Finali >

-----TMIEM-----