



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tat-28 ta' Marzu, 2014

Appell Civili Numru. 974/2004/1

Olive Gardens Investments Limited

v.

Avukat Mark Busuttil u Prokuratur Legali Victor Bugeja

b'digriet tat-2 ta' Dicembru 2004 maħtura kuraturi deputati sabiex jidhru għal Robert Sant Fournier li hu assenti minn dawn il-Gżejjer; u Avukat Tonio Azzopardi u Prokuratriċi Legali Hilda Ellul Mercer b'digriet tal-14 ta' Ġunju 2005 maħtura kuraturi deputati sabiex jidhru għal Michelle Corinne Minter

u żewġha Geoffrey Howard Minter

li huma assenti minn dawn il-Gżejjer

u b'digriet tal-10 ta' Dicembru, 2013

Dr. Tonio Azzopardi u P.L. Hilda Ellul Mercer

bhala kuraturi deputati tal-konjugi Minter

gew estromessi mill-kawza

Il-Qorti:

Rat l-att tac-citazzjoni li pprezentat is-socjeta` attrici fil-15 ta' Dicembru, 2004,

li jaqra hekk:

“Peress illi b'konvenju datat tlieta u ghoxrin (23) ta' Mejju tas-sena elfejn u tlieta (2003) il-konvenut Robert Sant Fournier (li ghalih deher l-Avukat Dottor Pierre Lofaro) obbliga ruhu li jbiegh u jittrasferixxi lis-socjeta` attrici li accettat u obligat ruhha li tixtri u takkwista minghand l-istess Robert Sant Fournier l-immobbli imsemmija fil-konvenju fuq imsemmi, inkluz:

“*URBAN PROPERTY*

“*One sixth (1/6) undivided part of the following:*

Kopja Informali ta' Sentenza

- “1. *The shop at number one hundred (100) formerly number thirty nine (39) in Msida Street, Santa Venera, let at eighteen Malta liri (Lm18) per annum.*
- “2. *The tenement at number twelve (12) Alley number one (1) Our Lady of Sorrows Street, Hamrun, subject to one Maltese lira (Lm1) annual perpetual ground rent, let at sixteen Malta liri (Lm16) per annum.*
- “3. *The tenement at number fifteen (15) Mesquita Street, Mdina, let at fourteen Malta liri (Lm14) per annum.*
- “4. *The store at number sixteen (16) Mesquita Square, Mdina, let at thirty six Malta liri (Lm36) per annum.*
- “5. *The temporary directum dominium and annual temporary ground rent of one hundred and thirty Maltese liri (Lm130) for the remaining period of the lease of fifty (50) years which commenced on the twenty seventh (27th) day of May of the year one thousand nine hundred and seventy five (1975) and the full ownership thereafter as subject to its share of an annual perpetual ground rent of ten cents (10 cts) of the terraced house at number thirty eight (38) Annunciation Street, Sliema.*
- “6. *The temporary directum dominium and annual temporary ground rent of one hundred and twenty five Maltese liri (Lm125) for the remaining period of the lease of ninety (90) years which commenced on the twenty fourth (24th) day of May of the year one thousand nine hundred and sixty six (1966) and the full ownership thereafter of the house at number seventy three (73) and seventy four (74) Siren Street, Senglea as subject to a burthen of two Maltese liri and eighty five cents (Lm2.85) towards Saint Lawrence Church of Vittoriosa and one Maltese lira twelve cents and five mils (Lm1.12,5) towards the Cathedral Church of Malta.*
- “7. *The shop at number three hundred (300) Saint Paul Street, Valletta, let at one hundred and forty Malta liri (Lm140) per annum.*

- “8. *The shop at number two hundred and ninety nine (299) Saint Paul Street, Valletta, let at one hundred and forty Malta liri (Lm140) per annum.*
- “9. *The home at number two hundred and ninety eight (298) Saint Paul Street, Valletta. This house is vacant.*
- “10. *The shop known as “Benefit Shoe Store” at number fifty two (52) Saint John Street, Valletta, let at eight hundred and eighty Malta liri (Lm880) per annum.*
- “11. *The shop at number fifty four (54) formerly numbers fifty three and fifty four (53, 54) Sain Johnn Street, Valletta, let at two hundred and fifteen Malta liri (Lm215) per annum.*
- “12. *The garage at number ten (10) Luqa Briffa Street, Naxxar, let at thirty Malta liri (Lm30) per annum.*
- “13. *One undivided half ($\frac{1}{2}$) of the Chapel containing two graves situated at the Addolorata Cemetery of Casal Paola bearing number twenty six (26). Section West, Compartment CC.*
- “14. *The temporary utile dominium for the remaining period of the concession of one hundred and fifty (150) years which commenced on the eighty (8th) day of February of the year one thousand eight hundred and ninety three (1893) of the garage at number six (6) Balzan Valley, Balzan as subject to thirty one cents and seven mils (31c7m) being its share of an annual temporary ground rent, let at two hundred and thirty nine Malta liri and sixty cents (Lm239.60) per annum.*
- “15. *One third ($\frac{1}{3}$) undivided share of the mezzanine now demolished situated at number one (1) Prison Street, Vittoriosa.*

“RURAL PROPERTY

“One sixth ($\frac{1}{6}$) undivided part of the following:

“1. One third ($\frac{1}{3}$) undivided share of the field known as “Gnien Iz-Zebbug situated in the district of Hal-Mann within the limits of Hal-Lija measuring about three thousand two hundred and sixty square metres (3260.m²) containing a small rural room and an underground well, bordered on the East by property of Marquis Cassar Desain, on the South by property of Canon Isidoro Formosa or his assignees and on the North by property belonging to the Parish Church of Casal Lija, as shown on the plan hereto annexed and marked Enclosure "E" let at two Malta liri per annum (Lm2).

“2. One third ($\frac{1}{3}$) undivided share of the field known as "Ix-Xaghra Ta ' Tawwil" in the district of "Id-dar il-Hamra" at Zebbiegh within the limits of Mgarr, Malta, having an area of twenty five thousand eight hundred and forty square metres (25,840 m²), bordered on the East by property belonging to Concetta Grant or her assignees, on the South by a public road and on the west by property of the family Vella, as shown on the plans hereto annexed and marked Enclosures "F" and " G ", let at three Malta liri and twenty one cents (Lm3. 21) per annum.

“3. The field known as "il-Hotba ta' Dell" sive "Habel Delli" sive "Ta' Hal Dragu" in the district of Hal Dragu at Bidnija within the limits of Mosta measuring about eleven thousand six hundred and twenty five square metres (11625 m²), bordered on the East by property belonging to Giovanni Muscat or his assignees, on the West by a public road and on the South by property of the families Said and Micallef or their assignees, let at four Malta liri (Lm4) per annum, as shown on the plan hereto annexed and marked Enclosure “H”.

“4. The field known as "Tal-Bidnija" in the district known as "Tal-Hireb" at Bidnija in the limits of Mosta, having all area of about four thousand two hundred and twelve square metres (4212 m²), bordered on the North and West by Triq tal-Hzejjen and on the South by property belonging to Joseph Calleja or his assignees let at fifty nine cents (59cts) per annum, as shown on the plan hereto annexed and marked Enclosure "I".

“5. The field known as "Il-Bajada" situated in the district known as "Tal Garda" within the limits of Hal Ghaxaq, having an area of about nine thousand nine hundred and ninety two square metres (9992 m²), bordered on the East by Wied Kambu and by a public space, on the South by property belonging to the heirs of Nicola Cachia or their assignees and on the West by property belonging to the assignees of the late Lord Strickland, as shown on the plan hereto annexed and marked Enclosure “J”, let at two Malta liri (Lm2) per annum.

“6. The field known as "Ix-Xaghra Tal-Garda" situated in the district of the same name within the limits of Hal Ghaxaq, having an area of about thirty eight thousand and thirty two square metres (38032m²) bordered on the South-West by a public road, on the East and North by property belonging to the Noble Emilia Trapani Galea or her assignees and on the South by a public road, as shown on a plan hereto annexed and marked Enclosure "K". let at four Malta liri and fifty cents (Lm4.50).

“7. The temporary directum dominium for the remaining period of about twenty one (21) years and the relative temporary annual ground rent of twelve Maltese liri (Lm12) as well as the full ownership after the expiration of the said emphyteutical concession of the land known as "Ta' Blat il-Qamar" in the district of the same name within the limits of Siggiewi containing a farmhouse and having an area of about thirteen thousand nine hundred and eighty eight square metres (13988m²) bordered on the North by Triq Blat il-Qamar, on the East partly by Triq Patri Guseppe De/ia and partly by property belonging to the heirs of Nicola Borg and on the South by property belonging to Carmelo Vasa/lo and Salvatore E/lul or their assignees, as shown on the plan hereto annexed and marked Enclosure "L".

“8. The field known as "Ta' Bellu" in the district known as "Tal Providenza" within the limits of Siggiewi, having an area of about sixteen thousand two hundred and thirty six square metres (16236 m²) and containing three wells, bordered on the West by Triq Ta' Bel/lu, on the North by Wied tal-Lewza and on the east by property belonging to the family Delia or its assignees, let at fifteen Malta liri (Lm15) per annum, as shown on the plan hereto annexed and marked Enclosure "M".

“9. The territory known as "Ta' Santa Lucia" situated in the district "Ta' I-Mtarfa" within the limits of Mdina. This territory occupies a total area of about sixty one thousand and seventy two square metres (61072m²) and is situated to the South of "Il-Wied tal-Qlejgha". The whole territory consists of three separate adjoining fields sloping from East to West and is shown on an aerial photograph hereto annexed and marked Enclosure "N" as well as on the plans hereto annexed and marked Enclosure "O" and "P".

“The first field measures forty two thousand eight hundred and eighty two square metres (42882 m²), contains part of a farmhouse and is subject to seventy five cents and four mils (75c4m) annual perpetual ground rent as well as a burthen of one mass and one quartana of wine and is subject to the servitude in favour of neighbouring owners to water animals from the spring existing therein. This field is bordered on the East by property belonging to the heirs of Count Nicolo' Sciberras Bologna, on the west by property belonging to the Manduca family and in part by Triq Bingemma and on the South partly by Triq Bingemma and partly by property of the Stagno Family or their assignees.

“The second field measures seven thousand one hundred and seventy four square metres (7174 m²) is subject to an annual perpetual ground rent of three scudi and four tari as well as to a burthen of two Masses and one twelfth of the costs of the annual festivities of Santa Lucia and to the maintenance of the Church situated in the same district. The land enjoys the right of servitude to take water for animals for domestic purposes from a nearby fountain in third party property and is bordered on the East by a lane, on the South by property of the Sant Fournier family and on the North in part by a lane and in part by property belonging to the Manduca family.

“The third area consists of two adjoining fields one measuring four thousand nine hundred and thirty six square metres (4936m²) and the other measuring six thousand and eighty square metres (6080 m²) and are together subject to an annual burthen of four scudi four tari and four grana towards the Cathedral Church of Malta and together bordered on the east by a lane, on the North by property of the Sant Fournier family and by a lane and on the South by property belonging to Paolo Borg.

The whole territory is let at forty four Malta liri (Lm44) per annum.

“10. The one undivided half (J /2) share of the lands known as "It-Taxis" in the district known as "Pwales " within the limits of Saint Paul's Bay, having an area of about thirty five thousand and fourteen square metres (35014n/) which lands contain a farmhouse in that part of the area known as "Il-Gnien", four unnumbered garages and two rural rooms. The said land has the right to participate in the yields of spring water at "Il-Gnien" for twelve hours a week and another twelve hours on evelY third Sunday. The land is bordered on the South-East by the Simar natural reserve, on the North-East by Triq il-Hagra Wiegfa and on the East by property belonging to Augustinian Friary, as shown on the plan hereto annexed and marked Enclosure "Q" let at twenty six Malta liri and thirty seven cents (Lm26.37) per annum.

“11. The field known as “Ta’ Danda” in the district of “Ta’ Wied Sara” within the limits of Zebbug, Gozo , measuring about thirteen thousand seven hundred and eighty eight square metres (13788m²) and bordered on the south by Triq Wied Sara, on the West by property belonging to the heirs of Luigi Portelli and on the East by property belonging to the families Borg and Leonardini or their assignees, which field is subject to the right of way by foot and by beast in favour of third parties, as shown on the plan hereto annexed and marked Enclosure "R" , let at nine Malta liri (Lm9) per annum.

“12. One undivided half (1/2) of the lands known as "Ta' Bingemma" in the district of the same name within the limits of Mgarr, Malta, formerly within the limits of Mdina. The said property consists of the following parcels of land, namely:

“(a) a divided portion known as "Ix-Xaghra tar-Razzett", consisting of poor agricultural land of a superficial area of about eight thousand six hundred and sixteen square metres (8616m²) from which land there is a private path leading

to Bingemma Road;

“(b) another divided portion of land forming part of the lands called "Il-Gnien ta' Bingemma" having an area of about twenty eight thousand one hundred square metres (28,100m²), bounded together with the portion of land described under paragraph (a) which is contiguous, on the East by property of the Calleja family, on the South-East by property of the Apap Bologna family, on the South by a public unnamed road, on the West in part by property of the Cilia family, in part by property of Victor Bonello and in part by property of the Calleja family, on the North-West in part by a public road and in part by property of the Calleja family and on the North by several buildings and a small valley belonging to third parties, which lands are subject to their share of an annual and perpetual pious burthen.

“(c) two small portions of land the first having an area of about one thousand nine hundred and twenty eight square metres (1928m²) bounded on the East and South by the road known as "Tas-Santi " and on the North by property of the Calleja family, whilst the other portion of land has an area of about one thousand six hundred and forty seven point six square metres (1647.6m²) and is bounded on the East and South by Government property and on the West and North by the road known as "Tas-Santi", free and unencumbered.

“(d) A divided portion of land known as "Ic-Cens ta' fuq il Gnien iz-Zghir" having a superficial area of about five thousand and ninety four square metres (5094 m²) and is bounded on the east by a private path, on the West and South by the Victoria Lines and on the North by the cliffs and in part by property of unknown persons, free and unencumbered.

“All the said portions of land which are shown on the plan hereto annexed and marked Enclosure “S” are let at eleven Malta Liri (Lm11) per annum.

“GROUND RENTS

“One sixth (1/6) undivided share of the following:

“1. The perpetual sub-directum dominium and annual perpetual sub-ground rent of sixty Maltese liri (Lm60) a subject to twenty cents (20c) annual perpetual head ground rent imposed on the following property, namely:

“(a) Forty five Maltese liri (Lm45) imposed on house number four (4) Annunciation Square, Sliema.

“(b) Three Maltese liri (Lm3) imposed on tenement number thirty seven (37) Annunciation Street, Sliema.

“(c) Six Maltese liri (Lm6) imposed 011 tenement number thirty seven letter A (37 A) Annunciation Street, Sliema.

“(d) Six Maltese liri (Lm6) imposed on tenement number thirty seven letter B (37B) Annunciation Street, Sliema.

"2. *The perpetual directum dominium and relative annual perpetual ground rent of fifteen cents (15c) imposed on tenement number thirteen (13) Saint George Street, Cospiscua.*

"3. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of one hundred and two Maltese liri and thirty three cents (Lm102.33) as subject to a head ground rent of one hundred and twenty three Malta liri and ninety six cents (Lm123.96), imposed on several tenements built on the land at Birkirkara known as "Tal-IFniek" having a superficial area of about six thousand seven hundred and forty four square metres (6744 m²) bordered on the East by Fleur de Lys Road, on the South by property of the Reverend Giuseppe Borg Buttigieg or his successors in title and on the North by property of Doctor Francis Buttigieg or his successors in title and on the North by property of Doctor Francis Buttigieg or his successors in title.*

"4. *The perpetual directum dominium and relative annual perpetual ground rent of one Malta lira and thirty seven cents (Lm1.37) imposed on tenement number twenty three (23) Saint Ignatius Junction, Sliema.*

"5. *The perpetual directum dominium and relative annual perpetual ground rent of three Malta liri sixty seven cents and five mils (Lm3.67.5) imposed on tenement number twenty four (24) Saint Ignatius Junction, Sliema named "Alice House".*

"6. *The perpetual directum dominium and relative annual perpetual ground rent of five Malta liri (Lm5) imposed on tenement number one hundred and forty seven (147) Blanche Street, Sliema.*

"7. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of ninety Maltese liri (Lm90) as subject to seventy Maltese liri (Lm70) head ground rent imposed on various tenements in Hamrun along Villambrosa Street, Canon F. Bonnici Street, P.P. Mifsud Street, Depiro Street and Garden Street all built on a plot of land originally measuring about eight thousand five hundred square metres (8500m²) and bordered on the East by Government property, on the West by Villambrosa Street and on the South in part by property of Saint Augustine Friary of Valletta and in part by a lane.*

"8. *The perpetual sub-directum dominium and relative annual perpetual ground rent of forty two Maltese liri and fifty two cents (Lm42.52,0) as subject to a head ground rent of ten Maltese liri (Lm10) payable to the Mensa Filippina of the Collegiate Church of Birkirkara imposed on various tenements in Balzan along Main Street, Pope Urbanus Street and Pope Pius XII Street, all built on part of the lands known as "Tal-Lewza" originally covering an area of one thousand nine hundred and thirty seven square metres (1937m²) and bordered on the South by Main Street, on the East by Pope Pius XII Street and on the West by Pope Urbanus Street.*

“9. *The temporary sub-directum dominium and relative annual sub-ground rent for the remaining period of the concession of one hundred and fifty (J 50) years with effect from the eight (8th) day of February of the year one thousand eight hundred and ninety three (1893) of eleven Malta liri and seventy five cents (Lm11.75,0) as subject to a head ground rent of seven Malta liri and eighty one cents (Lm7.81,0) payable to the Mensa Filippina of the Collegiate Church of Birkirkara, imposed on Miami Flats at number four (4) Valley Road, Balzan.*

“10. *The perpetual sub-directum dominium and relative annual perpetual sub-ground rent of one hundred and twenty one Malta liri and fifteen cents (Lm121.15,0) as subject to a head ground rent of seventy seven Malta liri and fifty cents (Lm77.55,0) imposed on the lands known as "Ta Wara il-Bjut" sive "Tal-Merghi" sive "Ta'-Busiatt" at Naxxar originally measuring nineteen thousand one hundred and thirty one square metres (19131m²) bordered on the North and South by public roads and on the West by property of the Parish Church of Naxxar or its assignees.*

11. *The one undivided half (1/2) of the temporary sub-directum dominium and relative annual temporary sub-ground rent of five Malta liri (Lm5) for the remaining approximately forty four (44) years of the original concession imposed on a plot of land forming part of the territory known as "Ta' Wara il-Knisja" at Saint Julians having an area of about one hundred and eight five square metres (185m²) and containing a lime kiln bordered on the West by Mensija Road, on the North by property of Giuseppe Attard and on the East by a new road.*

12. *The one undivided half (1/2) of the temporary sub-directum dominium and relative annual temporary sub-ground rent of five Malta liri twenty cents and eight mills (Lm5.20, 8) for the remaining approximately forty four (44) years of the original concession imposed on a plot of land forming part of the territory known as "Ta' Wara il-Knisja" at Saint Julians having an area of about one hundred and eighty three square metres (183m²), bordered on the West by Mensija Road, on the North-East and North- West by property of the assignees of the family Sant Fournier."*

“u dan versu l-prezz u l-pattijiet u l-kondizzjonijiet stipulati fl-istess konvenju, fosthom li s-socjeta attrici jkollha d-dritt li tissostitwixxi minflokha terza persuni/terzi persuni in toto jew in parte fuq il-kuntratt finali; kopja ta' liema konvenju qeghda tigi esibita u mmarkata dokument A.

“Peress illi l-konvenut Robert Sant Fournier naqas milli jaddivjeni ghall-pubblikazzjoni tal-kuntratt definittiv relattiv ghat-trasferiment ta' 1-

immobbli mertu ta' l-imsemmi konvenju tat-23 ta' Mejju 2003 nonostante l-fatt illi, qabel id-data ta' l-iskadenza ta' l-istess konvenju, gie debitament interpellat skond il-ligi ghal dan l-iskop mis-socjeta attrici, inkluz permezz ta' ittra ufficcjali datata 12 ta' Novembru 2004.

“Peress illi s-socjeta attrici trid tixtri minghand il-konvenut Robert Sant Fournier l-imsemmija immobbli kif gie miftiehem permezz tal-konvenju tat-23 ta' Mejju 2003.

“Peress illi s-socjeta attrici ghadu kif irrizultalha li waqt li kien ghadu jorbot l-imsemmi konvenju l-konvenut Robert Sant Fournier (li ghalih deher bi prokura l-konvenut l-iehor Geoffrey Howard Minter) abusivament biegh l-immobbli mertu ta' l-istess konvenju tat-23 ta' Mejju 2003 lill-konvenuta ohtu Michelle Corinne Minter b'kuntratt ta' l-4 ta' Mejju 2004 fl-atti tan-Nutar Dottor Joseph Tabone (Dok B).

“Peress illi dan il-bejgh sar b'qerq, sabiex il-konvenut Robert Sant Fournier bil-kolluzjoni u l-komplicita` ta' ohtu u r-ragel taghha jevadi l-obbligazzjonijiet tieghu lejn is-socjeta attrici.

“Jghidu ghalhekk il-konvenuti l-ghaliex, ghar-ragunijiet premessi, m'ghandux minn din il-Qorti:-

“1. Jigi dikjarat u deciz illi l-bejgh li sar b'kuntratt ta' l-4 ta' Mejju 2004 fl-atti tan-Nutar Dottor Joseph Tabone bejn l-ahwa l-konvenut Robert Sant Fournier u Michelle Corinne Minter sar b'qerq, sabiex il-konvenut Robert Sant Fournier bil-kolluzjoni u l-komplicita ta' l-istess ohtu u r-ragel taghha, l-konvenut Geoffrey Howard Minter, jevadi l-obbligazzjonijiet tieghu lejn is-socjeta attrici.

“2. Konsegwentament tordna r-rexissjoni ta' l-istess kuntratt ta' l-4 ta' Mejju 2004 u ghal dan l-iskop jigi nominat Nutar sabiex jippubblika l-kuntratt relattiv fil-lok, jum u hin li jigu wkoll stabbiliti u kuraturi nominati biex jirrappresentaw lill-eventwali kontumaci fuq l-istess kuntratt u dan taht dawk l-provvedimenti l-ohra li din l-istess Qorti jghogobha taghti.

“3. Konsegwentement jigi l-konvenut Robert Sant Fournier ordnat sabiex, fi zmien qasir u perentorju li jigi lilu prefiss, jaddivjeni ghall-kuntratt relattiv ghat-trasferiment minnu favur is-socjeta attrici tal-immobbli mertu ta' l-imsemmi konvenju tat-23 ta' Mejju 2003 u dan versu l-pattijiet u l-kondizzjonijiet stipulati fl-istess konvenju

“4. Jigi nominat Nutar sabiex jippubblika l-kuntratt relattiv fil-lok, jum

u hin li jigu wkoll stabbiliti u kuraturi nominati biex jirrappresentaw lill-eventwali kontumaci fuq l-istess kuntratt u dan taht dawk l-provvedimenti l-ohra li din l-istess Qorti jghogobgha taghti.

“5. F'kaz li t-talbiet precedenti ma jistghux jintlaqghu u/jew waqt il-mori tal-kawza jirrizulta illi l-konvenut ma jkunx jista' jwettaq l-obbligazzjonijiet kollha minnu assunti fl-imsemmi konvenju tat-23 ta' Mejju 2003, inkluz minhabba l-agir abbusiv fuq imsemmmi tieghu u tal-konvenuti l-ohra, jigi minn din il-Qorti dikjarat u deciz illi s-socjeta attrici sofriet danni li ghalihom huma responsabbli l-konvenuti kollha jew min minnhom.

“6. Jigu likwidati dawn id-danni hekk sofferti mis-socjeta attrici, okkorrendo bl-opera ta' perit nominand; u

“7. Jigu l-konvenuti, jew min minnhom, ikkundannati jhallsu dawn id-danni hekk likwidati lis-socjeta attrici.

“Salv kull dritt iehor spettanti lis-socjeta attrici fil-konfront tal-konvenuti u bl-ispejjez, inkluz dawk ta' l-ittra ufficjali tat-12 ta' Novembru 2004, kontra l-konvenuti; li huma minn issa ngunti sabiex jidhru in subizzjoni.”

L-Avukat Dottor Tonio Azzopardi u l-Prokuratur Legali Hilda Ellul Mercer, li gew mahtura kuraturi deputati sabiex jirrapprezentaw lill-konvenuti Michelle Corinne Minter u zewgha Geoffrey Howard Minter, eccepew illi huma m'humiex edotti mill-fatti tal-kaz u ghalhekk irriservaw li jressqu l-eccezzjonijiet tagghom fi stadju ulterjuri;

L-Avukat Dottor Mark Busuttil u l-Prokuratur Legali Victor Bugeja, li gew mahtura kuraturi deputati sabiex jirrapprezentaw lill-konvenut Robert Sant Fournier, ukoll eccepew illi huma m'humiex edotti mill-fatti u irriservaw id-dritt li jipprezentaw l-eccezzjonijiet tagghom fi stadju ulterjuri;

Rat illi wara li saret notifika tal-atti lill-konvenuti mizzewwgin Minter personalment, dawn ressqu s-segweni eccezzjonijiet:

- “1. Illi t-talbiet attrici huma nfondati fil-fatt u fid-dritt;
- “2. Illi l-eccipjenti ma kkagunaw l-ebda dannu lis-socjeta` attrici u m'humix responsabbli ghal ebda dannu fil-konfront taghha;
- “3. Illi l-eccipjenti dejjem aggixxew skont il-ligi u in buona fede;
- “4. Illi jekk kien hemm xi qerq jew agir abbusiv hija attribwibbli lis-socjeta` attrici li mponiet termini u kundizzjonijiet ta' bejgh li tant huma inequi ghal venditur li sahsitra jikkagunaw in-nullita` tal-istess konvenju mertu ta' din il-kawza;
- “5. Illi l-Konvenju bejn is-socjeta` attrici u Robert Sant Fournier kien null u bla effett fil-ligi abbazi ta' inter alia l-Artikoli 974,981 u 1056 tal-Kap. 16 tal-Ligijiet ta' Malta;
- “6. Illi, minghajr pregudizzju ghas-suespost, il-konvenju bejn is-socjeta` attrici u Robert Sant Fournier kien skada u ghalhekk ma kien hemm l-ebda obligu da parti ta' Robert San Fornier li jikkonkludi l-att ta' bejgh finali mas-socjeta` attrici,. Infatti l-konvenju ma stipulax terminu u ghalhekk skont l-Artikolu 1357 tal-Kap. 16 tal-Ligijiet ta' Malta t-terminu tal-konvenju kien ta' tlett xhur li beda jiddekorri mit-23 ta' Mejju 2003 u li ghalhekk skada nhar it-22 ta' Awwissu 2003;
- “7. Illi minghajr pregudizzju ghas-suespost l-eccipjenti Michelle Minter tirrileva li hija kienet baghtet ittra ufficjali nhar it-23 ta' Gunju 2003, hawn anness bhala Dokument M1, lil, inter alia, s-socjeta` attrici fejn hi nfirmathom li hi proprjetarja ta' sehem wiehed minn sitta ($\frac{1}{6}$) tal-wirt tal-mejjet Konti Charles Sant Fournier. Illi kienet wassletilha informazzjoni li kien gie ffirmat konvenju bejn is-socjeta` attrici u l-ahwa James u Charles Sant Fournier in kwantu huma flimkien proprjetarji ta' terz ($\frac{1}{3}$) indiviz tal-imsemmi wirt, kif ukoll li permezz ta' konvenju iehor

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hu l-eccipjenti Michelle Minter, Robert Sant Fournier, kienu wegħdu li jbieghu sehemhom indiviz mill-imsemmi wirt lis-socjeta` attrici. U illi fil-kaz li jsehh it-trasferiment hi kienet ser tezcita d-drittijiet kollha nkluz dak tal-irkupru spettanti lilha bhala werrieta tal-istess wirt skont inter alia l-Artikolu 912 tal-Kodici Civili kap. 16 tal-ligijiet ta' Malta. Illi f'dan ir-rigward l-eccipjenti Michelle Minter qegħda zzomm fem dawn id-drittijiet fil-kaz ta' ezitu sfavorevoli fid-determinazzjoni tal-mertu ta' din il-kawza.

“8. Salv eccezzjonijiet ulterjuri.”

Rat is-sentenza mogħtija mill-Prim' Awla tal-Qorti Civili fl-4 ta' Mejju, 2010, li in forza tagħha, wara li qieset li l-konvenju meritu tal-kawza “ma baqax jorbot”, caħdet it-talbiet tas-socjeta` attrici u kkundannatha thallas l-ispejjez kollha tal-kawza;

Dik il-Qorti tat is-sentenza tagħha wara li għamlet is-segħwenti konsiderazzjoniet:

“7. Il-fatti rilevanti ta' din il-kawza seħnew hekk: B'konvenju tat-23 ta' Mejju 2003 il-konvenut Robert Sant Fournier kien intrabat li jbigħ ishma mhux maqsuma ta' proprjeta` immobbli lis-socjeta` attrici; din il-proprjeta` effettivament kienet seħmu minn wirt li fih għandha seħem ukoll il-konvenuta Minter. Billi l-attrici riedet tikseb l-ishma kollha, mhux biss dawk tal-konvenut Sant Fournier, fil-konvenju tnizzel ukoll dan il-patt:

“This promise of sale is subject to the condition that the Purchaser acquires all the undivided portions of the immovables above described The Purchaser may renounce to this condition. The final deed shall be published within two months from when the purchaser acquires the aforementioned undivided portions or within two months [sc. from] when he notifies the Vendor in writing that he has renounced to the said condition.”

“8. Billi din il-kawża tallum hija mibnija fuq l-obbligazzjonijiet li joħorġu minn dan il-konvenju, huwa meħtieġ li qabel xejn naraw jekk, meta nfetħet il-kawża, il-konvenju kienx għadu jorbot.

“9. Skond il-ftehim il-konvenju kellu jorbot għal xahrejn minn meta jew (a) tkun seħħet il-kondizzjoni illi l-attriċi tikseb l-ishma l-oħra mhux maqsuma tal-wirt jew (b) tkun irrinunzjat għal dik il-kondizzjoni. Ma hemmx iżda ftehim dwar sa meta kellha sseħħ il-kondizzjoni jew sa meta l-attriċi kellha tirrinunzja għaliha. F’dan in-nuqqas – billi l-konvenju ma jistax jibqa’ jorbot *ad infinitum* sakemm isseħħ il-kondizzjoni jew l-attriċi tirrinunzja għaliha – il-kondizzjoni kellha sseħħ jew l-attriċi kellha tirrinunzja għaliha fiż-żmien ta’ tliet xhur imsemmija fl-art. 1357(2) tal-Kodiċi Ċivili. Jekk ma jkun sar xejn f’dawk it-tliet xhur il-konvenju ma jibqax jorbot.

“10. It-tliet xhur għalqu fit-23 t’Awissu 2003, u wara dakinhar il-konvenju ma baqax jorbot. Fil-każ tallum, l-att ġudizzjarju li l-art. 1357(2) irid li jkun sar qabel ma jagħlaq il-konvenju sar biss fit-12 ta’ Novembru 2004 – sew wara li għalaq il-konvenju. L-effett tal-konvenju bħala wegħda ta’ bejgħ għalhekk spiċċa, u l-attriċi ma tistax iżjed tgħid illi hija kreditriċi ta’ obbligazzjoni tal-konvenut Sant Fournier li jbigħilha l-proprjetà: la tista’ titlob li jithassar il-bejgħ li tgħid li sar b’qerq tal-kreditu tagħha – għax kreditriċi ma hijiex – u lanqas tista’ titlob illi titwettaq il-wegħda ta’ bejgħ għax il-wegħda ma għadx għandha effett.”

Rat ir-rikors tal-appell tas-socjeta` attrici li in forza tagħha, għar-ragunijiet minnha premissi, talbet li:

“... .. s-sentenza mogħtija mill-Prim’ Awla tal-Qorti fl-4 ta’ Mejju 2010 fil-kawża fl-ismijiet Olive Gardens Investments Limited versus Avukat Mark Busuttil et noe et fuq riferfa tigi minn din l-Onorabbli Qorti revokata, imhassra u annullata u, wara li din l-Onorabbli Qorti tagħmel hekk, tirmetti l-atti tal-kawża quddiem il-Qorti tal-ewwel grad sabiex din tiddeciedi dwar it-talbiet attrici wara li tiehu wkoll kont tal-eccezzjonijiet sollevati mill-konvenuti appellati; bl-ispejjez taz-zewg istanzi kontra l-istess konvenuti appellati.”

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Rat ir-risposta ta' Michelle Corinne Minter u ta' zewgha Geoffrey Howard Minter li in forza taghha, ghar-ragunijiet minnhom premissi, qalu li s-sentenza appellata ghandha tigi kkonfermata, bl-ispejjez kontra s-socjeta` attrici;

Semghet lid-difensuri tal-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Ikkonsidrat:

Illi din il-kawza ddur madwar konvenju ffirmit fit-23 ta' Mejju, 2003, li bih il-konvenut Sant Fournier obbliga ruhu li jbiegh lis-socjeta` attrici, li ntrabtet li tixtri minghandu, proprjeta` immobbli f'diversi partijiet ta' Malta. Is-socjeta` qed tfittex li tenforza dan il-ftehim peress li l-konvenut venditur naqas li jersaq ghall-pubblikazzjoni tal-att relattiv. L-ewwel Qorti cahdet it-talbiet attrici a bazi tal-fatt li, skont hi, il-konvenju skada u ma baqax jorbot. Hi qalet illi fil-konvenju ma hemmx ftehim dwar sa meta kellha ssehh il-kundizzjoni patwita, u kwindi, skont l-artikolu 1357(2) tal-Kodici Civili, iz-zmien huwa ta' tlett xhur, u la darba ma sar xejn f'dawk it-tliet xhur, il-konvenju skada.

Mis-sentenza appellat is-socjeta` attrici, u bl-ezami li ghamlet tal-artikoli tal-ligi u l-gurisprudenza in materja, din il-Qorti jidhriilha li s-socjeta` attrici appellanti ghandha ragun. Il-klawsola rilevanti fil-konvenju hija l-klawsola 5 li tipprovdi kif gejj:

“This promise of sale is subject to the condition that the Purchaser acquires all the undivided portions of the immovables above described belonging to the heirs of the Vendor’s uncle (Guido Sant Fournier), the Vendor’s aunt (Mary Micovic nee Sant Fournier) and the Vendor’s sister Michelle Corinne Minter. The Purchaser may renounce to this condition. The final deed shall be published within two months from when the Purchaser acquires the aforementioned undivided portions or within two months when he notifies the Vendor in writing that he has renounced to the said condition.” (enfasi mizjuda)

Mill-premess, jirrizulta li l-obbligazzjoni hemm patwita hija soggetta ghall-kundizzjoni sospensiva, u skont l-Artikolu 1063 (2) tal-Kodici Civili, obbligazzjoni taht kundizzjoni sospensiva ma tezistix qabel ma l-grajja tigrigi. Mela, l-effetti tal-obbligazzjoni huma sospizi, sa ma ssehh il-kundizzjoni. Kif jghid it-Torrente (“Manuale di Diritto Privato” 9° Ediz. pagna 236), *“durante la pendenza della condizione sospensiva il diritto che deriva del negozio non e` ancora nato, ma vi e` la possibilita` che esso nasca”*. La darba l-effetti tal-obbligazzjoni naxxenti mill-konvenju huma sospizi, il-kuntratt ta' trasferiment ma jistax isir, u jekk ma jistax isir, l-Artikolu 1357(2) tal-Kodici Civili, li fuqu strahet l-ewwel Qorti, ma japplikax, ghax dan l-artikolu jipprovdi li l-effett tal-konvenju jispicca, jew fiz-zmien li jipprovdu l-partijiet, jew fin-nuqqas, *“meta jghaddu tliet xhur minn dak in-nhar li l-biegh ikun jista' jsir”*. Kwindi, jekk il-

bejgh ghadu ma jistax isir, ghax il-kundizzjoni ghadha ma sehhiex, allura it-terminu ghadu ma bediex jghaddi. F'dan il-kaz, il-partijiet ftehm u biex il-kuntratt isir fi zmien xahrejn minn dak inhar li l-bejgh ikun jista' jsir, u allura zgur li t-tliet xhur imsemmi fl-Artikolu 1357(2) ma japplikax.

Jibqa' dejjem il-punt li t-terminu fil-konvenju hu marbut ma' kundizzjoni sospensiva, u qabel ma ssehh dik il-kundizzjoni, iz-zmien ma jibdiex jiddekorri. Sa meta wiehed ghandu jistenna biex jara jekk il-kundizzjoni ssehhx jew le, ma giex miftiehem, u allura japplika l-Artikolu 1058(2), u l-proviso relativ, tal-Kodici Civili, li jiddisponi kif gej:

“(2) Jekk ma jkunx hemm zmien stabblit, il-kundizzjoni ma titqiesx li ma sehhitx hlief meta hu zgur li l-grajja ma tigrax:

Izda, jekkk il-kundizzjoni tkun tikkonsisti f'xi haga li tista; tigi maghmula minn dak li favur tieghu l-obbligazzjoni tkun saret, il-Qorti tista' skont ic-cirkostanzi, taghti zmien ghall-esekuzzjoni tal-kondizzjoni, u jekk, meta jaghlaq dak iz-zmien, il-kundizzjoni ma tkunx sehhet, l-obbligazzjoni tispicca.”

(ara **Cutajar v. Mifsud**, deciza minn din il-Qorti fid-9 ta' Marzu, 2007 u **Frendo v. Agius**, deciza wkoll minn din il-Qorti fl-1 ta' Frar, 2008, fejn intqal li l-konvenju jibqa' validu u “*ma kienx hemm bzonn li l-konvenju jigi riattivat ladarba l-kundizzjoni sospensiva tkun ghadha ma avveratx ruhha.*”

F'dan il-kaz, ma ttiehdu ebda proceduri biex qorti tiffissa zmien għall-esekuzzjoni tal-kondizzjoni, u allura, la l-kondizzjoni ma sehhitx u ma jistax jinghad li zgur mhux sejra ssehh, iz-zmien għall-esekuzzjoni tal-kuntratt għadu ma bediex jiddekorri. (ara **N.I.B. Co. Ltd. et v. Bugeja**, deciza minn din il-Qorti fis-6 ta' Settembru, 2010). Ma jistax jinghad, allura, li dan il-konvenju ma baqax jorbot.

Fl-istess sens intqal mill-Prim' Awla tal-Qorti Civli fil-kaz **Olive Gardens Investements Ltd. v. Grech**, deciza fid-29 ta' April, 2010, u dan f'kuntest simili. Dik il-Qorti ghamlet is-segweni osservazzjonijiet a propozitu:

“Illi m’hemm l-ebda dubju li l-konvenju mertu ta’ din il-kawża kien sugġett għal għadd ta’ kundizzjonijiet ta’ sura sospensiva, minħabba li l-obbligazzjoni li jseħħ il-bejgħ kienet tiddependi minn għrajiet li kienu għadhom iridu jsseħħu u li ma kenitx haġa żgura jekk humiex se’ jseħħu. Għalhekk, qabel ma dawk il-ġrajja jseħħu, l-obbligazzjoni ma teżistix. Ladarba l-partijiet ma tawx żmien sakemm dawk il-ġrajja kellhom jiġru, allura kellha tgħodd ir-regola li l-kundizzjoni ma titqiesx li ma seħhitx flief meta huwa żgur li l-ġrajja m’hijix sejra tiġri;

.....Omissis.....

“Illi, fil-kaz tal-lum, huwa minnu li l-partijiet fuq il-konvenju ma stabilew l-ebda żmien sakemm l-imsemmija kundizzjonijiet kellhom jitqiesu li se’ jiġru jew li mhux se’ jiġru. F’dan ir-rigward jgħodd dak li tipprovdni l-liġi f’kazijiet bħal dawn u l-liġi tagħmilha ċara li l-obbligazzjoni titqies mitmuma biss jekk kemm-il darba ż-żmien għall-esekuzzjoni mogħti minn Qorti fuq talba ta’ xi waħda mill-partijiet, jgħaddi bla ma tkun seħħet dik il-kundizzjoni. Il-partijiet rabtu t-tul taż-żmien tal-konvenju sewwasew ma’ dak inhar li l-ġrajjet kundizzjonali jseħħu. Il-Qorti tifhem għalhekk li f’kaz bħal dan l-ebda parti ma għandha tiddeciedi waħedha li dawk il-kundizzjonijiet m’humiex sejr in iseħħu jew li l-

obligazzjoni tkun waqgħet għaliex għadda żmien u ma ġara xejn. F'dan ir-riward, taqbel mas-sottomissjonijiet ta' OGIL u tqis li l-parti m'harrka ma setgħetx tarroga għaliha l-jedd li tqis li r-rabta ma'fluqa bil-konvenju kienet intemmet, bla ma tikseb id-dikjarazzjoni ġudizzjarja li tgħti żmien xieraq għall-eżekuzzjoni ta' dawk il-kondizzjonijiet. Huwa biss meta jgħaddi dak iż-żmien li l-partijiet jinħallu mill-obligazzjoni li jkunu dañlu għaliha. U huwa minn dak inhar 'il quddiem li jibda jgħodd iż-żmien li l-partijiet ikunu taw għall-ħajja tal-konvenju jew, fin-nuqqas ta' żmien speċifiku mogħti, ż-żmien imsemmi fl-artikolu 1357(2) tal-Kodiċi;

“Illi fid-dawl ta' dawn il-kunsiderazzjonijiet, il-Qorti hija tal-fehma li ma jistax jingħad li l-konvenju kien waqa' għal nuqqas ta' twettiq tal-kundizzjonijiet fiż-żmien miftiehem. Lanqas ma jista' jingħad li l-konvenju kien wieħed “għal dejjem bla ma jagħlaq”. Il-kliem tal-klawsola 11 tal-konvenju, fil-fehma tal-Qorti, kien jagħti żmien lill-partijiet li kull waħda minnhom setgħet, bil-mezzi xierqa u mhux unilateralment, tiddetermina bla ma tħalli r-rabta ma'fluqa bil-konvenju ffirmat bejniethom imdendla għal dejjem. B'mod partikolari, l-Qorti ma tistax taqbel mal-argument tal-parti m'harrka li n-nuqqas ta' tħabrik min-naħa ta' OGIL kien jissarraff f'dikjarazzjoni li l-kundizzjonijiet sospensivi imdañhla fil-konvenju kien żgur li m'humiex se' jseñhu;”

F'dan il-kaz, patt ta' sospensjoni tat-terminu legali gie espressament inkluz fil-konvenju, u bhala patt sostanzjali hekk kellu jsir (ara Kollez. Vol. XXXIV.I.280). L-Artikolu 1058(2) jagħti fakulta` lill-parti interessata, bil-mezzi xierqa u mhux unilateralment, tiddetermina bla ma thalli r-rabta mahuqa bil-konvenju ffirmat bejniethom imdendla ghal dejjem. Jekk il-konvenju jibqax jorbot ad infinitum mhux mehtieg jigi trattat f'din il-kawza, peress li dawn il-proceduri huma intizi ghad-determinazzjoni tal-materja; bizzejjed jinghad li din il-Qorti fil-kawza **Vella noe v. Farrugia et**, deciza fid-9 ta' Ottubru, 2001, ma qablitx li konvenju soggett ghal kundizzjoni sospensiva jwassal għall-konvenju b'”*perjodu indefinit jew perpetwu*”, ghalkemm ma ppronunzjatx ruhha, ghax ma kienx mehtig, fuq

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iz-zmien tal-validita` ta' skrittura li ghandha forma ta' konvenju. Lanqas f'dan il-kaz, almenu f'dan l-istadju, ma hu mehtieg li din il-Qorti tesprimi xi decizjoni fir-rigward. Li qed jinghad biss hu li l-konvenju in kwistjoni ma skadiex, u dak li, effettivamente gie exceptit fis-sitt eccezzjoni tal-konvenuti konjugi Minter, ma hux fondat.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell interpost mis-socjeta` attrici billi tilqa' l-istess, thassar u tirrevoka s-sentenza tal-ewwel Qorti, u fil-waqt li tiddeciedi li l-konvenju ma skadiex, tichad is-sitt eccezzjoni tal-konvenuti konjugi Minter, u tirrinvoja l-atti lill-ewwel Qorti biex din tkompli tisma' l-kaz.

L-ispejjez tal-kawza marbuta ma' dan l-incident jithallsu mill-konvenuti konjugi Minter.

< Sentenza Finali >

-----TMIEM-----