



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

ANTHONY ELLUL

Seduta tal-5 ta' Mejju, 2014

Citazzjoni Numru. 813/2011

Lopoca Gaming Ltd

Vs

**Camaran s.r.o, numru ta' Registrazzjoni gewwa r-Repubblika Ceka
28952260**

Permezz ta' rikors guramentat prezentat fid-19 ta' Awissu 2011 l-attrici ppremettiet li topera fis-settur tal-loghob mill-ufficju 238, Suite A, Dolphin Court A, Embassy Way, Ta' Xbiex XBX 1071, Malta. Qalet ukoll li l-kumpannija konvenuta hi kumpannija registrata fir-Repubblika Ceka u li fl-1 ta' Lulju 2010 il-partijiet iffirmaw ftehim, *General Agreement for Acting as Distributor*, li bih il-konvenuta giet inkarigata sabiex tagixxi bhala distributtur tas-socjeta attrici fir-Repubblika Ceka ghall-gbir ta' abbonamenti ta' membri tal-loghob ta' azzard tas-socjeta attrici. Is-servizzi li kellha

taghti s-socjeta konvenuta kienu jinkludu l-gbir ta' flus ta' membri u r-registrazzjoni tal-membri fil-website ta' Lopoca. Imbghad il-flus li jingabru minghand il-membri kellhom jigu depozitati fil-kont tal-membri ta' Lopoca fl-ahhar tax-xahar, skond klawzola 4 tal-ftehim. Irrizulta li l-konvenuta ma kenitx qeghda tiddepozita l-flus. F'ittra tal-5 ta' Gunju 2011, il-konvenuta baghatet risposta ghall-ittra tal-attrici, u fiha rrikonoxxiet li hi debitrice tal-attrici izda kkontestat l-ammont dovut. L-attrici ssostni li hi kreditrici fis-somma ta' hames mija u erbgha u sebghin elf mija u tlieta u erbghin ewro u erbgha u erbghin centezmu (€574,143.44). Ghalhekk l-attrici talbet li l-konvenuta tigi kkundannata thallasha s-somma ta' hames mija u erbgha u sebghin elf mija u tlieta u erbghin ewro u erbgha u erbghin centezmu (€574,143.44) jew kull ammont iehor li jirrizulta dovut, rapprezentanti flus migbura mill-konvenuta fl-interess tal-attrici u dovuti fit-termini tal-ftehim.

Jirrizulta li l-konvenuta giet notifikata (ara certifikat ta' notifika skond ir-regolament 1392/2007 a fol.159).

Skond il-ftehim iffirmit fl-1 ta' Lulju 2010, il-konvenuta kellha tipprovdi dawn is-servizzi:-

"a) The Distributor (il-konvenuta) undertakes to search the market on behalf of Lopoca in the Territories, in order to attract and accommodate new customers/players that might be interested about Lopoca, to register to Lopoca's website with Lopoca pursuant the approval of Lopoca.

b) Lopoca authorizes the Distributor to collect money from potential Members and registering them with Lopoca's website."

Lopoca kellha tithallas lill-konvenuta, mizata ta' €16,500 fix-xahar u €9 ghall kull membru.

Ghall-attrici xehedu:

- i. **Symeon Mantzouranos** (fol. 176) li spjega li perjodikament il-konvenuta kienet taghti rendikonti lill-attrici tal-ammonti ta' flus li kienu qeghdin jigu kreditati fil-kont bankarju taghha dwar 'newly registered members'. Kompla jghid li *"In total we received 46 of such account statements, with detailed information such as the receiving date, time, amount, name of customer and username"*. Qal li l-ammont ta' flus li l-konvenuta gabret ghan-nom tal-attrici hu €679,544 u li minnu tnaqqset is-somma ta' €5,893.56 *"paid bank fees and the wire transfer charges that Camaran s.r.o. effected to Lopoca"*, u tlettax-il depozitu minghand Camaran lil Lopoca (€130,000) bejn it-30 ta' Settembru 2010 sas-16 ta' Novembru 2010. Qal ukoll li mill-ammont dovut tnaqqset is-somma ta' €9 ghal kull membru li rregistra tramite Camara; *"A total of 723 users were registered,*

*so we subtracted from the total outstanding amount €6,507". Fl-affidavit semma wkoll somma ta' €37,000 li jghid li thallset is-somma ta' €37,000 lil tlieta min-nies ghal negozju iehor ta' Camaran (*sportsbetting*) u li kellha tithallas lura lil Lopoca. Ma jidhirx li dan il-hlas pretiz ghandu x'jaqsam mal-kuntratt ta' distributorship li ffirmaw il-partijiet fl-1 ta' Lulju 2010 (fol. 23).*

ii. **Klaus Jorg Saurugger** li qal:

"I confirm that on the 1st July 2010 acting in my capacity as director of Lopoca I signed the General Agreement for Acting as Distributor (the Agreement)... Mr Kurtz, was acting for and on behalf of Camaran. By virtue of this agreement, Camaran was appointed as distributor of the claimant company, inter alia, for the collection of subscriptions of members subscribed.

Amongst the obligations of Camaran on the Agreement, Part I of the Schedule to the Agreement specifically provided for the collection of money by Camaran from potential members and registering them with Lopoca's website and Clause 4 further provided that the funds and/or money received and/or collected from potential members, in connection to the aforementioned services, were to be deposited in Lopoca's member account at the end of the month.

As Chief Executive Officer of the company I can confirm that during the term of the agreement, the obligation to transfer such money and/or funds as per Clause 4 was not fulfilled on a regular basis. Therefore Camaran has breached the Agreement and failed to fulfil their contractual obligations towards Lopoca. This as seen in the attached schedule which is marked as Document B. Document B also shows the outstanding amounts which is owed to Lopoca, being five hundred and seventy-four thousand euros, one hundred and forty three euro and forty-four cents (Euro 574,143.44)." (fol. 290).

Jirrizulta li b'ittra tal-5 ta' Mejju 2011 (fol. 9), il-konvenuta accettat li mhux il-flus kollha kienu gew trasferiti lill-attrici. Pero' kkontestat l-ammont reklamat. Fl-ittra jinghad:

"The stated amount of EUR 586,544.00, however, does not have any basis in fact. We also resolutely reject this account payable. This may have been the amount transferred by the customers, but it is not the amount that we have received. Firstly, the funds that were already passed on have not been deducted, and secondly a large part of the funds has not arrived at our end anymore because the bank terminated the accounts in its relationship with us as a result of the activity for Lopoca. The loss thus occasioned must be quantified firstly in material terms and secondly as a damage to the image." (fol. 9).

Kopja Informali ta' Sentenza

Il-qorti ghandha biss il-verzjoni tal-attrici li m'hijiex kontradetta. B'xi rizervi li ser jissemmew hawn taht, il-qorti tikkonkludi:

I – is-somma ta' €679,544 kienu l-flus li l-konvenuta gabret ghan-nom tal-attrici fit-termini tal-kuntratt fuq imsemmi;

II – is-somma ta' €37,000 m'hijiex meritu tal-kawza. Il-qorti trid tiddeciedi a bazi tal-kawzali li hemm fir-rikors guramentat, u cjoe' l-General Agreement for Acting as Distributor. Mill-affidavit ta' Symeon Mantzouranos (fol. 176) hu car li s-somma ta' €37,000 ma kellha x'taqsam xejn ma' dak il-kuntratt. Ghalhekk din is-somma mhux ser tigi mizjuda mal-ammont fuq imsemmi.

III - €130,000 hu hlas akkont li sar mill-konvenuta lill-attrici bejn it-30 ta' Settembru 2010 u 16 ta' Novembru 2010. Hemm ukoll €5,893.56 spejjez li ghamlet il-konvenuta biex sar it-trasferiment tal-flus.

IV - €6,507 li jridu jitnaqqsu u li jirrelata ghall-hlas ta' €9 ghal kull klijent gdid li jigi registrata mill-attrici bl-intervent tal-konvenuta.

Tibqa' rizervata l-materja dwar il-hlas ta' €16,500 fix-xahar lill-konvenuta peress li mill-atti m'huwiex car jekk dan il-hlas sarx. Li hu zgur hu li fil-kalkoli li ghamlet l-attrici dan ma ttiehedx in konsiderazzjoni.

Ghal dawn il-motivi tilqa' t-talba tal-attrici limitatament ghas-somma ta' hames mija seba' u tletin elf mija u tlieta u erbghin ewro u erbgha u erbghin centezmu (€537,143.44) u ghalhekk tikkundanna lill-konvenuta thallas din is-somma lill-attrici, bl-imghax li ghandu jithallas fit-termini ta' klawzola numru erbgha (4) tal-kuntratt tal-1 ta' Lulju 2010 (fol. 23). Il-konvenuta ghandha wkoll thallas l-ispejjez.

< Sentenza Finali >

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