



MALTA
**QORTI CIVILI
PRIM' AWLA
ONOR. IMHALLEF
JACQUELINE PADOVANI GRIMA**

Seduta tat-30 ta' Mejju, 2014
Citazzjoni Numru. 82/2008

**Dr Malcolm Falzon (numru tal-karta ta' l-identita
129280M) bhala mandatarju specjali ghan-nom
u in rapprezentanza tas-socjeta estera Tarkett GDL SA - Division International ta'
ZI Esteban - Lentweiler, 2 Op der Sang L 9779, Lentweiler GR - D, Luxembourg
VS
Mark Schembri & Sons Limited (C9425)**

Il-Qorti :

Rat ir-rikors guramentat ta Dr. Malcolm Falzon nomine Limited tal-29 ta' Jannar 2008, li jaqra hekk:

- 1. "Dr Falzon huwa debitament awtorizzat jibda dawn il-proceduri a nom ta' Tarkett GDL SA — Division International permezz ta' mandat, kopja ta' liema tinsab hawn annessa u mmarkata Dokument "A";*
- 2. Il-fatti li ser isegwu huma fatti li gew mghoddija lil Dr Falzon tramite rapprezentanti ta Tarkett GDL SA — Division International;*

Kopja Informali ta' Sentenza

3. *Mark Schembri & Associates Limited (“Schembri”) giet ingaggjata mis-socjeta estera Tarkett Sommer International GmbH sabiex taghmel xogholijiet ta’ floor laying fl-isptar Mater Dei.*
4. *Bhala parti minn dan l-arrangement, Tarkett GDL SA - Division International (kumpannija sussidjarja tas-socjeta Tarkett Sommer International GmbH) kienet tforni lil Schembri materjal sabiex jintuza mill-istess Schembri waqt xogholijiet ta’ floor laying li kienu qed isiru fl-isptar Mater Dei minn Tarkett GDL SA — Division International;*
5. *Tarkett GDL SA — Division International forniet lil Schembri materjal fl-ammont ta’ €34,876.19 u dan kif jidher mis-sensiela ta’ fatturi hawn annessi u mmarkati Dokumenti “B” sa “H”;*
6. *Nonostante illi rceviet il-konsennja ta’ dan il-materjal, Schembri baqa’ ma hallasx tieghu wara li skadew is-sittin jum li kellu sabiex ihallas ghall-imsemmi materjal;*
7. *Inoltre minhabba f’nuqqasijiet ta’ Schembri waqt ix-xogholijiet tieghu ta’ floor laying fl-isptar Mater Dei, Tarkett GDL SA - Division International kellha tinkorri diversi spejjez, fosthom billi tibghat f’Malta rapprezentanti taghha stess sabiex isewwu u jirrangaw dak illi Schembri kien qed jaghmel hazin, u b’konsegwenza ta’ dan Tarkett GDL SA - Division International sofriet danni fl-ammont ta’ €8,034.99 u dan kif jirrizulta mid-dokumenti annessi u mmarkati “I” sa “K”;*
8. *Tarkett GDL SA — Division International hija kreditrici ta’ Schembri fl-ammont totali ta’ €42,911.18.*

Tghid ghalhekk Schembri ghaliex din l-Onorabbli Qorti m’ghandhiex:

- (a) *tiddikjara illi Tarkett GDL SA — Division International hija kreditrici ta’ Schembri fl-ammont ta’ €42,911.18 u dan rapprezentanti materjal konsennjat u*

Kopja Informali ta' Sentenza

mhux imhallas u spejjez minhabba f'xogholijiet hziena li ghamel Schembri waqt floor laying fl-isptar Mater Dei;

(b) tikkundanna lil Schembri thallas is-somma ta' €42,911.18 bl-interessi skond il-ligi sad-data tal-pagament effettiv;

Bl-ispejjez inkluz dawk tal-mandat ta' sekwestru numru 1526/07.”

Rat il-lista tax-xhieda ndikati mis-socjeta' rikorrenti u l-elenku ta' dokumenti esebiti mar-rikors mahluf;

Rat illi ir-rikors gumentat u l-avviz tas-smiegh gew debitament notifikati lis-socjeta' intimata;

Rat ir-risposta tas-socjeta' konvenuta Mark Schembri & Associates Limited tas-26 ta' Frar 2008 li taqra hekk:

“L-ECCEZZJONIJIET:

- 1. Illi dina l-kawza hija konnessa ma' kawza ohra fl-ismijiet “Mark Schembri & Associates Limited —vs- Tarkett Holding GmbH et” pendenti ukoll quddiem dina l-Onorabli Qorti (Rikors Numru 963/2007 LFS) u differita ghal 14 ta' Mejju 2008, u konsistentement mal-principju ta' l-ekonomija tal-gudizzju z-zewg kawzi ghandhom jinstemghaw flimkien a tenur ta' l-Artikolu 793(1) tal-Kodici ta' Organizzazzjoni u Procedura Civili.*
- 2. Illi t-talbiet tas-Socjeta' attrici huma nfondati fil-fatt u fid-dritt u s-socjeta' esponenti ghandha tigi liberata mill-osservanza tal-gudizzju bl-ispejjez u dana peress illi s-socjeta' esponenti ma ordnatx, hliet ghal “Balade Bard” (Dok. “E”) dak il-materjal imsemmi (Dok. “B” sa Dok. ‘H”) in konnessjoni ma' l-appalt tal-“floor laying” fl-isptar Mater Dei kif premess fir-Rikors promotorju; u peress illi x-xogholijiet hziena saru ghal tortijiet imputabbli lill-istess socjeta' rikorrenti.*

Kopja Informali ta' Sentenza

3. *Illi bla pregudizzju ghall-premess il-materjal imsemmi gie konsenjat b'sistema ta' tpacija.*
4. *Salvi eccezzjonijet ulterjuri permessi mill-ligi.*

IL-FATTI:

1. *Illi s-socjeta' attrici is-subkontrattat u kkommissjonat lis-socjeta' esponenti biex taghmel appalt konsistenti fi twahhil ta' "vinyl flooring" u affarijiet ohra relatati fl-Isptar Mater Dei, Birkirkara by-Pass, Birkirkara.*
2. *Illi fuq dan l-appalt is-socjeta' esponenti ghad baqghalha tithallas minghand is-socjeta' rikorrenti bilanci sostanzjali u ghalhekk kellha tipprocedi gudizzjarjament bil-kawza fl-ismijiet "Mark Schembri & Associates Limited — vs- Tarkett Holding GmbH et" pendenti quddiem dina l-Onorabbli Qorti (r-Rikors numru 963/2007LFS) u differita ghall-14 ta' Mejju 2008.*
3. *Illi s-socjeta' esponenti ma ordnatx, hlief ghal "Balade Bard" (Dok. "E") dak il-materjal imsemmi (Dok. "B" sa Dok. "H") in konnessjoni ma' l-appalt tal "floor laying" fl-Isptar Mater Dei.*
4. *Illi fl-ezekuzzjoni ta' l-imsemmi appalt is-socjeta' ezegwiet l-istruzzjonijiet li kienet irceviet minghand is-socjeta' rikorrenti, tramite l-membri teknici taghha, biex taqta' l-vinyl madwar id-drains b'sistema manwali, mentri l-kuntrattur principali Skanska Malta Joint Venture ried li dan isir bil-"purus knife" sabiex tkun tista' tottjieni l-garanzija li joffri l-manufacturer tad-drains."*

Rat l-atti kollha tal-kawza;

Rat in-nota t'Osservazzjonijiet tas-socjeta' konvenuta Mark Schembri & Sons Limited tal-5 t'April 2010;

Rat id-digriet tal-4 t'Ottubru 2011 illi bih il-Qorti awtorizzat korrezzjoni fl-okkju, fejn is-socjeta konvenuta bidlet isimha minn Mark Schembri & Associates Limited ghal Mark Schembri & Sons Limited ;

Kopja Informali ta' Sentenza

Rat id-digriet tal-11 ta' Frar 2009 illi bih il-Qorti kif diversament preseduta innominat lil Perit Legali Dr. Gabrielle Buttigieg;

Rat ir-relazzjoni tal-Perit Legali ipprezentata fil-14 t'April 2011 u mahlufa fl-10 ta' Novembru 2011;

Rat in-nota ta' Sottomissjonijiet tas-socjeta' konvenuta Mark Schembri & Sons Limited tal-10 ta' Mejju 2012;

Rat in-nota ta' kritika tal-avukat Dr. Malcolm Falzon nomine tat-18 ta' Gunju 2012;

Ikkonsidrat:

Ix-xhud Bodo Jung xhed (permezz t'affidavit a fol 38 u 39), illi l-kumpanija inkarigata mill-ordni tal-materjal necessarju kienet Tarkett GDL S.A.. Huwa xhed illi din il-kumpanija Tarkett iffirmit kuntratt t'appalt ma Skanska Malta. L-kuntratti BD1 (a fol. 70) , BD2 (a fol.77), BD3 a fol. 80 u BD4 (a fol. 84). Jung xhed li Tarkett SA France kienet il-proprjetarja tas-socjeta' Tarkett GDL SA in Luxembourg li kienu zewg kumpaniji separati f'zewg pajjizi separati. Ix-xhud sostna illi s-socjeta' attrici kienet izomm zewg akkonti separati u cioe akkont ma Mark Schembri & Associates Ltd ghal-materjali u akkont iehor ghal-Tarkett Malta li kien jirispkkja l-isptar Mater Dei (vide fol. 66 sa 68)

Bodo Jung xhed illi hu qatt m'ghamel arrangement ta' tpacija mas-socjeta' intimata, u li kien hemm zewg akkonti wiehed tas-socjeta' attrici mas-socjeta' intimata, u l-akkont l-iehor kien bejn is-socjeta' attrici u l-Isptar Mater Dei. Bodo Jung gie muri *email* mibghuta minn Lara Vella u hu ikkonferma din l-*email* u spjega li Mark Schembri kien intitolat ghal pagament wiehed minn Tarkett Malta ghal xogholijiet f'Mater Dei, u li Schembri talab illi dawn il-flus jigu trasferiti minn Tarkett Malta ghal ghand Schembri u li Schembri kien ser jghaddi dawn il-flus lil kumpanija fil-Lussemburgu. Jung xhed illi huwa kien issugerixxa li kellu jitraserferixxi l-flus direttament lejn il-Lussemburgu. Dan sar bi ftehim bil-miktub ma Mark Schembri u l-mara tieghu Marie Louise Schembri.

Kopja Informali ta' Sentenza

Kien hemm disgwit dwar ir-rata ta' kambju pero din qatt ma giet risolta. Jung xhed li dan kien l-uniku tpacija li jaf biha. Jung xhed illi id-danni pretizi mis-socjeta attrici kienu b'referenza ghal “*sub floor, sub floor preparation u drains*”, u indika l-*invoices* a fol. 39. Jung b'referenza ghall-*invoice* numru 7155, xhed li din l-*invoice* kienet maghmula minn persuna teknika certu Leif Fallman u indika Dok J a fol. 17. Mistoqsi l-ghaliex il-kumpanija kienet qed tirrikjama danni fid-*drains* u *sub floor* waqt li ix-xhud Jan Svensson fl-affidavit tieghu jitkellem biss fuq danni konsegwenza ta' *drains*, Jung xhed illi huwa kien iddepona skond dak illi infurmawh in-nies teknici tieghu. Mitlub jaghti spjezzjoni ta' *invoice* 7164, Jung xhed illi r-rati setghu kienu ta' tlieta u ghoxrin Ewro u sitta u sittin centezmi (€23.66) kull katusa , pero dan seta' jinkludi ukoll *courier service*. Jung ma setghax jikkonferma jekk kemm-il darba dir-rata kienitx tinkludi it-trasport, l-konsenja u sostituzzjoni tal-katusi kif ukoll il-vinyl illi kellha tigi sostitwita madwar id-*drains*. Huwa ikonferma illi fl-*invoices* hemm applikati ir-rati tal-Isvezja. Jung ma setghax jaghmel paragun bejn r-rati Maltin u dawk tal-Isvezja. Jung **kompla jixhed illi s-socjeta' attrici ma kellhiex intenzjoni illi tiehu passi ghar-rizarciment tad-danni u ghamel dan biss wara li Mark Schembri fetah proceduri minn naha tieghu ghar-rizarciment tad-danni**. Huwa xhed illi huwa kien involut fil-progett fis-sena 2006 u li qablu kien hemm impjegati ohra mas-socjeta' attrici bhal Roberto Yakono involuti. Jung xhed illi l-irwol tieghu kien fl-aministrazzjoni u finanzi ta' dan il-progett, u kien jinvolvi l-ezami tal-*invoices* ta' Skanska Malta u Mark Schembri u jara li dawn jigu mhallsa. Jung sostna li kien hemm relazzjoni tajba bejnu u Mark u Marie Louise Schembri. Illi sas-Sajf 2007 l-*invoices* kollha sottomessi minn Mark Schembri kienu mhallsa b'mod immedjat minn Tarkett Malta.

Jan Svensson ikonferma a fol. 129 et. seq. illi huwa kien *Technical Service Manager* ma Tarkett AB u kien *Project Manager* mill-aspett tekniku tal-progett ta' Mater Dei, partikolarment fl-instalazzjoni u /jew tiswija tal-katusi u tal-*vinyl flooring* tal-isptar. Huwa xhed illi il-ftehim ma Skanska kien li x-xoghol jinhadem bil-mod tradizzjoni **cioe minghajr uzu ta' *purus knife***. Svensson sostna li ma kienx konxju tal-fatt li Skanska kienu ser jitilfu il-garanzija mis-*supplier* kemm-il darba ix-xoghol jinhadem minghajr l-uzu ta' din l-ghodda. Muri Dok. XY1, huwa xhed illi huma segwew il-pjan lilhom moghti. B'referenza ghal istess il-kliem “*preventive action which states, we are now using the purus knife*” fl-istess dokument **Svensson xhed li ma kienx konxju ta' dan il-kumment**. Huwa ikonferma meta gie muri Dok. XY2, illi ma kienx konxju tal-fatt illi

Kopja Informali ta' Sentenza

Tarkett kienet biddlet id-decizjoni taghha dwar uzu tal-*purus knife* sabiex ma titlifix il-garanzija.

Svensson xhed li kien rretorna Malta **fis-sena 2006** sabiex jirrisolvi l-problema dwar d-*drains* u dana **fuq talba specifika tas-socjeta Tarkett.**

Muri Dok XY4 Svensson xhed li kien jaf b'din l-*email*, pero ma setghax jiftakar fid-dettal il-kontenut tal-kuntratt u jekk Tarkett kienitx obligata li tissorvelja x-xoghol. Svensson xhed illi qablu kien hemm Fredric Oldby u li Leif Fallman qatt ma kien *Project Manager*.

Muri Dok XY5 li fiha Skanska kienet ilmentat dwar n-nuqqas ta' supervizjoni da parti ta' Tarkett, Svensson kkonferma li jaf b'dan id-dokument.

Huwa xhed illi Fallman kien harreg lil haddiema ghal erba' gimghat u li dawn in-nies tas-sengha uhud minnhom gia kellhom esperjenza f'dan it-tip ta' xoghol. **Huwa kkonferma illi l-haddiema kienu minghajr supervizjoni ta' Fallman ghal diversi granet.**

Svensson xhed illi kemm hu, kif ukoll Leif Fallman kienu ghadhom impjegati ma Tarkett.

Svensson xhed illi kien hemm ukoll problema fuq ghetiebi u l-metodu tat-tikhil taghhom, izda Tarkett qatt ma accettat responsabilita. Ghaldaqstant Skanska kienet iddecidiet illi taqta x-xoffa tal- ghetiebi. **Ma kiex jaf li b'din l-azzjoni intilfet il-garanzija ta' Trelleborg.**

Lanqas ma kien jaf illi l-problema ta' *wallguard* kienet kagunata mit-tip ta' kolla suggerita minn Tarkett.

Svensson xhed illi kien jiftakar lil Stefan Kliterno. Svensson xhed li Fallman kien jimmarka bil-lapes fejn ried jitranga. Ma kienx tal-opinjoni li l-marki tal-lapes kienu kienu diffiqli li jigi rimossi mill-*vinyl*.

Ma ftakarx li Kliterno kien ssugerixxa li ma jintuzax il-lapes u li juzaw kolla differenti.

Kopja Informali ta' Sentenza

Svensson xhed li kien ffirmat il-kuntratt finali waqt illi l-*Memorandum of Understanding* kien iffirmit minn Fredric Oldby.

Huwa xhed illi kien hemm klawnsola fi-kuntratt li rrikjediet aggestament tal-*sub floor*.

Svensson in ri-ezami xhed li Roberto Jacono lahaq *Project Manager* warajh u li kien gie nonimat *Technical Supervisor*.

Svensson xhed li l-manjiera li biha gew installati il-katusi uwriet mano d'opera pessima – u dan indipendentement mill-usu o meno tal-*purus knife*.

Svensson xhed li ma kienx jaf xejn dwar l-*invoices* a fol. 39. Svensson xhed li Alexander Stordeur ircieva lmenti minn Skanska.

Svensson sostna li persuna mharreg fuq xoghol simili kien jigi mharreg fl-installazzjoni ta' "*wet Room floor vinyl*" f'temp ta' gimgha. **Haddiema bla esperjenza** kienu jirrikjedu **tlett gimghat jew xahar**. Huwa stqarr illi Mark Schembri kien ghazel *trainees* ghal dan ix-xoghol.

Svensson xhed li kien ra x-xoghol hazin b'ghajnejh. Ix-xoghol ta' tiswija kien jikkonsisti fit-tnehhija ta' metru kwadru tal-*vinyl* li kien jiccirkonda il-katusa u s-sostituzzjoni taghha b' *vinyl* gdid. Tant kien hazin il-mano d'opera li wiehed seta' jara toqob u qsim li minnhom seta' jipperkola l-ilma facilment.

Dak iz-zmien ir-reputazzjoni ta' Skanska ma kienitx posittiva u ghalhekk Tarkett giet mitluba taghmel tiswijiet hi stess liema tiswijiet saru bil-*purus knife*. Svensson xhed li Skanska qatt ma ilmetat mieghu dwar it-telf tal-garanzija.

Fix-xhieda taghha fl-affidavit Dok.MLS a fol 350 et seq, Marie Loiuise Schembri xhedet illi hija kienet s-segretarja tas-socjeta' konvenuta u tirraprezenta lis-socjeta' fl-amministrazzjoni u fil-finanzi taghha. Fost id-doveri taghha kien hemm l-esekuzzjoni ta' kuntratti, ordnijiet, pagamenti u l-impjieg tal-haddiema.

Kopja Informali ta' Sentenza

Hija xhedet illi s-socjeta' intimata kienet ffirmit kuntratt ma Tarkett Holding GMBH (Tarkett GDL SA) ghal tqieghid ta' *vinyl* fl-art tal-Isptar Mater Dei u xoghol relatat bhal *priming tas-subfloor*, tqieghid ta' karta protettiva in segwitu tal-installazzjoni *skirting*, *drains*, mili ta' xquq, *waterproofing*, ghetiebi ,etc.

Hija kkonferma illi dan ix-xoghol sar fil-bicca l-kbira tieghu minghajr sorveljanza ta' Tarkett.

Marie Louise Schembri qalet illi fil-bidu Tarkett organizzaw skola ghal haddiema tas-socjeta' intimata li ma kellhomx esperjenza fi tqieghid ta' *vinyl flooring*. Minkejja illi l-haddiema tghallmu malajr xorta kellhom bzonn ta' supervizjoni li kienet giet promessa lillhom minn Fallman u Svensson.

In-nuqqas ta' supervizjoni wasslet fi protesti da parti ta' Skanska li riedet timponi penali fuq Tarkett. **Di piu' il-haddiema qatt ma gew mghallma jew mharrga fl-uzu tal-*purus knife* li kienet ggor maghha l-garanzija tal-katusi.**

Meta Skanska rat l-mano d'opera, pprotestaw ma Tarkett li minn naha taghha rrikonsidrat d-decizjoni taghha dwar l-uzu tal-*purus knife* sabiex il-garanzija tibqa' vigenti.

Schembri tenniet li ma kien hemm ebda dannu fuq is-*sub flooring*.

Marie Louise Schembri xhedet illi s-socjeta' intimata qatt m'ordnat materjal minn Tarkett GDL S.A. u l-*invoices* kollha maghmula minnhom kienu ma Tarkett Luxemburg S.A liema socjeta' nghaqdet ma Tarkett S.A..

Hija konfermat illi s-socjeta' intimata kienet tpaci l-kontijiet u pagamenti u din t-tpacija kien konsentita' minn Roberto Jacono u Bodo Jung.

In Kontro ezami (a fol. 404 et seq) Marie Louise Schembri xhedet li ma kellhiex kwalifiki ta' *accountant* jew *auditer*. Hija sostniet illi qatt ma attendiet xi kors ta' tahrig tal-haddiema taghhom .

Kopja Informali ta' Sentenza

Hija konfermat li qatt ma kellmet lil Fallman jew lil Svensson fuq il-kwistjoni ta' tqieghid ta' *vinyl*, u qatt ma qrat il-*Quality Plan* jew *Manual*.

Mistoqsija dwar l-ilmenti ta' Tarkett / Skanska fuq xi xoghol hazin u n-nuqqas t'uzu tal-*purus knife*, Mary Loiuse Schembri xhedet li kienet tkun taf x'inhu ghaddej ghax kien jirrapportalha zewgha Mark Schembri u gieli kienet taqra xi korrespondenza. Kienet taf li fil-passat, kien hemm xi lment fuq id-*drains*. Mary Loiuse xhedet illi ma kienitx taf illi Skanska ddecidiet illi tibghat il-haddiema taghha biex isiru x-xoghlijiet rimedjali.

Mary Loiuse Schembri ikkonfermat Dok.MS14 sa Dok.MS20, *invoices* ta' materjal assenjat lil Mark Schembri.

Mistoqsija dwar il-bdil, illi sar f'isem tal-kumpanija wara il-*merger* skond Dok. BD3 u BD 8, Mary Loiuse xhedet illi kull ma tista' tiftakar, huwa fuq Tarkett Luxembourg SA, ghaliex l-*invoices* kienu nhargu fuq Tarkett Luxembourg SA, u li ma kienitx taf b'dan il-*merger* u kien f'dan is-sens il-hames paragrafu ta' l-affidavit taghha, 'l ghaliex hi ma kienitx konxja li kien hemm dak il-*merger* u tibdil fl-isem.

Schembri sostniet illi jekk kumpanija jinbidlilha isimha, dak li kien dovut lilha xorta jibqa' dovut lilha.

Mistoqsija fuq l-ammont ta' erbgha u tletin elf, tmien mija sitta u sebghin Ewro u dsatax –il centezmi (€34,876.19), jekk dan l-ammont thallasx lil Tarkett, ix-xhud qalet illi ma tistax tirrispondi f'dak il-mument, u riedet taghmel il-verifiki.

In kontro ezami Marie Louise Schembri (a fol. 410) wara li ghamlet il-verifiki dwar l-ammont ta' erbgha u tletin elf, tmien mija sitta u sebghin Ewro u dsatax –il centezmi (€34,876.19), jekk dan thallasx lil Tarkett, xhedet li dan l-ammont li qed jinghad li kien dovut lil Tarkett GDL SA, ma kienx dovut lilhom, izda lil Tarkett Luxembourg – 'l ghaliex dawn ma kienux l-istess kumpanija.

Mark Schembri in kontro-ezami (a fol. 410) ikkonferma illi l-*invoices* ezebiti mis-socjeta' attrici minn Fol.6 sa Fol.14 tal-process, kien materjal ordnat mis-socjeta' intimata Mark Schembri & Associates minghand Tarkett Luxembourg.

Kopja Informali ta' Sentenza

B' referenza ghal paragrafu 10 ta' l-affidavit tieghu, fejn sostna: “*I can confirm that MSA never ordered any material from the plaintiff company*”, Schembri xhed illi: “*GDL SA huwa ffirma kuntratt magghom sub-contractor, installor. Kien magghom hu. Tarkett GDL SA qabel kien jisimha Tarkett Sommer u qabel kien jisimha Tarkett Holding GMBH. Tarkett GDL SA qatt ma bieghitlu materjal.*”(Ibid fol 411)

Suggerit lilu illi Tarkett SA kienet l-kumpanija li assorbiet lil Tarkett Luxembourg u bidlet isimha ghal Tarkett GDL SA, Schembri wiegeb li ma jaqbilx, ‘l ghaliex Tarkett GDL SA u Tarkett SA kienu zewg kumpaniji separati f’zewg pajjizi differenti.

Mark Schembri ikkonferma li l-invoices minn fol.6 sa fol.15, baqghu ma thallsux.

Schembri xhed li kien jaf bil-*quality plan* ta’ Tarkett u li skond il-*quality plan*, il-*floor laying* kellu jsir skond metodologija ta’ *free hand cutting* u mhux bl-uzu tal-*purus knife*. Zied jghid li kien hemm *leaflet* li kellha l-*purus cutter* maghha, u dan il-*brochure* kien ta’ Tarkett.

Ix-xhud qal li huwa jaf illi l-*quality plan* giet approvata minn Skanska, pero’ matul il-progett kien hemm aspetti li gewwa mibdula u gew accettati kemm minn Tarkett kif ukoll minn Skanska. Fosthom kien hemm mil-kaz tal-*purus cutter* fejn meta Skanska iccekjaw mal-*manufacturer* tad-*drains*, skoprew illi l-garanzija tal-istess *drains* tiskatta kemm-il darba dawn jkunu maqtughin bil-*purus cutter*, bicca ghodda specjali maghmula mil-*manufacturer* stess.

Schembri jinnega illi kien hemm toqob minn fejn seta’ jippenetra l-ilma. Schembri xhed li kien hemm qtugh qasir minn fejn seta’ jippenetra l-ilma, u dan id-difett kien wiehed ripetut f’Mater Dei. Schembri jinnega li x-xoghol kien sar hazin u li Skanska ma rieduhx *on site* anzi huwa sostna li kien baqa’ hemm sa l-ahhar gurnata u kien ghadu konsulent sa illum.

Gew ezebiti *emails* Dok. MA1 sa Dok.MA5.

Kopja Informali ta' Sentenza

Mark Schembri ikkonferma illi rapprezentanti ta' Tarkett, Jan Svensson u Leif Fallman kienu nizlu Malta sabiex, jaghmlu xoghlijiet rimedjali.

Schembri xhed illi wiehed ma setghax jaqta' qasir bil-*purus knife*, 'l ghaliex b'din l-ghodda ix-xoghol jigi perfett, anke jekk il-haddiem ma jkunx tekniku- vide fol 413.

Mark Schembri xhed li kien hemm *misunderstanding* ma Ivonne Halling dwar il-kwalita' ta' *cutting*. Mark Schembri xhed illi meta l-haddiema tax-xhud qatghu qasir dan sar fil-prezenza ta' Leif Fallman fil-parti ta' l-isptar Block E. Is-socjeta' Skanska indunat wara b'dana kollu.

Kurt Millberg, pensjonant, in kontro ezami, xhed li kien *engineer* u hadem bhala *project manager, production manager, site-engineer* ma Skanska, ma liema kumpanija hadem ghal tlieta u erbghin (43) sena. F'Malta kien *engineer supervisor*. Waqaf jahdem ma' Skanska fit-2 ta' Frar 2007, meta hareg bil-pensjoni.

Gie Malta fl-2003 u bhala *supervisor* kien jiehu hsieb iz-zebgha, *vinyl u floor preparation* inkuz ix-xoghol kollu tas-socjeta intimata, kif ukoll ix-xoghol taz-zebgha.

“Kont nirraporta lil project manager tal-grupp certu Rohan Davis, li kien f'Malta f'dak iz-zmien. Fuq Davis, kien hemm id-direttur manigerjali Zvediz.”- vide fol. 417.

Milliberg xhed illi kien responsabbli ghas-sorvejlanza kemm ghall-*floor preparation* kif ukoll *floor laying* fil-Blokka E ta' Mater Dei. Milliberg xhed li ma kienx involut fil-kuntratt, jew negozjati bejn Tarkett u Skanska.

Milliberg xhed illi l-impjegati ta' Tarkett kienu jirrappurtaw lilu. F'kaz ta xoghol li kien jmur oltre' mill-kuntratt, Milliberg kien jirraporta lis-superjuri tieghu. *“Konsegwentement, ma kontx involut fir-rigward ta' kull xoghol li kien jaqa' fil-parametri tal-kuntratt.”* – vide fol 418.

Milliberg xhed li wara ftit snin, x'aktarx fis-sena 2004, Thomas Eriksson ha x-xoghol li jirrigwarda l-*vinyl*, waqt li Milliberg zamm iz-zebgha.

Kopja Informali ta' Sentenza

Milliberg xehed illi wiehed ma jistax jispeċjalizza fil-*floor laying*. Milliberg xehed illi kien habib ta' Mark Schembri, li kien ragel tajjeb.

Ikkonferma, illi Thomas Eriksson minn Skansa kien jiehu hsieb tal-problemi f'Mater Dei li kienu jirrigwardaw Mark Schembri and Associates.

B'referenza ghall-Paragrafu 4 ta' l-affidavit tieghu, sostna illi Mark Schembri kien qed jaghmel dan il-*floor levelling* fis-sena 2003. Sosnta illi l-kontenut tal- paragrafu 4 tal-affidavit tieghu jicconcerna il-perjodu meta huwa kien *supervisor* tas-sit ghaz-zewg setturi cioe' taz-zebgha u, *floor levelling* u *preparations*.

F'dan il-perjodu, Milliberg sostna illi kien Mater Dei, ma' Mark Schembri ghal xi tmienja jew disa' sieghat kuljum. Fil-bidu ta' 1-2006, *floor laying* u *floor preparations* kienu f'idejn Thomas Eriksson. F'dak iz-zmien Milliberg xehed illi kien konxju li kien hemm impjegati li Skanska gabet mill-Indja biex jaghmlu x-xoghlijiet u Mark Schembri uriehom kif jaghmlu x-xoghol. Ma kienx jaf li Skanska kienet approvat pjan ta' kwalita' li Tarkett kienet issottomettiet ghal dak li jirrigwarda l-katusi.

Milliberg xehed kien ra lil Leif juri lill-impjegati ta' Mark Schembri kif kellhom jaqtghu il-*vinyl* madwar l-katusi u cioe permezz ta' sikkina normali u cioe' sikkina speċjali ta' twapet. Meta mistoqsi rigwardanti x-xoghol mahdum hazin da parti ta' Mark Schembri, Milliberg xehed li ma ra ebda xoghol maghmul hazin. Milliberg afferma li kemm qabel, kif ukoll wara li gie mqieghed il-*vinyl*, kien ra toqob fil-katusi.

Il-katusi ma kienux jaqghu fil-mansjoni ta' supervizjoni tieghu izda kienu jaqghu taht ir-responsabilita' ta' Thomas Eriksson. Thomas Eriksson kien qed jissorvelja x-xoghol, meta Mark Schembri kien qed iqieghed il-*vinyl*, wara 1-2004. Meta beda x-xoghol fuq l-ghatba ta' Block E, Milliberg jghid illi hu kien involut. Is-sur Leif qallhom kif kellhom jaqtghu. Kien hemm glieda rigward min kellu jaghmel ix-xoghol, bejn il-kumpannija li kienet responsabbli ghat-tqeghid tal-ghetiebi u l-kumpannija tal-*vinyl*. Milliberg xehed , illi kien jaf li l-*wall guard* kien qed jinqala' mill-ghetiebi fl-irkejjen, **u li din kienet problema kbira, li giet risolta minn Mark Schembri.**

Kopja Informali ta' Sentenza

Mistoqsi jekk din il-problema kienitx kawzata minhabba teknika hazina tal-installar da parti ta' Mark Schembri, Milliberg xehed illi kien Leif Fallman illi ta l-istruzzjonijiet lil Mark Schembri & Associates ta kif kellu jsir ix-xoghol. Ma kienx tal-fehma illi Mark Schembri ma kienx qed ihalli l-kolla tinxef, 'l ghaliex kieku, il-*vinyl* kollu kien jinjala' u mhux l-irkejjen biss. Milliberg xehed li ma kien involut f' ebda korrispondenza bejn Skanska u Tarkett rigward il-problema tal-*wall guards*.

Milliberg xehed li ma kiex jaf li Skanska kkuntattjat lil Tarkett biex tibghat lin-nies taghha Malta biex tirranga l- problema. In ri-eami, Milliberg xehed illi Mark ghamel ix-xoghol ta' levelling f' Mater Dei Schembri bejn is-sena 2003 u s-sena 2007.

Milliberg kkonferma li Mark Schembri & Associates gieli ghamlu xoghol ta' levelling meta l-impjegati Indjani kienu Malta.

Milliberg ikkonferma li "*Leif kien ta istruzzjonijiet dwar il-mod kif kellu jsir il-qtugh tax-xoffa tal-ghetiebi. Jien rajtu jaghmlu*".- vide fol. 422.

Mark Schembri in kontro-ezami (a fol. 425), xehed b'referenza ghal pagna 7 tal-*installation instructions* fil-*brochure* dwar il-*vinyl*, Dok.BB1, (a fol. 392 et seq) u ikkonferma illi apparti l-metodu tal-*purus knife*, kien hemm indikat ukoll metodu iehor, u li ghalhekk kien hemm **zewg** metodi li setghu jigu adoperati ghad-*drain pipes* u *floor drains*. Schembri ikkonferma illi fil-*quality plan* maghmula minn Tarkett u Skanska, **kien il-metodu manwali li kellu jintuza ghad-*drain pipes* u *floor drains*.**

Il-partijiet qabblu illi l-*brochure* relevanti - *Wetroom Concept* - huwa dak li gie publikat fis-sena 2007 (Dok.BB1) u mhux dak li gie ppublikat fl-2009.

Schembri stqar illi rcieva l-*brochure* fit-28 ta' Frar 2010, u li fil-*brochure* tal-2007, hemm referenza ghal *purus knife*. Schembri xehed li l-*brochure* ezebit, hu dak tas-sena 2009 u hareg fl-2010. Id-data li fih 04/07, sa fejn jaf hu, tfisser meta gie mahdum dak il-literature partikolari.

Il-Qorti rat u ezaminat ir-relazzjoni tal-Perit Legali, u takkolji l-konkluzjonijiet taghha limitament kif ser jinghad.

Ikkonsidrat:

Illi din il-kawza tirrigwarda talba għall-hlas ta' erbgha u tletin elf, tmien mija sitta u sebgħin Ewro u dsatax-il centezmu (€34,876.19), rapprezentanti materjal mibjugh u kkonsenjat mis-socjeta' attrici lis-socjeta' konvenuta; u talba għal-risarciment ta' spejjez f'ammont ta' tmint elef, erbgha u tletin Ewro u disgħa u disgħin centezmu (€8,034.99), inkorsi mis-socjeta' attrici f'reparazzjonijiet ta'xogħol hazin mahdum mis-socjeta' konvenuta, cioe' total ta' tnejn u erbghin elf, disgħa mija u hdax-il Ewro u tmintax il-centezmu (€42,911.18) bl-interessi.

Illi s-socjeta' Tarkett Holdings GmbH, gia' Tarkett Sommer International GmbH kienet hadet appalt ta' *vinyl flooring* u xogħolijiet oħra relatati fl-Isptar Mater Dei minghand Skanska Malta. Għalhekk is-socjeta' Skanska Malta JV hija l-kuntrattur principali.

Illi, is-socjeta' Tarkett Holdings GmbH, gia' Tarkett Sommer International GmbH permezz tas-subappalt imbagħad ingaggjat lis-socjeta' konvenuta għax-xogħolijiet ta' *floor laying*, specifikament imsejjah *vinyl flooring*, fost affarijiet oħra relatati, gewwa l-Isptar Mater Dei.

Illi, is-socjeta' konvenuta ordnat il-materjal li kellu jintuza waqt ix-xogħolijiet in kwistjoni mis-socjeta' Tarkett Luxembourg SA, pero' hekk kif jirrizulta mill-provi (Dok.BD3), kien sar *merger* bejn is-socjeta' Tarkett Luxembourg SA u s-socjeta' Tarkett Holding SA fit-28 ta' Gunju 2007, fejn is-socjeta' Tarkett Luxembourg SA **giet assorbita flimkien mas-socjeta' Tarkett Holding SA go kumpannija wahda bl-isem ta' Tarkett SA.**

Illi hekk skond il-provi (Dok.BD8), u **wara** li sehh il-*merger*, u fl-istess data tat-28 ta' Gunju 2007, irrizulta li **kien sar bdil** fl-isem tas-socjeta' hekk magħquda **Tarkett SA**, għal isem ta' **Tarkett GDL SA**, u dan it-tibdil kellu jibda jghodd mill-1 ta' Lulju 2007:

“Further to the completion of the Merger it is unanimously resolved to change the name of the Company from Tarkett S.A.

to Tarkett GDL S.A. with effect on 1 July 2007." (Dok.BD8, a fol. 118 sa 120).

Illi kienet ghal din ir-raguni hekk spjegata, li is-socjeta' attrici, Tarkett GDL SA – Division International, issostni li fil-fatt kienet forniet l-materjal lis-socjeta' konvenuta, liema socjeta' uzat il-materjal suppliet waqt l-imsemmija xogholijiet ta' *floor laying* gewwa l-isptar Mater Dei.

Illi, is-socjeta' attrici, ghalhekk tesigi il-hlas ta' erbgha u tletin elf, tmien mija sitta u sebgħin Ewro u dsatax-il centezmu (€34,876.19) prezz ta' materjal forniet mis-socjeta' konvenuta skond dokumentazzjoni (Dok.B sa Dok.H annessi mar-rikors promontorju), liema somma baqghet ma thallasitx mis-socjeta' konvenuta, anke wara l-iskadenza ta' sittin (60) gurnata kreditu lilha koncess.

Is-socjeta' konvenuta baqghet issostni illi l-hlas ma kienx dovut l' għaliex hija ma kienitx ordnat il-materjal li għamlet referenza għaliha s-socjeta' attrici (Dok.B sa Dok.H annessi mar-rikors promontorju), hliet illi ordnat *Balade Board* (Dok.E anness mar-rikors promontorju) mingħand l-istess socjeta'. Apparti minn hekk, hija sostniet ukoll illi l-materjal imsemmi (Dok.B sa Dok.H) kien fil-fatt gie kkonsejnat lilha b'sistema ta' tpacija.

Illi apparti minn hekk, is-socjeta' konvenuta baqghet tinsisiti wkoll illi hija fil-fatt qatt ma kienet ordnat dan il-materjal li tieghu qed jintalab il-hlas, mingħand is-socjeta' Tarkett GDL SA, b'referenza specifika għad-dokumenti ezebiti Dok.MS14 sa Dok.MS20, pero' li dan il-materjal gie ordnat u konsejnat mis-socjeta' Tarkett Luxembourg SA, għal liema ordni u konsejja, kien gie effetwat pagament mis-socjeta' konvenuta lil din is-socjeta' Tarkett Luxembourg SA (Dok.MS21 u Dok.MS22).

L-Qorti tagħmel referenza għal *merger* li kien sar bejn is-socjeta' Tarkett Luxembourg SA u s-socjeta' Tarkett Holding SA fit-28 ta' Gunju 2007 (Dok.BD3, a fol. 80), fejn is-socjeta' Tarkett Luxembourg SA giet assorbita flimkien mas-socjeta' Tarkett Holding SA go socjeta' wahda bl-isem ta' Tarkett SA; u sussegwentement għal dan il-*merger*, kien sar tibdil fl-isem tas-socjeta' hekk magħquda u msemmija Tarkett SA, fejn din is-socjeta' sar j isimha Tarkett GDL SA (Dok.BD8, a fol. 118 sa 120).

Kopja Informali ta' Sentenza

Illi id-dokument, iffirmit quddiem in-Nutar Maitre Joseph Elvinger u datat 28 ta' Gunju 2007 (Dok.BD3, fol. 80 et seq), juri l-*merger* hawn fuq imsemmi:

“The Absorbing Company holds one hundred per-cent (100%) of the shares of the Absorbed Companies...”

u *“...following its merger into the Absorbing Company, the Absorbed Companies no longer exist as from the Effective Date, their shares being cancelled at the same date. At the Effective Date, the universal transfer of all the assets and liabilities of the Absorbed Companies to the Absorbing Company has taken place ipso jure.”*(vide fol. 81)

L-Qorti tqis illi l-procedura adoperata li waslet ghat-tibdil fl-isem tas-socjeta' attrici kienet wahda li giet ippruvata b'mod sufficjenti u li ghalhekk ma jista' jirrizulta ebda dubbju rigward l-ordni tal-materjal minghand is-socjeta' bl-isem ta' Tarkett Luxembourg SA, li kjarament giet assorbita' mis-socjeta' attrici.

Il-Qorti taghmel accenn ghal kif sehew it-tibdiliet fis-socjeta' attrici:

Tarkett Sommer International GmbH

Skanska issubappaltat il-kuntratt ta' xogholijiet fl-Isptar Mater Dei lil din il-kumpannija (Dok.BD1)

Tarkett Holding GmbH

Tarkett Sommer International GmbH inbidlilha isimha u saret Tarkett Holding GmbH, fatt li ma giex ikkontestat bejn il-partijiet.

Tarkett Luxembourg SA + Tarkett Holding SA = Tarkett SA

Kien sar *merger* bejn dawn iz-zewg kumpanniji li flimkien saru Tarkett SA (Dok.BD3)

Tarkett GDL SA (is-socjeta' attrici)

Tarkett SA inbidlilha isimha u saret Tarkett GDL SA

Kopja Informali ta' Sentenza

(Dok.BD8)

Il-Qorti qieset l-*merger* illi sehh fis-socjetajiet li gew assorbiti fis-socjeta' attrici u t-tibdil li sar fl-isem tal-istess socjeta', u ghalhekk il-Qorti ma tisghax takkolji l-ecezzjoni tas-socjeta' konvenuta li m'hijiex debitur tas-socjeta' attrici ghar-raguni illi hi ma ordnat ebda materjal minghand din is-socjeta', izda kull ordni ta' materjal sar mis-socjeta' Tarkett Luxembourg SA. Dan jirrizulta kjarament meta wiehed jezamina l-provi fid-dettal. Vide xhieda ta' Marie Louis Schembri (a fol. 406 u 407): *“B'referenza ghall-hames paragrafu ta' l-affidavit tieghi u mistoqsija jekk jien aware illi Tarkett Luxembourg SA giet merged fil-kumpanija Tarkett SA u li sussegwentement inbidlitilha isimha ghal Tarkett GDL SA, u dan kif muri f'Dok.BD3 u Dok.BD8 annessi ma' l-affidavit ta' Bodo Jung, nghid illi kull ma nista niftakar huwa fuq Tarkett Luxembourg SA ghaliex l-invoices kienu nhargu fuq Tarkett Luxembourg SA. Le, **ma kontx aware b'dan il-merger**. Meta ghidt fil-hames paragrafu ta' l-affidavit tieghi, li “Mark Schembri & Associates Limited never ordered any material from Tarkett GDL SA”, kont qed nghid hekk ghax fuq l-invoices kien hemm Tarkett Luxembourg SA u **ma kontx aware li kien hemm dak il-merger u tibdil fl-isem. Iva, naqbel illi jekk kumpanija jinbidlitilha isima, dak li kien dovut lilha xorta jibqa' dovut lilha.**”* (Enfasi ta' din il-Qorti)

Jirrizulta di piu, illi Marie Louise Schembri a fol. 410, ammettiet : *“Kelli naghmel verifika dwar l-ammont ta' €34,876.19, jekk thallasx lil Tarkett, u nghid li dan l-ammont li qed tghid hu dovut lil Tarkett GDL SA, m'huwiex dovut lilhom **pero' lil Tarkett Luxembourg** – dawn m'humix l-istess kumpanija.”*

Ghaldaqstant gialadarba jirrizulta mill-provi illi Tarkett Luxembourg SA giet assorbita flimkien ma' kumpanija ohra fil-kumpanija bl-isem ta' Tarkett SA u sussegwentement Tarkett SA bidlet isimha ghal Tarkett GDL SA (is-socjeta' attrici), dak l-ammont huwa dovut lis-socjeta' attrici. Dan huwa ukoll rifless fix-xhieda ta' Mark Schembri (a fol. 410), in kontro-ezami fejn iddikjara li : *“Qed nigi muri invoices minn Fol.6 sa Fol.15 ta' l-ispoll”* (Dok.B sa Dok.H annessi mar-rikors promontur) *“**u naqbel illi dan huwa materjal ordnat minn Mark Schembri & Associates minghand Tarkett Luxembourg.**”*

Mark Schembri in kontro ezami jafferma: “B’referenza ghall-invoices minn Fol.6 sa Fol.15” (Dok.B sa Dok.H annessi mar-rikors promontur) “iva, naqbel li ma thallsux.”(vide fol 411)

Il-Qorti ghaldaqstant tqis li mill-provi prodotti illi s-socjeta’ konvenuta giet konsenjata materjal ammontanti erbgha u tletin elf, tmien mija sitta u sebghin Ewro u dsatax-il centezmu (€34,876.19), li ghalih ma ghamlitx hlas. Illi l-Qorti tghaddi biex tezamina l-eccezzjoni li ghamlet l-istess socjeta’ konvenuta rigwardanti l-fatt li l-materjal imsemmi gie konsenjat b’sistema ta’ tpacija.

Il-Qorti taghmel referenza ghall-affidavit ta’ Mark Schembri (Dok.MS) fejn huwa jghid: *“Further confirmation that MSA purchased the material from Tarkett Luxembourg SA and not from plaintiff Company is the e-mail of the 12th July 2007 when the set-off arrangement was agreed and payment effected to Tarkett Luxembourg SA. (Vide Dok. “MS21” here attached). Tarkett Luxembourg SA is not the same Company as Tarkett GDL SA, so much so that if it were so there would have not been any utility in making the set-off arrangements between the two Companies.”...“I must add that on one hand Tarkett owed MSA substantial amounts for work carried out at the Mater Dei Hospital, whilst MSA owed Tarkett Luxembourg SA for material purchased from them. The procedure of set-off had been agreed to practically from the very outset of the Mater Dei Project and in fact was commonly adopted for practical reasons and to facilitate payment. Eventually, there would be conducted with Pricewaterhouse Coopers, the Accountants for Tarkett, a full reconciliation exercise of what was due between MSA and the Tarkett Group of Companies and a final bill issued and payment was made accordingly. This exercise was also monitored by Tarkett’s Representatives (Roberto Jacono was eventually succeeded by Bodo Jung). In confirmation of the above I am exhibiting three separate instances where this set-off was adopted (Vide Dok. “MS22”, “MS23”, and “MS24” here attached).”*

Fl-affidavit ta’ Marie Louise Schembri (Dok.MLS), hi wkoll tghid: *“In MSA’s dealings with Tarkett we used to largely conduct the set-off agreements for the reason that MSA was owed substantial amounts of monies from Tarkett. This set-off arrangement was agreed and adopted with Tarkett Representative Roberto Jacono and also with his successor Bodo Jung.”*

Dana gie michud minn Bodo Jung: *“On a final note and with respect to MSA’s allegation that the material in respect of which we are requesting payment was so consigned on a system of set-off. The account created for the purpose of managing payment due to MSA in respect of works it carried out on the project is entirely separate from the account created to handle payments due by MSA for goods delivered to MSA and in respect of which we are currently requesting payment. Any claim which MSA has, or may have, for works carried out at Mater Dei is currently the subject matter of other proceedings and is also being contested. In any event, the plaintiff company requesting payment in these proceedings is different from the company which engaged MSA to carry out the works on the hospital project and in respect of which MSA has filed separate proceedings in Malta for payment.” ;*

Bodo Jung a fol. 396 stqar hekk: *“I confirm that Tarkett SA France is the owner of the Tarkett GDL SA in Luxembourg and they are two separate companies in two separate countries. I state that I have never made any offset arrangement with Mark Schembri & Associates Ltd. I tried to keep both accounts separate. I clarify that by the two accounts I mean, one with Mark Schembri & Associates Ltd for the materials and the other account was with Tarkett Malta for the hospital. I am being shown an email sent by me to Lara Vella of PWC and I confirm that I sent such email and I further explain that there was one time that Mark Schembri was entitled to receive payment from Tarkett Malta with regard to works at Mater Dei and before doing anything I contacted Mark Schembri personally and I made a proposal that instead of transferring money from Tarkett Malta to Mark Schembri in Malta and then for Mark Schembri to send money to the company in Luxembourg, I suggested that I would transfer this money directly to Luxembourg. I state that this was done only this time, after an agreement, even in writing, with Mark Schembri and his wife Marie-Louise Schembri. At that time there was the still the Maltese Lira and there was a disagreement between Marie Louise and myself with regard to the rate of exchange but my proposal which was to share the difference was never really solve. I confirm that as far as I know this was the only time which such barter was done. I personally never agreed to other such transactions and made it clear that if anything of the sort was negotiated or agreed to this should be done in writing. I insisted that the two accounts were kept separately.”*

Kopja Informali ta' Sentenza

Jirrizulta mill-iskambu ta' *e-mails* ezebiti u mmarkati bhala Dok.MS21 sa Dok.MS24, illi t-tpacija hemm imsemmija kienet tpacija ghall-ammont, liema tpacija kienet unika. Il-Qorti tqis, li kieku l-partijiet kienu miftiehma li kontijiet rispettivi taghhom kienu ser jkunu l-oggett ta' tpacija bejniethom, ma kienx ikun hemm l-htiega tal-iskambju ta' korrispondenza fuq indikata. Il-Qorti tikkonkludi illi si tratta ta' tpacija unika.

Illi l-**Artikolu 1196** tal-Kapitolu 16 tal-Ligijiet ta' Malta jistabilixxi, li meta tnejn minnies huma debituri lejn xulxin, issir bejniethom it-tpacija *ipso jure*. Din it-tpacija ssir minghajr ma jkunu jafu d-debituri hekk kif ikunu jezistu zewgt idjun fi zmien wiehed, u d-djun jinqatlu wiehed bl-iehor sa fejn ikunu ndaq; u l-**Artikolu 1197** tal-Kapitolu 16 tal-Ligijiet ta' Malta jistabilixxi, li t-tpacija ssir biss bejn zewgt idjun li jkollhom it-tnejn bhala oggett somma ta' flus.. u li jkunu t-tnejn likwidi u li jistghu jintalbu. Fis-sentenza fl-ismijiet **Marianna Spiteri et vs Joseph Vella** (deciza mill-Onor. Imhalled Alberto Magri fit-3 ta' Mejju 1993) gie ritenut li :

“Minn dawn naraw li l-eccezzjoni ta' tpacija fiha nnifisha tammonta ghall-ammissjoni tad-debitu u li dan id-debitu huwa dovut, biss ma ghandux jithallas ghax huwa pacut minn ammont iehor dovut mill-kreditur.”

Dwar it-tpacija din hija ammissibbli biss bejn zewgt idjun li jkunu likwidi, hekk kif jistabilixxi l-**Artikolu 1197**. Fil-kaz in ezami, il-pretensjoni attrici hija certament ghal ammont likwidu fis-somma ta' erbgha u tletin elf, tmien mija sitta u sebghin Ewro u dsatax-il centezmu (€34,876.19), u dana skond l-*invoices* immarkati bhala Dok.B sa Dok.H, waqt li minn naha taghha s-socjeta' konvenuta qatt ma indikat ammont preciz oggett ta' tpacija. Dan l-ammont l-anqas ma jirrizulta fl-iskambju ta' *e-mails* immarkati bhala Dok.MS21 sa Dok.MS24. Ghalhekk l-eccezzjoni ta' tpacija da parti tas-socjeta' intimata m'huwiex pprovat skond il-ligi.

Apparti l-ammont dovut ghall-materjal ssuplixxiet fis-somma fuq indikata, is-socjeta' attrici qedgha tipprocedi ghal hlas ta' l-ammont ta' tmient elef u erbgha u tletin Ewro u disgha u disghin centezmu (€8,034.99), danni illi hija soffriet in segwitu ta' reparazzjoni ta' xoghol hazin ezegwiet mis-socjeta' konvenuta.

Kopja Informali ta' Sentenza

Illi s-socjeta' konvenuta dejjem baqghet tinsisti illi hija ma kellha ebda tort jew responsabbilta' fir-rigward tax-xogholijiet hzienu li saru.

Il-Qorti taghraf illi bhala stat ta' fatt ma hemmx kontestazzjoni li xoghol li sar kien difettuz. Il-kontestazzjoni hija limitata ghal-kwistjoni ta' responsabbilta' ghal dak ix-xoghol difettuz.

L-ewwelnett, wiehed jibda mill-ftehim li dahlu fih il-partijiet in kwistjoni, fejn is-socjeta' attrici kienet ingaggjat lis-socjeta' konvenuta sabiex taghmel *vinyl flooring* u xogholijiet ohra relatati fl-Isptar Mater Dei (Dok.BD2), u hawnhekk isir accenn ghas-*subcontract general conditions* (Dok.JS1), liema kondizzjonijiet kienu japplikaw bejn il-*“contractor”*, u cioe' Skanska Malta J.V. u s-*“subcontractor”*, u cioe' Tarkett Sommer International, hekk kif wiehed jara mil-ftehim ta' subappalt bejniethom (Dok.BD1), ma' liema kuntratt kienu gew annessi dawn is-*subcontract general conditions*: *“1.1 (b) “Subcontract General Conditions” means the document so entitles and enclosed hereto as Appendix 1.”* (Dok.BD1). Fi klawzola 7.1 ta' Dok.BD2 jinghad illi: *“The Subcontractor shall not assign the whole or any part of the Subcontract or any benefit thereof, nor shall he, without the prior written consent of the Contractor, sub-let the whole thereof, nor shall he, without the prior written consent of the Contractor, sub-let the whole or any part of the Subcontract Works. Any such consent, if given, shall not relieve the Subcontractor from any liability or obligation under the Subcontract and the Subcontractor shall be responsible for the acts, defaults, neglects of any of his subcontractors, including such subcontractor’s agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Subcontractor, his agents, servants or workmen.”*

Il-Qorti taghmel accenn ghall-**Artikolu 1037** tal-Kapitolu 16 tal-Ligijiet ta' Malta, fejn jinghad:

“Kull min ghal xi xoghol jew servizz iehor iqabbad persuna mhux ta' hila, jew illi hu ma jkollux ragun jahseb li hija ta' hila, hu obbligat ghall-hsara illi dik il-persuna, minhabba n-

nuqqas ta' hila taghha, tikkaguna lil haddiehor fl-esekuzzjoni tax-xoghol jew servizz hawn fuq imsemmi.”

Minkejja li s-socjeta' attrici kienet ben konxja tal-fatt illi s-socjeta' konvenuta u l-impjegati taghha ma kellhomx esperjenza fit-tqeghied tal-*vinyl*, xorta wahda ingaggjat lis-socjeta' konvenuta sabiex taghmel x-xogholijiet in kwistjoni fl-Isptar Mater Dei. Mill-provi prodotti huwa evidentissmu illi l-haddiema tas-socjeta' konvenuta ma kellhomx esperjenza ta' xoghol ta' tqeghied ta' *vinyl* liema xoghol kien xoghol speċjalizzat immens u wiehed li l-haddiema Maltin ma kienux normalment intizi fih. Minkejja dana kollu Mark Schembri rnexxielu jakkwista' l-apprezzament ghas-soluzzjoni tieghu ta' kif kellu jitwahal il-*vinyl* fl-irkejjen (vide xhieda ta' Mark Schembri a fol. 303 u 304 u xhieda ta' Kurt Millberg a fol.421)

Il-Qorti taghmel referenza ghall-**Artikolu 1038** tal-Kapitolu 16 tal-Ligijiet ta' Malta li jipprovdi illi:

“Kull min minghajr ma jkollu l-hila mehtiega jindahal ghal xoghol jew servizz, hu obligat ghall-hsara li, minhabba n-nuqqas ta' hila tieghu, jikkaguna lil haddiehor.”

Mill-provi migjuba a konjizzjoni ta' din il-Qorti jirrizulta ampjament il-fatt li s-socjeta' konvenuta ma kellha l-ebda tip ta' esperjenza f'dan ix-xoghol. Dan huwa rifless fil-ftehim bejn iz-zewg partijiet (Dok.BD2), fejn uhud mill-kundizzjonijiet kienu illi: ***“Mark Schembri & Associates Ltd. is to provide facilities to conduct training of local installers (Tarkett Sommer University Malta) prior to commencing project.”***; u fil-*Quality Plan* maghmul minn Tarkett Sommer International (Dok.JS2), fil-klawzola 1.2, jinghad: ***“A specially developed Training School is prepared for training of Maltese labour. The training will be done by our specialists. Foreign installers might be necessary to use at the most busy periods, therefore a contractor is already informed and prepared to commence work with short notice.”*** In fatti skond ix-xhieda ta' Jan Svensson a fol. 400, persuna minghajr esperjenza f'dan ix-xoghol kienet tehtieg bejn tlieta u erbgha gimghat ta' tahrig.

Kopja Informali ta' Sentenza

Illi n-necessita' ta' dan il-perijodu ta' tahrig lil haddiema tas-socjeta' intimata gie konfermat fl-affidavit ta' Marie Louise Schembri (Dok.MLS); u skond l-affidavit ta' Jan Svensson: *"The training took four weeks..."* u fl-affidavit ta' Mark Schembri (Dok.MS) naraw illi *"After the rewarding of the Contract and prior to the commencement of the works MSA had set up a School with the approval of Tarkett in order to train Maltese employees in the line of vinyl flooring. Tarkett were aware that these students were completely unfamiliar in the vinyl trade."*

Illi ghalhekk fil-kaz in ezami , jiskatta l-**Artikolu 1037** tal-Kapitolu 16 tal-Ligijiet ta' Malta, 'l ghaliex il-kaz in ezami non si tratta ta' haddiema b'xi nuqqasijiet ta'hila izda haddiema **li ma kellhom ebda esperjenza f'xoghol ta' dan it-tip fattur, illi s-socjeta' attrici kienet taf ben sew mill-bidu nett.** Is-socjeta' attrici kellha diversi alternattivi ghad-dispozizzjoni taghha bhal perezempju li tingaggja kumpannija intiza f'dan it-tip ta' xoghol, jew li ggib haddiema specjali minn barra ghal dan it-tip ta' xoghol, **jew almenu li tassikura li jkun hemm sorveljanza teknika prima u kontinwa waqt l-esekuzzjoni ta' dawn ix-xoghljiet.**

Illi di piu' jirrizulta ben provat illi l-haddiema tas-socjeta' intimata nghataw istruzzjonijiet stretti hafna sabiex il-haddiema juzaw il-metodologija ta' *free hand cutting* fit-tqeghied tal-*vinyl* partikolarment ghal meta il-*vinyl* kellu jitqatta' biex jakkomoda id-*drains*. Dawn l-istruzzjonijiet kienu fis-sens illi l-manjiera ta' kif il-*vinyl* kien ser jitqatta madwar il-katusa, kienet b'sistema ta' qtugh manwali u mhux bl-uzu tal-*purus knife*.

Fl-affidavit ta' Jan Svensson huwa qal: *"Furthermore Tarkett did not, at any point in time, give MSA any instructions to use the purus knife for installation. In fact, Leif Fallman (who used to report directly to me) held discussions with representatives of Skanska Malta JV (Peter Hojer, Kurt Millberg and Peter Wallin) and MSA (Mr Stephen Xuereb) specifically in order to ensure that it was clear amongst all parties concerned that the purus knife was not to be used. In these discussions it was agreed that the purus knife was not to be used during the installation process at the Mater Dei Hospital, as this would not have been in conformity with the Quality Plan. Consensus on this matter was reached amongst all of the parties involved in a meeting held on 17 May 2002 at the offices of Skanska."*

Kopja Informali ta' Sentenza

In fatti Kurt Millberg (a fol. 420) jafferma: ***“I saw Leif who showed Mark Schembri’s staff how to cut the drains and he used a normal knife – it’s a special carpet knife.”***

Dan huwa konfermat ukoll fl-affidavit ta’ Mark Schembri (Dok.MS, a fol. 302) fejn afferma: ***“Amongst other things Fallman taught my staff to cut the vinyl around the drains in a freehand manner.***

Dawn l-istruzzjonijiet kienu hargu principalment mill-*Quality Plan* (Dok.JS2) ippreparat minn Jan Svensson, bhala t-Tekniku tas-socjeta’ attrici, liema *Quality Plan* kien gie sottomess lil Skanska. Mark Schembri xehed: *“Iva naqbel illi fil-quality plan li gie maghmul minn Tarkett u Skanska, kien il-metodu manwali li kellu jintuza ghad-drain pipes u floor drains.”* Is-socjeta’ attrici kienet waqqfet skola, ‘Tarkett Sommer University Malta’, **u ghallmet lill-impjegati tas-socjeta’ konvenuta biex ix-xoghol isir manwalment.**

Il-problema dwar il-qtugh manwali tal-*vinyl* mal-katusi kienet li x-xoghol ta’ tqeghied ma jidhirx mqieghed fi *standard* gholi bhal meta l-qtugh isir permezz tal-ghodda specifika u cioe il-*purus knife*. Dwar l-uzu tal-*purus knife* Milliberg jghid: *“...it is more safe, very easy to use, it is more reliable because it has a 100% water tightness, and it eliminates all mistakes.”*; fl-istess sens ix-xhieda ta’ Mark Schembri, a fol. 413: *“Le, ma tistax taqta’ qasir bil-purus knife. Le, bil-purus knife ix-xoghol ma kienx isir hazin, bil-purus knife ix-xoghol jigi perfett, anke jekk ma tkunx tekniku.”* u *“Bil-purus cutter qtugh qasir kien jigi eliminat. It’s like a compass, jahdem bhal li kieku qed tiftah bott tal-fazola.”*- fol. 414.

L-istruzzjonijiet sabiex ix-xoghol isir manwalment kienu stretti, hekk kif johrog mill-affidavit ta’ Jan Svensson: *“A very important section of this Quality Plan consisted of the Installation Instructions. This set out the techniques and methods to be used in order to install the vinyl flooring at the Mater Dei Hospital. The installation instructions make specific reference to the tools to be used in order to carry out the installations, and also explain the procedure to be followed in making such installations. I confirm that the purus knife is not one of the said tools and is not referred to in any of the installation procedures.”*

Kopja Informali ta' Sentenza

Mark Schembri (a fol. 412) xehed illi: *“Iva, l-istruzzjonijiet skond il-quality plan kienet li nahdem free hand u mhux bil-purus knife. Jiena naf illi l-quality plan giet appruvata minn Skanska, pero' matul il-progett kien hemm aspetti li gewwa mibdula u geww accettati kemm minn Tarkett kemm minn Skanska.”*.

Kien biss wara li s-socjeta' attrici intebhet li kienet ser tintilef il-garanzija mill-manufacturer illi beda jsir pressjoni biex l-qtugh tal-vinyl fejn jikkoncerna il-katusi jsir permezz tal-purus knife. Infatti rapprezentanti ta' Tarkett cioe' Jan Svensson u Leif Fallman nizlu Malta sabiex jirrangaw it-tqeghied u l-qtugh tal-vinyl fejn jikkoncerna il-katusi.

Din il-Qorti tistaqsi r-raguni 'l ghaliex s-socjeta intimata ma uzatx il-purus knife mill-bidu tax-xoghlijiet gialadarba, x-xoghol permezz ta' din l-ghodda, kien jitlest sa *standard* gholi hafna?

Kif intqal fis-sentenza fl-ismijiet **Raphael Micallef vs Anthony Agius** (deciza mill-**Prim' Awla tal-Qorti Civili fid-9 ta' Gunju 2004**): *“...hu dmir ta' l-appaltatur, skond il-principji generali tad-dritt in materja ta' adempjenza kuntrattwali, illi dan ghandu jassikura li x-xoghol lilo kommess ikun ser isir utilment u mhux b'mod li l-quddiem juri difetti. B'obbligu primarju jibqa' dejjem li “l-appaltatur hu obligat jezegwixxi l-opra miftehma skond is-sengha” (Kollez. Vol. XLI P ii p 892). Dan fis-sens li “l'imprenditore ha l'obbligo di eseguire bene l'opera commessagli secondo i dettami dell'arte suo, e deve prestare almeno una capacita' ordinaria” (Kollez. Vol. XXVII P I p 374);”...*” Dan stabbilit, *“jekk hu jaghmel ix-xoghol hazin, lanqas ma huwa eskluż mir-responsabilita minhabba li hu jkun qaghad ghal dak li ried il-kommittent” (Kollez. Vol. XK P I p 485). Jinkombi fuqu b'dover “di resistere ad ordini che egli vedesse pregiudizievoli alla solidita' e contrarii alle buone regole dell'arte” (Kollez. Vol. XXXV P I p 727). Jinsab fil-fatt dettat illi hu “m'ghandux japprofitta ruhu minn negligenza ta' l-arkitett u jitrasgredixxi d-dettami ta' l-arti edilizja” (Kollez. Vol. XLVI p 746).”*

Skond is-sentenza **Ray Camilleri Marble Works Limited vs Philip Bowd u b'digriet tat-13 ta' Gunju, 1997 Ronnie Gauci kjamat in kawza** (deciza mill-Qorti ta' l-Appell fl-20 ta' Jannar 2003), huwa dover ta' l-appaltatur li jirrezisti l-ordnijiet li hu jqies bhala pregiudizzjevoli ghas-solidita' u kontrarji ghar-regoli tas-sengha. L-appaltatur ghandu l-

Kopja Informali ta' Sentenza

obbligu li jesegwixxi l-inkarigu kommissjonat lilu skond is-sengha u l-arti u jrid almenu jippresta l-kapacita' ordinarja tieghu.

Jinghad ukoll fis-sentenza fl-ismijiet **Mario Blackman vs Carmelo Farrugia et noe (App. Kummerejali fis-27 ta' Marzu 1972)**, illi: *“L'appaltatur ghandu jezegwixxi x-xoghol lilu kommess fis-sens li ghandu l-obbligu li jara li dan ix-xoghol ikun sejjer isir utilment u mhux b'mod li l-quddiem juri difetti. F'kaz bhal dan ghandu mill-ewwel ma jaghmilx ix-xoghol jew ikollu jirrispondi ghad-difetti li jigru l-quddiem.”*

Din il-Qorti wara illi gharblet il-provi tqis illi is-socjeta' konvenuta, inghatat l-istruzzjonijiet sabiex ix-xoghol isir manwalment ghall-eskluzzjoni totali tal-*purus knife*.

Huwa veru ukoll illi li s-socjeta' konvenuta obdjet l-istruzzjonijiet tas-socjeta' attrici u ghalhekk ghamlet ix-xoghol b'mod manwali li skond fol. 7 tal-istess *brochure* Dok. BB1 (li jinstab a fol. 392) li **kien wiehed mill-manjieri ta' mano d'opera konsentit mill-manufacturer**. Ghalhekk din il-Qorti tqis li bl-ebda mod ma jista' jinghad li kien xoghol *“kontra s-sengha”*. Illi di piu' mill-provi illi minkejja ix-xahar stharrig tal-impjegati tas-socjeta' konvenuta **kienet biss f'okazzjoni wahda illi l-impjegati gew murija l-uzu tal-purus knife**.

Illi apparti minn dan, kien gie miftiehem bejn il-partijiet sa bil-bidu nett, illi **x-xoghol kellu jsir taht supervizjoni da parti tas-socjeta' attrici**, hekk kif jirrizulta primarjament mill-klawzola 4.1 tas-*Subcontract General Conditions* (Dok.JS1): *“The Subcontractor shall appoint a competent representative, to be approved by the Contractor, who shall be authorized to act on the Subcontractor's behalf in all respects. The Subcontractor's representative shall be in full charge of the Subcontract Works and shall give his whole time to the superintendence of them. The Subcontractor's representative shall cooperate fully with the Contractor's representative on site.”* (vide ukoll email Dok.MS1)

Mill-provi migjuba a konjizzjoni ta' din il-Qorti huwa evidenti li fir-realta' **x-xoghol sar minghajr din is-supervizjoni min-naha tas-socjeta' attrici, u in vjolazzjoni tal-ftehim bejn il-partijiet**.

Kopja Informali ta' Sentenza

Din in-nuqqas ta' supervizjoni adegwata da parti tas-socjeta' attrici tohrog ukoll mix-xhieda ta' Jan Svensson a fol. 398: *"I am being shown a letter (Dok.XY5) from Skanska to Tarkett in which Skanska complains of the lack of supervision by Tarkett and state that I was aware of this letter. The people that were trained by Fallman were not students but good installers and were taught by Fallman for four weeks. I add that some of these people were already experienced in this work. I confirm that they were left alone doing their work for several days without the supervision of Fallman."*

Fl-affidavit ta' Svensson a fol. 130: *"I recall that in the period 2001-2003, I came to Malta around 7 to 8 times, each time for about a week, to monitor the project and its progress, and particularly to supervise Mark Schembri and Stephen Xuereb. When the problems with the drains then started to crop up, I became involved again."*

Minkejja illi Leif Fallman kellu jkun prezenti fuq is-sit sabiex jaghmel is-supervizjoni adegwata tax-xogholijiet, jirrizulta, illi dan kien ikun assenti, tant illi skond ix-xhud Jan Svensson, hu stess kellu jigi Malta sabiex jaghmel is-supervizjoni tax-xoghol. In-nuqqas ta' supervizjoni da parti ta' Fallman jirrizulta b'mod ampju mill-fatt ewlieni illi l-esekuzzjoni ta' dan x-xoghol thalla jitkompla ghal zmien konsiderevoli minkejja illi ma kienx qieghed isir fl-ahjar *standard* li wiehed jipretendi fi sptar generali **u kien biss meta il-problemi dwar it-tqattiegh tad-drains** gew rikonoxxuti minn Skanska illi **Svennson tqabbad specifikament sabiex jirrimedja is-sitwazzjoni**. Dan ukoll u rifliss fl-affidavit ta' Kurt Millberg (Dok.KM) jghid illi: *"I must add that I do not think highly of Leif Fallman and I consider him as not a reliable person because he had done certain mistakes which cost Skanska quite heavily."*

In-nuqqas ta' supervizjoni fix-xoghlijiet da parti ta' Fallman gie affermat ukoll fl-affidavit ta' Mark Schembru vide fol. 302 *"This notwithstanding Leif Fallman was during the execution of Tarkett's contract... and no replacement was sent, therefore the project progressed unattended and without supervision and my staff carried out their work completely unsupervised. "*;

Kif ukoll minn Marie-Louise Schembri, Dok.MLS, a fol 350: *"I can confirm that the works at the Mater Dei Hospital proceeded mostly unsupervised from Tarkett's side. They were supposed to have their own technical expert present in Malta as they had*

Kopja Informali ta' Sentenza

bound themselves to do with Skanska. Originally, they had to set up a school and for some one month taught MSA's workers who were completely unfamiliar with the fixing of vinyl. Although our workers learnt fast, yet they still needed proper supervision as they had been promised by Leif Fallman, their instructor, and by Jan Svensson so that certain work would be corrected there on the spot. This lack of supervision brought about the protests of Skanska who wanted to impose heavy penalties on Tarkett. Moreover, the workers were not properly taught how to cut the vinyl around the drains and instead of teaching them to use the purus cutter, which brought with it certain guarantees from the drain supplier, they were taught to do it manually. This necessitated the need of supervision especially with these beginners."

Is-socjeta' attrici kienet responsabbli sabiex taghti istruzzjonijiet adegwati lill-impjegati, u sabiex taqdi l-obbligu kuntrattwali taghha ta'sorveljanza tax-xoghol tas-socjeta' intimata. –vide klawzola 4.1 tas-*Subcontract General Conditions* (Dok.JS1): *"The Subcontractor shall appoint a competent representative, to be approved by the Contractor, who shall be authorized to act on the Subcontractor's behalf in all respects. The Subcontractor's representative shall be in full charge of the Subcontract Works and shall give his whole time to the superintendence of them. The Subcontractor's representative shall cooperate fully with the Contractor's representative on site."*

Illi, rigward tal-kwantum tad-danni reklamati, hemm disgwid bejn il-partijiet jekk fil-fatt dawn id-danni saru biss fuq id-*drains* biss jew jekk sarux fuq is-*subfloor* ukoll. Fl-affidavit tieghu Bodo Jung a fol. 38 u 39, afferma illi kellhom isiru *"corrective works were required mostly in relation to the subfloor and the drains in the bathrooms of the hospital building."* Dan ix-xhud imbaghad iproduca skeda li fih hemm elenkati l-*invoices*, kollha datati 12 ta' Dicembru 2006, liema *invoices* jirreferu ghax-xogholijiet li kellhom isiru sabiex jirrimedjaw ix-xoghol hazin li rigwardanti *subfloor*, fl-ammont ta' elfejn u erbghin Ewro (€2,040), u regward d-*drains and subfloor preparation* fl-ammont ta' hamest elef, disgaha mija erbgha u ghoxrin Ewro (€5,924), u ta' 3 *drains* l-ammont dovut huwa ta' wiehed u sebghin Ewro (€71) – b'kollox ta' tmient elef u hamsa u tletin Ewro (€8,035).

Mark Schembri, fl-affidavit tieghu (Dok.MS a fol. 301 et seq.) jinnega l-fatt illi kienu saru xi hsrat fis-*subfloor* meta jghid: *"Finally, I would like to point out that there were*

Kopja Informali ta' Sentenza

no damages at all in the sub-floor, so much so that Jan Svensson in his affidavit presented in this lawsuit only refers to damages related to the drains and does not mention any alleged damages in relation to the sub-floor.” Hekk jirrizulta mix-xhieda ta’ Jan Svensson, a fol. 398 sa 400 li kkonferma l-affidavit tieghu.

Skond Marie Louise Schembri, fl-affidavit taghha (Dok.MLS a fol. 350): *“As far as I know there were no damages at all related to the sub-floor. There were damages related to the drains because of the lack of use of the purus knife and lack of proper supervision as above stated but not damages to the sub-floor.”*

Kurt Millberg, a fol. 420, ghamel referenza biss ghad-drains: *“When asked regarding Mark Schembri’s bad workmanship, I say I have not seen any bad workmanship. Yes, both before and after the placing of the vinyl, I saw the holes in the drains. The drains were beyond my realm, but in the hands of Thomas Eriksson.”*

Il-Qorti taghraf illi Bodo Jung, ma setghax jaghti spjegazzjoni kemm mill-fatturi esebiti Dok.I sa Dok.K kienu relatati mad-danni tad-drains u kemm kienu relatati mad-danni tas-subfloor.

Il-Qorti tikkonkludi ukoll illi s-socjeta’ konvenuta fil-fatt kienet mistharrga bizzzejjed sabiex meta l-art ma kienitx mahduma sew, rrifjutat tqieghed il-vinyl flooring sakemm din titranga kif imiss. Dan jirrizulta mill-affidavit ta’ Kurt Millberg (Dok.KM a fol. 347 sa 349).

Il-Qorti tikkonkludi illi s-socjeta’ attrici ma pprovatx sal-grad rikjest fil-kamp civili u cioe’ fuq bilanc ta’ probabilita’, illi s-socjeta’ konvenuta wettqet xogholijiet difettuzi fis-subfloor.

Ghaldaqstant l-Qorti tqis li is-socjeta’ attrici hija kredittrici tas-socjeta’ konvenuta fl-ammont ta’ erbgha u tletin elf, tmien mija sitta u sebghin Ewro u dsatax-il centezmu (€34,876.19), rapprezentanti materjal mibjugh u kkonsenjat mis-socjeta’ attrici lis-socjeta’ konvenuta, liema ammont ghandu jithallas mis-socjeta’ konvenuta oltre l-interessi legali sad-data tal-pagament effettiv.

Kopja Informali ta' Sentenza

Il-Qorti taghraf pero li ghar-rigward it-talba addizzjonali ghall-hlas ta' tmien elef erbgħa u tletin Ewro u disgħa u disgħin centezmu (€8,034.99) rapprezentanti spejjez li nkorriet is-socjeta' attrici sabiex issewwi u ttranga xogħol hazin li allegatament sar mis-socjeta' konvenuta, **il-Qorti tqis li s-socjeta attrici għandha terfa' r-responsabilita' kollha għal dan in-nuqqas**, u dana għar-ragunijiet imsemmija hawn fuq, principalment in-nuqqas ta' supervizjoni da parti tas-socjeta' attrici u n-negliġenza ta' l-istess li tqabbad socjeta' ta' hila tajba għal-xogħol speċjalizzat, li kien wiehed mhux intiz mill-haddiema Maltin. Minkejja d-decizjoni li tingagga s-socjeta li ma kellhiex hila jew esperjenza fit-tegħied tal-*vinyl*, s-socjeta' attrici aggravat s-sitwazzjoni meta naqset milli tassikura li l-istharrig tal-impjegati iwassal għal xogħol ta' *standard* għoli u naqset minn supervizjoni kontiwa u mehtiega f'dawn ic-cirkostanzi.

Għal dawn il-mottivi, l-Qorti taqta' u tiddeciedi billi tilqa' l-ewwel eccezzjoni, tilqa' t-tieni eccezzjoni limitatament, waqt li tichad it-tielet u r-raba eccezzjoni tas-socjeta intimata, tilqa' l-ewwel talba tas-socjeta' attrici limitatament għas-somma ta' erbgħa u tletin elf, tmien mija sitta u sebghin Ewro u dsatax-il centezmu (€34,876.19), rapprezentanti materjal mibjugħ u kkonsenjat mis-socjeta' attrici lis-socjeta' konvenuta, u tilqa' t-tieni talba limitatament billi tikundanna lis-socjeta' intimata thallas lis-socjeta' attrici is-somma ta' erbgħa u tletin elf, tmien mija sitta u sebghin Ewro u dsatax-il centezmu (€34,876.19) bl-imghax skond il-ligi sad-data tal-pagament effettiv.

L-ispejjez għandhom jigu divizi kwantu għal-kwart għas-socjeta attrici u kwantu għal tlett kwarti għas-socjeta' intimata.

Moqrija.

< Sentenza Finali >

-----TMIEM-----