



MALTA

**QORTI TAL-MAGISTRATI (MALTA)
MAGISTRAT DR.
GABRIELLA VELLA**

Seduta tas-6 ta' Ottubru, 2014

Avviz Numru. 444/2009

Pentasia Malta Limited

Vs

Sunderlands Online Limited

Il-Qorti,

Rat ir-Rikors ipprezentat mis-socjetà Pentasia Malta Limited fit-12 ta' Novembru 2009, permezz ta' liema titlob li s-socjetà Sunderlands Online Limited tigi kkundannata thallasha is-somma ta' disat elef erba' mija u erbghin Euro (€9,440.00), bilanc dovut mill-valur ta' fattura bin-numru 0906-394 datata 15 ta' Gunju 2004, fir-rigward ta' servizzi ta' rekultagg ta' Aurelio Vandelli kalkolati ai termini ta' ftehim accettat u ffirmat mill-istess Sunderlands Online Limited fis-6 ta' Novembru 2006, liema somma baqghet ma thallsitx nonostante diversi interpellazzjonijiet ghall-hlas, bl-ispejjez, inkluzi dawk ta' l-ittra ufficjali bin-Numru 5748/09 datata 22 ta' Ottubru 2009, liema ittra giet kontestata fit-28 ta' Ottubru 2009, u tal-Mandat ta' Sekwestru bin-Numru 3225/09, kontra s-socjetà Sunderlands Online Limited;

Rat ir-Risposta tas-socjetà Sunderlands Online Limited permezz ta' liema teccepixxi li: (i) preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra s-socjetà attrici billi l-ammont mhux dovut; (ii) bla pregudizzju ghall-ewwel eccezzjoni, hi adempjiet ruhha kompletament ma' l-obbligu kontrattwali imsemmi fir-Rikors promotur u fil-fatt già hallset dak minnha dovut lis-socjetà attrici u ghalhekk it-talba attrici ghandha tigi michuda; U (iii) fit-tielet lok u bla pregudizzju ghall-ewwel zewg eccezzjonijiet, min qed jaghmel it-talba ghandu jgib prova skond il-Ligi ta' dak li qed jirreklama;

Rat l-affidavit ta' Christopher Vella, Direttur tas-socjetà attrici, a fol. 18 u 19 tal-process, u d-dokumenti annessi mieghu markati Dok. "CV1" sa' Dok. "CV4" a fol. 20 sa' 29 tal-process, rat id-dikjarazzjoni solenni ta' Ziva Kolaric, Managing Consultant mas-socjetà attrici, a fol. 30 u 31 tal-process, u d-dokumenti annessi maghha markati Dok. "ZK1" sa' Dok. "ZK4" a fol. 32 sa' 41 tal-process u semghet ix-xhieda ta' Simon Barwani moghtija waqt is-seduta ta' l-4 ta' Ottubru 2010¹ u rat id-dokumenti markati Dok. "MC1" u Dok. "MC2" a fol. 44 sa' 47 tal-process;

¹ Fol. 48 tal-process.

Kopja Informali ta' Sentenza

Rat l-atti l-ohra kollha tal-kawza;

Ikkunsidrat:

Bil-proceduri odjerni s-socjetà attrici titlob li s-socjetà konvenuta tigi kkundannata thallasha is-somma ta' €9,440.00, rapprezentanti l-bilanc dovut mill-valur ta' fattura bin-numru 0906-394 datata 15 ta' Gunju 2004 fir-rigward ta' servizzi ta' reclutagg ta' Aurelio Vandelli, kalkolati ai termini ta' ftehim bejnha u s-socjetà konvenuta datat 6 ta' Novembru 2006. Is-socjetà konvenuta tilqa' ghat-talba attrici bis-segwenti eccezzjonijiet: (i) illi preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez billi l-ammont mhux dovut; (ii) illi hija adempjiet ruhha kompletament ma' l-obbligu kontrattwali imsemmi mis-socjetà attrici fir-Rikors promotur u fil-fatt già hallset dak minnha dovut lill-imsemmija socjetà; u (iii) li s-socjetà attrici ghandha ggib prova skond il-Ligi ta' dak li qed tirreklama.

Mill-provi prodotti jirrizulta li s-socjetà attrici hija socjetà licenzjata sabiex tagixxi bhala agenzja ta' l-impjieg ai termini ta' l-Att Dwar is-Servizzi ta' Impjieg u Tahrig, Kap. 343 tal-Ligijiet ta' Malta, u tispeccjalizza b'mod partikolari fir-reclutagg ta' persuni fis-settur ta' l-*online gaming*. Is-socjetà konvenuta ghandha diversi licenzji ghal-Loghob minn Distanza mahruqa favur taghha mill-Awtorità dwar il-Lotteriji u l-Loghob ai termini tar-Regolamenti Dwar Loghob minn Distanza. L-imsemmija zewg socjetajiet dahlu fi ftehim, datat 6 ta' Novembru 2006, *For the Introduction of Permanent Staff to be Directly Employed by the Client*² u ai termini tal-Klawsoli 3.4 u 3.4(a) ta' l-imsemmi ftehim *the fee payable to the Agency by the Client for an introduction resulting in an Engagement (at any time within 6 calendar months from the later of (a) the Introduction of an Applicant to the Client by the Agency or (b) the date of the Applicant's last interview with the Client) is the amount equal to 25% of the Annual Remuneration. VAT will be charged on the fee if applicable* u *In the case of local candidates (residing in Malta at the time of introduction), the fee payable to the Agency by the Client for an introduction resulting in an Engagement is the amount equal to 20% of the Remuneration applicable during the first 12 months of the Engagement. VAT will be charged on the fee if applicable.*

Il-kaz in ezami jittratta dwar ir-reclutagg ta' certu Aurelio Vandelli da parte tas-socjetà konvenuta tramite s-servizzi tas-socjetà attrici, ghal liema servizzi s-socjetà attrici talbet hlas ta' €16,000 flimkien mas-somma ta' €2,880.00 bhala VAT. Mill-ammont komplessiv ta' €18,880 is-socjetà konvenuta hallset is-somma ta' €9,440 izda baqa' pendenti bilanc ta' €9,440 li qed tirrifjuta li thallas peress li tikkontendi li hija hallset dak kollu minnha dovut lis-socjetà attrici fir-rigward ta' dan ir-reclutagg partikolari, tant illi teccepixxi l-pagament, u ghalhekk il-bilanc reklammat skontha mhux dovut.

Ghalkemm is-socjetà konvenuta teccepixxi l-pagament fil-kaz in ezami ma ghandhiex ghalfejn tipprova l-istess stante li huwa rikonoxxut mis-socjetà attrici li l-imsemmija socjetà effettivament hallset l-ammont ta' €9,440 (nofs il-valur tal-fattura mertu tal-kontestazzjoni) tant illi bl-azzjoni odjerna qed titlob il-hlas tar-rimanenti bilanc mill-fattura numru 0906-394 datata 15 ta' Gunju 2009³. B'hekk l-oneru tal-prova fil-kaz in ezami jinkombi principalment fuq is-socjetà attrici li trid tipprova b'mod sodisfacenti li s-socjetà konvenuta hija effettivament debitrice taghha fl-ammont pretiz ta' €9,440.

Fl-affidavit tieghu Christopher Vella⁴, Managing Director tas-socjetà attrici, jispjega li *fir-realtà, u kontra dak li qeghdin isostnu Sunderlands Online Limited, il-ftehim kien ghal paga ta' €160,000 fis-sena izda l-kuntratt sar ghal 6 xhur u ghalhekk il-paga li kien ser*

² Dok. "CV1" a fol. 20 sa' 26 tal-process.

³ Dok. "CV4" a fol. 29 tal-process.

⁴ Fol. 18 u 19 tal-process.

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jircievi Aurelio Vandelli kienet ta' €80,000 ghal dawn is-sitt xhur. Issir referenza ghal kopja tal-kuntratt ta' impjieg provdut lilna minn Sunderlands Online Limited stess [minkejja li qeghdin issa jtennu li dan huwa zbaljat u mhux iffirmat mill-impjegat taghhom] u partikolarment ghal "Appointment and Duration" u "Remuneration". Dan kien konfermat fe-mail mibghuta lill-impjegata taghna Ziva Kolaric li qeghda tigi anness u immarkata Dok. CV2 fejn inghad "Sorry, I had said 80K pa, its 80K on a 6 month contract" kif hekk ukoll ikkonferma Alessandro Morgani, impjegat tas-socjeta' Sunderlands Online Limited, li kkonferma fe-mail li kopja taghna qeghda tigi annessa bhala Dok. CV3 "I think I had a misunderstanding and €80,000 is to be paid over 6 months". Din il-konferma li kull ma qeghda taghmel Sunderlands Online Limited hija li tevadi l-pagament jirrizulta minn e-mail iehor mibghut minn Dave Grogan fil-25 ta' Awwissu 2009 fejn jghid li: "We agreed to review as I have said after 6 months at which stage the aim is to achieve a package more on a par with previous deal", rikonoxximent car ta' dak li kellha tkun u li fil-fatt hija l-paga li qieghed jircievi Aurelio Vandelli a bazi ta' liema tinhadem il-fee taghna skond il-ftehim. Illi skond l-artikolu 3.4a u 3.5 tat-Terms of Business, accettati minn Sunderlands Online Limited u a bazi ta' liema gew fatturati s-servizzi taghna tul iz-zmien li hdimna flimkien, Pentasia Malta Limited hija intitolata ghal 20% tal-paga annwali mifthemma bejn il-kandidat u min ikun ser ihaddmu. F'dan il-kaz ghalhekk ahna intitolati ghal nofs l-20% ta' €160,000 rapprezentanti l-paga annwali. Ahna dovuti u ffatturajna biss in-nofs f'dan l-istadju ghaliex il-kuntratt konkluz bejn il-partijiet huwa ta' sitt xhur. Fil-fatt ahna tennejna fl-e-mails skambjati illi tkun dovuta s-somma ta' €18,880 lil Pentasia Malta Limited kemm-il darba l-impjieg ta' Aurelio Vandelli jigi mgedded minn Sunderlands Online Limited f'ghelug is-sitt xhur. Illi ghaldaqstant jirrizulta car illi Sunderlands Online Limited huma kredituri [hawnhekk ix-xhud x'aktarx ried jghid debituri] tas-socjeta' Pentasia Malta Limited fis-somma bilancjali ta' €9,440 metru tal-fattura bin-numru 0906-294 kopja ta' liema hija annessa w esebita bhala Dok. CV4 mahruga fil-15 ta' Gunju 2009, bl-imghaxijiet kalkolabbli mill-iskadenza ta' 30 gurnata kif provdut fl-Artikolu 3.1.3 tat-Terms of Business.

Minn din ix-xhieda johrog car li l-punto di partenza tal-pretensjoni attrici huwa l-**allegat salarju ta' €160,000 fis-sena** li skont is-socjeta' attrici gie miftiehem bejn is-socjeta' konvenuta u Aurelio Vandelli ghad illi l-impjieg tieghu f'dak l-istadju kien ghal perijodu ta' sitt xhur biss. Fil-fehma tal-Qorti ghalhekk is-socjeta' attrici jehtigilha tipprova b'mod sodisfacenti li s-salarju effettivament miftiehem bejn is-socjeta' konvenuta u Aurelio Vandelli f'Gunju 2009 kien wiehed ta' €160,000 fis-sena minkejja li f'dak il-perijodu l-impjieg kien biss ghal zmien sitt xhur.

In sostenn ta' dak minnha pretiz is-socjeta' attrici ressqet bhala xhud lil Ziva Kolaric, Managing Consultant, ma' l-imsemmija socjeta', illi ddikjarat *on the 15th April 2009, Mr. Aurelio Vandelli, who was included as a candidate on our portfolio, was introduced to Sunderlands Online Limited. On its part Sunderlands Online Limited had indicated a salary for this position in the region of €100,000 per annum whereas Mr. Vandelli was expecting a package to match his last employment in the region of €180,000 per annum excluding bonuses. An initial interview was then held on the 23rd April 2009 at 4:00p.m. at Le Meridien Hotel in St. Julian's. The Client and the Candidate arranged another meeting for the same day later in the evening for which I was not present. A couple of days later, and precisely on the 29th April 2009, Dave Grogan on behalf of Sunderlands Online Limited made an offer via e-mail, a copy of which is being attached herewith and marked as Document ZK1. In this it is clearly stated that in the first year Mr. Vandelli would have had a salary in excess of €180,000. In the meantime discussions between Aurelio Vandelli and Sunderlands Online Limited progressed so much so that Sunderlands Online Limited made another offer to Aurelio Vandelli on the 21st May 2009. The proposal was for a basic salary of €100,000, a quarterly bonus of €10,000 and a rental allowance of €1,000 per month, to a total of €152,000 per annum. This is evidenced in the e-mail sent by Dave Grogan on behalf of Sunderlands International Limited to Aurelio Vandelli, a copy of*

which is being attached and marked as Document ZK2. In his reply Aurelio Vandelli demonstrated that he was not happy with a 50% reduction on his previous wage, clearly indicating that bargaining and negotiations were not to his liking. For some time we were kept out of the loop and hence I personally communicated with Dave Grogan via e-mail who confirmed on the 2nd June 2009 that Sunderlands Online Limited had employed Aurelio Vandelli for a six month period “on the basis of €80k pa plus performance bonus”. This e-mail forms part of a thread a copy of which is being herewith attached and marked as Document ZK3. Since this did not tally with the information we had gained during the recruitment process, by e-mail of same date I requested a copy of the agreement between the company and Aurelio Vandelli with a reminder 6 days later. On the 8th June 2009, Dave Grogan reported as follows: “Sorry, I had said 80k pa, its 80k on a 6 month contract. Will send asap.” A copy of the contract sent to us is being attached as Document ZK4. Since I have been following this matter closely I know from my superiors that Sunderlands Online Limited have failed to honour payment of our invoice, claiming – despite the above – that the agreed wage has been set at €80,000 per annum, It clearly transpires, and I am personally aware from my involvement in the recruitment process, that Mr. Vandelli would have never accepted a wage of €80,000 per annum and hence Sunderland’s claims to this effect are only an attempt to evade payment of our services as agreed in the terms of business agreement which was accepted by them⁵.

Ghalkemm minn din ix-xhieda jirrizultaw diversi cifri li allegatament gew negozjati bejn is-socjetà konvenuta u Aurelio Vandelli, minn imkien ma jirrizulta li bejn l-imsemmija socjetà u Vandelli kien hemm ftehim effettiv dwar salarju ta' €160,000 fis-sena. Dak li invece jirrizulta mill-provi prodotti mis-socjetà attrici stess huwa li b'effett mill-15 ta' Gunju 2009 Aurelio Vandelli gie impegat mis-socjetà konvenuta **ghal perijodu ta' sitt xhur b'salarju ta' €80,000 ghal dawk is-sitt xhur**. Ladarba l-impjeg ta' Vandelli kien ghal perijodu ta' sitt xhur, huwa ghal kollox inkoncepibbli w inspjegabbli kif is-socjetà attrici tippretendi li tista' tikkalkula l-fees taghha fir-rigward ta' dan ir-reklutagg partikolari a bazi ta' salarju annwali meta s-salarju miftiehem u percepit kien appuntu ghal sitt xhur. Huwa veru li l-Klawsola 3.4 tal-ftehim bejn is-socjetà attrici u s-socjetà konvenuta tipprovdi li l-fee dovuta lis-socjetà attrici ghas-servizzi prestati tkun ta' 25% jew 20%, skond il-kaz, ta' *the Annual⁶ Remuneration*, izda meta tali *annual remuneration* ma tirrizultax ghaliex l-impjeg u b'hekk is-salarju relattiv ikun ghal perijodu iqsar, f'dan il-kaz ta' sitt xhur, is-socjetà attrici ma tistax b'mod ghal kollox arbitrarju zzid tali remuneration biex tkorpi perijodu ta' sena, f'dan il-kaz billi rduppjat is-salarju miftiehem bejn is-socjetà konvenuta u Aurelio Vandelli. Ghal kull buon fini jigi osservat li fid-definizzjonijiet moghtija fil-ftehim stess il-kuncett ta' *Annual Remuneration* hu marbut mal-perijodu ta' tnax-il xahar u mhux ma xi perijodu iqsar: *Annual Remuneration means the annual salary or fees of the Applicant Engaged by the Client, including (without limitation) base salary or fees and a figure for the value of guaranteed and/or anticipated benefits, bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Applicant for services rendered to or on behalf of the Client for a period of 12 calendar months⁷ from the date of commencement of the relevant Applicant's Engagement whether the Applicant remains Engaged for the full 12 calendar months or not.*

Fil-fehma tal-Qorti fil-kuntest ta' dan il-kaz is-socjetà attrici kellha tikkalkula l-fee dovuta lilha ghar-reklutagg ta' Aurelio Vandelli da parte tas-socjetà konvenuta ghall-perijodu ta' sitt xhur skond kif provdut fl-ewwel parti tal-Klawsola 3.5 tal-ftehim bejn l-imsemmija socjetà u is-socjetà konvenuta, ossia *in the event that the Engagement is for a fixed term of less than 12 months, the fee in clause 3.4 [25% jew 20% skond il-kaz] will apply pro-rata⁸*, u dana fuq

⁵ Dikjarazzjoni solenni fol. 30 u 31 tal-process.

⁶ Sottolinear tal-Qorti.

⁷ Sottolinear tal-Qorti.

⁸ Sottolinear tal-Qorti.

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is-salarju miftiehem ghal dawk is-sitt xhur. Anke jekk għall-grazzja ta' l-argument kien hemm xi forma ta' intendiment bejn is-socjetà konvenuta u Aurelio Vandelli – għad illi mhux rifless fil-kuntratt ta' impjieg esebit mis-socjetà attrici – li wara l-iskadenza ta' l-ewwel sitt xhur ta' impjieg hija, ossia s-socjetà konvenuta, kienet ser terga' timpjegah għal perijodu ulterjuri jew addirittura għal zmien indefinit versu salarju ta' €160,000 fis-sena, is-socjetà attrici ma setghetx fl-istadju ta' l-impjieg inizjali u qabel ma effettivament jigi attwat tali intendiment tesigi l-hlas ta' fee a bazi ta' salarju ta' €160,000 fis-sena. Tali eventwalità tinsab debitament mahsuba u kawtelata fit-tieni parti tal-Klawsola 3.5 appena citata: *If the Engagement is extended beyond the initial fixed term or if the Client re-Engages the Applicant within 6 calendar months from the date of termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Annual Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is the sooner*⁹, u kemm-il darba kellu jirrizulta tali re-employment is-socjetà attrici setghet tippcedi kif hemm provdut izda, jigi ribadit, zgur mhux li fl-istadju inizjali ta' l-ewwel perijodu ta' sitt xhur ta' l-impjieg tippretendi hlas ta' fee kalkolata fuq salarju li Vandelli seta' possibiliment jippercepixxi fuq medda ta' tnax-il xahar.

Fid-dawl ta' dan kollu appena osservat il-Qorti hi tal-fehma li l-fee dovuta mis-socjetà konvenuta lis-socjetà attrici għar-reklutagg ta' Aurelio Vandelli għall-perijodu ta' sitt xhur b'effett mill-15 ta' Gunju 2009 versu salarju ta' €80,000 għal dawk is-sitt xhur tammonta għal **€9,440** kalkolata bil-mod segwenti: 10% (ir-rata pro-rata skond il-Klawsola 3.5 stante li r-rata shiha utilizzata mis-socjetà attrici hi r-rata ta' 20%) ta' €80,000 + VAT, u mhux għal €18,880 kif pretiz mis-socjetà attrici¹⁰. Peress illi kif già iktar 'l fuq osservat jirrizulta li s-socjetà konvenuta effettivament hallset lis-socjetà attrici l-imsemmija somma ta' €9,440, jsegwi li llum ebda ammont ulterjuri fir-rigward ta' dan l-ingagg partikolari ma huwa minna dovut lis-socjetà attrici.

Għaldaqstant jirrizulta li t-talba attrici ma hijiex gustifikata u konsegwentement għalhekk ma jisthoqqx li tigi milqugħa.

Għal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi l-kawza billi filwaqt li tilqa' l-eccezzjonijiet tas-socjetà konvenuta, tichad it-talba attrici.

L-ispejjez ta' dawn il-proceduri għandhom jigu sopportati interament mis-socjetà attrici.

< Sentenza Finali >

-----TMIEM-----

⁹ Sottolinear tal-Qorti.

¹⁰ Fattura 0906-394, Dok. "CV4" a fo. 29 tal-process.