



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta tad-29 ta' Jannar, 2015

Citazzjoni Numru. 519/2013

SB Fiduciary Limited (C41069)

kontra

Crocodile Limited (C46982)

u

PIVGame Limited (C44342)

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fis-26 ta' Gunju 2013 (in sostituzzjoni ta' rikors guramentat li kien prezentat fil-31 ta' Mejju 2013 - wara provvediment tal-Qorti tal-24 ta' Gunju 2013) u jaqra hekk :-

Illi s-socjeta` SB Fiduciary Limited (C41069) hija azzjonista fiducjarja ta` mija u sebghin (170) sehem u mitejn u sebghin (270) sehem tas-socjeta` intimata, Crocodile Limited (C46982) ;

Illi l-istess socjeta` Crocodile Limited (C46982) hija hi nfisha azzjonista tas-socjeta` PIVGame Limited (C44342) ;

Illi s-socjetajiet ntimati, u cioe` Crocodile Limited (C46982) u PIVGame Limited (C44342) ilhom ghal diversi xhur ma jaghtu rendikont ddettaljat tal-hrug u dhul tas-socjetajiet Crocodile Limited (C46982) u PIVGame Limited (C44342) lis-socjeta` rikorrenti u dan bi ksur flagranti kemm tad-doveri lejn l-azzjonisti kif ukoll bi ksur flagranti tal-ligi li tirregola s-socjetajiet ;

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Illi Crocodile Limited (C46982) u PIVGame Limited (C44342) gew interpellati permezz ta` ittra legali u protest gudizzjarju dan tal-ahhar ntavolat kontestwalment ma` dan ir-rikors sabiex jaderixxu ruhhom mad-dettami tal-ligi fil-konfront tas-socjeta` rikorrenti ;

Illi minkejja dan is-socjetajiet Crocodile Limited (C46982) u PIVGame Limited (C44342) baqghu inadempjenti ;

Illi in vista ta` dan is-socjeta` rikorrenti qeghda tipprevalixxi ruhha mill-jedd li ghandha abbazi tal-Artikolu 402 tal-Kap 386 tal-Ligijiet ta` Malta u taghmel s-segweni talbiet lil din l-Onorabbli Qorti sabiex taccerta ruhha li d-drittijiet taghha jigu maharsa :

Ghalhekk is-socjetajiet intimati jghidu ghaliex din il-Qorti m`ghandhiex :-

1. *Tordna lis-socjetajiet intimati u cioe` Crocodile Limited (C46982) u PIVGame Limited (C44342) sabiex fi zmien qasir u perenmtorju ffissat minn din l-Onorabbli Qorti jaghtu r-rendikonti kollha u jghaddu dawk l-istess rendikonti ta` kull dhul u hrug li saru mill-istess socjetajiet intimati lis-socjeta` rikorrenti u dan taht dawk il-provedimenti u kundizzjonijiet kollha li jidhrilha din l-Onorabbli Qorti ;*

2. *Fin-nuqqas li s-socjetajiet intimati Crocodile Limited (C46982) u PIVGame Limited (C44342) jonqsu li jaderixxu ruhhom mal-ordni ta` din l-Onorabbli Qorti skond l-ewwel talba fiz-zmien lilhom moghti tghaddi sabiex tinnomina likwidatur sabiex l-istess socjetajiet jigu stralcjati.*

Bl-ispejjez, inkluzi l-ittra legali, protest gudizzjarju u mandati ta` sekwestru u ta` qbid pprezentati kontra s-socjetajiet intimati li huma minn issa ngunti ghas-subizzjoni.

Rat il-lista tax-xhieda indikati mir-rikorrenti u l-elenku ta` dokumenti li pprezentat mal-att promotorju.

Rat ir-risposta li pprezentaw l-intimati fl-4 ta` Lulju 2013 li taqra hekk :-

1. *Illi preliminarjament kif ser jigi ppruvat is-socjeta` rikorrenti m`ghandhiex locus standi necessarju fl-azzjoni proposta stante li m`hijiex membru tas-socjeta` Crocodile Limited (C46982) u PIVGAME LTD (C44342). Minkejja li hija mnizzla bhala tali fir-Registru tal-Kumpanniji, effettivament qatt ma giet intavolata l-Formola apposita, ossia il-Form T necessarja, sabiex isir it-trasferiment tal-ishma minnha allegat u lanqas ma gie intavolat Registru tal-Membri aggornat jew inhargu certifikati li jikkonfermaw illi SB Fiduciary Limited ghandha xi ishma fi Crocodile Limited jew inkella PIVGAME LTD ;*

2. *Illi preliminarjament ukoll, u minghajr pregudizzju ghall-ewwel eccezzjoni, dato non concesso li s-socjeta` rikorrenti hija membru tas-socjeta` eccipjenti PIVGAME LTD u konsegwentement m`ghandhiex il-locus standi necessarju sabiex tintavola l-procedura odjerna fil-konfront ta` l-eccipjenti PIVGAME LTD ;*

3. *Illi fil-mertu, is-socjeta` rikorrenti m`ghandha l-ebda dritt li tinghata l-informazzjoni rikjesta fl-ewwel talba taghha u lanqas li titlob l-istralc*

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tas-socjetajiet eccipjenti, u dan kif ser jigi ppruvat waqt i-trattazzjoni ta` dan il-kaz ;

4. Salv eccezzjonijet ulterjuri li jistghu jinghataw waqt il-prosegwiment ta` din il-procedura u l-prezentata tad-dokumentazzjoni kollha li bhalissa mhijiex fil-pussess tal-eccipjenti.

Rat il-lista tax-xhieda ndikati mill-intimati.

Rat il-verbal tal-udjenza tal-10 ta` Ottubru 2013 fejn il-Qorti tat direzzjoni lill-partijiet fis-sens illi qabel tghaddi sabiex tqis il-mertu – jekk ikun il-kaz – riedet li l-partijiet jittrattaw l-ewwel eccezzjoni, ghax hija ta` natura preliminari u fl-istess waqt pregudizzjali ghall-prosegwiment tal-azzjoni, u taghti decizjoni dwarha.

Semghet ix-xiehda tal-Av. Claudette Fenech (bhala rapprezentant tar-Registratur tal-Kumpanniji) fl-udjenza tal-14 ta` Novembru 2013 u rat id-dokumenti li pprezentat ix-xhud.

Semghet ix-xiehda ta` Silvio Busuttil u tal-Av. Claudette Fenech (bhala rapprezentant tar-Registratur tal-Kumpanniji) fl-udjenza tal-21 ta` Jannar 2014 u rat id-dokumenti li kienu prezentati fl-istess udjenza.

Semghet ix-xiehda ta` Joseph Caruana, bhala Registratur tal-Kumpanniji, u ta` Silvio Busuttil fl-udjenza tas-27 ta` Marzu 2014.

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Rat in-nota li l-intimati pprezentaw fit-23 ta` April 2014.

Rat id-digriet li tat fl-udjenja tad-29 ta` Mejju 2014 fejn halliet il-kawza ghas-sentenza dwar l-ewwel eccezzjoni preliminari tal-intimati bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet tal-partijiet.

Rat l-atti l-oħra tal-kawza.

Ikkunsidrat :

II. Provi

1) Xhieda viva voce

L-Av. Claudette Fenech bhala rapprezentant tar-Registratur tal-Kumpanniji pprezentat numru ta` dokumenti li sejrjn jigu trattati `il quddiem.

Pagna 6 minn 20

Qrati tal-Gustizzja

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Qalet li whud mid-dokumenti li ressqet quddiem il-Qorti ma jigux registrati ufficjalment izda jinzammu bhala *unregistered documents* mir-Registratur ghall-beneficju ta` terzi.

Ix-xhud irreferiet ghall-ftehim dwar trasferiment ta` ishma li sar go Crocodile Limited bejn International Trust Limited u s-socjeta` rikorrenti.

Dr Fenech tghid illi ghalkemm it-trasferiment tal-ishma ma kienx intbaghat lir-Registratur, kif trid il-ligi, ir-Registratur xorta wahda zamm bhala *unregistered document* l-prova tat-trasferiment ghall-beneficju ta` terzi.

Tixhed li t-trasferiment tal-ishma go Crocodile Limited minn International Trust Limited ghas-socjeta` rikorrenti ma kienx registrat ghaliex il-Form T li ntbaghtet lir-Registratur fid-9 ta` Novembru 2012 ma kenitx iffirmata minn direttur, *manager* jew *il-company secretary* kif rikjest mil-ligi, ghalkemm *il-beneficial owner* tal-ishma baqa` l-istess. Fil-fatt iffirma Silvio Busuttil li ma kienx persuna kwalifikata skond il-ligi.

Skond Dr Fenech, il-Form T hija n-notifika *tas-share transfer*.

Tixhed illi ghax il-Form T ma kenitx iffirmata kif trid il-ligi r-Registratur kien prekluz milli jeffettwa r-registrazzjoni u ghalhekk baghat lura lil min iffirma u cioe` lil Silvio Busuttil iz-zewg formoli kien ircieva minghandu.

Dr Fenech tghid illi ghalkemm bejn il-kontraenti, *is-share transfer* kien effettiv, xorta wahda r-Registratur kien prekluz milli jaghmel ir-registrazzjoni.

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Cio` nonostante u unikament ghall-beneficcju ta` terzi r-Registratur zamm bhala *unregistered documents* id-dokumenti li kien ircieva minghand Silvio Busuttil, u li baghat lura.

Silvio Busuttil ikkonferma illi meta sar it-trasferiment ta` l-ishma fi Crocodile Limited minn International Trust Limited lis-socjeta` rikorrenti ma kien hemm l-ebda kambjament fil-*beneficial ownership* tal-ishma. Xehed illi mill-persuni responsabbli skond il-ligi li jiffirmaw il-Form T kien hemm rifjut. Ghalhekk il-Form T baqghet ma gietx iffirmata minn min kellu l-obbligu skond il-ligi li jiffirmaha.

Joseph Caruana – Registratur tal-Kumpanniji – xehed illi International Trust Limited u s-socjeta` rikorrenti kienu t-tnejn *nominee companies*. Ikkonferma li l-Form T li waslet ghandu ma kenitx konformi mar-rekwiziti tal-ligi u ghalhekk intbaghtet lura. Ghalkemm ha konjizzjoni tat-trasferiment tal-ishma, it-trasferiment tal-ishma ma setax jigi registrat. Fl-istess waqt huwa zamm bhala *unregistered documents* dak li kien ircieva minghand Silvio Busuttil.

2) Dokumenti

Fost id-dokumenti li kienu esebiti **bhala prova** in relazzjoni mal-ewwel eccezzjoni, il-Qorti tissenjala l-*memorandum* u l-*articles of association* ta` Crocodile Limited (Dok MFSA1) ; ittra ta` Silvio Busuttil lir-Registratur tal-Kumpanniji datata 15 ta` Novembru 2012 (Dok MFSA2 bhal Dok SB8) ; ittra tas-socjeta` rikorrenti lil Cesare Florio datata 13 ta` Novembru 2012 (Dok MFSA3 bhal Dok SB7) ; *share transfer agreement* datat 5 ta` Novembru 2012 ta` 170 *ordinary shares* go Crocodile Limited minn International Trust Limited lis-socjeta` rikorrenti (Dok MFSA4 bhal Dok SB4) ; *memorandum* u l-*articles of association* ta` PIVGAME Ltd (Dok MFSA5) ; ittra tar-Registratur tal-

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Kumpanniji lil Silvio Busuttil datata 12 ta` Novembru 2012 (Dok MFSA6) ; Form T dwar 170 sehem ordinarju fi Crocodile Limited iffirmata minn Silvio Busuttil datata 5 ta` Novembru 2012 (Dok MFSA7 bhal Dok SB6) ; Form T dwar 270 sehem ordinarju fi Crocodile Limited iffirmata minn Silvio Busuttil datata 5 ta` Novembru 2012 (Dok SB5) ; *share transfer agreement* datat 5 ta` Novembru 2012 ta` 270 *ordinary shares* go Crocodile Limited minn International Trust Limited lis-socjeta` rikorrenti (Dok SB3).

Ikkunsidrat :

III. Dritt

Il-Qorti sejra taghmel riferenza fit-test Ingliz ghal dawk id-disposizzjonijiet tal-Kap 386 tal-Ligijiet ta` Malta illi fil-fehma taghha huma rilevanti ghall-fini tal-provvediment tal-lum. Sejra ticcita t-test tal-ligi bl-Ingliz ghall-fini komparattiv ghaliex `il quddiem sejra tirreferi ghal-ligi u l-gurisprudenza tar-Renju Unit.

L-Art 118 tal-Kap 386 jittratta t-transfer of shares or debentures. Id-disposizzjoni taqra hekk :-

(1) *Notwithstanding any provisions contained in any other law, a transfer of shares in or debentures of a company shall be made in writing.*

(2) *It shall not be lawful for a company to register a transfer of shares in or debentures of the company unless a proper instrument of transfer or an authentic copy thereof has been delivered to the company ...*

L-Art 119 tal-Kap 386 jittratta the registration of transfer or transmission of shares or debentures. Jaqra hekk :-

(1) *On the application of the transferor or of the transferee of any share in or debenture of a company, the company shall enter in its register of members or of debentures, as the case may be, the name and address of the transferee and where the application is made by the transferor the entry shall be made in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.*

(2) *If a company refuses to register a transfer of shares or debentures, it shall, within two months after the date on which the transfer was lodged, send to the transferee notice of the refusal.*

...

(6) *If default is made in complying with the provisions of subarticles (2) or (5), every officer of the company who is in default, shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.*

L-Art 120 tal-Kap 386 jittratta the issue of certificates. Id-disposizzjoni taqra hekk :-

(1) *Every company shall, within two months after the allotment of any of its shares or debentures and within two months after the date on which a transfer of any such shares or debentures is registered with the company, and within one month from the date on which any such shares or debentures transmitted causa mortis have been registered in the name of the person entitled to be registered as the holder thereof, deliver the certificates of all shares, debentures or debenture stock allotted, transferred or transmitted causa mortis to*

the persons entitled thereto, unless the conditions of issue of the shares or debentures otherwise provide.

(2) The expression "transfer" for the purposes of this article means a transfer on which the relevant duty, if any, has been paid and is otherwise valid, and does not include such a transfer as the company is for any reason entitled to refuse to register and does not register.

(3) In the case of a transfer or of a transmission causa mortis of shares the company shall within fourteen days after the date on which a transfer of any such shares is registered with the company, and within one month from the date on which any such shares transmitted causa mortis have been registered in the name of the person entitled to be registered as the holder thereof, deliver to the Registrar for registration a notice of the transfer or the transmission causa mortis stating the names and addresses of the transferees or the names and addresses of the persons entitled to the shares transmitted causa mortis, as the case may be ...

(4) If default is made in complying with any of the provisions of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.

L-**Art 123** tal-Kap 386 jittratta **the register of members**. Ighid hekk :

(1) Every company shall keep a register of its members and shall enter therein the following particulars :

(a) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number, so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member ;

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(b) *the date at which each person was entered in the register as a member ; and*

(c) *the date at which any person ceased to be a member ...*

(3) *The register of members shall be kept at the registered office of the company or at such other place as may be specified in the memorandum or articles.*

(4) *If default is made in complying with any requirement of this article, every officer of the company who is in default shall be liable to a penalty, and, for every day during which the default continues, to a further penalty.*

Fl-**Art 127** tal-Kap 386 li jittratta dwar **trustees and nominees**, hemm tifsira ta' *beneficial owner* fis-subartikolu (5) li taqra hekk :

In this article :

"beneficial owner" means the person beneficially entitled to the shares under a trust or a fiduciary agreement ;

Ir-rikorrenti ntavolat l-azzjoni odjerna abbazi tal-**Art 402** tal-Kap 386.

L-ewwel subinciz tal-Art 402 jibda bil-kliem *any **member** of the company who complains ...* (enfasi u sottolinear tal-qorti).

“Member” huwa definit fl-**Art 2(1)** tal-Kap 386 :-

*“except where otherwise specifically defined, **means** a shareholder of a company and a partner in any other commercial partnership.”* (enfasi u sottolinear tal-qorti).

Fl-istess Art 2(1), **“shareholder”** huwa definit bhala *“a person entered in the register of members of a company pursuant to article 123 or the bona fide holder of a share warrant referred to in article 121”*

Specifikament ghall-fini tal-Art 402, il-legislatur ried iwessa` t-tifsira ta` *“member”* ghall-fini ta` dik id-disposizzjoni billi fis-subinciz (6) ighid –

*“**member**” includes a person entitled at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or intestate succession, and a trustee, as defined in article 127, who holds shares in the company.*

Hija l-fehma ta` din il-Qorti illi ghall-ahjar interpretazzjoni tal-ligi taghna fejn si tratta tal-Art 402 tal-Kap 386 ghandha ssir riferenza ghas-*sources* tal-ligi taghna.

Fis-sentenza taghha tad-9 ta` Marzu 2007 fil-kawza **“Vella vs Vella Brothers Limited et”**, il-Qorti tal-Appell qalet *senza mezzi termini* illi l-Art 402 kien imfassal fuq l-Art 459 tal-UK Companies Act 1985.

L-Art 459 kien imhassar bl-Art 994 tal-UK Companies Act 2006. Pero` id-disposizzjoni *l-gdida* baqghet l-istess bhal ta` qabel.

Din il-Qorti sejra tirriproduci l-Art 402 fil-ligi taghna u l-Art 994 tal-Companies Act 2006 tar-Renju Unit ghal finijiet komparattivi.

L-Art 402 shih jaqra hekk –

(1) Any member of a company who complains that the affairs of the company have been or are being or are likely to be conducted in a manner that is, or that any act or omission of the company have been or are or are likely to be, oppressive, unfairly discriminatory against, or unfairly prejudicial, to a member or members or in a manner that is contrary to the interests of the members as a whole, may make an application to the court for an order under this article.

(2) Where the Registrar has received a report on a company under article 410 and it appears to him that the company's affairs are being or have been conducted in a manner falling within the meaning of subarticle (1), he may make an application to the court for the issue of an order under this article.

(3) If on an application made in terms of subarticle (1) or (2), the court is of the opinion that the complaint is well-founded and that it is just and equitable to do so, the court may make such order under such terms as it thinks fit

(a) regulating the conduct of the company's affairs in the future ; or

(b) restricting or forbidding the carrying out of any proposed act ; or

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(c) *requiring the company to do an act which the applicant has complained it has omitted to do ; or*

(d) *providing for the purchase of the shares of any members of the company by other members of the company or by the company itself and, in the case of a purchase by the company, for the reduction accordingly of the company's issued share capital ; or*

(e) *directing the company to institute, defend, continue or discontinue court proceedings, or authorising a member or members of the company to institute, defend, continue or discontinue court proceedings in the name and on behalf of the company ; or*

(f) *providing for the payment of compensation by such person as may have been found by the court responsible for loss or damage suffered as a result of the act or omission complained of, to the person suffering the said loss or damage ; or*

(g) *dissolving the company and providing for its consequential winding up.*

(4) *When an order is made for the dissolution of a company in terms of subarticle (3)(g), the company shall be deemed to have been dissolved on the date when the order is made and the provisions of Sub-Titles I and III of Title II of Part V of this Act regulating the winding up of companies shall apply.*

(5) *An order made under this article may require a company not to make any amendment, or to make such amendment as may be required, in its memorandum or articles.*

(6) *In this article, the term "member" includes a person entitled at law to represent the interests of a deceased member, a person to whom shares in the company have lawfully devolved by way of testate or*

intestate succession, and a trustee, as defined in article 127, who holds shares in the company. (enfasi u sottolinear ta` din il-qorti).

L-Art 994 tal-UK Companies Act 2006 shih jaqra hekk –

1) A member of a company may apply to the court by petition for an order under this Part on the ground :-

(a) *that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) , or*

(b) *that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.*

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.

(3) *In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, "company" means—*

(a) *a company within the meaning of this Act, or*

(b) *a company that is not such a company but is a statutory water company within the meaning of the Statutory Water Companies Act 1991.*

(enfasi ta` din il-qorti)

Ghall-fini ta` kompletezza ta` analizi, trid issir riferenza ukoll ghall-**Art 112 tal-UK Companies Act 2006** li jaghti tifsira ta` “*member*”. Id-disposizzjoni taqra hekk –

(1) *The subscribers of a company’s memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.*

(2) *Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.*

Ikkunsidrat :

IV. Dottrina

Andrew Muscat fil-pag **816** et seq tal-ktieb tieghu “**Principles of Maltese Company Law**” (2007 – MUP) ighid hekk dwar is-suggett tad-*Disposal and Aquisition of Shares* :-

... A specimen form of notice of transfer or trasmission of shares (known as a “Form T”) has been published by the Registrar ...

A person can only be recognised as a shareholder, at least for the purposes of the Companies Act, if his name is entered into the register of members. This rule results from article 2(1) of the act which inter alia defines a “shareholder” as “a person entered into the register of members

of a company ...” Moreover articles of association often provide that the transferor of a share is to be deemed to remain a holder until the name of the transferee is entered in the register of members in respect thereof. Unfortunately many companies do not in practice keep a register of members or, if they do, fail to update it ...

Li inghad minn **Andrew Muscat** (op. cit.) jinkludi *footnote* li taqra hekk :-

The terms “shareholder” and “member” are interchangeable. In English Law, although the terms are often used interchangeably, there is in fact a distinction. Thus a company limited by guarantee has members but it does not have shareholders. And the holder of bearer shares does not become a member, since entry in the register of members is necessary for this purpose (vide section 122 of the UK Companies Act 1985 which has been restated by section 112 of the UK Companies Act 2006). In Maltese law, however, the holder of a share warrant is a “shareholder” and a “member” unless otherwise specifically provided means a shareholder [vide article 2(1) Companies Act]

Ikkunsidrat :

V. Risultanzi

Skond il-memorandum u l-articles of association tal-intimata **Crocodile Limited**, jirrizulta li l-ishma **kollha** ta` Crocodile Limited, u cioe` 2000 –il sehem huma registrati f'isem International Trust Limited u fuq l-ebda hadd iehor. Fl-istess att, jinghad li International Trust Limited tagixxi bhala *licensed trustee*. L-uniku direttur tal-intimata Crocodile Limited huwa Cesare Florio filwaqt li Av. Katya Azzopardi hija l-*company secretary*. **Ma jirrizultax ippruvat** illi wara li International Trust Limited ittrasferiet l-ishma, li

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ssemew fil-kors ta` din il-kawza fi Crocodile Limited, lis-socjeta` rikorrenti, kien hemm registrazzjoni ta` dak it-trasferiment fir-registru tal-membri ta` Crocodile Limited skond l-Art 119 tal-Kap 386. Indirettament jirrizulta li ma kienx hemm registrazzjoni ghaliex is-socjeta` rikorrenti dehrilha li kellha tikteb lil Cesare Florio sabiex jipprezenta l-Form T. Nafu bhala fatt ippruvat li hadd mill-persuni li skond il-ligi setghu jipprezentaw il-Form T ma pprezentaha.

Skond il-*memorandum* u l-*articles of association* tal-intimata **PIVGAME Ltd**, jirrizulta li l-ishma kienu maqsuma in kwantu ghal 279,997 ta` Crocodile Limited u in kwantu ghal tliet (3) ishma ta` Caterina Pellegrini. Id-diretturi huma Av. Salvatore Florio u Malcolm Spiteri waqt li l-*company secretary* huwa Rodney Lee Berger.

Din tal-lum hija azzjoni skond l-**Art 402 tal-Kap 386**.

Sabiex azzjoni ta` din i-xorta twassal ghall-ghoti ta` rimedji, trid tkun istitwita kif trid il-ligi ; in partikolari skond ma jghid is-subinciz (1) tal-Art 402. Dak is-subinciz jaghti d-dritt ta` azzjoni lil “**membri**” ta` kumpannija **u lil hadd aktar**.

Il-Qorti diga` ghamlet riferenza ghat-tifsira li l-Kap 386 jaghti ghal “**membri**” ghall-fini tal-Art 402.

Din il-Qorti tghid fil-pront u minghajr xkiel ta` xejn li r-rikorrenti ma tistax tipprezenta azzjoni fondata fuq l-Art 402 tal-Kap 386 – **kif inhi dik tal-lum** – kontra PIVGAME Ltd, ghaliex ma jirrizultax li s-socjeta` rikorrenti hija “membri” tal-imsemmija socjeta` ntinata.

Ghar-rigward tal-azzjoni kif dedotta kontra Crocodile Limited, il-Qorti tirrileva li hija **sprovvista** mill-prova li t-trasferiment ta' ishma favur is-socjeta` rikorrenti fi Crocodile Limited kien registrat fir-*register of members* tal-kumpannija skond l-Art 119 tal-Kap 386. Hija **sprovvista** wkoll mill-prova li thallset it-taxxa dovuta fuq l-allegat trasferiment ta' ishma skond l-Art 120(2) tal-Kap 386.

Ladarba **mhuwiex ippruvat** li s-socjeta` rikorrenti tikkwalifika bhala "*shareholder*" ta` Crocodile Limited skond l-Art 2(1) tal-Kap 386 u allura ma tistax tikkwalifika bhala "*member*" ta` Crocodile Limited, din il-Qorti, minghajr l-icken esitazzjoni tghid, illi s-socjeta` rikorrenti hija *ex lege* prekuza milli tistitwixxi l-azzjoni odjerna.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza, billi tilqa` l-ewwel eccezzjoni tal-intimati, u konsegwentement qeghda tillibera lill-intimati mill-osservanza tal-gudizzju, spejjez unikament ghas-socjeta` rikorrenti.

< Sentenza Finali >

-----TMIEM-----