



MALTA

QORTI CIVILI

PRIM' AWLA

ONOR. IMHALLEF

JOSEPH ZAMMIT MC KEON

Seduta ta' l-24 ta' Marzu, 2015

Citazzjoni Numru. 780/2014

A X Holdings Limited (C3595)

u

Paul Xuereb (ID 29864M)

kontra

Ir-Registratur tal-Kumpanniji

Il-Qorti :

I. Preliminari

Rat ir-rikors li kien prezentat fil-5 ta' Settembru 2014 u li kien jaqra hekk :-

Illi r-rikorreni bejniethom kellhom l-ishma kollha fis-socjeta` Hardrocks Limited, socjeta` li kienet registrata bin-numru C6026 (vide Dok A) hawn anness.

Illi s-socjeta` Hardrocks Limited giet struck off minn fuq ir-Registru tas-socjetajiet b`avviz li deher fit-12 ta` Gunju 2014, kif jirrizulta mill-avviz hawn anness bhala Dok B.

Illi ai termini tal-artikolu 325(4) tal-Kap 386 ghadhom m'ghaddewx hames snin minn meta din is-socjeta` thassret minn fuq ir-registru.

Illi rrizulta li s-socjeta` Hardrocks Limited kienet il-propjetarja ta` zewg propjetajiet immobbli li ma gewx inkluzi fil-likwidazzjoni : tal-ewwel konsistenti f`bicca art li fuqha hemm mibnija substation, liema art tissejjah ta` Ras il-Hamrija u tinsab f`Wied il-Ghasel, Naxxar ; u tat-tieni konsistenti f`sem. indiviz ta` bicca art ta` kejl ta` circa tomnejn, liema art tissejjah ta` Santa Katarina, f`Wied il-Ghasel, Naxxar.

Illi meta gew trasferiti l-assi tas-socjeta` Hardrocks Limited, dawn il-bicctejn art thallew barra, u s-socjeta` Hardrocks Limited kienet u ghada l-propjetarja tagghom.

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Illi r-rikorrenti bhala unici azzjonisti fis-socjeta` Hardrocks Limited ghandhom kull interess li s-socjeta` Hardrocks Limited terga` titpogga fuq ir-Registru tas-Socjetajiet sabiex l-istess socjeta` Hardrocks Limited tkun tista` validament tiddisponi minn dawn il-bicctejn propjeta` li bi zvista ma gewx inkluzi fl-iskema ta` distribuzzjoni.

Illi jekk is-socjeta` mhux ser titpogga fuq ir-registru tas-socjetajiet huma bhala l-unici beneficial owners tas-socjeta` ser jigu pprivati mill-propjeta` u t-tgawdija tal-propjeta` mmobbli tas-socjeta` jew ir-rikavat mill-bejgh tal-istess.

Illi b`hekk jezistu r-rekwiziti kollha kontemplati fl-artikolu 325(4) sabiex socjeta` li tkun giet struck off terga` titqieghed fuq ir-registru tas-socjetajiet.

Ghaldaqstant ir-rikorrenti umilment jitolbu li s-socjeta` Hardrocks Limited (C6026) terga` titqieghed fuq ir-Registru tas-Socjetajiet taht daww il-provvedimenti kollha li din il-Qorti jidhrilha xierqa.

Rat id-dokumenti li kienu prezentati mar-rikors promotur.

Rat ir-risposta li kienet prezentata mir-Registratur tal-Kumpanniji fis-17 ta` Ottubru 2014, u li kienet konfermata bil-gurament mill-Av. Claudette Fenech bhala rapprezentant tal-intimat, li taqra hekk :-

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Illi in kwantu għall-meriti fattwali tal-kawza odjerna billi l-esponent mhuwiex edott mill-fatti kollha kif dikjarati mir-rikorrenti huwa jirrimetti ruhu għall-provi u għall-gudizzju ta` dina l-Onorabbli Qorti.

Illi l-kumpannija in kwistjoni Hardrocks Limited (C6026) giet registrata fid-9 ta` Awissu 1982 u konsegwentement giet ikkancellata minn fuq ir-Registru b`effett mit-12 ta` Gunju 2014.

Illi l-esponent jixtieq umilment jigbed l-attenzjoni ta` dina l-Onorabbli Qorti illi l-kumpannija in kwistjoni kienet giet ikkancellata minn fuq ir-Registru per konsegwenza ta` rizoluzzjoni għax-xoljiment u stralc konsegwenzjali tal-kumpannija mehuda mill-azzjonisti tagħha cioe` mir-rikorrenti stess.

Illi għaldaqstant l-istralc u l-kancellament tal-kumpannija kien wiehed volontarju mehud ai termini ta` l-artikoli kollha relevanti skond l-Att. Dan kuntrarjament għal dak li ssottomettew ir-rikorrenti fir-rikors promotur tagħhom fejn qalu illi l-kancellament sar a bazi ta` l-Artikolu 325 ta` l-Att, liema artikolu jipprovidi għall-procedura specifika mibdija fid-diskrezzjoni tar-Registratur magħrufa bhala d-defunct procedure.

Illi għaldaqstant l-esponent umilment jissollewa illi tali rikors kellu semmai jigi intavolat ai termini ta` l-Artikolu 300A ta` l-Att jekk ikun il-kaz. Tali Artikolu jipprovidi illi meta fir-rikors ta` stralc ta` kumpannija l-istralcjarju ma jkunx ikkalkola xi assi tal-kumpannija u l-isem tal-kumpannija jkun thassar minn fuq ir-registru kull persuna interessata tista` b`rikors titlob lill-Qorti biex tordna r-rettifika tal-iskema ta` distribuzzjoni u l-Qorti tista` meta jidhrilha xieraq tordna dik ir-retifika taht dawk il-pattijiet u kondizzjonijiet li jidhrilha xierqa. Ta` min wiehed jinnota illi l-kliem tal-ligi jagħmluha cara illi tali rimedju ma għandux jitqies bhala wiehed awtomatiku imma wiehed illi jingħata fid-diskrezzjoni tal-Qorti jekk ir-rikorrenti jippruvaw b`mod mingħajr dubbju illi t-talba tagħhom għandha tigi milquga. Tali prova fil-kaz odjern isiru iktar oneruzi meta wiehed jikkonsidra l-fatt illi l-istralc u l-kancellament tal-kumpannija Hardrocks Limited (C6026) kien wiehed totalment volontarju mehud b`decizjoni ta` l-azzjonisti u l-ufficjali tas-socjeta` stess.

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Illi r-rimedju preskritt fl-Artikolu 300A ta' l-Att dwar il-Kumpanniji mhwiex wiehed intenzjonat illi jfejjaq xi forma ta' traskuragni jew negligenza fil-process ta' stralc u l-kancellament ta' kumpannija. Ir-rimedju huwa wiehed eccezzjonali ghaliex igorr mieghu konsegwnezi legali kbar inkluz t-tibdil fl-informazzjoni pubblika tar-records tal-kumpannija.

Illi fil-kaz odjern l-esponent qed jadotta linja fejn joggezzjona ghat-talba kif maghmula mir-rikorrenti. Minghajr pregudizzju f'kaz li dina l-Qorti jidhrilha xieraq u opportun illi l-isem tal-kumpannija jerga' jitpogga fuq ir-registru l-esponent umilment jissollewa illi tali re-instatement ghandu jigi akkordat biss ibbazat fuq artikolu specifiku u rilevanti ta' l-att u meta l-elementi indispensabbli u rikjesti mil-liogi jigi ppruvati b`mod sodisfacjenti ghall-Qorti. Dan salv kull provvediment iehor illi dina l-Onorabbli Qorti jidhrilha xieraq u opportun fic-cirkostanzi partikolari tal-kaz odjern.

Illi r-rikorrenti jinghataw terminu improrogabbli sabiex jirregolarizzaw il-posizzjoni taghhom u tal-kumpannija sabiex jigi evitat kwalunkwe forma ta' abbuz jew incertezza rigward l-isttaus tal-kumpannija.

Illi r-Registratur mexa b`mod korrett skond kif titlob minnu l-ligi partikolarment l-Att dwar il-Kumpanniji. Ghaldaqstant ma ghanddux jinzamm responsabbli ghal ebda spejjez marbuta ma` dan il-kaz.

Rat illi permezz ta' rikors taghhom tas-17 ta' Novembru 2014, ir-rikorrenti talbu korrezzjoni tar-rikors promotur fis-sens illi r-riferenza ghall-Art 325(4) tal-Kap 386 kellha thassar sabiex minflok issir riferenza ghall-Art 300A tal-Kap 386. Billi sa mill-udjenza tal-11 ta' Novembru 2014, l-intimat ma kienx oppona dik it-talba, il-Qorti akkordat il-korrezzjoni kif rikjesta mir-rikorrenti permezz ta' digriet taghha tat-18 ta' Novembru 2014. Min-naha tieghu, l-intimat ikkonferma li r-risposta tieghu tas-17 ta' Ottubru 2014 kienet tghodd anke ghar-rikors promotur kif korrett.

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Semghet ix-xiehda tar-rikorrent Paul Xuereb fl-udjenza tad-29 ta` Jannar 2015.

Rat illi fl-istess udjenza, ir-rikorrenti talbu korrezzjoni ohra fir-rikors promotur fis-sens illi mal-Art 300A tal-Kap 386 kellha tidhol riferenza wkoll ghall-Art 300B tal-Kap 386. Billi t-talba ma kenitx opposta mill-intimat, il-Qorti laqgħet it-talba.

Rat id-digriet tagħha tat-2 ta` Frar 2015 fejn, in vista tal-korrezzjoni għar-rikors promotur li kienet akkordata bid-digriet tagħha tad-29 ta` Jannar 2015, tat lill-intimat il-fakolta` li sal-udjenza tas-16 ta` Frar 2015 jipprezenta risposta ulterjuri fejn igib għall-konjizzjoni tagħha l-posizzjoni tiegħu dwar il-pretensjoni tar-rikorrenti li l-istanza tagħhom tista` tinkwadra ruhha anke/jew fl-ambitu tal-Art 300B tal-Kap 386.

Rat ir-risposta ulterjuri li pprezenta l-intimat fit-13 ta` Frar 2015 li taqra hekk :-

Illi permezz ta` digriet mogħti minn dina l-Onorabbli Qorti fit-2 ta` Frar 2014, l-intimat Registratur tal-Kumpanniji ngħata l-opportunita` sabiex jirrispondi għat-talba tar-rikorrenti sabiex l-kumpannija Hardrocks Limited (C6026) terga` titqiegħed fuq ir-registru tal-kumpanniji għab-bazi ta` l-Artikolu 300A anke/jew skond l-Artikolu 300B tal-Att dwar il-Kumpanniji.

Illi f`dan il-kaz ir-Registratur jixtieq umilment jissolleva illi l-Artikoli 300A u 300B huma zewg proceduri distinti u jipprovd u zewg rimedji differenti u għalhekk l-Att jipprovdihom f`zewg disposizzjonijiet diversi. Fl-opinjoni umili ta` l-esponent huwa l-Art 300B biss illi jipprovd i specifikament għar-restituzzjoni ta` l-isem tal-kumpannija fuq ir-registru. Dan għaliex l-process ta` stralc illi jkun wassal għall-kancellament tal-kumpannija kien vizzjat bi frodi jew b`illegalita` materjali.

Illi kif gie ampjament spjegat fil-kaz ta` Lay Lay Co Limited vs Peter Paul Darmanin et (Rik Nru 715/2010) u Av Dr Nicolai Vella Falzon noe vs Ir-Registratur tal-

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Kumpanniji et (Rik Nru 581/2013) minn dina l-Onorabbli Qorti, ir-rimedju mitlub taht l-Artikolu 300B huwa wiehed eccezzjonali u zgur mhuwiex intiz bhala xi procedura facli jew komda sabiex jitranga xi zball jew mankanza ta` azzjonisti jew diretturi tal-kumpannija illi wara illi jipprocedu ghal stralc u kancellament b`mod legger jindunaw illi thalla barra xi assi tal-kumpannija.

Illi r-rekwiziti ta` frodi u llegalita` materjali huma sine qua non u ghalhekk iridu jigu ppruvati b`mod car u sodisfacjenti ghall-Qorti illi minhabba l-ezistenza ta` xi wiehed minn dawn l-elementi il-process ta` stralc u kancellament jista` jkun gie vizzjat jew annullat. Ghaldaqstant tali provi ghandhom jigu ppruvati skond il-fatti u c-cirkostanzi partikolari tal-kaz illi l-Qorti jkollha quddiemha.

Illi fl-ahhar seduta gie allegat illi kien minhabba nuqqas tal-istralcjarju illi xi assi illi kellha s-socjeta` Hardrocks Limited (C6026) thallew barra mill-iskema ta` distribuzzjoni tal-kumpannija in kwistjoni. L-esponent jixtieq jissolleva illi l-ufficju tal-istralcjarju huwa wiehed specifiku u li jgorr responsabilita` kbira mieghu. Ghaldaqstant l-ligi fl-Artikolu 305 ta` l-Att titlob illi persuna ma tkunx kwalifikata li taghmilha ta` stralcjarju kemm –il darba ma tkunx jew avukat jew individwu illi jkun accountant pubbliku certifikat jew accountant u awditur pubbliku certifikat. Fil-prattika dan ghandu jassigura ruhhu illi kwalunkwe pretensjoni jew pendenzi gew verament finalizati qabel ma jmexxi l-process ta` stralc u jissottometti dokumenti rilevanti lir-Registratur tal-Kumpanniji ghar-registrazzjoni skond il-ligi. Dan specifikament meta l-istralc ikun wiehed volontarju u ghalhekk jistghu facilment jigu pregudikati nteressi ta` terzi anke jekk dawn ma kienux involuti direttament fil-procediment tal-istralc.

Illi minghajr pregudizzju ghas-suespost jekk dina l-Onorabbli Qorti tkun sodisfatta illi gew provati r-rekwiziti kollha mitluba taht l-Artikolu 300B l-esponent Registratur mhuwiex joggezzjoni illi l-isem tal-kumpannija Hardrocks Limited (C6026) jkun restitwit fuq ir-registru fi stat ta` stralc sabiex il-process jerga` jinfetah ghal dawk ir-ragunijiet u ghal dak iz-zmien illi l-Qorti jidhrilha xieraq.

Semghet ix-xiehda ta` Josef Wallace Galea fl-udjenza tas-16 ta` Frar 2015 u rat id-dokument li pprezenta x-xhud.

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Semghet is-sottomissjonijiet tad-difensuri tal-partijiet fl-udjenza tal-10 ta` Marzu 2015.

Rat id-digriet li tat f`din l-udjenza fejn halliet il-kawza ghas-sentenza ghal-lum.

Ikkunsidrat :

II. Provi

Kienu presentati **Dok A u Dok B** mar-rikor promotur ; dan huwa taghrif li tnizzel mill-website tal-Awtorita` ghas-Servizzi Finanzjarji ta` Malta.

Jirrizulta li Hardrocks Limited kienet registrata bhala kumpannija fid-9 ta` Awissu 1982 bin-Nru C6026. L-azzjonisti taghha huma r-rikorrenti fil-procediment tal-lum. Id-diretturi kienu Angelo Xuereb u r-rikorrent Paul Xuereb. Il-kumpannija kienet xjolta bil-mod volontarju u l-awditur Josef Wallace Galea kien appuntat bhala stralcjarju. L-isem tal-kumpannija thassar mir-Registru tal-Kumpanniji fit-12 ta` Gunju 2014.

Ir-rikorrent **Paul Xuereb** xehed illi l-azzjonisti ghamlu r-rikors billi sabu li meta sar l-istralc, xi immobbli li kienu ta` Hardrocks Limited thallew barra. Dan gara frott ta` zball. Gara li kien hemm substitution tal-Enemalta li kienet mibnija fuq art ta` Hardrocks. Riedu jittrasferixxu s-substation lura lill-Enemalta ghax ma kellhomx aktar htiega ghalha. Sabu izda li ma setghux jaghtu lura s-substation lura lill-Enemalta billi

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Hardrocks lahqet thassret mir-Registru bla ma saret l-ebda disposizzjoni dwar dik l-art. L-istralcjarju kien Josef Wallace Galea tad-ditta ta` awdituri Falzon & Falzon. Ma jidhrirx li kien ghamel ricerki.

Josef Wallace Galea xehed illi l-professjoni tieghu hija dik ta` awditur. Huwa kien l-istralcjarju ta` Hardrocks Limited. Ikkonferma li waqt li kien qieghed jikkonduci l-istralc huwa ma kienx ghamel ricerki sabiex jistabilixxi jekk il-kumpannija xjolta kellhiex propjeta` mmobbli. Spjega li ta` Hardrocks kien kaz ta` *voluntary liquidation*. Ma kellhiex dejn veru terzi ; l-uniku dejn li kellha kien versu persuni li kienu relatati mal-azzjonisti. Huwa kien ircieva *statement of affairs* li kien ighid li l-kumpannija kienet sejra tkun solvibbli fi zmien tnax il-xahar ; jassumi li dak l-*statement* kien preparat mid-diretturi. Fil-lista tal-assi li kien inghata ma kienx hemm indikata propjeta` mmobbli ; ghalhekk ma kienx ghamel ricerki. Il-lista tal-assi tawhielu d-diretturi. Fl-ahhar *balance sheet* ma kienx jidher li l-kumpannija kellha propjeta` ; fil-*balance sheets* precedenti kien hemm immobbli ndikati. Sar jaf li Hardrocks kellha propjeta` li ma kenitx meqjusa ghall-fini tal-istralc, meta nutar ghamel kuntatt mieghu biex jidher fuq kuntratt ta` trasferiment ; huwa qal lin-nutar li l-kumpannija kienet thassret minn fuq ir-Registru. Qabel dakinhar ma kellux l-icken idea li Hardrocks kellha propjeta` mmobbli. Qal illi huwa hejja l-Form B(2) biex tigi ffirmata mid-diretturi. Kien hu li pprezenta l-*form* iffirmata lir-Registru tal-Kumpanniji (**Dok JWG1**). Fuq domanda tal-Qorti illi ladarba kien se jaghmel *a scheme of distribution* kienx ghaqli li jaghmel ricerki, ix-xhud wiegeb : *illum nghid iva zgur*.

Riferibbilment ghal **Dok JWG1**, jirrizulta anness l-*statement of affairs* sal-31 ta` Lulju 2012 li rrefera ghalha Josef Wallace Galea.

Ikkunsidrat :

III. L-azzjoni tar-rikorrenti skond l-Art 300B tal-Kap 386

Ghalkemm inizjalment u cioe` fir-rikors promotur, ir-rikorrenti ddikjaraw li kienu qeghdin jibbazaw l-istanza taghhom fuq l-Art 325(4) tal-Kap 386, waqt l-iter tal-kawza, ir-rikorrenti bidlu ghal kollox d-direzzjoni taghhom, billi warrbu ghal kollox kull riferenza ghall-Art 325(4) tal-Kap 386, u ddikjaraw li kienu qeghdin jiprocedu abbazi tal-Art 300A u/jew l-Art 300B tal-Kap 386. Wara li nghalaq il-gbir tal-provi, u waqt it-trattazzjoni finali tal-kawza, id-difensur tar-rikorrenti ddikjara li r-rimedju li r-rikorrenti kienu qeghdin jitolbu mill-Qorti kien unikament a tenur tal-Art 300B tal-Kap 386, u ghalhekk stieden lill-Qorti sabiex tiskarta r-riferenza taghhom ghall-Art 300A tal-Kap 386, u toqghod biss fuq l-Art 300B tal-Kap 386.

Ikkunsidrat :

IV. Risultanzi

L-Art 300B dahal fil-Kap 386 bis-sahha tal-Att IV tal-2003.

Id-disposizzjoni taqra hekk :-

(1) *Meta kumpannija tkun thassret minn fuq ir-registru, kull persuna interessata tista' b'rikors, titlob lill-Qorti biex tordna hi li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah.*

(2) *Meta, fuq rikors maghmul taht is-subartikolu (1), il-Qorti tkun sodisfatta li l-istralc u t-thassir tal-kumpannija jkun vizzjat bi frodi jew b'illegalità ta' natura materjali, il-Qorti tista' tordna li l-isem tal-kumpannija jkun restitwit fuq ir-registru u li l-istralc jerga` jinfetah ghal dawk ir-ragunijiet u ghal dak iz-zmien li l-Qorti tispecifika fid-decizjoni taghha, u l-Qorti ghandha taghti dawk id-direttivi u timponi dawk il-kondizzjonijiet li jidhrilha xieraq.*

(3) *Il-Qorti ghandha tilqa' t-talba biss jekk tkun sodisfatta li dak ikun l-uniku rimedju li jkun hemm.*

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(4) *Fid-decizjoni tagħha l-Qorti għandha wkoll tiddeciedi jekk l-ordnijiet u d-direttivi tagħha jkunux effettivi favur il-persuni kollha jew jekk għandhomx japplikaw limitatament għal persuni specifiki indikati fid-decizjoni.*

(5) *Ma jista' jsir ebda rikors taht dan l-artikolu wara li jgħaddu hames snin mid-data li fiha l-isem tal-kumpannija jkun thassar mir-registru.*

Fil-Ligi Ingliza, il-procedura tentata mir-rikorrenti hija magħrufa fil-bhala **restoration of dissolved companies to the register**. Guristi awtorevoli tad-dritt soċjetarju Ingliz kellhom okkazzjoni jagħmlu analizi mirquma tal-ligi li tirregola l-procediment, l-iskop tiegħu, kif jithaddem u fejn iwassal.

Bhala introduzzjoni, il-Qorti sejra tirreferi għal pagna 778 ta' **Sealy's Cases and Materials in Company Law** (9th Edition – OUP – 2010) fejn jinghad hekk –

Restoration of dissolved companies to register may be necessary if, for example, further assets are discovered, or someone wishes to bring a damages claim for which the former company was insured.

There are two procedures available for restoring companies to the register :

An administrative procedure available when companies have been incorrectly struck off as defunct under CA 2006 s 1000 or 1001 (see ii and vii above) requiring application to the registrar by the company's former directors or former members within six years of the date of dissolution (CA 2006 s 1024)

and

A judicial procedure, requiring application to court (CA 2006 s 1029) in all other cases. The application may be made by a wide class of people [s 1029 (2)] and must

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generally be made within six years of the dissolution of the company although there are various exceptions. For example there is no time limit where the application is for the purpose of bringing proceedings against the company for damages for personal injury (s 1030 1). The court has wide powers to make restoration including any case in which the court thinks it is just to do so (s 1031 1 c)

CA 2006 ss 1024-1034 provide detailed rules on the pre-conditions and consequences of the procedures, including special supplementary rules dealing with company names and with restoration of property that had vested in the Crown.

Gower and Davies fil-Principles of Modern Company Law (8th Edition – Sweet & Maxwell – 2008) jidhlu fl-isfond tal-legislazzjoni ta` qabel (Companies Act 1985) u ta` dik viginti fil-prezent (Companies Act 2006), u jaghmlu analizi aktar dettaljata tal-procedura. Minn pag 1232 et seq ighidu hekk –

A contrast between the death of an individual and that of a company is that without divine intervention a dissolved company can be resurrected.

Following the CLR, the Act made two innovations in this area. First it introduced a limited form of administrative restoration to the register a result which had previously required a court order. Secondly a single method of court restoration replaced the formerly existing two methods which the courts had found some difficulty in making sense of and which overlapped to a considerable extent.

Administrative restoration

The new form of administrative restoration applies only where the company was dissolved by the Registrar under the provisions relating to defunct companies. Thus it does not apply to either voluntary striking off or to dissolution after winding up. The conditions for administrative restoration to the register confine it to situations where the company was carrying on business or in operation at the time it was struck. Thus the main purpose of administrative restoration is to deal more cheaply with reversing a striking off, which, ideally, should not have occurred in the first place. For probably the same reason, the application for restoration may be made only by a former director or former member of the company, but no application for restoration may be made more than six years after its dissolution. If any of the company's property is vested in the

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Crown as bona vacantia, the Crown's representative must consent and the applicant must offer to pay any costs of the Crown in relation to the application and more importantly dealing with the property during the period of dissolution. Finally the applicant must deliver to the Registrar such documents as are necessary to bring the company's public records up-to-date and to pay any penalties outstanding at the time the company was dissolved.

If these conditions are met the Registrar is under a duty to restore the company to the register. Notice of the decision must be given to the applicant and the restoration takes effect when that notice is sent. Public notice must be given of the restoration. The effect of restoration is that the company is deemed to have continued in existence as if it had not been struck off. However any consequential directions, if necessary, for placing the company and all other persons in the position (as nearly as possible) as they would have been in, had the company not been struck off, are to be given, not by the Registrar, but by a court, to which application may be made within three years of restoration.

Restoration by the court

The two court-based restoration methods previously provided were contained sections 651 and 653 of the 1985 Act. The current provisions are based on those of section 653, the somewhat simpler procedure. The court-based procedure applies to all forms of dissolution and a much wider range of persons may apply for restoration. These include not just former directors or members but any creditor of the company at the time of dissolution, anyone who but for the dissolution would have been in a contractual relationship with it, any person with a potential legal claim against the company, any manager or trustee of an employee pension fund, and the Secretary of State. This caters for a much wider range of reasons for wanting to have the company restored to the register, a common one being in order to sue or assert a right against it. Normally such persons must act within six years of the date of dissolution, but a claim for restoration in order to bring a claim for damages for personal injury against the company may be made at any time.

The court has power to order restoration if (a) in the case of striking off of a defunct company, it was carrying on business or in operation at the time ; (b) in the case of voluntary striking off, the conditions for such a striking off were not complied with ; and (c) in any other case the court thinks it just to do so. Restoration, if ordered, takes effect from the time the court's order is delivered to the Registrar and the Registrar must give publicity to the order in the usual way. The effect of restoration by the court is the same as with administrative restoration and the court may give the necessary directions to effect the principle that the company should be treated as if never dissolved.

Kopja Informali ta' Sentenza

Apparti l-pronunzjamenti dwar id-disposizzjoni li tat din il-Qorti **kif presjeduta**, il-Qorti ltaqghet ma` zewg pronunzjamenti taghha ohra, meta kienet diversament presjeduta (**PA/GV**) :-

1) L-ewwel wiehed huwa dak tat-2 ta` Frar 2007 fir-Rikors Nru 1108/2006 fl-ismijiet **“Rikors konguntiv ta’ George (401744M) u Maruccia (217951M) konjugi Muscat ai termini tal-Artikolu 300B ta’ l-Att dwar il-Kumpanniji (Kap 386 tal-Ligijiet ta’ Malta)”**.

2) It-tieni wiehed huwa dak tad-19 ta` Novembru 2007 fil-kawza fl-ismijiet **“Salvatore Pisani vs Registratur tal-Kumpanniji”**.

Il-Qorti tghid mill-ewwel li dawn iz-zewg kazi kienu jirrigwardaw soċjetajiet *en nom collectif* mhux kumpanniji bhal fil-kaz tal-lum.

Fl-ewwel kaz, is-socji ddecidew li jxolju s-socjeta' in kwistjoni. Meta r-Registratur tal-Kumpanniji kien avzat bid-decizzjoni ta' xoljiment ha l-passi necessarji sabiex is-socjeta' tigi cancellata mir-Registru kif fil-fatt sar. Gara pero` li meta sar il-kancellament, is-socjeta` kien ghad kellha assi mmobbli registrati f'isimha li kienu ghadhom ma ddevolvewx fuq is-socji f'isimhom personali jew fuq terzi. Ghalhekk saret talba lill-Qorti sabiex is-socjeta` ma tibqax mhassra mir-registru sakemm tiddisponi mill-propjeta`, u mbaghad wara li dan isir, tithassar b`mod definittiv. Il-Qorti laqghet it-talba ghax sostniet li t-thassir tal-kumpannija sar bi zball.

Fit-tieni kaz, wiehed miz-zewg socji miet u ma nhatar hadd minflok. Is-socju rimanenti xolja s-socjeta` meta s-socjeta` kien ghad kellha dejn x`jithallas lil terzi kif ukoll propjeta` mmobbli x`tigi trasferita. Ghalkemm sar l-avviz tax-xoljiment, l-ebda kreditur ma resaq biex jaghmel *claim* u s-socjeta` thassret mir-registru. Is-socju rimanenti talab sabiex is-socjeta` terga` titpogga fir-registru sabiex jithallas id-dejn ta` terzi u sabiex il-propjeta` mmobbli tigi trasferita lilu ; imbaghad setghet tithassar b`mod definittiv. Il-Qorti laqghet it-talba billi kienet tal-fehma l-procedura ghat-thassir tas-socjeta` kienet inkompleta.

Fil-Principles of Maltese Company Law (MUP – 2007 – pag 43) **Andrew Muscat** hekk jikkummenta dwar l-Art 300B –

The amending Act introduced another novel provision dealing with the situation where the winding up and striking off of a company has been vitiated by fraud or illegality of a material nature. A typical example would be where the liquidator deliberately fails to take into account a pending claim against the company.

The new article (article 300B of the Companies Act) empowers the court, upon an application filed by any interested person to order that the name of the company be restored to the register and the winding up be reopened for such purposes and such period as the court specifies in its decision. The court is also entitled to give such directives and impose such conditions as it may consider appropriate. No application may be filed after the expiration of five years from the date on which the name of the company has been struck off the register. Prior to the introduction of article 300B, the Maltese courts had in a number of cases tackled situations where a claim against a company was not taken into account by the liquidator who proceeded to finalise the winding up and have the company's name struck off the register. In these cases the courts applied a remedy involving the effective revival of the company.

It should be remarked that the courts have been willing to provide such a remedy even where the omission by the liquidator to take into account a pending claim against the company was purely inadvertent. Article 300B however empowers the court to grant a remedy where it is satisfied that “the winding up and striking off of the company has been vitiated by fraud or illegality of material nature”. Would an inadvertent omission constitute “illegality”. A wide interpretation ought to be afforded to the term “illegality”. A liquidator who, whether negligently or fraudulently, fails to take into account a pending claim will, if it is submitted, have acted unlawfully. After all, in terms of general principles of law, a person who does not use the prudence, diligence and attention of a bonus paterfamilias and causes damage as a result is deemed to have acted unlawfully. Moreover a liquidator is clearly bound by law to take into account all pending claims against the company and if he fails to do so through negligence, imprudence or want of attention he should also be deemed to have acted unlawfully.

Huwa maghruf u mizmum fid-dritt soċjetarju li kumpannija tibqa' teżisti u tgawdi l-personalita' ġuridika tagħha sa dak il-hin li isimha jithassar mir-Registru tal-Kumpanniji. Meta jithassar l-isem ta' kumpannija, hija titqies legalment bħala persuna li tkun “mietet”. Din il-qagħda tagħha tibqa' hekk sakemm ma jkunx hemm raġuni serja biżżejjed biex terġa' “tirxuxtaha” skond kif jipprovdi l-Art 300B tal-Kap 386.

Kopja Informali ta' Sentenza

Bhala principju generali, ir-ravvivar ta' kumpanija m'ghandux jigi facilment accettat. Irid jigi assikurat li l-kaz huwa wiehed genwin u m'ghandux jinghata lok ghall-abbuz jew xi forma ta' kolluzzjoni bejn il-partijiet interessati. Azzjonisti ta' socjeta' m'ghandhomx jiprocedu ghal-likwidazzjoni u thassir taghha b'mod legger, bl-idea *zbaljata* li jekk `il quddiem jinqala' l-kaz, il-kumpanija tkun tista` tigi ravvivata. Fil-kaz tal-ligi taghna, is-sitwazzjoni mhijiex din. Il-Qorti hija prekluzza milli taccetta l-*irxuxtar* tal-kumpanija jekk ma jirrizultawx il-linji traccjati mill-Art 300B.

Meta wiehed iqabbel l-Art 300B mad-disposizzjonijiet prevalenti fil-ligi Ingliza isib li filwaqt li f'din tal-ahhar, ir-rimedju huwa miftuh ghal numru ta` persuni li lista taghhom tirrizulta fil-ligi stess, fil-kaz tal-ligi taghna, il-legislatur ma llimitax ruhu ghal lista specifika jew ghal kategorija ta` persuni, izda fetah ir-rimedju ghal *kull persuna interessata* (ara is-subinciz 1 tal-Art 300B). Min jikkwalifika bhala *persuna interessata* jrid jitqies skond il-fatti u cirkostanzi ta` kull kaz.

Il-Qorti ma tarax il-htiega li fil-kaz tal-lum taghmel analizi ta` x`ried ifisser il-legislatur bil-frazi *kull persuna interessata* ghaliex ma hemmx dubju li z-zewg rikorrenti bhala l-possessuri tal-ishma kollha ta` Hardrocks Limited (u allura bhala l-*beneficial owners* tal-istess) ghandhom kull interess li jippromwovu dan il-procediment, ladarba rrizulta li fil-kors tal-istralc baqghu barra mill-iskema ta` distribuzzjoni l-immobbli li ghalihom saret riferenza fir-rikors promotur bil-konsegwenzi negattivi u gravi li din l-omissjoni gabet maghha.

Sodisfatt il-kriterju tal-*interest* skond is-subinciz 1 tal-Art 300B, il-Qorti sejra tara issa jekk humiex sodisfatti r-rekwiziti tas-subinciz 2 tal-Art 300B.

Il-Qorti teskludi mill-ewwel illi fil-kaz tal-lum saret xi allegazzjoni jew prova li l-istralc u thassir tal-kumpanija kien vizzjat bi frodi.

Eskluz il-vizzju bi frodi, il-Qorti trid tara jekk tirrizultax ir-rekwizit alternattiv tal-illegalita` ta` natura materjali.

Il-Kap 386 ma jaghti l-ebda tifsira ta` x`tikkostitwixxi *illegalita`* ghall-fini tas-subinciz 2 tal-Art 300B. Li jfisser li l-interpretazzjoni ta` *illegalita`* ghandha tkun wiesgha, mhux restrittiva ghal fergha jew ohra tad-dritt. B`*illegalita`* il-Qorti qeghda tifhem att mhux permess mil-ligi. L-unika restrizzjoni li tara l-Qorti hija li mhux kull *illegalita`* tiskatta l-jedd ghal rimedju skond is-subinciz 2 izda l-*illegalita`* trid tkun ta` *natura materjali*. X`hinu *materjali* jiddependi mill-fattispeci ta` kull kaz. Irid pero` jinghad illi l-materjalita` tal-*illegalita`* trid tkun tali li tivvizzja l-istralc. Huwa propju ghalhekk li l-procediment skond l-Art 300B huwa specjali u straordinarju ghaliex li jigri huwa li wara li jinghalaq l-istralc, u jkun thassar l-isem tal-kumpannija mir-registru, jintalab li l-isem jerga` jidhol fir-registru. Fil-ligi taghna (mhux daqstant taht il-ligi Ingliza) ir-ragunijiet ghat-talba huma ristretti u ghalhekk il-materjalita` tal-*illegalita`*.

Fil-kaz tal-lum, irrizulta bhala fatt ippruvat u nkontestat illi wara li r-rikorrenti, bhala azzjonisti ta` Hardrocks Limited, hadu d-decizjoni li jxolju volontarjament il-kumpannija, u hatru lil Josef Wallace Galea bhala stralcjarju, huma naqsu, frott ta` zball, milli jindikaw lill-istralcjarju li l-kumpannija kienet is-sid tal-immobbli li ghalihom saret riferenza fir-rikors promotur. Irrizulta wkoll bhala fatt ippruvat u nkontestat illi l-istralcjarju qaghad ghal kollox fuq it-taghrif li inghata mill-azzjonisti, u naqas li jaghmel ricerki sabiex jistabilixxi hu direttament (mhux fuq li jghidlu haddiehor) jekk il-kumpannija kellhiex propjeta` mmobbli. Il-konsegwenza ta` dan kienet li thejja *scheme of distribution* li halla barra l-immobbli in kwistjoni. U l-istralcjarju mexa ghat-thassir tal-kumpannija mir-Registru. Kien biss – tista` tghid – b`kumbinazzjoni li kien skopert in-nuqqas – din il-Qorti tghid – grossolan fil-kondotta tal-istralcjarju ghar-raguni li meta giet biex tigi trasferita l-propjeta` li terzi nstab li l-kumpannija kienet lahqet thassret mir-Registru.

Fix-xiehda tieghu, ir-rikorrent jistqarr illi hu jew Angelo Xuereb bhala diretturi ma kienux indikaw l-immobbli lill-istralcjarju minhabba *zball*. Il-Qorti tghid mill-ewwel illi li kieku kull ma gara kien konsegwenza ta` *zball* jew *zvista* da parti tal-azzjonisti u/jew diretturi, allura ma setax jissussisti r-rekwizit tal-*illegalita` ta` natura materjali* ghaliex il-procediment skond l-Art 300B mhuwix intiz biex jirrimedja ghal *zball* jew *zvisti*.

Pero` fil-kaz tal-lum, il-Qorti ssib li kien hemm *illegalita` ta` natura materjali* ghalieq l-istralcjarju naqas b`mod grossolan fid-dmirijiet legali tieghu bhala stralcjarju.

Anke l-kaz ta` stralc volontarju tal-membri, huwa obbligu legali tal-istralcjarju li jagħmel dawk il-ħwejjeġ li jkunu meħtieġa biex jiġi stralcjat in-negozju tal-kumpannija u sabiex jitqassam l-attiv tagħha. Bhala parti mill-process fejn jistabilixxi l-attiv, l-istralcjarju jrid jiddetermina l-konsistenza tal-assi kollha tal-kumpannija, speċjalment l-immobbli. Il-Qorti tagħmel enfasi fuq l-immobbli ghalieq dawk jikkostitwixxi l-assi l-aktar solidi li fuqhom l-istralcjarju jista` jwettaq l-istalc. Il-presenza ta` immobbli fil-patrimonju ta` soċjeta` jista` jiġi stabbilit bi precizjoni tramite ricerki pubblici. Bir-ricerki ma jkunx stabbilit biss x`beni mmobbli jkollha kumpannija izda jkun magħruf jekk għandhiex djun versu terzi li huma kawtelati b`ipoteki jew privileggi. Fil-kaz tal-lum, l-istralcjarju falla fit-twettieq tal-inkariku tieghu mill-bidu nett ghalieq l-*scheme of distribution* ittebba` negattivament minhabba l-omissjoni grossolana tal-immobbli. In-nuqqas tal-istralcjarju huwa sanzjonat bl-**Art 312 tal-Kap 386** meta dan *inter alia* jirreferi għal cirkostanza fejn *waqt l-istralc ta` kumpannija sew jekk bil-qorti jew volontarjament ikun jidher li persuna li ... kienet tagixxi bhala stralcjarju tal-kumpannija ... kienet hatja ta` ... ksur ta` dmir dwar il-kumpannija.*

Il-Qorti tirrileva li l-istralcjarju għandu funzjonijiet, setghat u allura responsabilitajiet kbar. Mhux kulhadd huwa eligibbli biex ikun stralcjarju (ara l-**Art 305 tal-Kap 386**). Il-persuna li taccetta l-hatra, speċjalment fi stralc volontarju bhal ma kien dak tal-lum, *non puo` lasciare niente al caso* izda għandha turi kawtela, tkun vigilant – *mohhu hemm*, kif ighid il-Malti – biex il-process li jibda mix-xoljiment, ighaddi mill-istralc sa ma jintemm bl-*striking off* mhux biss ikun trasparenti u kondott b`kompetenza izda fuq kollox bl-osservanza tal-ligi. **Fil-kaz tal-lum, mhux hekk gara.**

Fil-kaz tal-lum, l-istralcjarju qagħad għal kollox fuq it-tagħrif zbaljat tad-diretturi tal-kumpannija qabel gie għall-*scheme of distribution*. Id-dmirijiet legali tieghu kienu jesigu minnu li jistabilixxi b`mod oggettiv u awtonomu l-konsistenza tal-assi tal-kumpannija. Ghax l-istralcjarju naqas fl-obbligu ewlieni tieghu, il-konsegwenzi kienu negattivi. B`hekk kienet skorretta l-procedura li wasslet għat-thassir tal-isem tal-kumpannija mir-Registru. Hija l-fehma konsiderata ta` din il-Qorti li l-ommissjoni tal-istralcjarju tikkostitwixxi *llegalita`* mhux biss ghalieq kien hemm ksur tad-disposizzjonijiet tal-*lex specialis* u cioe` tal-Kap 386 izda wkoll tal-*lex generalis* u cioe` tal-Kap 16 (Art 1032).

Accertat li saret *illegalita`* il-Qorti trid tara jekk kenitx *ta` natura materjali*.

Il-Qorti m`ghandhiex l-icken dubju li l-illegalita` kommissa kienet ta` natura materjali minhabba l-effetti taghha fis-sens illi ghax l-isem tal-kumpannija lahaq thassar meta kien ghad kellha mmobbli li ma kienux distribwiti dawk l-immobbli ma setghux trasferiti.

Il-Qorti tghid illi huwa sodisfatt ir-rekwizit tas-subinciz 2 tal-Art 300B.

Daqstant iehor huwa sodisfatt ir-rekwizit tas-subinciz 3 ghaliex huwa evidenti ghal din il-Qorti li dak tal-lum huwa l-uniku rimedju ghad-disposizzjoni tar-rikorrent.

L-istess ighodd ghas-subinciz 5 stante li r-rikorrent ittenta dan il-procediment fit-terminu stabbilit mil-ligi.

Ghar-rigward tal-posizzjoni tal-intimat, din il-Qorti ma ssib propju xejn x`ticensura fl-operat tar-Registru tal-Kumpanniji fil-kaz tal-lum. Koxjenti ta` dak li jghid is-subinciz 4 tal-Art 300B, il-Qorti hadet kont tal-fatt illi r-Registratur tal-Kumpanniji mhux qieghed joggezzjona illi l-isem tal-kumpannija de qua jerga` jitqieghed fir-Registru u l-istralc taghha jerga` jigi miftuh sabiex jittiehed kont l-assi in kwistjoni. Ir-Registratur pero` jinsisti li dan il-process ghandu jsir skond direttivi u kondizzjonijiet illi l-Qorti jidhrilha xieraq fic-cirkostanzi partikolari tal-kaz.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti, b`applikazzjoni tal-Art 300B tal-Kap 386 tal-Ligijiet ta` Malta, qeghda taqta` u tiddeciedi din il-kawza hekk :-

1) Tordna li l-isem tal-kumpannija Hardrocks Limited (C6026) jerga` jitqiegħed fuq ir-Registru tal-Kumpanniji.

2) Tordna li jerga` jinfetħ l-istralc tal-kumpannija Hardrocks Limited (C6026).

3) Tordna lill-Awditur Josef Wallace Galea sabiex jerga` jassumi l-funzjonijiet, is-setgħat u l-obbligi kollha ta` stralcjarju tal-kumpannija Hardrocks Limited (C6026).

4) Tordna lill-istralcjarju Awditur Josef Wallace Galea sabiex, sa zmien perentorju ta` sitt xhur mil-lum, jagħlaq l-istralc tal-kumpannija Hardrocks Limited (C6026) wara li jkun ha wkoll in konsiderazzjoni tal-immobbli li għalihom saret riferenza fir-rikors promotur.

5) Tordna lill-intimat Registratur tal-Kumpanniji sabiex b`effett mill-24 ta` Settembru 2015, ihassar b`mod definittiv l-isem tal-kumpannija Hardrocks Limited (C6026) mir-Registru tal-Kumpanniji.

6) Tordna lir-rikorrenti sabiex ihallsu l-ispejjez kollha ta` dan il-procediment.

< Sentenza Finali >

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