



QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum it-Tnejn, 5 ta' Ottubru, 2015

Numru 12

Rikors Guramentat Nru. 200/2011

Boarding School (Malta) Ltd

vs

Maizie Williams

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-25 ta' Frar 2011 li jghid hekk:

1. Illi permezz ta' skrittura privata (kopja ta' liema qed tigi hawn annessa u mmarkata Dok. 'A') datata l-ewwel (1) ta' Lulju tas-sena elfejn u disgha (2009), Dr. Snezhana Bodishtianu, f'isem RBSM International Boarding School, dahlet fi ftehim ma' certu Donavon Nelson, li kien qed jagixxi in rappresentanza ta' Maizie Williams, rigward kuncert li kellu jinzamm nhar il-wiehed u tletin (31) ta' Dicembru tas-sena elfejn u disgha (2009) gewwa l-belt Ukrena ta' Feodosia;
2. Illi l-isem 'RBSM International Boarding School' huwa l-isem kummercjali li bih topera s-socjeta attrici;
3. Illi permezz ta' tali skrittura privata kien gie pattwit li l-grupp muzikali Boney M kellu jaghti wirja ta' sittin (60) minuta versu l-pagament ta' dsatax-il elf lira sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) - liema ammont thallas fl-intier tieghu - u dan bil-kundizzjonijiet kontenuti fl-istess skrittura;
4. Illi irrizulta li l-konvenuta, naqset milli tonora l-obbligi minnha assunti permezz tal-imsemmija skrittura privata, u dan peress li ghazlet li thassar l-arrangamenti kollha u li b'hekk il-grupp Boney M baqa' ma ta l-ebda wirja fid-data u l-post kif miftiehem;

5. Illi konsegwentement, il-pagament ta' dsatax-il elf lira sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) sar dovut lura lis-socjeta attrici, flimkien mad-danni li l-istess socjeta inkorriet minhabba n-nuqqas da parti tal-intimata;

6. Illi minkejja il-varji interpellazzjonijiet ghall-hlas tas-socjeta attrici, il-konvenuta xorta wahda baqghet inadempjenti;

7. Illi ghalhekk is-socjeta attrici kellha tintavola l-proceduri odjerni;

Ghaldaqstant tghid il-konvenuta ghaliex din l-Onorabbli Qorti m'ghandhiex:

1. Tiddikjara li l-konvenuta naqset milli jonora l-obbligi taghha ai termini tal-iskrittura privata datata l-ewwel (1) ta' Lulju tas-sena elfejn u disgha (2009);

2. Tiddikjara li s-socjeta attrici sofriet danni li kienu direttament ikkagunati minn tali nuqqas tal-konvenuta;

3. Tillikwida d-danni hekk sofferti mis-socjeta attrici;

4. Tordna lill-konvenuta thallas id-danni hekk likwidati lis-socjeta attrici;

5. Tiddikjara li s-somma ta' dsatax-il elf lira sterlina (£19,000), ekwivalenti ghal tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) li thallset mis-socjeta attrici lill-konvenuta hija dovuta lis-socjeta attrici;

6. Tordna lill-konvenuta thallas tali somma ta' tnejn u ghoxrin elf erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu tal-ewro (€22,462.88) ekwivalenti ghal dsatax-il elf lira sterlina (£19,000) lis-socjeta attrici.

Bl-ispejjez u bl-imghax kontra l-konvenuta li hi minn issa ingunta ghas-subizzjoni.

Rat ir-risposta guramentata tal-konvenuta li tghid hekk:

1) Illi preliminarjament l-intimata qatt ma dahlet fl-ebda rabta mas-socjeta attrici, u ghalhekk din ma ghandha l-ebda interess guridiku f'dawn il-proceduri. Ghalhekk l-ewwel u qabel kollox l-allegazzjoni dwar it-tradenome uzat mis-socjeta rikorrenti u n-ness guridiku bejn RBSM International Boarding School u Boarding School (Malta) Ltd ghandu jigi pprovat mis-socjeta rikorrenti. Ghandu jinghad ukoll illi fl-ebda punt qabel din il-kawza qatt ma giet imsemmija s-socjeta rikorrenti u daqstant iehor qatt ma ssemma jew intwera li hemm assocjazzjoni bejn RBSM International Boarding School u s-socjeta rikorrenti.

2) Illi minghajr pregudizzju ghas-suespost, hekk kif ser jirrizulta matul il-mori ta' din il-kawza, l-intimata ma hija hatja ta' l-ebda nuqqas f'dak illi ghandu jirrigwarda l-iskrittura privata illi giet annessa mar-rikors promotur u dan stante li hija ma naqset bl-ebda mod milli tonora xi obbligu li gie assunt minnha. Kienu semmai ir-rapprezentanti ta' RBSM International Boarding School u/jew l-organizzaturi inkarigati mill-kuncert li ma onorawx l-obbligi u l-kundizzjonijiet provduti fl-istess skrittura kif ser jirrizulta matul il-mori ta' din il-kawza.

3) Illi, kwalsiasi danni allegatament sofferti minn RBSM International Boarding School jew is-socjeta attrici, (jekk kien hemm danni sofferti), gew sofferti unikament minhabba n-nuqqasijiet taghhom infushom minghajr ebda tort tal-intimata. Illi l-ebda danni ma ghandhom ghaldaqstant jigu likwidati minn din l-Onorabbli Qorti gha'f-favur tas-socjeta rikorrenti jew RBSM International Boarding School.

4) Illi konsegwentement, l-intimata ma ghandhiex tigi ordnata thallas ebda danni lis-socjeta attrici jew RBSM International Boarding School.

5) Illi s-somma ta' dsatax-il elf lira sterlina (£19,000) ekwivalenti ghal tnejn u ghoxrin elf, erba' mija u tnejn u sittin ewro u tmienja u tmenin centezmu (€22,462.88) li thallset minn RBSM International Boarding School mhix dovuta mill-intimata stante li in vista tan-nuqqasijiet li taghhom irrendiet ruhha hatja RBSM International Boarding School, ir-rapprezentanti taghha u/jew l-organizzaturi inkarigati mill-kuncert kif imsemmi fit-tieni eccezzjoni, dahlet fis-sehh il-penali provduta fl-istess skrittura li ppermettiet lill-intimata z-zomm l-ammont in kwistjoni.

6) Illi ghandu jinghad ukoll illi sabiex hija tkun prezenti ghall-kuncert li kien ser jigi organizzat minn RBSM International Boarding School lejliet l-ewwel tas-sena, l-intimata kienet irrinuncjat ghal opportunitajiet ohra li ttella kuncert x'imkien iehor f'dik id-data stante li kienet zammet il-lejl tal-kuncert in kwistjoni rizervat ghall-avveniment li kien ser jigi organizzat. Il-kancellament tal-kuncert in kwistjoni f'it gimghat biss qabel id-data miftehema fisser li kien tard wisq ghalha li tircievi offerti jew ittella' kuncert x'imkien iehor.

7) Illi ghar-ragunijiet imsemmiya, l-intimata ma ghandhiex tigi ordnata thallas ebda somma la lis-socjeta attrici u l-anqas lil RBSM International Boarding School.

8) Salv eccezzjonijiet ohra.

Bl-ispejjez ta' din il-kawza kontra s-socjeta attrici li minn issa ghandha tigi ingunta ghas-subizzjoni.

Rat ir-risposta ulterjuri tal-konvenuta li tghid hekk:

1. Illi, b'zieda ma', izda minghajr pregudizzju ghall-eccezzjonijiet esposti fir-risposta guramentata taghha, qiegghda tippremetti illi, in vista tal-fatt illi l-konvenuta m'hijiex domiciljata hawn Malta, il-mertu tal-azzjoni proposta mis-socjeta attrici m'ghandux jigi investigat minn din l-Onorabbli Qorti, u dan stante in-nuqqas ta' gurdizzjoni rikjesta mid-dettami tar-Regolament tal-Kunsill (KE) Nru. 44/2001 tat-22 ta' Dicembru 2000 dwar gurdizzjoni u ezekuzzjoni ta' sentenzi f'materji civili u kummercjali.

2. Illi, ghaldaqstant, din l-Onorabbli Qorti ghandha tieqaf milli tiehu konjizzjoni tal-proceduri odjerni, prevja kwalsijasi dikjarazzjoni u/jew provvediment meqjus opportun.

3. Salvi eccezzjonijiet ohra permessi mil-Ligi.

Rat l-atti kollha tal-kawza u noti ta' sottomissjonijiet;

Rat is-sentenza preliminari taghha tal-5 ta' Dicembru 2012 li biha cahdet l-eccezzjoni ulterjuri tal-konvenuta dwar il-gurisdizzjoni ta' dawn il-Qrati billi meta saret ir-risposta guramentata fil-mertu, dina saret minghajr ebda riserva, bl-ispejjez kontra l-konvenuta;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Provi

Eugene Bodishtianu

stated that he and his wife are directors of Boarding School (Malta) Ltd. They had signed an agreement (see Dok. A) with Maize Williams to hold a concert in December 2009 in Ukraine. They paid her the money that was agreed upon, however she later cancelled the concert and did not turn up nor did she pay back the money she was given. His wife signed the agreement. The agreement was sent to Williams to sign and she sent it back. He had also spent money for the promotion of the concert which he is claiming. He had agreed with Williams on the concert but negotiations were made with Donovan Nelson. He knew Williams personally and had met her in Malta. Dok. AC1 at page 172 is the Advertising Services Agreement signed by his brother on his behalf. He had given the money to his brother to promote this event. The money came from the Boarding School. The advertising agreement with Top Ltd at page 172 was signed on 1st November 2010. Document at page 176 indicates the payment of 192,000 Ukrainian money paid by his brother on behalf of the Boarding School dated 1st October 2010. Questioned how this agreement and payment were made in 2010, when the concert was in 2009, he answered that there must be some mistake somewhere. At page 123 to 127, the flight tickets selling date is 18/11/2009. Departure date is 30th December 2009 from Kiev to Sinfirobal.

At page 151 Return flight was booked on low cost airline, not business class because Williams did not to stay more in Tirodosia. These flights were proposed by us. The proposal made by Donavan Nelson was too expensive. Before booking of the tickets there had to be consent of Donavan Nelson. On the phone he had told him that he could book the tickets then when he received the mail it was already December and he had to buy the tickets because it was late and would not otherwise find tickets.

During re-examination he stated that in the contract he did not mention that the flight had to be from London airport but from London. He had paid Mr. Nelson £19,000 and lost about €32,000 between deposit and damages he suffered. Williams cancelled the concert because somebody had paid her more because it was on New Year. Initially he had agreed with Williams on the contract, and then she told him to talk to her manager Nelson about the

technical details. There is nothing written in the advertising services agreement that his brother was appearing for the company.

Adriana Bodishtianu xehdet hekk:

She is the owner and director of the company. She signed an agreement with Boney M company to put on a concert in Ukraine during Christmas. They paid them money in advance but later they cancelled the show. They asked for a refund of the money paid however they ignored them. She wrote to them and sent emails but got no reply. Defendants were not happy with the flight tickets they bought them because they were not business class. In the agreement there was nothing specific about the tickets. They were not happy with the dates and connections. They changed the dates and the tickets to accommodate them, but still they were not happy. They tried to find the best solution for them to come back to London but they were kind of changing the routes all the time. The problem was about the flight tickets. They bought other tickets, and had to cancel some which they had bought and lost on them as they had to pay for them before online. According to the agreement one ticket had to be in business class for Maizie Williams. When they were booking the tickets they were in contact with Donavan Nelson by email and phone and they even gave them copies of their passports.

Yulia Iakovenko

testified that the documents on pages 172 to 176 are true translations in English of documents on pages 115 to 118. The signatures on pages 174 to 176 are hers and she carried out the translation to the best of her knowledge and ability.

Maizie Williams

confirmed that her manager, Donavon Nelson, entered into an agreement in 2009 with applicants on her behalf and her group had to perform on New Year's Eve 2009 in Feodosiya, Ukraine. She was not involved in the negotiating process and at no point did she contact the organizers. She is not aware of the specificities of the arrangements as these were handled by Mr. Nelson.

Donavon Nelson

stated that in the past he had worked with Boarding School (Malta) Ltd and Ms. Williams was happy to perform in Feodosiya in Ukraine. They had received other offers which they turned down as they were already booked by applicants. (Dok. fol. 262 et seq.). In July 2009 he prepared a contract with the group requirements for performing at the show. The contract was signed. He made several calls requesting the relative flight details and hotel bookings for his approval. Ms. Williams had to be booked business class and preferably all flights had to be direct ones unless a connecting flight was the only way to arrive at destination. He had to make sure that flights depart from London Heathrow or Gatwick and return to the same airport, that all members of the group travel with Ms. Williams and that the flight does not

depart too early in the morning or leave too late at night (see FLIGHTS in contract DN1)

On the 22nd November 2009 he received an email from Mr. Bodishtianu (Dok. DN2) wanting to cancel the show. At that stage it was clear that applicants had not bought any flight tickets, (witness here refers to return tickets) so close to the show, and that no money was going to be spent on the promotion of the show. On 8th December he sent an email (Dok. DN3) telling him that he was trying to make alternative arrangements. Applicant replied on 13th December (Dok. DN4) saying that he could not cancel the show as he had spent a lot of money. He replied telling him that he could make alternate flight arrangements. Mr. Bodishtianu replied on the 14th December (Dok. DN5) providing him with the flight arrangements he had made including a low cost flight. Such flight details were not acceptable and were contrary to their contractual arrangements. The flights were also early in the morning and the group would have to wait for more than nine hours in the airport for the connecting flight. He never gave his consent for the purchase of such tickets nor was he informed prior to such bookings. Had he been informed of such bookings he would not have accepted. On 15th December he emailed Mr. Bodishtianu (Dok. DN6) telling him that his booking were still on hold. He then received an email from Dr. Ghaznavi (Dok. GN7) telling him that his clients had already bought the return tickets and was trying to amend the return travel arrangements without going into greater expense. He also stated that the only condition that had to be respected by the Ukrainian side was that the flight be after 10.00hrs. He replied to Dr. Ghaznavi (Dok. DN8) telling him that he could not accept those flight arrangements and he either confirms the tickets he had on hold or the show would be cancelled. Dr. Ghaznavi replied (Dok. DN10) that his clients did not intend cancelling the show and were not willing to accept our travel arrangements. There was no agreement that they were ready to forego their contractual rights and to abide by the travel arrangements made by applicants. The group was not ready to fly so early in the morning with no sleep and travel to Luton instead of London. If applicants were not going to get new tickets they would cancel the show and claim 50% cancellation fee instead of the full fees (Dok. DN11). The fee which was paid was retained because of this clause on FLIGHTS in the contract. The show was cancelled solely in view of applicant's failure to honour and abide by its contractual obligations. He was unable to make alternative arrangements for the group to perform at another venue. On 22nd February 2010 he replied to Dr. Ghaznavis legal letter (Dok. DN12).

In cross examination he replied that Luton is not a London airport. Heathrow and Gatwick are. Luton and Stansted are outside London. As regards hotel accommodation, they did not get as far. They didn't even start discussing hotel accommodation as they were still trying to sort out the flights. When applicants emailed them that they wanted to cancel the show, they did not accept a 10% cancellation fee only. In his evidence he mentioned that applicants had not spent money on promotion and this was so because at that stage they were going to have the show only for the organizers. Subsequently he saw some billboards in the street where the show was

going to be held. According to the tickets that they found they were going to leave on the 4th January. Applicant should have booked the tickets from the very beginning when the contract was signed and not book the flight in halves. They were never given any route through Istanbul back to London Heathrow. The emails all referred to Kiev and Wizz Air and that was where the problem was because they said that they booked business class and that it was to London and when he checked he found that it was not so. They could not travel direct from stage, drive for four hours, and catch a plane at seven in the morning and then wait for six to nine hours in Kiev. That would kill his artist.

Talbiet

Illi s-socjeta attrici qed titlob li dina l-Qorti tiddikjara li l-konvenuta naqset milli tonora l-obbligi minnha assunti ai termini tal-iskrittura privata datata 1 ta' Lulju 2009; thallas d-danni minnha kagjonati lis-socjeta attrici kif ukoll li tirrifondi s-somma ta' £19,000 ekwivalenti ghal €22,462.88 li thallsu mis-socjeta attrici lill-konvenuta.

Kontestazzjoni

Illi l-konvenuta kkontestat it-talbiet attrici bhala infondati fil-fatt u fid-dritt u qalet li hi m'ghandha taghti xejn lis-socjeta attrici.

Konsiderazzjoni ta' dina l-Qorti

L-eccezzjoni ulterjuri tal-konvenuta dwar gurdizzjoni giet michuda minn dina l-Qorti b'sentenza taghha tal-5 ta' Dicembru 2012.

L-ewwel eccezzjoni tal-konvenuta tghid li hija qatt ma dahlet fl-ebda rabta mas-socjeta attrici u ghalhekk ma ghandha ebda interess gurdiku f'dawn il-proceduri. Illi pero jirrizulta mill-ftehim datat 1 ta' Lulju 2009 biex isir dana l-kuncert, li dana sar bejn Dr. Snezhana Bodishtianu. Principal of RBSM International, ghal RBSM International Boarding School, u Donovan Nelson obo Maizie Williams. Ghalhekk il-konvenuta ma tistax tghid li hija ma kellha ebda rabta f'dan il-kaz.

Dwar il-kumpliment ta' dina l-eccezzjoni jirrizulta li l-agent tal-konvenuta Donavan Nelson kien jaf ma' minn kien qed jinnegozja u ma min ghamel il-ftehim u ma' min ikkorrisponda. Din ma kinitx l-ewwel darba li sar negozju minnu mas-socjeta attrici.

L-eccezzjonijiet l-oħra huma fil-mertu u basikament il-konvenuta qed teccepixxi li:

1. Mhijiex hatja ta' l-ebda nuqqas f dak li jirrigwarda l-iskrittura privata in kwistjoni u dan stante li hija ma naqset bl-ebda mod milli tonora xi obbligu li gie assunt minnha u naqset li tidher ghal kuncert kif qed tallega s-socjeta attrici;
2. Kienu invece r-rapprezentanti ta' RBSM International Boarding School u/jew l-organizzaturi inkarigati mill-kuncert li ma onorawx l-obbligi u l-kundizzjonijiet provduti fl-istess skrittura. Ghalhekk kwalsiasi danni li allegatament sofriet is-socjeta attrici gew sofferti unikament tort tagħha;
3. Is-somma mitluba ta' £19,000 mhijiex rifondibbili in vista tan-nuqqasijiet li s-socjeta attrici rrendiet ruhha hatja minnhom u ghalhekk dahlet fis-sehh il-penali imsemmija fl-istess skrittura li tippermetti lill-konvenuta zzomm l-ammont in kwistjoni.

Illi mill-provi prodotti jidher li l-kwistjoni li wasslet lill-partijiet ghal dina l-vertenza kienet tirrigwarda il-biljetti tal-ajru li kellhom jinxtraw mis-socjeta attrici għall-konvenuta u l-grupp tagħha biex jirritornaw minn Kiev ghal Londra wara l-kuncert.

Il-konvenuta qed issostni li dawn il-biljetti kienu inxtraw tard wisq f'Novembru 2009 meta l-ftehim kien sar fl-Lulju, u ghalhekk kien vicin hafna d-data meta kellu jittella l-kuncert. Xahar qabel il-kuncert kien difficili biex jinxtraw biljetti bi prezz ragjonevoli u b' connections tajbin. Inoltre meta l-konvenuta (dejjem tramite l-agent tagħha Donavan Nelson) giet infurmata bit-tickets li kienet xtrat is-socjeta attrici ghal-retum flight minn Kiev ghal Londra, dawn ma kienux accettabbili għaliha ghal diversi ragunijiet u li b'hekk kienu jiksru l-obbligi assunti mis-socjeta attrici fil-ftehim imsemmi. Fost ir-ragunijiet li l-konvenuta ssemmi għalhiex ma kienux accettabbili dawn il-biljetti hemm li l-flight kien se jkun fuq ajruplan low cost; li ma kienx hemm zewg biljetti business class kif miftiehem; il-flight kien jitlaq kmieni fil-ghodu wara l-kuncert u li l-ajruplan ma kienx se jieqaf (Heathrow) Londra imma Luton.

L-agent tal-konvenuta Donavan Nelson, kien kiteb lis-socjeta attrici li dawk it-tickets ma kienux accettabbili, u li ghalhekk hu kien se jagħmel arrangamenti alternativi. Meta

pero l-agent informa lis-socjeta attrici bl-arrangement li kien qed jipproponi, is-socjeta attrici ma accettatx billi wiegbet li hija kellha t-tickets u li anke ippruvat tibdel xi uhud minnhom biex takkomodahom. Hi indikat li t-tickets li kien ibbukja l-agent kienu ghaljin wisq, u huma kienu ser jkomplu jitolfu l-flus fuq dana l-kuncert.

Donavan Nelson spjega hekk il-posizzjoni taghom:

Applicants did not abide by the contractual obligations, and, despite being offered the possibility of opting for alternative bookings in accordance with their contractual understanding, they insisted on offering an alternative arrangement which was excluded by such contract. Their proposed arrangement was unacceptable because it was in breach of the contractual agreement. The show was cancelled solely in view of applicants' failure to honour and abide by its contractual obligations.

L-ispjegazzjoni ghaliex dawn it-tickets ma kienux accettabili, fi kliem Donavan Nelson, kienet li:

The emails (tas-socjeta attrici) all referred to Kiev and Wizz Air and that was where the problem was because they said that they booked business class and that it was to London and when he checked he found that it was not so. They could not travel direct from stage, drive for four hours, and catch a plane at seven in the morning and then wait for six to nine hours in Kiev. That would kill his artist.

Illi skond il-ftehim iffirmit bejn il-partijiet hemm, fost kondizzjonijiet ohra, hemm li:

FLIGHTS

"Management to supply 7 flight tickets and one of the tickets should be in two business class for Ms. Maize Williams, Mr. Cliff Nash and all tickets from London unless agreed return and no flights are to be booked before 10.00am without consent and flights are to be agreed before purchase".

Illi kuntratt huwa konvenzjoni jew ftehim bejn tnejn minn nies jew izjed, illi bih tigi maghmula, regolata jew mahlula obligazzjoni (art. 960). Kuntratti maghmula skont il-ligi ghandhom is-sahha ta' ligi ghal daww li jkunu ghamluhom (art. 992) u jorbtu lill-istess fit-termini taghom. Il-kuntratti ghandhom jigu esegiwiti bil-bona fede (art. 993). "Il-principju kardinali li jirregola l-istatut tal-kuntratti jibqa' dejjem li l-vinkolu kontrattwali ghandu jigi rispettati u li hi l-volonta tal-kontraenti kif espressa fil-konvenzjoni li (ghandha) tipprevali u trid tigi osservata pacta sunt servanda" (**Gloria Beacom et vs L-Arkitett Anthony Spiteri Staines**, App 05/10/1998).

Illi fil-kaz in ezami s-socjeta attrici naqset li tipprovdi lill-konvenuta tickets business class u skond il-hin u l-post miftiehem. Il-konvenuta qatt ma kienet tat il-kunsens taghha biex jinxtraw it-tickets li s-socjeta attrici offritilha ghar-return minn Kiev ghal Londra u ma kienx hemm qbil bejn il-partijiet qabel daww it-tickets inxtraw.

Jidher ghalhekk li s-socjeta attrici ma wettqietx l-obbligi minnha assunti fil-ftehim imsemmi u ghalhekk ma kienx tort tal-konvenuta jekk eventwalment il-kuncert gie cancellat.

Il-Qorti tirrileva li mill-provi jirrizulta wkoll li s-socjeta attrici kien qed ikollha ripensament dwar dana l-kuncert billi indunat li ma kienx se jkollha attendenza ghal l-kuncert minhabba s-sitwazzjoni fl-Ukrajna u f'Novembru 2009 anke kienet kitbet fejn ssuggerit li konvenuta thassar il-kuncert u s-socjeta attrici tehel cancellation fee ta' 10%. Fil-fatt fl-email Dok. DN2 a fol. 148 Evgueni jikteb lil Nelson Donovan li

selling process is very low and inactive and if you have any other arrangement on these dates, it would be better to cancel the show in Feodosiya as there will be no people. If you agree to cancel the show, my brother would understand that you would deduct some cancellation fees which are usually not more than 10% and the rest of the money return back to them. Please inform whether such agreement is possible as such decision should be made as soon as possible for the organizer not to spend money on the promotion and air tickets, which actually by this moment did not bring any success. If you do not want to cancel the show, then your group would come and sing just for the organizers. Sorry for the unpleasant news, Ukraine today is a rough country to plan and predict anything.

Illi l-konvenuti kienu interpretaw dina l-email bhala li "At that stage it was clear that applicants had not bought any flight (return) tickets, so close to the show, and that no money was going to be spent on the promotion of the show. Skond Nelson Donovan "For me it was an excuse to get out of the booking because they were going to lose money".

Illi gara li Donovan Nelson f'dak l-istadju ma setghax itella show x'imkien iehor billi kien tard wisq. Minn naha l-ohra s-socjeta attrici bdiet issostni li "to cancel the show is impossible as we have already spent €40,000 for your fees, promotion on TV, bill boards, tickets". Ghalhekk is-socjeta attrici kienet ipponiet "to find the solution for everyone mutual comfort, but the trip must be organized". Is-socjeta attrici ma riditx

tonfoq aktar flus fuq kuncert fejn kien jidher li ma kien se jattendi kwazi hadd. Hija lanqas accettat it-tickets alternativi li bbukkjat il-konvenuta skond il-kundizzjonijiet miftiehma u ma riditx thallas aktar minn 10% cancellation fee kif kienet qed tippretendi il-konvenuta u ghalhekk is-show gie cancellat.

Illi ghalhekk fil-fehma tal-Qorti l-kancellament tas-show ma kienx minhabba xi nuqqas da parti tal-konvenuta imma billi s-socjeta attrici ma zammitx mal-pattijiet miftehema. Konsegwentement il-konvenuta mhux responsabbili ghad-danni reklamati mis-socjeta attrici.

Il-Qorti tirrileva wkoll li s-socjeta attrici, anke kieku, naqset li ggib prova skond il-ligi dwar id-danni reklamati. Veru li hija ezibit xi ritratti li jirreklamaw dana l-avveniment izda imbaghad fl-ircevuti li hija ezebit, dawn huma datati sena wara l-kuncert u meta Bodishtianu xehed fuq hekk ma setghax jaghti spjegazzjoni ghaliex dawna kienu b'dik id-data hlief li qal li kien hemm zball x'imkien. Fil-fatt l-advertising agreement Dok. AC1 huwa datat 01/11/2010 meta x-show kien f'Dicembru 2009 (ara wkoll Dok. AC2) u l-istess ftehim jirreferi ghad-data tal-kuncert b'mod hazin ukoll bhala 31/12/2010. In oltre hemm dubju kemm l-ammonti ghar-reklamar tal-kuncert gew attwalment sburzati mis-socjeta attrici.

Is-socjeta attrici talbet wkoll ir-rifuzjoni tas-somma ta' £19,000 li hallset lil konvenuta mal-ftehim. Fl-email Dok. DN2 a fol. 148 datata 22 ta' Novembru 2009 is-socjeta attrici kienet lesta li tikkancella s-show u tehel 10% cancellation fee. Il-konvenuta xehdet li huma kienu lesti li jikkancellaw is-show "and claim 50% cancellation fee instead of the full fee" (Dok. DN11 a fol. 157). Din l-email hi datata 16 ta' Dicembru 2009. Fl-eccezzjoni taghha l-konvenuta tghid li dahlet fis-sehh il-penali provduta fil-ftehim li ppermettiet lill-intimata zzomm l-ammont in kwistjoni.

Illi fil-ftehim hemm li "Should the concert be cancelled through the artist's fault, the latter owes to Management the amounts paid to him in advance in relation to the concert." F'dan il-kaz il-Qorti sabet li s-show ma giex cancellat tort tal-konvenuta.

Hemm imbaghad ukoll ipprovdut li:

In the event that the show is not presented for any reason the artist must still be paid in full, or the cancellation of the show within 21 days of the event the

artist will then receive 50% of the fee. Provided the artist is ready to perform at the designated time.

Pero jirrizulta illi fis-16 ta' Dicembru 2009 f'email li intbaghtet f'it minuti qabel dik tas-socjeta attrici DN11 a fol. 157, ir-rapprezentant tas-socjeta attrici mhux talli ma kienx ikkancella l-avveniment izda kien ghadu qed jipproponi mizuri alternattivi biex jizblokka l-impasse tat-travel arrangements u fejn jirrizulta li xorta kienet qed tipprova tehles mill-obbligu tal-first class travel ghal Maizie Williams, u inzul f'Luton airport u mhux wiehed aktar centrali f'Londra.

Illi fil-fehma tal-Qorti, avolja l-konvenuta kienet inizjalment ippronponiet li l-cancellation tkun ta' 50% pero dan kien fis-16 ta' Dicembru 2009 qabel mal-istess socjeta attrici ippronponiet mizuri ohra ta' travel arrangements minghajr ma iddikjarat li ikkancellat is-show u taccetta l-cancellation fee proposta.

L-artikolu 112 tal-Kodici tal-Kummerc jaqra hekk:

Accettazzjoni mdewma jew suggetta ghal kondizzjonijiet, zieda, restrizzjonijiet jew tibdil titqies li hija u tghodd bhala rifjut tal-proposta originali u bhala proposta gdida.

Il-fatt illi s-show ma sarx mhux htija tal-konvenuta u l-istess socjeta attrici istitwiet kawza ghar-rifuzjoni tas-somma shiha moghtija lil konvenuta jfisser li l-proposta tal-konvenuta ma gietx accettata u ghalhekk l-konvenuta kellha kull dritt tesigi f'dak l-istadju li jinzammu fis-sehh il-pattijiet tal-ftehim kif qed taghmel.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad t-talbiet tas-socjeta attrici, bl-ispejjez kontriha.

Onor. Mark Chetcuti LL.D.

Imhalled

Anne Xuereb

Deputat Registratur