

Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz Nru. 001/2016

VD u ND

vs

Crystal Finance Investments Ltd.

(C26761)

Seduta tas-27 ta' Settembru 2017

L-Arbitru

Ra l-Ilment¹ fejn jinghad illi:

“Nemmnu li l-bond ‘RENA’ nbiegh lilna meta digà kien jinstab f’diffikultà. Ahna gejna akkuzati li konna nfurmati bizzejjed rigward ‘bonds’ biex niehdu decizjoni. Jekk dan kien il-kaz, allura ma kienx jinhtieg li nuzaw is-servizz finanzjarju ta’ Crystal Finance.”

Mal-ilment taghhom, l-ilmentaturi hemzu ittra (datata 4 ta’ Gunju 2017), li kienet anticipat il-formola tal-ilment (datata 6 ta’ Settembru 2016), ukoll l-ittra li kellha tintbaghat lill-provditur (li fil-fatt intbaghtet fil-21 ta’ Lulju 2016).²

F’din l-ittra ntqal hekk:

“Firstly, on 26.11.2010, we were advised by Crystal to buy Norske Skog @ 7%. Having been told or rather assured by Mr John Gonzi on behalf of Crystal that with nine paper producing companies worldwide, this investment would be a sound one. Subsequently, €20,000 was ‘invested’ on our behalf amounting to 26,000 units. It transpires that and only after personal investigation the company had been in trouble for some time. It is impossible to credit that a financial advisor would not warn of pitfalls especially as he had been confided

¹ A fol 5

² A fol 8

to regarding other losses. He was aware that we went to Crystal for honest and reliable advice which with hindsight was the last thing on his mind.

Norske Skog have now been 'restructured' a term used to reassure the gullible meaning the company are in trouble. When Mr John Gonzi phoned to tell us this he assured us that there were no losses. Actually 'restructuring' is a pointless exercise to convince people that the investment is not lost.

Secondly, RENA bought on 19/12/12 (bearing in mind no one had even contacted us about Norske) from Crystal. Mr John Gonzi assured us that a German producing photo electrical cells was solid and we would not lose. We bought €12,000 for it to default. A cheque arrived for a few hundred euro. To I suppose shut us up.

I would ask you why we were advised so badly. Left to investigate these companies alone and never updated or contacted when things deteriorated. We effectively had the wool pulled over our eyes by people simply not qualified to advise, and we want to address this problem."

"Nistennew li tinghata lilna is-somma ta' €30,000 (stima tal-kapital u l-interessi) ghalkemm nemmnu li l-ammont fil-fatt jeccedi l-imsemmi."

Ra r-risposta tal-provditur tas-servizz fejn qed jissottometti:

1. Illi preliminarjament, l-Arbitru ghas-Servizzi Finanzjarji (l-"Arbitru") m'ghandux gurdizzjoni sabiex jisma' u jiddeciedi l-vertenza odjerna billi l-partijiet issottomettew ghal gurdizzjoni tal-Qrati ta' Malta u dan ai termini tal-Artiklu 17 tat-*Terms of Business Agreement* (anness u mmarkat bhala 'Dok CFI1') liema artikolu jispecifica bl-aktar mod car illi

"This Agreement is subject to the Laws of Malta and any dispute, which may arise therefrom, shall be subject to the jurisdiction of the Maltese Courts" u, ghalhekk, l-Arbitru ghandu jiddeciedi li jieqaf f'dan l-istadju milli jipprocedi bis-smigh u decizjoni dwar il-mertu ta' dan l-Ilment;

2. Illi wkoll preliminarjament, fi kwalunkwe kaz u minghajr pregudizzju ghall-ewwel eccezzjoni u ghall-eccezzjonijiet li jsegwu, l-azzjoni kontra is-Socjetà Esponenti waqgħet bil-preskrizzjoni ai termini tal-Kap. 16 tal-Ligijiet ta' Malta billi kwalsiasi forma ta' interazzjoni extra-kuntrattwali jew kuntrattwali li setgħet sehħet bejn il-partijiet, u r- relazzjonijiet bejn il-partijiet, jekk qatt kienu jezistu tali relazzjonijiet diretti, sehħew sew qabel id-dekadenza tal-perjodi ta' preskrizzjoni applikabbli;
3. Illi preliminarjament ukoll u dejjem minghajr pregudizzju għas-sueccipit u għall-eccezzjonijiet li jsegwu, is-Socjetà Esponenti teccepixxi in-nullità tal-Ilment ai termini tal-Artikolu 789(1)(c) tal-Kap. 12 tal-Ligijiet ta' Malta in kwantu iffaccjata bl-Ilment kif gie redatt, is-Socjetà Esponenti ma tistax tressaq difiza adegwata billi mill-istess Ilment ma jirrizultax/jirrizultawx in-nuqqas/ijiet tas-Socjetà Esponenti li jagħtu lok għall-Ilment u kwalunkwe dritt pretiz minnu. Fic-cirkostanzi ma huwiex possibbli li s-Socjetà Esponenti tagħraf il-bazi tal-istess Ilment (u allura l-eccezzjoni u sussegwentement il-prova li trid tressaq) biex tiddefendi lilha nfisha adegwament kif hu dritt indisputat tagħha u xi provi tressaq biex ixxejjen il-pretensjoni għad-danni allegati li fi kwalunkwe kaz huma r-rizultat ta' fatturi totalment estranei għas-Socjetà Esponenti. Semplicement, mhuwiex car x'ezattament suppost li għamlet hazin *Crystal Finance Investment Limited*;
4. Illi minghajr pregudizzju għas-suespost, subordinament u fil-mertu, l-Ilment u l-allegazzjonijiet tal-atturi huma għal kollox fiergħa u nfondati fil-fatt u fid-dritt u għandhom jigu respinti bl-ispejjez għaliex f'kull waqt is-Socjetà Esponenti agixxiet kif rikjest mill-qafas regulatorju applikabbli u skont l-ogħla livell ta' diligenza mistennija fil-ligi, kif jista', jekk ikun hemm il-htiega, jigi ampjament ippruvat waqt is-smigh ta' dan il-kaz;
5. Illi fil-mertu l-ilment u t-talbiet tal-atturi huma għal kollox infondati fil-fatt u fid-dritt u għandhom jigu respinti bl-ispejjez;
6. Illi subordinament u minghajr pregudizzju għall-premess, l-Ilment ma huwiex gustifikat inkwantu huwa car ukoll li:
 - a) Kwalunkwe telf li garrbu s-Sinjuri VD u ND huwa primarjament rizultat ta' *Credit Risk*, riskju inerenti ta' investiment f'*bonds* bħal dawġ li fihom

investew l-atturi u liema *bonds* kienu, fil-hin meta nghata l-parir lill-atturi, jghoddu jew *suitable* ghalihom kif gej ampjament ppruvat; u

- b) Ghalkemm il-konjugi VD u ND qeghdin jilmentaw li tilfu xi flus fuq zewg investimenti (cioè, il-*bonds Norske Skogindustrier ASA 7% 2017* u *RENA GmbH 7% 2015*) ma jsemmux li l-atturi kien ilhom jinvestu f'*bonds* u investimenti tal-istess tip mill-inqas mis-sena elfejn u ghaxra (2010), u ghaldaqstant kellhom esperjenza bizzejjed tar-riskji involuti u dan apparti l-ispjegazzjonijiet verbali u bil-miktub (hafna minnhom iffirmati mis-Sinjuri VD u ND) tar-riskji ta' investimenti ta' dan it-tip. Is-Socjetà Esponenti zzid tghid li l-konjugi VD u ND mhux talli kienu jafu sew ir-riskji ta' *bonds* u investimenti tal-istess tip, talli kif se jigi ampjament ippruvat waqt il-proceduri odjerni inkluz permezz tal-*investment history* tal-atturi (kemm tramite s-Socjetà Esponenti kif ukoll tramite operaturi terzi), talbu xjentement u investew ta' spiss f'*bonds* ta' certu riskju;
7. Illi fl-ahhar nett jinghad illi s-Socjetà Esponenti ma thossx illi hemm rimedju ghall-Ilment kif imressaq mir-rikorrenti peress illi l-Ilment mhuwiex gustifikat.
8. Salv eccezzjonijiet ulterjuri.

Ra wkoll id-dokumenti esebiti,

Sema' x-xhieda,

Jikkonsidra:

Eccezzjonijiet Preliminari

Eccezzjoni dwar gurdizzjoni

Il-provditur tas-servizz jghid li l-Arbitru ghas-Servizzi Finanzjarji m'ghandux il-gurdizzjoni jisma' dan il-kaz "*billi l-partijiet issottomettew ghal gurdizzjoni tal-Qrati ta' Malta u dan ai termini tal-Artiklu 17 tat-Terms of Business Agreement (anness u mmarkat bhala 'Dok. CFI1')*, liema artikolu jispecifica bl-aktar mod car illi *'This Agreement is subject to the Laws of Malta and any*

dispute, which may arise therefrom, shall be subject to the jurisdiction of the Maltese Courts”.

Però, tajjeb jinghad illi f’ittra li kiteb il-provditur lill-ilmentaturi datata it-30 t’Awwissu 2016,³ kien il-provditur tas-servizz stess li rrefera lill-ilmentatur biex igib il-kaz quddiem l-Arbitru. Fil-fatt, f’din l-ittra jghidlu hekk: *“We also inform you that you can refer the case to the Office of the Arbiter for Financial Services.”*⁴

Dan ifisser li l-provditur tas-servizz, minkejja l-eccezzjoni li qed jaghti, huwa konxju li l-Arbitru ghandu l-gurisdizzjoni li jisma’ l-kaz u rrikonoxxa l-gurisdizzjoni tieghu.

L-Arbitru jista’ jieqaf hawn ghaliex parti li tirrikonoxxi u tibghat lill-parti l-ohra quddiem organu gudizzjarju jew kwazi-gudizzjarju u tissottometti ruhha quddiem l-istess forum, ma tistax imbaghad tiddubita l-gurisdizzjoni tieghu.

Però, tajjeb jinghad ukoll li fl-istess *Terms of Business Agreement* fi Klawsola 16 hemm li jekk il-klijent li jressaq ilment quddiem l-istess provditur tas-servizz u ma jkunx kuntent bl-ezitu, *“the customer may refer his/her complaint to the MFSA.”*⁵ Din kienet referenza ghall-*Customer Complaints Unit* tal-MFSA li bhall-Arbitru ghas-Servizzi Finanzjarji kienet entità *ADR (Alternative Dispute Resolution)*. Bl-introduzzjoni tal-KAP. 555 u l-holqien tal-Ufficcju tal-Arbitru, dan il-*Unit* tal-MFSA gie mnehhi u l-istess *Unit* bdiet tibghat il-kazi li kellha quddiem l-Arbitru.

Ghalhekk anke taht din il-klawsola, l-Arbitru ghandu gurisdizzjoni.

Irid jinghad ukoll illi peress li l-*Terms of Business Agreement* sehħ fl-2010, dak iz-zmien l-Ufficcju tal-Arbitru ghas-Servizzi Finanzjarji ma kienx koncept u, ghalhekk, ma setax jigi eskluż mill-partijiet. Kif intqal fit-*Terms of Business Agreement*, il-gurisdizzjoni tal-Qrati Maltin ma kienetx esklussiva; anzi kien mistenni fil-qasam tas-servizzi finanzjarji li qabel u minflok il-Qrati tintuza l-entità *ADR* li kienet tezisti u li nholqot minflokha entità *ADR* ohra li hu l-Ufficcju tal-Arbitru. Il-fatt li l-Arbitru ghandu poteri legizlattivi, aktar milli kellha l-entità

³ A fol 18

⁴ A fol 19

⁵ A fol 45 A.

ADR ta' qabilha, ma jibdel xejn min-natura tal-Ufficcju tal-Arbitru, li hu wkoll entità ADR, kif anke rikonoxxut mill-Kummissjoni tal-Unjoni Ewropea.

Fil-gurisprudenza taghna gie osservat fil-kawza fl-ismijiet “Edgar Cuschieri - vs - Perit Gustavo R. Vincenti” - Appell Civili, 13 ta' Frar 1950, illi “*meta f'kuntratt il-partijiet ma jkunux spjegaw ruhhom car, jew posterjorment ghall-kuntratt jintervjeni avveniment li jkollu bhala konsegwenza kwistjoni li ma tkunx giet preveduta u li hemm bzonn tigi maqtugha, allura l-Qrati jkunu obbligati jinterpretaw il-konvenzjoni; u din ghandha tigi primarjament interpretata skont l-intenzjoni tal-partijiet li jkunu hadu parti fil-kuntratt u li tkun tidher car mill-kumpless tal-konvenzjonijiet.*”⁶

Wara l-konkluzjoni tat-*Terms of Business Agreement*, il-legizlatur haseb biex jipprovdni dan il-forum speċjalizzat biex jiddisponi ahjar minn certi tilwimiet fis-settur finanzjarju.

Ghalkemm il-kompetenza tal-Qrati ma gietx eskluza, u l-Arbitru ghandu kompetenza konkorrenti, l-intenzjoni prezunta tal-ilmentaturi dwar din l-okkorrenza li sehhet wara l-kuntratt ta' bejniethom hi li jaqblu li jipprevalixxu ruhhom minn din l-ghodda procedurali iktar idoneja mill-Qrati ghall-qasam tas-servizzi finanzjarji ipprovduta mil-legizlatur.

Din kienet ukoll l-intenzjoni tal-provditur tas-servizz ghaliex kien hu li baghat lill-ilmentaturi quddiem l-Arbitru.

Barra minn hekk, l-ilmentaturi huma '*klijent eligibbli*' u l-provditur tas-servizz huwa '*provditur tas-servizzi finanzjarji*' skont id-definizzjoni tal-KAP. 555 u, ghalhekk, l-Arbitru ghandu l-kompetenza.

Ghal dawn il-motivi l-Arbitru qed jichad din l-eccezzjoni.

Eccezzjoni dwar preskrizzjoni

L-eccezzjoni dwar preskrizzjoni hija wahda infelici ghall-ahhar. Hija wahda vaga u ma jissemmiex l-artikolu tal-ligi li tahtha qed tinghata.

⁶ Paul Camilleri vs Joseph Glanville – PA- Imhalled Philip Sciberras – 28.04.2003

Kif ritenut mill-Qrati taghna, min jeccepixxi l-preskrizzjoni jrid jindika l-artikolu tal-ligi li fuqu jkun qed jibbaza dik l-eccezzjoni:

“Illi f’dan il-kuntest jinghad li huwa principju illum stabbilit li jekk l-eccepjenti ma jispecificax liema preskrizzjoni qed jinvoka l-Qorti ma tistax tikkonsidraha u dan ghaliex altrimenti l-Qorti tkun qed tissupplixxi ghall-parti eccepjenti f’materja odjuza li fiha ma tistax tiehu inizjattiva (A.C. R. Cali vs Perit Galea - 11 ta’ Mejju, 1956 - Vol.XL p.1 p.166); Air Malta p.l.c. vs Via Holidays and Travel Limited (P.A. (GV) – 29 ta’ Jannar 2002) tant li fis-sentenza fl-ismijiet Henry P.Cole vs Salvatore sive Sammy Murgo (P.A. - 10 ta Lulju 2003) gie deciz:-

“L-imsemmija l-ewwel eccezzjoni, rigwardanti l-preskrizzjoni, ma tista’ qatt tigi akkolta, peress li l-konvenut naqas li jindika l-artikolu tal-ligi li fuqu huwa qed jibbaza din l-istess eccezzjoni tieghu.”

“Illi tal-istess portata hija s-sentenza Margaret Camilleri et vs The Cargo Handling Co Ltd (P.A. – 3 ta’ Ottubru 2003) fis-sens li:- ‘Kwantu ghall-eccezzjoni tal-preskrizzjoni huwa principju assodat fil-gurisprudenza illi l-Qorti ma tistax ex officio taghti effett ghall-preskrizzjoni jekk din ma tigix eccepita mill-parti interessata f’forma specifica’. Ara decizjonijiet a Vol.XXXIII P1 p481 u Vol. XLI P1 p178. Effettivament is-Socjetà konvenuta ma specificat l-ebda artikolu tal-ligi li jghodd ghal kaz, kif hekk irid l-Artikolu 2111 tal-Kodici Civili”;

B’mod kontradittorju, fin-nota ta’ osservazzjonijiet, l-ewwel hemm referenza ghall-Artikolu 2156 (minghajr ma jissemma’ s-sub-artikolu), imbaghad tissemma’ l-preskrizzjoni akkwiljana, minghajr ukoll ma jissemma’ l-artikolu tal-ligi.

L-Arbitru jaqbel ma’ dik il-linja giurisprudenzjali li l-eccezzjoni tal-preskrizzjoni ghandha titqajjem fir-risposta jew issir talba formali sabiex titressaq, u mhux titressaq jew tigi amplifikata baxx, baxx fin-nota ta’ osservazzjonijiet. Barra minn hekk, skont il-KAP. 555, l-eccezzjoni tal-preskrizzjoni (b’mod korrett) ghandha titressaq fl-ewwel sottomissjonijiet bil-miktub quddiem l-Arbitru (jigifieri fir-risposta), u mhux permess, jekk mhux bil-permess tal-Arbitru ghal ragunji li jrid isemmi, li titressaq fi stadju ulterjuri.

L-eccezzjoni tal-preskrizzjoni hija wahda serja ghaliex tittanta twaqqaf il-kaz, ghandha tigi interpretata b'mod ristrettiv u l-gudikant mhux mistenni li jghid hu liema preskrizzjoni ghandha tapplika u minn liema zmien.

Ghal dawn il-motivi l-Arbitru qed jichad din l-eccezzjoni.

Eccezzjoni dwar nullità

Il-provditur jghid li dan l-ilment huwa null peress li kif redatt ma jaghtix stampa cara ta' x'qed jintalab u ghalhekk ma jistax jaghmel difiza tajba.

Il-procedura quddiem l-Arbitru hija wahda informali u mhix regolata mill-Kodici tal-Procedura Civili, hliet fejn jinghad specifikament fil-KAP. 555 u, ghalhekk, l-Artikolu 789(1)(c) ma japplikax ghall-proceduri quddiem l-Arbitru.

Ir-rekwiziti li ilmentatur irid jinkludi fl-ilment huma regolati bl-Artikolu 22(1) tal-KAP. 555 fejn jinghad:

“22. (1) Persuna li tkun qed taghmel l-ilment ghandha tressaq ilment quddiem l-Arbitru bil-miktub fejn tidentifika l-parti li kontriha jkun sar l-ilment, ir-ragunijiet ghall-ilment, u r-rimedju li jkun qed jintalab.”

L-ilment *de quo* jissodisfa dan kollu u m'hemm xejn null fih. Tajjeb jinghad ukoll li dawn ir-rekwiziti mhumiex *ad validatem* ghax, kif trid il-ligi, dawn il-proceduri huma informali basta li l-provditur tas-servizz ikun jista' jifhem l-ilment bizzejjed biex ikun jista' jaghmel difiza ghall-ilment.

Mhux minnu li l-provditur tas-servizz ma setax jaghmel difiza tajba tant li ghamel risposta ta' hames pagni, ipprezenta ghadd gmielu ta' dokumenti u nota ta' osservazzjonijiet ta' hdax-il pagna fejn ghamel difiza estensiva.

Ghar-ragunijiet 'il fuq moghtija l-Arbitru qed jichad din l-eccezzjoni.

FIL-MERTU

L-Arbitru jrid jiddeciedi dan il-kaz b'referenza ghal dak li fil-fehma tieghu huwa ekwu, gust u ragonevoli fic-cirkostanzi partikolari u merti sostantivi tal-kaz.⁷

⁷ KAP. 555, Art 19(3)(b)

Il-bonds li dwarhom qed isir l-Ilment

L-ilment qed isir fir-rigward ta' telf mill-valur ta' zewg *bonds* (li inbieghu b'parir lill-ilmentaturi mill-provditur tas-servizz) kif gej:

7% Global Notes: Norske Skogindustrier ASA: 2007-26.6.17 Reg-S (SR Unsecured)

Din il-*bond* inxtrat fis-26 ta' Novembru 2010,⁸ bil-valur tas-suq ta' 75.50%. Inxtraw 26,000 *unit* ghall-konsiderazzjoni totali ta' €19,630.

Permezz ta' cirkulari (bil-Malti u bl-Ingiliz) li intbaghtet mill-provditur tas-servizz lill-investituri fit-12 t'April 2016,⁹ inghata taghrif dwar l-iskambju ("*exchange offer*") ta' din il-*bond* kif gej:

- *3.5% Notes Norske Skogindustrier 2026* ghal 52.36% tal-valur nominali fil-*bond* originali, inkluz l-imghax dovut sal-gurnata fuq il-*bond* 2017¹⁰
- *2% Notes Norske Skogindustrier Open End (perpetual)* ghal 36.2% tal-valur nominali¹¹ u
- Id-dritt ghal ishma ordinarji.

7% RENA GmbH: 2010-15.12.15

Din il-*bond* inxtrat fid-19 ta' Dicembru 2012,¹² bil-valur tas-suq ta' 97.92%. Inxtraw 12,000 *unit* ghall-konsiderazzjoni totali ta' €11,750.04.

Analizi tal-Ilment

Mir-risposta li ta l-provditur tas-servizz ghall-ilment, hemm indikat li l-ilmentaturi kienu ghal numru ta' snin jinvestu mieghu f'sigurtajiet simili bhal dawk tar-*RENA* u n-*Norske*, li minnhom garrbu telf fil-valur tal-investment.

Dan il-punt huwa zviluppat aktar fir-risposta¹³ li l-provditur tas-servizz kien baghat lill-ilmentaturi qabel ma l-kaz gie sottomess lill-Ufficcju tal-Arbitru:

⁸ A fol 16

⁹ A fol 14

¹⁰ A fol 21 u 22

¹¹ A fol 23

¹² A fol 15

¹³ A fol 18 et seq

“Your relationship with Crystal Finance started during 2010 wherein you invested funds in high yield income paying financial instruments, mainly bond portfolios and direct high yield bonds. During the past 6 years you continued to regularly invest in the same instrument type.

You surely understand, after investing in a number of high yield bonds, as evidenced in our files, that when investing in instruments paying high income, you are taking an element of risk ...

From your investment history, you were already knowledgeable and experienced in similar investments. In fact you signed the terms and conditions and risk warnings of each bond portfolio you invested in, including the individual bond ratings. You also acknowledged receiving a copy of the related documentation and confirmed/signed your understanding to, among other things, the service being provided and the risks attached to the underlying bonds.

Regrettably the two bonds mentioned above did not perform as expected and you suffered considerable losses. Notwithstanding, we cannot be held responsible for unfortunate events beyond control or be considered negligent.

As an advisory client, the service requested and provided by Crystal Finance is limited to advice on the suitability of the relevant product at the time of the relevant transaction.”

Minn din ir-risposta jirrizultaw zewg affarijiet: l-ewwel, li l-ilmentaturi kienu ilhom jinvestu mal-provditur ghal diversi snin; u t-tieni, li l-ilmentaturi kienu investew f' *bonds* b'rendiment gholi f'dan il-perjodu. Dawn iz-zewg punti kienu amplifikati waqt is-smigh tal-kaz, cioè, fil-15 ta' Novembru 2016, u fit-23 ta' Jannar 2017.

L-esperjenza f'investimenti (anke b'referenza ma' provdituri ohra)

Aspett li hareg fid-deher fl-ewwel seduta li saret fil-15 ta' Novembru 2016, kien jirrigwarda l-esperjenza tal-ilmentaturi fl-investimenti. Mir-risposta li kien ta l-provditur tas-servizz lill-ilmentaturi qabel mal-ilment kien intavolat lill-Ufficcju tal-Arbitru ghas-Servizzi Finanzjarji, kien hemm digà indikazzjoni li l-investment li ghamlu l-ilmentaturi fir-*RENA* u n-*Norske Skog* ma kienx l-ewwel ghalihom

ghax kien digà kellhom portafoll ta' *bonds* mal-istess provditur sa mis-sena 2010. Imma jidher ukoll li kien digà kellhom investimenti ma' provditur iehor kif ikkonfermaw waqt din is-seduta.¹⁴

"Before this investment we had other investments. We had foreign bonds with other companies and we had investments with Calamatta Cuschieri, but we had certain banking transactions before. At the time I was raising a family and did not have a particular occupation. I have tertiary education. At the time of investing, I did not have any expertise in investments."

Aktar tard, fl-istess seduta, waqt il-kontroezami, l-ilmentaturi kkonfermaw¹⁵ li r-relazzjoni mal-provditur tas-servizz bdiet fis-sena 2010. Ikkonfermaw ukoll kif gej:

"... I confirm that the investments were basically the same; they were bonds. With the other investors we had bonds."

Waqt il-kontroezami tas-Sur VD,¹⁶ huwa kkonferma li kien investa qabel u li mill-investimenti seta' jitlef:

"I was aware that we were investing and I thought that I was being given good advice. That is why we went to Crystal and we went to Crystal Finance after we lost a lot of money in other investments and we went there, hopefully, not to lose any more money. I was aware that I can lose money on investments"

"I am being asked whether the investment I had carrying a coupon in a rate of 10¾%, if I consider that to be middle of the road risk, I say that we were advised by Crystal Finance and for me 10% or 20%, I do not understand as I don't study accounts and that's why we went to an advisor. We lost over €100,000 with Calamatta Cuschieri, the parent company of Crystal Finance. I specify that out of this €100,000 I mention, half of it was mine and half of it was my parents' as I used to take care of their investments."

In 2010, when we did this investment I was employed as a clerical employee with Airmalta. I have post-secondary education but not tertiary."

¹⁴ A fol 57

¹⁵ A fol 58

¹⁶ A fol 59

Dwar l-investimenti infushom u r-riskju inerenti, l-ilmentaturi xehdu kif gej:¹⁷

“We talked to an advisor employed with Crystal Finance, they did not tell us anything about the investment. They did not tell us anything about the investment apart from that it was a solid investment and they did not see any problems with the investment. We wanted a middle of the road risk because we tend to be cautious. Yes, when you conclude the transactions, you automatically sign. (The Complainant is being shown a document a fol 40 of the process) – can recognise my signature on this document and I confirm that we were given a copy of this document. This document was not explained to us by Crystal Finance. We were just asked to sign it. The investment was explained to us but we were not given adequate time to read the small print in the document. We signed this document because we were investing money and we needed to sign it. We wanted to invest in this product to make our capital grow and for the sake of our future.”

Waqt l-istess seduta, fil-kontroezami,¹⁸ l-ilmentaturi qalu dan:

“Crystal Finance explained to us where they came from, and they gave us a description where the money will be invested, and it was explained to us about the underlying investments.”

L-investimenti li kellhom mal-provditur tas-servizz

Dokument li gie esebit mill-provditur tas-servizz¹⁹ jirrigwarda l-portafoll ta' investimenti li kellhom l-ilmentaturi mal-provditur tas-servizz sa mis-sena 2010.

Irid jinghad li kellhom investit fi tliet muniti, cioè l-Euro, l-iSterlina Ingliza u d-Dollaru Amerikan.

Fid-Dollaru Amerikan, kellhom investiment fi 10¼%: *Republic of Venezuela*.²⁰ Dan l-investment inxtara f'Novembru 2010, u inbiegh f'Settembru 2013. Mill-

¹⁷ A fol 57-58

¹⁸ A fol 58

¹⁹ A fol 62

²⁰ Ghal dan l-investment kien hemm referenza ghalih waqt is-smigh tal-15 ta' Novembru 2016, meta s-Sur VD gie mistoqsi, waqt il-kontroezami, jekk l-investment f' *bond* ta' 10 ¼% kienx jikkunsidrah bhala “middle of the road risk”.

kapital ghamlu telf ghalkemm, imbaghad, komplessivament ghamlu qligh jekk wiehed jiehu l-imghax li thallas tul il-perjodu tal-investment.

Fl-Isterlina Ingliza kellhom zewg investimenti: *6.5% Notes: Enterprise Inns p.l.c.* u *5.75% Euro Medium Term Notes: Banca Monte dei Paschi di Siena SpA*. L-investment fi *6.5% Notes: Enterprise Inns p.l.c.* inxtara f'Mejju 2010, u sal-mument li gie esebit id-dokument li jelenka l-portafoll ta' investimenti taghhom, qed jidher qligh kapitali li, però, ghadu ma giex realizzat.²¹ Mill-investment fi *5.75% Euro Medium Term Notes: Banca Monte dei Paschi di Siena SpA*, ghamlu telf kapitali. Komplessivment, jekk tiehu z-zewg investimenti fl-iSterlina flimkien, mill-kapital ghamlu telf imma l-imghax li rcevev ghamel tajjeb ghal dan it-telf u komplessivament ghamlu qligh (jekk wiehed jiehu l-imghax li thallas).

Fil-**Euro**, kellhom tliet investimenti, wiehed minnhom *bond portfolio* li inxtara f'Dicembru 2012 (*5.75% Eur Bond Portfolio 23 March 2017*). Minn dan il-*bond portfolio*, kien hemm telf marginali fil-kapitali, imma li ghal erba' snin shah ircevev imghax minnu u, allura, komplessivament kien hemm qligh minn dan l-investment. Il-kapital miz-zewg investimenti l-ohra – cioè, *RENA* u *Norske Skog* – intilef kollu, jew kwazi kollu, (jekk ghal fil-kaz ta' *Norske* tiehu in kunsiderazzjoni il-valur tal-investimenti li gew offruti fl-iskambju li kien hemm ghal *bond* li kellhom originarjament). Peress li l-investimenti fin-*Norske* u r-*RENA* flimkien kien jammonta ghal parti sostanzjali mill-investimenti taghhom fl-Euro, lanqas l-imghax li dahhlu mill-investimenti fl-Euro ma ghamel tajjeb ghat-telf li sofrew mill-kapital. Infatti, ghalkemm l-imghax li dahhlu kien jammonta ghal €12,344.57, it-telf mill-kapital kien €30,113.99, b'telf nett li jammonta ghal €17,769.42.

L-ewwel parir li inghataw kien f'Mejju 2010, meta investew fl-iSterlina. Fil-*Fact Find* li imtela' fis-26 ta' Mejjju 2010,²² hemm indikat li kellhom €80,000 ga investiti u depoziti ta' €45,000 mizmuma *joint*. L-attitudni ta' riskju hija "medium".

Ma gie sottomess ebda dokument li juri fuq liema bazi gew offruti l-investimenti fi $6\frac{1}{2}\%$ *Enterprise Inns p.l.c.* (f'Mejju 2010) u aktar tard $5\frac{3}{4}\%$

²¹ Dan ifisser li l-investment ghadu mizmum fil-portafoll taghhom.

²² A fol 63 et seq

Monte dei Paschi di Siena (Ottubru 2010) u *10¾% Venezuela* u *7% Norske* (f'Novembru 2010).

Il-*Fact Find* giet aggornata fit-23 ta' Novembru 2012,²³ fejn, ghal mistoqsijiet dwar x'tip ta' servizz ta' investment u investimenti kienu familjari magghom, imtlew it-twegibiet: "*bonds*" u "*Investment Advice*".

Fil-*Client Review Form*²⁴ li imtliet fit-23 ta' Novembru 2012, qed jigi indikat li kienu l-ilmentaturi li marru ghand il-provditur wara li rcevev *marketing letter* li kienet ghadha kemm intbaghtet minn dan tal-ahhar. Din il-formola qed tirregistra li, kuntrarju ghal drabi ohra fejn l-ilmentaturi investew f'*bonds* diretti, din id-darba l-ilmentaturi kienu interessati jinvestu f'"*bond mixture*".

Jidher li inghataw ghazla ta' tlieta u l-ilmentaturi ghazlu *bond portfolio* ta' 5.75% li jimmatara fis-sena 2017 "*to help with their annual income*" skont kif nizzel minn ta' parir lill-ilmentaturi. Hemm ukoll miktub kif gej: "*Clients have other investments with financial institutions*".

Xi ftit aktar minn gimghatejn wara din il-laqgha, l-ilmentaturi regghu zaru lill-provditur tas-servizz u fit-12 ta' Dicembru 2012, marru ghal parir "*to discuss financial opportunities. We discussed ... bonds since clients are Bond investors. We mentioned ... / ... / RENA / Also discussed the fact that corporate bonds offer comparable risk, that in case of default the recovery of capital is doubtful. Client wanted to invest in RENA, knowing that risk of default in short term bonds looks small.*" Ir-rating tar-RENA huwa indikat bhala BB+.

Fit-8 ta' Frar 2013, saret *Client Review Form*²⁵ fejn qed jigi indikat li l-ilmentatur (is-Sur VD) mar ghand il-provditur bl-intenzjoni li jbiegh wahda mill-*bonds*, dik ta' *Monte Dei Paschi di Siena*. Però, peress li l-prezz kien nizel xi ftit minn dak li kien anticipat, l-ilmentatur iddecieda li jippostponi l-bejgh tal-*bond*.²⁶ Qed jigi osservat li: "*He is fully monitoring the bond and understands the risks involved.*"

²³ A fol 69 et seq

²⁴ A fol 125

²⁵ A fol 127

²⁶ Infatti, din il-*bond* inbiegħet f'Settembru tas-sena 2013.

Fl-affidavit tieghu, John Gonzi,²⁷ li kien l-ufficjal li ta pariri lill-ilmentaturi ghad-diversi investimenti li ghamlu sa mill-bidu (cioè, minn Mejju 2010), jghid fost affarijiet ohra illi:

“Clients were always fully aware of the investments they were investing and the risks associated with them, as I have always indicated to clients that the value of the investments can vary, in fact they used to come to the office regularly to check how the investments are performing.....On many occasions, the clients always informed me of other investments with other financial institutions were they had lost a large sum of money.”

L-ilmentaturi ghazlu li ma jaghmlu l-ebda kontroezami tal-istess John Gonzi u xhieda ohra prodotta mill-provditur tas-servizz.²⁸

L-ilmentaturi ma cahdux li inghataw parir finanzjarju jew li l-*bonds* tar-RENA u n-Norske ma kienux adatti ghac-cirkustanzi tagghom.

Lanqas ma cahdu d-dettalji li kien hemm fid-dokumentazzjoni pprezentata mill-provditur tas-servizz wara l-ewwel seduta li saret fil-15 ta' Novembru 2016.²⁹

Mid-dokumentazzjoni pprezentata, mix-xhieda tal-ilmentaturi u anke mill-affidavit tas-Sur John Gonzi, johrog bic-car li l-ilmentaturi kellhom gharfien u esperjenza fil-qasam tal-investimenti fil-*bonds*.

L-ghazla ta' *bonds* li inghataw kienet skont il-kriterji li hemm indikat fil-*Fact Find (medium/high risk)*. Riedu investimenti li jrendu biex jizdied mad-dhul annwali tagghom. L-investimenti li kellhom mal-provditur kellhom kupun gholi. Meta gew biex jaghzlu il-*bond 7% RENA 2015*, kien hemm diskussjoni dwar ir-riskji li jista' jkun hemm f'*bonds* ta' kumpaniji.

Lanqas ma cahdu li kellhom investimenti ma' provditure ohra, li jindika li l-investimenti li saru mal-provditur kienu jaghmlu parti minn firxa ta' investimenti. L-ammont investit fir-RENA u n-Norske kien persentagg tal-ammont totali ta' investimenti. Apparti dan, kienu wkoll soffrew telf minn investimenti precedenti (ma' provditure ohra) u dan jindika li kienu jafu li meta

²⁷ A fol 150 et seq

²⁸ A fol 153

²⁹ A fol 61 et seq

tinvesti kien hemm is-sogru (kif fil-fatt ikkonferma is-Sur VD waqt l-ewwel seduta).

Bl-esperjenza li kellhom, ghax kienu investew qabel u kienu esperjenzaw anke telf minn investimenti, l-ilmentaturi setghu jifhmu sew li kienu deklin f'investimenti li seta' kellhom riskji fihom.

Kienu f'pozizzjoni ferm ahjar minn investituri ohra li ma jkollhomx esperjenza u jkollhom joqghodu biss fuq l-*advisor* taghhom minghajr ma jkunu konxji bir-riskji li jkunu deklin fihom.

It-tnejn li huma ghandhom livell ta' edukazzjoni tali li taghmilhom kapaci jaqraw u fejn ma jifhmux jistaqsu. It-*Term Sheets* li inghataw kienu jaghtu stampa bazika tal-investimenti li kienu qeghdin jinghataw parir jidhlu fihom. Ir-riskju fl-investimenti jidher li kien ikun parti mid-diskussjoni qabel ma saru l-investimenti, tal-anqas fir-rigward tar-*RENA*, ghaliex tan-*Norske* ma giet prodotta ebda *Client Review Form*.

Fil-formola tal-ilment taghhom,³⁰ huma qalu li l-*bond* tar-*RENA* kienet digà f'diffikultà meta giet offruta lilhom f'Dicembru 2012.

Fl-ittra li anticipat l-ilment,³¹ huma qalu li n-*Norske* "... *had been in trouble for some time.*"

Irid jinghad li fl-ebda mument ma l-ilmentaturi ressqu prova biex jissostanzjaw l-allegazzjoni taghhom – kemm fir-rigward tan-*Norske* u anke fir-rigward tar-*RENA*.

Mad-daqqa t'ghajn, kemm fir-rigward tan-*Norske*, u anke fir-rigward tar-*RENA*, il-kwalità tar-*ratings* ma kenitx mill-ahjar nett. Imma dan ma jfissirx li ma kellhomx jigu offruti lil investituri ***sakemm*** min qed joffri l-investment jaghmel analizi sew li l-*bonds* kienu adatti ghac-cirkostanzi u l-htigijiet ta' min kien se jakkwistahom.

Meta inghataw parir, il-provditur ghamel *suitability test* li ried jiddetermina, fost affarijiet ohra:

- i. Jekk l-investimenti li inbieghu kienux jilhqu l-oggettivi tal-klijenti;

³⁰ A fol 5

³¹ A fol 8

- ii. Jekk il-klijenti ghandhomx l-gharfien u l-esperjenza biex ikunu jistghu jifhmu r-riskji involuti fit-tranzazzjoni; u
- iii. Jekk il-klijenti kienux f'qaghda li jassorbu finanzjarjament kwalunkwe riskji ta' investiment konsistenti mal-oggettivi tal-investment taghhom.

Il-provditur issostanzja, permezz tad-dokumentazzjoni, li ghamel dan it-test meta kien qed jaghti parir lill-ilmentaturi. Mill-provi mressqa, ma kien hemm xejn x'jindika fil-kuntrarju ghal kull wiehed mit-tliet oggettivi marbuta ma' dan is-*suitability test*. Fi kliem iehor, l-investimenti li inghataw kienu jilhqu l-oggettivi tal-ilmentaturi, li kellhom gharfien u esperjenza fl-investimenti biex jifhmu ir-riskji involuti fid-diversi tranzazzjoni li ghamlu u kienu f'qaghda li jassorbu finanzjarjament riskji ta' investiment konsistenti mal-oggettivi taghhom.

Wara li sar l-investment, l-ilmentaturi ma thallewx fl-ghama u, skont is-Sur Gonzi, ircewew rendikont semestrali tal-investimenti taghhom. Dettal li jindika li l-ilmentaturi kienu qed isegwu l-andament tal-investimenti taghhom jinstab fil-*Client Review Form*³² tat-8 t'April 2013, meta l-ilmentaturi biddlu fehmithom u ma bieghux l-investment fil-*Monte dei Paschi di Siena* minhabba li l-prezz ma kienx favorevoli. L-ilmentaturi ma cahdux dak li kien hemm miktub fuq il-*Client Review Form*, cioè, li huma kienu qed isegwu ("*monitoring*") il-*bond*.

Ghalhekk, meta l-Arbitru jikkonsidra l-provi kollha mressqa, u ghar-ragunijiet kollha 'l fuq imsemmija, jasal ghall-konkluzjoni li l-ilmentaturi ma rnexxilhomx jippruvaw li t-telf li gie soffert minnhom fir-rigward tal-investimenti fir-*RENA* u n-*Norske* kien b'kagun ta' xi nuqqas min-naha tal-provditur tas-servizz finanzjarju.

Ghalhekk l-Arbitru qed jichad dan l-ilment.

Peress li l-Arbitru cahad diversi eccezzjonijiet preliminari moghtija mill-provditur tas-servizz, kull parti ghandha ggorr l-ispejjez taghha.

³² A fol 127

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