



MALTA

QORTI TAL-APPELL
(Sede Inferjuri)

ONOR. IMĦALLEF
LAWRENCE MINTOFF

Seduta tal-15 ta' Ġunju, 2022

Appell Inferjuri Numru 77/2021LM

L-Avv Damien Degiorgio (K.I. nru. 103075(M)) fil-kapaċità tiegħu ta'
mandatarju speċjali ta' Benita Wilding (ID/Passport No. 546223646)
(*'l-appellanta'*)

vs.

Integrated-Capabilities (Malta) Ltd (C 50348) hekk kif sostitwiti minn Optimus
Fiduciaries (Malta) Ltd (C 90147)
(*'l-appellata'*)

Il-Qorti,

Preliminari

1. Dan huwa appelli magħmul mir-rikorrent **Avv Damien Degiorgio (K.I. nru. 103075(M)) fil-kapaċità tiegħu ta' mandatarju speċjali ta' Benita Wilding (ID/Passport No. 546223646)** [minn issa 'l quddiem 'ir-rikorrenti'] mid-deċiżjoni tal-Arbitru għas-Servizzi Finanzjarji [minn issa 'l quddiem 'l-Arbitru'], mogħtija fis-

6 ta' Lulju, 2021, dwar il-każ 084/2019 [minn issa 'l quddiem 'id-deċiżjoni appellata'], li permezz tagħha ddecieda li jiċhad l-ilment tagħha fil-konfront tas-soċjetà intimata **Integrated-Capabilities (Malta) Ltd (C 50348)** [minn issa 'il quddiem 'ICML'] hekk kif sostitwita minn **Optimus Fiduciaries (Malta) Ltd (C 90147)** [minn issa 'l quddiem 'is-soċjetà intimata'], filwaqt li kull parti giet ordnata tħallas l-ispejjeż tagħha ta' dawk il-proċeduri.

Fatti

2. Il-fatti tal-każ odjern jirrigwardaw l-investiment tar-rikorrenti f'skema tal-irtirar magħrufa bl-isem 'The Optimus Retirement Benefit Scheme No. 1' [minn issa 'l quddiem 'l-Iskema'] stabbilita bħala *trust* u amministrata minn ICML, u aktar tard mis-soċjetà intimata fil-kariga ta' *Trustee* u anki ta' Amministratrici kif liċenzjata mill-MFSA.

Mertu

3. Ir-rikorrenti pprezentat ilment quddiem l-Arbitru fit-30 ta' Settembru, 2019 fejn fissret li s-soċjetà intimata ma kinitx qegħda tħalliha tittrasferixxi l-pensjoni tagħha lura lejn ir-Renju Unit, u għalhekk talbet lill-Arbitru sabiex tingħata l-awtorizzazzjoni li tittrasferixxi l-imsemmija pensjoni immedjatament lil kumpannija tal-għażla tagħha, flimkien mad-dokumenti legali relattivi.

4. Is-soċjetà intimata wiegħbet fit-22 ta' Ottubru, 2019 billi ssottomettiet li hija kienet aġixxiet bil-*bona fede* u fl-aħjar interess tagħha.

Id-deċiżjoni appellata

5. It-Tribunal ikkonsidra dan li ġejj rilevanti għall-appell odjern:

“Further Considers:

The Arbiter refers to case no. 107/2019 (fn. 8 Also decided today) which involved, inter alia, a similar request from a number of Scheme members to transfer out of the Retirement Scheme into the Bushido Support Services Community Interest Company ('the Bushido Scheme'), originally named as Bushido Capital Limited. (fn. 9 According to the records held at the UK Companies House, previously named as: 'Bushido Capital Pensions Community Interest Company' during the period '09 Jan 2019 -19 May 2020' and named as 'Bushido Capital Limited' during the period '12 Feb 2014 09 Jan 2019' – <https://find-and-update.company-information.service.gov.uk/company/08891797>)

The Arbiter is applying in full hereto, the same considerations and decision taken in case no. 107/2019 with respect to the said request to transfer out where, in summary and in essence, it was considered and decided as follows:

(a) That the Arbiter considers that there is validity to certain issues identified as stalling the satisfactory conclusion of the Service Provider's due diligence process in respect of the requested transfer.

The Arbiter's decision took into consideration the submissions made by the Service Provider on this specific matter and also recent information publicly available with respect to the financial standing, common links, regulatory status and track record of parties relevant to the Bushido Scheme as follows:

(i) Where according to the latest information publicly available from the UK's Companies House it emerged that:

(i.i) Premier Mortgage Club Ltd and Financial Claims Support Services Ltd were dissolved via voluntary strike-off on 22 September 2020 and 17 September 2019 respectively. Prior to them being dissolved, Premier Mortgage Club Ltd had a deficit 'Capital and reserves' of (£9,562) according to its latest available Micro-entity Balance Sheet as at 30 June 2019, (fn. 10 According to its latest available Micro-entity Balance Sheet as at 30 June 2019 - <https://find-and-update.company-information.service.gov.uk/company/SC325607/filing-history>) whilst Financial Claims Support Services Ltd had 'Total Shareholders funds' of £1 according to its latest Balance Sheet as at 31 July 2018 (fn. 11 As detailed in its 'Dormant Accounts' as at that date - <https://find-and-update.company-information.service.gov.uk/company/SC572219/filing-history>)

(i.ii) That the latest:

- 'Micro-entity Accounts' of Tynebank Claims Ltd as at 28 February 2021; (fn. 12 <https://find-and-update.company-information.service.gov.uk/company/SC574884/filing-history>)
- 'Micro-entity Accounts' of Assured Trustees Ltd as at 5 April 2020, (fn. 13 <https://find-and-update.company-information.service.gov.uk/company/08987364/filing-history>)
- 'Financial Statements And Accounts For The Year Ended 5 April 2020', of Bushido Support Services Community Interest Company; (fn. 14 <https://find-and-update.company-information.service.gov.uk/company/08891797/filing-history>)

all indicated a net deficit position as further explained in case no. 107/2019 under the section titled 'Request to Transfer Out'.

(i.iii) That Brian McLean featured in all of the aforementioned companies (fn.15 https://find-and-update.company-information.service.gov.uk/officers/d1xsvrF_2AG77f3itJDrAlmBWi8/appointments) (fn.16 <https://find-and-update.company-information.service.gov.uk/officers/4TQ3mTy1LLOfsY212QDhmJM/appointments>) hence confirming the common links highlighted by the Service Provider and potential conflict of interest arising from having a common party involved in the claims management company, the pension scheme into which the transfer is being requested and the trustee of such scheme.

(ii) Where according to The Financial Services Register of the Financial Conduct Authority ('FCA') in UK:

(ii.i) the regulatory status of Tynebank Claims Ltd (fn. 17 Tynebank Claims Limited was previously described as having 'permissions to carry out Claims Management Activities under the Financial Conduct Authority Reference Number: FRN829745' – A fol. 3 of case 107/2019) had 'Lapsed Since 18/05/2021'. (fn. 18 <https://register.fca.org.uk/s/firm?id=0010X00004KSqDkQAL>)

(iii) That, following Brian McLean's notification letter to the OAFS dated 17 March 2021, that Bushido Support Services Community Interest Company, (i.e., the Bushido Scheme) had purchased Tynebank Claims Ltd and that as of 1 February 2021, Bushido Support Services Community Interest Company was to represent all Tynebank Claims Ltd's clients, (fn. 20 A fol. 936 of Case 107/2019) where the former was described as follows:

'Bushido Support Services 100% not-for-profit CIC is exempt from regulation by the Financial Conduct Authority but adheres to its principles'. (fn. 21 Ibid.)

it appeared that as at end of May 2021, no comfort could be derived either that there were regulated companies involved with the claims/transfer, as none of the entities featuring in the claims/transfer seem to be regulated as at May 2021.

That, furthermore, despite the extensive documentation presented during the case, no basis and/or supporting evidence was provided as to the claim that the Pensions Regulator in the UK ('TPR'), 'considers Assured Trustees to be a professional organisation ...'. (fn. 22 A fol. 815 of Case 107/2019) and that 'Bushido's scheme is regulated by the Pension Regulator, not the FCA...' (fn. 23 A fol. 824 of Case 107/2019)

(b) That the arguments made by the Service Provider that it needs to be adequately satisfied of its due diligence exercise prior to proceeding with the transfer in order 'to preserve and safeguard the interests of the Scheme' and act in the best interests of its members are being accepted by the Arbiter.

(c) That taking into consideration the submissions made and other information as described above, the Arbiter considered that there is validity to the probing and additional comfort required by the Service Provider in relation to the pension scheme identified for the transfer out prior to the Service Provider being in a position to proceed with the requested transfer.

(d) That in its submissions, the Service Provider confirmed that it

'would consider transferring to an alternative pension provider if they still wished to proceed with a transfer out of the Scheme. To date, none of the Members provided us with an alternative'. (fn. 24 A fol. 461 of Case 107/2019)

That such uncontested statement indicated that members were not being precluded to transfer out to a Scheme of their choice as long as adequate due diligence is carried out to the reasonable satisfaction of the Service Provider which is inter alia bound 'to preserve and safeguard the interests of the Scheme,' and, thus, of its individual members and act in their best interests.

Conclusion

In the particular circumstances of this case, and for the reasons amply explained, the Arbiter considers that the actions taken by the trustee to require further comfort and request its due diligence exercise to be satisfactorily satisfied prior to transferring to the Bushido Scheme, do not appear frivolous, unjustified or unreasonable in the circumstances.

That whilst it is indeed a right of the member to request a transfer out in terms of the applicable rules and requirements, the Trustee and Retirement Scheme Administrator is also duty bound to act within, and adhere to, the provisions of the laws, rules and requirements applicable in respect of its function.

That the Trustee and Retirement Scheme Administrator is ultimately required to act in the best interests of the Scheme's member in relation to a request to transfer out and fully co-operate in the context of a favourable outcome of a reasonable due diligence exercise. (fn. 25 Such as in line with Condition 4.1.16 of 'Part B.4.1 Conduct of Business Rules' of the Pension Rules for Service Providers issued in terms of the Retirement Pensions Act, 2011 and the provisions outlined in the section titled 'B.5.3 Transfer out of the Retirement Scheme' of section B.5 'Conditions relating to information for Scheme Members and Beneficiaries' of Part B of the Pension Rules for Personal Retirement Schemes issued by MFSA.)

The Arbiter considers that, in the particular circumstances of this case, and for the reasons explained, there are no sufficient reasonable, fair and/or justifiable ground on which the Arbiter can uphold the Complainant's request.

The complaint is accordingly being rejected.

Because of the novelty of this case each party is to bear its own costs of the proceedings"

L-Appell

6. Ir-rikorrenti ħasset ruħha aggravata bid-deċiżjoni appellata tal-Arbitru, u fis-26 ta' Lulju, 2021 intavolat appell, fejn qegħda titlob lil din il-Qorti sabiex tħassar u tirrevoka l-imsemmija deċiżjoni appellata u tilqa' it-talbiet tagħha, bl-ispejjeż taż-żewġ istanzi kontra s-soċjetà intimata.

7. Is-soċjetà intimata wieġbet fis-16 ta' Awwissu, 2021 fejn issottomettiet li l-aggravju pprezentat mir-rikorrenti huwa frivolu u vessatorju, u ma kien hemm l-ebda raġuni legali għaliex id-deċiżjoni appellata għandha tiġi mħassra.

Konsiderazzjonijiet ta' din il-Qorti

8. Din il-Qorti llum stess kellha l-opportunità li tiddeċiedi ilmenti simili f'ċirkostanzi simili, permezz tas-sentenza tagħha fl-ismijiet **L-Avv Damien Degiorgio noe vs. Integrated-Capabilities (Malta) Ltd (C 50348)** hekk kif sostitwiti minn **Optimus Fiduciaries (Malta) Ltd (C 90147)** (App. Nru. 76/21). Sabiex għalhekk tevita li tirrepeti dak kollu li ntqal f'din is-sentenza, tiddikjara li l-konsiderazzjonijiet kollha li għamlet hemm, għandhom japplikaw *mutatis mutandis* għal dan l-appell, u li m'għandhiex x'izzid ma' dak li ntqal fl-imsemmija sentenza.

Decide

Għar-raġunijiet premeżsi, il-Qorti tiddeċiedi dwar l-appell tar-rikorrenti billi tiċċdu, u tikkonferma d-deċiżjoni appellata fl-intier tagħha.

L-ispejjeż tal-proċeduri quddiem l-Arbitru jibqgħu kif deċiżi, u dawk tal-appell odjern għandhom ikunu a karigu tal-appellanta.

Moqrija.

**Onor. Dr Lawrence Mintoff LL.D.
Imħallef**

**Rosemarie Calleja
Deputat Registratur**