

QORTI CIVILI

PRIM' AWLA

ONOR. MHALLEF

JACQUELINE PADOVANI GRIMA LL.D. LL.M. (IMLI)

Seduta ta' Nhar l-Erbgħa 1 ta' Gunju 2016

Kawza Numru : 12

Rikors Numru : 283/2013 JPG

Korporazzjoni Enemalta

u b'nota ta' 14 t'Ottubru 2014

Enemalta plc (C-65836) assumiet l-atti minflok

Korporazzjoni Enemalta

Vs

Cassar Fuel Limited (C28453)

Il-Qorti ,

Rat ir-rikors tal-Korporazzjoni Enemalta tat-22 ta' Marzu 2013 li jaqra hekk:

- 1. "Illi fl-4 ta' Dicembru 2006 saret operazzjoni ta' pumpjar ta' "fuels" mill- istallazzjoni Has-Saptan, li hija proprjeta tal-Korporazzjoru rikorrenti, għal-vapur Sacro Cour, li*

huwa proprjeta tas-societa ntimata, li kien ormeggiat fil-Marine Terminal ta' Ras Harzir, Kordin, ukoll proprjeta tal-Korporazzjoni rikorrenti;

- 2. Illi kif ser jigi ppruvat waqt it-trattazzjoni ta' din il-kawza u kif jirrizulta mill- anness rapport immarkat bhala Dok. A, waqt li kien ghaddej l-ippumpjar tal-fuel, il-hose pipe tal-Korp orazzjoni Enemalta, li minnu kien ghaddej l-fuel, garrab danni estensivi minhabba dak li jissejjah "liquid hammering" li kien ikkawzat unikament minhabba nuqqasij iet imputabbli lis-socjeta konvenuta;*
- 3. Illi barra minn hekk, in segwitu ghal hsara fil-hose pipe, kien hemm ukoll perkolar ta 'fuel' fil-bahar, b'dan illi l-Korporazzjoni hadet passi mmedjati, a spejjez taghha, sabiex dan jigi kontenut u saret operazzjoni immedjata, ukoll a spejjez tal-Korporazzjoni rikorrenti (invoice relattiva annessa u mmarkata bhala Dok B), sabiex il-fuel jingabar bl-inqas dannu possibbli ghall-ambjent minn socjeta kompetenti f'dan l-ezercizzju, senjatament is-socjeta Cassar Ship Repair Limited;*
- 4. Illi ghalhekk il-Korporazzjoni soffriet danni li jammontaw ghal sbatax-il elf sitt mija u hames euro u sbatax-il centezmu (€17,605.17c) rapprezentanti in kwantu ghal elf tmien mija u sittax-il euro u wiehed u disghin centezmu (€1,816.91) (ekwivaneti ghal seba mija u tmenin Lira Maltija - Lm780) danni lill-hose pipe proprieta' tal-Korporazzjoni, in kwantu ghal tlettax il-elf mija u zewg euros u tlieta u sebghin centezmu (€13 ,102.73) (ekwivalenti ghal hamest elef sitt mija u hamsa u ghoxrin - Lm5,625c) rapprezentanti spejjez mhallsa lil Cassar Ship Repairs Limited, sabiex jitnaddaf il-bahar miz-zejt u in kwantu ghal elfejn sitt mija hamsa u tmenin Euro u tlieta u hamsin centezmu (€2685.53c) taxxa fuq il-valur mizjud bhala konsegwenza ta' dan f'incident li sehh minhabba nuqqasijiet imputabbli lis-socjeta konvenuta;*
- 5. Illi s-societa' ntimata ghalkemm interpellata diversi drabi sabiex tersaq ghall-likwidazzjoni u hlas tad-danni, ukoll permezz ta' diversi ittri ufficjali, baqat inadempjenti u rribatiet ir-responsabilita' ta' l-akkadut (Dok C1-C9);*
- 6. Illi ghalhekk kellha ssir din il-kawza;*

Illi in vista tas-suespost il-Korporazzjoni Enemalta titlob bir-rispett li din l-Onorabbli Qorti joghgobha, prevja kull dikjarazzjoni ohra talvolta mehtiega u necessarja,

- 1. tiddeciedi u tiddikjara li s-socjeta Cassar Fuel Limited hija responsabbli ghall-incident li sehh fl-4 ta' Dicembru 2006 u konsegwentement ghad-danni kkawzati lill-Korporazzjoni Enemalta;*
- 2. tillikwida d-danni hekk kkawzati lill-Korporazzjoni Enemalta fis-somma ta' sbatax-il elf sitt mija u hames euro u sbatax-il centezmu (€17,605.17c) jew somma verjuri li din l-Onorabbli Qorti joghgobha tillikwida okkorendo bin-nomina ta' periti nominandi;*
- 3. tikkundanna lis-socjeta Cassar Fuel Limited thallas lill-Korporazzjoni Enemalta s-somma hekk likwidata;*

Bl-ispejjez kollha inkluz dawk ta' l-ittri ufficjali prezentati mill-Korporazzjoni Enemalta u datati 20 ta' Lulju 2007, 10 ta' Gunju 2009 u 8 ta' April 2011 u bl-imghax legali mid-data tal-hsara sal-effettiv pagament kontra s-societa intimata minn issa ngunta in subizzjoni.”

Rat li l-atti tar-rikors promotur, d-digriet u l-avviz tas-smiegh gew debitament notifikati skond il-ligi;

Rat ir-risposta tas-socjeta Cassar Fuel Limited (C28453) tad-9 t'April 2013 (a fol. 37 et seq) li taqra hekk:

- 1. Illi s-socjeta esponenti tirrespingi bil-qawwa kollha ,kif del resto dejjem ghamlet sa min dakinnhar tal-allegat incident ,it-talbiet attrici li huma infondati fil-fatt u fid-dritt u kull dannu risultanti jkun unikament sapportat u imputabbli biss ghall-Korporazzjoni Enemalta attrici u dan kif ser jirrisulta ampjament waqt is-smigh tal-provi u kwindi certament ma hemmx ebda responsabbilita ta'danni li ghandhom jigu likwidati kontra s-socjeta intimata .*

2. *Illi jsegwi illi l-ammont ta' €17,605.17 jew somma anqas verjuri li jista talvolta jirrisulta ma jista qatt jigi likwidat kontra s-socjeta intima izda sapportat mill-istess Korporazzjoni.*
3. *Illi konsegwentement s-socjeta intimata certament ma tistax tigi kkundannata thallas ebda somma likwidata .*
4. *Illi minghajr pregudizzju ghall-premess l-azzjoni hija preskritta stante illi s-socjeta intimata bi ksur tal-Artikolu 2149 u 2153 tal-Kodici Civili Kap 16 tl-igijiet ta' Maltastante li qatt ma giet notifikata bl-ittra ufficjali tal-10 ta' Gunju 2009 u konsegwentement l-azzjoni hija in kwalsiasi kaz certament preskritta .*
5. *Illi ulterjorment is-socjeta intimata mhijiex il-legittimu kontradittur stante illi l-vapur Sacro Cuor mhuwiex il-proprjeta tas-socjeta intimata izda tas-socjeta Diane Holdings Limited.*
6. *Illi anke s-segwenza tar-rapporti konkluzi ex parte jikkontradixxu l-verita tal-fatt stante ili anke mill-laqghat li saru dejjem gie attribwit il-ksur tal-hose pipe proprjeta tal-oni illi mhuwiex minnhu illi, allegatament inaghlqu xi valves waqt l-operazzjoni tal-loading tal-fuel . Dan zgur ma kienx il-kaz tant illi jirrizulta ex admissis illi l-ksur tal-hose pipe sehh proprju 13.10 hrs ((Events Itenary ; Loading of the gasoil stopped due to failure of hose) u 14.55 hrs Loading of the gas oil continued (vide tielet (3) pagna Report Doc A esebit . Dan jikkonferma t-tesi tas-socjeta intimata li hija ma setghetx ghalqet ,jew kellha raguni taghlaq il-fuel valves meta il-loading of fuel kien kien ghad fadallu u t-tankijiet kienu ghadhom mhux mimlija u ma setghet qatt tikkawza pressjoni fuq l-hose .*
7. *Illi ghalkemm il-hose giet certifikata mis- surveyor Daniel Grima flt-2 ta' Marzu 2006 ,l-incident sehh fl- 4 ta' Dicembru 2006, diversi xhur wara ; wara li l-Enemalta uzat l-imsemmija hose proprjeta taghha litteralment ta' kuljum u b'kontinwita sabiex*

taghbbi il-fuel kollhu lill-vapur lokali ta' sidien varji. Kien semplicement kif jikkonferma l-istess rapport, failure tal-imsemmija hose li mhijiex proprjeta tas-socjeta intimata izda tal-Korporazzjoni Enemalta u ghalhekk ghandha u kellha tkun hi responsabbli ghal kull dannu emergenti .

Salv eccezzjonijiet ulterjuri.”

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti ezebiti u l-atti kollha tal-kawza;

Semghet it-trattazzjoni tal-partijiet;

Ikkonsidrat:

Din is-sentenza hija fuq il-hames eccezzjoni preliminari tas-socjeta ntimata, u cioe illi hija mhijiex il-legittimu kontradittur stante illi l-vapur Sacro Cuor mhuwiex il-proprjeta taghha izda tas-socjeta Diane Holdings Limited.

Din l-azzjoni tirrigwarda incident li sehh waqt pompjar ta' fuel mill-istallazzjoni ta' Has-Saptan ghall-*barge* bl-isem **Sacro Cuor** li kien qieghed ormeggjat Ras il-Hanzir. Mill-provi, senjatament mix-xhieda ta' **Charles Cardona**,¹ **George Abdilla**² jirrizulta, (u ma giex kontestat) illi l-operazzjoni fuq il-bastiment kienet qed ssir fil-presenza ta' Stephen Cassar li kien qieghed imexxi u jidderigi l-operazzjoni fuq il-vapur. Skont Charles Cardona, Stephen

1 Fol 61 – 62, 136 – 147.

2 Fol 65 – 66.

Cassar kien qallu illi hemmhekk irid ikellem lilu, u li filfatt kien staqsa lilu b'liema rata ried li gie ppompjat il-fuel.³

Ix-xhieda ikkonfermaw wkoll illi l-ftehim kien illi n-nies tas-socjeta ntimata, li kienu abbord il-bastiment, kellhom l-ewwel jaghtu hom *stand by order* biex b'hekk huma jibdew inaqqsu l-prensa tal-fuel, imbaghad kellhom jaghtu hom sinjal iehor biex jieqfu. Huma xehdu li dan is-sinjal qatt ma wasal, u n-nies abbord il-bastiment ghalqu l-filliera tat-tankijiet li kienet qed timtela qabel ma fethu l-filliera l-ohra, b'rizulta illi ingemghat pressjoni kbira fuq il-hose pipe tas-socjeta rikorrenti, li spicca ccarrat.

Is-socjeta rikorrenti prezentat email li jinsab ezebit a fol 46 skont liema *email* is-socjeta Totsa Total Oil Trading kienet qed tirilaxxa kwantita ta' fuel lis-socjeta ntimata, u li kwalunkwe *loading charge* imposta mis-socjeta rikorrenti kellu jkun responsabbli ghalih ir-ricevitur finali u mhux Totsa Total Oil Trading.

Il-Qorti taghraf illi sabiex tirnexxi din l-eccezzjoni, s-socjeta ntimata trid turi illi ma kien hemm ebda relazzjoni guridika bejna u bejn is-socjeta rikorrenti. Kif inhu risaput

“[b]’relazzjoni guridika wiehed necessarjament jifhem dak l-att jew pluralita` ta’ atti konnessi li jimmiraw ghall-produzzjoni ta’ effett guridiku fl-ambitu ta’ drittijiet bejn zewg soggetti jew aktar.”⁴

Il-Qorti tqis illi huwa mill-aktar rilevanti f'dan il-kuntest, illi l-fuel rilaxxat minn Totsa Total Oil Trading gie rilaxxat lis-socjeta ntimata u mhux lill-bastiment jew is-sid tieghu, u kif ukoll **illi l-bastiment kien qieghed jigi operat mill-impjegati u direttur tas-socjeta ntimata, u mhux minn sid il-bastiment.** F'dan is-sens, il-Qorti taghmel referenza ghal dak spjegat mill-awtrici A. Mandaraka Sheppard, u cioe illi:

Historically, there have been two schools of thought. One school has viewed the rem action (claim) as a means of compelling the defendant liable for the claim to appear in court and defend the claim personally (known as the procedural theory). In other words, an in rem claim really aims at the person who is interested in the ship, who will - after

3 Fol 138.

4 Vide per eżempju **Burmarrad Commercials Ltd vs Desmond Mizzi et**, Prim'Awla tal-Qorti Civili deciza 28 ta' Frar 2007; **Salvu Fenech noe vs Karl Bonello et**, Qorti tal-Appell Civili deciza 3 ta' Ottubru 2007.

appearance - be personally liable, beyond the value of the ship, if the claim exceeds its value. The other school of thought has viewed it as being against the res and has developed from the concept of maritime liens, which attach on the ship from the moment of the incident that gave rise to the claim. In other words, the res has been considered to be the defendant, hence, the name attributed to this theory is known as the 'personification theory'.

*The procedural theory gradually gained preponderance amongst English judges over the personification theory, particularly since 1892, when Sir. Francis Jeune decided *The Dictator*, which, in fact, concerned the enforcement of a maritime lien claim for salvage, that is, a truly in rem claim (...)*

*(...)the procedural theory prevailed and, but for two decisions, which concern truly in rem claims and seem to be against it, there have been no other authorities that are inconsistent with *The Dictator*.”*

B'referenza ghal passagg appena citat, il-Qorti tal-Appell Civili fis-sentenza fl-ismijiet **International Paint Limited vs Il-Bastiment MV Plopeni et** deciza fl-1 ta' Frar 2008 kienet tal-fehma illi:

“[h]emm bosta decizjonijiet tal-Qrati Inglizi fejn din it-tezi giet adottata b'approvazzjoni u dan ghaliex wara kollox huwa ferm ingust u inekwu li l-attur jithalla jenforza t-talbiet tieghu kontra l-bastiment meta s-sid ma jkunx il-persuna responsabbli ghal dak id-dejn u ghalhekk ibati hu ghal dejn krejat minn terzi li kellhom il-kontroll u l-pussess tal-vapur rizultat ta' bareboat charterparty meta dan il-fatt kien a konoxzenza tal-kreditur.”

Intqal ukoll mill-Qorti Ingliza mis-sentenza **The Castlegate** illi:

“[i]n the case of liens of wages of master and crew the Legislature has recognised the rule that it attaches to ships independently of any personal obligation of the owner, the sole condition required being that such wages shall have been earned on board the ship. But that rule, which is founded upon obvious considerations of public policy,

constitutes an exception from the general principle of the maritime law, which I understand to be that, inasmuch as every proceeding in rem is in substance a procedure against the owner of a ship, a proper maritime owner lien must have its root in his personal liability.”

Fis-sentenza gia citata fl-ismijiet **International Paint Limited vs Il-Bastiment MV Plopeni et** il-Qorti tal-Appell kienet tal-fehma illi galadarba il-bastiment kien taht il-kontroll tal-*bareboat charter* u mhux tas-sid, u galadarba kien il-*bareboat charter* illi n-negozja mas-socjeta rikorrenti f'dik il-kawza, allura la l-bastiment u lanqas is-sid tieghu ma kienu responsabbli versu s-socjeta rikorrenti, izda kien il-*bareboat charterer* li kien responsabbli biex jaghmel tajjeb ghall-pretensjonijiet tas-socjeta rikorrenti.

Fuq l-istess linja ta' hsieb, fis-sentenza fl-ismijiet **Alfred Mizzi vs Sullivan Maritime Limited et** deciza fit-30 ta' Ottubru 2015, il-Qorti tal-Appell kienet tal-fehma illi kien fic-cirkostanzi ta' dak il-kaz il-legittimu kontradittur ghall-pretensjonijiet tar-rikorrenti kien l-agent tal-bastiment u mhux is-sid, u dan ghaliex kien l-agent, li kien qed jopera l-bastiment meta gew kagunati id-danni reklamati, li kellu l-kontroll immedjat tal-bastiment.

Fil-kaz odjern, il-Qorti rat illi s-socjeta rikorrenti resqet provi illi juru r-relazzjoni guridika taghha mas-socjeta ntimata u cioe:

1. illi l-*fuel* li kien qiegħed ppompjat fit-tankijiet tal-bastiment kien gie rilaxxat lis-socjeta ntimata stess; u
2. illi kienu l-impjegati tas-socjeta ntimata u direttur taghha li kien qed jiehdu hsieb l-operazzjoni in kwistjoni minn fuq il-bastiment.

L-ebda wiehed minn dawn il-fatturi m'huma kontestati mis-socjeta ntimata. Filfatt is-socjeta ntimata takkampa d-difiza taghha biss fuq il-fatt illi hija m'hijiex sid il-bastiment, u l-unika prova li ressqet hija filfatt fir-rigward tat-titolu fuq il-bastiment.⁵ Pero il-Qorti tqis illi galadarba jirrizulta illi s-socjeta ntimata kellha l-kontroll immedjat tal-bastiment fil-hin tal-incident, u specjalment tenut kont tal-fatt illi l-*fuel* li kien qiegħed jigi ppompjat kien gie rilaxxat lis-socjeta ntimata stess, ghandha tkun hi illi tirrispondi u tirribatti ghal

⁵ Il-Qorti rat illi l-Memorandum and Articles ezebti mis-socjeta ntimata m'humiex relevanti ghal dan kaz stante illi huma ta' socjeta estraneja ghalih.

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pretensjonijiet tas-socjeta rikorrenti fil-kaz illi s-socjeta rikorrenti jirnexxilha tipprova sal-grad rikjest mill-ligi t-talbiet taghha fil-mertu.

Ghal dawn ir-ragunijiet, il-Qorti taqta' u tiddeciedi billi tichad il-hames eccezzjoni tas-socjeta ntimata u tordna l-prosegwiment tal-kawza.

Spejjez riservati ghal vertenza finali.

Moqrija.

Mhallef Jacqueline Padovani Grima LL.D. LL.M. (IMLI)

Lorraine Dalli

Deputat Registratur