

QORTI TAL-APPELL

IMHALLFIN

**S.T.O. PRIM IMHALLEF SILVIO CAMILLERI
ONOR. IMHALLEF TONIO MALLIA
ONOR. IMHALLEF JOSEPH AZZOPARDI**

Seduta ta' nhar il-Gimgha 26 ta' Mejju 2017

Numru 25

Rikors numru 608/09 AE

**Middlesea Insurance plc (C-5553) kif surrogata fid-drittijiet
ta' l-asikurat taghha E.C.B. Hotel & Catering Equipment Limited
(C 4729), sia bis-sahha tal-polza ta' assikurazzjoni
u kif ukoll skond il-ligi**

v.

**Jet Services Limited (C 16337) u b'digriet tat-2 ta' Marzu 2010
il-kumpanija John Abela Limited gie kjamata in kawza**

Il-Qorti:

Rat ir-rikors gumentat li pprezentat is-socjeta' attrici fit-22 ta' Ġunju,
2009, u li jaqra hekk:

“1. Is-socjeta' E.C.B. Hotel & Catering Equipment Ltd. inkarigat lis-socjeta' konvenuta sabiex titrasportalha mill-Italja ghal Malta, konsenja ta' apparat u makkinarju li jintuza fil-*catering* (Dok.A).

“2. Is-socjeta’ konvenuta, ossia l-agenti tagħha, gabru dawn l-apparat u makkinarju minghand id-diversi produttori sabiex jigu trasportati għall-Port ta’ Genoa u minn hemm il-merkanzija titagħbba għal fuq il-vapur EURO CARGO VALENCIA sabiex tigi trasportata għal Malta.

“3. Ftit wara, l-importatur assigurat gie infurmat mis-socjeta’ konvenuta li t-*trailer* li kien fih il-merkanzija in kwestjoni kien insteraq f’Lainate, l-Italja. Sussegwentement, it-*trailer* instagħab mill-Pulizija Taljana, izda diversi oggetti mill-merkanzija kienu nieqsa.

“4. Għal dan in-nuqqas, ir-rikorrenti, skond il-polza ta’ assikurazzjoni, indennizzaw lill-assikurat tagħhom, E.C.B. Hotel & Catering Equipment Ltd. fis-somma ta’ disgha u ghoxrin elf, sitt mija u wiehed u tletin Ewro u disa’ centezmi (€29,631.09) u għalhekk gew issurrogati fid-drittijiet tieghu kontra s-socjeta’ konvenuta responsabbli għal dan in-nuqqas (Dok B. Sa Dok.E).

“5. Ghalkemm interpellati sabiex ihallsu għal dan in-nuqqas, il-konvenuti intimati baqghu inadempjenti.

“6. L-eponenti jaf personalment b’dawn il-fatti kollha.

“Jghidu għalhekk l-istess konvenuti intimati għaliex din l-Onorabbli Qorti m’ghandhiex:

“1) Tiddikjarahom unikament responsabbli għan-nuqqasijiet sofferti mis-socjeta’ E.C.B. Hotel & Catering Equipment Ltd. u li għalihom l-istess socjeta’ giet indennizzata kif premiss.

“2) Tillikwida d-danni sofferti mill-assikurat u li għalihom għamlu tajjeb l-atturi fis-somma ta’ disgha u ghoxrin elf, sitt mija u wiehed u tletin Ewro u disa’ centezmi (€29,631.09).

“3) Tikkundanna lill-istess konvenuti sabiex ihallsu lill-atturi s-somma hekk likwidata bhala danni sofferti mill-istess atturi, kif u għar-ragunijiet premissi.

“Bl-ispejjez, u bl-imghax legali mid-dara li l-assikurat thallas u cioe` t-2 ta’ Gunju, 2009, sa l-effettiv pagament, kontra l-konvenuti li jinsabu issa ngunti għas-subizzjoni”.

Rat ir-risposta ġuramentata tas-socjeta’ konvenuta Jet Services Limited li in forza tagħha eċċepiet illi:

“1. Illi preliminarjament, kif fil-fatt jikkonferma ir-rikorrenti, il-merkanzija in kwitjoni giet migbura minn agent ta’ l-esponenti li poggew

il-merkanzija fid-depożitu [*depoż*] ta' l-istess esponenti barra minn Malta, u imbagħad l-kumpanija John Abela Limited ittrasportata din il-merkanzija sabiex twassalha għwa d-depożitu [*depoż*] ta' l-intimati Malta. Illi għalhekk hemm bzonn li John Abela Limited jigu **kjamati fil-kawza** odjerna;

“2. Illi matul it-trasport waqt li l-merkanzija in kwistjoni kienet fil-pussess ta' John Abela Limited, din insterqet u għalhekk isegwi li l-esponenti qatt ma jistghu jkunu responsabbli għal hlas lura stante li m'għandhom l-ebda **htija** fl-inkarigu li kellhom jwettqu;

“3. Illi l-merkanzija in kwistjoni ma kinitx fil-**pussess** ta' l-esponenti izda jigi dikjarat li l-merkanzija in kwistjoni giet misruqa waqt li kienet għand terzi, ossia l-intimat John Abela Limited li kellhom jikkonsenjaw l-merkanzija indikata mir-rikorrenti lill-esponenti;

“4. Illi r-rikorrenti għandu jgib prova tal-valur ta' l-oġġetti li gew nieqsa;

“5. Illi mingħajr pregudizzju għas suespost, jigi sottomess li kull xogħol li għalih tigi nkarigata l-kumpanija Jet Services Limited hija dejjem regolata mill-**Kap. 486** [Att dwar il-Garr Stradali Internazzjonali ta' Merkanzija] a bazi tal-kundizzjonijiet CMR, u għaldaqstant kwalsiasi responsabilta' li din l-Onorabbli Qorti thoss li tista tkun ta' l-esponenti hija dik stipulata mill-ligi u mhux dik mitluba mir-rikorrenti.

“6. Illi inoltre, l-esponenti ma agixewx b'nuqqas ta' hsieb, bi traskuragni jew b'imperizja, jew nuqqas ta' hila fl-esercizzju tal-professjoni ta' l-intimati jew ta' min minnhom, u *ex delictu*, l-esponenti mhumieq responsabbli lejn hadd għad-danni rikjamati [u dan kif sejjer jigi ppruvat fil-mori tal-kawza] stante li l-esponenti u l-impjegati tagħha ma agixxewx colpozament u *multo magis*, lanqas ma jista' jingħad li agixxew dolozament, izda dejjem agixxew skont dak li tirrikjedi l-ligi.

“Salv eccezzjonijiet ohra ulterjuri.

“Għaldaqstant l-esponenti jitolbu bir-rispett li din l-Onorabbli Qorti toghgobha tichad it-talbiet tar-rikorrenti, bl-ispejejs kontra r-rikorrenti li minn issa huma ragunti għas-subizzjoni”.

Rat ir-risposta tas-soċjetá ġuramentata tas-soċjetá kjamata fil-kawza

John Abela Limited li in forza tagħha eċċepiet illi:

“1. Illi in linea preliminari kull talba fil-konfront tas-soċjeta esponenti hija preskritti ai termini ta' Artikolu 32 tal-Konvenzjoni dwar il-Kuntratt għall-Garr Stradali Internazzjonali ta' Merkanzija (CMR), inkorporata f'Kapitolu 486 tal-Ligijiet ta' Malta.

“2. Illi minghajr pregudizzju ghas-suespost u fil-mertu, it-talbiet kif proposti ma jistghux jirnexxu fil-konfront tas-socjeta esponenti u dan billi ma tezisti l’ebda relazzjoni kuntrattwali u jew guridika bejn is-socjeta esponenti w dik attrici jew l-awturi taghha w ghalhekk it-talbiet attrici fil-konfront as-socjeta esponenti, ghandhom jigu michuda bl-ispejjes;

“3. Illi minghajr pregudizzju u fil-mertu, is-socjeta` esponenti mhijiex risponsabbli lejn is-socjeta attrici jew l-awturi taghha *stante* li jekk jirrizulta li huwa minnu li l-merkanzija in kwistjoni giet nieqsa kif allegat, dan sehk konsegwenza ta’ forza magguri (*irresistible force* ossia *fortuitous event*) u/jew fatti ohra li s-socjeta esponenti la kellhix kontrol fuqhom u wisq anqas setghet tevita, u dan ai termini ta’ Artikolu 23 tal-Konvenzjoni dwar il-Kuntratt ghall-Garr Stradali Internazzjonali ta’ Merkanzija (CMR), inkorporata f’Kapitolu 486 tal-Ligijiet ta’ Malta, kif ukoll ai termini ta’ Artikolu 1134 u 1029 ta’ Kapirolu 16 tal-Ligijiet ta’ Malta;

“4. Illi minghajr pregudizzju ghas-suespost, fil-ftehim relattiv ghall-garr tal-merkanzija in kwistjoni kienet inkorporata l-Konvenzjoni **CMR** li f’kwalunkwe kaz tillimita r-responsabbilta tas-socjeta` esponenti u ghalhekk ir-responsabbilta tas-socjeta esponenti ma ghandhix tissupera l-limiti imposti minn Artikolu 23 ta’ l-imsemmija Konvenzjoni;

“5. Illi s-socjeta esponenti ma tistax tifhem kif it-talbiet tas-socjeta attrici huma mnizzlin fil-plurar meta l-istess socjeta attrici ghazelt li tipprocedi b’din il-kawza biss kontra s-socjeta konvenut Jet Services Ltd waheda;

“6. Illi fi kwalunkwe kaz jehtieg li s-socjeta attrici ggib il-prova tal-valur li qieghed tirrik

“7. Illi s-socjeta esponenti hija assikurata mas-socjeta assikuratrici Millenium Insurance Agency Limited, u ghalhekk jehtieg li din ta’ l-ahhar tigi kkjamara fil-kawza;

“8. Salvi eccezzjonijiet ohra premissi mil-ligi;

“Ghaldaqstant is-socjeta esponenti titlob bir-rispett li din l-Onorabbli Qorti joghgoba tichad it-talbiet attrici, bl-ispejjez kontra l-istess”.

Rat is-sentenza li tat il-Prim’Awla tal-Qorti Ċivili fis-7 ta’ Novembru, 2012,

li in forza tagħha ddecidiet il-kawza billi:

“1.Tichad l-eccezzjonijiet tal-konvenuta Jet Services Limited u tiddikjara li Jet Services Limited hi responsabbli sabiex taghmel tajjeb ghad-danni li sofriet E.C.B. Hotel & Catering Equipment Ltd,

u li ghamlet tajjeb ghalihom l-attrici li giet surrogata fid-drittijiet tal-assigurat taghha.

“2. Tikkonferma li s-somma dovuta hi ta’ disgha u ghoxrin elf sitt mija u wiehed u tletin ewro u disgha centezmi (€29,631.09).

“3. Tikkundanna lil Jet Services Limited sabiex thallas lill-attrici s-somma ta’ disgha u ghoxrin elf sitt mija u wiehed u tletin ewro u disgha centezmi (€29,631.09), bl-imghax mid-data tan-notifika tar-rikors guramentat gjaladarba ma nghatatx prova tal-ittra ufficjali li tissemma fir-rikors u n-notifika tal-istess.

“4. Tichad l-ewwel eccezzjoni ta’ John Abela Limited bl-ispejjez kontra taghha.

“5. Tilqa’ t-tieni eccezzjoni ta’ John Abela Limited u tilliberaha mill-osservanza tal-gudizzju peress li ma jirrizultax li bejnha u l-attrici kienet tezisti relazzjoni kuntrattwali.

“Salv ghal dak li nghad hawn fuq spejjez huma a karigu ta’ Jet Services Limited, b’dan li John Abela Limited ghandha taghmel tajjeb ghall-ispejjez taghha”.

Dik il-Qorti tat is-sentenza tagħha wara li għamlet is-segweni konsiderazzjonijiet:

1. “Il-kaz jitratta dwar talba għall-hlas ta’ danni fl-ammont ta’ disgha u ghoxrin elf sitt mija u wiehed u tletin ewro u disgha centezmi (€29,631.09), li l-attrici hallset lill-assigurata taghha (E.C.B. Hotel & Catering Equipment Ltd). Valur tal-merkanzija li fil-vjagg lejn Malta insterqet f’Lainate, Milan, Italja fit-28 ta’ Gunju 2008, flimkien mat-trailer li fuqu kienet mghobbija l-merkanzija. Ghalkemm it-trailer instab xi zmien wara, l-oggetti tal-kumpannija assigurata baqghu ma nstabux.

2. “Fit-2 ta’ Gunju 2009 il-kumpannija attrici giet surrogata fid-drittijiet tal-assigurat (ara dokumenti a fol. 5-8).

3. “E.C.B Hotel & Catering Equipment Ltd kienet inkarigat lill-kumpannija konvenuta Jet Services Limited biex tittrasporta l-merkanzija lejn Malta. Min-naha taghha din inkarigat lill-imsejha fil-kawza.

4. “Permezz ta’ email datata 4 ta’ Gunju 2009, il-kumpannija attrici nterpellat lil Jet Services Limited biex thallas is-somma fuq imsemmija. Fl-email jinghad : *‘As you are aware the time-bar is approaching and should you wish to reach an amicable settlement may we kindly ask you to grant us a time extension however should we not receive any reply*

by the 12th June 2009 we will have no other option but to institute legal proceedings.'

5. "Jidher li s-serqa sehhet fis-satra tal-lejl waqt li x-xufier tat-trukk kien riegged fil-kabina.

"Jet Services Limited hi l-kumpannija inkarigata tiehu hsieb il-garr tal-merkanzija lejn Malta. Ghalhekk kellha obbligu kuntrattwali li twettaq l-inkarigu. Min-naha taghha, Jet Services Limited inkarigat lil John Abela Limited biex iggorr il-merkanzija sal-port ta' Genoa. Il-kawza **George Bonnici et nomine vs Joseph Vella et nomine** deciza mill-Qorti tal-Appell fil-25 ta' Frar 2005 ukoll kienet titratta dwar serq ta' trailer. Il-qorti osservat :-

"l-unika relazzjoni kuntrattwali in konnessjoni mal-garr ta' din il-merkanzija kien l-kuntratt konkjuż bejn is-socjeta` Bortex u s-socjeta` konvenuta. Minn dan il-kuntratt ta' garr jirrizulta l-obbligu tas-socjeta` konvenuta li ggorr u tikkonsenja l-merkanzija fi stat tajjeb u minghajr nuqqasijiet; kull relazzjoni li l-istess socjeta` konvenuta setghet kellha mas-socjeta' kjamata in kawza huwa ghalhekk res inter alios acta li bl-ebda mod ma jbidel jew jhassar l-obbligu tas-socjeta' konvenuta li jirrizulta kemm mir-regoli generali ta' l-obbligazzjonijiet kif insibuhom fil-ligi nostrana kif ukoll mir-regolamenti maghrufa bhala CMR Rules li, bi ftehim bejn il-kontraenti, kellhom jirregolaw dan il-kuntratt.'

"Ghalkemm Jet Services Limited ssostni li l-merkanzija nsterqet meta kienet fil-pussess ta' John Abela Limited, dan il-fatt ma jistax iservi biex tigi ezonerata mir-responsabbilta. L-Artikolu 3 tar-Regolamenti jipprovdi:-

*"For the purposes of this Convention **the carrier shall be responsible for the acts of omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage**, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own."*

"Jet Services Limited ghamlet uzu mis-servizz ta' John Abela Limited biex twettaq l-obbligi kuntrattwali taghha fil-konfront ta' E.C.B. Hotel & Catering Equipment Limited. Din ta' l-ahhar ma kenitx involuta fin-negozju li sehħ bejn il-kumpannija konvenuta u l-imsejha fil-kawza. Hu inutli ghal Jet Services Limited li titfa' l-htija fuq John Abela Limited¹ billi ssostni li l-agir taghha jikkwalifika bhala *wilful misconduct*.

"Min-naha l-ohra mill-provi rizulta li ma tezisti l-ebda relazzjoni kuntrattwali bejn il-kumpannija attrici u John Abela Limited. Fil-fatt l-attrici qatt ma ppretendiet li tezisti tali relazzjoni tant li ma harrkitix

¹ Ara nota ta' sottomissjonijiet li pprezentat flimkien mar-rikors tal-15 ta' Ottubru 2012, li qiegħed jigi akkordat.

bhala konvenuta², u John Abela Limited giet imsejha fil-kawza fuq talba ta' Jet Services Limited. Sahansitra fit-twegiba li l-attrici pprezentat fil-25 ta' Frar 2010 b'riferenza ghar-rikors biex tissejjah fil-kawza John Abela Ltd³, iddikjarat:-

“L-esponenti jirrilevaw illi huma m'ghandhom l-ebda relazzjoni guridika mal-istess socjeta John Abela Ltd, kif jirrizulta ampjament mid-dokumenti ezibiti mar-rikors promotur.”.

“Inoltre, mir-rikors guramentat hu evidenti li l-attrici bbazat il-kawza fuq ir-relazzjoni kuntrattwali li kellha ma' Jet Services Limited, u li kien jikkonsisti f'kuntratt ta' garr ta' merkanzija lejn Malta. Sahansitra, mill-provi ma jirrizultax li l-attrici qatt interpellat lil John Abela Limited qabel ipprezentat il-kawza. F'dan il-kuntest it-tieni eccezzjoni tal-imsejha fil-kawza tidher flokha. Hi bla bazi wkoll is-sitt eccezzjoni tal-konvenuta Jet Services Limited, in kwantu l-azzjoni tal-attrici m'hijiex bazata fuq il-provvedimenti li nsibu fit-Titolu IV, Sub-titolu II tat-Taqsima II tat-Tieni Ktieb tal-Kodici Civili, *“Fuq id-Delitt u Kwazi-delitt.”.*

“Mid-dokument a fol. 109 jirrizulta li John Abela Limited kellha twettaq il-kuntratt ta' trasport li nghatat minn Jet Services Limited skond il-Konvenzjoni Internazzjonali dwar il-Kuntratt ghall-Garr Stradali Internazzjonali ta' Merkanzija (CMR), li ghandhom forza ta' ligi f'Malta permezz tal-Att dwar Garr Stradali Internazzjonali ta' Malta (Kap. 486 tal-Ligijiet ta' Malta).

“Skond l-Artikolu 17 ta' CMR Regulations, il-carrier ghandu jwiegeb ghat-telf totali jew parzjali tal-merkanzija li ssehh minn meta jinghata l-konsenja. Imbaghad l-Artikolu 29 jipprovdi:-

*“The carrier shall not be entitled to avail himself of the provisions of this chapter which exclude or limit his liability or which shift the burden of proof if the damage was **caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct.**”.*

“Tibqa' l-kwistjoni dwar jekk kienx hemm *wilful misconduct*, f'liema eventwalita il-konvenuta ma tkunx tista' ssostni li r-responsabbilta taghha hi limitata. Fil-ligi lokali ma nsibu l-ebda definizzjoni ta' dan. Il-gurisprudenza sabet li responsabbilta meta l-carrier jonqos milli jiehu prekawzjonijiet (ara per eżempju s-sentenza **Atlas Insurance Agency Limited nomine vs Express Trailers Limited**, 18 ta' Mejju 2005 tal-Qorti tal-Appell [Inferjuri]⁴, u **Prokuratur Legali Madeleine Firman**

² Mario Cutajar ta' ECB xehed: *“Jien ma nafux lil John Abela Limited. Ghandna x'naqsmu ma' Jet Services Limited. X'arrangamenti tkun ghamlet Jet Services Limited, biex din il-merkanzija titwassal Malta ahna ma nidhlux fiha u ma nkunux infurmati.”* (fol. 66).

³ Fol. 24.

⁴ Imhallet P. Sciberras.

nomine vs Concorde International Freight Forwarders Limited et deciza minn din il-qorti⁵ fit-30 ta' Marzu 2006). Din il-kondotta giet ekwiparata mal-kuncett ta' *gross negligence*.

"Irrizulta li s-serqa saret waqt li:-

- i. "It-trukk u t-trailer kienu pparkjati f'zona li ma kenitx mghassa;
- ii. "Ix-xufier tat-trukk kien rieqed wahdu fil-kabina.
- iii. "It-trailer kien imqabbd mat-trukk. Insteraq biss it-trailer.
- iv. "It-trailer ma kellux *anti-theft lock* attivitat.

"Carmelo Abela, direttur ta' John Abela Limited, xehed:-

"Fejn kien ipparkjat it-trailer setghet issir l-affari fis-sens li issir is-serqa. Ma tistax tipparaguna it-trukk tat-trailer ma' karozza. Inti meta tizganca t-trailer minn mat-trukk, tista' timbuttah facilment. Dak jahdem b'sistema ta' l-arja. Hemm it-tubi ta' l-arja imqabbdin mat-trailer,..... u li jekk inti tnehhi it-trailer minn mat-trukk jispicca billi jkun ghad ghandu l-arja, u tista' timbuttah, qed nirreferi hawnhekk ghaz-ziemel." (fol. 116).

"Spjega wkoll li fl-Italja, f'kazijiet simili, il-pulizija taghmel rapport fil-qasir u ma jidhlux fid-dettall ta' dak li jkun gara; *'Lanqas biss jigu fuq il-post. Huma ma jatux xi importanza partikolari ghal dan it-tip ta' kazijiet, tant kemm hija haga komuni li tigri.'* (fol. 115).

"Spjega wkoll li ghandu 54 sena u ilu jahdem f'dan il-qasam minn meta kien ghadu tifel u, *".....naf li kazijiet bhal dawn graw."*

"M'hemmx dubju li f'dan ix-xenarju kien hemm nuqqas serju mill-fatt li ma jirrizultax li fil-hin tas-serqa kien hemm *anti-theft lock* attivitat fuq it-trailer. Mid-dikjarazzjoni li ghamel ix-xufier, Pecanin Savo, jirrizulta li:-

- i. "It-trailer kellu *anti-theft lock* li titqabbd mar-rotta.
- ii. "Dan tnehha minn fuq ir-rotta tat-trailer minn certu Goran, meta Pecanin wasal fil-post minn fejn gabar it-trailer. Ma tressqitx prova li dan rega' twahhal meta Pecanin ipparkja biex jorqod matul il-lejl.

"Mid-deposizzjoni ta' Carmel Abela l-qorti fehmet li hu facli hafna biex trailer jigi sgancat minn mat-trukk. Is-sens komuni jghidlek li hemm bzonn li jittiehdu mizuri bazici biex jigu evitati kazijiet simili. Hu evidenti li x-xufier ma ghamel xejn biex jiminimizza l-possibilita' li t-trailer jinsteraq. Il-qorti hi tal-fehma li jekk ma jkunx hemm tnejn min-nies sabiex waqt li wiehed jistrieħ l-ieħor ikun għassa, għandhom għallinqas jittiehdu mizuri bħal :-

- i. "Jitpoggew *anti-theft locks* tajbin, bħal *king pin locks* u *wheel immobilizers* ;
- ii. "Titqieghed *alarm system* tajba mat-trailer mgħobbi bil-merkanzija;

⁵ Imhalled T. Mallia.

- iii. "GPS tracking systems;
- iv. "Post fejn ix-xufier ipparkja ghal-lejl. Il-fatt li qal li kien hemm trukkijiet ohra pparkjati ma jfissirx li kien waqaf f'post fejn kien hemm is-sigurta;
- v. "Ipparkjar ta' trailer b'tali mod li t-tarf jkun vicin ta' hajt jew barrier ohra.

"Fil-fehma tal-qorti hu d-dmir tal-carrier li jaghti spjegazzjoni tal-mizuri ta' sigurta' li jkun ha sabiex jevita dan it-tip ta' serq. F'dan il-kaz ma nghatat l-ebda spjegazzjoni. Minn dak li rrakkonta Carmel Abela hu evidenti li x-xufier kellu jkun konsapevoli tar-riskju li jezisti li jinsteraq it-trailer bil-merkanzija. Madankollu dahal jorqod minghajr ma' habbel rasu. It-traskuragni tax-xufier ma kienx mill-fatt li raqad, imma li waqaf fil-miftuh u ghalkemm suppost jaf bir-riskji li jezistu ma jirrizultax li ha xi prekawzjoni ghal dik li hi sigurta' tat-trailer. Lanqas ma jirrizulta li t-trailer kien armat b'sistemi ta' sigurta' li jipprotegu kontra s-serq. Ghalkemm Carmel Abela xehed li hu facli biex jinsteraq trailer, il-qorti tistqarr li ssibha ferm difficili biex tifhem kif Pecanin ma nduna b'xejn meta tikkunsidra li fl-istqarrija li ghamel jinghad:- *"No ho mai sganciato il semirimorchio sino al momento in cui mi sono accorto del furto."*⁶. Veru li x-xufier kien rieqed, pero l-qorti temmen li xi moviment u hsejjes kien hemm sabiex it-trailer gie sgancjat minn mat-trukk.

"Saret ukoll riferenza ghall-kuncett ta' forza magguri, min-naha ta' John Abela Limited. Skond Artikolu 17(2) tar-Regolamenti:-

"The carrier shall, however, be relieved of liability if the loss, damage or delay was caused through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent."

"Il-qorti ma tistax taqbel ma' din id-difiza gialadarba mill-provi rrizulta li hemm nuqqasijiet min-naha tal-carrier. Id-difiza tal-forza magguri jew kaz fortuwitu ma tistax tigi invokata fejn jigri xi haga li kienet prevedibbli u li ghaliha hu responsabbli l-carrier⁷. Hu l-carrier li jrid jaghti prova li m'ghandux responsabbilta minhabba forza magguri. Il-fatt li sehhet is-serqa waqt li x-xufier kien rieqed fil-kabina tat-trukk, m'hijjex prova ta' forza magguri. Fil-kaz **J.J. Silber Ltd and others v Islander Truching Ltd**, deciz fit-30 ta' Jannar 1985, il-Qorti tal-Kummerc Ingliza osservat:-

"Thus, I conclude that art. 17(2) sets a standard which is somewhere between, on the one hand, a requirement to take every conceivable precaution, however extreme, within the limits of the law, and on the other hand a duty to do no more than act reasonably in accordance with prudent current practice. To decide just where the standard is located, and how to express it in words, is a more difficult problem."

⁶ Fol. 120.

⁷ Ara sentenza tal-Qorti tal-Appell (Inferjuri), Imhallef P. Sciberras fil-kawza **Alfred Delia vs Segretarju Permanenti u d-Direttur Dipartiment tat-Toroq et tad-19 ta' Mejju 2004.**

“Ma nghatat l-ebda prova li x-xufier ha prekawzjonijiet biex inaqqas ir-riskju ta’ serq, u li huma essenzjali biex wiehed ikun jista’ jinvoka dan il-provvediment. Prekawzjonijiet li kien mistenni li John Abela Limited tiehu wkoll meta tqies li fi kliem id-direttur taghha stess, dan it-tip ta’ serq hu ferm komuni.

“Skond ir-Regolamenti, meta jkun hemm ‘*wilful misconduct*’ il-perjodu li fih id-dannegat ghandu jaghmel il-kawza hu ta’ tlett snin⁸. Ghalhekk l-ewwel eccezzjoni tal-imsejha fil-kawza hi minghajr bazi.

“Ghal dak li hu l-hlas li qeghda tippretendi l-attrici, xehed Mario Cutajar, General Manager ta’ E.C.B Hotel & Catering Equipment Limited⁹ li kkonferma li l-merkanzija li nsterqet kienet inxtrat gdida. Ipprezenta wkoll dokument¹⁰ li hu rendikont ta’ x’insteraq bil-prezz. Mid-dokumenti li pprezenta x-xhud jidher li l-merkanzija ma nsterqitx kollha¹¹”.

Rat ir-rikors tal-appell tas-soċjetá konvenuta Jet Services Limited li in forza taghha, għar-raġunijiet minnha premissi, talbet li din il-Qorti jogħgobha:

“..tirrevoka s-sentenza appellata u cioe` dik moghtija mill-Onorabbli Prim’Awla tal-Qorti Civili fil-kawza fl-ismijiet premissi fis-7 ta’ Novembru, 2012, billi tilqa’ l-eccezzjonijiet tas-socjeta` Jet Services Limited filwaqt li tichad l-eccezzjonijiet moghtija minn John Abela Limited”.

Rat ir-risposta tal-appell tas-soċjetá attrici li in forza taghha, għar-raġunijiet minnha premissi titlob:

⁸ Artikolu 32:- “*Nevertheless, in the case of wilful misconduct, or such default as in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct, the period of limitation shall be three years.*”.

⁹ Seduta tat-2 ta’ April 2012.

¹⁰ Fol. 71.

¹¹ “*Li niftakar huwa li Jet Services Ltd kienet infurmatna li kien hemm xi nuqqas fir-rigward tal-merkanzija li konna ordnawna u li kienet waslet Malta. Dakinhar kont tlajt personali Hal Far, l-istores tal-agent. Tlajt biex nara x’hemm bhala xoghol. Kien hemm certu merkanzija li ma wasslitx. Parti il-kbira ta’ l-invoice ikun ga gie imhallas. Mas-suppliers hallasna kollox. Personalment qadt niverifika kull oggett li wasal. Kien hemm kif ghidt merkanzija li ma wasslitx u li ahna spiccjana hallasna ic-cifra li semmejt iktar qabel. Cifra li rkuprajna minghand l-insurance taghna.*” (fol. 66).

“..li din l-Onorabbli Qorti tichad dan l-appell u tikkonferma s-sentenza tal-Onorabbli Qorti Civili, Prim’Awla tas-7 ta’ Novembru, 2012 fl-ismijiet premessi”.

Rat ir-risposta tas-soċjetá kjamata fil-kawza li in forza tagħha, għar-raġunijiet minnha premessi, titlob li din il-Qorti jogħgobha:

“..tichad l-appell fil-konfront ta’ l-esponenti, u li tikkonferma is-sentenza tal-15 ta’ Marzu 2016 bl-ispejjez kontra l-istess appellanti”.

Semgħet lid-difensuri tal-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Ikkonsidrat:

Illi din il-kawza hija talba mis-soċjetá attriċi għar-rimbors tal-flus li ħallset lill-assikurat tagħha wara din inserqilha trailer b’merkanzija f’Milan, l-Italja, fit-28 ta’ Ġunju, 2008. Il-merkanzija kellha tiġi trasportata lejn Malta mis-soċjetá konvenuta Jet Services Limited, li da parti tagħha, kienet qabbdet lis-soċjetá kjamata fil-kawza biex twettaq it-traġġit. Is-serqa seħħet fis-satra tal-lejl waqt li x-xufier tat-trakk kien rieqed waħdu fil-kabina.

L-ewwel Qorti sabet illi r-relazzjoni ġuridika tas-soċjetá attriċi hija mas-soċjetá Jet Services Limited, sabet li kien hemm negligenza, anzi *willful*

misconduct, da parti tal-operaturi tal-vjaġġ, u kkundannat lill-imsemmija soċjetá konvenuta thallas id-danni f'ammont ta' €29,631.09.

Is-soċjetá konvenuta Jet Services Limited appellat mis-sentenza u qed tinsisti, fuq kollox, li s-soċjetá kjamata fil-kawża, John Abela Limited, kellha hi tinsab responsabbli għal ħlas tad-danni peress illi n-nuqqasijiet saru mill-ħaddiema tagħha.

Trattat l-appell, din il-Qorti tosserva li s-soċjetá John Abela Limited, bhala *sub-contractor* tas-soċjetá konvenuta, m'għandiex relazzjonijiet diretti mas-soċjetá attriċi; l-obbligu kuntrattwali kien assunt mis-soċjetá konvenuta biss, u kull nuqqas tas-sub-konduuttur jew ta' persuni oħra mqabbdha għall-esekuzzjoni tal-kuntratt, twieġeb għalih, fil-konfront tas-soċjetá attriċi, is-soċjetá konvenuta. Il-fatt li s-soċjetá John Abela Limited giet imsejña fil-kawża, ma jfissirx li dik is-soċjetá trid bilfors tiġi kkundannata versu s-soċjetá attriċi. Is-soċjetá msejña libset il-libsa ta' konvenut fil-kawża, pero`, dan ma jagħmiliex neċessarjament legittimu kontradittriċi tat-talbiet attriċi. Mhux kull min hu konvenut, jekk l-attur jingħata raġun fil-kawża li jkun fetah, irid jiġi kkundannat, għax dan jiddependi minn min mill-konvenuti jirrispondi, skont il-liġi, għat-talbiet attriċi. Jista' jkun li din is-soċjetá għandha interess tkun parti fil-kawża, pero`, kif qalet l-ewwel Qorti, is-soċjetá attriċi daħlet f'kuntratt ma' Jet

Services Limited biss, u hija din li allura trid tirrispondi għal fatt li t-trailer ġie misruq.

Fissret ruħha sewwa fuq il-materja din il-Qorti, Sede Inferjuri, fis-sentenza li tat fil-kawża fl-ismijiet **Micallef v. Carbonaro**, deċiża fis-17 ta' Ottubru, 2008, meta osservat:

“Merament, mill-punto di vista tad-dritt procedurali jrid jinghad illi meta l-konvenut jeccepixxi li ma huwiex il-legittimu kontradittur fir-rapport dedott fil-gudizzju mill-attur u, anzi, jindika lil terzi bhala l-legittimati passivi tal-pretensjoni attrici, dan ma jfisserx, ankorke l-gudikant ikun laqa' t-talba ghas-sejha fil-kawza taghhom, illi dawn l-istess terzi ghandhom legittimament jitqiesu l-kontraditturi minflok il-konvenut. Dak ir-rapport merament processwali ma jgibx ghal daqshekk illi t-talba tal-kundanna tal-hlas testendi ruhha fil-konfront tat-terzi meta ma' dawn l-attur ma kellu ebda vinkolu kontrattwali”.

It-trasport tal-merkanzija bi triq hija regolata bil-Konvenzjoni dwar il-kuntratt għall-Ġarr Stradali Internazzjonali ta' Merkanzija (CMR) inkorporata fl-att dwar il-Ġarr Stradali Internazzjonali ta' Merkanzija (Kap. 486 ta' Ligijiet ta' Malta).

Il-baži tar-responsabbilitá tat-trasportatur tinsab fl-Artikolu 17(1) tar-regolamenti ta' CMR li jgħid:

“The carrier shall be liable for the total loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery”.

Ġie pprovat illi d-ditta assikurata inkarigat lis-soċjetá konvenuta tieħu ħsieb il-ġar ta' merkanzija mill-Italja; din il-merkanzija ġiet mgħobbija fuq

it-trailer li sussegwentement insteraq. Id-ditta konvenuta qed teċċepixxi li mhiex responsabbli għal dak li ġara peress li qdiet dmirijeta bl-akbar diligenza u l-merkanzija ntilfet b'forza maġġuri jew aċċident. Din id-difiża ssib l-applikazzjoni tagħha fl-Artikolu 17(a) fejn it-trasportatur hu eżonorat mir-responsabbiltà minħabba "*circumstances which the carrier could not avoid and the consequences of which he was unable to prevent*", u dan hu l-meritu tal-kawża.

Skont il-ġurista Jan Ramburg ("*The Law of Carriage of Goods; Attempts of Harmonization*" 9E.T.L. 1974), il-baži ta' responsabbiltà enunċjata fis-CMR mhix eskluża billi dak li jkun aġixxa diligentement, iżda hemm oneru akbar mixħut fuq it-trasportatur, li jrid jieħu l-mezzi kollha biex jevita kull ħsara jew serq. L-awtur S. Zamara ("*Carrier Liability*" Am. J. Of Comp Law 1975) jghid li "*the courts have been reluctant to admit as a defense that the carrier has simply not been negligent. Instead, they place a heavy burden on the carrier to show specifically how the unavoidable circumstance caused the loss*".

Il-grad ta' diligenza rikjesta f'każijiet simili mit-trasportatur hu deskritt hekk mill-awtur Malcolm A. Clarke fil-ktieb "*International Carriage of goods by Road: CMR*".

"There is a temptation to exonerate the carrier on this ground, if he has taken all 'reasonable steps' to avoid the event causing loss.. This would sit easily with the general duty of exercising reasonable care of cargo, which, it has been suggested will be implied in a contract to carry goods

by road. But the defense in article 17(2) makes no mention of reasonable steps and such steps are probably insufficient. What the carrier must show is more akin to the plea of impossibility of performance of a contract which involves an event which renders the contract not merely more onerous but completely impossible of performance. Writers on the CMR are agreed that the event must be one which literally 'could not' be avoided by the carrier. It need not however, like the concept of force majeure in France, be unforeseeable although many events will, by the very fact that they are foreseeable, be avoidable by the carrier of whom such a high standard is required".

Hekk ukoll l-awtur David Glass ('*The Divided Heart of the CMR Convention*' 14 E.T.L. 1979) jgħid li "*The carrier cannot hope, simply by showing that ordinary care was taken, to escape liability. He must show that in respect of the particular loss or damage, no failing on his part could have contributed to it. It follows that a high degree of proof is required on his part, normally by proving the actual cause and showing how it arose with no fault on his part*". Il-Qrati tagħna donnhom qed isegwu din il-linja rigida fl-interpretazzjoni tal-klawsola relattiva tas-CMR – ara **Sullivan v. Grech**, deciza mill-Prim'Awla tal-Qorti Ċivili fit-2 ta' Frar, 2001, **Galdes v. Bowman**, deciza mill-Prim'Awla tal-Qorti Ċivili fil-25 ta' Jannar, 2002, u **Farrugia noe v. Gatt noe**, deciza mill-Qorti tal-Kummerċ fis-1 ta' Jannar, 1984, fejn intqal li "*mhux bizzejjed li c-cirkustanzi kienu straordinarji imma li jridu jkunu tant straordinarji li jirrenduha impossibli lill-carrier li jimpediha anke bl-akbar diligenza. L-essenza tad-difiza hija l-imprevedibilita' u l-inevitabilita'*".

Hu interessanti li f'din l-añhar kawża s-serqa ġrat waqt li ż-żewġ *drivers* tat-*trailer* kienu reqdin fil-kabina tat-*trailer* waqt il-lejl, iżda xorta wañda dik

il-Qorti sabet lill-*carrier* responsabbli. Anke f'dan il-każ, is-serqa saret waqt li d-*driver* kien rieqed fil-kabina fil-ħin tal-lejl.

In konnessjoni mal-pajjiż tal-*Italja* huwa magħruf li hemmhekk jiġu rrapportati ħafna serqiet tant li fil-1981, il-Federazzjoni Internazzjonali tat-Trasportaturi fuq it-Triq (il-FIATA) ħarġet "*notes of guidance*" biex jiġu evitati serqiet f'dak il-pajjiż. Estratt minn dawk in-noti jgħidu hekk:

"How can theft be prevented

"A. MEASURES TAKEN PRIOR TO THE START OF AN INTERNATONAL ROAD TRANSPORT:

"1. *An anti-theft device must be installed in the vehicle which must be used even during the shortest absence of the driver from his vehicle.*

"2. *Engagement of Reliable drivers' who are handed envelopes containing papers likely to be of use to the police in the case of theft. These envelopes must always remain in the possession of the drivers.*

"3. *NEVER TO DIVULGE the nature and value of consignments to strangers.*

"4. *To arrange, whenever possible, a CONVOY of 2 to 3 vehicles or have a driving crew of 2 persons.*

"B. DURING THE JOURNEY

"1. *Never to give a LIFT to hitchhikers.*

"2. *Whenever the driver notices something out of the ordinary he must stop at a busy place and, if necessary, ring the police.*

"3. *Driver must stop AT GUARDED CAR PARKS, even for short breaks (or else relay on the brotherhood of vehicle drivers during the performance of customs and other formalities). In fact in one case, it was held that a road haulier whose vehicle has been left unguarded for two hours on the customs car park an Italian border station outside office hours and was stolen, was liable for the theft. The Court decided that the driver did not take adequate safety measures to prevent the theft of the vehicle and could not rely on Art. 17.2 of the CMR. That the*

vehicle was left locked up in a customs area was not sufficient evidence of careful securing.

“4. Driver must never STOP IN A REMOTE AREA.

“5. Driver should refrain from travelling alone at night, even on motorways.

“6. NO DELIVERY of goods, if possible, after office hours or on Friday evenings”.

Dawn il-*guidelines* fil-fehma ta' din il-Qorti għandhom jiġu addottati b'mod ġenerali f'kull każ ta' trasport ta' merkanzija fuq l-art. Din il-Qorti tqies dawn il-miżuri bħala neċessarji biex trasportatur ikun jista' jipprova jeħles mir-responsabbiltà; dawn il-miżuri, fil-fehma tal-Qorti għandhom jitqiesu bħala *sine qua non* għal kull vjaġġ, u n-nuqqas tat-trasportatur li jadopera xi waħda minn dawk il-miżuri, għandha twassal għall-konkluzjoni li t-trasportatur ikun responsabbli għal dak li jiġri. Fi kliem ieħor, din il-Qorti tqis dawk il-*guidelines* bħala li għandhom jiġu segwiti u adoperati f'kull każ ta' trasport fuq l-art, u n-nuqqas li jiġu adoperati dawk il-miżuri ta' sigurtà jkun neċessarjament ifisser li l-att tat-terzi ma jkunx jista' jitqies bħala wieħed “*which literally 'could not' be avoided by the carrier*”.

F'dan il-każ, jirriżulta li wħud minn dawn il-*guidelines* ma ġewx segwiti. It-trailer ma kellux *anti-theft device* attiv, ma ġiex irranġat *convoy* ta' żewġ jew tlett vetturi, jew, tal-anqas, jintbagħtu żewġ sewwieqa mat-trailer, u fuq kollox, id-driver ma waqafx f'*car park* li jkollha għassiesa. Din l-añhar kondizzjoni hija ferm importanti, speċjalment f'lok bħall-Italja, fejn is-serq minn *trailers* lañaq numru allarmanti u l-metodi saru aktar professjonali.

Id-*driver* in kwistjoni ipparkja fejn, għalkemm kien hemm vetturi oħra tal-istess tip hemm ipparkjati, huwa naqas li josserva obbligu mixħut fuqu, u ċioe`, li jieqaf biss fejn hemm sistema adegwata ta' sigurtá. Postijiet bħal dawn jeżistu l-Italja, u *sta* għad-*driver* li jimmaniġġja r-rotta tiegħu biex, meta jkun wasallu l-ħin biex jieqaf, ikun viċin parkeġġ bħal dan.

Is-serq, skont l-awturi fil-materja, mhux oġġettivament adegwat biex jevita li l-ħtija tintefa' fuq it-trasportatur, iżda jrid jirriżulta li ttieħdu l-miżuri kollha adegwati biex jiġi evitat serq; f'dan il-każ, dawn il-miżuri ma ttieħdux u, *kwindi*, is-soċjetá konvenuta hija responsabbli għan-nuqqasijiet (u dana peress kif ġia ġie osservat, li l-kuntrattur tat-trasport huwa responsabbli għall-atti jew ommissjonijiet tan-nies imqabba minnu).

Fil-kuntest tal-kunċett ta' *wilful misconduct*, il-Qrati Ingliżi kellhom diversi okkażżjonijiet li fihom spjegaw is-sinjifikat ta' "*wilful misconduct*". Fis-sentenza mogħtija mill-Qorti tal-Kummerċ Ingliż, presjeduta mill-Imhalled Cresswell fis-6 ta' Mejju 1997, fil-kawża fl-ismijiet **Thomas Cook Group Ltd & Ors v. Air Malta Ltd** li tinsab riportata fit-2 Lloyds's Report 39, insibu rassenja ta' definizzjonijiet mogħtija minn diversi Imhallfin preċedentement:

"Wilfull misconduct in such a special condition means misconduct to which the will is a party as contradistinguished from accident and if far beyond any negligence, even gross or culpable negligence, and involves that a person wilfully misconducts himself who knows and appreciates that is wrong conduct on his part in the existing circumstances to do, or to fail or omit to do (as the case may be) a

particular thing and yet intentionally does or fails or omits to do it, or persist in the act, failure or omission regardless of the consequences.” Per Johnson J. In Graham v. Belfast and Northern Counties Railways [1901] 2.I.R. 13, which was cited with approval by Lord Alverstone in Forder v GWR [1905] 2KB 532, who added “or acts with reckless carelessness, not caring what the results of his carelessness may be.”

“Wilful misconduct, to put it most shortly, as it has often been put in the past, is misconduct to which the will is a party, and it is something which is wholly different in kind from mere negligence or carelessness, however gross that negligence or carelessness may be. I think the first thing for you to remember is that the will must be party to the misconduct, and not merely a party to the conduct of which complaint is made. Let us take an example: if the pilot of an aircraft knowingly does something which subsequently a jury find amounted to misconduct, those facts alone do not show that he is guilty of wilful misconduct. To establish wilful misconduct on the part of this imaginary pilot it must be shown not only that he knowingly (and in that sense wilfully) did the wrongful act, but also that when he did it he was aware that it was a wrongful act – that is to say, he was aware that he was committing misconduct.” Per Barry J. In Horabin v BOAC [1952] 2 Lloyd’s Law Reports 450 at page 459.

“If I summarise the principle in my own words, it would be to say that for wilful misconduct to be proved there must be either (one) an intention to do something which the actor knows to be wrong or (two) a reckless act in the sense that the actor is aware that loss may result from his act and yet does not care whether loss will result or not, or, to use Mr Justice Barry’s words in Horabin’s case, ‘he took a risk which he knew he ought not to take’ per Longmore J. In National Semiconductors v UPS [1996] 2 Lloyd’s Reports 212 at 214.

“Further, a person could be said to act with reckless carelessness towards goods in his care if, aware of a risk that they may be lost or damaged, he nonetheless deliberately goes ahead and takes the risk when it is unreasonable in all the circumstances for him to do so.” Per Beldam LJ. In Laceys Footwear (Wholesale) Ltd v Bowler International Freight Ltd [1997] 2 Lloyd’s Reports 369, at page 374”.

Dawn l-istess definizzjonijiet jissemmew ukoll f’sentenza mogħtija mill-Qorti tal-Appell Ingliża, fit-2 ta’ Mejju 2007, fil-kawża fl-ismijiet **TNT Global Spa v. Denfleet International Limited:**

“In reversing the decision of HHJ Kershaw QC (Queen’s Bench Division, Manchester Mercantile Court), the Court of Appeal

unanimously held that the bare fact of the lorry driver admitting he fell asleep at the wheel (and, by reasonable inference, was aware that he had begun to feel sleepy), was insufficient to justify a finding of 'wilful misconduct'. What was required to prove 'wilful misconduct' was proof that the driver had deliberately driven beyond the permitted time limits at law (Jones v. Martin Bencher [1986] 1 Lloyd's Rep 54) or something that had demonstrated to the driver that he could not beat his sleepiness, such as hitting the side of the road or realising that he had previously nodded off during the journey".

F'din is-sentenza Lord Justice Toulson *inter alia* rrimarka hekk:

*"To establish **wilful misconduct** within the meaning of the CMR, it is not enough to show that the carrier was at fault in failing to take proper care of the goods and that the carrier's conduct was the product of a conscious decision. It has to be shown that the actor knew that his conduct was wrong or was recklessly indifferent whether it was right or wrong; and, as part of that requirement, he must have appreciated that his conduct created or might create additional risk to the goods. The authorities have been referred to by Waller LJ.*

*"Fault or misconduct in the case of a motorist may or may not involve matters of degree. If a traffic light is red, it does not require any element of judgement on the part of the driver to know whether he should stop. But driver impairment may be a matter of degree. A driver's ability may be reduced for many reasons. Tiredness is one of them. A motorist may feel some degree of tiredness, possibly transient, but not believe that it is sufficient to impair his ability to drive with proper care. If so, that may involve negligent misjudgement, but not **wilful misconduct**. On the other hand, a motorist may be aware that his ability to drive is significantly impaired".*

Fid-dawl ta' dak li ntqal, din il-Qorti hi tal-fehma li l-kuncett ta' *wilful misconduct* jimplika konsapevolezza ta' għemil ħazin li jmur oltre minn semplici negligenza jew, forsi, anke minn negligenza grassa. Fil-fehma tal-Qorti jkun hemm "*misconduct*" meta persuna tagħmel, jew tonqos li tagħmel, xi ħaga, bi ksur ta' xi dmir impost fuqha bil-ligi, jew bi ksur ta' xi dmir derivanti minn kuntratt magħmul skont il-ligi, billi, fis-sens tal-Artikolu

992 tal-Kodiċi Ċivili, tali kuntratt għandu s-saħħa ta' liġi għall-partijiet kontraenti.

F'dan il-każ, hija l-fehma tal-Qorti li s-sewwieq in kwistjoni naqas sew mid-dover tiegħu li jindokra sewwa t-trailer bil-merkanzija ġo fih u li jassigura li dan ma jinsteraqx. Hu aġixxa "*recklessly*", minghajr ma qies dak li kien qed jagħmel, jew aħjar, billi ma jimportahx jekk dik il-ħsara ssirx jew le. Meta s-sewwieq wasal fejn kien se jistrieħ, it-trailer jidher li ġie żgancat minn mat-trakk, li għamilha iżjed faċli għall-istess trailer li jinsteraq. It-trailer kellu *anti-theft lock*, iżda dan tneħħa meta s-sewwieq wasal biex jigbor il-merkanzija, u baqa' ma ġiex attiv meta dan raqad għal-lejl. Dawn, fost affarijiet oħra elenkati mill-ewwel Qorti, juru traskuraġni grassa u non-kuranza tal-obbligu tiegħu li jħares l-inkolumitá tal-merkanzija afdana f'idejh. Il-kumpanija Jet Services Limited, bħala l-*carrier* inkarigat bit-trasport, twieġeb hija għall-għemil u l-atti ta' traskuraġni kollha mwettqa minn kull min hu involut fit-twettieq tal-kuntratt "*as if such acts or omissions were his own*" (Artikolu 3 tal-Konvenzjoni aktar qabel imsemmija). Kull ma seħħ huwa responsabbilitá ta' din is-soċjetá, u ma tistax, f'dawn il-proċeduri, titfa' t-tort fuq terzi li magħhom is-soċjetá attriċi ma għandha ebda relazzjoni guridika.

Fir-rigward tal-quantum tad-danni, il-kontestazzjoni tas-soċjetá appellanti hija pjuttost dgħajfa, u ma ha hemm xejn fl-atti li jxejjen il-konklużjoni li waslet għaliha l-ewwel Qorti.

F'kull każ, kienet is-soċjetá appellanti li kkonstatat in-nuqqas u d-danni. Mix-xhieda ta' Charles Abela, għas-soċjetá kjamata fil-kawża, jirriżulta li dan esebixxa rapport tas-*surveyor* li l-kumpanija assikuratriċi tiegħu kienet qabddet, li jikkonferma n-nuqqasijiet u l-ammont tal-ħsara.

L-aggravji hekk tas-soċjetá appellanti qed jiġu, għalhekk, miċħuda.

Għaldaqstant, għar-raġunijiet premessi, tidisponi mill-appell tas-soċjetá konvenuta Jet Services Limited billi tiċhad l-istess u tikkonferma fis-sħiħ is-sentenza tal-ewwel Qorti, inkluz il-*capo spese*. L-ispejjeż ta' dan l-appell jiġihallu kollha mis-soċjetá appellanti Jet Services Limited.

Silvio Camilleri
Prim Imhalled

Tonio Mallia
Imhalled

Joseph Azzopardi
Imhalled

Deputat Registratur
mb