Fil-Qorti tal-Magistrati (Malta)
Magistrat
Dr.Gabriella Vella B.A., LL.D.

Rikors Nru. 213/09VG

Atlas Insurance PCC Limited (C-5601) f'isimha proprju u kif surrogata fid-drittijiet ta' l-assigurata taghha Intercomp Marketing Limited abbazi tal-polza ta' assigurazzjoni u tal-ligi u l-istess Intercomp Marketing Limited (C-20612)

Vs

B.A.S. Limited u b'Digriet tat-23 ta' Novembru 2009 giet kjamata in kawza s-socjetà Fahrenheit Freight Forwarders Company Limited

Illum 26 ta' Lulju 2017

Il-Qorti,

Rat ir-Rikorsipprezentat mis-socjetà Atlas Insurance PCC Limited f'isimha proprju u kif surrogata fid-drittijiet ta' l-assigurata taghha Intercomp Marketing Limited a bazi ta' polza ta' assigurazzjoni u tal-ligi u l-istess Intercomp Marketing Limited fid-9 ta' Gunju 2009 permezz ta' liema titlob li s-socjetà B.A.S. Limited, bhala s-socjetà inkarigata mill-gbir u transport ta' merkanzija tas-socjetà Intercomp Marketing Limited lejn Malta, tigi kkundannata thallashom is-somma komplessiva ta' hamest elef tlett mija wiehed u sebghin Euro u tmien centezmi (€5,371.08), inkwantu ghal €5,138.08 lis-socjetà Atlas Insurance PCC Limited rapprezentanti hlas ai termini tal-polza ta' assikurazzjoni in konnessjoni ma' nuqqasijiet u hsarat fil-merkanzija appartenenti lill-assigurata taghha, is-socjetà Intercomp Marketing Limited, u spejjez tas-survey relattiv, u inkwantu ghal €233 lis-socjetà Intercomp Marketing Limited rapprezentanti l-excess relattiv, bl-imghax mid-data tal-hlasijiet relattivi sad-data ta' l-effettiv pagament u bl-ispejjez kontra s-socjetà B.A.S. Limited;

Rat ir-Risposta tas-socjetà B.A.S. Limited permezz ta' liema teccepixxi li: (i) preliminarjament ma hijiex il-legittimu kontradittur tas-socjetajiet attrici u dan in kwantu f'kaz li jirrizulta li s-socjetajiet attrici effettivament sofrew xi hsara jew telf, tali hsara jew telf gew ikkawzati meta l-merkanzija kienet fil-pussess ta' terzi, ossia tas-socjetà Fahrenheit Freight Forwarders Co. Ltd.; (ii) it-talbiet attrici huma infondati fil-fatt u fid-dritt stante li ma jirrizultax li l-merkanzija in kwistjoni giet nieqsa waqt li din kienet taht ir-responsabilità taghha u fi kwalsiasi kaz, hija ma kellha l-ebda tort jew htija ghar-rigward tan-nuqqasijiet reklamati u ghalhekk ma hijiex responsabbli ghal kwalunkwe hsara jew telf soffert mis-socjetajiet attrici; (iii) fir-rigward tal-konsenja relattiva japplikaw il-limiti ta' htija a tenur tar-Regolamenti tal-Convention on the Contract for International Carriage of Goods by Road (CMR) u tal-MIFA Standard Terms and Condition; (iv) is-socjetajiet attrici jridu jippruvaw l-ammont reklamat minnhom, liema ammont qed jigi kkontestat; u (v) fic-cirkostanzi, ghandha tigi kjamata in kawza s-socjetà Fahrenheit Freight Forwarders Co. Limited li giet minnha inkarigata bil-garr tal-merkanzija u dana billi huwa importanti u ekonomiku li tigi stabbilita r-responsabbiltà tal-partijiet involuti f'dan il-kaz f'gudizzju wiehed;

Rat li b'Digriet moghti fit-23 ta' Novembru 2009 giet kjamata in kawza s-socjetà Fahrenheit Freight Forwarders Company Limited;

Rat ir-Risposta tas-socjetà kjamata in kawza Fahrenheit Freight Forwarders Company Limited permezz ta' liema teccepixxi li: (i) hija ma ghandha l-ebda relazzjoni guridika mas-socjetajiet attrici u ghaldaqstant ghandha tigi liberata mill-osservanza tal-gudizzju; (ii) fir-rigward tal-pretensjoni attrici jew dik konvenuta fil-konfront taghha tapplika d-dekadenza ai termini ta' l-Artikolu 32(1)(a) tal-Convention on the Contract for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi nostrana tramite l-Kap.836 [recte: Kap. 486] tal-Ligijiet ta' Malta; (iii) it-talbiet attrici ma humiex sufficjentement dettaljati ai termini tal-ligi u ghalhekk ghandhom jigu michuda fir-rigward taghha. Fost ohrajn, ir-Rikors promotur ma fih l-ebda fatti li jirrelataw maghha u dan jikkreja ostakolu ghaliha biex twiegeb ghall-kawza odjerna. B'hekk bla pregudizzju ghall-eccezzjoni li t-talbiet attrici ghandhom jigu michuda fil-konfront taghha, hija tirriserva d-dritt li ggib eccezzjonijiet ulterjuri fi stadju aktar avvanzat; (iv) hija ma hijiex responsabbli ghal ebda danni li allegatament sofrew is-socjetajiet attrici peress illi hi dejjem ikkonsenjat il-merkanzija li giet ikkonsenjata lilha lid-destinatarju fl-istess stat li tkun ircevietha hi, ghalhekk jekk kien hemm xi nuqqasijiet fil-merkanzija dan ma sarx meta l-merkanzija kienet taht l-isfera ta' responsabilità taghha; (v) it-talbiet attrici huma eccessivi; (vi) kwalunkwe responsabilità li tista' tigi imputata lilha hija suggett ghall-limitazzjonijiet tal-Convention for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi nostrana tramite l-Kap.836 [recte: Kap. 486] tal-Ligijiet ta' Malta; u (vii) ghaldaqstant, it-talba attrici ghandha tigi michuda, bl-ispejjez kontra s-socjetajiet attrici;

Semghet ix-xhieda ta' Patrick Wirth in rapprezentanza tas-socjetà Intercomp Marketing Limited moghtija waqt is-seduta tat-2 ta' Dicembru 2010[1] u rat id-dokumenti esebiti minnu markati Dok. "W1" sa' Dok. "W5" a fol. 22 sa' 34 tal-process, rat l-affidavit ta' Brian Valenzia in rapprezentanza tas-socjetà Atlas Insurance PCC Limited u d-dokument anness mieghu esebiti mill-istess imsemmija socjetà permezz ta' Nota pprezentata fil-21 ta' Frar 2011 a fol. 41 sa' 44 tal-process, semghet ix-xhieda ta' Kevin Grech moghtija waqt is-seduta tas-16 ta' Mejju 2011[2] u ix-xhieda ta' Mario Debono in rapprezentanza tas-socjetà konvenuta moghtija waqt is-seduta tat-13 ta' Ottubru 2011[3] u rat id-dokument esebit minnu markat Dok.

[1] Fol. 35 sa' 39 tal-process.
[2] Fol. 49 u 50 tal-process.
[3] Fol. 53 sa' 57 tal-process.

"MD1" a fol. 52 tal-process, rat it-traskrizzjoni tax-xhieda moghtija minn Raymond Borg in kontro-ezami fil-kors tas-smigh tar-Rikors bin-Numru 1175/08 fl-ismijiet "Atlas Insurance PCC Limited pro et noe v. B.A.S. Limited" pendenti quddiem il-Prim' Awla tal-Qorti Civili esebita mis-socjetà konvenuta permezz ta' Nota pprezentata fil-5 ta' Dicembru 2011 a fol. 59 sa' 69 tal-process, rat l-affidavits ta' Josianne Galea, Anthony Zerafa u Alexander Mallia u d-dokumenti annessi maghhom esebiti mis-socjetà kjamata in kawza permezz ta' Nota pprezentata fit-3 ta' Mejju 2012 a fol. 72 sa' 102 tal-process, semghet ix-xhieda ta' Sandro Mallia moghtija waqt is-seduti tat-12 ta' Novembru 2012[4], tat-18 ta' Frar 2013[5] u tad-9 ta' April 2013[6] u rat id-dokument markat Dok. "GV1" a fol. 108 tal-process;

Rat in-Nota ta' Sottomissjonijiet tas-socjetajiet attrici a fol. 109 sa' 123 tal-process u rat in-Nota ta' Referenzi tas-socjetà kjamta in kawza u s-sentenzi annessi ma' l-istess a fol. 137 sa' 224 tal-process;

Rat l-atti kollha tal-kawza;

Ikkunsidrat:

Bil-proceduri odjerni s-socjetà Atlas Insurance PCC Limited f'isimha proprju u kif surrogata fid-drittijiet ta' l-assigurata taghha Intercomp Marketing Limited abbazi tal-polza ta' assigurazzjoni u tal-ligi u l-istess socjetà Intercomp Marketing Limited jitolbu li s-socjetà B.A.S. Limited tigi kkundannata thallashom is-somma komplessiva ta' €5,371.08 u dan in kwantu ghas-somma ta' €5,138.08 lis-socjetà Atlas Insurance PCC Limited rapprezentanti hlas ai termini tal-polza ta' assikurazzjoni in konnessjoni ma' nuqqsasijiet u hsarat fil-merkanzija appartenenti lis-socjetà Intercomp Marketing Limited, assigurata taghha, u spejjez tas-survey relattiv, u in kwantu ghal €233 lis-socjetà Intercomp Marketing Limited rapprezentanti l-excess relattiv, u dana bhala s-socjetà inkarigata mill-gbir u trasport tal-merkanzija lejn Malta.

Is-socjetà konvenuta tilqa' ghat-talba tas-socjetajiet attrici bis-segwenti eccezzjonijiet: (i) preliminarjament ma hijiex il-legittimu kontradittur tas-socjetajiet attrici u dan in kwantu f'kaz li jirrizulta li s-socjetajiet attrici effettivament sofrew xi hsara jew telf, tali hsara jew telf gew ikkawzati meta l-merkanzija kienet fil-pussess ta' terzi, ossia tas-socjetà Fahrenheit Freight Forwarders Co. Ltd.; (ii) it-talbiet attrici huma infondati fil-fatt u fid-dritt stante li ma jirrizultax li l-merkanzija in kwistjoni giet nieqsa waqt li din kienet taht ir-responsabilità taghha u fi kwalsiasi kaz, hija ma kellha l-ebda tort jew htija ghar-rigward tan-nuqqasijiet reklamati u ghalhekk ma hijiex responsabbli ghal kwalunkwe hsara jew telf soffert mis-socjetajiet attrici; (iii) fir-rigward tal-konsenja relattiva japplikaw il-limiti ta' htija a tenur tar-Regolamenti tal-Convention on the Contract for International Carriage of Goods by Road (CMR) u tal-MIFA Standard Terms and Condition; (iv) is-socjetajiet attrici jridu jippruvaw l-ammont reklamat minnhom, liema ammont qed jigi kkontestat; u (v) fic-cirkostanzi, ghandha tigi

[4] Fol. 105a sa' 105i tal-process.
[5] Fol. 106a sa' 106e tal-process.
[6] Fol. 107a sa' 107c tal-process

kjamata in kawza s-socjetà Fahrenheit Freight Forwarders Co. Limited li giet minnha inkarigata bil-garr tal-merkanzija u dana billi huwa importanti u ekonomiku li tigi stabbilita r-responsabbiltà tal-partijiet involuti f'dan il-kaz f'gudizzju wiehed.

In forza ta' Digriet moghti fit-23 ta' Novembru 2009, giet kjamata in kawza s-socjetà Fahrenheit Freight Forwarders Company Limited li a sua volta laqghet ghat-talba attrici bis-segwenti eccezzjonijiet: (i) hija ma ghandha l-ebda relazzjoni guridika mas-socjetajiet attrici u ghaldaqstant ghandha tigi liberata mill-osservanza tal-gudizzju; (ii) fir-rigward tal-pretensjoni attrici jew dik konvenuta fil-konfront taghha tapplika d-dekadenza ai termini ta' l-Artikolu 32(1)(a) tal-Convention on the Contract for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi nostrana tramite l-Kap.836 [recte: Kap. 486] tal-Ligijiet ta' Malta; (iii) it-talbiet attrici ma humiex sufficjentement dettaljati ai termini tal-ligi u ghalhekk ghandhom jigu michuda fir-rigward taghha. Fost ohrajn, ir-Rikors promotur ma fih l-ebda fatti li jirrelataw maghha u dan jikkreja ostakolu ghaliha biex twiegeb ghall-kawza odjerna. B'hekk bla pregudizzju ghall-eccezzjoni li t-talbiet attrici ghandhom jigu michuda fil-konfront taghha, hija tirriserva d-dritt li ggib eccezzjonijiet ulterjuri fi stadju aktar avvanzat; (iv) hija ma hijiex responsabbli ghal ebda danni li allegatament sofrew is-socjetajiet attrici peress illi hi dejjem ikkonsenjat il-merkanzija li giet ikkonsenjata lilha lid-destinatarju fl-istess stat li tkun ircevietha hi, ghalhekk jekk kien hemm xi nuqqasijiet fil-merkanzija dan ma sarx meta l-merkanzija kienet taht l-isfera ta' responsabilità taghha; (v) it-talbiet attrici huma eccessivi; (vi) kwalunkwe responsabilità li tista' tigi imputata lilha hija suggett ghall-limitazzjonijiet tal-Convention for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi nostrana tramite l-Kap.836 [recte: Kap. 486] tal-Ligijiet ta' Malta; u (vii) ghaldaqstant, it-talba attrici ghandha tigi michuda.

Mill-provi prodotti jirrizulta li s-socjetà attrici Intercomp Marketing Limited ordnat ammont ta' *computer* u *computer accessories* minghand id-ditta estera Dell[7]. Din il-merkanzija kellha tigi trasportata mill-Olanda ghal ghand is-socjetà attrici Intercomp Marketing Limited hawn Malta u ghall-finijiet tal-gbir tal-merkanzija mill-Olanda u trasport ghal hawn Malta s-socjetà attrici Intercomp Marketing Limited inkarigat lis-socjetà konvenuta B.A.S. Limited. Is-socjetà attrici Intercomp Marketing Limited assigurat l-istess merkanzija b'polza ta' assikurazzjoni mahruga mis-socjetà attrici Atlas Insurance PCC Limited. Is-socjetà konvenuta da parte taghha inkarigat lis-socjetà kjamata in kawza Fahrenheit Freight Forwarders Company Limited ghall-fini li tigbor il-merkanzija in kwistjoni mid-depot tad-DHL gewwa l-Olanda u tittrasporta l-istess ghal hawn Malta. Is-socjetà attrici Intercomp Marketing Limited ma tat l-ebda inkarigu dirett lis-socjetà kjamta in kawza. Is-socjetà kjamata in kawza gabret il-merkanzija kollha destinata ghas-socjetà attrici Intercomp Marketing Limited mid-depot tad-ditta DHL, li kienet responsabbli mill-palletizing tal-merkanzija. Is-socjetà kjamata in kawza gabret tnax-il pallet minghand id-DHL u ghalkemm kellha tibghathom hawn Malta fuq trailer wiehed bhala fatt waslu fuq tlett trailers u cioè erba' pallets fuq trailer 735, sitt pallets fuq trailer 633 u zewg pallets fuq trailer 487. Mis-sitt pallets li waslu fuq trailer 633 kien

[7] Xhieda moghtija minn Ian Wirth, Logistics Manages mas-socjetà attrici Intercomp Marketing Limited waqt is-seduta tat-2 ta' Dicembru 2010, fol. 35 sa' 39 tal-process u Dok. "W5" a fol. 26 sa' 34 tal-process.

hemm tlieta minnhom danneggjati fis-sens illi w-wrapping kien imqatta' u l-merkanzija esposta[8]. Mal-konsenja tal-merkanzija lis-socjetà attrici Intercomp Marketing Limited irrizulta li kien hemm sitt laptops neqsin u laptop danneggjat[9]. Minn survey li sar mis-Surveyor tas-socjetà attrici Atlas Insurance PCC Limited irrizulta li l-hames laptops neqsin u l-laptop danneggjat kellhom valur komplessiv ta' USD$8,466.69, ekwivalenti ghal €4,838.08, u s-survey fee tammonta ghal €300.00[10]. Is-socjetà attrici Intercomp Marketing Limited infurmat lis-socjetà konvenuta bin-nuqqas ravvizat fil-merkanzija in kwistjoni u gharrfitha li qed izzommha responsabbli ghad-danni minnha sofferti[11]. Is-socjetà konvenuta ma ghamlitx tajjeb ghad-danni pretizi mis-socjetà attrici Intercomp Marketing Limited ghaliex skontha fil-kaz in ezami r-responsabilità ghall-akkadut hija tas-socjetà kjamata in kawza. Eventwalment is-socjetà attrici Atlas Insurance PCC Limited laqghet il-*claim* ta' l-assigurata taghha w ikkumpensata ghad-danni minnha sofferti, ossia kkumpensata s-somma ta' €4,838.08 rapprezentanti l-valur tal-laptop dannejjgat u tal-laptops misruqa. In segwitu ghal tali kompensazzjoni s-socjetà attrici Atlas Insurance PCC Limited giet surrogata fid-drittijiet ta' l-assigurata taghha b'Subrogation Form datata 24 ta' Ottubru 2008, esebita bhala Dok. "W1" a fol. 22 tal-process. Is-socjetà attrici Intercomp Marketing Limited da parte taghha hallset excess fl-ammont ta' €233[12].

Is-socjetà konvenuta u s-socjetà kjamata in kawza entrambe jikkontendu li, ghal ragunijiet moghtija minn kull wahda minnhom, ma humiex il-legittimi kontradditturi tas-socjetajiet attrici u jinvokaw favur taghhom id-disposizzjonijiet u provvedimenti tal-Convention on the Carriage of Goods by Road (CMR). Is-socjetà konvenuta tikkontendi li ma hijiex il-legittimu kontradittur tas-socjetajiet attrici ghaliex jekk sehhet hsara u telf fil-merkanzija tas-socjetà attrici Intercomp Marketing Limited, din sehhet meta l-merkanzija kienet fil-pussess tas-socjetà kjmata in kawza. Is-socjetà kjamata in kawza da parte taghha tikkontendi li ma hijiex il-legittimu kontradittur tas-socjetajiet attrici ghar-raguni li ma ghandha l-ebda relazzjoni guridika maghhom.

Fir-rigward ta' l-obbligi tat-trasportatur l-Artikolu 3 tal-CMR jipprovdi li *for the purposes of this Convention the carrier shall be responsible for the acts or 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.*

Kif già iktar 'l fuq osservat, mill-provi prodotti jirrizulta li s-socjetà attrici Intercomp Marketing Limited inkarigat lis-socjetà konvenuta ghall-fini tat-trasport mill-Olanda ghal hawn Malta tal-merkanzija minnha ordnata minghand id-ditta Dell. Kienet is-socjetà konvenuta li ddelegat dan l-inkarigu ghal fuq is-socjetà kjamata in kawza. B'hekk vis-à-vis is-socjetà attrici Intercomp Marketing Limited,

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[8] Xhieda moghtija minn Mario Debono, Deputy General Manager mas-socjetà konvenuta, waqt is-seduta tat-13 ta' Ottubru 2011, fol. 53 sa' 57 tal-process u Dok. "MD1" a fol. 52 tal-process.
[9] Dok. "W2" a fol. 23 tal-process.
[10] Dok. "BV1" a fol. 43 u 44 tal-process.
[11] Dok. "W3" a fol. 24 tal-process.
[12] Affidavit ta' Brian Valenza a fol. 42 tal-process.

it-trasportatur ma' min effettivament kellha relazzjoni guridika hija s-socjetà konvenuta. Mill-provi jirrizulta wkoll li l-procedura adottata mid-ditta Dell, il-fornitur tas-socjetà attrici Intercomp Marketing Limited, u mid-ditta DHL, id-ditta inkarigata mill-gbir tal-merkanzija minghand id-ditta Dell u mill-palletizing ta' l-istess merkanzija qabel ma din tintbaghat Malta, vis-à-vis merkanzija destinata ghall-esportazzjoni kienet wahda sodisfacenti u li tiehu l-mizuri necessarji biex ma jkunx hemm problemi[13]. Jirrizulta wkoll li s-socjetà kjamata in kawza gabret mid-depot tad-DHL il-merkanzija kollha destinata ghas-socjetà attrici Intercomp Marketing Limited, izda fil-kors tat-tragitt u meta l-merkanzija kienet fil-pussess taghha gara xi haga li wassal biex il-merkanzija destinata lis-socjetà attrici Intercomp Marketing Limited tasal hawn Malta mhux fl-istess stat li kienet fih meta ngabret mid-depot tad-DHL, u senjatament parti mill-konsenja giet *damaged and contents exposed* bir-rizultat li nstab li sitt computers insterqu u computer iehor gie danneggjat[14].

Applikati dawn il-fatti ghal dak provdut fl-Artikolu 3 tal-CMR, huwa evidenti li hija sosocjetà konvenuta li hija responsabbli vis-à-vis is-socjetajiet attrici ghal dak li gara waqt li l-merkanzija kienet fil-pussess tas-socjetà kjamata in kawza. Din l-osservazzjoni ssib konferma f'diversi sentenzi pronuncjati mill-Qrati nostrali fosthom, apparte dawk indikati mis-socjetajiet attrici fin-Nota ta' Sottomissjonijiet taghhom[15], is-sentenza fl-ismijiet **Benjamin Bonnici noe v. Francis Vella et noe, Citaz. Nru. 1083/92** deciza mill-Prim' Awla tal-Qorti Civili fit-30 ta' Ottubru 2000, fejn dik il-Qorti osservat: *mill-provi jirrizulta kjarament li r-rabta kuntrattwali kienet bejn is-socjetà attrici … u s-socjetà konvenuta. Kull sub-appalt iehor raggunt bejn il-konvenuti nomine u t-terz – minghajr ebda partecipazzjoni jew intromissjoni da parte tas-socjetà attrici … - m'ghandux ikun ta' impediment ghat-talbiet attrici fil-konfront tas-socjetà konvenuta naxxenti mill-ftehim tal-garr milhuq bejniethom. Is-socjetà attrici … ma kellha qatt xi rapport guridiku mat-terz. Is-socjetà konvenuta naqset milli twassal il-merkanzija ta' l-attur … kif kienet tenuta li taghmel … Il-konvenuti nomine ma rnexxilhomx jippruvaw li n-nuqqasijiet graw minhabba ragunijiet barra mill-kontroll taghhom. Fl-ebda waqt ma rrizulta li l-attur … ta l-kunsens tieghu jew awtorizza lill-konvenuti nomine biex jinkarigaw it-trasport lil terz. Kull ftehim ghalih kien 'res inter alios acta' u n-norma applikabbli f'kaz bhal dan hija dik li 'pacta tertis nec resunt nec nocent'*.

Jigi ulterjorment osservat illi ghalkemm il-hames eccezzjoni tas-socjetà konvenuta ghall-kjamata in kawza tas-socjetà Fahrenheit Freight Forwarders Limited giet milqugha bid-Digriet tat-23 ta' Novembru 2009, li effettivament ikkjama in kawza l-imsemmija socjetà, b'daqshekk ma jfissirx li s-socjetà konvenuta giet b'xi mod ezonerata mir-responsabilitajiet taghha fir-rigward tas-socjetajiet attrici. Din l-osservazzjoni ssib konferma f'diversi sentenzi pronuncjati mill-Qrati nostrali fosthom, oltre dik già imsemmija mis-socjetajiet attrici fin-Nota ta'

[13] Xhieda ta' Mario Debono, Deputy General Manager tas-socjetà konvenuta, moghtija waqt is-seduta tat-13 ta' Ottubru 2011, fol. 53 sa' 57 tal-process u traskrizzjoni tax-xhieda ta' Raymond Borg, Sales Commercial Manager tas-socjetà konvenuta, moghtija waqt is-smigh tal-proceduri fl-ismijiet "Atlas Insurance PLC Limited pro et noe v. B.A.S. Limited" Rik. Nru. 1175/08 fis-seduta tat-2 ta' Novembru 2010, fol. 60 sa' 69 tal-process.
[14] Dok. "MD1" a fol. 52 tal-process u Dok. "W2" a fol. 23 tal-process.
[15] Fol. 114 u 115 tal-process.

Sottomissjonijiet taghhom[16], is-sentenza fl-ismijiet **Agent Accountant General v. George Xuereb noe** deciza mill-Qorti ta' l-Appel fil-15 ta' Marzu 1991[17], fejn dik il-Qorti osservat: *fuq kollox però, it-talba ghall-kjamat in kawza b'ebda mod ma setghet tfisser illi b'daqshekk is-socjetà konvenuta kienet qatt theles, a bazi taghha, mir-responsabbilità kuntrattwali taghha, kif din hija stabbilita mill-kuntratt ta' appalt. Ara wkoll "Joseph Riolo pro et noe v. Carmel Muscat" Appell Civili, 15 ta' Marzu 1991.*

Fid-dawl ta' dan kollu osservat ghalhekk isegwi illi filwaqt li l-ewwel eccezzjoni tas-socjetà kjamata in kawza ghandha tigi milqugha u b'hekk tigi liberata mill-osservanza tal-gudizzju u l-kumplament ta' l-eccezzjonijiet taghha ma jigux ulterjorment ikkunsidrati, l-ewwel eccezzjoni tas-socjetà konvenuta ghandha tigi michuda.

Fir-rigward tal-mertu, is-socjetà konvenuta tikkontendi li t-talba attrici kif dedotta fil-konfront taghha ghandha tigi michuda a bazi tal-fatt li l-merkanzija li giet nieqsa ma gietx hekk nieqsa waqt li l-istess kienet fil-pussess taghha u b'hekk ma hijiex responsabbli ghal kwalunkwe hsara jew telf soffert mis-socjetajiet attrici u fi kwalunkwe kaz tinvoka favur taghha l-limitazzjonijiet dwar responsabilità stipulati fil-CMR, oltre l-kontestazzjoni li d-danni sofferti mis-socjetajiet attrici ghandhom jigu minnhom debitament ippruvati.

B'mod generali r-responsabilità tat-trasportatur taht il-CMR hija regolata bl-Artikolu 17(1) u (2) li jipprovdi illi: *the carrier shall be liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.* L-Artikolu 18(1) tal-CMR jipprovdi li *the burden of proving that loss, damage or delay was due to one of the causes specified in article 17, paragraph 2, shall rest upon the carrier.*

Fir-rigward tar-responsabilità tat-trasportatur huwa principju ormai assodat illi: *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 majeur in France, be*

[16] Fol. 115 tal-process.
[17] Kollezzjoni ta' Decizjonijiet tal-Qrati Superjuri ta' Malta, Vol. LXXV-II-506.

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".[18] Hu evidenti ghalhekk li kif osservat mill-Prim' Awla tal-Qorti Civili fis-sentenza fl-ismijiet **Thomas Smith Insurance Agency Limited noe v. MD Trucking Limited et, Citaz. Nru. 1093/01** deciza fit-18 ta' Frar 2004, fejn iccitat lill-awtur David Glass u l-ktieb tieghu "The Divided Heart of the CMR Convention" illi *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 taghna donnhom qed isegwu din il-linja rigida fl-interpreazzjoni tal-klawsola relattiva tas-CMR – ara "Sullivan v. Grech" deciza minn din il-Qorti fit-2 ta' Frar 2001, "Galdes v. Bowman" deciza minn din il-Qorti fil-25 ta' Jannar 2002 u "Farrugia noe v. Gatt noe" deciza mill-Onorabbli Qorti tal-Kummerc fis-16 ta' Jannar 1984, fejn intqal li "mhux bizzejjed li c-cirkostanzi kienu straordinarji imma li jridu jkunu tant straordinarji li jirrenduha impossibbli illi carrier li jimpediha anke bl-akbar diligenza. L-essenza tad-difiza hija l-imprevedibilità u l-inevitabilità".*

Mill-provi prodotti fil-kaz in ezami jirrizulta bl-iktar mod car li s-socjetà konvenuta ma lahqitx il-grad ta' prova minnha rikjesta mill-CMR ghall-fini li tigi ezonerata minn kwalunkwe responsabilità fir-rigward tas-socjetajiet attrici. Ghalkemm is-socjetà konvenuta kienet ghaddejja minn perijodu ta' diversi diffikultajiet fir-rigward ta' l-operat tas-socjetà kjamata in kawza hija naqset milli effettivament tiehu dawk il-mizuri, jekk hemm bzonn anke mizuri estremi, b'mod tempestiv biex tevita ripetizzjoni ta' tali problemi fir-rigward tal-klijenti taghha. Kien biss wara l-enneismu kaz ta' merkanzija nieqsa jew danneggjata u wara li l-merkanzija tas-socjetà attrici Intercomp Marketing Limited giet kompromessa, li s-socjetà konvenuta hadet il-mizura drastika, izda necessarja, li ma tibqax tuza s-servizzi tas-socjetà kjamata in kawza.

L-unika gustifikazzjoni li s-socjetà konvenuta taghti fil-kaz in ezami fir-rigward ta' dak li gara lill-merkanzija tas-socjetà attrici Intercomp Marketing Limited tirrizulta b'mod principali mix-xhieda ta' Mario Debono, Deputy General Manager ta' l-imsemmija socjetà, illi xehed li: *apparti dan il-kaz kellna problemi simili mal-Fahrenheit f'kazijiet ohrajn, ahna x-xoghol ingibuh kwazi kull gimgha u kien qed ikollna diversi problemi kwazi ma' kull konsenja. Allura konna hadna l-inizjattiva li nitilghu l-Olanda biex naraw l-process x'kien. Fil-fatt konna stedinna rapprezentant ta' l-Intercomp u a spejjez taghna tellajnih l-Olanda. Morna l-ewwel fl-imhazen ta' Dell u in segwitu fl-imhazen tad-DHL, kellimna lin-nies u rajna l-process u rajna li sa' dak l-istadju kollox kien miexi sew. Minn meta jitilqu l-affarijiet minghand id-DHL sal-wasla hawn Malta ma tantx stajna nkomplu insegwu ghar-raguni li hemmhekk l-affarijiet jghaddu f'idejn il-Fahrenheit. Madanakollu bdejna nimplimentaw certa policies godda, fejn qabel l-istruzzjonijiet kienu jkunu jingabru l-pallets, bdejna naghtu struzzjonijiet biex jingabru numru ta' kaxxi. Meta implimentajna dawn il-policies ghal madwar*

[18] Malcolm A. Clarke fil-ktieb "International Carriage of Goods by Road: CMR". John Galdes noe v. Joseph Bowman noe et, Citaz. Nru. 1479/93 deciza mill-Prim' Awla tal-Qorti Civili fil-25 ta' Jannar 2002.

gimgha x-xoghol mexa tajjeb izda imbaghad wara ftit ta' zmien regghu bdew il-problemi. Fil-fatt fi zmien hmistax jew tlett gimghat ma bqajniex nuzaw is-servizzi tal-Fahrenheit u bdejna nahdmu ma' haddiehor. Minn dakinhar lil hawn ma kellniex aktar problemi[19].

Minn din ix-xhieda jirrizulta b'mod car li ma kien hemm xejn imprevedibbli u inevitabbli li seta' wassal ghal dak li gara f'dan il-kaz izda li kien hemm kien nuqqas serju tas-socjetà konvenuta li tara u taccerta ruhha li l-proceduri implimentati mis-socjetà kjamata in kawza, socjetà del resto inkarigata minnha biex twettaq l-inkarigu moghti lilha mis-socjetà attrici Intercomp Marketing Limited, kienu tali li sufficjentement u b'mod adegwat jipprotegu u jittutelaw il-merkanzija trasportata minnhom. In-nuqqas tas-socjetà konvenuta johrog car mill-affermazzjoni ta' Mario Debono li wara l-istadju li l-merkanzija titlaq mid-depot tad-DHL is-socjetà minnu rapprezentata ma tantx setghet taghmel verifiki ghaliex minn dak il-mument 'l hemm il-merkanzija kienet tghaddi fil-pussess tas-socjetà Fahrenheit Freight Forwarders Limited. Huwa veru li s-socjetà Fahrenehit Freight Fowarders Limited kellha tul it-traggit il-pussess tal-merkanzija izda vis-à-vis is-socjetà attrici Intercomp Marketing Limited is-socjetà konvenuta kellha l-obbligu li tkun taf x'kien qed jigri mill-merkanzija anke tul dak il-process tal-garr ta' l-istess merkanzija u tara wkoll li kien hemm bizzejjed tutela u salvagwardji biex dik il-merkanzija tigi konsenjata fl-intier taghha u fi stat tajjeb lid-destinatarju finali.

Fid-dawl ta' dan ghalhekk is-socjetà konvenuta ma tistax tippretendi li fil-kaz in ezami tibbenefika mill-limitazzjonijiet ta' responsabilità tat-trasportatur stipulati fil-CMR u invece ghandha taghmel tajjeb ghad-danni reklamati mis-socjetajiet attrici.

In kwantu rigwarda d-danni reklamati mis-socjetajiet attrici, il-Qorti hija tal-fehma li dawn gew sodisfacentement ippruvati permezz tas-survey u tax-xhieda ta' Brian Valenzia a fol. 42 sa' 44, liema xhieda u survey ma gew bl-ebda mod kontradetti mis-socjetà konvenuta. B'hekk jirrizulta li s-socjetà konvenuta ghandha taghmel tajjeb ghad-danni sofferti mis-socjetà attrici Atlas Insurance PCC Limited fil-forma ta' hlas ta' kumpens lis-socjetà attrici Intercomp Marketing Services Limited u Survey Fees, komplessivament ammontanti ghal €5,138.08, u ghad-danni sofferti mis-socjetà Intercomp Marketing Limited konsistenti fil-hlas ta' excess ammontanti ghal €233.00.

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi l-kawza billi:

1. Tilqa' l-ewwel eccezzjoni tas-socjetà kjamata in kawza u konsegwentement tilliberaha mill-osservanza tal-gudizzju;
2. Tastjeni milli tiehu konjizzjoni ta' l-eccezzjonijiet l-ohra sollevati mis-socjetà kjamata in kawza;
3. tastjeni milli tiehu konjizzjoni ulterjuri tal-hames eccezzjoni sollevata mis-socjetà konvenuta in kwantu din giet indirizzata bid-Digriet moghti fit-23 ta' Novembru 2009;

[19] Xhieda moghtija waqt is-seduta tat-13 ta' Ottubru 2001, fol. 53 sa' 57 tal-process.

4. Tichad l-ewwel eccezzjoni tas-socjetà konvenuta;
5. Tichad ukoll it-tieni, tielet u raba' eccezzjonijiet sollevati mis-socjetà konvenuta;
6. Konsegwentement tilqa' t-talba attrici fil-konfront tas-socjetà konvenuta u tikkundanna lill-istess socjetà konvenuta: (a) thallas lis-socjetà attrici Atlas Insurance PCC Limited is-somma ta' €5,138.08, bl-imghax legali dekoribbli mid-data ta' din is-sentenza sad-data ta' l-effettiv pagament; **u** (b) thallas lis-socjetà attrici Intercomp Marketing Limited is-somma ta' €233.00, bl-imghax legali dekoribbli mid-data ta' din is-sentenza sad-data ta' l-effettiv pagament.

L-ispejjez kollha ta' dawn il-proceduri ghandhom jigu sopportati interament mis-socjetà konvenuta.

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