



QORTI CIVILI PRIM' AWLA

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum il-Hamis, 11 ta' Jannar, 2018

Numru 2

Rikors Guramentat Nru. 885/2014

Delva Corporation Ltd.

vs

**Thomas Smith Insurance Agency Limited bhala agenti
tas-socjeta Societa Italiana Assicurazioni e Riassicurazioni u
b'digriet tas-7 ta' Novembru 2014
gie mahtur l-Avukat Louis Cassar Pullicino bhala mandatarju
specjali tas-socjeta Societa Italiana Assicurazioni e Riassicurazioni
minflok l-agent Thomas Smith Insurance Agency Limited**

Il-Qorti,

Rat ir-rikors guramentat tas-socjeta attrici tal-10 ta' Ottubru, 2014 li jghid hekk:

1. Illi s-socjeta rikorrenti kienet assigurata mas-socjeta intimata taht polza ta' assikurazzjoni bin-nomenklatura "Marine Insurance Policy" bin-numru 022282-001-001, liema polza giet rinnovata ghall-perjodu mill-25 ta' Lulju, 2013, sal-25 ta' Lulju, 2014 u tkopri l-merkanzija in kwistjoni u n-nol tal-bastiment (Dok. DCL1, Dok. DCL2 u Dok. DCL3) li dwarha s-socjeta intimata harget il-fattura Dok. DCL4.

2. Ili l-merkanzija fl-ammont ta' elf disa' mija u tmienja u erbghin tunnellata metrika ta' qamhirrun (Moldovian corn), assigurata mas-socjeta intimata, telqet mill-port ta' Reni, fl-Ukrajna, fuq il-bastiment m.v. Erdogan Senkaya fi stat tajjeb skond l-annessi rapporti rilaxxjati mill-SGS (Dok. DCL5 sa Dok. DCL10). L-SGS iccertifikat ukoll li l-bastiment kien nadif biex jircievi dik il-merkanzija (Dok. DCL11). Il-merkanzija giet ukoll iffumigata (Dok. DCL12) u certifikata mill-awtorita sanitarja tal-Ukrajna (Dok.

DCL13). Il-vjagg kien ghal Oristano, f'Sardinja, l-Italja skond l-annessa polza tal-kariku markata Dok. DCL14.

3. Illi fi triqtu lejn Oristano, f'Sardinja l-Italja, il-bastiment m.v. Erdogan Senkaya hadda Malta u wara li l-merkanzija giet spezzjonata u misjuba fi stat tajjeb mill-Port Health Services giet rilaxxjata mid-dwana sabiex tigi distribwita fil-pajizi tal-Unjoni Ewropea (Dok. DCL15).

4. Illi l-merkanzija pero waslet Oristano, f'Sardinja l-Italja, imxarrba, fi stat ta' hsara ingenti stante l-livell gholi ta' umdita u li konsegwentement ma kinitx tajba ghall-ikel la mill-bniedem u lanqas mill-annimali. Fil-fatt il-pulizija Taljana issekwestrat il-merkanzija de quo u kellha tigi distrutta kif deciz mit-Tribunal ta' Oristano (Dok. DCL16) u ghalhekk ma setghatx tigi ikkonsenjata lid-destinatariji u s-socjeta rikorrenti ma setghatx tithallas.

5. Illi meta sar il-water test tal-hatchcovers tal-istivi tal-bastiment fejn kienet stivata l-merkanzija irrizulta li kien ighaddi l-ilma mill-hatchcovers ghal go l-istivi (Dok. DCL17).

6. Illi ghalhekk is-socjeta rikorrenti sofriet u qeghda issofri danni sostanzjali kif ukoll danni konsegwenzjali stante li ma tistax tkompli bl-operat taghha.

7. Illi s-socjeta rikorrenti ghamlet diversi talbiet sabiex is-socjeta intimata thallasha d-danni taht il-polza ta' assikurazzjoni izda s-socjeta intimata baqghet inadempjenti. Illi ghalhekk is-sovjeta rikorrenti interpellat lis-sovjeta intimata permezz ta' ittra ufficjali tad-19 ta' Gunju 2014 (Dok. DCL18).

8. Illi s-socjeta intimata irrispondiet permezz ta' ittra ufficjali datata l-1 ta' Awwissu, 2014, fejn irrifjutat li tonora l-obbligi taghha taht il-polza tal-assikurazzjoni fuq imsemmija (Dok. DCL19).

9. Ghalhekk kellha ssir din il-kawza.

Ghaldaqstant, tghid is-socjeta intimata ghaliex, prevja kull dikjarazzjoni opportuna u moghtija dawk il-provvedimenti kollha necessarji fic-cirkostanzi tal-kaz, din l-Onorabbli Qorti ma ghandhiex:

(i) Tiddikjara illi s-socjeta rikorrenti hi koperta taht il-Marine Insurance Policy ghad-danni li sofriet wara li l-merkanzija ta' elf disa' mija u tmienja u erbghin tunnellata metrika qamharrun (Moldovian corn) waslet fid-9 ta' Dicembru, 2013 fuq il-bastiment m.v. Erdogan Senkaya fil-port ta' Oristano, Sardinja l-Italja, imxarrba, bi hsara ingenti stante il-livell gholi ta' umdita u mhux tajba ghall-ikel.

(ii) Tillikwida d-danni konsistenti fil-hsara fil-merkanzija fuq imsemmija, fin-nuqqas ta' qliegh kif ukoll fid-danni konsegwenzjali fl-operat tas-socjeta rikorrenti minhabba l-istess hsara.

(iii) Tikkundanna lis-socjeta intimata thallas lis-socjeta rikorrenti ammont ekwivalent ghal dik is-somma hekk likwidata bhala indennizz taht l-imsemmija polza ta' assikurazzjoni.

Bl-ispejjez kontra s-socjeta intimata illi minn issa stess hija ingunta ghas-subizzjoni.

Rat ir-risposta guramentata tas-socjeta konvenuta li tghid hekk:

1. Illi fl-ewwel lok, il-polza ta' assikurazzjoni mertu tal-kaz ma gietx attivata relattivament ghall-vjagg u merkanzija in kwistjoni minkejja kondizzjoni espressa fl-istess polza li kienet tobbliga lis-socjeta attrici li bhala assikurata taghti debitu avviz lis-socjeta assikuratrici qabel il-vjagg u tluq tal-konsenja partikolari, haga li f'dan il-kaz partikolari s-socjeta attrici naqset li taghmel bil-konsegwenza li ma ghandha l-ebda dritt tesigi kwalunkwe kopertura u indenniz relattiv taht l-istess polza ta' assikurazzjoni.

2. Illi subordinatament u minghajr pregudizzju ghall-premess, jispetta lis-socjeta attrici li tressaq l-ahjar prova tat-titolu taghha a rigward tal-merkanzija assikurata kif ukoll ghad-dritt ta' azzjoni relattiv ghall-allegat hsarat. Dan qed jigi eccepit billi skont dak dikjarat f'rapport maghmul mill-awtoritajiet Taljani meta spezzjonaw il-merkanzija abbord il-bastiment, kif jigi pruvat ahjar waqt is-smigh tal-provi, it-titolu ghall-merkanzija in kwistjoni lahaq ghadha favur terzi. Fin-nuqqas ta' tali prova t-talbiet attrici ghandhom jigu michuda bl-ispejjez stante nuqqas ta' interess guridiku.

3. Illi subordinatament u fil-mertu, it-talbiet attrici huma infondati fil-fatt u fid-dritt billi kwalunkwe hsara li setghet garrbet il-merkanzija in kwistjoni la kienet rizultat ta' tixrib kawzat mill-ilma bahar waqt il-vjagg u lanqas kawzat minn tixrib kawzat bl-ilma xita waqt il-vjagg izda kwalunkwe tixrib li seta' kien hemm gie kawzat in forza ta' kawzi esterni mhux relatati mal-vjagg abbord il-bastiment in kwistjoni bil-konsegwenza illi mhux il-hsara allegata mhux koperta bil-polza relattiva.

4. Illi f'kull kaz it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu respinti bl-ispejjez.

5. Salvi eccezzjonijiet ulterjuri permessi mill-ligi.

Rat l-atti u n-noti ta' sottomissjonijiet;

Rat li l-kawza thalliet ghas-sentenza.

Ikkunsidrat

Fatti

Illi dana l-kaz jirrigwarda konsenja ta' elf disa' mija u tmienja u erbghin tunnellata metrika qamharrun (Moldovian corn) li waslet fid-9 ta' Dicembru, 2013 fuq il-bastiment m.v. Erdokan Senkaya fil-port ta' Oristano, Sardinja l-Italja, imxarrba, bi hsara ngenti stante il-livell gholi ta' umdita' u mhux tajba ghall-ikel. Is-socjeta rikorrenti qed titlob id-danni.

Provi

Kim Caruana, Underwriting Executive ma' Thomas Smith Ins.Agency Ltd, xehdet li r-rikorrenti Delva Corp.Ltd kellha assikurazzjoni Marine Open Policy cover. Il-klijent kien javzahom meta kien ikun gej xi xoghol biex jigi kopert taht il-polza. Il-polza ta' assikurazzjoni [Dok. DCL1 a fol. 7 sa 16] u r-renewal document [Dok. DCL2 a fol. 7]. Id-Dok. DCL3 [a fol. 18] huwa c-Certificate of Insurance li kopra dina l-konsenja partikolari. Ix-xhud ikkonfermat id-Dok. TG1 a fol. 62 li hija korrispondenza li ghattiet bejnha u Stefano Detassis.

Rita Wirth, General Manager tas-socjeta intimata Thomas Smith. xehdet li mhux huma iddiljaw b'dina l-claim imma l-Principal tagghom. Huma kienu nfurmawhom bil-claim u li kienu ser iqabbd u Llyod's Surveyor. Kien hemm perjodu meta l-vapur ma setghax jidhol fil-port sakemm l-awtoritajiet jiccertifikawh li jista jidhol. Huma kienu tkellmu mal-kljant u saru diversi laqghat fejn huma kienu anke assistiti minn avukat. Meta kellhom ir-rapport f'idejhom imbaghad ii-principal qalli hu kien se jiddilja mill-materja direttament mal-klijent.

Kevin Borg Degiorgio, Senior Claims Executive mas-socjeta rikorrenti xehed li Detassis kien ghamel claim u huma appuntaw Llyod's surveyor l-Italja u infurmaw lill-principal tagghom SIAT [ara n-nomina tas-surveyor li tinsab a fol. 73 u 74 tal-process: Dok. TG2].

Vasile Gajiu xehed li

their company Christ Vague of Moldova signed an agreement with applicant company for the transport and consignment of 2000 tons of corn (Dok. VG1 page 91 et seq.). In Dok. VG2 there is his photo at the time of consignment. The photos VG2 - 8 were taken by the Captain. The weather was fine on the 2nd November and there was no rain. The corn was of high quality. There was a surveyor at the point of loading and another one at the point of discharge. Doc. DC5 and 6 are certificates of quality of corn. Doc. DCL11 certifies that the vessel was suitable for loading. Doc. DCL12 is the certificate of fumigation. The Bill of Lading confirms the proper loading of the corn. 98% of the Fees had to be paid after loading of the vessel. Delva did not transfer the whole sum of money because she said that the insurance was not paying the claim they made. They instituted a court case against Delva which is still pending.

Salvatore Pala, rapprezentant legali tal-koperativa Agrikola Unione Pastore Nurri kellu x'jaqsam mal-akkwist ta' 500 tunnellata mais mill-Moldavia. Meta waslu ghal ftehim kien iddelega lil Francesco Corrias biex jirraprezentahom fil-Moldavia bhala espert biex jivverifika l-kwalita tal-merkanzija u kif tigi mghobbija biex ma jkunx hemm sorprizi fl-ahhar. Meta Corrias ivverifika li kollox kien kif suppost cempel f'Sardinia biex jaghmlu l-pagament. Meta l-merkanzija waslet Oristano kien ircieva telefonata li waqt il-vjagg kien hemm problema u li l-merkanzija xxarbet u ma setghux jiskarikawha. Kien mar Oristano u ra li l-mais kien umdu u iswed u ma kienx utilizzabili u dana anke kif jidher mir-ritratti ezibiti. [Dok. SA3]. Fid-Dok. SA1 jidher il-grad gholi ta' umidita li kien jimmarka 54 grad meta normalment suppost ikun bejn 8 u 10. F'kwantita bhal dik, aktar ma tkun kbira aktar tikber l-umidita. Dok. SP2 u SP4 juru li t-temperatura baqghet tvarja minhabba l-koncentrazzjoni tal-mais. Dawn ir-ritratti haduhom il-Pulizija. Fid-Dok. SP5 jidher li meta kienet qed tigi skarikata l-merkanzija kien hemm bicciet li baqghu mwahhlin u danajuri li kienet imxarba. Fuq kontroezami wiegeb li huma ma hadux il-konsenja u ghamlu claim. Jaf li l-pulizija kienu ghamlu investigazzjoni pero ma jafx x'sar minnha.

Francesco Corrias xehed li kienu baghtuh, kif qal Salvatore Pala, biex jiccekkja l-kwalita tal-prodott (ara ritratt FC1). Il-mais kien ta' kwalita tajba u meta beda jintefa fil-vapur beda hierreg it-trab li juri li kien niexef. Dak in-nhar it-temp kien sabih hafna. Damu jumejn ighabbu u imbaghad il-vapur inghalaq bil-pannelli. Meta accerta ruhhu li kollox kien sewwa cempel Sardinja u qallhom biex ihallsu sehemhom. Huma kellhom jiehdus pussess tal-merkanzija meta tasal Oristano u jekk ma kinitx tajjeb setghu jirrifjutawha u jitolbu lura l-flus. Meta waslet il-merkanzija f'Oristano hu ma kienx prezenti imma l-kollega tieghu.

Joseph Buhagiar, surveyor mal-P&I, xehed li kienu mqabbda mill-owners tal-vapur biex inehhu s-sigilli tal-hedges u jergghu jissigillawhom. Huma hargu Unsealing u Sealing Certificate [ara fol. 128]. Ezebixxa sett ritratti fejn fl-ewwel pagna jidhru s-sigilli originali: fit-tieni pagna hemm il-hedges miftuha u tidher il-cargo u l-cargo owner qed jeleva sample minnu. F'pagna tlieta hemm ritratt ta' kampjun li qed jitpogga f'borza u z-zewg ritratti l-ohra s-sigilli biex reggha ghalaq l-hedge. Meta fethu l-merkanzija dina kienet tidher vizwalment tajba. Kienu prezenti huma, tad-

Dwana, il-Cargo Owner, il-Kaptan tal-vapur u l-crew. Imbaghad ma jafx x'gara mill-merkanzija.

Tony Sammut, Spettur tas-Sanita mal-Port Health, xehed li kien ittimbra d-dokument DCL15 a fol. 31 fejn tah ir-release billi l-karti li kellu kienu tajbin. Hu ma kienx rah il-qamh billi ii-hold ma kienx ghadu infetah. Kien hernm tad-Dwana u ghalihom kien tajjeb u accettaw il-firma tieghu.

Joseph Gerada, Managing Director ma' Thomas Smith, xehed li huma kienu investigaw il-claim u ma kienux ghadhom waslu ghal konkluzzjoni meta l-Principal ha l-kwistjoni f'idejh.

Fl-affidavit tat-8 ta' April 2016, Stefano Detassis xehed li

he is the sole Director of the Company Delva Corporation Ltd which is an import/export Maltese Company providing professional Services as intermediary between producer and buyer. He had been contacted by a group of shepherds from Sardinia to import to Italy 2000 tons of corn. He met the interested parties and Crist Valg s.r.l. of Moldova who were to be the suppliers of the consignment which was to be loaded at the port of Reni (Ukraine) with final destination Oristano-Sardinia passing through Malta for ordinary customs operations and the Europeanization of goods since these were arriving from a non-EU country. An insurance cover was issued by defendants Thomas Smith covering the value of the goods and the freight on the same conditions agreed by Thomas Smith for similar import operations carried out the previous year by Delva Corp. Ltd. [Dok. DCL1 - 4]. He went to Moldova with a representative of his clients in Sardinia to verify the quality of the corn and assisted in the loading operations on the Turkish vessel m.v. Erdogan Senkaya. Loading lasted two days in sunny weather. Samples of the cargo were taken during loading. Following assessment of the cargo, the partial payment of the supply was made and the outstanding balance would be paid on the arrival of the corn in Sardinia. The ship's hatches were sealed. Thomas Smith were informed of the real weight of the corn and its value. The ship was completely dry and the corn left Ukraine in perfect condition. The ship arrived in Malta with a four days delay due to rough seas according to the Master. Samples were given to the Maltese Health authorities and the goods were declared as suitable to continue their journey to Oristano. The Turkish Owners P&I requested additional sealing of the ship before departure from Malta. When the ship arrived in Oristano he noticed that the holds of the ship were opened. The Master did not give them an explanation as to why they were open. He could not go close to the holds until the tests on the ship were completed by the authorities. These tests were not carried out in Malta because the cargo was not going to be released. During berthing of the ship he could notice a strong smell of mould

and realized that the colour of the com had changed and was deteriorated and not in the same state as it was when loaded and on inspection in the port of Malta. On seeing this he decided to block the operation of discharge and protested with the ship owners and master and informed Thomas Smith of what had happened. The Police then detained the cargo.

He noticed that in the internal superior side of the holds there were traces of dark colour caused by liquid substances, presumably rain water. From the ship's log books it results that the ship experienced bad weather during its journey. The corn was contaminated by mould. Com remained attached to the crane's winches, and while walking on the com there were footprints on the surface as it was wet. No Bill of Lading was given in original to the master and so the shipowner was still the owner and responsible for the goods according to law. Investigations were made by the shipowner and the Insurance but they did not give him any report. The Court of Oristano ordered the destruction of the com. A 'water test' was made on the ship's hold. The crew attempted to change the hatches' seals which closed the hold but he protested with the shipowner. Photos were taken but they were never sent to him. From the tests carried out it resulted that even though some seals were changed, water was still getting into the holds [DCL 24]. The seals were visibly damaged, old and not water resistant. Delva Corp. Ltd has suffered a commercial loss amounting to 15 shipments which were not effected.

Fit-tieni affidavit datat 20 ta' Gunju 2016 witness exhibited the invoices relative to the costs and extra costs with regard to this consignment [Doc. DCL29/30]. The ruined cargo was sold and from the amount received they paid partly the shipper and all the freight of the ship.

In kontroezami wiegeb li l-ftehim biex il-koperativa tixtri l-qamh ghal tant zmien kien wiehed verbali. Meta l-Pulizija Taljana ssekwestraw il-merkanzija dawn qalu li kien hemm rapport ta' truffa izda dana ma setghax ikun ghax il-kljenti kienu mieghu. Xogholhu hu li jgib flimkien ix-xerrej u l-produttur. Hu jahdem bil-flus taghhom u huma jhallsu meta jaraw li l-prodott huwa tajjeb. F'Malta huwa kien prezenti meta l-merkanzija giet spezzjonata u kienet tidher f'kondizzjoni eccellenti. Hu ma jaghzilx il-vapur li fuqu ser tigi importata l-merkanzija, din hija problema tal-armatur u l-kaptan. Minn Malta l-vapur telaq fil-5 ta' Dicembru 2013 u wasal fis-7 ta' Dicembru. Il-bahar kien hazin hafna imma l-ilma li dahal kien tax-xita. Hu kien rah il-log book tal-vapur meta l-periti kienu talbu ghalih. Il-hsara fil-merkanzija ma saritx biss f'dawn il-jumejn ghax il-moffa ma tigiex f'daqqa, imma il-fatt jibqa' li meta sar il-water test l-ilma dahal fl-istiva. Il-kaptan jista' jghid x'gara ezattament ghax hu ma kienx prezenti imma l-

Kaptan. Meta sar il-water test l-stiva kienet niexfa u vojta u jekk kien dahal l-ilma qabel dan kien inxtorob mill-merkanzija.

Dr Andreas Spolidoro xehed li

he works as a surveyor with particular knowledge on cereal by products. He was asked by SIAT, the cargo underwriters, to examine the documents relative to the case and to let them know what could have happened during the voyage or why there was the damage claimed by the receiver. He had a meeting with the P&I surveyor Dr Coselich, and examined the documents with regard to the discharge of the merchandize and the documents by the Italian Police. He prepared a report which he exhibited and marked as Dok. AS1. What happened could be due either to a wetting during transit or to high moisture contents on the grain when loading. It was not possible that the cargo was totally spoiled at high temperatures in two days from Malta to Oristano. Moreover according to the log book of the vessel there was no rain on those two days. Even if there was wetting in those two days, the cargo would have arrived wet, but not fermented because there was not enough time. The shell of the com is quite strong in front of wetting and it takes one day at least for the water to get inside and then you need to let the funghi grow. He totally excludes that the damage was caused from Malta to Oristano. In Ukraine the cargo was loaded in apparent good condition and samples were taken.

On being cross-examined, witness stated that he was not present when the cargo was discharged and only saw documentation and photographs. He had not seen the documentation and photos with regard to the loading of the cargo when he prepared his report. He had the report of the P&I Surveyor Mr. Marcialis. In his opinion only part of the cargo was damaged but the whole cargo was condemned but you cannot dispute their decision. As regards the sample taken on loading you can have two or three trucks with cargo with slightly higher moisture contents, and you have other parts with lower moisture content. You mix them all together and you have a correct moisture content but at the end you have some part of the mass that is too moist to bare the voyage. The cargo is reported to have been in good condition when it arrived in Malta so rain could not be the cause of the moisture. There was no water at the bottom of the holds. If you have water infiltration the water will drip down to the bottom. You would not have 58 degrees if in Malta the com was in good condition. If there was water infiltration it would need time to develop.

Luigi Marcialis xehed li hu ilu jahdem bhala merciologico mill-1976. Hu kien tqabbad mill-P&I biex jezamina merkanzija. L-istiva nfethet fid-9 ta' Dicembru u r-ricevitur ikkontesta mill-ewwel. Il-Kaptan kien ghamel garanzija biex il-vapur ikun jista jitleq. Hu kien prezenti l-ghada mill-bidu wara li kien hemm il-kontestazzjoni u anke li nizlet il-merkanzija. Il-merkanzija kellha riha qawwija u temperaturi gholjin f'certi partijiet.

Ma kinux kollha l-istess u kien hemm fermentazzjoni. Anke l-awtoritajiet kontra l-frodi kienu prezenti. Hu kien ha xi kampjuni. Xi kampjuni ntbaghtu għall-analizi lill-Kamra tal-Kummerc għall-prezenza tal-ilma tal-bahar u r-rizultat kien fin-negattiv. Huwa kien ra l-istiva fil-qiegh u kienet tidher xotta u l-prodott ma kienx imxarrab hemm. Sar il-water test u kien dahal f'tit ilma f'certi punti imma kienu negligibbli speċjalment għax it-test isir bi pressjoni għolja u ha xi siegħa. Inltre jekk kienet ix-xita, l-istivi kienu magħluqin għax kienu sigillati u anke l-accessi zghar għalihom kienu magħluqin u sigillati. Kieku dahlet ix-xita kieku dina kienet tkun f'ammonti zghar u kienu jinnotaw fil-wicc il-germolazzjoni li pero ma rawx. Fl-opinjoni tiegħu l-hsara ma saritx minhabba l-vjagg bil-bahar. Il-merkanzija waslet b'livell ta' umidita' għoli u anke bil-presenza ta' faqqiegh li waslu għall-fermentazzjoni. Gie ezibit is-survey li hu kien għamel bhala Dok. LM1 a fol. 422 et seq.

Fuq kontroezami wiegeb li f'Malta l-istivi regghu gew sigillati. Il-Surveyor tas-SIAT kien Giovanni Delogu. Mit-testijiet li għamlu eskcludew il-presenza ta' ilma tal-bahar fil-merkanzija. Ma għamlux test għall-moffa għax dina kienet tidher prezenti u hadd ma talab li jsir test. Hu kien qed jigi assistit mill-Inġinier Cosulic f'dan is-survey u dana għamel ir-rapport in kollaborazzjoni miegħu. Dwar il-protesta li saret fir-rigward tal-bdil tas-sigilli qal li dana ma jsirx f'affari ta' hames minuti u hu ha r-ritratti bhala parti mix-xogħol tiegħu. Huma eskcludew li kien hemm htija minhabba t-trasport u dana billi ma sabux tracci ta' ilma bahar.

Ligi

Il-principju generali hu li l-vettural, bhala depozitarju tal-merkanzija li jkun intalab igorr, huwa responsabbli li jikkonsenja l-merkanzija, bla hsara lid-destinatarju jew lil min sejjer jilqagħha f'ismu [fil-kawza fl-ismijiet **Dr Simon Micallef Stafrace noe vs James Gollcher et**, (PA 13/06/2002)]. Permezz tal-polza tal-karigu, l-Kaptan tal-vapur jobbliga ruhu li jikkonsenja l-merkanzija fil-port tad-destinazzjoni fl-istess kundizzjoni li tghabbiet.

L-istess principju nsibuh fl-artikolu 17.1 tac-CMR li jipprovdi li:-

The carrier shall be responsible 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.

F'sitwazzjoni bhal din l-oneru tal-provi jinkombi lit-trasportatur (art. 18(1) C.M.R).

F'kawza fejn jigu reklamati danni f'merkanzija importata permezz tat-trasport bil-bahar, jinvolvu essenzjalment tliet partijiet: (i) l-importatur jew ricevitur (ii) il-vettural jew trasportatur u (iii) l-kuntrattur portwali. Jinvolvu wkoll-esibizzjoni u l-ezami ta' dokumenti partikolari, il-portata guridika taghhom, u l-effett taghhom ghal fattispecie singolari f'kull kaz. [Ara sentenza fl-ismijiet **Dr Simon Micallef Stafrace noe vs Adrian Mifsud et. noe**, PA 09/12/2002].

Konsiderazzjonijiet ta' dina l-Qorti

Illi fil-kaz in ezami n-negozju kien jinvolvi essenzjalment l-importatur (is-socjeta rikorrenti) li qed jagixxi ghar-ricevitori; l-assikurazzjoni; it-trasportatur u l-fornitur tal-merkanzija. Il-kawza odjerna pero tirrigwarda biss l-importatur (l-assikurat) u l-assikurazzjoni tieghu (is-socjeta intimata) u l-Qorti trid tezamina biss ir-relazzjoni guridika bejn dawn iz-zewg partijiet. Ir-rikorrenti qed titlob li dina l-Qorti tiddikjara illi s-socjeta rikorrenti kienet koperta b'Marine Insurance Policy u li hija sofriet danni wara li l-merkanzija assikurata waslet fil-port ta' Oristano, Sardinja l-Italja, imxarba, bi hsara ngenti stante il-livell gholi ta' umdita' u mhux tajba ghall-ikel.

Eccezzjonijiet

Kopertura tal-assikurazzjoni

Illi fl-ewwel eccezzjoni, is-socjeta intimata teccepixxi li l-polza ta' assikurazzjoni mertu tal-kaz ma gietx attivata relattivament ghall-vjagg u merkanzija in kwistjoni minkejja kondizzjoni espressa fl-istess polza li kienet tobbliga lis-socjeta attrici li bhala assikurata taghti debitu avviz lis-socjeta assikuratrici qabel il-vjagg u tluq tal-konsenja partikolari, haga li f'dan il-kaz partikolari is-socjeta attrici naqset li taghmel bil-konsegwenza li ma ghanda l-ebda dritt tesigi kwalunkwe kopertura u indenniz relattiv taht l-istess polza ta' assikurazzjoni.

Illi s-socjeta intimata fin-nota ta' sottomissjonijiet taghha spjegat dina l-eccezzjoni fis-sens li qalet li l-avviz kellu jinghata lis-socjeta assikuratrici u mhux l-agent taghha.

Il-Qorti ma taqbilx ma dina s-sottomissjoni billi “an appointed representative of the insurer (bhal ma kienet Thomas Smith Insurance Agency Ltd), acts as an intermediary of the insurer” (Modern Insurance Law, Bird, 8th Ed p 209). u ghalhekk l-avviz li nghata lil Agent kien bizzzejjed ai fini tal-claim li saret.

Illi jirrizulta mill-provi li r-rikorrenti kellha Open Marine Policy [Dok. DCL1] li kienet giet rinnovata [Dok. DCL2]. Kien inhareg Certificate of Insurance fuq dina l-merkanzija partikolari [Dok. DCL3] u anke inhareg invoice fuqha. [Dok. DCL4] [Ara xhieda Kim Caruana]. Detassis ghas-socjeta rikorrenti xehed li ‘An insurance cover was issued by defendants Thomas Smith covering the value of the goods and the freight on the same conditions agreed by Thomas Smith for similar import operations carried out the previous year by Delva Corp. Ltd.’ Kompla jghid li ‘when the ship's hatches were sealed Thomas Smith were informed of the real weight of the corn and its value’.

Illi ghalhekk ma jistax jinghad dak li qed jigi eccepjet mill-intimata li l-polza ta' assikurazzjoni mertu tal-kaz ma gietx attivata relattivament ghall-vjagg u merkanzija in kwistjoni. Invece jirrizulta li s-socjeta rikorrenti tat id-debitu avviz lis-socjeta rapprezentanti lil principal cioe lis-socjeta assikuratrici qabel il-vjagg u tluq tal-konsenja partikolari minn Reni.

Ta' min josserva wkoll li meta s-socjeta rikorrenti ressqet il-claim fuq dina l-konsenja, din il-claim ma gietx rifjutata ghar-raguni li ma kienx hemm polza vigenti jew attivata jew ghax ma gewx osservati xi kondizzjonijiet tal-polza, imma billi l-assikurazzjoni kienet qed tezamina l-kaz u anke qabbdet surveyors biex jaraw x'kienet ir-raguni ghall-hsara u r-responsabilita' ghall-akkadut. Kieku ma kienx hemm kopertura kieku lanqas kienet tigi kkunsidrata.

Dina l-eccezzjoni ghalhekk qed tigi michuda.

Titolu tal-merkanzija

Illi l-konvenut eccepew ukoll illi jispetta lis-socjeta attrici li tressaq l-ahjar prova tat-titolu taghha a rigward tal-merkanzija assikurata kif ukoll ghad-dritt ta' azzjoni

relattiva ghall-allegat hsarat. Dan qed jigi eccepit billi skont dak dikjarat f'rapport maghmul mill-awtoritajiet Taljani meta spezzjonaw il-merkanzija abbord il-bastiment, it-titolu ghall-merkanzija in kwistjoni lahaq għaddha favur terzi. Fin-nuqqas ta' tali prova it-talbiet attrici għandhom jigu michuda stante nuqqas ta' interess guridiku.

L-intimati ssottomettew li l-Koperativa Agrikola f'Sardegna kienet xtrat u hallset minn qabel lis-socjeta attrici tal-merkanzija li kienet ordnat, għalhekk is-socjeta attrici ma jista jkollha l-ebda jedd li tippromuovi dina l-azzjoni għal risarciment taht il-polza ta' assikurazzjoni billi hija ma garrbet ebda telf.

Fil-fatt is-socjeta attrici kienet ordnat għan-nom tal-Koperativa l-merkanzija in kwistjoni u sakemm kellha tasal għandhom ir-riskju kien baqa' fuq is-socjeta attrici avolja l-Koperativa kienet hallset tal-merkanzija. Il-Koperativa irrisrevat il-dritt li tirrifjuta l-merkanzija jekk ma tkun tal-kwalita pattwita u li titlob ir-rifuzjoni tal-flus imhallsa. Għalhekk is-socjeta attrici kienet harget din l-assikurazzjoni appuntu biex tkopri dan ir-riskju f'kaz li l-merkanzija jigrilha hsara matul il-vjagg. L-assikurata f'dan il-kaz kienet is-socjeta attrici u l-merkanzija kienet assikurata fuq isimha. Dwar dina l-merkanzija, ir-relazzjoni kienet bejn is-socjeta attrici u l-assikurazzjoni intimata u l-Koperativa ma kinitx parti. Jekk is-socjeta attrici ma tigix risarcita tad-danni li hija sofriet mis-socjeta intimata, hija jkollha tirrifondi l-flus lura lill-Koperativa u tagħmel tajjeb għad-danni li huma sofrew. Il-prezz li għandu jigi risarcit lis-socjeta attrici huwa l-prezz tal-merkanzija assikurata u mhux il-prezz li bih is-socjeta attrici xtratu.

Illi f'dina l-kawza r-rikorrenti gabet provi dwar it-titolu tagħha għar rigward tal-merkanzija assikurata. Jigi rilevat li l-intimati ma kkwestjonawx it-titolu tar-rikorrenti meta huma gew biex johorgu l-assikurazzjoni fuq dik il-merkanzija u lanqas meta saret il-claim. Barra minn hekk meta l-merkanzija giet maqbdwa mill-awtoritajiet Taljani f'Oristano dawn daru fuq ir-rappresentant tal-kumpanija rikorrenti bhala s-sid responsabbili għall-merkanzija. Anke fir-rapport li għamel Dott. G. Cosulich (ara fol. 422) hu jirreferi għal cargo owner bhala Mr. Detassis.

Dina l-eccezzjoni wkoll qed tigi michuda.

Mertu

Illi fil-mertu s-socjeta intimata eccepiet li kwalunkwe hsara li setghet garrbet il-merkanzija in kwistjoni la kienet rizultat ta' tixrib kawzat mill-ilma bahar waqt il-vjagg u lanqas minn tixrib kawzat bl-ilma tax-xita waqt il-vjagg izda kwalunkwe tixrib li seta' kien hemm gie kawzat in forza ta' kawzi esterni mhux relatati mal-vjagg abbord il-bastiment in kwistjoni bil-konsegwenza illi l-hsara allegata mhux koperta bil-polza relattiva.

Illi s-socjeta intimata basikament qed issostni li l-hsara giet kawzata billi l-merkanzija kellha 'inherent vice' qabel tghabbiet f'Reni,

Rigward l-oneru tal-prova, l-Qrati taghna diga kellhom l-okkazzjoni li josservaw hekk:

Minn dan jitnissel b'egwal raguni illi l-ispedizzjonier jew ir-ricevitur iridu jfornu prova tal-kwalita', stat u kondizzjoni tal-merkanzija meta din giet hekk stivata. Mhux bizzzejjed allura li r-ricevitur jiddemostra x'kien l-istat tal-merca fil-mument tar-recezzjoni taghha meta din ghaddiet fil-pussess tieghu izda jrid juri sodisfacentement illi dan l-istess stat ma jikkorrispondiex ghall-istat fil-mument tal-istivagg. Dan ghaliex huwa proprju hu li jkun qed jallega u jattribwixxi htija fil-vapur u allura jehtieglu li jipprova fatti kostitwenti l-kawza tat-telf jew tad-dannu frapport man-negligenza attribwita minnu lill-vapur. Huwa biss meta jirnexxielu jaghmel dan, illi l-piz tal-prova jisposta ruhu fuq il-vapur biex dan jiddemostra, b'konvinzjoni, illi t-telf jew dannu ma kienx dovut ghan-negligenza tieghu, anke, per ezempju, billi juri li d-dannu hu l-effett tal-vizzju fil-haga jew minhabba forza magguri jew ghal xi raguni ohra fost dawk annoverati taht Art. 4 tal-Hague Rules ghall-fini ta' ezoneru mir-responsabbilta'. Stabbilita xi wahda minn dawk ir-ragunijiet l-oneru jerga' jghaddi fuq ir-ricevitur (**Atlas Insurance Agency Ltd. noe vs Gollcher Company Limited noe**, PA 23/06/2004.)

Illi la darba l-assikurat jinxurja l-merkanzija, mhux responsabilita' tieghu li jara li fit-trasbord tal-merkanzija ma jidholx ilma fl-istivi kemm jekk hija tax-xita kemm jekk tal-ilma bahar. Dik hija responsabilita tat-vettural. Ir-responsabilita tieghu hija illi jforni prova tal-kwalita', stat u kondizzjoni tal-merkanzija meta din giet stivata u li dan l-istess stat ma jikkorrispondiex ghall-istat fil-mument tal-istivagg.

Issa s-socjeta rikorrenti gabet provi li effettivament meta tghabbiet il-merkanzija dina kienet ta' kwalita u kundizzjoni tajba.

Vasile Gajiu, ghal kumpanija Christ Vague of Moldova, fornitur tal-qamh, xehed li

The weather was fine on the 27th November and there was no rain. The corn was of high quality. There was a surveyor at the point of loading.

Salvatore Pala, rapprezentant legali tal-koperativa Agrikola Unione Pastore Nurri, xehed li huma qabbd u lil Francesco Corrias biex jirraprezentahom fil-Moldavia bhala espart biex jivverifika l-kwalita tal-merkanzija u kif tigi mgħobbija. Ighid li meta Corrias ivverifika li kollox kien kif suppost cempel f'Sardinia biex huma jagħmlu l-pagament.

Francesco Corrias xehed li kien prezenti f'Reni biex jiccekkja l-kwalita tal-prodott (ara ritratt FC1). Il-mais kien ta' kwalita tajba u meta beda jintefa fil-vapur beda hiereg it-trab li juri li kien niexef. Dak in-nhar it-temp kien sabih hafna. Damu jumejn igħabbu. Meta accerta ruhhu li kollox kien sewwa cempel Sardinja u qalilhom biex ihallsu sehemhom.

Joseph Buhagiar, surveyor mal-P&I, xehed li f'Malta huma kienu tqabbd u mill-owners tal-vapur biex inehhu s-sigilli tal-hatches u jergghu jissigillawhom. Xehed dwar id-dokumenti a fol. 128 et seq fejn jidher li kien ittiehed kampjun tal-merkanzija li kienet tidher vizwalment tajba. Kienu prezenti huma, tad-Dwana, il-cargo owner, il-kaptan tal-vapur u l-crew. Il-merkanzija giet rilaxxjata mid-Dwana u mill-Awtorita tas-Sahha ta'Malta.

Stephano Detassis xehed li

He went to Moldova with a representative of his clients in Sardinia to verify the quality of the com and assisted in the loading operations on the vessel. Loading lasted two days in sunny weather. Samples of the cargo were taken during loading. The ship was completely dry and the com left Ukraine in perfect condition. Loading operation was made in the presence of employees of SGS Moldova, the international organ of control that certifies the quality of supply and hygiene conditions of the ship's holds. Such employees had to carry out such analyses on the basis of samples taken during the loading of cargo and assess its conformity and integrity of same in accordance with contractual terms. The com left Ukraine in perfect condition as confirmed by the various certificates released by SGS Moldova Dok. DCL5 -11. When samples were taken they were taken from different layers of the cargo on being loaded.

L-istharrig tal-pretensjonijiet attrici jiddependi mhux biss mix-xhieda imma anke mid-dokumenti li jixhdu l-grajja tat-tragitt u ghandhom piz probatorju. Dan jinghad ghalieq dawk id-dokumenti, generalment, ikunu saru fil-hin tal-grajja partikolari u jkunu ghalhekk mistennija li jservu bhala dokumentarju ta' dik il-grajja. (fil-kawza fl-ismijiet **David Curmi Doe Carmel Mallia et Doe**, App Kumm 06/06/1995)

Fil-kaz in ezami gew ipprezentati s-segwenti dokurnenti li jikkonfermaw l-istat tajjed tal-merkanzija meta dina giet imghobbija.

Id-Doc. DCL5 huwa l-Quality Certificate mahrug min SGS dwar is-sampling during loading and analysis on requested parameters of a consignment designated li kienet ser tingarr mill-valur MV ERDOGAN SENKA Y A. Id-dokument ighid hekk:

This is to certify that upon instructions received, our inspector has supervised the loading of the abovementioned quantity of goods declared as MOLDAVIAN CORN CONVENTIONAL CROP 2013 AS PER CONTRACT OF SALE DATED 29TH OCTOBER 2013 at the Reni Port and drew samples currently with the loading of the above mentioned parcel on to the vessel. Representative sampling of the cargo was performed at regular intervals throughout the entire loading as per GAFTA sampling rules 124.

Mill-analisi li saret irrizulta li Moisture kien ta' 14% u Foreign matters 0%.

Skond ic-certifikat Dok. DCL8, analisi ta' GMO irrizulta li l-GMO is lower than the contractual limit of 0.9%. Skond Dok. SCL9 Radiation is not exceeding 600 Becquerel per kilogram and is within the EEC permitted limits. Ic-certifikat Dok. SCL11 kkonferma li based on a visual examination of visibly accessible parts of the holds and hatches, Hold No 1 was swept and suitable to carry the goods. [ara Dok. a fol. 92 Shipment Document). Doc. DCL11 certifies that the vessel was suitable for loading.

The Bill of Lading confirms the proper loading of the com and certified as clean. [page 2].

Illi mid-dokumenti ezibiti u mill-analisi li saret tal-merkanzija meta giet mghobbija dina giet certifikata bhala tajba ghal vjagg u li l-vapur setgha jgorrha. Ghalkemm il-

Kaptan tal-vapur ighid li 'cargo has been delivered with the same conditions as loaded from Reni port' [fol. 178 Doc. DCL22) fil-fatt jirrizulta li waqt li f'Reni SGS iccertifikaw li l-markanzija kienet tajba, f'Oristano irrizulta li dina kienet immuffata, tinten u b'temperaturi gholjin.

Minn naha l-ohra s-socjeta intimata bazikament qed tghid li l-hsara ma gietx kawzata mill-ilma bahar u lanqas mill-ilma xita waqt it-tragitt imma in forza ta' kawzi esterni mhux relatati mal-vjagg.Hija ssostni li l-merkanzija kellha 'inherent vice' qabel tghabbiet.

Illi meta s-socjeta intimata teccepixxi li l-hsara saret in forza ta' kawzi esterni mhux relatati mal-vjagg hija qed talludi ghal possibilita' li l-merkanzija kienet diga hazina qabel tghabbiet. Hija qed tistrih fuq zewg rapporti, wiehed li sar mis-surveyor tal-vapur u iehor imqabba minnha stess.

Fir-rapport tieghu, Mr. Cosulich, surveyor tal-vapur, jasal ghal konkluzzjoni li mit-testijiet li saru wara li giet skarikata l-merkanzija 'the corn did not suffer any wetting by sea water during the voyage from Reni to Oristano' u li 'the fermentation was provoked by fresh water the origin of which is at Reni before loading'. Ghalkemm ir-rapport hu taht il-firma ta' Cosulich, fil-Qorti xehed Luigi Marcialis li kkollabora mieghu fl-indagini li saret. Hu qal li kien prezenti wara li Detassis kien ikontesta l-hsara u wara li nizlet il-merkanzija mill-istivi. Fl-opinjoni tieghu l-hsara ma saritx minhabba l-vjagg bil-bahar. Il-merkanzija waslet b'livell gholi ta' umidita u anke bil-presenza ta' faqqih li waslu ghal fermentazzjoni. Huma kienu eskcludew li kien hemm htija minhabba t-trasport u dana billi ma stabux tracci ta' ilma bahar mill-analisi li saret fuq il-kamjuni li gabru f'Oristano.

Fir-rapport tieghu Dr Andrea Spolidoro, imqabba minn-SIAT S.p.a. l-assikurazzjoni tal-merkanzija, jikkonkludi li:

As to the actual cause of damage, it results clear that this matter concerns a heating damage attributable solely to the presence of some lots of cargo, most probably already infested by storage fungi, with a moisture content higher than the indicated average of 14%, commingled with other lots with a lower moisture content, that is to say a damage clearly attributable to the cargo condition at loading: inherent vice (page 10 of Report Dok. AS1).

Meta xehed quddiem il-Qorti, Dr Spolidoro qal li dak li seta gara kien dovut jew ghax il-qamh ixxarrab fit-tragitt jew ghax kien hemm high moisture fil-qamh meta tghabba. Hu xehed li meta ghamel ir-rapport tieghu hu ma kellux fidejh ir-ritratti li ttiehdu meta giet mghobbija l-merkanzija. Isostni li anke kieku dahal l-ilma, il-merkanzija kienet tasal imxarba biss u ma jkunx hemm fermentazzjoni kif fil fatt kien hemm, ghax iz-zmien kien qasir wisq ghalhekk. Inoltre ma nstab ebda ilma fil-qiegh tal-istivi. Hu jghid li meta jitghabba l-qamh jista jgri li truck ikollu moisture content differenti minn truck iehor u trid thallathom flirnkien biex ikollox il-moisture content korrett imma jista jgri li jkollok parti li tkun too moist u ma tiflahx ghal vjagg. Fl-opinjoni tieghu parti biss mill-merkanzija kellha hsara imma l-awtoritajiet Taljani kkundannaw il-merkanzija kollha u ma setghux jikkontestaw id-decizjoni taghhom.

Kemm Dr Spolidoro kif ukoll Marchialis ma kienux prezenti meta l-merkanzija giet mghobbija Reni u hurna raw biss dina l-merkanzija meta waslet Oristano, xi granet wara li dahlet il-port fejn giet skarikata.

Illi f'dan il-kaz il-Qorti hi rinfaccajata b'zewg posizzjonijiet: is-socjeta attrici li ssostni li l-merkanzija kienet ta' kwalita tajba u giet karigata f'kondizzjoni tajba u l-vapur gie certifikat li seta jittrasporatha u minn naha l-ohra ghandna s-socjeta intimata li qed issostni li l-merkanzija kellha 'inherent vice' qabel giet mghobbija u ghalhekk l-polza ta' sigurta ma kinitx topriha.

Illi fil-fehma tal-Qorti l-atturi mexxilhom jgibu prova tal-kwalita, stat u kondizzjoni tajba tal-merkanzija meta din giet stivata u li fil-mument tar-recezzjoni taghha l-istess stat ma kienx jikkorrispondi ghall-istat li kienet fil-mument tal-istivagg. Dina l-merkanzija giet certifikata ghat-tjubija taghha u l-adattabilita tal-vapur biex igorrha giet certifikata minn kumpanija SGS maghrufa intemazzjonalment. Il-merkanzija gie mghobbija fil-presenza ta' diversi persuni li kkonfermaw kemm bil-miktub kif ukoll bic-certifikati u ritratti l-istat taghha. Kieku l-merkanzija ma kinitx tajba r-rikorrenti u l-iricevitori tal-merkanzija ma kienux ser jaghmlu l-pagament biex dina tingarr ghal Oristano. Inoltre f'Malta dina l-merkanzija kienet ukoll instabet f'apparent good condition meta nfethu

I-istivi u dana gie konfermat mir-ritratti ezibiti, kampjuni li ttiehdu, u mix-xhieda ta' Detassis. Il-merkanzija gie cleared biex tkompli l-vjagg mill-Awtoritajiet ta' Malta.

Fir-rapport tieghu, Dr Spolidoro jifha' l-htija fuq il-merkanzija li skond hu kienet hazina qabel tghabbiet. Fir-rapport pero, fil-fehma tal-Qorti, hemm diversi supposizzjonijiet li ma gew sostanzjati u korroborati mill-fatti kif jemergu. Hu per ezempju jsemmi li l-merkanzija kienet infettata bil-fungi meta tghabbiet meta fil-fatt ma hemm ebda prova dwar dan. Hu jippresupponi li din l-merkanzija kienet 'probably already infested by storage fungi'. Isemmi ukoll il-possibilita li kien hemm moisture degree differenti f'partijiet differenti tal-merkanzija meta fil-fatt SGS iccertifikat li Representative sampling of the cargo was performed at regular intervals throughout the entire loading as per GAFTA sampling rules 124. Fir-rapport jissemma wkoll li kien hemm high moisture content fil-merkanzija meta fil-fatt meta tghabbiet gie ccertifikat minn SGS li l-Moisture kien ta' 14% u Foreign matters 0%. Ghalhekk ma hemmx prova konkreta u attendibbili li, kif qed isostnu l-intimati, kien hemm high moisture content of part of the cargo when loading, anzi mic-certifikazzjoni ezibta jirrizulta l-kuntrarju.

Illi ghalhekk is-socjeta rikorrenti kienet gie assikurata li l-merkanzija li hija kienet se tixtri kienet tajba u ghalhekk jekk kien hemm xi difett fil-qamh li ma jidhirx ma kienx tort taghom imma tal-fornitur. Is-socjeta rikorrenti kellha merkanzija li kienet giet certifikata tajba u ghalhekk setghet tinxurjaha taht l-Open Marine Policy li kellha. Lanqas is-socjeta rikorrenti ma hija responsabbili jekk l-merkanzija grala xi hsara waqt it-tragitt ghax ir-responsabilita hija tal-vettural. Hija responsabilita tal-vettural li obbliga ruhu li jikkonsenja l-merkanzija fil-port tad-destinazzjoni fl-istess kundizzjoni li tghabbiet.

F'dana l-kaz jirrizulta li meta l-merkanzija gie skarikata f'Oristano kien sar water test b' 'hose to verify the water-tightness of the hatches closures, and leakages were found on the transversal joints of panels 2, 3, 4 of hatch cover out of the 8 panels composing hatch cover 1, and on a transversal joint of panel 2 out of the eleven panels composing hatch cover 2. The hatches closures were found not fully watertight at the hose test performed'. (Rapport Dr Spolidoro u konfermat minn Detassis fix-xhieda tieghu u Doc. DLC17 Rizultat tal-Water Test. Hatches Water

Tight: NO). Detassos xehed li 'A 'water test' was made on the ship's hold. From the tests carried out it resulted that even though some seals were changed, water was still getting into the holds [DCL 24]. The seals were visibly damaged, old and not water resistant'. Hu jghid li huwa ma jaghzilx il-vapur li fuqu ser tigi importata l-merkanzija, din hija problema tal-armatur u l-kaptan.

Jirrizulta li skond il-log book tal-vapur kien hemm waqt it-tragitt rain and rough sea weather ghalkemm skond ir-rapporti ezibiti mill-intimati, dawn ma kienux il-kawza ghall-hsara fil-merkanzija ghar-ragunijiet imsemmija fl-istess rapporti.

Illi ghalhekk fil-fehma tal-Qorti s-socjeta rikorrenti imexxilha tipprova t-talba taghha u konsegwentement qed tigi milqugha.

Danni

Is-socjeta rikorrenti talbet il-likwidazzjoni tad-danni sofferti konsistenti fil-hsara fil-merkanzija, fin-nuqqas ta' qliegh kif ukoll fid-danni konsegwenzjali fl-operat tas-socjeta rikorrenti minhabba l-istess hsara.

Fin-nota ta' sottomissjonijiet taghha s-socjeta rikorrenti talbet is-segwenti:

€ 424,453.49 bhala hsara fil-merkanzija
€ 88,254.83 bhala spejjez extra
€ 519,910.55 bhala telf ta' qliegh.

1. Kwantu ghal l-ewwel talba, il-polza ta' assikurazzjoni kienet tkopri is-somma ta' €415,000 biss u ghalhekk kull somma ulterjuri mitluba ma tistax tigi milqugha. Fil-fehma tal-Qorti kull ma tista' tippretendi li tithallas is-socjeta rikorrenti huwa l-valur tal-konsenja li giet assikurata kif jirrizulta mid-dokumenti DCL3 u 4. Ir-responsabilita tal-assikurazzjoni ghall-indenizz skond il-polza sa hemm jasal. F'dan ir-rigward jigi rilevat ukoll li s-socjeta rikorrenti rkuprat is-somma ta' €29,220.00 bhala recovery sale tal-merkanzija mhassra. Il-merkanzija giet mibjuha lil kumpanija Sarda Sementi Srl bil-15.00 Euro/ton u mir-rikavat thallas il-freight tal-vapur u parzjalment il-vettural.

2. Dwar din it-talba, fit-tieni affidavit tieghu datat 20 ta' Gunju 2016, Stefano Detassis esebixxa invoices relativi ghas-spejjez extra fir-rigward ta' dina l-konsenja fl-ammont ta' €88,254.83 [Doc DCL29/30]. Jigi rilevat li l-assikurazzjoni ma taghmilx tajjeb ghal spejjez extra li gew inkorsi mill-assikurat. Il-limit of liability taghha hija s-somma

assikurata skond il-polza. Gew ezibiti numru konsiderevoli ta' dokumenti [fol 215-260] li pero ma gewx spjegati, ghalfejn saru dawk l-ispejjez u lanqas ma ttella xi hadd biex jixhed u jispjegahom u jikkonfermahom. Veru li l-gurisprudenza hija li mhux dejjem hemm bzonn li d-dokument jigi kkonfermat bil-gurament imma hawnhekk si tratta ta' hafna dokumenti u li l-ammonti mitluba huma sostanzjali u ghalhekk il-Qorti ma tistax taqbel u taccettahom minghajr verifika proprja.

3. Stefano Detassis xehed li 'Delva Corporation Ltd has suffered a commercial loss amounting to 15 shipments which were not effected'. In kontroezami hu wiegeb li l-ftehim biex il-koperativa tixri l-qamh ghal tant zmien kien wiehed verbali u mhux bil-miktub jew bi mod iehor formalizzat. Illi fil-fehma tal-Qorti l-assikurazzjoni ma ticcentra xejn f'dan il-ftehim. Anke kieku l-figura ta' €519,910.55 hija figura spekulativa ta' operazzjonijiet li ma avverawx ruhhom u ma kien hemm xejn konkret/jew ftehim, li jindika li dawn l-operazzjonijiet kienu se jsiru u li ma sarux tort tal-assikurazzjoni. L-assikurazzjoni ma tkoprix loss of profit u biex tkopri talba simili trid tkun harget polza specifika ghal dan l-iskop.

Decide

Ghal dawn il-motivi l-Qorti tiddeciedi billi tilqa' t-talbiet tas-socjeta rikorrenti Tillikwida d-danni fl-ammont ta' €415,000, u tikkundanna lis-socjeta intimata thallas lis-socjeta rikorrenti l-ammont hekk likwidat bhala indenniz taht l-imsemmija polza ta' assikurazzjoni. Bl-ispejjez u bl-imghax kontra s-socjeta intimata mid-data tal-ittra ufficjali tad-19 ta' Gunju 2014.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur