



**QORTI ĊIVILI
PRIM'AWLA**

**ONOR. IMHALLEF
ROBERT G. MANGION**

SEDUTA TAD-29 T'OTTUBRU 2020

Kawza Numru: 4

Rik. Gur. 158/2012 RGM

Cassar Fuels Ltd (C 28453)

vs.

**Alpha Trading SpA (kumpanija estera
registrata gewwa l-Italja) u b'digriet tat-23 ta' Gunju 2016
gie kjamat in kawza il-Bastiment MT Blue Rose**

Il-Qorti:

Rat ir-rikors guramentat tas-socjetà Cassar Fuels Ltd prezentat fil-15 ta' Frar, 2012 u kkonfermat bil-gurament minn Mark Cassar li permezz tieghu ippremettiet u talbet is-segweni:

1. Jiena għandi r-rappreżentanza ġuridika tas-soċjeta' rikorrenti.

2. Illi fl-għoxrin (20) ta' Ottobru 2011 is-soċjeta' rikorrenti bieghet u debitament ikkonsenjat lill-vapur 'm/v Blue Rose', fuq ordni tas-soċjeta' intimata, kwantita' ta' *fuel oil* għall-prezz ta' mitejn u sitta u sittin elf dollaru \$266,000 (kopja tal-ordni u tal-koferma tal-ordni hawn annessi u mmarkati bhala Dok. 'A' u Dok. 'B' rispettivament).

3. Dan il-prezz gie ridott għal mitejn tlieta u tletin elf, tlett mija u tmien dollaru u sittin ċenteżmu (\$233,308.60), illum ekwivalenti għal **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin Euro u għoxrin ċenteżmu (EUR175,443.20)** stante li l-*fuel oil* in kwistjoni kellu ammont ta' ilma fih (kopja tal-fattura relattiva hawn annessa u mmarkata bhala Dok. 'C').

4. Illi għalhekk s-soċjeta' intimata għandha thallas lis-soċjeta rikorrenti s-somma totali ta' **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin Euro u għoxrin ċenteżmu (EUR175,443.20)** skond l-imsemmija fattura (Dok. 'C').

5. Illi s-soċjeta' intimata giet interpellata diversi drabi sabiex thallas l-imsemmi ammont, anke permezz ta' ittra interpellatorja datata 5 ta' Jannar, 2012 (kopja tagħha hawn annessa u mmarkata Dok 'D'), iżda baqgħet inadempjenti.

6. Illi l-ammont dovut favur is-soċjeta rikorrenti huwa ċert, likwidu u dovut, u fil-fehma tal-istess soċjeta' rikorrenti jikkonkorru l-elementi kollha taht l-Artikoli 167 sa 170 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kapitolu 12 tal-Liġijiet ta' Malta), peress li fil-fehma tas-soċjeta rikorrenti s-soċjeta' intimata m'għandha l-ebda eċċezzjoni valida skond il-liġi xi tressaq kontra t-talbiet rikorrenti.

Għaldaqstant, għar-raġunijiet premissi, tgħid is-soċjeta' intimata, għaliex dina l-Onorabbli Qorti m'għandhiex, prevja kull dikjarazzjoni neċessarja u opportuna:

1) Tiddeċiedi din l-kawża bid-dispensa tas-smiegh, għall-finijiet tal-**Artikoli 167 sa 170** tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili (Kapitolu 12 tal-Liġijiet ta' Malta).

2) Tiddikjara li s-soċjeta' intimata għandha tagħti lis-soċjeta rikorrenti s-somma ta' **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin Euro u ghoxrin ċenteżmu (EUR175,443.20)**, u dana oltre l-imgħaxijiet kummerċjali sad-data tal-pagament effettiv tas-somma kollha.

3) Tikkundanna lis-soċjeta' intimata tħallas lis-soċjeta' rikorrenti s-somma ta' **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin Euro u ghoxrin ċenteżmu (EUR175,443.20)**, u dana oltre l-imgħaxijiet kummerċjali sad-data tal-pagament effettiv tas-somma kollha.

Bl-ispejjeż kollha, inklużi l-ispejjeż tal-ittra legali datata 5 ta' Jannar, 2012 u bl-imgħaxijiet kummerċjali dekorribbli sad-data tal-pagament effettiv tas-somma kollha kontra l-istess soċjeta intimata, li hija minn issa ngunta għas-subizzjoni.

Rat ir-**Risposta guramentata tas-socjeta` Alpha Trading SpA** prezentata fit-12 ta' Novembru, 2012 fejn jinghad kif gej:

1. Illi in linea preliminari, in-nuqqas ta' gurisdizzjoni ta' dina l-Qorti billi a tenur tal-artikolu 16(2) u l-artikolu 7(4) tal- *General Terms and Conditions* tas-socjeta' rikorrenti (Gia esebit fis-seduta tal-25 ta' Ottubru 2012), kwalunkwe vertenza relatata ma' nuqqas ta' kwalita' tal-prodotti furnuti mis-socjeta' rikorrenti għandha tigi risolta "*through the offices and methods contemplated by the Malta International Arbitration Centre in terms of the Arbitration Act 1996*", liema *General Terms and Conditions* gew inkorporatti fil-*Letter of Confirmation*("*All Bunker deliveries are within Cassar Fuel Ltd Terms and Conditions*") (Kopja hawn annessa u mmarkat bhala Dok "A") li permezz tagħha s-socjeta' rikorrenti ntrabtet li tbiegh u tforni lill-bastiment M/V Blue Rose kwantita' ta' *fuel oil* versu l-prezz u taht dawk il-pattijiet u kundizzjonijiet ohra hemm stipulati. Jigi bir-rispett sottomess illi għalhekk din l-Qorti għandha twaqqaf dawn il-proceduri a tenur tal-artikolu 742(3) tal-Kap. 12 kif ukoll l-artikolu 8 tal-*Model Law on International Commercial Arbitration* illum parti mill-ligi nostrana (Kap. 387 – l-ewwel Skeda);

2. Illi subordinatement u minghajr pregiudizzju ghas-suesspost, it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez u dana ghaliex is-socjeta' attrici ma onoratx l-obbligi kontrattwali taghha;

3. Illi a tenur tal-*bunker supplier nomination order* datata 14 ta' Ottubru 2011 (Kopja hawn annessa u mmarkata bhala Dok "B"), is-socjeta' intimata ngaggat lis-socjeta' attrici sabiex tissupplixi lill-bastiment M/V Blue Rose b' 400 tunnellata ta' *fuel oil* maghruf bhala "IFO 380 CST" versu l-prezz ta' USD\$ 665.00 ghall kull tunellata. Il-fornitura tal-fuel oil lill-imsemmi bastiment saret hawn Malta fl- 20 ta' Ottubru 2011 permezz tal- *barge* M/T Karol Wojtyla (IMO No. 9016454) bastiment proprejta' tas-socjeta' attrici hekk kif jirrizulta mill-*bunker delivery note* (kopja hawn annessa u mmarkata bhala Dok "C"). Waqt il-fornitura kienu wkoll ittieddu *samples* skond ir-regolament 14(1) jew (4)(a) u r-regolament 18(1) tal-Annex tal-Marpol Convention 73/78 liema *samples* gew ennumerati b' seal numbers 0018485 (Marpol Annex VI ritenut mill-bastiment); 0018486 (ritenut mill-bastiment); u 0018487 (ritenut minn Cassar Fuels Ltd) flimkien ma' 0018488 (ritenut wkoll minn Cassar Fuels Ltd) kif jirrizulta mill-*bunker delivery note* (kopja hawn annessa u mmarkata bhala Dok "C"). Kull *sample* jigi issiggilat fil-presenza tal-membri tal-ekwipagg tal-bastiment fornit u tal-*barge* li suppliet il-fuel oil.

4. Illi fis- 27 ta' Ottubru 2011 meta l-bastiment M/V Blue Rose kien ghadu Malta jhott il-merkanzija il-*managers* tieghu, Bernhard Shulte Shipmanagement (BSS) ta' Cipru, ircevw *fuel alert* fir-rigward tal- *fuel oil* li kien gie suppliet lill-bastiment mis-socjeta' attrici minhabba kwantita kbira ta' ilma fil-kontenut tal-*fuel oil* fornit. Il-managers mill-ewwel infurmaw lill-armaturi tal-bastiment, Ace Tankers C.V. ibbazati fl'Olanda, u dawn infurmaw lis-socjeta' intimata. Is-socjeta' intimata fis- 27 ta' Ottubru 2011 permezz ta' *e-mail* (hawn annessa u mmarkata bhala dok "D") infurmat lill-Cassar Fuels Ltd dwar dan in-nuqqas ta' kwalita'.

5. Illi s-socjeta' intimata insistiet diversi drabi mas-socjeta' rikorrenti sabiex issir "*contradictory analysis*" minn kumpannija indipendenti fuq *is-samples* ritenut mill-bastiment, u *s-samples* ritenut mill-*barge* li s-suppliet il-fuel oil in kwistjoni izda s-socjeta' rikorrenti baqghet tinsisti li l-analysis kellu jsir biss fuq is-sample ritenut mill-*barge* li suppliet il-*fuel oil* u r-rizultat kellu jkun finali u jorbot liz-zewg

partijiet. Wara diversi tentattivi s-socjeta' attrici qablet li kemm is-*samples* tal-bastiment fornit kif wkoll is-*samples* tal-barge jittiehdu ghal-*contradictory analysis*.

6. Illi s-socjeta' intimata fuq istruzzjonijiet tar-rapprezentant tal-P&I Club tal-bastiment fornit ngaggaw lis-socjeta' Inspectorate Malta Ltd sabiex jaghmlu *analysis* fuq s-*samples* ritenuti mill-bastiment. Il-*contradictory analysis* li sar fuq kampjun 001846 (kampjun tal-bastiment fornit) u kampjun 0018487 (kampjun tas-socjeta' attrici) ta rizzultati opposti fis-sens li fil-waqt li l' analizi li saret fuq kumpjun 001846 tghat rizzultat *off-spec*, it-test li sar fuq kampjun 0018487 ta rizzultat *on-spec* (Kopja tac-certifikati hawn annessa u mmarkati bhala Dok "E" u Dok "F")

7. Illi fit-28 ta' Ottubru 2011 rapprezentant tas-socjeta' attrici kien informa[t] lis-socjeta' attrici [recte: konvenuta] permezz ta' email (kopja hawn annessa u mmarkata bhala Dok "G") li jiehdu l-*fuel oil* lura u jerghu jissupplixu lill-bastiment b' *fuel oil* gdid. Fl-email qallu wkoll li l-unika problema kienet it-temp hazin li kien jimppeddixi lis-socjeta' attrici milli taghmel kwalunkwe operazzjonijiet ta' de-bunker u/jew bunker u, fil-fatt, spicca l-email tieghu hekk "*for the time being, we can presume that the de-bunkers and bunkers can be performed earliest next Monday agw + wp*"). Is-socjeta' intimata qablet ma din il-proposta u permezz ta' email datata (kopja hawn annessa u mmarkata bhala Dok "G") ikkonfermat "*Ok noted. Pls arrange asap*". Is-socjeta' attrici rrispondiet lura billi qalet "*Thanks a lot. So it seems that problem is solved. We shall speak again next Monday to organize both operations*" (kopja tal-email hawn annessa u mmarkata bhala Dok "H")

8. Illi fil-frattempt l-armaturi /operatori tal-bastiment infurmaw lis-socjeta' intimata li jekk l-operazzjonijiet ta' debunkering issir it-tnejn (31 ta' Ottubru 2011) dan kien se jikkawza "*too much delay to our vessel and unacceptable distortion to her future loading schedule*" hekk kif jirrizulta minn email ta' Ace Tankers C.V. datata 28 ta' Ottubru 2011 (kopja ta' email hawn annessa u mmarkata bhala Dok "I") u ghalhekk talbu lis-socjeta' intimata sabiex l-operazzjonijiet ta' debunker u

re-bunkering issir kemm jista jkun malajr, jew dak inhar stess jew l-aktar tard l-Hadd (30 ta' Ottubru 2011).

9. Illi l-Hadd 30 ta' Ottubru 2011 is-socjeta' attrici nformat lis-socjeta' intimata li l-maltemp kien mistenni jdum sal-Hamis 4 ta' Novembru 2011. Fuq istruzzjonijiet tal-armaturi / operaturi tal-bastiment, is-socjeta' intimata permezz ta' email datata 30 ta' Ottubru 2011 (kopja hawn annessa u mmarkata bhala Dok "J") infurmaw lis-socjeta' attrici u partijiet ohra, fosthom lill-agenti taghhom hawn Malta, Messrs. Wilhelmsen Ship Services (Malta) Ltd., li l-bastiment ma setax jistenna sal-Hamis ghax kien jitlef il-*laycan* fil-port sussegwenti u ghalhekk jitlef vjagg u b'konsegwenza talli dewmien kien se jikkawza dannu u telf finanzjarju kbir lill-armaturi /operaturi tal-bastiment.

10. Illi wara skambji ta' diversi *emails* bejn is-socjeta' intimata u s-socjeta attrici, fil 31 ta' Ottubru 2011 is-socjeta attrici permezz ta' email (kopja hawn annessa u mmarkata Dok "K") nformat lis-socjeta' intimata li l-operazzjonijiet ta' debunkering u bunkering setghu jsiru fis-segweni portijiet "BCN [Barcelona] /Gibraltar / Las Palmas" bil-probabbilita' li dawn l-operazzjonijiet issiru fl-port fl-Las Palmas. L-armaturi tal-bastiment infurmaw lis-socjeta' intimata li l-bastiment kien fi triqtu lejn Barcelona u taghwhom wkoll d-detallji tal-agenti taghhom f'dan il-port.

11. Illi meta s-socjeta' intimata infurmat b'dan lis-socjeta' attrici din infurmathom permezz ta' email (kopja hawn annessa u mmarkata bhala Dok "L") li "*Barcelona is no go, as it is quite prompt. Other option is in Las Palmas. Pls advise*". I-agenti tal-bastiment f'Barcelona infurmaw lill-partijiet li CEPSA kienu lesti li jaghmlu l-operazzjonijiet fit 3 ta' Novembru 2011. Izda s-socjeta attrici rrifjutat din il-proposta u infurmat lill-partijiet li kienu se jiehdus hsieb l-arrangamenti tal-operazzjoni ta' debunkering huwa stess hekk kif jirrizulta minn email mibghuta mis-socjeta' attrici datata 31 ta' Ottubru 2011 (kopja hawn annessa u mmarkata bhala Dok "M").

12. Illi fil-frattemp u kwazi xahar wara li l-bastiment kien lest biex issalpa mill-kosta Afrikana fejn kien qed jhott il-merkanzija u peress li l-vjagg

susessgweni kien ghadu mhux maghruf kien possibli li il-bastiment jipprocedi lejn Giblta sabiex fi triqtu jghaddi qrib Las Palmas fejn setghu issiru l-operazzjonijiet ta' *de-bunkering* u *bunkering*. Izda, meta is-socjeta' attrici giet mitluba sabiex tikkonferma l-arrangamenti dwar l-operazzjoni ta' debunkering din qalet permezz ta' email datata 02 ta' Dicembru 2011 (kopja hawn annessa u mmarkata bhala Dok "N") – u wkoll kuntrarjament ghal dak li qalet precedentement – "*We are agreeing to solve this matter by de-bunkering the vessel in Malta. Since we operate from Malta, it is much easier to handle such operation*" u sostniet wkoll li "*we are making it clear that after de-bunkering, this case will be closed without any other claims for any damages, demurrages etc*".

13. Illi gialadarba is-socjeta' attrici marret lura mill-kelma taghha u kisret il-ftehim li kien intlahhaq bejn il-partijiet sa dak iz-zmien abbazi ta' emails skambjati, liema ftehim kien jikkontempla li d-*debunkering operation* kellha issir f'port barra minn Malta skond l-arrangamenti tas-socjeta' attrici, il-parti konvenuta u dawk assocjati maghha ma kellhomx ghazla ohra hlief li jiddisponu mill- *fuel oil* li kien ghadu abbord billi jaghmlu l-arrangamenti necessarji f'port li kien fir-rotta tal-bastiment, minhabba li dan il-*fuel oil* kien qieghed jimpeddixxi lill armaturi/operatori tal-bastiment mill jkomplu jippjanaw vjaggi futuri u ghalhekk kien qieghed jaffetwa hazin l-introjt tal-bastiment.

14. Illi ghall kull buon fini u trasparenza l-armaturi / operatori tal-bastiment fid-09 ta' Dicembru 2011 kienu wkoll infurmaw lis-socjeta' attrici permezz ta' email (kopja hawn annessa u mmarkata bhala Dok "O") li ma kienx possibli l-bastiment jigi Malta sabiex issir l-operazzjonijiet ta' debunkering minhabba "*short notice*" u nnfurmawhom wkoll "*As you can imagine the 400mts off specs fuel hinders an effective planning of supply for the near future*". Eventwalment kien sar l-arrangement necessarji mis-socjeta' intimata sabiex l-operazzjoni ta' debunkering issir Giblta fejn il-*fuel oil* in kwistjoni gie off-loaded bhala *sludge*. Dan kollu sar bi spejjez tas-socjeta' intimata li barra minn dawn l-ispejjez li nkorriet minhabba din l-operazzjoni u zmien zejzed u dewmien tilfet wkoll il-klijent / xoghol iehor.

15. Illi mill-premess ghalhekk ghandu jkun ovvju – anke meta wiehed jiehu in konsiderazzjoni li fir-rikors promotur tas-socjeta' attrici din ammettiet li l-*fuel oil* supplit kien fih kwantita ta' ilma u arbitrarjament irriduciet il-prezz tal-*fuel oil* b' 13% wara li unilaterament u arbitrarjament ikkalkulat li l-percentagg ta' ilma fil-*fuel oil* supplit minnha kien jammonta ghall 13% (kopja tal-fattura originali datata 20 ta' Ottubru 2011 hawn annessa u mmarkata bhala Dok "P") – li t-talbiet attrici huma infondati fil-fatt u fid-dritt ghaliex il-prodott supplit mis-socjeta' attrici ma kienx tal-kwalita' pattwita billi ma kienx konformi mall- *International Specifications (ISO 8217 Fuel Standard Fourth Edition 2010 – RMG 380)* u inoltre kien prodott li qatt ma setgha jintuza ghall iskop li ghalih kien inxtara minghajr ma jikkawza danni kbar u serji lill-magni tal-bastiment.

16. Illi ghal kull buon fini jinghadd li s-socjeta' attrici ssupplixiet wkoll lill-bastiment M/V Blue Rose 60 metru kubu ta' *Gas Oil* permezz tas-*supply barge* M/T Sacro Cuor 1 (IMO No. 7438115) – proprejta' u/jew operata tas-socjeta' attrici – liema forniture ma hijiex in kwistjoni u l-fattura relativa' ghal din il-fornitura giet saldata mis-socjeta' intimata.

17. Illi ghalhekk f'kull kaz it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda.

Bir-riserva ta' eccezzjonijiet ulterjuri skond il-ligi u b' talba ghad-danni.

Bl-ispejjes kontra s-socjeta' rikorrenti

Rat ir-risposta guramentata tal-bastiment MT Blue Rose, kjamat in kawza, ipprezentata fl-14 ta' Novembru 2016 fejn gie ecceppiet is-segwent:

1. Illi in linea preliminari, l-Qrati Maltin m'ghandhomx il-gurisdizzjoni mehtiega biex jiehdun konjizzjoni tal-azzjoni attrici *verso* l-bastiment billi din hija azzjoni *in rem* migjuba kontra l-istess bastiment intimat u r-rekwiziti necessarji u kontemplati fl-Artikolu 742D tal-Kap.12 tal-Ligijiet ta' Malta kif ukoll dawn mnisslin fid-dispozzjonijiet ta' Kap. 234 tal-Ligijiet ta' Malta m'huwiex sodisfatti. Dan billi "il-persuna risponsabbli in personam *versu* s-socjeta' attrici" (cioe' m'huwiex *ir-relevant*

person) certament m'huwex is-sid jew is-sid beneficjarju jew in-noleggatur taht bareboat charter tal-vapur, kif jirrikjedi l-imsemmi **artikolu 742D** ta' Kapitolu 12 tal-Ligijiet ta' Malta.

2. Minghajr pregudizzju ghall-premess u in linea preliminari ukoll, il-bastiment intimat m'huwiex il-legittimu kontradittur u ghandu ghalhekk jigi liberat mill-osservanza tal-gudizzju stante illi l-bastiment intimat u/s-sid u/jew l-armaturi m'ghandhom ebda relazzjoni kuntrattwali jew guridika mas-socjeta` rikorrenti peress illi *Ace Tankers C.V.* (li kienu *t-time charterers* tal-bastiment intimat fis-sena 2011) ordnaw *bunkers* minghand *NSG Overseas Ltd* (socjeta` li tiffirma parti mill-*North Sea Group*) sabiex dawn jigu furnuti lil bastiment intimat gewwa Malta. Sussegwentament, din l-istess socjeta` tal-ahhar ikkuntrattat f'isimha proprju lis-socjeta` konvenuta Alpha Trading SpA ghall-provvista tal-istess ammont ta' bunkers, liema socjeta` wara dahlet f'kuntratt f'isimha proprju mas-socjeta` rikorrenti ghall-provvista tal-istess bunkers li gew fizikament furnuti mill-bastiment tas-socjeta` rikorrenti, Karol Wojtyla (IMO Nru 9016454), lil bawstiment intimat MV Blue Rose (IMO numru 933915) hawn Malta fl-20 ta' Ottubru, 2011.

3. Illi l-kuntratt ta' bejgh bejn s-socjeta` rikorrenti u s-socjeta` intimata Alpha Trading SpA huwa res inter alios acta bejn il-partijiet tal-istess kuntratt ghaldaqstant dan il-kuntratt jorbot **BISS** lill-partijiet imsemmija fih u ma ghandu l-ebda forza fuq kwalunkwe terz iehor inkluz il-bastiment intimat u/jew is-sid tieghu, u dan ai termini ta' Artikolu 1001 tal-Kodici Civili, Kapitolu 16 tal-Ligijiet ta' Malta.

4. Illi l-esponenti tichad u tirrifjuta kategorikament bbhala infondata l-allegazzjoni tas-socjeta` rikorrenti li l-bastiment intimat u/jew is-sidien tieghu qatt accettaw li jkunu jew li huma b'xi mod marbutin bl-*istandard terms and conditons* tal-istess Cassar Fuels Limited.

5. Illi subordinarjament u fil-mertu, t-talbiet attrici huma kollha infondati fil-fatt an fid-dritt u ghalhekk ghandhom jigu michuda bl-ispejjez.

6. Illi ghal kull buon fini qed jinghad ukoll li l-prodott li gie fornut lill-bastiment intimat fl-20 ta' Ottubru, 2011, u limitatament fir-rigward l-400 tunnellata ta' *fuel oil*, ma kienx tal-kwalita` mitlub jew/u accettabbli u cioe` kienu *off-spec*.

7. Illi qed jigi ddikjarat ukoll ghal kull li s-sidien u/jew l-armaturi tal-bastiment diga halsu lil NSG Overseas Ltd. Ghall-provvista tal-400 tunnellata ta' fuel oil in kwistjoni, kif ser jigi ppruvat fil-kors ta' din il-kawzaq u ghaldaqstant ikun xejn inqas minn ingustizzja sostanzjali jekk din l-Onorabbli Qorti b'xi mod tordna l-bastiment intimat biex terga thallas ghall-istess *bunkers*.

8. Illi minghajr pregudizzju ghas-suespost, fl-ahharnett l-esponenti tecippixxi ukoll li s-socjeta` rikorrenti stess fir-rikors promotur taghha qeghda biss tippretendi l-hlas tas-somma mitluba minghand is-socjeta` konvenuta Alpha Trading SpA u mhux minghand l-bastiment intimat, hekk kif jidher car mill-kawzali/talbiet tar-rikorrenti stess li huma limitati ghall-hlas minghand is-socjeta` konvenuta u ghaldaqstant din l-Onorabbli Qorti hija marbuta strettament bil-kawzali/talbiet rikorrenti.

9. Salv eccezzjonijiet ulterjuri permessi mill-Ligi.

Bl-ispejjez.

Rat l-atti kollha tal-kawza;

Rat is-sentenza in parte moghtija minn din il-Qorti diversament preseduta fit-30 ta' Mejju 2013 li permezz taghha cahdet l-ewwel eccezzjoni ta' nuqqas ta' gurisdizzjoni tal-Qorti moghtija mis-socjeta` konvenuta¹;

¹ Pagna 242 tal-process.

Rat id-digriet moghti minn din il-Qorti diversament preseduta fit-23 ta' Gunju 2016 li permezz tieghu ntlaqat it-talba tas-socjetà attrici sabiex jigi kjamat in kawza l-bastiment MT Blue Rose²;

Rat is-sentenza in parte moghtija minn din il-Qorti diversament preseduta fit-3 ta' Dicembru 2018 li permezz taghha giet milqugha l-ewwel eccezzjoni tal-kjamat in kawza, cahdet it-talbiet tas-socjetà attrici fil-konfront tal-bastiment bl-ispejjez kontra s-socjeta' attrici u ordnat il-prosegwiment tal-kawza fil-konfront tas-socjetà konvenuta Alpha Trading SpA biss;

Rat il-provi kollha li tressqu fil-mori tal-kawza;

Rat illi l-kawza thalliet ghal-lum ghas-sentenza finali.

Ikkunsidrat;

L-Azzjoni Attrici.

Fl-20 t'Ottubru 2011 is-socjetà attrici bieghet u kkonsenjat fil-bastiment MT Blue Rose erba' mitt (400) tunellata ta' fuel u dan fuq ordni tas-socjetà konvenuta. Kien hemm qbil li l-valur tal-karburant huwa ta' mitejn u sitta u sittin elf dollaru (\$266,000). Dak in-nhar li saret il-konsenja ittiehdu erba' kampjuni tal-karburant, tnejn minnhom inzammu mis-socjetà attrici u tnejn l-ohra mill-bastiment. Saru t-testijiet mehtiega sabiex jigi determinat il-kwalità tal-fuel. Wara li saru diversi ilmenti min-naha tas-socjetà konvenuta u l-kjamati in kawza li l-kwalità tal-fuel kien wiehed *off-specifications (off-spec)*, is-socjetà attrici naqset il-prezz ghal mitejn tlieta u tletin elf, tlett mija u tmien dollaru u sittin centezmu (\$233,308.60) ekwivalenti ghal mija u sebgha u sebghin elf mija u hamsa u sittin ewro (€177,165). Nonostante li s-socjetà konvenuta giet interpellata sabiex jigi saldat l-ammont allegatament dovut permezz ta' korrisondenza elettronika datata 5 ta' Jannar 2012, l-imsemmija socjetà baqghet inadempjenti. Kien ghalhekk li s-socjetà attrici, permezz ta' din l-azzjoni qieghda titlob lil din il-Qorti tiddikjara li l-ammont ta' €177,165 huwa dovut sabiex

² Pagna 495 tal-process.

tikkundanna lis-socjetà konvenuta thallas l-imsemmija somma flimkien ma' imghaxijiet kummercjali sad-data tal-pagament effettiv tas-somma kollha.

Ikkunsidrat;

Provi.

Ic-Chief Executive Officer tas-socjeta' attrici, **Darren Marmara**, fil-21 t'Ottubru 2013³ xhed li kien gie allegat mis-socjetà konvenuta li l-karburant li MT Blue Rose gie suppliet bih kellu fih ammont ta' ilma u kien ghalhekk li s-somma dovuta giet ridotta sabiex tkopri l-ammont ta' ilma li kien fih il-fuel. Jghid li mit-testijiet li sar ghand Visualab fuq il-kampjun mehud mill-bastiment irrizulta li l-ammont li kien ikopri ilma kien ta' 12% jew 13%. Jikkonferma li bhala kwantità, s-socjetà konvenuta kienet talbet 400 tunnellata fuel, li fil-mument li saret it-talba l-prezz kien ta' sitt mija u hamsa u sittin dollaru (\$665) kull tunnellata. Li jigri huwa li barkun (*barge*) imur hdejn il-bastiment sabiex jissupplixxi l-karburant mitlub. Bhala prova ta' dak li jkun gie ssuppliet, jittiehdu erba' kampjuni tal-fuel, tnejn minnhom huma ghall-barkun sabiex jigu mghoddija lis-socjetà attrici u t-tnejn l-ohra jinzammu mill-bastiment. Ix-xhud jispjega li jekk ikun hemm dubju dwar il-kwalità, it-termini u kundizzjonijiet jipprovdu li l-verifika minn laboratorju ndipendenti ghandha ssir fuq il-kampjuni li gew moghtija lill-barkun. Kompla jispjega li ftit jiem wara li l-bastiment gie suppliet bil-fuel, is-socjetà attrici giet informata li l-fuel kien fih kwantità ta' ilma, però x-xhud ma kienx f'pozizzjoni li jikkonferma jekk il-bastiment kienx ghadu Malta meta s-socjetà attrici giet informata dwar il-kwalità tal-fuel. Li kien f'pozizzjoni jghid ix-xhud huwa li "kien il-maltemp [...] ghax aktar tard imbaghad kien telaq ghax ahna ppruvajna fil-fatt li jsir *bunkering* f'portijiet ohra"⁴. Jiftakar però li kien hemm komunikazzjoni fis-sens illi meta l-bastiment jerga lura Malta jew ikun fil-qrib, jaghmlu *debunkering* (cioe jittiehed lura z-zejt) f'dak iz-zmien jew inkellha issir barra minn Malta, fejn kienu "semmev Barcellona li ma stajniex naghmlu l-arrangamenti taghna ghaliex kien too prompt"⁵. Meta reggha gie mistoqsi dwar il-kwalità tal-fuel huwa jghid li mit-testijiet li saru fuq il-kampjun li kellu l-barkun proprjetà tas-socjetà

³ Pagna 256 tal-process.

⁴ Pagna 261 tal-process.

⁵ Pagna 262 tal-process.

attrici rrizulta li fil-verità kien hemm 0.3% ta' ilma u allura dak il-livell ta' ilma huwa accettabbli u dan ghaliex il-limitu huwa ta' 0.5%. Però jghid li mit-tieni kampjun li kien fil-pussess tal-bastiment kien irrizulta li l-livell ta' l-ilma kien ta' 18%. Dawn it-testijiet saru fil-laboratorju internazzjonali li ghandu fergha f'Malta bl-isem ta' Malta Inspectorate. Apparti dawn it-testijiet, sar ukoll test fuq kampjun (imsemmi aktar 'l fuq), li skont ix-xhud kien fil-pussess tas-socjetà Alpha Trading SpA fejn irrizulta li l-persentagg tal-ilma kien proprju ta 12.29%. Ix-xhud jghid li r-rapport ta' dan l-ahhar test jirrakkomanda li l-prodott ghandu jithalla joqghod sabiex ikun jista' jigi mnehhi l-ilma u dan ghaliex filwaqt li l-fuel jitla 'l fuq l-ilma jkun in-naha ta' taht fejn "id-design taghhom [b'referenza ghat-tankijiet] ikun diga apposta ghal hekk fis-sens illi jkollu sump allura jkun fil-qiegh tat-tank li fil-verità kulma trid taghmel tiftah il-valve, ovvjament ha tara ilma biss ghax hu ha jissepara"⁶. Ix-xhud jghid li galadarba kien hemm din il-kontestazzjoni min-naha tas-socjetà konvenuta, is-socjetà attrici kienet disponibbli li timmitiga l-problema billi tbiddel il-fuel. Peress li l-bastiment kien fuq skeda stretta ma setax joqghod fl-ibhra Maltin sabiex ikun jista' jinhatt il-fuel u jinghata iehor gdid u ghalhekk bahhar fuq l-iskeda li kellu. Kien ghalhekk li gie propost li *debunkering* isir f'postijiet ohra u gew imsemmija tlett postijiet u cioe Barcellona, Las Palmas u Gibraltar. Jghid li huma riedu l-fuel lura ghaliex "sibna wkoll min xtaqu f'dawn it-tlett postijiet"⁷, però fl-istess nifs jghid ukoll li kien impossibbli li jsiru arrangamenti gewwa Barcellona ghaliex ma kellhomx pre-avviz. Jghid ukoll li huwa kien kellem direttament lis-sid tal-bastiment sabiex isiru l-arrangamenti mehtiega halli l-vapur jerga' jigi Malta u *debunkering* isir hawn u jigi evitat milli jidhlu terzi persuni fin-nofs. Jghid li s-sid kien qabel li jsir hekk u li kien qallu li m'ghandux problemi, izda qallu li din tiehu hsiebha Alpha Trading SpA u allura l-ftehim ma' dik is-socjetà ghandu jsir. Ix-xhud spjega li l-fuel gie deskritt mill-konvenuti bhala slug, "prattikament dan gabuli ekwivalenti tad-drenagg"⁸, ghalkemm dan ma kienx il-kaz. Ghall-mistoqsija tal-Qorti jekk kienx hemm xi oggezzjoni ohra li l-fuel kellu tniggis iehor apparti ilma, Marmara wiegeb li l-ilment dejjem kien fuq il-kontenut tal-ilma fil-karburant.

⁶ Pagna 265 tal-process.

⁷ Pagna 267 tal-process.

⁸ Pagni 267 – 268 tal-process.

Darren Marmara xehed ukoll permezz t'affidavit fejn kjarifika li l-unika ilment li huma kellhom minn Alpha Trading SpA u/jew mill-bastiment kien jirrigwarda l-kwantità ta' ilma li kien hemm fil-fuel. Jinsisti li s-socjetà attrici ma kinitx obbligata taccetta "ir-rizultat tat-testing tal-kampjun li nzamm mill-bastiment"⁹, izda kienet lesta xorta wahda li taccetta dak ir-rizultat u kien ghalhekk li Cassar Fuels Ltd kienet lesta tiehu lura l-fuel u tissupplixxi fuel iehor. Jinsisti li dan il-qbil sar nonostante li l-ilma setgha jitnehha mill-fuel minghajr ma jinhatt kif gie rakkomandat mill-laboratorju: "Please do not use this fuel in the present condition. Purifier will not efficiently remove more than 3% water. Settle, drain and purify continuously until all water is removed. Please check the fuel before use." Ix-xhud jishaqq li kien hemm qbil ukoll li *debunkering* kellu jsir Malta fil-perjodu li l-bastiment MT Blue Rose kien ghadu Malta u "fuq kollox kienu qablu li d-*debunkering* tiehu hsiebu Cassar Fuels"¹⁰ u hawn irrefera ghall-korrispondenza elettronika skambjata bejn Marmara u Giampaolo Gargiulo ghas-socjetà konvenuta. Reggha però qal li dan ma setax isir minhabba l-maltemp. Peress li d-*debunkering* kellu jsir minn Cassar Fuels u peress li l-imsemmija socjetà kienet ghada ma thallsitx ghal-fuel, "l-intendiment kien li fil-fatt tithallas meta terga' tissupplixxi l-bastiment b'fuel oil iehor filwaqt li tiehu lura l-fuel oil li kienet issuppliet originarjament"¹¹. Ix-xhud jghid li ghalkemm kien hemm possibilità li d-*debunkering* isir fi xtut ohra barranin, qatt ma kien hemm ftehim li fil-fatt id-*debunkering* kellu jsir Las Palmas u dan a kuntrarju ta' dak li qieghda tghid Alpha Trading SpA. Jispjega li Alpha Trading tat struzzjonijiet lill-operaturi tal-bastiment sabiex jiddisponu mill-fuel gewwa Giblta bhala *sludge*, izda ftehim f'dan is-sens ma' Cassar Fuels qatt ma kien hemm u ma huwiex gust li l-fuel gie kkunsidrat bhala *sludge* u intrema. Jishaq li Alpha Trading SpA hija responsabbli ghall-hlas tal-fuel apparti l-fatt ukoll li cahdet "lil Cassar Fuels milli jzommu l-istess fuel oil kif kellha d-dritt taghmel mhux biss minhabba l-ftehim li kien intlahaq wara li fl-istess fuel oil instab kontenut ta' ilma izda wkoll legalment fis-sens li meta xerrej jallega li l-prodott li jkun xtara jkun difettuz qabel xejn ma jistax juzah u fuq kollox irid jaghti lill-bejjiegh il-possibilità li jiehu lura l-istess prodott"¹². B'dan l-atteggjament, Cassar Fuels ma tistax taghmel uzu kif trid mill-fuel li ssupplixxiet u li ghalih ma thallsitx.

⁹ Pagna 275 tal-process.

¹⁰ Pagni 275 – 276 tal-process.

¹¹ Pagna 276 tal-process.

¹² Pagna 277 tal-process.

Finalment jghid li s-socjetà konvenuta ma gabitx prova li verament nehhet il-fuel bhala *sludge* u ghalhekk jista' jfisser li l-bastiment ghamel uzu mill-istess fuel. Jghid li r-rapport tal-laboratorju mkien ma jghid li l-fuel ghandu jintrema.

In kontro-ezami mizмум fis-7 ta' Marzu 2016, Darren Marmara spjega li wara li hareg ir-rizultat tal-kampjun mehud mill-bastiment, is-socjetà Cassar Fuels provat issib soluzzjoni u dan nonostante li ma kellha ebda obbligu li taghmel dan peress li r-rizultat tal-kampjun mizмум mis-socjetà attrici kien juri li l-karburant kien ta' kwalità tajba, liema rizultat ghandu jorbot. Jispjega li peress li l-fuel kellu l-ilma fih, dan facilment setgha jigi mnehhi u jerga jigi fuel tal-kwalità mehtiega, kien ghalhekk li saret offerta sabiex jittiehed lura l-fuel. Il-procedura ta' *debunkering* ma setghatx issir minhabba l-maltemp u l-bastiment ried jitlaq. Jikkonferma li Cassar Fuels ghal bidu ma kellhiex problema li l-hatt tal-fuel isir barra minn Malta u jissemew tlett portijiet – Barcellona, Las Palmas u Giblta – Barcellona izda ma setax isir ghaliex ma kellhiex bizzejjed zmien biex taghmel l-arrangamenti mat-terzi li kienu ser jaghmlu d-*debunkering* f'isimha. Jghid li Alpha Trading riedet tqabbad l-operaturi li riedet hi sabiex isir dan ix-xoghol, fosthom CEPSA gewwa Barcellona, xi haga li ma kinitx accettata mis-socjetà attrici ghaliex riedet tqabbad kummercjanti taghmel din il-procedura f'isimha. Meta mistoqsi dwar x'ried ifisser meta x-xhud fix-xhieda tieghu qal li kien hemm min hu interessat jixtri l-fuel fil-portijiet imsemmija, huwa kjarifika li b'interess ried ifisser bhala "*promising buyers li setghu jixtruh, imma mhux ghax kien hemm, ghadha ma gietx diskuss il-prezz, jew kif, jew meta gej il-vapur*"¹³. Fir-rigward tar-rizultati tal-kampjun, ix-xhud jaghmel distinzjoni bejn ir-rapport u l-*claim* li waslet ghandhom – jghid li filwaqt ir-rapport "jista' jghid hafna affarijiet. Jigifieri ghax hu jidhol anke fl-elementi tal-prodott innifsu, imbaghad inti tghid jien qed nikklemja fuq l-ilma. Dak huwa the official claim."¹⁴ Jinsisti li Cassar Fuels ma kinitx prezenti meta sar l-analizi fuq il-kampjun mehud mill-bastiment u xi haga li saret minghajr il-kunsens tal-kumpanija attrici.

Rega' gie mressaq Darren Marmara sabiex jixhed in kontro-ezami fil-25 t'April 2019. Jghid li b'referenza ghall-korrispondenza li huwa kellhu jipproduci jghid li huwa

¹³ Pagna 460 tal-process.

¹⁴ Pagna 464 tal-process.

m'ghadux jahdem bhala CEO ta' Cassar Fuels u dan mit-30 t'Ottubru 2017. Ix-xhud ghall-hafna mistoqsijiet li sarulu ma kienx f'posizzjoni li jirrispondi ghaliex ma jiftakarx id-dettalji. Jikkonferma li minn 400 tunnellata gew imnaqqsa 49 tunnellata li kien ekwivalenti ghall-allegat ilma li kien gie fornut mal-fuel.

Xehdet **Sarah Cassar**, *sales representative*, permezz t'affidavit ipprezentat fil-15 ta' Jannar 2014. Hija tibda billi tirreferi ghal dak li intqal minn Darren Marmara fl-affidavit tieghu fejn jikkoncerna lilha u tikkonferma dak li intqal kif ukoll il-fatti. Spjegat li wara li sar l-ilment li l-fuel kellu kwantità t'ilma, is-socjetà attrici accettat li taghmel *debunkering* tal-fuel ikkontaminat u *rebunkering* bi fuel iehor u dan sabiex l-imsemmija socjetà tithallas. Sarah Cassar, l-istess bhal Darren Marmara, halfet li "Alpha Trading kienet qablet li d-*debunkering* isir Malta, fil-perjodu li l-bastiment in kwistjoni kien ghadu Malta, u fuq kollox kienu qablu li d-*debunkering* tiehu hsiebu Cassar Fuels."¹⁵ Inghad mix-xhud li *debunkering* ma setax isir fil-perjodu li l-bastiment kien ghadu Malta u dan minhabba l-maltemp. Kien ghalhekk li l-hatt tal-fuel ma kienx sar u l-bastiment beda l-vjagg tieghu lejn Barcellona. Tispjega li d-diskussjonijiet komplew nonostante li l-vapur kien fir-rota tieghu lejn il-pajjiz li jmiss. Tinsisti li kien hemm ftehim li *debunkering* u l-*bunkering* kellu jsir minn Cassar Fuels "anke ghaliex Cassar Fuels ma kienetx ghadha thallset ghall-fuel oil li fil-fatt kienet issuppliet u l-intendiment kien li fil-fatt tithallas meta terga' tissupplixxi l-bastiment b'fuel oil iehor filwaqt li tiehu lura l-fuel oil li kienet issuppliet originarjament"¹⁶. Tghid li huma kienu ser jikkunsidraw li jaghmlu tajjeb ghall-ispejjez li l-bastiment setgha jinkorri sabiex jigi Malta. Spjegat li ghalkemm kien hemm il-possibilità li l-hatt tal-fuel isir Las Palmas, però qatt ma kien hemm ftehim f'dak is-sens. Tghid li Cassar Fuels ma kintix obbligata li tiehu lura l-fuel allegatament hazin izda l-imsemmija kumpanija kienet lesta li taghmel hekk. Tikkonferma li Cassar Fuels kienet ikkomunikat direttament mal-operaturi tal-bastiment bl-iskop li *debunkering* isir Malta u dan kif kellha dritt tinsisti l-kumpanija attrici taht l-artikolu 2.3 tat-termini u kundizzjonijiet. Tghid li "jidher li kien intlahaq ftehim fis-sens li meta l-bastiment kellu jkun Malta jew vicin Malta, dik l-operazzjoni

¹⁵ Pagna 273 tal-process.

¹⁶ *ibid.*

ssir Malta.”¹⁷ Tikkonkludi l-affidavit taghha billi tghid li Alpha Trading tat struzzjonijiet lill-bastiment sabiex jiddisponi bil-fuel gewwa Gibiltà bhala *sludge*.

In kontro-ezami mizmum fil-21 ta' Gunju 2018, Sarah Cassar ikkonfermat li huma rcevev ordni ghal *bunkers* minn ghand Alpha Trading.. Tikkonferma wkoll li dwar dan il-*bunkering* l-unika kuntratt kien ma' Alpha Trading SpA u ma' l-ebda socjetà ohra. Tghid li huma saru jafu b'North Sea Group wara li intbaghtet l-ordni u qabel wasal il-bastiment Malta; Cassar Fuel Ltd qatt ma kellha kuntatt ma' North Sea Group jew mas-sidien jew *charterers*.

Fil-11 ta' Gunju 2019 sar it-tieni kontro-ezami ta' Sarah Cassar u tikkonferma li l-ilment kien gej minn ghand Alpha Trading fuq informazzjoni li kienet giet moghtija lilha minn Ace Tankers, li l-fuel kellu fih ammont ta' ilma. Terga' tikkonferma li Cassar Fuels kienet qieghda tikkonsidra li jsir *debunkering* gewwa Barcellona, Las Palmas jew Gibiltà, izda din kienet biss possibilità. Tghid li kienu insistew li d-*debunkering* isir Malta peress li huma stabbiliti Malta u kien ikun aktar facli li d-*debunkering* isir hawn. Tghid ukoll li l-fuel kien ghadu proprjetà tas-socjetà attrici peress li kien ghadu ma sarx hlas tieghu u ghalhekk ma setghax jiddisponi minnu. Tghid ukoll li kien sar qbil ma' Alpha Trading li l-bastiment ghandu jingieb Malta sabiex isir *debunkering* però tghid li hija m'ghandha l-ebda korrisondenza f'dan is-sens u lanqas ma setghet tipprovdi data specifika. Ma tiftakarx anqas ma' min kien sar il-ftehim hawn imsemmi. Tikkjarifika li meta qalet li s-socjetà Cassar Fuel kienet lesta li taghmel tajjeb ghall-ispejjez, kienet qieghda tirreferi ghal charges tad-*debunkering*, Agency fee u *anchorage fee* ghad-*debunkering*, cioe cirka ta' elf ewro (€1000). Tghid li din l-informazzjoni qatt ma inghatat lil Alpha Trading ghaliex ir-rapprezentat taghha, Gargiulo, beda jwebbes rasu. Meta gie ssuggeriet lilha li Alpha Trading u North Sea Group kienu ghamlu xi proposti kif setghu jghinu lil Cassar Fuels jaghmlu *debunkering* barra minn Malta hija tghid li ma tiftakarx. In ri-ezami saret referenza ghall-korrisondenza esebita man-nota ta' Cassar Fuels (minghajr ma gie precizat ghal liema korrisondenza qieghda ssir referenza), tikkonferma li dak kien il-ftehim li kien sar ma' Alpha Trading.

¹⁷ Pagna 274 tal-process.

Waqt is-seduta tas-16 ta' Jannar 2014 xehed **Roderick Camilleri**, impjegat mal-kumpanija Dimar, l-agenti “responsabbli ghas-supply ta’ dan il-vapur [b’referenza ghal MT Blus Rose]”¹⁸ u cioe mill-mument li dahal il-bastiment Malta sa x’hin gie fornut u hareg mit-territorju Malti. Il-prassi hija li meta jkun hemm ilment min-naha tal-bastiment l-agenzija Dimar tkun informata bil-problema u “nghaddu dan il-complain, niccekkjaw mal-laboratorju, niccekkjaw mas-supplier u naraw ezatt x’naqas, x’setgha gara, u naraw x’nistghu naghmlu biex iz-zewg partijiet ikunu kuntenti”¹⁹, però fil-kaz odjern Dimar ma kinitx informata dwar xi problema min-naha ta’ Alpha Trading SpA. In kontro-ezami qal li huma gew appuntati minn Cassar Fuel bi ftehim bejn Cassar Fuel u s-sidien koncernati.

Is-socjetà Cassar Fuels Ltd ipprezentat affidavit tal-**Avukat Matthew Brincat**, l-avukat li kien qieghed jassisti l-istess socjetà attrici fil-kwistjoni tal-kaz odjern, precizament mill-mument meta s-socjetà konvenuta iddecidiet minn rajha tiddisponi mill-fuel. Hawn ukoll Dr. Brincat jghid li d-*debunkering* kellu jsir Malta sakemm il-bastiment kien ghadu Malta “u fuq kollox kienu qablu li d-*debunkering* tiehu hsiebu Cassar Fuels”²⁰, izda minhabba l-maltemp dan ma setax isir. Il-bastiment halla Malta lejn Barcellona, u bhal ma inghad minn Darren Marmara u Sarah Cassar, kien hemm ftehim li d-*debunkering* kellu jsir minn Cassar Fuels u dan anke ghaliex ma kinitx thallset ghal fuel li ssuppliet u l-hsieb kien li tithallas meta terga’ tissupplixxi l-bastiment bil-fuel. Ix-xhud jghid li Cassar Fuels ikkomunikat direttament mal-operaturi tal-bastiment bl-iskop li d-*debunkering* u l-*bunkering* isir Malta u dan kif kellha kull dritt tinsisti fuqu Cassar Fuels skont l-artikolu 2.3 tat-termini u kundizzjonijiet. Skontu, jidher li kien intlahaq ftehim li meta l-bastiment ikun Malta jew vicin Malta, l-operazzjoni hawn imsemmija kellha ssir Malta. Jispjega li Alpha Trading iddecidiet li l-fuel ghandu jitnehha meta l-istess fuel kien ghadu proprjetà ta’ Cassar Fuels u meta l-partijiet kienu ftehm li Cassar Fuels kellha terga tiehu lura l-imsemmi fuel. Jikkonferma li l-unika ilment kien dwar l-ammont ta’ ilma fil-fuel. Dwar dan il-punt, Dr Brincat jghid li Cassar Fuels ma kinitx obligata taccetta r-rizultat tal-kampjun li nzamm mill-bastiment li kien qieghed jindika li l-fuel kellu fitit anqas minn 13% ilma, izda sabiex takkomoda lill-klijenti taghha accettat ir-rizultat u

¹⁸ Pagna 279 tal-process.

¹⁹ Pagna 280 tal-process.

²⁰ Pagna 285 tal-process.

qablet li terga tissupplixxi fuel gdid wara li tkun hattet dak li fuqu qieghed isir l-ilment. Dr. Brincat, l-istess bhal Darren Marmara, jghid li Alpha Trading SpA hija responsabbli ghall-hlas tal-fuel apparti l-fatt ukoll li cahdet “lil Cassar Fuels milli jzommu l-istess fuel oil kif kellha d-dritt taghmel mhux biss minhabba l-ftehim li kien intlahaq wara li fl-istess fuel oil instab kontenut ta’ ilma izda wkoll legalment fis-sens li meta xerrej jallega li l-prodott li jkun xtara jkun difettuz qabel xejn ma jistax juzah u fuq kollox irid jaghti lill-bejjiegh il-possibilita li jiehu lura l-istess prodott”²¹. B’dan l-atteggjament, Cassar Fuels ma tistax taghmel uzu kif trid mill-fuel li ssuppliet u li ghalih ma thallsitx.

Min-naha taghhom is-socjeta konvenuta bdiet billi resqet l-affidavit ta’ **Giampaolo Gargiulo**, rapprezentant tal-istess socjeta. Il-kariga tieghu mal-kumpanija hija ta’ *manager*. Beda billi jispjega li Alpha Trading hija kumpanija li tinnegozja fil-fuel ghall-bastimenti billi tixtri fuel minn fornitur fiziku f’isimha stess u tbieghhom, xi daqqiet permezz ta’ sensara, lis-sidien u l-kerrejja tal-bastimenti. Alpha Trading m’ghandha l-ebda kontroll fuq l-itinerarju ta’ bastiment u lanqas m’hija involuta fil-gestjoni u kontroll tal-bastiment. Spega li fil-kaz odjern, is-socjeta konvenuta ghamlet kuntatt mas-socjeta attrici sabiex tixtri 400 tunnellata fuel biex jigi pprovdut lill-bastiment MT Blue Rose barra mill-Port. Il-kunsinna saret fl-20 t’Ottubru 2011 kif kien mifthiem. Sebat ijiem wara u cioe fis-27 t’Ottubru 2011, Viswalab, il-laboratorju maghzul mis-sid tal-bastiment, informa lill-operaturi tal-bastiment, Bernhard Shulte Shipmangement, li l-fuel kien fih kontenut gholi ta’ ilma u sabiex dan ma jintuzax fil-kundizzjoni li kien. Gie stipulat mil-laboratorju li l-kontenut gholi tal-ilma seta’ effettwa r-rizultat kollu. Jghid li gie nnutat li l-livell ta’ kalkju fil-fuel kien gholi. Dan ir-rapport gie mghoddi lis-sidien tal-bastiment, Ace Tankers mis-supretendent tekniku bis-segwenti messagg:

- a. *“High water content -12.29% by volume (0.50 max)*
- b. *Total sediments over the Limited – 0.20% by mass (0.10 max)*
- c. *Ash content 0.240% by mass (max 0.150)*
- d. *High sodium content 651 ppm – sea water in the fuel.*

²¹ Pagna 286 tal-process.

*Pls note, we have to consider to offload this bunker because even after removing the water burning of the fuel of such quality will create lots of problems and will unable to the ship*²².

Fis-27 t'Ottubru 2011 stess is-sidien ghaddeu dan il-messagg lin-negozjant North Sea Group, cioe il-kumpanija li min ghandha s-socjetà intimata hadet l-ordni biex tforni l-bastiment bi fuel, u zammewhom responsabbli ghad-danni li setgha jigi kkawzat mill-uzu tal-istess fuel. Dan il-messagg gie mghoddi lis-socjetà Alpha Trading li sussegwentement dak inhar stess ukoll ghadietu lil Cassar Fuels, specifikament lil Sarah Cassar. Wara hafna skambji gie miftiehem li jsiru testijiet fuq il-kampjun li kellha s-socjetà attrici u l-kampjun li kien mizmum mill-bastiment, liema kampjuni ittiehdu waqt il-*bunkering*. L-analizi sar minn Inspectorate Malta. Fit-28 t'Ottubru 2011 inhargu r-rizultati, fejn filwaqt li l-kampjun li kellha s-socjetà attrici kien ikkunsidrat *on-spec*, il-kampjun fil-pussess tal-bastiment kien ikkunsidrat *off-spec*. Ix-xhud jghid li fit-28 t'Ottubru, Cassar Fuels ipproponiet li tixtri l-fuel lura u talbu lis-socjetà konvenuta taghtihom l-ahjar offerta. Spjega li din l-offerta ma giet meqjusa accettabbli, izda gie propost li jinhatt il-fuel u tinghata provista gdida. Din il-proposta giet accettata minn Cassar Fuels. Din il-procedura ma setghatx is-sehh dak il-hin minhabba l-maltemp u kien ghalhekk li qablu li jergghu jikkomunikaw it-Tnejn. Is-sidien tal-bastiment baghtu korrispondenza elettronika lil Cassar Fuels u lil Alpha Trading SpA jinfurmawhom li *“delaying the off loading till next week Monday is causing too much delay to our vessel and unacceptable distortion to her future loading schedule. Please see what can be done to have the operation scheduled today (Saturday) or latest Sunday. Awaiting yours ref revised planning”*. Fid-29 ta' Ottubru 2011 is-socjetà konvenuta giet infurmata li t-taghbija kellha tkun lesta sa wara nofsinhar u li l-bastiment *“to shift to anchorage for soonest (de) bunkering operations”*. It-Tnejn, 30 t'Ottubru s-socjetà konvenuta giet infurmata minn Cassar Fuels li l-operazzjoni ma setghetx ssir minhabba li l-maltemp kien ghadu qieghed jippersisti. Dak in-nhar ukoll is-socjetà konvenuta giet infurmata mill-bastiment li kienu ser jitolqu minn Malta l-ghada wara nofsinhar inkellha kienu ser jitolqu l-*laycan* fil-port li kien imiss. L-ghada Cassar Fuels baghat korrispondenza elettronika lin-negozjant fejn gie avzat li *“I have proposed to Alpha Trading that vessel will proceed*

²² Pagna 294 tal-process.

to next port in order to keep her laycan, and then come back to Malta for debunker/rebunker” izda s-sidien oggezzjonaw u qalulhom li din hija *“no-go as the vessel will discharge in West Africa”*. Xhud spjega hekk *“Fil-31 ta’ Ottubru Cassar Fuels ipproporna li jhott il-karburant ghall-bastimenti “in the following ports BCN/Gibraltar / or Las Palmas” u ddikjara “our supplier requires in which berth or terminal above mentioned vessel will do cargo operations. Presently without commitments to be likely in Las Palmas”*. Is-sidien ikkonfermaw li Barcellona kienet accettabbli ghalihom u ntbaghat messagg lil Cassar Fuels biex jikkonfermaw Barcellona. Cassar Fuels irrisponda lura jghid *“Barcelona is a no go, as it is quite prompt. Other option is in Las Palmas. Pls advice”*. Barra minn hekk, Cassar Fuels avza wkoll *“We will do all arrangements for the debunker, please keep CEPSA out”*. [...] F’dan l-istadju l-ftehim ma’ Alpha Trading kien li l-hatt tal-karburant ghall-bastimenti jsir f’port konvenjenti barra minn Malta”.²³ Jishaq li mhux minnu li kien hemm ftehim li l-fuel kellu jinhatt minn Cassar Fuels meta l-bastiment ikun vicin jew gewwa Malta u dan ghaliex is-sidien baghtu korrispondenza elettronika lil Cassar Fuels kif ukoll lis-socjetà konvenuta fit-30 ta’ Novembru jinfurmawhom li l-bastiment kien jinstab gewwa l-Punent tal-Afrika u li ma kien hemm l-ebda vjaggi ohra ppjanati u l-istruzzjonijiet li inghataw kien li l-bastiment ghandu jmur Gibiltà, jghaddi minn Las Palmas, sakemm jinghataw ordnijiet godda. Din il-korrispondenza tghid ukoll li m’huwiex maghruf f’dak l-istadju jekk il-bastiment ikunx ser ikun vicin Malta jew fil-Mediterran. Ikompli jghid li sadanittant, Alpha Trading ma rceviet l-ebda struzzjonijiet minn Cassar Fuels kien ghalhekk li fit-2 ta’ Dicembru, Alpha Trading talbet lis-socjetà attrici konferma jekk tistax tagixxi f’isimhom biex jinhatt il-fuel tal-bastiment. Jghid li Cassar Fuels irrispondiet li *“we hereby confirm that we are responsible for the de-bunkering at Malta”*, huwa ghalhekk li b’dan il-messagg Cassar Fuels irrevokat unilateralment l-istruzzjonijiet precedenti li l-bastiment jista’ jinhatt f’port barra minn Malta. Jghid li a kuntrarju ta’ dak li inghad minn Sarah Cassar meta tenniet li Cassar Fuels kienet lesta tikkunsidra taghmel tajjeb ghall-ispejjez li l-bastiment jidhol fihom sabiex jasal Malta, b’referenza ghal korrispondenza elettronika datata 2 ta’ Dicembru spjega li Cassar Fuels qalulhom li kien aktar facli ghalihom li d-*de-bunkering* isir Malta u ddikjaraw li *“we are making it clear that after de-bunkering this case will be closed without any other claims for*

²³ Pagna 295 tal-process.

any damages, demurrages, etc". Xehed li North Sea Group bghatet korrisondenza lil Cassar Fuel jistaqsu ghalfejn m'ghadux possibbli li jkun hemm il-hatt gewwa Las Palmas. Inghataw zewg ghazliet minn North Sea Group: (a) jinhatt il-fuel ghall-bastiment go port li qieghed fit-triq lejn Gibiltà, jew (b) jiddependi l-iskeda tal-bastiment, jigi Malta biex jinhatt il-fuel ghall-bastimenti sakemm Cassar Fuels ikopri l-ispejjez tal-fuel li l-bastiment juza sabiex jigi Malta u jmur lura Gibiltà. Jghid però li l-ebda wahda minn dawn l-ghazliet ma kienu accettabbli mis-socjetà attrici. Fis-6 ta' Dicembru, is-sidien baghtu korrisondenza ohra lis-socjetà Cassar Fuels jinfurmawhom li l-bastiment telaq Lome u li qieghed fi triqtu lejn Gibiltà sabiex jinghata l-ordnijiet izda jista' jieqaf Las Palmas sabiex isir il-hatt. Cassar Fuels izda baqghu jinsistu li *debunkering* ghandu jsir Malta. Fid-9 ta' Dicembru intbaghat *email* iehor lil Cassar Fuels jinfurmawhom li m'huwiex vijabbli fi zmien daqsek qasir li l-hatt tal-fuel isir Malta, apparti l-fatt ukoll li 400 tunnellata ta' fuel ta' kwalità inferjuri qieghed ifixkel l-ippjanar effettiv tal-provvista ghall-futur qarib. Gargiulo jinsisti li ghalhekk qatt ma kien hemm ftehim li l-bastiment jingib vicin Malta sabiex jitnehha l-fuel hazin. Li gara huwa li l-fuel inhatt gewwa [Gibiltà]²⁴ bhala *sludge* (hama), liema arrangement sabiex dan ikun possibbli sar minn Alpha Trading fuq struzzjonijiet li inghataw mis-sidien, u dan sar ghal prezz ta' \$80 kull tunnellata. Jghid li Cassar Fuels bghatet fattura bi skont ta' 13% tas-somma li originarjament inghatat u b'dan ghalhekk hemm ammissjoni min-naha tas-socjetà attrici li l-fuel kien *off-specs*. Il-fattura ma gietx accettata mis-socjetà Alpha Trading minhabba li l-fuel ma setghax jintuza mill-bastiment minghajr ma ssir hsara. Jghid ukoll li l-ilment ma kienx biss fuq l-ilma li instab fil-fuel izda wkoll fir-rigward tal-elementi l-ohra kollha u mhux biss fuq l-ilma kif qeghdin jipprovaw jaghtu x'jifhmu Darren Marmara u Dr. Matthew Brincat.

Sar kontro-ezami tax-xhud Giampaolo Gargiulo fl-24 ta' Settembru 2019. Jghid li safejn jaf hu ma kien hemm l-ebda relazzjoni kuntrattwali bejn Cassar Fuel u Ace Tankers fuq din it-transazzjoni partikolari. Ix-xhud jikkonferma li kien hemm qbil bejn il-partijiet kollha, inkluz Cassar Fuels, li kien ser jiehu l-fuel lura. Jikkonferma wkoll li "*the weather was not comfortable to effect the debunkering*"²⁵. Jghid ukoll li

²⁴ Din l-informazzjoni giet korretta permezz ta' korrisondenza elettronika mibghuta minn Giampaolo Gargiulo lil Avukat tieghu Dr. Larry Gauci datat 15 t'Ottubru 2019 – pagna 741 tal-process.

²⁵ Pagna 735 tal-process.

Cassar Fuel kienu informati li l-fuel kien ser jitnehha bhala *sludge* ferm qabel fil-fatt gie hekk dispost. Ix-xhud jghid li safejn jaf hu, Alpha Trading ma kinitx involuta fil-bejgh tal-fuel bhala *sludge*. Jispjega li l-purifikazzjoni tal-fuel qatt ma giet proposta u dan il-karburant gie mormi peress li apparti livell gholi ta' ilma, kellhu wkoll elementi ohra li kienu jmorru oltre l-massimu issuggeriet.

Permezz ta' affidavit xehed ukoll **Lorenzo Buffoni**, impjegat tas-socjetà konvenuta bhala *bunker trader*. Jikkonferma li l-kumpanija giet mitluba minn NSG Overseas Ltd c/o North Sea Group fuq il-possibilità li l-bastiment tagghom bl-isem MT Blue Rose jigi suppliet bi fuel. Fuq dawn l-istruzzjonijiet, fl-14 t'Ottubru is-socjetà konvenuta dahlet fi ftehim mas-socjetà attrici ghal bejgh ta' 400 tunnellata fuel bi prezz ta' \$665 kull tunnellata. Dak inhar ukoll is-socjetà konvenuta dahlet fi ftehim ma' NSG Overseas Ltd ghal bejgh ta' 400 tunnellata fuel bi prezz ta' \$671 kull tunnellata. Il-fuel gie suppliet direttament minn Cassar Fuels ghal bastiment MT Blue Rose. Fis-27 t'Ottubru Alpha Trading giet informata minn NSG Overseas Ltd bir-izultat tat-test li sar fuq il-kampjun tal-fuel li gie suppliet minn Cassar Fuels. Minn dawn it-testijiet irrizulta li l-fuel kien *off-spec*. Jghid li fis-27 t'Ottubru, Ciampaoli Gargiulo ha f'idejh dawn in-negozjati. Xhed li *“after Cassar Fuels Limited had unilaterally and abusively withdrawn from the agreement reached by and between all the parties involved, including Ace Tankers CV, to debunker the off-spec bunkers onboard the MT Blue Rose in a port outside Malta, on the 9th December 2011 we had received instructions from NSG Overseas Ltd and Ace Tankers CV to arrange for the debunkering of the off-spec bunkers in Gibraltar and to supply the vessel with fresh bunkers”*²⁶. Jghid li fil-fatt hekk huma ghamlu u dan sabiex jinhellsu minn kwalunkwe responsabbiltà. Jixhed ukoll li fl-10 ta' Jannar 2012, Cassar Fuels baghat fattura bis-somma ta' \$32,691.40 imnaqqsa mis-somma miftiehema, rapprezentanti 13% ilma li kien jinstab fil-fuel; min-naha tas-socjetà konvenuta izda oggezzjonat li thallas stante li l-fuel kien *off-spec*. Jikkonkludi billi jghid li s-socjetà Alpha Trading SpA qatt ma rceviet flus minn ghand NSG Overseas Ltd.

Kontro-ezami lix-xhud Lorenzo Buffoni sar fl-24 ta' Settembru 2019 fejn jikkonferma li apparti l-ordni ta' 400 tunnellata fuel, ma kien hemm l-ebda kuntratti

²⁶ Pagna 404A tal-process.

ohra. Gie mistoqsi wkoll jekk fl-arrangement *back-to-back* cioe il-ftehim bejn Cassar Fuels Ltd u Alpha Trading u bejn Alpha Trading ma' North Sea Group, kienx hemm it-termini u kundizzjonijiet miftehma bil-miktub ma' Cassar Fuels riflissi fil-ftehim ma' North Sea Group ix-xhud jghid li “*we applied our terms and conditions with NSG*”²⁷. Jghid li huwa ma jafx b'xi kundizzjoni li hija prerogattiva ta' Cassar Fuels li taghmel id-*debunkering*.

Xehed **Henricus sive Henk Turenhout** permezz tar-Regolament tal-Kunsill (KE) Nru 1206/2001 dwar kooperazzjoni bejn il-qradi ta' l-Istati Membri fil-kumpilazzjoni ta' xhieda f'materji civili jew kummercjali. Is-Sur Turenhout huwa maniger mal-kumpanija ACE Tankers cioe il-kumpanija li kienet il-maniger kummercjali tal-bastiment MT Blue Rose. Jispjega li l-maniger tekniku kienet kumpanija Ciprijotta bl-isem ta' Bernhard Shulte Shipmanagement li bdiet b'dan l-inkarigu f'Ottubru 2011. Kienet il-kumpanija ACE Tankers li ordnat il-fuel, u koordinat mal-kaptan tal-bastiment sabiex issir il-kunsinna. L-ordni saret permezz ta' kumpanija North Sea Group, li sussegwentament ghamlu ordni m'ghand Alpha Trading. Alpha Trading imbaghad xtrat il-fuel minn ghand Cassar Fuels. Jispega li l-kuntratt taghhom kien mal-kumpanija North Sea Group. Jghid ukoll li huma ma kienux jafu bin-negozju li sar minn North Sea Group. Turenhout spjega li hija Prattika komuni li jittiehed kampjun waqt il-*bunkering*, liema kampjun jintbaghat il-laboratorju li jahdem ghalihom. Fil-fatt dak li gara hawn ukoll, fejn ittiehed kampjun, saru analizi fuqu mil-laboratorju bl-isem Viswa ibbazat gewwa Houston, Texas, u rrizulta li l-fuel li gie suppliet bih il-bastiment Blue Rose ma' kienx ta' kwalità rikjesta, u dan stante li fost ohrajn, il-fuel kellu hafna ilma. NSG giet informata b'dan. Jassumi li NSG ghaddiet l-informazzjoni lil Alpha Trading li sussegwentament giet mghoddija lil Cassar Fuels. Kampjuni ohra ittiehdu fejn wiehed minn dawn il-kampjuni inzamm mis-socjeta' Cassar Fuels. Testijiet saru wkoll fuq dak il-kampjun kif ukoll fuq il-kampjun li kellu fil-pussess tieghu l-kaptan tal-bastiment. L-analizi sar gewwa laboratorju Malta u kien hemm prezenti rapprezentat minn ACE Tankers kif ukoll rapprezentat tas-socjeta' Cassar Fuels. Jghid li l-kampjun li kien fil-pussess ta' Cassar Fuels kien meqjus bhala l-kampjun li r-rizultat tieghu biss ghandu jigi meqjus bhala wiehed tajjeb. Mill-analizi li sar fuq dan l-ahhar kampjun, ir-rizultat kien wiehed kontradittorju ghal dak li sar

²⁷ Pagna 738 tal-process.

mis-socjetà ACE Tankers. Jghid ukoll li r-rizultat tal-kampjun li kien fil-pussess tal-Kaptan kienu jaqblu ma' dawk li saru minn ACE Tankers. Jghid li wara dan ir-rizultat, kien hemm hafna diskussjonijiet bejn il-partijiet u eventwalment, Cassar Fuel Ltd ammettiet li l-fuel ma kienx tal-kwalità mehtiega. Il-karburant kellu ghalhekk jinhatt b'urgenza minhabba d-destinazzjoni li kien imissu jmur izda l-maltemp ma ppermettiet li dan isir. Jghid li *"it was agreed among all the parties involved (ACE-Tankers, NSG and Cassar) that the bunkers would be taken off the ship elsewhere at a later time"*²⁸. Iktar il-quddiem fix-xhieda tieghu jikkjarifika li l-ftehim ma kienx direttament ma' Cassar Fuels izda bejn ACE Tankers u NSG, izda *"it was made clear to us that Cassar had also agreed to this. We were copied in all the communication between Alpha Trading and Cassar"*²⁹. Il-bastiment mar Barcellona sabiex jghabbi taghbija ohra u bahhar lejn il-Punent tal-Africa sabiex ihott. Peress li l-bastiment kien ser jghaddi minn Las Palmas, *"the parties concerned agreed to offload the bunkers there"*³⁰. Gara izda li f'dak il-mument Cassar ma riedx aktar li l-hatt tal-fuel isir Las Palmas kif kien miftiehem precedentement izda riedet li dan isir Malta. Peress li kellu jsir il-hatt gewwa l-Afrika, il-bastiment kellu jkompli r-rota tieghu minghajr dewmien. Jixhed li *"the idea then was to stop in Las Palmas for offloading on the way back. There was a discussion on whether or not Cassar would pay the extra costs of the detour from the ship via Malta in order to offload there, but Cassar did not want that. Ace-Tankers, NSG and Alpha Trading then agreed that the bunkers would be offloaded in Gibraltar and new bunkers would be supplied at the same time"*³¹ fejn l-arrangamenti saru minn Alpha Trading. Il-fuel kif kien ma setax jintuza altrimenti kien jikkawza hsara lil magna. Xhed li bejn Ottubru u Dicembru 2011 il-bastiment Blue Rose ma kienx vicin Malta izda huwa possibbli li wara Gibiltà, jista' jkun li irritorna fil-Mediterran izda x-xhud jghid li m'huwiex cert dwar dan. Ghal mistoqsija maghmula mis-socjetà attrici jekk kienx konxju li Cassar Fuels u Alpha Trading kienu qablu li l-hatt ghandu jsir minn Cassar Fuels stess, ix-xhud jghid li huwa ma kienx jaf b'dan. Jghid li l-ftehim taghhom kien ma' NSG biss; NSG informathom ukoll li l-hatt tal-fuel ser isir gewwa Gibiltà u li hemmek ser jircievu fuel gdid. Jghid li huwa ma jafx min ta l-ordni li l-fuel ghandu jitnehha bhala *sludge* u lanqas jaf x'gara minn dak

²⁸ Pagna 427 tal-process.

²⁹ Pagna 428 tal-process.

³⁰ Pagna 427 tal-process.

³¹ Pagna 428 tal-process.

il-fuel wara li nhatt gewwa Gibiltà. Jghid ukoll li huwa ma kienx jaf li Cassar Fuels kellha dritt li tiehu hsieb il-hatt tal-fuel hi stess; ghalkemm jimmagina li Cassar Fuels ghandha dak id-dritt, huwa ma jaf xejn dwar dan. Ix-xhud qal li ma jafx jekk Cassar Fuel irrinunzjax o meno ghal dak l-imsemmi dritt. Lanqas ma jista' jikkonferma jekk Cassar Fuels irrinunzjatx ghat-talba li ssir il-hlas u dan ghaliex ACE Tankers ma kellha l-ebda relazzjoni kuntrattwali ma' Cassar Fuels.

Wara li gie kjamat in kawza il-bastiment Blue Rose, Henk Turenhout ipprezenta affidavit bhala r-rapprezentant ta' ACE Tankers. Jispjega li huma *operations manager* mal-imsemmija kumpanija. Lura f' Settembru tal-2011 Blue Rose gie mikri (*chartered*) lil Ace Tankers CV m'ghand is-sidien Pantera Marine Company of Trust Company Complex, kien ghalhekk li kienet ir-responsabbiltà ta' ACE Tankers sabiex isiru arrangamenti sabiex il-bastiment jigi suppliet bi fuel. Fl-14 t'Ottubru 2011, Ace Tankers ghamlet arrangamenti ma' NSG Overseas Limited sabiex jixtru 400 tunnellata fuel u liema kellu jkun suppliet lil bastiment waqt il-waqfa gewwa Malta fid-19 t'Ottubru 2011. Jghid li nonostante li NSG Overseas Limited hija identifikata bhala l-venditur tal-fuel, sussegwentement saru jafu li NSG Overseas Limited ma kinux issupplixxew huma l-fuel izda ghamlu ordni ghall-istess fuel ma' Alpha Trading SpA. Minghajr l-gharfien taghhom, Alpha Trading SpA kkuntrattaw ma' Cassar Fuel Limited li ssuppliet il-fuel il-bastiment. Jinsisti li "*at the time of purchasing the bunkers, Ace Tankers CV was not aware of this chain of events and as far as it was aware, it had only contracted with NSG Overseas Limited to supply the bunkers. Ace Tankers CV only had a contractual relationship with NSG Overseas Ltd.*"³² Il-fuel gie suppliet fl-20 t'Ottubru 2011. Jispjega li bhal mhi il-prattika fil-qasam marittimu, waqt il-*bunkering* tal-fuel, ittiehed kampjun ghal analizi minn laboratorju mqabbad mis-sidien tal-bastiment, permezz tal-manigers teknici, sabiex jigi investigat jekk il-kwalità hijiex dik misthoqqa. Dan il-kampjun ittiehed bil-metodu hekk imsejjah '*drip sample*', kampjun li jingabar matul il-process tal-*bunkering* kollu sabiex ir-rizultat ahhari jkun rapprezentattivi tal-fuel kollu. Hekk kif dan il-kampjun ingabar dan intbaghat immedjatament fil-laboratorju indikat mis-sidien tal-bastiment cioe Viswalab, Houston Amerika. Wara li t-taghbija kienet kompluta, l-Inginier iffirma dik hekk imsejha Bunker Delivery Note (BDN) fejn permezz taghha hemm qbil dwar

³² Pagna 533 tal-process.

il-kwantità tal-fuel izda ma tisser xejn aktar u ma torborx lil ACE Tankers f'xi forma ta' kuntratt. Ix-xhud jghid li qabel bdiet il-procedura tat-tagħbija tal-fuel, ittiehdu erba' (4) kampjuni mill-barkun li ssupplixxa l-bastiment – tnejn minn dawn il-kampjuni inzammu mill-Inginier tal-bastiment u tnejn l-oħra inzammu mill-barkun ta' Cassar Fuel Ltd. Ix-xhud jghid li din hija prattika komuni u dan sabiex jekk ikun hemm xi disputa dwar il-kwalità tal-fuel, kull parti jkollha l-kampjuni li fuqha jista' jsiru l-analizi mehtiega. Fis-27 t'Ottubru 2011, Ace Tankers gew informati mill-manigers teknici tal-bastiment li l-fuel supplet Malta ma kienx tal-kwalità mistennija u dan peress li kellu kwantità konsiderevoli ta' ilma, "*total sediments, ash content and high sodium content*"³³. NSG Overseas Ltd gew informati b'dawn ir-rizultati u inghataw struzzjonijiet sabiex il-fuel jitnehha minn fuq il-bastiment minghajr dewmien. Dwar lit-testjar tal-kampjuni li inzammu mill-bastiment u mis-socjetà attrici, ix-xhud jghid hekk:

"14. It was agreed with NSG Overseas Ltd that the two samples (presented to the Chief Engineer at the time of bunkering) should be analysed in Malta, where representatives of all parties were invited to witness.

15. The physical suppliers Cassar Fuel Ltd kept on however insisting that their own two (2) samples retained by its bunker barge should be the ones the parties test and these should be binding only. Alpha Trading SpA questioned why Cassar Fuel Ltd was taking this position and why Cassar Fuel didn't want to analyse the other two (2) samples delivered to Chief Engineer of the vessel Blue Rose. Cassar Fuels Ltd kept on insisting that its own retained samples should be analysed only.

16. The different parties involved appointed surveyor/s and kept pushing to persuade Cassar Fuel Ltd to be reasonable and have the Blue Rose samples also analysed. Owners' P&I Club correspondent in Malta, Mssrs H Vassallo Limited, were appointed to assist from the Malta side. Mr. John Bugeja was the case handler and he engaged Mr Arthur Taliana, a Petroleum Surveyor to attend the analysis on behalf of Owners.

³³ Pagna 534 tal-process.

17. *Eventually everyone appeared to have agreed to analyse both sets of samples.*"³⁴

Ir-rizultat ta' dawn il-kampjuni inhareg fit-28 t'Ottubru 2011 fejn ir-rizultat tal-kampjun mizmum mis-socjetà attrici juri li l-fuel huwa ta' kwalità misthoqqa, filwaqt li r-rizultat tal-kampjun mizmum mill-bastiment wera li l-kwalità kienet 'il boghod minn dik misthoqqa. Ix xhud jispjega li fl-ahhar mill-ahhar Cassar Fuel Ltd qablet li l-fuel ma kienx ta' kwalità misthoqqa u ghalhekk kien ser isir il-hatt tieghu gewwa Malta jekk it-temp ikun jippermetti. It-taghbija li l-bastiment kien ghalih Malta kien komplut fid-29 t'Ottubru 2011, kien ghalhekk li l-vapur salpa ghal post sigur sakemm il-kundizzjonijiet tat-temp gew favorevoli sabiex il-procedura tad-*debunkering* u *re-bunkering* setghet issir. Henk Turenhout jghid li fil-31 t'Ottubru 2011, Cassar Fuel Ltd infurmat lil kulhadd li ma kinitx tista' taghmel l-operazzjoni tad-*debunkering* qabel il-bidu tal-gimgha ta' wara minhabba impenji ohra. Jghid li minhabba l-iskeda li kienu fuqha huma, gie deciz li jkun ahjar li l-bastiment jibda l-vjagg tieghu lejn Barcellona "*in order not to miss the cancelling date for arrival under our next contract*"³⁵. Wara hafna korrispondenza, ix-xhud jghid, li l-partijiet kollha qablu li l-hatt tal-fuel kellu jsir Las Palmas fit-23 ta' Novembru 2011. Jghid izda li Cassar Fuel Ltd f'daqqa wahda bdiet tinsisti li d-*debunkering* kellha ssir biss gewwa Malta. Peress li MT Blue Rose ma kienx ser ikun vicin Malta ghax-xhur ta' wara, din ma kinitx ghazla li setghet tigi kkunsidrata. Skont ix-xhud, fid-9 ta' Dicembru 2011, il-partijiet gew informati minn Alpha Trading SpA li d-*debunkering* kienet ser isir gewwa Gibiltà. Fit-12 ta' Dicembru 2011 kien hemm qbil bejn Alpha Trading SpA bhala l-venditur u Ace Tankers bhala x-xerrej li l-bastiment kellu jkun suppliet 400 tunnellata ta' fuel gewwa Gibiltà sabiex jiehu post il-fuel li ma kienx ta' kwalità tajba, liema fuel kien pjanat li jitnehha wkoll gewwa Gibiltà. Ix-xhud jikkonferma li d-*debunkering* sar f'Gibiltà bejn is-16 u s-17 ta' Dicembru 2011.

Fil-15 ta' Jannar 2018 sar il-kontro-ezami ta' Henk Turenhout. Gie kjarifikat li huwa sar jaf bl-involvement ta' Cassar Fuel Ltd fil-mument li saret il-kunsinna tal-fuel. Jikkonferma li d-dokument li ffirmat l-Inginier b'referenza ghal Bunker Delivery Note

³⁴ Pagna 534 tal-process.

³⁵ Pagna 535 tal-process.

hija biss konferma li fuel tghabba fuq il-bastiment. L-inginier jehtieglu jittimbra d-dokument, u l-unika timbru li hemm abbord il-bastiment huwa t-timbru tas-sidien tal-bastiment. Fir-rigward tal-kampjuni, ix-xhud jghid li huwa ma jafx xi jghidu t-termini u kundizzjonijiet ta' Cassar Fuel Ltd u dan ghaliex Ace Tankers ma kinitx parti fil-kuntratt. Dwar jekk kienx hemm ftehim finali fejn id-*debunkering* kellu jsir huwa jghid li l-unika arrangament formali kien bejn Ace Tanker u “*our contractor party and then it was said that the bunker should be delivered in Gibraltar [...] I'm not aware of any final ultimate agreement, that ultimate agreement should not be between Cassar and us.*”³⁶ Jikkonferma li Cassar Fuel qatt ma kien parti fil-ftehim li *debunkering* u *rebunkering* kellu jsir Gibilta. B'referenza ghal meta fl-affidavit tieghu jghid li l-partijiet kollha qablu li l-hatt tal-fuel kellu jsir Las Palmas fit-23 ta' Novembru 2011, waqt il-kontro-ezami jiccara li l-partijiet huma NSG, Alpha Trading u Cassar Fuels.

Xehed ukoll **Panaite Fotache**, Chief Engineer tal-bastiment MT Blue Rose, permezz t'affidavit ipprezentat fit-18 ta' Meju 2017. Jghid li bhala Chief Engineer huwa responabbli mill-magni u makkinarju iehor tal-bastiment hawn imsemmi. Jghid li jiftakar li fl-20 t'Ottubru 2011 gew supplieti b'erba' mitt tunnellata karburant. Jghid li ittiehdu kampjuni tal-fuel maghrufin bhala *drip sample* (cioe mehuda mill-pajp waqt il-process tat-trasferiment u ghalhekk qabel ma jasal fit-tank tal-bastiment) u dan skont il-*policies* interni tal-kumpanija. Dawn il-kampjuni intbaghtu l-laboratorju ghall-analizi. L-arrangamenti sabiex isiru t-testijiet fuq il-kampjuni jsiru mis-sidien permezz tal-manigers teknici tagghom. Fotache jghid li qabel ma beda l-process tat-trasferiment tal-fuel ghal fuq il-bastiment, ittiehdu erba' kampjuni, tnejn inghataw lilu u tnejn ohra inzammu mill-barkun. Jispjega li dan isir sabiex jekk ikun hemm xi ilment dwar il-kwalità tal-fuel, kull parti jkollha zewg kampjuni kull wiehed li fuqhom jista' jsiru testijiet.³⁷ Jghid li huwa informat li mir-rizultat tal-kampjun hareg li l-fuel kien *off-spec*. Il-firma li tinstab fuq il-Bunker Delivery Note hija tieghu u t-timbru huwa tal-bastiment. Bil-firma tieghu huwa jkun qieghed jikkonferma t-tip ta' fuel li bih gie mgħobbi l-bastiment u l-kwantità. Jispjega wkoll li bil-firma huwa qieghed jiehu responsabbiltà tal-kwantità tal-fuel u t-tip. Jghid li “*I am not a director*

³⁶ Pagna 615 tal-process.

³⁷ Il-Qorti tinnota li r-rizultati li huwa pprezenta f'pagna 597 tal-process jindikaw li l-kampjuni ttiehdu l-laboratorju Inspectorate fis-6 ta' Dicembru 2011 u t-testijiet saru bejn is-6 u 7 ta' Dicembru.

*of the registered owner and/or the charterers and therefore I have no capacity or power to bind either of them. I am not empowered nor authorized to contract for and on behalf of any of them. Furthermore, I am not the master of the Vessel and my signature does not even bind the ship, like his would.”*³⁸

Fis-26 ta' Marzu 2018 xehed in kontro-ezami Panaite Fotache. Jikkjarifika li l-policies interni li kien qieghed jirreferri ghalihom huma tal-kumpanija Bernhard Shulte Shipmanagment. Jghid li huwa ma kienx jaf dwar il-fatt li kien ir-rizultat tal-kampjun fil-pussess tal-barkun li huwa applikabbli u mhux dak mehud indipendentement jew mizmum mill-bastiment. Jispjega li meta jiffirma l-BDN huwa jkun qieghed jikkonferma biss il-kwantità u mhux il-kwalità ghaliex dak ma jistax jigi vverifikat dak il-hin. Jikkonferma li l-kwantità tal-fuel kienet tajba. Ix-xhud gie mistoqsi *“whether you are aware that when you were actually signing for the delivery notes you were accepting the terms and conditions of sale of the supplier. Were you aware?”*, ix-xhud irrisponda *“nothing more”*³⁹. Dwar l-erba' kampjuni li tiehdu, in ri-ezami, jghid hekk *“one stays on board, another one is sent to the laboratory, the third sample is kept on board to be used only in case of dispute and the fourth sample I sent to the bunker barge.”*⁴⁰ L-Inginier jghid li meta sar it-tieni analizi, cioe dak li sar Malta, il-kampjun ittiehed mit-tankijiet tal-bastiment – *“in this time, between receiving and the taking of the second sample, some time had passed and the water had settled. When this guy came to take the samples, he drained the water from the tanks before sampling but I cannot say how much water remained. For me, as a chief engineer, the most important is the sample from my manifold. This is the fuel from the manifold taken during the bunkering and is the actual fuel delivered from the barge, without any mixing.”*⁴¹ Dwar jekk MT Blue Rose ghandhiex makkinarju jew facilitajiet sabiex l-ilma jkun jista' jintehha, ix-xhud iwiegeb li iva, jghid li s-surveyor li gie jiehu l-kampjuni battal it-tankijiet mill-ilma izda wiehed battlu aktar mill-iehor. Jispjega li t-tankijiet huma maghmra b'sistema fejn jigu msahhna u l-ilma jevapora, izda din is-sistema ma tistax tintuza meta jkun hemm hafna ilma. Hemm ukoll il-possibilità li jithalla l-fuel joqghod u l-ilma jissepara minn mal-fuel izda dan il-

³⁸ Pagna 587 tal-process.

³⁹ Pagna 645 tal-process.

⁴⁰ Pagna 649 tal-process.

⁴¹ Pagna 652 tal-process.

process jiehu hafna hin. Jghid ukoll li jekk il-fuel b'kontenut gholi ta' ilma jghaddi mis-sistema tal-bastiment, dan jikkawza hsara lis-sistema. Jghid ukoll li l-livell gholi ta' sodium fl-ilma juri li l-ilma kien dak ilma bahar. Jekk dan l-ilma jghaddi mill-makkinarju tal-bastiment, jigi kkawzat hafna problemi teknici. In kontro-ezami ix-xhud jikkonferma li l-ahjar rizultat huwa dak li johrog mill-kampjun mehud mill-pajp waqt li kien qieghed isir it-trasferiment (*manifold*) ghaliex dak huwa strettament il-fuel li gie trasferit.

In segwietu ghal kontro-ezami ta' Henk Turenhout, **Sarah Cassar** ipprezentat affidavit iehor fejn fih tinsisti li “ma kien hemm l-ebda ftehim li d-*debunkering* tal-*fuel oil* in kwistjoni kellu jsir gewwa Las Palmas, anzi kif jikkonferma l-imsemmi Henricus Turenhout fil-paragrafu 24 mill-affidavit tieghu tas-27 ta' Frar 2017, Cassar Fuels Limited kienet qieghda tinsisti li d-*debunkering* isir gewwa Malta u meta eventwalment dak id-*debunkering* sar gewwa Gibiltà, l-ebda ftehim ma kien intlahaq ma' Cassar Fuels Limited, kif jikkonferma wkoll l-istess Henricus Turenhout fil-paragrafu 25 mill-istess affidavit. Fil-fatt, Cassar Fuels Limited kellha kull dritt li tinsisti li d-*debunkering* isir fejn tindika hija li kellu jsir u dana skond l-artikolu 2.3 mill-*General Terms and Conditions* [...]”⁴².

Provi dokumentarji inkluz korrispondenza elettronika

Mar-risposta guramentata giet ipprezentata kopja tal-konferma minn Cassar Fuel Ltd datata 14 t'Ottubru 2011 li maghha kien hemm it-termini u kundizzjonijiet. L-ewwel kundizzjoni hija li l-pagament ghandu jsir fi zmien tletin gurnata mill-konsenja. Jekk dan ma jsirx ghandu jithallas l-imghax bir-rata ta' tmienja fil-mija mill-ghada li l-pagament sar dovut sad-data tal-pagament kollu. Jekk il-hlas ma jsirx, is-socjeta attrici tiriserva d-dritt li taghmel kuntatt mas-sidien tal-bastiment ghall-bilanc jew il-pagament dovut. Ai termini ta' dawn it-termini u kundizzjonijiet, il-kampjuni ghandhom jittiehdu bil-metodu ta' *continuous drip* mill-*manifold*. Ghandha ssir verifika tal-kwantità u li l-kampjuni ghandhom ikunu issigilatti. Rigward il-Bunker Delivery Receipt (BDR) jinghad fil-kundizzjonijiet li “*will be then issued with the agreed verified quantity and together with the samples will be deemed to be the only*

⁴² Pagna 621 tal-process.

proof of quality of product from the loadings.”⁴³ Ikompli jipprovdi li “testing 1 of the suppliers retained sample bottles can be made by any Independent Laboratory at port/place of delivery within 14 days from date of delivery and the result of these tests is deemed to be final and binding by both parties.”⁴⁴

Giet ipprezentata wkoll dik imsejha bhala Bunker Delivery Note (BDN). Kien hemm qbil li fl-20 t'Ottubru 2011 gie trasferit l-ammont ta' 400 tunnellata fuel. Fost il-kundizzjonijiet hemm innizzla wiehed isib il-kundizzjoni li “*all Deliveries are subject to CASSAR FUEL LIMITED GENERAL TERMS & CONDITIONS OF SALE.*”⁴⁵ L-Inginier iffirma dan id-dokument fejn bis-sahha taghha “*I confirm to have taken delivery of the above products, and further confirm they are to be used as marine bunkers only. I also confirm receipt of the samples as indicated below (for Vessel).*”⁴⁶

Is-socjetà Alpha Trading fil-25 t'Ottubru 2012 ipprezentat it-termini u kundizzjonijiet generali tas-socjetà Cassar Fuel. Ta' interess partikolari huwa l-artikolu 2.3 li jissemma mix-xhieda hawn fuq kwotati b'mod ripetut:

“Irrespective of any obligations of the Company [i.e. Cassar Fuel Limited] with respect to the quality and applicable warranties of the Marine Fuel supplied by it in terms of Article 2.1 above, it shall be the duty of the Buyer to take all reasonable actions, including retention and burning of fuel to eliminate or minimise any costs associated with an off-specification or suspected off-specification supply in this respect and for this aim, the Buyer shall extend his fullest cooperation with the Company in the identification and giving effect of the most practical, cost-effective and damage-limiting solution to any relative problem that may from time to time arise. It is specifically agreed and covenanted that in any event the Company's obligations hereunder shall not exceed the direct expenses incurred for removal and replacement of fuel and shall not include any consequential or indirect damages, including without but not limited to demurrage claims, loss of contract

⁴³ Pagna 8 tal-process.

⁴⁴ *ibid.*

⁴⁵ Pagna 9 tal-process.

⁴⁶ *ibid.*

or loss of profit. The Company retains the right to remove or direct the removal and replacement of any such Marine Fuel as may need such replacement and shall not be liable for any direct or other expenses in connection with such removal if such removal is effected by the Buyer without the express consent of the Company.”⁴⁷

Dawn it-termini u kundizzjonijiet jipprovdu wkoll li *“Legal title to the Marine Fuel shall only pass onto Buyer on full payment of the price, and until such full payment the Company shall have the right to recall the product or to indicate its place of delivery; in the event that the product perishes or is destroyed or is lost after delivery without the price having been paid in full, Buyer shall still be responsible towards the Company for the payment of the price or any unpaid portion thereof”⁴⁸.*

Permezz ta’ nota tas-socjetà attrici pprezentata fit-28 ta’ Mejju 2014 gie pprezentat rapport meteorologiku ghal jiem bejn is-27 t’Ottubru 2011 u 8 ta’ Novembru 2011. Fid-29 t’Ottubru tal-imsemmija sena r-rih kien bejn forza 4 u forza 5 u fit-30 t’Ottubru varja bejn forza 5 u forza 6.

Mal-affidavit ta’ Lorenzi Buffoni gie anness il-ftehim li Alpha Trading dahlet ma’ North Sea Group. Fost il-kundizzjonijiet hemm is-segwent

*“- Ship’s Tanks’ samples and figures will not be accepted.
- VPS/DNV/FOBAS/LINTEC samples / findings / analysis will not be accepted, quality to be determined by analysis of the supplier’s sealed reference sample only, drawn on board the barge by barge’s crew, to be carried out at Malta, where delivery took place, by an independent laboratory, whose result to be final and binding. No other sample to be binding / accepted, even if signed by barge’s crew”⁴⁹*

⁴⁷ Pagna 92 tal-process.

⁴⁸ Pagna 93 tal-process.

⁴⁹ Pagna 410 tal-process.

Dawn il-klawzoli flimkien ma' ohrajn jorbtu sakemm ma jigux espressament rigettati bil-miktub mill-kompratur. It-termini u kundizzjonijiet generali tas-socjetà Alpha Trading qatt ma gew ipprezentati.

Giampaolo Gargiulo mal-affidavit tieghu pprezenta fost ohrajn *Debunkering Receipt* data 16 ta' Dicembru 2011 mahruqa minn Vemaoil Company Limited u fejn il-port indikat huwa ta' Gibiltà. Din l-ircevu, ghalkemm m'hijiex cara, il-Qorti tiddeduci s-segweni:

“The undersigned Captain of the M/T “Vemaoil XIV” Zurab Dzvineharadze (?) on 6th (?) of December, 2011⁵⁰ from 14:10 hrs till 23:15 hrs from M/T “Blue Rose” which are under Marshal Island flag, port of registry Majuro and with IMO No 9335915 have received the following grade and quantity of bunkers: RMG380 CST – 386.347 MT (Density at 15° C – 0.9909): The debunkering receipt not given from vessel. Final quantity and quality will be defined after samples analysis of the delivered crude.”⁵¹

Fil-mori tal-kawza il-partijiet ipprezentaw numru konsiderevoli ta' korrisondenza elettronika. Ikun xieraq li dawn jinghataw il-piz mehtiega u ghalhekk din il-Qorti sejra taghmel elenku tal-korrisondenza li intbaghtet u x'jirrizulta mill-istess:

27 t'Ottubru 2011

Cees Kuypers ghas-socjetà Ace Tankers informa lil North Sea Group bir-rizultati tal-analizi tal-kampjuni u ordna li l-fuel kollu li kien abbord ghandu jinhatt.

Giampaolo Gargiulo ghadda lil Sarah Cassar korrisondenza li kienet tinkludi fiha korrisondenza ohra mibghuta minn Mariusz Wickland, ghall-kumpanija Bernhard Shulte Shipmanagement (Cyprus) Ltd. Din il-korrisondenza kienet tikkonsisti fir-rapport mahrug mil-laboratorju wara li saru t-testijiet necessarji fuq il-kampjun mehud waqt il-bunkering. Jghid li *“the bunkers we have purchased is out of spec on*

⁵⁰ Fix-xhieda su-kwotati d-data tad-debunkering giet indikata bhala 16 u 17 ta' Dicembru 2011.

⁵¹ Pagna 350 tal-process.

water.”⁵² L-ordni moghtija mill-persuna teknika kienet li ghandu jinhatt il-fuel. Minn din il-korrispondenza jidher, li l-kumpanija li tiehu hsieb l-immanigjar tekniku tal-bastiment, uriet li jekk ser ikun hemm kontestazzjoni ta’ dan ir-rizultat allura ghandu jigi analizzat ukoll il-kampjun tas-socjeta’ attrici. L-imsemmija ordni inghatat wara li gew meqjusa s-segwenti rizultati:

- a. ***“High water content -12.29% by volume (0.50 max)***
- b. ***Total sediments over the Limited – 0.20% by mass (0.10 max)***
- c. ***Ash content 0.240% by mass (max 0.150)***
- d. ***High sodium content 651 ppm – sea water in the fuel.”***⁵³

In oltre, anness ma’ din il-korrispondenza kien hemm ukoll ir-rapport li inhareg mil-laboratorju Viswalab. Dan ir-rapport jelenka fih ukoll rakkomandazzjonijiet ta’ x’ghandu jsir sabiex jigi mnehhi l-ilma mill-fuel, cioe, *“purifier will not efficiently remove more than 3% water. Settle, drain and purify continuously until all the water is removed”*⁵⁴. Ir-rapport jipprovdi wkoll informazzjoni dwar il-hsarat li jistghu jigu kkawzati mill-kwantita’ gholja ta’ ilma, irmied u l-elementi l-ohra li jinsabu fil-fuel.

28 t’Ottubru 2011

L-analizi fuq il-kampjun mizмум mis-socjeta’ attrici u dak mizмум mill-bastiment sar minn Inspectorate Malta Ltd fit-28 t’Ottubru 2011. Mir-rizultat hareg li filwaqt li l-kampjun li kien fil-pussess tas-socjeta’ attrici kellu livell ta’ ilma ta’ 0.3%, cioe skont l-ispecificazzjonijiet mehtiega, il-kampjun li kien fil-pussess tal-bastiment indika li 18% kien ilma, ferm ‘il boghod mill-ispecificazzjonijiet mehtiega. Dawn ir-rizultati wasslu sabiex ikun hemm skambju bejn Alpha Trading u Cassar Fuel dwar x’ghandu jsir. Gargiulo allega li l-kampjun tas-socjeta’ attrici kien wiehed falz. Talab lil Cassar sabiex jipprocedu immedjatament *“to debunker the product, if you do not immediately we will arrange on our own and all costs and damages resulting from your refusal to do so will be totally at your account.”*⁵⁵ Darren Marmara, CEO tas-socejtà Cassar

⁵² Pagna 124 tal-process.

⁵³ *ibid.*

⁵⁴ Pagna 126 tal-process.

⁵⁵ Pagna 332 tal-process.

Fuel informa lil Gargiulo li “*strictly speaking, we are on the good side since the barge sample, (which according to contract is final and binding), read an on-spec product.*”⁵⁶ Izda jghid li fic-cirkostanzi, Cassar Fuel kienet lesta li tghin xorta u informatu li kienu lesti jixtru l-hazna lura minn ghandhom u talbu jaghtih l-ahjar offerta sabiex jiprocedu.

Is-Sur Gargiulo jinforma lil Marmara li fil-fehma tieghu l-ahjar soluzzjoni hija li jinhatt il-fuel ta' kwalità inferjuri u jerga jitghabba b'karburant gdid ta' kwalità tajba. Darren Marmara qabel ma' din is-soluzzjoni, izda l-unika problema kien it-temp hazin li kien hawn Malta u “*tight Schedule we have*”⁵⁷. Giampaolo Gargiulo jitlob li l-arrangamenti isiru minghajr dewmien. Is-Sur Marmara jirrispondi “*so it seems that problem is solved*” u li ghandhom jergghu jitekellmu t-Tnejn sabiex isiru l-arrangamenti ghall-imsemmija hatt u tghabbija. Ghal din l-ahjar korrispondenza bghatt Henk Turenhout, ghas-socjetà Ace Tankers, fejn informahom li “*off loading till next week Monday is causing too much delay to our vessel and unacceptable distortion of her future loading schedule*”⁵⁸. Kien ghalhekk li talab li l-imsemmija procedura ghandha issir dak inhar stess, is-Sibt jew l-aktar tard il-Hadd. Darren Marmara irrisponda li ser jaghmlu mill-ahjar li jistghu izda m'hemm l-ebda garanzija. Jghidli li l-problema principali huwa t-temp, xi haga li hadd m'ghandu kontroll fuqu.

29 t'Ottubru 2011

Intabghatu diversi *emails* minghand Giampaolo Gargiulo lil Cassar Fuel Ltd, lil Ace Tankers u lil North Sea Group jitolbu ghall-aggornament. Ghal wiehed minn dawn l-emails irrisponda Henk Turenhout ghal Ace Tankers fejn informahom li minn dak li jaf hu “*vessel expected to complete cargo operations end afternoon where after vessel to shift to anchorage for soonest (de) bunkering operations.*”⁵⁹ Jitolbu sabiex jaghmel pressjoni min-naha tieghu sabiex jigi evitat aktar dewmien. In segwietu ghal din il-korrispondenza, Gargiulo jitlob lil Cassar Fuel ghal aggornament b'mod urgenti. Henk Turenhout jghid li tkellem mal-agent “*and could very well be supplier using the*

⁵⁶ Pagna 150 tal-process.

⁵⁷ Pagna 101 tal-process.

⁵⁸ Pagna 135 – 134 tal-process.

⁵⁹ Pagna 144 tal-process.

weather as an excuse to delay the operation of the weekend”⁶⁰. Ghal din il-korrispondenza irrisponda Karl Magro fejn qal li bhala agenti ser ikompli jaghmlu l-pressjoni fuq Cassar Fuel sabiex jaghmlu l-procedura mehtiega b’dewmien mill-anqas.

30 t’Ottubru 2011

Henk Turenhout jghid lil Karl Magro li gie informat minn Cassar Fuel li t-temp hazin ser jibqa’ sa nhar il-Hamis u saqsa jekk dan huwiex minnu.

Giampaolo Gargiulo jinforma lill-partijiet koncernati li l-bastiment ghandu jitlaq minn Malta sa l-aktar tard it-Tnejn filghaxija altrimenti titlef il-*laycan* fil-port li jmiss b’konsegwenza li jintilef ukoll il-vjagg. Talab lill-agenti kif ukoll lil Cassar Fuel Ltd jghidu jekk id-*debunkering* u l-*bunkering* jistax isir gewwa l-port. Karl Magro informah li “*before sourcing out a berth we need to know when will the barge be available for debunkering/bunkering*”.⁶¹

31 t’Ottubru 2011

Karl Magro informa lill-partijiet koncernati li Malta kien ghad hawn temp hazin u li jaghmlu impossibbli li jsir il-hatt u tghabbija mill-gdid tal-fuel. Giampaolo Gargulio saqsa jekk huwiex possibbli li l-bastiment jidhol fil-port u jsir il-hatt u tghabbija hemm. Vincent Fabre ghal North Sea Group saqsa jekk *debunkering* jistax issir “*by truck*”⁶². Gargulio talab konferma jekk il-bastiment bediex triqtu. Karl Magro qal li l-bastiment kien ghadu barra l-port jistenna struzzjonijiet. Jacopo Pigliapochi ghal Alpha Trading talab ghal aggornament u Sarah Cassar informatu li t-temp kien ghadu hazin. In segwietu ghal din il-korrispondenza Fabre talab ghas-segweni informazzjoni minghand Cassar Fuel:

“What condition is required to enable debunkering & rebunkering (wind speed and swell limits)?

⁶⁰ Pagna 362 tal-process.

⁶¹ Pagna 320 tal-process.

⁶² Pagna 319 tal-process.

Once these conditions are met, what is the timing we can forecast with barge schedule (meaning how long do we need to plan to get the barge alongside once the weather is fair enough)?

Should anchorage/roads operations be too risky and should the port re-open should we still enter Blue Rose in port to debunker/rebunker? ”⁶³

Sarah Cassar informat lil Vincent Fabre li hija pproponiet lil Alpha Trading li l-bastiment ikompli fir-rota tieghu imbaghad jerga’ jigi Malta ghal hatt u tghabbija. Kuypers irrisponda li *“this is a no-go as the vessel will discharge in West Africa”⁶⁴*.

Stephen Cassar ghan-nom tas-socjetà attrici informa lil Giampaolo Gargiulo li Cassar Fuel kienet qieghda tikkunsidra li taghmel id-*debunkering* u *rebunkering* gewwa Barcellona, Gibiltà jew Las Palmas. Jghidlu wkoll li minghajr ma jikkommettu ruhhom probabbilment sejra issir gewwa Las Palmas: *“Regarding the De-bunkering of the M/t Blue Rose we are considering de-bunker and re-bunker in the following Ports of Barcelona/Gibraltar / or Las Palmas. Our Supplier requires in which berth or Terminal above mentioned vessel will do cargo operations. Presently without any commitment to be likely in las palmas.”⁶⁵* Ghal dan irrisponda Jacopo Pigliapochi mis-socjetà Alpha Trading ukoll fejn qallu li sar jaf minghand is-sidien li l-bastiment ser ikollu bzonn *bunker* u *debunker* gewwa Barcellona fit-2 ta’ Novembru u saqsa jekk huwiex possibbli li dan jigi garantit. Sarah ghas-socjeta attrici irrispondiet li Barcellona *“is a no go, as it is quite prompt. Other option is in Las Palmas.”⁶⁶*

Jacopo jirrispondi li l-bastiment ser jasal Barcellona fit-2 ta’ Novembru wara nofsinhar. Jghidilha wkoll li l-Agenti huma Alfaship. Jinformaha wkoll li *“CEPSA has a possibility to supply by barge 03/11am earliest”⁶⁷*. Sarah Cassar tirrispondi billi tghidlu li l-arrangament ghad-*debunker* ser jaghmluh huma u ghandhom ihallu barra lil CEPSA. Is-Sur Pigliapochi jistaqsi lil Sarah Cassar jekk hijiex tikkonferma li *bunkering* u *debunkering* sejjer isir f’Barcellona fit-2 ta’ Novembru wara nofsinhar u fit-3 ta’ Novembru filghodu kmieni. Risposta ghal din il-korrispondenza, jekk kien

⁶³ Pagna 317 tal-process.

⁶⁴ *ibid.*

⁶⁵ Pagna 138 tal-process

⁶⁶ *ibid.*

⁶⁷ Pagna 139 tal-process.

hemm, ma gietx ipprezentata. F'korrispondenza aktar tard (xi 20 min wara) jinforma lil Sarah Cassar illi s-sidien ser jaghmlu l-arrangamenti min-naha taghhom gewwa Barcellona sabiex il-bastiment jitghabba bi fuel. Jitlobha sabiex min-naha taghhom tinformah kif, fejn u meta ser ikun hemm l-arrangamenti ghad-*debunkering*.

1 ta' Novembru 2011

Baghat korrispondenza Karl Magro ghal Ships Agency Supervisor fejn informa lil Giampaolo Gargiulo, lil North Sea Group u lil Cassar Fuel li t-temp dik l-ghodwa kien ghadu hazin sabiex isir id-*debunkering* u *rebunkering*. Henk Turenhout irrisponda lis-Sur Magro fejn informah li peress li l-bastiment kien sejjer jispicca minghajr fuel, ma kellhomx alternattiva ohra ghajr jaghtu struzzjoni lil vapur sabiex jipprocedi lejn Barcellona il-lejl ta' qabel.

30 ta' Novembru 2011

Fabre saqsa lil Kuypers jekk Blue Rose kienx ser jghaddi minn Malta ghal vjagg li jmiss. Fl-istess korrispondenza Fabre informa lil Gargulio, li jekk dan mhux il-kaz, jista' jigi accettat li Cassar Fuel ma tistax tiehu hsieb il-hatt tal-fuel x'imkien iehor barra Malta izda Cassar ghandhom jaghmlu tajjeb ghall-ispejjez kollha relatati. Gargulio gie mitlub jorganizza id-*debunkering* f'port konvenjenti u bl-aktar mod ekonomiku.

Turenhout wiegeb li Blue Rose kienet tinstab gewwa l-Punent tal-Afrika u l-vjagg ta' wara ma kienx ghadu gie fiss. Però jghid li malli l-hatt ikun komplut, il-bastiment kien ser jiehu triqtu lejn Gibiltà, fejn ser jghaddi minn Las Palmas, ghal ordnijiet. Jghidlu wkoll jekk il-vjagg li jmiss ser jiehd u vicin Malta ghadu mhux maghruf.

2 ta' Dicembru 2011

Gargulio talab lil Sarah Cassar tikkonferma li “1) *you will recognize that all de-bunkering cost are on your full account whatever port will be decided to organize de-bunkering*; 2) *you do not want to handle de-bunkering yourselves where else than Malta*; 3) *you give us full power to settle the claim in the best way without mean to*

contest solutions decisions taken ”⁶⁸. Sarah Cassar tikkonferma li huma responsabbli ghad-*debunkering* f’Malta.

B’korrispondenza mibghuta aktar tard fil-gurnata minn Sarah Cassar, gie ccarat x’kienet l-intenzjoni ta’ Cassar Fuels u cioe li kienu qed jaqblu li sabiex tissolva l-kwistjoni ta’ bejniethom ghandu jinhatt il-fuel minn fuq il-bastiment gewwa Malta. Peress li joperaw minn Malta, ikun aktar facli li din ssir hawn. Nelfratemp ser tkun qieghda tistenna informazzjoni dwar meta l-bastiment ser ikun disponibbli sabiex jigi pjanat id-*debunkering*. Tghidlu wkoll “*we are making it clear that after de-bunkering, this case will be closed without any other claims for any damages, demurrages, etc.*”⁶⁹ Ghal din il-korrispondenza rrisponda Fabre fejn fost ohrajn qal hekk:

“You proposed at first to organize yourself the debunkering in LP; why is that alternative not valid anymore ??? it was acceptable to all parties !

I see 2 options:

- *Either you organize debunkering in the closest port on the way from WAC to Gib / we can alternatively do that for you but all expenses would be for yourselves*
- *Or if owners are not tight on their schedule and agree on this solution, they could come to Malta BUT you would need to compensate the bunkers used from Gib to Malta and back and than proceed in port the debunkering.*”⁷⁰

6 ta’ Dicembru 2011

Gargulio talab ghall-aggornament dwar ir-rapport u fejn kien jinstab il-bastiment. Kuypers irrisponda li John Bugeja kien inkarigat sabiex isir survey minn Inspectorate. Jghid ukoll “*guess we need to do the samples from each individual banker tank (2)*”⁷¹. Jinfurmah ukoll li l-bastiment kien ghadu kif telaq minn Lome fi triqtu lejn Gibiltà fejn ser ikun qieghed jistenna ordnijiet dwar il-hatt tal-fuel.

⁶⁸ Pagna 341 tal-process.

⁶⁹ Pagna 140 tal-process.

⁷⁰ Pagna 344 tal-process.

⁷¹ Pagna 346 tal-process.

9 ta' Dicembru 2011

F'korrisondenza mibghuta minn Giampaoli Gargiulo lil CEO Darren Marmara u lil North Sea Group jinfurmahom li dan il-messagg *“is to confirm to all parties that the product supplied by Cassar Fuel to Mt Blue Rose at Malta on 20/10/11 will be discharged as a sludge in the port of Gibraltar on 16/12/2011. It is understood that any extra costs arising from this operation will be borne by the supplier of the product (Cassar Fuel) the solely responsible for the bad quality of the product supplied.”*⁷²

Darren Marmara ghazel li jirrispondi ghal din il-korrisondenza billi baghat lil Ace Tankers C.V. u mhux lil Giampaolo Gargiulo. F'dan l-email Marmara informah li *“de-bunkering of our Fuel supplied at Malta at a port in Gibraltar, please note that we are not acknowledging this e-mail, and hence we reserve the right to take all the necessary actions in the future.”*⁷³ Jinformah li Cassar Fuel hija lesta li tiehu l-fuel lura izda Malta u dan ghandu jinftehem ghaliex huwa aktar facli ghalihom li din l-operazzjoni ssir gewwa Malta. Cees Kuypers ghal Ace Tankers irrisponda precizament b'dan il-kliem: *“We would not have a problem to debunker in Malta if the ship was ordered to Malta or should have passed Malta with little or no deviation on her way to the next destination. At present however the ship will sail to Gibraltar and it is unlikely that on this short notice planning of de-bunkering in Malta is feasible. As you can imagine the 400mts off-spec fuel hinders an effective planning of supply for the near future.”*⁷⁴ Jghidlu wkoll li ghalkemm huma konxji li kien Cassar Fuel Limited li provdjet il-fuel, ir-relazzjoni taghhom hija ma' North Sea Group u Alpha Trading.

Darren Marmara rrisponda billi rringrazzjah li fehem il-posizzjoni ta' Cassar Fuel u li ma kienu jsibu l-ebda problema li jinhatt il-fuel Malta. Ghal din ir-raguni talbu jinfurmah meta l-bastiment kien ser ikun Malta sabiex tigi organizzata l-procedura mehtiega.

12 ta' Dicembru 2011

⁷² Pagna 162 tal-process.

⁷³ Pagna 161 tal-process.

⁷⁴ *ibid.*

Darren Marmara baghat email lil Cees Kuyper fejn qallu “*that we agreed to de-bunker the vessel in Malta in order to close the case without any hassle*”. Kuyper izda kjarifika li huma qatt ma qalu li qeghdin jaqblu li *debunkering* isir Malta. Dak li intqal huwa li meta l-bastiment jghaddi minn Malta jew ikun Malta, kienu lesti jikkunsidraw li jaghmlu *debunkering* hemm. Jinfurmah li l-bastiment huwa kummercjament immexxi minn terzi u ghalhekk m’humiex f’pozizzjoni li jinfluwixxu fejn isir il-kummerc. Jghidlu wkoll li hemm urgenza sabiex il-fuel ta’ kwalità inferjuri jitnehha. Il-bastiment kien inghata ordnijiet sabiex ibahhar lejn Gibiltà minghajr ebda ordni ohra fil-prezent. Jerga jfakkru li r-relazzjoni kuntrattwali taghhom hija ma’ North Sea Group u Alpha Trading u ghalhekk ma jridux jinterferixxu fi kwistjonijiet bejnhom u bejn Cassar Fuel Ltd. Marmara min-naha tieghu jerga jirringrazzjah li ma jsibu l-ebda probelma li hatt tal-fuel isir Malta. Talbu sabiex jistennew sakemm il-bastiment ikun fil-vicinanzi ta’ Malta.

3 ta’ Jannar 2012

Sarah Cassar talbet ghal informazzjoni dwar korrisondenza li kienet baghtet fid-19 ta’ Dicembru.⁷⁵

4 ta’ Jannar 2012

Bernice Calleja (Accounts Dept.) ghan-nom tas-socjetà attrici informat lil Gianpaolo (ghas-socjetà Alpha Trading) li huma mitluba jhallsu minghajr aktar dewmien u sa dak inhar nofsinhar l-ammont pendenti ghal fuel konsenjat lil Blue Rose. Is-somma hija ta’ \$233,308.60. Tghidlu wkoll kif waslet ghal dan l-ammont – 400mts x \$665 = \$266,000, nieqes l-ammont ta’ ilma li kien hemm fil-fuel cioe 49.16mts x \$665 = \$32,691.40

⁷⁵ Kopja tal-korrisondenza tad-19 ta’ Dicembru 2011 ma gietx ipprezentata.

Giampaolo Gargiulo jirrispondi li l-fuel gie *debunkered* bhala hama (*sludge*) fis-17 ta' Dicembru f'Gibiltà.

Ghal din l-email irrispondiet Sarah Cassar (Sales Dept.) fejn informatu li huma qatt ma rrikonoxxew li jsir *debunkering* gewwa Gibiltà u ghalhekk il-prodott ghadu proprjetà ta' Cassar Fuel.

Jerga' jirrispondi Giampaolo Gargiulo jirreferiha ghall-korrispondenza datata 13 ta' Dicembru, 31 t'Ottubru u 12 ta' Dicembru li jghidilha li baqghu ma gewx imwiegba. Min-naha taghha Sarah Cassar terga tghidlu li fl-ewwel lok il-prodott qatt ma kien ikkunsidrat bhala hama, fit-tieni lok, Cassar Fuel qatt m'awtorizzat li l-prodott jinbiegh bhala hama u dan peress li sa dik il-gurnata, il-prodott kien ghadu jappartjeni lil Cassar Fuel. Giampaolo ftit minuti wara jirrispondiha u jghidilha li l-messaggi taghhom kienu cari u li ghalhekk il-kwistjoni hija definittivament maghluqa. Sarah Cassar tirispondih bis-segwenti:

*“The matter is far from being considered a closed matter. We had advised you that vessel de bunkering of the fuel would be undertaken by us. Until then the fuel remained on board and accepted by the vessel. We have referred the matter to our legal Attorneys who inform us that the vessel had no right to dispose of the fuel and in doing so has assumed its responsibility and its effective payment. Your statement that it was disposed as sludge is unacceptable in law and in fact and the vessel and its owners remain responsible to pay the full amount due to us unless the said fuel is delivered back to us.”*⁷⁶

Dak inhar wara nofsinhar, Dr. Matthew Brincat l-avukat tas-socjeta' attrici baghat fuq dan l-ahhar email lil Ace Tankers u North Sea Group jinfurmahom li kienu taw struzzjonijiet lill-avukat gewwa Slovenja sabiex jinhareg mandat ta' qbid fuq il-bastiment Blue Rose stante li kien ghadu pendent li l-hlas ghall-fuel konsenjat gewwa Malta.

⁷⁶ Pagna 17 tal-process.

Cees Kuypers irrisponda ghal Ace Tankers u spjega li m'hemm l-ebda relazzjoni kuntrattwali bejnhom u dan peress li huma xtraw minghad Alpha Trading. Jekk Alpha Trading naqset milli thallas mela l-ilment ghandu jigi ndirizzat lilhom. Jirrispondu wkoll li m'huma ser ihallsu l-ebda ammont mitlub, apparti l-fatt li l-ammont ma jirraprezentax il-valur tal-fuel suppliet. Jghid ukoll li l-fuel ma kienx tal-kwalità mehtiega tant li l-fuel ma setghax jigi uzatt, altrimenti kien jigi kkawzat hsarat fil-magna f'ammont hafna aktar mis-somma mitluba. L-unika rimedju li kellhom kien li jhottu l-fuel gewwa Gibiltà u dan taht l-istruzzjonijiet ta' Alpha Trading.

Irrisponda wkoll Giampaolo Gargiulo ghall-*email* mibghuta minn Dr. Brincat u dan irrispondih billi ghamel referenza ghall-korrispondenza mibghuta minn Stephen Cassar ghan-nom tas-socjeta attrici fil-31 t'Ottubru 2011 fejn kien infurmah li Cassar Fuel kienet qieghed tikkunsidra li taghmel id-*debunkering* u *rebunkering* gewwa Barcellona, Gibiltà jew Las Palmas. Cassar kien qal ukoll li minghajr ma jikkommettu ruhhom probabbilment sejra issir gewwa Las Palmas.

5 ta' Jannar 2012

L-Avukat Matthew Brincat jibghat korrispondenza elettronika lis-Sur Gargiulo jghidlu li kien hemm “*unequivocal confirmation from your part and shipowners that an agreement and acceptance had been reached for the fuel to be bunkered by our clients. Debunkering had to take place in Malta although other ports were mentioned. [...] We are informed by Ace Tankers c.v. that you instructed debunkering in Gibraltar and further that it was debunkered as sludge (according to your unwarranted version) in so doing the vessel has accepted the fuel and chose to depart from what had been agreed.*”⁷⁷

Ikkunsidrat,

L-Azzjoni Attrici.

⁷⁷ Pagna 12 tal-process.

L-azzjoni odjerna tirrigwarda **kuntratt** ta' bejgh – bi precizjoni kuntratt ta' bejgh *pactum riservati dominii*⁷⁸, ghal ragunijiet spjegati aktar 'l quddiem - fejn il-kunsinna tal-karburant saret mis-socjeta attrici izda l-hlas ma sehxx mis-socjetà konvenuta minhabba li l-kunsinna ma kinitx ta' **kwalià** kif pattwit. Is-socjetà konvenuta ghamlet l-arrangamenti sabiex isir il-**hatt** tal-istess karburant.

Il-kuntratt ta' Bejgh.

L-**Artikolu 1346 tal-Kodici Civili** jipprovdi li “Il-bejgh hu kuntratt li bih waħda mill-partijiet tintrabat li tagħti haġa lill-oħra bi prezz li din il-parti l-oħra tintrabat li tħallas lilha.” Ghalhekk il-bejgiegh jobbli ruhu li jikkonsenja l-haga, ix-xerrej jobbli ruhu li jhallas il-prezz miftiehem.

Fir-rigward tal-konsenja, **Artikolu 1378 tal-Kodici Civili** jipprovdi li “Il-bejgiegh għandu fuq kollox żewġ obbligi, jigiifieri, li jikkunsinna, u li jiggarrantixxi l-haġa mibjugħa.”

Fir-rigward tal-hlas, issir referenza għall-**Artikolu 1146 tal-Kodici Civili** fejn jipprovdi li “Hlas ifisser l-esekuzzjoni tal-obbligazzjoni sew jekk l-oġġett tal-obbligazzjoni jkun li tingħata xi haġa sew jekk ikun li tiġi magħmula xi haġa”. Ir-regola generali hija li “[m]eta ż-żmien u l-lok tal-hlas tal-prezz ma jġugx miftiehma fil-kuntratt, ix-xerrej għandu jhallas fiż-żmien u fil-lok tal-kunsinna tal-haġa.”⁷⁹ Isegwi ghalhekk illi l-bejgiegh u x-xerrej jistghu jaqblu li l-hlas u l-kunsinna ma jsirux fl-istess mument kif fil-fatt kien il-kaz li ta lok għall-kawza odjerna.

Gara li fl-14 ta' Ottubru 2011 is-socjetà attrici accettat li tforni 400 tunnellata karburant lill-bastimnet Blue Rose għall-prezz ta' \$665 kull tunnellata li min-naha tagħha s-socjetà konvenuta qablet li tħallas il-prezz miftiehem fi zmien tletin gurnata mill-kunsinna.

⁷⁸ Mhux fis-sens ta' *hire-purchase*.

⁷⁹ **Artikolu 1433** tal-Kodici Civili. Ara Gustav Ricci

Ta' min josserva li fil-kaz odjern is-socjetà kreditrici qiegħda tagixxi bhala *physical supplier* li fil-qasam tal-bunkering hija definita mill-**International Maritime Organisation** bhala kumpanija li “*Buys, owns and stores fuel oil and sells bunkers. Distributes bunkers from pipelines, trucks and/or barges. May blend products to meet the customer's specifications. May own or charter a distribution network or may hire a barge provider from supply to supply. Issues the bunker delivery note (BDN)*”⁸⁰. L-aktar vicin li wiehed jista' jasal għall-irwol ta' *physical supplier* taht il-**ligi Maltija, proprju fl-Avviz Legali 1 tal-1996**⁸¹ hija dik ta' “**operatur tal-bunkering**” cioe “persuna jew korp ġuridiku [...] li jkunu liċenzjati [...] biex iqassmu, ibieghu, jesportaw jew b'xi mod ieħor jiddisponu minn *bunkers*, jew għal xi attività relatata oħra, kemm jekk dik il-persuna jew korp ġuridiku jkunu jew ma jkunux il-parti li tkun fiżikament tittrasporta jew twassal dawk il-*bunkers* lill-bastiment”. Min-naha l-oħra is-socjetà debitorici, Alpha Trading SpA hija *trader*, definita bhala socjetà li tixtri “*bunkers from a physical supplier and sells to a purchaser without holding the product physically.*”⁸²

M'huwiew ikkontestat li l-venditur hija s-socjetà Cassar Fuel Ltd u x-xerrej hija s-socjetà Alpha Trading Ltd u dan nonostante l-fatt li tal-ahhar ma haditx il-pussess fiziku tal-oggett mibjugh lilha. Din il-Qorti tqis ukoll li mid-dokumenti li gew ipprezentati, is-socjetà konvenuta dejjem giet diskritta bhala *Buyer* minghajr referenza għal ebda xerrej ieħor. Għaldaqstant, l-obbligu tas-socjetà attrici, bhala *physical supplier*, kien li tikkunsinna l-*bunkers*⁸³ mibjugh. Min-naha l-oħra, is-socjetà konvenuta kienet obbligata li thallas għal 400 tunnellata ta' *bunkers*. Filwaqt li Cassar Fuel Ltd onorat l-obbligu tagħha li tagħmel il-kunsinna fil-gurnata u l-hin miftiehem, is-socjetà konvenuta ma hallsitx il-prezz relattiv fi zmien tletin gurnata mill-kunsinna kif kien gie miftiehem. Is-socjeta' konvenuta teccepixxi illi hija ma hiex tenuta thallas

⁸⁰ *Guidance on Best Practice for Fuel Oil Purchasers / Users for Assuring the Quality of Fuel Oil used on Board Ships* referenza tad-dokument MEPC.1/Circ.875 ippubblikat mill-*International Maritime Organisation* fis-26 t'April 2018.

⁸¹ **Regolamenti dwar bastimenti ta' tagħbijiet perikolużi, termini u facilitajiet marittimi u bunkering, L.S. 499.12.**

⁸² *Guidance on Best Practice for Fuel Oil Purchasers / Users for Assuring the Quality of Fuel Oil used on Board Ships* referenza tad-dokument MEPC.1/Circ.875 ippubblikat mill-*International Maritime Organisation* fis-26 t'April 2018.

⁸³ “*Bunkers* tfisser kull *marine grade fuel oil* mhux volatili użat bhala fuel għal bastiment jew il-makkinarju tiegħu u tinkludi żejt lubrikanti” - **Regolamenti dwar bastimenti ta' tagħbijiet perikolużi, termini u facilitajiet marittimi u bunkering, L.S. 499.12.**

ghall-fuel konsenjat peress li dak konsenjat "*ma kienx tal-kwalita' pattwita billi ma kienx konformi mal-International Specifications (ISO 8217 Fuel Standard Fourth Edition 2010 - RMG 380).*"⁸⁴

Il-kwalità pattwita.

Trevor Harrison⁸⁵ fil-ktieb tieghu *Legal Issues in Bunkering: An Introduction to the Law Relating to the Sale and Use of Marine Fuels* jaccenna li:

*"The responsibility for specifying the required grades that will be fit for use by the vessel is placed firmly with the buyers whilst the seller is obliged to supply fuel that meets the contract specification, complies with ISO 8217 (or as otherwise agreed) and is of satisfactory quality"*⁸⁶

Ghalhekk meta x-xerrej jehtieg kwalità partikolari tal-mobbli⁸⁷ li jrid jixtri huwa ghandu jgharraf lill-venditur b'dan. Irrizulta li dan ghamlitu s-socjetà konvenuta, fejn talbet li l-400 tunellata karburant ghandu jkun tal-kwalità maghrufa bhala IFO 380 CST, li proprju taqa taht il-kappa tal-istandards ISO 8217⁸⁸. Min-naha taghha, is-socjetà attrici accettat l-ordni u qablet bis-sahha tal-ittra ta' konferma datata 14 t'Ottubru 2011⁸⁹ li tissupplixxi l-bastiment MT Blue Rose b'dik l-imsemmija kwantita' u kwalità.

In tema legali ssir referenza ghall-**Artikolu 1390 tal-Kodici Civili** li jipprovdi li "[j]ekk il-ħaġa li l-bejjieġh iġib biex jikkunsinna ma tkunx tal-kwalità mwieġhda, jew ma tkunx bħall-kampjun li fuqu l-bejgħ ikun sar, ix-xerrej jista' jagħżel jew li jirrifjuta l-ħaġa u jitlob id-danni, jew li jircievi l-ħaġa bi prezz anqas fuq stima ta' periti." Fis-

⁸⁴ Pagna 109

⁸⁵ Arbitru marittimu

⁸⁶ Pagna 18.

⁸⁷ Ghalkemm il-Kodici Civili ma taghmel l-ebda referenza specifika ghal karburant jew zejt, facilment wiehed jasal biex jikkonkludi li huwa mobbli mill-qari tal-**Artikolu 312** li jaqra hekk: "Il-ħwejjeġ kollha, bil-ħajja jew bla ħajja, illi, mingħajr ma titbiddel is-sustanza taghhom, jistgħu jmorru wahidhom jew jingarru minn banda għal oħra, huma mobbli minnhom infishom, ukoll jekk dawk il-ħwejjeġ ikunu jagħmlu flimkien kollezzjoni jew *stock* ta' kummerċ."

⁸⁸ <https://www.spglobal.com/platts/plattscontent/assets/files/en/our-methodology/methodology-specifications/global-bunker-fuels.pdf>

⁸⁹ Pagna 7 tal-process.

sentenza **Carmelo Xuereb vs. Nazzareno Azzopardi**, deciza fil-21 ta' Gunju 1943, il-Qorti tal-Appell Kummercjali irritjena li “l-ewwel obligazzjoni tal-venditur hu li ghandu jaghti l-haga skond il-kwalità miftiehma u f'kondizzjoni li kienet waqt il-bejgh, u presumibilment fi stat tajjeb.”⁹⁰

Fil-linji gwida mahruqa mill-**International Maritime Organisation** intitolati *Best practice for fuel oil purchasers / users for assuring the quality of fuel oil used on board ships*⁹¹ gie spjegat li

“1.2 Fuel oil purchasers are responsible for correctly specifying the fuel oil which is to be supplied. It is the responsibility of the supplier to deliver fuel oil which is compliant with the agreed specification.”

Fil-kawza odjerna fil-**Bunker Delivery Note** datata 20 t'Ottubru 2011 gie indikat⁹² is-segweni mis-socjeta' attrici:

<i>Density (vac) @ 15° C</i>	0.9909 kg/m ³
<i>Carbon content</i>	-
<i>Water</i>	0.1% m/m
<i>Sulpher</i>	3.5% m/m
<i>Ash</i>	-

Is-socjeta' attrici ma resqet l-ebda prova dwar b'liema mod waslet ghall-persentaggi hemm indikati rigwardanti il-livell tal-ilma u l-livell ta' sulpher fil-fuel supplet indikati fil-Bunker Delivery Note rilaxxjata fl-20 ta' Ottubru 2011 fl-istess jum tal-konsenja. Jekk daw k ic-cifri ghandhom mill-verita' wiehed jista' biss jipprezumi li

⁹⁰ Kif kwotata fis-sentenza fl-ismijiet **Alfred Theuma vs. Jupiter Co. Ltd** deciza mill-Qorti tal-Appell (sede Inferjuri) fid-19 ta' Mejju 2009.

⁹¹ Guidance on Best Practice for Fuel Oil Purchasers / Users for Assuring the Quality of Fuel Oil used on Board Ships referenza tad-dokument MEPC.1/Circ.875 ippubblikat mill-International Maritime Organisation fis-26 t'April 2018.

⁹² Pagna 9 tal-process.

it-test sar qabel il-konsenja. Min ghamel tali test u b'liema mod, is-socjeta' attrici ma resqet l-ebda prova fir-rigward.

Il-Qorti taghmel referenza ghar-Regolament 18 (6) tal-Annex VI tal-**Konvenzjoni tal-MARPOL**⁹³ li ssemmi “*a representative sample of the fuel oil delivered*”. Huwa evidenti kif ukoll logiku illi l-ahjar metodu sabiex wiehed jakkwista kampjun rapprezentattiv tal-karburant konsenjat huwa billi jittiehed permezz tal-metodu maghruf bhala *drip sample*.⁹⁴ Uhud mix-xhieda fuq imsemmija, spjegaw li l-kampjun fil-fatt ittieded mill-*manifold* u r-raguni wara dan kien sabiex jiksbu rizultati rapprezentattivi tal-karburant li ghadha fil-bastiment MT Blue Rose mis-socjeta' attrici.

Rebecca Prentiss Pskowski fl-artikolu taghha “*Bad Bunker: Fuel Contamination Claims, IMO 2020, and the Houston Problem*”⁹⁵ tghid li ladarba l-karburant jigi kkonsenjat fuq il-bastiment, imbaghad l-oneru dwar il-kwalita' ta' dak konsenjat jaqa' fuq ix-xerrej:

Once the fuel is onboard, the onus is on the purchaser to ensure that the fuel in the tanks is of the quality promised by the BDN. Onboard fuel sampling for independent testing is a widely acknowledged industry best-practice: "The taking of samples is vital in establishing the actual quality of fuel supplied. It may be used in evidence in both commercial and criminal courts, so adherence to a strict sampling procedure is vital to protect the interests of all parties involved" Logistically, this requires prompt sample dispatch, from whichever world port a vessel has bunkered in:

A prudent owner will have a sample of delivered fuel tested by an independent accredited testing laboratory and will try to ensure that he has the results of the analysis available before the fuel has to be used. Fuel testing is

⁹³ *International Convention for the Prevention of Pollution from Ships (MARPOL): Annex VI Prevention of Air Pollution from Ships* (dahlet fis-sehh fid-19 ta' Mejju 2005).

⁹⁴ Fost ohrajn fit-tezi fl-ismijiet *The Bunkering Industry and its Effect on Shipping Tanker Operations* miktub minn Angelos Boutsikas u sottomess fl-Università ta' Newcastle fl-2004: “*The sample taken should be a representative sample taken by continuous drip method throughout the whole period of the bunkering*” – pagina 26 tal-imsemmi tezi.

⁹⁵ Rebecca Prentiss Pskowski, “*Bad Bunker: Fuel Contamination Claims, IMO 2020, and the Houston Problem*” (2019) 44 *Tulane Maritime Law Journal* 217.

not required for MARPOL compliance It is however, a major help in avoiding issues with the use and handling of a fuel on board.

Sar analizi fuq id-diversi kampjuni li ingabru waqt il-*bunkering* u mill-maggoranza tar-rizultati intwera li l-karburant kien fih, fost elementi ohra, kwantità gholja ta' ilma tal-bahar. Is-socjetà konvenuta tinsisti li b'dawn l-inkonsistenzi kollha, il-karburant kien *off-spec*.

Gie ritenut fl-artikolu “***Bunker Quality Claims in 2020 – Issues to consider – Part 2***” li

“Bunker supply contracts may contain provisions which provide that the supplier shall not be liable for any quality claim, unless payment is first made in full by the purchaser. These provisions can be of considerable assistance to suppliers; if payment is not made in full before a claim is advanced, the supplier could potentially seek an interim award for payment of the purchase price, and/or take enforcement action to obtain payment.”⁹⁶

Fil-kaz odjern ma kienx hemm kondizzjoni ta' din ix-xorta. Ghalhekk ma hemm l-ebda impediment legali li l-Qorti tinvesti l-allegazzjoni li l-karburant konsenjat ma kienx tal-kwalita' pattwita. Is-socjetà konvenuta tillamenta fil-fatt li l-karburant mhux biss kien *off-spec* izda ma setax jigi ppurifikat u uzat minghajr ma ssir hsara lill-magni tal-vapur stante il-livell gholi tal-ilma fil-karburant konsenjat, apparti elementi ohra li nstabu bit-testijiet li saru.

Gie spjegat minn **Eley D u Burak S** fix-xoghol taghhom ***Fuel Oil - Changes, Challenges, Contamination and Catastrophe***

⁹⁶ Leon Alexander et al, “Bunker Quality Claims in 2020 – Issues to consider – Part 2”, artikolu ppubblikat fl-10 ta' Frar 2020 - <https://www.clydeco.com/en/insights/2020/02/bunker-quality-claims-in-2020-issues-to-consider-p> access f' din il-pagna sar fis-26 t' Awwissu 2020.

“[...] there are also other 'off specification' fuel oils that are both outside of the specification AND outside of the ability of the pre-treatment plant and the main engine and generators to contend with, without severe mechanical damage or handling difficulties AND outside of the realm of the engineering staff onboard the vessel to handle. Many prudent shipping companies, when confronted with these problems, will debunker the fuel oil irrespective of whether they will eventually suffer financial loss due to the inability to demonstrate that the fuel at the time of supply was compliant or non compliant with specifications. The legal problems ensuing when these type of actions occur, can be simplified by taking prudent actions to support any eventual legal claim.”⁹⁷

Ghalkemm is-socjetà attrici ma kinitx lesta li tilqa' r-rizultati tal-analizi maghmula fuq il-kampjuni li kienu fil-pussess tal-bastiment, is-socjetà attrici, ghal ragunijiet ta' kummerc li kellha mas-socjetà konvenuta⁹⁸, qablet li l-kwalità tal-karburant supplet kien *off-spec* u li kienet lesta li tiehu lura il-karburant kollu konsenjat. Fil-fatt irrizulta wkoll li barra kontenut gholi ta' ilma [12.2% meta l-massimu accettabbli m'ghandux jeccedi 0.50%); il-karburant konsenjat kellu wkoll kontenut gholi ta' sediments [0.20% meta l-massimuk accettabbli m'ghandux jeccedi 0.10%]; kellu kontenut gholi ta' ash [0.24% meta l-massimu accettabbli huwa ta' 0.15%] kif ukoll "high sodium content 651 ppm - sea water in the fuel".

Konsegwentement il-Qorti qed tiddeciedi illi s-socjetà attrici naqset milli tonora l-obbligu taghha li tissupplixxi karburant ta' kwalità pattwita. Il-Qorti qeghda ghalhekk tikkonkludi u tiddeciedi illi il-karburant konsenjat ma kienx tal-kwalità pattwita' li fit-terminologija tal-bunkering jissejjah *off-spec* u li ghalhekk is-socjeta' konvenuta kellha kull dritt tirrifjutah kif fil-fatt ghamlet.

Huwa minnu li s-socjeta' attrici accettat li tiehu l-karburant *off-spec* lura u tissupplixxi karburant *on-spec* presumibilment bl-istess prezz pattiwt; izda hwan fejn il-kwistjoni ikkomplikat ruhha.

⁹⁷ Eley, D. u Burak S., "Fuel Oil - Changes, Challenges, Contamination and Catastrophe", Marine FuelTech, London, 12th June 2000.

⁹⁸ Kif jirrizulta mix-xhieda ta' Darren Marmara.

Fejn kellu jsir il-hatt

Huwa pacifiku illi una volta irrizulta li l-karburant ma kienx tal-kwalita' pattwita l-obbligu tas-socjetà konvenuta fic-cirkostanzi kien li timminimiza d-danni; min-naha l-ohra l-obbligu tas-socjetà attrici f'tali cirkostanzi kien li thott lura l-karburant. Dawn l-obbligi gew dedotti mis-socjetà attrici stess fit-termini u kundizzjonijiet minnha taghha:

“[...] the Buyer shall extend his fullest cooperation with the Company in the identification and giving effect of the most practical, cost-effective and damage-limiting solution to any relative problem that may from time to time arise. [...] The Company retains the right to remove or direct the removal and replacement of any such Marine Fuel as may need such replacement [...]”

Fit-28 t'Ottubru 2011, il-jum tal-Gimgha, is-socjeta' attrici informat lis-socjetà konvenuta li l-fuel kien sejjer jinhatt minnha izda l-istess socjeta' attrici informat li kellhom jergghu jtkellmu it-Tnejn 31 t'Ottubru 2011 sabiex isiru l-arrangamenti mehtiega. Darren Marmara, ghas-socjetà attrici informa lis-socjetà konvenuta li l-problemi fir-rigward kienu (1) it-temp hazin u (2) skeda mimlija li s-socjetà attrici kellha. Rapprezentant tas-socjetà Ace Tankers, il-kumpanija li kienet tiehu hsieb l-operazzjoni kummercjali tal-bastiment MT Blue Rose, informat lil Darren Marmara, li *debunkering* kellu jsir is-Sibt jew il-Hadd, però s-Sur Marmara, ghas-socjetà attrici rrisponda li ser jaghmlu li jistghu izda it-temp iholl u jorbot kollox. Sa dan il-punt is-socjetà attrici ma pprovdiet l-ebda soluzzjoni sabiex il-hatt isir fi tmiem il-gimgha u lanqas alternattivi ohra. Mhux talli hekk, talli wkoll naqset milli zzomm komunikazzjoni mal-partijiet koncernati (u naqset milli tirispondi d-diversi messaggi elettronici li intbghatu kemm mis-socjetà konvenuta kif ukoll mis-socjetà Ace Tankers) nonostante li tat il-kelma taghha li ser taghmel l-almu taghha sabiex id-*debunkering* isir fil-granet proposti minn Ace Tankers.

Sabiex jigu minimizzati d-danni u l-hatt isir minghajr dewmien, gie propost mis-socjetà konvenuta li l-hatt isir gewwa l-port. Ghal din il-proposta, is-socjetà attrici

naqset milli tghid meta l-barkun kien ser ikun disponibbli sabiex isir il-hatt gewwa l-port u dan nonostante l-fatt li t-talba sabiex id-*debunkering* isir gewwa l-port saret darbtejn fi granet differenti. Din il-Qorti tosserva li ghal din il-proposta ma ngabet l-ebda prova mis-socjetà attrici fil-prosegwiment ta' dawn il-proceduri illi turi li kien fizikament impossibbli li jsir *debunkering* fil-port. Din il-Qorti hija tal-fehma li jekk is-socjetà attrici verament riedet taghmel l-almu taghha u jekk verament il-maltemp kienet l-unika problema li ma jsirx id-*debunkering* u *rebunkering* fi tmiem il-gimgha, l-imsemmija socjetà kienet tilqa' l-alternattiva li l-hatt isir gewwa l-port, manuvra li tista' ssir skont id-dettami tal-Avviz Legali 1 tal-1996⁹⁹.

Jigi meqjus ukoll minn din il-Qorti li, apparti li ma rrisponditx il-korrispondenza mibghuta fi tmiem il-gimgha u lanqas gie muri lil din il-Qorti li nzamm xi forma ta' kuntatt fl-imsemmija granet min-naha tas-socjetà attrici, is-socjetà attrici naqset milli tirrispondi sett ta' mistoqsijiet pertinenti mqieghda mir-rapprezentant tas-socjetà Ace Tankers:

“What condition is required to enable debunkering & rebunkering (wind speed and swell limits)?

Once these conditions are met, what is the timing we can forecast with barge schedule (meaning how long do we need to plan to get the barge alongside once the weather is fair enough)?

Should anchorage/roads operations be too risky and should the port re-open should we still enter Blue Rose in port to debunker/rebunker?”¹⁰⁰

Bit-twegibiet ghal dawn il-mistoqsijiet, il-Qorti, kienet tifhem ahjar x'kienet ir-raguni vera ghaliex il-hatt ma setax isir Malta meta l-bastiment kien ghadu hawn. Il-fatt wahda li gie pprezentat rapport meteorologiku ghal perjodu in kwistjoni minghajr ma gie spjegat lil din il-Qorti l-kontenut tal-istess u r-relevanza ta' dik l-informazzjoni ghal kaz taghha, m'huwiex sejjer jghin lill-Qorti tifhem f'liema tip ta' temp il-hatt ma jistax isir u ghaliex il-hatt ma sarx gewwa l-port.

⁹⁹ Regolamenti dwar bastimenti ta' taghbijiet perikoluzi, termini u facilitajiet marittimi u *bunkering*, L.S. 499.12. Il-pagna Maritime Services in Malta tindika li “Bunkering operations within port limits is permitted at the various terminals” <https://www.transport.gov.mt/maritime/local-waters/maritime-services-in-malta-120> access f'din il-pagna sar fil-21 t'Awwissu 2020.

¹⁰⁰ Pagna 317 tal-process.

Din il-Qorti tosserva wkoll li l-bastiment baqa' fl-ibhra Maltin sat-Tnejn 31 t'Ottubru 2011 filghaxija, oltre l-iskeda tieghu ppjanata li jibqa' Malta, bit-tama li *debunkering* isir Malta, izda ghal diversi ragunijiet moghtija mis-socjeta' konvenuta il-bastiment ma setax jistenna aktar mit-Tnejn filghaxija. Meta l-bastiment kien ghadu Malta Sarah Cassar ghas-socjeta attrici issuggeriet li l-bastiment ghandu jkompli bir-rota tieghu imbaghad jerga jigi Malta sabiex isir id-*debunkering*. Ace Tankers irrifjutat din il-proposta u dan minhabba l-iskeda li kellu l-bastiment u wkoll ghaliex ma kienx hemm pjanijiet li l-bastiment ikun vicin Malta fil-futur qarib. Ghalhekk ma hemmx dubju, li dik il-proposta tas-socjeta' attrici ma kentix qed tiehu in konsiderazzjoni li d-danni jigu minimizzati.

Di più, minn qari tal-korrispondenza li giet skambjata wara din il-proposta u ir-rifjut tal-istess, Stephen Cassar informa lill-partijiet koncernati, inkluz ghalhekk lis-socjetà konvenuta, li *debunkering* u *rebunkering* jista' jsir gewwa Barcellona, Las Palmas jew Giblta, portijiet li issemmgħu għall-ewwel darba proprju mis-socjetà attrici u mhux mis-socjeta' konvenuta. Informahom ukoll li “[p]resently without commitment to be likely in Las Palmas”. B'din l-informazzjoni, is-socjetà attrici rabtet lilha nnifisha li l-hatt jista' jsir f'wiehed minn dawk it-tlett postijiet, naturalment bl-arrangamenti kollha jsiru mis-socjeta' attrici a spejjez tagħha. Kien ghalhekk li s-socjetà konvenuta pproponiet li l-hatt isir gewwa Barcellona fit-2 ta' Novembru 2011, però Cassar Fuel Ltd spjega li ma tistax issir ghaliex id-data kienet wahda vicin u ma kinux ser jilhqu jagħmlu l-arrangamenti meħtiega. L-ebda prova ma tresqet li s-socjeta' attrici ippruvat li l-hatt isir f'Barcellona fit-2 ta' Novembru 2011. Sarah Cassar qalet precizament dan il-kliem “*other option is Las Palmas*” mingħajr ma għamlet uzu mill-kliem uzuat minn Stephen Cassar cioe il-kliem “*without commitment*”, u hawnhekk f'ghajnejn din il-Qorti is-socjetà attrici ikkommettiet li l-hatt jista' jsir Las Palmas minflok f'Barcellona.

Is-socjetà konvenuta min-naha tagħha, ppruvat issib soluzzjoni billi offriet li *debunkering* u *rebunkering* isir minn CEPSA, kumpanija taz-zejt Spanjola¹⁰¹. Min-naha tagħha Cassar Fuel Ltd oggezzjonat u insistiet li CEPSA għandha tibqa barra,

¹⁰¹ <https://www.cepsa.com/en/the%E2%80%9393company> access f' din il-pagna sar fis-26 t' Awwissu 2020.

decizzjoni din li fil-fehma tal-Qorti ma taghmel l-ebda sens tenut kont li t-tort tal-problema kien kollu fuq is-socjeta' konvenuta u bl-ebda mod ma jista' jigi imputat lis-socjeta' konvenuta.

Mix-xhieda ta' Darren Marmara jidher li kien hemm oggezzjoni li tidhol CEPSA ghaliex riedu li l-hatt isir minn kummercjanti ohra; izda l-Qorti tosserva li mill-qari tal-atti imkien ma gie propost xi kummercjant iehor la gewwa Barcellona u wisq anqas gewwa Las Palmas. Maghdud ma' dan, fil-process lanqas ma nstabet korrisondenza b'informazzjoni ulterjuri mehtiega sabiex isir id-*debunkering* mis-socjeta' attrici. Galadarba li ma gew prodotti l-ebda korrisondenza datati bejn 1 ta' Novembru u l-1 ta' Dicembru 2011, il-Qorti hija kostretta tikkonkludi li ma kien hemm l-ebda korrisondenza u f'dan il-perjodu s-socjeta' attrici baqghet indifferenti fil-konfront tas-sitwazzjoni li kien jinstab fiha l-bastiment.

Sitwazzjoni din totalment gustament inaccettabbli ghas-socjeta' konvenuta tenut kont is-sitwazzjoni prekarja li sabet ruhha fiha b'rizultat tal-karburant mhux tal-kwalita' pattwita' b'potenzjal kbir li jekk jintuza jikkawza hsrat konsiderevoli fil-magni tal-bastiment.

Kienet is-socjeta' konvenuta li fit-2 ta' Dicembru 2011 ikkomunikat mas-socjeta' attrici titlobha tikkonferma li *1) you will recognize that all de-bunkering cost are on your full account whatever port will be decided to organize de-bunkering; 2) you do not want to handle de-bunkering yourselves where else than Malta; 3) you give us full power to settle the claim in the best way without mean to contest solutions decisions taken*"¹⁰². Però Sarah Cassa injorat kompletament dak kollu li gie miftiehem fil-korrisondenza precedenti u informat li l-intenzjoni ta' Cassar Fuel Ltd issa kienet li l-karburant jinhatt minn fuq il-bastiment gewwa Malta u dan ghaliex huwa aktar facli ghall-imsemmija socjeta' li l-hatt isir gewwa Malta. Huwa evidenti illi s-socjeta' attrici marret lura mill-ftehim milhuq bejn is-socjeta' attrici u dik konvenuta illi l-hatt isir jew Barcellona jew Las Palmas.

¹⁰² Pagna 341 tal-process.

In oltre, s-socjetà attrici insistiet li “*we are making it clear that after de-bunkering, this case will be closed without any other claims for any damages, demurrages, etc.*”¹⁰³ Din il-korrispondenza ghalhekk taghmilha cara li mhux talli s-socjetà attrici marret lura mill-ftehim milhuq li de-bunkering isir f’wiehed mill-portijiet fl-esteru li hi stess ipproponiet, fuq il-pretest li kien aktar facli ghalha li d-debunkering isir f’Malta, izda riedet ukoll timponi kondizzjoni gdida li l-ispejjez kollha li l-bastiment u/jew is-socjetà konvenuta kienu ser jinkorru sabiex jakkomodaw lis-socjetà attrici sabiex jergghu jibaghtu l-bastiment lejn Malta unikament ghal de-bunkering kellhom jaghmlu tajjeb ghalihom il-bastiment u/jew is-socjetà konvenuta. Dan kollu juri kemm Sarah Cassar u Darren Marmara kienu skorretti fix-xhieda taghhom meta qalu li s-socjetà Cassar Fuel kienet lesta taghmel tajjeb ghall-ispejjez biex il-bastiment jigi Malta.

Sarah Cassar tinsisti li l-hatt kellu jsir Malta proprju minhabba dak li jipprovdi l-Artikolu 2.3 tat-termini u kundizzjonijiet. Mill-qari akkurat ta’ dan l-artikolu, din il-Qorti ma ssib l-ebda referenza ghall-allegat fatt li l-*debunkering* ghandu jsir bilfors Malta, izda ssib li “*The Company retains the right to remove or direct the removal and replacement of any such Marine Fuel as may need such replacement*” cioe, filwaqt li s-socjetà attrici ghandha tneghi l-karburant *off-spec* hi jew billi tqabba lill-kummercjant iehor, dan jista’ jsir fi kwalunkwe port. Dan fil-fatt ikkonfermah Darren Marmara fl-affidavit tieghu u kkonfermaha wkoll waqt il-kontro-ezami tas-7 ta’ Marzu 2016.

B’din is-sitwazzjoni quddiemhom, fejn filli s-socjetà attrici stess issuggeriet li l-hatt isir gewwa Barcellona, Las Palmas jew Gibiltà u f’daqqa wahda qieghda tinsisti li l-hatt isir gewwa Malta ghaliex huwa aktar facli, is-socjetà konvenuta u l-partijiet koncernati ma kellhomx triq ohra ghajr jippruvaw isibu rimedju. L-agir fil-fehma tal-Qorti skorrett tas-socjeta' attrici ma halla l-ebda triq ohra lis-socjeta' konvenuta hlief li tipprova ssib soluzzjoni hi. Fabre ghas-socjetà Ace Tankers fil-korrispondenza tat-2 ta’ Dicembru 2011 jaghmel is-segwenti osservazzjonijiet u suggerimenti:

¹⁰³ Pagna 140 tal-process.

“You proposed at first to organize yourself the debunkering in LP; why is that alternative not valid anymore ??? it was acceptable to all parties !

I see 2 options:

- *Either you organize debunkering in the closest port on the way from WAC to Gib / we can alternatively do that for you but all expenses would be for yourselves*
- *Or if owners are not tight on their schedule and agree on this solution, they could come to Malta BUT you would need to compensate the bunkers used from Gib to Malta and back and then proceed in port the debunkering.”¹⁰⁴*

Il-Qorti tinnota li s-socjetà attrici mhux biss naqset milli tilqa' wahda minn dawn l-alternattivi, talli naqset milli tkun disposta li toffri alternattivi ragonevoli fejn id-danni ghaz-zewg partijiet ikunu mill-anqas.

Is-socjetà attrici tinsisti li l-konvenuti qabblu li l-hatt ghandu jsir Malta. Din il-Qorti ma ssib l-ebda korrispondenza f'dan is-sens wara li l-bastiment kien telaq mill-ibhra Maltin tort tal-intransigenza tas-socjeta' attrici; il-qbil li *debunkering* isir Malta kien sakemm il-bastiment kien ghadu Malta. Tant dan huwa l-kaz li, bhal ma diga gie ritenut aktar 'l fuq, is-socjetà Ace Tankers mill-ewwel oggezzjonat ghall-proposta li l-bastiment jerga' jigi lura Malta ghal de-bunkering u dan minhabba l-iskeda li l-istess bastiment kellu. F'diversi korrispondenza li gew pprezentati juru lis-socjetà attrici ssaqsi jekk il-bastiment kienx ser ikun vicin Malta jew semai fil-Mediterran sabiex il-hatt ikun jista' jsir Malta, izda Ace Tankers kienet spjegat li ma kellha l-ebda vjaggi ppjanti u li mill-punent tal-Afrika il-bastiment kien ser ibahhar lejn Gibiltà sakemm jinghatawlu ordnijiet godda. Maghdud ma' dan kollu, is-socjetà Ace Tankers ghamlitha cara ma' Darren Marmara fid-9 ta' Dicembru 2011 li ma jsibux oggezzjoni sabiex il-hatt isir Malta jekk il-bastiment kien ser ikun vicin: *“We would not have a problem to debunker in Malta if the ship was ordered to Malta or should have passed Malta with little or no deviation on her way to the next destination.”*¹⁰⁵ Tkompli tispjegali *“At present however the ship will sail to Gibraltar and it is unlikely that on this short notice planning of de-bunkering in Malta is feasible. As you can imagine*

¹⁰⁴ Pagna 344 tal-process.

¹⁰⁵ Pagna 161 tal-process.

the 400mts off-spec fuel hinders an effective planning of supply for the near future.”¹⁰⁶
In oltre, din il-Qorti tinnota li filwaqt li s-socjetà attrici b’mod konsistenti ghamlet referenza ghal din il-korrispondenza hawn kwotata, u cioe korrispondenza ma’ terz li m’huwiex parti fil-kawza, l-istess naqset milli tindika korrispondenza fejn jintwera li s-socjetà konvenuta qablet li l-hatt isir Malta.

Bhala sunt ghal dan kollu, filwaqt li s-socjetà konvenuta flimkien mat-terzi persuni koncernati, pprovdew numru ta’ alternattivi ohra sabiex il-hatt isir minghajr dewmien, b’efficenzja u b’anqas spejjez, is-socjetà attrici min-naha taghha mhux talli naqset b’mod lampanti li toffri alternattivi ragjonevoli talli wkoll marret lura mill-offerta taghha stess, li giet accettata mis-socjeta’ konvenuta, li tiehu hsieb li d-*debunkering* issir gewwa Barcellona, Las Palmas jew Gibiltà.

Il-hatt (*debunkering*)

Fit-30 ta’ Novembru 2011 is-socjetà konvenuta giet mitluba mis-socjetà North Sea Group taghmel l-arrangamenti mehtiega sabiex isir id-*debunkering* f’port konvenjenti u bl-aktar mod ekonomiku u dan peress li l-bastiment ma setax jibqa’ mghobbi aktar b’400 tunnellata karburant li ma setax jintuza. Din it-talba saret wara li gie stabbilit li s-socjetà Cassar Fuel Ltd m’hijiex lesta li taghmel *debunkering* f’post iehor li mhux Malta. In segwitu ghal din il-korrispondenza, is-socjetà konvenuta ippruvat ghal darb’ohra timmittiga s-sitwazzjoni, izda kien kollu ghalxejn. Kien ghalhekk li fid-9 ta’ Dicembru 2011 Giampaoli Gargiulo baghat korrispondenza elettronika lil CEO tas-socjeta’ attrici Darren Marmara u lil North Sea Group jinfurmahom li “*the product supplied by Cassar Fuel to Mt Blue Rose at Malta on 20/10/11 will be discharged as a sludge in the port of Gibraltar on 16/12/2011. It is understood that any extra costs arising from this operation will be borne by the supplier of the product (Cassar Fuel) the solely responsible for the bad quality of the product supplied.*”¹⁰⁷

Is-socjetà attrici, nonostante li kienet irceviet il-korrispondenza mis-socjeta’ konvenuta bghatet ir-risposta taghha direttament lil Ace Tankers sabiex tinfurmahom

¹⁰⁶ *ibid.*

¹⁰⁷ Pagna 162 tal-process.

li hija m'hijiex qieghda taqbel mal-kontenut tal-imsemmija korrispondenza, però l-istess informazzjoni ma jirrizultax mill-atti li inghatat lis-socjetà konvenuta Alpha Trading SpA.

Din il-Qorti tifhem li 400 tunnellata ta' karburant *off-spec*, li kien ilu aktar minn xahar jingarr, il-bastiment ma setax jibqa' jgorru aktar sakemm forsi xi darba jghaddi vicin Malta. Mill-provi jidher li iz-zamma tal-karburant *off-spec* abbord il-bastiment kien qieghed jikkawza dannu konsiderevoli ghall-operat tal-istess bastiment.

Kien ghalhekk li l-bastiment inghata ordnijiet, wara arrangamenti li saru mis-socjetà konvenuta, sabiex il-hatt isir Gibiltà fis-16 ta' Dicembru 2011. Ix-xhud Giampaolo Gargiulo spjega li l-karburant inhatt bhala *sludge*. F'dan ir-rigward l-unika prova li ngabet huwa dokument, imsejjah bhala rcevuta mill-imsemmi xhud, fejn permezz taghha is-socjetà Vemaoil qieghda tircievi “*the following grade and quantity of bunkers: RMG380 CST – 386.347 MT (Density at 15° C – 0.9909): The debunkering receipt not given from vessel. Final quantity and quality will be defined after samples analysis of the delivered crude.*”¹⁰⁸

Trevor Harrison fil-ktieb ***Legal Issues in Bunkering: An Introduction to the Law Relating to the Sale and Use of Marine Fuels*** jispjega li “*oil that is delivered to a ship as bunkers but which subsequently has to be removed from the ship might, in some circumstances, be debunkered not as bunker fuel but as slops or waste. The categorisation of debunkered fuel can be very important both in terms of its value and its status for Customs purposes.*”¹⁰⁹

Din il-Qorti tosserva li fid-dokument ipprezentat m'hemm l-ebda referenza ghal kliem ‘*sludge*’ ‘*slops*’ jew ‘*waste*’ u ma ngabet l-ebda prova ohra li l-karburant verament nbiegh bhala hama. Li tinnota huwa li l-grad imsemmi huwa ta' RMG 380CST cioe l-istess grad li xtratu s-socjeta konvenuta. In oltre, is-socjetà konvenuta naqset milli tipproduci kopja tar-rizultati kemm tal-kwalità kif ukoll tal-kwantità tal-karburant li hija bieghet lis-socjetà Vemaoil. Ghalkemm Giampaolo Gargiulo jghid li l-karburant

¹⁰⁸ Pagna 350 tal-process.

¹⁰⁹ Pagna xxvii.

inbiegh \$80 kull tunnellata, izda naqas milli jgib prova adegwata li turi x'verament kien l-ammont li gie mhallas mis-socjetà Vemaoil. Finalment din il-Qorti tosserva wkoll li ma ngabet l-ebda prova li turi li s-socjetà konvenuta ppruvat tikseb l-ahjar prezz.

Min setgha jordna l-hatt?

Mill-qari tal-atti jirrizulta li l-insistenza li l-hatt kellu jsir mis-socjetà attrici gejjja mill-fatt li galadarba s-socjetà konvenuta kienet ghadha ma halsitx ghall-istess karburant, hija kienet ghadha l-proprjetarju tal-istess karburant, u cioe kienet ghadha qieghda tirritjeni titolu fuq l-istess karburant (*pactum reservati dominii*) u dan in vista tas-segweni kundizzjoni:

“Legal title to the Marine Fuel shall only pass onto Buyer on full payment of the price, and until such full payment the Company shall have the right to recall the product or to indicate its place of delivery; in the event that the product perishes or is destroyed or is lost after delivery without the price having been paid in full, Buyer shall still be responsible towards the Company for the payment of the price or any unpaid portion thereof”¹¹⁰.

Trevor Harrison fil-ktieb *Legal Issues in Bunkering: An Introduction to the Law Relating to the Sale and Use of Marine Fuels* indaga dwar il-principju *pactum reservati dominii* (*retention of title*) u spjega li

“The passing of title or the passing of property is the moment when the rights of ownership in the product pass from the seller to the buyer. Until title passes, the seller is the legal owner of the fuel oil and has the right to give instructions to others about the use, custody and handling of the fuel oil.”¹¹¹

Ikompli jghid li

¹¹⁰ Pagna 93 tal-process.

¹¹¹ Pagna 26.

“Businesses that supply goods often include within their standard terms and conditions of sale a retention of title clause. The clause provides that title (ownership) in the goods sold will not pass from the seller to the buyer until the seller has been paid in full. Until the seller receives payment, the goods remain the seller’s property and, if payment is not forthcoming, the seller may repossess them.

[...]

The nominal purpose of a retention of title clause in a contract for the sale of goods is to enable an unpaid seller to regain possession of the goods from the buyer. For example, if a shopkeeper does not pay his supplier, the supplier, relying on a retention of title clause, can simply demand the return of the goods (which are still the supplier’s property). The supplier can instruct the shopkeeper to stop selling them and send a vehicle around to collect the goods from the shop and bring them back to the supplier’s warehouse. However, the real value of a retention of title clause for most sellers is not to regain possession of the goods but as a means of encouraging reluctant customers to make payments.

With bunkers, repossession will rarely be simple and a threat to do so is unlikely to cause much excitement on the part of a non-paying buyer. Even if a supplied ship is still in port when payment falls due, discharging bunkers can be a slow and complicated process and everyone recognises this.”¹¹²

Fil-kawza fl-ismijiet **Forsythe International (UK) Ltd. V. Silver Shipping Co. Ltd and Petrolobe International Ltd** maghrufa bhala “The Saetta” [1993] 2 Lloyd’s Rep. 268. 1-Onorevoli Imhalledf Clarke spjega li

“Notwithstanding that delivery has taken place, the marine fuels shall remain the sole and absolute property of the seller as legal and equitable Owner until such time as the buyer shall have paid to the seller the agreed price together with all

¹¹² Pagna 61.

interest, costs and expenses which may have accrued due and together with the full price of any other fuel the subject of any other contract with the seller.

Both the Owner of the vessel and the buyer acknowledge that they are in possession of the marine fuels solely as bailee for the seller, until such time as all the foregoing sums have been paid to the seller.

The buyer's right to possession of the marine fuels ceases if he does anything, or fails to do anything, which would entitle a receiver to take possession of any assets or which would entitle any person to present a petition for winding-up"

Dan it-tip ta' bejgh huwa distint minn bejgh fuq kreditu (*credit sale agreement*). Din id-distinzjoni hija spjegata f'tezi tal-1973 intitolata ***The Transfer of Property and Risk in Commercial Sale [Philip Sciberras - UOM]***:

"This instalment sale with retention of ownership is to be distinguished from the other type of instalment sale in which the transfer of ownership is not postponed but passes as soon as there is agreement between the parties on the thing and the price. This is known as a credit sale agreement; in other words, the vendor has given credit to the purchaser, and the latter will have to pay the price of the thing on credit. Settlement may be in one or several instalments, although the method of payment is irrelevant. What is important is that the buyer has acquired credit; it is a sale without immediate payment of the price while ownership and possession have passed in the hands of the purchaser.

In credit sale contract the vendor cannot reserve the right to retake possession of the thing if an instalment is not paid. This is extremely important in that it distinguishes this contract from the other type of sale with retention of ownership. In the latter contract although possession of the thing passes to the buyer, ownership is retained by the seller and therefore an action is necessary in order that the Court may assign the thing back to him; this is because sale with 'pactum resevati dominio' is more in the nature of guarantee and vendor, on complication of the obligation, passes ownership to the purchaser. But in a contract of credit

sale the seller can never reserve ownership on to him and his remedy is only for balance of price still due.”¹¹³

Il-Qrati nostrana kellhom l-opportunità jiddeciedu fuq bejgh bil-kundizzjoni ta' *pactum riservata dominii*. Fost dawn insibu s-sentenza deciza minn din il-Qorti diversament preseduta fl-ismijiet **Dr. Antoine Cremona noe vs. Konstantin Alexander Anastasiou** (Cit Nru 480/05 RCP) deciza fit-28 ta' Gunju 2006 fejn gie ddikjarat:

Illi ma hemm l-ebda dubju li dan il-kuntratt huwa ftehim bejn is-socjeta' attrici u l-konvenut kontumaci li jissejjah *pactum com riservata dominii* u hawn issir riferenza ghall-kawza li fil-kawza l-ismijiet **“Regina Auto Dealer Limited vs Miller Dist. Limited et nomine”** (P.A. (RCP) – 30 ta' Mejju 2002) fejn inghad li dak il-ftehim li komunimament jissejjah f'termini legali bhala *pactum cum riservata dominii*, l-effett tieghu huwa dak deskritt fis-sentenza fl-ismijiet **“V. Bonnett vs G Azzopardi”** (A.K. 28 ta' Gunju 1922) fejn intqal li:-

“In natura intrinsika ta' dan il-kuntratt hija li fih zewg stadji ben distinti. Is-sid ta' l-oggett jittrasferixxi lill-kerrej l-uzu u l-pussess ta' l-oggett ghall-kirja specifika, b'dan li l-proprjeta` ta' l-oggett ma tghaddix ghand ix-xerrej sakemm il-prezz ma jkunx imhallas kollu. Il-venditur jibqa' legalment konsidrat li hu s-sid ta' l-oggett u l-proprjeta` tieghu ma tghaddix lill-venditur sakemm il-prezz tieghu ma jkunx gie saldat” (vide **“G Degiorgio vs E Micallef”** - A.C. fis-16 ta' Dicembru 1936 (Vol XXIX.i.1438; **“Negozjant Alfredo Muscat vs G Bonnici et”** – A.C. 8 ta' Frar 1935 - (Vol XXIX.i.89); **“Lieutenant Colonel Robert Strickland vs David Shepherd”** (A.C. 21 ta' Jannar 1951 (Vol XXXV.iii.530); **“Maggur Hannibal A. Scicluna vs Avukat Dottor Edgar Grima”** K. (MCC) – 23 ta' Frar 1965.

Fis-sentenza fl-ismijiet **Anthony Abela noe vs. Maria Attard et** deciza wkoll mill-Qorti Civili, Prim'Awla fit-12 ta' Frar 1957 gie spjegat li “fil-vendita bil-patt tar-

¹¹³ Philip Sciberras, *The Transfer of Property and Risk in Commercial Sale*, Royal University of Malta, 1973, pagni 30-31.

rizerva tad-dominjum l-istess patt jattribwixxi lill-venditur il-fakolta li jirritarda t-transmissjoni tal-proprjeta tal-haga mibjugha sal-mument meta javvera ruhu fatt, jew jghaddi ċertu zmien; u malli dak il-fatt jew zmien jivverifika ruhu, ma jkunx hemm bzonn ta' manifestazzjoni ohra gdida ta' volontà, jew xi attività ohra mill-parti tal-kontraenti jew xi hadd iehor, sabiex tavvera ruhha t-trasmissjoni tal-proprjeta. Minn dan jitnissel li sakemm ma javverax ruhu l-fatt kontemplat, jew jghaddi z-zmien stabbilit, il-venditur jibqa' l-proprjetarju tal-haga li tkun giet iffurmat oġġett tal-kontrattazzjoni tal-bejgh bil-patt fuq imsemmi”.

Lura ghall-kaz odjern, filwaqt li Ace Tankers ma kinitx taf bit-termini u kundizzjonijiet li gew mqieghda mis-socjeta Cassar Fuel ghaliex ma kellha l-ebda relazzjoni kuntrattwali ma' Cassar Fuel, is-socjeta konvenuta kienet taf ben tajjeb b'dawn il-kundizzjonijiet inkluz ghalhekk il-kundizzjoni li t-titolu tal-karburant jghaddi lilha wara li jsir il-hlas. Mix-xhieda ta' Lorenzo Buffoni hareg car ukoll li s-socjeta konvenuta “*applied our terms and conditions with NSG [North Sea Group]*”¹¹⁴ izda kopja ta' dawn it-termini u kundizzjonijiet ma gewx ipprezentati u ghalhekk din il-Qorti ma hiex f'posizzjoni tghid jekk dak dikjarat minn Buffoni ghandux mis-sewwa.

Ta' relevanza ghall-kaz odjern hija s-sentenza fl-ismijiet **Noel Gruppetta noe vs. Joseph Florian** deciza mill-Qorti tal-Appell fid-19 ta' Jannar 1980 fejn gie not li

“Dwar il-validita ta' din il-figura ta' vendita bil-“*pactum riservati dominii*” ormai ma jista' jkun hemm lanqas il-minimu dubju. Stabbilit dan, il-vera kwistjoni tikkoncerna fil-kaz prezenti l-passagg tar-riskji. F'dan ir-rigward anki dina l-Qorti taqbel ma' dak li gie anterjorment deciż (mizzi vs. Caruana, Kumm. 9 ta' Ottubru, 1945; Kollez. Vol. XXXII, III, 536) u cjoe illi l-bejgh ta' din ix-xorta fejn il-kompratur ikun ottjiena l-pussess u l-godiment tal-haga mal-kunsinna (u l-venditur ikun korrispondentement tilef fuqha l-poter ta' kustodja u konservazzjoni) u fejn il-kompratur ghadu ma akkwistax ukoll il-proprjeta dan hu biss in virtuta ta' agevolazzjoni lilu koncessa li jiddiferixxi u jirratizza l-pagament tal-prezz, m'ghandux jitqies li kien fl-intendiment tal-partijiet illi tali vantagg hekk koncess

¹¹⁴ Pagna 738 tal-process.

lill-kompratur jwassal anki biex jipproduci, b'aggravament ovvju tas-sitwaazzjoni tal-venditur, vantagg ulterjuri u cjoe dik tal-ezenzjoni tar-riskji ... Ghalhekk fil-kaz prezenti hu l-konvenut kompratur li ghandu jissapporti t-telf tal-motor cycle misruq wara li kien gie lilu debitament ikkunsinnati fuq kuntratt ta' bejgh b'riserva tal-proprjeta` sal-effettiv pagament tal-prezz kollu.”¹¹⁵

Fil-kaz odjern, kien hemm kundizzjoni espressa fil-ftehim li nonostante li ma jkunx ghadu sar il-hlas tal-*bunker*, ix-xerrej ghandu jaghmel tajjeb ghall-ispejjez jekk il-karburant jintilef, jithassar jew jigi distrutt:

“in the event that the product perishes or is destroyed or is lost after delivery without the price having been paid in full, Buyer shall still be responsible towards the Company for the payment of the price or any unpaid portion thereof”.

Gie issenjalat fis-sentenza **Neg. Pio Pisani ne. Vs. Neg. Carmelo Wismayer** moghtija fis-sena 1946 li “il-Kumpratur ghandu dritt jirrifjuta l-merkanzija meta din tkun diversa minn dik li huwa xtara; u dan avolja fil-ftehim tal-bejgh huwa jkun assuma r-riskji. Ghax r-riskju ma jista' qatt ikun jirrifjerixxi ruhu ghad-differenza tal-merkanzija jew tal-kwalita` taghha. Dawn ma humiex riskji tal-bejgh.”¹¹⁶

Fis-sentenza fil-kawza fl-ismijiet **Paul Galea pro et noe vs. Carmel Galea** deciza fil-31 ta' Jannar 2003, mill-Prim Awla tal-Qorti Civili (Cit Nru 891/1990/1) gie dikjarat is-segwenti fl-applikazzjoni tal-**Artikolu 1390 tal-Kodici Civili**,

“Riferibilment ghat-trasferiment ta' proprjeta` u r-riskju ta' l-oggett mixtri, jinsab enuncjat illi “meta x-xerrej jirrifjuta l-oggett li jkun baghtlu l-venditur ghax l-oggett hu hazin u mhux adatt ghall-fini tax-xiri, kif hu dejjem prezunt li ghandu jkun l-oggett mibjugh u javza lill-venditur b'dan ir-rifjut, l-istat ta' fatt ikun daqs li kieku naqas ghal kollox l-oggett tal-bejgh, u kwindi ma hemmx trapass tal-proprjeta` jew tal-*periculum rei perditae*” (Francesco Zammit vs Celest Spiteri, Qorti ta' l-Appell, Sede Inferjuri, 14 ta' Novembru 1953).”

¹¹⁵ Ara wkoll **Raymond Buhagiar vs. Darren Falzon** (Rik Nru 291/2017 SG) deciza mill-Qorti tal-Magistrati (Malta) fl-24 ta' Settembru 2019 fejn tirrigwarda bejgh ta' mobbli.

¹¹⁶ Vol XXXII.III.553 (1946)

B'applikazzjoni ta' dan l-insenjament ghal kaz odjern, din il-Qorti tosserva li ghalkemm ir-riskju gie trasferit fuq is-socjetà konvenuta, l-imsemmija socjetà kjarament irrifjutat li teffetwa il-hlas proprju minhabba l-fatt li l-kwalità tal-karburant kien *off-spec*. F'dan il-kaz wiehed jirrikorri ghar-rimedju li kull xerrej ghandu meta l-oggett mixtri ma jkunx tal-kwalità pattwita.

Ir-rimedju li ghandu x-xerrej

Ir-ritorn tal-prodott li mhux ta' kwalità pattwit huwa fil-fatt wiehed mir-rimedji li jipprovdi l-Artikolu 1390 tal-Kapitolu 16, fuq kwotat.

Gie spjegat li “Huwa desumibbli minn dan il-provvediment illi r-rimedju akkordat mil-ligi lill-konvenut-xerrej kien wiehed duplici. Jew li jirrexindi l-ftehim minhabba inadempjenza ta' l-atturi-vendituri u jitlob id-danni, jew li jzomm l-oggetti lilu konsenjati imma jesigi riduzzjoni fil-prezz. F'din it-tieni ipotesi l-ftehim jibqa' jissussisti pero` l-kompratur ikollu dritt jigi kompensat minhabba inadempjenza kontrattwali tal-venditur;”¹¹⁷

Fis-sentenza fl-ismijiet **Raymond Azzopardi vs. Francis Azzopardi** (App Civili 718/2005/1 PS) deciza mill-Qorti tal-Appell (sede Inferjuri) inghad:

“Issokta jigi spjegat illi biex jezercita dak ir-rimedju fit-termini ta' l-Artikolu 1390 tal-Kodici Civili il-kompratur m'ghandux, u ma jistax, bl-azzjoni tieghu stess jippregudika tali dritt. “Ir-rifjut ta' l-oggett u t-talba ghall-hlas ta' danni jimportaw li l-oggett mibjugh jigi ritornat lill-venditur, nehhi f'dawk il-kazijiet eccezzjonali fejn dan ikun fizikament impossibbli. Certament il-kompratur ma jistax jirrifjuta l-oggett filwaqt li jibqa' jzommu taht il-kontroll tieghu, jaghmel uzu minnu u forsi anke, kif hu allegat f'dan il-kaz, jiddisponi minnu” (“**Nazzareno Cauchi et nomine - vs- Joseph Baldacchino et nomine**”, Appell, 7 ta' Ottubru, 1997). Gja nofs seklu qabel din is-sentenza kien inghad illi x-xerrej li ma jkunx irid jaccetta l-

¹¹⁷ **Andrew Camilleri vs. Daniel Edwin Sayles** (Cit Nru 1364/1991) deciza mill-Qorti Civili, Prim'Awla fis-17 ta' Gunju 2003.

merkanzija ma jistax izommha ghandu u meta jigi mharrek ghall-pagament jippretendi li jirritornaha lill-venditur billi jallega li l-merkanzija mhix ta' kwalita tajba. Ara “**Neg. Frank Borg -vs- Paul Bondin**”, Appell Kummercjali, 30 ta' Gunju, 1947;

Dejjem in tema nghad ukoll illi “wiehed mill-principji li jirregolaw il-materja meta l-merkanzija tkun baqghet f'idejn ix-xerrej, li ma jkunx ikkura ruhu li jiddepozitaha, hu li ebda reklam ma jista' jsir jekk mhux res adhuc integra”. Ara “**Lorenzo Buttigieg -vs- Henry Hirst nomine**”, Appell Civili, 16 ta' Frar, 1945, “**Carmel Bajada et nomine -vs- Alfred Salomone nomine**”, Appell Civili, 23 ta' Mejju, 1960 u “**William Rizzo nomine -vs- Victor Zammit**”, Appell, 15 ta' Dicembru, 1997;”

Fis-sentenza tal-Qorti Civili, Prim'Awla fl-ismijiet **Morina Aquasport Ltd. vs. Eastern Star Ltd.** (Cit Nru 1355/2000 JRM), deciza fil-31 ta' Mejju 2012, saret l-osservazzjoni segwenti: “Illi problema li minn dejjem tqanqal f'dawn l-azzjonijiet u l-proponibbilta` taghhom huwa dak dwar jekk il-ħaga mixtrija kinitx konsenjata jew le. Jidher li din il-kwestjoni ġiet solvuta fis-sens li l-azzjoni taht l-artikolu 1390 tista' tirnexxi u jista' jintalab it-tħassir tal-kuntratt, ukoll jekk tkun saret il-konsenja tal-ħaga, dment li x-xerrej ma jkunx tilef tali dritt bil-fatt tiegħu stess (per eżempju, jekk ikun biegh il-ħaga jew ikun biddlilha n-natura tagħha) jew sakemm ma jkunx wera li qieghed japprovaha.”

Il-Qorti tal-Appell (sede Superjuri) fil-31 ta' Jannar 2014 fid-decizzjoni **Medcomms Ltd vs. Peter Muscat Scerri** (App. Civ. 727/2000) irriteniet is-segwenti:

Hekk ukoll, din il-Qorti, Sede Inferjuri, fil-kawza **Debono v. Uskin Ltd.**, deciza fit-28 ta' Marzu, 2008, ossevat a propositu:

“Ma hemmx dubbju illi l-Artikolu 1390 tal-Kodici Civili jqis bhala rilevanti l-kwalita` jew kwalitajiet li huma essenzjali ghall-uzu tal-haga jew li jiffirmaw l-oggett ta' xi impenn kontrattwali specifiku, u li, in mankanza, jintitolaw lix-xerrej li jagixxi ghar-risoluzzjoni jew ghar-riduzzjoni tal-prezz. Huma dawn anke skont id-dottrina legali r-rimedji generali esperibbli mix-xerrej fil-kaz ta’

inadempiment. Ara **Bianca “La Vendita e la Permuta”**, Unione Tipografica – Editrice Torinese, 1972, pac. 845 et sequitur). Min irid jagixxi b’xi wahda minn dawn mhux bilfors u dejjem irid jghaddi ghar-radd lura jew depozitu tal-oggett li hu jqis difforni ghaliex dawn ma humiex xi ingredjenti sine qua non ghall-esperibbilita` jew is-success tal-azzjoni. Il-kazijiet ivarjaw u huma dipendenti fuq ic-cirkostanzi specjali tal-kaz konkret. Dan hu hekk rikonoxxut anke mill-gurisprudenza taghna.”

Din il-Qorti, fil-kawza **Dalli v. Patiniott**, deciza fid-19 ta’ Mejju, 2000, kien osservat illi:

“... .. jekk il-kompratur jaghzel li jzomm l-oggett lilu konsenjat u bl-ebda mod ma jirreagixxi skont kif trid il-ligi ghall-fatt li dak l-oggett ma jkunx skont il-kampjun jew tal-kwalita` pattwita, il-kompratur ikun qieghed jippregudika irremedjabbilment il-pozizzjoni tieghu.” (Sottolinear ta’ din il-Qorti).

Isegwi mill-premess li z-zamma wahedha min-naha tax-xerrej tal-haga mixtrija m’hijiex ta’ xkiel ghas-success tal-azzjoni taht l-Artikolu 1390. Hija z-zamma tal-oggett minghajr reklam ta’ nuqqasijiet, jew minghajr impenn serju dirett lejn soluzzjoni li tista’ twassal ghat-telfien tal-azzjoni kontemplata fl-Artikolu 1390. Irid jirrizulta li x-xerrej “*tilef dan id-dritt bil-fatt tieghu stess*”, u dan jiddependi mic-cirkostanzi tal-kaz u mhux biss mill-fatt li x-xerrej zamm ghandu l-oggett in vendita.”

Fil-kaz odjern ghalkemm is-socjeta` konvenuta ma kinitx inattiva jew passiva in relazzjoni man-nuqqasijiet riskontrati, u qatt ma wriet li kienet qieghda taccetta l-oggett mixtri, is-socjeta` konvenuta ma ghaddietx sabiex tistitwixxi proceduri taht l-Artikolu 1390 meta rat inadempjenza min-naha tas-socjeta` attrici (kif ser jigi spjegat aktar ‘l quddiem) izda ghaddiet biex bieghet l-istess karburant li hija kienet qieghda tilmenta minnu. F’dan is-sens din il-Qorti taghmel referenza ghal-kawza **Louis de Gabriele vs. Arcidiacono Mfg. Co. Ltd** (App Civ Nru 429/2002 PS) deciza mill-Qorti tal-Appell (sede Inferjuri) fil-11 ta’ Jannar 2006:

“Anke hawn is-socjeta appellanti, qua kompratrici, ma setghatx tippretendi li minkejja li, skond hi, l-merce kienet difettuza, izzommha ghandha, tiddisponi minn parti minnha u tiddeciedi li ma thallasx taghha. Pretensjoni bhal din certament ma hijiex wahda guridikament korretta. Kif diversi drabi enuncjat, “ix-xerrej ma jistax izomm f’idejh il-merkanzija li ma jkunx irid jaccetta u, wara li jkun ghadda z-zmien, jirrifjuta li jhallasha u jippretendi li jaghtiha lura lil venditur, billi jallega li l-merkanzija kienet difettuza” (Kollez. Vol. XLIV P I p 153). “Huwa kien imissu agixxa bid-diligenza kollha f’ materja simili, u ladarba ma ghamelx hekk, ma jistax wara jippretendi li jirritorna l-merkanzija u jippregudika lill-venditur” (Kollez. Vol. XXXIII P I p 585).”

Kif jipprovdi l-artikolu 1390 tal-Kap. 16, is-socjeta' konvenuta, una volta stabbilit u accettat mis-socjeta' attrici li l-karburant konsenjat ma kienx tal-kwalita' pattwita kellha dritt tistitwixxi azzjoni ghad-danni filwaqt li tirrifjuta l-karburant konsenjat. Tirrifjuta l-karburant konsenjat ifisser jew li l-karburant jigi konsenjat lura lis-socjeta' attrici jew li tiddepozitah taht l-awtorita' tal-Qorti jekk is-socjeta' attrici tirrifjuta li tiehdu lura. Wara li ezaminat bir-reqqa il-provi kollha migjuba mill-partijiet hi tal-ferma konvinzjoni illi s-socjeta' attrici, bi ksur tal-obbligi kontrattwali taghha mas-socjeta' konvenuta, ghamlet minn kollox sabiex tostakola l-konsenja lura tal-karburant difettuz. Huwa deplorevoli l-agir tas-socjeta' attrici illi wara li kien tort uniku taghha li s-socjeta' attrici spiccat bit-tankijiet tal-bastiment de quo b'karburant difettuz; ghamlet minn kollox sabiex filwaqt li tirrecta li trid tikkopera sabiex issolvi l-problema li holqot hi stess, bil-fatti ghamlet bil-maqlub ta' dak li kien kontrattwalment fid-dover taghha.

Pero', filwaqt li fil-mertu s-socjeta' konvenuta kellha ragun, jirrizulta illi mhux biss ma hadet l-ebda passi legali fir-rigward tal-ilment gustifikat taghha; talli meta giet rinfaccjata bil-kawza odjerna ghall-kanonizzazzjoni tal-hlas tal-prezz tal-karburant difettuz, minflok segwit dak li jipprovdi l-Artikolu 1390 tal-Kap. 16 hija ghazlet illi teccepixxi biss illi l-azzjoni attrici hija infondata ghaliex il-prodott supplit mis-socjeta' attrici ma kienx tal-kwalita' pattwita.

L-Artikolu 1390 tal-Kap 16 jaghti zewg rimedji lill-kumpratur ta' merkanzija li tirrizulta li ma hiex tal-kwalita' pattwita: jew jirrifjuta l-merkanzija (u naturalment

jekk giet konsenjata jirritornaha lura lill-venditur u f'kaz li dan ta' l-ahhar jirrifjuta jiddepozitaha taht l-awtorita' tal-Qorti u jagixxi ghad-danni (Actio Redibitorja) jew jaccetta l-haga u jagixxi ghar-riduzzjoni fil-prezz bl-assistenza ta' periti (Actio Aestimatoria jew Quanti Minoris). M'hemmx toroq ohra disponibbli ghax-xerrej f'dawn ic-cirkostanzi. Jekk ix-xerrej jagixxi b'tali mod li l-merkanzija ma tistax tigi ritornata, bhal per eżempju ibieghha, bhalma gara fil-kaz odjern, allura l-unika triq li jkun fadallu hija l-Actio Aestimatoria. Ghalkemm il-ligi ma tipprovdi b'mod specifiku, pero' l-gurisprudenza nostrana tghallem illi difiza msejsa fuq l-elementi tal-actio aestimatoria tista' titressaq in via di eccezione meta x-xerrej jigi mharrek ghall-prezz; basta li tali eccezzjoni msejsa fuq l-azzjoni estimatorja titressaq qabel jiskadi t-terminu preskrittiv ta' sentejn.

Hu proprju hawnhekk fejn is-socjeta' konvenuta tfalli bi kbir.

Dan ghaliex f'risposta guramentata ta' erba' pagni u nofs fejn prattikament ghamlet sunt tal-fatti, l-unika eccezzjoni fil-mertu hi dik enumerata numru 15 fejn jigi eccepiet illi "... t-talbiet attrici huma infondati fil-fatt u fid-dritt ghaliex il-prodott supplit mis-socjeta' attrici ma kienx tal-kwalita' pattwita u inoltre kien prodott li qatt ma setgha jintuza ghall-iskop li ghalih kien inxtara minghajr ma jikkawza danni kbar u serji lill-magni tal-bastiment."

Kif irriteniet il-Qorti tal-Appell fis-sentenza fl-ismijiet "**L & D Attard Co. Limited vs Eurometal Co. Limited**" moghtija fit-28 ta' Jannar 2005 dwar konsenja ta' merkanzija konsistenti f'metall allegatament mhux tal-kwalita' pattiwta ippronunzjat is-segwentu dwar l-Artikolu 1390 tal-Kap. 16:-

"L-Artikolu 1390 jghid kjarment x'jista jaghmel ix-xerrej meta jigi rinfaccjat b'oggett li ma jkunx gie mgħoddi lilu skond kif miftiehem. Jista' jirrifjutah jew izommu u jitlob diminuzzjoni fil-prezz tal-bejgh. Li zgur ma jistax jaghmel hu li jibqa' jzomm ghandu dan l-oggett" [u ma jhallas xejn]

Kompliet tghid hekk il-Qorti tal-Appell fis-sentenza appena citata:-

"Dawn il-Qrati dejjem irritenew li biex ix-xerrej jehles mir-rabta kontrattwali li kien dahal fiha li jakkwista l-oggett minghand il-venditur, fejn dak l-oggett ma jkunx konformi mal-kampjun jew skond il-kwalita` mwieghda, hu kellu jirrifjutah jew materjalment jew billi jiddepozitah taht l-Awtorita` tal-Qorti (**Avv. Dottor Louis Cassar Pullicino nomine vs. Pauline Buhagiar nomine**, Appell Civili, 28 ta' April 2000). Naturalment skond l-istess termini ta' l- artikolu tal-ligi, huwa seta' wkoll jaghzel li jaccettah u jhallas prezz anqas ghalih fuq stima ta' perit. Fis-sentenza moghtija fil-kawza fl-ismijiet: "**John Mary Dalli nomine v. Grezzju Patiniott**", Appell Civili, 19 ta' Mejju 2000, gie inoltre ritenut li "Din kienet difiza li l-kompratur seta' javanza ukoll per via di eccezione jekk il-venditur jinterpellah biex ihallas ilprezz ta' l-oggett in vendita`. Mill-banda l-ohra, jekk il-kompratur jaghzel li jzomm l-oggett lilu konsenjat u bl-ebda mod ma jirreagixxi skond kif trid il-ligi ghall-fatt li dak l-oggett ma jkunx skond il-kampjun jew tal-kwalita` pattwita, il-kompratur ikun qieghed jippregudika irremedjabilment il-posizzjoni tieghu".

Hu hekk fil-fehma tal-Qorti ghamlet is-socjeta' konvenuta fil-kawza odjerna. Ippregudikat irrimedjabbilment il-posizzjoni taghha meta bieghet il-karburant difettuz minghajr ma agixxiet almenu in via di eccezione b'difiza imsejsa fuq l-azzjoni estimatorja.

Naqset gravament is-socjeta' konvenuta meta ma inkarigat l-ebda esperti sabiex jaghtu stima indipendenti u oggettiva tal-merkanzija difettuza una volta s-socjeta' konvenuta kienet ser tghaddi sabiex tbiegh dik l-istess merkanzija difettuza. Mill-mument li s-socjeta' konvenuta iddecidiet li tbiegh dik il-merkanzija lil terzi, immaterjali jekk hux bhala karburant ta' kwalita' prima jew bhala 'sludge' jew hama, kienet qeghda fl-istess nifs tiffinunzja ghall-azzjoni redibitorja u gabet fi tmiemu ir-rifjut formali taghha tal-merkanzija. Mal-bejgh tal-karburant de quo kien baqala' biss ghad-disposizzjoni taghha l-azzjoni aestimatorja izda fir-rigward ma haditx il-prekawzjonijiet u l-azzjonijiet li kienu lilha disponibbli lanqas in via di eccezione.

Ghaldaqstant, gialadarba is-socjeta' konvenuta bieghet lil terzi l-merkanzija mertu tal-kawza odjerna u naqset milli tressaq eccezzjoni msejsa fuq l-azzjoni

estimatorja; l-eccezzjoni fil-mertu tagħha li l-merkanzija ma hiex tal-kwalita' pattwita ma hiex legalment fondata, una volta zammet l-istess merkanzija.

Decide.

Għal dawn il-motivi l-Qorti qed taqta' u tiddeciedi l-kawza billi;

1. Tichad l-eccezzjonijiet tas-socjeta' konvenuta li ma gewx decizi bis-sentenza in parte tat-30 ta' Mejju 2013;
2. Tilqa' t-tieni talba attrici, tiddikjara li s-socjeta' konvenuta għandha tagħti lis-socjeta attrici s-somma ta' **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin euro u ghoxrin centezmu (EUR175,443.20)**, oltre l-imghaxijiet kummercjali sad-data tal-pagament effettiv.
3. Tikkundanna lis-socjeta' konvenuta thallas lis-socjeta' attrici s-somma ta' **mija u hamsa u sebghin elf erba' mija u tlieta u erbghin Euro u ghoxrin centezmu (EUR175,443.20)**, oltre l-imghaxijiet kummercjali sad-data tal-pagament effettiv.

Bl-ispejjeż kontra s-socjeta' konvenuta hlief daww relatati mas-sentenza in parte mogħtija minn din il-Qorti diversament presjeduta fit-30 ta' Mejju 2013.

Onor. Robert G. Mangion

Imhalef

29 ta' Ottubru 2020

Lydia Ellul

Deputat Registratur

