MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.
PHILIP MANDUCA

Seduta tat-2 ta' Ottubru, 2003

Talba Numru. 2932/2002

Atlas Insurance Agency Limited bhala rappresentant tas-socjeta' estera AXA Insurance Plc, f'isimha proprju u kif surrogata fid-drittijiet tal-assikurat taghha Wands Limited

Vs

Gollcher Company Limited bhala agenti tas-socjeta' estera Grandi Traghetti di Navigazione SpA armaturi tal-bastiment "MV Lince" u Ace Travel Limited bhala socjeta' operatrici ta' bond privat

It-Tribunal

Ra l-Avviz li fih is-socjeta' attrici talbet il-hlas ta' Lm371.00c (tlett mija u wiehed u sebghin lira Maltin) rapprezentanti danni in kwantu Lm23.00c (tlieta u ghoxrin lira Maltin) li nkorriet "de proprio" bhala "survey fees" u in kwantu ghal Lm348.00c (tlett mija u tmienja u erbghin lira

Maltin) li sborsat a favur l-assikurat taghha Wands Limited bhala indennizz wara li din gabret nuqqas ta' 122 flixkun minn konsenja ta' 190 cartons ta' inbid ghal liema nuqqas kienu responsabbli s-socjetajiet konvenuti.

Ra r-Risposta li fiha is-socjeta' konvenuta Gollcher Company Limited qalet li t-talba attrici hija kontestata billi s-socjeta' eccippjenti mhix responsabbli ghad-danni pretizi. Gollcher Company Limited qalet ukoll li, minghajr pregudizzju, kwalunkwe responsabilita li tista tigi stabbilita minn dan it-Tribunal hija limitata skond il-ligi u l-polza ta' kariku.

Ra r-Risposta ta' Ace Travel Limited li qalet li t-talba hi nfondata fil-fatt u fil-ligi.

Ra d-dokumenti esebiti.

Ra s-seduta datata fis-26 ta' Marzu, 2003 li fiha xehed Peter Saliba, prodott mis-socjeta' attrici, fejn jikkonferma li huwa l-marine claims tas-socjeta' attrici. Jghid li l-merkanzija ta' diversi mportaturi kienet gejja minn Franza fuq il-vapur MV Lince. Id-destuffing sar fil-bonding stores tal-Gollcher. Qal li mhux cert jekk hux il-Wands jew Gollcher kienu qabdu lil Ace Travel biex igibu x-xoghol. Jghid ukoll li minn Hal Far sal-warehouse tal-klijenti taghhom ix-xoghol gie bil-gwardjan tad-dwana. Jghid li hemmhekk kien hemm tally ta' x'kien hemm bhala merkanzija u kienet harget bill of lading ghal konsenja kollha.

Ra x-xhieda ta' George Micallef, prodott mis-socjeta' attrici, fejn jikkonferma li huwa l-Finance and Administration Manager mal-Wands Limited u s-socjeta' attrici kienet tassigura l-merkanzija in kwistjoni. Is-socjeta' Wands qabdu lil Ace Travel biex iwaslu l-merkanzija sa Malta. Micallef qal li kien hemm nuqqas ta' 10 kaxxi shah bi tnax-il flixkun u zewg fliexken ohra – total ta' 122 flixkien neqsin. Wands ghamlu claim lis-socjeta' attrici, s-socjeta' attrici hallset il-claim u giet surrogata fid-drittijiet taghha.

Illi skond il-Bill of Lading esebit a fol. 45 fit-trailer kien hemm (said to contain) 116 pieces groupage goods.

Xehed Joseph Calleja ufficjal tad-dwana li qal li fil-bond tas-socjeta' Ace Travel hu u gwarjdan iehor ghoddew il-merkanzija. Ghar-rigward ix-xoghol tas-socjeta' assikurata mad-ditta attrici kien hemm "konsenja ta' erba kolli (4 pallets). Meta sar id-destuffing kienu ghadhom hemm dawn l-erba' pallets. Il-merkanzija l-ewwel mar f'Bond ta' Thomas Smith u imbaghad fil-Bond ta' Ace Travel. Ace Travel iffirmaw li ircivew 4 pallets.

Fil-mument li sar ir-rilaxx mill-bond ta' Ace Travel l-ufficjal tad-dwana sab li kien hemm 193 kaxxa bi tnax il-flixkun; ghoxrin kaxxa b'sitt fliexken, ghaxra b'sitta u ghaxra b'tnax. Ghalhekk Calleja kkalkola li kien hemm total ta' 122 fliexken neqsin. Hu wasal ghal din il-konkluzzjoni billi qabell l-invoice mal-merkanzija li ra fil-mument tad-destuffing.

Xehed ukoll Michael Chetcuti manager ma' Gollcher Company Limited li qal li s-socjeta' konvenuta kkonsenjat it-trailer 'said to contain 116 pieces". Chetcuti esebixxa tally sheet minn fejn jirrisulta li t-trailer nizel Malta fil-11 ta' Dicembru, 2001 bla rimarki. It-trailer gie konsenjat lil Cargo Handling Company Limited.

Xehed Peter Bonello impjegat ma' The Cargo Handling Company Limited li esebixxa tally sheet "bla rimarki". F'dan il-kaz ma sarx gate pass out billi t-trailer nizel f'open quay u t-trailer johrog ghad-destinazzjoni tieghu bl-iskorta tad-dwana.
Xehed ukoll Bernard Muscat ghan-nom ta' Thomas Smith and Company Limited. Muscat ikkonferma li Thomas Smith and Company Limited kienu inkarigati minn Ace Travel Limited sabiex igibu xoghol ghal Ace Travel minn barra. Muscat qal li s-socjeta' Thomas Smith ma tkunx taf kemm suppost kellu jkun hemm cartons. Thomas Smith informat lil Ace li waslet l-merkanzija u ma kien hemm ebda ilment dwar il-kontenut tax-xoghol. Ix-xhud iffirma delivery order iffirmat minn Ace Travel. Thomas Smith ircivew il-merkanzija minghand il-Cargo Handling

Company Limited. Meta t-trailer wasal fil-Bond ta’ Thomas Smith & Company Limited is-seals kienu “intact”. Is-seals tkissru fil-presenza tal-ufficjali tad-dwana.

Ikkunsidra li Wands qabdu lil Ace Travel biex igibu merkanzija minn Franza. Ace Travel qabdu lil Thomas Smith. Thomas Smith qabdu l-agenti taghhom. Il-merkanzija tghabbiet go Trailer flimkien ma merkanzija ta’ importaturi ohra. Meta t-trailer wasal Malta s-seals kienu intact. It-tally sheets huma cliena u ma hemmx gate pass out. Meta Thomas Smith ghaddew il-merkanzija ghand Ace Travel, Ace Travel iffirmaw li rcevew il-merkanzija minghajr kummenti. Ace Travel naqsu li jixhdu f’din il-kawza.

Illi s-socjeta’ attrici kellha tipprova li xi hadd mill-konvenuti kienet responsabbli ghan-nuqqas. Certament Gollcher Company Limited bhala agenti ta’ Grandi Traghetti di Navigazione SpA mhix responsabbli billi gabet trailer hawn Malta bis-seals intact u bla rimarki kif ikkonfermat mit-tally sheets.

It-Tribunal jaghmel referenza ghal kawza Michael Gatt noe Vs L-Avukat Dr Philip Sciberras Deciza fil-20 ta’ April 1995 mill-Qorti tal-Appell fejn saret referenza ghat-tally sheet u gate pass out u ntqal li t-tally sheet u l-gate pass out ghandhom jitqiesu bhala decizivi u li jorbtu l-partijiet kollha fil-kawza. Provi “a posteriori” ta’ dawk iz-zewg mumenti m’ghandhomx valur kontra l-presunzjoni “juris tantum” li dawn id-dokumenti huma veri u awtentici; dokumenti li gew kompilati tempestivament u fil-mument opportun.

Illi ghar-rigward Ace Travel Ltd jirrisulta li s-socjeta’ Ace Travel iffirmat li irceviet 4 “colli” minghajr kummenti. (ara Delivery Order esebit mix-xhud Bernard Muscat u x-xhieda ta’ l-istess Bernard Muscat).

Illi s-socjeta’ attrici naqset li tipprova li Ace Travel irceviet dawk il-fliekxen kollha imsemmija fl-invoice. Ma hemmx prova ta’ kemm il-flixkun gie loaded fit-trailer in kwistjoni. Mis-CMR hemm referenza ghal 4 colli. Fil-Bill of Lading

hemm referenza ghal 116 pieces – groupage. Illi ma hemmx provi li juri li Ace Travel Limited kienet responsabbli ghal xi nuqqas. (Ara Formosa & Camilleri Ltd noe Vs John Ripard & Sons Ltd noe Deciza fit-30 ta' Jannar 2003 PA FD).

Ghaldaqstant, jichad it-talba attrici bl-ispejjez.

< Sentenza Finali >

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