



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
GIANNINO CARUANA DEMAJO**

Seduta tat-30 ta' Ottubru, 2003

Citazzjoni Numru. 1960/1999/1

***Micallef & Zammit (Marketing) Limited; u b'nota tat-2 ta' Marzu 2001 is-so`jetà GasanMamoAgency Limited, a[enti f'Malta tas-so`jetà assikuratri`i estera CGU Insurance p.l.c., kif surrogata fid-drittijiet ta' l-assikurat tag]ha Micallef & Zammit (Marketing) Co. Limited assumiet l-atti tal-kawla minflok Micallef & Zammit (Marketing) Limited***

***versus***

***Mediterranean Shipping Company (Malta) Limited a[enti f'Malta ta' l-armaturi tal-vapur msc Veronique***

Din il-kawla hija dwar [arr ta' merkanzija.

l`-itazzjoni tg]id illi s-so`jetà attri`i importat mill-Awstralja konsenja ta' elfejn cartons ta' [obon. Dawn il-cartons in[arru f`ew[ refrigerated containers fuq il-bastiment msc Veronique li wasal Malta fit-8 ta' Settembru 1998. Meta l-merkanzija ng]atat lill-importatri`i nstab illi kien hemm [afna [sarat g]ax il-containers ma kinux qeg]din ja]dmu sew. Min]abba f`hekk is-so`jetà attri`i [arrbet danni ta'

lamest elef erba' mija u tmien liri u sitt `ente\mi (Lm5,408.06).

Billi qieg]da tg]id illi s-so`jetà konvenuta g]andha twie[eb g]al dawn id-danni, is-so`jetà attri`i fet]et din il-kaw\la u qieg]da titlob illi l-qorti:

1. tg]id illi s-so`jetà konvenuta ta]ti g]all-]sara; u
2. tikkundannaha t]allas ]amest elef erba' mija u tmien liri u sitt `ente\mi (Lm5,408.06) b]ala danni, flimkien ma' l-ispejje\ tal-kaw\la.

Is-so`jetà konvenuta ressqet dawn l-e`ezzjonijiet:

1. l-azzjoni waqg]et bi preskrizzjoni skond il-polza ta' kariku;
2. ma hux minnu illi s-so`jetà konvenuta ta]ti g]ad-danni; u
3. ir-responsabbiltà tas-so`jetà konvenuta hija limitata skond il-polza tal-kariku.

Is-so`jetà *Micallef & Zammit (Marketing) Limited* kienet da]]let kwantità ta' [obon f'Malta f'*refrigerated containers* tas-so`jetà konvenuta. Xi \mien wara li l-[obon wasal Malta nstab li kien beda je]ien. Is-so`jetà importatri`i, billi dehrilha illi l-]tija kienet tas-so`jetà konvenuta, g]ax ir-*refrigerated containers* ma kinux ]admu sew u ma \ammewx temperatura baxxa bi\lejjed, fet]et din il-kaw\la g]ad-danni kontra s-so`jetà konvenuta. Waqt li kienet miexja l-kaw\la, i\da, l-assikuratur tas-so`jetà importatri`i g]amel tajjeb g]ad-danni ta]t polza ta' assikurazzjoni, u, wara li kien surrogat fid-drittijiet ta' l-importatri`i u kiseb l-awtorizzazzjoni tal-qorti<sup>1</sup>, assumma l-atti tal-kaw\la b'nota tat-2 ta' Marzu 2001<sup>2</sup>.

Qabel ma nqisu l-meritu tat-talbiet tas-so`jetà attri`i, irridu nqisu l-e`ezzjoni ta' preskrizzjoni, jew, a]jar, ta' dekadenza, mressqa mis-so`jetà konvenuta. Din id-dekadenza hija regolata bl-Art. III.6<sup>3</sup> tal-*Hague-Visby*

<sup>1</sup> *Fol. 14.*

<sup>2</sup> *Fol. 16.*

<sup>3</sup> **III.6.** Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

*Rules*, li kienu inkorporati fil-ftehim bejn il-partijiet bis-sa]ja tal-*paramount clause* fil-polza tal-kariku.

Il-merkanzija waslet Malta fit-8 ta' Settembru 1998, u l-kawla nfet]et fis-7 ta' Settembru 1999, anqas minn sena wara u g]alhekk qabel ma se]]et id-dekadenza skond l-art. III.6 imsemmi fuq.

L-ewwel e` ezzjoni hija g]alhekk mi`]uda.

Fid-9 ta' Settembru 1998, l-g]ada li waslet il-merkanzija, billi [à kien hemm suspett illi r-*refrigerated containers* ma kinux ]admu sew, tqabbdet is-so`jetà *MSB Valletta Limited* b]ala *surveyor* biex tassisti waqt il-]att tal-merkanzija.

Il-*log* tat-temperatura fil-*containers* matul il-vja[[ juri illi t-temperatura ma kinitx kostanti, u [ieli telg]et sew fuq it-3°C. G]alhekk sar e\ami fuq il-mekkan\mu li jkessa] il-*containers* u nstab illi, fi\ew[ *containers*, kien hemm ]sara mekkanika jew elettrika.

G]alkemm ma kinitx tidher ]sara fil-[obon ]lief g]al xi *condensation*, billi t-temperatura fil-*containers* kienet bejn 10.7°C u 15°C, meta t-temperatura kellha tkun ta' 3°C, saret analisi fuq kampjuni tal-[obon. F'din l-ewwel anali\i batterjolo]ika, li saret ffit jiem wara, ma nstabitx ]sara fil-[obon.

Billi, min]abba l-]sara fil-*containers*, matul il-vja[[ il-[obon ma kienx ma]\un f'temperatura tajba, l-importatri`i idde`idiet illi l-[obon ikun *monitored* g]alkemm fl-ewwel anali\i batterjolo]ika, kif rajna, ma kienx hemm sinjali ta' t]assir. Fil-fatt saret anali\i o]ra fit-28 ta' Di`embru 1998 u din id-darba nstab li l-[obon kien t]assar u mmoffa, u ma baqax tajjeb biex jittiekel, g]alkemm suppost kellu *expiry dates* bejn {unju 1999 u Di`embru 1999.

Is-so`jetà attri`i ressqet xhieda biex turi illi, wara li wasal Malta f'Settembru ta' l-1998 sa meta saret it-tieni anali\i f'Di`embru, il-[obon in]a\en f'*cold stores*. G]alkemm ma n]ibitx xhieda dwar il-kondizzjonijiet kif kien ma]\un il-

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Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

[obon f'dawn il-*cold stores*, ma hemm xejn li juri li kien mi'mum ja'in, u g]alhekk hija ra[onevoli l-konklu\joni illi l-]sara [rat g]ax, kif jixhed il-*log* tat-temperatura tal-*containers*, it-temperatura n\ammet g]olja wisq g]al \mien twil matul il-vja[. G]alkemm il-]sara ma la]qitx kibret bi\lejjet biex turi sinjali li jidhru meta saret l-ewwel anali\i, il-prin`ipju ta' t]assir [à kien hemm u kompla kiber biex il-[obon ]\ien qabel l-*expiry date* tieg]u.

Billi l-]sara [rat g]ax il-*containers* ma ]admux sew, u kienet ir-responsabbiltà tas-so`jetà konvenuta li tara li l-*containers* ja]dmu sew, il-]tija g]all-]sara taqa' fuq is-so`jetà konvenuta u t-tieni e`ezzjoni hija g]alhekk mi`]uda. Fadal l-e`ezzjoni tal-patt ta' limitazzjoni ta' responsabbiltà. Din l-e`ezzjoni tidher li hija mibnija fuq il-klawsola 21 tal-polza:

Neither the Carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding Pounds Sterling 100 of lawful tender in the U.K. per package or unit, unless the nature and value of such goods have been declared by Merchant before shipment and inserted in the Bill of Lading. ... ..

Where the goods have been packed into containers by or on behalf of the Merchant, it is expressly agreed that each container shall constitute one package for the purpose of application of limitation of the Carrier's liability.

Billi, i\da, il-polza fiha *paramount clause* illi tinkorpora l-*Hague-Visby Rules*, il-limitazzjoni ta' responsabbiltà hija regolata bl-Art. IV ta' l-istess *rules*:

Article IV

5 (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 666.67 units of account per package or unit or units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher.

... ..

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such

article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

... ..

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

Fil-polza ma hux muri kemm tiswa l-merkanzija, u g]alhekk il-limitu huwa ta' sitt mija u sitta u sittin punt de`imali sitta sebg]a *special drawing rights* (SDR 666.67) kull *unit*, li ji[u aktar minn mitt sterlina (£100) kull *unit*<sup>4</sup>.

Fil-polza ma hemm ebda indikazzjoni tan-numru ta' *packages*; g]alhekk in-numru ta' *packages* jitqies li hu daqs in-numru ta' *containers*, li kienu tnejn (2).

Ir-responsabbiltà tas-so`jetà konvenuta hija g]alhekk limitata g]al elf tliet mija u ]amsa u tletin punt de`imali tlieta erbg]a *special drawing rights* (SDR 1,335.34), li huwa anqas mid-dannu li [arrbet is-so`jetà attri`i i\da huwa l-og]la kumpens li jista' jing]ata.

G]al dawn ir-ra[unijiet il-qorti taqta' l-kaw\la billi, wara li ti`jad l-e`ezzjoni ta' preskrizzjoni, tg]id illi s-so`jetà konvenuta ta]ti g]all-]sara fil-merkanzija, tillikwida d-danni fis-somma ta' elf tliet mija u ]amsa u tletin punt de`imali tlieta erbg]a *special drawing rights* (SDR 1,335.34) u tikkundanna lis-so`jetà konvenuta t]allas lis-so`jetà attri`i daqskemm jiswew elf tliet mija u ]amsa u tletin punt

<sup>4</sup> Ir-rata ta' kambju ta' l-*Special Drawing Rights* tinsab f`dan il-URL:

<http://www.imf.org/external/np/tre/sdr/basket.htm>

Kopja Informali ta' Sentenza

de`imali tlieta erbgja *special drawing rights* (SDR 1,335.34) fi flus Maltin bil-kambju tallum.

Billi t-talba tas-so`jetà attri`i kienet g]al aktar minn hekk, huwa xieraq illi t]allas sehem mill-ispejje`, u l-qorti g]alhekk tordna illi kull parti g]andha t]allas nofs l-ispejje`.

**< Sentenza Finali >**

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