

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
DAVID SCICLUNA**

Seduta ta' l-10 ta' Dicembru, 2004

Citazzjoni Numru. 1335/1992/1

**Joseph Mamo**

**VS**

**John Formosa u Albert Formosa bhala diretturi ghan-nom u in rapprezentanza tas-socjeta` Formosa & Camilleri Ltd., bhala agenti tas-socjeta` estera Guardian Royal Exchange Assurance plc.; u b'nota tat-13 ta' Ottubru 2000 is-socjeta` Atlas Insurance Agency Ltd. bhala rapprezentanta legali tas-socjeta` estera Atlas Insurance PLC assumiet l-atti tal-kawza minflok John Formosa et nomine; u b'digriet tat-18 ta' Ottubru 2004 is-socjeta` Atlas Insurance Ltd. assumiet l-atti tal-kawza minflok is-socjeta` Atlas Insurance Agency Ltd.**

Il-Qorti,

Kopja Informali ta' Sentenza

Rat ic-citazzjoni pprezentata fid-9 ta' Ottubru 1992 li permezz taghha l-attur, wara li ppremetta:

Illi l-attur huwa assigurat mas-socjeta` konvenuta bil-Motor Insurance Policy numru 40943 502 04 liema polizza tkopri serq u hruq;

Illi fl-14 ta' Marzu 1992 il-vettura Citroen numru tar-registrazzjoni H-5000, proprjeta` tal-attur, li hija assigurata taht il-polizza fuq imsemmija ghall-ammont ta' elfejn u erba' mitt lira Maltin (Lm2,400.00,0), hadet in-nar u qabdet bir-rizultat li giet iddikjarata total loss;

Illi l-attur sejjah lis-socjeta` konvenuta sabiex thallsu fl-ammont ta' elfejn u erba' mitt lira Maltin (Lm2,400.00,0) rapprezentanti s-somma li l-vettura fuq imsemmija hija assigurata, izda l-konvenuti nomine qeghdin jirrifjutaw li jhallsu lill-attur ghalkemm gew interpellati biex jaghmlu dan f'diversi okkazjonijiet;

Talab li din il-Qorti tikkundanna lill-konvenuti nomine sabiex ihallsu lill-attur is-somma ta' elfejn u erba' mitt lira Maltin (Lm2,400.00,0) bhala l-valur tal-vettura Citroen bin-numru H-5000, proprjeta` ta' l-attur, assigurata mal-konvenuti nomine ghall-valur imsemmi taht il-Motor Insurance Policy numru 40943 502 04;

Bl-ispejjes inkluzi dawk tal-ittra ufficjali tat-2 ta' Settembru 1992 u bl-imghaxijiet relattivi mid-data ta' l-ittra ufficjali sad-data tal-eventwali hlas - kollha kontra l-konvenuti nomine li gew ingunti sabiex jidhru in subizzjoni;

Rat in-nota ta' l-eccezzjonijiet tal-konvenuti nomine fejn qalu:

1. Illi t-talba attrici hija nfondata fil-fatt u fid-dritt u dana kif sejjer jigi spjegat ahjar waqt it-trattazzjoni tal-kawza;
2. Salvi eccezzjonijiet ohra;

Rat id-dikjarazzjonijiet guramentati tal-kontendenti u l-listi tax-xhieda taghhom;

Kopja Informali ta' Sentenza

Rat id-digriet ta' l-1 ta' Frar 1993 li permezz tieghu gie nominat l-Avukat Dott. Marco Grixti bhala perit legali bis-solitu inkarigu;

Rat id-digriet tal-21 ta' Mejju 1996 fejn gie nominat l-assistent gudizzjarju l-Avukat Dott. Ian Spiteri Bailey biex jassisti fil-gbir tal-provi;

Rat id-digriet ta' l-10 ta' Dicembru 1999 li permezz tieghu gie revokat l-inkarigu tal-perit legali u sostitwit ghalih bl-istess inkarigu l-Avukat Dott. Ian Spiteri Bailey;

Semghet ix-xhieda;

Rat in-noti ta' osservazzjonijiet tal-partijiet;

Rat l-atti l-ohra kollha tal-kawza u d-dokumenti esibiti;

Ikkunsidrat:

L-attur qed jitlob il-hlas ta' Lm2,400 minghand il-konvenut nomine bhala valur tal-vettura Citroen numru H-5000, proprjeta` tieghu u li kienet assicurata ma' l-istess konvenut nomine ghal dak il-valur taht il-polza ta' assikurazzjoni numru 40943 502 04 u dan sussegwenti ghal incident fejn din il-vettura giet dikjarata *total loss* wara li nhakmet min-nar.

Is-socjeta` assikuratrici qed tirrespingi l-pretensjoni attrici peress illi ssostni li l-attur naqas mill-obbligi tieghu lejha minhabba *non-disclosure* ta' informazzjoni rilevanti li kienet twassal lis-socjeta` assikuratrici biex ma tassikurahx.

John Birds<sup>1</sup> ighid: "*The contract of insurance is the primary illustration of a class of contracts described as **uberrimae fidei**, that is, of the utmost good faith. As a result, the potential parties to it are bound to volunteer to each other before the contract is concluded information*

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<sup>1</sup> *Modern Insurance Law*, 4<sup>th</sup> ed.; Sweet & Maxwell, London; 1997, p. 100 - 101

*which is material ... The basic effect of the duty can be stated quite simply. An applicant for insurance is under a duty to disclose to the insurer, prior to the conclusion of the contract, but only up to this date, all material facts within his knowledge which the latter does not or is not deemed to know. A failure to disclose, however innocent, entitles the insurer to avoid the contract **ab initio**, and upon avoidance it is deemed never to have existed".*

Birds jikkwota lil Lord Mansfield fis-sentenza ngliza fl-ismijiet *Carter v. Boehm* li stabbiliet l-obbligu ta' disclosure: *"Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the under-writer trusts to his representation, and proceeds upon the confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risqué as if it did not exist".<sup>2</sup>*

Il-Qrati taghna dejjem ikkonfermaw dawn il-principji u mxew magghom. B'hekk fis-sentenza moghtija minn din il-Qorti diversament presjeduta fl-ismijiet *Joseph Mamo vs Joseph Grech et fit-3 ta' Ottubru, 2002*, intqal:

*"Hekk fil-kawza **Camilleri noe vs Bartolo** deciza minn din il-Qorti fit-22 ta' Marzu 1982, polza ta' asskurazzjoni giet invalidata meta rrizulta li l-assikurat ma kienx informa lill-kumpanija assikuratrici li kien ghamel claims ohra qabel ma avvicina l-asskurazzjoni. Gie ribadit il-principju li kull fatt materjali handu jigi ndikat, u fatt materjali gie deskritt bhala 'fatt ta' xorta tali li jinfluwenza d-decizjoni ta' assiguratatur prudenti meta jigi biex jara jekk ghandux jiehu r-riskju'. Fil-kawza **Degiorgio vs Agius**, deciza minn din il-Qorti fil-25 ta' Gunju 1962 (Vol. XLVI.ii.656) intqal li 'il-kuntratt ta' asskurazzjoni hu meqjus bhala wiehed tal-aqwa bona fede, u l-proponent ghandu jaghti risposta cara dwar dettalji li jigu mistoqsija lilu espressament fil-proposal forms; anzi hu generalment ritenut li l-proponent*

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<sup>2</sup> *op. cit.* pagna 102.

*hu fid-dmir li jsemmi kull fatt li ragjonevolment ghandu jhoss li hu rilevanti ghall-assikuratur li jkun jaf, u dan anke jekk ma jkunx mistoqsi'. Principju simili gie ribadit dan l-ahhar minn din l-istess Qorti fil-kawza **Muscat vs Gasan Insurance Agency Limited** deciza fit-2 ta' Marzu 1998.*

*Fid-dawl tal-premess huwa ghalhekk principju accettat mill-Qrati Maltin li huwa dmir tal-assikurat li jikxef lill-assikuratur kull cirkostanzi rilevanti ghall-kaz u in partikolari billi jwiegeb korrettement kull domanda li jkun hemm registrata fil-polza".*

Kuntratt ta' assikurazzjoni huwa riskju ghal min johrog il-kopertura u, kwindi, hu mistenni li min jitlob assikurazzjoni jkun onest maghha u jaghtiha l-informazzjoni kollha materjali u rilevanti ghall-kaz.

Fil-kaz in ezami l-attur xehed li l- *proposal form* imliha fl-ufficcini tas-socjeta` konvenuta stess, cioe` imtliet minn skrivan minn taghha. Huwa spjega li "Wara li imliha ghidtlu: 'Int kif ma tistaqsini xejn fuq jekk kellix 'claims' jew hekk?' u hu qalli 'Din mhix ghalina qieghda'. Jien ghidtlu Lili serquli xi erba' karrozzi' u hu rrispondini 'Din ghalina' pero` qata n- 'no' li kien nizzel u nizzel xi haga ohra. Dan l-iskrivan ma nafx x'jismu u anqas naghrfu".

Steve Conti, *claims manager* mas-socjeta` assikuratrici, xehed hekk: "L-ewwel nett timtela l-*proposal form*, fejn hemm diversi domandi, fost domandi li hemm, hemm wahda li ssaqsik jekk qattx kellek claims qabel ma gejt tassigura dik il-karrozza, li fil-fatt dan is-sinjur ghall-ewwel kien qal le, imbaghad ikkorregiha u wara qal iva, u qal li kellu karrozza misruqa, id-dati ma taniex u kien thallas minn kumpanija Legal and General. Issa jiena wara li ndagajt u ndagajta jien personali ghax kellu record ta' theft ta' karrozzi, Legal and General qatt ma kien inxurjat maghhom. Prior to that date, 11<sup>th</sup> October, 1991, jirrizulta li kellu tliet claims ohra, wahda kienet 1986, ma' Laferla, fejn insterqitlu karrozza u thallas Lm1200, that same year kellu ohra ma' Gasan, le, kellu boat inharqitlu, ma' Gasan, fejn kien inxurjat Lm5000 u tawh Lm2000, kellu ohra 16<sup>th</sup> of November 1988, theft ta' karrozza minn Blackley

*Street, fejn kien joqghod, claim ta' Lm3000 u thallas Lm1500 u diversi claims oħra wara din id-data, wara d-data tal-hruq ... Id-dikjarazzjoni li għamel fin-non-disclosure hija falza wkoll għax ma jirrizultax li kellu theft ma' Legal and General għax ma kellux Insurance ma' Legal and General ... fil-fatt għandi korrisondenza minn kull Insurance Company li kellu Claims magħhom u qiegħda hawnhekk u jekk trid nesebihom”.*

Minn ezami tal-proposal form esebita minn Steve Conti fis-seduta tat-13 ta' Ottubru 2000 jirrizulta li l-mistoqsija numru 5(d) hija jekk hemmx xi sewwieq li "Kellu xi accident jew għamel talba għal kumpens tul dawn l-aħhar tliet snin b'konnessjoni ma' xi vettura li kien qiegħed isuq". Għal din il-mistoqsija jidher li l-ewwel giet immarkata t-twegiba "LE" izda din thassret u giet immarkata t-twegiba "IVA". Imbagħad tnizzlu isem is-sewwieq (l-attur), l-eta` tieghu u d-dettalji dwar claim precedenti bhala "CAR STOLEN" U "LEGAL & GENERAL".

Peress illi l-mistoqsija kienet dwar claims fl-aħhar tliet snin u peress illi mir-ricerka magħmula mis-socjeta` assikuratrici rrizulta li f'dawk l-aħhar tliet snin l-attur kien għamel biss claim wahda, sa certu punt għandu ragun jghid li ma kienx hemm non-disclosure min-naha tieghu. Fuq din il-kwistjoni fil-fatt E.R. Hardy Ivamy<sup>3</sup> jghid:

*"The questions serve to define the limits of what is material, and may, by requiring information of a specific sort, thus relieve the assured from the duty of disclosing facts which are not within their scope ... if the proposer for a fire policy is asked to state how many fires he has had during the last three years, the specification of a precise period will relieve him from the duty of disclosing a fire which happened five years before. Again, an example of this effect of the questions is to be found in Jester-Barnes v Licenses and General Insurance Co Ltd, where MacKinnon J said (obiter) that if an insurance company had asked a proposer the question ' Have you or your driver during the past five years been convicted of an*

<sup>3</sup> General Principles of Insurance Law, 5<sup>th</sup> ed; Butterworths, London, 1986.

*offence?' and he had said 'No', and that was true, he would have come without any hesitation to the conclusion that the company was not entitled, after asking that question and receiving the true answer, to take it to mean that he had failed to disclose that he had been convicted eight years ago, and that that was a material fact".*

Inoltre l-istess domanda kif jidher car tirreferi ghal *claims* jew incidenti dwar vetturi mentri wahda mill-*claims* li kien ghamel l-attur fl-1986 kienet tirrigwarda hruq ta' dghajsa!

B'hekk wiehed jista' jikkonkludi li galadarba l-*claim* maghmula qabel it-tliet snin u dik li kienet tirrigwarda d-dghajsa ma kinux jaqghu fil-parametri tal-mistoqsija fil-*proposal form*, allura la kienu jitqiesu bhala rilevanti u materjali mis-socjeta' konvenuta u wisq anqas setghet tippretendi li jitqiesu bhala rilevanti mill-attur. Fl-istess hin ma tistax tigi injorata twissija li hemm fuq l-istess *proposal form* li tghid: "*Jekk tonqos li taghti fatti li l-kumpannija ta' l-assikurazzjoni thoss li jistghu jinfluwenzaw jekk it-talba tieghek tigix accettata u taht liema kundizzjonijiet tigi accettata, dan jista' jwassal biex il-polza tieghek tkun bla effett. Jekk thoss li ghandek xi dubji jekk certi fatti humiex rilevanti jew le, jekk joghgbok, staqsi lill-agent tieghek*". L-attur stess xehed li diga` kellu *claim* mal-kumpanija assikuratrici Commercial Union dwar karrozza ohra u ma thallasx ghax fil-*proposal form* ma ssemwex *claims* precedenti; b'hekk insista li jitnizzlu l-*claims* li kien diga` ghamel meta kienet qed timtlielu l-*proposal form* mas-socjeta` konvenuta. Izda dak li hemm fil-*proposal form* ma jirrispekkjax dak li xehed li nsista fuqu!

Mix-xiehda ta' Steve Conti li ghaliha ghadha kif saret riferenza pero` jidher li s-socjeta` konvenuta qieghda mhux biss tallega *non-disclosure* izda wkoll *misrepresentation* ghaliex qieghda tinsisti li l-attur taha l-informazzjoni zbaljata dwar il-*claim* indikata fil-*proposal form* meta ndika l-assikurazzjoni li maghha kien ghamel il-*claim* bhala "LEGAL & GENERAL".

Fi kliem John Birds: "*A fact is material for the purposes of both non-disclosure and misrepresentation if it is one*

*which would influence the judgment of a reasonable or prudent insurer in deciding whether or not to accept the risk or what premium to charge".<sup>4</sup>*

E.R. Hardy Ivamy jiddikjara li *"the onus of proving that the assured has failed to perform the duty of disclosure or has made a misrepresentation or has broken a condition relating to disclosure lies upon the insurers".<sup>5</sup>* Il-prova necessarja sabiex tigi stabbilita *misrepresentation* hi deskritta u spjegata minn E.R. Hardy Ivamy meta dan ighid:

*"(b) Misrepresentation*

*In the case of fraudulent or innocent misrepresentation it must be shown:*

- i That the statement alleged to have been made was inaccurate;*
- ii That the statement relates to a material fact;*
- iii That, in the case of fraud, the assured knew the statement to be false, or did not believe it to be true, or made it recklessly, not caring whether it was true or false; or, in the case of innocent misrepresentation, ought to have known the truth; and*
- iv That the statement was made by the assured or by his agent"<sup>6</sup>.*

M'hemm l-ebda dubju li l-informazzjoni moghtija mill-attur li kellu *claim* mal-Legal & General ma kinitx korretta. Fix-xiehda tieghu ma jaghti l-ebda spjegazzjoni ghal dan. Fl-ahhar tal-*proposal form* huwa ffirma dikjarazzjoni li tghid li dak kollu li kiteb hu skond il-fehma tieghu "sewwa u komplet u ser ikun il-bazi tal-kuntratt" bejnu u l-assikurazzjoni. Ghalhekk huwa kien qieghed jiehu r-responsabbilta` ta' kull ma kien hemm miktub fil-*proposal form*. L-importanza ta' informazzjoni korretta anke dwar l-isem tas-socjeta` assikuratrici li maghha l-proponent ikun

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<sup>4</sup> *Op. cit.* pagna 107.

<sup>5</sup> *Op. cit.* pagna 178.

<sup>6</sup> *Op. cit.* pagna 179.



Kopja Informali ta' Sentenza

ghamel *claim* precedenti tohrog mix-xiehda ta' Steve Conti waqt kontro-ezami:

*"Domanda: X'differenza taghmillek ... jekk jiena nghidlek kelli mal-Legal and General u minflok mal-Legal and General il-claim jirrizulta li kienet ma' Laferla? Spjegali.*

*Risposta: Taghmel differenza. Meta int ikollok claim u trid ticcekkja wara, jigifieri wara li hadtu dan il-bniedem, u trid ticcekkja, dan zgwidak, ghax se tmur ghand Insurance Company differenti li ma kienx inxurjat maghha".*

Din is-sitwazzjoni waslet biex saret investigazzjoni ma' kumpaniji assikuratrici ohrajn u minn dik l-investigazzjoni bdew jirrizultaw *claims* ohrajn.

Fil-polza ta' assikurazzjoni esebita mis-socjeta` konvenuta (u ndikata bhala *motor cycle policy* izda li bla dubju tirispekkja l-pozizzjoni anke fir-rigward ta' karrozzi) jinghad fil-klawsola numru 2 tal-Kondizzjonijiet fl-ahhar pagna: "The due observance and fulfilment of the Terms of this Policy in so far as they relate to anything to be done or not to be done by the Insured or any person claiming to be indemnified and the truth of the statements and answers in the proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy" (sottolinear tal-Qorti).

F'dawn ic-cirkostanzi din il-Qorti hi tal-fehma li t-talba attrici ma tistax tigi milqugha.

Ghal dawn il-motivi:

Tiddeciedi billi tichad it-talba attrici bl-ispejjez kontra l-attur.

Kopja Informali ta' Sentenza

**< Sentenza Finali >**

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