



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tal-5 ta' Mejju, 2005

Citazzjoni Numru. 1110/2003

GM International Services Limited

vs

M/Y Ilderim IV

Il-Qorti:

Rat ic-citazzjoni ppresentata mis-socjeta' attrici fis-27 ta' Ottubru, 2003, li in forza taghha, wara li ppremettiet illi:

Is-socjeta' attrici f'Settembru, 1990 giet appuntata mill-konvenut bhala l-agent lokali ghall-*Motor Yacht* taghha *ILDERIM IV*,

Is-servizzi li kienet tipprovdi is-socjeta' attrici kienu jikonsistu principalment billi tesegwixxi l-ordnijiet li kienet tircievi minghand il-konvenut fil-parti l-kbira fil-

manutenzjoni tal-*yacht* fuq imsemmi u li tisuplixxi provizjon ghall-*yacht* u ghall-crew tieghu.

Is-socjeta' attrici ipprestat dawn is-servizzi ghal dawn l-ahhar tlettax il-sena u dejjem gew esegwiti ghas-sodisfazzjon tal-konvenut tant illi hallas regolarment il-kontijiet kollha dovuti sa Lulju 2002.

Illum baqa' bilanc favur is-socjeta' attrici fis-somma ta' tminja u ghoxrin elf sitt mija, sebgha u tletin lira Maltin u sittin centezmu (Lm28,637.60) prezz ta' *spare parts*, *drydocking*, flus mahruqa mis-socjeta' attrici ghall-provizjon ta' l-ikel ghall-crew u bzonnijiet essenzjali ghall-bastiment, *berthing fees*, konsum ta' dawl u ilma u spejjez ohra kif spjegat fl-anness Doc B.

Is-socjeta' attrici m'ghadiex l-agent lokali tal-konvenut.

Ghalkemm l-konvenut gie interpelat sabiex ihallas il-bilanc dovut lis-socjeta' attrici ghas-servizzi fuq imsemmija, baqa' inadempjenti;

Dan id-dejn huwa cert, likwidu u esigibli u fil-fehma tas-socjeta' attrici il-konvenut m'ghandux eccezzjonijiet x'jaghti kontra t-talba tal-hlas mitlub.

Talbu lill-konvenut jghid ghaliex din l-Onorabbli Qorti m'ghandiex:

1. Tiddeciedi l-kawza skond it-talba tas-socjeta' attrici bid-dispensa tas-smiegh a tenur ta' l-Artikolu 167 *et sequitur* tal-Kap 12 tal-Ligijiet ta' Malta.

2. Konsegwentament tikkundanna lill-konvenut ihallas lis-socjeta' attrici s-somma ta' tminja u ghoxrin elf sitt mija, sebgha u tletin lira Maltin u sittin centezmu (Lm28,637.60) dovut lilha bhala prezz ta' *spare parts*, *drydocking*, flus mahruqa mis-socjeta' attrici ghall-provizjon ta' l-ikel ghall-crew u bzonnijiet essenzjali ghall-bastiment, *berthing fees*, konsum ta' dawl u ilma u spejjez ohra kif spjegat fl-anness Doc B.

Bl-imghaxijiet u spejjez komprizi dawk tal-Mandati tal-Qbid u ta' Impediment ta' Tluq ta' Bastiment prezentati fis-16 ta' Ottubru, 2003 kontra l-konvenut minn issa ngunt ghas-subizzjoni.

Rat id-digriet ta' din il-Qorti tal-21 ta' Novembru, 2003, li in forza taghha awtorizzat lill-bastiment konvenut jikkontesta il-kawza, u ppreferiliggiet terminu ghal-presentata tan-nota tal-eccezzjonijiet;

Rat in-nota tal-eccezzjonijiet tal-bastiment konvenut li in forza taghha eccepjet illi:

1. L-azzjoni istitwita mis-socjeta' attrici, *cioe'* dik *in rem*, ma tistax treggi billi hafna mill-krediti allegatament dovuti ma jaghtux lok ghall-azzjoni *de quo*, izda biss ghal dik *in personam*, u dan kif sejjer jirrisulta ampjament fit-trattazzjoni tal-kawza;
2. Kif jirrisulta mid-Dok. W esebit man-nota ta' riduzzjoni presentata mis-socjeta' attrici waqt l-udjenza tal-21 ta' Novembru, 2003, certi pagamenti, partikolarment dawk dovuti lil *Manoel Island Yacht Yard*, ma thallsux mis-socjeta' attrici, li m'ghandha l-ebda jedd tirreklama hlas ghalihom. Il-bilanc dovut lill-imsemmija *Manoel Island Yacht Yard* thallas direttament mill-*yacht* konvenut, kif jirrisulta mill-annessa kopja ta' ittra Dok. ST1;
3. Diversi spejjez gew maghmula minghajr il-kunsens tas-sidien, u hemm diversi fatturi ohrajn li ma jisthoqqilhomx li jithallsu;
4. Minghajr pregudizzju, diversi mill-*istatements* presentati m'humiex sorretti minn fattura, jew ricevuta fiskali, u f'diversi kazijiet m'hemm l-ebda riferenza ghall-*yacht* konvenut;
5. L-azzjoni istitwita saret bi ksur tal-obbligu fiducjarju tas-socjeta' attrici li ghamlet uzu minn informazzjoni maghrufa lilha fil-kwalita' taghha ta' agent sabiex tintenta l-azzjoni b'mod klandestin, waqt illi s-sidien tal-*yacht* konvenut kienu barra minn Malta.

Kopja Informali ta' Sentenza

Salvi eccezzjonijiet ulterjuri.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat in-nota tas-socjeta' attrici tal-21 ta' Novembru, 2003, li in forza taghha irriduciet it-talba taghha ghas-somma ta' Lm22,997.60;

Rat in-nota ulterjuri tas-socjeta' attrici tat-3 ta' Marzu, 2004, li in forza taghha irriduciet it-talba taghha ghas-somma ta' Lm20,608.60;

Rat il-provi prodotti u l-osservazzjonijiet tal-partijiet imressqa *in konnessjoni* ma' l-ewwel eccezzjoni preliminari sollevata mill-bastiment konvenut;

Rat li l-kawza thalliet ghal-lum ghas-sentenza fuq l-ewwel eccezzjoni preliminari tal-bastiment konvenut;

Ikkunsidrat;

Illi f'din il-kawza, is-socjeta' attrici qed tallega li irrendiet diversi servigi lill-bastiment konvenut konsistenti, fil-parti l-kbira, fil-manutenzjoni tal-*yacht* u anki fi provizjon ghall-*yacht* u l-crew taghha. Dan ix-xoghol ilu jsir ghal-snin twal u bejn il-partijiet jidher li kien jopera speci ta' kont kurrent, fis-sens, li x-xoghol isir *on credit* u l-hlas isir kull tant zmien, mhux dejjem b'mod regolari u mhux dejjem kien isir hlas versu *invoice* partikolari. Is-socjeta' attrici tallega li l-bilanc dovut hu ta' Lm20,608.60, u qed titlob il-kanonizzazzjoni ta' dan il-kreditu favur taghha. L-azzjoni saret kontra l-bastiment u ghandha in-natura ta' azzjoni *in rem*. Il-bastiment konvenut tecepixxi, *in linea* partikolari, li uhud mis-servizzi rezi ma jikwalifikawx li jkunu trattati bhala servizzi rezi lill-vapur, izda huma obbligazzjonijiet personali li jridu jigu mistharga fil-konfront tal-kontroparti.

Il-ligi kodifikata ta' Malta ma tipprovdi ghall-esercizzju ta' azzjoni *in rem*. Din l-azzjoni tista' tigi esercitata quddiem dawn il-qrati ghaliex dan il-principju ta' *Admiralty Law* Ingliz intiret mill-istatuti tal-parlament Ingliz fiz-zminijiet

meta Malta kienet kolonja tal-Imperu Brittaniku. F'dak izmien, il-gvern kolonjali kellu s-setgha li jestendi l-applikazzjoni ta' certu ligijiet tal-parlament ta' Westminster biex jigu fis-sehh anki fil-kolonji tal-Kuruna mxerrdin madwar id-dinja. In fatti, l-gurisdizzjoni *in rem* giet introdotta f'Malta fis-seklu dsatax, meta l-gvern kolonjali estenda l-applikazzjoni tal-*Admiralty Law* Ingliz permezz tal-*Colonial Courts of Admiralty Acts*, senjatement l-*Admiralty Court Acts* ta' 1840 u 1861.

Bis-sahha ta' dawk il-ligijiet gew fis-sehh il-*Vice Admiralty Courts* li nghataw is-setgha li jezercitaw *Admiralty Jurisdiction*. Din kkonferiet lill-qrati Maltin il-kompetenza esklussiva u limitata li jisimghu kawzi ta' natura marittima, b'azzjoni *in rem*. Sussegwentement, din il-kompetenza intirtet mill-Qorti tal-Kummerc, u eventwalment mill-Prim'Awla tal-Qorti Civili.

Issa, l-imsemmija *Admiralty Court Acts* tal-1840 u 1861 jaghtu dritt ta' azzjoni *in rem* kontra il-bastiment meta il-pretensjoni taqa' taht wahda mill-hekk imsejjha *heads of jurisdiction in rem*. B'hekk, jekk in-natura tal-pretensjoni taqa' li tigi klassifikata taht wahda mill-*heads of jurisdiction*, l-*Admiralty Court Acts* tal-1841 u l-1860 jaghtu id-dritt lill-kreditur li jipprocedi direttament kontra l-bastiment li fir-rispett tieghu tezisti il-pretensjoni, flok azzjoni normali *in personam* taht il-Kodici ta' Organizzazzjoni u Procedura Civili.

Irid jinghad illi l-*heads of jurisdiction* taht l-*Admiralty Court Acts* tal-1840 u 1861 huma ezawrjenti u biex kreditur jistgha jipprocedi bl-azzjoni *in rem* kontra bastiment, in-natura tal-pretensjoni trid tkun tali li taqa' strettament taht wahda mill-kategoriji elenkati fil-precitat statuti. Ghalhekk, filwaqt illi l-kreditur ghandu dritt li jirrikorri ghal azzjoni ordinarja *in personam* biex jikkanonizza kreditu ordinarju lilu dovut, azzjoni *in rem* hija limitata ghall-kaz fejn il-pretensjoni hija ta' natura li taqa' taht il-*heads of jurisdiction* definiti fil-precitati statuti, liema *heads of jurisdiction* bl-ebda mod ma jistghu jigu estizi.

Ghalhekk qatt ma tista' tigi intavolata azzjoni *in rem*, bhal ma hi dik odjerna kontra bastiment, fejn il-pretensjoni ma taqax li tigi konsidrata taht il-lista li ssegwi u *cioe'*:

1. *“Claims relating to mortgages.*
2. *Claims relating to title to or to ownership and possession of a ship or proceeds arising in actions regarding possession, salvage, damage, wages or bottomry.*
3. *Claims for salvage.*
4. *Claims for damage done by ship.*
5. *Claims for damage suffered by ship.*
6. *Claims for towage.*
7. *Claims for necessaries supplied.*
8. *Claims by the holder of a bill of lading of any goods imported into Malta for any damage done to the goods through negligence or breach of contract on the part of the owner or crew of the ship.*
9. *Claims for building, equipping or repairing the ship.*
10. *Claims regarding possession, ownership, employment and earnings of a ship registered in Malta as between co-owners.*
11. *Claims by seamen for wages.*
12. *Claims by a master for disbursements made by him for use by the vessel.”*

Il-bastiment konvenut telenka uhud mis-servizzi li taghhom s-socjeta' attrici qed titlob il-hlas, u qed tallega li dawk is-servizzi allegatament rezi ma jikwalifikawx li jigu kkunsidrati taht il-*“heads of jurisdiction”* li jaghtu lok ghall-azzjoni *in rem*. Is-socjeta' attrici qed tqies li t-talbiet taghha ghandhom kollha jigu kkunsidrati li jikwalifikaw bhala *claims* li jattiraw azzjoni *in rem*, u, in partikolari, tikkunsidra s-servizzi kontestati bhala li jikwalifikaw bhala *“claims for necessaries supplied to any ship”* u / jew bhala *“claims for the building, equipping or repairing of any ship”*.

Id-definizzjoni tal-kelma *“necessaries”*, hija suggett ta' diversi kitbiet minn bosta awturi renomati fuq is-suggett kif ukoll suggett ta' diversi sentenzi kemm Inglizi kif ukoll lokali.

Kopja Informali ta' Sentenza

F'Aspinall's "Maritime Law Cases" Volume V pg. 145 insibu rapport tal-kaz Heinrich Bjorn decis 23 Lulju 1883 fejn intqal dan li gej:

"The expression "necessaries supplied" in the 3 & 4 Vict. C. 65 s6, which gave the Admiralty Court jurisdiction over foreign ships, though it is not to be restricted to things absolutely and unconditionally necessary for the ship in order to put to sea, must still be confined to things directly belonging to the ship's equipment necessary at the time and under the then existing circumstances for the service on which the ship is engaged".

Fil-publikazzjoni ta' Nigel Meeson "Admiralty Jurisdiction and Practice" LLP 2000, pagna 71 insibu:

"The generally accepted judicial definition of "necessaries" was "whether is fit and proper for the service in which a vessel is engaged, whatever the owner of that vessel as a prudent man would order if present at the time".

Dan kien estratt mis-sentenza Webster vs Sekamp 1828. L-estratt ikompli:

"originally its technical meaning was "anchors, cables, rigging and matters of that description", but it was readily extended to include all things necessary for the service of the ship and was not confined to things absolutely and unconditionally necessary for a ship in order to put to sea.

It was therefore extended to the following:

- (i) "Metal sheating, rings and nails (The Perla – 1858)*
- (ii) Coals for a steamship (The West Friesland – 1859)*
- (iii) Provisions (The N.R. Gosfabrick – 1858 (Il-kelma provisions hawn tfisser ikel u xorb).*
- (iv) Brokerage (The Riga – 1872)*
- (v) Clothing for crew (The W.F. Stafford – 1860)*
- (vi) Slops for the crew (The Feronia – 1868)*
- (vii) Port charges (The Mogileff – 1922)*
- (viii) Dock Dues (The St. Lawrence – 1880)*

- (ix) *Canal Dues (The Mecca – 1859)*
- (x) *Telegrams, custom house and immigration service fees (Pochahontas Fuyel Co. v. Ambatelios – 1922)*
- (xi) *Monies advanced for the purpose of procuring necessaries, or to discharge a debt for necessaries already incurred (The Sophie – 1868; The Underwriter (1868); The Albert Crosby – 1865)”*

Fil-publikazzjoni ta' Christopher Hill, “*Maritime Law*”, LLP 1998 pagna 98 insibu kif gej:

““Necessaries” is a term found only in common law or old statutes. (Bhall-Admiralty Court Act 1840 u 1861 li ma ghadhomx in vigour l-Inghilterra). It is not found in the Supreme Court Act 1981. The word has been defined as covering payment by way of advances to enable necessaries to be purchased.

Examples of what could reasonably be described as “necessaries” for the effective prosecution of a ship’s voyage are:

- (a) *bunker fuel;*
- (b) *crew’s clothing;*
- (c) *repairs;*
- (d) *expenses of destroying contaminating or rotting cargo.*

A comprehensive test for deciding what comes within the term “necessaries” is “all that is fit and proper for the service in which the ship is engaged and that the owner, as a prudent man, would have ordered if he had been present””.

Fil-gurisprudenza lokali, jidher li l-qrati taghna wkoll abbraccjaw interpretazzjoni wiesa' ta' meta azzjoni *in rem* tista' tirnexxi. Fil-kawza “Nicolaki vs Agius et”, decisa mill-Onorabbli Qorti tal-Kummerc fit-18 ta' Dicembru, 1907, intqal li “*In virtu della giurisdizione alla Corte di Commercio trasferita come Corte di Vice-Ammiragliato, la detta Corte di Commercio e’ competente a conoscere di qualunque credito dedotto contro una nave, ... quando la stessa trovasi entro la giurisdizione di queste Isole*”. Fil-kawza

“Mifsud vs Migliori”, decisa mill-Onorabbli Qorti tal-Kummerc fit-22 ta' Ottubru, 1923, intqal li *“Come Corte di Vice- Ammiragliato la nostra Corte di Commercio prende cognizione delle domande relative a provviste fatte ad una nave anche fuori la guirisdizione di queste isole”* Fil-kawza “Peralta noe vs Sammut noe”, decisa mill-Onorabbli Qorti tal-Kummerc fil-5 ta' April, 1990, il-Qorti accettat il-principju illi mhux mehtieg illi l-provisti jkunu *“absolutely and unconditionally necessary”*; kull ma hu mehtieg biex provisti jkunu konsiderati bhala *“necessaries”* hu li jintwera li fic-cirkustanzi kien prudenti li jinxtraw il-provvisti relattivi ghall-bastiment. Fil-kawza “Cassar Ship Repair Ltd vs m/v Northella”, decisa minn din il-Qorti fit-23 ta' Mejju, 2003, il-Qorti kellha tiddeciedi fuq talba ghal-hlas ta' *berthing fees*, provista tal-kurrent elettriku, hlas lil *watchman*, u *crane usage rate*. Il-Qorti osservat li: *“Dawn il-prestazzjonijiet li s-socjeta' attrici kellha taghti lill-bastiment jinkwadraw ruhhom fl-interpretazzjoni ta' necessaries invokati mill-konvenut a fini tal-ligi imsemmija minnu. Kif jikteb l-awtur Christopher Hili fil-ktieb “Maritime Law” (5th Edit. pag. 99), “necessaries are all that is fit and proper for the service in which the ship is engaged and that the owner, as a prudent man would have ordered if he had been present”.*

Din il-Qorti taqbel li ghandha tghati importanza partikolari lil kliem ***“for the service in which a vessel is engaged”*** u dan ghaliex dak li huwa *“necessary”* ghall-*“tanker”* li jgorr iz-zejt mhux necessarjament *“necessarju”* ghall-*“yacht”* privat u vici versa.

Kif jispjega sew fl-affidavit tieghu John Gauci Maistre ghas-socjeta' attrici, fattur essenzjali mil-uzu u l-funzjoni ta' *yacht* privat huwa t-tgawdija ta' *yacht* privat u li s-sid tal-*yacht* li jordna s-*supplies* u s-servizzi konness mal-*yacht* ikollu access immedjat ghal dawk l-affarijiet kollha li hu jixtieq fuq il-*yacht* u li huma parti integrali mill-esperjenza tat-tbahhir fuq *yacht* privat u ghaldaqstant il-forniment ta' ikel, xorb, servizzi ta' sigurta' meta l-krew ma jkunx abbord, esigenzi tal-krew bhal per ezempju il-visa's tal-krew tal-*yacht* sabiex dawn ikunu jistghu jivvjaggaw bhala crew fuq il-*yacht* u tindif tal-*yacht*, huma kollha

affarijiet li ghall-*yacht* privat huma essenzjali u ghaldaqstant necessarji.

Servizzi ta' din in-natura kienu ilhom zmien twil jigu suppliti lill-bastiment *in kwistjoni*, u s-sid tal-*yacht*, li juza l-istess *yacht*, ghal-pjacir u d-divertiment tieghu, kien jiehu hsieb jara li, ghall-iskop li hu ried juza l-bastiment, din kienet tkun fornita b'dak kollu necessarju u mehtieg. Dan il-bastiment kien jintuza ghal-skopijiet privati u ghat-tgawdija totali tas-sid, u hu, fil-waqt li ghandu dritt jiehu mill-*yacht* dak il-pjacir li huwa assocjat mieghu il-qasam tal-*private yachting*, ma jistax jissottometti li dak li hu marbut ma dan l-iskop tal-bastiment, ma hux necessarju ghal-bastiment.

Ix-xhud John Gauci Maistre spjega tajjeb kull ammont li deher fuq l-*invoices* identifikati mil-konvenut bastiment fl-affidavit tieghu. Huwa evidenti mill-ispjega li ta' li l-ammonti huma kollha pagabbli ghall-servizi jew bzonnijiet li inghataw lill-*yacht* u li minghajrhom il-bastiment ma jkunx jista' jiffunzjona bhall-*yacht* privat ghall-godiment tas-siddien tieghu. L-*invoices* ta' *Charles Grech and Co Ltd*. Valhorm Borg Imp/Exp., Gala Centre, Msida, *Gala Drive In Supermarket*, *Rex Butcher*, *Platin wine*, *Corvo wine* u *Louis Roederer Brut Premier* huma kollha provvisti ta' ikel u xorb li gew konsenjati lil *yacht* fuq ordni tas-sid sabiex jigu kunsmati mis-sid u l-krew. L-*invoices* bl-isem ta' "*cleaning expenses*" u "*security expenses*" huma kollha konnessi mat-tindif regolari tal-*yacht*, kif dejjem sar fil-passat, u sabiex jinzamm fl-istat lussus li jinsab fih denju ta' *yacht* privat, u ta' servizzi ta' sigurta' necessarji ghal meta ma kienx ikun hemm krew. Ilkoll servizzi li dejjem kien ihallas ghalihom is-sid tal-*yacht* u li dwarhom qatt ma inqalet ebda problema. L-*invoices* ta' *Petrolea*, *Mizzi Ltd*, *Deeco Ltd*, *Censu Grech Ironmongery – Cement*, u *The Eclipse House Limited* huma kollha relatati mal-forniment ta' bzonnijiet fil-*galley* tal-*yacht*, tat-tindif, jew servizzi u *spare parts* fuq il-magna. Is-segwenti *invoices* huma immedjatament konnessi mal-krew tal-bastiment li minghajru l-*yacht* ma setax ibahhar u *cioe'*: *French Embassy Visa*, u *Visa Charges* u *Cash to Mr. Rakotoarimanana*, *Amendment of ticket to Captain*,

Handling fees at Airport, Airspeed Express Ltd, Fotvision, u Fotovision Receipt u Travel Allowance lil Captain.

L-*invoice* li tkopri *Delivery of Paintings on Board* huwa il-pagament dovut lis-socjeta' attrici ghat-trasport ta' pittura ghab-bord il-*yacht* ILDERIM IV li ghogbu jixtri u jordna s-sid u li ordna lis-socjeta' attrici tikkonsenja ghal fuq il-*yacht*. Kieku s-sid deherlu li ma kienetx necessarja kieku zgur ma kienx jixtriha u jordna li tigi ttrasportata ghab-bord il-bastiment. Ghaldaqstant anki dan l-*invoice* huwa *invoice* li ghandu jitqies bhala "*necessary*".

Ghar-rigward dak l-ammont indikat bhala "*legal fees*", dan l-ammont kif spjega John Gauci Maistre fl-affidavit tieghu, huwa ammont dovut lil Dr. Joseph Schembri li kien irrappresenta l-istess bastiment f'proceduri konessi ma impediment ta' partenza u mandat ta' qbid tal-istess ILDERIM IV li kien ghamel kaptan precedenti tal-*yacht* ILDERIM kontra l-istess ILDERIM. Minghajr tali servizzi legali l-bastiment ILDERIM ma kienx jista' jitlaq minn Malta u ghaldaqstant dan is-servizz certament jitqies bhala "*necessary*".

Fid-dawl ta' dawn il-konsiderazzjonijiet, meta tqies l-uzu li sid il-*yacht* kien jaghmel mill-bastiment tieghu, is-servizzi provduti ma jistghux ma jitqiesux "*necessaries*". Jekk sid ta' *yacht* irid jghix hajja ta' lussu fuq l-istess *yacht*, u jrid izomm il-*yacht* fi stat inpekkabbli anke biex, forsi, jistieden hbieb ghad-divertiment fuq il-*yacht*, hu jkun irid jghammar il-*yacht* b'certi provisti u anke jipprovdi ghat-tindif u s-sicurezza tal-*yacht*, u dawn l-ispejjez ghandhom jitqiesu bhala "*necessaries*" "*for the service in which the ship is engaged*". Kwindi, l-ewwel eccezzjoni preliminari tal-bastiment konvenut ma timmeritax li tigi milqugha.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi minn din il-kwistjoni billi tichad l-ewwel eccezzjoni preliminari sollevata mill-bastiment konvenut, u tordna l-prosegwiment tal-kawza fil-meritu.

L-ispejjez *in konnessjoni* ma' din id-decisjoni jithallsu mill-bastiment konvenut.

Kopja Informali ta' Sentenza

< Sentenza In Parte >

-----TMIEM-----