



MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PETER BORG COSTANZI**

Seduta ta' l-24 ta' Novembru, 2005

Talba Numru. 2386/2004

**Atlas Insurance Limited (C5601) f'isimha propju u
kif surrogata fid-drittijiet tal-assigurata taghha Alfred
Gera & Sons Limited abbazi tal-polza ta'
assicurazzjoni
u tal-ligi**

Vs

FalcoTRANS Limited (C 8284)

It-Tribunal

Ra l-Avviz tat-talba li bih is-socjeta' attrici talbet li s-socjeta' konvenuta tigi kkundannata thallas is-somma ta' elf mija u seba' liri Maltin u sbatax-il centezmu (Lm1,107.17c) u dan billi ppremettiet illi s-socjeta' Alfred Gera & Sons Limited inkarigat lis-socjeta' konvenuta

Kopja Informali ta' Sentenza

sabiex tittrasporta merkanzija lejn Malta u meta l-imsemmija merkanzija giet ikkonsenjata rrizulta li l-merkanzija ma kienetx ingarret f'kundizzjonijiet idoneji, b'dan illi l-merkanzija ma setghetx tinbiegh u tigi kkonsumata.

Peress illi ai termini tal-polza ta' assigurazzjoni relattiva s-socjeta' attrici hallset lill-assigurati taghha s-somma ta' elf u seba' liri Maltin u sbatax-il centezmu (Lm1,007.17c) oltre mitt lira Maltin (Lm100) survey fees u ghalhekk is-socjeta' attrici hija surrogata fid-drittijiet ta' l-assigurata taghha.

Peress illi s-socjeta' konvenuta hija ghalhekk debitrici tas-socjeta' attrici fis-somma ta' elf mija u seba' liri Maltin u sbatax-il centezmu (Lm1,107.17c) rapprezentanti l-valur tal-merkanzija appartenenti lill-assigurata tas-socjeta' attrici u ghall-ispejjez tas-survey relattiv, liema konsenja waslet Malta fuq il-bastiment MV Island Seaway fil-25 ta' Jannar, 2004.

Ra r-Risposta tas-socjeta' konvenuta li biha wiegbet li preliminarjament trid tigi esebita s-surroga msemmija mill-atturi u dwar il-mertu t-talbiet attrici kif diretti kontra l-konvenuti ghandhom jigu respinti *in toto* stante illi huma ghal kollox infondati fil-fatt u fid-dritt.

Sema' x-xhieda ta' Brian Valenzia, Michael Curmi u ta' Peter Busuttil.

Ra d-dokumenti esebiti u l-atti kollha tal-kawza.

Sema' t-trattazzjoni ta' Dr Lennart Depasquale ghas-socjeta' attrici u ta' Dr Simon Micallef Stafrace ghas-socjeta' konvenuta.

Ikkunsidra

Illi mill-provi prodotti jirrizulta illi l-kumpanija Alfred Gera & Sons Limited kienet inkarigat lis-socjeta' konvenuta sabiex tittrasporta konsenja ta' gobon, hamsa u tmenin (85) kaxxa, u dan minn Franza ghal Malta, liema gobon kellu

jigi ttrasportat go *frigotruck*. Skond l-International Consignment Note mahruga taht l-International Convention on the Contract of International Carriage of Goods by Road (CMR) tad-19 ta' Mejju, 1956 kif emendata fil-5 ta' Lulju, 1978, il-piz totali ta' dawn il-hamsa u tmenin (85) kaxxa huwa ta' hames mija u hamsa u tletin kilogrammi (535kg).

Mill-Packing List jirrizulta illi mill-hamsa u tmenin (85) pakkett, hamsa u sittin (65) kienu Brie u go kull kaxxa kien hemm zewg units, jigifieri b'kollox kien hemm mija u tletin (130) pakkett Brie.

Meta l-konsenja waslet Malta u gie eventwalment ikkonsenjat fil-*warehouses* ta' Alfred Gera & Sons Limited, Michael Curmi nduna illi l-gobon ma kienx f'kundizzjoni tajba u ghalhekk qasam gobna u sabha iebsa. Il-gibon beda jitfarrak u kellu riha qisha tinten. Suppost il-gobon irid ikun artab u mhux iebes. Dak il-hin stess huwa avza lil Falcotrans u anki avza lill-insurance u saret claim. Il-piz tal-Brie li ma kienx sodisfacenti huwa ta' erba' mija u tnax punt sebgha sitta kilogrammi (412.76kg).

L-importatur ikkomunika mas-suppliers taghhom dwar dan l-ilment u s-suppliers ivverifikaw il-konsenja in kwistjoni u s-supplies kollha li ghandhom ma' pajjizi ohra kienet tajba. L-unika complaint li kellhom dwar din il-konsenja kien max-xoghol li kien intbaghat Malta u ghalhekk qed jigi allegat illi l-hsara fil-merkanzija sehhet minhabba li fil-*frigotruck* ma nzammitx it-temperatura idonea.

Da parti taghha s-socjeta' konvenuta qieghda ssostni illi fil-fatt hija m'ghamlet xejn hazin u minn trakk shih merkanzija li fih kien hemm anki yoghurt, l-unika complaint li kien hemm kien dwar dan il-gobon. Huma jahdmu ma' ditta Ingliza li ilha snin topera u li hija ditta professjonali.

Skond l-Artikolu 18.4 tas-CMR jinghad hekk:

4. If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat,

cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him.

Taht il-konvenzjoni, r-regola generali hija li l-piz tal-prova tispetta lit-trasportatur izda l-Artikolu 17 jipprova dwar cirkostanzi specjali meta t-trasportatur jista' jehles mir-responsabbilta':

- 4.** Subject to article 18, paragraphs 2 to 5, the carrier shall be relieved of liability when the loss or damage arises from the special risks inherent in one more of the following circumstances:
- (a)** Use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
 - (b)** The lack of, or defective condition of packing in the case of goods which, by their nature, are liable to wastage or to be damaged when not packed or when not properly packed;
 - (c)** Handling, loading, stowage or unloading of the goods by the sender, the consignee or person acting on behalf of the sender or the consignee;
 - (d)** The nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage, or the action of moth or vermin;

Fil-kaz odjern m'hemmx dubju li l-merkanzija de quo – gobon – hija merkanzija li tista' tigi partikolarment esposta ghall-hsara u tinhtieg li tigi ttrasportata b'certu kawtela (vide Aix 10 Nov 1976 B.T. 1977.248). Jekk l-esportatur jaf li ghandu merkanzija li hija sensitiva ghall-kundizzjonijiet partikolari tal-vjagg u jiddeciedi li juza mezzi ordinarji tat-trasport, ma jistax wara jdur fuq it-trasportatur.

Izda f'dan il-kaz jirrizulta li ntabab li mhux biss jintuza *frigotruck* izda li l-gobon jinzamm entro limiti specifici ta' temperatura.

Jirrizulta li meta l-gobon gie ezaminat malli gie kkonsenjat fil-*warehouses* ta' l-importatur, il-gobon kien iddanneggjat. Dan kien iddeterjora u wiehed ghandu jiddeciedi jekk dan id-deterjorazzjoni kienx tali li huwa ntrinsiku man-natura ta' l-oggett, jekk sehxx b'rizultat ta' xi haga li sehhet waqt it-trasport jew jekk hemmx xi raguni ohra.

Stante li jirrizulta li l-merkanzija waslet bil-hsara u stante li skond l-International Consignment Note l-merkanzija kienet giet mgħobbija f'kundizzjoni tajba, jispetta lill-konvenut li jgib prova sodisfacenti li l-gobon inzamm fir-range ta' temperatura pattwit.

Giet esebita wkoll it-*temperature chart* li tohrog awtomatikament mit-trakk in kwistjoni billi dan ghandu memorja li jzomm fih record tat-temperatura gewwa t-trakk. Il-merkanzija giet ikkonsenjata Malta fil-25 ta' Jannar, 2004 u presumibbilment din damet biex waslet Malta tlieta / erbat ijiem. Minn ezami tat-*temperature chart* esebita a fol 13 tal-process, jidher illi bejn it-22 ta' Jannar, 2004 u l-25 ta' Jannar, 2004, it-temperatura fit-*trailer* varja ftit aktar minn +3° sa ftit aktar minn 9.24° u dan ifisser illi t-temperatura fit-*trailer* ma nzammx bejn +2° - +4° kif suppost inzamm il-gobon.

Illi f'din il-kawza ma gew inkarigati l-ebda esperti teknici mill-partijiet u fil-fatt l-unika accenn ghal kif setghet sehhet il-hsara fil-gobon in kwistjoni huwa e-mail mibghut minn Michael Curmi ta' Alfred Gera & Sons Limited lil Falcotrans fid-9 ta' Frar, 2004 fejn jinghad hekk:

“Dexpa have also supplied me with documentation confirming correct quality controls by the cheese manufacturer, together with their assessment that the cheese could only have been exposed to lower than acceptable temperatures to lose its usual creamy and soft texture.”

Illi fil-fatt, minn ezami tat-*temperature chart* esebita jirrizulta skond din ic-*chart* illi t-temperatura qatt ma nizlet inqas minn 3° u cjoe' presumibbilment kienet entro l-limiti tat-temperatura li fih ser jibda jinzamm il-gobon.

Ma gew prodotti l-ebda provi biex jindikaw li b'xi mod tefghu xi dubju fuq il-korrettezza ta' l-informazzjoni fit-*temperature chart* jew jekk il-mekkanizmu li jirrekordja t-temperatura fit-*trailer* kienx *calibrated* tajjeb jew le. F'dawn ic-cirkostanzi, t-Tribunal ihoss illi l-konvenut irnexxielu jipprova li huwa qada dmiru skond l-istruzzjonijiet lil moghtija u ghalhekk jekk il-gobon gralu xi hsara dan mhux minhabba xi nuqqas da parti tas-socjeta' konvenuta. Jirrizulta lil dan it-Tribunal illi s-socjeta' konvenuta qdiet l-inkarigu lilha moghti bid-diligenza minnha mistenni. Wara kollox wiehed irid jiftakar li t-trasportatur jircievi oggett ippakkjat u ssigillat u ghalhekk ma jkunx possibbli ghalih li jezamina l-kontenut li qed jigi ttrasportat u jiccertifika l-kwalita' tieghu. Galadarba fl-ebda hin ma nizlet it-temperatura anqas minn dak li suppost ikun hemm, u galadarba jirrizulta mill-provi prodotti illi l-hsara hija mputabbli ghal temperature inqas milli suppost, ma jistax jinghad li l-hsara in kwistjoni sehhet minhabba xi incident jew nuqqas da parti tat-trasportatur waqt it-trasport. F'kull kaz jirrizulta wkoll illi fl-istess *trailer* kien hemm anki l-yoghurt liema yoghurt huwa maghruf li huwa aktar suxxettibbli milli huwa l-gobon u ma kien hemm l-ebda ilmenti dwar dan il-yoghurt.

Ghal dawn il-motivi t-Tribunal jaqta' u jiddeciedi billi jichad it-talba tas-socjeta' attrici izda stante n-natura u l-komplessita tal-kaz, l-ispejjez jibqghu bla taxxa bejn il-partijiet.

< Sentenza Finali >

-----TMIEM-----