



QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO**

**ONOR. IMHALLEF
ALBERT J. MAGRI**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta ta' l-1 ta' Frar, 2008

Appell Civili Numru. 1100/1997/2

**International Paint Limited socjeta` estera
rapprezentata mill-mandatarju lokali taghha Dottor
Louis Cassar Pullicino**

v.

**Il-Bastiment MV PLOPENI u b'nota tal-14 ta' April
1998, John A. Gauci Maistre bhala direttur tas-socjeta`
GM International Services Limited assumma l-atti tal-
kawza ghan-nom tal-bastiment MV PLOPENI**

Il-Qorti:

Rat ic-citazzjoni pprezentata mis-socjeta` attrici li tghid hekk:

"Peress illi l-konvenut ghandu jaghti lis-socjeta` attrici is-somma komplessiva ta' sebat elef erba' mija u sebgħa u tmenin lira sterlina (GBP 7487) liema somma tirraprezenta prezz ta' zebgħa (marine paint) konsenjata abbord l-bastiment M.V. PLOPENI gewwa Sirena Shipyard f'Constanza, ir-Rumanija, kif jidher mill-annessi fatturi u korrispondenza markati rispettivament Dokument "A", "B", "C" u "D";

"U peress illi ghalkemm l-armaturi tal-bastiment konvenut geww interpellati diversi drabi sabiex ihallsu lis-socjeta` attrici s-somma komplessiva hawn fuq indikata, il-pagament xorta baqa ma sarx;

"U peress illi fil-fehma tas-socjeta` attrici, dan id-dejn huwa veru, cert, likwidu u dovut u l-konvenut ma ghandux eccezzjonijiet xi jgib għat-talba għall-hlas tas-socjeta` attrici;

"U peress illi għalhekk dan jaghti id-dritt lis-socjeta` attrici tipprocedi kontra l-konvenut bi procediment sommarju speċjali kif provdut fil-Artikolu l67 *et sequitur* tal-Kapitolu l2 tal-ligijiet ta' Malta, kif fil-fatt qegħda tagħmel u għalhekk għall-finijiet ta' l-Artikolu l67 qegħda tigi prezentata dikjarazzjoni bil-gurament (markata Dokument "E:);

"Jgħid il-konvenut għaliex m'għandhiex dina l-Qorti:

"(1) Tiddeciedi skond it-talba bid-dispensa tas-smiegh tal-kawza a tenur tal-Artikolu l67 *et sequitur* tal-Kapitolu l2 tal-Ligijiet ta' Malta; u

"(2) Tikkundanna l-bastiment konvenut ihallas lis-socjeta` attrici s-somma komplessiva li fid-data tas-sentenza tkun ekwivalenti għal sebat elef erba' mija u sebgħa u tmenin lira sterlina (GBP 7487) liema somma tirraprezenta prezz ta' zebgħa (marine paint) debitament konsenjata lill-bastiment konvenut u dan għar-ragunijiet hawn premeffi;

"Bl-ispejjez u bl-imghax kummercjali mid-data tal-konsenja (12 ta' Lulju 1996) sal-hlas effettiv kontra l-bastiment konvenut li gie ingunt ghas-subizzjoni."

Rat in-nota ta' l-eccezzjonijiet tal-Kaptan Balasa Valentin in rapprezentanza tal-vapur m/v Plopeni li in forza taghha eccepixxa illi:

"Illi l-azzjoni kif promossa mill-attur ghandha tigi respinta bl-ispejjes kontra tieghu stante li l-azzjoni tentata hija wahda in rem meta kif sejjer jirrizulta il-vapur biddel l-idejn u allura azzjoni in rem hija impossibbli."

"Salv eccezzjonijiet ohra."

Rat id-digriet tal-Prim Awla tal-Qorti Civili fl-1 ta' Dicembru 1998, li in forza tieghu giet michuda talba tal-bastiment konvenut ghall-prezentata ta' nota ta' eccezzjonijiet ulterjuri;

Rat is-sentenza moghtija mill-Prim Awla tal-Qorti Civili fit-22 ta' April 2005, li in forza taghha ddecidiet il-kawza billi:

"Fl-ewwel lok tichad l-eccezzjonijiet tal-bastiment konvenut u billi fit-tieni lok tilqa' it-talbiet u tikkundanna l-bastiment konvenut ihallas lis-socjeta` attrici is-somma kompressiva ekwivalenti fid-data ta' din is-sentenza f'liri Maltin ghas-somma ta' sebat elef erba' mija u sebgha u tmenin lira sterlina (GBP 7487) liema somma tirrapprezenta prezz ta' zebgha (marine paint) debitament konsenjata lill-bastiment konvenut u dan bl-imghaxxijiet kummercjali mit-12 ta' Lulju 1996, sad-data tal-hlas effettiv;

"Spejjez kontra l-bastiment konvenut."

Dik il-Qorti tat is-sentenza taghha wara li ghamlet is-segwenti konsiderazzjonijiet:

"Din hi azzjoni in rem. Is-socjeta` attrici estera qed tittanta din il-procedura kontra l-bastiment M.V Plopeni ghal hlas tas-somma ta' sebat elef erba mija u sebgha u tmenin lira sterlina (GBP 7487) rapprezentanti prezz ta' zebgha (marine paint) konsenjata meta l-imsemmi bastiment konvenut kien gewwa Sirena Shipyard f'Constanza, ir-Rumanija;

"Il-bastiment konvenut qed jeccepixxi li din l-azzjoni in rem hi impossibli peress li l-bastiment konvenut biddel l-idejn;

"Il-fatti rilevanti u mhux kontestati huma s-segwenti:-

"a) Socjeta` statali tar-Rumania, CNN Navron, hi s-sid tal-bastiment konvenut;

"b) Is-socjeta` estera attrici kkonsenjat fuq il-bastiment konvenut, waqt li dan kien f'Costanza r-Rumania, kwantita ta' "marine paint" li, apparentement, intuzat appuntu sabiex isir xoghol ta' manutenzjoni fl-istess bastiment konvenut;

"c) L-ordni ghar-rigward ta' din il-konsenja saret mis-socjeta` Ritz Rom Marine Srl, li fiz-zmien li saret l-istess ordni u fiz-zmien li sar ix-xoghol relattiv kienu l-armaturi tal-bastiment taht bareboat charter;

"d) Sussegwentement l-istess bastiment, fis-27 ta' Gunju 1996, inghata ukoll taht bareboat charter iehor lill socjeta` ohra, cioe` Euro Ship Management and Trading Srl, u ghalhekk din il-kawza saret meta l-bastiment ma kienx ghadu fil-pussess tas-socjeta` li kienet ordnat iz-zebgha in kwestjoni, lanqas ma kien fil-pussess tas-sidien izda kien f'idejn terzi;

"Kif gia` gie rilevati din hi azzjoni in rem kontra l-bastiment konvenut, li qed jeccepixxi li din l-azzjoni ma tistax tirnexxi stante li appuntu qed issir kontra l-bastiment u b'hekk huma involuti s-sidien tal-bastiment u mhux kontra d-debitur veru u cioe` minn ordna il-merkanzija in kwestjoni. Inoltre illum il-bastiment jinsab fil-pussess ta' terzi. Lanqas fil-pussess tas-sidien;

"F'dan ir-rigward il-bastiment konvenut isostni li hi s-socjeta`, li kienet fiz-zmien l-armatrici tieghu, li hi responsabbli li thallas l-ammont in kwestjoni. Isostni ukoll li la l-vapur u lanqas is-sidien tieghu ma jistghu jigu ritenuti responsabbli ghad-dejn li jkun sar mill-bareboat charterer b'mod partikolari meta ma jirrizultax li d-dejn in kwestjoni

sar bil-kunsens tas-sidien. Il-bastiment konvenut ikompli jissottometti li r-responsabbilta` ghal hlas ta' kull tip ta' servizz provdut minn terzi negozjati direttament mil-bareboat charterer, hija responsabbilita` kompletament u unikament tal-istess bareboat charterer;

"F'dawn ic-cirkostanzi u f'gih il-gustizzja u l-ekwita it-terzi, cioe` s-socjeta` attrici, m'ghandiex ikollha xi drittijiet kontra l-bastiment, li zgur mhux proprjeta tal-bareboat charterer. Skond il-bastiment konvenut f'"bareboat jew demise charter party" l-bastiment fl-aktar sens wiesgha jghaddi mis-sid ghall-bare boat charterer ghall-perijodu twil ta' zmien u l-unika konnessjoni tas-sid mal-bastiment tibqa biss ir-registrazzjoni tal-bastiment f'isem is-sid. Kull haga ohra hi r-responsabbilita tac-charterer. Ghalhekk b'din l-azzjoni ser jintlaqat mhux min hu verament id-debitur cioe` il-bareboat charterer izda s-sid li m'ghandu x'jaqsam xejn mad-dejn in kwestjoni;

"Il-partijiet jaqblu li l-gurisdizzjoni tal-Qrati Maltin fil-kawzi in rem hi regolata mill-Admiralty Court Act tal-1840 u The Admiralty Court Act 1860 u The Admiralty Court Act 1863 u dan in forza tal-artikolu 370 tal-Kap 234. (Vide ukoll Strano v Zahra - Qorti tal-Appell – 6 ta' Gunju 1975 u Bugeja v Foros – Qorti tal-Kummerc - 16 ta' Awissu 1977). F'dawn il-ligijiet hemm indikat fejn il-Qrati Maltin ghandhom gurisdizzjoni in rem. F'dan ir-rigward il-bastiment konvenut isostni li dwar ic-cirkostanzi kif prevalenti f'dan il-kaz il-ligi ma tghid xejn u ghalhekk hawnhekk tezisti lacuna fil-ligi maltija. Il-bastiment konvenut isostni li ghalhekk ghandha issir referenza ghall-prattika u l-konswetudini u ghalhekk ukoll referenza ghall-ligi u posizzjoni fl-Ingilterra. Skond il-bastiment konvenut il-ligi Ingliza ma tippermettix li wiehed jipprocedi "in Rem" kontra bastiment jekk il-bniedem li jkun responsabbli in personam meta jkun inholoq id-dejn, ma jkunx is-sid tal-bastiment. Dan hu ukoll ibbasat fuq l-ekwita`. Illum fl-Ingilterra din il-materja hi regolata mis-Supreme Court Act 1981, liema att jirregola kazijiet bhal dak in esami;

"M'hemmx dubju li l-imsemmi Supreme Court Act 1981 ma jappilkax ghal Malta. Skond il-ligi, applikabbli ghall-

gurdizzjoni ta' dawn il-qrati, u skond guriprudenza lokali konstanti, biex ikun hemm "actio in rem" il-kreditu in kwestjoni ghandu jaqa taht l-elenku tal-"cause of action" li hemm fil-ligi, l-azzjoni trid issir kontra l-bastiment, li ukoll irid ikun fl-ibhra territorjali ta' Malta. Il-bastiment irid ikun maqbud jew mizmum milli jiltaq minn Malta:

"F'din il-kawza dawn ir-rekwisit jidhru li huma sodisfatti. Difatti il-mertu in kwestjoni jirrappresenta "necessaries supplied" kif elenkat fil-ligi rilevanti. Appuntu l-vantaggi tal-kawza specjali in rem hi li kreditu kontra bastiment, la darba jigi accertat, jista eventwalment jigi esegwit kontra l-istess bastiment, li jkun ibbenefika mill-istess kreditu. Dan hu rimedju effettiv hafna stante li b'din l-azzjoni jigu evitati kwestjonijiet dwar ir-responsabbilta personali tas-sidien u ta' terzi li jistghu ikunu involuti fil-gestjoni tal-bastiment. B'hekk ukoll konsiderazzjonijiet dwar responsabilita in personam, f'azzjoni bhal din, huma ghal kollox irrilevanti. Fl-azzjoni in rem il-bastiment konvenut jitqies responsabbli direttament ghall-kreditu pretiz u ghalhekk hu necessarju li fl-ewwel lok jigu pjenament sodifatti ir-rekwisiti, voluti mill-ligi, sabiex tirnexxi kawza in rem;

"Sewwa tissottometti s-socjeta` attrici li ma jistax jinghad li tesisti xi lacuna fil-ligi maltija u li jekk il-ligi tghati gurdizzjoni lill-Qorti f'kawzi bhal dik in esami, b'hekk isegwi li jesisti d-dritt ta' azzjoni a favur is-socjeta` attrici. Ghalhekk, skond il-ligi tghana, tesisti l-azzjoni in rem kontra l-bastiment irrespettivament ta' minn huma s-sidien tal-istess bastiment u irrissettivament minn ordna z-zebgha in kwestjoni. F'kaz li jintervjenu fil-kawza s-sidien anke biex jiddefendu l-kawza ir-responsabbilta personali o meno tas-sidien tista tkun rilevanti;

"Ghandu ukoll jigi rilevat li l-kreditu in kwestjoni mertu ta' din il-kawza jirrappresenta prezz ta' zebgha li giet usata fil-bastiment konvenut u ghalhekk jirrizulta li l-istess bastiment konvenut ibbenefika mill-istess materjal supplit. Minhabba f'dan kollu ukoll is-sottomissjonijiet tal-bastiment konvenut rigwardanti l-gustizzja u ekwita` mhux daqstant ghandhom lok f'din il-kawza;

"Fid-dawl tal-premess jirrizulta li l-azzjoni attrici hi valida skond il-ligi. Konsegwentement l-eccezzjonijiet tal-bastiment konvenut ghandhom jigu rigettati. Peress li t-talbiet attrici ukoll jirrizultaw sufficjentement pruvati, dawn l-istess talbiet ghandhom jigu akkoliti."

Rat ir-rikors ta' l-appell tal-bastiment konvenut li in forza tieghu ghar-ragunijiet hemm premissi, talbet ir-revoka tas-sentenza appellata u biex din il-Qorti tipprovdi minflok billi tichad it-talbiet tas-socjeta` attrici bl-ispejjez taz-zewg istanzi kontra s-socjeta` appellata;

Rat ir-risposta tas-socjeta` attrici li in forza taghha, ghar-ragunijiet hemm premissi, talbet ic-cahda ta' l-appell interpost mill-bastiment konvenut, il-konferma tas-sentenza appellata u l-akkoljiment tat-talbiet attrici kif dedotti;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Semghet lid-difensuri tal-partijiet;

Ikkunsidrat;

Illi f'din il-kawza s-socjeta` attrici qed tagixxi *in rem* kontra l-bastiment konvenut ghall-hlas tal-prezz ta' konsenja zebgha tal-bahar li intuza ghall-istess bastiment. Jirrizulta mill-provi li l-ordni ghal din iz-zebgha ma saritx mill-proprietarju tal-bastiment, izda mis-scoejta` Ritz Rom Marine s.r.l., li dak iz-zmien kienet l-armatur tal-bastiment taht *bareboat charter*. Il-bastiment konvenut ikkontesta l-kawza fis-sens illi qed jigi sottomess li azzjoni *in rem* kontra l-bastiment ma tistax issir meta l-ordni u x-xoghol relattiv ikunu saru waqt li l-istess bastiment ikun f'idejn terzi taht *bareboat charter*, li allura jibqa' responsabbli personalment u esklussivament ghad-djun li jidhol fihom meta jkollu l-pussess tal-vapur f'idejh.

L-ewwel Qorti ma accettatx dan l-argument tal-bastiment konvenut, u laqghet it-talba attrici wara li qieset li azzjoni *in rem* tista' issir dejjem ghal servizzi moghtijin lill-

bastiment meta dan ikun fit-territorju tal-pajjiz tal-Qorti invokat.

Il-bastiment konvenut appella minn din is-sentenza ghal quddiem din il-Qorti.

Il-Qorti tirrileva li l-punt legali meritu ta' din il-kawza gie diskuss u deciz fil-kawza **Avukat Max Ganado v. Kaptan Sebastiano Pizzimenti**, moghtija minn din il-Qorti, diversament komposta, fit-30 ta' Novembru, 2007. F'dik il-kawza, il-punt kontrovers gie diskuss *funditus* kemm mill-ewwel Qorti kif ukoll minn din il-Qorti, u z-zewg Qrati qablu mat-tezi tal-bastiment konvenut, u cioe`, li azzjoni *in rem* kontra l-vapur ma tistax treggi meta s-servizzi nghataw waqt li l-vapur kien f'idejn terzi taht *bareboat charter*. Fil-parti rilevanti taghha, din il-Qorti f'dik il-kawza ghamlet dawn l-osservazzjonijiet dwar il-materja in kwistjoni:

"7.4 Din il-Qorti hija tal-fehma, bhal dik ta' qabilha, li kawza *in rem* ma tistax tirnexxi kontra l-vapur meta s-sid ma jkunx responsabbli ghall-kreditu li jkun qed jigi mitlub.

.....

"Din it-tezi hija sostenuta minn dak deciz fil-gurisprudenza Ingliza, fejn il-Qrati kienu u ghadhom inklinati lejn il-*procedural theory*, u dan anke fiz-zmien meta kienu ghadhom vigenti fl-Ingilterra l-Atti tal-1840 u l-1861. L-awtur A. Mandaraka Sheppard tispjega li:

"Historically, there have been two schools of thought. One school has viewed the rem action (claim) as a means of compelling the defendant liable for the claim to appear in court and defend the claim personally (known as the procedural theory). In other words, an in rem claim really aims at the person who is interested in the ship, who will - after appearance - be personally liable, beyond the value of the ship, if the claim exceeds its value.

"The other school of thought has viewed it as being against the res and has developed from the concept of maritime liens, which attach on the ship from the moment

of the incident that gave rise to the claim. In other words, the res has been considered to be the 'personified' defendant, hence, the name attributed to this theory is known as the 'personification theory'

*"The procedural theory gradually gained preponderance amongst English judges over the personification theory, particularly since 1892, when Sir. Francis Jeune decided **The Dictator**, which, in fact, concerned the enforcement of a maritime lien claim for salvage, that is, a truly in rem claim....*

*"...the procedural theory prevailed and, but for two decisions, which concern truly in rem claims and seem to be against it, there have been no other authorities that are inconsistent with **The Dictator**."*

"Hemm bosta decizjonijiet tal-Qrati Inglizi fejn din it-tezi giet adottata b'approvazzjoni u dan ghalix wara kollox huwa ferm ingust u inekwu li l-attur jithalla jenforza t-talbiet tieghu kontra l-bastiment meta s-sid ma jkunx il-persuna responsabbli ghal dak id-dejn u ghalhekk ibati hu ghal dejn krejat minn terzi li kellhom il-kontroll u l-pussess tal-vapur b'rizultat ta' *bareboat charterparty* meta dan il-fatt kien a konnoxxenza tal-kreditur.

"Fid-decizjoni **The Castlegate**, li kienet ikkaratterizzata b'diskussjoni dwar il-Merchant Shipping Act tal-1889, gie ritenut li -

"'In the case of liens of wages of master and crew the Legislature has recognised the rule that it attaches to ships independently of any personal obligation of the owner, the sole condition required being that such wages shall have been earned on board the ship. But that rule, which is founded upon obvious considerations of public policy, constitutes an exception from the general principle of the maritime law, which I understand to be that, inasmuch as every proceeding in rem is in substance a procedure against the owner of a ship, a proper maritime owner lien must have its root in his personal liability."

"F'din id-decizjoni kienet giet kwotata d-decizjoni **The Parliament Belge** fejn kien intqal:

"In a claim made in respect of a collision the property is not treated as the delinquent per se though the ship has been in collision, and has caused injury by reason of the negligence or want of skill of those in charge of her, yet she cannot be made the means of compensation if those in charge of her were not the servants of her then owner...That is conclusive to show that the liability to compensate must be fixed, not merely on the property, but also on the owner through the property."

"F'kawza deciza sussegwentement, fl-ismijiet **The Utopia** wkoll gie deciz illi -

"It was suggested in argument that, as the action against the Utopia is an action in rem, the ship may be held liable though there be no liability in the owners. Such contention appears to their Lordships to be contrary to principles of maritime law now well recognised."

"7.5 Din l-interpretazzjoni giet ukoll adottata mill-Qrati Awstraljani li sa l-1988 kienu wkoll japplikaw l-Admiralty Court Acts tal-1840 u l-1861. Kif korrettement irrileva l-appellat nomine, gie deciz mill-High Court of Australia fil-kawza fl-ismijiet **Shell Oil Co. v. Astrigoni**, li l-*actio in rem* "cannot be maintained when there is no liability in the owners" u li ghalhekk l-artikoli ta' dawn l-atti ghandhom jigu interpretati fid-dawl ta' din ir-regola. Dik il-Qorti kienet ikkwotat id-decizjoni Ingliza **The Castlegate** u ziedet illi "proceedings in Admiralty are intended to facilitate the enforcement of liabilities, not to allow pressure to be put upon a person who is himself under no liability in respect of the liabilities of others".

"7.6 Inoltre ghandu jinghad illi fuq kollox huwa fl-interess tal-kummerc illi ligijiet simili jigu interpretati bl-istess mod. Kif intqal fid-decizjoni fil-kawza **The Tolten**.

"...it is in the interest of maritime commerce that British Admiralty law should not unnecessarily diverge from the

general law of the sea among other nations. If there is a doubt about some rule of principle of our national law and one solution of the doubt would conform to the general law and the other would produce divergence, the traditional view of the Admiralty Judges is in favour of the solution which will produce uniformity. For this there are two good reasons, first because that course will probably be the true reading of our legal development, and secondly because uniformity of sea law throughout the world is so important for the welfare of maritime commerce that to aim at it is a right judicial principle...".

Jirrizulta mill-provi akkwiziti f'din il-kawza li fiz-zmien meta gew forniti s-*supplies* in kwistjoni mis-socjeta` attrici lill-bastiment m/v "Plopeni", il-bastiment kien gie moghti b'*bareboat charter* lis-socjeta` Ritz Rom Marina s.r.l., u kien taht il-kontroll u fil-pussess assolut ta' din is-socjeta`. Kien il-*bareboat charterer* li kkuntratta mas-socjeta` attrici International Paint Ltd. sabiex din tforniha b'konsenja ta' zebgha, u l-*invoice* relattiv inhareg mis-socjeta` attrici lil Ritz Rom Marine s.r.l.. Is-socjeta` attrici kienet taf bic-*charterparty* ghaliex dejjem innegojzat u kkomunikat mac-charterer. Konsegwentement, is-sidien mhumix responsabbli, u applikati l-principji suesposti l-azzjoni *in rem* ma tistax tirnexxi.

Fl-ahharnett jinghad illi din il-Qorti ma tistax tiehu konjizzjoni ta' l-argumenti migjuba mill-appellant nomine li f'kull kaz is-sidien huma responsabbli a bazi tal-kuncett legali tal-kwazi-kuntratt, stante li l-azzjoni proposta hija wahda *in rem*. Huwa principju assodat fil-gurisprudenza illi l-kawzali kif espressa fic-citazzjoni ma tistax tinbidel tul it-trattazzjoni tal-kawza u li l-Qorti ghandha toqghod u tkun konfomi mat-termini tad-domandi kif espressi fic-citazzjoni - li kieku dan ma jsirx is-sentenza moghtija tkun *extra petita*.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-appell interpost mill-bastiment konvenut, billi tilqa' l-istess, thassar u tirrevoka s-sentenza ta' l-ewwel Qorti u tichad it-talbiet attrici.

Kopja Informali ta' Sentenza

L-ispejjez, minhabba n-natura tal-kaz, jithallsu kollha (jigifieri kemm ta' l-ewwel istanza kif ukoll ta' l-appell) kwantu ghal zewg terzi ($\frac{2}{3}$) mis-socjeta` attrici, u terz ($\frac{1}{3}$) mill-bastiment konvenut.

< Sentenza Finali >

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