PRIM'AWLA TAL-QORTI CIVILI

IMHALLEF

ONOR. DR DAVID SCICLUNA LL.D. MAG. JUR. (EUR. LAW)

Seduta ta' nhar il-Gimgha, 26 ta' Ottubru 2001

Numru

Citaz. numru 1639/94DS

Alfred u Vincenza konjugi Parnis

vs

Stephen Fava u Dorothy Simms bhala diretturi ghan-nom u in rapprezentanza tas-socjeta` Fogg Limited bhala agenti tas-socjeta` estera Avon Insurance

Illum, 26 ta' Ottubru 2001

Il-Qorti,

Rat ic-citazzjoni pprezentata fid-29 ta’ Novembru 1994 li permezz taghha l-atturi wara li ppremettew:

Ili l-attur huwa assigurat mas-socjeta konvenuta bil-motor insurance policy numru FAPC21312/1/92 liema polizza tkopri serq u hruq;

Illi fl-20 ta’ Awissu 1994 bejn it-8.30 u l-10.30 p.m. il-vettura Audi bin-numru tar-registrazzjoni J-4331, propjeta tal-atturi, li hija assigurata taht il-polizza msemmija ghall-ammont ta’ hamest elef lira Maltin (Lm5000), insterqet minn quddiem id-dar residenzjali tal-atturi u nstabet ftit tal-hin wara mahruqa f’Hal-Far.

Illi l-attur sejjah lill-konvenuti nomine sabiex jikkumpensawh fl-ammont ta’ hamest elef lira Maltin (Lm5000) rappresentanti s-somma li ghaliha l-vettura msemmija hija assigurata, izda huma qeghdin jirrifjutaw li jonoraw l-obbligi kuntrattwali taghhom taht il-pollizza msemmija u jhallsu lill-atturi.

talbu lil din il-Qorti ghar-ragunijiet premessi:-

1. tikkundanna lill-konvenuti nomine sabiex ihallsu lil-atturi l-ammont ta’ hamest elef lira Maltin (Lm5000), ghal liema somma l-vettura Audi bin-numru tar-registrazzjoni J-4331, propjeta tal-atturi, hija assigurata mal-konvenuti nomine taht il-Motor Insurance Policy imsemmija.

Bl-ispejjez inkluzi dawk tal-ittra interpellatorja tal-14 ta’ Novembru 1994 u bl-imghax relattiv mid-data tal-20 ta’ Awissu 1994 u cioe’ meta nsterqet u nharqet il-vettura in kwistjoni sad-data tal-hlas eventwali, kollha kontra l-konvenuti nomine li huma minn issa ngunti sabiex jidhru ghas-subizzjoni.

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

1. Illi d-domandi attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu rigettati bl-ispejjez u dan in vista tal-fatt li l-allegat kuntratt ta' assigurazzjoni bejn il-partijiet, li huwa il-pern tal-kawza attrici, ma jezistix u qatt ma ezista legalment.

2. Illi meta l-attur kien mar u mela il-proposal form, li kif jaf kullhadd hija l-bazi tal-polza ta' assigurazzjoni, wiegeb hazin ghal diversi domandi li sarulu jew ma svelax certa informazzjoni ta' natura importanti.

3. Fil-mertu u bla pregudizzju ghall-premess illi il-fatti kif elenkati mill-attur ma grawx kif qalhom hu u dan kif sejjer jirrizulta waqt it-trattazzjoni tal-kawza u ghalhekk it-talbiet attrici ghandhom jigu rigettati bl-ispejjez.

4. Salvi eccezzjonijiet ohra.

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

Rat id-digriet tas-26 ta' Gunju 1995 fejn gie nominat l-Avukat Dottor Marco Griscti bhala perit legali biex ifittex u jirrelata dwar il-fondatezza tad-domandi attrici, wara li jiehu konjizzjoni ta' l-eccezzjonijiet, u jaghmel l-osservazzjonijiet kollha li ghandhom x'jaqsmu mal-kaz;

Rat id-digriet ta' l-4 ta' Novembru 1996 fejn, fuq talba ta' l-imsemmi perit legali stess gie sostitwit ghalih l-Avukat Dottor Tonio Mallia;

Rat ir-relazzjoni debitament mahlufa fit-2 ta' Frar 2001;

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

Ikkunsidrat illi:-

F'din il-kawza l-attur kien assigura l-karrozza tieghu Audi numru J-4331 mas-socjeta` konvenuta kontra hruq u serq f'Jannar 1992. F'Awissu 1994 il-karrozza nsterqet minn wara l-bieb tieghu u nstabet mahruqa f'Hal-Far. Bl-ebda mod ma jirrizulta li hu kien b'xi mod involut fis-"serq" tal-karrozza u jirrizulta li qabel ma pparkjaha kien ha l-prekawzjonijiet necessarji billi sakkarha u halla t-twieqi mtella'. Kif tajjeb ikkummenta l-perit legali ghalhekk *prima facie* jidher li l-atturi huma ntitolati ghall-kumpens relattiv minghand is-socjeta` assikuratrici.

L-imsemmija socjeta` pero` qed tattakka l-validita` tal-polza ta' assikurazzjoni ghax issostni li l-kunsens taghha ma nghatax liberament billi kien bazat fuq zball. Hija tghid li kemm meta l-attur talab il-hrug tal-polza u sahansitra meta ghamel il-*claim*, l-attur gie mistoqsi jekk kienx ghamel *claims* ohra qabel u hu wiegeb fin-negattiv meta in effetti kien ghamel *claims* ohra qabel, fosthom tnejn ta' serq ta' zewg vetturi ohra li kellu qabel din. L-attur fix-xiehda tieghu stess jistqarr li meta nxurja l-Audi mas-socjeta` konvenuta ma qalilhomx bis-serqiet l-ohra u jispjega li dan kien ghax il-vetturi ma kinux inxurjati ma' Fogg. Jistqarr ukoll li l-anqas lil Louis Bonello, l-agent li ghandu mar biex jimlilu l-polza, qatt ma qallu dwar dawk is-serqiet billi mhux hu kien jiehu hsieb l-assigurazzjoni li l-attur kellu qabel ma' Gasan. Jirritjeni wkoll l-attur li ma kienx gie mistoqsi specifikatament id-domanda jekk kienx ghamel *claims* ohra qabel jew le – Louis Bonello mill-banda l-ohra jinsisti li saqsa d-domandi kollha fil-paragrafu sitta (6) u f'dawk sussegwenti fil-*proposal form*.

Fir-relazzjoni tieghu l-perit legali jaghmel is-segwenti konsiderazzjonijiet:

"Li kuntratt ta' assigurazzjoni huwa kuntratt "uberimae fidei" huwa principju accettat mill-awturi u l-gurisprudenza kollha in materja. Kuntratt t'assigurazzjoni huwa riskju ghal min johrog il-kopertura u, kwindi, hu mistenni li min jitlob l-assikurazzjoni jkun onest maghha u jaghtiha l-informazzjoni kollha materjali u rilevanti ghall-kaz. Hekk, fil-kawza "Rozanes vs Bowen", 1928, il-Qorti Ingliza osservat "*It has been for centuries in England the law in connection with insurance of all sorts, that as the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters, without being asked, of all the material circumstances. ...That is expressed by saying that it is a contract of the utmost good faith".* Fil-kawza "Greenhill vs Federal Insurance Co Ltd", 1972, rega' ntqal *"Now, insurance is a contract of the utmost good faith, and it is of the gravest importance to commerce that that position should be observed. The underwriter knows nothing of the particular circumstances of the voyage to be insured. The assured knows a great deal, and it is the duty of the assured to inform the underwriter of everything that he has not taken as knowing, so that the contract may be entired with an equal footing."* Dan il-principju gie emfasizzat fl-EEC Council Directive tal-1977, ghalkemm, f'dik id-direttiva, gie suggerit li l-obbligu tal-assikurat huwa ezawrit meta jirrispondi onestament id-domandi li jkun hemm fil-polza, minghajr htiega li jzid aktar.

Dawn il-principji, kif inghad, huma anke accettati mill-Qrati taghna. Hekk, fil-kawza "Camilleri noe vs Bartolo", deciza minn din l-Onorabbli Qorti fit-22 ta' Marzu 1982, polza ta' assikurazzjoni giet invalidata meta rrizulta li l-assikurat ma kienx informa lill-kumpanija assikurattrici li kien ghamel claims ohra qabel ma avvicina l-assikurazzjoni. Gie ribadit il-principju li kull fatt

materjali ghandu jigi ndikat, u fatt materjali gie deskritt bhala "fatt ta' xorta tali li jinfluwenza d-decizjoni ta' assiguratur prudenti meta jigi biex jara jekk ghandux jiehu riskju." Fil-kawza "Degorgio vs Agius", deciza minn din l-Onorabbli Qorti fil-25 ta' Gunju 1962 (Vol XLVI.II.656) intqal li "il-kuntratt ta' assikurazzjoni 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 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 rebadit dan l-ahhar minn din l-istess Onorabbli 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 relevanti ghall-kaz u, in partikolari, billi jwiegeb korrettament ghal kull domanda li jkun hemm registrata fil-polza. In oltre, meta fil-polza jkun hemm klawsola maghrufa bhala "Basis of Contract Clause", kif inhu fil-kaz in ezami (ara l-klawsola taht is-sub titlu "Declaration" fid-Dok. X), "*the effect of this language is to incorporate the insured's answeres into the insurance policy although they are not set out in the policy. An incorrect answer to anyone of these questions is fatal to the insured's claim. This is so whether he answered the questions in good faith to the best of his knowledge, or, indeed, whether his response related to a material fact or not*" – RA Hassan, "The 'Basis of the Contract Clause' in Insurance Law". Awturi ohra (per ezempju, John Birds, "The Statement of Insurance practice – A measure of regulation of the insurance contract") jaqblu ma dan il-principju, pero' jhossu li risposta rrata fuq domanda li mhiex intiza "to disclose a material fact:, m'ghandiex tigi uzata biex tannulla l-kuntratt.

Ghall-fini ta' din ir-relazzjoni, jista' jinghad li hemm qbil li "*an insured's accident history will often be of greatest importance to an insurer"*, u meta assikuratur jinnega li qatt qabel ghamel claims meta, fil-fatt ghamel, m'ghandux ikun hemm dubju li l-assikurat ikun naqas milli jikxef "material facts". F'dan il-kaz, l-assikuratur assikura l-karrozza tieghu kontra "fire and theft" u naqas jindika li kienu nsterqulu tlett vetturi ohra qabel. Mhiex haga normali li persuna jinsterqulu tlett vetturi in fila, u kien obbligu tieghu li jinforma lill-kumpanija assikuratrici li kellu dan il-passat. Mhiex raguni li s-serq sehh meta l-assikurat kien inxurjat ma' assikuraturi ohra, ghax, bhala fatt, kellu dan il-passat li, ghal assikuraturi ohra, ghax, bhala fatt, kellu dan il-pasat li, ghal assikuratur prudenti, kien jikkwalifikah bhala persuna b' "a high risk" u kwindi, kien jimmeritah trattament specjali. Ghalhekk, fil-fehma tal-esponenti, ir-risposta negattiva li ta' l-assikurat ghal domanda jekk kienx ghamel claims ohra fil-passat, meta kien jaf li kien ghamel, hija "misrepresentation of a material fact" li ghandha twassal ghall-invalidita' tal-kuntratt. Ta' min josserva li, kif qalet il-Qorti Ingliza fil-kawza "Arterial Carowners Ltd vs Yorkshire Insurance Co" fl-1973 (per Chapman J), "*the primary obligation was one of disclosure on the part of the insured, not of enquiry on the insurer.*" Huwa ovvju li l-agir tal-assikurat f'dan il-kaz jekwivali ghall-ingann u, per konsegwenza, induca lill-assikuratur fi zball li, anke' taht principju tradizzjonali, jivvizzjaw il-kunsens, li jaghti lok ghall-annullament tal-kuntratt (ara "Zammit vs Formosa", deciza minn din l-Onorabbli Qorti fis-6 ta' Mejju 1994)

L-assikuratur, d'din il-kawza, qed jallega li r-risposti ghad-domandi miktuba fil-polza, kien kitibhom l-agent tad-ditta konvenuta minn rajh, u ma gewx riferiti lilu. Jigi rilevat li, kif inghad, il-Qrati Maltin osservaw li kull fatt materjali kellu jigi mikxuf, "anke; jekk ma jkunx mistoqsi" u, ghalhekk, din mhix raguni valida ghal non disclosure. In oltre, din l-allegazzjoni tal-attur,

mhux sostnuta mill-istess agent li kien kategoriku fix-xhieda tieghu li hu staqsa lill-attur kull domanda li hemm fil-polza. Fuq kollox, jekk l-attur ma giex mistoqsi d-domandi, ma messux qabad u ffirma l-polza. Kien dmir tieghu li, qabel ma jiffirma, jaqra sew dak li kien se jiffirma, u jekk m'ghamilx hekk, irid ibati l-konsegwenzi tan-negligenza tieghu. Meta jkun hekk skrittura ffirmata minn parti, hu prezunt li hu accetta dak kollu li jkun regolat fl-iskrittura, u jridu jirrizultaw provi cari, certi u konkludenti biex jigi skartat dak li jkun hemm miktub. It-tesi tal-attur tkompli tidher inverosimili ghax anke meta rregistra l-claim in kwistjoni, rega' gie mistoqsi jekk kellux claims precedenti, u r-risposta regghet kienet negattiva. L-attur kien ben konxju ta' dak li kien qed jaghmel u, fil-fehma tal-esponenti, m'ghandux ikun hemm dubju li l-polza ta' assikurazzjoni in kwistjoni hija vizzjata b'mod li tintola lill-kontraenti assikuratrici li tannulla l-istess kuntratt.

L-esponenti josserva wkoll illi skond il-gurisprudenza lokali, l-agent jitqies bhala l-mandatorju tal-assikurat u mhux tal-kumpanija assikuratrici (ara "Zammit vs Micallef", deciza mill-Onorabbli Qorti tal-Kummerc fil-31 ta' Jannar 1952 (Kollez Vol XXXVI.III.610) u "Vassallo vs Azopardi", deciza minn din l-Onorabbli Qorti fil-21 t'April 1999). Kwindi, jekk naqas l-agent jew jekk dan wera xi negligenza f'xogholu, l-konsegwenzi jrid ibatihom l-assikurat – salv kull rimedju, li dan jista' jkollu kontra l-mandatorju tieghu taht il-ligi. Hija inutli, allura, li, f'din il-kawza, l-attur jipprova jitfa' l-htija ta' dak li gara fuq l-agent, ghax fil-konfront tat-terzi, l-agir tal-mandatarju jorbot lill-principal tieghu. Jekk il-mandatarju ma esegwix sew il-mandat moghti lilu mill-attur, (ghalkemm lanqas jirrizulta li l-attur, meta mar biex johrog polza t'assikurazzjoni, qal lill-agent li hu kellu claims precedenti), jista' jkun passibbli ghad-danni, izda jibqa' l-fatt li l-attur naqas minn obbligu principali tieghu meta ma stqarrx li kellu gja' claims ohra u, kwindi d-ditta assikuratrici hija korretta

fis-sottomissjoni taghha li ma tezisti ebda rabta kontrattwali valida bejnha u l-attur."

IL-perit legali konsegwentement ikkonkluda li t-talba attrici ghanha tigi michuda u l-ewwel zewg eccezzjonijit tas-socjeta' konvenuta milqugha.

Issa m'hemmx dubbju illi il-proposal form tifforma l-bazi ta' assikurazzjoni. Minhabba li n-natura tal-kuntratt ta' assikurazzjoni huwa bbazat fuq element ta' riskju, huwa essenzjali illi bejn il-partijiet tkun tezisti l-"utmost good faith" jew l-uberrima fides. "In cases of insurance, a party is required not only to state all matters within his knowledge, which he believes to be material to the question of insurance, but all which in point of fact are so. If he conceals anything which he knows to be material it is a fraud, but besides that, if he conceals anything that may influence the rate of premium which the underwriter may require, although he does not know it would have that effect, such concealment entirely vitiates the policy." (Dalgish vs Jarvie (1850) – Shawcross – On The Law of Motor Insurance, Second Edition, p. 100).

Id-Dikjarazzjoni li tinsab fil-proposal form hija krucjali skond l-istess awtur (Shawcross – Chp. VII - Making of the Contract):
"It now becomes necessary to examine the effect of a clause which is frequently found in a proposal form, whereby it is stipulated that all the statements and answers contained in the proposal form are warranted to be true. The effect is twofold. In the first place, it turns into terms of the contract answers which might otherwise be mere representations without any effect. In the second place, it may turn statements which would otherwise be immaterial into material representations".

Fid-dikjarazzzjoni li tinsab fil-proposal form esebit, l-assikurat jiddikjara: "I agree that this proposal is for insurance in the standard terms and conditions of the insurer's policy and shall be the basis of the contract." Skond Shawcross l-effett ta' klawsola bhal din huwa "to elevate to the status of essential stipulations….terms in the proposal form which would otherwise be non-essential" (pp384). Il-frazi "I declare that the answers given overleaf are true to the best of my knowledge and belief that the car is in sound and roadworthy condition and that all material factors affecting the assessment of the risk have been disclosed" ghandha l-effett illi "those questions and answers which would otherwise amount to mere warranties, the breach of which would not entitle the insurers to cancel the contract as from the date thereof and in some to declare that it was never in existence." (Shawcross – p384).

Minbarra hekk, fil-proposal form insibu ukoll klawsola intitolata WARNING li terga tfakkar lill-assikurat l-importanza li huwa jaghti kull taghrif materjali u li fin-nuqqas il-kopertura tkun nulla.

Ix-xhieda prodotta dwar jekk l-agent saqsiex lill-attur domandi oltre dawk li ghandhom x'jaqsmu ma dettalji personali tieghu u tal-karrozza, hija konfliggenti. L-attur xehed illi Bonello qatt ma saqsieh jekk ghamilx xi claim. Waqt li Bonello xehed illi "Li nimla l-form jiena u naqraha lill-klijent naghmilha ma kullhadd, u ma ghamilthiex biss mal-attur; wara nghatihielu biex jiffirmaha." L-attur ammetta fix-xhieda tieghu li lill-Fogg qatt ma qallhom dwar iz-zewg serqiet precedenti ghaliex ipprezuma illi dan ma kienx necessarju stante illi kienu assigurati ma Gasan. Dwar dan Shawcross jghid hekk: "The question as to whether certain facts are or are not material is not one for the assured to decide, but is determined by the views of reasonable, prudent insurers." Huwa jikkwota f'dan il-kuntest il-kaz: Farra vs Harrington (1931): "The failure of an assured to disclose the fact that cars which he had previously

owned had on several occasions been temporarily stolen or abstracted from his possession was also held a sufficient non-disclosure to entitle the insurers to avoid a policy, even though the assured had not deemed it material". (p.391)

Ir-Road Traffic Act 1934 Ingliza taghti s-segwenti definizzjoni tal-kelma "material": "The expression "material" means of such a nature as to influence the judgement of a prudent insurer in determining whether he will take the risk, and, if so, at what premium and on what conditons…"

L-informazzjoni li naqas li jaghti l-attur kien fattur determinanti ghall-kopertura tal-vettura tieghu. Dan ghaliex ir-riskju li kienet ser tiehu il-kumpanija konvenuta kien ser ikun ikbar mir-riskju li kienet ser tiehu fir-rigward ta' klijent li kellu "a clean background".

Ghalhekk Il-Qorti taqbel mal-konkluzjoni peritali li t-talba tal-attur ma tistax tigi milqugha.

Ghal dawn il-motivi:-

Tiddeciedi billi tilqa l-ewwel zewg eccezzjonijiet tas-socjeta' konvenuta u tichad it-talba attrici.

Bl-ispejjez kontra l-atturi.

Onor Imhallef
Dottor David Scicluna

D/Registratur