



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
MARIO SCERRI**

Seduta tal-21 ta' Dicembru, 2010

Talba Numru. 5/2009

GasamMamo Insurance Limited (C3143)

vs

Joseph Ellis

It-Tribunal,

Ra l-avviz tat-talba pprezentat fid-9 ta' Frar 2009, li jaqra hekk :-

'Is-socjeta' attrici titlob lil dan it-Tribunal sabiex jikkundanna lill-konvenut ihallas is-somma ta' elf u sitta u hamsin Euro u tnejn u ghoxrin Eurocentezmi (€1056.22) rapprezentanti spejjez gudizzjarji u mghaxijiet imhallsa mis-socjeta' attrici ghan-nom tal-konvenut bhala l-assikurat taghha in segwitu ta' l-arbitragg mandatorju numru M714/2006 fl-ismijiet : Espedito Grech vs Joseph Ellis, u l-appell sussegwenti fl-istess ismijiet (Appell Inferjuri Nru. 23/2007), u dana wara illi l-konvenut inghata

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d-debita twissija ai termini ta' l-Art.15(5) tal-Kap.104 tal-Ligijiet ta' Malta ;

Interpellat sabiex ihallas, il-konvenut accetta, izda baghat biss parti mill-pagament (Dok. GMI.1 u Dok. GMI.2), u ghaldaqstant kellhom jigu istitwiti l-proceduri odjerni sabiex jingabar l-ammont kollu dovut ;

Bl-ispejjez, u bl-imghaxijiet mit-23 ta' Settembru 2008 (ossija d-data illi gie effettwat il-hlas lit-terzi mis-socjeta' attrici) kontra l-konvenut li huwa minn issa stess ingunt ghas-subizzjoni.' ;

Il-konvenuti permezz tar-risposta tieghu pprezentata fil-11 ta' Marzu 2009, eccepixxa :-

' 1. Illi r-responsabilita' tal-konvenut hija limitata bl-artikolu 10(4) tal-Kap.104, u s-socjeta' attrici trid tipprova illi hija hallset lit-terza persuna aktar mill-ammont li kienet obbligata li thallas ai termini tal-imsemmi artikolu tal-ligi ;

2. Illi bla pregudizzju ghas-suespost is-socjeta' attrici qed tippretendi l-hlas ta' taxxa tad-drittijiet legali u gudizzjarji li qatt ma gew rezi ezekuttivi fil-konfront tal-esponenti imma illi hija accettat illi thallas lil terza persuna minkejja illi l-esponenti kien wissa lis-socjeta' attrici li l-hlas pretiz mit-terza persuna ma kienx interament dovut ;

3. L-esponenti hallas lis-socjeta' attrici dak li rrizultalu li kien realment dovut ghall-proceduri msemmija u d-differenza bejn dak mitlub mis-socjeta' attrici u dak imhallas mill-esponenti kienet biss ta' €47.09, u dana minhabba diskrepanzi li rrizultaw mit-taxxi tar-Registatur tal-Arbitragg u tal-Qorti tal-Appell u t-taxxa fuq il-valur mizjud relattiv. Minkejja din id-differenza zghira, is-socjeta' attrici ghazlet li tibda din il-kawza, u dana minghajr qatt ma rritornat ic-cekk li ntbaghtilha u li gie esibit mat-talba taghha jew talbet kjarifika dwar l-istess diskrepanza ;

4. Illi n-nuqqas li jigi ritornat ic-cekk imsemmi jipprekludi lis-socjeta' attrici milli taghmel it-talba odjerna ;

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5. Illi dan il-hlas sar da parti tal-esponenti sabiex jaghlaq il-vertenza minkejja illi legalment ma hassx li l-ammont hu dovut minkejja illi s-socjeta' attrici ma tat l-ebda assistenza sabiex l-ammont ta' spejjez u drittijiet gudizzjarji jigi realment stabilit imma qaghdet fuq dak li gie pretiz mit-terza persuna. Mhux talli ma tat l-ebda assistenza, izda talli nciatat lit-terza persuna sabiex tibghat ittra ufficjali halli s-socjeta' attrici tkun legalment obbligata illi thallas lill-istess terza persuna u dan minghajr ma jsiru l-verifiki mitluba mill-esponenti.' ;

Sama' l-provi ;

Ra l-atti kollha tal-kawza, u d-dokumenti esibiti ;

Ra l-verbal tal-konvenut tal-24 ta' April 2009, fejn ghamel riferenza ghac-cekk li kien intbaghat lis-socjeta' attrici datat is-16 ta' Novembru 2008, u li kopja tieghu giet esibita fil-process a fol.4 bhala dokument GM1, fejn ta l-kunsens tieghu lill-istess socjeta' attrici sabiex interament minghajr pregudizzju ghall-kontensjoni tieghu, dan ic-cekk jigi msarra bil-patt li jekk jirrizulta li t-talbiet attrici jigu michuda, tali ammont jigi rifuz bl-imghaxijiet mid-data ta' meta jkun gie msarra ic-cekk ;

Ra wkoll li l-Avukat Dottor Michael Zammit Maempel ghas-socjeta' attrici aderixxa ruhhu ghal dan il-verbal ;

Sama' lid-difensuri rispettivi jittrattaw il-kawza ;

Ra li l-kawza thalliet ghallum ghas-sentenza ;

Ikkunsidra :

Qabel kollox dan it-Tribunal jibda biex jiddisponi mit-talba tal-konvenut tat-13 ta' Ottubru 2010, billi jqis l-istess talba bhala wahda superfluwa, u jastjeni milli jiehu konjizzjoni ulterjuri tar-rikors ghar-raguni li l-istess dokument JEX li l-konvenut talab li jigi ammess li jipprezenta fl-atti wara li kien gie dikjarat maghluq l-istadju tal-provi u l-kawza kienet giet differita ghas-sentenza, kien gia' gie esibit a fol.42 u 58 tal-process ;

Fil-meritu din hi azzjoni li s-socjeta' attrici qeghdha taghmel fil-konfront tal-assigurat taghha ghall-hlas ta' spejjez legali u gudizzjarji, u ghall-imghaxijiet fuq il-hlas tad-danni li l-kumpanija attrici kellha thallas lit-terz, certu Espedito Grech, li kellu l-incident awtomobilistiku mal-konvenut fl-20 ta' Dicembru 2005. Is-socjeta' attrici kienet wissiet lill-konvenut qabel ma t-terz irrikorra ghall-arbitragg mandatorju, li ma kienet qeghdha tara ebda raguni l-ghaliex m'ghandhiex taccetta r-responsabbilita' tal-konvenut ghall-incident *de quo* u thallas id-danni minghajr ma tikkontesta l-kaz u tidhol f'aktar spejjez. Permezz ta' korrisondenza mibghuta elettronikament lill-konvenut fl-20 ta' Dicembru 2005, fit-8 ta' Mejju 2006, u fit-30 ta' Gunju 2006, huwa kien gie avzat, anzi' mwissi ripetutament mill-legali tas-socjeta' attrici li l-konvenut m'ghandux kaz fil-konfront tat-terz dwar ir-responsabbilita' ghall-incident, u li ghandu jaccetta r-responsabbilita' volontarjament u jaghti l-kunsens tieghu lis-socjeta' attrici sabiex tfittex tissalda d-danni lit-terz minghajr ma tidhol f'aktar spejjez, u fin-nuqqas is-socjeta' attrici ma kenitx lesta li taghmel tajjeb ghall-ispejjez legali u gudizzjarji, u ghall-imghax fuq id-danni likwidati fl-eventwali kaz li t-terz ikollu jipprocedi gudizzjarjament fil-konfront tal-konvenut ghall-hlas ta' dawn id-danni ;

Fl-ittra tal-20 ta' Dicembru 2005, il-konvenut kien gie avzat li *'In accordance with Section 15(5)(a) of the Motor Vehicles Insurance (Third-Party Risks) Ordinance, Cap.104, we are formally notifying you of the consequences of your objection to our settlement of the third party's claim. Should the case proceed to a Court of Law, and you are found liable (fully or partly) in the final judgement, you will be responsible to refund us with all legal and judicial costs and interest incurred by us in the proceedings. Please note that the law requires us to settle a third party claim in full once a judgement has been obtained in favour of the third party We therefore urge you to reconsider your objection and to accept our recommendation to settle the third party claim.'* ;

F'ittra ohra tat-8 ta' Mejju 2006, huwa kien rega' gie avzat li *'in the light of a long series of court judgements that favour the main road user in cases such as this, I have advised my clients to accept full liability with the third party and proceed with settling his claim. As you can understand, my clients have an interest in keeping costs to a minimum, and this is why they would see this claim settled at this stage, rather than let things get to litigation (and thereby incur further costs and interests). I must be blunt about the implications of your objection to us proceeding in this manner ; if we lose the case (in whole or in part), you will be obliged to refund us with all the judicial costs and interests accrued to date. As a colleague, I must urge you to avoid this course of action, because I genuinely believe it would be unfortunate if things had to go that way – and I would very much hate having to institute legal proceedings against you personally. Since time is running out, we must ask you to give us your final reply by not later than Friday, 12th May. I look forward to a positive reply from your end.'* ;

Fl-ittra tat-30 ta' Gunju 2006, il-konvenut rega' gie mwissi li *'I note that I have still not received an answer from you, despite my frequent reminders and our lengthy conversation in Valletta 2 weeks ago. Dr. Joe Zammit McKeon has warned me today that he will be initiating legal action on behalf of his client against you on Monday morning. This is your last opportunity to accept liability voluntarily and allow GasanMamo to settle in full with the third party. If judicial action is in fact filed, be warned that you will have to foot the bill for all judicial costs and intersts yourself, in the likely eventuality that you are declared to be fully responsible for the collision in question. Furthermore, GasanMamo will not be engaging their lawyers to defend any lawsuit that is initiated against you, meaning that you will have to either defend the case yourself, or engage a lawyer of your choice. I don't think I can put things plainly than this. The ball is squarely in your court.'* ;

Jidher mill-atti li l-konvenut baqa' ma tax il-kunsens biex il-kumpanija assiguratrici tieghu thallas id-danni li kienu

qeghdin jigu reklamati mit-terz, bil-konsegwenza li t-terz kien fl-ahhar spicca biex ressaq il-kaz tieghu quddiem l-Arbitragg, li gie deciz fid-19 ta' Lulju 2007, u li kellu ezitu kontra l-konvenut, kif wara kollox kien gie mwissi l-konvenut dak li probabilment kien ser jigri. Jidher ukoll li mill-*lodo* tal-arbitru l-konvenut kien intavola appell quddiem il-Qorti tal-Appell (Sede Inferjuri), li mbaghad kien cedieh fis-6 ta' Gunju 2008. Wara li l-kumpanija attrici kienet irceviet l-ittra tas-6 ta' Awwissu 2008, minghand l-avukat tat-terz fejn giet avzata thallas is-somma ta' elfejn u hamsa u erbghin Euro u sittin centezmi (€2045.60) f'danni, imghax, u spejjez, il-kumpanija attrici regghet avzat lill-konvenut permezz ta' korrisondenza li ntbaghtitlu elettronikament fit-8 ta' Awwissu 2010, 20 ta' Awwissu 2008, u 23 ta' Ottubru 2008, fejn avzatu biex ihallas direttament lit-terz l-ispejjez u l-imghaxijiet, liema hlas baqa' ma' sarx mill-konvenut minkejja li kien gie mwissi minn ferm qabel li jekk kien ser jipprecipita' l-kwistjoni u jwassal il-kaz s'hawn, huwa kellu jaghmel tajjeb ghal dawn il-hlasijiet. Ma kellu ebda raguni valida l-konvenut la fil-fatt u wisq anqas fid-dritt li baqa' jipprolunga z-zmien ghall-hlas ta' dawn l-ispejjez u mghaxijiet semplicement il-ghaliex ma kienx qed jaqbel fuq diskrepanza li dan it-Tribunal jikkunsidraha bhala minima, meta wiehed iqis li biss biss l-ispejjez ta' l-ittra ufficjali li t-terz kien kostrett li jispedixxi fil-konfront tas-socjeta' assiguratrici fl-1 ta' Settembru 2008, gew jiswew aktar mid-differenza fl-ispejjez gudizzjarji li l-konvenut kien baqa' jikkontesta dwarha. Fl-ittra tat-8 ta' Awwissu 2008, il-konvenut kien gie avzat u s-socjeta' attrici kienet taghtu gimgha zmien *'to settle the sum of €997.39 (representing all judicial costs and interests) DIRECTLY with Dr. Joseph Zammit McKeon'*, u wissietu li *'should you fail to do so by Monday, 18th August 2008, my clients are hereby informing you that they shall be effecting all payments temselves, and shall immediatley be instituting judicial proceedings against you for the recovery of all amounts disbursed on your behalf. As a colleague, and in order not to exacervate the steadily rising judicial costs, we trust your good sense will prevail and that you will settle the matter peaceably and in a gentlemanly manner'* ;

Minkejja din it-twissija u twissijiet ohra cari li kienu nghataw lill-konvenut fl-ittri tal-20 ta' Awwissu 2008, u tat-23 ta' Ottubru 2008, jirrizulta mill-atti li dawn l-ispejjez il-konvenut baqa' ma ssaldahomx billi ma kienx qed jaqbel mal-kont tal-ispejjez legali u gudizzjarji li kien qed jintalab li jhallas, u mill-atti dan it-Tribunal jirriskontra li d-differenza kienet wahda relattivament minima ta' erba' u tletin Euro u erbgha u disghin centezmi (€34.94) minn total ta' €2050.56, u dan kien fuq id-dritt li gie ntaxxat lill-avukat fil-proceduri quddiem l-Arbitragg u sitt Euro u disgha u ghoxrin centezmi (€6.29) VAT fuq dawn id-drittijiet. Dwar l-ispejjez u d-drittijiet gudizzjarji tal-appell, mill-atti tirrizulta biss taxxa ufficjali wahda li giet mahruga fis-16 ta' Gunju 2008, u l-hlas li kien talab it-terz tal-ispejjez u drittijiet relattivi ghal dan l-appell kienu biss dawk li jirrizultaw minn din it-taxxa, u mhux aktar. Dwar l-ispejjez tal-ittra ufficjali tal-1 ta' Settembru 2008, lanqas ma jirrizulta mill-atti li l-konvenut kien qed jikkontesta dawn l-ispejjez tant li mal-pagament li baghat lis-socjeta' attrici mal-ittra tieghu tal-21 ta' Novembru 2008, il-konvenut hallas l-ispejjez mitluba ta' din l-ittra ufficjali ;

Il-konvenut baqa' la tkellem direttament mal-avukat tat-terz dwar din id-diskrepanza minima, li kienet kwistjoni li ma kenitx tikkoncerna lill-kumpanija attrici billi din kienet ghamlitha cara mal-konvenut sa mill-bidu nett li ma kenitx qeghdha taghmel tajjeb ghall-hlas ta' dawn l-ispejjez u ghall-imghaxijiet, u wisq anqas baqa' ma hallasx lit-terz dawk l-ispejjez u l-imghaxijiet li dwarhom huwa ma kienx qed jikkontesta u halla mpregudikata d-differenza ta' wiehed u erbghin Euro u tlieta u ghoxrin centezmi (€41.23), jew skond kif kien qed jikkontendi l-konvenut d-diskrepanza ta' €47.09, bil-konsegwenza li fl-1 ta' Settembru 2008, giet spedita mit-terz l-ittra ufficjali fil-konfront tas-socjeta' attrici ghall-hlas tad-danni, spejjez, u mghax, u dan fit-termini tal-artikolu 10(1) tal-Kap.104 tal-Ligijiet ta' Malta, li rrendiet id-decizjoni arbitrali tad-19 ta' Lulju 2007, f'titolu esekuttiv. Rinfaccjata b'din l-ittra ufficjali tat-terz, u n-nuqqas persistenti tal-konvenut li jhallas l-ispejjez u l-imghaxijiet almenu lanqas ta' dawk li ma kienx qed jikkontesta, is-socjeta' attrici ma kelliex ebda ghazla ohra hlief li taghmel il-hlas mitlub kif hi obligata bil-ligi li

taghmel. Minhabba dan in-nuqqas tal-konvenut, is-socjeta' attrici kellha thallas aktar spejjez f'imghaxijiet u wkoll l-ispejjez tal-ittra ufficjali li gew jammontaw ghal aktar mid-differenza li l-konvenut kien qed jikkontesta, u li minhabba din ir-raguni kien qed jipprokrastina milli jhallas ;

Illi ma jistax jinghad li s-socjeta' attrici ma ppruvatx tkun ragonevoli mal-konvenut, u sa jirrizulta minn korrispondenza elettronika mibghuta lill-konvenut fis-6 ta' Novembru 2008, li nterament minghajr pregudizzju ghall-kwistjoni dwar il-hlasijiet tal-ispejjez legali u gudizzjarji, u l-imghaxijiet, is-socjeta' attrici sa kienet lesta dak iz-zmien li ma tinsistix mal-konvenut li jirrimborzaha tal-imghaxijiet li hallset lit-terz, purché li jaccetta li jhallas minnufih l-ispejjez kollha legali u gudizzjarji, u l-VAT fl-ammont ta' tmien mija u sitta u sebghin Euro u tmienja u hamsin centezmi (€876.58). F'dik l-ittra l-konvenut kien gie avzat li *'If this proposal is acceptable to you, then you are to remit payment DIRECTLY to my clients by not later than Thursday, 13th November 2008. My clients wish to emphasise that this proposal is not negotiable any further, and that in default they shall be proceeding judicially as already advised.'* Il-konvenut kien baqa' jipprokrastina aktar miz-zmien li kienet taghtu s-socjeta' attrici ghall-hlas, u b'ittra tal-21 ta' Novembru 2010, il-konvenut baghat cekk lis-socjeta' attrici b'pagament ta' €829.49 minflok ta' €876.58 ;

Illi kellha ragun s-socjeta' attrici li m'accettatx dan il-hlas ta' €829.49 minghand il-konvenut, liema ammont gie offrut mill-konvenut ghas-saldu tal-pretensjonijiet kollha taghha. Inghad li 'jekk id-debitur offerent jiddikjara b'mod univoku u indubitabbli li qed joffri pagament ghas-saldu tal-pretensjonijiet kollha tal-kreditur, m'ghandux dritt il-kreditur unilateralment jinjora l-mod kif offert il-pagament u jaccettah b'kondizzjonijiet u riservi li necessarjament huma inkonsistenti ma offerta ta' pagament a saldu" [Qorti tal-Appell, **William Apap vs Joseph Galea et noe**, deciza fis-26 ta' Novembru 1986]. Illi f'kawza aktar ricenti fl-ismijiet : **St George's Park Company Limited vs Eric Pace Bonello noe** (Avviz 966/97) deciza fit-12 ta' Jannar

2001, mill-Qorti Tal-Magistrati (Malta), intqal ukoll li : “Din il-posizzjoni diga giet ikkunsidrata diversi drabi mill-Qorti taghna u l-gurisprudenza prepoderanti fi kwistjonjiet simili hija illi jekk il-kreditur jaccetta pagament mibghut lilu ghas-saldu ikun qieghed jikkonferma illi b’dak il-pagament ikun inqatel id-dejn u ma jistax jippretendi huwa li jkun baqghalu kreditu ghall-bilanc”. Is-socjeta’ attrici kienet korretta meta avzat lill-konvenut b’ittra tas-27 ta’ Novembru 2008, li l-pagament minnu mibghut *‘is short of the amount of €47.09 and therefore cannot be accepted in full and final settlement. The full amount due by your good self is of €876.58 as expressed in my email to you of the 6th November 2008 Should payment of this additional sum (i.e. €47.09) not reach my clients by Thursday, 4th December 2008 (i.e. within one week), my clients will have no alternative other than to return the above-mentioned cheque to you and to initiate immediate judicial proceedings in your regard for the recovery of all their dues. Kindly note that if such proceedings are eventually initiated, my clients shall claim for the full amount due to them, including interests as originally claimed, as per Art.15 of Chapter 104.’*. M’ghamlet xejn hazin is-socjeta’ attrici meta ma baghtix lura dan ic-cekk lill-konvenut la darba ic-cekk baqa’ xorta wahda ma ssarrafx. Il-kawza mis-socjeta’ attrici lanqas ma saret f’Dicembru 2008, u halliet kwazi xaharejn ohra biex istitwiet din il-kawza, presumibilment bit-tama li l-konvenut jilhaq ihallas id-differenza li kien baghat nieqsa ;

Mill-atti jirrizulta palesi li l-ammont offrut mill-konvenut kien sahansitra inqas mill-ispejjez, u l-VAT li s-socjeta’ attrici kienet hallset lit-terz fit-23 ta’ Settembru 2008. Huwa car mill-korrispondenza esibita in atti li l-hlas tal-imghax li s-socjeta’ attrici kienet lesta li ma tinsistix dwaru kienet ovvjament offerta li saret bla pregudizzju, u wkoll offerta li kienet valida kemm –il darba l-konvenut kellu jibghat il-pagament fl-ammont mitlub u sa zmien li kien gie lilu moghti fl-ittri tas-6 ta’ Novembru 2008 u tas-27 ta’ Novembru 2008, u mhuwix gustifikat il-konvenut li issa jippretendi li ma jirrimborzax l-imghaxijiet li s-socjeta’ attrici hallset lit-terz wara li kien l-istess konvenut li wassalha biex fethet dawn il-proceduri fil-konfront tieghu u

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dahhalha f'aktar spejjez minkejja t-twissijiet cari taghha, u issa l-konvenut ma jistax jippretendi li ghandu xi gustifikazzjoni li ma jkollux ukoll ihallas lis-socjeta' attrici ta' dawn l-ispejjez tal-imghaxijiet li kienu gew minnha mhallsa wkoll ;

Illi t-talba attrici tirrizulta ghalhekk gustifikata u timmerita li tigi milqugha fl-intier taghha, bla pregudizzju ghal kull azzjoni li l-konvenut ghandu jew jista' ghandu fil-konfront tat-terz ghall-hlas zejzed li l-konvenut jippretendi li dan it-terz kien ircieva ndebitament minghand is-socjeta' attrici ;

Ghall-motivi premessi dan it-Tribunal qed jaqta' u jiddeciedi l-kawza billi filwaqt li jichad l-eccezzjonijiet tal-konvenut, jilqa' t-talba tas-socjeta' attrici u jikkundanna lill-konvenut ihallasha s-somma ta' elf u sitta u hamsin Euro u tnejn u ghoxrin centezmi (€1056.22), jew kemm –il darba jirrizulta li c-cekk numru 843 44716 71013015001 tal-HSBC Bank Malta plc ta' €829.49 kien isarraf wara l-verbal tal-24 ta' April 2009, il-konvenut ihallas id-differenza ta' mitejn u sitta u ghoxrin Euro u tlieta u sebghin centezmi (€226.73), u dan ghar-ragunijiet spjegati fl-avviz tat-talba, bl-imghaxijiet legali kif mitluba wkoll fl-avviz tat-talba li ghandhom jiddekorru fuq is-somma kollha sal-effettiv pagament, u bl-ispejjez kollha kontra l-konvenut.

< Sentenza Finali >

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