



**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
MARK CHETCUTI**

Seduta tas-17 ta' Ottubru, 2011

Citazzjoni Numru. 232/2011

Azrow International Trading Company Limited

VS

FIMBank p.l.c.

Il-Qorti,

Rat ir-rikors gurantat tas-socjeta' attrici tad-9 ta' Marzu 2011 li jghid hekk:

1. Illi permezz ta' ftehim kummercjali bejn is-socjeta' rikorrenti u s-socjeta' estera Alem Aletkan Recycling Company, is-socjeta' rikorrenti giet moghtija u accettat l-inkarigu li twaqqaf *Motor Vehicle Recycling Plant* gewwa Tripoli, fil-Libja;

2. Illi in konnessjoni ma' dan l-inkarigu, is-socjeta' rikorrenti talbet lis-socjeta' estera indikata sabiex tottjeni '*irrevocable stand by letter of credit*' a favur tal-istess socjeta' rikorrenti

u dan ghall-valur tax-xogholijiet li ghalihom s-socjetà rikorrenti giet ingaggata u cioe ghall-valur ta' disgha u ghoxrin miljun ewro (€29,000,000) [vide l-anness proforma invoice bin-numru 121/10 immarkat Dok AIT1];

3. Illi s-socjetà estera Alem Aletkan Recycling Company talbet u ottjeniet il-hrug ta' '*irrevocable stand by letter of credit*' fl-ammont ta' disgha u ghoxrin miljun ewro (€29,000,000) tramite n-National Commercial Bank ta' Tripoli, fil-Libja, liema *letter of credit* iggib in-numru wiehed u hamsin sbarra elfejn u ghaxra (51/2010) u li hija valida sat-tnejn (2) ta' Mejju tas-sena elfejn u hdax (2011) [vide l-anness dokument immarkat Dok YA1];

4. Illi l-'*irrevocable stand by letter of credit*' surriferita giet mibghuta min-National Commercial Bank ta' Tripoli, fil-Libja, lis-socjetà intimata u din tal-ahhar ircievet l-istess fit-tlieta (3) ta' Gunju tas-sena elfejn u ghaxra (2010);

5. Illi sussegwentement is-socjetà intimata kienet zammet zero punt sitta fil-mija (0.6%) tal-ammont tal-*letter of credit* surriferita, u dan in rapprezentanza ta' *confirmation charges* relatati mal-istess *letter of credit*, u konsegwentement ikkonfermat l-istess *letter of credit*,

6. Illi in konsegwenza ta' dawn il-fatti, u b'mod partikolari in vista tal-konferma tal-*letter of credit* in kwistjoni mis-socjetà intimata, is-socjetà rikorrenti bdiet certu xogholijiet, dahlet f'kuntratti ma' terzi w inkorriet spejjez inkluzi l-hrug ta' *letters of credit* ulterjuri lil varji *subcontractors* li magghom kienet qiegheda tinnegozja;

7. Illi fit-tmienja u ghoxrin (28) ta' Gunju tas-sena elfejn u ghaxra (2010) s-socjetà rikorrenti talbet u ottjeniet il-hrug ta' *irrevocable letter of credit* bin-numru FIMOLMA101600001 a favur is-socjetà Razin Company For General Contracting ghas-somma ta' seba' miljun ewro (€7,000,000) liema *letter of credit* kienet inharget *back-to-back* mal-*letter of credit* mertu tal-kawza odjerna [vide l-anness dokument immarkat Dok YA2];

8. Illi sussegwentement is-socjetà Razin Company For General Contracting ghamlet *claim* parzjali fuq din il-*letter of credit* ghall-ammont ta' zewg miljuni ghaxart elef u erba' mitt ewro (€2,010,400) [vide l-anness dokument immarkat YA3, liema dokument juri claim parzjali ta' miljun mitejn u hamsin elf u erba' mitt ewro (€1,250,400) maghmul a bazi tal-*letter of credit* mahrugha mis-socjetà rikorrenti];

9. Illi s-socjetà rikorrenti eventwalment ghaddiet sabiex taghmel l-ewwel *claim* taghha fuq il-*letter of credit* in kwistjoni, liema *claim* giet onorata mis-socjetà intimata, b'dan illi nhar il-hmistax (15) ta' Lulju tas-sena elfejn u ghaxra (2010) l-istess socjetà intimata qieghdet ghad-dispozizzjoni tas-socjetà rikorrenti s-somma ta' sitt miljuni hames mija u sebat elef u seba' mija u hamsin ewro (€6,507,750);

10. Illi fit-tnejn (2) ta' Awwissu tas-sena elfejn u ghaxra (2010) s-socjetà rikorrenti regghet ghamlet *claim* ghas-somma ulterjuri ta' ghaxar miljun ewro (€10,000,000) liema *claim* ma gietx onorata mis-socjetà intimata [vide l-anness dokument immarkat Dok YA4];

11. Illi s-socjetà intimata rrifjutat li tonora din it-talba u dan a bazi t'allegazzjoni li n-National Commercial Bank ta' Tripoli, fil-Libja, kien qed ihassar il-*letter of credit* in kwistjoni u dan in konsegwenza tal-fatt li allegatament il-*letter of credit* kienet wahda falza;

12. Illi s-socjetà intimata allegat, u dan wara li kien hemm xi laqghat bejnha u bejn in-National Commercial Bank ta' Tripoli, fil-Libja, li l-garanzija li kienet moghtija min-National Commercial Bank kienet wahda falza u dan in konsegwenza ta' '*default in our [National Commercial Bank] internal procedures*';

13. Illi s-socjetà rikorrenti regghet intavolat *claim* ai termini tal-istess *letter of credit* fil-hdax (11) ta' Ottubru tas-sena elfejn u ghaxra (2010), liema *claim* ukoll ma gietx onorata [vide l-anness dokument immarkat Dok YA5];

14. Illi s-socjetà rikorrenti ikkomunikat mas-socjetà estera Alem Aletkan Recycling Company li originarjament kienet talbet il-hrug tal-*letter of credit* mertu ta' din il-kawza, li da parti taghha ikkonfermat li kollox kien regolari u li l-*letter of credit* ghalhekk kellha tkun onorata;

15. Illi s-socjetà rikorrenti talbet lis-socjetà intimata sabiex tressaq provi in sostenn tal-allegazzjoni maghmula fir-rigward tal-falsita tal-*letter of credit* in kwistjoni, speċjalment in vista tal-fatt li l-istess socjetà intimata kienet diga ikkonfermat il-*letter of credit* u zammet *charges* in konnessjoni ma' dan u li b'hekk kienet obligat ruhha li tonora l-*claims* maghmula mis-socjetà rikorrenti a bazi tal-istess *letter of credit*, u in vista ukoll tal-fatt li kienet diga onorat *in parte* l-imsemmija *letter of credit* fuq talba tal-istess socjetà rikorrenti, ghal liema talba s-socjetà intimata rrispondiet li hija disposta tipproduci tali evidenza biss fi proceduri gudizzjarji li setghu jigu intavolati mis-socjetà rikorrenti;

16. Illi s-socjetà rikorrenti sabiex tevita proceduri gudizzjarji intavolat ittra ufficjali datata tnejn (2) ta' Marzu bin-numru seba' mija u erbgha sbarra elfejn u hdax (704/2011) [vide l-anness dokument immarkat Dok YA6] permezz ta' liema interpellat lis-socjetà intimata sabiex tonora l-obbligi minnha assunti ai termini tal-*letter of credit* mertu ta' din il-kawza w inoltre fl-erbgha (4) ta' Marzu, ufficjal tas-socjetà rikorrenti mar personalment gol-ufficju tas-socjetà intimata fejn ipprezenta *claim* ghall-bilanc tal-*letter of credit* in kwistjoni [vide l-anness dokument immarkat Dok YA7] izda s-socjetà intimata baqghet inadempjenti u komplet tinsisti li mhux ser tonora l-*letter of credit* in kwistjoni;

17. Illi inoltre permezz tal-ittra ufficjali surriferita gie koncess zmien ta' erbgha u ghoxrin (24) siegha min-notifika tal-istess ittra lis-socjetà intimata sabiex tonora l-obbligi assunti minnha ai termini tal-*letter of credit* mertu tal-kawza odjerna, izda nonostante l-fatt li tali terminu ghadha, is-socjetà intimata baqghet inadempjenti u lanqas biss irrispondiet ghall-istess ittra ufficjali sabiex tindika l-posizzjoni taghha;

18. Illi ghalhekk kellhom jigu intavolati dawn il-proceduri;

Ghaldaqstant tghid is-socjetà konvenuta ghalfejn din l-Onorabbli Qorti m'ghandhiex:

1. Previa kull dikjarazzjoni ohra talvolta mehtiega u necessarja, tiddikjara li s-socjetà intimata ghandha tkompli tonora l-obbligi naxxenti mill-*'irrevocable stand by letter of credit'* bin-numru 51/2010 li inharget tramite n-National Commercial Bank, ta' Tripoli, fil-Libja, fil-kapacità taghha ta' *confirming bank*;

2. Tordna lis-socjetà intimata sabiex tkompli tonora l-obbligi assunti minnha ai termini tal-*'irrevocable stand by letter of credit'* bin-numru 51/2010 li inharget tramite n-National Commercial Bank, ta' Tripoli, fil-Libja, u dan billi tissaldja l-*claims* kollha maghmulin mis-socjetà rikorrenti ai termini tal-istess *letter of credit*,

3. Previa kull dikjarazzjoni ohra talvolta mehtiega u necessarja, tiddikjara li s-socjetà rikorrenti sofriet danni in konsegwenza tan-nuqqas da parti tas-socjetà intimata fil-kapacità taghha ta' *confirming bank* milli tonora l-obbligi assunti minnha in relazzjoni mal-*'irrevocable stand by letter of credit'* bin-numru 51/2010 li nharget tramite n-National Commercial Bank, ta' Tripoli, fil-Libja,

4. Tillikwida d-danni hekk sofferti mis-socjetà rikorrenti in konsegwenza tan-nuqqas tas-socjetà intimata milli tonora l-obbligi assunti minnha in relazzjoni mal-*'irrevocable stand by letter of credit'* bin-numru 51/2010 tramite in-National Commercial Bank, ta' Tripoli, fil-Libja;

5. Tordna lis-socjetà intimata thallas l-ammont hekk likwidat rapprezentanti danni sofferti mis-socjetà rikorrenti, lill-istess socjetà rikorrenti;

Bl-imghax u bl-ispejjez kontra s-socjetà intimata li hi minn issa ingunta ghas-subizzjoni;

Rat ir-risposta tal-bank konvenut li jghid hekk:

1. Il-Bank intimat għandu jigi liberat mid-domandi stante illi r-relazzjoni guridika bejn il-bank intimat u s-socjeta' rikorrenti mhix dik prospettata fir-rikors promotur u għalhekk, kif dedotti, it-talbiet rikorrenti ma jistghux jintlaqaw. Kuntrarjament għal dak allegat fir-rikors guramentat ir-relazzjoni bejn il-bank intimat u s-socjeta rikorrenti mhix regolata bl-*standby letter of credit* li fuqha ssejjeset it-talba tagħha s-socjeta rikorrenti b'mod esklussiv. Ir-relazzjoni bejn il-bank intimat u s-socjeta rikorrenti hija principalment regolata, bis-segwenti ftehimiet milhuqa bejn il-partijiet f'din il-kawza, ftehimiet illi s-socjeta rikorrenti ma tagħmel ebda riferenza għalihom, u cioe:

a. *Facility Letter* datata 24 ta' Gunju 2010 permezz ta' liema l-bank intimat pogga a disposizzjoni tas-socjeta rikorrenti facilita bankarja għas-somma massima ta' €24,300,000 (Dokument "FIM1") proprju għall-iskop li s-socjeta rikorrenti tibni *Motor Vehicle Recycling Plant*, fi Tripoli, l-Libja (**il-Facilita**);

b. Ftehim intestat *Guarantee and Indemnity Agreement* li jgib ukoll id-data tal-24 ta' Gunju 2010 permezz ta' liema id-direttur u azzjonista uniku tas-socjeta rikorrenti, Yousef Mohammed El Azzabi ggarantixxa personalment il-hlas lura u l-indenizz komplet a favur tal-bank intimat għal kwalunkwe somma talvolta dovuta ai termini tal-Facilita għall-massimu tas-somma imsemmija fil-paragrafu precedenti (Dokument "FIM2");

c. Ftehim intestat *Pledge of Bank Account/Balances Agreement* li jgib l-istess data tal-ftehimiet l-oħra permezz ta' liema s-socjeta rikorrenti tat b'rahan favur il-bank intimat il-*bank account* indikat fl-istess ftehim u kwalunkwe *accounts* oħra tas-socjeta rikorrenti kif ahjar indikat fl-imsemmi ftehim (Dokument "FIM3"); u

d. Ftehim intestat *Terms and Conditions Governing the Pledging of Goods, Documents and Receivables* li wkoll igib l-istess data u permezz ta' liema nġataw ukoll b'titolu ta' rahan favur il-bank intimat l-oġġetti, dokumenti, djun u drittijiet oħra in konnessjoni mal-proġett li s-socjeta

rikorrenti kellha tibni fil-Libja konsistenti *f'car maintenance facility* a favur tas-socjeta Libjana Alem Aletkan Recycling Company (Dokument "FIM4");

2. Ai termini tal-ftehim imsemmi fil-paragrafu 1.b ta' din ir-risposta, ghandu jigi kkjamat personalment **Yousef Mohammed El Azzabi**, ai termini tal-obbligi minnu kuntrattati f'dak l-istess ftehim, bhala l-garanti mas-socjeta rikorrenti, ta' kwalunkwe somma talvolta dovuta lill-bank intimat *ai termini* tal-Facilita u wkoll abbazi tal-indenizz li Yousef Mohammed El Azzabi ta lill-bank intimat ghal kull dannu, telf u spejjez naxxenti minn nuqqas tas-socjeta rikorrenti li twettaq l-obbligi taghha kif aktar dettaljatament spjegat fil-kuntratt imsemmi fil-paragrafu 1.b;

3. *In oltre*, u fi kwalunkwe kaz, il-bazi kollha illi fuqha kien qieghed jistrieħ il-bank intimat biex jaghmel il-Facilita' disponibbli lis-socjeta rikorrenti sostniet tibdil sinnifikanti, principalment billi s-sors ta' ripagament tal-istess Facilita gie dikjarat mil-bank Libjan li kien hareg *l-Istandby Letter of Credit*, bhala "*Falz*". Ghaldaqstant il-bazi kollha tal-arrangamenti kuntrattwali bejn il-partijiet u l-aktar element importanti, cioe propju kif kienet ser tithallas lura l-istess Facilita imbidlet kompletament min dik kontemplata u ghalhekk, il-bank intimat ma ghadx fadallu ebda obbligu taht l-imsemmi arrangement;

4. Minghajr pregudizzju ghas-suespost, it-talbiet tas-socjeta rikorrenti xorta wahda ghandhom jigu michuda u dan stante illi, anki jekk l-istess *letter of credit* taghti lok ghal relazzjoni guridika diretta bejn il-bank intimat u s-socjeta rikorrenti (indipendentement mill-Facilita, li mhux il-kaz), il-bank intimat jinsab infurmat li l-istess *letter of credit* hija affetta minn frodi, s-socjeta rikorrenti hija konsapevoli ta' din il-fatt, u ghaldaqstant kull talba tas-socjeta rikorrenti li saret wara l-4 ta' Awwissu 2010 abbazi tal-*standby letter of credit* hija wkoll affettata minn frodi. Ghalhekk il-bank intimat mhux talli m'ghandu ebda obbligu jonora l-imsemmija *standby letter of credit* anzi jekk jilqa t-talbiet attrici jkun qieghed jirrendi ruhhu kompartecipi fil-frodi. Id-dokumenti permezz ta' liema l-bank intimat gie nfurmat li l-*letter of credit* hija milquta

minn frodi qed jigu annessi ma din ir-risposta u mmarkati Dokument "FIM5" sa Dokument "FIM7";

5. In oltre, b'rabta mar-raba' risposta, il-bank intimat jitlob il-kjamata fil-kawza (okkorrendo bin-nomina ta' deputati kuraturi biex jirraprezentaw lill-istess bank assenti min Malta) tal-*issuing bank* u cioe tal-bank Libjan bl-isem National Commercial Bank of Tripoli ("NCB"), il-bank illi origina l-imsemmija *letter of credit* u li sussegwentement informa lill-Bank intimat illi l-istess *letter of credit* kienet milquta min frodi u li ma kienx ser jonora ebda talba li ssir taht dik l-istess *letter of credit*;

6. Fi kwalunkwe kaz, kif johrog mill-paragrafu 1.b ta' din ir-risposta, Yousef Mohammed El Azzabi ikkostitwixxa ruhu garanti tal-bank intimat u ggranatixxa personalment il-hlas tal-ammonti dovuti lill-bank intimat. Yousef Mohammed El Azzabi huwa l-uniku direttur u l-uniku azzjonalista tal-istess socjeta' rikorrenti. Jekk jigi deciz illi l-Bank intimat ghandu jonora t-talbiet għal hlas mis-socjeta rikorrenti, allura jiskatta wkoll id-dritt ta' rivalsa tal-Bank esponenti fil-konfront tal-garanti, Yousef Mohammed El Azzabi liema dritt jibqa' riservat mill-bank esponenti, fil-konfront tal-istess garanti;

7. Illi l-bank esponenti mhux responsabbli għal danni li s-socjeta' rikorrenti qieghdha tallega illi sofriet fit-tielet talba attrici;

8. Salv risposti ulterjuri u b'rizerva ta' kwalunkwe azzjoni ohra a disposizzjoni tal-bank intimat fil-konfront tas-socjeta rikorrenti, u ta' Yousef Mohammed El Azzabi;

9. Bl-ispejjez;

Rat l-atti tal-kawza inkluz ix-xieghda, id-dokumenti, in-noti ta' sottomissjonijiet u trattazzjoni finali li saret fis-seduta tal-5 ta' Ottubru 2011;

Rat li l-kawza thalliet għas-sentenza fuq l-ewwel eccezzjoni tas-socjeta' konvenuta dwar l-improponibilita tal-azzjoni għas-17 ta' Ottubru 2011.

Ikkunsidrat

Il-Qorti qed tifhem li l-kontenzjoni tal-partijiet hi s-segwenti. Is-socjeta' attrici qed taghmel talbiet biex il-bank konvenut jonora obbligi naxxenti minn letter of credit li ggib in-numru 51/2010 liema letter of credit qed jigi allegat jorbot direttament u b'mod awtonomu lil bank konvenut fil-konfront tas-socjeta' attrici irrISPETTIVAMENT minn kull ftehim iehor bejniethom liema ftehim jimxi parallellament mal-letter of credit u mhux assorbili f'xulxin. Il-bank konvenut qed jilqa' ghal din it-talba billi jallega illi r-relazzjoni bejn il-kontendenti mhix regolata bl-imsemmija letter of credit izda regolata minn diversi ftehim bejn il-partijiet u ghalhekk it-talba attrici kif impostata esklussivament fuq il-letter of credit mhix proponibbli ghax ir-relazzjoni guridika bejn il-partijiet mhix imsejsa esklussivament fuq il-letter of credit 51/2010 kif tallega s-socjeta' attrici anzi bil-ftehim bejn il-partijiet il-letter of credit flok mezz ta' pagament saret strument ta' sigurta ghal bank ghal hlas lura tal-facilita.

Din il-Qorti ser tinvestiga biss dan il-punt cioe jekk l-azzjoni attrici kif impostata esklussivament fuq il-letter of credit treggix fil-kuntest ta' dak permess u mitlub.

Qabel ma jigi trattat il-punt ta' dritt tajjeb li jigu riassunti l-fatti li wasslu ghal kawza.

Jidher li dak li ta' bidu ghal dan kollu kien ftehim ta' appalt bejn is-socjeta' estera Alen Aletkan Recycling Company mas-socjeta' attrici biex din tal-ahhar twaqqaf impjant fil-Libja ghas-socjeta' estera b'valur ta' €29,000,000. Mill-atti jidher li s-socjeta' attrici registrata f'Malta riedet li dan il-korrispettiv jigi mhallas permezz ta' 'irrevocable standby letter of credit'. Id-dokument AIT1 fol. 15 u 16 tal-process datat 13 ta' Frar 2010 li hu proforma invoice tal-valur tax-xogholijiet miftehema jistipula testwalment 'payment by irrevocable confirmed L/C payable 100% at sight upon presentation of our invoice to our bank'.

Sadattant pero fl-istess zmien li sar il-ftehim bejn is-socjeta' attrici u s-socjeta' Alem Aletkan is-socjeta' attrici kienet f'negozjati ma' FIMBank biex il-bank jipprovdiha facilita deskritta bhala wahda ta' overdraft mid-diretturi tas-socjeta' attrici fl-affidavit tieghu a fol. 86 et seq. tal-process, u bhala general facility mir-rapprezentant legali tal-bank konvenut biex hi tkun tista' tiffinanzja l-progett. Jidher ukoll mill-affidavit tal-istess direttur illi halla f'idejn FIMBank biex jirredigi l-kontenut ezatt tal-letter of credit li kellha tigi mahruqa mill-bank tas-socjeta' Alem Aletkan.

Jidher illi s-socjeta' Alem Aletkan ottjeniet din il-letter of credit (irrevocable standby) tramite n-National Commercial Bank ta' Tripoli. Din il-letter of credit iggib in-numru 51/2010 u kellha validita sat-2 ta' Mejju 2011. Qed tigi riportata l-fax mighbut min-National Commercial Bank tal-FIMBank fit-3 ta' Gunju 2010 li juri ezatt il-portata ta' din il-letter of credit

IN CONSIDERATION OF CONTRACT NO. 121/10 DATED 13-02-2010 BETWEEN ALEM ALETKAN RECYCLING COMPANY TRIPOLI LIBYA (REFERRED AS THE APPLICANT) AND AZROW INTERNATIONAL LIMITED MOSTA MALTA (REFERRED AS THE BENEFICIARY), WE NATIONAL COMM.BANKT TRIPOLI LIBYA, HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO 51 VALID AT YOUR COUNTERS IN MALTA 02-MAY-2011, IN FAVOUR OF AZROW INTERNATIONAL LIMITED BY ORDER OF ALEM ALEKAN RECYCLING COMPANY OF TRIPOLI LIBYA AND AVAILABLE BY PAYMENT AT SIGHT UP TO A MAXIMUM OF EUR29,000,000.00 (SAY EUR TWENTY NINE MILLION) WE NATIONAL COMM.BANKT TRIPOLI LIBYA, HEREBY IRREVOCABLY UNDERTAKE TO PAY YOU UPON RECEIPT OF YOUR FIRST CLAIM FOR PAYMENT, BY AUTHENTICATED SWIFT STATING THE AMOUNT CLAIMED UNDER THIS STANDBY L/C AND THAT THIS AMOUNT REPRESENTS AN AMOUNT DUE AND OWING TO AZROW INTERNATIONAL. PARTIAL DRAWINGS ARE ALLOWED. OUR LIABILITY IS LIMITED TO AMOUNT NOT EXCEEDING EUR29,000,000.00 THIS STANDBY L/C WILL BE REDUCED BY ANY PAYMENTS MADE UNDER THIS

STANDBY L/C BY US AFTER OUR RECEIPT FROM FIM BANK (FIMBMT M3)

A SWIFT MSG STATING THAT PROCEEDS RELATED TO THIS STANDBY L/C HAVE BEEN RECEIVED AND L/C CAN BE REDUCED ACCORDINGLY. THIS STANDBY LETTER OF CREDIT EXPIRES ON THE 02-MAY-2011 UNLESS PREVIOUSLY EXTENDED BY US AND UPON THE EXPIRY DATE ALL OUR OBLIGATIONS UNDER THIS STANDBY L/C SHALL BE AUTOMATICALLY TERMINATED AND NO FUTHER CLAIMS ENTERTAINED. PLEASE ADVISE THIS STANDBY L/C TO ZROW INTERNATIONAL LIMITED ADDING YOUR CONFR,ALL IMBANK COSTS. THIS STANDBY L/C IS SUBJECT TO UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS 2007 REVISION INTR'L CHAMBER OF COMMERCE PUBLICATION NO 600

Sussegwentement fl-24 ta' Gunju 2010 is-socjeta' attrici inghatat facilita mill-bank konvenut ta' €24,300,000 koperta fil-majjor parti b'letters of credit lis-socjetajiet li lilhom is-socjeta' attrici kienet ser tissubappalta x-xoghol u x-xiri ta' attrezzi u materjal (Dok. FM1 fol 29 tal-process). Il-hlas lura ta' din il-facilita kellu jsir principalment mill-hlasijiet li kellha tircievi s-socjeta' attrici permezz tal-letter of credit 51/2010 mahruga min-National Commercial Bank ta' Tripoli. Flimkien ma' din il-facilita saru tlett ftehim oħra in garanzija tal-hlas lura lil bank konvenut cioe Dok. FM2 personal guarantee and indemnity agreement (fol. 39 tal-process), Dok. FM3 pledge of bank accounts/balances agreement (fol. 48 tal-process), kif ukoll Dok. FM4 terms and conditions governing the pledging of goods, documents and receivables (fol. 55 tal-process). Qed tigi riportata l-parti saljenti tal-facility agreement Dok. FM1 a fol. 29 tal-process

We, FIMBank PLC (the "Lender"), are writing to confirm that, subject to the terms of this Facility Letter, we will make available a Deal Specific Transactional Trade Finance Facility up to a maximum amount off €24,300,000 (Twenty Four Million and Three Hundred Thousand Euro) (the "Facility") to you, Azrow International Trading Co Ltd, having registration number C26895, and

registered address at Rose, Lion Well Street, Rabat, Malta, (the "Borrower") for the purposes set out in the Clauses below.

1 PURPOSE

1.1 The Facility shall be utilised to finance the delivery, construction and installation of a car maintenance plant in Libya following to a sales contract signed by the Borrower with Alem Aletkan Recycling Company Tripoli Libya (Contract no. 121/10 signed on 13th February 2010).

Financing shall be made by way of:

1.1.1 an outward letter of credit for €13,500,000 to be issued in favour of Razen For General Construction, Tripoli, Libya covering the design / civil works and construction of the car maintenance and

1.1.2 an outward letter of credit for €2,650,000 to be issued in favour of Altersana General Trading, Dubai, UAE covering the delivery of the steel roof for the plant and

1.1.3 two outward letters of credit for a total amount of €6,950,000 to be issued in favour of Autorobot Finland OY Auto-Machinery, Finland and Mediscot Rubber Machinery, Korea covering the delivery of machinery, equipment and tools and

1.1.4. outward payments for a total amount of €1,200,000, (already effected on the 10th June 2010) covering other related costs.

2 REPAYMENT

2.1 The Facility together with any interest accrued on the Facility then outstanding shall be repaid from the proceeds of an inward stand by letter of credit bearing reference number 51/2010 (Lender's reference number FIMILST101590002) issued by National Commercial Bank, Tripoli, Libya, for €29,000,000, in favour of the Borrower and received at the Lender's counters. The inward standby letter of credit is payable on demand upon a claim for payment to be effected by the Lender. Accordingly, the Borrower

undertakes to assign the proceeds of the above indicated standby letter of credit in favour of the Lender.

2.2 This is subject to the overriding condition that any outstanding balance of the Facility and interest thereon shall at all times be repayable on demand. A simple request in writing by the Lender to be good and sufficient notice for this purpose.

The Facility shall be prepaid in full, with interest immediately upon the non-receipt of payment by the Lender under the instrument mentioned above presented to the Lender for financing under the Facility for any reason whatsoever.

3 INTEREST AND PRICING

3.1 The Borrower will pay interest on the daily balance of the Facility outstanding from time to time at the rate of 4.00% per annum above the One Month London Interbank Offered Rate for Euro or equivalent in any other currency, as conclusively certified by the Lender, such interest to be compounded on a quarterly basis.

Accrued interest shall be paid on any date when a prepayment or other repayment of the Facility is payable, and shall be calculated on the basis of the actual number of days elapsed on the basis of a 360 day year.

3.3 The Borrower will pay to the Lender the following fees:

Inward stand by letter of credit

Confirmation fee:	0.50% per annum
Payment fee:	0.15% flat fee
Advising fee:	US\$250
Outward letters of credit:	All inclusive fee of 0.80%
Outward payments fee:	All inclusive fee of 1.20%

All other fees as per the Lender's standard tariff of charges.

The Lender shall have the right to collect all out of pocket expenses and other fees that are incurred directly by it during the full course of a transaction.

4 SECURITY AND DOCUMENTATION

4.1 As security for the Facility, the Borrower shall provide the Lender with:

4.1.1 Pledge on bank account/balances agreement for €24,300,000 on Account No. 00764-CALL-EUR-054 as well as other current and future accounts following the Pledgor's identification number 000764. The Pledge on bank account/balances agreement will also entitle the Lender to recover any fees and other expenses incurred.

4.1.2 Terms and conditions governing the pledging of goods, documents and receivables (hereinafter also "the Goods") referable to the agreement for €24,300,000 to be signed by the Borrower with Alem Alekkan Recycling Company Tripoli Libya.

4.1.3 Personal guarantee for €24,300,000, to be given by Mr. Yousef Mohammed El Azzabi holder of Libyan passport number 329159-2007, supported by a statement of affairs.

4.1.4 This facility letter duly executed.

Fit-28 ta' Gunju 2010 b'referenza ghal dan il-ftehim bejn il-kontendenti FIMBank harget irrevocable letter of credit FIMOLMA101600001 mibghuta lil Libyan Foreign Bank a favur ta' Razim Company (wiehed mis-subappaltati tas-socjeta' attrici) ghal €7,000,000 (Dok. YA2 fol. 8 tal-process) fejn hemm indikat kundizzjonijiet specifici li tahthom seta' jintalab pagament lil FIMBank.

Fis-6 ta' Lulju l-Libyan Foreign Bank ghamel talba ghal-hlas ta' €1,250,400 Dok. YA3 (fol. 10 tal-process). Jidher li din it-talba giet onorata. Mhux hekk biss izda fl-affidavit tad-diretturi tas-socjeta' attrici hu jzid illi filfatt saru pagamenti liz-zewg suppliers f'Dubai fl-ammont ta' €6,500,000 oltre l-ammont ta' €1,200,000 li l-bank kien gia

avvanza fl-10 ta' Gunju 2010. Dan hu konfermat anki mix-xieha tar-rapprezentant legali tal-bank konvenut Andrea Batelli.

Il-kwistjoni hadet xejra negattiva meta fit-2 ta' Awwissu 2010 is-socjeta attrici talbet lil bank biex tonora hlas ta' €10,000,000 in konnessjoni mal-letter of credit 51/2010 u FIMBank irrifjuta li jonoraha ghax in-National Commercial Bank ta' Tripoli kien infurmaha b'fax tal-4 ta' Awwissu 2010 li hassret il-letter of credit ghax kienet falza (ara Dok. FIM5 fol. 66 tal-process u FIM7 fol. 68 tal-process). Is-socjeta' attrici regghet talbet hlas ta' €10,000,000 ohra b'ittra tal-10 ta' Ottubru 2010 (Dok. YA5 fol. 12 tal-process) u s-somma komplessiva (inkluz tal-ittra precedenti) ta' €20,481,850 b'ittra tal-4 ta' Marzu 2011. Dawn is-somom intalbu in virtu tal-letter of credit 51/2010.

Dak li qed tikkontendi s-socjeta' attrici hu illi l-letter of credit 51/2010 kienet torbot lil-bank konvenut ghal kull hlas mitlub tahtha. Il-kwistjoni quddiem il-Qorti mhix jekk independentement mill-kuntratti li taw lok ghal-letter of credit is-socjeta' attrici ghandhiex ragun li titlob il-hlas izda jekk talba maghmul b'dan il-mod hix ammissibbli fil-kuntest tan-negozju bejn il-partijiet kontendenti.

Tematika legali

Kull parti ghandha dritt taderixxi lil Qrati ghal soluzzjoni ta' vertenza bejn tnejn jew aktar partijiet sakemm ma hemmx klawsola arbitrali jew ta' gurdizzjoni specifika u ghandha wkoll il-liberta tal-ghazla dwar l-impostazzjoni tat-talbiet u r-rimedji mitluba. Pero tali liberta ta' ghazla hi marbuta intrinsikament ma' rabta legali diretta jew indiretta naxxenti minn rapport kontrattwali, kwazi kontrattwali jew ex delicto mal-kontroparti li qed tigi msejha ghal gudizzju tal-kontroversja.

F'dan il-kaz is-socjeta' attrici ghazlet timposta t-talbiet taghha esklussivament fuq letter of credit numru 51/2010 li nharget min National Commercial Bank ta' Tripoli fuq talba tas-socjeta Alem Aletkan a favour tas-socjeta' attrici qua kreditrici tas-socjeta' Alem Aletkan u beneficjarja tal-

istess letter of credit. Din il-letter of credit saret in konsegwenza tal-kuntratt ta' appalt bejn l-istess socjeta' attrici u s-socjeta' Alem Aletkan.

Is-socjeta' attrici qed tikkontendi illi din il-letter of credit giet konfermata mill-bank konvenut FIMBank u allura hi responsabbli in solidum man-National Commercial Bank ta' Tripoli ghal kull hlas li jista' jigi mitlub da parti tas-socjeta' attrici direttament taht il-letter of credit.

Il-ktieb Finance of International Trade
(Cowdell/Hyde/Watson 7th Ed) jiddefinixxi commercial letters of credit bhala

"a conditional guarantee of payment made by a bank to a named beneficiary, guaranteeing that payment will be made, provided that the terms fo the credit are met. These terms will state that the beneficiary must submit specified documents, to a certain bank by a certain date. In simpler words, letters of credit in international trade involve the following: the importer that is located in one particular jurisdiction contracts his bank to issue a letter of credit to the benefit of the letter who is located in another jurisdiction. After presentation of correct documents and compliance of the terms and conditions of the letter of credit with the documents, the issuing bank pays the amount agreed upon, thus ensuring security of the goods being bought in the transaction".

Mehud ghal mument in astratt ir-relazzjoni ezistenti taht il-letter of credit insibu illi hemm relazzjoni kontrattwali inizjali bejn zewg partijiet, f'dan il-kaz is-socjeta' attrici cioe dik kreditrici u s-socjeta' debitrici cioe Alem Aletkan liema ftehim sar fi Frar 2010. In garanzija ghal hlas dovut lis-socjeta' attrici s-socjeta' Alem Aletkan dahlet fi ftehim iehor mal-bank National Commercial Bank ta' Tripoli fejn dan tal-ahhar bhala issuing bank accetta u obbliga ruhu li jhallas lil kreditur ta' Alem Aletkan cioe s-socejta' attrici bhala beneficjarja, l-kreditu dovut lilha. Dan il-ftehim jikkostitwixxi ftehim separat bejn id-debitur u l-bank tieghu, liema ftehim jidhol in vigore malli l-kreditur jaccetta t-termini tal-letter of credit fejn allura tigi krejata relazzjoni

kontrattwali ohra bejn il-bank li johrog il-letter of credit u l-kreditur fejn il-bank hu obligat jonora talba ghal hlas malli jigu ottemperati l-kundizzjonijiet tal-letter of credit.

Hu pacifiku fil-gurisprudenza u l-awturi illi l-letter of credit hi strument ta' hlas ta' kreditu indipendenti u awtonomu mill-underlying contract bejn il-partijiet u darba li l-kreditur jottempera ruhu mal-kondizzjonijiet tal-letter of credit, il-bank li jkun hareg il-letter of credit (issuing bank) hu marbut li jhallas, b'eccezzjonijiet limitati u eccezzjonali, u dan anki jekk ikun hemm divergenzi bejn il-partijiet fuq it-termini tal-kuntratt.

F'dan il-kaz partikolari jidher illi n-National Commercial Bank ta' Tripoli bil-fax tat-3 ta' Gunju 2010 hareg standby irrevocable letter of credit payable at sight. Fi kliem semplici l-bank Libjan intrabat b'letter of credit 'irrevokabbli' cioe li ma tistax tigi cancellata jew emendata sad-data tal-iskadenza taghha f'Mejju 2011, li jaffettwa hlas meta ssir talba semplici 'at sight' konformi mal-kondizzjonijiet tal-letter of credit. Dan il-hlas kellu isir fuq talba tal-bank Malti a favur tal-beneficjarju, is-socjeta' attrici, fejn il-bank Malti kellu jiddikjara li l-hlas mitlub kien dovut lis-socjeta' attrici taht il-letter of credit 51/2010. Il-bank Malti intalab jikkonferma l-letter of credit u jinforma lis-socjeta' attrici fl-istess fax tat-3 ta' Gunju 2010.

Dan ifisser illi l-bank Libyan kien obligat ihallas hu direttament lil bank Malti a favur tas-socjeta' attrici taht il-letter of credit salv id-drittijiet tal-bank Libjan fil-konfront tad-debitur li mieghu ghandu relazzjoni kontrattwali separata kif fuq inghad.

F'dan il-kaz partikolari inoltre s-socjeta' attrici qed tistrieq fuq il-premessa illi din il-letter of credit giet konfermata minn FIMBank, bhala confirming bank li irrendiet lill-istess bank responsabbli direttament fil-konfront taghha. Ghalhekk b'din l-argumentazzjoni s-socjeta' attrici qed tallega li giet krejata relazzjoni kontrattwali diretta ohra bejnha u l-bank FIMBank u dan minghajr pregudizzju ghar-relazzjoni kontrattwali ohra indipendenti w awtonoma

bejn in-National Commercial Bank ta' Tripoli u l-FIMBank meta din accettat li tagixxi ta' confirming bank.

L-awturi huma konsonini fit-tagħlim tagħhom dwar ir-relazzjoni kontrattwali diretta naxxenti meta bank jikkonferma letter of credit mahrug minn bank iehor. Fil-ktieb **The Law and Practice of International Bank** (Penn, Shea and Aora 1987 Vol II) ighidu hekk:

"The contractual obligations between the creditor and the issuing and confirming banks arise from the terms of the letter of credit. The issuing and confirming bank, are, therefore, under a duty to the beneficiary to honour the credit, namely to accept bills presented to it by the beneficiary, either on demand if the letter is an open one, or if, as is more usually the case, the credit is a documentary letter of credit on fulfilment of the conditions set out in the letter of credit. The duty to honour is unilateral and so the bank is bound to honour the credit if it is strictly complied with. There is no duty or obligation on the beneficiary to fulfil the terms of the credit, but if he wishes to benefit under it, he must conform to the terms of the credit as a condition precedent to insisting on performance of the bank's obligations".

L-istess hsieb insibuh fil-**Uniform Customs and Practice** UCP600 fl-artikolu 8 li għalihom hi soggetta l-letter of credit 51/2010.

Il-Qorti ma għandhiex dubbju illi FIMBank, inkwantu għal letter of credit 51/2010 accettat li tagixxi bhala confirming bank. Dan hu evidenzjat mhux mill-fax tat-3 ta' Gunju 2010 Dok. YA1 li hi biss l-letter of credit mahruga min-National Commercial Bank bi stedina lil FIMBank li jagixxi bhala confirming bank izda, għax hekk jirrizulta mill-atti, mill-kuntratt ta' facilita bankarja bejn is-socjeta' attrici u FIMBank datat 24 ta' Gunju 2010 artikolu 3.3 tal-imsemmi kuntratt riportat aktar il-fuq implicitament juri illi FIMBank assumiet ir-rwol ta' confirming bank meta zammet 'confirmation fee' ta' 0.50% per annum. Kif qalet il-Qorti fil-kawza **Lawrence Ellul Sullivan noe vs Francis Flynn**

nomine (App Kum 23.03.1992) il-modus operandi tal-bank wera illi l-bank konvenut agixxa bhala confirming bank. Inoltre r-rapprezentant legali tal-bank konvenut ikkonferma dan fil-kontroezami li sarlu fil-5 ta' Ottubru 2011 fejn zied li l-beneficjarju gie informat bil-konferma l-ghada li gew iffirmati d-dokumenti tal-facilita cioe fil-25 ta' Gunju 2010.

L-import ta' dan hu illi l-beneficjarju tal-letter of credit ghandu zewg banek li jiggarrantixxu solidament il-pagament dovut lil jekk l-issuing bank (cioe l-bank Libjan) jonqos milli jonora talba ghal hlas (ara **Bills of Exchange and Bankers Documentary Credits** (William Hedley 3rd Ed).

Is-socjeta' attrici qed tibbaza t-talbiet taghha ibda mill-ewwel wahda (billi l-ohrajn kienu konsegwenzjali ghaliha) fuq l-vinkolu dirett naxxenti mill-fatt illi l-bank konvenut ikkonferma l-letter of credit numru 51/2010 mahrug min-National Commercial Bank ta' Tripoli favur is-socjeta' attrici u dan l-istrument ta' kreditu hu indipendenti mill-kuntratt li minhabba fih ikun inharget il-letter of credit, u bl-istess mod indipendenti mill-facilita konessa lilha mill-istess bank konvenut.

Il-bank konvenut jilqa' ghal din it-talba billi jghid primarjament illi t-talba kif impostata mhix ammissibbli ghax in-negozju bejnha u s-socjeta' attrici kien ibbazat fuq facilitata bankarja li kkonceda l-istess bank lis-socjeta' attrici in konnessjoni mal-istess xogholijiet intraprizi mis-socjeta' attrici u l-letter of credit 51/2010 kienet il-mezz primarju u l-garanzija tal-hlas lura lil bank ta' kull somma mahruga mill-bank in konnessjoni mal-facilita. Bil-koncessjoni tal-facilita u r-rabta tal-letter of credit bhala s-sors principali tal-hlas lura tal-facilita, il-bank konvenut sar il-beneficjarju tal-istess letter of credit. Ghalhekk l-awtonomija tal-letter of credit bhala mezz tal-pagament ghas-socjeta attrici, sar istrument ta' garanzija ta' hlas favur il-bank konvenut bil-facilita koncessa u kondizzjonijiet miftehma.

Din il-Qorti ma taqbilx ma' dan l-argument. In-negozji kif gia gie relevat aktar il-fuq huma sekondarji ghall-portata u

effetti li ggib maghom letter of credit. Hu minnu illi l-bank konvenut fil-facilita koncessa fl-24 ta' Gunju 2010 fi klawsola 2.1 iddikjara illi l-hlas lura tas-somom mahruga in virtu tal-facilita kellhom jithallsu primarjament minn kull hlas emanenti mill-letter of credit. B'daqshekk ma jissubordinawx il-letter of credit merament bhala mezz ta' pagament tal-facilita koncessa mill-bank konvenut lis-socjeta' attrici. Dan kien ikun minnu kieku l-bank konvenut ma ikkonfermax l-imsemmija letter of credit izda l-obbligu tal-bank bhala confirming bank kien u baqa' jissusisti kemm jekk hlasijiet lura tal-facilita isiru jew ma jsirux permezz tal-letter of credit, u l-Qorti izzid illi dan l-obbligu jibqa' hemm anki jekk is-socjeta' attrici ma taghmilx uzu mill-facilita bankarja.

Inoltre l-fatt li fl-istess paragrafu s-socjeta' attrici accettat li tassinja r-rikavat tal-letter of credit biex isir hlas lura ta' flus mahruga mill-facilita ma jfissirx b'daqshekk illi s-socjeta' attrici assenjat u irrinunzjat b'xi mod ghad-drittijiet taghha naxxenti mill-istess letter of credit. Kif ighidu r-regoli tal-**Uniform Customs and Practice** UCP600 fl-artikolu 39 li ghalihom hija soggetta l-letter of credit 51/2010

"The fact that a credit is not stated to be transferable shall not affect the right of the beneficiary to assign any proceeds to which it may be or may become entitled under the credit, in accordance with the provisions of applicable law. This article works only to the assignment of the proceeds and not to the assignment of the right to perform under the credit".

Il-Qorti tqis li l-iskop ta' din il-kondizzjoni kienet mhux assenjazzjoni (li fiha nfisha tqajjem kwistjonijiet ta' formalita procedurali kif ghandha ssir) izda bhala mezz ta' tpacija bejn dak li jkun gie avanzat mill-bank konvenut skond il-facilita u dak li jintalab mis-socjeta attrici skond it-termini tal-letter of credit. Ovjament jekk il-bank konvenut ma jkollux ebda kreditu dovut, kull somma percepita mill-letter of credit tghaddi direttament fil-kont bankarju tas-socjeta attrici.

La darba l-bank konvenut ikkonfema l-letter of credit 51/2010, assuma fuq r-responsabilta u l-oneru li jonora talba ghal hlas skond it-termini tal-letter of credit 51/2010 irrISPettivament minn kull ftehim separat li l-istess bank kellu mas-socjeta' attrici dwar negozju iehor avolja direttament relatat mill-causa li tat lok ghal letter of credit.

Madankollu harsa bir-reqqa lejn il-letter of credit juri li din mhix letter of credit kummercjali normali fejn ikun hemm l-obbligu tal-hlas kemm il-darba jigu ipprezentati d-dokumenti appoziti mill-kreditur lil bank, bhal invoice, bill of lading, shipping documents, jew certifikati ta' periti li juru li jkun sar ix-xoghol. Din hi letter of credit irrevokabbli payable at sight fuq semplici talba maghmula mill-bank Malti lil dak Libyan, fuq talba maghmula originarjament mill-beneficjarju tal-letter of credit.

F'dan il-kaz il-letter of credit hi kondizjonata bil-kliem 'standby'. L-standby letter of credit hi differenti mill-letter of credit kummercjali normali u tidistingwi ruhha b'dan il-mod. Filwaqt li l-commercial letter of credit hija mekkanizmu primarju ta' pagament, l-standby letter of credit hi mezz sekondarju ta' pagament, u isservi funzjoni differenti mill-commercial letter of credit. Bank johrog standby letter of credit f'isem klijent biex jipprovdi assikurazzjoni li l-klijent jista' jottempera ruhu mill-obbligi tal-kuntratti bejn il-klijent u l-beneficjarju. Infatti l-partijiet involuti fit-transazzjoni qatt ma jistennew illi din l-standby letter of credit ser tigi utilizzata. Madankollu l-beneficjarju ghandu garanzija b'din l-standby letter of credit li d-debitur ser jottempera ruhu mal-obbligazzjoni tal-hlas bil-garanzija tal-hlas mill-bank. Il-beneficjarju ghandu d-dritt li jircievi hlas dirett taht il-letter of credit kemm il-darba jgib provi illi d-debitur naqas li jhallas wara li jigi interpellat u billi jipprezenta lil bank id-dokumenti li jiggustifikaw il-hlas ghax-xogholijiet maghmula. L-standby letter of credit ma hi xejn hlief garanzija ta' hlas u jghin biex jiffacilita kummerc cross border. Sakemm id-debitur ikun qed ihallas, standby letter of credit ma tistax tigi utilizzata. Il-mekkanizmu ghall-uzu tal-standby letter of credit jiskatta meta l-kreditur jitlob il-hlas lid-debitur u dan ma

jottemperax ruhu kif miftiehem fil-kuntratt jew fin-nuqqas kif trid il-ligi. F'dan il-kaz il-kreditur irid jaghti prova ta' din it-talba lil bank u jiggustifika t-talba ghal hlas bil-prova tal-hlas dovut, u f'din ic-cirkostanza biss il-bank ghandu jhallas, bid-dritt ta' risarciment minghand il-klijent tieghu u/jew issuing bank.

Applikati dawn il-principji ghal kaz in ezami jidher mill-atti illi s-socjeta' attrici ghamlet tlett talbiet ghal hlas lil bank konvenut, wahda b'ittra legali datata 2 ta' Awwissu 2010 ghas-somma ta' €10,000,000 (fol. 11 tal-process), ghamlet talba ohra b'ittra legali datata 11 ta' Ottubru 2010 (fol. 12 tal-process) u ohra b'ittra legali tal-4 ta' Marzu 2011 din id-darba ghas-somma kumplessiva ta' €20,481,850 (li kienet tikkomprensi s-somma fl-ittra precedenti). Dawn it-talbiet saru a bazi tal-letter of credit 51/2010. L-ittra ufficjali mibghuta fit-2 ta' Marzu 2011 mis-socjeta' attrici tal-bank konvenut ukoll taghmel riferenza ghall-letter of credit 51/2010.

Il-premessi u talbiet fir-rikors gumentat ma jikkontjenu ebda dikjarazzjoni jew talba illi s-socjeta' attrici ottemperat ruhha mal-kundizzjonijiet tal-istandby letter of credit in kwistjoni u b'hekk per konsegwenza tidhol in vigore l-ewwel talba attrici kif impostata.

Il-Qorti f'dan l-istadju tal-proceduri mhix tidhol fil-mertu tat-talbiet attrici izda biss jekk in-nuqqasijiet riskontrati fil-paragrafu ta' qabel dan kif intqal jirrendux it-talbiet attrici inammissibbli. Bla dubbju l-ewwel talba attrici hi konsegwenzjali ghal dikjarazzjoni li s-socjeta' attrici ottemperat ruhha mal-istandby letter of credit u f'kaz pozittiv tidhol in vigore l-ewwel talba attrici kif impostata. Pero kif qalu l-Qrati taghna:

"Id-dikjarazzjonijiet li talvolta jkunu mehtiega biex l-attur jasal ghal xi wahda mid-domandi tieghu m'hemmx bzonn li jrsir fic-citazzjoni taht forma ta' domandi, izda huwa bizzejjed li ssir talba biex tigi moghtija kull dikjarazzjoni mehtiega skond

Kopja Informali ta' Sentenza

il-prattika

kostanti tal-Qrati Taghna" (Vol. XXXIII P.I. p.666);

"ladarba din id-dikjarazzjoni (generika) tirrizulta mitluba, ma kienx hemm lok li huma jaghmiu l-istess dikjarazzjoni fic-citazzjoni permezz ta' domanda separata, ghaliex id-dikjarazzjonijiet li talvolta jkunu mehtiega biex l-attur jasal ghal xi wahda mid-domandi tieghu, m'hemmx bzonn li

jsiru fic-citazzjoni taht forma ta' domandi" (Vol. XLI. PII. p.688).
(Vol.

XLC. p.690) (Bongailas vs Magri - deciza mill-Prim'Awla fis-
27 ta' Gunju, 1995)

u din id-dikjarazzjoni l-atturi talbuha u ppremettewha ghall-att tac-citazzjoni;

Hemm analogija bejn dan il-kaz ma' talba ghal zgumbrament minghajr talba li l-konvenut qed jokkupa l-fond bla titolu. Il-Qorti tal-Appell fil-kawza **Dottor George Vassallo et vs Julian Sammut** deciza fit-12 ta' Marzu, 1990 irriteniet;

"Il-Qorti ma tarax li kien necessarju ghall-atturi li jaghmlu talba *ad hoc* fic-citazzjoni ghal dikjarazzjoni li l-konvenut qed

jokkupa l-fond bla titolu billi dina l-kwistjoni hija implicita fl-imsemmija talba ghall-izgumbrament ... Mela biex il-Qorti tiddecidi jekk ghandux jigi zgumbrat jew le l-konvenut, ghandha,

qabel xejn, tara jekk verament il-konvenut hux qed jokkupa l-fond

bla titolu kif qed jigi pretiz fit-talba tac-citazzjoni ... Lanqas it-

Qorti ma tara n-necessita' li l-atturi fic-citazzjoni jitolbu dikjarazzjoni mill-Qorti li l-lokazzjoni pretiza mill-konvenut hija

valida jew le ... Biex il-Qorti tasal ghall-konkluzjoni jekk il-konvenut hux qed jokkupa l-fond bla titolu kien ovvju li trid tara u

tistabilixxi jekk jezistix jew le favur il-konvenut it-titolu li

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huwa
jippretendi li jezisti favur tieghu";

L-istess japplika f'dan il-kaz. Biex il-Qorti tasal biex tiddeciedi li l-bank konvenut ghandux obbligu jonora l-istandby letter of credit trid bilfors tara jekk is-socjeta' attrici ottemperatx ruhha mat-termini stretti tal-letter of credit liema talba hi implicitament imsemmija fl-ewwel talba attrici.

Decide

Ghal dawn ir-ragunijiet ghalhekk il-Qorti tiddeciedi illi t-talbiet attrici huma ammissibbli u proponibbli kif maghmula minghajr pero din il-Qorti ma hi qed tidhol bl-ebda mod fil-mertu tal-azzjoni hlief safejn hu permess ghar-risoluzzjoni tal-ewwel eccezzjoni tal-bank konvenut li ghar-ragunijiet fuq esposti qed tigi rigettata.

Bl-ispejjez riservati ghal gudizzju finali.

< Sentenza In Parte >

-----TMIEM-----