



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
CONSUELO-PILAR SCERRI HERRERA**

Seduta tat-23 ta' Novembru, 2011

Avviz Numru. 231/2009

**Middlesea Insurance p.l.c.(C5553) kif surrogati fid-
drittijiet ta' Pharma MT Limited (C42603)
vs**

**Jet Services Limited (C16337) u b'digriet moghti fis-
seduta tal-25 ta' Frar 2010 giet imsejha in kawza s-
socjeta' John Abela Ltd u b' digriet moghti fl-10 ta'
Gunju 2010, il-Qorti rrevokat Contrario Imperio l-
kjamata in kawza ta' John Abela Ltd. u bil-verbal tal-5
ta' Lulju 2010 regghet giet kjamata in kawza s-socjeta'
John Abela Ltd.**

Il-Qorti,

Rat ir-rikors pprezentat mis-socjeta attrici nhar it-22 ta' Gunju 2009 fejn talbet lil din il-Qorti tikkundanna lis-socjeta' konvenuta thallasha s-somma ta' disat elef disgha mija w tnax-il Ewro (€9,912) ammont imhallas lill-assigurat taghha, s-socjeta' Pharma MT Limited, in konnessjoni ma' nuqqasijiet u spejjez ohra sofferti mill-istess socjeta'

assicurata fil-merkanzija, konsistenti fi prodotti farmaceutici, li kellha tigi minnhom trasportata mill-Italja lejn Malta w li naqset waqt li kienet qed tigi hekk trasportata. Is-socjeta' attrici giet debitament issurrogata fid-drittijiet tal-istess socjeta assicurata. Dan flimkien mal-ammont ta' tlett mija, tlieta w erbghin Ewro w erbgha w hamsin centezmu (€343.54) rapprezentanti spejjez ta' survey inkorsi mis-socjeta' attrici.

Dan okkorendo, previa dikjarazzjoni ta' din l-Onorabli Qorti li huma unikament responsabbli ghan-nuqqasijiet li saru fil-merkanzija kif fuq intqal.

Bl-imghax mid-data li sar il-hlas lill-assigurat sal-effettiv pagament kontra s-socjeta' konvenuta li hija ingunta in subizzjoni.

Rat ir-risposta tas-socjeta' konvenuta Jet Services Limited prezentata fir-registru ta' din il-Qorti nhar id-9 t'Ottubru 2009 fejn esponiet is-segwenti:

1. *"Illi, preliminarjament, kif fil-fatt jikkonferma ir-rikorrenti, il-merkanzija in kwistjoni giet migbura minn agent ta' l-esponenti li poggew il-merkanzija fid-depositu (depot) ta' l-istess esponenti barra minn Malta u imbaghad il-kumpanija John Abela Limited ittrasportat din il-merkanizja sabiex twassalha gewwa d-depositu (depot) ta' l-intimati Malta. Illi ghalhekk hemm bzonn li John Abela Ltd jigu **kjamati fil- kawza** odjerna.*
2. *Illi matul it-trasport waqt li l-merkanzija kienet fil-pussess ta' John Abela Limited, din insterqet u ghalhekk isegwi li l-esponenti qatt ma jistghu jkunu responsabbli ghal hlas lura stante li m'ghandhom l-ebda **htija** fl-inkarigu li kellhom iwettqu.*
3. *Illi l-merkanzija in kwistjoni ma kienitx fil-**pussess** ta' l-esponenti izda jigi dikjarat li l-merkanzija in kwistjoni giet misruqa waqt li kienet ghand terzi ossia l-intimat John Abela Limited li kellhom jikkonsenjaw l-merkanzija indikata mir-rikorrenti lill-esponenti.*
4. *Illi r-rikorrenti ghandu jgib prova tal-valur ta' l-oggetti li gew nieqsa.*

5. *Illi minghajr pregudizzju ghas-suespost, jigi sottomess li kull xoghol li ghalih tigi nkarigata l-kumpanija Jet Services Limited hija dejjem regolata mill-Kap 486 (Att dwar il-Garr Stradali Internazzjonali ta' Merkanzija) a bazi tal-kundizzjonijiet CMR, u ghaldaqstant kwalsiasi responsabilita' li din l-Onorabbli Qorti thoss li tista' tkun ta' l-esponenti hija dik stipulata mil-ligi u mhux dik mitluba mir-rikorrenti.*

6. *Illi in oltre, l-esponenti ma agixxewx b'nuqqas ta' hsieb, bi traskuragni jew b'imperizja jew nuqqas ta' hila fl-esercizzju tal-professjoni ta' l-intimati jew ta' min minnhom, u 'ex delictu', l-esponenti mhumieq responsabbli lejn hadd ghad-danni rikjamati (u dan kif sejjer jigi ppruvat fil-mori tal-kawza) stante li l-esponenti u l-impjegati taghha ma agixxewx colpozament u multo magis, lanqas ma jista' jinghad li agixxew dolozament, izda dejjem agixxew skond dak li tirrikjedi l-ligi.*

7. *Salv eccezzjonijiet ohra ulterjuri."*

Konsengwentement talbet lil din l-Onorabbli Qorti tichad it-talbiet rikorrenti, bl-ispejjez kontra r-rikorrent li huma ingunti ghas-subizzjoni.

Illi nhar il-15 ta' Dicembru 2009 xehdet **Lucienne Cini** u dan fil-kapacita' taghha ta' Senior Executive mas-socjeta' attrici. Spjegat li s-socjeta' Pharma MT ghandha marine open cover maghhom u kienu nfirmawha li kellhom trailer misruq. Huma qabdu lis-surveyors taghhom MSV Valletta Ltd. sabiex jaghmlu l-investigazzjonijiet taghhom, u rrizulta li l-claim kienet tammonta ghal €9,912. In segwitu' huma hallsu din l-istess somma lis-socjeta' Pharma MT. Spjegat li t-trailer kellu in fatti jigi trasportat mis-socjeta' konvenuta Jet Services Ltd. u dan wara li tali socjeta' kienet giet imqabba mis-socejta' Pharma MT stess.

Hija esebiet il-*Bill of Lading* li gie mmarkat bhala Dok. M, is-*subrogation form* li gie immarkata bhala Dok. M1, is-*survey report* immarkat bhala Dok. M2, l-*invoices* u *packing lists* li gew immarkati bhala Dok M3, kopja tal-*letter of reserve* li gie mibghuta lis-socjeta' Pharma MT minghandhom, liema dokument gie mmarkat bhala Dok

M4. Ikkonfermat li s-socjeta' konvenuta ma kinitx qed taccetta r-responsabilita'.

Rat id-digriet taghha tal-25 ta' Frar 2010 fejn kienet ordnat il-kjamata in kawza tas-socjeta' John Abela Ltd (fol. 22) a spejjez provisorjament ghas-socjeta' konvenuta.

Nhar il-25 ta' Frar 2010 xehed **James Magri** fil-kapacita' tieghu ta' Loss Adjustor mas-socjeta' MSV Valletta Ltd. Huwa kkonferma l-kontenut tar-rapport esebit fl-atti a fol. 14 tal-process, liema rapport huwa datat 22 t'Awwissu 2008 u stqarr li dan gie rilaxxjat minnu. Jghid li effettivament kienet saret serqa fl-Italja u fil-file hemm dokumentazzjoni rilaxxjata mill-pulizija Taljana dwar din is-serqa.

Patrick Nicholl xehed nhar il-25 ta' Frar 2010 fil-kariga ta' Direttur tas-socjeta' Pharma MT Limited. Dan ikkonferma li nhar is-7 ta' Lulju 2008 il-merkanzija li kienet tikkonsisti f'*medical devices* li kellhom f'*container* l-Italja giet kollha misruqa. Jghid li din is-serqa kienet koperta bil-polza ta' sigurta'. Il-*brokers* taghhom hija s-socjeta' Jetco. Ikkonferma li kienu thallsu ghal din is-serqa minghand il-*brokers* taghhom. Meta gie muri d-*discharge letter* u *subrogation form* esebiti fl-atti huwa kkonferma li thallas skond is-*subrogation form* u dan minghand is-socjeta' Middlesea Insurance plc.

Olvin Galea xehed nhar l-10 ta' Gunju 2010 fil-kapacita' tieghu ta' Direttur tas-socjeta' konvenuta w ikkonferma li din is-serqa tikkoncerna serq ta' *trailer* minn gewwa l-Italja. Spjega li huma jaghmlu xoghol *groupage* mill-Italja ghal Malta kull gimgha w dan tramite is-*sub-contractors* taghhom u cioe' s-socjeta' John Abela Ltd. Din is-socjeta' John Abela Ltd. kellha tigbor merkanzija minn gewwa d-depot tas-socjeta' konevnutu gewwa Milan. F'dan il-kaz din is-socjeta' hekk ghamlet u waqt li kienet *en route* lura lejn Malta insteraq it-trailer. Ghalhekk din is-socjeta' ghamlet rapport mal-Awtoritajiet Taljani dwar din is-serqa, w kif kienu tenuti jaghmlu skond ic-CMR conditions huma nfirmaw lill-klijenti taghhom dwar dak li kien gara, w cioe' bis-serqa. Spjega li kienet is-socjeta' Pharma MT li

qabddet lis-socjeta' attrici bhala l-assikuraturi taghha. Fix-xhieda tieghu tat-30 ta' Settembru 2010 Galea jghid li s-socjeta' John Abela Ltd. kienet ukoll koperta bil-polza ta' sigurta'.

Illi nhar il-21 ta' Frar 2011 is-socjeta' kjamata in kawza John Abela Limited (C18181) ipprezentat ir-risposta taghha fejn esponiet is-segwenti:-

1. *Illi in linea preliminari it-talbiet attrici fil-konfront tas-socjeta' esponenti huma preskritti ai termini tal-**artikolu 32** tal-Konvenzjoni dwar il-Kuntratt ghall-Garr Stradali Internazzjonali ta' Merkanzija (CMR), inkorporata f'Kapitolu 486 tal-Ligijiet ta' Malta.*

2. *Illi primarjament it-talbiet tas-socjeta' attrici fil-konfront tas-socjeta' esponenti ghandhom jigu michuda bl-ispejjez stante li ma tezisti l-ebda relazzjoni guridika u/jew kuntrattwali bejn is-socjeta' attrici w dik esponenti.*

3. *Ili minghajr pregudizzju u fil-mertu, s-socjeta' esponenti mhix responsabbli lejn is-socjeta' attrici stante li jekk jirrizulta li huwa minnu li l-merkanzija in kwistjoni giet nieqsa kif allegat, dan sehh konsegwenza ta' forza magguri (irresistible force ossia fortuitous event) u/jew fatti ohra li s-socjeta' esponenti la kellha kontroll fuqhom u wisq inqas setghet tevita, u dan ai termini tal-**artikolu 23** tal-Konvenzjoni dwar il-Kuntratt ghall-Garr Stradali Internazzjonali ta' Merkanzija (CMR), inkorporata f'kapitolu 486 tal-Ligijiet ta' Malta, kif ukoll ai termini tal-**artikoli 1134 u 1029** tal-Kapitolu 16 tal-Ligijiet ta' Malta.*

4. *Illi minghajr pegudizzju ghas-suespost, fil-ftehim relattiv ghall-garr tal-merkanzija in kwisjtioni kienet inkorporata l-Konvenzjoni CMR li fi kwalunkwe kaz tillimita r-responsabilita' tas-socjeta' esponenti w ghalhekk ir-responsabilita' tas-socjeta' esponenti m'ghandhiex tissupera l-limiti imposti minn **Artikolu 23** ta' l-imsemmija Konvenzjoni.*

5. *Ili s-socjeta' esponenti hija assikurata mas-socjeta' assikuratrici Millenium Insurance Agency Limited,*

u ghalhekk jehtieg li din ta' l-ahhar tigi kkjamata fil-kawza odjerna.

6. *Salvi eccezzjonijiet ohra premissi mil-ligi.*

Ghaldaqstant, is-socjeta' esponenti titlob bir-rispett li din l-Onorabli Qorti joghgobha tichad it-talbiet attrici, bl-ispejjez kontra l-istess."

Nhar it-12 t'April 2011 xehed **Carmelo Abela** fil-kapacita' tieghu ta' Managing Director tas-socjeta' John Abela Ltd. u kkonferma li nhar it-23 ta' Gunju 2008 kien dahal f'akkordju ma' huh Lino flimkien mas-socjeta' Jet Services Ltd. sabiex jigbru tlett trailers mill-Italja. Spjega li x-xoghol in kwistjoni kellu jitghabba fis-27 ta' Gunju 2008 u wara jinzlu bix-xoghol lejn Genova bejn il-Gimgha w is-Sibt bl-intendiment li jaqbd u l-vapur lejn Malta jum it-Tnejn ta' wara 30 ta' Gunju 2008 sabiex b'hekk dakinhar stess wara nofsinhar huma jikkonsenjaw ix-xoghol lis-socjeta' konvenuta. Spjega li dan it-tragitt kellu jsir taht is-CMR *conditions*. Huwa pprezenta l-cover tal-konsenja in kwistjoni li giet immakata bhala Dok. Z, li tindika li huma gabru t-trailer in kwistjoni nhar is-27 ta' Gunju 2008. Ikkonferma li wiehed minn dawn it-trailers inqala' minn maz-ziemel tieghu u ghamlulu l-*lock* sakemm gie id-driver li kien ser isuqu. Id-Driver wasal fil-ghaxija w l-ghada filghodu dan it-trailer insteraq. Ikkonferma li dan gie misruq bejn jum il-Gimgha w is-Sibt, u in effetti ghamlu rapport mal-pulizija Taljana w esebixxa kopja tieghu li giet immarkata bhala Dok. X. Ikkonferma li relazzjoni mas-socjeta' attrici ma kellhomx. Ikkonferma li kienu gew imqabbda mis-socjeta' konvenuta. Jghid li n-negozju bejn is-socjeta' tieghu u dik konvenuta hija wahda kontinwa ta' kull gimgha, l-ewwel jiehu l-ordni bil-fomm u wara jirceviha bil-miktub.

Rat is-sentenza taghha in parte moghtija fl-ismijiet premissi nhar it-13 ta' Lulju 2011 fejn din il-Qorti kif preseduta iddecidiet li tilqa' l-ewwel eccezzjoni tas-socjeta' kjamata in kawza billi laqghet l-eccezzjoni tal-preskrizzjoni fil-konfront taghha, w konsegwentement

Kopja Informali ta' Sentenza

tastjeni milli tiehu konjizzjoni ulterjuri ta' l-azzjoni odjerna fil-konfront taghha.

Semghet il-partijiet jitrattaw il-kawza fis-seduta tal-5 t'Ottubru 2011.

Ikkunsidrat.

Illi din l-azzjoni hija maghrufa bhala '*marine cargo claim*', fejn is-socjeta' Pharma MT kienet qabddet lis-socjeta' konvenuta Jet Services Limited sabiex tittrasportalha merkanzija konsistenti f'*medical devices* minn gewwa l-Italja, liema merkanzija giet stivata f'*container* li kellu jingabar mis-socjeta' John Abela Ltd., liema socjeta' giet imqabdda mis-socjeta' konvenuta bhala *sub contractors* taghha. Gara pero' li wara li s-socjeta' John Abela Ltd. hadet pussess ta' dan it-trailer u gabritu minn gewwa Milan, (id-depot tas-socjeta' konvenuta) u haditu Genova, dan gie misruq. In segwitu' s-socjeta' John Abela Ltd. ghamlet rapport relattiv mal-awtoritajiet Taljani (Dok. X a fol. 45) dwar din is-serqa.

Ghal dan in-nuqqas ghamlet tajjeb is-socjeta' attrici li assigurat il-merkanzija in kwistjoni w hallset l-ammont mitlub fir-rikors promotur fis-somma ta' disat elef disgha mija w tnax-il Ewro (€9,912) bhala valur li jirrapprezenta l-merkanizja li giet misruqa oltre s-somma ta' tlett mija w tlieta w erbghin Ewro w erbgha w hamsin centezmu (€343.54) li tirrapprezenta l-ispejjez li gew imhallsa lis-socjeta' MSB Valletta Ltd. ghas-*survey* datat 22 t'Awissu 2008 li ghamlet fuq inkarigu taghha (fol. 14). Is-socjeta' attrici giet surrogata fid-drittijiet tal-assigurat taghha (a fol. 16) w istitwiet din il-kawza sabiex tirkupra l-ammont minghand is-socjeta' konvenuta, li qed tigi tenuta responsabbli ghal tali nuqqasijiet ghaliex bhala trasportatrici naqset li tikkonsenja l-merkanzija kollha fdata lilha lill-konsenjatarja s-socjeta' Pharma MT.

Illi dwar l-ewwel eccezzjoni diga' nghatat sentenza preliminarj w ghalhekk f'dan l-istadju l-Qorti ser tastejni milli tiehu konjizzjoni ulterjuri taghha stante li l-mertu taghha gia gie indirizzat.

Dwar it-tieni w it-tielet eccezzjoni, s-socjeta' konvenuta teccepixxi li hija m'ghandhiex tinzamm responsabbli ghal dan in-nuqqas ghaliex hija kienet qabbdet socjeta' ohra bhala *sub contractor* taghha, w ghalhekk il-merkanzija li giet derubata qatt ma kienet fil-pussess taghha, w konsegwentement ma tistax tinzamm responsabbli ghalha.

Din il Qorti tirrileva li f'dan il-kaz l-unika relazzjoni kuntrattwali in konnessjoni mal-garr ta' din il-merkanzija kien il-kuntratt konkjuz bejn is-socjeta' Pharma MT u s-socjeta' konvenuta Jet Services Ltd. Minn dan il-kuntratt ta' garr jirrizulta l-obbligu tas-socjeta' konvenuta li ggorr u tikkonsenja l-merkanzija fi stat tajjed u minghajr nuqqasijiet; kull relazzjoni li l-istess socjeta' konvenuta setghet kellha mas-socjeta' kjamata in kawza John Abela Ltd. huwa ghalhekk *res inter alios acta* li bl-ebda mod ma jbidell jew ihassar l-obbligu tas-socjeta' konvenuta li jirrizulta kemm mir-regoli generali ta' l-obbligazzjonijiet kif insibuhom fil-ligi nostrana, kif ukoll mir-regolamenti maghrufa bhala CMR Rules li, bi ftehim bejn il-kontraenti, kellhom jirregolaw dan il-kuntratt. (vide "**George Bonnici et nomine vs Joseph Vella et nomine**" (A.C. – 25 ta' Frar 2005).

Illi huwa opportun li jinghad li l-**artikolu 3 ta' l-istess CMR** jipprovdi li:-

"For the purposes of this Convention the carrier shall be responsible for the acts of omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own".

Illi jirrizulta li f'dan il-kaz is-socjeta' intimata hija "*carrier*" u hija tibqa' hekk responsabbli indipendentement mill-fatt illi hija tkun qabbdet persuna ta' hila ghal dak ix-xoghol jew servizz o meno. F'dan is-sens ukoll huma s-sentenzi

“Albert Abela vs S Mifsud & Sons Ltd” (P.A. (RCP) 23 t'Ottubru 2001) u **“Gasamamo Insurance Agency Limited nomine vs Sea Malta Company Limited proprio et nomine”** (A.I.C. (PS) – 17 ta' Novembru 2004. F'dan il-kuntest allura din il-Qorti thoss li l-istess socjeta' kienet u baqghet responsabbli ghat-tragitt kollu minn Milan gewwa l-Italja sa Malta, nkluz meta l-istess trailer kien fil-pussess tas-socjeta' John Abela Ltd. Is-socjeta' konvenuta kienet u baqghet responsabbli bhala *carrier* tal-istess merkanzija ghad-durata tat-tragitt kollu mill-Italja sa Malta, kif fil-fatt kien pattwit. Kif ammess mis-socjeta' konvenuta, w dwar dan ma jidhirx li hemm kontestazzjoni, t-tragitt in kwistjoni kien kopert u regolat bir-regoli ta' Garr Stradali Internazzjonali ta' Mekanizja (Kapitolu 486 tal-Ligijiet ta' Malta).

Illi s-socjeta' konvenuta qed tecepixxi wkoll li mhix responsabbli ghat-telf tal-merkanzija in kwistjoni in kwantu din giet nieqsa minhabba cirkostanzi li hi ma setghetx tevita w li ghalihom ma kellha l-ebda tort jew htija, ghaliex il-merkanzija ma kinitx fil-pussess taghha. F'dan il-kuntest jidher ghalhekk li hija qed tistrieħ fuq l-**artikolu 17.2** ta' l-istess **kapitolu 486** fuq citat li jipprovdi *“inter alia”* illi:-

“The carrier shall, however, be relieved of liability if the loss, damage or delay was caused ... through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.”

Illi min-naha l-oħra jinghad li l-**artikolu 17.1 CMR** jipprovdi li:-

“The carrier shall be responsible for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.”

Illi f'dan il-kuntest huwa relevanti dan li nghad fis-sentenza mogħtija mill-Prim' Awla tal-Qorti Civili nhar it-30 ta' Novembru 2010 fl-ismijiet **Middle Sea Insurance et vs Exprss Trailers Ltd** fejn ghamlet referenza ghas-sentenza fl-ismijiet **“Compunet Limited vs B.A.S.**

Limited” (P.A. (RCP) – 30 ta’ Gunju 2010), u **“Charles Borg noe vs Francis Vella et noe et”**(P.A. (PS) – 31 ta’ Jannar 2003) fejn gie affermat li:-

*“F’sitwazzjoni bhal din l-oneru tal-provi jinkombi b’logicita’ lit-trasportatur (Art 18 (1)). Fl-ispjega li jaghtu l-awturi **Hill u Massent** fil-ktieb taghhom **“CMR: Contracts for the International Carriage of Goods by Road”**, Lloyd’s of London Press Ltd, 1984, pagna 68, “ic-cirkostanzi”, li ghalihom jirreferi l-artikolu citat 17 (2), jkopru zewg sitwazzjonijiet distinti, definiti bhala “force majeure” u “cas fortuit”. Dwarhom jinghad dan:-*

“The former indicates something imposed upon the carrier by a third party with either “de facto” or “de jure coercive power”. This would include Act of State, governmental requisition or the effect of strikes or other industrial action. However, it will also cover an accidental occurrence which is foreign to the normal course of events in the environment in which it occurs, an event which is neither within the power of man nor his judgement to foresee or prevent, such as an accident of nature. ‘Cas fortuit’, on the other hand, is an accidental occurrence due to chance, which is extraneous to the carrier’s normal activities, and which it is not possible to foresee or prevent, but which occurs during and in the course of performance of the contract, as for example, a fire in a warehouse”.

Illi fil-kaz odjern dan jidher li jirriverti ruhhu fil-punt mhux tant jekk is-sub contractor kienx negligenti jew le, izda jekk f’kaz ta’ serq huwa “could have avoided the circumstances and prevented the consequence”. Jekk jigi accertat li dan seta’ jaghmlu, “then he will be liable although judged by negligence standards he was not behaving unreasonably in failing to overcome the risk” (**“Michael Galley Footwear Ltd –vs- Dominic Laboni”** (1982) 2 All E.R. 200; **“Thermo Engineers Ltd –vs- Ferrymasters Ltd”** (1981) 1 Lloyd’s Rep. 200).

F’din l-istess sentenza fuq citata **Middle Sea Insurance et vs Epress Trailers Ltd** gie ritenut illi “s-serq ghandu jkun ekwiparat ghal kaz fortuwitu u ghalhekk ghandu

jsofrieh il-proprjetarju tal-oggett misruq, ammenocche' ma jkunx hemm xi htija ta' min kien depozitarju ta' dak l-oggett li titfa' l-htija fuqu ta' dak il-kaz fortuwitu" (**C. Bianco -vs- Carmelo Ciantar**" - Vol XXXII pl p532; **Giuseppe Lia -vs- Peter Endrich**" - Vol XLI pll p998).

Illi f'dan il-kaz jirrizulta li m'huwiex kontestat li s-serq sar u ghalhekk kif jinghad fil-Konvenzjoni w anke fil-gurisprudenza taghna tmiss lil dawn il-prova li s-serq sar, u li dan kien ghalihom, mhux biss imprevidibbli, imma anke inevitabli. (Kollezz, XXXI p.iii p168).

Illi f'kawza simili fl-ismijiet **Thomas Smith Insurance Agency Limited noe vs MD Trucking Limited et**" (P.A (TM) - 18 ta' Frar 2004) gie ritenut li:-

"Skond il-gurista Jan Ramburg ("The Law of Carriage of Goods: Attempts of Harmonization" - 9E.T.L. 1974), il-bazi ta' responsabbilta' enuncjata fis-CMR mhix eskluza billi dak li ikun agixxa diligentament, izda hemm oneru akbar mixhut fuq it-trasportatur, li jrid jiehu l-mezzi kollha biex jevita kull hsara jew serq. L-awtur S. Zamara ("Carrier Liability" Am. J. of Comp Law 1975) jghid li "the courts have been reluctant to admit as a defense that the carrier has simply not been negligent. Instead, they place a heavy burden on the carrier to show specifically how the unavoidable circumstance caused the loss".

Illi huwa pacifiku li l-grad ta' diligenza rikjesta f'kazijiet simili mit-trasportatur hu deskritt hekk mill-awtur **Malcolm A. Clarke** fil-ktieb **"International Carriage of goods by Road: CMR"**:

"There is a temptation to exonerate the carrier on this ground, if he has taken all 'reasonable steps' to avoid the event causing loss... This would sit easily with the general duty of exercising reasonable care of cargo, which, it has been suggested will be implied in a contract to carry goods by road. But the defense in article 17 (2) makes no mention of reasonable steps and such steps are probably insufficient. What the carrier must show is more akin to the plea of impossibility of performance of a contract

which involves an event which renders the contract not merely more onerous but completely impossible of performance. Writers on the CMR are agreed that the event must be one which literally 'could not' be avoided by the carrier. It need not however, like the concept of force majeure in France, be unforeseeable (sic) although many events will, by the very fact that they are foreseeable, be avoidable by the carrier of whom such a high standard is required."

Illi jirrizulta li mill-istess giurisprudenza qed tigi segwita din il-linja rigida fl-interpretazzjoni tal-klawsola relattiva tas-CMR ("**Sullivan vs Grech**" P.A. - 2 ta' Frar, 2001; "**Galdes vs Bowman**" P.A. - 25 ta' Jannar, 2002; u "**Farrugia noe vs Gatt nomine**" – K - 16 ta' Jannar, 1984) fejn intqal li "*mhux bizzejjed li c-cirkostanzi kienu straordinarji imma li jridu jkunu tant straordinarji li jirrenduha impossibbli lill-carrier li jimpediha anke bl-akbar diligenza. L-essenza tad-difiza hija l-imprevedibilita' u l-inevitabilita'.*"

Illi hawn issir referenza ghall dak li nghad fis-sentenza ghal dak li jghid l-awtur **David Glass – The Divided Heart of the CMR Convention** 14 E.T.L. 1979) u cioe':-

"The carrier cannot hope, simply that ordinary care was taken, to escape liability. He must show that in respect of the particular loss or damage, no failing on his part could have contributed to it. It follows that a high degree of proof is required on his part, normally by proving the actual cause and showing how it arose with no fault on his part". Dan gie adottat mill-Qrati taghna fil-kawza "**Bernard Sullivan et nomine vs Emmanuel Grech et nomine**" (P.A. (DS) – 2 ta' Frar 2001); "**John Galdes nomine vs Joseph Bowerman**" (P.A. (DS) 25 ta' Jannar 2002) u "**Farrugia nomine vs Gatt nomine**" (K. – 16 ta' Jannar 1984) u "**Elmo Insurance Agency Limited et vs Fahrenheit Freight Fowarders Co. Limited**" (P.A. (GV) – 29 ta' Ottubru 2004); "**Charles Borg nomine vs Francis Vella et nomine**" (P.A. (PS) 31 ta' Jannar 2003); "**Filtons Clothing Company Limited vs Sullivan Shipping Agencies Limited et**" (P.A. (RCP) – 27 ta'

April 2006); u “**Atlas Insurance Agency Limited proprio et nomine vs Falcotrans Limited**” (P.A. (RCP) – 26 ta' April 2007).

Illi fil-rigward ta' l-Italja huwa maghruf li hemmhekk jigu rraportati hafna serqiet tant li fil-1981, il-Federazzjoni Internazzjonali tat-Trasportaturi fuq it-Triq (il-FIATA), harget “*notes of guidance*” biex jigu evitati serqiet f'dak il-pajjiz. Estratt minn dawn in-noti kwotati f'hafna sentenzi nostrana jghidu hekk:-

“How can theft be prevented’

A. MEASURES TAKEN PRIOR TO THE START OF AN INTERNATIONAL ROAD TRANSPORT:

- 1. An anti-theft device must be installed in the vehicle which must be used even during the shortest absence of the driver from his vehicle.*
- 2. Engagement of Reliable drivers’ who are handed envelopes containing papers likely to be of use to the police in the case of theft. These envelopes must always remain in the possession of the drivers.*
- 3. NEVER TO DIVULGE the nature and value of consignments to strangers.*
- 4. To arrange, whenever possible, a CONVOY of 2 to 3 vehicles or have a driving crew of 2 persons.*

B. DURING THE JOURNEY

- 1. Never to give a LIFT to hitchhikers.*
- 2. Whenever the driver notices something out of the ordinary he must stop at a busy place and, if necessary, ring the police.*
- 3. Driver must stop AT GUARDED CAR PARKS, even for short breaks (or else relay on the brotherhood of vehicle drivers during the performance of customs and*

other formalities). In fact in one case, it was held that a road hauler whose vehicle had been left unguarded for two hours on the customs car park at an Italian border station outside office hours and was stolen, was liable for the theft. The Court decided that the driver did not take adequate safety measures to prevent the theft of the vehicle and could not rely on Art. 17.2. of the CMR. That the vehicle was left locked up in a customs area was not sufficient evidence of careful securing.

4. *Driver must never STOP IN A REMOTE AREA.*
5. *Driver should refrain from travelling alone at night, even on motorways.*
6. *Driver must be alert in restaurants, coffee houses etc.*
7. *NO DELIVERY of goods, if possible, after office hours or on Friday evenings."*

Illi hija l-fehma ta' din il-Qorti, anke a bazi tal-gurisprudenza citata li dawn il-linji gwida ghandhom jigu addattati b'mod generali f'kull kaz ta' trasport ta' merkanzija fuq l-art. Din il-Qorti tqis dawn il-mizuri bhala necessarji biex trasportatur ikun jista' jipprova jehles mir-responsabilita', tant li ghandhom jitqiesu bhala *sine qua non* ghal kull vjagg, b'dan li n-nuqqas tat-trasportatur li jadopera xi wahda minn dawk il-mizuri, ghandha twassal ghall-konkluzzjoni li t-trasportatur ikun responsabbli ghal dak li jigri. Dan ifisser li dawn il-linji gwida ghandhom jigu segwiti w adoperati f'kull kaz ta' trasport fuq l-art, u n-nuqqas li jigu adoperati dawk il-mizuri ta' sigurta' jkun necessarjament ifisser li l-att tat-terzi ma jkunx jista' jitqies bhala wiehed "*which literally 'could not' be avoided by the carrier*".

Illi ghalhekk it-tieni, t-tielet u l-hames eccezzjoni qeghdin jigu michuda *in toto*.

Dwar ir-raba' eccezzjoni, w cioe' dik li s-socjeta' attrici ghandha tipprova l-valur ta' l-oggetti li gew misruqa,

jinghad is-segwent. Is-socjeta' attrici pprezentat is-*survey report* li ghamlet is-socjeta' MSB Valletta Ltd., il-Loss Adjustors tas-socjeta' attrici li jindika li l-ammont tal-claim li ghamlet is-socjeta' Pharma MT jammonta ghal disat elef, disgha mija w tnax-il Ewro (€9,912) skond id-dokumentazzjoni li kienet irceviet. Illi in segwitu' s-socjeta' attrici hallset dan l-ammont lis-socjeta' Pharma MT, kif *del resto* jirrizulta mix-xhieda tar-rapprezentant tas-socjeta' Pharma MT. Jirrizulta wkoll li s-socjeta' attrici hallset l-ammont ta' tliet mija w tlieta w erbghin Ewro w erbgha w hamsin centezmu (€343.54) ghas-*survey* li nkarigat. Illi s-socjeta' konvenuta ma ressqet l-ebda prova kuntrarja w ma kkontestat l-ebda dokument esebit mis-socjeta' attrici w ghalhekk l-ammont reklamat minnha huwa gust u ghandu jigi konfermat.

Ghaldaqstant din il-Qorti qieghda tilqa' t-talba attrici w tikkundanna lis-socjeta' konvenuta thallas lis-socjeta' attrici s-somma pretiza fir-rikors promotur t'ghaxart elef mitejn u hamsa w hamsin Ewro u erbgha w hamsin centezmu (€10.255.54) (cioe' s-somma ta' €9,912 + €343.54).

Bl-imghax mid-data li sar il-hlas lill-assigurat u l-ispejjez tal-kawza jithallsu kollha mis-socjeta' konvenuta nkluz dawk fir-rigward tal-kjamat in kawza.

< Sentenza Finali >

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