MALTA

# TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.**
**DEBORAH MIFSUD ATTARD**

Seduta ta' l-4 ta' Ottubru, 2012

Talba Numru. 930/2008

**Atlas Insurance PLC Ltd**

**Vs**

**B.A.S. Limited**

**It-Tribunal**,

Ra l-avviz fl-ismijiet premessi pprezentat fl-25 ta' Novembru, 2008 fejn intalab illi s-socjeta konvenuta ghandha tigi kkunddannata thallas lis-socjeta attrici s-somma ta' tmien mija u tnejn u sittin Ewro, (€862) dovuti minnha peress illi s-socjeta Intercomp Marketing Limited inkarigat lis-socjeta' intimata sabiex titrasporta merkanzija lejn Malta u meta l-imsemmija merkanzija giet ikkonsenjata, rrizulta li kien hemm nuqqas fil-merkanzija, ghal liema nuqqas hija responsabbli s-socjeta intimata.

Peress illi ai termini tal-polza ta’ assikurazzjoni relattiva s-socjeta rikorrenti Atlas Insurance Plc Limited hallset lil assigurata taghha s-somma ta’ hames mija u disghau hamsin Ewro (€559) u ghalhekk s-socjeta’ rikorrenti hija surrogata fid-drittijiet tal-assigurata taghha u dan oltre l-hlas ta’ sebghin Ewro (€70) bhala survey fees u s-socjeta’ Intercomp Marketing Limited sofriet mittejn u tlieta u tletin Ewro (€233) bhala excess.

Peress illi ghalhekk s-socjeta intimata hija ghalhekk debitrici tas-socjetajiet rikorrenti fis-somma globali ta’ tmien mija u tnejn u sittin Ewro (€862), inkwantu ghal hames mija u disgha u hamsin Ewro (€559) (liema ammont erronjament u manifestament zball tat-tipa tnizzel bhala sitt mija u disgha u hamsin Ewro (€659) lis-socjeta rikorrenti Atlas Insurance PLC Limited u mittejn u tlieta u tletin Ewro (€233) lis-socjeta’ rikorrenti Intercomp Marketing Limited rapprezentanti l-valur tan-nuqqasijiet fil-merkanzija relattivi, l-ispejjez tas-survey relattiv u l-excess, kollox kif premes, liema merkanzija rimanenti giet ikkonsenjata lil Intercomp Marketin Limited fit-13 ta’ Frar, 2008.

Bl-imghax legali rispettiv mid-data tal-hlasijiet relattivi u bl-ispejjez.

Ra ukoll ir-Risposta ipprezentata fit-23 ta’ Dicembru, 2008 fejn l-konvenut preliminarjament jghid illi t-talbiet tas-socjetajiet attrici huma nulli in kwantu huma vagi u ma fihomx dettalji sufficjenti dwar il-fatti li waslu ghat-talbiet hekk kif trid il-ligi u fost affarijiet ohrajn ma jsir l-ebda riferenza ghad-dokument tat-transport u lanqas rigward il-garr tal-merkanzija relattiva;

Minghajr pregudizzju s-socjeta konvenuta rrizervat li tipprezenta eccezzjonijiet ulterjuri fil-kaz li jinghataw dettalji sufficjenti dwar it-talba mill-atturi fil-mori tal-kawza.

It-Tribunal ezamina x-xhieda li ngiebet.

Xehdu Brian Valenzia u Anthony Pace t-tnejn prodotti mis-socjeta attrici li pprezentaw dokument fuq il-kaz. In vizta

ta’ dan s-socjeta konvenuta talbet illi tipprezenta nota ta’ eccezzjonijiet ulterjuri fejn ecceppew illi t-talbiet attrici huma infondati fil-fatt u fid-dritt stante illi ma jirrizultax illi l-merkanzija in kwistjoni giet nieqsa waqt li din kienet taht ir-responsabbilta tas-socjeta konvenuta stante illi din waslet il-merkanzija fl-istess stat, kundizzjoni u kwantita li giet mghoddija lilha, u fi kwalunkwe kaz s-socjeta konvenuta ma kellha ebda tort jew htija ghar-rigward tan-nuqqasijiet reklamati u ghalhekk ma jista jkollha ebda responsabilta.

Illi subordinament u minghajr pregudizzju kwalsiasi responsabilta li tista tigi determinate hija limitata a tenur tar-regolamenti tal-Convention on the Contract for International Carriage of Goods by Road. Inoltre talbet li tigi kjamata in kawza s-socjeta Fahrenheit Frieght Forwarders Co Limited. Liema kumpanija giet kjamata in kawza permezz ta’ digriet tat-23 ta’ Marzu, 2009.

Il-kjamati fil-kawza Fahrenheit Freight Forwarders Co Limited permezz ta’ risposta  ecceppew illi s-socjeta esponenti ma ghandha l-ebda relazzjoni guridika mas-socjetajiet attrici u ghaldaqstant ghandha tigi liberata mill-osservanza tal-gudizzju.

Illi minghajr pregudizzju il-pretenzjoni tas-socjetajiet attrici jew dik konvenuta qatt ma seta kellhom fir-rigward tas-socjeta esponenti llum huma dekaduti ai termini tal-Artikolu 32(1)(a) tal-Kap 836 tal-Ligijiet ta’ Malta.

Illi s-socjeta kjamata in kawza mhix responsabbli ghal ebda danni li allegatament soffrew is-socjetajiet atturi stante illi hi kkonsenjat il-merkanzija, konsistenti f’numru ta’ sealed pallets li gew konsenjati lilha mis-socjeta estera DHL, lir-ricevitur f’Malta u cioe s-socjeta konvenuta B.A.S. Ltd, fl-istess stat li rceviethom hi u dan skond ma kienet marbuta taghmel. Ghaldaqstant jekk kien hemm xi nuqqasijiet fil-merkanzija dan ma sarx meta l-merkanzija kienet taht il-kura u kustodja taghha. Eccepiet ukoll illi t-talbiet huma eccessivi.

Fix-xhieda tat-13 ta’ Ottubru, 2009 Paul Caruana ghas-socjeta’ attrici qal li huwa jaghmel parti mit-team logistiku tal-kumpanija attrici u jiehu hsieb id-deliveries u kien ikun prezenti meta jinhatt ix-xoghol. Huwa qal li rcieva sittax il-pallet ppakjati bil-plastic iswed u meda beda jinhatt irrizulta li kien hemm kaxxa vojta. In kontroezami kkonferma li l-pallets inkluz il-kaxxa l-vojta kienu ssiljati. Meta gie mistoqsi in kontroezamimill-kjamat in kawza dan ix-xhud qal, “ Ix-xrink wraps isiru minn min irid jghabbihom….. cioe … min jibghat il-merkanzija jiehu hsieb ix-xrink wrap.F’dan il-kaz partikolari ma nafx min kien. Cioe min fejn fl-ahhar mill-ahhar il-post minn fejn l-imghallem tieghi jordna l-merkanzija.

Ix-xhud Mario Debono prodott  mis-socjeta konvenuta meta mistoqsi in kontro ezami mill-kjamat in kawza jghid “Id-DHL generalment jircievu kaxxi loose u mhux ippakjati u lesti. Id-DHL imbaghad generalment jiehu hsieb il-packing u sealing. Nikkonferma li imbaghad il-Fahrenheit Freight jircevihom ippakkjati u lesti u jigu pogguti fuq it-trailer.

Imbaghad xehed Raymond Borg prodott mis-socjeta konvenuta fejn qal illi “Generalment li jigri huwa li t-trailer – trakk jiddokja fil-mahzen tad-Dell. Tingabar il-merkanzija u cioe l-ordni lit kun saret, jigi ssigillat, jinzamm record tas-sigill u mbaghad dawn imorru fil-mahzen tad-DHL….”

Dan ix-xhud tkellem fuq is-supply chain li tibda mid-Dell tghaddi ghand DHL, wara tidhol il-Fahrenheit Freight Forwarders u fl-ahhar hemm BAS Ltd. Ikkonferma wkoll illi wrapping tal-plastic jigi ssigillat tant tajjeb illi hemm bzonn illi jinqata permezz ta’ sikkina.

Fl-affidavit taghha Josianne Galea qalet illi l-Fahrenheit Freight Forwarders jipprovdu trailer gewwa l-bonds tad-DHL gewwa l-Olanda. Hemmhekk jigu mghobija l-pallets min-nies tad-DHL stess gewwa t-trailer tal-Fahrenheit.

Gie pprezentat wkoll affidavit ta’ Anthony Zerafa li huwa operations manager mal-Fahrenheit Freight Forwarders fejn spjega kif it-trailer tal-Fahrenheit jigbor ix-xoghol

imbaghad id-DHL u jkunu l-impjegati tad-ditta DHL li jghabbu l-pallets li jkunu diga lesti mdawrin bil-plastic iswed gewwa t-trailer. Ix-xufiera tal-Fahrenheit ma jistghux jidhlu fil-warehouse tad-DHL u allura setghu biss jaraw il-pallets jitghabbew fit-trailer izda qatt ma setghu jaraw il-kontenut tal-pallets ghax dawn kienu jkunu diga mdawrin bil-plastic.

Xehed Paul Caruana li kkonferma dak li kien diga qal Anthony Zerafa fl-affidavit tieghu. Huwa qal illi huwa jinzel fuq il-post fejn tinhatt il-merkanzija u meta fethu l-pallets sab kaxxa vojta kkonferma li l-pallets kienu ssigillati u li filfatt is-sigill qacctu hu.

Gie pprezentat ukoll affidavit tad-Direttur tal-Kumpanija Fahrenheit Alexander Mallia li wkoll ikkonferma li l-pallets ingabru diga bix-xrink wrap.

It-Tribunal ra l-provi u x-xhied mressqa u kkunsidra:

Illi mill-provi migjuba jirrizulta li s-socjeta Intercomp xtrat minghand il-kumpanija DELL, 30 laptop li minnhom waslu 29 laptop peress illi l-ahhar kaxxa kienet vojta. Din il-merkanzija minghand il-kumpanija DELL ghaddiet ghand id-DHL b’mod sfuzz u kienet id-DHL li ssigillat u ghamlet xrink wrap madwar il-pallets tal-merkanzija. Is-socjeta kjamata in kawza Fahrenheit Freight Forwarders kienet inkarigata mis-socjeta konvenuta BAS Ltd sabiex tigbor din il-merkanzija. Hawnhekk hareg car mill-provi illi s-socjeta kjamata in kawza Fahrenheit Freight Forwarders gabru l-pallets li kienu diga ssigilati. Il-Fahrenheit imbaghad ghaddew il-merkanzija lil BAS Ltd liema socjeta kellha inkarigu minghand l-Intercomp Ltd. Is-socjeta BAS gabet il-prova wkoll illi l-pallets gabrithom issigilati minghand il-Fahrenheit Freight Forwarders u waslithom issigilati ghand l-Intercomp. Dan kien ikkonfermat anki mix-xhieda prodotti mis-socjeta attrici Atlas Insurance li kien surrogata fid-drittijiet tal-Assigurat taghha Intercomp Marketing Limited.

Fil-fehma tat-Tribunal s-socjeta attrici ma rnexxilhiex tipprova illi kien hemm xi nuqqas da parti tas-socjeta

konvenuta jew tas-socjeta kjamata in kawza. Anzi hareg car illi fil-perjodi meta l-merkanzija kienet f'idejn Fahrenheit Freight Forwarders u BAS Ltd il-merkanzija kienet issigilata u diga bix-xrink wrap.

Ingiebet il-prova illi dan sigil u xrink wrap taghmlu d-DHL izda hadd mill-partijiet ma dahhal lil din is-socjeta fil-kawza odjerna.

Ghaldaqstant it-Tribunal jiddecidi illi s-socjeta attrici ma rnexxilhiex tipprova l-kaz li kien hemm xi nuqqas da parti tas-socjeta konvenuta jew responsabbilta ghal merkanzija nieqsa u lanqas ma gie ppruvat li kienet is-socjeta kjamata in kawza li kellha xi responsabbilta.

Ghalhekk it-Tribunal jaqta l-kaz billi jichad it-talbiet attrici.

Bl-ispejjez ikunu a karigu tas-socjeta attrici.

**< Sentenza Finali >**

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