



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
VINCENT GALEA**

Seduta tal-15 ta' Lulju, 2013

Talba Numru. 85/2012

Alison WOOD

Vs

Express Freights Limited

It-Tribunal,

Ra t-talba tar-rikorrenti mressqa fit-3 ta' Frar, 2012 u li permezz taghha talbet lis-socjeta intimata thallasha s-somma ta' elfejn seba' mija disgha u tletin euro u erbgha u tletin ċenteżmi ta' euro [€2,739.34c] u dan wara li ppremettiet hekk:

“L-attrici qeghda titlob is-somma ta' €2,739.34c rappreżentanti l-valur tad-danni sofferti minnha meta s-socjeta konvenuta naqset milli tikkonsenja l-oggetti mobbli kollha li kienet inkarigata taghmel u dan kif ser jiġi ppruvat fil-kors ta' dina l-kawza.

Bl-ispejjez u bl-imghax legali b'effett mid-data tal-konsenja sal-pagament effettiv kontra s-socjeta konvenuta li hija minn issa ngunta ghas-subizzjoni”.

Ra **r-risposta tas-socjeta intimata** minnha mressqa fl-1 ta' Marzu, 2012 u li permezz taghha hija rrispondiet hekk ghat-talba tar-rikorrenti:

“1. Illi d-dritt tal-attrici sabiex tfittex lis-socjeta esponenti ddekada skont il-kundizzjonijiet maqbula bejn il-partijiet;

2. Illi minghajr preġudizzju ghas-suespost it-talbiet attrici huma nfondati fil-fatt u fid-dritt u l-allegati nuqqasijiet u danni jridu jiġu ppruvati mill-attrici;

3. Illi minghajr preġudizzju ghas-suespost, jekk jirrizulta li kien hemm nuqqasijiet fil-konsenja tal-merkanzija, is-socjeta ntinata ma ghandhiex x'tahti ghal dawn in-nuqqasijiet u, semmai, hija s-socjeta estera EUF Group Limited li hija responsabbli ghal tali nuqqasijiet u ghaldaqstant din is-socjeta estera ghandha tiġi msejha fil-kawza;

4. Illi minghajr preġudizzju ghas-suespost, fi kwalunkwe kaz ir-responsabbilta tas-socjeta ntinata hija limitata ai termini tal-kundizzjonijiet maqbula bejn il-partijiet.

Salv eċċezzjonijiet ulterjuri.

Bl-ispejjez kontra l-attrici li minn issa hija ngunta ghas-subizzjoni”.

Ra l-verbal datat 25 ta' April, 2012 laqa' t-talba tas-socjeta intimata biex tinghata deċiżjoni dwar l-ewwel eċċezzjoni taghha.

Ra l-verbali datati 12 ta' Lulju, 2012, 17 ta' Settembru, 2012, 31 ta' Ottubru, 2012, 7 ta' Jannar, 2013, 25 ta' Frar, 2013, 4 ta' Marzu, 2013 u 6 ta' Mejju, 2013 fejn il-kawza thalliet ghas-sentenza ghal-lum dwar l-ewwel eccezzjoni;

Semgha' x-xhieda;

Ra l-atti;

Ikkunsidra:-

1. Din hija sentenza preliminari dwar l-ewwel eċċezzjoni tas-socjeta intimata li taqra hekk:

“Illi d-dritt tal-attrici sabiex tfittex lis-socjeta esponenti ddekada skont il-kundizzjonijiet maqbula bejn il-partijiet”.

2. Permezz ta' din it-Talba, r-rikorrenti qeghda titlob il-hlas minghand is-socjeta intimata tas-somma ta' elfejn seba' mija disgha u tletin euro u erbgha u tletin ċenteżmi ta' euro [€2,739.34c], liema ammont jirrappreżenta l-valur tad-danni sofferti minnha meta s-socjeta intimata naqset milli tikkonsenja l-oġġetti mobbli kollha li kienet inkarigata taghmel.

Ikkunsidra;

3. Din il-kawza ġiet intavolata fit-3 ta' Frar, 2012.

4. FI-4 ta' Mejju, 2010, is-socjeta intimata harget stima ghall-importazzjoni ta' diversi oġġetti minn ġewwa r-Renju Unit bid-destinazzjoni finali tkun Malta (fol. 10). F'din l-istima hemm ukoll fil-parti ahharija taghha s-segwenti:

*“** Insurance is not included unless instructed in writing
** The carriage of goods is subject to its Std terms and conditions
** Payment terms are strictly cash”* (fol. 11).

5. L-ammont indikat fl-istima huwa ta' €535.001, mentri skont il-fattura li hemm esebita a fol. 13, l-ammont dovut mir-rikorrenti lis-socjeta intimata kien ta' €1,546.75c. L-oġġetti kellhom jaslu hawn Malta b'*container*.

6. Skond l-*istandard trading terms & conditions* (fol. 14) esebiti mis-socjeta intimata permezz ta' nota minnha mressqa fid-9 ta' Mejju, 2012 taht ir-rubrika *Notices and Time for Suit* (fol. 31) nsibu hekk:

“30 (A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably for him to do so.

(B) Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be instituted against the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company”

7. Issa skond id-delivery order il-merkanzija waslet hawn Malta fit-3 ta' Gunju, 2010 (fol. 33 u 34).

8. Fis-seduta tat-23 ta' Mejju, 2012 xehed **Steve Amaira**, rappreżentant tas-socjeta intimata. Beda biex qal li huwa kien il-persuna mis-socjeta intimata li kien qiegħed jinnegozja din it-transazzjoni partikolari mar-rikorrenti. Qal ukoll li r-rikorrenti kienet talbitu stima peress illi riedet iggib xi xogħol mill-Ingilterra. Huwa qal li l-istima li kien ipprovdilha hija dik li hemm esebita a fol. 10 tal-process. Ikompli jghid li l-istima ġiet aċċettata mir-rikorrenti u x-xogħol gie bbukkjat mal-agenti tal-Ingilterra.

In kontro-ezami, x-xhud qal li huwa ma jiftakarx jekk l-istima saritx permezz ta' telefonata però jaf fic-cert li huwa kien bagħtilha permezz ta' e-mail. Mistoqsi jekk jiftakarx li huwa kien kellew lill-zewgha Isaac Wood u mhux lir-rikorrenti, huwa wiegeb li ma jiftakarx. Inoltre, žied igħid li l-istima huwa kien bagħatha fl-indirizz residenzjali tar-

rikorrenti. Qal però li huwa kien kellem lill-konjugi Wood dwar din il-merkanzija. Meta gie suggerit li huwa kien intalab jaghmel assigurazzjoni ghar-rigward ta' din il-konsenja, liema assikurazzjoni huwa qatt ma ghamel, ix-xhud ighid li *"jista jkun iva"* (fol. 39). Ix-xhud qabel mal-fatt li din ma kienitx l-ewwel darba li r-rikorrenti kienet użat is-servizzi tal-kumpanija biex iġġib affarijiet minn barra. Meta reggha gie suggerit lilu li l-procedura li kienet tintuza bejniethom kien li r-rikorrenti u żewġha jċemplu permezz tat-telefon u imbaghad huwa kien jieh u hsieb l-affarijiet ix-xhud reggha qal li ma jaqbilx ma dan is-suggeriment. Anzi żied ighid li lill-konjugi Wood qatt ma kien rahom u li qatt ma ghamlu xi ordni preċedenti mieghu, però qabel mal-fatt li huma kienu kellmuh permezz tat-telefon.

B'referenza għall-kemm il-faccata kien fiha din l-istima, x-xhud qal li din tkun twila skont kemm il-linja tintuża u dan *"fis-sens illi skont kemm il-entry nimputtjaw ahna fiha u għalhekk mhux bilfors li tkun fuq pagna wahda"* (fol. 43). L-istima fil-kaz odjern, kompli jghid ix-xhud, kien fiha tlett (3) faccati. Gie suggerit lix-xhud li t-tieni faccata tad-dokument EF1 a fol 10 tal-process ma ntbaghtx lir-rikorrenti u kienet intbaghtet biss l-ewwel faccata. Huwa qal li dan ma jistax ikun l-ghaliex huwa dokument wiehed. Zied ighid li *"għalhekk il-weight li jkun hemm jiena nkun nafu mill-invoice u mill-packings. Il-weight ta' kemm ser ikunu l-affarijiet li gejjin minn barra ttihomli l-klijenta jew lill-klijent mhux naqbad nivvinthom. It-2088 kilos li kien il-weight illi kien tal-merkanzija li gabet l-attrici hawn Malta u li jissemma a fol 11 tal-process u a fol 34 tal-process huma identici l-ghaliex fl-ewwel wiehed tkun tatuhli l-klijenta kif diga ghidt mill-packaging u anke minghand is-suppliers ta' barra u t-tieni wiehed ikun dak li jkun baghtilna l-agenti. Il-weight huma tawhuli u cioe' l-atturi u hadd izjed"* (fol. 43). Meta gie mistoqsi kif jispjega li l-piz li hemm indikat a fol 11 tal-process u l-piz li hemm indikat a fol 34 tal-process u cioe' 2088 kilos huma identici, x-xhud qal li *"l-weight li hemm a fol 11 tal-process ktibtu ghax qaluhli l-klijenti"*.

Fis-seduta ta' l-14 ta' Gunju, 2012 reggha xehed Steve Amaira. Beda biex qal li huwa kien baghat e-mails

b'referenza għall-istima, però wara sitt (6) xhur dawn l-e-mails ma jibqgħux fuq is-sistema tagħhom. Mistoqsi jekk kienx hemm e-mails għar-rigward ta' l-ordni din hija xi haga ohra differenti u obbliga ruħhu li jivverifika mill-ufficju jekk kienx hemm dawn l-e-mails. B'referenza għad-dokument immarkat bħala EF1 (fol. 10 et seq), ix-xhud qal li dan *"huwa kollox kompjuterizzat hlief li jiena ndaħhal ir-rate ta' l-affarijiet. Hekk kif jiena ndaħhal ir-rate ta' l-affarijiet allura s-sistema tiggera l-e-mail u tibgħatu"* (fol. 45). Meta x-xhud gie mistoqsi mit-Tribunal x'inhil-procedura meta klijent icempel lill-agenzija fejn jahdem hu u jagħtih il-volum u l-piz tal-affarijiet, huwa qal li *"jiena xorta nibgħat quote. Il-quotation trid tohrog dejjem bilfors. Jekk ma jkollux e-mail nibgħatuha bil-fax jekk ma jkollux fax nibgħatuha bil-posta. Jiena ma għandix kopja tal-email li ntbgħatet mill-kumpanija minni rappreżentata lill-attrici l-għaliex kif għidt wara sitt xhur jithassru pero' l-procedura hi li dejjem tintbagħat e-mail u ma għandix għalfejn niddubita li f'dan il-kas tbidlet din il-procedura. Fil-quote ikun hemm l-insurance"* (fol. 45).

Ix-xhud qal ukoll li biex huwa setgħa jesebixxi d-dokument immarkat bħala EF 1 huwa kellu jara l-file tar-rikorrenti. Zied iġħid li hekk kif appena l-klijenta tikkonferma dik l-istima, huwa jipprintja kopja ta' dik l-istima. Qal li d-data tal-istima ma tistax tintmiss il-għaliex tigi generata awtomatikament.

9. Fis-seduta tat-23 ta' Mejju, 2012 **Antoine Vella**, *operations manager* mas-socjeta intimata. Huwa qal li l-istandard terms and conditions li s-socjeta intimata tagħmel ma' kull individwu li juża s-servizzi tagħha huma dawk li hemm esebiti a fol. 14 et seq tal-process (dok. EF 3). Kompla jgħid li *"meta tinhareg quote hemm nota li tghid illi biex jingarr ix-xogħol ikunu qed japplikaw dawn l-istandard terms and conditions ovvjament wiehed ikun jista jitolb kopja ta' dawn l-istess terms and conditions"*. Zied iġħid li fi zmien meta ngarr ix-xogħol dawn kienu l-istandard terms and conditions applikabbli.

Dwar id-dokument EF2 (fol. 13) huwa qal li din hija kopja tal-fattura li nharget lir-rikorrenti Zied iġħid li l-fattura

tinhadem a bazi tal-istima meta jasal ix-xoghol minn barra. Ghar-rigward tad-dokument EF5 (fol 34) huwa qal li dan huwa l-manifest ta' dak kollu li kien hemm fil-container u fosthom kien hemm ix-xoghol li gabet minn barra r-rikorreni. Din l-informazzjoni tasal ghand is-socjeta intimata minghand l-agent taghha mill-Ingilterra u cioe minn fejn ikun origina x-xoghol.

Meta gie mistoqsi in kontro-ezami jekk it-tieni pagna ta' dokument EF1 u li tinsab ezebita a fol 11 tal-process inhargitx wara li waslu l-affarijiet hawn Malta huwa qal li l-istima mhux hu kien ghamilha però jaf li l-istima hija kontinwa u mhux ta' pagna wahda. L-istima tinhareg generalment a bazi ta' dak li jghidilhom il-klijent u jekk il-klijent jghidilhom li huwa ha jgib mitt kilo minn barra minn Malta huma hekk jiktbu.

10. Fis-seduta ta' l-4 ta' Lulju, 2012 **xehdet ir-rikorreni**. Hi bdiet billi qalet li hija kienet cempet fl-ufficju tas-socjeta intimata u hemm tkellmet ma Steve Amaira. Hija qalet li *"dakinhar jiena staqsejtu kemm jigu bhala prezijiet dak li kont qeghda nitolbu bhala nformazzjoni. Spjegajtlu wkoll illi jiena x-xoghol ma kontx naf kemm kien ser ikun fi cubic meters ghax jiena dejjem insiefer, nitla f'dan il-kas l-Ingilterra u li nsib nixtri"*. Ziedet tghid li hi ma tkunx taf kemm ser ikunu l-ammonti li hija tkun ser tnizzel hawn Malta u li din l-informazzjoni tinghata lilha meta l-oggetti jaslu fil-port. Hija tkompli tghid li malli jkollha din l-informazzjoni, hi ccempel immedjatament lis-socjeta intimata u tinfirmaha kemm ghandha cubic metres. Wara hija tirritorna lura Malta u malli jasal ix-xoghol hawn Malta, l-addetti tas-socjeta intimata jcemplulha u jinfurmawha li jkun wasal ix-xoghol u jikkonsenjawn lilha. Fil-frattemp, is-socjeta ntinata tilhaq tibghatilha l-fattura relativa. Ir-rikorreni tkompli tghid li *"fejn hemm a fol 11 tal-process l-ammont ta' toqol 2088 kilos u volum 17.72 nghid illi dawk huma t-toqol u l-volum ezatti li jiena kont tajthom meta kont l-Ingilterra. Jiena kif diga ghidt ma nkunx naf minn qabel x'ser nixtri u allura ma nistax nghidilhom l-ammont preciz ta' toqol u ta' volum li jkolli bzonn, x'hin nixtrihom inkun naf. Dawn l-affarijiet jiena nkun xtrajthom ghalija personali. Dawn huma kollha affarijiet relatati mad-dar,*

garden furniture and toys tat-tifel u affarijiet ohra simili" (fol. 60-61).

11. Ir-rikorrenti tergga ttenni li l-istima tintbaghat qabel ma tinhadem u qabel ma hi tkun tathom l-ammonti. Hi tghid li wara li harget l-istima li hemm a fol 10 tal-process u mmarkat bhala dokument EF1 hi kienet bdiet tikkomunika permezz tal-e-mail mas-socjeta' intimata. Ziedet tghid li qabel din l-ahhar konsenja, hija diga kienet uzat is-servizzi tas-socjeta intimata fi tlett okkazzjonijiet ohra biex iwasslulha l-affarijiet li hija tkun xtrat barra minn Malta ghal Malta. Tghid ukoll li qabel ma titlaq minn Malta hija tilhaq titlob stima ta' kemm ser jigiha kull metru kubu, pero "*ghar-rigward tal-kejl u t-toqol preciz kont incempilhom mill-Ingilterra*" (fol. 61). B'referenza ghad-dokument immarkat bl-ittri EF2 a fol 13 tal-process ir-rikorrenti tghid li hija hallset din il-fattura fit-12 ta' Gunju 2010.

Ir-rikorrenti tghaddi biex tghid li fid-dokument li hija pprezentat u li gie mmarkat bhala dok. AW 1 (fol. 63) hemm xi differenzi mid-dokument ipprezentat mis-socjeta intimata u li gie mmarkat bhala dokument EF 2 (fol. 13). L-ewwel differenza, tghid ir-rikorrenti, hija dik li tirrigwarda d-dettalji tal-kumpanija taht l-ittri dok EF2 l-intestatura tal-kumpanija huwa differenti minn dak li wiehed jara taht id-dok AW1. Apparti minn hekk, tkompli tghid ir-rikorrenti, fid-dokument li gie esebit mis-socjeta intimata a fol 13 (dok. EF 2) hemm *it-terms and conditions* u hemm il-kliem *Express Freights Limited trades only under its standard terms and conditions and all agreements, verbal or otherwise are subject to the said terms and conditions. Copies of these conditions can be obtained on application with Express Freights Limited.* Fid-dokument li ntbghat lilha ssostni r-rikorrenti, liema dokument gie mmarkat bhala dok. AW 1 dan il-kliem ma hemmx.

Zball iehor, issostni r-rikorrenti huwa ghar-rigward tad-data tal-hlas minnha maghmul lis-socjeta intimata. Skond id-dokument minnha esebit u mmarkat bhala dok. AW 2 (fol. 64) hemm miktub illi hija hallset l-ammont ta' sitt mija erbgha u sittin lira u zewg centezmi liri Maltin (elf hames

mija sitta u erbghin ewro u hamsa u sebghin centezmi ta' ewro) fit-8 ta' Gunju, 2010. Tkompli tghid li fid-dokument ipprezentat mis-socjeta' intimata mmarkat bhala dokument EF2 (fol. 13) hemm miktub li hi hallset fit-12 ta' Gunju, 2010.

Ir-rikorrenti ghaddiet biex tesebixxi dokument iehor mmarkat bhala dok. AW3 (fol. 65) li huwa *n-notice of arrival*. Ir-rikorrenti stqarret li fuq dan id-dokument jirrizulta illi x-xoghol wasal Malta fit-3 ta' Gunju 2010 u li l-volum kien ta' 17.72 metri kubi b' toqol (weight) ta' elfejn u tmienja u tmenin kilo (2088kg). Hi tghid li bhala *units* ossia *packages* hi kellha mija disgha u ghoxrin (129). Dan in-numru jirrizulta mid-dokument immarkat bhala dok. AW3. Ir-rikorrenti tistqarr li waslu ghandha mija u wiehed u ghoxrin (121) unit u b'hekk kien hemm tmien (8) units neqsin.

Ir-rikorrenti esebit ukoll dokument iehor immarkat bhala dokument AW4 (fol. 67) fuq liema dokument, hi ssostni li "*ukoll ma hemmx miktub it-terms and conditions kif diga sjegajt u ezebejt fid-dokument AW1*" (fol. 62).

12. Fit-12 ta' Lulju, 2012 sar il-kontro-ezami tar-rikorrenti. Mistoqsija ghar-rigward tad-dokument immarkat bhala AW 1 (fol. 63) ir-rikorrenti stqarret illi dak id-dokument hija rcevietu bil-posta. Hija qablet ma dak suggerit lilha li qabel il-konsenja mertu ta' dan il-kaz hija kienet diga uzat is-servizzi tas-socjeta' intimata. Qablet ukoll li dawn il-fatturi ghal konsenji precedenti kienu thallsu minnha fi flus kontanti. Mistoqsija jekk hi taghmilx distinzjoni bejn *trailer* u *container* ir-rikorrenti wiegbet fin-negattiv u ziedet tghid li "*jiena mmur ghand is-socjeta' konvenuta u nhalli f'idejhom kif igibuli l-affarijiet hawn Malta. Kienu jghiduli huma x'inhil-irhas sistema biex jiena ngib oggett hawn Malta nara li naqbel maghha u nimxi ma' dak li jghiduli. Jiena s-socjeta' konvenuta kont nafdahom u nimxi fuq dak li jghiduli huma, huma kellhom l-esperjenza mhux jien*" (fol. 70). Meta giet mistoqsija ghalfejn kienet hadet l-oggetti minnha mixtrija gewwa Dagenham fir-Renju Unit, ir-rikorrenti qalet li dan ghamlitu fuq suggeriment tas-socjeta' intimata. Meta kienet tasal

Dagenham kienu jaghmlulha *delivery receipt* ta' l-oggetti li kienet tiehu hemm. Fil-fatt, ir-rikorrenti ghaddiet biex tsebixxi zewg ricevuti li gew immarkati bhala dokument AWT1 (fol. 73) u dokument AWT2 (fol. 74). Minn Dagenham imbaghad, tkompli tghid ir-rikorrenti, kienu jcemplu lis-socjeta intimata u kienu jkellmu lill-Steve Amaira u kienu jtuh id-dettalji relattivi. Dan apparti l-fatt, tkompli ssostni r-rikorrenti li anke hi kienet tkellmu direttament.

Mistoqsija minn fejn kienet iggib l-informazzjoni ghar-rigward tal-volum u tat-toqol tal-oggett, hija qalet li din l-informazzjoni kienet iggibha minghand il-EUF li qeghda gewwa Dagenham. Meta hi kienet tkellem lir-rapprezentant tas-socjeta intimata permezz tat-telefon mill-Ingilterra huwa kien jipprepara l-fattura u mhux l-istima. Tghid li hi kienet tkun taf l-ammonti dovuti u dan sabiex tilhaq tipprepara l-pagament necessarju ghas-socjeta intimata. Ghar-rigward tal-fattura, r-rikorrenti tghid li din kienet tigi f'idejha dakinhar li kienu jaghmlulha l-konsenja. Pero b'referenza ghal din il-konsenja partikolari r-rikorrenti tghid li hija ma tiftakarx meta rceviet il-karti u cioe jekk kienitx ircevietha meta l-*container* u l-affarijiet ta' go fih inghataw lilha jew qabel. Mistoqsija jekk il-konsenji li kellha qabel il-konsenja odjerna kinux inxurjati, ir-rikorrenti qalet li l-*consignment* (dak ta' qabel il-mertu tal-kaz odjern) wahdu kien assikurat pero ghar-rigward ta' l-ohrajn ma kienitx tiftakar.

Meta giet mistoqsija dwar id-dokument EF 1 (a fol. 10 et seq) ir-rikorrenti qalet li l-indirizz li hemm fuq dik l-istima huwa taghha u zewgha jismhu Isaac Wood. Dawn id-dettalji, tghid ir-rikorrenti kienu inghataw lis-socjeta intimata minnha. Enfassizat pero li dan "*ma jfissirx pero' b'daqshekk illi dan id-dokument li qieghed nigi u qed nara a fol 10 tal-process inghata lili*" (fol. 71). Ziedet tghid li "*fuq il-karti kollha li jiena rcevejt mill-ewwel consignment sal-ahhar consignment isem zewgi Isaac qatt ma deher, din hija l-ewwel darba li isem zewgi qieghed jidher fuq dokument tal-kumpanija dan qed nirreferi ghal dok EF1 a fol 10 tal-process* (fol. 71).

Ikkunsidra;

13. Illi din hija sentenza preliminari ghar-rigward ta' l-ewwel eccezzjoni mqanqla mis-socjeta intimata għall-azzjoni tar-rikorrenti. Din l-eccezzjoni taqra hekk:

“Illi d-dritt tal-attrici sabiex tfittex lis-socjeta esponenti ddekada skont il-kundizzjonijiet maqbula bejn il-partijiet”.

14. Kif diga rajna, skond l-*istandard terms and conditions* tas-socjeta intimata taht ir-rubrika *Notices and Time for Suit* (fol. 31) nsibu hekk:

“30 (A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably for him to do so.

(B) Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be instituted against the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company”.

15. Skond id-*delivery order* il-merkanzija waslet hawn Malta fit-3 ta' Gunju, 2010 (fol. 33 u 34). Il-kawza odjerna infethet fit-3 ta' Frar, 2012. Dan ifisser li l-kawza odjerna ġiet intavolata sentejn u tmien xhur wara li l-oggetti waslu hawn Malta.

16. L-artikolu 30(A) tal-*istandard terms and conditions* jistipula li “*Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the customer can show that it was impossible for him to comply with this Time Limit and that he has made the claim as soon as it was reasonably for him to do so*”. Mill-provi prodotti ma jirriżultax li r-rikorrenti mxiet ma din il-procedura delinejata f’dan l-artikolu partikolari. Di fatti l-ebda ittra ma ġiet ippreżentata mir-rikorrenti u lanqas is-socjeta intimata ma stqarret li hija kienet irċeviet xi korrispondenza minghand ir-rikorrenti f’dan ir-rigward.

17. L-artikolu 30(B) tal-*istandard terms and conditions* jistipula li “*Notwithstanding the provisions of Sub-Paragraph (A) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless suit be instituted against the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company*”.

18. Diga rajna li l-kawza odjerna ġiet intavolata sentejn u tmien xhur wara li l-oġġetti waslu hawn Malta u allura wara d-disa’ xhur imsemmija fl-artikolu 30(B) tal-*istandard terms and conditions*.

19. Ir-rikorrenti, ssostni li hi ma kienitx taf b’dawn l-*istandard terms and conditions* u li kien ghalhekk li hija ma segwitx din il-procedura. Ghalhekk imiss lit-Tribunal li jiddeċiedi jekk ir-rikorrenti ghandhiex dritt tipproċedi b’din

il-kawza jew le ġaladarba hi ma segwietx il-procedura ta' l-*istandard terms and conditions* tas-socjeta intimata. Ir-rikorrenti tishaq li hi ma kienitx taf b'dawn it-termini u dan anke minhabba l-fatt li kull ma kien hemm miktub fuq il-fattura li hija rċeviet kien il-kliem:

"Express Freights LTD trades solely under its standard terms and conditions. All agreements verbali or otherwise are subject to these terms and conditions, copies of which can be obtained on application with the company" (fol. 13 u fol. 63)

u fuq l-istima:

"The carriage of goods is subject to its Std terms and conditions" (fol. 11)

20. Mill-provi prodotti ma jirriżultax li r-rikorrenti qatt talbet lis-socjeta intimata għall kopja ta' dawn l-*istandard terms and conditions*. Lanqas ma jirriżulta li dawn l-*istandard terms and conditions* inghataw lir-rikorrenti mis-socjeta intimata. It-Tribunal jista jjeqaf hawn u jghid li s-socjeta intimata naqset mill-obbligi tagħha lejn ir-rikorrenti, li bhala konsumatur, kellha kull dritt li tkun taf x'kienu l-kundizzjonijiet li hija tahtom ikkuntrattat mas-socjeta intimata u ma kellhiex għalfejn toqghod titlob hi għal dawn l-*istandard terms and conditions*.

21. B'zieda ma dan però, t-Tribunal jhoss li f'dan il-kaz għandu jagħmel referenza ukoll għall-**Att dwar l-Unjoni Ewropeja** (Kapitolu 460) u senjatament għall-**artikolu 5 ta' l-istess Kapitolu 460**. Dan l-artikolu jghid hekk:

5. (1) Għall-finijiet ta' kull proċediment quddiem xi qorti jew *awtorità ġudikanti oħra*, kull kwistjoni dwar it-tifsir jew l-effett tat-Trattat, jew dwar il-validità, *tifsir jew effett ta' xi strumenti li joħorgu minnu jew tahtu*, għandha tiġi ttrattata bħala punt ta' dritt u jekk ma tkunx riferita lill-Qorti tal-Ġustizzja tal-Komunitajiet Ewropej, tkun għad-deċiżjoni bħala tali skont il-prinċipji stabbiliti minn, u kull deċiżjoni rilevanti ta', il-Qorti tal-Ġustizzja tal-

Komunitajiet Ewropej jew ta' kull qorti marbuta magħha.

(2) Għandha tittieħed **konjizzjoni ġudizzjarja tat-Trattat**, tal-Ġurnal Uffiċjali tal-Unjoni Ewropea u ta' kull deċiżjoni ta', jew **espressjoni ta' fehma minn, il-Qorti tal-Ġustizzja tal-Komunitajiet Ewropej jew ta' kull qorti marbuta magħha** dwar kull kwistjoni kif hawn qabel imsemmija, u l-Ġurnal Uffiċjali jkun ammissibbli bħala prova ta' kull istrument jew att ieħor, komunikat permezz tiegħu, ta' xi waħda mill-Komunitajiet jew ta' xi istituzzjoni tal-Unjoni Ewropea.

(sottolinejar u enfazi tat-Tribunal).

22. Issa l-Council Directive 93/13/EEC tal-5 ta' April, 1993 li titkellem dwar klawnsoli ingusti f'kuntratti mal-Konsumatur giet trasposta u allura implimentata fis-sistema nostrana fit-Taqsima VI tal-Att dwar l-Affarjiet tal-Konsumatur (Kapitolu 378)¹.

23. **L-artikolu 44 tal-Kapitolu 378** jistipula li:

44. (1) Ma jistgħux jintużaw f'kuntratti li jsiru mal-konsumatur **espressjonijiet mhux ġusti**, jew **espressjonijiet jew kombinazzjoni ta' espressjonijiet li jkun mhux ġusti f'illi jkollhom bħala skop jew effett xi wieħed mill-iskopijiet u effetti msemija fis-subartikolu (2)**, u kull espressjoni pprojbita kif hawn aktar qabel imsemmi li tiddaħħal f'xi kuntratt li jsir mal-konsumatur għandha titqies bħallikieku qatt ma tkun hekk iddaħħlet.

(2) L-espressjonijiet imsemmija fis-subartikolu (1) **jinkludu** espressjonijiet li jkollhom l-iskop jew l-effett li –

¹ Ara artikolu 47C tal-Kap. 378 li taqra hekk: “**47Ċ.** L-għan ta' din it-Taqsima huwa dak li jimplimenta d-disposizzjonijiet tad-**direttiva tal-Kunsill 93/13** tal-5 ta' April 1993 dwar klawżoli ingusti f'kuntratti mal-konsumatur u d-disposizzjonijiet ta' din it-Taqsima għandhom jiġu applikati u interpretati b'dan il-mod”.

(m) ikunu irrevokabilment jorbtu lill-konsumatur b'pattijiet li ma kellu ebda opportunità reali li jifhem sew qabel ma jagħmel il-kuntratt;

(4) L-elenku ta' espressjonijiet stipulati fis-subartikolu (2) mhix lista eżawrjenti, u għaldaqstant ebda ħaġa li tinsab fis-subartikolu (1) u (2) ma għandha tiftiehem bħala li tillimita jew xort'oħra tippregudika l-generalità tad-disposizzjonijiet tal-artikolu 45.

(enfazi tat-Tribunal).

24. Imbagħad l-artikolu 47 tal-Kap. 378 jistipula li:

47. (1) F'kuntratt li jsir mal-konsumatur, fejn l-espressjonijiet kollha jew x'uħud minnhom li jkunu offruti minn kummerċjant lil konsumatur jkunu bil-miktub, daww l-espressjonijiet għandhom jinkitbu b'lingwa kif ordinarjament mitkellma u intelligibbli li tista' tiftiehem mill-konsumaturi li l-kuntratt ikun indirizzat lejhom.

(2) Meta xi espressjoni tkun ambivalenti jew ikun hemm xi dubbju dwar it-tifsira ta' xi espressjoni, għandha tipprevalixxi ttifsira l-iktar favorevoli għall-konsumatur:

Iżda dan is-subartikolu ma għandux japplika għall-proċeduri miġjuba taħt l-artikolu 94.

(enfazi tat-Tribunal).

25. Dan l-artikolu tal-ligi, riportat fil-Kapitolu 378 tal-Ligijiet ta' Malta huwa in linea ma' l-artikolu 6(1) tad-Direttiva 93/13/EEC li jghid:

(1) Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

26. Fil-kawza fl-ismijiet **Pannon GSM Zrt. v. Erzsébet Sustikné Győrfi**² inghad mill-Qorti Ewropeja li:

32. *The court seised of the action is therefore required to ensure the effectiveness of the protection intended to be given by the provisions of the Directive. Consequently, **the role thus attributed to the national court by Community law** in this area is not limited to a mere power to rule on the possible unfairness of a contractual term, but also consists of the **obligation to examine that issue of its own motion**, where it has available to it the legal and factual elements necessary for that task, including when it is assessing whether it has territorial jurisdiction.*

33. *In carrying out that obligation, the national court is not, however, required under the Directive to exclude the possibility that the term in question may be applicable, if the consumer, after having been informed of it by that court, does not intend to assert its unfair or non-binding status.*

(sottolinejar u enfazi tat-Tribunal)

27. U fil-kawza **Océano Grupo Editorial SA v. Rocío Murciano Quintero**³ inghad li:

25. *As to the question of whether a court seised of a dispute concerning a contract between a seller or supplier and a consumer may determine of its own motion whether a term of the contract is unfair, it should be noted that **the system of protection introduced by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of the terms.***

² Case C-243/08, ECR 2009, p.I-4713 paragrafi 32 u 33 ta' l-istess sentenza deciza fl-4 ta' Gunju, 2009;

³ Joined Cases C240/98 to C-244/98 ECR I-4941 deciza fis-27 ta' Gunju, 2000

26. The aim of **Article 6 of the Directive**, which requires Member States to lay down that unfair terms are not binding on the consumer, **would not be achieved if the consumer were himself obliged to raise the unfair nature of such terms**. In disputes where the amounts involved are often limited, the lawyers' fees may be higher than the amount at stake, which may deter the consumer from contesting the application of an unfair term. While it is the case that, in a number of Member States, procedural rules enable individuals to defend themselves in such proceedings, there is a real risk that the consumer, particularly because of ignorance of the law, will not challenge the term pleaded against him on the grounds that it is unfair. **It follows that effective protection of the consumer may be attained only if the national court acknowledges that it has power to evaluate terms of this kind of its own motion.**

28. Ukoll fil-kawza **Elisa Maia Mostaza Claro v. Centro Móvil Milenium SL**⁴

38. The nature and importance of the **public interest underlying the protection which the Directive confers on consumers** justify, moreover, the national court being required to assess **of its own motion** whether a contractual term is unfair, compensating in this way for the imbalance which exists between the consumer and the seller or supplier.

29. Imbagħad fil-kawza **Asturcom Telecomunicaciones SL v. Cristina Rodriguez Noqueira**⁵

52. Accordingly, in view of the nature and importance of **the public interest underlying the protection which Directive 93/13 confers on consumers, Article 6 of the directive must be regarded as a provision of equal**

⁴ Case C-168/05 deciza fis-26 ta' Ottubru, 2006;

⁵ Case 40/08 deciza fis-6 ta' Ottubru, 2009;

standing to national rules which rank, within the domestic legal system, as rules of public policy.

53. It follows from this that, inasmuch as the national court or tribunal seised of an action for enforcement of a final arbitration award is required, in accordance with domestic rules of procedure, to assess of its own motion whether an arbitration clause is in conflict with domestic rules of public policy, it is also obliged to assess of its own motion whether that clause is unfair in the light of Article 6 of that directive, where it has available to it the legal and factual elements necessary for that task (see, to that effect, Pannon GSM, paragraph 32).

30. Biex niġu lura ghal kaz, jirrizulta bic-car, mill-provi prodotti, li r-rikorrenti ma kienitx taf bit-termini u kundizzjonijiet li s-socjeta intimata kienet qeghda timponi fuq dan in-negozju. Pero, anke li kieku r-rikorrenti kienet taf, u dan dejjem biss ghal-grazzja ta' l-argument, bil-klawsoli 30(A) u 30(B) tal-*Istandard Trading Terms & Conditions* tas-socjeta intimata żgur ma jistax jinghad li dawn huma ġusti skond dak riportat fil-gurisprudenza Ewropeja hawn fuq riportata. Konsegwentement, dan it-Tribunal huwa tal-fehma li l-klawsoli hemm imsemmija huma nulli u bla effett u konsegwentement, l-istess soċjetà intimata ma tistax taghmel uzu minnhom sabiex hija tecepixxi li d-dritt ta' l-attrici sabiex tfittex lis-socjeta intimata ddekada skont il-kundizzjonijiet maqbula bejn il-partijiet.

GHALDAQSTANT dan it-Tribunal qiegħed jichad l-ewwel eccezzjoni tas-socjeta intimata u konsegwentement jordna l-prosegwiment tal-kawza.

L-ispejjez ta' dan l-episodju jithallas fl-intier mis-socjeta intimata.

< Sentenza In Parte >

Kopja Informali ta' Sentenza

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