MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta tad-9 ta' Mejju, 2014

Avviz Numru. 19/2013

Raphael Farrugia (ID 685445M)

vs

Middlesea Insurance plc (C 5553)

Il-Qorti

Rat ir-rikors ippresentat fil-21 ta’ Jannar 2013 fejn ir-rikorrent talab lill-Qorti tikkundanna lis-socjeta intimata thallsu is-somma ta’ sitt elef, sitt mija u tletin Euro (€6,630) jew somma ohra verjuri rappresentanti Danni sofferti mill-attur meta l-opra tal-bahar ossija motor boat nin-numru ta’ registrazzjoni S-9891 tal-marka Chaudron bil-mutur Johnson G7746895 soffriet hsara kbira f’incident illi sehh fit tlieta (3) ta’ Lulju tas-sena elfejn u tnax fil-bajja ta’ Bahar ic-Caghaq, liema motor boat kienet debitament assikrata mas-socjeta intimata that polza ta’ assikurazzjoni nurmu P9200104641 minnha mahruga.

Bl-imghax legali mid-data ta’ l-Ittra Ufficjali datata 5 ta’ Ottubru 2012, u bl-ispejjez legali inkluz dawk ta’ l-ittra ufficjali u tas-surveyor li kien qabbad l-attur, kontra s-socjeta konvenuta.

Rat ir-risposta tas-socjeta konvenuta ippresentata fid 19 ta’ Frar 2013 fejn laqghat ghal dak miltub billi eccepiet, fl-ewwel lok, illi s-socjeta intimata ma kienetx tenuta tindennizza lill-assikurat ghall-hsarat ikkawzati peress illi l-allegat hsarat kienu rizultat ta’ logorament u

nuqqas car ta’ manutenzjoni da’ parte tal-assikurat. Fit-tieni lok, is-socjeta intimate eccepiet illi l-assikrat ma ottemperax ruhhu ma’ l-obbligi naxxenti mill-polza tal-assikurazzjoni u gahlhekk ma setax jitob li jigi indennizzat ghall-allegat hsarat.

Rat in-nota ta’ l-attur ippresentata fit 8 ta’ April 2013 bid-dokumentazzjoni relatata mal-valur tad-dghajsa meritu tal-kawza in kwistjoni u spejjez inkorsi rizultat tal-gharqa tad-dghajsa meritu tal-kawza odjerna.

Semghet ix-xhieda ta’ **Lucianne Cini**, il-persuna responsabbli fil-Claims Department fi hdan is-socjeta intimata illi pprocessat il-‘claim’ tar-rikorrenti, mogthija fl-10 ta’ Mejju 2013 u dokumentazzjoni minnha esebita.

Semghet ix-xhieda ta’ **Michael Azzopardi**, surveyor imqabbad mis-socjeta intimata, mogthija fl-10 ta’ Mejju 2013, flimkien ma’ rapport minnu esebit.

Semghet ix-xhieda ulterjuri ta’ Lucienne Cini mogthija fis 17 ta’ Gunju 2013 u dokumentazzjoni minnha esebita.

Rat illi fis-17 ta’ Gunju 2013 is-socjeta intimata, in vista tal-fatt li l-provi kienu gew inveertiti, ddikjarat illi ma kellhiex aktar provi x’tippresenta.

Semghet ix-xhieda ta’ **Kurt Gutteridge**, surveyor imqabbad mir-rikorrent, moghtija fit 12 ta’ Lulju 2013 flimkien ma’ dokumentazzjoni minnu ppresentata.

Rat l-affidavit ta’ **Frank Grima** ippresentat fit 12 ta’ Lulju 2013.

Semghet ix-xhieda ta’ **Raphael Farrugia** moghtija fit 8 ta’ Novembru 2013 flimkien ma’ dokumentazzjoni minnu ppresentata.

Semghet ix-xhieda in kontro ezami ta’ Raphael Farrugia illi saret fis 7 ta’ April 2014.

Rat illi fis 7 ta’ April 2014 il-partijiet iddikjaraw illi ma kellhomx aktar provi x’jippresentaw.

Semghet it-trattazzjoni ta’ l-abbli difensuri tal-partijiet illi saret fis 7 ta’ April 2014.

Ikkunsidrat

Mill-provi prodotti quddiem dina l-Qorti jirrizulta illi r-rikorrent huwa propretarju ta’ dghajsa tal-marka ‘Chaudron’ S-9891 illi kellha fuqha mutur outboard tad-ditta Johnson, tas-sahha 225HP, liema dghajsa kienet assikurata mas-socjeta intimata ghall-periodu bejn 1 ta’ Novembru 2011 u 31 ta’ Ottubru 2012.

Jirrizulta illi fit 3 ta’ Lulju 2012, waqt illi d-dghajsa kienet sorguta gewwa il-bajja ta’ Bahar ic-Caghaq, gherqet rizultat ta’ ingress ta’ ilma kkawzat minn bahar qawwi illi hakem mil-lokalita’.

Jirrizulta, skond ix-xhieda ta’ Frank Grima, persuna li kien fil-lokalita meda beda l-maltemp u ra id-dghajsa teghreq, “*the waves grew bigger and the boat started nose dipping and the wave started entering into the boat from the front. After about an hour it sank*”.

Jirrizulta illi fil 5 ta' Lulju 2012, wara illi d-dghajsa ttellghet mill-bahar mir-rikorrenti, is-surveyor tas-socjeta intimata, Michael Azzopardi inspezzjona d-dghajsa u wasal ghal konkluzjoni illi "*since no holes or damage were found on the hull as inspected at the time of survey, sea water could have easily entered from the rubber boot with the oncoming sea*".

Jirrizulta mill-istess ispezzjoni ta' Azzopardi, illi ghal dak li jirrigwarda il-hull "*no damage on glass fibre or any dents were found on the hull.*" Madanakollu, l-istess surveyor imbghad irrileva, waqt li kien qieghed jispezzjona l-'Outboard Motor', li "*the water tight bellow at the rear end where cables and fuel lines of outboard motor pass through the hull is completely torn and worn out.*"

Jirrizulta illi, bhala rizultat ta' tali rapport, is-socjeta intimata gharrfet lir-rikorrent li peress li kien jirrizulta nuqqas ta' manutenzjoni tad-dghajsa, huwa ma kienx kopert mill-assikurazzjoni u ma kienux ser ihallsuh.

Jirrizulta illi sena qabel ma sehh l-incident, ossija fid 19 ta' Mejju 2011, fuq struzzjoni tas-socjeta intimata, d-dghajsa kienet giet inspezzjonata minn surveryor u dana wasal ghal konkluzjoni illi d-dghajsa kienet "*suitable for pleasure cruising in Maltese coastal waters*". Zied jghid illi l-valur tad-dghajsa kien ta' €6,675 li kienet tinqasam €1,864 id-dghajsa u l-accessorji taghha, €4,194 il-mutur li kellha fuqha u €700 it-trailer tad-dghajsa.

Jirrizulta illi wara r-rapport tas-surveyor tas-socjeta intimata, ir-rikorrent qabbad surveyor ex parte sabiex jikkonstata l-konkluzjonijet tas-surveyor tas-socjeta intimata, u dana kien Ingineer Marittimu Kurt Gutteridge.

Jirrizulta illi s-surveyor tar-rikorrent, ikkonferma illi l-'water tight bellow' illi minhabba fiha is-surveyor tas-socjeta intimata ikkonkluda li gherqet, kienet attwalment 'l fuq sew mill-livell tal-bahar u li tali bellow ma kienetx attwalment "water tight bellow" kif stqarr is-surveyor tas-socjeta intimata izda kien attwalment "grommet", li ma hijiex intiza sabiex tkun 'watertight' izda hija intiza sabiex jghaddu minn go fiha il-"cables" tal-fuel u tal-controls tal-mutur u ma jitqattghux bil-muviment mal-fiberglass.

Jirrizulta wkoll illi, skond is-surveyor tar-rikorrenti, "*a more realistic scenario in the opinion of the undersigned would see the boat dipping by the head in heavier seas with the water ingress increasing the boat's immersion and trim, triggering a chain of vents, including the seeping of water through the torn grommets, leading to the rapid loss of the boat.*"

Ikkunsidrat

Mill-provi prodotti, u partikolarment ix-xhieda ta' Lucienne Cini, jirrizulta illi s-socjeta intimata ma accettatx il-claim abbazi tal-fatt unikament illi r-rikorrent kien naqas illi jiehu hsieb id-dghajsa kif suppost u ma ssemmiet ebda raguni ohra lir-rikorrent, lanqas fix-xhieda quddiem dina l-Qorti.

Jirrizulta illi, skond il-kundizzjonijiet tal-polza ta' assikurazzjoni mogthija lir-rikorrent, partikolarment l-artikolu 4.A.1, dana jipprova illi l-assikurazzjoni ma tkunx obbligata illi thallas xi claim

> *"For any loss or damage caused by a failure to exercise due diligence to manage the vessel properly or to maintain her in a seaworthy condition whether such failure is yours, your professional skipper's or that of any other person appointed by you to manage the vessel"*

Jirrizulta illi skond l-artikolu 2.6 ta' l-itsess kundizzjonijiet,

> *"'Seaworthy' means well maintained and in good repair and adequately manned by competent crew and properly equipped and provisions and in all respects in a condition to withstand the ordinary action of wind and waves without sustaining damage"*

Jirrizulta mill-provi prodotti illi, dakinhar, ma kien kaz ta' "*ordinary action of wind and waves*" peress illi, kif stqarr Frank Grima, persuna indipendenti illi lanqas kien jaf illi d-dghajsa kienet tar-rikorrent meta raha teghreq, il-bahar beda jitqawwa f'daqqa u l-mewg tant kien kbir illi beda jirkeb id-dghajsa minn quddiem bhala rizutlat ta' "nose dipping" tad-dghajsa, u fi ftit hin, id-dghajsa gherqet. Ta min jghid ukoll illi ftit jiem wara, reggha kien hemm kaz iehor ta' mewg kbir illi kkawza hsarat ingenti gewwa Tas-Sliema.

Illi, in vista ta' tali xhieda, hija ferm aktar plawsibbli l-konkluzjoni milhuqa mis-surveyor tar-rikorrent, illi d-dghajsa ma gherqietx pricipalment minhabba it-toqba intiza ghal cables tal-mutur, izda gherqet principalment minhabba f'ingress ta' ilma minn quddiem id-dghajsa.

Illi apparti minn hekk, jirrizulta ben ippruvat illi l-konkluzjonijet milhuqa mis-surveyor tas-socjeta intimata huma bbazati fuq sitwazzjoni illi ra <u>wara</u> illi sehh l-incident u wara li d-dghajsa ittellghet minn qiegh il-bahar, meta bhala rizultat tal-garr tad-dghajsa, kif anke jidher fir-ritratti esebiti mis-surveyor tar-rikorrent, tali "grommet" setghet giet facilment mqatta rizutlat ta' hbula illi gew marbuta mal-cables illi jghaddu minn go tali "grommet" sabiex tittella d-dghajsa minn qieghd il-bahar.

In vista ta' tali konsiderazzjonijiet kollha, il-Qorti tqis illi l-konkluzjoni milhuqa mis-socjeta intimata illi ma jaccettawx it-talba tar-rikorrent assikurat taghhom abbazi tal-fatt illi d-dghajsa ma kienetx 'seaworthy', minhabba fi "grommets' difettuzi illi kellha fuqha ma humiex plawsibbli u korretti.

Ikkunsidrat

Mill-provi prodotti, jirrizulta illi filwaqt illi l-mutur ma kienx fi stat illi jkun riparat, kemm minhabba fil-hsarat visibbli illi jidhru kif ukoll minhabba fl-ingress ta' l-ilma fil-mutur, jirrizulta wkoll illi d-dghajsa innifisha baqghet intatta u ma soffriet ebda hsarat strutturali. Ghalhekk, stante illi d-dghajsa ser tibqa fil-pussess tar-rikorrent, ikun opportun illi dina l-Qorti takkorda lir-rikorrent biss l-ispejjez relatati mal-valur tal-mutur li ghereq mad-dghajsa, u dana skond il-valur tas-survyor imqabbad mir-rikorrent stess qabel ma assikura d-dghajsa mas-socjeta intimata sena qabel, jigifieri €4,194.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti

Wara illi semghet it-trattazzjoni ta’ l-abbli difensuri tal-partijiet

Tghaddi biex taqta’ u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha tas-socjeta intimata

Tilqa it-talbiet attrici limitatament fis-sens illi tillikkwida d-danni sofferti mir-rikrorenti u dovuti mis-socjeta intimata fis-somma ta’ erbat elef, mija u erbgha u disghin Euro (€4,194), rappresentanti l-valur tal-mutur Johnson 225 u ghalhekk

Tikkundana lill-istess socjeta intimata thallas lir-rikorrent is-somma ta’ erbat elef, mija u erbgha u disghin Euro (€4,194) flimkien ma’ l-ispejjez tat-tlugh tad-dghajsa ammontanti ghal erbgha mitt Euro (€400), l-ispejjez ghat-tindif tal-mutur ammontanti ghal mija u sebghin Euro (€170). L-ispejjez tas-surveyor tar-rikorrent, la darba ma giet ippresnetata ebda ricevuta, jibqghu a karigu tar-rikorrent.

Spejjez tal-ittra ufficjali u tal-proceduri odjerni ikunu kollha a karigu tas-socjeta intimata bl-imghax mid-data tas-sentenza sad-data tal-pagament effettiv

< Sentenza Finali >

--------------------------------TMIEM--------------------------------