

Qorti Civili, Prim'Awla

Imhalled Anthony Ellul

Rikors numru: 409/2013AE

**U-Boat Malta Limited**

**Vs**

**Boatcare Trading Limited**

L-Erbgha, 7 ta' Ottubru 2015.

Permezz ta' rikors gurantat prezentat fis-26 ta' April 2013, is-socjeta' attrici ppremettiet u talbet:-

*Illi s-socjeta' esponenti tat appalt lis-socjeta' intimata ghal diversi xogholijiet li kellhom jigu ezegwiti fuq il-bastiment MV U-Boat Navigator skond skeda miftiehma bejn il-partijiet datata 28 ta' Mejju 2012 (hawn anness u markata Dokument "A"), fuq liema appalt is-socjeta' esponenti hallset lis-socjeta' intimata bhala depozitu s-somma ta' erbghin elf ewro (€40,000);*

*Illi s-socjeta' intimata naqset li tadempixxi dan l-appalt fiz-zmien miftiehem jew skond il-ftehim u anke ghaddiet sabiex unilateralment tittermina l-appalt u tabbandanu x-xoghol;*

*Illi l-esekuzzjoni tal-imsemmi appal tsar hazing u mhux skond l-arti u s-sengha u dana skond ma jirrizulta mir-rapport imhejji mill-Kaptan Reuben Lanfranco, surveyor inkarigat mis-socjeta' esponenti, hawn anness u markat Dokument "B";*

*Illi konsegwenza ta' din l-inadempjenza da parti tas-socjeta' intimata, is-socjeta' esponenti ser tkun kostretta li tinkorri spejjez addizzjonali sabiex tirrimedja ghax-xoghol ezegwit hazin mis-socjeta' intimata fuq il-bastiment MV U-Boat Navigator;*

*Illi s-socjeta' intimata minkejja li giet debitament interpellata sabiex tirrifondi d-depozitu lilha mhallas u tikkumpensa lis-socjeta' esponenti ghad-danni minnha subiti konsegwenza tal-ezekuzzjoni mhux skond il-ftehim u mhux skond is-sengha u l-arti, is-socjeta' intimata baqghet inadempjenti.*

Ghaldaqstant, is-socjeta' attrici titlob ghar-ragunijiet premessi, lil din l-Onorabbli Qorti sabiex:

*(i) Tiddikjara li l-appalt moghti mis-socjeta' esponenti lis-socjeta' intimata giet terminat b'tort tas-socjeta' intimata;*

*(ii) Tiddikjara li l-ezekuzzjoni tal-appalt mis-socjeta' intimata ma sarx skond il-ftehim u/jew l-arti u s-sengha;*

*(iii) Tikkundanna lis-socjeta' intimata tirrestitwixxi u thallas lura s-somma ta' €40,000 mhallsa lilha mis-socjeta' esponenti bhala depozitu ghat-twettiq tal-imsemmi appalt flimkien mal-imghaxijiet legali mid-data tal-hlas tal-istess depozitu;*

(iv) Tiddeciedi li s-socjeta' intimata hija responsabbli ghad-danni minhabba abbandun u/jew inadempjenza u/jew minhabba li x-xogholijiet li ghalihom giet ikkummissjonata ma sarux skond il-ftehim u l-arti u s-sengha;

(v) Tillikwida d-danni sofferti mis-socjeta' esponenti anke bl-opera ta' periti nominandi;

(vi) Tikkundanna lis-socjeta' intimata thallas id-danni li jigu hekk likwidati lis-socjeta' esponenti.

Bl-ispejjez u bl-imghax legali skond il-ligi kontra s-socjeta' intimata li hija minn issa ingunta in subizzjoni.

Permezz ta' twegiba guramentata prezentata fl-24 ta' Mejju 2013, is-socjeta' konvenuta wiegbet:-

1. Illi t-talbiet tas-socjeta' attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjes;

2. Illi mhux minnu li s-socjeta' rikorrenti tat appalt lis-socjeta' intimata fir-rigward tax-xogholijiet mertu tal-kawza, u ghaldaqstant ir-rikors promotur huwa bla bazi kif jigu ppruvat waqt it-trattazzjoni tal-kawza;

3. Illi semmai, ir-relazzjoni bejn il-partijiet hija, jew ahjar kienet, regolata mill-provizjonijiet tal-Kodici Civili fuq il-mandat skont il-kuntratt datat 16 ta' Mejju 2012 (Anness bhala "Dok BT1") u kif jigi ppruvat f'aktar dettal waqt it-trattament tal-kawza;

4. Illi in esekuzzjoni tal-mandat lilha moghti u fuq struzzjonijiet tas-socjeta' attrici, is-socjeta' konvenuta talbet l-opinjoni ta' esperti terzi rigward in-natura ta' xogholijiet li kienu mehtiega abbord il-bastiment MV U-Boat Navigator, propjeta' tas-socjeta' attrici;

5. Illi l-opinjoni tal-imsemmija terzi giet trasmessa lir-rapprezentanti tas-socjeta' attrici fil-forma ta' elenku, anness bhala Dok A mar-rikors guramentat;

6. Illi r-rapprezentanti tas-socjeta' attrici qablu ma' l-opinjoni tal-imsemmija esperti terzi, ossia Jason Cachia ezercenti l-kummerc bl-isem CJ Marine Sercives u, wara li gew introdotti ma' l-istess Cachia, ghazlu li jqabbdh sabiex jezegwixxi x-xogholijiet minnu rakkomandati;

7. Illi inoltre', in-natura tax-xogholijiet mertu tal-kawza jaqaw barra mill-iskop tal-kuntratt tas-16 ta' Mejju 2012 bejn il-partijiet, u kienet proprju din ir-raguni ghal xiex is-socjeta' attrici kellha tqabbd terzi persuni biex jezegwixxu l-istess xogholijiet;

8. Illi fi kwalunkwe kaz u minghajr pregudizzju ghas-suecceptit, is-somma ta' erbghin elf Ewro (€40,000) li ghaliha taghmel referenza s-socjeta' attrici m'ghandha assolutament xejn x'taqsam mal-lista ta' xogholijiet elenkata f'Dok A anness mar-rikors guramentat u dan kif jigi ampjament ippruvat waqt it-trattament tal-kawza;

Il-qorti semghet il-provi u rat l-atti li jinkludu noti ta' sottomissjonijiet.

1. L-ilment tal-attrici jirrelata dwar xoghol li sar fuq il-bastiment MV U-Boat Navigator. F'din il-kawza l-attrici qeghda ssostni li s-socjeta' konvenuta ma wettqitx appalt skond is-sengha u l-arti u ghalhekk talbet ir-rifuzjoni ta' €40,000 li thallsu bhala depozitu u d-danni sabiex jittranga x-xoghol hazin. Min-naha taghha l-konvenuta qalet li qatt ma

nghatat appalt. L-attrici bbazat ir-rikors guramentat fuq rapport li ghamel il-Kaptan Reuben Lanfranco, surveyor *ex parte* li nkarigat sabiex jirrelata dwar ix-xogholijiet<sup>1</sup>.

2. Il-konvenuta pprezentat kuntratt datat 16 ta' Mejju 2012 fejn fih jinghad li s-socjeta konvenuta:-

*"... will perform on behalf of the owners the **overall maintenance and management of the motor sailing yacht**, beginning from 16<sup>th</sup> May 2012, in particular upon signing of this contract, Boatcare will:-*

- 1) Daily inspect the yacht when berthed in Malta.*
- 2) Due (recte, do) all contract negotiations with all yards and marinas that pertain to the yacht.*
- 3) **Organise and supervise all necessary repair work** by the suitable team of experienced technicians after thorough market search concerning the spare parts to be used, within the soonest possible time span and wherever the motor sailing yacht is located, anywhere within the Maltese waters.*
- 4) Boatcare conducts the co-ordination of all repair works, and payment of bills. The supervision is performed by experienced staff at all times....".*

Jirrizulta li bejn it-18 u 25 ta' Mejju 2012 l-attrici ddepozitat ghand il-konvenuta s-somma ta' €40,000. Fit-28 ta' Mejju 2012 il-konvenuta tat lill-attrici lista tax-xogholijiet li kien hemm bzonn li jsiru fuq il-bastiment U Boat (fol. 4). Jirrizulta li din il-lista kienet saret minn certu Jason Cachia ta' CJ Marine Services. Fis-seduta tal-24 ta' Gunju 2013 id-difensur tal-attrici ddikjarat:-

*"1. Il-kuntratt PB1 anness mar-risposta tal-24 ta' Mejju 2013 jirreferi ghall-manutenzjoni tad-dghajsa<sup>2</sup>.*

*2. Is-somma ta' Eur30,000 li tissemma fil-kuntratt tas-16 ta' Mejju 2012 qatt ma thallset ghaliex il-kuntratt qatt ma dahal fis-seh<sup>3</sup>. Ir-rapprezentanta tal-kumpannija attrici kkonfermat li l-ftehim kien gie ffirmat.*

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<sup>1</sup> Ara kopja tar-rapport a fol. 5.

<sup>2</sup> Qed tirreferi ghall-kuntratt datat 16 ta' Mejju 2012.

<sup>3</sup> F'dan ir-rigward Anastasia Budykho, direttur tas-socjeta attrici, xehedet: "A maintenance agreement was signed with Boatcare on 16 May 2012 and we paid to Boatcare the sum of €30,000 by means of a cheque (copy attached as Doc AB1)" (fol. 61). David Azzopardi, direttur tas-socjeta konvenuta, ikkonferma li c-cekk kien gie msarraff fit-18 ta' Mejju 2012 (fol. 106); "However Mrs Budykho asked me to return this amount as she preferred to pay from another account if I remember correctly. In fact, the €30K was returned in two transactions (due to transfer limits) on the 19<sup>th</sup> May 2012 (see BOV Debit Advice attached as Doc DA1)" [fol. 106]. Id-dokumenti li pprezenta David Azzopardi jikkonfermaw li fit-23 u 25 ta' Mejju 2012 sar dan il-hlas lill-attrici fl-istess kont li ghalih jirreferi c-cekk datat 18 ta' Mejju 2012 li kopja tieghu tinsab a fol. 65. Ghalhekk fir-realta' s-somma li nghatat lis-socjeta konvenuta kienet ta' €40,000.

*3.Ix-xoghol li l-attrici tallega li kellu jsir mill-konvenuta sar minn terzi kif ukoll xoghol sabiex jissewwa x-xoghol li l-attrici qeghda ssostni li ma sarx skond is-sengha u l-arti” (fol. 56).*

3. Jidher li x-xogholijiet li jissemmew fid-Dokument A a fol. 4 ma kienux parti mix-xoghol li l-konvenuta kellha taghmel skond il-kuntratt tas-16 ta’ Mejju 2012 (fol. 31) meta tqies li dak il-kuntratt kien *‘maintenance agreement’* filwaqt li x-xogholijiet li jissemmew fl-imsemmi dokument ma jistghux jigu kwalifikati bhala manutenzjoni. Punt li jidher li jaqblu dwaru z-zewg partijiet<sup>4</sup>.
4. Filwaqt li l-attrici argumentat li d-dokument A (fol. 4) kien appalt li nghata lill-konvenuta, min-naha l-ohra l-konvenuta argumentat li kull m’ghamlet kien li ntroduciat lis-sidien tal-bastiment ma’ Jason Cachia ta’ CJ Marine Services. Il-qorti hi tal-fehma li kien fatt maghruf li x-xoghol elenkat fid-dokument A (fol. 4) ma kienx ser isir mill-konvenuta imma minn Jason Cachia. Madankollu l-konvenuta xorta kellha tkun involuta fis-sens li torganizza u tissupervizjona x-xogholijiet<sup>5</sup>. Sahansitra d-dokument datat 28 ta’ Mejju 2012 gie printed fuq letter head tas-socjeta konvenuta. Fic-cirkostanzi l-qorti ma taqbilx mal-konvenuta li kienet biss mandatarja tas-socjeta attrici. Hi kienet responsabbli li tinkariga n-nies biex jaghmlu x-xoghol u taghti l-ordnijiet u taghmel is-surpervizjoni.

Il-qorti ma temminx li s-somma ta’ €40,000 thallset b’riferenza ghax-xoghol li jissemma fid-dokument a fol. 4 meta tqies li l-flus gew depozitati ghand il-konvenuta fi tlett darbiet: 18, 19 u 25 ta’ Mejju 2012 (fol. 37), filwaqt li l-attrici bbazat il-kawza fuq id-dokument datat 28 ta’ Mejju 2012. Dan fih innifsu jaghti lill-qorti x’tifhem li l-hlas ma sarx b’riferenza ghax-xoghol li jissemma f’dak id-dokument. Sahansitra lanqas m’hemm prova li x-xoghol elenkat fid-dokument a fol. 4 kien jiswa €40,000. Fuq il-bastiment saru xogholijiet li m’ghandhom x’jaqsmu xejn mal-imsemmi dokument u li l-konvenuta kellha kull dritt tithallas ghalihom. Fil-fatt mill-istima maghmula mill-Kaptan Lanfranco jirrizulta kif il-parti l-kbira tal-invoices li harget il-konvenuta m’humieq jigu kontestati.

5. L-involviment tal-konvenuta f’xogholijiet li saru fuq il-bastiment U Boat hu evidenti. Tant hu hekk li harget invoices (fol. 40-42 u 44-47) li

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<sup>4</sup> Il-konvenuta stess ikkonfermat dan ‘il fatt fil-paragrafu numru 7 tat-twegiba guramentata.

<sup>5</sup> F’email datata 11 ta’ Lulju 2012 li ntbaghatet mill-avukat ta’ fiducja tal-konvenuta lid-difensur tal-attrici, tikkonferma dan ‘il fatt (Dok. JG1 fol. 194): *“Boatcare’s responsibility in so far as works carried out by third parties are concerned were to **ensure that these works were carried out by professional third parties who were specialized for the job, and all of these jobs were also successfully completed**”*. Hekk ukoll fin-nota li pprezentat fit-18 ta’ Gunju 2013 qalet li fir-rigward tax-xoghol li jissemma fid-dokument datat 28 ta’ Mejju 2012 (fol. 4): *“... Ir-responsabbilta’ tas-socjeta konvenuta rigward l-imsemmija xogholijiet kienet limitatat ghall-koordinazzjoni u supervizjoni”* (fol. 54).

thallset ghalihom mis-somma ta' €40,000 li l-attrici ddepozitat ghandha. L-unici kontijiet li ma hargitx il-konvenuta huma dawk a fol. 39<sup>6</sup> u 43<sup>7</sup> li pero' thallas minn din is-somma li kienet giet depozitata ghand il-konvenuta.

Fl-istima li ghamel il-Kaptan Lanfranco, datata 6 ta' Awissu 2013 (fol. 100) hemm spjegat il-pretensjoni attrici. Id-dokument jaghmel riferenza ghal tlett kategoriji ta' xogholijiet:-

*"Category 1: This relates to the work carried out by Boat Care Limited in accordance with the abovementioned agreement dated 28<sup>th</sup> May 2012 and which works have been completed to the satisfaction of U-Boat Malta Ltd.*

*Category 2: This relates to the work carried out by Boat Care Limited in relation to the abovementioned agreement dated 28<sup>th</sup> May 2012 but which have not been completed to the satisfaction of U-Boat Malta Ltd.*

*Category 3: This relates to works carried out by Boat Care Limited which are not mentioned in the abovementioned agreement dated 28<sup>th</sup> May 2012.*

*Whilst U-Boat Malta Limited are not contesting the invoices for works listed in Category 1, they are contesting the invoices for works under Category 2 and also damages caused under Category 3, as these have not been carried out in accordance with the written agreement. Furthermore, the additional works carried out under Category 3 had actually deteriorated the condition of the vessel and U-Boat Malta Limited had to take the necessary corrective actions to rectify damages themselves and provide for overall improvements on the vessel" (fol. 100).*

Imbaghad ghadda biex elenka x-xogholijiet li l-attrici qeghda ssostni li ma sarux sew, b'total ta' **€10,664.30** u fir-rigward ta' liema l-attrici harget invoices. Rilevanti li jigi notat li l-ebda wiehed minn dawn l-invoices ma jirrelata ghax-xoghol elenkat fid-dokument datat 28 ta' Mejju 2012 (fol. 4), li l-attrici qeghda tirreferi ghalih bhala l-appalt.

L-invoices li gew kontestati huma 12-0302, 12-0304, 12-0308 u 12-0309. Il-qorti tosserva:

- i. Dwar il-kont **12-0302** (fol. 76), il-Kaptan Lanfranco qal:-  
*"There are doubts if this job had ever been carried out. It is also clear that the engines that the engines had not been tested or confirmed in order".* Fil-fehma tal-qorti dan m'huwiex bizzejjed biex il-qorti tikkonkludi li l-attrici ghandha ragun fuq dan l-ilment. Ghalkemm ix-xhud qal li dik il-konkluzjoni ghamilha minn

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<sup>6</sup> Kont ta' Buccanneer Boats datat 25 ta' Mejju 2012.

<sup>7</sup> Kont ta' Naval Architectural Services datat 9 ta' Gunju 2012.

kostatazzjonijiet li jkun ghamel waqt l-access, dan m'huwiex bizzejjed. Ix-xhud kellu jghid x'kienu 'l fatti li wasluh jaghti dik l-opinjoni. Minn dan m'hemm xejn u ghalhekk il-qorti tiskarta din l-opinjoni. Dan apparti li Robert Riolo, il-persuna li ghamlet dan ix-xoghol, xehed u kkonferma li x-xoghol sar u thallas mill-konvenuta (ara wkoll dokument RR1 a fol. 128).

- ii. Dwar l-ilment relatat max-xoghol ta' zebgha, mir-ritratti hu evidenti li dan ix-xoghol sar ta' **kaf kaf**<sup>8</sup>. L-ilment tal-attrici hu altru milli gustifikat. F'dan ir-rigward hu rilevanti dak li jinghad f'pagna 10 tar-rapport tal-Kaptan Lanfranco (fol. 15). Christopher Dunn xehed li kien ghamel zmien jahdem ghall-konvenuta. Gie zmien fejn tqabbd direttament mill-attrici; *"When I was employed with U-Boat the whole boat was stripped down by many people including myself. I was simply a worker on the boat. We were doing different works. However, we also did paintwork. The whole boat was stripped. Everything stated from afresh"* (fol. 201). Ghalhekk jidher li tnehha x-xoghol ta' zebgha li ghamlet il-konvenuta.

Fil-kont numru **12-0304** (fol. 45) jissemma hlas dovut ghal *Engineer supervision May 2012, Man-hours for 3 weeks in May, u Paints*. Ghalkemm David Azzopardi xehed li: *"... I engaged the services of Mr Chris Dunn, an experienced engineer, whose services I had availed of before, for the specific function of checking and supervisig works on this boat"*, mid-deposizzjoni stess ta' Dunn jirrizulta li fuq il-bastiment ma kienx qieghed jaghmel xoghol ta' supervizjoni<sup>9</sup>. Fir-rigward tal-hlas ta' €2,584 ghal *manpower used for 3 weeks in May*. Ix-xoghol ta' zebgha m'huwiex skond is-sengha u l-arti u l-ebda hlas mhu dovut. Ovvjament dan japplika wkoll ghaz-zebgha li nxtrat. Ghalhekk dawn il-flus support iridu jithallsu lura lill-attrici, fl-ammont ta' **€5,004**.

- iii. Fir-rigward tal-kont **12-0308** (fol. 71), fir-rapport tal-Kaptan Lanfranco jinghad: *"Further works from a previous job carried out on the radar/radio mast (Photo 33) through Boatcare Ltd have also not been completed as some of the wiring still requires to be connected. A distribution box inside one of the mast arches (Photo 34) was manufactured to connect the old wiring (in white) with the new wiring (in black). The labelling system on the new wiring is also unsatisfactory as this has been handwritten on electrician's tape which will very shortly wear*

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<sup>8</sup> Ara ritratti 6 sa 13 u 23 sa 28 fir-rapport tal-Kaptan Lanfranco.

<sup>9</sup> *"I confirm that my role was not supervisory. I was simply executing the work which Mr Azzopardi requested me to do. My job as I have stated was cleaning and painting..... I am not aware who the person who was taking care of the supervision of the works, was"* (fol. 200).

*out and flake off, making it difficult to identify wires for their respective purpose*" (fol. 170). Il-qorti ma tifhimx kif il-Kaptan Lanfranco saħansitra naqqas il-hlas relatat max-xiri tal-parts<sup>10</sup>. Imkien ma qal li l-parts li ntuzaw kienu hziena jew kien hemm bzonn li jinbidlu. Dwar il-wiring, fil-kont jinghad: "*Antennas connections are not yet finished and their labour is not included in the invoice price*" (fol. 71). Il-qorti tqies li ma setax kien hemm iktar mis-somma ta' mija u hamsin ewro (€150) li jirrelata għal *labelling ta' wires*.

iv. L-attrici tikkontesta wkoll l-kont numru **12-0309** (fol. 40) in kwantu dan jirrelata għax-xiri ta' zebgħa. Il-qorti fehemet li:

- (a) l-items 'Penguard' jirreferu għax-xiri taz-zebgħa.
- (b) din iz-zebgħa nxtrat fir-rigward tax-xogħol li jissemma f'dawk l-invoice, b'mod partikolari r-radar.

Mir-rapport tal-Kaptan Lanfranco ma jirrizultax li x-xogħol fuq ir-radar sar hazin. Għalhekk m'hemm l-ebda rifuzjoni dovuta fuq dan ix-xogħol.

Il-problema hi li fejn il-qorti rriskontrat nuqqasijiet, id-dokument tat-28 ta' Mejju 2012<sup>11</sup> m'għandu x'jaqsam xejn. Għalhekk il-qorti ma tistax tikkundanna lill-konvenuta sabiex thallas lura l-flus fuq imsemmija.

6. It-tieni parti tal-istima tal-Kaptan Lanfranco titratta xogħol li kellu jsir:

*"..... to rectify and/or correct the damage caused by Boat Care Limited. Reference to the damage cause may also be found in the Post Works Inspection Survey report exhibited in Court as Document B"* (fol. 101), b'total ta' €6,575. Dan kien jinkludi:-

a) **Mast** – *Incomplete wiring and cabling jobs - €1,200.*

Xogħol li wkoll ma kellu x'jaqsam xejn mad-dokument A (fol. 4). Fil-fatt jissemma fl-ahhar parti tar-rapport tal-Kaptan Lanfranco bhala *"... from a previous job carried out on the radar/radio mast (Photo 33) through Boatcare Ltd....."* (fol. 170). Pero' fir-rapport in-nuqqasijiet jirrelataw dwar *labelling* u li kien għad irid isir xi *wiring*. Pero' l-attrici ma tat l-ebda prova li dahlet f'xi spejjez zejda. Il-qorti tfakkar li fir-rikors guramentat l-attrici qalet li x-xogħol sar hazin u mhux skond is-sengħa u l-arti u li minhabba f'hekk kellha *"...tinkorri spejjez addizzjonali sabiex tirrimedja għax-xogħol ezegwit hazin mis-socjeta intimata fuq il-bastiment MV U-Boat Navigator"* (fol. 1). Il-qorti tosserva:-

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<sup>11</sup> Li fuqu s-socjeta attrici bbazat il-kawza.

- Ix-xoghol fuq il-mast ma jirrizultax li kien parti mix-xogholijiet li jissemmew fid-dokument datat 28 ta' Mejju 2012 (fol. 4);
- M'hemmx prova li f'dan ir-rigward l-attrici nkorriet spejjez addizzjonali;

b) **Pump Room** - *Re-instatement of flexible piping and correction of leakages* - €350.

Il-qorti ma tqiesx li dan l-ammont hu gustifikat gialadarba ma giex spjegat b'mod car x'ghandha taqşam mieghu l-konvenuta.

c) **Medical Room** – *Removal and installation of piping systems to adequate standards* - €1,250.

Jirrizulta li dan ix-xoghol sar minn Jason Cachia li originarjament kien hareg kont ta' €6,194 (fol. 146) lill-attrici. Kont li hu ndirizzat lil Anastasia Budykho, li hi d-direttur tas-socjeta attrici. Jirrizulta kif Jason Cachia ta' CJ Marines kien talab il-hlas direttament minghand l-attrici. Karina Ayrapetyan, kontrollur finanzjarju tal-attrici, qalet li CJ Marines kienet talbet il-hlas ghax-xoghol li ghamlet; "*Ahna spjegajnilhom li ma kienx possibbli li ahna naghmlu xi pagament ghax ix-xogholijiet ma kienux sodisfacenti. L-iktar ghidnilhom li nistghu nikkunsidraw li nhallsu u nkoprulhom l-ispejjez tal-materjal li jista' jerga' jintuza ghax-xogholijiet*" (fol. 144). Fatti li lill-qorti jindikawlha li kien hemm relazzjoni diretta bejn Cachia u l-attrici.

Wara li l-konvenuta harget mix-xena, f'liema stadju jidher li Cachia kien ghadu ma lestiex ix-xoghol kollu<sup>12</sup>, kompla bix-xogholijiet u l-kont (KA1, fol. 146) thassar u nhareg kont gdid ghas-somma ta' €3,072 (fol. 147) li thallas mill-attrici. Ghalhekk ukoll jekk sar xi xoghol hazin, il-qorti ma tifhmix x'dannu setghet sofriet l-attrici. L-oneru tal-prova kien fuq l-attrici. Irrizulta li l-ammont li spiccat thallas l-attrici kien inqas minn dak li ntabab bl-ewwel kont. F'dan ix-xenarju l-qorti m'hijieq sodisfatta li l-pretensjoni tal-attrici hi gustifikata.

Fil-kumpliment ta' din il-parti tal-istima hemm xoghol relatat maz-zebgha li wkoll ma kienx parti mix-xoghol li kellu jsir skond id-dokument datat 28 ta' Mejju 2012. Fl-istima tal-Kaptan Lanfranco jinghad:

*Tender Crane – renewal of hydraulic pipes, re-sanding and painting of the crane unit* - € 975;

<sup>12</sup> Fir-rapport tal-Kaptan Lanfranco jinghad: "*Boatcare only replaced some of the old pipes with new pipes but this did not resolve the problem of sewage leakage as this is still present on the deck (Photo 21) of the medical room, which ideally should serve as a sanitised area. Works carried out therefore, are unsatisfactory*". Pero' mid-deposizzjoni ta' Jason Cachia jirrizulta li meta l-konvenuta harget mix-xena x-xoghol kien ghadu ma tlestiex.



*Engine Room – Cleaning preparation and re-painting of the engine room - €1,600;*  
*Bulwark main deck – Starboard side bulwark cleaning, de-oxidisation and coating/paint - €1,200;*

Mill-provi ma rrizultax xi hlas ghamlet l-attrici sabiex tnehha x-xoghol ta' zebgha li ghamlet il-konvenuta u regghet giet applikata z-zebgha. Permezz tal-Kaptan Lanfranco, tat prova li x-xoghol taz-zebgha ma sarx skond is-sengha u l-arti. Chris Dunn ikkonferma li x-xoghol taz-zebgha li kien sar fuq il-bastiment fi zmien li kien jahdem ghall-konvenuta, kien tnehha wara li l-konvenuta ma baqghetx involuta fil-progett; *"Therefore the paintwork that was carried out by Boatcare, that is the paintwork, was done again"* (fol. 201). Ma jirrizultax xi hlas ghamlet l-attrici sabiex il-partijiet differenti tal-bastiment regghu nzebghu.

7. Minkejja dak li nghad hawn fuq, il-problema hi li l-attrici bbazat il-kawza fuq ix-xogholijiet li jissemmew fid-dokument tat-28 ta' Mejju 2012 (fol. 4). Dwar dan il-qorti tosserva li:-
  - i. Il-qorti diga' kkonkludiet li fil-fehma taghha d-depozitu ta' €40,000 ma kienx thallas ghax-xogholijiet li jissemmew f'dak id-dokument. Flus li ntuzaw ghal xoghol iehor. Il-bilanc li kien fadal<sup>13</sup> wara li l-konvenuta ma baqghetx involuta, thallas lura lill-attrici.
  - ii. Fir-rigward tax-xogholijiet li jissemmew f'dak id-dokument, ix-xogholijiet ma kellhomx isiru mill-konvenuta. Fil-fehma tal-qorti l-obbligu taghha kien li tingagga lill-kuntratturi u taghmel supervizjoni waqt li ghaddej ix-xoghol.
  - iii. Mill-istima li ghmel il-Kaptan Lanfranco hu evidenti li l-ilmenti tal-attrici jirrelataw principalment ghal xoghol li m'ghandu x'jaqsam xejn mal-imsemmi dokument. Hekk per ezempju x-xoghol relatat maz-zebgha u *service fuq magni* li m'humieq oggett tad-dokument datat 28 ta' Mejju 2012 (fol. 4).
  - iv. Hu veru li gie zmien meta l-konvenuta ghazlet li ma tibqax involuta fix-xoghol li jissemma fid-dokument a fol. 4. Pero' mill-provi l-qorti hi sodisfatta li s-sitwazzjoni ma kienet xejn felici, b'indhil mhux floku ta' persuna li kien ighix abbord tal-bastiment li jidher li l-professjoni tieghu kienet ta' tabib<sup>14</sup>. Anzi rrizulta wkoll kif l-attrici ma kienet xejn kuntenta bil-kwalita ta' xoghol li sar fuq il-bastiment tant li m'hemmx provi li pprovat tibqa' tinqeda bis-servizzi tas-socjeta konvenuta.

<sup>13</sup> €7,642.31 (fol. 38). Anastasia Budyko xehedet: *"The only amount received was €7,642.31 on 14 June 2012"* (fol. 63).

<sup>14</sup> Dwar din il-persuna Christopher Dunn xehed: *"From what I could see, the doctor had very little marine knowledge. He was present every day on the boat and he insisted that he had this knowledge"* (fol. 202).

- v. F'kull kaz lanqas ma jirrizulta li l-attrici ghamlet xi spejjez addizzjonali minhabba 'l fatt li ma komplietx taqdi d-dmirijiet taghha fir-rigward tax-xogholijiet li jissemew fid-dokument datat 28 ta' Mejju 2012 (fol. 4).
- vi. Id-decizjoni tal-qorti trid tkun bazata fuq l-ilment tal-attrici kif propost fir-rikors guramentat u mhux xi ragunijiet ohra li rrizultaw mill-provi izda li ma jissemewx fir-rikors guramentat.

**Ghaldaqstant filwaqt li l-qorti tiddikjara li ma taqbilx ma' dak li ddikjarat il-konvenuta fit-twegiba guramentata li, bhala mandatarja, kienet biss introduciet lill-attrici ma' Jason Cachia ta' CJ Marine Services sabiex jaghmel xogholijiet fuq il-bastiment MV U-Boat Navigator<sup>15</sup>, ghar-ragunijiet moghtija hawn fuq tichad it-talbiet attrici. Salv u mpregudikat id-drittijiet tal-attrici fir-rigward tax-xogholijiet li ssemew hawn fuq li pero' ma kienux oggett tad-dokument datat 28 ta' Mejju 2012 (Dok. A, fol. 4) u ghalhekk mhux meritu tal-kawza deciza b'din is-sentenza. Spejjez a karigu tas-socjeta attrici.**

Anthony Ellul.

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<sup>15</sup> Ara paragrafi tnejn (2) sa sitta (6) tat-twegiba.