



QORTI ĊIVILI PRIM'AWLA
IMHALLEF
ONOR. JOSEPH AZZOPARDI LL.D.

Illum il-Erbgha, 28 ta' Ottubru 2015

Kawza Nru: 12

Ċitazzjoni Nru: 2394 / 00/ 1 JA

Amino Chemicals Limited

-vs-

**Cin & Tex Lift Limited, Rolando
Cusimano u l-Inġinier Paul Borg**

Il-Qorti,

Rat iċ-ċitazzjoni pprezentata fit-3 ta' Novembru 2000 li permezz tagħha s-soċjeta' attriċi ppremettiet:

Illi l-atturi Amino Chemicals Limited talbu lid-ditta konvenuta tistalla "*cargo lift*" fil-bini tal-istess atturi fil-Marsa u fil-fatt sar kuntratt bejn l-atturi u CIN & TEX Lift Limited datat 7 ta' Jannar 2000 (dan qed jiġi anness bhala 'Dok 1'). Dan il-*cargo lift* ġie stallat bejn tmiem Marzu u Lulju tas-sena elfejn minn Rolando Cusimano personalment ta' CIN & Tex Lift Limited u

gie ċertifikat bhala funzjonanti tajjeb fis-7 ta' Lulju 2000 mill-Inginier Paul Borg il-konvenut l-iehor Dok '2a' u '2b'.

Illi d-ditta attriċi kienet obbligata thallas lid-ditta konvenuta bil-mod segwenti: 20% mill-prezz fuq l-ordni, 20% oħra meta il-mekkanizmu tal-lift jiġi konsenjat, 20% oħra meta jsiru l-provi bil-lift vojti, u 40% sittin jum wara li l-inginier jiċċertifika l-lift bhala tajjeb. A bażi ta' dan l-atturi ħallsu lid-ditta konvenuta Lm1,178.00 fis-7 ta' Jannar 2000, Lm1,178.00 fid-9 ta' Frar 2000, Lm1,170 fit-3 ta' April 2000 u minflok l-aħħar 40% l-atturi ħallsu Lm1,500 fid-19 ta' April 2000. B'kollox hekk gie li l-atturi ħallsu lid-ditta konvenuta Lm6,226.00.

Illi Paul Borg għamel rapport datat 25 ta' April 2000 fejn kien issuġġerixxa li jsiru ċerti alterazzjonijiet minimi li ma kienux ifixklu il-ħidma tal-lift. Dawn kienu saru sas-7 ta' Lulju 2000 meta l-istess Paul Borg iffirma li dawn id-difetti kienu ġew rattifikati. Hu ċċertifika l-lift bhala tajjeb għall-użu kummerċjali meta fil-fatt jidher li ma kienx;

Illi l-imsemmi pero' qatt ma ħadem sew u Rolando Cusimano kellu jissejjaħ u jingieb diversi drabi għal tiswijiet. Fit-18 ta' Awissu 2000 il-lift ċeda u waqa' tlett metri u nofs b'piż ta' ċirka 585 kilo meta suppost huwa ċertifikat li jista' jgħabbi 2000 kilo. Irrizulta li l-lift fil-fatt ma kienx gie mqieghed skond l-arti u s-sengħa u / jew skond il-professjoni. Paul Borg wara l-incident għamel spezzjoni oħra u sab li kien hemm xi "brakes" neqsin liema *brakes*, kieku kienu hemm, kienu jimblokkaw il-waqa' – dawn il-*brakes* suppost skond l-Inginier Borg kienu hemm qabel. Pero' l-unika persuna li ħadmet fuq il-lift għal ħafna drabi anke wara li kien ċertifikat minn Borg kien l-istess Cusimano.

Illi l-mittenti qabbd u Inginier ieħor Paul Cardona li sab li l-lift fil-fatt ma kienx imqieghed skond l-arti u s-sengħa u l-professjoni u anzi sab li kien fih għadd ta' difetti, inkluż difetti fil-*welding*, ċjoe' fl-istruttura tiegħu. Hu sab ukoll li l-istruttura tal-lift ma kenitx tajba (Rapport 'Dok 3').

Illi minhabba f'dan kollu l-atturi sofrew danni kbar u għadhom qegħdin isofru dawn id-danni. Għaldaqstant l-atturi nterpellaw lill-konvenuti permezz ta' ittra uffiċjali datata 3 ta' Ottubru 2000 sabiex fi żmien jumejn jersqu għall-likwidazzjoni u hlas ta' danni kawżati lill-atturi minhabba f'dak kollu hawn fuq indikat.

Illi l-konvenuti baqgħu inadempjenti.

Illi x-xogħol kollu sar minn Rolando Cusimano personalment u kien l-istess Cusimano li wettaq l-iżbalji li kkawżaw l-incident – Rolando Cusimano kien negligenti f'xogħlu u ma hadimx skond l-arti u s-sengħa;

Jgħidu l-konvenuti għaliex dina l-Qorti m'għandhiex:

1. Previa kull dikjarazzjoni li tkun neċessarja tiddikjara li l-*"cargo lift"* stallat fil-proprjeta' tad-ditta attriċi fih difetti u ma giex stallat skond l-arti u s-sengħa u tiddikjara li għal dan jahtu l-konvenuti jew min minnhom *stante* li ma wettqux xogħolhom skond l-arti, sengħa jew professjoni u / jew wettqu xogħolhom b'negligenza jew b'nuqqas ta' tharis ta' dak li titlob is-sengħa tagħhom;
2. Tiddikjara li l-*cargo lift* mibjugħ, konsenjat u istallat għand l-atturi kien fih difetti u / jew hsarat li jagħmluh inidoneju għax-xogħol li għalih huwa intiz;
3. Tordna lill-konvenuti jew min minnhom sabiex a spejjeż tagħhom u fi żmien qasir u perentorju fissat minn dina l-Qorti u taht id-direzzjoni u istruzzjoni ta' espert mahtur mill-Qorti jsewwu l-*cargo lift* istallat mid-ditta konvenuta sabiex ikun jista' jaħdem tajjeb u skond il-speċifikazzjonijiet imwegħda;

4. Fin-nuqqas tawtorizza li dan il-*cargo lift* jissewwa mill-atturi taht id-direzzjoni u istruzzjoni ta' espert mahtur mill-Qorti u a spejjez tal-konvenuti jew minn minnhom;
5. F'kaz li dak mitlub fit-tielet u raba' talba ma jistax jitwettaq b'mod sodisfaçenti tordna lid-ditta konvenuta thallas lura lill-atturi l-ammont ta' sitt elef mitejn u sitta u ghoxrin lira Maltin (Lm6,226) bl-interessi kummerçjali mid-data tal-hlas (çjoe' fuq Lm1,178.00 mis-7 ta' Jannar 2000, fuq Lm1,178.00 ohra mid-9 ta' Frar 2000, fuq Lm1,170 mit-3 ta' April 2000 u fuq Lm1,500 mid-19 ta' April 2000 il-koll sal-hlas-effertiv u a spejjez taghha jew tal-konvenuti jew min minnhom u taht id-direzzjoni ta' perit nominandi, fi zmien qasir u perentorju fissat minn din l-Qorti tnehhi u tiehu lura l-lift istallat u fin-nuqqas tawtorizza li dan il-*cargo lift* jitnehha mill-atturi taht id-direzzjoni u istruzzjoni ta' espert mahtur mill-Qorti u a spejjez tal-konvenuti jew minn minnhom; u dan kollu minghajr preçudizzju ghat-talbiet li jsegwu.
6. Tiddikjara lill-konvenuti kollha jew min minnhom responsabbli ta' negligenza fit-twettieq ta' xogholhom u / jew lid-ditta konvenuta ta' inadempjenza tal-obbligu li tikkonsenja u tistalla *cargo lift* li jiffunzjona tajjeb u skond is-sengha;
7. Tillikwida d-danni sofferti mill-atturi minhabba l-inadempjenza tal-konvenuti jew min minnhom u minhabba d-difetti tal-lift u tal-operazzjoni shiha tal-istallar tieghu;
8. Tordna u tikkundanna lill-konvenuti f'daqqa *in solidum* jew min minnhom sabiex ihallsu lill-atturi dawk id-danni kif likwidati fis-seba' talba;

Bl-ispejjez inkluzi dawk tal-ittra ufficjali datata. U bl-interessi.

Il-konvenuti minn issa ngunti biex jidhru għas-subizzjoni.

Rat id-dikjarazzjoni maħlufa tas-soċjeta' attriċi u l-lista tax-xhieda.

Rat in-nota ta' eccezzjonijiet ippreżentata mill-konvenut Paul Borg fil-15 ta' Marzu 2001 fejn eċċepixxa:

1. Illi t-talbiet attriċi fil-konfront tiegħu huma nfondati fil-fatt u fid-dritt u għandhom jiġu miċħuda *stante* illi huwa dejjem aġixxa skond is-sengħa u l-arti u bl-ebda mod ma kien traskurat jew negligenti meta huwa kien ġie mqabbad mill-konvenuti l-oħra sabiex jiċċertifika l-*cargo lift* mertu ta' din il-kawża. Għaldaqstant huwa ma huwa bl-ebda mod responsabbli għall-ħsarat li ġraw fl-istess lift.

Salv eċċezzjonijiet ulterjuri.

Rat id-dikjarazzjoni maħlufa tal-konvenut Paul Borg u l-lista tax-xhieda.

Rat illi s-soċjeta' konvenuta u l-konvenut Cusimano ma ppreżentawx nota tal-eċċezzjonijiet u allura huma kontumaċċi skond il-liġi;

Rat ir-rapport tal-espert tekniku Michael A. Vella a fol 263 u tal-perit legali jassistih l-Avukat Dottor Vincent Galea (fol 282), appożitament nominati mill-Qorti permezz tad-digriet tat-19 ta' Jannar 2004, liema rapporti ġew debitament maħlufin fit-12 u fl-20 ta' Mejju 2015 rispettivament;

Rat l-affidavits u l-verbali li saru mill-imsemmija esperti;

Rat l-atti proċesswali nkluż il-verbal tas-seduta tal-1 ta' Lulju 2015 fejn il-kawża tħalliet għas-sentenza;

Ikkunsidrat:

Illi din hija azzjoni bbażata fuq il-kuntratt ta' appalt bejn il-partijiet. Is-soċjeta' attriċi kienet infatti ordnat l-istallazzjoni tal-lift imsemmi mingħand is-soċjeta' konvenuta u in segwitu skond l-istess soċjeta' attriċi seħhew il-fatti ndikati fiċ-ċitazzjoni.

Illi l-perit tekniku wasal għal dawn il-konklużjonijiet kif riportati fir-rapport tiegħu (a fol 274):

RESPONSIBILITY

a) Ing. Paul Borg:

- 1. While the basic requirements of L.N.48/1964 were duly observed in conducting the inspection, the prior experience quoted by Ing. Borg through employment with a lift installation company and through having followed a familiarisation course with a lift producer overseas should have alerted him to the need of assuring the presence of the three safety elements pertaining specifically to hydraulic operated lifts as referred to in Page 3 section 3 above. These elements seem not to have been addressed at all, particularly in regard to the presence and calibration of the pressure relief valve.*
- 2. That valve is ordinarily tested by placing on the lift platform the rated load, in this case 2000kg, plus 20% overload, at which point the relief valve should come into play and the platform would not move. Had that test been conducted any deficiency would have been brought to light and the incident possibly averted. That load test would also have physically confirmed the 2000kg capacity rating as certified.*
- 3. Failure, or incorrect calibration, of the relief valve was a direct contributory factor to the incident.*

b) Amino Chemicals Ltd:

- 1. The apparently blind faith which Amino Chemicals seem to have had in Ronaldo Cusimano at all stages of this affair, as well as their failure to call Cusimano to order despite the*

repeated lift malfunction, and to keep records of the events is at least an indirect contributory factor to the incident. Closer observation by Amino Chemicals of the happenings could have led to Ing. Borg being called in, and / or remedial action taken to prevent the occurrence.

c) Rolando Cusimano

- 1. Whether acting on behalf of Texarco Ltd, Cin & Tex lifts Ltd, or personally, it is clear that Rolando Cusimano had carried out works and modifications to the lift without the knowledge or approval of Ing. Paul Borg after the lift had been inspected and certified by the latter. At least one of the modifications, namely, the modification of the guide shoe assembly by insertion of a jubilee clip is seen to be the direct cause of the initial blockage of movement of the lift platform and of the resultant failure of the brake mechanism once the hoist ropes were pulled away from their fixing points. Had the excessive play between the lift platform on its guide rails been properly remedied, that is by correcting the difference in distance between the guide rails and / or possibly using shim washers on the guide shoe assembly to refine the adjustment, the incident need not have occurred.*

SUMMARY - PERCENTAGE RESPONSIBILITY

- i. Upward movement of the lift car was constricted by the introduction of a 'jubilee' type hose clip between the car sling frame and the car guide shoe, effectively increasing the overall distance between the car guide shoes and eliminating the free running space that originally existed between the car guide shoes and the guide rails and which space compensated for the 7mm reduction in distance between guide rails at upper end of car travel.*
- ii. This modification was carried out by Rolando Cusimano after the lift had been inspected and commissioned by Ing. Paul Borg and shortly before the incident occurred.*
- iii. The oil pressure relief valve did not come into play, causing increasing stress on the lift hoist ropes. Proprietary hydraulic machinery normally includes a pressure relief system as part of its design. It is the*

responsibility of the installer to ensure the presence of that device and its calibration to avoid excessive stress on equipment used in the rest of the installation. Rolando Cusimano evidently failed to take the necessary action before the lift was put to use.

- iv. Ing. Paul Borg conducted test runs using 'typical 680kg load', but did not conduct any overload tests in regard to the function of the pressure relief valve. In that regard, it also cannot be excluded that Rolando Cusimano might have modified the setting on the pressure relief after the lift was commissioned by Ing. Borg and in a bid to overcome upward car movement resistance following the 'jubilee clip' modification.*
- v. The hoist ropes snapped or were tom from their anchoring points under excessive hydraulic pressure causing the car to drop and springing away from the guide rails the yoke guiding the upper end of the ram.*
- vi. At this juncture, the car downward over speed brake should have come into play. This safety brake mechanism was said to have functioned normally when tested by Ing. Paul Borg at time the lift was commissioned.*
- vii. Following the modification to the car guide shoe mounting [See (i) above] the car over speed brake on that side was physically disconnected from the guide rail and so rendered useless, thus leaving the brake components on the other side of the car to cope with the full forces imposed by the free drop of the loaded car. The over speed brake on the other side of the car did come into play at time of the incident, but the brake rollers fractured under the additional forces imposed by the absence of the corresponding brake mechanism on the other side of the car frame.*
- viii. Failure of the over speed brake resulted directly from the 'jubilee clip' modification by Rolando Cusimano to the car guide shoe and over speed brake mechanism.*

DEGREE OF RESPONSIBILITY

1) Amino Chemicals Ltd [ACL]

- i. ACL acted in accordance with accepted parameters up to the point of commissioning of the lift by Ing. Paul Borg. Thereafter, however, ACL had direct responsibility for ensuring the proper functioning of the lift, both for the safety of its employees and in order to avoid mechanical breakdowns. It does not appear that such procedures were in place in regard to the lift in the lead up to the incident. ACL was unable to present any records or information as to the nature of the faults in the lift, or of remedial action taken by Rolando Cusimano.*
- ii. Though maintenance and repair of machinery may be entrusted to a person deemed to be competent in the field, that action does not relieve the owner of the machinery from the responsibility of overseeing the actions of the person so entrusted and from requiring regular reports on the condition of the machinery and on the works conducted thereon.*
- iii. The existence of even a maintenance / repair call log card periodically reviewed by the competent person within ACL could have flagged up a deteriorating situation and also possibly served as a deterrent to the resort of unsafe practices by Cusimano. The absence of an established reporting procedure effectively allowed Rolando Cusimano a free hand in modifying the lift components without his actions in any way being overseen by the lift owners.*
- iv. Though that situation could have contributed to the incident, even if indirectly, in the absence of formal maintenance / repair records, the degree of responsibility of ACL in regard to that incident cannot be quantified.*

2) Ing. Paul Borg

- a) The procedure followed by Ing. Paul Borg at time the lift was commissioned was deficient in that, though the installation was certified to transport 2000kg, the lift was*

only tested with a 680kg load and no overload test was conducted to verify function of the related safety device/s.

- b) *Evidence presented on events subsequent to certification of the lift by Ing. Paul Borg however shows:*
- i. *The risk resulting from overloading of the lift in the normal course of work was minimised since the typical load was equivalent to, or less than, the test load.*
 - ii. *The cause of the incident was not attributable in any way to overloading of the lift car, but was the direct result of deliberate modification by Ronaldo Cusimano of one of the car guide shoe mountings in a way that eliminated all free play between the car guide shoes and the guide rails, and so severely constricting movement of the lift car, while also physically detaching the safety brake mechanism on that side of the lift car from its guide rail.*
 - iii. *After the lift was commissioned and put to use, and right up to the date of the incident, ACL called on Rolando Cusimano on a number of occasions to deal with lift stoppage or other malfunction and that said Cusimano effected repairs and modifications to the lift. Ing. Paul Borg was never notified or at any time made aware of these works.*
 - iv. *The contributory factors to the incident were, sequentially: the modification to the car guide shoe mounting and concurrently the neutralisation of the car safety brake; the oil pressure relief valve not coming into play; the subsequent operational failure of the car safety brake.*
 - v. *The first and the last contributory factors resulted directly from the deliberate actions by Rolando Cusimano after the lift was commissioned by Ing. Paul Borg, and without informing the latter.*
 - vi. *The failure of the oil pressure relief valve to come into play was spanned by the consequences of the modification*

made to the car guide shoe and brake assembly by Rolando Cusimano.

- vii. Although the oil pressure relief valve was not tested by Ing. Paul Borg at time of lift commissioning, it also cannot be excluded that Rolando Cusimano may have tampered with or modified the calibration of the oil pressure relief valve, possibly in a bid to overcome resistance to the free movement of the lift car brought about by his modification to the car guide shoe mounting.*
- viii. Responsibility for the incident under review cannot thus be attributed to Ing. Paul Borg.*

3) Rolando Cusimano

- a) Rolando Cusimano acted deliberately and, so far as can be seen, without informing the competent person within ACL of the works so effected, by modifying the car guide shoe mounting in a way that caused the lift car to jam on its upward run, and concurrently neutralising the safety brake mechanism on one side of the car rendering the remaining half of the brake unable to cater for the loads imposed by the dropping, loaded, car.*
- b) Resultant from the above modifications, Rolando Cusimano is seen as being fully responsible for cause of the incident and so for the consequent damage.*

Illi kif jidher minn din ir-relazzjoni, il-perit tekniku eżonera lill-konvenut Borg minn kull responsabbilta' u filwaqt li kkonkluda li s-soċjeta' attriċi tat wisq spazju lill-konvenut Cusimano biex ibiddel il-komponenti tal-lift, qal illi ma setax jikkwantifika l-kontributorjeta' tagħha f'dan is-sens; qal li din il-persuna ma kinitx kompetenti biex tagħmel dan ix-xogħol .

Illi l-Qorti ma għandha ebda dubju li kwantu għal kwistjoni teknika hija għandha taddotta l-opinjoni tal-espert nominata minnha għaliex kif intqal fil-kawża **“Giswarda Bugeja vs Emanuele Muscat et”** (23 ta' Gunju 1967) *għalkemm il-Qorti*

*mhux marbuta li taċċetta l-konklużjonijiet peritali kontra l-konvinzjonijiet tagħha nnifisha, u l-konklużjonijiet peritali bħal materjali istruttorji oħrajn kontrollabbli mill-ġudikant, madankollu 'il giudizio del' arte' espress mit-tekniku ma jistgħux u ma għandux, aktar u aktar fejn il-parti interessata ma tkunx ipprevaliet ruħha mill-fakolta' lilha mogħitja b'talba ta' nomina ta' periti addizzjonali, jiġi skartat faċilment, ammenokke' ma jkunx jidher sodisfaċentement illi l-konklużjonijiet peritali huma fil-kumpless kollu taċ-ċirkostanzi irragonevoli. Bl-istess mod il-Qorti (Prim Awla) ippronunzjat ruħha fil-kawża fl-ismijiet “**Josephine Micallef vs Louis Zammit**”, deċiża fil-11 ta' Ottubru 2010 u kkonfermata minn din il-Qorti fil-31 ta' Ottubru 2014, u aktar riċentement il-Qorti tal-Appell fil-kawża fl-ismijiet “**Kummissarju tal-Artijiet vs Mugliette et**” deċiża fit-28 ta' Marzu 2014 u “**Giulia Curmi et vs Guzeppi Schembri**” deċiża fl-24 ta' April 2015. Dak li ngħad fir-rigward ta' perizji ta' periti arkitetti naturalment japplika wkoll għal perizji ta' esperti oħra.*

Illi skond l-artikolu 1031 tal-Kap. 1, kull persuna trid twieġeb għal ħsara li tkun htija tagħha; il-perit tekniku ma kkummentax dwar ir-responsabbilta' tas-soċjeta' konvenuta u l-Qorti taqbel mal-konklużjoni tal-perit legali illi din naqset meta nkarigat lill-konvenut Cusimano illi evidentement ma kienx il-persuna kompetenti biex tagħmel dawk ix-xogħlijiet u allura hemm f'dan il-każ, '*culpa in eligendo*'. Għalhekk it-tnejn huma responsabbli għall-akkadut. (“**Tal-Franċiż Construction Limited vs Zarb**”, Appell Inferjuri, deċiż fil-15 ta' Lulju 2007). Infatti l-artikolu 1037 u 1038 tal-Kap. 16 jgħidu hekk:

1037. Kull min għal xi xogħol jew servizz ieħor iqabba persuna mhux ta' ħila, jew illi hu ma jkollux raġun jaħseb li hija ta' ħila, hu obligat għall-ħsara illi dik il-persuna, minhabba n-nuqqas ta' ħila tagħha, tikkaguna lil haddieħor fl-eżekuzzjoni tax-xogħol jew servizz hawn fuq imsemmi

1038. Kull min minghajr ma jkollu l-hila mehtiega jindahal ghal xogħol jew servizz, hu obligat għall-ħsara li, minhabba n-nuqqas ta' hila tiegħu, jikkaguna lil haddieħor.

Illi l-Qorti taqbel ukoll li l-konvenut Borg ma għandux jinżamm responsabbli għar-raġunijiet indikati fir-rapport tekniku u li s-soċjeta' attriċi ma kellha ebda ħtija għaliex l-inċident seħħ fit-18 ta' Awissu 2000 meta fis-7 ta' Lulju 2000 il-lift kien ċertifikat li huwa tajjeb u allura ma naqset minn ebda obbligu.

Illi kwantu għad-danni, dawn ġew korrettement kwantifikati mill-perit legali fis-somma ta' **€14,502.68** u ma hemm ebda kontestazzjoni fir-rigward.

DEĊIŻJONI

Għal dawn il-motivi l-Qorti tiddeċiedi din il-kawża billi tilqa' l-eċċezzjonijiet tal-konvenut Borg u tiċhad it-talbiet attriċi fil-konfront tiegħu.

Tilqa' t-talbiet attriċi (minbarra t-tielet u raba' talba) fil-konfront tas-soċjeta' konvenuta u tal-konvenut Cusimano u tikkundannahom solidalment ihallsu lis-soċjeta' attriċi s-somma ta' €14,502.68 fuq imsemmija bl-imghaxijiet kummerċjali jiddekorru mil-lum; tastjeni milli tieħu konjizzjoni tat-tielet u raba' talba billi ma għadx hemm lokhom;

Kwantu għall-hames talba tordna li r-rimozzjoni ssir fi żmien xahrejn mill-konvenuti msemmija taħt is-superviżjoni tal-perit tekniku Michael Vella;

Tilqa' s-sitt u s-seba' talba sakemm kompatibbli ma' l-akkoljiment tat-talbiet preċedenti;

Tastjeni milli tieħu konjizzjoni tat-tmien talba *stante* l-premess.

L-ispejjeż tal-kawża jkunu a kariku tal-istess konvenuti solidalment bejniethom eccetto dawk tal-konvenut Borg li ghandhom jithallsu mis-soċjeta' attriċi.

Moqrija.

**Onor. Joseph Azzopardi LL.D.
Imhalled**

**Mario Debono
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