FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn ghoxrin (20) ta' Frar 2017

Rikors Numru 87/16 FDP

AIB Insurance Brokers Limited
(C 29741)

vs

Citadel Insurance plc
(C 21550)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis-27 ta' April 2016 fejn is-socjeta rikorrenti AIB Insurance Brokers Limited talbet lill-Qorti tikkundanna lis-socjeta intimata Citadel Insurance plc thallas s-somma ta' disat elef mija u erbgha u tletin ewro u tmenin centezmu (€9,134.80), rapprezentanti kumpens ghal danni sofferti mill-kumpannija C. Fino & Sons Limited (C 2468), liema ammont thallas mir-rikorrenti lill-istess kumpannija msemmija in konnessjoni ma' numru ta' claims li saru in segwitu ta' numru ta' poloz tal-assigurazzjoni mahruga mill-kumpannija intimata (bhala lead co-insurer) favur C.Fino & Sons Limited tramite s-servizzi tal-kumpannija rikorrenti bhala broker taghha u dan stante li 1-kumpannija intimata baqghet ma hallsitx dan 1-ammont lis-socjeta assigurata taghha, u cioe C.Fino & Sons Limited, minkejja li giet interpellata taghmel dan diversi drabi. Dan il-kreditu gie assenjat minn C.Fino & Sons Limited lill-kumpannija rikorrenti in forza ta' ftehim datat 9 t'April 2015, u li 1-kumpannija intimata giet debitament infurmata dwaru skond il-ligi permezz ta' ittra ufficjali numru 1544/15.

Bl-ispejjez, inkluzi dawk tal-ittra ufficcjali numru 1544/15 u bl-imghaxijiet legali sad-data tal-pagament effettiv kontra 1-kumpannija intimata li minn issa hija ingunta in subizzjoni.

Rat l-Ittra Ufficjali datata 29 ta' April 2015 mibghuta lis-socjeta intimata mis-socjeta rikorrenti (fol 2) kif ukoll rat l-'Assigment Agreement' milli intlahaq bejn is-socjeta C. Fino & Sons Limited u is-socjeta rikorrenti AIB Insurance Brokers Limited datat 9 ta' April 2015 (fol 4), abbazi ta' liema ftehim is-socjeta rikorrenti nediet il-proceduri odjerni.

Rat id-difiza mressqa mis-socjeta intimata fl-24 ta’ Mejju 2016 fejn ressqet is-segwenti difizi:

1. Illi ma hi dovuta lill-attrici ebda somma minn dik mitluba, stante li 1-ammont in kwistjoni jirrigwarda insurance claim maghmul minn assikurat tal-attrici, liema claim gie mhallas mill-attrici ghal ebda raguni hlief li riedu jakkomodaw il-klijent taghhom.
2. Illi 1-attrici ghandha qabel xejn ghalhekk tipprova 1-claim tal-assikurat skont il-ligi. Fil fatt il-hlas da parti tal-broker ma hu xejn hlief stratagemma biex minghalihom jevitaw li 1-claim jigi mgharbel kif suppost.
3. Illi f’dan ir-rigward jitqajjem formalment il-konflitt ta' interess tal-attrici bhala broker li minkejja li ma gietx awtorizzata li taghmel claims handling iddeciediet minn jeddha li takkomoda 1-klijent tieghha biex minflok toqghod hi stess tfittex lil principal taghhaa. Il-konflitt ta'interess iwassal ghan-nullita tac-cessjoni premessa.
4. Illi jigi eccepit ukoll li ma setghax jigi cedut kreditu likwidat izda semmai biss dritt ta'azzjoni jew ossia dritt litigjuz u dan ghaliex fil-mument ta' cessjoni il-claim tal-asikurat ma kienitx ghadha giet kanonizzata.
5. Illi fi kwalunkwe kaz ma jisgthux jigu mposti imghaxijiet fuq 1-eccipjenti semplicement ghaliex 1-attrici ghogobha thallas lill-assikurat u dan ghaliex kieku il-claim kien validu allura il-hlas kien isir f’waqqtu mill-esponenti bhala assikuratrici.
6. Illi talbiet attrici huma kompletament infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra 1-atturi li huma minn issa ingunti in subizzjoni.

Semghet ix-xhieda ta’ **Ramon Mizzi**, rappresentant tas-socjeta rikorrenti, moghtija fl-20 ta’ Ottubru 2016, u rat id-dokumentazzjoni minnu esebita.

Rat l-affidavit ta’ **Ian Stivala** ghas-socjeta Argus Insurance Agencies Limited, ippresentat fit 28 ta’ Novembru 2016.

Rat l-affidavit ta’ **Carmelo Sharlo Vella** ghas-socjeta Elmo Insurance Limited, ippresentat fit 28 ta’ Novembru 2016.

Rat l-affidavit ta’ **Patrick Muscat** ghas-socjeta Mapfre Middlesea Insurance plc, ippresentat fit 28 ta’ Novembru 2016.

Rat l-affidavit ta’ **Ian Caruana** ghas-socjeta AIB Insurance Brokers Limited, ippresentat fit 28 ta’ Novembru 2016.

Rat l-affidavit ta’ **Joseph Mangion** ghas-socjeta Atlas Insurance PCC Limited, ippresentat fit 28 ta’ Novembru 2016.

Rat l-affidavit ta’ **Ruth Farrugia** ghas-socjeta Fino Group of Companies, ippresentat fit 28 ta’ Novembru 2016.

Rat illi fit 28 ta’ Novembru 2016 is-socjeta rikorrenti ddikjarat illi ma kellhiex aktar provi x’tippresenta.

Rat illi fit 13 ta’ Frar 2017, wara illi la rappresentant tas-socjeta intimata u wisq anqas il-konsulent legali ma dehru quddiem il-Qorti, fatt illi sehh matul it-tlett seduti precendenti, il-Qorti, wara illi rat li fis-seduta precedenti kienet ivverbalizzat illi jekk ma jidher hadd mis-socjeta intimata, hija ser tipprocedi biex tiddikjara il-provi maghluqa, il-Qorti ghaddiet biex ddikjarat l-istadju tal-gbir tal-provi bhala maghluq.

Semghet it-trattazzjoni ta' l-abbli difensur tas-socjeta rikorrenti illi saret fit 13 ta' Frar 2017, wara liema trattazzjonji il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi s-socjeta rikorrenti, bhala 'Insurance Broker' kellha klijent lis-socjeta C Fino & Sons Limited, illi taghha s-socjeta rikorrenti kienet tiehu hsieb tamministra l-varji 'policies' tal-assikurazzjoni illi l-istess socjeta C Fino & Sons Limited kien ikollha bzonn ghax-xoghol taghha.

Jirrizulta illi, bhala parti min-negozjati illi kienet ghamlet is-socjeta rikorrenti, u dana abbazi tal-prassi adoperata lokalment fost id-ditti tal-assikurazzjoni, hija ottjeniet varji poloz tal-assikurazzjoni ghas-socjeta C Fino & Sons Limited, liema poloz ma kienu mahrugin minn ditta ta' assikurazzjoni wahda, izda minn varji ditti lkoll flimkien, izda fi kwoti differenti.

Jirrizulta illi l-poloz illi kienu inhargu Industrial All Risks Policy, Electronic Equipment Policy u Employers Liability Policy.

Jirrizulta illi dawna l-policies inhargu bejn is-socjetajiet Millenium Insurance Agency Limited, illum gestita minn Argus Insurance Agency Limited, Elmo Insurance Limited, Mapfre Middlesea plc, Altas Insurance PCC Limited u s-socjeta intimata Citadel Insurance plc.

Jirrizulta illi s-socjeta Citadel Insurance plc kellha l-oghla porzjon tal-assikurazzjoni bejn id-ditti kollha fuq imsemmija u dana peress illi 43% tal-coverage tal-poloz mahruga lis-socjeta C Fino & Sons Limited, u ghalhekk kienet meqjusa bhala il-'leading insurer' bir-rizultat illi l-claims illi kienu isiru mis-socjeta C Fino & Sons Limited tramiet il-broker taghha, is-socjeta rikorrenti, kienu jigu kkunsidrati mis-socjeta Citadel Insurance plc u, hekk kif tali claims jigu approvati mill-istess Citadel Insurance plc, kull assikurazzjoni thallas is-sehem taghha tal-polza illi abbazi taghha sar il-claim.

Jirrizulta illi bejn id-19 ta' Frar 2012 u is 7 ta' Frar 2013, saru ghaxar claims da parte tas-socjeta C Fino & Sons Limited, tmienja minnhom abbazi tal-policy Industrial All Risks u tnejn minnhom abbazi tal-polcy Employers Liability, kif jidher dettaljat a fol 46 u 47 tal-process, fl-affidavit ta' Ruth Farrugia, Exeutive Director tas-socjeta Fino Group of Companies .

Jirrizulta illi l-claims kienu kollha gew approvati u d-ditti tal-assikrazzjoni kollha, salv is-socjeta intimata, halsu s-sehem taghhom tal-claim.

Jirrizulta, madanakollu, illi s-socjeta intimata kellha kwistjoni ma' 'sister company' tas-socjeta rikorrenti, ossija Allcare Insurance Agency Limited, illi kienet ghamlet zmien tagixxi bhala agent tas-socjeta intimata u sussegwentement waqqfet, u in vista ta' dina l-kwistjoni illi kien hemm, is-socjeta intimata irrifjutat illi thallas lis-socjeta C Fino & Sons Limited is-sehem taghha ta' l-ghaxar claims fuq imsemmija.

Jirrizulta illi, sussegwentement, fid 9 ta' April 2015, is-socjeta rikorrenti dahhlet fi ftehim mas-socjeta C Fino & Sons Limited illi fiha hija hallset lis-socjeta C Fino & Sons Limited is-sehem rimanenti tal-claims pendenti u li kellhom jithallsu mis-socjeta intimata, liema sehem kien jammonta ghal €9,134.80, filwaqt illi s-socjetra C Fino & Sons Limited issurrogat lill-istess socjeta rikorrenti fid-drittijiet taghha fil-konfront tas-socjeta Citadel Insurance plc, sabiex is-socjeta rikorrenti tkun tista tigbor il-flejjes dovuti lilha.

Jirrizulta illi fid 29 ta' April 2015 giet ippresentata Ittra Ufficjali Nru 1544/15 mis-socjeta rikorrenti lis-socjeta intimata, ghall-hlas tas-somma flus fuq imsemmija u fis 27 ta' April 2016, l-istess socjeta rikorrenti niedet il-proceduri odjerni sabie tigbor tali flejjes.

Ikkunsidrat

Il-Qorti tosserva illi ghalkemm is-socjeta intimata, debitament notifikata ippresentat l-eccezzjonjiet taghha, rappresentant taghha qatt ma deher quddiem dina l-Qorti sabiex jressaq il-provi tas-socjeta intimata u jaghti l-verzjoni taghha tal fatti. Ghalhekk il-Qorti ikollha tistrieh fuq il-provi kif imressqa quddiemha mis-socjeta rikorrenti.

B'referenza ghad-difiza mressqa mis-socjeta intimata, il-Qorti tosserva illi s-socjeta rikorrenti ippresentat hdax-il '*discharge form*' mahruga mis-socjeta intimata lis-socjeta C Fino & Sons Limited (fol 23 sa 34) fejn l-istess socjeta intimata kienet qieghda taccetta il-claim illi kienet saret lilha mis-socjeta rikorrenti ghan-nom tas-socjeta C Fino & Sons Limited, u abbazi ta' liema accettazzjoni is-socjetajiet tal-assikurazzjonijiet l-ohra, illi kien 'co-insurers' hallsu s-sehem taghhom.

Illi ghalhekk hija inverosimili d-difiza principali taghha illi s-socjeta rikorrenti kienet mexxiet dawna l-claims biex takkomoda lis-socjeta C Fino & Sons Limited u sabiex tgharraq bis-socjeta intimata, peress illi jidher car illi dawna l-claims kollha kienet attwalment gew mgharrbla mis-socjeta intimata, a differenza ta' dak minnhoma allegat, u l-'co insurers' l-ohra lkoll mexxew u hallsu s-sehem taghhom abbazi ta' tali 'Discharge Forms'.

Illi jirrizulta, mill-provi prodotti mis-socjeta rikorrenti, illi dawna l-claims gew lkoll accettat mis-socjeta intimata izda eventwalment mhux onorati fejn kien jirrigwarda l-hlas tas-sehem taghha, u dan ghal ragunijiet illi taf is-socjeta intimata biss u li qatt ma ressqet provi dwarha quddiem dina l-Qorti ghax qatt ma dehert quddiemha.

Fic-cirkostanzi, il-Qorti ma tara ebda raguni ghaliex ma ghandhiex tilqa t-talba attrici.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi prodotti mis-socjeta rikorrenti,

Wara illi semghet it-trattazzjoni ta' l-abbli difensur tas-socjeta rikorrenti,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha tas-socjeta intimat, u ghalhekk

Tilqa it-talbiet attrici u

Tikkundanna lis-socjeta intimata Citadel Insurance plc thallas lis-socjeta rikorrenti AIB Insurance Brokers Limited is-somma ta' disat elef mija u erbgha u tletin ewro u tmenin centezmu (€9,134.80), rapprezentanti s-sehem tas-socjeta intimata ta' kumpens ghal danni sofferti mill-kumpannija C. Fino & Sons Limited (C 2468), abbazi ta' varji poloz ta' assikurazzjoni minnha koperti izda qatt imhallsa, liema somma eventwalment thallset mis-socjeta rikorrenti lis-socjeta C Fino & Sons Limited, li eventwalment surrogata fid-drittijiet taghha kontra s-socjeta intimata.

Spejjez u Imghax mid-data ta' l-Ittra Ufficjali 1544/15 sad-data tal-pagament effettiv, ikun kollu a kariku tas-socjeta intimata.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur