FIT-TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR: DR PHILIP MANDUCA LL.D

Seduta ta' nhar il-Hamis 9 ta' Mejju , 2002

Avviz Nru:1556/01PM

Elmo Insurance Services Limited bhala rapprezentanti tas-socjeta' estera Sun Alliance & London Insurance plc surrogata fid-drittijiet tal-assigurat taghha Kelly Down Trading Co. Marketing Ltd u l-istess Kelly Down Trading Co. Marketing Limited

Vs

Fogg Insurance Agencies Limited bhala agenti tas-socjeta' assigurattrici estera Norwich Union International Insurance Limited diga' Norwich Union Fire Insurance (Gibraltar) Limited

It-Tribunal,

Ra l-avviz li fih l-atturi talbu l-hllas ta' elf erba' mija u lira u disa' u ghoxrin centezmu Lm 1401.29c. Illi skond l-atturi dan l-ammont huwa dovut wara sentenza li nghatat kontra Eugene Attard li kien assigurat fill-mument tal-habta in kwistjoni mas-socjeta' konvenuta;

Ra l-eccezzjonjiet pprezentati mill-konvenuta fejn eccepiet li dawn il-proceduri kienu inutili billi s-socjeta' atttrici kellha titolu ezekuttiv kontral-assigurat taghha. Minghajr pregudizzju skond l-artikoli 1934 et seq li s-socjeta' konvenuta tista' tigi obbligata li thallas in linea sussidjarja biss u cioe' wara li l-beni tad-debitur principali jigu debitament diskussi;

Sema' t-trattazzjoni;

Ra li l-kawza giet differita ghas-sentenza;

Ili skond l-artikolu 10 tal-Kap 104 tal-Ligijiet ta' Malta;

"if, after a certificate has been issued under subsection four of section four of this ordinance to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under subsection 1 of section 4 of this ordinance (being a liability covered by the terms of the policy) is obtained against any person insured by the policy, then

notwithstanding that the authorized insurer may be entitled to avoid or cancel, or may have avioded or cancelled the policy, the authorized insurer shall, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum";

Illi mhux kontestat li nghatat sentenza kontra l-assigurat tal-konvenut. Mhux kontestat li ntbaghat l-ittra ufficjali ai termini tal-artikolu 10(2)(a) tal-Kap 104;

Illi fl-artikolu 253 tal-Kodici ta' Organizzjoni u Procedura Civili hemm lista tat-titoli ezekuttivi;

Illi skond l-artikolu 10 tal-Kap 104 s-sentenzi msemmija fl-istess artikolu ghandhom effett fill-konfront tal-assigurazzjoni tal-persuna assigurata kif spjegat fl-istess artikolu`;

Illi ghalhekk ma hemmx il-bzonn li terga' tigi pprezentata kawza ohra kontra s-socjeta' assigurattrici;

Is-socjeta' konvenuta ma ghandiex dritt titlob lis-socjeta' attrici tipprocedi l-ewwel kontra l-assigurat taghha. Ma hemm xejn fill-Kap 104 li jobbliga lis-socjeta' attrici biex l-ewwel tihu passi kontra l-persuna assigurata;

Is-socjeta’ konvenuta kellha thallas l-ammont ta’ elf erba’ mija u lira u disa’ u ghoxrin centezmu, Lm1401.29, lis-socjeta’ attrici izda dawn il-proceduri saru inutilment ghaliex s-socjeta’ attrici setghet tinforza s-sentenza kontra s-socjet’a konvenuta skond il-Ligi u ma kelliex dawn il-proceduri;

Ghaldaqstant, f’dan is-sens, tichad it-talbiet attrici;

Illi s-socjeta’ konvenuta kella d-dover li thallas dan l-ammont fill-hin u ghalhekk ghandha tbaghti parti mill-ispejjes tal-kawza. Is-socjeta’ konvenuta ma kelliex ragun tinsisti li s-socjeta’ attrici tipprocedi kontra l-assigurat tas-socjeta’ konvenuta;

Fic-cirkostanzi kull parti ghandha thallas l-ispejjes taghha.

Dr.Philip Manduca L.L.D.

Gudikatur