



FIT-TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR: DR PHILIP MANDUCA LL.D**

**Seduta ta' nhar It-Tnejn 15 ta' Lulju , 2002**

**Avviz Nru:1561/01 PM**

**Micheal Attard Limited**

**Vs**

**Paul Chetcuti**

**It-Tribunal,**

Ra l-avviz li fih is-socjeta' attrici talbet il-hlas ta' elf erba' mija u erba u tmenin Lira Maltin u tmienja u hamsin centezmu, Lm 1484.58, rapprezentanti import ta' erbatax il-kambjala kif spjegat fl-istess avviz;

Ra r-risposta fejn il-konvenut sostna li fl-ewwel lok ghandu jigi ppruvat li l-kambjali gew accettati mil-accettant, u dan peress li ma huwiex car mill-istess kambjali, li sallum kopji taghhom biss ghadhom gew ezebiti, mun huwa l-persuna li ffirmat fuqhom u f'liema kapacita; fit-tieni lok u minghajr pregudizzju ghal-permess, il-

konvenut ma ghandu jhallas xejn lis-socjeta' attrici minhabba difetti li tfaccaw fill-vettura, difetti konsistenti f'sadid profuz f' diversi bnadi; illi meta l-konvenut akkwista din il-vettura gie ffirmit kuntratt bejn il-kontendenti li sallum, minkejja insistenza tal-konvenut ghadu ma giex prodott mis-socjeta' attrici. Dan il-kuntratt kien jesplita certi garanziji dwar il-kwalita tal-vettura, garanziji li gew evidentement vjolati u minkejja dan is-socjet'a attrici ma tridx tonora l-obbligazzjonijiet taghha naxxenti minn dan il-ftehim. Li kieku s-socjet'a attrici ma pprovdietx dawn l-garanziji l-konvenut zgur ma kienx jikkompleta l-akkwist tal-vettura;

Ra d-dokumenti ezebiti;

Ra l-atti tal-kawza;

Ra li l-partijiet qablu li tinghata sentenza dwar it-tieni u t-tielet eccezzjonijiet;

Ikkunsidra illi fill-kawza "Louis Galea noe. Vs Alfred sive Freddie Bartolo", deciza fl-4 ta' Novembru, 1968 mill-Qorti tal-Appell (sede Kummercjali) hemm referenza ghal artikoli 197 u 199 tal-Kodici Kummercjali: "pleas which are personal to the endorsers cannot be set up against the holder of the bill;" u "no opposition to the payment of the bill, or bankruptcy of the bill shall be allowed except in the case of loss of the bill, or bankruptcy of the holder";

Hemm referenza ghal din is-sentenza fil-ktieb ta' Dr. Philip Farrugia Randon (The Word of the Court) Vol. 10 page 355:

“Indeed, were defendants plea to be accepted, the bill of exchange would lose all its essential nature of an autonomous obligation independent of the transaction from which it emanates. Its negotiability would be denied since no one could otherwise safely accept an endorsed bill if one had to delve into the relationships existing between the parties who had already signed the bill”;

A pagna 290 ta' l-istess ktieb Dr.Farrugia Random ikompli:

“l-artikolu 198(I) tal-Kodici tal-Kummerc jipprovdi li ‘ pleas which are personal to the holder of a bill cannot delay the payment thereof, unless the pleas are such as can be conveniently and speedily disposed of on the pending action”;

u jipprovdi li, “where such pleas require a prolonged enquiry, the examination thereof shall be referred to an independent action and, meanwhile, the judgement ordering the payment of the bill, with or without security, as the court shall deem fit, shall not be delayed”;

illi certament sabiex dan it-Tribunal jistabilixxi jekk hemm difett latenti fill-vettura jirrikjedi, “a prolonged enquiry”;

Hemm, ukoll il-kawzi Dr. L. Randon noe. Vs Alfredo Attard Vol. XXII-III-75, Capt. Joseph Mizzi noe. Vs Anthony De Carlo Vol. XL VII-III-1086; Dr. F. Depasquale noe. Vs Paul Gladwish noe. 10/4/1978 Qorti tal-Kummerc; Alfred Tonna vs Vincent Lentini Vol. XXXIV-III-845 li jikkonfermaw l-principji li meta jigi allegat li l-merkanzija hi difettuza l-kambjali jridu jithallsu xorta wahda;

Ghaldaqstant jichad t-tieni u t-tielet eccezzjonijiet tal-konvenut.

**Dr. Philip Manduca L.L.D.**

**Gudikatur**