



FIT - TRIBUNAL GHAL TALBIET ZGHAR

Gudikatur: Dr. Philip M. Magri LL.D; M.A. (Fin.Serv); M.Phil (Melit)

Seduta ta' nhar il-Gimgha, 20 ta' Novembru, 2020

Talba Nru: 339/2019PM1

Michele Siciliano (ID Nru. 146317(A))

Vs

**Christopher Abela (ID Nru. 186269(M)) u
David Smith (ID Nru. 239482(M))**

It-Tribunal,

Ra l-avviz fl-ismijiet premessi pprezentat fil-wiehed u tletin (31) t' Ottubru, 2019 permezz ta' liema l-attur talab li l-konvenuti jew min minnhom ghandhom jigu kkundannati sabiex ihallsu lill-istess attur is-somma ta' elfejn u hamsin euro (€2050) jew kull somma ohra verjuri rapprezentanti tnaqqis fil-prezz tal-vettura bin-numru ta' registrazzjoni ACP273 sabiex dan jirrifletti l-valur veru tal-istess mutur, u dan prevja kull provvediment jew dikjarazzjoni ohra li tkun necessarja, bl-ispejjez, inkluz dawk tal-ittra ufficjali numru 979/2019 u bl-imghax sal-jum tal-hlas effettiv kontra l-konvenuti jew min minnhom.

Ra d-dokumenti annessi mal-istess avviz senjatament il-Bill of Sale relattiv u l-*log book* relattiv ghall-istess mutur, dikjarazzjoni mahruqa mis-surveyor Tonio Mizzi,

kopja tal-ittra ufficjali datata 3 ta' Gunju, 2019 u ritratti tal-mutur mertu tal-kawza odjerna.

Ra li permezz ta' digriet datat 3 ta' Frar, 2020 dan it-Tribunal, ghar-ragunijiet hemmhekk moghtija, filwaqt li sab li l-konvenuti huma kontumaci, ordna l-isfilz mill-process tar-risposta tagghom u kwindi ordna l-prosegwiment tal-kawza bil-provi atturi.

Sema' x-xhieda moghtija minn Neville Magri u minn Anthony Mizzi moghtija waqt is-seduta tal-5 ta' Marzu, 2020. Ra wkoll l-in-nota tal-attur b'anness maghha l-affidavit tieghu prezentata wkoll waqt l-istess seduta. (a fol. 34 et. seq. tal-process).

Ra n-noti ta' sottomissjonijiet tal-partijiet rispettivi.

Ra illi waqt is-seduta tat-13 ta' Lulju, 2020 it-Tribunal ordna li ghas-seduta ta' wara jigi ingunt is-surveyor Anthony Mizzi u dana sabiex l-istess surveyor jixhed ulterjorment.

Sema' x-xhieda ta' Anthony Mizzi waqt is-seduta tat-12 t'Ottubru, 2020.

Ra n-nota tal-attur datata 23 t'Ottubru, 2020 illi permezz taghha ressaq rapport ulterjuri kkonfermat bil-gurament mill-istess surveyor Anthony Mizzi.

Ra li l-partijiet ma kellhomx sottomissjonijiet xi jzidu wara l-prezentata tal-istess nota u d-dokument anness maghha.

Ha konjizzjoni tac-cirkostanzi kollha tal-kaz.

Ra li l-kawza baqghet differita ghas-sentenza ghas-seduta tal-lum.

Ikkunsidra

Illi l-kawza odjerna tirrigwardja talba ghal rifuzjoni ta'parti mill-prezz imhallas mill-attur lill-konvenut fir-rigward tal-mutur allegatament mibjugh bhala mudell GTS300 b'kilometragg ta'33,000 izda li sussegwentement irrizulta li huwa muddell 250 b'kilometragg ta' iktar minn 100,000. Permezz ta'digriet datat 3 ta'Frar, 2020 dan it-

Tribunal sab li l-konvenuti huma kontumaci u ordna l-isfilz mill-process tar-risposta tagghom.

Illi fir-rigward tan-natura tat-talba odjerna l-art. 1390 tal-**Kodici Civili** jipprovdi testwalment li:

“Jekk il-ħaġa li l-bejgiegħ igib biex jikkunsinna ma tkunx tal-kwalità mwieġħda, jew ma tkunx bħall-kampjun li fuqu l-bejgħikun sar, ix-xerrej jista’ jagħżel jew li jirrifjuta l-ħaġa u jitlob id-danni, jew li jircievi l-ħaġa bi prezz anqas fuq stima ta’ periti.”

Illi dan huwa proprju dak li l-attur fil-kawza odjerna qiegħed jallega u jitlob. F’dan ir-rigward it-Tribunal jaqbel mas-sottomissjoni tal-konvenut limitament fis-sens li, skont ma jirrizulta car mill-avviz tat-talba, l-azzjoni odjerna mhijiex relattiva għal xi allegazzjoni ta’ difetti latenti fi-mutur imma hija limitata esklussivament għall-kwistjoni naxxenti mill-kwalità pattwita referibilment għall-mudell tal-mutur u l-kilometeragg tiegħu. Fir-rigward tas-sottomissjoni li l-azzjoni odjerna hija perenti bid-dekors tat-terminu skont l-art. 1431 tal-**Kodici Civili** citat mill-istess konvenuti, jinghad li, *se mai*, din il-linja difensorja kellha titqanqal permezz ta’ risposta formali u skont il-ligi da parti tal-konvenuti u mhux permezz tan-nota ta’ sottomissjonijiet. Inoltre huwa car li in vista tan-natura tal-azzjoni u ta’ dak li jinsab espressament provdut taht l-art. 1407 tal-**Kodici Civili** l-azzjoni odjerna zgur li ma tistax tigi meqjusa bhala perenta (ara f’dan is-sens ukoll dak deciz mill-Onor. Qorti tal-Appell fit-2 ta’ Dicembru, 2005 permezz tas-sentenza fl-ismijiet **Joseph Zarb et. v. Mira Motors Sales Limited** u wkoll dak deciz, fost ohrajn, mill-istess Onor. Qorti tal-Appell fis-27 ta’ Frar, 2004 permezz tas-sentenza fl-ismijiet **Noel Curmi et. v. Dr. Joseph Ellis noe**).

Illi fir-rigward tal-mertu jinghad li huwa l-istess attur li, permezz tal-affidavit tiegħu, jistqarr illi:

“4. The defendants Mr. Christopher Abela and Mr. David Smith, when I was at their shop even showed me the Log book of the motorcycle (with registration number ACP273) which showed me a mileage in the region of

thirty three thousand kilometres (33,000km). They assured me that the motorcycle was in an excellent condition and that the model was that of a 'GTS300'. This even showed on the stickers of the motorcycle in question (...)

7. After the sale and when I took delivery of the motorcycle it was mounted with an analogical dashboard. The defendants explained to me that I had to go again to their shop as they told me that they wanted to fit the motorcycle with the original digital dashboard as they mentioned that it was being repaired for some reason. I went their (sic) again as they had instructed me and fit the digital dashboard on my motorcycle. As soon as I looked at it, to my surprise the odometer showed a mileage of around one hundred and twelve thousand kilometres (112,000Km);

8. I decided to take the motorcycle to a mechanic I trust and that is well versed on Vespas' whose name is Neville to ask him about this matter of the odometer. The mechanic on seeing the motorcycle revealed to me that incidentally he had already inspected the motorcycle earlier as the defendants had tried to sell it to him. **The mechanic informed me that he had made his verifications by connecting the motorcycle to the computer and confirmed that the actual mileage of that motorcycle was what was being shown on the electronic dashboard which was in the region of one hundred and twelve thousand kilomteres (112,000km).** (...)

9. **On further inspection the mechanic confirmed to me that this motorcycle that I had just bought was not a 'GTS 300' model but a '250' model, It just had the stickers added on it of a 'GTS300'.** (...)

11. I then had no other option but to proceed with legal action against them **as they had sold me a motorcycle that was not of the same quality as that they promised me.**" (enfazi mizjudá)

Illi dan kollu gie effettivament pruvat ukoll tramite x-xhieda tal-*mechanic* Neville Magri:

“Nghid li l-mudell li gabli Siciliano effettivament kienet muddell ta’ Vespa GTS250. Nghid li d-differenza bejn GTS300 u GTS250 il-body huwa l-istess imma l-unika differenza hi li fuq in-naha tal-lemin hemm il-ventilators u dana fil-mudell tat-300. Fil-fatt qed nara r-ritratt a fol. 8 tal-process nghid li fuq il-lemin ta’din il-Vespa ma jirrizultax li hemm ventilators u minn hemmhekk ukoll nista’ nikkonferma dak li ghadni kif xhedt li dan kien mudell GTS250”.

Illi f’dan ir-rigward xehed ukoll is-surveyor Anthony Mizzi li wkoll ikkonferma li:

“Nghid illi jiena stajt nistabilixxi wkoll il-mileage ta’ dan il-mutur kien over hundred thousand kilometers, din id-diskrepanza li jiena nsemmi fl-istess tieni klawnsola tar-rapport tieghi jiena stabilixxejtu wara li rajt il-logbook li jinsab ukoll esebit fil-process fejn jirrizulta li kien hemm mileage ta’ thirty three thousand. Innutajt ukoll li l-istickers li hemm fuq il-mutur jghidu xi haga differenti b`differenza minn dak li jirrizulta milllogbook tal-istess mutur, dana b`referenza ghal mudell tal-istess mutur.” (enfazi mizjuda)

Effettivament, anke mir-ritratti ezebiti mill-attur u annessi mal-istess avviz tat-talba, jirrizulta li l-istickers imwahhlin fuq il-mutur jirreferu ghall-mudell GTS300 (Dok. R3 a fol. 9 tal-process) mentri l-mudell effettiv kien dak ta’ Vespa 250 kif irrizulta car mill-provi prodotti. Hekk ukoll fir-rigward tal-*mileage* il-*logbook* jirreferi ghall-figura ta’ 33722 b`differenza minn dak li rrizulta kjarament mill-provi prodotti f’dawn il-proceduri kif hawn fuq rappurtat. Dawn iz-zewg aspetti ghandhom kwindi jigu ritenuti essenzjali ghall-kuntratt u espressament pattwiti anke in vista tal-informazzjoni espressament provduta mill-istess intimati in kwantu vendituri lill-attur bhala xerrej.

Illi f'dan ir-rigward wara li rega' ra t-talba attrici u wara li sema' x-xhieda tas-surveyor Anthony Mizzi fejn dan stqarr ukoll:

*“Ingibditli l-attenzjoni wkoll mill-mechanic illi meta ftahna t-tap taz-zejt kien hemm tahlita ta' zejt u ilma. Din x`aktarx li hija rizultat ta' xi problema jew fil-gaskit jew fil-magna tal-istess mutur. **Fuq mistoqsija tat-Tribunal nghid illi jiena mhux f'pozizzjoni jekk hemm xi diskrepanza fil-valur tal-mutur u cioe` tal-Vespa bejn mudell GTS 300 jew mudell GTS 250. L-irwol tieghi kien limitat ghar-rapport li jiena qed nara u nikkonferma a fol 5 talprocess. Nghid li jiena wasalt ghal konkluzjoni li dan il-mutur jiswa eight hundred euro (€800) bid-difetti li jiena stajt nirriskontra**”* (enfazi mizjuda),

it-Tribunal ordna lix-xhud sabiex “*jindika permezz ta' nota guramentata kwalunkwe diskrepanza fil-prezz rezultanti mill-mudell GTS250 ghall-mudell 250 avut rigward ghad-data ta' bejgh tal-istess vettura u wkoll b'referenza ghall-mudell kif indikat fil-logbook u inkluz ukoll id-diskrepanza fil-mileage li l-istess xhud xehed dwaru*” u dana skont il-poteri koncessi lilu mill-Att dwar Tribunal ghal Talbiet Zghar, senjatament l-art. 9 tal-istess. Fil-fatt l-istess xhud ressaq dikjarazzjoni mahlufa li permezz taghha iddikjara li “**difference in price between a GTS 300 Vespa and a 250 Vespa is that of approx. 300Euros since the GTS300 is a different engine.**” Minkejja dak ordnat mit-Tribunal ma jidhirx li tali dikjarazzjoni tindika espressament l-effett fuq il-prezz derivanti mill-mileage tal-istess vettura. Madanakollu t-Tribunal huwa f'posizzjoni li jiddetermina tali ammont b'referenza ghall-figuri l-ohrajn li jinsabu hemmhekk indikati u skont il-kalkoli li ser isiru hawn taht.

Precedentement, waqt ix-xhieda tieghu moghtija waqt is-seduta tat-12 t' Ottubru, 2020, l-istess surveyor Mizzi kien iddikjara li wasal ghall-konkluzjoni li l-Vespa kienet tiswa tmien mitt euro (€800) dakinhar tax-xiri taghha “*wara li kkunsidrajt id-difett li kien fiha l-magna, id-diskrepanza ossija l-avarija li hemm fil-mileage u wkoll il-hsara li hemm fl-istruttura tal-istess Vespa*”. Tenut kont li l-Vespa inxtrat versu l-prezz ta'€2850, id-

differenza bejn tali prezz u l-valur taghha , b'referenza ghat-tlett elementi imsemmija, ta'€800 huwa dak ta' €2050 kif mitlub. Permezz tad-dikjarazzjoni guramentata tieghu, is-surveyor Mizzi iddikjara wkoll li r-riparazzjonijiet fil-*frame* jammontaw ghal €1200 filwaqt li r-riparazzjonijiet fil-magna jiswew madwar €350. Jekk wiehed inaqas dawn iz-zewg figuri (€1200 u €350) mid-differenza fil-prezz hawn fuq nutata (€2050) jirrizulta li l-avarija fil-*mileage* influwixxiet fuq l-avarija fil-prezz fis-somma rimanenti ta' hames mitt euro (€500). Dan allura jfisser li, wara li wiehed jikkunsidra biss l-elementi mertu ta'din il-kawza skont l-avviz tat-talba – senjatament id-differenza fil-mudell u diskrepanza fil-*mileage* – skont ix-xhieda tas-surveyor, l-attur huwa intitolat biss ghar-rizarciment tas-somma ta'€300 fir-rigward tad-differenza fil-mudell u ghar-rizarciment ta' €500 fir-rigward tal-avarija fil-*mileage* ghas-somma totali ta' tmin mitt euro (€800)

Illi ghaldaqstant, avut rigward ghan-natura tal-azzjoni odjerna, ghall-fatt illi l-elementi li jinsabu kontestati mill-attur fir-rigward tal-bejgh jirrigwardjaw id-differenza bejn il-vettura effettivament mibjugha u l-kwalita` taghha pattwita determinata mill-mudell u mill-*mileage* taghha, it-Tribunal isib li huwa gust u ekwu li l-attur jigi rizarcit is-somma msemmija ta' tmin mitt euro (€800) kalkulata skont kif surreferit.

Ghaldaqstant it-Tribunal qieghed jaqta' u jiddeciedi dan il-kaz billi jilqa' t-talba attrici limitatament fis-somma ta' tmin mitt euro (€800), bl-imghaxijiet mid-data tas-sentenza odjerna u bl-ispejjez, inkluzi dawk tal-ittra ufficjali 979/2019 jigu sopportati in kwantu ghal zewg partijiet minn hamsa (2/5) mill-attur u in kwantu ghar-rimanti tlett partijiet (3/5) minn hamsa mill-konvenut.

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Gudikatur