

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
PHILIP SCIBERRAS**

Seduta tal-31 ta' Jannar, 2003

Citazzjoni Numru. 826/1991/1

**Avukat Dottor Giovanni Griscti bhala rapprezentant
tas-socjeta` "Formosa & Camilleri Ltd", u dina bhala
agenti f'Malta tas-socjeta` assikuratrici estera "The
Guardian Royal Exchange Assurance Plc" kif
surrogata fid-drittijiet ta' l-assigurat taghha s-socjeta`
"Carmelo Gauci Ltd"**

Vs

**John Parnis England bhala direttur u in
rapprezentanza tas-socjeta` W. J. PARNIS ENGLAND
LTD bhala agenti Malta tas-UZUNOGLU SHIPPING ta'
Istanbul armaturi tal-vapur SALIH UZUNOGLU**

Il-Qorti;

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Rat l-att tac-citazzjoni li bih l-attur *nomine* premissi d-dikjarazzjonijiet necessarji u moghtija l-provvedimenti opportuni.

Premess illi s-socjeta` Carmelo Gauci Ltd importat minn Spanja hamsa u tletin (35) pallet *Chipboard* minghand is-socjeta` Spanjola Andreas Faus SA (13) li waslu Malta fuq il-vapur SALIH UZUNOLGU;

Premess illi meta l-vapur wasal Malta il-merkanzija instabet mifruxa fl-istiva tal-vapur u konsegwentement hafna minnha garrbet hsara kif jirrizulta mis-survey report Dok. C;

Premess illi ghalhekk ghal din il-hsara l-assigurazzjoni kif obbligata, hallset is-somma ta' erba' mija hamsa u tletin lira Maltin u ghoxrin centezmu (Lm435.20) iktre sittin lira Maltin (Lm60) survey fees u ghalhekk giet surrogata fid-drittijiet tas-socjeta` importatrici (Dok. D);

Premess illi l-konvenut *nomine* huwa responsabbli ghal dan in-nuqqas;

Talab ghalhekk l-attur *nomine* lil din l-Onorabbli Qorti sabiex:-

1. Tiddikjara lill-konvenut *nomine* responsabbli ghal-hsara u n-nuqqasijiet fuq indikati;
2. Tikkundanna lill-konvenut *nomine* jhallas lill-attur *nomine* is-somma ta' erba' mija hamsa u tletin lira Maltin u ghoxrin centezmu (Lm435.20) oltre sittin lira Maltin (Lm60) survey fees kif fuq premiss in linea ta' danni sofferti mill-importatur u ghalhekk surrogat lill-attur *nomine* bl-interessi skond il-ligi mid-data tal-pagament indikat fis-surrogati Dok. D maghmula mill-attur *nomine* fic-cirkostanzi u minhabba l-obbligi hawn fuq premissi;

Bl-ispejjez kontra l-konvenut *nomine*;

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Rat id-dikjarazzjoni guramentata ta' l-istess attur *nomine*, il-lista tax-xhieda minnu indikati u l-elenku tad-dokumenti esebiti;

Rat in-nota ta' l-eccezzjonijiet tal-konvenut *nomine* illi permezz taghha huwa eccepixxa:-

1. Illi l-eccipjenti ma kienx responsabbli ghad-danni allegatament sofferti mill-attur *nomine* u dan peress li x-xoghol tghabba that kundizzjoni ta' F.I.O.S. u l-merkanzija tghabbit minn nies imqabba mix-shippers minghajr irbit necessarju (Dok. A);

2. Salvi eccezzjonijiet ulterjuri;

Rat id-dikjarazzjoni guramentata ta' l-istess konvenut *nomine*, il-lista tax-xhieda minnu indikati u l-elenku tad-dokumenti esebiti;

Rat id-digriet ta' l-14 ta' Ottubru 1991 li permezz tieghu gie nominat Dr. Andrew Muscat bhala perit legali;

Rat id-digriet tat-2 ta' Frar 1994 li permezz tieghu l-perit legali gie sostitwit bl-avukat Dr Marco Grixti bl-istess fakoltajiet u inkarigi tal-perit precedenti;

Rat ir-relazzjoni ta' l-imsemmi perit gudizzjarju li tinsab a fol. 62 *et sequitur* tal-process u li giet minnu debitament konfermata fl-udjenza tas-26 ta' Mejju 1997;

Rat l-atti kollha tal-process;

Ikkonsidrat:-

Permezz tal-prezenti azzjoni s-socjeta` attrici, hekk surrogata fid-drittijiet ta' l-importatur (fol. 15) assigurat taghha, qed tippretendi minghand l-agent lokali tal-vapur

"SALIH UZUNOGLU", igorr bandiera Torka, risarciment ghad-danni li garrab l-assigurat taghha fil-merce minnu importata, konsistenti f'hamsa u tletin (35) paletta ta' *hardboard* u *chipboard*;

Il-konvenut *nomine* oppona ruhu ghal din il-pretensjoni billi eccepixxa li l-kariku tghabba fuq basi F.I.O.S. Inoltre, fid-dikjarazzjoni irrimarka li l-vapur irriskontra bahar u rih qawwi fil-kors tal-vjagg u peress li l-merkanzija ma kellhiex irbit b'hekk sehhet il-hsara;

Il-kariku *de quo* ingarr skond Polza ta' Kariku (fol. 32) mill-port ta' Gandia fi Spanja. Fil-mument tal-hatt tieghu f'Malta gie verifikat u stabbilit mis-*survey* kondott minn Noel Ellul (fol. 9) waqt li l-merkanzija kienet ghadha fl-istiva illi "*several pallets had shifted and relative iron straps were broken which caused the sheets of the bundles to become loose and incur damages*". Fl-istess *survey report* jinghad li l-*causa causans* tax-"*shifting of cargo in hold*" kienet attribwibbli ghal "*improper lashing*";

Il-konvenut *nomine* ma huwiex qed jikkontesta l-fatt tad-dannu. Anzi dan hu rikonoxxut minnu, kif evidenzjat fil-kopja tat-Testimonjal esebit minnu a fol 33 tal-process. Huwa, invece, jistrieħ fuq il-linja difensjonali tal-forza magguri u tal-fatt li l-irbit tal-kariku kien responsabilita` ta' l-ispedizzjonjier;

Fin-Nota ta' Kritika tieghu (fol, 69) ghar-rapport peritali (fol. 62) - li incidentalment, anke din il-Qorti tqisu deficjenti ghal dawk li huma l-aspetti l-aktar saljenti tal-materja u maggorment ghal dawk li huwa principji guridici fil-kamp marittimu - il-konvenut *nomine* jirreferi ghal "Voyage Charter". Ghalkemm tabilhaqq il-polza tal-kariku tafferma li dak esebit huwa d-dokument "*to be used with Charter-Parties*", fil-verita` ma gie provvdut l-ebda prova dwar dan ic-*Charter*;

Minhabba r-riferenza espressa fil-polza anke fejn jinghad ukoll li n-nol stabbilit hu skond ic-*Charter Party* wiehed irid jassumi li dan tabilhaqq kien kaz ta' *Voyage Charter*. Dan ghaliex kif jinghad fl-opra "**Voyage Charters**", Cooke,

Young, Taylor, Martowski, Taylor and Lambert, pagna 3, Lloyd's of London Press:

"A contract for the chartering of a ship is normally embodied in a printed form of charter party, agreed by the parties or their agents. Under English law there is no requirement that a contract for the services of a ship or a voyage should be made or recorded in any particular manner. So long as the parties have reached complete agreement, a charter party signed by or on behalf of the parties is unnecessary: Lidgett vs Williams (1845). The parties agreement may be made in the course of written exchanges, or during conversations, and may even be inferred from conduct, so long as the inference to be drawn is clear. All that is required is that the parties should have reached a firm agreement upon all essential terms.";

Dak li hu mportanti hu li "l-kondizzjonijiet bejn il-partijiet ghandhom ikunu nkorporati jew fil-kuntratt ta' nolagg jew fil-polza tal-kariku, jekk din tkun qed taghmel lok ghall-iehor" (**Vol. XXX P I p 707**). Effettivament, *"the bill of lading almost invariably contains words which purport to be provisions of the contract of affreightment ..."* (**Scrutton**, "On Charter parties and Bills of Lading", 19th Edition, pagna 3);

Issa fil-Polza tal-Kariku *de qua* insibu li l-merkanzija tghabbiet "Clean on board" u fuq basi "F.I.O.S." Fin-Nota marginali taghha nsibu li l-merce giet karikata fil-port tat-taghbija *"in apparent good order and condition on board the vessel"*;

Kif imfisser fid-decizjoni **"Wilfred Mamo et noe -vs- Paul Mifsud et noe"**, Appell Kummercjali, 5 ta' Gunju 1987, "il-kliem fil-polza *"shipped in apparent good order and condition"* ossija l-hrug tal-*"clean bill of lading"* jistabbilixxu *prima facie* l-prova li l-merkanzija imsemmija fil-polza giet karigata f'kondizzjoni tajba u timponi l-obbligu li l-merkanzija tigi skarikata fl-istess kondizzjoni tajba.";

Il-konsegwenza ta' rilaxx ta' polza konsimili fejn jinstab li imbaghad il-merce ma gietx konsenjata f'kondizzjoni tajba, "*rende il vapore responsabile della perdita di fronte al ricevitore*" ("**Negte Alfredo Nicosia noe -vs- Negte Reginald Smith noe**", Qorti tal-Kummerc, 11 ta' Jannar 1921;

Gie pero` ravvisat ukoll "*che la polizza in quei termini, sebbene stabilisce prima facie una prova, benchè non concludente, che le merci siano state caricati in buona condizione, tuttavia quei termini non sono operative contro tutte le altre condizioni apposte nella medesima polizza ed aventi lo scopo di esentare dalla responsabilita` i proprietari per cio che accadrebbe lungo il viaggio.*" ("**Negte Lorenzo Mifsud -vs- Negte Remigio Pace noe**", 8 ta' Jannar 1884, Vol. X p 361);

Effettivament il-konvenut *nomine* qed jistrieh fuq il-kondizzjoni li t-taghbija u l-istivagg kien F.I.O.S. Kif rilevat fid-decizzjoni "**John Aquilina -vs- Giovanni Coleiro noe**", Qorti tal-Kummerc, 23 ta' Frar 1950, b'referenza espressa ghall-Halsbury's Laws of England, Vol. 30 p 371, fic-charter parties "*more weight is to be given to the written than to the printed terms*" u dan ghar-raguni kif spjegat fil-kawza "Robertson -vs- French" (1803) "*the written terms embody the special stipulations which the parties, after consideration of all the circumstances have introduced for the purpose of meeting this special requirements*";

Il-klawsola F.I.O.S. ma tfissirx, kif donnu qed jippretendi l-konvenut *nomine*, xi ezenzjoni mir-responsabilita`. Din l-espressjoni giet fil-fatt imfissra hekk:

"*All expenses in regard to the loading and/or unloading of merchandise are borne by the shipper and/or receivers and free to the ship. Today the common insertion of FIOS or F.I.O.S. or f.i.o.s. is to be seen meaning Free In and Out Stowed. The word 'Stowed' is added to emphasise that even the stevedoring expenses which are paid on Liner Terms ... are to be free to the ship.*" (**The Marine Encyclopaedic Dictionary**", Eric Sullivan, Lloyd's of London Press Ltd. 1992);

L-operazzjoni tal-karikazzjoni, stivagg u skarikazzjoni tirrientra fil-kazijiet ordinarji fil-kompitu tal-vapur. *"But these operations may be undertaken by the shipper or consignee. It is submitted that such an arrangement is not prohibited by the Rules (Hague), and that a provision by which the shipper undertakes to load, or the consignee to discharge, the goods is one which defines the scope of the contract service rather than the terms on which that service is to be performed, and that is therefore valid notwithstanding Act III, r. 8."* (Carver **"Carriage by Sea"**, Vol. 1, 12th Edition, pagina 269);

Naturalment wiehed ghandu per forza jirraguna illi jekk ix-*shipper* intriga ruhu mill-istivagg tal-merkanzija fuq il-vapur dan l-istivagg ghandu jigi kondott b'diligenza skond ir-regoli dettati mill-arti u s-sengha ta' operazzjoni bhal din;

Minn naha l-ohra pero` wiehed ghandu jippresumi wkoll li tali stivagg, anke fejn ikun assunt mic-*charterer* jew mix-*shipper* ikun sar taht id-direzzjoni tal-kaptan tal-vapur. Jew ta' lanqas taht is-supervizzjoni tieghu. Dan bl-iskop li jkun accertat illi l-istivagg maghmul hazin jew b'mod traskurat ma jirrendix il-vapur *"unseaworthy"*. Wara kollox *"la direzione o gestione nautica della nave spetta al capitano, il quale avendo il dovere di giudicare intorno alle condizioni di navigabilita` della nave, ha anche il dovere di assicurarsi che la nave e` adatta a trasportare senza pericolo di danno alla nave o al carico, determinata merce di cui avra` assunto il trasporto ..."* (**Negte. Francesco Tabone noe -vs- Neg. Gennaro Civitelli**", Appell Kummercjali, 5 ta' Novembru 1920);

Ghalhekk fil-fehma konsiderata ta' din il-Qorti, anke kieku wiehed kellu jaccetta bhala sagrosant dak dikajrat fuq l-Istatement of Facts (fol. 23) illi ma kienx hemm *lashings* mal-kariku, il-konvenut ma jistax jippretendi li jiddefendi ruhu ghal kollox fuq il-bazi tal-klawsola suddetta billi jiddikjara li hu ma huwiex responsabbli ghal stivagg hazin;

Ghalkemm si trattava ta' merce deperibbli l-Qorti ta' l-Appell Kummercjali fil-kawza **"Walter Bonello noe -vs-**

Carmelo Caruana noe", 8 ta' Novembru 1968, dejjem b'riferenza ghall-istess klawsola FIOS, xorta wahda irriteriet li l-vapur ma jistax jiskansa ruhu minn kull htija. Fil-fatt f'dak il-kaz il-Qorti spartiet ir-responsabilita` bejn l-importatur u l-vapur;

Fl-opinjoni tal-Qorti l-vapur jirrispondi f'certu mizura ghad-danni xorta wahda jekk jirrizulta li dawn ikunu graw b'xi att jew volontarju jew konsapevoli tieghu li jammonta ghal dak il-grad ta' kolpa li l-ligi tirrikjedi fl-ezekuzzjoni ta' l-obbligazzjoni li huwa jkun assumu;

Dan jibqa' hekk "*ammenocche tali danni non siano l'effetto di vizio proprio o di forza maggiore e l'esonero da tale responsabilita` non si puo provare che con stipulazione espressa*" ("**Neg. Carmelo Mifsud noe -vs- Capitano Marittimo Giuseppe Gallaro et**", Appell Kummercjali, 10 ta' Marzu 1920);

Anke jekk wiehed kellu jaccetta l-versjoni tas-*surveyor* Noel Ellul fuq kliem il-kaptan tal-vapur illi dan qallu li "*cargo became loose from its lashings*" u dan b'rizultat tal-maltemp riskontrat fil-kors tal-vjagg, wiehed irid imbaghad jara jekk dan il-fatt tal-maltemp jehlisx lil vapur mir-responsabilita` Dan fuq l-istregwa ta' l-Artikolu 4(2) tal-Hague Rules applikabbli ghal kaz anke in forza tal-kondizzjoni apportata fuq ir-retro tal-Polza tal-Kariku taht ir-ras "General Paramount Clause";

Dan l-Artikolu jipprovdi illi "*Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from*", *inter alia*, "*Perils, dangers and accidents of the sea or other navigable waters*" (para. c);

X'jikkostitwixxi "*peril of the sea*" hi kwistjoni ta' fatt izda l-oneru tal-provi dwaru jinkombi fuq il-vapur li jeccepiha bhala linja difensiva;

Mil-*log book* tal-kaptan, li estratti minnu jinsabu esebiti a fol. 35 tal-process jirrizulta li l-vapur inkontra "*boisterous gales*". Dan hu minnu sostenut fis-Sea Protest (fol. 34);

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Ma hemmx dubju li skond il-ligi, ex Artikolu 104 ta' l-Att dwar il-Bastimenti Merkantili kopja awtentika tal-*log book* taghmel prova tal-kontenut taghom salv prova in kuntrarju (**Vol. XXXIV P III p 758**). Dan ighodd ukoll ghat-Testimonjal jew Sea Protest (**Vol. V p 279**);

Jinghad illi fejn il-vapur ikun *sea worthy*, u il-kuntrarju jinkombi lil min jallegah, u dan kien efficcjenti ghal vjagg, "*any accident, any mischance which could be foreseen as one of the ordinary consequences of that voyage, which has arisen from some of the sources of danger denoted by 'perils of the sea', is included prima facie within that exception*" (Carver "**Carriage by Sea**, pagna 163);

Gustament il-konvenut *nomine* irrileva illi "*boisterous gales*" jimmanifestaw intemperji ta' certu forza u qawwa u per konsegwenza jirrientraw fil-karattru ta' accidenti naturali. Jekk allura l-"*lashings*" inqatghu, dejjem attiza l-versjoni tax-xhud Noel Ellul, il-kagun ta' dan ma jistax jigi addossat fuq il-kaptan jew l-ekwipagg fil-"*management of the ship*" jew fl-istivar jew immaniggjar tal-merkanzija abbord il-vapur. Ara f'dan is-sens, kompriz aspetti valevoli ta' dritt *in subjecta materia* d-decizjoni tal-Qorti tal-Kummerc, per Imhallel Carmelo Scicluna, tas-6 ta' Ottubru 1989 in re "**John Abela noe -vs- l-Avukat Dottor Philip Sciberras nomine**";

Fic-cirkostanzi din il-Qorti hi propensa li tapplika r-regola stabbilita fl-Artikolu 1029 tal-Kodici Civili li jsostni li "kull hsara li tigri b'accident jew b'forza magguri, ibatiha, fin-nuqqas ta' disposizzjoni espressa tal-ligi li tghid il-kuntrarju, dak li fuq il-persuna jew il-beni tieghu tigri l-hsara.";

Dan in kwantu l-kaz fortuwitu jiddispensa lid-debitur ta' l-obbligazzjoni minn kundanna ghad-danni. Biex ikun xort'ohra jrid jigi pruvat illi l-kaz fortuwitu kien precedut minn htija tal-vapur. Prova din li ma saritx mill-attur *nomine*. Invece tirrizulta l-prova illi l-vapur gie imqieghed fl-impossibilita, minhabba l-maltemp riskontrat, li jevita l-hsara lil kariku. Dan nonostante ukoll it-tentattiv tieghu li

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jaghmel "*traverse sailing to prevent losses and damages*"
(*Sea Protest*);

Fic-cirkostanzi, tenut rigward ta' l-osservazzjonijiet kollha
suesposti, din il-Qorti ma tistax taccetta l-konkluzjoni
peritali kontra l-konvinzjoni taghha nnifisha.

Ghal dawn il-motivi;

Taqta' u tiddeciedi l-kawza billi filwaqt li takkolji l-
eccezzjoni tal-konvenut *nomine* illi l-hsara fil-merkanzija
kienet dovuta ghal "*peril of the sea*" a norma ta' l-Artikolu
4(2) (c) tal-Hague Rules, tichad it-talbiet ta' l-attur *nomine*,
bl-ispejjez kontra tieghu.

-----TMIEM-----