

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
GEOFFREY VALENZIA**

Seduta tat-30 ta' Gunju, 2003

Citazzjoni Numru. 194/2003

**Avv.Carmel Chircop noe
vs
Smarta Navigation Ltd**

Il-Qorti,

PRELIMINARI

Rat ir-rikors;
Rat ir-risposta;
Semghet lill Avukati difensuri jittrattaw;

KONSIDERAZZJONIJIET

Il-konvenuti qed jitlobu fir-rikors taghhom li dina l-Qorti tirrevoka contrario imperio d-digriet taghha tal-24 ta' Frar, 2003 fejn laqghet it-talba dwar il-bejgh u/jew trasferiment ta' l-ishma tas-socjeta' konvenuta.

Pagna 1 minn 4

Qrati tal-Gustizzja

Fir-rikors originali li kien ghamel l-attur noe taht l-Artikolu 37 tal-Kap 234 il-Qorti kienet laqghet it-talbiet ta' l-attur noe fosthom li ma jsir ebda bejgh u/jew trasferiment tal-ishma tas-socjeta' konvenuta Smarta Navigation Ltd, sid tal-bastiment Mv Smarta.

Il-konvenuti fir-rikors odjern qed jissottomettu li l-Qorti ma setghetx tilqa' dik it-talba taht l-artikolu 37 tal-Kap 234, ghax mhiex prevvista mill-istess artikolu.

Tikkunsidra

Illi l-artikolu 37 tal-Kap 234 jipprovdi li :

37. (1) *The Civil Court, First Hall, may, if it thinks fit (and without prejudice to the exercise of any other power of the court), on a demand by writ of summons of a person claiming a right in or over a ship make an order prohibiting for a specified time, which shall in no case be of more than a year, any dealing with a ship or any share therein, and the court may make the order on any terms and conditions it thinks just, subject to any other provision of this Act, including, without prejudice to the generality of the above, the imposition of an obligation to provide appropriate security, for damages, interests and costs, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and every registrar, without being made a party to the proceedings, shall on being served with, or given notice of, the order obey the same and shall enter a note thereof and the relevant expiry date in the register of the ship.*

.....

(5) *The Court shall appoint the writ for hearing within twenty days of its filing; moreover the court may, on the application of the plaintiff make a provisional order prohibiting any such dealings until the court decides definitely on the merits of the writ or until the court shall have revoked the provisional order.*

L-attur noe qed jissottometti li l-Qorti kienet laqgħet iż-żewġ talbiet tiegħu nkluza dik li ma jsir ebda bejgħ u/jew trasferiment ta' l-ishma tas-soċjeta' Smarta Navigation Ltd. Infatti, hu jsostni, li l-ligi tipprovdi li l-Qorti *generally may act in the case as the justice of the case requires* u f'dan il-kaz hekk kien mehtieg u xieraq.

Il-ligi, fl'Art 37 tipprovdi li tkun tista' tinhareg ordni għal persuna li tkun *claiming a right in or over a ship u għall any dealing with a ship or any share therein*. Il-ligi ma titkelliemx fuq ishma ta' kumpaniji imma ta' vapuri. Il-bastiment u s-shareholders tal-kumpanija huma żewġ entitajiet distinti u differenti, u mizura kontra wiehed mhix necessarjament timplika mizura kontra l-iehor. L-attur noe dejjem jista' jiehu mizuri separati kontra s-socjeta' b'att gudizzjarju appositu iehor izda mhux taht l-artikolu 37.

Għalkemm l-artikolu 37 jipprovdi li l-Qorti tista tagħmel l-ordni b'dawk il-pattijiet u kondizzjonijiet li jidhrilha xierqa, izda dana tista tagħmlu b'riferenza għall dak provvdut fl-istess artikolu cioe' għal dak li jirrigwarda *claim of a right in or over a ship*.

L-attur noe issottometta wkoll li t-talba tiegħu setgħet issir biex ma jsir ebda bejgħ u/jew trasferiment ta' l-ishma tas-socjeta' Smarta Navigation Ltd kif johrog car mill-artikolu 37 fejn jgħid li kull Registratur għandu meta jigi notifikat bl-ordni jew jingħata avviz tiegħu jobdi dak l-ordni, u għalhekk jargumenta li l-artikolu 37 japplika mhux biss għar-Registratur tal-Bastimenti Merkantili imma anke għar-rigward tar-registraturi l-oħra li l-Qorti jidhrilha xierqa li timponi fuqhom l-ordni, f'dana l-kaz, ir-Registratur tal-Kumpaniji.

Il-Qorti ma taqbilx li kull Registratur tirreferi għall registraturi oħra kollha li l-Qorti jidhrilha xierqa li timponi l-ordni fuqhom. Il-Ligi fil Kap 234 tipprovdi għal bastimenti merkantili u r-riferenza hemmhekk għal Registratur tirreferi għall Registratur tal-Bastimenti Merkantili u kieku l-legislatur ried jirreferi għall registraturi oħra kien jgħid hekk u kien jipprovdi għalihom u jispecifica għall liema

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tapplika, kif sar diversi drabi f'ligijiet ohra ez inibizzjonijiet - ghar Registratur ta' l-Art jew tal-Insinwa.

Fid-definizzjonijiet li jaghti l-Kap 234 insibu li:

"registrar" means a person appointed as registrar under article 364, and includes any person acting under his authority with the permission of the Registrar-General;

"Registrar-General" means the Registrar-General of Shipping and Seamen as provided in article 363, and includes any person acting under his authority;

Fl-artikolu 37 ir-riferenza hija ghall Registratur tal-Bastimenti who shall enter a note thereof and the relevant expiry date in the register of the ship. Ma jissemma ebda registratur jew registru iehor.

DECIZJONI

Ghal dawn il-motivi
il-Qorti tiddecidi

billi tilqa' t-talba tas-socjeta' Smarta Navigation Ltd kontenuta fir-rikors datat 22 ta' Mejju, 2003 u tirrevoka contrario imperio d-digriet taghha tal 24 ta' Frar, 2003 fir-rigward tat-talba dwar il-bejgh u /jew trasferiment ta' l-ishma tas-socejta' rikorrenti;
tordna li jigu notifikati bid-decizjoni r-Registratur Generali tal-Bastimenti u r-Registratur tal-Kumpaniji.

Spejjez riservati ghad-decizjoni finali.

< Sentenza In Parte >

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