

Kopja Informali ta' Sentenza



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
TONIO MALLIA**

Seduta tal-21 ta' Ottubru, 2004

Citazzjoni Numru. 107/1995/2

**Avukat Max Ganado bhala mandatarju specjali ghan-
nom u in rapprezentanza tas-socjeta' estera METAL
TRADE S.R.L**

VS

**Kaptan Sebastiano Pizzimenti ghan-nom u in
rapprezentanza tal-bastiment M.V. Poker, ta' bandiera
taljana, registrat fil-Port ta' Cagliari u b'nota tas-27 ta'
Frar 1995 Dr. Tonio Fenech assumma l-atti tal-kawza
minflok il-Kaptan sabiex jirrapprezenta l-bastiment
M.V. Poker**

Il-Qorti;

Kopja Informali ta' Sentenza

Rat ic-citazzjoni pprezentata mill-attur fis-26 ta' Jannar, 1995, li in forza taghha, wara premetta:

1. Illi l-konvenut nomine huwa debitur tal-attur nomine fis-somma fi flus maltin ekwivalenti ghal wiehed u tletin miljun u sebgha mija u sebgha u sittin elf punt tnejn disgha zero liri taljani (IL 31.767.290) liema ammont jirrapprezenta bilanc minn somma akbar prezz ta' *spare parts* u provvisti necessarji li gew suppliti u kkonsenjati lill-istess konvenut nomine;

2. Illi dan id-debitu huwa cert likwidu u dovut u fil-fehma tal-attur il-konvenut nomine m'ghandux eccezzjonijiet ghal din it-talba;

Ghalhekk l-attur talab lil din l-Onorabbli Qorti sabiex:

1. Taqta' u tiddeciedi l-kawza bid-dispensa tas-smiegh tal-kawza ai termini tal-artiklu 167 tal-Kap. 12 tal-Ligijiet ta' Malta u

2. Tikkundannah sabiex ihallas lill-attur nomine s-somma fi flus maltin li fid-data tas-sentenza tkun ekwivalenti ghal wiehed u tletin miljun sebgha mija u sebgha u sittin elf mitejn u disghin liri taljani (IL 31.767.290) liema ammont jirrapprezenta bilanc minn somma akbar prezz ta' diversi oggetti, *spare parts* u provvisti necessarji konsenjati lill-attur;

Bl-ispejjez kontra l-konvenuti u bl-imghax legali sad-data tal-pagament effettiv li jibqghu minn issa ngunti biex jidhru in subizzjoni.

Rat id-digriet tal-Qorti tal-15 ta' Frar, 1995, li in forza taghha, wara li ssodisfat ruhha li l-konvenut ghandu eccezzjoni tajba biex jopponi l-azzjoni, tat lill-konvenut permess li jopponi l-azzjoni u taghtu zmien ghoxrin gurnata biex jipprezenta l-eccezzjoni tieghu u ordnat ukoll

Kopja Informali ta' Sentenza

li l-kawza tigi mismugha u deciza fuq l-istess atti fil-kors ordinarju taghha;

Rat in-Nota tal-Eccezzjonijiet mressqa mill-konvenut li biha eccepixxa;

1. Illi, in linea preliminari, din il-Qorti m'ghandhiex gurusidizzjoni biex tiehu konjizzjoni tal-kawza odjerna.

2. Illi subordinatament u minghajr pregudizzju ghall-premess, il-gudizzju m'huwiex integru ghaliex is-sidien tal-bastiment in kwistjoni ma gewx imharrka imqar ghal kull interess li jista' jkollhom fil-bastiment peress illi kull azzjoni "*in rem*" mhix proponibbli kemm-il darba s-sidien ma jkunux ukoll responsabbli ghall-kreditu pretiz;

3. Illi fil-mertu u minghajr pregudizzju ghas-suespost, stante li fil-kaz odjern si tratta ta' bastiment li kien "*bareboat chartered*" meta l-kreditu pretiz gie kontrattat, il-hlas ta' dan l-istess kreditu mhux biss m'huwiex ir-responsabbilita' tas-sidien tal-istess bastiment – liema kreditu lanqas ma hu kopert bi privilegg – izda inoltre l-azzjoni "*in rem*" f'dawn ic-cirkostanzi ma tistax tkun legalment ammissibbli;

4. Sussidjarjament u minghajr pregudizzju ghall-premess, fil-meritu t-talba tal-attur nomine ma tistax tigi milqugha minhabba li l-kreditu pretiz mill-attur nomine mhux dovut u mhux ezigibbli minghand il-bastiment stante illi s-sidien tal-bastiment mhux responsabbli ghall-hlas tal-istess in persona u dan peress illi l-kreditu pretuzi ma gewx kotntrattati mis-sidien jew minn persuni awtorizzati in rapprezentanza tas-sidien; dawn lanqas ma jirradikaw privilegg fuq il-bastiment. Ghalhekk l-eccipjent noe m'huwiex il-legittimu kontradittu tal-attur nomine;

5. Salvi eccezzjonijiet ohra.

Rat id-dikjarazzjonijiet guramentati tal-partijiet;

Rat il-verbal registrat fl-ujdenza tas-6 ta' Gunju, 1995, li fiha l-konvenut irrinunzja ghall-ewwel eccezzjoni tieghu;

Kopja Informali ta' Sentenza

Rat is-sentenza moghtija minn din il-Qorti fis-27 ta' Settembru, 1999, li in forza taghha laqghet it-talba tal-konvenut nomine ghall-isfilz tal-affidavit ta' l-imsemmi Francesco Rizzuto, b'dana pero' li qeghda tirrizerva espressament id-dritt li tirrevoka *contrario imperio* tali ordni fil-kaz li ssirilha talba formali ghall-ammissjoni tax-xhud imsemmi u dan kemm-il darba hija tkun konvinta li tali talba tkun legalment gustifikata; fit-tieni lok, l-attur nomine ghandu permezz ta' nota juri jekk huwiex qieghed jestendi t-trattazzjoni tieghu ghall-mertu kollu tal-vertenza meta huwa elabora dwar il-ligi applikabbli, jew inkella, huwiex minflok qieghed jillimita ruhu biss ghall-fini tat-tielet eccezzjoni.

Fit-tielet lok, ordnat lill-konvenut nomine biex dan jiddikjara jekk ghandux xi haga x'izid man-nota tieghu u rigwardanti t-tielet eccezzjoni u specifikatament dwar l-osservazzjoni tieghu li l-azzjoni *in rem* fic-cirkostanzi partikolari tal-kaz "ma tistax tkun legalment ammissibbli"; u b'dan li f'kull wahda minn dawn l-ordnijiet il-kontro-parti jkollha d-dritt ta' risposta.

Rat il-verbal ta' din il-Qorti redatt fid-9 ta' Dicembru, 1999, fejn gie stabbilit li, f'dak l-istadju, il-Qorti kellha tillimita ruhha biex tiddeciedi liema ligi hi applikabbli u li ghandha tirregola l-materja dwar l-allegat privilegg;

Rat id-digriet ta' din il-Qorti tat-28 ta' Frar, 2000, li in forza tieghu rriskontrat diversi punti li dwarhom talbet li jsiru kjarifiki ulterjuri mill-partijiet;

Rat in-Nota konguntiva tal-partijiet tat-23 ta' Marzu, 2000, fejn gew moghtija l-kjarifiki li talbet il-Qorti;

Rat is-sentenza ta' din il-Qorti tal-1 ta' Gunju, 2000, li in forza taghha iddikjarat li l-ligi applikabbli ghall-kwistjoni ta' privilegg hija u kienet regolata bil-ligi taljana u, ghaldaqstant, awtorizzat lill-attur li jipproduci l-provi opportuni dwar il-ligi Taljana; l-ispejjez rizervati ghall-gudizzju finali;

Kopja Informali ta' Sentenza

Rat id-digriet ta' din il-Qorti tad-19 ta' Ottubru, 2000 li ordnat li l-affidavit sfilzat jerga' jigi mdahhal fil-process;

Semghet il-provi li resqu l-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti eseblti, inkluzi l-affidavits li ressqu l-partijiet;

Rat is-sentenza ta' din il-Qorti tad-9 ta' Ottubru, 2003, li in forza taghha laqghet *in parte* t-tielet eccezzjoni tal-konvenut *nomine*, u iddikjarat li l-pretenzjoni tal-attur *nomine*, anke jekk sorretta fil-fatt u fil-ligi, ma tikwalifikax li tkun koperta bi privilegg;

Rat li din il-kawza thalliet ghal-lum ghas-sentenza fuq il-meritu;

Rat in-nota tal-osservazzjonijiet ulterjuri tal-partijiet;

Ikkunsidrat;

Illi f'din il-kawza, l-attur, f'isem is-socjeta' estera Metal Trade s.r.l., qed jitlob hlas minghand il-bastiment m.v. "Poker" ta' bilanc minn somma akbar ta' *spare parts* u provvisti necessarji li gew suppliti u kkonsenjati lill-bastiment. Din it-talba giet promossa bhala azzjoni *in rem* kontra l-vapur u l-bilanc mitlub huwa ta' LIT31,767,290.

Jirrizulta li bejn l-1 ta' April, 1994 u t-18 ta' Jannar, 1995, il-bastiment *in kwistjoni* kien gie moghti b'"bareboat charter" lis-socjeta' Marinzulich Cap. Claudio Armatore & C S.r.l., u dan kif jirrizulta minn "bareboat charterparty" tal-31 ta' Marzu, 1994. Dan il-"bareboat charterparty" kien gie terminat mis-sidien tal-vapur, Sea Containers Italia s.r.l. qabel iz-zmien pattwit, u dan minhabba inadempjenza *da parti* tal-"bareboat charterparty". Fiz-zmien li l-vapur kien f'idejn il-"bareboat charterer" gew kuntrattati l-allegati krediti reklamati mis-socjeta' attrici. Il-vapur konvenut qed jallega li hi mhux responsabbli ghal hlas ta' dawn il-krediti, peress li meta gew kuntrattati, il-vapur kien fil-pussess u l-kontroll assolut tal-imsemmi "bareboat charterer", tant li l-kaptan tal-istess bastiment

kien gie mahtur mill-*"bareboat charterer"* stess u mhux mis-sidien, u kien biss fit-18 ta' Jannar, 1995, meta s-sidien hadu lura l-pussess tal-bastiment, li dawn hatru kaptan iehor *in sostizzjoni* tal-kaptan nominat mill-*"bareboat charterer"*. Mid-dokumenti ezebiti mis-socjeta' attrici, jirrizulta ammess li l-fornituri saru meta l-vapur kien f'idejn il-*"bareboat charterer"* u l-ordnijiet fil-fatt saru mis-socjeta' li kellha l-*"bareboat charter"*, jigifieri s-socjeta' Marinzulich Cap. Claudio Armatore & C. S.r.l.

Il-pretenzjoni tas-socjeta' attrici giet konfermata minn Marco Giovanni Noviello, direttur tas-socjeta' attrici, li spjega li l-*parts* gew provduti wara talba li saritlu mill-kaptan tal-vapur, u kkonferma l-*invoices* relattivi li jkopru l-perjodu mis-26 ta' April, 1994 sat-18 ta' Ottubru, 1994. Dawn il-*parts* inghataw lill-vapur waqt li din kienet fis-*shipyards* ta' Tommaso Montano & Figli S.r.l. gewwa Livorno, l-Italia.

Min-naha l-ohra, il-vapur konvenut, fil-waqt li ma jichadx li gew provduti l-*parts*, ma jaccettax li l-ordni saret mill-kaptan. Malcolm Walter Parrott, rapprezentant tas-sidien tal-vapur, jghid li mill-investigazzjoni li hu ghamel dwar il-kaz, ix-xogholijiet saru fuq ordni tal-*charterers*, u li x-xogholijiet *"were the responsibility of a Sr. Mangrini who was acting as an independent technical superintendent for Marinzulich"*. Din il-Qorti fis-sentenza preliminari taghha tad-9 ta' Ottubru, 2003, kienet stharget dan il-punt u kienet waslet ghal konkluzzjoni li x-xoghol ma sarx fuq ordni tal-kaptan, izda fuq talba tal-*"bareboat charterers"* li hadu hsieb jirrangaw li jsiru t-tiswijiet mehtiega meta l-vapur dahlet fil-port ta' Livorno.

Fil-kuntratt ta' *"charterparty"* in kwistjoni jinghad li *"The vessel shall during the charter period be in the full possession, and at the absolute disposal for all purposes of the charterers and under their complete control in ever respect"*. Fir-rigward ta' *charterparties*, l-awturi Gaskell, Debattista and Swatton, fil-ktieb *"Chorley & Giles' Shipping Law"* (8th Edit, 1988 pag. 174) jaghmlu dawn l-osservazzjonijiet:

“To put it broadly a charterparty is a contract between the charterer and the shipowner, by which the former hires from the latter the use of the ship, either for a certain length of time – say, twelve months – when it is called a time charter, or for a certain voyage, when it is called a voyage charter; this latter may be out and home, usually called a ‘round voyage’. The charter may be an ordinary hire just as the hire of any movable thing, for instance, a motor car for an excursion, or it may be in the nature of a lease by which the owner grants or demises the entire control and possession of the ship to the charterer (charter by demise). This type of charterparty is appropriate when a shipowner is desirous of augmenting his fleet, or where a person wishes to obtain full temporary possession of a ship, as when fitting out an expedition for exploration. The demise charterer is in a position similar to the leaseholder of land, that is to say, he is for all practical purposes, except registration, the temporary owner of the ship. Accordingly, the duties and rights of the owner are performed and exercised, respectively, by him. He is bound by a salvage award, and it is on his behalf that the master signs bills of lading, for master and crew are his, and not the owner’s servants. During the duration of a charter by demise the owner’s right is to be paid the hire or, as it is sometimes confusingly called, the chartered freight. He is not allowed to interfere in any way with the management of the ship, except in so far as the terms of the charterparty itself permit. If the ship earns a salvage award the charterer by demise is entitled to it. The common form of charterparty is that used between the shipper of goods and the shipowner”.

Kif intqal minn Lord Watson fil-kawza “The Castle Gate”, deciza mill-House of Lords fl-1892, *“As every proceeding in rem is in substance a proceeding against the owner of the ship, a proper maritime lien must have its root in his personal liability”*. Issa, meta jkun hemm *charter by demise*, is-sid tal-vapur ma jkun bl-ebda mod responsabbli għall-obbligazzjonijiet assunti mill-vapur, u *kwindi* ma tistax issegwi azzjoni *in rem* kontra l-vapur, liema azzjoni, kif jinghad fil-kawza “L’Astrigoni”, deciza fl-

Kopja Informali ta' Sentenza

Ingilterra fl-1974, hija *“intended to facilitate the enforcement of liabilities, not to allow pressures to be put upon a person who is himself under no liability in respect of the liabilities of others”*.

Il-fatt li s-sid tal-vapur izomm xi drittijiet fuq il-vapur, per eżempju, li *c-chief engineer* ikun mahtur minnu, u li s-sid izomm dritt ta' spezzjoni u dritt ta' identifikazzjoni f'kaz ta' xi responsabbilita' jew hsara lill-vapur, ma jtellifx mill-fatt li kuntratt jibqa' definit *“charter by demise”*, bir-responsabilitajiet u obbligi jkunu kollha *tac-charterer* – “Baumwoll Manufactur von Carl Scheibler vs Furness”, deciza mill-Qorti ta' l-Appell fl-Ingilterra fl-1893.

Meta l-kaz ikun ta' din in-natura, ir-responsabbilita' ghal hlas ta' servizzi provduti tkun *tac-charterer* biss u mhux tal-vapur, aktar u aktar meta, f'dan il-kaz, gie stabbilit li l-ordnijiet saru *mic-charterer* u mhux mill-kaptan. F'kaz ta' *charter by demise*, ir-responsabbilita' ghal hlas ta' dan il-kreditu ma jkunx, allura, tas-sidien tal-istess bastiment, izda tal-*“bareboat charterers”* personalment. Hekk jinghad ukoll fil-ktieb tal-awtur Scruttan *“On Charterparties”* (19th Edit. 1984 pag. 47).

“A charter by demise (bare boat) operates as a lease of the ship itself, to which the services of the master and crew may or may not be supra added. The charterer becomes for the time the owner of the vessel; the master and crew become to all intents his servants, and through them the possession of the ship is in him.

Under a charter not by demise, on the other hand, the ship owner agrees with the charterer to render services by his master and crew to carry the goods which are put on board his ship by or on behalf of the charterer.

The possession of a demised ship is in the charterer, not the owner. Various consequences follow from a charter being construed as a demise:

Kopja Informali ta' Sentenza

(1) *the owner is not liable to shippers even if they did not know of the charter, or to the charterers, for acts of the master and crew. (Baumwoll vs Furness 1893 A.C. 8).*

(7) *Where statutory duties are imposed on the “owner” of a ship, such as the payment of light dues, in the absence of express provisions in the charter, the charterer is liable if the charter is a demise, the owner if it is not. (The Hopper No. 66 (1908) A.C. 126).*

(8) *A charterer by demise is liable for collision caused by negligence of the demised ship. (Fenton vs Dublin 1838 8 A. & E. 835)”*

Meta m'hemmx ir-responsabilita' tas-sidien tal-vapur, m'hemmx responsabilita' tal-vapur, u *kwindi* ma tistax tirnexxi azzjoni *in rem* kontra l-istess vapur. Vapur ma jistax jinzamm responsabbli meta ma tezisti ebda responsabilita' tas-sidien taghha.

Kwindi l-azzjoni tas-socjeta' attrici kontra l-bastiment u intiza bhala wahda “*in rem*” u xejn aktar, ma tistax tirnexxi. Din ukoll hija l-pozizzjoni li hadet din il-Qorti, diversament presjeduta, fil-kawza “Dingli noe vs Pizzimenti”, deciza fil-11 ta' Lulju, 2001.

Ghaldaqstant, ghar-ragunijiet premessi, tiddisponi mill-kawza billi tilqa' t-tielet eccezzjoni tal-konvenut, tqies l-azzjoni attrici, kif maghmula, improponibbli, u tillibera lill-istess konvenut mill-osservanza tal-gudizzju.

L-ispejjez tal-kawza jithallsu mill-attur *nomine*.

< Sentenza Finali >

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