



MALTA

TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
PHILIP MANDUCA**

Seduta tas-7 ta' Dicembru, 2005

Talba Numru. 882/2004

Strand Electronics Limited (C 8393)

Vs

**Dorian u Jeremy ahwa Dalli f'isimhom proprju kif
ukoll ghan-nom u in rapprezentanza tas-socjeta' CD
Holdings Limited (C 28639)**

It-Tribunal

Ra t-talba attrici fejn il-konvenuti proprio et nomine huma mitluba jhallsu s-somma ta' seba' mija u sebgha u sittin lira Maltin u tmenin centezmu (Lm767.80c) rapprezentanti prezz ta' *point of sale system* mibjugh u debitament ikkonsenjat lill-konvenuti proprio et nomine fuq inkarigu taghhom stess.

Ra r-Risposta tal-konvenuti fejn jghidu illi l-ammont mitlub m'huwix dovut peress illi l-ammont mitlub gie mhallas u fi kwalunkwe kaz it-talba hija wahda esagerata u bla bazi legali.

Illi minghajr pregudizzju ghas-suespost is-servizz moghti u l-apparat installat mis-socjeta' attrici ghadu ma jahdimx kif miftiehem filwaqt li hemm difetti serji fl-istess *software* tas-sistema nstallata.

Ra x-xhieda ta' Ray Azzopardi li jiddikjara li kien involut direttament fid-dealings ma' CD Holdings Limited, liema socjeta' kienet accettat li tixtri *equipment* tal-bars minghandhom. Dan jissejjah *point of sale* li jinkludi *software w installation*. Jghid li kien hemm xi *delayed payments* izda waslu fi stadju ta' arrangament ta' pagamenti mas-socjeta' konvenuta, fejn gie ffirmat *statement* li ghamlu flimkien. Jiddikjara illi l-ftehim kien li jekk il-konvenuti ma jhallsux regolarment, l-ammont kollu jsir dovut. Il-pagamenti bdew isiru regolari izda l-ahhar pagament ma sarx. Fi Frar gie ffirmat *payment agreement* mis-socjeta' konvenuta bhala qbil ta' l-ammont dovut. Gie mitlub aktar zmien ghall-hlas, liema talba giet michuda. Jghid li l-ilmenti min-naha tal-konvenuti dwar is-servizz gew irrangati.

Ra x-xhieda ta' Dorian Dalli fejn jikkonferma illi flimkien ma' huh xtraw EPOS System minghand id-ditta attrici. L-ammont originali tal-bejgh kien ta' xi tmien t'elef u hames mitt lira Maltin (Lm8,500). Jghid li kien sar *payment program* mas-socjeta' attrici dwar kif ser jithallas l-ammont dovut. L-apparat gie mixtri biex jintuza ghar-rapporti bhal *stocktaking*. Is-sistema tahdem bhala *cash register*, pero' raw certu difetti fil-mod kif is-sistema taghmel ir-rapporti. Jiddikjara li bdew ihallsu xi elf lira Maltin (Lm1,000) fix-xahar izda nfurmaw lil ta' l-iStrand, lil certu Peter Paul, dwar id-difetti. Wara xi zmien, f'Lulju tal-2002 is-sistema kkraxxjat ghal kollox. Talbu li jigu ta' Strand Electronics sabiex jirrangaw id-difetti, madanakollu sabiex jibaghtu t-technician kellhom ihallsu elf lira Maltin (Lm1,000) mill-ewwel. Dan sar izda xorta kien hemm diffikulta' biex jinchargu r-rapporti. Il-hlas baqa' jsir u anki l-ilmenti lis-

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socjeta' attrici. Jikkonferma l-bilanc dovut. Jghid li s-sistema qiegħda topera biss bhala *cash register* normali billi r-reporting ma jistax isir. L-installazzjoni saret f'Dicembru 2001, u f'Mejju 2002 sar is-schedule payment u wara ndunaw bid-difetti.

Ra x-xhieda ta' Jeremy Dalli fejn jikkonferma dak kollu li qal huh. Is-sistema hija llinkjata ma' *main computer* u l-problema kienet fil-connection bejn il-*cash register*, l-apparat u l-*main computer*, u li r-rapporti mhux qed johorgu. Jaqbel ma' huh meta jghid li spickaw joperaw is-sistema bhala *cash register* normali li tiswa madwar tlett mitt lira Maltin (Lm300), mentri l-apparat li nxtara jiswa xi tmien t'elef lira Maltin (Lm8,000). Gie assigurat li l-problemi kollha se jigu rrangati meta sar il-ftehim għal *further repayment*.

Ra d-dokumenti esebiti.

Illi fl-ewwel eccezzjoni l-konvenuti ecceppew il-hlas. Ma gabux prova ta' tali hlas u għalhekk l-ewwel eccezzjoni hija michuda.

Illi fit-tieni eccezzjoni l-konvenuti qalu li l-apparat li xtraw ma jahdimx.

Ra illi skond l-**Artikolu 73 (d) Kapitolu 378**:

"73. (1) Traders are obliged to deliver to consumers, goods which are in conformity with the description and specifications in the contract of sale, and shall accordingly be obliged to ensure that the goods –

(d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the trader, the producer or his representative, particularly in advertising or on labelling."

L-**Artikolu 79 (1)** ta' l-istess Kapitolu jghid:

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“79. (1) In order to benefit from the remedies available under this part, a consumer must notify the trader of any lack of conformity in writing within two months from the date on which the consumer detected such lack of conformity.”

Il-konvenuti naqsu li jinfurmaw bil-miktub lis-socjeta' attrici dwar l-allegat hsara fis-sistema, waqt li ma hadux passi legali kontra s-socjeta' attrici. Oltre, ndunaw bid-difetti f'Mejju tal-2002, u baqghu juzaw is-sistema difettuza sa sentejn wara li ndunaw bid-difetti. Illi skond is-socjeta' attrici d-difetti fis-sistema kollha gew irrangati.

Illi l-konvenuti setghu jaghmlu uzu ta' l-*actio redhibitoria* u l-*actio aestimatoria* izda naqsu li jaghmlu dan.

L-Artikolu 1427 tal-Kapitolu 16 jikkontempla li:

“In the cases referred to in sections 1424 and 1426, the buyer may elect either, by instituting the *actio redhibitoria*, to restore the thing and have the price repaid to him, or, by instituting the *actio aestimatoria*, to retain the thing and have a part of the price repaid to him which shall be determined by the court.”

Madanakollu, l-azzjoni applikabbli hi preskritta ai termini ta' l-**Artikolu 1431** li jghid:

“1431 (1) The *actio redhibitoria* and the *actio aestimatoria* shall, in regard to immovables, be barred by the lapse of one year as from the day of the contract, and, in regard to movables, by the lapse of six months as from the day of the delivery of the thing sold.

Where, however, it was not possible for the buyer to discover the latent defect of the thing, the said periods of limitation shall run only from the day on which it was possible for him to discover such defect.”

It-Tribunal jaghmel referenza ghall-kawza **Emanuel Fiteni Vs Gorg Spiteri u Salvu Azzopardi - Citaz. Nru. 1196/1991DS tat-3 t'Ottubru, 2003.**

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Illi l-konvenuti ghazlu li jkomplu juzaw l-apparat li xtraw u ma hadux il-passi legali li setghu kienu ntitolati li jiehdu. Inltre l-konvenuti ffirmaw ftehim fis-16 ta' Frar, 2004 fejn accettaw li jhallsu l-ammont dovut (ara Dok. SE a fol 12 tal-process). Dan kien wara li ndunaw bid-difetti.

Ghaldaqstant it-tieni eccezzjoni hi wkoll michuda.

Ghalhekk billi l-ammont jirrizulta li hu dovut, jilqa' t-talba attrici u jikkundanna lill-konvenuti sabiex ihallsu l-ammont ta' seba' mija u sebgha u sittin lira Maltin u tmenin centezmu (Lm767.80c) bl-ispejjez u bl-imghax mis-7 ta' Mejju, 2004.

< Sentenza Finali >

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