

# **FIL-PRIM'AWLA TAL-QORTI CIVILI**

**IMHALLEF  
ONOR. GEOFFREY VALENZIA B.A., LL.D.**

**Seduta ta' nhar l-Erbgha, 28 ta' Frar, 2001**

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**Marine Services Ltd.**

**vs**

**Captain Morgan Leisure Limited u l-vapur  
"Charlotte Louise"**

Il-Qorti,

## **PRELIMINARI**

Rat l-att tac-citazzjoni li permezz taghha is-socjeta' attrici ippremettiet illi fis-sebgha u ghoxrin (27) ta' Gunju 1997, il-vapur konvenut Charlotte Louise, registrat taht il-bandiera Maltija, sab ruhu f'diffikoltajiet serji meta kien qed ibahhar ftit il-boghod mix-xtut Maltin, u dan minhabba malfunzjonament tal-magni tieghu u,

Premess illi meta l-kaptan tal-istess vapur ra li x-Charlotte Louise kien qed jingibed mill-kurrent u kien qed jersaq wisq lejn il-blat, huwa beda jitlob l-assistenza mid-dghajjes li kien hemm fil-vicinanze, u

Premess illi "speed-boat" proprjeta' tas-socjeta' attrici fil-pront marret taghti ghajnuna ta' salvatagg lil Charlotte Louise u fil-fatt, mertu tal-isforzi

tempestivi taghha, irnexxielha tigbidha 'l boghod mill-periklu sakemm wassal vapur iehor fil-proprjeta' tas-socjeta' konvenuta, u

Premess illi kieku li-“speed boat” tas-socjeta' attrici ma dahhlitx ghall-vapur, dan kien jinkalja u jsofri hsara kbira bhala rizultat.

Premess illi skond il-ligi is-socjeta' attrici hija intitolata ghal “salvage award” minhabba l-intervent taghha fis-salvatagg tal-vapur Charlotte Louise.

Ghar-ragunijiet premissi, is-socjeta' attrici talbet li din l-Onorabbli Qorti:

1. Tiddikjara lis-socjeta' attrici hija intitolata ghall-hlas ta' kumpens ghas-salvatagg (“salvage”);
2. Tillikwida l-kumpens ghas-salvatagg dovut lis-socjeta' attrici, okkorrendo bl-opra ta' Periti nominandi;
3. Tikkundanna lill-konvenuti ihallsu lis-socjeta' attrici dik is-somma likwidata ai termini tat-tieni talba, kollox kif intqal fuq.

Bl-ispejjez, inkluzi dawk tal-ittra legali tal-erbgha u ghoxrin (24) ta' Lulju 1997 kontra l-konvenuti.

Rat id-dikjarazzjoni tas-socjeta' attrici a fol 3;

Rat in-nota tal-eccezzjonijiet tas-socjeta' konvenuta a fol 10 fejn eccepjet:

1. Illi l-ewwel talba, u konsegwentement it-tieni u t-tielet talba, tas-socjeta' attrici huma nfondati fil-fatt u fid-dritt stante illi l-bastiment “Charlotte Louise” qatt ma kien f'periklu f'xi hin fis-sebgha u ghoxrin (27) ta' Gunju, 1997 u ghaldaqstant ma ghandu jithallas ebda salvatagg;

2. Illi subordinament u minghajr pregudizzju ghas-suespost, is-socjeta' attrici u s-socjeta' konvenuta u l-bastiment konvenut ghandhom relazzjoni esistenti li permezz taghha is-socjeta' attrici ghandha d-dmir li taghti ghajnuna barra milli skond id-disposizzjonijiet tal-Att dwar il-Bastimenti Merkantili (Kap 234 tal-Ligijiet ta' Malta) u s-servizzi li tat is-socjeta' attrici lill-bastiment konvenut ma kienux ta' xorta eccezzjonali u ghaldaqstant ma ghandu jithallas ebda salvatagg;

3. Illi subordinament u minghajr pregudizzju ghas-suespost anke kieku wiehed kellu jaccetta li huwa dovut xi hlas ta' salvatagg, u dan mhuwiex ammess, l-ammont tal-istess hlas ghandu jkun minimu stante illi:-

(i) L-isforz tas-socjeta' attrici kien ta' natura zghira;

(ii) La l-bastiment konvenut u lanqas is-socjeta' attrici jew il-bastiment taghha ma ghaddew minn l-ebda periklu;

(iii) Il-hin li ttiehed biex l-incident de quo gie risolt kien qasir hafna, ma sarux spejjez u ma ggarrabx telf. Inoltre, ma kienx hemm riskji ta' responsabilita' jew riskji ohra li ttiehdu mis-socjeta' attrici jew il-bastiment taghha.

4. Salvi eccezzjonijiet ohra.

Rat l-atti kollha tal-kawza u d-dokumenti ezibiti;

Semghet ix-xhieda bil-gurament;

Rat li ma sarux noti mill-partijiet;

**TALBA**

L-atturi qed jitolbu li dina l-Qorti tiddikjara li s-socjeta' attrici hija intitolata ghall-hlas ta' kumpens ghas-salvatagg tal-vapur Charlotte Louise; tillikwida l-kumpens dovut; u tikkundanna lill-konvenuti jhallsu l-kumpens hekk likwidat.

## **ECCEZZJONIJIET**

Il-konvenuti eccepew il-bastiment imsemmi qatt ma kien f'perikolu f'xi hin fis-sebgha u ghoxrin (27) ta' Gunju, 1997 u ghalhekk m'ghandu jithallas ebda salvatagg;

Is-servizz li tghat is-socjeta' attrici ma kienx ta' xorta eccezzjonali u kien hemm relazzjoni ezistenti bejn il-partijiet li permezz taghha s-socjeta' attrici kellha dmir li taghti ghajnuna;

Jekk kellu jithallas xi kumpens, dan ghandu jkun minimu billi l-isforz tas-socjeta' attrici kien ta' natura zghira; u la l-bastiment u lanqas is-socjeta' attrici jew l-bastiment taghha ma ghadew minn ebda perikolu. Il-hin li ittiehed biex l-incident de quo jigi risolt kien qasir hafna u ma sarux spejjez u ma garrabx telf. Ma kienx hemm riskji ta' responsabilita' jew riskji ohra li ittiehdu mis-socjeta' attrici jew il-bastiment taghha.

## **PROVI**

**Paul Ebejer** xehed li kien qed juza l-ispeed boat SA464 fis-sebgha u ghoxrin (27) ta' Gunju, 1997 fil-bajja ta' San Gorg. Dak in nhar ir-rih kien mill-Grigal force 4. F'xi t-tmienja u nofs ta' filghodu (8.30 am) raw lil Charlotte Louise diehla l-bajja biex tigbor xi turisti mill-jetty tal-Westin Dragonara. Il-vapur dar mal-bajja u kif wasal fuq in-naha tal-Lukanda Corinthia San Gorg hu avvicina l-vapur billi jaf lill-Kaptan. F'daqqa wahda induna li l-propellor tal-vapur ma kienx qed idur u l-Kaptan kien qed jipprova jistartja l-magna minghajr success. Dak il-hin il-vapur kien xi hamsin (50) sa sittin (60) pied il-boghod mill-blat. Il-vapur ghandu magna wahda biss. Peress illi kien rih anke gewwa

I-bajja, I-Kaptan kien qal lill-ekwipagg biex jippreparaw biex jifgħu I-ankri izda xorta kien ser jinkalja. Billi kien vicin tal-vapur il-Kaptan b'certa anzjeta talbu biex jigbed habel li kien ser jifgħlu biex jigbdu u jevita li jinkalja. F'dan l-istadju I-vapur kien diga resaq sa xi tletin / hamsa u tletin (30/35) pied il-boghod mill-blat u kien qed jersaq aktar vicin aktar ma jghaddi I-hin. Huma qabdu I-habel u gibduh barra I-bajja. Il-makni kien ghandhom il-hsara. Meta kien barra I-bajja gie vapur iehor tal-konvenuti u rmonka ic-Charlotte Louise sax-xatt ta' Tas Sliema. B'kollox is-servizz li taw dam sejjer ghoxrin (20) minuta. L-ispeed boat tagħhom huwa zghir sbatax (17)-il pied. Hu cahad li s-socjeta' tiegħu kellha xi obbligi kuntrattwali biex tassisti lix- Charlotte Louise jew lis-socjeta' konvenuta. Hu kien kiteb lis-socjeta' konvenuta biex jikkumpensawh għas-servizz ta' salvatagg pero' irrifjutaw li jhallsuh.

Fuq kontroezami wiegeb li boat bhal Charlotte Louise mhux li kemm titfa' I-ankri u zzommha imma trid certu tul ta' habel.

**Bernard Miggiani** xehed li kien ma' Paul Ebejer fuq I-ispeed boat fil-bajja ta' San Gorg u kienu taw I-ghajnuna lil Charlotte Louise. Hu ikkonferma x-xhieda ta' Ebejer. Il-vapur tant kien wasal vicin I-art li kien qal lil Ebejer li kienet ser tispicca I-art. Huma ghamlu sforz kontinwu bl-ispeed boat biex gibdu I-vapur. Il-kaptan deher inkwetat. Meta I-ispeedboat irnexxilha tigbed I-ischooner barra din kienet vicin hafna tal-blat. Li kieku ma tawx I-assistenza ta' salvatagg il-vapur kien jinkalja zgur.

**Gregory Scicluna** xehed li I-valur tax-Charlotte Louise fit-tletin (30) ta' Gunju, 1997 kien ta' hamsa u disghin elf, tmien mija u disgha u hamsin liri Maltin (Lm 95,859) Dok C1 fol 44 bhala hull.

**Robert Clarke** testified that on that day they were going to collect some clients from the Westin Dragonara. The wind on that day was from south-east force 4-5 approximately, and the sea was slight but building. When they entered the bay, they had some difficulty in boarding the clients. The captain

was liaising with two guys in an outboard motor equipped speedboat via VHF radio, who were in turn liaising with the charter group by mobile telephone. As they were turning to leave the bay, the main engine stopped without warning. The captain attempted to restart the engine, but it would start, run for three seconds, and shut down again. He got the anchor ready. Then the captain told the two guys to do him a favour and take a line and informed them that he had lost the engine. He gave them the line which he was preparing to attach to the Admiralty anchor. They secured it to their vessel and proceeded to pull their bow around. At this point their position was seven to ten meters from the north shore of the bay. The closest point of approach to the north shore was five metres. If the guys had not agreed to take their line, they would have deployed their admiralty anchor given the nature of the seabed would have stopped the boat from closer approach to the shore. Under the continued assistance from the speed boat their clearance from the shore increase to about thirty (30) metres. At this point MV Valandra approached and succeeded in securing a line with Charlotte Louise. Later they found that the engine had stopped because of a short circuit. They started the engine and proceeded under their own steam to moor in Marsamxett Harbour.

**Jonathan Gurland**, captain of the Charlotte Louise, testified that on that day he intended collecting passengers from the jetty of the Westin Dragonara. He realized that the wind in the area of the jetty would be on his starboard beam (right) and would complicate moorings in that area. Ebejer was on the jetty and he spoke to him about the mooring. He told him that he was not going in and Ebejer came over to the Charlotte Louise with his speed boat and continued discussing the mooring. He decided not to moor and return to Sliema. During that time the engine stopped. He informed Captain Morgan administration by VHF of his problems and was informed that the Valandra was on its way. He tried to restart the engine two (2) or three (3) times without success. He ordered the crew to prepare the emergency anchor (anchor which is much heavier than a normal anchor). He asked Ebejer to

do him a favour and pass him a rope. At this stage they were at least two lengths of the boat away from the Corinthia side, that is about two hundred (200) feet. If they threw the anchor in at this time the boat would have been a sufficient distance from the shore. He told Ebejer to pull them towards the mooring buoy of the Westin Dragona but instead he pulled them out into the wind and towards the entrance of the bay. Then the vessel of Captain Morgan took over from the speedboat. Later he started the engine and continued back to Sliema using his own engine. When the engine stopped the boat was half way between the buoy and the NorthEast shore.

Ix-xhud kompli hekk: If there had been nobody around who I knew and could do me a favour and assist me, I would have acted in accordance to what was required and dropped the anchor. It would take a matter of seconds to drop the anchor as it was already prepared. Had I dropped the anchor the boat would have been brought to a standstill. I would certainly not have requested Paul's assistance if I knew he was going to claim salvage, as I would have first asked the employer for such authorization. Moreover Valhundra was on its way and he could have dropped anchor and waited for her. His crew was ready to drop anchor.

**Kevin Zammit Briffa** xehed li l-berthing fejn il-lukanda San Gorg tiehu hsiebu Marine Services Ltd. L-atturi ghandhom il-facilities tal-Lidos tal-bajja ta' San Gorg. Huma juzaw dawn il-facilities bi ftehim magghom. Juza l-facilities li jaghtuhom. Ic-Charlotte Louise kienet vojta dak il-hin. Kieku ic Charlotte Louise ma nizzlitx l-ankri kienet tinkalja fuq ir-ramel. Li jigri kien xi ffit dannu fil-kil. L-atturi ma kienu talbu xejn minghandhom, imbaghad wara ffit zmien talbu elf u hames mitt liri Maltin (Lm1500) ghall-assistenza.

## **KONSIDERAZZJONIJIET**

Il-kaz in ezami hu wiehed fejn l-atturi qed jitolbu li dina l-Qorti tiddikjara li huma intitolati għall-hlas ta' kumpens għal-salvage. Salvage gie definit bħala "the voluntary saving of maritime property from danger at sea".

Il-ligi taghna fl-art. 343 tal-Kap 234 jipprovdi li

**343.** (1) Where any vessel, whether Maltese or foreign, is wrecked, stranded or in distress at any place on or near the coasts within the territorial jurisdiction of Malta and services are rendered by any person in assisting that vessel or saving the cargo or apparel of that vessel or any part thereof, or where any services are rendered by any person other than a receiver of wreck in saving any wreck, there shall be payable to the salvor by the owner of the vessel, cargo, apparel, or wreck, a reasonable amount of salvage limited to the amount of the property saved.

Ir-rekwiziti ta' salvatagg li titlob il-ligi huma principalment erbgha:

- (a) the service must be rendered to a legally recognized subject of salvage, that is to say, to vessels, their apparel, cargo and merchandise, bunkers, wreck and so-called freight at risk;
- (b) the service must be voluntary;
- (c) the subject of the salvage must be in danger and
- (d) the service must be successful.

Dwar (a) the subject of the salvage, is-servizz inghata lis-schooner Charlotte Louise proprjeta' tal-konvenuti.

Dwar (b) gie allegat u anke isemma fl-eccezzjoni tal-konvenuti li kien hemm relazzjoni ezistenti bejn il-partijiet li permezz taghha s-socjeta' attrici kellha dmir li taghti ghajna. L-atturi cahdu dana. Il-konvenuti ghamlu riferenza

ghall-artikolu tal-ligi li jipprovdi li ma jithallasx salvatagg meta jkun dmir tagghom li jaghtu l-ghajnuna:

**Sec 344 (b)** no salvage shall be due -

(i) to persons having such relation to the vessel assisted or saved as it is their duty to render assistance otherwise than under the provisions of this Act, except where the services rendered are of an exceptional nature.

Mill-provi prodotti fil-fatt ma jirrizultax li kien hemm xi ftehim jew obligu da parti tal-atturi li jirrendu xi servizz ta' ghajnuna lill-konvenuti hlief li l-konvenuti juzaw il-jetty li kienu jiehdusieb l-atturi. Ghalhekk l-ghajnuna li taw l-atturi meta gibdu l-boat barra mill-bajja nghatat volontarjament u mhux ghaliex kienu kostretti jew ghax kien xogholhom.

Dwar (d) dana jirrizulta billi fil-fatt l-ghajnuna li nghatat mill-atturi wasslet biex l-ischooner tingibed barra mill-bajja u giet evitata possibili hsara.

Imbaghad hemm l-element determinanti tal-azzjoni tal-atturi cioe jekk il-boat kienitx f'perikolu reali meta nghatat l-assistenza. Dina l-prova trid issir mill-atturi.

Kif ighid l-awtur Hill fil-ktieb Maritime Law:

It is the task of the person claiming salvage to show that at the time when the performance of the service commenced a real danger existed. It is up to the Court hearing the case to determine for itself, whether the property was really in danger, taking into consideration all the facts and circumstances. What is normally in dispute is not the existence of the danger but the degree of danger which does exist... Every situation has to be treated on its own merits and the tests must necessarily be both subjective and objective... Perhaps it would not be too wide of the mark to say that if the ship and/or its cargo is beyond the point where it is able to save itself or bring itself to a

place of refuge and needs outside assistance then it is a situation of real danger.

It-test applikat mill-Qrati Inglizi biex jigi stabilit jekk kienx hemm perikolu jew le, huwa : *Would the master, as a reasonably prudent man, if asked whether he required assistance, have answered yes or no?*

L-atturi qed jippretendu li kieku ma kienx ghal ghajnuna li huma taw, kieku l-ischooner kien jinkalja. Huma qed ighidu li dina kienet tant vicin il-blat meta kienet waqfitilha l-magna, li anke kieku l-kaptan nizzel l-ankra ma kienx ikun bizzejjed billi dina mhiex ser tieqaf mill-ewwel u trid tul habel biex tieqaf. Dak il-hin l-ischooner kienet xi hames (5) metri l-boghod mill-blat.

Minn naha l-ohra l-kaptan tal-ischooner xehed li hu kien ser inizzel l-admiralty anchor biex iwaqqaf il-boat, izda billi kien hemm Ebejer magemb il-boat hu kien talbu jaghmillu favur u jigbdu bil-habel . Hu xehed hekk:

If there had been nobody around who I knew and could do me a favour and assist me, I would have acted in accordance to what was required and dropped the anchor. It would take a matter of seconds to drop the anchor as it was already prepared. Had I dropped the anchor the boat would have been brought to a standstill. I would certainly not have requested Paul's assistance if I knew he was going to claim salvage, as I would have first asked the employer for such authorization. Moreover Valhandra was on its way and he could have dropped anchor and waited for her. His crew was ready to drop anchor.

Robert Clarke xehed fl-istess sens li :

If the guys (atturi) had not agreed to take their line, they would have deployed their admiralty anchor given the nature of the seabed would have stopped the boat from closer approach to the shore.

Kevin Zammit Briffa xehed li anke kieku l-ischooner inkaljat kienet tispicca fir-ramel u d-dannu ma kienx ikun kbir. Ghalhekk kieku l-boat garrbet xi hsara allura l-valur ta' dina l-hsara ghandu jittiehed in konsiderazzjoni u mhux il-valur tal-boat kollha.

Jirrizulta mill provi li l-boat ghalkemm bil-makna wieqfa setghet tigi mwaqqfa tempestivament billi titnizzel l-admiralty anchor. Il-Kaptan xehed li dina l-ankra hija *much heavier than a normal anchor* u kienet twaqqaf il-boat. L-ankra kienet fuq barra u l-crew kienu lesti biex inizzluha, izda Ebejer kien vicin taghhom u accetta li jghinhom jigbed il-boat. Huma kienu distanza mill-blat darbtejn it-tul tal-boat xi mitejn (200) feet. (ara xhieda tal-Kaptan).

Hemm cirkostanzi ohra li jikkonvincu lill-Qorti li dina ma kienitx operazzjoni ta' salvatagg, imma se mai ta' towing. Il-Kaptan xehed li kieku kien jaf li l-atturi kienu ser jitolbu salvage, ma kienx jitlob l-ghajnuna lill-atturi, minghajr qabel ma jitlob l-awtorizzazzjoni tal-employer tieghu. Fil-fatt hu kien in contact mal administration tal-Captain Morgan li kienu jafu bil-problema li kellu u kienu baghtulu boat ohra biex tassistih. Hu setgha ha l-instructions tieghu dak il-hin. Kif qal il-Kaptan, hu setgha jitfa' l-ankra u jistenna dina l-boat tigi tassistih.

Il-Qorti ghalhekk tikkonkludi li dan il-kaz kien wiehed ta' rmonk semplici. Kien hemm il-possibilita' li l-boat jigrilha xi hsara imma fl-ebda mument ma kienet fi stat ta' perikolu reali. Il-boat kellha l-possibilita' li tuza l-admiralty anchor taghha, izda huma accettaw l-ghajnuna ta' l-atturi li jigbduhom 'l barra, mhux ghax kienu fi stat ta' perikolu imma ghax is-servizz li kienu se jaghtuhom l-atturi kien aktar sbrigattiv u jevita inkonvenjenzi. Ghalhekk il-kumpens li f'dan l-incident jisthoqq lill-atturi mhux ta' natura ta' *salvage award* izda ta' servizz ta' assistenza.

Fl-apprezzament tas-servigi li jigu rezi meta jkun kaz ta' salvatagg il-ligi tikkonsidra s-segwenti fatturi:

**Sec 345(2)**

In determining the amount or the apportionment of salvage, the court shall have regard to -

- a) the measure of success obtained, and the efforts and deserts of the salvor;
- (b) the danger run by the vessel saved, by her passengers, crew and cargo;
- (c) the danger run by the salvor and the salving vessel;
- (d) the time expended, the expenses incurred and the losses suffered, and the risks of liability and other risks run by the salvors, and also the value of the property exposed to such risks, due regard being had to the special appropriation (if any) of the salvor's vessel for salvage purposes;
- (e) the value of the property saved.

Fejn il-kumpens ikun wiehed ghal salvage l-kumpens ikun wiehed *large u liberal*, pero' fejn ma jkunx hemm salvage, *the compensation cannot be denominated a salvage compensation and the remuneration is merely one pro opere et labore*. (Rear Admiral J. Stuart Cambridge Salter vs E.G.Arrigo et noe kwotat fil-kaz App. Azzopardi vs Cassar et noe 6.10.98).

L-isforzi li ghamlu l-atturi biex gibdu l-boat permezz tas-speed boat tagghom ma kienux straordinarji. Il-Charlotte Louise dak il-hin ma kellix passiggieri.

L-atturi m'ghaddewx minn perikolu biex gibdu l-boat barra mill-bajja li mhux wiehed normali meta jsir rmonk.

L-operazzjoni damet sejra b'kollox xi ghoxrin (20) minuta.

Ma gew indikati ebda spejjez u telf li garrbu l-atturi meta rmonkaw il-boat.

Ma ssemwew ebda riskji ohra li hadu l-atturi biex gibdu l-boat.

The jurisdiction which is exercised by the court in salvage cases is of a peculiarly equitable character. Illi l-kumpens li tista taghti dina l-Qorti ghas-servizz moghti mill-atturi lill-konvenuti jista jinghata a bazi a decizjoni arbitrio boni viri. Fic-cirkostanzi fid-dawl tat-tip ta' ghajnuna li nghatat u kif fuq deskritta il-Qorti qed takkorda s-somma ta' tlett mitt lira Maltin (Lm300).

## **DECIZJONI**

Ghal dawn il-motivi, il-Qorti tiddeciedi tiddikjara li s-socjeta' attrici hija intitolata ghall-hlas ta' kumpens ghal servizz ta' assistenza lil Charlotte Louise; tillikwida l-kumpens dovut fl-ammont ta' tlett mitt lira Maltin (Lm300); u tikkundanna lill-konvenuti jhallsu l-kumpens hekk likwidat. Bl-ispejjez jithallsu bin-nofs bejn il-partijiet.

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**Frankie Mercieca  
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