MALTA

QORTI TA' L-APPELL

**S.T.O. PRIM IMHALLEF
VINCENT DE GAETANO**

**ONOR. IMHALLEF
ANTON DEPASQUALE**

**ONOR. IMHALLEF
ALBERT J. MAGRI**

Seduta tat-3 ta' Marzu, 2006

Appell Civili Numru. 1048/1995/1

**Evander Borg ghan-nom u
in rappresentanza tas-socjeta`
kummercjali Middle Sea Insurance
Company Limited kif surrogata fid-
drittijiet tas-socjeta` kummercjali
Doublesin & Zammit Limited**

v.

**Francis Vella ghan-nom u in
rappresentanza tas-socjeta`
Express Trailers Limited u
din kemm f'isimha proprju u**

bhala agent u in rapprezentanza
tas-socjeta` estera Wilson Holland B.V.

Il-Qorti:

Preliminari:

B'citazzjoni pprezentata fis-26 ta' Lulju, 1995 quddiem l-allura Qorti tal-Kummerc, l-attur nomine ppremetta illi s-socjeta` kummercjali Doublesin & Zammit Limited importat f'Malta tnax (12)-il kaxxa kontenuti (sic) tnejn u sebghin "Radio Casettes" mill-Filippini kif jidher mill-annessa kopja tal-polza ta' karigu mmarkata bhala Dok 'A'; illi din il-merkanzija giet trasbordata l-ewwel mill-Filippini ghall-Olanda, minn hemm ghal Reggio Calabria, l-Italia minn fejn ingarret ghal Malta fuq il-vapur Zebbug, li wasal fl-20 ta' Settembru, 1994; illi meta l-vapur wasal Malta u l-'container' infetah instab li kaxxa minn din il-merkanzija kienet nieqsa kif jidher mic-certifikat tad-Dwana li kopja tieghu qed tigi hawn annessa u mmarkata bhala Dok 'B' u md-dikjarazzjoni rilaxxjata ukoll mid-Dwana 'a tergo' ta' l-Import Declaration, li kopja taghha qed tigi hawn annessa u mmarkata bhala Dok 'C'; illi dawn in-nuqqasijiet sehhu meta din il-merkanzija kienet fil-pussess u taht ir-responsabbilita` tal-konvenut; illi ghal dawn in-nuqqasijiet, is-socjeta` attrici Middle Sea Insurance Company Ltd hallset lill-importatur is-somma ta' seba' mija u wiehed u hamsin lira u hamsin centezmu (LM751.50), kif jirrizulta mis-surroga li kopja taghha qed tigi hawn annessa u mmarkata bhala Dok 'D' u mill-anness rendikont li kopja tieghu qed tigi hawn annessa u mmarkata bhala Dok 'C' (sic); illi l-konvenuti huma responsabbli ghan-nuqqasijiet kif fuq spjegat u ghalkemm interpellat[i] sabiex jaghmlu tajjeb ghal dawn in-nuqqasijiet, huma baqghu inadempjenti; dan premess l-attur nomine talab li dik il-Qorti:-

1. Tiddikjara lill-konvenuti responsabbli ghan-nuqqasijiet sofferti mill-importatur Doublesin & Zammit Ltd;
2. Tikkundanna lill-istess konvenuti jhallsu lill-attur is-somma ta' LM751.50 bl-imghax skond il-ligi mis-27 ta'

April, 1995 in linea ta’ danni sofferti mill-assikurat u li ssurroga d-drittijiet tieghu kif intqal.

Bl-ispejjez kontra l-konvenuti u bl-ingunzjoni taghhom ghas-subizzjoni.

B’nota pprezentata fit-12 ta’ Frar 1996 il-konvenut Francis Vella nomine eccepixxa:-
1. Illi in kwantu t-talbiet attrici huma diretti kontra s-socjeta` estera Wilson Holland BV, it-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez stante li l-merkanzija kollha tghabbiet fuq it-trailer ETM 22 li fuqu instabu mis-socjeta` konvenuta l-ohra Express Trailers Limited minn Rotterdam lejn Malta.
2. Illi in kwantu t-talbiet attrici huma diretti kontra s-socjeta` Express Trailers Limited, ir-responsabbilita` taghhom ghan-nuqqasijiet reklamati mis-socjeta` attrici hija limitata skond il-kondizzjonijiet tal-garr.

Is-sentenza appellata.

B’sentenza tas-7 ta’ Frar 2003 il-Prim Awla tal-Qorti Civili iddisponiet minn din il-vertenza billi laqghet it-talbiet attrici fil-konfront biss tas-socjeta` konvenuta Express Trailers Limited u b’hekk iddikjarat l-istess socjeta` konvenuta Express Trailers Limited responsabbli ghan-nuqqasijiet sofferti mill-importatur Doublesin & Zammit Limited u kkundannat lill-istess socjeta` Express Trailers Limited thallas lis-socjeta` assikurattrici attrici, bhala surrogata fid-drittijiet ta’ l-imsemmija importaturi, s-somma ta’ LM751.50 ghall-istess nuqqasijiet u dana bl-imghax skond il-ligi mis-27 ta' April 1995 u cioe` mid-data ta' l-imsemmija surroga. Dik il-Qorti imbaghad ghaddiet biex tillibera lis-socjeta` konvenuta l-ohra cioe` s-socjeta` Wilson Holland BV mill-osservanza tal-gudizzju u ordnat li l-ispejjez kollha tal-kawza jigi sopportati mis-socjeta` konvenuta Express Trailers Limited u dana wara li ghamlet is-segwent konsiderazzjonijiet:-

“Ikkunsidrat:

“Mill-provi prodotti jirrizulta li s-socjeta` Doublesin & Zammit Limited importat f’Malta, mill-Filippini, tnax (12) il-kaxxa kontenenti tnejn u sebghin ‘radio cassettes’. Fl-ahhar parti tal-vjagg lejn Malta l-imsemmija merkanzija ngarret ghal Malta f’container fuq il-vapur “Zebbug”, li wasal fl-20 ta’ Settembru 1994. Meta nfetah l-imsemmi container instab illi kaxxa wahda mill-merkanzija in kwestjoni kienet nieqsa;

“Is-socjeta` assikurattrici attrici, ghal dan in-nuqqas, irrizarcit is-socjeta` importattrici u hallset is-somma ta’ seba’ mija u wiehed u hamsin lira u hamsin centezimu (LM751.50) u b’hekk l-istess socjeta` assikurattrici giet surrogata fid-drittijiet kollha tas-socjeta` importattrici. Inoltre is-socjeta` assikurattrici tippretendi li l-konvenuti, jew min minnhom, huma responsabbli ghan-nuqqasijiet in kwestjoni u ghalhekk qed issir din il-kawza;

“Is-socjeta` konvenuta Express Trailers Limited tammetti r-responsabbilita` taghha ghal dawn in-nuqqasijiet. In effett l-istess socjeta` konvenuta taccetta li meta l-merkanzija giet konsenjata lilha, gewwa Rotterdam fl-Olanda, mis-socjeta` konvenuta l-ohra l-istess merkanzija giet hekk konsenjata fl-interezza kollha taghha. Is-socjeta` konvenuta Express Trailers Limited ghalhekk taccetta li n-nuqqasijiet in kwistjoni sehhew meta l-merkanzija kienet taht ir-responsabbilita` taghha;

“Ir-rapprezentant tas-socjeta` konvenuta pero` jippretendi li l-merkanzija ingarret taht dawk li huma mgharufa bhala regoli tac-CMR u skond dawn ir-regoli hemm limitazzjoni ghar-rigward tar-responsabbilita` ta’ min qed igorr il-merkanzija;

“Minn ittra tal-konsulent legali tas-socjeta` konvenuta (fol 51) jirrizulta li s-socjeta` konvenuta tippretendi li, skond ic-CMR Convention, il-massimu tar-responsabbilita` taghha, ghal kull kartuna jew kaxxa, ma jistax jeccedi s-somma ta’ hamsa u hamsin liri Maltin u hamsa u tmenin centezmu (LM55.85). Is-socjeta` konvenuta esibiet ukoll kopja tal-“combined bill of lading” ghar-rigward tal-merkanzija in kwestjoni. (Vide fol. 55 u a tergo tieghu);

“Is-socjeta` konvenuta naqset li tindika minn fejn tirrizulta l-limitazzjoni fir-responsabbilita` kif minnha reklamata. Mid-dokument a fol. 55 ma tirrizultax espressament din il-limitazzjoni fir-responsabbilita`. Ma jidhirx li f’dan id-dokument hemm xi referenza diretta ghar-regoli tac-CMR. Barra minn hekk minn imkien ma jirrizulta li s-socjeta` importattrici accettat xi limitazzjoni fir-responsabbilita` ta’ minn kien qieghed igorr il-merkanzija;

“In vista tal-premess l-imsemmija pretensjoni tas-socjeta` konvenuta ma tirrizultax pruvata. Minn naha l-ohra tirrizulta ppruvata, anke in vista ta’ l-ammissjoni tas-socjeta` konvenuta Express Trailers, ir-responsabbilita` ta’ l-istess socjeta` Express Trailers ghar-rigward tan-nuqqasijiet in kwestjoni. Jirrizulta li d-dannu li soffriet is-socjeta` importattrici, minhabba dawn l-istess nuqqasijiet, gie kwantifikat fis-somma ta’ seba’ mija u wiehed u hamsin lira u hamsin centezmu (LM751.50) li hi s-somma li hallset is-socjeta` attrici assikurattrici lis-socjeta` importattrici u b’hekk is-socjeta` konvenuta Express Trailers ghandha tigi kundannat thallas din is-somma lis-socjeta` attrici assikurattrici.”

L-appell tas-socjeta` Express Trailers Limited.

Is-socjeta` Express Trailers Limited hasset ruhha aggravata bis-sentenza fuq imsemmija u ghalhekk, b’rikors ipprezentat fil-25 ta’ Frar 2003 talbet li, ghar-ragunijiet hemm moghtija, din il-Qorti tirriforma s-sentenza tas-7 ta’ Frar 2003 fil-kawza fl-ismijiet fuq imsemmija fis-sens illi ghal dak li jirrigwarda d-danni likwidati u pagabbli mis-socjeta` appellanti, dawn jigu kalkolati u likwidati a bazi tal-kondizzjonijiet tal-garr vigenti a bazi tal-kuntratt tat-trasport. Bl-ispejjez taz-zewg istanzi kontra s-socjeta` attrici appellata.

Fir-risposta intavolata mis-socjeta` attrici appellata qed jinghad li s-sentenza hija gusta u timmerita konferma bl-ispejjez taz-zewg istanzi kontra l-attur.

L-aggravji tas-socjeta` appellanti.

Minn qari akkurat tar-rikors ta’ l-appell tas-socjeta` Express Trailers Limited jidher li din ressqet aggravju wiehed kontra s-sentenza appellata u cioe` li ghat-trasport in kwistjoni kienet tapplika c-CMR Convention u konsegwentement l-ammont dovut ghan-nuqqasijiet reklamati kellu jigi likwidat a tenur tar-regoli vigenti taht l-imsemmija konvenzjoni.

Ikkunsidrat:

In sostenn tas-sottomissjoni tas-socjeta` appellanti saret referenza ghal zewg pattijiet partikolari li, allegatament, jinsabu fid-Dok ‘A’ imsejjah “Combined Transport Bill of Lading” u cioe` l-klawsola 2.2 li tipprovdi dwar r-responsabbilita` tal-Carrier ghall-“*acts and omissions of any person of whose services he makes use for the performance of the contract ….”* u l-klawsola 11.1 li tghid li *“if an action for loss or damage to the goods is brought against <u>any person referred to in paragraph 2 of Clause 2</u>, such person shall be entitled to avail himself of the <u>defences and limits of liability which the Carrier is entitled to invoke under these conditions.</u>*”

Fl-ewwel lok ghandu jigi osservat li d-dokument ‘A’ anness mac-citazzjoni attrici ghal-liema qed issir referenza mis-socjeta` konvenuta appellanti, ma fih ebda klawsoli bhal dawk li gew riprodotti fir-rikors ta’ l-appell. Dawn il-klawsoli effettivament jinsabu fid-Dok XX2 a fol. 55 tal-process liema dokument gie esebit mis-socjeta` appellanti. Ghandu jinghad ukoll li d-dokument ‘A’ gie rilaxxat f’Manila, il-Filippini, u dan ma ghandu ebda relevanza ghall-kaz sottoezami inkwantu jikkoncerna t-tragitt minn Manila ghall-Roterdam f’liema parti tat-tragitt, kif irrizulta quddiem l-ewwel Qorti, ma kien hemm ebda nuqqasijiet fil-merkanzija. Ghandu wkoll jigi rilevat li d-dokument XX2 a fol. 55 tal-process fejn jinsabu l-klawsoli hawn fuq imsemmija ma jghid xejn dwar CMR Rules u fi kwalunkwe kaz ma jirrizultax mill-istess dokument li s-socjeta` importattrici accettat direttament jew indirettament xi klawsola li biha r-responsabbilita` tal-‘Carrier’ hija limitata.

Qed jigi sottomess ukoll li meta l-merkanzija waslet l-Olanda din giet konsenjata mis-socjeta` Wilson B.V., is-socjeta` konvenuta l-ohra, lill-agent taghha Express Trailers Limited u dan permezz ta' CMR Consignment Note (Dok XX1 fol 54). Hawn jigi rilevat li dan id-dokument ghas-socjeta` importattrici kien *res inter alios acta* billi jikkoncerna r-relazzjonijiet bejn is-socjeta` Olandiza u s-socjeta` konvenuta appellanti mentri s-socjeta` importattrici ma tiffigura mkien fuq dan id-dokument u ma ntwerietx ir-relazzjoni ezistenti bejn is-socjeta` importatrici u Express Trailers. Ghalhekk dan id-dokument u l-obbligi li johorgu minnu qatt ma seta' jorbot lis-socjeta` importattrici.

Konsegwentement l-aggravju tas-socjeta` Express Trailers Limited ma jirrizultax gustifikat u ghalhekk l-appell ser jigi michud.

Ghar-ragunijiet fuq moghtija l-appell tas-socjeta` appellanti Express Trailers Limited qed jigi michud u s-sentenza kkonfermata bl-ispejjez kontra s-socjeta` appellanti.

< Sentenza Finali >

-------------------------------TMIEM-------------------------------