



MALTA

**QORTI CIVILI
PRIM' AWLA**

**ONOR. IMHALLEF
LINO FARRUGIA SACCO**

Seduta tas-6 ta' Dicembru, 2006

Rikors Numru. 880/2006

Jeroen Frech bhala mandatarju specjali tas-Socjeta`
estera Ilios Limited

vs

MV Elinor TH (Bastiment Registrat taht il-bandiera Ta'
Bermuda)

Illum 6 ta' Dicembru, 2006.

Il-Qorti,

Rat ir-rikors ta' Paul Attard (ID 475978 M) ghan-nom u in-rappresentanza tas-Socjeta` Patron Group Limited (C 35360) sid il-bastiment MV Elinor TH li fih semma li in ottemperanza mad-digriet ta' din l-Onorabbli Qorti datat 6 ta' Novembru 2006, ippresenta dokumentazzjoni li juru li huwa, ossija l-kumpanija minnu gestita hija proprjetarja tal-bastiment mertu ta' din il-kontensjoni. Semma li pprezenta anness mar-rikors:

Kopja Informali ta' Sentenza

- I. kopja awtentika tal-**bill of sale** li bih l-imsemmija kumpanija Patron Group Limited xtrat il-bastiment fil-15 ta' Settembru 2005,
- II. kopja tal-memorandum ta' l-assocjazzjoni tas-Socjeta` Patron Group Limited

Ghaldaqstant ir-rikorrent in vista tad-dokumentazzjoni prezentata talab lil din il-Qorti tipprefigi terminu qasir sabiex l-intimati jiddepozitaw is-somma ta' Lm10,000 bhala garanzija, a tenur ta' l-imsemmi digriet.

Rat ir-risposta ta' Frech Jeroen li bazikament fiha insista li la ma giex prezentat ic-**Certificate of Registration**, ir-rikorrent ma ottemperax ruhu mad-digriet ta' din il-Qorti tas-6 ta' Novembru 2006. Semma li gie prezentat biss **Bill of Sale**. Sostna li l-**Bill of Sale** per se ma jaghtix titolu fuq bastiment.

Fid-digriet taghha tas-6 ta' Novembru, 2006 il-Qorti kienet tat lil Paul Attard nomine zmien gimgha biex jipproduci dokumenti ghall-prova li kien is-sid tal-bastiment MV Elinor TH. Huwa veru li fil-korp tad-digriet gieli issemma c-certifikat tar-registrazzjoni. Mill-Memorandum jirrizulta li Paul Attard seta' jirrapprezenta lil "Patron Group Limited". Ghalhekk jinkombi fuq il-Qorti biex tara jekk ghall-finijet tal-mandat u tal-garanzija jekk il-**bill of sale** prezentat hux sufficjenti,

Illi l-Qorti tal-Kummerc [Imh. W. Harding] fil-kawza fl-ismijiet **Joseph Bugeja vs Joseph Bartolo et** fl-10 ta' Jannar 1950 qalet hekk:

Illi ma hemmx dubju illi skond ic-certifikat u l-Bill of Sale, ezebit fol.68 u 69 ta' l-inkartament, u l-"owner" registrat kien il-konvenut Bartolo, u issa l-"owner" registrat hu l-kjamant in kawza Spiridone Mizzi. Ebda prova ohra ma hija attendibili biex wiehed jara min hu r-"registred owner". Dan kien hekk minn dejjem; u meta fil-Qrati Inglizi gie espress xi dubju, Lord Stowell, fil-kaz citat mill-Abbott (Treatise of the Law relating to Merchant Ships and Seamen, p.2), qal enfatikament:- "According to the ideas which I have always entertained on this question, a bill of sale is the proper title to which the maritime courts of all

countries would look. It is the universal instrument of transfers on the ships in the usage of all maritime countries, and in no degree a peculiar title – deed of conveyance known to the Law of England. It is what the maritime law expects, what the Court of Admiralty would in its ordinary practice require, and what the legislature of the country has now made absolutely necessary with regard to British subjects by the regulations of the Statute Law”;

F'dan l-istadju l-Qorti sejra tikkwota mit-tezi ta' Dr. Veronica Naudi – **Ship Registration Systems and the Challenges facing Maltese Law** [1977] u specifkament pagna 11 fejn insibu:

British ship registration is only prima facie evidence of the title and nationality. In the **Bineta case** (1966), 17X was the registered owner of a yacht which he sold to Y. Y was registered as owner but X kept possession of the yacht until he was paid. Y did not pay, so X sold it to Z (according to law). Y objected to Z's registration. The court held that Z entitled to register as owner, since he had good title¹⁸.

This case shows how registration is only prima facie evidence of title and not declaratory of title, unlike land registration which is evidence of the title and not capable of rebuttal, since it was Z who was declared to have good title as he had a valid bill of sale. In this respect, the same can be said of ship registration in Maltese and Liberian law for example.

In Maltese law, registration does not confer title to vessel but it is only indicative of title. In fact, vessels are originally registered on the basis of a declaration of ownership executed by the owner or his authorised representative. In view of this, in the case of vessel purchases, final instructions to proceed with the registration process should only be given to the buyer's local representative as soon as title to the vessel has passed to the new owners, usually following the execution and delivery of a bill of sale.

Mis-suespost jidher car li ghall-finijiet tal-proceduri odjerni r-rikorrent Paul Attard **nomine** ghandu l-**Bill of Sale** u

Kopja Informali ta' Sentenza

ghalhekk il-Qorti tilqa' r-rikors tat-13 ta' Novembru, 2006 u tipprefigi t-terminu ta' gimgha biex Jeroen Frech bhala mandatarju specjali tas-socjeta` estera Ilios Limited jipproduci garanzija ghal LM10000.

Minhabba n-natura tal-kaz spejjez bla taxxa.

< Sentenza Finali >

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