MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF
GINO CAMILLERI

Seduta tas-16 ta' Marzu, 2007

Citazzjoni Numru. 926/1999/1

Galdes and Mamo Limited agenti 'Malta tas-socjeta assikuratrici estera International Insurance Holdings Limited u din kif surrogata fid-drittijiet u l-assikurat taghha s-socjeta V J Salamone (Equipment) Limited u b'nota tal-25 ta' April , 2000 is-socjeta Gasan Mamo Insurance Agency Limited assumiet l-atti tal-kawza minflok is-sojceta Galdes and Mamo Agency u dina in rapprezentanza tas-socjeta assikuratrici estera Royal International Insurance Holdings Ltd kif surrogata fid-drittijiet tal-assikurat taghha is-socjeta VJ Salomone (Equipment) Limited

vs

John Ripard and Sons Limited agenti tas-socjeta FLE Shipping Line armaturi tal-vapur OOCL Germany u l-istess socjeta John Ripard and Sons Limited bhala operaturi tal-bonded stores

Il-Qorti

Rat ic-citazzjoni fejn is-socjeta attrici ppremettiet:-

Illi s-socjeta V J Salamone (Equipment) Limited impurtat minn Singapore 102 Cartons Casio products li waslu Malta fil-25 ta’ April 1998 fuq il-vapur OOCL Germany (ref Dok A);

Illi meta din il-merkancija giet konsenjata lill-impurtatur gew notati nuqqasijiet kif elenkati fid-dokument hawn anness Dok B;

Illi ghal dan in-nuqqas l-attur kif obbligat sia bil-polza u sia bil-ligi hallas is-somma ta’Lm1376.05 u gie surrogat fid-drittijiet ta’l-assikurat Dok C;.

Illi l-konvenut huwa responsabbli ghad-danni sofferti;

Ghalhekk is-socjeta assikuratrici attrici talbet li l-konvenut jghid ghaliex ma ghandhiex din il-Qorti:

1 tiddikjara lill-konvenut responsabbli ghan-nuqqas fil-konsenja ta’ 102 cartons Casio products li waslu Malta fil-25 ta’ April 1998 fuq il-vapur OOCL Germany;

2 tikkundanna lill-konvenut ihallas is-somma ta’ Lm1376.05 in linea ta’ danni sofferti mill-imputatur u li drittijiet ghalihom gew surrogati lill-attur;

Bl-ispejjes u bl-imghax legali sad-data tal-pagament effettiv kontra l-konvenut li gie ingunt ts-subizzjoni;

Rat in-nota ta’ eccezzjonijiet tas-socjeta konvenuta bhala operatur tal-bonded stores fejn gie eccepit illi t-talbiet tas-socjeta attrici huma infondati fil-fatt u fid-dritt u ghanhom jigu michuda bl-ispejjes kontra taghha ghaliex s-socjeta konveuta kkonsenjat il-merkanzija fl-istess stat li irciviet l-merkanzija u dan jirrisulta ukoll mill-cargo receipt iffirmat mid-ditta attrici;

Rat id-dikjarazzjoni tas-socjeta konvenuta bhala operaturi ta’ bonded stores debitament konfermata bil-gurament u l-ista tax-xhieda taghha;

Rat in-nota tal-eccezzjonijiet tas-socjeta konvenuta bhala agenti tas-socjeta Shipping Line armaturi tal-vapur OOCL Germany fejn gie eccepit illi t-talbiet tas-socjeta attrici huma infondati fil-fattu fid-dritt u ghandhon jigu michuda bl-ispejjez kontra s-socjeta konvenuta ghaliex is-socjeta konvenuta kkonsenjat il-merkamzija fl-istat li rceviet l-istess;

Rat id-dikjarazzjoni tas-socjeta konvenuta bhala agenti tas-socjeta Shipping Line armaturi tal-vapur OOCL Germany debitament konfermata bil-gurament u l-lista tax-xhieda taghha;

Semghet lix-xhieda prodotti mis-socjeta attrici;

Rat l-affidavit ta’ Gordon Axiak presentat mis-socjeta attrici;

Semghet lix-xhud prodott mis-socjeta konvenuta;

Rat l-atti l-ohra kollha tal-kawza u d-dokumenti esibiti;

Rat li l-kawza giet differita ghas-sentenza;

Ikkonsidrat:

Jirrizulta li fil-25 ta’ April 1998 is-socjeta V J Salamone (Equipment) Limited impurtat mal-vapur OOGL Germany mija u tnejn (102) kartuna kontenenti prodotti tal-marka Casio. Jirrizulta ukoll li l-merkanzija giet konsenjata lill-imsemmija importaturi b’nuqqassijiet. Is-socjeta attrici bhala s-socjeta assikuratrici hallset lill-imsemmija socjeta importatrici is-somma ta’ elf tlett mija u sitta u sebghin liri maltin u hames centezmi (Lm1376.05) u b’hekk l-istess socjeta attrici giet surrogata fid-drittijiet kollha tas-socjeta importatrici ghar-rigward l-istess nuqqassijiet;

Is-socjeta attrici qed tippretendi li s-socjeta konvenuta hi responsabbli ghall-imsemmija nuqqassijiet u ghad-danni konsegwenzjali u ghalhekk qed issir din il-kawza;

Is-socjeta konvenuta kemm bhala operaturi tal-bonded stores kif ukoll bhala agenti tal-imsemmi vapur qed teccepixxi li hi kkonsenjat il-merkazija fl-istess stat kif ircivietha;

Jirrizulta li l-merkanzija in kwestjoni giet rilaxxata f'idejn is-socjeta importatrici mill-"bonded stroes" tas-socjeta konvenuta. Fir-"release order", u cioe' meta il-merkanzija giet rilaxxata f'idejn is-socjeta importatrici, hemm notament tal-ufficjal tad-Dwana li jghid li diversi mill-kartuni in kwestjoni kienu danneggjati u kien hemm in-nuqqasijiet;

Jirrizulta ukoll li l-container in kwestjoni kien groupage u li qabel infetah is-sigilli tieghu kienu intatti. Jirrizulta ukoll li kif infetah il-container kien jidher li kien hemm dsatax (19) il-kartuna minn dawk in kwestjoni li kienu "retaped" u kien hemm xi merkanzija nieqsa minn go fihom. Fil-"bill of lading" relattiv ma hemm l-ebda indikazzjoni li kien hemm xi kartuni minn dawk in kwstjoni li kellhom xi hsarat jew li kellhom xi nuqqasijiet;

Peress li generalment containers li jkunu groupage, bhal dak in kwestjoni, jigu sigillati meta l-istess containers jintelghu. Jidher, ghalhekk, li s-sigilli tqieghdu wara li l-merkanzija in kwestjoni kienet gia fil-pussess tal-vapur. Konsegwentement is-socjeta konvenuta, bhala agent tal-imsemi vapur, ghadha titqies li hi responsabbli ghan-nuqqassijiet in kwestjoni u ghad-danni relattivi. Konsegwentement ukoll l-eccezzjonijiet tas-socjeta konvenuta ghandhom jigu michuda. It-talbiet attrici jirrizultaw sufficjentement pruvati u ghalhekk l-istess talbiet ghandhom jigu akkolti;

Ghal dawn il-motivi kollha:

Tiddeciedi billi fl-ewwel lok tichad l-eccezzjonijiet kollha tas-socjeta konvenuta u billi fit-tieni lok tilqa t-talbiet attrici

u tiddikjara lis-socjeta konvenuta, bhala agent tal-vapur OOCL Germany, responsabbli ghan-nuqqas fil-konsenja ta' 102 kartuma kontenenti prodotti Casio li waslu Malta fil-25 ta' April 1998 fuq l-imsemmi vapur u tikkundanna lill-istess socjeta konvenuta thallas lis-socjeta attrici s-somma ta' elf tlett mija sitta u sebghin liri u hames centezmi flus maltin (Lm1376.05) in linea ta' danni sofferti mill-importaturi u ghall-liema drittijiet gew surrogati l-atturi u dana bl-imghaxxijiet kollha legali mid-data tan-notifika tac-citazzjoni lis-socjeta konvenuta sad-data tal-pagament effettiv;

Spejjez kollha kontra s-socjeta konvenuta.

< Sentenza Finali >

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