MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.
JOSEPH A. APAP BOLOGNA

Seduta tat-23 ta' April, 2007

Avviz Numru. 2731/1997/1

Galdes and Mamo Limited agenti f'Malta tas-socjeta' assikuratrici estera Royal International Insurance Holdings Limited u din kif surrogata fid-drittijiet ta' l-assikurat taghha s-socjeta' Intercomp Limited u b'nota tal-25 ta' April 2000 is-socjeta Gasan Mamo Insurance Agency Limited assumiet l-atti tal-kawza minflok is-socjeta Gasan and Mamo Insurance Agency Limited u dana in rappresentanza tas-socjeta assiguratrici estera Royal International Insurance Holdings Limited kif surrogata fid-drittijiet ta' l-assigurat taghha

Vs

1. **Tuninter Limited**
2. **Air Malta Company Limited**

Il-Qorti,

Rat l-avviz in esami li bih is-socjeta attrici nomine talbet sabiex is-socjetajiet konvenuti jghidu l-ghaliex ma ghandhomx ikunu kundannati li jhallsu s-somma ta' Lm632.94 dovuta kwantu ghal Lm527.34 bhala danni sofferti f'konsenja ta' computers li waslu Malta fuq titjira tal-konvenut Tuninter Ltd, fit-22 ta' Frar 1996 u kwantu ghal Lm105.60 bhala danni sofferti f'konsenja ta' printers li waslu Malta fuq titjira tal-konvenut Tuninter Limited fis-27 ta' Dicembru 1995, liema zewg konsenji ta' merkanzija gew mghoddijja f'idejn il-konvenut l-iehor Air Malta Company Limited wara li gew skarikati mill-ajruplan.

Bl-ispejjes inkluz dawk ta' l-ittra ufficjali u bl-imghax legali kontra l-konvenuti li gew ingunti ghas-subizzjoni.

Rat in-nota tal-eccezzjonijiet tas-socjeta konvenuta Air Malta Company Limited (fol 4 tal-atti) u li biha eccepiet bir-rispett:-

1. Illi t-talba attrici in kwantu diretta kontra s-socjeta' eccipjenti hi nfondata fil-fatt u fid-dritt u dan ghar-ragunijiet infraskritti:- (a) in-nuqqas, jekk avvera, sar fil-mument li l-konsenja kienet fil-pussess tal-vettural is-socjeta' konvenuta l-ohra Tuninter Limited. (b) f'kull kaz in vista' tal-Ground Handling Agreement bejn l-eccipjenti nomine, qua Handler, u l-vettural, is-socjeta' eccipjenti hi ezenti mir-responsabilta';
2. Bla pregudizju ghall-premess ir-responsabilita' tas-socjeta' eccipjenti hi limitata skond kif mahsub fil-Warsa Convention.

Salvi eccezzjonijiet ohra.

Rat li s-socjeta' konvenuta Tuninter Limited qatt ma dehret quddiem l-istess Qorti u ma' ghamlet l-ebda eccezzjoni.

Rat l-atti kollha tal-kawza.

Semghet it-trattazzjoni.

Ikkunsidrat

Illi John Galdes bhala “claims manager” tas-socjeta attrici nomine spjega (fol 13 et seq ibid) illi dan il-kaz jirreferi kif jidher mill-istess avviz, ghal zewg “claims” maghmulin mis-socjeta assikurata “Intercomp Limited”. L-ewwel wahda kienet tirreferi ghal konsenja ta’ “computers’ li dahlet f’Malta fis-27 ta’ Dicembru 1995 u din kienet tirreferi ghal “printer” li ma kienx wasal f’Malta u kien thallas risarciment ammontanti ghal Lm105.60,0. Dwar l-istess konsenja, ix-xhud esebixxa d-dokumenti markati Dok A sa Dok F minn fol 18 sa fol 23 tal-atti. In rigward it-tieni wahda, din kienet tirreferi konsenja ta’ “computer equipment” li waslet f’Malta fit-22 ta’ Frar 1996 u kienet tirreferi ghal “computer” wiehed li ma kienx wasal f’Malta u nsab li kien nieqes. Dwar din il-‘claim’ ir-risarciment li kien thallas kien jammonta ghal Lm527.34,0. Anke in rigward it-tieni ‘claim’ ix-xhud esebixxa d-dokumenti markati Dok G sa Dok K minn fol 25 sa fol 30 ibid. Jigi notat mill-istess xhieda illi fiha tissemma d-ditta “Wings Cargo Limited” bhala r-ricevitur (“consignee”) li x-xhud immagina li kienet il-‘freight forwarders”.

Illi Trevor Pace f’isem is-socjeta’ assikurata imsemmija, xehed (fol 31 et seq ibid) in rigward l-ewwel konsenja li meta l-“printers’ kienu waslu hawn Malta mit-Tunisija, is-socjeta ‘Wings Cargo Limited” kienet inkarigata ghal dak li jirrigwarda “customs clearance”. In oltre irrizulta illi kien gie skopert li kien hemm “printer” wiehed nieqes “.. meta l-oggetti kienu qed jinhargu mid-dwana” u x-xhud dwar dan irrefera ghad-dokument markat Dok B a fol 19 ibid cjoe “Damages/losses certificate” rilaxxat mis-socjeta konvenuta “Air Malta Company Limited”. Dwar it-tieni konsenja, instab li kien hemm nieqes “computer” wiehed u saret referenza ghad-dokument markat Dok G a fol 26 ibid rilaxxat minn din is-socjeta konvenuta u l-ekwivalenti tal-imsemmi “Dok B” (ara, ukoll, ix-xhieda ta’ Alphonse Caruana impjegat bhala “shipping clerk” mas-socjeta assikurata a fol 38 et seq ibid).

Illi, in rappresentanza tas-socjeta “Wings Cargo Limited” xehed Joseph Zammit (fol 54 et seq ibid) u dan spjega illi l-involviment ta’ din is-socjeta f’dawn il-kazijiet kienet

bhala “clearance agents” tas-socjeta assikurata. In rigward il-kaxxi, hu spjega illi dawn jkunu maghluqin u ma jigiex esaminat il-kontenut, liema kaxxi jigu trasferiti mill-istess socjeta’ minghand l-“Air Malta Company Limited” ghal ghand is-socjeta assikurata.

Illi, in rapprezentanza tas-socjeta konvenuta “Air Malta Company Limited” gie prodott Vincent Debono bhala “manager-warehousing” tal-istess socjeta u dan xehed (fol 65 et seq ibid) waqt li ghamel referenza ghad-dokumenti, gja msemmija, a fol 19 u fol 26 ibid. In rigward l-ewwel dokument dan jirreferi ghal konsenja, trasportata fuq ajruplan tas-socjeta “Tuninter Limited” waqt li s-socjeta rappresentanta minnu kienet il-“Handling Agents” tal-istess merkanzija skond kif xehed l-istess xhud “Instab li zewg kaxxi minnhom kienu bit-‘tape’ uzat mit-Tuninter”. Inoltre waqt li l-kaxxi kienu qedin jigu esaminati mid-dwana lokali, irrisulta li kien hemm ‘printer’ wiehed li kien nieqes waqt li, pero’, kien hemm ukoll “…. 13 il-kilo aktar mill-piz dikjarat”. In rigward it-tieni dokument, dan, ukoll, jirreferi ghal merkanzija trasportata fuq ajruplan tal-istess socjeta konvenuta, “Tuninter Limtied” bl-“Air Malta Company Limited” bhala “Handling agents”. Hawnhekk, kienet instabet kaxxa wahda li kienet danneggata u ghalhekk kienet giet “taped” mid-dwana lokali. F’dan il-kaz, kien instab li kien hemm “disk drive’ u manwali li kienu neqsin. Fl-ahhar nett hu semma li jesisti ftehim (“ground handling agreement”) bejn is-socjetajiet konvenuti a basi tal-liema ftehim il-”carrier“ ossija s-socjeta’ “Tuninter Limited” tassumi r-responsabilita f’kazijiet bhal dawn in esami.

Ikkunsidrat

Illi minn analisi tal-provi kif hemm fuq esposti jidher li, fuq basi ta’ probabilta in-nuqqasijiet ilmentati mis-socjeta attrici nomine avveraw ruhhom meta z-zewg konsenji kienu “… fil-pusess tal-vettural is-socjeta konvenuta l-ohra Tuninter Limited” (fol 4 ibid). Jigi ssottolineat illi is-socjeta “Tuninter Limited” bl-ebda mod ma kkontestat it-talbiet attrici. Konsegwentement minhabba dan u minhabba l-provi prodotti minn fejn jidher li, kif di gja nghad, in-

nuqqasijiet in esami, probabilment, graw meta, fiz-zewg kazijiet, il-merkanzija kienet fil-pussess tal-"carrier" u mhux tal-"handling agent", is-socjeta "Tuninter Limited" ghandha tigi ritenuta bhala unikament responsabbli ghall-istess nuqqasijiet u dawn konsegwenzjali.

Ghal dawn il-motivi, il-Qorti, waqt li tichad it-talbiet attrici fil-konfront tas-socjeta "Air Malta Company Limited" tilqa' l-istess talbiet fil-konfront tas-socjeta konvenuta l-ohra u tikkundanna lis-socjeta "Tuninter Limited" sabiex thallas lis-socjeta attrici nomine s-somma komplessiva Lm632.94,0 bl-imghax legali mis-21 ta' Marzu 1996 sad-data tal-pagament bl-ispejjes inklusi dawk tal-ittra ufficjali bla data imsemmija fl-avviz jithallsu mill-istess socjeta "Tuninter Limited".

< Sentenza Finali >

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