MALTA

QORTI CIVILI
PRIM' AWLA

ONOR. IMHALLEF ANTHONY ELLUL

Seduta tat-18 ta' Settembru, 2012

Citazzjoni Numru. 1308/2007

Ray Attard bhala kuratur ghan-nom u in rapprezentanza ta' Martin Chambone direttur u proprjetarju tas-socjeta estera Macha Export Holland

Vs

Imp Limited

Permezz ta' rikors guramentat prezentat fl-14 ta' Dicembru 2007 l-attrici qeghda titlob hlas ta' €13,060.79 li jirraprezenta depozitu mhallas lill-konvenuta ghal zewg ordnijiet li ghamlet l-attrici biex il-konvenuta ggibilha mit-Taiwan parts ta' vetturi. L-attrici ssostni li l-merkanzija ma

ntbaghatitx u li d-ditta li kellha tissuplixxi l-parts kienet hallset lura l-flus lil Imp Limited, li min-naha taghha ma hallistx lura d-depozitu lill-attrici.

Permezz ta' risposta guramentata prezentata fit-28 ta' Frar 2008 il-konvenuta wiegbet li m'ghandix thallas il-flus lura ghaliex l-ordni giet kancellata mill-attrici li minn wara dahar il-konvenuta kkomunikat direttament mal-kumpannija Abakus li minghandha kellha tinxtara l-merkanzija[1].

Mill-atti jirrizulta li l-konvenuta qatt ma ressqet provi. Jirrizulta wkoll li giet notifikata bl-avviz ta' smiegh permezz tal-procedura tal-affissjoni u pubblikazzjoni[2].

Konsiderazzjonijiet.

1. Mid-dokumenti li hemm fl-atti jirrizulta li l-merkanzija ma kenitx giet ikkonsenajta lill-attrici. Fil-fatt f'email datata:-

(a) 19 ta' Lulju 2007 mibghuta minn Hugh Agius, ufficjal tal-kumpannija konvenuta, jinghad:-

"We are surprised...... Martin I have a shock on me..... Container was ready to leave..... they were holding the container because of a report... from Israel.... that's what I know.... Im not understanding what had happened exactly...... ***Martin we will send you the money back****... but these are the facts....Im sorry."* (enfazi tal-qorti)[3].

(b) 2 ta' Awwissu 2007[4] mibghuta mill-istess Hugh Agius, jinghad:-

[1] Fol. 14.
[2] Ara fol. 103, 106,108, 109, 110.
[3] F'din l-email hemm it-taghrif li baghatet Abaus lil Imp Limited: *"We would like to inform you that we just receive a following information from our office in Taipei. We would like to infrom you that we were informed that his order will be shipped to Israel market by our audit department. They request us to stop it immediately and we inform you immediately too. Sorry for inconvenience."*.
[4] Fol. 89.

"As you were informed on various occasions we had placed deposits and bank guarantees with respect to this order. As of today, for some reason or other these have not been released and we have not received the refund.

We are astonished, very concerned and disappointed regarding the real reasons for the shipment not being sent to Malta. We were provided with information that puts light on these reasons, which are far from that represented by the supplier. When on puts this information in the context of the sequence of events, as they occurred, it is evident that the reasons given for witholding the order are not factual. In this respect, we are considering taking the necessary measures in view of these emerging facts.".

Mill-atti jirrizulta wkoll li d-ditta li minghandha kellha tinxtara l-merkanzija kienet baghatet lura l-hlas lill-konvenuta[5]. Sahansitra fis-seduta li kienet saret fil-5 ta' Mejju 2008 quddiem l-Assistant Gudizzjarju gie ddikjarat: *"Il-partijiet jaqblu li l-ordnijiet kienu saru u li thallas depozitu ta' 15% li jammonta ghal €13,000.79 mis-socjeta MACHA Export Holland u li l-konsenja qatt ma saret da parti tas-socjeta konvenuta li lilha thallas id-depozitu u* ***li dan id-depozitu gie rifjuz mis-socjeta estera Abankus lil IMP Ltd.****"*[6] (enfazi tal-qorti). F'kull kaz, il-hlas xorta kien ikun dovut mill-konvenuta gialadarba mill-provi ma rrizultax li l-attrici kienet ikkancellat l-ordni. Ir-relazzjoni guridika tal-attrici kienet mal-konvenuta u mhux mat-terz, cjoe s-supplier Abakus. Ma tezisti l-ebda gustifikazzjoni ghalfejn il-konvenuta ma hallsitx lura d-depozitu.

Ghal dawn il-motivi l-qorti qeghda taqta' u tiddeciedi l-kawza billi tichad l-eccezzjoni tal-konvenuta u tilqa' t-talbiet tal-attrici u tikkundanna lill-konvenuta thallas s-somma ta' tlettax-il elf u sittin ewro u disgha u sebghin centezmu (€13,060.79), bl-imghax minn Gunju 2007. Spejjez a karigu tal-konvenuta.

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[5] Ara dokumenti prezentati fis-seduta tat-2 ta' Dicembru 2011 li saret quddiem l-Assistant Gudizzjarju Dr Tiziana Filletti minn Martin Chambone. Jirrizulta li f'Mejju u Lulju 2007 saru pagamenti permezz ta' bank transfers.
[6] Fol. 18.

< Sentenza Finali >

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