MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.
FRANCESCO DEPASQUALE

Seduta tas-26 ta' Ottubru, 2012

Avviz Numru. 93/2010

Atlas Insurance PCC Limited bhala surrogata fid-drittijiet ta’ l-assikurat taghha Intergame Limited

Vs

Absolute Cleaners Limited (C-14767), Casey Borg (ID 545987M) u Mark Lawrence Rizzo

Il-Qorti

Rat l-avviz ipprezentat fit-18 ta’ Marzu 2010 mis-socjeta rikorrenti fejn, kif surrogata fid-drittijiet ta’ l-assikurat taghha Intergame Limited, hija talbet lill-Qorti sabiex tikkundanna lill-intimati sabiex ihallsu s-somma ta’ erba’ t’elef, sebgha mija u sitta u tletin Euro u wiehed u hamsin centezmu (€4,736.51) rapprezentanti danni, originarjament soferti mill-assikurat taghha, ghall-liema ghamlet tajjeb is-socjeta rikorrenti assiguratrici ai termini

tal-polza ta’ assikurazzjoni ezistenti bejniethom, u ghalhekk tinsab surrogata fid-drittijiet ta’ l-istess, konsegwenza tas-serqa li sehhet fid- 19, 20 u 21 ta’ Settembru 2009.

Bl-imghax legali mid-data tal-pagament u cioe mill-25 ta’ Novembru 2009, u bl-ispejjez kontra l-intimati.

Rat ir-risposta tas-socjeta Absolute Cleaners Limited ipprezentata fil-15 t’April 2010 fejn eccepixxa li gej:-

1. Illi preliminarjament, is-socjeta rikorrenti trid iggib prova tas-surroga allegata minnha;

2. Illi, minghajr pregudizzju ghas-suespost, is-socjeta intimata Absolute Cleaners Limited qieghda tirrispingi t-talbiet tas-socjeta rikorrenti bhala totalment infondati fil-fatt u fid-dritt stante illi s-socjeta intimata ma kienet bl-ebda mod responsabli ghad-danni allegatament sofferti mis-socjeta rikorrenti;

3. Illi, minghajr pregudizzju ghas-suespost, is-socjeta rikorrenti trid iggib provi tad-danni allegatament sofferti minnha.

Rat ir-risposta ta’ Casey Borg iprezentata fl-14 ta’ Mejju 2010 fejn eccepixxa li gej:-

1. Illi primarjament, jigi rilveta li kien esklusivament il-konvenut Mark Lawrence Rizzo li approprija ruhu mill-merkanzija in kwistjoni, u l-esponenti m’ ghandux jaghmel tajjeb ghad-danni sofferti mis-socjeta attrici;

2. Illi, minghajr pregudizzju ghal premess, jigi rilevat illi s-socjeta attrici ghandha tipprova kif wasslet ghal komputazzjoni tad-danni pretizi;

Rat illi Mark Lawrence Rizzo, ghalkemm deher fis-seduta tat-18 ta’ Mejju 2010. qatt ma dahhal eccezzjonijiet u ghalhekk huwa kontumaci.

Rat ix-xhieda ta’ Mark Xuereb, rapprezentant tas-socjeta rikorrenti, illi xehed fl-1 ta’ Dicembru 2010 u esebixxa serie ta’ dokumenti fosthom ‘Final Discharge and Subrogation Form’ datata 25 ta’ Jannar 2009 iffirmata mir-rapprezentant tas-socjeta Intergame Limited kif ukoll lista ta’ oggetti misruqa w il-valur taghhom.

Rat ix-xhieda ta’ Michael Spiteri Bailey, rapprezentant tas-socjeta Intergame Limited, illi xehed fl-1 ta’ Dicembru 2010 dwar is-serqa illi sehhet fl-ufficini taghhom bejn id-19 u l-21 ta’ Settembru tas-sena 2009 kif ukoll dwar l-arrangament illi huwa kien ghamel ma’ Luke Bayona, bhala rapprezentant tas-socjeta Absolute Cleaners Limited, fuq kif kellu jsir it-tindif ta’ l-ufficcju u min kellu jkollu access ghall-post. Tali xhud gie kontro ezaminat fis-7 ta’ Ottubru 2011.

Rat ix-xhieda ta’ l-Ispettur Daniel Zammit, illi kien l-Ispettur stazzjonat gewwa c-CID illi kien investiga is-serqa illi kienet sehhet, liema investigazzjonijiet kienu wasslu sabiex jittiehdu kontra l-intimati Borg u Rizzo.

Rat illi fis-seduta tat-2 ta’ Dicembru 2011, is-socjeta rikorrenti iddikjarat illi ma fadallhiex aktar provi x’tipprezenta.

Rat l-affidavit ta’ Luke Bayona, rapprezentant tas-socjeta Absolute Cleaners Limited ipprezentat fl-10 ta’ Gunju 2011 u debitament kontro ezaminat fis-7 ta’ Ottubru 2011.

Rat ix-xhieda ta’ Casey Borg moghtija fit-2 ta’ Dicembru 2011.

Rat illi fis-16 ta’ Marzu 2012 il-kawza giet differita ghas-sentenza.

Fatti

Illi fil-kaz in ezami, is-socjeta rikorrenti niedet il-proceduri odjerni wara illi is-socjeta Intergame Limited, illi kienet l-assikurata taghha, kienet ghamlet claim maghhom talli

kienu insterqulha xi oggetti bejn il-granet tad-19 u l-21 ta' Settembru 2009, meta l-ufficini taghhom kienu maghluqin.

Illi, minn indagini maghmulha mill-Ispettur Daniel Zammit, irrizulta li f'tali granet, persuni dahhlu fl-ufficini tas-socjeta Intergame Limited billi ghamlu uzu minn cavetta elettronika illi kienet inghatat lis-socjeta Absolute Cleaners Limited mis-socjeta Intergames Limited. Irrizulta, sussegwentement, illi attwalment kienu l-intimati Casey Borg u Mark Lawrence Rizzo illi kkommettew is-serqa, b'ta l-ewwel jghaddi c-cavetta tal-hanut lil Mark Lawrence Rizzo sabiex jakkwistalu television illi huwa kien ra gewwa l-ufficini waqt li kien qed inaddafhom, u ta' l-ahhar jikkommetti s-serqa billi dahal fl-ufficini bic-cavetta elettronika illi tah Borg.

Mix-xhieda ta' Michael Spiteri Bailey, irrizulta illi hu, bhala Direttur tas-socjeta Intergame Limited, kien qabbad lis-socjeta intimata Absolute Cleaners Limited sabiex taghmel it-tindif ta' l-ufficini meta dawna jkunu maghluqa. Sabiex jaghmel dan, Spiteri Bailey ghadda lil Luke Bayona, rapprezentant tas-socjeta konvenuta, zewg cwievet elettronici sabiex jaccedi fil-post kif ukoll ghaddilu code uniku ghalih ta' l-alarm. Il-ftehim kien illi Bayona jiftah ghall-impjegati u jdahhalhom fl-ufficini, imbghad ihallihom inaddfu u sussegwentement imur lura meta jlestu u jaghlaq l-ufficini u jirriattiva l-alarm bil-code uniku illi huwa kellu.

Fix-xhieda tieghu, Luke Bayona jichad illi kien ftiehem ma' Spiteri Bailey illi huwa kellu jiftah u jaghlaq ghall-impjegati u stqarr illi, filwaqt li attwalment kien inghata zewg cwievet tal-post in kwistjoni, huwa kien inghata tnejn sabiex, f'kaz illi l-impjegati jitilfu c-cavetta waqt li jkunu gewwa u ghalhekk ma jkunux jistghu johorgu, huwa jkun jista jifthilhom minn gewwa.

Huwa qal ukoll illi n-numru ta' l-alarm illi kien moghti lilu, huwa kien tah ukoll lis-supervisor tal-kumpannija kif ukoll liz-zewg cleaners illi kienu jmorru fl-ufficini, fosthom Casey Borg.

Fix-xhieda ta’ Casey Borg, huwa jistqarr illi kien ra television fl-ufficji tas-socjeta Intergame Limited fejn huwa kien mar xi ghaxar darbiet inaddaf u dejjem kien jiftahlu Luke Bajona. Huwa ghalhekk ha cavetta li kien sab fost hafna cwievet fl-ufficju u iltaqa ma’ Mark Lawrence Rizzo, qallu illi ried it-television u tah ic-cavetta ta’ l-ufficju. Imbghad, skond Borg, huwa ma ikkomunikax ma’ Rizzo u ftit jiem wara kellmuh il-Pulizija u, meta resquh il-Qorti akkuzawh ta’ komplicita’ f’serq, huwa ammetta.

Ikkunsidrat

Illi mill-provi prodotti jirrizulta ben car illi s-socjeta rikorrenti giet surrogat fid-drittijiet tas-socjeta li kienet qed tassikura, ossija Intergame Limited kif ukoll irrizulta b’mod car kemm attwalment kien il-pagament illi huma ghamlu lis-socjeta Intergame Limited, u kif wasslet ghal tali ammont.

Jirrizulta ben car ukoll illi Casey Borg kien il-persuna illi kellu f’idejh ic-cavetta elettronika ta’ l-ufficini u li ghadda l-istess lil Mark Lawrence Rizzo sabiex jinsterqu minn l-ufficini diversi oggetti. Ghalkemm Borg jghid illi huwa kull ma ghamel kien illi ghadda c-cavetta u daqshekk, il-Qorti issibha ferm difficli illi temmen li Borg ma kienx kompartecipi fis-serqa u ma hax sehem attiv fl-istess.

Il-kwistjoni li ghandha tara l-Qorti hija jekk attwalment is-socjeta Absolute Cleaners Limited ghandhiex hi ukoll tigi kkundannata thallas ghad-danni illi kellha thallas is-socjeta rikorrenti. Dana qieghed jinghad ghax is-socjeta intimata taghmel referenza ghall-artikolu 1057 tal-Kap 16 tal-Ligijiet ta’ Malta u tikkontendi illi hija ma ghandhiex tinstab responsabbli ta’ danni kkawzati minn haddiema taghha.

Illi huwa minnu li s-socjeta intimata kienet ghamlet xi tip ta’ due diligence fuq Casey Borg qabel ma impjegatu, izda dana wahdu ma jezonerahiex mir-responsabbilta’ f’dan il-kaz. Dana huwa dovut ghal fatt illi s-socjeta intimata kienet inghatat zewg cwievet sabiex jintuzaw minnha kif ukoll kodici ghall-alarm ta’ l-ufficini, liema kodici kien

‘unique’ ghaliha u li kellu jintuza unikament mis-sid Luke Bayona, illi kellu jiftah dejjem hu u jaghlaq dejjem hu. Madanakollu, jirrizulta illi, ghalkemm tali kodici kellha tintuza unikament minn Bayona, huwa attwalment ghadda tali kodici lil tlett persuni ohra, fosthom ukoll lil Borg.

Il-Qorti ma tistax ma tistaqsix x’kien l-utilita’ kollha tas-socjeta Intergame Limited illi taghmel kodici uniku ghall-Bayona meta imbghad dana Bayona qabad u kkomunika tali kodici lill-haddiema kollha li kellu jnaddfu l-ufficju. Apparti minn hekk, il-Qorti ma tistax ma tinnutax ukoll illi l-fatt li wiehed mill-impjegati kien komplici f’serqa, liema serqa sehhet peress illi ghamel uzu mill-fiducja lilu fdata u ghamel uzu minn cavetta ta’ access, minnha innifisha ghandha titqies bhala li l-impjegat ma kienx ta’ hila, u dana qieghed jinghad peress illi wahda mill-obbligi essenzjali li persuna illi tnaddaf ghandha hija dik ta’ fiducja u li tiehu xejn minn fuq il-post fejn qieghda tnaddaf. Fil-kaz in ezami, jidher illi l-impjegat tas-socjeta intimata, mhux biss ha c-cavetta minn fuq il-post, izda kien komplici, jekk mhux kompartecipi, f’serqa illi sehhet fl-istess ufficini illi huwa kien qieghed inaddaf u li kienu gew fdati lis-socjeta intimata ghat-tindif. Ghalhekk, is-socjeta intimata ghandha terfa r-responsabbilta’ taghha wkoll.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u ix-xhieda pprezentati

Tghaddi biex taqta u tiddeciedi l-kaz billi;

Tichad l-eccezzjonijiet kollha tal-konvenuti u;

Tilqa’ t-talbiet attrici kif dedotti u ghalhekk;

Tikkundanna lil Absolute Cleaners Limited, Casey Borg u Mark Lawrence Rizzo, solidalment, sabiex ihallsu s-somma ta’ erba’ t’elef, sebgha mija u sitta u tletin Euro u wiehed u hamsin centezmu (€4,736.51) bl-imghax legali

mill-25 ta’ Novembru 2009 sad-data tal-pagament effettiv u bl-ispejjez kontra l-intimati.

< Sentenza Finali >

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