QORTI TAL-MAGISTRATI (MALTA)

SEDE CIVILI

MAGISTRAT : DR DENNIS MONTEBELLO B.A. LL.D.

SEDUTA TA' NHAR IL-GIMGHA 1 TA’ MARZU 2002

Avviz Nru 895/00DM

Tug Malta Limited

vs

S. Mifsud & Sons Limited

Il-Qorti,

Rat l-avviz permezz ta’ liema l-attur nomine talab il-kundanna tal-konvenuti sabiex ihallsu s-somma ta’ sitt mija u tnejn u ghoxrin lira Maltin (Lm622) rappresentanti servizzi tal-irmonk moghtija mill-attur nomine bil-lanec tal-irmonk “Mari” u “Vitorin” b’inkarigu tal-konvenuti nomine fuq il-vapur “M/T White Sea” fil-15 ta’ Gunju 2000.

Bl-imghaxijiet legali u bl-ispejjez kontra il-konvenuti nomine li gew ngunti ghas-subizzjoni..

Rat in-nota tal-eccezzjonijiet tas-socjeta konvenuta fejn eccepiet illi:

1 It-talbiet attrici huwa infondati fil-fatt u fid- dritt u ghandhom jigu rigettati bl-ispejjes u dana stante illi l-ammont pretiz mhux dovut billi l-istess socjeta’ attrici naqset milli tonora l-obbligazzjonijiet taghha, skond kif kien pattwit;
2 Salvi eccezzjonijiet ohra.

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti esebiti;

Rat l-atti kollha tal-process; u

Ikkunsidrat:-

Mill-provi prodotti, komprizi d-dokumenti esibiti u d-deposizzjoni tal-Kaptan Dayal Anand jirrizulta ampjament stabbilit illi l-konvenuti kienu ipprenotaw is-servizz ta irmonk ghall-vapur "White Sea" ghall-15.30 tal-15 ta Gunju 2000.

Dan il-prenotament gie infatti kkonfermat mill-kumpanija attrici bil-"Confirmation of Order for Tug Assistance" (Dok JA1 a fol. 10).

F'din il-konferma il-kumpanija ghamlet pero' certi riservi dwar il-priorita' fl-ghoti tas-servizz, dwar in-numru ta tugs u dwar il-hinijet miftehma. Gie espressament riservat illi: *"…….acceptance of your verbal order for tug assistance ………* ***Is without prejudice to ship movement priority as dictated to us by the Authorities"*** u *"* ***Tug Malta Limited cannot be held responsible if particulars as above stated are changed due to circumstances beyond the Company's control including the number of tugs ordered and <u>the time of commencement of the operation</u>***".

Huwa ukoll definitivament stabbilit mill-provi illi l-konvenuti, hlief ghall-presenza tal-bdot, kienu ppreparati biex jaccettaw is-servizz ta rmonk fil-hin miftiehem, izda minghajr ebda preavviz dan is-servizz inghata fil-16.45 tal-istess jum, ghalhekk izjed minn siegha tard.

Ghalhekk biex tezimi ruhha minn kull risponsabilita' ghal dan id-dewmien il-kumpanija attrici trid tipprova jew li kellha xi ordni ta priorita' moghtija lilha mill-Awtorita' Marittima jew kien jezisti xi impediment oltre l-kontroll taghha.

Mill-provi prodotti ma rrizultax li l-atturi rcevew xi ordni espressa minn ghand xi Awtorita' kompetenti biex ivarjaw il-priorita fl-ghoti tas-servizz ta rmonk u ghalhekk irid jigi ezaminat jekk kienx jezisti xi impediment legittimu li waqqaf fl-ezekuzzjoni puntwali tal-ftehim.

Irrizulta ukoll mill-provi li l-manuvri ta kull vapur waqt li jkun diehel jew hiereg mill-port iridu jkunu taht il-kontroll ta bdot ossia "Pilot" mharreg u awtorizzat ghal daqshekk mill-awtorita' kompetenti.

Irrizulta ukoll illi dan il-'Pilot' la huwa impjegat mal-atturi u lanqas ma huwa taht il-kontroll taghhom fit-tqassim tax-xoghol tieghu, izda dan jiehu l-istruzzjonijiet tac-Chief Pilot u f'kazijiet iktar serji tal-Awtorita' Marittima.

Il-Kap. 352**.** Tal-Ligijiet ta Malta jipprovdi 'inter alia' hekk:

> ***"6.** (1) It shall be the function of the Authority:*
> *(a) to provide, maintain and operate ports in Malta, and to provide, maintain and operate therein and in the approaches thereto adequate and efficient services and facilities as it may from time to time consider necessary or advantageous for the proper, safe and efficient functioning of such ports or as the Authority may otherwise deem it proper to provide in the public interest;*
> *(b) without prejudice to the provisions of any other law, to exercise overall control for the preservation of good order in the territorial and internal waters of Malta, in any port and in the land and sea approaches to any port, and on wharves;*
> …………………………………………………
> *(2) Subject to the provisions of this Act, it shall be the duty of the Authority -*
> *(a) to regulate and control navigation within the limits of any port and the approaches thereto;*
> ……………………………………………………
> *(4) Subject to any regulations made under this Act, the Authority shall further have power -*
> *(a) to direct where any ship shall be berthed, moored or anchored in any port and the method of anchoring within the port;*
> *(b) to remove or order the removal of any ship from one berth, station or anchorage to another in a port, and the time within which such removal is to be effected;*
> *(c) to regulate the movement of ships within or between ports, or within the approaches to a port or within territorial waters."*

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Infatti Jesmond Mifsud il-Pilot li kien moghti l-inkarigu biex jimmanuvra l-vapur 'White Sea' iddikjara li huwa jiehu l-istruzzjonijiet mid-Direttur tal-Freeport, Kaptan Dayal Anand, li minn-naha tieghu ikkonferma li jghati l-istruzzjonijiet huwa stess lill-Pilots, izda meta tqum xi kwistjoni dwar xi priorita' jirreferi l-kaz lil Chief Pilot u fl-ahhar lill-Awtorita Marittima.

L-istess Pilot, Jesmond Mifsud, jikkonferma li ghalkemm l-appuntament li kellhu inizjalment kien biex jghati servizz lil "White Sea" fit-3.30 p.m. huwa kien gie dirett mis-superjuri tieghu biex f'dak il-hin jghati s-servizz tieghu lill-bastiment iehor.

Ghaldaqstant jirrizulta li l-atturi kienu gustifikati li ma jghatux is-servizz taghhom lill-konvenuti fil-hin stipulat billi l-konvenuti f'dak il-hin ma kienux jiddisponu minn servizz ta Pilot biex jassisti fil-manuvrar fil-port u ghalhekk kull ilment tal-konvenuti fil-konfront tal-atturi m'huwiex gustifikat.

Infatti jirrizulta li l-ilment tal-konvenuti kien ikun gustifikat jekk dirett lejn l-Awtorita' Marittima li fl-ahhar nett ghandha il-kontroll u s-supervizjoni tal-manuvri tal-bastimenti fil-portijiet. Huwa inkoncepibbli kif ma ssir ebda komunika bis-serjeta' mal-agenti tal-vapuri, anke jekk purament ghall-kortesija, meta unilateralment isiru kambjament fl-appuntamenti digia' kkonfermati tenut kont ukoll tal-possibilita' ta danni minhabba id-dewmien.

Izda fil-konfront tat-talba attrici, li effettivament taw is-servizz ghalkemm tardivament, il-kontestazzjoni tal-konvenut mhiex gustifikata u konsegwentement tilqa t-talba attrici u ghar-ragunijiet indikati fl-avviz tikkundanna lill-konvenuti sabiex ihallsu lill-atturi is-somma mitluba ta sitt mija, tnejn u ghoxrin liri maltin (LM622), bl-imghax legali mis-17 ta Lulju 2000.

Bl-ispejjes kontra l-konvenuti.

Mag Dr D Montebello B A LLD

S. Farrugia
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