



TRIBUNAL GHAL TALBIET ZGHAR

**GUDIKATUR DR.
VINCENT GALEA**

Seduta ta' l-24 ta' Gunju, 2013

Talba Numru. 214/2008

**GasanMamo Insurance Limited [C-3143] kif surrogata
fid-drittijiet tal-assigurata taghha Universal Import
Export Limited [C-077037] skond il-ligi u l-polza tal-
assikurazzjoni**

vs

**Advance Shipping Limited u b'digriet tas-7 ta'
Novembru, 2008 gie ordnat il-kjamat fil-kawza tas-
socjeta Air Malta p.l.c.**

It-Tribunal,

**Ra t-talba mressqa mis-socjeta rikorrenti fid-29 ta'
Frar, 2008** u li permezz taghha talbet il-hlas, minghand l-
intimati, tas-somma ta' seba' mija u sittax-il euro u wiehed
u ghoxrin centezmu ta' euro [€716.21c] u dan wara li
ppremettiet hekk:

“Illi l-kumpanija Universal Import Export Limited inkarigat
lis-socjeta konvenuta sabiex titrasporta mill-Germanja

konsenja ta' *solder paste* li kellha tasal Malta f' Marzu, 2007.

Illi meta l-konsenja waslet Malta f'Marzu 2007 il-konsenja ta' Universal Import Export Limited kienet nieqsa, liema konsenja kellha valur ta' Lm1259.47 u b'hekk l-Universal Import Export Limited ghamlet claim mas-socjeta attrici u giet debitament kompensata.

Illi tlett gimghat wara, u cioe f'April 2007, il-merkanzija waslet Malta izda wara li din giet irtirata u *samples* minnha gew mibghuta barra sabiex jigu ttestjati instab li parti kienet ghadha tajba u parti ohra ma kienetx tajba u b'hekk kien hemm *salvage* fl-ammont ta' Lm365. Billi t-trasport sar parzjalment bl-ajru fuq titjira tal-Air Malta, l-Air Malta p.l.c. hallset is-sehem taghha tad-danni kif limitati skond il-*limitation* stipulata taht il-Konvenzjoni ta' Montreal u hallset l-ammont ta' Lm587 biex b'hekk baqa l-bilanc mitlub f'din il-kawza.

Illi s-socjeta konvenuta bhala trasportatrici inkarigata mill-importatur sabiex iggib tal-merkanzija kollha Malta hija responsabbli biex thallas id-danni totali sofferti minghajr limitazzjoni liema kumpanija interpellata sabiex thallas anke permezz ta' ittri interpellatorji tal-25 ta' Jannar 2008 u tat-22 ta' Frar 2008 baqghet inadempjenti.

Bl-ispejjez u bl-interessi mill-4 ta' Marzu 2007 kontra l-kumpanija konvenuta li minn issa hija ngunta ghas-subizzjoni”.

Ra r-risposta tas-socjeta intimata pprezentata fis-7 ta' April, 2008 u li permezz taghha eccepiet hekk:

“It-talbiet attrici huma kompletament infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra s-socjeta attrici ghar-ragunijiet segwenti:

1. Illi, in limine litis, trid issir il-prova tas-surroga;

2. Illi, minghajr pregudizzju ghas-suespost, il-kawza hija tardiva u d-dritt ta' azzjoni ta' l-attrici gie dekadut ai termini ta' l-*Standard Terms and Conditions* li tahtom giet ingaggjata s-socjeta eccipjenti mill-assigurat tas-socjeta attrici, u cioe s-socjeta Universal Import Export Limited, fir-rigward tal-garr tal-merkanzija li hija s-suggett tal-kawza odjerna, li tillimita d-dritt ta' azzjoni ghal disa' xhur mid-data tal-konsenja;

3. Illi, fil-mertu, il-hsara allegata fil-merkanzija, kif allegata mis-socjeta attrici, trid tigi ppruvata;

4. Illi, minghajr pregudizzju ghas-su-eccepit, is-socjeta eccipjenti ma kkomettiet ebda nuqqas fil-konfront tas-socjeta attrici u, kwindi, is-socjeta eccipjenti mijiex responsabbli fil-konfront tas-socjeta attrici;

5. Illi subordinament u minghajr pregudizzju ghas-su-eccepit, jekk jirrizulta li huwa minnu li l-merkanzija in kwistjoni soffriet xi hsara, dan seh esklussivament mil-linja ta' l-ajru Air Malta p.l.c. li kienet responsabbli ghall-garr tal-merkanzija bl-ajru;

6. Illi din is-socjeta, u cioe l-Air Malta p.l.c., gia hallset lill-assigurat tas-socjeta attrici, u cioe lis-socjeta Universal Import Export Limited, ghall-hsarat allegatament sofferti mill-merkanzija u ghaldaqstant is-socjeta attrici ma ghandhiex dritt ghal kumpens kontra s-socjeta eccipjenti;

7. Illi minghajr pregudizzju ghas-sueccepit in ogni caso, ir-relazzjoni bejn is-socjeta eccipjenti u l-assigurat tas-socjeta attrici (is-socjeta Universal Import Export Limited) hija regolata mill-konvenzjoni internazzjonali maghrufa bhala l-Montreal Convention li tillimita r-responsabbilta tas-socjeta eccipjenti ghal mhux aktar minn €1397 (mahduma skond 17 SDR/kilo). Dan l-ammont ga thallas mis-socjeta Air Malta p.l.c. lill-assigurat tas-socjeta attrici, u cioe lis-socjeta Universal Import Export Limited, kif hawn fuq inghad;

8. Salvi eccezzjonijiet ulterjuri permessi mil-Ligi”.

Kopja Informali ta' Sentenza

Ra r-risposta mressqa mis-socjeta kjamata fil-kawza Air Malta p.l.c. intimata fid-19 ta' Frar, 2009 u li permezz taghha ecceppiet hekk:

“Illi l-kjamata in kawza Air Malta p.l.c. tirrespingi l-pretensjonijiet tal-attrici bhala infondati fil-fatt u d-dritt ghal dawn ir-ragunijiet:

1. Teccepixxi l-ewwelnett il-hlas: Qabel ma nfethu dawn il-proceduri, Air Malta p.l.c. ghamlet hlas tas-somma ta' hames mija u sebgha u tmenin lira Maltija (Lm587, illum ekwivalenti ghal €1,367.34) lill-assigurata tal-attrici Universal Import & Export Limited assaldu tal-pretensjonijiet tal-imsemmija assigurata (ara skambju ta' korrisondenza u dokumenti annessi bhala Dok AM 1 sa 7). Ghalhekk, l-ebda hlas iehor ma huwa dovut mill-kjamata in kawza.

2. Illi l-kjamata in kawza umilment tiriserva illi, bil-permess ta' dan it-Tribunal, tressaq eccezzjonijiet fil-mertu wara li tigi deciza l-eccezzjoni tal-pagament.

Bl-ispejjez.”

Ra l-verbal tas-17 ta' Settembru, 2012 fejn il-kawza giet differita ghas-sentenza;

Ikkunsidra;

1. **Joseph Tedesco**, *operations manager* tas-socjeta Universal Import Export Limited xehed permezz tal-procedura ta' l-affidavit. Huwa qal fost affarijiet ohra li:

i. Is-socjeta minnu rappreżentata kienet ordnat tnejn u sebghin (72) kilo *solder paste* minghand il-Kumpanija Kester gewwa l-Germanja. Dan il-prodott kellu jigi trasportat f'temperatura baxxa.

ii. Hija kienet inkarigat lis-socjeta intimata Advance Shipping Limited sabiex igibilha Malta din il-konsenja mill-Germanja u twassalha sal-bieb.

iii. Is-socjeta intimata kienet igorr diversi drabi dan il-prodott ghas-socjeta Universal Import Export Limited u ghalhekk, skond l-istess soċjetà, l-intimata kienet taf li din it-tip ta' merkanzija trid tingarr taht '*cold condition*'.

iv. Biex tasal hawn Malta, din il-merkanzija kellha tingarr bl-ajru u fuq l-airway bill kien hemm struzzjonijiet speċifiċi li din il-merkanzija trid tingarr *in cold storage*.

v. FI-4 ta' Marzu, 2007 addetti mis-socjeta intimata ċemplu lis-socjeta Universal Import Export Limited biex jinfurmawha li l-merkanzija ma kienitx waslet hawn Malta. Din is-socjeta ghamlet *claim* mas-socjeta rikorrenti u giet ikkumpensata mill-istess flammont ta' €2,933.78c¹.

vi. Fil-11 ta' April, 2007 is-socjeta intimata ikkonsenjat il-merkanzija, iżda peress li din ma kienitx *in cold condition* is-socjeta Universal Import Export Limited ftehmiet mas-socjeta rikorrenti sabiex tibghat samples tal-merkanzija lura ghand is-suppliers taghha biex dawn jaghmlu t-testijiet relattivi u jstabilixxu jekk il-merkanzija kienitx f'kundizzjoni tajba jew le. FI-4 ta' Mejju, 2007 is-socjeta Universal Import Export Limited irċeviet ir-risposta minghand is-suppliers fejn dawn infurmawha liema batches kienu ghadhom tajbin u jilhqu mal-ispecifications. L-ammont li seta jiġi salvat kien jammonta ghal ghoxrin (20) kilo li kellu prezz ta' €850.22c. Kien ghalhekk, li s-socjeta Universal Import Export Limited harget credit note a favur tas-socjeta rikorrenti u hargu ukoll pagament f'dan l-ammont lill-istess soċjetà rikorrenti.

¹ Fil-paragrafu numru ghaxra (10) ta' l-affidavit tieghu Joseph Tedesco jghid hekk: "*Il-prezz totali tal-merkanzija li ma waslitx kien jammonta ghal €2,720 ekwivalenti ghal Lm1167.70 (Dok. JT6) li maghhom l-assikurazzjoni kkalkulat 10% markup u naqset l-excess li kien jammonta ghal Lm25 u ghalhekk ikkumpensatna s-somma ta' elf, mitejn u disgha u hamsin Lira u sebgha u erbghin ċenteżmu (Lm1,259.47) (Dok. JT7)*" (fol. 13). Lm1,259.47c huma ekwivalenti ghal €2,933.78c.

vii. F'Gunju, 2007, is-socjeta kjamata in kawza Airmalta p.l.c. kitbet lis-socjeta Universal Import Export Limited u infurmata li hija kienet qeghda thallas is-somma ta' €1,367.34c ghat-telf subit mill-imsemmija soċjetà Universal Import Export Limited.

viii. F'Jannar, 2008 is-socjeta Universal Import Export Limited baghtet čekk lis-socjeta rikorrenti fl-ammont ta' €1,367.34c u dan peress li din l-ahhar soċjetà kienet digà ikkumpensathom minhabba li l-merkanzija ma kienitx waslet f'Marzu, 2007.

ix. Ghalhekk, ighid ix-xhud Joseph Tedesco, huma, wara li naqsu l-ammont ta' €850.22 (meta huma xtraw lura parti mill-konsenja li kienet ghadha tajba) u naqsu l-ammont ta' €1,367.34c (kumpens li huma kienu rċevew minghand l-Airmalta p.l.c.) huma gew li baqalhom is-somma ta' €716.21c mill-ammont originali li kienet taghthom is-socjeta rikorrenti ta' €2,933.77c.

2. Is-socjeta rikorrenti qeghda titlob il-hlas minghand is-socjeta intimata u/jew minghand il-kjamata in kawza tas-somma ta' €716.21c li huwa l-ammont li hija kellha tohrog a favur tas-socjeta Universal Import Export Limited biex tikkumpensaha minhabba l-fatt li parti mill-ordni ta' *solder paste* li hija kienet ghamlet, kienet waslet ghandha f'kundizzjoni mhux tajba ghall-bejgh, tort, skond is-socjeta rikorrenti, ta' xi wahda mis-socjetajiet intimati f'dawn il-proceduri.

3. Fis-seduta tat-28 ta' Mejju, 2008 xehed John Galdes, *senior manager claims* mas-socjeta rikorrenti. Huwa qal li s-socjeta rikorrenti kienet harget polza ta' assikurazzjoni favur is-socjeta Universal Import Export Limited li kienet sejra timporta *solder paste* mill-Germanja lejn Malta. Zied ighid li s-socjeta Universal Import Export Limited kienet inkarigat lis-socjeta intimata sabiex tiehu hsieb it-trasport mill-Germanja sa ghandha ta' dan is-*solder paste*.

Fis-6 ta' Marzu, 2007, ighid ix-xhud, huma gew infurmata mis-socjeta Universal Import Export Limited li l-konsenja ntilfet. Qal ukoll li din is-*solder paste* kellha tasal Malta f'kundizzjoni kiesha u cioe f'*cold storage* u dan skont ma hemm miktub fl-*airway bill*. Is-socjeta Universal Import Export Limited kienet qeghda tinkwiteta li anke kieku din il-konsenja kellha tasal xi ffit tard, xorta wahda din kienet ser tkun kompromessa jekk ma tasalx fil-kundizzjoni ta' *cold storage*.

Ix-xhud qal li peress li din il-konsenja baqghet ma waslitx, allura huma hallsu lis-socjeta Universal Import Export Limited is-somma ta' Lm1,259.47c pari ghal €2,933.78c. Ghar-rigward tad-dokument li hemm immarkat bhala dok. JT7 (fol. 21), huwa qal li dik hija d-*discharge form* iffirmata mis-socjeta Universal Import Export Limited biex b'hekk huma gew surrogati fid-drittijiet taghha. Din id-*discharge form* hija datata 23 ta' Marzu, 2007.

Xi tlett (3) ġimghat wara li s-socjeta rikorrenti kienet hallset is-somma hawn fuq indikata lis-socjeta Universal Import Export Limited hija infurmata li l-merkanzija kienet waslet hawn Malta. Meta din l-ahhar soċjetà imsemmija talbet li tiehu *sample tas-solder paste* biex tkun tista tivverifika l-istat taghha, s-socjeta intimata irrifjutat u ghalhekk is-socjeta Universal Import Export Limited ġabret il-merkanzija u baghtet *sample lis-supplier* taghha sabiex isiru d-debiti verifiki jekk din ghadhiex tajba. Skond notament li hemm fuq dok. JT 8 (fol. 22) jirrizulta li "*goods are not in cold condition*". Is-socjeta Universal Import Export Limited ġiet infurmata li kien hemm parti mill-merkanzija li ma kienitx tajba u ghalhekk is-socjeta rikorrenti ghamlet *salvage* tal-merkanzija li kienet ghada tajba. Fil-fatt, hi rifondiet lis-socjeta rikorrenti s-somma ta' Lm365 pari ghal €850.22c.

Is-socjeta rikorrenti kitbet lis-socjeta intimata u infurmata li huma kienu qeghdin jippretendu minghandha s-somma ta' Lm894.47c pari ghal €2,083.55c. Is-socjeta intimata irrifjutat li taghmel dan, u infurmat lis-socjeta rikorrenti li

huma kienu ser ikellmu lis-socjeta Airmalta p.l.c. sabiex jirkupraw dan l-ammont minghandha. F'Jannar, 2008 is-socjeta rikorrenti giet infurmata li s-socjeta Airmalta p.l.c. hallset lis-socjeta Universal Import Export Limited s-somma ta' Lm587 pari ghal €1,367.34c, liema ammont thallas a baži tal-Montreal Convention. Dan l-ammont gie rifuz lis-socjeta rikorrenti mis-socjeta Universal Import Export Limited biex b'hekk gie li s-socjeta rikorrenti issa kienet qeghda tippretendi li tithallas is-somma ta' Lm307.47c pari ghal €716.21c minghand is-socjeta intimata. Is-socjeta intimata ma riditx thallas dan l-ammont u ghalhekk saret din il-kawza.

4. Fis-seduta tal-1 ta' Lulju, 2008 xehed **Kurt Caruana**, *claims negotiator* mas-socjeta rikorrenti. Ix-xhieda tieghu hija ripetizzjoni tax-xhieda ta' John Galdes. Fil-fatt, ix-xhud ighid li "*fuq dan il-kaz partikolari allavolja jien hdimtu, jiena bqajt niddilja dejjem mas-senior manager tieghi illi huwa John Galdes peress illi ma kienx kaz regolari ta' short landing*" (fol. 40).

5. **Saviour Mallia**, Section Head Cargo Department mas-socjeta Airmalta p.l.c., tressaq biex jixhed mis-socjeta kjamata in kawza fis-seduta tas-16 ta' April, 2009. Beda biex qal li huwa jiehu hsieb il-*claims* li jsiru kontra s-socjeta kjamata in kawza. B'referenza ghal kwistjoni odjerna, x-xhud qal li din il-konsenja kellha tasal mal-ajruplan KM942 li kellu jasal fl-4 ta' Marzu, 2007. Pero l-kaxxi kontenenti l-merkanzija in kwistjoni ma waslux ma din it-titjira u fit-13 ta' Marzu, 2007 is-socjeta minnu rappreżentata rċeviet *claim* minghand is-socjeta Universal Import Export Limited fejn din ta' l-ahhar kienet qed iżomm lil Airmalta p.l.c. responsabbli ghal dan in-nuqqas. Wara li s-socjeta kjamata in kawza irċeviet id-dokumenti li kien talab dan ix-xhud minghand is-socjeta Universal Import Export Limited, hija ghaddiet biex hallset l-ammont ta' Lm587 pari ghal €1,367.34c skond il-kundizzjonijiet tal-kuntratt. Dan l-ammont ma huwiex l-ammont kollu li s-socjeta Universal Import Export Limited kienet qeghda titlob iżda huwa l-ammont li s-socjeta minnu rappreżentata kienet tenuta thallas skond il-Montreal Convention.

Ix-xhud ghmel referenza ghad-dokument li huma baghtu lis-socjeta Universal Import Export Limited (dok. AM 4 a fol. 59) datat 8 ta' Gunju, 2007 fejn ma din l-ittra kien hemm cekk fl-ammont ta' Lm587 pari ghal €1,367.34c u li dan l-ammont kien qiegħed jithallas “... *in full and final settlement to your claim*” (fol. 59).

Meta sar il-kontro-ezami tieghu mir-rapprezentant legali tas-socjeta rikorrenti, x-xhud qal li l-*airway bill* kienet indirizzata lil Advance Shipping Limited u ghalhekk, kompla jghid dan ix-xhud, kienet din is-socjeta proprjament il-klijenta tagħhom ghax kienet hi li qabbdithom biex igorru l-merkanzija in kwistjoni.

In kontro-ezami mir-rapprezentant legali tas-socjeta intimata, x-xhud qal li l-pagament ta' Lm587 pari ghal €1,367.34c sar lis-socjeta Universal Import Export Limited *in full and final settlement*. Zied ighid li “*meta l-Air Malta bagħtet ic-cheque in kwistjoni l-Universal Import & Export Limited bl-ebda mod ma kkontestat dan l-ammont jew ma accettatux peress illi kienet qed titlob xi ammont ikbar. Nikkonferma li c-cheque gie anke msarraf*” (fol. 70).

6. Is-socjeta intimata resqet lil **Terence Cachia**, bhala xhud tagħha fis-seduta tas-26 ta' Gunju, 2009. Qal li fiz-zmien in kwistjoni huwa kien direttur tas-socjeta intimata. Qal ukoll li qabel din il-konsenja s-socjeta Universal Import Export Limited kienet użat is-servizzi tas-socjeta intimata diversi drabi. Zied ighid li “*meta xi hadd ikun talabna ic-charges u l-quotations tagħna, ahna dawn nibagħtuhomlu u fuq l-istess quotation ikun hemm imniżżel illi s-socjeta Advance Shipping Limited għandha t-terms and conditions tagħha u li sabiex wiehed ikun jista jara dawn it-terms and conditions, hemm site illi jista jidhol fiha*” (fol. 74-75).

Ix-xhud esebixxa dokument li gie mmarkat bhala dok. TC1 (fol. 78 et seq) u qal li dan huwa dokument li permezz tieghu s-socjeta Universal Import Export Limited talbet lis-socjeta intimata sabiex tagħtiha r-*reservations*. Ma dan id-dokument hemm ukoll “...*ir-risposta tagħna fejn proprju*

tajniehom il-quotation u wiehed jista jara li taht din il-quotation hemm imniżżel fejn wiehed irid imur sabiex jara t-terms and conditions taghna” (fol. 75). Din l-istima maghmula mis-socjeta intimata ġiet aċċettata mis-socjeta Universal Import Export Limited. Izid ighid li l-merkanzija kellha tasal hawn Malta f'*cold storage* u li bhala linja ta' l-ajru, huma kienu qabbd u lil Air Malta p.l.c. sabiex igorr din il-merkanzija.

Qal li meta huma rċevew in-*notice of arrival* minghand is-socjeta kjamata in kawża (dok. TC 3 a fol. 86) huma marru biex jiġbru l-merkanzija u wara li kienu hallsu ghal istess huma irrealizzaw li fuq l-*airway bill* kien hemm l-ittri “NRB” li jfissru *not received in bond* (ara dok. TC 4 a fol. 87). Huma nfurmaw lis-socjeta Universal Import Export Limited li l-merkanzija ma kienitx waslet u kienu baghtulha n-*notice of arrival* bil-kliem miktub NRB u dan sabiex l-imsemmija soċjetà jkollha dokument minghandhom li juri li l-merkanzija ma kienitx waslet. Ix-xhud qal ukoll li s-socjeta Universal Import Export Limited kienet baghtitilhom *email* fejn infurmathom li kienet qeghda iżżommhom responsabbli ghal dan il-fatt, iżda s-socjeta intimata kienet irrifjutat li hija tinżamm responsabbli l-ghaliex il-fatt li ma waslitx il-merkanzija ma kienx imputabbli lilhom. Da parti taghha, s-socjeta intimata baghtet email lis-socjeta kjamata in kawża fejn infurmatha li hija kienet qeghda iżżommha responsabbli ghal akkadut (ara dok. TC 6 a fol. 93). Wara xi xahar, is-socjeta kjamata in kawża infurmatha li l-merkanzija kienet waslet u ghalhekk is-socjeta intimata infurmat lis-socjeta Universal Import Export Limited b'dan il-fatt (ara dok. TC 7 a fol. 94). Sussegwentement, is-socjeta kjamata in kawża hallset lis-socjeta Universal Import Export Limited u imbaghad s-socjeta rikorrenti fittxet lis-socjeta minnu rappresentata ghad-differenza.

Huwa esebixxa ukoll dokument li gie mmarkat bhala dok. TC 2 (fol. 80) li huma *t-terms and conditions* tas-socjeta intimata.

7. **Joseph German**, direttur tas-socjeta intimata kkonferma dak li xehed Terence Cachia.

8. Fis-seduta tat-8 ta' Ottubru, 2009 reggha xehed **Terence Cachia**. Huwa qal li s-socjeta Universal Import Export Limited irċeviet il-merkanzija fil-11 ta' April, 2007. Skond ma jirrizulta mid-dokument immarkat bhala dok. TC 12 (fol. 109), irrizulta li "*goods where not in cold condition*". Mistoqsi in kontro-ezami meta nkitbet din il-frazi, x-xhud qal li "*dak il-kumment żgur ma sarx waqt li l-merkanzija kienet ghada ghand l-Airmalta*" (fol. 107). Zied ighid li dan il-fatt sehh peress li "*... l-Airmalta ma kienux żammewhom fil-cold store*" (fol. 106). Qal ukoll li s-socjeta minnu rappresentata kienet baghtet lil burdnar taghha fis-*shed* tas-socjeta kjamata in kawża, dak-in-nhar stess, li baqa sejjer dirett biha ghand is-socjeta Universal Import Export Limited ġewwa l-imhazen taghha f'Rahal Gdid. Ix-xhud esebixxa ukoll sensiela ta' *emails* bejn is-socjeta intimata u dik kjamata in kawża (dok. TC 13 a fol. 110 et seq) minfejn jirrizulta li l-merkanzija waslet hawn Malta fit-8 ta' April, 2007 (fol. 112) u s-socjeta minnu rappresentata ġiet infurmata fl-10 ta' April, 2007 li l-merkanzija kienet ghand is-socjeta kjamata in kawża permezz ta' telefonata. Meta gie mistoqsi jekk il-vann tal-burdnar kellux faċilitajiet li jżomm il-merkanzija fi stat *cooled*, huwa qal li l-vann tal-burdnar kien "*a dry van*" (fol. 107). Mistoqsi r-raguni ghala l-burdnar gabar il-merkanzija *in a dry van*, x-xhud wieġeb li "*il-burdnar taghna kien gabar ix-xoghol in a dry van ghaliex kien induna li minghand l-Airmalta ma kienx cooled u ma konniex ser nergu nkeshu l-merkanzija mill-gdid*" (fol. 107). Stqarr ukoll li ġieli kien hemm każijiet fejn merkanzija li tkun merfugha go *cool storage*, s-socjeta intimata tqiegħed din il-merkanzija go *dry van* u cioe minghajr *cooling* u dan meta l-vjagg ikun wiehed qasir bhal ma kien dan il-kaz odjern².

Mistoqsi r-raguni l-ghala l-merkanzija waslet kważi xahar tard, ix-xhud qal li qatt ma inghata twegiba minghand is-socjeta kjamata in kawża dwar dan.

9. **Noel Ellul**, direttur tas-socjeta General Marine Services and Consultancy Limited xehed fit-8 ta' Ottubru,

² Il-vjagg kien minn Hal-Luqa ghal Rahal Gdid.

2009 u qal li huwa ha hsieb din il-*claim* partikolari ghan-nom tas-socjeta intimata. Huwa qal li l-parir tieghu lis-socjeta intimata kien li hi ma kellha l-ebda responsabilita ghall-akkadut iżda t-tort kien ta' l-Airmalta p.l.c. Dan peress li huma ma kienux żammew il-merkanzija f'*cool storage*. Il-fatt li l-merkanzija ingarret fi *dry van* bl-ebda mod ma wasal sabiex din il-merkanzija jigrilha l-hsara. Huwa qal li wasal ghal din il-konkluzzjoni peress li "... *meta jiena staqsejt nies ta' Advance Shipping Limited minn fejn kienu gabru din il-merkanzija jiena sirt naf illi l-merkanzija ma kienetx ingabret mill-cool shed, iżda minn xi shed iehor fejn tinstab il-merkanzija normali*" (fol. 115) Stqarr però li huwa ma kien ra l-ebda dokument minghand is-socjeta kjamata in kawża li juri jekk il-merkanzija kienetx *in cold storage* jew le.

Ikkunsidra ulterjorment;

10. Illi din hija kawża dwar danni li s-socjeta rikorrenti, kif surrogata fid-drittijiet tal-assigurat taghha s-socjeta Universal Import Export Limited tghid li sofriet peress li merkanzija li kienet ordnata mill-ahhar soċjetà kienet waslet tardivament hawn Malta u fi stat, fil-maggor parti taghha, mhux tajjeb ghal uzu. L-ammont reklamat huwa ta' €716.21c.

11. In succint, wiehed jista jghid li s-segwenti fatti jirruzzlaw mill-atti:

i. Is-socjeta Universal Import Export Limited fis-27 ta' Frar, 2007 kienet ordnat 72kg *solder paste* mill-Germanja, liema merkanzija kellha tiġi trasportata f'temperatura baxxa. Hija kienet harget polza ta' l-assikurazzjoni mas-socjeta rikorrenti ghal din il-konsenja.

ii. Hija kienet inkarigat lis-socjeta intimata biex taghmel dan, li da parti taghha kienet inkarigat lis-socjeta kjamata in kawża biex iggib din il-merkanzija f'Malta;

iii. Skond l-*airway bill* esebita a fol. 16 tal-process (dok. JT 2) jirrizulta li l-merkanzija kellha tinżamm f'*cool storage*.

iv. Din il-merkanzija kellha tasal Malta fl-4 ta' Marzu, 2007 (fol. 17). Fir-rejalta, waslet Malta l-Hadd 8 ta' April, 2007 (fol. 95) u ingabret mill-burdnar tas-socjeta intimata nhar it-Tlieta 11 ta' April, 2007 u inghatat lis-socjeta Universal Import and Export Limited dak-in-nhar stess.

v. Meta din il-merkanzija waslet ghand is-socjeta Universal Import and Export Limited, trizżlu l-kliem "*Note: goods not in cold condition*" (fol. 109).

vi. Sadanitant, is-socjeta Universal Import and Export Limited kienet resqet *claim* mas-socjeta rikorrenti u dan minhabba li din il-konsenja ma kienitx waslet fl-4 ta' Marzu, 2007 u fil-fatt is-socjeta rikorrenti kienet hallsitha s-somma ta' Lm1,259.47c pari ghal €2,933.78c bhala hlas a saldu ta' kull pretensjoni li l-imsemmija soċjetà kellha kontra s-socjeta rikorrenti a bażi tal-polza ta' l-assikurazzjoni li hija kellha maghha. Is-socjeta Universal Import and Export Limited kienet giet surrogata fid-drittijiet tas-socjeta Universal Import and Export Limited ma dan il-hlas (fol. 21).

vii. Meta l-merkanzija imbaghad waslet hawn Malta, is-socjeta Universal Import and Export Limited baghtet xi samples mill-istess lill-fabbrika minfejn kienet akkwistata sabiex tara jekk kienx ghad hemm xi partijiet minnha li kienu tajba. Fil-fatt irrizulta li kien hemm 20kg minn din il-merkanzija li kienet ghadha tajba u setghet tintuża. Ghalhekk, l-imsemmija soċjetà taght *credit note* lis-socjeta rikorrenti fl-ammont ta' €850.22c.

viii. Fit-8 ta' Gunju, 2007, is-socjeta kjamata in kawża hallset is-somma ta' €1,367.34c lis-socjeta Universal

Import and Export Limited *in full and final settlement* għall-pretensjonijiet tagħha u dan skond ma jirrizulta mill-ittra li hemm esebita a fol. 27. Dan l-ammont inghata mis-socjeta Universal Import and Export Limited lis-socjeta rikorrenti f'Jannar, 2008.

ix. B'hekk jekk mill-ammont ta' €2,933.78c tnaqqas iz-zewg somom imsemmija fil-paragrafi preċedenti u cioe l-ammonti ta' €850.22c u €1,367.34c jiġi l-ammont mitlub fit-talba odjerna u cioe l-ammont ta' €716.22c.

12. Is-socjeta intimata tallega li hija ma hijiex responsabbli għal akkadut u li r-responsabbilita kienet tas-socjeta kjamata in kawża. Is-socjeta intimata talbet, fl-ewwel eċċezzjoni tagħha, l-prova tas-surroga. It-Tribunal huwa tal-fehma li l-kopja tas-surroga li hemm a fol. 21 tal-process hija suffiċjenti sabiex din l-eċċezzjoni tiġi newtralizzata u konsegwentement, l-istess Tribunal qiegħed jgħaddi biex jichadha.

13. It-tieni eċċezzjoni tas-socjeta intimata hija fis-sens li t-talba odjerna ġiet intavolata tardivament u dan skond it-termini ta' l-*Standard Terms and Conditions* li tahtom ġiet ingaggata mill-assigurat tas-socjeta rikorrenti. Is-socjeta intimata tghid li t-talba odjerna kellha tiġi intavolata fi żmien disa' (9) xhur mid-data tal-konsenja. Rajna li l-konsenja tal-merkanzija saret fil-11 ta' April, 2007 u t-talba ġiet intavolata fid-29 ta' Frar, 2008 u b'hekk mid-data tal-konsenja sad-data ta' l-intavolar tal-kawża odjerna għaddew għaxar xhur u tmintax-il gurnata. Fl-*standard terms and conditions of trading* tas-socjeta intimata (dok. TC 2 a fol. 80 et seq.) insibu li:

"17. TIME LIMIT

The Company shall be discharged of all liability:

(i) In respect of damages, unless the Company has been given a reasonable time period in which to survey

such damage except where it was not reasonably possible for the Company to be given such opportunity,

(ii) In respect of loss or damage at the Company's premises of any Unit or Vehicle, unless written notice of such loss or damage is received within five working days of the date when such Unit or Vehicle left the Company's premises or, if lost, when such Unit or Vehicle should have left the Company's depot,

(iii) In respect of all claims, unless within 9 (nine) months from the date of delivery of the goods to the Customer, suit is brought against the Company in the proper forum and written notice thereof received by the Company" (fol. 84).

14. Kif diġà rajna, l-vjagg tal-merkanzija kellhu jasal hawn Malta permezz ta' l-ajru. Pero qabel ma jibda l-vjagg tieghu bl-ajru, l-merkanzija kellha titwassal bit-triq u meta tasal l-ajruport hawn Malta, terga titwassal ghand is-socjeta Universal Import and Export Limited bit-trasport tat-triq. Fit-trattazzjoni taghha, s-socjeta rikorrenti tghid li l-kawza kellha tigi ntavolata fi żmien sena mid-data tal-konsenja (Art. 32 tal-Kap. 486 u cioe l-Att dwar il-Garr Stradali Internazzjonali ta' Merkanzija). Fil-fehma tat-Tribunal dan l-Att ma huwiex applikabbli ghal kaz odjern l-ghaliex kif ighid l-Artikolu 2 ta' l-Iskeda annessa ma l-imsemmi Att:

"1. Where the vehicle containing the goods is carried over part of the journey by sea, rail, inland waterways or air, and, except where the provisions of article 14 are applicable, the goods are not unloaded from the vehicle, this Convention shall nevertheless apply to the whole of the carriage. Provided that to the extent it is proved that any loss, damage or delay in delivery of the goods which occurs during the carriage by the other means of transport was not caused by act or omission of the carrier by road, but by some event which could only have occurred in the

course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Convention but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods alone had been made by the sender with the carrier by the other means of transport in accordance with the conditions prescribed by law for the carriage of goods by that means of transport. If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Convention.

2. If the carrier by road is also himself the carrier by the other means of transport, his liability shall also be determined in accordance with the provisions paragraph 1 of this article, but as if, in his capacities as carrier by road and carrier by the other means of transport, he were two separate persons”.

F'dan il-kaz, kienet il-merkanzija biss li ingarret u mhux il-vettura li fih kien hemm il-merkanzija. Ghalhekk dan l-Att ma huwiex applikabbli ghal kaz odjern.

15. Ghalhekk, it-Tribunal, in vista tal-kundizzjonijiet tas-socjeta intimata, u cioe li s-socjeta rikorrenti kellha tipprocedi b'kawza kontra s-socjeta intimata fi żmien disa (9) xhur, qieghed jilqa din l-istess eċċezzjoni u jiddikjara li t-talba odjerna giet intavolata tardivament kontra s-socjeta intimata u konsegwentement qieghed jichad l-istess talba fil-konfront taghha.

16. Ghar-rigward tas-socjeta kjamata in kawza, jinghad li din giet kontrattata sabiex igorr din il-merkanzija mill-Germanja ghall-Malta mis-socjeta intimata. Is-socjeta intimata da parti taghha kienet giet inkarigata mill-assigurata tas-socjeta rikorrenti sabiex igibilha l-merkanzija mill-mhazen tal-kumpanija fil-Germanja ghall-imhazen taghha f'Malta. Ghalhekk legalment, ir-relazzjoni tas-socjeta kjamata in kawza hija mas-socjeta intimata. Filwaqt li r-relazzjoni tal-assigurat tas-socjeta rikorrenti hija mas-socjeta intimata.

17. Is-socjeta kjamata in kawża ecceppiet il-hlas ghas-saldu ta' kull pretensjoni li l-assigurat tas-socjeta rikorrenti kellha ghar-rigward ta' din il-merkanzija. Skond ma jirrizulta minn ittra datata 8 ta' Gunju, 2007 mibghuta fit-8 ta' Gunju, 2007 (fol. 59), s-socjeta kjamata in kawża kienet baghtet čekk fl-ammont ta' Lm587 pari ghal €1,367.34c "... *in full and final settlement to your claim*" (fol. 59) lis-socjeta Universal Import and Export Limited. Dan ic-čekk gie debitament imsarraff mill-imsemmija soċjetà. Pero, s-socjeta rikorrenti kienet ġiet surrogata fid-drittijiet tas-socjeta Universal Import and Export Limited fit-23 ta' Marzu, 2007. Dan xi jfisser? Tista s-socjeta kjamata in kawża tecepixxi l-hlas li hija ghamlet lil soċjetà li f'dak l-istadju ma kienx ghad kellha x'taqsam mal-kwistjoni? Fil-fehma tat-Tribunal, il-hlas a saldu sar lil kumpanija (Universal Import and Export Limited) li meta sar il-hlas ma kellha l-ebda dritt li tirċievi dak il-hlas l-ghaliex is-socjeta rikorrenti kienet hallsitha ghall-pretensjonijiet taghha kollha fit-23 ta' Marzu, 2007. Kieku l-hlas sar lis-socjeta rikorrenti, allura l-posizzjoni legali kienet tkun wahda ferm differenti. Ghalhekk, din l-eccezzjoni tas-socjeta kjamata in kawża qeghda tiġi michuda.

18. Mill-provi prodotti, ghalkemm jirrizulta li parti mill-merkanzija ta' *solder paste* li nġiebet hawn Malta ma baqghetx tajba ghal uzu minhabba li ma kienitx inżammet in *cool storage*, ma jirrizultax jekk din il-merkanzija kienitx qeghda tinżamm in *cool storage* meta din telqet mill-fabbrika ġewwa l-Germanja, kif inżammet, jekk inżammet, fil-*warehouse* ġewwa l-ajruport tal-Germanja, kif telghet fuq l-ajruplan u kif inżammet meta waslet hawn Malta fit-8 ta' April, 2007 sakemm ingabret mill-burdnar tas-socjeta intimata tlett ijiem wara u cioe fil-11 ta' April, 2007. L-unika haġa ċerta hija li meta ngarret din il-merkanzija mis-*shed* tas-socjeta kjamata in kawża ghall-imhazen tal-assigurat tas-socjeta rikorrenti, din ingarret *in a dry van*. Ghalhekk it-Tribunal ma jistax jasal biex jghid jekk is-socjeta kjamata in kawża ghandhiex tahti ghal xi nuqqas da parti

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taghha u konsegwentement ma jistax jilqa t-talba tas-socjeta rikorrenti.

Ghaldaqstant, it-Tribunal, qiegħed jaqta u jiddeciedi dan il-kaz billi:

1) fil-konfront tas-socjeta intimata jichad l-ewwel eċċezzjoni tagħha. Qiegħed jilqa t-tieni eċċezzjoni tagħha u konsegwentement jichad it-talbiet tas-socjeta rikorrenti fil-konfront tagħha.

2) fil-konfront tas-socjeta kjamata in kawża qiegħed jichad l-ewwel eccezzjoni tagħha u

3) qiegħed jichad it-talba tas-socjeta rikorrenti stante li din ma gietx sodisfacentement ippruvata skond il-ligi.

L-ispejjez huma għak-karigu tas-socjeta rikorrenti fl-intier tagħhom.

< Sentenza Finali >

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