

Kopja Informali ta' Sentenza



**QORTI CIVILI  
PRIM' AWLA**

**ONOR. IMHALLEF  
LORRAINE SCHEMBRI ORLAND**

Seduta tal-11 ta' Lulju, 2013

Citazzjoni Numru. 1637/2000/1

**Middle Sea Insurance PLC kif surrogota fid-digriet tal-  
assikurat taghha Vivian Corporation Limited gia  
Vivian Commercial Corporation Limited sew bil-polza  
kif ukoll bil-ligi**

**vs**

**MD Trucking Limited**

**II-Qorti,**

**I. PRELIMINARI.**

Rat ic-citazzjoni tas-socjeta` attrici datata 4 ta' Awwissu 2000 fejn esponiet: -

Illi l-assikurat tas-socjeta' attrici s-socjeta' Vivian Corporation Limited impurtat partita merkanzija konsistenti f'zewg (2) "Pallets" 161 - 'cartons' salami, perzut, *speck* u prodotti ohra affini bhala Groupage go "Refrigerated

Trailer RC 3398" illi wasal Malta fit-30 t'Awwissu 1999 fuq il-bastiment "Malta Falcon".

Illi meta s-socjeta' Vivian Corporation Limited marret biex tirtira l-merkanzija giet infurmata illi kien hemm xi problemi fis-sens illi r-"refrigerator system" fil-*container* ma kenitx qieghda tiffunzjona tajjed bir-rizultat illi l-merkanzija konsistenti kif fuq intqal f'salami etc., (prodotti tan-natura deperibbli) hzienu tant illi eventwalment kellhom jigu distrutti taht id-direzzjoni tal-Awtoritajiet Sanitarji.

Illi bhala rizultat l-assikurat tas-socjeta' attrici soffriet danni ammontanti ghall-elfejn u sebghin lira ta' Malta (Lm2,070).

Illi s-socjeta' attrici kif kienet obligata illi taghmel hallset lill-assikurat taghha s-socjeta' Vivian Corporation Limited is-somma ta' elfejn u sebghin lira ta' Malta (Lm2,070) bhala kumpens ghad-danni minnha sofferti u b'hekk giet issurrogata fid-drittijiet kollha taghha.

Illi s-socjeta' konvenuta kienet inkarigata bil-garr tal-merkanzija u ghalhekk hija responsabbli ghall-istess sakemm tigi konsenjata lill-impurtaturi.

Illi s-socjeta' konvenuta hija unikament responsabbli ghad-danni kollha sofferti mill-assikurat tas-socjeta' attrici u dan peress illi l-merkanzija hzientet meta l-istess kienet ghadha fir-"refrigerated container" li kif diga` fuq premess ma baqghetx tiffunzjona jew ma zammitx it-temperatura necessarja biex il-merkanzija tinzamm f'kondizzjoni tajba kif *del resto* gie ammess minn rapprezentant tal-istess socjeta' konvenuta kollox kif jigi pruvat waqt it-trattazzjoni tal-kawza.

Tghid ghalhekk is-socjeta` konvenuta 'l ghaliex, ma ghandiex din l-Onorabbli Qorti ghar-ragunijiet premessi:

1. Tiddikjara lill-istess socjeta' konvenuta responsabbli ghad-danni kollha sofferti mill-assikurat tas-socjeta' attrici.
2. Konsegwentement tikkundanna thallas lis-socjeta' attrici s-somma ta' elfejn u sebghin lira ta' Malta

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(Lm2,070) danni sofferti mill-assikurat tas-socjeta' attrici kif fuq inghad.

Bl-ispejjez u bl-imghax legali mill-24 ta' Jannar 2000 kontra is-socjeta' konvenuta ngiunta minn issa biex tidher ghas-subizzjoni.

Rat li din il-kawza giet appuntata ghas-smigh mill-Qorti kif diversament presjeduta ghas-seduta tal-8 ta' Novembru 2000.

Rat in-nota tal-eccezzjonijiet ta' MD Trucking Limited datata 29 ta' Settembru 2000 (fol 13) fejn esponiet: -

1. Illi d-domandi attrici huma nfondati fil-fatt u fid-dritt *statne* li l-eccippjenti m'hijiex responsabbli u m'ghandha ebda htija ghall-allegat danni.

2. Salvi eccezzjonijiet ulterjuri.

Rat in-nota ta' osservazzjonijiet tas-socjeta' attrici datata 3 ta' Frar 2006 a fol 146 tal-process.

Rat il-verbali tas-seduti kollha mizmuma quddiem il-Qorti kif diversment presjeduta fejn fis-seduta tas-7 ta' Frar 2006 meta ssejhet il-kawza deher Dr. Albert Grech ghall-kumpanija attrici. Il-kumpanija konvenuta msejha tliet darbiet ma dehritx. Il-kawza giet differita ghas-sentenza ghall-31 ta' Mejju 2006; u l-verbali l-ohra kollha mill-31 ta' Mejju 2006 sas-27 ta' Novembru 2012 fejn il-kawza baqghet ghas-sentenza ghat-13 ta' Marzu 2013.

Rat is-surroga datata 16 ta' Jannar 2013 fejn din il-kawza giet assenjata lil din il-Qorti kif hekk presjeduta.

Rat il-verbal tas-seduta mizmuma quddiem din il-Qorti kif hekk illum presjeduta fejn b'ordni ta' din l-istess Qorti l-kawza giet differita ghall-11 ta' Lulju 2013 ghall-istess skop tal-verbal precedenti.

Hadet konjizzjoni tal-provi prodotti.

## II. KONSIDERAZZJONIJIET

Illi din hija kawza maghmula mis-socjeta` attrici assikuratrici sabiex tirrikjama danni sofferti mill-assikurat taghha Vivian Corporation Limited minghand il-konvenut u dan minhabba l-allegazzjoni li *r-refrigeration system* fil-*container* tal-konvenut ma kenitx qed tiffunzjona tajjeb bir-*risultat* li l-merkanzija, konsistenti f'prodotti ta' natura deperibbli, hzienu tant li kellhom jigu disttrutti taht id-direzzjoni tal-awtoritajiet sanitarji. L-ammont reklammat in linea ta' danni huwa ta' Lm2070.

Il-fatti tal-kaz li jirrizultaw huma s-segwenti:

### FATTI

Is-socjeta` Vivian Corporation Limited f'Awwissu 1999 importat konsenja ta' laham ipprocessat, konsistenti f'perzut, salami u affarijiet affini illi waslu Malta bil-vapur "Malta Falcon" fit-30 t'Awwissu 1999, u kienet inkarigat lis-socjeta` konvenuta sabiex titrasporta dawn il-prodotti.

Mark Ferris, *bond operator*, u mpjegat mas-socjeta` konvenuta, kien gab *mechanic* biex jaghti d-*diesel* lit-*trailer*, u dan peress li ma kienx hemm dawl fil-post, u dan sabiex it-*trailer* jibqa' jkessah kif suppost. Kien rega' mar ukoll biex jiccekkja li kollox kien sew iktar tard filghaxija. F'xi hin dakinhar filghaxija kien anke mar jivverifika l-affarijiet certu Michael Debono, direttur tas-socjeta` konvenuta. Sa dak il-hin it-teperatura kienet ghadha *Plus Four Degrees Celsius*.

Irrizulta li t-*trailer* tas-socjeta` konvenuta li fih kienet qed tinzamm din il-merkanzija fil-bond ta' Hal-Far ma kienx baqa' jahdem sewwa, bil-konsegwenza li t-temperatura ma baqghetx baxxa daqs kemm kien hemm bzonn sabiex jinzammu dawn il-prodotti. Ir-rapprezentanza tas-socjeta` Vivian Corporation kien minn tal-ewwel li nduna li l-prodotti kienu shan u kienu qed jilhqu temperatura ta' 'l fuq minn tletin grad Celsius. Induna b'dan meta kien mar biex jigu rilaxxati l-prodotti lil Vivian Corporation.

Ghaldaqstant gew imsejha rapprezentanti tad-Dwana, tad- Dipartiment tas-Sahha, u *surveyors* mibghutha mis-socjeta` attrici. Irrizulta illi fil-container li fih kienu jinsabu dawn il-prodotti kien hemm diversi konsenji ohra ta' importaturi differenti. Kollha kienu ga gew rilaxxati, peress li kienu prodotti deperibbli. L-unici li ma kienux gew rilaxxati kienu tas-socjeta` Vivian Corporation, u ta' socjeta` ohra, Strand Palace.

Irrizulta wkoll illi *r-refrigerated trailer* in kwistjoni li kellu '*panel*' li minnha setghet tigi manuvrata t-temperatura ta' go fih, u din l-*panel* ma kellha ebda ghata ta' protezzjoni.

Minhabba li t-*trailer* ma baqax jahdem sewwa, il-prodotti ma baqghux tajbin ghall-uzu, u dan skont certifikat li gie rilaxxat mid-Dipirtiment tas-Sahha. Gie stabbilit li t-temperatura medja fost dawn il-prodotti kienet ta' tnejn u tletin (32) grad Celsius. Il-prodotti ghaldaqstant kellhom jinqerdu taht is-supevizjoni tal-awtoritajiet tad-Dwana u tas-Sahha, bid-dannu li dan gab lis-socjeta` Vivian Corporation.

Illi tali fatti gew sostanzjalment ippruvati u certifikati mis-*surveyor* Taliana u mir-rapprezentanti tad-Dwana u tad-Dipartiment tas-Sanita li ccertifikaw il-hsara u li l-merkanzija kienet thassret sal-punt li ma kenitx tajba izjed ghall-konsum.

Da parti taghha, s-socjeta' konvenuta invokat l-ezenzjoni mir-responabbilta' tal-vettural *ai termini* tal-**Art 17.2** tal **Konvenzjoni CMR**, u sostniet li s-socjeta' konvenuta hadet il-prekawzjonijiet kollha mehtiega biex tissoddisfa l-grad ta' responsabbilta' rikjesta minnha. **Anton Ferris**, ghan-nom tas-socjeta' konvenuta, iddikjara li "*matul il-lejl xi hadd tfieh*"<sup>1</sup>. Huwa qal li hadu hsieb li jifgħu id-*diesel* fit-trakk sabiex jibqa' jahdem matul il-lejl u li kienu l-atturi li ma gewx jigbru l-merkanzija immedjatament minkejja li hija procedura taghhom li jirilaxxjaw id-dokumenti mehtiega biex il-konsenjatarju jkun jista' imur fis-sezzjoni

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<sup>1</sup> Fol 92 tal-process,

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tal-emergenza tad-Dwana u jigbor il-merkanzija minghajr dawmien.

### **Konsiderazzjonijiet Legali**

Illi l-**artikolu 17.1** tal-*Convention on the Contract for the International Carriage of Goods by Road (CMR)*<sup>2</sup> jipprovdi li:-

*“The carrier shall be responsible for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery.”*

Izda kif jirrizulta mill-**artikolu 17.2 CMR**: -

*“The carrier shall, however, be relieved of liability if the loss, damage or delay was caused ... through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.”*

Skont l-**artikolu 18**: *“1. The burden of proving that loss, damage or delay was due to one of the specified in article 17, paragraph 2, shall rest upon the carrier.”*

Skont l-**Artikolu 17.3 CMR**: - *“The carrier shall not be relieved of liability by reason of the defective condition of the vehicle used by him in order to perform the carriage, or by reason of the wrongful act or neglect of the person from whom he may have hired the vehicle or of the agents or servants of the latter.”*

L-**artikolu 18(4) CMR** jghid:-

*“If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of article 17, paragraph 4 (d), unless he proves that all steps*

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<sup>2</sup> Geneva 19 th May 1956

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*incumbent on him in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that he complied with any special instructions issued to him."*

Bhala principju gie ritenut li l-vettural, bhala depozitarju, huwa responsabbli biex jikkonsenja l-merkanzija minghajr hsara - "**Dr. Simon Micallef Stafrace noe v James Gollcher**" - Dec. P.A. 12 ta' Gunju 2002.

Illi f'dan il-kuntest huwa relevanti dak li nghad fis-sentenza fl-ismijiet "**Compunet Limited vs B.A.S. Limited**" (P.A. (P.A. (RCP) – 30 ta' Gunju 2010), u "**Charles Borg noe vs Francis Vella et noe et**" (P.A. (PS) – 31 ta' Jannar 2003) fejn gie affermat li: -

*"F'sitwazzjoni bhal din l-oneru tal-provi jinkombi b'logicita' lit-trasportatur (Art 18 (1)). Fl-ispjega li jaghtu l-awturi **Hill u Massent** fil-ktieb taghhom "**CMR: Contracts for the International Carriage of Goods by Road**", Lloyd's of London Press Ltd, 1984, pagna 68, "ic-cirkostanzi", li ghalihom jirreferi l-artikolu citat 17 (2), jkopru zewg sitwazzjonijiet distinti, definiti bhala "force majeure" u "cas fortuit". Dwarhom jinghad dan: -*

*"The former indicates something imposed upon the carrier by a third party with either "de facto" or "de jure coercive power". This would include Act of State, governmental requisition or the effect of strikes or other industrial action. However, it will also cover an accidental occurrence which is foreign to the normal course of events in the environment in which it occurs, an event which is neither within the power of man nor his judgment to foresee or prevent, such as an accident of nature. 'Cas fortuit', on the other hand, is an accidental occurrence due to chance, which is extraneous to the carrier's normal activities, and which it is not possible to foresee or prevent, but which occurs during and in the course of performance of the contract, as for example, a fire in a warehouse".*

Illi kif inghad mill-awtur **Malcom A. Clarke** fix-xoghol tieghu ntitolat **International Carriage of Goods by Road CMR** (2<sup>nd</sup> Edition pg 355):-

*“For the defence of unavoidable circumstances, as the name suggests, the evidence must disclose a cause that was the unavoidable cause of the loss, damage or delay. At first sight, the description of the defence suggests loss, damage or delay which could not have been avoided by the carrier, something quite literally, inevitable. However, in England, the defence of unavoidable circumstance is not read literally. It does not require absurd or extravagant measures of the carrier, but that the circumstances causing loss, damage or delay could not be avoided by the exercise of “utmost care” on the part of the carrier.”*

Fil-kaz "**John Galdes noe v Joseph Bowman noe**" - Dec. fil-25 ta' Jannar 2002 PA- gie ritenut li "It-trasportatur ghandu jipprova li kien fil-kondizzjoni li ma setax iwettaq l-obbligi tieghu taht il-kuntratt ta' trasport minnhabba avveniment inevitabbli, li pero' mhux necessarjament ghandu jkun wiehed imprevedibbli. Kjarament in-negligenza tat-trasportatur jeskludi din id-difiza."

Illi fil-ligi taghna dawn l-istess kuncetti – “*force majeure*” u “*cas fortuit*” huma kodifikati fl-**artikolu 1029 tal-Kap. 16** li jipprovdi li “*kull hsara li tigri b’*accident* jew b’*forza* *magguri, ibatiha, fin-nuqqas ta’ dispozizzjoni espressa tal-ligi li tghid il-kuntrarju, dak illi fuq il-persuna jew il-beni tieghu tigri l-hsara*”.*

Illi fil-kazijiet ezaminati l-iskrutinju li jsir huwa jekk l-att kienx precedut minn att jew ommissjoni kolpuza. Jekk ma hemm l-ebda konnessjoni bejn il-fortuwitu u l-eghmil, doluz jew kolpuz tal-agent, allura issehh l-effikacija tal-kaz fortuwitu bhala “*mezzo liberatore della responsabbilta*” (“**Ciantar - vs - Gatt**, A.I.C - 15 ta' Mejju 1926); “**Carmel Wismayer nomine et vs Chev. Anthony Falzon nomine**” – A. C. – 29 ta' April 1996); u “**Dr. Carmel Chircop nomine vs Av. Dr. Kevin F. Dingli nomine**” (P.A. (RCP) – 9 ta' Jannar 2001).



Illi ghal kuntrarju *“quando invece si ha la violazione di un dovere, ed una volontaria ommissione di diligenza per cui non si prevedono le conseguenze della propria azione ed ommissione e si viola il diritto altrui, senza volerlo ed anche senza avvedersene, allora si ha non il caso fortuito, ma la colpa ed il quasi delitto”* (**“Publio Azzopardi -vs- Antonio Arcicovich et”** A.K - 14 ta' Novembru 1919; **“Bezzina -vs- Grech et”**, K - 7 ta' Gunju 1938; **“Costantino Fenech -vs- Camillo Gatt”** - P.A. - 17 ta' Mejju 1902; **“Micallef noe -vs- Gasan nomine”** K. - 20 ta' Jannar, 1930).

Kif jghid l-awtur **David Glass – The Divided Heart of the CMR Convention** 14 E.T.L. 1979) u cjoe:-

*“The carrier cannot hope, simply that ordinary care was taken, to escape liability. He must show that in respect of the particular loss or damage, no failing on his part could have contributed to it. It follow that a high degree of proofs required on his part, normally by proving the actual cause and showing how it arose with no fault on his part”*. Dan gie adottat mill-Qrati taghna fil-kawza **“Bernard Sullivan et nomine vs Emmanuel Grech et nomine”** (P.A. (DS) – 2 ta' Frar 2001); **“John Galdes nomine vs Joseph Bowerman”** (P.A. (DS) 25 ta' Jannar 2002) u **“Farrugia nomine vs Gatt nomine”** (K. – 16 ta' Jannar 1984) u **“Elmo Insurance Agency Limited et vs Fahrenheit Freight Fowarders Co. Limited”** (P.A. (GV) – 29 ta' Ottubru 2004); **“Charles Borg nomine vs Francis Vella et nomine”** (P.A. (PS) 31 ta' Jannar 2003); u **“Filtoms Clothing Company Limited vs Sullivan Shipping Agencies Limited et”** (P.A. (RCP) – 27 ta' April 2006).

Applikati dawn il-principji ghall-kaz in ezami, jirrizulta b'mod inekwivoku li l-merkanzija hzientet sal-punt li kella tigi distrutta meta kienet ikkustodita mis-socjeta' konvenuta.

Jirrizulta ppruvat anke mix-xhieda tar-rapprezentanti tas-socjeta' konvenuta li t-temperatura fit-trakk ma nzammitx fil-grad baxx mehtieg u b'hekk il-prodott sahan. Skont is-

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socjeta` konvenuta, dan sehh ghaliex xi hadd tefa' s-sistema matul il-lejl.

Mis-*survey report* rilaxxjat mis-socjeta' attrici hemm osservat li l-*control panel* tat-*trailer* ma kellux ghatu u b'hekk seta' jigi facilment manuvrat mill-estern.

Madanakollu jidher li s-socjeta' konvenuta kienet ben konsapevoli dwar ir-riskji li setghet tinkorri fihom, tant li matul il-gurnata, it-*trailer* kien qed jigi kkontrollat perjodikament sabiex jigi zgurat iz-zamma tat-temperatura fi grad baxx u anke gie rifornit b'*diesel* biex ir-*refrigeration system* ikompli jahdem. Matul il-gurnata, ghalhekk, is-socjeta` konvenuta ipprevediet l-possibbilta' ta' hsara fir-*refrigeration system* izda, inesplikabbilment, dawn il-kontrolli waqfu matul il-lejl kollu, bil-konsegwenza li l-merkanzija giet irrovinata.

Fil-fehma tal-Qorti il-fatt li s-socjeta` konvenuta ezercitat kontroll matul il-gurnata ma jezonerahiex mir-responsabbilta' ghad-danni ghaliex din ir-responsabbilta' tkompli sakemm il-merkanzija tigi konsenjata u jispetta lill-vettural li jkompli jiehu l-prekawzjonijiet mehtiega b'mod ininterrott sakemm issir il-konsenja. Hawnhekk ma hemmx kaz ta' avveniment inevitabbli jew imprevedibbli ghaliex l-impjegati stess tal-kumpanija konvenuta baqghu jaghmlu l-verifiki perjodici taghhom sa certu hin b'turija li kienu ben konxji li il-makkinarju kellu jibqa' jigi ikkontrollat.

F'dawn ic-cirkostanzi, kien jinkombi fuq is-socjeta' konvenuta li tressaq il-provi li l-hsara kienet imprevedibbli jew inevitabbli - prova li ma ngabitx.

Ghal dawn il-motivi, il-Qorti tqis li s-socjeta' konvenuta ma irnexxilha iggib provi bizzejjed sal-grad rikjest mil-ligi biex tezimi ruhha mir-responsabbilta' ghad-danni rekjamati.

### III. KONKLUZJONI.

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Illi ghalhekk ghal dawn il-motivi, din il-Qorti, **taqta' u tiddeciedi**, billi fil-waqt li **tichad** l-eccezzjonijiet tas-socjeta' konvenuta; **tilqa'** it-talbiet kollha attrici u :

**1. Tiddikjara** lill-istess socjeta' konvenuta responsabbli ghad-danni kollha sofferti mill-assikurat tas-socjeta' attrici.

2. Konsegwentement tikkundanna lis-socjeta' konvenuta sabiex thallas lis-socjeta' attrici s-somma ta' erbat elef, tmien mija u wiehed u ghoxrin ewro u tmenin centezmu (€4821.80), gja elfejn u sebghin lira ta' Malta (Lm2,070) danni sofferti mill-assikurat tas-socjeta' attrici kif fuq inghad flimkien mal-imghax legali mill-24 ta' Jannar 2000.

L-ispejjez jithallsu mis-socjeta' konvenuta.

**Moqrija.**

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