



MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

MARSEANN FARRUGIA

Seduta tad-9 ta' April, 2014

Avviz Numru. 324/2003

Mark Galea u martu Jacqueline Galea

Vs

Middlesea Insurance plc

Il-Qorti,

Rat l-avviz tal-atturi li talbu li s-soċjetà konvenuta tiġi kkundannata thallas lill-atturi s-somma ta' Lm1722.50, (elf, seba' mija u tnejn u għoxrin Lira Maltija u ħamsin ċentezmu) bħala indenizz dovut lill-atturi taht polza ta' assigurazzjoni Yatch and Pleasure Craft bin-numru 32/13012/001, maħruġa mis-soċjetà konvenuta favur l-atturi fuq il-*cabin cruiser* « Twinkle One » u dan wara li l-istess *cabin cruiser* sofriet ħsarat fil-magna tagħha bħala rizultat ta' riskju assigurat, liema ħsarat ġew imsewwija mill-atturi bil-prezz fuq indikat.

Bl-ispejjez u bl-imġaxijiet mid-data tal-prezentazzjoni ta' din il-kawza kontra s-soċjetà konvenuta li kienet ingunta in subizzjoni.

Rat in-nota tal-eccezzjonijiet tas-socjeta konvenuta fejn eċċepiet:

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1. Illi t-talbiet tal-atturi huma infondati fil-fatt u fid-dritt u għandhom jiġu miċhuda bl-ispejjez kontra tagħhom stante illi:
 - a) Il-hsara sehhet minhabba nuqqasijiet attribwibbli lill-atturi,
 - b) Illi mingħajr preġudizzju għall-premess, illi l-atturi ma osservawx il-kondizzjonijiet tal-polza,
 - c) Illi mingħajr preġudizzju għall-permess, l-ammont rikjest huwa fi kwalunkwe kaz eċċessiv.
2. Salvi eċċezzjonijiet oħra.

Semgħet ix-xhieda, rat id-dokumenti u l-atti kollha pprezentati;

Semgħet it-trattazzjoni finali tal-avukati difensuri tal-partijiet.

Ikkunsidrat:

Il-Fatti

Il-fatti li taw lok għal din il-vertenza huma s-segwenti:

1. Fit-3 ta' Gunju 1999, l-attur Mark Galea assigura l-*cabin cruiser* tiegħu « Twinkle One » mas-socjeta' konvenuta.¹ Il-kuntratt ta' assigurazzjoni relattiv kien jgħid hekk : « *You and your manager (if any) must at all time exercise due diligence to keep the Vessel in a seaworthy condition, to see that she is properly fitted with all prudent safety equipment and to keep that equipment in good working order and to ensure that when left unattended she is properly moored and her accommodation and storage compartments are secured and locked, and to prevent pollution or the risk of pollution following damage to the Vessel.* »²
2. Illi f'Ottubru l-attur kien itella' *cabin cruiser* mill-bahar u jerfaghha fi triq privata, San Pawl il-Bahar³, sas-sajf.

¹ Ara Dok A a fol. 5 tal-process.

² Ara d-definizzjoni ta' *due diligence* skont il-klawzola 5.J tal-kuntratt a fol. 44 tal-process.

³ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

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3. Fix-xhieda tieghu, l-attur jghid li, meta d-dghajsa tkun merfugha fuq l-art kien jistartja l-magna inboard⁴ kull sitt jew seba' gimghat u kien jitawwilha minn barra u cioe' minghajr ma' jitla' fuqha kull gimgha.⁵ Huwa jghid li kien jaghttiha wkoll b' canopy.

4. Fis-17 ta' Gunju 2002 meta l-cabin cruiser kienet ghada merfugha got-triq privata, l-attur meta ipprova jistartja l-magna hija ma hadmitx.⁶ Hu jghid li l-ahhar darba li kien tela' fuq il-cabin cruiser kien madwar sitta jew seba' gimghat qabel ma nstabat il-hsara.⁷ Skont l-attur, *waterproof canopy* li tghatti d-dghajsa kienet f'postha izda meta l-attur nehha l-canopy sab xi ftit hmieg li hu sejjahlu "normali". Illi skont l-attur, il-canopy in kwistjoni kienet tehel madwar il-hull kollu permezz ta' buttuni u meta hu mar sabiex inehhi l-canopy ma sab l-ebda buttuna maqlugha.⁸

5. Dan nonostante jidher li dahal ilma tax-xita gol-magna tad-dghajsa li ghamel hsara lill-istess magna, u kien ghalhekk li ma hadmitx.

6. L-attur ghamel *claim* mas-socjeta' konvenuta fejn *inter alia* qal hekk: "... ... *Vessel was visited regularly every 8 weeks. On the 17/06/2002 I installed the batteries and tried to start the engines to no avail. I called the mechanic The rain water must have entered through a gap in the canopy. No water was noticed during winter visits. Probably rain water found its way out via a slightly blocked drain pipe.*"⁹

7. Charles Cauchi, surveyor u marine engineer¹⁰ tas-socjeta' England Insurance Agency li hija agent tas-socjeta' konvenuta, ghamel zewg surveys fuq il-magna. Fl-ewwel ispezzjoni tieghu huwa jghid hekk : «*On inspection of the already found partially dismantled engine, it was noticed that the engine suffered from an intrusion of fresh water inside the engine which effected the number 2 piston on the port sidebank to the extent that the piston got jammed inside the bore thus not letting the engine to run or even turn. This could have been caused by rain water intrusion which could have passed through the canvas cover onto the inner floor*

⁴ Ara x-xhieda in kontro-ezami ta' Mark Galea a fol. 34 tal-process.

⁵ Ara x-xhieda in kontro-ezami ta' Mark Galea a fol. 34 tal-process.

⁶ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

⁷ Ara x-xhieda in kontro-ezami ta' Mark Galea a fol. 34 tal-process.

⁸ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

⁹ Ara Dok LD1 a fol. 111 tal-process.

¹⁰ Ara x-xhieda ta' Charles Cauchi a fol. 90 tal-process.

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plates photo number 1, to the water channels which by time became clogged by dirt photo number 2, into the cylinder block through the air cleaner mid nut, assuming that this was there at the time, into the induction manifold and onto the piston. This must have been left there for some time causing the piston to jam in the block photo number 3 and number 4 and resulted in the above mentioned damage”¹¹

8. Charles Cauchi ghamel it-tieni spezzjoni meta l-magna kienet kompletament zarmata. Huwa elenka l-partijiet li kellhom bzonn jigu mibdula, li kkalkula li kienu jammontaw ghal circa LM508 u ikkalkula li x-xoghol tal-*labour* kellu jqum LM380.¹²

9. Fix-xhieda tieghu Charles Cauchi qal illi, «... .. *l-ilma seta' kien hemm minn hamest (5) ijiem 'l fuq.*»¹³ L-istess surveyor qal hekk « *Ma niftakarx meta rajt il-boat, kellix canopy. Jien nghid li kieku kien hemm canopy, ma kienx jidhol l-ammont kbir ta' ilma li dahal. Fil-fatt jidhol biss taqtir, kieku kien hemm canopy. Il-canopy fil-fatt, ghalhekk nghid illi jew ma kienetx hemm jew kienet imqatta. (T)ah't il- canopy ikun hemm iehor jghatti l-magna.*”¹⁴

10. Charles Schembri, il-mekkanik imqabbad mill-attur li sewwa l-magna, xehed li jikkalkula li abbazi tas-sadid li sab, l-ilma kien dahal fil-magna madwar sitt jew tmien gimghat qabel. Zied jghid li la darba jidhol ilma fil-magna dan ma jistax johrog.¹⁵

11. Il-kont tal-mekkanik Charles Schembri jammonta ghal LM 1722.50 (ekwivalenti ghal €4063.46)¹⁶ li minnhom l-ammont ta' LM 380 (ekwivalenti ghal €896.48) jirrapprezenta l-hlas *labour*, u l-bilanc huwa kollha partijiet li kellhom jinbidlu.¹⁷

12. La l-attur u lanqas il-mekkanik tieghu ma bghatu ghas-surveyor Charles Cauchi meta l-ammont tal-partijiet li skont huma kellhom jitbiddlu zdied.¹⁸

¹¹ Ara fol. 54 tal-process.

¹² Ara fol. 54 tal-process.

¹³ Ara x-xhieda in kontro-ezami ta' Charles Cauchi a fol. 119 tal-process.

¹⁴ Ara x-xhieda in kontro-ezami ta' Charles Cauchi a fol. 120 tal-process.

¹⁵ Ara x-xhieda in kontro ezami ta' Charles Schembri a fol. 61 tal-process.

¹⁶ Ara x-xhieda ta' Charles Schembri a fol. 61 tal-process.

¹⁷ Ara x-xhieda in kontro-ezami ta' Charles Schembri a fol. 61 tal-process.

¹⁸ Ara x-xhieda ta' Charles Cauchi a fol. 91 tal-process, u xhieda ta' Charles Schembri a fol. 62 tal-process.

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13. Mill-provi ma jirrizultax li fix-xhur ta' Mejju u Gunju tas-sena 2002 nizlet kwantita' ta' xita partikolari fiz-zoni li jolqtu l-area ta' San Pawl il-Bahar¹⁹

14. Illi fid-9 ta' Settembru 2002, England Insurance Agency baghtet ittra lill-attur, fejn allegat li l-attur ma zammx *due diligence* hekk kif rikjest fil-kuntratt ta' assigurazzjoni, u minghajr pregudizzju offrewlu is-somma ta' LM 300 (ekwivalenti ghal € 707.71) ghas-saldu tal-hsarat li garrab.²⁰

Kunsiderazzjonijiet ta' din il-Qorti

Il-pern tal-kwistjoni fil-kaz odjern huwa jekk l-hsara li grat lill-magna tad-dghajsa tal-attur hix attribwibbli ghal negligenza tal-attur, u cioe' jekk l-attur uzax *due diligence* biex jiehu hsieb id-dghajsa fil-perjodu li kienet imtallal-art, kif kien obbligat li jaghmel skont il-kuntratt tal-assigurazzjoni. Huwa l-attur li jrid jipprova li dan l-obbligu impost fuqu gie rispettatt, ghaliex huwa l-attur li qed jitlob li jigi indennizzat ghal hsara li sofrat.

Skont ix-xhieda Peter England, direttur tas-socjeta' England Insurance Limited, l-agent tas-socjeta' konvenuta, id-*due diligence* rikjesta mis-socjeta' konvenuta hija li "... .. *kull tlieta (3), erba' (4) gimghat, il-propretarju jew min hu inkarigat mill-istess cabin cruiser imur fuqha, jistartjaha go ilma helu u jara jekk hemmx bzonn xi haga, per ezempju fil-batterija Nippretendu fil-fatt li jkun hemm canopy meta l-istess cabin cruiser tkun fi triq privata msemija...Nghid ukoll, pero' illi jekk ma kellux canopy din ma kienetx, fi kliemi stess, problema ghalina, peress illi normalment meta boat tixxarab id-drainage isir wahdu, b'referenza ghall-ilma.*"²¹ Ma ngabet l-ebda prova sabiex tigi kontradetta din ix-xhieda.

In oltre, fl-ittra li Peter England kiteb lill-attur fis-27 t'Awissu 2002, huwa jghid *inter alia* hekk: "*Further to our short discussion a.m. today, we are taking the opportunity of highlighting the following points mentioned by your goodself :*

1. *you have today advised us verbally that the boat was attended and engine started every three to four weeks.*

¹⁹ Ara x-xhieda ta' Saviour Porter a fol. 103 tal-process.

²⁰ Ara fol. 52 tal-process.

²¹ Ara x-xhieda in kontro-ezami ta' Peter England a fol. 100 tal-process.

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2. *A fresh water tank was kept near the vessel for such use.*
3. *It is not normal practice to keep a vessel spic and span during the laid up period unlike summer.*²²

Il-kontenut ta' din l-ittra qatt ma gie michud mill-attur.

Fl-opinjoni kunsiderata ta' din il-Qorti, l-atturi ma rnexxielhomx jippruvaw li huma ezercitaw *due diligence* fil-manutensjoni tad-dghajsa u dan ghas-segwentu ragunijiet:

1. Fix-xhieda tieghu, l-attur qal li « *l-incident in ezami gara matul ix-xitwa ta' 2002 pero ma niftakarx id-data specifika* »²³ Izda fil-*claim form*, l-attur jghid li l-ewwel darba li nnota l-hsara kien fis-17 ta' Gunju 2002²⁴ - cioe meta kien prattikament is-sajf. In oltre, mill-provi jirrizulta li fix-xhur ta' Mejju u Gunju 2002 ma ghamlitx xita sostanzjali.

2. Fix-xhieda tieghu, l-attur qal li fix-xitwa kien jistartja l-magna « *ghal massimu ta' hames darbiet*.²⁵ In kontro-ezami huwa qal li, “*jiena kont nistartja l-magna madwar kull sitta/seba' gimghat*.”²⁶ Min-naha l-ohra kif jirrizulta mill-ittra fuq imsemmija, l-attur kien qal lil Peter England li hu kien jistartja l-magna kull tlieta/erba' gimghat. In oltre, fil-*claim form* l-attur jghid '*vessel was visited regularly every 8 weeks*'²⁷ - minghajr ma specifika kull meta kien jistartja l-magna. Skont ix-xhieda ta' Charles Schembri, il-mekkanik tal-attur, mis-sadid li sab fil-magna jikkalkula li l-ilma kien ilu hemm, ghal perjodu ta' sitta jew tmien gimghat.²⁸ Ghalhekk, certament li l-attur ma kienx qed jistartja l-magna kull tlett/erba' gimghat.

3. L-attur xehed illi d-dghajsa kienet moghtija b'canopy, liema canopy kienet *waterproof* u kienet mizmuma tajjeb u maqfula b'mod sigur.²⁹ Min-naha l-ohra, fil-*claim form*, l-attur qal hekk : '*rain water must have entered through a gap in the canopy*.'³⁰ In oltre, skont is-surveyor Charles Cauchi, kieku kien hemm canopy, ma kienx jidhol l-ammont kbir ta' ilma li dahal, imma kien jidhol biss taqtir. Ghalhekk skont is-surveyor, jew ma kienx hemm canopy

²² Ara Dok. LD2 a fol. 115 tal-process.

²³ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

²⁴ Ara fol. 111 tal-process.

²⁵ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

²⁶ Ara x-xhieda in kontro-ezami ta' Mark Galea a fol. 34 tal-process.

²⁷ Ara fol. 111 tal-process.

²⁸ Ara x-xhieda in kontro-ezami ta' Charles Schembri a fol. 61 tal-process.

²⁹ Ara x-xhieda ta' Mark Galea a fol. 32 tal-process.

³⁰ Ara fol. 111 tal-process.

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jew kienet imqatta'. In oltre, is-surveyor irrileva li taht il-canopy, ikun hemm canopy iehor li jghatti l-magna biss.³¹

4. In oltre l-attur qal li l-*canopy* kellha naqra hmieg fuqha u bl-ammissjoni tieghu stess fil-*claim form 'rain water found its way out via a slightly blocked drain pipe.*³² Dan juri li d-dghajsa ma kienetx qed tinghata manutenzjoni regolari, ghaliex li kieku id-*drain pipe* ma kienx ikun ibblokkjat.

Fid-dawl ta' dawn l-inkonsistenzi fil-verzjonijiet tal-attur u fid-dawl ta' dawn il-kunflitti fil-provi, fl-opinjoni kunsidrata ta' din il-Qorti, l-attur ma rnexxielux jipprova sal-grad rikjest fil-kamp civili, li huwa kien jiehu hsieb id-dghajsa b'mod diligenti. Konsegwentement, il-Qorti tikkonkludi li l-hsarat li gew ikkagunati lill-magna tad-dghajsa huma attribwibbli ghan-nuqqasijiet tieghu.

Konkluzjoni

Ghal dawn il-motivi, il-Qorti tichad it-talba tal-atturi, bl-ispejjez kollha kontra tagghom.

< Sentenza Finali >

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³¹ Ara x-xhieda in kontro-ezami ta' Charles Cauchi a fol. 120 tal-process.

³² Ara fol. 111 tal-process.