



MALTA

QORTI TA' L-APPELL

S.T.O. PRIM IMHALLEF

SILVIO CAMILLERI

ONOR. IMHALLEF

TONIO MALLIA

ONOR. IMHALLEF

JOSEPH AZZOPARDI

Seduta tat-28 ta' Lulju, 2014

Appell Civili Numru. 86/2010/1

Paul Grech u Rosaria Grech u b'digriet tat-18 ta' Lulju 2014 stante l-mewt ta' Paul Grech fil-mori tal-kawza, il-gudizzju f'ismu gie trasfuz ghal fuq isem l-eredi tieghu Paul Grech, Lourdes Grech, Michelle Guillaumier u Charlton Grech

v.

**Middlesea Insurance plc u England Insurance Agency Limited ghal kull
interess li jista' jkollhom**

Il-Qorti:

Rat ir-rikors guraumentat li l-atturi pprezentaw fid-29 ta' Jannar 2010 u li jaqra
hekk:

"1. Illi l-esponenti kellhom polza ta' l-assikurazzjoni mal-intimati li thares l-oggetti mobbli li huma ghandhom fid-dar taghhom Flat 26, Binja Hamrija, Triq il-Hamrija, Naxxar. Dina l-polza ta' assikurazzjoni ggib in-numru 1012522001-0011 ;

"2. Illi fit-28 ta' Lulju 2008, l-esponenti sfaw misruqa minn terzi skonoxxuti u mid-dar taghhom insterqulhom gojjelli bil-valur ta' Euro 13,396.23 kif ser jirrizulta waqt is-smigh tal-kawza ;

"3. Illi dan il-kaz gie nvestigat mill-Pulizija Ezekuttiva izda bla ezitu ta' xejn ;

"4. Illi s-socjetajiet intimati gew interpellati sabiex ihallsu lill-esponenti a bazi tal-polza msemija izda dawn qed jirrifjutaw li jaghmlu l-hlas skond il-ligi ;

"5. Illi ghalhekk kellha ssir dina l-kawza.

"Ghalhekk jghidu l-intimati jew min minnhom ghaliex ma ghandhiex dina l-Onorabbli Qorti :-

Kopja Informali ta' Sentenza

“1. Tiddikjara li s-socjetajiet intimati ghandhom ihallsu lir-rikorreni d-danni minnhom sofferti fis-serqa li huma garrbu mir-residenza taghhom fit-28 ta' Lulju 2008 u dana a bazi tal-polza tal-assikurazzjoni msemmija;

“2. Tillikwida l-hlas fl-ammont ta' Euro 13,396.23 jew somma verjuri li tigi hekk likwidata jekk tezisti l-htiega permess ta' periti nominandi ;

“3. Tordna lis-socjetajiet intimati jhallsu lir-rikorreni s-somma hawn indikata jew dik likwidata kif hawn qed jintalab.

“Bl-ispejjez, bl-imghax legali dekorribbli mid-data tat-28 ta' Lulju 2008, u b'hekk is-socjetajiet intimati jibqghu ngunti ghas-subizzjoni.”

Rat ir-risposta guramentata tal-kumpanija Middlesea Insurance plc li in forza taghha eccepjet illi:

“Illi t-talbiet tar-rikorreni ghandhom jigu michuda bl-ispejjez kontra taghhom, stante illi huma nfondati fil-fatt u fid-dritt u ghar-ragunijiet segwenti :

“1. Illi fl-ewwelnett, ir-rikorreni diga' istitwew proceduri quddiem ic-Centru Malti tal-Arbitragg, liema proceduri ghadhom pendenti u ghalhekk ma jistax ikun hemm zewg proceduri dwar l-istess mertu ;

“2. Illi in subsidju u minghajr pregudizzju ghall-premess, meta l-attur mela l-proposal form huwa ta' informazzjoni hazina, naqas milli jiddikjara claims jew l-ezistenza ta' sinistri relatati u naqas milli jaghti informazzjoni rilevanti u ghalhekk l-esponenti ma ghandhiex thallas ghall-allegati danni minhabba non-disclosure ta' fatti materjali ;

Kopja Informali ta' Sentenza

“3. Illi minghajr pregudizzju ghal fuq espost l-atturi jridu jippruvaw li l-oggetti attwalment insterqu, li l-oggetti relattivi kienu propjeta' taghhom u li l-valur reklamat ghall-oggetti huwa gust, reali u korrett ;

“4. Illi minghajr pregudizzju ghall-premess u fi kwalunkwe kaz, it-talba ghall-hlas ta' imghax kif mitluba mhijiex sostenibbli ;

“5. B'riserva ta' kontestazzjonijiet ulterjuri.”

Rat ir-risposta guramentata tal-kumpanija England Insurance Agency Ltd li in forza taghha eccepjet illi:

“1. Illi t-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez kontra taghhom billi s-socjeta' esponenti m'hijiex il-legittimu kontradittur tar-rikorrenti stante illi l-esponenti hija biss agent tal-principal lokali u ghalhekk l-esponenti ghandha tigi liberata mill-osservanza tal-gudizzju.

“2. B'riserva ta' kontestazzjonijiet ulterjuri.”

Rat illi b'nota tal-25 ta' Marzu 2010, l-atturi cedew il-kawza fil-konfront tal-kumpanija England Insurance Agency Ltd;

Rat li fl-udjenza tal-25 ta' Marzu 2010, quddiem l-ewwel Qorti, id-difensur tal-atturi ddikjara li l-arbitragg li jissemma fl-ewwel eccezzjoni tal-kumpanija konvenuta Middlesea Insurance plc kien gie cedut; ghalhekk l-istess kumpanija konvenuta irtirat l-ewwel eccezzjoni taghha;

Rat is-sentenza li tat il-Prim'Awla tal-Qorti Civili fit-30 ta' Novembru 2010 li in forza taghha ddecidiet il-kawza billi;

“... .. filwaqt li tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel eccezzjoni tal-kumpannija konvenuta Middlesea Insurance plc stante li dik l-eccezzjoni kienet irtirata fil-mori tal-kawza, u filwaqt li tastjeni milli tiehu konjizzjoni tal-kawza fil-konfront tal-kumpannija konvenuta England Insurance Agency Limited stante n-nota ta` cessjoni tal-atturi, tilqa` t-tieni eccezzjoni tal-kumpannija konvenuta Middlesea Insurance plc, u konsegwentement tichad it-talbiet tal-atturi kif dedotti, bl-ispejjez kollha tal-kawza jithallsu mill-atturi.”

Dik il-Qorti tat is-sentenza taghha wara li ghamlet is-segweni konsiderazzjonijiet:

“L-atturi kellhom *home policy* mal-kumpannija konvenuta Middlesea Insurance plc (“Middlesea”) intiza sabiex tkopri kemm il-bini tad-dar tar-residenza taghhom Flat 26, Binja Hamrija, Triq l-Ghenieq, Naxxar, kif ukoll il-kontenut tad-dar, ghaz-zmien ta` bejn it-13 ta` Ottubru 1998 u t-12 ta` Ottubru 1999. Saret *proposal form* li kopja taghha hija esebita a fol 15 u 16 u markata Dok.PE1. Din kienet iffirmata mill-atturi. Wara l-perijodu নিজالي, il-polza baqghet tigi mgedda. Fis-26 ta' Lulju 2008, l-atturi garrbu serqa ta' flus u deheb (*jewellery*) mill-fond assikurat u saret *claim* lill-Middlesea tramite l-agent taghha England Insurance Agency Limited (“England”). Kopja tal-*claim form* iffirmata mill-attur hija esebita a fol 17 u hija markata Dok.PE2.

“L-assikuraturi nkarikaw lil MSB Valletta Limited bhala *loss adjuster*. Ix-xhud James Magri hadem fuq dan il-kaz ghal-*loss adjuster*. Ir-rapport tieghu huwa esebit a fol 19 sa 23 u markat Dok.JM1. Fost fatti ohra, fir-rapport jinghad hekk (fol 22) –

““ ...

“During the period 1990 to 1995 the Insured used to live at Flat 2, Nazju Falzon Street, Birkirkara. During the 1990/1991 period a home contents policy was arranged with Gasan Insurance. On this policy a claim was lodged following an alleged theft of jewellery. Gasan settled the claim for around Lm 5000 (€11,647)

“ ...

“The policy with Gasan was not renewed following the theft incident. Cover was not sought with another company ...”

“England u Middlesea jghidu li l-atturi ma kienux avzawhom bis-serqa tal-1991 meta saret il-*proposal form*. U lanqas ma avzawhom b`dak il-fatt fis-snin ta` wara meta l-polza kienet qeghda tiggdedd. Ghalhekk il-polza kienet trattata bhala wahda normali *with a clean claims history*. Fil-fatt l-uniku bdil li kien hemm fil-kors tat-tigdid tal-polza kien l-aggustament tal-valuri assikurati. L-ewwel darba li saru jafu bis-serqa tal-1991 kien biss wara s-serqa tal-2008. Bhala fatt, l-atturi jaccettaw mhux biss li fl-1991 kienu garrbu serqa fil-fond l-iehor fejn kienu jabitaw izda li ma kienux avzaw lill-kumpanniji konvenuti b`dik is-serqa (ara l-verbal tad-difensur tal-atturi fl-udjenza tal-21 ta` Gunju 2010 a fol 24). Irrizulta wkoll li wara li kienu gew indennizzati ghas-serqa tal-1991, l-atturi ma geddewx il-polza ma' Gasan Insurance (ara x-xhieda ta` James Magri fol 40).

“Il-claim tal-atturi ma thallsitx unikament ghaliex skond l-assikuraturi kien hemm *non-disclosure* tal-claim tas-serqa tal-1991 (ara x-xhieda ta` Peter England fol 33). B`ittra tat-12 ta` Settembru 2008, esebita a fol 18 u markata Dok.PE3, England kitbet hekk lill-attur –

““ ...

“the insurance proposal form you completed in 1998 requested you to disclose any material facts which could effect us as underwriter in considering insurance. Failure to disclose material facts could invalidate your policy

“ ...

“we regret to advise you that your failure to disclose the details pertaining to the theft claim of 1991 is being considered as a failure to disclose essential information. In view that you withheld such relevant information we regret we are unable to consider payment of the claim ...”

“Accettat il-fatt li ma kienux qalu lil England u lill-Middlesea bis-serqa tal-1991 meta kienu assikurati ma` Gasan Insurance, l-atturi jsostnu li meta saret il-*proposal form* it-tifla taghhom kienet tahdem bhala skrivana ma` England u kienet hi li mliet il-*proposal form*, staqsiethom id-domandi li kien hemm fil-*proposal form* u qratilhom id-dokument. Huma mbaghad iffirmaw id-dokument. Skond l-attur, kellha tkun it-tifla li tghid lil England b`dik is-serqa tal-1991 li kienet taf li grat ghalkemm dak iz-zmien kienet imsiefra (ara x-xhieda tal-attur fol 44). Ghall-attur, dak li kien importanti huwa li wiegeb fejn kien specifikament mitlub ighid jekk kellux *claims* fil-hames snin ta` qabel (ara x-xhieda tal-attur fol 48). Pero` ma tax kaz tal-klawsola tal-ahhar nett (markata bit-tipa sewda *bold*) li kienet tinsab ezatt fuq il-post fejn hu u l-mara tieghu ffirmaw. Skond l-attur, huwa halla f`idejn it-tifla.

“Ikkunsidrat :

“Fis-sentenza taghha tal-14 ta' Mejju, 2004 fil-kawza “**Sammut vs Middle Sea Insurance p.l.c.**”, il-Qorti tal-Appell qalet hekk -

“Polza ta' assikurazzjoni tohloq relazzjoni bilaterali bejn il kontraenti fejn, in konsiderazzjoni tal-hlas ta' premium mill-assikurat lis-socjeta` assikuratrici, dik l-istess socjeta` tintrabat li tindenzza lill-assikurat taghha fl-eventwalita` li dan jsofri xi telf bhala rizultat ta' event dannuz kopert bl-istess polza ta' assikurazzjoni. L-element principali f'dan it-tip ta' kuntratt huwa r-riskju, liema riskju tassumieh s-socjeta` assikuratrici.

“F'dan is-sens, ghalhekk, dan huwa kuntratt bilaterali b`titolu oneruz in kwantu l-kontraenti jirregolaw l-obbligazzjonijiet ta' bejniethom billi bil-hlas ta' premium da parti tal-assikurat tiskatta l-obbligazzjoni ta' indennizz da parti tas-socjeta` assikuratrici. In kwantu polza ta' assikurazzjoni hija kuntratt jehtieg li jigu sodisfatti r-rekwiziti generali tal-kuntratti u cioe` li l-kontraenti

jkunu kapaci jikkuntrattaw u li jaghtu l-kunsens taghhom. Inoltre l-oggett tal-kuntratt jrid jkun determinat u lecitu.

*“Kif inghad hawn fuq bil-hrug tal-polza ta’ assikurazzjoni s-socjeta` assikuratrici tassumi l-obbligu li tindenzza lill-assikurat taghha ghall-event futur dannuz. Din l-obbligazzjoni ghalhekk hija wahda kazwali billi taghmel l-obbligazzjoni tiddipendi minn grajja ta’ bla hsieb li ma tkunx fis-setgha la tad-debitur u lanqas tal-kreditur (Art.1053 (I), Kodici Civili). **Minhabba l-incertezza insita f’dan il-kuntratt huwa mehtieg grad gholi ta’ bona fede u partikolarment da parti ta’ min ikun talab l-hrug tal-polza. Dana billi b’dak il-mod biss is-socjeta` assikuratrici tista’ ssir konsapevoli mic-cirkostanzi kollha insiti fir-riskju sabiex taghzel li tiehu dak ir-riskju kif ukoll tistabilixxi “premium” adegwat. Din il-bona fede li tiddistingwi dan il-kuntratt bhala wiehed ta’ uberrimae fidei hija mehtiega f’kull tip ta’ polza ta’ assikurazzjoni** (enfasi ta` din il-Qorti) billi, kif gie ritenut minn Lord Scrutton fil-kaz “Greenhill v Federal Insurance Co. (1927) : “Now insurance is a contract of the utmost good faith, and it is of the gravest importance to commerce that this position be observed. The underwriter knows nothing of the particular circumstances of the voyage to be insured. The assured knows a great deal, and it is the duty of the assured to inform the underwriter of everything that he is not taken as knowing, so that the contract may be entered into on an equal footing.” Infatti kif gie ritenut fil-kaz “Pickersgill v London & Prov. Marine” (1912) : “The duty to make a full disclosure proceeds from an implied term in the contract precedent to the insurers liability.”*

“Ghal din il-Qorti, dan l-estratt mis-sentenza citata tal-Qorti tal-Appell jolqot bis-shih il-kwistjoni li ghandha quddiemha f’din il-kawza. Min-naha wahda, l-atturi jsostnu li l-assikuraturi ghandhom jonoraw il-*claim* taghhom stante li huma kienu wiegbu korrettement ghad-domandi kollha tal-*proposal form* u l-fatt li fl-1991 kienu garrbu serqa ma kienx a *material fact* li kienu obbligati jgibu a konjizzjoni tal-assikuraturi. Min-naha l-ohra l-assikuraturi jghidu l-maqlub. Il-fatt li l-atturi kienu garrbu serqa aktar minn hames snin qabel id-data tal-*proposal form* kien a *material fact* li kellu jigi svelat lilhom ghax fl-ewwel lok kien jinfluwixxi fuq id-decizjoni jekk jaccettawx ir-riskju, u fit-tieni lok, jekk jaccettaw ir-riskju b’dak il-fatt maghruf, kienux jimponu kondizzjonijiet differenti fuq l-assikurat inkella premium aktar oghli.

“Peter England xehed hekk a fol 31 -

““
...

“Bazikament dan jaffettwa l-underwriting criteria nghidulu, skond l-informazzjoni li jkollna nohorgu polza jew nikkwotaw forsi kondizzjonijiet differenti, prezzijiet differenti u skond l-informazzjoni li ghandna ha nibbazaw jekk ha naccettaw ir-riskju jew le ...”

“Il-principju ta’ *uberrimae fidei* jesigi li l-assikurat iwiegeb sew ghall-mistoqsijiet kollha li jsirulu mill-assikurat permezz tal-*proposal form*, u obligat jaghti lill-assikurat it-taghrif kollu mehtieg biex l-assikurat jaghmel stima tar-riskju. Dan il-principju huwa ewlieni fil-ligi ta’ l-assikurazzjoni u jaghti lill-assikurat, meta jkun hemm nuqqas materjali min-naha ta’ l-assikurat, il-jedd illi jinhall mill-polza.

“Fil-kontroezami, l-attur kien mistoqsi hekk (fol 48-49) -

“Sewwa jigifieri inti fil-mument meta ffirmajt dik il-proposal form ghalkemm inqratlek dik il-bicca ta’ l-ahhar fejn qed tavzak li int trid tghidilhom b`kull ma taf bih li jista` jaffettwahom ladarba ma kienx hemm kaxxa yes or no ghal dan il-ghan ghalik dehrlek illi xorta ghalkemm hemm dak miktub ma kontx obligat li tghidilhom?”

“L-attur wiegeb –

“Hekk hu.

“Din il-Qorti tghid li l-attur zbalja. L-attur kien obligat iwiegeb tajjeb ghad-domandi kollha inkluza dik li ghamel riferenza specifika ghaliha izda kien obligat ukoll li jisvela kwalunkwe fatt iehor li seta` kien materjali ghall-assikurat. Id-disposizzjoni fil-*proposal form* hija cara. U *material fact* hija definita. L-obbligu tal-attur kien li ma jahbi xejn mill-assikurat u mbaghad jispetta lill-assikurat li skond it-taghrif li jaghti l-assikurat iqisx dak bhala *material fact* inkella le. L-accertament ta` *material fact* hija vitali ghal kull assikurat. Huma grajjiet li jafhom biss l-assikurat u ghalhekk huwa obligat igharraf lill-assikurat bihom. Huwa nuqqas talment gravi da parti tal-assikurat li jinvalida l-kuntratt ta` assikurazzjoni. Fil-mument li ssir applikazzjoni ghall-hrug ta’ polza ta’ assikurazzjoni s-socjeta` assikuratrici ma

Kopja Informali ta' Sentenza

jkollha ebda informazzjoni fuq dik il-persuna li tkun qeghda tipproponi l-hrug tal-polza u ghalhekk hi ghandha toqghod fuq dak li jigi dikjarat lilha u mhux mistenni minnha li tinvestiga ulterjorment f'dak l-istadju dwar il-veracita` tal-fatti dikjarati. Fil-kaz tal-lum, it-twissija li kien hemm fil-*proposal form* miktub *in bold* kienet cara u ma thalli l-ebda dubju dwar il-portata taghha -

“ ...

“I/We declare that to the best of my/our knowledge and belief

“ ...

*“(ii) I/We have not withheld any material fact**

“ ...

“*IMPORTANT material facts are those which are likely to influence underwriters in the acceptance or assessment of this proposal, and it is essential that you disclose them. If you are in doubt about whether a fact is material, then for your own protection you should disclose it since failure to do so could invalidate your policy.”

“Fil-kaz tal-lum ma jistax ikun serjament kontestat illi t-taghrif illi l-attur zamm mohbi, ghalkemm kien jaf bih, kien “materjali”, ghax relevanti u mehtieg biex issir stima sew tar-riskju u sew sabiex l-assikuratur jara ghandux jaccetta li jaghti assikurazzjoni kontra dak ir-riskju jew le. *“Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.”* (Scott, L.J. – **Locker & Woolf v. Western Australian Insurance Co.**)

“Fin-nota ta` osservazzjonijiet taghhom (a fol 61), l-atturi jaghmlu din id-domanda -

“ ...

“Ladarba fil-proposal form l-assikurazzjoni ghamlet domanda specifika dwar serq precedenti, il-klijent ikollu xi tort jekk jirrispondi dik il-mistoqsija b` suggett specifiku imbaghad l-istess suggett (ossia s-serq precedenti) ma jergax jiddikjara dwaru fil-blanket provision li hemm fl-ahhar parti tal-proposal form fejn wiehed jiffirma ?”

“It-twegiba trid tkun fis-sens li in linea mal-obbligu tal-*uberrimae fidei* l-attur kellu l-obbligu li mhux biss iwiegeb dwar *claims* li kellu fil-hames snin precedenti l-*proposal form* izda *claims* ohra fi snin precedenti l-hames snin anke jekk ma kienx specifikament mistoqsi dwarhom propju ghaliex *claims* ta` qabel il-hames snin kienu jikkwalifikaw bhala *material fact*. John Birds fil-ktieb tieghu “**Modern Insurance Law**” ighid li “*the potential parties to an insurance contract are bound to volunteer to each other before the contract is concluded information which is material*”. Fil-kawza “**Carter vs.Boehm**” Lord Mansfield jiddikjara li “*good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact and his belief in the contrary.*”

“Ghalkemm il-principju ta’ *uberrimae fidei* jimponi obbligu fuq l-proponent mhux fuq l-assikuratur, fl-istess waqt irid jinghad li fl-esekuzzjoni tal-kuntratt, dak il-principju japplika ghaz-zewg partijiet (ara s-sentenza tal-Qorti tal-Appell tas-26 ta’ Jannar, 2007 fil-kawza “**Borda vs Elmo Insurance Agency Limited noe**”). Dan ghaliex min-naha wahda hu l-obbligu tal-persuna li tkun qed tinnegozja biex tidhol f’kuntratt ta’ assigurazzjoni li taghti l-informazzjoni kollha sostanzjali u rilevanti dwarha bhala is-soggett ta’ assigurazzjoni, meta jkun car li tali informazzjoni tista’ b’xi mod tinfluwenza d-decizjoni tad-ditta assiguratrici fl-ghoti tal-polza, u min-naha l-ohra d-ditta assiguratrici hi obbligata tinforma lill-klijent bil-limitazzjonijiet u restrizzjonijiet li l-polza li tkun ser tinhariglu jkollha.

“Anke b’riferenza ghal dak li nghad mill-atturi fin-nota ta` osservazzjonijiet taghhom, din il-Qorti taccetta fil-principju li l-*uberrimae fidei must not be indiscriminately used by insurers and judges as an excuse for ignoring insurance claims*. (ara - Semin Park – *The Duty of Disclosure in Insurance Contract Law* (1996) p.68 kwotat fil-kaz App “**Briffa vs Camilleri**” 9 ta’ Frar 2001) izda fl-istess waqt tghid li fil-kaz tal-lum irrizulta li bl-imgieba taghha l-kumpannija konvenuta ma ppruvatx issib mezz ta` kif tehles mill-obbligi taghha skond il-polza. Fil-kaz tal-lum, irrizulta li sabiex setghet taccerta l-claim tal-1991 l-assikurazzjoni kellha tiddependi ghal kollox fuq l-assikurat propju

ghaliex l-ezercizzju tal-*claims check* ma wassal ghal ebda rizultat. Kienet propju ghalhekk li kellha toqghod fuq dak li kien gie dikjarat lilha fil-*proposal form* in kwantu l-assikurat jaghti garanzija li dak li qal huwa l-verita`. Fil-kuntratt ta` assikurazzjoni, “*the insurer is entitled to assume, as the basis of the contract between him and the assured, that the latter will communicate to him every material fact of which the assured has, or, in the ordinary course of business, ought to have knowledge*” (Lord Cockburn, C.J. – “**Proudfoot v Montefiore**” – citat f` Bingham’s ‘*Motor Claims Cases*’ Fifth Edition p. 690).

“Ghalkemm fin-nota ta` osservazzjonijiet taghhom l-atturi ma ghamlu l-ebda accenn ghall-fatt li l-*proposal form* in kwistjoni kienet imtliet minn bint l-atturi li kienet tahdem ma` England, l-attur fix-xhieda tieghu ghamel hafna enfasi dwar dan. Din il-Qorti tghid li l-fatt li l-formola mliet minn bint l-atturi u li hi kienet tahdem ma` England huwa ghal kollox irrilevanti ghall-kwistjoni u ma jixhet l-ebda obbligu fuq l-assikurazzjoni. Dan qed jinghad ghaliex meta l-*proposal form* tigi mimlija mhux mill-proponent, imma minn persuna ohra (**hi min hi**) dik il-persuna titqies li mliet il-formola ghall-proponent, u mhux ghall-assikuratur. Infatti dik il-persuna titqies bhala l-mandatarju ta’ l-assikurat u jekk il-mandatarju b`xi mod jonqos il-konsegwenzi jbatihom l-assikurat, salv kull rimedju li dan jista’ jkollu kontra l-mandatarju tieghu skond il-ligi (Prim`Awla tal-Qorti Civili - PA/GV – 8 ta` Ottubru, 2004 – “**Baron et vs Thos. C. Smith Insurance Services Ltd noe.**” ; Qorti tal-Kummerc - “**Zammit vs Micallef**” - 31 ta’ Jannar, 1952 (Kollez Vol XXXVI.III.610) ; u “**Vassallo vs Azzopardi**” – Prim`Awla tal-Qorti Civili – 21 t’April, 1999).)

“Din il-Qorti tqis li l-obbligu *not to withhold any material fact* kien vjolat mill-atturi. Lilhom kien jinkombi id-dmir li **sua sponte u volontarjament** ipoggu ghad-dispozizzjoni tas-socjeta’ assikuratrici l-gharfien tal-fatt li fl-1991 kienu garrbu serqa, meta assikurati minn haddiehor, ghamlu claim, u thallsu skond il-polza li kellhom ma` haddiehor.”

Rat ir-rikors tal-appell tal-atturi li in forza tieghu, ghar-ragunijiet minnhom premissi, talbu li din il-Qorti joghgobha:

“... .. thassar, tirrevoka u tanulla s-sentenza appellata sabiex b`hekk tirrespingi l-eccezzjonijiet tas-socjeta` appellata.”

Kopja Informali ta' Sentenza

Rat ir-risposta tas-socjeta` Middlesea Insurance plc li in forza taghha, ghar-ragunijiet minnha premissi, talbet li din il-Qorti joghgobha:

“... .. tichad l-appell tar-rikorrenti u tikkonferma l-ewwel sentenza, bl-ispejjez taz-zewg istanzi kontra l-istess rikorrenti.”

Semghet lid-difensuri tal-partijiet;

Rat l-atti kollha tal-kawza u d-dokumenti esebiti;

Ikkunsidrat:

Illi l-atturi kellhom *home policy of insurance* fuq l-mobbli li kellhom fid-dar taghhom il-Hamrun. Jghidu li f'Lulju tal-2008 kienu vittmi ta' serqa, u insterqulhom gojjelli bil-valur ta' tlettax-il elf, tliet mija, sitta u disghin Euro u tlieta u ghoxrin centezmi (€13,396.23). L-atturi talbu kumpens mis-socjeta` assiguratrici taghhom, izda din irrifjutat li thallas peress li qieset li l-atturi naqsu, meta imlew l-applikazzjoni ghall-assikurazzjoni, *'to disclose a material fact'*, partikolarment li kienu vittmi ta' serqa ohra li saret fl-1991. L-ewwel Qorti qablet mat-tezi konvenuta, u rrifjutat it-talba ghall-hlas.

Kopja Informali ta' Sentenza

L-atturi appellaw mis-sentenza, u qallu illi huma kienu genwini u gew zgwidati mill-format tal-proposal form.

Trattat l-appell din il-Qorti tibda biex tosserva illi kuntratt ta' assigurazzjoni huwa kuntratt *uberminae fidei* li huwa principju accettat mill-awturi u l-gurisprudenza kollha in materja. Kuntratt ta' assigurazzjoni huwa riskju ghal min johrog il-kopertura u, kwindi, hu mistenni li min jitlob assigurazzjoni jkun onest maghha u jaghtiha l-informazzjoni kollha materjali u rilevanti ghall-kaz. Hekk, fil-kawza **Rozanes v. Bowen**, 1928, il-Qorti Ingliza osservat "*It has been for centuries in England the law in connection with insurance of all sorts, that as the underwriter knows nothing and the man who comes to him to ask him to ensure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters, without being asked, of all the material circumstances. ... That is expressed by saying that it is a contract of the utmost good faith*". Fil-kawza **Greenhill v. Federal Insurance Co Ltd**, 1927, rega' ntqal "*Now, insurance is a contract of the utmost good faith, and it is of the gravest importance to commerce that the position should be observed. The underwriter knows nothing of the particular circumstances of the voyage to be insured. The assured knows a great deal, and it is the duty of the assured to inform the underwriter of everything that he has not taken as knowing, so that the contract may be entered with an equal footing.*" Dan il-principju gie enfasizzat fl-EEC Council Directive tal-1977, ghalkemm, f'dik id-direttiva, gie suggerit li l-obbligu tal-assikurat huwa ezawrit

Kopja Informali ta' Sentenza

meta jirrispondi onestament id-domandi li jkun hemm fil-polza, minghajr htiega li jzid aktar.

Dawn il-principji, kif inghad, huma anke accettati mill-Qrati taghna. Hekk, fil-kawza **Camilleri noe v. Bartolo**, deciza mill-Prim'Awla tal-Qorti Civili fit-22 ta' Marzu, 1982, polza ta' assigurazzjoni giet invalidata meta rrizulta li l-assigurat ma kienx informa lill-kumpanija assiguratrici li kien ghamel *claims* ohra qabel ma avvicina l-assigurazzjoni. Gie ribadit il-principju li kull fatt materjali ghandu jigi ndikat, u fatt materjali gie deskritt bhala "fatt ta' xorta tali li jinfluenza d-decizjoni ta' assigurat prudenti meta jigi biex jara jekk ghandux jiehu r-riskju." Fil-kawza **Degiorgio v. Agius**, deciza mill-Prim'Awla tal-Qorti Civili fil-25 ta' Gunju, 1962 (Vol XLVI.II.656) intqal li *"il-kuntratt ta' assikurazzjoni hu meqjus bhala wiehed tal-aqwa bona fede, u l-proponent ghandu jaghti risposta cara dwar dettalji li jigu mistoqsija lilu espressament fil-proposal forms; anzi hu generalment ritenut li l-proponent hu fid-dmir li jsemmi kull fatt li ragjonevolment ghandu jhoss li hu rilevanti ghall-assikuratur li jkun jaf, u dan anke' jekk ma jkunx mistoqsi"*. Principju simili gie ribadit dan l-ahhar mill-istess Prim'Awla tal-Qorti Civili fil-kawza **Muscat v. Gasan Insurance Agency Limited** deciza fit-2 ta' Marzu, 1998.

Fid-dawl tal-premess, huwa, ghalhekk principju accettat mill-Qrati Maltin, li huwa dmir tal-assigurat li jikxef lill-assigurat kull cirkostanzi rilevanti ghall-

Kopja Informali ta' Sentenza

kaz, u in partikolari, billi jwiegeb korrettament ghal kull domanda li jkun hemm registrata fil-polza. Inoltre, meta fil-polza jkun hemm klawsola maghrufa bhala “*Basis of Contract Clause*”, kif inhu fil kaz in ezami (ara l-klawsola apposita fil-“*Proposal Form*”) “*the effect of this language is to incorporate the insured’s answers into the insurance policy although they are not set out in the policy. An incorrect answer to anyone of these questions is fatal to the insured’s claim. This is so whether he answered the questions in good faith to the best of his knowledge, or indeed, whether his response related to a material fact or not*” – R A Hassan, “*The ‘Basis of the Contract Clause’ in Insurance Law*”. Awturi ohra (per ezempju, John Birds, “*The Statement of Insurance Practice – A measure of regulation of the insurance contract*”) jaqblu ma’ dan il-principju, pero` jhossu li risposta errata fuq domanda li mhiex intiza “*to disclose a material fact*”, m’ghandhiex tigi uzata biex tannulla l-kuntratt.

Ghall-fini ta’ din id-decizjoni, jista’ jinghad li hemm qbil fost l-awturi li “*an insured’s accident history will often be of greatest importance to an insurer*” u meta assigurat ma jghidx li precedentement kien vitma ta’ serqa mid-dar tieghu, m’ghandux ikun hemm dubju li l-assikurat ikun naqas milli jikxef “*material facts*”. F’dan il-kaz, l-assigurat assigura l-mobbli tad-dar, u naqas li jindika li kien vitma ta’ serqa ohra fl-1991 minn post iehor li fih kien joqghod. Hu gie mistoqsi biex jghid ghandux dettalji ohra rilevanti ghal kaz, u wiegeb fin-negattiv. Il-fatt li kien sofra serqa ohra mir-residenza tieghu, f’dak il-kaz ukoll ta’ gojjelli (u wkoll pratikament ghall-istess valur ta’ dawk meritu tal-

proceduri odjerni), u li kien gie sussegwentement ezarcit mill-assigurati tieghu ta' dak iz-zmien, kien zgur rilevanti u materjali. Fil-fehma ta' din il-Qorti, ir-risposta negattiva li ta l-assigurat ghandha l-karattru ta' *'misrepresentation of a material fact'* li ghandha twassal ghall-invalidita` tal-kuntratt (ara wkoll **Parnis v. Fava**, deciza mill-Prim'Awla tal-Qorti Civili fis-26 ta' Ottubru 2001). Ta' min josserva li, kif qalet il-Qorti Ingliza fil-kawza **Arterial Carowners Ltd v. Yorkshire Insurance Co** fl-1973 (per Chapman J), *"the primary obligation was one of disclosure on the part of the insured, not of enquiry on the insurer"*. Huwa ovvju li l-agir tal-assigurat f'dan il-kaz jekwivali ghall-ingann u, per konsegwenza, induca lill-assigurat fi zball li anke taht principji tradizzjonali, jivvizzjaw il-kunsens, li jaghti lok ghall-annullament tal-kuntratt (ara **Zammit v. Formosa** deciza mill-Prim'Awla tal-Qorti Civili fis-6 ta' Mejju 1994).

Sa hawn, ifisser li s-socjeta` konvenuta ghandha ragun. F'dan il-kaz, pero` hemm konsiderazzjoni ohra li hija importanti. Dan huwa rizultat tal-fatt li l-assiguratur prospettiv staqsa, bhala domanda specifika, jekk l-atturi kienux vittmi ta' serq fl-ahhar hames snin. Ir-risposta fin-negattiv kienet il-verita`. Meta allura, fl-ahhar tal-mistoqsijiet kien hemm domanda generika biex tinghata informazzjoni ohra ta' rilevanza ghall-assigurazzjoni, huma wiegbu wkoll fin-negattiv. Il-Qorti tara li fic-cirkostanzi, l-atturi setghu facilment jikkonkludu li din l-ahhar domanda ma kinitx tirreferi ghal serq, materja li giet ezawrita mid-domanda specifika fuq is-suggett. Dik id-domanda specifika setghet titqies li s-socjeta` assiguratrici ghamlet kif jghidu l-awturi fil-materja *"a waiver of*

disclosure” ta’ informazzjoni ulterjuri fuq l-istess suggett. Fil-ktieb “Birds’ Modern Insurance Law” ta’ Birds & Hird (6 Ediz. 2004), jinghad f’pagna 111 illi:

“It is clear that the fact that many questions are expressly asked does not relieve the proposer of his duty to disclose facts outside the scope of the questions, but in some cases the form of questions asked may reduce the scope of the duty of disclosure.”

Aktar tard, f’pagna 112, l-awturi jkunu aktar specifici, u b’ezempju li jattalja ezatt ma’ dan il-kaz, juru meta mhux mistenni li l-assigurat prospettiv jerga’ jiftah materja trattata fid-domanda specifika. Huma jghidu dan fuq is-suggett:

“Waiver as a result of the form of questions asked will usually arise where an express question asks for some details of certain facts or types of facts. Disclosure of other details will be waived if it is felt that a reasonable man reading the proposal form would consider that the insurer did not seek the other details. For example, a question asking the proposer for details of previous losses he has suffered within a five-year period would waive disclosure of losses outside that period even though such losses might well be material facts according to the usual test. Similarly, a question asking about the claims history of the proposer in relation to the type of insurance for which he is applying might well be regarded as waiving any duty of disclosure of losses or claims in respect of other types of insurance that in some circumstances might be regarded as material facts.”

Dan hu dak li gara f’dan il-kaz, u darba s-socjeta` konvenuta ghamlet u llimitat ir-rilevanza ta’ serqiet precedenti ghal hames snin, kien mistenni li l-atturi jqisu dik il-materja maghluqa b’dik id-domanda.

Kopja Informali ta' Sentenza

Is-socjeta` konvenuta tghid ukoll li l-attur ma kienx in *bona fede*. Dan inghad ghax wara s-serqa tal-gojjelli fl-1991, l-atturi baqghu ma hargu ebda polza ohra ghal hames snin ghax “kienu jafu” li wahda mid-domandi specifici fuq il-*proposal form* tirreferi ghal incidenti ta’ serq fl-ahhar hames snin (bint l-atturi kienet impjegata ma’ agent ta’ assicurazzjoni); kien biss wara hames snin li l-atturi regghu assicuraw l-gojjelli ma’ assicuratur differenti.

Din il-Qorti kkunsidrat dan il-punt, pero`, tara li ma saritx prova ta’ *mala fede*. Kif inhu risaput, l-atturi jgawdu minn presunzjoni li agixxew in *bona fede*, u hi s-socjeta` konvenuta li trid tipprova l-kuntrarju. Ic-cirkostanzi ta’ kif graw l-affarijiet jaghtu “xamma” ta’ xi haga mhux f’lokha, pero`, li l-istess persuna tkun darbtejn vitma ta’ serq mhux xi haga wisq insolita, u li, f’kull kaz, is-serqa tkun ta’ gojjelli, wiehed jistenniha. Ma saritx fil-fehma tal-Qorti, prova konvincenti tal-mala fede tal-atturi.

It-talbiet atturi ghalhekk, jimmeritaw li jigu milqugha anke ghaliex jirrizulta li saret is-serqa bi zgass ghad-dannu tal-atturi.

Ghaldaqstant, ghar-ragunijiet premissi, tiddisponi mill-appell tal-atturi billi tilqa’ l-istess, thassar u tirrevoka s-sentenza tal-ewwel Qorti tat-30 ta’ Novembru 2010, u tghaddi biex tilqa’ t-talbiet attrici, u tordna lis-socjeta`

Kopja Informali ta' Sentenza

konvenuta Middlesea Insurance plc thallas lill-atturi s-somma ta' tlettax-il elf, tliet mija, sitta u disghin Euro u tlieta u ghoxrin centezmi (€13,396.23) a bazi tal-polza ta' assicurazzjoni, bl-imghax legali mil-lum sal-pagament effettiv.

L-ispejjez tal-kawza jithallsu mis-socjeta` konvenuta appellata Middlesea Insurance plc.

< Sentenza Finali >

-----TMIEM-----