MALTA

TRIBUNAL GHAL TALBIET ZGHAR

GUDIKATUR DR.

DEBORAH MIFSUD ATTARD

Seduta tal-11 ta' Novembru, 2014

Talba Numru. 214/2009

Atlas Insurance PCC Limited (C 5601) f'isimha propju u kif surrogata fid-drittijiet tal-assikurata taghha Intercomp Marketing Limited abbazi tal-polza ta' assikurazzjoni u tal-ligi u l-istess Intercomp Marketing Limited (C 20612)

Vs

B.A.S. Limited u b'digriet tal-14 ta' Gunju, 2012 giet ordnata l-kjamat in kawza tas-socjeta' Fahrenheit Freight Forwarders Limited.

It-Tribunal,

Ra l-avviz fl-ismijiet premessi pprezentat fit-23 ta' Marzu, 2009 fejn is-socjeta' attriic talbet peress illi s-socjeta' Intercomp Marketing Limited inkarigat lis-socjeta' intimata sabiex tittrasporta merkanzija lejn Malta u meta l-imsemmija merkanzija giet ikkonsenjatalil Intercomp Marketing Limited fis-27 ta' Marzu, 2008, rrizulta li kien hemm nuqqasijiet fil-merkanzija, ghal liema nuqqasijiet hija responsabbli s-socjeta' intimata.

Peress illi ai termini tal-polza ta' assikurazzjoni relattiva s-socjeta' rikorrenti Atlas Insurance PCC Limited hallset lill-assigurata taghha s-somma ta' mitejn hamsa u disghin ewro u wiehed u

sebghin centezmu (€295.71) u ghalhekk is-socjeta' rikorrenti hija surrogata fid-drittijiet tal-assigurata taghha u dan oltre l-hlas ta' disghin ewro (€90) bhala survey fees u s-socjeta' Intercomp Marketing Limites sofriet mitejn tlieta u tlettin ewro (€233) bhala excess.

Peress illi s-socjeta' intimata hija ghalhekk debitriki tas-socjetajiet attrci fis-somma globali ta' sitt mija u tmintax-il ewro u wiehed u sebghin centezmu (€618.71), inkwantu ghal tliet mija hamsa u tmenin ewro u wiehed u sebghin centezmu (€385.71) lis-socjeta' rikorrenti Atlas Insurance PCC Limited u mitejn tlieta u tletin ewro (€233) lis-socjeta' rikorrenti Intercomp Marketing Limited, rappresentanti l-valur tan-nuqqasijiet fil-merkanzija relattivi, l-ispejjez tas-survey relattiv u l-excess, kollox kif premess.

Bl-imghax legali rispettiv mid-data tal-hlasijiet relattivi u bl-ispejjez kontra s-socjeta' intimata, bl-ingunzjoni tas-socjeta' intimata in subizzjoni.

Is-socjeta' konvenuta rrispondiet permezz ta' risposta pprezentata fit-13 ta' April, 2009 fejn eccepiet:

1) Illi preliminarjament t-talbiet tas-socjetajiet attrici huma nulli inkwantu huma vagi u ma fihomx dettalji sufficenti dwar il-fatti li waslu ghat-talbiet hekk kif trid il-ligi u fost affarijiet ohrajn ma ssir l-ebda referenza ghad-dokument tat-trasport u lanqas rigward il-garr tal-merkanzija;

2) Illi minghajr pregudizzju ghas-suespost, is-socjeta' konvenuta tirriserva li tipprezenta eccezzjonijiet ulterjuri fil-kaz illi jinghataw dettalji sufficenti dwar it-talba mil-atturi fil-mori tal-kawza;

3) Illi in vista tas-suespost it-talbiet tas-socjetajiet attrici ghandhom jigu michuda bl-ispejjez;

Salv eccezzjonijiet ulterjuri.

Permezz ta' risposta ulterjuri s-socjeta' B.A.S. Limited eccipiet ulterjorment is-socjeta' esponenti teccepixxi ulterjorment is-segwenti:

1) Illi, preliminarjament, is-socjeta' esponenti m'hijiex il-legitimu kontradittur u dan peress illi (a) l-esponenti ma kinitx inkarigata bit-trasport tal-merkanzija mertu tal-kaz u (b) ma jirrizultax li l-merkanzija in kwistjoni gietx nieqsa waqt li din kienet taht ir-respomsabilita tas-socjeta' esponenti;

2) Illi s-socjeta' esponenti ma tahtiex ghal kwalunkwe nuqqas lamentat mis-socjetajiet attrici;

3) Illi fi kwalunkwe kaz, l-ammont reklamat jinsab kontesta.

4) Illi t-talbiet attrici huma infondati fil-fatt u fid-dritt.

Bl-ispejjez.

Xehed Brian Valenzia li huwa d-direttur tas-socjeta' attrici. Spjega illi s-socjeta’ attrici tassigura lis-Socjeta’ Intercomp. Il-claim ta’ din il-kawza kien dwar laptop li rrizulta nieqes fil-konsenja li kellha tasal ghand is-socjeta’ Intercomp Ltd. Malli l-konsenja waslet ghand Intercomp Mal-ewwel gie ‘rrimarkat illi hemm laptop nieqes. L-ammont reklamat huwa ta’ sitt mija u tmintax-il ewro u wiehed u sebghin centezmu (€618.71) li jinqasam mitejn tlieta u tletin ewro (€233) lis-socjeta’ Intercomp u tliet mija hamsa u tmenin ewro u wiehed u sebghin centezmu (€385.71) lis-socjeta’ Atlas Insurance Limited.

Xehed Ian Wirth li huwa logistics Manager ta’ Intercomp Marketing Ltd. Spjega li jkun involut fl-ordnijiet tal-merkanzija u l-frejt tieghu hsiebu B.A.S. Ltd. L-arrangament taghhom huwa li BAS Ltd jiehdu hsieb il-gbir u konsenja ta' din il-merkanzija minghand is-supplier u jiddeliverjawha lil Intercomp. Malli waslet il-konsenja sar jaf bin-nuqqas. Spjega wkoll illi l-BAS Ltd ma jghatuhomx dokument biex juri x'ikunu gabru minghand id-Dell. Li jircievi huwa n-number of pellits pero fil-verita jinterresah in-number of cartons.

Is-sistema tahdem billi d-Dell tinforma lil Intercomp li l-merkanzija ordnata tkun nizlet fid-depot taghhom u jinformah li hemm tant cartons lesti ghal gbir. Imbaghad Intercomp tghati 'sstruzzjonijiet biex dawn il-cartons jingiebu Malta. Ghalhekk il-BAS tkun taf kemm ser tigbor cartons u ghandha ticcekjahom. Il-Fahrenheit hija biss trailair operator u ma tghaddi l-ebda dokumentazzjoni lill-Intercomp.

Malli tasal il-merkanzija tigi 'ccekjata mill-istore keeper u tigi 'ffirmata delivery note dan isir kollu qabel jitlaq l-impjegat tal-BAS Ltd.

Xehed Mario Debono Deputy General Manager tas-socjeta' BAS Ltd li spjega kif tahdem is-sistema u spjega li s-socjeta' attrici kienet talbet illi x-xoghol ikun seal wrapped u dan sar. Qal ukoll illi kemm ilhom li waqfu juzaw din is-socjeta' ' Fahrenheit' naqsu l-problemi u mexjin sew. In kontro ezami jghid illi l-Fahrenheit kif ukoll lid-DHL jinkarigawhom il-BAS Ltd.

ra x-xhieda mghotija minn Raymond Bay fil-kawza 930/08 fl-14 ta' Gunju, 2012 giet imressqa talba sabiex tigi kjamata in kawza is-socjeta' Fahrenheit Freight Forwarders li sussegwament ipprezentat risposta fil-25 ta' Jannar, 2013:

1. Illi, s-socjeta' esponenti, u cioe' Fahrenheit Freight Forwarders Co. Ltd., ma ghandha l-ebda relazzjoni guridika mas-socjetajiet attrici u ghaldaqstant ghandha tigi liberata mill-osservanza tal-gubizzju;

2. Illi, minghajr pregudizzju ghas-suespost il-pretensjonijiet li s-socjetajiet attrici jew dik konvenuta qatt ma seta' kellhom fir-rigward tas-socjeta' esponenti llum huma dekaduti ai termini ta' l-Artikolu 32(1)(a) tal-Convention on the Concept for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi mostrana tramite l-Kap.836 tal-Ligijiet ta' Malta;

3. Illi, minghajr pregudizzju ghas-suespost is-socjeta' esponenti m'hijiex responsabbli ghall-ebda danni li allegatament soffrew is-socjetajiet atturi stante li hi kkonsenjat il-merkanzija, konsistenti f'numru ta' sealed pallets li gew konsenjati lilha mis-socjeta' estera DHL, lir-ricevitur f'Malta, u cioe' s-socjeta' konvenuta BAS Limited, fl-istess stat li rceviethom hi u dan skond ma kienet marbuta li taghmel. Ghaldqastant jekk kien hemm xi nuqqasijiet fil-merkanzija dan ma sarx meta l-merkanzija kienet taht il-kura u kustodja taghha;

4. Illi minghajr pregudizzju ghas-suespost, it-talbiet attrici huma eccessivi;

5. Illi minghajr pregudizzju ghas-suespost kwalunkwe responsabbilita' li tista' tigi mputata lis-socjeta' esponenti hija suggetta ghal-limitazzjonijiet tal-Convention on the Concept for International Carriage of Goods by Road (CMR) li giet inkorporata fil-ligi nostrana tramite l-Kap.836 tal-Ligijiet ta' Malta;

Ghaldaqstant it-talbiet tas-socjetajiet attrici u l-pretensjonijiet tas-socjeta' konvenuta fil-konfront tas-socjeta' esponenti ghandhom jigu michuda bl-ispejjez kontra taghhom.

Salv eccezzjonijiet ulterjuri.

Ra l-affidavit tad-direttur tal-Fahrenheit Freight Forwarders Alexander Mallia flimkien mad-dokumenti pprezentati.

Semgha x-xhieda ta' Etiene Mallia prodott mill-kjamat in kawza.

It-Tribunal ikkonsidra:

Illi mill-provi prodotti jirrizulta bla ebda dubju li s-socjeta' assigurata mas-socjeta' attrici u cioe' is-socjeta' Intercomp Marketiung Ltd inkarigat lis-socjeta' konvenuta sabiex iggor il-merkanzija in kwistjoni ga trailer mill-warehouse fornitura tal-kompjuters Dell gewwa l-Olanda ghal hawn Malta.

Illi f'dan il-kaz, jidher car li l-partijiet specifikaw illi tali relazzjoni taghhom u ta' bejnithom kellha tig regolata bl-imsemmija **CMR Rules**, u ghalhekk ovvjament isegwi li d-determinazzjoni ta' responsabbbilita' o meno tas-socjeta' konvenuta fil-kawza odjerna ghandha tigi deciza abbazi ta' tali regoli, stante li tlai regoli huma nkorporati fil-ftehim bejn l-istess partijiet u ghalhekk jaghmlu stat fil-konfront tal-istess.

Illi mill-provi prodotti jirrizulta wkoll illi l-merkanzija indikata ma twaslitx shiha mis-socjeta' konvenuta, kif hija obbligata ruhha li taghmel verso ssocjeta' attrici Intercomp Marketing Limited, fid-destinazzjoni taghha hawn Malta u ghalhekk jidher li s-socjeta' konvenuta ghandha tirrispondi ghall-istess nuqqas.

Artikolu 3 ta' CMR Rules jghid:

"For the purposes of this convention the carrier shall be responsible for the acts or omissions of his agents and servants and of any other persons of whose services he makes use of for the performance of the carriage, when such agents, servants, or other persons are acting within the scope of their employment as if such acts or ommissions where his own."

Illi 'mbaghad l-**Artikolu 17** tal-istess **CMR Rules** jipprovdi li:

"1. The carrier shall be liable 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.

2. The carrier shall, however, be relieved of liability if the loss, damage or delay was caused by the wrongful act or neglect of the claimant, by the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier, by inherent vice of the goods or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

3. The carrier shall not be relieved of liability by reasons 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."

Illi l-**Artikolu 18** jipprovdi illi:

"1. The burden of proving that loss, damage or delay was due to one of the specified in article 17, paragragh 2, shall rest upon the carrier."

Illi mill-provi prodotti jirrizulta wkoll li s-socjeta' konvenuta kienet inkarigat lis-socjeta' kjamata fil-kawza sabiex tigbor il-merkanzija minn gewwa warehouse DHL. Jinghad li s-socjeta' attrici' kjamata in kawza giet imqabbda mis-socjeta' konvenuta ghalkemm il-kuntratt tal-garr li sar mis-socjeta' attrici Intercomp Marketing Limited sar eskluzzivament mis-socjeta' attrici.

Illi s-socjeta' konvenuta qed targuementa li l-hsara u n-nuqqasijiet riskontrati graw meta l-istess merkanzija kienet fil-pussess tal-kjamat fil-kawza u li ghalhekk l-istess socjeta' kjamata in kawza ghandha tinzamm responsabbli tal-istess danni di fronte ghas-socjeta' attrici.

Il-fatt li l-istess socjeta' konvenuta inkarigat lis-socjeta' kjamata in kawza sabiex iggorr l-istess merkanzija, ma jfissirx li l-istess socjeta' kjamata in kawza b'hekk holqot relazzjoni guridika u kontratwalli mas-socjeta' attrici u dan anke in vista tal-fatt li l-inkarigu tas-socjeta; konvenuta sar direttament u esklussivament mas-socjeta' konventua u mkien mill-istess ftehim jew mix-xhieda prodotta ma jirrizulta li s-socjeta' attrici tat il-kunsens taghha sabiex is-socjeta' konvenuta tinkariga terzi sabiex igorru l-istess merkanzija.

Ghal dawn il-motivi t-Tribunal jaqta u jiddeci billi jilqa' t-talbiet attrici, tichad l-eccezzjonijiet mressqa mis-socjeta' konvenuta BAS Ltd u jilqa' l-eccezzjonijiet tas-socjeta' kjamata in kawza Fehrenheit Freight Forwarders u tikkundanna lis-Socjeta' BAS Ltd thallas lill-atturi s-somma ta' sitt mija u tmintax-il ewro u wiehed u sebghin centezmu (€618.71) kif mitlub.

Bl-imghax legali mid-data tal-prezentata sad-data tal-pagament effettiv u bl-ispejjez tal-kawza jkunu a karigu tas-socjeta' konvenuta BAS Ltd.

< Sentenza Finali >

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