



**MALTA**

**Fil-Qorti tal-Magistrati (Malta)  
Magistrat  
Dr. Gabriella Vella B.A., LL.D.**

**Rikors Nru. 74/08VG**

**Alka Ceramics Limited**

**Vs**

**S. Mifsud & Sons Limited proprio u fil-kapacità taghha bhala l-agent tas-socjetà estera Ignazio Messina & C. u Bernard Sultana li b'Digriet ta' l-10 ta' April 2008 gie nominat bhala Kuratur Deputat sabiex jirrapprezenza l-interessi tas-socjetà estera Ignazio Messina & C.**

**Illum 11 ta' Frar 2016**

**Il-Qorti,**

Rat ir-Rikors ipprezentat mis-socjetà Alka Ceramics Limited fis-7 ta' Frar 2008 permezz ta' liema titlob li s-socjetà S. Mifsud & Sons Limited proprio u fil-kapacità taghha bhala agent tas-socjetà estera Ignazio Messina & C. u Bernard Sultana li b'Digriet ta' l-10 ta' April 2008 gie nominat bhala Kuratur Deputat sabiex jirrapprezenza l-interessi tas-socjetà estera Ignazio Messina & C. jew min minnhom jigu kkundanti jhallsuha d-danni li jigu likwidati mill-Qorti rapprezentanti danni subiti minnha in konnessjoni ma' trasport ta' materjal ordnat minnha mill-esteru u dana skond *bills of lading* bin-Numri G0749087, G0749095 u G0749127 rispettivament u liema materjal gewwa l-*container* irrizulta li kien iddannegjat hekk kif wasal Malta u dana unikament minhabba negligenza, imperizija u non-osservanza tar-regolamenti da parte taghhom jew min minnhom, bl-ispejjez, inkluzi dawk ta' l-ittra ufficjali datata 11 ta' Dicembru 2007, kontra l-konvenuti jew min minnhom;

Rat id-dikjarazzjoni tas-socjetà attrici li d-danni minnha pretizi ma jeccedux is-somma ta' sitt elef disa' mija u tmienja u tmenin Euro u tmax-il centezmu (€6,988.12) ekwivalenti ghal tlett elef Lira Maltija (Lm3,000);

Rat li b'Digriet datat 17 ta' Marzu 2008 kien gie nominat l-Avukat Dottor Richard Sladden bhala Kuratur Deputat sabiex jirrapprezenta l-interessi tas-socjetà estera Ignazio Messina & C.;

Rat ir-Risposta ta' l-Avukat Dottor Richard Sladden bhala Kuratur Deputat sabiex jirrapprezenta l-interessi tas-socjetà estera Ignazio Messina & C. permezz ta' liema eccepikka li: (i) ma huwiex edott mill-fatti tal-kaz u jirriserva li jipprovi l-eccezzjonijiet u risposta tieghu dwar il-mertu in kwistjoni fi stadju ulterjuri meta jikkomunika mas-socjetà estera; u (ii) ghal dan l-iskop huwa kiteb lis-socjetà konvenuta l-ohra sabiex jinghata kull informazzjoni inkluz l-indirizz tas-socjetà estera biex jikkomunika ma' l-istess;

Rat in-Nota ta' Bernard Sultana bhala rapprezentant tas-socjetà S. Mifsud & Sons Limited ipprezentata fil-5 ta' Marzu 2008 permezz ta' liema accetta, fil-kapacità tieghu ta' rapprezentant tas-socjetà S. Mifsud & Sons Limited, li jirrapprezenta lis-socjetà estera Ignazio Messina & C. fl-atti tal-kawza fl-ismijiet premissi u fl-atti l-ohra kollha relattivi u sussegwenti;

Rat in-Nota ta' l-Avukat Dottor Richard Sladden li kien gie nominat bhala Kuratur Deputat sabiex jirrapprezenta l-interessi tas-socjetà estera Ignazio Messina & C., ipprezentata fid-9 ta' April 2008, permezz ta' liema in vista ta' l-accettazzjoni tal-bandu da parte ta' Bernard Sultana bhala rapprezentant tas-socjetà S. Mifsud & Sons Limited, huwa rrinunzja ghan-nomina moghtija lilu;

Ra li b'Digriet datat 10 ta' April 2008 Bernard Sultana gie nominat bhala Kuratur Deputat sabiex jirrapprezenta l-interessi tas-socjetà estera Ignazio Messina & C.;

Rat ir-Risposta tal-Kuratur Deputat Bernard Sultana permezz ta' liema jeccepixxi li: (i) preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda, bl-ispejjez kontra s-socjetà attrici, stante li ma hemm ebda relazzjoni guridika bejn l-imsemmija socjetà attrici u s-socjetà estera Ignazio Messina & C.; (ii) fejn jirrigwarda s-socjetà estera Ignazio Messina & C. ma hemm ebda danni x'jigu likwidati favur is-socjetà attrici u fi kwalunkwe kaz, is-socjetà attrici ghandha ggib prova ta' tali danni ai termini tal-Ligi; (iii) is-socjetà estera Ignazio Messina & C. ma hijiex responsabbli ghad-danni allegatament subiti mis-socjetà attrici u ghalhekk m'hemmx lok ghal kundanna ghall-hlas ta' danni; u (iv) il-garr tal-merkanzija in kwistjoni kien qed isehh taht il-kondizzjonijiet tas-CMR Convention u ghalhekk ghandhom japplikaw ir-regoli ta' l-istess konvenzjoni;

Rat ir-Risposta tas-socjetà konvenuta S. Mifsud & Sons Limited permezz ta' liema teccepixxi li: (i) preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda, bl-ispejjez kontra s-socjetà attrici; (ii) fejn jirrigwarda lilha ma hemm ebda danni x'jigu likwidati favur is-socjetà attrici u fi kwalunkwe kaz, is-socjetà attrici ghandha ggib prova ta' tali danni ai termini tal-Ligi; (iii) hija ma hijiex responsabbli ghad-danni allegatament

subiti mis-socjetà attrici u ghalhekk m'hemmx lok ghal kundanna ghall-hlas ta' danni; u (iv) il-garr tal-merkanzija in kwistjoni kien qed isehh taht il-kondizzjonijiet tas-CMR Convention u ghalhekk ghandhom japplikaw ir-regoli ta' l-istess konvenzjoni;

Semghet ix-xhieda ta' Joan Haber in rappreżentanza tas-socjetà attrici moghtija waqt is-seduti tat-18 ta' Novembru 2008<sup>1</sup>, ta' l-14 ta' Mejju 2009<sup>2</sup> u tat-3 ta' Frar 2011<sup>3</sup> u rat id-dokumenti esebiti minnha markati Dok. "JH1" u Dok. "JH2" a fol. 31 sa' 99 tal-process, semghet ix-xhieda ta' Paul Ellul moghtija waqt is-seduti tat-28 ta' April 2009<sup>4</sup> u tal-5 ta' April 2011<sup>5</sup> u x-xhieda ta' Georgette Scerri moghtija waqt is-seduti tat-3 ta' Gunju 2009<sup>6</sup> u tal-5 ta' April 2011<sup>7</sup> u rat id-dokumenti esebiti minnha markati Dok. "GS1" u Dok. "GS2" a fol. 113 sa' 115 tal-process, rat id-dokument, ossia Polza ta' Karigu, esebita mis-socjetà attrici permezz ta' Nota ipprezentata fit-28 ta' Gunju 2010 a fol. 122 sa' 124 tal-process, semghet ix-xhieda ta' Paul Agius moghtija waqt is-seduta tat-22 ta' Novembru 2010<sup>8</sup> u rat id-dokumenti esebiti minnu markati Dok. "PA1" sa' Dok. "PA7" minn fol. 127 sa' fol. 137 tal-process;

Rat in-Nota ta' Sottomissjonijiet tas-socjetà attrici pprezentata fit-2 ta' Mejju 2011 a fol. 152 sa' 158 tal-process;

Rat li s-socjetà konvenuta u l-Kuratur Deputat Bernard Sultana kellhom zmien sal-5 ta' Dicembru 2011 sabiex jipprezentaw in-Noti Responsivi taghhom izda tali Noti baqghu ma gewx ipprezentati;

Rat l-atti l-ohra kollha tal-kawza;

### **Ikkunsidrat:**

Bil-proceduri odjerni s-socjetà attrici titlob li l-konvenuti jew min minnhom jigu ikkundannati jhallsuha somma likwidata mill-Qorti, liema somma però ma ghandhiex teccedi s-somma ta' €6,988.12, rappreżentanti danni subiti minnha in konnessjoni ma' trasport ta' materjal ordnat minnha mill-esteru u dana skond *bills of lading* bin-Numri G0749087, G0749095 u G0749127 rispettivament, liema materjal gewwa l-*container* irrizulta li kien iddanneggjat hekk kif wasal Malta u dana unikament minhabba negligenza, imperizja u non-osservanza tar-regolamenti da parte taghhom jew min minnhom.

Il-konvenut Bernard Sultana nominat bhala Kuratur Deputat sabiex jirrappreżenta l-interessi tas-socjetà estera Ignazio Messina & C. b'Digriet

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<sup>1</sup> Fol. 28 sa' 30 tal-process.

<sup>2</sup> Fol. 107 sa' 109 tal-process.

<sup>3</sup> Fol. 143 u 144 tal-process.

<sup>4</sup> Fol. 104 u 105 tal-process.

<sup>5</sup> Fol. 146 tal-process.

<sup>6</sup> Fol. 111 u 112 tal-process.

<sup>7</sup> Fol. 147 tal-process.

<sup>8</sup> Fol. 138 sa' 141 tal-process.

moghti fl-10 ta' April 2008, jilqa' ghat-talba attrici bis-segventi eccezzjonijiet: (i) preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda, bl-ispejjez kontra s-socjeta' attrici, stante li ma hemm ebda relazzjoni guridika bejn l-imsemmija socjeta' attrici u s-socjeta' estera Ignazio Messina & C.; (ii) fejn jirrigwarda s-socjeta' estera Ignazio Messina & C. ma hemm ebda danni x'jigu likwidati favur is-socjeta' attrici u fi kwalunkwe kaz, is-socjeta' attrici ghandha ggib prova ta' tali danni ai termini tal-Ligi; (iii) is-socjeta' estera Ignazio Messina & C. ma hijiex responsabbli ghad-danni allegatament subiti mis-socjeta' attrici u ghalhekk m'hemmx lok ghal kundanna ghall-hlas ta' danni; u (iv) il-garr tal-merkanzija in kwistjoni kien qed isehh taht il-kondizzjonijiet tas-CMR Convention u ghalhekk ghandhom japplikaw ir-regoli ta' l-istess konvenzjoni.

Is-socjeta' konvenuta S. Mifsud & Sons Limited tilqa' ghat-talba attrici bis-segventi eccezzjonijiet: (i) preliminarjament it-talbiet attrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda, bl-ispejjez kontra s-socjeta' attrici; (ii) fejn jirrigwarda lilha ma hemm ebda danni x'jigu likwidati favur is-socjeta' attrici u fi kwalunkwe kaz, is-socjeta' attrici ghandha ggib prova ta' tali danni ai termini tal-Ligi; (iii) hija ma hijiex responsabbli ghad-danni allegatament subiti mis-socjeta' attrici u ghalhekk m'hemmx lok ghal kundanna ghall-hlas ta' danni; u (iv) il-garr tal-merkanzija in kwistjoni kien qed isehh taht il-kondizzjonijiet tas-CMR Convention u ghalhekk ghandhom japplikaw ir-regoli ta' l-istess konvenzjoni.

Mill-provi prodotti jirrizultaw is-segventi fatti:

- Fost affarijiet ohra s-socjeta' attrici timmanifattura *lamp shades* ta-ceramika u ghal tali skop timporta l-materja prima kif ukoll *shades* biex jakkumpanjaw il-lampi<sup>9</sup>;
- Fl-2007 is-socjeta' attrici riedet iggib konsenja ta' materja prima, *lamp shades* u *holders* ghall-*lamp shades* mill-Italja u fil-5 ta' Frar 2007 ottjeniet stima minghand is-socjeta' konvenuta ghall-garr ta' tali merkanzija minn Genova gewwa l-Italja ghal dawn Malta<sup>10</sup>. Peress illi irrizulta li l-gbir tal-materjal mehtieg kellu jsir minghand tlett fornituri differenti, fid-9 ta' Frar 2007 is-socjeta' konvenuta harget stima ulterjuri a favur is-socjeta' attrici<sup>11</sup>;
- Bhala fatt is-socjeta' attrici inkarigat lis-socjeta' konvenuta biex tiehu hsieb il-garr tal-merkanzija in kwistjoni minn Genova gewwa l-Italja ghal hawn Malta<sup>12</sup>;
- Is-socjeta' konvenuta a sua volta inkarigat lis-socjeta' Ignazio Messina s.p.a. – minnha rapprezentata hawn Malta – biex tiehu hsieb il-garr ta' tali merkanzija<sup>13</sup>;

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<sup>9</sup> Xhieda moghtija minn Joan Haber, Managing Director tas-socjeta' attrici, waqt is-seduta tat-18 ta' Novembru 2008, fol. 28 sa' 30 tal-process.

<sup>10</sup> Dok. "PA1" a fol. 127 tal-process.

<sup>11</sup> Dok. "PA3" a fol. 129 tal-process.

<sup>12</sup> Dok. "PA4" a fol. 130 tal-process.

- Is-socjetà attrici gharrfet lis-socjetà konvenuta li l-materjal li kellu jingabar l-ewwel, għall-fini li jigi stivat fil-qiegh tal-*container*, kellu jkun it-tafal (ossia l-materja prima) minghand id-ditta Colorobia s.p.a.<sup>14</sup>;
- It-trasport tal-merkanzija in kwistjoni kien kopert u regolat bi tlett *bills of lading* bin-Numri G0749095, G0749095 u G0749095<sup>15</sup>;
- Il-*container* stivat bil-materjal tghabba fuq il-vapur fl-1 ta' Marzu 2007 u wasal Malta fit-3 ta' Marzu 2007. L-istess *container* gie konsenjat lis-socjetà attrici fit-8 ta' Marzu 2007<sup>16</sup>;
- Hekk kif rapprezentanti tas-socjetà attrici fethu l-*container* in kwistjoni, liema *container* minn barra kien jidher iddanneggjat, sabu hsara estensiva fil-merkanzija minnhom importata mill-Italja<sup>17</sup>;
- Il-materjal gie spezzjonat mis-surveyor Paul Ellul li fl-4 ta' April 2007 hareg Survey Report fejn fost affarijiet ohra kkonkluda li *it is quite evident that Container No. LMCU 1074260 suffered heavy impact damages during transit as can be ascertained from the condition of the container and the heavy shifting found of the cargo inside when relative container was opened at consignees. ... Under the circumstances it is our opinion that the contractual carriers should be held liable in this instance*<sup>18</sup>;
- B'e-mail datata 8 ta' Marzu 2007<sup>19</sup> u b'ittra datata 9 ta' Marzu 2007<sup>20</sup> is-socjetà attrici gharrfet lis-socjetà S. Mifsud & Sons Limited bil-hsara fil-materjal minnha importat u zammitha responsabbli għad-danni subiti. Is-socjetà S. Mifsud & Sons Limited però b'ittra datata 20 ta' Marzu 2007 cahdet kwalunkwe responsabilità għall-hsara fil-merkanzija u konsegwenti danni pretizi mis-socjetà attrici u dana billi *as this consignment was packed and duly sealed in a container by shipper or his representative, we regret to advise you that in the circumstances we are unable to accept liability for alleged damages/shortages. Furthermore, the seal of the container was broken in the presence of a customs officer at the time of delivery and between sealing and breaking of the same seal, nobody had access to the cargo*<sup>21</sup>;
- Fid-dawl tal-posizzjoni adottata mis-socjetà S. Mifsud & Sons Limited, is-socjetà attrici istitwiet il-proceduri odjerni.

Entrambe l-konvenuti jikkontendu li ma hemm ebda dannu x'jigi likwidat favur is-socjetà attrici, li fi kwalunkwe kaz għandha tipprova b'mod sodisfacenti d-dannu minnha allegatament subit, u li ma humiex responsabbli għad-danni hekk allegatament subiti mis-socjetà attrici. Bernard Sultana

<sup>13</sup> Xhieda ta' Paul Agius, Deputy General Manager tas-socjetà konvenuta, mogħtija waqt is-seduta tat-22 ta' Novembru 2010, fol. 138 sa' 141 tal-process.

<sup>14</sup> E-mail datata 15 ta' Frar 2007, fol. 131 tal-process.

<sup>15</sup> Dok. "PA6" a fol. 133 sa' 135 tal-process.

<sup>16</sup> Dok. "PA6" a fol. 133 sa' 135 tal-process, xhieda ta' Paul Agius mogħtija waqt is-seduta tat-22 ta' Novembru 2010 a fol. 138 sa' 141 tal-process u Survey Report ta' Paul Ellul, Dok. "JH1" a fol. 58 sa' 69 tal-process.

<sup>17</sup> Dok. "JH2" a fol. 31 sa' 57 tal-process.

<sup>18</sup> Dok. "JH1" a fol. 58 sa' 69 tal-process.

<sup>19</sup> Fol. 81 tal-process.

<sup>20</sup> Fol. 83 tal-process.

<sup>21</sup> Fol. 84 tal-process.

bhala Kuratur tad-ditta estera Ignazio Messina & C. jeccepixxi wkoll li l-imsemmija ditta ma ghandha l-ebda relazzjoni guridika mas-socjetà attrici u ghaldaqstant fi kwalunkwe kaz ghandha tigi liberata mill-osservanza tal-gudizzju.

In kwantu rigwarda l-hsarat u konsegwenti dannu reklamati mis-socjetà attrici, il-Qorti hija tal-fehma li l-imsemmija socjetà irnexxielha tipprova b'mod sodisfacenti li l-merkanzija minnha importata mill-Italja waslet ghandha bi hsara estensiva u li b'konsegwenza ta' tali hsara hiija garrbet dannu ekonomiku. Apparte x-xhieda moghtija mir-rapprezentanti w impjegati tas-socjetà attrici<sup>22</sup>, gew esebiti r-ritratti<sup>23</sup> li ttiehdu minn Paul Ellul, Surveyor, li juru bl-iktar mod car l-istat li fih is-socjetà attrici sabet il-merkanzija meta fethet il-*container* ikkonsenjat lilha fit-8 ta' Marzu 2007. Apparte minn hekk mill-istess ritratti jidher b'mod car illi l-*container* li fih kienet stivata l-merkanzija in kwistjoni ukoll kellu diversi daqqiet.

Dak li jirrizulta mir-ritratti huwa kkoroborat fis-Survey Report ta' Paul Ellul, minnu debitament ikkonfermat<sup>24</sup>, li meta zamm access fit-8 ta' Marzu 2007 biex jispezzjona l-merkanzija tas-socjetà attrici kkonstata li: ***Container No. LMCU 1074260*** - ... *at the rear section of the container floor two wooden floor boards were found dislodged and their respective screws were found partly sticking upwards from relative floor boards. In this are one steel strip which is usually secured between the two wooden floor boards at the rear section was found completely dislodged and lying loose on the container floor amongst the cargo. This damage clearly indicated to us that the container has suffered impact damage during transit<sup>25</sup> (Photographs 1-10). The right door upper section was found indented approximately 1.0 meters in way of the container's identification markings, this damage was clearly of fresh origin (Photographs 11-13). The container ceiling was found buckled downwards at the front section, this damage was of fresh origin (Photographs 14 & 15). Fresh scratch marks were found on the front section right lower side of the container indicating to us that the unit suffered impact damage<sup>26</sup> (Photographs 16-18). **The Cargo carried inside Container No. LMCU 1074260** As stated earlier in our report, the cargo carried inside Container No. LMCU 1074260 consisted of three consignments, namely: **98 packages Lampshades. 1 pallet Electrical Material. 2 pallets Clay in Bags.** Consignees' instructions to the contractual carriers were for the 2 pallets Clay in Bags to be stowed first inside the container, then the 98 packages Lampshades were to be stowed partly on the 2 pallets of Clay and partly at the centre section of the container and finally the 1*

<sup>22</sup> Xhieda moghtija minn Joan Haber, Managing Director tas-socjetà attrici, moghtija waqt is-seduti tat-18 ta' Novembru 2008 a fol. 28 sa' 30 tal-process u ta' l-14 ta' Mejju 2009, fol. 107 sa' 109 tal-process u xhieda moghtija minn Georgette Scerri moghtija waqt is-seduti tat-3 ta' Gunju 2009 a fol. 111 u 112 tal-process u tal-5 ta' April 2011, fol. 147 u 148 tal-process.

<sup>23</sup> Dok. "JH2" a fol. 31 sa' 57 tal-process.

<sup>24</sup> Xhieda moghtija waqt is-seduti tat-28 ta' April 2009, fol. 104 u 105 tal-process u tal-5 ta' April 2011, fol. 146 tal-process.

<sup>25</sup> Sottolinear tal-Qorti.

<sup>26</sup> Sottolinear tal-Qorti.

*pallet Electrical Material was to be stowed at the rear section of the unit. When the container doors were opened the three consignments were found to be heavily shifted towards the rear section of the container with the result that a large number of cartons containing Lampshades ended up heavily crushed and their respective contents extensively damaged. The two pallets Clay in bags were found de-palletised with their respective wooden pallets lying upright at the front section of the container and the bags of Clay lying on the fragile cardboard cartons containing the lampshades resulting in heavy crushing of these cartons*<sup>27</sup> (Photographs 19-38). After the three consignments were checked, 370 lampshades, from a total of 831 lampshades were found extensively damaged and unsaleable (Photographs 39-54).

Fid-dawl ta' dak minnu konstatat is-surveyor Paul Ellul ikkonkluda li *Alka Ceramics Limited* instructed *S. Mifsud & Sons Limited* to collect the three consignments and ship them to Malta in a 20-foot container. *S. Mifsud & Sons Limited* appointed their sub-contractors in Italy who delivered the empty container to the three suppliers and loaded the goods as per consignee's instructions. The Terms of Shipments of the three consignments were "EX-WORKS" so that *S. Mifsud & Sons Limited* were responsible for the loading and stowage of the goods inside the container, even though, in practice the three different suppliers assisted the sub-contractors of *S. Mifsud & Sons Limited* to load the goods. It is quite evident that Container No. LMCU 1074260 suffered heavy impact damages during transit as can be ascertained from the condition of the container and the heavy shifting found of the cargo inside when relative container was opened at consignees. In each of the three Bills of Lading issued, one for each consignment, it is stated that shippers sealed the container with the same seal, namely Seal No. M185348. We cannot understand how the same seal was used by the different shippers also bearing in mind that the sub-contractors of *S. Mifsud & Sons Limited* delivered the container from one shipper to another in order to load the various consignments. In their letter dated 20<sup>th</sup> March 2007, *S. Mifsud & Sons Limited* stated as follows: "As this consignment was packed and duly sealed in a container by shipper or his representative. We regret to advise you that in the circumstances we are unable to accept liability for alleged damages/shortages. Furthermore, the seal of the container was broken in the presence of a customs officer at the time delivery and between the sealing and breaking of the same seal nobody had access to the cargo". In our opinion what is stated in *S. Mifsud & Sons Limited's* letter is completely untrue since Seal No. M185348 could have only been secured on the container after the last consignment was collected from the last shipper and in the period between the collection of the first consignment and the collection of the last consignment, *S. Mifsud & Sons Limited* and/or their sub-contractors did have access to the cargo inside the container. Furthermore, the three consignments were collected from Italy which forms part of the European Union so that, as can be confirmed by consignees, no Customs

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<sup>27</sup> Sottolinear tal-Qorti.

*Officer was present at the time the container was opened at consignees' premises. Under the circumstances it is our opinion that the contractual carriers should be held liable in this instance.*

Is-socjetà S. Mifsud & Sons Limited tirribatti ghal dak li jirrizulta mill-provi prodotti mis-socjetà attrici tramite x-xhieda tad-Deputy General Manager taghha Paul Agius, li ghad illi jistqarr li dwar il-fatti jaqbel li dawn huma kif esposti minn Paul Ellul fis-Survey Report tieghu, ma jaqbilx mal-konkluzzjoni li ghandu jkun hemm xi responsabilità attribwita lill-Carrier ghal tali hsarat u dana in bazi ghas-segwentu konsiderazzjonijiet: *Meta giet accettata t-tieni quotation [ossia l-istima tad-9 ta' Frar 2007 li kienet tindika zieda fil-prezz peress li l-merkanzija ma kenitx se tingabar minn post wiehed biss] ahna gharrafna l-Principals taghna u il-container gie bbukjat. Eventwalment il-vapur kien telaq minn Genova u gie hawn Malta u l-vapur inhatt fit-terminal. Fit-terminal hemm dak li jissejhu tally clerks group li essenzjalment xogholhom hu li joqghodu ghasa meta jinhattu l-containers biex jaraw jekk ikunx hemm hsara esterna fuq dan l-istess container. Meta imbaghad huma jaraw li hemm xi hsara esterna issir nota ta' dan. F'dan il-kaz partikolari ghandi dokument tat-tally clerks group rigward il-vapur li kien gie bbukjat ghas-socjetà attrici u minn dan id-dokument jidher illi dan il-container ma kellu ebda hsara esterna<sup>28</sup>. ... Sabiex l-importatur ikun jista' jiehu il-merkanzija mit-terminal dan ikun irid jipprezentalna l-bill of lading originali. F'dan il-kaz partikolari s-socjetà attrici pprezentatilna tlett bills of lading originali li kienu kollha iffirmati mir-receiver. F'dan il-bills of lading kien hemm klawzoli specjali u naghmel referenza partikolari ghall-Klawzola 10. Essenzjalment ahna konna carriers biss jigifieri kull ma rridu naghmlu huwa li inwasslu l-merkanzija mill-port li tkun tghabbiet ghall-port fejn trid tinhatt. Il-container ma jinteliex minna izda mis-suppliers tas-socjetà attrici. Il-bills of lading f'dan il-kaz jindikaw kollha din is-sitwazzjoni fejn ahna carriers biss u dawn jinsabu iffirmati mir-receiver jigifieri minn rapprezentant tas-socjetà attrici. ... Il-container partikolari kien wasal ix-xatt fit-3 ta' Marzu 2007 u ittiehed mill-burdnar fit-8 ta' Marzu 2007. ... Jiena rajt l-affarijiet kemm dawk li kienu fil-container kif ukoll dawk li kienu lahqu dahlu fil-fabbrika u verament kien hemm xi affarijiet li kellhom il-hsara. Jiena imbaghad tkellimt mal-Principals taghna fir-rigward tal-hsarat li kien hemm fl-affarijiet u anki kont bghattilhom xi ritratti. Ir-risposta minghand il-Principals taghna kienet essenzjalment referenza ghall-klawsola Numru 10 tal-bills of lading u biex nistennew u naraw x'ser jigri. Eventwalment is-socjetà attrici fethet dawn il-proceduri. ... il-materjal ma nistivawhx ahna fil-container. Qed nigi mistoqsi jekk naqbilx jekk il-hsara li grat lill-merkanzija tas-socjetà attrici huwa minhabba caqliq eccessiv fil-vapur nghid li jiena ma nistax nirrispondi ghal dak li jigri fuq il-vapur. Irrid inqid ukoll illi meta l-container wasal il-port kif gja ghedt qabel dan dam hamest ijiem hemmhekk u tul dawn il-hamest ijiem dan seta' ccaqlaq minn post ghall-iehor minn nies tal-port stess. Ahna m'ghamilna l-ebda forma ta'*

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<sup>28</sup> Dok. "PA5" a fol. 132 tal-process.



*investigazzjoni fuq dan il-kaz; kull ma ghamilna hu li nfirmajna lill-Principal taghna fuq dak li kien qed jigri. Jiena ma nafx jekk il-Principal taghna ghamilx din it-tip ta' investigazzjoni*<sup>29</sup>.

Il-Qorti qieset bir-reqqa l-affermazzjonijiet ta' Paul Agius u l-provi minnu prodotti in sostenn ta' l-istess u wara tali skrutinju tqis li l-istess huma ghal kollox infondati u bl-ebda mod ma javvaloraw il-posizzjoni adottata mis-socjetà S. Mifsud & Sons Limited kif ukoll sa' certu punt mis-socjetà estera Ignazio Messina & C. li l-*Carrier* f'dan il-kaz ma huwa bl-ebda mod responsabbli ghall-hsara kawzata fil-merkanzija importata mis-socjetà attrici u ghal konsegwenti dannu minnha subit.

Ghalkemm tramite Paul Agius u d-dokument Dok. "PA5" minnu esebit, ossia t-Tally Sheet datat 3 ta' Marzu 2007, is-socjetà S. Mifsud & Sons Limited tikkontesta l-konkluzzjoni ta' Paul Ellul li l-hsara li garrab il-*container* bin-Numru LMCU 1074260 kienet hsara friska w indikattiva ta' *impact damage during transit*, jigi osservat illi huma principji assodati fis-sistema guridika nostrali li: *dawn iz-zewg dokumenti* [it-Tally Sheet u l-Gate Pass Out, dan ta' l-ahhar mhux imsemmi u mhux in kwistjoni fil-kaz in ezami] *ghandhom jitqiesu bhala decizivi u li jorbtu l-partijiet kollha fil-kawza, li ghandhom l-opportunità, f'waqtha 'a tempo vergine' li jikkontrollaw u jipprecizaw ir-registrazzjoni ta' l-istat ta' fatt – Michael Gatt noe v. L-Avukat Philip Sciberras noe, Appell Kummercjali, 20 ta' April 1995; David Curmi noe v. Carmelo Mallia et noe et, Appell Kummercjali, 6 ta' Gunju 1995. Dawn id-dokumenti kienu jikkostitwixxu prova li joholqu presunzjoni 'juris tantum' tal-korrettezza tal-kontenut taghhom. ... sakemm ma jkunx hemm provi ohra serji u precizi li jindikaw il-kuntrarju – Dr. Simon Micallef Stafrace noe v. John E. Sullivan et noe, Appell, Sede Inferjuri, 16 ta' Dicembru 1993; Noel Ellul noe v. James Gollcher et noe et, Appell, 12 ta' April 1999. Jibqa' l-fatt però li meta c-cirkostanzi jkun tali li l-Qorti tkun konvinta li ma kienux jirriflettu r-realtà ghax ikun zmentiti minn provi ohra fil-process, il-Qorti ghandha tiskartahom – Avv. Dottor Giovanni Griscti noe v. John Cooper et noe et, Appell, 19 ta' Mejju 2000, Avv. Dottor Robert Staines noe v. Commendatore Silvio Mifsud et noe et, Appell, 19 ta' Mejju 2000*<sup>30</sup>.

Ghad illi mid-dokument Dok. "PA5" – li l-Qorti ma tistax tonqos milli tosserva li huwa semplici fotokopja u mhux id-dokument originali – ma tirrizulta l-ebda rimarka dwar l-istat tal-*container* in kwistjoni, mir-ritratti esebiti bhala Dok. "JH2" u b'mod partikolari r-ritratti bin-numri 11 sa' 18 a fol. 36 sa' 39 tal-process jirrizulta b'mod car hafna li l-istess *container* kellu daqqiet sinjifikattivi fuqu li kif gustament osserva Paul Ellul jidhru li huma daqqiet friski u kompatibbli ma' *impact damage*. Fid-dawl ta' dawn ir-ritratti li kjarament juru l-istat li fih kien il-*container* meta wasal Malta, senjatament il-hsara li kellu l-*container*, il-Qorti certament ma tistax tqis li t-tally sheet li

<sup>29</sup> Xhieda moghtija minn Paul Agius waqt is-seduta tat-22 ta' Novembru 2010, fol. 138 sa' 141 tal-process.

<sup>30</sup> Dr. Simon Micallef Stafrace noe v. Adrian Mifsud noe et noe, Citaz. Nru. 105/93 deciza mill-Prim' Awla tal-Qorti Civili fid-9 ta' Dicembru 2002.

tistrih fuqha s-socjetà S. Mifsud & Sons Limited hija prova konklussiva ta' l-istat tal-*container* in kwistjoni, liema stat l-imsemmija socjetà tikkontendi li kien wiehed ta' bla ebda tip ta' hsara.

Paul Ellul ma llimitax ruhu li jghid li d-daqgiet li kellu l-*container* kienu kompatibbli ma' *impact damage* izda ddikjara li dan kien *impact damage during transit*. Mix-xhieda ta' Paul Agius huwa evidenti li s-socjetà S.Mifsud & Sons Limited tirribatti din l-affermazzjoni u konkluzzjoni ta' Paul Ellul billi tipprova tixhet ir-responsabilità għall-hsara kawzata lill-*container* u per konsegwenza lill-merkanzija importata mis-socjetà attrici fuq il-kuntrattur portwali. Ghalkemm huwa indiskuss li kazijiet bhal dak in ezami jinvolvu essenzjalment tlett partijiet, u cioè l-importatur/ricevitur; il-vettural/trasportatur u l-kuntrattur portwali, fil-kaz in ezami s-socjetà S.Mifsud & Sons Limited – fuq min indubbjament jaqa' l-oneru tal-prova li fil-hamest ijiem li l-*container* dam il-port dan seta' iccaqlaq mill-kuntrattur portwali u b'hekk giet ikkawzata l-hsara fih u per konsegwenza fil-merkanzija in kwistjoni, in bazi għall-principju li l-obbligu tal-prova ta' fatt imiss lil min jallegah<sup>31</sup> u marbut ma' dan, għall-principju ulterjuri li *l-piz probatorju tal-konvenut in sostenn ta' l-eccezzjonijiet tieghu jinsorgi fih una volta l-attur minn naha tieghu ikun gab prova ta' fatt jew fatti li jsostnu l-bazi tat-talba tieghu. Dan ghaliex l-insufficjenza jew in-nuqqas tal-prova tac-cirkostanzi dedotti mill-konvenut biex jikkumbatti l-pretensjoni attrici ma tiddispensax lill-attur mill-oneru li adegwatament jiddimostra l-legittimità u l-fondatezza tal-meritu tal-pretensjoni tieghu. Fil-kaz, imbagħad, li l-konvenut ma jikkontentax ruhu bis-sempliċi kontestazzjoni generika ta' l-assunt ta' l-attur, u anki jikkontrapponi difiza artikulata fuq fatti diversi minn dawk formanti il-bazi tad-domanda attrici, u dan tramite eccezzjoni sostanzjali, allura jinsorgi fih l-obbligu li hu wkoll igib il-quddiem prova dimostrattiva a sensu ta' l-Artikolu 562, s'intendi dejjem bil-konsegwenzjali relattiva f'kaz ta' prova insufficcjenti jew insodisfacenti<sup>32</sup> – ma ressqet l-ebda prova in sostenn ta' tali dubju tagħha u lanqas ma ittentat tikkjama in kawza lill-kuntrattur portwali. Mhux talli ma tressqitx tali prova fir-rigward talli Paul Agius iddikjara li s-socjetà S.Mifsud & Sons Limited ma għamlet l-ebda investigazzjoni fir-rigward u ma kienx f'posizzjoni jghid jekk id-ditta estera Ignazio Messina & C. da parte tagħha għamlitx xi investigazzjoni biex tara x'seta' gara waqt li l-*container* kien jinsab il-port.*

Dejjem tramite x-xhieda ta' Paul Agius is-socjetà S.Mifsud & Sons Limited tipprova tiskolpa lill-*Carrier*, ossia lilha nfisha, minn kwalunkwe responsabilità billi tinvoka il-*bills of lading* li kienu jirregolaw il-garr tal-merkanzija in kwistjoni. In effetti Paul Agius jafferma li a tenur ta' l-imsemmija *bills of lading*, senjatament a tenur tal-Klawsola Nru.10, huma kienu biss *carriers* fis-sens illi l-obbligu minnhom assunt kien biss li jwasslu l-merkanzija tas-socjetà attrici mill-port ta' Genova għal dak ta' Malta fil-waqt li

<sup>31</sup> Artikolu 562 tal-Kap.12 tal-Ligijiet ta' Malta.

<sup>32</sup> Mario Mifsud v. Carmelo Mifsud, Appell Civili Nru. 1536/99 deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fit-12 ta' Novembru 2003. Sottolinear ta' din il-Qorti.

l-istivar tal-merkanzija gol-*container* kienet l-obbligu esklussiv tal-fornituri tas-socjetà attrici. Jikkontendi wkoll li din kienet il-posizzjoni adottata mis-socjetà Ignazio Messina & C. meta giet infurmata bil-hsara li garrbet il-merkanzija tas-socjetà attrici.

Minn ezami tal-provi prodotti però dak affermat minn Paul Agius jirrizulta ghal kollox kontradett. Jibda biex jigi osservat li skond l-istima datata 5 ta' Frar 2007<sup>33</sup> is-*Shipment Terms* moghtija mis-socjetà konvenuta stess kienu fis-sens *Exwks Firenze up to FO Malta* li, kif gustament osservat minn Paul Ellul, ifisser li l-fornitur tal-materjal ma jkollu x'jaqsam xejn ma' l-istivar ta' l-istess gol-*container* li allura jfisser li tali stivar isir mit-trasportatur inkarigat mill-kompratur (is-socjetà attrici), ossia jsir mid-ditta Ignazio Messina & C. inkarigata ghal tali skop mis-socjetà S.Mifsud & Sons Limited. Tant l-istivar tal-merkanzija fil-*container* kien obbligu tas-socjetà S. Mifsud & Sons Limited, u eventwalment tad-ditta Ignazio Messina & C., li s-socjetà attrici permezz ta' e-mail datata 15 ta' Frar 2007<sup>34</sup> espressament infurmat lis-socjetà konvenuta li *it is very important that the first pick up is from Colorobia since goods collected here will be clay and the shades from F.P.N. can then be stacked on top of the clay.*

Apparte minn dan, kif osservat mill-Prim' Awla tal-Qorti Civili fis-sentenza fl-ismijiet **Dr. Simon Micallef Stafrace noe v. John Ripard et noe, Citaz. Nru. 30/94** deciza fit-28 ta' Mejju 2003 *il-Qorti ma tistax taccetta l-osservazzjoni illi t-trasportatur ... jew huwa eskluż mill-operazzjoni ta' l-istivar tal-merce gewwa l-container jew priv minn kull taghrif ta' x'effettivament gie stivat meta dan jinteressah mill-aspett tas-sea worthiness tal-vapur. Anzi strettament taht il-Hague Rules il-carrier ghandu r-responsabilità primarja ta' l-istivar, anke fejn din tkun effettwata mix-shipper, in kwantu l-istivagg tal-merkanzija hu intimament konness mas-safety tal-valur. Ara in partikolari Artikolu 3 u 4 tal-Hague Rules.* Fid-dawl ta' dan jigi ulterjorment osservat illi ghalkemm impjegati tal-fornituri setghu gheni lin-nies tad-ditta Ignazio Messina & C. biex stivaw il-merkanzija in kwistjoni gol-*container*, b'daqshekk ma jfissirx li l-istess ditta Ignazio Messina & C. u per konsegwenza s-socjetà S. Mifsud & Sons Limited gew mehlusa minn kull responsabilità ghall-mod kif sar tali stivar.

Apparte minn hekk fil-fehma tal-Qorti l-Klawsola 10 citata minn Paul Agius ma issibx applikazzjoni fil-kaz in ezami. Din il-Klawsola kjarament tittratta dwar *Dangerous goods* u tipprovdi li *(a) No goods which are or may become dangerous, inflammable or damaging (including radio-active materials), or which are or may become liable to damage any property whatsoever shall be tendered to the Carrier for carriage without his express consent in writing and without the container or other covering in which the goods are to be transported and the goods being distinctly marked on the outside so as to*

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<sup>33</sup> Dok. "PA1" a fol. 127 tal-process.

<sup>34</sup> Fol. 131 tal-process.

*indicate the nature and character of any such articles and so as to comply with the IMO Code and any other applicable laws, regulations or requirements. If any such articles are delivered to the Carrier without such written consent and marking or in the opinion of the Carrier the articles are or are liable to become of a dangerous, inflammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Merchant and without prejudice to the Carrier's right to freight. (b) The Merchant undertakes that the goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and in compliance with all laws and regulations which may be applicable during carriage. (c) Whether or not the Merchant was aware of the nature of the goods the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of any breach of the provisions of this clause. (d) Nothing contained in this clause shall deprive the Carrier of any of his rights otherwise provided for<sup>35</sup>. Huwa evidenti li l-varji stipulazzjonijiet tal-Klawsola 10 ghandhom jinqraw flimkien in kwantu lkoll jirreferu ghal *dangerous material* u l-ebda wahda minn dawn l-istipulazzjonijiet ma tista' tigi estrapolata ghalha wahdeha biex tapplika ghal merkanzija li – bhal fil-kaz in ezami – kjarament ma tikkwalifikax bhala *dangerous material*.*

Meta Paul Agius gie mistoqsi jekk jaqbilx li l-hsara li grat lill-merkanzija tas-socjeta attrici gratx minhabba caqliq eccessiv fil-vapur huwa rrisponda li *jiena ma nistax nirrispondi ghal dak li jigri fuq il-vapur*. Tali affermazzjoni però hija ghal kollox zbaljata ghar-raguni li s-socjeta S. Mifsud & Sons Limited kienet responsabbli ghall-merkanzija tas-socjeta attrici mill-mument li d-ditta Ignazio Messina & C. hadet pussess taghha minghand il-fornituri gewwa l-Italja sal-mument li l-istess twasslet hawn Malta, inkluz ghalhekk it-tragitt bil-bahar fuq il-vapur. Is-socjeta S. Mifsud & Sons Limited ma tistax tippretendi li tehse mir-responsabilitajiet taghha b'afferazzjoni bhal dik maghmula mid-Deputy General Manager taghha stante li tali affermazzjoni addirittura tmur ghal kollox kontra l-kuncetti fuq liema huwa msejjes l-istitut tal-garr ta' merkanzija bil-bahar li appuntu jkopri u jirrelata ghaz-zmien minn dak il-hin li l-merkanzija titghabba fuq il-bastiment sa' x'hin tinhatt minnu – definizzjoni ta' "garr ta' merkanzija" fl-Iskeda ta' l-Att dwar Garr ta' Merkanzija bil-Bahar, Kap.140 tal-Ligijiet ta' Malta. Se mai kien jispetta lill-istess socjeta S. Mifsud & Sons Limited tipprova b'mod sodisfacenti li l-hsara fil-merkanzija tas-socjeta attrici ma sehhitx f'hin meta l-istess merkanzija kienet taht il-kustodja taghha jew tad-ditta Ignazio Messina & C., prova però li baqghet ma saritx.

F'tali rigward issir referenza ghal dak osservat mill-Qorti ta' l-Appell (Sede Inferjuri) fis-sentenza fl-ismijiet **Atlas Insurance Agency Limited noe v. Gollcher Company Limited noe, Appell Civili Nru. 514/02** deciza fit-23 ta' Gunju 2004: *fil-kamp marittimu u l-ligijiet li jirregolaw it-trasport ta'*

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<sup>35</sup> Fol. 123 u 124 tal-process.

merce minn destinazzjoni għall-ohra jikkompreni, di solitu, tlett fazijiet distinti. Jigifieri fazi anterjuri għat-tagħbija tal-merce abbord il-vapur, il-fazi relattiva għat-trasport bil-bahar u l-fazi posterjuri għall-iskarikazzjoni tal-merce minn fuq il-vapur. Dawn it-tlett fazijiet huma sew regolati bil-Konvenzjoni ta' Brussels, 1924, ahjar magħrufa bħala l-Hague Rules, kodifikati fil-Ligi tagħna fil-Kap.140 – Att dwar il-Garr ta' Merkanzija bil-Bahar. Mal-precitati fazijiet huma abbinati disposizzjonijiet partikolari tal-Konvenzjoni imsemmija. Hekk per eżempju ma' l-ewwel u t-tielet fazi huwa espressament konceptit id-dispost ta' l-Artikolu 7 li jikkontempla li l-partijiet kontraenti jistghu jidhlu fi ftehim jew jimponu kondizzjonijiet, rizervi, ezenzjonijiet “as to the responsibility and liability of the carrier of the ship for the loss or damage to, in connection with, the custody and care and handling of goods prior to loading on, and subsequent to, the discharge from the ship on which the goods are carried by sea”. Kwantu għal fazi tat-trasport proprju bil-bahar jsib applikabilità dak dettat fl-Artikolu 3 ta' l-istess Hague Rules, inter alia, li “the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried” (subsection 2). Affermati dawn il-preliminari, il-prova tat-tagħbija fuq il-vapur hi kostitwita mill-polza tal-kariku. Dan kif ahjar precizat fl-Artikolu 325 tal-Kodici tal-Kummerc (Kap.13) li a propozitu jiddisponi li “l-polza ta' karigu tagħmel prova bejn il-partijiet kollha interessati fit-tagħbija, kif ukoll bejniethom u l-assigurat, bla hsara ta' prova kuntrarja”. ... Bħala norma dawn il-poloż jikkontjenu t-termini u l-kondizzjonijiet li jghoddu għall-garr partikolari. ... Huwa bil-wisq naturali li mill-kontenut u l-portata ta' dawn il-klawsoli jiddependi l-oneru probatorju li jispetta lill-partijiet. Dan anke għaliex dawn l-istess klawsoli jikkrejaw minn natura tagħhom certi presunzjonijiet kostitweti regoli ta' prova. Li jfisser allura illi f'materja ta' marine cargo claims id-distribuzzjoni tal-oneru tal-provi hi fir-realtà aktar komplessa minn dik tal-materji ordinarji ohrajn, civili jew kummercjali. B'illustrazzjoni, kif regolarment insibu fil-maggor parti tal-poloż, meta insibu l-klawsola stampata “shipped in good order and condition” – klawsola din li tirrizulta mill-bills of lading mertu ta' dawn il-proceduri fejn hemm indikat *received by carrier in apparent good order and condition (unless otherwise noted herein...)*<sup>36</sup> – “si deve presumere che la merce si stata ricevuta a bordo in buone condizioni perchè il capitano è responsabile dei danni avvenuti alla merce caricata (Kollez Vol. XXIV pI p995) u allura hu mistenni li l-merkanzija tigi skarikata fl-istess kondizzjoni tajba (“Wilfred Mamo et noe v. Paul Mifsud et noe” Appell Kummercjali, 5 ta' Gunju 1987). Naturalment din il-presunzjoni hi wahda “juris tantum” u tammetti l-prova kuntrarja li f'kaz bħal dan hi inkombenti fuq il-vapur.

Fid-dawl ta' dan kollu għalhekk jigi ribadit li filwaqt li s-socjetà attrici rnexxielha tistabilixxi b'mod sodisfacenti li l-merkanzija minnha importata mill-Italja tramite s-servizz ta' trasport offrut lilha mis-socjetà S. Mifsud & Sons Limited waslet hawn Malta bi hsara konsiderevoli, is-socjetà S. Mifsud &

<sup>36</sup> Fine print fuq il-faccata tal-*bill of lading* senjatament fil-parti that in-numru tal-*bill of lading*.

Sons Limited ma irnexxilhiex tipprova b'mod daqstant iehor sodisfacenti li hi u/jew id-ditta estera Ignazio Messina & C. ma humiex responsabbli ghal tali hsara fil-merkanzija tas-socjetà attrici.

F'dan l-istadju l-Qorti taghmel referenza ghal eccezzjoni ohra sollevata kemm mis-socjetà S. Mifsud & Sons Limited kif ukoll minn Bernard Sultana bhala Kuratur Deputat ghall-interessi tad-ditta estera Ignazio Messina & C. u cioè l-eccezzjoni li l-garr tal-merkanzija in kwistjoni kien qed isehh taht il-kondizzjonijiet tas-CMR Convention u ghalhekk ghandhom japplikaw ir-regoli ta' l-istess konvenzjoni. Jibda biex jigi osservat li huwa principju ormai assodat fis-sistema guridika nostrali li *biex il-konvenzjoni* – ossia Convention on the Contract of International Goods by Road (Geneva 19<sup>th</sup> May 1956) komunement maghrufa bhala CMR Rules – *tapplika l-partijiet iridu jkun espressament ftehmux hekk. Dan il-principju hu segwit f'diversi sistemi guridici...*<sup>37</sup>. Minn ezami tal-provi prodotti u senjatament tad-dokumenti esebiti mill-partijiet kontendenti minn imkien ma jirrizulta li s-socjetà attrici u s-socjetà S. Mifsud & Sons Limited espressament ftehmux li fil-kuntest tal-ftehim bejniethom ghandhom japplikaw CMR Rules. L-uniku accenn fir-rigward huwa fl-istima tal-5 ta' Frar 2007 fejn jinghad illi *unless otherwise indicated all shipments are carried on a 'FIOS Basis'. The standard conditions of carriage of sea/air/land shall apply in all instances as per carrier's Bill of Lading, CMR, AWB or WayBill, whichever is applicable*<sup>38</sup>. Huwa bil-wisq evidenti li b'daqshekk is-socjetà attrici u s-socjetà S. Mifsud & Sons Limited ma ftehmux li l-garr tal-merkanzija in kwistjoni kien se jigi regolat interament mill-CMR Rules imma li *carriage by land* – jekk ikun hemm u jekk jirrizulta li l-hsara saret f'tali parti tat-tragitt, rizultanza din li bl-ebda mod ma tohrog mill-provi prodotti – ikun regolat bil-CMR Rules. Huwa evidenti ghalhekk li tali eccezzjoni hija assolutament infondata u bhala tali ma jisthoqqx li tigi milqugha.

Stabbilit li s-socjetà attrici rnexxielha tipprova b'mod sodisfacenti li l-merkanzija minnha importata mill-Italja tramite s-servizz ta' trasport ipprovdot mis-socjetà S. Mifsud & Sons Limited kellha hsara estensiva u li min-naha l-ohra l-imsemmija socjetà S. Mifsud & Sons Limited ma rnexxilhiex tezimi ruhha mir-responsabilità ghal tali hsara, jehtieg issa tigi trattata u determinata l-eccezzjoni preliminari sollevata mill-Kuratur Deputat Bernard Sultana li qed jidher ghall-interessi tad-ditta estera Ignazio Messina & C. u cioè li l-imsemmija ditta ma ghandha l-ebda relazzjoni guridika mas-socjetà attrici u per konsegwenza ghandha tigi liberata mill-osservanza tal-gudizzju.

Ghall-finijiet ta' determinazzjoni ta' tali eccezzjoni jigi osservat illi l-ftehim ghall-garr tal-merkanzija mill-Italja, senjatament minn Genova, ghall-Malta sar esklussivament bejn is-socjetà attrici u s-socjetà S. Mifsud & Sons Limited. Is-socjetà attrici inkarigat lis-socjetà S. Mifsud & Sons Limited, u lilha biss,

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<sup>37</sup> George Bonnici et noe v. Joseph Vella et noe, Citaz. Nru. 669/95 deciza mill-Prim' Awla tal-Qorti Civili fit-12 ta' Dicembru 2001 u kkonfermata mill-Qorti ta' l-Appell fil-25 ta' Frar 2005.

<sup>38</sup> Dok. "PA1" a fol. 127 tal-process. Sottolinear ta' din il-Qorti.

ghall-garr ta' tali merkanzija. Kienet l-imsemmija soċjetà S. Mifsud & Sons Limited minghajr ebda intervent, istruzzjoni jew intromissjoni da parte tas-soċjetà attrici li a sua volta nkarigat lid-ditta Ignazio Messina & C. biex tiehu hsieb tali garr<sup>39</sup>.

Ghal tali rizultanzi japplika dak osservat mill-Prim' Awla tal-Qorti Civili fis-sentenza fl-ismijiet **Benjamin Bonnici noe v. Francis Vella et noe, Citaz. Nru. 1083/92** deciza fit-30 ta' Ottubru 2000: *illi mill-provi jirrizulta kjarment li r-rabta kuntrattwali kienet bejn is-soċjetà attrici u s-soċjetà konvenuta. Kull sub-appalt iehor raggunt bejn il-konvenuti nomine u t-terz – minghajr ebda partecipazzjoni jew intromissjoni da parte tas-soċjetà attrici m'ghandux ikun ta' impediment ghat-talbiet attrici fil-konfront tas-soċjetà konvenuta nascenti mill-ftehim tal-garr milhuq bejniethom. Is-soċjetà attrici ma kellha qatt xi rapport guridiku mat-terz. Is-soċjetà konvenuta naqset milli twassal il-merkanzija ta' l-attur ... kif kienet tenuta li taghmel. ... Il-konvenuti nomine ma rnexxilhomx jippruwaw li n-nuqqasijiet graw minhabba ragunijiet barra mill-kontroll taghhom. Fl-ebda waqt ma rrizulta li l-attur ... ta il-kunsens tieghu jew awtorizza lill-konvenuti nomine biex dawn jinkarigaw it-trasport lil terz. Kull ftehim ghalih kien 'res inter alios acta' u n-norma applikabbli f'kaz bhal dan hija dik l'Ipacta tertiis nec present nec nocent'.*

Din is-sentenza appena citata giet citata mill-Prim' Awla tal-Qorti Civili fis-sentenza fl-ismijiet **Middlesea Insurance p.l.c. v. Advance Shipping Limited noe et, Citaz. Nru. 679/00** deciza fit-30 ta' Mejju 2002, fejn il-Qorti ziedet tosserva illi *huwa rilevanti li f'dik l-istess kawza hawn citata saħansitra giet michuda l-kjamata fil-kawza tat-terza persuna li s-soċjetà konvenuta kienet inkarigat sabiex iggorr il-merkanzija minn barra minn Malta ghal Malta, stante li sostniet li l-unika relazzjoni li kienet tezisti kienet dik bejn l-attur u s-soċjetà konvenuta u ghalhekk ladarba l-gudizzju huwa integru u fejn ir-responsabilità tal-konvenut fil-konfront ta' l-attur hija indubitata, indipendentement minn x'relazzjonijiet jista' jkollu ma' haddiehor, mela allura l-kjamata fil-kawza ta-terz ma ghandhiex tigi applikata (Mamo v. Abela noe – A.C. 4 ta' Frar 2000). Illi fis-sentenza Albert Abela v. S. Mifsud & Sons (P.A. (RCP) 23 ta' Ottubru 2001) dawn il-principji kollha gew ikkonfermati u din il-Qorti thoss li japplikaw ghall-kaz in kwistjoni stante li l-unika relazzjoni li tezisti dwar dan il-kuntratt ta' garr ta' merkanzija mill-Italja ghall-Malta kienet proprju dak bejn l-assigurat ta' l-attur u s-soċjetà konvenuta Advance Shipping Limited, u kull relazzjoni li setghet inholqot bejn is-soċjetà konvenuta u s-soċjetà estera indikata fl-affidavit tas-soċjetà konvenuta fuq citata, u cioè id-ditta Shipping Services Italia srl hija estraneja ghal posizzjoni ta' l-assigurat ta' l-attur f'din il-kawza.*

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<sup>39</sup> Xhieda moghtija minn Paul Agius waqt is-seduta tat-22 ta' Novembru 2010, fol. 138 sa' 141 tal-process u d-dokumenti minnu esebiti waqt l-imsemmija seduta a fol. 127 sa' 137 tal-process.

Mill-principji appena citati jirrizulta ghalhekk li d-ditta estera Ignazio Messina & C. b'mod dirett ma kellha u ma ghandha l-ebda relazzjoni guridika mas-socjetà attrici in kwantu l-unika relazzjoni li s-socjetà attrici kellha fir-rigward ta' dan il-ftehim ta' garr ta' merkanzija kien mas-socjetà S. Mifsud & Sons Limited li obligat ruhha fil-konfront tas-socjetà attrici li twassal il-merkanzija taghha mill-Italja ghal Malta ghad illi l-garr effettiv tal-merkanzija sar mid-ditta estera Ignazio Messina & C.

Fid-dawl ta' dan ghalhekk l-eccezzjoni preliminari sollevata mill-Kuratur Deputat Bernard Sultana li qed jirrapprezenta l-interessi tad-ditta estera Ignazio Messina & C. hija gustifikata u b'hekk jisthoqq li tigi milqugha.

In kwantu rigwarda l-*quantum* tad-danni subiti mis-socjetà attrici l-Qorti hi tal-fehma li ghalkemm rapprezentanti ta' l-istess socjetà attrici ddikjaraw li b'konsegwenza ta' dan l-episodju tilfu mhux biss klijenta tajba taghhom izda addirittura tilfu negozju ma' fornitur taghhom, id-danni minnhom effettivament subiti u debitament ippruvati huma dawk li jirrizlutaw mis-Survey Report ta' Paul Ellul<sup>40</sup> u cioè is-somma komplessiva ta' Lm2,618.26, illum ekwivalenti ghal **€6,098.90**, konsistenti tali somma fil-valur ta' 831 *lampshade* li nstabu estensivament danneggjati, ammontanti dan ghal €5,096.24 (Lm2,187.82), ammont proporzjonali tal-*freight and handling charges* (VAT eskluza) imhallsa ghat-831 *lampshade* li instabu estensivament danneggjati, ammontanti dan ghal €471.30 (Lm202.33), ammont proporzjonali tal-*hauliers' expenses* (VAT eskluza) ammontanti ghal €112.06 (Lm48.11) u *Survey Fees* (VAT eskluza) ammontanti ghal €419.28 (Lm180.00). Ghalhekk is-socjetà S. Mifsud & Sons Limited ghandha thallas lis-socjetà attrici s-somma ta' €6,098.90 in linea ta' danni ghall-hsara li garrbet parti sostanzjali mill-merkanzija minnha importata mill-Italja tramite s-servizz provdut mill-imsemmija socjetà S. Mifsud & Sons Limited.

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi l-kawza billi filwaqt li tilqa' l-eccezzjoni preliminari tal-Kuratur Deputat Bernard Sultana li qed jirrapprezenta l-interessi tad-ditta estera Ignazio Messina & C. u konsegwentement tilliberah mill-osservanza tal-gudizzju b'dana li mhux se tiehu konjizzjoni ta' l-eccezzjonijiet l-ohra sollevati mill-imsemmi Kuratur Deputat, tichad l-eccezzjonijiet kollha sollevati mis-socjetà konvenuta S. Mifsud & Sons Limited u tikkundanna lill-imsemmija socjetà konvenuta S.Mifsud & Sons Limited thallas lis-socjetà attrici is-somma ta' €6,098.90, bl-imghax legali dekoribbli mis-26 ta' Marzu 2008, id-data tan-notifika tar-Rikors promotur lis-socjetà konvenuta S. Mifsud & Sons Limited, sad-data ta' l-effettiv pagament.

L-ispejjez ta' dawn il-proceduri – hlief ghal dawk relattivi ghall-Kuratur Deputat Bernard Sultana li qed jirrapprezenta l-interessi tas-socjetà estera Ignazio Messina & C. – u l-ispejjez relattivi ghall-ittra ufficjali datata 11 ta'

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<sup>40</sup> Dok. "JH1" a fol. 58 sa' 69 tal-process.



Dicembru 2007, ghandhom jigu sopportati mis-socjetà S. Mifsud & Sons Limited filwaqt li l-ispejjez relattivi għall-imsemmi Kuratur Bernard Sultana li qed jirrappreżenta l-interessi tad-ditta estera Ignazio Messina & C. ghandhom jigu sopportati mis-socjetà attrici.

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