

Fit-Tribunal Tal-Konsumatur

Carmelo Caruana u Xiaoting Li

vs

Hamilton Travel Co. Ltd

CCT 180/19/MS

23 ta' Settembru 2020

It-Tribunal

Ra l-avviz tar-rikorrenti pprezentat fit-23 ta' Dicembru 2019 fejn talbu s-somma ta' elf Euro, kumpens ghal flus li kellha thallas ir-rikorrenti Xiaoting Li minhabba misinformazzjoni u/ jew nuqqas ta' informazzjoni u / jew agir negligenti min-naha tas-socjeta' intimata meta naqset illi tavza r-rikorrenti Li illi kellha bzonn Visa sabiex tkun tista' tibqa' fuq il-cruise.

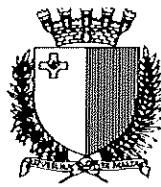
Ra r-risposta tas-socjeta' intimata fejn cahdet it-talba tar-rikorrenti u qalet illi s-socjeta' intimata kienet avzat lir-rikorrenti aktar minn darba li kellhom jiccekjaw il-proceduri kollha mal-Ambaxxata anke wara li r-rikorrenti informaw lis-socjeta' intimata illi ma kienux ser ilahhqu japplikaw ghal visa.

Sema' x-xhieda bil-gurament.

Ra l-atti u d-dokumenti kollha tal-process.

Ikkunsidra

Illi rrizulta mill-provi u mhux kontestat illi r-rikorrenti pprenotaw pakkett ta' l-ivjaggar minghand is-socjeta' intimata li kien jinkludi titjara minn Malta ghal Hamburg u lura, u cruise ta' sebat iljieli fuq il-MS Preziosa mill-1 ta' Settembru sat-8 ta' Settembru 2019. Ir-rikorrenti pprenotaw il-pakkett f'Mejju 2019 u fl-20 ta' Mejju sar l-ewwel depozitu ta' €500.00. Fit-3 ta' Gunju 2019 sar pagament iehor ta' €2288.00 (ara dok 3). Il-cruise kellu jitlaq minn Hamburg fl-1 ta' Settembru u jasal Le Havre, Franza fit-3 ta' Settembru. Fl-4 ta' Settembru kien hemm waqfa f'Southampton fir-Renju Unit umbaghad fil-5 ta'



Settembru il-vapur kellu jieqaf f'Zeebrugge, il-Belgju. Peress illi Xiatong Li hija Ciniza, hija kellha bzonn Visa ghal Renju Unit.

Ir-rikorrenti Li xehdet fil-proceduri u qalet li kienet bdiet il-process biex tapplika ghal Visa f'Gunju 2019, pero' waqqfet il-process peress illi kienet bi hsiebha tivjagga f'Lulju 2019 u kellha bzonn il-passaport taghha f'idejha u ghalhekk ma setghetx tkompli bil-process ghal Visa

ghaliex dan kien jirrikjedi li tibghat il-passaport lejn l-Inglaterra. Ir-rikorrenti tghid illi meta marret biex thallas il-bilanc mar-ragel taghha, infurmaw lis-socjeta' intimata illi ma kienux ser jibukkjaw l-excursion ghall-Londra peress illi ma kellhiex Visa. Qalet ukoll li impjegata qaltilha li setghet tibqa' fuq il-vapur basta ma tinzilx. Gara pero' li malli waslet fuq il-vapur fl-1 ta' Settembru qalulha illi peress illi ma kellhiex Visa, ma setghetx tibqa' fuq il-vapur u tawha zewg ghazliet: jew li titlaq lura lejn Malta jew inkella li tinsel mill-vapur fit-3 ta' Settembru u terga' titla fil-5 ta' Settembru. Fil-fatt hekk ghamlet.

Xehed ukoll ir-rikorrent Carmelo Caruana, ir-ragel ta' Li, li filwaqt li ghamel tieghu x-xiehda ta' martu, zied ighid li l-mara tilfet zewgt iljieli fuq il-cruise u meta regghet qabbdet il-vapur fil-5 ta' Settembru, tellawha fin-nofs in nhar flok fid-9am. Esebixxa wkoll numru ta' ircevuti ta' dak li kellha thallas f'dawk il-jumejn li kellha titlaq - u cjoe' spejjes relatati ma' lukandi, ikel, trasport ecc. Qal illi d-decizjoni taghhom biex jibbukjaw il-cruise kien bbazat fuq l-assigurazzjoni li nghataw mill-impjegati li setghu joqghodu fuq il-vapur, anke minghajr il-visa.

In kontro-ezami, Caruana kkomferma illi huma marru xi tlett darbiet jew erbgha ghand is-socjeta' intimata. Meta mar biex ihallas il-bilanc gie avzat illi seta' kien hemm il-htiega tal-Visa u meta kellem lil certu David qal li dan qatt ma qallu diskors fis-sens li setghu jivvjagaw minghajr il-Visa. Pero' qal illi kien hemm zewg impjegati ohra illi qalulhom li minghajr il-Cisa setghu joqghodu fuq il-vapur basta ma jinzlux.

Illi min-naha l-ohra, is-socjeta' intimata tghid illi kienet infurmat ir-rikorrenti illi ghandhom jiccekjaw l-affarijiet mal-ambaxxata u rreferu wkoll ghall-termini u kondizzjonijiet taghha, senjatament numru 6.

David Camilleri, ghas-socjeta' intimata ighid illi huwa kien kellem lir-rikorrenti u fost l-informazzjoni li tahom, qallhom biex jaraw jekk ghandhomx bzonn Visa ghal pajjizi li kienu ser izuru. Zied ighid illi r-rikorrenti qalulu illi gielil siefru u m'ghandhomx bzonn Visa. Dan gie michud mir-rikorrent Carmelo Caruana li fix-xhieda tieghu ighid illi Camilleri qatt ma qallu diskors f'dan is-sens, pero' kkonferma li xi hadd kien qallu biex jiehu hsieb jiccekja fuq il-Visa.



Appati din id-divergenza jew diskrepanza fil-provi, jidher illi hemm qbil bejn il-partijiet fuq hafna minn dak li gara:

1. ir-rikorrenti gew avzati mis-socjeta intimata biex jiehu hsieb jaghmlu l-Visa u jiccekjaw l-affarijiet mal-Ambaxxata.
- 2) ir-rikorrenti bdew il-process tal-Visa izda waqqfuh ghaliex kienu ser isiefru f'Lulju u kellhom bzonn il-passaport. intimata
- 3) ir-rikorrenti infurmaw l-isocjeta' intimata illi ma lahqux ghamlu l-Visa u ghalhekk ikancellaw l-excursion ghall-Londra u dan gie accetat mis-socjeta' intimata.
- 4) ir-rikorrenti gew infurmati minn impjegati tas-socjeta' intimata illi jistghu jibqghu fuq il-vapur basta ma jinzlux Southampton.

F1-avviz, ir-rikorrenti ighidu li kien fil-fatt din l-assigurazzjoni (il-fatt li setghu jibqghu fuq il-vapur minghajr il-Visa) illi wassalhom biex jibbukjaw u li kieku qalulhom mod iehor (li ma jistghux joqghodu fuq il-vapur) kienu jaghzlu gita ohra.

Ikkunsidra

Illi f'ittra mibghuta min Dinah Debono fit-8 ta' Ottubru 2019, u allura ferm qabel ma nfethet il-kawza, Debono, rapprezentanta tas-socjeta' intimata tghid hekk:

Client booked the cruise on 20/05/2019. Initially, Mrs Xiaoting was going to apply for the visa and as such they have also added a UK excursion in their booking. Further to advising the client to always double check the VISA procedures with the Embassy, we have this information on our T&C published on the Brochure where there is clearly stated "it is your responsibility to ensure that you are in possession of a valid passport or other valid travel document, and any appropriate visas.

By the end of July Mr Carmel informed the offices that he would like to remove the UK excursion since Mrs Xiaoting will not apply for the visa. We have made an exception to remove the excursion price after the day of full payment and advised the client to double check Visa procedures directly with the embassy. We have also informed him that as per other clients past experiences they board the ship without the respective visa documentation and were permitted to stay on the ship but obviously couldn't disembark the port.

It was not the first time that Mr Cassar and Ms Xiaoting were travelling neither with us nor even on a different cruise company so they knew from past experiences that they still stayed



on board of the ship when Mrs Xiaoting and/ or Mr Carmelo did not apply for the required visa.

Dan ihalli l-ebda dubju f'mohh it-Tribunal illi ir-rikorrenti nghataw dan il-parir/assikurazzjoni (li setghu jibqghu fuq il-vapur minghajr il-Visa) mis-socjeta' intimata. U dan gie kkoroborat u konfermat anke minn Kylie Borg, impjegata mas-socjeta' intimata illi xehdet fil-kawza u qalet hekk:

“Jien is-sinjur kellimtu fuq it-telephone. Kien diga thallas il-payment u talabni biex inehhi l-excursion ta' Londra ghax qalli li ma kellux cans jaghmel il-visa. Ghamilna exception ghalih u nehhejna l-excursion ta' London biex ma jinzilx hu. Jiena ghidtlu li responsabbilta' tieghu u li jekk ha jnehhi l-excursion jista' jibqa' fuq il-vapur minghajr il-visa.”

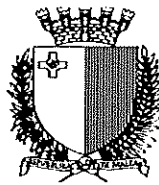
Ta' min jinnota wkoll illi l-ircevuta datat 3 ta' Gunju 2019 fl-ammont ta' €2288.00 li inhareg f'isem Carmel Caruana, huwa ffirmat minn K. Borg. Dan ikompli jikkorrobora x-xhieda tar-rikorrenti li qalu li kienu kellmu impjegata tas-socjeta' intimata dakinhar li marru jhallsu l-bilanc, li kienet qaltihom li setghu jibqghu fuq il-vapur anke minghajr il-Visa.

Illi ghalhekk, ghalkemm it-Tribunal m'ghandux dubju illi xi hadd mis-socjeta' intimata kien qalilhom biex jiccekjaw mal-Ambaxxata fuq il-htiega tal-Visa, huwa daqstant konvint illi impjegata mis-socjeta' intimata kellmet lir-rikorrenti u qaltihom illi minghajr il-Visa setghu joqghodu fuq il-vapur minghajr problemi, basta ma jinzlux. Mid-dehra din kienet xi haga li kienet issir, ghaliex l-ittra ta' Dinah Debono tirreferi ukoll ghal din il-prassi li kienet bbazata fuq esperjenzi tal-klijenti.

Ikkunsidra

Illi s-socjeta' intimata tinsisti illi r-resposabbilita' ahhari kien fuq ir-rikorrenti u jirreferu ghal Termini u l-Kondizzjonijiet innizzlin fil-brochure taghhom, senjatament numru 6, li ighid testwalment hekk:

It is your responsibility to ensure that you are in possession of a valid passport or other valid travel documents and any appropriate visas. Be sure to check passport, travel document and visa requirements with your Travel Agent, well in advance, particularly if you are a non-Maltese passport holder. You are responsible for any charges, fines etc that



may be levied by authorities in Malta or overseas for non-compliance of regulations in this area and any such amounts will be charged to you. (sottolinear tat-Tribunal).

Ta min jinnota pero' illi din il-kondizzjoni taghmel referenza ghall-agent tal-ivvjagar (Travel Agent), li f'dan il-kaz, huwa l-istess s-socjeta' intimata. Fil-fatt fejn jidhol 'duty of care', hemm differenza bejn air-carrier/sea-carrier u agent tal-ivvjagar. Dan gie konfermat f'decizjoni tal-15 ta' Settembru 2015 mill-Qorti tal-Apell (Court of Cassation).

Il-fatti tal-kaz :

Tliet passigieri - koppja u tifel taghhom - ibbukjaw biljetti fuq titjira direttament mill-air-carrier. Peress illi tnejn minnhom kellhom il-passaport skadut u ma kellhomx visa ghal Cambodia, it-trasportatur (air-carrier) ma hallewhomx jitolghu fuq l-ajurplan. Il-passigieri fethu kawza kontra t-trasportatur ghaliex skond huma ma kienux infurmawhom fuq il-bzonn ta' dawn id-dokumenti. L-ewwel Qorti ddecidiet kontra t-trasportatur (air-carrier). Saret appell minn din id-decizjoni u l-Qorti tal-Appell biddlet id-decizjoni tal-Ewwel Qorti u ghamlet distinzjoni bejn air-carrier u travel agent fejn qalet hekk:

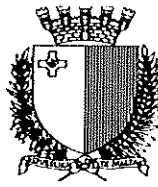
"an air-carrier has no duty to inform passengers of necessary travel and immigration documents, as it is not a travel agent..."

... an air carrier has no duty to inform passengers of necessary travel and immigration documents, as it is not a travel agent. Thus, each passenger who buys a ticket for an international flight is responsible for obtaining all relevant and valid travel documents

Illi s-sentenza Charles Attard et vs ATV Travel Limited, esebita mis-Socjeta' Intimata tteni l-istess hsieb. F'dik is-sentenza, Carnival Cruises (bhal MSC) kien il-carrier, mhux l-agent tal-ivvjagar, u l-Qorti qalet hekk:

Izda la darba r-rikorrenti ghazlu li jixtru l-biljett taghhom minghand l-agent tal-ivvjagar Malti u mhux direttament minghand il-Carnival Cruises, l-agent tal-ivvjagar Malti u cioe' s-socjeta' intimata kellha d-dmir illi tinforma lir-rikorrenti li kellhom bzonn visa biex jaghmlu l-cruise. Mill-korrispondenza esebita u wkoll mill-brochures ma jidher imkien illi r-rikorrenti gew informati mil-miktub illi huma ghandhom bzonn visa. Ir-rapprezentanta Veronica Garrugia illi kienet tikkomunika mar-rikorrenti, ma tiftakarx jekk infurmatx jew le lir-rikorrenti bil-bzonn ta' visa ghalkemm issostni li bhala procedura normali (pero' ma ftakritx f'dan il-kaz) hi tghid lill-klijenti biex jiccejkaw mal-Ambaxxata dwar il-Visa.

Rigward l-ewwel brochure din il-Qorti hija tal-fehma illi l-informazzjoni ghalkemm kienet tinqara u tinftiehem, ma kenitx izda preciza. Wiehed kien jistenna li agent tal-ivvjagar Malti jkun f'posizzjoni li jindika lill-klijent tieghu li ghandhom bzonn visa ghal dak il-vjagg



MALTA

partikolari. Ghalhekk il-Qorti tikkonkludi illi s-socjeta' rikorrenti (recte intimata) hija principarjament responsabbli ghad-danni sofferti mir-rikorrenti.

Izda l-Qorti hija tal-fehma li min-naha tar-rikorrenti kien hemm ukoll element ta' negligenza kontributorja"

It-Tribunal jikkondividi perfettament ma' dan il-hsieb. Huwa ben stabbilit illi agenti tal-ivjaggar huma nies professjonali illi ghandhom dmir professjonali (duty of care) lejn il-klijenti taghhom u kif qalet il-Qorti fil-kawza fuq citata, wiehed jistenna li dawn ikunu f'posizzjoni li jindikaw specifikament jekk klijent taghhom ghandu bzonn Visa ghal destinazzjoni partikolari. Dan imur oltre minn semplici parir vag biex klijent jiccekja mal-Ambaxxata jekk ghandux bzonn Visa jew le, kif donnu gara f'dan il-kaz. Informazzjoni bhal din ghandha tkun miktuba u tkun preciza (ara f'dan is-sens DOK CC5 fejn hemm immizzel informazzjoni dwar il-htiega li l-ismijiet tal-booking jaqblu mal-passaport u informazzjoni ohra.) Kif xehdet ir-rikorrenti stess, hija-nghatat parir illi tbiddel il-passaport ghaliex taghha kien ser jiskadi u fil-fatt hekk ghamlet. Dan huwa d-duty of care li professjonisti bhal dawn ghandhom isegwu. Bl-istess mod, informazzjoni cara u precisa dwar htiega ta' Visa o meno, huwa daqstant importanti, jekk mhux iktar, ghaliex minghajr il-Visa il-passigier ma jithalliex jivjagga u ghalhekk din ghandha tinghata hafna importanza u ma tistax tithalla f'riskju jew f'dubju.

Illi t-Tribunal m'ghandux dubju li s-socjeta' intimata tathom parir generali biex jiccekjaw jekk ghandhomx bzonn Visa jew le. U dan gie konfermat anke mir-rikorrent. Pero' fic-cirkostanzi tal-kaz, u tenut kont tal-informazzjoni moghtija lilhom minn Kylie Borg, (korroborata minn Dinah Debono) li qaltihom illi setghu joqghodu fuq il-vapur, anke minghajr Visa, it-Tribunal huwa sodisfatt illi kien hemm element ta' nuqqas ta' informazzjoni u/jew misinformazzjoni min-naha tas-socjeta' intimata, partikolarment meta wiehed iqis illi bhala agenti professjonali misshom kienu jafu illi minghajr visa valida, il-klijent jista' ma jithalliex jivjagga. Kif, gara' f'dan il-kaz.

It-Tribunal m'ghandux l-icken dubju li r-rikorrenti bbazaw id-decizjoni finali taghhom fuq din l-assigurazzjoni u ma kienux jivjaggaw li kieku s-socjeta' intimata qaltihom car u tond illi minghajr Visa ir-rikorrenti ma kenitx ha tithalla titla' fuq il-vapur.

Ikkunsidra

Illi t-Tribunal ma jistax ma jiccensurax ukoll lir-rikorrenti li bdew il-process tal-Visa, anke fuq il-parir tas-socjeta' intimata umbaghad waqqfuh hesrem u ghalhekk filwaqt illi huwa veru li huma fl-ahhar mill-ahhar qaghd u fuq dak li qaltihom Kylie Borg, kien hemm ukoll element ta' traskuragni kontributorja min-naha taghhom.



Ghal dak li jirrigwarda danni, it-Tribunal ha konjizzjoni tal-ircevuti esebiti mir-rikorrenti u ser jilqa' t-talba taghhom limitatament ghal dawn l-ispejjes li jammontaw ghal €318.52.

Illi ghalhekk, it-Tribunal, wara li qies ic-cirkostanzi kollha tal-kaz, jaqta' u jiddeciedi illi jilqa' parzjalment it-talba tar-rikorrenti u jikundanna lis-socjeta' intimata thallashom is-somma ta' € 318.52.

Bl-ispejjes ghandhom jibqghu bla taxxa.

A handwritten signature in purple ink, appearing to read 'Michela Spiteri'.

Av. Michela Spiteri
Arbitru