

MALTA

Fit-Tribunal tal-Konsumatur

Edwin Camilleri

vs

Eurobridge Shipping Services Ltd.

CCT/87/20/MS

5 ta' Mejju 2021

It-Tribunal

Ra l-avviz tar-rikorrent ipprezentat fil-15 ta' Lulju 2020 fejn talab lil dan it-Tribunal jikundanna l-isocjeta' intimata thallsu s-somma ta' €322.20, danni inkorsi minhabba nuqqas da parti tas-socjeta' intimata li tikkonsenja l-merkanzija kollha li kellha tittrasporta minn Malta lejn il-Germanja.

Ra r-risposta tas-socjeta' intimata li cahdet it-talba tar-rikorrent u qalet illi jekk kien hemm xi nuqqas ma kenitx responsabbli hi ghalih, peress illi r-rikorrent jew min ircieva il-konsenja kien iffirma li kollox kien wasal sew u hemmhekk is-socjeta' intimata ma baqghetx iktar responsabbli.

Ra l-atti kollha tal-process.

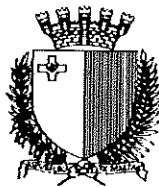
Sema' x-xhieda bil-gurament

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Illi jibda biex jinghad illi mhuwex kontestat illi bejn il-partijiet gie konluz kuntratt ta' garr ta' merkanzija.

F'dan ir-rigward ir-rikorrent xehed illi lejn l-ahhar ta' April 2020 huwa qabbad l-isocjeta' intimata biex jibghat zewg kaxxi lit-tifla tieghu li toqghod il-Germanja. Dawn il-kaxxi li kienu jikkonsistu f'pushchair (stroller) u hrieqi tad-drapp, kienu f'kundizzjoni perfetta, maghluqin sew u l-konsejna minn Malta saret fit-12 ta' Mejju 2020, fl-eqqel tal-pandemija.

Meta l-konsenja waslet ghand it-tifla tieghu, li dak iz-zmien kellha sitt xhur tqala, minhabba s-sitwazzjoni tal-pandemija (u anke minhabba s-sitwazzjoni personali taghha) hi ddeciediet li ma tiftahx il-kaxxi sakemm dawn jitnaddfu sew. Ghalhekk, hi ffirmat ghal kaxxi minghajr ma ccekjathom alavolja wiehed minn dawn il-kaxxi kien jidher



MALTA

'mishandled'. Meta eventwalment infethu l-kaxxi, indunat illi kien hemm hsara sostanzjali fil-gegn tal-kaxxa li ma kienx vizibbli minn barra. U sabet wkoll li hrieqi tad-drapp li jiswew €313.00 kienu neqsin. Ir-rikorrent ighid li t-tifla cemplitlu biex tara jekk kien nesa jpoggi l-hrieqi fil-kaxxa, pero' dan ma kienx il-kaz. Infurmaw il-kumpanija immedjatament b'dak li kien gara. Ir-rikorrent hallas €76.00 ghal konsenja minn Malta ghal Germanja. Ir-rikorrent ipprezenta ritratti tal-kaxxi u dokumenti ohra, inkluz ircevuta ta' sett tnappies ohra li kellu jixtri wara illi dawn sfaw neqsin.

Illi xehed ukoll David Abela rapprezentant tas-socjeta' intimata illi filwaqt li kkonferma dak kollu li qal ir-rikorrent, qal illi meta x-xoghol wasal ghand it-tifla tar-rikorrent, hi ffirmat li kollox kien wasal sew. Ghalhekk meta iktar tard ircevw l-ilment, minhabba li ma kien hemm l-ebda rimarka dwar hsara jew serq ta' oggetti fil-mument meta l-konsenja saret, min-naha tieghu u wara li kellem lill-agent tieghu barra, ma seta' jaghmel xejn. Skond hu, min jircievi l-pakkett ghandu d-dmir jiccekja l-konsenja. Qal ukoll illi bhala trasportaturi, r-responsabbilita' taghhom huwa limitat hafna u r-rikorrent kien fl-obbligu li jaghmel asikurazzjoni ghal oggetti. Ghamel referenza ghal termini u l-kundizzjoni indikati fl-email mibhgut lir-rikorrent u cjoe:

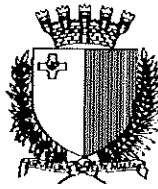
*The carriage of good is subject to MIFA Standard Terms and Conditions.
Any damage/missing goods are to be reported and signed by the customer's representative on the Delivery Order (on pick up at Hal Far Bonds) or on the Cargo Receipt (upon delivery) otherwise we will not be held responsible.*

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Illi l-kawza odjerna titratta ftehim li r-rikorrenti kellu mas-socjeta' Eurobridge Shipping Services Limited biex igorr zewg kaxxi minn Malta ghal Germanja. Ir-rikorrent qed jallega illi hrieqi illi kienu ppakkjati fil-kaxxi intilfu jew insterqu meta kienu f'idejn is-socjeta' intimata. Illi dwar il-fatti, ma jidhirx li hemm kontestazzjoni. Il-kwistjoni principali hija jekk is-socjeta' intimata tista' tezimi ruhha mir-responsabbilita' abbazi tal-fatt illi t-tifla tar-rikorrenti ffirmat ghall-konsenja qabel ma vverifikat l-oggetti u ghalhekk minghajr ma indikat fid-delivery note li l-oggetti kienu neqsin.

Illi skond il-kuntratt ta' trasport bejn il-partijiet fil-kawza odjerna, it-trasport kien wiehed regolat "subject to MIFA standard terms and conditions". Illi fost dawn il-kundizzjonijiet, hemm stipulat:

Subject to the exclusions of liability in these Conditions, to the extent that it is proved that the claim arises from the negligence of the Company, its servants, agents or sub-contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated.



MALTA

(a) Physical loss of or damage to Goods, but not exceeding the lesser of: the value of the Goods lost, or the reasonable cost of repair in the case of damage, or (e) Physical loss of or damage to property of any form other than that in Section 13 (a), (b), or (c), but not exceeding the lesser of: the value of the property lost, or the reasonable cost of repair in the case of damage ...

Illi l-kumpanija qed tinvoka' dak li huwa mnizzel fl-email mibghut fit-28 ta' April u cjoe' li

“any damages/missing goods are to be reported and signed by the customer's representative on the Delivery order.”

Dan pero' mhuwiex rifless fit-termini u l-kundizzjonijiet tal-MIFA. Skond dawn il-kundizzjonijiet,

The Company shall be discharged of all liability:

(i) in respect of damages, unless the Company has been given a reasonable time period in which to survey such damage except where it was not reasonably possible for the Company to be given such opportunity,

(ii) in respect of loss or damage at the Company's premises of any Unit or Vehicle, unless written notice of such loss or damage is received within five working days of the date when such Unit or Vehicle left the Company's premises or, if lost, when such Unit or Vehicle should have left the Company's depot,

(iii) in respect of all claims, unless within 9 (nine) months from the date of delivery of the goods to the Customer, suit is brought against the Company in the proper forum and written notice thereof received by the Company.

Illi t-Tribunal jidhirli li huwa inutili l-argument tas-socjeta' intimata i li tibqa' tinsisti li malli t-tifla tar-rikorrent ffirmat ghal konsenja, kellha terfa' hi r-responsabbilita' tat-telf.

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Illi ai termini tal-artikoli 1628 et sequitur tal-Kodici Civili, ir-responsabbilita' tal-vettural tibda minn meta l-haga tigi fdata lilu.



“Il-vetturali bl-art jew bil-bahar ghandhom, dwar il-kustodja u l-hars tal-hwejjeg fdati lilhom, l-istess obligi tad-depozitarju”. (Art.1628)

Fl-artikolu 1630 il-legislatur jiddisponi li l-vettural huwa responsabbli ghat-telf tal-haga fdata lilu. Jigi rilevat li l-obbligu tal-vettural, izda, mhux wiehed assolut u l-ligi fl-Artikolu 1630 tipprovdi ghall-ezoneru meta ma jippruvawx li l-haga ntilfet jew gratilha hsara b'accident jew b'forza magguri u minghajr htija taghhom.”

Illi skond l-artikolu 17(1) ir-regolamenti tal-Konvenzjoni Internazzjonali dwar il-Kuntratt ghall-Garr Stradali Internazzjonali ta' Merkanzija (CMR), li ghandhom forza ta' ligi f'Malta permezz tal-Att dwar Garr Stradali Internazzjonali ta' Malta (Kap. 486 tal-Ligijiet ta' Malta), “*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*”.

L-istess regolamenti jipprovdu ghall-ezoneru mir-responsabbita' jekk it-telf, dannu jew dewmien ikun il-konsegwenza, *inter alia* ta' “circumstances which the carrier could not avoid and the consequences of which he was unable to prevent”. Izda f'din is-sitwazzjoni huwa t-trasportatur li ghandu l-oneru li jipprova dan.

Illi skond l-artikolu 30 tal-istess regolamenti “*if the consignee takes delivery of the goods without checking their condition with the carrier or without sending reservations giving a general indication of the loss or damage not later than the time of delivery in the case of apparent loss or damage and within seven days of delivery, Sundays and public holidays excepted, in the case of loss or damage which is not apparent, the fact of his taking delivery shall be prima facie evidence that he has received the goods in the condition described in the consignment note*”.

Issa f'dan il-kaz, skond dak miktub mir-rikorrent stess fl-avviz tieghu, “the box in question had no obvious sign of damage”. Minhabba l-pandemija globali fejn persuni madwar id-dinja kienu avzati biex ihallu deliveries sa 72 siegha qabel ma jifthuhom (u dan anke ghas-sigurta' tad-delivery persons), u iktar u iktar minhabba li t-tifla tar-rikorrenti kienet tqila u allura ‘persuna vulnerabbli’, hi rceviet il-konsenja minghajr ma ccekjat l-oggetti u ghalhekk ma setghetx tkun taf dakinhar li kien hemm oggetti neqsin. Pero' malli indunat infurmat lill-kumpanija immedjatment u fil-fatt hemm email datat 19 ta' Mejju u allura entro it-terminu ta' ‘seven days of delivery’ fejn jidher car illi l-kumpanija kienet avzata b'dan in-nuqqas.

Dan ma giex kontradett mis-socjeta' intimata. Anzi fix-xhieda tieghu, Abela ighid illi jaqbel ma' dak li qal ir-rikorrent. Fil-fatt huwa kellem lill-agent tieghu mal-ewwel li qallu li minhabba li ma hemm l-ebda rimarka ta' damage jew stolen goods, ma jista' jaghmel xejn.



MALTA

Dan pero' mhuwiex rifless la fit-termini tal-MIFA u lanqas fir-regolamenti tas-CMR, fejn jidher illi meta l-telf ma jkunx vizibbli (bhalma gara hawn), dak li jkun ghandu almenu gimgha, jew anke ftit iktar (minhabba hdud u festi) biex jaghmel ir-rapport.

Biex tezonera ruhha mir-responsabbilta' is-socjeta' intimata kellha tipprova illi t-telf ma kienx tort taghha u li hadet daww il-mizuri kollha idoneji skond il-kriterji tad-diligenza ordinarja biex tassikura li l-merkanzija tkun sikura. It-Tribunal jidhirlu li s-socjeta' intimata ma rnexxilhiex taghmel il-prova liberatorja li kien jispetta lilha li taghmel.

Ghal dawn il-motivi, jaqta u jiddeciedi illi jilqa' t-talba tar-rikorrent u jikundanna l-isocjeta' intimata tirrifondilu s-somma ta' tlett mija u tlettax - il-Euro (€313.00). Bl-ispejjes kontra l-istess socjeta' intimata.

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

Michela Spiteri Av.
Arbitru