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Fit-Tribunal tal-Konsumatur

Owen Bonnici

vs

Surfside Charter Co. Ltd

CCT 48/21/MS

4 ta' Mejju 2022

It-Tribunal

Ra l-avviz tar-rikorrent ipprezentat fil-15 ta' Marzu 2021 fejn talab lil dan it-Tribunal jikundanna l-isocjeta' intimata thallsu s-somma ta' elfejn seba' mija u erbghin Euro (€2,740), u dan wara li s-socjeta' intimata obligat ruhha li tforni servizz ta' *private charter* a bazi ta' ftehim, liema servizz ma nghatax skond dak pattwit, minhabba malfunzjonament u / jew hsara li zviluppa fil-magna tad-dghajsa,

Ra illi l-isocjeta' intimata, debitament notifikata bl-avviz tat-talba u tas-smigh m'ghamlitx risposta u hadd ma deher meta hekk imsejjah biex jaghti x-xhieda tieghu..

Sema' x-xhieda bil-gurament.

Ra illi fil-kontumacja tas-socjeta' intimata, il-kawza thalliet ghas-sentenza.

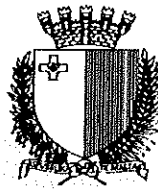
Ra r-rikors tas-socjeta' intimata fejn talbet is-sospensjoni tal-prolazzjoni tas-sentenza sabiex tinghata l-opportunita' li tikkontesta t-talbiet maghmula mir-rikorrent.

Ra d-digriet tat-Tribunal fejn issospenda l-prolazzjoni tas-sentenza u ddiferixxa l-kawza ghal kwalunkwe sottomissjonijiet li xtaqu jaghmlu l-partijiet.

Ra l-atti kollha tai-process.

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Illi rrizulta mill-provi illi r-rikorrenti krew minghand is-socjeta intimatai dghajsa ta' 50 pied ghal erba' tijem mill-15 ta' Awwissu sat-18 ta' Awwissu 2020, ghal prezz ta' elfejn seba mija u erbghin euro (€2,740) u dan skond kuntratt esebit fil-process. Is-servizz kien jinkludi wkoll servizz ta' kaptan/skipper.



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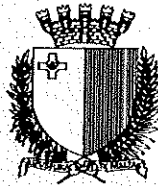
Illi r-rikorrent Owen Bonnici xehed f'dawn il-proceduri fejn qal illi huwa u shabu (grupp ta' disa' persuni), kienu krew dghajsa (sailing boat) b'servizz ta' skipper ghall-erbat ijiem ghall-prezz ta' elfejn seba mija u erbghin euro. Dan ma kienx l-ewwel darba li uzaw is-servizzi tas-socjeta' intimata u qatt ma kellhom problemi qabel. Dakinhar, pero', telqu minn Kalkara kmieni filghodu u malli waslu Mgarr ix-Xini saghtejn wara, kien hemm problema fid-dghajsa u l-kaptan kien taht xokk kbir, tant li hasbu li kienu ser jahbtu go dghajsa ohra u r-nexxilehom jevitaw incident ikrah. Minhabba li l-kaptan ma setax jibqa' ibahhar b'mod normali u seta' biss jopera d-dghajsa b'lura (*in reverse gear*), kien perikoluz li joqghodu vicin dghajjes ohra u ttiehdet id-decizjoni li jmorru jsibu kenn id-Dwejra. Ghal habta tas-saghtejn, l-iskipper infurmahom illi wisq probabbli l-magna kellha bzonn iz-zejt u hemmhekk ir-rikorrent baghat messagg lis-sid Jonathon Gambin fejn saqsieh kif kien bi hsiebu jirrisovi l-problema.

"After an amount of time idle at sea, it was not safe to get close to other boats or shore, we accepted the offer of our skipper that the safest option at the point in time was to move to where we had planned to spend the night, Dwejra. Some hours after, at approximately 14.00, the skipper informed us that most probably the boat needed an oil top up but no oil was avail on board. When I sent a whats app message to the company owner Jonathon Gambin to get information on how the company intended to resolve the situation, he immediately started accusing us of being fussy and that we should stop complaining. He also insisted that if we wanted to move we could go ahead and move"

Ir-rikorrent ighid illi s-sitwazzjoni ddeterjorat ghall-aghar u s-sur Gambin ma offra l-ebda soluzzjoni kif kien bi hsiebu jirrisolvi l-kwistjoni. Anzi, qalilhom li kien ser jibghat skipper iehor meta l-problema qatt ma kienet l-iskipper izda l-hsara fil-magna u ma kien hemm l-ebda ilment fuq il-kaptan/skipper.

"There were a number of phonecalls were (where) they kept on insisting about the skipper, and at multiple instances I kept on reminding them that there was no issue with the skipper, the issue was the faulty boat."

Hawnhekk ir-rikorrent wera x-xewqa tieghu biex jittermina c-charter u jirritornaw lura l-Kalkara l-ghada filghodu (16th). F'dan l-istajdu gew infurmati illi l-problema x'aktarx kienet nuqqas ta' zejt u li l-ghada kienu ser jibghatu technician biex jiccekkja l-magna u jgib iz-zejt, kif fil-fatt gara l-ghada, tard filghodu. Ghal ftit sighat wara, kollox kien jidher tajjeb pero' wara nofs inhar il-problema regghet tfaccat u ghal darb'ohra kellhom jsibu il-kenn, din id-darba gol-Marina ta' Mgarr. Pero' malli waslu kien hemm problema ohra meta gew infurmati illi ma setghux jiehdu provvista tal-elettriku minhabba li ma kienx hemm '*electric cable*' abbord, u dan nonostante l-fatt illi huma kienu ghamluha cara mal-kumpanija l-



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intenzjoni tagghom illi jaghmlu zewgt iljieli il-Marina. Hemmhekk gew infurmati illi kienu ser jibghatu dghajsa ohra l-ghada.

"On the evening of the 16th August we were informed that the morning after, a replacement boat will be arriving in Gozo. We made it a point that the replacement boat should arrive in Gozo as early as possible not to miss more time out of our charter. On the 17th August the replacement boat arrived at around 13.00. Meaning that half of the day of Monday we were stuck at Mgarr Marina waiting for the replacement boat. To make the circus of events complete, the replacement boat was not equipped to accommodate guests, no bed sheets, not enough pillows, no pillow cases, no clean towels and most shocking was to find garbage bags sticking trash from previous guests in one of the bedrooms."

Xehdu wkoll Elaine Magro u Titiana Cutajar li kienu parti mill-grupp. Ikkonfermaw dak kollu li xehed ir-rikorrent, fejn qalu illi kienu dizappuntanti hafna bis-servizz jew nuqqas ta' servizz li rceview minghand il-kumpanija u talbu flushom lura.

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Illi rrizulta mill-provi prodotti, illi s-socjeta intimata hija s-sid tad-dghajsa Oceanis ta' 50 pied, liema dghajsa taghti s-servizzi ta' 'chartering' fl-ibrha lokali Maltin lill kull min jirrikjedi tali servizz. Jirrizulta wkoll illi r-rikorrent Owen Bonnici hallas is-somma ta' €2740.00 ghal erba tjiem charter mill-15 sat-18 ta' Awwissu 2020.

Illi l-kuntratt (Vessel Charter Contract) iffirmat fil-15 ta' Awwissu bejn ir-rikorrent Owen Bonnici u l-kaptan Jeandre Lubbe ighid hekk:

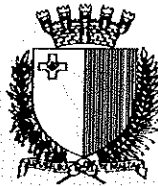
1. Vessel & Service.

The owner (Surfside Charter Company Limited) agrees to provide the Charterer (Owen Bonnici) with the vessel in Compliance of length 50 ft for the purposes of this charter. The Captain agrees to navigate the Vessel in a safe and professional manner for the entire duration of the charter, and will aid and advise the Charterer.

3. Fees & Method of Payment.

The Charterer agrees to pay the fee of €2740.00 which includes payment for the vessel and its related services for 4 days and for a maximum of 10 passengers, including the Charterer.

4. Liabilities



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The Owner agrees to compensate the Charterer for any damage suffered by him or his guests, including loss of sailing time, which was caused directly by acts of gross negligence or fault of the Owner of his employees at a price agreed between the Parties. The Parties agree that the Owner is not liable for damages or injury to passengers arising out of acts beyond his control, unpredictable and unforeseen events or force majeure, such as but not limited to bad weather, grouting on unchartered water hazards, reasonable wear and tear and latent defects.

The Captain agrees that he is liable for the safety of the Vessel and its equipment while this Contract is in force and must ensure that he:

(a) operates the vessel in accordance with all safety rules and regulations as per the international Regulations for Preventing Collisions at sea;

... ..

The Charterer acknowledges that in case of bad weather conditions, and if the Captain or Owner deem fit, the Captain must, without delay, bring the Vessel to a place of safety and remain in such place of safe at least until the condition subsides. The Charterer agrees that he cannot claim compensation for being unable to leave this place of safety for any reason whatsoever while the bad weather conditions persist.

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Illi ghalkemm is-socjeta' intimata m'ghamlitx risposta thalliet taghmel sottomissjonijiet quddiem dan it-Tribunal fejn argumentat illi dawn huma affarijiet li jigru fuq dghajjes. Is-sid Jonathan Gambin ikkontenda illi kellu jhallas ghas-servizz ta' skipper ghal erbat ijiem u jhallas VAT u fl-ahhar mill-ahhar il-grupp baqa' fuq id-dghajsa ghall-erba tjiem u hadd ma wegga. Min-naha tieghu, offra li jhallas is-somma ta' €680.00 bhala kumpens/ danni ghal dak li gara.

Min-naha l-ohra ir-rikorrent argumenta illi is-servizz illi hallas ghalih ma nghatax kif pattwit u li hamsa u sebghin fil-mija (75%) tal-hin tagghom kien mitluf.

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Illi ma hemmx dubju illi kien hemm malfunzjoni/hsara fid-dghajsa li minhabba fiha ikkagunat telf ta' hin konsiderevoli - "loss of sailing time", u li dan ma kienx rizultat ta' maltemp jew force majeure, izda konsegwenza ta' negligenza min-naha tal-kumpanija, li setghet tigi evitata.

Filwaqt illi t-Tribunal japprezza illi gieli jkun hemm problemi fuq dghajjes, ihoss ukoll li hawnhekk kien hemm kaz car ta' nuqqas ta' manutenzjoni xierqa u adegwata u li dan ma



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kienx 'beyond the control of the owner.' Anke jekk, ghal grazzja tal-argument it-Tribunal jikkoncedi illi kien hemm hsara fil-magna li kienet 'beyond the control of the owner' (li zgur ma kienx il-kaz hawnhekk), dan missu gie rizolt fl-ewwel gurnata. Is-socjeta' intimata kellha diversi opportunitajiet biex tirisolvi l-problema u jidher illi r-rikorrent kien lest li jaccetta certu dewmien li kieku l-problema giet rizolta. Minflok il-kumpanija baqghet tkarkar u l-problemi zdiedu tul il-perjodu tal-kirja, tant li anke fil-port tal-Mgarr ma setghux jiehdu provvista tal-elettriku. Meta fl-ahhar id-dghajsa giet sostitwita ma dghajsa ohra, apparti li ma kenitx fi stat adegwata biex takkomoda arrangamenti tal-irqad (u dan alavolja li r-rikorrent hallas ghal servizz ta' irqad ghal erba' tjiem), kien hemm ukoll skart ta' nies ohra, l-epitomija ta' negligenza grossolana u nuqqas serju ta' professjonalizmu.

Illi l-kumpanija setghet facilment taghmel arrangamenti biex jgib id-dghajsa lura Malta minnufih u se mai kienet tevita il-bzonn illi thallas il-kaptan ghal dawk l-erba tjiem, pero' minflok baqghet traqqa l-pannu bil-qargha ahmar.

Illi filwaqt illi huwa minnu li r-rikorrent u l-grupp baqghu il-hin kollu fuq id-dghajsa, ma kellhomx ghazla ohra u kienu dipendenti fuq il-kaptan. Mhuwiex daqstant facli jew prattiku li tinzal minn fuq dghajsa kif gieb u lahaq. Ma hemmx dubju illi l-vaganza tar-rikorrent u shabu kienet rovinata u s-servizz ma nghatax kif suppost.

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Illi f'dawn il-proceduri, ir-rikorrent qed jitlob illi jinghata lura is-somma ta' €2740.00 minhabba illi s-servizz ma kienx dak pattwit u ma nghatax b'mod komplut. Kif qal ir-rikorrent stess, hamsa u sebghin fil-mija tal-hin kien mitluf u irnexxielhom igawdu d-dghajsa ghal ftit sighet biss. Wara li qies ic-cirkostanzi kollha tal-kaz, it-Tribunal jidhirlu illi r-rikorrent ipprova l-istanza tieghu u ser jiffissa s-somma li ghandu jiehu lura *arbitrio bono viri* fl-ammont ta' €2,200.00

Ghal dawn il-motivi, jaqta' u jiddeciedi illi jilqa' parzialment it-talba tar-rikorrent u jikundanna l-isocjeta' intimata thallsu s-somma ta' elfejn u mitejn euro €2,200. Bl-ispejjes kontra s-socjeta' intimata.

Michela Spiteri LL.D.
Arbitru