

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 158/2024

RK

(‘l-Ilmentatriċi)

vs

MAPFRE MSV Life p.l.c. (C-15722)

(‘il-Fornitur tas-Servizz’)

Seduta 31 ta’ Jannar 2025

L-Arbitru,

Ra l-ilment¹, fejn l-Ilmentatriċi issottomettiet li kienet qed tħallas is-somma ta’ €582 fis-sena għal ħamsa u għoxrin sena bil-premessa li eventwalment tirċievi s-somma ta’ Lm21,461 (€50,004). Qalet, iżda, li f’Mejju 2024, meta l-polza immaturat, giet infurmata li minflok dak allegatament kien imwiegħed lilha, kienet ser tirċievi biss s-somma ta’ €21,480.12, liema somma hi m’acċettatx.

L-Ilmentatriċi stqarret li hi tħossha dizappuntata minħabba li minkejja l-kuntratt li kienet originarjament iffirmit u li kien jindika s-somma ta’ €50,004, din l-istess somma la giet offruta u wisq inqas mogħtija lilha.

Għaldaqstant, l-Ilmentatriċi qed titlob li tingħata s-somma ta’ €50,004, li għaliha kienet iffirmit il-kuntratt ħamsa u għoxrin sena ilu.

Ra t-tweġiba² tal-Fornitur tas-Servizz

¹ P. 3

² P. 63 – P. 69

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1. **MAPFRE MSV Life plc (“MMSV”) refers to the allegation made by the complainant that the maturity value of the policy in question numbered 50422 of nature Endowment Assurance with Profits including Funeral Expenses (“the Policy”) was not equivalent to the maturity value which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the complainant the difference between the said figures by paying an amount in addition to the Maturity Value of the Policy which originally amounted to Euro 21,480.12 and which amount MMSV was in a position to pay upon the maturity of the Policy.**

In this regard, MMSV is of the view that the claimant’s request is unfounded and therefore, the complainant is not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.

2. **It is to be noted that the estimated maturity values are based on estimates shown in two quotations that were presented by the complainant together with her complaint (the quotations are marked as fol.12 and fol.13 of the complaint). The quotations in question contained the words, “illustration”, “Estimated Maturity Value including Reversionary Bonus” and “Estimated Maturity Value including Reversionary and Terminal Bonuses”. Therefore, none of the figures which were indicated in the quotation as “estimated” could be said to have been guaranteed.**
3. **The estimated maturity value shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold. The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time. At the time, the value of the investments was much higher than it is today. In fact, the rate used to calculate the estimated maturity value as shown in the quotations was that of 6.75%, which rate had remained constant until the year 1998 and then increased slightly in 1999 to 7% and started to decrease from the year 2000. The most important factor that affects bonus rates is the underlying**

investment performance and in recent years the investment returns internationally were lower. In the light of the above, the quotations in question were in fact correct because they were issued according to the circumstances at the time and therefore MMSV had acted in good faith and therefore misselling did not occur.

Furthermore, it must be stated that in the quotation (fol. 12) there was a distinction between reversionary bonuses and terminal bonuses and MMSV was not obliged to pay the terminal bonuses as indicated by the words 'if any'. In addition, the fact that the quotations presented during that stage indicate two estimated maturity values, the value of which are substantially far apart from each other, further confirms that there was an investment element to the Policy and that the estimates being claimed by the complainant could not have been guaranteed. In the circumstances at the time that the Policy was being sold, MMSV was already indicating (in the quotation fol.12) that if the circumstances in the investment market had remained constant, the Policy could have matured either at a value of Lm15,701 (Euro 36,573.50) or at the higher value of Lm21,589 (Euro 50,288.85). It is clear that the complainant cannot claim that the quotations were not conditional because there were in fact the words "estimated" and "illustration" as well as the words "if any" next to the words "reversionary and terminal bonuses".

- 4. Besides the fact that the quotation indicates two maturity values as "estimated" and therefore, said figures could not have been guaranteed, the complainant was also presented with notes (IMPORTANT NOTES – PLEASE READ THESE NOTES CAREFULLY, which shall be attached herewith and marked as Dok. MSV 1) together with the quotation (which was attached with the complaint in fol. 12). The said notes delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus".***

The said notes also explain that the Policy was participating in the Company's "distribution of its profits by means of an allocation of annual Reversionary Bonuses declared from time to time ... The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured." The IMPORTANT NOTES also state that:

“These are usually expressed as a percentage of the Policy Account which is made of all the investment premia paid plus bonuses (if any) which accrue on a daily basis,”

and therefore the word if ‘any’ shows that the ‘estimated’ maturity values were not guaranteed and were in fact conditional.

These notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.

Therefore, the amount that was indicated in the quotation as estimated maturity value including reversionary bonus was not guaranteed because one needed to wait at the end of every year in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate and it was only at that time that the complainant could have been certain how the value of the Policy Account of her Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.

- 5. In fact, the Life Policy Schedule of the Policy (presented with the complaint fol. 020), provides that “In respect of each premium paid, Lm239.59 shall be credited to the Policy Account which will be increased by the bonuses which may be declared by the Company from time to time.” This continues to support what was provided for in the notes above-mentioned in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholder.***

This also explains that the investment premium, which as at the date of the maturity of the Policy had amounted to 13,952.25 was in fact also guaranteed to be paid upon maturity or on prior death of the life assured and this in addition to the bonuses which would have been declared by MMSV during the term of the Policy. This was not the case with other investments, such as those known as the unit linked policies where the payments of no amounts were guaranteed. Therefore, MMSV adhered to its

obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainant by an additional Euro 7,527.87 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.

- 6. Furthermore, the only amount mentioned in the Life Policy Schedule was the sum assured, and no amounts containing the word 'Estimate' in the quotation were mentioned on this Schedule, which further shows that therefore according to the agreement between the parties the estimate maturity value including reversionary bonus and the estimate maturity value including reversionary bonus and terminal bonus were never guaranteed.*
- 7. The notes that formed part of the quotation above-mentioned also provided that “Whilst the purpose of these notes is to guide the policyholders and prospective policyholders the benefit provided by the Policy are conferred by the Policy document ... In the case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail.” This meant that the complainant could not treat the quotation as a stand-alone document but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the policy document (also presented with the claim).*
- 8. In addition, the Important Notes make it clear that:*

“The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end.”

“Depending on the performance of the company, bonus rates may go down as well as up.”

“Investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future.”
- 9. In so far as the Terminal Bonus is concerned, the notes forming part of the quotation, provided that:*

“Depending on its profit experience, the Company Limited may, after the end of the Policy’s TENTH year, and ten year’s full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to the other declared bonuses ... as they depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether.”

Therefore, the amount being indicated in the quotation as “estimated maturity value including reversionary and terminal bonus was likewise not guaranteed because MMSV had the discretion not to pay a terminal bonus.

10. It is to be noted that the complainant in fact signed the bottom of the quotation (fol.12) and hence confirmed that:

“I/We hereby confirm that I/we have read and understood the Important Notes to this quotation and that the Representative has fully explained the notes overleaf to me/us and we are satisfied with the policy/s illustrated and its explanation.”

It is therefore unfair for the complainant to state that she was promised an estimated maturity value without taking said estimated figures and putting them in the context of the other documents and the explanations given to the complainant, which by her own signature she confirmed that those same documents were explained to her.

11. Furthermore, on 5th May 1999, the complainant also signed a document known as "Product Information" (a copy of which is attached herewith and marked as Dok. MSV 2) which explained among many things how policy bonuses are calculated and paid. This document explains that:

“With Profits policies may earn Reversionary and Terminal Bonuses.

The method of calculation is as follows:-

Reversionary Bonuses are calculated daily as a percentage of the Investment Premium whilst Terminal Bonuses, if declared at the option of the Company, are normally expressed as a percentage of the Policy

Account or as a nominal amount after payment of the ten full years' premium.

A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrender.

The rate of bonus if declared will depend upon the performance of the Company and the investment market both locally and overseas.

When presenting you with the Company's official written quotation for the Estimated Maturity value we have based our calculations solely on current bonus rates.

Please note that past performance is not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed."

The policy document and in particular the policy schedule also states that bonuses were not mandatory, but it was within the MSV's discretion to declare or not to declare such bonuses. This is another reason why the estimated maturity value of the policy in question indicated in the estimate was not guaranteed but was only an estimate and only the sum assured was guaranteed.

12. Therefore, at the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment and what the eventual maturity value shall be made up of and how said amount was calculated. Notwithstanding, the complainant is merely basing her claim on the quotations without putting them in the context of all the other documents also provided to the complainant when the Policy was being sold to the complainant and every year thereafter as shall be explained hereunder.

13. MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainant. Said Fund has been managed not only subject to

the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority.

The performance of the said Fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. The investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future. Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.

Notwithstanding the fact that the maturity value could not be equivalent to any one of the estimated maturity values indicated in the quotations due to the said shift in the performance of the market investments, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the term of the Policy despite the fact that the return was made while there were three financial crisis, besides the fact that during the year 2018, the classes of assets around the world had registered a negative income and when the Policy matured the investment markets had been substantially negatively impacted as a result of the COVID 19.

In fact, the complainant made a gain in the amount of Euro 7,527.87 after deducting the maturity value from the investment premium that was paid by the complainant and this represents a rate of return-on-investment premium amounting to 3.17 % and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.73%.

- 14. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of her Policy and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to her, on a yearly basis, a Bonus Statement together with the so-called Important Notes.***

As from 2001, MMSV had also started sending to the complainant, every year, a Media Release (copies of the bonus statements are attached with the complaint and marked Fol.038- Fol.050, and a further bonus statements, together with copies of some Important Notes and Media Releases are being attached to this reply and marked as Document “MSV 3”). Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years.

Apart from the use of the terms “Estimated” and “illustration” used in the quotations which are self-explanatory, the Important Notes forming part of the Bonus Statements above-mentioned as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down.

Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy. Furthermore, the complainant sent a request to MMSV for the revised illustrative maturity value in the year 2013, where MMSV replied and supplied the information to the complainant (the document annexed and marked as Doc. MSV 4) giving her a picture of profit rates based on another three different percentages and at the same time informed the complainant the following:

“The revised illustrative Maturity Values have been calculated using three different levels of assumed bonus rates. The assumed bonus rates shown above are not guaranteed and they are not minimum or maximum rates or amounts. The most important factor that affects bonus rates is the underlying investment performance. Investment returns can go up as well as down and therefore past performance is not necessarily a guide to the future. It is not possible to predict what the bonus rates will be in future, and they may be higher or lower than they are today.”

“Depending on its profit experience, MSV may, after the end of the policy’s tenth year, or after ten years full premiums have been paid, decide to allocate from time to time a Final bonus in addition to other declares bonuses. Such Final Bonuses will normally be expressed as either as a percentage of the Policy Account or as a nominal amount. A Final Bonus, if declared is payable on policies that become claims by maturity or death, but not by surrender. You should be aware that Final Bonus rates are likely to be highly volatile and very dependent on our own investment performance. The Final Bonus shown in this illustration is assumed at a rate of 0.5% for the assumed bonus rate of 3.5% and 1.0% for the assumed bonus rate of 4.0%.”

Thus MMSV continues to demonstrate and acclaim that it has supplied sufficient information to the complainant about the policy in question at all stages including after the issuance of the policy and in fact MMSV did not receive any request for withdrawal of the policy after these documents were provided to the complainant.

15. Apart from the investment element to the Policy, the same Policy also provided a guaranteed life cover over the complainant’s life, such that MMSV was obliged to pay the sum assured, in the amount of Lm5,401 (Euro 12,580.95) to the heirs of the complainant in the case of their demise at any time that the Policy was in force. The said life cover was not normally available under other forms of regular savings, but it has been completely ignored by the complainant.

16. The Policy (presented with the claim) provides that

“The COMPANY HEREBY AGREES to pay the greater of either the Basic Sum Assured or Policy Account (if any) (emfazi mizjud) and/or the specified additional benefits (if any) to the Payee named in the Schedule on the happening of the Event Assured Against subject to the payment to the Company of the Premiums detailed in the Schedule in the manner specified therein and to the proper observance of the terms and conditions of this contract.”

Therefore, MMSV clearly adhered to its obligations under the Policy, as opposed to what is being alleged, because it has offered the value of the

Policy Account of the Policy as at the date of the maturity thereof because said value had by far exceeded the value of the Sum Assured.

17. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact the complainant was presented with the Statutory Notice that was issued in accordance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989 and was in fact signed by the complainant herself (a copy of which is attached herewith and marked as "Dok. MSV 5".

The Statutory Notice set out several warnings including the right to withdraw from purchasing the Policy and the manner to do so. This Notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was somehow pressurized to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy.

18. Finally, MMSV maintains that it has always adhered to its obligations under the Policy and therefore, it should not be ordered to pay any compensation other than the final maturity value or any expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.

With reservation for any further pleas."

Seduti

Fl-ewwel seduta tad-29 t'Ottubru 2024, xehed XK, żewg l-ilmentatriċi, li kien preżenti waqt il-bejgħ tal-polza in kwistjoni u gie stabbilit li jixhed hu bil-permess ta' martu. Hu iddikjara li:

"Ngħid li aħna konna nattendu għall-XXXX u l-leader tagħna kien wieħed mir-rappreżentanti li kien bieghilna l-insurance. Ngħid li beda jkellel lil kulhadd fuq din l-insurance u spjegalna li jekk inħallsu Lm250 fis-sena ser inkunu intitolati għal Lm21,000.

Qalilna li jekk Alla jħares qatt tiġi nieqsa l-mara, għax l-insurance kienet fuqha, jien nieħu Lm5,000 u daqshekk.

Ngħid li, imbagħad, meta qlibna għall-euros, il-Lm250 ġew għal €582. Imma jekk is-somma li kienet offruta lilna kienet ta' Lm21,000, suppost ġiet ta' €50,000.

Ngħid li fuq dan kollu, tkellimna jiena u l-mara u għidna li jekk inhi hekk nieħdu çans, però, għadda ż-żmien u jien kont marid u skont il-professuri tal-isptar qaluli li kelli nieqaf mix-xogħol u aħna li kellna tlett itfal ġejna f'diffikultà.

U omm RK, Alla jagħtiha l-glorja tal-ġenna, qaltilna, 'Isma', fil-każ lil ma tkunux tistgħu tħallsu, inħallashielkom jien.' U kienet qed tħallas minnha omm RK; kienet qed tħallas il-premium hi.

Ngħid li mietet u RK reġgħet qabdet taħdem (għax kienet waqfet mix-xogħol biex tieħu ħsieb ommha għax kienet marida) u reġgħet bdiet tħallasha.

Ngħid li lilna qatt ma qalulna li jista' jiġri dan li qed jiġri illum il-ġurnata għax kieku aħna din l-insurance ma konniex nixtruha. Bl-ebda mod ma konna nixtruha għax jien ma kontx ser inħallas biex imbagħad minn Lm21,000 neħodhom €21,000. Lanqas qatt ma kont naççetta.

Ngħid li meta kellna din il-problema tas-saħħa u konna ergajna kellimna lis-Sur Mifsud u anke kienet çemplet hemmhekk (ma nafx lil min kienet kellmet), qalulha li kien hemm xi perçentaġġi li jekk aħna nieqfu qabel, jiġu applikati dawk il-perçentaġġi li kienu miktubin.

U b'hekk tonqoslok l-ammont tas-somma li int intitiat li tieħu. Jiġifieri dawn ġo moħħna dejjem daħħlulna li aħna dik is-somma konna ser nieħdu.

U illum il-ġurnata qegħdin hawnhekk quddiem l-Arbitru u quddiem is-Sinjuri u nisperaw li ssir ġustizzja magħna u nieħdu dak li wiegħeduna.”³

Għall-mistoqsijiet tal-Arbitru, XK qal:

“Mistoqsija jekk dan li bieghilna l-polza fl-1999 ġiex għandna d-dar, ngħid li kien ġie għandna imma spjegalna very briefly.

Ngħidu li ġie darba d-dar, iffirmajna l-karti u kkommettejna ruħna għaliha.

³ P. 84 – P. 85

Ngħid li ma niftakarx kemm dam dan il-meeting. Ngħid li peress li dan kien il-leader u konna mmorru l-laqgħat tiegħu, tagħmillu belgħa kafe u xi ħaġa hekk. Imma l-bqija qalilna sempliciment li ġabilna l-karti li kellimna fuqhom hemmhekk u ffirmajnihom.

Mistoqsija xi spjegalna barra li ser nieħdu dawk il-Lm21,000 u li jekk tiġi nieqsa l-mara nieħu Lm5,000, ngħid li spjegalna wkoll li qatt ma jaqbilna nsarrfuha qabel għax nitilfu minnha. Ngħidu li dak biss spjegalna.”⁴

Fil-kontroezami, l-Ilmentatrici u żewgħa komplew li:

“Nikkonferma li r-rappreżentant li bieġħilna l-polza jismu Joe Sammut.

Qed jingħad li għaddew 25 sena u mistoqsi naqbilx li ma niftakarx x’qalilna s-Sur Sammut kelma b’kelma, ngħid li niftakar. Toqgħodx tgħidli għax 25 sena, niftakar.

Qed jingħad li allura qed neskludi li qalli affarijiet oħra u li l-meeting seta’ ħa kwarta. Ngħid li hu qalilna li ser nieħdu dik is-somma għax hu kien jaf li għandna tlett itfal.

Qed niġi referut għal paġna 12 li hi l-Quotation u qed jingħad li hemm figuri oħra minbarra l-Lm21,000 u l-Lm5,000 fuq din il-Quotation, fosthom, il-figura ta’ Lm15,701.

Mistoqsi xi spjegali fuq il-Lm15,701, ngħid li xejn. Mistoqsi jekk staqsejtux xi tfigisser dik il-figura ta’ Lm15,701, ngħid li lilna fl-ebda ħin ma semmihelna. Aħna, ġenwinament, għax kien il-leader tagħna, u kien jippriedka r-religjon, jiġifieri kien raġel sewwa – mhux qed ngħid li kien raġel ħażin – però, f’dawn l-affarijiet, ma spjegalniex sew għax li kieku l-insurance ma konniex nixtruha.

Ngħid li aħna kellna fiduċja ħafna fih.

Qed jingħad li fuq il-Quotation hemm miktub:

‘The Quotation provided is for illustration only and does not confer any rights.’

Anke li fejn il-figura li qed insemmi hemm il-kelma ‘estimated’.

⁴ P. 85

Mistoqsi naqbilx li din kienet stima u ma kinitx garantita, ngħid li jien qiegħed taħt ġurament u m'inix ser ngħid farka gidba: aħna daww l-affarijiet ma kinux spjegati lilna u, allura, aħna ma stajniex nagħmlu mistoqsijiet fuqhom. Aħna ma kellniex çans. Tant fdajnih lil dan ir-raġel għax kien il-leader tal-Families for Christ illi dan aħna fdajnih b'għajnejna magħluqa.

Mistoqsi qrajtx id-dokumenti, ngħid li le, ma qrajthomx.

Qed jingħad li hemm dokumenti iffirmati minni (l-Ilmentatrici), u qed niġi murija Dok. MSV 1 u ngħid li jiena qalli fejn niffirma u daqshekk.

Qed niġi murija Dok. MSV 2 u nikkonferma li hemm il-firma tiegħi u tiegħu. Ngħid li din ma qrajthiex.

Ngħid li jien qatt m'għamilt insurance u ma kontx naf.

Qed niġi murija Dok. MSV 5 fejn hemm il-firma tiegħi u ngħid li din ma qrajthiex.

Mistoqsija meta ndunajt li ma kontx ser nirċievi dak li hemm fil-Quotation, ngħid li meta bgħattuli l-karti intom, sena ilu. Semmejtuli tliet ċifri.

Mistoqsija kif qed ngħid hekk meta fl-2013, l-MSV kienet diġà tatni ittra (Dok. MSV 4) fejn l-ammont li ħadna bħala Maturity Value kien l-istess li indikawli fl-2013, ngħid li meta rċevejt din l-ittra kont ċempilt u qaluli li fl-aħħar għaxar snin jizdiedu. Jien assumejt li din iċ-ċifra ma kinitx tirrifletti l-25 sena għax kien fadal għaxar snin oħra biex tagħlaq.

Ngħid li kelli l-mara tat-tifel li kienet taħdem hemm u għidtilha biex tiċċekkjali u mbagħad ċempilt jien u qaluli li dik tiżdied fl-aħħar għaxar snin. Hekk kien qalli, 'Toħroġhiex qabel ċertu ammont ta' snin għax inkella titef.'

Mistoqsija naqbilx li jien xtaqt infaddal u mhux nieħu riskju meta xtrajt dan il-prodott, jiġifieri dak li kont ser ninvesti ma ridtx nitilfu u ridt nagħmel gwadann over and above dak li qed ninvesti.

Ngħid li aħna kellna tlett itfal u għidna nagħmluha biex inħallulhom xi ħaġa għax aħna xejn m'għandna. Għidtlu, 'Nagħmluha għax Lm21,000, jieħdu Lm7,000 kull wieħed.'

Ngħid li xtrajniha għax kien hemm dik iċ-ċifra, għax I wouldn't have bothered.

Ngħid li aħna fdajna lis-Sur Sammut; tant fdajt li jien just iffirmajt u, mbagħad, tfajtu fil-cupboard u ħallejtu hemm.

Ngħid li kieku xtrajna garage b'dawk il-flus kien jiġi jiswa ħafna aktar milli qed toffrulna intom.

Qed jingħad li ma tajtx kas u ffirmajt kollox. Ngħid li mhux ma tajtx kas, imma tant ikollu kliem sabiħ lil min tibgħatu jbiegħ li aħna fdajnih.

Oltre bniedem jafek u int qed tafdah għal bniedem ma tafux. Dan bħal meta nafda t-tifel ma' missieri u jagħmillu bużullotta. U hekk kien dan, qisu missierna u fdajnih.

Mistoqsija kif ma rrealizzajt li kienet too good to be true li jien inħallas Lm6,250 u f'perjodu ta' 25 sena ser nieħu Lm21,000, ngħid li I trust too much. Dak wieħed mid-difetti tiegħi. After all, dan pingiha li dawn in-nies dejjem jagħmlu l-profitt u żgur li mhux ser tmur ħażin magħhom.”⁵

Wara din is-seduta, ġie pprezentat l-Affidavit⁶ ta' Victor Farrugia bħala Chief Operations Officer tal-MSV li sostanzjalment jirrepeti dak li kien diġà intqal fit-twegiba għall-ilment sottomessa mill-Fornitur tas-Servizz.

Eventwalment, fis-seduta tat-8 ta' Jannar 2025, Victor Farrugia ħalef⁷ il-kontenut ta' dan l-istess Affidavit, filwaqt li l-Ilmentatriċi iddikjarat⁸ li m'għandhiex mistoqsijiet x'tagħmel rigward dan l-Affidavit.

F'din l-istess seduta, xehed Joseph Sammut, il-persuna li biegħ il-polza ilmentata lill-Ilmentatriċi. Hu stqarr li:

“Ngħid li kont inbiegħ il-poloż tal-assikurazzjoni tal-MSV partikolarment dawk tal-Endowment Assurance with Profits partikolarment f'Mejju 1999. Ngħid li kont sub-agent u kont illiċenzjat. Il-Middlesea, apparti t-training courses li kienet tagħmlilna, biex ingibu l-liċenzja mill-MFSA, konna nagħmlu eżami. L-eżami kien rigward il-prodotti li aħna konna nbiegħu dak iż-żmien.

⁵ P. 85 – P. 87

⁶ P. 90 – P. 95

⁷ P. 96

⁸ *Ibid.*

Ngħid li lis-Sinjuri RK niftakarhom għax kienu jattendu l-komunità li kont fiha jiena. Apparti minn hekk, naf lis-Sur XK bħala pulizija tal-SAG u anke nafhom għax kienu jmexxu restorant għax kont għamiltihom xi prodott ukoll.

Qed niġi referut għall-Quotation (paġna 12 tal-proċess) u nikkonferma li dik hija l-firma tiegħi. Qed niġi referut għall-Important Notes (Dok. MSV1) li nkun tajtha mal-Quotation.

Qed niġi muri l-Proposal Form u nikkonferma li dik hi l-handwriting tiegħi.

Nikkonferma l-firem tiegħi fuq Dok MSV 2, il-Product Information u fuq Dok MSV 5, l-Avviż Statutorju.

Ngħid li jien kont ġejt trained mill-Middlesea u matul dan it-training konna nsegwu proċess li jekk il-klijent jiddeċiedi jew jidher li hu interessat fil-prodott, il-meeting kien jieħu siegħa/siegħa u kwart; sakemm tispjega, sakemm timla l-formoli u sakemm kollox, dan kien jieħu bejn siegħa u siegħa u kwart.

Kont spjegajtilhom li dan il-prodott kellu żewġ features importanti. Parti kienet Life Cover li skont l-ammont li jagħmlu jkollhom somma assicurata li tkun garantita. Fil-każ tagħhom kienet ta' Lm5,400. U li din il-Life Cover kienet ukoll applikabbli jekk tkun trid tieħu loan mill-bank għax isservi bħala garanzija.

It-tieni parti tal-investment kien is-savings li jagħtihom l-opportunità li jfaddlu. Spjegajtilhom li l-kumpanija kienet tieħu l-premium u kienet tinvestih f'investimenti underlying, investimenti tal-kumpanija stess. Ikunu investimenti diversi biex ikun hemm aktar stabbiltà fl-investment.

Spjegajtilhom li l-kumpanija setgħet tiddikjara bonus kull sena skont l-andament tal-investment u dan ikun miżjud fil-Policy Account tagħhom.

Semmejtilhom li hemm żewġ tipi ta' bonuses: ir-Reversionary Bonus once declared permezz ta' ittra mill-kumpanija, ikun miżjud mal-Policy Account u jkun garantit. Is-Sum Assured kienet garantita, però, jekk il-Policy Account jikber b'tali mod li l-investment tal-premium u l-bonuses ikunu aktar mis-Sum Assured, jekk ikun hemm każ ta' mewt tittieħed l-akbar somma – jew is-Sum Assured jew il-Policy Account.

Kont spjegajtilhom ukoll fuq Terminal Bonus li dan japplika jekk il-polza tibqa' in force sat-term tagħha u jingħata fid-diskrezzjoni tal-kumpanija, jiġifieri jista' jingħata u jista' le u jiġi miżjud fl-aħħar mas-somma tal-maturità.

Dawn huma ż-żewġ garanziji li tajt u spjegajt lis-Sinjuri RK.

Spjegajtilhom ukoll li fl-Important Notes hemm li l-passat mhux garanzija tal-futur għax dawn huma investimenti li l-kumpanija tagħmel u naturalment taqla' l-imgħaxijiet tagħhom, imbagħad, fid-diskrezzjoni tagħha tqassamhom mal-klijenti.

Spjegajtilhom ukoll li jekk dawn iċedu l-polza qabel id-duration tagħha, kienu ser jitilfu l-flus peress li dan kien prodott fit-tul – l-aħjar prodott li gġemma' huwa prodott fit-tul mhux wieħed fil-qosor.

Għidtilhom ukoll li kif kienet il-liġi dak iż-żmien, dan kien tax free u jekk ma tinbidilx il-liġi mill-gvern, dan il-prodott jibqa' tax free.

Ngħid li l-proċedura hekk kienet u jien żgur li ffolowjajtha magħhom.

Wara li spjegajtilhom dan il-prodott, staqsejthom jinteressahomx u meta qaltli li jinteressaha, staqsejtha kemm trid tinvesti premium u għal kemm żmien. B'hekk stajt noħroġ l-istimi fuq il-quotation form. Kienet ċara li kienu stimi għax il-quotation form mimlija bil-kliem stima, estimate.

Ngħid li l-kalkoli li użajt kienu skont ir-rate book tal-kumpanija li kienu jagħtuna. Tajthom stima kemm tas-Sum Assured, kemm tar-Reversionary Bonus ikkalkolata fuq l-aħħar snin ta' dikjarazzjoni tal-bonus tal-kumpanija, u kemm tat-Terminal Bonus jekk iżommu l-polza sal-aħħar u jekk il-kumpanija tagħtih. U kont tajthom idea wkoll tas-Surrender Value biex huma jkunu jafu li jekk iċeduha qabel, ma kinux ser jieħdu l-valur kollu tagħha.

Kont spjegajtilhom li r-Reversionary Bonus kien jinħadem fuq percentaġġi li jkunu ingħataw dak iż-żmien.

Ngħid li jiena qatt ma stajt nassigurahom li fl-aħħar tal-polza kienu ser jirċievu r-Reversionary Bonus fl-ammont ta' Lm15,701 minħabba li l-ewwel nett il-kumpanija ma kinitx tiggarrantih u jiena ma stajtx immur kontra t-training tiegħi. Jien ukoll kont naħdem b'kuxjenza fis-sens li ma kontx nipprova to mislead the clients.

Kont spjegajtilhom li dawn l-estimates kienu maħduma fuq bonuses li kienu ngħataw fis-snin ta' qabel. U li l-investment jiddependi mill-andament tal-kumpanija.

Ngħid li kif spjegajt, għidtilhom il-bonuses kif jaħdmu u jiddependu fuq l-investimenti li tagħmel il-Middlesea dak iż-żmien bħala kumpanija b'diversi prodotti biex tieħu l-aħjar possibilità ta' interess u toħloq stabilità wkoll fir-rati tal-interess. Ngħid li jien qatt ma wiegħedthom jew iggarantejtilhom li ser jieħdu l-ammont ta' Lm21,589.

Ngħid li wara li ħriġt il-quotation, imlejt il-formoli li s-Sinjura ffirmat li huma l-Policy, l-iStatutory Form u l-Product Information. Spjegajtilhom ukoll skont l-iStatutory Form li kellhom ħmistax-il ġurnata cooling off period li tistgħu tikkancellaw kollox u tieħdu fluskom lura minn meta toħroġ il-polza, meta l-kumpanija tibgħatilhom il-polza.”⁹

Fil-kontroezami, Joseph Sammut kompli li:

“Qed jingħad li mhuwiex vera li jiena spjegajtilhom dawn l-affarijiet li għadni kif semmejt u li ma tajtu l-ebda ħmistax-il ġurnata għax mort id-dar u ffirmax il-karti mingħajr ma spjegajtilhom xejn.

Ngħid li jiena ma stajtx ma spjegajt xejn għax inkella ma kinux jifhmu x'features kellu l-prodott. Kif jistgħu jaċċettaw li jixtru jekk ma jkunux jafu x'features fih, x'inhom garantit u x'mhuwiex iggarantit u x'possibilità hemm li jieħdu bħala investment. Ngħid li meta mort għandhom, u naċċerta li l-ewwel kuntatt kont għamiltu wara xi laqgħa, però, jiena wrejthom x'kont qed nagħmel mal-Middlesea u kinux interessati li jisimgħu aktar fuq dan il-prodott.

Allura, mort hemmhekk bl-għan u t-tir li jien nispejalhom kif jaħdem dan il-prodott. Din kienet standard practice tagħna; u jiena bl-ebda mod ma stajt niggarrantixxi xi ħaġa li l-kumpanija ma tiggarrantixxix għax jien kont qed inbiegħ prodott tal-Middlesea mhux tiegħi. Lanqas li kien tiegħi ma nista' nagħti garanzija daqskemm jinbidlu ż-żminijiet.

U kif kulhadd jaf, l-interessi jtilgħu kif ukoll jinżlu matul iż-żmien skont l-ekonomija tad-dinja u tal-pajjiż b'mod partikolari. Jiġifieri, jien qatt ma stajt

⁹ P. 96 – P. 98

nagħti garanzija ta' Lm21,500, kemm kienet għax ma kienx garantit. Dawk kienu stimi ikkalkolati fuq interessi li ngħataw qabel mill-kumpanija u jekk jibqgħu kif inhuma u l-kumpanija tiddikjara dawk l-interessi, is-somma kienet titla' bejn wieħed u ieħor biex ikunu jafu x'potenzjal għandu l-prodott.¹⁰

F'dan l-istadju, il-partijiet iddikjaraw¹¹ li m'għandhom xejn aktar xi jżidu.

Sema' lill-partijiet

Ra l-atti kollha tal-każ

Jikkunsidra:

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

Il-punt kruċjali f'dan l-ilment jittratta l-allegat spjegazzjoni mogħtija lilha fil-mument tal-bejgħ tal-polza u dan fir-rigward tal-ammont li hi kellha tircievi mal-maturità li, izda, meta fil-fatt immaturat il-polza, giet offruta ammont ferm inqas.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'gie mwiegħed lill-Ilmentatriċi u x'eventwalment gie mogħti jew offrut lilha mal-maturità. Irid jara ukoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan lahaqx *'l-aspettattivi raġonevoli u legittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.*¹²

L-Arbitru jsib ċertu diffikultà biex jifhem jekk dan kienx każ fejn is-*salesperson* li b'mod imprudenti emfasizza s-sabiħ u ma kienx kawt biżżejjed biex jispjega sew id-differenza bejn dak li kien garantit u dak li kien stmat, jew inkella kienx każ fejn l-Ilmentatriċi fehmet dak li riedet tifhem u ma kienx insidjuża biżżejjed biex

¹⁰ P. 99

¹¹ *Ibid.*

¹² Kap. 555, Artiklu 19(3)(c)

tagħti importanza anke l-aspetti mhux garantiti tal-*quotation*, avolja dawn ġew spjegati.

Fil-istess waqt, l-Arbitru ma jistax ma jinnotax l-ispejgazzjoni dwar il-mod kif taħdem il-polza, partikolarment dwar il-*bonuses* u kif dawn jiġu allokat, ġiet anke mogħtija lill-Ilmentatrici f'dokumenti oħra, partikolarment f'dokument titolat '*Product Information*', li kopja tiegħu ġiet sottomessa mill-Fornitur tas-Servizz, u li dan ġie iffirmat mill-Ilmentatrici stess.

Fil-*Proposal Form* hemm miktub ċar li r-raġuni li qed tieħu l-polza kien '*savings*'.¹³ Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli sas-sena 1999, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ.

Anke persuna mhux tant intiza fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 25 sena speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq 25 sena u mhux xi '*lump sum investment*' li tista' tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal żmien twil. Dan appartu li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Jidher li dan kien każ fejn is-*salesperson* u l-klijenta kienu diġà jafu lil xulxin u kienu jafdaw lil xulxin tant li forsi ma daħlux biżżejjed fil-fond dwar dak li kien għustament mistenni mill-polza u d-differenza bejn dak li kien garantit (*life cover* u *bonuses* dikjarati) u dak li kien stima li tiddependi fuq kif tmur id-dinja tul il-25 sena tal-polza.

Iżda l-Arbitru diffiċli jaċċetta li l-Ilmentatrici ffirmat dokumenti li kienu jispjegaw dan kollu u ma qrat xejn minn dan.

"tant fdajt li jien just iffirmajt u, mbaġħad, tfajtu fil-cupboard u ħalljetu hemm".¹⁴

Anke diffiċli jifhem kif f'laqgħa tal-bejgħ kulma ġie spjegat kien li jekk tħallas il-*premium* kien garantit li tieħu ħamsin elf ewro meta tagħlaq jiġri x'jiġri.

¹³ P. 16

¹⁴ P. 87

Meta l-Arbitru staqsa jekk ħasbitx li kienet *'too good to be true'* biex taċċetta li jekk tħallas Lm6,250 fuq medda ta' 25 sena fl-aħħar żgur kienet ser tieġu Lm21,000 meta l-iskop tal-polza kien tfaddil bla riskju tal-kapital, qalet:

*"I trust too much. Dak wiehed mid-difetti tiegħi. After all, dan pingiha li dawn in-nies dejjem jagħmlu profitt u żgur mhux ser tmur ħazin magħhom."*¹⁵

Altru mhux ser tmur ħazin u altru ser titripplika u aktar il-kapital investit! Kollox ma' kolloxx, ix-xhieda tar-rappreżentant li biegħ il-polza kellha doża akbar ta' probabbiltà.

Min-naħa l-oħra, l-Arbitru jhoss li l-Provditur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 25 sena xejn ma jibqa' stabbli. Fil-fatt, ingħad li wara s-sena 2000, bdew joħorġu tliet kwotazzjonijiet u mhux waħda, u dan kien jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 25 sena.

Għalhekk għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeċiedi li l-ilment huwa wiehed ġust, ekwu u raġonevoli, u ser jilqgħu limitatament sakemm dan huwa kompatibbli ma' din id-deċiżjoni.

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentatriċi, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tagħhom kienu li mal-maturità tal-polza kienu ser jirċievu s-somma ta' madwar €50,000 li, iżda, fid-data tal-maturità ġew offruti ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatriċi kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens li jrid ikun ibbażat fuq ġustizzja ekwitattiva kif huwa sanzjonat li jagħmel espressament permezz tal-Artikoli 19(3)(b) u 26 tal-Kap. 555 tal-Liġijiet ta' Malta.

¹⁵ *Ibid.*

Filwaqt li jara wkoll li dan l-ammont ikun raġonevoli, ma jistax ikun preċiż minhabba li hemm diversi fatturi li jridu jiġu ikkunsidrati.

Ma giet ipprezentata l-ebda prova li dak iż-żmien l-Ilmentatriċi kellha xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentatriċi ma gābitx prova li gārrbet xi tip ta' *opportunity loss*.

Għalkemm qalet li kieku xtrat garaxx b'dawk il-flus kienet tmur aħjar, ma gābitx prova li verament setgħet tixtri garaxx u tħallas Lm250 fix-xahar għal 25 sena. Normalment, biex tixtri proprjetà trid tħallas is-somma sħiħa mal-akkwist jew tieħu self mill-bank li jinkorri spejjeż ta' imgħax.

Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jhossx li permezz ta' din il-polza, wieħed għandu x'jitlef. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentatriċi kellha ċ-ċans li tikkontribwixxi għat-tfaddil permezz ta' din l-istess polza u dan billi tħallas ammont żgħir kull sena għal 25 sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' 3.73%¹⁶ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin, u għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellu benefiċċju ta' kopertura fuq ħajtu li beda mill-ewwel ġurnata tal-polza.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatriċi, u jiddeċiedi li s-somma xierqa li għanda tingħatalha bħala kumpens hija dik ta' **€3,221.88**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV LIFE p.l.c. tħallas lill-Ilmentatriċi s-somma ta' tlett elef, mitejn u wieħed u għoxrin punt tmienja tmienja ewro, b'żieda mas-somma diġà offruta, cioè mas-somma ta' €21,480.12¹⁷ u, għalhekk, iħallasha s-somma kumplessiva ta' €24,702 (erbgħa w għoxrin elf, seba' mija u tnejn ewro).

¹⁶ P. 95

¹⁷ P. 8

Il-kumpens għandu jithallas fi żmien hamest ijiem ta' xogħol mid-data ta' din id-deċiżjoni. Jekk dan ma jsirx, il-ħlas għandu mbagħad isir bl-imgħax ta' 2.90%¹⁸ fis-sena mill-iskadenza tal-hamest ijiem sad-data tal-ħlas effettiv.

L-ispejjeż ta' dan il-każ huma għall-Fornitur tas-Servizz.

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru

Dritt ta' Appell

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.

¹⁸ Ekwivalenti għall-MRO rate tal Bank Ċentrali Ewropew

L-Ispejjeż tal-Proċeduri

Skont l-artikolu 26(3)(d) tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), l-Arbitru ddeċieda min għandu jhallas l-ispejjeż tal-proċeduri u f'liema proporzjon, skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri mhumiex limitati għall-pagament tal-ispejjeż applikabbli fuq ilment magħmul mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji (preżentament Ewro25), imma jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għal atti pprezentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taħt l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att.

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.