



MALTA

COURT OF APPEAL
(Inferior Competence)

HON. JUDGE
LAWRENCE MINTOFF

Sitting of the 23rd October, 2024

Inferior Appeal number 28/2023 LM

Simona De Giovanni (Identity Card Number CA6351LE) and
Vincenzo Cocozza (Identity Card Number AZ0321346)
(‘the appellees’)

vs.

Bank of Valletta p.l.c. (C 2833)
(‘the appellant’)

The Court,

Preliminary

1. This appeal has been filed by the respondent company **Bank of Valletta p.l.c. (C 2833)** [‘the appellant Bank’] from the decision of the Arbiter for Financial Services [‘the Arbiter’] of the 20th February, 2023, [‘the appealed decision’], whereby the said Arbiter decided the complaint presented by the

applicants **Simona De Giovanni (Identity Card Number CA6351LE)** and **Vincenzo Coccozza (Identity Card Number AZ0321346)** [‘the appellees’] as follows:

“Decision

For the above-stated reasons, the Arbiter decides that the complaint is fair, equitable and reasonable in the particular circumstances of this case, (fn. 9: CAP. 555 of the Laws of Malta, Art. 19(3)(b)) and is upholding it as long as it is compatible with this decision.

Therefore, in accordance with Article 23(3)(b)(c)(i) of Chapter 555 of the Laws of Malta, the Arbiter orders Bank of Valletta plc to close the Complainants’ account merits of this case and transfer the money deposited in such account to the Complainants.

With legal interest at the rate of 8% per annum on the sum deposited in the account from the date of this decision till the date of the effective transfer of money to the Complainants, as ordered above in this decision.

The legal expenses of this case are to be borne by the Service Provider.”

Facts

2. The facts of the present case concern bank account number 40022493817, which the appellees had opened with the appellant Bank in 2016. In October 2019, the said appellees had given the appellant Bank instructions to transfer the funds in the abovementioned bank account, and to close same. The appellant Bank had however failed to reply to their request, even after they had engaged a lawyer to communicate with it on their behalf.

Merits

3. The appellees therefore presented a complaint before the Arbiter on the 14th of July, 2022, wherein they submitted that they could not understand why

their account had been frozen, and they requested the Arbiter to order the appellant Bank to transfer the funds from the said account and to close it.

4. The appellant Bank replied on the 8th August, 2022, where it explained that it could not comply with the appellees' request due to a legal impediment which did not allow them to divulge the reason for their refusal to accede to the said request.

The Appeal

5. The appellant Bank felt aggrieved with the appealed decision, and it filed an appeal before this Court on the 13th March, 2023, where it is requesting the revocation of that decision. It explains that its grievance lies with the fact that the decision was not correct.

6. The appellees replied on the 22nd May, 2023. They insist that the present appeal should be rejected, whilst the appealed decision should be confirmed with costs of both instances against the appellant Bank.

Evidence

7. In this Court's decree of the 27th November, 2023, the appellant Bank was authorised to:

*“(i) submit in the acts of these proceedings a copy of the application number 469/23AF and any other documentary evidence submitted in the acts of those proceedings; and
(ii) to submit viva voce evidence in its' defence that it was unable to produce before the Arbiter by the means provided by law.”*

8. **Mark Falzon** was duly summoned by the appellant Bank to testify on oath during the hearing of the 31st January, 2024. After being released from his obligation of banking secrecy, the witness explain that he was employed with the appellant Bank as Deputy MLRO. He said that on the 25th October 2021 the said appellant Bank was served with a garnishee order by the Police whereby it was obliged to block the appellees' accounts, and to refrain from granting them access to the said accounts in accordance with the law. The appellees subsequently requested the release of their funds, but the appellant Bank was prohibited from doing so due to the said garnishee order. The appellant Bank was also prohibited from explaining the reason why this action had been taken in terms of article 4 of Cap. 373 of the Laws of Malta, and consequently it was unable to defend its position before the Arbiter. He said that were the appellant Bank to reveal the reason for the garnishee order, he would have been subjected to criminal proceedings and possibly to a prison sentence. The witness confirmed that to date the garnishee order was still valid, and had not been removed. In the meantime following the appealed decision of the Arbiter, the appellant Bank had received confirmation from the Criminal Court that it could not release the funds in question, and it could neither communicate the reason for its action. He revealed that some time after, the matter had come out in the public domain, when the media had reported that the appellees had filed proceedings before the Constitutional Court. The appellant Bank was then no longer bound by secrecy, which enabled the said witness to give evidence in the present proceedings. He confirmed that the garnishee order was still in place, and the appellant Bank was prohibited from releasing the funds to the appellees.

Considerations

9. The Court will now consider the grievance of the appellant Bank, whilst taking into account the Arbiter's deliberations, and the submissions presented by the appellees.

10. The appellant Bank argues that the appealed decision is wrong. It explains that it had declared before the Arbiter that it was legally prohibited from acceding to the requests made by the appellees, and also legally prohibited from divulging the reason for this. The appellant Bank submits that the said prohibition persists until today.

11. The appellees reveal that the appellant Bank did not explain before the Arbiter the reason why their account had been frozen, and they had not done so neither before this Court. They submit that in the appeal application, the appellant Bank declared that due to a particular circumstance it was alone aware of, and which persists until today, it could not accede to the requests made by the appellees. They argue that this statement cannot be considered a grievance, but merely an attempt to avoid compliance with the Arbiter's order.

12. The Court considers that during these present proceedings, the appellees are now aware of the reason why their account was frozen, and why the appellant Bank could not divulge the said reason. The appealed decision is therefore truly wrong, but through no fault of the Arbiter, who was not and could not be provided with the relevant information to enable him to decide the complaint according to law. The Court considers that now that the

appellees know the reason for the appellant Bank's actions, they can take the appropriate action in terms of Cap. 373 of the Laws of Malta.

Decision

For these reasons, the Court allows the present appeal, and hereby revokes the appealed decision of the Arbiter, with all costs of both instances against the appellees.

Read.

**Hon. Dr Lawrence Mintoff LL.D.
Judge**

**Rosemarie Calleja
Deputy Registrar**