

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 083/2024

ZB

(‘l-Ilmentatur’)

vs

Bank of Valletta p.l.c. (C 2833)

(‘BOV’, ‘il-Bank’ jew ‘il-Fornitur tas-Servizz’)

Seduta tat-28 ta’ Frar 2025

L-Arbitru,

L-Ilment

Ra l-Ilment¹ magħmul kontra l-BOV dwar ir-rifjut li jirrifondi ammont ta’ AED (*United Arab Emirates Dinars*) 14,150 rigward pagamenti li saru mill-Ilmentatur lil terzi mill-kont tiegħu mal-Bank abbinat mal-VISA *Card* rigward kiri ta’ karozza(i) meta kien f’Dubai.

L-Ilmentatur isostni li dawn il-pagamenti saru mingħajr il-permess tiegħu u li kienu abbużivi għaliex huwa kien biss uża d-*device* tiegħu għal dawn il-pagamenti biex jagħmel garanzija għall-karozza li kera hu u għal żewġ karozzi oħra li nkrew minn ħbieb/qraba li kienu miegħu; u l-ftehim kien li dawn il-garanziji jigu rrilaxxati meta jirritornaw il-karozza bla dannu u bla ma jkun hemm xi spejjeż bħal ċitazzjonijiet li jinkorru waqt il-kirja.

L-Ilmentatur isostni li tliet pagamenti kif ġej kienu ‘*FRAUDULENT and UNJUSTIFIED*’²:

¹ Formola tal-Ilment minn paġna (p.) 1 - 6 b’dokumentazzjoni addizzjonali minn p. 7 - 66.

² P. 41

05.04.2023 POS TURBO PLUS RENT A CAR LLC AED 5150 @ 3.9775 €1,294.78

06.04.2023 POS TURBO PLUS RENT A CAR LLC AED 5000 @ 3.9605 €1,262.46

06.04.2023 POS TURBO PLUS RENT A CAR LLC AED 4000 @ 3.9605 €1,009.97

Total AED 14,150 €3,567.21.³

L-Ilmentatur qed jitlob kumpens ta' dawn l-ispejjeż u l-ispejjeż li ħallas għall-ammont ta' €712.97 biex ressaq il-każ tiegħu quddiem l-Arbitraġġ tal-VISA⁴.

B'kollox, qed jitlob l-Arbitru biex jordna l-Bank jagħtih kumpens ta' €4,280.18.

Matul il-proċess irriżulta, u ma ġiex ikkontestat, li dawn il-pagamenti ilmentati kienu ġew approvati mill-Ilmentatur jew permezz tal-*card* fizika jew permezz tat-*token* li kien forma ta' *Apple wallet* fil-mobajl tal-Ilmentatur.

Irriżulta li kien sar pagament ieħor ta' AED 3130 qabel ma saru l-pagamenti ilmentati, iżda dan kien il-prezz tal-kirja miftiehema u, għalhekk, ma jiffurmax parti minn dan l-Ilment.⁵

Għalhekk, fis-sustanza tiegħu, l-Ilment huwa li l-pagamenti ilmentati ma kinux ġustifikati u kienu abbużivi għaliex ma kienx hemm lok li l-pagamenti li l-Ilmentatur kien awtorizza bħala garanzija ta' kirjiet ta' tliet karozzi, flok jiġu liberati bla spejjeż la l-karozzi ġew ritornati kif miftiehema u bla danni, ġew użati biex saru l-pagamenti ilmentati.

L-Ilmentatur qal ukoll:

'My bank, i.e. BoV have informed me that Visa have decided not to refund these amounts, when a family member that was in Dubai for the same stay in April 2023, did in fact get refunded in full into his HSBC Bank Malta account.

Surely, the work from BoV was not done well efficiently and on time, unlike HSBC Bank Malta. As the same transactions were also taken fraudulently from the card of the family relative during the same stay, BUT in his case, Visa did refund him, but not in MY case. As BoV are saying that Visa declined to refund. Not to

³ P. 94 - 95

⁴ P. 66

⁵ P. 140 il-Bank qal li dan il-pagament ġie awtorizzat fit-3 t'April 2023, xi erba' minuti wara li kien ġie awtorizzat il-pagament ilmentat ta' AED 5150 (P. 125) fil-ħin ta' 10:40.

*mention the fact that we have raised the case with Visa back in September 2023, but BoV only came back to me a day after I sent them an email for an update. When the reply (positive one) replied to my family relative with HSBC, came straight away after only 1 month from the start of the process!*⁶

Risposta

Ra r-risposta tal-BOV⁷ fejn qalu:

'Respectfully submits:

A. Introduction

1. *Whereas Mr. ZB ("the complainant") states that his "debit card was debited a total of AED14,150 fraudulently during my stay in Dubai."⁸ He explains that the Bank informed him that Visa decided not to refund these amounts and alleges that this is due to the fact that "the work from BoV was not done well and efficiently and on time."⁹ Therefore he is requesting a refund of the amount of €3567.21, as well as the €712.97 representing charges for the Arbitration proceedings with VISA.*

B. Timeline of approval of the Payments

2. *Whereas the complainant attached details of the transactions in question on page 041 of his complaint. He explains that the 1st withdrawal of AED 3,130 (€786.92 and €9.84 conversion fees) was debited on the 5th of April in line with the agreed prices. According to the Bank's records this transaction was pre-authorized on the 3rd of April 2023 using the physical card of the complainant and the chip of this card was used. The funds were then withdrawn on the 5th of April 2023 as explained by the complainant.*
3. *Whereas the 1st transaction My. ZB claims was "fraudulent and unjustified" was for AED5,150 (€1,294.78 and €16.18 conversion fee) debited on the 5th of April 2023. According to the Bank's records this transaction was also pre-authorized on the 3rd of April 2023 using the*

⁶ P. 3

⁷ P. 72 -76 u dokumenti annessi p. 77 - 95

⁸ P. 3 tal-Ilment

⁹ *Ibid.*

physical card of the complainant where the chip of this card was used. This was authorized on the 3rd of April 2023, a few seconds after the uncontested transaction of €786.92 was authorized. The funds were then withdrawn by the merchant on the 5th of April.

4. *Whereas the 2nd transaction Mr. ZB claims was “fraudulent and unjustified” was for AED 5,000 (€1,262.46 and €15.78 conversion fee) debited on the 6th of April 2023. According to the Bank’s records this transaction was pre-authorized on the 4th of April 2023 through the use of his token, meaning that Mr. ZB has his card registered on his phone and instead of using the physical card to approve transactions, he can use the digital card saved on his phone. From the Bank’s records it results that this transaction was approved using a token (‘digital card’) which Mr. ZB previously used to authorize other transactions which he is not contesting the legitimacy of. These funds were then debited by the merchant on the 6th of April.*
5. *Whereas the last transaction Mr. ZB claims to be “fraudulent and unjustified” was for AED 4,000 (€1,009.97 and €12.62 conversion fee) also debited on the 6th of April. According to the Bank’s records, this transaction was also pre-authorized on the 4th of April 2023 using Mr. ZB’s token. The funds were then withdrawn by the merchant on the 6th of April.*
6. *Therefore, these transactions were all duly authorized and in terms of the Payment Services Directive 2 and Directive 1 of the Central Bank of Malta¹⁰, the Bank has no obligation to refund the complainant for duly authorized payments.*

C. Timeline of the Bank’s handling of the complaint

7. *Whereas on the **12th of May 2023** the Bank received an email from Mr. ZB containing an email sent to the car rental company outlining the allegedly fraudulent transactions. He also provided a copy of the communication he had with the merchant.¹¹ Mr. ZB provided no other*

¹⁰ Article 40(1) of the CBM Directive 1.

¹¹ DOC.A – Initial documents sent by Mr. Grech.

document and therefore on the **17th of May 2023**, the Bank asked Mr. ZB to submit the rental agreement and any other additional documents.¹²

8. Whereas on the **25th of May 2023**, Mr. ZB replied to the Bank saying that he did not have a copy of this documentation and once again provided the Bank with the Whatsapp messages he had with the car rental company.¹³ In this respect, the Bank submits that if he was not given a copy of the agreement, it was in his interest to insist on being given a copy since this agreement would regulate his relationship with the car rental company and would stipulate any charges and fees which may be incurred and for which reason.
9. Whereas on the **31st of May 2023**, the Bank followed up with Mr. ZB regarding the required documentation and informed him that if he is not in a position to provide the rental agreement, he should include this statement in the declaration letter where he needed to explain the dispute. He was informed that this is required by the foreign bank in order to investigate the chargeback claim.¹⁴ On the **5th of June 2023**, he sent the Bank this declaration letter.¹⁵
10. Whereas on the **9th of June 2023**, the Bank informed Mr. ZB that it had contacted the foreign bank regarding the disputed amounts and that the foreign bank had 30 days to review the matter and revert to the Bank.¹⁶ Therefore, within 4 days of Mr. ZB submitting the required documentation, BOV made the chargeback claim to the foreign bank. Thus, the complainant cannot allege any delay on the Bank's part at this stage.
11. Whereas on the **13th of July 2023**, the Bank informed Mr. ZB that the foreign bank had declined the chargeback request stating that the amount of €1310.96 related to traffic fines incurred during the time the car was in his possession. The foreign bank also declined the chargeback request for the 2 other amounts stating that Mr. ZB's card had been

¹² DOC.B – Email from the Bank dated 17th of May 2023.

¹³ DOC.C – Email from Mr. Grech dated 25th of May 2023.

¹⁴ DOC.D – Email from the Bank dated 31st of May 2023.

¹⁵ DOC.E – Email from Mr. Grech dated 5th of June 2023.

¹⁶ DOC.F – Email from the Bank dated 9th of June 2023.

*presented as a guarantee for additional charges for another vehicle rented in the name of 3rd parties. The Bank informed Mr. ZB that the next step in the process was to raise a Pre-Arbitration case where he would need to present a letter rebutting the merchant's reply.¹⁷ The Bank requested him to submit a signed letter by the **24th of July 2023**.*

*12. Whereas on the **2nd of August 2023**, the complainant sent the Bank the necessary documentation to raise the Pre-Arbitration. On the **4th of August 2023** informed Mr. ZB that the Bank had raised the 3 Pre-Arbitrations and the foreign bank had 30 days to review and reply to BOV.¹⁸*

*13. Whereas on the **5th of September 2023**, the Bank informed Mr. ZB that the foreign bank had replied and rejected the Pre-Arbitration attempts. Amongst the reasons listed for the rejection where the following:*

- The transactions were affected in a face-to-face environment,*
- The cardholder incurred traffic fines which as per the car rental agreement, Mr. ZB had authorized the car company to withdraw,*
- The cardholder had agreed to be debited for additional charges incurred and agreed that he would be liable for all kinds of violations.*

14. BOV informed Mr. ZB that the next step would be to file an Arbitration case directly with VISA who would issue the final ruling. The Bank also informed him that the losing party would incur the filing review fee of €500 per transaction. Moreover, he was informed that VISA's decision would be final.¹⁹

*15. Whereas on the **6th of September 2023**, Mr. ZB informed the Bank that he wanted to proceed with the Arbitration and the Bank requested an updated letter with his claim which he submitted on the **7th of September 2023**. On the **9th of September 2023**, the Bank then raise the 3 claims in 1 bundle case so that less fees would be incurred.*

¹⁷ DOC.G - Email from the Bank dated 13th July 2023.

¹⁸ DOC.H - Email from the Bank dated 4th of August 2023.

¹⁹ DOC.I – Email from the Bank dated 5th of September 2023.

16. *Whereas on the 7th of November 2023, the Bank received a final decision from VISA, declining the Arbitration. However, the Bank could not inform Mr. ZB of the outcome immediately, since VISA had not yet informed the Bank of the amount due for the review fee.*
17. *Whereas on the 29th of January 2024, the Bank was informed that VISA debited USD750 (€712.97) from the Bank for the case of Mr. ZB. The Bank eventually informed Mr. ZB of this on the 20th of March 2024 and debited his account with the fees.²⁰*
18. *Whereas the Bank acknowledges that there was a delay from when it had the final outcome to when it informed Mr. ZB. However, respectfully the Bank submits that the outcome and decision of VISA would not have changed if the Bank had informed him of the decision previously. Therefore, it is completely unjustified for Mr. ZB to expect the Bank to refund him for transactions which were duly authorized and which the Bank did its' utmost to assist Mr. ZB to recover.*
19. *Whereas Mr. ZB alleges that a family member who was in Dubai for the same stay in April 2023 was fully refunded by HSBC. Thus, he alleges that "surely the work from BOV was not done well efficiently and on time, unlike HSBC Malta."²¹ Respectfully, the Bank submits that Mr. ZB cannot compare 2 unrelated cases together as his relationship with the car rental company was regulated by a contract which he signed, and any agreement signed by a third party is irrelevant to Mr. ZB's situation. Moreover, from the timeline outlined in this reply, it is clear that BOV followed the necessary steps and procedures to attempt to recover the money. However, the final decision rested with VISA who declined the Arbitration. As explained to Mr. ZB by the Bank, the Bank cannot appeal VISA's decision which is final. Moreover, one should note that at no point in the chargeback process did the foreign bank or VISA decline the Bank's claim due to the Bank not raising it within the stipulated timeframes. Therefore, Mr. ZB's allegation that the Bank's work "was not done well, efficiently and on time"²² is unfounded and unjustified. Had the Bank*

²⁰ DOC.J – Email from the Bank to Mr. Grech.

²¹ P. 3 of the complaint.

²² P. 3 of the complaint.

attempted to submit any of the claims outside the stipulated timeframe, they would not have been accepted by the system and no decision would have been issued.

20. *Whereas Mr. ZB also states that he is requesting the €712.97 charges "that BOV will charge for the procedure."²³ As explained to Mr. ZB, these charges were imposed by VISA in order to file the Arbitration. Prior to proceeding with the Arbitration, the Bank duly informed Mr. ZB that there would be these charges associated with the claim and that the losing party will need to bear these charges. In fact, each claim amounts to €500, however, since the Bank raised the 3 complaints altogether, a lesser amount was incurred as explained in the Bank's email to Mr. ZB of the 20th of March 2024. BOV does not charge any fees at any point in the chargeback cycle.*

D. Conclusion

21. *For the reasons articulated above, the Bank respectfully submits that the Complainant's claims are unfounded in fact and in law and should be rejected by the Honorable Arbiter.*
22. *Chapter 555 of the Laws of Malta vests the Honorable Arbiter with the authority to decide a case on the basis, inter alia, of the Complainant's legitimate expectations and what he deems fair and equitable in the circumstances of the case. The Bank very respectfully submits that such element of fairness and a customer's legitimate expectations are founded and pivot on a balance between rights and obligations whereby a customer most certainly has rights but also an inherent interest and obligation to faithfully abide with all terms, conditions as well as guidelines issued by the Bank, as these are ultimately intended to serve and protect the customer.*
23. *The Bank reserves the right to bring oral and documentary evidence in order to substantiate the defenses raised in this reply, as well as to make submissions both verbally and in writing pursuant to the provisions of Chapter 555 of the Laws of Malta.*

²³ *Ibid.*

24. *The Bank reserves all rights/ actions pertaining to it at law, and respectfully requests the Arbiter to reject and dismiss the complaints' claims.*

*With expenses.*²⁴

Seduti

Fis-seduta tat-22 t'Ottubru 2024, xehed l-Ilmentatur u qal:

'Ngħid li l-ilment tiegħi hu li xi ħadd li krejt karozza mingħandu Dubai ħa l-flus mingħajr l-approvazzjoni tiegħi. Għamilt il-complaint tiegħi mal-BOV u l-BOV prattikament qatt m'aċċettaw il-claim u qed jgħidu li għax it-tielet persuna qed jipprezenta dokumenti li jiena suppost iffirmajt u awtorizzajt dan il-pagament.

Ngħid li jiena qatt ma awtorizzajthom u bqajt sal-lum il-ġurnata l-bank mhux qed jipproteġini biex nieħu l-flus lura.

Jien nippretendi li pagamentli ma awtorizzajt, ma nħallsux, jiġifieri jekk il-bank qed jgħid li għandu d-dokumenti u qed jaċċettahom, il-bank irid jgħidli fuq liema bazi qed jaċċettahom jew fejn qed jara l-firma tiegħi fejn jiena awtorizzajt dawn il-pagamenti.

Ngħid li jiena qed nitlob lill-bank jirrifondili l-flus li jien m'awtorizzajtx, is-somma ta' €3,567.21.²⁵

Fil-kontroezami kompli jgħid:

'Nikkonferma li fit-3 t'April 2023, meta ġara dan l-incident, jiena kont Dubai.

Ngħid li dakinhar użajt il-card tiegħi biex nikri karozza mingħand dik il-kumpanija Car xi ħaġa.

Ngħid li użajt il-VISA card tiegħi biex tajt deposit, garanzija, l-ewwel deposit biex nikri karozza.

²⁴ P. 72 - 76

²⁵ P. 96

Ngħid li le, ma kellix il-card irregistrata fuq il-mobile, fuq il-wallet. Illum għandi, imma dakinhar użajt il-card fiżika.

Mistoqsi l-garanzija li għidt li tajt għal min tajtha jekk hux għal karozza li krejt jiena jew ttajttx garanzija għal karozza li kera ħaddieħor, ngħid, biex ngħaddi għall-punt mill-ewwel, jekk tagħmlu sempliciment Facebook research fuq is-seller, fuq min jikri l-karozzi, dan jagħmel tip ta' frodi apparentement ma' kulhadd bl-istess mod identiku.

Dan jekk għandu tnejn min-nies, tlieta li krew karozza mingħandu, it-tnejn min-nies l-oħra kienu jiena u żewġ membri tal-familja tiegħi. Ngħid li lilt-tlieta li aħna ħadilna l-flus. U kulhadd qed jipprezenta d-dokumenti tal-oħrajn daqslikieku jien iggarantejt lill-ieħor. Imma dak x'qed jgħid hu.

Ngħid li jien qatt ma ffirmajt dokument fejn jidhlu l-oħrajn. U l-oħrajn qatt ma ffirmaw dokument fejn nidhlu aħna. Fil-fatt, hemm każ mal-HSBC fejn l-HSBC taw il-flus lil wieħed minnhom. L-ieħor mal-Banif u ma ffollowjahx. U jiena Prattikament magħkom.

Dan Prattikament qed jgħid li jekk il-parti l-oħrajn għandhom claim ukoll għax anke lill-oħrajn seraq, qed jipprova jgħaqqad il-claim li għandu hu fuq tliet każi kull darba. Jekk tagħmlu sempliciment Facebook research, taraw xita ta' complaints fuq din il-kumpanija. Aħna ma konniex nafu, wara sirna nafu x'tip ta' frodi jagħmel dan.

Mistoqsi dakinhar iffirmajtx xi ħaġa, ngħid li dakinhar iffirmajt għall-karozza tiegħi biss. Qatt, ma jeżistix dokument li jien iffirmajt għal nies oħra. U jekk jagħtuni dan id-dokument, jien lest li nagħlaq ħalqi u nwaqqa' dan il-każ.

Mistoqsi kontx konxju tat-termini li jikkundizzjonaw ir-relazzjoni tiegħi ma' dan il-merchant, ngħid li jien kont konxju li qed nikri l-karozza tiegħi u jekk nagħmel xi danni lill-karozza tiegħi, ovvjament kien hemm il-garanzija li ħa l-ewwel ġurnata. Terġa' mhux il-flus li ħa wara mingħajr l-awtorizzazzjoni tiegħi.

Mistoqsi wara dakinhar iltqajtx ma' din il-persuna u jekk ergajttx ħallastu b'xi mod, ngħid li le, xejn. Anzi għamilt xahar inċempillu kuljum, ġennintu għax spicċajt immur għand il-pulizija. Jien mhux għat-€3,500, mhux ser jibdluli ħajti,

imma bir-rispett kollu, jien maħruq li xi ħadd seraq lili, seraq lill-familja kollha u he just got away with it u l-bank aċċettahielu.

Onestament għalhekk qiegħed hawn għax ma nistax inħalli lil xi ħadd li jisraq lin-nies li jkollu u jisraq lili u lill-familja kollha.

Mistoqsi għamiltx rapport mal-Pulizija dwar dan l-inċident, ngħid li le, hawn Malta qatt m'għamilt rapport mal-Pulizija.

Mistoqsi meta kienet il-ġurnata li rritornajt il-karozza, ngħidlek il-ġurnata bl-ammont hekk ... ngħid li għal ġurnata krejtha, allura, la kien it-3 t'April, mela fl-4 t'April.

Mistoqsi ergajt x'ħallastu, ergajt x'tajtu l-card, ngħid li meta tajtu l-karozza, kellu jagħlaq it-tranzazzjonijiet hu waħdu, jgħidli fl-4 t'April, jekk uża xi tranzazzjoni fl-4 t'April, użaha again biex jagħlaq it-tranzazzjonijiet tiegħi u mhux biex jagħlaq it-tranzazzjonijiet ta' ebda ħaddieħor.

Mistoqsi jekk biex jagħlaq it-tranzazzjonijiet tiegħi tajtux il-card, ngħid li l-għada x'ħin irritornawha, hu kien qalilna, 'Isma', dan ma nkunx naf jekk hemmx tickets. Jien għalissa ser inżomm il-flus u xahar ieħor ser tieħdu l-flus awtomatikament.'

Ngħid li aħna meta rritornajna, ippanikajna għax tlieta min-nies tagħna ħadilna l-flus tagħna, jien minn qabel ix-xahar bdejt indejqu. Eżatt f'egħluq ix-xahar, ġennintu bit-telefonati u spicċa jgħidli biex ma nkellmux aktar, ma niktibx aktar, biex inkellem lill-bank u biex inħallih. Dan kien qalli li fi żmien xahar, jaqgħu waħedhom il-garanziji li ħa, whatever l-ammonti li ħa mingħandi, però, l-ammonti li ħa mingħandi b'din il-card ser inkomli ngħid li jiggarrantixxu biss il-kirja tiegħi. Ma kellu l-ebda awtorizzazzjoni mingħandi la ffirmata fejn tgħid li jien qed niggarantixxi l-karozza ta' ħaddieħor jew xi ammont ieħor.

Mistoqsi l-ammonti li qed nirreferi għalihom li ħa fil-bidu kinux il-garanzija u jekk wara tajtux xi ħaġa jew ippruvajt xi ħaġa, ngħid li le, qatt.

Mistoqsijiet mill-Arbitru:

Qed jingħad li jidher li l-kirja kienet għal ġurnata jew fit-3 t'April jew fl-4 t'April. Imbagħad, fl-ilment, is-Sur ZB qal fejn hemm, 'When did you have first

knowledge of the matters complained of' hemm is-6 t'April li tigi l-għada jew jumejn wara.

Mistoqsi kif sirt naf, ngħid li meta jiena irritornajt il-karozza tiegħi, kellimt lil ħatni u r-raġel t'oħt il-mara u r-raġel t'oħt il-mara l-oħra. U kif rajna t-tlieta li aħna – dan ħadilna figuri lit-tlieta li aħna kollha esagerati, qed jibblokkjalna mill-card figuri esagerati, morna niċċekkjaw fuq din il-kumpanija. Kif morna niċċekkjaw mill-ewwel fuq din il-kumpanija, naraw dawn it-tip ta' complaints fuq il-Facebook speċi li dan jagħmilha regolari, eċċ. Allura xegħelulna l-alarm bells minn dakinhar.

Mistoqsi mill-Arbitru jekk it-tranzazzjoni tal-VISA card kinitx tibblokkja l-ammont kollu, ngħid li naħseb li le. Li niftakar żgur li anke sa wara jalla rċevejtx xi refusals jiġifieri anke pprova jgħaddiha wara dakinhar. Ma nafx jekk il-bank għandux din l-informazzjoni imma jiena jidhirli li anke sa wara pprova jgħaddi.

L-Arbitru jgħid li kien hemm erba' tranzazzjonijiet li tlieta minnhom jien qed nikkontesta. Ngħid li dawk huma l-figuri kollha barra l-kirja. Ngħid li jien m'għamilt l-ebda dannu, m'għamiltiha xejn.

Mistoqsi jekk irċevejtx xi notifika mill-bank fejn infurmani li l-kont tiegħi ġie ddebitat b'5,000 Dir, ngħid ħa nkunu ċari, l-ammont kollu li bblokkja jien kont naf bih mis-6 t'April 2023. Jien mhux qed nikkontesta li dak l-ammont ma kellux jibblokkjah; però, d-diskors tiegħu dejjem kien li hu qed jibblokkjah bħala garanzija biex jara kienx hemm ċitazzjonijiet, ħsara, eċċ.

Mistoqsi għal liema ammont qed nirreferi, ngħid għall-ammont kollu li ħa waqt dawk il-jumejn u ngħid li jekk wara s-6 t'April ma ħa xejn, jien ma nistax ngħidlek li hemm figura li lili ma qallix li qed jibblokkja bħala garanzija għax inkella nkun qed nigdeb.

Jiena qed ngħid li l-ammont li kien qal u mis-6 t'April stess xegħelulna l-alarm bells, indunajt li lili bblokkjali ammont ta' flus, eventwalment qal li dawn f'xahar jaqgħu waħedhom u bdejt indejqu xahar sħiħ u waqt dak ix-xahar jalla kontx ġejt lura u ktibt lill-BOV li dan mhux qed iwaqqgħu. Imbagħad, minn hemm komplejna bil-każ kollu.

Jien mhux qed ngħid, 'Isma', dawk il-jumejn, waqt li jiena tajtu l-card, qed ngħidilkom żgur li bil-card tiegħi ma ppruvahulix dak l-ammont jew ma ħadux bħala garanzija għax hu just qal garanzija.'

Iva, dan suppost irrilaxxah u ma rrilaxxahx. Hekk hu, kompletament. U m'għandux prova għalxiex ried iżommmhom.

Qed jingħad mill-Arbitru li ma kellux l-ammont sħiħ imma f'erba' biċċiet. Ngħid li kellu t-tranzazzjonijiet li hu ħadhom bħala garanzija, li hu qed jgħid bħala garanzija sakemm jara kienx hemm ċitazzjonijiet, eċċ.

Ngħid li jekk m'hemmx tranzazzjoni wara s-6 t'April, nista' ngħid li t-tranzazzjonijiet kollha għaddihom waqt li kont hemm jiena. Ngħid ħa nkun ċar li dik m'inix qed nikkontestaha.

L-Arbitru jistaqsini jekk l-informazzjoni kollha li talbuni l-Bank of Valletta tajthielhomx biex ikunu jistgħu jagħmlu difiża kif suppost mal-Arbitration Board tal-VISA, ngħid li jekk dan il-bniedem ħadli flusi, qatt ma awtorizzajthom u ma nafx għalxiex qed jeħodhom, x'dokumenti stajt nippreżenta? Jien m'għandix dokumenti oħra ħlief dak tal-kirja. Ngħid ma nafx ngħid bl-ammont jekk ipprezentajnihx.

(Is-Sur Daniel Bilocca, għall-ilmentatur, jgħid li ma pprezentawx id-dokument tal-kirja għall-fatt li qatt ma pprovdiehom dan id-dokument.)

Dwar dan id-dokument tal-kirja, kieku kellu jinstab huwa identiku ma' tal-oħrajn – nista' niċċekkja mal-oħrajn għax m'għandix idea.²⁶

Fis-seduta tas-7 ta' Jannar 2025, il-Bank ressaq ix-xhieda ta' Shirley Scerri li qalet:

'Ngħid li jiena Manager taċ-Chargebacks Department u ili nokkupa r-rwol minn Lulju 2023 u ili nagħmel parti minn dan id-dipartiment għal dawn l-aħħar tmintax-il sena.

²⁶ P. 97 - 100

Ngħid li jiena kont l-ewwel persuna li kont qed nikkomunika mal-ilmentatur meta kont għadni fir-rwol ta' Chargeback Officer u l-każ kien beda qabel Lulju 2023.

Ngħid li tranżazzjoni waħda saret billi fiżikament giet ipprezentata l-card u ddañhal il-PIN. Din kienet ta' €1,310.96 li saret fit-3 t'April 2023, u giet ipproċessata jumejn wara.

Imbagħad, saru żewġ tranżazzjonijiet oħra mill-ilmentatur. Waħda ta' €1,022.59 li saret fl-4 t'April 2023 u giet ipproċessata fis-6 t'April 2023. L-oħra hija ta' €1,278.24 li saret fl-4 t'April 2023 li giet ipproċessata fis-6 t'April 2023.

Dawn l-aħħar żewġ tranżazzjonijiet saru billi ġew approvati bit-token jiġifieri l-ilmentatur ipprezenta l-mobile tiegħu fejn kellu il-card enrolled. Dan huwa mod ieħor kif l-ilmentatur jista' jawtorizza t-tranżazzjonijiet. Il-card kienet enrolled fl-Apple Wallet fuq il-mobile tal-ilmentatur mill-4 ta' Marzu 2023, jiġifieri giet enrolled fuq il-mobile tiegħu qabel ma saru dawn it-tranżazzjonijiet.

Fl-istess ġurnata, fl-4 t'April 2023, huwa ħallas bl-istess mod u ħallas il-hotel Atlantis, The Palm, fejn ħallas €76.70, jiġifieri intużat bl-istess mod u ntuża l-istess token number li ntuża għal dawn iż-żewġ tranżazzjonijiet ilmentati.

Ngħid li dan il-pagament li semmejt mhuwiex parti mill-ilment.

Ngħid li għalkemm it-tliet pagamenti kienu awtentikati u awtorizzati mill-klijent, aħna xorta ftaħna claim mal-bank ta' barra biex nispegawhom għalfejn il-klijent tagħna jrid il-flus lura. Ngħid li għamilna chargebacks, għamilna ċ-Chargeback Cycle kollu jiġifieri Chargeback Stage, Pre-Arbitration u Arbitration dirett mal-VISA. U għamilnihom wara li l-klijent gie nfurmat fuq kull stadju kif ukoll ġibna l-approval tiegħu biex inkomplu sal-aħħar stadju.

Meta l-klijent ikkuntattjana f'Mejju 2023, u għamel referenza għal dawn l-ammonti, aħna tlabnih xi dokumenti. Tlabnih ir-Rental Agreement u tlabnih dokumenti oħra fis-sens jekk dan tkellimx mal-merchant, jekk kellux emails mal-merchant, jekk ikkuntattjax lill-merchant wara li hu ra dawn it-transactions. Il-klijent infurmana li ma kellux ħafna mid-dokumenti li tlabnih, jiġifieri ma kellux Rental Agreement, ma kellux emails mal-merchant; kulma

kellu Whatsapp chats li kien għamel fl-istadju biex jikri karozza u karozzi oħra għax mhux karozza waħda tissemma' f'dawn iċ-chats.

Allura, l-bank talab lill-klijent biex dan kollu u d-dokumenti li qalilna li m'għandux jinkorpora kollox f'ittra biex aħna nkunu nistgħu nibgħatu kollox lill-bank ta' barra.

Hu qalilna li kera karozza; kriha għal 24 siegħa u qalilna li kriha fl-4 t'April 2023. Meta aħna rċevajna d-dokumenti kollha fil-5 ta' Ġunju 2023, aħna ftaħna l-claim mal-bank fid-9 ta' Ġunju 2023, jiġifieri erbat ijiem wara.

Ngħid li ma kienx hemm dewmien fil-claim. Il-claim ġie handled u raised mill-ewwel. Meta ġie declined ikkuntattajna lill-klijent u komplejna bil-Pre-Arbitration stage. U meta ġie declined ukoll spjegajnilu li the next step hija l-Arbitration. L-Arbitration għal kull każ, jiġifieri għal kull transaction. Spjegajnilu li għandu €500 għal kull Arbitration li ried jagħmel u l-klijent aċċetta li jipproċedi. Ngħid li aħna spjegajnilu kollox.

Ngħid li l-każ ġie declined f'kull stadju taċ-Chargeback Cycle. Il-foreign bank baġħtilna dokumenti li kien hemm rental u kien hemm ċitazzjonijiet. Kien hemm aktar dokumenti, jiġifieri, għal kull transaction li ġiet declined, bgħatna l-informazzjoni lill-klijent. Hu kien jaf il-foreign bank x'qiegħed jgħid għax dawk id-dokumenti bgħatnihomlu.

Ngħid li l-każ jarah l-Arbitration VISA Committee. Ngħid li aħna la jkollna say bħala bank u lanqas il-foreign bank ma jkollu say. Id-dokumenti li jkunu telgħu fis-cycle kollu ikunu hemm available biex l-Arbitration Committee jarawh u bazikament jagħmlu review tal-każ. Ngħid li aħna ma nistgħux nirribattu l-eżitu tal-każ. Their decision is final.

Ngħid li ma jkunx hemm xhieda imma kollox minn fuq id-dokumentazzjoni ta' fuq is-sistema.²⁷

Fil-kontroezami kompliet tixhed:

'Naqbel li tranżazzjoni minnhom saret bil-physical card u ż-żewġ tranżazzjonijiet l-oħra saru bit-token.

²⁷ P. 102 - 104

Qed jingħad li wieħed minnhom kien bħala garanzija u t-tnejn l-oħra bħala payment, jiġifieri b'hekk saru b'dak il-mod u għall-ebda raġuni oħra.

Mistoqsija x'dokumenti għandna mis-supplier biex jiġġustifika din it-tranzazzjoni, ngħid li d-dokumenti kollha li baġħtilna l-foreign bank bġħatnihom lill-klijent.

Qed jingħad li l-bank qed jaċċettaw it-tranzazzjoni wkoll għax ġiet justified mit-tranzazzjonijiet li tana l-foreign supplier.

Ngħid li t-tranzazzjonijiet ġew awtentikati mill-klijent.

Qed jingħad li ġew awtentikati b'mod frawdolenti bħala garanzija u mhux bħala payment. U jekk dan il-bniedem li hu supplier li finalment għaddew il-flus through l-bank għax il-klijent ħallas bil-card biex ikollu l-protection u dan qal li għamel hold ta' payment u issa ħadu, kif qed jgħid il-bank.

Ngħid li l-klijent għandu d-debits fuq l-istatement.

Mistoqsija fuq liema dokument il-pagament ġie aċċettat, ngħid li t-tranzazzjonijiet ġew awtentikati u awtorizzati mill-klijent. Mela t-tranzazzjonijiet ser jgħaddu.

Qed jingħad li l-klijent awtorizza l-hold biex f'każ li ħabat bil-karozza jew kellu xi speeding tickets. Qed jingħad li dawn il-pagamenti kellu jawtentikahom is-supplier u kellu jivverifika hu li saru l-ispeeding tickets u li ma kienx fid-dover tal-ilmentatur li jagħmel dan.

Mistoqsija fuq liema bażi l-bank jew il-VISA Board aċċettaw li dawn l-ispeeding tickets huma tal-klijent, ngħid li l-klijent qed isemmi xi ħaġa totalment differenti. Il-klijent għamel id-dispute u baqa' sejjer sal-aħħar tad-dispute għax il-bank ipprovdieu d-dokumenti li tana l-foreign bank u l-klijent ma baqax jaqbel.²⁸

Digrieti

Permezz ta' digriet tal-10 ta' Jannar 2025, l-Arbitru talab biex mas-sottomissjonijiet finali jintbagħtu kopji tad-dokumenti li ġew sottomessi lill-Bord tal-Arbitraġġ tal-VISA bħala difiża tal-ilmentatur u kopja ta' dokumenti li ġew

²⁸ P. 104 - 105

ipprezentati mill-bank tal-*Merchant* bħala ġustifikazzjoni tar-rifjut ta' *chargeback* u *pre-arbitration*.

L-Ilmentatur irrisponda²⁹ bl-argumenti li kien diġà qal fl-Ilment u fis-seduti bla ma baġhat ebda dokumenti. Il-BOV baġhat risposta dettaljata flimkien ma' kopji ta' dokumenti mitluba.³⁰

Permezz ta' digriet datat 4 ta' Frar 2025,³¹ l-Arbitru talab kjarifika dwar punti li ħarġu mid-dokumenti annessi mas-sottomissjonijiet tal-BOV. Din il-kjarifika ġiet sottomessa.³²

Analizi u osservazzjonijiet

L-Arbitru jrid jasal għal ġudizzju fuq dan l-Ilment skont dak li, fil-fehma tiegħu, huwa ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u sostantivi tal-każ u dan skont artiklu 19(3)(b) tal-Att KAP. 555.

F'dan il-każ ingabu provi suffiċjenti li juru li l-pagamenti ilmentati kollha saru bl-approvazzjoni tal-Ilmentatur permezz tal-*card* fiżika jew tat-*token* fl-*Apple Wallet*.

Fil-fatt, l-Ilment mhux li dawn il-pagamenti ma ġewx awtorizzati iżda li dawn il-pagamenti kellhom iservu ta' garanzija temporanja biex jagħmlu tajjeb għal xi ħsara, ċitazzjoni jew kilometri żejda waqt il-kirja tal-karozzi. Iżda l-Ilmentatur isostni li b'mod abbużiv il-*Merchant* flok irrilaxxa l-garanzija, ġibidha bla raġuni.

L-Ilmentatur iħoss li l-BOV ma għamilx difiża tajba biżżejjed biex jipprova l-abbuż li sar mill-*Merchant* u, għalhekk, qed jitlob li l-Bank iġorr id-dannu li sofra mill-allegat abbuż tal-*Merchant*.

L-Arbitru jagħmilha ċara li fil-kors tal-provi u s-sottomissjonijiet ma ħareġ xejn li jipprova xi nuqqas tal-BOV kif qed jallega l-Ilmentatur. Għall-kuntrarju, jirrizulta li l-Bank mexxa ma' proċeduri korretti biex jagħmel l-argumenti u l-evidenza li seta' jipprovdilu l-Ilmentatur u dan fit-tliet livelli tal-proċess biex jipprova

²⁹ P. 110

³⁰ P. 113 – 116 u dokumenti annessi p. 117 - 133

³¹ P. 134 – 135

³² P. 138 - 140

jirkupra d-dannu, jġigifieri l-proċessi ta' *chargeback* u *pre-arbitration* dirett mal-*Merchant* u, fl-aħħar nett, mal-Bord tal-Arbitraġġ tal-VISA.

Jekk il-*Merchant* ipprovda evidenza li kkonvinciet lill-Bord tal-Arbitraġġ tal-VISA li dawn iċ-*charges* kienu skont kif kienu miftiehma bejn il-partijiet, u kienu relatati ma' ċitazzjonijiet u kilometri żejda waqt il-kirja, żgur mhux ħtija tal-BOV.

Għall-kuntrarju, kien l-Ilmentatur li naqas li jipprovdi kopja tal-kuntratt tal-kirja u ma għamilx difiża dwar l-allegati ċitazzjonijiet li kienu barra mill-ħin tal-kirja.

Il-fatt li l-Ilmentatur ma għamilx din id-difiża, u li ġie stabbilit li l-pagament mhux kontestat ġie approvat għall-ħabta ta' 10:40, minkejja li l-kuntratt tal-kirja juri li din bdiet wara nofsinhar, jindika li l-Bord tal-Arbitraġġ tal-VISA kienu konvinti mill-validità taċ-*charges* ilmentati ġaladarba ddeċidew favur il-*Merchant*.

Huwa ċar li l-Bank kien jiddependi mill-informazzjoni li jagħtih l-Ilmentatur biex jagħmel il-każ favur l-irkupru u, jekk dan ma rnexxiex, dan ġara għax l-evidenza li pprovda l-Ilmentatur ma kinetx soda u affidabbli.

Ma ngabet ebda prova li l-BOV kellu xi evidenza li pprovda l-Ilmentatur li b'negligenza jew nuqqas ieħor naqas milli jipprovdiha lill-bank tal-*Merchant* u lill-Arbitraġġ tal-VISA.

L-uniku nuqqas li jista' jġi attribwit lill-Bank f'dan il-proċess huwa li dam mis-7 ta' Novembru 2023 sad-29 ta' Jannar 2024, biex informa lill-Ilmentatur bid-deċiżjoni negattiva tal-Bord tal-Arbitraġġ tal-VISA. Izda dan bl-ebda mod ma ppreġudika l-pożizzjoni tal-Ilmentatur.

Rigward l-argument li bank ieħor kellu suċċess fil-proċess taċ-*chargeback* ma' klijent bl-istess problema ma ngabet ebda evidenza dwar dan. U, fuq kollox, is-suċċess jew le ta' *chargeback* jiddependi fuq l-evidenza li jforni l-ilmentatur konċernat.

Deciżjoni

Għar-raġunijiet hawn fuq spjegati, dan l-Illment qed jiġi miċħud u jordna li kull parti għorri l-ispejjeż tagħha.

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.