

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 240/2024

GR u TR

(‘l-Ilmentaturi’)

vs

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

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

Seduta 2 ta’ Mejju 2025

L-Arbitru,

Wara li ra l-ilment magħmul kontra *Bank of Valletta p.l.c.* dwar *scam* finanzjarja li l-Ilmentaturi sfaw vittma tagħha.

*L-Ilment*¹

Fl-ilment tagħhom, l-Ilmentaturi ppremettew u sottomettew illi mill-kont bankarju tagħhom saru żewġ pagamenti ta’ €303.00 kull wieħed abbażi ta’ xiri minn fuq ‘*BlockChain*’ li, però, l-Ilmentaturi jiċhdu li rċevew xi prodotti jew servizzi relatati.

L-Ilmentatrici spjegat li persuna kienet qed tikkomunika magħha fuq il-pjattaforma ‘*WhatsApp*’ li għamel tabirruħu li huwa rappreżentant tal-lukanda li l-Ilmentaturi kienu rriservaw għal xi ljieli permezz ta’ ‘*Booking.com*’. Il-frodista qalilha li l-pagament ma kienx gie ipproċessat u wassalha sabiex reggħet ipprovdietlu d-dettalji bankarji tagħha. Minkejja li t-tranzazzjonijiet in kwistjoni saru bit-*3D Secure Authentication*, dawn xorta saru b’qerq peress li l-Ilmentatrici kellha l-impressjoni li kienet qed tikkomunika ma’ rappreżentant ġenwin tal-

¹ Formola tal-Ilment minn paġna (p.) 1-6, bid-dokumentazzjoni addizzjonali minn p. 7-53

lukanda. L-Ilmentaturi qalu li l-fatt li ma rċevew l-ebda prodotti jew servizzi jkompli jikkonferma kemm verament din kienet *scam*.

L-Ilmentaturi qalu li huma kienu kkuntattjaw lill-BOV minnufih malli waslitolhom l-SMS li nformathom li seħnew tranżazzjonijiet mill-kont tagħhom, għaliex dak il-ħin stess indunaw li dawn it-tranżazzjonijiet kienu frawdolenti. Wara li ċemplu lill-CardCentre tal-BOV, ġew infurmati li kien tard wisq biex iwaqqfu t-tranżazzjoni u jgibu l-flus lura fil-kont għaliex it-tranżazzjoni kienet diġà seħħet. B'hekk, l-Ilmentaturi huma ffrustrati għaliex ma jistgħux jifhmu x'inhuwa l-punt li tintbagħat SMS meta sseħħ tranżazzjoni jekk ma hemm l-ebda possibiltà li din titregġa' lura.

Barra minn hekk, l-Ilmentaturi jsostnu li huma ma kellhom l-ebda kont bankarju miftuħ ma' CENTI u lanqas ma għandhom imniżżla l-app ta' CENTI. B'hekk, l-Ilmentaturi jixtiequ jkunu jafu jekk dan il-punt tqajjmix mill-BOV fil-korrispondenza tiegħu ma' CENTI u jekk dan huwa fil-fatt il-każ, x'risposta kellhom CENTI.

Rimedju mitlub

Għaldaqstant, l-Ilmentaturi qegħdin jitolbu l-flus li tilfu u, *cioè*, s-somma totali ta' €606.00.

Ra t-twegiba tal-Fornitur tas-Servizz²

“Respectfully submits:

A. Introduction

- 1. Whereas Mr. and Mrs. Complainant(s) (“the complainants”) state that they have been victims of fraud and are thus asking the Bank to refund them the amount lost, this being €606.06. Despite the various explanations and documents presented with the claim, the complainants fail to clearly state what actions Mrs. Complainant(s) performed, why the Bank let them down and why it is being asked to compensate them.*
- 2. Whereas the transactions being complained of occurred on the 26th of July 2024 and were affected from card ending 7468 in the name of Mrs.*

² P. 59-154

Complainant(s). According to the Bank's records, the 2 transactions were duly authorised via the 3D Secure app using the push notification and authentication method, which app is registered on Mrs. Complainant(s)'s phone. As part of the Bank's security systems which are in line with the Payment Services Directive 2 (PSD2), there are multiple levels of authentication to ensure that the transactions are affected by the customer themselves and from credentials and systems registered in his name. In fact, these transactions had no indication that they were fraudulent.

3. *Whereas article 40(1) of Directive 1 of the Central Bank of Malta (based on the PSD2) provides that a transaction is considered to be authorised if the person making the payment gave their consent for the transaction to be affected. As explained, the Bank received legitimate instructions from credentials associated with Mrs. Complainant(s) and therefore it has no obligation to refund the complainants.*
4. *Whereas the Bank implemented the necessary measures to ensure that its systems are secure and in line with the PSD 2 which provides the following on 'strong customer authentication':*

*'strong customer authentication' means an authentication based on the use of two or more elements categorised as **knowledge (something only the user knows), possession (something only the user possesses) and inherence (something the user is)** that are independent, in that the breach of one does not compromise the reliability of the others, and is designed in such a way as to protect the confidentiality of the authentication data;³*

5. *Whereas Mrs. Complainant(s) was fully aware of the amount of each transaction. In this case, the recipient was CENTI. The recipient was not booking.com, the name of the hotel nor the person with whom Mrs. Complainant(s) was communicating through Whatsapp. The recipient and the amount would have been visible on the 3D Secure app of Mrs. Complainant(s), and she needed to approve the payment by a passcode*

³ Article 4(30) of PSD2

or using her fingerprint (if her mobile phone is compatible with this feature). This satisfies the elements of possession and knowledge, or inference as required by strong customer authentication. This process can be seen from the attached document marked as 'DOC.A' (this is easily accessible on the Bank's website). This process clearly shows that one is approving a transaction.

6. *Whereas this transaction was approved using the card details of Mrs. Complainant(s) and with the use of her 3D Secure app. Therefore, the Bank had no control over this transaction since it was affected completely by Mrs. Complainant(s) herself. When the Bank receives legitimate instructions from the adequate systems, the Bank implements them accordingly since it is expected that the only person who has access to these details and systems is the person with whom they are associated.*
7. *Whereas Mrs. Complainant(s) is familiar with this method of approving transactions since the 3D Secure app had been registered on her device since the 28th of August 2023 and she had made multiple genuine transactions prior to this incident.*
8. *Whereas the Terms and Conditions of the BOV Cashlink VISA clearly provide that the 3D Secure app is used to approve payments:*

3. YOUR PIN / 3D SECURE PASSCODE / VERIFICATION CODES / OTHER SECURITY DETAILS

- a) *You may use your Card to effect transactions through various channels. For this reason you will be issued with any one, or all, of the below:*
 - i) *A PIN – personal identification number to be used for example at the ATM or at the Point of Sale;*
 - ii) *A 3D Secure passcode – to be used for example when effecting online purchase;*
 - iii) *A verification code – to be used to verify your cards when registering to an eWallet, or an app, such as the Bank's BOV Pay app or the BOV 3D Secure app.*

b) In all the above instances, any PIN and/or Card/Security Details communicated to you to be used in conjunction with your Card must be kept secret. This means that you must not disclose such Card/Security Details to anyone else, including Bank personnel, or record them in any way which allows another person to discover them.⁴

Moreover, the same terms and conditions provide the following regarding the cancellation of payments:

6(b) We cannot cancel a payment made using your Card once you have given consent to make the payment to a retailer or supplier or provided your PIN and/or Card/Security Details and enabled the processing of the payment. You will need to contact the retailer or supplier separately.⁵

B. Timeline of the Bank's handling of the complaint

- 9. Whereas on the **26th of July 2024**, Mrs. Complainant(s) called the Bank in order to report the incident. She was informed of the procedure to be followed in order to make a claim with the Bank's Chargebacks department. In this respect, reference is made to the question posed by spouses Complainant(s) in their complaint regarding the SMS sent following each transaction.⁶ The Bank sends this SMS so that if unauthorised use is occurring through the card, the customers are informed immediately, and any future unauthorised use can be prevented.*
- 10. Whereas on the **5th of August 2024**, Mrs. Complainant(s) submitted her written claim with the Bank and provided a copy of the police report, details about her device model, the Bank's SMS alerts, and the communication received from the 3rd party.⁷ In the meantime, the Bank started investigating the claim and it resulted that both transactions were duly approved.*

⁴ **DOC.B:** BOV Cashlink Visa – Product Information Guide, page 5

⁵ *Ibid* page 6

⁶ Fol. 4 of the complaint

⁷ **DOC.C:** Email dated 5th of August 2024

11. *Whereas on the **27th of August 2024**, Mr. Complainant(s) provided a signed letter by his wife, explaining the situation. The Bank acknowledged this email on the **28th of August 2024**. Both emails and attachments marked as '**DOC.D**'.*
12. *Whereas on the **18th of September 2024** the Bank informed spouses Complainant(s) that the transactions in dispute were authenticated via the 3D Secure app and thus Mrs. Complainant(s) was not eligible for a **fraud chargeback**.⁸ However, the Bank still attempted to contact the recipient bank regarding the issue. Mr. Complainant(s) once again complained to the Bank requesting positive feedback.⁹*
13. *Whereas on the **27th of September 2024**, the Bank informed Mrs. Complainant(s)¹⁰ that the foreign Bank declined BOV's dispute since both transactions were duly authorised. BOV informed spouses Complainant(s) that the next step in the chargeback process was to raise a Pre-Arbitration. On the **3rd of October 2024**, Mr. Complainant(s) provided the Pre-Arbitration letter.¹¹ Subsequently, the Bank¹² instructed spouses Complainant(s) to omit reference to 'fake', 'scam' or 'fraud' since the request would automatically be rejected since no chargeback claim on the basis of fraud can be made if the transactions are duly authorised. However, the fact that reference to these words were omitted, does not guarantee that the Chargeback would be successful. Spouses Complainant(s) provided an updated letter on the **7th of October 2024**.¹³*
14. *Whereas on the **10th of October 2024**, the Bank informed spouses Complainant(s) that a Pre-Arbitration was raised (on the basis of documentation provided by them)¹⁴. On the **15th of October 2024**, the Bank informed spouses Complainant(s) that the foreign bank had declined the Pre-Arbitration since Centi (the merchant) provided evidence of successful delivery of the purchase and also provided supporting*

⁸ **DOC.E**: Email dated 18th of September 2024

⁹ **DOC.F**: Email dated 19th of September 2024

¹⁰ **DOC.G**: Email dated 27th of September 2024

¹¹ **DOC.H**: Email dated 3rd of October 2024

¹² **DOC.I**: Email dated 4th of October 2024

¹³ **DOC.J**: Email dated 7th of October 2024

¹⁴ **DOC.K**: Email dated 10th of October 2024

documentation for this. BOV informed spouses Complainant(s) that it had no further ground to contest the case further.¹⁵

- 15. Whereas Mr. Complainant(s) was not satisfied with the Bank's reply and various communications ensued between Mr. Complainant(s) and the Bank where Mr. Complainant(s) insisted that they did not receive any goods or serviced from CENTI and the Bank attempted to explain the reason for decline of the merchant bank. At this stage Mr. Complainant(s) raised the same argument made in his complaint before the Arbiter, that is that they did not open an account with CENTI and the email used to open such account did not belong to spouses Complainant(s).¹⁶*
- 16. Whereas the reason why BOV could not make this argument with the merchant bank was clearly explained by emails sent to Mr. Complainant(s) by the Bank's Electronic Banking Department Head, attached and marked as 'DOC.N'. As outlined in these email, BOV (and any other bank) has strict protocols and specific chargeback categories which need to be adhered to when presenting a case on behalf of a cardholder. These protocols do not allow for any free communication with the bank or any direct communication with the merchant. As explained by Mr. Degabriele, when a transaction is fully authenticated, the merchant would have fulfilled its security obligations. When accepting a payment from a third party, the obligation of the merchant bank was to endure that it was duly authorised by the cardholder. The bank has no obligation to verify email addresses. Despite this, BOV still mentioned the fact that the email address did not belong to its customers. However, the foreign bank simply informed BOV that the transactions were duly authorised and did not take into consideration the Bank's argument regarding the email address. The next stage in the chargeback process would have been arbitration where VISA decide the case based on the legitimacy of the authentication process. This process would result in a fee of \$500 which would need to be paid by the customer.*
- 17. Whereas in view of the above, it is clear that BOV followed the necessary steps and procedures to attempt to recover the money. However, the final*

¹⁵ **DOC.L:** Email dated 15th of October 2024

¹⁶ **DOC.M:** Emails dated between 17th and the 14th of November 2024

decision rested with the foreign Bank who declined the request. Once it was declined, the Bank could not appeal the decision further if the Bank attempted to do so, spouses Complainant(s) would have incurred further charges when there was no reasonable prospect that the funds would be returned.

18. Whereas Mrs. Complainant(s) had the option to decide which merchant to effect payments to and now cannot expect the Bank to bear responsibility for her actions. The Bank simply provided her with a service to process payments which she herself authorised.

19. Whereas the Bank makes numerous educational campaigns to raise awareness about the secure use of its systems. In fact, the Bank also sends direct communications to customers to inform them of fraudulent schemes which imitate its communication channels (smishing or spoofing). However, it is not reasonably expected for the Bank to send such direct communication about every possible scam which may be circulating. The Bank respectfully submits that the customer certainly has rights and interests, however, they also have a duty to adhere to terms and conditions and need to be aware of the use they are making of the Bank's services, since these are ultimately intended to serve and protect the customer.

C. Conclusion

20. 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.

21. 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.

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

With expenses."

Seduti

Fl-ewwel seduta, nhar l-24 ta' Frar 2025, l-Ilmentatur issottometta s-segwenti:

"Ngħid li dan kien f'Lulju tas-sena l-oħra, l-mara tiegħi, li għamlet booking fuq Booking.com irċeviet WhatsApp message fejn kien hemm miktub 'I am the Manager of the hotel you have booked with ...', fejn qal li kien hemm xi diffikultà bil-card details u biex nerġgħu nissottomettu l-card details tagħna fuq il-link li tawna bil-WhatsApp.

U l-mara, dak il-ħin, għax ma tħobbx tħalli xejn pendent, ikklikkja fuq il-link u tefgħet id-details tal-card tagħna u qalulna 'Not Authorised. Please repeat this,' u reġgħet għamlitha. Irrealizzajna, għax konna sejrin holiday mal-familja, li jekk nirċievu dan il-messaġġ ma nagħtux kasu imma aħna konna diġà rċevejnih u konna lhaqna diġà attivajna dawn il-links biex nissottomettu dawn id-dettalji.

Kif indunajna li dan il-WhatsApp kien scam, (għax in all fairness veru konna sejrin holiday u vera bbukkajna fuq Booking.com, kif tagħmel debit fuq il-card tiegħek, tircievi SMS li jekk il-pagament ma kienx awtorizzat, iċċempel il-bank), dak il-ħin stess, within a few minutes, ċempilna l-Call Centre biex ngħidulhom li dawk iż żewġ pagamenti li saru ta' €303 ma humiex awtorizzati għax indunajna li kien hemm scam.

Il-Call Centre qalulna li ridna mmorru l-Għassa tal-Pulizija, nagħmlu rapport u nissottomettu evidenza lill-bank biex il-bank jikkonsidra l-każ tagħna. Morna l-Għassa tal-Pulizija, iffajljajna l-claim u bgħatna l-claim liċ-Chargeback Centre tal BOV.

Ir-risposta tal-bank kienet li l-bank tkellem mal-merchant u l-merchant bagħtilhom is-supporting documents biex juri li aħna ftaħna account magħhom. Il-merchant huwa by the name of Centi.

Centi wkoll qed jgħid li aħna awtorizzajna li niftħu account magħhom, ma' Centi, biex nixtru prodott fuq il-blockchain, li dan mhuwiex minnu. U, fil-korrispondenza li kienu bagħtu Centi, l-email li kien hemm fil-korrispondenza bħala klijent kien ibblakkjat bil-gem marker; it was redacted.

Bażikament, il-bank qalilna li għamlu kemm setgħu biex iġibu r-refund jew iċ-chargeback tal-claim imma ma setgħu jagħmlu xejn għax il-merchant qed jinsisti li jien il-prodott ħadtu.

Ngħid li jiena l-prodott ma ħadtux mingħand Centi. L-account ma ftaħnihx aħna għax we managed to remove the black gem marker from the email u mhuwiex relatat magħna, jiġifieri xi ħadd ieħor fetaħ dan l-account. Is-servizz ma ħadniex u l-BOV qed jinsistu li huma ma jistgħu jagħmlu xejn għax huma qegħdin bejnna u bejn il-merchant u, allura, m'hemm xejn x'jistgħu jagħmlu.

Ngħid li qed nitlob jiena huwa r-refund ta' dawn iż-żewġ pagamenti ta' €303-il wieħed.

Xtaqt insemmi wkoll żewġ affarijiet importanti. Fil-claim tagħna l-bank qalilna biex ma nużawx il-kliem 'fraud' u 'scam' fl-ittra tagħna biex nagħmlu iċ-chargeback. Ngħid li ma tantx fhimt għalfejn, però, aħna għamilna kif qalilna l-bank, li aħna ma xtrajna l-ebda prodott, u l-merchant ġie lura u qalilna li aħna xtrajnih dan il-prodott. Però, sal-lum għad m'għandix evidenza xi xtrajna, jekk humiex goods jew services jew fuq il-blockchain. U, once again, l-email li ntuża - għax it-team tiegħi irnexxielhom ineħħu l-black gem marker - ma kienx l-email tagħna biex niftħu dan l-account li qed jgħidu li ftaħna ma' Centi.

Ngħid li kellimt xi nies superjuri l-bank biex jipprovaw jgħinuni u qaluli li bażikament it-tip ta' tranzazzjoni li saret apparentement VISA m'għandhomx classification ta' din iċ-chargeback, kif tiġi kklassifikata għax mid-dehra huwa każ partikolari. Ngħid li jiena ma nsibhiex risposta ċara biżżejjed biex tikkonvincini għalfejn m'għandix ikolli r-refund ta' dawn il-flus.

It-team tiegħi, għax jiena qiegħed fix-xogħol ta' compliance, qegħdin jgħiduli li jkun hemm tliet partijiet involuti biex jagħmlu din is-sistema ta' fraud li

bazikament jidher li rnexxielhom jiffrodaw is-sistema tal-bank fejn lili ħaduli l-flus u jien ma ħadtx is-servizz li ridt.”¹⁷

L-Arbitru staqsa lill-Ilmentatur jicċara fejn semma’ li xi ħadd qal lill-Ilmentaturi biex ma jagħtux kas il-messaġġ li jgħidilhom biex jagħfsu xi *link*. L-Ilmentatur spjega:

“Ngħid li kienu family members tagħna għax aħna konna sejrin holiday mal-familja u kulħadd ibbukja l-lukandi tiegħu fuq Booking.com; u oħt il-mara qaltilna, fuq il-group chat tal-familja, biex jekk nirċievu dan il-messaġġ ma nagħtux kasu għax hemm min irċevih diġà u it’s fraudulent, a scam. U aħna konna lhaqna diġà kklikkjajna dak il-link.”¹⁸

Dr Luana Vella, f’isem il-fornitur tas-servizz, xtaqet tistaqsi lill-Ilmentatriċi peress li mit-*token* tagħha ġew awtorizzati l-pagamenti, iżda ma setgħetx tagħmel dan minħabba li l-Ilmentatriċi ma dehritx għal din is-seduta. L-Ilmentatur qal li huwa kien preżenti meta l-Ilmentatriċi rċeviet dan il-messaġġ.

L-Arbitru staqsa lill-Ilmentatur jekk hemmx kontestazzjoni li t-tranzazzjonijiet saru mit-*token* tal-Ilmentatriċi. L-Ilmentatur ikkonferma li m’hemmx kontestazzjoni li dawn it-tranzazzjonijiet ġew awtorizzati mill-Ilmentatriċi iżda saħaq li l-istess tranzazzjonijiet kienu frawdolenti.

Taħt kontroezami, l-Ilmentatur wieġeb:

“Qed jingħad li meta tkun qed tapprova tranzazzjoni, jkun hemm miktub il-merchant fejn sejrin. Mistoqsi niftakarx min kien il-merchant indikat, ngħid li kulma kellna fuq il WhatsApp kienet kumpanija Hitech Pipes Limited.

Qed jingħad li l-mistoqsija hija meta tiġi biex tapprova tranzazzjoni fuq il-BOV 3D Secure App, ngħid li nista’ nitkellem għan-nom tagħha li ma niftakrux dak il-ħin x’kien hemm miktub. Nikkonferma li ġiet approvata bit-3D Secure App. Ngħid li ma niftakrux min kien il-merchant ta’ dawn iż-żewġ tranzazzjonijiet. Ngħid li l-online booking fuq Booking.com, il-mara għamlitu.

¹⁷ P. 155-157

¹⁸ P. 157

Mistoqsi niftakarx x'kienu l-kundizzjonijiet tal-booking, jekk għażlitx li jitħallas meta naslu l-hotel jew jekk tħallasx qabel, ngħid li ma niftakarx imma niċċekkja u ngħidilkom.

Mistoqsi għamilniex complaint ma' Booking.com jew mal-lukanda wara dan l-incident, ngħid li le.

Mistoqsi għamilniex rapport mal-Pulizija, ngħid li iva għax qalilna l-bank stess biex nagħmlu rapport minħabba ċ-chargeback. Ngħid li ma kellniex updates f'dan ir-rigward mill-Pulizija.¹⁹

L-Arbitru talab biex is-Sinjura Ilmentatrici tibgħat risposta għall-mistoqsija tal-Bank dwar kif għażlet li jsir il-pagament tal-lukanda jew b'*email* dik il-gimgha stess jew inkella billi tattendi għas-seduta li jmiss u tagħti spjegazzjoni dwar dan.

Fit-tieni seduta, nhar l-24 ta' Marzu 2025, l-Ilmentatur irrefera għall-*email* li kien bagħat fis-26 ta' Frar 2025, fejn hemm magħha l-*Booking Receipt* li huwa a '*non-refundable booking in advance*' u kkonferma li ħallas "***at time of booking***".

L-Arbitru qal li l-korrispondenza saret ma' *Hitch Pipes Limited* u staqsa lill-Ilmentatur jekk din kellhiex x'taqsam mal-lukanda. L-Ilmentatur wiegħeb:

"Ngħid li le. Prima facie, hekk ħsibna għax kienu jafu d-dettalji kollha tal-booking, imbagħad, wara irrealizzajna li kienu scammers."²⁰

L-Arbitru staqsa lill-Ilmentatur jekk *Hitch Pipes Limited* kienx xi isem li deher fil-proċedura tal-*booking* li għamlu, u dan wiegħeb: "***not that I know***".²¹

F'isem il-Fornitur tas-Servizz dehret is-Sinjura Shirley Scerri, li ssottomettiet is-segwent:

"Jiena ċ-Chargeback Manager taċ-Chargebacks Department u ili nokkupa dan l-irwol mill-2003 però, ili nagħmel parti minn dan id-dipartiment għal dawn l-aħħar dsatax-il sena. Ngħid li jiena familjari ma' dan il-każ; naf kif għie investigat u kien hemm ukoll komunikazzjoni li kont għamilt jien mas-Sinjuri Ilmentaturi meta għamlu l-ilment.

¹⁹ P. 157-158

²⁰ P. 169

²¹ *Ibid.*

Ngħid li kont naf x'qiegħed jinvestiga t-team u ngħid li kont involuta. Mill-investigazzjonijiet li saru, jidher li s-Sinjura Ilmentatrici ċemplet il-Fraud Monitoring Unit fis-26 ta' Lulju fl-16:35 u spjegat li trid twaqqaf il-cards u l-analista bagħtilha email bid-dokumenti li riedet tipprovdi u twaqqafet il-card.

Id-dokumenti li pprovdiet is-Sinjura lill-bank kienu kopja tal-Whatsapp messages li hi kellha ma' Hitech Pipes Limited; bagħtet ukoll kopja tal-SMSes li rċeviet mill bank għall-pagamenti li saru ta' Centi u pprovdiet ukoll id-dettalji tal-mobile tagħha.

Is-Sinjura Ilmentatrici, però, ma pprovdietx dan id-dokument li ġie eżebit mill-aħħar seduta 'l hawn, jiġifieri din il-confirmation tal-Booking.com. Dan id-dokument juri li hu a non-refundable booking u hemm ukoll l-ammont kemm kellha tħallas.

Min hu familjari mal-Booking.com jaf li jekk inti tagħmel booking tipprovdi card, però, dan id-dokument ma jurix liema card ġiet ipprovduta. M'hemmx id-data ta' meta sar il-booking; la hemm id-dettalji tal-lukanda. Ngħid li dan mhuwiex dokument komplut. Aħna ma kellniex kopja tiegħu. Hu xi ħaġa ġdida li qed naraw issa. Ngħid li ma kienx se jaffettwa l-proċedura, però, forsi kien ikollna aktar informazzjoni għaliex is-Sinjura qed tillinkja dan il-booking ma' dawn iż-żewġ ammonti.”²²

Is-Sinjura Scerri kompliet:

“Wara li s-Sinjuri Ilmentaturi rrapportaw lill-Bank, kulma seta' jagħmel il-Bank sabiex jirkupraw il-flus, kien li jikkuntattja l-acquirer jiġifieri mhux lil merchant dirett, mhux lil Centi. Aħna ma nistgħux nikkuntattjaw lill-merchant dirett.

Għamilna proċedura ta' chargebacks, però, ma stajniex nagħmlu a fraud related chargeback. It-transaction kienet awtentikata bit-2 factor authentication. Is-Sinjura Ilmentatrici kkonfermat li kienet hi li approvathom dawn iż-żewġ ammonti.

Wara li s-Sinjuri Ilmentaturi irrapportaw lill-bank, kulma seta' jagħmel il-bank sabiex jirkupraw il-flus kien li jikkuntattja l-acquirer jiġifieri mhux lill-merchant dirett, mhux lil Centi. Aħna ma nistgħux nikkuntattjaw lill-merchant dirett.

²² P. 169-170

Għamilna proċedura ta' chargebacks, però, ma stajniex nagħmlu a fraud related chargeback. It-transaction kienet awtentikata bit-2 factor authentication. Is-Sinjura Ilmentatrici kkonfermat li kienet hi li approvathom dawn iż-żewġ ammonti.

Aħna ma stajniex nagħmlu l-ilment tagħna jew biex il-fondi jiġu lura għax hija frodi għax il-pagamenti ġew awtentikati t-tnejn.

Ngħid li kkuntattjajna lill-bank u spjegajnilu x'gara, għaddejnilu d-dokumenti li pprovditilna s-Sinjura Ilmentatrici u għamilna ż-żewġ steps taċ-chargeback cycle, jiġifieri għamilna chargeback li ġiet declined, però, imbagħad, komplejna bil-pre-arbitration li wkoll ġiet declined.

At chargeback stage, ipprezentajna l-ittra tas-Sinjura Ilmentatrici, il-Whatsapp messages u tajna rendikont ta' x'qalet li gara. Il-foreign bank m'aċċettax għax dawn it-tranzazzjonijiet kienu awtentikati bit-2 factor authentication, u l-foreign bank ipprova s-servizz billi pproċessa dawn il-pagamenti, jiġifieri huwa mexa mal-istruzzjonijiet li tatu l-klijenta.

Komplejna nagħmlu l-pre-arbitration; aħna għaddejna d-dokumenti lis-Sinjuri Ilmentaturi u hi għamlitilna ittra bl-affarijiet li riedet tirribatti. U aħna dik l-ittra ergajna bagħtniha lill-foreign bank u komplejna at pre-arbitration stage. Però, l foreign bank ma aċċettax għax insista ħafna li ġew awtentikati bit-2 factor authentication għax jekk hi awtentikat daww l-ammonti, taf lil min ser tħallas u kemm. Once li inti qed tawtentikahom, int qed tgħid, iva rrid inħallas lil dak il merchant. It is a secure way of paying.”²³

Taħt kontroezami, is-Sinjura Scerri wiegħbet:

“Mistoqsija għalfejn ma nsistejniex mal-acquirer biex jipprovdi confirmation u proof tal-goods or services li ħadu l-Ilmentaturi mingħand Centi għax l-Ilmentaturi m'għandhomx din l-informazzjoni mill-bank, ngħid li originarjament ir-rikjesta tal-Ilmentaturi ma kinitx għal services mingħand dan il-merchant.

²³ P. 170-171

Qed jingħad li l-BOV bagħat ir-risposta ta' Centi lill-Ilmentaturi fejn Centi bagħatu lill-Ilmentaturi numri ta' screenshots u affarijiet fejn huma qed jinsistu li the goods and services were purchased on the blockchain.

Qed jingħad li l-Ilmentaturi m'għandhomx prova ta' dan u jistaqsu kif aħna m'aħniex niproteġuhom u li ċ-chargeback għandu jsir; li fil-korrispondenza mal-higher officials qed ngħidulu li m'hemmx classification għal dak it-tip ta' chargeback.²⁴

L-Ilmentatur qal li Centi kulma bagħat kienu *screenshots, terms and conditions*, imma m'hemmx evidenza tal-prodott. Is-Sinjura Scerri qalet li: ***“l-Ilmentatur għandu x'għara. An account was opened.”***

Iżda l-Ilmentatur jgħid li: ***“le, ma fetħu l-ebda account.”*** Sostna li l-*email* ma nfethitx mingħand l-Ilmentaturi; l-*email* kienet *redacted* u hu rnexxielu li jaqla' l-*black felt pen* li hemm fuq l-*email*. Jgħid li ħadd ma kkummentalu fuq din u jsostni li ma fetħu l-*ebda account*.

Is-Sinjura Scerri qalet li: ***“jekk is-Sinjura Ilmentatrici awtorizzat dawk iż-żewġ pagamenti mela qed tgħid in a secure way li qed tħallas dawk il-flus lil dak il-merchant.”***²⁵

L-Ilmentatur staqsa lis-Sinjura Scerri jekk il-bank setax għamel xi ħaġa illi m'għamilhiex biex jiproteġi lill-klijenti, fejn misshom insistew aktar għall-evidenza tad-*delivery of goods* li tant hu hekk li qalulu li fl-aħħar ma kinux ser jagħtu kashom aktar. Is-Sinjura Scerri wiegħbet:

“Ngħid li għamilna l-isteps kollha li stajna nagħmlu, jiġifieri għamilna chargeback u, mbagħad, komplejna bil-pre-arbitration notwithstanding li l-klijenta awtentikat dawn iż żewġ ammonti. Ngħid li aħna xorta morna għand il-bank u ppruvajna nispjegaw għaliex irriduhom lura, però, jekk it-tranzazzjonijiet huma awtentikati, dak hu l-iskop li inti tawtentika bit-2 factor authentication. Inti qed tikkonferma li int qed tħallashom.

Ngħid li le, ma stajniex inkomplu nagħmlu xi ħaġa oħra. Teknikament, kien hemm ħaġa oħra li tista' tagħmilli kieku għandek chargeback rights li hija l-

²⁴ P. 171

²⁵ *Ibid.*

arbitration. L-arbitration issir diretta mal-VISA at a fee of €500 per transaction. Din tagħmilha u tinforma lill-klijent fuqha jekk int għandek chargeback rights.

Però, f'dan il-każ, il-klijenta awtentikathom, jġigifieri m'hemmx rights, m'hemmx aktar steps x'tista' tagħmel jekk inti taf, in the first place, li dan ma kienx każ li inti tipprova ġġib il-flus lura għax hija frodi.²⁶

Dr Vella ġibdet l-attenzjoni li l-email li rreferew għaliha x-xhud u l-Ilmentatur hija mehmuża mar-risposta bħala Doc. M (minn p. 151 tal-proċess) flimkien ma' korrispondenza oħra.

Is-Sinjura Scerri kkjarfikat li ***“aħna m'għidniex lill-Ilmentatur riedx ikompli bl-arbitration għax ma jkunx hemm lok li int tidhol f'arbitration at that expense. Definitely, ma kinitx ser tiġi aċċettata għax bdejna mill-ewwel step li t-tranzazzjonijiet kienu awtentikati.***²⁷

L-Arbitru staqsa lis-Sinjura Scerri jekk hux korrett li l-Ilmentatur seta' jwarrab l-opinjoni tal-BOV u jmur għal 'full arbitration'. Din wiegbet: ***“iva, seta' jagħmilha, però, l-arbitration issir in a very strict timeframe, jġigifieri f'dan il-każ kien hemm ħafna komunikazzjoni għaddejjja bejn is-Sinjuri Ilmentaturi u l-bank u ma konniex f'dak it-timeframe.***²⁸

L-Ilmentatur qal illi l-bank ma ħax l-opportunità li l-Ilmentaturi jhallsu din il-fee partikolari biex jgħidulhom x'servizz ħa l-klijent jew jagħtuh *refund* tal-flus li ħallas mingħajr ma ħa servizz. Qal ukoll li l-bank qiegħed hemm biex jipproteġi lill-klijent mhux lin-naħa l-oħra, u li l-Ilmentatur iħoss li tal-bank ma nsistewx biżżejjed għax kif il-klijent ta lill-bank id-dokument bl-email *redacted*, u talbuhom aktar provi, huma ma ġewx lura b'aktar informazzjoni. Il-mument li l-Ilmentaturi daħlu aktar fid-dettall u qajmu punti interessanti, tal-bank waqfu minkejja li fil-bidu bdew jibagħtu ħafna informazzjoni fuq it-termini u kundizzjonijiet.

Għal dan, is-Sinjura Scerri spjegat:

“Ngħid li meta għamilna l-pre-arbitration, għaddejjja l-ittra tas-Sinjura Ilmentatricili kienet aktar dettaljata; u l-kummenti li semmew is-Sinjuri

²⁶ P. 172

²⁷ *Ibid.*

²⁸ *Ibid.*

Ilmentaturi fuq l-emails ukoll semmejnihom. Però, l-każ xorta ġie declined mill-foreign bank.

Ngħid li hemm ċertu mechanism li, once li int ser tkompli l-każ, għandhom 30 ġurnata biex jagħtuna feedback u, once li jagħtu l-feedback, ma nistgħux nerġgħu inkellmuhom. Ngħid li hemm proċess.”²⁹

Sottomissjonijiet Finali

Fis-sottomissjonijiet finali, il-partijiet irrepetew dak li kienu diġà pprezentaw fil-ilment, fir-risposta u fix-xhieda waqt is-seduti.

Analizi u osservazzjonijiet

F’dan il-każ ma tqajjem l-ebda dubju li kienu l-Ilmentaturi stess li awtorizzaw il-pagamenti ilmentati permezz tas-sistema *3D Secure* fuq il-BOV App.³⁰

L-Ilmentaturi lanqas ma nnegaw li l-BOV kien konformi mal-obbligu tat-2 *factor authentication* skont ir-regolamenti tal-pagamenti maħruġa mill-Bank Ċentrali ta’ Malta u skont il-liġi tal-UE magħrufa bħala PSD 2.

Iżda l-Ilmentaturi xorta jippretendu li l-BOV għandu jagħmel tajjeb għat-telf tagħhom minkejja li fil-frodi ma kienx hemm xi personifikazzjoni tas-sistema tal-Bank kif ikun hemm f’każ ta’ frodi tip *APP push payments* fejn frodist jidħaq bil-vittma billi jippersonifika lill-bank.

Rigward *APP push payments*, l-Arbitru ppubblika mudell kif tiġi allokata r-responsabilità tat-telf bejn il-bank u l-klijent skont iċ-ċirkostanzi tal-każ. Iżda dan il-mudell ma japplikax għal dan il-każ. F’dan il-każ, il-frodi saret fuq kanal ta’ komunikazzjoni *Whatsapp* minn terzi li għalkemm ippersonifikaw lil-lukanda, fil-fatt, l-isem tagħhom *Hitech Pipes Limited*³¹ la kien juri konnessjoni mal-lukanda bbukkjata (*room2 Southampton Homotel*) u lanqas mal-*platform* ta’ *Booking.com*.³²

²⁹ P. 173

³⁰ P. 157

³¹ P. 12-16

³² P. 17-18

Il-BOV ma kien bl-ebda mod involut f'dan il-*booking* u ma setax ikun jaf bih u lanqas seta' jkollu xi indizzji li l-pagament approvat bit-3D *Secure* kellu x'jaqsam ma' *booking* ta' lukanda u wisq anqas li kien riżultat ta' frodi.

Għalhekk, l-Arbitru ma jistax jalloka xi ħtija fuq il-BOV talli naqsu li jagħmlu xi ħaġa biex jevitaw jew iwaqqfu dan il-pagament li rriżulta frawdolenti. Jekk xejn, il-ħtija qiegħda fuq in-naħa tal-Ilmentaturi għax meta approvaw il-pagamenti lmentati kellhom informazzjoni biżżejjed li kienu qed jagħmlu pagamenti li ma kinux dovuti (għax il-pagament dovut kien diġà tħallas mal-*booking*).³³

Il- pagamenti ilmentati saru lil terzi magħrufa bħala CENTI li jidhru li huma xi *digital asset exchange* fuq *blockchain*. Kien ċar li la CENTI u lanqas *Hitech Pipes* ma kellhom konnessjoni mal-lukanda jew ma' *Booking.com*. L-Ilmentaturi kellhom indizzji biżżejjed biex jissuspettaw li mhux kollox kien sew.

Minkejja dan huma wrew negliġenza grossolana meta komplew jawtorizzaw pagament li kien diġà sar u dan għamluh darbtejn permezz tal-*BOV 3D app* meta kienu jafu li l-pagament ma kienx dovut u li l-benefiċjarju dikjarat fuq it-*3D app* ma kienx la l-lukanda u lanqas *Booking.com*.

L-Ilmentaturi sostnew li għaladarba l-pagamenti ilmentati kienu frawdolenti, allura, l-Bank kellu obbligu li jinsisti aktar ma' CENTI li la huma ma ħadux servizz mingħandhom, allura, dawn il-flus kellhom jiġu mrodda lura irrispettivament min-negliġenza grossolana li wrew meta awtorizzaw dawn il-pagamenti.

Dan l-argument ma jregix. Skont preambolu 72 tad-Direttiva tal-UE **2015/2366** magħrufa bħala PSD 2 u riprodotta f'Direttiva numru 1 tal-Bank Ċentrali ta' Malta CBM/01/2018, il-konsumatur ma għandux dritt għal rifiżjoni fejn it-telf ikun kawżat minn negliġenza grossolana min-naħa tagħhom.

Għaladarba kien hemm frodi huwa ovvju li l-Ilmentaturi ma ħadux benefiċju tal-pagamenti ilmentati. Izda b'daqshekk ma jfissirx li għaladarba huma b'negliġenza grossolana approvaw il-pagamenti li kienu koperti fis-sistemi sikuri tal-Bank konformi mal PSD2, huma kellhom xi dritt ta' rifiżjoni mingħand CENTI jew mingħand il-Bank. Jidher probabbli li l-frodist kellu xi relazzjoni ma' CENTI u appena l-flus waslu fil-kont tiegħu għibidhom.

³³ P. 169

Il-pretensjoni tal-Ilmentaturi li l-Bank seta' sforza jdejn CENTI biex jagħmel xi ħaġa aktar milli huwa permess fil-proċeduri ta' *chargeback* hija pretensjoni falza. L-unika ħaġa li seta' jagħmel il-Bank, bil-permess u spejjeż tal-Ilmentaturi, kien li jiftaħ każ ta' arbitragg ma' VISA. Iżda l-Bank għandu esperjenza biżżejjed biex jifhem li ma kienx hemm prospett ta' suċċess f'arbitragg bħal dan li jinvolvi spejjeż sproporzjonati.

Il-Bank, skont l-esperjenza li għandu f'din il-materja, ta parir lill-Ilmentaturi biex fit-talba għaċ-*chargeback* ma juzawx kliem bħal *fraud* jew *scam*. U donnu l-Ilmentaturi deherilhom li dan kien parir ħażin li tellifhom il-prospett ta' suċċess fil-proċess ta' *chargeback*. Ma' dan l-Arbitru ma jaqbel xejn.

Il-proċedura ta' *chargeback* tinfetaħ mal-Bank tal-*Merchant* u kontra l-istess *Merchant* (f'dan il-każ CENTI). Jekk jiġi allegat li CENTI kienu parti mill-frodi jew *scam*, allura, dan irid jiġi ppruvat u, jekk jiġi ppruvat, allura, CENTI jitilfu l-VISA *membership* bħala *merchant*. Ma tressqet l-ebda evidenza li CENTI kienu parti mill-*iscam* jew frodi u, biex jiġi allegat mod ieħor, irid ikun hemm evidenza qawwija li ma kienx hemm.

Deċiżjoni

Skont Artiklu 19(3)(b) tal-Att KAP. 555, l-Arbitru huwa obligat li jiddeċiedi u jagħti għidizzju b'referenza għal dak li, fil-fehma tiegħu, ikun ġust, ekwu u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.

Hija l-fehma tal-Arbitru li l-Ilment mhux ġust, ekwu u raġonevoli għax il-pagamenti ilmentati ġew awtorizzati mill-Ilmentaturi u ma kien hemm xejn li seta' qajjem suspett lill-Bank li dawn kienu frawdolenti.

Anke fil-proċess ta' *chargeback* ma jsib xejn li l-Bank naqas b'xi mod milli jsegwi l-proċessi li jesigū l-VISA.

Għall-kuntrarju, l-Arbitru huwa tal-fehma li kienu l-Ilmentaturi li kienu negligenti b'mod grossolan meta approvaw pagamenti li ma kinux dovuti u li kienu juru li qegħdin isiru lil terzi li huma ma kinux ikkuntrattaw magħhom.

L-Arbitru jagħder lill-Ilmentaturi li jhossuhom misruqa iżda dan ma jfissirx li l-Bank għandu obligu jagħmel tajjeb għat-telf tagħhom. L-Ilmentaturi messhom

kienu aktar attivi biex ifittxu drittijiethom kontra l-lukanda li ppermettiet li s-sistemi tagħha jigu ppenetrati mill-frodisti u jweggħu lill-klijenti tagħhom.

Għar-raġunijiet hawn spjegati, l-Arbitru qed jiċċad dan l-Ilment u jordna li l-partijiet igorru l-ispejjeż rispettivi tagħhom.

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 taht 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 tipografici 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.