Quddiem l-Arbitru tas-Servizzi Finanzjarji

Każ ASF 090/2025

SL

('Ilmentatur')

vs

Bank of Valletta p.l.c.

(C-2833)

('BOV', 'Bank', jew 'Fornitur tas-Servizz')

Seduta tad-9 ta' Jannar 2026

L-Ilmentatur jitlob lill-Bank biex jagħmel tajjeb għal spejjeż ta' €3,752.69 li inkorra meta daħal f'negozjati mal-BOV biex is-self fuq id-dar residenzjali tiegħu, li kienet ma' bank ieħor, tiġi trasferita mal-BOV.

Huwa sostna li huwa ssodisfa l-kundizzjonijiet kollha li l-Bank talab meta approva l-faċilità inkluż il-kundizzjoni li l-periti tal-Bank jikkonfermaw li d-dar kienet konformi mal-permessi tal-ippjanar.[1] Iżda l-periti mqabbda mill-Bank sabu li l-proprjetà ma kinetx konformi mal-permessi u identifikaw ħames varjazzjoni. Il-Bank ikkunsidra li erbgħa minn dawn il-varjazzjoni kienu minuri ħafna u, għalhekk, aċċettabbli.Iżda fuq varjazzjoni minnhom kien hemm bżonn ta' xi intervent biex il-proprjetà tiġi konformi mal-permess.

Din kienet kwistjoni dwar bieb li kien qiegħed f'post mhux skont il-permessi u kien qed joħloq kwistjonijiet ta' sanità peress li kien jimblokka ċ-ċirkolazzjoni tal-arja mill-bitħa.

[1] Paġna (P.) 208 fejn hemm kundizzjoni li '*The facility will only become operative once the Bank's appointed valuer appraises the property to be hypothecated to the Bank's satisfaction and confirms that the building permits are in order.'*

L-Ilmentatur isostni li minkejja li l-perit tiegħu ikkonfermat lill-Bank li huwa kien lest li jneħħi dan il-bieb, il-Bank baqa' jinsisti għal konferma diretta ta' konformità mill-Planning Authority u deherlu li l-Bank kien qed jagħmel kundizzjonijiet li ma kinux miftiehema fis-*sanction letter*. B'hekk iritira l-applikazzjoni u rreġistra dan l-ilment biex jirkupra l-ispejjeż li nkorra.

L-Ilment[2]

Fl-ilment tas-16 ta' Mejju 2025, l-Ilmentatur sostna illi:

"*Please find below the arguments supporting my complaint:*

1. The bank disagreed that the last condition in the facility letter for the home loan refinance application had been satisfied. This condition was:

'The facility will only become operative once the Bank's appointed valuer appraises the property to be hypothecated to the Bank's satisfaction and confirms that building permits are in order.'

The customer was purposely misled into thinking that the building permits (i.e., PA/00811/12) were not in order due to several alleged deviations noted in the bank's property report dated 27th February 2025. Below is an extract of the communication from the loan officer (see March 4th email in email-thread-1.pdf):

'We receive the architect's report, and the below deviations have been noted:

• The exterior area between the bridge and WC at ground floor level is roofed over and forms part of the internal area which has compromised the sanitary compliance of the living room.

• Gypsum soffits have been installed in the ground floor hall and in the room approved as a living room at first floor level.

• The bridge connecting the kitchen and living room was not constructed with glass but with timber.

[2] P. 1 - 10 u dokumenti annessi p. 11 - 180

• The living room on the first floor is being used as a bedroom. The aperture of the approved living room overlooking the yard is wider than shown on the permit.

• Discrepancies in measurements were noted across the property when compared to the approved measurements marked in the approved planning permit drawings.

Kindly note that these must be regularised and submitted drawings to be updated.'

This alone caused considerable distress to the customer, not to mention the potential costs involved in regularising each claimed deviation. It turned out that only a single alleged deviation was the reason behind the bank's argument about the property not being compliant with its permits (see March 7th email sent from the customer in email-thread-1.pdf).

2. The claimed deviation giving rise to the bank's argument that the building permits are not in order is the following:

'The exterior area between the bridge and WC at ground floor level is roofed over and forms part of the internal area which has compromised the sanitary compliance of the living room.'

Per the approved first floor property plans (see Plans.pdf) and the customer's architect (Ms. \\\ ) feedback on March 7th (see email-thread-3.pdf), this is not a deviation contrary to what is claimed in the report. That is, the area in question on the ground floor level SHOULD be indeed roofed over in order to comply with permit PA/00811/12, hence the roofing over cannot have compromised the sanitary compliance given that the first floor plans were approved by the Planning Authority.

3. Subsequent emails show confusion and a total lack of transparency from the part of the bank. The bank kept moving the goalposts as to what is compromising the sanitary compliance (see March 18th and 20th emails in email-thread-3.pdf) despite the property report not mentioning any of these issues. Hence, the customer is also arguing that the bank provided unsubstantiated claims.

4. Since the bank could not substantiate its claims with the property's irregularities, the bank imposed a condition on the customer which was not present in the facility letter, requiring him to obtain an impossible declaration from the Planning Authority affirming the property's sanitary compliance (see March 20th email sent from the loan officer in email-thread-3.pdf). The new condition was:

'In agreement with the clarification received from our external valuers, we require a declaration from Planning Authority that the intermediate door between the living room and the existing internal corridor (circled in green in the underlying plan) is acceptable and that its existing width of 1metre is also acceptable by Planning Authority.'

This condition compounded the existing confusion because, since the property plans had been approved by the Planning Authority, then it follows that they are also acceptable by the Planning Authority. Regardless, the Planning Authority itself stated that declarations like the one requested from the bank cannot be issued (see attachment named pa-reply.pdf).

While it might be a bank's prerogative to play judge, jury, and executioner, BOV's inability to grasp the approved property plans combined with its flip-flopping and unreasonable demand bordered on bad faith.

5. As per the email dated March 20th (see email-thread-3.pdf), the customer removed the sliding glass door to eliminate any doubt whatsoever that building permits are not in order. Nevertheless, this does not prejudice the customer's position regarding his property being in line with current planning policy and building legislation, especially considering the fact that neither customer's property form nor the bank's property report make direct or indirect reference to the door or the aperture. Indeed, the property report alleges that it is the roofing over which converted the exterior area into an internal one, thus compromising the sanitary compliance."[3]

Bħala kumpens, huwa elenka dawn l-ispejjeż:

"1. BOV mortgages processing fee: 1445 euros (loan-processing-fee.png)

[3] P. 3 - 5

2. BOV legal and professional fees: 827.50 euros (legal-and-professional-fees.png)

3. BOV architect property report and valuation fee: 448.40 euros (outsource-architect-fee.png)

4. BOV administrative fee issuance of the letter of cancellation of hypothec fee: 50 euros (pending)

5. MeDirect loan subrogation letter fee: 50 euros (2025_064_Cancellation_Letter_2025-02-24T09_45_20.605Z.pdf)

6. BOV property form completed by customer's architect fee: 80 euros (Invoice for BOV valuation.pdf)

7. Customer's architect intervention fee: 150 euros (Invoice 432025 - refinancing issue.pdf)

8. Notary property search: 701.79 (A22078 SL Canc Loan.pdf)."[4]

Dawn jammontaw għal €3,702.69 għax il-€50 ta' punt 4 mhux applikabbli la l-ipoteka ma saritx u, għalhekk, ma jsirx kanċellament.

Risposta[5]

Fir-risposta tad-9 ta' Ġunju 2025, il-BOV qal:

1. *"Where is on the 12th of November 2024 SL ("the complainant") signed a home loan application form with Bank of Valletta p.l.c. for the sum of €485,000. This document is being attached as 'DOC.A'.*
2. *Whereas on the 12th of November 2024 the complainant also signed a 'European Standard Information Sheet'. This information sheet contained a number of costs which the complainant needed to pay on a one-off basis; some costs were payable to the bank and other costs to third parties. These costs were all explained in the information sheet which is being attached as 'DOC.B'.*

[4] P. 6
[5] P. 189 - 191 u dokumenti annessi p. 192 - 320

3. *Whereas on the 28th of January 2025 the complainant signed a facility letter to be granted a home loan in the sum of €485,000. The purpose of this facility was to remortgage a facility originally granted by MeDirect Bank (Malta) plc, for the purchase of a house in Triq Santa Lucija in Naxxar. A copy of the facility letter is being attached as 'DOC.C'.*

4. *Wheras once again, SL was clearly informed of the charges applicable in order to be granted this facility. In fact, in the section entitled 'Charges', it is clearly stipulated that the sum of €1,455 was due as a Mortgage Processing Fee as per the bank's tariff of charges. The facility letter also specified that "the processing fees are due to the bank upon issuance of the facility letter and are payable whether loan funds are drawn down or otherwise."*[6]

5. *Whereas this facility letter also stipulated that the sum of €847.50 was due as Legal and Professional fees. It also specified that these professional fees "in connection with the vetting of your contract are payable once your contract has been vetted by the bank whether the facility is utilised or not."*[7]

6. *Whereas as security for this loan, the Bank was granted (amongst other security) a Special Hypothec over the House of character including its relative airspace, [address].*

7. *Whereas the facility letter also stipulated that 'the facility will only become operative once the Bank's appointed valuer appraises the property to be hypothecated to the Bank's satisfaction and confirms that building permits are in order.'*[8]

8. *Whereas this facility letter, including all the relevant terms and conditions, was duly signed by SL who acknowledged that he was accepting the terms and conditions stipulated in the said letter.*

9. *Whereas as stipulated in the facility letter, the Bank appointed an architect to carry out a valuation of the property which would be hypothecated. The Bank's architect carried out an inspection of the property on the 18th of*

[6] DOC.C - page 2.
[7] Ibid.
[8] DOC.C, page 4

February 2025 and presented a valuation report dated 27th of February 2025 which is being attached as 'DOC.D'.

10. *Whereas as part of her report, the Bank's architect noted a number of variations in the property. The architect noted that some of these property variations were minimal, however she also noted that a particular variation was not minimal and was not in line with the current planning policy and building legislation.*[9]

11. *Whereas the Bank passed on this report to SL and eventually an architect appointed by SL contacted the relevant branch regarding the variations noted by the Bank's architect in the property. SL and his architect attempted to convince the Bank that the variations noted by its' architect were "factually incorrect". The Bank informed SL and his architect that it would not deviate from its' architect's report, however it would accept a declaration from the Planning Authority regarding the point of contention.*[10]

12. *Whereas instead of providing the requested declaration SL stated that the Bank's property report was factually incorrect and stated that he is terminating his home loan refinancing application by virtue of an e-mail dated 17th of April 2025.*

13. *Whereas the complainant had every right to withdraw his home loan application, however as stated in the multiple forms signed and accepted by himself, certain bank charges would not be refunded, even if the facility is not utilised. With respect to the fee of €50 for the issuance of the letter of cancellation, the Bank respectfully submits that no hypothec was ever registered by BOV over property of SL, thus no cancellation will be made and no fee will be incurred in this respect.*

14. *Whereas as stated in the facility letter, the Bank has the right to ensure that a property upon which it is acquiring a hypothec in its' favour is appraised to the Bank's satisfaction. Therefore, the Bank was well within its' rights to insist that any irregularities are remedied, since otherwise it would be acquiring faulty security.*

[9] DOC. D, page 4.
[10] DOC.E – Email correspondence.

15. *Whereas in view of the above, the Bank respectfully submits that the Complainant's claims are unfounded in fact and in law.*

16. *Chapter 555 of the Laws of Malta vests the Honourable 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 obligation to faithfully abide with all terms and conditions.*

17. *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.*

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

With expenses."

Seduti

Fl-ewwel seduta tat-28 t'Awwissu 2025, xehed l-Ilmentatur li sostna dak li kien diġà qal fl-ilment.

Għamel referenza għar-risposta tal-Bank u, rigward punt numru 12, qal li la l-Bank ma kienx lest jaċċetta li jekk jitneħħa l-bieb li ma kienx fil-pjanti approvati, il-proprjetà kienet tiġi konformi, u l-BOV baqa' jinsisti li huwa jġib konferma uffiċjali ta' konformità mill-Planning Authorty (li skont hu ma jagħtux dawn it-tip ta' konformi), allura, huwa ma kellux għażla ħlief li jirtira l-applikazzjoni tas-self.

Fis-seduta tas-7 ta' Novembru 2025, xehdet il-Perit Nadia Marinelli għan-nom tal-Bank u qalet:

"***Wara korrispondenza bl-emails, jien aċċettajt li nitkellem dirett mal-Perit tal-klijent biex insolvu l-problema. F'dan ir-rigward, imbagħad, meta tkellimna iċċarajna eżatt x'kienet u kien irrakkomandat li jitneħħa l-bieb li jagħti għal ġol-bitħa.***

Ngħid għalija ma rajthiex soluzzjoni sodisfaċenti għax il-living room u l-kċina kienu ser ikunu għall-apert. Kienet tinħass ovvja li hekk kif isir il-kuntratt, kien ser jerġa' jitqiegħed lura dan il-bieb.

Però, l-Perit qaltli wkoll fuq din il-varjazzjoni tal-bieb (li kienet by email din il-korrispondenza) li huma kienu diġà tkellmu mad-Dipartiment tas-Sanità mill-Planning Authority u ma rawx problema b'dan il-fatt.

U jiena tlabthom li jekk għas-Sanità hija aċċettabbli biex jagħtuni l-istess dikjarazzjoni tas-Sanità permezz ta' email. U għalina, kienet tkun aċċettabbli. Jekk ma kinitx aċċettabbli min-naħa tas-Sanità, ma kinitx aċċettabbli min-naħa tal-Bank of Valletta.

Ngħid li l-klijent baqa' jinsisti li ma kien hemm l-ebda varjazzjoni bejn il-proprjetà u l-permess u peress li ma ġietx ikkoreġuta din il-varjazzjoni tal-kuridur intern li nħoloq mal-living room, hemmhekk spiċċa li l-Bank ma setax jaċċetta din il-varjazzjoni li kienet iddikjarata bħala maġġuri.

Ngħid li kieku ġiet sanzjonata jew kien hemm physical alteration li titranġa din il-varjazzjoni, il-Bank kien lest li jmexxi mal-klijent u jgħinu fejn hu possibbli."[11]

Wara kjarifika mitluba mill-Arbitru, il-perit tal-BOV qalet li l-Bank kien qed jinsisti li mhux biss jitneħħa l-bieb li ma kienx skont il-permess iżda li jsir bieb fil-living room/kċina li jagħti għal barra skont il-permess għax jekk le kien ċar li l-bieb li ma kienx skont il-pjanti kien ser jerġa' jitwaħħal wara li jsir il-kuntratt.[12]

L-Arbitru staqsa:

"Jekk il-Bank, at some point, qal li mhux biss jitneħħa l-bieb imma jekk jitpoġġa bieb ieħor skont il-pjanta, il-pożizzjoni tiġi mod ieħor u tkun aċċettabbli?"

Il-perit tal-Bank qalet:

"li dik il-proposta qatt ma saret, ngħid li kieku konna naċċettawha."[13]

Xehdet ukoll Michelle Buttigieg li kienet il-persuna prinċipali li kienet tirrappreżenta lil BOV fin-negozjati mal-Ilmentatur.

[11] P. 342 - 343
[12] P. 344
[13] P. 345

Il-punt prinċipali kien għalfejn il-Bank kien jidher li qed jinsisti li anke dwar li l-erba' diskrepanzi żgħar identifikati jiġu rranġati minkejja li l-Bank aċċetta li jmexxi anke jekk ma jiġux indirizzati.

Il-klijent għall-bidu kien fehem li l-Bank kien qed jinsisti li dawn jindirizzahom ukoll, iżda wara ġie kkjarifikat li rigward dawn l-erba' diskrepanzi żgħar, il-BOV kien għamel biss rakkomandazzjoni u mhux kundizzjoni.

Analiżi u osservazzjonijiet

Dan huwa każ ċar fejn fil-proċess ta' negozjati dwar jekk il-bini kienx konformi jew le mal-permessi tal-*Planning Authority,* daħlet ċertu pika bejn il-partijiet tant li differenzi li normalment jiġu ndirizzati bi ftehim raġonevoli, minflok kabbru d-differenzi sal-punt ta' rottura sħiħa bejn il-partijiet li wasslet għal dan l-ilment.

L-Arbitru jħoss li ż-żewġ partijiet għandhom ħtija ta' dan. Il-Bank ma kienx ċar li jekk jitneħħa bieb li ma kienx skont il-pjanti u jpoġġi bieb ieħor fil-post skont il-pjanti b'hekk kien lest li jaċċetta konformità mal-permessi.

Il-perit tal-Bank qalet:

"li dik il-proposta qatt ma saret, ngħid li kieku konna naċċettawha." [14]

Anke jekk din il-proposta ma saritx, tant kienet ovvja li l-Bank messu insista li dan isir u mhux jibgħat lill-klijent jiġri wara konformi bil-miktub mill-Planning Authority dwar dak li setgħet tidher bħala devjazzjoni mill-permess.

La kien possibbli jsir tibdil żgħir biex il-post jiġi skont il-permess, ma kien hemm l-ebda skop li joqgħodu jintalbu konformi li mhux faċli jingħataw mill-Planning Authority mingħajr proċess formali ta' applikazzjoni.

In-nuqqas ta' komunikazzjoni bejn il-partijiet huwa evidenti sew minn dak li ntqal fit-tieni seduta mill-perit tal-BOV:

"L-Arbitru jgħid li hawn il-Bank qal li biex tiġi konformi mal-permess trid tagħmel bieb ġewwa għax il-permess jgħid li trid tagħmel bieb ġewwa.

Allura, l-Arbitru jistaqsi għalfejn kien hemm bżonn li xi ħadd imur il-Planning Authority u jistaqsi li jekk jagħmel bieb ġewwa jiġix in order, ngħid li għax qatt ma kien hemm ċarezza. Kien hemm l-insistenza min-naħa tal-klijent li kien

[14] Ibid.

hemm kollox sew u ma kien hemm xejn ħażin; kien hemm proposta min-naħa tal-Perit tal-klijent li jekk jitneħħa l-bieb ... u fl-istess waqt is-sitwazzjoni hija aċċettabbli mis-Sanità. Allura aħna tlabna either one or the other.

L-Arbitru jgħid li l-bieb li insistejna li jagħmel kien bieb biex jiġi skont il-permess. Mela ġaladarba fi stadju minnhom, din il-pożizzjoni kienet ċara għall-partijiet, x'kien hemm bżonn li tmur għand il-Planning Authority biex tgħidlu li dak alright.

Ngħid li fl-istess ħin, il-klijent beda jgħid li hemm kollox sew.

Qed niġi mistoqsija għalfejn ridna d-dikjarazzjoni tas-Sanità jekk il-klijent kien qed jgħid li l-bieb ta' barra u s-saqaf jidhru fil-pjanta, ngħid li għax il-klijent baqa' jinsisti li kollox sew u li ma kienx hemm għalfejn jitneħħa."[15]

Min-naħa tiegħu, l-Ilmentatur kien punterjuż wisq u għaġġel wisq biex waqqaf il-proċess flok ipprova jifhem eżatt fejn kienet il-problema. Kien imissu spjega lill-Bank li kien lest jagħmel bieb ġewwa skont il-permess, u li ma kien hemm għalfejn iġib l-ebda konferma mis-Sanità tal-Planning Authority għax kollox kien ikun skont il-permess.

Il-fatt li talab konferma mill-Planning Authority, li ġiet rifjutata għax ma kinetx skont il-proċeduri, seta' indika li ma kienx verament bi ħsiebu jagħmel kollox skont il-permess u ħoloq dubji f'moħħ il-Bank li l-konċessjoni li jneħħi l-bieb li kien joffendi l-permess kienet biss xi ħaġa temporanja sa ma jsir il-kuntratt.

Deċiżjoni

Skont Artiklu 19(3)(b) tal-Att 555 li jirregola l-operat tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji, l-Arbitru jiġġudika skont dak li, fl-opinjoni tiegħu huwa ġust, ekwu u raġonevoli skont iċ-ċirkostanzi partikolari tal-każ.

In vista li l-Arbitru jqis li ż-żewġ partijiet għandhom parti mit-tort, l-Arbitru qed jordna lil Bank of Valletta biex jirrifondi lill-Ilmentatur nofs l-ispejjeż tas-servizzi tiegħu stess, jiġifieri nofs il-Processing Fee ta' €1,455 u Legal & Professional Fees ta' €847.50.[16]

[15] Ibid.
[16] P. 206 (għalkemm f'paġna 6, il-fees legal and professional ġew dikjarati €827.50)

L-ispejjeż l-oħra mħallsa lil terzi (jew lill-Bank biex iħallas lil terzi) jibqgħu a karigu tal-Ilmentatur.

Skont Artikolu 26(3)(c) (iv) ta' KAP. 555, il-Bank huwa ordnat iħallas kumpens lill-Ilmentatur ta' **€1,151.25** (elf, mija u wieħed u ħamsin ewro u ħamsa w'għoxrin ċenteżmu).

Bl-imgħax ta' 2.15%[17] minn ħamest ijiem wara d-data ta' din id-deċiżjoni sad-data tal-pagament effettiv.

Peress li kull naħa kellha parti mit-tort għat-telf imgarrab, kull parti ġġorr l-ispejjeż tagħha.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru

Dritt ta' Appell

Id-Deċiżjoni 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-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni 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-Deċiżjoni skont l-artikolu msemmi.

[17] Marginal Refinance Operations (MRO) rate tal-Bank Ċentrali Ewropew. Jekk isir appell u din id-deċiżjoni tiġi konfermata, l-imgħax japplika mid-data ta' din id-deċiżjoni.

Skont il-prattika stabbilita, id-Deċiżjoni 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.