



IN THE SMALL CLAIMS TRIBUNAL

Adjudicator: Dr. Claudio Żammit

Sitting of Tuesday 31st August 2021

Claim Number: 18/20 CZ

Carlo Donzella

vs.

AS Blueorange Bank

The Tribunal,

Having seen the Notice of Claim filed in virtue of Regulation (EC) 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure, filed on 25th September 2020 in virtue of which claimant requested the payment of five thousand Euro (€5,000) from defendant bank because of an

'extortionate, illegitimate and not communicated monthly fee of one thousand Euro (€1,000) on a bank account for five (5) months.'

Defendant bank filed its reply on 10th May 2021, and declared:

Commission in the amount of Euro 1,000 per month (for the period 01/06/2018 – 30/10/2018) was collected in accordance with the General Terms of Business (hereinafter – GTB), Terms and conditions of the agreement on account opening and maintenance (thereinafter – T&C) and the Price List.

The plaintiff was duly served with defendant bank's reply on 16th June 2021.

The Tribunal considered:

Plaintiff claims that he was irregularly charged a fee of one thousand Euro (€1,000) per month by defendant bank for holding an account with the latter. In a letter which he exhibited with his claim, dated 21st December 2018, he set out in greater detail his grievances, wherein he stated that if defendant bank was considering defendant's company as a shell company, it did not notify plaintiff about such consideration. Plaintiff also stated that the bank was in breach of EU Regulations when it did not communicate its decision of charging a fee of one thousand Euro (€1,000) monthly without giving a 60-day notice in advance. Plaintiff also stated that he does not recall being notified via online banking about the changes effected by defendant bank.

Defendant bank countered these claims by exhibiting the Terms and Conditions of the Agreement on Account Opening and Maintenance, the Price List, an Account Statement, Information about shell status, and information about changes in the Price List, and proof of payment. Defendant bank also stated that the client of the bank was not Carlo Donzella, but legal entity Omictech LLC. By signing the application for account opening, the Client (Omictech LLC) confirmed to use Bank's services in accordance with T&C, GTB and the Price List. Omictech LLC had submitted

the complaint (on May 20, 2019) against the Bank to the Financial and Capital Market Commission (FCMC), a regulatory government institution, and the FCMC didn't have objection to the Bank's conduct in this case.

The Tribunal considered that Clause 2.1 of the of the Terms and Conditions of the Agreement on Account Opening and Maintenance states that the Bank shall make a decision to 'establish business relations and open an account' and maintain it in accordance with the Client's Orders and the Agreement terms.

Furthermore Clause 17.12 of the same terms and conditions explicitly provides that:

... The Bank reserves the right to unilaterally amend the Terms and/or the Pricelist and/or the provisions of the Bank's services and/or an Agreement unless the Parties have arrange otherwise. The Currency List is intended for reference only, and the Bank reserves the right to amend it unilaterally without giving notice to the Client.

In the Price List of International Clients – Legal Entities, in point four (4) there is a declaration that:

For entities identified as shell companies in accordance with the applicable legislation of the Republic of Latvia, maintenance of a Current Account is subject to a fee of Eur 1,000.00 per month. Some exceptions may apply depending on the client's business profile and use of the Bank products – please enquire with the Bank.

Defendant bank also provided a definition of a shell company, and also provided a statement of the account of Omictech LLC.

Plaintiff claimed that his company, which is the holder of the account in question, i.e. Omictech LLC is a company regularly registered in Delaware. The Tribunal considered the statement of the bank account exhibited by defendant bank where the holder of the account is clearly indicated as Omictech LLC. The Tribunal also considered a separate notice sent by defendant bank on the 9th June 2018 wherein the client is clearly indicated as Omictech LLC (035557). The Tribunal also considered the fact that plaintiff declared that Omictech LLC is registered in the United States as a separate legal entity. All these considerations were made particularly because of the plea of defendant bank wherein it stated that its client is not plaintiff, but Omictech

LLC, and thereby is effectively raising the plea of lack of juridical interest on the part of plaintiff. For the Tribunal it is clear that plaintiff, although alleging that he is a 'Manager' of Omictech LLC, very clearly is not the company itself, in that plaintiff and the company are two separate legal persons; defendant bank is therefore justified in raising this plea. The Tribunal did not receive any comment or submission from plaintiff on this particular plea, and since it is satisfied that the holder of the bank account in question was not plaintiff himself, will uphold this plea.

The Tribunal further notes that though plaintiff requested an oral hearing, it did not deem such oral hearing to be necessary since the case is being decided on a procedural point of law, before considering the proper merits of this case.

The Tribunal is therefore upholding defendant bank's plea wherein it stated that plaintiff has a lack of juridical interest, and is therefore rejecting plaintiff's claims. The costs of this case shall be paid by plaintiff.

Dr. Claudio Zammit

Adjudicator

Susanne Fenech

Deputy Registrar