



QORTI ĊIVILI – PRIM'AWLA
ONOR. IMHALLEF MIRIAM HAYMAN LL.D.
Seduta tallum l-Erbgha 5 ta' Marzu, 2025

Fl-Atti tar-Rikors Ġuramentat nru.: 296/2022MH
Numru: 2

Bank of Valletta p.l.c

Vs

**1. Avukat Dottor Martin Fenech u l-Prokuratur Legali
Katrina Zammit Cuomo nominati b'digriet tal-25 ta'
Ġunju 2021 bhala Kuraturi Deputati sabiex jirrapreżentaw
lil Silva Nazenin Demir, liema kuraturi ġew estromessi b'digriet
tad-19 ta' Mejju, 2023, stante li assumiet l-atti personalment
Silva Nazenin Demir**

**2. Avukat Dottor Graziella Tanti u l-Prokuratur Legali
Daniel Aquilina nominati b'Digriet tal-5 ta' Lulju, 2021
bhala kuraturi Deputati sabiex jirrapreżentaw lill-assenti
Derya Demir**

Il-Qorti rat ir-rikors tas-soċjeta' 35°14° Capital SCC p.l.c. datat 12 ta' Jannar, 2024¹ fejn intalab illi stante li hi akkwistat mingħand il-Bank of Valletta id-drittijiet, titoli, l-interessi u benefiċċji kollha inklużi d-drittijiet litigjużi fil-

¹ Folio 118.

konfront tal-konvenuti intimati dan dejjem in forza tal-Kap 484 tal-Liġijiet ta' Malta, konsegwentement talbet illi tiġi awtorizzata li tassumi l-atti tal-kawża odjerna minflok il-Bank of Valletta attur u dan ai terminu ta' l-artikolu 810A tal-Kap 12 tal-Liġijiet ta' Malta.

Rat ir-risposta tal-kuraturi deputati in rappreżentanza tal-assenti Derya Demir² fejn irrimettew ruhhom.

Rat ir-risposta issa tal-konvenuta Silva Nazenin Demir oppositorja għat-talba ta' l-assuzzjoni ta' l-atti kif mitluba³ u dan fuq il-premess illi ċ-ċessjoni ta' drittijiet tinhtieg issir b'att pubbliku u dan ai terminu ta' l-artikolu 1470 tal-Kodiċi Ċivili, Kap 16 tal-Liġijiet ta' Malta. Oltre u li jekk dan hekk sar, kellu jiġi esebit l-att relattiv.

Rat ukoll in-nota tal-10 ta' Lulju, 2024⁴ fejn giet esebit l-atti skrittura privata transunt fl-atti tan-Nutar Dr. Reuben Debono fit-3 ta' April, 2014⁵ trattando tal-kuntratt ta' ċessjoni ta' krediti ta' portfolio ta' *non performing loans* bejn is-Socjeta' Bank of Valletta plc u s-socjeta li trid tassumi dawna l-atti. Hemm inkluz ukoll lista ta' debituri formanti parti mill-*portfolio* msemmi.

² Folio 127.

³ Folio 130

⁴ Folio 148

⁵ Dok w folio 149 et. Seq.

Ikkunsidrat

Illi jkun opportun in soluzzjoni ta' din il-vertenza li l-Qorti thares lejn dak li xpruna dan it-tibdil legislattiv u t-tifsir tieghu.

Insibu hekk:

Asset Securitization Comptroller's Handbook November 1997

"How do banks do securitization?"

Securitization is a financing technique by which homogeneous income-generating assets – which on their own may be difficult to trade – are pooled and sold to a specially created third party, which uses them as collateral to issue securities and sell them in financial markets.

What the EU is doing and why

When banks and other credit institutions package loans into securities and then sell them to investors, it's called 'securitisation'. It lets banks transfer the risk of some loans to other banks or long-term investors such as insurance companies and asset managers. This allows banks to use the capital that was set aside to cover the risk in those loans to create and sell new loans.

This freed-up space in balance sheets can be used to support many of the challenges that the EU economy is facing, including the green transition, which will require vast amounts of financing from private and public investors alike. If opaque, however, securitisation can amplify vulnerabilities across the financial system, as was the case during the US subprime mortgage crisis beginning in 2007.

This is why, as part of the Capital Markets Union Action Plan, the EU has put in place a sound framework that removes the harmful practices

of the past and incentivises safe market practices. The revised securitisation framework came into application in 2019. Its core objective is to establish an EU securitisation market that helps finance the economy without creating risks to financial stability.”

Il-Kummissjoni Ewropeja tgħid hekk fir-rigward.;

“A EUROPEAN FRAMEWORK FOR SIMPLE AND TRANSPARENT SECURITISATION

What is securitisation?

Securitisation is the term used to refer to a transaction that enables a lender – often a bank - to refinance a set of loans/assets (e.g. mortgages, auto leases, consumer loans, credit cards) by converting them into securities that others can invest in. The lender pools a portfolio of its loans into a set of securities tailored to different investor risk/reward characteristics. End investors are then repaid by the cash-flows generated by the underlying loans.

Why does the Commission want to restart securitisation markets?

Soundly structured, securitisation is an important channel for diversifying funding sources and enabling a broader distribution of risk by allowing banks to transfer the risk of some exposures to other banks, or long-term investors such as insurance companies and asset managers. This allows banks to "free" the part of their capital that was set aside to cover for the risk in the sold exposures, thereby allowing banks to generate new lending.”⁶

⁶ Maħruġa mill-Kommissjoni Ewropeja.

Il-ħsieb wara din il-*framework* allura kien il-faċilita' u liberalizzazzjoni u movement ta' flejjes, in *poche parole* biex min hu mgħobbi b'piżijiet li jistgħu joħonqu in-negozzju tiegħu jsib faċilita' kif jinża u jehles mill-istess.

Ovja li minn dan wieħed jista jiddeduċi li biex jiġi milqugħ dan l-għan li l-mekaniżmu ma jridx ikun wieħed mogħni b'ritwal proċedurali żejjed.

Mil-lat lokali nsibu li l-Att relattiv u l-Kap 484 tal-Liġijiet ta' Malta, jgħid hekk;

L-artikolu 2 jgħid:

"securities" has the same meaning assigned to it by the Financial Markets Act;

"securitisation" means a transaction or an arrangement whereby a securitisation vehicle, directly or indirectly: (a) acquires securitisation assets from an originator by any means, or (b) assumes any risks from an originator by any means, or (c) grants secured loan or other secured facility or facilities to an originator, and finances any or all of the above, directly or indirectly, in whole or in part, through the issue of financial instruments, and includes any preparatory acts carried out in connection with the above;

"securitisation creditors" means all creditors or classes of creditors of a securitisation vehicle, in relation to a securitisation transaction, whose credit is secured by any means whatsoever, whether by security collateral or title transfer collateral, including, without prejudice to the generality of the foregoing, the originator, any person holding one or more financial instruments issued by the securitisation vehicle, other than a shareholder of the securitisation vehicle, if applicable, any lender, hedge counterparty, liquidity provider and credit support provider of the securitisation vehicle and any trustee acting on any of their behalf"

"Securitisation vehicle" means a vehicle as referred to in article 3;"

Mentri l-artikolu 3 jaqra

" (1) A securitisation vehicle may be:

(a) a company, including an investment company;

(b) a commercial partnership.

(c) a trust created by a written instrument; or

established under the laws of Malta or those of a jurisdiction recognised by the competent authority.

(2) When a securitisation vehicle is established under this Act:

(a) the objects and purposes of such vehicle shall be limited to such matters which are necessary to carry out all or any transactions intended or required to implement or participate in a securitisation transaction and all related and ancillary acts including, without limitation, the acquisition, management and collection of credits and other receivables or other securitisation assets, the assumption of risks, the granting of secured loans, the issue of financial instruments or the borrowing of funds to finance the acquisition of assets or assumption of risks, the engagement of service providers to administer or support its activities and the entering into derivative instruments; and

(b) its constitutive document shall state expressly that it is a vehicle established subject to the provisions of this Act"

ukoll

L-artikolu 14 jaqra

"(1) The following provisions of the Civil Code shall not apply in case of an assignment of a securitisation asset to a securitisation vehicle:

(a) article 1483(1);

(b) article 1056(1); and

(c) article 2013(3).

(2) The following provisions of the Civil Code shall apply subject to the modifications herein stated:

- (a) *article 1968(1) of the Civil Code shall not apply, and where the thing pledged to the securitisation vehicle is a debt, the securitisation vehicle shall, unless otherwise agreed with the originator, be responsible for the collection of such debt on maturity and the securitisation vehicle may place the moneys or other things received either as agreed or, failing such agreement, may hold the same as security for the debt until due;*
- (b) ***without prejudice to the right of the parties to assign rights by means of public deeds and register the same in accordance with articles 2051 and 2052 of the Civil Code, when a right arising from a public deed, including any hypothecary rights, is transferred to or from a securitisation vehicle, article 1470(2) shall not apply; and***
- (c) *articles 1980 to 1984 of the Civil Code shall not apply and a securitisation vehicle shall have a right of use over and the right to sub-pledge any securitisation assets which have been pledged, assigned, or delivered to it for the purpose of a securitisation transaction.”*

Għandu jingħad ukoll u hu sinifikanti għall-eżami tal-lum, illi l-***margin note*** ta' l-artikolu 14 taqra, u dan hu ta' importanza għal din il-kwistjoni; ***“Modifications of certain provisions of the Civil Code”***

Mill-qari ta' dan hawn fuq citat, huwa ċar illi hawn si tratta ta' *securitisation asset* li ġie trasferit lil *securitisation vehicle*. Del resto dana bħala fatt mhux wieħed ikkontestat.

Kif ingħad jidher li l-ispirtu u r-ratio wara dan l-istrument legali hu liberalizzazzjoni u ċirkulazzjoni ta' flejjes u assi finanzjarji. Hu għalhekk logiku illi l-liġi trid u tistabilixxi anqas rigorożita fl-applikazzjoni ta' dan.

Għalhekk, u tant hu ċar dan, huwa żbaljat dak kontestat mill-intimat li hawn kien neċessarju li l-fethim ikun wiehed formalizzat b'att pubbliku.

Konsegwentement tilqa' t-talba kif dedotta u tordna il-bdiel fl-okkju tal-kawża fis-sens illi ai terminu ta' l-artikolu 810A tal-Kap 12 tal-Liġijiet ta' Malta is-soċjeta' 35°14° Capital SCC p.l.c. tassumi l-atti minflok il-Bank of Valletta p.l.c.

Tordna li din l-annotazzjoni tiġi debitament registrat fl-atti kull fejn jokkorri.

Onor. Miriam Hayman

Imhallef

Rita Falzon

Dep.Reg.