**The “Mrs C case”**

**(Denial of mortgage loan - April 2019)**

**KEYWORDS:**

*Creditworthiness assessment — Denial of mortgage loan — Delay — Creditor’s pre-contractual duties — Negligence in submitting documentation — Probative value of screenshot.*

**FACTS:**

Mrs C had her application for a home mortgage loan denied, thereby losing the down payment she had paid to the seller.

Mrs C notes that she had applied for a mortgage to finance 50% of the purchase price of a parcel of real estate (with the balance to be paid in cash by Mrs D). She had signed a preliminary sales agreement, and made a down payment in the amount of Euro 9,000. In her mortgage application, Mrs D noted that the preliminary sales agreement as signed with the seller included a provision that the sale be consummated within sixty (60) days. The bank sent a list of required documents needed to process her application, which, due to a misunderstanding, the Lady provided only in part.

The Bank sent an additional email enumerating the missing documents needed to assess her credit-worthiness; Mrs C sent most (but not all) of the requested documents. The Bank, once again, alerted Mrs C via email that the documentation was incomplete; Mrs C snapped photos of some of the requested with her mobile phone and sent them to the Bank.

A few days before the deadline to execute the final agreement, Mrs C was advised that the mortgage loan had been denied due to insufficient proof of assets.

The customer claimed that the lender was responsible for the damages consequent to the failure to complete processing on her mortgage application by the firm deadline set within the preliminary agreement, as well as a breach of their duty to timely provide detailed notice of the denial, the lost chance to seek out other lenders, and justifiable reliance on the application being approved.

She notes that she was required to seek a loan from her relatives and friends, suffering a serious blow to her dignity.

*She would have compensation for general damages.*

**LEGAL ANALYSIS:**

The question presented is whether the lender breached their duty of good faith during negotiations undertaken pursuant to EU Directive 2014/17/EU.

The intermediary was, in fact, required under to set a deadline by which Mr C needed to submit the documents needed to assess C’s credit worthiness.

* **Legal provisions with specific reference to EU directive when applying:**

Artt. 13 and 18 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive – MCD); Art. 1337 Italian Civil Code, Artt. 120-*novies* and 120-*undecies* TUB [Testo Unico Bancario, Consolidated Banking Law, D.lgs. 1 September 1993, n. 385], introduced into the TUB pursuant to Legislative Decree no. 72/2016 in implementation of MCD.

**LEGAL SOLUTION:**

The expired deadline is not attributable to the lender's conduct, but rather to client’s negligence: the submission of a disjointed and incomplete set of documents in lieu of the required documentation, thereby causing the application to be denied.

Rules on the burden of proof: furthermore, we found that the lender's objections regarding the “screenshots” being insufficient to prove the authenticity of the claims were valid.

**SUGGESTED SOLUTION:**

Since there was no case, we suggested to drop the case.