**The “Supermarket snatching case”**

**(Fraudulent withdrawals and purse-snatching – May 2020)**

**KEYWORDS:**

*PSD2 — Payment services — Late notification of the theft of the payment instrument — Pickpocketing.*

**FACTS:**

Mrs Smith advises that one morning at 9 a.m. she went to her usual supermarket, which she likes because of its monitored car-park.

After parking her car, she headed into the store. She finished her shopping, exited the store, and was loading her grocery bags into the car when she was interrupted by a man inquiring about a pharmacy. Distracted, she fell victim to her purse being snatched from the shopping cart (9:41 a.m.).

As soon as she noticed the theft, she headed to the Carabinieri station to file a police report.

At the suggestion of the police officer, at 12:27 p.m., she cancelled her card.

The next day, she went to her bank branch and requested a copy of her statement, where she saw eight (8) fraudulent withdrawals, totalling Euro 1,500.00 (the daily withdrawal limit).

*She requested the full amount be reimbursed.*

**LEGAL ANALYSIS:**

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

Artt. 69, par. 1, lett b) and 70, par. 1, lett c), Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2); artt. 7, par 1, lett. b) and par 2, 8 and e 12, par 4, Legislative decree, 15 December 2017, n. 218, implementing Directive (EU) 2015/2366 on payment services in the internal market.

**LEGAL SOLUTION:**

This was clearly a sophisticated fraud: the theft consisted of a course of conduct beginning with distracting the victim (by asking for directions) and asporting the prepaid card. The Arbitro bancario e finanziario (ABF) concluded that the skill required to consummate the crime ruled out any negligence on the part of the card-user. To wit, when it appears that a cardholder is deceived through the use of subterfuge by a skilled thief, there is no carelessness, negligence, or lack of due care on the part of the cardholder in terms of safeguarding the card and their credentials.

By the same token, there was a delay between the time of the theft, and when the card was reported stolen. We reached out to the client, who said the transactions occurred around 11 a.m. A timely reporting of the stolen card would therefore have sufficed to prevent all of the unauthorised withdrawals (which indeed took place about an hour and a half after the theft). Instead, the late report allowed the thieves plenty of time to carry out the transactions.

**SUGGESTED SOLUTION:**

An application to the Arbitro bancario e finanziario (ABF) would be ill-advised.

**SPECIFIC REMARKS:**

The diligence of the cardholder following the request to block the card is insufficient to offset their behaviour prior thereto.