



[2018] JMCC Comm.33

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2013 CD00083

BETWEEN	SUPREME VENTURES LIMITED	CLAIMANT
A N D	CAMIELE BISSENEY (t/a CAMIELE'S ONE STOP)	DEFENDANT

Mr John Graham and Mr Josemar Belnavis instructed by John G Graham & Co Attorneys-at-Law for the Claimant

Ms Christine Mae Hudson instructed by K Churchill Neita & Co Attorneys-at-Law for the Defendant

Contract – Agent’s failure to pay sums due under contract

Evidence – Whether sufficient evidence of the integrity of the system which is being relied upon to establish debt

Heard 15th, 16th and 25th October 2018

LAING, J

The Claim

[1] The Claimant, Supreme Ventures Limited, a company duly incorporated under the laws of Jamaica (“SVL”), claims against the Defendant Camiele Bisseney, trading as a Camiele’s One Stop, for the sum of Two Million Five Hundred and Five Thousand Two Hundred and Sixty-Seven Dollars (\$2,505,267.00) plus

interest and costs for monies owing pursuant to a contract dated the 1st day of September, 2010 ("the Contract").

- [2]** SVL is the proprietor of a number of games of chance licensed by the Betting, Gaming and Lotteries Commission. These games are sold throughout the island of Jamaica by a number of agents of SVL. The Contract provided for the Defendant to operate as one such agent at 12 Duhaney Pen Road, Morant Bay, St. Thomas.
- [3]** SVL's operations were made possible by a network of terminals linked to a Central Computerised Gaming System. Pursuant to the Contract, the Defendant was supplied with a computer terminal ("the Terminal") and a unique agent number. The Terminal was equipped with a dial pad on the monitor, a printer and a modem. Whenever a customer purchased a game/lottery ticket, the Terminal operator would make the appropriate input into the Terminal and the Terminal would make an electronic request by an encrypted message via the Central Computerised Gaming System and a response sent back to the Terminal resulting in a physical printed lottery ticket for the purchaser to hold. The entire interconnected operation of SVL will be referred to herein for convenience as "the Computer System".
- [4]** The Computer System utilises a customer tracking software that processes all commands inputted into a Terminal and verifies all transactions. SVL is able to generate an Agent's Activity Report, which as the name suggests, records all the activity of an agent and most importantly, the amount which is to be paid over to SVL by a deposit to SVL's account at the bank, using the Agent's unique number for ease of identification and accounting.
- [5]** The Defendant, like all agents, had the ability to use the Terminal to print a daily report and on Mondays, was able, and indeed required, to print the invoice report for the previous week's activities at her Terminal showing the net amount to be paid over to SVL.

[6] SVL asserted that the Agent's Activity Report produced by the Defendant's Terminal shows that for the period beginning 7th January 2012 (inclusive of a balance brought forward from 2011) to the 27th day of October, 2012 the Defendant had accumulated a balance on sales totalling \$2,205,267.00. This sum has not been paid and forms the basis of the claim.

The Defence

[7] The main prong of the Defence was a challenge to the integrity of SVL's Computer System and its accounting procedures. In her Defence, the Defendant asserted that on or about October 2011, she notified SVL that the Terminal sale numbers (net sales) were inconsistent with the actual amount of sales and that the Terminal was not working. The Defendant averred that she was advised to call the offices of SVL and reconcile the amounts which were due and payable on a weekly basis and she did so. She said that she continued to operate in this fashion until she received a letter terminating the Contract on 11th May 2012.

[8] The Defendant also asserted that having regard to the terms of the Contract and the associated accounting arrangements, she could not have owed SVL for several months in the sums indicated by it in the Claim, because if in any week she failed to pay the previous weekly amount that was due to SVL, her Terminal would be suppressed and she would not be able to sell lottery tickets.

Challenge to the claim based on documentary evidence of the Terminal having malfunctioned

[9] During cross examination, the Defendant said that she first noticed the problem with her Terminal "*maybe*" the first week in January 2012. This assertion was in contrast with her pleaded case that the problem arose in October 2011. She explained that the evidence that her Terminal was not working correctly was seen in the fact that the amounts reflected in the daily reports generated by it did not equal the total amount reflected in the Weekly Report which it generated. She said that this discrepancy occurred for about 8-10 weeks.

Challenge to the evidence of the accumulation of the debt after 31st December 2011

- [10] The cross examination of SVL's witness, Ms Lorna Gooden, by Ms Hudson, focused to a large extent on the accumulation of the debt arising from the net sales totalling \$2,205,267.00. Counsel used as a reference point, SVL's letter to the Defendant dated 16th September 2011 which stated that the outstanding funds owed to SVL was \$228,210.00 "*...as at the week ending September 03, 2011*".
- [11] Ms Gooden was questioned at great length in relation to the agent online activity report in respect of the Defendant's Terminal. The cross examination revealed the need for caution in using the report in order to get an accurate snapshot at a particular date, without appreciating variables which might not be immediately apparent. This is because the figures relating to a particular date, although providing a snapshot, did not necessarily reflect the true position of the Defendant on that date, in terms of the total amount which might be owing to SVL.
- [12] One reason for this, was that, quite often, there was a time lag between the date when the sales were concluded and the date when the payments were made or applied to the Defendants' account. On some occasions the adjustments to reflect the late payments was considerably later than the date when the payments were made. For example, although the online amount outstanding as at 31 December 2011 is shown to be \$1,194,263.00 this figure did not include payments totalling \$526,550.00 for which an adjustment was only made in 2012. Had this adjustment been made in 2011, the total outstanding as at 31st December 2011 would have been shown to be the correct figure of \$667,713.00. The Defendant also made a payment of \$141,600.00 during the first week of January 2012 which would have further reduced her indebtedness in respect of the year ending 31st December 2011, to \$526,113.00.

- [13] It is against this background that Ms Hudson sought to cast doubt on the Defendant's Agent Summary "*Online Amount*", which represented the amount owed by her as having increased to \$2,325,267.00 as at 21st April 2012.
- [14] The sum of \$2,205,267.00 which is the amount in the Claim Form, utilises this amount of \$2,325,267.00 which was adjusted to account for earlier payments of \$923,180.00 that had been made by the Defendant and also adjusted to take into account payments of \$120,000.00 which were subsequently made by the Defendant.
- [15] Ms Gooden explained that the "*Online Amount*" in the report was the accumulated amount that would have been due as at the stated date. On SVL's case, there is no mystery as to how the amount of the debt reached \$2,325,113.00 since it is the accumulated total of the debt. The Agent Summary shows that for all the weeks from 7th January 2012 to 25th February 2012, the Defendant did not pay into the relevant bank account the full sum that was due to SVL each week. The result of that was a shortfall reflected in the "*variance*" column for each week, which totalled \$1,799,154.00. This variance amount when added to the actual balance of \$523,113.00.00 amounts to \$2,325,267.00.

Alleged inconsistency in SVL's conduct

- [16] Ms Hudson argued that the conduct of SVL was not consistent with that of a party that was in fact owed the sums which SVL claims. Counsel expressed concern about the fact that there were not more letters from SVL to the Defendant, advising her of her indebtedness at each stage and that, furthermore, most of the letters, (including the letter to the Defendant dated 16th September 2012 by which the Contract was terminated), did not expressly state the sum which SVL was asserting to be then due and owing.
- [17] Counsel, also submitted that although the Contract provided that the agent should account for the sales for each preceding week, the Defendant is alleged to have had a significant sum owing to SVL during January and February 2012,

yet her Terminal was not suppressed and no adequate explanation for this non-suppression was forthcoming from Ms Gooden. Counsel submitted that this situation was especially strange having regard to her evidence as to the limited number of circumstances in which SVL's discretion would be exercised in favour of not suppressing a terminal where there was a substantial balance outstanding as reflected on the Agent's Terminal report.

The applicable law

[18] The parties were agreed that the applicable law in this area is well settled and not in dispute. A principal can sue his agent for breach of contract. The Claim is based on the Defendant's obligation to make the appropriate payments pursuant to the Contract and SVL is alleging that in breach of these obligations the Defendant has not paid over the sums due which form the subject of the Claim. The outcome of the Claim is therefore subject to the Court's view of the facts against general principles of contract law, as well as the Court's assessment of the reliability of the evidence and in particular the documentary evidence, on which the Claim is founded (the documentary evidence having been admitted into evidence at trial by consent of the parties). In these circumstances, I do not find it necessary for purposes of this judgment to discuss the applicable law in any greater detail.

Analysis

[19] Documentary evidence in the form of printouts generated from the Defendant's Terminal, demonstrating inconsistency between the sum total of the daily sales and the accumulated weekly total as reflected in the Weekly Report generated by the same Terminal (or even if generated any other portion of the Computer System for that matter), would be very strong evidence of the unreliability of SVL's Computer System. If this unreliability resulted in SVL attributing a debt to the Defendant which was not in fact due, then these printouts or reports would

have established the Defendant's account which is that the debt being claimed by SVL is not in fact due and owing.

[20] The Defendant agreed that the reports/printouts evidencing the discrepancies between the aggregate sum from the daily sales and the total sales as reflected in the weekly report, would have been important to her Defence. However, she explained that she misplaced them for a period of time, as a result of her having changed the location of her business operations. Notwithstanding the fact that the Defendant said that she has since located some of the reports which bear the evidence of the discrepancy, it is noteworthy that none of these documents were produced and exhibited during the trial.

[21] In fact, none of these documents were produced to SVL contemporaneously. The Defendant explained to the Court that she did not do so because no one was telling her that she had an outstanding amount. I do not believe the Defendant's evidence and her explanation in this regard. One would expect that such a discrepancy would have been an issue of such significant concern, that any reasonable person in the position of the Defendant would have been keen to present the evidence to SVL. Any reasonable person would also have guarded those documents and treated them with the importance they would have deserved by safely securing them, rather than leaving them in a place where they could have been lost, whether as a result of the business being relocated, or otherwise. I find that the Defendant's failure to have produced these alleged documents to SVL is not explained by her assertion that she had not been told that she had an outstanding balance. I find that the Defendants failure to have showed these documents to SVL or to have produced them as a part of her Defence, is explained by the fact that these documents simply do not exist.

[22] Furthermore, I am satisfied that the possibility of the existence of these documents is not supported by the evidence of SVL's witnesses. SVL has presented detailed evidence explaining the operation of and the functioning of its Computer System. Importantly, Mr O'Neil Lynch, SVL's Management Information

Systems Administrator gave evidence of the types of problems that might arise which typically are, from the agent's side, difficulty with the communication between the Terminal and the central system. From the Computer System's side, problems are of the kind which usually result in the inability of the agents to make sales. He confirmed that net sales as recorded by the Terminal being inconsistent with the actual sales amounts was not one of the problems which occurred and furthermore he confirmed that he had received no complaint of this nature from the Defendant.

- [23] There was also the evidence of Ms Gooden that based on her experience in the accounting department, she had never encountered any situation in which the Terminal of an agent had recorded one, or a series of sales, which were not in fact made and in respect of which an adjustment to that agent's account had to be made.
- [24] To the extent that the Defendant appeared to be asserting that the reports of her Terminal showing high volume of sales was inaccurate, such an assertion was half-hearted and lacked any evidential substance. In this regard, the Defendant was cross examined about what appeared to be contradictory assertions in paragraph 3 of her witness statement, in that she claimed that "*I have never made sales in excess of \$300,000.00*", followed immediately by the next sentence which read "*When this happens the lottery jackpot is at a high*". She confirmed that she was referring to weekly sales and in responding to the Court's question seeking clarification she explained that when the jackpot is at a high she would indeed achieve sales in excess of \$300,000.00 per week. There was therefore no valid basis for the Defendant's challenge to any specific figure recorded as sales from her Terminal.
- [25] Counsel for the Defendant acknowledged that the failure of the Defendant to produce the inconsistent reports to which she referred may weaken her case, but Counsel reminded the Court that despite this, it was the duty of SVL as the Claimant to prove its case by satisfying the Court as to the existence of the debt

claimed. Counsel submitted that notwithstanding the documentary evidence presented the Court should still harbour doubt as to the validity of the Claim.

- [26]** The Court has analysed the Claim and has noted all areas of potential weakness. It is perhaps prudent to expressly state, that although the Court accepts the evidence of Mr O'Neil Lynch as to the integrity of the SVL network and the improbability of it generating and attributing sales to the Terminal of the Defendant which were not in fact transacted, the Court fully appreciates that there was an element of human interaction in the relationship between SVL and the Defendant which could have resulted in inaccuracy of the debt being claimed. By way of example, an error could have arisen due to the fact that the Defendant was required to deposit the payments due to SVL at the bank using her unique bank account number or "*CCP number*". Ms Gooden explained that these deposits are regular bank deposits that are physically done utilizing a lodgement slip. As a consequence, there may be instances where a deposit is made and the depositor is not clearly identified because of the missing CCP numbers. The agent would then need to provide proof that he or she made the deposit before their account could be credited. Ms Gooden's evidence was that this occurred in the Defendant's case just once, but was rectified and is of no moment as far as the Claim herein is concerned.
- [27]** The operation of the system also provided for manual adjustments to be made in order to update the Defendant's account and there was demonstrably a time lag in the making of these adjustments. However, notwithstanding, the presence of this manual/ human element as a part of SVL's accounting mechanism, the Court finds on the evidence that as at the time of filing of the claim, all the relevant adjustments in respect of the Defendant's account had been properly made by SVL and that the debt attributable to the Defendant is true and accurate.
- [28]** As it relates to the submissions of Ms Hudson that the letters of SVL to the Defendant for the most part did not specify the amount due at each point, whereas I agree with Counsel for the Defendant that this is odd, I do not find that

this is inconsistent with the fact that a debt was due. I accept the evidence of Ms Gooden that the amount owed by an agent, and in this case, the Defendant, was accessible via her Terminal and so it was not absolutely necessary that the amount owing be expressly stated in correspondence. Clearly, notwithstanding this fact, it would be a good practice to expressly state it for the avoidance of any doubt, however, I do not find that anything of significance turns on this omission as far as this case is concerned.

[29] As it relates to the failure of SVL to have suppressed the Defendant's Terminal/Account when SVL claims she had a significant balance outstanding, such as at the beginning of 2012, I do not find that this is evidence which supports the Defendant's position that the debt was not then due as SVL has asserted. It is not without significance that the Defendant's account was suppressed on sixty four occasions. I accept the evidence of Ms Gooden that the suppression was not automatic but was contingent on a manual request being made to SVL's technology service provider. There was a discretion involved in this process and Ms Gooden gave evidence as to some of the circumstances in which that discretion might be exercised in an Agent's favour. Although Ms Gooden was not in a position to explain the specific reason for the Defendant's Terminal not having been suppressed, I do not find that this, by itself affects my view of the other evidence which, on a balance of probabilities, points to the existence of the debt as claimed.

Conclusion in respect of the Claim

[30] I find that SVL has provided sufficiently cogent evidence as to the reliability and integrity of their Computer System and also their associated accounting system. I am satisfied on a balance of probabilities that the debt claimed was in fact owed by the Defendant pursuant to the terms of the Contract. There has been no evidence from the Defendant which has caused me to doubt the accuracy of the SVL's accounts and/or the basis of its calculations on which the claim is founded.

The Counterclaim

- [31] The Defendant has also filed a counterclaim claiming that the actions of SVL in publishing her name in the Sunday Gleaner and Sunday Observer in the following words:

“Anyone knowing the whereabouts of Camiele Bissiney are kindly being asked to contact Supreme Ventures Limited”.

Were defamatory and caused immeasurable distress to the Defendant.

- [32] The Defendant claimed that the Claimant failed to give proper accounts of the statements, failed to properly maintain the cash terminal and unlawfully terminated the Agent Agreement causing loss and damage to the Defendant.

Defence to Counterclaim

- [33] SVL filed a Defence to the Counterclaim on February 11, 2013 in which it denies that the notices were capable of bearing a defamatory meaning. SVL also denies that the Contract was terminated without cause or unlawfully, but rather was terminated pursuant to clause 3. I) (iv) of Contract.
- [34] Mr Graham submitted that, insofar as the Counterclaim is concerned the Defendant has not produced sufficient evidence to support it. I wholly agree with these submissions and it is therefore unnecessary to treat with it in any greater detail.

Disposition

- [35] For the reasons expressed herein the Court makes the following orders:
1. Judgment for the Claimant on the claim in the sum of \$2,205,267.00 together with interest at the rate of 6% per annum from 17th May 2012 to 25th October 2018 the date of judgment herein.

2. Costs of the Claim are awarded to the Claimant to be assessed if not agreed.
3. Judgment to the Claimant/Defendant to the Counterclaim, on the Counterclaim with costs of the Counterclaim to be assessed if not agreed.