

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1993/D046

Judgment Book

BETWEEN DEXTRA BANK AND TRUST CO. LTD. PLAINTIFF

A N D BANK OF JAMAICA DEFENDANT

Mr. Dennis Goffe Q.C., Miss Susan McGhie instructed by Mr. Dennis Jones of Myers, Fletcher and Gordon for Plaintiff.

Mr. Douglas Leys instructed by Miss Sandra Wright for Defendant.

HEARD: 29th April, 1993.

EDWARDS J.

By Summons for Judgment dated April 1, 1993

and set down for hearing on the 29th April 1993 the Plaintiff sought leave of the Court pursuant to section 79 of the Judicature (Civil Procedure Code) Act to enter Judgment against the Defendant. Section 79 provides in part:

"Where the defendant appears to a Writ of Summons specially indorsed with or accompanied by a Statement of Claim under section 14 of this Law, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed if any, apply to a Judge for liberty to enter judgment for such remedy or relief as upon the statement of claim the plaintiff may be entitled to. The Judge thereupon, unless the defendant satisfies him that he has a good defence to the action on the merits or discloses such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief".

A Writ of Summons dated 11th March 1993 which formed the basis of this action was specially indorsed with a Statement of Claim under section 14 of the Judicature (Civil Procedure Code) Act and the Defendant entered appearance thereto on the 15th March 1993 but up to the date fixed for hearing of the summons for Judgment, had not filed a Defence.

At the hearing I was informed by Mr. Dennis Goffe Q.C. representing the plaintiff that the parties had reached agreement on a draft form of the order which they would be asking the Court to make and which included the grant of leave to the defendant to defend the action but they could not reach agreement on one point viz the question of whether the order should include an order for speedy trial.

The plaintiff wished to have the matter speedily resolved and therefore asked the Court to include in the order, an order for speedy trial. Surprisingly, Mr. Douglas Leys for the defendant opposed this. He saw no reason for a speedy trial.

The defendant is the Central Bank of Jamaica and the affidavit evidence shows by the allegations contained therein that the integrity of the Bank was being impugned. There were allegations of non payment of debt, fraud and forgery. The affidavit of the Governor of the Bank of Jamaica shows at paragraph 8 that the signature of a Deputy Governor of the Bank of Jamaica on a promissory note which is the subject matter of this action is a forgery and that the police "are carrying out intensive investigations into the above with a view to establishing and charging the perpetrator of the fraud."

But in order to better be able to comprehend the matter, it is necessary to give a brief review of the facts.

The plaintiff a Bank which has its place of business in George Town, Grand Cayman is contending that on or about the 12th January 1993 it was approached by two persons a Mr. John Wildish and a Mr. Michael Phillips who said they had been requested on behalf of the defendant to raise a loan of \$3 million United States Dollars (U.S.\$3,000.00) for a period of 90 days.

Discussions took place, a draft promissory note was prepared, and telefaxed to Mr. Wildish on the 14th January for him to get the approval of the defendant. Further discussions took place, amendments were made and eventually the terms of the promissory note were agreed on the 19th January 1993.

Mr. Phillips attended the Grand Cayman office of the plaintiff's attorney-at-law on the 19th January and was given the engrossed note and a cheque for U.S.\$2,999.000 from the plaintiff bank being the loan of U.S.\$3,000.000 less legal fees of U.S. \$1000. He was instructed to take the note to either the Governor or the Deputy Governor of the bank for signature by one of them together with the signature of another officer selected by the first signatory.

The note dated 20th January 1993 was returned to the plaintiff by Courier. It had a Bank of Jamaica stamp on it and was signed by Mr. R.E. Straw Deputy Governor of the defendant and a Mr. O.W. Beckford. Mr. Beckford was an acting Director of the Economic Cooperation Department of the defendant at that time.

The cheque for U.S. \$2,999.000 which was made payable to the defendant was deposited to the account of the defendant and the negotiated cheque returned to the plaintiff.

The defendant has therefore received the \$2,999.000 but it now states that it is not liable under the note as ^{the}signature of Mr. Straw was forged and Mr. Beckford had no authority to enter into that type of transaction on behalf of the defendant.

Mr. Beckford has since disappeared and his whereabouts are unknown. He is believed to have left the Island with his family.

The defendant does not deny that it received the cheque for \$2,999,000 and lodged it to its use, but claims that the cheque was received by it in good faith and valuable consideration was given for it.

On the 20th January 1993 Mr. Richard Jones one of the defendant's agents brought in to the defendant's office the cheque for \$2,999.000. The defendant had appointed a number of agents to obtain on the open market, foreign exchange in the form of cash, telegraphic transfers or demand items.

also had another unique feature. It was the first case involving a joint purchase of a foreign cheque by the agents.

A return submitted by Mr. Jones indicated that the cheque had been purchased from a Mr. O. Dunn and it was a joint purchase by Mr. Jones and another agent Mr. Wycliffe Mitchell. Mr. Jones was responsible for purchasing U.S. \$2 million and Mr. Mitchell for purchasing the remaining U.S.\$999,000. Mr. Jones purchased his U.S. \$2 million by eight Jamaican Dollars cheques totalling \$45,072.9 million and ranging in value from \$ J\$1.26 million to J\$11.075 million made payable to six persons.

Mr. Mitchell purchased his by four Jamaican Dollar cheques totalling \$21,928.5 million and ranging in value from \$4.43 million to \$6.645 million. Over \$67 million Jamaican Dollars was therefore paid to persons other than the plaintiff for a cheque issued by the plaintiff to the defendant which was received and negotiated by the defendant.

Mr. Leys in opposing the grant of an order for speedy trial made reference to Supreme Court Civil Appeal No. 27/91 **BRUCE GOLDING** (for the standing and Central Executive Committees of the Jamaica Labour Party) and another against **PEARNEL CHARLES** and quoted from the Judgment of Carey P. (Ag.) to show that "the fact that a great deal of money is at stake, is not a relevant consideration" in the making of an order for speedy trial. But Carey P. went on to say that "when the postponement of having an early decision in the case might have serious financial or other repercussions to the economy..... or if irreparable harm might result to a party, all these constitute the sort of factors which should predispose a Judge to granting such an Order".

Section 5 of the Bank of Jamaica Act shows that:

"The principal objects of the Bank shall be to issue and redeem notes and coins, to keep and administer the external reserves of Jamaica, to influence the volume and conditions of supply of credit so as to promote the fullest expansion in production, trade and employment, consistent with the maintenance of monetary stability in Jamaica and the external value of the currency, to foster the development of money and capital markets in Jamaica and to act as Banker to the Government".

Section 23(1) of the Bank of Jamaica Act also gives the defendant the power to make arrangements or enter into an agreement with any bank or financial institution outside Jamaica to borrow in such manner, at such rate of interest and upon such other terms and conditions as it may think fit, any foreign currency which the Board may think it expedient to acquire.

The plaintiff is authorised by Section 38 of the Act to act as agent for the Government in the payment of interest and principal and generally in respect of the management of the public debt of Jamaica.

In view of the crucial and pivotal role which the plaintiff plays in the financial and economic affairs of Jamaica nothing should be done which could remotely be conceived as Jeopardising the country.

A person charged with the maintenance of monetary stability in Jamaica and who is given the power for that purpose to enter into agreements with foreign banks and institutions outside Jamaica, to borrow foreign currency at negotiated rates of interest and who is also mandated to act as agent of the Government in the payment of interest and principal on the public debt of Jamaica cannot in my view properly discharge those function while a court action accusing it of defaulting on its obligations to pay principal and interest on money received by it, remains unresolved.

Banking whether domestic or foreign is an institution which rests on confidence.

If behoves the defendant which is the Central Bank of Jamaica to get this matter cleared up as quickly as possible. It is not just the name of the Bank of Jamaica that is at stake. It is the integrity of Jamaica that is at stake, and to that end the Court will give it every possible assistance.

I therefore have no hesitation in making the order for speedy trial.