

*Judgment Book.*

IN THE SUPREME COURT OF JUDICATURE

IN EQUITY

SUIT NO. 1984/E173

BETWEEN                      DOROTHY PATRICIA ROACHE                      PLAINTIFF  
A N D                              RUEL ROACHE                                      DEFENDANT

Dennis Goffe of Myers, Fletcher & Gordon, Manton & Hart for  
Plaintiff.

Defendant unrepresented.

3rd December, 1986, 7th April, 1987  
& 3rd February, 1989

HARRISON, J.

This is an assessment of damages wherein the plaintiff claims damages for loss suffered and expenses incurred as a consequence of acts of fraud committed by the defendant.

The plaintiff, a Jamaican, is a registered nurse who has been residing in the State of Florida in the United States of America for a period in excess of seventeen years. She was formerly the wife of the defendant and they were the registered proprietors, as joint tenants, of the property in Montego Bay, St. James registered at Volume 508 Folio 92 of the Register Book of Titles.

In the year 1984, the plaintiff while in Miami, Florida received certain information, as a result of which she came to Montego Bay, Jamaica on the 29th day of May 1984. On arrival she discovered that her name had been removed from the title to the said property, that the defendant was the sole owner, and that the Royal Bank of Jamaica Limited was offering for sale, the said property which it held as mortgagee, to secure a loan of \$100,000 made to the defendant on the 20th of December, 1983. The plaintiff further discovered that her

signature had been forged purporting to show that she had signed two (2) documents, namely, a transfer and a release, in respect of the said property and that it was transferred to the defendant, with her concurrence, for a consideration of \$3,000.

The said ~~fraudulent~~ transfer was registered at the Titles Office on the 18th day of January, 1983.

The plaintiff subsequently went to her attorneys-at-law in Kingston, on the 4th day of June, 1984, visited the Titles Office where she observed her forged signatures on the documents and thereafter made a report to the police, on the same day. The plaintiff made several visits from Montego Bay to Kingston during the next five weeks that she remained in Jamaica, travelling by aircraft and taxi cabs. While in Montego Bay she obtained accommodation at the Montego Bay Beach Club and the Montego Bay Hotel.

The plaintiff returned to Miami on the 2nd day of July, 1984, and came back to Jamaica on the 9th day of July, 1984. She again contacted the Fraud Squad at the Criminal Investigation Branch in Kingston and the defendant was arrested in the month of August 1984. The plaintiff remained in Jamaica until "about 9th September, 1984." and "...returned to Jamaica in October.." and left thereafter on "November 9th."

On the 6th day of January 1985, the plaintiff again returned to Jamaica; there was a hearing on the 7th and the plaintiff stayed for 43 days and left. She returned in mid-March 1985, because there was "another proposed Court date hearing", brought money to pay the mortgagee, the Royal Bank, stayed for 40 days and returned to Florida in May 1985. In July 1985 the plaintiff came back, "to speak to the Deputy Public Prosecutor .. we finally got a date set for September", spent 16 days, returned to Florida and came back to Jamaica

on the 8th day of September 1985.

The defendant pleaded guilty to the criminal charge on the 18th day of September; the plaintiff spent 13 days in Jamaica during the month of September 1985.

The plaintiff claims damages against the defendant being, the monies expended by her for air travel to and from Jamaica, transportation costs by car in Jamaica and Florida, accommodation costs in Jamaica, and also loss of earnings in her employment as a nurse in Miami, Florida; she claims that these arose as a result of the ~~fraudulent~~ acts of the defendant.

The plaintiff claims, loss of earnings as a nurse,

1. in the year 1984 - 154 days working 60 hours per week at a rate of US\$16 per hour. She stated that she was usually employed for a minimum of 8 hours and a maximum of 16 hours per day.
2. for the month of January 1985, 8 hours per day at a rate of US\$18 per hour;
3. for the period from March to May 1985, 8 hours per day at a rate of US\$18 per hour;
4. for the month of July 1985, 16 days working 12 hours per day at a rate of US\$20 per hour;
5. for the month of September 1985, working 8 hours per day at a rate of US\$22.50 per hour.

The basic principle is that a plaintiff who is wronged is entitled to be restored to the position in which he would have been had the tort not been committed against him and the damages must be reasonable foreseeable. However the plaintiff is required to mitigate his loss.

.. The learned author in *Mayne v. McGregor* on Damages, 12th Edition, paragraph 148, observed,

"...persons against whom wrongs have been committed are not entitled to sit back and suffer loss which could be avoided by reasonable efforts or to continue an activity unreasonably so as to increase the loss. This well established rule finds its most authoritative expression in the speech of Viscount Haldane, L.C. in the leading case of British Westinghouse Co. vs. Underground Rly. [1912] A.C. 673, where he said: 'The fundamental basis is thus compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach and debars him from claiming any part of the damage which is due to his neglect to take such steps'".

The law requires the plaintiff to act reasonably.

The plaintiff's claim for loss of earnings and travelling expenses incurred, includes quotations in foreign currency, the currency of the United States of America, converted into Jamaican currency at the rate of exchange prevailing not at the date of breach but at the date of judgment. The breach-date rule was the prevailing principle, previously, as it applied to the law of tort.

The Court of Appeal, in the case of Sheila Darby vs. The Jamaica Telephone Company Limited et al, Supreme Court Civil Appeal No.44/86, in a judgment delivered on the 11th day of April, 1988, following the House of Lords decision in the case of the Despina [1979] A.C. 685; [1979] 1 ALL E.R. 421, held that the breach-date rule no longer applied to claims in tort and that judgment may be given in foreign currency but was convertible into Jamaican currency at the rate prevailing at the date of judgment.

The decision in the Despina brought the law of tort in line with the law of contract in relation to the breach date rule and judgment in a foreign currency. The decision in the case of Miliangos v. George Frank Textiles (1976) A.C. 443 concerned damages arising from a breach of contract;

it abrogated the breach-date rule as it related to damages expressed in a foreign currency and the relevant conversion date.

In the instant case, therefore, the plaintiff is entitled to recover, inter alia, that portion of her claim representing damages incurred and expressed in foreign currency converted into Jamaican currency at the rate of exchange prevailing at the date of judgment. The plaintiff is entitled to recover all the loss directly following from the fraudulent acts of the defendant including consequential loss. However, the plaintiff did not at times seek to mitigate her loss and may well have delayed her stay in Jamaica unnecessarily long.

The plaintiff is therefore entitled to recover for losses sustained and expenses incurred by her and for the periods as stated hereunder.

- (1) From 29.5.84 to 7.6.84
- (a) Loss of earnings - 10 days @ US\$128 per day US\$1280.00
  - (b) Transportation
    - (i) air fare Miami to Kingston return 310.00
    - (ii) taxi fare to & from Miami airport
    - (iii) taxi fare airport to hotel return Ja \$20.00 44.00
    - (iv) taxi fare Tinson Pen to titles office to Attorney's office Ja \$55.00
    - (v) Ja Air Taxi - Montego Bay to Tinson Pen, Kingston - 2 days Ja \$145 return - \$296.00
    - (vi) Taxi fare from hotel, to airport, from Tinson Pen to Attorney's office 6.8.84 & return 44.00
  - (c) Accommodation
    - (i) Montego Bay Beach Hotel 29.5.84 to 2.6.84