

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 375 OF 1998

BETWEEN:

MORELLA VITALIS
(Substituted on Order of Charles J.
made on 13th day of March 2002)

Claimant

and

THE BANK OF NOVA SCOTIA

Defendant

Appearances:

Mr. Kenneth A. H. Foster QC for the Claimant.
Mr. Rhory McNamara for the Defendant.

2002: October 14
October 18

JUDGMENT

1. **HARIKRASHAD-CHARLES J:** Lennard Vitalis, now deceased was a businessman and a customer of the Defendant, the Bank of Nova Scotia which carries on its banking business at William Peter Boulevard in the City of Castries. About two years before his demise, Mr. Vitalis commenced legal proceedings against the Defendant claiming the sum of \$26,231.97 from 10th day of November 1980 being principal and interest on monies he held at the Defendant Bank.

2. Mr. Vitalis had a savings account No. 3397 at the Defendant Bank. His passbook reflected that as of 10th day of November 1980, there was a credit of \$13,334.52 with interest at 4% per annum accruing as from that date. Mr. Vitalis claimed not to have withdrawn or removed any money from account No. 3397 after 10th day of November 1980.
3. The Defendant denied that Mr. Vitalis had a savings account. The Defendant alleged that Account No. 3397 was a regular savings account which showed a balance of \$13,334.52 as at 10th day of November 1980 and that Mr. Vitalis made regular withdrawals from the said account from 18th day of November 1980 until the said account was closed and fully drawn out by Mr. Vitalis. In short, the Defendant denied its indebtedness to Mr. Vitalis in any sum at all.
4. Mr. Vitalis passed away on 21st day of June 2000. His wife, Morella Vitalis was substituted therefor for the continuation of the said claim. Mrs. Vitalis testified that some seventeen years later in 1997, she and her husband went to the Defendant Bank to deposit a cheque in savings account No. 3397 when they were told that no such account exists. Mrs. Vitalis produced the savings book which showed a credit of \$13,334.52 as at 10th day of November 1980. The savings book also showed no activity after that date.
5. Mrs. Lucille Chitolie, Operational Manager at the Defendant Bank was the sole witness for the Defendant. She has been employed at the said Bank for twenty-nine years. She testified that Mr. Vitalis did not have a savings account but a regular savings account which facilitated savings as well as allowing the customer to write cheques on the same account. She produced a withdrawal slip dated 13th day of February 1981 charged to account No. 3397 and a cheque written on 17th day of February 1981 paid on Account No. 3397 showing some activity on the deceased account after 10th day of November 1980.
6. Under cross-examination by Learned Queen's Counsel, Mr. Kenneth Foster, Mrs. Chitolie stated that the Bank had a retention period for documents pertaining to deposits and withdrawals for ten (10) years and by sheer coincidence, when Mr. Vitalis came to the Bank to reactivate Account No. 3397 in or about 1997, the staff was able to locate two withdrawal documents pertaining to that account.

7. This is a civil case wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour of, and the evidence of the Defendant. Mrs. Chitolie impressed me as a witness of truth. Even under intense cross-examination by Mr. Foster, she maintained her composure. She was forthright and frank. I cannot say the same for Mrs. Vitalis. In my view, she did not know much about the account. She alleged that she was in a common-law relationship with the deceased in 1980. She eventually married the deceased on or about 1996. She was never a party to the account. She joined issue with the Defendant subsequent to the death of her husband in 2000.
8. On the evidence before me, I concluded that the claim instituted by the deceased and furthered by his wife has no foundation. There was no evidence to support the Claimant's allegation other than a savings book showing a balance on account of \$13,334.52 and containing no entries after 10th day of November 1980.
9. All in all, I agree with the tenacious submissions made by Mr. Rhory McNamara that Mr. Vitalis had a regular savings account and not a savings account as he alleged. As such, he could have withdrawn money personally (see withdrawal slip dated 13th day of February 1981) and/ or write cheques (see cheque No. 126191 dated 17th day of February 1981). He did both. This is also evident from the Bank Ledger which showed continuous activity on the account after 10th day of November 1980.
10. I also agree with Mr. McNamara that the Claimant has failed to prove her case. On a balance of probabilities, the evidence supports the Defendant's contentions. In the premises, the Claimant's claim is dismissed.
11. The normal rule is that costs follow the event. The unsuccessful party should pay the costs of the successful party. The Defendant Bank has been the victor in this suit. But, I will make no award of costs to the Defendant because of the treatment meted out to the Claimant at the hands of personnel of the Defendant Bank. The Bank must not shut its doors to its inquiring customers even though the allegations may seem fallacious. The

Bank owes a duty to its clients. Mrs. Vitalis wanted to see the Country Manager and she should have been given such opportunity. I am of the firm view that had she been given the opportunity, she may not have pursued this claim.

INDRA HARIPRASHAD-CHARLES

High Court Judge