SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SUIT NO: 1034 of 1998

BETWEEN

BANK OF ST. LUCIA LIMITED

Claimants

and

1. PIERRE'S ENTERPRISES LIMITED
2. VINCENT PIERRE

Defendants

Appearances:
Mr. Thaddeus Antoine for Claimants
Mr. Kenneth Foster QC for Defendants

2003: June 5
June 11
June 17

JUDGMENT

[1] Shanks J: This is a claim by the Bank against Pierre's Enterprises Ltd. in respect of an overdraft (which had a limit of $500,000.00) and a loan for $500,000.00 granted to "revamp working capital position" pursuant to a facility letter dated 29th June 1993. Mr. Pierre's personal liability arises under a guarantee dated 30th July 1993.

[2] I heard evidence from the Bank's Manager of Recoveries and Securities, Martin James, from Fitzroy Augustin, who gave expert evidence for Mr. Pierre, and from Mr. Pierre himself. I accept the evidence of Mr. James in its entirety and, in so far as their evidence was inconsistent with his evidence, I reject that of Mr. Augustin and Mr. Pierre.

[3] I was also provided with a bundle of documents and, subsequently, a set of statements of account in relation to the overdraft account which had not previously been supplied and a detailed letter explaining the figures from Francis and Antoine dated 12th June 2003. I have delayed giving judgment in this matter for a few days from 12th June 2003 to give Mr. Foster an opportunity if he saw fit to make any observations on that letter but he has not done so.

The Loan

[4] Most of the trial was occupied with analyzing the "Loan Activity Statement" in respect of the loan of $500,000.00 which is at pp 35-41 of the bundle. I accept the evidence of Mr. James about this statement. Only simple interest was ever charged on the outstanding principal on the loan and it was only ever charged at 13% as provided in the facility letter of 29th June 1992 (p. 43). It had been agreed that the loan would be repaid over 10 years which involved monthly repayments of $7,465.51. However, there was not always sufficient in the overdraft account even to pay the interest each month so that the capital remained constant for a long period and arrears of interest built up. There was a complaint that on many occasions payments were assigned only to interest and not to capital. I am satisfied that where there were arrears of interest it was right to apply payments first to interest and this approach is sanctioned in any event by Article 1090 of the Civil Code.

[5] The net result of the payments made and the interest charged, along with some insurance charges made in 1998-2003 which are allowed under a hypothec dated 16th May 1995 is, according to the figures supplied by Mr. Antoine which I have no reason to doubt, that the capital sum outstanding on the loan is $467,221.00 and the total interest outstanding was $364,203.00 as at 11th June 2003, continuing at the daily rate of $166.41.

The Overdraft

[6] There was debate about whether requests had been made for the bank statements relating to the overdraft previously. In any event, they were not before the court and on 5th June 2003 the Bank undertook to supply them to Mr. Pierre and the court. The statements of account produced were still not complete but were not inconsistent with the evidence given by Mr. James as to the operation of the two accounts and Mr. Foster made no point about them at the further hearing on 11th June 2003.

[7] However, it emerged at one of the hearings that the Bank had been charging a higher rate of interest (namely 18%) on the overdraft account from 28th March 2000 by way of default interest. I could see no basis for this higher charge given the clear terms of the facility letter of 29th June 1993 (p.43 of bundle): this provides that the interest rate on the overdraft should be 13% p.a. and that it may vary, "… with the general level of interest rates" (which clearly does not include provision for a default rate). I therefore asked Mr. Antoine to provide the court with figures for the overdraft account which applied an interest rate of only 13% for the entire period.

[8] According to Mr. Antoine's letter of 12th June 2003, which again I have no reason to doubt, the net result of all this is that the amount outstanding on the overdraft in respect of both interest and capital was $882,724.00 as at 11th June 2003 and interest continues to accrue at the daily rate of $178.15 ($500,177 x 13% ÷ 365).

Result

[9] I therefore give judgment against the company and Mr. Pierre as follows:

Loan:	Capital sum	$ 467,221.00
	Interest to 11th June 2003	364,203.00
	Interest 11th June – 17th June	998.00
Overdraft at 11th June 2003		882,724.00
	Interest 11th June – 17th June	1,067.00
Total		1,716,213.00

Costs

[10] The Defendants have delayed payment of a large sum of money for a very long time on a spurious basis and put the Bank to the trouble and expense of suing them. The Bank is therefore *prima facie* entitled to its costs of the claim and such costs are to be quantified in accordance with CPR 65.5(1) as "prescribed costs" (which would amount to some $113,980.00). It is clear I think that the figure bears no relationship to the actual costs incurred by the Bank in pursuing this case. However, the rules are clear that the costs of a

concluded claim are to be quantified as "prescribed costs", and there were no doubt good policy reasons for that to be so.

[11] However, there are a number of criticisms which can be made of the Bank's conduct which are matters that might be taken into account in deciding whether costs should be awarded and to what extent. Those are as follows:

(1) the Bank's documents were extremely confusing and difficult to follow, especially the loan activity statement, which does not show the interest accruing on the loan;

(2) the Bank failed to provide the overdraft statements of account (at least in the context of the proceedings) until I called for them on 5th June 2003;

(3) the Bank charged interest at 18% from 28th March 2000 without any proper sanction: this could have led to a judgment for $80,000.00 more than the Bank should have received;

(4) the amount demanded by the Bank in its letters of demand dated 25th August 1998 (p.p. 81 and 83 of the bundle) ($1,049,386.00) was, it emerges, clearly for too little when set against the figures given by Mr. Antoine for 12th October 1998.

[12] It seems to me that these were matters which, taken together, might entitle the court to make a special order under CPR 65.5(4)(a). [Incidentally, the reference in that rule to rules 64.6(4) and (5) must, I think, be an error. I think the reference should be to rules 64.6(5) and (6)]. Mr. Foster, no doubt encouraged by observations of mine, suggested I should not allow any costs at all to the Bank. Mr. Antoine, no doubt bearing in mind the high level of prescribed costs as I have described above in paragraph [10], said that the

right answer was that the Bank should have 50% of the prescribed costs. That was an invitation which I am afraid I could not resist. I therefore give judgment in the total sum of $1,716,213.00. with 50% of the prescribed costs in respect of such a judgment sum.

Murray Shanks
High Court Judge