THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. 143/1995

BETWEEN:

ROYAL BANK OF CANADA

Claimant

and

(1) BENETTON (ST. LUCIA) LTD
(2) TRACI OR TRACY BETTS

Defendants

Appearances:
Mrs. Brenda M. Floissac-Fleming for the Claimant.
Mr. Ramón R. Raveneau for the Defendants.

2003: October 28, November 05, 18, 21
2004: April 16

RECOVERY OF MONIES BY BANK…THE DOCTRINE OF UNDUE INFLUENCE---THE BANK'S ALLEGED UNDUE INFLUENCE…ALLEGED UNDUE INFLUENCE BY LOVER…IGNORANCE OF THE GUARANTEE…SHOULD THE BANK BE PUT ON INQUIRY…REPAYMENT OF LOAN IN FULL…OFFER…WAS THERE ACCEPTANCE…WHAT IS REASONABLE TIME…REVOCATION OF OFFER…REJECTION…EFFECTS OF PARTIAL RADIATION…PRMISSORY ESTOPPEL

JUDGMENT

1. HARIPRASHAD-CHARLES J: The Claimant, Royal Bank of Canada (the Bank) claims against the defendants, Benetton (St. Lucia) Ltd (Benetton) and Traci Betts the recovery of monies which were lent by the Bank to Benetton and the repayment of which was guaranteed by Ms. Betts.

Introduction

2. Royal Bank carries on banking operations at its authorized place of business on the William Peter Boulevard in the City of Castries. Benetton was a company which carried on business as a clothing outlet. Ms. Betts, a businesswoman by profession was the Managing Director as well as a director and majority shareholder of Benetton. Between 1992 and 1994, Ms. Betts on behalf of and for the benefit of Benetton obtained an overdraft facility of EC$200,000.00, a letter of credit for EC$216,586.00 and a Customs Bond of EC$78,000 from the Bank. The issue of security was discussed. Benetton had no property in its own name so the loans would not have been granted. Ms. Betts did not have any property in her name but indicated that she would be receiving property which could be used as security for the loans. The loans were approved subject to the security requirement. Subsequently, Ms. Betts produced a Deed of Sale and Sub-Lease in her favour from Robert Johnson Construction Limited which was dated 3rd February 1992 and registered in the Land Registry on 7th February 1992. A Hypothecary Obligation dated 21st February 1992 was executed in favour of the Bank to secure any debts that the Bank loaned to Benetton. The loans were also secured by a personal guarantee of Ms. Betts dated 23rd January 1992.

3. Shortly thereafter, Benetton began to encounter financial difficulties and defaulted on the repayment of the loans. The Bank made several demands for payment. In particular, a formal demand was made in a letter dated 5th December 1994 (Exhibit BS9) advising Ms. Betts to pay all outstanding amounts or they will proceed with whatever action they deem necessary. The defendants failed and/or refused to pay. On 21st February 1995, a specially indorsed Writ of Summons with Statement of Claim was issued in the High Court claiming the total payment of $416, 586.00 with interest.

Chronology of relevant events

4. The matter dragged on for years with many adjournments and countless interlocutory applications. I do not think it is necessary to recite them as they are not pertinent to the determination of this matter.

5. However, it seems clear that during the intervening period, the Bank was making concerted efforts to recover the monies which it lent to Benetton. So, on 30th March 1999, Ms. Christine Henry, the Accounts Manager of the Bank telephoned Ms. Betts and made her an offer of settlement. That offer was reduced into writing and is contained in letter dated 13th April 1999. The gist of that letter was that the Bank had found a serious purchaser who was offering $300,000.00 for Ms. Betts' Cap Estate property. The Bank was prepared to accept $300,000.00 despite a shortfall of $463,925.97 and to release their judgment against Ms. Betts in final settlement. However, the Bank needed Ms. Betts' written concurrence to proceed with the sale. The Bank received no concurrence, written or otherwise from Ms. Betts.

6. Then on 10th May 1999, the Bank wrote to Ms. Betts withdrawing its compromise offer made on 13th April 1999.

7. On 21st October 1999, the then Solicitors for Ms. Betts, Mr. Peter Foster wrote to the Bank stating that Ms. Betts had obtained a better offer of $310,000.00 which she accepted with a view of retaining $10,000.00 for herself. He stated as follows:

> "We are in possession of funds in the sum of $300,000.00 which we will undertake to remit to your bank upon the execution of the enclosed Radiation and upon your Solicitors discontinuing Suit No. 143 of 1995 and Suit No. 145 of 1995 and your undertaking that all claims in your letter dated 13th April 1999 are extinguished."

8. Suffice it to say, the Bank did not execute the Radiation. More talks ensued between the Bank and Ms. Betts' solicitors. Then on 20th December 1999, her solicitors again wrote to the Bank and enclosed a Partial Radiation. On 19th January 2000, the Bank's Solicitors, Floissac Fleming & Associates recommended some amendment to the Partial Radiation. On 17th February 2000, the Bank executed a Partial Radiation in favour of Benetton and Ms. Betts.

9. On 30th January 2003, the defendants sought an order to amend the defence which was filed on 8th October 1996. Ms. Betts in an affidavit alleged that the issue of her negotiation with the Bank was not part of her defence and it is crucial to the determination of all of the issues in this case (paragraph 10 of her affidavit of 30th January 2003). On 3rd February 2003, leave was

granted to the defendants to amend their defence on certain conditions. All of the conditions were satisfied by the time the matter got to trial.

The Defences

10. The defendants' defences to the claim are multifarious. In their amended defence filed on 16th February 2003, Ms. Betts asserted (1) that the Bank did not lend monies to Benetton (2) that she was ignorant of the fact that what she signed was a guarantee; (3) that there was lack of consideration for the guarantee; (4) that the Bank exerted undue influence over her to execute the guarantee; (5) that her lover exerted undue influence over her to execute the guarantee; and (6) that the debt has been paid in full.

Denial of the Loans

11. At paragraph 2 of their amended defence, the defendants denied that the Bank lent monies to Benetton. And in the same breath, at paragraphs 7 and 8 of the said defence, they admitted that Ms. Betts paid the sum of $300,000.00 to the Bank towards the debt owed. By reason of the said payment and the admission thereof, the defendants are estopped by conduct and admission from denying the loans and resultant indebtedness to the Bank. It was therefore not surprising that Mr. Raveneau appearing for the defendants did not pursue this issue vigorously.

Ignorance of the Guarantee

12. At paragraph 14 of her witness statement, Ms. Betts averred:

> "I was of the opinion that the documents I was in fact signing were all for the granting of the loan to Benetton (St. Lucia) Ltd., I was not aware that one of the documents was a personal guarantee by me."

13. Under intense cross-examination by Mrs. Fleming, Counsel for the Bank, Ms. Betts stated:

> I was aware that I was signing a personal guarantee but my ignorance lies in the fact that I was going to be personally liable."

14. As Mrs. Fleming rightly submitted, Ms. Betts cannot rely on statements which were not part of her defence. In the first place, Ms. Betts is estopped by her own negligence from denying that the document which she signed was a personal guarantee and secondly, she is precluded from taking advantage of her own wrong, that is her own negligence, carelessness or

inadvertence: see Lord Pearson in *Saunders v Anglia Building Society*[1] at page 982 quoting Salmon LJ in his judgment in this case[2]:

> "If…a person signs a document because he negligently failed to read it, I think he is precluded from relying on his own negligent act for the purpose of escaping from the ordinary consequences of his signature. In such circumstances he cannot succeed on a plea of *non est factum*. This is not in my view a true estoppel, but an illustration of the principle that no man may take advantage of his own wrong."

Consideration for the Guarantee

15. At paragraph 3 of their amended defence, the defendants alleged that there was no consideration to support the guarantee and /or the alleged consideration is not sufficient in law to support the alleged guarantee.

16. Except for this bare assertion in the defence, not an iota of evidence was adduced to support it.

17. The Learned authors of Halsbury's Laws of England (4th Ed.) Vol. 20 at paragraph 141 said:

> "The consideration for the guarantor's promise does not move from the principal debtor, but from the creditor.[3]…It may consist wholly of some advantage given to or conferred on the principal debtor by the creditor at the guarantor's request."

18. In the instant case, the consideration for Ms. Betts' guarantee was the overdraft and credit facilities which the Bank granted to Benetton at the request of Ms. Betts who was the principal shareholder and director of Benetton. Under cross-examination, Ms. Betts admitted that she signed the guarantee to obtain loan and credit facilities for Benetton.

19. In my judgment, Ms. Betts is estopped by statement, admission or misrepresentation from denying that there was consideration for the guarantee when the guarantee which she signed expressly provided that it was "for valuable consideration".

[1] [1970] 3 All ER 961
[2] [1969] 1 All ER 1062
[3] Dutchman v Tooth (1839) Bing NC 577

20. As a result, the defendants cannot adduce testimony to contradict the written guarantee: see Article 1164 of the Civil Code.

21. This defence is untenable and must fail.

The doctrine of Undue Influence

22. The essence of undue influence is the unconscionable abuse of influence that one person has over another applied so as to preclude the exercise of free and deliberate judgment. It has a connotation of impropriety. In the eye of the law, undue influence means that influence has been misused.

23. The principle justifying the court in setting aside a transaction for undue influence can now be seen to have been established by Lindley L.J. in *Allcard v Skinner*[4]. It is not a vague "public policy" but specifically the victimization of one party by the other. It was stated by Lindley L.J. in a famous passage at pp. 182-183:

> "The principle must be examined. What then is the principle? Is it that it is right and expedient to save persons from the consequences of their own folly? or is it that it is right and expedient to save them from being victimized by other people? In my opinion the doctrine of undue influence is founded upon the second of these two principles. Courts of equity have never set aside gifts on the ground of the folly, imprudence, or want of foresight on the part of donors. The courts have always repudiated any such jurisdiction. *Huguenin v Baseley*[5] is itself a clear authority to this effect. It would obviously be to encourage folly, recklessness, extravagance and vice if persons could get back property which they foolishly made away with, whether by giving it to charitable institutions or by bestowing it on less worthy objects. On the other hand, to protect people from being forced, tricked or misled in any way by others into parting with their property is one of the most legitimate objects of all laws; and the equitable doctrine of undue influence has grown out of and been developed by the necessity of grappling with insidious forms of spiritual tyranny and with the infinite varieties of fraud."

24. Subsequent authority supports the view of the law as expressed in *Allcard v Skinner.* The need to show that the transaction is wrongful before the court will set aside it whether relying on evidence or the presumption of the exercise of undue influence has been asserted in two Privy

[4] 36 Ch.D. 145
[5] (1807) 14 Ves. Jun. 273

Council cases of *Bank of Montreal v Stuart*[6] and *Poosathurai v Kannappa Chettiar*[7]. The wrongfulness of the transaction must, therefore, be shown: it must be one in which an unfair advantage has been taken of another. A relationship of banker and customer may become one in which the banker acquires a dominating influence. If he does and a manifestly disadvantageous transaction is proved, there would be room for the court to presume that it resulted from the exercise of undue influence.

25. In *Lloyds Bank Ltd v Bundy*[8] it was accepted that the relationship between banker and customer is not one which ordinarily gives rise to a presumption of undue influence: and that in the ordinary course of banking business a banker can explain the nature of the proposed transaction without laying himself open to a charge of undue influence.

26. The modern tendency is to classify undue influence under two heads, namely Class 1 (actual undue influence) and Class 2 (presumed actual influence). Class 2 is further divided under two sub-heads. The first sub-head is Class 2A which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitor and client, medical adviser and patient but not extending to banker and customer. The second sub-head is Class 2B which is descriptive of the legal presumption which arises from a relationship whereunder the complainant generally reposed trust and confidence in the dominant party.

The Bank's alleged undue influence

27. In their amended defence, the defendants alleged that the Bank wrongfully procured and induced Ms. Betts to execute the guarantee in her personal name and in her personal capacity. In other words, Ms. Betts' defence was that the execution of the guarantee had been procured by the Bank's undue influence over her.

28. In order to obtain judicial rescission of the guarantee on the ground of the Bank's exertion of undue exertion over Ms. Betts, she must prove one of three facts namely:

    (a) That the Bank exerted actual influence over her.

[6] [1911] A.C. 120 at 137
[7] L.R. 47 I.A.1 at 3
[8] [1975] Q.B. 326

(b) That the Bank is presumed to have exerted undue influence over her by reason of a legally accredited class 2 (A) relationship between the Bank and her.

(c) That the Bank is presumed to have exerted undue influence over her by reason of a class 2(B) relationship whereunder Ms. Betts generally reposed trust and confidence in the Bank.

The Bank's alleged actual undue influence

29. In *Royal Bank of Scotland v Etridge (No. 2)*[9], Lord Hobhouse of Woodborough at page 481 stated:

> "Actual undue influence is an equitable wrong committed by the dominant party against the other which makes it unconscionable for the dominant party to enforce his legal rights against the other. It is typically some express conduct overbearing the other party's will."

30. Actual undue influence consists of wrongful or unconscionable conduct by way of duress, coercion, excessive pressure, domination, victimization, threats, blackmail, misrepresentation, cheating, fraud or other "insidious techniques of persuasion."

31. It does not depend upon some pre-existing relationship between the two parties though it is most commonly associated with and derives from such relationship. He who alleges actual undue influence must prove it.

32. In the present case, the defendants have failed to prove that the guarantee which Ms. Betts entered into was procured by the Bank's exertion over her of actual undue influence. The defendants have adduced no evidence to amount to actual undue influence, as judicially defined.

The Bank's alleged presumed undue influence: Class 2A relationship

33. The presumption of undue influence which arises by reason of a legally accredited Class 2A relationship between a complainant and a dominant party does not apply to the relationship of

[9] [2001] 4 All ER 449

banker and customer: see Lord Scarman at page 707 in *National Westminster Bank v Morgan*[10]

.

34. Consequently, the banker/customer relationship between the Bank and Ms. Betts was not a legally accredited Class 2A relationship which created a presumption that the Bank had exerted undue influence over Ms. Betts to execute the guarantee.

The Bank's alleged presumed undue influence: Class 2B relationship

35. The presumption of undue influence which arises by reason of a Class 2B relationship of trust and confidence applies only where the complainant generally (generally, frequently or repeatedly) reposed trust and confident in the dominant party: see Lord Browne-Nicholson at page 423 (g) in *Barclays Bank PLC v O'Brien*[11] and *Murray v Deubury.*[12] In the latter case, Sir Vincent Floissac, C.J. at page 153 concluded:

> "In my judgment, an isolated demonstration by a complainant of trust and confidence in a dominant party is insufficient to engender a Class 2B relationship between the complainant and the dominant party. There must be evidence that the complainant "generally reposed trust and confidence" in the dominant party. The evidence required is evidence that before or at the time of the execution of the transaction, the complainant had habitually, frequently or repeatedly expressed or indicated his trust and confidence in the dominant party."

36. In the instant case, there is no such evidence that there was a Class 2B confidential relationship between Ms. Betts and the Bank. The evidence discloses that Ms. Betts was dissatisfied with her previous bankers. She approached the claimant Bank with her accountant with a view to obtaining overdraft and credit facilities for Benetton. The Bank agreed to doing so but not without adequate security. Shortly after the initial meeting, Ms. Betts produced a Deed of Sale and lease and signed a personal guarantee.

37. Even if Ms. Betts could have established a Class 2B relationship, that relationship would not by itself have been sufficient to generate a legal presumption of undue influence. In order to give

[10] [1985] 1 A. C.686
[11] [1993] 4 All ER 417
[12] (1996) 52 W.I.R. 147

rise to that presumption, Ms. Betts also had to prove that the guarantee was to her manifest disadvantage. This she has failed to do.

Undue Influence by Lover

38. The defendants alleged that the guarantee was procured by the exertion by Marc Johnson (Ms. Betts' then lover) of undue influence over Ms. Betts to execute the guarantee. The burden is on Ms. Betts to prove that Mr. Johnson exerted actual or presumed undue influence over her to execute the guarantee. She has failed to discharge that burden.

39. The presumption of undue influence which arises by reason of a Class 2A or 2B relationship does not apply to relationships such as between Ms. Betts and her lover: see Lord Browne-Wilkinson at page 423 (j) in *Barclays Bank v O'Brien* and Lord Nicholls at page 460 (a) to (c) in *Royal Bank v Etridge.*

40. Assuming that Mr. Johnson (the dominant party) exerted actual or presumed undue influence over Ms. Betts (the complainant) to execute the guarantee in favour of the Bank (third party), she must prove one of the following three facts:
    (a) that the dominant party acted as agent of the third party or
    (b) that the third party has actual knowledge of the undue influence, or
    (c) that the third party had constructive notice of (i.e. was put on inquiry as to) the probability that the dominant party had exerted undue influence over the complainant to execute or enter into the transaction

41. In the instant case, Ms. Betts is not entitled to judicial rescission of the guarantee on the ground of undue influence by Mr. Johnson because:
    (a) The defendants have failed to prove that Mr. Johnson acted as agent of the bank.
    (b) The defendants have failed to prove that the Bank had actual knowledge of the amorous relationship between Mr. Johnson and Ms. Betts or actual knowledge of any undue influence exerted by Mr. Johnson on Ms. Betts to execute the guarantee. Both Mr. Miller and Ms. St. Ville testified that they

did not know that Ms. Betts had a lover and I believed them as witnesses of candour.

(c) The defendants have failed to adduce any evidence which would constitute notice to the Bank or should put the Bank on inquiry as to the probability that Mr. Johnson had exerted undue influence over Ms. Betts to execute the guarantee.

Put on Inquiry

42. Mr. Raveneau submitted that the Bank should have been put on inquiry when it realized that Ms. Betts had no security but was obtaining it from her then boyfriend, Marc Johnson. Strictly speaking, this phrase is a misnomer as a bank is not required to make inquiries. In *Barclays Bank v* O'Brien, the House of Lords considered the circumstances in which a Bank is "put on inquiry." Lord Browne-Wilkinson at page 429 stated:

> "Therefore, in my judgment, a creditor is put on inquiry when a wife offers to stand surety for her husband's debts by the combination of two factors: (a) the transaction is on its face not to the financial advantage of the wife; and (b) there is a substantial risk in transactions of that kind that in procuring the wife to act as surety, the husband has committed a legal or equitable wrong that entitles the wife to set aside the transaction"

43. None of these circumstances apply in the present case. In fact, I am bound to say that the facts appear to me to be a far cry from a relationship of undue influence by the Bank or Mr. Johnson. As I see it, if anyone was under undue influence, it was Mr. Johnson because Ms. Betts got the benefit of his property for $1.00. She then turned around and used it for the benefit of a company of which she is the principal shareholder. In fact, she was truthful when she stated under cross-examination that Marc Johnson did not exert any undue influence over her to execute the guarantee. I am also of the view that she knows fully well that the Bank did not exert any undue influence (actual or presumed) on her to execute the guarantee and she knew fully well that she was signing a personal guarantee. After all, she was an intelligent businesswoman who ran a profitable business.

Repayment of the Debt in full

Offer

44. By letter dated 13th April 1999 (Exhibit TB11), the Bank made an offer to Ms. Betts indicating that they are willing to accept EC$300,000.00 in full settlement of her indebtedness to them but upon certain terms and conditions. The terms and conditions were couched as follows: "If you are in agreement with this offer, kindly provide us with your written concurrence to proceed with the sale." Ms. Betts did not accept the Bank's offer.

45. Mr. Raveneau argued that there was a prior telephone dialogue between Ms. Betts and Ms. Henry wherein the Bank's agent proceeded to make an offer which Ms. Betts accepted. He next submitted that the letter of 13th April 1999 is insignificant in the light of the conversation which had taken place as the offer was made over the phone and the agreement by Ms. Betts to its terms is enough to stand alone as an oral contract has been made.

46. In my considered opinion, the letter (exhibit TB11) purported to be and was the oral offer committed to writing. In fact, the letter commenced with the words "further to our telephone conversation of March 30, 1999…"

47. Article 1164 of the Civil Code illuminates this confusion. It states that testimony cannot be received to contradict or vary the terms of a valid written instrument.

Revocation

48. By letter dated 10th May 1999, the Bank revoked the offer.

49. Mr. Raveneau submitted that Ms. Betts never received the alleged revocation letter as it was sent to the wrong postal address and as a consequence, the revocation is not effective. He relied heavily on the authorities of *Byrne & Co v Van Tienhoven*[13] and *Henthorn v Fraser*[14] to support the law that a revocation of an offer is of no effect until brought to the mind of the person to whom the offer was made and that therefore a revocation sent by post does not operate from the time of posting it.

[13] (1880) 5 C.P.D.344
[14] (1892) 2 Ch. 27

50. Mrs. Fleming argued that the Bank's revocation of its offer was received by and under the signature of Nigel Victor (Ms. Betts' servant or agent) on 10th May 1999 at Ms. Betts' postal address at Harmony Estates Limited. She succinctly argued that Ms. Betts is precluded from denying receipt of the revocation letter.

51. I have no reasons to disbelieve Mr. Miller when he said under oath:

> "We did not receive any response from the second defendant and consequently were unable to facilitate a quick sale. By letter dated 10th May 1999, the claimant withdrew the offer and indicated that it would be proceeding with the legal process to finality. The said letter was hand delivered to Harmony Hotel, the address that the second named defendant gave to the claimant and the one it forwarded all correspondence to when communicating with the second named defendant. A copy of the receipt evidencing delivery is exhibited hereto and marked JM4.The letter was also forwarded to the second defendant by the second named defendant at her last known address. A copy of the envelope evidencing that the letter was posted by registered mail is exhibited hereto and marked JM5."

52. His evidence remained uncontradicted. I find as a fact that Ms. Betts gave her mother's hotel address to the Bank when her business collapsed.

53. As Mrs. Fleming correctly submitted, Ms. Betts is estopped from denying receipt of the revocation letter. It is significant to observe that Ms. Betts received the letter of offer at the same address which she now alleged is not her registered postal address. In *the Brimes*[15] case, Mejaw L.J. at page 113 had this to say:

> "With all respect, I think the principle which is relevant is this: if a notice arrives at the address of the person to be notified, at such a time and by such a means of communication that it would in the normal course of business come to the attention of that person on its arrival, that person cannot rely on some failure of himself or his servants to act in the normal businesslike manner in respect of taking cognizance of the communication, so as to postpone the effective time of the notice until some later time when it in fact came to his attention."

[15] [1974] 3 All ER 88

Rejection

54. I next consider the letter of 21st October 1999 wherein Ms. Betts through her then Solicitor communicated to the Bank her decision and proposal to sell the Cap Estate property to a prospective purchaser (other than the prospective purchaser approved by the Bank) at a price of $310,000.00 of which she will retain $10,000.00 for herself and remit $300,000.00 to the Bank.

55. This communication to my mind amounted to a rejection of the terms and conditions of the Bank's offer and was therefore an unaccepted counter-offer which terminated or destroyed the Bank's offer: see Lord Denning, M.R. at page 967 (j) to 968 (b) in *Butler Machine Tool Co. v Ex-Cell Corporation.*[16]

56. Even if I were wrong to conclude that the revocation was not valid, I am of the firm view that the Bank's offer would in any event be deemed to have been terminated by lapse or expiration of a reasonable time. What is a reasonable time is a question of fact, which may be judged, among other things, in the light of the following factors: the purpose or subject matter of the offer; the conditions obtaining at the time of the offer; the protracted nature of the negotiations; the method by which the offer was communicated and the subsequent conduct of the parties: see *Halsbury's Laws of England (4th ed.) Vol.9 (1) paragraph 646.*

Partial Radiation.

57. To go on with the facts of the case. On 17th February 2000, the Bank executed a Partial Radiation (Exhibit JM12) which was notarized by Ms. Betts' then solicitor, Mr. Peter Foster. It reads as follows:

> "WHO for valuable consideration in the sum of THREE HUNDRED THOUSAND DOLLARS ($300,000.00) E.C.C., hereby grants a partial release and discharge and consents to the cancellation of the registration of the claim recited in the First Schedule hereto in so far only as the said claim affects the property described in the Second Schedule hereto, the remainder of the indebtedness by BENETTON (ST. LUCIA) LIMITED (Principal Debtor) with TRACY DEBORAH BETTS (as surety) being hereby preserved and maintained."

[16] [1979] 1 All ER965

58. The Partial Radiation was executed against the following factual background:

    (a) That two civil suits were pending in the High Court.

    (b) The principal amount of the Bank's claim in the instant suit was EC$416,586.00.

    (c) The consideration for the Partial Radiation was EC$300,000.00.

    (d) The Bank expressly reserving the right to pursue the action.

59. The defendants' defence to the claim was absence of consideration for the guarantee and undue influence exerted by the Bank.

60. Interpreted against the factual background, the Partial Radiation meant that the sum of EC$300,000.00 was paid by the defendants and accepted by the Bank on the clear understanding that:

    (a) the said sum was not the full amount of the defendants' indebtedness to the Bank;

    (b) the balance of the defendants' indebtedness to the Bank was EC$116,586.00 with interest thereon;

    (c) the Bank did not waive and expressly preserved its right to pursue or recover the said balance;

    (d) the preservation of the Bank's right to pursue or recover the said balance was without prejudice to the right of the defendants "to defend the claim" on the ground of absence of consideration and undue influence by the Bank.

61. In these circumstances, the payment of $300,000.00 by the defendants was not intended to be in full settlement of their indebtedness to the Bank. If that were the case, then the parties would have agreed to a Radiation and not a Partial Radiation.

Promissory Estoppel

62. Mr. Raveneau vigorously pursued the doctrine of promissory estoppel. The learned authors of Halsbury's Laws of England (4th ed.) Volume 10 at paragraph 1071 commented:

> "When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted upon it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced."

63. Mr. Raveneau contended that Ms. Betts relying on the 'promise' by the Bank to waive the balance of the interest, sold off her one million dollar property for $300,000.00 and remitted the proceeds of the sale to the Bank. First and foremost, there is no valuation to substantiate the allegation that the land at Cap Estate is valued at one million dollars. In fact, there is evidence to substantiate the fact that she bought the said land for one dollar. And even if there were, I do not think that promissory estoppel would apply in this case because the promise by way of an offer by the Bank was revoked before the promise or offer was accepted and acted upon by the promisee (Ms. Betts).

64. I am in agreement with Mrs. Fleming that promissory estoppel does not apply in this case for the additional reason that the promise was not acted upon by Ms. Betts in the manner intended by the promisor (the Bank).

65. In my judgment, the doctrine has no place in this case.

The decision of the case

66. The decision of the case is as follows:

    (a) The Bank is entitled to recover from the defendants the unpaid balance of the amounts paid by the Bank to Benetton either by way of loan or otherwise.

    (b) Ms. Betts is liable to the Bank under the personal guarantee which she executed.

    (c) There is sufficient consideration for the guarantee which Ms. Betts is estopped from denying.

    (d) The defendants have failed to prove that the Bank exerted undue influence (actual or presumed) over Ms. Betts to execute the guarantee.

(e) The defendants have failed to prove that Marc Johnson exerted undue influence over Ms. Betts to execute the guarantee.

(f) The payment by Ms. Betts of the sum of EC$300,000.00 was not a payment in full settlement of the debts owed by the defendants to the Bank.

67. In the premises, there will be judgment for the Claimant in the sum of $116,586.00 with interest thereon and costs of $7,500.00.

Indra Hariprashad-Charles

High Court Judge