SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CIVIL APPEAL NO.10 OF 2003

BETWEEN:

BERNADETTE LIDDIE

and

BERNARD LIDDIE

Appellants

and

ST. KITTS & NEVIS ANGUILLA NATIONAL BANK LTD

Respondent

Before:

The Hon. Sir Dennis Byron	Chief Justice
The Hon. Mr. Albert Redhead	Justice of Appeal
The Hon. Mr. Brian Alleyne, SC	Justice of Appeal

Appearances:

Mr. Anthony Gonsalves for the Appellants;
Mr. C. Parkins with Mr. Gonsalves
Ms. P. Haynes for the Respondent

2003: November 4;
December 1;
2004: May 24.

JUDGMENT

[1] REDHEAD J.A.: Mr. and Mrs. Liddie, the Appellants, obtained a loan of $48,000.00 from the Respondent Bank in July 1997. As a result the Liddie's signed a loan application letter which was prepared by the Bank. They had no input in the preparation of the letter of application. This letter stated that the loan was $48,000.00 that the rate of interest was 11.5%, that the term of the loan was 60 months and that the installment was to be $987.67 per month. This letter was signed by Miss Claudia Daris, the Senior Manager of the Bank. Mr. and Mrs.

Liddie were only asked to indicate their acceptance of the terms as offered by the Bank which they did by signing the letter.

[2] Mr. and Mrs. Liddie also signed a Loan Data Form which was also prepared solely by the Bank and was signed both by Mr. and Mrs. Liddie. It repeated the above loan information, and set out the securities and other information.

[3] This form indicated that based on a monthly payment of $987.67 starting on 31st August 1997 the loan of $48,000 at 11.5% interest would be repaid in full by 30th July 2002, a time period of 60 months.

[4] The Liddie's also signed a promissory note which says that the loan is payable "on demand" and it did not specify any amount of installments. By this note Mr. and Mrs. Liddie promised to repay on demand $48,000.00 at an interest rate of 11.5% by monthly installments. The Liddie's were also required to deposit their Certificate of Title with the Bank as a security by way of an equitable mortgage.

[5] In June 2002 Mr. and Mrs. Liddie received an e-mail communication from the Bank. They were then told that they had been given an incorrect repayment term of 60 months for the loan and the correct repayment term should have been 66 months.

[6] It should be noted that at that point in time in June 2002 the Liddie's had about one more installment to make in order to complete the repayment having regard to the schedule of payment worked out by the Bank and given to Mr. and Mrs. Liddie.

[7] The Bank in its letter of June 2002 to the Appellants explained to them that if it was intended that the period for repayment would have been 60 months then the repayment would have been $1,055.65 instead of $987.67.

[8] Mr. and Mrs. Liddie's lawyer wrote to the Bank pointing out that the fault was not that of Mr. and Mrs. Liddie. The lawyer stated that Mr. and Mrs. Liddie relied entirely on the Bank to set out the terms including the amount of the installment and the duration of the payment.

[9] The bank replied to the letter written by Mr. and Mrs. Liddie's lawyer insisting that it be paid the extra six months installments and refused to release the Liddie's Certificate of Title.

[10] On 28th November 2002 Mr. and Mrs. Liddie issued a Fixed Date Claim Form by which they sought the following reliefs:

[i] A declaration that the unilateral variation by the Bank in 2002 of the term of the loan agreed upon between the parties in or about July 1997 is unlawful and unforceable.

[ii] A declaration that Mr. and Mrs. Liddie have repaid in full the loan granted to them by the Bank in or about July 1997 and are not liable to pay any further sums on the said loan account.

[iii] An order that the Bank return the Certificate of Title registered in the name of Mr. and Mrs. Liddie and given as security to the Bank.

[11] The Bank counterclaimed for a declaration that the amount of $48,000.00 and the interest of 11.5% are the essential terms and $987.67 over 60 months does not reflect the actual agreement between the parties. The Bank sought a rectification of the loan period by six months to reflect the actual agreement between the parties.

[12] With reference to the declaration it is beyond doubt and agreed by all the parties that the loan would not have been fully repaid by 30th July 2002 on the repayment schedule as worked out by the Bank.

[13] The learned trial Judge in dismissing Mr. and Mrs. Liddie's claim held that it was a common mistake that was made in this case. It was a mathematical one. It was one that neither party was aware of at the time of the signing of the loan application letter. The learned trial Judge then ordered that the loan application letter be "corrected" to reflect the correct period of 66 months, so that Mr. and Mrs. Liddie will have to pay the missing six months of installments before they will be entitled to get back their Certificate of Title.

[14] The Appellants, Mr. and Mrs. Liddie are dissatisfied with the learned trial Judge's ruling and appealed to this Court. There are two substantial grounds of appeal.

[i] The learned trial Judge's findings and conclusions were against the weight of the evidence.

[ii] The learned trial Judge erred in finding that the mistake in question was a common mistake in that the evidence and law clearly establish that the said mistake was in fact a unilateral mistake on the part of the Bank.

[15] Mr. Gonsalves learned Counsel for the Appellants argued forcefully that this was not a case of common mistake. He contended that this was a case where there was no consensus ad idem.

[16] In Paget's Law of Banking 9th Edition page 290 the learned authors state:

> "The mistake must be fundamental or basic or essential in sense, that is fundamental to the transaction. What exactly this means is to some extent left to the imagination."

[17] There can be no doubt in my mind that the mistake made by the Bank was fundamental. Because to ask the parties to make six months payments more when that was not contemplated by them is a fundamental change in their circumstances.

[18] I now examine the question of estoppel which is the most important issue in this case.

> "To form the basis of an estoppel a representation may be made either by a statement or by conduct and conduct includes negligence and silence…." Halisburys Laws of England Vol. 16. at paragraph 1592.

[19] I have no doubt that what the Bank was saying in effect and what was argued on behalf of the Bank that there was a mistake on the part of the Bank when it represented to the Liddies that the period for repaying the loan was 60 months instead of 66 months. That mistake was an innocent one rather than a deliberate mistake. In that regard, in my judgment, that was negligence on the part of the Bank.

[20] Covell v Sweetland [1] was a case which concerned a maintenance agreement. In September 1956 the marriage having finally broken down, in November 1956 the parties entered into a maintenance agreement. They were therein referred to as "the husband and the wife". The agreement contained no words limiting its duration or providing for its termination. It provided that the husband shall pay the wife 3 pounds weekly and that "the wife" should keep the husband indemnified in respect of any liability incurred by her. In January 1960 the plaintiff wife filed a petition for divorce. In May 1960 a decree nisi was pronounced. No maintenance order was agreed or made and the decree was made absolute in August 1960. The defendant then ceased to make payments to the plaintiff for her own maintenance. In December 1960 the plaintiff remarried. The plaintiff issued a writ claiming under the agreement arrears of maintenance. Hinchcliff J. at page 1020 said:

> "In my judgment the plaintiff is estopped, having regard to all the circumstances of the case; that is to say that the agreement was intended to be for a duration of the marriage, and it only came to an end by the

[1] 1968 2 ALL ER 1016

> decree absolute. The plaintiff in the letters written on her behalf never suggested that the maintenance should be paid after she re-married and the first suggestion of this was in March 22, 1965, when the writ was issued. I have no doubt at all that it would be grossly unfair to the defendant if he should be ordered to satisfy the plaintiff's claim after so many years of delay during which he was lulled into a false sense of security into believing that the maintenance for the plaintiff certainly ended after she had remarried on December 21, 1960 …… Therefore in my judgment, the plaintiff is estopped from asserting that the defendant is indebted to her in the agreement in respect of that maintenance."

[21] Halsbury's Laws of England 4th Edition states:

> "The doctrine of estoppel constitutes an important limitation ……It operates in two ways. First there is no genuine consensus between the parties and therefore prima facie there should be no contract, it may nonetheless have effect to prevent a party from denying that consensus with the other party exists. Thus it may enable a party to succeed on a cause of action which, without the estoppel he would have failed."

[22] I hold that the Bank is estopped from claiming the extra 6 months payment because it has lulled the Liddies into a false sense of security. It would be unfair to require them to make further payments towards the loan.

[23] I therefore reject the argument of learned Counsel, Miss Haynes that the payment of the principal and interest were the fundamental terms of the contract, whereas the time for repayment and the amount were collateral terms.

[24] The appeal is therefore allowed. The judgment and order of the Court below are hereby set aside. It is hereby declared that the Appellants are not liable to pay any further sums on their loan amount. The St. Kitts Nevis Anguilla National Bank is hereby ordered to return the Appellants' Certificate of Title registered in Book W2 Folio 101 of the Register of Titles for the island of St. Christopher.

[25] Costs to the Appellants agreed in the sum of $6,000.00.

Albert Redhead
Justice of Appeal

[Sgd.]
I concur. Sir Dennis Byron
Chief Justice

I concur. Brian Alleyne, SC
Justice of Appeal