

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2005/0602

BETWEEN:

HILROY HUMPHREYS

Claimant

And

RBTT BANK CARIBBEAN LIMITED

Defendant

Appearances:

Mr. Septimus Rhudd and Ms Gail Pero for the Claimant
Ms. C. Debra Burnette and Ms. Yasmine Wade for the Defendant

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2007: February 5th
April 30th
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JUDGMENT

[1] **Blenman, J**; This is a claim for breach of fiduciary duties.

Background

[2] Mr. Hilroy Humphreys (Mr. Humphreys) was a Member of Parliament and is a businessman. RBTT Bank Caribbean Limited (the Bank) is a Company duly incorporated under the laws of Trinidad and Tobago with its principal place of business situated on High Street, St. John's Antigua, and engaged in the business of providing banking and other financial services.

[3] Mr. Humphreys alleges that he maintained a banking relationship as a customer with the Bank being the holder of a Current Account **No. 60-507-784-7** and a Fixed Deposit. He further alleges that as a customer he expected the Bank's preservation of his rights to privacy in so far as it concerned his banking relationship with the Bank. The said rights

were implied in the relationship then existing between himself and the Bank. He alleges that in or around February, 2003, the Government of Antigua and Barbuda, acting through the offices of the Director of Public Prosecutions, the Commissioner of Police and the Office of National Drug and Money Laundering Control Policy, conducted certain investigations relating to, among other things, his banking relationship with the Bank. He says that in accordance with the provisions of the Banker's Book (Evidence) Act, Cap 39 and the Banking Act, Cap. 40 it is a requirement that any dissemination of information to a third party in respect of a customer's relationship with a banking institution, could only be done pursuant to an order made by the Court.

[4] Mr. Humphreys further complains that in or around February, 2003 and in response to a request from the Government's investigators, information relating to his bank accounts held with the Bank was provided by the Bank to the investigators. At the time the information was provided by the Bank, the appropriate Court Order had not been obtained by the investigators. Subsequently, a Court Order was made by Joseph-Olivetti J, which permitted the Bank to reveal his bank details. In making the Order, the Court relied on the contents of the Affidavit sworn to by Elaine Malone an investigator. Acting on the information improperly and unlawfully provided, members of the Royal Police Force of Antigua and Barbuda, accompanied by members of Scotland Yard conducted a search of his home at Long Lane Estate in the Parish of St Phillip in Antigua. On or around November 5, 2003, pursuant to an Application made by him (Mr. Humphreys), the Honourable Mr. Justice Mitchell vacated and set aside the Order made by the Honourable Madam Justice Joseph-Olivetti. This was done on the basis that the information had not been procured by the investigator in accordance with the provisions of the Banker's Book (Evidence) Act and the Banker's Act.

[5] Mr. Humphreys says that in failing to ensure that the investigators had procured the appropriate Court Order prior to the releasing of the information to the said investigators, the Bank breached its fiduciary duty to him and violated his rights to privacy as implied in the banker/customer relationship. Therefore, he contends that by virtue of the breach he has suffered pecuniary loss and damages and seeks damages to be assessed.

[6] In defence, the Bank denies that it has breached any duty it owed to Mr. Humphreys. The Bank says that it is aware that the Government of Antigua and Barbuda through the Offices of the Director of Public Prosecutions, the Commissioner of Police and the Office of National Drug and Money Laundering Control Policy, conducted certain investigations relating to Mr. Humphreys' banking relationship with the Bank. The Bank became so aware in January, 2003 when a letter signed by one Sergeant Hughes of the Investigating Team MBS Inquiry dated the 31st December, 2002 was received by the Bank requesting information relating to two cheques. On or about the 6th January, 2003, the Bank responded to the said letter advising that the letter containing the said request was without an official letter head and bears no evidence of authority to request any information. Further, the Bank advised that it is precluded by the provisions of the Banking Act, 1997 to comply with the request except in accordance with the said provisions. The Bank further asserts that on the 5th day of March, 2003, it was served with an Order made by Her Ladyship Justice Joseph-Olivetti, in Suit No. 93 of 2003 ordering it to permit the Applicant or an officer designated by the Applicant to inspect and make copies of all accounts, savings, deposit, current or otherwise standing in the names of Mr. Humphreys and others. By letter dated the 26th day of March, 2003 and 14th May, 2003, the Bank in compliance with the Order of the Court gave liberty to the Applicant by providing the information ordered to be produced.

[7] The Bank maintains that it acted in accordance with the Order of Court dated 5th March, 2003, and, states further that at no time in February, 2003 as alleged by Mr. Humphreys did it release any information unlawfully and in breach of any fiduciary duty which the Bank owed to Mr. Humphreys. The Bank also denies that Mr. Humphreys is entitled to be compensated.

Evidence

[8] Mr. Humphreys testified on his own behalf and placed certain documents before the Court. In support of the defence, Mrs. Kathyne Armstrong-Hollingsworth (Mrs. Armstrong-Hollingsworth) and Mr. Johnathan Lindsay (Mr. Lindsay) testified and also relied on documents that were placed before the Court.

Issues

- [9] The issues that arise for the Court's determination are as follows:
- (a) Whether the Bank has breached its fiduciary and/or contractual duty that it owed to Mr. Humphreys;
 - (b) If so, whether Mr. Humphreys is entitled to be compensated by the Bank;

Law

- [10] The relevant Acts are the Banker's Book (Evidence) Act Cap 39 Laws of Antigua and Barbuda (The Banker's Book Act) and the Banking Act Cap 40 Laws of Antigua and Barbuda (the Banking Act).

- [11] Firstly, I propose to address the Banker's Book Act.

Section 7 of the Banker's Book Act states:

"On the application of any party to a legal proceeding, a Court or Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding. An order under this section may be made either with, or without, summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the Court or Judge otherwise directs."

- [12] I would now deal with Section 31 of the Banking Act which states as follows:

"(1) No person who has acquired knowledge in his capacity as director, manager, secretary, officer, employee or agent of any financial institution or as its director, officer, employee or agent of the Central Bank, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution except:

- (a) With the written authorization of the depositor or customer or of his heirs or legal personal representatives; or
- (b) For the purpose of the performance of his duties within the scope of his employment in conformity with the provisions of this Act; or

- (c) When lawfully required to make disclosures by any court of competent jurisdiction within Antigua and Barbuda; or
- (d) Under the provisions of any law of Antigua and Barbuda, or agreement among the participating Governments;

but nothing herein shall prevent a financial institution from providing to a person, upon legitimate business request, a general credit rating, a summary of which will be provided to the depositor or customer upon request.

(2) Every person who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment."

Claimant's Evidence

[13] I am of the view that it is important to refer in some detail to Mr. Humphreys' evidence. In his witness statement he said as follows:

"At all relevant times and up 2003, I was a customer of the Defendant Bank being the holder of an overdraft account and a loan account.

At all relevant times my business GCS Bottling Limited also maintained an overdraft account and a loan account at the Defendant Bank.

In or around February, 2003, the Government of Antigua and Barbuda through the Office of National Drug Control Policy (ONDCP) conducted investigations into my banking relationship with the Defendant.

The Defendant, in response to inquiries made by the said Government investigators, provided information relating to my banking relationship without my consent and without any prior notice to me.

The information provided by the Defendant was then used in an Affidavit sworn to by a Ms. Elaine Malone, an investigator of New Scotland Yard in the United Kingdom in support of an Application made by the Director of Public Prosecution. The Application was made in or around February 20, 2003 for an Order to inspect and take copies of my banking records by the Defendant. As a customer of the Defendant bank, I reasonably expected that my dealings with the Defendant would be kept confidential and details would not be disclosed without my knowledge or consent.

By providing the information to the Government investigators prior to a Court Order requiring the release of the information, the Defendant

breached its fiduciary and contractual duties owed to me as a customer of the Bank.

On or around March 4, 2003, an Order was made by Madam Justice Rita Joseph-Olivetti authorizing the inspection of my various bank accounts held with the Defendant, among others.

I subsequently made an Application to the Court for that Order to be vacated and set aside.

My Application was heard by Mr. Justice Ian Donaldson Mitchell, QC. on or about the 9th day of October 2003. The Judge, having heard Counsel appearing on my behalf ruled that the Order of March 4, 2003 should be vacated and set aside.

The Defendant's authorized disclosure to the said Government investigators resulted in a breach of the Defendant's duty to maintain my privacy and the confidentiality of my personal banking information in light of my relationship with the Defendant as a customer.

The information released by the Defendant to the Government investigators is exclusively within the knowledge of the Defendant, which is the custodian of all relevant documents and records of my relationship with the Defendant.

My claim against the Defendant is for damages to be assessed, cost and interest. To date, the Defendant has not made any payments."

- [14] Mr. Humphreys, under cross examination by Learned Counsel Ms. Burnette, stated that he had a current account and a fixed deposit with the Bank. He maintained that the Bank had passed his bank details before it had been served with the Court Order. He was clear that this is so "because when the information was provided, the Report of the Medical Benefits Inquiry had just been published but the appendices dealing with the Report came after." By this time, he was sure that the Bank had already divulged the information to the ONDCP. The police had written to the Bank requesting information about various accounts held by him and other persons; the Bank replied to the police and provided the information requested; he was of this view because that information could only have been provided by himself or the Bank. Mr. Humphreys having said earlier that he did know by what means the Bank had communicated the information to the police, later stated that the Bank provided the information to the police by way of letter; he said that he did not have a

copy of the letter. He further stated that he did not have the letter and therefore did not know when the information was communicated by the Bank. He was clear that while the Medical Benefits appendices contained lots of information he could not recalled whether they contained information regarding the accounts he held at the Bank. In fact, the Medical Benefits investigation had nothing to do with the relationship between himself and the Bank.

[15] During further cross examination, he admitted that he had a fixed deposit with the Bank which covered a loan for someone; however this information was not published even though the Bank would have been aware of the existence of the fixed deposit. Mr. Humphreys next said that even though he had a chequing account with the Bank from which he drew cheques, the existence of this chequing account would be within the peculiar knowledge of the Bank and himself. He said that only he and the Bank would know of the existence of this chequing account.

[16] During further cross examination, Mr. Humphreys admitted that he had applied to the Court to set aside the Order of Olivetti J and said further that he was aware that the Commission of Inquiry Act provides that no statement made during the Inquiry can be called into evidence. However, denied that it was on the basis that Ms. Malone had sought to utilize information that was obtained from the Commission of Inquiry that he was able to get the Court to set aside the Order made by Olivetti J. He maintained that it was the Bank that had communicated the information to the police even though he was unsure of the date on which that had occurred.

Defendant's Evidence

[17] Ms. Armstrong-Hollingsworth stated in her witness statement as follows:

"I am employed by the Defendant as Senior Manager, Risk Management & Compliance at the RBTT Bank Limited, Trinidad, 5th Floor, 55 Independence Square, Port of Spain in Trinidad & Tobago, having been employed at the Defendant since September 1975, in the capacities of Senior Supervisor, Assistant Branch Manager, Commercial Manager, Branch Manager (small to medium size branches), Assistant Manager Loans at the St. Vincent operation and Country Manager in Antigua.

At all material times, I was working at the Antigua branch at 45 High Street in the City of St. John in Antigua and Barbuda as the Country Manager. I was primarily responsible for all aspects of revenue growth portfolio quality, cost effective operations, employee capability and commitment and customer loyalty, optimizing shareholder value, risk management, business development, corporate governance and regulatory compliance, planning organizing, effective implementation and monitoring, bank representation and outreach.

The Claimant was a customer of the Defendant.

In January 2003, the Defendant received a letter dated 31st December 2003 signed by one Sergeant Joseph Hughes of the Investigation Team MBS Inquiry requesting information relating to two cheques, namely ACB cheque #156, teller number #5, negotiated on the 02/8/00 and ACB cheque #140, teller number #5 negotiated 06/10/99.

By way of letter dated January 6, 2003, I responded to Sergeant Joseph Hughes advising him that the letter containing the said request was without an official letterhead and bears no evidence of authority to request any information. I also informed him that the Defendant is precluded by the provisions of the Banking Act, 1997 from providing information unless it is in specifically prescribed circumstances. As such, the information requested by Sergeant Joseph Hughes in his letter was not provided.

Upon receipt of the letter dated 31st December 2003, I became aware that the Government of Antigua and Barbuda, through the Offices of the Director of Public Prosecutions, the Commissioner of Police and the Office of National Drug and Money Laundering Control Policy was conducting certain investigations relating to the Claimant's Banking relationship with the Defendant.

On or about the 5th day of March 2003, the Defendant was served with an Order dated the 27th day of February 2003 made by Her Ladyship Justice Rita Joseph-Olivetti, a Judge of the High Court of Justice in Suit No. ANUHCV 2003/0093

The said order gave the Office of the Director of Public Prosecutions or a designated officer liberty to inspect and make copies of all accounts, savings, deposits, current or otherwise standing in the names of the Claimant and other persons named in the said order.

When the said order was received, the same was recorded in two books of the Defendant, the first being the Occurrence Record Book and the

second being, the Register of Court Orders and Documents released to police/designated authority.

It is a standard procedure of the Defendant that all Court orders served on the Defendant be recorded in the above manner.

Pursuant to the Order of the Court, the Defendant by letter dated 26th March 2003 and 14th May, 2003 gave liberty to the Director Public Prosecution by providing the information ordered to be produced.

The Defendant at all times was in full compliance of the Order of the Court which gave liberty to the Director of Public Prosecution to receive the necessary information requested.

In September 2005, I received a letter from the Septimus A. Rhudd, Attorney for the Claimant in this matter alleging that the Defendant was in breach of its customer/bank duty to the Claimant.

Each client of the Defendant is guaranteed client/bank confidentiality relationship at all times. Each member of staff is trained and constantly reminded of their responsibility to and the importance of protecting clients' information in the course of their daily duties and at all times. This is constantly reinforced at all regular staff meetings, and annually in the bank's mandatory Anti-Money Laundering Training Sessions. Annually, during my tenure at the beginning of the year, each member of staff was required to sign a "Declaration of Secrecy" in which this is enshrined.

It is a standard documentation policy of the Defendant that all Letters of Complaint, Court Orders and documents of this type be handled and signed off by the Country Manager. All Court Orders once received must be recorded in two books, the Occurrence Record Book and the Register of Court Orders and Documents released to the Police/Designated Authority.

At all materials times, the Defendant acted in accordance with the Order of Court dated the 27th February, 2003 and state further that at no time in February, 2003 as alleged by the Claimant did it release any information unlawfully and in breach of any fiduciary duty which the Defendant owed to the Claimant."

- [18] During cross examination by Learned Counsel Mr. Septimus Rhudd, Mrs. Armstrong-Hollingsworth stated that the Production Order was received by the Bank on the 5th day of March 2003. She could not recall the circumstances under which she received the letter written by Sgt Joseph Hughes; however, she recalled that they had a face to face meeting

in Mr. Lindsay's office subsequent to receiving his letter and subsequent to their dispatching the letter from the Bank. She could not recall if other persons were present in that meeting. She accepted that she would have written to Sgt Hughes on the 6th January 2003. She could not explain why no mention was made in her witness statement of the meeting or the letter of the 6th January 2003.

- [19] Mrs. Armstrong-Hollingsworth during further cross examination later admitted that she had telephone conversation with Sgt Hughes and said that it is possible that there were other contacts other than telephone conversation. She admitted that they had commenced research even though the Bank was not in a position to divulge the information. Mrs. Armstrong-Hollingsworth confirmed that Mr. Lindsay did the research. She was aware of the meeting which took place in Mr. Allaway's office involving Mr. Lindsay and Sgt Hughes but admitted that she did not mention that meeting in her witness statement and indicated that she was not present at that meeting. She was aware that the information in relation to Mr. Humphreys' accounts was located and was sure that it would have been shared with her and Mr. Allaway. She also knew that having received the letter from Mr. Humphreys' attorney alleging that the Bank had breached its duty to Mr. Humphreys, that the Bank had conducted an investigation so as to ensure that the Bank did not breach its duty of confidentiality to its client (Mr. Humphreys). She instructed Mr. Lindsay to investigate the allegation which he did and subsequently made a report to her. Mrs. Armstrong-Hollingsworth stated, however, that it did not strike her as strange that the information provided was very similar to the information the Bank had provided as a result of being served with the Production Order

Mr. Lindsay

- [20] In his witness statement he stated as follows:

"At all material times, I was employed by the Defendant as the Assistant Manager for Administration of the Defendant Bank. I was working at the Antigua branch at 45 High Street in the City of St. John in Antigua and Barbuda from November 1996 to May 2006 as the Assistant Manager for Administration. I was responsible for branch administration, customer and centralized services, human resources and premises.

At all material times the Claimant was a customer of the Defendant.

In January 2003, the Defendant received a letter dated 31st December 2003 signed by one Sergeant Joseph Hughes of the Investigating Team MBS Inquiry requesting information relating to two cheques, namely ACB cheque #156, teller number #5, negotiated on the 02/8/00 and ACB cheque #140, teller number #5, negotiated 06/10/99.

By way of letter dated January 6, 2003, the Defendant through its Country Manager, Mrs. Kathryn Armstrong-Hollingsworth, responded to Sergeant Joseph Hughes.

When the Defendant received the letter dated 31st December 2003, I became aware that the Government of Antigua and Barbuda, through the Offices of the Director of Public Prosecutions, the Commissioner of Police and the Office of National Drug and Money Laundering Control Policy, conducted certain investigations relating to the Claimant's banking relationship with the Defendant.

The said order gave the Office of the Director of Public Prosecutions or a designated officer liberty to inspect and make copies of all accounts, savings, deposits, current or otherwise standing in the names of the Claimant and other persons named in the said order.

When the said order was received, the same was recorded in two books of the Defendant, the first being the Occurrence Record Book and the second being, the Register of Court Orders and Documents released to police/designated authority.

It is a standard procedure of the Defendant that all Court Orders served on the Defendant be recorded in the above manner.

Pursuant to the Order of the Court, the Defendant by letters dated 26th March 2003 and 14th May, 2003 gave liberty to the Director of Public Prosecution by providing the information ordered to be produced.

The Claimant at all times was in full compliance of the Order of the Court which gave liberty to the Director of Public Prosecution by providing the necessary information requested. All Correspondence relating to the production of information pursuant to the said Court Order were signed by Kathryn Armstrong-Hollingsworth and myself and forwarded to the Director of Public Prosecution.

Each client of the Defendant enjoys a client/bank confidentiality relationship at all times. Each staff is trained and constantly reminded of their importance of protecting the client's information in their daily duties.

At the Defendant's Bank and on receipt of a Court Order it is our standard banking policy that any Court Order received is passed to management and handled by management from that stage. All and any Court Orders received would be recorded as stated in paragraphs 13 and 14 above.

Each staff member during their orientation process on their first day is conducted through a list of items, one being the matter of client confidentiality and the importance of ensuring that this is maintained and practiced. Thereafter, it is reinforced in general staff meetings and regular training courses such as Anti-Money Laundering sessions to which it directly pertains.

At all material times, the Defendant acted in accordance with the Order of Court dated the 27th February, 2003 and state further that at no time in prior to the production of the Court Order aforesaid and as alleged by the Claimant did it release any information unlawfully and in breach of any fiduciary duty which the Defendant owed to the Claimant."

[21] During cross examination by Ms. Burnette, Mr. Lindsay stated that when Sgt Hughes delivered the letter to Mr. Allaway the letter was "passed to him". Mr. Allaway then called him into his office and at that time Sgt Hughes was in the Bank. They spoke for approximately 10 – 15 minutes. At the meeting, Mr. Allaway, himself, Elaine Malone and Sgt Hughes and another gentleman from Scotland Yard were in Allaway's office. Mr. Lindsay said that he did not refer to that meeting in his witness statement but maintained that the meeting was introductory in nature; neither did he feel it was necessary to mention that in his witness statement. He was clear that he did not speak to Sgt Hughes after their meeting even though he could not recall whether he may have said "hello" to Elaine Malone during the meeting.

[22] Mr. Lindsay further stated that while the Bank had commenced its research, the information that had been requested of the Bank was not in relation to Mr. Humphreys. He maintained that there was no other contact between any of the Government representatives and the Bank's official. The Bank only provided the information after it had been served with the Production Order granted by the Court. During the two months period of his research, the Bank did not communicate with the Medical Benefits' office, the police or the ONDCP. The information that he garnered was kept in a vault. After

receiving the complaint about the alleged breach of confidentiality they conducted an investigation in order to determine whether there had been any breaches and found that there was none.

- [23] Mr. Lindsay when comparing the information that was stated in Ms. Elaine Malone's Affidavit with that he provided agreed that it was similar and said that it struck him as strange. He agreed that the information that the Bank had was almost identical to the information shown to him by Mr. Rhudd. "Mr. Lindsay also said it was very strange that "that sort of information could have shown up before a Production Order".

Claimant's Submissions

- [24] Mr. Septimus Rhudd asked the Court to find the following facts: In or around December, 2002 the Director of Public Prosecutions (DPP) of Antigua and Barbuda commenced an investigation, inter alia, into alleged criminal misconduct by Mr. Humphreys and other persons with whom Mr. Humphreys was supposedly affiliated. In conducting its investigation, the DPP solicited, and received, assistance from the Metropolitan Police Force Fraud Squad of New Scotland Yard in the United Kingdom. One Elaine Malone, an officer of the said Metropolitan Police Force, became attached to the Royal Police Force of Antigua and Barbuda as a Special Constable. She formed part of the team investigating Mr. Humphreys and the other persons.

- [25] On or around February 20, 2003, the DPP made an application under Section 7 of the Banker's Book (Evidence) Act, Cap 39 of the Laws of Antigua and pursuant to the provisions of the Section 15(ii) of the Money Laundering (Prevention) Act, 1996 (MLPA), as amended, for a Production Order allowing his office to inspect and copy bank account information relating to Mr. Humphreys and other persons named in the application. The application was supported by an Affidavit, sworn to by the said Elaine Malone on the 19th day of February, 2003 and filed on the 20th day of February, 2003. In paragraph 15 of her Affidavit, Elaine Malone disclosed definitively that the Office of National Drug and Money Laundering Control Policy ("ONDACP"), a division of the government, was in possession of pertinent private and confidential bank account information about the Humphreys'

accounts held with the Bank. Elaine Malone stated in her Affidavit that this information had been obtained by her, based on inquiries made through the ONDCP. At the time that this information was disclosed by Elaine Malone, no prior application had been made for any appropriate Court Order authorizing the Bank to release any such information to the ONDCP. Mr. Rhudd submitted that the information that was contained in the Affidavit of Elaine Malone was obtained from the Bank and prior to March 5th, 2003 on the date the Bank was presented with a Court Order authorizing it to release information on Mr. Humphreys and the other persons named in the Order.

[26] By virtue of the unauthorized release of information, Mr. Humphreys has alleged that he has suffered damages for which he should be compensated. Those damages arise out of the Bank's breach of its fiduciary duty to him. In addition, Mr. Humphreys is maintaining that the Bank breached his rights to privacy as enshrined in the Antigua and Barbuda Constitution Order, 1981, in the Banker's Book (Evidence) Act, Cap. 39 and the Banking Act, Cap 40.

[27] In making its determination, Mr. Rhudd urged the Court to consider the factual evidence as presented by the parties. The Court is urged to consider the demeanour of the witness while giving their testimony. Mr. Rhudd asked the Court to look at the similarity in the information supplied in the attachment to the Bank's letter dated March 26, 2003 with the information contained in paragraph 15 of the Affidavit of Elaine Malone. Mr. Rhudd next submitted that the similarity is much too great and much too striking for this to be merely coincidental. The Court should find that, on a balance of probabilities, it is reasonable to conclude that the information contained in the Affidavit was, in fact provided by the Bank – albeit informally.

[28] Mr. Rhudd pointed out that Mr. Humphreys categorically refuted the suggestion of Counsel for the Bank that the information about his account could have been obtained during the Inquiry into the operations of the Medical Benefits Scheme. He pointed out that nothing in respect of his banking relationship with the Bank was addressed during the said Inquiry.

[29] Mr. Rhudd conceded that while Mr. Humphreys was being cross examined, he testified that the information must have been provided in a letter sent by the Bank. This response was obviously due to an overabundance of exuberance on his part as it was never Mr. Humphreys' case – as is evident from the documents filed during the lead up to trial – that the information was contained in any letter form. What is apparent, and inescapable, is that information that was peculiarly within the knowledge of the Bank turned up in an Affidavit sworn to by Elaine Malone before the Bank was properly authorized to release such information. Mr. Humphreys' position always was, and still is, that the Bank made the information available to the investigators without obtaining the proper Court Order. The Court is being respectfully urged to so find. The Court is also being urged not to penalize Mr. Humphreys for his statement in this regard or view his testimony unfavourably.

[30] Turning to the evidence adduced on behalf of the Bank, Mr. Rhudd stated that in general, Mr. Lindsay's evidence highlighted the weaknesses in the Bank's case. He admitted to seeing the letter of December 31, 2002 and affixing his signature in the upper right hand corner. He admitted to seeing the letter during a meeting that took place in the office of the then General Manager, Frank Allaway. When pressed he admitted that he participated in the said meeting at which Elaine Malone, Senior Sergeant Hughes and another Scotland Yard officer were also present. This meeting occurred on the same date that the letter had been delivered to the Bank by Senior Sgt. Hughes. Yet, when he had been asked earlier, Mr. Lindsay had denied that he had spoken to Senior Sgt. Hughes. Mr. Rhudd therefore submitted that the Court should take note of the witness' attempt to mislead the Court in relation to the sequence of events. The Court should ask itself why was the witness at pains to play down and give the impression that he only had minimal contact and communication with Senior Sgt. Hughes and the investigative team. Mr. Lindsay made the important revelation that the meeting lasted for some 10 – 15 minutes. Although he tried to categorise the meeting as merely an "introductory" one, he admitted several times during cross examination that Senior Sgt. Hughes "did more than introduce himself" and that, during the meeting, "more was discussed than mere introductions" He even admitted further to speaking with Elaine Malone. Mr. Rhudd further submitted that this 'introductory' meeting was an important piece in the puzzle. Yet, it was never mentioned or referred to

in the Witness Statement of the Mr. Lindsay. When asked why something as significant as this was omitted, Mr. Lindsay's response was that he did not think it was important to mention it in his Witness Statement. The Court is being urged to draw the necessary inferences from this failure to include something so important in the Witness Statement.

[31] Next, Mr. Rhudd asked the Court to note that Mr. Lindsay willingly conceded that the information contained in the Affidavit of Elaine Malone was such as would come "primarily from the customer or the Bank". He also conceded that the information contained in the Affidavit of Elaine Malone was "almost identical" to the information in the list attached to the letter dated March 26, 2003 sent by the Bank to the DPP and he admitted that it was "very, very strange".

[32] Mr. Rhudd submitted finally that on consideration of the totality of the evidence presented to the Court that, on a balance of probability, Mr. Humphreys has established his case. He has been able to show that details of his accounts held with the Bank were divulged prior to the obtaining of the appropriate Court Order, namely in the Affidavit of Elaine Malone. That this information ended up in her Affidavit cannot be challenged. He was adamant that he did not disclose this information to any of the investigators. The Bank has merely denied that it passed this information to the investigators even though it has conceded that the information about which Mr. Humphreys complained is strikingly similar to the information that the Bank eventually provided to the DPP's office. In addition, the Bank's version of its contact with the several investigators prior to the production of the appropriate Court Order leaves a lot of doubt and uncertainty as to whether the Bank handled the information about Mr. Humphreys' account in a sufficiently confidential manner. Mr. Rhudd finally submitted that this doubt and this uncertainty should be resolved in Mr. Humphreys' favour.

Defendant's Submissions

[33] Ms. Burnette submitted that there is only one issue for the Court to determine. The issue is a question of fact namely:

Did the Defendant release information pertaining to the Claimant's banking relationship with the Defendant prior to the issuance of a Court Order?

- [34] Ms. Burnette stated that it is the evidence of Mr. Humphreys that the Bank gave the investigators information contained in the Affidavit of Elaine Malone before a Court Order was served on the Bank in March, 2003. Mr. Humphreys testified that this information was communicated to the Investigators by a letter written by the Bank to the said Investigators. In his Statement of Claim, Mr. Humphreys failed to plead the manner in which the information was allegedly communicated by the Bank to the Investigators. It was only whilst giving his oral testimony and when pressed under cross examination did Mr. Humphreys disclose that this information was given by a letter. Indeed, this being the case of Mr. Humphreys, the same was never put to the Bank's witnesses who testified that no information was passed to the said Investigators prior to March 5th, 2003 either orally or in writing. The letter at page 31 of the Trial Bundle speaks volumes of the Banks' awareness of its duty to its customers. It sets out clearly the circumstances under which the Bank would be obliged to release any information regarding its customers.
- [35] Next, Ms. Burnette stated that the witness Mr. Lindsay testified that members of the Investigating Team introduced themselves to him and the then Branch Manager, Frank Allaway whilst the witness Mrs. Armstrong-Hollingsworth testified that she was introduced to Sgt Hughes subsequently. It was their clear and uncontroverted evidence that during these meetings no information was passed concerning Mr. Humphreys' account.
- [36] Ms. Burnette submitted that in any event, this is not the case pleaded or canvassed by Mr. Humphreys. When the Court examines the documents included in the Trial Bundle and in particular the Affidavit sworn to by Mr. Humphreys in support of an application to set aside the Production Order, it is evident that Mr. Humphreys' complaint relative to the Affidavit of Elaine Malone was that it contains "evidence adduced at a Commission of Inquiry held at the Multipurpose Centre at Perry Bay". Mr. Humphreys has brought his case with the expectation that the Court will infer from the Affidavit of Elaine Malone that only the Bank could have given information regarding his account to the said Elaine Malone.

[37] Ms. Burnette therefore submitted that Mr. Humphreys was successful in getting the Order set aside on the basis that the information used by Ms. Malone in her Affidavit was information which she received from evidence adduced at the Commission of Inquiry in circumstances where the Commission of Inquiry Act renders such evidence inadmissible. Ms. Burnette stated that it is disingenuous and erroneous at best for Mr. Humphreys to have brought this suit against the Bank on the basis that "he believes" that the information was given by the Bank, particularly as he knew he was the subject of an ongoing investigation, which investigation clearly began before the said Investigators sought to obtain information from the Bank. By his own evidence, he has told the Court that evidence was contained in an Inquiry, the appendices for which had not yet been officially published.

[38] Further, Ms. Burnette stated that the Court in drawing inferences must have the proper foundation of facts upon which such inferences may be drawn. Indeed, the Court cannot infer that the Bank wrote a letter and gave the information as Mr. Humphreys alleges. Indeed there is no such evidence that any letter was written. Mr. Humphreys himself has not testified that he has seen such a letter, neither did he plead that such a letter exists. This then goes directly to the credibility of Mr. Humphreys' testimony and the weight which this Court must attach to the same. Ms. Burnette urged the Court to find that no such letter was written by the Bank disclosing Mr. Humphreys' information as alleged or at all. Were the Court to find that such a letter exists, the said finding would fly in the face of the letter of 6th January, 2003 written under the hand of the then Country Manager, Mrs. Armstrong-Hollingsworth.

[39] Ms. Burnette stated that section 31 of the Banking Act, Cap 40 sets out the circumstances under which a financial institution maybe authorized to disclose any information regarding the identity, assets, liabilities, transaction or other information in respect of a customer of that financial institution. This is the very premise on which the Bank through its Country Manager had made it clear to the Investigators that it cannot answer the queries raised in its letter of 31st December, 2002. A copy of the said provision was made available to the

Police and in March, 2003, the Bank was served with an Order of Court authorizing it to release information relating to Mr. Humphreys and others. Ms Burnette further said that there is no evidence on which the Court can make this specific finding particularly as Mr. Humphreys' evidence is that it was done via a letter. It is for Mr. Humphreys to prove to this Court on a balance of probabilities that the Bank has (i) failed to satisfy itself that the Investigators had applied for and obtained the appropriate Court Order (ii) failed to request sight of any Court Order prior to releasing information and (iii) released information about Mr. Humphreys' bank account to unauthorized persons. These are the particulars of breach alleged in Mr. Humphreys' Statement of Claim.

- [40] Ms. Burnette finally submitted that Mr. Humphreys has not discharged the burden of proof. Indeed, the Bank has adduced sufficient evidence to disprove the allegations made by Mr. Humphreys. Both the documentary evidence and the oral testimonies of the Bank are overwhelming and the Court is urged to prefer the evidence of the Bank. It follows therefore that on a balance of probabilities and on a preponderance of the evidence, that the Bank has not breached its fiduciary relationship with Mr. Humphreys.

Court's Analyses and Findings

- [41] I have reviewed the evidence adduced in its entirety and given careful consideration to the submissions of both Learned Counsel.
- [42] This is a civil case and the onus of proof, as in all civil cases, is on the Claimant (Mr. Humphreys) the standard of proof required of him is on the balance of probabilities. He has to prove that the Bank disclosed information in relation to his banking details without his permission as he has alleged to the investigators.
- [43] With respect, I must state that I was unable to give such a favourable interpretation of Mr. Humphreys' evidence as urged by Learned Counsel Mr. Rhudd. It was clear to me that Mr. Humphreys in testifying did not know and could not provide any credible or reliable evidence in support of his allegation that it was the Bank that had disclosed the information. In this regard, I propose to analyse Mr. Humphreys' evidence a bit more. For

the most part, his evidence was in the nature of speculation. It struck me that, as he went along he sought to buttress his case by seeking to have the Court infer that the information was disclosed by way of letter. He has not provided the Court with a thread of positive evidence in support of this allegation. There was no fact placed before the Court on which that inference could have been drawn. In contradistinction, Mrs. Armstrong-Hollingsworth and Mr. Lindsay cut a better picture in testifying and were more persuasive.

[44] I did not find Mr. Humphreys to be a very forthright witness. It is his case and he ought to satisfy the Court by adducing credible and reliable evidence in support of his allegation. While there is no doubt that Mr. Humphreys is upset about what he perceives to be unlawful disclosure of his bank details by the Bank, I must re-state, and with respect, that he has failed to meet the threshold required to establish that it is the Bank that was responsible for divulging the information. There is no doubt that information about two of the accounts he held with the Bank were in the public domain but that is a far cry from him proving positively that the Bank published the information. As stated earlier, Mr. Humphreys sought to persuade the Court that he was sure that the Bank had divulged the information by way of letter. However, (when as stated earlier), when he was pressed in cross examination that sought to test both his credibility and reliability, he was found wanting in both respects. He was then forced to admit that he did not have a copy of the letter. With respect, it is very clear to me that Mr. Humphreys never saw any letter from the Bank in which the alleged information was communicated even though this was the clear inference he sought to have the Court draw. He, however, never admitted that he had never seen the alleged letter but instead said that he did not have a copy; this was meant to give the impression that he had actually seen the letter but simply did not have a copy. This meant to mislead the Court.

[45] I also find Mr. Humphreys' evidence incredible when he testified that in relation to his "checquing account" that the only persons who would know of its existence would be himself and the Bank. Mr. Humphreys is an intelligent man and could not have believed this aspect of his evidence – he must know that persons to whom cheques were made payable, would, at very least, be aware of the existence of that account. Mr. Humphreys,

to my mind, realized, that he was unable to substantiate the allegation that he had made and instead relied on speculation in an attempt to prove his case, all to no avail.

[46] Taking the totality of the evidence in to consideration and paying particular regard to the documentary evidence provided by Mr. Humphreys, I am not satisfied that he has not established that it was the Bank that had disclosed the information to Elaine Malone. On this aspect of the case, I have given very careful consideration to his affidavit deposed to on the 2nd May 2003, in order to have the Order of Olivetti J set aside. In paragraph 5 of his affidavit, Mr. Humphreys stated that Ms. Malone's affidavit "contains evidence adduced at a Commission of Inquiry held at Multipurpose Centre at Perry Bay". Yet, in the face of that evidence, Mr. Humphreys sought to persuade the Court that Ms. Malone came into possession of the information through the Bank having divulged same.

[47] Despite the skilful cross examination by his Counsel Mr. Rhudd of the witnesses called on behalf of the Bank, I have no doubt that Mr. Humphreys' case based on his own evidence was unsalvageable. To put the matter beyond any doubt, Mr. Humphreys has failed to prove as a fact that it was the Bank that had disclosed the information concerning his accounts.

[48] In addition, the totality of the evidence adduced by the Bank left me in no doubt that Mr. Humphreys' evidence could not be accepted; I accept the evidence of the Bank's witnesses in preference to his. I must state that the fact that the information that the Bank produced was very similar to the information Ms. Malone deposed to, without more, is insufficient to assist Mr. Humphreys in buttressing his claim. There is no evidence adduced by either Mr. Humphreys or the Bank on which I could properly infer that it was the Bank that disclosed the information.

[49] In view of the foregoing, I have no difficulty in accepting the arguments adduced by Ms. Burnette in preference to those advanced by Mr. Rhudd. Accordingly, I am of the considered opinion that Mr. Humphreys has failed to establish that it was the Bank that

disclosed the information and he has therefore failed to prove his claim against the Bank namely that it had breached its fiduciary duty to him.

Conclusion

[50] Accordingly, I hereby order that Mr. Hilroy Humphreys' claim against the RBTT Bank Caribbean Ltd is dismissed. Mr. Humphreys is further ordered to pay the RBTT Caribbean Ltd prescribed costs unless otherwise agreed.

[51] I commend both Learned Counsel for their industry.

Louise Esther Blenman
High Court Judge