THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV 2012/0003

BETWEEN

DANTE TAGLIAVENTI

Claimant

AND

RBTT BANK CARIBBEAN LIMITED

Defendant

Appearances:

Mr. Lawrence Daniels for the Claimant
Ms. Ann Henry for the Defendant

2012: May 30

DECISION

[1] **REMY J.**: The Claimant Dante Tagliaventi is a businessman. The Defendant RBTT Bank is a banking institution registered in Antigua and Barbuda and operates and conducts business in St. John's, Antigua. The Claimant was at all material times, a customer of the Defendant bank.

[2] The facts as pleaded in the Claim Form and Statement of Claim filed on 3rd January 2012 are as follows:-

The Claimant owns, operates and manages a business at Heritage Quay known as "Treasure of Life". His business specializes in gold and diamond jewelry sales along with leather bags and wallets. The Claimant applied for and opened three accounts at the Defendant Bank. The said accounts were namely, (i) a U.S. Currency account, (ii) a business account, and (iii) a Supreme Savings Account. By letter dated 27th October 2011, (the Letter) the Defendant gave the Claimant notice that it intended to close his (the Claimant's) accounts by 28th November, 2011. The reason for the closure as contained in the Letter which was exhibited to the Claimant's Statement of Claim was

stated thus: "....Our policy guidelines require us to risk assess our client portfolio on a regular basis. Regretfully at times, we are left with no other choice but to end client relationship as a result of changed risk profiles which no longer fit our risk appetite. After careful consideration, we advise that we are not in a position to maintain our banking relationship with you and accordingly the (following accounts) held with RBTT Bank Antigua will be closed." As a result, the Claimant wrote to the Defendant requesting an extension of time for an additional month to make adequate banking arrangements. The Defendant acceded to the Claimant's request and extended the time for closure until 28th December, 2011.

[3] The Claimant states that he approached several other banks and they all refused to open a business account for him. He states that the Defendant knew or ought to have known this, since he (the Claimant) was required to disclose this information to the other banks and state the reason for opening a new account, the Defendant's bank having closed his account. He states further that on the 28th December 2011, Ms. Gardiner, an employee, servant and/or agent of the bank telephoned him and informed him "that his account would be closed on the 28th December, 2011 and that he should conduct no further activities on the said account as it (the Defendant Bank) was going to remove his credit card machine from his business place."

[4] In paragraph 8 of his Statement of Claim, the Claimant states that "by virtue of the Defendant closing his (the Claimant's) account," he is "unable to write any cheque to pay his creditors, staff, rent, utilities and as such the Defendant is forcing him to close his business that he operated for the past 30 years." He states that "the Defendant has breached its contract with him by arbitrarily closing" his account when he was not in breach of any rule or regulation of the bank. The Claimant states that he will lose in excess of $30,000.00 per week; further, that the Defendant has directly or tacitly conspired with others to limit the supply of banking services to him, thereby forcing him out of business by closing his bank accounts on 28th December, 2011.

[5] The relief sought by the Claimant is stated as follows:-

> "(1) A breach of contract in that the Defendant closed the Claimant's account when the Claimant did not breach any law or regulations pertaining to his account or relationship with the bank.
>
> (2) A Declaration that the Defendant has directly or tacitly conspired with others to limit the supply of banking services to the Claimant thereby closing the Claimant's accounts and forcing the Claimant out of business.
>
> (3) A Declaration that the Respondent's notice to the Claimant as to the closure of the Claimant's accounts to take effect on the 28th December, 2011 constitutes a repudiation of contract between the Defendant and the Claimant for which the Claimant is entitled to damage."

The Claimant also claims "costs, Attorney costs and interest."

[6] By Notice of Application filed on the 3rd January 2012, the Claimant sought an interim injunction prohibiting the Respondent whether by themselves, their servants or agents from closing or attempting to proceed with the closure of his accounts. At the date of the said application, the Claimant's accounts had already been closed. After hearing arguments from Counsel for the parties, the Court dismissed the application for the interim injunction.

[7] On 1st March 2012, by Notice of Application, the Defendant applied to the Court for an Order:-

> "1. Striking out and dismissing the Claim Form filed in the captioned matter on the 3rd January, 2012;
> 2. Requiring the Claimant to pay the Defendant/Applicant's costs; and/or
> 3. For such further or other relief as the Court deems just and appropriate in the circumstances."

[8] The ground of the above Application was stated thus: "No cause of action is made out by the Claimant against the Defendant, or at all, on the Claim Form and Statement of

Claim filed herein." The Notice of Application was filed pursuant to Part 26 of the Civil Procedure Rules (CPR) 2000. It was accompanied by an Affidavit in Support, deposed to by Ms. Cassandra Ryan, the Branch Manager of the Defendant Bank.

[9] The above Notice of Application came up for hearing before the Court on the 10th May, 2012. Counsel for the parties made oral submissions to the Court and the Court reserved its ruling in the matter.

SUBMISSIONS OF COUNSEL

[10] Learned Counsel for the Defendant Ms. Ann Henry in her oral submissions stated as follows:-

a) No cause of action is disclosed in this matter. Paragraph 9 of the Statement of Claim sets out the basis on which this claim is brought. The paragraphs before are in the nature of evidence as to notice being given for the closure of the bank account, i.e. – paragraphs 3-8. These paragraphs essentially set out the notice given for the closure of the accounts and the action taken relative to that.

b) In paragraph 9, the Claimant asserts a breach of contract by reason of the closure of the accounts. Paragraphs 10 and 11 purport to support the assertion of a breach. Paragraphs 12 and 13 are of a formal nature.

c) At the heart of the matter is an assertion of a breach. The Claimant alleges that the closure of the account is the breach of the contract. This is why the Defendant relies on the cases of **Prosperity Ltd v Lloyds Bank Ltd.**[1]; and **Joachimson v. Swiss Bank Corp.**[2].

d) The principles on which the Court acts are well known to the Court and can be found in the Court of Appeal cases of **Citco Global Custody NV and Y2K Finance Inc**[3]; and **Ian Peters and Robert George Spencer**[4].

[1] 3 LDAB 287
[2] [1921] 3KB 110
[3] Virgin Islands HCVAP 2008/022
[4] Antigua & Barbuda HCVAP 2009/016

e) The one issue on which the instant case turns may be framed in the following question: "Did the action of the Defendant in closing the accounts of the Claimant in the circumstances give rise to a cause of action?" Counsel submits that the answer is in the negative. She states that, as a matter of law, even if one accepts the facts as pleaded by the Claimant in the Statement of Claim, it does not give rise to a cause of action.

f) The facts as pleaded fall squarely within the legal principles as enunciated within the Prosperity and Joachimson cases. For that reason there is no cause of action and the claim must fall away. The facts as given are:-

1. Notice was given – paragraph 4 of the Statement of Claim
2. Extension was given – paragraph 5 of the Statement of Claim
3. Thereafter, the accounts were closed.

g) Those are the facts on which the Claimant relies in his Statement of Claim. Those facts cannot give rise to that cause of action, namely, a breach of contract.

[11] The rival submissions of Mr. Laurence Daniels, Learned Counsel for the Claimant, are as follows:-

1. The cause of action arose when the Defendant bank closed the Claimant's account on the 28th December, 2011. This in and of itself is a breach of contract, because the Claimant did not breach any laws or regulations pertaining to his account or relationship to the Defendant.

2. The Defendant has directly or tacitly conspired with others to limit the supply of banking services to the Claimant, thereby closing the Claimant's account and forcing the Claimant out of business.

3. The Defendant's notice to the Claimant as to the closure of the account which took effect on the 28th December 2011 constituted a repudiation of the contract between the Defendant and the Claimant for which the Claimant is entitled to damages.

Learned Counsel also relied on the case of **Prosperity Ltd. V Lloyd Bank Ltd.** (supra).

[12] In her Reply, Ms. Henry submitted that the Prosperity case is not identical with the case before the Court; that the facts are not identical. The conclusion reached in the Prosperity case is not really of any moment in considering the instant case; it is the principle of the case which is the important point. She states that there is no pleading before the Court that there was any special contract between the parties that would affect the Bank's right to close the account. Further, in the Prosperity case, there were additional circumstances, namely the Insurance Scheme. It is because of that scheme, that the Court reached the conclusion that a month's notice was not sufficient notice. No such circumstances exist in the case at bar.

THE LAW

[13] By CPR 26.3 (1):

> "....the court may strike out a statement of case or part of a statement of case if it appears to the court that -
>
> (a) .....
>
> (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;
>
> (c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings."

[14] By CPR Part 2.4:-

> " 'statement of case' means –
>
> (a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and
>
> (b) ...."

[15] Striking out the statement of case means that no court time is wasted, even in pre-trial process..... In applications for striking out, the court is mainly concerned with the adequacy of the statements of case, with whether they disclose reasonable grounds for

bringing or defending the action – see Halsbury's Laws of England, 5th edition, page 397-398, paragraph 504.

[16] In the case of Ian Peters and Robert George Spencer, George-Creque, J.A. stated thus:-

> "CPR 26.3 (1) finds its equivalent in the UK CPR r 3.4 (2) (a). The learning in respect of the UK rule is that striking out is appropriate in the following instances: where the claim sets out no facts indicating what the claim is about or if is incoherent and makes no sense, or if the facts it states, even if true do not disclose a legally recognizable claim against the defendant."

[17] In the Ian Peters case referred to above, the Learned Judge referred to the Court of Appeal decision of **Citco Global Custody NV v Y2K Finance Inc.** (supra), in which Edwards JA, dealt with the principles by which the Court must be guided when exercising the power of striking out a party's statement of case. The relevant parts of the judgment of Edwards JA are hereby reproduced:-

> "Paragraph [13] - On hearing an application made pursuant to CPR 26.3 (1) (b) the trial judge should assume that the facts alleged in the statement of case are true. Despite this general approach, however, care should be taken to distinguish between primary facts and conclusions or inferences from those facts. Such conclusions or inferences may require to be subjected to closer scrutiny.
>
> Paragraph [14] - Among the governing principles stated in Blackstone's Civil Practice 2009 the following circumstances are identified as providing reasons for not striking out a statement of case: where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully investigated. It is also well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination and cross-examination of witnesses often change the complexion of a case. Also, before using CPR 26.3(1) to dispose of 'side issues', care should be taken to ensure that a party is not deprived of the right to trial on issues essential to its case. Finally, in deciding whether to strike out, the judge should consider the effect of the order on any parallel proceedings and the power of the court in every application must be exercised in accordance with the overriding objective of dealing with cases justly."

[18] George-Creque JA in the Ian Peters case further stated: - "a statement of case is not suitable for striking out if it raises a serious live issue of fact which can only be properly determined by hearing oral evidence." - **Bridgeman v Mc Alpine-Brown**[5]"

[19] According to Blackstone's Civil Practice 2011[6], cases where striking out under CPR, r. 3.4(2) (a), is appropriate according to Potter LJ in **Partco Group Ltd v Wragg**[7], include:

> (a) "where the statement of case raises an unwinnable case where continuing the proceedings is without any possible benefit to the respondent and would waste resources on both sides (Harris v Bolt Burdon [2000] CPLR 9); and
>
> (b) where the statement of case does not raise a valid claim or defence as a matter of law (Price Meats ltd v Barclays Bank plc [2000] 2 All ER (Comm) 346)."

[20] The learned authors of Blackstone add that a cause of action that is unknown to the law will be struck out such as a claim alleging abuse of civil proceedings (Ustimenko v Prescot Management Co. Ltd. [2007] EWHC 1853 (QB), LTL 20/8/2007). A statement of case ought also to be struck out if the facts set out do not constitute the cause of action or defence alleged, or if the relief sought would not be ordered by the court.

[21] In the instant case, the facts pleaded by the Claimant are that the Notice was given by the Defendant bank that his accounts would be closed; the Claimant sought an extension of time of one month from the Defendant, and that extension was granted. Thereafter, the accounts were closed. The submission of Learned Counsel for the Claimant is that the cause of action arose when the Defendant bank closed the Claimant's account on the 28th December, 2011. Counsel contends that "this in and of itself is a breach of contract, because the Claimant did not breach any laws or regulations pertaining to his account or relationship to the Defendant."

[22] With respect, I have to disagree with the submission of Learned Counsel for the Claimant. The classic description of the contract constituted by the relation of banker and customer is that of Atkin LJ in **Joachimson v Swiss Bank Corporation** (supra):-

---

[5] [2000] L.T. L Jan. 19, 2000, CA.
[6] Page 474. Para. 33.8
[7] [2002] EWCA Civ 594, [2002] 2 Lloyd's Rep 343, at [46]

"The bank undertakes to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, **it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice**. The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery....." (my emphasis)

[23] According to Paget's Law of Banking, 13th edition, page 153, paragraph 7.13:-

"The relationship (between banker and customer) may terminate:

i). by agreement between the parties;

ii). by unilateral act, as where the customer or the banker gives notice to terminate; or

iii). by death of the customer."

[24] Chitty on Contracts – Volume 11, page 416, paragraph 34-307 states:-

"The customer is, usually, entitled to bring the relationship of banker and customer to an end at any time. In the case of a current account he can do so by demanding payment of the outstanding balance. In the case of a deposit account, however, the banker is usually entitled to notice. **The banker is not entitled to close the customer's account without giving reasonable notice.**" (my emphasis)

[25] The law is therefore settled that a bank may terminate its relationship with a customer, whether in credit or not, provided that it gives the customer reasonable notice of its intention to close the account. The Privy Council decision of **National Commercial Bank of Jamaica v Olint Corp. Ltd**[8], re-inforced that position. In that case, Lord Hoffman stated: "in the absence of express contrary agreement or statutory impediment, a contract by a bank to provide banking services to a customer is terminable upon reasonable notice." Such notice, according to Paget (supra) "must be adequate to enable the customer to make other banking arrangements." What is reasonable notice will depend on the circumstances of each particular case. In the case of Prosperity Ltd. V Lloyds Bank Limited (supra), relied upon by both Counsel, Mr. Justice Cardie

[8] [2009] UKPC 16

stated that there might be special arrangements between the banker and the customer as to what notice would be required. In the case at bar, it is not pleaded that any such special arrangements existed between the Claimant and the Defendant bank.

[26] What is pleaded by the Claimant in the instant case is that the bank gave the Claimant one month's notice. The Claimant requested an extension of an additional month. These are the facts set out in the Claimant's Statement of Claim in relation to the closure of his accounts. The Claimant does not plead that there was an express agreement or statutory impediment which governed how his accounts with the Defendant bank should be terminated. Further, in the view of the Court, the fact that it is the Claimant himself who requested an extension of time from the bank and stipulated the period of extension, namely, an additional month, obviates the need for the Court to inquire as to the reasonableness or the sufficiency of the notice.

[27] The Claimant's Statement of Claim does not allege that the Defendant failed to give him reasonable notice; it does not allege that the Defendant failed to give him sufficient notice. What the Claimant alleges is that the Defendant's act of closing the Claimant's account is a breach of contract. The law and the authorities do not support the Claimant's contention. As stated above, a statement of case will be struck if the facts set out do not constitute the cause of action - or defence - alleged. A claim will also be struck out if there is no reasonable cause of action. In **Taylor v Inntrepreneur Estates (CPC) Ltd**[9] the claimant brought a claim seeking a declaration that a lease agreement had come into force, damages for breach of the lease, and damages for misrepresentation resulting from having entered into the alleged lease. On the documents it was clear that throughout the parties had negotiated on a 'subject to contract' basis. It was held that as no written agreement had been signed, no lease had been entered into. It followed that there was no reasonable cause of action, and the claim was struck out. (See Blackstone (supra)).

[28] In considering the Defendant's application to strike out the Claimant's Statement of Claim, I am mindful that the Court's jurisdiction to strike out is to be used "sparingly". I

[9] (2001) LTL 7/2/2001

am also mindful that the power of the Court in every application must be exercised in accordance with the overriding objective of dealing with cases justly. I am also required to consider whether the case involves a substantial point of law which does not admit of a plain and obvious answer; or whether the case involves an area of law which is developing.

[29] In light of the above, and applying the relevant principles of law to the facts pleaded by the Claimant, I am of the view that, in the circumstances, the instant case is an appropriate one for the exercise of the Court's power to strike out. The facts as pleaded, even if accepted as true, do not, as a matter of law, give rise to a cause of action. The facts as stated do not disclose a legally recognizable claim against the Defendant.

My ORDER is as follows:-

1. The Defendant's application dated the 1st day of March 2012 is hereby granted.
2. The Claim filed herein by the Claimant is dismissed.
3. The Claimant is to pay to the Defendant costs in the sum of $ 2,500.00

JENNIFER A. REMY
High Court Judge