

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2005/0306

BETWEEN:

SUNTAN GARMENTS

Claimant

and

VANELS
GRENADA CO-OPERATIVE BANK

Defendants

Appearances:

Ms. Kim George for the Claimant

Ms. Anyika Johnson and Ms. Debra St. Bernard for the Second Named Defendant

2014: April 8;
May 29.

REASONS IN ORAL RULING

[1] **MOHAMMED, J.:** On the 9th May 2013 I appointed Michael Archibald as the expert witness ("the expert") in this matter on the basis that the expert witness Ms. Lera Gooding who had filed a witness statement in this matter could no longer be an expert since she was employed by the Grenada Co-operative Bank ("the Bank") subsequent to the filing of her witness statement.

[2] A dispute has arisen amongst the parties as to the appropriateness of the following two questions which the Bank wishes to put to the expert, namely:

(a) What are the International Chamber of Commerce ("ICC") procedures for bills and collections?

(b) Whether on the face of the sight drafts exhibited to the Statement of Claim, they contain all the information to show that they were issued by Exim Bank of Trinidad and Tobago.

[3] The Claimant's position is that the questions are irrelevant to the resolution of the issues to be determined at the trial and their inclusion would result in prejudice to the Claimant.

[4] The Bank's position is they are relevant to one of the issues to be determined in the substantive action, which is whether the Bank received the shipping documents and Bills of Exchange which the Claimant asserts. It has also submitted that the said questions were put to the previous expert Lera Gooding without objection from the Claimant, and its only witness Mr. Denby De Freitas passed away in January 2012.

[5] Part 32 CPR governs Experts and Assessors. CPR 32.2 states that "Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly". CPR 32.3 further states that "It is the duty of the expert to help the court impartially on the matters relevant to his or her expertise." And CPR 32.4 states: "An expert witness must provide independent assistance to the court by way of objective unbiased opinion in relation to matters within the witness' expertise." I agree with Counsel for the Claimant that the CPR do not prescribe factors which the Court ought to consider in determining whether to disallow certain question to be put to an expert.

[6] In March 2013, the Court of Appeal of Trinidad and Tobago in **Christianne Kelsick v Dr. Ajit Kuruvilla and Ors** ¹ examined the issues of whether a Court should grant permission for expert evidence and what evidence the expert should be allowed to give. Jamadar JA who delivered the decision of the Court stated at paragraph 11:

¹ Civil Appeal P 277 of 2012

“In summary, for expert evidence to be appropriate in light of CPR 1998, and for permission to be granted to use it, that evidence ought to be relevant to matters in dispute, reasonably required to resolve the proceedings and the proposed expert must be impartial and independent and have expertise and experience which is relevant to the issues to be decided. In addition, the use of expert evidence must also be proportionate in light of the factors set out in Part 1.1, CPR, 1998. Economic considerations, fairness, prejudice, bona fides and due administration of justice are always matters that may have to be considered depending on the circumstances of each case.” (Emphasis mine)

- [7] The Court went on to caution at paragraph 12 that:
- “To ensure that there is no uncertainty we wish to clarify that the above factors are not to be understood as hurdles to be cleared when considering whether to grant permission for expert evidence. They are intended to function as guidelines to assist the court in determining whether to grant permission.”
- [8] The impartiality of the expert is not in dispute. I agree with the guidelines in **Christianne Kelsick** that the questions which ought to be put to the expert must be relevant to the issues to be determined and reasonably required to assist the Court to determine the issues.
- [9] The Claimant’s claim against Vanels is for breach of contract, and against the Bank is for negligence with an alternative relief of US \$112,502.11. Its case is there was an agreement between the Claimant and Vanels for the provision by the Claimant to Vanels of a quantity of cotton T-shirts and flags (“goods”). It claims that it was also agreed that the goods would be consigned to the Bank, which was Vanels’ bankers at that time. There were certain conditions specified in the shipping documents for delivery and the Bank as consignee was to procure and arrange for payment to the Claimant for the goods before delivery to Vanels.
- [10] In Vanels’ Defence it admits the agreement, the shipment of the goods and receipt of the goods without it having made payment. At paragraph 6 of its Defence it

stated that the airway bills for the three shipments were stamped by an officer of the Bank and released to a representative of Vanel, who subsequently took possession of the goods.

[11] The Bank has denied any involvement in this arrangement with the Claimant and Vanel. Its pleaded case is the first time it became aware of this matter was when it was served with the Claim. At paragraph 8 of its Defence it denied receiving any shipping documents from the Claimant or its bankers, as is the normal procedure when banks act as consignee. At paragraph 9 it denied receiving any tracers or reminders from the Claimant or its Bankers concerning outstanding payments for the shipments, as is the normal procedure when banks act as consignee and payments remain outstanding. I understand the Bank's defence to be that it carried no responsibility in this transaction since it was no way involved.

[12] After the Bank filed its Defence, Vanel named the officer of the Bank who was involved in the transaction to be Florence Williams. However, the Bank maintained its denial and did not address the role of its officer, Florence Williams.

[13] In reply to the Bank's denial, the Claimant pleaded details of meetings and other dealings between Mr. Ramesh Maharaj, representative of the Claimant, Mr. Nelson Louison, representative of Vanel and the Bank's employee Florence Williams to demonstrate the Bank's involvement in the transaction.

- [14] In my view the issues of fact for determination arising from the pleadings are:
- (a) What were the terms of the agreement between the Claimant and Vanel for the supply of the goods?
 - (b) Did the Claimant's representative Ramesh Maharaj, and Vanel's representative Nelson Louison meet with and had communications with Florence Williams, the servant and/or agent of the Bank in relation to the supply of and payment of the goods, and if so, what were the terms of their discussions?

- (c) Did the Bank either through its servant and/or agent Florence Williams or otherwise, come into possession of certain airway bills and bills of exchange in relation to the goods?
- (d) Did the Bank through its servant and/or agent Florence Williams stamp and deliver to the Vanel's representative, Nelson Louison, the said airway bills without having the said Nelson Louison accept the bills of exchange?

[15] The issues of law to be determined are:

- (a) Whether Vanel's breached the contract by failing to pay the Claimant for the goods.
- (b) Whether the Bank owed a duty of care to the Claimant in respect of the delivery of the said airway bills to Vanel's.
- (c) Whether the Bank, through its servant and/or agent Florence Williams, negligently delivered the said airway bills to Vanel's.
- (d) Whether the Claimant should be compensated for the breaches by Vanel's and the Bank as pleaded or at all.

[16] It is not in dispute that the area of banking is a specialized area outside the Court's expertise. The role of the expert is limited to provide expert evidence to assist the Court in matters outside of the Court's knowledge which are relevant to the issues for determination. The issue of whether the Bank received the shipping documents and airway bills is a question of fact to be determined by the Court.

[17] With respect to the first question, there is no pleading that the Bank is a member of the International Chamber of Commerce ("the ICC") and that it is bound to its rules and procedures, so there is no basis for injecting the ICC into this matter. In my view any evidence on the ICC rules and procedures would not assist the Court in determining any of the issues in this matter since the ICC rules and procedures do not translate into the Bank's banking practice since it did not plead that it was bound by the ICC rules and procedures. For these reasons the first question is not allowed.

[18] With respect to the second question, the Defendant's defence is the shipping documents never came into its possession. The Claimant's case is that they were received by Florence Williams, servant and/or agent of the Bank. The Bank never made the form of the Exim Bank documents an issue and therefore any evidence to determine whether the Exim Bank documents contained information to show that they were issued by Exim Bank is irrelevant since this is not an issue for determination based on the pleaded case. The second question is not allowed.

[19] I therefore do not allow the two questions.

[20] The costs of the application are costs in the cause. The expert to file his witness statement on or before 8th July 2014. Trial Bundle to be filed 25th September 2014. Status hearing for 9th October, 2014.

Margaret Y. Mohammed
High Court Judge