

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

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2005/0514

BETWEEN:

CARIBBEAN AGRO INDUSTRIES LIMITED

Claimant/Counter

and

ISAAC N. PETERS
(Trading as "I. N. PETERS")

Defendant/Counter

Appearances:

Ms. Sheriva Lewis for the Claimant/Counter Defendant
Mr. Anslem Clouden for the Defendant/Counter Claimant

2015: March 4;
April 1.

JUDGMENT

- [1] **ASTAPHAN, Q.C., J.:** On 25th November 2005 the Claimant/Counter Defendant, Caribbean Agro- Industries Limited, (hereinafter referred to as "**Agro**") filed a Claim Form and a Statement of Claim against the Defendant/Counter Claimant, Isaac N. Peters (hereinafter called "**Peters**").
- [2] In the Claim Form Agro claimed the sum of EC\$85,364.32 as being monies due and owing to it from Peters for goods supplied to, or on account of, Peters on credit, together with interest thereon at the rate of 12% per annum from 31st December 2003 until payment, court fees of \$125.00, legal practitioners' fixed costs on issue of \$1,500.00, and the unexplained sum of \$19,445.58 - presumably, but not said to be, interest calculated on the sum claimed as debt, from 31st December 2003, to the date of the claim.

- [3] The total sum claimed on the Claim Form is therefore \$106,434.90.
- [4] The Statement of Claim, however, claims the sum of EC\$85,364.32 as the debt, together with interest thereon at the rate of 12% per annum from 31st December 2003 until payment, and costs in an unstated amount.
- [5] Peters has admitted, in paragraph 2 of his Defence, to "...owing the sum mentioned ... (in) paragraph 9 of the Statement of Claim ..." What is "... the sum mentioned ... (in) paragraph 9 of the Statement of Claim ..."?
- [6] Paragraph 9 of the Statement of Claim states that "[by] letter dated 11th November 2002, the Defendant wrote to the Claimant admitting that *at that date*, the sum of EC\$73,000.00 was due and owing to the Claimant and indicated his willingness to pay off the outstanding amount by monthly installments of EC\$5,000.00 from 30th October 2002, until liquidation of the debt to the Claimant." [Italics supplied].
- [7] In paragraph 4 of his Defence Peters requires Agro to prove the sum claimed in paragraphs 12 to 14 of the Statement of Claim; namely EC\$85,364.32.
- [8] Nowhere in the Claim Form, the Statement of Claim, nor the Reply to Defence and Defence to Counterclaim does Agro set out any particulars as to how the debt increased from EC\$73,000.00 to EC\$85,364.32.
- [9] Nowhere in the Witness Statements of the two witnesses for Agro in this case, Ms. Theresa Calliste (at the material time the Financial Controller of Agro, [vide page 20 of the Trial Bundle]), or Mr. Cecil Hypolite (currently Managing Director of Agro, and at the material time General Manager of Agro [vide page 22 of the Trial Bundle]), do they set out how Agro arrived at the sum of EC\$85,364.32.
- [10] Neither Ms. Calliste nor Mr. Hypolite, in their oral evidence before the Court, whether in evidence-in-chief, cross-examination, or re-examination, gave any evidence as to how the sum due had moved from EC\$73,000.00 to EC\$85,364.32.
- [11] Further, while it is true that the List of Documents at pages 46 to 50 contained five pages of documents headed, inter alia, "***** STATEMENT*****", no evidence was

lead during the trial to provide the Court with an understanding of, or to amplify the contents of the said documents. More will be said later in this judgment about the contents of the list of documents.

- [12] There is therefore no evidence before me to prove, on the balance of probabilities, the sum of EC\$85,364.32 as being the then sum due and payable to Agro from Peters – to which proof Agro was put by Peters in paragraph 4 of his Defence.
- [13] Peters has admitted owing EC\$73,000.00 to Agro (paragraph 2 of his defence) and judgment will be entered on that admission in that sum, Agro having failed to prove to the satisfaction of this Court the sum of EC\$85,364.32 as the debt owed to it by Peters.
- [14] Court fees of \$125.00 are awarded to Agro.
- [15] The Claim for legal practitioner's fixed costs of \$1,500.00 has lapsed, the matter having gone to trial. Agro shall have its costs based on prescribed costs as set out below.
- [16] Interest on the sum of \$73,000.00 at the credit agreement contractual rate of 1.5% per month - i.e. 18% per annum - shall be paid from 1st January 2004, to 25th November 2005, being the date on which the claim was filed.
- [17] Interest at the statutory rate of 6% per annum shall be paid on that total, namely, the said \$73,000.00, plus the interest calculated up to 25th November 2005, from the date of this judgment until payment.
- [18] The Registrar of the Supreme Court, Grenada, shall calculate the interest as directed in paragraph [15] above and shall certify same within 7 days of the date of this judgment.
- [19] Agro shall have, and are hereby awarded prescribed costs calculated on the sum certified by the Registrar, namely the total of EC\$73,000.00, plus interest at the rate of 18% per annum from 1st January 2004 to 25th November 2005. The Registrar of

the Supreme Court of Grenada is to certify those prescribed costs within 7 days of the date of this judgment.

- [20] Peters, in his Counterclaim, set out as the basis for his claim an alleged written agreement made in December, 1983 between Agro and himself. I assume he means his predecessor Company "Target International Supplies Limited" which did business with Agro until the letter of 13th January, 1998, which informed Agro that "...TARGET INTERNATIONAL SUPPLIES LIMITED IS NOW UNDER THE NAME OF I. N. PETERS EFFECTIVE FROM 1st JANUARY 1998. FOR YOUR INFORMATION ALL PROPERTIES ETC. IS NOW UNDER THE NAME OF I. N. PETERS WHO WOULD BE RESPONSIBLE FOR ALL FUTURE TRANSACTIONS." [Sic. and caps in original]
- [21] Peters alleges at paragraph 7 of his Defence and Counterclaim that by this agreement he was contracted by Agro "... to be one of two agents for the exclusive distribution of Supreme Brand Flour for the local wholesale market."
- [22] At paragraph 8 Peters alleges that "[it] was a term of the contract that wholesalers would not purchase their supplies from [Agro] but only from the agents." (I am at this point constrained to state that it is rather curious, at best, that an alleged term of an alleged contract purports to oblige 'purchasers' who are not parties to the said contract, "... not to purchase their supplies from [Agro] but only from the agents", one of whom was Peters. It would have been less curious were the alleged term one that prohibited Agro from selling Supreme Brand Flour to wholesalers; that only the agents were permitted to do so. But, that is not what Peters has alleged the term to be.)
- [23] Peters further alleges at paragraph 9 of his Defence and Counterclaim that by virtue of a term in the alleged agreement he "... would be entitled to a margin of 5% to be obtained by increasing the price of the flour by 5% when selling it to customers."
- [24] Peters states at paragraph 10 that "[in] execution of the contract between the parties, [he] began selling 100 pound bags of flour supplied by [Agro] on or about

January 3, 1985.” In his Witness Statement Peter says that in 1993 Agro began to produce 25 pound bags and 2 pound bags of flour “... of which we were also distributors.” [Paragraph 4 of his witness statement at page 25 of the Trial Bundle.]

[25] It is Peters’ claim at paragraph 11 that “... in breach of the terms of the contract [Agro] began selling flour directly to several wholesalers in 1993 thus causing loss of business and loss of profits to [him]”. He states further that his “... losses steadily increased until October 2002 when [his] largest customer... was supplied directly by [Agro] in further breach of the contract.”

[26] Peters claims that as a consequence of the aforesaid breach of the alleged contract he suffered loss of profits for the years 2000 to 2006 “... to be not less than EC\$490,000.00.” [Paragraph 14 of the Counterclaim].

[27] In his Witness Statement Peters states that in December 1984 he “...agreed with [Agro] on the terms of a written contract.” He claims that that written agreement “...was executed by [Agro] through one Mr. Earnest Baumgartner who was its then Managing Director, and on the basis of that agreement his company was made “...the main distributor of Supreme Flour for [Agro] in Grenada.”

[28] “Unfortunately”, says Peters at paragraph 2 of his Witness Statement, “this written agreement was burnt when my home was completely destroyed by fire in April 1996.” A most tragic event, as we shall see later on in this judgment.

[29] It is on that alleged 1984 written agreement, allegedly destroyed in a fire in 1996, that Peters’ Counterclaim is pleaded.

[30] At paragraph 14 of the Defence and Counterclaim Peters claims that, “As a result of the matters set out above, the Defendant [Peters] has suffered loss and damage.” It is trite law that particulars of loss and damage, where Special Damages are being sought, like in this case, must be specifically pleaded and proved.

[31] What then is pleaded in paragraph 14 as the Particulars of Loss and Damage so suffered?

"PARTICULARS

The Defendant [Peters] estimates the loss of profits for the years 2000 to 2006, on account of the actions of the Claimant, [Agro] to be not less than EC\$490,000.00."

[32] Clearly that does not comply with the requirement of specificity in pleading Special Damages, for it is but a mere broad, non-specific statement of estimated loss. There is a reason why Special Damages must be specifically pleaded; it is to alert the Defendant [and the Court] of the specifics of the loss claimed to have been suffered in consequence of the Defendant's breach, because Special Damages, unlike General Damages, are not 'at large'. They are specific and ascertainable, and must be pleaded with specificity. In a claim for Special Damages the Claimant is telling the Defendant and the Court that, 'as a result of the Defendant's actions I have arrived at that specific sum'. It provides the Defendant with the opportunity to examine the sum claimed, as well as its component parts, with a view to being properly able to respond to the allegation of that specific ascertainable loss which is claimed to have resulted from his act or omission.

[33] Paragraph 14 of the Defence and Counterclaim fails to do so and, as such, it cannot be the basis of an award of Special Damages.

[34] At the trial of this matter – in fact on re-examination by his Counsel - Peters tendered a one page typed document entitled "Sales" to support his claim for Special Damages. While it was clear that the basic requirements for its admissibility were not faithfully met, the Court permitted its admission. Nevertheless, this document fails to prove, whether directly or indirectly, any alleged breach of any alleged agreement between the parties.

- [35] The document, "I.N.P. 1", contains in its left side a column setting out the years 1985 to 2002, and opposite to each year, on its right side, a column with figures each of which is aligned to a year opposite.
- [36] "I.N.P.1" shows a steady decline in the alleged sales figures starting at the year 1993, and continuing to the year 2002.
- [37] While it is true that there is a coincidence in year as to when the alleged decline in sales began and when Agro is alleged to have, in breach of the alleged written agreement, began selling flour directly to wholesalers, there is nothing to show that the stated declines were not attributable to other factors or circumstances, or, that they were, wholly or in part, a direct or indirect result of the actions of Agro. No oral evidence was lead to do so.
- [38] Further, there is nothing at all to undergird the said figures, and when in cross-examination Peters was asked of their genesis, he stated that the figures were taken from Ledgers. These "ledgers" have not formed a part of these proceedings, and have not been referred to in the Claimant's Counterclaim as is required by the Civil Procedure Rules Part 8.7(3), or in his, or any of his witnesses', Witness Statements at all. They were not the subject of disclosure. The very first time these alleged "Ledgers" made their appearance - 'Stage Left'- was in Peters' re-examination when Mr. Clouden sought to, and had admitted, "I.N.P.1".
- [39] On that basis alone, the Court will not allow the Special Damages claimed, for not only have they not been pleaded, they have not been proved at all.
- [40] That, however, is not the end of the matter because before Damages are to be finally considered, Peters must first prove the alleged written agreement upon which his Counterclaim is based and the alleged breach or breaches of that agreement which give rise to the Damages claimed.

'THE TALISMAN'

[41] During the course of the trial of this matter, Mr. Anslem Clouden, Counsel for Peters, informed the Court on more than one occasion that the Defendant/Counterclaimant was no longer relying on the alleged 1983 written agreement. In fact, in his oral submissions Mr. Clouden stated the position thusly:

“Claimant [Agro] contends that there was no written agreement; they couldn't find one upon diligent search. We are not relying on the alleged written agreement; the terms cannot be spelled out; the document cannot be found. What we are relying on, as is set out in paragraph 6 of our Submissions, is the assignment of contractual liability which we consider to be a new contract. It [the 'new contract'] does not require 'consideration'; it requires acceptance by the Creditor.

[42] We submit that the 'Beacon Light of Hope' that exposes the nature of the dealings with the parties rest with the letter of November 12, 2002 written by Mr. Hypolite, where he is literally admitting the existence of the written agreement, subject to seeing it.

[43] It is submitted that the parties acted as though there was in existence some agreement that regulated the conduct and dealings of the party. Unfortunately, that agreement cannot be produced so we are not aware of its terms and we cannot rely on it.”

[44] A dispositive concession, if ever there was one.

[45] Mr. Clouden, with this dainty and delicate pirouette, brings to mind the great Ballet dancer Vaslav Nijinsky, as 'Vayou' in Nikolai Legat's revival of Marius Petipa's 'The Talisman', so perfectly executed was his about face on the alleged written agreement, all in the space of one paragraph of his oral submission. The "Beacon Light of Hope" being the letter of 12th November 2002, wherein Mr. Hypolite [Agro] allegedly admits the existence of that written agreement which forms the basis of

the 'new' alleged agreement, but, 'we are not relying on it', the written agreement. Like any good Captain in the Carriacou Regatta would, Mr. Clouden is, on his case, obliged to tack from Port to Starboard, depending on the change of winds - or in this case, written agreement?, or no written agreement? Unfortunately, the suffering of the 'slings and arrows of outrageous fortunes' of his client's ever-shifting case, from time to time transformed Mr. Clouden, whom, it must be stated, made a valiant effort with the little available to him, into a veritable 'Captain Nijinsky'.

[46] Mr. Clouden's reference to the letter of Mr. Hypolite is of major importance to the 'revised' case of the Counterclaimant, so it becomes necessary to address that letter at this stage.

[47] That letter of 12th November 2002 is a letter in reply to a letter received by Agro from Peters dated 11th November 2002. Neither letter was tendered for admission as an exhibit in this case. Further, there is nothing on file to indicate that the Documents filed with the Lists of Documents in this case are 'Agreed' or 'Not Agreed', and, in the absence of such delineation, I will assume, without deciding, that they were indeed 'Agreed Documents', and are therefore deemed to have been admitted by consent.

[48] But, in any event, Mr. Hypolite's letter does not admit of the existence of the written agreement alleged in Peter's letter to govern the relationship between the parties, as was submitted by Mr. Clouden. What Mr. Hypolite says is that, in reference to the said alleged written agreement, they [Agro] had not been able to find any such agreement, and they would be grateful to have received a copy to honour its terms, and he requested a copy be supplied by Peters. In that context, Mr. Hypolite offered Agro's apologies for any inconveniences which may have been caused by the sale of flour by Agro directly to the customers.

[49] I find as a fact that the above communications of Mr. Hypolite do not constitute an admission or acceptance of the existence of the alleged written agreement, which, in any event, Peters has abandoned as the basis for his counterclaim.

THE VIVA VOCE EVIDENCE

[50] Mr. Peters gave evidence. I observed his demeanour closely. I am not satisfied that he was at all times forthcoming with the Court. I got the distinct impression that he was 'playing the ball off the pitch', to use a cricketing metaphor.

[51] He insisted that there was the written agreement which he says perished in a fire at his home. He said that he had Ledgers for his business which are with his Counsel, Mr. Clouden. He did not offer any explanation to the Court as to why the alleged written agreement was at his home while the Ledgers and accounts were not. It is, at the very least, curious that the one important bit of documentary evidence upon which he based his claim would have been at his home, while other equally important business documents were not; or, if they were, why they too had not met their demise alongside the 'written agreement'. The Ledgers are not in evidence. They were not disclosed. They form no part of this case.

[52] He said he lost money as a result of the breach of the disavowed written agreement. Yet, on cross-examination he answered a question from Ms. Lewis thus:

“Q: At what point did you notice that the business finances began to decline?”

A: My business finances did not decline.

Q: Didn't you tell the Court that your business finances began to decline in 1993?”

A: No, I did not say that.

Q: You say in your Witness Statement that sales began to decline in 1993?”

A: I said that.”

[53] One would not be faulted if one were to conclude that if one's sales begin to decline so too would your business finances, if your business was one of selling goods, as clearly was Peters' business as a wholesaler. This I find to be a distinction without a difference, in particular because Peters does not say that 'sales' means only sales of flour, so it must be assumed that he is speaking of all sales. And, if all sales decline, it should follow axiomatically that the business' finances would decline accordingly. Given that there is no evidence to explain the alleged distinction sought to be introduced by Peters, I find as a fact that, for present purposes, there is no distinction between sales and finances.

[54] And yet, despite the insistence that his business finances did not decline when sales allegedly began to decline in 1993, Peters alleges that in consequence of Agro selling flour directly to customers, he lost "...not less than EC\$490,000.00".

[55] As stated earlier, there is no evidence before this Court upon which a finding of Special Damages can be made. But, even if there was such evidence of Loss, there is no evidence to prove a causal link between that loss and Agro's conduct, to the exclusion of any other cause or causes.

[56] After getting Peters to accept that he did not bring an action against, or write a letter to Agro complaining about the alleged breach of the alleged written agreement in the years 1993 - 1999, 2000 - 2002, the following exchange took place between Ms. Lewis and Peters:

Ms. Lewis:

Q: *"It is only after receiving numerous requests by the Claimant for payment of money that you owed them that you wrote to the Claimant about the alleged breach?"*

Mr. Peters:

A: *I admitted that I owed them and it was my opinion that they would give me back the flour and I wrote them when I saw they did not, on 11th November 2002, when I heard they were selling the flour to all my people.*

Q: *This was the first mention of an alleged breach of a written contract?*

A: *I don't agree with that.*

Q: *Do you have any evidence that you mentioned the written contract or alleged breach? Put in evidence to the Court?*

A: *I put it in my witness statement.*

Q: *If it was accepted that there was a written contract which was breached, it would mean that you did nothing while you continued to lose sales?*

A: *It was my intention that [Agro] would resort to giving my customers back to me." [Italics supplied].*

[57] It is to be noted that in relation to the year 1994, Mr. Peters claimed that he "called them and they apologized. I did not make a big issue about it". In relation to 1998 Mr. Peters claimed that he "...discussed it with them." And in relation to the years 1999, 2000, 2001 and 2002 he did nothing "...because I think I was treating them as a gentleman."

[58] The above exchanges lead this Court to the conclusion, having closely observed Mr. Peters demeanour in the witness box, that Mr. Peters was not being candid with respect to the alleged existence of the written agreement. The answers given by Mr. Peters do not for a moment resemble the conduct of a person who was fortified in the factual belief that there was indeed in existence a written agreement which was being violated. I so find as a fact.

[59] Notwithstanding Peters' Counsel abandoning the alleged written agreement as the basis for the Counterclaim, I find as a fact that Peters has failed to prove to the satisfaction of this Court, on the balance of probability, that such an agreement did in fact exist.

NOVATION: A NEW CONTRACT?

[60] In their written Submissions filed 2nd March 2015, Peters, for the very first time, raised the allegation of the existence of a new Contract by way of Novation.

[61] Briefly, they say that the letter of January 1998 wherein Target International informed Agro that from thence business would be conducted under the name of 'I.N. Peters' with "...ALL PROPERTIES ETC IS NOW UNDER THE NAME OF I N PETERS WHO WOULD BE RESPONSIBLE FOR ALL FUTURE TRANSACTIONS.", coupled with Agro continuing to do business with Peters, constitute a Novation of the alleged written agreement – which alleged written agreement was expressly abandoned in the course of the trial by Peters.

[62] I am forced to dispose of this argument summarily, given the relevant Law.

[63] Lord Selborne, LC in **Scarf v Jardine** [1882] 7 Appeal Cases 345 at 351 defines 'Novation' as follows"

"Novation ... as I understand it means... that there being a contract in existence some new contract is substituted for it, either between the same parties [for that might be] or between different parties; the consideration mutually being the discharge of the old contract."

[64] Peters having abandoned the proof of the allegation of the existence of the written agreement of 1984, it cannot be the basis of a novation in 1998, as there would exist nothing for which the 'new contract can be substituted - no mutual consideration of the discharge of the old contract. And if there is no "... contract in existence ..." there can be no 'Novation'. I so hold.

WAS THERE ANY AGREEMENT BETWEEN THE PARTIES?

[65] The answer to this question, though moot, is 'Yes', as both parties admit to there being in existence a credit agreement between them, initially for a credit limit of \$50,000.00, subsequently increased to \$75,000.00.

[66] It is 'moot' because it forms the basis of Agro's Claim against Peters in debt, which Peters admitted.

[67] Despite Mr. Clouden's gallant efforts to mutate this agreement into a creature comprised of it, and 'the ghost of alleged written agreements past' - which pirouette failed - the fact is that this agreement was nothing but a Credit Agreement between the parties, and I so hold.

THE WITNESSES

[68] I have not in this Judgment set out the evidence tendered by the witnesses for either side, save for Mr. Peters. I did not think it necessary to do so as the matter can be disposed of on the basis of the foregoing, and because all of Peters' witnesses were witnesses to the alleged existence of the abandoned agreement.

[69] However, for the sake of completeness I shall now briefly address the witnesses, other than Mr. Peters, and their evidence.

FOR PETERS

[70] Mr. Andrew De Gale: Mr. De Gale in his witness statement said that from about November 1987 his business were buying 100lb bags of flour from Target/Peters whom "... we understood and believed to be the agent for Supreme Flour for the Claimant ..."

[71] Mr. De Gale did not say (a) whom the 'We' he referred to were, and (b) what the source and basis of their understanding and belief was. He did not say so in cross-examination, and Mr. Clouden declined to re-examine him.

[72] That evidence, such as it is, is of no assistance to the Court.

- [73] Mr. De Gale did give evidence about his company buying flour from Peters up to 2002 when they began to buy flour directly from Agro. He spoke of a conversation between himself and Mr. Peters where Mr. Peters informed him that he had observed that De Gale was buying flour directly from Agro and that Peters was 'very shocked as he has an agreement with [Agro] and [Agro] has all right to notify him [Peters] in advance of such decision" [Witness Statement para 6].
- [74] That evidence does not assist Peters, if only because Peters has abandoned the alleged written agreement.
- [75] Ms. Joan Walker: Ms. Walker had proffered a witness statement.
- [76] At the trial she was absent. Mr. Clouden said that she resides in the United States and "inclement weather' dictated her absence from Court.
- [77] He applied for her witness statement to be admitted, and it was admitted subject to the excision of hearsay, and the Court giving it what weight it warranted in the circumstances, particularly where it was not subjected to the vigours of cross-examination.
- [78] Ms. Walker said that in or about 1985 the Family-owned company began buying 100lb bags of Supreme Flour from Target/Peters.
- [79] She states that early in 1992 she and her husband decided to approach Agro to request that they purchase directly from Agro since they were buying such large quantities of flour.
- [80] She further claims that in or about December 1992 they again approached Agro with the same request but Agro "...insisted that Target [Peters] was their Agent and that we would still have to continue buying from them. However, they told us that we could buy a new brand they were introducing, which is Bakers Choice. We

agreed and we have continued to purchase that brand from them since.”
[paragraphs 2, 4 & 5 of the witness statement].

[81] She was not present, so she was not cross-examined and I was unable to observe her demeanour to assist in the assessment of her credibility. I therefore can assign very little, to no weight to her evidence.

AGRO'S WITNESSES

[82] Mr. Cecil Hypolite, Commercial Manager of Agro: He stated that he was not aware of the existence of any agreement with Peters, as alleged. The only agreement of which he was aware was the Credit Agreement for which he authorized the Limit to be increased to \$75,000.00.

[83] He stated that he had no conversations with Ms. Walker and/or her husband concerning them purchasing Supreme Flour directly from Agro, or about them purchasing 'Bakers Choice Flour' from Agro.

[84] Mr. Hypolite stated that he has no knowledge of any person in Agro having any conversation with Ms. Walker and/ or her husband with respect to Target/Peters being the Agent of Agro.

[85] He stated that he was unaware of there being any written agreement as Peters alleged and, if there was in fact any such agreement, he would have been aware of it. He was, at the relevant time, General Manager with responsibility for the Operations of Agro.

[86] Mr. Hypolite said that he is not aware of Agro giving any entity exclusive distribution of Supreme Brand Flour, and that, as General Manager then, and Commercial Manager now he would have been aware.

[87] Mr. Hypolite was extensively and vigorously cross-examined by Mr. Clouden. He denied that Peters' was ever an Agent/ Distributor for Agro. He admitted that in

Peters application for Credit, Peters/Target's 'occupation' was listed as 'Agent/Distributor' but stated that that was the nature of the business carried on by Target/Peters for other companies, not for Agro.

[88] He admitted that Peters, like others, was a distributor of Agro's flour, but insisted that Peters was never an Agent. He said that Agro had "...no special arrangement with ..." Peters.

[89] Throughout his evidence he maintained that there was no written agreement with Peters, and there was no 'special arrangement' with Peters, except for the Credit Agreement for which he said Peters qualified.

[90] Ms. Theresa Calliste: Ms. Calliste stated that at all material times she was Financial Controller for Agro, but that she no longer works there – since November 2013.

[91] She said that when in April 1983 she began to work with Agro, Target/Peters was a customer.

[92] She did not know Mr. or Mrs. Walker until the Mediation in this case, although she knew of their business entity conducting business with Agro.

[93] She never had a conversation with either of them.

[94] She is not aware of the existence of the alleged written contract, and if one existed, she would have known. She searched the files for such a contract when Peters alleged its existence but could not find a copy.

[95] Ms. Calliste said that Agro never gave exclusive distribution of flour to any customer.

[96] Ms. Calliste was cross-examined by Mr. Clouden. She made it clear that:

- (a) there was no written agreement;
- (b) the only agreement in existence between Peters and Agro was the Credit agreement;
- (c) that Peters, like other wholesalers, was a distributor and not an Agent;
- (d) there was no 'special arrangement' with Peters;
- (e) there were other wholesalers to whom Agro sold flour, and at least one other wholesaler who had applied for, and was granted a Credit Agreement like Peters.

FINDINGS OF FACT ON THE EVIDENCE

- [97] I give no weight to the evidence of Ms. Walker for the reasons stated.
- [98] Likewise, Mr. De Gale's evidence does not assist the Court with respect to the issue at hand, and is accorded no weight.
- [99] Mr. Peters evidence was mainly addressed to the disavowed alleged written agreement. Insofar as that is concerned it has become irrelevant by virtue of that disavowal. However, for the avoidance of doubt, I do not find that Mr. Peters was a credible witness. I have grave doubt, having observed him closely, that he was being frank and forthright with the Court. As such, I reject his evidence as being unreliable.
- [100] I find as a fact, having observed both of them closely, that Mr. Hypolite and Ms. Calliste were truthful, honest and frank witnesses.
- [101] Insofar, and wherever, there are any conflicts between the evidence of Mr. Peters, Mr. De Gale and Ms. Walker, on the one hand, and Mr. Hypolite and Ms. Calliste, on the other hand, I have no hesitation in disregarding the evidence of the former as being unreliable and self-serving, while accepting the evidence of the latter as being truthful. I so find as a fact.

[102] I wish to express my gratitude to Mr. Clouden and Ms. Lewis for their assistance in this matter; and I wish to commend each of them for the professional and competent manner in which they represented their client's interests.

IT IS HEREBY ORDERED THAT ON THE CLAIM:

- (1) Judgment is entered for AGRO in the sum of \$73,000.00.
- (2) Interest shall be paid on that sum to be calculated at the contract rate of 1.5% per month (18% per annum) from 1st January 2004, until 25th November 2005, the date of the filing of this Claim;
- (3) Interest shall be paid on the sum calculated above, namely the sum of \$73,000.00 with interest, at the rate of 6% per annum from the date of this judgment until payment.
- (4) Court Fees of \$125.00 shall be paid to Agro.
- (5) The \$1,500.00 claimed as Legal Practitioner's Fixed Costs is disallowed.
- (6) The Registrar of the Supreme Court for Grenada shall calculate the interest awarded in paragraph 2 above, and she shall certify same within 7 days of the date of this Judgment.
- (7) AGRO shall have its Prescribed Costs paid by PETERS calculated on the sum Certified by the Registrar. The Registrar shall certify the costs so calculated within 7 days of the date of this judgment.

ON THE COUNTERCLAIM:

- (8) The Counterclaim is dismissed.
- (9) There is no order as to costs.

Thomas W.R. Astaphan, Q.C.
High Court Judge

