

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV 2015/0399

BETWEEN:

SHAISTA TRADING LIMITED d.b.a DIAMOND REPUBLIC

Claimant

and

FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD.

Defendant

APPEARANCES:

Mr. Hugh Marshall and with him Ms. Andrea Smitten for the Claimant

Mr. James A. Bristol and with him Mrs. Eleanor Solomon for the Defendant.

2017: November 13th
2018: May 10th

JUDGMENT

- [1] **WILKINSON J.:** Shaista Trading Company Limited dba Diamond Republic (“the Merchant”) filed its claim form and statement of claim on 20th March 2015. The relief sought: (i) payment pursuant to a Merchant Service Agreement dated 25th March 2010, in the sum of US\$4,500.00 or the equivalent of EC\$12,150.00; (ii) damages for breach of contract, (iii) court fees of \$40.00, (iv) process server fees of \$100.00, (v) attorney fixed costs on issue \$750.00, (vi) costs, interest and such further relief as the Court deemed fit. First Caribbean International Bank (Barbados) Ltd (the Bank) filed its defence on 30th April 2015.

Issue:

1. The single issue is whether the terms and conditions which could lead to or avoid a chargeback under reason code 4853 were met.

The Evidence

- [2] The primary facts are not contested. The Merchant is in the business of operating a jewelry store at 100 Heritage Quay, in the capital of Saint John's. The Heritage Quay complex is a popular tourist shopping area which houses many shops and stores offering amongst other things local and duty free products and items. It is in the proximity of where cruise ships dock for passengers to disembark at Antigua.
- [3] The Bank, a commercial bank, has its head office located at High and Market Streets in the capital of Saint John's. The Merchant is a customer of the Bank's branch situated at Old Parham Road in the parish of Saint John.
- [4] On 25th March 2010, the Merchant and the Bank (the Parties) executed a Merchant Service Agreement ("the Agreement"). According to the Bank, all the rules and regulations of the Card Associates are incorporated in the Agreement. The introduction of the Agreement states that its purpose was to allow the Merchant to accept credit and or debit card payment from its customers, to use a point of sale terminal to request authorization of credit and debit card transactions and to deposit the Merchant's credit card sales drafts, and or debit service to its merchant account. The Agreement covered purchases made by Visa, MasterCard, Discover and Diners Credit cards (the Card Associate). Amongst the terms of the Agreement, the relevant ones are:

"General Terms and Conditions

10. This document constitutes the entire agreement between the Parties and supersedes all prior agreements, reports or understandings between the Parties by execution of this document.

11. All credits and debits to the Merchant's Merchant Account are subject to final audit by FirstCaribbean. If there is an inaccuracy, FirstCaribbean will charge or credit the

Merchant's account without notice. The Merchant will remain liable to FirstCaribbean in the event that the Merchant no longer maintains a Merchant Account with FirstCaribbean. The Merchant agrees to settle all cardholder disputes and claims directly with the cardholder. This clause shall survive termination of this Merchant Agreement.

Responsibilities of the Merchant

10. These Agreements are subject to, and the Merchant agrees to be bound by the operating regulations and rules of VISA, MasterCard, and any other card association or network organization covered by the Agreement(s), as any of such referenced documents may be modified from time to time. FirstCaribbean may from time to time, issue written directions (via mail, email or posting to FirstCaribbean's Internet site) regarding procedures to follow and forms to use to carry out the Agreement(s). These directions and the terms of the forms are binding as soon as they are issued and shall form part of the terms and conditions of the Agreement.

Chargebacks

Notwithstanding any authorization or approval of a transaction which may be given by or on behalf of the issuer of a credit card, FirstCaribbean may charge back to the Merchant for immediate payment, or deduct from any payments due to it, or charge against its merchant bank account the total amount of any sales draft, in any of the following circumstances (or if FirstCaribbean reasonably believes that any of the following circumstances has occurred or is about to occur): This is in keeping with the rules and regulations of the Card Associations.

1.

3. The cardholder claims that he/she is dissatisfied with an aspect of the transaction, the services were unsatisfactory (Customer must provide evidence that the service or product sold is unsatisfactory and differs with what was provided).

4.

13. The transaction is charged back for any other reason pursuant to card association's regulations;

14.....

Other Chargeback Reasons

The following is a list of reasons for other Chargebacks. Changes to Association Rules or operational requirements may create other Chargeback strategies:

1. ...

10. Not as described: as goods or services received by Cardholder did not match merchant's written, mail/phone order or merchant's verbal description.

11.....

30. The Merchant's actions associated with the transaction in any way constituted or otherwise involved a breach of any term, condition, representation, warranty or duty.

....

FIRSTCARIBBEAN will give the Merchant details of any sales draft which it has refused to pay or if such sales draft has been charged back to its Merchant Account.

1. The Merchant agrees to take all appropriate steps to minimize cardholder disputes and Chargebacks."

[5] There was disclosed to the Court, a copy of the 1988-2014 MasterCard Chargeback Guide dated 15th April 2014. Therein it is provided:

"MasterCard Message Reason Codes – Dual Message System Transactions

3.24 Message Reason Code 4853 – Cardholder Dispute – Defective/Not as Described

The following sections describe the proper and improper use of message code 4863.

3.24.1 Proper Use of Message Code 4853

Customers may use message code 4853 if the cardholder engaged in the transaction and returned goods or services (or made them available) to the merchant for any of the following reasons.

- Goods and Services Did Not Conform to their Description. The goods or services did not conform to the merchant's description, or the goods were of different quality, quantity, color, size or health of a plant or animal. For example:
-
- A cardholder states that the specified color, size or quantity is not as described as detailed by the merchant.

Prerequisites to Process a 4853 chargeback

- The cardholder engaged in the transaction.
- The cardholder returned the goods or informed the merchant the goods were available for pickup.
- The cardholder contacted the merchant to resolve the dispute and the merchant refused to adjust the price, repair or replace the goods or other things of value, or issue credit.
- The documentation must provide sufficient detail to enable all parties to understand the nature of the dispute.

Waiting Time Prior to Processing a 4853 Chargeback. To allow the merchant an opportunity to process a credit, the issue must wait 15 calendar days prior to charging back for 4853 from the following dates:

- The date goods were returned, or
- The date services were cancelled.
- The only exception to the 15-day period is if the waiting period would exceed the 120 calendar day chargeback time frame."

[6] Ms. Petra Griffith of the Bank explained the dispute process on a chargeback. She said that the chargeback process begins with a cardholder disputing a transaction at his bank. This involved the cardholder speaking with his bank and identifying the issue in dispute. Once the issue was identified the information was then passed on to the card issuer. The card issuer would then select the appropriate chargeback reason code from the Card Association Rules and Regulations for the specific issue. The card issuer would then request information from the cardholder together with supporting documentation in order to complete and submit the complaint on the Expedited Billing

Dispute Resolution Process Form. The chargeback along with the information on the form is entered into MasterCard system and is routed to where the transaction occurred. In the instant case, that would be the Bank. The card issuer would then send the Expedited Billing Dispute Resolution Process Form to the Bank and the Bank would notify the Merchant of the chargeback by sending the Expedited Billing Dispute Resolution Process Form to the Merchant. In addition to the form, the Bank would also send a letter to the Merchant informing of the fact that there is a chargeback dispute, the potential chargeback debit to the Merchant's account, the reason for the dispute and requesting the Merchant to provide a rebuttal response by a specific date. The Merchant was also required to provide all supporting documentation for its rebuttal response. The rebuttal response and supporting documentation were to be sent to where the transaction originated, in the present case, this would be the Bank. Once the chargeback was processed by the card issuer, the credit and debit funds were automatically generated by MasterCard. The credit was received at the card issuer to refund the cardholder and the debit was received by the Bank for the account of the Merchant. The debit is usually held by the Bank pending the investigation and a decision is made to pass (or not pass) the debit to the Merchant's Company's account, due to the validity of the chargeback and having no valid recourse option to utilize. A chargeback transaction is also time sensitive.

- [7] On 6th November 2013, Mr. Cyrus D. Chenoy, a passenger on the cruise ship "Celebrity" visited the Merchant's store. According to the Merchant's invoice #777-S-6,113, he purchased a ring described as style code: LNR21003 and bearing the description: 18KT white gold diamond ring TW DI1.71 CT for the price of US\$4500.00. It also stated that all sales were final and that there would be no refunds save for manufacturing defects. Mr. Chenoy paid for the ring by way of a mastercard issued by Citibank of the United States of America.
- [8] At the time of sale, the Merchant provided Mr. Chenoy with an appraisal of the ring - Appraisal No: 77-AP-748. It was addressed TO WHOM IT MAY CONCERN. Aside from setting out Mr. Chenoy's address and that the Merchant had been in the jewelry business for over a decade, it stated that the appraised estimated value of the ring for insurance or other purposes was at the current market value – US\$7950.00, the Merchant did not agree to purchase or replace the ring. The ring was described as 1 18 KT white gold ring with princess cut and round brilliant diamonds with total

weight of the diamonds being 1.71CT, the centre princess cut being 0.71 CT and side round and princess cut diamonds being 1.00CT.

[9] Following purchase of the ring and approximately 1 week later, this being after Mr. Chenoy had returned to the United States of America, an exchange of emails commenced between Mr. Chenoy and the Merchant about the identification of manufacturer, description of the diamonds and appraised estimated value of the ring.

[10] By email dated 13th November 2013, Mr. Chenoy wrote on behalf of himself and his wife, Fiona to Mr. Kishor Rajpal (Kenny) as follows:

“Hope you’re having a good week. We’re glad that we purchased the ring but just have a few questions that kindly need to be addressed as soon as possible.

1. The website that is listed on the invoice that you provided does not work. Furthermore, when we try to google your company, there’s absolutely no information except a Facebook page with 26 likes. Is there a working website that you have that we can take a look at? Also, what is the contact information for your company’s branch in NY which you had mentioned when we were buying the ring?

2. We had the ring inspected by a jeweler and he could not find the laser inscribed identification/certification number in the diamond. I would kindly appreciate if you could get us the number.

3. The invoice on the ring states it’s 14K whereas it is 18K white gold. I would like an updated invoice to be mailed to the address that I provided as soon as possible.

4. The appraisal certificate you provided only lists the cut & carat but the color and clarity are not mentioned. Also, the appraised value listed is lower than what was verbally quoted and listed on the price tag. Could you please send us a more detailed appraisal with all the pertinent diamond & ring information?

5. Last but not least, please send us the certificate of the ring as soon as possible or let us know how we could obtain a copy of it.

It would greatly help ease our concerns if the above requested information is provided to us in a timely manner (as soon as possible), so we can recommend you to friends and family & use you again for future purchases.

Your assistance in providing all the above information is greatly appreciated.”

[11] On 20th November 2013, Mr. Chenoy again wrote. The email read:

“Please call James with the dimension and depth of the diamond as soon as possible. Also, if you’ve the contact information from where you received the diamond, he would like that too. His phone number is 410 897 0889. Once you call him and speak to him, email me back to inform me that you’ve done so. Thank you.”

[12] On 20th November 2013, Mr. Rajpal of the Merchant wrote to Mr. Chenoy as follows:

“Hi please find attachment of the invoice which we corrected.”

[13] A second appraisal was also prepared and forwarded to Mr. Chenoy. It bore the same appraisal No. 777-AP-749 and date of November 6th 2013. It described the ring as 1 white gold ring stamped 18KT containing 6 brilliant cut diamonds and 3 princess cut diamonds with approximate weight 1.71CT. The centre princess is .71CT and the sides 2 princess cut and round brilliant cut diamonds are 1.00CT. The appraised value US\$9,950.00.

...

[14] On 21st November 2013, Mr. Rajpal wrote to Mr. & Mrs. Chenoy as follows:

“Please accept my humble apologies for not responding to you before.

It was a pleasure doing business with you as well. Our company policy is professional after sale service and therefore we are more than obliged to respond to your queries.

1) You are right about the web site. We have a Facebook page and we can be contacted easily via telephone or email id. Furthermore we do service centre in NY and they are in

direct contact with us, if you have any problem with the jewelry we will contact them for you.

2) I had a conversation with Mr. James about the laser inscription on the diamond and few other things.

3) In terms of the KT gold , we have already emailed you the revised invoice . Please confirm receipt of the same .

4) We have also emailed you the detailed appraisal certificate please confirm receipt .

5) As per our conversation during the purchase, I had mention that original certificate was exchange or we were sent wrong certificate were (where) I tried to contact my manufacturer but unfortunately the manufacturer company has closed down. However the appraisal certificate that we had provided can be reconsider as guarantee.

As we had mention while making the sale, we do life time upgrading on diamonds.

Any further information required in this matter please do not hesitate to contact me.

Looking forward to doing more business with you and your family and friends are also welcome in advance.”

[15] On 22nd November 2013, Mr. Chenoy responded to Mr. Rajpal as follows:

“Thank you for your response.

We’re still waiting for the appraisal value and certificate for the ring from James, our appraiser.

However, I wanted to reconfirm something. We both remember you mentioning when we initially bought the ring (and also over the phone a couple of days ago) that if we got an independent appraisal done in the U.S. and the ring’s value did not come close to your appraised value of between \$9,000.00 - \$10,000.00, you’ll be happy to take the ring back from us and refund our money.

We hope it does not come to that but we do expect Diamond Republic and you to honor that verbal agreement.

Thank you.”

[16] On 25th November 2013, Mr. Rajpal wrote:

“Good morning

Cyrus

I just got your email thank you for sending me I am going to discuss with my boss
And let you know.”

[17] On 24th November 2013, Mr. Chenoy wrote:

“Please review the attached appraisal.

Thank you.”

Attached to Mr. Chenoy’s email was the appraisal of Mr. James V. Joliff, a graduate gemologist and master graduate gemologist appraiser of diamond and colored stones. Mr. Joliff’s appraisal stated that he had appraised 1 lady’s white gold and diamond ring of engagement style, size 7 1/2 and marked 18K. His findings on testing were that the ring was 18K white gold, he gave measurements of the ring in width and thickness. There was a round brilliant cut diamond accent setting area and tapered measuring 1.77mm in width by 1.16 mm thick at the lowest point of the shank. The ring contained a square modified brilliant princess cut diamond set in 4 prong and centered square head. The diamond measured 4.88 mm in length and 4.53mm in width and 3.86mm in depth with weight of .071 CT. The diamond had a colour grade of G and clarity of VS. He described a laser inscription of a diamond dealer KRAIKO and noted that the diamond dealer’s telephone number was no longer in service and there was no certificate from the diamond dealer. There were 2 other diamonds described as modified square cut brilliant princess cut accent stones which were 2 bar set, on each side of the centered diamond. He fixed the appraised estimated value at US\$6595.00 inclusive of 6 percent State sales tax.

[18] On 26th November 2013, Mr. Rajpal wrote to Mr. & Mrs. Chenoy:

“Dear Cyrus and Fiona,

As I mentioned in our conversation and during the purchased. I am confirming that if you get the appraised value less than \$4500.00 we will refund.

I had never mention about the refund if you get the appraised value of \$ 9000.00.

The appraisal that your jeweler had given is a very fair deal and we are glad that the value has not been low as \$ 4500.00.

However we are sorry to say that we cannot Honour the refund since we haven't met all the requested.

Regards,

Kenny”

- [19] The Bank's involvement in the dispute started when on 18th December 2013, the Bank received an Expedited Billing Dispute Resolution Process Form (chargeback case reference #627924113) for the Merchant. It was accompanied by Mr. Chenoy's (i) copy of merchant's invoice, (ii) copy of the Merchant's first appraisal, (iii) copy of the Merchant's mailed second appraisal, (iv) copy of the emailed correspondence between the Parties, and (v) copy of the independent appraisal report.
- [20] The Bank observed that the dispute was based on the sale processed by the Bank on 6th November 2013, to the cardholder, Mr. Cyrus Chenoy, using a MasterCard with ending digits 1821 and issued by CitiBank at the United States of America. Mr. Chenoy's claim was that the goods purchased were not as described.
- [21] The Bank by email of 19th December 2013, to the Merchant sent a chargeback notification together with a cover letter issued by Ms. Denise Farley of even date. The cover letter read:

“

CIBC FirstCaribbean International Bank
Barbados Card Centre
O & T Centre
Lot 25 & 26 Warrens Industrial Park
St. Michael, Barbados
Email – chargeback@cibcfib.com
Tel: (246) 431-5490 Fax (246) 467-8384

To: Kenny Rajpal/ Arun Bijalni
Company: Diamond Republic
Tel: 562-1972
Fax No.: 1-268-562-1973

From: Denise Farley
Tel: (246) 431-5490
Fax: (246) 467-8384
Date: 12/19/2013

Comments:

We wish to advise that your account may be debited for the amount of \$4,500.00 representing a Visa/MasterCard/Discover or Diners Club sales voucher that has been returned for reasons(s) noted below.

Merchant Number: 67867020000
Card Number: 5*****1821
Charge Back reference: 627924113
Original transaction amount: \$4,500.00
Chargeback amount: \$4,500.00
Original transaction date: 11/06/2013
Reason for dispute: Cardholder Dispute – Defective/Not as Described
Response date: 01/03/2014

If you have reasons as to why this item should not be returned to your account, kindly provide the swiped receipt or imprinted sales document. In addition please provide reason(s) for your rebuttal along with all other supporting documentation on or before **01-Jan-2014**

We will submit the information received, to the cardholder's bank for review and possible reversal and will advise your office of the result of the same. **Do not issue refund at this time.**

Should you have any questions or concerns on this matter, please contact Denise Farley (Ms.) at 1-800-744-0013 or 1-246-467-1932

Yours sincerely

(signed)

Denise Farley (Ms.)”

- [22] The Expedited Billing Dispute Resolution Process Form issued under the signature of Ms. Sharon Palmer, a customer service chargeback representative, provided that it was raised for the reason code **4853-Cardholder Dispute Defective/Not as Described**. Aside from providing Mr. Chenoy's credit card number, his name, transaction date, amount of transaction and amount in dispute, Merchant – the Merchant, it stated:

“Reason Code-Cardholder Dispute-defective/Not as Described

Check type of transaction:	Face-to-face	Non-face-to-face
Did the cardholder participate in the transaction?	Yes	No

Provide the details of the cardholder's attempt to resolve the issue with the merchant.

our cm attempted to resolve this many times from the date they made their purchase. The cm called and emailed requesting a return of the merchandise based on misrepresentations and the merchant refused to work with the cm to resolve.

Provide details about the return (or attempt return) of the merchandise (such as date, location, and whether the merchant accepted the return).

the cm requested to return the merchandise many times. The cm began calling the merchant within a couple days of their return to the USA and when it was evident that the merchant would not remedy the situation the cm asked for a refund and that they wanted to return the item and the merchant sent an email on 11/26 rejecting the offer to return the merchandise for a refund

Provide details about what was purchased and how the merchandise was damaged upon delivery or was not suitable for the purpose for which it was intended or why the merchandise (or service) was defective, incompatible, or otherwise not as described.

The cm received the invoice and appraisal of the item at the time of purchase (see 1st appraisal). The invoice lists the item cert # as LNR2 1003 ("style code" on invoice) which should be inscribed on the ring and instead it is inscribed with KD 5572 which the 2nd merchant appraiser explains in their appraisal. This would not be the same item as listed on the invoice that the cm thought they were purchasing and indicates it is a completely different maker of the ring.

The 2nd merchant appraiser also determined that inscription meant the maker of the ring was no longer in business therefore no Kraiko Diamond certificate was available from the seller that matched that laser description.

It should also be noted that after the purchase, the merchant mailed another appraisal for the ring which is different than the original one they received at the time of the sale. This one shows a difference in clarity from the original VS1 – VS2 S-1 to the 2nd mailed appraisal showing VS2 – S1I. The appraisal that the cm obtained from the other merchant shows the clarity as VS1.

The merchant has in and of themselves misrepresented the sale by sending the cm another appraisal that differed from the original one given to them at the point of sale.

Please see the complete appraisals for both provided from the merchant and then the one from the expert appraiser with their complete write up. Our cm is due credit for the obvious misrepresentation that took place not only during the transaction but also after the transaction had taken place.

"I certify that the facts were obtained from my discussion with the cardholder or

_____.

... and that the facts are accurate to the best of my knowledge."

Sder170/Sharon Palmer

Customer Service/Chargeback Representative

12/13/2013

Date"

[23] On 30th December 2013, the Merchant emailed the Bank its rebuttal. The Merchant's email read:

"Dear sir or madam:

Kindly see the attached invoice of sale and the appraisal certificate in relation to the charge back ref: 627924113 for usd4,500.00. Please note that we also forwarding to you copy of appraisal which customer had appraised the ring with local independent jeweler and it was appraised for US\$6595.00 where he paid US\$4500.00.

As far as we can see he should be satisfied with the purchase and I don't clearly understand the reason to refund.

Any additional information needed in this regards please do not hesitate to contact us.

Thank you

Yours faithfully

Kishore Rajpal"

[24] According to Ms. Griffith at early January 2014, she began investigating the chargeback and after reviewing the details of the Expedited Billing Dispute Resolution Process Form together with its supporting documentation and the Merchant's rebuttal, she referred to the Card Associations Rules and Regulations for the chargeback conditions relating to the reason code "Not as Described".

[25] Ms. Griffith's having examined the prerequisites that applied to Reason Code 4853, she considered

the matters noted on the Expedited Billing Dispute Resolution Process Form:- (i) Mr. Chenoy had attempted to resolve the matter many times from the date of purchase; (ii) Mr. Chenoy called and emailed the Merchant requesting a return of the merchandise based on misrepresentations and the Merchant refused to work with Mr. Chenoy to resolve the dispute, (iii) when it became evident that the Merchant would not remedy the situation, Mr. Chenoy requested the refund and wanted to return the item and the Merchant sent an email on the 26th November, 2013, rejecting the offer to return the merchandise for a refund, (iv) the style code note on the invoice which should have been inscribed on the ring did not match the inscription on the ring, (v) the item described on the invoice did not match what the cardholder purchase, and (vi) Mr. Chenoy noted that after the purchase the Merchant emailed another appraisal for the ring which was different from the original one that Mr. Chenoy had received at the time of purchase.

[26] Ms. Griffith says that in order to effectively refute the chargeback, evidence from the Merchant was required to show that the deficiency was corrected or that the chargeback was invalid and while the Merchant provided a rebuttal response via email on 30th December, 2013, there was no evidence to challenge the dispute. Based on the MasterCard Chargeback Guide and all the evidence provided, she determined that the dispute was valid as the Merchant's response failed to address much less rebut the claim to the chargeback and there was no other recourse available through the MasterCard process.

[27] On 8th January 2014, Ms. Griffith sent an email to the Merchant advising that the response provided was inadequate, did not address the concerns of Mr. Chenoy and failed to meet the requirements to refute the chargeback. Thereafter on 10th January 2014, she prepared the entries for the chargeback debit and submitted the paperwork to have the Merchant's account debited. The Merchant's account was debited on 10th January 2014, with the debit advice being emailed to the Merchant on 14th January, 2014.

[28] Following the processing of the debit to effect the chargeback, the Merchant on January 14th 2014, sent an email to the email address of Mr. Lennox Thomas, the Bank's Merchant Service Representative. It was not copied to Mr. Chenoy. The substance of the email was however, addressed Mr. Chenoy. The email read as follows:

"From: Diamond Republic [gold@candw.ag]
Sent: Tuesday, January 14, 2014 11:42 AM
To: 'Lennox.Thomas@cibcfcib.com'
Subject: FW: find it very unfair with us The

Dear Mr Cyrus .

I find it very unfair with us. The diamond ring I sold you after spending so much time and I did explain you about the certificate and also you had appraised the diamond ring with your local independent appraiser the value you got 2095.00 dollars more for the diamond (than) you spent.

so you should be happy about it but anyway this is my fedex account number 228345024 i must get the ring in next 5 days.

Other wise after that option is avoided.

make sure you do the insurance before you send the ring for \$4500. It won't cost you much

I made the bank known about the option.

I hope you change your mind and keep the ring and enjoy it. We always do upgrading where u won't loose a penny of your purchase. And we will continue give you best prices.

My new york address is
62w 47th street suite 1005
New York NY 10036.

Regards
Kenny"

[29] The Merchant then sent a further email, this time addressed to itself. More than likely error and so it would not have reached Mr. Chenoy. The email read:

“From: diamondrepublic1999 [diamondrepublic1999@hotmail.com]
Sent: Monday, January 20, 2014 12:29 PM
To: Diamond Republic
Subject: Merchandise returned

Dear Mr. cyrus

I have emailed you last Monday to return the ring to our office in new york.

Also I have provided you my fed Ex account number.

I have not received the ring neither I see you(r) email reply.

Please inform us when the transfer take place.

Diamond Republic”

[30] Following this email, the Bank said that between 10th March 2014, when it was contacted by the Merchant and 18th July 2014, it made “good faith attempts without prejudice” on behalf of the Merchant. At 18th July 2014, Citibank informed the Bank that it was unable to contact Mr. Chenoy.

[31] Under cross-examination Ms. Griffith was asked if she was satisfied that the ring had been returned and she replied that she was satisfied that Mr. Chenoy had made an attempt to return.

[32] Ms. Griffith was also asked if as far as possible – analytical duty that she should satisfy date the ring was made available? She responded that she was not required to. The rules did not state that she had to provide date. Rather the dates have to be provided to the Bank.

[33] Ms. Griffith was asked if once she received a dispute form if she accepted everything on it, and she replied that the Bank did so.

[34] It was put to Ms. Griffith that the only evidence that Mr. Chenoy had made the ring available to the Merchant was from the information contained in the dispute form and she responded “Yes”. She then agreed that such contained no particulars of date and location when Mr. Chenoy made the ring available.

[35] Several questions were put to Ms. Griffith about the details in the various appraisals and the matter of misrepresentation by the Merchant. She said that the issue of misrepresentation arose after considering the descriptions in the invoice, the first appraisal at time of sale, the second invoice of the Merchant, and Mr. Joliff’s appraisal. She said that in the end, she did not receive an effective rebuttal from the Merchant as the Merchant did not respond to Mr. Chenoy’s concerns.

Findings and analysis

[36] It appears that it is customary in the jewelry business for appraisals to be given as to the estimated value of jewelry and which value is not directly related to the purchase price. The observation is that the appraised estimated value is usually somewhat higher than the purchase price. As this Court understands this is to reflect the replacement cost consistent with “new-for-old” principle in an insurance policy.

[37] Confining itself to the sole issue of were the procedures on chargeback pursuant to the terms and conditions adhered to, on review of the emails the Court did not find a direct request from Mr. Chenoy to return the ring although the Court believes that it would not be unreasonable to say that same may be inferred from Mr. Chenoy’s email of 22nd November 2013, when he asked the Merchant to confirm that both he and his wife were correct in recalling that if the ring was not appraised for between US\$9000.00 –US\$10,000.00, the Merchant would be happy to take the ring back and issue a refund. There followed the Merchant’s email where there was a promise to discuss what Mr. Chenoy had written. Then there was submitted Mr. Joliff’s appraisal which came in well under the Merchant’s second appraisal estimated value of US\$9000.00 – US\$10,000.00, it fixed the appraised estimated value at US\$6595.00. In response to Mr. Joliffe’s appraisal, by the email of 26th November 2013, the Merchant takes the position that there will be no refund.

- [38] The Bank became involved in Mr. Chenoy and the Merchant's dispute only after they failed to settle their dispute. The Bank was not concerned with the contract between Mr. Chenoy and the Merchant for purchase of the ring it not being a party to that contract. Once the Bank became involved, the matter was simply one of each Party following prescribed procedures on a chargeback request pursuant to the Agreement.
- [39] Looking at the Agreement, it appears to the Court that the Bank followed the prescribed procedures. The Expedited Billing Dispute Resolution Process Form as received was submitted to the Merchant with a request that the Merchant provide reasons why the debit of US\$4500.00 should not be debited to its account. The response of the Merchant on 30th December 2013, addressed the purchase price versus the appraised estimated value of Mr. Joliffe and concluded that as far as the Merchant was concerned, Mr. Chenoy should be satisfied with the purchase and so the Merchant did not understand the reason for the refund.
- [40] It appears to the Court that an appropriate response to the claims in the Expedited Billing Dispute Process Form would have at least addressed the differences in the appraisals instead of brushing off the complaint by saying that Mr. Chenoy got value for his money as he paid less than the appraised estimated value stated in Mr. Joliff's appraisal and so what is Mr. Chenoy's complaint? That the Merchant was going to be firm in its position of no refund was evident as far back as its email of 26th November 2013. The Merchant carried this position into its response to the Expedited Billing Dispute Process Form.
- [41] The emails exchanged between Mr. Chenoy and the Merchant show that while Mr. Chenoy focused on the differences of the various appraisals estimated value of the ring, the Merchant focused on the purchase price of the ring as against the appraised estimated value.
- [42] It is to be noted that it was only after the Merchant's account was debited for US\$4500.00 that it provided an address for delivery of the ring and called for return of the ring.

[43] The Merchant having failed to address the claims in the Expedited Billing Dispute Process Form, the Court finds that the Merchant cannot prevail. The claim will be dismissed with costs for the Bank.

[44] Court's order:

1. The claim is dismissed.
2. Prescribed costs are awarded to the Bank and are payable within 21 days.

Rosalyn E. Wilkinson

High Court Judge

By the Court

Registrar