

**IN THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2009/0438

BETWEEN:

ALOYSIUS CUMBERBATCH

Claimant

and

EAST CARIBBEAN FINANCIAL HOLDING COMPANY LTD

Defendant

Appearances:

Mr. Leevie Herelle for the Claimant

Mr. Hilford Deterville Q.C and with him Ms. Diana Thomas for the Defendant

2019: February 01st.

JUDGMENT

- [1] **WILKINSON J.:** Mr. Aloysius Cumberbatch (Mr. Cumberbatch) filed his claim form and statement of claim on 7th May 2009. Mr. Cumberbatch claims unlawful summary dismissal from the East Caribbean Financial Holding Company Ltd. (ECFH). ECFH defends the suit by stating that Mr. Cumberbatch breached confidentiality of its subsidiary, the Bank of Saint Lucia Ltd. (the Bank) and therefore the dismissal was lawful. Mr. Cumberbatch sought the following relief: (i) loss of monthly earnings to retirement \$1,356,674.66, (ii) loss of emoluments to retirement \$224,963.70, (iii) interest, and (iv) costs.

Issue

- [2] The single issue is whether on a balance of probability Mr. Cumberbatch breached ECFH's policy of secrecy by disclosure to Mr. Fabian Jagroop of information about Ms. Lucretia Johnny's account.

The Evidence

- [3] Mr. Cumberbatch started his banking career with the Bank's predecessor, National Commercial Bank in October 1989. He was promoted several times over the course of nearly 20 years and at January 2009, he held the post of personal banker 1, a position he was appointed to in March 2006.
- [4] Mr. Fabian Jagroop was married to Mrs. Greta Johnny- Jagroop. Mrs. Greta Johnny-Jagroop was the sister of the Bank's customer, Ms. Lucretia Johnny. According to disclosed letters of administration, Mrs. Greta Johnny-Jagroop died on 20th August 2008, and Mr. Jagroop was appointed the administrator of her estate.
- [5] Matters leading to Mr. Cumberbatch's termination started with a letter dated 9th December 2008, from Ms. Lucretia Johnny. Ms Johnny wrote as follows:

"December 9th 2008

The Managing Director
Bank of Saint Lucia
Financial Centre Building
1 Bridge Street, Box 1862
Castries

Dear Sir or Madam,

It is with immense disappointment, distress and annoyance that I submit this letter of complaint for your perusal and immediate action.

On the said day of December 5th 2008, upon a mediation discussion at the Family Court in the presence of my Lawyer and other persons involved, I was totally shocked when one Fabian Jagroop disclosed personal information with regards to my Account held at Bank of St Lucia Vieux-

Fort Branch. Accurate information on account number, date of withdrawal on account and amount withdrawn and even closure of my account.

I would believe that such confidential and pertinent information of my personal account would be held as privacy standards set by your bank and it would be the duty of your bank to safeguard customers confidential but in that case my entire account information was exposed to Mr. Jagroop.

Further I wish to state that your bank is responsible for ensuring that information furnished by your bank tellers with regards to customer accounts should not be misused or disclosed to unauthorized information persons or entities or unauthorized purposes other than to serve the best interest of the customer.

My displeasure concerning the wrongful and disloyal misconduct by your bank to disclose information on my account to Mr. Jagroop is treated as grievous and warrants legal proceedings which I will not hesitate to undertake. Due to the profound ineptitude of your employee(s) I feel obliged to say that not only has my trust in your bank (been) completely destroyed but I wish to say that failure to comply with immediate redress and compensation will result in exposing your bank to the general public and media.

I therefore implore you to use your good office to carry an in depth investigation as to how my account information was able to slip out to an unauthorized person and look forward to immediate recourse in that situation.

Yours sincerely,

(signed)
Lucretia Johnny.

cc. Manager – Bank of St. Lucia –Vieux Fort Branch.”

[6] The account in issue was account 42219313.

[7] Mr. Cumberbatch denies that he was the source of the information disclosed and complained about. He said that he attended to Mr. Jagroop at the Castries branch some time in November 2008, and per the Bank’s policy, after checking the system he only gave him balances on account held in Mr. Jagroop’s name and he

did not provide any details on accounts of which he was not a signatory, whether in his name or jointly.

- [8] According to Mr. Cumberbatch, in relation to inquiry about Mrs. Greta Johnny-Jagroop, he told Mr. Jagroop that he should go to his Counsel who would write the Bank for the information.
- [9] Employees of ECFH were required to adhere to ECFH - HR Policies Policy No: 310. That disclosed was dated October 2005. The document was titled "Policy-Code of Personal and Professional Conduct. The purpose of the policy stated that it established the standards of ethical business behaviour and personal conduct expected by and from the organization and its employees. The intent of the policy was to safeguard ECFH's tradition of moral, ethical and social standards of conduct and to enable employees to guide their conduct to enhance the reputation of the organization. There was a confidentiality provision and which required all employees amongst other things to protect all confidential information from unauthorized disclosure. There was a provision which provided that employees were not to disclose confidential information to any person within ECFH unless disclosure was in connection to ECFH employment responsibilities. There was provision that employees were not to disclose information to anyone outside of ECFH unless the information was required by for example ECFH's lawyers, accounts or similarly connected firms or where the request for information was made via legal process such as subpoena. There was also a declaration of secrecy which was signed by employees. Mr. Cumberbatch under cross-examination stated that he signed the declaration of secrecy every year.
- [10] Ms. Jenni Killam the senior manager-human resource training & development of ECFH gave evidence on its behalf. She has held the position since 1st January 2006.

- [11] According to Ms. Killam, sometime in December 2008, she became aware that the Bank's customer, Ms. Johnny had delivered a letter to the managing director of the Bank on the subject of duty of confidentiality owed to her. Ms. Johnny threatened to take legal action against the Bank and expose the Bank's alleged wrong doing to the general public and media.
- [12] According to Ms. Killam, the duty of confidentiality and secrecy to the customer is of paramount importance to the Bank and all employees were made aware of this duty from the date of their employment. So important is this duty and so seriously did the Bank take that duty that it took certain precautions amongst them being: (i) all employers were requested to read and sign a Declaration of Secrecy upon taking employment; (ii) made the duty of secrecy and confidentiality part of the ongoing training programs for all employees and this requirement in the Banking Act was pointed out to them, no disclosure without a court order, (iii) made the duty party of our Human Resource Policy Manual which was made available to all employees through handing out hard copies whenever the Code of Conduct was revised or a new employee was hired. Engaged; the Code of Conduct was also available on the online Human Resource Information System; (v) it was made a part of the duties and responsibilities of all employees which is expressly stated in their job description and terms of employment as a condition thereof; (vi) incorporated the duty as part of the contract with the client in order to assure the client that the Bank will fulfil its responsibility, (vii) set up computerized operations with certain checks and balances, password protected systems and authorization requirements to protect client's information and there was also set up an audit and log system to trace the activities of each employee.
- [13] Against the backdrop of the Bank's policy on confidentiality, when Ms. Johnny's letter came to Ms. Killam's attention in December 2008, the senior management team which included Mr. Malcolm Alexander, the operations manager met and Mr. Alexander was required to trace the system on Ms. Johnny's account to discount the possibility that there was a breach. The management team inquired firstly, whether Ms. Johnny's complaint might have had probable merit. Secondly, if it did,

which one of the Bank's employees may have been responsible for the breach? In these early discussions according to Ms. Killam, Mr. Cumberbatch's name did not feature in any of the discussions as the management team was still not aware of who was responsible, if anyone.

- [14] Mr. Malcom Alexander as the senior manager-operations had the capacity to trace the computerized systems for all entries into the client's account which could reveal that someone had acquired knowledge of not only (i) the client's name, and (ii) account number but also (iii) activities on the client's account. Mr. Alexander carried out his investigations in December 2008 and January 2009 and produced his preliminary findings in early January 2009.
- [15] Mr. Alexander's preliminary findings revealed that on 27th November 2008, Mr. Cumberbatch had inquired into Ms. Johnny's accounts at the deepest level which would have revealed the account's activities like withdrawals and deposit and dates of these activities. The findings also showed that same day Mr. Cumberbatch had also inquired into Mr. Fabian Jagroop's accounts. This information confirmed three things to the Bank:— (i) that Ms. Johnny's claims about Mr. Jaroop's accounts being enquired into on the same day, (ii) that the information of which she complained was in fact accessed 1 week prior to it being revealed at the mediation hearing, and (iii) that Mr. Cumberbatch was logged as having made several enquiries into accounts in the names of 3 customers: - Lucretia Johnny, Greta Johnny and Fabian Jagroop.
- [16] After review of Mr. Alexander's preliminary findings, Ms. Killam requested a meeting with Mr. Cumberbatch and invited the senior shop steward Ms. Tarbula Amedee to attend the meeting. At the time Mr. Alexander gave Ms. Killam his preliminary report. The management team did not know of the relationship between Mr. Cumberbatch and Mr. Fabian Jagroop.

[17] On 9th January 2009, the meeting occurred, present were Ms. Killam, Mr. Alexander, the senior shop steward, Ms. Amedee and Mr. Cumbertabatch. Mr. Cumberbatch under-cross-examination denied that Ms. Amedee was at this meeting.

[18] At the said meeting Mr. Cumberbatch was questioned by Ms. Amedee, Mr. Alexander and Ms. Killam. Mr. Cumberbatch admitted that he knew Mr. Jagroop very well, that Mr. Jagroop had attended his office at the Castries branch on 27th November 2008, and inquired about accounts in the name of Mrs. Greta Johnny-Jagroop. He said that he told Mr. Jagroop that Mrs. Johnny-Jagroop had an account with the Bank and denied that he revealed any other information to Mr. Jagroop. Mr. Cumberbatch was asked to submit a written report on his actions.

[19] On 12th January 2009, Mr. Cumberbatch wrote to his report. It read as follows:

“January 12, 2009

TO: Senior Manager – Human Resource, Training & Development
FROM: Personal Banking Officer

I refer to our meeting on Friday 9th January 2009.

Based on questions posed, it would appear that someone may have disclosed information to Mr. Jagroop. Therefore, I submit the facts below.

During the week of the 24 November 2008, Mr. Fabian Jagroop visited my office to inquire about accounts held in the name of his deceased Wife, Greta Johnny-Jagroop and his Son Shaheel Jagroop. I said to Mr. Jagroop that I can perform a check on the system: however I cannot disclose any information to him on the accounts if any.

I proceeded to check the system which involved me going into a few accounts in order to verify who they belonged to. After a thorough search I communicated to Mr. Jagroop that his wife had other accounts but I did not disclose any other information regarding those accounts to him.

The only information that I provided to Mr. Jagroop was on accounts where he is a signatory to them.

(signed)

Aloysius Cumberbatch

Personal Banking Officer.”
Mr. Cumberbatch

[20] In his evidence at trial, Mr. Cumberbatch added that he had advised Mr. Jagroop that he should go to his lawyer who would write to the Bank for the information.

[21] Upon receipt of Mr. Cumberbatch's report, Mr. Alexander was again approached to test the veracity of Mr. Cumberbatch's statements. Mr. Alexander submitted a second report dated 22nd January 2009. The second report, together with the Mr. Cumberbatch's report and interview to the Bank revealed the following:

- i. That Mr. Cumberbatch had made inquiries into a level which reveals the activities in the account No. 422219313. That he made the inquiries 3 times during a period of approximately 15 minutes.
- ii. That he was able to on 27th November 2008, ascertain when the said account was closed, the balance in the account and the dates which they were made.
- iii. That there was no need for Mr. Cumberbatch to have had knowledge of the information he acquired on 27th November 2008, ascertain when the account was closed, the balance in the account, all withdrawals on the account and the dates which they were made.
- iv. Mr. Cumberbatch could not account for the need to have made those inquiries which logged his entry.
- v. That even if Mr. Cumberbatch wanted only to ascertain whether Mrs. Greta Johnny-Deceased held accounts with the Bank he would not have needed to enquire into the deepest level of the account. He would not have been logged at all.
- vi. That Mr. Fabian Jagroop was present when Mr. Cumberbatch made those inquiries.
- vii. That it is more likely than not Mr. Jagroop acquired knowledge of Mrs. Johnny's accounts from the Claimants on 27th November, 2008.

- [22] Ms. Killam and Mr. Alexander met with Ms. Amadee and Mr. Cumberbatch after Ms. Killam received Mr. Alexander's second report of 22nd January 2010. Mr. Cumberbatch was again given an opportunity to explain himself. When no satisfactory explanation was received, Ms. Killam consulted with Ms. Amadee and it was agreed that Mr. Cumberbatch should be dismissed forthwith for misconduct and for breach of the Bank's mandatory employment policies.
- [23] Mr. Cumberbatch was accordingly given two letters dated 30th January 2009, notifying him of the decision to terminate him forthwith, and the second to advise him of his entitlement in the circumstances.
- [24] The Bank had additional cause to further investigate the matter after Mr. Cumberbatch's Counsel became involved. They specifically enquired into the possibility of a person other than Mr. Cumberbatch having logged into Ms. Johnny's account with no legitimate banking business. Mr. Alexander produced a third report dated 3rd April 2009, showing entries from 3 separate dates in September 2008 to 5th December 2008. All other entries to the account appeared to be legitimate banking inquiries.
- [25] The Bank therefore informed Mr. Cumberbatch's Counsel that the Bank stood by its decision as Mr. Cumberbatch by his actions had breached his duty of secrecy to the customer and the Bank and had exposed to considerable and grave reputational and legal risk.
- [26] Mr. Malcolm Alexander spoke further about the conduct of his searches of the Bank's computers after Ms. Johnny's complaint. He was familiar with the operating and compliance procedures which had been set up by the Bank to ensure that employees adhered to their duties under the Bank's Code of Conduct. As operations manager, he was aware of all the operational aspects of the computerized system to make inquiries into customer's accounts. He was

responsible to oversee the investigation into whether information was disclosed by the Bank to Mr. Fabian Jaroop and which employee may have been responsible.

[27] According to Mr. Alexander, there are various levels of inquiry/search made to gather information on an account. Some logged on the system and there was 1 that did not logged. He explained the inquires/searches as follows:

- (i) First level inquiry - in order for an employee to ascertain and pull up a listing of names of clients and account numbers and balances the employee can access the first level of the computerized system. A first level entry does not log an employee into the system. No log would therefore be produced.
- (ii) Second level inquiry - can be made of a specific account and this would show the customer's name, any other name on the account and even the balance as of the date of inquiry. This level provides the employee with further limited amounts of information on the account and several options to further investigate the account. The second level entry would be logged by the computerized system and records the employee's name and number and the time of the inquiry.
- (iii) Third level inquiry - in order to access any further information about activities on any particular account the employee would need to click the camera icon on the particular account and call up the screen which shows account information beginning with the most recent. The screen also allows you to scroll back depending on the number of items on the screen. The system again creates a log which records the employee's name and number and the time of the inquiry. This log is important for audit reasons because at this level of entry into the system the employee is able to manipulate the account and this provides a record of who made the inquiry.

[28] According to Mr. Alexander, the investigation took him to the Core Directory System. The log revealed that on 27th November 2008 Operator No.225, that being Mr. Cumberbatch, accessed Ms. Lucretia Johnny's account No.422219313 on 3 occasions between 10:47:27 and 11:02:10 am. What struck Mr. Alexander as

curious, was that the log also showed Mr. Cumberbatch had also made enquiries into Mr. Fabian Jagroop's account around the same time.

- [29] Mr. Alexander examined other inquiries into Ms. Johnny's account and determined that all other inquiries were legitimate. The first 2 inquiries made on 12 September 2008 and 13 November 2008 were made at the instance of Ms. Johnny herself since they both related to withdrawals and instructions to close the account. In relation to the inquiry made on 13 November 2008, they were made at the instance of Ms. Johnny herself since they both relate to withdrawal and instructions to close the account. In relation to the further inquiry made on 13 November 2008, this was the normal inquiry made by the supervisor for maintenance purposes to enter in the filed "reason account closed".
- [30] According to Mr. Alexander after reporting his preliminary findings to Ms. Killam and his findings were disclosed at the meeting of 9th January 2009, to Mr. Cumberbatch, Mr. Cumberbatch denied disclosure of the information and stated that he only made inquiries to ascertain whether Mrs. Greta Johnny-Jagroop had any accounts with the Bank, and only disclosed to Mr. Jagroop that she did have accounts with the Bank.
- [31] Mr. Alexander said that he explained the information system to Mr. Cumberbatch and stimulated the inquiry system and showed the difference between the inquiry which Mr. Cumberbatch should have made to ascertain the information which he said that he provided and that which he actually made.
- [32] Mr. Jagroop gave evidence on behalf of Mr. Cumberbatch. He said that Mr. Cumberbatch only gave him information about his personal accounts and those held jointly with Mrs. Greta Johnny-Jagroop. He did ask him about other accounts in his wife's name and of which he was aware of and Mr. Cumberbatch told him that he was unable to provide any information as this was the Bank's policy. He

recommended that he go through his lawyer. Mr. Johnny did not contest the statements which Ms. Lucretia Johnny said that he made.

- [33] According to the evidence, the Bank's Ms. Deborah Pelage wrote to Mr. Jagroop 2 letters dated 10th March 2009, and 5th August 2009 disclosing information about all accounts on which his wife was a signatory. This being 3 months and 8 months after the date on which Ms. Lucretia Johnny said that information about the account was disclosed.

Findings and Analysis

- [34] The technology used by the Bank and upon which it relies, greatly assist the Court in understanding the issue.
- [35] Mr. Cumberbatch has admitted to knowing Mr. Jagroop very well, he has admitted to going to the account of Ms. Johnny notwithstanding that she was not present before him. What he does is deny the release of the information pertaining to her account.
- [36] Mr. Jagroop does not deny the contents of Ms. Johnny's letter. He claimed that he had information about his deceased wife's affairs through their close relationship.
- [37] Even if the Court accepts that Mrs. Greta Johnny-Jagroop told Mr. Jagroop of the account in issue, there remains the fact that Mrs. Greta Jagroop-Johnny died on 20th August 2008, and the said account was closed according to Mr. Alexander on 13th November 2008. Therefore, the deceased, Mrs. Greta Johnny-Jagroop could not have given Mr. Jagroop details about (a) date of withdrawal on account, (b) amount withdrawn, and (c) the closure of the account. According to Mr. Alexander, these transactions occurred on 12th September 2008, and 13th September 2008.
- [38] How then did Mr. Jagroop acquire the information post his wife's death? It was only after presentation of the letters of administration to the Bank, that Ms. Pelage

provided information on accounts by letters dated 10th March 2009, and 4th August 2009.

- [39] As the Court understands Mr. Alexander, when access is sought to an account number, there are various levels at which an inquiry/search can be made. It appears that Mr. Cumberbatch would have had general information about the existence of accounts pertaining to Mrs. Greta Johnny-Jagroop by a first level search but he chose to go to the deepest level to secure the information such as the account being closed, balance, withdrawals and the dates of these events.
- [40] Mr. Cumberbatch's actions contradict his words. For a while he says that he told Mr. Jagroop to go through his lawyer to get any further information on Mrs. Greta Johnny-Jagroop, he had no explanation as to why he went to the deepest level to search for details on Ms. Lucretia Johnny's account. An account found to be joint with Mrs. Greta Johnny-Jagroop.
- [41] No other person within the Bank accessed Ms. Lucretia Johnny's account between the date closed and the date of the mediation, 5th December 2008.
- [42] The Court is called to decide this case on a balance of probability. The Court relying logged information generated by the Bank's system and as described by Mr. Alexander and there being no evidence of any bias held by the Bank against Mr. Cumberbatch prior, believes that on a balance of probability, that Mr. Cumberbatch did release the information about the account to Mr. Jagroop.
- [43] The Court having found that on a balance of probability that Mr. Cumberbatch did disclose the information about Ms. Lucretia Johnny's account, strikes out Mr. Cumberbatch's claim.
- [44] Court's Order:
1. The claim is struck out.
 2. Prescribed costs are awarded to the Bank.

**Rosalyn E. Wilkinson
High Court Judge**

By the Court

Registrar