

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2016-01424

BETWEEN

RAMSUMAIR HARDWARE LIMITED

Claimant

AND

FIRST CITIZENS LIMITED

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr Haresh Ramnath for the Claimant

Mr Stephen Singh and Ms Tracey Rojas for the Defendant

Date: 1 November 2018

REASONS (Edited Oral Judgment)

1. The claimant, and its managing director, were the unfortunate victims of a fraudulent cheque. It is accepted now that the cheque was not genuine.

2. At the time it was tendered the Managing Director, Mr Ramsumair did not. It was purportedly issued by the defendant. The defendant, however, through its witnesses, denied it was issued by it and brought witnesses to prove its lack of authenticity.
3. The claimant provided goods to a customer to the value of \$99,900.00 based on the forged cheque.
4. The claimant's case is that the defendant is responsible for this economic loss there being a negligent misrepresentation by the defendant's representations.
5. The defendant denied it was responsible. It stated the cheque was fraudulent. It was not issued by its Marabella branch and that its representative, Emerson Cheddie, never gave any assurance relating to the cheque.
6. This is where the real dispute in the case is. The claimant filed one witness statement – this was the evidence of Mr Charan Ramsumair, its managing director.
7. He said on 3 May 2013 the claimant sold materials to a company called Premier Construction Company Ltd – he dealt with two persons Stephen Abdool and Shane Badassie.
8. Shane Badassie presented a manager's cheque from the defendant's Marabella branch for \$99,900.00. A balance of \$7,200.00 was to be paid one week later.
9. Mr Ramsumair said before he handed over the materials he telephoned FCB Marabella branch at the number 658 1892. He heard the bank's music

and was greeted with automated options. He was convinced he had called the bank. He got an extension for one Mr Cheddie. He told Mr Cheddie about the cheque. Mr Cheddie told him he had cut the cheque that morning and he can proceed to accept it. He asked Mr Cheddie to verify some numbers at the top and he did so. He also asked Mr Cheddie to send him a copy of the cheque and he asked him his full name which was "Everson Cheddie."

10. The "Mr Cheddie" then faxed a copy of the cheque with the bank stamp on it.
11. On 6 May 2013 he went to Royal Bank, Canada, Princess Town, and gave the teller the cheque. A few minutes later he was told the cheque was fraudulent and he was advised to contact the police.
12. He then telephoned FCB at the same 658-1892 number and "the same voice" told him he was unaware of the cheque. He went to the bank and met Mr Cheddie who told him to go to the police. He said once again it was the same voice.
13. He called the bank after that and got the same melody and options. He said he tried calling in July 2017 and the bank had changed its menu option, which showed they changed it after the case was filed.
14. He said the bank's representatives accordingly presented to him the cheque was a duly issued one orally and by fax and accordingly the defendant is responsible for his loss.
15. Three witnesses gave evidence for the defendant – Emerson Cheddie, Russel Bachan and Hayden de Four.

16. Hayden de Four set out the differences between a genuine manager's cheque and this one. As indicated, it is now accepted by the claimant that the cheque was not genuine.

17. Russel Bachan was the manager of the Marabella branch of the bank at the time. Having looked at the records he noted:

(i) There is no account in the name of Premier Construction Company Limited at the bank.

(ii) The cheque was not drawn at the bank.

(iii) There was no record of Shane Badassie on the bank's electronic profile system.

(iv) There were features which showed the cheque was not genuine.

(v) The number 658-1892 was the bank's phone number but this was not used as a fax.

(vi) It is against the policy of the bank to give verbal confirmation of cheques over the phone.

18. Mr Emerson Cheddie is now a branch manager at the Siparia branch. He has over thirty (30) years' experience in banking. He was a credit officer in 2013, an assistant bank manager in 2015 and manager in 2017.

19. In 2013 he was the supervisor of the credit department. He gave his duties in his witness statement. His duties did not give him authority to clear cheques by phone or otherwise.

20. In his witness statement he said:

“On 7th May, 2013, around 9:55 am, he got a phone call from an unknown person regarding Premier Contracting. He was accused of calling the said person on 3rd May, 2013 and clearing a manager’s cheque for around \$100,000.00. He denied he had done so or that he had faxed anything to anyone. He sent an email at 10:55 am to his supervisors about the call.”

21. On 8 May 2013 he said he got a phone call from a person identifying himself as Mr Ramsumair regarding a fax authorising a manager’s cheque.
22. Mr Cheddie informed Mr Ramsumair that the number 658-1891 was not the bank’s fax number. He also sent an email to his supervisor about the call.
23. He said he had nothing to do with the cheque. He said the credit department had a dedicated fax number which was different as did the operations department. He said the numbers 658-1891 and 1892 were both phone lines of the bank. He did not fax a copy of the purported cheque to the claimant.
24. The format of the fax was also not authentic. His name was also spelt incorrectly on the purported fax as “Emerson Chedi.” He was familiar with the authorised signatories for manager’s cheques. As an “A” signatory he can authorise cheques for \$40,000.00 if there was another “A” or “B” signatory to it.
25. Managers’ cheques would ordinarily be signed off by authorised signatories in the operations department. He said it was rare that persons from the operations department would go upstairs to the credit department to get a managers’ cheque signed.
26. He denied he prepared the cheque in question. He denied he signed it. He cannot say who the other signatory was. The number of the person signing

the cheque is not his unique number. He did not know Shane Badassie or Premier Construction Company as bank customers.

27. He was aware of a prior incident in February 2013 of a purported managers' cheque surfacing with a signature purporting to be him. A report was made to the police about it.
28. His emails show he wrote about the phone calls to his superiors on the dates he said he got the calls.
29. There was cross-examination. In cross-examination the claimant said the Badassie man had approached him about the order a week before. He told him he needed to get a certified cheque and not an ordinary cheque. Badassie came back with a certified cheque. He maintained he called Mr Cheddie.
30. Mr Cheddie in cross-examination noted that he was questioned by the fraud squad. He gave his signature as a specimen to them. There had been a prior report.
31. The key factual issue turns on whether Mr Cheddie had a conversation with Mr Ramsumair on the Friday 3 May stating the cheque was authorised and whether he sent a fax.
32. The defendant's witnesses say the cheque was a forgery.
33. It seems implausible to me that Mr Cheddie would speak to Mr Ramsumair to authorise the forged cheque. He must have known the cheque was not genuine because he had not issued it. Because of the cheque not having the security features it would not be honoured. Thus allegations were guaranteed to be made about him if he had done so.

34. Between Mr Ramsumair and Mr Cheddie I preferred the evidence of Mr Cheddie.
35. Fraudsters act in many devious ways and they can be both convincing and clever. I do not doubt that Mr Ramsumair was made to speak to someone purporting to be Mr Cheddie, but unfortunately it was not Mr Cheddie. He was duped and it is difficult for someone – especially a successful businessman – to come to terms with having been defrauded. But this is precisely what I find occurred here.
36. I found that there were weaknesses in Mr Ramsumair's version as pointed out in the written submissions of the defendant.
- 37. At the end of the day, the claimant had to prove his case: *Re: B (children)* [2009] 1 AC 11 at p. 17.**
38. The defendant's witnesses were able to point out that the fax form, the numbers and the cheque were not the standard processes or forms used by them.
39. There was some veiled suggestion that Mr Cheddie was somehow involved in this scheme. I find this unlikely. First, if there was a firm suspicion about it, the defendant would have likely have acted on it – they would have a proper interest that a senior employee like him was not involved. They would hardly have left Mr Cheddie there to cover up a liability of \$99,900.00.
40. Second, he has since been promoted. He stated his sample signature was requested by the police. Clearly, therefore, there was some investigation which at the end of the day did not affect his promotion prospects.
41. The contemporaneous documents of the emails also support Mr Cheddie's version.

42. The claimant made the point that the bank could have called evidence from TSTT to show if the telephone calls emanated from the bank or not. While, they could have done so, I wish to make the point that it was for the claimant to prove its case. The claimant had the option of summoning TSTT to provide records. The bank may or may not have objected. The court could have drawn inferences from that. But it was for the claimant to prove its case. Showing the bank's involvement would have been crucial. Had the claimant shown the calls were made to the bank and that the fax came from the bank to him directly, it may have engaged the defendant's liability as being responsible for acts of persons using its system. But this evidence was lacking.
43. As Lord Hoffman noted, where a return of one or zero on a point to be proved has to be made, it is the party on whom the burden resides who must adduce evidence to ensure the value of one is returned (Re: B.)
44. The claimant too could have put before the court his phone record to show he had called the bank on 3 May, 2013.
45. Had I accepted the claimant's evidence about the confirmation of the cheque and that Mr Cheddie sent the fax in question, it seems to me that the bank would have been liable in these circumstances for the representation.
46. In the circumstances, as I have found them, the bank cannot on a consideration of the legal and factual basis be liable.
47. First, Premier was not the defendant's client nor was Badassie. Second, I find there was no representation by Mr Cheddie. Third, the cheque was forged. Fourth, the bank's involvement has not been proved.
48. As noted, fraudsters can be devious, clever and persuasive. It is not unheard of for calls to be intercepted or it may seem that the call is being put to a particular place when it is not. Fraudsters sometimes act with

others who may be placed to receive a phone call or even to make it look like a call is being placed to a particular place.

49. When Mr Ramsumair did in fact speak to the real Mr Cheddie, it is not unfathomable, that he could have convinced himself that this was the same man he had previously spoken to – people at the end of the day don't like to be shown up as having been duped. This unfortunately is what I found occurred. The defendant cannot therefore be held liable.

50. On costs, costs follow the event. The claim was for \$99,900.00. Costs are therefore payable on the prescribed scale by the claimant to the defendant based on this sum.

Ronnie Boodoosingh
Judge