

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-00551
HCA No. 1798 of 2005

BETWEEN

MORA OIL VENTURES LIMITED
MORA VEN HOLDINGS LIMITED

CLAIMANTS

AND

SCOTIABANK TRINIDAD & TOBAGO LIMITED

DEFENDANT

Before the Honourable Mr. Justice A. des Vignes

Appearances:

Mr. Andrew Mitchell, Q.C.
Mr. Keith Scotland
Instructed by Mr. Lionel Luckhoo for the Claimants

Mrs. Deborah Peake, S.C.
Mr. Colin Kangaloo
Instructed by Mrs. Nadia Kangaloo for the Defendant

RULING

On the 27th April 2012, the Defendant filed a Notice of Application to strike out evidence in Witness Statement of George Nicholas III. Having considered the submissions filed by both sides, I set out hereunder my rulings and reasons on the several objections:

Paragraph 20

The Claimants are alleging a general duty of care and breach of implied term of contract – See paragraph 17 of Re-Re-Amended Statement of Claim.

It is a matter for Court to decide if on the facts a duty of care existed as alleged. The witness' expectation does not take the matter any further. It is no more than the expression of his opinion. When the Court hears facts concerning the relationship, then submissions can be made as to the existence of a duty of care.

Accordingly, from the words "I also expect...." in line 2 to the end of the paragraph are hereby struck out.

Paragraph 26

The witness' understanding appears to be based on advice received. Therefore it would be hearsay. If it is based on his own analysis of the facts, then it is an expression of his opinion which is inadmissible. It would be a matter for the court to assess the facts and determine the effect of the events set out at paragraph 21.

Therefore, these are matters on which the Plaintiff's Counsel will no doubt make submissions and the Court will decide.

Paragraph 26 is struck out.

Paragraph 27

At paragraph 18, Mr. Nicholas gives evidence about the bank mandate by Mora Oil Ventures Limited (MOVL) to Defendant.

At paragraph 21 he gives evidence of meeting of shareholders of Mora Ven Holdings Limited (MVHL) at which certain Directors of MVHL were removed.

His evidence at paragraph 27 is not permissible because it is no more than his opinion without any factual connection between the removal of Directors of MVHL and the authority of Wattlely and Harris to sign cheques pursuant to the mandate given to Scotiabank by MOVL being extinguished.

Therefore, the first, third, fourth sentences are disallowed and struck out.

His belief as to what Scotiabank would have been aware of is an expression of his opinion. If he wants to prove knowledge, he must give facts, not opinions. Therefore, the rest of paragraph 27 is struck out.

Paragraph 28

The newspaper reports are inadmissible as hearsay. In any event, they are of little or no probative value.

From the words “The news about Mora...” in line 2 to the end of the paragraph are hereby struck out.

Paragraph 29

Mr. Nicholas is expressing an opinion which is based on speculation – if he wants to prove knowledge of Scotiabank he must give evidence of facts, not mere speculative beliefs.

Paragraph 29 is hereby struck out.

Paragraph 30

The issue of whether the letter dated 13th May, 2002 from Mr. Jacelon contained a “plain typographical error” is hotly contested. It is matter on which the Court will be asked to consider the meaning and effect of that letter. Mr. Nicholas is expressing his opinion that Mr. Jacelon made a typographical error in Mr. Jacelon’s letter. This is not permissible and will not be allowed.

From the words “This was plainly a typographical error” in lines 6 and 7 are hereby struck out.

The rest of the paragraph is argumentative and is more properly to be heard in Counsel’s closing submissions. It is not evidence of any fact that is relevant to the issues to be determined by the Court.

Therefore the rest of paragraph is struck out.

Paragraph 33

The words objected to are based on the earlier deductive opinions of Mr. Nicholas which I have already struck out. It is the Claimants’ burden to prove that Defendant was on notice and Mr. Nicholas’ opinion is not helpful. Therefore, from the words” Scotiabank was on notice...” in line 2 to the word “account” in line 3 are struck out.

Paragraph 52

Having struck out earlier the objectionable parts of Mr. Nicholas' Witness Statement, the witness cannot be permitted to give evidence that Defendant received actual notification of the change of Directors and signatories of MOVL or implied notification from press reports.

From the words "Despite" in line 1 to "aspects" in line 3 are hereby struck out.

Paragraph 54

The documents speak for themselves and no objections are taken to this evidence.

Mr. Nicholas' interpretation of the document is an expression of his opinion and will not assist the Court. The Court will consider the documents and no doubt will hear cross-examination of the Bank's witness thereon.

From the words "it is now my understanding" in line 2 to the word "thereafter" in line 2 are hereby struck out.

Paragraph 56

There is nothing objectionable about the witness saying that was a new procedure. He is speaking from his personal knowledge.

The words objected to are allowed.

Paragraph 59

The words objected to are in the nature of submissions on what meaning the Court should place upon the letter dated 17th July, 2002. It is matter on which I am sure I will hear cross-examination by Counsel for the Claimants as well as submissions. The arguments are not appropriately contained in the Witness statements.

Therefore, from the words "The importance of this letter....." in line 3 to the word "vice versa" in line 8 are hereby struck out.

Paragraph 63

The witness is expressing his opinion as to what Defendant recognised and knew. That is a matter on which I must hear the evidence and decide whether I accept the Claimants' or the Defendant's submissions thereon. The letter speaks for itself.

From the words "It is again plain..." in line 3 to the word "related" in line 6 are hereby struck out.

Paragraph 64

This is argumentative.

From the words “Again Scotiabank...” in line 2 to the word “relationship” in line 3 are hereby struck out.

Paragraph 68

One of the important issues to be determined at the trial is whether or not the Defendant breached the mandate. Mr. Nicholas’ opinion on that issue does not take that matter any further. I will hear the evidence and the submissions.

Accordingly, I will strike out the words “in breach of the mandate” in line 2.

Then, he asks the Court to draw an inference based on the change of procedure which is really a matter for submissions at the conclusion of the evidence.

Accordingly, I will strike out from the words “It follows ...” in line 5 to end of paragraph.

Costs

I hereby order the Claimants to pay the costs of the Defendant with the assessment of those costs reserved to the 28th November 2012, the adjourned date of the matter.

Dated this 8th day of October, 2012

**André des Vignes
Judge**