

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-03772

BETWEEN

NANDA RAMHIT

Claimant

AND

VITCO TT LIMITED

Defendant

AND

INDARNIL BHAGWANDEEN

Defendant to Counterclaim

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. P. Deonarine instructed by Ms. S. Narine for the Claimant

Mr. R. Dowlath for the Defendant

Mr. N. D. Alfonso for the Ancillary Defendant

RULING

1. Before me are two applications, the claimant's for summary judgment dated 14th March 2012 and the defendant's of 3rd May 2012 to strike out the claim.

2. It is convenient to first deal with the defendant's striking out application, since if the defendant succeeds there will be no need to proceed further. I understand the application to be made pursuant to Part 26.1 (b). From the defendant's submission I gather that it is contended that the statement of case

discloses no ground for bringing a case against the defendant and I have to agree for the following reasons.

3. This cause of action here is a personal loan made under an agreement as stated in the statement of case (para. 3), between the claimant and one Mr. Balgobin, (the defendant's managing director). The claimant has not pleaded that at the material time of the agreement that Mr. Balgobin was acting for and on behalf of the defendant. In order to attach liability to the defendant company, it seems to me that this was a necessary ingredient, which ought to have been included even in the shortest statement of facts.

4. The bare statement that the claimant, by this agreement, lent the defendant the sum of \$500,000.00, makes a leap, the basis of which has not been established. In the absence of a claim that Mr. Balgobin was acting on behalf of the defendant company or vice versa I cannot find that the defendant incurred any liability. The discussions allegedly held with Mr. Balgobin (in his personal capacity) prior to entry into the contract (para. 5) are in those circumstances irrelevant.

5. The pleading continues (para. 6) that it was in pursuance of the oral agreement between the claimant and Mr. Balgobin (in again his personal capacity, I would have to conclude) the claimant broke his fixed deposit and lent the defendant the proceeds.

6. Clearly, in order to maintain an action against the defendant company, the claimant would have been required to show that it contracted with the defendant, through Mr. Balgobin. The annexures "C" and "D" to the statement of case confirm that it was Mr. Balgobin and not the defendant who was the contracting party. Both are documents which emanated from the claimant.

7. By personal demand a letter to Mr. Balgobin dated 27th April 2011 the claimant wrote -

**Mr. Kavindra Balgobin
Managing Director
Vitco TT Limited
No.11 Verdant Vale
Mc Bean Local Road
Calcutta Road No.1
Mc Bean Village
Couva**

Dear Sir

In September 2009 you approached me for a loan in the sum of One Million Five Hundred Thousand dollars (\$1,500,000.00). You said that you had located a source for electrical cables in Indis and that you needed this money to purchase these cables as you had clients waiting to purchase them once they arrived in Trinidad. You also stated that the purchase of the cable from India and the subsequent sale in Trinidad should be completed with six (6) months after which you would pay the loan with all cost and interest added.

After considering your proposal, I informed you that I would break a fixed deposit and loan to you that said One Million Five Hundred Thousand dollars (\$1,500,000.00) under the

condition that the sum in its entirety, with all cost and interest, be repaid upon the end of the six (6) month period. You wholeheartedly agreed to this proposal and further requested that I make the cheque for the loan in the name of VITCO TT LIMITED, which I did.

Since I had loaned you the said monies, nineteen (19) months has passed. During this time I have made numerous requests for you to repay the said monies owed, however, nothing was forthcoming.

8. The preaction letter dated 9th June 2011 from attorneys on record, significantly, to Mr. Balgobin as the proposed defendant, repeats the above allegations and provides even further support for the defendant's application.

Specifically it said -

**Mr. Kavindra Balgobin
No. 11 Verdant Vale
Mc Bean Local Road
Calcutta Road No.1
Mc Bean Village
COUVA**

Dear Sir

We are instructed by the claimant to claim against Mr. Kavindra Balgobin (hereinafter the proposed defendant) the sum of \$1,500,000.00 (One Million and Five Hundred Thousand Dollars) together with interest at the rate of 12% from the 24th day of March, 2010 until liquidation and costs.

Our client further instructs as follows:

- (i) That on or about September 2009 the proposed defendant approached our client for a loan for purchase of electrical cables in the sum of \$1,500,000.00. The proposed defendant indicated that the loan would be repaid by him within 6 months.**

- (ii) **As a result of the aforementioned our client broke a fixed deposit which our client used to make the said loan available to the proposed defendant.**
- (iii) **The proposed defendant further requested for the sake of convenience and appearance that the said cheque should be made in the name of the Vitco TT Limited (hereinafter the “Company”). In consequence of the same the claimant drew a cheque on a Republic Bank Limited account for the sum of \$1,500,000.00 in favour of the Company, dated the 23rd day of September, 2009. A true copy of the cheque is hereto annexed at A.**

9. The letter ended by calling for both Mr. Balgobin (the proposed defendant) and the company to repay the monies lent. That request by itself cannot in my view affix liability in the first defendant. The statement of case and these letters support a finding that personal loan agreement was with Mr. Balgobin and that moneys were only paid to the defendant company's accounts for convenience.

10. The claimant has suggested in its submissions that the mere fact that the cheque was made payable to the defendant through the agreement between the claimant and Mr. Balgobin is sufficient to make the company liable under the “cheque rule”. I respectfully disagree with counsel for the claimant and find that this submission is misconceived. The claimant relied on the admission at paragraph 6 (c) of the defence, that the loan proceeds were paid

over to the defendant to bring the defence within “the cheque rule”. I reject this submission too.

11. It is more accurate to say that the defendant, at all times, set out facts which indicate that the defendant was not the beneficiary of the loan, (which would make no difference if it did not contract with the claimant) rather with the consent of the claimant, it was a channel to disburse the proceeds in accordance with the requests of a third person, the ancillary defendant. That the payment to the defendant was effected as a matter of convenience to one of the contracting parties, Mr. Balgobin, was confirmed in the claimant’s preaction letter. But none of this changes the fact that the claimant never asserted that the defendant was the contracting party.

12. In the circumstances I grant the defendant’s application to strike out on the ground that the statement of case discloses no cause of action against the company. This is a step which the court would have taken of its own motion had it been pointed out at the first Case Management Conference before the claimant indicated it wished to make an application for summary judgment.

13. The claimant is to pay the defendant’s costs in accordance with the prescribed schedule.

14. I will defer my decision on the application regarding the counterclaim until I hear counsel for the ancillary defendant.

Dated this 27th day of September 2012

**CAROL GOBIN
JUDGE**