

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012 - 01416

BETWEEN

**BRITISH- AMERICAN INSURANCE COMPANY LIMITED**

Claimant

AND

**BRIAN BRANKER**

Defendant

**BEFORE THE HONOURABLE MADAM JUSTICE JONES**

**Appearances:**

**Mr. F. Gilkes instructed by Mr. A. Rudder for the Claimant.**

**Mr. P. Lamont instructed by Mr. C. Williams for the Defendant.**

**Reasons (Oral)**

The sole issue for my determination in this case is whether the Defendant entered into a loan agreement with the Claimant (hereinafter called “BAICO”) or British American Insurance Company (Trinidad) Ltd (hereinafter called “BAT”). This is an issue of fact for my determination the resolution of which depends on my assessment of the credibility of the witnesses and the effect of the contemporaneous documents tendered into evidence by consent.

It is not in dispute that the sum of \$4,066,000 was lent to the Defendant. Nor is it in dispute that of the money loaned the Defendant has to date repaid the sum of \$266,000. Of that sum, the sum

of \$3,800,000 represented the purchase price paid by the Defendant on a property and the sum of \$266,000 represented the monies paid to the Board of Inland Revenue as stamp duty on the transaction.

At the end of the day I preferred the evidence of BAICO's witnesses to that of the Defendant. To my mind the evidence of these witnesses were presented in a straightforward and highly convincing manner and was supported by the documentary evidence. Not so the evidence of the Defendant. From the documents tendered into evidence by consent it was clear that from the outset the Defendant was not being completely candid in his witness statement. For example in his witness statement the Defendant simply states that he was employed by BAT. He makes no reference to any relationship with BAICO. He says that he was employed with BAT in May 1976, was suspended on 26<sup>th</sup> September 2008 and at the time of the suspension he was employed as the chairman and chief executive officer of BAT and had been so employed during the period relevant to these proceedings.

In this regard therefore the Defendant's glibly ignores his appointment as a director and CEO (ag) of BAICO in 2001 or his subsequent appointment as CEO of BAICO with effect from 1<sup>st</sup> January 2003.

In the witness box the Defendant was evasive and tended not to answer questions directly but rather beat about the bush and prevaricate. On occasions his evidence was just simply incredulous. By way of example it is sufficient to refer to the manner in which the Defendant

deals with two sets of documents both admittedly signed by him: (i) the promissory note and (ii) the financial statements.

In support of its case BAICO pleads the existence of a promissory note dated 3<sup>rd</sup> February 2005 by which the Defendant promised to pay to it the sum of \$3,800,000 loaned to him. A copy of the promissory note was annexed to the statement of case. It is clear from that document that it purports to have been made by the Defendant and refers to the sum of \$3,800,000 lent to him by BAICO.

Instrumental in my assessment of the Defendant's credibility is an examination of the various positions taken by the Defendant with respect to this promissory note. By his defence the Defendant does not deny that the signature on the note is his. He however denies that it was made on 3<sup>rd</sup> February 2005 and pleads that it was made in or about April 2008 when it was put before him by an agent of BAICO along with other documents with the explanation that the signature was required for an internal bookkeeping exercise. By paragraph 13 of his defence the Defendant also denies knowledge of the contents of three letters, including one dated 24<sup>th</sup> April 2008, and pleads that his signature on that document was as a result of his being told that it was required as part of an internal bookkeeping exercise and was required by the auditors in order to sanction the accounts. By paragraph 18 of his counterclaim the Defendant pleads that the Claimant acquired the alleged promissory note and the three letters by having its agent, one Albeadea Mohammed ("Mohammed"), misrepresent the position to him.

With respect to the promissory note therefore the defence presented by the Defendant is that the date is incorrect and that his signature was obtained by the agent for BAICO, Mohammed, presenting it together with other documents for his signature and misrepresenting to him that his signature was required by the auditors as part of an internal bookkeeping exercise. These allegations are in keeping with the contents of a letter dated the 29<sup>th</sup> April 2010 written by attorneys who represented the Defendant up to and until March 2011.

There, in response to a letter dated 12<sup>th</sup> April 2010 written on behalf of the judicial manager in which the reference was specifically made to the promissory note, the attorney for the Defendant states as follows: “ our client recalls being in a meeting in the boardroom when one Ms Albeada Mohammed came in and asked him to sign a document for the auditors and when our client enquired what it was, she indicated it was just confirmation of the indebtedness, as it was not properly recorded on the company's books.”

Of note is the fact that in a subsequent letter, dated 28<sup>th</sup> May 2010, the Defendant's position with respect to the promissory note changes. In that letter, which the Defendant specifically says was written upon his instructions, no reference is made to the representation by Mohammed but rather the Defendant raises other objections to the promissory note. Of relevance here is the attorney's confirmation that the note was made in favour of British American Insurance Company Limited and the contention that all three companies, Trinidad, Barbados and Bahamas, were known as British American Insurance Company limited. The position taken in the letter was that as far as the Defendant was concerned “the funds came from the Trinidad company and

so conducted his affairs on that basis and no one on behalf of any of the three companies took any steps to correct that position.”

The positions taken by the Defendant and on his behalf must be taken in the context that the unchallenged evidence is that Albeadea Mohammed was employed by BAT and that in cross-examination the Defendant eventually accepts that there were instances where BAT received or paid money on behalf of BAICO and that all BAICO’s transactions in Trinidad were conducted by BAT.

By the time he files his witness statement however the Defendant merely states that the promissory note was made in April 2007 and was put before him by Mohammed. No reference is made as to any alleged misrepresentations by Mohammed.

Under cross-examination the Defendant’s position changes. According to the Defendant the document was not put before him by Mohammed but rather he was told by someone else that it was required by Mohammed. His first position is that he thinks he was asked by the finance department to back date the document. He says he asked why so long after the event and they said that they wanted that date on the document. In response to the question “who” he says it wasn't Mohammed he thinks the girl who brought it in was an assistant in his office but that the suggestion was that it was for Mohammed. According to him he just enquired why they were requesting this date now and was told that it was for audit purposes.

Later in his cross-examination in an attempt to give support for the position that he was now

taking he says: “it was customary sometimes for people to bring folders of documents for me and either bring it in themselves or give it to one of my assistants to bring it in for me and I would ask who is this for and they would say so and so is outside they need these signed. So sometimes the individual would come to me directly with the documents sometimes they would wait outside my office and an assistant would come in I would sign them pass them out, that’s why I say the person didn’t always present themselves in front of me so that the person could have been outside waiting for the document.” Noticeable here and in keeping with the Defendant’s tendency to dissemble is the fact that the Defendant does not actually state that this is what happened in this particular instance. Further there is a material difference between being asked to sign a document and being asked to back date a document. One goes merely to the date and the other to the authentication of the contents of the document.

Further later on in his cross-examination when presented with the promissory note he says: “ I remember scanning through the document. They told me it was a requirement for the auditors. By scanning I mean that I would have read the heading, read the amount and I signed it. I did not observe that it was BAICO. I thought the note was security for the loan, but not asking me to pay BAICO”. Later on he says “ I just enquired why they are requesting this date now and was told for audit purposes.”

This evidence is not in accordance with his pleading or his witness statement. Of equal importance is the fact that it does not accord with the contents of another pre-action letter written by his attorneys in these proceedings which he accepts was written on his instructions. In a letter dated 22<sup>nd</sup> March 2011 from the Defendant’s attorneys the Defendant’s instructions were that at

the time the promissory note was presented to him he raised the question as to the grant of the loan as appeared on the note and was told that the document was needed for internal audit purposes or words to that effect and that the arrangements that he had made with the Trinidad company would not be affected. In the light of the Defendant's continuing change of positions with respect to the promissory note it is therefore not surprising that his instructions with respect to the circumstances under which he signed the promissory note was not put to Mohammed.

His position with respect to the financial statements is simply incredulous. It is not in dispute that the financial statements for the years 2005 and 2006 for both BAICO and BAT bear the Defendant's signature. The financial statements of BAICO for the years ending 31<sup>st</sup> December 2005 and 31<sup>st</sup> December 2006 both refer to loans to directors and key management of the group in excess of \$644,000,000 US. While the financial statements of BAT for the corresponding period refer to an amount representing loans to directors and key management substantially less than the monies borrowed by the Defendant. The inference to be drawn being that the loan could not have been from BAT but rather must have been from BAICO.

Under cross-examination after some prevarication as to the purpose of his signature on the documents the Defendant reluctantly accepts that in his opinion the purpose of his signature was to authenticate the contents of the statements. The Defendant however will have us believe that he never read the financial statements before signing. According to him if he read the financial statements he would be doing the finance department's work. I just do not accept this evidence. It is simply impossible to believe that the executive chairman of a company with assets in excess

of \$404,237,000.00 would, knowing that his signature was required to authenticate the contents, sign financial statements without reading them. Even more dubious is the reason proffered by him for not doing so.

I do not accept the Defendant's evidence. I find the Defendant not to be a witness of the truth. I am satisfied that the Defendant has spun a web of half truths and deliberate lies in an attempt to avoid the repayment of the loan taken from BAICO. Indeed by way of submission the Defendant suggests that as an unsecured loan from BAT to a director the loan in fact falls foul of section 48 of the Insurance Act and is in the circumstances illegal and unenforceable.

At the end of the day I accept the evidence of BAICO and find that:

- (i) the business of BAICO was carried out from BAT's offices in Trinidad.
- (ii) BAICO and BAT operated a centralised accounting system which was managed by employees of BAT in Trinidad;
- (iii) BAICO did not have a bank account in Trinidad and Tobago dollars and receipts and payments made or received by it in Trinidad was through an account in the name of BAT with the appropriate entry being made in the intercompany account between the two companies;
- (iv) while the funds were disbursed by BAT as a result of the intercompany arrangement the loan, the subject matter of this action, was taken by the Defendant from BAICO and not BAT.

I am satisfied that all material times the Defendant as an official of both companies knew of these facts and the financial relationship between the companies. This to my mind is confirmed



by the Defendant's reluctant admission under cross-examination that he was aware that BAT on occasion either paid or received money on behalf of BAICO in Trinidad; that these transactions would have been accounted for in the intercompany account and that all BAICO's transactions in Trinidad were conducted by BAT. I am satisfied that at all times the Defendant was aware that the loan was made to him by BAICO and not BAT. This is to my mind is confirmed by the relevant documentation with respect to the loan; the financial accounts of BAICO and BAT; the promissory note and the acknowledgements signed by the Defendant.

I reject the evidence of the Defendant with respect to the circumstances under which he signed the latter two sets of documents.

To my mind the fact that Attorneys for BAT after the intervention of the central bank in February 2009 claimed the loan for themselves has no bearing on the facts as found by me. Attorneys have been known to be wrong. Indeed the Attorney subsequently and before the commencement of this action admitted the mistake. Further I am satisfied that the letter of the 7<sup>th</sup> May 2009 signed by Ramchand Ramnarine on behalf of BAICO is not an acknowledgment by BAICO that the loan was granted to the Defendant by BAT. In my opinion it is merely a reminder to the Defendant that the loan was due and payable at the date of his retirement.

At the end of the day therefore BAICO is entitled to an order that the Defendant pay to it the sum of \$3,800,000, together with interest at the rate of 3% per annum from 12<sup>th</sup> April 2010 being the date of the Claimant's first demand for payment. As I understand in the Defendant's submissions

he is no longer pursuing his counterclaim. In any event I am satisfied that the counterclaim is not maintainable. In the circumstances the counterclaim is dismissed.

Dated this 13<sup>th</sup> day of March, 2013.

**Judith Jones**  
**Judge**