THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. C.V. 2012-01245

Between

RBC ROYAL BANK (TRINIDAD AND TOBAGO) LIMITED

(Formerly RBTT Bank Limited)

Claimant

And

AYANNA DAVIS

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Ms. Sarah Sinanan for the Claimant
2. Mr. Clair Michael O'Neal for the Defendant

Edited transcript of the oral decision delivered on 22nd September, 2014

REASONS

Summary of Proceedings

1. Before the Court for its determination, is the Claimant's Statement of Claim filed on the 23rd March, 2012 for breach of contract caused as a result of Defendant's failure to pay the sum of $20,120.83 which became due and owing on her visa card credit account # 4557-9543-0819-2631.The Claimant also seeks interest on that balance at the rate of 25.2% per annum and late charges.

Defendant's Case

2. The Defendant contends that based on the unequivocal representation given to her by the Claimant's employee Mrs. Anita Ventour- Bartholemew that her credit card debt was paid off, she was no longer indebted to the Claimant with respect to the alleged credit card debt, and that the Claimant is estopped from making the claims on the sum due on the credit card .

3. It is not disputed that the Defendant owed money to the Bank, the Defendant stated that she ultimately acquired a loan from TTMF to liquidate the said credit card debt and received a certified cheque made payable to the credit card account, which she produced to a loan officer Mrs. Anita Bartholemew at the Claimant's Carlton Centre Branch in San Fernando. Upon presentation she says she was informed that a search of the Claimant's system revealed that there was no record of her owing the Claimant and the credit card debt was liquidated and that Ms. Bartholemew then informed her that the cheque would be deposited into her account and made available to her.

4. The Defendant's case is that she then requested that the said employee provide her with a letter of non-indebtedness reflecting this, and in or around June 2011, a letter of non-indebtedness was provided to her, addressed to TTMF . However, she was later contacted by a representative of the Bank, Ms. Rosabell Singh who informed her that the debt was

still outstanding, Perplexed by this discovery, she requested and obtained another letter of non-indebtedness from the Claimant's Carlton Centre Branch dated the 27th February, 2012.

5. The Defendant's case is that she relied on the representations and applied the funds deposited for other purposes and acted to her detriment and is no longer in a position to obtain the financing needed to liquidate the debt . The Defendant contends that the Claimant is estopped from denying that the Defendant has settled all outstanding monies owed with respect to the said credit card debt and that it is inequitable in all the circumstances for the Claimant to go back on its representations.

The Claimant's case

6. The Claimant relied on the evidence of Mrs. Anita Ventour- Bartholemew and Ms. Rosabell Singh contained in their sworn Affidavits and Witness Statements. Ms Rosabell Singh, a Retail Collections officer, Special Loans Unit employed with the Claimant at its Independence Square branch deposed that as of 17th November, 2010, the Defendant's delinquent credit card account was transferred to her and that in or around January 2011 she left messages for the Defendant to contact her concerning her account. She testified that the Defendant contacted her and informed her that she received a cheque and had intentions of depositing the cheque in order to maintain the credit card account . Ms. Singh then informed the Defendant that the credit card account was blocked and that she should consider approaching Bankers for financing to liquidate the debt in full or reassign her salary to the debt so that the debt could be restructured.

7. Ms. Singh noted that the Carlton Centre branch contacted her and requested a settlement letter for the Defendant's account as she was considering approaching another financial institution for financing to settle her credit card debt, and on the 21st June, 2011 the Claimant issued a Settlement letter to the Defendant.

8. According to Ms. Singh, in December, 2011 upon reviewing the Defendant's files she noticed that on the 21st July, 2011 a cheque in the sum of $17,597.95 was deposited into

the Defendants savings account and the Defendant was utilizing the money for personal transactions and nothing was applied to the credit card debt which was in the sum of $17,406.69 as at 21st July 2011 , Ms. Singh said she tried contacting the Defendant but was unsuccessful, and as a result caused a letter to be issued to the Defendant on the 22nd December, 2011 informing her of the outstanding debt.

9. According to Ms. Singh the manager of the Claimant's Carlton Centre branch informed her that when the Defendant visited the Carlton Centre Branch, Ms. Bartholemew erroneously checked the T24 system which reflects loans and not the TSYS Prime system which reflects all credit cards on the Claimants books, and it was as a result of this oversight that the non indebtedness letter was issued to the Defendant.

10. Mrs.Anita Ventour-Bartholemew by her witness statement filed on the 18th February, 2014, stated that she did not represent to the Defendant that her credit card debt was liquidated or that she was not indebted to the Claimant outside of the Carlton Centre Branch, however she admits that she caused to be issued to the Defendant a letter informing her that she was no longer indebted to the Carlton Centre Branch.

Issue:

11. The issues for determination by the Court are:

    i. Whether the representations made by the Bank's employee Ms. Bartholomew to the Defendant, that she was no longer indebted under the credit card amounted to an estoppel by representation.

    ii. What is the effect of the letters issued by the Carlton Centre Branch which indicated that there was no indebtedness to that Branch.

    iii. Whether the Bank ought to be estopped from claiming the sums owed to it.

Determination of Issues

12. According to Spencer Bower and Turner, : "The Law Relating to Estoppel by Representation" ,(at p. 31 and 37) :

> "**In order to constitute a representation on which an estoppel may be founded, the statement must be one of 'existing fact'. However it is not a representation in the sense of a statement, where the facts to which it relates are actually as the representor believes them to be , or is informed that they are; and, there is no estoppel, therefore, against denying the correctness of the opinion, belief, or information."**

13. This position was cited with approval in the case of Low .v. Bouverie [1891] 3 Ch 82 C.A. where a trustee, in answer to an inquiry by a stranger, stated that the trust fund was subject to certain incumbrances, without mentioning , because he had forgotten them, certain other incumbrances to which the fund was also subject, it was held that the statement created no estoppel, according to Bowen L.J at pg. 106 **" the trustee's language would be reasonably understood as conveying an intimation of the state of his belief , without an assertion that the fact was so apart from the limitation of his own knowledge."**

14. Ultimately the court had to determine a question of fact and what was clear to the court was that the Defendant did not dispute the fact that she owed money to the Bank pursuant to her unpaid credit card. In fact the Defendant requested a statement so as to ascertain her indebtedness to the Bank and went to the TTMF for the purpose of paying off her credit card debt to the Bank.

15. The Court found as a fact that it was a clear and undisputed intention of the Defendant to pay this debt. The cheque that was obtained from TTMF was made payable to Royal Bank in the name of the Defendant and was endorsed with the credit card account number. In the view of the Court it is not logical that someone who has no loan with that particular branch and has an account that has a negative balance would request a letter of non indebtedness from the institution. On a balance of probabilities and what the Court thinks is more plausible is that there was a human error. The employee Ms. Bartholomew

did not make the necessary checks that were required and therefore when she communicated with the Defendant it was not revealed to the Defendant that the credit card debt was still subsisting because Ms. Bartholomew did not check that system.

16. The Court considered the evidence of Ms. Singh who said that she made some enquiries and was informed by the Bank Manager of certain errors that occurred when the checks were made. The Court is of the view that as a result of human errors the wrong information was conveyed to the Defendant but that misinformation could not by itself result in a situation where the Bank is estopped from reclaiming the money owed under the credit card account.

17. At all material times the Defendant was aware that she had a debt, she was not engaged only with Royal Bank Carlton Centre Office but she had in fact requested whether it was directly or through Carlton Centre, a statement of indebtedness from the Collections Agency Centre and Ms. Singh was in charge of her account. The Defendant in fact spoke to Ms. Singh previously and there were discussions with respect to proposals to liquidate the debt, yet the Defendant took no steps to verify the information that she was given by Ms. Bartholomew with Ms. Singh. The Defendant possibly due to her financial circumstances did not act prudently but the misinformation did not erase her indebtedness to the Bank and the Court found it difficult to accept that the statement by Ms. Bartholomew caused the Defendant to believe that the debt had been repaid when she herself had not done so.

18. The Bank upon discovering the error made, contacted the Defendant and caused a letter to be issued in or around December, 2011 informing her of her still outstanding debt. The Defendant cannot place reliance on the second letter which was issued in February, 2012, since it was issued after the Bank would have informed her of the still subsisting credit card debt.

19. Upon a proper construction of the letter issued to the Defendant, it indicated that the Defendant was "*no longer indebted to this branch"* which if taken upon its literal construction may mean only the Carlton centre Branch and the letter did not specifically say that the Defendant was no longer indebted to the credit card center.

20. In the case of **Emmanuel Ayodeji Ajayi (trading under the name and style of The Colony Carrier Co) v R T Briscoe (Nigeria) Ltd**[**1964] 3 All ER** 556 the principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, was raised and this arises when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other party. This equity is, however, subject to the qualification (a) that the other party has altered his position, (b) **that the promisor can resile from his promise on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, (**c) the promise only becomes final and irrevocable if the promisee cannot resume his position.

21. In order for a promissory estoppel to arise, it must be unconscionable for the promisor to resile from his promise. In the case **Emery and another v UCB Corporate Services Ltd** [**2001] EWCA Civ 675** the Court found that it was not inequitable for UCB to go back on its representation or promise it made to the Plaintiffs, that they would not demand repayment of the loan so long as a weekly payment of £700 was made, the Court was of the view that UCB could not be estopped from exercising its contractual rights in demanding payment. In the instant case the Defendant knew that she had not repayed her debt and as with any equitable relief, he who comes to equity must come with clean hands. In the circumstances the Defendant's conduct raises concerns and the Court felt that she sought to take advantage of the situation that really was too good to be true. In all of the circumstances it cannot be said that she acted to her detriment as she elected to apply the funds obtained from TTMF for purposes other than paying off the credit card debt having taken no reasonable steps to definitively determine that her credit card indebtedness had been extinguished.

22. The Court however, must be guided by considerations of fairness and unconsionability. The Court considered that it could not be fair for the Bank having made an error that led to this situation to ask the Court for the award of interest on that entire sum that was due and owing in 2011 at a rate of 25.20% per annum.

23. On the letter dated the 21st June, 2011 which was when the Defendant was making her enquiries as to what was owed, it was stated that the sum of $17, 406.69 was owed. The cheque that the Defendant obtained from TTMF was dated the 28th June, 2011 and which was deposited on the 21st July, 2011, was for the sum of $17, 597.95. When this cheque was deposited into the Defendant's savings account the account was in a negative balance of $1,249.78 and the available balance thereafter was $16,348.17.

24. The Defendant's intention was to pay off the credit card and that is why she obtained a cheque for $17,597.95 and deposited it. All things being equal, if the Bank did what they were supposed to have done which is to clear the indebtedness as it stood at the 21st July, 2011, two sums would have been outstanding to the Bank, the $17,406.68 plus the interest that would have accrued thereon from the date of the indebtedness letter which was the 21st June, 2011 to the date of the deposit which was the 21st July, 2011, as well as the sum of $1,249.78 which was the negative balance in the savings account. The cheque that was deposited by the Defendant was therefore not sufficient to clear all her indebtedness. Out of the sum that was deposited, the Bank, would have been entitled to deduct the monies owed on the savings account as a negative balance, this would have left a balance of $16,348.17 which should have been applied towards her credit card debt.

25. The credit card debt as it stood on the 21st July, 2011 based on the documentation provided to the Court attracted interest at a rate of $10.03 per day on the principle sum of $14,534.01. The settlement letter was dated the 21st June, 2011, but the cheque was deposited on or about the 21st July, 2011. The interest and principle for that 30 day period plus the late payment charge of $35.00 would therefore amount to a figure of

$17,742.59 due and owing as at the 21st July 2011, if the $16,348.17 was applied to this figure, it would have left a balance owing of $1,394.42.

26. As stated earlier the Bank ought not to benefit from its own error. As at the 21st July, 2001 if the Bank did what it suppose to have done, the savings account would been cleared and $16,348.17 ought to have been applied to the credit card debt and this would have left unpaid balance as at the 21st July, 2011 of $1,394.42. The Court therefore makes no award of interest at the rate of 25.20% on the sum of $16, 348.17. The Defendant shall pay to the Bank/Claimant the sum $16,348.17 with interest accrued thereon at a rate of 3% per annum from the 21st July, 2011 to the date of this judgment which is today's date, the 22nd September, 2014.

27. On the balance of $1,394.42, the Bank is however entitled to its credit card interest because even if the Defendant's cheque been applied, her indebtedness under the credit card would not have fully liquidated. The Defendant is therefore to pay the additional sum of $1,394.42. Interest is to accrue on the said sum at a rate of 25.20% per annum from the 21st July, 2011 to the date of this judgment and interest shall accrue on both of the aforementioned sums at the statutory rate of interest from the date of this judgment until repayment.

28. On the issue of costs while it is usual for cost to follow the event and for the successful party to be awarded cost. The Court is prepared to depart from the usual cost order in this matter. The reason for doing so is that ultimately errors were made by the both parties to the action. The Defendant intended to pay-off her debt, obtained alternative financing to do so, came to the institution and because of an error by an employee in the Bank and her lack of prudence as it relates to verification of the information conveyed, her intention was not effected and her debt under the credit card was not repaid. In those circumstances and bearing in mind that financial institutions have an obligation to the members/citizens that they serve to ensure that information presented to customers is accurate as well as the responsibility, when it recognized, that inaccurate information has been presented to deal with the matter fairly, in the Court's view, the Bank ought to have

engaged in this very mathematical exercise that the Court embarked upon, with the customer and a different approach ought to have been adopted.

29. In the circumstances the Court order is that each party is to bear their own respective legal costs in this matter.

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FRANK SEEPERSAD

JUDGE