THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2023-00165

BETWEEN

CURTIS MATHURA

Claimant

AND

REPUBLIC BANK LIMITED

Defendant

Before the Honourable Madam Justice Carol Gobin

Date of delivery: October 7, 2024

Appearances:

Mr. Kiel Taklalsingh and Mr. Stefan Ramkissoon instructed by Mr Rajiv Sochan and Mr. Matthew Allahar Attorneys at law for the Claimant

Ms. Hillary Muddeen led by Mr. Kerwyn Garcia, S.C. instructed by Ms. Tonya Rowley Attorneys at law for the Defendant

JUDGMENT

1. The material facts in this case were agreed at pages 152 -154 of the trial bundle and there is no need to repeat them.

2. The relationship between the parties is that of Bailor (the Claimant) and Bailee (the Defendant), under a contract of bailment for hire.

3. The contract expressly provided for a minimum duty of ordinary care by the Defendant in the operation of its security system and the exercise of due diligence to deny access of any unauthorised persons to the Claimant's safety deposit box.

4. The issue I had to determine is whether the Defendant discharged its obligations or whether it was negligent in the performance of the contract.

The Burden of Proof

5. The Claimant had to establish the loss of contents of the box and the contents and I accept his evidence. The burden then shifted to the Defendant to establish that the loss was not caused by its negligence. The case of **Coldman v Hill [1919] 1 KB 443** was cited in the judgment of Lord Pearson in the authority cited by the Defendant ***British Road Services Ltd v Arthur Crutchley Co. Ltd [1968] 1All ER 811***, stated as follows:

> *"In my view, there is a recent decision of this court, which was not cited to the Divisional Court, which, however, decides the question and by which we are bound. In Joseph Travers & Sons v Cooper (2) a belles of goods had them in a barge. His lighterman left the barge unattended, and in his absence the barge was either mud-sucked - namely, held in the mud, or caught under a projecting bolt, and in either case was flooded by the rising tide. It was extremely doubtful what exactly happened, and whether, if the lighterman had been on board, he could have prevented the loss. PICKFORD, J, held that the burden of proof was on the bailor to show that there was negligence which caused the loss, and that, as he left the matter in doubt, he failed. All the members of the Court of Appeal thought this was wrong. They took the view that it was incumbent upon the defendant, the belles, when the goods were lost, to prove that he had taken reasonable care to keep and preserve them. As BUCKLEY, LJ, said ([1915] 1 KB at p 88):*
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> > *"The defendant as bailor of the goods is responsible for their return to their owner. If he failed to return them, it rested on him to prove that he did take reasonable and proper care of the goods, and that if he had been there he could have done nothing, and that the loss would still have resulted."*
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> *The court support this view by an unreported decision of the House of Lords in Morison v Walton (1) in which I was counsel. In that case the defendant was belles of a boat which he undertook to tow across the Atlantic with a term in the contract that he should have a man on board. He broke his contract, and had no man on board.*

The boat was lost at night, and there was no evidence whether she was lost by gradual straining and leakage, or by a sudden and overwhelming wave. There was, therefore, no evidence whether the man, if on board, would have detected the leak and ordered the towing vessel to slacken speed, or whether he would have been destroyed by the overwhelming wave without being able to do anything. The House of Lords held that the man who had, by breaking his contract, destroyed the possibility of any evidence on the subject, could not be heard to say that there was no evidence that his breach of contract caused the loss. ***It was, his duty as belles to prove that his breach of duty did not cause the loss, not the plaintiff's duty to show that it did****."* [emphasis added]

6. The principle was clearly set out by Lord Denning in **Morris v CW Martin and Sons (1965) 2 All ER** at page 725:

"Once a man has taken charge of goods as a bailee for reward, it is his duty to take reasonable care to keep them safe: and he cannot escape that duty by delegating it to his servant. If the goods are lost or damaged, whilst they are in his possession, he is liable unless he can show—and the burden is on him to show—that the loss or damage occurred without any neglect or default or misconduct of himself or of any of the servants to whom he delegated his duty"

7. At the end of the day the case turned on my assessment of the evidence of the Defendant's witness Mr. Forte, Manager of Corporate Security at Republic Bank Limited, and whether it was sufficient to discharge the burden of proof.

8. I attach no weight to Mr. Forte's evidence that the bank's security measures are standard in the industry and to the United States Bank Protection Act because this was not pleaded in the defence. It is therefore irrelevant.

9. The Defendant's case is that it discharged the burden by applying the following measures:

Mr. Forte's Witness Statement

"21. At the time of the incident, there were CCTV cameras focused on the cash vault but no CCTV cameras focused on the area of the safe deposit locker vault. This is deliberate and is to ensure customer confidentiality and privacy. The Bank's customers are allowed their privacy when storing and retrieving their personal items from their safe deposit lockers. About a week after the break-in, a wide angled CCTV camera was installed which focuses on the vault door. That camera deliberately does not focus on the area where customers go to view the contents of their safe deposit lockers after retrieving them.

"22. In addition to the CCTV system in place, at the material time, the Bank had the following security measures in place:

i. the safe deposit lockers are made of steel and are stored in a fireproof vault made of pre-cast concrete and steel sheeting. This provides the first layer of security.

ii. an Intrusion Detection System ("IDS") which is monitored overnight from the close of the Bank's operations to opening the next day. The IDS comprises an alarm system with magnetic contacts for doors and windows, motion sensors, vibration sensors, glass break sensors and a communication system that transmits messages from the branch to a Central Monitoring Station. The alarm signals are picked up by our external provider-ASSL. The alarm system is armed daily by the estate constable on duty upon his exit of the premises. When the alarm system is armed or disarmed, the Central Monitoring Station receives a signal. As stated above, the alarm system was armed on Friday 27 May, 2022 at approximately 6:55 p.m. and a closing signal was received by the Central Monitoring Station. The branch was opened on Saturday 28 May, 2022 at around 12:45 p.m. for the servicing of the ABMs. An opening signal was duly received by the Central Monitoring Station. On the same day the branch was closed at 1:35 p.m. and a closing signal was received by the Central Monitoring Station. The system remained armed until Tuesday May 31, 2022.

iii. a communication system that remains engaged for 24 hours controlling the panic buttons and magnetic contacts on the emergency exit doors.

iv. the doors to the vault housing the safe deposit lockers was checked and securely locked by the Defendant's employees prior to the close of business on Friday 27 May, 2022. The vault remained securely locked during the break-in. Mr. Phillipe Mike confirmed to me that the vault was found to be locked."

10. Mr. Forte's evidence confirmed that these measures notwithstanding, a group of intruders shockingly managed to conduct a four hour operation between 1:02 am and 5:04 am, using heavy equipment, drilling walls, crawling on the ground while avoiding cameras and sensors to carry out a well-planned and well executed heist, breaking several security boxes and they managed to do so, undetected. All of this took place in the vicinity of a police station.

11. This evidence raised an obvious and serious question as to whether the systems were sufficient or if some or more components had failed. It came down to whether in the circumstances of this case, the measures provided were adequate and it is not an answer to say that the system did not fail, rather that the thieves succeeded. If the system allowed such a brazen enterprise, could the Defendant be said to have discharged its contractual obligation to take reasonable care?

12. In **Bolton and Others v Stone [1951] AC 850,** Lord Ratcliffe explained reasonable care as follows:

"One may phrase it as "reasonable care" or "ordinary care" or "proper care" - all these phrases are to be found in decisions of authority - but the fact remains that, unless there has been something which a reasonable man would blame as falling beneath the standard of conduct that he would set for himself and require of his neighbour, there has been no breaks of legal duty"

13. I find that the Defendant's security systems fell short and below the standard that was required and the Claimant is entitled to judgment. Mr. Forte's evidence established the following:

i. The vibration sensors failed to pick up what must have been unusually significant vibrations. Mr. Forte was reluctant to say they malfunctioned and preferred to

surmise it had to do with the positioning of the sensors. I am not persuaded that they may not have malfunctioned but the explanation of placement did not negate a finding that the Defendant had breached its duty of care. It was not enough to simply install vibration sensors if they were not located close enough to perimeter walls and especially on the wall to the rear of the building which afforded the perfect entry point away from public view. It is safe to say that in installing vibration sensors the bank would not have been contemplating unauthorised entry via main established doors leading in and out of the bank.

ii. Motion sensors failed to pick up movements of at least 3 persons who were in the bank for almost 3 hours. These were persons who were carrying heavy equipment. Even if they were crawling on the ground, the failure to trigger the alarm was not sufficiently explained. The explanation of a "pet alley" made little sense in the context of security at a bank. It would simply not be necessary unless a "pet" was trained to walk along it.

iii. The absence of live monitoring in the context of what might be considered reasonable in the current environment of Trinidad and Tobago and at the time of the heist, pointed to a failure to provide adequate security in the circumstances. Live monitoring is now a fairly common feature of security measures adopted by ordinary home owners even at significant cost. This is because it is necessary. What the Defendant has sought to label "monitoring" is in fact response by third party providers to the triggering of an alarm. Monitoring and response features are not the same. That no alarm was triggered for four hours during the invasion has not been satisfactorily explained but in any case, the failure establishes that the system fell below a reasonable standard of care.

iv. The failure to provide vibration sensors and motion sensors in the vault itself was, in my view, inexcusable. Mr. Forte's explanation for not having them was "this particular vault does not have electrical conduits", "but they are placed around the general area to pick up movement". Clearly, from the events that led to this litigation, placing sensors in an area outside the vault proved ineffective. The explanation of not having cameras for privacy could not be considered reasonable if cameras were installed and activated after closure.

Determination

14. There shall be judgment for the Claimant against the Defendant on liability.

Damages

15. Very short submissions were taken on damages. Parties are asked to indicate by urgent response whether they would like to file further submissions on quantum, on or before Wednesday 09 October, 2024.

Carol Gobin

Judge