

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA - *Judgment Book.*

IN COMMON LAW

SUIT NO. CL 1996/C330

BETWEEN FINANCIAL INSTITUTIONS SERVICES LTD. - PLAINTIFF

AND	CNB HOLDINGS LIMITED	1ST DEFENDANT
AND	CENTURY NATIONAL DEVELOPMENT LIMITED	2ND DEFENDANT
AND	DONOVAN CRAWFORD	3RD DEFENDANT
AND	VALTON CAPLE WILLIAMS	4TH DEFENDANT
AND	BALMAIN BROWN	5TH DEFENDANT
AND	REGARDLESS LIMITED	6TH DEFENDANT
AND	FORDIX LIMITED	7TH DEFENDANT
AND	SPRING PARK FARMS	8TH DEFENDANT
AND	ALMA CRAWFORD	9TH DEFENDANT

SUIT NO. CL 1997/C050

BETWEEN FINANCIAL INSTITUTIONS SERVICES LTD. - PLAINTIFF

AND	CNB HOLDINGS LIMITED	1ST DEFENDANT
AND	DONOVAN CRAWFORD	2ND DEFENDANT
AND	BALMAIN BROWN	3RD DEFENDANT
AND	VALTON CAPLE WILLIAMS	4TH DEFENDANT
AND	REGARDLESS LIMITED	5TH DEFENDANT
AND	DEBROC LIMITED	6TH DEFENDANT

Michael Hylton, Q.C., Mrs. Sandra Minott-Phillips and Miss Michelle Henry
for Plaintiff instructed by Myers, Fletcher and Gordon
Patrick Bailey instructed by Brady & Company for 1st, 2nd, 3rd, 6th, 7th, 8th
and 9th Defendants in Suit CL1996/C330 and for 1st, 2nd, 5th Defendants
in Suit CL 1997/C050

Anthony Pearson for 4th and 5th Defendants in Suit CL 1996/C330 and for
3rd, 4th and 6th Defendants in Suit CL 1997/C050

Heard on September 21, 22, 23, 24, 25, 28, October 1, 1998 and May 25, 1999.

CORAM: WOLFE C.J.

On the 28th day of April, 1998, it was ordered that the action in Suit CL 1997/C050 be consolidated with the action in suit CL1996/C330.

Both actions were commenced in the names of Century National Bank Ltd. and Century National Building Society. On January 21, 1998, by Order of Miss Justice Beckford, Financial Institutions Services Limited was substituted as Plaintiff in both actions. Leave was granted to both the Plaintiff and the Defendants to make such consequential amendments to their pleadings as might be necessary.

CLAIM - Suit CL 1996/C330

The Statement of Claim dated October 2, 1996, was amended, pursuant to an Order of the Master in Chambers dated December 19, 1996 and was further amended, pursuant to an Order of Miss Justice Beckford dated the 21st day of January, 1998.

The amended Statement of Claim contains sixty seven paragraphs. Laborious as it is, I am constrained to set them out as they explain in detail the relationship of each defendant to the plaintiff and the circumstances in which the liability of each defendant arises.

"1A. The Plaintiff is a company in which, pursuant to an Order of this Honourable court made on the 21st day of October, 1997, in Suit No. M-121 of 1997, the assets of Century National Bank Limited and all claims and rights to recover debt, damages or other compensation from persons liable to Century National Bank Limited are vested.

1B. Century National Bank Limited (hereinafter referred to as 'CNB') is and was at all material times a bank licensed under the Banking Act, 1992 and at all material times carried on business as bankers through various branch offices in the island of Jamaica. On July 10, 1996, the Minister of Finance assumed the temporary management of the Plaintiff pursuant to section 25 of the Banking Act.

2. The 1st Defendant is a company incorporated under the Companies Act and was at all material times the majority shareholder of CNB.

3. The 2nd Defendant is a company incorporated under the Companies act. The 3rd defendant owns 99.99% of the shares in the 2nd Defendant.

4. The 3rd Defendant was at all material times a director and the chairman of CNB, the 1st and the 2nd Defendants and a director of the 6th, 7th and 8th Defendants. The 9th Defendant is the 3rd Defendant's mother.

5. At all material times the 3rd Defendant, his wife Claudine, and his children Donovan and Sian, owned all the shares in the 6th Defendant.

6. At all material times the 3rd, 6th and 9th Defendants owned a majority of the shares in the 1st Defendant.

7. The 7th and 8th Defendants are companies incorporated under the Companies Act and were at all material times wholly owned subsidiaries of the 1st Defendant.

8. At all material times the 3rd Defendant was also the chief executive officer and an employee of CNB and was responsible for overseeing the day to day operations of CNB and he received a salary for these services.

9. At all material times, the 4th and 5th Defendants were directors and employees of CNB and received a salary for their services and the 5th defendant was the President of CNB.

10. At all material times the 4th Defendant was a director of the 1st Defendant, the 2nd Defendant and the 7th Defendant.

11. The 1st Defendant is indebted to the Plaintiff in the sum of \$235,887,984.90 being the debit balance outstanding as at September 15, 1996 in respect of the 1st Defendant's current account with CNB.

12. Interest continues to accrue on the said sum of \$235,887,984.90 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

13. By an instrument in writing made in or about the year 1991, the 2nd Defendant guaranteed to CNB payment of all sums due to CNB from the 1st Defendant. Despite demand, the 2nd Defendant has not paid the sums due to the Plaintiff from the 1st defendant or any part thereof.

14. The 2nd Defendant is indebted to the Plaintiff in the sum of \$251,608,398.43 being the debit balance outstanding as at September 15, 1996, in respect of the 2nd Defendant's current account with CNB.

15. Interest continues to accrue on the said sum of \$251,608,398.43 at the rate of 65% per annum from September 16, 1996 until judgment or sooner payment.

16. In order to induce CNB to grant the overdraft facilities referred to in paragraphs 11 and 14 hereof, and as security for its indebtedness to CNB, the 2nd Defendant created equitable mortgages by deposit of title deeds in favour of CNB over the lands comprised in the following certificates of title:-

- a. Volume 1207 Folio 345 - property known as Barry & Lloyd
- b.. Volume 957 Folio 291 - property known as land part of Negril;
- c. Volume 1237 Folio 151 - property known as Lot 4 Sterling Castle;
- d. Volume 1237 Folio 578 - property known as Apartment 54 Fisherman's Point;
- e. Volume 1209 Folio 914 - property know as Devon Penn, St. Andrew
- f. Volume 914 Folio 93 - a farm in St. Elizabeth.

17. The 5th Defendant is indebted to the Plaintiff in the sum of \$1,310,428.80 being the debit balance outstanding as at September 15, 1996 in respect of the 5th Defendant's current account with CNB.

