



[2017] JMSC Civ. 5

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2015HCV02910**

**BETWEEN**

**TRACIA SCOTT**

**CLAIMANT**

**AND**

**THE BANK OF NOVA SCOTIA  
JAMAICA LIMITED**

**DEFENDANT**

**IN CHAMBERS**

**ORAL JUDGMENT**

**Mr. Canute Brown instructed by Brown, Godfrey & Morgan appeared for the Claimant**

**Mrs. Daniella Gentles-Silvera instructed by Livingston, Alexander and Levy appeared for the Defendant**

**Heard: 21<sup>st</sup> November; 19<sup>th</sup> December 2016 and 11<sup>th</sup> January 2017**

**Civil Practice & Procedure – Notice of Application – Striking Out Statement of Case – No Reasonable Cause of Action – No Reasonable Ground for Bringing the Claim – Termination of Banking Services with Reasonable Notice – Whether the claim is bound to fail – Whether the Defendant had reasonable cause to close the Claimant’s bank account – Proceeds of Crime Act, section 92 – Civil Procedure Rules, rule 26.3(1)(c)**

**L. PUSEY J**

- [1]** Tracia Scott has two (2) accounts at The Bank of Nova Scotia Jamaica Limited branch at Mandeville in the parish of Manchester (“the Bank”). One (1) of these accounts had been operated for over fifteen (15) years and the other was opened in 2012. In February and March 2015 sums of Thirteen Thousand (13,000) and Twenty-Eight Thousand (28,000) Euros were sent from Finland into the older account. The details of these transfers are outlined in the extensive affidavit of the Defendant filed on the 29<sup>th</sup> day of July 2015, the content of which has not been challenged.

- [2]** After the arrival of the February deposit the Bank attempted to contact Ms. Scott by telephone without success. Consequently, they wrote to Ms. Scott requesting information about the source of the funds and documentary evidence in the form of a job letter or pay slips if the funds were sourced from income earned. The Bank also requested that Ms. Scott state the reason for the transfer and whether or not it will be an ongoing transfer. The Bank received no response.
- [3]** When the March transfer arrived, the transfer was not verified and Ms. Scott was contacted by the Bank via telephone. Ms. Scott told the Bank's representative that the money came from her sister-in-law who intended to use the funds to purchase real estate in Jamaica. The Bank's representative, Mrs. Gopall, requested a copy of the sales agreement for the real estate and updated the Bank's records with Ms. Scott's contact information. This conversation was confirmed in a letter from the Bank to Ms. Scott and the Bank pointed out that The Bank of Jamaica required the Bank to ascertain documentary evidence for source of funds for all wire transfers.
- [4]** The Bank maintains that sums wired to Ms. Scott were being withdrawn from the account by means of point of sale transactions. On the 14<sup>th</sup> of April 2015 Mrs. Gopall called Ms. Scott on behalf of the Bank to remind her of the necessity to obtain the copy of the sales agreement.
- [5]** The Bank contends that Ms. Scott reacted angrily and stated that she did not wish to be rushed. Ms. Scott said that she had not yet received the sales agreement as the person decided to put two (2) parcels of land instead of one (1).
- [6]** The Bank asserts that its suspicions were awakened as to the nature of the transaction and the source of funds and that the transaction could be related to money laundering. It cites the following reasons for its suspicion:
- 1) The absence of information of the source of funds and documentary proof of the real estate transaction.

- 2) The funds being used for other purposes namely the point of sale transactions.
  - 3) The transaction and amounts were not in keeping with the history of the account.
  - 4) Ms. Scott's reaction to the requests for documentation and information.
- [7]** The Bank decided to place a hold on the account. On the 15<sup>th</sup> day of April 2015, Ms. Scott visited one of the branches of the Bank and was advised to bring in documentation to establish the source of funds. Mrs. Gopall called Ms. Scott and asked her to pick up a letter setting out the Bank's position. Ms. Scott picked up the letter some days later.
- [8]** Ms. Scott's attorneys contacted the Bank on the 16<sup>th</sup> day of April 2015 and communication proceeded between the attorneys and the Bank. On the 29<sup>th</sup> day of April 2015, the Bank closed the accounts and indicated that a cheque for the outstanding balance was available for collection. At the time of the hearing of this application, it is my understanding that the cheque has now been collected.
- [9]** Ms. Scott sought an interim injunction to restrain the Bank from freezing or closing the account. That application was discontinued. In her affidavit in support of that application, Ms. Scott said that the real estate transaction was delayed and that she and her sister-in-law had decided to purchase a minibus and prepare it for the public transportation sector in the interim. Ms. Scott indicated that she is not involved in financial impropriety or unlawful conduct. Aside from the naming of her sister-in-law she does not identify the source of funds. Ms. Scott asserts that she has been caused financial hardship in servicing her loans and her credit rating is being prejudiced.
- [10]** The substantive claim seeks damages for the loss of income of a minibus, damages for wrongful detention of the money in the account, a permanent injunction restraining the closure of the account, damages for intimidation and the release of the money in the account.

- [11] The Bank on the 23<sup>rd</sup> day of July 2015 filed a Notice of Application to Strike out the action as disclosing no reasonable ground for bringing the claim pursuant to the Civil Procedure Rules (2002) (CPR), particularly rule 26.3(1)(c). The Application points out, inter alia, that a customer has no legal basis to force a bank not to close their account. This is the Application before the court and for which the court has decided upon.
- [12] Mrs. Gentles-Silvera's case is straightforward. In fact, the court may have to ask her forgiveness for oversimplifying her case. She points out that it is long established law that the relationship between banker and client is that of borrower and lender. The general principle is that the contract to provide banking services can be terminated upon reasonable notice unless there is some statutory or express contractual term to the contrary. Mrs Silvera referred to the Privy Council decision of **National Commercial Bank Jamaica Ltd. v Olint Corporation Ltd. (Jamaica)** [2009] UKPC 16 as a gentle reminder of that principle. Their Lordships affirm the general principle above in the first paragraph of their judgment.
- [13] The second plank of Mrs. Gentles-Silvera's argument is that a statement of case may be struck out if it is legally unsustainable and bound to fail. Accordingly, this case is bound to fail as there was reasonable notice given by the Bank in the termination of the account. Therefore, the claims for damages for wrongful detention of the money and to restrain the closure of the account are unsustainable. The application for release of the sums in the account is unnecessary as the money was tendered to Ms. Scott and has now been returned to her.
- [14] Therefore, it is my view that the pleadings disclose no legally sustainable ground for an action against the Bank. The Bank is simply a debtor who has paid the creditor back all the money that was owed. It is illogical for the creditor to then ask the debtor to keep her money.
- [15] Mrs. Gentles-Silvera has also relied upon the Personal Services Agreement between the Bank and Ms. Scott, for support for her contention that the Bank can

put a hold on the account. Mr. Brown has argued that that Agreement was signed in relation to the second account, not the account that the money was deposited into. However, Mrs. Gentles-Silvera countered that the Agreement covered all accounts in the bank. It is my view that additional evidence would have to be provided for the court to be able to conclude that the Agreement applied to this particular account or that Ms. Scott was bound by the Agreement. The court has relied upon the general principles of banker and client, as stated previously, rather than the terms of the Agreement.

- [16] The Bank brought the court's attention to the **Proceeds of Crime Act ("POCA")**. **POCA** has among its aims, the prevention of money laundering. **Section 92 of POCA** makes it an offence if a person enters into an arrangement which he has reasonable grounds to believe facilitates the acquisition or control of criminal property. If the person makes an authorized disclosure of the transaction, then no offence has been committed. As a result of this legislation, banks in Jamaica have taken special care to query and investigate the source of funding which they acquire in circumstances that they deem suspicious. For the reasons mentioned in paragraph [6] above, the Bank deemed the transactions in February and March 2015 as suspicious and Ms. Scott's responses did not in any way dampen those suspicions.
- [17] It is my view that; the provisions of **POCA**, the Bank's duty under that **POCA** and Ms. Scott's response gave the bank reasonable cause to close the account.
- [18] Ms. Scott also claimed damages for loss of earning for a minibus that she was to have bought. However, the pleadings have not indicated any factual foundation to support the allegation that the hold placed on the account in fact interfered with the purchase of this minibus. There is such an assertion in Ms. Scott's affidavit and Mr. Canute Brown who appeared for Ms. Scott intimated that she should be permitted to amend her Particulars of Claim, but no draft Amended Particulars of Claim were presented to the court. Consequently, the court has no way of

knowing, the alleged nexus between the purchase of the minibus and the closing of the account.

[19] The unusual claim of intimidation is raised in this suit. I must confess that this was never given much consideration in the arguments. I understand intimidation to be harm which is inflicted by unlawful threats whereby the lawful liberty of others to do as they please is interfered with (see: **Salmond & Heuston on The Law of Torts**, 20<sup>th</sup> Edition (1997), p. 371). I will not begin to speculate what the pleader intended to argue. Suffice it to say that I see no particulars in the pleadings that can substantiate this.

[20] In summary, the Bank closed Ms. Scott's accounts based on the fact that she was uncooperative in relation to its requests to provide information about the source of funds she received from overseas. Additionally, the Bank's suspicions were furthered in relation to the manner in which funds were being used which appeared contrary to the information provided by Ms. Scott. A bank has a right to close an account with reasonable notice and such right was exercised in this matter. Hence, the claims for damages for loss of income and intimidation are not sustainable neither are they set out in them pleadings.

[21] Consequently, for the reasons set out above, the Claimant's statement of case ought to be struck out for disclosing no reasonable cause of action or grounds for bringing the claim.

## **ORDERS**

[22] Having regard to the foregoing, the Court makes the following Orders:

1. The Claimant's statement of case is struck out.
2. The Defendant is awarded judgment against the Claimant.
3. The Claimant is to pay the costs of this action including all interlocutory applications.