

SAINT LUCIA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 16 OF 2001

BETWEEN:

SPARTAN HEALTH SCIENCE UNIVERSITY SCHOOL OF MEDICINE

Appellant

and

BANK OF NOVA SCOTIA

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Satrohan Singh
The Hon. Mr. Adrian Saunders

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Parry Husbands, QC for the Appellant
Mr Anthony McNamara for the Respondent

2001: October 23;
2003: September

JUDGMENT

[1] **BYRON, C.J.:** When this matter came on for hearing we dismissed the appeal. We have been requested to give reasons in writing.

[2] On the 12th June 2001 Barrow J. [Ag] dismissed [SPARTAN HEALTH SCIENCE UNIVERSITY SCHOOL OF MEDICINE] Spartan's claim for the value of cheques it alleged to have been forged which were paid and debited from its bank account. At the trial Spartan had closed its case without adducing any evidence.

- [3] The pleadings in the matter contained cross allegations. Spartan pleaded that it maintained a checking account at the Bank's Vieux Fort Branch with two authorized signatories, and that the Bank, having negligently failed to verify the authenticity of the signatures, paid out eight forged cheques purporting to be drawn by Spartan, in the sum of \$97,831.05. The Bank denied being negligent, did not admit the forgery and made counter charges of negligence against Spartan, including its delay of four months in making any report.
- [4] The record showed that Spartan refused to accede to the Bank's request for handwriting samples of the signatory and counter signatory for their handwriting expert.
- [5] At the trial Counsel for the Appellant indicated that he did not intend to call any witnesses but applied to the court to admit a document which he wanted to hand up from the bar, purporting to be the opinion of a handwriting expert relating to the authenticity of the alleged cheques. Counsel for the Bank objected to the statement being tendered in the absence of the purported maker. The learned trial Judge refused to admit the document in evidence. The Appellant then closed his case. The Respondent called two witnesses who stated that they could not distinguish the signatures as being forged. Counsel for Spartan declined cross-examination of both witnesses.
- [6] The learned trial Judge in making his decision stated:
- “ There is a complete absence of any evidence from the Plaintiff that the cheques drawn on the account of the Plaintiff and honoured by the Defendant were forgeries. The Plaintiff's entire case is that the cheques were forgeries. There was an obligation on the part of the Plaintiff to introduce evidence of forgery; the persons whose signatures were allegedly forged were not produced as witnesses. The fact that they are overseas makes not the slightest difference. The Plaintiff had 3 months to arrange to bring their witnesses here. The Plaintiff has stated that they did not think it necessary to call witnesses. The decision is fatal. I dismiss the Plaintiff's case with costs to the Defendant in the sum of \$10,000.00.”

[7] The burden of proving that an amount was improperly debited to an account lay on the account holder. See **Moffett v Bank of Nova Scotia**¹. In this case Spartan failed to discharge this burden. There was absolutely no evidence adduced in support of the claim and the testimony of the Bank's witnesses rebutted the allegations in the statement of claim and supported the allegations in the defence.

[8] In the circumstances we dismissed the appeal with costs to the Respondent in the agreed sum of \$10,000.00.

Sir Dennis Byron
Chief Justice

I concur.

[Sgd.]
Satrohan Singh
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

¹ (1969) 15 W.I.R.