EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2015/0907

BETWEEN:

[1] Simone Collins Noel

Claimant

AND

[1] Bank of Nova Scotia

Defendant

APPEARANCES:
Mr. Lawrence Daniels for the Claimant
Mrs. Neleen Rogers Murdock for the Defendant.

2021: October 13th

2021: December 23rd

JUDGMENT

[1] **Robertson J.** The claimant initiated these proceedings alleging breach of contract on the part of the defendant in that the defendant failed to credit the claimant's account in the sum of $22,189.99. The claimant contends that on various occasions between August 29th, 2016, to July 2017 she deposited funds into her accounts totaling $22,189.99 and the sums deposited were not credited to her account.

[2] The claimant also contends that the defendant is liable in damages for having taken the decision to close the claimant's accounts and thereby terminating the contractual arrangement between the parties on 11th November 2019. The claimant further contends that the defendant closed the accounts without the defendant having good and sufficient reasons.

[3] The issues before the court are:

a. Whether the claimant deposited the sum of $22,189.99 into her account through the automated telebanking machines on given dates but such sums were not credited to the claimant's account.

b. Whether the defendant possessed good and sufficient reason to close the accounts of the claimant.

[4] In this matter the claimant gave evidence on her own behalf. The defendant's evidence was given by Earl Richards and Joshua Ryner. Upon the consideration of the evidence, this court has, for the reasons indicated hereunder, determined that this claim is to be dismissed and that prescribed costs are payable to the defendant by the claimant.

The Factual Matrix

[5] The relevant accounts are accounts numbered 1003484,1008882 and 1000295. The claimant was the account holder for saving account number 900882 and was associated with the two other accounts. The account number 1003484 was a chequing account in the name of Antigua Caribex, a company owned by the claimant and account number 1000295 is an account in the name of Wind Chimes Inn which was owned by her former husband. The claimant possessed a power of attorney over the account 100295.

[6] The claimant contends that on 11th August 2017 when she was reconciling the chequing account #1003484 she discovered that a cash deposit of EC$1,000.00 which was made on Sunday 23rd July 2017 was credited to her account on Monday 24th July 2017 but later was not in her account. This observation triggered the claimant to review the reports for the other accounts and the claimant made certain observations. Specifically, the claimant contended that on various occasions sums were credited to the accounts and later debited from the accounts. The total sum that the claimant contends was missing is $22,189.99.

[7] The claimant's evidence of the sums and the dates of the transactions are indicated below:

a. Chequing account 1003484

i. July 22nd or 24th 2017- EC$1,000.00

ii. March 13th 2017-EC$3,000.00

iii. March 13th 2017-EC$3,000.00

iv. February 27th 2017-EC$1960.00

b. Savings account 9008882

i. August 29th 2016 -EC4000

ii. August 29th 2016 -EC$4000

iii. August 29th 2016 -EC$4000

c. Chequing Account 1000295 INO WIND CHIMES INN

i. January 3rd 2017 – EC$1226.99

[8] The claimant approached the representative for the defendant located at the Woods Centre Branch to make a verbal complaint regarding the funds which the claimant alleged to have been removed from the accounts. The complaint was subsequently directed to the Assistant Manager.

[9] As it relates to the defendant, the Assistant Branch Manager and Adjustor, Collections and Recoveries Site Representative gave evidence on the specific transactions in issue, the record of transactions generally, the exhibited banking records relevant to the transactions, the operations of the automated banking machines [ABM], the various records generated by the bank with respect to accounts held by customers and acronyms used by the bank in the banking documents before the court.

[10] The parties relied on the records provided in support of their respective cases and generally acknowledged the integrity of the report. The competence of the witnesses for the defendant to speak to the records produced to the court was not seriously challenged by the counsel for the claimant. The court does note that the counsel for the claimant did raise the absence of the video footage for the transaction which the claimant contended occurred on 22nd July 2017. Additionally, the counsel for the claimant on cross-examination of the Assistant Branch Manager noted the absence of verification reports for specific days.

[11] The following evidence of the defendant's witnesses is relevant as it relates to the transaction reports, verification reports, exception reports, account summaries [in relation to the savings and chequing/current], trace reports:

a. All transactions at the bank and at the ABM are recorded. Recording formats include account summaries, customer's credit report, verification reports, exception reports. The exception and verification reports can be generated and reflect transactions on specific account at an ABM machine for a particular period.
b. The exception reports record all failed transactions and attempted transactions at a particular ABM. Exceptions reports are generated the following workday.
c. The exception reports also reflect, the failed and attempted transactions, the general reason for a failed transaction and how the system "self-corrected". Thus, for example, the report may reflect a "hardware fault' as a reason for a failed transaction. This reference is an indication that the transaction was unable to be completed and/or was declined as a result of a "hardware fault". The term is also an indication that there is a technical malfunction on the machine in question.
d. The account summary for a specific account would indicate the transactions relating to a particular account. This summary would indicate when an attempt is made to deposit a sum through the ABM and show that sum being credited to the account. In circumstances when the sum is not received the account summary would also reflect the equivalent sum of money being debited from the account on the same day.

[12] The defendant's witnesses also stated the following relevant evidence:

a. Failed transactions are also recorded on the customer's account as a credit, followed by an error correction of the amount that was credited.
b. The ABM records the date, time of the transaction and provides an indication of the funds that the customer indicates that the customer intends to transact.
c. One of the reports generated by the bank contain a "response code". This code serves as an indication to the bank about what transpired regarding the particular transaction.
d. At least, one of the reports generated by the bank contain the following acronyms: CUR, DTE, ABM, SYS, GEN. The acronyms have the following meanings: CUR- current; DTE - date; A- Automatic; B -Banking; M- Machine. SYS- systems; GEN -generated.

e. Verification reports record successful transactions. Therefore, failed transactions do not appear on the verification reports. The failed transactions or attempted transactions appear on exception reports [see paragraph 11.b.].

[13] Further, the defendant's witnesses, in evidence, acknowledged that there are occasions when the machine may malfunction so that certain services offered at the ABM may not be available but other services are available to customers and therefore in respect of those other services the machine remains operative. In circumstances when a particular service of the ABM is not available it is indicated by a red light near the unavailable service on the ABM. Thus, a red light by the deposit slot would be an indication that the deposit feature on the specific ABM is not operational.

[14] The evidence of the witnesses for the defendant was clear, cogent and consistent. The explanations provided supported the records which were before the court.

[15] The following is the relevant information presented on the deposits in the accounts from the various reports:

[16] Account 9008882. The account statement summary indicates:

"29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00-
29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00-
29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00-
…		
…		
29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00+
29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00+
29 AUG	ABM CREDIT	
	*WOODS CENTRE ANTIGUA AG	EC$4,000.00+

[17] Account 1003484. Transaction statement on account 1003484 on 27th February 2017 and 13th March 2017:

"02/27/2017 ABM AUTO TELLER-CREDIT
*WOODS CENTRE ANTIGUA AG
0520917 4303198320485707 18325*****3*84 1,960.00 XCD
02/27/2017 CUR DTE ABM/ABB SYS.GEN SECIEC
*WOODS CENTRE ANTIGUA AG 18325*****3*84 $(1,960.00) XCD"
0520917 4303198320485707

[18] The exception report for account 1003484 on 27th February 2017 reflects:

"18325001003484 78 01051 4303198320485707 N 27/02/17 3:04 520917 XCD 1,960.00 DEPOSIT-DDA HARDWARE FAULT"

[19] Transaction statement on account 1003484 on 13th March 2017. The transaction statement reflects:

"03/13/2017 ABM AUTO TELLER-CREDIT
*WOODS CENTRE ANTIGUA AG
0565319 4303198320485707 18325*****3*84 3,000 XCD
03/13/2017 ABM CUR DTE ABM/ABB SYS.GEN SECIEC
*WOODS CENTRE ANTIGUA AG 18325*****3*84 $(3,000.00) XCD"
0565319 4303198320485707
"03/13/2017 ABM AUTO TELLER-CREDIT
*WOODS CENTRE ANTIGUA AG
0565322 4303198320485707 18325*****3*84 3,000 XCD
03/13/2017 ABM CUR DTE ABM/ABB SYS.GEN SECIEC
*WOODS CENTRE ANTIGUA AG 18325*****3*84 $(3,000.00) XCD"
0565322 4303198320485707

[20] The exception report reflects:

"18325001003484 78 01041 4303198320485707 N 12/03/17 1:36 565319 XCD 3,000 DEPOSIT-DDA HARDWARE FAULT"

"18325001003484 78 01041 4303198320485707 N 12/03/17 1:36 565322 XCD 3,000 DEPOSIT-DDA HARDWARE FAULT"

[21] Transaction statement on account 1003484 on 24th July 2017. The record of this transaction is:

"07/24/2017 ABM AUTO TELLER-CREDIT
*WOODS CENTRE ANTIGUA AG 18325*****3*84 $1,000 XCD
07/24/2017 CUR DTE ABM/ABB SYS.GEN SECIEC
*WOODS CENTRE ANTIGUA AG 18325*****3*84 $(1,000.00) XCD"

[22] The exception report reflects:

"18325001004383 78 01041 4303198320485707 N 23/07/17 2:06 764764 XCD 1,000 DEPOSIT-DDA HARDWARE FAULT"

[23] The account summary document on account 1003484 for 24th July 2017 reflects:

24JUL CUR DTE ABM/ABB SYS.GEN SECIEC EC$1,000.00-
*WOODS CENTRE ANTIGUA AG

…

24JUL ABM CREDIT
*WOODS CENTRE ANTIGUA AG EC$ 1,000.00 +

[24] The reports tendered as evidence in this court clearly indicate that the deposits were attempted deposits which were not completed as a result of hardware malfunction or for some other reason. Each report reflects the information consistently. The reports show that the transaction was attempted and the electronic system "self-corrected" by making the appropriate adjustment. Specifically, certain documents show "-" and "+" or a sum in equal amount in parenthesis. Finally, the exception report reflects that there was a "Hardware Fault" in respect of the particular transaction.

[25] On the matter of the deposit of $1,000.00 in respect of account 1003484, this court accepts that this is evidenced in the transaction dated on 24th July 2017. The position of this court is not changed by the absence of the verification report for a disputed transaction.

[26] **Account 100295 INO WIND CHIMES INN** The evidence before the court is that account 100295 INO WIND CHIMES INN is in the name of Collin Noel, the husband of the claimant. Collin Noel did

not give evidence in these proceedings. The defendant has presented a correspondence addressed to the manager of the defendant dated 30th November 2017 which indicated that the "Wind Chimes Inn (Collin Noel) has no outstanding case against the bank and therefore has no problem with my accounts currently held at your institution". The correspondence is dated prior to the initiation of these proceedings. The correspondence was entered into evidence without being challenged. The claimant has not offered any evidence of an existing power of attorney which empowers the claimant to initiate proceedings in respect of Account 100295 INO WIND CHIMES INN. Accordingly, the claimant has not shown that she possesses the necessary locus to initiate proceedings in respect of this account.

[27] Whether the Claimant is entitled to damages as a consequence of the closure of the Claimant's account with the defendant. Upon the initiation of the contractual relationship the claimant signed a personal financial services agreement. The only pages before this court in relation to this document are the 'deposit account agreement' and the signature page. It is a term of the agreement that the defendant "*may close your account without notice to you if you do* not *operate your account in a satisfactory manner, for example, if you maintain an overdrawn balance due to NSF cheques or outstanding service charges or if you use the account for illegal or improper purposes*". The agreement also indicates that the defendant "*may close your account without reason by giving you 30 days' written notice*". The claimant has not shown any contrary relevant provision in the agreement which challenges these terms of the agreement which were entered into evidence.

[28] Accordingly, for the reasons indicated herein this court dismisses the claim filed, accepts that the defendant was entitled to terminate the contractual relationship as provided in the contract of engagement. Prescribed costs are payable to the defendant by the claimant.

Marissa Robertson
High Court Judge

By the Court

Registrar

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