EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR 2017/0050

BETWEEN:

THE QUEEN

and

ALPHONSO RYAN

Appearances:
Mrs. Shannon Jones-Gittens, Counsel for the Crown
The Defendant appears in person

2021: July 12th, 13th, 20th

JUDGMENT

[1] **WILLIAMS J.:** The Defendant, Mr. Alphonso Ryan, was indicted on one count of Obtaining Money by False Pretences contrary to section 27 (a) of the **Larceny Act** Chapter 241 of the Laws of Antigua and Barbuda, Revised Edition 1992.

[2] The particulars of offence, (as amended), stated that:

> "Alphonso Ryan between the 8th day of August, 2014 and the 24th day of September, 2014 in Antigua and Barbuda with intent to defraud issued an Antigua and Barbuda Investment Bank Cheque No: 2120 in the amount of XCD $16,902.98 to Plumbing Electrical Limited as payment for plumbing and electrical supplies knowing that there was insufficient fund[s] in his account to satisfied (sic) the cheque."

[3] Section 27 (a) of the **Larceny Act** of Antigua and Barbuda provides that:

"Every person who, by any false pretence – with intent to defraud, obtains from any person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable chattel or valuable security to be delivered, to himself or to any person for the use or benefit or on account of himself or any other person, shall be guilty of a misdemeanor."

[4] In order for the Defendant, Mr. Ryan, to be found guilty of the offence of obtaining money by false pretence with which he is charged, the Crown must adduce evidence to satisfy the forum of fact so that the forum of fact is sure of the Defendant's guilt. Mr. Ryan does not have to prove anything.

[5] The Crown in order to satisfy the forum of fact that Mr. Ryan is guilty, must prove to a degree of certainty that the Defendant:

I. In fact made the pretence;

II. Obtained the money (money's worth) as a result of the pretence;

III. Intended to defraud; and

IV. To his knowledge the pretence was false.

The Facts

[6] There was not much dispute over the basic facts in the case. The disputed matters will be looked at after summarizing the matters that are agreed.

[7] The virtual complainant, Mr. Ashfaq Ahmad and the Defendant, Mr. Alphonso Ryan, have known each other for a number of years. Mr. Ahmad is the owner of Plumbing and Electrical Limited, PEL. That company provided plumbing and electrical supplies to wholesalers, retailers and contractors. Mr. Ryan owned a company, Alkran Hardware. Both men met when Mr. Ahmad worked with Century Eslon Antigua Limited. Mr. Ryan was a client of Century Eslon.

[8] In July 2014, Mr. Ahmad acquired Century Eslon stock and established PEL.

[9] On the 8th August, 2014 Mr. Ryan went to PEL and he received goods valued at $7,873.28. Mr. Ryan handed over an undated cheque for the full amount to Mr. Ahmad. Mr. Ryan however asked Mr. Ahmad not to cash the cheque immediately, but to "give him a few days" as he wanted to "sort out some finances at the bank." Mr. Ryan asked that the cheque be held until the 16th of September. Mr. Ahmad then wrote in the date on the cheque.

[10] Then on 4th September, 2014 Mr. Ryan returned to PEL and credited a further $9,029.70 worth of goods. Mr. Ryan requested that the first cheque be returned to him and he wrote another cheque in the sum of $16,902.98, which sum was equal to the two invoices – of 8th August, 2014 and 4th September, 2014. Mr. Ryan dated that cheque 24th September, 2014. It was an Antigua and Barbuda Investment Bank cheque, No: 2120.

[11] When the 24th September, 2014 came the virtual complainant telephoned the Defendant to inquire if it was okay to go ahead and deposit the cheque. Following the conversation, Mr. Ahmad deposited the cheque at the bank. That cheque was not honoured by the bank. On the 26th September, 2014 the cheque was stamped "Refer to drawer" and returned to Mr. Ahmad.

[12] Mr. Ahmad informed the Defendant that the cheque was returned by the bank. Mr. Ryan told the virtual complainant to wait a few days as he, Mr. Ryan, "will sort out some issues with the bank."

[13] After the passage of a few days, Mr. Ahmad again called Mr. Ryan. Mr. Ahmad gave the Defendant the option to return the goods. The goods were never returned. The relationship between the two then deteriorated.

[14] A report was made to the police. Mr. Ryan was summoned by the police on 27th October, 2014 and released after giving a written statement.

[15] Mr. Ahmad sought the services of a lawyer to write to the Defendant. Then a collection agent was sent to the Defendant. Mr. Ahmad received two payments on the account: $1,000.00 on the 6th January, 2015 and $902.98 on the 28th January, 2015.

[16] The Defendant was again detained in relation to this matter on the 29th June, 2016. A formal police interview was conducted with Mr. Ryan. Following the interview Mr. Ryan was formally charged.

Disagreements

[17] Some aspects of the Crown's case were not accepted by the Defendant. The Crown also disputes aspects of the case for the Defendant. Some of the disputed evidence goes to specifics and do not necessarily concern the substance of the charge. Some of these are:

I. Whether Mr. Ahmad returned the first cheque on which he wrote in the date of 16th September 2014 to Mr. Ryan.

II. Whether the Defendant requested of Mr. Ahmad to come and pick up the remaining goods from Alkran as the vehicle that Alkran used was no longer road worthy.

III. Whether Mr. Ahmad told the Defendant that he, Mr. Ahmad, had to contact his bosses overseas about extending credit.

IV. Whether Mr. Ahmad at some stage refused to go and collect a payment of $2,000.00 saying that it was insufficient;

V. Whether Mr. Ryan later raised $8,000.00 and again told Mr. Ahmad to come and collect it, but Mr. Ahmad said he wanted at least $10,000.00.

VI. Whether there was an argument between the virtual complainant and the Defendant in which adverse comments about race and nationality were made.

[18] Not every disputed point needs to be resolved. Only those matters which touch and concern the central issues of the case and which would assist in determining the innocence or guilt of the Defendant need to be addressed.

[19] The fundamental point of disagreement between the two sides however concerned the ABIB cheque No 2120:

1. whether or not Mr. Ahmad in fact spoke with Mr. Ryan before depositing the cheque;

2. whether Mr. Ryan told Mr. Ahmad to go ahead and deposit the cheque; and

3. why was the cheque tendered in the first place.

Defendant's Case

[20] Mr. Ryan has pleaded 'not guilty'. He has put the Crown upon proof of its case. He is saying that he did not commit the offence as alleged. He testified that he had no intention to defraud.

[21] At the close of the Crown's case, Mr. Ryan was told that he had a case to answer and he was informed of his various options (to remain silent, to give an unsworn statement from the dock following which no questions could be asked of him, or sworn testimony following which he would be liable to cross examination but regardless of which option he chose, he would be entitled to call a witness or witnesses on his own behalf). The Defendant elected to give evidence on oath. His evidence has to be assessed on the same scale as the witnesses for the Crown, all of whom also testified under oath.

[22] Apart from the Defendant's testimony from the witness box, his case also emerges from other sources: his handwritten statement to the police; the question and answer with Sergeant 629 Virlica Chatham; and what emerged during his cross examination of the Crown's witnesses.

[23] When the Defendant was first detained by the police on the 27th October 2014, he wrote on the Self-Written Statement of Accused Form that:

> "I Alphonso Ryan, Managing Director of Alkran Hardware, Old Parham Road, do admit that I wrote a cheque for about seventeen thousand (17,000 EC) to company PEL located at Herberts at about September 2014. The cheque was deposited by PEL without my permission. There appeared a misunderstanding between myself and the other person as when to deposit the cheque. The police contacted me with patience and understanding. I intend to resolve this matter in about two weeks."

[24] Mr. Ryan responded to 42 questions over a period of two hours and 10 minutes on the 29th June, 2016. He reviewed and edited the responses. In that interview among the things that Mr. Ryan stated were:

I. Sales for the past two years have been "Embarrassing, close to zero";

II. That he received from PEL the goods listed on the two invoices – No 62 amounting to $7,873.28 and No 94 amounting to $9,029.70;

III. He could not remember whether each invoice was to be paid after 30 days or at the end of the month;

IV. He did sign the ABIB cheque number 2120 dated the 24th September, 2014 in favour of PEL in the amount of $16,902.98;

V. The purpose of the cheque was for Mr Ahmad to hold not to deposit.

[25] The Defendant during his testimony in Court said:

> "The issue at hand is really whether or not I wrote that cheque to be deposited. That cheque was never intended to be deposited at no time at all. The other party tricked me to get hold of Alkran's cheque… My action of writing a cheque to PEL with the agreement not to be deposited was merely an intention to pay a debt sometime in the future… The cheque was not to be deposited."

Cross Examination

[26] Mr. Ryan at the commencement of the cross examination said that he could not recall saying that the intention was for the cheque to be used to pay a debt sometime in the future. He disagreed that it was so. The Defendant went on to say:

> "What I said or intended was that the cheque was merely an intention to pay. What I really wanted to say: the cheque was merely an intention of goodwill, of trust, or reassurance to pay with other proceeds than the cheque. That is what I intended."

[27] Throughout the course of the cross examination, Mr. Ryan repeatedly stated that there was no intention for the cheque to be deposited. He pointed out that he "gave the cheque to Mr. Ahmad as a safety net, so he will not lose his job."

[28] Mr. Ryan at the time of the writing of the cheque was experiencing challenges. He said that Alkran at the time was not active as there were hardly any openings and that the company was seeking to refinance. He agreed that at the time the company was doing zero or close to zero sales. Mr. Ryan also spoke of the company having passed its overdraft limit at the bank but stated: "that does not mean the banker would not have passed the cheque." Mr. Ryan also said that he was expecting money from Hawksbill Hotel and they defaulted.

Discrepancies and Inconsistencies

[29] There was one notable discrepancy in the case for the Crown. This related to the first cheque that Mr. Ryan wrote to PEL. The evidence from the virtual complainant was that he returned the cheque

to Mr. Ryan at the Defendant's request, prior to being issued the new cheque in the amount of the two invoices. Sergeant 629 Chatham however testified that Mr. Ahmad gave her two cheques, numbers 2119 and 2120.

[30] This discrepancy appears to be relatively minor and does not go to the heart of the case. Its overall importance however, is that it is something to be considered and assessed when it comes to evaluating Mr. Ahmad's credibility, since if he is found to be intentionally and deliberately untruthful it can impact on how his overall testimony is regarded.

[31] There were inconsistencies in the Defendant's evidence. One of these is when Mr. Ryan wrote the statement which he gave to the police back in October 2014, about a month after giving the cheque to PEL, that it was "deposited without my permission." Two years later, during the interview with the police and at trial, he is saying that the cheque was never meant to be deposited at all. While on the surface "deposited without my permission" may seem to be the same thing as not to be deposited at all, in the context of the evidence in the case they are vastly different. If in October 2014 Mr. Ryan knew that his intention was for the cheque not to be deposited at all, two questions arises: why did he not say so then? And therefore what did he mean when in his handwritten statement he said: "There appeared a misunderstanding between myself and the other person as when to deposit the cheque"?

[32] It is also notable the difference in how Mr. Ryan endorsed the two cheques. The first did not have a date inscribed on it. The evidence from the virtual complainant is that he is the one who wrote in the date of 16th September, 2014 on it. There is no issue with this cheque as it was never deposited. The cheque that is the subject matter of this case however was signed and dated by the Defendant. The question arises then: why did Mr. Ryan not write in the date on the first cheque which he asked the virtual complainant not to deposit until sometime in the future yet wrote in the date on the second cheque, No. 2120?

[33] The Defendant, who acknowledged that he had no cash, an overdraft account that had reached its limit and that he was doing zero or close to zero in sales, said that he was expecting payment from a hotel "to take care of those two invoices." Another question arises here: Why would the hotel be paying him at least $16,902.98 when he was not doing any sales?

[34] Even if the version of events given by Mr. Ryan is disbelieved, he cannot be convicted on the basis that what he has said is unreliable. Rather, the forum of fact having dismissed Mr. Ryan's account, must be convinced by the cogency of the evidence adduced by the Crown that the Defendant is guilty.

<u>Goods Retained</u>

[35] It is agreed by both sides that Mr. Ahmad requested a return of the goods after the cheque was not honoured by the bank. The goods were never returned.

[36] The virtual complainant testified that he told the defendant, Mr. Ryan to only pay for whatever goods he may have sold and whatever had not yet been sold could be returned.

[37] According to Mr. Ryan: "I never returned the goods. I made efforts to, but he [the virtual complaint] sent collection agents."

[38] The Defendant confirmed that he did tell the police that he did not have enough money to hire a truck to return the goods. The truck that was used to collect the goods from PEL was no longer roadworthy.

Credibility Assessment

[39] Mr. Ahmad and Mr. Ryan were the only two witnesses to the essential facts of the case. It was therefore extremely necessary to closely scrutinize their testimony; to not just look at either witness and seek to assess their demeanour but to closely examine the evidence given by the witnesses and look at the internal logic, cohesion and plausibility, as well as the consistency of their testimony alongside any other available evidence.

[40] Mr. Ahmad explained both in his evidence in chief and when pressed in cross examination, that it was the Defendant wrote the cheque that is the subject matter of this case and that on the date inscribed by the Defendant, he called Mr. Ryan and asked if he can deposit the cheque and the Defendant told him that it was okay to do so.

[41] There was little difference in the manner in which Mr. Ahmad responded to questions by either the counsel for the Crown or by the Defendant in cross examination. He was polite, respectful and answered what was asked.

[42] The Defendant seemed intent on making the point that the cheque was not intended to be deposited. Regardless of the question posed, he found a way to return to what seemed to be a rehearsed and deliberate intended response. He doubted and denied obvious facts, such as claiming falsely that he did not say something and even saying that the cheque that he gave to Mr. Ahmad was not intended to cover the two invoices, even though the amount of $16,902.98 was equal to the total of the two invoices for the goods he collected. Mr. Ryan said he provided the cheque to the virtual complainant so that Mr. Ahmad could use it as a hedge and show to his boss – even though Mr. Ahmad was the principal of PEL.

[43] The Defendant did not fare well in cross examination.

Findings

[44] The following findings of fact are made:

1) Mr. Ahmad impressed as a witness of truth;

2) Conversely, Mr. Ryan's narrative that the cheque was not intended to be deposited was disbelieved as being untrue and was cast aside;

3) Mr. Ryan wrote and dated ABIB cheque No: 2120 in the sum of $16,902.98 and gave it to Mr. Ahmad as payment for the plumbing and electrical goods he took from PEL;

4) Mr. Ryan in signing and dating the cheque sought to give Mr. Ahmad the impression that he either was or would be able to pay for the goods on the specified date;

5) Mr. Ryan on the 24th September, 2014 gave the "go-ahead" to Mr. Ahmad to deposit the cheque;

6) Mr. Ryan at the time of writing the cheque and also when he told the virtual complainant to deposit the cheque, knew that he did not have any funds available in the account as he had already exceeded his overdraft limit;

7) Mr. Ryan having received the goods and not having the money to pay for them, did not return the goods as he was requested to do;

8) When the facts and circumstances of the case are considered, Mr. Ryan had the intention to defraud Mr. Ahmad and PEL.

Conclusion

[45] Alphonso Ryan is guilty as charged of the offence of obtaining money by false pretences.

Colin Williams
High Court Judge

By the Court

Registrar