

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCv 2009/0243

BETWEEN:

MONTPELLIER FARM LTD

Claimant

and

ANTIGUA COMMERCIAL BANK

Defendant

Appearances:

Mr. F. Jilkes and Mr. Clement Bird for the Claimant

Ms. Kamilah Roberts (with Ms. Andrea Roberts and Safiya Roberts) for the Defendant

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2010: October 25, 26
2011: February 11
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JUDGMENT

- [1] **MICHEL, J.:** By Claim Form with Statement of Claim filed on 13th May 2009 the Claimant, Montpellier Farm Ltd, claimed against the Defendant, Antigua Commercial Bank Limited, for (a) damages in the sum of \$805,900.00 for breach of an oral agreement made between the Claimant and the Defendant on 31st October 2002, (b) general damages for loss of profit occasioned by the said breach, (c) interest on damages at the rate of 18% per annum or at such rate as the Court may allow, (d) costs and (e) further and or other relief.

- [2] By Defence and Counterclaim filed on 8th July 2009 the Defendant joined issue with the Claimant on most of its averments in the Statement of Claim and then counterclaimed against the Claimant for (a) \$5,148,980.43, (b) interest thereon at the contractual rate of 13% per annum, (c) collection fees of 10% of the total amount owed and (d) costs.
- [3] By Reply and Defence to Counterclaim filed by the Claimant on 7th September 2009 the Claimant in turn joined issue with the Defendant on most of its averments in the Defence and Counterclaim.
- [4] By Reply to Defence to Counterclaim filed by the Defendant on 6th November 2009 the Defendant rejoined issue with the Claimant on the Reply and Defence to Counterclaim.
- [5] Case management of the matter took place on 15th March 2010 and - after some extensions of time granted by the Court - both parties complied with the case management directions of the Master.
- [6] Pre-Trial Review of the matter was held on 8th October 2010, with the trial taking place on 25th and 26th October 2010.
- [7] At the trial, the Claimant called two witnesses, while the Defendant called one witness.
- [8] The first witness for the Claimant was Mr. Peretz Moshe, who is also referred to as Micha Peretz. Mr. Moshe stated that he is the General Manager of the Claimant and proceeded to give details of the relationship between the Claimant and the Defendant over a period of several years since 2000, including details about the issue of the Letter of Credit by the Defendant on behalf of the Claimant and about various loans granted to the Claimant by the Defendant.

- [9] The other witness for the Claimant was Ms. Karen Barr, a Certified Public Accountant based in Florida in the United States of America, who gave evidence as to her assessment of losses incurred by the Claimant because of its inability to fulfil its contracts.
- [10] The Claimant closed its case and the defence then called its only witness, Mr. Geoffrey Simmons, the Consumer Lending Officer of the Defendant, who essentially took the Court through the Claimant's file at the Antigua Commercial Bank, covering in the process the issue by the Defendant of the Letter of Credit on behalf of the Claimant and the grant by the Defendant to the Claimant of various loan facilities culminating in a consolidated loan of \$3,100,000.00 in March 2003, with interest thereon at the rate of 13% per annum.
- [11] At the conclusion of the case, both parties were ordered to file and exchange written submissions with authorities on or before 26th November 2010. Neither of the parties complied with this directive to the letter, with the Defendant filing its submissions three days late (on 29th November 2010) and the Claimant filing its submissions three and a half weeks late (on 20th December 2010). The Court however accepted both submissions and hereby deems them to have been duly filed.
- [12] Having seen and heard the witnesses who gave evidence in this case, having read the several documents put into evidence in this case, having perused the closing submissions made on behalf of the parties and read the accompanying authorities, this Court concludes as follows:
1. That the Claimant and the Defendant did enter into a contract for the issue by the Defendant of a Letter of Credit to the bankers of the company from whom the Claimant was purchasing a desalination plant.
 2. That the discussions held on 31st October 2002 between Messrs Micha Peretz and Karl Gardner on behalf of the Claimant and Mr. David Stevenson on behalf of the Defendant (partly by telephone and partly in person) constituted pre-contract

negotiations between the parties en route to entering into a contract for the issue of a Letter of Credit by the Defendant to the aforesaid bankers.

3. That the Claimant is bound by the terms of contract for the issue of the Letter of Credit by the Defendant as per the application form signed by Mr. Peretz on behalf of the Claimant, even although Mr. Peretz signed a blank form with the expectation that it would be completed in accordance with the pre-contract negotiations of 31st October 2002 and the form was not so completed. No other conclusion is possible if this Court accepts that the judgments of the Court of Appeal of England and Wales are at least persuasive authority on matters in which the law of Antigua and Barbuda is either very similar to or is the same as the law of England and Wales by virtue of being derived from the English common law. The English Court of Appeal was unanimous and unequivocal in its ruling in the case of **United Dominions Trust Ltd v Western B.S. Romanay**¹ that if a person signed in blank an agreement which he knew would be completed by some other person, it is not open to the signatory to say that he did not consent to whatever figures the completed document contained, even though they differed with the figures previously discussed by the parties. So too if a party signed an application form in blank with the terms to be filled by the other party and the terms contained in the completed form differ from what was discussed in pre-contract negotiations.
4. That the Defendant did not breach its contract with the Claimant when it issued a Letter of Credit as per the application form signed by Mr. Peretz.

[13] Once having made this determination, it becomes unnecessary to address the issues concerning the damages claimed by the Claimant, because none can be awarded.

[14] As to the Defendant's counterclaim, there does not appear to be any real contest on the issue of the Defendant having granted to the Claimant a loan of \$3,100,000.00, the balance on which stood at \$3,084,353.01 at the date of the claim. There also does not

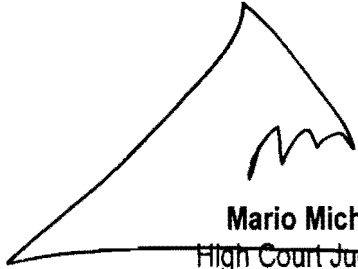
¹ [1976] 1 Q.B. 513

appear to be any real contest on the issue of the applicable rate of interest on the loan being 13%, with the interest due at the date of the claim being \$2,064,627.42 and continuing at the daily rate of \$1,098.5367, bringing the amount of interest due at this time (by mathematical calculation) to \$2,766,592.30. The evidence for the Defendant on these issues was uncontroverted.

- [15] In the circumstances, the Claimant is ordered to pay to the Defendant the sum of \$5,850,945.31 made up of principal in the sum of \$3,084,353.01 and interest to the date of this Order in the sum of \$2,766,592.30. Interest from the date of this Order to the date of payment shall be at the statutory rate of 5%.
- [16] The Court declines to make any award for collection fees claimed by the Defendant, because the Court considers that interest (which forms part of the award in this case) is the compensation to the aggrieved party for late payment of the money due to him and costs is the reimbursement to him of expenses incurred in recovering the money. There is no justification therefore for the additional imposition of collection fees.
- [17] The Court also considers that an award of prescribed costs is not justified in the circumstances of this case. There were no experts called to give evidence or expert reports to be considered. The Defendant called its current Consumer Lending Officer as its sole witness and he merely regurgitated to the Court the file of the Claimant. The Defendant never even bothered to call as witnesses any of its employees or former employees (apart from the current Consumer Lending Officer) who were involved in the bank's dealings with the Claimant at the relevant times. The Claimant also did not unduly strain the Defendant, with only the evidence of Mr. Peretz for them to contend with and the very brief entry and exit of Ms. Barr. In the circumstances, the Court considers that an award of costs to the Defendant in the sum of \$20,000.00 to be adequate, bearing in mind the factors to be considered in accordance with Rule 65.2 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

[18] The Court's overall Order is as follows:

1. That the Claimant's claim is dismissed.
2. That the Defendant's counterclaim is allowed and the Claimant is to pay to the Defendant the sum of \$5,850,945.31.
3. Costs are awarded to the Defendant in the sum of \$20,000.00.
4. Interest on the amount of the award, including costs, shall be paid from the date of this Order to the date of payment at the rate of 5% per annum.



Mario Michel
High Court Judge