

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO SKBHCV2000/0129

BETWEEN:

ST KITTS-NEVIS FINANCE COMPANY LIMITED

Claimant

and

AVRIL FRANCIS

Defendant

Appearances:

Damian Kelsick for the Claimant
Joseph Quinlan for the Defendant

2003: April 3, 15

JUDGMENT

[1] **MITCHELL, J:** Mrs Francis runs a business and secretarial college in Basseterre. One of the subjects she teaches is computer skills. She borrowed money from the Finance Company to buy computers and other equipment for use in her college. When she failed to pay the loan instalments, the finance company seized the computers and sold them. The proceeds of the sale did not satisfy the debt. The Finance Company has now sued her for the balance. Mrs Francis has counter claimed alleging that the Finance Company had wrongfully seized and had sold her property at a gross undervalue. She seeks damages.

[2] This case falls to be decided solely on its facts. The facts as I find them are as follows. On 15 August 1994, Mrs Francis gave the Finance Company its First Bill of Sale to secure a loan from it of \$45,600.00. She used that loan to purchase a Mitsubishi Lancer motor car. One year later she gave the Finance Company a

Second Bill of Sale to secure a second loan for the purchase of equipment for her school. A year after that, on 30 May 1996, she borrowed a third sum of \$40,000.00 to buy computers for her school. She and the Finance Company agreed to consolidate the second and third loans. The new combined security would be a Third Bill of Sale for a total of \$57,191.28 which would replace the Second Bill of Sale.

- [3] By July 1998, the loans were a year in arrears, and the Finance Company gave Mrs Francis notices to pay them off. When she did not do so, the Finance Company used the First Bill of Sale to seize the vehicle and it used the Third Bill of Sale to seize the school equipment. The vehicle is not of further interest in this suit. The Finance Company next gave her notice to pay off the balance owing on the Third Bill of Sale failing which the equipment would be sold. When she did not do so, the Finance Company sold the equipment. The loan balance not being fully satisfied by the proceeds of sale, the Finance Company wrote her demanding payment of the balance. Her response was to have her solicitor write letters of 25 August and 3 November 1999 acknowledging the indebtedness and requesting time for payment.
- [4] The Third Bill of Sale contained a number of typing errors. In particular, the consideration clause refers to a "motor vehicle" being the property referred to in the Schedule. The Schedule in fact refers only to the office equipment. Also, the insurance clause has Mrs Francis agreeing to keep the property assigned insured "on a comprehensive motor vehicle policy." There was in fact no motor vehicle to be insured. The error has obviously crept in to the Bill of Sale because the lawyer who drafted it used a template normally reserved for motor car loans, and did not proof-read the draft carefully enough before it was signed and registered.
- [5] Mrs Francis has used this typing error in an attempt to confuse the issues in this case. At the trial she repudiated the Third Bill of Sale and attempted to say that her signature on it was a forgery, but I do not believe her. First of all, it is patently

her signature. Secondly, she never previously claimed such a thing in her pleadings. Thirdly, throughout the period after the sale of the equipment and up to the filing by her of her defence and counter claim she always admitted the balance of the debt. Fourthly, there is the matter of a formal admission, dealt with below.

- [6] The solicitor had sworn in the statutory affidavit of due execution required for every Bill of Sale that she had explained the effect of the Bill of Sale to Mrs Francis and that Mrs Francis had said that she understood, and that she had witnessed Mrs Francis execute the Bill of Sale. It would be a very serious thing for a solicitor to tell such a falsehood in an affidavit proving a Bill of Sale. If such an allegation is to be raised at a trial, it must first be laid out in the pleadings. Mrs Francis did put in her Defence an allegation that the Finance Company had asked her to sign the Third Bill of Sale, but that after reading it she had refused to do so. Saying that you refused to do something when the Finance Company asked you to do it is not the same thing as your saying that the solicitor is not telling the truth when the solicitor swears in an affidavit that she attended at the execution of the Bill of Sale.
- [7] Even after the Finance Company had raised in its Defence to her Counterclaim the allegation of the proper execution by Mrs Francis of the Bill of Sale before its solicitor, Mrs Francis did not make the slightest suggestion in her Reply that the solicitor had not been telling the truth in the affidavit of due execution. She never once says in her Reply, "I was not there. I never signed it." She raised the allegation that the solicitor was not telling the truth for the first time in her testimony on cross-examination. I do not believe her. She has not told the truth in testifying that she had not attended at the solicitor's chambers to execute the Bill of Sale. Besides the question of my disbelief, this failure by her to raise such a serious claim in her Reply constitutes a formal admission by her that she had in fact signed the Bill of Sale. She has sought to cling on to the typing error in the Bill of Sale and to make this false accusation in an attempt to confuse the issue of the balance that she owes. She does not deny the accuracy of the calculations of the

balance due and owing to the Finance Company, so that I take the calculations to be admitted.

- [8] Given the findings of fact above, there will be judgment for the Finance Company for its claim of \$55,210.44. The counter claim is dismissed. The Finance Company will have its costs agreed at \$7,500.00.

Don Mitchell, QC
High Court Judge