

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 878 OF 1995

BETWEEN:

NICHOLAS THEODULE

Claimant

and

THE BANK OF NOVA SCOTIA

Defendant

Appearances:

Ms. Cybelle Cenac for the Claimant.
Mr. Rhory McNamara for the Defendant.

2002: March 25
March 28

JUDGMENT

[1] **HARIPRASHAD-CHARLES J:** In 1970, the Claimant opened an Account No. 9940 at Bank of Nova Scotia in the name of Nicholas Fenelon of Aux Lyon, Dennery. On 3rd day of October 1979, he changed his name to Nicholas Theodule.

[2] There was another Nicholas Theodule, married to one Unica Theodule who lived at Babonneau, Quarter of Castries before he migrated to St. Thomas. He had an account No. 8177 at the said Bank of Nova Scotia and remitted monies on a regular basis to Saint Lucia.

- [3] In error, the Claimant was given the account information of Account No. 8177 in the name of Nicholas Theodule of Babonneau, Castries. This occurred at the time when the records of the Bank were not computerized and thus operated a system of passbooks, signature cards and savings cards. The Claimant profited on this information.
- [4] Prior to 1979, the Claimant was employed with Hess Oil. He alleged that his salary was deposited in Account 8177 but later changed his story when Mr. McNamara provided ample documentary evidence to demonstrate that his salary from Hess Oil was deposited in Account 9940.
- [5] In 1982 the Claimant left Saint Lucia for Cayenne, French Guiana. Account No. 9940 was actively used by him up to that time. Shortly thereafter, the said account was left dormant with a balance of \$4.29. In 1986, the Account was closed due to inactivity. This was the period of time that the Claimant was living in Cayenne.
- [6] In 1985, the Claimant was involved in an accident in Cayenne and was compensated by the French Government by remittances of approximately 4,000 french francs every three months. This money was deposited in a new account at the said bank as Account No. 9940 was closed.
- [7] The Claimant was given the new account. The Bank made yet another blunder on the opening of this new account. The Claimant was inadvertently given Account No. 400576 which was subsequently changed to Account No. 400641 because Account No. 400576 was a duplicate of another account. This was another feather in the Claimant's cap to concoct his incredulous story.
- [8.] Under intense cross-examination by Mr. Rhory McNamara for the Defendant, the Claimant eventually conceded that the moneys from the French Government were deposited in his new account No. 400641 and not Account No. 8177 as he had previously alleged.

- [9] The Claimant next alleged that prior to leaving Saint Lucia and while working for Hess Oil, he was employed as a building contractor and received large sums of money totaling in excess of \$60,000.00 which was never credited to his account. Except for his bare assertions, the Claimant could not provide any documentary evidence to substantiate his claim.
- [10] This is a civil case wherein the standard of proof is based upon a balance of probabilities. Examining the facts presented to this Court, I was much more impressed with the demeanour of, and the evidence given by the Defendant's witnesses. They impressed me as witnesses of truth. I cannot say the same for the Claimant. He took the Court on several excursions into the wilderness. The Claimant could not prove any of the allegations which he raised. I am of the view that the Claimant was not only an untruthful witness but he was dishonest as he tampered with certain documents, for example the wire transfer.
- [11] On the evidence presented to the Court, I am of the considered opinion that the Claimant never had access to Account No. 8177 and that his money was never deposited to that account. The Claimant cannot read and write well. However, I do not think that the Claimant was unable to fully grasp his finances. On the contrary, I think that he tried to use the inadvertence of the Bank to his benefit.
- [12] After considering the evidence and even though I must confess to have been very impressed by the ingenuous arguments of Ms. Cenac, Counsel for the Claimant, I found the arguments advanced by Counsel for the Defendant to be more compelling. I accordingly dismiss the claim. I make no order as to costs because of the inadvertence of the Defendant Bank. I do hope that the advent of technology has eradicated problems of this nature.

INDRA HARIPRASHAD-CHARLES

High Court Judge