

IN THE SUPREME COURT OF BELIZE, A.D. 2004  
SUMMARY PROCEDURE

ACTION NO. 66 OF 2004.

	(DR. ARDEN USHER	PLAINTIFF
	(	
BETWEEN	(AND	
	(	
	(ATLANTIC BANK LTD	DEFENDANT

Mr. O. Sabido S.C., for the plaintiff.

Ms. L. Barrow for the defendant.

AWICH J.

3.6.2005.

JUDGMENT

1. This is a case which should not have been brought to the Supreme Court. The proper forum was the Magistrate's Court. It is no good reason that the Supreme Court has jurisdiction over all matters. It is so, but some businesses must be left to the magistrates' courts, otherwise what is their purpose if small matters are filed at the Supreme Court as a matter of convenience.

2. The case was the result of lack of a proper system at the defendant bank, the Atlantic Bank Ltd, on Cleghorn Street, Belize City, in receiving cheques and cash payments on credit card accounts. The bank was grossly negligent I would say. Had there been a record of the cheques, and cash payments that Dr. Arden Usher, the plaintiff, made, he would have had no suspicion that some cheques he presented were not credited to his account.
  
3. The testimony of Dr. Usher was this: On 11.6.2004, he presented for payment into his credit card account at the bank, about 50 cheques drawn in his favour, and cash. He did not list the cheques and cash on any deposit slip or such paper. The teller simply received the cheques and cash and issued an acknowledgment receipt date - stamped June 11, 2004, exhibit P(AU)2, for the total sum of US\$10,734.72. Six days later, on 17.6.2004, Ms. Blanca Echevaria, the operations manager at the bank, called Dr. Usher and informed him that there had been error in the payments he had made. On 18.6.2004, Ms. Echevaria went to Dr. Usher and discussed the matter. She took with her 44 photocopies of cheques, but one was duplicated. Dr. Usher rejected the explanation that there was a mistake. There were exchanges of letters. Despite the fact that Dr. Usher did not accept any error, the bank on 28.6.2004, debited his account with US \$1,049.20, equivalent to Bz \$2,143.00. The entry was shown in his bank credit card statement of account for July. It was the view of Dr Usher that the debit was effected because he had more than sufficient money on the account; it had been credited with money he had paid to a company, Amco, on an invoice which the company later “reversed” and paid the money back to his account.

4. The teller, Ms. Lobitsa Santos, said that she received about 50 cheques and \$75 in cash. She confirmed that neither Dr. Usher nor herself listed the cheques and cash payments on deposit slip or such paper; she simply added the payments and issued the acknowledgment receipt. She also confirmed that it was not required of the customer or her to list down the payments. It has been a requirement since.
  
5. The account of the transactions given by Ms. Santos is as follows: Dr. Usher wanted to pay off US\$10,734.72 which by the conversion rate of 2.0425, became Bz 21,925.67. Ms. Santos added the cheques (including the errors) and deducted the total from \$21,925.67 to be paid, on the credit card account to clear off the US \$10,734.72. She informed Dr. Usher that the total of the sums on the cheques was short of the sum needed, Dr. Usher was to pay Bz \$487.42 to make the total. He gave her another cheque for Bz \$317, then another for Bz \$95.00, (Dr. Usher said it was a US \$ cheque). There was still Bz \$75.42 to be paid. Ms. Santos said Dr. Usher gave her Bz \$100 note in cash. She gave back change of Bz \$25. Dr. Usher said in his testimony that when Ms. Santos told him that the cheques added to less than the sum needed, he knew so. But he also had said earlier that he had added the cheques at his home twice.
  
6. The statements in the testimony of Ms. Santos about what was said to be the errors were as follows: At the end of the day her payments and receipts transactions could not balance, she "was short by about BZ\$2,100.00". She

reported the matter to her supervisor, Ms. Blanca Echevaria. The transactions were examined by the supervisor and by the bank's internal auditors unsuccessfully. Eventually after two to three days the supervisor traced the problem to errors in adding up the sums on the cheques. The explanations by Ms. Santos about the errors were: 1) for one cheque of \$260, she added \$60 instead of the correct sum of \$260 - shown at (3) on the machine roll, exhibit D(LS)9, and, 2) for another cheque of \$260 she added \$2,603 instead of the correct sum of \$260 - shown at (4) on the machine roll.

7. According to the above explanations by Ms. Santos of the errors, it means she diminished total receipt from Dr. Usher by  $(260-60) = \$200$ , and inflated it by  $(2,603-260) = \$2343$ . Her explanations can be expressed mathematically as a net inflation of the correct payment by,  $(2,343-200) = \$2,143$ . It is the same as the figure debited to Dr. Usher's account, but different from the shortfall she gave in Court as "about Bz \$2,100".
8. The explanations by Ms. Echevaria of the errors were these: One cheque for \$260 was wrongly added as \$60, another for \$260 was wrongly added as \$2,603. Two other cheques for \$260 were added correctly.
9. So According to the above explanations by Ms. Echevaria, the total payment was diminished by  $(260-60) = \$200$ , and was inflated by  $(2603-260) = \text{Bz}\$2343$ . The combined effect was that the payment by Dr. Usher was inflated by  $(2,343-200) = \text{Bz}\$2143$ . That was the figure debited to Dr Usher's account. It is also the same end figure by the explanations given by

Ms. Santos.

10. According to the letter by Mr. Glenford Ysaquirre, senior operations manager at the bank, exhibit P(AU)7, the error was occasioned by the teller erroneously: 1) adding three cheques for \$60 each when there were only 2 cheques for \$60, 2) adding only 2 cheques for \$260 each when there were 4 cheques for \$260 each and, 3) adding \$2,603 when there was no cheque for it.
  
11. My appraisal of the explanations above, given by Mr. Ysaquirre, is that the payment made by Dr. Usher was inflated by a \$60 cheque and the sum of \$2,603, a total of \$2,663. Then the payment was diminished by two cheques of \$260 each, totalling 520. So to the payment stated as \$21,925.67, the sum of \$2,663 must be subtracted thus,  $(21,925.67 - 2663) = \$19,262.67$ . Then \$520 must be added thus,  $(19,262.67 + 520) = \$19,782.67$ . So, according to Mr. Ysaquirre, the sum paid in by Dr. Usher should be \$19,262.67 instead of \$21, 925.67. The difference between the sum shown as paid and the sum determined as the correct payment by the explanations by Mr. Ysguirre is  $(21,925.67 - 19,782.67) = \$2,143$ . That was the figure debited to Dr. Usher's account. It is also the same as the end figures by the explanations given by Ms. Santos and by Ms Echevaria.
  
12. The explanations given by Ms. Santos, Ms. Echevaria and Mr. Ysaquirre though worded differently do give the same end figure debited to the account of Dr. Usher. It is improbable that a concocted story given in different words by three persons individually will produce the same end

figure. In my view, taking the entire story related by Ms. Santos and the explanations of the errors given by her, by Ms. Echevaria and by Mr. Ysaquirre, although worded differently, it is more probable than not, that there has been error in adding the sums, resulting in the shortfall of Bz \$2,143 which the bank debited to the credit card account of Dr. Usher. The claim of Dr. Usher that the teller made no mistake and so the total of \$21,925.67 must be correct has not been proved to a standard of balance of probabilities. The claim is dismissed.

13. Usually costs follow cause. In this case I decided to order otherwise. There are two reasons for my decision. 1) This case arose wholly as the result of the negligence of the bank in receiving a large number of cheques together with cash without recording them. That allowed for suspicion that there has been dishonesty. 2) When the bank and Dr. Usher could not agree, the bank simply took the money from his account. It seems to me like taking the law in one's hand. I think the bank should have made a claim in court. I see nothing similar to what is known as a lien. The bank will pay part costs to Dr. Usher in the sum of Bz \$1,200.

14. Exhibits may be returned to the party who tendered them.

15. Pronounced this Friday the 3<sup>rd</sup> day of June, 2005.

At the Supreme Court

Belize City

Sam Lungole Awich

Judge

Supreme Court