

**IN THE COURT OF APPEAL OF BELIZE, A.D. 2007**

**CIVIL APPEAL NO. 6 OF 2007**

**BETWEEN:**

**BERNARDO VILAFRANCO  
VERNA VILAFRANCO**

**Appellants**

**FIRST CARIBBEAN  
INTERNATIONAL BANK  
(BARBADOS) LIMITED**

**Respondent**

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**BEFORE:**

<b>The Hon. Mr. Justice Sosa</b>	<b>-</b>	<b>Justice of Appeal</b>
<b>The Hon. Mr. Justice Carey</b>	<b>-</b>	<b>Justice of Appeal</b>
<b>The Hon. Mr. Justice Morrison</b>	<b>-</b>	<b>Justice of Appeal</b>

**Mr. Hubert Elrington for the appellants.**

**Mrs. Naima Barrow-Badillo for the respondent.**

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**21 June, 26 October 2007.**

**CAREY JA**

1. The appellants entered into loan agreements with Barclays Bank PLC, but default in their repayments resulted in an indebtedness in the sum of \$40,135.33 inclusive of interest charges, attorneys' fees and sundry other charges. Barclays Bank PLC did not take action to recover the debt. The respondent, it was, who lodged a claim form certifying as claimant that it provided loans to the appellant. This was entirely untrue and it is not surprising that in their defence, the appellants as defendants averred that

“at no time had (they) any dealings ... with the claimant.” The claimant’s pleadings thus left much to be desired.

2. Howsoever that might be, at the case management stage before the Registrar, all was revealed. By Act 32 of 2002, Bank Undertaking (Barclays Bank PLC BELIZE OPERATIONS) VESTING ACT, 2002, the operations of Barclays Bank were transferred and “all existing assets, liabilities ... vested in CIBC Caribbean Limited.” An agreement between CIBC Caribbean Limited and the respondent allowed the former to use the appellation First Caribbean International Bank (Barbados) Limited. It is a trademark for CIBC Caribbean Limited.
3. The Registrar not surprisingly entered judgment for the amount claimed.
4. The appellants appealed against that order to the Chief Justice who found no merit in the application before him and duly made an order dismissing it. Aggrieved by that decision, the appellants have appealed to this court.
5. Mr. Hubert Elrington, who appeared before the Chief Justice, argued that the appellants were liable to CIBC Limited and to no other. Before this court, counsel maintained the same submission. At the case management stage, the issue of privity was no longer a live issue in the circumstances of this case. It is unarguable that the respondent is not the successor of Barclays Bank PLC and stands in its shoes. First Caribbean International Bank (Barbados) Limited is a trade mark or the trade name of the respondent. Mr. Elrington is well aware of the agreement between Barclays Bank and CIBC. Although he seemed to be suggesting in course of his argument that he only saw it after the decision below was rendered, that seems unlikely as it appears to me that the Chief Justice was able to take it into consideration and deal with it in his reasons for judgment and counsel would have been in the same position as the Chief Justice.

6. In my opinion, the appeal is really without any vestige of merit and for the reasons set out above, I agreed with my brothers that the appeal should be dismissed with costs.

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**CAREY JA**

**SOSA JA**

On 22 June 2007 this Court dismissed the appeal of the appellants, with costs to the respondent, and affirmed the judgment of the court below. I concur in the reasons for decision stated in the judgment of Carey JA, a draft of which I have read.

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**SOSA JA**

**MORRISON JA**

I also agree.

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**MORRISON JA**