

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 470 of 2009

CAYE INTERNATIONAL BANK LIMITED

CLAIMANT

AND

WILLIAM STEVENS

DEFENDANT

Hearings

2012

15th March

12th June

23rd July

5th September

8th October

27th November

Mr. Nigel O. Ebanks for the claimant.

Mrs. Tricia Pitts-Anderson for the defendant.

LEGALL J.

JUDGMENT

1. This is a claim by the claimant, an offshore bank registered in Belize, for the sum of \$176,628.14 against the defendant who was employed

as a customer service officer by the claimant from March 2007 to October 2007, on the ground that he converted the sum of money belonging to the claimant for his own use.

2. The claimant was the holder of a checking account No. 1000134070 at Atlantic Bank, Belize City, which had a branch at San Pedro, Belize. The first allegation of the claimant is that the defendant debited or prepared withdrawal slips in relation to accounts in the name of clients of the claimant's bank, namely account no. 10094 in the name of Whitesuns Holdings; account no. 10058 in the name of Neil Sullivan, and account no. 10144 in the name of LM Investments Ltd.; and having done so, the allegation is that the defendant proceeded to write some cheques in the names of certain individuals mentioned in the table below; and in three instances, in the name of a company named Bravo Motors Limited to withdraw the amounts on the cheques from the above checking account of the claimant held at Atlantic Bank. The second allegation of the claimant is that the defendant wrote other cheques in the names of other individuals also mentioned in the table below, payable from the claimant's account at Atlantic Bank when those individuals had no account at the claimant's bank. Such cheques were not, as the allegation goes, processed by the claimant's bank. The particulars of all the cheques in relation to the first and second allegations are in the table as follows:

TABLE

Cheque No. & Date	Names of Payees or Individuals on the cheques	Amount of Cheque
1. 4774544 26.7.2007	Gillermo Briceno	\$20,000
2. 477,4559 31.7.2007	Gillermo Briceno	\$23,000
3. 4720671 31.5.2007	Neima Gomez	\$ 2,500
4. 4774527 23.7.2007	Rubilla Guitierrez	\$10,000
5. 4774523 19.7.2007	Luis Munoz	\$17,000
6. 4774561 1.8.2007	Bravo Motors	\$18,839.07
7. 4774575 6.8.2007	Bravo Motors	\$18,839.07
8. 4774639 28.8.2007	Amin Westby	\$20,000
9. 4683865 8.5.2007	Everette Cain	\$ 5,000
10. 4683882 16.5.2007	Everett Cain	\$ 5,000
11. 4683809 23.4.2007	Everett Cain	\$ 6,000
12. 477460 23.8.2007	Henry Hendez	\$ 8,000
13. 4774518 17.7.2007	Andre Hendez	\$ 1,000
14. 4857404 4.10.2007	Andre Hendez	\$ 6,500
15. 4720746 21.6.2007	Entigue Narvaez	\$ 3,000
16. 477450 12.7.2007	Henry Hendez	\$ 3,000
17. 4774591 9.8.2007	Henry Hendez	\$ 6,000
18. 4774650 30.8.2007	Manuel Pekins	\$ 6,500
19. 4720736 19.6.2007	Robert Davidson	\$ 4,100
20. 4857314 7.9.2007	Andre Hendez	\$ 4,000
21. 4774529 3.7.2007	Manuel Pekins	\$ 4,200

22. 4774514 16.7.2007	Marion Ramirez	\$2,500
23. 4857378 26.12.2007	Andre Hendez	\$2,500
24. 4857394 3.10.2007	Pedro Martin	\$6,250
25. 4774500 31.7.2007	Andre Hendez	\$4,000
26. 4720783 5.7.2007	Andre Hendez	\$ 4,200
27. 4774517 17.7.2007	Bravo Motors	\$10,000
28. 4857378 18.9.2007	Andre Hendez	\$ 6,100
29. 4857356 19.9.2007	Pedro Martin	\$ 6,000
30. 4857409 5.10.2007	Pedro Martin	\$ 6,000
31. 4774631 24.8.2007	Pedro Norton	\$ 3,000
32. 4774640 28.8.2007	Pedro Norton	\$ 5,000

3. The defendant admitted that he wrote all the cheques mentioned in the table above, but he states that he wrote them with the authority of the claimant. The defendant states that at all times the cheques, which were kept in the custody of Joy Flowers, executive vice president of the claimant, were given to him by Joy Flowers, and at all times he acted on the directions and instructions, and with the authority of the said Joy Flowers, and the Operation's Director of the claimant, Odway Flowers. The defendant states that the cheques he wrote were verified, signed and authorized by both officers above, and also by the marketing officer, Tricia Villanueva. The defendant admitted that his duties included filling out debit or withdrawal slips, credit slips and

writing cheques; but he insisted that he did not falsify any information of any client of the claimant's bank to obtain any cheque, or caused to be obtained or cashed, cheques to be drawn on the claimant's bank account for his own use or for the use of other persons. The defendant states further that he did not present or caused to be presented cheques to Atlantic Bank to obtain payments on those cheques in the amount of the claim or in any amounts at all. The defendant states that he is therefore not liable in the amount of the claim or any amount at all.

4. Indeed the signatories to all the cheques above were that of senior officials of the claimant's bank, namely Joy Flowers, Odway Flowers, and Tricia Villanueva. The procedure to obtain the signatures of the officials is that the defendant writes the cheque, which is accompanied by a request. The nature, or a description, of the request was not given in evidence. The cheque and the request are then submitted to any two of the senior officers above who would examine the request to determine if it and cheques are valid. All the cheques above were presented to the above officials for signatures which were done. Odway Flowers admitted that he was the signatory to seventeen of the above cheques. He said he signed the cheques because the requests submitted to him with the cheques "seemed valid." Miss Flowers testified that in relation to cheque No, 4774561 for \$18,839.07, the defendant told her that one Jerry Morgan, a signatory to an account at the claimant's bank in the name of LM Investments Ltd. was requesting a withdrawal from the account to purchase a vehicle from Bravo Motors. Odway Flowers later testified that the account was fictitious, meaning that particulars of the account, such as name,

articles of association, were on file of the claimant in a cabinet, but not activated in the sense that no money was in the account. A second cheque No. 4774575 in same amount and payable to Bravo Motors Ltd. was presented to her by the defendant, and she signed the cheque based on what the defendant told her. Miss Flowers stated that she enquired from the defendant why Mr. Morgan was paying Bravo Motors Ltd. so much money, and the defendant replied that Mr. Morgan was purchasing a vehicle, and that the amount on the cheque was an installment. We shall see below that the monies on the cheques were used to purchase a vehicle in the name of the defendant. In addition, Miss Flowers states that a bank reconciliation was done in which “we looked at our statements from our local accounts at Atlantic Bank, and compare those statements to our internal records, we noticed discrepancies in the Atlantic Bank statements. There were cheques drawn against our account that were not reflected in our internal records. ...The bank reconciliation did not implicate anyone else.” She proceeded to testify that the other signatories, Odway Flowers and Villanueva were not implicated in the bank reconciliation exercise.

5. The defence is that these officials authorized the preparation of the cheques, they signed all the cheques, and therefore if there was withdrawal of funds from the claimant’s account, it was done with the authorization of the said signatories to the cheques and not the defendant. The defendant, it was stated, was only carrying out instructions from senior officers of the bank to write the cheques, which he did.

6. Let us examine the evidence in this case to see if it leads to any person or persons at the bank, who benefitted from the proceeds of the amounts in the cheques, because this may be of assistance in determining who was involved in this alleged fraud. The evidence is that the cheques at No. 6 and 7 in the table above were paid to Bravo Motors Ltd. to purchase an Isuzu D Max motor vehicle in the name of the defendant which the defendant bought for himself. The signatories to those cheques were the officials above, but the vehicle was bought by the defendant for himself, according to the evidence of his girlfriend, Miss Gomez; and the Certificate of Registration for the vehicle is in his name.

7. But the defendant in answer to a question in cross-examination said that the money to purchase the said vehicle came from a loan by the claimant to him. Neither in his witness statement nor in his written defence did he say it was a loan to him to purchase the vehicle. The defendant has not in this case produced any document, such as a promissory note or loan agreement to establish such a loan from the claimant's bank to him. Prior to his evidence-in-chief, an application was made, on his behalf, to amplify his witness statement which was granted. Yet in that amplification, he made no mention of such a loan to him by the claimant to purchase the vehicle. In addition, I saw the defendant give his evidence and I observed his demeanour and how he answered questions. I do not believe him when he said the money to purchase the vehicle was a loan from the claimant to him.

8. In relation to the cheque No. 5 in the table above for \$17,000, the evidence is that this amount was used to purchase land situate at Corozal North in Belize measuring 0.142 acres. The evidence is that the defendant agreed to purchase this piece of land from Luis Munoz, and made all the arrangements. The defendant sent the cheque to purchase the land to his girlfriend, Neima Gomez through Tropic Air, and she collected it from Tropic Air. The evidence is that at the defendant's request, Luis Munoz and Gomez signed documents to transfer the land in Gomez's name who became owner of the land by land certificate No. 10433 of 2007 dated 2nd August, 2007.

9. Cheques numbers 1 and 2 in the above table in the total of \$43,000, the evidence is that this amount was used to purchase land measuring 41.244 acres situated at Ramonal Zapole, North Corozal, from Gillermo Briceno. The evidence is that the defendant sent the cheques in the amount of \$43,000 through Tropic Air to his said girlfriend Gomez who received the cheques and paid them to Briceno, and the transfer documents were signed by Gomez and Briceno. Land Certificate No. 10835/2007 for the land was issued in the name of Gomez on 14th August, 2007. The agreed purchase price of the land was \$42,000, according to the evidence of Briceno. Since the cheques were in the amount of \$43,000, Briceno testified that Gomez, requested a cash refund of \$1,000, which he said he gave to her. Miss Gomez testified that she did not receive a refund from Briceno. But Gomez testified that she paid for the transfer of the land in her name, which I take to mean conveying expenses to transfer the land in her name.

10. In relation to number 3 in the above table, the defendant admitted that he wrote this cheque in the amount of \$2,500 for his girlfriend Gomez. In cross-examination, he said his girlfriend did work for the bank and that she was an accounts teacher, which by inference would raise the defence that the cheque was written to pay her for work she did for the claimant. But he has admitted in cross-examination that it is neither in his written defence nor in his witness statement, nor in the amplification of his witness statement that Miss Gomez did work for the bank.

11. Cheque No. 11 on the above table was used to purchase a four door Geo Prism car for \$5,500. The evidence of Everette Cain is that the defendant told him that he had borrowed some money from the claimant and wanted to purchase a vehicle to use for his work. Cain, who is a mechanic, told the defendant that he could arrange to purchase a car from a friend of his in Belize City named Kenny Prince. Cain, who had an account number 210595710 at Atlantic Bank, testified that he told the defendant that the price of the vehicle was \$5,500 and that the defendant told him that he would put the money in his, Cain's account, at Atlantic Bank. Cain testified that the defendant deposited the money as promised, and he took out the money from his said account and purchased the car and gave the keys for the car to the defendant. He testified that on 20th July, 2007, he transferred the car to the name of the defendant's girlfriend Gomez. Gomez testified that the defendant told her that Cain would be signing over ownership of the car at Corozal, which Cain did. Gomez testified that the defendant told her that he did not want the car to

remain in Cain's name, and that he, the defendant, could not transfer the car into his name, because he was in San Pedro at the time.

12. In relation to cheques No. 9 and 10 on the table above, Cain swore that he received telephone calls from the defendant, whom he had known for about six years, saying that his salary and \$5,000 had been mistakenly deposited into his Cain's account at Atlantic Bank; and requested Cain to withdraw the amounts – two amounts of \$5,000 each – from his account. Cain presented the cheques No. 9 and 10 that contained his name as payee written by the defendant to Atlantic Bank, and withdrew for the defendant on cheque No. 9, \$4,900 and on cheque No. 10, \$4,800. Cain testified that for doing the transaction on cheque No. 9 the defendant gave him \$100 and for the transaction on cheque No. 10 the defendant gave him \$200, which explain the withdrawal of \$4,800 and \$4,900 respectively from Cain's statement of account. Cain also tendered in evidence his Atlantic Bank Passbook showing the deposits in his accounts of the amounts of the cheques and withdrawals of those amounts from the account. The above evidence of Cain that the defendant told him he would deposit money in his account and did deposit money in his account, and that he withdrew the monies and purchased the car and gave the defendant the keys, and also withdrew cash for the defendant and was rewarded with \$300 for doing the transactions, was not shaken in cross-examination. Moreover, I saw him give his evidence and observed his demeanour. I accept the above evidence of Cain.

13. In relation to cheque No. 8 on the table above for \$20,000, the evidence of the witness Westby is that he wanted to own a home, so he spoke with the defendant who told him that though the bank did not give loans to Belizeans, he would speak to his bank and Miss Flowers. Westby testified that the defendant on 28th August, 2007 offered him a loan of BZ\$20,000 which he accepted. Westby swore that on the said date, the defendant deposited cheque No. 8 on the table above – cheque 4774639 – which was in the amount of \$20,000 to his Westby’s account which was drawn on the claimant’s account which was at Atlantic Bank. Westby swore that he never returned any money to the claimant’s bank, and that he made two monthly payments to the bank. The amount of these monthly payments are not known; but Westby swears that he is currently making arrangements to repay the claimant the \$20,000 “which derived from Atlantic Bank limited cheque No. 4774639,” to use his own words. The details of the arrangements are also not known.
14. In relation to cheque No. 4 on the table above, the evidence is that the defendant told his girlfriend Gomez that he wanted to purchase a car for her, and that she must make enquiries. After making enquiries about the car, she swore that the defendant sent to her a cheque written by him through Tropic Air in the amount of \$10,000 in favour of Rubillia Guterrez, the person selling the car which was a four door 1995 Dodge Stratus car which was transferred in her name.
15. The above evidence of Gomez, Briceno, Westby and Cain was not shaken in cross-examination. Moreover, I saw them give their

evidence and observed their demeanour. I accept their evidence in relation to the purchase of the properties and articles and the withdrawal of monies from Atlantic Bank. But I note the discrepancy with respect to the \$1,000 mentioned above, between Briceno and Gomez. From all the evidence above, I am satisfied on a balance of probabilities that the defendant derived benefits from the amounts on the cheques, numbers 1 to 11 and 27 on the table above, in that firstly, he was able to give his girlfriend gifts and to impress upon her that he cared for her which must have resulted in admiration for him to his benefit. In addition, the evidence is clear that he received financial benefits as well, such as the benefit of a motor vehicle, as we saw above from the evidence of Cain and Gomez. Due to those benefits which the defendant derived from the cheques, and there being no evidence of any benefit from those cheques on the above officers of the bank, I accept the evidence that the officers were not implicated in this matter, even though they signed all the cheques.

16. According to the claimant, Miss Gomez during the investigation of this matter, transferred over to the claimant, all the property that was put in her name, namely the land certificates in relation to land bought by cheques Nos. 1, 2 and 5 of the table above. The two cars bought with cheques No.4 and 11 on the said table were also handed over to the claimant by Gomez, as well as a computer which Gomez testified the defendant bought by cash for her. The claimant estimated the value of the above returned items and property in the amount of BZ\$71,400. This estimated value has not been challenged, and I accept it.

17. Apart from the cheques for the payment for the land and items returned to the claimant by Gomez, we have seen above that three cheques Nos. 6, 7 and 27 were drawn on the claimant's account that purchased a vehicle for the defendant which is in his name. We have also seen above the defendant deposited money in the account of Cain in the amounts of \$10,000, \$5,500 of which were used to purchase the prism car which was returned to the claimant by Gomez; and the balance given to the defendant from which he gave \$300 to Cain. This is evidence as we saw above of financial and other benefits the defendant received by virtue of the amounts payable by the cheques.

18. Apart from cheques numbered 1 to 11 (inclusive) and 27 in the table above, the other cheques numbered in the table namely No. 12 to 32 (inclusive) except No. 27 (hereinafter referred to as "the other cheques") are in the names of persons named Hendez, Narvarez, Pekin, Davidson, Ramirez, Martin and Norton, hereinafter referred to as the "uncalled witnesses." The uncalled witnesses were not called to give evidence. Odway Flowers testified that with respect to the other cheques in the names of the uncalled witnesses, he cannot say that the defendant cashed these cheques; and he cannot say that the defendant received monies from these cheques. As we saw above, the cheque at No. 27 in the table, was used as part of the payment for Isuzu truck, as well as No. 6 and 7 cheques which are in the names of the defendant which show that it was cashed on behalf of the defendant. But in relation to the other cheques on the table in the names of the uncalled witnesses, it is stated that there is no evidence that the other

- cheques were cashed, and there was no evidence that the defendant received any of the funds from the other cheques.
19. Odway Flowers admitted in cross-examination that he did not go to Atlantic Bank to find out if the uncalled witnesses cashed the other cheques. The claimant, it would seem, did not consider calling any official from Atlantic Bank as a witness to testify whether or not the other cheques were cashed, and whether or not Atlantic Bank had any form of identification evidence as to the person or persons who cashed the other cheques, if they were cashed. The defence of the defendant is that he did not cash the cheques nor caused them to be cashed and he did not receive any of the amounts of monies stated in the cheques. Moreover, the defendant says there is no evidence that he cashed the cheques or received the amount on the cheques.
 20. A close examination of the other cheques shows a stamp on the face of the cheques marked “Atlantic Bank Ltd.,” and teller numbers appear on the cheques. For instance, one cheque has “Teller 04” and gives the branch of the bank and also gives the date. Is the stamp on the face of the other cheques, evidence that the other cheques were presented to tellers at Atlantic Bank, and if they were presented to the tellers, does the stamp show that the amounts on the other cheques were paid to the person who presented the cheques to the tellers? In the absence of evidence of an official of the bank, these questions pose grave difficulty. Odway Flowers exhibited to his witness statement – exhibit OF 25, – a bundle of numerous copies of documents which are described as “bank reconciliation statements.”

The person or persons who provided or inserted the information on these photocopies of the documents were not called to give evidence. The claimant applied to tender the bundle of documents as part of the witness statement of Odway Flowers. After hearing arguments on the application, I was not satisfied that the nexus between the bundle of documents comprised in OF 25, and the reliefs claimed were established. Therefore, the relevance of exhibit OF 25 at that stage was not been established. But as Flowers had just started giving his evidence-in-chief, I admitted the bundle of documents for identification purposes only, leaving the possibility for him, if there is the evidence, to establish the nexus in the course of his evidence. This was not established. Moreover, who are the persons who provided the information on the documents in exhibit OF 25, and how was that information obtained? This is unknown. There is also the nexus problem above. Exhibit 25 is therefore not admissible for the truth of what is contained therein.

21. In the absence of exhibit 25, the question remains, whether the aforementioned stamps on the face of the other cheques, show, on a balance of probabilities, that they were cashed at the Atlantic Bank by the payees named thereon. It is well known, and a notorious fact, that it is banking practice as to debiting of bank accounts that tellers of the bank stamp cheques that are presented to the bank to be cashed. The court is entitled to take judicial notice of a notorious fact. The fact that the stamp appears on the other cheques is some indication that the cheques were presented to tellers of the bank. But who presented the other cheques and who received the cash? The question is whether

there is enough evidence that the other cheques were presented to tellers at Atlantic Bank to be cashed and were cashed in the amounts for the use of the persons who presented the said cheques and no one else. It is true that there is no evidence that the defendant presented or received the amounts stated on the other cheques. Though there is no evidence that it was him who presented the other cheques and received the cash, the fact remains that the defendant prepared the other cheques which were presented at Atlantic Bank and which were debited from the checking account of the claimant at Atlantic Bank; and from this it may seem that he was part of the process of the cheques being presented to the bank, and therefore probably makes him responsible, to some extent, for the cashing of the cheques.

22. On the other hand, it has to be noted, that the uncalled witnesses named on the other cheques were not called to give evidence, and, as we have seen above, no official of the bank was called to say if these cheques were cashed and if so, by whom. Though there are stamps on the cheques I think it would, on the evidence, take a giant leap in logic to say that the defendant presented the other cheques, or received the amounts stated thereon, or caused the other cheques to be presented to the bank by the uncalled witnesses named thereon. I am therefore not satisfied, on the evidence and on a balance of probabilities, that the defendant presented the other cheques or received the amounts stated on the said cheques or caused them to be presented to the bank to be cashed. Therefore the total amounts stated on the other cheques are not recoverable from the defendant.

23. The claimant is therefore entitled to the amount on cheques Nos. 1 to 11, and 27 after deducting the estimated value of the items returned. I am satisfied on the evidence and on a balance of probabilities, that the defendant wrote those cheques, caused them to be presented to Atlantic Bank to withdraw the amounts stated thereon from the claimant's account, and did benefit from those amounts. The total amount on the cheques Nos. 1 to 11 and 27 is \$156,178.14. Included in that \$156,178.14, are the property and items returned to the claimant, which have been estimated by the claimant to the value of \$71,400. The claimant is entitled to judgment from the defendant of the difference, which is \$84,778.14.
24. In deciding on an order for costs, the court has a discretion; and in the exercise of that discretion the court is entitled to consider the conduct of the parties.
25. For all of the above reasons I make the following orders:
- (1) The defendant shall pay to the claimant not later than 1st February, 2013 the sum of \$84,778.14.
 - (2) The defendant shall pay to the claimant interest on the amount at (1) at the rate of 6% from 23rd April, 2007 until the said sum is fully paid.

- (3) The defendant shall pay prescribed costs to the claimant in the sum of \$16,955.63.

Oswell Legall
JUDGE OF THE SUPREME COURT
27th November, 2012