IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 823 OF 2011

BETWEEN:

(MONTGOMERY MANAGEMENT LTD.	**CLAIMANT**
(AND	
(CHOICE BANK LTD.	**DEFENDANT**

BEFORE the Honourable Madam Justice Michelle Arana

Ms. Naima Barrow of Barrow and Company for the Claimant

Ms. Tania Moody of Barrow and Williams for the Defendant

J U D G M E N T

1. This is a Claim for the sum of $37,500.00 pursuant to an agreement made on or around the 12th January, 2010 between the Claimant and the Defendant and in the alternative, damages for breach of contract plus interest.

2. The Defendant claims that it did not make or execute the agreement dated January 12th, 2010 and that that agreement is not binding on the Defendant. The Defendant denies the loss or damage alleged by the Claimant and states that the claim must fail.

The Facts

3. The Defendant Choice Bank Ltd. is a company carrying on business as a bank at Coney Drive, Belize City, Belize.

4. The Claimant Montgomery Management Limited (MML) is a company who had been engaged by the Defendant Bank as an independent contractor to oversee specific card related projects and to manage other similar projects.

5. Montgomery Management Ltd. wrote a proposal dated December 28th, 2009 addressed to the Board of Directors of Choice Bank Ltd. in care of Robert Cummings wherein Montgomery Management Limited proposed to provide certain financial services to Choice Bank Ltd.

6. This proposal, which was dated 28th December, 2009, was signed on behalf of the Board of Directors of Choice Bank Ltd. by its Director Robert Cummings on January 4th, 2010 and also signed by Montgomery Management Ltd. The proposal was marked **"**Agreed and accepted this 4th January, 2010."

7. The Proposal of 28th December, 2009 provided that ***"MML acknowledges that this engagement may be subject, among other things, to: (a) The formal approval of the Bank's Board of Directors****…"*

8. The Proposal of 28th December, 2009 also provided that "***If the enclosed proposal is acceptable to Choice Bank, please indicate your acceptance in the space provided below, which will constitute an agreement in principle by the parties hereto, and as noted previously, may be subject to completion of definitive documentation for this engagement on the basis outlined in this proposal. For greater certainty, the terms herein are deemed to be binding on any party with the express understanding that certain conditions of this Agreement may require regulatory approvals****."*

9. Choice Bank Ltd. issued to Montgomery Management Ltd. a ninety day (90) written notice of the termination of its engagement which was dated 20th June, 2011. The notice was framed in and referred to the terms of the written agreement between the parties dated December 28th, 2009.

10. Montgomery Management Ltd. provided services to Choice Bank Ltd. until 20th September, 2011.

11. Montgomery Management Ltd. sought to enforce payment of sums due under an (unsigned) agreement dated January 2nd, 2010 which it claims governs the contractual relationship between the parties. Choice Bank Ltd. claims it had no such agreement with MML and the only agreement it was aware of and was bound by was that of December 28th, 2009.

The Issue

12. There is only one major issue in this case. Which agreement binds these parties legally? Is it the proposal dated December 28th, 2009 or is it the agreement dated January 2nd, 2010? Everything else flows from the determination of that issue.

13. Montgomery Management Ltd. claims that the proposal dated December 28th, 2009 has been superseded by an agreement between the parties dated January 2nd, 2010. Mr. Benjamin Lo in his witness statement claims that the proposal dated December 28th, 2009 was merely a commitment letter which clearly stated that it *"**may be subject to completion of definitive documentation for this engagement on the basis outlined in this proposal**".*

14. It is argued on behalf of the Claimant Company that this January 2010 Agreement contained a term which stated that:

> *"**In consideration for the provision of the services the Company shall pay to Consultant and Consultant shall accept from the Company as compensation for all services to be provided pursuant to this Agreement not to exceed twelve thousand, five hundred Belizean dollars (BZD 12,500.00) in respect of compensation in any calendar month**."*

15. By the terms of this January 2010 Agreement the Claimants claim that the Defendant Bank agreed to the following term:

> ***"If the Company terminated the agreement by notice Consultant will receive cash remuneration as at the date of termination equal to three months fee."***

16. On behalf of the Claimant, it is argued that the various emails exchanged between Robert Cummings of the Defendant Bank and Benjamin Lo of the Claimant Company indicate that the contract which governed the relationship between the parties was the January 2010 Agreement and not the December 2009 Agreement. It is also submitted on behalf of the Claimant that the fact that Montgomery Management Ltd. failed to receive formal approval of the Board of Directors of Choice Bank Ltd. for the January 2011 Agreement is wholly irrelevant and immaterial, as Montgomery Management Ltd. was not obligated to receive any formal approval of the Bank's Board of Directors to alter the December 2009 Agreement nor to produce the January 2010 Agreement.

17. The Claimants submit that the fact that the January 2010 Agreement is not signed by Choice Bank Ltd. nor approved by the Bank's Board

of Directors is no bar to the Agreement's validity. In support of this argument, Learned Counsel for the Claimant Ms. Barrow cites section 50 of the Labour Act as follows:

> **50(1)** *"When a contract of service of a worker-*
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> > ***(a)*** *is made for a period of or exceeding three months or a number of working days equivalent to three months; or*
> >
> > ***(b)*** *is a contract of service made within Belize and to be performed wholly or partially outside Belize; or*
> >
> > ***(c)*** *stipulates conditions of employment which differ materially from those customary in the district of employment for similar work, the contract shall be made in writing*
>
> *(2)* ***The worker shall indicate his consent to the contract by signing it;***
>
> *(3) Where a contract which is required by subsection (1) to be made in writing has not been made in writing it shall not be enforceable* ***except*** *during the period of one month from the making thereof:*

> *Provided that where note or memorandum in writing is made setting out the terms of the contract and* ***a party to the contract has indicated his consent thereto as aforesaid*** *prior to the expiry of the period for which the contract was made, the contract shall be enforceable under the provisions of the section* ***against that party*** *notwithstanding the expiration of the period of one month from the making thereof, and note or memorandum may be presented for attestation to a labor officer."*

Learned Counsel for the Claimant argues that on the basis of this section of the Labor Act, where there is a note or memorandum in writing setting out the terms of a contract, that contract is enforceable even though it is signed by only one party to the contract prior to the expiry of the period for which the contract was made. Therefore the fact that the January Agreement is not under seal of Choice Bank Ltd. does not affect its validity. She further argues that under the principle of promissory estoppel, Choice Bank Ltd. cannot (21 months after receiving services from Montgomery Management Ltd.) rely on its own failure or refusal to execute the January 2010 Agreement to avoid its terms.

18. On behalf of the Defendant, Learned Counsel Ms. Moody argues that the only binding agreement is the Agreement dated December 28th, 2009 which is executed by the Claimant Company and the Defendant Bank. She submits that it was on the basis of this Agreement that the Claimant commenced its consultancy services with the Defendant. This December Agreement had the formal approval of the Bank's Board of Directors and by the terms of the Agreement itself the Claimant and the Defendant were both legally bound.

19. Ms Moody further submits that as the Defendant Bank's Board of Directors did not give any consent or approval to the Agreement dated 12th January, 2010, that Agreement is not binding on the Defendant. She argues that the Defendant never signed the January 2010 Agreement and that there is no clause in the December 2009 Agreement which alleges entitlement of the Claimant to the payment of three months fees at date of termination. The Agreement dated December 28th, 2009 clearly stated:

> ***"If the enclosed proposal is acceptable to Choice Bank, please indicate your acceptance in the space provided below, which will constitute an agreement in principle by***

the parties hereto, and as noted previously, may be subject to completion of definitive documentation for this engagement on the basis outlined in this proposal. For greater certainty, the terms herein are deemed to be binding on any party with the express understanding that certain conditions of this Agreement may require regulatory approvals*."*

Learned Counsel for the Defendant argues that the evidence clearly shows that the Agreement dated December 28th, 2009 is the only Agreement accepted and approved by both parties and is therefore the only Agreement that is legally binding on both parties.

Decision

20. I have reviewed the evidence in this case and considered the legal submissions made and the authorities cited. I agree fully with the submissions made on behalf of the Defendant. The Agreement of January 2010 on which the Claimant grounds his claim is a document which bears only the signature of Genevieve Pennill on behalf of the Claimant Company. There is absolutely no evidence that the

Defendant Bank was even aware of this document's existence until after the Defendant Bank issued notice of termination to the Claimant Company on June 20th, 2011. This is clear from the email exchange between Benjamin Lo of Montgomery Management Ltd. and Mary Lee of Choice Bank Ltd. dated June 30th, 2011 where Mr. Lo asks for a copy of signed agreement dated December 28th, 2009 and in response Ms. Lee agrees to send it to him and asks Mr. Lo for a copy of the January 2010 Agreement. I also agree with the submission that even the Claimant Mr. Benjamin Lo admitted under cross examination that emails exchanged between the Bank and Mr. Lo could have been referring to ongoing negotiations between the Bank and himself relating to an entirely different contract, that is, a Settlement and Release Deed. That Deed was signed by Mr. Lo and though not signed by Choice Bank Ltd., the Bank's seal was affixed to the Deed. By stark contrast, the January 2010 Agreement bears no signature, no company seal, nothing to indicate that Choice Bank Ltd. has agreed to be bound by its terms.

21. I accept as true the evidence of Mr. Cummings that it was only after the Bank had terminated the Claimant's services that the Bank became aware of the alleged agreement of January 2011. I also find

it telling that under effective cross examination by Learned Counsel for the Defendant, Mr. Lo himself admitted that none of the emails exhibited in or around January 2010 referred either in the subject heading or in the body to the agreement of January 12th, 2010. There is no issue of estoppel that applies in this case as I find that the Bank acted in accordance with the December 2009 Agreement by which it was legally bound.

22. I agree with the argument that the fact that the December 2009 Agreement included the words *"**may** be subject to definitive documentation for this engagement"* does not invalidate the 28th December, 2009. The word "may" as Learned Counsel for the Defendant rightly pointed out as opposed to "shall" indicated that the completion of a definitive document was not mandatory but discretionary.

23. I find that Section 50 of the Labour Act does not assist the Claimant as that section clearly seeks to bind the party to the contract **who has signed the contract** one month before the expiry of the contract. It seems to me that this section protects the employer in that it requires the worker to sign to indicate his agreement to be bound, and then

goes on to state that the contract will be enforceable **as against that party who has so indicated his consent**. In this case there is no signature or anything on the January 2010 indicating that Choice Bank Ltd. consented to this alleged agreement.

24. I find that the December 28th, 2009 Agreement is the only agreement which was duly executed by the Claimant and the Defendant, and that agreement contained no clause regarding three month payment to Claimant upon termination. I find on a balance of probabilities that the Claimant has failed to prove its case. I therefore dismiss this Claim.

25. Costs awarded to the Defendant to be assessed or agreed.

Dated this 8th day of March, 2013

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Michelle Arana
Supreme Court Judge