

IN THE HIGH COURT OF BELIZE, A.D. 2023

Claim No. 464 of 2021

BETWEEN

ROBERT OLIVAS

1ST CLAIMANT

JANE AVILA

2ND CLAIMANT

AND

**THE BELIZE BANK CORPORATION
LIMITED**

DEFENDANT

THE ACCOUNTANT GENERAL

1ST INTERESTED PARTY

**THE MINISTRY OF
INFRASTRUCTURE
DEVELOPMENT AND HOUSING
(Formerly the Ministry of Works)**

2ND INTERESTED PARTY

**THE ATTORNEY GENERAL'S
MINISTRY**

3RD INTERESTED PARTY

BEFORE THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

Trial Date: February 22, 2023

Final Submissions' Date: March 7, 2023

Appearances:

Ms. Alberta Perez, Counsel for the Claimants.

Mr. Jose Alpuche, Counsel for the Defendant.

Mr. Israel Alpuche, Counsel for the Interested Parties.

DECISION AFTER TRIAL

Introduction:

[1] Mr. Olivas and Ms. Avila have brought a claim to recover \$14,559.70 plus interest from the Belize Bank Corporation (Belize Bank). The Claimants allege that the Accountant General deposited Mr. Olivas' retirement gratuity into Ms. Avila's Belize Scotiabank Ltd. (Scotiabank) account in 2008 without their knowledge and that they only became aware of that deposit in 2019. The Claimants allege Belize Bank, who is the successor of Belize Scotiabank Ltd., did not credit the money to Ms. Avila's account as directed by the Treasury Department and thereby failed in their duties owed as Trustees and Fiduciary to the Claimants.

[2] Belize Bank argues that the Claimants have failed to prove the Treasury Department deposited Mr. Olivas gratuity. If, however, I find that the deposit was made, the Claimants have failed to prove the gratuity was not credited to Ms. Avila's account. Belize Bank also disputes the characterization of their relationship as arising from a Trust. Belize Bank argues that they were in a contractual relationship with the Claimants. Consequently, the action is barred by operation of the *Limitation Act* because it was not brought within six (6) years.

[3] While I find that Mr. Olivas and Ms. Avila have proven that the Treasury Department deposited the gratuity with the Scotiabank, on a balance of probability, I find that the money was credited to Ms. Avila's account. In the absence of any evidence that the Belize Bank, or anyone working for them who had access to the account, misappropriated the funds or neglected to deposit them, I find that the Claimants have failed to satisfy the burden of proof that the gratuity was not credited to Ms. Avila's account.

Preliminary Issue:

[4] Given the length of time between the alleged deposit and the trial, little documentary evidence is available to the Court. I feel it necessary to consider the nature of the Parties' relationship as a preliminary issue because the Claimants assert that the burden of proof shifts to Belize Bank and the *Limitation Act*¹ does not apply if Belize Bank is a Trustee.

[5] Mr. Olivas and Ms. Avila provide no authority for their assertion that Belize Bank is a Trustee. A review of the *Trusts Act*² and the *Domestic Banks and Financial*

¹ Cap. 170, *The Substantive Laws of Belize*, Rev. Ed. 2020.

² Cap. 202, *The Substantive Laws of Belize*, Rev. Ed. 2020.

*Institutions Act*³ do not define the relationship between a Bank and its account holders as a trust relationship. I find no reason to depart from the long-established principle that a banker is not a trustee for its customers.⁴ The Parties had a contractual relationship. Mr. Olivas and Ms. Avila have the burden to prove their claim on a balance of probabilities.

Main Issues:

[6] The remaining issues raised by this Claim are:

1. Whether the funds claimed were deposited by the Accountant General with Belize Bank?
2. Whether Belize Bank failed to credit the deposit to Ms. Avila's Account?
3. Whether Belize Bank breached any fiduciary duty to Mr. Olivas and Ms. Avila?
4. Whether the *Limitation Act* operates as a bar to this Claim?
5. Whether Mr. Olivas and Ms. Avila are barred from any equitable remedy due to laches and delay?

Deciding Issues 3 through 5 will only become necessary if Mr. Olivas and Ms. Avila satisfy the burden of proof in the first two Issues.

1. Whether the funds claimed were deposited by the Accountant General with Belize Bank?

[7] A letter dated September 2, 2008, from the Public Service Commission to Mr. Olivas stated that he was entitled to a retirement Gratuity of \$14, 559.70. The letter directs Mr. Olivas to visit the Accountant General and the Central Bank in Belize City to collect the gratuity. Mr. Olivas testified that he did not receive the letter and did not go to the Central Bank to obtain his gratuity.

³ Cap. 263, *The Substantive Laws of Belize*, Rev. Ed. 2020.

⁴ *Joachimson v. Swiss Bank Corp.* [1921] 3 KB 110 at 127.

[8] Mr. Olivas testified that he became aware that he was entitled to a retirement gratuity when he visited the Social Security office to ask about his benefits. He testified that he went to his former employer, now the Ministry of Works, as it then was, and was provided with a copy of the September 2, 2008, letter. He then visited the Treasury Office who directed him to the Scotiabank, as was still known, where he spoke with an assistant manager, Ms. Erica Noralez. Somewhere in that process, Mr. Olivas received a screenshot of an invoice from an accounting program. The screenshot is dated September 5, 2009, and indicates that the retirement gratuity was paid to Ms. Avila's bank account. A photocopy of the screenshot with Ms. Noralez' business card attached was entered into evidence.

[9] Mr. Olivas originally testified that the screenshot came from the Scotiabank, but under cross-examination admitted that he could not recall who gave him the document. Ms. Diana Cal, Customer Service Supervisor at the Belize Bank, testified that the screenshot was not generated from any program used by Belize Bank or the Scotiabank.

[10] I find that the screenshot was more likely than not provided to Mr. Olivas by the person he spoke with at the Treasury Office. Ms. Cal's testimony is consistent with the screenshot itself. The screenshot is plainly marked as an invoice owed to Mr. Olivas and paid to Ms. Avila's account at the Scotiabank. Mr. Olivas was not owed money by Scotiabank, therefore, there is no reason why they would label money deposited to them as an invoice. The fact that the screenshot was generated at the Treasury Office also explains why Mr. Olivas went looking to recover the money from Ms. Avila's Scotiabank account after speaking with the Treasury Office. No other reason can explain why, if Mr. Olivas felt that he never received the gratuity, he would look for it at the Scotiabank.

[11] The screenshot also proves, on a balance of probability, that the retirement gratuity was deposited into Ms. Avila's account. The screenshot has Ms. Avila's banking information, including the account number, in the box titled "Vendor Name and Remit Address." Other information indicates that \$14, 559.70 was coming from the Treasury Office and was to be paid immediately. The Status of the invoice is marked as 'Paid' and the transaction is tracked with a voucher number. If the gratuity had been returned, it is reasonable to conclude that the invoice's status would indicate something other than "Paid."

2. Whether Belize Bank failed to credit the deposit to Ms. Avila's Account?

[12] I find that Mr. Olivas and Ms. Avila have failed to prove, on the balance of probability, that the money was not deposited to Ms. Avila's account. While I do not dispute the Claimants' sincere belief that retirement gratuity was not deposited to Ms. Avila's account, the little evidence before this Court does not support that conclusion.

[13] In particular, Mr. Olivas was adamant that the account was solely for Ms. Avila's benefit. He provided no explanation for why the Treasury Office not only had Ms. Avila's banking information but linked that information to the payment of his retirement gratuity. The September 2, 2008, letter from the Ministry of Works clearly outlines that payment of the gratuity, requiring Mr. Olivas to request disbursement from the Accountant General at the Central Bank. In the absence of any evidence to the contrary, the only reasonable explanation for how the Treasury Office ended up with an invoice for the payment of the gratuity is that Mr. Olivas, or someone on his behalf, made the request.

[14] The Claimants' own evidence indicates that three people had access to Ms. Avila's account: Ms. Avila, Mr. Olivas, and Ms. Avila's daughter. Ms. Avila and Mr. Olivas both testified that they never went to the Central Bank in Belize City to request the gratuity. Ms. Avila's daughter did not testify. Nonetheless, they did not provide evidence that a physical visit was necessary. It may well be that a form could have been signed and arrangements made from their home in Punta Gorda that was simply forgotten about due to the passage of time.

[15] Critically, Mr. Olivas and Ms. Avila provided no evidence that the money once paid to the Scotia Bank was never credited to their account. The Treasury Office had Ms. Avila's bank account number and directed that it be paid to that account. There is no record of the money being returned to the Treasury. No bank statements were provided that show the balance of the account at the relevant time that can confirm that the credit was not made. In the absence of any evidence that the Belize Bank, or anyone working for them who had access to the account, misappropriated the funds or neglected to deposit them, I find that the Claimants have failed to satisfy the burden of proof that the gratuity was not credited to Ms. Avila's account.

[16] Having found that the Claimants have not proven their Claim, the remaining issues do not need to be decided.

3. Disposition:

It is hereby ordered that:

1. The Claim is dismissed.
2. The Claimants shall pay the Defendants prescribed costs.

Dated August 2, 2023

**Patricia Farnese
Justice of the High Court**