

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2007/0210

BETWEEN:

FLORENCE ANNE WILLIAMS

Claimant

AND

GRENADA CO-OPERATIVE BANK LIMITED

Defendant

Appearances:

Mrs. Celia Edwards, Q.C. with Ms. Sabrita Khan for the Claimant

Mr. Ruggles Ferguson, instructed by Ms. Deborah St. Bernard, with Ms. Anyika Johnson for the Defendant

2010: February 17, 18
March 1, 3, 15
2011: January 18

JUDGMENT

- [1] **PRICE FINDLAY, J.:** The Claimant had been employed by the Defendant for a period of eleven (11) years, having started that period of employment in January 1995. At that time her position within the Defendant organization was Senior Credit Officer.
- [2] On the 22nd October 2002 the Claimant was promoted to the post of Manager, Credit after having served the requisite probationary period. She served in this latter capacity until her dismissal on the 15th June 2006.
- [3] The Claimant in this matter has claimed damages for wrongful dismissal from her employment as Manager, Credit. The Defendant, while admitting that it dismissed the Claimant from her employment, deny that the dismissal was wrongful and

pleads that the termination resulted from the gross negligence of the Claimant. The Defendant claims that this negligence by the Claimant allowed a grand fraud to be perpetrated against the Defendant resulting in the loss to the Defendant of hundreds of thousands of dollars.

- [4] The Claimant gave evidence on her own behalf and called Ms. Jacqueline Salfarlie, who also worked at the Defendant and who at the relevant time served in the post of Senior Operations Supervisor. The Defendant called Mr. Richard Duncan, Ms. Julia Lawrence and Ms. Claudette Layne, all employees of the Defendant; Mr. Duncan at the time of the trial being the General Manager of the Defendant, Ms. Lawrence being the Chief Audit Executive and Ms. Claudette Layne being the Senior Internal Audit Assistant.
- [5] That a fraud was perpetrated at the Defendant Bank by the Credit Card Representative Ms. Joanne Fortune between the years 2002 – 2006 is not disputed. It is this fraudulent activity which led directly to the termination of the Claimant in 2006.
- [6] Ms. Fortune, the credit card representative, was not a direct reportee to the Claimant by way of the job description which she was given at the time of her employment at the Bank as the Credit Card Representative (hereinafter referred to as the CCR). Ms. Fortune reported directly to the Senior Operations Officer. At the relevant time the Senior Operations Officer was Ms. Claudette Layne.
- [7] The fraud centred around the application for and approval of the credit card product offered to the general public by the Defendant. It involved the collection and distribution of those cards as well as the payment of outstanding balances on those cards, as well as the reporting of those payments to the card issuing entity, the Caribbean Credit Card Corporation (hereinafter referred to as 4C's).
- [8] The process for applying for a credit card at the Defendant Bank involved the customer filling out an application form which required the customer to give the Bank certain personal information. It was the job of the CCR to assist in the filling

out of the form and thereafter to review the form to ensure that the applications were complete, do credit checks and ensure that the relevant findings were reported to the Credit Card Centre. The Credit Card Centre was under the supervision of the Claimant in her capacity of Manager, Credit.

[9] In fact the CCR job description states that the CCR was to carry out preliminary interviews of applicants and accept applications for forwarding to the Credit Department daily.

[10] The application forms required the following information:

- The name of the applicant
- The address of the applicant
- The birthplace of the applicant
- The contact number of the applicant
- The mailing address of the applicant
- The place of employment of the applicant
- The banking details of the applicant
- Credit reference information on the applicant
- The signature of the applicant

[11] The CCR was also responsible for ensuring that the "Authority to hold funds on deposit" forms were received by the main branch of the Defendant.

[12] Once the application was filled out and the relevant documents (i.e. job letter, if necessary, and I.D) were attached to the form, the CCR presented the form and attachments to a senior officer for approval. In many of the instances in this matter, that senior officer was the Claimant.

[13] The Bank's credit card manual set out the reviewing process as involving the following:

When verifying ensure that:

(1) The application is properly filled out

- (2) Date of birth is entered
- (3) The application must be signed by the applicant/co-applicant
- (4) Credit check is done by the Credit Card Representative
- (5) Where applicable, all applications are seen and signed by the Manager – Credit Control Centre or the Senior Credit Officer
- (6) A Job Letter is required if the applicant is not an account holder of GCBL
- (7) Photo ID of applicant/co-applicant is attached.

[14] Once the application was received, a credit limit would be set and the application approved by the Manager Credit. Once this was done, the approved application would be entered in a database and the application sent off to 4C's by Fax and then by ordinary mail. All of the approved applications were also to be placed in files and kept at the Bank.

[15] Once the credit cards were issued, the customers were informed by telephone by the CCR, and the CCR was supposed to ensure that the cardholder received the card, sign for it upon receipt, and deliver the card to the customer. The card holder was also to sign the card in the presence of the CCR.

[16] Monthly statements would be issued by 4C's and received by the Defendant via LIAT QUIK PAK. 4C's would also send delinquency reports to the Defendant and it was the Defendant's responsibility to inform the customers and have them come in and regularize their accounts.

[17] In effect the CCR had almost complete control of the day-to-day functions of the credit card application process. The Defendant contends that it was the failure of the Claimant to properly supervise the CCR and her failure to properly oversee the credit card applications submitted to her for approval which led to the perpetration of the fraud.

[18] While I find that the Claimant could have scrutinized the applications presented to her in more detail, I find that she in fact followed the guidelines set out in the

Defendant's Credit Card Manual and did all that was required of her in reviewing the applications for the credit cards.

- [19] The CCR was allowed to operate within the Defendant as a law unto herself. She was allowed to accept the delivery of credit cards to the bank. She was allowed to open mail addressed to the General Manager, in direct violation of the Bank's policy which stated that mail was to be opened under dual custody. She was allowed to accept monies from customers for credit card payments without any supervision from anyone senior to her in the Bank's hierarchy.
- [20] The CCR was able to make the fraudulent applications, receive the fraudulent cards, attach the PIN's, prepare fraudulent payment summary sheets, and send correspondence to 4C's. And she did all of these things without detection. The Operations Manager and her immediate supervisor who was to oversee the preparation of the payment summary sheets and the submission of those sheets to 4C's apparently did not do so, as many of these payment summary sheets were, at the highest, inaccurate and at the lowest, simply fraudulent.
- [21] I accept the evidence of the Claimant that the CCR had a lot of freedom, "she had free control". But she had that control only because all concerned let the Bank's policies slide and they failed to rein Ms. Fortune in.
- [22] The evidence of Jacqueline Salfarlie revealed an organization in utter disarray. The powers that be at the Defendant allowed violation after violation of the Bank's policy and they did nothing to stem the tide. Tellers accepted monies, the CCR accepted monies, the customer service representatives accepted monies, all for the payments of credit cards.
- [23] The monies were not always processed at the time of receipt and documents relating to the receipt of these monies were not always processed in a timely manner. Clearly, this was an environment which allowed the CCR to operate not so much under the radar as through the radar, undetected for the incredible period of four years.

- [24] No one picked up on what the CCR was doing, not the Operations Manager, not the Credit Manager, not the General Manager, and not the Audit Department.
- [25] The credit card paying process seemed to be chaotic at best. Jacqueline Salfarlie in her evidence said that if a payment was received by someone in the Bank other than a teller, the monies may not be posted in the system due to the tellers being busy at the time, that it was still possible for the payment summary sheet to be signed as representing the receipt of the money. No receipt would be available at the time for the money, because it would not have reached to a teller at the time it was signed off for. She further stated that the CCR and the Customer Service Representatives were allowed to take cash from customers because the Bank was always short handed. The only evidence that there was that money was received would be the voucher which was written up for the purpose of giving the customer a receipt.
- [26] If the customer paid in cash, there appears to have been no control for the accounting of this cash at the end of the Banking day.
- [27] Due to this absolute lack of supervision on the part of the Bank's management the CCR was able to not only prepare fraudulent application forms but present payment summary sheets which reflected phantom payments.
- [28] The process lent itself to the possibility that cash could disappear after the supervising officer had seen the voucher and signed the payment summary sheet.
- [29] More importantly, the Claimant as Manager Credit had the following duties, among other things, as set out in her job description:
- (i) Conduct regular reviews of the Bank's credit portfolio to ensure portfolio performance is meeting established standards, and
 - (ii) Prepare monthly, quarterly and annual reports on the performance of the Bank's credit portfolio and advise Executive Management on actions required to maintain the quality of the portfolio.

- [30] These represent two of the most important functions of the Manager of any credit department of a financial institution. The Bank's credit portfolio is one of its most valuable assets, and the supervision of this area must be of the highest standard if the Bank is to operate at its optimum level.
- [31] I find it unacceptable for the Claimant in this matter to state that it was the CCR's responsibility to submit delinquency reports to her as Credit Manager, and further that she relied at all times on the reports submitted by the CCR as she did with all officers who provided her with delinquency reports on the Defendant's internal loans.
- [32] It is not contradicted that 4C's submitted weekly delinquency reports to the Defendant. They were sent via email to the Defendant and were to be forwarded to the Manager Credit. It was to be obtained from 4C's by the Administrative Assistant, Credit Control Centre. The Manager Credit must have been aware that these reports came from 4C's on a weekly basis. It was incumbent on her to make sure that she received and perused these reports. It was an integral part of her duties.
- [33] Again, it was for the Administrative Assistant of the Credit Control Centre who was to collect the delinquency report and forward it to the Claimant in her position as Manager Credit, yet, it was the CCR who routinely had access to the said report and who did not forward the reports to the Claimant. This was in clear breach of the Bank's policy. It allowed the CCR to manipulate what the Claimant saw and when she saw it.
- [34] I find that the Claimant was derelict in her duty when she failed to request the weekly delinquency reports and failed to review these reports as a result.
- [35] I find that had the Claimant insisted on seeing and reviewing the weekly delinquency reports the fraudulent credit cards would have come to light much sooner than it did. I also find that had the reports been reviewed on a timely basis the Bank would not have been defrauded to the extent that occurred. The various

delinquencies would have come to light at a time much earlier between 2002 and 2006.

- [36] It was a serious dereliction of duty on the part of the Claimant. Even when the new CCR Jael Hood was appointed, the practice of having the CCR have access to the delinquency reports continued.
- [37] It is instructive that the fraud came to light after the Claimant received one such delinquency report in February 2006. It only serves to reinforce the Court's view that had the Claimant demanded sight of these reports as she was mandated to do that the nature and extent of the fraudulent scheme, carried out with such impunity by Ms. Fortune, would have been discovered much sooner and the Bank would have been saved much of the loss and embarrassment that it suffered.
- [38] It is with some reluctance that I have concluded that the Claimant was guilty of gross negligence and dereliction of duty.
- [39] While her negligence in not reviewing the delinquency reports in a timely fashion was instrumental in the non discovery of the CCR's fraud, she was not the only one at fault.
- [40] The entire supervisory staff at the Defendant were less than vigilant in overseeing the CCR's functions. As a result her immediate supervisor, the Operations Manager, the General Manager, and to a degree the Operations Supervisor, all failed in their duties. The Internal Audit Department does not escape criticism in that it is incredible that in the period that the fraud was perpetrated that the Audit Department did not discover any indication of this fraud.
- [41] The Court hopes that the Bank has learnt from this dire experience and have not just written manuals about the better policing of their employees, but have made the necessary adjustments to implement those changes in a meaningful way.

[42] After all, the Bank serves the public of this country and they are entitled to have confidence in the financial institutions into which they place their hard earned money.

[43] In the circumstances, I find for the Defendant; the Claimant's termination was lawful. As indicated earlier, she was derelict in her duty as Credit Manager to a degree which I find rises to the level of gross negligence.

[44] I would therefore award costs to the Defendant in the sum of \$7,500.00.

[45] I would like to thank Counsel for their assistance in this matter.

[46] I referred to the following authorities:

Pepper v Webb [1969] 1 WLR 51

Gooding v Grenada Bank of Commerce Ltd. Civil Suit No. 553 of 1998

Laws v London Chronicle Ltd. [1959] 1 WLR 698

Corbette v National Commercial Bank of Dominica Privy Council Appeal No. 41 of 2008

Employment Act of Grenada ss. 74 - 77



Margaret Price Findlay
High Court Judge