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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1980/E018

BETWEEN	EAGLE FARMS COMPANY LIMITED)	
)	PLAINTIFFS
AND	ALFRED D. THOMPSON)
)	
AND	ATTORNEY GENERAL FOR JAMAICA	FIRST DEFENDANT
AND	JAMAICA DEVELOPMENT BANK	SECOND DEFENDANT

Mrs. M. E. Forte for plaintiffs.

Mrs. Yvonne Humphries-Shaw of the Attorney General's Department
for first named defendant.

Mr. R. N. A. Henriques and Mr. Bruce Barker for second named
defendant.

December 4, 1980;
February 16, 1981

Wolfe, J. (Ag.):

By Writ of Summons dated the 14th day of May, 1980, the
plaintiffs commenced proceedings against both defendants to recover
damages for:

- (a) Breach of Contract;
- (b) Breach of Statutory Duty;
- (c) Negligence.

The particulars of the plaintiffs' claim are set out in
the Statement of Claim of even date.

The first named defendant seeks an order in pursuance of
section 100 of the Judicature (Civil Procedure Code), Chapter 177 -

" that the name of the first named
defendant be struck out on the ground that
the said defendant has been improperly
joined as a party to the action therein. "

The second defendant likewise seeks an order under
section 238 of the said Law to strike out paragraphs 12, 13, 19, 21,
22, 23 and 24 of the plaintiff's Statement of Claim as disclosing
no reasonable cause of action against the second defendant.

In dealing with these applications, it is necessary to summarise the allegations as set out in the Statement of Claim.

The first named plaintiff is a limited liability company with the second named plaintiff as its principal shareholder. The primary object of this company being to farm and process poultry, to manufacture poultry feeds and to establish the first integrated poultry operation in Jamaica.

The second defendant is a Government Banking Corporation established by the Jamaica Development Bank Act, for the purpose of affording financial and technical assistance in the development of certain enterprises in Jamaica.

The second defendant provided the company with a loan of \$253,000.00 as security for which the second defendant was issued with a First Mortgage Debenture on all the assets of the company present and future.

In or about 1974, the second defendant provided further loan assistance to the amount of \$247,000.00, on the security of a First Mortgage Debenture as aforesaid.

A further loan assistance was provided by the second defendant to the amount of \$100,000.00 to the company in November 1974, on the security of a Promissary Note, payable on demand, given by the second named plaintiff.

In November 1976, the second defendant again provided a further loan to the company to the amount of \$500,000.00 secured by a First Mortgage Debenture on all the assets of the company present and future to rank pari passu with the two debentures already referred to as well as by mortgage on lands owned by the second named plaintiff.

Prior to the grant of each loan, officers of the second named defendant's company carried out a feasibility study and made recommendations to the second named defendant.

In or about 1977, the plaintiffs and second named defendant submitted certain proposals to the Minister of Industry

and Commerce as a result of which the Government of Jamaica, the second defendant and the first named plaintiff entered into an agreement as to the reorganization of the company and management of the company.

It was agreed that a new Board of Directors comprising seven members would be appointed of which the Government of Jamaica would appoint four members including a representative of the second named defendant and the second named plaintiff as minority shareholder would appoint three of the Directors.

The new Board was duly appointed and assumed control of the company.

In February 1978, the defendants abandoned the company, withdrew all financial assistance resulting in the company becoming insolvent and in November 1978, the second defendant placed the company in receivership.

The first named defendant, as pleaded in the Statement of Claim, was made a party to the suit by reason of the provisions of the Crown Proceedings Act, as representing the Ministry of Industry and Commerce and the Government of Jamaica.

A careful examination of the Statement of Claim reveals that all the acts complained of which would possibly give rise to a cause of action are acts committed by the Board of Directors or the second named defendant.

Directors are in the eyes of the law agents of the company for which they act and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors.

See Ferguson v. Wilson [1966] L.R. 2 Ch. 77.

The fiduciary relationship of a director exists with the company and not with individual shareholders.

Hence, the acts complained of against the Directors would not, in my view, make the Government of Jamaica liable, as a shareholder of the company.

However, section 20 of the Jamaica Development Bank Act states as follows:

" The Bank may act generally as agent for the Government where it can do so appropriately and consistently with its function under this Act. "

Paragraph 4 of the Statement of Claim alleges that the second defendant was at all material times the agent of the Government of Jamaica. Whether or not this is so is a question to be determined by the court of trial.

I therefore hold that the first named defendant has been properly joined as a party to this action.

The application by the first named defendant is therefore dismissed.

The power given by section 238 of the Judicature (Civil Procedure Code) Law, Chapter 177, to strike out statement of claim or parts thereof is one which must be used with caution.

The second named defendant's application to strike out the paragraphs referred to earlier in this judgment is based on the ground that they disclose no reasonable cause of action.

Paragraph 4 of the Statement of Claim sets out the statutory duties of the Bank as contained in section 4(1) and (2) of the Jamaica Development Bank Act. The section as worded is, in my view, of general application to all person transacting business with the Bank. What is open to interpretation is the extent of the Bank's duty vis-a-vis persons with whom it has transacted business.

It is, therefore, not a valid argument to say that the Statement of Claim does not disclose that the second named defendant was under any of the duties mentioned in paragraph 12 thereof.

By parity of reason, the same observations are applicable to the other paragraphs complained of.

In Davey v. Bentinck /1893/ 1 Q.B. 185, it was held -

" So long as the Statement of Claim or the particulars disclose some cause of action, or raise some question fit to be decided by a Judge or jury, the mere fact that the cause is weak and not likely to succeed is not ground for striking it out. "

For the above reasons, I hold that the paragraphs complained of ought not to be struck out. This application is also dismissed.

Costs of these proceedings to plaintiffs against the defendants in any event, to be taxed if not agreed.
