

Notes

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C. L. 1995/J-118

BETWEEN JAMAICA AGRICULTURAL DEVELOPMENT FOUNDATION PLAINTIFF

A N D YVETTE REID 1ST DEFENDANT

A N D MAVIS HENRY 2ND DEFENDANT

Mr. D. Batts and Miss Gentles for plaintiff instructed by Livingston Alexander & Levy.

Mr. W. Scott and Mrs. S. Usim for defendants instructed by Chancellor & Co.

Heard: 5th, 6th, 7th July 1999; 14th, 16th December 1999; 5th April, 2000 and 14th February, 2002.

ELLIS, J.

The plaintiff claims an amount of \$1,814,669.23 as balance outstanding on a loan from the plaintiff to the defendants.

It is to be noted that the defendants do not deny the loan but disclaim obligation to repay. The reason for the disclaim they say, is that the plaintiff induced them to take up a loan for fish farming well knowing that it was of high risk and would fail.

The defendants have counterclaimed for damages for the plaintiff's misrepresentation contained in a project document. That document was prepared by the plaintiff for the defendants use in the fish farming venture.

The first defendant say that the Project Document having been prepared by

the plaintiff's Technical Services Department induced her entry in fish farming.

She was so induced although she informed the plaintiff that she lacked prior expertise in fish farming. The plaintiff held itself out as expert in fish farming and as such, owed a duty of care to give sound technical advice in the Project Document which the defendants were expected to follow.

The defendants argue that their fish farming venture failed because of the plaintiff's misrepresentations and inaccurate technical information. The failure resulted in the defendants inability to service the loan with consequential loss and expenses to them.

They contend that the Project Document was negligently prepared by the plaintiff.

The defendants say that they relied on those false representations to their loss.

The plaintiff through Mr. Rohan Miller gave evidence that Mrs. Reid the 1st defendant, having identified a fish farm, applied for a loan to finance its acquisition. He prepared the Project Document. The purpose of the document was to analyse the project and to guide the plaintiff's Board as to whether the loan should be granted. The 1st defendant provided some information which was placed in the Document. On completion of the document 1st defendant was given it to read and consider its contents.

The defendant was not obliged to follow the guidelines contained in the document.

Evidence was also given that previous owners of the defendants' fish farm were successful in its operation

The 1st defendant gave evidence to the effect that she did have experience in business but not in fish farming. She had no training in fish farming other than attendance at seminars. The loan which she obtained from the plaintiff was on terms contained in the Loan Agreement at page 79 of Exhibit 1. As to the Project Document she had no input in that document apart from what was required from her by way of her background etc. She operated the fish farm for about 2 years without any technical assistance from the plaintiff.

The 1st defendant said she spoke to Mr. Carberry the manager of Aquaculture. Thereafter changes were made to the Project Document which she obtained from the plaintiff. These changes she said were in conformity with Aquaculture guidelines and were outside the regime of the plaintiff's guidelines.

The outflows for infrastructure exceeded the figures shown in the project document.

There was a loss on the business of approximately \$2 million in the first year. That loss resulted in her inability to service the loan from the plaintiff.

She denied any agreement with the plaintiff to capitalise interest on the loan.

The 1st defendant was cross examined by Mr. Batts. She said her decision to enter into fish farming in June 1992 was not a final decision and in March of 1992 she had already taken steps to satisfy her credit worthiness with the plaintiff.

She agreed to buy the fish farm before the project document as executed. She agreed to buy the farm as is and as a growing concern.

The project document contemplated her selling fifty percent of fish to Aquaculture and the remaining fifty percent at pond side. However the agreement with Carberry demanded a sale of 100% of fish to Aquaculture. This latter demand was referred to the plaintiff. She expected technical assistance and visitations from the Board which managed the plaintiff.

She denied meeting with Mr. Malcolm Brown. She did not agree to any capitalization and capitalization was not her proposal.

Finally, she attributed the failure of her fish farm to what was done by the plaintiff. It was not her decisions and conduct of the farm which caused failure of the enterprise.

The defendant called Dr. Vincent Wright as a witness.

His evidence was primarily to say that the arrangement to sell 50% of fish produced to Aquaculture was unworkable given the expenditure of the defendant. That arrangement would result in a deficit of \$12000 - \$13000 on each crop.

The defendants say that the project document was prepared by the Technical Services of the plaintiff. The project document, in their submission, was negligently prepared and contained several false representations. The defendants contend that having relied on the false representations to their loss the plaintiff is liable to them in tort.

The cases of Hedley Byrne and Coy Ltd v Heller and Partners Ltd (1963) 3WLR 101, Esso Petroleum Coy Ltd v Marden (1976) 2All ER. 5 were cited in support of that contention.

Are the cited cases of assistance to the defendants.

In Hedley Byrne and Co. Ltd. It was held “that a negligent, though honest misrepresentation, spoken or written may give rise to an action for damages ‘or financial loss caused thereby, apart from any contract or fiduciary relationship since the law will imply a duty of care when a party seeking information from a party possessed of special skill trusts him to exercise due care, and that party know or ought to have known that reliance was being placed on his skill and judgment.”

In Esso Petroleum Co. Ltd v Marden Lord Denning said “if a man who has or professes to have special knowledge or skill makes a representation by virtue thereof to another - be it advice, information or opinion - with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable

care to see that the representation is correct and that the advice, information or opinion is reliable.

If he negligently gives unsound advice or misleading information or expression erroneous opinion and thereby induces the other side into a contract with him he is liable in damages.”

The appellants in the Hedley Byrne case had embarked on business with a company prior to seeking advice from the respondents.

The respondents gave advice upon which the appellants acted to their loss. The respondents would have been liable but for an express disclaimer of liability.

In *Esso Petroleum v Marden*, Esso gave advice to the defendant on matters which were particularly within their special knowledge. The advice was negligently given and induced the defendant to enter into a tenancy agreement with Esso. The defendants suffered loss on that agreement.

I do not find that on the evidence the cases assist the defendants. I say so because it is clear that the 1st defendant, prior to the execution of the project document, had decided to buy a fish farm. The evidence is that she was desirous of obtaining a loan from the plaintiff to purchase the farm, not to be instructed on how to operate the farm.

In the circumstances, the preparation of the Project Document did not induce her entry into fish farming. Of course the plaintiff provided guidelines and

recommended certain practices to aid the repayment of the loan if followed. It was solely the defendants decision whether to follow or not to follow the guidelines and practices which the Projects Document recommended. They did not follow those recommendations. I find no negligent misstatement in the Project Document as alleged.

It is also my finding that the defendants loss in their fish farming operation was not consequential on any negligent or false statement by the plaintiff.

The defendants also, in argument but not on the pleadings, contend that they had not agreed to any capitalization of loans.

There is evidence from the Plaintiffs witness Mrs. Claudette Creary that interest on the loan had been accruing for sometime. That interest was capitalized after meetings with the defendant Mrs. Reid. The letter at page 113 of Exhibit 1 speaks to the agreement of the parties to capitalization.

That evidence was cross examined and it was not in my opinion, successfully challenged. I am constrained to hold that there was agreement for the capitalization of loans and interest.

It is also to be noted that the Loan Agreement executed by the parties makes for capitalization at paragraph 1(f) thereof.

In light of my findings and conclusions the plaintiff has established its case to the courts satisfaction.

The defendants counterclaim is dismissed. There is therefore judgment for the plaintiff in the amount claimed with interest at a rate of 20% per annum to date.

Costs to the Plaintiff to be taxed if not agreed.