

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. P. 189 of 1983.

BETWEEN	GWEN PHILLIPS	PLAINTIFF
A N D	ROYAL BANK OF JAMAICA LIMITED	DEFENDANT

Donald Scharschmidt instructed by Hugh Abel Levy & Company for the Plaintiff

Dennis Morrison instructed by Edmund Cox & Orrett for the Defendant.

January 10, 11, 1990 and November 23, 1990.

CLARKE, J.

This is an action in which each party asks for judgment on the basis that the following facts agreed upon support that party's case:

1. Gwendolyn Phillips purchased a Manager's Cheque in the amount \$40,000 payable to JOHN C. TREADWAY TRUSTEE.

She purchased it from the Knutsford Boulevard Branch of the Royal Bank, Jamaica Limited (the bank). The bank turned over the instrument to her and retained a carbon copy.

2. In mid March 1978, Mrs. Phillips attended at the branch. She said that the payee had not negotiate the instrument and that as she presumed that it was lost, she was requiring that the bank reimburse her the \$40,000. She admitted that the payee was not 'Jamaican' and that she was not in contract with any of the persons connected with the payee.

The Bank did not pay the funds to her. So, she requested that the bank place a stop-payment order against the manager's cheque. The Bank made a notation to this effect on the records.

3. On April 18, 1978 a Mr. Walter Prideaux of Tuscon, Arizona, attended at the Branch and presented two Manager's Cheques for encashment. One of these, No. C-040693, was that which Mrs. Phillips had purchased.

Mr. Prideaux also procured a power of attorney and an affidavit both purportedly signed by John C. Treadways and witnessed by a notary public. Mr. Prideaux asked the bank to encash the cheque and pay him in United States dollars.

4. The bank advised him that Bank of Jamaica approval would be required and that a "Notary Public" acknowledgement should be obtained from the State of Arizona along with a copy of the trust documents pertaining to JOHN C. TREADWAY TRUSTEE. Mr. Prideaux did not meet these requirements and later that day, left with the cheques.
5. On June 2, 1978 the bank received an overseas telephone call purportedly from Mr. John Treadway. The caller stated that he had revoked the power of attorney given to Mr. Prideaux and requested that the bank have no further dealings with Mr. Prideaux.
6. In the first week of March, 1980 Mrs. Phillips again attended at the bank. She requested that the bank refund her the full proceeds of the cheque or else pay her interest on the sum involved.

Mrs. Phillips was now residing in Miami and interest payment would require approval by the Bank of Jamaica. This was communicated to Mrs. Phillips and her attorney, but, nothing came of the matter.
7. On February 12, 1982 Mrs. Phillips attended once more at the bank and tendered a letter dated October 28, 1981 which reads as follows:

"The Manager,
Royal Bank Jamaica Limited,
29 Knutsford Boulevard,
Kingston 5.

Dear Sir,

On the day of November 1, 1977 I purchased a Bankers Cheque in the sum of \$40,000.00 payable to (John C. Treadway Trustee). This I did on instruction of a Mr. John Mais, but have since found out that the name 'Treadway' is fictitious.

I have not received any consideration from Mr. Mais, and I now fear that my cheque will be cashed on a false endorsement.

I request that the cheque be immediately encashed and I hereby give to you my indemnity against any action which may be taken against you in connection therewith.

Thanking you,

Yours truly,

Gwendolyn Phillips".

8. On October 31, 1983 six years after the manager's cheque was issued Mrs. Phillips put the matter in suit and had the bank served with a writ of summons and statement of claim.
9. The bank wrote Mrs. Phillips' Attorney a letter dated November 7, 1983 rehearsing the gist of ^{the} facts aforementioned and concluded the letter in the following terms:

"It may be that any possible claims by the payee against the Bank are now statute barred and accordingly, we are thinking positively of providing Mrs. Phillips with reimbursement against the usual indemnity. However, we are not prepared to consider any request for payment of interest or costs. Kindly, let us know by Thursday, 10th instant, whether Mrs. Phillips would accept the sum of \$40,000.00 ⁱⁿ settlement hereof."

10. The purchasing power of \$40,000 in 1977 was much greater than in 1989.

By her amended statement of claim, Mrs. Phillips seeks to recover from the bank, the sum of \$40,000 "as money had and received by the bank to her use and such interest thereon as the commercial banks were giving on

deposits or alternatively as the commercial banks were getting on loans made by them between March, 1978 and December, 1989".

Alternatively, she claims that on the principle, *restitutio in integrum*, she is entitled "to such sum in December, 1989 as represents the purchasing power of \$40,000 in March, 1978".

As a final alternative she claims the return to the \$40,000 and damages for its detention.

The bank pleads that in the light of the legal character of a banker's or manager's cheque and the canons of good practice it acted properly in refusing to accede to Mrs. Phillips' request for the repayment of the \$40,000 and denies receiving money to her use or that she is entitled to any of the reliefs claimed.

The cardinal issue that arises from the facts agreed upon by the parties is whether or not the bank holds the sum of \$40,000, for the account of Mrs. Phillips.

Mr. Scharschmidt submitted that having regard to the facts, I should hold that in March, 1978 at the request of Mrs. Phillips, the bank stopped payment on the manager's cheque. Further submitted that on that basis the bank has been holding from March 1978, the proceeds of the cheque for the account of Mrs. Phillips. Mr. Morrison on the other hand contended that, Mrs. Phillips having purchased the manager's cheque, the sum of \$40,000 has remained with the bank payable to the payee or to his order. The factual and legal positions, he urged, support that contention.

First of all, the legal nature and significance of a manager's cheque must be understood. A manager's cheque is a bank cheque which someone may purchase from a bank. The bank is the drawer of such an instrument. It is drawn by a bank upon itself and made payable to, or to the order of, the payee designated by the customer on whose behalf the bank issued the instrument. Such an instrument at least as regards the holder is a negotiable instrument, for by section 5 of the Bills of Exchange Act the holder may treat the instrument at his option either as a bill of exchange or as a promissory note. And while a bank, which is both drawer and drawee of a manager's cheque, is not entitled to treat it as a bill of exchange as

defined by Section 3 of the Act, such a cheque plainly contains the bank's undertaking to pay the amount payable on the instrument. As Viscount Simonds said in Commercial Banking Company of Sydney v Mann [1961] A.C. 1 at p.7:

" [Manager's Cheques] are in legal significance promissory notes made and issued by the bank".

I understand Viscount Simonds to be saying that a manager's cheque drawn as it is by the bank upon itself is the bank's promissory note or undertaking to pay to the payee or holder in due course, the amount for which the cheque is expressed to be payable. As Mr. Morrison correctly submitted, it is therefore not open to a customer who purchases such a cheque to give an effective order to a bank to stop payment. Mr. Morrison, however, conceded in argument that a bank may effectually stop payment of its manager's cheque, notwithstanding its liability to the payee or holder in whose hands such a cheque has come.

Margarete Lawrence testified that it is not the policy of the bank to stop payment of its own manager's cheque at the request of the customer. She said, however, that where the bank is satisfied that such a cheque has been lost or destroyed, the bank will either replace the cheque or refund the customer against a suitable indemnity. In my opinion, the bank's policy in this connection is in keeping with the canons of good banking practice: see Practice of Banking (2nd edn.) by E.P. Doyle, at page 85286; questions on Banking Practice (11th Edn.) at pages 280 and 367, a work received and issued under the authority of the Council of the Institute of Bankers London.

Yet, regardless of the bank's policy, did it on the occasion of Mrs. Phillips' attendance in March, 1978 stop payment of the manager's cheque? Mr. Scharschmidt, argued with force that in the absence of evidence to the contrary, the bank must have on that occasion stopped payment, as witness the words, "STOP - PAYMENT" on the face of the exhibited copy of the instrument retained by the bank. He submitted that it was in the bank's power to produce evidence as to when and by whom the quoted words were written across the face of the copy instrument. He urged that the bank failed to produce such evidence by which the facts might have been elucidate and that accordingly I ought to infer that the bank stopped payment of the instrument in March, 1978.

That inference cannot, in my opinion, reasonably be drawn from the facts. No evidence was required to elucidate the facts. The agreed facts in this connection are that when in mid March, 1978 the bank did not pay the funds, Mrs. Phillips requested that it place a stop-payment order against the instrument. The bank ^{then} made a notation to that effect on the records. I find that the bank merely noted on the records Mrs. Phillips request that it stop payment. Test it: its willingness a month later to encash the instrument in United States dollars if the payee's purported agent had met certain requirements, can in the context of the facts be explicable only on the footing that it had not previously stopped payment. Moreover, by that time the bank had notice that the instrument had been delivered to the payee and that he by himself or his agent was taking steps to encash it. The bank in keeping with the canons of good banking practice continued to act in such a way as would permit it to fulfill its obligation to the payee or holder in due course.

Six years after Mrs. Phillips had purchased the manager's cheque payable to John C. Treadway Trustee the bank wrote to her attorneys intimating that as any possible claims by the payee against it might then be statute barred it would reimburse Mrs. Phillips against the usual indemnity if she accepted the sum of \$40,000 in settlement without payment of interest.

That intimation does not in my judgment create a legal right in Mrs. Phillips to the \$40,000.00. For her to succeed, I must be satisfied that she has a right in law to the funds. Plainly, she has no such right and consequently the bank has no legal obligation to reimburse her.

On the agreed facts it is abundantly clear that she delivered the manager's cheque to the payee. His purported agent attempted to encash it, but as certain conditions had not been fulfilled, that attempt was unavailing. There is no evidence that the instrument has since come into Mrs. Phillips hands. In any event, that is not her case. As I understand it, when she delivered the instrument to the payee she divested herself of all legal right to the \$40,000.

Unless upon presentation of the instrument the bank sooner pays

the funds to the payee or his duly authorised agent or holder in due course, as it would be obliged to do, the bank is at liberty (consistent with its practice as deposed to by one of its officers). to keep the funds for up to fourteen (14) years in a non interest bearing account and thereafter to pay same over to the government.

In the result, as the bank does not hold the \$40,000 for the account of Mrs. Phillips, she is not entitled to any of the reliefs claimed. There will, accordingly, be judgment for the defendant .

The plaintiff must pay the defendant's costs to be taxed if not agreed.