

IN THE CAYMAN ISLANDS COURT OF APPEAL

CICA (Civil) No. 12 of 1999
Grand Court Cause No. 318 of 1996

IN THE MATTER OF BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS)
LTD. (IN LIQUIDATION)

AND IN THE MATTER OF RULE 4.83 OF THE INSOVENCY RULES 1986 (UNITED
KINGDOM)

AND IN THE MATTER OF ORDER 28 RULE 10 OF THE GRAND COURT RULES

BETWEEN:

DINSHAW H. ANKLESARIA

Appellant

- and -

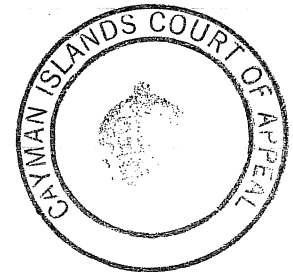
BANK OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS) LTD. (IN LIQUIDATION)

Respondent

BEFORE: The Rt. Honourable Mr. Justice E. Zacca, President
The Rt. Honourable Mr. Justice T. Georges, J.A.
The Honourable Mr. Justice I. Rowe, J.A.

Jonathan Nash and Stephen Porter instructed by C.S. Gill & Co. for the Appellant.
Sarah Dobbyn instructed by Hunter & Hunter for the Respondent.

August 8th 2000



REASONS FOR JUDGMENT

GEORGES, J.A.

This is an appeal by Mr. Dinshaw Anklesaria ("Mr. Anklesaria") from a judgment of Murphy J. refusing Mr. Anklesaria's application for an order reversing the decision of the Official Liquidators of BCCI (Overseas) Ltd. ("the Bank") rejecting his proof of debt in respect of 400 travellers cheques with a face value of US \$400,000.00.

These cheques formed part of a book of 1698 cheques, each of a face value of US \$1,000.00 purchased in October 1990 by a representative of Sheikh Khalifa bin Zayed, a member of the Royal Family of the United Arab Emirates. As would have been expected, Sheikh Khalifa did not personally take delivery of the cheques. They were delivered in blank form to a representative of the Sheikh, most likely at the Bank's branch in Abu Dhabi, UAE. The records indicate that the representative was one Zafar Iqbal whose signature appears as purchaser on the purchase agreement. Payment was made by a single remittance from BCCI (Emirates) to the BCCI (O) Travellers Cheques Division.

Mr. Anklesaria in his supporting affidavit stated that he had received the cheques from a representative of the Royal Family of the Emirate of Abu Dhabi in satisfaction of services he had rendered to members of that Family.

The province of Sindh in Pakistan where Mr. Anklesaria lives is a popular hunting ground for the Royal Family of the United Emirates. In late 1990 he had been asked by one of their representatives to make all necessary arrangements and provide all the support needed by way of supplies, services and manpower for a Royal hunt. This involved providing all the necessary food, fuel, beaters and bag carriers for an operation involving several hundred people over several days for each shoot. The hunts extended over a period of three months from December 1990 to March/April 1991.

After the completion of the hunt a representative of the Royal Family handed him the unsigned travellers cheques, the subject matter of the claim. The payment was expected to cover his expenses and to provide a gratuity for his services. The operations of the Bank ceased on July 5th 1991 when a

receiver was appointed. As the cheques were blank, Mr. Anklesaria signed and countersigned them and submitted them as proof of debt to the Official Liquidators. The Official Liquidators rejected the claim.

Mr. Anklesaria filed an originating summons seeking reversal of that decision. Murphy J. refused this application, hence this appeal.

The trial judge found that no one had made a claim for loss of the cheques nor had anyone requested a refund of the sums appearing as their face value.

It was common ground between the parties that travellers cheques were a species of bill of exchange. This basic classification is clearly acceptable once it is borne in mind that it is merely "a species" of bill of exchange and is subject to the terms of the contract under which it has been issued.

At the moment of its issuance by the selling Bank, in this case BCCI (O), it is incomplete. It bears the embossed signature of the drawer but there is no payee named. The drawer is described on the face of the instrument as the "issuer" and the terms and conditions governing the document are set out on its reverse side.

Once a travellers cheque is purchased, the issuing bank is put in funds to meet the obligations it is likely to incur under the document. A liability is assumed which continues to exist until it is discharged by payment of the document.

The terms on which payment is to be made appear on the reverse side and are plainly designed to ensure that payment is made to the person intended by the purchaser to receive payment. The chosen method of achieving this is set out in paragraph 1 of these terms:

“Using the same signature used for signing this Purchase Agreement; the Purchaser shall sign each cheque in permanent ink, in the space provided at the top right at the time of purchase and countersign each cheque in the lower left in the presence of the person cashing the cheque.”

This contemplates that the issuer will ensure that the purchaser will sign each cheque in the appropriate space at the time of purchase. Comparison with the signature at the time of encashment will supply proof that the person presenting the cheque for payment is the person intended to be paid.

No doubt issuing banks are well aware that purchasers are not always required to sign cheques in the appropriate place at the time of purchase. Paragraph 7 of the Agreement deals with the consequences which may follow that eventuality:

“The issuer shall not be required to stop payment on any cheque for any reason and shall pay each cheque in accordance with its terms when the signatures and countersignatures are signed by the same individual whether or not by the Purchaser.”

The kernel of the reasoning of the learned trial judge was that the Bank was under no obligation to pay on the cheques which formed the basis of Mr. Anklesaria's claim because he was not a holder in due course of the cheques. Acknowledgedly only holders in due course are entitled to payment under Bills of Exchange Law.

The trial judge stated that he knew of:

“No principle of law that would import these terms into the negotiable instrument itself. In bills of exchange law the enforceability or otherwise of the instrument will not turn on underlying or collateral contracts, and certainly not contracts to which the holder was not a party.”

In fact though classifiable as a “species of bill of exchange”, travellers cheques fall into a category of their own. The very document issued to the purchaser as the cheque, which can be termed the bill of exchange, carried on its reverse side the conditions affecting its encashment. It is in no sense an unconditional promise to pay. If the provisions of paragraph 1 are complied with and the cheque is duly countersigned the document arguably becomes a negotiable instrument capable of being transmitted in accordance with the Bills of Exchange Law. Even if this does not take place the liability of the issuer under the terms of the document remains unaffected.

It should be noted that a person who is the “mere holder” of a bill does have the right to bring an action on the bill – see Chalmers and Guest, Bills of Exchange Cheques and Promissory Notes (1998) paragraph 34 – 097. Defences can be raised against a “mere holder” which cannot be raised against a holder in due course. None of these defences are relevant on the facts of this case.

It has been established that the travellers cheques were delivered to Mr. Anklesaria with the intention of passing title in them to him. Making a claim for payment from the issuer would not be a negotiation of the cheque as a bill of exchange and the issue of being holder in due course would not arise. The situation falls within the provisions contemplated by paragraph 7 of the terms and conditions set out above.

The official liquidators ought to have accepted the claim.

Accordingly, at the end of the arguments we allowed the appeal. We set aside the order made by Murphy J. The decision of the Official Liquidators rejecting the claim was reversed and the Official Liquidators were ordered to admit the claim to proof. The appellants were awarded the costs of the appeal and of the hearing before Murphy.

We have now put in writing our reasons for the order made.

