

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CIVIL APPEAL NO. 89 OF 2004**

**BEFORE: THE HON. MR. JUSTICE SMITH J.A  
THE HON. MR. JUSTICE HARRISON J.A  
THE HON. MR. JUSTICE DUKHARAN J.A (Ag.)**

<b>BETWEEN</b>	<b>GLORIA BARRETT-JOBSON</b>	<b>APPELLANT</b>
<b>AND</b>	<b>NATIONAL COMMERCIAL BANK</b>	<b>1<sup>ST</sup> RESPONDENT</b>
<b>AND</b>	<b>LANVILLE HENRY</b>	<b>2<sup>ND</sup> RESPONDENT</b>

**H. Charles Johnson instructed by H. Charles Johnson & Co. for the Appellant.**

**Miss Tenneshia Watkins instructed by Vacciana and Whittingham for the Respondents.**

**May 5 and July 25, 2008**

**SMITH, J.A.:**

I have read in draft the judgment of Harrison, J.A. I agree with his reasoning and conclusion. There is nothing further that I wish to add.

**HARRISON J.A.:**

1. This is an appeal from a decision by Mrs. Justice Norma McIntosh to strike out a claim brought by Mrs. Gloria Barnett-Jobson, (the Appellant) against National Commercial Bank and Lanville Henry (the Respondents). The grounds of appeal are that:

"a. the Appellant is entitled to a trial of the issues as stated in her particular case; and

b. the Order of the learned Judge is erroneous due to her reliance on affidavit evidence of the Respondents which failed to address all the issues in the Claimants case as filed".

## **Background**

2. The facts reveal that an account was opened at National Commercial Bank, Falmouth branch, in 1985 in the name of the Denis Tobin Preparatory School ("the school"). The money in the account was used to conduct the business of the school at all times. Mr. Lanville Henry, was then the Manager of the 1<sup>st</sup> Respondent.

3. The account was governed solely by a mandate dated November 29, 1985, which was varied only to the extent that new officers were appointed to operate the account from time to time.

4. The original signatories on the account were the principal, Phyllis Kay Farquharson, and the Canteen Manager, J.W. Hawthorne. One or both persons were authorized to sign.

5. The Appellant has contended that the school was 'completely handed over to her' by an agreement reached between herself, Mr. John Farquharson and Mrs. Phyllis Farquharson. However, she presented no evidence in support of this allegation. She is also contending in her affidavit sworn to on the 22<sup>nd</sup> July, 2004 that the school was in

financial difficulties when she 'undertook' its operation and that she used her personal funds to clear school debts.

6. On June 4, 1997 the second respondent received a letter dated June 3, 1997 from the school which advised him that the Board's Chairman, Mrs. Barrett-Jobson, was no longer permitted to present cheques for payment on the account and that cheques were only to be presented for payment by Winston Douglas and Norma Anderson. A new resolution, dated June 6, 1997, was created to reflect this change.

7. On June 9, 1997 Mrs. Phyllis Farquharson (who signed as owner of the school) wrote to the 2<sup>nd</sup> Respondent and advised him that Mrs. Jobson's position as Chairman and Board Member of the school had been terminated.

8. On December 2, 1997, the Appellant filed suit against the National Commercial Bank and Mr. Lanville Henry. Her claim is for the return of the sum of one million, two hundred thousand Jamaican dollars (J\$1,200,000.00). She asserts that the Bank had been holding the monies on her behalf in account number 44277 65 98/2 since April 1990. She further asserts that the first Respondent has fraudulently and arbitrarily prevented her from accessing funds in the said account.

9. The Respondents made an application for court orders and sought to have the Statement of Claim struck out for not having disclosed a reasonable cause of action. The claim was struck out by McIntosh J. who also ordered the discharge of an

interlocutory injunction which was granted on January 22, 1998. This injunction had restrained the Respondents from paying over the funds held by the Bank to the School.

### **The Law**

10. Rule 26.3 (1)(c) of the Civil Procedure Rules 2002, makes provision for the striking out of a statement of case or part of a statement of case, if it appears to the court that: "the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending the claim". This provision formed the basis of the Respondents' application to strike out the Appellant's statement of case.

11. In **Williams & Humbert Ltd. v W & H Trademarks (Jersey) Ltd.**, [1986] A.C. 368, which the Appellants have relied on Lord Templeman, at page 435, stated the following:

"...if an application to strike out involves a prolonged and serious argument the judge should, as a general rule, decline to proceed with the argument unless he not only harbours doubts about the soundness of the pleading but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for trial or the burden of the trial itself."

12. The authorities have also made it abundantly clear that an application to strike out a statement of claim will be upheld in cases where the outcome is plain and obvious. See **Three Rivers District v Bank of England** (No. 3) [2001] UKHL 16.

## **The Issue**

13. The issue that the learned judge had to decide was a simple one - who was the owner of the account in dispute? McIntosh J., in her judgment of the 30<sup>th</sup> August 2004 said:

“It is common ground that the account in question is in the name of the Dennis Tobin Prep School and was operated to conduct the business of the school. There were other signatories to the account who also had access to the funds it contained. Therefore, the Claimant cannot reasonably be declared the lawful holder of the account”.

## **Discussion**

14. In order for the appellant to succeed in her claim, she would have had to satisfy the court that the evidence upon which she relies is credible.

15. Based on the mandate of November 1985, it is clear that the account in question was held in the name of the school. This mandate required that all changes to signatories on the account should be done by a resolution of the Board and in addition a letter signed by the Chairman for the time being had to be sent to the Bank. In May 1997 the Board passed a resolution designating Mrs. Barrett-Jobson and the two other Board members as signatories to the account. It meant therefore, that as far as the Bank was concerned, Mrs. Barrett-Jobson was an authorized representative of the school, and that she was not the owner of the account.

16. Subsequent to the authorization referred to above, the Bank received a letter from the 'Committee' terminating that authorization. The Bank was therefore obliged to comply with those instructions, and to act in accordance with the terms of the mandate governing the operation of the account.

17. In the circumstances, the outcome of the claim would have been 'plain and obvious'. The learned judge was therefore correct when she struck out the Claim as establishing no reasonable cause of action. It is also my view that the affidavit evidence before the learned judge, had addressed all the issues which she needed to determine the matter that was before her.

18. It is therefore my view that the appeal ought to be dismissed with costs to the Respondents.

**DUKHARAN, J.A. (Ag.)**

I agree.

**SMITH, J.A.**

**ORDER:**

The appeal is dismissed with costs to the Respondents.