

IN THE COURT OF APPEAL OF LESOTHO

C OF A (CIV) NO. 43 OF 2011

In the matter between:

LESOTHO BANK (1999) LIMITED

APPELLANT

AND

BOLIBA MULTI PURPOSE  
COOPERATIVE SOCIETY

RESPONDENT

CORAM SMALBERGER JA  
SCOTT JA  
HOWIE JA

HEARD : 16 APRIL 2012  
DELIVERED: 27 APRIL 2012

SUMMARY

Bank – liability for accepting and honouring cheques drawn on it, ostensibly by its customer – customer alleging cheques to be forgeries – bank denying cheques in fact forgeries – whether forgery proved.

JUDGMENT

HOWIE JA

[1] The plaintiff co-operative society was at all relevant times a customer of the defendant bank. In late July 2002 the bank accepted and paid three cheques (the July cheques). The cheque forms in question bore the bank's name as the issuer of the forms and the plaintiff's name as drawer. Below the plaintiff's name were two signatures. The cheque numbers were 986, 991 and 993. On each the word forty was spelt "FOURTHY".

[2] In the first half of August 2002 the bank accepted and paid three other cheques (the August cheques). It is common cause or not disputable that the August cheques were drawn and signed by two authorized signatories on behalf of the plaintiff on forms from a cheque book issued by the bank to the plaintiff. The numbers of the August cheques were also 986, 991 and 993. It is further common

cause that the amounts of the July cheques were debited to the plaintiff's account.

[3] Alleging that the July cheques were forgeries, the plaintiff sued the bank to recover the loss occasioned by the debits referred to.

[4] The bank's only defence was a denial that the July cheques were forgeries.

[5] The matter came before Hlajoane J in the High Court. The plaintiff led the evidence of its sales manager, Ms. Mamoeketsi Monapathi Mabuse. The bank led no evidence. The learned Judge gave judgment for the plaintiff, hence this appeal by the bank. I shall continue referring to the parties as they were in the court below.

[6] Essentially, the argument in support of the appeal is that without expert evidence the Judge should not have found, as she did, that the July cheques were forged.

[7] The evidence of Ms Mabuse established the following uncontroverted or incontrovertible facts. She herself signed two of the August cheques and she knew the other signatures on those cheques to be the signatures of her fellow employees, Mrs. Monpathi and Mr. Khalema. The signatures on all the July cheques appeared to be those of Mrs. Monpathi and herself. However, she said “the signatures are not ours”. In emphasizing that she did not sign the July cheques, she pointed out that she concluded her signature with a full stop which was absent from her apparent signature on the July cheques.

[8] Ms Mabuse went on to indicate various differences in printing between the two sets of cheques. The words “Maseru Main” (the branch) and the plaintiff’s name on the July cheques are in a different type font from that used in printing those names on the August cheques. The word “kapa” is spelt with a capital “K” on the July cheques and a lower case “k” on the August cheques. She added that the July cheque forms had perforations, which the bank’s cheque forms did not.

[9] Finally, one has the glaring inability of the person who filled in the July cheques to spell “forty” – something one would not expect from experienced officials of an established business – and the improbability that the bank issued cheque forms with the same numbers. Identical numbering would obviously promote confusion instead of

the orderliness that sequential numbering is intended to achieve.

[10] The evidence thus summarized was sufficient to show that the July cheques were indeed forgeries. One might add that absent a challenge to the witness' credibility or reliability, and there was none, the evidence of a handwriting expert could not have taken the matter further.

[11] The legal position in South African law, and there is no basis for holding that the law of Lesotho differs in this regard, is that when the signature of the drawer of a cheque who is a bank's customer has been forged, it is placed on the cheque without the drawer's authority. Without such authority the bank pays the forged cheque at its own risk and it may not debit the drawer's account: see

Tedco Management Services (Pvt) Ltd v Grain Marketing Board 1997 (1) SA 196 (ZSC) and the cases cited at 206 A-B.

[12] The appeal must accordingly fail and it is dismissed with costs.

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C.T. HOWIE  
JUSTICE OF APPEAL

I agree:

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J.W. SMALBERGER  
JUSTICE OF APPEAL

I agree:

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D.G. SCOTT  
JUSTICE OF APPEAL

For the appellant : Adv T.R. Mpaka  
For the respondent: Mr. T. Matoane