

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2011-03772

BETWEEN

NANDA RAMHIT

Claimant

AND

VITCO TT LIMITED

Defendant/Ancillary Claimant

INDARNIL BHAGWANDEEN

Defendant to the Counterclaim/
Ancillary Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. P. Deonarine instructed by Ms. J. Narine for the Claimant

Mr. Dowlat instructed by Mr. S. Kadem for the Defendant

Ms. N. Alfonso instructed by Mr. R. Dass for the Defendant
to the counterclaim

JUDGMENT

1. Mr. Nanda Ramhit, a businessman, filed this action against the defendant company VITCO, for repayment of a loan in the sum of \$1,500,000.00 together with interest. It is not in dispute that he wrote a personal cheque dated 23rd September 2009 payable to the defendant in that sum. It is not seriously disputed that it was a loan and that it has not been repaid. VITCO, through its manager Kavindra Balgobin denied that there was a loan to the company.

2. The company accepted that a cheque in the sum of \$1,500,000.00 was drawn in its favour, but claimed that the loan was actually made to Indarnil Bhagwandeem

(Bobby), a director of the defendant under an arrangement with the claimant, who is his cousin, and that Bobby was the beneficiary of the proceeds of the loan which was only passed through VITCO for Bobby's accommodation. The defendant claimed in those circumstances that it was Bobby, who was liable to the claimant for the repayment of the loan. The defendant filed an ancillary claim against him.

3. On the facts in issue I had to determine to whom did Mr. Ramhit lend these monies and whether the defendant company or the ancillary defendant was liable for the repayment. My understanding, throughout, was that in addition, it was open to me, to find that neither was liable and if the pleadings and evidence supported it, that a third party who had not been sued, ought properly to have been named a defendant. This was one outcome which might have followed from a finding that the claimant failed to establish on a balance of probabilities, that VITCO was liable.

4. Both counsel for the claimant and for the ancillary defendant (Bobby) sought to persuade me that such a course was not open to me. They contended that I was limited on the pleadings, especially the defence, to either reject the defendant's statements of case, that it, VITCO, was not the borrower, or to find that the ancillary defendant was in fact the borrower. They said that in the absence of a positive case by the defendant that a third party, was in fact the borrower, this issue was not open for consideration.

5. The first question I had to decide then, was whether I was allowed to find that the loan may have been made to someone other than the defendant and ancillary

