How the Supreme Court of Mauritius controls the implied terms of the contract between the bank and its customer.

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There is no book or materials headed ‘’Banking Laws in Mauritius’’ which would assist a law student or a legal practitioner in his research work. The sources of our banking laws are scattered in various legislations and the expert usually has recourse to the civil code, code de commerce and various legislations which are voted by the parliament among others. Our Judges are however well trained to look into the terms of the contracts between the bank and its customers and more specially the implied ones as may be seen in some recent judgments referred to below.

All written contracts embody both the express and the implied terms. An express term is a provision agreed to by the parties in words, written or spoken. An implied term means a provision not agreed to by the parties in words but either regarded by the courts as necessary to give effect to their presumed intentions or introduced in the contract by statutes.

In Mauritius, a bank is defined, established and secures its banking license under the Banking Act 2004. The Act also provides for the revocation of the license, and once same is revoked, such bank will not be able to stop a statutory provision from taking effect “Union International Bank Ltd. v/s the Bank of Mauritius 1996 SCJ1 249”.

A customer is defined neither under our legislations nor in our case law. It was decided in the case of “Great Western Railway v/s London and County Banking Co., 1901 A.C.414”, that in order to make a person a customer, there must be either a deposit or a current account or some similar relation. The case of ‘’Hervey v/s MCB Ltd 1893 MR2 19’’ has enunciated that the relation between a banker and depositors of money are not those between mandant and mandatory or principal and agent and appears one to be sui generis’’.

The relationship between a bank and a customer arises from a contract between them. The essential implied terms of this relationship were stated in the case of “Joachimson v/s Swiss Bank Corporation (1921)3 KB 110”as follows:

1. the bank undertakes to receive money and collect bills for its customer’s account;
2. the bank borrows the proceeds and undertakes to repay them;
3. the bank will not cease to do business with the customer except upon reasonable notice (so that there is time for his outstanding cheques to be presented before the account is closed) the same rule applies to withdrawal of overdraft facilities;
4. the bank is not liable to pay until the customer demands payment from the bank, but it will repay at the customer’s branch during banking hours ;and
5. the customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery.

Does the bank have the right to give false and malicious information to the police to the effect that a client had no overdraft facilities whereas it was the case, or refuse to honor a cheque where there was sufficient provision?

In “Mauritius Commercial Bank Limited v/s S.R. Naidu 1991 SCJ 143”, Mr Naidu was arrested following false and malicious information given by the bank’s manager to the police. He was prosecuted for having issued, in bad faith, a cheque in the sum of Rs 5000 for the payment of which there was no sufficient provision. The evidence showed that on the date the cheque was issued Mr Naidu had enough funds in his bank account. Subsequently the bank’s manager agreed that there was ‘’un manquement’’ on his part when he gave information to the police about the cheque issued by Mr Naidu. The latter successfully sued the bank for damages for prejudice suffered.

In Ramdhonee v/s Mauritius Commercial Bank Limited 1998 (MCB Ltd) SCJ 180, the plaintiffs are husband and wife. The husband was at the material time employed by the Indian Ocean International Bank Ltd. (I.O.I.B.). He had a joint current account with the MCB Ltd. On 8 March 1991, he drew a cheque for the amount of Rs 11,971.45 in respect of the current account in order to pay part of a loan he had contracted from I.O.I.B. When the cheque was presented to the Bank, it was returned with the mention “Present Again”. He was reproached by his employer, the I.O.I.B., and he felt very embarrassed. Following enquiries he made, the MCB Ltd admitted that they had mistakenly debited the account with the sum of Rs 6,400.

In a second case the couple claimed damages for cheques which were not honored by the MCB Ltd on the same account. On 22 January 1995,Mrs Ramdhonee drew a cheque in favour of a commercial enterprise . On 30 January1995, she drew a cheque in favour of a private school to settle the monthly fees of her son. On the same day, she drew another cheque in favour of another commercial company. On 1 February 1995, Mr Ramdhonee drew a cheque for Rs 3,000 in favour of I.O.I.B. to pay a loan. All these cheques were returned by the defendant. This was due to the fact that the MCB Ltd had wrongly debited the joint account of the couple with a sum of Rs 32,000. The Supreme Court drew that the Bank has committed a “faute” in both cases.

When opportunity arises, our Supreme Court will always endeavor to give the right interpretation to the implied terms of the contract between the bank and its customers.

1 Supreme Court Judgment

2. Mauritius Reports