

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 771 OF 2002

BETWEEN:

MALCOLM M. STEPHENSON

Plaintiff

AND:

(1) SHÂN STEPHENSON
(2) RONNIE STADTLANDER

Defendants

BEFORE: MADAME JUSTICE LEVERS

Appearances:

Counsel for the Plaintiff: Mr. Kenneth Farrow of Quin & Hampson

Counsel for the Defendant: Ms. Jaffa Bodden of XIX Fort Street Chambers

Heard: 3rd November, 2003

JUDGMENT



Levers J.

This is an application by the Plaintiff, Malcolm M. Stephenson for summary judgment.

Background

The action in this matter was commenced by a Writ of Summons dated the 22nd October, 2002, in which the Plaintiff claims that a certain sum of money is payable by the Defendants on a Promissory note. It is alleged that the Defendants have made part payment and that despite a demand on the Second Defendant made on the 14th June 2002, the amount of \$75,003.08 remains outstanding. A claim is also made for accrued interest

on the outstanding principal rate of 10% per annum pursuant to the promissory note and costs.

Judgment has been obtained against the First Defendant who did not contest the proceedings. The Second Defendant however, has filed a Defence. Her defence is one of denial, *"the Second Defendant denies the Statement of Claim in its entirety and avers that she bears no personal liability in respect of the said Promissory Note (the facts of which are, in any event not admitted)."*

In support of the application for summary judgment, Mr. Stephenson has filed two affidavits and in opposition, the Second Defendant has filed one affidavit. The affidavit of the Plaintiff sets out his claim and avers that there is no defence to the action. The affidavit of the Second Defendant states that:

"This action concerns a Promissory Note ("The Promissory Note") which I along with my former partner, the First Respondent, signed on behalf of the Coffee Grinder Limited on the 30th September 1996."

She also avers that the Plaintiff served a statutory demand on Coffee Grinder Limited thereby showing his intention that the money was loaned to Coffee Grinder Limited.

The Present Proceedings

This is an application for summary judgment. It is perhaps convenient at this stage to look at the Promissory Note dated the 30th September, 1996:

"In consideration for the loan of US\$100,000⁰⁰ (one hundred thousand US dollars), Karen Shân Stephenson and Ronnie Stadlander (also known as the Coffee Grinder) agree to pay to Malcolm M. Stephenson the sum of US\$100,000 with interest thereon at 10% per annum in 89 monthly installments of US\$1600.00 (sixteen hundred US dollars). Monthly installments are due and payable the 15th of each month beginning 15th December, 1996, with the last installment due 15th February 2003. This loan will be considered in default if any installment is not paid within 15 days of the due date.

*Signed Karen Shân Stephenson
Ronnie Stadlander*

In the presence of a witness. /

On the face of the document it is not signed on behalf of Coffee Grinder or Coffee Grinder Limited. It is a document in which the Second Defendant Ronnie Stadlander and the First Defendant Karen Shân Stephenson have accepted personal liability at the time of the loan.

Submissions

It has been submitted on behalf of the Plaintiff that I need not look any further than the Promissory Note as there is in fact a personal liability and therefore that they are entitled to summary judgment. They further submit that the fact that a statutory demand was served on the company and not on Stephenson does not give the Defendant the right to go behind the Promissory Note.

Mr. Farrow on behalf of the Plaintiff submits that I should exercise my discretion and grant summary judgment as there appears to be no defence to the action.

The submissions of the defence are that in fact the money was loaned to the Company. They make this submission despite the Promissory Note being signed by Ronnie Stadlander and Karen Stephenson and that in fact it was the intention of both parties to lend the monies to Coffee Grinder Limited as evidenced by a statutory demand which was subsequently served on Coffee Grinder Limited. They make the further point that all correspondence was addressed to Coffee Grinder Limited. This in fact is not accurate, the correspondence was sent to Ronnie Stadlander care of Coffee Grinder Limited which puts a completely different complexion on the matter.

The Law

The Grand Court Rules, Order 86, rule 3 provide:

“Unless on the hearing of an application under rule 1 either the Court dismisses the application or the defendant satisfies the Court that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be a trial of the action, the Court may give judgment for the plaintiff in the action.”

A Plaintiff should only apply for summary judgment where there appears to be no defence to the action. Therefore the burden of proof is on the defendant to show that there is a triable issue. In this particular case, there is a promissory note and as Lord

Denning MR said in *Fielding & Platt Limited v Selim Najjar* [1969] 1WL page 357 at 361:

“We have repeatedly said in this Court that a bill of exchange or a promissory note is to be treated as cash. It is to be honored unless there is some good reason to the contrary.”

(e.g. if there is an arguable case based on the total failure of consideration.)

The Defendant in her defence simply denies the claim. The affidavit in opposition to summary judgment does not condescend to particulars. All it says is that the Defendant did not understand that the money was being loaned to her personally and that, in fact, it was loaned to Coffee Grinder Limited. Her attorney Mrs. Jaffa-Bodden relies on section 82 of the Companies Law (2001 Revision). Section 82 reads:

“A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company if made, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.”

On a careful reading of the promissory note, I do not find that the section applies in this case, I agree with Mr. Farrow that section 26 (1) of the Bills of Exchange Law (1997 Revision) which provides as follows applies:

“Where a person signs a bill as drawer, indorse or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to

his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liabilities.”

Section 89 of the same law provides:

“ (1) subject to this part, and except as by this section provided, the provisions of this Law relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions, the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser or a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer’s order.”

None of these assist the Second Defendant since it is clear from section 26 (1) that to exclude personal liability she should have signed on behalf of a principal (“the Company”). In this matter her signature is not qualified in any way. The fact that a statutory demand was made on the Company does not negate the responsibility of the Second Defendant, in my view. At the time of the signing of the promissory note she accepted personal liability. Indeed, it is of some interest that despite the Plaintiff alleging that payments were made by the First and Second Defendant towards this debt of \$100,000US, the Second Defendant has not condescended to any particulars and/or any denial of the alleged payments. In the circumstances the Court is left with the promissory note that was signed by the Second Defendant and the First Defendant accepting personal liability. The fact that Coffee Grinder is in brackets after their names on a promissory note matters not in my view. The material time must be at the time of signing the promissory note. In the premise I do not believe that the defendants have established that

there is a legal and/or factual issue to be tried I am persuaded by the case of *McCulloch v Gregg* [1969], 11 J.L.R. at page 428 in which Rowe, J. granted summary judgment on similar factors. The Plaintiff is entitled to judgment and I so order. Costs to the Plaintiff to be agreed or taxed.

Dated this 17th day of November, 2003



Madame Justice Levers,
Judge of the Grand Court

