

C.T.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORE TOWN, GRAND CAYMAN
CAUSE NO: 2/2000

26-09-00

BETWEEN : THOMAS AND KAREN HAMORSKY

PLAINTIFFS

AND: PADJ LIMITED

DEFENDANT

APPEARANCES:

Ms. S. Brooks, for the Plaintiffs

Mr. Ward Sykes, for the Defendant

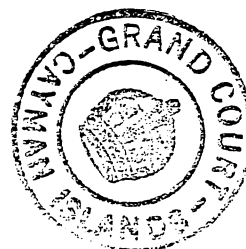
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Date: 14th & 15th September, 2000

BEFORE JUSTICE SANDERSON

REASONS FOR JUDGMENT

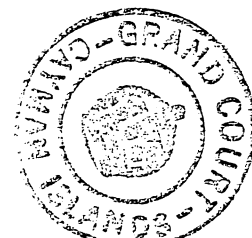
The Plaintiffs Thomas and Karen Hamorsky claim they loaned U.S. \$80,000 to the Defendant PADJ Limited . They say this loan was secured by a Promissory Note dated November 5th , 1996, and executed on behalf of PADJ Limited by Angele Ginn, who was an officer and director of PADJ at the time. PADJ denies liability on the basis that Thomas and Karen Hamorsky have not proved that they advanced the money and there was, therefore, a total failure of consideration. Alternatively, it says that Angele Ginn was not authorized to sign the Promissory Note and therefore it is not enforceable.



Both Mr. and Mrs. Hamorsky gave evidence. Portions of their testimony were challenged in cross-examination but were generally uncontradicted by any evidence by PADJ on the material issues. Mr. Hamorsky testified that he and his wife made an agreement with Angele Ginn to lend PADJ \$80,000 for the purpose of starting a restaurant in Grand Cayman. Ms. Hamorsky had met Ms. Ginn some years prior, in a business capacity, and was impressed with her business acumen and drive.

Mr. Hamorsky testified that he gave Ms. Ginn the sum of \$50,000 in cash on September 25th 1996 at a luncheon meeting in a restaurant in the Columbia, Maryland area. His wife was also present. The \$50,000 was in \$100 bills. He explained that Ms. Ginn had asked for cash because PADJ had not yet opened a bank account in the Cayman Islands and therefore could not cash a cheque and deposit funds. According to Mr. Hamorsky, Ms. Ginn was in the United States and was intending to purchase equipment and supplies for shipment to the restaurant in Grand Cayman. He said she told him that, if he gave her a cheque payable to her, it would take several days to clear and she needed the money to start making the purchases immediately. Mr. Hamorsky testified that he had approximately \$60,000 in cash, in a safe at his home. He said that this was an accumulation of tips that he received as a volunteer fireman over the previous 3 years. He, therefore, had no banking documents, such as withdrawal slips or bank account records, to show that this \$50,000 existed.

On October 16th, 1996 Mr. Hamorsky says he made the 2nd advance, this time in the amount of \$14,000 cash, also in \$100 bills. He was uncertain of the source of all of those funds; some may have been from a bank account, some from the safe in his home. Again, there were no banking



or other financial records to evidence this advance. He said he gave Ms. Ginn the \$14,000 in a paper bag at his home.

The final advance of \$16,000 was by a bank draft payable to Angele Ginn dated October 29th 1996. He says that this money came from his bank accounts, but again no supporting bank records have been produced.

Mr. Sykes forcefully argues that the Plaintiffs have not proved that they made the loan as claimed, that the circumstances of this cash loan are highly suspicious, that there is little or no supporting documentation and therefore I should not accept the Plaintiff's evidence.

I agree that the cash advances, claimed to have been made by the Plaintiffs are suspect and therefore require careful scrutiny and consideration.

I have considered the other evidence surrounding the Harmorskys' involvement in this restaurant endeavour. Mr. Hamorsky assisted by purchasing some stereo and musical equipment himself. He arranged and assisted in shipping this equipment, as well as substantial amounts of other goods and supplies for the restaurant, from the United States to Grand Cayman. After the restaurant became operational he did some accounting work and bookkeeping, including preparation of PADJ's profit and loss statements.

On November 5th 1996 in George Town Ms. Ginn executed a promissory note in favour of the Harmorskys, in the amount of \$80,000. The note shows it was executed by Ms. Ginn on behalf of PADJ.



Mr. Harmosky also received a document, signed by Angele Ginn, indicating that he was the registered holder of \$80,000 in "loan stock" of PADJ. Also produced was a document, signed and sealed by Ms. Ginn on behalf of PADJ, purporting to be a subscription form for \$80,000 in PADJ "loan stock".

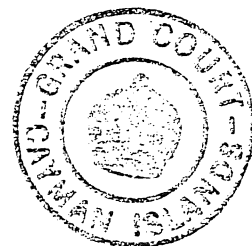
The Harmoskys also testified that they asked Ms. Ginn to provide them with a list of items that were purchased with the \$80,000 loan. She did so and those invoices were produced at trial. Mr. Harmosky prepared a total of these invoices and it equalled \$80,035.00.

Mr. Stevenson, who gave evidence on behalf of PADJ, was unable to contradict the Harmorskys' assertion that their money was used to pay the \$80,000 in invoices. He said he did not know of anyone other than the Harmorskys or Ms. Ginn who would have paid them. He acknowledged that the equipment and supplies described in the invoices were delivered to and used by PADJ.

Finally, in May, 1998 there was a meeting in George Town to discuss the future of the restaurant and the contributions which had been made to that date. The minutes of that meeting were kept by a local attorney, Mr. Peter Broadhurst and state;

"It appeared that in terms of cash contributions, the following contributions had been made;

Tom and Karen Harmorsky	80,000
	2,813
	31.50
	<u>6000.00 ..."</u>



That assertion does not appear to have been disputed at this meeting. Subsequently, Mr. Stevenson asked the Harmoskys to provide back up documentation in support of their claim. They provided the promissory note of \$80,000, the \$16,000 cashiers cheque, the loan stock certificate and subscription form and the invoices for supplies and items purchased. Mr. Stevenson was apparently not satisfied with this as proof of the loan.

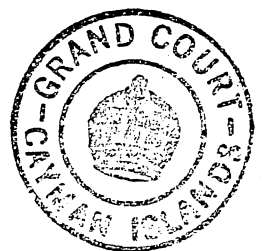
Notwithstanding the suspicious circumstances of the cash loan, which has little contemporaneous documentation to support it, I am satisfied on the balance of probabilities that it was made.

Mr. Harmorsky said that he had not reported approximately $\frac{1}{2}$ of the \$60,000 he received in tip, as income in the United States. That helps explain why he kept it in a safe at home. He also probably wanted to earn interest outside the United States on this investment and not report that as income. Even though what he did contravened the law of the United States I found him and Mrs. Harmosky to be creditable witnesses at trial and I accept their evidence regarding the loan. Finally, their evidence was supported by the documentation issued subsequent to the loan and by the conduct of the parties, which I have referred to above. I conclude that Mr. and Mrs. Harmosky loaned \$80,000 to PADJ and are entitled to repayment of the amount claimed .

In view of my finding that a loan of \$80,000 was made and not repaid, it is probably not necessary that I decide on the validity of the promissory note. However, should the matter proceed to appeal it may be useful if I give a decision on that issue.

Section 82 of the Companies Law provides;

“A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a company



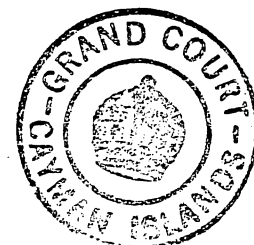
if made, accepted or endorsed in name of, or by or on behalf or on account of, the company by any person acting under its authority" (emphasis added)

Was Ms. Ginn acting under the authority of PADJ when she executed the Promissory Note? The articles of association provide, at article 30.04:

"all cheques, promissory notes....., shall be signed, drawn, accepted, endorsed, or otherwise executed in such manner as the Directors may from time to time determine."

In this case there was no directors' resolution authorizing Ms. Ginn to execute the Promissory Note. Ms. Brooks argued that there is nothing in the articles or resolutions which applies to the execution of the Promissory Note and that the Companies Law must govern.

Even though there was no directors resolution, there must have been a determination by the directors to authorize Ms. Ginn to sign this note. She was the driving force in charge of purchasing the equipment and the start-up of the restaurant. The directors must have known that the money was being borrowed to make these purchases. They knew and presumably authorized Ms. Ginn to sign other documents on behalf of PADJ . For example, the lease of the premises was signed by Ms. Ginn on behalf of PADJ, as were other documents. No one gave evidence that Ms. Ginn was not authorized to sign the Promissory Note. I conclude that she was authorized to do so and find the note is valid.



Accordingly, the Plaintiff's claim is allowed with costs.

Dated this 26 day of September, 2000.

D. Sanderson

Dale Sanderson
Judge of the Grand Court

