



[2024] JMCC COMM. 18

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. 2016CD0005

BETWEEN

C & F FINANCE LIMITED

CLAIMANT

AND

PETULA SALMON

DEFENDANT

Ms. Tamara Francis Riley Dunn and Ms. Kadian Davidson instructed by Nelson-Brown, Guy & Francis, Attorneys-at-law for the Claimant

Ms. Diandra Bramwell instructed by Bramwell, Melbourne & Associates, Attorneys-at-law for the Defendant

**Breach of Contract- whether all the essentials of a valid contract have been met-
Whether the parties had an intention to create legal relation**

IN OPEN COURT

Heard on 26th and 27th February, and April 16, 2024

STEPHANE JACKSON-HAISLEY J.

INTRODUCTION

- [1] The Claimant C & F Finance Limited is a society registered under the Industrial and Provident Societies Act and carries on the business of money lending. At the time of the Claim, the Defendant Petula Salmon was a businesswoman. The Claimant alleges that it is entitled to principal and interest pursuant to a Promissory Note executed by Ms Petula Salmon on or about the 25th day of February, 2013. Upon the terms set out in the Promissory Note, Ms. Salmon was required to repay the principal sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) at the rate of 1% per month for the first 12 months and 10% per month thereafter by making monthly payments of Eighteen Thousand Six Hundred and Fifty-Eight Dollars and Twenty-Five Cents (\$18,658.25) commencing March 27, 2013.
- [2] According to the Claimant, Ms Salmon breached the Agreement by failing to make timely payments as a result of which the principal amount ballooned from Two Hundred and Ten Thousand Dollars (\$210,000.00) to Fifteen Million, Six Hundred and Eighty-Two Thousand, Seven Hundred and Sixty-Five Dollars and Seventy-Six Cents (\$15,682,765.76). Ms. Salmon denies owing the Claimant the money being claimed and instead stated that the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) was a personal loan received directly from the Claimant's Chief Executive Officer, Mr. Curtis Williams as at the time the loan was given they shared an intimate relationship and that she has complied with the terms of this loan and fully repaid what was agreed.

EVIDENCE OF THE CLAIMANT

- [3] Mr. Curtis Williams, the Claimant's Chief Executive Officer is the only witness for the Claimant. He stated that when he met Ms Salmon in January 2013, she introduced herself as a sales representative of Organo Gold Network as well as a shareholder of Cape Solutions Limited, a company that was similar in nature to the

Claimant company. Mr. Williams stated that since Cape Solutions had business consultancy as its core business, he offered Ms. Salmon the position of Manager of a Kingston office that he had an intention to open. He stated further that in February, 2013, Ms. Salmon requested a loan in the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) from the Claimant company to pay a car loan. He averred that in keeping with company's policy, Ms. Salmon was asked to complete an application form along with the Loan Amortization Schedule and return them to the company along with a valid driver's licence and her last three pay slips or last three months' income statement.

[4] Mr. Williams stated that as evidence of her ability to repay the loan, Ms. Salmon provided her most recent statement from Organo Gold Network for the period January 3, 2013 to February 15, 2013 and she disclosed that she earned the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) per month from Cape Solutions Limited. Having satisfied that she had the means to honour her loan, the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) was lodged to the account provided by her on February 25, 2013 for repayment to commence on March 27, 2013 at a discounted staff interest rate of 1% per month in anticipation of her being employed by the Claimant company.

[5] Mr. Williams stated that on or about May 16, 2013, Ms Salmon requested an advancement of One Hundred and Thirty Thousand Dollars (\$130,000.00) which was disbursed to her account on the condition that it would be repaid by May 31, 2013. He further stated that despite repeated requests, Ms. Salmon failed to make any payment on the loan received on February 25, 2013 or the advancement she received in May 2013 as a result of which he had to employ the services of a bailiff to assist with the collection of the loan. The bailiff collected a portion of the outstanding sum however, Ms. Salmon was further directed to make the payments to an account number in the name of Curtis Williams as the bailiff was not lodging all the sums that were paid to him.

- [6] Mr. Williams confirmed that the total sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) was collected from Ms. Salmon who made her last payment on September 1, 2015. He alleged that as at February 25, 2024, the total amount outstanding stands as Fifteen Million, Six Hundred and Eighty-Two Thousand, Seven Hundred and Sixty-Five Dollars and Seventy-Six Cents (\$15,682,765.76).
- [7] In cross examination, Mr. Williams admitted that he had a personal relationship with Ms. Salmon, however he denied that he met with Ms. Salmon the day after the sums were transferred to her account to facilitate the signing of the loan documentation to make it appear legitimate. Mr. Williams also denied that he called on Ms. Salmon to repay the loan after their relationship broke down in September, 2013 but stated that efforts were made to collect the loan from March 2013 by sending text messages to Ms. Salmon requesting settlement of the debt.

EVIDENCE OF THE DEFENDANT

- [8] In her evidence Ms. Salmon stated that she was facing numerous financial challenges including unemployment and an existing car loan when she met Mr. Curtis Williams. She indicated that they developed a close friendship and during one of their many conversations, Mr. Williams offered to assist her with clearing the arrears on her car loan. He also offered her the position of managing a new branch of his company that he intended to open. She purported that Mr. Williams generously transferred the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) to her and it was considered as a signing bonus as she would need to be mobile to be efficient in the job that was proposed to her. She stated that at that time, there was no intention for her to repay the funds.
- [9] She further alleged that after receiving the funds, Mr. Williams met with her, as would normally occur and explained that the money mistakenly came from the company's account and he would not be able to explain to the auditors without

having supporting documents to justify the transfer and she was asked to sign a Promissory Note as well as other documents. Ms. Salmon indicated that though Mr. Williams told her the money came from the Company's account, the funds came directly from his personal account. She further stated that although she signed the Promissory Note, there was no intention to repay, as at that time, she was unemployed.

- [10]** Ms. Salmon averred that during the course of their relationship, it was brought to her attention that Mr. Williams was a married man and this caused some distance in their interactions which had become primarily work-related after she informed Mr. Williams that she had no interest in pursuing an intimate relationship. Ms. Salmon stated that as their relationship deteriorated, Mr. Williams demanded repayment of the Two Hundred and Ten Thousand Dollars (\$210,000.00) and after multiple conversations, it was agreed that she would repay the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) by making monthly payments to a bailiff. During cross-examination, Ms. Salmon admitted that no changes were made to the repayment structure set out in the Promissory Note. It was suggested that there were no arrangements to cap the total repayment sum however, Ms. Salmon denied that she decided to pay what she wanted to pay but indicated that the arrangement was made during a telephone conversation with Mr. Williams. Ms. Salmon further indicated that after a few months of making payments to the bailiff, she was instructed to make the payments directly to Mr. Williams' account and this was finalised in September 2015.
- [11]** She pointed out that having settled the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) as agreed, she is not indebted to Mr. Williams in the sum of Fifteen Million, Six Hundred and Eighty-Two Thousand, Seven Hundred and Sixty-Five Dollars and Seventy-Six cents (\$15,682,765.76) as claimed.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[12] Counsel for the Claimant submitted that the issues for the Court to consider are (i) whether there was an intention to create a legally binding contract between the parties, (ii) whether there has been a breach of the Agreement by either party and (iii) whether the Claimant is entitled to the relief as sought? Counsel placed reliance on **Keith Garvey v Ricardo Richards** [2011] JMCA Civ 16 where Harris JA in assessing whether a contract did in fact exist stated that:

“it is a well – settled rule than an agreement is not binding as a contract unless it shows an intention to create legal relationship. Generally, three basic rules underpin the formation of a contract, namely an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain there must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”

[13] Counsel submitted that there is documentary evidence that a written agreement exists and the acceptance of the deposit of the loan amount to the Defendant’s account satisfies consideration in keeping with basic contract principles.

[14] Counsel submitted that the test outlined by Lord Clarke in **RTS Flexible Systems Ltd v Molkerei Alois Muller Gmbh & Co. KG UK (Production)** 2010 3 All ER 1 should be considered to determine the issue of an intention to create legal relations. Counsel also commended to the Court Atkins L.J.’s guidance in **Rose and Frank Co. v J.R. Crompton & Bros Ltd.** [1923] 2 K.B as well as Megaw J in **Edwards v Skywards Limited** [1969] 1 WLR 349 and submitted that a binding contract exists between the parties for the lending of the money which is proven through the Agreement and the supporting documents that were signed by both parties. Counsel submitted that the documentation evidenced that interest is applicable to the loan and the loan was to be repaid on a monthly basis.

[15] In concluding, Counsel submitted that the presumption of an arrangement being enthused by an intimate relationship is not proven and further argued that the requirements of a contract exist and the Defendant's failure to perform in accordance with the terms of the agreement constituted a breach. Having failed to repay the loan subject to the terms of the agreement, the sums now remain due and outstanding with interest which continues to accrue.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[16] Counsel for the Defendant, Ms. Diandra Bramwell submitted that as the parties shared a close relationship, the Promissory Note which was executed in February 2013 was not done with an intention to create a legally binding contract. Counsel also relied on paragraphs 10-12 of **Keith Garvey** as well as **RTS Flexible Systems Ltd** and submitted that the sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) that was transferred to the Defendant's account was never considered to be a loan from the company but instead more of a "personal loan" to be paid back whenever she could or be considered a "signing bonus" for potentially working for the Claimant company in the future.

[17] Counsel contended that having executed the Promissory Note days after receiving the funds, there was no intention between the parties to create legal relations. She highlighted that the Defendant was called upon to repay the personal loan after the relationship between the parties broke down and submitted that the Promissory Note does not satisfy all the requirements of a legally binding contract as there is no intention to create legal relations.

[18] In concluding Ms. Bramwell argued that having repaid the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) as agreed after the relationship broke down, the Defendant is not indebted to the Claimant as alleged.

DISCUSSION

- [19] The parties have agreed that the sum of sum of Two Hundred and Ten Thousand Dollars (\$210,000.00) was transferred from the Claimant to the Defendant and that the sum was to be used towards the loan payment on a vehicle that the Defendant had previously acquired. There is also no dispute that a Promissory Note was in fact executed by the Defendant which provided for the repayment of the loan at a particular rate commencing at a particular time. There is also no dispute that the Defendant has not complied with the repayment terms as set out in the Promissory Note.
- [20] According to the Claimant's representative, the sum was a loan but according to the Defendant at the time of transfer the sum was never considered a loan. She further alleged that at the time she received the loan there were no intention for her to make the repayment in accordance with the terms of the Promissory Note and that the Promissory Note was executed after she received the loan and only for audit purposes. The main question that arises is whether at the time the parties entered into this transaction there was an intention to create legal relations.
- [21] The Claimant is involved in the business of money lending and so its transactions are viewed primarily as commercial. Counsel on behalf of the Claimant has submitted that there is a presumption of an intention to create legal relations in commercial dealings as reflected in the decision of **Edwards v Skywards Limited**. However, I am of the view that this case is not reflective of that position as it has not been disputed that the Claimant's Chief Executive Officer shared a personal relationship with the Claimant and that there is some debate about whether the sums transferred came initially from the Claimant or from Mr Williams himself. In light of the personal relationship shared by the two, I am of the view that the case should not be treated as a commercial transaction but more so on the basis on being an arrangement between close relations.

[22] In cases where arrangements are made between family and close relations, there is a presumption that persons do not usually intend to create legal relations. Such a presumption is however rebuttable. In **Jones v Padavatton** [1969] 1 W.L.R 328, Salmon LJ opined at p. 332-333 that:

“Mr. Sparrow has said, quite rightly, that as a rule when arrangements are made between close relations, for example, between husbands and wife, parent and child or uncle and nephew in relation to an allowance, there is a presumption against an intention to creating any legal relationship. This is not a presumption of law, but of fact. It derives from experience of life and human nature which shows that in such circumstances men and women usually do not intend to create legal rights and obligations, but intend to rely solely on family ties of mutual trust and affection. This has all been explained by Atkin L.J. in his celebrated judgment in Balfour v Balfour [1919] 2. K.B. 571, 578-580. There may, however be, circumstances in which this presumption, like all other presumption of fact, can be rebutted.”

[23] The facts of **Richmond Farms Ltd. & Mark Brooks v Georgina Cooke Holland** [2020] JMSC Civ 98 are similar to the case at bar. The Defendant in both cases alleged that the money received from the Claimant(s) was personal in nature and that there was never an intention for the loans to be repaid on the basis that (i) a personal relationship existed and (ii) the Defendant(s) were experiencing financial difficulties. The Claimant(s) on the other hand claims that there is documentary proof of an intention to be legally bound and the repayment of the loan(s) was expected.

[24] In **Richmond Farms Ltd** at paragraph 36, Henry McKenzie stated that:

“[36] In the instant case, it is common ground that the parties were in an intimate relationship when the disputed sums were given to the defendant. Though the law will be in favour of there being no binding legal relations, the court still has to consider whether the claimants’ case has rebutted the presumption that these monies were a gift to a romantic partner in need of assistance, as against being given under demand loan agreements, with the expectation to be repaid upon demand.”

- [25] It is therefore necessary to consider the facts in the case at bar to determine whether the presumption has been rebutted. This will turn on the question of credibility and which version is to be accepted.
- [26] Although the fact that they shared an intimate relationship was not contested, it was only Ms. Salmon who provided any details concerning this relationship that they shared. However, it is noted that a lot of what Ms. Salmon alleged in her evidence was not subject to any significant challenge as it relates to how the relationship evolved. The Claimant appears to be insisting that despite this “relationship” he operated on a strictly formal basis however the evidence presented is not consistent with this. If his evidence were to be accepted, the loan was processed in accordance with the policies of the office except that she did benefit from an interest rate that is usually applied to staff members although she was not a member of staff of the Claimant company. Although the usual requirement was for an intended borrower to submit three pay slips, in her case the loan was approved with her providing one month’s pay slip from Organo Gold and not three months’ as is the company policy. On Mr Williams’ account, if accepted, not all the formalities were followed in relation to this loan. This is supportive of the fact that the nature of their relationship was a factor which influenced how the transaction was conducted.
- [27] On the face of it, the Promissory Note reflected the terms of the loan however the Defendant has averred that the Promissory Note was merely drafted for convenience to satisfy the auditors. When I examine the evidence presented on behalf of the Claimant, there were certain aspects that struck me as strange. It is strange that the loan came from Mr. Williams’ personal account and that the repayment sums were not made to the Claimant’s company bank account but directly to Mr. Williams’ account as directed by him after the bailiff failed to hand over all payments collected from Ms. Salmon. It is also curious that more stringent efforts were not made to collect the outstanding sum from the Defendant after she failed to make three months’ payment as would be the norm in a business

relationship. Mr. Williams, in his oral evidence stated that text messages were sent to the Defendant informing her of the requirement to repay the loan nevertheless, one entire year passed before efforts were made to contact a bailiff to collect the outstanding sums. Further Mr. Williams alleged Ms. Salmon requested an advancement of One Hundred and Thirty Thousand Dollars (\$130,000.00) on May 16, 2013 and indicated she would repay the sum on May 31, 2013. If the Defendant failed to repay the loan given to her in February 2013, why would the Claimant grant an advancement in May, 2013 when she was already in arrears on the first loan?

[28] It is interesting to note that Mr Williams did not challenge Ms. Salmon's evidence that the sum was transferred from his personal account and not the account of the Claimant. In fact, most of what Ms Salmon alleged about their relationship, how it developed and thereafter deteriorated was not significantly challenged. I had the opportunity to assess both Mr Williams' and Ms Salmon's demeanour and the way they gave their evidence and I must say that Ms. Salmon struck me as being more credible. The account as presented by Mr. Williams appeared to be less than credible whereas the account presented by Ms. Salmon had a ring of truth.

[29] The Defendant has been consistent in her evidence that the sums transferred were initially based on the relationship they shared. I found it more probable than not that this is in fact so. I accept that when the sum was transferred to the Defendant it was transferred informally and as either a "signing bonus" to clear her car debt or if not, she could pay him back when she was able to do so. I find that this sort of arrangement was made because of the relationship the parties shared. I also accept that the funds came from the personal bank account of Mr. Williams. I accept that it was subsequent to the Defendant receiving the money that she executed the Promissory Note with the understanding that this was necessary for audit purposes. I accept that the parties did not then intend for the Defendant to be bound by the terms of the Promissory Note. I therefore find that although there is an executed Promissory Note, and other documents, there was no intention to

create legal relations at that point in time. Not only was there no intention to create legal relations at that time but there was no certainty in the terms under which this money was transferred and the execution of the Promissory Note did nothing to change that.

[30] I find that the terms of this agreement did not fall within what is required for a contract as has been set out in the **Keith Garvey** case. I accept that after this the parties developed a deeper relationship but that the relationship started to deteriorate when Ms. Salmon discovered that Mr Williams was married resulting in her attempt to sever the relationship. I accept that it was subsequent to this time, on around October or November 2013, that Mr Williams called her and demanded repayment of the sum he had given her. I accept therefore that it was at this point in time that the arrangement changed from being an agreement with no intention to create legal relations to one in which there was this intention and that this change was brought about because of the change in their relationship.

[31] I find as a fact that it was then agreed that she would repay him the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00). It is true that although there are no details concerning this agreement, the agreement arrived at was that the sum advanced would be treated as a loan and that the Defendant would pay to the Claimant the sum in full satisfaction of the loan. The events that followed subsequently on the part of the Defendant of making payments of certain sums up to a certain time are supportive of this. During this time period, no steps were taken by the Claimant to revert to or enforce what was alleged to be this first agreement. This strengthens the case for the Defendant and makes it more probable than not that this is in fact what occurred. I accept that she thereafter made the payments amounting to the said sum making her final payment on September 1, 2015.

[32] I accept that it was after making the final payment that Mr Williams contacted her with a view to rekindling what was left of the relationship and she rejected this and told him not to call her again. I accept that he became enraged and demanded that

she pay more money as he had initially exercised leniency and waived the additional interest and late fee when they agreed to the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00). I accept on a balance of probabilities that the only arrangement that binds the parties was the agreement to pay the sum of Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) which the Defendant has satisfied. The Defendant is therefore not liable to the Claimant in the sum of Fifteen Million, Six Hundred and Eighty-Two Thousand, Seven Hundred and Sixty-Five Dollars and Seventy-Six Cents (\$15,682,765.76).

[33] Judgment is for the Defendant with costs to the Defendant to be agreed or taxed.

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Stephane Jackson-Haisley
Puisne Judge