

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2019/0600

BETWEEN:

CECIL CHARLES

Claimant

-and-

MARLON BROWN

Defendant

Appearances:

Ms. Sylvia O'Mard for the Claimant

Ms. Sherrie-Ann Bradshaw for the Defendant

2022: November 2nd
November 22nd

ORAL JUDGMENT

- [1] **Byer J.:** This was a case which clearly showed that when the lines between friendship and business become blurred that relationships fall apart, and litigation ensues.
- [2] This court also wishes to note that the closing addresses of the parties were due on the 14th November 2022 and up to the delivery of this judgment the defendant had not filed their closing submissions nor filed any application seeking an extension of time to do so. This judgment is therefore rendered based on the submissions of the claimant and the court's own findings in this matter.
- [3] I also wish to state that the court finds it particularly unhelpful when submissions are filed, which make reference to case law and the case law is not provided. It cannot be that it is the responsibility of the court to locate those authorities referred to in aid of the party

having referred to the same. This is a practice that I have unfortunately seen on one too many occasions and there needs to be immediate discontinuance of that practice.

- [4] The Claimant, Cecil Charles by way of the Statement of Claim filed on the 30th day of October 2019 and served on the Defendant Marlon Brown claimed for the repayment of a debt owed and/or for reimbursement by the Defendant in the sum of \$279,890.66 with interest and costs.
- [5] The basis of the claim as alleged by the Claimant was that at the request of the Defendant, the Claimant entered into a contract of guarantee on the 9th day of November 2011 whereby he signed a guarantee for a loan to the Defendant from the RBTT Bank Caribbean Limited.
- [6] The said loan was made to the Defendant in the sum of \$350,000.00 E.C., and the Defendant was to repay the loan over a seven (7) years period at a monthly payment of \$5,631.00 inclusive of principal and interest.
- [7] The Defendant commenced paying the loan however he ceased paying the said loan in or about the year 2013 and thus the loan went into default.
- [8] The Defendant, having failed to pay the Bank, on the 27th day of December, 2013 the Bank deducted the sum of \$279,890.66 from the Claimant's account to satisfy the Defendant's loan. The Claimant was notified of this by way of letter from the Bank dated 30th December, 2013.
- [9] The Defendant admits, in his Defence dated the 3rd day of December, 2019, that by a loan agreement dated the 9th day of November, 2011 he borrowed the sum of \$350,000.00 from the RBTT Bank Caribbean Limited to consolidate his debt and that the Claimant guaranteed the loan between himself and the Bank.
- [10] The Defendant further stated that he had no agreement between himself and the Claimant as it relates to the loan and that there was no payment plan discussed between himself and the Claimant. He claims therefore, that as a result he is thus not indebted to the Claimant. Further in any event, he pleaded that the claim is was statute barred based on the provisions of the Limitation Act No 8 of 1997 (the Act).
- [11] The issue therefore in this court's mind is simply whether the claimant can maintain his action for the monies stated to be due and owing. In determining this issue, this court will consider the pleading of the defendant that the claim is statute barred pursuant to the provisions of the Act.

Court's consideration and analysis

- [12] Having heard the evidence of the claimant and the defendant the court is satisfied on a balance of probabilities that the following facts have been proven:
- i) that there was a very close relationship between the claimant and the defendant at the time that the loan was entered into by the parties;
 - ii) that the claimant in an attempt to assist the defendant during a financial crisis made arrangements for the defendant to obtain a loan to consolidate his outstanding debts from a financial institution with which he had a relationship ;
 - iii) that the claimant well knowing that the defendant was in financial difficulties(admittedly to the extent of an inability to pay recurring bills) voluntarily agreed to sign as guarantor to the loan using his own funds as security as opposed to a parcel of land belonging to the defendant;
 - iv) that the defendant voluntarily signed the loan documents with the bank knowing what his obligations were under the loan and in fact initially commenced making payments to the bank;
 - v) that the entirety of the loan sum inured to the benefit of the defendant and he accessed and used all such funds;
 - vi) that the defendant after his initial loan payments stopped making payments on the loan but did not communicate the same to the claimant;
 - vii) that the claimant was forced to pay the said sums on behalf of the defendant as the signed guarantor.
- [13] When this court considers these facts as determined and in particular the answer that was elicited from the claimant by way of a question from the court, this court also accepts that the claimant well knew that there was a real possibility that the defendant would default on the loan payments as they became due.
- [14] The claimant's clear answer was that although he expected the defendant to meet his obligation to the bank, he knew that the defendant was having financial problems and as much as he expected him to pay, he also knew that if the defendant did not pay he would be obliged to do so.
- [15] The reasons why the defendant defaulted are neither here nor there to this court. It was however of some interest that the defendant sought to lay at the feet of the claimant his failure to pay due to the alleged non -payment by the claimant himself to the defendant for jobs completed. However, this court does not accept that this was in fact the reason for non- payment or certainly the defendant could have brought his own counterclaim for monies due and owing to set off against any monies that may have been due to the claimant.
- [16] Be that as it may, the pivotal question for the court must be whether the claimant having been called upon to make payment on the loan as guarantor for funds for which the defendant was the sole beneficiary, is prima facie entitled to have the same repaid.

- [17] In the case of **Brooks Wharf & Bull Wharf Ltd v Goodman Brothers**¹ the Court of Appeal considering whether bonded warehouse men who were forced to pay on their bond on behalf of the importers for items that were stolen through no fault of their own, identified the underlying principles as to why the importers would be liable to the bonded warehouse men who made the payments.
- [18] The court had this to say, in quoting from Leake on Contracts and the case of **Moule v Garrett**² “where the plaintiff has been compelled by law to pay or being compellable by law, has paid money which the defendant was ultimately liable to pay so that the latter obtains the benefit of the payment by the discharge of his liability; under such circumstances the defendant is held indebted to the plaintiff in the amount.”
- [19] This principle was reiterated in the case of **Bonner v Tottenham & Edmonton Permanent Investment Building Society**³ where the court in examining a similar issue made it clear that the essence of the rule is that there is a liability for the same debt resting on the plaintiff and the defendant and the plaintiff has been legally compelled to pay but the defendant gets the benefit of the payment because his debt is discharged either entirely or pro tanto whereas the defendant is primarily liable to pay as between himself and the plaintiff. The case is analogous to that of a payment by a surety which has the effect of discharging the principal’s debt and which therefore gives a right of indemnity against the principal.⁴
- [20] In this court’s mind, it is therefore clear that the defendant cannot avoid being held liable to the claimant for the monies paid by the claimant, which payment was clearly made ultimately on his behalf.
- [21] As this court considers it, “the obligation is imposed by the court simply under the circumstances of the case and on what the court decides is just and reasonable having regard to the relationship of the parties. It is a debt or obligationapart from any consent or intention of the parties or any privity of contract.”⁵ Indeed it is without a doubt that the “defendants would be unjustly benefitted at the cost of the plaintiffs if the latter who had received no extra consideration and made no express bargain should be left out of pocket by having to discharge what was the defendant’s debt.”⁶
- [22] I therefore find that on the face of the claim, the claimant is entitled to his claim as against the defendant. However, the more important question at this point is whether

¹ 3 All ER 696 at 706

² (1872) L.R. 7 Exch 101

³ (1899) 1 Q.B.161 per Vaughn Williams L.J.

⁴ As discussed in the **Brooks Wharf** case Supra at page 706

⁵ **Brooks Wharf** case Supra at page 707

⁶ **Brooks Wharf** case Supra at page 707

the claimant can in fact maintain the claim as against the defendant in light of the provisions of the Act.

[23]. By section 7 of the Act “an action founded on simple contract shall not be brought after the expiration of six years from the date which the cause of action accrued.”

[24] It is not disputed that the loan was entered into by the defendant as principal and the claimant as guarantor in 2011 and indeed in this court’s mind the money became payable as of that date, however it cannot be disputed that the obligation as between the claimant and the defendant would not have arisen until the sums were paid on behalf of the defendant. That effective date, has to have been the date that the claimant’s account was in fact debited, 30th December 2013.

[25] By mere mathematical calculation, the six years would have expired from that date, on the 29th December 2019, while this action was filed on the 30th October 2019, well within the six year period.

[26] However, this court is of the further opinion that the obligation of the defendant to repay the claimant is not based on an agreement to pay but rather that the claimant having paid the defendant’s creditor now himself steps into the shoes of the primary creditor.⁷

[27] There is therefore no need to establish the existence of an agreement to which the provisions of the Act would apply.

[28] This court therefore finds that the defendant is liable to the claimant in the full sum as paid on his behalf on the 30th December 2013.

⁷ In *Re Fox, Walker (ex parte Bishop)* LR 15 Ch Div 400

Order of the court

1. The claimant is entitled to his claim in its entirety in the sum of \$279,890.66 together with interest as prescribed by law from the date of this judgment to payment and prescribed costs on the sum claimed pursuant to Part 65.5 Appendix B CPR 2000.

**P. Nicola Byer
High Court Judge**

By the Court

Registrar