



[2025] JMSC Civ 117

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022CV01562

BETWEEN	C&F FINANCE LIMITED	CLAIMANT
AND	KAYDRON BAILEY	FIRST DEFENDANT
AND	RICHARD BAILEY	SECOND DEFENDANT

IN OPEN COURT

Ms Kadian Davidson instructed by Nelson- Brown Guy & Francis for the Claimant

Ms Shantel Jarrett instructed by Zavia Mayne & Company for the First Defendant

Heard: February 3 & September 25, 2025

**CONTRACT – BREACH OF CONTRACT– WHETHER WAIVER OF RIGHTS TO
EXERCISE POWER UNDER A BILL OF SALE -**

WINT-BLAIR J

- [1]** The claimant is duly registered under the Industrial and Provident Societies Act with its registered office at 3 Church Hill Avenue, Montego Bay, in the parish of Saint James. It is specifically exempted from the provisions of the Moneylending Act.
- [2]** The claimant claims against the defendants to recover the sum of \$335,388.68, being the balance due as at February 11, 2015, on a loan disbursed on March 8, 2013. The claimant also claims interest at 14% per month as set out in the contract from February 11, 2015, to the date of full payment.

- [3] The second defendant was not served with this claim.

The Evidence

- [4] Mr Curtis Williams, Chief Executive Officer and Managing Director of C&F Finance Limited, gave evidence that in or around February of 2013, the claimant company was approached by Ms Kaydron Antoinette Bailey and Mr Richard Horace Bailey for a loan amounting to Sixty-Five Thousand Dollars (\$65,000.00).
- [5] In line with office policy, a loan application form and a loan amortisation schedule were provided to both applicants for their signatures. They were required to return these documents along with valid identification to the company. Ms Kaydron Bailey submitted the duly signed Loan Application Form on February 26, 2013, and Mr Richard Bailey submitted his Loan Application Form on March 8, 2013.
- [6] Ms. Bailey stated in her loan application form that the prospective loan would be secured by the chattels situated at her home, viz: An Apex Television, Aiwa 5 CD changer component set with 2 Speakers, Blue Code Desktop Computer with small speakers, HP Printer, 3 Piece metal glass top table, three piece floral sofa set, Whirlpool washing machine, Sharp microwave, nine draw dresser with double mirror, Sony component set, glass top table with four chairs, Breakfront.
- [7] Having been satisfied that the borrowers could repay the loan and that the security was adequate in the event of a default, the claimant provided Mr and Ms Bailey with a Promissory Note, Bill of Sale, and the Residential Affidavit of the Borrower for signature.
- [8] These documents were returned to the offices executed by both defendants. As the documents were found to be in order in all material respects, the claimant issued a cheque, numbered 9412378, for the sum of Sixty-Five Thousand Dollars (\$65,000.00) to Ms Kaydron Bailey on the 8th of March 2013.
- [9] Details of the terms on which the loan of \$65,000.00 was made are set out in the executed Promissory Note as follows:

- a. Interest to be charged at a rate of 14 % per month
- b. The Debt would be repaid in five interim payments of \$16,715.28 per month, to be paid on the 8th day of each month, commencing April 2013.
- c. A late fee is to be charged at a rate of \$100.00 per day for each day a payment due remains unpaid.
- d. Interest per day is 0.5 % on the arrears.

[10] The claimant's case is that Ms Bailey was at all material times fully aware of the terms of the loan she obtained from the claimant company, including its conditions and her obligations to repay it.

[11] Despite numerous requests, the borrowers failed to make the full monthly payments as specified in the Promissory Note. Payments were received sporadically, with the lowest sum being \$5,000.00. Accordingly, interest and late payment fees were added as had been agreed.

[12] In or around July 2013, the company engaged Salma Barrett as a bailiff to assist with the consistent collection of the loan balance. On July 31, 2013, the loan balance was \$22,808.66. Between July 2013 and December 2013, a total of \$72,000.00 was collected. The last payment from the borrowers was received on December 30, 2013.

[13] On or around February 15, 2014, Salma Barrett was again instructed to recover the outstanding loan amount, including late fees and interest, which totalled \$44,942.05 at the time. If the debt was not paid, the Company instructed the bailiff to seize the securities listed in the Bill of Sale.

[14] The bailiff's efforts were unsuccessful, as the first defendant had moved to an undisclosed location in Trelawny, taking the chattels with her, and all calls to her mobile phone number went straight to voicemail. Despite this, the claimant company continued to try to contact the defendants, hoping to settle the outstanding sums.

[15] On September 8, 2014, Kaydron provided an updated address for her residence and directions to the property. This information was provided to Ms Barrett;

however, using the directions given by Ms Bailey, the Bailiff was unable to locate the property. At all material times, attempts were made to inform the first defendant of the difficulties in finding the residence to seize the assets as outlined in the schedule to the Bill of Sale.

- [16]** To date, Ms Bailey has refused and/or failed to make any payments towards her debt, which, as of February 11, 2015, stands at \$335,388.68. Pursuant to the Promissory Note signed by her, interest continues to accrue daily for each day the sums remain unpaid.
- [17]** In cross-examination, Mr Williams stated that the company has been in business since 2006 and has been issuing loans for approximately 18 years. He agreed that he has held the position of Managing Director and CEO since 2006 and that he has knowledge of the laws and regulations relating to the issuance of loans by his company.
- [18]** He was shown Exhibit 1, and asked whether the document showed a repayment amount of \$100,691.68. He replied that he did not see that figure in the document. He agreed that Ms Bailey was to pay interest on the \$65,000 loan, but disagreed that the total repayment amount, including interest, was \$100,691.68.
- [19]** He referred to the promissory note, stating that the sum of \$100,291.68 was what Ms Bailey would have paid had she paid on time. He confirmed that he stamped the promissory note at the Stamp Office in relation to the amount of \$100,291.68. He testified that the other documents were stamped, though this information was not included in his witness statement. He confirmed that he did not exhibit any other promissory note and that the claimant collected monies from Ms Bailey between 2013 and 2018. The total amount collected was \$136,500.00.
- [20]** He disputed that Ms Bailey had repaid the complete sum she had committed to, as per the promissory note; however, he acknowledged that the sum she paid, being \$136,500.00, exceeds the sum he said she owed on the promissory note, which was \$100,291.68.

- [21]** He contested the claim that the promissory note specified Ms Bailey's obligation to repay \$100,291.68. When asked whether he was untruthful in his earlier evidence regarding the promissory note, which indicated Ms Bailey's agreement to repay that amount, he replied, "No." When questioned whether he was dishonest, he disagreed with and denied the assertion that Ms Bailey had consented to pay him \$100,291.68 and had actually done so.
- [22]** Exhibit 2 was shown to the witness, and he confirmed that it was the statement of account generated for this matter. He also confirmed that each time a bailiff was sent, Ms Bailey was charged a bailiff's fee. He identified the names of three bailiffs who collected money from Ms Bailey: Lennox Rose, Salma Barrett, and Damion Jarrett. When reviewing the statement of account, he acknowledged that there was no record of Salma Barrett collecting money from Ms Bailey. Similarly, his witness statement made no mention of Damion Jarrett or Lennox Rose collecting money from Ms Bailey. Despite this, he disagreed that the statement of account generated by his company and his evidence regarding monies collected from Ms Bailey by bailiffs were inaccurate.
- [23]** Mr Williams confirmed that Ms Bailey signed the bill of sale, which was executed in relation to the promissory note dated March 8, 2013. According to the bill of sale's terms, he had the right to sell the 12 items listed and agreed that the bill of sale remained valid to date.
- [24]** Mr Williams confirmed that attempts were made to seize and sell the items listed in the bill of sale, and that he had instructed a bailiff to seize them. When asked if his efforts were unsuccessful because Ms Bailey was avoiding the bailiff, he wasn't sure if those were his exact words. Still, he remembered that Ms Bailey had relocated the items to an undisclosed location. After realising he could not locate Ms Bailey, he tried to contact her numerous times using the number she had provided. He estimated that he made around twenty calls.

- [25]** He admitted that an email address was listed for Ms Bailey, and that she had named her mother as her next of kin, with their address and phone number also included. He stated that he had not sent a note or letter to any of the addresses associated with the loan, nor had he instructed anyone to visit her mother's address. He believed he had made a call to her mother about the loan, but couldn't remember if he had mentioned that call in his witness statement.
- [26]** Ms Bailey provided directions to her residence, which could not be located. As a result, the confiscation of the items listed in the bill of sale was not possible. Since September 2014, further attempts were made to seize the items; however, none of these efforts were recorded in Mr Williams' witness statement. Mr Williams admitted that, between April 2013 and September 2014, he was aware of Ms Bailey's place of employment. Nonetheless, she had ceased working at the original address she provided, and after that, he was unaware of her new place of work.
- [27]** Mr Williams agreed that he had filed suit against Ms Bailey in the St. Ann Bay Parish Court and that his company had been able to serve her with court documents. When asked if that meant he was able to locate Ms Bailey, the witness disagreed, stating that it was the bailiff who had located her.
- [28]** He agreed that Clause 4 of Exhibit 1 grants the holder the right to sell the security immediately, and that upon default of the payment schedule, he has the right to sell the items without delay. However, he disagreed that he breached the terms of the agreement by failing to adhere to Clause 4.
- [29]** Mr Williams disputed the assertion that Ms Bailey does not owe the amount of \$335,000.00 plus interest. When prompted to indicate where in his statement he stated that Ms Bailey owes \$335,000.00, the witness noted that the figure appears in paragraph 21. However, it is not explicitly stated that Ms Bailey owes that sum. He also disagreed with the assertion that Ms Bailey was not indebted to the claimant and reaffirmed that she repaid the sum specified in the promissory note dated March 8, 2013.

- [30]** In re-examination, he maintained that the promissory note provides for payment to be made in six instalments on specific dates, and that in the event the defendant failed to pay on those dates, further interest and late fees would apply in accordance with the terms of the promissory note. Ms Bailey owes the sum of \$335,388.68 as of February 11, 2015, with interest continuing.
- [31]** Ms Kaydron Bailey, Secretary and the first defendant, testified that around February 2013, she approached C & F Finance Company Limited for a loan. As part of the approval process, an agent employed by the claimant visited her home to verify her address and assess the items intended as security.
- [32]** On or about March 2013, she signed a promissory note agreeing to repay the sum of One Hundred Thousand, Two Hundred and Ninety-One Dollars and Sixty-Eight Cents (\$100,291.68), inclusive of the principal amount and interest. Shortly thereafter, she received a cheque from the claimant in the agreed sum of Sixty-Five Thousand Dollars (\$65,000.00).
- [33]** To date, she has made several payments of One Hundred Thirty-Six Thousand Five Hundred Dollars (\$136,500.00), representing the principal amount, interest, and late fees accrued, with her last payment being in December 2013.
- [34]** In January 2014, she received a call from Ms Green, an agent of C & F Finance Company Limited, who informed her that her loan was in default and that she owed a balance of Thirty Thousand Dollars (\$30,000.00), including late fees and accrued interest. Ms Bailey stated that she told the said agent she did not owe the stated amount and that, to her knowledge, the loan had been paid off in December 2013. The agent said she would speak with her employer and respond shortly. When Ms Bailey did not receive a callback from Ms Green or a company representative, she contacted the office. She was informed that Ms Green was no longer employed there, but that a manager would review her file and provide an update soon.
- [35]** Sometime thereafter, she was informed that the branch located in Ocho Rios, with which she had conducted the loan transaction, had ceased operation, and she did

not receive any further correspondence regarding the loan. She stated that she believed this matter was now resolved and that her loan payments had been satisfied.

[36] In April 2015, she was served with court documents at her place of employment for breach of contract in the sum of Three Hundred & Thirty-Five Thousand, Three Hundred and Eighty-Eight Dollars, Sixty-Eight Cents (\$335,388.68) to be heard in the Saint Ann Parish Court on April 16, 2015.

[37] At the time of service, she was employed by Debby-Ann Samuels & Company, Attorneys-at-Law, as a Secretary. After reviewing the documents, the attorney wrote a letter to the manager of C & F Finance Company Limited, stating that Ms Bailey was unable to pay the claimed amount and advising that the chattel used as security was available for sale to recover the sum.

[38] The letter and subsequent discussions with the attorney did not receive a favourable response from the manager, Mr Curtis Williams, who maintained that the matter could only be resolved if the full amount was paid. The attorney mentioned that Ms Bailey was not in a position to settle the sum but could arrange to pay instalments of \$ 8,000 per month until the debt was settled. Mr Williams opposed this stance and advised that the debt would take an excessive amount of time to resolve; he therefore only accepted instalments of \$15,000.00 per month, which Ms Bailey stated she could not afford. Negotiations fell through as a result. The case stayed in the parish court until the interest rate of 168% caused the initial claim to exceed the court's jurisdiction.

[39] During cross-examination, Ms Bailey admitted that she had signed for and received the loan sum of \$65,000.00, as agreed upon in Exhibit 1. The contract required her to make five monthly payments of \$16,715.00 each, with the first payment due on April 8, 2013, and the four subsequent payments on the 8th of each month.

- [40] Ms Bailey admitted that she did not make all her payments in full or on time every month. At the time of her loan application, she provided her address as Mount Edgecombe, Runaway Bay, St Ann. However, she later relocated from that address in September 2014 to Steer Town, Trelawny.
- [41] She moved with the furniture listed as security for the loan. About 13 years had passed since she took out the loan, and she still had most of the household items. When asked why she had not sold the items and repaid the loan, she replied that this was not part of the agreement. She did, however, agree that it was part of the agreement that she would pay \$16,715.00 on the 8th of each month starting April 2013.
- [42] Ms Bailey denied that between July and December 2013, Mr Williams' agent visited her to demand payment. She admitted that her last payment towards the debt was made on December 30, 2013, in the amount of \$10,000.00. She disagreed that she would have needed to pay \$41,878.03 on that date to settle the debt in full. She has made no further payments on the loan since 30th December 2013.
- [43] Ms Bailey disagreed with the suggestion that her statement claiming to have paid off the loan in full was untrue. She also disagreed that her failure to pay in full and on time each month resulted in a balance of \$41,878.03 as of December 30, 2013. It was suggested to her that, at the time the claim was filed on February 15, 2018, she owed \$335,388.68, plus ongoing interest. She disagreed.

Submissions

- [44] In assessing whether a legally binding contract exists, counsel relied on the case of **Keith Garvey v Ricardo Richards**.¹ To form such a contract, there must be an agreement, intention to create legal relations, and consideration. Both parties signed a promissory note, providing evidence of offer and acceptance for a

¹ [2011] JMCA Civ 16

\$65,000.00 loan, which was disbursed and due for repayment. The defendant admitted to repaying \$136,500.00, with the last payment made in December 2013. The promissory note required \$100,291.68 to be repaid by September 8, 2013, in monthly instalments. The defendant has not demonstrated full or timely payments, breaching the agreement and incurring interest and fees.

- [45] The defendants claim they have a valid defence, contending that the claimant failed to enforce security for the loan, particularly by not seizing chattels. The claimant is barred from recovering the debt, as waiver depends on conduct and consent, and the promissory note states that failure to enforce rights does not constitute a waiver. The claimant's registration under the Industrial and Provident Societies Act exempts it from the provisions of the Money Lending Act.
- [46] All essential elements of a valid contract—offer, acceptance, legal intent, and consideration—are present, and breach has occurred as the defendant has not repaid according to the agreement. The promissory note (Exhibit 1) states Ms Bailey's unconditional promise to repay \$100,291.68, including principal and interest at 14% per month. Mr Williams testified that Ms Bailey borrowed \$65,000 plus interest, promising to repay \$ 100,100.98, and that he stamped the note and paid the duties. He admitted there are no additional notes relating to other sums owed. He also confirmed that Ms Bailey had repaid \$136,500.00, exceeding the promised amount, but refused to acknowledge the repayment as per the terms of the promissory note.
- [47] Counsel argued that the note only covers \$100,291.68, and her repayment fulfils the promissory note's terms. There are no other promissory notes for the amounts claimed of \$335,388.68 or \$4,656,759.99. The case of **EW Lewis Investment & Finance Limited & another v Plantation Development Company Limited & ors.**² supports the contention that only one promissory note exists for \$100,291.68, which was paid. Mr Williams, with 18 years' experience, should have known to

² [2024] JMCC comm 11

ensure that additional notes were signed. Although the second defendant was not in court, under **Nicholson v Revill**³, Ms Bailey's payment means both defendants are discharged from further obligations. Once the promise is fulfilled, the obligors are released from their obligations. Section 59 of the Bills & Exchange Act is also cited and provides: "a bill is discharged by payment in due course by or on behalf of the drawee or acceptor."

[48] Clause 4 of the promissory note states that:

"We agree that if we are in default of any of the provisions of this Promissory Note, including failure to adhere to the payment schedule in 1) above, then the holder shall have the right to immediately sell the security given and apply the proceeds from the sale thereof against our indebtedness to the holder."

[49] Throughout the cross-examination, Mr Williams was adamant that he had made efforts to contact Ms Bailey to recover the amount he alleges is outstanding. He says that he called her only 20 times over the course of several months. He also admitted that Ms Bailey provided several means of making contact, as specified in the Loan Application Form (Exhibit 3). Based on the evidence, he utilised very few of the options available to him to make contact with Ms Bailey, and the effort he did make was negligible.

Q. Did you send a letter to any of the addresses provided?

A.No

Q. Did you send her an email?

A.No

Q. Did you reach out to her next of kin?

A. I believe we did

[50] Mr Williams' evidence suggests he was unable to locate Ms Bailey to seize the items listed in the promissory note. He also claims to have made attempts since September 2014 to seize the items, but these efforts were unsuccessful. However,

³ [835-42] All ER Rep 148

under cross-examination, Mr Williams admitted to having brought a claim against Ms Bailey in the St. Ann's Bay Parish Court in February 2015 and serving her with documents related to those proceedings.

- [51] Further, the claimant did not immediately seize the assets, as Mr Williams testified, but continued to collect payments from Ms Bailey until the full amount she had promised to pay was received. In support of this, counsel cited **Tele2 International Card Company SA and others v Post Office Limited**,⁴ arguing that the claimant's actions amounted to an abandonment and/or waiver of any right to enforce the promissory note terms after such a prolonged period.
- [52] According to Halsbury's Laws of England (Volume 29 (2019)), a "*waiver may be expressed or implied from conduct, but in either case, it must amount to an unambiguous representation resulting from a positive and intentional act by the party granting the concession with knowledge of all the material circumstances.*"
- [53] The claimant relies on the "no waiver" clause in the promissory note (Clause 6) and claims the first breach occurred in April 2013. Nevertheless, they continued to collect payments from the first defendant until December 2013, approximately eight months, and made further attempts to collect payments until September 2014. The claimant cannot now rely on Clause 6 because its wording does not preclude abandoning a right due to delay or neglect, nor does it permit choosing to continue the contract as if no breach had occurred. The claimant was negligent or delayed in treating the contract as breached by Ms Bailey and continued to accept payments despite the breach. The claimant cannot now state that Ms Bailey breached the note by failing to make payments, as they delayed enforcement and collected payments, thereby affirming the note's terms.
- [54] Attached to the promissory note is a bill of sale (Exhibit 4), which sets out the terms of the sale of the listed items. Counsel drew attention to section 2 of the Bills of Sale Act and argued that the effect of the bill of sale is that, although the debtor

⁴ [2009] EWCA Civ 9

retains possession of the items, the sale transfers property in chattels from the grantor to the grantee.

[55] In the case of **National Commercial Bank of Jamaica Limited v Owen Campbell & Toushane Green**,⁵ the Court of Appeal, in allowing an appeal, found that in executing a bill of sale, the owner's title in respect of a BMW motor vehicle was void, and he could not sell or transfer the motor vehicle to a third party since it was assigned to the bank as security for a loan.

[56] Like the clause in the case of **National Commercial Bank of Jamaica Limited v Owen Campbell & Toushane Green**, clause 3 of the bill of sale in the instant case states that:

*"In pursuance and in consideration of the goods, the Borrower as the beneficial owner HEREBY **ASSIGNS, TRANSFERS AND SETS OVER** unto the lender ALL AND SINGULAR goods described in the schedule hereto together with all attachments, accessories, replacement, improvements and other equipment affixed or kept separate and apart from the assigned goods..."* [Emphasis added]

[57] Mr Williams' evidence in relation to the Bill of Sale is as follows:

Q. A Bill of Sale was executed in respect of the promissory note, correct?

A. Yes

Q. And based on the terms of the Bill of Sale, you have the right to sell the items that were listed?

A. Yes

Q. To date, has the Bill of Sale been discharged?

A. No

[58] It is worth noting that during cross-examination, Ms Bailey stated that most of the items were still in her possession. Although it is claimed that there is a breach of the terms of the promissory note, the claimant is attempting to recover the alleged outstanding debt through this claim. The consequence of the claimant not

⁵ [2014] JMCA Civ 19

discharging the bill of sale is that the listed items remain assigned to them, which prevents Ms Bailey from assigning, transferring, or selling them to a third party.

[59] Issues

1. Whether there is a valid and binding contract between the parties?
2. Whether the defendants have repaid that debt?
3. Whether the claimant has waived its right to enforce the terms of the loan agreement by not seizing the collateral on the loan?
4. What is the effect of the bill of sale?
5. Whether the claimant is entitled to the relief sought?

Discussion

[60] On the first issue, there is no dispute that the parties agreed that the promissory note before the Court constituted a binding contract between them.

[61] The Promissory Note to C & F Finance Limited dated March 8, 2013, states:

“For value received, We the undersigned unconditionally PROMISE to PAY in accordance with the schedule at 1) below to C & F Finance Limited (an industrial and Provident Society), a Company incorporated under the laws of Jamaica and having its registered office at 3 Church Hill Avenue, Montego Bay, in the PARISH of SAINT JAMES, (hereinafter referred to as the holder) at Shop. 3. Ocean Village Shopping Centre, Ocho Rios, SAINT ANN (or such other place as the holder may in writing direct), the sum of \$100,291.68 being the principal sum of \$65,000 together with interest of \$35,291.68 calculated at an interest rate of 14% per Month:

Interest shall be calculated daily based on a thirty-day month and shall be applicable both before and after maturity and judgment.

Unpaid interest shall be compounded at daily, rests at the same rate applicable in respect of the principal at the relevant time.

1) Five, (5) interim payments of \$16,715.28, each Monthly

The first to be paid on the 8th Day of April 2013 with Four (4) others, each falling due on the same day of each successive Month.

One final payment of \$16,715.28, being the final balance on the 8th day of September 2013 this being the maturity date of this note.

Where any payment falls due on a public holiday or Sunday then the payment shall be made on the day immediately preceding that public holiday or Sunday.

- 2) The holder may at his sole discretion charge late fees at a rate of \$100 per day for each day a payment due remains unpaid and any such late fees charged shall incur interest at the same rate applicable in respect of the principal.*
- 3) Notwithstanding the schedule stated at 1) above any payment made shall first be applied to any interest then due, then to any late fees charged by the holder and thereafter to the principal*
- 4) We agree that in the event that We are in default of the any of provisions of this Promissory Note, including failure to adhere to the payment schedule in 1) above, then the holder shall have the right to immediately sell the security given and to apply the proceeds from the sale thereof against our indebtedness to the holder.*
- 5) The undersigned hereby waives presentment, demand protest and notice of any kind in the enforcement of this Note*
- 6) Any failure by the holder to enforce any right contained in this Promissory Note shall not be construed as a waiver of such a right.*
- 7) This Note shall be governed by and construed in accordance with the Laws of Jamaica.”*

[62] On the remaining issues, the first defendant alleges that she has repaid the sums owed on the promissory note; the claimant refutes this. The claimant has provided a statement of account to show how any sums repaid were applied to the debt. The statement of account was generated after the last payment was made, when the total repayments were \$136,500.00, as admitted by the first defendant. The

statement of account in evidence demonstrates that the defendants have failed to pay what is owed.

[63] The first defendant has not challenged this evidence with a statement of account of her own. She relies on the assertion that she has paid more than the amount stated on the promissory note, while also admitting that she did not pay in full and on time as agreed. This means that the first defendant is not in a position to tell the Court how the payments were apportioned between principal and interest. This failure suggests that she does not know the exact sum owing on the loan.

[64] Additionally, the first defendant asserts that she has paid \$136,500.00, which exceeds the amount specified on the promissory note, effectively admitting that she owed more than the stated \$100,291.68, without the need for any additional promissory notes, as has been argued. The admission that she made the final payment in December 2013, which was outside the agreed loan period, confirms that the debt remains unpaid.

[65] It is for the defendant to elect whether to enforce the contract or to recover the debt by exercising their rights under the bill of sale. The evidence indicates that the claimant attempted to locate the defendant's residence, and the defendant admitted relocating with the items she now claims should have been seized. In these circumstances, neither the waiver by conduct nor the Moneylending Act are applicable.

[66] The claimant had two methods to secure repayment of the loan, it could have sued the defendants or seized the collateral. These remedies could have been exercised at any time, either simultaneously or successively. If the claimant obtains judgment and the debt is paid, the items secured will be released.

[67] The promissory note was signed as security for the loan and supports the fact that a loan was made to the defendants. I accept that the promissory note stands as evidence of the loan and its terms. The promissory note stated the agreed interest and created a binding obligation on the defendants. There is no plea of non est

factum before the Court; therefore, Ms Bailey knew what she was signing. She has admitted to receiving the loan proceeds. The various contentions she has made do not prevent the claimant from recovering the debt in the amount claimed.

[68] In **EW Lewis Investment & Finance Limited**, the claimants argued that over several years, they had advanced short-term bridging loans, as well as funds for vehicles, fixtures, and development materials, to the defendants. These were secured by promissory notes, title deeds, and an attorney's undertaking. The loans were rolled over, and promissory notes were periodically executed to reflect the balance at that time. When the regulator later required mortgages to support the loans, the defendants refused to sign, leading to a breakdown in relations between the parties. Although some payments were made, a balance of \$214,270,394.47, inclusive of interest and fees, remained outstanding.

[69] The defendants contended that the principal had been repaid, that no binding interest rate had been agreed upon, and that the promissory notes were sham documents created solely to satisfy regulators. They also argued that the documents were improperly stamped and the entire arrangement was tainted by illegality. The Court rejected these arguments, finding that the promissory notes were genuinely executed, with interest agreed upon. Even if there were stamping irregularities, late stamping did not invalidate them, and the loans could still be proved by viva voce evidence.

[70] The defendants had indeed received the loans, and the handing over of title deeds for securing the debt created equitable mortgages. The Court held that the claimants had rendered an account and the defendants had failed to pay. In essence, the existence and genuine execution of promissory notes was sufficient evidence of a debt and its terms. Even if stamping irregularities exist, this does not invalidate the underlying debt, which may be proved by other admissible evidence.

[71] In **Nicholson v Revill**, the central issue was whether the discharge of one joint debtor also discharged the remaining co-debtors. It is distinguishable from this case as there has been no discharge of either debtor.

[72] The first defendant's reliance on **Tele2 International Card Company SA and others v Post Office Limited** does not assist them, as in that case, there was a contract for the supply of goods and services, not a loan. There was no right to terminate the contract for non-payment in the agreed terms. Additionally, there was no clear and unequivocal communication of an election to abandon the right to terminate and continue the agreement, as was the case in **Tele2**.

[73] The claimant has proven its case to the requisite standard, and the first defendant is liable for the repayment of the sums claimed as the debt owed on the promissory note.

[74] **Orders**

1. Judgment for the claimant against the first defendant in the sum of \$335,388.68.
2. Interest on the judgment sum is at a rate of 14% per annum from the date of judgment until payment.
3. Costs to the claimant are awarded against the first defendant to be agreed or taxed.
4. Costs are limited to the maximum award which could be awarded in the Parish Court.

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Wint-Blair J