



[2024] JMCC Comm 31

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMERCIAL DIVISION

CLAIM NO.SU2023CD00445

BETWEEN	PATREENA MINTO-POWELL	CLAIMANT
AND	JERIMI DRATON GRANT	1 st DEFENDANT
AND	VIVETTE GRANT	2 nd DEFENDANT

Mr Lemar Neal instructed by NEA |LEX for the claimant

Mrs Tamara Riley Dunn instructed by Nelson, Brown Guy & Francis for the 2nd defendant

Heard July 22 and 31, 2024

Civil Procedure - Application for Summary Judgment - Whether the claimant has a real prospect of succeeding on the claim - CPR 15.2(a) - The nature of the evidence of a respondent to an application for summary judgment

CORAM: JARRETT J

ORAL REASONS FOR DECISION

1. These are my oral reasons for my decision on the 2nd defendant's application for summary judgment filed on November 14, 2023.

2. The basis of the application is that the claimant has no real prospect of succeeding on the claim. The 2nd defendant therefore relies on CPR 15.2(a) and the overriding objective which requires that the court deals with cases expeditiously and fairly.
3. In her claim form filed on August 24, 2023, the claimant claims against the 2nd defendant for the sum of \$14,414,599.57, inclusive of interest and late fees pursuant to a guarantee agreement dated June 7, 2022. It is alleged that by this guarantee agreement, the 2nd defendant guaranteed payment of all sums payable to the claimant by the 1st defendant under a loan agreement. In the particulars of claim the claimant avers that the guarantee agreement was embodied in a loan agreement by which \$5,000,000.00 was loaned to the 1st defendant by the claimant. By the guarantee agreement, the 2nd defendant guaranteed payment of all sums, including interest, legal fees and other costs, due and payable by the 1st defendant. It is also alleged that it was a term of the guarantee agreement that upon default by the 1st defendant, the claimant is entitled to treat the guaranteed liabilities as due and payable and forthwith collect the sums due from the 2nd defendant. It is because of the default by the 1st defendant, that the claim against the 2nd defendant is made.
4. Affixed to the particulars of claim is a copy of the loan agreement. At the foot or end of that document, there is a signature which purports to be that of the 2nd defendant as guarantor, with the date of signing being June 12, 2022. Also appearing is a signature said to be that of the 1st defendant, with the date of June 12, 2022, below it. The claimant's signature also appears on the document with the date of signing being June 13, 2022. There is no indication on the document that the signatures were witnessed.
5. There are no allegations in the particulars of claim that the claimant saw the 2nd defendant affix her signature to the document, or which indicate the basis on which the claimant contends that the signature appearing on the document is that of the 2nd defendant.

6. In her defence filed on November 9, 2023, the 2nd defendant denies owing the money claimed. She says that she did not sign the loan agreement and had not seen the document before the commencement of the claim against her. She goes further to say that while she knew that the 1st defendant was in discussion with the claimant in relation to borrowing money, she was not aware of the terms of the agreement until she was served with the claim. She alleges that the signature on the document purporting to be hers was never signed by her and must have been fraudulently affixed to the document. She says further that when she approached the 1st defendant, he told her that he was the one who fraudulently affixed her signature to the document.
7. Judgment in default of acknowledgment of service was entered against the 1st defendant on May 27, 2024.
8. The 2nd defendant filed two affidavits in support of her application. In her affidavit filed on June 21, 2024, she exhibits documents which she says is evidence of her true signature. These include her government issued drivers licence, and the biodata pages of her current and cancelled passports. In an affidavit filed on July 9, 2024, she exhibits a report from William Smiley whom she describes as a handwriting expert. He says in that report that based on known signatures of the 2nd defendant, in his opinion, the signature on the loan agreement is not hers, but he cannot be definitive about it as he has not seen the original loan agreement.
9. I placed no weight on the report of William Smiley as no application was made by the 2nd defendant for him to be appointed as an expert for the purposes of this application.
10. The claimant filed an affidavit in response to the application on July 18, 2024. It is deposed to by Chris Ann Campbell who says she is an attorney-at-law with conduct of this matter. She says that her evidence is based on the perusal of the

claimant's file and the instructions given to her by the claimant. It is a 5 paragraph affidavit and I will reproduce in full paragraph 4 as this paragraph is key to my determination of the application before me:-

"The Claimant instructed me that the Loan and Guarantee Agreement dated June 7, 2022, was prepared by the 1st Defendant's Attorneys-at-law. Therefore, she has no reason to doubt and/or question the legitimacy of the document or the authenticity of the signatures affixed to it. She verily believes that the document was signed by the 2nd Defendant"

11. The principles the court must consider when determining an application for summary judgment are well known. There is no dispute between the parties that the threshold test which the 2nd defendant has the burden to meet, is that the claimant has no real prospect of succeeding on the claim. It is also common ground that in these applications, the court is entitled to look not only at the pleadings but also at the evidence advanced in support of the application and any evidence filed by the respondent in response.

12. The 2nd defendant by her evidence has said that the signature on the loan agreement was not made by her and is not hers. She pleads in her defence that the 1st defendant admitted that he was the one who fraudulently affixed her signature to the document. As observed earlier, the claimant's evidence in response to the application is that of attorney-at-law Chris Ann Campbell who says that the claimant advised her that the document was prepared by the 1st defendant's attorney-at-law, therefore, she has no reason to doubt or question the document's legitimacy or the authenticity of the signatures on it and verily believes it was signed by the 2nd defendant.

13. I agree with the submissions of counsel Mrs Riley Dunn that this evidence does not establish a basis to proceed to trial on the claim. The fact that an attorney-at-

law prepared the loan agreement is no good or logical reason to believe that the impugned signature is that of the 2nd defendant. The affiant Chris Ann Campbell has not said that the attorney-at-law who prepared the document witnessed the 2nd defendant's signature and that that attorney-at-law will be called upon to give evidence at trial. There is also no basis given in her affidavit as to why the claimant "verily believes" the 2nd defendant signed the document. It simply does not follow, that because an attorney-at-law prepared the document, this must mean that the 2nd defendant signed it. This is not a rational proposition.

14. **Korea National Insurance Corporation v Allianz Global Corporation Specialty AG [2007] EWCA Civ 1066** , is a case in which the respondent **Allianz** did not file an affidavit in response to the claimant's summary judgment application . I find the following dictum of Moore-Bike LJ, on the court's approach to the evidence on a summary judgment application, at paragraphs 13 and 14 instructive, and I gratefully adopt it:

"...the court on an application for summary judgment will normally accept the parties' evidence at face value ... and will refuse to be drawn into an attempt to resolve factual disputes of any kind. However, a party cannot complain if, accepting his evidence at face value, the court adopts a rigorous approach when considering what, if anything, that evidence amounts to.

In the present case Allianz criticised the judge for having failed to make allowance in its favour for the likelihood that additional evidence relating to various aspects of this defence would be available at trial to cast a more benevolent light on events, but in my view that criticism is unfounded. It is incumbent on a party responding to an application for summary judgment to put forward sufficient evidence to satisfy the court that it has a real prospect of succeeding at trial. If it wishes to rely on the likelihood that further evidence will be available at that stage, it must substantiate that assertion by describing, at least in general terms, the nature of the

evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up. It is not sufficient, therefore, for a party simply to say that further evidence will or may be available, especially when that evidence is, or can be expected to be, already within its possession, as is the case here. Allianz was quite entitled, if it so chose, to confine its evidence to the factual allegations in the defence, but having done so, and having failed to give any indication of what other evidence can be expected to be available at trial, it cannot complain that the court has not speculated about whether there might be any such evidence, and if so what its nature might be.”

15. The only evidence filed by the claimant in response to the application is that of Chris-Ann Campbell. Having been confronted by the 2nd defendant’s application, and her evidence that the signature on the loan agreement is not hers, it was incumbent on the claimant to put before the court all the evidence she intends to rely on to support her claim that the 2nd defendant signed the loan agreement and is therefore liable on the guarantee agreement embodied in it. Having relied only on Chris Ann Campbell’s evidence and on her pleadings, in which there is no averment that she either witnessed the 2nd defendant sign the loan agreement or she knows of her own personal knowledge that the impugned signature is that of the 2nd defendant’s, I do not see how, the claimant can possibly succeed against the 2nd defendant at trial.

16. In the result, I find that the 2nd defendant has succeeded in showing that the claimant has no real prospect of succeeding on her claim. Summary judgment must therefore be entered in her favour.

Orders

17. Having regard to the foregoing, I make the following orders:

- a) Summary judgment is granted in favour of the 2nd defendant.
- b) The claim against the 2nd defendant is dismissed.
- c) Costs to the 2nd defendant to be agreed or taxed.

A Jarrett
Puisne Judge