

In the Supreme Court of St. Helena
Citation: SHSC 567/2019 & 568/2019
Civil
Application to set aside a Judgment

Bank of St Helena

-v-

(1) V2 Taxi & Tour Agency Limited

&

(2) V2 Paradise Limited

Ruling dated 14th December 2020

The Chief Justice Charles Ekins

1. This is a claim by Bank of St Helena (the Bank) against the two Defendant companies which I shall refer to together as V2. The claim is for monies advanced to the two companies under respective loan agreements and overdraft facilities and now alleged to be due and owing. Particulars of Claim in this case were issued by the Bank on 8th November 2019. In November 2019 when I was on St Helena the matter came before me when I was told that the Bank and the Defendants, personified by Ms. Lucille Johnson and Mr. Patrick Henry had agreed terms of repayment for the monies said to be due and the agreement was duly recorded in a consent order. In fact, no repayments were made pursuant to that agreement. Because agreement had apparently been reached in November no provision was made for the service of any defence by the Defendants but in the absence of any repayments, on 9th July 2019 the Bank sought to progress the claim and an Order was made requiring the Defendants to file a defence by or before 21st August 2020. No defence was filed although on 19th August 2020 Ms. Johnson wrote to the Registrar requesting an extension of time for the service of a defence to a date 4 weeks from 21st August 2020-i. e 18th September 2020. The Bank did not formally agree an extension of time but in any event did not issue an application for judgement in default until October 2020. I heard the application on 27th October 2020. All parties were present. V2 had still not submitted any form of Defence even in draft form. Ms. Johnson informed me that she believed that V2 had a defence. Her principal complaint at that time related to the interest charged by the Bank. In the circumstances I was not prepared to grant further time for filing a defence to the claim per se. It had never been suggested that the loans and overdraft facilities had not been granted to V2. Nor had it ever been suggested that amounts had been repaid which the Bank had wrongly failed to credit to V2's accounts. I was nevertheless prepared to

give the Defendants a final opportunity to say precisely in what respects, if any, the Bank's claim was disputed, and to that end the Defendants were granted a further 14 days; and to that end and although I entered judgement in default I did so in an amount to be assessed.

2. On 4th November 2020 the Bank's managing director, Ms. Josephine George filed an affidavit setting out in detailed terms how the Bank's claim was calculated; and in the interests of securing agreement, recalculating the Bank's claim, from the point of view of interest charges, on a basis entirely favourable to V2.
3. On 4th November 2020 the Court received a lengthy letter from Ms. Johnson which was ultimately to form the basis of a more formal defence. The letter acknowledges the loan; but essentially complains about the lack of sympathy and support from the bank given the difficult economic background initially faced by V2 which, with the pandemic has descended into an economic catastrophe for St Helena. Ms. Johnson complains that V2 was not offered the level of support in terms of loan freezes that were offered to other businesses. In an affidavit sworn on 6th November 2020 Ms. Johnson acknowledged a capital outstanding balance in respect of V2 Paradise of £282,545.93 and a further capital outstanding balance in respect of V2 Taxi and Tour Agency of £27,318.72. What the affidavit fails to do is to address the Plaintiff's assertion that V2 Paradise was loaned £343,848.00; and had an authorised overdraft of £15,000.00; and V2 Taxi and Tours a loan of £102,303.00 with an authorised overdraft of £10,000.00; and the perfectly clear arrangements for repayment, even in the event of insufficient funds in the current account to meet the loan repayments as and when they feel due. Ms. Johnson repeats that she feels that V2 was hard done by, by not receiving a loan freeze afforded other businesses; and her general feeling that the Bank has treated her unfairly.
4. On 30th November 2020 the Defendants at last filed a draft defence with the Court and on 11th December 2020 the Court received from the Lay advocate on behalf of the Defendants what is described as a draft defence statement on behalf of Ms. Johnson and Mr. Henry. Making every allowance that I can, neither document seems to me to amount to a defence of the claim itself. Both reiterate the catastrophic economic downturn since the loans were taken out; the Bank's less than sympathetic stance towards these two businesses; and proposals for how the money due to the Bank can be repaid over a number of years.
5. I have gone into some detail on the Background to this claim and the documents filed by the Defendants since I heard the application for judgement in default in October. I also note that on 3rd November 2020 the defendants filed their own application to set aside the judgement in default on the grounds that there are triable issues in respect of part of the claim at least.
6. On 14th December 2020 the matter was again listed before me to enable the parties the opportunity to make any final representations that they felt to be appropriate. I made it clear to both Plaintiff and Defendants that the Court has no power uninvited to mediate between the parties. The Court cannot direct how amounts due should be repaid or provide a repayment schedule. The Court's sole function at this stage is to determine whether the

defendant has demonstrated a triable issue in respect of all or any part of the Plaintiff's claim; and if so whether it would be proper in effect to set aside the judgement in default in whole or in part given the delay in filing a defence.

7. The fact that the loans were made as claimed by the Bank; and the fact that overdraft facilities were made available to the Defendants seem to me indisputable and not in fact seriously disputed by the Defendants. It is also clear to me that the way in which the loans were "repaid" by means of taking payments from the respective current accounts which as a result descended into unauthorised overdrafts was a wholly normal arrangement authorised by the loan agreements entered into. There is nothing about the accounting exercise by which these loans were managed which could conceivably give rise to a defence; and the bank has now in any event foregone the higher rate of interest charged on unauthorised loans.
8. Ms. Johnson and Mr. Henry may well have been the victims of spectacular and unforeseeable misfortune in seeking to invest in tourist enterprises just as tourism was about to collapse but that cannot provide them with a defence to the Bank's claim. It is hard to say, but investment history is littered with those whose failures have been solely due to causes beyond the control of the investors themselves. Rotten luck, however, does not provide a defence.
9. It is not for me to say whether the Defendants have been badly treated by the Bank by comparison with others who were loaned money. I merely observe that all parties reached an agreement for rescheduled payments in November 2019 when it was never suggested that these monies were not owed; but few if any meaningful payments were ever made by the Defendants. Even in those circumstances the Bank held off until July before resurrecting its claim. In any event, the fact that the Bank may have treated others more preferentially is equally not a matter that can provide the Defendants with a defence however hardly done by they may feel.
10. In the circumstances I see no basis for permitting the Defendants to defend any part of the Plaintiff's claim. I confirm that judgement is entered in the amount of the claim as calculated by Ms. George in her affidavit of 4th November 2020, namely £460,755.27. for the avoidance of doubt the Defendant's application to set aside judgement is dismissed.
11. I repeat, I have no power to direct how the Bank should enforce judgement. That is a matter for the Bank in accordance with the terms of any legal charges it holds and/or by any agreement reached with Ms. Johnson and Mr. Henry.

Charles Ekins, The Chief Justice
14th December 2020

