

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
(COMMERCIAL DIVISION)

BETWEEN:

RAJENDRA HARIPAUL

Plaintiff

-and-

MOHAMED KHAN

Defendant

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Jainarayan Singh for the Plaintiff

Mr. Vidyanand Persaud for the Defendant

**Heard February 19<sup>th</sup>, March 15<sup>th</sup>, June 20<sup>th</sup> and October 21<sup>st</sup> 2016**

**Ruling delivered November 11<sup>th</sup> 2016**

RULING

BACKGROUND

The undisputed precursory facts to this Action are that the Plaintiff and the Defendant were friends at least from the year 2009 and on several occasions the Plaintiff loaned the Defendant various sums of monies which were secured by the Defendant executing promissory notes in favor of the Plaintiff.

It is the Plaintiff's claim that the Defendant failed to repay the following sums on the following promissory notes;

1. \$2,600,000.00 on promissory note dated August 16<sup>th</sup>, 2010 [**Exhibit "A"**]
2. \$7,000,000.00 on promissory note dated August 31<sup>st</sup>, 2010 [**Exhibit "B"**]
3. \$2,400,000.00 on promissory note dated September 1<sup>st</sup>, 2010 [**Exhibit "C"**]
4. \$8,700,000.00 on promissory note dated March 31<sup>st</sup>, 2011 [**Exhibit "D"**]

As a result the Plaintiff's claim against the Defendant is for \$20,700,000.00.

The Defendant's defense is that he did execute the two promissory notes in August 2010 and the one in September 2010 and that he in fact repaid those monies thereby

discharging his obligations under the said notes. He further asserts that he executed the promissory note in March 2011 under duress and further that he did not in fact borrow any such monies.

The issue, so to speak, in this trial is simply; “*who is telling the truth?*”.

In this regard, let us examine the evidence.

The Plaintiff testified that prior to August 16<sup>th</sup>, 2010, the date that the first promissory note, subject of this claim, was executed, he and the Defendant engaged in several transactions of a similar nature.

Specifically with respect to the promissory note executed on March 31<sup>st</sup>, 2011 [**Exhibit “D”**], the Plaintiff testified that the Defendant asked for that loan to fund the processing and export of fish from his fish processing plant. The fish, he testified was going to be exported to the Defendant’s brother in Toronto.

Under cross examination he testified that prior to the promissory notes that are the subject of this claim, the Defendant faithfully repaid all monies. He accepted that by March 31<sup>st</sup>, 2011 the Defendant owed him \$12,000,000.00 which was at least 6 months overdue. He testified that at that time he was upset with the Defendant as he had made many demands for repayment, he, nevertheless, loaned him \$8,700,00.00 on March 31<sup>st</sup>, 2011.

It was then suggested to the Plaintiff that he received a wire transfer in the amount of US\$6,000.00 in December 2010. The Plaintiff accepted this suggestion but explained that that was in respect of payment towards another promissory note.

The court adjourned for the Plaintiff to produce that promissory note. On the adjourned date, March 15<sup>th</sup>, 2016 the Plaintiff produced a copy of a promissory note dated December 1<sup>st</sup>, 2010 [**Exhibit “E”**]. He explained that the original was handed to the Defendant after it was paid and the Defendant destroyed it.

It was suggested to the Plaintiff that he use force and threats on the Defendant to make him sign **Exhibit “D”** because the Defendant refused to allow him to pack packages into his containers of fish for export.

It was suggested to the Plaintiff that he had a partner by the name of Dinesh Budna, who received repayments from the Defendant on behalf of him. The Plaintiff insisted that Budna was his handyman and he would not have engaged in multimillion dollar transactions with Budna. He subsequently accepted that he did attest in an affidavit in High Court Action No. 175/ CD of 2012 that he had lent Budna over \$3,000,000.00. He further testified that he had authorized Budna to collect small sums for him when he was overseas, which monies Budna would take to his secretary, Shazeeda.

The Plaintiff also testified that Budna collected small sums, less than \$100,000.00 from the Defendant in 2011.

The Defendant testified that he did execute **Exhibits “A”, “B” and “C”** and that he and the Plaintiff had an arrangement whereby he could use the monies for a year provided he paid interest in the sum of \$10,000,000.00. He further testified that all of these monies were paid to the Plaintiff and he in fact tendered twenty two receipts issued to him by Budna dating from December 30<sup>th</sup>, 2010 to September 22<sup>nd</sup>, 2011 totaling \$7,080,000.00 [**Exhibits F1 - F22**].

He testified that he presently owes the Plaintiff between \$130,000.00 and \$170,000.00.

Under cross examination the Defendant accepted that he was awaiting a loan of \$21,000,000.00, part of which was to be used to clear his debt with the Plaintiff.

The Defendant also accepted that he did not state in his Affidavit of Defence that he was required to pay interest, or that he paid monies to Budna or that he owed the Plaintiff between \$130,000.00 and \$170,000.00.

Dinesh Budna testified for the defense. He testified that he and the Plaintiff were one time partners, buying and selling different commodities and lending money.

He testified that he issued **Exhibits F1 - F22** to the Defendant for monies he collected from him for the Plaintiff, which monies he gave to Shazeeda Ali, the Plaintiff's girlfriend.

Budna was cross-examined about his employment prior to this and it was suggested to him that he was fired from these places, Banks DIH, Gafoors and the Venezuelan Embassy because of fraudulent transactions which he denied.

### **ANALYSIS**

Counsel for the Defendant invited the Court to examine **Exhibits A and E** as it was his contention that **Exhibit E** was a forgery created by the Plaintiff to explain the wire transfer made to him by the Defendant in December 2010.

The Court did examine the two exhibits and found that the signatures were startlingly identical, even down to their placement on the signature lines. The Court finds beyond a reasonable doubt that **Exhibit E** is a forgery.

This finding must bring into doubt the veracity of the Plaintiff concerning every aspect of his testimony. How can the Court even attempt to determine what parts of the Plaintiff's testimony can or may be truthful when the Plaintiff has perpetuated a fraud upon the Court itself? This is not possible.

As Chadwick LJ stated in **Arrow Nominees Inc and Another v Blackledge and Others** [2000] 2 BCLC 167 @ 193 - 195, a case in which it was found that the Petitioners were seeking to rely on forged documents;

*“The function of the court is to do justice between the parties; not to allow its process to be used as a means of achieving injustice. A litigant who has demonstrated that he is determined to pursue proceedings with the object of preventing a fair trial has forfeited his right to take part in a trial. His object is inimical to the process which he purports to invoke.”*

In addition to the foregoing, the Court does find it incredible that the Plaintiff, obviously a money lender, would have loaned the Defendant the sum of

\$8,700,000.00 in March 2011 when at the said time the Defendant would have been at least six months in default of repaying him the sum of \$12,000,000.00.

The Court further finds it unbelievable that the Plaintiff would have advanced this person, (the Defendant) this sum to be repaid the same day, notwithstanding he was in default at least six months in repaying him the sum of \$12,000,000.00 AND THEN 19 days later his Attorney-at-Law sends letters of demand for all four of the promissory notes.

### **CONCLUSION**

The Plaintiff has failed to provide any credible evidence in support of the claim. It is however noted that the Defendant did testify that he owes the Plaintiff between \$130,000.00 and \$170,000.00.

In the circumstances, there will be judgment for the Plaintiff in the sum of \$130,000.00.

No order as to costs.

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Justice N. A. Singh