

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CIVIL DIVISION**

3
4 **Cause No: G0086/2014**
5

6 **BETWEEN:**

7 **DR. STEPHEN GAY**

8 **PLAINTIFF**

9
10 **AND:**

11 **MR. MARLON COLLINS**

12
13 **DEFENDANT**
14

15
16 **Appearances:**

17 **Mr. Colm Flanagan of Nelson & Co. for the**
18 **Plaintiff**

19 **Mr. Dennis Brady of BRADY, Attorneys-at-**
20 **Law for the Defendant**
21

22 **Before:**

Mr. Justice Seymour Panton

23 **Heard:**

7th and 9th September 2015
24

25 **JUDGMENT**
26

- 27
28 1. The parties to this action were friends. They once shared the Plaintiff's leased
29 apartment, at no expense to the defendant. That was between 2003 and early 2005. The
30 friendship, which began in 2002, saw significant changes in May 2012 and June 2014.
31 Between April 2005 and May, 2012, that is, after the defendant had moved out of the
32 Plaintiff's apartment, the Plaintiff lent the defendant a significant amount of money,
33 with the expectation of being repaid. The Plaintiff kept a record of the various amounts
34 lent and the dates on which the transactions took place.
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1 2. On the 12th May 2012, the Defendant signed a document bearing that date, which had
2 been drafted by the Plaintiff. The document reads thus:

3 *“This is a statement to confirm-:*

- 4
- 5 a. *That Marlon Collins and Stephen Gay agree that there will be no further*
6 *lending or borrowing of money between us after this date.*
- 7 b. *That over the period from April 2005 to the present date an accrued*
8 *amount of \$130,983.69 has been borrowed by Marlon Collins from*
9 *Stephen Gay.*
- 10 c. *It is expected that this debt will be settled by the sale of a portion of the*
11 *property owned by Marlon Collins and any outstanding amount be repaid*
12 *by regular monthly repayments commencing August 1st 2012, until the*
13 *outstanding amount is settled.*
- 14 d. *Signed and dated below by both parties:*
- 15 e. *Marlon Collins 12.05.12*
- 16 f. *Stephen Gay 12/5/2012”*
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19 3. In view of the failure of the Defendant to honour the terms of the agreement, the
20 Plaintiff made a formal demand for payment on 14th May 2014, that is, two (2) years
21 after the signing of the document. This was followed by the issuing of the instant
22 proceedings on 5th June 2014.

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24 4. The plaintiff claims:

- 25 a. Judgment in the sum of CI\$130,983.69;
- 26
- 27 b. Pre-Judgment interest upon the sum as set out at paragraph (a) above with
28 effect from 14 May 2014 at the rate of 2 3/8% per annum (CI\$8.52 per
29 diem) and standing at CI\$187.44 as at the date of issue of the Writ and/or
30 such other rate then prevailing and/or determined by the Court in
31 accordance with s.34 of the Judicature Law (2007 Revision) and the

1 Judgment Debts (Rates of Interest) Rules 2012 as amended from time to
2 time;

3 c. Post-Judgment interest upon the sums as set out in paragraphs (a) and (b)
4 above with effect from the date of service of Judgment at the rate of 2
5 3/8% per annum and/or such other rate then prevailing and/or determined
6 by the Court in accordance with s. 34 of the Judicature Law (2007
7 Revision) and the Judgment Debts (Rates of Interest) Rules 2012, as
8 amended from time to time; and

9 d. Costs.

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11 5. In his amended defence, the defendant has admitted signing the agreement but alleges
12 that he signed under duress and frustration, influenced by anger and disbelief, and
13 without the benefit of legal advice. In his reply, the Plaintiff has denied that the
14 statement was signed under duress.

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16 6. The Defendant filed affidavits on which he has relied. His affidavit dated 22nd July
17 2014 makes no mention of the statement signed on 12th May 2012. Instead, it speaks of
18 the brotherly relationship between the parties, and of efforts made by the Defendant in
19 2012 to secure funds to assist the Plaintiff who was, the Defendant says, experiencing a
20 tight financial situation as a result of:

21
22 a. attempting to set up a private medical practice;

23
24 b. refurbishing his (the plaintiff's) parents' home in Barbados; and;

25
26 c. divorce proceedings between the Plaintiff and his wife.

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1 7. The Defendant's affidavit of the 1st October 2014 describes his efforts to help the
2 Plaintiff who he said had been very kind to him. He felt, he said, "*a moral obligation*"
3 to give to the Plaintiff C\$33,000.00 "*to register (his) gratitude for his assistance to*
4 *(him)*". To that end, he had written a cheque in anticipation of a loan that did not
5 materialize. He regarded the sums of money he received from the Plaintiff as part of
6 the expression of brotherhood that existed between them. However, he detailed those
7 amounts that he said he owed. He said that the other amounts were not amounts he felt
8 he had an obligation to repay, nor had he given the Plaintiff any assurance that he
9 would repay them. He said that there had been no expression between them of a desire
10 to enter into legal relations as regards "*those acts of benevolence the Plaintiff now*
11 *comes to demand repayment on the premise that at all material times the sums*
12 *expended were a loan ...* ".

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14 8. In this affidavit, the Defendant also said that he signed the document "*out of*
15 *frustration and anger, that (the Plaintiff) was seeking to ambush (him) with a debt that*
16 *(they) had never agreed was owing ...*"

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19 **BURDEN OF PROOF**

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21 9. O.35 r.7(6) of the Grand Court Rules (GCR) provides that where the burden of proof
22 of all the issues in the action lies on the Defendant, the Defendant shall be entitled to
23 begin.

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25 10. And O.35 r.7(1) states that the Judge before whom an action is tried may give
26 directions as to the party to begin.

- 1 11. In view of the state of the pleadings, and given the disclosures in the affidavits, I
2 acceded to the request of the Plaintiff's attorney-at-law that the Defendant be asked to
3 begin. The clear issue in the case was whether the Defendant was under duress. That
4 was something he had to show in order to negative/negate the effect of the document
5 he signed.
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7 12. The Defendant was sworn, gave evidence in chief and was cross-examined. In his
8 evidence in chief, he gave his occupation as an accountant, and stated that over the
9 years of knowing the Plaintiff, he ran errands for the Plaintiff and took care of many
10 domestic matters on his behalf. He never considered that monies that came from the
11 Plaintiff to him were in the form of loans. So far as the issue in the case was
12 concerned, he said he had signed the note acknowledging the amount claimed as he
13 was in a hurry with his wife who had a few days earlier visited a psychiatrist, and he
14 (the Defendant) wanted to get the Plaintiff off his back. He signed, he said, because he
15 was upset, and he added that he did not even see the amount he was signing to. It was
16 only in May 2014, he said, that he became aware of what comprised the total loan.
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18 13. Under cross-examination, the Defendant said that he was an accountant of 18 years
19 standing. It was due to stupidity, he said, why he signed. He said he signed not
20 knowing that the matter would reach "*this far*". He accepted that he made promises to
21 repay sums of money to the plaintiff, and he accepted that he received the monies but
22 did not accept that they were loans.
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24 14. Given the state of the evidence, after hearing submissions from the attorneys-at-law, I
25 concluded that there was no need for the Plaintiff to be heard in evidence. The
26 document produced by the Plaintiff has not, in my opinion, been impugned in any way
27 so as to affect its legal effect and significance.

SUBMISSIONS

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3 15. Mr. Flanagan for the Plaintiff submitted that judgment ought to be entered for the
4 Plaintiff. There was nothing, he submitted, to suggest duress or coercion in the signing
5 of the document. The Defendant, he said, had not offered any rebuttal and there was
6 nothing to vitiate the document. He referred to the case *Seldon v Davidson*¹.

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8 16. Mr. Brady for the Defendant submitted that although the Defendant is a qualified
9 accountant, the Court should resist the temptation to hold him to a higher standard of
10 awareness of what he was signing than the standard to be applied to the average
11 citizen. He said it was reprehensible for one so qualified to have made such an error on
12 the face of it. The case, he said, should be viewed as one between friends. On the night
13 in question when the Defendant was required to sign the document, the Defendant was
14 concerned about the possibility of defect in respect of his unborn child being carried by
15 his wife.

16 This situation, he said, was one of an ambush by a friend; it was friendship gone bad.
17 The Court, he said, should import into the proceedings the humanity of the Defendant
18 as the Defendant's rationality left him at a significant moment of time. He was not
19 under duress *per se*, but there was no precursor that would have led the Defendant to
20 think that he was entering into legal relations. He referred to the case *Balfour v*
21 *Balfour*². The document, he said, cannot be viewed in isolation, and there had been no
22 voluntary acceptance of the debt when the Defendant affixed his signature to the
23 document.
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¹ [1968] 1 WLR 1083

² [1919] 2 KB 571

1 17. In the case *Seldon v Davidson* referred to by Mr. Flanagan, the Plaintiff drew cheques
2 totaling £1550 to the Defendant her chauffeur/handyman. Later she demanded
3 repayment. The Defendant refused and the Plaintiff brought action to recover the
4 amount in the county court. The Defendant in his defence admitted receipt of the
5 money but alleged it was a gift. The county court ruled that there was a burden on the
6 Defendant, having admitted receipt of the money, to begin at the hearing of the action.
7 The Defendant appealed against the ruling. There was a debate as to whether there was
8 a right of appeal from such a ruling by the county court. It was, however, held that if
9 there was a right of appeal, the burden of proof was on the Defendant because in the
10 absence of any circumstances showing that a presumption of advancement arose, or
11 that the money had been paid in settlement of a debt, the admitted payments imported a
12 *prima facie* obligation to repay.

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14 18. Willmer LJ at page 757F said:

15 *“This is not a case of father and child, or husband and wife, or any other such*
16 *blood relationship which could have given rise to a presumption of advancement.”*

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20 And Edmund Davies LJ, at page 759E added:

21 *“Proof of payment imports a prima facie obligation to repay the money in the*
22 *absence of circumstances from which a presumption of advancement can or may*
23 *arise”.*

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26 19. In *Balfour v. Balfour* a husband was employed to the government of Ceylon. He and
27 his wife returned to England while he was on leave. At the end of his leave, his wife
28 was unable to travel back to Ceylon with him due to medical treatment that she had to
29 receive in England. While still in England, the wife sued her husband on the basis that
30 he had promised to pay her a certain sum of money each month.

1 Sargant J held that there was a valid contract. On appeal, it was held that the alleged
2 agreement did not constitute a legal contract, but was only an ordinary domestic
3 arrangement which could not be sued upon. Mutual promises made in the ordinary
4 domestic relationship of husband and wife do not of necessity give cause for action on
5 a contract.

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7 20. This case does not help the Defendant considering that the Defendant and the Plaintiff
8 were not in a husband and wife relationship.

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10 ***DECISION***

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12 21. The *Seldon* case referred to by Mr. Flanagan confirms that where money has passed,
13 especially a substantial amount of money, there, *prima facie*, is an obligation to repay
14 if there are no circumstances indicating that a presumption of advancement arose. Such
15 a presumption will arise in the case of a father and child or wife and husband. That is
16 not the position in the instant case.

17 The Defendant is relying on the brotherly relationship that he said existed between
18 them. However, this brotherly relationship is not sufficient to invoke the presumption
19 of advancement. So, on that score, the Defendant, having signed such a serious
20 document as has been exhibited, needed to show why the document was invalid and
21 could not be relied on for accuracy.

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1 22. In the pleading and in his evidence, the Defendant has advanced the idea that he was
2 under duress. The circumstances relied on include the allegation that his wife was
3 having a difficult pregnancy and he wanted to get the Plaintiff off his back. Duress, as I
4 understand it, involves some degree of compulsion and fear being exerted on someone
5 thereby causing that person to act in a manner that he would not have otherwise acted.
6 There ought to be some fear of personal suffering, actual or threatened. The person
7 causing the suffering or fear would have had to be acting illegally also. In this case,
8 there is no such situation. That being so, we are left with the position that an
9 accountant of 18 years standing has signed, without protest, a document indicating
10 indebtedness of a significant sum of money to his friend who, he claims, has been
11 extremely kind and nice to him over a period of years. The only source of enmity or
12 annoyance between them has been the Defendant's constant requests for loans to
13 satisfy personal and family needs both here and abroad. The Defendant even initialed
14 the document as regards the date when repayment was to commence. In my view, there
15 is nothing to invalidate the document. The Defendant has to be made to honour his
16 obligation.

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18 23. Accordingly, judgment is entered in favour of the Plaintiff as prayed.

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20 **.Dated this the 24th day of September 2015**

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22 **Mr. Justice Seymour Panton**
23 **Acting Judge of the Grand Court**