

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 306 of 2022

BETWEEN:

UNITED DISTRIBUTORS

CLAIMANT

AND

ARNALDO ISAIAH REYES

DEFENDANT

Appearances:

Rene Montero for the Claimant

Arnaldo Isaiah Reyes, the Defendant in person

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2023      December 14

2024      March 07  
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JUDGMENT

- [1.] **NABIE J.:** This is a claim for recovery of a sum of money owed by means of a promissory note executed by the defendant in favor of the claimant.
- [2.] Judgment is for the claimant in the sum of \$211,237.62 with interest at the rate of 1.5% per month from the 1<sup>st</sup> September 2020 until today's date.

**Background:**

- [3.] The claimant filed the claim form and statement of claim on 9<sup>th</sup> May 2022 as Anil Hotchandani doing business as United Distributors Limited against Arnold Isaiah Reyes.
- [4.] The defence was filed on 23<sup>rd</sup> June 2022.

- [5.] The claimant thereafter filed an amended claim form and amended statement of claim on 11<sup>th</sup> August 2022. The proceedings were amended to name the claimant as 'United Distributors Limited' and included at paragraph 3 in the amended statement of claim the following:
- “The Defendant ordered and received a large number of products from the Claimant and has refused and/or failed to pay for those products despite repeated request for him to do so. It was mutually agreed between the parties that the total sum owing by the Defendant to the Claimant as of August 2020 amounted to \$220,740.62. The Defendant further agreed to execute a promissory note in favor of the Claimant and the Claimant agreed with the Defendant to take the promissory note as payment.
- [6.] This matter came up for case management on 27<sup>th</sup> March 2023 and standard disclosure was ordered.
- [7.] On the 29<sup>th</sup> May 2023 this matter came up for report and the court ordered the filing and exchange of witness statements and objections thereto, as well as the filing of a joint pre-trial memorandum.
- [8.] The claimant filed witness statements by Anil Hotchandani, Lalit Kumar and Marcel Cardona on 23<sup>rd</sup> June 2023.
- [9.] No witness statements were filed by the defendant. The defendant is self represented and filed his own defence.
- [10.] The issues identified in the joint Pre-Trial Memorandum are as follows:
- (i) Whether the promissory note is payable by the defendant to the claimant.
  - (ii) Whether the defendant signed the promissory note under duress.
  - (iii) What is the sum, if any, owed by the defendant to the claimant.
- [11.] The trial of this matter took place on 21<sup>st</sup> November 2023. All the witnesses for the claimant were able to give evidence and was cross examined by the defendant. The defendant having not filed any witness statements was therefore unable to present any evidence at trial.
- [12.] The claimant filed written closing submissions on 14<sup>th</sup> December 2023 and the defendant filed written closing submissions on 13<sup>th</sup> December 2023.
- [13.] The claimant is a limited liability company incorporated under Chapter 250 of the Substantive Laws of Belize with its registered office situated at No. 16A Clarke Street, Orange Walk District, Belize. The defendant is a businessman who resides at Gibnut Street, Carmelita Village, Orange Walk District, Belize.
- [14.] On or about March 2018, the claimant and the defendant started doing business when the defendant would buy goods and products from the claimant. Thereafter verbally it was agreed between the parties for the defendant to take goods on consignment with payments to be made by various means, bank deposits or cash or cheques.
- [15.] This arrangement continued from around March 2018 to March 2020. The defendant would take goods on a weekly basis or more often. Over time, the defendant's debt to the claimant was increasing with the occurrence of bounced cheques and non- payment of goods.

[16.] Thereafter, the defendant made some payments on the outstanding money owed, at the same time he continued to take goods and supplies from the claimant.

[17.] Due to the outstanding monies owed the defendant signed a promissory note dated 1<sup>st</sup> August, 2020 and thereby agreed to pay \$220,740.62 to the claimant. The said promissory note expressly provided that the defendant would pay a fixed monthly sum of \$3,600.00 until the loan was paid in full.

[18.] The promissory note contained the following clauses relevant to this matter -:

“In the event of a default in payment of the principal sum or any interest due hereunder upon acceleration, redemption or maturity, the overdue principal and interest shall bear interest at the rate stated above plus an additional one and a half percent (1.5%) per month on the overdue amount which shall accrue from the date of such default to the date payment of such principal and interest has been made, Interest on any overdue principal payment and/or interest shall be payable on demand.

Maker hereby undertake to meet all legal and other costs associated with the establishment of the loan, and the maker shall be responsible for all collection costs, legal expenses, or attorneys fees expended in defending, protecting or safeguarding the Holder’s rights or interest in the Government taxes, and any other liabilities or obligations incurred by Holder as a consequence of the Holder’s entry into this Note.”

[19.] The defendant denies that he owes the sum of \$220,740.62. He contends that he was forced to sign the promissory note. That is the gist of the defence. The defendant has not complied with the terms of the agreement and never made any monthly payments.

## **ISSUES NOS. 1 and 2**

**Whether the Promissory note is payable by the defendant to the claimant?**

**What is the sum, if any, owed by the defendant to the claimant?**

[20.] It is undisputed that the promissory note was signed by the defendant in favor of the claimant.

[21.] The promissory note was exhibited to the witness statement of Anil Hotchandani. The terms of the said instrument are clear and unequivocal. As the claimant contends in his submission-

“As such, the promissory note being an unconditional promise in writing by the Defendant to pay the Claimant the sum of \$220,740.62 on demand and being indorsed by the Defendant is a valid note according to the Act.

[22.] Promissory Notes are governed by the Bills of Exchange Act. The sections 85 and 90 state as follows:

“85.—(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within Belize is an inland note, and any other note is a foreign note.

90. The maker of a promissory note, by making it, (a) engages that he will pay it according to its tenor; (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse."

[23.] With regard to payments the Promissory Note provided that the defendant was to pay within fourteen (14) days of demand by the claimant, the principal sum of \$220,740.62 together with interest thereon accruing daily at the rate of 1.5% per month on that said amount or at the default rate of interest on any overdue and outstanding balance owed on the said amount. But until such demand is made the defendant was to pay monthly payments of \$3600.00 starting from 1<sup>st</sup> September 2020 and to be continually paid on the first day of each consecutive month until the amount was fully repaid, no later than 1<sup>st</sup> August 2027.

[24.] The evidence of Anil Hotchandani was not challenged or discredited by the defendant in cross-examination. It is Mr. Hotchandani's evidence that despite his demand for payments of the monies owed, the defendant has just not complied with same.

[25.] Anil Hotchandani evidence is that in fact several smaller payments were made. This was corroborated by Lalit Kumar. These payments amounted to \$9503.00. The defendant never paid the fixed monthly sum of \$3600.00 as set out in the Promissory Note. The defendant was therefore in breach of the agreement in the first month he signed it.

[26.] The claimant amended paragraph 3 of his statement of claim as follows:

" The Defendant ordered and received a large number of products from the Claimant and has refused and/or failed to pay for those products despite repeated request for him to do so. It was mutually agreed between the parties that the total sum owing by the Defendant to the Claimant as of August 2020 amounted to BZ\$220.740.62. The Defendant further agreed to execute a promissory note in favor of the Claimant and the Claimant agreed with the Defendant to take the promissory note as payment."

[27.] The defendant never amended his defence and thus accordingly and I agree with the claimant that the above is deemed to be admitted.

[28.] The defendant failed to discredit Mr. Hotchandani and Mr. Kumar in cross examination. In fact his questions centered around the defendant's gambling and how many chips he had in possession when Mr. Hotchandani saw him at a casino. The defendant also asked Mr. Lalit Kumar about the

reason why the claimant continued to extend a line of credit to him after the occurrence of bounced cheques and why Mr. Kumar was of the view that he, the defendant was trustworthy and continued to supply him with products.

- [29.] The defendant was unable to present his case having not filed any witness statements.
- [30.] Mr. Hotchandani's evidence, regarding the sum of money owed was not challenged in cross examination, and that the sum is \$211,237.62 that being the amount now owed after the deduction of the smaller payments amounting to \$9503.00 as indicated aforesaid. Further the interest rate also undisputed is 1.5 % per month. The promissory note and the defendant's detailed accounts were exhibited to Mr. Hotchandani's witness statement.
- [31.] The Court finds that the promissory note has been made in exchange for valuable consideration. Further, the promissory note is an acknowledgement of the debt owed and an agreement to repay the sum of \$220,740.62. In the premises the claimant is entitled to the amount owed at a rate of 1.5% per month from 1<sup>st</sup> September 2020 to date. The defendant is bound to pay the legal and other expenses associated with the establishment of the promissory note and the costs to the claimant in safeguarding his rights in the note, government taxes and other obligations. The claimant submits that this is 20% of the amount owed.

### **ISSUE NO. 3**

#### **Whether the defendant signed the promissory note under duress.**

- [32] It is well known that the defences available on a claim for the enforcement of a bill of exchange or promissory note may include fraud or duress or absence of consideration. In the matter of **Imraz Ali v Kazim Ali** CV 2011-01707 (from Trinidad and Tobago), Rahim J. stated at paras 49 and 50 of the judgment:

"49. Bills of exchange and promissory notes, unlike other forms of simple contract are presumed to stand upon the basis of a valuable consideration: see s.30 of the Bills of Exchange Act Chap. 82:31. The effect of the presumption, therefore, is to shift the burden of proof from the claimant who relies upon the instrument to the defendant who impugnes it. But when it is admitted or proved that the acceptance, issue or subsequent negotiation of the instrument is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has been given for the instrument in good faith: Halsbury's Laws of England (5<sup>th</sup> Edition) Volume 48 (2008) para 1407.

50. Valuable consideration has been defined as some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other at his request: Halsbury's Laws of England (5<sup>th</sup> Edition) Volume 22 (2012) para.309."

- [33.] It was pleaded in the defence, that the promissory note was signed under duress. The defendant not being able to call any witnesses, I agree with the claimant that there is no evidence to support the allegation made by the defendant that he signed the promissory note under duress.
- [34.] The issue of the duress was in any event never raised during the cross examination of the claimant's witnesses. Therefore Mr. Hotchandani's evidence stands that the defendant signed the promissory note willingly. He stated that he did not threaten or force nor did he see anyone threaten or force the defendant to sign the promissory note.
- [35.] Mr. Cardona, attorney at law, also made a witness statement and was cross examined by the defendant. This issue of duress was also not raised during the cross examination of Mr. Cardona. Accordingly the evidence of Mr. Cardona stands, he also deposed that there was no undue influence or pressure exerted by anyone for the defendant to sign the promissory note. His evidence is that the defendant took time to read the promissory note, he also made inquiries of the interest which Mr. Cardona explained to him. He further deposed that the defendant consented and agreed to sign three (3) copies of the promissory note. Mr. Cardona was also a witness to the promissory note.
- [36.] I am of the view that the claimant's witnesses were credible and accordingly, I find that the defendant signed the promissory note of his own volition.

**Disposition:**

[37.] It is hereby ordered that:

1. Judgment is for the claimant in the sum of \$211,237.62, with interest at the rate of 1.5% per month from the 1<sup>st</sup> September 2020 until today's date.
2. The defendant shall pay the costs of the claim on a prescribed basis.

**NADINE NABIE**  
High Court Judge