



[2022] JMSC Civ 77

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV04304

BETWEEN	ROY ANDRADE	CLAIMANT
AND	RAVI CHATANI	DEFENDANT

IN CHAMBERS

Mrs Pauline Brown-Rose instructed by Mrs Kerry-Ann Sewell for Simone Mayhew, Q.C.

Defendant absent and unrepresented

April 25, 2022 and May 26, 2022

Judgment on admissions- Admission is to come from defendant and must be in clear terms.

ORR, J (AG)

BACKGROUND TO THE APPLICATION

[1] In his claim form filed on December 12, 2017, the claimant, Roy Andrade, claims the sum of US\$44,000.00 from the Defendant, Ravi Chatani, a businessman. Mr. Andrade alleges that he loaned Mr. Chatani the sum of US\$20,000.00 in October 2004 to retrofit his new store in Montego Bay, Saint James.

[2] He also states that the parties agreed that this sum was to be repaid over a seventy-two-month period, with interest at 15% per annum. Mr. Chatani he said

made sporadic payments such that the loan remained unsatisfied in 2010 by which time it should have been settled pursuant to their agreement.

- [3] Mr. Andrade further alleges that Mr. Chatani made a further proposal for the settlement of his indebtedness which he accepted in around January 2010, at which time the debt was US\$23,790.00 inclusive of interest.
- [4] He said that the Defendant only made one payment despite acknowledging his indebtedness and making promises to pay, the loan remained outstanding.
- [5] The Defendant did not file an Acknowledgement of Service or a Defence to this claim.
- [6] On December 15, 2021, a Notice of Application to enter Judgment on Admissions was filed on behalf of the Claimant in the sum of US\$15,500.00. The Claimant's affidavit in support of the application outlined that after this claim was served on the Defendant, he approached the Claimant's Attorneys-at-law with a further proposal to settle his indebtedness.
- [7] A new agreement was negotiated between the parties and a copy of the signed agreement was exhibited to his affidavit. This new agreement outlined that the Defendant would pay the Claimant US\$20,000.00 in full and final settlement of this claim. This sum was to be satisfied with a lump sum payment of US\$2,000.00 on January 15, 2019, and thereafter monthly payments of US\$500.00 commencing on February 28, 2019 until the balance was settled in full.
- [8] A final term of this new agreement was that Mr. Chatani would be discharged from all further claims and liability in relation this claim 2017HCV04304 **Roy Andrade v Ravi Chatani**.
- [9] Mr. Andrade also outlined a schedule of the payments received from the Defendant pursuant to this last agreement and the dates these payments were received. He

said that Mr. Chatani had paid a total of US\$4,500.00 between February 2019 and February 2020.

- [10] Also exhibited to this affidavit was correspondence purportedly from Mr. Chatani on which he also sought to rely. The contents of this letter are important and I have outlined same below:

Re: Roy Andrade

28/2/19

Dear Symone

Re: ROY ANDRADE

I am very sorry for getting this to you so late- Just been under a tonne of pressure. Nonetheless I stand by my commitment to see this out.

Formal letter to follow. I'm shooting again this afternoon and didn't want another day to go by without sending this off to you.

Please acknowledge receipt in due course.

Regards

Ravi Chatani

- [11] Mr. Andrade also said that despite follow up messages from his Attorney-at-law, the Defendant made no payments after February 2020 and now owes US\$15,500.00 pursuant to the settlement agreement. He asked that the court enter judgment against the Defendant in the sum of US\$15,500.00 with interest at a commercial rate from the date of the settlement agreement.

- [12] An amended Notice of Application to enter Judgment on Admissions was subsequently filed on April 22, 2022. The amount claimed for the judgment was amended to read US\$14,000.00.
- [13] In her brief oral submissions, counsel invited the court to consider the Claimant's affidavit evidence in support of the application exhibiting the loan agreement together with the letter from the Defendant, to find an admission from the Defendant.
- [14] Counsel submitted that the court should accept the Claimant's evidence as to the amount presently owed by the Defendant, together with the letter from the Defendant as the Defendant's admission.
- [15] She further submitted that the Defendant having been served with this application and having failed to respond or attend the hearing, the application was unchallenged and the court should make the order prayed in the Notice of Application.

THE LEGAL FRAMEWORK

- [16] Where a party has admitted a claim or part of a claim in correspondence or pleadings, any other party may apply for judgment on admissions to be entered against that party. It would not be in keeping with the overriding objective of saving expenses and indeed a waste of the parties' and the court's resources to proceed to a trial on the admitted issues.
- [17] Part 14 of the CPR encapsulates the steps that a party wishing to admit part or all of a claim must take, and the procedure that should follow after this admission is made. Relevant to this claim is Rule 14.1 (1) which provides that:

(1) *"A party may admit the truth of the whole or any part of any other party's case."*

- (2) *“A party may do this by giving notice in writing (such as in a statement of case or by a letter) before or after the issue of proceedings”.*

CPR 14.4 further provides:

1. *Where a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission*
2. *The terms of the judgment shall be such as it appears to the court that the applicant is entitled to on the admission.”*

[18] The wording of 14.4(2) is important in that the court must only enter the judgment against the party on the sum he has admitted. The court is therefore only able to consider the information contained in that party’s admission, whatever form the admission may take.

[19] In **Technistudy Limited v Kelland** [1976] 1 WLR 1042 the court was asked to consider an appeal against an order of the lower court granting a judgment on admissions.

[20] The court considered R.S.C. Order 27.r 3 which is similar to our CPR 14.1. It provides:

“Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the court may give such judgment or make such order, on the application as it thinks just. An application for an order under this rule may be made by motion or summons.”

[21] Lord Roskill, as did the other members of the court, in allowing the appeal, said that there was no clear admission on the pleadings that the contractor was entitled to the sum claimed. He went on to say at page 1045 H that:

“The reason why the order was wrong is that there is no clear admission of any kind, either in the pleadings or in correspondence, which entitled him to make the order that he did under R.S.C., Ord.27, r.3. As the cases show, an order should only be made under that rule if it is plain that there are either clear express, or clear implied admissions...”

- [22]** The letter on which the Claimant seeks to rely as evidence of an admission by the Defendant could be taken no higher than an apology by the Defendant, and his intention to honour “a commitment to the Claimant”, whatever that commitment may be. There is no expression or any clear admission of any amount owed by the Defendant. There is no figure included in the letter relied on by the Claimant which the court could use to enter judgment against the Defendant.
- [23]** The agreement which is exhibited to the affidavit is only evidence of a loan as between the parties.
- [24]** The evidence as to the payments made by the Defendant and the outstanding balance all came from the Claimant himself. This evidence could not be relied on to enter a judgment on admissions as there is no admission from the Defendant as to any sum owed.
- [25]** I cannot accept counsel’s submissions that the Claimant’s evidence be considered, as the rule is clear - the admission must come from the Defendant in clear and unambiguous terms. In this case more particularly so, because the court is not hearing from the Defendant.
- [26]** While the letter indicates that Mr. Chatani is acknowledging a commitment to the Claimant, there is no indication as to what this commitment is and the amount of this commitment from his letter. This evidence has been supplied by the Claimant and is unreliable on an application to enter judgment on admissions against a Defendant.
- [27]** For the foregoing reasons I have refused the Claimant’s application to enter judgment on admissions in the sum of US\$14,000.00 against the Defendant
- [28]** In the result the order of the court is as follows:
1. The Claimant’s application to enter judgment on admissions against the Defendant is refused.

STEPHANY ORR

Pusnie Judge (Ag)