

Court of King's Bench of Alberta

Citation: Hansen v Felgate, 2024 ABKB 419

Date: 20240710
Docket: 2209 00146
Registry: Peace River

Between:

Aaron Hansen

&

Donna Hansen

Plaintiffs

- and -

Nicholas Felgate

&

Andrea Felgate

Respondents

**Memorandum of Decision
of the
Honourable Justice C.D. Millsap**

[1] Aaron and Donna Hansen seek enforcement of a loan agreement between themselves and the Defendants, Nicholas and Andrea Felgate, by way of Summary Judgment. The Felgates take the position that they are not required to pay back the loans principal or interest.

[2] Since there is more than one party sharing a last name, the parties will be referred to individually throughout this decision by their first name to ensure there is clarity with regard to who is being referenced. No disrespect is intended by this.

[3] Donna Hansen is the mother of Aaron Hansen, Nicholas and Andrea Felgate are married spouses. Aaron and Nicholas attended college together in 1999 and remained acquaintances since that time.

[4] In 2019, pursuant to numerous discussions between Aaron and Nicholas, Aaron loaned Nicholas \$20,000 and Donna issued loans to Nicholas totalling \$70,000.00. The intended use of the loaned funds was not specified in the agreements; however, the apparent understanding was that Nicholas would invest the money at his discretion and keep any profit earned from that investment. The terms and conditions of the loan agreements were reduced to writing in promissory notes by Nicholas, that he signed and forwarded to the Hansens. The promissory notes were never signed by the Hansens due to a typo on one of the pages, they did however forward the funds in accordance with the agreements.

[5] The funds were sent in 3 installments:

- 1) \$20,000.00 electronic transfer from Aaron's bank account to Nicholas's TD VISA account on May 27, 2019,
- 2) \$20,000.00 electronic transfer from Donna's bank account to Nicholas's TD VISA account on May 28, 2019, and
- 3) \$50,000.00 electronic transfer from Donna's bank account to Andrea's TD bank account on May 28, 2019.

[6] Initially the Defendant(s) complied with the repayment terms and schedule with cheques and electronic transfers sent from the bank accounts of Nicholas and Andrea to both Aaron and Donna. Regular payments however soon declined, then stopped altogether. The Hansens initially allowed for a deferral of the repayments but once it became apparent to them that the money was likely not going to be repaid, they commenced this action.

[7] The Hansens now seek Summary Judgment for the principal amount of the loans plus interest arguing that there are no issues that require a full hearing of the matter.

Issues

[8] The main issue to be determined in this summary judgment application is whether there is a genuine issue requiring a trial, see rule 7.2 and 7.3 of the *Alberta Rules of Court*, Alta Reg 124/2010. An application for summary judgment will be successful if a just and fair determination can be made without the necessity of trial, as stated by Justice Karakatsanis in *Hryniak v. Mauldin*, 2014 SCC 7 at para 49:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows

the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[9] The facts are for the most part not in issue. The money was forwarded from the Plaintiffs to the Defendants as outlined above. These transfers were pursuant to an understanding that the money would be paid back with interest over a 36-month term. The Defendants do not dispute this, even if they did, it is an obvious conclusion from the evidence.

[10] The issues in dispute are whether the Defendant Nicholas had the capacity to contract at the time he entered into the agreements with the Plaintiff and whether Andrea Felgate was a party to the loans.

Decision - Capacity

[11] Nicholas Felgate had the capacity to enter into these contracts. The defence of “lack of capacity” is without merit and this issue is readily determinable by summary judgment.

[12] The Defendants take the position that Nicholas suffers from a serious medical condition that has required him to take hydrocortisone as well as other medications to offset the effects of his Congenital Adrenal Hyperplasia. On the material before the court, there is little room for doubt that Nicholas suffers from this condition and that his prescribed dosage of hydrocortisone was at times excessive; and, that he was subject to an error of dosage at the time he entered into the agreements with the Hansens.

[13] They further argue that this error in dosage resulted in an adverse reaction that rendered Nicholas incapacitated. Nicholas deposes that he experienced numerous symptoms of corticosteroid overdosing, including psychosis. While he has presented no evidence of receiving a diagnosis of corticosteroid psychosis by a medical professional, he asks the Court to make the same inference that he seems to make in his January 29, 2024, Affidavit at paragraph 25, wherein he states, “I cannot explain how I believed what I did [having millions of dollars] other than a state of psychosis...” Respectfully, the Court cannot come to this same conclusion.

[14] The evidence establishes that Nicholas MAY have been suffering from mania and/or psychosis at the material time, but it is equally possible that he was not. Importantly for this analysis, expert medical evidence that pertains directly to Nicholas was not presented. Nicholas did present letters authored by a treating physician, Dr. Peter Grundy (Exhibit F, January 29, 2024, Affidavit). In this letter Dr. Grundy states, “Apparently he has had quite a bit of psychological difficulty, some of it which at least he thinks may have been related to the unusually high doses of hydrocortisone he was receiving in the past.” This letter appears to be the closest evidence Nicholas has provided to having a diagnosis that may assist him: it is not a diagnosis.

[15] The Grundy letter does not establish the existence of psychosis, nor does it do anything more than establish that even Nicholas was uncertain about the impact his dosing was having on his mental health.

[16] There is a presumption that an adult person has the capacity to contract as stated in *Hittinger v Turgeon*, 2005 ABQB 257 at para 22:

There is a presumption in law that an adult has the capacity to contract. The burden is on anyone attempting to show a lack of capacity.

[17] Therefore, in this case, the Defendants bear the onus of proving a lack of capacity on a balance of probabilities.; *Chovalo v Chovalo*, 2018 ONSC 311 at para 20, *Lobban v Wilkins*, 2014 ABQB 653 at para 40. However, a contract may be invalidated for lack of capacity if one party lacks the ability to understand the nature of the contract, or one party lacks the ability to understand the contract's specific effect in the circumstances: *RMK v NK*, 2020 ABQB 328 at para 133.

[18] Of further persuasion the *Bills of Exchange Act*, RSC 1985, c B-4, on the use of promissory notes as the instrument of a loan agreement, indicates:

185. The maker of a note, by making it,

(a) engages that he will pay it according to its tenor; and

(b) is precluded from denying to a holder in due course the existence of the payee and **his then capacity to endorse**.

[19] Even if Nicholas had proven to any degree that he in fact suffered from psychosis at the time of the contract, his position is that his psychosis caused him to believe that he was wealthier than he otherwise truly was. There is no evidence to support the notion that this psychosis would have had any impact on his ability to understand the contract or its effects, quite the opposite is established by the evidence. Notwithstanding his purportedly psychotic views about his own wealth or ability to create wealth, he clearly knew he was borrowing money, knew he would eventually have to pay it back and understood that he would have to pay back more than he borrowed.

[20] Nicholas's complaint of possible psychosis at the time of borrowing the money does not establish a lack of capacity. His behaviour, communications, and recognition that he was failing in his obligations all speak to the fact that he had a very good understanding of the agreement he made with the Hansens.

[21] Even if he did not understand the nature or consequences of the agreement, the contract is not automatically voided; *RMK v NK* at para 134. It remains incumbent on Nicholas to show that the Hansens had actual or constructive knowledge of this lack of capacity; *RMK v NK* at para 140. There is simply no evidence of this. In all his communication with the Hansens, Nicholas was well-spoken, articulate, and confident. He claimed to be able to create wealth and he appeared to have the lifestyle to support that. While there were many red flags that should have sent a potential lender or investor running, these red flags touched upon the honesty and integrity of Nicholas and not his mental health or capacity.

[22] Nicholas argues that it should have been obvious to the Hansens that he lacked capacity. It should have been obvious to the Hansens at the time of their loan that Nicholas was a high-risk investment and potential fraudster, but the evidence does not establish that he was clearly suffering from psychosis.

[23] The Defendants' argument that Nicholas lacked capacity fails. They have not established on a balance of probabilities that he suffered from psychosis or any other mental disorder that would have stripped him of his capacity to contract.

[24] The evidence establishes that Nicholas Felgate voluntarily entered into contracts with the Plaintiffs. The terms of those contracts, as drafted by Nicholas, were clear and unambiguous.

Nicholas has failed to repay the loan and the agreed upon interest charges: he is liable. The application for Summary Judgment against Nicholas Felgate succeeds.

Decision – Andrea as Party

[25] Summary Judgment against Andrea Felgate cannot be granted. The evidence before the Court does not permit this finding of fact to be made on a summary basis. Applying the same legal test for Summary Judgment as articulated above, there is a legal issue that requires a full trial for a fair and just determination.

[26] Andrea was at all times married to Nicholas. She asserts that Nicholas's business dealings, including the Hansen loans were solely his business and this part of their life was not shared. She was not part of the negotiations regarding the loan, and she is not named on the loan agreements. Her status as Nicholas's spouse does not in and of itself make her a party to Nicholas's contracts. The evidence establishes that the account some of the loan money went into was a chequing account in Andrea's name only and some payments made to the Hansens were from that same account.

[27] The application is to make Andrea jointly and severally liable for the entirety of the loan and interest. It would be difficult to imagine that Andrea would not be held liable for the repayment of at least the \$50,000.00 principal that was deposited into her account, however her liability beyond the mere repayment of the money deposited directly into her bank account is not obvious.

[28] The Plaintiffs argue that Andrea became a party to the entire contract when she accepted the loan money into her account and made payments toward the interest from that same account. This fact alone may make her a party to the entire contract, a portion of it, or none of it. The determination of whether Andrea was a party to the contract and to what extent cannot be made on this evidence and a full trial is necessary to ensure a proper finding of fact is made in this regard.

[29] The summary judgment application against Andrea fails and the matter is remitted to trial to determine the extent of Andrea's liability in this matter.

Damages

[30] Having granted summary judgment against Nicholas the Court must now determine the damages to be awarded to the Plaintiffs. The Statement of Defence filed in this matter concedes that the loan agreements in question were made and that they are currently in default. The agreement is clear, the principal amount plus interest is to be paid to the Plaintiffs by the Defendant Nicholas. To date, \$15,540.00 in interest has been paid.

[31] The following calculations were used to determine the total amount owed to the Hansen's by Nicholas and are in keeping with the loan agreements which are identical except for the principal amounts.

\$90,000.00 principal investment at an annual interest rate of 30% = \$27,000.00.

\$27,000.00/12 months = \$2,250.00 interest per month

\$2,250.00 x 37 months = \$83,250.00

Therefore, the contractual interest payable for the first 37 months, at a simple interest rate of 30% annually, is \$83,250.00.

As per Clause 5 of the Promissory Notes the interest rate increases if the loan is defaulted on. As a result, interest payable for months 38 forward is to be calculated at 40% per annum: the triggering date for the increase in interest is June 30, 2022. According to the loan agreement, the interest owing continues until the full payment is received by the Lender; however, it is the direction of this Court that the end of the accumulation of interest shall be the date of this Summary Judgment, July 10, 2024.

\$90,000.00 principal investment at a simple interest rate of 40% per annum = \$36,000.00.

\$36,000.00/365 days = \$98.63 interest per day

June 30, 2022, to July 10, 2024, = 2 years and 10 days

$(\$36,000.00 \times 2 \text{ years} = \$72,000.00) + (\$98.63 \times 10 \text{ days} = \$986.30) = \$72,986.30$

\$90,000.00 principal + \$83,250.00 (37 months interest) + \$72,986.30 (default interest) = \$246,236.30

Thus, according to the loan agreements entered into by the Defendant the total owing to the Hansens is \$246,236.30 less the previously paid \$15,540.00 interest leaving a total amount of \$230,696.30 payable immediately.

[32] For greater certainty, in case the above calculations are incorrect, it is the finding of this Court that the contract is valid, and the Defendant Nicholas is ordered to pay the principal amount to the Plaintiffs plus the interest as contemplated by the Promissory Notes attached as exhibit "Z" to the January 29, 2024, Affidavit of Nicholas Felgate. Because the contract is valid and contemplates a remedy for late payment, the interest owing on this judgment is that included within the agreement as opposed to pursuant to the *Judgment Interest Act*, RSA 2000, c J-1.

Heard on the 9th day of January, 2024 and the 24th day of May, 2024.

Dated at the Town of Peace River, Alberta this 10th day of July, 2024.

C.D. Millsap
J.C.K.B.A.

Appearances:

Aaron Hansen: Self-represented Plaintiff
&
Donna Hansen: Self-represented Plaintiff

Nicholas Felgate: Self-represented Respondent
&
Andrea Felgate: Self-represented Respondent