Neutral Citation Number: [2020] EWHC 1039 (QB)

Case No: QA-2019-000170

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**On appeal from the County Court at Central London**
**HHJ Saggerson**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30th April 2020

**Before** :

**MRS JUSTICE FARBEY**

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**Between :**

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| **IDRIS RAMISE-EDWARDS** | **Claimant/ First Respondent** |
| **- and –** | |
| **(1) KOLAWOLE BABATUNDE IDOWU** | **First Defendant/ Appellant** |
| **(2) PATRICK OKONMAH** | **Second Defendant/ Second Respondent** |

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**Mr Phillip Aliker** (instructed by **Fitzpatrick & Co**) for the **Appellant**
**Mr Sami Rahman** (instructed by **Dillex Solicitors**) for the First Respondent
The Second Respondent neither appeared nor was represented

Hearing date: 4 February 2020

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 4:00pm on Thursday 30 April 2020.

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**Mrs Justice Farbey :**

1. This is an appeal, brought with the permission of Jefford J, against the order of HHJ Saggerson sitting at the County Court at Central London on 21 May 2019. The judge ordered (among other things) that the appellant pay the first respondent (who was the first defendant below) the sum of £45,778.21 representing money owed under a contract. He made no order against the second respondent (Mr Patrick Okonmah) who was the second defendant below and who has not needed to play any part in the appeal. For ease of reference, I shall refer to the appellant as the defendant and to the first respondent as the claimant.

2. Permission to appeal was granted on two grounds. The first ground concerns the judge's conclusion that the claim was brought within the relevant limitation period as opposed to being time-barred. The second ground concerns a payment made by the defendant to a third party in the sum of £8,303. The defendant submits that this payment was made on behalf of the claimant so that the defendant's liability ought to be reduced by the same amount. At the hearing before me, the claimant conceded this ground. It follows that I do not need to deal with the second ground in detail.

**Factual background**

3. The judge described the case as an "unfortunate tale" because it relates to the breakdown of friendships. It is indeed a case of friends trying to help each other in a way which, sadly, went wrong. The claimant and defendant were close friends and also had a solicitor/client relationship. As found by the judge, the claimant paid the defendant £350,000 on 9 May 2008. It was the claimant's case before the judge that this sum represented a loan from the claimant to the defendant for a fixed period of six months.

4. It was the defendant's case that he had brokered the loan and received the money on behalf of another friend of the parties, Bruce Ighalo. It was at all material times known by the claimant that the money was intended as a loan to Mr Ighalo who had fallen on bad times. The defendant had received the money only as Mr Ighalo's agent and had assumed no liability for its repayment, which fell entirely on Mr Ighalo.

5. There was no written loan agreement of any sort but it was common ground that the cause of action for the recovery of the loan would have accrued on 10 November 2008. It follows that (absent other factors) the six-year limitation period on a simple contract for the advance of the loan would have expired on 11 November 2014. The claim was issued in the County Court on 10 October 2017 – outside that six-year period.

6. The trial before the judge took place on 20 and 21 May 2019. He heard evidence from the claimant, the defendant and Mr Okonmah. Mr Ighalo did not give evidence. A witness statement by him had been served late and the judge refused to extend time.

7. The evidence and counsel's submissions addressed both the limitation period and the substantive claim which the judge considered together in a detailed ex tempore judgment. He introduced the limitation point at paragraph 14 of his judgment as follows:

> "Leaving all the other issues, and there are several, for example, who provided the money? Who received the money? On behalf of whom did somebody receive the

> money? For what purpose was the money received and how much is outstanding? All these are factual issues that I am going to have to grapple with, but for limitation purposes, let us just suppose that this was a personal loan from the claimant to the first defendant."

8. In considering the limitation period, the judge took into consideration the parties' correspondence about repayment. On 12 August 2014, the defendant had sent the claimant an email attaching a schedule of payments which the defendant maintained he had made to the claimant. On 13 August 2014, the claimant sent an email to the defendant attaching an annotated version of the schedule. The email said (retaining the original wording):

> "The items highlighted in red I am disputing. I need dates and account those funds were paid into my account to cross check, I never got cash from. I know for a fact you have not paid 236,000 pounds out of the 350,000 pounds. Thanks."

9. On 20 August 2014, the defendant sent an email to the claimant saying:

> " I am aware that things are difficult for most of us now but I never thought there would be any reason for us to wrangle over amounts of money.
>
> I kept a record of monies repaid to you at the time in the hope that Bruce would repay the money and for me to recover whatever I had paid from him. Nobody ever thought that things would turn out the way they have. As I mentioned to you I actually gave Bruce a copy of the breakdown last year for him to be aware of what needed to be repaid.
>
> I am sure you cannot be implying that I can make up almost £90,000 payments that you claim are disputed. I thought in asking for the breakdown it was to check it against your statements/records. For instance it was exactly £90,000 or a bit more that was first repaid?
>
> In asking for dates it would appear that you have not checked the items against your records. How will it look if the evidence confirms the payments.
>
> …
>
> In view of your disputing some of the payments, I am making arrangements to obtain past bank statements so that evidence can be shown of what has been paid.
>
> …
>
> Kola".

10. The judge found that the 20 August email was not without ambiguity but held that its objective effect was "quite clear". The defendant had signed it. As to its subject matter, the email was clearly referring to the defendant's schedule. The judge held:

> "21….it is undoubtedly, when looked at objectively, a document signed in email terms by the…defendant acknowledging that these payments as appear on [the schedule], were paid to the claimant in the context of and related to and attributable

> to the loan that is the centrepiece of this action. There is no other logical objective or reasonable explanation as to what this email is about.
>
> 22. I am satisfied that, as of 20 August 2014, the… defendant acknowledged in writing and signed that acknowledgement to the effect that the loan or part of it remained outstanding. There can be no other explanation.
>
> 23. It is not necessary for the total amount of the loan to be mentioned in the written acknowledgment. It is sufficient if, objectively speaking as a matter of construction, acknowledgement of the loan itself is made and in my judgment, that is sufficient in this case to amount to a written acknowledgement that the loan was made and has been repaid in tranches as the…defendant maintains from the schedule."

11. The judge construed the 20 August email in the context of, in particular, the schedule that had been attached to and the subject of the earlier emails, saying that the schedule demonstrated that the acknowledgment was referable to the loan in question. The claimant had demonstrated that there had been an acknowledgment that the balance of indebtedness remained outstanding. Accordingly, the limitation period was (in the judge's words) "kick-started" under sections 29 and 30 of the Limitation Act 1980. He concluded:

> "That makes the issuing of proceedings on 10 October 2017 in time for the purposes of the refreshed limitation period and the defendant's defence insofar as it maintains that the action is statute-barred, is not a valid one and fails."

12. Having held that the claim was not statute-barred, he went on to conclude that the defendant had repaid all but £45,778.21 of the loan by the date of the trial and he gave judgment for the claimant in that amount.

## Legal framework

13. By virtue of CPR 52.21(1), this appeal is not a rehearing but is limited to a review of the judge's decision. The appeal stands to be allowed only if the judge's decision was (a) wrong; or (b) unjust because of a serious procedural or other irregularity (CPR 52.21(3)).

14. Section 29(5) of the Limitation Act 1980 makes provision for the fresh accrual of a cause of action if a person acknowledges or makes part payment of a debt:

> "(5) Subject to subsection (6) below, where any right of action has accrued to recover—
>
> (a) any debt or other liquidated pecuniary claim; or
>
> (b) any claim to the personal estate of a deceased person or to any share or interest in any such estate;
>
> and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it the right shall be treated as having accrued on and not before the date of the acknowledgment or payment."

15. Section 30 of the Act makes formal provisions as to acknowledgments and part payments:

> "(1) To be effective for the purposes of section 29 of this Act, an acknowledgment must be in writing and signed by the person making it.
>
> (2) For the purposes of section 29, any acknowledgment or payment—
>
> (a) may be made by the agent of the person by whom it is required to be made under that section; and
>
> (b) shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made."

16. In order to constitute an acknowledgment under section 29(5), the debtor must acknowledge both his indebtedness and his legal liability to pay the claim in question (*Surrendra Overseas Ltd v Government of Sri Lanka* [1977] 1 WLR 565, 575D-E.

17. Whether a statement amounts to an acknowledgment is a question of construction. Decided cases are therefore of limited value because a "decision on one debtor's words is not much help in construing another's" (Chitty on Contracts, 33rd Ed, 28-096). Nevertheless, it is well-established by case law that the debtor's statement must be considered as a whole: the creditor is not entitled to pick out parts and ignore others (*Surrendra Overseas Ltd*, above, 575G-H). Extrinsic evidence is admissible not only to identify the debt and to ascertain its amount but also to "link one document with another (so that when read together there is an acknowledgement)" (Chitty, above, 28-095). In *Ross v McGrath* [2004] EWCA Civ 1054, para 21, the court asked what would reasonably be understood by the recipient of the debtor's statement in the light of its language construed in its context.

**The parties' submissions**

18. On behalf of the defendant, Mr Phillip Aliker submitted that the judge was wrong to find that the defendant's email of 20 August 2014 was an acknowledgment of the claim by the defendant within the meaning of section 29(5) of the 1980 Act. The email should be construed objectively without reference to extrinsic evidence, as otherwise there would be no legal certainty as to its meaning. Read on its own (without reference to other evidence that the judge had heard during the trial) and considered as a whole, the 20 August email was neither an admission by the defendant of the debt nor an acknowledgement of his liability to pay.

19. Mr Aliker submitted that, far from construing the email in an objective way, the judge had taken a subjective approach. He may have been influenced by the rest of the evidence in the trial – relating to issues other than limitation – because this would have been in his mind when giving judgment.

20. Mr Aliker submitted that, on an objective and reasonable construction, the email stated that the debt was that of Mr Ighalo; that Mr Ighalo had a legal liability to repay that

debt; and that the defendant had made payments or given credit on behalf of Mr Ighalo as set out in the schedule. There would have been no reason for the defendant to have mentioned Mr Ighalo in the email if Mr Ighalo had nothing to do with the debt and no liability to repay it. The judge had failed to ascertain whether, on the proper construction of the email, the defendant had acknowledged the debt on behalf of, or as an agent for, Mr Ighalo. The email ought to have been construed as a denial of the defendant's liability and as an averment of Mr Ighalo's liability.

21. As the email could not reasonably be construed as meaning that the defendant admitted the debt as his and that he had a legal liability to pay it, it did not meet the requirements of a personal written acknowledgment under section 29 of the 1980 Act. It was at its highest an acknowledgement by the defendant as agent of Mr Ighalo within the meaning of section 30(2)(a) of the Act.

22. Mr Aliker emphasised the judge's observation that the material parts of the email were not without ambiguity. As it was ambiguous, the email could not amount to "an express and unequivocal admission of the existence of the debt" which he submitted was a necessary condition of an acknowledgment under the statute (*Bradford & Bingley plc v Rashid* [2006] UKHL 37, [2006] 1 WLR 2066, para 36).

23. In the absence of an acknowledgment of the claim by the defendant - and in light of the judge's finding that the defendant did not make any part payments relevant to limitation under section 29(5) - the claim was statute-barred. As that was a complete answer to the claim, judgment should not have been entered for the claimant.

24. On behalf of the claimant, Mr Sami Rahman submitted that the judge was correct to construe the 20 August email as the acknowledgement of a debt by the author of the email. A third-party debt may have been in the background but the judge was entitled to treat it as one of many background features of the case and to focus on the meaning of the email.

25. The judge could not properly be said to have taken a subjective approach or to have been unduly influenced by evidence at trial on other issues. It was plain from his judgment that he had considered the limitation point on its own and on the correct legal basis. By raising the agency point, the defendant was inviting this court to revisit the relationship between the claimant, the defendant and Mr Ighalo. Given that an appeal to this court is a review and not a rehearing, that was an impermissible approach. It would involve the court in a reassessment of evidence going well beyond the 20 August email. The judge had read the various emails in context but, in doing so, he had not resorted to extrinsic evidence beyond linking the emails together which was permissible.

## Analysis and conclusions

26. I have some sympathy with the defendant's position that the judge's observation that the email was ambiguous should mean that it cannot constitute an express and unequivocal admission of the debt. However, I have come to the view that, by referring to ambiguity, the judge meant that not all parts of the email pointed to the same conclusion. Even if parts of the email pulled in different directions, that was not a bar to the judge construing the email as a whole as constituting an acknowledgement within the meaning of section 29(5).

27. During discussion, I asked counsel whether paragraph 14 of the judgment, which I have quoted above as introducing the limitation point, contained any misdirection of law or error of approach. Although Mr Aliker submitted that the judge would have been influenced by oral evidence beyond the scope of the 20 August email, he accepted that paragraph 14 of the judgment showed that the judge had properly approached the question of limitation as a discrete point. Nor was any procedural argument raised before me that the judge was wrong to hear evidence on all issues together before reaching a decision on limitation.

28. There is nothing to suggest that the judge reached his conclusion on limitation on the basis of any inadmissible evidence. The transcript of his judgment shows that the judge decided the point by reading the 20 August email in the context of the other emails to which I have referred and, in particular, the schedule. In my judgment, linking together these three emails so as to infer an acknowledgement of a debt owed by the defendant to the claimant does not go beyond the use of extrinsic evidence permitted by the case law.

29. What does the 20 August email mean? Mr Aliker's submission that the defendant was referring to himself as Mr Ighalo's agent, or acknowledging the debt on Mr Ighalo's behalf, goes too far. It is not borne out by any reasonable reading of the email. In my judgment, the email shows that the defendant aspired to be reimbursed by Mr Ighalo. Nevertheless, it cannot be implied from any part of the email that he was conveying to the claimant that Mr Ighalo was legally liable to pay the claimant. I agree with Mr Rahman that Mr Aliker was effectively inviting this court on an appeal to revisit the relationship between the claimant, the defendant and Mr Ighalo. I agree that that would involve the court in a reassessment of evidence going well beyond the 20 August email or what could permissibly be considered by way of extrinsic evidence.

30. The judge found elsewhere in his judgment – when considering issues other than limitation – that the defendant had persuaded himself in the light of hindsight that he was acting as Mr Ighalo's agent. The judge firmly rejected the agency argument in conclusions that were rooted in the evidence and are not susceptible to challenge in this court. In my judgment, the defendant's attempt in this appeal to shoe-horn his agency argument into the argument about the construction of the 20 August email cannot succeed.

31. In my judgment, the judge was entitled to reach the conclusion that the 20 August email, when objectively considered, was acknowledging (i) the existence of a debt to the claimant; and (ii) that the debt was owed by the defendant personally. As the judge found, the email was part of correspondence between the claimant and defendant about repayment of a loan which the claimant was seeking from the defendant. In the email, the defendant can only have had that loan in mind and can only have been referring to how he had repaid parts of the loan in the past and disputed the balance which the claimant said was owing. He did not dispute that he was the person with liability to repay the claimant.

32. Therefore, despite Mr Aliker's attractive submissions, I see no reason to interfere with the judge's conclusion that the claim was not statute-barred. This ground of appeal is dismissed. In the circumstances, I shall simply note a further submission from Mr Rahman that Mr Aliker's arguments before me were inconsistent with certain concessions in his closing submissions to the judge. Having considered the transcript

of the hearing, I do not think that Mr Aliker should be regarded as making such concessions. From the transcript, it seems to me that Mr Aliker's language reflected his wish to put the various aspects of the defendant's case to the judge and to answer the judge's questions. I do not accept that he has changed his case between trial and appeal.

33. As I have mentioned, the claimant concedes the second ground of appeal. I shall vary the judge's order so that the defendant's liability to the claimant will be reduced by £8,303 with a pro rata reduction of interest. To this extent only, this appeal is allowed.