IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV 2009/0018

BETWEEN

BANK OF MONTSERRAT	Claimant
And	
OWEN ROONEY	Defendant

APPEARANCES

Mr David Brandt for the claimant.

The defendant appeared in person (by skype).

2018: JUNE 13

JUNE 27

JUDGMENT

On whether bank loan repayable

1 Morley J: I am asked to decide whether the claimant ('the bank') has proved on a balance of probabilities that the defendant ('Rooney'[1]) took out a loan of $41000ec on 01.06.93 at 12%, later partly paid up to 1997, reduced to $23000ec, thereafter post volcanic activity silent until 2009, so that he now owes $115000ec; and whether, after it was statute-barred, in 2009 he

[1] For the purposes of this judgement, the parties and others will be referred to as bracketed for ease of reading, with no disrespect intended by not writing out on each mention full names and titles or the legalese as to whether claimants or defendants.

acknowledged the debt in an email to the bank on 27.02.09, after a demand on 24.02.09, so that it became actionable, (and then perhaps further acknowledged it by making part payments of $5000ec[2] in 2012 following a court order of 02.02.12 pursuant to a flawed mediation agreement of 16.02.11 which I set aside on 16.03.18).

2 Rooney has been representing himself, living in California, appearing on skype, unable to afford a lawyer, after spending much money pursuing his land interests in Montserrat. These were the subject of a fraud during the noughties, where it is alleged a lawyer named Warren Cassell pretended to be in charge of an estate Rooney co-owned, named Providence Estate, and sold off land, it seems pocketing the money, and was later jailed though his conviction was successfully appealed.

3 Rooney is garrulous, and it might be said often speaks before he thinks, (I can say this, not unkindly, as I have had several hearings in which he has appeared). He has filed copious materials, and has many different actions being litigated simultaneously in the High Court, Court of Appeal, and Privy Council. He is not well, growing elderly, with a heart condition. The material is poorly organised, and lacking the sifting and presentation skills of a lawyer is often, sadly, almost impenetrable verbiage, though well-intentioned. As a litigant in person, on skype, it has been challenging for the court to deal with his case.

4 Trial in respect of the bank's claim took place on 13.06.18, when the bank's manager since 2009, Michael Joseph, gave evidence. Rooney did not, and argued the claim had not been proved.

5 The weakness in the bank's case is that it has lost all originating material. Owing to volcanic activity on Montserrat in 1995-7, many records have disappeared when the bank had to move premises.

a. The bank can offer no paperwork evidence of Rooney signing a loan agreement for $40000ec at 12% on 01.06.93, nor of a copy of the originating cheque.
b. Instead the bank infers this from computer records it has no certification are correct. Computers in 1993 were growing in use, and then not the wholly ubiquitous machines we

[2] The figures are rounded, and *ad seriatim* more exactly $40920.57ec, $23199.05ec, up to 19.04.18 $115103.92ec, and $49911.04ec.

encounter now. The manager does not know what hardware was used, and says there was a software named 'Access' issued by Jack Henry & Associates, though this has since changed to 'Core Director', to reflect improvements, though does not know for what. Whatever happened with Rooney in 1993 or earlier was before his time. He has no personal knowledge of matters. He assumes records were kept correctly, and points to audit records by chartered accountants located then in Plymouth, showing an annual report for each of the years 1993-2009.

c. Joseph does not know who authorised the loan, nor who input its details in the computer, nor if the loan was rightly ascribed to Rooney, nor why there were no chasing letters, nor indeed if there were, nor is there evidence from the original manager Anton Doldron, in office in the period 1993-2009, as to what decisions were taken about this loan in his tenure, or even verification of it, or whether it may possibly have been contemplated to be written off.

d. Joseph has produced a helpful spreadsheet of figures, exhibit MJ1, which is his case, namely the computer tells him Rooney owes money at 12% from 01.06.93. But the computer is not a person and cannot be cross-examined so that court finds itself treading carefully.

e. On taking over in 2009, Joseph identified from the computer old loans which might be actionable, including for Rooney, for whom it appears he did not have an address. He caused Counsel Brandt to write on 24.02.09 (exhibit BM1) to Rooney via his Montserrat attorney Hogarth Sergeant, (acting for him in the thicket of the Cassell fraud), calling in the debt of $23000ec on which there had been no activity since 1997, and which had been sitting at 12%pa accumulating interest to that date in the sum of $52000ec[3], (being by then more than twice the principal), making a total of $75000ec claimed, to guarantee which there was a caution registered against property 13/15/88 (not requiring Rooney's consent), possibly to be sold by the bank to settle the debt.

f. On 16.03.18, during proceedings concerning setting aside the mediation agreement of 16.02.11 (the transcript being exhibited in this action) Sergeant said he had immediately advised Rooney on receipt of the letter of 24.02.09 the debt was statute-barred.

g. Rooney has said in argument there was no loan for $40000ec, but a different loan at a time between 1991 and 1993 for $30000ec, which he points to largely having paid off, noting in materials he has filed various payment stubs, and a cheque for $10000ec, so that any

[3] The correct figures are $23199.05ec, $51672.42ec., and $75103.46ec.

indebtedness would be as pennies. It is this debt he says he means by his defence filed on 06.06.10 that he admits being a loan. Moreover, he says he was not on Montserrat on 01.06.93, and the bank cannot show otherwise, nor can the bank prove there was no loan for $30000ec, or if there was, what happened to it.

6 The weakness in Rooney's position is that it seems in response to the demand on 24.02.09 from Counsel Brandt, he wrote an email on 27.02.09 to Doldron, saying: *'I am in receipt of a letter from Mr David Brandt's office this morning….I have been asking Mr Sergeant for over a year to make arrangements with the Bank of Montserrat to satisfy my indebtedness, which I fully acknowledge…I undertake to settle my indebtedness in full.'* The bank claims this email acknowledges the debt and is therefore evidence Rooney agrees he entered into the pleaded loan arrangement.

7 Moreover, had Rooney said nought, it is agreed by counsel the action to recover the loan would have been statute-barred under s4 Limitation Act cap 2.12, (as revised on 01.01.02). However, the debt being acknowledged, if it was, the bank can now argue it is no longer statute-barred, per Lawton J in Busch v Stevens 1963 1 QB 1. In short, without the email, the bank would have no enforceable case.

8 I must determine, what is the effect of the email of Friday 27.02.09 at 12.23pm? It is exhibit BM2. It is six paragraphs. I will recite its full contents. It is sent to BOM@candw, being a generic address for the Bank of Montserrat, and copied to Counsel Brandt, legal@gov.ms, woodj@gov.ms (neither identified), and a DS Hoyte in the Bermuda police (who Rooney had asked to investigate fraud in the Montserrat dealings). There is an attachment marked *'Oct 3 Order on default judgment'*, and the subject of the email is *'Owen Rooney – Providence estate'*.

> Mr Anton Doldron
> Bank of Montserrat
> Montserrat
>
> Re Parcel 88 in Block 13/15
>
> Dear Mr Doldron,

> I am in receipt of a letter from Mr David Brandt's office this morning. As you undoubtedly know, I am the midst of inciting legal proceedings against several lawyers in Montserrat including Mr. Brandt. I attach a triple sealed copy of the first judgment against Mr Brandt's colleague, Mr Warren Cassell, and partner in the firm Brandt & Cassell since 25.10 1990. Mr Cassell has been ordered to pay me US$6657492 for conspiring to defraud me and another of US$3688157 for international interference with contract. Mr Cassell of Brandt & Cassell has also been criminally charged with 8 counts of fraud and one count of making false statements.
>
> I will also be inciting civil proceedings against David Brandt personally and others on completion of the criminal trial against Mr Cassell in Montserrrat. Disciplinary proceedings have already been filed against Mr Brandt and Mr Cassell before the Eastern Caribbean Supreme Court.
>
> I have been asking Mr Sergeant for over a year to make arrangement with the Bank of Montserrat to satisfy my indebtedness which I fully acknowledge. This above captioned lot is completely landlocked and without costly earthworks will remain that way making it unsaleable.
>
> I would ask that the Bank of Montserrat stay any proceedings until after the conspiracy trial against my former partner Water A Wood in Virginia in August of this year. Settlement of my obligations to the Bank of Montserrat is first and paramount after the civil case against Mr Wood.
>
> If the Bank of Monserrat proceeds in suit I will simply move the court for a stay of proceedings until after the criminal trial and this will only delay payment to the Bank. I undertake to settle my indebtedness in full. I can make monthly payments between March and August and then pay the balance in full after I obtain judgment against Mr Wood this summer.
>
> Please contact me directly if you have any questions.
>
> Sincerely,
> Owen M Rooney

9 I find as a fact that it is probably the case the email is in response to the demand sent by Counsel Brandt on 24.02.09. However, where I struggle is with the email meaning that Rooney had intended to acknowledge the precise debt sought so that it is legally resurrected and binding. He uses the word *'acknowledge'* and uses the words *'undertake to settle in full'*. However, he does not specify a sum, and he is not a lawyer. And I have been told by attorney Sergeant Rooney had been immediately specifically told the precise debt was statute-barred, so it seems odd

bindingly to acknowledge it, if that is what the email intends. The bulk of the letter is about parallel proceedings against Cassell, and Brandt, and Wood, and is a request for the bank to desist until these resolve, copied to a police officer. I find that the purpose of the email is probably not to 'acknowledge' the debt, but to alert the bank to the other cases. Its subject header is not the debt, nor the letter, but the estate, while the email substance begins *'Re Parcel 88 in Block 13/15'* and is complaint about fraud. Having heard much from Rooney in this hearing and others, and sensing his character, he is loose with words, and linguistically shoots from the hip. I find he probably did not intend to acknowledge specifically the claim raised by Counsel Brandt, who in parallel he was imputing was a fraudster, but was rather to promise to get to the bottom of whatever he owed later. In short, concerning the debt he was saying *'wait, we'll discuss this later'*, not *'yes, I accept I owe you as you demand'*.

10 As to the point there was an order by Redhead J on 02.02.12 that Rooney pay $2500ec pm, following the flawed mediation agreement of 16.02.11, I understand he was not represented, and was at the time of the order a prosecution witness in the Cassell trial, wishing to make a good impression on the same judge. If he did not argue about the debt then, it is hardly surprising. As to making part payment of $5000ec between August and October 2012, I understand from the bank these payments were from attorneys Allen Markham & Co, and there is no evidence they were authorised by Rooney. Even if they were, none were for $2500ec, suggesting the payments may not have been made happily, but rather in the teeth of disagreeing the debt, in the context of the parallel Cassell trial. In short, I do not find the payments in 2012 amount to debt ex post facto acknowledgment.

11 To distil this case, I find that there may have been a debt for $40000ec at 12% taken out on 01.06.93, but I do not find this has been proved properly. On the evidence it is quite possible, not probable. It does not follow in logic that I have found there was probably not a debt; instead the bank has simply failed in its burden. If the bank set out to prove that an apple grown on Montserrat was probably green, and failed, it would not follow the opposite had been proved, namely that an apple was probably not green: instead it would mean whether it was green had not been proved.

12 Moreover, even if the bank had met its burden, I find the email of 27.02.09 (and later part payments in 2012) do not acknowledge the debt, in the sense of legally resurrecting it, so that at the time of filing the action on 30.07.09, the claim was statute-barred, as pleaded in the defence of 06.06.10, so that it is not actionable.

13 I have reached these conclusions without need to consider evidence from Rooney, and I put out of my mind his various unsworn mixtures of argument and fact during the hearing. Just looking at the defence pleading, and considering the state of the evidence tendered by the bank, the burden is not met to the standard needed.

14 I should mention *obiter*, though it has formed no part in my analysis of the facts, that there is something quite dissatisfactory in a debt being allowed by the bank to grow from 1993, with seemingly no correspondence until 2009, at so high an interest rate, being 12%, so that the interest now dwarfs the principal (the principal being $23000ec, but the claim now being for $115000ec). Moreover, I note that in the email of 27.02.09, Rooney makes imputations of fraud against Counsel Brandt, alleging breach of conduct, warning of parallel civil proceedings against him, so that it seems to this court that he might have withdrawn from being counsel responsible for pursuing Rooney for the money, as it might be said a reasonable observer would perceive a personal animus between the two, which is not attractive to Bar practice, as counsel has a personal interest in the action he represents when he is otherwise expected to be a neutral officer of the court.

15 In all the circumstances, I therefore dismiss the claim by the bank. However, because Rooney brought these proceedings on himself by sending the hasty and ambiguous email of 27.02.09, although he wins the case, I make no order as to costs.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

27 June 2018