



ADGM COURTS

محاكم سوق أبوظبي العالمي



In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN**

JULIE ANNE MCCRAE

Claimant

and

THE LOREAU GROUP FZ LLC

First Defendant

and

CHRISTOPHER TAYLOR

Second Defendant

JUDGMENT OF JUSTICE WILLIAM STONE SBS KC



Neutral Citation:	[2023] ADGMCFI 0018
Before:	Justice William Stone SBS KC
Decision Date:	19 October 2023
Hearing Dates:	2 and 3 October 2023
Decision:	<ol style="list-style-type: none"> Judgment be entered in favour of the Claimant as against the First Defendant in the amount of AED 545,000 (the “Judgment Sum”), with interest to accrue on the Judgment Sum at the rate of 5% per annum from 1 August 2022 to the date of payment. The case as against the Second Defendant be dismissed. There be a costs order <i>nisi</i> that there be no order as to costs, such order to become absolute by 4.00 pm on 2 November 2023 unless application is made to vary.
Date of Order:	19 October 2023
Catchwords:	Action in debt, whether original agreement was restructured, corporate veil, shareholders’ voluntary liquidation
Legislation cited:	Media Zone Authority – Abu Dhabi Companies Regulations 2016
Case Number:	ADGMCFI-2023-028
Parties and representation:	<p>Claimant</p> <p>Mr Shakeel Ahmed, Mohamed Eid Al Suwaidi Advocates & Legal Consultants, on behalf of the Claimant</p> <p>Defendants</p> <p>Mr Neil Drahmoune, Fotis International Law Firm, on behalf of the First and Second Defendants</p>

JUDGMENT

Background

- This is a case about the non-repayment of a corporate debt.
- By an agreement evidenced by a ‘Bridging Loan Term Sheet’ dated 17 January 2022 (the “**Original Agreement**”), the Claimant, Ms Julie McCrae, lent the First Defendant, The LorEau Group FZ LLC (“**LorEau**”), the sum of AED 500,000.
- This was expressed to be a bridging loan to be used by LorEau, a marketing and advertising company registered in June 2021 by Media Zone Authority (otherwise known as “twofour54”) in mainland Abu Dhabi.
- It was agreed that interest on this loan was to be fixed at AED 100,000, which, together with the principal amount of AED 500,000, amounted to the total sum of AED 600,000 (the “**Debt**”). The Debt was to be repaid in full on 31 July 2022.



5. The repayment of the Debt did not occur, and Ms Mccrae now seeks to recover from the First and Second Defendants the outstanding amount owed to her pursuant to the Original Agreement.
6. The Second Defendant, Mr Christopher Taylor, was the general manager of LorEau at the date of the loan, and had signed the agreement on behalf of LorEau .
7. There are no other parties to this case. The Court has received evidence not only from Ms Mccrae but in addition from Mr Taylor and from Mr Ronnie Mccrae, Ms Mccrae's husband, who is currently living in the United Kingdom and presently is estranged from his wife.
8. There is no dispute about the terms of the loan as made to LorEau, including that monies were advanced as claimed. However, there *is* disagreement about two issues: first, whether the Original Agreement effectively was novated and replaced by three individual personal payment plans accruing to three partners of LorEau (the "**Restructured Agreement**"), and second, in relation to Mr Taylor, who says that he had no personal liability under the Original Agreement, and ought not to have been joined as Second Defendant to this case.

Liability of the Second Defendant

9. Mr Taylor maintains that signing the Original Agreement on behalf of LorEau in his capacity as "*general manager and authorised signatory*" did not result in any personal liability on him to make repayments under that agreement.
10. In this submission he has the law on his side. As a limited liability company LorEau possessed its own independent legal personality, and in signing "on behalf of" LorEau (the expression that is used in the Original Agreement), Mr Taylor was doing no more than acting as agent for LorEau and formally executing the agreement on behalf of his corporate employer.
11. There is no evidence before the Court to the effect that Mr Taylor warranted repayment or otherwise assumed personal liability for the loan made to LorEau under the Original Agreement. Furthermore, no evidence is put forward, nor argument advanced, that the 'corporate veil' should be pierced in order to impose contractual liability on Mr Taylor qua signatory to that agreement.
12. The only case which appears to be put forward on behalf of the Claimant is that by the act of signing the Original Agreement as the sole decision maker of LorEau, Mr Taylor must be regarded as a contracting party and thus be held personally liable for the Debt. For his part, Mr Taylor disputes that he was the sole decision maker or that he is personally liable for the Debt under the Original Agreement. In any event, the Claimant's proposition overlooks the fundamental issue of separate legal personality arising upon incorporation of a limited liability company.
13. In executing the Original Agreement as agent for LorEau, Mr Taylor has done nothing to attract personal liability for the loan made to the company, and it follows that on this basis the case against him must be dismissed.

The 'Restructuring Issue'

14. The position advanced by Mr Taylor in these proceedings was that although he had no liability under the Original Agreement, this agreement nevertheless "*was restructured into three separate personal loans between the company representatives*" (the "**Restructured Agreement**").
15. Mr Taylor's contention was supported by the evidence of Mr Ronnie Mccrae, the Claimant's husband, and the person whom Ms Mccrae said had proposed that she provide the credit line of



AED 500,000 (which then represented her life savings) to LorEau to assist the company with what was said to be a short-term cash flow problem.

16. The thrust of the evidence given by Mr Taylor and Mr Mccrae is that consequent upon the Covid-19 epidemic LorEau had run into financial difficulty and consideration was being given to the company being shut down; however they were concerned that this would leave Ms Mccrae unpaid in terms of the outstanding loan. Accordingly, discussions were held to restructure the loan, with the result that the existing “partners”, Mr Taylor and Mr Mccrae, together with a third partner, Mr Victor Krrashi, would agree to assume personal liability in order to put Ms Mccrae back in pocket.
17. The Court has seen evidence in the form of emails and WhatsApp messages which focused upon this ‘restructuring’ plan whereby personal liability was to replace the initial corporate obligation contained within the Original Agreement. The Court was also shown minutes of a meeting held on 8 August 2022 (the “**August 2022 Minutes**”) wherein the participants were Ms Mccrae, Mr Taylor, Mr Mccrae and Mr Krrashi.
18. The subject for discussion at this meeting was the splitting of the Debt with the three remaining ‘partners’ of the company, namely Messrs Taylor, Mccrae and Krrashi, with payments to be made by personal cheques. An update to the August 2022 Minutes notes that Ms Mccrae had spoken with her solicitor “*who has confirmed proceeding with the personal agreements*” which were “*to be agreed by each person*” at the next meeting on 11 August 2022.
19. Two other points of note in this context were that Ms Mccrae had made it clear that she was encountering personal financial problems and was in need of money to pay nursery fees for her children, and that Mr Taylor also had advised that “*he is looking to close the LorEau Group at the end of August*”.
20. It is clear from the August 2022 Minutes that Ms Mccrae was eager to have an upfront payment of AED 80,000 with each of the three partners making a monthly payment thereafter until full repayment of the Debt. No such initial payment was ever made, but it appears to have been envisaged that the company debt of AED 600,000 was to be apportioned between Mr Taylor (AED 110,000), Mr Krrashi (AED 110,000) and Mr Mccrae (AED 380,000).
21. However, no formal agreements were drawn up, and in fact Mr Krrashi (from whom the Court has received no evidence and whom has filed no witness statement) appears not to have participated in this plan and ultimately declined to become involved.
22. In any event it appears that following these negotiations some monies were received by Ms Mccrae from both Mr Taylor and Mr Mccrae, albeit in the case of the payments of Mr Mccrae the Claimant disputes that such monies constituted any repayment of the monies due from LorEau.
23. There is no dispute that negotiations as to the mode of debt repayment were conducted. Where there is a strong difference of view is regarding the legal consequence of such negotiations.
24. In her evidence Ms Mccrae strenuously resisted any argument that the primary liability of LorEau factually had been supplanted by the discussions between her and Messrs Taylor, Mccrae and Krrashi: she says that nothing ever was formally finalised and that since she was very short of money and was in desperate need of funds to provide for the upkeep and education of her young twin boys, she was obviously keen to accept repayment of the debt owed to her in any form, even if not in the form of direct repayment by company cheque. In other words, Ms Mccrae understandably was content to adopt the approach of ‘any port in a storm’ when it came to recouping the funds she had lent to LorEau.



25. For their part both Mr Taylor and Mr Mccrae stressed that in light of the company's financial condition, which had arisen from loss of potential contracts due to the Covid-19 epidemic, they personally wished (and continued to wish) to ensure that Ms Mccrae was put back in funds and was not left out of pocket as a result of the failure of LorEau. Accordingly, as far as they were concerned such 'restructuring' indeed had occurred, albeit within agreed limits: on their version of events Mr Taylor's obligation was to pay AED 110,000 and Mr Mccrae AED 380,000.
26. This contention remains a constant thread within this case. No alternative case is advanced on behalf of the Claimant against either Mr Taylor or Mr Mccrae personally on the basis of the alleged alternative payment arrangements.
27. Accordingly, if any Restructured Agreement did come into effect as alleged it would operate as a defence to the claim as brought. Against this, Ms Mccrae's position was clear: the Original Agreement remained extant and she was unconcerned about the source of the debt repayment (that being a matter for LorEau and its 'partners').
28. On the factual issue of whether the Original Agreement remains extant, notwithstanding the repayment negotiations, the Court concludes that it does. The Court finds that the Original Agreement was not, in effect, novated, and that at the time of these repayment discussions, the corporate repayment obligation was not extinguished as a matter of law in favour of individual (and apparently varying) personal commitments.
29. No substitute agreements were drawn up, in part no doubt due to the potential cost of so doing. In any event, on any basis the Court has no difficulty in accepting that Ms Mccrae would not have agreed, and did not agree, to a situation whereby she was to receive *less* than the principal sum payable under the Original Agreement: on the alternative 'novation case' Mr Taylor was to repay AED 110,000 and Mr Mccrae AED 380,000, with Mr Krrashi, whilst the third participant in the discussions (who features on several WhatsApp communications with Ms Mccrae), declining to participate at all. Accordingly, the result of any proposed repayment arrangements and restructuring of the Original Agreement was that Ms Mccrae would have been AED 110,000 short of what she was otherwise entitled to.
30. Whilst this has been the subject of no submission, it also seems that in wishing to put Ms Mccrae back into funds notwithstanding the absence of any reasonable prospect of repayment on the part of LorEau, Mr Taylor and Mr Mccrae in effect were mere volunteers, given that Ms Mccrae had furnished no consideration for the payment obligations that both gentlemen now say that they had assumed. However, since this was not pleaded (and the Court has found that the Original Agreement was not replaced by the Restructured Agreement) there is no need to make any finding on this further point.

Monies Received

31. Whatever the origin of the obligation, the evidence is that Ms Mccrae has in fact received some monies in repayment of the Debt. In terms of that which was received from Mr Taylor there is no dispute: Ms Mccrae agrees that to-date she has received AED 55,000 from him. In terms of receipts from Mr Mccrae the picture is less clear-cut, and is the subject of considerable dissension.
32. Mr Mccrae says that thus far he has remitted to Ms Mccrae a total of slightly more than AED 107,000: on the papers he submitted to the Court a total of 20 remittances can be identified, amounting (on this analysis at least) to the sum of AED 101,467.84, although the Court accepts that since these monies were remitted in GBP exchange rate differentials may in part explain



some of that discrepancy. However, it was accepted by Mr Mccrae that the remittances submitted did not identify the 'payee' to whom the amounts were paid.

33. In any event, Ms Mccrae disagrees that the remittances evidence payments made against her loan to LorEau. She says that in the repayment negotiations that took place she had specified that deposits be made into her personal (First Abu Dhabi Bank) bank account, Ms Mccrae's evidence was that her personal bank account statements show that she received only two deposits from her husband during the relevant period in the respective amounts of AED 18,750 (for her rent) and AED 5,600 (as repayment of a personal loan she had made to him), a total of AED 24,350. Ms Mccrae confirmed in her evidence that these amounts were unrelated to the repayment of the LorEau debt.
34. Mr Mccrae gave evidence that instead of making repayments into Ms Mccrae's personal account, he initially made payments into a joint account and then, in order to save on bank remittance charges, he made payments using a pre-paid revenue card in order to transmit money to Ms Mccrae. He also indicated during his evidence that notwithstanding the 20 remittances so far made he was keen to "ensure that Julie gets her money back".
35. The Court does not doubt Mr Mccrae's laudable desire to ensure that the Ms Mccrae is repaid and is not left stranded and out of pocket. However, in so far as he has the burden of proving that the monies he says thus far have been transmitted to Ms Mccrae represented payment towards the Debt (or, at the least, on his version of events, that part of the Debt which he personally had assumed), it is not possible on the current state of the evidence to differentiate between the payments that he said he had made to his wife qua debt repayments as opposed to payments made to defray normal domestic expenses arising from his matrimonial obligations.
36. Accordingly, on the current state of the evidence, the Court is not prepared to find that the Debt has been reduced by more than the sum thus far paid by Mr Taylor (whom in his evidence similarly expressed the sentiment that in light of what had happened he too wished to ensure that Ms Mccrae was repaid).
37. In the circumstances the Court holds that to-date the cumulative Debt of AED 600,000 (namely, principal plus agreed interest) has been reduced to AED 545,000, and this amount remains due and owing.

The Status of LorEau

38. This case has been conducted throughout, and has proceeded to trial, on the basis that LorEau remains in existence as a corporate entity.
39. There is no reference in any of the pleadings or in any of the witness statements which provided any indication that this did not remain the position: the only incidental reference to the state of this company appears in the August 2022 Minutes (a document which was only produced on the first day of this trial) wherein the sixth bullet point reads "*Chris Taylor advised that he is looking to close the LorEau Group at the end of August, he will update Julie Macrae on this as it affects the VISA*".
40. During his evidence Mr Taylor, who was a helpful and articulate witness, referred to the fact that LorEau had been put into 'Shareholders' Voluntary Liquidation', that the establishment card of the company had been cancelled on 20 June 2023, and that as a matter of fact the company was no longer in existence.



41. This was a matter which caused Ms Mccrae visible shock. She told the Court, and the Court accepts, that until Mr Taylor's evidence at the trial she had been unaware that the company to which she had lent money no longer existed, and she made the not unreasonable point that had she been told that this was the position she would have proceeded differently.
42. Upon receipt of this information the Court immediately called for relevant documentation regarding the status of LorEau, and some documentation was produced by Mr Taylor.
43. It appears that on 4 January 2023, the Directors of LorEau passed a 'Special Resolution' (consequent upon a declaration of solvency) that it was in the best interests of the company that it enter into a 'Shareholders' Voluntary Liquidation' under Part 11 of the Media Zone Authority – Abu Dhabi Companies Regulations 2016, and that the liquidator to be appointed was Mr Taylor himself.
44. Thereafter on 20 January 2023 in Gulf Today an advertisement appeared stating that the directors of the LorEau Group, a free zone limited liability company established in the Media Zone - Abu Dhabi with registration number 1064, hereby provided notice of the commencement of the voluntary liquidation of the company by its shareholders, that Mr Taylor was appointed liquidator, and that this notice was being given pursuant to the Media Zone Authority – Abu Dhabi Companies Regulations 2016.
45. The Court also has seen an email dated 20 June 2023 passing between Mr Taylor and a representative of twofour54 stating that "*the establishment card of the company The LorEau Group FZ LLC has been cancelled*", which Mr Taylor takes to mean that the company was no longer in existence, but said that he had not been able to obtain further evidence.
46. Whilst it seemed likely on the basis of the information provided that this was the situation, at the conclusion of the trial the Court requested production of any further official document, such as a certificate of deregistration, which would confirm that LorEau in fact had been liquidated. Accordingly those acting for the Defendants were given a period of 14 days to obtain and produce such evidence: clearly its continued juridical existence remains a fundamental requirement to enable judgment to be entered against the First Defendant.
47. In this post-trial period the Registry has been sent information from Ms Mccrae (regarding a telephone inquiry) and from the Defendants' solicitors (including copies of email correspondence between Mr Taylor and the relevant twofour 54 authority) such that it appears that this Company has **not** yet been liquidated, and thus continues to exist at law.
48. It is unfortunate that this matter was not brought to the Court's attention earlier: by early January 2023 it seems clear that the First Defendant was undergoing liquidation procedures, and had the Court been informed it is unlikely that this case would have proceeded to trial in the manner that it now has. The evidence revealed by the documents produced at trial at the Court's request demonstrated that the decision to embark upon a shareholders' voluntary liquidation involved a directors' declaration dated 4 January 2023 by Mr Taylor and Mr Mccrae to the effect that the directors of LorEau Group FZ LLC "*have made a full inquiry into the affairs of the Company, and we have formed the opinion that the Company is able to discharge all of its liabilities and any interest within a maximum period of six(6) months from the date of this statement, or has no liabilities.*"
49. The Court assumes that Mr Taylor and Mr Mccrae felt able to make such declaration in these terms by virtue of the negotiations which earlier had taken place with Ms Mccrae regarding personal repayment of the debt due and owing by LorEau, and that as a result they believed that



they had settled the issue of an outstanding corporate debt. However, given the lateness of this revelation about the status of this company, this point was not explored in any detail at trial.

50. In the event, the Court now proceeds on the basis that LorEau currently remains in existence, albeit the overwhelming probability is that it has no assets upon which to levy execution, and the issue of repayment to Ms McCrae remains subject to the goodwill of Mr McCrae and Mr Taylor, each of whom have stressed they wish to ensure that Ms McCrae is put back in funds.

Decision

51. There is to be judgment against the First Defendant in the sum of AED 545,000, with interest to accrue on this sum at the rate of 5% per annum from 1 August 2022 to the date of payment.
52. The case as against the Second Defendant is dismissed.
53. In view of the circumstances set out above, the Court makes an order *nisi* that there be no order as to costs, such order to become absolute by **4.00 pm on 2 November 2023** unless application be made to vary.



Issued by:

A blue ink signature of Linda Fitz-Alan.

Linda Fitz-Alan
Registrar, ADGM Courts
19 October 2023