



Neutral Citation Number: [2024] EWHC 3282 (KB)

Case No: KB-2023-003081

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 19 November 2024

**Before :**

**Elizabeth O'Neill (sitting as Deputy High Court Judge)**

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**Between :**

**Tarnjit Singh Gill**

**- and -**

**(1) Sanjay Anand**

**(2) Bobby Singh**

**Claimant**

**Defendants**

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**Stuart Cutting** (instructed by **SP Legal Solutions**) for the Claimant  
**Edward Knight** (instructed by **Lawrence Stephens Limited**) for the First Defendant  
The Second Defendant not appearing or being represented.

Hearing dates: 19 November 2024  
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**Approved Judgment**

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Elizabeth O'Neill  
(Sitting as a Deputy High Court Judge)

**O'Neill, Elizabeth (sitting as Deputy High Court Judge):**

1. This is an assessment of the sums due by the First Defendant, Mr Sanjay Anand, to the Claimant, Mr Tarnjit Gill, following an order by Master Gidden dated 14 March 2024 (the "14 March Order") striking out the First Defendant's Defence and providing that the Claimant be granted judgment against the First Defendant for "a sum to be assessed by the Court".

**The Claim**

2. The Claimant alleges that in breach of six loan agreements, the terms of which were variously agreed between the Claimant and the First Defendant in January and February 2018, the First Defendant failed to repay the Claimant the sums lent and the interest due thereupon. The Claimant seeks repayment of the sums lent (or damages in the same sums), together with interest pursuant to contract or statute.

**Procedural history**

3. On 17 March 2023, the Claimant applied for summary judgment against the First Defendant, seeking repayment of the first of the six loans particularized in his statement of claim.

4. Although the application for summary judgment and evidence in support thereof was served on the First Defendant via process server on 20 March 2023, the First Defendant only filed his evidence in response thereto after 4 pm on 21 February 2024, the day preceding the hearing of the application.

5. Following the First Defendant's failure to respond to the summary judgment application in a timely manner, the hearing of the application was not able to proceed on 22 February 2024. Master McCloud, in an Order dated 1 March 2024, made directions for the case to proceed. This included directions addressed to the First Defendant, one of which was an "Unless" order ("the Unless Order"):

"Unless by 4:00 PM on 7 March 2024 the First Defendant pays the Claimant's costs thrown away summarily assessed on the indemnity basis in the sum of £11,010, the First Defendant's Defence shall stand struck out without further order."

6. The First Defendant did not comply with the Unless Order. On 8 March 2024, following the First Defendant's non-compliance with the Unless Order, the Claimant wrote to court seeking judgment for £6,199,935.19, consisting of £3,280,000 for repayment of the capital sums loaned and £2,919, 935.19 in interest.

7. Upon reviewing the Claimant's letter seeking judgment, Master Gidden made the 14 March Order, which included:

"1. The First Defendant's defence is struck out unless the First Defendant shows cause in writing why this should not be done within 7 days of service of this Order by the Claimant.

2. The Claimant be granted judgment against the First Defendant for a sum to be assessed by the Court. [...]

8. Any application to vary or set aside this order is to be made within seven days of service of this Order by the Claimant.”

8. The Claimant did not apply to set the 14 March Order aside. On 17 April 2024, Master Gidden made an order (“the 17 April Order”) listing the assessment hearing pursuant to paragraph 2 of the 14 March Order and providing for both the Claimant and the First Defendant to file and serve evidence in advance of the hearing.
9. The Claimant filed and served evidence in advance of the assessment hearing. The First Defendant failed to respond. At the assessment hearing on 15 October 2024, the First Defendant appeared in person and requested an adjournment, to enable him to arrange for legal representation (his direct access arrangements having broken down). I granted an adjournment to 19 November 2024 and gave associated directions, one of which permitted First Defendant to submit a witness statement in response to the Claimant’s evidence, limited to the issue of the interest rates applicable to the sums due. The First Defendant subsequently appointed Lawrence Stephens Limited to represent him, who instructed Edward Knight to act on his behalf at the adjourned assessment hearing.

### **Preliminary issues**

10. At the outset of the hearing, as foreshadowed in the skeleton argument and witness statement submitted on behalf of the First Defendant, Mr Knight applied for a further adjournment, on the basis that the First Defendant intended to apply for relief from sanctions in respect of the Unless Order and 14 March Order. The basis for the relief application would be that the First Defendant has been suffering from serious mental health issues, interlinked with alcohol and substance abuse. No commitment could be given by Mr Knight as to when any such application for relief might be made by the First Defendant.
11. Bearing in mind the overriding objective, and in the absence of any commitment from the First Defendant to make an application for relief within a definite time-frame, I declined to make a second adjournment. Proceeding with the hearing would not prevent the First Defendant from making any application for relief, and an alternative, more proportionate approach to ensure fairness to both parties would be to stay the enforcement of the judgment assessing the sum due, pending the outcome of any application for relief made by the First Defendant within 14 days of judgment.

### **Assessment hearing**

12. Master Gidden gave judgment for a “sum to be assessed” pursuant to CPR 3.5(2)(b) (ii). CPR 3.5 entitled “Judgment without trial after striking out” provides:

“(1) This rule applies where—

(a) the court makes an order which includes a term that the statement of case of a party shall be struck out if the party does not comply with the order; and

(b) the party against whom the order was made does not comply with it.

**(2) A party may obtain judgment with costs by filing a request for judgment if—**

**(a) the order referred to in paragraph (1)(a) relates to the whole of a statement of case; and**

**(b) where the party wishing to obtain judgment is the claimant, the claim is for—**

**(i) a specified amount of money;**

**(ii) an amount of money to be decided by the court; [emphasis added][..].”**

13. Practice Direction 26 entitled “*Determining the amount to be paid under a judgment or order*” provides at paragraph 20: “(1) *In paragraphs 21 to 24—(a) a relevant order means a judgment or order of the court which requires the amount of money to be paid by one party to another to be decided by the court; [..]*”. Paragraph 20(2)(c) provides a “relevant order” may have been obtained “*on the striking out of a statement of case under Part 3*” as was the case here.
14. Paragraph 23 of Practice Direction 26 provides for Rule 32.6 (evidence in hearings other than at trial) to apply unless the court orders otherwise. This enables the court to have regard to evidence contained in a party’s statement of case and application notice if these are verified by a statement of truth. In addition, Master Gidden directed that the Claimant be permitted to submit witness evidence and despite striking out the First Defendant’s Defence, provided him with the opportunity of submitting evidence in response. The 14 March Order did not in terms debar the First Defendant from defending the proceedings, though it did strike out the Defence in its entirety. There are a number of ways in which a Defendant against whom judgment has been given and whose Defence has been struck out, but who has not expressly been debarred from the defending the proceedings may seek to advance his case which do not require reliance on the Defence, for example, by submissions relating to the Claimant’s pleaded case.

### **The Assessment**

15. My role here is limited to assessing and giving effect to the entitlements to monetary payment as they appear in the pleadings and evidence before me, further to the 14 March Order and 17 April Order.
16. As Counsel for the Claimant, Mr Cutting, explains in his clear and comprehensive Skeleton Argument, what is being assessed pursuant to judgment being given under CPR 3.5 is the Claimant’s claim in contract, not the alternative claim for damages:

“Following the failure by D1 to fulfil his promise to repay the Loans, the assessment amount owing under the oral loan agreements will include assessment of the capital sum and assessment of any entitlement to interest. C does not seek per se

interest as damages but seeks interest on the basis of his contractual entitlement or in the alternative seeks statutory interest. As C is not seeking interest as damages, C does not need to prove loss to claim interest.”

17. To determine the extent of the monetary relief to which the Claimant is entitled, the Court may consider the Claimant’s application, statement of case, and the Claimant’s witness evidence before the Court and the evidence submitted pursuant to the 17 April Order. The First Defendant’s statement of case, though struck out, may assist in defining the matters that are not in dispute.

### **The Loans**

18. The Claimant’s case is that in January and February 2018, in the context of an established friendship with the Defendant, which had involved lending in the past, the Claimant entered into a series of oral loan agreements with the First Defendant, partially evidenced in writing by email and WhatsApp exchange. The loans were aimed at enabling the First Defendant to purchase (and onward sell) “super cars”, and each loan would be repaid with interest.
19. The First Defendant in his struck out Defence does not dispute that the Claimant and the First Defendant had known each other as friends for twenty years and that he had borrowed money from the Claimant and the Claimant’s family in the past.
20. The First Defendant also admits that the Claimant made loans in the amount pleaded. His Defence contended that the loans were not made to him, but to the Second Defendant. This Defence no longer stands.
21. In assessing the amount due to the Claimant, I note at the outset that the comprehensiveness and terms of the pleaded contractual arrangements for each of the six loans differ. Furthermore, the Claimant has put forward several different methods to calculate the relevant rates of interest.

### **Loan 1**

22. Having considered paragraphs 10–13 of the Particulars of Claim, together with Annex A and B thereto, and the Claimant’s evidence, I am satisfied that it was the parties’ clear and express intention at the time the loan was made that the Claimant would lend the First Defendant the capital sum of £350,000, for a fixed period of up to six months, and that the payment of interest due at the conclusion of this period in consideration for the loan was £10,500, calculated by reference (pro rata) to a 6% per annum interest rate.
23. It appears from paragraph 10 of the Particulars of Claim that the initial fee agreed for the loan was £60,000. Paragraph 11 of the Particulars of Claim indicates that “*the agreement was varied on or before 9 January so that the loan would attract interest at 6% per annum*”. Counsel for the Claimant contends this establishes a contractual entitlement to the agreed interest rate beyond the pleaded six-month duration of the loan, or that by agreeing this annual rate, the parties made provision for payment of interest to be paid beyond the agreed duration of the loan. I do not agree – the

variation was to the rate of return for the loan, but it did not affect the duration of the loan, which remained a six-month loan.

24. I note that the First Defendant's email appended in evidence of the agreement at Annex B to the Particulars of Claim provides: "*I will loan £350,000 and get a 6% p.a. rate but as the loan is for 6 month we will be receiving back: 3% i.e. £10,500 plus the principle [sic] amount*". The references to annual percentages in this context are as a yardstick by which to quantify the interest payment due at the end of the six month loan period.
25. The Claimant explains, at paragraph 4 of his Third Witness Statement, that the agreed rate of interest was high precisely because the loan duration was short: "*These loans were not long-term lending, they were supposed to be repaid quickly, hence the higher interest being offered*". This undermines any case to infer references to annual interest rates were intended or agreed by the parties to mean that the loan itself lasted beyond the express duration that is clearly pleaded as agreed by the parties. The Claimant himself acknowledges that the commercial proposition for the rates offered was tied to the short duration of loan.
26. I do not find that the case as pleaded, or the evidence tendered in support thereof, establishes any express or implied contractual term for interest to be paid beyond the clearly agreed six-month duration of the agreement. In my view, the pleadings and evidence in support of the application for judgment establish this was a short-term, fixed period loan based on a business proposition of quick turnaround of capital. References to annual rates of interest in this context were to quantify the interest payment at the conclusion of the loan.
27. Accordingly I assess that, as pleaded at paragraph 13 of the Particulars of Claim, at the conclusion of the loan on 11 July 2018, the Claimant was due £360,500, consisting of the capital sum of £350,000 together a payment by of interest of £10,500. I do not find there a case is made out for any contractually agreed interest due from the First Defendant beyond this date. From 11 July 2018 onward, the rate of interest applicable to the unpaid debt is the rate determined by the Court under section 35A of the Senior Courts Act 1981.

## **Loan 2**

28. The Claimant pleads at paragraph 14 of the Particulars of Claim he entered into a second loan agreement with First Defendant on or shortly before 15 January 2018, for the sum of £750,000, for "up to two months" at an interest rate of 6% per annum, amounting to £7,500 for the two-month duration of the agreement. This loan was paid into the account of a third party, at the direction of the First Defendant, and was never repaid.
29. I assess that, as appears from paragraph 17 of the Particulars of Claim, at the conclusion of the loan on 16 March 2018, the Claimant was due £757,500, consisting of the capital sum of £750,000 together with an interest payment of £7,500. From that date onward, the rate of interest applicable to the unpaid debt is the rate determined by the Court, applying section 35A of the Senior Courts Act 1981.

## **Loan 3**

30. At paragraphs 17, 18 and 19 of the Particulars of Claim, the Claimant pleads that by an agreement made on 22 January 2018, the Claimant agreed to lend £180,000 to the First Defendant for a period of three months, and the First Defendant agreed to pay £15,000 by way of interest at the conclusion of this period.
31. The Claimant calculates that a payment of £15,000 for a three-month period amounts to an interest rate of 33.33% p.a. and that this rate of interest should be applied to calculate the interest due by the First Defendant to this day. I do not find that the pleaded case and the evidence support such an agreement. What is pleaded, and is clear from the evidence in support, is a three-month agreement with an interest payment of £15,000 at its conclusion, in consideration for the loan.
32. I assess that as pleaded at paragraph 19 of the Particulars of Claim, at the conclusion of the loan, the Claimant was due £195,000 from the First Defendant. From 23 April 2018 onwards to the date of this judgment, the rate of interest applicable to the unpaid debt is the rate determined by the Court under section 35A of the Senior Courts Act 1981.

#### **Loan 4**

33. Paragraph 20 of the Particulars of Claim pleads that the Claimant made an agreement with the First Defendant on 22 January 2018, evidenced in writing at Annex D to the pleadings, that the Claimant would lend £325,000 to the First Defendant for a period of two months, and that the First Defendant would pay the Claimant £15,000 for this loan.
34. The Claimant extrapolates from this that the interest rate applicable to the agreement was 26.47% p.a. and that this rate should be applied to this day. I do not find that the pleaded case and evidence before the Court supports such an agreement. What is made out in the pleadings, the written evidence appended to the pleadings and referred to in the witness evidence, is a two-month agreement with a payment of £15,000 at the conclusion of the two-month period.
35. I therefore assess that the Claimant is due £340,000 under this heading, together with statutory interest accruing from the conclusion of the loan on 23 March 2018 until the date of this judgment at the rate determined by the Court under Section 35A of the Senior Courts Act 1981.

#### **Loan 5**

36. Loan 5 is pleaded as a series of payments made by the Claimant, the Claimant's solicitors and a company controlled by the Claimant at the First Defendant's direction to a number of parties, amounting to £925,000. No interest rate or duration is pleaded to have been agreed, although I was invited to imply a term that a reasonable rate of interest would have been agreed, which could be deemed to be 6% per annum.
37. Of the pleaded loan agreements before me, this was the least comprehensively pleaded and evidenced. In the absence of any contractual term being made out in the pleadings or evidence in support thereof, I do not consider the evidence sustains implying a term relating to interest.

38. I therefore assess that the Claimant is due £925,000 under this heading, together with statutory interest. I will accordingly fix a reasonable rate of interest accruing from the date of the loan (5 February 2018) until the date of this judgment, under section 35A of the Senior Courts Act 1981.

### **Loan 6**

39. Paragraphs 27 and 28 of the Particulars of Claim set out the key terms of this loan. The loan was agreed on or shortly before 15 February 2018, the capital amount was £750,000, the duration was 4 months and the payment by way of interest for that period was £70,000. I assess that the Claimant is due £820,000 under this heading, together with statutory interest accruing from the conclusion of the loan period on 16 June 2018 until the date of this judgment.

### **Statutory interest**

40. The Claimant submits that should the Court in its assessment choose to apply a statutory rate of interest under section 35A of the Senior Courts Act 1981, a reasonable rate of statutory interest to apply to these loans would be 4% per annum. I agree this is a reasonable rate for all six statutory interest payments assessed to be due above. Although this rate was considerably above the Bank of England Base Rate at the time of the agreement, given the fluctuation of rates that has since occurred over the time that the Claimant has been deprived of his money, I consider that this rate fairly compensates the Claimant for deprivation of his money in the period since the loans were entered into and due and accordingly where a statutory rate is applied in respect of the six of the loans assessed above, this is at the rate of 4% per annum.

### **Sum Due**

41. I therefore assess the Claimant is due £3,280,000 from the First Defendant in repayment of the capital sums together with statutory interest and per paragraphs 27, 29, 32, 35, 38 and 39 above, at a rate of 4% per annum until the date of this judgment.
42. Enforcement of this decision is to be stayed pending the resolution of any application for relief made by the First Defendant within 14 days of the judgment.