

**IN THE SUPREME COURT OF BELIZE, A.D. 2013**

**CLAIM NO: 485 of 2013**

**BETWEEN**

**SAMUEL KIM**

**CLAIMANT**

**AND**

**M.E.L. INVESTMENTS LIMITED  
RENDEVOUS ISLANDS LIMITED**

**DEFENDANTS**

**Keywords:** Judgment on Admissions; Judgment on Admission of Fact in a Document admitted; Inherent Jurisdiction of the Court; Summary Judgment.

**Before the Honourable Mr. Justice Courtney A Abel in Chambers**

**Hearing Dates:** 26<sup>th</sup> February 2014  
27<sup>th</sup> May 2014

**Appearances:**

Mr. Denys Barrow S. C. and with him Ms. Naima Barrow Counsel for the Claimant

Mr. Kareem Musa Counsel for the Defendants.

**JUDGMENT**

**Delivered on the 27<sup>th</sup> day of May 2014**

**Introduction**

[1] This is an application made at a case management conference under Part 14.4(1) of the Civil Procedure Rules 2005 by the Claimant against the Defendant for

Entry of Judgment on Admissions which, it is alleged, the Defendants made in their Defence.

- [2] The application was filed on the 16<sup>th</sup> December 2013 for the sum of \$3,650,000.00 together with interest, court fees, fixed costs on issue and entering Judgment and served on the Defendants on the 10<sup>th</sup> February 2014. Counsel for the Defendants accepts that there has been service of the application.
- [3] This claim is for a specified sum of money<sup>1</sup> and the only remedy which the Claimant seeks is the payment of money.
- [4] The application has been made in a prescribed form (form 8 of CPR 2005) and under a procedure in place to enter judgment based on admissions<sup>2</sup> if an admission is made within the pleadings, and also as part of the court's case management powers and based on the principle that there is no defence to the claim and/or that the Claimant has no prospect of succeeding on the claim.
- [5] The Defendants, by their Counsel allege that at no point in time have the Defendants admitted that they owe the debt or the obligation to repay it and that there ought to be a trial of the issues arising on the claim.
- [6] The Court has to determine the questions between the parties after perusing the Defence and establish if the Defendants have indeed admitted the claim and if there ought to be a trial.

### **The Proceedings**

- [7] On the 16<sup>th</sup> September 2013 the Claimant filed the Claim Form & Statement of Claim.
- [8] In the Statement of Claim the Claimant alleges that under an oral agreement made between the Claimant and the Defendant in or around August 2013, which was evidenced by a written agreement entered into by them dated 20<sup>th</sup> August 2013, the Claimant agreed to lend to the 1<sup>st</sup> Defendant the sum of US\$7,000,000.00, of

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<sup>1</sup> Being a defined by Part 2.4 of CPR 2005 as “ a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract”.

<sup>2</sup> And under the old rules and no doubt under the inherent jurisdiction of the court to regulate its own proceedings.

which the sum of US\$3, 500,000.00 was duly advanced to the 1<sup>st</sup> Defendant and acknowledged by them<sup>3</sup>.

[9] The written agreement was not in fact appended to the court's copy of the statement of claim but the court was, by agreement of the parties, handed a copy of the agreement to which the Statement of Claim referred.

[10] The Loan Agreement at paragraph 5(a) under the heading "Draw Down" states as follows:

*"The Lender has already made available to the Borrower Three Million Five Hundred Thousand Dollars in the currency of the Unites States of America (US\$3,500,000.00)."*

[11] The Claimant also alleges that under the agreement existed the following expressed terms:

- (a) The term of the loan would be one year from the 1<sup>st</sup> of September 2013<sup>4</sup>.
- (b) Interest would accrue on the loan to be calculated monthly on the outstanding principal balance of the loan at the rate of sixteen and two-third percent (16.66%) per month for the first six months of the term and 5 per cent (5%) per month for the seventh to twelfth month of the term or at such other rate as may be notified to the 1<sup>st</sup> Defendant by the Claimant from time to time in writing (the "Interest Rate")<sup>5</sup>.
- (c) All legal fees, stamp duties, filing fees, and costs payable in connection with the preparation, execution and completion of the Agreement would be paid by the 1<sup>st</sup> Defendant<sup>6</sup>.
- (d) The 1<sup>st</sup> Defendant would, within seven (7) days following a demand by the Claimant, pay (or reimburse the Claimant for ) all costs and expenses (including court costs, attorneys' fees and expenses) incurred by the

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<sup>3</sup> The specifically pleaded acknowledgement was contained in paragraph 4 of the Statement of Claim.

<sup>4</sup> Paragraph 3.1 of the Statement of Claim as referenced by clause 1(c) of the Agreement.

<sup>5</sup> Paragraph 3.2 of the Statement of Claim as referenced by clause 1(d) of the Agreement.

<sup>6</sup> Paragraph 3.3 of the Statement of Claim as referenced by clause 2 of the Agreement.

Claimant in connection with enforcement of the Agreement or in connection with the protection of any of the Claimant's rights thereunder<sup>7</sup>.

(e) In consideration of the agreement, the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant would charge certain properties of which they were the beneficial owners by way of legal mortgage, with payment to the Claimant of the sum advanced to the 1<sup>st</sup> Defendant and interest on that sum and other charges and expenses as mentioned above as well as the principal money interest and other money secured by this Agreement, and that no part of the Property shall be redeemable and the mortgage subsisting on it shall not cease until all sums due under this Agreement have been duly paid<sup>8</sup>.

(f) All indebtedness and liability of the 1<sup>st</sup> Defendant to the Claimant would become immediately due and payable if the 1<sup>st</sup> Defendant committed any act which would adversely affect (in the claimant's sole discretion ) the ability of the Claimant to collect the principal, interest and other sums due to the Claimant from the 1<sup>st</sup> Defendant under the Agreement<sup>9</sup>.

[12] The Claimant alleges that pursuant to "the Agreement" (the oral agreement) and as acknowledged therein, the Claimant duly advanced the sum of US\$3,500,000.00 to the 1<sup>st</sup> Defendant under the Agreement<sup>10</sup>.

[13] The Claimant alleges that in addition to the sums advanced to the 1<sup>st</sup> Defendant the Claimant incurred expenses of US\$70,230.00 and legal fees of US\$61,438.00<sup>11</sup>.

[14] The Claimant also alleges that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed do what was necessary to complete the registration of the mortgage which resulted in the Claimant not disbursing the balance of the funds which they had agreed to lend the 1<sup>st</sup> Defendant and demanded the repayment of the sums advanced<sup>12</sup>.

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<sup>7</sup> Paragraph 3.4 of the Statement of Claim as referenced by clause 3 of the Agreement.

<sup>8</sup> Paragraph 3.5 of the Statement of Claim as referenced by clause 4 of the Agreement.

<sup>9</sup> Paragraph 3.6 of the Statement of Claim as referenced by clause 7 of the Agreement.

<sup>10</sup> Paragraph 4 of the Statement of Claim..

<sup>11</sup> Paragraph 5 of the Statement of Claim.

<sup>12</sup> Paragraph 6 and 7 of the Statement of Claim.

- [15] The Claimants also alleges that the 1<sup>st</sup> Defendant acknowledged by email of the 9<sup>th</sup> September 2013 the sum of Us\$3,650,000.00 but stated that it was unable to pay the sum due to the Claimant, and instead offered to pay the Claimant interest on the US\$3,650,000.00 at the rate of 10% per annum payable at the end of each month commencing 30<sup>th</sup> September 2013 until the 15<sup>th</sup> January 2014 when it would repay all sums due to the Claimant.
- [16] The Claimant therefore claims payment of the sum of US\$3,970,402.00 from the Defendants together with interest and that the Defendant is indebted to the Claimant. The principal and interest due, as at 16<sup>th</sup> September 2013 is in the sum of US\$4,323,185.45.
- [17] The Defendants in its Acknowledgment of Service does not admit any part of the claim and filed a Defence and Counterclaim on the 11<sup>th</sup> October 2013.
- [18] In the Defendants' Defence and Counterclaim the Defendants seeks to set out a different version of events from that given by the claimant.
- [19] In particular the Defendants deny that by an oral agreement in or about August, 2013 between the Claimant and the Defendants the Claimant agreed to lend the 1<sup>st</sup> Defendant the sum of US\$7,000,000.00<sup>13</sup>.
- [20] In their Defence and Counterclaim the Defendants proceed to detail an elaborate and somewhat complicated version of events, by means of which they seek to avoid being bound by the terms of the oral and written agreements pleaded.
- [21] The Defendants pleaded a Memorandum of Understanding (MOU) with a Company which is not a party to the present proceedings (The Placencia Group International Ltd.) and which involves a seemingly entirely different series of events and an entirely different transaction to that pleaded by the Claimant in the Claim; and involves two companies which are also not parties to the present proceedings (Alamo Heights Financial Inc and Big Chief Inc.).
- [22] In paragraph 2 of the Defence it was admitted by the Defendants however, that Big Chief and the Claimant were connected in the following terms: "Big Chief

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<sup>13</sup> Paragraph 1 of the Defence.

Inc./Sam Kim”; and went on to admit that US\$3,500,000.00, was received by the Placencia Group from Big Chief Ltd. and that this sum “would be converted into a loan agreement” on certain expressed conditions.

[23] The Defendant admitted entering into the loan agreement<sup>14</sup> as alleged by the Claimant but that this agreement was executed on the 1<sup>st</sup> August 2013 by two directors of the Defendants’ companies.

[24] The Defendants also allege certain assurances by parties not parties to the present proceedings namely, the Claimant’s Attorneys-at-Law.

[25] The defendants’ then allege that the said directors of the Defendants delivered title to a property owned by the 2<sup>nd</sup> Defendant as security for the loan of US\$7,000,000.00.

[26] The Defendants did not deny or admit (i.e. did ‘not admit’) that the Claimant has already made available to the Defendant US\$3,500,000.00<sup>15</sup>.

[27] The Defendants rely on paragraph 5(b) of the Agreement pleaded by the Claimant<sup>16</sup>; and admits that subsequent to the agreement on the 1<sup>st</sup> August 2013 the Claimant advanced to the Defendants the sum of US\$150,000.00 and that the Claimants failed to advance US\$850,000.00 in default of the Agreement<sup>17</sup>.

[28] The Defendants also alleges that the Agreement (including “the excessive interest rates”) is now null and void<sup>18</sup> since the loan agreement was expressly for a loan of US\$7,000,000.00 and not US\$3,650,000.00, alleging that the Claimant having failed to deliver the further advances of US\$3,350,000.00 is “therefore barred from relying on the terms of the loan agreement, having himself defaulted in the disbursement of the proceeds of the loan”<sup>19</sup>.

[29] The Defendants pleaded other matters which are not pertinent to the present application.

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<sup>14</sup> Paragraph 8 of the Defence.

<sup>15</sup> Paragraph 5.(a) of the written agreement.

<sup>16</sup> Paragraph 12 of the Defence.

<sup>17</sup> Paragraph 13 of the Defence.

<sup>18</sup> Paragraph 15 of the Defence.

<sup>19</sup> Paragraph 15 of the Defence.

- [30] Indeed, as I previously noted in another case in which I gave a decision, “*I felt that I was being drawn into an impenetrable labyrinth of circumstances, involving actors and companies which/who are not joined in these proceedings, transactions which are collateral to the [agreements] pleaded, and generally matters which can never be pursued in the present proceedings, as they are clearly collateral or tangential to pleaded issues in the case*”<sup>20</sup>.
- [31] The Defendants plead that they are not liable to repay the sums advanced as the Claimant was in default and acted unreasonable in not agreeing to re-execute the loan agreements as they claimed they ought to have been.
- [32] The Counterclaim is not the subject of the present application.
- [33] The Claimant filed a comprehensive Reply on the 1<sup>st</sup> November 2013.
- [34] In the Reply and Defence to Counterclaim the Claimant admits much of what is pleaded by the Defendants in their Defence relating to the MOU, admits that the Loan Agreement was executed on Friday the 2<sup>nd</sup> August 2013, but denies that any verbal assurances were given by the Claimant’s Attorneys.
- [35] The Claimant in their Reply and Defence to Counterclaim then proceeded to specifically reply to most of the allegations made by the Defendants in relation to the different version of events from that originally given by the Claimant most of which are not relevant to the present application.

### **The Law**

- [36] The Civil Procedure Rules 2005 (“CPR 2005”) sets out provisions for starting proceedings such as the Claim Form and Statement of Claim in the present proceedings<sup>21</sup>, for the Defendant to file and acknowledgment of service in a specified form<sup>22</sup> and if the Defendant wishes to dispute the whole or part of the claim, for a defence to be filed and served<sup>23</sup>.

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<sup>20</sup> See Consolidated Claims 74 of 2013; 105 of 2013 & 106 of 2013: THE BELIZE BANK LIMITED V LUKE ESPAT Page 10.

<sup>21</sup> CPR Part 8.1

<sup>22</sup> Part 9.1(2) of CPR 2005.

<sup>23</sup> Part 10.1(2) of CPR 2005.

[37] Part 10.5 of CPR 2005 specifies that the Defence must set out all the facts on which the defendant relies to dispute the claim, which should be as short as practicable and must say<sup>24</sup>:

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- (a) *which (if any) allegations in the claim form or statement of claim are admitted ;*
- (b) *which (if any) are denied; and*
- (c) *which (if any) are neither admitted nor denied, because the defendant does not know whether they are true, but which the defendant wishes the claimant to prove.”*

[38] Part 10.5(4) & (5) of CPR 2005 state as follows:

*“(4) Where the defendant denies any of the allegations in the claim form or statement of claim –*

- (a) the defendant must state the reasons for doing so; and*
- (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant’s own version must be set out in the defence.*

*(5) if, in relation to any allegation in the claim form or statement of claim the defendant does not –*

- (a) admit it; or*
- (b) deny it and put forward a different version of events,*

*The defendant must state the reasons for resisting the allegation*

[39] Part 14 of CPR 2005 deals with ‘*Judgments on Admissions*’.

[40] Under Part 14.1(4) of CPR 2005 a party may admit the truth of the whole or any part of any party’s case in writing (such as in a statement of case such as a Defence) after the issue of proceedings for a specified sum of money.

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<sup>24</sup> Part 10.5(3) of CPR 2005.



[41] Part 14.6 of CPR 2005 provides as follows:

- (1) *This Rule applies where –*
  - (a) *the only remedy which the claimant is seeking is payment of a specified sum of money;*
  - (b) *the defendant admits the whole of the claim in the acknowledgment of service; and*
  - (c) *the defendant has not requested time to pay.*
- (2) *The claimant may file a request for judgment (in Form 8) for the amount claimed, interest and fixed costs under Rule 64.4 and may specify;*
  - (a) *The date on which the judgment debt is to be paid;*  
*or*
  - (b) *The time and rate at which it is to be paid if by installments.*
- (3) *The court office must enter judgment in accordance with the request.”*

[42] Part 14.7 of CPR 2005 provides as follows:

- “(1) This Rule applies where –*
  - (a) *the only remedy which the claimant is seeking is payment of money;*
  - (b) *the defendant admits –*
    - (i) *a specified sum of money; or*
    - (ii) *a specified proportion of a claim for an unspecified sum of money,*  
*In the acknowledgement of service or defence; and*
  - (c) *the defendant has filed a defence as to the amount not admitted.*
- (2) *The court office must serve a notice on the claimant requiring him to file a notice stating that -*

- (a) *the amount or proportion admitted in satisfaction of the claim is accepted; or*
  - (b) *the proceedings are to continue.*
  - (3) *The claimant must –*
    - (a) *file the notice under paragraph (2); and*
    - (b) *serve a copy on the defendant within 14 days after service of the court’s notice.”*
- etc

[43] The law is well established that an admission may be expressed or implied but must be clear<sup>25</sup>.

[44] Also that where the Defendant admits a document but does not admit that its terms are fully or correctly pleaded, the claimant may obtain judgment if the document, on production, clearly establishes the claim<sup>26</sup>.

[45] Part 15.2 of CPR 2005 provides:

- “The court may give summary judgment on the claim or on a particular issue if it considers that –*
- a) ...
  - b) *The defendant has no real prospect of successfully defending the claim or the issue.”*

[46] Part 15 sets out the types of proceedings for which summary judgment is not available (which do not apply to the present proceedings), the procedure for summary judgment, the evidence which is required for the purposes of such applications, and the powers of the Court on such applications.

[47] Although notice of application for summary judgment must be served not less than 14 days before the date fixed for hearing the application<sup>27</sup>, Part 15.4(3) provides that: *“The court may exercise its powers without such notice at any case management conference”*.

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<sup>25</sup> See UK Civil Procedure Volume, the White Book Service 2011 Part 14.1.4 page 431.

<sup>26</sup> Ibid

<sup>27</sup> Part 15.4(1) CPR 20015

[48] The powers of the Court are specifically set out at Part 15.6(1) of CPR 2005 which provides:

*“The court may give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end.”*

[49] The summary judgment application may be defeated if the Defendant can show some “prospect” or chance of success. This apparently, and somewhat deceptively, simple test, (“The Defendant has no real prospect of successfully defending the claim or the issue“) I have explored in another recent decision which I delivered along with the learning on the subject<sup>28</sup>. .

[50] In addition to the above powers granted by the rules of court it is undoubtedly the case that this High Court, as a superior court of record, has powers (as distinguished from a discretion) which are necessary to enable it to act effectively within its jurisdiction under its ‘inherent jurisdiction’ to enforce its rules and prevent an abuse of its own process, which power is exercisable by summary process, without a plenary or full trial<sup>29</sup>.

### **The Issues.**

[51] The primary issue for determination is whether the Defendants admit or dispute the claimed debt of \$3,650,000.00 together with interest, or any part of the claimed debt.

[52] A secondary issue is if the Defendants did not admit any part of the claimed debt, whether judgment could or should otherwise be entered against the Defendants for the whole or any part of the claimed debt of \$3,650,000.00 together with interest, or any part of the claimed debt.

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<sup>28</sup> See Consolidated Claims 74 of 2013; 105 of 2013 & 106 of 2013: THE BELIZE BANK LIMITED V LUKE ESPAT Page 10.

<sup>29</sup> See Civil Procedure Volume 2; The White Book 201: Paragraph 9A-68.

**The contentions of Counsel for the parties to the proceedings**

[53] Counsel for the Claimant made the following submissions about admissions which the Defendants made in their Defence:

- (a) That the Defendants admitted receiving the sum of US\$3,500,000.00.
- (b) That the Defendant agreed that the sum of US\$3,500,000.00., received were to be treated as a loan.
- (c) That there was not a denial or challenge of any of the terms of the loan agreement.
- (d) Therefore the Defendants admitted that they owed the amount of the loan to the Claimant with whom alone the loan agreement was made (see parties to loan agreement attached to Statement of Claim), and do not owe the loan to other persons.
- (e) That the Claimant demanded repayment of the loan.
- (f) That the Defendants advanced ‘no defence against the obligation to repay the loan except the conclusionary (and not factual or contractual) assertion that the failure of the Claimant to lend further sums made the loan agreement null and void’.
- (g) That the Defendants imply that the alleged ‘nullity and voidness of the loan agreement results in the forfeiture of the Claimants US\$3.5 million to them’ because the Claimants are “barred from relying on the terms of the loan agreement”.
- (h) That the Defendants have ‘admitted the debt and the obligation to repay it and have pleaded no defence which is capable of succeeding’.

[54] Counsel for the Defendants made the following submissions in response to the submissions of the Claimants:

- (a) At no point in time have the Defendant admitted that they owe the debt and at no point did they cite the obligation to repay it. If true then the Claimants would be on good footing to bring an application for judgment on admissions.

- (b) The application is an improper one and should have been an application for summary judgment. This is an application for judgment on admissions.
- (c) The Defendants' nowhere in their Defence admitted to owing the monies to the Claimant nor did they communicate their obligation to repay it.
- (d) The Defendant at no point admits the whole of Claim in the acknowledgement of service as required by Part 14.6(1) of CPR 2005.
- (e) No admission of owing any monies as required by Part 14.7.
- (f) They would like this matter to be dealt with expeditiously and for the court to set an early trial date.

[55] Counsel for the Claimant, with the agreement of the Counsel for the Defendant, handed the court a copy of the written agreement and submitted that the pleadings supports the acknowledgment of the Defendants obligation to repay this sum. Counsel referred to Paragraph 6 of Defence and submitted that thereafter it was mutually agreed between the parties that the sums advanced to Placencia Group namely US\$3.5 million, pursuant to MOU, would be converted into a loan agreement on the expressed condition that the Claimant would issue further advances to a total of US\$7 million.

[56] Counsel for the Claimant referred the Court to Part 15.4(3) of CPR 2005 and asked for summary judgment be given without an application.

[57] Counsel for the Defendants accepted that the Court has power, in clear instances, to grant summary judgment, but submitted that this is not such an instance.

### **Court's Conclusions**

[58] The present application is being determined entirely on the pleadings and not on any evidence; as no evidence has been filed by the parties in support of the application for the Request for Entry of Judgment on Admission, and the stage has not been reached for evidence to be exchanged by the parties or filed with the court.

- [59] I first consider whether the Defendants admitted or disputed the claimed debt of US\$3,650,000.00 together with interest, or any part of the claimed debt.
- [60] In relation to this matter I will consider the Claimant's submission that the Defendants admitted receiving the sum of US\$3,500,000.00.
- [61] I observe that the Claimant in their Statement of Claim distinguished between the pleaded oral agreement and the written agreement dated 20<sup>th</sup> August 2013 which latter agreement was allegedly signed by the Defendants and which evidenced the oral agreement.
- [62] Unfortunately the Claimant seemed not to be entirely clear in his Statement of Claim between the oral and written agreement and seemed at times to conflate the two. In particular, at paragraphs 3 and 4 of the Statement of Claim the Claimant seems to be referring to the oral agreement in which, it was alleged that there existed certain expressed terms and that it was acknowledged therein that the Claimant duly advanced the sum of US\$3,500,000.00, and seemed not to be referring to the written agreement.
- [63] But nevertheless it appears to be clear that the Defendants in their Defence and Counsel for the Defendants at the hearing must have been admitting that, as contained in the written agreement, the sum of US\$3,500,000.00 was advanced (or converted into a loan agreement, whether subject to a condition of a further grant of US\$3,500,000.00 or not), that the Claimant made available to the Defendant the sum of US\$3,500,000.00; and also that the Defendants by their directors did execute the written loan agreement at the offices of the Claimant's Attorneys-at-Law, Barrow & Co. LLP, on the 1<sup>st</sup> day of August 2013 (whether based on alleged assurances given or otherwise).
- [64] On perusal of the agreed written Loan Agreement handed to the court, it is on the face of the document at paragraph 5(a) that the Defendants (as parties to this loan agreement) acknowledge that "the Lender<sup>30</sup> has already made available to the

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<sup>30</sup> The Claimant.

Borrower<sup>31</sup> Three Million Five Hundred Thousand Dollars in the currency of the United States of America (US\$3,500,000.00).”

- [65] It seems to me therefore, that as the Defendants have both admitted a document and admitted its terms, and that on production of the document by agreement, the written agreement clearly establishes that the Claimant advanced to the Defendant by having “made available to the Borrower Three Million Five Hundred Thousand Dollars in the currency of the United States of America (US\$3,500,000.00)” that this clearly establishes, by admission, that the sum of US\$3,500,000.00 had been advanced by the Claimant to the Defendant even if it was not entirely clear on the pleadings whether the advance was made pursuant to the written agreement or the oral agreement. On this basis, I am prepared to find that there was an admission by the Defendants that they were advanced by the Claimant the sum of US\$3,500,000.00.
- [66] It seems to me a clear admission because there does not appear to me any clear or credible defence on the face of the Defence or by legal or other argumentation (i.e. otherwise) to the liability to repay the sum of US\$3,500,000.00.
- [67] I therefore agree with the submissions of learned Counsel for the Claimants that “The Defendants advanced no defence against the obligation to repay the loan except the conclusionary (and not factual or contractual) assertion that the failure of the Claimant to lend further sums made the loan agreement null and void”.
- [68] Learned Counsel for the Claimant used more colourful language when he stated “”The defendants do not have the effrontery to say it, but they imply that the alleged nullity and voidness of the loan agreement results in the forfeiture of the Claimants US\$3.5 million to them: they say the claimant is ‘barred from relying on the terms of the loan agreement’”. Even though it has not been pleaded as a defence, in my view, Equity could and would not permit such a defence or conclusion.

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<sup>31</sup> The Defendants.

- [69] I therefore agree that the Defendants have admitted receiving the sum of US\$3,500,000.00.
- [70] Beyond this sum of US\$3,500,000.00, I could not find that the Defendants have made any admissions to the claim.
- [71] There is some difficulty with the application for Request for Entry of Judgment on Admissions however.
- [72] It seems to me that the procedure for judgment on admission as requested by the Claimant is not in conformity with Part 14.6 of CPR 2005 as the request would not amount to a situation where “*the defendant admits the whole of the claim in the acknowledgment of service*” as required by this rule and which entitles “*the court office to enter judgment in accordance with the request*”. There was no such admission either of the whole of the claim nor was there an admission in the acknowledgment of service.
- [73] It also seems to me that the procedure for judgment on admission as requested by the Claimant is also not in conformity with “Admission of part of claim for money only” contained in Part 14.7 of CPR 2005 as although the only remedy which the claimant is seeking is payment of money and the Defendant admits a specified sum of money in its defence and the Defendant has filed a defence as to the amount not admitted. The court office is then required to serve a notice on the claimant requiring him to serve a notice stating that “*the amount or proportion admitted in satisfaction of the claim is accepted or the proceedings are to continue*”.
- [74] The request is for entry of Judgment on Admission for the whole of the claim and the defence purports to be of the whole of the claim and not of part of it.
- [75] Also, the court office has not, as required by Part 14.7 of CPR 2005, served a notice on the Claimant to file the notice provided for by this rule and neither has the Claimant filed and served on the Defendant the notice required by this rule within the time specified by the rule.



- [76] In my view however, given the admission, which I have found, I consider these nonconformities with the rules and/or procedural irregularities to be minor, and would find that this court does have powers, to bridge the gap which appears to exist in the rules, and enable it to act effectively within its jurisdiction under its 'inherent jurisdiction' to enforce its rules and prevent an abuse of its process. The court's power is exercisable by summary process, without a plenary or full trial.
- [77] I find that the Claimant is entitled to judgment on admission in respect of the sum of US\$3,500,000.
- [78] If I am wrong about this, and in any event, I would also find that on the state of the pleadings and on the facts and circumstances of the present case, as set out above, the Defendant has no real prospect of successfully defending the claim in respect of the sum of US\$3,500,000., which I have found the Defendant has admitted; and the Claimant is thereby entitled to summary judgment without notice of an application for summary judgment. Counsel for the Defendant has conceded that the application should have been for summary judgment instead of judgment on admissions and in relation to this concession I accept that this was correctly made.
- [79] It seems to me that this is an appropriate case to make use of the courts powers contained Part 15 of CPR 2005 and to give effect to the overriding objective as it will save expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice.
- [80] It also seems to me that in respect of the claim for US\$3,500,000 the Claimant has a case which is bound to succeed and it is in the Defendant's interest to know as soon as possible that that this is the position and that this is proper use of Part 15 having reviewed the matter and heard full arguments on both sides.
- [81] There remains, however, the defence and counterclaim in relation to the remainder of the Claimant's case and I order that these issues proceed to trial.

### **Costs**

[82] At this stage, even though it seems to me that the Claimant may be entitled to his costs in relation to the claim on which he has been successful, I will nevertheless reserve my decision on the question of costs on the part of the claim on which I have now granted judgment until the end of the case and after hearing hear full arguments; but will proceed to give directions for the trial of the other outstanding issues of the case.

**Disposition**

[83] The Claimant is entitled to judgment on its admission in respect of the sum of US\$3,500,000, and I so order.

[84] Further and alternatively, having found that the Defendants has no real prospect of successfully defending the claim in respect of the sum of US\$3,500,000., I order that that the Claimant is entitled to summary judgment without notice of an application for summary judgment in respect of the said sum of US\$3,500,00.

[85] Costs are reserved in relation to the judgment of US\$3,500,00, which I have ordered.

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**The Hon. Mr. Justice Courtney A. Abel**