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ORDER, SUPREME COURT OF NEW JERSEY (OCTOBER 3, 2023)

SUPREME COURT OF NEW JERSEY

STEPHEN N. NORTH,

Plaintiff-Respondent,

v.

ANTHONY EMPOSIMATO,

Defendant-Appellant.

No. 088462

C-116 September Term 2023

Before: Stuart RABNER, Chief Justice.

A petition for certification of the judgment in A-003095-20 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 3rd day of October, 2023

/s/
Clerk of the Supreme Court

OPINION, SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION (JUNE 8, 2023)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

STEPHEN N. NORTH,

Plaintiff-Respondent,

v.

ANTHONY EMPOSIMATO,

Defendant-Appellant.

Docket No. A-3095-20

Submitted June 1, 2023 – Decided June 8, 2023

On Appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2332-18.

Before: MAYER and FISHER, Judges.

PER CURIAM

In 2013 and 2014, plaintiff Stephen N. North made four short-term loans, in the collective amount of $140,000, to defendant Anthony Emposimato. These loans and defendant's obligation to repay the principal with interest, together with reasonable attorneys' fees incurred by plaintiff in seeking collection, were memorialized in writing and signed by the parties. Defendant defaulted and later acknowledged his default in writing.

Plaintiff commenced suit to collect this debt. Judge Robert J. Brennan conducted a two-day bench trial, during which the parties and three other witnesses testified. Judge Brennan rendered a few weeks later an oral decision containing his findings of fact and conclusions of law. The judge found that defendant owed the principal amount plus interest, and he rejected defendant's assertion that plaintiff had forgiven the debts. The judgment eventually entered awarded plaintiff $170,349.42 in principal and interest, and $80,627.96 in attorneys' fees and costs.

Defendant appeals, arguing in his first point that plaintiff "did not perform in accordance with the agreements [and] [t]here was no money that was given" to him, and in a second point that "[a] new cont[r]act was formed and the loans were forgiven."

Considering our standard of review, which bars our "overturn[ing] [a] trial court's factfindings unless [they are] 'manifestly unsupported' by the 'reasonably credible evidence' in the record," *Balducci v. Cige*, 240 N.J. 574, 595 (2020) (quoting *In re Tr. Created By Agreement Dated Dec. 20, 1961*, 194 N.J. 276, 284 (2008)), we conclude, after close examination of the record, that Judge Brennan's factfindings are firmly anchored to the credible evidence and, therefore, command our acceptance and deference. And, while the interpretation of a contract is generally subject to de novo review, *Kieffer v. Best Buy*, 205 N.J. 213, 222-23 (2011), the loan documents admitted in evidence clearly and unambiguously established defendant's liability to repay plaintiff. There being no credible evidence that plaintiff forgave the loans in whole or in part, we reject defendant's arguments and affirm substantially

for the reasons set forth in Judge Brennan's thoughtful and cogent oral decision.

Affirmed.

ORDER, SUPERIOR COURT OF NEW JERSEY (DECEMBER 14, 2020)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MORRIS COUNTY

STEPHEN A. NORTH,

Plaintiff,

v.

ANTHONY EMPOSIMATO,

Defendant.

Docket No. MRS-L-2332-18
Civil Action

Before: Honorable Robert J. BRENNAN, J.S.C.

ORDER ENTERING JUDGMENT AGAINST DEFENDANT ANTHONY EMPOSIMATO

THIS MATTER was opened to the Court by the filing of a Complaint on behalf of Plaintiff Stephen A. North against Defendant Anthony Emposimato, and the parties having conducted a bench trial in front of the Honorable Robert J. Brennan, J.S.C. on August 25, 2020 and August 31, 2020, and after considering the testimony and various exhibits placed into evidence, based upon my review and consideration of all proofs presented in this matter:

IT IS on this 14th day of December, 2020

ORDERED that Judgment be and hereby is entered in favor of Plaintiff Stephen A. North and against Defendant Anthony Emposimato in the amount of $170,349.42 based on Defendant's breach and failure to repay monies pursuant to four (4) loan agreements dated November 1, 2013, April 1, 2014, September 2, 2014 and October 10, 2014 (the "Loan Agreements").

FURTHER ORDERED that Plaintiff is awarded attorneys' fees and costs pursuant to the express terms of the Loan Agreements in the amount of $80,627.96 for a total judgment of $250,977.38.

FURTHER ORDERED, that within seven (7) days of Plaintiff's receipt of this Order, Plaintiff shall serve a copy of same upon Defendant by regular mail.

/s/ Robert J. Brennan
J.S.C.

The court set forth its reasons for entry of judgment against defendant on the record on September 15, 2020. The court's subsequent review of plaintiff's attorney fees and costs revealed them to be reasonable and necessary.

TRANSCRIPT OF DECISION, SUPERIOR COURT OF NEW JERSEY (SEPTEMBER 15, 2020)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART MORRIS COUNTY

STEPHEN A. NORTH,

Plaintiff,

v.

ANTHONY EMPOSIMATO,

Defendant.

Docket No. MRS-L-2332-18

App. Div. No. A-003095-20-T1

Before: Honorable Robert J. BRENNAN, J.S.C.

(Proceeding commenced at 10:05:34 a.m.)

COURT CLERK: Good morning, everyone.

MR. MOUNT: Good morning.

MR. NORTH: Good morning.

MR. EMPOSIMATO: Good morning.

COURT CLERK: The matter of *Stephen North v. Anthony Emposimato* comes before the Honorable Robert J. Brennan, September 15th, 2020, Docket Number MRS-L-2332-18. This decision is made

recorded for the Morris/Sussex Vicinage by Court Clerk Daniel Rivera using Zoom technology.

THE COURT: Good morning, everyone. Thank you for joining us. The purpose of today's proceeding is for the Court to set forth on the record its decision following a trial that occurred on August 25th. We then took several days to—for the parties to review certain documents, and we resumed and finished on August 31, both dates in 2020.

The case was tried remotely to the bench without a jury by agreement of the parties.

The complaint in this action was filed on November 28th of 2018. In the complaint plaintiff claims that money is due him from the—from defendant on four personal loan agreements that total $140,000. The primary defense to the plaintiff's claims mounted by defendant is that the loans were forgiven by plaintiff.

The background is as follows. In approximately 2009 or 2010 the parties came together, having met initially, and worked together with a number of other individuals to start up a company known as Tropical Marine Recycling, which the parties referred to in the course of the trial as TMR, which was a limited liability corporation established in Puerto Rico.

In the period of 2010 to 2013 the plaintiff paid over the sum of $125,000 to TMR by way of checks, personal checks, that were marked in evidence as J-5, J being for joint. The Court asked the parties to attempt to agree on certain exhibits that might come into evidence without objection, and they did agree on J-5, again, J for joint, J-5, 6, 7, 8 and

9. Which—now, these funds were characterized, again, during the trial by the parties as, quote, "seed money," unquote whereby the funds would be used to assist with the start up of the operation of TMR.

However, in plaintiff's words, TMR, quote, "did not get off the ground," unquote. That is to say although the parties appear to have worked on the matter for a period of time, worked on establishing TMR to get it into business and operating, that never did occur. That is to say the object of their efforts was not realized.

By November 1 of 2013 the parties agreed to convert the so-called seed money to a personal loan that was extended by the plaintiff to defendant.

J-1 is the loan agreement that the parties signed on November 1 of 2013. It is in the face amount of $135,000. That is to say the—J-1 purports to memorialize a loan from plaintiff to defendant in the amount of $135,000. However, it was agreed that the $135,000 figure is what the plaintiff described as a clerical error, and that the sum of the seed money converted to a personal loan was not, in fact, $135,000, but rather correctly was $125,000.

And so, plaintiff alleges that this was a personal loan by him to defendant in the amount of $125,000, and he seeks to recover that sum, together with certain other sums that I'll describe in a moment.

The $125,000 loan was due and payable, according to J-1, on May 1 of 2017. Interest, according to J-1, would accrue at two-and-a-half percent on what-

ever was unpaid—whatever principal was unpaid, at November 1, 2015, and thereafter interest would accrue at the rate of five percent, the annual rate of five percent, on the unpaid principal as of May 1, 2017, should there be any principal unpaid at that time.

The defendant, for his part, agrees that this loan was made. He agrees that he did not pay. However, his position is subject to his defenses that the Court will review.

Now, the parties, beyond J-1, they entered into three additional loan agreements. J-2, in the amount of $5,000 on April 1 of 2014 that was due and payable on June 21 of 2014, with interest to run at two-and-a-half percent annually on the on whatever was unpaid after that due date of June 21 of 2014.

Again, the defendant agrees that this loan was made, and that it was not paid, but again, subject to his defenses.

J-3, another personal loan from plaintiff to defendant, again in the amount of $5,000, was made on September 2nd of 2014, due and payable on November 15 of 2014, with interest to run at two-and-a-half percent annually on the unpaid principal as of the due date, 11/15/2014. Again, defendant agreed the loan was made. He did not pay. But his position is subject to his defenses, again.

A third in this series, actually the fourth overall loan, J-4, again in the amount of $5,000, was made by plaintiff to defendant on October 14 of 2014, due November 15 of 2014, interest at two-

and-a-half percent on the unpaid principal at the due date. Defendant's position is the same here as the other loans. He agrees the loan was made. He agrees he did not pay, all subject to his defenses.

Now, the series of $5,000 loans was not made directly in connection with TMR. Rather, the defendant was in the midst at that time of a divorce proceeding, and according to the plaintiff what defendant told him was that the $125,000 loan would be repaid from whatever the defendant was able to realize in the matrimonial proceeding, the FM case.

Now, whether that would be by way of equitable distribution, support payments or the like was not specified, but plaintiff lent defendant this total of $15,000 to assist with payment of counsel fees in the FM case so that hopefully, from plaintiff's perspective, at the end of the day when the FM case was concluded defendant would have funds from that action to repay the $125,000 loan, as well as the three $5,000 loans.

That did not happen. That is to say, at least to the extent that funds—whatever funds the defendant may have realized from the FM, if any, were not utilized to repay any of the loans. So, the total that the plaintiff seeks from the four loans, one of $125,000, and three loans at $5,000 each, the total that the plaintiff seeks to recover, the principal is $125,000 with interest.

P-2 in evidence is a letter from defendant to plaintiff dated May 15 of 2017. Defendant wrote, to paraphrase, in that letter that he was unable to

pay the $125,000 loan made personal loan made on November 1 of 2013. And when I say the loan was made that day, the agreement reflected that it was—what it was effectively doing was converting the so-called seed money to a personal loan from plaintiff to defendant. And defendant wrote in his letter loan. acknowledging that he was unable to repay And at that time the correction was made as a clerical error that it was in fact the $125,000 loan.

Now, what the plaintiff was—said that what his desire was at this time was to document the fact that the defendant could not—excuse me. I'm sorry. I beg your pardon. Let me start that phrase again. According to the plaintiff, what he wanted to do was to document the fact that defendant was unable to pay the loan, so that the plaintiff would have a basis for taking that non-payment of the loan as a deduction, so to speak, on his income taxes to offset any short-term capital gain. So this would be a short term capital loss to offset any short term capital gains for that particular year on his income taxes.

However, he did still expect the—he said, the defendant to repay the loan, and of course if that happened, then in a future year the plaintiff would have to recognize on his taxes the repayment, and adjustments would have to be made for the deduction that had been taken. All of this is hypothetical because there was no repayment that ever was made.

And so, what the plaintiff said essentially was that the letter—he asked the defendant for the letter for purposes of the plaintiff's dealings with the

Internal Revenue Service in writing off the short term capital losses against short term capital gain.

Again, the defendant admitted that the $125,000 in seed money was transferred into a personal loan to defendant from the plaintiff, also that the three smaller loans of $5,000 each were for the purpose of assisting defendant in funding his counsel fees in the FM case, although according to plaintiff the defendant was actually unrepresented in the FM action and was appearing there pro se.

P-1 is a letter from defendant, in evidence, to plaintiff dated October 1 of 2016. In this case the defendant wrote and acknowledged that he was unable to repay the three $5,000 loans, and that plaintiff desired to have that written record, again for purposes of supporting any short term capital losses that he might use to offset short term capital gains on his income tax returns.

Now, the defendant's essential position is that plaintiff forgave the loans, that they—that the parties, when these funds were due and owing, came together, I believe it was in a local restaurant, had a discussion, and according to defendant the plaintiff said that he was forgiving these loans.

The plaintiff denies this and said that he never forgave the loans and had no intention of making a gift to defendant in the amount of $140,000.

Now, defendant also, in addition to his defense that the plaintiff forgave the loans, plaintiff also testified, representing himself, the defendant appeared pro se in the matter, and argued in

summation that plaintiff, an employee of Raymond James Financial Services, and plaintiff's work at Raymond James was as an investment advisor, defendant maintained that plaintiff's investment and involvement in PMR violated certain Financial Regulatory Act and Board, that is to say FINRA regulations governing the financial investment community. And as I say, plaintiff was an employee of Raymond James as an investment advisor.

However, the Court finds that this particular argument posed by defendant here is of no moment to the underlying issue of whether the loans were made, which they were, and the key issue is whether they were forgiven, not whether plaintiff may have or may not have been in violation of certain financial regulatory regulations, rules, and the like.

So, although two witnesses from Raymond James testified about plaintiff's request that he be permitted to engage—invest in and engage in TMR, that testimony ultimately the Court finds is irrelevant to the underlying question of whether these loans were forgiven.

In any event, the evidence did tend to show that the plaintiff was not in violation of the underlying FINRA regulations, and that he did have his employer's consent, but again, the Court finds that not to be relevant to the underlying issues here.

So, the plaintiff's purpose in obtaining the records, that is to say the letters that I've mentioned, P-2 and P-1 from defendant, was so that the plaintiff would have written proof, documentation of the

fact that he had lent money and was now not able to collect it. And there was testimony from Robert Stein, plaintiff's CPA, that tended to support that position.

The defendant argues that he never received a demand letter from plaintiff for repayment, but that is not required. There is a loan—there are loan documents, loan agreements that are in effect, and the fact that plaintiff did not sit down and write a letter demanding repayment does not affect the—whether there may be sums due and owing, or affect the question of whether the loans that were forgiven.

Now, the defendant says that the forgiveness of the loans was verbal, and he quoted the plaintiff as saying, quote, "the loans are gone," closed quote. The defendant also argues that he received no consideration for the execution of the loan documents, but that the loan documents themselves do recite consideration, which is legally sufficient. The money was also used in furtherance of TRM, and so there certainly was, based on the record, consideration for the loans that were made, and for defendant's obligation.

Now, the defense position is that the plaintiff said that plaintiff would forgive the loans, and then take a deduction for those loans, which is not a logical position. One can't do both. One can't forgive a loan and then take a deduction. If one forgives a loan one makes a gift, and then one does not have an unpaid loan to use as a tax deduction. So it's not a logical—not a logical argument. Forgiveness of a loan is a gift, and that would not line up with taking a deduction.

Plaintiff argues that the Statute of Frauds, N.J.S.A. 25:1-5(f) and 1-5(g), require this loan forgiveness—any loan forgiveness in this case to be in writing. The Court cannot accept that argument. It is without merit. The statute provides as follows. No action—this is N.J.S.A. 25:1-5, "No action shall be brought on any of the following agreements or promises unless the agreement or promise upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or by some other person there unto by him lawfully authorized." Subsection (f) then says, "A contract, promise, understanding or commitment to loan money, or to grant, extend or renew credit in an amount greater than $100,000 not previously—" I'm sorry— "not primarily for personal, family or household purposes, made by a person engaged in the business of lending or arranging for the lending of money or extending credit." (g)—and then I'm quoting (f) in part, in relevant part, and as well Subsection (g) in relevant part provides, "An agreement by a creditor to forbear from exercising remedies pursuant to a contract, promise, undertaking or commitment which is subject to the provisions of Subsection (f) of this section."

So, the Statute of Frauds does not apply because the plaintiff—there's no proof in this record that the plaintiff is in the business of lending or arranging for the lending of money or extending credit. So the Court does not base its decision on the Statute of Frauds.

However, the Court does find that the loans were not forgiven, orally, in writing, or any other way, primarily because it would simply not make sense that the plaintiff would forgive the loans and then take a deduction from his taxes. That would not be legal, and one can't—simply can't do both, and that's why it is completely illogical that the plaintiff would go to efforts to obtain these letters from defendant as a basis for showing the IRS that he had uncollectible loans and then turn around and forgive them. That is not a logical, sensible theory. The Court rejects it and finds that the loans were made. There was consideration. They are unpaid. And these funds are due and owing from defendant to plaintiff.

The interest calculated on the $140,000 due, according to the interest provisions that I have placed on the record a few moments ago, the interest equals $30,349.42. So the total due and owing is $170,349.42.

Now, the loan agreements provide for attorney fees as part of—if there is a collection requirement, if efforts must be made to collect, then attorney fees are collectible as well. And so I take it that counsel for plaintiff will submit a certification of services.

I do apologize to the parties for jumping into this without taking appearances. Please accept my apology for that. Better late than never. Can we have appearance for counsel for plaintiff, please?

MR. MOUNT: Yes, Your Honor. Andrew Mount from Bressler, Amery & Ross, on behalf of the plaintiff.

THE COURT: Thank you. And Mr. Emposimato, for defendant, please?

MR. EMPOSIMATO: Yes. Pro se Anthony—excuse me—Anthony Emposimato.

THE COURT: All right. Thank you very much.

And again, I'm sorry that I overlooked that at the outset.

So, Mr. Mount, are you intending to submit a certification of services?

MR. MOUNT: Yes, Your Honor.

THE COURT: When will you do that by?

MR. MOUNT: Your Honor, we could likely do that by the end of—end of next week. Would that be okay?

THE COURT: Okay. That is September 25th, I believe.

MR. MOUNT: Yes.

THE COURT: Okay. Mr. Emposimato, would you like to submit any objections to Mr. Mount's certification of services?

MR. EMPOSIMATO: No, Your Honor.

THE COURT: No?

MR. EMPOSIMATO: No.

THE COURT: Okay. All right. Well, I will review the certification and include a reasonable and necessary amount of attorney fees as part of the final judgment. But do—even though Mr. Emposimato is not going to file any objections, Mr. Mount, please do make sure that Mr. Emposimato receives

notice and a copy of your certification of services. All right?

MR. MOUNT: Absolutely. Thank you.

THE COURT: All right. So I'll see that on September 25th And—oh. Please submit a form of judgment with that, as well, Br. Mount.

MR. MOUNT: Yes. We will, Your Honor.

THE COURT: Okay. Upload that to eCourts if you would, please, as well as your certification, and the Court will then enter a final judgment in due course.

Now, the evidence is in the hands—of well, Mr. Emposimato did not enter any documentary evidence—any documents into evidence. Mr. Mount has the evidence, which I presume you will maintain and safeguard for a reasonable period of time. Correct, Mr. Mount?

MR. MOUNT: That's correct, Your Honor.

THE COURT: All right. All right. I thank you both again very much for being present morning. And I'll look forward to receiving the certification and the form of judgment. And as I say, we'll process that just as soon as possible.

With that I will sign off with thanks and wishing everyone a good day.

MR. EMPOSIMATO: Thank you. Goodbye.

MR. MOUNT: Thank you, Your Honor.

THE COURT: Goodbye now.

(Proceeding concluded at 10:36:26 a.m.)

EMAILS WITH STEPHEN NORTH REGARDING LOAN WRITE-OFFS (APRIL 3, 2017)

From: Robert Stein
To: Stephen Oppenheim
Subject: FW: Loan Writeoffs
Date: Monday, April 03, 2017 3:01:32 PM

Steve,

Use the $ 15,000 loan as a bad debt for 2016. See below.

Bob

From: Stephen North [mailto:snorth3@gmail.com)
Sent: Monday, April 03, 2017 3:00 PM
To: Robert Stein
Subject Re: Loan Writeoffs

Yes

On Apr 3, 2017, at 2:52 PM, Robert Stein <rstein@rem-co.com> wrote:

So we will take the loss for $.15k for the 2014 loan in 2016.

Agreed?

From: stephen north [mailto:snorth3@gmaH.com]
Sent: Monday, April 03, 2017 2:51 PM
To: Robert Stein
Subject: Fwd: Loan Writeoffs

Bob,

I just wanted to confirm the email displayed below.

Steve

-----Forwarded message-----

From: Stephen North <snorth3@gmail.com>
Date: Thu, Mar 23, 2017 at 3:20 PM
Subject: Loan Writeoffs
To: Robert Stein <rstein@rem.co.com>

Thought I would provide you with some information about what I am terming loan write offs.

During 2014 I loaned a friend/business partner approximately $15000 that he has indicated he is unable to repay. These loans are documented with signed and notarized loan agreements. There is on additional loan for $135000 made in November of 2013 that is not due for payment until 5/1/17 so this will no doubt an issue for tax year 2017.

The questions I have are as follows:

What impact will this have on my 2016 taxes and you might want to use 2015 as the results are similar.

What documentation of the loan default is required by the taxing authorities?

Any thing else that you think I should know.

Thanks,

Steve

EXCERPTS FROM THE TESTIMONY OF PLAINTIFF STEPHEN A. NORTH SEPTEMBER 15, 2019, DEPOSED BY ANTHONY EMPOSIMATO DEFENDANT

Deposed by the Defendant Antony Emposimato

(Stephen A. North at 11: 2-12)

Q. So I'll ask you the question again. What did I receive personally for transferring? to seed money, to me personally, what benefit received my benefit personally?

A. I would say that it might have protected your ego as being an Italian gentleman who shook hands and when he did that, he always stayed within his word. That handshake was as good as anything in writing, obviously that wasn't true.

In the Plaintiff testimony he clearly testifies that there was no money exchanged with the Defendant.

(Stephen A. North at 5: 10-29)

Q. Ok did I receive $150,000 cash?

A. No.

Q. What did the 150,000 represent?

A. Its: state in the loan agreements

Q. What was it used for?

A. I don't know you used it.

Q. Did you consider the seed money for Tropical Marine for Tropical Marine.?

A. Not anymore

Q. originally it was considered?

A. Yes

Q. Seed money?

A. Yes

Q. Ok, so I didn't receive $150,000 Cash it was seed money to Tropical Marine deposited into Tropical Marine accounts?

A. Correct

Q. OK

The contractual complaint from New Jersey provides clear evidence that the Defendant did not receive $150,000; instead, the funds were deposited into Tropical Marine bank accounts. The Plaintiff issued subpoenas for all bank accounts associated with TMR and Defendant Antony Emposimato spanning eight years. The bank records, including those from J.P. Morgan Chase, Wells Fargo, and TD Bank, were thoroughly examined. Notably, no funds were found to have been deposited into Defendant Anthony Emposimato personal accounts from either the Plaintiff's investment or TMR. The records unequivocally establish that there were no assets or funds transferred to Anthony Emposimato.

(Stephen A. North Deposition at 16:10-25)

Q. Did you call for a meeting on the 25th of March 2017 regarding loan agreements?

A. I believe that is correct.

Q. Did the meeting occur on March 25, 3017 at Morristown Café regarding the loans.

A. Yes

Q. What was discussed at the meeting?

A. There was loans outstanding that needed to be paid.

Q. Did you make any demand for the money at the meeting?

A. Yes

Q. You made a demand for the money?

A. Yes.

(Deposition of Stephen A. North)

Q. On March 25th, 2017, Plaintiff instructing me to write letters that money could not be paid.?

A. There were loans outstanding and need to be paid.

Q. Did you make any demands at the meeting?

A. Yes

The asserted loan agreements weren't expected to be due until May 1, 2017. Making a demand for payment on something not yet due is not permissible. The Plaintiff was untruthful in their testimony.

(Deposition of Stephen A. North at 18: 4-25 at 19: 1-3)

Q. Did you after the meeting there were several phone calls back and forth as I recall. Did you instruct me to type two letters regarding the loan agreements?

A. Yes

Q. Were the letter dated December 1, 2016, and May 15, 2017?

A. I have to look at the letters.

Q. So I would-ok Were the letter authored by you.?

A. I probably gave the contents of what should be included.

Q. In the body of the letter it specifically has numbers?

A. Yes

Q. OK So–you–that is what you gave correct and date and time?

A. Yes

Q. Ok, did you know that the dates you requested on the letters regarding the loan agreements were pre and post dated?

A. Yes

Q. Why did you do that?

A. I don't recall.

The trial dates bear significance as the jointly submitted letters become pivotal evidence that was exploited. On that day, the Plaintiff forgave the loan agreements and subsequently utilized tax credits. There is an absence of evidence presented by the Plaintiff indicating any demand for payment. However, records reveal the utilization of tax credits, reinforcing the claim that the Defendant indeed forgave the loan agreements on the agreed-upon day.

On March 23rd, 2017, the Plaintiff contacted their accountant. The response from Mr. Stein did not come until April 2, 2019. The meeting, confirmed by the Plaintiff, took place on March

25, 2017, where the loans were forgiven, and a new verbal contract was established (refer to Exhibit 2-e attached). This fact has been attested to in the Plaintiff's testimonies on 8/25/2021 and 8/30/2020, as well as in the deposition on 9/15/2019.

Regrettably, this crucial evidence was disregarded by the lower court and dismissed by the Appeals court. As mentioned earlier, it was entered into the record as a second affirmative defense. The Appeals court focused as it was the first affirmative defense and failed to address the consideration, which was deemed an obligation of the Plaintiff. And the Defendant main defense.

Should the court overlook a valid legal defense and dismiss a crucial procedural issue, it forms the basis for an appeal, and the case may be subject to review which is included in Defendant's Writ of Certiorari

[. . .]