
CANADA / JUDGMENT

Wang v. Chen

2015 BCSC 245

COURT

Supreme Court of British Columbia

DECIDED

26 February 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 245 Wang v. Chen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Chen,

2015 BCSC 245

Date: 20150226

Docket: S140484

Registry: Vancouver

Between:

Yuan Yuan Wang

also known as Jessica Wang

Plaintiff

And

Jiejun Chen

also known as Jie Jun Chen

also known as Tom Chen

Defendant

Before: The Honourable Mr. Justice Burnyeat

Reasons for Judgment

Counsel for the Plaintiff:

T.S. Brayer

Counsel for the Defendant:

L. Morfidis

Place and Date of Trial:

Vancouver, B.C.

January 20-23, 26-27

and 30, 2015

Place and Date of Judgment:

Vancouver, B.C.

February 26, 2015

- [1] The Plaintiff claims the sum of \$38,145 arising out of an "IOU" dated September 13, 2011 and an "IOU" dated October 13, 2011. The Plaintiff also claims interest under the Court Order Interest Act, R.S.B.C. 1996, c. 79 and costs.
- [2] The Defendant responds that a number of the amounts set out in the two IOUs were "Gratuitous Expenses" pursuant to a "Cohabitation Agreement" while the parties cohabited at an address in Burnaby and an address in Vancouver for an 18-month period which ended in the Fall of 2011. In any event, the Defendant responds that the IOUs were obtained by the Plaintiff by coercion so that they are void or voidable and that, because the IOUs were obtained through a "criminal act" the doctrine of *ex turbi causa non oritur actio* applies. At the same time, the Defendant states that the actions of the Plaintiff are so "morally reprehensible that they warrant the censure of this court by way of increased costs or Special Costs".
- [3] In a Counterclaim, the Defendant (Plaintiff by Counterclaim) seeks damages for breach of contract and for an order directing the Plaintiff (Defendant by Counterclaim) to return all monies obtained from the Defendant (Plaintiff by Counterclaim), to return two diamonds provided to the Plaintiff (Defendant by Counterclaim), punitive or, in the alternative, aggravated damages, pre and post-judgment interest on all monetary awards, and costs on a solicitor and client basis. In this regard, the Defendant (Plaintiff by Counterclaim) states that \$20,000 cash was paid to the Plaintiff (Defendant by Counterclaim) and that all monies alleged by the Plaintiff (Defendant by Counterclaim) to be owing have been paid.

BACKGROUND

- [4] The Plaintiff came to Canada in 2002 as an international student, took some economics courses at The University of British Columbia and three years of financial management at the British Columbia Institute of Technology with a major in accounting. The Defendant

came to Canada in 2003 and studied English as a Second Language and Hotel Management at Vancouver Island University. Using money that he had received from his family, the Defendant purchased two properties in Vancouver, including an apartment on Cordova Street.

- [5] After the Plaintiff posted a message on a Chinese language website seeking a boyfriend, the Defendant contacted her. I find as a fact that the parties never lived together. Rather, the Plaintiff remained with her roommates in a one-bedroom apartment on Fremlin Street and, although the Plaintiff visited the dwelling of the Defendant on numerous occasions, I find that she stayed overnight at the dwelling of the Defendant on only a few occasions. In these regards, I accept the evidence of the property manager for the Fremlin Street premises that the Plaintiff was a tenant between September 2005 and April 2012, of the roommates of the Plaintiff that there may have been only one night when the Plaintiff did not sleep at the Fremlin Street address, and of the Plaintiff that she did not move any personal belongings to the home of the Defendant and that they had never resided together. I also find as a fact that the key to the dwelling of the Defendant was never provided to the Plaintiff. As I find that the parties never cohabited, I also find that there was no "Cohabitation Agreement" as alleged by the Defendant.
- [6] The telephone records of the Defendant were in evidence. Despite the claim Response of the Defendant that he and the Plaintiff were in a conjugal relationship in 2010 and 2011, the telephone records of the Plaintiff indicate no calls to the phone number of the Defendant in December of 2010 through July of 2011, with the first telephone call to the telephone number of the Defendant on August 9, 2011 at 5:40 p.m. for a duration of 50 seconds. The first telephone call from the telephone number of the Defendant to the telephone number of the Plaintiff was on August 8, 2011 for eight minutes. It is impossible for me to conclude that any relationship between the parties existed prior to August 8, 2011. Accordingly, I find as a fact that the Response to Civil Claim of the Defendant that he and the Plaintiff were involved in a conjugal relationship "for approximately 2 years from 2010 to 2011" is not the case.
- [7] From what is in evidence, it appears that the balance in the HSBC bank account of the Defendant between April of 2011 and January of 2012 ranged between an overdraft in excess of \$4,000 to a positive balance of no more than \$3,200. The account shows withdrawals of \$6,000 and \$2,700 on June 13, 2011. For June through August of 2011, the balance in this account was often in overdraft or was less than \$400. \$27,990 was received on July 18, 2011 and a cash withdrawal of \$20,000 was made on July 21, 2011.
- [8] In a different account maintained with HSBC Bank of Canada, \$369,985 was deposited into this account on December 1, 2010. A number of transfers out of that account to the other account maintained by the Defendant occurred between December of 2010 and December of 2011. The account balance in this second account was less than \$100 in December of 2011 through February 16, 2012.

- [9] The parties began to date in August of 2011. I accept the evidence of the Plaintiff that the Defendant almost immediately made requests of the Plaintiff to borrow funds in order that he could pay various amounts that he owed and so that he would have money for day-to-day expenses. The funds for these expenses were not available from the bank accounts of the Defendant.
- [10] When they met, the Plaintiff was employed as an accountant and was earning approximately \$28,000 a year. The Defendant was not employed as he had been involved in a motorcycle accident. The Record of Employment in evidence indicates that the Defendant last worked on July 27, 2011 and that his insurable earnings to that date as a "pressman" were \$20,244.05. However, the Defendant was selling Usana products which he stated at Trial as requiring an initial purchase of \$1,000, provided the Defendant with a percentage of the products that he sold, and a percentage of the products sold by those that he introduced to the business. There was no evidence before the Court regarding the income that was available to the Defendant from this source.
- [11] The Plaintiff states that the Defendant asked for financial assistance during August of 2011 and that she began to advance funds to him so that he could pay various expenses. It was the testimony of the Plaintiff that she kept a note of the expenses that she paid for him on "sticky notes".
- [12] The Defendant owned a 2005 BMW ("BMW"). The BMW was transferred from the name of the Defendant into the names of the Plaintiff and the Defendant. It was the evidence of the Plaintiff that the transfer of the interest to the Plaintiff was for security for the repayment of the financial assistance that was being provided. At Trial, I record the Defendant as testifying that he pledged "the co-owned car as the collateral". The Defendant also testified that the BMW was transferred as security but that the transfer took place in October. In that regard, the Response states that the transfer took place in October of 2011. The registered transfer documents show that the transfer took place on September 3, 2011. What the Defendant stated at Trial and what was set out in his Response shows a pattern of confusion and inaccuracy. I find that the Defendant was hopelessly confused about the details surrounding not only the relationship between himself and the Plaintiff but also the financial arrangements that were in place. I find as a fact that the transfer took place on September 3, 2011.
- (a) The IOU dated September 13, 2011
- [13] The Plaintiff produced a document to the Defendant outlining what she stated was the financial assistance that she had provided to the Defendant. I accept the evidence of the Plaintiff that she went to the home of the Defendant and provided him with the document that she had prepared. I accept the testimony of both parties that the contents of the document were then re-written by the Defendant in the Chinese language in a document headed "Receipt for a Loan (IOU)" and with the following statement made by the Defendant:

"I, CHEN Jie Jun, have borrowed some money from WANG Yuan Yuan for the following uses ...".

- [14] The document prepared by the Defendant then set out on the document ten "uses" totalling \$24,900 (Canadian funds). Each "use" had a Canadian dollar amount beside it. It is not clear whether this IOU was created on September 13, 2011 or whether that date was subsequently added. It is also not clear whether that date was added by the Defendant or by the Plaintiff. I am satisfied that nothing turns on these questions. In any event, I am satisfied that each of the "uses" set out on the document were "uses" which were funded by the Plaintiff prior to September 13, 2011.
- [15] At the request of the Plaintiff, the Defendant wrote the telephone number for his mother in China on this IOU. The Plaintiff testified that she wanted the phone number so that she would have a contact for him if he was no longer in Canada. While the Defendant wrote a phone number on this IOU, he admits that the number that he gave was not the phone number for his mother. The Defendant testified that he put down an incorrect number as he was afraid that the Plaintiff would contact his mother and draw to her attention that he was spending money foolishly including his gambling losses.
- [16] The Defendant testified that he did not read what was produced by the Plaintiff, that he did not read what he wrote, and that he did not understand that what he was signing was an obligation to repay monies. There was no mention of the BMW on this document.
- (b) The IOU dated October 13, 2011
- [17] Further funds were advanced. A further document was prepared by the Plaintiff outlining seven additional advances totalling \$12,674.99 as well as one payment of \$3,000. The document was also in Chinese. The document was headed "Receipt for a Loan (IOU)" and the Defendant made the following statement prior to the listing of the former ten "uses", the seven new "uses", and the payment received by the Plaintiff: "I, CHEN Jie Jun, have borrowed some money from WANG Yuan Yuan for the following uses: (I owe WANG Yuan Yuan)." Beside each new "use" was the amount in Canadian funds.
- [18] Below what had been written on the document by the Defendant were also the following words: "I pledge the co-owned car along with the diamonds as the collateral. The borrowed money will be paid back to you preferably within one year." There is some discrepancy in the translations available as the version prepared at the request of the Defendant translated those words as follows: "I pledge the co-owned car along with diamond ring as the collateral."
- [19] During his direct examination, the Defendant was asked why he gave the Plaintiff diamonds and I record him as stating: "Because by then she wanted money back"; "What she demanded so I gave as security."

- [20] A \$3,000 payment was described as being "... for paying back the money used to purchase the Hyundai car". The Defendant testified that he purchased the vehicle for the Plaintiff as she had stated that "she didn't know how to drive so it would be parked near her home". The Defendant could not recall when the vehicle was purchased, only that it had been purchased after he met the Plaintiff.
- [21] At the request of the Plaintiff, four other "uses" totalling \$2,560 were written on the document. It appears that these four other "uses" were written on the document by the Defendant sometime in either late December of 2011 or January of 2012. Although it bore the date of October 13, 2011, I am satisfied that what was in evidence was not a document that was prepared on that date. I have concluded that the document was prepared afterwards as it reflects the addition of the four "uses" totalling \$2,560. However, I am satisfied that nothing turns on the question of the date of this IOU. It is clear that the signature of the Defendant was added after the four new "uses" were added and after the "pledge ... as the collateral" had been added to the document. As well, the Defendant testified at Trial that he was asked by the Plaintiff to add the four further "uses" and that he did so.
- (c) The BMW
- [22] At the request of the Defendant, the interest of the Plaintiff in the BMW was transferred to the Defendant on December 12, 2011. The transfer document indicates an "exemption from tax being claimed" on the basis that the transfer was a "gift". At the time, I find that the BMW was listed on Craig's List with an asking price of \$26,000. In evidence was a purchase agreement of the Defendant relating to a 2008 Mercedes Model S550 showing a purchase price of \$50,950 with payments of \$2,500 a month. The document also indicates that the Defendant provided a deposit of \$3,922.40 on December 9, 2011.
- [23] I record the Defendant as stating that he wanted the vehicle transferred back into his name because: "I love my car and didn't want impair on title"; "She helped me with payments. I repaid the money so I wanted her removed." At Trial, the Defendant also stated: "She wanted the money back." It was the testimony of the Defendant that he provided \$20,000 cash to the Plaintiff on December 12, 2011.
- [24] The Plaintiff denies that such a payment was made. There was no documentary evidence regarding the payment of \$20,000. Specifically, there was no deposit of that or any other sum into a bank account controlled by the Plaintiff and there is no contemporary withdrawal of cash from any bank account maintained by the Defendant. The Defendant withdrew \$20,000 in cash from his bank account on July 21, 2011. The Defendant testified that this and other cash was held by him in his apartment so that it would be available for "emergencies". The Defendant did not claim that there was any "emergency" which required him to use the emergency cash that he said he held in his apartment.
- [25] Counsel for the Defendant pressed the Plaintiff as to why she was prepared to give up the security on the BMW. In this regard, I record her as stating: "He said one year so not concerned that money from the BMW would not be received by me"; "I had no choice";

"Even if I kept the half title - he would not pay me back"; and that she was concerned about her future car insurance costs if the vehicle was in an accident. At Trial, the Defendant was adamant that he had provided the \$20,000 to her in October 2011. This is yet another example of the considerable confusion in the evidence of the Defendant at Trial. As well, the Response states that the transfer of the BMW took place "sometime in the later part of October 2011". This is clearly not the case. On the basis of the transfer documents in evidence, I have no hesitation in concluding that the BMW was transferred from the names of the parties to the Defendant on December 12, 2011.

EVENTS IN DECEMBER OF 2011 AND IN EARLY 2012

(a) Phone Text Messages

[26] In evidence were photographs taken of the screen shots of phone text messages showing not only the phone number of the Plaintiff but also the phone number of the Defendant. The messages in evidence for December 29 and 30, 2011 indicate that the Plaintiff was pressing for payment, the Defendant promised to give the Plaintiff "some diamonds", the Defendant made the following promises: "I will pay it back to you when I have money" and "I will of course pay you back when I have the money", the Plaintiff was prepared to stop pressuring the Defendant for payment if the diamonds were provided for "IOU collateral" before the planned trip of the Defendant to China, and that the Plaintiff confirmed that she had "lent you \$40,000, receiving but a few items as IOU collateral". There is nothing in those phone text messages whereby the Defendant denied that the Plaintiff had "lent" him "\$40,000". As well, the phone text messages are in conflict with the Response of the Defendant which states that the "two loose diamonds" were provided to the Plaintiff in "the later part of October 2011".

(b) Late December Telephone Conversation

[27] There is a translation of an undated telephone conversation between the parties. Considering the various matters set out in the telephone conversation, I find that the conversation took place sometime in late December of 2011. In the conversation, the Defendant stated: "If and when I have the money, I will for sure pay you back the money. Yet I now have no money." In response, the Plaintiff stated: "And the last time the money you used for repairing the car: two thousand dollars. You have not written that up." To that comment, the Defendant responded: "Hey, I know that, I know. I will come back - when I come back, we will talk about it." After comments made by the Plaintiff that: "... It is not a small number, more than \$40,000", the Defendant stated: "I know, I know".

[28] At one point in this conversation, the Defendant stated that he would pay back what he owed at \$100 a month. The Plaintiff responded that it would take 400 months to repay what was owing. In that regard, the Defendant stated: "That is enough. If I have money now, I will certainly pay it back to you." "If I have money, wouldn't I give it to you? You have less money than I do? It is ridiculous." In response to the Plaintiff's suggestion that he should provide collateral before he leaves on his trip [to China], the Defendant stated: "I know, let me tell

you: when I come back, I will leave my diamonds with you, as collateral." After requesting that there be collateral immediately, the Plaintiff stated: "But you do not have money, you always say you are poor. That is why I want you to write the IOU but you are not even willing to do that." In response, the Defendant stated: "This is not a matter of the IOU. It is about our being together in the past. Please stop making such a big fuss about it. I'll give you the money when I have it."

- [29] The Defendant was asked at Trial about the recorded telephone conversation and he suggested it might not be authentic: "It is not necessarily so." "She may have prepared it." This testimony was despite the fact that there was a concession by his counsel that the transcript was "authentic". In the circumstances, I have no hesitation in coming to the conclusion that the translation of the telephone conversation accurately represents what was discussed between the parties in late December of 2011. I find that the suggestion that this telephone conversation was fabricated is merely a continuation of unbelievable "explanations" provided by the Defendant throughout the Trial.

(c) Chatline Records

- [30] The parties met on a Chinese-language chatline ("Q.Q."). There are a number of entries in evidence between the Defendant and the Plaintiff from this form of communication. On November 9, 2011, the Defendant requested more money "so that I can pay the credit card bills". In response to the comments made by the Plaintiff that he had said on a number of occasions that there many "last times", the Defendant stated: "This time it is for real. Must pay the credit bills." "In a few months, I will repay you once I receive the money." On the same date, he advised that his credit card bill was then \$2,800. After the Plaintiff commented that this was "impressive" and what she earned in a whole month, he responded: "Please help me pay it this time." "Please help me first, I will repay you."
- [31] On November 22, the Defendant again asked the Plaintiff to "help me pay the credit card bills". When the Plaintiff offered to lend him \$50 "for meals", he responded "How about \$100?". The Plaintiff responded: "You seem to feel that you are entitled to it when you borrow money from me. Do I owe it to you? Why should I lend money to you? What relationship is there between you and me? I resent it that you take me for granted. It looks like that I would be in the wrong if I do not lend money to you. It looks like you do not need to repay the money that I lend you. It is like throwing water at you. If you really don't have money, then you need to careful[ly] plan the use of each penny." To that, the Defendant responded: "I know." The Plaintiff then stated: "You said that you knew the first time you borrowed money from me, it was the last time, until the money you borrowed totalled \$40,000, you still said that you knew it was the last time. I really want to give you a sound scolding to wake you up, but I know it is useless. I have given you plenty of opportunities, yet you still keep spending your days on drinking, eating and having fun only. You are really going to be finished." To which the Defendant responded: "OK, that is enough."

- [32] On November 24, 2011, the Plaintiff stated: "All in all, right now, you owe me \$42,000 and you owe the bank \$7,000, which makes your total debt of \$50,000." The Defendant then asked for her help to pay his credit card bills "The very last time." The Plaintiff then stated: "If you don't want all people in Vancouver to know that you are a fraudster, you had better repay me as early as possible" and the Defendant responded: "I have already told you: I will have money next year."
- [33] When asked why, if he had cash of at least \$20,000 available, he had to ask the Plaintiff for \$100 for meals, he stated: "But my Q.Q. name was stolen." "I couldn't get on line - she knows my Q.Q. name. She knew my password. "Long time I couldn't use my Q.Q.." The explanation that the Defendant gave regarding what was set out in the communications on Q.Q. is a further example of the unbelievable explanations that the Defendant gave throughout the Trial. This "explanation" is nothing other than a foolish lie as it would require the Plaintiff to have stolen the Q.Q. name and to not only correspond in her own name but in the name of the Defendant at the same time. As well, the Defendant offered no explanation as to why later communications between himself and the Plaintiff on the Q.Q. chatline were possible if his "name was stolen".

COMMUNICATIONS IN 2012 AND THE 2013 DEMAND LETTER

- [34] On March 2, 2012, the Plaintiff emailed to the Defendant: "How are you doing recently? When do you come back? It is so difficult to contact you. Right now I am in urgent need of money. If you can, please pay me back as much as possible. Please contact as early as possible. In urgent need. Thank you."
- [35] The parties had a conversation on March 22, 2012 and the Defendant stated: "I told you that it would be by the end of the year [when she was to be repaid]." "I do not have \$ yet - hope the end of year." On April 25, 2012, the Defendant stated that money would be available "when the auto insurance compensation for damages arrives". That promise was repeated on May 11, 2012.
- [36] On June 11, 2012, the Defendant stated: "I will repay you as soon as I have money." On July 23, 2012, the Plaintiff emailed the Defendant: "I left you messages using Q.Q., but you have not yet responded. Are you still alive? When are you prepared to pay me back the money?" On July 31, 2012, the Plaintiff wrote to the Defendant: "You just wait. You will see how I managed to find out where you are hiding! I am ready to report this to the police! One of these days you are bound to pay me back what you owe me!"
- [37] On October 3, 2012, in response to the Plaintiff stating: "If you have money, could you please repay some of the money?", the Defendant responded "I don't have the money", "perhaps sometime later", "maybe next month", "when the money arrives, I will repay you some". In response to the question of when the money would be arriving, the Defendant stated: "the money from selling the car", "i.e., also the insurance".

[38] By April 16, 2013 registered mail, demand was made by the lawyer for the Plaintiff for the sum of \$39,145. In response, the Defendant stated in a letter:

Here are a few issues I would like to raise:

1. I do not know if the signature on the IOU is my signature; also regarding the amount of the money in question. I hope that you would photocopy it and send me one copy at the same time as you are sending me the notice of court appearance.
2. Wang Yuan Yuan is my former girlfriend; together we spent the money in question before we broke up, including the stuff bought for her. The payment was made of her own free will. After it was suggested to break up, she drafted an IOU, asked me to sign it, and demanded something as a security/pledge against the money that she had disbursed. I remember providing the BMW x5 that I had purchased myself as a collateral of equivalent value, as well as providing diamond rings as a collateral of equivalent value, which were recorded on the IOU. Then, one day, she came to my place and I gave her \$35,000 in cash and got back my car. She said she would revise the IOU. Together we went to the insurance company to revert the car under my name. For the balance of the money in question, I would return the balance to her when she would return the 3 diamonds to me. She has never returned my diamond rings. We have subsequently lost contact. Now the lawyer's letter from your law firm makes no mention of the collaterals recorded on the IOU, which is a great shock to me, though I have not yet perused the letter. This is a letter of blackmail!
3. The event occurred a long time ago and I'm not sure if the signature on the letter that you see is my signature. Its authenticity needs to be verified by a judge. Meanwhile, I would like to ask you to relay me message to WANG Yuan Yuan: It has been such a long time - Why won't you leave me alone? Even if you have not yet lost the IOU, do you think you can falsely accuse me of that?
4. I am a law-abiding person without any record of bad behavior. After receiving your notice of court appearance, I'll contact my lawyer for consultation and prepare the documents required. If the judge renders a judgment that I owe you that much of money, I will surely return it to you; if I win the case, I will disregard the good old time when we were in love and certainly sue you for extortion, false accusation, and harassment!
5. If I really owe you that much money, you know where I live, where we once lived together, why didn't you send a letter to me? I really do not understand you. I will provide your letter to my lawyer as evidence. If Yuan Yuan persists in dragging me into such entanglement, I will see you in court!

[39] What is set out in the "response" to the demand letter does not hold up to even a most superficial review. First, he suggests that the IOUs were drafted after they broke up but, from his own evidence, the parties broke up sometime in November or December 2011, whereas the first IOU was prepared by him and signed by him earlier. Second, he suggested that, at the time the IOU was signed, security was requested and he provided the BMW. Clearly that

is not the case as the transfer was registered on September 3, 2011. Third, the Defendant states that he gave the Plaintiff "\$35,000 in cash and got back my car". I find as a fact that \$20,000 in cash was not provided to the Plaintiff in December of 2011 and that, in any event, this reference to \$35,000 differs from the story that the Defendant gave under oath at Trial. Fourth, at Trial, he resiled from the statement that he would return the balance owing to her when she returned the diamonds to him and now states that the \$20,000 "paid" fully satisfied any balance owing to her. Fifth, he doubts the authenticity of his signature but made no effort at Trial to lead evidence in that regard. Sixth, while he stated in the letter that the IOU was prepared and signed after their "breakup", he said in his direct testimony at Trial that they had ended their relationship "Around December 2011". In his Response to Civil Claim, the Defendant stated that they began the "process of separating" in October of 2011. What is set out in this "response" is consistent with the constant fabrication and faulty recollections of the Defendant.

DISCUSSION AND CASE AUTHORITIES

- [40] A loan is founded upon a "mutual concordance between the parties as to the existence, nature, and scope of their rights and duties": G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Toronto: Thomson Canada, 2011) at page 5, cited with approval in *Biehl v. Strang*, 2011 BCSC 1373. In order for parties to be bound by contract, there must be a meeting of the minds and the parties "must express themselves outwardly in a manner that indicates both an intention to be bound and reasonably certain mutually agreed terms": *Le Soleil Hotel & Suites Ltd. v. Soleil Management Inc.*, 2009 BCSC 1303 at para. 322.
- [41] A contract can be concluded in writing, orally, by conduct, or a combination thereof. The critical question is whether an agreement has been reached on all the essential terms regardless of its form. Numerous decisions have addressed the particular nature of loan agreements and their essential elements. The key elements have been articulated as an agreement on the following: (a) the principal sum; (b) placed with the borrower; (c) on agreed terms for the payment of interest; and (d) liability on the borrower's part for return of the principal with accrued interest: *Jacobs v. Yehia*, 2014 BCSC 845 at para. 254, citing *Lee v. 1137434 Alberta Ltd.*, 2009 BCSC 284.
- [42] Regarding the principal balances advanced, the two IOUs clearly set out the balances advanced for each of the listed "items". Accordingly, I am satisfied that the requirement to set out the principal sums has been met. When the Defendant stated that he owed the Plaintiff the various monies that were set out in the 21 "items" listed in the IOU dated October 13, 2011 and when he wrote that the document was a "receipt for a loan (IOU)", he was acknowledging the principal sums. When the Defendant stated that he had "borrowed some money" and stated "The borrowed money will be paid back", he was acknowledged that sums had been placed with him as a borrower and that he was obligated to pay back the monies that had been provided to him.

- [43] The parties may specify that a loan will be interest free. Where the parties agree that interest is payable, either expressly or by inference but they do not fix the rate, the application of s. 3 the Interest Act, R.S.C., 1985, c. I-15 is triggered.
- [44] I cannot conclude that the parties agreed that interest would be payable. First, there is no indication in the IOUs that interest would be payable. Second, there was no testimony from the Plaintiff to that effect. Third, the \$3,000 payment received was applied by the Plaintiff against the principal balance owing. However, the absence of an agreement to pay interest does not mean that the principal balance is not payable.
- [45] If a loan agreement is silent about the repayment date, the loan is repayable on demand. Here, the October 13, 2011 IOU provided a clear promise by the Defendant: "The borrowed money will be paid back to you preferably within one year." I am satisfied that the Plaintiff accepted this date regarding when the loan would be repaid. I find that the loan was repayable from and after October 13, 2012.
- [46] In the two IOUs, in the recorded telephone conversations in 2011, in the emails between the parties, and on the Chatline, the Defendant acknowledged not only that the \$40,000 that had been advanced to him was by way of a loan but also that the loans had to be repaid. I find that the principal balance of \$38,145 as set out in the IOU dated October 13, 2011 is payable and the loan agreement is enforceable unless any defences raised by the Defendant can prevail.
- (a) Is the defence of non est factum available to the Defendant?
- [47] While this defence is not pleaded in the Response of the Defendant, the Defendant nevertheless took the position at Trial that he did not know what he was signing. I record the Defendant as stating that the Plaintiff "asked me to copy it" and "asked me to sign it", but that "I didn't pay much attention to it", "I didn't think about it - she just asked me to copy [it]". In response to a question of whether he could confirm that he did not read the IOUs, I record him as testifying: "She gave it to me to copy. After I finished, I didn't have time to read it. I didn't read it carefully. I was just copying it. I never confirmed it was my handwriting, but it looks like mine." "I didn't read it completely or carefully." "I copied from what she gave me."
- [48] In *Marvco Color Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, Estey J., on behalf of the Court, stated: "... any person who fails to exercise reasonable care in signing a document is precluded from relying on the plea of non est factum as against a person who relies upon that document in good faith and for value." (at p. 779).
- [49] I am satisfied that the defence of non est factum is not available to the Defendant. First, the Defendant wrote the IOUs in his native language. Second, I find that he has a post-secondary education and experience with obtaining credit and signing contracts for credit. Third, I am satisfied that it would have taken him some time to write out the IOUs and he was reading another document as he wrote them. It is not believable that he would not have read what he was asked to write. Fourth, the Defendant would have been aware of the contents and the

context of the IOU as I find that the Plaintiff specifically asked the Defendant to write and sign the IOUs and that she walked him through how she wanted the IOUs to be written, including what denomination of currency he was to include for each "use". Fifth, both of the IOUs began with the phrase "Receipt for a Loan (IOU)", followed by a line stating that the Defendant was borrowing money from the Plaintiff. There could be no ambiguity in this regard and it could not be the case that the Plaintiff was in any way misrepresenting the contents of the document that the Defendant prepared.

(b) Was there duress/coercion?

[50] In *Bell v. Levy* (2011), 341 D.L.R. (4th) 652 (B.C.C.A.), K.J. Smith J.A., on behalf of the majority, stated that, for the defence of duress to succeed, three elements had to be established: (a) that the threat was made; (b) that the threats were wrongful; and (c) that the execution of an agreement was in fact induced by the threats "overriding" the free will of the party executing the agreement (at para. 72).

[51] Regarding the "threat" to make a call to the mother of the Defendant, this defence was not pleaded in the Response of the Defendant. Despite that, I am satisfied that this part of his "defence" cannot succeed. First, the "threat" was not raised in the Response or in the letter forwarded by the Defendant after he had received the demand letter on April 13, 2013. It is simply not believable that he would have forgotten about this "threat". Second, while the Defendant alleged that the Plaintiff threatened to call his mother to inform them that he had been financially irresponsible, I agree with the submission made by counsel for the Plaintiff that such a threat would have been "toothless" because the phone number provided to the Plaintiff was a fake telephone number. Third, requesting a telephone number for a family member is a prudent act for a creditor and simply asking for the number is not a threat or wrongful. I find that any "threat" to call the mother of the Defendant is not wrongful. I am satisfied that, even if made, such a "threat" could not possibly have been such as to override the free will of the Defendant.

[52] Under cross-examination, D was asked to confirm that he found the alleged extortion "frightening". He confirmed that it was and that he remembered it "well". While he indicated that he had mentioned the coercion to "a friend" and that he then consulted a "lawyer", there was no testimony to that effect from those individuals. When asked whether he was afraid after the second IOU was signed, he stated, "I was not", but when asked, if he was not afraid, how he could state that he had been coerced, he stated: "She threatened me."

[53] Regarding the alleged threat to call the police after they had sexual intercourse and that this "threat" coerced the Defendant into signing the second IOU, I find that such a "threat" was never made. First, the Defendant never provided anything to substantiate this allegation. He did not call the police and he had no contemporaneous notes relating to the threat. Second, the behaviour of the Defendant afterwards was not consistent with the alleged threat as he acknowledged in numerous ways that it was a loan and it was repayable and that he and the Plaintiff should remain friendly. He expressed fondness for the Plaintiff after the alleged

"threat". All of this is inconsistent with the suggestion that the Plaintiff had threatened to call the police and complain of sexual assault.

[54] The Defendant acknowledged he did not have the money when repayment was discussed on October 3, 2011; he requested more money "so that I can pay the credit card bills" and "could you please help me one more time?", and "then I will repay you gradually" on November 9, 2011; in the context of asking for more money, he acknowledged that he had received loans from the Plaintiff on November 22, 2011; he advised the Plaintiff that "I will have money next year" on November 24, 2011; he asked the Plaintiff "could you please lend me some money" on November 25, 2011; in response to a request on March 22, 2012 that he repay the Plaintiff something, he responded: "I do not have money yet, hope the end of year" on March 26, 2012; on April 25, 2012 in response to a request for payment, he advised: "I have no way to control it. I've told you that it would be the end of the year. At present I have no money."; on May 11, 2012 he stated: "It is not that I won't repay you the money, but that I really have no money."; and on June 11, 2012 he stated: "I will repay you as soon as I have the money." None of those statements are consistent with the suggestion that the IOU dated October 13, 2011 was signed under duress. As well, the payment of \$3,000 was made after the alleged threat to claim that intercourse was in fact a "sexual assault". I am satisfied that none of these communications are consistent with the story now being advanced by the Defendant.

[55] I have no hesitation in coming to the conclusion that the defence of duress/coercion is not available to the Defendant. It is yet another example of fabricated evidence which the Defendant gave throughout the Trial.

(c) Were the advances "gratuitous" payments as part of a cohabitation agreement?

[56] I have no hesitation in coming to the conclusion that the advances were not gratuitous and were not part of a cohabitation agreement. First, I have found that the parties did not cohabit. Second, the Defendant has provided no explanation why the "uses" described as being part of his borrowing from the Plaintiff were actually amounts that were being provided to him on the basis of "love and affection".

(d) Are all "uses" repayable?

[57] While he argued that some of the amounts set out in the "uses" should not be repaid and while he provided various explanations regarding the 21 uses set out in the IOU dated October 13, 2011, I have no hesitation in coming to the conclusion that all of the funds set out in the "uses" are repayable. To suggest otherwise gives absolutely no meaning to the fact that he wrote what he was signing as being a "Receipt for a loan (IOU)", that he was borrowing "some money", and that the "borrowed money will be repaid".

(e) The two diamonds held as security

[58] There was no evidence regarding the value of the two diamonds that continue to be held as security for the repayment of the balances owing. In the circumstances, the two diamonds will be released from evidence to the Plaintiff. The Plaintiff will obtain two appraisals of the diamonds and the Defendant will have two options regarding the diamonds: (1) the average of the two appraisals will be set off against the judgment that is provided herein once the remaining balance including accumulated interest and any costs have been paid by the Defendant to the Plaintiff; or (2) the diamonds will be returned to the Defendant once the full balance of the judgment with any accumulated interest and with any costs subsequently awarded to the Plaintiff have been paid. The reasonable cost of the two appraisals will be borne by the Defendant as a disbursement in these proceedings.

COUNTERCLAIM OF THE DEFENDANT (PLAINTIFF BY COUNTERCLAIM)

[59] At Trial, counsel for the Defendant abandoned the request for damages for breach of contract, punitive or aggravated damages, and special costs. However, the claim to recover the two diamonds provided to the Plaintiff (Defendant by Counterclaim) and to recover the cash payments made to the Plaintiff (Defendant by Counterclaim) were maintained. I have no hesitation in dismissing the Counterclaim of the Defendant (Plaintiff by Counterclaim).

[60] The parties will be at liberty to speak to the question of costs in my dismissal of the Counterclaim.

SUMMARY

[61] The Plaintiff will be entitled to judgment in the amount of \$38,145 plus post-judgment interest on that amount. The parties will be at liberty to speak to the question of costs of the action of the Plaintiff.

__ "Burnyeat J." __

Burnyeat J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/02/2015BCSC0245.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/wang-v-chen-2015>

Prepared on 29 October 2026 · Esheria