

PETER P. GELZINIS, JR., Plaintiff

v.

**LAGOON AVIATION INC., a CORPORATION, and
JERRY KRAMER, Defendants**

Civil Action No. 14-73

Trial Division of the High Court

Marshall Islands District

November 30, 1973

Action for balance due on note. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held the note payable in stock of borrower corporation pursuant to oral agreement made subsequent to written note and allowing for cash or stock payment.

1. Bills and Notes—Promissory Notes—Persons Liable on Note

When a maker of a note signs as an agent or in a representative capacity, he is not personally liable on the note.

2. Contracts—Oral Contracts—Proof

Evidence of oral agreement that prior, written, nonnegotiable note was to be repaid in either cash or stock of borrower, a corporation, was not barred by parol evidence rule in action to recover on the note.

3. Bills and Notes—Promissory Notes—Construction

Whether or not agreement for repayment of promissory note by stock of borrower or cash specified it, repayment by stock would have to be with stock of cash or book value equal to that owed, not par value.

4. Contracts—Usury

Promissory note for \$5,000 loan, providing for payment of 15% interest in 12 equal monthly installments (\$750 total interest) was usurious where statute allowed maximum of one percent per month on the balance due, which amounted to \$500 for the loan in question. (33 TTC § 251)

GELZINIS v. LAGOON AVIATION INC.

Assessor: MORRIS JALLY, *Associate Judge,*
District Court
Counsel for Plaintiff: PRO SE
Counsel for Defendant
Lagoon Aviation: JERRY KRAMER
Counsel for Defendant
Jerry Kramer: PRO SE

TURNER, *Associate Justice*

Plaintiff loaned the defendant corporation \$5,000.00 February 24, 1970, and took in return a note providing for monthly interest payments at the rate of 15% of the principal in twelve equal installments, the final interest payment to be paid with the loan principal February 1, 1971. No payment has been made on principal but three months' interest in the amount of \$187.50 was paid at the end of the first three months.

[1] The note was executed by James L. Pruter, president of the defendant corporation. Plaintiff testified he named Kramer a defendant "because he dealt with him." There is no basis whatever for personal liability of Kramer and as to him the complaint must be dismissed. Also there was no showing that Pruter signed the note other than as agent of the corporation. When a maker of a note signs as an agent or in a representative capacity, the signing maker is not personally liable. Only the corporation can be charged in this case.

The extent of that liability depends upon the common law because there are no negotiable instruments statutory provisions in effect in the Trust Territory. The common law or the law merchant has been codified by statutes in all of the American states. Thus, the principles of such statutes may be applied to this case. For definitions and explanations of the subject see 10 C.J.S., Bills and Notes, Sec. 11 (b) et seq. and 11 Am. Jur. 2d, Bills and Notes, Sec. 1, et seq.

By its terms the note sued upon was nonnegotiable and as such the special provisions of the Uniform Negotiable Instruments Act are not applicable. The instrument specifically provided: "This note is non-transferable, non-assignable, and non-negotiable." The note, therefor, was a contractual agreement to pay interest and principal. As it is said in 11 Am. Jur. 2d, Bills and Notes, Sec. 1: "Bills and Notes in their various forms . . . are contracts, and the fundamental rules governing contract law are applicable to the determination of the legal questions which arise over such instruments."

There is no dispute that there was no repayment of the loan. The sole question is whether or not the defendant is obliged to pay the principal and interest in money or whether there was a subsequent oral agreement for the corporation to repay the loan at its option by either money or by corporate stock. The plaintiff admits there was some "understanding" to that effect but insists he now wants payment in money. The defendant insisted he is ready and willing and always has been to satisfy the debt by delivery of fifty shares of corporate stock at \$100.00 par.

Evidence of the subsequent repayment contract was furnished by plaintiff's letter of inquiry to defendant sent two months after the promise to pay money, as evidenced by the note, had become delinquent. The inquiry was dated April 5, 1971, and among other matters said: "At this writing do I consider myself a stockholder of X number of shares at Y dollars per share or am I the lender in a bad debt situation?"

[2] The first question to be determined is whether or not there was a new agreement. Even though it was oral, it would be admissible because it would not violate the rule excluding parol evidence to contradict, add to, or vary a written contract. The evidence of an oral agreement was

not admissable to change the terms of the note but to prove a new agreement.

A promissory note may be varied by a subsequent agreement whereby the terms of payment such as the medium of payment (stock instead of cash) or the amount of the payment may be changed. Like any other contract there must be an agreement between the parties that is definite in its terms. If there is not a specific understanding as to terms, there is no contract. If there is no subsequent agreement, the promise to pay in money controls. We believe from the evidence there was such an agreement and that it was sufficiently specific as to its terms as to give the defendant its option to repay in cash or stock.

[3] We do not agree with defendant that the terms of the understanding permitted repayment at par value of stock. Whether specified or not, consideration for repayment required stock of equal value to the loan. Whether fifty shares at \$100.00 par will suffice to meet the obligation was not shown. Stock having a cash or book value of the amount due on the loan is required. This is a matter for the parties to settle between them and if they cannot they may ask the court for an order in aid of Judgment based upon an accounting of the financial condition of the corporation.

[4] The next question to be determined is what amount is due from defendant to plaintiff. First consideration is given to the amount of interest. Plaintiff sued for "principal and interest" without specifying the amount. The note called for "15% of the principal amount of loan to be paid in 12 equal monthly installments on the first of each month." The interest therefore was \$750.00 and was usurious. The statute, Trust Territory Code Title 33, Section 251, provides that "No action shall be maintained . . . to recover a higher rate of interest than one percent per month

on the balance due on any such contract involving a principal sum of over three hundred dollars.”

One percent per month on \$5,000.00 is, of course, \$500.00 for a 12-month period. A contract for payment of \$750 in 12 equal monthly installments of \$62.50 each exceeds the statutory limit. Hence, “no action shall be maintained.”

The record shows, however, payment of three months' interest at the 15% rate. The code, 33 TTC § 252, provides in the situation where usurious interest has been paid, thus making the “no action shall be maintained” provision inapplicable, that the excess of interest at the rate allowed by law at the time of making the contract, shall be taken to be payments made on account of principal. The payment of \$187.50 for three months' interest exceeded the allowable amount by \$37.50 and that amount must be applied against the \$5,000.00 principal sum.

Ordered, adjudged and decreed:—

1. That plaintiff shall have and recover judgment against the defendant corporation, Lagoon Aviation, Inc., in the amount of \$4,962.50, said amount to be satisfied at the option of the defendant by the payment of cash plus interest at the rate of 6% per annum from date of judgment until paid or in the alternative by issuance by the defendant corporation and delivery to the plaintiff corporate stock having a fair cash value in the judgment amount.

2. That the complaint against the defendant Jerry Kramer be and the same hereby is dismissed.

3. That plaintiff shall have and recover his costs upon making claim in accordance with law.