

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

WATCHEN NELSON, )  
ANDREW DASTINOT, )  
 ) C.A. No. 08C-07-058-MMJ  
Plaintiffs, )  
 )  
v. )  
 )  
JAMES KAMARA, )  
 )  
Defendant. )

Date Submitted: May 26, 2009  
Date Decided: June 30, 2009

**OPINION**

Following Bench Trial

John R. Weaver Jr., Esquire, Weaver, Stark & Stark PC., Attorney for  
Plaintiffs

James Kamara, *pro se*

**JOHNSTON J.**

Watchen Nelson and Andre Dastinot brought this action to collect a debt allegedly owed by James Kamara. The parties have stipulated that Nelson gave Kamara \$60,000 on one occasion and \$113,830.34 on another occasion. They further stipulate Kamara made five payments, totaling \$45,500 on the \$60,000 agreement.

The Court took this decision under advisement after a one-day bench trial. Plaintiffs waived their right to a jury trial. Defendant waived his right to a jury by not demanding a jury trial within 10 days after the service of the last pleading.<sup>1</sup>

The Court must resolve the amount, including interest, owed to plaintiffs. Further the Court must determine defendant's counterclaim for defamation. Considering parol evidence when necessary to resolve ambiguities in the agreements, the Court finds for plaintiffs in the amount of \$335,527.84. Further, the Court finds that defendant did not establish his counterclaim for defamation.

### **FINDINGS OF FACT**

Defendant drafted and signed an agreement dated August 22, 2005. Nelson gave \$60,000 to Kamara. The agreement provides:

**RE: \$60,000 INVESTMENT TO BUY AND SELL REAL  
ESTATE PRO AUGUST 24, 2005 TO APRIL 24, 2006**

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<sup>1</sup> Super. Ct. Civ. R. 38(b), (e).

Attached is a scheduled of payments

\$60,000

Date August 22, 2005

As of August 24, 2005 James M. Kamara, received; \$60,000 investment from Watchen Nelson to be invest in buying and selling Real Estate .The undersigned promises to pay \$7,500 every two on a \$60,000 investment balance.

**TERMSOF THE LOAN:**

Loan Amount \$60,000

Payback amount \$67,500

Due Date October 24, 2005

I James Kamara will personally be responsible to pay back this loan at the due date.

Watchen Nelson testified that Kamara owed her \$7500 every two months in interest. Kamara did not dispute the amount or interval of interest at trial.

Approximately a year later, another agreement relating to the original loan was signed by Kamara and notarized. This agreement restates the prior agreement verbatim and includes the following:

The Total balance on this loan as of April 24, 2006 is \$95,948.00

I will pay the interest of \$30, 155.00 May 1, 2006

And the balance \$67500 with one month interest of \$3,750 on May 31, 2006.

**TOTAL AMOUNT TO BE PAY**

May 1, 2006          \$30,155

May 31, 2006	71,250
Total	\$101,405

Both Nelson and Kamara signed a third agreement dated March 1, 2007. The agreement states: “I the undersigned James Kamara agree to pay . . . Amount \$113,830.34 plus interest of . . . \$1,000.00 monthly as of April 1, 2007.”

## **ANALYSIS**

### **Debt Collection Action**

#### **The \$60,000 Agreement**

This Court applies basic rules of contract law to resolve this dispute. If the language of a contract is “[c]lear and unambiguous . . . [it] should be given its ordinary and usual meaning.”<sup>2</sup> A contract is ambiguous when can reasonably can be interpreted in two or more ways.<sup>3</sup> In instances of ambiguity, the Court applies “the well-accepted *contra preferentem* principle of construction which is that ambiguities in a contract should be construed

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<sup>2</sup> *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 739 (Del. 2006) (quoting *Rhone-Poulenc Basic Chem. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992); see *Paul v. Deloitte & Touche, LLP*, 2009 WL 1396411, at \*4 (Del.).

<sup>3</sup> *Lorillard*, 903 A.2d at 739 (quoting *Rhone-Poulenc*, 616 A.2d at 1196).

against the drafter.”<sup>4</sup> The Court also looks beyond the text of the contract to parol evidence to resolve ambiguous contract terms.<sup>5</sup>

Portions of the two agreements regarding the \$60,000 investment are unambiguous, while other terms are ambiguous. Kamara received \$60,000 from Nelson as an investment and owed Nelson interest on the investment. Determining the exact amount of interest requires parol evidence. The statement, “the undersigned promises to pay \$7,500 every two on a \$60,000 investment balance” is ambiguous because it lacks a temporal instruction for the period in which interest accrues. During the trial, Nelson testified that interest accrued every two months. Kamara did not contradict the assertion.

Moreover, the second agreement further supports that interest accrued every two months for a total of \$30,155.00 as of May 1, 2006. Kamara drafted the second agreement. The total is premised on compound interest accruing every two months. Plaintiffs introduced a schedule of payments, drafted by Kamara, outlining compound interest on the \$60,000 investment. The Court finds that the parties agreed that Kamara would pay Nelson compound interest, accruing at the rate of \$7500 every two months.

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<sup>4</sup> *Twin City Fire Ins. Co. v. Del. Racing Ass’n.*, 840 A.2d 624, 630 (Del. 2003) (citing *Kaiser Alum. Corp. v. Matheson*, 681 A.2d 392, 398 (Del. 1996); Restatement (Second) of Contracts § 206 (1981); Arthur L. Corbin, *et al.*, *Corbin on Contracts*, § 559, *supp.* at 337 (1960 & *Supp.*1996)).

<sup>5</sup> *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997) (citing *Pellaton v. Bank of New York*, 592 A.2d 473, 478 (Del. 1991)).

Kamara made five payments on this initial investment totaling \$45,500. The Court must determine whether those payments apply first to interest or to principal. In *Estate of Carpenter v. Dinneen*<sup>6</sup>, the Court of Chancery considered a similar question. Carpenter's estate sought recovery of misappropriated funds.<sup>7</sup> As part of a criminal plea, one of the defendants made a repayment to the estate.<sup>8</sup> The court held that defendants misappropriated the funds.<sup>9</sup> The court further determined that plaintiff "[was] entitled to apply [defendant's payments] first to the repayment of interest and then to the reduction of the outstanding principal."<sup>10</sup>

This Court holds that Kamara's payments apply first to interest and then to principal. Therefore, Kamara has not repaid any of the principal, because the accrued interest always exceeded the payments made.

As of April 24, 2006, Kamara's schedule of payments shows that he owed Nelson \$95,947.50. Subsequently, Kamara paid Nelson \$45,500 over the course of 5 payments, which will be deducted from the amount owed. Nelson sought simple interest beginning April 24, 2006. Thirty-eight months and six days have transpired since that date, making the accrued

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<sup>6</sup> 2008 WL 859309 (Del. Ch).

<sup>7</sup> *Id.* at \*1.

<sup>8</sup> *Id.* at \*10.

<sup>9</sup> *Id.* at \*28.

<sup>10</sup> *Id.*

interest \$143,250. Therefore, the plaintiff is entitled to \$193,697.50<sup>11</sup> from the defendant on the \$60,000 agreement.

### **The \$113,830.34 Agreement**

The final agreement between the parties, dated March 1, 2007, is clear on its face. Nelson loaned Kamara \$113,830.34 in exchange for interest accruing at the rate of \$1000 a month. The simple interest began accruing on March 1, 2007. Twenty-eight months have passed. Therefore, Nelson is entitled to \$141,830.34<sup>12</sup> from Kamara.

### **Defamation Counterclaim:**

The Court also must consider Kamara's counterclaim for defamation. The party alleging defamation must establish: (1) a false and defamatory communication concerning plaintiff; (2) publication of the communication to a third party; (3) understanding of the defamatory nature of the communication by the third party; (4) fault on the part of the publisher; and (5) injury to plaintiff.<sup>13</sup>

Kamara offered the testimony of his sister, mother and father to support his claim. He claimed three defamatory acts: a letter from Nelson to the Watchtower Society headquarters, statements by Nelson to friends, and

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<sup>11</sup>  $(95,947.50 + 143,250) - 45,500 = 193,697.50$ .

<sup>12</sup>  $113,830.34 + (28 \times 1,000) = 141,830.34$ .

<sup>13</sup> *Wharton v. Worldwide Dedicated Servs.*, 2007 WL 404770, at \*2 (Del. Super.) (quoting *Bickling v. Kent Gen. Hosp.*, 872 F. Supp. 1299, 1307 (D.Del. 1994)).

statements to the Delaware Attorney General's office and police as part of an investigation. The Court will examine each alleged instance.

### **Watchtower Society Letter**

The Court heard testimony about a letter from Nelson to the Watchtower Society headquarters in Brooklyn, NY. Nelson testified that she wrote the letter to address the problems she had in her business dealings with Kamara. Kamara was a presiding overseer in the local Jehovah's Witnesses congregation. Nelson sought redress for her problems with Kamara from the Watchtower Society, which is the church's national headquarters. The Court heard testimony regarding the church's official practice of requiring its members to attempt to resolve their differences through the intervention of other members.

Kamara did not offer the letter into evidence and Nelson vaguely described it during testimony. The "gist" or "sting"<sup>14</sup> of the letter dealt with the fact that Kamara received money from Nelson and refused to pay it back.

"Under Delaware law there is no liability for defamation when a statement is determined to be substantially true."<sup>15</sup> The Court finds that the

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<sup>14</sup> *Riley v. Moyed*, 529 A.2d 248, 253 (Del. 1987) (citing *Gannett Co., Inc. v. Re*, 496 A.2d 553, 557 (Del. 1985).

<sup>15</sup> *Riley*, 529 A.2d at 253 (citing *Gannett*, 496 A.2d at 557).

letter to the Watchtower Society was substantially true and therefore not defamatory.

### **Statements to Friends**

Kamara further alleges Nelson made defamatory statements about him to her friends and members of their congregation. Kamara's father testified Nelson told members of the congregation Kamara refused to pay back dollars. His mother also testified that Nelson made similar statements to family members and congregation members and that everyone knew about the problem. Kamara's sister added that at least 10 people know about the dispute. Again, this Court finds the statement -- that Kamara refuses to pay back Nelson -- as expressed during her conversations about the dispute to third parties, is substantially true and therefore not defamatory.

### **Statements to Law Enforcement**

Kamara also contends that Nelson defamed him in statements to the Attorney General's office and police. Nelson made statements to the Attorney General's office and police as part of an investigation regarding an alleged assault by Kamara against Nelson. In the course of her testimony in that case and conversations with law enforcement, Nelson stated that Kamara "stole our money" and slammed a door in her face.

This Court need not determine if her statements were substantially true. “Absolute privilege” is an affirmative defense to defamation in Delaware.<sup>16</sup> The long-recognized common law rule “protects from actions for defamation statements of judges, parties, witnesses and attorneys offered in the course of judicial proceedings” as long as they are relevant to the proceeding.<sup>17</sup> The Court finds that “absolute privilege” applies to Nelson’s statements.

### **CONCLUSION**

The Court finds that defendant owes Watchen Nelson \$193,697.50 on the August 24, 2005, agreement and \$141,830.34 on the March 1, 2007, agreement, plus post-judgment interest and costs.

The Court finds that the alleged defamatory statements are either true or substantially true, or are subject to absolute privilege.

**THEREFORE**, the Court finds defendant liable to plaintiffs in the amount of \$335,527.84, plus post-judgment interest and costs; and the Court finds plaintiffs not liable to defendant for defamation.

**IT IS SO ORDERED.**

*/s/ Mary M. Johnston*  
The Honorable Mary M. Johnston

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<sup>16</sup> *Barker v. Huang*, 610 A.2d 1341, 1345 (Del. 1992) (citing *Tatro v. Esham*, 335 A.3d 623, 625–26 (Del. Super. 1975)).

<sup>17</sup> *Barker*, 610 A.2d at 1345 (citations omitted).