

**IN THE CIVIL NATIONAL BUSINESS CENTRE COUNTY COURT**

B E T W E E N :-

**BOOKER Limited**

Claimant

and

(1) Mr Raman **KAPUR**

(2) Mr Nikulkumar Ajitkumar **PATEL**

Defendants

**DEFENCE OF THE FIRST DEFENDANT**

dated 16 July 2024

1. Paragraph 1 of the Particulars of Claim is admitted.
2. With reference to Paragraph 2 of the Particulars of Claim, it is denied that the First Defendant is a director of Relaxed Dining Holdings Limited (Company). The Company was dissolved on 6 January 2023 and has no directors. It is admitted that the First Defendant was a director of the Company, appointed 20 September 2017. This appointment was terminated on 12 February 2019. The First Defendant ended his active involvement in the Company in or around August 2018.
3. With reference to Paragraph 3 of the Particulars of Claim, it is averred that the Second Defendant became a director of the Company on 3 September 2018. It is further averred that this appointment was in the context of a transfer of control of the Company from the First Defendant to the Second Defendant in or around August 2018.
- 4.1 Paragraph 4 of the Particulars of Claim is denied and it is particularly denied that the First Defendant signed the Application & Agreement for Supply of Goods dated 1 October 2018. On its face this document is signed by the Second Defendant only, on behalf of the Company, and not by the First Defendant.
- 4.2 The document headed Continuing Guarantee for the Supply of Goods is dated 2 November 2017. This document was signed by the First Defendant. It relates to an earlier agreement between the Company (when it was known as The Canavan Co. (UK) Limited) and the Claimant. The First Defendant avers that the earlier agreement was cancelled in or around August 2018, with a nil

balance, before execution of the new Application and Agreement dated 1 October 2018 signed by the Second Defendant (on behalf of the Company) and Susan Cameron (on behalf of the Claimant).

4.3 The First Defendant was alert to the possibility that the Claimant would continue to supply the Company under new management, after August 2018, and wished to ensure that was a discontinuation in relations between the Claimant and the Company. The First Defendants ensured that there was no money owed to the Claimant at this time, August 2018. This is consistent with Annex 3, the statement of account, which begins with a zero balance on 1 November 2018.

5. Paragraph 5 of the Particulars of Claim relates to the averment that the Second Defendant signed a new Continuing Guarantee on 24 September 2018. The First Defendant does not plead to this. The First Defendant does however rely upon the the following to aver that the Claimant was aware of the change in circumstances, taking the documents disclosed by the Claimant at face value and without admissions, namely :-

5.1 the First Defendant positively avers that the earlier account between the Claimant and the Company was cancelled with a nil closing balance in or around August 2018;

5.2 apparently the Second Defendant executed a new Continuing Guarantee dated 24 September 2018;

5.3 apparently a new account was created pursuant to the Application & Agreement dated 1 October 2018 and signed by the Second Defendant (not by the First Defendant) for the Company and Susan Cameron for the Claimant;

5.4 apparently the Second Defendant alone executed a new direct debit to the Claimant from the account of the Company also dated 1 October 2018.

6. With reference to Paragraph 6 of the Particulars of Claim, it is not admitted that a Credit Account (729985192) was opened for the Company (and in any event would not have been for the Defendants personally). The First Defendant avers that the earlier credit account, which existed before 1 October 2018, was cancelled or closed with a zero balance in or around August 2018. It appears that a new account was opened, as indicated by the points made in paragraph 5 above, with a first entry on 1 November 2018 indicated by Annex 3.

7. With reference to Paragraph 6 of the Particulars of Claim, it is admitted that goods were purchased from the Claimant by the Company (not by the Defendants) and the Claimant supplied invoices to the Company (not to the Defendants) providing an account balance and requesting payment of same. The First Defendant has knowledge of such dealings under the earlier agreement which ended in or around August 2018 with a nil closing balance. The First Defendant has no direct knowledge of dealings after August 2018 and makes no admissions in relation to any later dealings.
8. Paragraph 8 of the Particulars of Claim relates to Payment Agreement between the Claimant and the Second Defendant dated 7 December 2020. The First Defendant does not plead to this. The First Defendant does however rely upon the existence of the Payment Agreement dated 7 December 2020 as evidence that the Claimant enforced the Continuing Guarantee dated 24 September 2018 executed by the Second Defendant against the Second Defendant.
9. Paragraph 9 of the Particulars of Claim relates to payments received by the Claimant from the Second Defendant pursuant to the Payment Agreement dated 7 December 2020. The First Defendant does not plead to this.
10. With reference to paragraph 10 of the Particulars of Claim, it is not admitted that the Claimant made repeated attempts to obtain payment in full from the Defendants. There are no details or annexed documents to substantiate this pleading, nor does the pleading differentiate between the First and Second Defendants. The First Defendant admits that the Claimant contacted the First Defendant in or about July 2019.
11. With reference to Paragraph 11 of the Particulars of Claim, it is not admitted that the current amount outstanding on the Credit Account is £22,120.81. The First Defendant is unable, as at the date of this document, to admit or deny any part of the statement of account at Annex 3 to the Particulars of Claim. The earliest item is dated 1 November 2018, of which time and thereafter the First Defendant has no direct knowledge of the dealings of the Company.
12. With reference to Paragraph 12 of the Particulars of Claim, the claim pursuant to Section 5A of the Late Payment of Commercial Debts (Interest) Act 1998 is noted and not admitted.
13. With reference to Paragraph 13 of the Particulars of Claim, the claim pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 is noted and not admitted.

*The positive case of the First Defendant*

14. The First Defendant relinquished control of the Company to the Second Defendant in or around August 2018. The Second Defendant Mr Patel became a director on 4 September 2018. As of August 2018, at the time of the last active involvement of the First Defendant, the Company did not owe anything to the Claimant and its original account with the Claimant was cancelled with a nil closing balance. It appears from Annex 3 that a new account between the Claimant and the Company became active on 1 November 2018 with a starting nil balance.
15. Although the First Defendant does not make any admissions about Annex 3, the First Defendant notes that all of items in Annex 3 post-date August 2018, at which time and for all material times thereafter until its dissolution the Company was in the control of the Second Defendant.
16. The original Bookers Account was cancelled in or around August 2018. This was part of the transfer of control of the Company from the First Defendant to the Second Defendant. The First Defendant avers that the Continuing Guarantee signed by the First Defendant dated 2 November 2017 cannot relate to the later Application & Agreement dated 1 October 2018 to which the First Defendant was not a party nor a signatory.
17. As a fundamental point, the First Defendant did not agree that the Claimant should supply any goods to the Company after August 2018. Later supplies (none being admitted) were effected pursuant to the documents disclosed by the Claimant namely the Continuing Guarantee of the Second Defendant dated 24 September 2018, the Application & Agreement dated 1 October 2018 and the Direct Debit on behalf of the Company also dated 1 October 2018.
18. The First Defendant refers to clause 1 of the Guarantee and Indemnity dated 2 November 2017 which provides as follows :-

In consideration of Booker having agreed at the Guarantors request to supply the Buyer [Company] with the Goods for his trade and business the Guarantor [First Defendant] guarantees to be answerable and responsible to Booker for the due and punctual repayment for all of the Goods supplied under the Standard Terms ('the Guaranteed Obligations').
19. The First Defendant avers that :-
  - (1) the First Defendant made no request to supply the Company after 2018 because the earlier agreement between Booker and the Company was at an end;

- (2) further or in the alternative, any request from the First Defendant to the Claimant to supply the Company was explicitly withdrawn in or around August 2018;
- (3) by necessary implication or result, the Continuing Guarantee dated 2 November 2017 was cancelled with the cancellation of the earlier underlying agreement;
- (4) further or in the alternative, on the analysis that the Continuing Guarantee dated 2 November 2017 continued in effect, there was no continuing agreement or request within the sense of clause 1 set out above and accordingly no subject matter of the Guarantee;
- (5) while noting that clause 2 of the Guarantee and Indemnity provides that the Guarantee shall apply whether or not the Guarantor has any knowledge of the Buyer's failure to pay the Claimant, the First Defendant relies on the two basic points required by clause 1 namely agreement and request, both of which were explicitly cancelled or withdrawn in or around August 2018;
- (6) the documents disclosed by the Claimant indicate its actual knowledge of and reaction to the change in circumstances in or around August 2018.

20. By reason of the foregoing the First Defendant denies any liability to the Claimant for the sums claimed or at all.

16 July 2024

Andrew McGuinness  
Holborn Chambers

*Statement of truth*

The First Defendant believes that the facts stated in this Defence dated 16 July 2024 are true. The First Defendant understands that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed ..... Raman Kapur

Dated .....

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Solicitors for the First Defendant

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