

# Banque Cantonale de Geneve v Sanomi

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In a recent judgment the Court has confirmed the principles underpinning the enforceability of promissory notes.

## Background

Mr Sanomi is a businessman and founder of Taleveras Petroleum Trading Ltd ("Taleveras"), a company which trades and markets oil and petroleum products. In 2015, Taleveras suffered substantial losses as a result of collapsing oil prices. In June 2015, Taleveras completed two finance transactions with Banque Cantonale ("Banque") relating to two trading operations: (i) a cargo of gasoline, and (ii) the chartering of a vessel. Banque provided \$16m in respect of the first operation and \$4m for the second. By August 2015, Banque was becoming increasingly concerned about the money it had lent to Taleveras and sought additional security. Following a meeting with Banque employees, Mr Sanomi agreed to sign two promissory notes by way of personal security for the outstanding loans.

In March 2016, Mr Sanomi offered to pay off the promissory notes in monthly instalments ending in November 2016. This proposal was not acceptable to Banque, which sought summary judgment on the notes.

## Claim

Mr Sanomi resisted the application on the following bases:

- That the notes were not in fact promissory notes under the relevant statute;
- Mr Sanomi alleged that he was told during his meeting with Banque employees that the Banque would make no demand under the notes. Mr Sanomi argued variously that (i) this nullified the notes as legally binding documents, (ii) that Banque was estopped from making a demand, and (iii) that Banque made a misrepresentation when it declared it had no intention of making a demand in future;
- That Banque had given Mr Sanomi no legal consideration in return for his promise to pay under the notes, meaning the notes failed as legally enforceable contracts.

## Decision

The Court granted the application for summary judgment. It held that, consistent with the clear provisions of the Bills of Exchange Act 1882, a promissory note did not need to be negotiable to be valid between the parties. In any event, the notes in question were negotiable, since they lacked any wording prohibiting transfer to a third party. The notes were clearly valid.

As to the various arguments raised in relation to the alleged statement that the Banque would make no demand, the Court held as a matter of principle that evidence that would completely undermine the certainty and finality of negotiable instruments (namely evidence of a contemporaneous oral agreement varying the written terms of the notes) was inadmissible. In any event, the Court preferred Banque's version of events, in which no such assurance that Banque would make no demand was ever given.

Finally, the Court dismissed Mr Sanomi's "no consideration" defence. At the time of Mr Sanomi signing the notes, Banque had assured him that he would be given a two-week grace period in which to make repayment proposals. The Court held that this grace period constituted "forbearance" of Banque's right to take action against Mr Sanomi which a long line of legal authority confirmed was sufficient consideration for the purposes of English contract law.

## Conclusion

This judgment is a welcome restatement of the basic principles governing the enforceability of promissory notes. The Court has reaffirmed the established principle that promissory notes are to be treated as cash and a defendant is not entitled to a stay of execution for any counterclaim or claim for set off.

## Authors

**Jonathan Brogden**

*London - Walbrook*

+44 (0)20 7894 6290



[jbrogden@dacbeachcroft.com](mailto:jbrogden@dacbeachcroft.com)

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