GRENADA

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2005/0469

BETWEEN:

ANN BLACKMAN

Claimant

AND

KENNY FORRESTER

Defendant

Appearances:

Mr. F. Williams for the Claimant
Mrs. C. Edwards, Q.C., with her Ms. Y. Phillip for the Defendant

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2010: May 9
2011: July 13

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant, a businesswoman with several businesses in Grenville, lent to the Defendant, also a businessman, the sum of $301,069.00 over a period of time.

[2] The parties consolidated their agreement by entering into a Deed dated 15th November 1999 which set out the terms and conditions of the loan.

[3] It clearly stated that the Defendant promised to repay the total amount loaned by the 15th November 2003. It also stated that the loan was interest free.

[4] It also provided that if any part of the loan was in arrears after the stated repayment date, the amount in arrears shall become due immediately.

[5] The main dispute between these parties was what, if any, sum did the Defendant owe the Claimant.

[6] The Claimant claimed in her pleadings the sum of $217,069.00; the Defendant claimed that he had in fact repaid the sum in its entirety. He in fact stated in his evidence that he had repaid 304,000.00.

[7] In her evidence the Claimant stated that she loaned the Defendant the following sums:- $70,000.00, $130,000.00, $15,000.00, $100,000.00, and some smaller sums which amounted to an additional sum of $2,000.00. The total of these sums is $317,000.00, even though she insisted that the sum lent was $301,069.00. She added that there were sums loaned that she did not include. This appears to be an astonishing statement seeing that the Deed signed by the parties were for the sum of $301.069.00.

[8] She spoke of an additional $5,000.00 which she said she also loaned to the Defendant, but she said that this $5,000.00 was included in the figure stated in the deed of $301,069.00.

[9] She gave details of how she delivered the cheque for $100,000.00 and then took it back after she became aware that the Defendant had gone to Trinidad with his girlfriend. She admitted that she and the Defendant were involved in a romantic relationship.

[10] She borrowed the $100,000.00 from a commercial bank at an interest rate of 12% interest, but made the loan to the Defendant interest free.

[11] It was contemplated that there would have been a simultaneous execution of the Deed and exchange of the $100,000.00.

[12] That did not take place, but the $100,000.00 was included in the sum stated as the loan amount in the Deed.

[13] After taking back the $100,000.00 cheque, the Defendant 'sweet talk her" and she returned the cheque to him.

[14] At first she denied that a payment of $85,000.00 to her was a repayment of the debt but later somewhat reluctantly she admitted that that payment was made towards the debt.

[15] She gave evidence that the Defendant paid monies to her lawyers and also paid monies directly to her. She testified that the Defendant paid her an estimated sum of $109,000.00 (this figure included the $85,000.00).

[16] She denied that she had a conversation with the Defendant where he told her he had paid her $224,000.00 and she told him the sum he repaid was $214,000.00. She denied that she ever asked him to pay $150,000.00 to her lawyer.

[17] She also testified that the Defendant agreed to pay interest but that he said he would not include this in the Deed.

[18] She denied that the Defendant paid $9,500.00 in cash to her. She denied that the Defendant put $6,000.00 on her credit card.

[19] She admitted that the Defendant paid monies to her lawyers, the sum of $40,000.00, not $60,000.00. She stated that the Defendant owed her approximately $220,000.00 as he had not totally repaid the loan.

[20] In answer to the Court the Claimant stated that she did not understand all of the Deed which she signed, bud did not ask for an explanation even though she signed the document in a lawyer's office.

[21] The Defendant does not dispute that the Claimant loaned him $301,069.00 in total. He admits that he was supposed to repay the loan by the 15th November 2003 and that he failed to do so. He admits that the monies were loaned to him for his business. He admits that though he incorporated a company the Claimant lent the monies to him and not the company. He also testified that between 2003 - 2005 that he was not heavily in debt.

[22] He said that he got letters from two law firms on behalf of the Claimant. He said he confronted her and reminded her that he had paid her $224,500.00 of the debt

owed but she replied that it was $214,500.00. She then told him to pay her lawyer $150,000.00. She also told him he had to pay some interest.

[23] He testified that the reason there was an agreement for no interest because the Claimant was a rent free tenant of the Defendant at premises situate at Grenville. He said he also got his brother to do work for the Claimant at a cost of $16,500.00 and he paid the bill.

[24] He said that between 1999 and 2005 he made payments to the Claimant totaling $304,000.00. He produced documentation evidencing payments totaling $169,000.00 to the Claimant. The Claimant disputes the receipt of $20,000.00, of that figure. She states that it was never paid to her lawyers but, interestingly, the lawyer's office gave the Defendant a receipt for these disputed monies.

[25] I find that these monies, $169,000.00 including the disputed $20,000.00 were in fact paid to the Claimant.

[26] He said he paid other monies to the Claimant including $59,000.00 from monies he received for work done for one Joel Webb, but the documentation was destroyed by Hurricane Ivan. He said he made these payments in cash. Further, he paid $6,000.00 to the Claimant's credit card while she was in Miami.

[27] He does not admit that he owes the Claimant any money. He repeated in cross-examination that he had paid in excess of the loan to the Claimant. He said he paid the Claimant the sum of $304,000.00.

[28] The Defendant admitted that he did not have a copy of the cheque for the receipt from the lawyer's office dated 29th June 2005, but was adamant that he had paid this $20,000.00 sum to the lawyer's office. I have already indicated that I have accepted the Defendant's testimony that these monies were paid.

[29] He testified that he got the Claimant a discount on land she purchased in Edgemont. He admitted that when the Claimant's lawyers wrote to him in 2005, he still owed a substantial amount on the loan.

[30] He said that in January 2003 the Claimant offered to lend him more money but had no knowledge of what the Claimant borrowed in order to build her building in Grenville.

[31] I found that both the Claimant and Defendant were not the best witnesses for their own cause, but the Claimant, who alleged that the Defendant owed her $217,500.00, had the burden to prove that this was so. I find that she has failed to do so.

[32] Counsel for the Claimant has tried in his submissions to explain the absence of the cheque for $20,000.00 and puts forth an explanation for its absence. It is not right for Counsel to attempt to lead evidence either from the Bar table or in their closing submissions. It is a practice that should be frowned upon and Counsel ought to know better than to indulge in this practice.

[33] I find that the Claimant was evasive and was slow to give answers which she felt may be detrimental to her case. She gave evidence of loans to the Defendant of $317,000.00 but also testified that the figure of $301,069.00 in the deed was correct.

[34] I do believe that the Defendant did pay the sum of $6,000.00 to the Claimant's credit card while she was in Miami. The Claimant herself testified that she sometimes did business on behalf of the Defendant and that she used her credit card to do so. It is not inconceivable that he would have forwarded money to her for her to purchase items for his business. However, I do not believe the Defendant when he testified that there was an agreement between himself and the Claimant to postpone the repayment of the loan.

[35] I am less convinced by his assertion that he paid her some $59,000.00 in cash from his work at Joel Webb.

[36] The Claimant claims special damages but has failed to provide the Court with any documentation necessary to prove those damages to the satisfaction of the Court. The claim for special damages therefore fails.

[37] The Claimant has not claimed interest in her pleadings, but Counsel makes a claim for interest in his closing submissions. I would refer to CPR 2000, Rule 8.6(4) which states:

> "8.6(4) A claimant who is seeking interest must –
>
> (a) say so expressly in the claim form; and
>
> (b) include, in the claim form or statement of claim, details of the –
>
> (i) basis of entitlement;
>
> (ii) rate; and
>
> (iii) period for which it is claimed."

[38] The Claimant in this matter has failed to comply with this rule and cannot now claim interest on any amount borrowed by her and loaned to the Defendant. I repeat paragraph 32 of the judgment above.

[39] I find that the Defendant did borrow the sum of $301,069.00 from the Claimant. I also find that there was no interest attached to that loan.

[40] I find that the Defendant paid the sum of $175,000.00 to the Claimant in respect of the loan. That leaves the sum of $126,069 owed to the Claimant and this is the sum I would award her.

[41] Therefore, I make the following order:

1. The Defendant is to pay the Claimant the sum of $126,069.00

2. The Defendant will pay interest at the rate of 6% per annum from the date of filing to the date of payment

3. Costs of $5,000.00 as agreed by the parties at the Case Management Conference.

Margaret Price Findlay
High Court Judge