

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB REGISTRY SAN FERNANDO

H.C.A. No. S – 2161 of 1986

H.C.A. No. S – 2162 of 1986

H.C.A. No. S – 2163 of 1986

H.C.A. No. S – 2164 of 1986

BETWEEN

SIEW RAMADHAR

Plaintiff

AND

SATCHAN RAMSARAN

Defendant

Before: The Honourable Mr. Justice David Alexander (Ag.)

Appearances:

Mr. Prakash Ramadar and Mr. Sunil Gosine for the Plaintiff;

Ms. Melissa Ali of Lex Caribbean on record for the Defendant;

REASONS

1. On the 17th November, 1992, Master Paray-Durity ordered that these actions be consolidated and thereafter carried on as one action.
2. In each action which was commenced by writ of summons filed on the 13th August, 1986 with statement of claim endorsed thereon, the Plaintiff Siew

Ramadhhar claims against the Defendant, Satchan Ramsaran the repayment of monies lent by the Plaintiff to the Defendant.

3. In High Court Action (H.C.A.) No. S – 2161 of 1986, the Plaintiff states at paragraph (1) of his re-amended statement of claim that his claim against the Defendant is for the sum of \$528,543.85 being \$450,000.00 cash lent to the Defendant by the Plaintiff on the 28th April, 1978, and \$78, 543.85 agreed interest thereon which the Defendant agreed to pay the Plaintiff at the rate of 11% per annum for the first year and thereafter at the rate of 12% per annum.

PARTICULARS

To cash lent on 28/04/78	\$ 450,000.00
To interest from 28/7/78 to 25/6/86	\$ 436,080.82
Total	\$ 886,080.82
To interest paid up to 25/4/84	\$ 357,536.97
Balance	\$ 528,543.85

4. At Paragraph 1(b), the Plaintiff alleges that alternatively, the Defendant on the 25th April, 1984, acknowledged in writing his indebtedness to the Plaintiff.
5. In H.C.A. No. S – 2162 of 1986, the Plaintiff at paragraph (1) of his re-amended statement of claim states that his claim against the Defendant is for the sum of \$57,000.00 being \$50,000.00 cash lent to the Defendant on the 8th

March, 1979, and \$7,000.00 agreed interest thereon which the Defendant agreed to pay at the rate of 12% per annum.

PARTICULARS

To cash lent on the 8/3/79	\$ 50,000.00
To interest from 30/3/79 to 25/6/86	\$ 43,000.00
Total	\$ 93,000.00
To interest paid up to 25/4/84	\$ 36,000.00
Balance	\$ 57,000.00

6. At paragraph 1(b) the Plaintiff alleges that alternatively, the Defendant on the 25th April, 1984, acknowledges in writing his indebtedness to the Plaintiff.
7. In H.C.A. No. S 2163 of 1986, the Plaintiff at paragraph (1) of his re-amended statement of claim states that his claim against the Defendant is for the sum of \$214,071.23, being \$150,000.00 cash lent to the Defendant on the 6th May, 1981, and \$64,071.23 agreed interest thereon which the Defendant agreed to pay at the rate of 14% per annum.

PARTICULARS

To cash lent on 6/5/81	\$ 150,000.00
To interest from 6/5/81 to 25/6/86	\$ 108,500.00
Total	\$ 258,500.00
To interest paid up to 25/4/84	\$ 44,428.77
Balance	\$ 214,071.23

8. At paragraph 1(b), the Plaintiff alleges that the Defendant on the 25th April, 1984 acknowledged in writing his indebtedness to the Plaintiff.
9. In H.C.A. No. S – 2164 of 1986, the Plaintiff at paragraph 1 of his amended statement of claim states that his claim against the Defendant is for the sum of \$329,436.19 being cash lent to the Defendant as follows:-

(i) On the 7/12/82	\$ 100,000.00
(ii) On the 10/12/82	\$ 150,000.00
(iii) On the 23/6/83	\$ 79,436.75

With agreed interest at the rate of 12% per annum.

PARTICULARS

To cash lent on (i) (ii) and (iii) above	\$ 329,436.75
To interest up to the 25/6/86	\$132,802.44
Total Balance	\$ 462,239.19

10. The Defendant's defence to H.C.A. Nos. S – 2161 – 2163 of 1986 is the same. In his re-amended defences thereto, he admits the loans but denies paying interest thereon up to the 25th April, 1984, and with reference to H.C.A. No. S 2162 of 1986, denies paying any interest at all. As a result, he says that the Plaintiff's actions are barred by the Limitation of Personal Actions Ordinance Ch. 5. No. 6.

11. The Defendant then says that his indebtedness to the Plaintiff referred to in letter dated 25th April, 1984, was in respect of two loans made by the Plaintiff to him of \$60,000.00 on or about the 15th November, 1977 and \$200,000.00 on the 21st June, 1978. Further or in the alternative, the Defendant says that at all material times the Plaintiff carried on the business of a moneylender without having obtained a Moneylender's licence as required by the Moneylender's Act, Chap. 84:04 and since the loans were made by the Plaintiff in the course of his money-lending business the loans were illegal and / or unenforceable.

12. The Defendant's defence to H.C.A. No S – 2164 of 1986 is in the same vein as in H.C.A. Nos. S 2161 – 2163 of 1986, save and except in No. S 2164 of 1986, he denies borrowing from the Plaintiff or that the Plaintiff lent him the monies mentioned in paragraph 1 of the statement of claim. The Defendant says that prior to the 2nd April, 1984, the Plaintiff loaned to Satchmo Canning

and Bottling Limited (the Company) sums amounting to \$329,436.75 in respect whereof the Company on or about the 2nd April, 1984, executed a promissory note in favour of the Plaintiff.

13. These matters came up for hearing before me on the 8th July, 2008. On that date, Ms. Melissa Ali Attorney at Law of the firm Lex Caribbean which was then on record for the Defendant appeared and informed the Court that pursuant to summons dated and filed the 7th July, 2008, she was seeking an order on the part of Lex Caribbean that they have ceased to act as Attorneys at Law for the Defendant. This summons was supported by the affidavit of Ms. Geeta Maharaj Attorney at Law also of Lex Caribbean. The Defendant did not appear in Court on that date.
14. Ms. Ali informed the Court that she had been unable to serve the Defendant with the said summons, that the Defendant seemed to be avoiding service and that she wished to attempt service via registered mail.
15. In answer to the Court, Mr. Prakash Ramadar Attorney at Law for the Plaintiff said that he was not opposing Ms. Ali's application. Ms. Ali further informed the court that she had no instructions from the Defendant for the trial.
16. The affidavit of Ms. Geeta Maharaj in essence recounted the several occasions on which both she and Ms. Ali spoke to the Defendant with regard to obtaining his instructions for preparation of the trial to no avail.
17. I was presented with a letter dated 2nd July, 2008 from one Dr. Carl A.R. Lee, a medical doctor, which stated that the Defendant was under his care and as a result of the Defendant's medical condition which was set out therein, Dr. Lee recommended the Defendant should not attend Court for at least three weeks.

18. In deciding whether or not to adjourn the matters as recommended by Dr. Lee or to proceed to hear them, I took into consideration the fact that these actions were filed since 1986, some twenty-two years ago and the fact that the Defendant failed to comply with the directions for trial given by Aboud J. on the 12th October, 2007, and particularly, the failure by the Defendant to file and exchange his witness statement on or before the 28th February, 2008. There was no application made by the Defendant for an extension of time in which to do so and / or for relief from sanctions. For these reasons I decided to proceed to hear the matter.
19. The Plaintiff was the only witness to testify on his behalf. His evidence-in-chief is contained in his witness statement which was tendered into evidence and marked "S.R.1.". I did not enquire of Ms. Ali whether she wished to cross-examine the Plaintiff in light of her application to cease to act and the fact that she had no instructions for the trial as she indicated to the Court.
20. The issues which I discern from the pleadings are:
- (i) With regard to H.C.A. Nos. S 2161 – 2163 of 1986, whether or not the Plaintiff's claims are statute barred pursuant to the Limitation of Personal Actions Ordinance Chap. 5. No. 6;
 - (ii) With regard to H.C.A. No. 2164 of 1986, whether or not the Plaintiff loaned the sums alleged to the Defendant and
 - (iii) With regard to all four actions whether or not the Plaintiff carried on the business of a moneylender.
21. As to the first issue, the Defendant in his defence admitted the loans, but denied paying interest thereon up to the 25th April, 1984. The Defendant pleaded that he paid interest up to 1981 and not thereafter. The Defendant as

a result is relying on Section 5 of the Limitation of Personal Actions Ordinance Ch.5 No. 6 (the Ordinance) which provides for the commencement of all actions founded upon any simple contract without specialty within four years next after the cause of such actions and not after. The Defendant is therefore saying that not having paid any interest on the said loans after 1981, the Plaintiff ought to have commenced his actions for the recovery thereof by 1985, and not thereafter.

22. I have not seen any evidence of interest payments by the Defendant up to the 25th April, 1984, however, the Plaintiff is relying upon the Defendant's letter to him dated 25th April, 1984, which counsel for the Plaintiff submitted is an acknowledgement of the said loans. The contents of this said letter are as follows:

25th April, 1984

Mr. Siew Ramadhar,
Freeport Mission Road,
Freeport.

Dear Sir,

Agreement dated 21/6/68

Purchase of Land at Calcutta Settlement

In consideration of your request and for the refund of the down-payment made (\$112,500.00) plus interest at 12% per annum, I hereby agree to terminate our agreement dated 21st June, 1978.

I also agreed that the sum of \$112,500.00 (the said down-payment) plus interest \$78,928.77 be deducted from monies I owe you.

Yours truly,
Satchan Ramsaran

23. I agree with counsel for the Plaintiff that the words “from monies I owe you” which appear at the end of the last line of the said letter do refer to all the loans which the Defendant has admitted the Plaintiff made to him and remained unpaid at the date of the said letter i.e. the 25th April, 1984. Had the Defendant meant otherwise, I am sure that he would have so stated and indeed he had the opportunity to do so.
24. Pursuant to Section 7 of the Ordinance, an acknowledgement in writing signed by the party liable upon any simple contract makes it lawful for the person entitled to such action to bring his action for the money remaining unpaid or so acknowledged to be due, within four years after such acknowledgement. The Plaintiff having brought these actions on the 24th August 1986, some two years after the said letter dated 25th April, 1984, acknowledging the said loans, was not barred from so doing by the Ordinance.
25. As to the second issue, whether the Plaintiff loaned the alleged sums to the Defendant (H.C.A. No. S of 2164 of 1986) I accept the Plaintiff’s evidence that he did so. The Plaintiff’s evidence is that he purchased a draft dated the 10/12/1982 No. 525990 from the Bank of Nova Scotia Trinidad and Tobago Limited in the sum of \$150,000.00 and another of the same date No. 525942 in the sum of \$100,000.00, endorsed them both and delivered them to the Defendant. These two bank drafts are annexed to the Plaintiff’s witness statement in one bundle marked “D”. Also contained in the said bundle marked “D” is Republic Bank Limited cheque drawn on the Plaintiff’s account payable to Satchmo Cannings and Bottling Industries Limited (the Company) in the sum of \$79,436.75. The Plaintiff’s evidence which I accept is that this latter sum was paid to the Company at the Defendant’s request and on his behalf which he the Defendant undertook to repay. The Defendant was the Company’s Managing Director.

26. As to the third issue, whether or not the Plaintiff carried on business as a moneylender, I do not think that there was any evidence to suggest that he did so. The word moneylender is defined in Section 2(1) of the Moneylenders' Act Chapter 84:04 (the Act) as including any person whose business is that of moneylending, or who advertises or announces himself or holds himself out in any way as carrying on that business, but does not include any person bona fide carrying on any business not having for its primary object the lending of money in the course of which and for the purposes of which he lends money.
27. Section 3 (1) of the Act provides that every moneylender shall take out annually a moneylenders' licence. In Gonzales - v - Hassanali [1965] 8 W.I.R. 146 Wooding C. J. at Pg. 148 B explains the meaning of moneylender where he stated at pg. 148 D that the definition “does not imply that in every instance of a person lending money on interest a moneylending business is carried on. Indeed, section 12 of the Act provides that the interest which may be charged on loans by any person other than a moneylender licensed under the Act shall not exceed the rate of 24% simple interest per annum. Halsbury's Laws of England 3rd Edn. Vol. 27 pg. 18 Para. 27 explains the matter thus:

“ It is a question of fact in each case whether a person is carrying on the business of moneylending. In order to establish that he is carrying on such a business it is not sufficient to prove that he has occasionally lent money at a remunerative rate of interest; it is necessary to prove some degree of system and continuity in his moneylending transactions and something more than loans to friends and relatives. In considering whether a person is carrying on a business of moneylending all loans made by him must be taken into account.”

28. The Defendant's allegation in his defence that the Plaintiff carried on business as a moneylender without more is clearly insufficient for one to conclude that the Plaintiff did carry on such a business. The Plaintiff himself testified that it was at the Defendant's request he being a relative and friend of the Plaintiff that the Plaintiff assisted him in the time of need. I therefore hold that there is no evidence that the Plaintiff carried on the business as a moneylender as alleged by the Defendant.

29. In summary, my findings are as follows:

- (i) The Plaintiff's actions were not barred by the Limitation of Personal Actions Ordinance Chap. 5. No. 6;
- (ii) The Plaintiff did lend the Defendant the sums alleged in H.C.A. No. S – 2164 of 1986;
- (iii) The Plaintiff did not carry on the business of a moneylender as defined by the Act.

In these circumstances, I gave judgment for the Plaintiff on his consolidated claims together with interest in the sum of \$5,263,077.10 (as computed by Mr. Sunil Gosine Attorney at Law for the Plaintiff). The costs of the action are to be paid by the Defendant to the Plaintiff certified fit for senior and junior counsel to be taxed in default of agreement. I further granted to Lex Caribbean an Order in terms of the summons dated and filed the 7th July, 2008, subject to the filing of an affidavit of service on or before the 14th July, 2008.

April 23, 2010

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DAVID ALEXANDER

Former Judge (Ag.)