

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-01878

BETWEEN

DEOWATTIE BAKSH

Claimant

AND

SHAIN STEVEN

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr Rennie K Gosine instructed by Mr Arshad Mohammed for the Claimant

Ms Shabaana Mohammed instructed by Mr Abdel Mohammed for the Defendant

JUDGMENT

I. Background:

[1] This Claim was brought seeking the liquidation of a debt allegedly owed by the Defendant to the Claimant pursuant to an oral agreement between the parties. The Defendant, in opposition, denies the existence of any such agreement and further denies that any money is owed at all to the Claimant.

- [2] On the 23rd June, 2016 the Claimant alleges that she, a taxi driver, entered into an oral agreement with Mr Steven, a self-employed contractor. She described Mr Steven as a “close family friend” who was in “urgent need of funds to receive a sub-contract from the Housing Development Corporation (HDC)”. As a result, Ms Baksh decided that she would loan the Defendant the **\$40,000.00** that he requested and as consideration, it was purportedly agreed that he would pay her interest in the sum of **\$3,000.00**.
- [3] In pursuance of that agreement, on even date, Ms Baksh pleads that the Defendant accompanied her to Scotiabank Limited where she withdrew \$25,000.00 to give to Mr Steven. Later on, he received another \$5,000.00 in cash. On another occasion, the parties went to Venture Credit Union where she gave the Defendant another \$10,000.00. Ms Baksh attached, in support, the withdrawal slips for both withdrawals.
- [4] In total therefore, under the alleged oral agreement, she avers that the Defendant was required to repay her the **\$40,000.00** loaned plus interest in the sum of **\$3,000.00 within 2 months**.
- [5] As is gleaned from the cause of action in the Claim, Ms Baksh received no money by October of 2016 and therefore, contacted the Defendant who then allegedly promised to repay the money by November of that year. Having received no money by said date, the Claimant eventually made a report to the San Fernando CID with one Corporal Nanan, who visited the Defendant’s home on the 24th February, 2017. The outcome of this visit was not pleaded, however, it is evident that the debt remains outstanding considering that **a pre-action letter** was issued to the Defendant on the **31st March, 2017**.
- [6] No mention was made of any response to this pre-action letter and thus, the Claim herein was instituted seeking the repayment of the \$43,000.00 debt under the oral agreement along with interest at 6% from the date of the agreement, being the 23rd June, 2016 and 12% from the date of this judgment.
- [7] On the Defendant’s version, he was more than a mere “close friend” of the Claimant. In fact, he pleads that Ms Baksh was his ex-girlfriend and that he ended their relationship some three (3) years ago after he got married. As a result, his case is that the Claimant

has brought her claim out of malice and revenge because she was “*bitter and angry since their break-up*” and was “*unsuccessful at hampering the Defendant’s marriage*”.

[8] Thus, his case is that he never asked for any loan from Ms Baksh and further, denies that he ever applied to be sub-contracted on any HDC jobs. Moreover, he states that he considered himself to be the higher income earner and accordingly, had no need to seek a loan from the Claimant. It followed that he denied ever accompanying the Claimant to any of the mentioned financial institutions to withdraw money and states that the withdrawal slips attached to the Claim are not sufficient proof that the withdrawals were at his request or for his benefit.

[9] He did, however, admit that a Police Officer visited his home pursuant to the Claimant’s report on the alleged debt but averred that he indicated to the said officer that he never borrowed any money from Ms Baksh. The police then returned at a later date and delivered a letter issued by the Claimant. It was not clear whether this letter was a pre-action letter and further, the contents of this letter were not pleaded. Nevertheless, Mr Steven avers that he did issue a response to the Claimant’s pre-action letter on the 26th April, 2017, where he denied the allegations.

[10] In essence, the Defendant categorically denied the material allegations and reliefs sought in the Claim.

[11] Ms Baksh issued a short Reply to the Defence where she then admitted that the parties had been in a relationship but that the said relationship had come to an end in January, 2017. Further, she now stated that the reasons the relationship came to an end were because of the Defendant’s refusal to repay the loan and the argument that ensued. She stated that she was unaware of when Mr Steven got married but pleaded that he “*always had financial problems*” as he was a heavy drinker and has a very active social life.

[12] At the first Case Management Conference, directions were given for disclosure and inspection, the filing of witness statements with their attendant evidential objections, if any. A trial date was also fixed for the 2nd March, 2018.

[13] After the filing of List of Documents, the Claimant filed a hearsay notice seeking to admit the account history of Ms Baksh from Scotiabank Limited as well as a receipt from

Venture Credit Union on the basis that the makers of these documents could not be expected to recall the matters relevant to their accuracy and further, that these documents were not challenged on the Defence.

[14] Both parties filed one witness statement each on the 18th December, 2017. Evidential Objections were filed by the Claimant on the 9th January, 2018. However, the Defendant failed to file its evidential objections as ordered but sought, on the day of trial, to raise objections to certain aspects of the Claimant's witness statement.

[15] On the day of trial, being the 2nd March, 2018, Mr Gosine for the Claimant objected to the Defendant's application for evidential objections on the basis that they were out of time. After hearing both sides on the issue, this Court opted to allow the Defendant's evidential objections for two essential reasons: (i) that the Court had taken a truncated approach to the CMC process and had dispensed with the pre-trial review, which is the usual arena for hearing evidential objections; and (ii) that at the end of the day, the overriding duty remains with the Court to admit evidence that is admissible and relevant regardless of whether or not there are any objections.

[16] The Court gave its ruling on the parties' **Evidential Objections** as follows: (i) with respect to the Defendant's witness statement, the objections to paragraph 4, line 1 and to paragraph 5, the second sentence only were sustained and therefore struck out; (ii) as to the Claimant's witness statement, paragraphs 3 & 4 in their entirety and the second sentence of paragraph 5 only were struck out on the grounds that they were not pleaded.

II. Issues:

[12] It is evident from the pleadings that no money was ever paid by the Defendant to the Claimant as it is the Defendant's case that no money is due and owing. In the circumstances, there remains two material issues for determination:

- (i) **Whether the parties entered into the oral agreement and if so, on what terms?**
- (ii) **Whether the Defendant owes the Claimant the sum of \$43,000.00 or any money at all?**

The parties conceded at trial that these issues were purely factual and thus opted to give very brief oral closing addresses. Accordingly, no case law was submitted and none was needed for this decision.

III. Law & Analysis:

[13] The pleadings in this matter were relatively straightforward. The Claimant's case is that the parties entered into an oral agreement whereby she would loan the Defendant \$40,000.00. The reasoning for this loan was because, according to Ms Baksh, "*he was considered a close family friend*" and was in urgent need of funds to obtain a sub-contract from HDC. As consideration, she states that it was agreed that the Defendant would repay her, in addition, \$3,000.00 in interest. She stated that the Defendant then accompanied her to Scotiabank Limited and to Venture Credit Union where she withdrew and gave Mr Steven the sum of \$35,000.00. She also gave him \$5,000.00 in cash and thus, completed her obligations under the alleged oral agreement.

In her Reply, she admitted that the parties shared more than a close friendship and had actually been involved in a relationship. Further, she now stated that the relationship broke down because of the Defendant's failure to repay the loan and the arguments that ensued.

Ms Baksh also pleaded in her Reply that she was aware that the Defendant is married but did not know when that marriage took place although she admitted to knowing the Defendant's wife.

[14] Ms Baksh's witness statement was largely consistent with her pleadings. She maintained that the agreement was entered into on the 23rd June, 2016 when the Defendant called her indicating that he needed the money to get a sub-contract from HDC to carry out construction works. Her evidence was that the Defendant told her that he would use the \$40,000.00 as a deposit to obtain the sub-contract from the HDC. Further, she stated that it was because of her trust in him, borne out of the 16 years that she knew him, she loaned him the money without a written agreement. On her version, Mr Steven agreed to pay her the \$43,000.00 in two months after the money was loaned to him.

Other evidence surrounding the agreement was introduced as follows:

- (i) That after speaking to the Defendant on the phone, Ms Baksh called her son, Nicholas, and told him to bring her bank book, bank card and ID to Scotiabank's car park.
- (ii) That Nicholas arrived shortly after the Defendant and gave her the requested items. Thereafter, the parties entered the bank together around 10 am.
- (iii) That she initially told the teller that she wanted to withdraw \$10,000.00, however, after receiving her receipt for the transaction, she observed she had enough funds to withdraw a further \$15,000.00.
- (iv) That the additional \$5,000.00 cash was given to the Defendant after she returned home. Thereafter, it was agreed that she would give the Defendant the remaining \$10,000.00 in three weeks' time.
- (v) That she withdrew the remaining \$10,000.00 under the agreement on the **13th July, 2016** and trusted Mr Steven to repay the loan by mid-September, 2016.

[15] At trial, Ms Baksh confirmed that she was still in a relationship with the Defendant when he requested the loan. She stated that she tried to obtain a record of her received phone calls from that date but could not because she was told that she needed a court order. Thus, she admitted that no records proving that the Defendant called her on that date is before the Court. Further, she was also forced to admit that she did not state in her witness statement that she attempted to get the phone records and that she was denied.

Notably, Ms Baksh also gave evidence that she did not seek from the Defendant any details about the reason for the Defendant's request for the loan. For instance, she admitted that she never asked him how much money was involved in the purported sub-contract, or whether the \$40,000.00 was refundable, or whether he had any documents proving that the \$40,000.00 deposit was required. Rather, she maintained that she lent him this sum of money solely on account of their relationship.

Counsel for the Defendant suggested to Ms Baksh that it was not believable that she would lend money to someone for whom she clearly had great affection yet still request that he pay interest. Her response was ***"Yes because I work hard for my money"*** and

that, in her words, ***“I trusted him, I trusted him to repay me my money and I working so I didn’t have time to look around.”***

When shown her account statement, Ms Baksh admitted that the withdrawals thereon do not provide proof that those withdrawals were made for the Defendant. Nevertheless, she insisted that she withdrew the money for him and did in fact give him.¹ The Court noted that the attached account statement does indicate that Ms Baksh did, indeed, withdraw \$15,000.00 followed by \$10,000.00 on the same day as the transactions are marked with the same “posting date” being “0623” or the 23rd June as pleaded.

Similar answers were given with respect to the account statement from Venture Credit Union where another \$10,000.00 was withdrawn.²

Despite her mention of her son’s involvement in bringing her bank documents coupled with her evidence at trial that her kids knew of the loan to Mr Steven before commencing this Claim, she admitted that none of them was brought to give evidence on her behalf.

Further, despite her evidence that she tried via numerous methods such as by phone, emails and text message to contact the Defendant when she had received no money and that those correspondence would have assisted her case, none of them made their way to the Court.

Counsel then questioned Ms Baksh briefly on her relationship with the Defendant. On this line of examination, Ms Baksh’s evidence was as follows:

- (i) That when she first asked Mr Steven whether he was married, he denied it.
- (ii) That she found out that he was married about 4 years ago but she did not have any proof.
- (iii) That she is still unsure of whether he is married.
- (iv) That she does not know his wife.

¹ Notes of Evidence page 13 line 41

² Notes of Evidence page 14 lines 13-14

(v) That she had no problem with the Defendant breaking up with her but she just wants her money back.

[16] I found Ms Baksh to be a very credible witness. The account statements, to my mind, fit her narrative in terms of the withdrawals, notwithstanding they do not prove that those withdrawals were in pursuance of the alleged agreement. Nonetheless, it begs the question of why would she go through all this legal expense to bring a claim seeking a mere \$40,000.00, unless it were true. More than that, it is undisputed between the parties that prior to bringing this claim, she made a report to the police who visited the Defendant and informed him of same. Thereafter, she issued a pre-action letter. This does not suggest to me that this was some ill-conceived plan to swindle Mr Steven out of his money. The fact pattern does suggest a legitimate claim.

Further, I do not agree with counsel's submissions that it is unusual for someone lending money in these circumstances to also ask for interest in return. This is not an improbable occurrence. It is clear that Ms Baksh carried deep feelings for the Defendant— she visited him in prison, waited for him to get out and took him in for 6 months until he was able to stand on his own two feet. This evidence leads me to two conclusions: (i) it depicts the Claimant as a generous and good-natured person and thus, a credible witness; and secondly (ii) while Mr Steven may claim that he was the higher income earner, having spent 4 years in prison, it is more than likely that he would have been starting over when he got out. Thus, I do believe that he was in financial straits and needed money to get back into the "*swing of things*". Further, given the evident affection Ms Baksh had for him, I also believe that she agreed to lend him money to assist him in this endeavour.

As it pertains to the interest payment, it must be remembered that Ms Baksh is a woman of over 50 years and earned her income as a taxi driver. Thus, the monies loaned would have formed a large chunk of her hard earned life's savings. Further, I do not consider her to be a young and naïve woman and thus, am of the opinion that she would have sought to achieve some sort of consideration for the loan. In any event, given that I find her to be a very credible witness, I do find it probable that she also agreed that the Defendant would pay \$3,000.00 in interest on the loan.

[17] In opposition, the Defendant's pleaded case amounted mostly to a denial of most of the material facts in the Claim. He confirmed that Ms Baksh was his ex-girlfriend. He stated that he ended this relationship three years ago after he got married and that Ms Baksh became bitter at his decision and was unsuccessful in her attempts to hamper his marriage. Thus, his case is that her Claim is the result of her bitterness toward him and initiated out of revenge.

He therefore denied all facts pleaded about the agreement, the withdrawals and the sub-contract with HDC. In fact, he stated that he was the higher income earner and as such, had no need to ask her for money. His only admission was that a police officer did attend his residence based on a report by the Claimant and that at some later point, that officer dropped off a letter. He also pleaded that he did reply to the pre-action letter by denying the claim in its entirety.

[18] His witness statement was largely a corroboration of his pleaded facts. He confirmed that he ended his relationship with the Claimant about 3 years ago because he wanted to *"behave myself and focus on making my marriage work."*³ His evidence was that in retaliation, the Claimant indicated her dissatisfaction with his decision and that she intended to ruin his marriage.

He maintained that he never accompanied the Claimant to any of the pleaded financial institutions to withdraw money. Moreover, he stated that the first time he became aware of the Claimant's allegations was when a police officer called him informing him of the particulars of the alleged loan. He confirmed that it was the same police officer who delivered the pre-action letter.

[19] At trial, Mr Steven admitted that he was incarcerated for four and a half years from 2004 to 2009 and that Ms Baksh visited him "once or twice" in prison. He stated that he used to write her love letters from prison. After leaving prison, he stated that he lived with the Claimant for about 6 months. Further, from 2009 to 2017, he admitted that his address was the Claimant's address. He stated that he got married on the 17th November, 2012 but continued to have a relationship with the Claimant until early 2016 when it ended.

³ Witness statement of Defendant paragraph 3 lines 2-3

Counsel probed further about the parties' relationship and, in response, Mr Steven stated that she filed this Claim to seek revenge because, in his words, he "*didn't want her no more*". He stated that "*she does go the distance to threat, well call meh wife and made scene, so I reach a stage that I wanted to keep meh marriage so...*"⁴

Mr Steven maintained that during the parties' relationship he paid the bill every time they went out and therefore, maintained that he was the higher income earner. He also stated that he was never in financial straits and always had money in the bank although, admittedly, he never adduced copies of his bank statements to the Court.

He however maintained that he never got any work from HDC and therefore, never did any work on any HDC houses. He stated that as a sub-contractor, he gets paid weekly and that usually, he gets 40% before he commences any work.

Throughout his cross-examination, he continuously denied that any money was given to him by the Claimant. In fact, he stated that the last time he had any contact with Ms Baksh was in January, 2016. He however stated, for the first time, that he had broken up with the Claimant temporarily in 2012, when he got married and then resumed his relationship with her sometime in 2013. Upon resumption of his extra-marital affair, he informed Ms Baksh that he was married in 2013. At this point, he states that his wife already knew of his affair with the Claimant but admitted to having lied to his wife for four (4) years thereafter by not telling her that he continued the relationship with the Claimant until January 2016.

Lastly, Mr Steven admitted that he was imprisoned for receiving a stolen computer without a receipt.⁵

[20] In my opinion, Mr Steven had some serious hurdles with regard to his credibility from the outset. Not only was he convicted of a criminal offence involving the receipt and subsequent sale of stolen goods, he was also admittedly and unapologetically engaging in an extra-marital affair, continuously lying to both women to cover up his relationship with both of them and in effect used the Claimant as a crutch until he could regain his

⁴ Notes of Evidence page30 lines 18-29

⁵ Notes of Evidence page 36 lines 20-21

lost life and thereafter, opted to discard her. He therefore does not strike me as a genuinely moral and trustworthy individual. Rather, he is evidently skilled at being deceptive when it suits him.

Further, in his own admission, not only did he, at his convenience, stay at the Claimant's residence after leaving prison, but proceeded to meet and marry another woman shortly thereafter, deceptively concealing this change in his status from the Claimant while at the same time continuing his relationship with the Claimant. Such behaviour does not lead me to believe that he is a man whose word can be trusted. All this evidence confirmed that the Claimant had evidently developed deep feelings for the Defendant, which explains why she would have felt moved to lend him the quantum of money out of her hard earned savings without probing in to the details.

Therefore, while I agree with Ms Mohammed in her oral submissions that it is the Claimant who carries the burden of proof, in cases such as this one where the parties are not expected to have kept records of their dealings, the determining factor will be, as agreed and submitted by the attorneys, the witness' credibility.

On the totality of the evidence, I prefer the evidence of the Claimant. She was, to my mind, the victim in these proceedings whom the Defendant used when it suited him. I therefore do believe that the monies, which were undoubtedly withdrawn from the Claimant's accounts in Scotiabank and the Venture Credit Union, were given as a loan to the Defendant. I am also of the belief that upon moving on to what he may have thought were "*greener pastures*" the Defendant opted to turn a blind eye to his obligations to her in terms of his repayment of that loan.

[21] Thus, based primarily on her account records at Scotiabank Limited and Venture Credit Union, the credibility and forthrightness of the Claimant's evidence, coupled with the lack of the Defendant's credibility as a witness as evidenced primarily by his admitted actions with the Claimant, I find, on a balance of probabilities, that the parties did enter into an oral agreement and that monies, as claimed, are owed to the Claimant.

IV. Disposition:

[22] Accordingly, in light of the foregoing analyses and findings, the order of the Court is follows:

ORDER:

1. Judgment be and is hereby entered for the Claimant against the Defendant for the sum of \$43,000.00 being judgment debt in the sum of \$40,000.00 and agreed interest in the sum of \$3,000.00.
2. There shall be interest on the sum of \$43,000.00 (pre-judgment interest) at the commercial rate of 1% per annum from the date of filing of the Claim (i.e. 23rd May, 2017) to the date of this judgment (20th April, 2018) quantified in the sum of \$392.30.
3. The Defendant shall pay to the Claimant costs of the Claim to be quantified on the prescribed scale of costs. The value of the Claim being determined at \$43,392.30, prescribed costs are hereby quantified in the sum of \$12,348.00.
4. Interest on the judgment debt and costs shall accrue at the statutory rate of 5% from the date of judgment to the date of payment.

Dated this 20th day of April, 2018

Robin N. Mohammed
Judge