

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-03757

**BETWEEN**

**CLINTON HARRIPERSAD**

Claimant

AND

**HOLLY MORA**

Defendant

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Ms. M. Hinds for the claimant

Mr. A. Khan for the defendant

## Judgment

1. This is a claim for breach of contract. The claimant, a police officer claims that on or around the 4<sup>th</sup> July, 2013 the defendant asked him for a loan in the sum of \$75,000.00. The claimant further claims that on the 28<sup>th</sup> March, 2014 he entered into an oral agreement with the defendant to loan her the sum of \$75,000.00. That based on the agreement, the defendant promised to repay the said sum within one week of the date of the agreement. According to the claimant, the aforementioned was a term of the agreement.
  
2. It is the case of the claimant that in breach of the term of the agreement, the defendant refused and/or failed to repay him the loan or any part thereof. Consequently, by Claim Form filed on the 31<sup>st</sup> October, 2016 the claimant claims damages for breach of contract and the payment of the sum of \$75,000.00.
  
3. By Amended Defence and Counterclaim filed on the 22<sup>nd</sup> May, 2017 the defendant denied borrowing the sum of \$75,000.00 from the claimant. She claims that she lent money to the claimant and that he still owes her same. It is the case of the defendant that the claimant owes her the sum of \$40,522.23. As such, by Counterclaim the defendant is claiming the payment of the sum of \$40,522.23 together with interest.

## Issues

4. The issues for determination by this court are as follows;
  - i. Whether there was an agreement between the claimant and the defendant for the loan of \$75,000.00;
  - ii. If the answer to (i) is yes, whether the defendant breached the agreement by failing to repay the claimant the sum of \$75,000.00; and
  - iii. Whether the claimant owes the defendant the sum of \$40,522.23.

### **The case for the claimant**

5. The claimant gave evidence and called one other witnesses, Myra Harripersad.
6. The claimant testified that the defendant was at the material time an acquaintance of his and that she knew he was a serving member of the Trinidad and Tobago Police Service (“TTPS”). That whilst he was attached to the Tunapuna police station, he met the defendant several times while she was working at the Public Affairs Unit Office situated in the Police Administration Building Port of Spain. During cross-examination, the claimant testified that he met the defendant either in 2008 or 2009. The claimant testified that when he met with the defendant, he had conversations with her pertaining to work. During cross-examination, the claimant testified that during those conversations he had with the defendant, it was possible that they would have discussed his financial struggles and gains.
7. He testified that he never borrowed any money from the defendant between April, 2012 and June, 2013. During cross-examination, the claimant denied borrowing \$1,000.00 from the defendant in March, 2012 and \$5,000.00 in April, 2012. He further denied telling the defendant that he needed to borrow money because he had borrowed money from someone and that the person was threatening him. Moreover, the claimant denied that the defendant told him that he could not continue borrowing money from her and that he needed another job to supplement his income from the TTPS. He testified that he had no problems with his financial resources.
8. During cross-examination, the claimant testified that he took a loan from the police credit union to purchase a vehicle.
9. Sometime in the year 2012, the defendant informed the claimant that she had opened her own real estate business called La Fortune Enterprises. Thereafter, the defendant informed the claimant of a new company she had started called JHM Constructions & Brokerage Limited (“JHM”). The defendant asked him to be a director of JHM because she wanted to show that the company consisted of persons other than herself. During

cross-examination, the claimant denied that the defendant told him that she would make him a director of JHM so that he could conduct due diligence on persons who were interested in investing in the company because of his experience as a CID officer. He testified during cross-examination that the defendant did ask him once to conduct investigations into persons but that he told her that he could not do so.

10. It is his evidence that he had no experience relative to the running of a home construction business but only performed occasional driving duties for the defendant. That the defendant had a work office located at #80 Eastern Main Road, Arouca at the corner of Henry Street. The claimant visited this office twice and on those two occasions, he went with the defendant. As such, it was his testimony that he was not given any keys or access to the said office.
11. The claimant's communication with the defendant was via telephone and via her email accounts, *hollymora2@gmail.com*, *jhmconstruction44@gmail.com* and *hollymorra@yahoo.com*.
12. According to the claimant, the defendant needed money for JHM as it was failing. In or around June, 2013 the defendant informed the claimant that an investor named Rama Aziz ("Aziz") had communicated with her and she forwarded the email dated the 27<sup>th</sup> June, 2013 that she had received from Aziz to the claimant.
13. On the 28<sup>th</sup> June, 2013 the claimant received another forwarded email from the defendant concerning another communication from the investor, Aziz. On the 30<sup>th</sup> June, 2013 the claimant received a forwarded email from the defendant concerning her communication with a person named James Pascal ("Pascal") and their arrangement for a meeting in London. The claimant was in communication with the defendant as she made arrangements for the meeting in London, England on the 5<sup>th</sup> July, 2013.
14. During cross-examination, the claimant testified that he did not conduct investigations into Pascal. That the defendant did not ask him to conduct investigations into Pascal to determine whether the investment opportunity was real and not a scam. He further testified during cross-examination that the defendant asked him to accompany her to

London. That he had no interest in going to London and it was the defendant who assisted him in obtaining his passport expeditiously to accompany her to London.

15. The claimant introduced the defendant to his long-time friend, Tina Chandler (“Tina”) who worked in a travel agency. During cross-examination, the claimant testified that as the defendant wanted to make arrangements to go to London, he told her that he had a friend who worked in a travel agency and that they could get the tickets from Tina.
16. During cross-examination, the claimant denied that the defendant gave him \$18,000.00 to give to Tina for her (the defendant’s) ticket. He testified that sometime before their departure to London, he took the defendant to Enterprise to meet Tina and that Tina and the defendant had a conversation and Tina gave the tickets to the defendant. That after he introduced the defendant to Tina, the defendant orchestrated everything with Tina.
17. The claimant testified that on the 2<sup>nd</sup> July, 2013 the defendant asked him for a loan in the sum of \$75,000.00. That the defendant represented that she needed the money to pay legal fees and for the securing of a bond in England in order for her to conduct business there. The claimant agreed to loan the defendant the money.
18. On the 3<sup>rd</sup> July, 2013 the claimant took the defendant to Back Street, Tunapuna to meet his mother, Myra Harripersad (“Myra”) and Myra’s common law husband, Lakhan Ramdeo (“Lakhan”). The claimant had a conversation with Myra and Lakhan about the defendant’s need of money to pay legal fees and for the securing of a bond in England in order for her to conduct business in England. The claimant testified that the defendant agreed that he should borrow the money from Lakhan to loan to her. The claimant further testified that the loan was made under the condition that the defendant would pay back the entire sum in full with no interest within one week.
19. According to the claimant, on the 3<sup>rd</sup> July, 2013 in the presence of Lakhan and Myra, the defendant and he made an oral agreement to loan the defendant the sum of \$75,000.00 TTD or \$7,500.00 pounds. The claimant testified that before leaving Myra’s residence and driving the defendant to her residence, the defendant shook hands with Myra and Lakhan.

20. On the 4<sup>th</sup> July, 2013 the claimant went back to meet Lakhan and drove Lakhan to the Eastern Credit Union situate at the Eastern Main Road, Tunapuna. Lakhan withdrew \$100,000.00 TTD from the Credit Union. Thereafter, the claimant contacted the defendant to inform her that Lakhan and Myra asked that she sign a receipt for the money. The claimant testified that the defendant indicated that she was busy on business and asked that he sign the receipt on her behalf. The claimant wrote up a receipt, signed it and gave it to Lakhan. Subsequently, the claimant and Lakhan checked the money and Lakhan handed the claimant \$75,000.00 TTD in \$100.00 bills.
21. It was the testimony of the claimant that pursuant to the agreement and the promise to repay within one week of the agreement, he loaned the defendant the sum of \$75,000.00.
22. On the evening of the 4<sup>th</sup> July, 2013 the claimant met the defendant at the Piarco International Airport. He handed over the \$75,000.00 TTD to the defendant and they went to a money currency changing kiosk in the terminal where the defendant changed some of the cash into Euros and British pounds. The defendant gave the claimant the Euros to hold. He then proceeded with her to board the flight to England. During cross-examination, the claimant testified that when he gave the \$75,000.00 to the defendant, he did not ask her to sign a receipt for receiving same because he trusted her. He further testified during cross-examination that the \$75,000.00 was used for the trip to London.
23. On the 5<sup>th</sup> July, 2013 the defendant and the claimant arrived at Gatwick International Airport in the United Kingdom. They proceeded to a TTT Money Corp kiosk where the claimant converted \$1,765.00 Euros into \$1,312.00 pounds. Subsequently, the defendant and the claimant checked into their separate rooms at the Holiday Inn Gatwick Hotel.
24. Sometime in the morning of the 6<sup>th</sup> July, 2013 the defendant and the claimant left the hotel to meet the investors. The claimant made certain observations and alerted the defendant that it was a scam. The police were also alerted. The claimant made a report via telephone to the Metropolitan Police.

25. On the 7<sup>th</sup> July, 2013 the defendant indicated that she had arranged to meet new clients and left on her own to conduct business. The claimant testified that after the discovery that the business venture was a scam, he wanted to return to Trinidad but that the defendant insisted on staying to meet with other prospective business persons and left on her own to meet them. The claimant further testified that the defendant then wanted to have a week's vacation to recover from the bad experience and asked that he stay. The claimant testified that he had his own money for the trip and that he did not borrow money from the defendant.
26. During cross-examination, the claimant testified that he did not pay for his ticket for London. He further testified that he did not pay for his hotel accommodation in London
27. On the 9<sup>th</sup> July, 2013 the defendant forwarded an email to the claimant regarding her communication with an investor named Al-Hameed Karzai ("Karzai").
28. On the 10<sup>th</sup> July, 2013 the defendant and the claimant returned to Trinidad.
29. On the 23<sup>rd</sup> July, 2013 the claimant received a forwarded email from the defendant which concerned a communication from another investor. The claimant testified that the defendant stated that she was awaiting her commission from that transaction and that she would use same to pay everyone. On the 24<sup>th</sup> July, 2013 the claimant received a forwarded email from the defendant which concerned correspondence from the investor, Karzai.
30. The claimant testified that the defendant told him that she had work to do and was too busy to go to the bank to organize the \$75,000.00 to repay Lakhan and Myra. He further testified that the defendant invited him to apply for a loan. The claimant told the defendant that he had access to family property to build an apartment complex on.
31. On the 3<sup>rd</sup> August, 2013 the claimant received another forwarded email from the defendant concerning communication with Candice Pegus ("Pegus") from Scotia Bank. The defendant informed the claimant that clients from a bank will be referred to her to meet her demand for loan applicants. On the 4<sup>th</sup> August, 2013 the claimant received an

email from the defendant which concerned a conversation for a loan to build apartments.

32. On the 4<sup>th</sup> August, 2013 the claimant received another email from the defendant which concerned foreign used cars. On the 7<sup>th</sup> August, 2013 the claimant received a forwarded email concerning communication with “araфинinvestmentksa”. On the 10<sup>th</sup> August, 2013 the claimant received a forwarded email from the defendant concerning communication with Michael A. Simpson which pertained to investments.
33. Sometime later in August, 2013 the claimant received a forwarded email from the defendant concerning a communication from an investor jhm Financial Services indicating an opportunity in the oil business. Again in August, 2013 the claimant received a forwarded email from the defendant from “boxbe.com” indicating an acknowledgement of a message received about financing.
34. According to the claimant, the defendant and he had a telephone conversation about the return of the \$75,000.00 to Lakhan and Myra. The claimant testified that the defendant asked for a copy of the receipt for her financial records to show proof of her use of the foreign investor’s monies.
35. On the 20<sup>th</sup> August, 2013 the claimant went to Back Street, Tunapuna and met with Lakhan and Myra. Lakhan gave the claimant the receipt that he (the claimant) had prepared and signed for receiving the \$75,000.00. Lakhan also gave the claimant a receipt from the Eastern Credit Union. The receipt from the Eastern Credit Union is dated the 4<sup>th</sup> July, 2013, has Lakhan’s name and the amount of \$100,000.00 printed on it. The claimant testified that Lakhan indicated to him that the receipt was given to him when he withdrew the cash to loan the defendant.
36. On the 20<sup>th</sup> August, 2013 the claimant emailed the defendant indicating that he was in possession of the receipts and the defendant forwarded a reply on the 21<sup>st</sup> August, 2013. The email dated the 20<sup>th</sup> August, 2013 stated as follows;



*“I got the receipts today as you requested. My mother was a little worried but he found it. I don't want anything extra just give them... amount borrowed and they can build their house. I do hope that you... not distance yourself from everyone as things are going up. There... people you can trust. If you are still interested I am preparing the... documents for my family' property. Please let me know so I can... mom a date to get her cash.”*

37. During the months of July and August, 2013 as the claimant was off from work, he assisted the defendant by driving her around on a visit to Tobago and to various locations in south Trinidad whilst she conducted business. During that time, the claimant had received occasional demands from Lakhan and Myra for their money. The claimant indicated same to the defendant who advised that she would be receiving funding soon and was not willing to break her fixed deposit account. The claimant testified that the defendant explained that it would take her fifteen days before she obtains cash. The claimant further testified that the defendant was annoyed at his demands. During that time, the defendant employed Tina as an assistant.
38. During cross-examination, the claimant testified that the defendant stopped speaking to him in late August, 2013. He further testified during cross-examination that he did not email her to demand the repayment of the \$75,000.00 because he was sending her text messages and leaving voicemails on her telephone. That most of the emails the defendant sent to him was after he sent her text messages.
39. On the 1<sup>st</sup> September, 2013 the claimant received a forwarded email from the defendant concerning yet another communication from an undisclosed source. The email's disclaimer indicated that the sender was not a registered financial adviser or securities dealer.
40. On the 2<sup>nd</sup> September, 2013 the claimant called the defendant and also sent several messages demanding that she give him the money to repay Lakhan and Myra. The

claimant testified that the defendant said that it was too much cash to move with and asked for his bank account information for her to transfer the cash. The claimant sent his bank account information to the defendant but he did not receive any money in his bank account. The defendant then sent the claimant to a person named Keith in Marabella to collect the cash but Keith indicated that he had no money to give the defendant.

41. On the 4<sup>th</sup> September, 2013 the claimant received an email from the defendant indicating the following;

*“I have send you my personal details. Not everything I talk. I have been making arrangements to wire money from my Corporate Account in London, route ... and back to my account here. So while you Madam Tina and Harripersad... talking me bad I have been doing business. Maybe if you both had the faith... looking for you would be rich today. I don't need the kind of people praying... doubting me or accusing me of being a liar, scammer and whatever god... has shown me in the time of delay my true friends, the ones who stand... the ones who left me because they had little faith to see. Faith is the subs... things not seen but the evidence of things hope for... I held on to god and ... to me. Learn it and you will see your way the way god has planned it. My.. finally reached the states and now it will get to me.”*

42. The email of the 4<sup>th</sup> September, 2013 also contained a forwarded email from HSBC Bank USA which stated as follows;

*“Attn: Dr Holly Mora*

*Sir/madam,*

*We wish to confirm the receipt of your fund - \$US25, 000,000.00 dollars...ordering beneficiary's financial affiliate account for further credit to your account.”*

43. On the 13<sup>th</sup> September, 2013 the claimant received a forwarded email from the defendant from MF Global USA Inc. Attached to the email were documents appearing to be a wire transfer acknowledgement.
44. The claimant testified that a few days later the defendant moved out of her residence in Trincity and that she did not answer his calls. Sometime in October, 2013 while the claimant was at the station, he met Rishi Rampersad (“Rampersad”), a work colleague who was a known acquaintance of the defendant. Rampersad told the claimant that the defendant sent something and handed over an open envelope with a cheque inside. The claimant looked at the cheque and observed it had his name written on it and the sum of \$40,000.00. He then noticed that the cheque was dated the 31<sup>st</sup> November, 2013 and that the month of November only has thirty days.
45. Nevertheless, the claimant went to Republic Bank Limited in Trincity to cash the cheque. However, due to the non-existent date, the cheque was not honoured. The claimant went to the Fraud Squad Office Port of Spain and made a report. He has since made several oral demands to the defendant to repay the sum but to date she has failed and/or refused to pay.
46. The claimant attempted to call the defendant and he also sent numerous text messages to her. He spoke to the defendant’s relatives and they indicated that they were unaware of the defendant’s address. On the 7<sup>th</sup> December, 2013 the claimant received a text message from the defendant saying that she gave a postdated cheque because funds were released that day and she was told that she could use the cheque book until the changes were amended while she was out of country. The defendant further informed the claimant that he should pick up the money from Rampersad and communicate through Rampersad not to her directly.
47. The claimant testified that he was neither aware of any missing cheque book nor was he aware of any report made against him. He testified that as a police constable, he is required to be informed by the investigator of any report made against him.

48. The claimant's attorney-at-law wrote letters dated the 20<sup>th</sup> December, 2013, the 19<sup>th</sup> February, 2014 and the 28<sup>th</sup> March, 2014 to the defendant demanding that she repay the sum loaned. The claimant testified that there has been no response to date or any payment made by the defendant towards the outstanding debt.
49. **Myra** is a retired security officer. She testified that Lakhan passed away on the 24<sup>th</sup> August, 2016. During cross-examination, Myra testified that Lakhan was her common-law husband and that they lived together for six years.
50. Myra testified that she communicated with the claimant frequently and that she trusted his judgment in matters. She further testified that at some point between the months of March and April, 2013 she was introduced to the defendant. That the claimant always spoke of the defendant as his good friend. Myra testified that when she met the defendant, she (the defendant) seemed like a nice person.
51. Myra testified that on the 3<sup>rd</sup> July, 2013 the claimant brought the defendant to her home. Myra was present with Lakhan when the defendant visited. Myra further testified that the defendant asked to borrow \$75,000.00. That the defendant explained that she needed to borrow the sum as her money was held in a fixed deposit which she was unable to access. The defendant further explained that she and the claimant wanted to leave for England to conduct their business transaction and therefore she could not wait until her money became available. Myra testified that the defendant promised to repay Lakhan and her as soon as she (the defendant) returned from England.
52. Myra testified that Lakhan and she decided to lend the claimant the money which he would then lend to the defendant. Myra preferred to lend the claimant the money because she trusted him as he is her son.
53. On the 4<sup>th</sup> July, 2013 Myra did not go with Lakhan and the claimant to acquire the \$75,000.00 from the Eastern Credit Union. Myra testified that the \$75,000.00 was given to the claimant and that on the evening of the 4<sup>th</sup> July, 2013 the claimant and the defendant left for England. During cross-examination, Myra testified that when Lakhan handed over the \$75,000.00 to the claimant, the defendant was not present. She further

testified during cross-examination that the defendant called her and thanked her for the money on the 3<sup>rd</sup> July, 2013.

54. On or about the 10<sup>th</sup> July, 2013 the claimant and the defendant returned from England. As the defendant did not speak to Myra about the money, Myra asked the claimant about the money. Myra testified that the claimant informed her that when they arrived in England, they were scammed and the business transaction as planned could not be carried out. The claimant further informed Myra that they used the money for travel and accommodation and assured that they would be repaid. However, Lakhan and Myra were never repaid.

55. Myra testified that in or about late October, 2013 the claimant brought the cheque in the sum of \$40,000.00 that was sent to him by the defendant as repayment of the sum borrowed. When Myra saw the cheque, she noticed it was dated the 31<sup>st</sup> November, 2013 and brought the date to the defendant's attention.

### **The case for the defendant**

56. The defendant gave evidence for herself. At the material time, the defendant worked at the Finance Department of the TTPS. She testified that in March, 2011 she met the claimant while he was a police officer. She further testified that she does not know whether the claimant was a police officer during all her interactions with him and that she does not know whether he is still a police officer.

57. According to the defendant, the claimant informed her that he was frustrated with his financial position because each month it was difficult for his salary to cover his expenses.

58. In March, 2011 when the defendant was on her way to her unit in Public Affairs, the claimant told her he was having issues with his performance appraisal which prevented him from getting some money owed to him. The defendant assisted the claimant in that

regard by connecting him to an officer. The defendant gave the claimant her office and mobile contact information and told him that he could contact her whenever he needed help.

59. The defendant testified that the claimant visited her unit every time he visited the Police Headquarters. The defendant and the claimant would usually talk about some issue at work, his girlfriend or his financial problems. The defendant testified that she told the claimant that he needed to do some other work to supplement his income so that he could meet his recurring expenses comfortably.
60. According to the defendant, a professional friendship developed between the claimant and her. She testified that around March, 2012 the claimant asked her to borrow \$1,000.00 as he was low on funds. The defendant lent the claimant the \$1,000.00. She testified that the claimant repaid \$200.00, so that he still owes her \$800.00 from the \$1,000.00 he borrowed.
61. Around April, 2012 the claimant told the defendant that he needed to borrow \$5,000.00 because he owed money to someone and the person was threatening him. The defendant lent the claimant the \$5,000.00. He repaid \$1,000.00 and so still owes the defendant \$4,000.000 from the \$5,000.00 he borrowed.
62. The defendant told the claimant that he needed to get a job to supplement his salary because he could not continue borrowing money from her and not repaying in full. The claimant told the defendant that the TTPS took too long to pay over-time which leaves him broke and that he did private jobs in Curepe on evenings by a friend's store. The defendant told the claimant that his girlfriend needed to get a job to assist and he told her that they were not living together.
63. Around April, 2013 the claimant was stilling owing the defendant \$4,800.00. At this time he told her he was having issues with his car. That he needed to get the clutch fixed and he used his last spare and needed to get a tyre. As such, the claimant asked the defendant to borrow \$2,000.00. The defendant reminded the claimant that he still owed her \$4,800.00. As the claimant told the defendant he would repay her all the

money once he got back on his feet, she lent him the additional \$2,000.00. The defendant told the claimant that that was the last set of money she was lending to him and when he got his overtime payment he had to repay her in full. The claimant promised that he would. Sometime in May, 2013 the claimant wanted to borrow money again but the defendant refused him.

64. The defendant testified that she told the claimant *“Clinton you need a job. I do consultancy where I do business plans, register companies, conduct employee due diligence write resumes etc. and you need to establish your own business.”* According to the defendant, this was when the claimant told her that he can do due diligence and that if she forgot he works in the CID. The defendant testified that the claimant asked that she make him a Director of the company (JHM) and she told him that she would think about it and get back to him.

65. In June, 2013 the defendant decided to make the claimant a director of JHM. She told him that he had to do all investigations regarding offers. That if they got people who wanted their land marketed, he needed to make sure the deed was good. The defendant testified that as JHM was a new company, she told the claimant he had to ensure the company’s name did not become disreputable and also bring clients in because that is how they got paid. The claimant agreed to the defendant’s terms. During cross-examination, the defendant testified that the claimant refused on a lot of occasions to do due diligence and/or investigations on offers.

66. The defendant testified that around June, 2013 she received an offer from London. She took the offer to Interpol and asked the claimant to do the due diligence since anytime someone asks for money to be sent to get money, it was usually a scam. The defendant testified that the claimant insisted it was not a scam and that they should not allow their insane suspicion get the better of them.

67. The defendant testified that she decided to take the business trip to London to explore the business opportunity for the company. That her father who was also a director of JHM could not make the long flight to London. She testified that the claimant was not

required to attend the business trip but that he insisted that he could go in place of her father. The defendant told the claimant that there was no need for him to come along on the trip to London especially since the company was not paying for the trip. The defendant testified that the claimant kept insisting that he should come along. He told the defendant that he was coming into some money and could pay for himself. He further told her that his friend could give him a good price on the tickets.

68. The defendant testified that the claimant called a Travel Agency, Oasis in Enterprise which is defunct. That the claimant told her that Tina could get her a good price on the ticket and so she agreed to use Oasis. Oasis issued two tickets. The defendant gave the claimant \$18,000.00 out of her own money to give to Tina to pay for her ticket. The defendant testified that the claimant showed up at the airport stating that he was going on the trip.

69. The defendant made arrangements to meet the investors at Holiday Inn Gatwick since that was the hotel she was staying at. She did not wire any funds for the investors in London. She testified that the records in the bank can show the aforementioned. She further testified that she paid for her fare with her own money.

70. The defendant testified that they missed their flight back to Trinidad because the claimant was shopping. During cross-examination, she denied that they missed their flight back to Trinidad because she wanted to stay in London to recuperate herself after the investors turned out to be a scam. She testified that the claimant could not pay for the extra night they had to stay in London and that she had to pay the penalty on both tickets. As such, it was her testimony that she had to lend the claimant \$15,522.23 TTD while on the business trip to England. The particulars of that money are as follows;

- i. Hotel accommodation - \$10,447.00
- ii. Airline penalty - \$875.04
- iii. Meals - \$4,200.19 TTD



71. During cross-examination, the defendant testified that when she and the claimant were on their way back to Trinidad, the claimant told her he would reimburse her for all the monies she spent on him in London.
72. The defendant testified that on her return to Trinidad she was angry with the claimant and so told him that she needed some space from him. She also told him that he was supposed to do a proper check on the investors. The defendant also testified that as lost all the money because the claimant did not do a good job, she began avoiding all his calls.
73. The defendant testified that when she returned to Trinidad, Tina contacted her to inform her that she still owed her \$18,000.00 even though she had already paid in full for her ticket. That she realized that the claimant was able to get a ticket without paying for it and that when she gave the claimant the \$18,000.00 to pay Tina for her ticket, he used the money to pay for half of her ticket and half of his ticket when the \$18,000.00 was just to pay for her ticket. The defendant only found out what the defendant did when she returned. As such, it was her testimony that she had to pay an additional \$18,000.00 TTD out of her own finances.
74. The defendant testified that in July, 2013 the claimant promised to repay her all the money that he owed to her including the \$35,522.23 TTD for the business trip and all the money he borrowed before the business trip totaling to \$8,000.00.
75. The defendant testified that the claimant asked her how much money was in the bank. In answer to his question, the defendant told the claimant that she was not going to divulge any information to him and that he would not take anything out of the account. The defendant also stated to the claimant that he owed people prior to becoming a director, he took money from the petty cash, he made her lose money on a deal that was fake because he did not do a proper due diligence and that he was threatening to take her to court because he felt that because he was a director he was entitled to half of everything. The defendant testified that the claimant also threatened for a reimbursement of his time. The defendant laughed because she ended up paying for the tickets. She testified that she

tried getting in contact with the owner of Oasis, Krishna Arjoon but that he needed details to get her a copy of the receipt on which had her name as paying the full price for both the claimant and herself.

76. The claimant was removed as director and the Republic Bank Account was closed. The defendant testified that no more business was done under JHM after the claimant sabotaged her.
77. The defendant testified that she did not borrow any money from the claimant. That she never entered into any verbal or written agreement to borrow the sum of \$75,000.00 from the claimant. She further testified that she never requested a loan in the sum of \$75,000.00 from the claimant around the 4<sup>th</sup> July, 2013. Moreover, the defendant testified that neither did she borrow nor receive the sum of \$75,000.00 from the claimant or anyone else acting on behalf of the claimant. The defendant further testified that the first time she heard about the \$75,000.00 was when a woman claiming to be the mother of the claimant called her in September, 2013 stating that the claimant had borrowed money for the trip and that he had promised that the company would repay.
78. As such, it was the testimony of the defendant that she does not owe \$75,000.00 to anyone either personally or on behalf of the company. She testified that when she confronted the claimant about the telephone call, he told her that he would deal with it.
79. During cross-examination, the defendant denied meeting Myra and Lakhan at their home located at Backstreet, Tunapuna. She further denied asking Myra and Lakhan to borrow the sum of \$75,000.00 at their home.
80. In November, 2013 while cleaning out the office, the defendant found a receipt for the sum of \$75,000.00 with her name on it. She testified that as she had never seen the receipt before, she confronted the claimant about it. In her witness statement, she testified that she subsequently made a report to the police. However, during cross-examination she testified that she did not make a report. Further during cross-examination, the defendant denied authorizing the claimant to sign the receipt on her behalf for receiving the \$75,000.00.

81. The defendant testified that on the 28<sup>th</sup> March, 2014 she did not enter into any agreement for a loan in the sum of \$75,000.00 to pay legal fees and for the securing of a bond in England. That the transaction in England was a scam which was reported to the authorities in England. She further testified that she arranged her own financing for the London trip. As such, it was her testimony that she never received \$75,000.00 TTD or \$7,500.00 GBP from the claimant.
82. According to the defendant, the cheque dated the 31<sup>st</sup> November, 2013 for the sum of \$40,000.00 written on the name of the claimant was supposed to be used for the payment of office expenses. The defendant testified that the cheque was missing. That during this matter she realized that the claimant stole the cheque. She further testified that the cheque was never presented to the bank.<sup>1</sup>
83. It was the testimony of the defendant that the cheque belongs to the company. She testified that the said cheque book was supposed to be used for the day to day company operations and that the claimant stole the cheque book from the company office's locker located at Eastern Main Road, Arouca. She further testified that the claimant is utilizing the cheque to file a false claim against her. That she did not issue any cheque as part payment to the claimant.
84. During cross-examination, the defendant denied that the cheque for \$40,000.000 was part payment of the \$75,000.00 she allegedly borrowed from the claimant. She further denied giving the cheque to a mutual friend to be delivered to the claimant. She testified that she wrote the cheque for \$40,000.00 and asked the claimant to deposit same into the company's account because she was unable to leave the office to deposit same. That the claimant told her that he could not deposit the cheque and left same in the office. She further testified that when she was looking for the cheque, she asked the claimant about same and he suggested that she may have shredded the cheque.

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<sup>1</sup> A copy of the bank statement for the period of the 1<sup>st</sup> July, 2013 to the 1<sup>st</sup> January, 2015 was annexed to the defendant's witness statement at "H.M.1".

**Issues 1 & 2** – *whether there was agreement between the claimant and the defendant for the loan of \$75,000.00 and if so, whether the defendant breached that agreement by failing to repay the claimant the sum of \$75,000.00*

85. Upon an evaluation of the evidence the court finds that there was an agreement between the claimant and the defendant for the loan of \$75,000.00. The claimant testified that on the 2<sup>nd</sup> July, 2013 the defendant asked him for a loan in the sum of \$75,000.00. That the defendant represented that she needed the money to pay legal fees and for the securing of a bond in England in order for her to conduct business there.
86. He further testified that on the 3<sup>rd</sup> July, 2013 he took the defendant to Back Street, Tunapuna to meet his mother, Myra and Myra's common law husband, Lakhan. That he had a conversation with Myra and Lakhan about the defendant's need of money to pay legal fees and for the securing of a bond in England in order for her to conduct business in England. Moreover, he testified that the defendant agreed that he should borrow the money from Lakhan to loan to her.
87. According to the claimant, on the 3<sup>rd</sup> July, 2013 in the presence of Lakhan and Myra, the he entered into an oral agreement to lend the defendant the sum of \$75,000.00 TTD. The claimant testified that before leaving Myra's residence and driving the defendant to her residence, the defendant shook hands with Myra and Lakhan.
88. Myra corroborated the evidence of the claimant that the defendant visited her home on the 3<sup>rd</sup> July, 2013 and that when the defendant visited her home, she asked to borrow the sum of \$75,000.00. Myra testified that the defendant explained that she needed to borrow the sum of money because her money was held in a fixed deposit which she was unable to access in time for the business trip to England. Myra further testified that the defendant promised to repay the sum of money as soon as she returned from England. Myra and Lakhan decided to lend the money to claimant to lend to the defendant because they trusted the claimant as he is Myra's son. The court accepts all of the above evidence as being highly plausible and credible.

89. The court is fortified in its view because at an early at the stage of pleadings, the claimant pleaded in his Defence to Counterclaim filed on the 23<sup>rd</sup> June, 2017 that he took the defendant to his mother's home, however the defendant failed to dispute and/or rebut same or even treat with the issue at all in her witness statement. The defendant did not in her witness statement deny going to the home of Myra and Lakhan and/or provide any sort of evidence as to where she was on that day to refute the allegation. Her failure to treat with the issue demonstrated to the court that she accepted the allegation and her veiled attempt to distance herself only came in cross examination. This is but one of the issued upon which she holds no credibility.
90. Further, the claimant testified that on the 4<sup>th</sup> July, 2013 he returned to meet Lakhan and drove Lakhan to the Eastern Credit Union where Lakhan withdrew \$100,000.00 TTD. A receipt from the credit union of even date was provided to this court to show that Lakhan did in fact withdraw \$100,000.00. The claimant further testified that he subsequently contacted the defendant to inform her that Lakhan and Myra asked that she sign a receipt for the money. It was his testimony that the defendant indicated that she was busy on business and asked that he sign the receipt on her behalf. The claimant wrote up a receipt, signed it and gave it to Lakhan. The receipt which was provided to this court stated that \$75,000.00 was received from Lakhan by the claimant for *"the payment of a legal fee, loan to be repaid by Holly Mora via Clinton Harripersad"*.
91. It is clear to the court that in all of her dealings with the claimant, her intention and plan was to deceive the claimant. This is one of those instances. When a person sets out to deceive, there is usually in the course of human affairs a chain of events reflective of the deceit. While this event on its own does not point to deceit, when taken together with the emails with the multitude of promises that she was receiving financing, it becomes clear that her decision not to sign the receipt may have been a calculated and well thought out decision on her part an attempt to ensure that there was no evidence or proof that she received the money independent of the word of the claimant.

92. The claimant testified that pursuant to the agreement and the promise to repay within one week of the agreement, he loaned the defendant the sum of \$75,000.00. That on the evening of the 4<sup>th</sup> July, 2013 he met the defendant at the Piarco International Airport and handed over the \$75,000.00 to the defendant. During cross-examination, the claimant testified that when he gave the \$75,000.00 to the defendant, he did not ask her to sign a receipt for receiving same because he trusted her. The court accepts this evidence as it clear that there was a course of dealings between the parties over time and that these dealings would have engendered a level of trust. Common sense would dictate that person would not lend \$75,000.00 to another without at least a receipt being signed unless there was some level of trust.
93. The claimant and the defendant then went to a money currency changing kiosk in the terminal where the defendant changed some of the cash into Euros and British pounds. The defendant gave the claimant the Euros to hold. He then proceeded with her to board the flight to England. On the 5<sup>th</sup> July, 2013 the defendant and the claimant arrived at Gatwick International Airport in the United Kingdom. They proceeded to a TTT Money Corp kiosk where the claimant converted \$1,765.00 Euros into \$1,312.00 pounds. Subsequently, the defendant and the claimant checked into their separate rooms at the Holiday Inn Gatwick Hotel.
94. The defendant testified that in November, 2013 while cleaning out the office of JHM she found a receipt in the sum of \$75,000.00 with her name on it. She further testified that she had never seen the receipt before and that she confronted the claimant about it and subsequently made a report to the police. However, during cross-examination she testified that she never reported the claimant. The defendant also did not provide this court with the receipt she allegedly found. So there is no such police report and no such receipt and there never was. The defendant was literally caught out in cross examination when she admitted that she never made a report. It means that when she said that she found the receipt and made a report she was not telling the truth. This was yet another attempt to deceive. It was a failed attempt by the defendant to provide an explanation for the existence of the receipt signed by the claimant on her behalf and which he produced in court. In the court's view she was attempting to lay a foundation for saying that the

receipt was made up by him by testifying that she had found it earlier and said it was false even then. Of course, that amounts to a previous consistent statement and offends the rule against narrative. In short, not because she purported to have said the receipt was false on a prior occasion and she was now saying so in evidence did it mean that it was true. She could not have used a previous consistent statement to support her case on that issue. But she did not know that, hence her attempt to deceive. In the court's view, the defendant appeared to be a very clever person capable of a web of well thought out deception.

95. If the court is to believe the evidence of the defendant, it would mean that the claimant is framing her for a loan he would have taken from Lakhan for himself. That would be against all logic and reason for the claimant to take a loan and simply pick the defendant to pin the loan on. It simply makes no sense. The court therefore finds that the defendant has not provided any basis for it to find that the claimant is making up the allegation against her. The court finds that is more plausible than not that the defendant did in fact borrow the money from the claimant which he borrowed from Lakhan. Further, the claimant has provided a witness to corroborate his version of events. Not only did the defendant fail to produce a witness to corroborate her version of events, the more one examines the defendant's evidence the more it reeks of untruth.
96. Although, the defendant denied borrowing and/or receiving the sum of \$75,000.00 from the claimant, there was a cheque issued to the claimant for the sum of \$40,000.00 dated the 31<sup>st</sup> November. In her witness statement, the defendant denied that the cheque was part payment to the claimant. She testified that the cheque was for office expenses and alluded to the fact that the claimant stole the cheque from the office and is using same to bolster his false claim against her. During cross-examination, the defendant sort to provide this court with a completely different explanation for the existence of the cheque.
97. The court finds that both explanations provided by the defendant for the issuance of the cheque were implausible and were yet other attempts to deceive the court. According to the evidence of the defendant, on her return to Trinidad from England, she was angry with the claimant and told him she needed space. She testified that she began to avoid

all the claimant's calls. She further testified that the claimant was removed as a director and that no more business was done under JHM after the claimant sabotaged her. A logical conclusion to be drawn from the evidence of the defendant is that after the trip to England, she no longer trusted the claimant. As such, it was highly unlikely that she would have made out a cheque to the claimant for office expenses and/or for him to deposit on her behalf because it is clear that after the trip, she no longer trusted him and wanted to have little to do with him. Consequently, the court finds that it is more reasonable to believe the evidence of the claimant that the cheque was part payment of the \$75,000.00 borrowed by the defendant and that the defendant sent the cheque to him via a mutual friend.

98. But the issue of the cheque is more insidious as the 31<sup>st</sup> November does not exist and the defendant did not provide any explanation to this court as to why the cheque was so dated. It is obvious that by this time she had made many promises to the claimant to repay him. These promises are to be found in the emails wherein she told him on numerous occasions that she was getting new investors. In those circumstances, the proverbial chickens having come closer to home to roost, the next step had to be a better one. She had already told him that she received \$25,000.00 USD from an investor. So she wrote him a cheque, of course with a non-existent date so that he could not cash it. This could buy her some time. The court finds that the dating of the cheque with the non-existent date was a clear and bold attempt by the defendant to deceive the claimant. The court also finds further, that she would not have written such a cheque in an attempt to placate him if she did not owe him so that her actions support the evidence of the claimant on the issue of the loan being owed by the defendant to the claimant.

99. The court therefore finds 1) that there was an agreement between the claimant and the defendant for the loan of \$75,000.00, 2) that the claimant did borrow the \$75,000.00 from Lakhan to lend to the defendant, 3) that a term of the agreement was that the sum would be repaid within one week of the agreement, 4) that the claimant acted to his detriment by borrowing the money from Lakhan and 5) that the defendant breached the agreement by failing to repay the claimant.



100. However, the claimant has failed to account for the \$1,765.00 Euros he converted to \$1,312.00 pounds at the Gatwick International Airport. He does not say that he handed it over to the defendant so that on the evidence he remained in possession of the money. As such, this sum will be deducted from the \$75,000.00 TTD which is owed to him by the defendant. In that regard The Central Bank of Trinidad and Tobago Rates of Exchange effective 8<sup>th</sup> July 2013 was 9.97662 UK Pound Sterling to 1 TTD. That rate effective the 24<sup>th</sup> June 2013 was 10.17749 UK Pound Sterling to 1 TTD. The parties travelled on the 4<sup>th</sup> July 2013 so that a rate of 10 UK Pound Sterling to 1 TTD shall be used by the court to calculate the deduction from the amount owing. The TTD equivalent is therefore \$13,120.00. When deducted from the amount owing the balance owing to the claimant amounts to \$61,880.00.

Issue 3 - *whether the claimant owes the defendant the sum of \$40,522.23*

101. According to the evidence of the defendant, between March, 2012 and April, 2013 she lent to the claimant the sum of \$8,000.00. She testified that the claimant only repaid her the sum of \$1,200.00 and so owes her the sum of \$6,800.00. She further testified that she expended the sum of \$35,522.23 TTD on the claimant for the trip to England. During cross-examination, the claimant admitted that he did not pay for his ticket to England and for accommodation in England.

102. Although the claimant admitted that he did not expend any money for the purchasing of his ticket and for accommodation in England, the only basis in law upon which the defendant could recover the monies she expended on the claimant is if there was agreement by the claimant to repay the cost of the ticket prior to the expending of the money. The defendant testified that the claimant promised to repay the money she expended on him for the trip during the trip itself but she did not give any evidence of an agreement to repay the costs of the ticket and the accommodation prior to her paying for same. Consequently, the court finds that there was no such agreement.

103. Further, the defendant has not provided any documentary proof to substantiate her claims that the cost of the tickets were \$18,000.00 each, the cost of the hotel was \$10,447.00, the cost of meals was \$4,200.19 and the airline penalty was \$875.04. In any event the defendant is a person who is not at all credible in the court's view. She simply cannot be trusted and so her evidence is tainted with a hollow ring. It is clear that she would have taken absolute advantage of the claimant up until she could do it no more. The counterclaim will therefore be dismissed.

### **Disposition**

104. The order of the court is as follows;
- i. The defendant shall pay to the claimant the sum of \$61,880.00.
  - ii. The counterclaim is dismissed;
  - iii. The defendant shall pay to the claimant the prescribed costs of the claim; and
  - iv. The defendant shall pay to the claimant the prescribed costs of the counterclaim.

Dated the 17<sup>th</sup> October, 2018

Ricky Rahim  
Judge