

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA: No. CV2007\01214

BETWEEN

RAJMANI SEEPERSAD

Claimant

AND

SUBHAS SEEPERSAD  
DEV ANAND SEEPERSAD

Defendants

**BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR**

**APPEARANCES:**

Mr. H. Ramnath for the Claimant

Mr. Parsad instructed by Ms Marchan for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

**Judgement**

An oral decision was delivered after hearing the evidence at trial and I now elaborate upon the reasons for decision previously enunciated.

**The Claim**

The claimant claims against the defendants the following sums:-

1. US \$60,000.00, lent on or around May 3<sup>rd</sup> 2004
2. sums totalling TT \$55,000.00 lent in September 2005 and
3. US \$2914.00

The claims for the first and second amounts are based upon loans admittedly made by the claimant to the defendants while the claim for the sum of \$2918 US is for sums advanced by the claimant for a reel of saw blades.

### **The Facts**

2. The defendants admit the loan of the sums of US 60,000.00 and TT \$55,000. 00. They contend that the loan was for the purchase of land on which they would erect a sawmill, that the land when purchased would be used as collateral to obtain a loan from a commercial bank to set up the sawmilling business, that the bank loan was to be first repaid and that a further “grace period “of 6 months was to be afforded them, after which the Claimant was to be repaid.

3. There is also an issue arising as to whether the defendants are required to repay the full amount of the US \$60,000.00 or whether they are entitled to deduct US \$17,000 from that sum because they have assumed a debt of the claimant to their sister Lisa in that amount. The claimant admits borrowing US \$17,000.00 from Lisa and further that the defendants assumed that debt, but says that that sum was owed to her by the defendants out of a further sum realized from a separate transaction – the sale of a log skidder – the ownership of which (and the proceeds of sale thereof) is also the subject of dispute.

4. The Defendants contend that the sum of US 2914.00 spent on the reel of saw blades purchased was a gift from the claimant to them.

5. The claimant

- (i) denies the alleged terms for the period of repayment of the loan and
- (ii) denies that the reel of saw blades was a gift as alleged. (Rather she contends she purchased it with her own funds for the defendants’ convenience but that it was expected and understood that she would be repaid.)

- (iii) contends that the debt of US \$17,000.00 repayable to Lisa the assumed by the defendants has nothing to do with the loans subject of her instant claim

#### Undisputed facts

6. It is not disputed
- (a) that the claimant is the sister of the defendants
  - (b) that loans were made by the claimant to the defendants
  - (c) that the amounts of those loans totalled US \$60,000.00 and TT\$55,000.00
  - (d) that those loans were interest free
  - (e) that the claimant purchased a reel of saw blades at a cost of US \$2,914.00 for the defendants.
  - (f) that the initially good relations among all the parties deteriorated significantly.

#### **Issues**

7. (i) Whether the loans of US \$60,000.00 and subsequent loans totaling TT \$55,000.00 were to be repayable to the claimant after the principal and interest on a Bank loan taken by the defendants, was repaid plus a 6 month grace period, [the alleged term] or after the return of the Claimant to Trinidad.  
(On the defendants' timetable the loans become repayable at the end of November 2009)
- (ii) Whether the sum of US \$17,000.00 is to be deducted from the loan of US 60,000.00 and
- (iii) Whether the amount US \$2914.00 advanced for the purchase of the saw blades, was a loan or a gift.

It is clear therefore, as counsel agreed, that the issues were largely if not exclusively questions of fact and counsel presented their respective cases on this basis.

### Disposition

- 8.
- (i) I reject the defence of the defendants. I find that it is in conflict with the agreed documentary evidence.
  - (ii) Furthermore their actions subsequent to the loan in taking out further loans secured on the land (including the latest in the very month of trial – a demand loan for \$250,000) while insisting on deferred payment to the claimant in November 2009 in accordance with the alleged term, are inconsistent with their own evidence as to the purpose of the alleged grace period. This inconsistency in particular renders their evidence inherently implausible.
  - (iii) I did not detect any such inconsistencies in the evidence of the claimant. I prefer her evidence to that of the defendants where they are in conflict.
  - (iv) I find that there was no term as contended by the defendants requiring repayment only after a 6 month grace period after the repayment of the bank loan. I do not accept the evidence of the defendants in this regard. Neither do I accept their evidence that the sum of US \$2914 was a gift as they contend or that they are entitled to deduct the sum of US \$17,000.00 from the sums they admittedly borrowed from the claimant.

### Order

9. I find that the Defendants are liable to pay the following sums to the Claimant:
- (a) the sum of \$60,000.00 US currency;
  - (b) the sum of \$2,914.00 US currency;
  - (c) the sum of \$55,000.00 TT currency.
  - (d) costs on the scale calculated in accordance with the Civil Procedure Rules for prescribed costs for the equivalent of the above amounts in TT currency
  - (e) A stay of Execution of 6 weeks is granted. (This was not resisted by the Claimant's attorney and I so order.)
- I make no order with respect to interest.

## ANALYSIS AND REASONING

### **The claimant's evidence**

11. In so far as it relates to the issues the claimant's evidence in summary is that:
- (a) the loan of US \$60,000.00 would be repaid upon her return to Trinidad.
  - (b) There was no term limiting repayment of the sum of the US \$60,000.00 or the further sum of TT \$55,000.00 as contended for by the defendants.
  - (c) that the reel of saw blades purchased by her, from her own funds, was not a gift, and was repayable by the Defendants; and
  - (d) that there was no set off applicable to the loans the subject of this action as a result any arrangement for assumption of her debt to Lisa.

She gave her evidence in a forthright manner and was unshaken in cross-examination.

### **The Defendants' evidence**

11. It was clear that the defendant (Subhas) - was not a man of business, that he left all such matters to his brother, and that he handled the practical aspects of the sawmilling business. I accept his evidence to this effect.

12. As to the defendant Devanand I found his evidence instructive on the issue as to the repayment terms.

His witness statement in so far as relevant is set out below

#### Paragraph 10 of Witness statement filed February 01 2008

*We say that pursuant to the Loan Agreement on or about April 2003 the Claimant advanced the sum of \$60,000.00 US to us by way of wire transfer on the 3<sup>rd</sup> May 2004 and that the money was advanced to us on the following terms and not otherwise:*

- (a) *The monies advanced would be used by us to purchase a parcel of land to set up a sawmill*
- (b) *That we would then use the parcel of land so purchased as collateral for the purpose of obtaining a loan of the appropriate amount required from a Commercial Bank in Trinidad for the setting up of the sawmill business*
- (c) *That we would not be required to repay any sum to the Claimant until the principal and interest of our loan from the Bank was fully repaid and after a grace period of 6*

*months* [emphasis is mine] from the date of such payment to the bank during which time the sawmill business should be fully operative at profit to us.

- (d) *That in order to repay the Claimant we would again use the parcel of land and the sawmill business as collateral for securing a further loan from the bank so that the Claimant would be repaid the monies advanced to the Defendants by way of a lump sum payment.*

*Paragraph 11*

*“Pursuant to the Loan Agreement and not otherwise we did as follows:*

- (a) *in or about May 2004 with part of the monies advanced we duly purchased 2 contiguous parcels of land together comprising approximately 6 acres at Clarke Extension Road, Penal, and utilised the remainder in preparing the land for the sawmill business. True copies of the relevant certificates of title to the said parcels of land are at No. 7 in the Agreed Bundle of Documents filed herein on the 7<sup>th</sup> December 2007 (hereafter “the Agreed Bundle”).*
- (b) *On the 23<sup>rd</sup> day of March 2005 we borrowed the sum of \$400,000.00 from Republic Bank Limited who held the said parcels of land by way of mortgage to secure payment of the said loan. By the terms of the said loan from the Bank repayment of the principal and interest is by way of monthly instalments of \$13,623.00 commencing May 2006 and ending on the 31<sup>st</sup> May 2009. True copies of the relevant memorandum of mortgage and a letter from Republic Bank Limited dated 14<sup>th</sup> May 2007 confirming the amount and repayment terms of the loan are at No.8 in the agreed Bundle.*
- (c) *We duly used the monies borrowed from the Bank to set up the sawmill business which they now operate.*

*Paragraph 12.*

*The repayment of the bank loan is still outstanding and comes to an end on 31<sup>st</sup> May 2009.”*

13. The 2<sup>nd</sup> named defendant indicated to the court that currently there is a demand loan for \$250,000.00 secured on the Land and the sawmill which was taken out this month (February 2009). He also indicated that there were 5 loans at present secured on the lands.

This defendant was also asked by the court what was the purpose of the alleged 6 month grace period. His evidence is as follows:-

*A: We thought that we would be able to come up with \$300,000 over 6 months.  
Best we could do be \$50,000.00 per month.*

*Q: Didn't you think about remortgaging the land to pay her back?*

*A: That was an option."*

He conceded that the claimant did not get anything from the arrangement to loan \$60,000.US

With respect to the loan by Lisa to the claimant the defendants' evidence is that:

*"We remain indebted to our sister Lisa for the said payment of US \$17,000.99. The claimant has however not given us credit for the said payment."*

## **DOCUMENTARY EVIDENCE**

14. The documentary evidence upon which the defendants were primarily cross-examined was the mortgage for the land purchased with the money loaned by the claimant (item 8 of the agreed bundle of documents) with particular reference to the front page of the mortgage and the stamping and up stamping thereon. Initially it was stamped for \$30,000.00 dollars and subsequently it was up stamped for a further \$270,000 dollars. In addition letter from Republic Bank dated May 14<sup>th</sup> 2007 to the Defendants stated that the loan to them commenced in May 2006 and expired on May 31<sup>st</sup> 2009.

The question therefore is how did that mesh with the statement in the witness statement by the joint Defendants that the sum of \$400,000 dollars was borrowed on 23<sup>rd</sup> March 2005 and that was the loan taken from the bank.

15. I find that the documentary evidence is totally inconsistent with the statement of the Defendants with regard to the amount borrowed from the bank and the time it was borrowed. Coupled with that however, is the unambiguous statement by the Second

named Defendant that up to this month – February 2009 he took out a demand loan for the sum of \$250,000 dollars using as security for that loan, the land purchased with the US \$60,000 initially borrowed from the Claimant, and the sawmilling business. I find that action speaks louder than words, and that fact was a clear indication that repayment to the Claimant was and is not a priority of the Defendants.

#### CREDIBILITY OF CLAIMANT’S EVIDENCE

16. I find that there would have been no benefit to the claimant to agree to the alleged term, that it is far more plausible that the claimant would have required her money upon her return to Trinidad and that she would not have put those funds out of her reach for such a lengthy period in an arrangement which did not even contemplate nominal interest accruing thereon.

#### CREDIBILITY OF DEFENDANT’S EVIDENCE

##### The loan from Republic Bank

17. I find that the evidence of the defendant in his witness statement is inconsistent with the documentary evidence as to when the loan of \$400,000.00 was taken from the bank, and leads me to doubt the veracity of the defendants’ testimony.

If it were in fact a term of repayment to the Claimant that the Defendants would not be required to repay her until the bank loan were first repaid then why would they not take out that loan promptly so it could be repaid promptly? They claim to in fact have done so within a year – March 2005, but the documentation does not bear this out. on their time table. The loan is repayable when the bank loan is repaid. That bank loan was taken out in May 2006, 2 years after the Claimant lent them the first sum of US \$60,000.00 I find that this alleged “term” is an after thought. It would not have been, on a balance of probability, agreed to by the Claimant, even taking family affiliation into account.



## THE “GRACE PERIOD”

18. I am led to further disbelieve the defendants testimony when their actions are compared with their evidence of the arrangement. If there was an arrangement for the repayment of the claimant after the initial loan from Republic Bank was repaid, and it was really the intention to remortgage the land to repay the claimant – as contended by the defendants in their witness statement, then actions which serve to further encumber that land with debt would be inconsistent with that arrangement.

It is inconsistent with having a grace period of six months within which time the Defendants say they expected to have repaid the Claimant, to make it more difficult for them to do so by further encumbering the property. A six month grace period in that case stops being a grace period, - a period when it will become easier for the Defendants to raise finance (however they do so) to repay the Claimant, when it instead is used to further encumber the property. Because of the inconsistency with the documentary evidence and the inconsistency of the Defendants’ actions with the agreement that they say they entered into with the Claimant, I disbelieve the Defendants when they state that there was in fact a six month grace period and the loan they took from the Claimant is repayable in November 2009.

19. The fact that the defendants now have 5 loans secured on that land, and as recently as the month of trial proceeded to take out a demand loan of \$250,000.00 secured on the land, is inconsistent with any agreement, far less any effort, to have the land free of encumbrances by May 2009 so as to be in a position to repay the claimant. I find rather that continuing to create charges secured on the land that rank in priority to the unsecured obligation to repay the claimant is more consistent with a cynical disregard for the admitted obligation to repay the Claimant and consistent with a deprioritising of that obligation. I find that their reluctance to repay the Claimant has nothing to do with any “term” governing time of repayment but rather has everything to do with the admittedly poor relations between them and the Claimant. I am fortified in this view by having had the benefit of seeing the parties and in particular the 2<sup>nd</sup> named defendant testify.

As a result I find that the Defendants' version of the agreement to repay the loans, and with respect to the "gift" of the reel of saw blades is completely lacking in credibility.

Alleged set off

20. It is undisputed that the \$60,000.00 US was borrowed from the Claimant and therefore I find that the issue remaining to me is whether or not \$17,000.00 US needs to be deducted from the \$60,000.00 US dollars, - which I find as a fact has been borrowed and is not subject to a grace period of any sort.

The question of whether or not the \$17,000.00 US dollars repayable to Lisa is to come from the proceeds of sale of the log skidder, as a separate transaction, or whether it comes out of the \$60,000.00 US dollars that the Defendants were obligated to repay to the Claimant at some point in time, is troubled by a dearth of evidence.

There is no evidence as to ownership of the log skidder, and there is little evidence as to who was entitled to the proceeds of sale thereof, whether \$138,000.00 TT or \$140,000.00 TT. The evidence is that the phone number of one Defendant was used when it was advertised and that the cheque was made payable to the other Defendant. The claimant herself explains that she would have been satisfied with the \$17,000.00 US dollars, plus \$10,000.00 and the balance could have gone to the Defendants.

21. I am not convinced that I have to determine any issue in relation to the \$17,000.00 US at this stage. However, the fact that there is no dispute that the \$17,000.00 US dollars lent by Lisa (sought to be deducted from the \$60,000.00 US dollars) has not been repaid by the Defendants assists considerably. Whether or not the Defendants agree to pay it or the Claimant is still obligated to pay it, the fact is that it has not been paid. There will be no injustice done if I were to order the repayment of the full sum borrowed by the Defendants from the Claimant because in the first analysis the \$17,000.00 US dollars would be a matter between either of them and their sister Lisa. Who she chooses to seek repayment from is an issue that has not yet crystallized. [If Lisa requires repayment she is](#)

at liberty to claim it from whichever party owes it and the issue of who was entitled to the proceeds of sale of the log skidder can be properly explored rather than being addressed only tangentially as this issue has arisen in these proceedings.

In any event however on this issue also I prefer the evidence of the Claimant whom I have not had cause to disbelieve on any material aspect of the evidence given

### **FINDINGS OF FACT**

Accordingly I find as follows:

- (i) that there was no term as alleged that the loans from the Claimant to the Defendants would only be repaid after the first loan was repaid and a further grace period of six months afforded.
- (ii) I find that the US \$17,000 loaned by Lisa was not deductible from the sums loaned by the claimant to the defendants.
- (iii) I accept the evidence of the claimant when she contends that she did not gift the defendants with US \$2914 and they were to have repaid her this sum. I find this sum also repayable.
- (iv) I find the fact that the Claimant made further advances to the Defendants upon her return to Trinidad in September 2005 to be irrelevant to the issues and my findings above.

### **Conclusion:**

I therefore find that the Defendants are liable to pay the following sums to the Claimant

- (a) the sum of \$60,000.00 US currency;
- (b) the sum of \$2,914.00 US currency;
- (c) the sum of \$55,000.00 TT currency.
- (d) costs on the scale calculated in accordance with the Civil Proceedings Rules for prescribed costs for the

equivalent of the above amounts in TT currency.

(e) A stay of Execution of 6 weeks is granted

I make no order with respect to interest.

Dated this 10th day of March 2009

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Peter A. Rajkumar  
**Judge.**