

THE REPUBLIC OF TRINIDAD & TOBAGO
IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV2019-05264

BETWEEN

SUITE 16 LIMITED

Claimant

And

PRAMEILA HARDEEN

Defendant

Before the Honourable Mr. Justice Frank Seepersad

Date: 21 July, 2021.

Appearances:

1. Mr Naveen Maraj instructed by Ms Laurissa Hosein, Attorneys-at-law for the Claimant.
2. Mr Taradath Singh, Attorney-at-law for the Defendant.

ORAL DECISION REDUCED INTO WRITING

1. Before the Court for its determination is the Claimant's Claim Form and Statement of Case filed on 20 December 2019 by virtue of which the Claimant sought the following relief :
 - a. The sum of One Hundred Thousand Dollars (\$100,000.00) for monies due and owing under guarantee/promissory note dated 6 October 2017;
 - b. Interest including statutory interest at such rate and for such period as may be appropriate;
 - c. Costs;
 - d. Such further and/or other relief as the Court may deem fit.

The Claimant's facts:

2. The Claimant, a limited liability company in the retail clothing company, employed the Defendant, Ms Hardeen first in the positions of a sales clerk and thereafter as a manager.
3. Ms Hardeen's responsibilities as manager included, *inter alia*, the responsibility of managing and supervising the sales clerks, managing the store's goods and inventory as well as operating the cash register. She held this position until the 6 October 2017 when she allegedly abandoned her job.
4. The Claimant's director, Ms Haddad, on or about September 2017 received information which incited in her a suspicion that Ms Hardeen may have committed larceny. Inventory was missing and she also had oral reports, made by other employees, regarding same. These suspicions initiated the launch of an investigation.
5. On the 4 October 2017 Ms Haddad received further credible information that Ms Hardeen had committed another act of larceny and she made a report to the Arouca Police Station. Two days later, two police officers attached to the Arouca Police Station visited the Claimant's store and in the presence of Ms Haddad and another woman, they interviewed Ms Hardeen about the incident. During this interview Ms Hardeen admitted that she appropriated goods and monies from the Claimant in the sum of at least \$100,000.00 and that her actions were not sanctioned by Ms Haddad.
6. Ms Haddad in lieu of the police proceeding to institute a criminal charge thereafter made a suggestion that Ms Hardeen compensate her to the value of the goods which were misappropriated. Ms Hardeen subsequently executed a promissory note in favour of the Claimant in the sum of \$100,000.00.
7. Ms Hardeen however failed to honour her acknowledged indebtedness notwithstanding the Claimant's demands for payment.

The Defendant's facts:

8. The Defendant denied that she abandoned her job in October 2017. She pleaded that she was approached by two police officers from the Arouca Police Station who stated that they were investigating a report that she had stolen monies. The Defendant pleaded that she was arrested and told that she would go to prison. Against this backdrop the Claimant's servant/ agent prepared the promissory note which she executed under undue influence. The Defendant maintained that she did not steal from the Claimant and denied that she ever admitted that she had stolen from the Claimant. The Defendant also pleaded that prior to her execution of the promissory note, her personal items were taken away and she could not leave or contact her family.
9. By way of counterclaim, the Defendant claimed damages for undue influence, aggravated and exemplary damages, interest pursuant to Section 25A of the Supreme Court of Judicature Act Chap. 4:01, costs and such other relief as the Court may deem fit.

The Evidence:

10. At the virtual hearing Ms Kathrina Haddad, Ms Kimberly Johnson and Ms Valini Ojah Maharaj testified on the Claimant's behalf. The Defendant testified on her own behalf.

The Law:

11. Rahim J in **CV2011-01707 Imraz Ali v Kazim Ali** at paragraph 49 and 50 stated:

"49. Bills of exchange and promissory notes, unlike other forms of simple contract, are presumed to stand upon the basis of a valuable consideration: see s. 30 of the Bills of Exchange Act Chap 82:31. The effect of the presumption, therefore, is to shift the burden of proof from the claimant who relies upon the instrument to the defendant who impugns it. But when it is admitted or

proved that the acceptance, issue or subsequent negotiation of the instrument is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has been given for the instrument in good faith: Halsbury's Laws of England (5th Edition) Volume 48 (2008) para. 1407.

50. Valuable consideration has been defined as some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other at his request: Halsbury's Laws of England (5th Edition) Volume 22 (2012) para. 309.”

Resolution of the matter:

12. Essentially this matter is fact dependent and the Court has to determine whether the Defendant was the subject of undue influence, illegality, fear, coercion or statutory non conformities so as to render the promissory note as being unable to be viewed as a document of valuable security or consideration. In relation to the assertions of statutory non conformity, the Defendant pointed out that the promissory note contained no repayment date and should be declared void for uncertainty.

Assessment of the Evidence:

13. The Court was generally impressed by the evidence adduced by the Claimant's three witnesses. They all engendered in the Court an unshakeable feeling that they were witnesses of truth. The Court found that Kimberly Johnson who was and still is the managing director of the Claimant company was persuasive and her evidence, apart from having the characterization of forthrightness painted a factual picture which seemed plausible and probable. The Court found no basis upon which it could discredit any aspect of her evidence and found as a fact that Suite 16 Ltd generated hand written receipts when its electronic system was down. The Court also found as a fact that those receipts were printed documents which reflected the store's name and

logo. It is probable to conclude that given the size of the Claimant's operations it is likely that such a company would have endorsed memorabilia and cash books so as to readily identify as Suite 16 Ltd.

14. The Court also accepted Ms Johnson's evidence in relation to the events of the 6 October 2017 and in particular her recall of the conversation between the police officers and the Defendant including her admission to them that she had stolen.
15. The Court found that Ms Haddad's evidence was also compelling and that it was clothed with an air of plausibility. Her explanation as to what triggered her suspicion seemed probable as a family friend alerted her about the receipt of hand written receipts as opposed to Company generated receipts.
16. The Court rejected the Defendant's assertion that the police officers were Ms Haddad's friends, particularly as the Court had before it, a station diary extract from the Arouca Police Station in relation to a report on or about the 2 October 2017. If Ms Haddad engaged her friends, who were police officers, to assist her in frightening the Defendant, it is highly improbable and implausible that she would have gone to the police station to make an official report and rogue police officers who were doing jobs on the side would not want an official report, in the station diary, with respect to a job which was being discharged for a friend.
17. The Court also accepted the evidence that Ms Maharaj gave in relation to the officers coming in plain clothes but having their police badges readily available. All of the evidence in relation to the police led the Court to find as a fact that this was a regular exercise by the police. It is plausible that they would have informed Ms Haddad that they would be coming to the store on the particular date and the Court accepted her evidence that she did not have a specific time. The Court also found as a fact that during the unfolding events, the Defendant retrieved and handed over a "receipt book" from her handbag. This receipt book was not one of the authorised receipt books.

18. The Court also found as a fact that no general staff meeting was called and that the store was not closed nor did anyone embarrass the Defendant.
19. The Defendant's evidence was not unassailable and there were material weaknesses in her testimony. Of significant importance, to the Court, in its fact finding resolution, was her assertion that the police officers told her that there was no evidence to charge her.
20. This assertion was inconsistent with the Defendant's theory that the officers were Ms Haddad's friends and they were there to manhandle her into paying and if that was their operative it is unlikely that they would say they had no evidence against her. This Defendant is not an uneducated person and was the manager of a mall branch. Common sense would therefore suggest that if she was told that there was no evidence against her it is logical to conclude that she would have asked to leave and she would definitely not execute any agreement on the basis of fear or undue influence.
21. The Court also rejected the Defendant's version of the events which unfolded in the store. Her version appeared to be fictitious and fanciful. The Court felt that if the Defendant was manhandled, coerced and subjected to duress, as she outlined, then it is likely that she would have proceeded to make a report to a police station immediately upon her exit from the store. It is also likely that legal steps would have been initiated to set aside the promissory note but the Defendant remained inactive for years, until a pre-action protocol was sent by the Claimant.
22. As a matter of law, the Court dismissed Mr Singh's assertion as to the interconnect between that the phrase "in one year" and Section 83 of the Exchange of Bills Act Chap . 82:31. In the Court's view the promissory note conformed with all the legislative prerequisites and requirements.
23. The Court is resolute in its view of that the promissory note amounted to an acknowledgement of indebtedness as well an agreement to repay the sum of

\$100,000.00 for money and clothing which would have been taken from the defendant.

24. The promissory note stands as valuable consideration and the Claimant is entitled to rely upon same. In those circumstances, the lack of invoice information or audited information does not disentitle the Claimant to the relief which has been sought.
25. The Court having rejected, on a balance of probabilities, the evidence adduced by the Defendant, is unable to conclude that any coercion, fear, undue influence or duress was imposed upon the Defendant on the 6 October 2017, prior to her execution of the promissory note. There existed reasonable grounds of suspicion so as to have catalyzed the events of 6 October 2017. The Defendant was caught, she confessed and formally acknowledged her indebtedness when she executed the promissory note.
26. In terms of quantum a tally of the cash receipts contained in the book which the Defendant handed over, demonstrates that the Defendant swindled significant income from the Claimant and it is plausible and probable to conclude that the sums misappropriated from the company likely exceeded \$100,000.00 but that sum was agreed as a realistic quantum for the Defendant to repay given her circumstance.
27. The Court also accepted Ms Haddad's evidence that the Defendant's husband said they could not repay the total sum owed but could afford to repay \$100,000.00.
28. When the Court scrutinized the receipts, several receipts were for successive days and it is unlikely that these could be company receipts as it is unlikely that the system would have broken down so regularly and consistently over several consecutive days. Ms Johnson testified that while system failures happened they did not happen with that measure of frequency. In addition, for a mall branch, it is unlikely electrical outages would have occurred with that measure of regularity or that the Claimant's bankers would have been allowed to furnish the Claimant with a defective point of sale machine over several successive days.

29. In this case the Defendant abused her managerial authority, she took advantage of her employer and she is fortunate that she was not brought before the criminal justice system but she will be held accountable on a civil basis. A message must be sent that this type of conduct is unacceptable. Stealing and misappropriation of funds from an employer, the State or from any individual cannot and should not be tolerated in this Republic and the Defendant should be ashamed of her conduct.

30. For the reasons as outlined, there is judgment in favour of the Claimant against the Defendant in the sum of \$100,000.00. The counterclaim is dismissed. Interest shall accrue in the judgement sum from the date of judgment at the statutory rate. The Defendant shall pay costs on the claim and counter claim in accordance with the provisions of the CPR.

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FRANK SEEPERSAD

JUDGE