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ANTIGUA AND BARBUDA
IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO: 1 of 1991

BETWEEN

GILBERT CUTIE GOMES

Appellant

and

DAVID ZACHARIAH

Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. Justice Matthew J.A. (Ag.)

Appearances: Miss K. Defreitas for the appellant
No appearance by the Respondent.

1992: June 10 and 11

J U D G M E N T

MATTHEW J.A. (Ag.)

The Appellant sued the Respondent in the Magistrate's Court for the re-payment of the sum of \$500.00 being money lent by the Appellant to the Respondent at the Respondent's request and which said sum the Respondent has neglected and/or refused to pay despite numerous requests to do so by the Appellant.

The evidence before the learned Magistrate revealed that the money was paid as a loan for the purpose of the payment of a fine imposed on the Respondent for resisting arrest. This evidence was led by the Appellant and was not challenged upon cross-examination by the learned Counsel for the Respondent. The evidence of the Appellant was supported in this respect by the evidence of Marilyn Nero, Solicitor's Clerk, who said:

"In my presence Gilbert Gomes said that David Zachariah owed him a debt. David Zachariah did not say that he did not owe Gilbert Gomes the money. He agreed to pay Gilbert Gomes \$100.00 per week."

Further, under cross-examination the Respondent admitted that he owed the Appellant the sum of \$500.00.

In his reasons for decision the learned Magistrate found that the amount of \$500.00 was paid on behalf of the Respondent gratuitously and that no consideration passed from the Respondent and so the action in contract failed. He also found that the Appellant exercised undue influence over the Respondent in getting the latter to sign a promissory note and that the transaction had a taint of unlawfulness and illegality about it.

I regret not being able to agree with the reasons of the learned Magistrate. This was a simple action for repayment of a loan the benefit of which was obtained by the Respondent. On the record before me I can find no evidence whatsoever to support the learned Magistrate's finding of undue influence or unlawfulness and illegality about the transaction in question.

I would therefore allow the appeal, set aside the decision of the learned Magistrate and order that judgment in the sum of \$500.00 be entered for the Appellant.

Learned Counsel for the Appellant indicated to the Court that the appeal was prosecuted on principle and that the Appellant would be prepared to waive costs. There will therefore be no order as to costs.

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A.N.J. MATTHEW
Justice of Appeal (Ag.)

I concur

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V.F. FLOISSAC
Chief Justice

I concur

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C.M.D. BYRON
Justice of Appeal