

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2022/0062

BETWEEN:

BANK OF SAINT LUCIA

Claimant

and

CHERYLL MATHURIN
ANTHONY ALCEE

Defendants

Before:

The Hon. Mde. Justice Heather F. Felix-Evans (Ag.)

High Court Judge

Appearances:

Mr. Leslie Prospere for the Claimant

Mr. Horace Fraser for the Defendant

2026: February 11; (Trial)
March 18; (Written Submissions)
2026: May 7. (Decision)

JUDGMENT

- [1] **FELIX-EVANS J:** This is a claim for recovery of a debt against the Defendants flowing from breach of contract. The Defendants are customers of the Claimant bank.
- [2] The Claimant's pleaded case is that it disbursed the sum of \$54,000.00 to the Defendants pursuant to a mortgage loan agreement for the sum of \$370,196.00 after which it was realized that the loan had not been securitized in accordance with the loan agreement and its internal policies. The Claimant also disbursed the sum of \$10,000.00 to the first-named Defendant under its Christmas Loan Campaign 2016. Despite its repeated requests, the Defendants failed to securitize the loan and

thereby breached the mortgage loan agreement. Further or in the alternative, the agreement has become frustrated by the Defendants' failure to securitize the mortgage loan. The Defendants have failed and/or refused to pay the sums due and therefore remain indebted to the Claimant.

[3] The Claimant claims against the Defendants the following:

(1) Amount claimed under the debt	\$64,000.00
(2) Court Fees	\$ 54.00
(3) Service Fees	\$ 200.00
(4) Legal Practitioner's fixed cost on issue	\$ 1,500.00
(5) Together with interest on the principal sum of \$54,000.00 at the rate of 5.99% per annum from 1 st July, 2016 to 15 th February, 2022 (2,055 days) and continuing (Daily rate thereafter = \$8.8619 per day) and interest on the principal sum of \$10,000.00 at the rate of 11% per annum from 21 st March, 2017 to 26 th January, 2022 (1,772 days) and continuing (Daily rate thereafter - \$3.01369 per day)	

TOTAL	\$89,366.12
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[4] The Defendants do not deny the mortgage loan agreement ("the agreement"). Their pleaded case is that they entered into the mortgage loan agreement with the Claimant for the purpose of re-financing their loan facility at the Saint Lucia Civil Service Credit Union ("the Credit Union"). For that purpose, they executed a Hypothecary Obligation in favour of the Claimant on 22nd December 2015. This notwithstanding and despite their repeated requests to the Claimant for disbursement of the loan sum and assurances from the Claimant that a cheque had been sent to the Credit Union, the Claimant failed and/or refused to make payment to the Credit Union. The sum loan was never disbursed, and no monies were credited to their accounts as alleged. They never entered into a loan agreement with the Claimant for \$64,000.00 and the said sum was never credited to their accounts. It was the Claimant who breached the mortgage loan agreement by failing to perform its obligations thereunder.

[5] Further, the alleged disbursement of \$64,000.00 was a scheme of a fraudulent design executed by one or more unknown servants of the Claimant who benefitted therefrom.

[6] In their joint pre-trial memorandum, the parties agreed the following issues for determination at trial:

- i. Whether the parties entered into the mortgage loan agreement dated and executed on 9th May and 25th January, 2016 respectively”?
- ii. Whether the Defendants provided security for the Claimant’s lending in the form of an approved First Hypothecary Obligation over their immoveable property dated 17th September 2015?
- iii. Whether the Defendants’ approved First Hypothecary Obligation over their immoveable property dated 17th September 2015 was valid having regard for the fact that it was not grounded upon a pre-existing mortgage loan agreement?
- iv. Whether the Claimant made a partial loan disbursement in the sum of \$64,000.00 to the Defendants under the terms of the mortgage loan agreement?
- v. Whether the partial loan disbursement in the sum of \$64,000.0 was paid to certain employees of the Claimant pursuant to a fraudulent scheme?
- vi. Whether the Claimant is entitled to recover the partial loan disbursement to the Defendants in the aggregate sum of \$64,000.00?

[7] At the start of trial, Counsel for the Claimant informed the Court that pursuant to CPR 28.12 a further supplemental list of documents had been filed the day before listing a copy of a Loan Commitment Letter signed by the parties on 10th May 2016. Counsel sought leave to admit that copy of the Loan Commitment Letter into evidence, explaining that during preparation for trial the Claimant realized that an incorrect copy of the Loan Commitment Letter had been included in the Trial Bundle. The copy in the Trial Bundle did not reflect the signature of the Claimant’s representative. Counsel for the Defendants opposed the application on the ground that reference had not been made to Loan Commitment Letter dated 10th May 2016 in the Claimant’s pleadings and witness statements and it was a different document to that contained in the Trial Bundle. According to Counsel, the Claimant’s entire case was based on a Loan Commitment Letter signed on 25th January 2016. Counsel however acknowledged that the Defendants did not deny that they signed the Loan Commitment Letter dated 10th May 2016.

[8] The Court granted leave to admit the copy of the Loan Commitment Letter dated 10th May 2016 for the following reasons: it is the document referred to in the claim and statement of claim as *“a loan agreement made in writing and entered into between the Claimant and Defendants on 10th May 2016”*; the Defendants accepted that it is their signatures on that document; it was signed by the parties whereas the copy in the Trial Bundle was not signed by the Claimant’s representative; its contents were exactly the same as the contents of the Loan Commitment Letter in the Trial

Bundle; the Defendants' case does not challenge the existence and contents of the Loan Commitment Letter; and its admission would not introduce any element of surprise and resulting prejudice to the Defendants. The failure to include the copy of the Loan Commitment Letter dated 10th May 2016 was clearly due to the inadvertence of the Claimant and its counsel. The interest of justice would not be served by refusing leave simply because of this inadvertence.

The Claimant's evidence

- [9] Three witnesses gave evidence for the Claimant: the Credit Analyst at the Claimant's Bridge Street Branch, the current Branch Manager at the Gros Islet Branch and the Senior Manager of the Claimant's Internal Audit Department.
- [10] In summary the Claimant's evidence is that the Defendants owned and operated a joint savings account (the "joint account") and the first-named Defendant owned and operated a savings account (the "individual account") at the Gros Islet branch. In early April 2017, the first-named Defendant called to inquire about the disbursement of the proceeds of a mortgage loan with the Claimant. The first-named Defendant complained that she was frustrated with the process as the loans officer with whom she was dealing (hereafter 'SJR') was giving them the run-around for the disbursement of the loan proceeds. This complaint led to a review of the Claimant's records which revealed that there were several documents on file relative to the Defendants' mortgage loan application, including the Loan Commitment Letter signed on 10th May 2016. The purposes of the mortgage loan were to pay off the Defendants' loan facility with the Credit Union and complete the construction of their house. There was no loan account for the Defendants registered on the Claimant's books.
- [11] The Claimant's then Branch Manager invited the first-named Defendant to a meeting on 3rd April 2017. Two of the Claimant's witnesses were present at that meeting. The first-named Defendant repeated her complaints and informed that she had received the loan proceeds for completion of the construction of their house but was still awaiting disbursement of the loan proceeds to pay off their loan at the Credit Union. She also revealed that she had taken a loan of \$10,000.00 under the Claimant's Christmas Loan Campaign 2016 and received these funds. After the Branch Manager informed the first-named Defendant that there was no evidence of a loan to her under the Christmas Loan Campaign and asked for more details, she became uncooperative and provided no further information. At the end of the meeting, the first-named Defendant provided the Branch Manager with her contact details and advised that the Claimant was not to contact her unless they were ready to pay her

the remaining mortgage loan proceeds. She also indicated that she would seek legal advice on the matter.

- [12] The matter was investigated by the Claimant's Internal Audit Department who at that time was investigating other complaints against SJR. The Audit team discovered that several deposits had been made into the joint account between and including 1st July 2016 and 6th October 2016, i.e., a deposit of \$20,000.00 on 1st July 2016; a deposit of \$10,000.00 on 29th July 2016; a deposit of \$10,000.00 on 7th September 2016; and a deposit of \$14,000.00 on 6th October 2016. It was also discovered that a deposit \$10,000.00 had been made into the individual account on 21st March 2017. The audit revealed that all the deposits into the joint and individual accounts had been withdrawn from the accounts of other customers of the Claimant. The investigation concluded that SJR had made the deposits of these various sums into the joint and individual accounts as disbursements under the terms of the Loan Commitment Letter.
- [13] As a result of these wrongful withdrawals, the Claimant had to reimburse all its affected customers.
- [14] The Claimant's documentary evidence included:
- i. the Loan Commitment Letter of 10th May 2016 which set out the following terms and conditions, among others:
 - New liability: Mortgage Loan of \$370,196.00;
 - Purpose: to pay off the Credit Union and complete construction;
 - Interest rate: 5.99% per annum;
 - Repayment: Payable over [216] months at \$3,011.71 per month, payments to commence within 30 days of final draw;
 - Security: To be obtained First Hypothecary Obligation over 0.09 hectares of land known as Blk1456B Parcel #149 located at Cas en Bas, Gros Islet, STC\$370,196.00;
 - All security must be executed and perfected prior to disbursement of the facility; and
 - The Claimant reserves the right to demand the outstanding balance of the debt at any point in time and the whole outstanding balance of the debt will become due and payable on demand with interest thereon;
 - ii. Four [4] processed deposit slips dated 1st July 2016, 29th July 2016, 7th September 2016 and 6th October 2016, in the total amount of \$54,000.00

credited to the joint account and one [1] processed deposit slip dated 21st March 2017 in the amount of \$10,000.00 credited to the individual account;

- iii. The joint account activity statements for the period 1st July to 31st December 2016 and the individual account activity statement for the period 4th October 2016 to 30th September 2017. These statements reflected credits made on dates and in the amounts corresponding to the dates and amounts on the processed deposit slips. The joint account activity statements also reflected that on the same dates the deposits were made, substantial amounts were transferred from the said joint account to another account. To illustrate: following the deposit of \$10,000.00 into the joint account on 1st July 2016, on the same day the sum of \$6,000.00 was transferred to another account; following the deposit of \$10,000.00 into the joint account on 29th July 2016, on the same day the sum of \$9,000.00 was transferred to another account; following the deposit of \$10,000.00 into the joint account on 7th September 2016, on the same day the sum of \$6,000.00 was transferred to another account; and following the deposit of \$14,000.00 into the joint account on 6th October 2016, on the same day the sums of \$1,000.00 and \$9,000.00 were transferred to another account;
- iv. three (3) processed bank withdrawal slips which showed that debits/withdrawals of \$10,000.00, \$10,000.00 and \$14,000.00 from a third-party customer's account had been processed for deposit into the joint account on the same dates and in equivalent amounts reflected on the activity statement for the joint account;
- v. an unregistered Hypothecary Obligation signed by the Defendants on 22nd December 2015 for a piece of land known as Blk1456B Parcel #149 measuring approximately 0.09 hectares situate at Cas-En-Bas in the Quarter of Gros Islet; and
- vi. a valuation report in respect of the first-named Defendant's property (Block & Parcel No.1456b 149) dated 21st April 2016 which included a list of the works to be done and the value of these works.

The Defendants' evidence

- [15] Both Defendants gave evidence. Their evidence was that they desired to re-finance their loan obligation at the Credit Union and approached the Claimant in June 2015 for a mortgage loan in the sum of EC\$370,196.00. The immoveable property registered in the name of the first-named Defendant described as Block 1456 B Parcel 149, located at Cas En Bas, Gros Islet was offered as security. The loan was approved and pursuant to the instructions of SJR, on 22nd December 2015 they executed a Hypothecary Obligation in favour of the Claimant. Despite the passage of time and their repeated written inquiries about disbursement, the Claimant failed to disburse the loan proceeds. At the meeting with the Claimant's Branch Manager in early April 2017, the first-named Defendant was informed that there was no loan on the Claimant's system.
- [16] They did not enter into any agreement with the Claimant for the sum of \$64,000.00 and had no knowledge of any sum having been deposited into their accounts. The allegation that monies were credited to their account was a fraudulent scheme by one or more of the Claimant's employees who benefitted from the said scheme.
- [17] Under cross-examination, the first-named Defendant admitted that she applied to the Claimant for a loan to pay off the Credit Union and complete construction of her house but stated that she could not recall how much of the loan was to be applied to pay off the Credit Union and how much was to be applied to complete construction of her house. She could not recall whether the Claimant had sent a valuer to the house to value the incomplete works, but she recalled a representative of the Claimant visiting the property for the purpose of valuing it. She acknowledged that she had completed construction of the house and purchased material therefor from local hardware stores. She denied that these purchases were made with monies deposited into their accounts by the Claimant. She could not recall any of the deposits alleged to have been made by the Claimant into the joint account and the individual account, nor could she recall transferring monies from the joint account to individual account on the same dates that monies were deposited by the Claimant into the joint account. She testified that at the material time no person other than she and the second-named Defendant had access to the joint account and that she did not report that her ATM cards had been compromised or stolen or that any of her accounts had been hacked. Further, she could not recall making any of the point-of-sale ("POS") purchases at the various hardware stores reflected on the joint account statement of activity.
- [18] The first-named Defendant acknowledged that the credit transfers reflected on the individual account activity statement for the period 4th July 2016 to 30th November

2016¹ corresponded in dates and amounts with the debit transfers from the joint account, but could not recall making these credit transfers into the individual account. She stated that if she had received funds into her account and did not know the sender, she would report it to the Claimant and direct the Claimant to return to sender. She agreed that she did not report these credit transfers to the Claimant and did not explain the source of these funds in her witness statement. She also acknowledged that the monies alleged by the Claimant to have been deposited into the joint account were in fact deposited into that account but maintained that she had no knowledge of the deposit of \$64,000.00 into joint and individual accounts.

[19] The second-named Defendant testified that the Defendants continue to operate the joint account but he had not made any transfers from the joint account to the individual account and had not actively participated in the loan application process nor dealt with SJR. In the period 2016 to 2017, he had not monitored the joint account and could not assist the Court with information about deposits made into the joint account or transfers made from that account.

[20] The Defendants' documentary evidence included an unsigned letter on the Claimant's letterhead dated July 29, 2015 giving instructions to a third party to prepare a Hypothecary Obligation by the Defendants in favour of the Claimant, a Pro Forma Invoice by the third party for the preparation of the Hypothecary Obligation, an executed Hypothecary Obligation dated 22nd December 2015 by the Defendants in favour of the Claimant, two unsigned letters from the Defendants to the Claimant's Country Manager complaining about non-disbursement of the loan proceeds and referencing payment to the Credit Union, and the activity statement for the individual account for the period 4th July 2016 – 30th November 2016.

The Claimant's submissions

[21] The Claimant submitted that the parties entered into a legally binding mortgage loan agreement by signing the Loan Commitment Letter on 10th May 2016. SJR, who was at all material times one of its customer relationship executives, had the ostensible authority to bind the Claimant. The Defendants' argument that since the Loan Commitment Letter does not specify \$64,000.00 as the loan amount it is not binding upon the parties is misconceived as the Claimant's case is not that the parties entered into a loan agreement for \$64,000.00 but rather that the \$64,000.00 was the cumulative partial disbursements received by the Defendants from the mortgage loan amount. This is supported by the complaints of the Defendants that they had not received the balance of the loan to pay-off the Credit Union. It is true that the

¹ This document was disclosed by the Defendants.

\$64,000.00 was taken from the accounts of its other customers, but the unchallenged evidence is that the Claimant reimbursed the affected customers. Therefore, the monies received by the Defendants were ultimately the Claimant's funds which the Defendants have refused to repay under the terms of the Loan Commitment Letter. The Claimant has irrefutably established that the Defendants received the cumulative sum of \$64,000.00.

- [22] The Claimant repudiated the mortgage loan agreement when it discovered that SJR had failed to book the mortgage loan in accordance with its internal policies and had disbursed other customers monies into the Defendants' accounts under the guise of a properly booked loan and the Defendants had failed to properly securitize the loan in accordance with the Loan Commitment Letter. Accordingly, the terms of the Loan Commitment Letter were frustrated, and the Claimant became entitled to repudiate the contract and seek to recover the sums paid.²
- [23] The Claimant further contends that the Defendants have sought to expand their defence by suggesting through cross-examination of the Claimant's witnesses that the mortgage loan was not properly securitized by a promissory note which was a prerequisite, and that even if the sum of \$64,000.00 had been deposited into their accounts, the said monies did not belong to the Claimant, but to its customers, and therefore the Defendants had no obligation to reimburse. These suggestions were impermissible as they were not pleaded in accordance with CPR 10.5 (3) – (5).³

The Defendants' submissions

- [24] The Defendants submitted the following as the salient facts:
- i. there was an agreement between the parties for a mortgage loan of \$370,196.00;
 - ii. the purpose of the loan was to facilitate the completion of the construction of their home and to pay off an existing loan facility at the Credit Union;
 - iii. the mortgage loan of \$370,196.00 was never disbursed and no mortgage loan transaction existed in the Claimant's records;
 - iv. the total sum of \$64,000.00 was deposited into the joint and individual accounts which they hold with the Claimant.
- [25] They submit that the issues identified in the joint pre-trial memorandum are no longer being pursued as the trial has given them a new appreciation of the facts. The only

² The Claimant relied on Article 1132 and 1132(A)(1) and (2) of the Civil Code of Saint Lucia as their authority for that position.

³ The Claimants cite Court of Appeal judgment in **Roserie Company Limited v Firstcaribbean International Bank**, SLUHCVP2022/0012 (delivered October 16, 2024) in support of this pleading point.

issue for determination, they state, is whether the claim against the Defendants is properly before the court and whether the case was properly brought and maintained against them.

[26] There was no contract between the parties for the sum of \$64,000.00: the Defendants never consented to such a contract and never made a promise to repay such sum to the Claimant nor did they make an offer to the Claimant for a loan in the said sum which the Claimant accepted.⁴ Therefore the Claimant has no cause of action against them. The Claimant cannot not rely on the mortgage loan agreement to claim the sum of \$64,000.00 which was not the loan sum. Further, the Claimant failed to pay them the sum of \$370,196.00 which was agreed upon in exchange for their promise to repay and so the contract between the parties is null and void for lack of consideration.

[27] Although the Claimant has established the deposit of the sum of \$64,000.00 into the joint and individual account, the Claimant has failed to prove that the said sum was withdrawn by the Defendants and not by SJR who had a practice of operating other customers' accounts and was fired from her employment and charged for theft as a result. At most, the Defendants who were the beneficiaries of SJR's theft could be accomplices. Instead of pursuing SJR with an action for delict, the Claimant pursued the Defendants who had committed no delictual wrong against them. The Defendants could not be liable in delict because no agreement existed between the parties in respect of the sum of \$64,000.00. The Claimant has therefore sued the wrong party. The Claimant's right of action was against SJR.

[28] Further the sum of \$64,000.00 was not deposited into the Defendants' accounts pursuant to the contract because the normal procedure for disbursement of a mortgage loan was not followed in this case as the said sum was wrongly taken by SJR from the accounts of other customers, the loan was not recorded in the Claimant's books and the Claimant failed to send the loan sum of \$370,196.00 to the Notary Royal.

Discussion and Conclusion

[29] Having considered the pleadings, evidence, and submissions of the parties, the Court distills the following as the issues for determination:

- (i) Whether the \$64,000.00 admitted as having been received by the Defendants into their accounts was paid pursuant to the agreement between the parties?

⁴ Paragraph 6.1 of Defendants' Submissions

- (ii) Whether the claim is properly brought and maintained against the Defendants and/or whether they are the proper Defendants?
- (iii) Whether there is evidence that the Defendants benefitted from the sum of \$64,000.00 paid into their account or whether the Claimant has failed to negative the inference that the sums deposited into the Defendants' account were withdrawn by SJR who had a practice of operating other clients' accounts?

Whether the \$64,000.00 was paid pursuant to the mortgage loan agreement

- [30] It is common ground that the parties entered into a mortgage loan agreement for the sum of \$370,196.00 by their signing of the Loan Commitment Letter dated 10th May 2016. The stated purposes of this mortgage loan agreement were to pay off the Credit Union and complete construction of their house.
- [31] The Defendants' argument that the \$54,000.00 was not disbursed pursuant to the mortgage loan agreement because SJR failed to follow the internal procedures for booking a loan, took the monies disbursed from the accounts of other customers and failed to send the loan sum to the Notary Royal as is the practice is not tenable. Based on the evidence, the mortgage loan agreement was the sole reason for depositing these funds into the joint account. The Defendants received these monies in the belief that it was pursuant to the mortgage loan agreement.
- [32] The Court accepts the Claimant's evidence that at the meeting in early April 2017 the first-named Defendant stated that she had received the disbursements for the completion of construction and a disbursement of \$10,000.00 under the Claimant's 2016 Christmas Loan campaign. It was these revelations that triggered the Claimant's review of its records which in turn led to the investigation of transactions dealt with by SJR and the discovery of the deposits to the Defendants' accounts.
- [33] There is no evidence that at the time the deposits were made into their accounts the Defendants knew that SJR had failed to follow the procedure for booking the loans or that SJR had unlawfully sourced these monies. It appears from the evidence that as far as they believed, these funds were deposited into their joint account pursuant to their mortgage loan agreement. The monies for the construction works would have to be given to them directly; therefore, there was nothing unusual in the monies being deposited into the joint account. It would have been this state of mind that led the first-named Defendant to write letters and emails to the Claimant complaining about

the delay in disbursement for payment to the Credit Union, call the Claimant's office and express her annoyance and frustration about the said delay, agree to meet with the Branch Manager to discuss the matter and at the meeting, disclose that she had already received disbursements for the completion of construction and pursuant to her approved loan under the 2016 Christmas Loan campaign. The first-named Defendant appeared to be of the view that the delay in disbursement to pay off the Credit Union was due to the inefficiency of one or more of the Claimant's officers. She became aware of alleged improprieties of SJR on 3rd April 2017 after the \$64,000.00 had been deposited into their accounts.

- [34] SJR's improper and wrongful conduct in failing to book these loans and in sourcing the loan proceeds for disbursement, which at all material times were unbeknownst to the Defendants, were properly a matter between the Claimant and SJR and between the affected customer and the Claimant. But said conduct by SJR did not nullify the reason or the basis for the deposits to the Defendants, which was the mortgage loan agreement for the \$54,000.00 and the 2016 Christmas loan agreement for the \$10,000.00.

Whether the claim is properly brought and maintained against the Defendants and/or whether they are the proper Defendants?

- [35] The argument that there could be no breach of contract because there was no consent or agreement for a loan of \$64,000.00 and no agreement by the Defendants to repay the sum of \$64,000.00 cannot logically find favour with the court. The common pleading and the evidence are that there was an agreement for a loan to the Defendants for the sum of \$370,196.00. The Claimant's case is that a partial disbursement in the sum of \$54,000.00 was improperly made to the Defendants pursuant to that agreement. It is this principal sum, and no more, that the Claimant seeks to recover for breach of that agreement. The Claimant seeks to recover the other \$10,000.00 which was disbursed to the first-named Defendant as proceeds of a loan under the Christmas Loan campaign. At all material times, SJR had ostensible authority to bind the Claimant.
- [36] The Court accepts the Claimant's evidence that upon discovering SJR had failed to book the loans and had sourced the proceeds from the other customers' account and that the Defendants had failed to provide an executed and registered Hypothecary Obligation, no further disbursements were made and the Defendants were repeatedly requested to provide the Hypothecary Obligation in accordance with the mortgage loan agreement. In the Court's view, the Claimant was entitled to respond as it did because according to a term in the Mortgage Loan Agreement "All

security must be executed and perfected prior to disbursement of the facility". The Claimant had no obligation to make any disbursement under the mortgage loan agreement before the Defendants submitted an executed and registered First Hypothecary Obligation.

- [37] The further evidence of the Claimant, which the Court accepts, is that when the Defendants failed to provide security in accordance with the mortgage loan agreement, it demanded repayment of the disbursed amounts with interest and costs. The Defendants have failed to make any repayments to date.
- [38] The Court finds that by their refusal to provide the Claimant with an executed and registered Hypothecary Obligation and to repay the sums demanded, the Defendants breached their mortgage loan agreement with the Claimant. The Claimant became entitled to seek to recover from the Defendants the principal sum of \$54,000.00 disbursed plus interest, by a claim of breach of contract.
- [39] The Claimant was also entitled to seek to recover from the first-named Defendant the principal sum of \$10,000.00 disbursed to her by deposit into the individual account on 21st March 2016 pursuant to the Christmas Loan campaign 2016 by a claim for breach of contract. The Court notes that there is no evidence of the interest rate that applied to that loan.

Whether there is evidence that the Defendants benefitted from the sum of \$64,000.00 deposited into their accounts?

- [40] The Defendants contend that the evidence does not establish that they benefitted from the deposits made into their accounts as there is no evidence as to who withdrew the said monies from the joint and individual accounts. The Claimant failed to offer evidence to negative the inference that SJR was the person who withdrew the funds.
- [41] The Court has already indicated its acceptance of the Claimant's evidence that at the meeting with the Branch Manager on 3rd April 2017 the first-named Defendant stated that she had received part of the mortgage loan proceeds for the completion of her home and the \$10,000.00 under the 2016 Christmas Loan Campaign. This admission by the first-named Defendant aligns with other evidence in this case.
- [42] In the Defendants' unsigned letters to the Claimant complaining about the delay in the loan disbursement, their focus appears to be solely on disbursement of the loan proceeds to pay off the Credit Union. There is no reference or suggestion about pending construction works which cannot be proceeded with because of the delay

in disbursement of the loan proceeds. It is reasonable to assume that if the funds for that purpose had not already been received, the first-named Defendant would have referenced these pending works in their written communications to the Claimant.

- [43] The Defendants testified that they had completed the works to their home. The second-named Defendant's evidence was that he did all the labour and the first-named Defendant purchased the material for construction. This begs the question, how were the Defendants able to complete construction of their house without receipt of the loan proceeds? The Defendants provided no evidence that answered this question.
- [44] Under cross-examination, when the first-named Defendant was asked whether she had made the various transfers from the joint account to the individual account, she testified that she did not recall making them. This answer left open the possibility that the first-named Defendant did make these transfers. After all, her sole account was the beneficiary of these transfers. The second-named Defendant came across as truthful when he testified that he did not make these transfers. Could these transfers reasonably have been made by SJR? It would make no sense for SJR to have made these transfers. The first-named Defendant was the one who stood to gain from these transfers.
- [45] The first-named Defendant also testified that no person other than Defendants had access to the joint account, they had made no report to the Claimant that any of their accounts had been hacked or that their ATM cards had been compromised or stolen.
- [46] When the first-named Defendant's attention was directed to the joint account activity statement which reflected POS purchases at Sunbilt, Cepal Holdings, Johnson Marine, Rayneau Construction and Harris Paints during the months of July and August 2016, she agreed that some of these stores were local hardware stores and said she was unsure whether the others were. She could not recall making ATM purchases at any of these stores. Again, by this answer, the first-named Defendant left open the possibility that she did make these purchases.
- [47] The Court accepts the second-named Defendant's evidence that he was not actively involved in the loan application process, never dealt with SJR during the loan application process, did not make any transfers from the joint account to the individual account, did not purchase the material for the completion of construction, the first-named Defendant was the one who purchased the construction material, was not monitoring the transactions on the joint account at the material time and could not assist the Court with information about the deposits made into the joint account and transfers made out of the joint account.

[48] On the other hand, the Court does not find the evidence of the first-named Defendant to be candid, credible and/or reliable.

[49] On a balance of probability, the Court finds that the Defendants benefitted from the \$64,000.00 deposited into their accounts from 1st July 2016 to 21st March 2017.

Conclusion

[50] The Claimant is entitled to recover the principal sums claimed with interest and costs. There is no evidence to support the Claimant's claim for interest on the sum of \$10,000.00 at the rate of 11% per annum.

[51] The Court orders as follows:

- (1) The Defendants shall repay the Claimant the sum of \$54,000.00 at the rate of 5.99% per annum as specified in the Loan Commitment Letter dated 10th May 2016 (the mortgage loan agreement), from November 6, 2016 to date of judgment.
- (2) The first-named Defendant shall repay the Claimant the sum of \$10,000.00 at pre-judgment interest rate of 3% from 21st April 2017 to date of judgment.
- (3) The Defendants shall pay the Claimant court fees and service fees in the cumulative amount of \$254.00.
- (4) The Defendants shall pay Legal Practitioner's fixed cost on issue in the amount of \$1,500.00.
- (5) Post judgment interest.

**Heather F. Felix-Evans
High Court Judge (Ag.)**

By the Court



Registrar