

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN MONTSERRAT

CASE MNIHCV2021/0015

BETWEEN

IRENE LUCINDA BASS

Claimant

AND

DAVID WILLIAM GERALD

Defendant

APPEARANCES

Ms Marcelle Watts for the Claimant.

Mr Lawrence Daniels for the Defendant.

2023 JANUARY 20

JUDGMENT

On debt arising over car ownership during marriage

- 1 **Morley J:** Irene Bass wants her ex-husband David Gerald to pay her \$20000ec, plus \$3500ec in costs. She says she gave him money in 2011 to buy a BMW car, and he acknowledged in 2018 he should pay her back; he says the car is hers and owes her nothing.
- 2 There was a trial on 14.12.22 when I received evidence from Bass, her sister Anita Baker, her son Alvonne Locker, and from Gerald¹. The dispute about the car is in the wider context of financial settlement following the divorce, about which there was a consent order under case MNIHCV2021/0016 on 15.12.21 concerning their former matrimonial home, where

¹ The parties shall be referred to by their surnames for ease of reading, and no disrespect is intended by not writing out in full their titles or names.

each has an equitable interest, the land being owned by Bass' sister and mother, in these terms:

- 1 The Claimant Irene Bass shall pay to the Defendant David Gerald the sum of \$125000ec within 90 days of this Order, being the amount representing Gerald's interest in the upstairs apartment situated at Block 14/19 Parcel 36.
- 2 The Defendant David Gerald shall vacate the apartment situated at Block 14/19 Parcel 36 within 90 days of this Order, assuming the above sum paid, (and if not paid can reside until he is).
- 3 Bass lives mostly in Tilbury UK, has not paid, Gerald remains in occupation upstairs at parcel 36, though has means to live elsewhere, dispute has regularly arisen over access by Bass to the premises, for example the front door lock was changed by Gerald in early 2022 and again by Bass on 09.12.22, and Bass here seeks to offset the car money against the money she will pay for the property.
- 4 Bass and Gerald married on 25.12.99, and divorced on 18.01.21, while it is clear relations soured some years earlier, certainly by 2018. However, at the time of the car purchase in 2011 they were still very much a couple, which will be important as this judgment progresses.
- 5 Considering the facts, I do not propose to rehearse all that was said by the parties. The reason is this court is firmly of the view neither told the unvarnished truth. Each has sought to tailor and spin, with information sometimes being omitted, which is not uncommon in acrimonious matrimonial disputes. Their varying versions can be found in their witness statements. What follows are my findings of fact, sometimes on balance, but mostly about which I am sure, even though the former test is enough.
- 6 What has happened is this, on the evidence offered:
 - a. Gerald is an able carpenter. Bass is a lady of style. He drives a pickup, recently a Nissan Navarra; she prefers smarter. In February 2000, Bass unfortunately damaged her back, and began spending more time in the UK for medical reasons. In 2005, she shipped back to Montserrat a burgundy BMW, in which when on island Gerald would drive her, as her back injury meant she could no longer drive. In 2008 she was once again in the UK for medical reasons, and because she was required to stay longer, though Gerald remained on Montserrat, she sold the burgundy BMW to 'Leslie Sweeney'.

- b. In 2011, remaining in constant communication with each other, a decision was made to buy another BMW, this time blue, a 2005 5.25 sport series, found in the UK by Locker, who is skilled in car purchase. Gerald spoke with Locker, while Bass was aware of what her son had found, so that I find as husband and wife they were in it together to own the car jointly. The car cost £7300gbp with £3107gbp spent on improvements, requiring £1500gbp for shipping. Gerald borrowed \$34900ec from the Bank of Montserrat, repayable at \$870ec per month commencing 28.10.11, and wired Locker the money. The car was shipped on 01.11.11.
- c. Duty then arose on Montserrat on 24.11.11, at 43%, being \$25841ec. This was paid by Bass coming out to Montserrat with about £8000gbp in cash, undeclared, in her bag, which was paid over at the Bank of Montserrat and converted to local xcd as about \$26000ec, as she finally revealed in evidence, though never in her statement. The money had come from UK child benefit collected in respect of their daughter Nikeida, which Bass has understandably considered is Nikeida's money which in time ought to be paid back, and it seems to the court earlier she had tried to hide she had raided it.
- d. The car was then insured by Gerald, and registered in his name, as he was on Montserrat and she mostly not, and Bass would be driven in it by him if on island, which for example occurred during Christmases from 2011 to 2015. Bass was not back for Christmas 2016, and the court senses that from around this time relations waned.
- e. Back on Montserrat for Christmas 2017, by early 2018, with the relationship strained, Bass made it clear she wanted Nikeida's money back. The court surmises she was no longer comfortable being driven about by Gerald if on island, while on the face of it Gerald 'owned' the car, it being in his name, so it could reasonably be for him to sell. Gerald paid off the loan. It was a smart car, with folk asking for it at weddings.
- f. To ensure she got Nikeida's money back, Bass wrote in duplicate a note, asking Gerald to sign it, which he did on 09.01.18, inter alia saying:

I Lucinda Irene Gerald lend you David W Gerald \$26000ec in December 2013 as a deposit payment to get a loan from the Bank of Montserrat for a period of 4 years ending Dec 2017. Four years have now passed and I haven't received my money back. I would like you David W Gerald to sign this note to state that as of 09.01.18 I

haven't received my money back and that you still owe me and have to pay me back my money as soon as possible.

- g. Back in UK, having had no money returned, on 23.06.18 she sent a phone text saying:

Good night, just letting you know that I can see that you're not taking me seriously about my money, which is \$26000 dollars but I have had enough and enough means fucking enough. I need my money and I want you to give Anita \$500 each month until it is paid off. You are not a nice person, you are just a pretender. I have gotten enough of you playing games and if you don't pay in the money as I say I will deal with you the hard way. You can't have your car and my money and living off me for free. Get on with our life, find someone because as you see while I was there and I tell you there's no relationship between you and me. Good luck.
- h. Thereafter, between February 2019 and March 2020, Gerald made nine payments to Anita Baker of \$500ec, totaling \$4500ec, who kept receipts, and separately paid \$1500ec to Bass, making a total of \$6000ec, reducing the \$26000ec owing to the sum here sought of \$20000ec, filed as a claim on 29.06.21.

7 The parties argued variously.

- a. Bass says the \$26000ec was only ever a 'loan' for the car being bought wholly by Gerald, somehow to help secure the bank loan by contributing to the duty. I am sure this is not so: as a married couple, in then good times, when purchased the car was for them both, they owned it together, to accommodate Bass in her usual style, like before, namely to be driven in a smart car, rather than Gerald's pickup, the BMW being in Gerald's name conveniently as he was living on Montserrat and she not. Further, having seen him in evidence it is abundantly plain a BMW is not at all his style, he is a simple man, his never separately owning a BMW before, only pickups; while further, this court takes judicial notice in seven years of sitting on Montserrat there is a keen social interest locally in who drives what car which will have been incentive to Bass, having observed her in evidence too, to prefer to be seen in a BMW.
- b. Gerald says the car belongs wholly to Bass. I am sure not so, for the above reasons, plus he has kept possession of it, still, though it has not been driven for three years, said to be worth now about \$12000ec.
- c. Gerald says he did not know what he was signing on 09.01.18, being merely asked going hurriedly out the door. I am sure not so, he knew, while I accept on balance he signed twice, the note being in duplicate, informing him as relations disintegrated Bass wanted

Nikeida's money back, likely vexed she should not have converted it, its value to lie in a car no longer in her control nor to her benefit.

- d. Gerald says the money he paid to Anita Baker was just voluntary 'upkeep' of his wife in UK. I am sure not so; the text of 23.06.18 is wholly persuasive he had agreed to paying back the \$26000ec, though later stopped.
- e. Gerald says he received no money from Bass in 2011, borrowing instead from 'Lionel', and had no idea Bass had brought over Nikeida's child benefit money. I am sure this is not so, as he agreed to pay Bass back in 2018, as above.
- f. Finally, the court said at the time during trial the parties appeared to being selective with the truth, noting Bass had hitherto not mentioned the £8000gbp in cash raided from child benefit, hiding what was the heart of the case, and even more notably Gerald, leading at one point to the court inquiring if he was in ill-health owing to what appeared to be probable multiple manifest inconsistencies in his evidence.

8 Drawing the threads together, it is plain to this court Bass and Gerald jointly owned the blue BMW when it was purchased and shipped in 2011, there was no formal loan, but by 2018, with their relationship waning, Gerald agreed to pay her back what had been the £8000gbp used to cover the duty, the consideration for this contract being he accepted it was Nikeida's money, requiring return, while he was keeping the car, which he could sell, though originally a shared asset jointly owned, and so as they were parting he agreed she would get her contribution back and so he began to pay Bass off.

9 In short, this action should be about enforcing the agreement of 2018, evidenced by the signed note of 09.01.18, text of 23.06.18, and then payments in 2019-2020 of \$500ec most months, not a contrived loan in 2011, engineered ex post facto for later litigation and incorrectly recorded as 2013.

10 Of interest is the statement of claim.

- a. The statement of claim at para 2 reads:

By an agreement made in December 2013, the Claimant loaned the Defendant \$26000ec, as security payment to obtain a loan from the Bank of Montserrat...to be held for a period of four years ending in December 2017 to secure purchase of a motor vehicle for the Defendant.

- b. Counsel Daniels argues there was no such agreement, in contract, being wrong as to date and nature, so that the claim should fail. He goes on further to argue the claim statute-barred, as arising from an event in 2013, or 2011, and not sued until 2021, which is outside the limitation period of six years, as required for actions in contract under **s4 Limitation Act** cap 2.12.

- 11 Counsel Daniel is right the agreement is wrongly pleaded as to its facts. However, I am sure there was one in 2018, not 2011. It concerns their daughter's money, owing to her and acknowledged in evidence by Bass, in theory Nikeida could sue over it, and as fair parents in 2018 they agreed she should get it back, by Gerald paying back Bass. Arguably, Gerald could have agreed to pay Nikeida directly, to ensure she does get the money, as it is conceivable Bass will withhold paying her, but the agreement by Gerald was to Bass, who had raided the money in the first place. Plainly, in the background is a third party, the daughter, whose money is tied up in the car, still in the possession of Gerald, and they both know this.
- 12 The first question is whether the claim fails for pleading the agreement wrong. I think not, as the action at core is to enforce an agreement, and to my mind it is not a material averment its precise detail, only that there was one for \$26000ec to be paid back, somehow, about which a defendant must be on notice in the proceedings, which here Gerald is, as the note of 09.01.18 and text of 23.06.18, plus record of \$500 payments to Baker, are all in the case papers and in evidence. It should not be a bar to sue for a specific sum where the claimant writes the claim wrong when the defendant knows he owes it.
- 13 The next question is whether the claim is statute-barred. I think not:
 - a. If the agreement arose in 2018, as I find, the claim filed in 2021 is within time;
 - b. If the agreement arose in 2013, it was said in the note of 09.01.18 not to require repayment until 2017, and so the action possibly arising from then, again the claim filed in 2021 is within time; and
 - c. If the agreement arose in 2011, it is plain from the note of 09.01.18, where 2013 would be a mistaken recollection two years out, the payments would not be owing for four years until December 2015, so a claim filed on 29.06.21 would still be six months just in time.

- 14 Counsel Daniels may complain the agreement wrongly pleaded as to its facts and 'that should be an end to it'. However, I remind myself of **rule 1.1 CPR 2000** as amended:

The overriding objective

- 1.1 (1) The overriding objective of these Rules is to enable the court to deal with cases justly.

In my judgement the 'just' outcome of this case is that the agreement of 2018 should be enforced, so that Nikeida gets her money back, how her parents agreed.

- 15 To this end I will offset the \$20000ec against the money payable by Bass to Gerald in the order of 15.12.21, being \$125000ec, reducing it to \$105000ec. In the meantime, Gerald can sell the car and keep the proceeds.
- 16 There is no complication of law to consider. The issue is factual, as to whether there was ever an agreement Gerald would pay back \$26000ec to Bass (being Nikeida's £8000gbp), which should now be enforced, which I find there was and should.
- 17 As to costs, I will order the sum of \$3500ec as sought by Bass, as she has won the action, even though in part her evidence was unreliable, and her case inaccurately pleaded, because Gerald has always known since 2018 he was supposed to pay her back Nikeida's money, so her basic complaint is true, and he should not have litigated. To this end, I will offset the amount, and further reduce the sum payable by Bass to \$101500ec, payable within 90 days, as per the now adjusted order concerning case MNIHCV 2021/0016 below at Annex A.

The Hon. Mr. Justice Iain Morley KC
High Court Judge
20 January 2023

ANNEX A

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
IN MONTSERRAT
CASE MNIHCV2021/0016**

BETWEEN

IRENE LUCINDA BASS	Claimant
AND	
DAVID WILLIAM GERALD	Defendant

ORDER

BEFORE: **The Honourable Mr. Justice Iain Morley KC**
DATED: **This 20th day of January 2023**
ENTERED: **This day of January 2023**

APPEARANCES:

Marcelle Watts of Counsel for the Claimant.
Lawrence Daniels for the Defendant.
The parties present in Court.

UPON this matter coming on for further consideration owing to resolution of case MNIHCV 2021/0015, concerning financing the purchase of a BMW in 2011, in which decision the Defendant Gerald has been found to owe the Claimant Bass \$20000ec and \$3500ec in costs;

CONSIDERING the amount can be set off against the \$125000ec owing by Bass to Gerald over settling their dispute in this action MNIHCV2021/0016 over Block 14/19 Parcel 36;

CONSIDERING Bass has on 09.12.22 changed the front door lock and therefore now has ability to enter the upstairs apartment on parcel 36, with as agreed, until Bass has paid out Gerald, 24 hours' notice to Gerald she or their daughter Nikeida may attend;

CONSIDERING the consent order of 15.12.21 should therefore be adjusted;

IT IS HEREBY ORDERED THAT:

1. The Claimant Irene Bass shall pay to the Defendant David Gerald the sum of \$101500ec within 90 days of this Order, being the amount representing Gerald's interest in the upstairs apartment situated at Block 14/19 Parcel 36.
2. The Defendant David Gerald shall vacate the apartment situated at Block 14/19 Parcel 36 within 90 days of this Order, assuming the above sum paid, (and if not paid can reside until he is).
3. The Defendant David Gerald on departure shall only remove those items of furniture that he purchased namely a refrigerator and washing machine.
4. Each party shall bear their own costs as to this case MNIHCV 2022/0016.
5. This order now supersedes the order of 15.12.21.

BY THE COURT

REGISTRAR

Settled,

Jain Morley

Morley J

20 January 2023