



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
MONTSERRAT
(CIVIL)
A.D 2021

CLAIM NO: MNIHCV2019/0019

BETWEEN:

DAGRIEE WILSON

Claimant

and

ORIS SULLIVAN

Defendant

Appearances:

Mr. Jean Kelsick for the claimant
Mr. Sylvester Carrott for the defendant

2021: July 05
2021: July 22

Judgment

1. **John, J. (Ag):** By a claim form filed on 14th May, 2019 Dagrie Wilson 'Claimant' claimed against Oris Sullivan the 'defendant' the sum of \$35,500.00 representing the balance of an amount paid by the claimant at the defendant's verbal express request and on his behalf to discharge monies then due and owing by the defendant to various third parties. She further claimed interest of 5.99% per annum and further, or in the alternative, the claimant claimed the sum of \$35,500.00 in restitution and / or unjust enrichment plus interest.
2. By his defence and counterclaim the defendant denied the amount claimed. He further denied that for the reasons set out hereunder he was not indebted to the claimant;
 - a) The total sum is incorrect

- b) Several of the invoices submitted that are alleged to have been procured on the defendant's behalf were never taken on behalf of the defendant or for his benefit.
 - c) There was never any conversation between the claimant and the defendant in respect of any interest. No interest was ever agreed between the claimant and the defendant.
 - d) There was never any agreement for any monies spent by the claimant to be repaid.
 - e) In any event, the claimant agreed sometime around 2016 to have the sum set off in exchange for a Car Rental Company which was owned by the claimant and the defendant.
3. The claimant signed a witness statement on the 19th August 2020 which was filed on the same date. Appended to the statement were several documents including but not limited to the following; copies of cancelled cheques, emails, text messages and correspondence to the defendant. At the hearing leave was sought and granted to treat the witness statement as her evidence in chief. The documents were also admitted into evidence.
4. The defendant filed a witness statement on the 29th November, 2019 and with leave of the court it was treated as his evidence in chief.

The background

5. The claimant and the defendant started an amorous relationship in 2011. They did not live together. It was more of a visiting relationship with each party spending nights at the home of the other.
6. In or about April 2013 the defendant's mother passed away in the United Kingdom. Around the same time the defendant's home was being constructed at Barzey's. It was the claimant's assertion that the defendant told her that he had applied for a loan from the Bank of Montserrat to assist him in meeting the construction expenses of the home but approval would not come through prior to his departure for the U.K.
7. The claimant further asserted that the defendant asked her to assist him by continuing to make payments to his building contractor and his suppliers to enable the construction to continue in his absence. The claimant said that she had some money saved for the construction of her new beauty salon but at the continued insistence of the defendant she agreed to assist him upon his promise that upon receipt of the loan from the Bank of Montserrat he would repay her. Prior to his departure for the U.K the claimant said the defendant signed some RBC cheques and left the book with her so she could write cheques to defray expenses from monies that he would send while he was in the U.K.

8. No funds were ever deposited to the RBC account during the defendant's absence abroad. That information she claimed was relayed to the defendant who promised to make good the payments that she had made upon his return to Montserrat. Notwithstanding her several requests after his return from the U.K the defendant failed and/ or refused to make good on his promise.
9. The defendant has denied owing the claimant any monies and set out the reasons at paragraph 2 (supra). By way of a counterclaim he alleged in or about 2011 he bought a motor vehicle which he used for about 6 months. Later in 2011 he and the claimant agreed to enter into a car rental business. His vehicle was not suitable for that purpose and another vehicle was bought.
10. The defendant further claimed that pursuant to an agreement between the claimant and her employer Bruce Farrara it was agreed that the defendant's vehicle be sold and a Toyota Altezza vehicle be purchased from Farrara. The sale of his vehicle fetched \$16,500.00. In his counterclaim the defendant claimed the he negotiated the purchase of the Toyota Altezza for \$29,500.00.
11. In his counterclaim the defendant further asserted that it was agreed between the claimant and himself that the claimant would conduct the car rental business as he held a public office as Director of Public Prosecutions. He further said that the Toyota Altezza was rented out on several occasions both on long term and short term rentals and the income from the rentals was used to pay the balance on the vehicle loan.
12. The defendant further claimed that as a result of a vehicular accident in which the Toyota Altezza was involved, they received a payment of \$7,000.00 which went towards minor repairs to the vehicle and the balance towards paying off the loan on the vehicle. Subsequently he claimed that three other vehicles were purchased and monies obtained from the rentals were applied towards payment of the vehicles.
13. The defendant claimed that he never received any money from the rental of the business; one vehicle was subsequently sold to a medical doctor for \$1500. He did not receive any money from that sale.
14. He has further asserted that it was always agreed that the profits of the business would be shared equally on a 50-50 basis. Accordingly, the defendant counterclaims for a breach of contract. The particulars of the breach are as follows;
 - a) The Claimant/defendant claimed 50% of all earnings from the vehicle rental which the defendant/claimant estimated to be not less than \$50,000 from 2012 to present.
 - b) 50% on earnings on vehicle rented to Dr. Tracy 30 months @ EC\$1500 = \$22,500.
 - c) 50% of all assets of the rental business
 - d) Interest at a rate to be decided by the court.

The Cross-examination of the Parties

15. The Claimant was cross-examined by Mr. Sylvester Carrott and answered;

- i. She denied that she began a car rental business with the defendant in 2012.
- ii. She admitted that she used the defendant's personal vehicle.
- iii. She denied that the defendant sold his car. She said he traded in his vehicle for a Toyota Altezza.

In paragraph 3 of the defendant's witness statement he stated as follows;

"In or around 2012 we started a rental business, renting motor vehicles. At that point I had a motor car which I traded with Sales and Services, a company owned by Bruce Farrara. The claimant being my partner did most of the arrangement with Bruce Farrara."

- iv. The claimant steadfastly denied that the defendant sold his vehicle with Sales and Services.
- v. She denied that she ever acquired a fleet of 4 vehicles in partnership with the defendant.
- vi. The Toyota Altezza vehicle R1620 is jointly owned and is in her possession and in her name.
- vii. The Toyota Altezza vehicle R1620 is not rented out. She operates a car rental business with seven (7) vehicles.
- viii. The defendant contributed towards the acquisition of the Toyota Altezza in the sum of \$17,000.00 and she paid off the balance with interest.
- ix. She started the car rental business in 2012
- x. She did not start the car rental business with the defendant after the purchase of the Toyota Altezza.
- xi. She admitted using R1620 for rental in 2012 but it was never a joint venture with the defendant. She never told the defendant in 2016 that when she advanced him the money that she did not want it back but he was not a nice person so she wanted her money back.

16. In re-examination, referencing the Toyota Altezza, the claimant in answer to Mr. Kelsick said the Toyota Altezza never made a profit. It was intended to go on a long-term rental to a colleague at the office of the defendant but that never materialized.

17. Terrod Chalmers was the sole witness for the claimant. He too swore a witness statement which was filed on the 19th August 2020. That witness statement was treated as his evidence in chief. He said that he was the sole trader of CTC trading a retail business of building materials. In the months of April, May and September 2013 he supplied building materials to the defendant and invoiced him for them.
18. He further said that in April 2013 the defendant contacted him and told him of his intended travel to the United Kingdom and that his girlfriend namely the claimant would make purchases on his behalf and pay him for them until his return. Mr. Chalmers said that in accordance with the defendant's request he supplied the necessary building materials as and when requested to do so.
19. He further said that he received the first payment on 14th May, that is after the defendant's departure for the U.K and at the request of the claimant he emailed her the invoice for forwarding to the defendant. He said that he continued to supply materials until the defendant returned in September 2013. The invoices were exhibited to his witness statement and tendered into evidence without objection. The cross examination of this witness centered around an issue not relevant to the claim and in court's view was intended only to disparage the witness in the eyes of the court.
20. Set out here under are some of the defendant's responses to questions under cross examination by Mr. Kelsick;
- The defendant was referred to paragraph 12 of his affidavit of August 14, 2020 where he deposed; "While I was away in the U.K, the claimant and I were in communication. During that period, she spent some of her own money on the construction of the property. After I returned, she also spent money for the payment of workmen as I remember." (Emphasis mine)
 - I never inquired of Terrod Chalmers whether any payments were made to his hardware on my behalf.
 - When questioned about a payment made to Joseph Allen a supplier of electrical material, the defendant admitted that the payment was made on his behalf during the period that he was in the U.K.
 - The defendant admitted to leaving blank cheques with the claimant drawn on RBC and Bank of Montserrat but denied that the cheques could not have been used by the claimant or that there was no money in the account.
 - The defendant accepted that the claimant spent money of her own on his property at his request but that he did not know the total value of the payments. (emphasis mine)
 - I think that I did ask her to assist me financially on the construction, I accept that the claimant spent some of her own money on the construction of the house.

- She made some payments at my request. I don't know the total value of the payments made at my request. (emphasis mine)
- I did look at the several cancelled cheques. They were written by the claimant to M.S. Osborne (hardware store). I see the cheque of May 31, 2013 made out to CTC Trading. I heard Mr. Chalmers say today that CTC trading was his trading name.
- When shown exhibit D.W.1 (f) a cancelled cheque dated May 17, 2013 in the sum of \$3,640.00 and drawn on the account of Dagrie Wilson T/A Beauty Plus payable to Leroy Gerald, the defendant's response was; *"I imported all my electrical fittings."* He later admitted to having made purchases from Leroy Gerald but that the cheque did not say that it was on his behalf.
- We had discussed and agreed to set off the \$28,000.00 against the rental business.
- Referencing paragraph 19 of his affidavit, in answer to Mr. Kelsick the defendant said that he stood by what he said in that paragraph. In paragraph 19 the defendant stated:
"Once the claimant said she wanted the money back, I asked how much she was claiming. She said it was about EC\$28,000. We agreed that she would have the business in lieu of the amount she was claiming. In addition, I gave her in excess of EC\$5,000 in addition to the business which I left with her."
- Referencing paragraph 25 of his written statement where he said:
"I paid the claimant the sum of \$6,450.00 but this was not in respect of any agreement to pay \$42,000." His response was that the sum of \$6,450.00 was inclusive of the \$5,000 referred to in paragraph 19 of his witness statement and the \$5,000 was paid as part of the business exchange.
- He further said that the first time she asked for \$42,000.00 was in 2016 however, when shown a letter from the claimant to him dated September 26, 2014 which he acknowledged having received, his response was that the letter referred to a sum of \$41,903.00.
- The defendant was cross-examined about a payment made by the claimant on his behalf to the Port Authority of Montserrat for goods that were becoming subject to storage charges. It was suggested to him that as a result of a telephone call from the claimant he attended the office of the Port Authority where he met the claimant. The sum of \$199.66 was due and owing to the Montserrat Port Authority. He told the claimant that there were insufficient funds in his account and asked her to make the payment for him. The defendant denied that that happened. However, when shown exhibit D.W.6 an email from the claimant to him he said he had never seen the email before but admitted that his counsel did receive the bundle of exhibits. I set out verbatim the email and the defendant's response:

From Dagrie Wilson to Oris Sullivan on Monday July 4, 2014...

Mr. Sullivan, I have your cheque in my bag. So, you need to go and get the cash for me because I paid the bill out of my checking account because of the embarrassment and you had already got the goods or you can write a new one in my name so I can replenish it to my account today please. Dagrie

- From Oris Sullivan to Dagrie Wilson on Monday July 4, 2014....

Miss Wilson can you resubmit the cheque to the bank today. Oris.
The defendant later recanted and admitted having received the email.

- The defendant alluded to a fire at his home and in answer to Mr. Kelsick said the claimant was the prime suspect. He went on to say that the claimant was the one who destroyed his home.

The Claimant's submissions

21. In his written submissions Mr. Kelsick first set out by way of introduction the background to the claimant's case. In paragraph 5 he referred to the defendant's response to the claimant's request for \$42,041.67. The defendant paid three installments in 2016 totaling \$6,450.00 and refused to pay anything further. Mr. Kelsick further submitted that at the date of issue of the claim form in May 2019 the amount due was \$48,844.43. The additional interest he submitted on the \$35,500 at 5.99% is \$4,435.89 making a total now due of \$53,320.34.
22. Accordingly, Mr. Kelsick submitted that the defendant advanced no discernible defence or one capable of operating as a bar to the claims in restitution for the recovery of money paid by a third party at the defendant's request and unjust enrichment.
23. As to the counterclaim counsel submitted that the defendant produced no proof that he made any contribution to the purchase of any of the vehicles save and except the Toyota Altezza which vehicle he submitted can be sold and the proceeds divided equally between the parties.
24. He further submitted that there was not a single email or text message of the existence of a significant business arrangement between the parties. That he submitted, must adversely affect the defendant's credibility.
25. He further said that the defendant's contention that the claimant was a suspect in the destruction of his house by fire was first raised in his pleadings and if there was any basis for the allegation, the defendant would have raised it much earlier in his correspondence with the claimant
26. The claim was brought he said both in restitution, that is to say, money paid at the defendant's request and unjust enrichment. He cited several authorities in support of his claim.

27. In *Re. A Debtor* [1937] 1 ALL ER 1 Slesser LJ at page 8 he opined:

*"It is, in my opinion, settled beyond possibility of dispute that where "A" at the request of "B" guarantees payment of "B's" debt to "C," the law implies an undertaking by "B" to indemnify "A" in respect of any sums which he properly pays to "C" under the guarantee. This is merely a branch of a wider rule which is laid down in numerous authorities. I may quote as examples *Brittain v Lloyd* (8) where, at p.773 Pollock, C.B., says:*

"It is clear, that, if one requests another to pay money for him to a stranger, with an express or implied undertaking to repay it, this amount, when paid, is a debt due to the party paying from him at whose request it is paid, and may be recovered on a count for money paid...the request to pay, and the payment according to it, constitute the debt; and whether the request be direct, as where the party is expressly desired by the defendant to pay, or indirect, where he is placed by him under a liability to pay, and does pay, makes no difference."

28. He also referred to "Chitty on Contracts" 26th Ed. under the rubric

Payment to a Third Person at the Defendant's Request

At paragraph 2110 the learned author stated;

'For many years, restitution has been available (through the action "for money paid") to recover money paid by the plaintiff to a third person at the request, express or implied, of the defendant, and with an undertaking, express or implied, on his part to repay it; and it is immaterial whether or not the defendant is relieved from a legal liability by the payment. This type of claim is not obviously contractual, since the implied undertaking to repay is often fictional, furthermore the plaintiff need not have been under any contractual obligation to make the payment, and the defendant's request may not have referred to a precise sum of money; the ground for recovery is akin to the principle of the law of agency which imposes on the principal an obligation to indemnify his agent against any liability which he may incur in the exercise of his authority.'

29. He further stated at paragraph 2112,

'It is also necessary for the plaintiff to prove the defendant's express or implied request to the plaintiff to pay the money for his use. It is not sufficient to prove that the defendant was liable to a third person and that the plaintiff paid the third person; it must be proved that the plaintiff did so at the instance, either express or implied, of the defendant.'

30. *Halsbury's Laws of England* 4th Ed. At page 320 under the rubric "Restitution" states:

'Any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a person from retaining the money of, or some benefit derived from, another which it is against conscience that he should keep. Such remedies in English law are generically different from remedies in

contract or in tort, and are now recognized to fall within a third category of the common law which has been called quasi contract or restitution.'

The Defendant's submissions to the Claim and Counterclaim

31. Mr. Carrott set out the agreed facts and then identified the following facts as being disputed:
- i. Monies paid to the defendant by the claimant were by way of an express loan
 - ii. The monies were requested by the defendant and the defendant agreed to pay the monies back with interest at the rate of 13% per annum;
 - iii. The defendant paid \$17,000.00 towards a motor vehicle which was used for the car rental business and the proceeds of the rental paid for the rest of the car and went to the business;
 - iv. There was an arrangement between the parties that the proceeds of the car rental business be set off against the monies advanced by the claimant.
32. Mr. Carrot submitted that whenever the parties differed in evidence, the court, unless there is independent documentary evidence to the contrary the evidence of the defendant ought to be preferred.
33. He further submitted that the pre-action letter sent by Mr. Warren Cassell on behalf of the claimant spoke of a debt of \$42,000.00 with an interest rate of 13%. He further said that there was never any agreement to pay interest at the rate of 13%. In Montserrat there is no statutory provision for claiming pre-judgment interest, only post-judgment interest is allowed.
34. He said the parties appeared to have pooled their resources to the extent that the claimant paid some money towards the house and the defendant paid at least \$17,000.00 towards purchasing a car for the car rental business.
35. The court should approach the evidence of Terrod Chalmers with caution given his prosecution for corruption by the defendant, which prosecution predated his written statement.
36. On the issue of unjust enrichment Mr. Carrott referred the court to **Featherwood Trading Ltd v Fraunteld Management Ltd [BVI 2013]** which case he submitted established that for a claimant to succeed the claimant must establish three things (1) that the defendant has been enriched (2) at the claimant's expense and (3) the actions of the defendant are unjust.
37. On the counterclaim Mr. Carrot submitted;

- It is clear the defendant paid \$17,000.00 for the motor vehicle despite the claimant's denial in cross examination. He said she disavows any agreement as to set off and so it follows that the defendant is entitled to the \$17,000.00 plus car rental estimated at \$50,000.00.
- There is no statutory provision for pre-judgment interest in Montserrat and therefore the claimant's claim for interest must fail.
- The defendant should therefore be awarded the sum prayed for including costs.

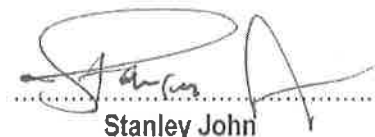
Court's findings on the Claim

38. The claimant was very forthright in her testimony under cross examination by Mr. Carrott. She displayed a high level of clarity with respect to the answers concerning monies advanced on behalf of the defendant during the period that he was in the U.K. In addition, the several cancelled cheques, emails, text messages and correspondence to the defendant are equally supportive of her claim and constant request for repayment.
39. In fact, the defendant has not denied that the claimant made payments on his behalf but it was very surprising to hear him say that he did not know the amount and then at a later stage accepted an agreement to repay her by way of set off.
40. The court was impressed by the claimant's demeanor and found that she conducted her affairs in a very professional manner. The dicta in the cases referred to all support the principle that where exists an agreement or some arrangement to repay notwithstanding it was not in writing the beneficiary is under a legal obligation to repay.
41. The court unhesitatingly finds that the defendant promised to repay the claimant all the monies advanced on his behalf and for which he benefitted. The court accepts the claimant's evidence that there was an agreement to repay the debt at the rate of 13% per annum and later reduced to 5.99% per annum. The claimant is therefore entitled to the sum claimed plus interest at the rate of 4% per annum until payment and prescribed costs.

The Counter-claim

42. The defendant's evidence in relation to his counter-claim lacked candor. Save for the evidence that Toyota Altezza was purchased jointly, which the court has accepted, there was no documentary or the other evidence to support his counter-claim. His answers under cross-examination were very vague and at most times displayed a level of uncertainty.
43. In his counter-claim he alleged that he sold the Toyota Altezza for \$16,500. However, under cross-examination he admitted it was in fact traded to Sales and Services. The court does not accept his evidence that there was any agreement or arrangement between the parties to enter into a car rental business or that he contributed any monies directly or indirectly to the acquisition of a fleet of four (4) vehicles. That evidence lacked cogency.

44. While the court accepts that the vehicles were rented out, the court is satisfied on the evidence that it was at all material times the claimant's sole business without any input from the defendant. The court therefore rejects the defendant's contention that there existed any contract between himself and the claimant as set out in his counter-claim.
45. Accordingly, the counter-claim is dismissed with costs to be paid by the claimant/defendant to the defendant/claimant on a prescribed basis.
46. The court considers it regrettable that this matter had to engage its attention. Notwithstanding several attempts by the claimant and the counsel to have this matter settled, and mediation, all efforts came to naught.
47. I must also express my consternation at the statement made by the defendant under cross examination that in the destruction of his home by fire the claimant was the prime suspect and not only was she the prime suspect but that she was the one who destroyed his home. There was not a scintilla of evidence from him to support such a statement. It could only have been made to paint her in a poor light.
48. The defendant holds one of the highest public offices in the justice system namely that of Director of Public Prosecutions. The hallmark of such an office is a high level of integrity not just in his profession but also in his personal life. Integrity and good faith must ever be present.
49. For all the above reasons, the claim is allowed with costs to be paid by the defendant to the claimant.
50. The parties are at liberty to apply.



Stanley John
High Court Judge (AG)