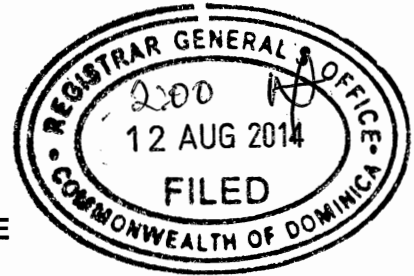


EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE



DOMHMT2012/0060

BETWEEN:

WORREL SANFORD

Claimant

and

JEFF GEORGES

Defendant

Appearances:

Mr. David Bruney for the Claimant

Mrs. Kathy Buffong-Royer for the Defendant

2013: March 7th, 8th, 19th

2014: August 12th

JUDGMENT

[1] **Cottle, J:** The parties are brothers. The claimant is a medical doctor and lecturer at the Ross University School of Medicine. The defendant is a farmer and operates a small grocery. By his statement of claim, the claimant says that he advanced a total of \$95,435.67 to the defendant. These funds were advanced for the purpose of establishing a business involving the purchase of fish for retail to the general public.

- [2] An initial sum of \$30,000.00 was advanced. This was used to build a structure in Bataca to be used to house the agreed enterprise. The claimant avers that after the construction of the building it was agreed by the parties that they would maximize the use of the structure by incorporating a minimart/grocery aspect of the business. To stock the minimart, the claimant provided \$35,435.67. The final \$30,000.00 was advanced and used to purchase a motor vehicle, a pick-up truck, for use in the business. The claimant says that the total agreement was that he would provide the finance for the business and the defendant would provide the labor and day to day management and the claimant would be entitled to a half share of the profits.
- [3] The defendant agrees that he received the sums from the claimant as averred. He denies any agreement to jointly establish a minimart business and share the profits with the claimant equally. He says there was an agreement to establish a fish retail business and share the profits equally. He says the fish aspect of the business has never been established. The defendant's position is that the sum of \$95,435.67 was not an investment in a joint business but a loan from a loving brother. No payment terms were agreed and there was no mention of interest. He has since repaid \$11,000.00.
- [4] The issue which falls for resolution is whether there was any agreement to invest by the claimant in return for a for a half share of the profits or whether the funds advanced to the defendant constituted a generous loan

Evidence

- [5] The claimant gave evidence along the lines of his pleadings. He swore that the business began on 22nd June 2011 and that initial sales were excellent. The defendant informed him of the level of sales for June and July but from August 2011 the defendant stopped communicating with the claimant. The claimant says he concluded that the defendant was set on excluding him from the minimart business after he had fully financed the project.
- [6] The claimant called Julia Burton and Ryan Burton. They testified that it was the claimant who selected the vehicle for the business and paid for it. Dorian Sanford also gave evidence. He says he was contacted by the claimant to do the electrical wiring of the premises which now houses the minimart/grocery. He formed the view from looking at the interaction of the brothers during the construction, that they were entering a partnership business.

- [7] The defendant gave evidence. He says the decision to establish the minimart was born of his wife Priscilla's dream of owning a minimart. He says he discussed this with the claimant and told him of his intention to finance the project using his lands at Marigot as collateral. He says that upon hearing this, the claimant offered to loan him the money. He accepted the offer. He says the agreement for a partnership was only in relation to selling fish. No fish was ever sold.
- [8] The defendant says he told the claimant that he would begin repaying the loans in January 2012, but was told that this was too far in the future. He says he made an initial payment of \$1,500.00 in September 2011 by depositing it into the claimant's account at Marigot Credit Union. He says that he has continued to make deposits to the claimant's account and has now repaid \$18,000.00 thus far. He denies that the claimant is his business partner and therefore he has not deprived him of any agreed profit sharing from the business.
- [9] The wife of the defendant gave evidence. She says that the claimant agreed to finance the minimart. She too says that the financing took the form of a loan rather than an investment in the business.
- [10] This court considered the evidence led by both sides carefully. At the end of the trial I have concluded that I prefer the evidence of the claimant. It is unlikely that such substantial sums would be advanced to the defendant with no provisions for repayment terms. I believe the claimant when he says that the funds represented an investment entitling him to a half share of the profits from the joint enterprise. It is clear from the evidence that the defendant is in breach of the investment agreement. He is refusing to account to the claimant and excluding him from any share of the business proceeds.
- [11] There now remains the issue of what relief the claimant should be awarded. The award should be such as to put the claimant in the position he would have been had the defendant not breached the contract. The claimant would have earned one half of all the profit generated by the business from its inception to the present time.
- [12] The defendant is ordered to account to the claimant for all the profits earned by the business to date. The claimant is declared entitled to 50% of such profits as found on the accounting. Should the defendant fail to provide such accounts within 30 days he will repay to the claimant the sum of \$95,435.67 together with interest on that sum at the rate of 5% from 25th October 2013 until repayment.

[13] The defendant will also pay the claimant prescribed costs on \$95,435.67 in accordance with the C.P.R2000



Brian Cottle

High Court Judge