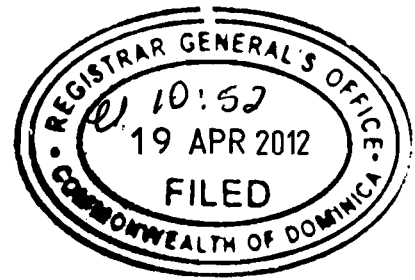


EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA
IN THE HIGH COURT OF JUSTICE
CLAIM NO. DOMHCV0275 OF 2001



VERNON RICHARDS

Claimant

v

JACQUELINE JOHN

Defendant

Appearances:

Mr. B. McDonald Christopher for the Claimant.

Mr. Alick Lawrence for the Defendant.

2006: June 14.

2012: April 19

JUDGMENT

Introduction

- [1] LEIGERTWOOD-OCTAVE J [AG.]: The parties in this claim, Vernon Richards ["Mr. Richards"] and Jacqueline John ["Ms. John"] had previously been involved in an intimate relationship. In or about 1991, Ms. John purchased a parcel of land ["the property"] with funds loaned to her by the

Portsmouth Co-operative Credit Union ["PCCU"]. The property was registered in her name. Around August 1995, at a time when she was unemployed, the PCCU notified Ms. John that she was in arrears of her loan. She discussed the matter with Mr. Richards and he subsequently paid off her loan.

- [2] The parties are entirely at odds regarding the circumstances surrounding Mr. Richards' paying off Ms. John's loan and this is the basis for the dispute in this claim. Mr. John's case is that he and Ms. John had entered into an oral agreement that he would obtain a loan from the Roseau Cooperative Credit Union ["RCCU"] and use those funds to repay her debt at the PCCU. They had also agreed that within one year Ms. John would either reimburse him all the capital and interest paid on his loan to the RCCU or she would give him the option to have the land transferred to him in consideration for what he had paid to the PCCU.
- [3] He has claimed that he is entitled to an equitable interest in the property, being a proportion of its market value, because he had contributed \$33,339.74 to its purchase. He has claimed damages for the alleged breach of the oral contract between himself and Ms. John because not only had she denied the existence of the contract, she had also failed to reimburse the money he paid to the PCCU; to give him the option to have the land transferred to him; and to acknowledge his share in the land. Mr. Richards has sought the refund of \$33,339.74 with interest from Ms. John; an Order that the Certificate of Title be delivered to him; or alternatively an order that the property be sold and transferred to him. He also sought a declaration that he had an interest in the land being a proportion of its market value.
- [4] Ms. John in her Defence denied that Mr. Richards was entitled to any of the relief that he has claimed. He had volunteered to take a loan from the RCCU to pay off her debt to the PCCU. As he did not have any security, she had used her Certificate of Title for the land to secure his loan at the RCCU. She denied his allegation that there had been any oral agreement between them. The issue of her repaying him only arose after their relationship had broken down and when there was no hope of the reconciliation that he had constantly requested. He had instituted proceedings in 1991 seeking relief similar to those in this claim. Those proceedings were withdrawn in 2001.

The Issue

- [5] Both sides in their closing submissions identified what they considered to be the issues to be determined by the court in this case. There were four from the Claimant and one from the Defendant. My view is that there is really one issue. The court must determine whether or not there was an oral agreement between the parties that Mr. Richards would obtain a loan from the RCCU, use the proceeds of that loan to repay Ms. John's debt at the PCCU and she would reimburse him or give him the option of having the land transferred to him in consideration of the amount paid on her behalf to the PCCU.

The Evidence

- [6] The relationship between Mr. Richards and Ms. John started some time around 1992 or 1993 and ended in 1997. Mr. Richards was aware that Ms. John had taken a loan from the PCCU in 1993 to buy the property. When the PCCU made a claim against Ms. John in August 1995 for amounts due on her loan, she had discussed the matter with Mr. Richards. Her evidence was that he had volunteered to assist her to pay off the loan, his exact words being *"I will take care of that"*. She understood the paying off the loan to be a gift to her and acknowledged that although it was a substantial gift, it was still a gift.
- [7] Mr. Richards had given Ms. John gifts during their relationship but said that he had been cautious when doing so. He had paid for typing and computer classes for her, he had paid off her debts at Courts Furniture Company and admitted in cross examination that he had paid three monthly installments of her loan at the PCCU as a gift. When he agreed to pay off her debts at the PCCU, that was not a gift and he had made that clear to her. He was not a rich man and he had not said anything that would have led her to believe that he would pay over \$33,339.74 for her as a gift to her. They were involved at the time, he did it willingly and he had expected the relationship to last, he knew she was unemployed and he was assisting her to avoid the pending case because she had asked him to. He had made it clear to her that his assistance came with conditions, conditions which he said resulted in an oral agreement between them.
- [8] Under that agreement if he contributed to the payment of her loan at PCCU, she was to reimburse him within one year all the capital and interest that he had paid or alternatively if she could not do

so, Ms. John would transfer the whole property to him. There was no written agreement because, he trusted her and not because as Mr. Lawrence suggested in cross examination because it was a gift.

[9] Around July 1995, he approached the RCCU, where he had an existing loan and increased it to include what was required for Ms. John's loan to the PCCU. Ms. John was the guarantor to the loan and as agreed her Certificate of Title which was held by the PCCU was deposited with the RCCU as security. Mr. Richards subsequently paid off Ms. John's loan at the PCCU.

[10] Ms. John's denied that there was ever any oral agreement between her and Mr. Richards that she would reimburse him what he had paid towards her loan together with interest or that she would give him her land as consideration for the payments he had made on her behalf. The issue of her repaying him or transferring the land to him never arose between them in the two years immediately after the break down of their relationship. She believed that it was only when he realized that she had no intention of continuing a relationship with him that he decided that he wanted his gift back and that was the reason why he had brought this claim.

Was there an oral agreement between the parties?

[11] Mr. Richards' case raises issues related his entitlement to an equitable interest in the property but to succeed on that limb or in his contract claim, he must satisfy the court on a balance of probabilities, that there was an oral agreement between himself and Ms. John that she would either reimburse him the amounts that he paid to her loan at the PCCU or if she was unable to do so to transfer the property to him and she had breached that agreement.

[12] In his submissions, Mr. Christopher had much to say about the issue of a gift in this matter. He went into the law on gifts and has asked the court to conclude that there was an onus on Ms. John to prove that Mr. Richards' repayment of her loan was a gift. Mr. Christopher is not correct when he stated¹ that Ms. John had contended that Mr. Richards had made an absolute gift to her. There is no reference by Ms. John in her Defence², that Mr. Richards made a gift to her. It is accepted that she said in her Witness Statement, *"now he wants to take back the gift ... it was a substantial*

¹ At para. 14

² Filed on 19th October 2001

gift, it was a gift" but her contention in this matter is not that it was gift but that there was no oral contract that she would repay him. There is no counterclaim in this matter and like Mr. Richards, Ms. John is bound by her pleading. In my judgment, Ms. John has no onus to prove anything in this case.

- [13] There are several legal definitions for a contract but on the facts of this case, the definition that it is a promise or set of promises which the law will enforce, seems the most appropriate³. Regardless of the definition relied on however there are three main elements for the creation of a contract, whether it is written or oral: an offer, acceptance, consideration and an intention to create legal relations.
- [14] Also specifically relevant to these facts, are the authorities like **Jones v Padavatton**⁴ and **Balfour v Balfour**⁵ that hold that in social and domestic agreements, there is a presumption that the parties did not create legal relations and that presumption may be rebutted by evidence to the contrary. In my judgment however the fact that the consideration is so substantial, in excess of \$30,000.00 makes this a case where the presumption could easily be rebutted.
- [15] In coming to a determination, I adopt the position taken by Lord Denning in **Hardwick v Johnson**⁶ concerning family arrangements and apply them to social arrangements. The Master of the Rolls described such arrangements as having legal consequences and time to time again, the Courts are called upon to determine the true legal relationship resulting from them and this was especially the case where one member of a family pays money to another and afterwards says it was a loan and the other says it was a gift. The court must look at all the circumstance and spell out the legal relationship.
- [16] Some of the undisputed facts in this case, are that the parties were in a romantic visiting relationship. They were close sleeping and eating together. They clearly cared for each other even though Mr. Richards hesitated to admit that he loved Ms. John. Their relationship was going well when Ms. John fell on hard times. She was not employed when the PCCU demanded the money that she owed them on her loan. She said Mr. John's response to her plight was "*I will take*

³ Pollock Principles of Contract 13th Ed. 1

⁴ [1969] 1 WLR 328

⁵ [1919] 2 KB 571

⁶ [1978] 1 WLR 683

care of that and he went about making the arrangement to pay the loan for her. He did so first by paying monthly installments to the PCCU and then by taking a loan from the RCCU to clear it off. All that she was required to do was to put up her property as collateral because all his real estate assets were already tied up.

- [17] That happened when the relationship was going fine between the parties but things changed the relationship broke down and Ms. John did not want to continue it. Mr. Richards attaches little significance to the fact that they were involved in a romantic relationship to what he had done.
- [18] To emphasize the fact that it could not be a gift his evidence was that from the start he had been cautious about giving her gifts but he did give her gifts. He financed her typing and computer classes, he paid off her debts at Courts. He was even suspicious that she did not bring back his change when he gave her money to buy ice cream. Paying off the arrears at the PCCU, that was no gift, it had to be reimbursed. After all, it was a lot of money and he was not a rich man and at the time he was buying his own land at Chance. He was cautious and suspicious but his response to Mr. Lawrence in cross-examination, he had not gotten her to sign a document because he trusted her.
- [19] Mr. Christopher seemed to put great reliance on the document addressed to the Manager of the RCCU by which Ms. John deposited the Certificate of Title for her property as the security for the loan taken by Mr. Richards. His argument is that this document supported the contention that there was an oral contract, because as Mr. Richards answered you would not envisage that a person getting a gift would guarantee a loan repayment. He submitted that her hesitancy to admit that she had guaranteed the loan, spoke to the unreliability of her evidence. The document speaks for itself. It is a deposit of security, Ms. John signed as guarantor and Mr. Richards as the applicant.
- [20] This case highlights the difficulty that a claimant faces where an oral contract, particularly in a social context, is not reduced to writing. The court is placed in an extremely difficult position where there is limited evidence as to what was exactly said and what were the surrounding circumstances. This is one of those cases.

[21] If one considers the issue of the credibility on the witnesses, both Mr. Richards and Ms. John were reluctant in some of their answers. In my view that might not be unexpected because of the nature of their relationship and the fact that they were now in proceedings before the court. Both did not admit to matters until they were confronted with various facts and documents. I agree with Mr. Lawrence that Mr. Richards gave at least three versions regarding the terms of the agreement. Ms. John was reluctant to admit that she had signed as guarantor.

[22] However, for the most part Ms. John remained as submitted by Mr. Lawrence, calm and forthright, while Mr. Richards was evasive. On his own evidence there is nothing to suggest that he was really being cautious about giving her gifts. He assisted the woman he had an intimate relationship with at a time of need, and it is likely that he had not contemplated that the relationship would break down, never to continue. More than likely when the realization sunk, he headed to court.

[22] As Lord Denning stated in **Storer v Manchester City Council**⁷:

'In contracts you do not look into the actual man's mind. You look at what he said and did. A contract is formed where there is to all outward appearances a contract'.

[23] In my judgment the evidence and circumstances in this case do not support a finding that there was an oral agreement between the parties that Ms. John would either reimburse Mr. Richards the amounts that he paid to her loan at the PCCU or that if she was unable to do so that she would transfer the property to him. In the light of Ms. John's denial, Mr. Richards' say so without one other supporting circumstance can lead to any other conclusion.

[24] I need only add that although Mr. Lawrence dealt with it in his written submissions, there was no allegation in Mr. Richards pleading of the existence of a resulting trust and I have therefore not considered that point.

⁷ [1974] 1 WLR 1403 (CA)

Conclusion

[25] For the reasons I have stated in this judgment, I dismiss Mr. Richard's claim and award prescribed costs to Ms. John, in accordance with Part 65.5(2)(b) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and make the following order:

1) Claim DOMHCV of 2001 is dismissed with costs to Ms. John.

2) Mr. Richards is to pay Ms. John prescribed costs in the sum of \$9,835.25.




Ianthea Leigertwood-Octave

High Court Judge [Ag.]