

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 232 OF 2008



BETWEEN:

HERMUS CYRUS

Claimant

v

CHRISTOPHER WYLLIE

Defendant

Appearances:

Mr. Olin J.B. Dennie, for the Claimant
Mr. Cecil B. Williams, for the Defendant

2011: June 29
2012: February 7

JUDGMENT

- [1] **THOM, J:** Mr. Cyrus and Mr. Wyllie are relatives and over the years they have had a very close relationship. Mr. Cyrus lived and worked in the United States for many years. During this period when Mr. Wyllie visited the United States he would visit Mr. Cyrus.
- [2] This close relationship was fractured when during the period 2005-2007 Mr. Cyrus resided at the home of Mr. Wyllie while he was constructing his retirement home at Prospect. Mr. Cyrus alleges that during this period he loaned a sum of \$35,280.31 to Mr. Wyllie to pay customs duties which Mr. Wyllie owed the Government of St. Vincent and the Grenadines. After several demands Mr. Wyllie repaid him \$20,000 in two payments of \$10,000 each. However Mr. Wyllie has failed to pay him the remaining \$15,280.31 despite several demands that Mr. Wyllie must repay the said sum.

- [3] Mr. Cyrus instituted these proceedings in which he claims the said sum of \$15,280.31. He also claims interest on the said sum at the rate of 12% per annum and costs.
- [4] Mr. Wyllie in his defence denies that he was given a loan of \$35,280.31 by Mr. Cyrus. He alleges that the sum was an advance. Mr. Cyrus had requested him to assist him with a number of projects such as the acquisition of a property at Campden Park, construction of a retaining wall and repairs to the said property, construction of retaining walls at the site of the retirement home at Prospect and the construction of the retirement home. Himself and Mr. Cyrus had agreed that on the completion of the retirement home they would agree on a lump sum to be paid to Mr. Wyllie.
- [5] In the counterclaim Mr. Wyllie claims the sum of \$239,555.73 as being the sum owed to him by Mr. Cyrus for work done, his time, and storage fees. He also claims general damages and prescribed costs.

EVIDENCE

- [6] Mr. Cyrus gave evidence and called one witness Mr. Alstar Mars. Mr. Wyllie gave evidence and called three witnesses being Mr. Cenus Hinds, Mr. Ellis Grecia, and Mr. Kenvert Velox.

EVIDENCE ON BEHALF OF THE CLAIMANT

- [7] The evidence of Mr. Cyrus is that he spent several years in the United States of America where he worked as a maintenance man. After retirement he decided to build a house in Prospect. During the period of the construction of the house between November 2005 and July 2007 he resided at Mr. Wyllie's residence.
- [8] In December 2005 Mr. Wyllie requested him to loan him the sum of \$35,280.31 to pay customs duties. Mr. Wyllie agreed to repay him the money the following month. Mr. Cyrus paid the sum of \$35,280.31 to the Accountant General by two cheques, the first dated the 6th December 2005 in the sum of \$18,538.38 and the second on the 28th December 2005 in the sum of \$16,741.73. Both cheques were exhibited.

- [9] Mr. Wyllie having failed to repay the money several demands were made to him. In March 2007 he paid Mr. Cyrus \$10,000 and approximately six weeks later he paid him a further \$10,000, leaving a balance of \$15,280.31. Mr. Cyrus made several other demands for the payment of the outstanding sum and Mr. Wyllie having failed to pay same, Mr. Cyrus caused his solicitor to make a written demand for the outstanding sum by letter dated 6th May 2008. In spite of the letter the sum still remained unpaid and the claim was instituted to recover the said sum of \$15,280.31.
- [10] Prior to Mr. Cyrus' return to Saint Vincent in 2005, the Saint Vincent Building and Loan's Association decided to foreclose on a mortgage on the house of Mr. Cyrus' sister. Mr. Cyrus agreed to purchase the house. To facilitate the purchase of the house he executed a Power of Attorney in favour of Mr. Wyllie. He sent a cheque to Mr. Wyllie for him to pay the Building and Loans Association, and Mr. Wyllie executed the transfer documents on his behalf. There was no agreement between himself and Mr. Wyllie for Mr. Wyllie to be paid an agreed fee for the transaction.
- [11] A few months after he purchased the property he visited Saint Vincent and the Grenadines. He requested Mr. Wyllie to arrange the building of a retaining wall at the property in Campden Park. He gave Mr. Wyllie US\$5,000 for the purchase of material and labour. He also sent US\$3,000 to Mr. Wyllie for him to arrange the construction of a retaining wall at the property at Prospect. The wall was not completed when he visited Saint Vincent and the Grenadines and he engaged some men from the village of Troumaca who completed the wall in one week.
- [12] On the recommendation of Mr. Wyllie he entered into a contract with Mr. Cenus Hinds for him to construct his retirement home. Mr. Cenus Hinds did not complete the construction of the home. During the construction of his home on some occasions Mr. Wyllie's truck was used to transport material to the site. On those occasions, he paid the driver and he also provided the fuel for the truck.

- [13] His household belongings which were shipped to Saint Vincent were stored at Mr. Wyllie's residence until he moved to his home at Prospect. He had decided to store his belongings at his own property at Campden Park but Mr. Wyllie suggested that he use his store room since he did not need the space and he did not think it was safe to store the items at Campden Park. There was no agreement to pay for storage of his belongings. When Mr. Wyllie was operating his cold storage business he permitted Mr. Wyllie to store material at his property at New Montrose. Also on several occasions, he would purchase items for Mr. Wyllie in the United States and ship them to Mr. Wyllie.
- [14] During the period he stayed at Mr. Wyllie's residence, Mr. Wyllie assured him he did not have to pay for accommodation. He purchased food for the household and his wife who was still residing in the United States posted food for the household.
- [15] Under cross-examination Mr. Cyrus agreed that some of his household belongings were transported from the port to Mr. Wyllie's residence in Mr. Wyllie's truck. He testified that Mr. Wyllie never sent him an invoice or told him that he had incurred expenses in supervising his work. On the few occasions that Mr. Wyllie's secretary did some typing for him no fees were requested.
- [16] Mr. Cyrus witness, Alstar Mars who knows both Mr. Cyrus and Mr. Wyllie very well since they grew up in Troumaca confirmed that Mr. Wyllie told him in the presence of Mr. Cyrus while they were at his shop that Mr. Cyrus wanted to store his household items at Campden Park but he offered to store them for him at his residence free of charge.

EVIDENCE ON BEHALF FO THE DEFENDANT

- [17] Mr. Wyllie stated that Mr. Cyrus told him of his plans to retire and return to Saint Vincent and the Grenadines. Mr. Cyrus requested him to supervise the building of a retaining wall and clearing of the land at Prospect where he was going to build his retirement home. He told Mr. Cyrus that he would not set a specific fee for his work but he could use his discretion. He understood that Mr. Cyrus would pay him reasonable compensation. The wall took two months to construct. A reasonable fee for his supervisory services would be

\$1,000 per week but he was only claiming \$2,400. He used his truck to transport material and water to the site which amounted to a cost of \$11,250 but he was only claiming \$5,000.

[18] Mr. Wyllie testified that he also supervised the construction of a second wall at Prospect. The cost for his supervisory services is \$6,000 but he is only claiming \$3,000. the cost for his trucking services is \$26,000 but he is only claiming \$13,300.

[19] He also supervised the construction of a retaining wall at the property at Campden Park, the cost of his services is \$8,000 but he is only claiming \$2,000. Trucking services amounted to \$9,000 but he is only claiming \$8,000. The repairs to the house at Campden Park lasted approximately six (6) weeks. The cost for his supervisory services is \$10,000 but he is claiming \$1,200.

[20] Mr. Wyllie acknowledged that Mr. Cyrus paid for the purchase of all materials for the construction and paid for labour.

[21] Mr. Wyllie also testified that the storage space occupied by Mr. Cyrus items amounted to 210 sq ft at a cost of \$60,000 for the 30 months that Mr. Cyrus spent at his home. Boarding and lodging at \$1,500 per month amounted to \$42,000.

[22] He also transported items for Mr. Cyrus in his truck from Kingstown Park and Campden Park to his residence at a cost of \$60,000. He provided materials for the construction of a shed at the Prospect site at the cost of \$1,500, tools and equipment at the value of \$2,823.73, a water tank at the cost of \$780.00 and a cell phone for \$250.00.

[23] It was agreed that after Mr. Cyrus sold his house in the United States and received his retiring benefits from the Social Security, they would sit down and discuss the compensation to be paid to him for the work that he did.

- [24] Mr. Wyllie acknowledged that he received \$35,280.31 from Mr. Cyrus but testified that it was not a loan, it was to assist him with the payment of customs duties. He did not expect Mr. Cyrus to ask for repayment since at that time Mr. Cyrus had owed him substantially more than that sum. He explained that he gave Mr. Cyrus the first sum of \$10,000 because Mr. Cyrus told him his was in hospital and she did not get the opportunity to transfer the money to him so he needed \$10,000 to cast the floor. Mr. Wyllie further testified that he gave Mr. Cyrus the second \$10,000 because some weeks after Mr. Cyrus told him another story which he cannot remember. Mr. Cyrus approached him a third time and asked for financial assistance but he did not accede to his request because he realized Mr. Cyrus was clandestinely seeking to recover the money which he had given to him.
- [25] Under cross-examination he acknowledged that himself and Mr. Cyrus did not agree for the payment of any specific sum for any services done or for boarding and lodging. He agreed Mr. Cyrus stayed at his home from November 2005 to July 2007. He maintained that at the time Mr. Cyrus gave him the \$35,280.31. Mr. Cyrus had owed him. He was not certain of the amount that Mr. Cyrus had owed him. He estimated it was about \$35,000.
- [26] Mr. Cenus Hinds who testified on behalf of Mr. Wyllie confirmed that Mr. Wyllie had transported materials to Prospect during the construction of the wall and the house. On some occasions he was paid by Mr. Wyllie. Under cross-examination he agreed that Browne's Hardware transported materials for the construction of the house. He also agreed that on those occasions when Mr. Wyllie paid him he did not know who provided the money.
- [27] Mr. Kenvert Velox testified that he was the driver of Mr. Wyllie's truck. He transported material in Mr. Wyllie's truck to the building site at Prospect. Mr. Wyllie visited the construction site regularly. It was only once Mr. Cyrus provided fuel for Mr. Wyllie's truck. Under cross-examination he agreed that on some occasions Mr. Cyrus did purchase fuel for the truck.

SUBMISSIONS

[28] Learned Counsel Mr. Dennie submitted that based on the evidence before the court it is clear that Mr. Wyllie did not repay the sum of \$15,280.31 claimed by Mr. Cyrus. Mr. Dennie urged the court to reject the explanation given by Mr. Wyllie why he paid Mr. Cyrus two sums of \$10,000.

[29] Mr. Dennie also submitted that there was no agreement between Mr. Cyrus and Mr. Wyllie for Mr. Cyrus to pay Mr. Wyllie for services. Mr. Dennie urged the court to note that the invoice Mr. Wyllie tendered into evidence was prepared after the claim was served on him. There are no dates or periods on the invoice showing when the purported services were rendered. Having regard to the relationship which existed between Mr. Cyrus and Mr. Wyllie there was no intention to create any legal relations in respect of which Mr. Cyrus could be held liable.

[30] Mr. Williams submitted that the evidence of Mr. Wyllie should be believed. Mr. Wyllie acknowledged that he received the \$35,280.31 from Mr. Cyrus but it was not a loan. He explained why he gave Mr. Cyrus two sums of \$10,000.

[31] Mr. Williams further submitted that there was a contract between Mr. Cyrus and Mr. Wyllie. Learned Counsel referred the court to the text The Law of Contract by P.S. Atijah at p.98 and submitted that the absence of an agreement as to the price for goods or services does not preclude the formation of a contract. Learned Counsel also referred to the case of Pao On and others v Lau Yiu Long and Others 1980 A.C. p.614 where the Privy Council held that:

“an act done before the giving of a promise could be valid consideration for that promise if the act had been done at the promisor's request, the parties had understood that the act was to be remunerated either by payment or conferment of a benefit and the payment or conferment of a benefit would have been enforceable had it been promised in advance.”

- [32] Learned counsel relying on the above statement submitted that in the present case Mr. Wyllie did all that he did for Mr. Cyrus at Mr. Cyrus' own request. There was a reasonable expectation that Mr. Cyrus would pay Mr. Wyllie for services rendered. Mr. Cyrus reimbursed Mr. Wyllie for monies spent on materials and labour but did not pay Mr. Wyllie for services rendered.

FINDINGS

- [33] Having seen and heard the witnesses, I believe the testimony of Mr. Cyrus. Mr. Cyrus was consistent throughout his cross-examination. He answered questions in a forthright manner.
- [34] Mr. Cyrus and Mr. Wyllie were close friends and relatives. They visited each others home and would socialize together. Mr. Mars testified that they would visit his bar. So it was not surprising that there was no agreement for any sum to be paid to Mr. Wyllie when Mr. Cyrus executed the Power of Attorney for Mr. Wyllie to conclude the purchase transaction with the Saint Vincent Building and Loan Association.
- [35] It is not disputed that Mr. Cyrus had assisted Mr. Wyllie in purchasing items in the United States of America on more than one occasion. It was also not disputed that Mr. Wyllie had used Mr. Cyrus' property at New Montrose to store items. I therefore do not believe Mr. Wyllie that there was an agreement for Mr. Cyrus to pay him for supervisory service or transportation. Mr. Wyllie was engaged in his own business activities and when he had the time to give assistance to his cousin and friend he did so. During the construction period when Mr. Cyrus was in Saint Vincent and Mr. Wyllie's truck was available to transport materials for him, Mr. Cyrus paid the driver and put fuel in the truck.
- [36] When Mr. Cyrus left Mr. Wyllie's residence in July 2007 their relationship was no longer cordial. I do not believe that if Mr. Cyrus had owed Mr. Wyllie he substantial sum of approximately \$300,000 that he would have made no claim for his money. It is worth noting that in his counterclaim he does not claim the sum of \$20,000 which he alleges was not a repayment to Mr. Cyrus. In his testimony he acknowledged that he was reimbursed

all sums he spent on materials and labour on behalf of Mr. Cyrus. I am of the view that if the \$20,000 was a sum advanced to Mr. Cyrus for him to buy materials and pay labour as alleged by Mr. Wyllie, Mr. Wyllie would have claimed the sum.

[37] Mr. Cyrus sent the Solicitor's letter demanding payment of the outstanding sum of \$15,280.31 almost one year after he had removed from Mr. Cyrus's residence. The undisputed evidence is that Mr. Cyrus removed from Mr. Wyllie's residence in July 2007. The letter from the Solicitor is dated May 6, 2008. Until this time Mr. Wyllie had made no claim for any sums owing to him. It was only after these proceedings were instituted for the sum of \$15,280.31 that Mr. Wyllie prepared an invoice addressed to his then Solicitor showing that he was claiming \$239,555.73 from Mr. Cyrus.

[38] I find that there was no agreement between Mr. Cyrus and Mr. Wyllie for Mr. Cyrus to pay Mr. Wyllie for the services that he assisted him with in his projects. They were relatives and very close friends who had always assisted each other. The case of Pao On and others is not applicable there was no promise to pay for the services at any time.

CONCLUSION

[39] In conclusion, I find that Mr. Cyrus has proved his claim on a balance of probabilities that he loaned Mr. Wyllie \$35,280.31 and Mr. Wyllie has only repaid him \$20,000 and the sum of \$15,280.31 remains unpaid. I also find that Mr. Wyllie has failed to prove on a balance of probabilities that there was an agreement between himself and Mr. Cyrus for Mr. Cyrus to pay him for services.

[40] It is ordered:

- (1) Judgment is entered for the Claimant in the sum of \$15,280.31.
- (2) The Defendant shall pay the Claimant interest on the said sum at the rate of 6% per annum from the date of judgment until final payment.
- (3) The Defendant shall pay costs to Claimant in the sum of \$2,292.00.
- (4) The counterclaim is hereby dismissed.



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Gertel Thom

HIGH COURT JUDGE