

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA**

CLAIM NO: ANUHCV 2009/0346

BETWEEN:

SONIA GRANT

Claimant

AND

MAYNARD WILLIAMS

Defendant

Appearances:

Mr. Charlesworth O.D. Brown for the Claimant

Ms. Nelisa D. Spencer for the Defendant

.....
2011: June 15

July 20
.....

JUDGMENT

INTRODUCTION

[1] **REMY J.:** The Claimant Sonia Grant, a Registered Nurse, and the Defendant Maynard Williams, a Carpenter, were involved in an intimate relationship which began in November 2005 and ended in or about May/June 2008.

[2] The Claimant's claim is that, during the course of their relationship, "they engaged in several transactions with the express intention of creating binding legal obligations between them". The Claimant pleaded that at the request of the Defendant, she agreed to lend him several sums of money, totalling \$31,132.40 (the loan) and that the

Defendant agreed to pay the said sums of money "by reasonable installments from time to time." The Claimant further pleaded that the Defendant repaid some of the money loaned leaving, as at May 24th 2008, an outstanding balance of \$13,532.40.

[3] The Claimant further pleaded that, by a separate agreement entered into between herself and the Defendant (the Vehicle Agreement) she agreed to purchase from the Defendant his Mitsubishi Galant vehicle for the sum of \$6,600.00

[4] The Claimant's claim against the Defendant is for the sum of \$20,982.40, which sum is made up as follows:-

(a) The sum of \$13,532.40 - being the outstanding balances of various loans granted by her to the Defendant at his request for the period September 2006 and January 2008.

(b) The sum of \$7,450.00 - being monies paid by the Claimant to the Defendant for the purchase of a Mitsubishi Galant vehicle and which sum she is seeking to have returned to her.

(c) The Claimant also claims interest and costs.

[5] In his Defence, the Defendant denies owing the monies claimed by the Claimant and specifically denies borrowing any money from the Claimant at any time.

[6] With respect to the Vehicle Agreement, the Defendant pleaded that he agreed to sell his Mitsubishi Galant to the Claimant for the agreed price of \$15,000.00. He added that the Claimant paid a deposit of \$6,000.00 towards the said purchase price.

EVIDENCE

THE CLAIMANT

[7] The Claimant Sonia Grant (Mrs. Grant) gave evidence on her own behalf and called no witnesses. Her evidence as contained in her Witness Statement is that she started an

intimate relationship with the Defendant Maynard Williams (Mr. Williams) soon after he returned from the U.S.A. where he had been residing for several years. Mrs. Grant testified that the Defendant, who was then employed as a Carpenter, "was in a relatively weak financial position", and that he "relied on her to assist him to make ends meet." She stated that during the course of the relationship, she often lent money to the Defendant and otherwise engaged in transactions with him that were meant to be legally binding.

[8] Mrs. Grant's evidence is that, by "several oral agreements", she agreed to lend the Defendant several sums of money totalling \$31,132.40, and that the Defendant agreed to repay the said sums "by reasonable installments within a reasonable time." She stated that she kept a record in her notebook of the several loans made pursuant to the oral agreement. She testified that the Defendant defaulted in the repayments and that as of May 24th 2008, a balance of \$13,532.40 remained due and owing to her, as a result of which she instructed her Attorney to issue a demand letter to the Defendant.

[9] Mrs. Grant stated that by a separate agreement (the Vehicle Agreement), she agreed to purchase the Defendant's vehicle for \$6,600.00, which sum she paid to the Defendant. She stated further that, in addition, she paid the sum of \$452.00 and \$379.98 respectively towards the insurance and licence of the vehicle. She testified that, despite her several requests, the Defendant has failed or refused to deliver and transfer title of the vehicle to her, as a result of which she caused a letter of demand to be issued to the Defendant, demanding a full refund of the purchase price together with the licence fees and insurance premium paid by her.

[10] Mrs. Grant further testified that, separate and apart from the loan and vehicle agreements, she agreed to assist the Defendant by providing her property as security for a vehicle loan (the vehicle loan) granted by RBTT Bank to the Defendant for the purchase of a Toyota Rav 4 vehicle. She stated that the Defendant has defaulted in the repayment of the vehicle loan, as a result of which she had to pay the arrears and meet the monthly installments on behalf of the Defendant, as the ownership of her property

was in jeopardy, while the Defendant retains control and exclusive use of the vehicle. Mrs. Grant states that, despite her Attorney's letter written to the Defendant, he has refused to provide alternative security to the bank so that the charge registered against her property could be discharged.

[11] It is Mrs. Grant's testimony that, as a result of the Defendant's "breach of the several agreements", she has suffered loss and damage, for which the Defendant is liable.

[12] Under cross-examination, Mrs. Grant testified that the relationship between herself and the Defendant "was not all bad", and that it had "good moments" in the beginning. She stated that the Defendant was "kind and sweet" in the beginning. She agreed that he "cut the grass" for her and "took turns with her to purchase the food." She stated however: - "I can't remember anything he did for me." She testified that during the course of their relationship, the Defendant worked as a Carpenter and that during the last five (5) months of the relationship, he also rented out vehicles. She stated that the vehicles would be rented out for a minimum of \$100.00 a day and that they were rented frequently on week-ends.

[13] Mrs. Grant stated that she understood the meaning of "payment in kind" and agreed that payment in kind more usually happens in situations involving friends, family and also lovers. She reluctantly agreed that herself and the Defendant, to "some extent", were "lovers".

[14] With respect to the vehicle loan, Mrs. Grant testified that the Defendant and herself were co-borrowers. She stated that during the relationship, there was no problem with the Defendant with respect to the loan that "he was making the payments." She stated that the Defendant told her that he would stop making the payments when the relationship ended, and that he did so.

[15] With respect to the vehicle agreement, Mrs. Grant stated that the Defendant "quoted to her" the purchase price of \$6,000.00 for the silver grey Mitsubishi Galant and never

mentioned to her that he was selling the vehicle to her for the discounted price of \$15,000.00. She stated that when she gave the Defendant the sum of \$6,600.00 for the purchase of the said vehicle, he was indebted to her in the sum of \$17,332.40 for the loans. She stated that the Defendant wanted the cash to purchase another vehicle. She added that she "felt foolish now", giving the Defendant this money after he already owed her "all this money."

THE DEFENDANT

- [16] The Defendant Maynard Williams (Mr. Williams) gave evidence on his own behalf and called no witnesses. In his Witness Statement, Mr. Williams testified that during the course of his relationship with the Claimant, he did a number of things for her; "far too many to recount in detail." He stated that he cut the grass for her, and was there for her sons and would try to assist her in rearing and maintaining them. He stated that he would regularly gave the Claimant money, "up to half of his salary". He stated that he considered the Claimant "almost as his wife" and "treated her this way."
- [17] Mr. Williams denied owing the Claimant any money and categorically denied borrowing any money from her. He added that during the course of the relationship, the Claimant never asked him, or even mentioned, "not even once", for monies alleged to be loaned to him.
- [18] Mr. Williams' evidence is that, apart from his work as a Carpenter, he also rented vehicles out to persons as an additional income. He stated that the Claimant was aware of this, and that at intervals, the vehicles would be parked in the Claimant's yard. He added that on some occasions, the Claimant would interact with the customers for the rental, would collect the proceeds of the said rental and would hold on to the said monies. He stated that he would not question the Claimant about the monies.
- [19] Mr. Williams stated that himself and the Claimant obtained two (2) loans for the purchase of vehicles. He stated that with respect to the loan obtained from RBTT in November 2007, the Claimant's land was used as security for the said loan. He stated that he would

regularly give the Claimant money from his earnings and that she then made the payments on the loan(s).

[20] Mr. Williams' evidence with respect to the sale of the vehicle to the Claimant was that the Claimant asked him to sell her his silver grey Mitsubishi Galant which she wanted for her son, and he agreed to sell it to her. He stated that the vehicle was valued at approximately \$18,000.00, but that because of their relationship, he agreed to sell it to her at the discounted price of \$15,000.00. He stated that the Claimant paid him \$6,000.00 towards the purchase price, and that about five (5) months later, when approximately \$9,000.00 was still outstanding, the Claimant told him that she no longer wanted the vehicle.

[21] Mr. Williams stated that, when the vehicle was subsequently returned to him months later, after having been taken away and kept away from him by the Claimant, the vehicle was in "poor condition", as a result of which he had to carry out repairs to the vehicle in the sum of approximately \$2,000.00.

[22] Under cross-examination, the Defendant testified that when he met the Claimant, he had one vehicle and was not engaged in any rental business at that time. He denied asking the Claimant for any loans during the relationship. Mr. Williams testified that he gave the Claimant money every week "as a man would give his woman", and not for a loan. He rejected the suggestion of Counsel for the Claimant that the vehicles which he acquired during the relationship with the Claimant – at least four (4) – were as a result of loans from the Claimant. He stated that those loans were given to him by the Bank.

[23] When questioned about the records of the loan kept in the Claimant's note book, Mr. Williams testified that he never saw those records until he attended the mediation session in the Courthouse "downstairs".

[24] From the evidence in its totality, I make the following findings of fact:-

(A) The loans totalling \$31,142.00

- (i) The Claimant in her Witness Statement stated that “the purposes for which the loans were granted include part payment for vehicles, financial assistance to the Defendant’s children, purchase of airline tickets, vehicle repairs and legal fees.”
- (ii) With respect to the item namely “financial assistance to the Defendant’s children”, I find that the Claimant has provided no cogent evidence that any such assistance was granted, and further, that if there was such assistance, that it was by way of a loan. By way of amplification of her Witness Statement, the Claimant testified that “from time to time, his (the Defendant’s) children would call him and ask him for monies. On a couple of occasions, he did not have the money, so he asked me to lend him those monies until he could repay me.” The Claimant failed to specify either the total sums loaned or when those monies were loaned to the Defendant. Under cross-examination, the Claimant accepted that the receipt produced by her (page 64 of the Agreed Bundle of Documents), which incidentally was the only receipt produced under this item, does not indicate from whom the monies originated and that the document merely confirms that she was the one who went in person to the money transfer agent. The evidence of the Defendant in that regard is that, as he would be working at various locations, he would give the Claimant the money and she would carry out the transaction for him, with his money, as a matter of convenience.
- (iii) With respect to the item namely “purchase of airline tickets”, in amplifying her Witness Statement, the Claimant testified that the Defendant wanted two (2) of his children to come to Antigua for vacation during the summer of 2007, and that he wanted assistance in buying the tickets as he did not have the money. She testified that “I did that”. She further testified that the Defendant wanted an air hostess to accompany his under- aged child. She stated “I gave him the additional money for that purpose.” Based on the Claimant’s own testimony, there is no evidence that the amount paid was by way of a loan. Further, when shown the receipt tendered by the Claimant as evidence of the money paid for

the air hostess to accompany the Defendant's child, (page 57 of the Agreed Bundle of Documents), the Claimant conceded that the said receipt "did not actually say what it was for."

- (iv) Under cross-examination, the Claimant at first denied that she received any travel allowance from her employer, namely the Government of Antigua and Barbuda. When shown the receipt produced by her (page 59 of the Agreed Bundle of Documents), the Claimant stated that this was a receipt for her "travel grant", which is not the same as a "travel allowance." The Claimant conceded, however, that "what was remaining of the grant, I used to assist the Defendant to get his children to visit for summer 2007."
- (v) Based on the above, I accept the Defendant's contention that the Claimant voluntarily used her travel allowance towards the payment for the airfare for his children to travel to Antigua in the summer of 2007 as an outright gift. There is no cogent evidence from the Claimant that it was otherwise.
- (vi) With respect to the item namely "legal fees", by way of amplification of her Witness Statement, the Claimant testified that "he (the Defendant) sought to have divorce proceedings carried out, so he borrowed \$1,500.00 from me for that purpose." The documents tendered by the Claimant, namely an invoice and a receipt (pages 62 and 63 of the Agreed Bundle of Documents), are in the name of the Defendant and therefore provide no proof that anyone other than the Defendant paid the bill.
- (vii) Under cross-examination, the Claimant testified that the Defendant and herself were planning to get married, and that when she realized that the Defendant was still married, she wanted his divorce to be made final. Upon the suggestion of Counsel for the Defendant that since she wanted the divorce to be finalized and for that reason gave him (the Defendant) the money to go to the lawyer, the Claimant responded, "I helped Maynard (the Defendant) by giving him money towards the fees for his divorce. Yes, Maynard and I were planning on getting married at some point. I wanted his divorce to be finalized when he was still

married. He asked, and I gave him money to go to the lawyer.” Again, there is no evidence that the money for the legal fees was intended to be a loan.

- (viii) With respect to the item “vehicle repairs”, and “part payment of the purchase price of vehicles”, the Claimant produced no receipts and relied solely on the record contained in her notebook (pages 12 to 21 of the Agreed Bundle of Documents).
- (ix) There is evidence before the Court that the Claimant and the Defendant took at least one loan from the bank for the purchase of the Rav 4 vehicle. Further, that the Claimant used her property as security for the loan for that vehicle.

According to the evidence of the Claimant herself, there was “no problem” with the Defendant with respect to the loan for that Rav 4 vehicle. The Defendant’s evidence is that he made the payments for this loan by himself during the currency of the relationship. The evidence of the Claimant supports this; she testified that “he (the Defendant) was making the payments.” Her evidence is that the Defendant stopped making the payments when the relationship ended.

- (x) In the view of the Court, it is significant that, although that loan was secured by the Claimant’s property which, as she has stated is “in jeopardy” if the loan is not repaid, the Claimant makes no claim for the monies owed or outstanding on that loan. In response to the suggestion of Counsel for the Defendant that her reason for filing the claim against the Defendant, was “to get back the money on the loan that the Defendant had stopped paying”, the Claimant responded that this was “not the only reason”, but that it was “part of the reason.” Again, under cross examination and in response to the suggestion of Counsel for the Defendant that she was angry with the Defendant when he stopped making the payments on the loan, the Claimant denied that she was angry. She stated, “I was not angry with him for doing so.” She added, “I was upset with myself for trusting him. He (the Defendant) had betrayed the trust I put in him.”

(B) The Vehicle Agreement

- (i) There is no dispute that the Claimant agreed to purchase the Defendant's silver grey Mitsubishi Galant vehicle from him. The dispute arises with respect to the amount of the purchase price of the said vehicle. The Claimant alleges in paragraph 5 and 6 of her Statement of Claim that the agreed purchase price was \$ 6,600.00, and that this sum was paid to the Claimant. In paragraph 2 of a letter from the Claimant's Attorney dated 10th June 2008, "the agreed price of the Mitsubishi Gallant" is stated as \$6,000.00; further, that the Claimant paid the said sum of \$6,000.00.
- (ii) The Defendant refutes the allegation that the purchase price was \$6,000.00. He contends that the purchase price was \$15,000.00 and that this figure represents a discount on the value of approximately \$18,000.00. He however acknowledges that the sum of \$6,000.00 was paid to him by the Claimant by way of deposit.
- (iii) The evidence discloses that there is no written agreement between the parties with respect to the vehicle agreement. There is no receipt from the Defendant with respect to the amount paid. There is also no proof provided by the Claimant that any sums were paid by way of insurance premium or licence fee.
- (iv) The evidence also discloses that upon the payment of the sum of \$6,000.00 to the Defendant, that the Claimant had possession of the vehicle.

[25] It is the submission of Counsel for the Claimant that:-

"There were enforceable contracts between the parties in respect of the loan of money and the purchase of the vehicle. The conduct of the parties as established by the evidence is that both of them contributed gratuitously to each other in several ways but both knew and understood that in relation to the loans and the vehicles there was a mutual intention to create binding agreements."

[26] Counsel for the Defendant in her Submissions re-iterates that the Defendant specifically denies borrowing any money from the Defendant at any time. She counters the above submission of Counsel for the Claimant as follows:-

“The primary submission in respect of the alleged loans is that the alleged agreement between the former lovers, lacks the certainty which would be required to bring it within the category of binding obligations.”

Counsel quotes from Halsbury's Laws of England, Fourth Edition, Volume 9 at paragraph 266, which states:-

“The general rule is that, if the terms of an agreement are so vague or indefinite that it cannot be ascertained with reasonable certainty what is the intention of the parties, there is no contract enforceable at law.”

[27] It is the contention of Counsel for the Defendant that the nature of the agreement as set out by the Claimant is that the Defendant would repay the loan sums “by reasonable installments from time to time.” Counsel further contended that under cross-examination, the Claimant sought to change the “time to time” to “when he (the Defendant) got paid.” It is the further contention of Counsel for the Defendant that the expressions “when he got paid” and “from time to time” in effect have the same meaning and are “equally uncertain.” She adds that “there is no certainty as to amount or even intervals of payments”. Counsel therefore submits that “as such, that there was no agreement at all.”

[28] Counsel for the Defendant further submitted that “the above lack of certainty is often the inherent nature of agreements in domestic situations.” She adds that the lack of certainty is also indicative of the fact that, if any monies were loaned, there was no intention to create legal relations. Counsel cited the cases of **Gould v Gould**¹; and **Jones v Padavatton**².

¹ [1970] 1 AB 275

² [1969] 1 WLR 328

[29] The law is settled that the first requirement for the formation of a contract is that the parties should have reached agreement. As stated in Halsbury's Laws of England (supra), "Agreement is usually reached by the process of offer and acceptance and, where this is so, the law requires that there be an offer on ascertainable terms which receives an unqualified acceptance from the person to whom it is made."

The general rule is that there can be no contract without a "meeting of the minds of the parties, consensus ad idem." In the case at bar, the Claimant's claim with respect to the alleged loan agreements, is that there were "several oral agreements" between September 2006 and November 2007, and that the Defendant agreed to repay the said sums "by reasonable installments from time to time." The Defendant categorically denies borrowing any monies from the Claimant.

[30] Chitty on Contracts³ defines a contract of loan of money as follows:-

"A contract of loan of money is a contract whereby one person lends or agrees to lend a sum of money to another, in consideration of a promise express or implied to repay that sum on demand, or at fixed or determinable future time, or conditionally upon an event which is bound to happen, with or without interest."

[31] In order to create a binding contract, the parties must express their agreement in a form which is sufficiently certain for the courts to enforce.

[32] The Court will also not enforce an agreement unless the said agreement evinces an intention to create legal relations. "In the case of family, domestic or social agreements, it is presumed that there is no intention to create legal relations; but there is presumed to be such an intention in the case of commercial agreements."

[33] As stated by Edmund Davies L.J. in the case of **Gould v Gould**:

"There can be no doubt that husband and wife can enter into a contract which binds them in law... but it is upon the spouse asserting that such a contract has been entered into to prove that assertion... the evidence establishing such an intention needs, in my judgment, to be clear and convincing... While I agree that in the present circumstances

³ See 38-239 [909]

the probability that a legally binding agreement was intended may be greater than in *Balfour v Balfour*, nevertheless the best key in my judgment to the parties' intention is the language they employed. The importance of this aspect of the case is not restricted simply to the question of whether the agreement is bad for uncertainty, but extends to the initial question of whether a legally binding agreement was ever within the parties' contemplation."

[34] In the English Court of Appeal decision of **Jones v Padavatton**, Danckwerts L.J. stated:-

"...I have reached a conclusion that the present case is one of those family arrangements which depend on the good faith of the promises which are made and are not intended to be rigid, binding agreements."

[35] The Court is of the view that the presumption laid down in respect of agreements between spouses as stated in paragraph 33 & 34 above, would equally apply to situations where, as in the case at bar, parties are in a cohabitation relationship. As stated in Halsbury's (*supra*), "whilst it is clear... that spouses can impliedly enter into binding agreements, not only before marriage and after separation but also during cohabitation, the fact that the parties are living together in amity is a very strong factor tending to the conclusion that there was no intention to create legal relations."

[36] Under cross-examination, the Claimant stated that "he (the Defendant) gave the impression that he was unable to take care of himself unless I helped him." The Claimant further testified that "the impression that I got was that he (the Defendant) had some obligations and needs to be met which he could not meet and he requested my assistance, and that he would pay over time."

[37] It is the view of the Court that, even if the Court were to find that the Claimant agreed to loan monies to the Defendant, that there is no evidence that there was an intention to create a binding contract. The evidence of the Claimant is that the Defendant agreed to repay the monies "by reasonable installments within a reasonable time". Her further evidence is that "there was no real decision to this agreement." According to the Claimant, she continued to loan money to the Defendant even while he was still indebted to her.

[38] It is the further submission of Counsel for the Claimant that:

"The Claimant's record-keeping in respect of the loans she granted to the Defendant, his repayment by installments and the balance outstanding speak for themselves. Moreover, her overwhelming production of documentary proof of the relevant matters should render her at once reliable and believable."

[39] The rival submissions of Counsel for the Defendant on the issue of the Claimant's record-keeping are as follows:-

- (a) Although the Claimant apparently started making her notes from the outset, she stated in cross-examination that she showed the Defendant her notes only once, "at which time, the notebook indicates that the Defendant would have allegedly owed in excess of \$17,000.00."
- (b) It is incredible that the Claimant, despite the parties being in a relationship, would seek to make these regular records (down to even .40 cents) but over the course of the almost two year period, only show the Defendant the records once.
- (c) The Claimant did not ask the Defendant to sign or even initial her alleged records or give him any receipt or written record of his alleged repayments.
- (d) The Claimant under cross-examination accepted that it is possible for virtually anyone to prepare a series of figures and dates in an exercise book.

CONCLUSION

[40] In my opinion, and based on the totality of the evidence, the Claimant has failed to provide any cogent evidence to establish on a balance of probabilities that the Defendant and herself ever entered into an agreement or agreements for the loan of money to the Defendant.

[41] According to the Claimant's Witness Statement, she "voluntarily assisted" the Defendant "from time to time with no expectation of getting anything in return", and that she did so

in consideration of their "mutual affection." She also speaks of the "gratuitous assistance" which she provided to the Defendant "during the course of their relationship." The Claimant's claim, however, is for monies which she claimed were loaned to the Defendant, which range from sending money to the Defendant's children overseas for him, assisting his children to come home for the vacation, paying the legal fees for his divorce, to repairing and purchasing vehicles for him. If one looks closely at the totality of the Claimant's evidence, if, as she alleges, the above items were meant to be "loans", the only "gratuitous assistance" which she provided to the Defendant apart from cooking for him, would be purchasing food, and even then, it is her evidence that herself and the Defendant "took turns" to do so. This makes her "voluntary assistance" non-existent. In the view of the Court, therefore, the Claimant's assertion of "voluntarily assisting" the Defendant "with no expectation of getting anything in return" undermines her credibility.

[42] The Claimant's evidence of the Defendant's indebtedness to her is a notebook, which she kept, almost from the outset of the relationship. In this notebook, she wrote up "a ledger of records and dates" of monies which she alleged were loaned to the Defendant. She did so, without showing those records or the notebook to the Defendant, until as she stated, some time in 2007, when the balance owed by him was in the region of \$17,000.00. Those records were therefore not verified by the Defendant and were not even signed by him. Further, the Claimant failed to give any receipts to the Defendant. The Claimant testified that she is a "meticulous person". I believe that she is. It defies logic therefore, why the Claimant, being the meticulous person that she is, did not ensure that the Defendant sign the records or that he verify the accuracy of the said records, if indeed there had been, not one, but "several loan agreements" between them, as alleged.

[43] It is noteworthy also that the Claimant has sought to include in the records as being part of the alleged "loans", monies which, by her own evidence, she "gave" to the Defendant or which, based on my findings in paragraph 24 above, were not loans at all. According to the Claimant, these are records of monies owed by the Defendant to her, and his repayments towards the said loans. However, as stated above, there is evidence from

the Claimant herself that the Defendant made payments towards the bank loan for the Rav 4 vehicle. She stated that during the course of the relationship and before it ended, "there was no problem with the Defendant with respect to the loan" and that "he (the Defendant) was making the payments." Yet these records do not reflect these payments as being payments towards the bank loan.

[44] Given the inconsistencies contained in the Claimant's evidence with respect to the monies she "gave" to the Defendant as opposed to what she claimed she "loaned" to him, and given the fact that the only evidence in support of her alleged agreements consists of the record contained in her notebook, I respectfully disagree with the submission of Counsel for the Claimant that "the Claimant's record-keeping in respect of the loans she granted to the Defendant, his repayments by installments and the balance outstanding speak for themselves." Further, Counsel's submission that "the overwhelming production of documentary proof of the relevant matters should render her (the Claimant) at once reliable and believable", is with respect, without merit.

[45] It is my considered opinion that, whatever the reason for the Claimant making and keeping the records, that these records cannot support the Claimant's claim that the Defendant and herself "engaged in several transactions with the express intention of creating binding legal obligations between them." The records could just as easily have represented the Claimant's records of monies which were exchanged between herself and the Defendant, or else could have been a record of monies which she gave to the Defendant since the Defendant and herself were contemplating marriage and, as she claims, he was in a weaker financial position than she was. However, it is not the Court's function to speculate what these reasons are.

[46] Accordingly, based on the law and the evidence as adduced, I find that the Claimant has not proved, on a balance of probabilities, that she is entitled to the sum of \$13,532.40 "being the outstanding balances of several loans granted by her to the Defendant at his request between September 2006 and January 2008" as alleged in her said claim.

[47] In respect of the Vehicle Agreement, as stated in paragraph 24 above, there is no dispute that there was an agreement for the Claimant to purchase the Defendant's vehicle. The dispute is in respect to the amount of the purchase price. The Defendant's evidence is that the Claimant paid the sum of \$6,000.00 as part payment in respect of his vehicle, namely the silver grey Mitsubishi Galant and that the purchase price of the said vehicle was \$15,000.00. The Claimant's evidence is that the sum of \$6,000.00 represented the full purchase price. Again, as stated in paragraph 24 above, there is some discrepancy in the Claimant's evidence as to the exact amount of the purchase price. In any event, the Claimant's claim with respect to the vehicle agreement is for the full refund of the sum of \$7,450.00 being the purchase price of the vehicle – which she claims is \$6,600.00 – together with the licence fees and insurance premium.

[48] The Claimant has not denied that she did not return the vehicle to the Defendant after she had it in her possession in circumstances which are not disputed by the Claimant. The Defendant's evidence is that he took the vehicle to a mechanic after the Claimant complained that something was wrong with it. He stated that himself and the Claimant went to check on the vehicle at the mechanic's premises and that the Claimant drove off with the vehicle. He added that the Claimant thereafter refused to inform him as to the whereabouts of the vehicle, and also refused to return the vehicle to him. It is the further evidence of the Defendant that what transpired was that the Claimant's son had given the vehicle to a third party, and that it was only after the intervention of the police that enabled him to have the vehicle returned to him. None of this evidence was disputed by the Claimant. Further, under cross-examination, the Claimant agreed that despite her allegedly no longer wanting the vehicle, she refused to turn the vehicle over to the Defendant. She also accepted that the police became involved and that it was the police who eventually returned the vehicle to the Defendant: - "the police got involved with respect to the Galant. To the best of my knowledge, a police officer returned the vehicle to Maynard (the Defendant)."

[49] On perusal of the evidence and the conduct of the Claimant with respect to the vehicle, and in relation to the evidence in its totality, I accept the evidence of the Defendant in

preference to that of the Claimant. I find that, in spite of what Counsel for the Claimant in his Submissions characterized as the Defendant's "abrasive responses", that the Defendant was a forthright witness. The Defendant did not hesitate in admitting that he told the Claimant that he was going to cease making the payments on the loan for the Toyota Rav 4, and that he ceased making the payments when the relationship ended.

[50] In the view of the Court, the Claimant, on the other hand was less forthcoming and straightforward with her responses. For instance, under cross examination, when asked whether the Defendant and herself considered renting out her Suzuki vehicle when there was a demand and all the other vehicles were rented out, the Claimant denied that this was so. She then amended her response saying that "a one sided discussion is not a discussion." When pressed by Counsel for the Defendant, the Claimant responded "yes, he had this one sided discussion with me about renting the Vitara when all the vehicles were out."

[51] The Court is of the view that the evidence of the Defendant as to the purchase price of the vehicle is to be believed over that of the Claimant. The Claimant's evidence is that she wanted back the monies she had paid to the Defendant for the vehicle because he refused to change the vehicle into her name. She gives no reason for his refusal to do so. The Defendant's case is that at all material times, the Claimant knew that the Defendant would have completed the change of ownership upon receiving final payment for the vehicle. He states further that the Claimant informed him that she had changed her mind about purchasing the vehicle months after she had paid the \$6,000.00. The Court is of the view that the more likely inference to be drawn from the Defendant's failure to effect the change of ownership is that the Claimant had failed to complete payment of the purchase price, which, in the view of the Court, was \$15,000.00 rather than \$6,000.00. The Court is also of the view that the conduct of the Claimant with respect to the vehicle prior to its return to the Defendant by the police as stated in paragraph 48 above, militates against her credibility.

[52] The Court is of the view that, in the absence of a contrary intention in the verbal agreement entered into by the parties, the Defendant is liable to refund to the Claimant the sum of \$6,000.00 which he admits was paid to him by the Claimant. Although the evidence of the Defendant that he carried out repairs to the vehicle after it was returned to him by the police was not challenged by the Claimant, the Defendant produced no receipts to substantiate the amount of the repairs. Further, the Defendant made no counterclaim for the repairs. Additionally, in the absence of a counterclaim by the Defendant, the Court makes no finding in respect of loss income for rental of the vehicle.

ORDER

[53] Accordingly, my order is as follows:-

1. The Claimant's claim against the Defendant with respect to the sum of \$13,532.40 is hereby dismissed.
2. The Defendant is to pay to the Claimant the sum of \$6,000.00 by way of refund of the deposit of the purchase price paid for the Mitsubishi Galant.
3. Both the Claimant and the Defendant are entitled to costs based on the awards in accordance with Part 65 of the Civil Procedure Rules (CPR) 2000.



JENNIFER REMY
High Court Judge