

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: GDAHCV2008/0617

BETWEEN:

MARY ANGELLA RADIX

Claimant

and

ANDY ANDALL

Defendant

Appearances:

Ms. Afi Ventour de Vega for the Claimant

Mr. Derick Sylvester for the Defendant

2010: February 1, 17

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This is a story that is all too common in these days. It is a story of a relationship gone wrong and the parties ending up in court to do battle over loans and other assets acquired during the course of the relationship.
- [2] The Claimant and Defendant in this matter started a relationship sometime in 2004 and soon thereafter the Defendant moved into the Claimant's house.
- [3] The Claimant by all accounts was and is an industrious woman who has her own business selling popcorn and sweets at various functions and events. She also has her own home, an apartment building as well as two vehicles.
- [4] At the beginning of the relationship the Defendant was a relatively young man. The Defendant maybe with the encouragement of the Claimant wanted to start his own business, selling food and drink. The Defendant did not have the necessary financial resources to do so. The Claimant agreed to help.

- [5] As a result, the Claimant took a loan from the bank in the sum of \$14,000.00 in order for the Defendant to have a vehicle in which to transport the items he had for sale.
- [6] The vehicle was purchased and licenced and insured in the Claimant's name. The Defendant was supposed to get the requisite T-licence in order to operate the vehicle. He never did, and in 2006 there was an accident. The vehicle was damaged extensively. No claim was made to the Insurance Company, and no charges were field against the other driver, who the Defendant asserts was the cause of the accident. No explanation was forthcoming from either party as to why neither of these steps was taken.
- [7] In any event, the loan for the vehicle had to be repaid to the bank. There are varying accounts as to what happened with respect to the repayments and the arrangements for the repayment of this loan.
- [8] The Claimant in her evidence said that the Defendant agreed to pay the monthly installments on the vehicle directly to her. She said in her Witness Statement he made payments of \$500.00 per month to her for about four (4) months then he reduced it to \$300.00.
- [9] However, in cross-examination she said that the range of payment would be between \$300.00 - \$800.00 per month. She admitted that she did not document every time the Defendant paid the mortgage to her. She also admitted that she did not document when he paid the bank.
- [10] In answer to the Court she said that the Defendant made only one payment of \$300.00. She further said that the Defendant was to pay the sum of \$20.00 per day towards liquidating the vehicle loan, but he only did so for approximately three weeks. The last payment of \$20.00 was in October 2008.
- [11] She stated that she did not make a note in writing of what was paid. She said she made a mental note of the amounts paid by the Defendant. She did not make a

note of every month the Defendant paid her. She did not write down when the Defendant paid.

- [12] At some point in time the Claimant needed further financing from the bank. She was informed that she would have to pay off the loan for the vehicle if she wished to do so. The Claimant duly paid off the outstanding sum on the loan in the sum of \$4,687.24.
- [13] The Court was not put into a position to make a determination of how much of the loan, minus the sum of \$4,687.24, was paid by the Defendant.
- [14] The Court was left in the dark as to how much, if any, of the \$4,687.24 the Defendant paid back to the Claimant after she paid off the loan. The mental notes taken by the Claimant were not translated into actual figures for the Court and unfortunately remain within the mental recesses of the Claimant.
- [15] With respect to the vehicle T412, the Defendant and his witness John Mark both assert that the vehicle was written off. That the vehicle was in an accident in 2006 is not disputed. What happened to the body of that vehicle after the accident is very much in dispute. The Claimant says it was not written off but that the Defendant purchased a shell from a Mr. A. Greasley of the same make, model and colour of T412. She says it was repaired and is on the road being driven by the Defendant. She insured it up to 2008-2009.
- [16] The Defendant's witness John Mark gave evidence that T412 was written off by him. He is a mechanic who had worked on the original vehicle T412.
- [17] I have found as a fact that the vehicle was purchased for the use of the Defendant but he was not the owner thereof. Throughout the vehicle remained the property of the Claimant. She was the registered owner. The policy of insurance was in her name.

- [18] While the Court has its own view as to why an insurance claim was never made with respect to the accident in 2006, that matter is not of any real importance in the issues to be decided in this matter.
- [19] The Court finds as a fact that the vehicle T412 was written off in the accident of 2006. The damage to the vehicle as described by both the Claimant and the witness for the Defendant, John Mark, lead the Court to believe that the damage was substantial and that whatever was left of the vehicle was minimal at best. The parts are scattered far and wide and are not in some cases retrievable at this time.
- [20] The Claimant asserts that she lent a further \$8,000.00 to the Defendant to repair T412. Apart from her bald assertion that she did so, even though she alleges that she did this by cheque, no tangible evidence of this loan has been proffered.
- [21] The Defendant denies receipt of a loan of \$8,000.00. But even if the Court wanted to accept the Claimant's evidence that she did loan the sum of \$8,000.00 to the Defendant, it cannot do so. The law is he who alleges must prove. In the instant case the Claimant has failed to do so on all counts.
- [22] In the circumstances, the Claimant fails in every aspect of her claim.
- [23] Judgment is therefore entered for the Defendant with costs in the sum of \$2,000.00.



Margaret Price Findlay
High Court Judge