

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

Claim No. ANUHCv 2001/0119

BETWEEN:

MARGARET FRASER

- Claimant

and

CARL NATHANIEL

- Defendant

Appearances:

Ralph Francis for Claimant

George Lake for Defendant

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2004: June 3rd
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JUDGMENT

- [1] **FERDINAND, J. (Ag.):** While on a visit to sunny Antigua from her native England in 1997 the Claimant Margaret Fraser got to know the Defendant Carl Nathaniel. She was quite taken by him and they became lovers. She trusted him to the point that she opened a joint bank account with him in Antigua, although this was prompted by her understanding that it was easier for a foreigner in Antigua to open such an account together with a national, than to open one in her sole name. Ms Fraser placed a substantial sum of money in the said account. The operation of the said account is not, however, the source of any complaint in these proceedings.

- [2] Ms Fraser admitted under cross-examination that she spent approximately EC\$20,000.00 on airfares and accommodation for Mr. Nathaniel. He visited her in England on several occasions, and when she was in Antigua he would stay with her at her hotel.
- [3] It is disputed between the parties as to the precise duration of their intimate relationship, but it is common ground that after the relationship had existed for some years, Ms. Fraser sold her home in England, transferred the proceeds of sale to Antigua, and used a substantial portion of that money to purchase, outfit, license and insure a Mercedes 14-seater bus. A total of some EC\$99,234.77 was provided by Ms Fraser in this regard. The bus was registered in the sole name of Mr. Nathaniel.
- [4] It is also common ground that shortly after the purchase of this bus the ardour in the relationship began to diminish as Mr. Nathaniel withdrew his affection. Mr. Nathaniel contends that it is his withdrawal from the relationship that has prompted the making of the claim in this case.
- [5] Ms Fraser's amended Claim is for \$99,234.77 comprising an alleged debt owed by the Defendant to her arising out of the transaction whereby the Mercedes 14-seater bus was purchased, outfitted, insured and licensed from money provided by Ms Fraser. The bus was insured and licensed in the name of the Defendant to enable him to ply the bus for hire. The Claimant's case is that it was orally agreed that the Defendant would repay her the said sum of \$99,234.77 from the income he would earn by his use of the bus for hire.
- [6] The Defendant denies any indebtedness to the Claimant and states that there was never any oral agreement for him to repay the Claimant for the money she provided for the bus. His case is that the money provided by the Claimant was a gift from one lover to the other.
- [7] The burden of proving the alleged debt lies on the Claimant and it must be proved on a balance of probabilities.
- [8] On the pleadings and the evidence adduced at the trial, this Court makes the following findings. There had undoubtedly been a close, intimate relationship between the parties in existence at the time that the bus was bought. It was not disputed at the trial that the Claimant provided the money as alleged in the amended statement of claim, and that the Defendant benefited therefrom by having the bus purchased in his name and by using same. The Defendant alone had a duty-free concession and he was a national of Antigua

and Barbuda, able to engage in business as such. The Claimant did not have these advantages.

- [9] The Claimant did expend considerable sums of money on the Defendant, principally by way of airfares and accommodation expenses. She has never made any claim for repayment of those sums of money. These expenditures on airfares and accommodation brought Mr Nathaniel closer to the Claimant and thus enabled her to enjoy the pleasures of his company. I also accept that the Claimant gave the Defendant gifts of jewelry, clothing and some spending money. Very significantly, the Defendant said in evidence that he knew that the Claimant was a retiree who had transferred the proceeds from the sale of her house in England to Antigua and Barbuda and that this was money which she intended to use to live on in Antigua as her place of retirement.
- [10] Learned counsel for the Claimant urged the Court to hold that the Claimant provided the money for the purchase and outfitting of the bus in order to help the Defendant, but on the basis that he would repay her. I so hold. Given the relationship between the parties at the time, it is not that surprising that the repayment arrangement was not documented. As this litigation demonstrates, that lack of documentation was clearly imprudent.
- [11] In the circumstances of this case, even making allowance for the 'foolishness' of one who was lovestruck (to which learned counsel for the Defendant alluded in his address), I do not accept that the Claimant made a gift of such magnitude to the Defendant. I prefer and accept the evidence of the Claimant, particularly on the central question as to whether it was agreed that the money was to be repaid.
- [12] Accordingly, it is ordered that there be judgment for the Claimant against the Defendant in the sum of \$99,234.77, plus Costs in the sum of \$5,000.00 as agreed by both Counsel prior to the start of the trial.

J EMILE FERDINAND

High Court Judge (Acting)

