IN THE SUPREME COURT OF BELIZE A.D., 2018

CLAIM NO. 67 OF 2020

BETWEEN

(MOHIT BUDRHANI	**CLAIMANT**
(	
(AND	
(	
(VEENU SADARANGANI	**DEFENDANT**

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Decision Date:

4th March, 2021

Appearances:

Erin Quiros, Counsel for the Claimant.

Hubert Elrington, SC Counsel for the Defendant.

KEYWORDS: Contract - Oral - Loan - Terms - Interest - Rate of Interest - Breach - No Repayment - Remedies

JUDGMENT

[1.] This case concerns an oral agreement which the Claimant says was for a loan of $50,000.00 that he made, as a friend and member of the Indian community, to the Defendant in 2014. He said it was also agreed that the sum would attract interest at 2% per month. Repayment was to take the form of $1,000.00 installments. The first installment was to have been made in August, 2014.

[2.] As security, the Defendant gave the Claimant two (2) signed cheques in the sum of $25,000.00 each. When he attempted to cash them at the appropriate bank, he was informed that the account no longer existed. He says despite repeated pleas for repayment he has never received any part of the loan sum.

[3.] The Defendant denies borrowing any money from the Claimant or agreeing to the payment of any interest at all. She says the Claimant was a family friend and she was merely assisting him in the furtherance of his unlicensed money lending business where he mainly purchased illegal US currency. He kept large sums of Belizean currency in his home and was assisted by his trusted business associates of which she was one.

[4.] The arrangement was that she would give him a cheque for a large sum of money ($50,000.00 in this case) which he would cash and then hand over the cash to her. She was expected to safely keep the money until he needed it. Upon his request, she would send portions of that sum to him. She said that as a trusted friend to him she obliged and has repaid over $44,000.00 through courier. She kept no records but is prepared to immediately deliver the outstanding $5,500.00.

Preliminary Matters:

[5.] The Defendant filed her witness statements but omitted to serve them in accordance with the order of the Court. Senior Counsel attempted to make an Oral Application for an extension of time and relief from sanctions but was informed by the Court that in accordance with the Civil Procedure Rules he needed to make a formal application supported by affidavit. This he did on the

27th January, 2021. However, the Application was dismissed at the Pre-trial Review when Counsel for the Claimant objected to the affidavit in support.

[6.] That affidavit had been made by Senior Counsel himself and contained matters which went well beyond the formal. The affidavit was accordingly struck out which meant that the Application had lost its foundation and had to be dismissed. The Defendant offered no evidence at the trial but Senior Counsel cross-examined the Claimant's witnesses.

The Issues:

1. Was there an oral agreement made between the Claimant and the Defendant?
2. Was there a breach of that oral agreement by the Defendant?
3. If there was a breach, what remedies are the Claimant entitled to?

Was there an oral agreement made between the Claimant and the Defendant:

[7.] The Court considers the Defendants own admission in her pleadings that she received the $50,000.00. The Claimant also provided a number of WhatsApp messages between the Defendant and the Claimant, which were not objected to by the Defendant. In those messages, the Claimant specifically asked for the balance owed (August, 2014), interest payments of $13,500.00 (September, 2014), checks and interest payment (October, 2014), interest and cheques (February, 2015), interest (June, 2015).

[8.] In January, 2016 he messaged asking her for postdated cheques *"for the $50K that you owe me it has been over two years now. You can pay $5K for 10 months"*. She

responds thanking him for his patience and understanding and continues *"God bless you u will send u the cks but will start the first payment in February as I am trying to settle a few things"*.

[9.] He then informs her that he will send Ravi to collect this afternoon but she asked him to do this on Monday instead as she had ordered the book (the Court assumes this to be the cheque book) and it was expected on Monday. He agrees, but pleads for no more delays. She assures him *"no will not."* Nonetheless, there he is again in March, 2016 asking for payment and promising police or lawyer involvement otherwise.

[10.] There is no evidence of activity again until February 2018 when a letter was sent on his behalf by his lawyers, Balderamos Arthurs LLP. It demanded payment of $90,000.00 inclusive of interest on the $50,000.00. There does not appear to have been any response. His lawyers write again on the 16th February directing full settlement in three (3) days or legal action.

[11.] There is also exhibited a letter sent to the Claimant's attorneys on the Defendant's behalf from H E Elrington & Co dated the 23rd February, 2018. It admits that the Defendant did receive $50,000.00 from the Claimant (though not as a loan). It was entrusted to her as part of his money lending business and was to be returned by installments of $1,500.00 monthly, without interest. The Defendant offered no evidence to substantiate any of these allegations.

[12.] Having considered all of this evidence, there is no doubt in my mind that the Claimant did in fact loan the Defendant $50,000.00. What remains to be determined is what the specific terms were under which this sum was lent.

Terms of the Loan Agreement:

[13.] The Court considered the Claimant's pleadings which were not exactly on all fours with his testimony. In his Statement of Claim, the Claimant averred that the loan was made on or around September, 2014. His witness statement says it was made on or around July, 2014.

[14.] He pleaded that he was to have been repaid in monthly installments of $1,000.00. However, in his witness statement, he said installments of $1,000 .00 with a lump sum payment when the Defendant was able.

[15.] He also said that he agreed to 2% interest because the loan was expected to be for a short term (three months) How could repayment of $50,000.00 in installments of $1,000.00 per month ever be considered short term? There was, by his own admission, no specified time for payment of this alleged lump sum nor was the exact amount of the lump sum ever specified.

[16.] The first payment, he testified, was to have been made in August, 2014. But his WhatsApp message of August, 2014 does not ask for an installment it asks for *"the balance owed"*. When someone speaks of a balance they are actually admitting that some part of the total has already been accounted for. Perhaps he used the word incorrectly or perhaps if there was testimony from the other side this may have been clarified. But as it is, the Court can only consider the evidence before it.

[17.] The Court cannot, however, turn a blind eye to the pattern which emerged through those WhatsApp messages. They began on the 14th August, 2014 and disclosed that up to January 2016 the $50,000.00 remained outstanding and a first installment or payment of any kind had yet to be made.

[18.] There are also repeated demands for interest made by the Claimant. His offer, on the 7th January, 2016, to have the Defendant *"pay $5k for 10 months"* is reminiscent of his 30th September, 2014 message. There, he said he was sending to pick up payment for nine (9) months of interest.

[19.] The Defendant does not deny any of this in her WhatsApp replies up to and on the 8th January, 2016. In fact, she thanks him for his patience and understanding and promises to make a first payment in February. That alone is acknowledgement that payment was supposed to have been made and that the Defendant was really not the one being the helpful friend. Rather, it was the Claimant who was showing leniency.

[20.] There seems to have been no change up to 19th March, 2016 when the Claimant writes again. The WhatsApp messages stop abruptly here, with no explanation offered by the Claimant. This gives me pause. It was surprising that no issue was made of it under cross examination.

[21.] The Court's attention was also drawn to the Claimant's demand of $13,500.00 interest in his message of September, 2014. This is stated to be for nine (9) months which is impossible according to the Claimant's own pleadings and testimony.

[22.] His testimony is that the Defendant borrowed the money in July, 2014. So by September, 2014 that would have been only two months. Interest is not paid in advance, it accrues over time. Interest of that amount, for nine (9) months, (as is stated in the message) is $1,500.00 per month or a rate of 3% (not 2% as pleaded) per month. Far worse, if it is for a two month period (in accordance with the pleadings) then that would be at a rate of 13.5% per month which must be impossible. Something is incredibly wrong.

[23.] The Court also notes that the matter of the rate of interest was not addressed by Counsel for the Claimant in either her written or oral sub missions. She repeated the evidence given by the Claimant's and at paragraph 25 simply said *"....on a balance of probabilities, there was an oral agreement between the Claimant and the Defendant where the Claimant loaned the Defendant the sum of $50,000.00 with interest."*

[24.] So while the Court is certain that there was an agreement to pay interest, I reject the Claimant's evidence as to the rate of that interest. He has not convinced me, on a balance of probability, that the rate was 2% per month as he has stated and claimed. Interest shall instead be assessed by the Court and be awarded at the rate of 6% per annum.

[25.] The WhatsApp messages are also cogent evidence that the loan was to be repaid in installments. I take this from the Defendant's own response of January, 2016 that she would make the first payment in February. The Claimant's evidence that repayment was to have been by monthly installments of $1,000.00 has not been refuted and is, therefore, accepted.

The balloon payment of an unspecified sum was never pleaded as a term and is rejected wholesale.

Was there a Breach by the Defendant of the Oral Agreement:

[26.] The Defendant pleads that she has repaid the debt in part. She offers no evidence of this and the very WhatsApp responses from her prove that for quite a considerable period of time (up to 2016) the debt remained unpaid. Even what was put by Senior Counsel to the Claimant under cross-examination was not what she had pleaded.

[27.] In her pleadings she said she had sent her payments by courier to the Claimant. But the case put the Claimant by Senior Counsel was that the money had been paid to the Claimant's now deceased father. This Counsel for the Claimant found to be a disturbing discrepancy.

[28.] On the other hand, the Claimant was not shaken under cross examination. He remained firm in his testimony that he had never been repaid. His supporting witness, Ravi Bodani, also testified to having gone to the Defendant's business place on numerous occasions but leaving without any of the promised payments. He also testified to having never seen the Defendant or her employees come to the Claimant's business place to drop off any packages or envelopes.

[29.] In his submissions, Counsel for the Defendant proposed that the Claimant, being engaged in the business of Money Lending, must comply with the Money Lenders Act Cap 260 (the Act). He asked the Court to consider

section 13 particularly and to find any oral contract made between the parties to be unenforceable.

That section reads:

13.–(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender after the commencement of this Act or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract.

(2) No such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(3) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and the effective annual rate of interest charged on the loan.

He also referred to section 23 and urged that the claim was out of time. That section provides:

23.–(1) Notwithstanding anything contained in the Limitation Act, Cap. 170, no proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued.

(2) .....

[30.] In his oral submissions he urged that the circumstances of the transaction begged to be defined as a money lending business. He highlighted the fact

that the Claimant was a businessman. That the Claimant and his business manager were both present when he had given her the $50,000.00. That he admitted being enticed to give the loan by the Defendant's offer to pay 2% interest per month. A rate which the Claimant himself accepted was very high.

[31.] This, he concluded, was nothing more than a business to produce interest and the workings of a money lender. There was a course of business known to both parties to the transaction and was an open, naked and flagrant breach of the Act. Why then would he have such a large sum of money with him, where did it come from? It could only have been there to facilitate his illegal activity.

[32.] In response, Counsel for the Claimant asked the Court to consider that the agreement was for a personal loan between friends. There is no law which prevents such a transaction or requires that a license be obtained to do this.

[33.] She stressed that the Claimant was not in the business of lending money. She drew the Court's attention to section 2 of the Act and the definition of a moneylender contained therein;

"moneylender" includes every person whose business is that of money lending, who advertises or announces himself or holds himself out in any way as carrying on that business,.....

[34.] She further submitted that there was absolutely nothing beyond the bare allegations made in the Defendant's statement of case which suggested that the Claimant was an unlicensed money lender. This was an allegation which

the Claimant strenuously denied. As such, the parties were free to contract as they did.

[35.] In her view, it was beyond strange that the Defendant tried to use the agreement to pay interest at the rate of 2% per month as proof of a money lending business profiting from interest payments. Since the Defendant had been adamant in her pleadings, and in the case put the Claimant that she did not take a loan and never agreed to pay any interest.

[36.] Counsel insisted that the Defendant had breached that contract by her failure to repay any part of the sum loaned to her. The fact that they agreed to interest does not amount to evidence of a money lending business either.

[37.] This Court agrees with the Claimant entirely. There must be some proof of a money lending business for the Act to apply. The Court found nothing suspicious of a businessman, at his business place which sells electronics, to have $50,000.00 cash.

[38.] Moreover, there was no evidence that the arrangement had not been made in advance so that when the Defendant arrived the Claimant had already prepared himself for the transaction. There is no evidence led either that the postdated cheques had not been agreed between the parties prior to the date of the loan which would explain why the Defendant also came prepared.

[39.] There is simply not sufficient evidence before the Court on which a finding could be made that the Claimant was in fact conducting a money lending enterprise and I so hold.

[40.] The Court finds that there is, however, an enforceable contract between the parties. The Defendant has repaid no part of the $50,000.00 loaned to her in July, 2014. That constitutes a fundamental breach for which the Claimant is entitled to a remedy.

If there was a breach, what remedies are the Claimant entitled to:

[41.] The Claimant will have damages in the sum of $50,000.00 with interest at the assessed rate of 6% per annum from the date of the breach which the Court finds to be the 30th August, 2014 to the date of judgment herein and thereafter at the statutory rate of 6% per annum until payment in full.

Determination:

1. Judgment for the Claimant.
2. Damages are awarded to the Claimant in the sum of $50,000.00 to be paid by the Defendant.
3. Interest is awarded to the Claimant at the assessed rate of 6% per annum from the date of breach to the date of judgment herein being 30th August, 2014 and thereafter at the statutory rate of 6% per annum until payment in full.
4. Costs to the Claimant in the sum of $10,000.00 as agreed.

SONYA YOUNG
SUPREME COURT JUDGE