SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1998

SUIT NO: 676 of 1993

BETWEEN

1. **JOHN BERTRAM GODDARD**
2. **THERESA Z.P. GODDARD**

PLAINTIFFS

AND

1. **FITZ GERALD WILLIAMS**
2. **SHIRLEY WILLIAMS**
3. **WILLIAMS HOLDINGS LIMITED**

DEFENDANTS

Appearances:

Mr E Calderon for the Plaintiffs
Mr LA Williams for the Defendants

1998: September 28
October 19
December 3, 18

JUDGMENT

Mitchell J

This is a claim on a moneylending contract. The case began by a Writ of Summons endorsed with a Statement of Claim issued on 2 November 1993. By it the Plaintiff claimed sums of money lent between May 1988 and March 1989 amounting to EC$200,000.00. These loans were consolidated in writing in February 1990, with the agreement that $5,000.00 was to be paid each month. The claim is for repayment of the principal sum of $200,000.00; $5,000.00 per month from 15 May 1990 to date of repayment; payment of 2 months arrears due prior to May 1990 or $10,000.00; general damages for breach of the agreement; and costs. By a Defence filed on 23 November 1993 the Defendants offered a bare denial of any breach of the agreement,

deny that they are indebted in any sum at all, and deny each and every allegation in the Statement of Claim. On 9 March 1994 a Request for Hearing was filed.

On 28 September 1998 the matter came up on a call over, and was set down for a pre-trial hearing in Chambers on 19 October 1998. On 19 October 1998 the following pre-trial directions were given: (i) The Defendants were given leave to amend their Defence giving full particulars of the defence, and to serve and file the Amended Defence on or before 2 November 1998; (ii) any Amended Reply in answer to the Amended Defence to be served and filed within 8 days of service of the Amended Defence; (iii) lists of proposed exhibits to be filed and served on or before 2 November 1998; (iv) copies of proposed exhibits to be exchanged within 8 days of service of the lists; (v) no other exhibit save those so listed and exchanged to be admissible in evidence; (vi) the matter was set down for hearing in open court on 3 December 1998.

By an Amended Defence served on 28 October and filed on 30 October 1998 pursuant to the above directions, the Defendants pleaded that the promissory notes were purporting to bear interest "undclear undefinite and unintelligible [sic]" in that necessary constituents, attributes and incidents relating to interest were not covered in the promissory notes. The Defendants made payments to the Plaintiffs up to 6 January 1993 in the sum of $262,000.00 The Defendants sought relief in respect of the transactions on the grounds that the purported interest on the sum owed is excessive, and that the transaction taken as a whole is harsh and unconscionable - all as by the Ordinance provided. The Defendants sought the reopening of the transaction and the taking of accounts. There was no Reply served

and filed in response to the Amended Defence.

The matter came up for trial on 3 December 1998 when the Court heard evidence from John Bertram Goddard for the Plaintiffs, and Fitzgerald Williams and Claude Griffith for the Defendants. All of the Plaintiffs' exhibits were put in by consent.

John Goddard is an elderly retired businessman. He had been a very successful businessman in St Lucia. He and his wife were very friendly with the Defendants. He had cash and he urged the Defendants to make use of it. Over a period of years he made a number of loans to the Defendants. He had never himself borrowed money from any person or institution. He had never had a bill of sale, or a hire purchase agreement, or drawn up a promissory note, nor had a mortgage. He dealt only in cash for all his business life. After he lent the Defendants the first amount of $20,000.00 on 16 May 1988 he told the Defendants he would make a "charge" for the loan. They agreed. They never discussed any rate of interest. He typed up the following document, and he and his wife and the two Defendants all signed it:

"AGREEMENT

16th May 1988

It is hereby agreed that John B Goddard will grant a cash "money" loan to Mr & Mrs Fitzgerald Williams of the Morne Castries in the amount of Twenty Thousand Dollars $20.000.00. During the period of the said loan Mr & Mrs Fitzgerald Williams promise to pay to John B Goddard his heirs or successors the

sum of one thousand dollars such payment to be made monthly starting on 15 June 1988 and continuing monthly until the loan of the $20.000.00 is recalled and repaid to John B Goddard. There shall be a notice period of 60 days "sixty" given to Mr & Mrs Williams before the repayment of the loan is recalled.

(sd) Fitzgerald Williams *(sd) John B Goddard*

(sd) Shirley Williams *(sd) Theresa Goddard"*

Various additional loans were made by the Plaintiffs to the Defendants. The 2nd Agreement was typed on the letterhead of the Plaintiffs' company. The 3rd and subsequent Agreements were typed on the Defendants' company letterhead. They are all in identical wording, but for various sums, amounting to a total of $200,000.00. By 1990 the monthly payments under the various loan agreements amounted to $8,000.00. The 1st Plaintiff had a discussion with his wife and as a result decided to reduce the monthly payments to $5,000.00 The parties signed a new Agreement which read as follows:

"It is hereby agreed that John Bertram Goddard, of Vigie, Castries, St. Lucia W.I. retired business man, his wife Theresa Z.P. Goddard. (Nee Maroun.) their children Mark-John Goddard. Jason Bertram Goddard. Jermain Marie Goddard. Jacinta Lucia Goddard.do hereby agree that the following existing agreements be rescinded.

As follows.

No:1. Agreement dated 16th May 1988. *$20.000.*

No:2. " " 8th August 1988. *20.000.*

No:3.	*"*	*"*	*19th January 1989*	*10.000.*
No:4.	*"*	*"*	*28th March 1989.*	*50.000.*
No:5.	*"*	*"*	*28th March 1989.*	*100.000*
			Total $	*200.000*

And in their places we do now agree with Fitzgerald Williams, his wife Shirly Williams, with Williams Holdings their heirs and successors that the sum of Five Thousand dollars $5.000 be paid in two installments. Each instalment two thousand five hundred dollars $2.500. to be paid on the first and the 15th of every month beginning first February 1990.

Regarding the loan of $200.000 to Fitzgerald Williams, his Wife Shirly Williams, with Williams Holdings, there shall be a notice period of sixty days (60 days) given to Fitzgerald Williams, Shirley Williams, Williams Holdings,Their Heirs and successors before the repayment of the cash Loan given them ($200.000)."

The Plaintiffs were very good friends with the Defendants. The 1st Plaintiff emphasized repeatedly how close he and his wife were to the Defendants. He claimed no interest from the Defendants. He had no agreement with the Defendants for them to pay interest. He is not a moneylender. He has never lent any money to any other person before he made these loans. He lent the first money to the Defendants without any agreement, and then prepared the 1st Agreement himself. He did not consider the Agreement to be a promissory note. He wrote it only as a friend to a friend. He needed no security, as the Defendants were friends and family. He was quite confident that the Defendants could pay back the loans. All of the monthly payments, starting first at $1,000.00 a month on the first

$20,000.00, and then amounting to $8,000.00 per month on the full $200,000.00, were charges that he set and made to the Defendants for lending them the money. None of the $262,000.00 that the Defendants have re-paid to the Plaintiffs was towards principal. He was adamant that he was not allowed to receive any money towards principal without giving the Defendants the appropriate notice set out in the Agreement. He could have increased the monthly charge above $8,000.00 if he had wanted. It was he who unilaterally reduced it to $5,000.00 a month after talking it over with his wife and preparing the consolidated loan Agreement. The loan could only have come to an end if he had given Mr Williams the appropriate notice, and Mr Williams had re-paid him the lump sum of $200,000.00. He was convinced that the Agreements were fair and reasonable, drawn up as they were between friends.

In 1992 Mr Claude Griffith, who is a Fellow of the Association of Certified Chartered Accountants of the United Kingdom, and a member of the Institute of Chartered Accountants of St Lucia, qualified since 1959, 1st Vice Chairman of the National Commercial Bank, and the Defendants' accountant, did a calculation of the payments made by the Defendants to the Plaintiffs. The monthly charge due on the 1st Agreement would be the equivalent of a rate of interest of 60%. The 2nd and 3rd notes also involved charges the equivalent of a 60% rate of interest. Other Agreements bore charges that were the equivalent of rates of interest that ranged from 30% to 60%. In 1987 the prime rate of the commercial banks lending to their best customers was 9%. During that period and in subsequent years the best rate that one could get on Certificates of Deposit was about 7%. In some years it went down to 4%. In a meeting that Mr Griffith held with Mr Goddard and Mr Williams in January 1993, Mr Griffith

presented to Mr Goddard that it would be fair to review the transactions between the parties at an assumed rate of 20% interest. Mr Goddard did not accept this, but asked Mr Griffith to put it in writing. Mr Griffith did a calculation of what the effect of the various payments that the Defendants had made to the Plaintiffs would have been if the loans had borne interest at a rate of 20% per annum on the daily balances outstanding. Without going in to all of the calculations, suffice it to say that principal and interest due to 5 January 1993 was $280,042.87. Cash payments made up to 6 January 1993 amounted to $262,000.00. That would leave a balance outstanding due to be paid the Defendants to the Plaintiffs of $18,042.87 at an assumed rate of interest of 20%. Mr Griffith set this all out in a report that he made to the parties and that was an exhibit. In his evidence, Mr Goddard was clear that he was not in agreement with this. He expected the Defendants to pay him the amount of $200,000.00, his charges at $5,000.00 a month since May 1993, and damages for their breach of the Agreement.

The Defendant Fitzgerald Williams, who is a qualified pharmacist, gave his evidence. He did not appear to be an astute or successful businessman. He stated, close to tears, that he has not a cent to his name. He is close to bankruptcy. It seems that he and his wife signed the documents presented by Mr Goddard each time money was advanced without looking at them. None of the charges imposed by the 1st Plaintiff in any of the Agreements were the result of discussion or negotiation. The course of conduct between them was that money would be advanced without any document being signed at that time. A few days later the 1st Plaintiff either brought in an Agreement or would come into the Defendants' office and dictate to the 1st Defendant's secretary, who typed it on a company letterhead for the

parties to sign. The 1st Defendant stopped making payments when his business failed and he realized that he would have to pay $5,000.00 per month for ever.

The law governing money lending is the Moneylending Act, Cap. 248 of the 1957 Revised Edition of the Laws of St Lucia. Section 2 provides

> *"Where proceedings are taken in any court by any person for the recovery of any money lent before or after the date of the coming into force of this Ordinance, or the enforcement of any agreement or security made or taken before or after the date of the coming into force of this Ordinance, in respect of money lent, and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals, or any other charges, are excessive, or that in any case, the transaction is harsh and unconscionable, the court may re-open the transaction, and take an account between the lender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly chargeable and due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aide, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money*

lent, and if the lender has parted with the security may order him to indemnify the borrower or other person sued."

The case of Carringtons v Smith [1906] 1KB 79 is applicable. In that case Channell J held, according to the headnote, that

"although the rate of interest asked, 75% per annum, was high, that fact did not of itself necessarily render the transaction "harsh and unconscionable" and that, having regard to the risk and to all circumstances of the case, amongst which the Court was entitled to consider the fact that the Defendant understood the transaction, and without any misrepresentation or pressure by the Plaintiffs voluntarily agreed to pay the interest asked, 75% per annum, was a reasonable rate of interest, and not "excessive" within the meaning of the Act, and the transaction was not "harsh and unconscionable" and that the Defendant was therefore not entitled to relief."

The House of Lords case of Samuel v Newbold [1906] AC 461 was a case under the Moneylending Act. It dealt with the circumstances that permit a Court to re-open a transaction and take an account between the moneylender and the person sued. Per Lord Loreburn LC at p. 466

"Under the Money Lenders Act 1900, s.1 sub-s.1, a court may re-open a trans action and take an account between the money-lender and he person sued upon two conditions. The first condition is that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, are excessive. There cannot be any doubt that the

interest charged in this case is, under the circumstances, excessive. The second condition is that the contract is harsh and unconscionable, or is otherwise such that a Court of Equity would give relief. A serious question has arisen in this case as to the meaning and effect of these words."

And at page 467:

"What the Court has to do in such circumstances is, if satisfied that the interest or charges are excessive, to see whether in truth and fact and according to its sense of justice the transaction was harsh and unconscionable. We are asked to say that an excessive rate of interest could not be of itself evidence that it was so. I do not accept that view. Excess of interest or charges may of itself be such evidence, and particularly if it be unexplained. If no justification be established, the presumption hardens into a certainty. It seems to me that the policy of this Act was to enable the Court to prevent oppression, leaving it in the discretion of the Court to weigh each case upon its own merits and to look behind a class of contracts which peculiarly lend themselves to an abuse of power".

Given the admissions made by Mr Goddard under cross-examination, this is clearly a case for relief under the Moneylending Act. First, the parties had no agreement for interest; the Defendants agreed to the charges as they were imposed and varied by the 1st Plaintiff unilaterally from time to time, not understanding the financial implications if those charges had been expressed as interest. The Defendants were gullible, and were under the impression they were

dealing with close friends. The 1st Plaintiff had no concept of the significance in moneylending terms of the charge that he was making of his friends. The charge was not set at a high level because Mr Goddard was concerned about the risk. He never considered the question of risk, nor made any enquiries about the risk. He never discussed the Defendants giving him security for the loans. Mr Goddard has no concept of a proper rate of interest charged by institutions that lend money. To this day he believes that the notes were fair and reasonable, "drawn up as they were between friends." The offer of the Defendants to pay back the money lent at a rate of interest of 20% per annum is generous to an extreme. A charge amounting to a rate of 60% or thereabouts per annum is excessive, and the transaction is harsh and unconscionable. There is no point in ordering the taking of accounts. There is no dispute over the amounts lent or repaid. The calculations done by the accountant have not been challenged.

Under the provisions of section 2(1) of the Moneylending Act it is proper to re-open the transaction. The rate of 20% is adjudged to be chargeable, even if excessive, as the Court finds it to be, as that rate has been offered by the Defendants. However, the small balance that the accountant proved to be due based on a calculation of 20% interest is found not to be payable. The claim of the Plaintiffs is dismissed. Costs to the Defendants, to be taxed if not agreed.

I D Mitchell
High Court Judge (Ag)