

GRENADA

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

CIVIL CASE NO. GDAHCV1999/0597

BETWEEN:

MADLYN CHRISTENSEN

Claimant

AND

JOHN PHILLIP

Defendant

Appearances:

Mr. Alban John for the Claimant

Mr Dwight Horsford for the Defendant

2004: May 27

2005: Feb 24

[1] **BELLE J.:** The claimant in this matter Madlyn Christensen resides at 84 La Horquette Road, Glencoe, Point Cumana, Trinidad. She said she was originally from Mt Craven St Patrick's, Grenada where she met John Phillip the Defendant in or about the year 1987.

[2] In her evidence in chief the claimant states that over the period 1996 to 1997 John Phillip the defendant approached her for loans of various sums, which she advanced to him on the promise that he would repay from the proceeds of insurance money he was expecting to be paid for his burnt bus. She stated that over the period May 7th, 1996 to February 1997 she loaned the said defendant approximately E.C. \$14,150.00. However this trial only relates to \$9,150.00 owed by the defendant since the defendant in 2003 consented to a judgment against himself for the payment of \$5,000.00 to the claimant, the defendant having admitted that he owed the claimant that sum of money.

[3] The claimant said the money was paid by cheque and she produced copies of the returned cheques as evidence of these payments. This I think is significant. I do not think that many people can find the returned checks from 1996 to 1997 in 1999 unless they are in business. It is amazing that she kept these cheques so long.

[4] The claimant stated that she orally requested on numerous occasions that the Defendant pay her the money and on or about August 27th 1999 she wrote him requesting payment. This letter was also produced and tendered in evidence. Ms Christensen also produced and tendered in evidence an "I Owe You" dated June 21, 1996 signed by John Phillip. The "I Owe You" stated as follows:

"I, the undersigned, JOHN PHILLIP of Marran St Mark's do hereby admit that I borrow \$5,000.00 E.C. dollars from Madlyn Morgan Christensen of Mt Rodney St Patrick's which is wholly and solely her money.

I undertake to pay the said sum of \$5000.00 five thousand E.C. to Madlyn Morgan Christensen account number 715347 at the National Commercial Bank at Grenville or St George with the sum of \$500.00 per month from October 1996 without any interest."

[5] The coincidence between the date of this document and the time when the Claimant said the loans began is of some significance. The "I Owe You" sets the tone of what is to follow, even if friendship was involved, she was of the view that she would be repaid and documented this transaction. As time went on she did not document all of the loans. But her evidence is that she extended another \$9,000.00 in loans for him to use on the basis that the defendant would be paid insurance for a burnt bus and he would repay her from this money.

[6] I took careful note of the manner in which the parties gave their evidence. The claimant and the defendant were the only witnesses in the case. I found the claimant forthright in

her manner. She remembered various details and incidents and did not appear at any time to be trying to hide facts from the court. The defendant on the other hand was evasive and would remember things only when pressed to do so. He could not even explain why he had initially denied borrowing any money from the claimant and then changed his mind to admit that he had borrowed \$5,000.00 from the claimant. He appeared to be forgetful of details for convenience. He was a less believable witness.

[7] I refer to examples from the evidence to support this position. Under cross-examination the defendant admitted receiving a letter asking for his debt to the claimant to be paid. But when shown such a letter which mentioned that previous demands had been made he denied seeing the letter. In my view his denial was less than convincing. Another example of the defendant's attitude was displayed in his answer relating to the sale of a bus, which the claimant had helped him to acquire. The defendant admitted selling the bus for \$20,000.00, he also admitted at that time that he knew that he had borrowed \$5,000.00 from the claimant. He said that he had to pay the bank and when he had finished paying the bank he had about \$7,000.00 left and yet he used it for other purposes rather than repaying the loan.

[8] Based on the Court's note the defendant's evidence was as follows:

"I sold the bus. I had it a long time. I just sold it. I got \$20,000.00 for it. Somebody named Thomas from Grenville bought it. At the time I sold the bus I knew I had borrowed the \$5000.00 from the claimant. I had to pay the bank, that is why I didn't pay her the \$5000.00. When I finished paying the bank I had about \$7000.00 left. I used it for other purposes. She was my friend at the time I thought that payment to her could wait."

[9] This is an admission that in spite of requests to pay and the fact that he had the money to pay he refused to pay the \$5,000.00 to the claimant until she put the matter before the court. This attitude towards his indebtedness to the claimant is remarkable.

[10] I therefore cannot believe the defendant that the other advances beyond the \$5,000.00 accounted for in the "I Owe You," were all gifts given as part of a relationship. I believe that even if there was a relationship, there was some reliance on the promise to repay and the

defendant in spite of the tone, which had been set by the "I Owe You" early in the day, broke that promise.

- [8] I therefore find that the defendant should repay the claimant the sum of \$8,750.00 the sum supported by the cheques produced in evidence. This sum is to be paid with interest from the date of the claim at the rate of 6% per annum and thereafter from the date of trial to the date of payment at the rate of 5% per annum. The defendant should also pay the claimant her costs in accordance with the case management order of 25th September, 2003.

Francis H V Belle
High Court Judge