

GRENADA

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

CIVIL CASE NO. GDAHCV2000/0538

BETWEEN

DERICK COBB

Claimant

and

NORMA WILLIAMS

Defendant

Appearances:

Mr. Ruggles Ferguson for the Claimant

Mrs. Celia Edwards for the Defendant

2004: May 13, 2005: Feb. 24

JUDGMENT

[1] **BELLE, J.:** This is a case of many hidden themes some of which came to light during the process of the trial and indeed had they come to light before, the trial may have been unnecessary. Be that as it may, the parties have now "enjoyed" their day in court and a decision is to be rendered based on the evidence and the law.

[2] The case involves parties who once shared an intimate relationship and contributed in one form or another to the business which the defendant ran. The defendant is also the mother of the claimant's child . As is normal in relationships generosity may be seen as the grease of the engine of reciprocity. While the relationship lasts the generosity and reciprocity continue. But when the relationship falls apart that is all seen as part of some hidden agenda to use, confuse, or befuddle the aggrieved party. This is such a case.

[3] In his statement of claim filed on 4th October 2000, before the introduction of CPR 2000, the claimant prayed for the following orders inter alia:

“ 1. A declaration that the Plaintiff is an equitable owner of the boutique operated by the Defendant at George Patterson Street in Grenville in the parish of Saint Andrew.

2. A Declaration that the Plaintiff is an equitable owner of Hyundai Truck registration number TK 590 purchased in September 1997 from Hubbards Motor Land at Grand Anse in the parish of Saint George in Grenada.

3. An Order directing the Defendant to prepare a statement of account regarding the operation of the said boutique from its inception in 1993 to May 1999.

4. An order directing the Defendant to prepare a statement of account for the operation of the said truck from May 1999 to present.”

[4] It is clear that both parties are business people and entrepreneurs who take the idea of investing and reaping the benefit of investment and work seriously. But both of them also accept that the dealings in relation to the business were the subject of discussion in intimate moments in the context of their man-woman relations. Therefore as long as everything was going well the arrangement worked to some extent. From the day the relationship fell apart certain aspects of the business fell into disrepair and eventually ceased to function altogether.

[5] The claimant pleaded in the particulars of his statement of claim at paragraph 4. that *“in or about the year 1992 the plaintiff became a partner in a sidewalk vending business hitherto operated by the Defendant at Grenville in the parish of Saint Andrew aforesaid. The Plaintiff's initial injection of capital amounted to \$2300.00 which he obtained by way of a loan from the St George's Communal Credit Union for the purpose of purchasing stock for the said business.”*

[6] The particulars continue:

" In or about the year 1993 the Plaintiff, at the request of the Defendant, applied for and obtained another loan in the sum of \$9500.00 from the Grenville Credit Union for the purpose of expanding the sidewalk vending business to include a boutique. The said loan was used to purchase stock for the said boutique which was first located upstairs the Bain & Sons building on Gladstone Road at Grenville aforesaid."

[7] Clearly these assertions required some amplification. The claimant attempted to amplify these claims in his witness statement. In paragraph 3 of his witness statement Mr Cobb states that he gave the defendant the entire sum of \$2300.00 to travel to Saint Martin to purchase stock which included a variety of men's, women's and children's clothing. Before going to St Martin the defendant had stopped the sidewalk vending for about a month since she had little or no stock. With the stock purchased from St. Martin she was able to resume the sidewalk vending.

[8] What Mr. Cobb does not say is whether he was repaid his money or shared in the profits and if so, how this was done. Clarification came on this issue from the defendant who stated in her evidence in chief that in relation to the \$9500.00 loan on a number of occasions she would ask the claimant what was the balance on the loan. He would not say, neither would he show her the Credit Union Savings Book which would show the repayment of the loan plus the share value. She said that whenever the time came for the repayment of the loan, the claimant would ask for the money long in advance. If he did not receive it upon request he would get upset, even though she would always pay him on or before the due date of payment.

[9] The defendant became suspicious after making certain calculations which revealed that the loan should have been already paid. Then one day she searched the claimant's pouch where he kept his documents and found the savings book among some other documents. Upon scrutinizing the book she realized that the loan had long been satisfied and asked where the money on the shares was. There was a quarrel about this and she questioned the claimant as to why she was paying a loan that had long been satisfied. The claimant

did not answer these questions. Nevertheless the claimant continued to ask for \$350.00 per month and she continued giving him \$350.00 per month for over one year after this incident in spite of her knowledge that the loan had been repaid. She said she did this because the claimant was physically abusive and the claimant was the type of person who whenever he wanted something and it was not given to him he would quarrel. She didn't want the neighbours to hear them quarrelling. So she gave him the money for a peaceful life.

[10] I watched the way in which the defendant gave evidence under cross –examination and observed that her resolve in relation to these aforesaid related facts was never shaken. I find that this version of the loan arrangement and repayment situation on a balance of probabilities represents the truth and I also find that it explains the absence of any explanation about the repayment of the loan or how the claimant got his share of the profit on his investment.

[11] It is evident that while the defendant controlled the income in the boutique business, the claimant always made sure that he paid the loan from the defendant's earnings and that he took some for himself. Indeed we do not know how much the claimant took for himself, but there is no evidence that the defendant had agreed to do anything other than repay the loan taken by the claimant from the Grenville Credit Union. Mr Cobb was himself a businessman. He ran a shop and it is interesting that there was never any discussion of the parties sharing in the proceeds of that shop.

[12] In my view this was the extent of the so called partnership referred to by the claimant. The course of dealing was that Mr. Cobb always ensured that he was covered, any debt in his name was satisfied and then he took some more for himself. I apply similar logic to the "deposit of capital" which the claimant claims to have made in 1992 to the boutique. But at paragraph 10 of her witness statement the defendant provides some information which sheds light on the claimant's willingness to lend support to the boutique business. The defendant said that the claimant's mother at the time owned a boutique and sometimes when the defendant went to shop for her boutique the claimant's mother would come along

with her to buy stuff for hers. Eventually the defendant and the claimant's mother began shipping things together to save money. But the goods would be cleared separately. It was the defendant who gave the claimant money to clear the goods. The defendant was never shown receipt entries or airway bills to account for the clearing process.

[13] I am of the view that the claimant adopted a similar scheme in relation to the truck for which he claims an account. A shortened version of the truck story goes like this. The defendant decided to purchase a truck to enhance the business. She got the necessary loan from the bank and relied on the claimant to drive the truck and produce enough income to pay the loan and give her some return on her investment. The claimant was able to give her \$2000.00 every month to pay for the truck. In fact the loan payment was \$1700.00 but the defendant was making sure she was getting a return on her investment.

[14] The claimant brought in support of his view of the facts the evidence of Joseph James. But Mr James evidence supports the contention of the defendant that the truck was being run at a loss. It also appears that Mr James relied on documents given to him only by the claimant. This clearly is not a full account. Mr James "Statement of Operation of the Truck # TF873 for the Period October 1999 to May 2000" also includes a "note" to the reader which says:

"Although the above shows a deficit it does not include any salary for the driver in expenses."

[15] The witness Mr James therefore admits the inadequacy of the account. The court is left with no idea what the claimant was taking for himself. He says he was always on time with the payments for the truck and he complained about the defendant making him pay her more than the instalment required on the loan. But he did the same thing or worse when the loan was in his name. I have accepted that the claimant made the defendant pay in excess of the loan value after the loan had been satisfied. Now the shoe is on the other foot the claimant is complaining, and he seeks an order from this court requesting an account on the proceeds of the truck after his right to drive it was withdrawn by the owner because the relationship had broken down.

[16] I find nothing suspicious about the way in which the truck was retaken by the defendant from the claimant's premises. I also conclude that any effort to keep the truck business going thereafter was unsuccessful and eventually the bank repossessed it. I do not know what account could be obtained which would reveal anything due to the claimant in the premises. Both parties reaped benefits from the trucking business in the good years. When it fell apart it was the defendant who had to continue paying the loan.

[17] The defendant had stated in her evidence:

"I became disillusioned with the truck business because not only was it not making any money but it was dragging down my other business because I would have to take money from there to help in the repayment of the loan."

Even if the claimant never paid himself anything for driving the truck, two things are clear; firstly the full cost of the truck was \$85,000.00 and his payment of \$11,900.00 towards the loan still leaves the bulk of the loan to be paid. Secondly the defendant produced receipts to show that she also had to bear part of the burden for paying for fuel, parts and repairs for the truck

[18] Furthermore it should be noted that the defendant had further invested in the boutique business quite independently of the claimant. She entered into a "sou sou" or savings plan, and when she got her hand of \$10,000.00 she placed it in the bank on a fixed deposit. She later put more money from her business on the deposit to meet the requirements for the truck loan. This shows an enterprising spirit. Indeed the claimant conceded that the defendant always wanted to do things her way and by all means necessary. I understand this to mean that she was the motivated driving force behind the relevant business decisions. It should be noted in this regard that loan taken from Grenville Credit Union was the defendant's idea and that she also came up with the truck business idea.

[19] There was much ado about the deposit made for the \$9500 loan from the Grenville Credit Union. The claimant said he deposited \$3000.00 and the defendant \$2000.00. The

defendant claimed she deposited \$5000.00 from her business. In the circumstances it does not matter which one is telling the truth. But it is obvious that this loan was repaid from the proceeds of the defendant's business and thereafter sums in excess were taken from which the defendant never benefited. Yet the claimant thinks he is entitled to an account on both the boutique business and the truck. Even though he never stated anywhere what he personally made from driving the truck. This was a glaring omission explained by counsel in terms that he was willing to provide an account but the defendant should also do so. Why doesn't the claimant set the example? The answer is that he was never the driving force behind anything. He just took what he thought he should take when the opportunity arose.

[20] Why should I go on an excursion into the law of constructive trusts on this kind of evidence?

I find no evidence of intention that the parties should share equally from the business. The money was used to buy stock for a boutique, which was run by the defendant. She ensured that the loan was repaid and paid in excess to the claimant without any explanation from him. I see nothing inequitable in the way things have turned out in this case. Indeed if there is any iniquity it has fallen upon the defendant who has had to alone complete the payments for the truck loan. I do not understand the law of trusts to be saying that whenever a person lends somebody money for a business venture or assists them in the venture they become entitled to benefit from the proceeds of the business from henceforth forever. What the law says is that where it was inequitable on the grounds of justice and good conscience that the legal owner of property should take the property for himself and exclude another from it, the law would impute or impose a trust for the other's benefit. See **Hussey v Palmer 1972 All ER Vol. 3.**

[21] The court is being asked to apply this principle to the situation of the truck and boutique in this case even though we don't know how much Mr Cobb took for himself from either branch of the business. It would have been helpful if Mr. Cobb could provide a more complete account of the profits he took from the business. Had there been clear facts and figures about the payments on the loan for the boutique and the final payments for the truck, the court would have been in a better position to make a determination. But as the

evidence stands the defendant's version is quite convincing and does not provide any avenue for an assumption that there is any basis for Mr. Cobb to share in the proceeds of her business.

[22] I can therefore see no reason why the court should apply principles of equity to the facts of this case other than to say that the court believes that justice has been done. I therefore dismiss the application for the various orders prayed for by the claimant. I also dismiss the defendant's counter claim as serving no useful purpose at this stage. Indeed it would appear that the defendant acquiesced in the claimant's poor accounting. She cannot now claim that she is entitled to it.

[23] No specific value has been placed on this claim and thus costs are to be determined in accordance with Part 65.5 (2)(b) (iii) and the direction given in the Case Management order of 30th June 2003 in favour of the defendant.

Francis H V Belle
High Court Judge