

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2007/0046

BETWEEN

COMMUNITY FIRST CO-OPERATIVE CREDIT UNION LIMITED
(formerly Antigua and Barbuda Teachers Cooperative Credit Union Ltd.)

Claimant

And

JANICE REYNOLDS-GREENE

Defendant

Appearance:

Ms. C Debra Burnette for the Claimant
Mrs. Janice Reynolds-Greene in person

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2008: September 23
October 30
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JUDGMENT

[1] **Blenman J:** This is a claim by the Community First Cooperative Credit Union Limited (the Credit Union) against Mrs. Janice Reynolds-Greene for outstanding moneys.

[2] **Background**

The Credit Union says that around the 26th March 1997, through an amalgam of various applications by Mrs. Reynolds-Greene, it granted her a consolidated loan in the sum of \$30,000 repayable with interest at 12% per annum. She signed several promissory notes; and by promissory note, Mrs. Reynolds-Greene agreed to repay the loan by monthly installments of \$561.00 for a period of 82 months commencing from the 31st March 1997. She made one payment of \$624.00 on the 18th January 1997. She did not make any other payments until 2002.

- [3] The promissory notes authorise the Credit Union to apply the paid shares and savings towards the outstanding debt should the defaulter fail to honour the obligation to service the loan, the Credit Union is authorised to retrieve outstanding moneys by suit.
- [4] The Credit Union says that Mrs. Reynolds-Greene has an outstanding balance of \$11,506.08 with interest at the rate of 12% per annum. Despite its demands, she has failed to liquidate the debt. As a consequence, on the 17th July 2006, the Credit Union applied the sum of \$21,706.03 inclusive of her shares and savings towards the loan. The sum that remains owing is \$11,506.08.
- [5] The Credit Union states that Mrs. Reynolds-Greene is indebted to it in the sum of \$11,506.08 which represents the principal and interest. It also seeks to recover other miscellaneous fees including Court fees, legal fees. The total sum it seeks to recover from Mrs. Reynolds-Greene is \$13,546.69.
- [6] In her defence, Mrs. Reynolds-Greene does not deny that the Credit Union has granted her loans but says that they were never consolidated. She says that she received a first loan from the Credit Union on May 10th 1995; the Credit Union loaned her \$21,495.00. She obtained a second loan of \$35,000 from the Credit Union on March 26th 1997. She says that she cannot admit or deny whether she paid \$500. However, in or about 2002, she was advised by officials of the Credit Union that she had an outstanding debt, and that she should pay approximately \$5000, which together with their application of her shares to the loan would liquidate it. Around 2002, she paid the money demanded and therefore she is not indebted to the Credit Union. She also says that the 20% commission that the Credit Union paid to its bailiff, Mr. Cedric Henry, was unlawful; that those moneys should have been credited to her loan.
- [7] Accordingly, Mrs. Reynolds-Greene denies that she owes the Credit Union any moneys. She says that the Credit Union is incorrectly asserting that she owes then \$11,506.08 which represents \$7,551.71 in interest and \$3,954.37 in principal.

[8] Alternatively, Mrs. Reynolds-Greene says that if she is indebted to the Credit Union, this is due to the Credit Union's wrongful act in not applying her shares towards the satisfaction of the loan. In addition, she says that she gave Mr. Henry the sum of \$717.53 to be paid towards her loan but that sum is not reflected on her loan account.

[9] The Credit Union takes issue with Mrs. Reynolds-Greene's position. It says that she was a long standing customer and knew that their policy was to consolidate old loans with the new loan. In fact, at the time of executing the loans, she signed the promissory notes which clearly underscore the policy of consolidation. The Credit Union denies that it misapplied her moneys by paying the bailiff fees. The promissory notes that she signed permitted or authorised the payment of fees and costs.

[10] **Issue**

The issue that arises for the Court's consideration is as follows:

Whether Mrs. Reynolds-Greene has any outstanding moneys for the Credit Union.

[11] **Evidence**

Ms. Angela Payne, who is the Loans Manager and Ms. Claudette Simon who is the Loans Officer, filed witness statements on behalf of the Credit Union and they were cross examined. Mrs. Reynolds-Greene filed a witness statement and she was cross examined. The parties also filed an agreed bundle of documents, to which the Court has had regard.

[12] Mrs. Reynolds-Greene has appeared in person. She conducted her case in a respectful and rational manner. She presented her case in the best possible manner and lost nothing by her lack of legal representation. Ms. C Debra Burnette presented her client's case in a fair and professional manner.

[13] **Law**

The Credit Union is governed by the Cooperative Societies Act No.2 of 1997 Laws of Antigua and Barbuda read together with the Cooperative Societies Regulation No.14 of 2001.

- [14] Section 195 of the Act empowers the Credit Union to give loans.
- [15] Section 199(1) of the Act provides that the maximum intervals at which interest on loan must be paid may be prescribed in the regulation.
- [16] The Credit Union is also subject to the rules of its Bylaws.
- [17] Section 78 of the Bylaws states that the terms and conditions of the loan shall be fixed by the Board.
- [18] Section 79 of the Bylaws states that the rate of interest to be charged on loans shall be fixed from time to time by the Board of Directors and shall be assessed on the monthly unpaid balance.
- [19] Section 77 of the Bylaws provides for the giving of loans to members.
- [20] Section 89 of the Bylaws says that a member who wishes to obtain a loan shall submit an application form to the Credit Union.
- [21] **Defendant's submissions**
Mrs. Reynolds-Greene urged the Court to dismiss the claim against her. She asked the Court to accept her evidence. She said that the documentary evidence presented by the Credit Union is not consistent with its case but rather, it supports her defence. She is adamant that she has paid off the entire loan that she obtained from the Credit Union. In fact, it is her case that she has even overpaid the Credit Union by a substantial sum, even though she has not counterclaimed.
- [22] Mrs. Reynolds-Greene asked the Court not to accept the evidence of either of the two witnesses that the claimant called. She asked the Court to find that she paid the bailiff a sum of money and that the Credit Union did not apply the money to her loan.

[23] Mrs. Reynolds-Greene maintained that based on the documentary evidence it is clear also, that the Credit Union did not credit an additional sum of \$717.53 which she paid, to her loan. She is adamant that she is not indebted to the Credit Union since she has paid off the loan that she obtained from them.

[24] Mrs. Reynolds-Greene also said that the Credit Union has improperly applied moneys that should have been credited to her loan account, by paying those moneys to the bailiff Mr. Henry. She neither sanctioned nor authorised this and therefore should not suffer as a consequence of the Credit Union's unauthorized act. She is convinced that had the Credit Union properly applied the moneys that she gave to the bailiff, on its behalf for transmission to the Credit Union, she would not have any outstanding moneys for the Credit Union. Further, Mrs. Reynolds-Greene stated that there are four sums of money that she gave to the bailiff to be deposited on her loan account but that the moneys were not credited to her loan account. She said one sum of money that she gave to the bailiff has not been accounted for namely \$717.53 mentioned above. She stated further, that in so far that there is no promissory note which reflects that she has outstanding moneys; the Credit Union cannot sue her.

[25] **Claimant's submissions**

Learned Counsel Ms. C Debra Burnette asked the Court to accept that Mrs. Reynolds-Greene is indebted to the Credit Union to the extent of \$11,506.08 which includes both principal and interest. She says that both of the witnesses who testified on behalf of the claimant were truthful and reliable witnesses.

[26] Ms. Burnette, learned Counsel says that in the Statement of Agreement to Conditions under which the loan was granted, Mrs. Reynolds-Greene accepted to pay 12% per annum on the unpaid balance. Counsel urged the Court to attach greater weight to Ms. Simon's and Ms. Payne's evidence over that of Mrs. Reynolds-Greene.

[27] Ms. Burnette urged the Court not to accept Mrs. Reynolds-Greene's evidence when she says that she had paid off the entire balance of the moneys that she owed. In addition,

learned Counsel Ms. Burnette stated that based on the evidence, there is no basis for concluding that the Credit Union has misappropriated or misapplied moneys that were paid by Mrs. Reynolds-Greene to Mr. Henry, on behalf of the Credit Union.

[28] Mrs. Reynolds-Greene, stated Counsel, was unable to explain several important matters in relation to her contention that she had paid off the debt. Counsel urged the Court to reject Mrs. Reynolds-Greene's evidence since she was forced to resile, under cross examination, from positions she had taken earlier.

[29] **Court's analysis and conclusion**

I have given deliberate consideration to the evidence led by both parties. I have found Ms. Simon to be a very credible, honest and straightforward witness. She struck me as a witness who simply wanted to relate the true picture of what transpired to the Court. Her evidence was corroborated by Ms. Payne's evidence and reinforced by the agreed documents. The Court has no doubt that Ms. Simon is a very reliable witness.

[30] The Court is afraid that Mrs. Reynolds-Greene was not as forthcoming as she could have been. This may well be due to the fact that she was labouring under the mistaken belief that she had liquidated her indebtedness to the Credit Union because of the fact that the Credit Union had stated that "she had paid the sum of \$500 towards the satisfaction of the debt". Indeed Mrs. Reynolds-Greene prevaricated quite a bit in her evidence. Where there is any conflict between Mrs. Reynolds-Greene's evidence and that of Ms. Simon, I am more persuaded by Ms. Simon's. The latter did not resile from her position even under intense questioning from Mrs. Reynolds-Greene, during cross examination.

[31] The Court has accepted the claimant's evidence in relation to the loans that were granted to Mrs. Reynolds-Greene, even though the latter seemed to convey that she could not recall the exact number of loans she had received.

[32] Also, I have no doubt that the Credit Union has proved, on a balance of probability, that Mrs. Reynolds-Greene did not pay off the entire sum of money that she had borrowed. I

am equally satisfied that she owed the Credit Union outstanding moneys in excess of the sum of \$5000, the latter which she is of the view was the final and complete payment. The Court does not accept Mrs. Reynolds-Greene's evidence that when she made that last payment, based on the evidence, it was in satisfaction of the entire debt. I am afraid that the Court does not accept Mrs. Reynolds-Greene's evidence when she said that she did not agree to have the loans consolidated.

[33] The Court finds it quite interesting that Mrs. Reynolds-Greene accepted under cross examination that by letter dated 21st August 2002, she wrote to the Credit Union agreeing to liquidate her debt by paying a monthly installment of \$1000; at times she was able to pay it. Yet Mrs. Reynolds-Greene expects the Court to believe that by 18th November 2002, she had liquidated the entire debt that she owed the Credit Union. The Court notes that Mrs. Reynolds-Greene was forced to admit under cross examination that she has no record to prove that she has paid off her debt to the Credit Union.

[34] While the defendant takes issue with the Credit Union having applied portions of the moneys that she repaid to Credit Union, as fees to the bailiff, there is no doubt that she was aware of this and approved of that policy.

[35] The Court accepts that Mrs. Reynolds-Greene sanctioned the Credit Union paying the bailiff fees up front. Ms. Simon's evidence in relation to the conversations that she had with Mrs. Reynolds-Greene about the arrangements for the payment of bailiff fees was very compelling. I believe her when she said that Mrs. Reynolds-Greene agreed to pay the bailiff Mr. Henry up front in order to prevent him from going to her place of work to collect the outstanding moneys that Mrs. Reynolds-Greene owed.

[36] On the evidence presented, the Court accepts that the bailiff is paid 20% of the outstanding fees; there is no reason for me to disbelieve Ms. Simon. The Court accepts, without any reservation, that the Credit Union's payment of the bailiff fees is lawful; it falls within the expenses or costs associated with recouping moneys loaned to members and not repaid. These fees and costs are recognised in the promissory notes that Mrs.

Reynolds-Greene executed. The Court however, refrains from commenting on the fact that the bailiff's fees are 20% of the moneys collected.

[37] Further, I do not for one minute believe that the Credit Union has misapplied the moneys that Mrs. Reynolds-Greene paid towards her outstanding debt.

[38] In view of the totality of circumstances, the Court is of the view that the Community First Cooperative Credit Union has proven that Mrs. Janice Reynolds-Greene is indebted to it in the sum of \$11,506.08

[39] **Conclusion**

In view of the foregoing circumstances, it is hereby ordered that judgment is given for Community First Cooperative Credit Union Limited against Mrs. Janice Reynolds-Greene in the \$11,506.08

[40] Prescribed costs are awarded, unless otherwise agreed.

Louise Esther Blenman
High Court Judge