

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

**COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/00604**

BETWEEN

**TERRY D. DELANCY
t/a VIRGO CONSTRUCTION MAINTENANCE & LANDSCAPING**

Plaintiff

AND

JUDY KNOWLES

Defendant

Before: The Hon. Madam Justice G. Diane Stewart
Appearances: Mrs. Mary Bain-Charlton for the Plaintiff
Mr. Edward Turner for the Defendant
Hearing Date: 16th December 2020, 17th December 2020
Judgment Date: 14th May 2021

Civil – Contract – Oral Contract – Breach of Contract – Whether there was an intention to create legal relations – Whether the money was given as a Gift

JUDGMENT

1. The Plaintiff, Mr. Terry Delancy, the owner of the business, Virgo Construction Maintenance and Landscaping (**the “Plaintiff”**), seeks from the Defendant, Mrs. Judy Knowles, his former business associate (**the “Defendant”**), the sum of Eight Thousand Dollars plus damages, which he claimed was given to her as a loan to pay for the funeral expenses of the Defendant’s late husband, Mr. Colin Stewart Knowles (**“Mr. Knowles”**), a former business associate of the Plaintiff.
2. The Plaintiff further claimed that the loan by oral agreement was made on or around the 17th August, 2016 whereby, it was agreed that the payment would be made to East Sunrise Mortuary, No. 183 Baillou Hill Road and Cordeaux Avenue (**the “Funeral Home”**). A cheque was drawn in the amount of eight thousand dollars from the Plaintiff’s business account and made payable to the Funeral Home.
3. Thereafter, he avowed that the Defendant failed to and was unwilling to repay the alleged loan, despite numerous verbal and/or written requests to do so and that he suffered loss and damage as a result.
4. The Defendant denied the she was a business associate of the Plaintiff and denied that the eight Thousand Dollars was a loan. She instead claimed that the Plaintiff volunteered

to airlift Mr. Knowles to the Jackson Memorial Hospital at a cost of fifteen thousand dollars prior to his passing. She alleged that after Mr. Knowles' death, the Plaintiff offered to pay for his funeral expenses in the amount of eight thousand dollars from money that was owed to Mr. Knowles by the Plaintiff.

EVIDENCE

Plaintiff's Evidence

5. The Plaintiff averred that both the Defendant and Mr. Knowles, were former business associates of his. In 2016 he recalled visiting Mr. Knowles at the Princess Margaret Hospital ("PMH") and during his visit, he heard the Defendant express her disdain at the treatment Mr. Knowles was receiving while hospitalized. As a result, the Defendant had made the decision to arrange to airlift Mr. Knowles to Jackson Memorial Hospital and he gave her some advice with regard to arranging for air ambulance transportation.
6. While he gave the Defendant advice on arranging the air ambulance for Mr. Knowles to Jackson Memorial Hospital, at no time did he tell the Defendant that he would assume the financial responsibility of that arrangement nor assume responsibility for any medical bill in Cuba or PMH. On her assertion that she did not have any money, he offered to lend her some.
7. He denied that he was holding twenty thousand dollars for Mr. Knowles or that he had promised to pay for his medical expenses or that he owed him or the Defendant any money. Instead, the Defendant approached him after Mr. Knowles' death on 13th August, 2016 seeking assistance with the expenses related to his burial.
8. On or around the evening of 16th August 2016, he discussed the Defendant's request with his wife, Mrs. Keisha Delancy ("Mrs. Delancy"), who informed him that it was not a good idea and that the Defendant should find the money to bury Mr. Knowles on her own.
9. Despite his wife's advice, he lent the Defendant the money because she could not afford to pay for the funeral expenses and because they were business associates. He wanted to prevent the Defendant, who was grieving at the time, from the financial embarrassment of not having the funds to bury Mr. Knowles.
10. The Plaintiff explained that the terms of the oral agreement, were that he was to lend the Defendant eight thousand dollars for the purpose of paying the funeral expenses of Mr. Knowles and that the Defendant was to repay the funds by equal weekly consecutive installments of \$200.00 until the money was repaid in full.
11. Pursuant to the oral agreement, he issued a First Caribbean International Bank (Bahamas) Limited Cheque No. 466, dated the 17th August 2016 drawn on the account of Terry Delancy t/a Virgo Construction Maintenance & Landscaping in the amount of eight thousand dollars to Judy Knowles. The Plaintiff added that he was then instructed to make the cheque payable directly to the Funeral Home.
12. On the 17th August 2016 he issued a check to the Funeral Home and a receipt was provided as proof of payment. Thereafter, Mr. Knowles' funeral was held at the Church of God of Prophecy, East St. Tabernacle on Saturday, 27th August 2016 and he was

buried in the Woodlawn Gardens Cemetery on Soldier Road. The Plaintiff claimed that the aforementioned actions were proof that he complied with his part of the oral agreement.

13. Some fifteen months after the loan, in November 2017, the Defendant attended Virgo Car & Scooter Rental Booth located in downtown Nassau by Festival Place. The purpose of her attendance was to provide him with a cheque in the amount of three hundred dollars which was labelled as the first payment towards the repayment of the loan. He concluded that since issuing the cheque the Defendant failed to make any additional payments towards the balance of the loan.
14. At trial, the Plaintiff asserted that the Defendant had informed him that she had approached the bank to borrow money to bury her husband, which she would not have received in a timely fashion. As a result, she asked him to borrow eight thousand dollars and informed him that she would reimburse him.
15. Under cross examination, the Plaintiff considered himself a successful businessman. He added that with the car and scooter rentals customers had to sign contracts although he did not personally deal with such transactions. The Plaintiff confirmed that he knew what a contract was.
16. The Plaintiff averred that Mr. Knowles was a business associate who would rent scooters for him downtown and that this business relationship was started a couple of months before Mr. Knowles' death on the 16th August 2016. There had also been a previous business relationship with Mr. Knowles. The Plaintiff added that he did not know Mr. Knowles personally but that he had gotten to know him from Festival Place as Mr. Knowles assisted him with getting a booth within the building based on his position with the Rental Scooter Association.
17. Mr. Knowles had reached out to him to work together because Mr. Knowles had older scooters while he had new scooters and that he had agreed to the arrangement because while he had received permission to work on the exterior of Festival Place, Mr. Knowles had a space on the inside.
18. He first met the Defendant at the hospital after Mr. Knowles had crashed on his motorbike. Mr. Knowles was in a coma and while incapacitated, the Defendant came to his office to discuss the continuation of the business relationship. The Defendant would subsequently come to his office to apprise him of what was happening with the business dealings as she was responsible for collecting the monies and completing all of the paperwork on a daily basis, which she would daily bring to his office.
19. As a philanthropist he would have and had distributed groceries to those in need for over twenty years. He added that he donated to the Red Cross, Salvation Army, Unity House and any non-profit organization that would impact the community in a positive way. He would give money if he was in a position to do so. While he had assisted people with donations for funeral services and school fees it was not his intention to do so in this case. He stated that he never gave the money to the Defendant as a gift and said that he wrote the word loan on the cheque drawn.
20. The Plaintiff further averred that when he visited Mr. Knowles in the hospital, he met the Defendant along with her two sons and one or two other family members. He spoke with the sons generally and that they did not speak about finances as they were more concerned about Mr. Knowles' health. As Mr. Knowles was in the intensive care unit

("ICU") and only two people were allowed to enter at a time and while he did not go into the actual room to see him, he was in the unit.

21. The Plaintiff denied that he told the Defendant and her sons, outside of the male medical ward, that he would make any sort of payment for Mr. Knowles' funeral. He added that while Mr. Knowles was in the hospital they never thought that he was going to die, since he was removed from ICU to the male medical ward. Their conversation was always about his progress.
22. He admitted that he had previously received medical care in Cuba, but he never suggested that Mr. Knowles do the same or that he would pay for it. Additionally, he never suggested paying for an air ambulance to Miami and invited the Court to reach out to the company to confirm the same.
23. As his wife worked in his office, he introduced his wife to the Defendant. He maintained that the Defendant would come his office to report to him on the business and bring his share of the funds received. He continued that he conducted business with the Defendant well after Mr. Knowles' death. The Plaintiff added that he ultimately ended the business relationship with Ms. Knowles after her son Dionisio came to his office and had a verbal exchange with one of his female employees.
24. The Plaintiff denied that he only started requesting the eight thousand dollars after the discontinuation of the business relationship. He maintained that when he did ask prior she would tell him that she did not get the loan. He denied contacting family members of the Defendant to harass them and to insist that she owed him money. The Plaintiff further denied that the Defendant issued a cheque in the amount of \$300.00 to him because he had been harassing her.
25. He copied the cheque and had it returned to the Defendant because it was only one cheque. He added that had she sent him postdated cheques that totaled the eight thousand dollars, he would have kept them. He continued that he was not prepared to accept the single cheque that was labelled first payment. The cheque was not returned to embarrass her and he was unable to tell her that he would have preferred postdated cheques because she had stopped answering him and had blocked his calls.
26. During re-examination, the Plaintiff averred that while he may have given his input on the airlifting of Mr. Knowles, he never agreed to pay any of the expenses. He added that he had airlifted his mother to Cuba in 2007 for which he paid \$16,000.00. He never intended to give the Plaintiff nor the funeral home any money and insisted that it was a loan. He explained that while he wrote loan in the form of LN on the initial cheque he wrote to her, he did not include it on the cheque to the funeral home because he did not think it was appropriate for them to know that it was a loan.
27. If the Defendant had never received the money from the bank she could have paid him \$200 weekly and if she had done so then she would have completed repaying the loan by now.
28. Mrs. Delancy averred that in addition to being the Plaintiff's wife, she was also an employee of the Plaintiff's company and that she was familiar with the Defendant and Mr. Knowles as they were former business associates of the Plaintiff. Mrs. Delancy stated that on or around the 16th August, 2016 around 7:00 p.m., the Plaintiff discussed with her the request of the Defendant for a loan in the amount of Eight Thousand Dollars to assist with funeral arrangements for her late husband.

29. Mrs. Delancy confirmed that she had told the Plaintiff that it was not a good idea to lend the Defendant the money and that he should telhad I her to go and find the money elsewhere. She added that two days later, she found the copy of the cheque in the amount of Eight Thousand Dollars on her desk at work, which the Plaintiff told her was for his records. She was informed by the Plaintiff and she believed that the Defendant never repaid the loan and as a result the Plaintiff suffered loss and damage.
30. Under cross examination, Mrs. Delancy accepted that her husband was a generous man at times but denied that he would pay for funeral bills unless it was family related. She met Mr. Knowles when he and the Plaintiff started a partnership to conduct the scooter rental business together. Mrs. Delancy continued that she only knew their relationship to be a business one.
31. She did not know if the Plaintiff visited Mr. Knowles in the hospital but they did speak about his being ill. She could not recall if she met the Defendant before or after Mr. Knowles died however, she recalled her coming in to the office to speak to the Plaintiff and to take the Plaintiff the money from the scooter rental business. She added that she and the Defendant spoke on a few occasions. Mrs. Delancy stated that the cheque issued to the Defendant had the Defendant's name on it with the notation loan thereon.
32. Ms. Lavanya Munnings, an employee at the Virgo Car & Scooter Rental Booth, downtown Festival Place ("**Ms. Munnings**"), averred that she was familiar with the Defendant and her late husband as they were former business associates of the Plaintiff.
33. Sometime on or around the 29th November 2017, the Defendant came to the Virgo Car & Scooter Rental Booth and handed her an envelope telling her "**Here, give this to your boss, let him know this is the first payment.**" She then took the envelope to the Plaintiff at his office on Kemp Road, who opened it, made a copy of the cheque and told her to return the envelope to the Defendant.
34. Ms. Munnings stated that when she attempted to return the envelope to the Defendant, the Defendant retorted that she was not accepting it and her son, known as Bobo accepted the envelope on her behalf. She later learnt that the cheque represented the first payment on a loan granted to her by the Plaintiff that was to assist with her late husband's funeral expenses.
35. Under cross examination, Ms. Munnings averred that she knew the Defendant, and had contact with her around November 2017 when the Defendant handed her the envelope for the Plaintiff. She took the envelope to the Plaintiff who in turn opened it, made a copy of the contents therein and said to take it back to the Defendant.

Defendant's Evidence

36. The Defendant averred that she and Mr. Knowles were business partners in a scooter rental company located on the Prince George Wharf. Prior to Mr. Knowles' death, her son worked with him and she started working after his death. She had never met the Plaintiff until after Mr. Knowles was hospitalized and the Plaintiff went to visit him.
37. On Friday, 13th August 2016 around 3:00 p.m., the day before Mr. Knowles' death, the Plaintiff visited him in the Male Surgical Ward of PMH, while she and her son were there. During the Plaintiff's visit, they discussed a number of things including the future of her late husband and finances generally.

38. She claimed that the Plaintiff offered to pay for her husband to seek medical assistance at Jackson Memorial Hospital and that he had additionally offered to pay for medical assistance for him in Cuba as he too had to seek medical care there due to a leg injury he sustained in an accident. The Defendant stated that the idea to transport Mr. Knowles to Cuba was the Plaintiff's as she was not familiar with the process. She was familiar with Jackson Memorial, however, as her oldest sister had an operation at that facility and that she would have been comfortable with it.
39. She told the Plaintiff that she had no money to pay for hospital care outside of PMH and added that her husband had informed her that the Plaintiff was holding some Twenty Thousand Dollars for him and that if something was to happen to him, to ask the Plaintiff for it. The Plaintiff offered to give her Fifteen Thousand Dollars, Ten Thousand of which was to be used for an air ambulance and Five Thousand was to be used for living expenses and food while in Miami in order for him have proper treatment in Miami.
40. Her son was present during the conversation and that the trip to Jackson Memorial was arranged. The Plaintiff even told her how to arrange for the air ambulance to transport her late husband and that the reason for the delay in utilizing the air ambulance was because she needed the doctors attending to her late husband in Nassau to provide a release and a referral to Jackson Memorial.
41. Mr. Knowles' bags were already packed to attend Jackson Memorial when he died. The following week, prior to the funeral arrangements being made, she saw the Plaintiff in his office where he reiterated that he wanted to help financially as Mr. Knowles was his good friend and business partner.
42. In response, she informed the Plaintiff that she had no money for the funeral and that the Plaintiff again said that that was not a problem and that he would take care of the funeral. The Plaintiff requested whether or not a cheque should be issued to her or the Funeral Home and she asked him to issue the cheque to the latter. She added that she had never received any cash from the Plaintiff.
43. She continued to work for the Plaintiff after Mr. Knowles' death. He had also hired a lady to work in the office which caused a decline in the morale of the business as the lady began making false reports to the Plaintiff. She and the new worker did not see eye to eye but the Plaintiff informed her that the new employee was to report to him after she had questioned her in role in the business.
44. That employee then got into an argument with her son who questioned the relationship between the employee and the Plaintiff and days later, the Plaintiff demanded that she repay the money that had been given to her for the funeral. Thereafter, the Plaintiff continued to demand that she repay the money. The Defendant initially thought that the Plaintiff was joking however, he then started to pressure her with so many texts and calls that she eventually had to block him. She added that the pressure from the Plaintiff to repay the money led to her quitting the job as she was very disturbed by the pressure.
45. She told her family and her Pastor that the Plaintiff had paid for the funeral and the fact that he was now stating that she owed him that she refused to repay him placed a lot of pressure on her which led her to writing a cheque to him for Three Hundred Dollars.
46. The Plaintiff threatened to damage her credit rating, prevent her from obtaining a job and ruin her good name if she did not repay the money. She added that after the cheque was issued, the Plaintiff returned the cheque with a worker several days later without cashing it and never asked for another payment until he initiated the present action.

47. Under cross examination, the Defendant denied that the Plaintiff never made any offers to pay for Mr. Knowles' medical assistance, whether it was at Jackson Memorial Hospital or Cuba or for his funeral expenses, and it was her daughter who had made the funeral arrangements. She additionally denied that she had told the Plaintiff that she was borrowing money from the bank which was taking too long and was the reason she needed him to assist with the money.
48. The Defendant maintained that after the incident between her son and one of the Plaintiff's employees, the Plaintiff started to harass her for the money and denied that she ever asked him for a loan. While she did receive a loan from the bank it was not obtained to bury her husband and that it would not have been enough to do so. She had spoken to the bank manager and informed him that her husband had died and that she needed money to purchase outfits for the funeral and other items for her family for the funeral.
49. She might have received about three thousand dollars from the bank but could not remember the full amount borrowed. She had never seen or received a cheque in her name from the Plaintiff and confirmed that the Plaintiff had called her and had asked her what name he should put the cheque in. She told him that the money was not for her but for the funeral home.
50. The first time that she saw the cheque issued to her was when she received the documents filed in the action and that she did not know that the cheque existed. She had been in the Plaintiff's office when he asked her how he could help her as he would have loved to on behalf of Mr. Knowles. He had asked her three times however, she did not know him well enough to ask him for anything.
51. The Plaintiff had nothing to do with any funeral plans for Mr. Knowles' and she did not even care whether he attended the funeral or not because she did not know him that well. She reiterated that at the hospital, the Plaintiff told her about how he had received an injury to his leg from a motorcycle accident and that he did not like the care that Mr. Knowles was getting and that he told her that they should take him to Cuba to get medical treatment.
52. She then suggested taking Mr. Knowles to Jackson Memorial Hospital in Miami but stated that she did not have any money to which he told her not to worry because he would be able to pay and offered to her \$15,000.00; \$10,000.00 towards the air ambulance and \$5,000.00 for her use during the stay.
53. The Defendant stated that she wrote the cheque for \$300 to the Plaintiff because she was frustrated and had sat and cried after her son came home one day to her and suggested that she pay the Plaintiff because he was tired of hearing him talk about her. She stopped going to the downtown location of the business, after she became overwhelmed as a result of the Plaintiff harassing her.
54. She maintained that there was no loan and stated that if the Plaintiff knew that she did not have any money, offering her a loan would not be wise because she would not be able to repay it. There were many other bills which she had to pay. She also had to deal with the grief of losing her husband.
55. Every bill that her husband had become responsibility at his death and she was not working at the time he died. She added that if funds were needed her family would have assisted her with paying for the funeral arrangements and that she would not have needed to ask an outsider to assist her.

56. In re-examination, the Defendant admitted that she had seen the Plaintiff while she was leaving the bank and that they had had a brief conversation. She explained that she had gone to the bank manager to inform him that her husband had passed and to ask about a small loan to be repaid in about three or four months.
57. She explained that at the Port there was a scooter rental block and that each company had individual booths. She and her husband had the first booth and the Plaintiff's was at the end. She never went into his booth. When her husband was alive, he operated both booths. She could not say if any of the Plaintiff's scooters were rented from her husband's booth.
58. The Defendant also confirmed that the Plaintiff and her husband had worked together on two separate occasions. The second time, the Plaintiff was going to lose his booth and her husband said that he did not want him to lose it so he secured his booth for him in order for him to bring his bikes back to the dock.
59. It was her understanding that the Plaintiff was giving her the funds and that it was not a loan, because her husband was a very good friend of the Plaintiff. She explained that in her conversation with the Plaintiff she stated that she had not done anything yet about the funeral in response to his asking if there was anything that he could help with. She stated that the funeral expenses were ten thousand dollars, the balance of which came from national insurance. The two hundred dollar difference was settled by the funeral director.
60. She confirmed that there was an incident which had taken place between her son Dionisio Knowles and one of the Plaintiff's employees which led to the Plaintiff harassing her. She would have used the money he was offering to take her husband away and pay for his medical expenses.
61. **Mr. Dionicio Knowles (Dionicio)**, the son of the Defendant and Mr. Knowles, in his evidence in chief stated that at the time of Mr. Knowles' death in August 2016, he was working along with him and the Plaintiff in their scooter rental business. When Mr. Knowles was in hospital, the Plaintiff visited him frequently as he saw him there several times. Dionicio added that on Friday, 19th August 2016 at about three or four o'clock in the afternoon, the Plaintiff met him and the Defendant at the hospital while they were visiting with his father.
62. The Plaintiff told them that he did not like how the hospital was caring for his good friend, that he would take care of him and that he would arrange for him to be air lifted to Jackson Memorial so that he could get back on his feet. The night before Mr. Knowles' death, the Plaintiff brought a worker to the hospital with him who assured both himself and the Defendant that the Plaintiff would take care of the bill for the air ambulance.
63. After Mr. Knowles' passing, the Plaintiff showed up during the identification of his body, pulled his mother aside and told her that the money that he was going to provide for the air ambulance, would now go towards the funeral expenses. The Plaintiff did not say that he was lending the Defendant the money, nor did he understand it to be a loan.
64. Under cross examination, Dionicio denied the suggestion that a meeting did not occur between the Defendant and the Plaintiff at the hospital but instead confirmed that the meeting in fact occurred on the 12th August 2016 and not the 19th August, 2016. He maintained that he did not know anything about receiving a loan from the Plaintiff. After being shown the cheque made out to the Defendant, he disagreed that the acronym LN

meant loan and further maintained that the Plaintiff claimed that he said he would take care of everything because he wanted to see Mr. Knowles get back on his feet.

65. Dionicio then denied that it was the worker who stated that the Plaintiff would cover everything. He had no knowledge of his mother going to the bank for a loan, nor did he have any knowledge of her asking to borrow money from the Plaintiff because the bank was taking too long to approve the loan.
66. During re-examination, Dionicio averred that the meeting actually took place on the 12th August 2016 and that the initial date he had given of the 19th August 2016 was a mistake as his father had died on the 13th August, 2016. He claimed that he did not know anything about a cheque until the hearing and that all of the arrangements were made by his mother. He was not aware of the name of the worker that accompanied the Plaintiff at the meeting. He added that he was part owner of the business after his father died as he had devised the business in his Will to him.
67. Dionicio admitted that the Defendant did most of the work for the business and that he would assist with the ground work inclusive of the service and maintenance of the vehicles. He added that he had never asked the Defendant to see any of the financial records but that he would purchase gas, oil and cleaning products.

SUBMISSIONS

68. The Plaintiff submits that an oral legally binding and enforceable agreement was entered into by both he and the Defendant on the 17th August, 2016, after the Defendant approached him for Eight Thousand Dollars to assist with the burial of her late husband. The Plaintiff issued the cheque to the Funeral Home as agreed with the Defendant and in turn, the Defendant was to repay the loan. Therefore, it was the intent of the parties to enter into a loan agreement.
69. The cheque issued to the Defendant had the notation "L/N" at the bottom and that the cheque issued to the Plaintiff had the notation "Payment 1". The Plaintiff stated that the law does not interfere with any legally enforceable agreement between the parties save and except to enforce the agreement.
70. The Plaintiff also contends that he did not owe the Defendant's late husband Twenty Thousand Dollars nor any money for that matter and adds that that allegation was not supported by any evidence.
71. The Defendant on the other hand contends that there was no intention to create a legal relationship between the parties and the cheque to the Funeral Home was a gift to the Defendant and her family. She relies on **Esso Petroleum Ltd. v Commissioner of Customs and Excise [1976] 1 ALL ER 117**, particularly Lord Simon of Glaisdale's obiter at pgs. 122 and 123:

".....Believing as I do that Esso envisaged a bargain of some sort between the garage proprietor and the motorist. I must try to analyse the transaction. The analysis that most appeals to me is one of the ways in which Lord Denning MR considered the case, namely a collateral contract of the sort described by Lord Moulton in Heilbut, Symons & Co v Buckleton:

'....there may be a contract the consideration for which is the making of some other contract. "If you will make such and such a contract I will give you one hundred pounds", is in every sense of the word a complete legal contract. It is collateral to the main contract...'"

72. The Defendant submits that there were two contracts, a primary contract and a collateral contract. The primary contract being between the Plaintiff and the Funeral Home and the collateral contract being between the Plaintiff and the Defendant. She further submits that the consideration in the collateral contract was facilitating the contract between the Funeral Home and the Plaintiff with the Defendant acting as the broker between the Plaintiff and the funeral home.
73. In support of her submission that the payment for the funeral was a gift, she relies on the definition of gift as set out in **New International Dictionary Volume 1 A-G** as follows:
- “something that is voluntarily transferred by one person to another without compensation”**
74. She also cites the definition of Donatio Inter Vivos which states, **“a gift between living persons, is irrevocable except for gratitude of the donee”**. In that regard she submits that the gift was complete as soon as the donor manifested his intention whether in writing or not and added that the Plaintiff volunteered to help her financially by paying for medical care. However, once her husband died he volunteered to pay for the funeral instead.
75. The Defendant also submits that if the Plaintiff intended to lend her money, he would have insisted on a written instrument such as a Promissory Note or an IOU and relies on Section 84 (1) of the **Bill of Exchange Act**.
76. She then defines an IOU as **“a written acknowledgement of debt”** pursuant to the **Concise Law Dictionary**. The Defendant submitted that once the Plaintiff wrote the cheque to the Funeral Home, the gift was perfected. She added that the Plaintiff is a seasoned businessman who operates many businesses and that he knows the value of reducing agreements to writing. Therefore, a simple IOU or a Promissory Note would have solved any legal issue. The Defendant further contends that this was not done because it was his intention to voluntarily pay the funeral expenses without the expectation of receiving compensation.
77. The Defendant also discusses the ingredients for a loan and relied on the definition of a loan as defined by the **New International Dictionary Volume II H – R** which states:
- “A loan is defined as Money lent at interest. Something lent for the borrowers temporary use on condition that it or its equivalent be returned.”**
78. On that note, the Defendant concludes that there was no written or oral agreement to lend her any money and that a cheque was only tendered to the Plaintiff after he attempted to harass and embarrass her. She added that the Plaintiff returned the cheque because he never contemplated receiving compensation from her.

DECISION

79. The first issue for determination is whether there was an oral contract between the parties whereby the Plaintiff agreed to lend and the Defendant agreed to repay, the sum of eight thousand dollars. If it is found that there was an oral contract, the question to be answered is whether that contract was breached.
80. An oral contract that has not been reduced to writing is recognized as a legal and binding agreement. The authors of **Chitty on Contracts, 24th Edition, London, Sweet & Maxwell 1977 (“Chitty on Contracts”)** at para. 109, pg. 221 have expressed this,

"221. The general rule. The general rule of English law is that contracts can be made quite informally; no writing or other form is necessary."

81. The formation of a contractual agreement depends on the existence of three factors, namely offer, acceptance and consideration. Chitty on Contracts at pg. 21, para. 41 states,

"General Principles. There may be said to be three basic essentials to the creation of a contract: agreement, contractual intention and consideration.....In order to decide whether the parties have reached an agreement it is usual to inquire whether there has been a definite offer by one party and an acceptance of that offer by the other. In answering this question, the courts apply an objective test: if the parties have to all outward appearances agreed in the same terms upon the same subject-matter neither can generally deny that he intended to agree. The theory, popular in England in the nineteenth century, that there can be no contract without a meeting of the minds of the parties, has been largely discredited as it would tend to produce commercially inconvenient results."

82. It is agreed by both parties that the amount of eight thousand dollars was given to the Defendant by the Plaintiff to assist with the funeral expenses of the Defendant's late husband. The parties differ however, on whether it was requested or offered and whether the money was a gift or whether it was to be repaid. A tenet of a contractual agreement is that the terms must be certain. This principle was also discussed in Chitty on Contracts at para. 111 pg. 54 as follows:

"The terms of the contract must be certain. An agreement may be so vague or uncertain that it cannot give rise to a binding contract. This principle is illustrated by the following examples: an undertaking to retire from business "so far as the law allows"; a promise that if satisfied with the plaintiff as a customer the defendants would favourably consider an application by him to renew a subsidiary contract; an agreement that the plaintiff should receive a reasonable share of profits; an agreement subject to satisfactory mortgage, or a lease which fails to specify the date of commencement. In each of these cases the agreement was held to be too uncertain to create a contractual obligation. Similarly, in *G. Scamwell & Nephew Ltd. v. Ouston* the House of Lords held that an agreement to acquire goods on hire-purchase was too vague since there were many kinds of hire-purchase agreements in widely different terms, so that it was impossible to specify the terms on which the parties had agreed."

83. In the absence of a written agreement, the Court is tasked with relying on the evidence of the parties and their witnesses and must determine who is the most credible. The Plaintiff on the one hand asserts that the Defendant asked to borrow the eight thousand dollars to pay for Mr. Knowles' funeral expenses and that she would repay the money once she received the funds from the loan she requested.
84. The Defendant on the other hand alleges that she never asked the Plaintiff for the money or told him about a loan from the bank but that he offered to pay for Mr. Knowles' medical expenses if he was taken abroad and that it transferred to the funeral expenses after Mr. Knowles' unexpected passing. The Plaintiff claims however, that he was simply informing them of their options and that knowing how expensive medical treatment abroad was he would not have offered to assist.
85. The Plaintiff additionally denied that he owed or was holding any money for Mr. Knowles when he passed which would have accounted for the eight thousand dollars given to the Defendant. He also stated that he and Mr. Knowles were business partners which was confirmed by both parties and their witnesses. Moreover, the Plaintiff recorded his

intention for the eight thousand dollars to be labelled as a loan by inscribing the letters "L/N" on the cheque initially written to the Defendant even though the cheque to the Funeral Home stated that it was for Mr. Knowles. No documentary evidence was produced of any monies being held for Mr. Knowles by the Defendant.

86. The Defendant claimed that she did not see the cheque that had the inscription "L/N" thereon and was adamant that the Plaintiff never asked her for the return of the money until the breakdown of their business relationship when there was an altercation between her son and one of the Plaintiff's employees.
87. I note however, that while the Defendant denies that she requested the money from the Plaintiff as a loan which was to be repaid after she received the loan from the bank, the Plaintiff was aware that she had approached the bank to obtain a loan. Additionally, while she initially denied that she obtained a loan from the bank, she later admitted that she did in fact obtain a loan from the bank for an amount less than the eight thousand dollars and while she could not recall the exact amount she estimated that it was around three thousand dollars. This loan was to purchase outfits for the family and other items. No evidence was produced from the Bank to confirm the amount or purpose.
88. The Defendant claimed that it was her daughter who was responsible for the funeral arrangements, whereas her son claimed that it was his mother, who took care of the funeral arrangements for Mr. Knowles. The Defendant also wrote a cheque in the amount of \$300 to the Plaintiff and identified it as the first payment.
89. I do not accept the Defendant's assertion that this payment was only made after the breakdown of the partnership when the Plaintiff harassed her. I am satisfied that the Defendant paid the money after being harassed by the Plaintiff because she knew that the monies were owed. I also do not accept her assertion that he returned the cheque to her because he knew that it was a gift. The business relationship between the Plaintiff and Mr. Knowles appeared to be one of convenience.
90. Additionally, as the Defendant attempted to bring to the court's attention that the Plaintiff was a philanthropist in support of her position that the money was a gift, it seems highly unlikely that the Plaintiff would go through the trouble of initiating this action to retrieve money that he intended to be a gift, even if there may have been a breakdown in the business relationship between himself and the Defendant.
91. In civil cases, a case must be proved on a balance of probabilities and is not as strict as the criminal burden of proof which requires a case to be proved beyond a reasonable doubt. In the instant case, I have considered both the evidence of the Plaintiff and the Defendant and I find the Plaintiff's evidence to be more credible than that of the Defendant. I do not accept the Defendant's assertion that there was a primary and collateral contract or her assertion that the money was given to her as a gift. If she maintained that it was a gift, I find it difficult to accept that she would make a payment to him and label it as the first payment.
92. Accordingly, I find that there was an oral contract between the Plaintiff and the Defendant, which the Defendant breached when she failed to repay the money to the Plaintiff and judgment is awarded to the Plaintiff in the sum of \$8,000.00. There is no evidence pleaded with respect to any additional damages sustained as a result of her failure to repay the loan, accordingly I make no additional order as to damages.
93. The Plaintiff is awarded his costs to be taxed if not agreed.

94. Interest on the \$8,000.00 shall run from the date of judgment, pursuant to the Civil Procedure (Award of Interest) Act, 1992.

Dated this 14th day of May 2021

A handwritten signature in blue ink, appearing to read "G. Diane Stewart".

The Hon. Madam Justice G. Diane Stewart