

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

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IN CIVIL DIVISION

CLAIM NO. 2005 HCV 1177

BETWEEN ELECIA AARONS CLAIMANT
AND ZEPHENIAH AARONS DEFENDANT

Mr. Barrington Frankson for Claimant

Mr. Garth McBean for Defendant.

Contract – Whether monies delivered to the Defendant by the Claimant was by way of an investment in a business enterprise or by way of loan

17th and 18th November 2008

BROOKS, J.

The Claimant and the Defendant in this matter are brother and sister and neither was completely truthful with this court.

Miss Elecia Aarons claims that she invested, at the request of Mr. Zepheniah Aarons, the sum of \$661,500.00 in his scrap metal business. Mr. Aarons was then seeking to have the business registered and needed money to do so. She says that, thereafter, he paid her some monies but just after a year had passed, told her that she had no interest in his business and that he wished to have nothing to do with her in that regard. She claims damages for breach of contract and/or for misrepresentation. She also claims a declaration that she is a joint owner of the business.

Mr. Aarons for his part denies that there was any investment in his business. He says that he sought and received loans from his sister, totalling \$661,500.00 and that he has repaid them in full. He denies any indebtedness to her or that she has any interest in his business.

As the evidence unfolded it became clear that what Mr. Aarons did was to approach Miss Aarons from time to time between March and April 2004 to get money from her. He denied that these monies were for use in his business; he insisted that they were personal loans. His testimony in this regard was not convincing. It became clear during cross-examination that Mr. Aarons so interacted with his business Jamaica Metals (which was a trading name) that he constantly confused what was personal with what was his business.

Miss Aarons testified that whenever he needed monies to purchase scrap metal he would approach her for that money. She gave evidence that he also used the money to assist with the registration of his business. She has seventeen receipts for such advances. I accept her testimony in this regard as truthful and reject his as untruthful. I accept that on a balance of probabilities that he did tell her that he needed at least some of this money to pay for scrap metal, which he had purchased.

On what basis were the monies advanced? The source of the funds and the manner in which it was repaid provides the answer. Miss Aarons says that the money she advanced to Mr. Aarons was not hers but belonged to a Mercedes Robinson and had been entrusted to her. Although Miss Aarons testified that she would have been prepared to lose that money if the business proved unprofitable, I do not accept that testimony as truthful. Miss Aarons has not demonstrated that she could have afforded to lose that amount of money, especially money which was not hers. She is illiterate. She lived in her mother's house. She is a dressmaker. I find that she loaned Ms. Robinson's money with confidence that she would have been repaid it with some measure of gain, by way of interest. The careful record of each advance and the fact that it was not a lump sum payment assists me in coming to my conclusion. The probabilities are that if it were an investment it would have been by way of a lump sum.

I now turn to the matter of the repayment. Although on her pleadings and in her witness statement Miss Aarons gave the impression that she was only paid the sum of about \$100,000.00, she admitted in cross-examination that she received over \$1.0m from Mr. Aarons between 1st April 2004 and 19th April 2005. In fact, by 6th May 2004, she had received a total of \$945,000.00 in three payments, having received on that date, a payment of

\$610,000.00. I find that in accepting those monies, Miss Aarons acknowledged that the monies, which she had advanced to Mr. Aarons, were by way of loans. I find that those sums were delivered to her by way of repayment of the monies loaned. Although the cheque for \$610,000.00 has written on the back, the words "loan repayment", I place no reliance on that bit of evidence because of the source from which it comes (Mr. Aarons) and secondly because Miss Aarons is illiterate. Even if the words had been placed there when the cheque was delivered to her she would not have been able to determine whether or not she agreed with them as the basis for the payment. I accept as a concise summation of the facts, as I find them to be, the following portion of Mr. McBean's submissions on behalf of the Claimant:

"The repayment of these sums and the acceptance thereof within such a short space of time is inconsistent with an investment in business. There would have been insufficient time for a turnover of profits if it were an investment."

Though both sides indicate that the scrap metal trade was lucrative, the fact that Miss Aarons was receiving repayments at about the same time that she was making advances, is less indicative of an investment in an enterprise than it is of intermittent loans and repayments with interest thereon continuing over a period of time. I also bear in mind and accept that some of the payments reflected in the cheques delivered to Miss Aarons

represented payment for rental of a vehicle which Mr. Aarons had taken from her.

It is also my view that the absence of an agreement as to the percentage that she would have in the business is fatal to her position. That would be a critical element in determining what interest, if any, she had in the business. In my judgment its absence leaves the parties, on her case, without an agreement. In the case of *Western Broadcasting Services v Seaga* PCA 43 of 2005 (delivered 29/3/07) their Lordships at paragraph 19 of the judgment said:

It is trite law that although parties may reach agreement on essential matters of principle, if important points are left unsettled their agreement will be incomplete: *Chitty on Contracts*, 29th ed (2004) para 2-110. In some cases it can properly be said that the parties have reached an enforceable agreement on part of the matters in issue, leaving the rest to be determined by further agreement or the process of litigation: see such cases as *Tomlin v Standard Telephones & Cables Ltd* [1969] 1 WLR 1378. The present case does not come into that category.

I find that this case also does not fall within the category cited.

I also accept the submission by Mr. McBean that there are no *indicia* of a partnership as set out in *Lindley and Banks on Partnership* 17th Ed. at paragraph 7-23. There the learned authors speak to “books of account, letters, admissions and oral evidence of employees, agents and other persons”.

Mr. Frankson, on behalf of Miss Aarons submitted that the fact that after the significant payments were made by 6th May, payments in smaller

amounts continued for up to a year. He says that that supports Miss Aarons' position that this was a return on her investment. I do not accept that that accords with normal experience. A business enterprise, especially one with limited capital, usually starts making small profits before it begins to grow and develop. Here, on Mr. Frankson's theory the business would have ballooned at the beginning and within a month thereafter earn only comparatively meagre profits. Although it is not impossible that that could have occurred, there is no evidence from Miss Aarons that she made enquiries or received any explanation as to the reason for the sudden, dramatic fall in the level of her returns.

Mr. Frankson also made significant reference to an incident which is reported to have occurred in a bank in which Mr. Aarons is supposed to have told Miss Aarons that her name could not have been added to Jamaica Metals' bank account at that time but that he would see that it is done at a later date. Mr. Aarons denies any such occurrence. I am not sure whom to believe, bearing in mind the proclivity of both to be economical with the truth. The burden of proof is on Miss Aarons and she hasn't convinced me. Even if I did accept her version of this incident it does not overturn the other aspects of the relationship between these parties which I have already discussed.

Finally I turn to two other aspects by which Miss Aarons sought to demonstrate her interest or share in the business. She said that she did advance some of her own money but that was not part of the \$661,500.00 in issue. Her money, I find, if she did use any, was used to purchase small quantities of scrap metal which she in turn sold to Jamaica Metals. It is for that reason that she has no receipts in respect of those monies and also goes to show that she regarded herself as separate from that business. She also rented a car to Mr. Aarons for use in the business. She accepted the periodical payments for the rental of the vehicle. This is not an indication of a person with a share in the business, but rather it is an indication of someone dealing at arm's length with another. These aspects do not support Miss Aarons' claim.

For the reasons stated above the Claimant Miss Aarons must fail.

The order therefore is as follows:

1. Judgment for the Defendant
2. Costs to the Defendant to be taxed if not agreed