IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 195 of 2009

JAMES LIGHTBURN (deceased) **represented herein by his duly appointed** **personal representative Mr. Hubert Elrington**	**CLAIMANT**
AND	
LIONEL HAMILTON	**DEFENDANT**

Hearings
2010
22nd February
1st September
29th September
18th October
23rd November

Mr. H.E. Elrington SC for the Claimant.
Mrs. Naima Barrow-Badillo and Mrs. Liesje Barrow-Chung for the Defendant.

LEGALL J.

JUDGMENT

1. The claimant filed the claim in this matter dated 11th May, 2009 in which he asked for several declarations and orders against the defendant who is a relative of the claimant. Before the claim came up

for hearing, the claimant died on 18th November, 2009. Mr. Elrington SC, the lawyer who filed the claim on behalf of the claimant, applied exparte to the court for him to be appointed the personal representative in the estate of the deceased claimant for the purpose of continuing the claim. The application making Mr. Elrington the personal representative of the deceased claimant was granted.

2. On 22nd February, 2010 Mr. Elrington for the claimant agreed to a consent judgment in relation to the claim, to the effect that the property, the subject matter of the claim, be sold; and the proceeds be divided equally. The court therefore made a consent order as follows:

> "By consent the property described in Minister's fiat dated 26th September, 2001 No. 762 of 2001, be sold by public auction or private sale and the net proceeds of the sale shall be divided equally between the estate of the claimant and the defendant."

3. This consent order was never entered or perfected, but it took effect from the date it was made – 22nd February, 2010. On the said date the court made the above order, the court also fixed a date for the parties to report in relation to a counterclaim filed by the defendant. After no settlement could be arrived at, the defendant agreed to limit the counterclaim to a single claim of $36,512.00, being monies spent by him to develop and maintain the property.

4. Based on the consent order above, the trial proceeded only on the single counterclaim. In support of that counterclaim, the defendant called three witnesses, including himself. The representative for the claimant did not testify or call any witnesses; and no defence to the counterclaim was filed. The court, at the end of the hearing of the counterclaim, gave the parties about three weeks to file and serve their written submissions in relation to the counterclaim; and adjourned the counterclaim for this purpose to 18th October, 2010. On that date only the defendant filed his submissions. Mr. Elrington asked for further time to put his submissions in writing. The court then fixed 23rd November, 2010 for decision on the counterclaim, and at the same time gave Mr. Elrington further permission, between those dates, to file his submissions. Up to the date set for decision in this matter, the submissions were not filed.

5. In order to get a proper understanding of the counterclaim, brief facts relevant thereto are necessary. The claimant held a lease for 580 acres of land situate at Ben Lamond/Corn House Creek Works Area, Belize District, Belize, which was granted by the government to the claimant on several conditions, including the payment of an annual rent of $1,160.00, subject to review every three years. The claimant experienced financial problems in relation to the lease, including paying the rent. He approached the defendant to go into a joint business venture, namely tourism and agriculture, using the land for that purpose. The defendant agreed to the business venture; and further agreed to provide money to the claimant to pay off back rent,

taxes and to purchase the land, on the condition that the claimant would include the defendant's name on the lease.

6. The claimant agreed and the lease was transferred in both of their names in June 1998. Because of certain circumstances, the lease was put in the sole name of the defendant for about one year. Afterwards the lease has reverted back in both of their names in September 2010, and it is still in both of their names.

7. The defendant's contention is that he spent sums of money with respect to the land: monies for arrears of rent on the lease; to pay land taxes, survey fees and monies to purchase the land, all amounting to $73,024.00. Since the land is owned by both of them, the defendant has counterclaimed for half of the amount he said he spent – namely $36,512.00.

8. In the counterclaim, it is stated that the defendant "gave" monies to the claimant; that the defendant "paid" monies to the government for rent due and to purchase the land; and the defendant "paid the survey fee of $9,000.00." The counterclaim does not plead that the claimant had a loan agreement, oral or written, or a promissory note to repay half of the monies allegedly spent by the defendant for purposes of the property. The counterclaim shows that the defendant advanced, paid, and gave monies to the claimant; but it does not plead that there was a promise by the claimant to pay back half of the monies.

9. The witness statement of the defendant, subject to the observations below, also fails to establish such a promise by the claimant. The defendant's evidence in court does not fill this gap. Assuming that the defendant did spend the aforesaid amount of money for purposes of the property, it does not necessarily mean, without supporting evidence, that because the property is in the names of both of them, therefore the claimant has to pay half of the expenses. In my view, the claimant would not be liable to pay half of the expenses, unless he had promised or agreed to do so; and I do not find on the evidence that the claimant did so promise or made such an agreement to pay half of the expenses.

10. There is however evidence in the defendant's witness statement, that the claimant arranged two loans from the defendant amounting to $3,480.00 to pay off back rent. Apparently these loans were made in March and June 1997. There is also a promissory note signed by the claimant dated 30th September, 1996 whereby he received the sum of $4,000.00 from the defendant and agreed to repay it on demand with 6% interest. There is another promissory note dated 28th January, 1997 for $500.00 repayable with 6% interest from the defendant to the claimant. Another similar promissory note dated 27th March, 1997 for $2,320.00 received by the claimant from the defendant which the claimant promised to repay with 6% interest.

11. It seems that the above loans, although clearly loans on a simple contract, may not be recoverable because of section 4 of the

Limitation Act, Chapter 170 of the Laws of Belize. Section 4 state: inter alia:

> "4. The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued – (a) actions founded on simple contract or on tort;" …….
> (b) ...."

12. It is established by the authorities that in the case of a promise to pay a debt on demand, no demand is necessary, and the cause of action arises on the promise: see ***Collins v. Benning 1701 12 MOD Rep 444*** and Halsbury Laws of England 4th Edition Volume 28 paragraph 662. "In an action for money lent, if time is specified for repayment or any condition for repayment, other than mere demand, is imposed, the statute of limitation runs on the expiration of the time specified or on the happening of the condition. If no time is specified the statute runs from the date of the loan": see Halsbury laws above at paragraph 663 quoting ***Re McHenry's Claim 1894 3 Chd 290 and Garden v. Bruce (1868) LR3CP300***. Based on these authorities the loans above do not seem to be recoverable.

13. I therefore repeat the consent order at (1) below, and make the orders at (2) and (3):-

(1) By consent the property described in Minister's fiat dated 26th September 2001 No. 762 of 2001 be sold by public auction or

private sale, and the net proceeds of the sale shall be divided equally between the estate of the claimant and the defendant.

(2) The counterclaim is dismissed.

(3) Each party to bear his own costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
23rd November, 2010