

IN THE SUPREME COURT OF BELIZE 2002

CLAIM NO. 86 OF 2002

BETWEEN:	EGBERT CABRAL	CLAIMANT
	AND	
	NORMAN EILEY	DEFENDANT

Mrs. L. B. Chung, for the claimant
Mr. Hubert Elrington, for the defendant

AWICH J.

17.9.2009

J U D G M E N T

1. The plaintiff, Egbert Cabral, and the defendant, Norman Eiley, entered an agreement that they described as, “a joint venture agreement”, for the purchase of a boat known as the “Royal Piper”, and to run it for transporting passengers from San Pedro to Placencia for payment of fares. The agreement was not written.

2. The claimant's case was that it was agreed that each party would contribute the sum of \$30,000.00 as one half part of the capital; and further, that the claimant would pay in his contribution, and lend to the defendant, \$30,000.00 being the one half part of the capital due from the defendant. The claimant testified that he duly contributed his part of the capital and advanced the part due from the defendant.
3. It was a common fact that the business operations were carried on by the defendant alone, and that he had complete custody of the boat, which he sold at the close of the business.
4. The business ceased and the boat was sold off. The claimant has claimed against the defendant the following: (1) \$30,000.00, money said to have been lent to the defendant; (2) in the alternative, damages; (3) an account to be rendered of the business; (4) an account to be rendered of the sale of the boat; (5) payment of sums due from the accounts rendered; (6) interest under s: 165 of the Supreme Court Act; and (7) costs of suit.

5. Based on the common fact that the defendant alone carried out the business operations, the court at pretrial review on 4.5.2006, invited parties to give any reason that would prevent it from adjudging the defendant liable to render accounts of the operations; and of the shares of profit or loss. Both learned counsel, Mr. Hubert Elrington and Mrs. L. Chung were agreeable to the proposed order. The court proceeded and made the order requiring the defendant to render the accounts.

6. The defendant filed an account of receipts and expenditure on 4.5.2006. It showed loss. At trial the claimants did not adduce contrary evidence to show that profit was made. The court must accept that loss, and not profit, was made. There has been no account of the shares of the loss. The loss must be shared equally at fifty-fifty since capital was contributed in that ratio.

7. It is irrelevant that the claimant did not demand accounts of profits during the business operations, or account of the sale of the salvaged boat. He finally made demands leading to this claim, which demands were not met.

8. The question of the loan of \$30,000.00 advanced by the claimant to the defendant is a different matter; it did not depend on profit being made. The claimant produced sufficient evidence to prove the loan. The evidence included a written acknowledgement signed by the defendant. Whether or not the business failed, the loan remained just that, and was repayable. Judgment is entered for the claimant, Egbert Cabral, for the sum of \$30,000.00, to be paid by the defendant, Norman Eiley. An account of the business operations and sale of the boat has already been rendered. An order for account is no longer necessary.

9. Interest at 6% per annum is payable on the sum awarded from today, 17.9.2009, until full payment. The defendant will also pay costs of suits to be agreed or taxed.

10. Delivered this Thursday the 17th day September 2009.
At the Supreme Court
Belize City

Sam. L. Awich
Judge
Supreme Court