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

CLAIM NO. 237 OF 2007

	(KITTY FOX	**CLAIMANT**
	(	
BETWEEN	**(AND**	
	(	
	(HEIDI RIBARY	**DEFENDANT**

Before: Hon Justice Sir John Muria

5 March 2010

Counsel:

Mr. H. Elrington SC for the Claimant
Defendant in person

J U D G M E N T

CLAIM – money lent – debt not denied – loan repayable on demand, unless otherwise agreed – whether action premature – repayment under Promissory Note to commence 24 months later – Promissory Note not part of the terms of the loan – cause of action not premature – claimant entitled to claim repayment of loan on demand

MURIA J.: This is a claim brought by the claimant on 15 May 2007 against the defendant for the sum of $26,694.83 being money lent by the claimant to the defendant. The said amount comprises of $17, 094.83 first lent to the defendant in December 2005, to enable her to travel to Canada and to pay

for the expenses of bringing her Ford Super Cab vehicle from Canada to Belize, and $9,600.00 in February 2006, for customs duty on the vehicle.

On the pleadings, there is no denial on the part of the defendant that she owed the claimant the sum of $26,694.83 nor is there any dispute as to the purpose for which she borrowed the money from the claimant. Consequently, Mr. Elrington SC submitted that the defendant has no defence, and so judgment ought to be entered for the claimant.

I accept Mr. Elrington's submission that the defendant is indebted to the claimant in the sum of $26,694.83 and that she has promised to pay the amount back to the claimant. The claimant also relies on the Promissory Note dated November 22, 2006 signed by the defendant, to support her claim. Apart from what I will later say on it, the said Promissory Note signed by the defendant is conclusive proof that she owes the money to the claimant and has agreed to pay it back.

The Promissory Note is in the following terms:

"$26,694.83

> Twenty-Four months from the date hereof I promise to pay KITTY FOX OR ORDER THE SUM OF TWENTY-SIX THOUSAND SIX HUNDRED NINETY – FOUR DOLLARS AND EIGHTY THREE CENTS in Belize currency [BZ $ 26,694.83] for value received.
>
> (Defendant's signature)
> Hiedi Ribary"

Whilst accepting that the Promissory Note confirms that the defendant owes the claimant $26,694.83, the defendant also relies on the same Promissory Note in Paragraphs 3 and 4 of her defence. She raises the defence that the claim was premature, that is to say, the claimant has no cause of action when she filed the claim on 15th May, 2007. The argument being that based on the Promissory Note, twenty four months had not yet lapsed in order to give rise to the liability to repay the loan, so it seems to the Court to be the defendant's position.

Regrettably, Mr. Elrington SC made no submission on the point, despite the fact that the defendant who represented herself in person, raised the issue of

prematurity, based on the Promissory Note. Be that as it may, I will deal with the point briefly.

Generally speaking, unless the parties agree otherwise, a loan is repayable on demand. That is not only the law, but it is also plain business and common sense.

I assume the purpose of the defence raised in Paragraphs 3 and 4 of the defence, is to say that the commencement of the repayment of the loan was twenty four months from November 22, 2006 which would be November 22, 2008. Had this been a stipulation forming part of the terms of the loan arrangement between the parties, and supported by evidence, I would be inclined to accept the defendant's intimation. However, I cannot accept any suggestion that the Promissory Note signed by the defendant in this case stipulates that the loan would be repaid after twenty four months from November 22, 2006. Hence the Promissory Note cannot override the claimant's right to demand repayment from the defendant of her money.

There are obvious reasons why the Promissory Note relied on by the defendant does not help her defence as shown by the evidence of the

claimant in her witness statement. First, it was not a term of the loan of the money from the claimant to the defendant that repayment should commence twenty four months from November 22, 2006. Rather, the claimant lent the money to the defendant "*on the understanding and agreement that the ownership of the vehicle would be transferred to Peckish Limited*" a company owned jointly by the claimant and defendant. That understanding had been breached by the defendant by failing to transfer ownership of the vehicle to the company.

The defendant failed to fulfill the arrangement for the transfer of the vehicle to Peckish Limited. The parties then agreed that the defendant should sell the vehicle and the proceeds to be used to repay the loan. The defendant again failed or refused to sell the vehicle as agreed. The following paragraphs in the claimant's witness statement confirm the position between the parties over the matter:

> "4. I loaned the said sum to the Defendant on the understanding and agreement that the ownership of the vehicle would be transferred to Peckish Limited, a company owned jointly by the Defendant and I.

5. In breach of the said agreement, the Defendant did not transfer the ownership of the vehicle to Peckish Limited.

6. Sometime in November of 2006, the Defendant further agreed to sell the vehicle and use the proceeds of the sale to repay the monies she borrowed from me.

7. In breach of the agreement the Defendant has refused to sell the vehicle and despite repeated demands from me has refused or neglected to repay the said loan".

Even on the defendant's own evidence in paragraph 7 of her witness statement, she confirms that she had a meeting with one of the claimant's witnesses, Mrs. Barbara Elrington, Manageress of Pitts & Elrington Law Firm on November 22, 2006. At that meeting Mrs. Elrington asked the defendant if she was prepared to sell the vehicle, so as to pay back the loan. Her reply was that she could do that "*but it really would depend on future actions of the 'defendant' (sic) and my future activities.*" It was after that meeting that the defendant was asked to sign, and did sign, the Promissory Note.

Thus the Promissory Note, in fact, only came about after the defendant failed to fulfill the terms of the loan on her part. It was obviously part of the security measures taken by the claimant to secure repayment of her money lent to the defendant.

The defendant having failed to perform what was required of her in order to meet the terms of the loan, the claimant demanded repayment, and entitled to do so, of the loan. There was no need for the claimant to wait twenty four months before she could make demands for the repayment of her money lent to the defendant. The claimant advanced the money in December 2005 and in February 2006 to the defendant. It would be untenable on the defendant's part to argue that under her Promissory Note repayment would only start 24 months later: See ***Nigel Colin Tattersall and William Allan De Beer v Nedcor Bank Limited*** (28 March 1995) Court of Appeal (South Africa) Case No. 340/1993.

The cause of action was triggered there and then, in November 2006, when the defendant failed to comply with the understanding and the arrangement between the parties over the terms of the loan. The claimant's claim was, therefore, not premature when she filed her claim on 15 May 2007.

For the above reasons there must be judgment for the claimant in the sum of $26,694.83 together with costs, to be taxed if not agreed.

Order Accordingly

Hon. Justice Sir John Muria
Justice of the Supreme Court

H. E. Elrington & Co., Attorneys-at-law for the Claimant
Defendant represented herself