IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. M125/1976

BETWEEN	AINSLEY H. MURRAY	PLAINTIFF
A N D	COUNCILLOR HIRAM MURRAY	DEFENDANT

A. G. Gilman for Plaintiff.

E. L. Frater for Defendant.

Heard on January 25, October 28, 1980 May 18, and June 18, 1981.

~~JUDGMENT~~

CAMPBELL J.

The plaintiff and the defendant are father and son. One Mrs. Mae Murray who is mentioned in the Defence and who gave evidence for the defendant is the wife of the plaintiff and the mother of the defendant.

The plaintiff claims repayment by the defendant of the sum of $15,000.00 being the balance of a loan of $20,000.00 made by him to the defendant in August, 1974.

It is not disputed that the sum of $20,000.00 was paid over to the defendant in two instalments of $10,000.00 on the 6th August, 1974 and 16th August, 1974 respectively. It is equally not disputed that payment was effected by withdrawal by Mrs. Mae Murray from a joint account the Passbook of which was in the names of the plaintiff and Mrs. Murray. This Passbook was admitted in evidence as Exhibit 1.

The dispute centres on the circumstance in which the money was paid over to the defendant.

The plaintiff asserts that the money was given as a loan. The defendant by paragraphs 1 and 2 of his defence denies that any loan was made to him by the plaintiff and that he owes him any sum. In paragraph 3 of the defence he proceeded to set out the nature of the transaction but clarity, precision, and consistency are totally lacking therefrom.

This paragraph of the defence starts off by pleading that

the plaintiff and the defendant's mother, Mrs. Mae Murray operated a joint bank account. That the said Mrs. Mae Murray gave the defendant the sum of $20,000.00 on the understanding that he the defendant would repay her whenever he could afford to do so.

Pausing here, the defendant could be asserting that the transaction was funded from money held exclusively by Mrs. Mae Murray in which case the specific denial of any loan transaction with the plaintiff would be justified.

Alternatively the defendant could be saying that the loan was funded from the joint banking account, but, as it was lent to him by Mrs. Mae Murray in exercise of a claim of right by her to use the fund as she pleases, she and she alone had the right to claim repayment. On this alternative assertion serious legal issues could have arisen foremost of which would be the limiting circumstnces in which a co-owner and or a volunteer deriving title through him, can be sued by the other co-owner to recover property held in co-ownership which has been handed over by one co-owner to the volunteer without the consent and or concurrence of the other co-owner.

The evidence of Mrs. Mae Murray on this aspect of the matter has obviated the necessity for considering this legal issue. She admitted that the $20,000.00 given to the defendant came from the joint account. She went further to say that "the plaintiff told me to give the defendant $10,000.00 on each occasion".

Under cross-examination she varied her evidence by saying "plaintiff did not give me the book, I had it and I went to him and told him if he would agree with me to give the defendant the $10,000.00. He agreed. I went to the bank that time, drew the amount and transferred it to my son. So also with the second transfer". However, even under cross- examination she recognised at the least the right of the plaintiff to be consulted.

Returning to paragraph 3 of the defence, it goes on to plead an understanding between Mrs. Mae Murray and the defendant that he the defendant could off-set against the repayment to Mrs. Mae Murray of

the $20,000.00, "whatever sum the said Mae Murray and the defendant spent on the repairs and extension to the plaintiff's premises at Jupiter Road in the parish of St. Andrew".

Here again the pleading is imprecise and inconsistent with the first part of the paragraph. It is imprecise because it is not clear whether the offset is of expenditure already incurred which has only to be quantified, or of expenditure to be incurred.

It is inconsistent with the first part of the paragraph because inasmuch as that part is capable of meaning that the money given to the defendant belonged to Mrs. Mae Murray exclusively, it becomes difficult to understand why Mrs. Murray would be allowing the defendant to offset expenditure incurred by him not on her property but on property of the plaintiff. Equally is it difficult to understand why she would be giving to the defendant, by way of offset against the repayment to her, the amount she expended on the plaintiff's property.

The defendant did not give evidence to explain what he meant in his defence. However if the pleaded right to offset expenditure on the plaintiff's property at Jupiter Road is to be understood in an intelligible manner, then this can be so only on the basis that the $20,000.00 given by Mrs. Mae Murray to the defendant was to the knowledge of both Mrs. Murray and the defendant the exclusive property of the plaintiff albeit in the joint account.

Now to the evidence. The plaintiff says that prior to 1974 he had a joint savings account with his wife Mrs. Mae Murray.

Exhibit 1 is a continuation of that account. All deposits made in the joint account since the opening thereof were made by him. The joint account was created to facilitate his wife making withdrawals on his behalf as he was frequently ill and in hospital. On the other hand Mrs. Mae Murray in her evidence said, without conviction, that she had lodged money in exhibit 1 occasionally.

She at the same time was operating a current account at the same bank where the joint account was held. I do not believe nor do I accept her evidence that she made occasional lodgments to the

joint account. I find that all deposits were made by the plaintiff. The plaintiff's evidence goes on to say that he deposited in the joint account on or about July 25, 1974, the amount of $26,914.85. This was the net proceeds from the sale of No. 6 Camperdown Road owned by him.

He said that prior to August, 1974, he had promised his son the defendant a loan, he was reminded by his son of this promise while he the plaintiff was in hospital. He implemented this promise by giving the Passbook to his wife Mrs. Mae Murray with instructions to withdraw and give to the defendant the amount of $20,000.00. This was effected by the withdrawals by Mrs. Mae Murray from the joint account of $10,000.00 on 6th and 16th August, 1974, respectively. These sums were duly paid over to the defendant.

The plaintiff also gave evidence as to the defendant promising to repay as soon as he obtained a deposit from Victoria Mutual Building Society which he was expecting. The plaintiff was repaid $5,000.00 and no more despite demand for repayment of the balance.

The evidence given in-chief by Mrs. Mae Murray on behalf of the defendant that the plaintiff told her to give the money is consistent with the plaintiff's evidence. The attempt by Mrs. Mae Murray under cross-examination to qualify her evidence in-chief so to suggest that she was the initiator of the idea of giving the money to the defendant is regrettable. It is feeble and she is not being truthful. I reject this later version and find as a fact that she gave the money to the defendant on the direction of the plaintiff.

There is no evidence contradicting the plaintiff's version as to what took place between him and the defendant prior to the former entering hospital nor of what took place in hospital consequent on which he the plaintiff instructed Mrs. Mae Murray to make payment to the defendant. I accept the plaintiff as a truthful witness and find as a fact that in instructing Mrs. Mae Murray to give the defendant $20,000.00, he the plaintiff was implementing a loan agreement entered into with the defendant.

Mrs. Mae Murray in her evidence relative to the payment of the money to the defendant said "I gave him the money, he was building a home. I gave him the money with the understanding that as I was going to improve the Harbour View house, then he would give it back to me in portions as I needed it. I refer to 56 Jupiter Road".

This piece of evidence given by Mrs. Murray is totally at variance with the defendant's pleading namely that Mrs. Murray in giving him the money had an understanding with him that he would repay her whenever he could afford so to do.

Mrs. Murray in giving this piece of evidence is also at variance with the defendant's pleading namely that there was an understanding that he and Mrs. Murray would be entitled to deduct expenditure on repairs and extension to the plaintiff's premises at Jupiter Road.

On a fair construction of this piece of evidence given by Mrs. Murray there would be no question of deduction from the sum of $20,000.00 to be repaid but rather repayment by instalments as and when money was needed to finance the improvement contemplated for 56 Jupiter Road.

Regarding the repairs and improvement to 56 Jupiter Road, Mrs. Murray in her evidence said she authorised the work to be done. She said the work was done in 1974 or 1975 but she cannot remember exactly. The money for the repairs and reconstruction was her own money which she had in her own account derived from the boutique which she operated. When she ran short she took a loan from a friend of hers. Her estimate of the expenditure on 56 Jupiter Road is $10,000.00. This sum, she on behalf of the defendant, says should be deducted.

Mrs. Murray has been far from candid with the Court when she says the expenditure is estimated at $10,000.00 and that it was incurred, in 1974 or 1975 but that she cannot remember, the invoices and receipts evidencing the expenditure, with but one exception for an amount of $32.00 in January, 1974, all show expenditure in 1973 with the bulk

concentrated in July 1973. The total expenditure from the exhibits admitted in evidence amount to $2,461.50. This is a very far cry from $10,000.00 and I cannot conceive that the defendant and Mrs. Murray who appear to have been so meticulous in preserving invoices for as little as $1.75 would have been so careless as to misplace the invoices and receipts which would account for some $7,500.00 of expenditure if the same had been incurred. On a charitable view of the matter Mrs. Murray must have been basing her estimate on the 1980 cost of doing similar work.

Was there any understanding that the sum of approximately $2,500.00 which I find as a fact was expended on 56 Jupiter Road should be deducted by the defendant? This sum I find was incurred in the year ending in December 1973.

This was some seven months at least prior to the giving of the loan. Had the defendant incurred the expenditure, and had he intended to demand reimbursement he would hardly have failed to request payment from the plaintiff before incurring any loan liability.

He the defendant was in exclusive occupation and enjoyment of the plaintiff's house since 1970 and there is no evidence that he was paying any rent. If in fact he did expend on minor repairs it certainly would in my view be in consideration of his rent free occupation. I however find as a fact that the expenditure, or the substantial part thereof was incurred by Mrs. Murray. Whether it was financed from rents received from the plaintiff's Dry Goods Store at Lionel Town or from Mrs. Murray's own money is not necessary for me to decide because the defendant cannot as against the plaintiff claim a deduction for expenditure which he did not incur and there is no evidence that any claim to repayment by Mrs. Murray from the plaintiff had been assigned to the defendant.

Mr. Frater for the defendant submits that there never was any intention to create a legally binding relationship between Mae Murray and the defendant or between him and any other person. In my view, despite the relationship of the plaintiff and the defendant

the evidence as given whether viewed from the plaintiff's version or from the version given on behalf of the defendant, showed clearly that the plaintiff or Mrs. Murray on their respective version expected to be repaid and that the defendant knew that he was under an obligation to repay. The amount involved is a very substantial one almost exhausting the amount in the savings account, there is no evidence that the plaintiff is a rich man. I reject as without substance the submission that the parties did not intend the transaction to be legally binding.

In conclusion I accept the evidence given by the plaintiff that he gave a loan to the defendant through Mrs. Mae Murray. I find as a fact that the defendant made no significant expenditure on 56 Jupiter Road which though owned by the plaintiff was then in the occupation of the defendant as a non-paying tenant. I find as a fact that the amount of $15,000.00 out of the loan of $20,000.00 remains still unpaid.

There will accordingly be judgment for the plaintiff against the defendant for the sum of $15,000.00 with costs of and incidental to these proceedings to be paid by the defendant to the plaintiff, the same to be agreed or taxed.

U. V. CAMPBELL,
Judge.