

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION**

TYRONE BUTTS,)	
Plaintiff,)	
)	
v.)	No. 11L 1760
)	
CYNTHIA FORD and)	Honorable Thomas R. Mulroy
DENISE HUNT)	
Defendants.)	

OPINION AND ORDER

Litigation Background

On February 16, 2011 Plaintiff Tyrone Butts filed a Complaint for breach of contract against his sisters, Cynthia Butts Ford and Denise Hunt seeking \$67,479.00. The case was set on Judge Allen Goldberg’s call. On June 16, 2011 both defendants filed *pro se* appearances and answered the complaint. Judge Goldberg referred this case to court-annexed mediation on September 16, 2011. During the court ordered mediation, Defendant Denise Hunt reached a settlement agreement with Plaintiff. On September 26, 2011, this case was transferred to Judge Thomas Mulroy and the first status was set for October 17, 2011. On November 11, 2011 all parties appeared and trial was set for December 20, 2011 at 1:30p.m. The parties engaged counsel and a one day bench trial, without a court reporter was held before Judge Mulroy on December 20, 2011.

Statement of Facts

This case involves a family dispute over money between Plaintiff and Defendant who are brother and sister. Plaintiff alleges he gave thousands of dollars to Defendant over time to hold for him in her bank account, in “safekeeping,” because he did not have access to a bank account. When Plaintiff investigated, he discovered Defendant had used the money for herself and he sued her for what she owes him.

ORDER

Defendant claims she took some of Plaintiff's money for her use, but only and always with his permission and with the understanding that she would replace it. The case could not be fully resolved by mediation and went to trial. A handwritten, witnessed agreement between the parties and Defendant's Charter One bank records were introduced into evidence. Plaintiff and Defendant testified along with five other witnesses, some of whom had relevant evidence to give. There were no written agreements as to this arrangement; it was simply Plaintiff's word against Defendant's.

This case tugged on the binds of this large family and many of its members came to observe the trial and to testify. This decision will not stop the bickering or heal the bad feelings which were obvious in court, but will bring an end to this particular dispute.

Plaintiff testified that in 2002 he gave Defendant approximately \$16,000 for "safekeeping." As noted above, there was no written document to verify this, but then there probably would not have been since a brother was asking his sister for a favor. Plaintiff testified that because of his "bad credit" he did not have access to a bank but did not want to keep his cash in an insecure place. Plaintiff was a vendor of small items in the community and was well known for lending money to those who needed it and for helping others in need. It was not explained how Plaintiff was able to amass the cash which he asked Defendant to hold for him and it was never explained why Defendant agreed to hold Plaintiff's money or why he could not find a bank which would take his cash.

Plaintiff testified that as time went on from 2002, he gave Defendant more money to hold until, by September 25, 2004, Defendant had \$40,000 of Plaintiff's cash under their brother-sister agreement whereby she would keep the money in her bank account for his purposes and that she was not to take or use it without his permission. He then added more money in 2004.

Plaintiff testified that he discovered that money was missing in 2005 and that when he confronted Defendant she admitted she owned him money. Plaintiff said Defendant admitted taking the money for her own use and promised to repay it. She continued her promises of repayment up to the date of trial.

ORDER

Plaintiff explained that he and Defendant entered into a written agreement on September 25, 2004 whereby Plaintiff would again deposit money into Defendant's account and Defendant would purchase a house with the money and ultimately give the house to Plaintiff. The reason for this arrangement was never explained and why Defendant participated in the plan was never explained. However, Defendant was able to obtain a "no money down" loan from a bank and bought a home to rehabilitate. Plaintiff paid each mortgage payment. When the market crashed, they lost the home to foreclosure. The contract, witnessed by Levy Bowman, handwritten by Plaintiff and signed by Defendant, states, in part:

"Also the money in Cynthia Ford (*Defendant*) Bank account with Charter One Bank is solely the money of Tyrone Butts (*Plaintiff*) for the purposes of acquiring and backup plan for paying for said home or homes."

Plaintiff testified that Defendant now owes him \$45,000 based on what he has given her and what she has returned to him.

Defendant took the stand and denied owing Plaintiff money and introduced into evidence her bank records which show a confusing array of deposits and withdrawals over the years. Defendant confirmed the brother-sister safekeeping arrangement and admitted taking some of Plaintiff's funds, but said he had given her permission innumerable times to withdraw money for her own use. She denied ever telling Plaintiff she owed him money or that she would repay him money. Defendant testified that she was coerced into signing the September agreement for the house purchase, that she signed it against her will and that she never read it.

Levy Bowman, a brother to Plaintiff and Defendant, testified that he witnessed the September agreement and that Defendant was not coerced and that she had read the contract carefully. He further testified he heard Plaintiff and Defendant discuss the matter before Defendant signed the agreement.

Thomas Rainey testified that he had known the family for years and had seen Plaintiff give Defendant thousands of dollars to deposit into her bank account and had heard them discussing buying a home in her name and then ultimately signing it

over to Plaintiff. He also testified that Defendant promised to pay Plaintiff back the money she had taken.

Thomas Doherty testified that he was Plaintiff's roommate and had worked for Plaintiff and knew his family. He testified he heard Defendant promise to repay Plaintiff the money she owed.

Other witnesses testified who were not careful in their testimony or demeanor and who were not helpful to either side.

OPINION

This family dispute over the care and safekeeping of money turns on the familiar question of credibility which the Court was in a unique position to judge during trial. It reviewed and studied the documents, listened carefully to the testimony and measured countless issues relating to credibility. The Court asked questions of Plaintiff and Defendant as well as of the other witnesses while they were on the witness stand and observed Plaintiff's and Defendant's reaction and response to the witness testimony. Testifying is a stressful and unique occurrence and this court has observed thousands of witnesses under oath and applied that experience to this case. Some witnesses stammer or fidget, some are cool and straightforward, some overly rehearsed, while others are seemingly taken by surprise with each question. There are witnesses who are direct and frank on direct examination and then turn defensive and reticent on cross-examination. There are witnesses who do not take seriously their role and responsibility as a witness, and do not assist the trier of fact in its determination. In determining credibility, the Court considered the strength of a witness' memory, the clarity with which he/she could recall events, as well as the witness' expression and gestures and, importantly, his/her motive, interest and bias.

Here Plaintiff and Defendant testified about transactions which were very important in their lives and which carried an emotional impact despite the passage of time. The Court paid careful attention to Plaintiff and Defendant while they testified and observed their reactions to the evidence. The Court considered all the documents as well as testimony from other witnesses when weighing the credibility of Plaintiff

ORDER

and Defendant. Based on the Court's observations, and considering the direct and circumstantial evidence it finds Plaintiff was credible and believable. His demeanor did not change from direct to cross- examination; he was not argumentative or defensive; he was clear and straightforward and believable. Defense counsel carefully questioned Plaintiff and Plaintiff held his ground, maintained his credibility.

The Court further finds the witnesses Bowman, Rainy and Doherty credible and believable when they testified in support of Plaintiff and his case.

Plaintiff had the burden to prove what defendant owed him and despite the lack of records and written agreement, the Court finds Plaintiff met his burden of proof through his testimony to the extent he was able to establish Defendant owes him \$45,000.

This was a difficult and emotional case and it must be noted that counsel for Plaintiff, Crystal P. Brown and counsel for Defendant, James E. Taylor presented thorough and carefully prepared cases. Their arguments were cogent, intelligent and clear and both lawyers represented their clients well and were of great assistance to the Court in the trial of this case. The Court is appreciative of their diligence and attentiveness in this matter.

IT IS HEREBY ORDERED;

Judgment is entered for Plaintiff is the amount of **\$45,000** and against Defendant in that amount. Payment of this judgment is due thirty days from the date of this order.

This order is final and appealable and there is no just reason to delay its enforcement.

_____, 2011

ENTER:

Judge