

ORDER

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

JUAN CONTRERAS,
Plaintiff,

v.

JUAN and MARIA OLIVARES,
Defendants.

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No. 09 L 2144

Honorable Thomas R. Mulroy

ORDER

Litigation Background

Plaintiff, by his counsel, filed his initial complaint alleging breach of contract against Defendants, his sister and brother-in law, on February 23, 2009. The case was assigned to the Honorable Charles Winkler. On November 12, 2009, Defendants filed their appearance and on June 8, 2010 Defendants filed a Counterclaim against Plaintiff also asserting breach of contract and demanding damages of more than \$100,000. On October 12, 2010, Plaintiff amended his verified Complaint. This case was transferred to the Honorable Sanjay Tailor on February 1, 2011. In April, 2011, Plaintiff filed his Second Amended Verified Complaint adding Heritage Title as a third party defendant. On January 17, 2012, this case was transferred to the Honorable Thomas Mulroy for trial. Trial was held on January 17, 2012. Both parties were represented by counsel.

The Facts

In 1992, Johnny Carson retired from television, Bill Clinton is elected president and Plaintiff borrowed \$60,000 from Defendants, his sister and brother-in-law. In an attempt to collect her money, Defendants filed a lien against certain proceeds due Plaintiff. In response, Plaintiff, alleging that he had indeed repaid the loan and thus the lien was wrongful, sued Defendants for damages. This family feud case came to trial twenty years later with brother testifying against sister and mother testifying against daughter. This opinion resolves a dispute but will not heal the emotional wounds.

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In 1992 Plaintiff and his mother sought to purchase a bar/restaurant for \$350,000. They borrowed the down payment from Mr. Gonzales, but he wanted to be repaid immediately or he would charge Plaintiff interest. Thus, Plaintiff approached Defendants seeking a \$60,000 loan to repay Gonzales. Defendants agreed to lend the money and took out a second mortgage on their home at 6% interest. Defendants gave \$60,000 of the second mortgage proceeds to Plaintiff and the mom who repaid Gonzales. The loan transaction is memorialized in a document signed by Plaintiff and Defendant-sister and dated December 4, 1992. The plan was that Defendants would be repaid as soon as possible, but certainly when Plaintiff and his mother sold the bar/restaurant. According to Defendants, by October 2003, the loan had not been repaid and the bar/restaurant was sold. In order to collect the loan, Defendants filed a \$60,000 lien on the sale proceeds at Heritage Title. When Plaintiff sued Defendants in this case, Heritage deposited the \$60,000 liened proceeds with the Clerk of the Court of Cook County where it remains waiting to be distributed to the successful litigant.

Plaintiff's complaint, prepared by counsel, and which survived motions to dismiss, alleges:

16. At all time (sic) relevant hereto, the Contract [*the loan agreement between brother and sister*] constituted a valid and enforceable contract between Plaintiff Contreras and Defendants Olivas [*Plaintiff means Olivares*]

17. Plaintiff, Juan Contreras performed all of its (sic) obligations under the Contract.

18. Defendants, Juan and Maria Olives' [*meaning Olivares*] breached the Contract [*the loan agreement*] by interfering in a Contract [*the real estate sales contract for the bar/restaurant*] that they are not entitled to receive (sic).

19. As a direct and proximate result of Mr. & Mrs. Olives' [*Olivares*], Defendants breach of Contract, Plaintiff has been damaged in the amount of \$100,000 representing interest Going (sic) back to 2003, representing the amount that will replace the amounts owed to Plaintiff.

(The bracketed notes above are the court's.)

Counsel styled the complaint "breach of contract" and it seems to allege that Defendants interfered in the sales contract of the bar/restaurant when they placed a lien on \$60,000 of the sales proceeds in order to recover their loan; or it may allege that

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Defendants breached the loan agreement when they tried to collect this money knowing they had already been repaid. The central allegations of the complaint are:

10. The Defendants had no right to interfered (sic) with the funs (sic) through a closing and was not allowed to receive his funds.(sic) The Defendant interred (sic) with the contract allowing him To receive his funds.(sic)

13. The Defendants interred (sic) with the contract by not allowing Plaintiff to receive his Funds (sic) since August 2003.

14. The Plaintiff did everything possible to receive his funds including going to Heritage Title that (sic) wants to give the Plaintiff his funds but for the interference of the Defendants.

18. Defendants, Juan and Maria Olives' [*Olivares*] breached the Contract by interfering in a Contract that they are not entitled to receive (sic).

Defendants answered by stating that Plaintiff and his mother only repaid \$5,533 of the \$60,000 and thus their lien was proper. Additionally, Defendants filed a counterclaim against Plaintiff for the amount of the loan plus interest. Defendants claimed there was an oral agreement that Plaintiff was to pay 8% interest on the amount he borrowed.

The evidence at trial showed that cash transactions were common in this family. For instance, the mother as well as the Plaintiff's friend/girlfriend lived in the same residence and paid rent to Defendant during much of this dispute. Additionally, Plaintiff loaned or gave cash to his brother-in-law for "emergencies" and "vacation." These cash transactions added to the confusion of the accounting of Plaintiff's alleged repayment, since only Defendants retained records of any of these transactions.

The Trial

Plaintiff testified that since 1992, he had given his sister \$185,000 which was three times what he borrowed, and thus she had no right to lien the proceeds of the sale. He testified that he lost track of his payments on the loan and testified that he never asked Defendants how much he had repaid. He testified that he lost his books and records and has no notes, cancelled checks or any records of the amount he claims he repaid.

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He testified that he wanted to purchase the bar/restaurant in November 1992 with his Mother and borrowed \$60,000 from Mr. Gonzales on the condition that he would not have to pay interest if he repaid Gonzales promptly. He went to his sister for the money and she agreed to take out a second mortgage on her home, give \$60,000 of the loan proceeds to Plaintiff, who would then repay Gonzales. This happened.

The property was sold in October 2003 for \$500,000. Plaintiff testified that he is unclear what happened to the proceeds, but he was clear that Defendants were not given any money from the sale.

Plaintiff testified that since he had given Defendants \$185,000 which repaid the \$60,000 loan and then some, it was a breach of the loan agreement for Defendants to lien the proceeds of the bar/restaurant. He had no corroboration, documentary support or evidence of any kind, circumstantial or otherwise to support his claim of payment.

He testified that his sister showed him papers in 2003 which indicated he owed \$97,000 on the loan. He said he did not discuss the matter with her.

He further testified that in 2004 his sister sent him a note which indicated that he owed Defendants \$100,000 in loan principle and accumulated interest. He said he did not discuss the subject further.

Surprisingly, Plaintiff testified that in 1996 his niece (his sister's daughter) stole \$42,000 in jewelry and some amount of cash from him. When he learned of this crime and confronted Defendants about it, they told him to deduct that amount from what he owed on the loan. No police report was filed; no corroboration of any kind was submitted for this shocking allegation of family thievery.

On cross examination, Plaintiff was asked about his affidavit which he signed, swore to and filed in support of his opposition to Defendants' motion for summary judgment. He admitted several of the paragraphs were false and untrue.

Maria Compos, the mother testified that her daughter loaned her money but that she and her son made \$250 cash payments each week for two years.

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Elizabeth Matos testified that she was Plaintiff's friend but not his lover and that she lived in the residence with Plaintiff and his mother. She testified she paid rent to Defendant.

With this evidence, Plaintiff rested. No documents were offered or admitted into evidence. Defendants made no motion for directed finding at the close of Plaintiff's case.

Defendant Maria Olivares testified that she kept careful handwritten records of each cash payment Plaintiff made to repay the note and that his payments amounted to \$5,533. She testified he agreed to pay 8% interest on the loan amount. She further testified that the \$250 given her by her mother each week was for the purpose of betting on the *numbers* and had nothing to do with repaying the loan. She also said that the mother paid rent to live in the home and that Ms. Matos also paid rent but that it was paid by her brother Plaintiff. Defendant's notes were admitted into evidence along with a summary of the records showing the amounts owed.

Mr. Olivares also testified, but added nothing new. The Defense rested.

Plaintiff called Plaintiff, Matos and Compos in rebuttal none of whom added anything new to the evidence.

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As in so many cases, this one particularly turns on the credibility of the witnesses. The court was in an excellent position to judge the credibility of the witnesses and observed their testimony and demeanor carefully. The court examined the documents admitted into evidence.

The court finds Plaintiff utterly failed to prove his case as alleged in his complaint, presented no documentary or testimonial corroboration for his allegations of breach of contract. In addition, the Court finds Plaintiff was not credible when he testified he repaid the \$60,000 loan to his sister. The court believes Defendant when she testified that interest was due upon the note and finds her records credible.

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The court believes the mother, Maria Campos when she testified that she paid a certain amount to her daughter each week to retire the debt. Her demeanor on the witness stand and her demeanor during cross examination convinced the court that she was truthful. In addition, it is simply distressing to believe a mother would lie against her children. The court finds that by 1996 Ms. Campos paid Defendant, her daughter, \$26,000 at \$250 per week for 104 weeks as repayment. The court recognizes that the mother's story involves a great deal of cash, paid with great regularity, from mother to daughter. Nevertheless, that is the court's judgment based on the credibility of the witnesses who testified before it.

Although Defendant testified that Plaintiff agreed to an interest rate of 8%, there is no writing, note or document of any kind to that effect. The court does not believe the parties agreed to an interest rate of 8%. However, Defendants were required to pay 6% on their home equity loan and the court believes the parties agreed to pay that rate until the loan was repaid, expecting that it would be repaid quickly. Therefore, by 1996 the debt was reduced to \$34,000. From 1996 until trial was fifteen years of interest. Defendants' lawyer stated in closing argument that his clients demanded *simple* interest, not compounded, on the remaining amount due. Simple interest of 6% on \$34,000 amounts to \$2,040 yearly for fifteen years for a total due of principle and interest to defendants of \$64,600.

IT IS HEREBY ORDERED:

1. Plaintiff failed to prove its case and the court finds in favor of Defendant on Plaintiff's Complaint.
2. Defendants proved their counterclaim and are awarded \$64,600 in loan proceeds and accrued interest.
3. Heritage Title and the Cook County Clerk's office are hereby ordered to release to Defendants the \$60,000 being held in escrow within 14 days of this order.

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- 4 . The remaining \$4,600 due Defendants from Plaintiff is to be paid within 21 days of the date of this order.

This order is final and appealable.

_____, 2012

ENTER:

Judge Thomas Mulroy