



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT

CIVIL SUIT NO. 27 OF 2017

BETWEEN

MARTINA SCOTTY (Proprietor of Double Up of Denig District)

Plaintiff

AND

ARABELLA DETENAMO (nee Tamakin of Uaboe District)

Defendant

Before: Khan, J
Date of Hearing: 16 June 2020
Date of Ruling: 13 November 2020

Case may be referred to as: Scotty v Detenamo

CATCHWORDS: Application to strike out under order 15 rule 19 of the Civil Procedure Rules 1972 – No evidence or agreed facts – unable to decide in the absence of evidence or agreed facts.

APPEARANCES:

Counsel for the Plaintiff: E Soriano
Counsel for the Defendant: D Aingimea

RULING

INTRODUCTION

1. The defendant filed a summons on 14 February 2020 under Order 15 Rule 19 of the Civil Procedure Rules 1972 to strike out the plaintiff's claim. In the summons it is stated that the plaintiff does not have the locus standi to bring this action because:

- 1) That the plaintiff's claim is in contravention of section 2(1)(b) and (c) of Money Lenders Act 1900;
 - 2) That the plaintiff filed this claim in breach of section 33(1) of Partnership Act 1976, in that, the plaintiff's other partner, Angelina Kepae, is deceased.
2. After the summons was filed, both parties filed written submissions and oral submissions were made by Mr Soriano and Mr Aingimea before me on 16 June 2020 and I had adjourned this matter for ruling on 31 July 2020. On 23 July 2020 my term of appointment as a judge expired, and I was re-appointed on 27 August 2020 on new terms and conditions, and I was sworn in on 9 September 2020 under those conditions. On 13 October 2020 I informed the parties that I was unable to complete my ruling under my previous appointment and both parties agreed to me to continue to hear this matter and they informed me that they were relying on their earlier submissions.

BACKGROUND

3. The plaintiff filed the claim on 7 September 2017 as the proprietor of 'Double Up', a money lending business registered under the Business Names Act 1976 for the sum of \$55,800 as money due and owing by the defendant for loan given to her at her request on the following dates:

	<u>Date of Loan</u>	<u>Amount of Loan</u>	<u>Due Date</u>	<u>Interest</u>	<u>Total Payable</u>
a)	13 June 2014	\$1,000	13 September 2014	\$ 5,200	\$6,200
b)	14 June 2014	\$2,000	14 September 2014	\$10,400	\$12,400
c)	17 June 2014	\$2,000	17 September 2014	\$10,400	\$12,400
d)	21 June 2014	\$2,000	21 September 2014	\$10,400	\$12,400
e)	25 June 2014	\$2,000	25 September 2014	\$10,400	<u>\$12,400</u>
				TOTAL	<u>\$55,800</u>

4. The 'Double Up' business was registered on 16 June 2014 and the Certificate of Registration of the business name 'Double Up' was registered by the plaintiff Martina Scotty and Angelina Kepae.
5. The defendant filed numerous defences through her solicitor, DA Law, which are as follows:
- a) On 1 December 2017, the defendant filed defence in which she denied the claim and the allegations;
 - b) On 11 May 2018 an amended defence was filed in which the defendant admitted borrowing the sum of \$9000 but disputed owing the sum of \$55,800; and
 - c) The statement of defence was further amended on 8 June 2018 in which the defendant again disputed owing the sum of \$55,800 but admitted to owing a sum of \$9,000;

- d) On 5 April 2019 the defence was amended again in which the defendant raised the issue that 'Double Up' proprietors were Martina Scotty and Angelina Kepae; and that this claim by the plaintiff is in non-compliance of the Moneylenders Act 1900 in particular section 2(1)(b).

AGREED FACTS AND ISSUES

6. On 17 September 2019 the parties filed an Agreed Facts and Issues which stated as follows:

A. Agreed facts

The parties

- i) The plaintiff is the proprietor of 'Double Up' and a licensed money lender under the Business License Act 2011.
- ii) The defendant is from Uaboe District.

The Claim

- iii) Between 13 June 2014 and 25 June 2014, the plaintiff loaned to the defendant a total of \$9,000 at the request of the defendant and on the condition that the defendant would repay the plaintiff within 3 months from each respective date of loan.
- iv) The defendant agreed that a 20% interest per fortnight would apply if she failed to repay the plaintiff's monies within the given 3 months.
- v) The defendant has not repaid the plaintiff any monies.

B. The Issues to be determined by the Court

Point of Law

- i) Whether the transactions between the plaintiff and the defendant were lawful; and
- ii) Whether the plaintiff is a money lender under the Money Lenders Act 1900 as it applies to Nauru; and
- iii) If so, whether the transactions between the plaintiff and the defendant were in accordance with the terms of lending money as per the said Act; and
- iv) Notwithstanding the issue of compliance, whether the plaintiff is entitled to recover monies lent to and taken by the defendant; and

- v) Whether the plaintiff is entitled to the interest charged on monies loaned to the defendant.

SUPPLEMENTARY AFFIDAVITS

7. On 1 October 2019 Mr Soriano filed a supplementary affidavit of the plaintiff.
8. On 1 October 2019 Mr Soriano filed written submissions on behalf of the plaintiff and on 22 October 2019 Mr Aingimea filed written submissions in response on behalf of the defendant in which he complained that after entering to agreed facts on 17 September 2019 the plaintiff file additional evidence on 1 October 2019.
9. On 29 November 2019 I asked the parties as to whether I can still give my ruling as new issues/evidence had been introduced by the plaintiff by way of supplementary affidavit dated 1 October 2019. Both parties asked for further time to enter into a fresh set of agreed facts and issues; and on 6 December 2019 I was advised that they cannot agree to the facts and issues, and I adjourned the matter before the Registrar to be called 20 December 2019.

SUMMONS TO STRIKE OUT

10. On 14 February 2020 the defendant filed this summons to strike out the plaintiff's claim.
11. Both the plaintiff's and defendant's counsel filed very extensive written submissions and Mr Aingimea complained that the plaintiff has introduced evidence when no evidence was agreed upon; and that this summons is to be decided purely on a point of law and whatever the court can take judicial notice of.

CONSIDERATION

12. Order 15 Rule 19 of the Civil Procedure Rules states as follows:

Rule 19

- 1) The Court in which any suit is pending may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any Writ of Summons in the suit, or anything in any pleading or in the indorsement, on the ground that –
 - a) It discloses no reasonable cause of action or defence, as the case may be;
 - b) It is scandalous, frivolous or vexatious;
 - c) It may prejudice, embarrass or delay the fair trial of the suit; or
 - d) It is otherwise an abuse of process of Court;

and may order the suit to be stayed or dismissed or judgement to be entered accordingly, as the case may be.

- 2) No evidence shall be admissible on an application under subparagraph (1)(a) of the last preceding paragraph.
13. The issues raised in the submissions are in relation to the non-compliance of section 2 of the Money Lenders Act 1900 and section 33(1) of the Partnership Act 1976.
14. I am unable to decide those issues in the absence of evidence or agreed facts and therefore this application is dismissed.
15. I order that this matter should be set down for trial on the next available date, and before that I suggest that the parties should again look at their pleadings to see that it correctly reflects their case.
16. I order the costs shall be in the cause.

DATED this 13 day of November 2020.



Mohammed Shafiullah Khan
Acting Chief Justice

