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IN THE GRAND COURT OF THE CAYMAN ISLANDS  
 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
 BEFORE THE HON. THE CHIEF JUSTICE

ON

CAUSE # 46 OF 1988

BETWEEN:	ELIZABETH HUFFMAN	PLAINTIFF
AND	ROLAND SCHOEFER	FIRST DEFENDANT
AND	LAURE FAUST	SECOND DEFENDANT
AND	BEROLA COMPANY LTD.	THIRD DEFENDANT

Plaintiff in person - unrepresented  
 Mr. D. Muirhead Q.C. and Mr. Hampson for defendants.

MALONE C.J.

JUDGMENT

The third defendant was incorporated on the 8th May 1985. It is a local company within the meaning of the expression "local company" as defined in section 2 (1) of the Local Companies (Control) Law ("the Law"). The plaintiff is a Caymanian and was allotted 60% of the shareholding of the third defendant. The remaining 40% was divided equally between the first and second defendants who are not Caymanians. With the plaintiff the first and second defendants became the directors of the third defendant. The first defendant was made the President of the Board and the second defendant the Secretary. They are sued in their role as directors and shareholders of the third defendant.

The reliefs sought by the plaintiff are:

1. an accounting of all purchases, sales, stock, incoming, outgoing expenses, monies in respect of the third defendant;
2. an accounting of net profits accruing to the third defendant between March 1987 and January 1988;
3. an order for the payment by the defendants to the

Plaintiff of all monies found to be due to her on the taking of such accounts;

4. a declaration that the plaintiff is, in law or equity, the beneficial owner of 60 shares in the defendant;
5. further or other relief;
6. costs.

The first, second and third of those reliefs are based on an alleged breach of an agreement and arrangement, express or implied, which, it is pleaded, was made between the plaintiff and the defendants. Under the said agreement and arrangement the plaintiff, it is further pleaded, was entitled to receive 60% of the profits earned by the third defendant and to a full and accurate account of the profits and expenses or losses of the third defendant when she requested it. The fourth relief is based on the plaintiff's rejection of the defendants' allegation that by a written agreement of the 25th March 1987 she transferred her 60 shares in the third defendant and ceased to be a director of the third defendant. The rejection of the alleged agreement of the 25th March 1987 is pleaded as follows in paragraph 10A in the re-amended reply to the re-amended defence and counterclaim:

"the said agreement ..... is null and void as being in contravention of the provision of the Local Companies (Control) Law and further, in so far as the said agreement requires the transfer of the shares registered in the Plaintiff's name, it is null and void and ultra vires by virtue of the provisions of the Local Companies (Control) Law".

As the issue with respect to the legality and validity of the alleged agreement of the 25th March 1987 affects the plaintiff's claim and is crucial to the grant or refusal of the orders and the declaratory relief counterclaimed by the first and third defendants I shall consider first that aspect of the case.

The document of the 25th March 1987 is as follows:

! "25th March 1987

Mr. Roland Schoffer

The Lighthouse Club

Breakers

Grand Cayman

Dear Sir:

Re Berola Ltd.

In consideration of your agreeing to purchase all of the shares ("shares") in Berola Ltd. ("Company") presently registered in my name or to which I am entitled for a purchase price of C.I.\$5,000.00 payable as agreed between us, I hereby confirm and undertake to you and for your benefit that:

1. I am the registered owner of the shares which I hold as the legal and beneficial owner free and clear of all encumbrances, liens, pledges, charges or equities.
2. I hereby deliver to you instruments of transfer in respect of the shares in blank and original share certificate issued by the Company in respect of the shares for cancellation for any liabilities arising from issuing a replacement for a lost share certificate.

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3. I hereby resign from any and directorships or offices held by me in the Company without any claim for compensation for loss of office or otherwise.
4. I hereby deliver to you as a Director of the Company all of the statutory records of the company with the common seal.

It is understood and agreed that you intend that the shares will be registered in the name of a third party and we hereby consent to the assignment by you of the right to take transfer of the shares without any liability on such third party for payment of the purchase price hereunder. You are

hereby authorised to complete the instruments of transfer with the names of the transferees and the relevant number of shares (being transferred to such transferees being part or all of the shares) so long as the aggregate number of shares so transferred does not exceed the number of shares sold on the terms hereof.

The Agreements contained herein shall be governed and construed in accordance with the laws of the Cayman Islands.

Yours faithfully

Elizabeth Huffman

Witness: L Faust."

Extrinsic evidence was led by the plaintiff to vary the consideration expressed in the document of the 25th March 1987. The plaintiff's evidence is that on the 22nd March 1987 she went to the first and second defendants' home at Breakers and told them she wanted to talk about profit sharing and that she wanted them to buy her out of the third defendant because she needed the money to open her office and because the lease held by the third defendant was due to expire. This was the lease of the property known as the Lighthouse where the third defendant carried on a restaurant business. The plaintiff explained to the Court that she was concerned that the rent of the property leased would be increased and that the third defendant might require further loans. Specifically she denied that she asked for a loan or that she said that for \$10,000.00 she would resign as a director and transfer her shares in the third defendant. According to her no figure was mentioned as the sum she would accept for her shares. At the time she said that she had financial statements of the third defendant up to July 1986 and expressed a wish to see the later accounts. That request did not please the defendant. However, the first defendant agreed to get the financial statements from the third defendant's accountant, Brenda Gregson, and to meet with the plaintiff on the next day and let her know how much money there was in the bank.

On the 23rd March 1987 the first defendant came to see her to find out what she wanted for her shares. Her recollection is that he did not bring the accounts with him but that she received them a couple of days later. Whichever it was she told him she would have to see the accounts first. He said he would see Brenda Gregson. However, he did not come back and the next time that she saw the first and second defendants was on the 25th March 1987. That meeting took place at the Beach Club at around 2 p.m. Her evidence is that the defendants told her they had discussed the matter with Mr. Charles Adams and that he had told them to offer her \$5,000.00. They had with them a document dated the 25th March 1987. The original of that document is Ex.A 85 B. On the 25th March 1987 the document was unsigned. Where now the figure of \$5,000.00 appears there was a blank. The initials E.H on the side of the document and the word "All" inserted into the typed text were not there. She was told she could have a cheque for \$5,000.00. She told them she wanted more and that would be decided when the financial statements were obtained. She was told that Mr. Adams had said he could apply for a licence for the defendants that would enable the defendants to run the restaurant business of the third defendant without a Caymanian partner. The plaintiff explained to the Court that she refused the \$5,000.00 and refused to sign Ex A-85-B and in cross-examination denied that she had told the defendants she would consider their proposal and let them know. The meeting of the 25th March, 1987 ended with agreement to meet the next day. The parties met on the 26th March 1987. In cross-examination it was suggested to the plaintiff that she then advised the defendants that she accepted their proposal and signed the letter of the 25th March. Following which she asked the defendants for a loan of \$10,000.00. Those suggestions, the plaintiff denied, but acknowledged there was a discussion about a borrowing from First Home Bank of \$10,000.00 which the first defendant was to arrange on the 27th March 1987. She further stated that at no time did she insert the word "All" in the typescript and initial the document of the 25th March 1987. Shown a cheque for \$5,00.00, dated the 26th March 1987 and endorsed by her she denied that she endorsed it on that day or that she had at any time filled in the figures \$5,000.00 in the

document of the 25th March 1987. She said that on the 31st March 1987, which is the day the cheque was negotiated, she endorsed the cheque and signed the document of the 25th March 1987. The space for the price was still blank as I understand her evidence in chief. She did not say when it was that the space was filled in nor was she sure by whom it was filled in. She explained that she signed the document of the 25th March 1987 "in good faith". Those words, as I understand the plaintiff, import to her a great deal. The document was blank as to the price to be paid for the shares because the price, though not determined, was to be more than \$5,000.00. But for the reasons that follow she signed the document. She had received by the cheque \$5,000.00 of the price to be paid and there was it seems a promise of \$10,000.00 more in further part payment. She knew from the accounts of the third defendant which she had seen by the 31st March 1987 that the third defendant had made a profit. She trusted the defendants. She badly needed the \$5,000.00 to pay off a mortgage debt. That her mortgage payments were in arrears and her credit rating at the First Home Bank extremely low is borne out by the Bank's officer Mr. Powell.

The defendants agree that there were meetings with the plaintiff on the 22nd, 25th, and 26th March 1987 but their version of what took place at those meetings differs from that of the plaintiff and the difference widens as the meetings progress. They say that on the 22nd March 1987 the plaintiff not only informed them that she wanted to resign and transfer her shares but also asked for a loan. The latter request was refused. On the 25th she was handed the document dated of that day. That document, the first defendant stated, he had on the 23rd asked Mr. Adams to prepare and on the 25th had picked it up from the Chambers of Mr. Adams. When on the 25th March 1987 the first defendant met the plaintiff he showed her the document of that date without any writing in ink on it and offered her \$5,000.00 for her shares. To that offer she replied:

"I will consider it".

On the 26th March 1987 the plaintiff returned with the document she had been shown on the previous day and declared that she accepted the offer. Whereupon she wrote in \$5,000.00 in the blank space for the

price, inserted the word "All", initialed and signed the document. The second defendant then signed as a witness and handed the cheque for \$5,000.00 to the plaintiff. The first defendant made no further reference to the cheque but the evidence of the second defendant is that she wrote the cheque on the 26th March 1987 after the plaintiff signed the agreement. Following on the execution of that transaction the plaintiff, it is said, asked the first defendant for a loan of \$10,000.00. He refused but offered to be the guarantor of a loan to her from the bank and said he would work on it the next day. On the 27th March 1987 the first defendant took the document of the 25th March 1987 that the plaintiff had signed to Mr. Adams and signed a guarantee for \$10,000.00 at the First Home Bank. Neither the first nor the second defendant spoke of a meeting with the plaintiff on the 23rd March 1987. The evidence of the first defendant is that he requested Mr. Adams on the 23rd March 1987 to write the letter of the 25th March 1987. That evidence is corroborated by Mr. Adams. The further evidence of the first defendant that he picked up the letter from Mr. Adams' Office on the 25th March 1987 and returned it to that office on the 27th March is also corroborated by Mr. Adams. Indeed Mr. Adams' memory in relation to the typing of the document and its return seemed sharp. He said:

"I am positive the agreement was typed on the 25th March and was collected from my office and the first defendant brought it back on the 27th March. I think I vividly recall that he brought it in in some relief at having reached finality. At the time it seemed a neat and tidy finish."

Mr. Adams is a witness of weight. Strictly he is not an independent witness as the defendants are his clients, but I am not disposed to think when I have regard to Mr. Adams' demeanour that he would wilfully depart from the truth to assist the defendants. If his evidence is accepted, it must seriously affect the plaintiff's credibility as the space provided in the document for the price cannot have been a blank when she signed it. Whether that was the 30th March 1987, as she first, said or

the 31st March 1987 as she later said. I therefore think it incumbent on me to consider any other matter that bears on the point.

If the plaintiff's evidence is accepted, it is clear that the consideration for the transfer of her shares was never settled. But it would have been capable of estimation if (which is not clear) it was agreed that she was to be paid 60% of the profits of the third defendant. The cheque for \$5,000.00 was merely a part payment. So also was the \$10,000.00 that was to be borrowed if in fact it had been agreed to borrow that sum. In his opening address, however, counsel who represented the plaintiff at that stage of the proceedings outlined the nature of the consideration for the transfer of the plaintiff's shares in a different way. As he explained it the consideration was \$15,000.00 of which the cheque for \$5,000.00 was a part. Because of the conflict between the plaintiff and her counsel it may be there was a change of front by the plaintiff as presumably counsel's presentation of the case was based on instructions from the plaintiff. On the other hand, the conflict may have been the product of a misunderstanding between counsel and the plaintiff. Which was it? To my mind a misunderstanding is improbable. For consideration is so vital to a contract that it would be looked for by counsel. If as the plaintiff says the consideration had not been settled counsel is unlikely to have found it had been. Accordingly, I think that the plaintiff changed her position after instructing counsel that the consideration was as he stated. If even she did not and there was a misunderstanding of her position by counsel, her evidence is questionable as it seems to me unlikely that the first defendant would have agreed to guarantee a loan of \$10,000.00, as he said he did, and, in fact, did do when the amount to be paid for the shares was undecided. And still more unlikely that he would have agreed to deposit \$10,000.00 as the plaintiff said he promised to do but did not. The likelihood of the first defendant promising in those circumstances to deposit \$10,000.00 is the more remote when according to the plaintiff herself, the

relationship between the parties was not a happy one at the time. Further the uncertainty in the plaintiff's evidence as to whether there was agreement with respect to the method of calculating the consideration and as regards the \$10,000.00, must also put in question her attempts to vary the consideration as expressed in the document of the 25th March 1987.

In a letter of 29th May 1987 which the plaintiff wrote to the Cayman Protection Board appears the following statement at the top of p 4 thereof:

"On March 25 1987, I met Mr. Schoefer and Miss Faust at the Beach Club and they had a cheque for \$5,000.00 made out in my name and the enclosed letter for me to sign".

The letter referred to was a copy of Ex.A - 85 - B. It was without the ink writing to be seen on Ex A - 85 - B. It's possession by the defendants is explained by Mr. Adams who said that he caused to be prepared an instruction document which was a copy of Ex A - 85 - B. On the instruction document he had written instructions on how to complete Ex A - 85 - B as he knew that the latter would be collected from his chambers by the first defendant. It is not in dispute that on the 25th March 1987 the price that the plaintiff would accept for her shares was not known to the defendants or to Mr. Adams. Nor was it known when the transaction would be closed. In those circumstances it seems unlikely that the cheque would be drawn and dated without that knowledge. The only explanation I can think of for drawing and dating the cheque in advance of that knowledge is that the defendants were adopting a take it or leave it attitude and fixing a time for acceptance by the plaintiff. There is no suggestion from the plaintiff that that was the defendants' attitude. No suggestion that she was being hustled into closing a deal. Indeed according to her, the document dated the 25th March 1987 was not signed by her until the 31st March 1987. Whilst according to the first defendant she was given at her request an opportunity to consider the offer. To my mind, the

greater probability is that the truth is to be found in the evidence of the second defendant that the cheque was drawn after the plaintiff had signed the agreement on the 26th March 1987.

From the foregoing examination of the extrinsic evidence I am satisfied that it neither adds to nor subtracts from or in any manner varies or qualifies the document dated the 25th March 1987. That document I am further satisfied was signed and completed by the plaintiff on the 26th March in the manner described by the first and second defendants. As I do not believe the plaintiff, I find on the basis of the document itself and the evidence of the defendants and Mr. Adams that there was consideration and that the consideration was \$5,000.00. Accordingly, the document embodies a contract of which it is conclusive.

The document discloses that the shares were transferred in blank to the first defendant on the understanding that they were to be transferred to a third party. Subsequently on the 28th April 1987 a resolution passed by the members of the third defendant confirms that on that day the shares were transferred to Mr. Ernest Foster. Further, as is shown by the return of shareholders made by the third defendant to the Cayman Protection Board on the 28th April 1987, the shares were registered in the name of Ernest Foster. Accordingly until the registration of the shares in Mr. Foster's name the transfer was incomplete and the shares were deemed to be held by the plaintiff. The reason being that article 22 of the articles of association of the third defendant in part provides that:

"the transferror shall be deemed to remain a holder of the shares until the name of the transferee is entered in the register of members in respect thereof."

The significance of the finding that until the registration of Mr. Foster as the holder of the shares they were deemed to be held by the plaintiff is that at no time was the legal title in

the shares held by a non-Caymanian as, like the plaintiff, Mr. Foster is a Caymanian. Accordingly at all times there has been compliance with the provision of the Law stated in paragraph 2 (1) of the Schedule thereto that:

"the percentage of shares beneficially owned by Caymanians in the local company shall not be less than sixty per centum ....."

When the fact of compliance with the Law is coupled to the understanding expressed in the document, I think it is clear that the parties intended to comply with the Law.

The plaintiff's case of nullity is founded on alleged non-compliance with the provision last cited. That is shown by the language of paragraph 10A of the re-amended reply to the re-amended defence and counter-claim and by the language of paragraph 4 of her amended statement of claim. As I have found that at all times there was compliance I reject the plaintiff's submissions on the point and hold that the agreement is a valid agreement that was carried out precisely as was agreed. That conclusion disposes of the aspect of the case that I have had under consideration. It does not, however, dispose of all the matters that were touched upon by the plaintiff in her closing address on that aspect of the case. As the plaintiff was at that stage unrepresented I think that I should briefly deal with those matters notwithstanding they were not pleaded. To do so I shall assume that the document of the 25th March 1987:

1. was not in the form required by the Law; and
2. embodied a contract that did not comply with the provision cited from paragraph 2(1) of the Schedule to the Law relating to the control of local companies by Caymanians.

This is not a case where the form of the contract is expressly laid down by the Law and any other form is expressly prohibited. Nor is it a case where the contract that was made is

expressly forbidden by the Law. To be illegal, the contract must, in this case, be one that on the assumptions that have been made is implicitly prohibited by the Law. Accordingly what must be ascertained is whether the object of the Legislature is to forbid the contract.

The object of the Legislature in this instance is, I think, clear. It is to get Caymanians involved in business activity. The object is not to discourage non-Caymanians from establishing businesses here. Rather it is to make use of them to get Caymanians into business. To ensure that the involvement of the Caymanians is not mere "fronting" the law fixes their interest at not less than 60% of the shareholding and of the number that shall constitute the Board of Directors. It is significant, as Mr. Muirhead pointed out, that the penalty fixed by the Law for failure to comply with its provisions as to control is a summary prosecution that is sanctioned by the Attorney General. There is no provision that punishes such failure by a declaration of nullity. The intention to be spelled out of the Law is that non-compliance with its provisions may be punished but not by closing down the business. Even that limited intention is not to be spelled out of the Law with regard to the form of contract. The Law treats the form as an internal company matter and leaves it to the directors of the Board to pronounce on the validity of a form that is not as prescribed by article 23 of the Articles of Association.

In the result, I find for the foregoing reasons that even when the assumptions set out above are made, the plaintiff is not entitled to the declaration pleaded in paragraph 4 of her amended statement of claim. I turn to consider the other reliefs sought by the plaintiff in the first three paragraphs of the claim made in the amended statement of claim. As the basis for those reliefs it is pleaded as follows in paragraph 6 of the amended statement of claim:

"6. By agreement and arrangement made between

the Plaintiff and the Defendants and by implied agreement and arrangement made between the Plaintiff and the Defendants, it was agreed, arranged and implied that the Plaintiff was and would be entitled to receive monies from the profits made by the third defendant representing sixty per cent of the said profits earned by the said third defendant."

The allegation that the plaintiff was entitled by reason of an agreement and an arrangement to receive monies from the profits made by the third defendant is rejected by the finding that the consideration for the agreement of the 25th March 1987 was \$5,000.00. It will be rejected also by the finding shortly to be made that two sums of \$5,000.00 and \$2,000.00 were paid to the plaintiff as loans and not as she alleged as part of the third defendant's profits. As those findings deal with the relevant evidence adduced on that issue there is accordingly no acceptable evidence to support the plea in paragraph 6 of the amended statement of claim in so far as it alleges an agreement and arrangement for the payment of a share of the third defendant's profits to the plaintiff. Certainly in relation to the plaintiff as a shareholder of the third defendant, there was an implied agreement that the plaintiff would share in any dividends. However, where as in this case there is no suggestion in the pleadings of want of bona fides on the part of the directors or of the company, a shareholder has no right to sue until a dividend is

declared. (See Palmer's Company Law 24th ed 77-08 at p 1100). In this instance no dividend was declared during the time that the plaintiff was a shareholder of the third defendant. Accordingly in so far as the plaintiff's case is founded on the implied agreement to share in dividends by reason of being a shareholder she has no cause of action.

For the foregoing reasons I find that the plaintiff is not entitled to the relief sought in the first three paragraphs of the claim made in the amended statement of claim.

In arriving at the finding last made, I do not consider that the plaintiff was under paid for her services. She had in fact done very little. The initial financing of the third defendant was not provided by her. The work of renovating the Lighthouse building to make it suitable for an up-market restaurant business was solely performed by the first defendant and he it was who determined the decor. The evidence of Mr. Powell who I consider to be a wholly independent witness, is very clear on that point. The management and operation of the business was conducted by the first and second defendants or under their direction and control. Indeed their dominant position was recognised by the plaintiff for although she was the majority shareholder she concurred in the appointment of the first defendant as President of

the third defendant, of the second defendant as secretary and of both as directors of the third defendant. Further, and perhaps of even greater moment, she made the first and second defendants sole signatories to the operation of the bank account of the third defendant. The plaintiff's contribution was in fact limited to the initial legal work. She incorporated the third defendant and applied for the necessary work permits and licenses. She may also, as she wrote in her letter of the 29th May 1987 to the Cayman Protection Board, have solicited support for the Lighthouse restaurant from business associates. However that may be, the fact is that without being pressurised by the defendants into doing so, she accepted \$5,000.00 in full payment for her shares in the third defendant and resigned as a director of the third defendant. At the time of her resignation, as she saw the position, the lease of the lighthouse was up for renewal at an increased rent and it seemed that more money would have to be borrowed. In the circumstances it could be that at the time the plaintiff made the agreement that I have found she did make it was acceptable to her.

The reliefs claimed by the defendants under their counterclaim are the following:

1. A declaration that the sale agreement referred to in the Defence and Counterclaim constituted a binding agreement and that the said agreement ought to be specifically performed

and carried into effect;

2. An Order that the Plaintiff sign and deliver up to the first defendant an instrument of transfer in respect of the said shares in blank; or alternatively, deliver up to the third Defendant an instrument of transfer in the name of Ernest Foster and Carolyn Foster, the new Caymanian successor shareholders and deliver up to the registered office of the Third Defendant the original Share Certificate issued by the company in respect of the shares for cancellation;
3. An Order that the Plaintiff deliver to the Third Defendant at its registered office all of the corporate records of the Third Defendant in her possession;
4. Further a declaration that since the 26th March, 1987 the Plaintiff is no longer entitled to any interest as a shareholder or otherwise in the Third Defendant held and/or holds the said shares as trustee for the Caymanian successor shareholders Ernest and Carolyn Foster.
5. A declaration that since the 26th March, 1987 the Plaintiff does not hold any office in the Third Defendant either as an officer, Director or otherwise;
6. An injunction to restrain the Plaintiff whether acting by herself or otherwise howsoever from holding herself out as an Officer, Director or otherwise of the Third Defendant or as having an interest, beneficial or otherwise in the third defendant.
7. The repayment of two sums loaned by the third defendant to the Plaintiff referred to in paragraph 14 of the Defence and Counterclaim

- amounting to CI\$6,100 plus interest of CI\$792.87 totalling CI\$6,892.87 together with interest until repayment (Daily Rate CI\$1.25).
8. An inquiry as to what damages the Defendants and each of them have suffered;
  9. Costs;
  10. Such further and other relief as to this Honourable Court may seem just."

In this instance the relief that the defendants would obtain from the declarations and orders they seek are now largely theirs. The shares to which the contract of the 25th March 1987 relates have been registered in the name of Mr. Foster, the plaintiff is no longer on the Board of the third defendant and I have resolved the substantial legal issues in the case, namely, the validity and binding effect of the contract in favour of the defendants. For the foregoing reasons I am of the view that it is not necessary to grant the declarations and orders set out as the first, second, fourth and fifth claims of the defendant's counterclaim. Since the defendants abandoned the claim for an injunction and the claim to damages and I shall grant the third claim of the counterclaim there remains for consideration the seventh claim.

The sums referred to in the seventh claim of the counterclaim are sums of \$5,000.00 and \$2,000.00. In explanation of those sums the second defendant said:

"In April 1986 there was a conversation about \$5,000.00. It was a loan by Berola Ltd. to the plaintiff to enable the plaintiff to go into business in the island. It has never been repaid. Another loan was that of \$2,000.00 in December, 1986."

There is no reference to those sums in the accounts of the third defendant but it is not disputed by the plaintiff that she did receive them from the defendants and that they were paid to her at her request. The question is were they received as loans?

The plaintiff denied that they were. In her evidence in chief she explained that both sums were paid to her as part of her profits derived from the third defendant.

Earlier, I commented on paragraph 6 of the amended statement of claim when I held that the plea was not supported by acceptable evidence. That comment applies with particular force in relation to the question posed when account is taken of the plaintiff's letter of the 29th May 1987 to the Cayman Protection Board. In that letter she refers to the \$5,000.00 and to the \$2,000.00. Of the \$5,000.00 she wrote that:

"They" (i.e. the first and second defendants)  
"agreed to loan it to me and said I could pay  
it back at any time."

In relation to the \$2,000.00 she wrote:

"I informed them" (i.e. the first and second  
defendants) "of my own financial difficulties  
and that I needed my money. They said they  
did not have that much but would lend me  
\$2,000.00. I took and paid my mortgage but  
informed that that was not enough."

The passage cited in relation to the \$5,000.00 is a clear contradiction of the plaintiff's oral evidence. The passage cited in relation to the \$2,000.00 is perhaps not as clear but is contradictory of her oral evidence. Considered with my finding that her evidence bearing on the execution of the agreement of the 25th March 1987 and on the consideration for that agreement was not credible I am left in no doubt that the plaintiff is not to be accepted when she claims that the \$5,000.00 and \$2,000.00 were paid to her as part of her profits. They were, in my view, paid to her as loans. Such payments by way of loans are not illegal under the Law since the Law has no provision corresponding to section 190 of the English Company Act 1948. No time was fixed for the repayment of these loans but as more than 5 years in the case of the loan of \$5,000.00 and more than 4 years in the case of the loan of \$2,000.00 have now passed I consider the repayment is overdue. Since provision was not made

for the payment of interest, no interest is payable.

In the result I order that:

1. the plaintiff's action be dismissed;
2. judgment be entered for the defendants on the counterclaim in the following terms. Namely that:
  - (a) the plaintiff deliver to the third defendant at its registered office all of the corporate records of the third defendant in her possession;
  - (b) the plaintiff repay to the third defendant the principal amount of C.I.\$4,100.00 loaned on the 30th April 1986 and the principal amount of C.I.\$2,000.00 loaned on the 29th December 1986;
  - (c) the plaintiff pay interest at the rate of 7 1/2% per annum from the date of judgment on the principal sums of C.I.\$4,100.00 and C.I.\$2,000.00;
3. The costs of the claim and counterclaim to be taxed and paid by the plaintiff to the defendants.

*Denis E.G. Malone*

13.11.91

On application by counsel for the defendants it was further ordered as follows:

1. the mareva injunction granted in the matter be discharged;
2. damages sustained by the defendants as a result of the mareva injunction may, if not agreed, be assessed by a judge of the Grand Court.

*Denis E.G. Malone*  
Denis E.G. Malone

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