

THE HIGH COURT**Record No. 2010/5451S****Between:****SANDRA KEOGH****Plaintiff****- and -****BRENDAN GIBBONS****Defendant****JUDGMENT of Mr Justice Max Barrett delivered on 14th June, 2016.****Part 1****Introduction**

1. This is a summary claim for monies that Ms Keogh claims were lent and advanced by her to Mr Gibbons or for his benefit and at his request within the last six years.
2. Ms Keogh and Mr Gibbons were for a time dating each other. They then lived together as a couple. The entirety of their relationship spanned from 2004 to 2009. Each of Ms Keogh and Mr Gibbons appears during that time to have been financially generous to the other. Mr Gibbons bought various gifts for Ms Keogh, he gave her money when she was the victim of a burglary, he obtained a couple of jeeps under successive hire-purchase agreements and allowed her the use of them as though they were hers, he assisted financially and otherwise in her canteen business, and when he first moved into her house he paid towards his accommodation and lodging.
3. Mr Gibbons was generous with his own monies. Ms Keogh, in return, was generous with sums of money that she borrowed and some of which she gave to Mr Gibbons. She claims that her borrowings were done as part of a deal whereby Mr Gibbons would complete the construction of a house in the foothills of the Dublin Mountains and pay her back the monies she gave him by drawing down in some way on any increase in the value of that house when constructed. There does not appear to have been any arrangement as to interest contemplated in the arrangement as described by Ms Keogh. For his part, Mr Gibbons says that in fact such monies as Ms Keogh advanced to him involved her paying back some of what he had previously given her during their relationship.
4. The arrangement described by Ms Keogh has the ring of truth about it. She has always 'paid her way' through life. She does not lead an extravagant lifestyle. Apart from her borrowings during the course of her relationship with Mr Gibbons, she has been financially prudent. Though there is no documentation evidencing the contractual relationship that Ms Keogh purports to have existed between herself and Mr Gibbons, it defies logic that a woman who is generally prudent would run out and borrow monies for her boyfriend (and later partner) in the expectation that he could keep it if, as happened here, their personal relationship came to an earlier end than either party appears at the outset to have contemplated.
5. The court accepts therefore that there was a contractual relationship between the two parties of the type suggested by Ms Keogh. The substance of this contractual arrangement is considered further later below. Though he continues to deny that there was any legal relationship between them concerning the loan monies, Mr Gibbons has sought that various advances that he made to Ms Keogh during the currency of their relationship should be 'set off' whatever amount he owes her. As will be seen below, the court's understanding of the contractual arrangements arising between the parties is to yield at least part of the 'set off' sought by Mr Gibbons, albeit by a subtly different route to that contended for.

Part 2**Oral Evidence****A. Ms Keogh and Mr Gibbons.**

6. Both Ms Keogh and Mr Gibbons took to the witness-box during the course of the hearings. Both were clearly seeking to tell the truth as each recalled it. Ms Keogh did not seem to the court a woman who would be vulnerable to a conniving man. Mr Gibbons did not seem to the court the type of man who would prey financially on a woman.

B. Mr Keogh.

7. Ms Keogh's brother, John, also took to the witness stand. He testified that shortly after the 'break-up' of the relationship between his sister and Mr Gibbons, he met with Mr Gibbons and received an assurance that the better part of €200k would be paid to his sister. For his part, Mr Gibbons denies that he ever gave this indication and the court believes him. At no time has Mr Gibbons owed €200k to Ms Keogh, so why would he acknowledge such a liability? It may be that some confusion has arisen over the proposed €200k promissory note arrangement (of which more anon).

C. Ms Cartagena.

8. Ms Cartagena, daughter of Mr Gibbons, also gave evidence. She was, for a time, a walking-partner of Ms Keogh. During one of these walks, Ms Keogh indicated that she owed €20k to her mother which had as yet gone unpaid. Ms Cartagena, like her father, seems a pleasant person. Her evidence was credible and is accepted by the court as true...but it does not really advance matters so far as the wider thrust of this case is concerned.

D. Mr Glynn.

9. Mr Glynn, sometime solicitor to Ms Keogh gave evidence. He was brought in by Ms Keogh at a very late stage when the relationship between her and Mr Gibbons had all but ended. Though Mr Glynn, an entirely competent professional, had his attendance from the meeting (which occurred several years ago), he could not, understandably, recall the substance of the meeting in great detail.

10. When it comes to this meeting, Mr Gibbons maintains that in order to help out Ms Keogh, who was by then in financial distress, and – so Mr Gibbons thought, but Ms Keogh's evidence at trial suggested otherwise – because there were signs of their 'getting back together' as a couple, he was minded to extend Ms Keogh credit in the amount of €200k. Various means whereby this might be achieved were discussed with Mr Glynn, who later contacted Mr Gibbons' solicitor with a view to progressing matters; however, nothing came to pass.

11. The court does not read a great deal into the sequence of events involving Mr Glynn. All practising solicitors have doubtless attended meetings at which parties discuss a possible deal, appear to arrive at a possible arrangement between them that may or may not have been perfectly thought through, and then completely restructure that arrangement or (as here) never proceed any further. That, it seems to the court, is all that happened here. The parties discussed matters with Mr Glynn, he gave his advice, and nothing was agreed by the parties thereafter. That is the stuff of life for practising solicitors.

E. Mr Walsh.

12. Mr Frank Walsh, a certified accountant with Browne, Murphy & Hughes took to the stand. He had done a forensic accounting exercise on such figures as had been made available to him, reducing the mass of financial documentation with which the court had been presented by both parties to a comprehensible yet comprehensive analysis. His evidence was entirely helpful. However, the extent to which he could be of assistance was constrained by the fact that Mr Gibbons gets paid (or got paid) his salary in cash, leads (or led) a life in which cash plays a greater role than would perhaps be the case for most, and so had (and may still have) a lot of expenditure that is effectively invisible, being a cash payment out from a cash receipt in.

Part 3

The Contracts Arising

A. General.

13. Our law of contract requires that for a contract to exist between parties there must be offer, acceptance, and consideration. An intention to create legal relations is also sometimes asserted to be a necessary ingredient to the formation of a contract and there is case-law that supports this assertion. Even so, this is a bit of a grey area, not least because in a polity founded on the rule of law, it is ultimately the law, not the whim of the parties to a purported legal agreement that determines the legal status of same; and certainly in the longer reach of the common law, it was the presence or absence of consideration that was the determinant of contractual intention. Nowhere perhaps do matters become greyer in this regard than in the context of family arrangements. And in this case, the difficulty arising starkly presents: Ms Keogh says that there was an intention to create legal relations; Mr Gibbons says there was no intention to create legal relations; the court must therefore 'wade in' and seek to decide whether there was the requisite contractual intention. In this regard, factors such as the degree of closeness between the parties have traditionally played a role in the deliberations of the courts, as have the extent to which a promisee has relied on a promise.

B. Contract #1.

14. Ms Keogh offered to assist Mr Gibbons in a manner that went above and beyond the boundaries of a personal relationship – certainly one of a relatively short duration as theirs was. Thus Ms Keogh offered to borrow monies from certain financial institutions and give them to Mr Gibbons to assist him in building a house in the Dublin Mountains. This was not some wealthy heiress embarking on a folly that involved her throwing about monies with abandon. It was a woman of relatively moderate means offering to borrow money to help someone out. And Mr Gibbons, for his part, accepted this offer. Ms Keogh then relied on this arrangement to act very much to her prejudice, borrowing large sums for which she is now, regrettably, being pursued by the lending institutions. The court is satisfied, based on the foregoing, that offer, acceptance, consideration (and contractual) intention all present.

C. Contract #2.

15. There is another side to the relationship between Ms Keogh and Mr Gibbons. During their relatively short time together as a couple, Mr Gibbons expended monies (a) on a thorough refurbishment of Ms Keogh's house (even though he owned a house of his own), (b) lent her monies to cover the cost of business assets stolen from her home one Christmas, and (c) part-funded Ms Keogh's business.

16. It was a curious feature of Ms Keogh's evidence, and one not accepted by the court as correct, that any money expended by her on Mr Gibbons' house as it underwent construction was done pursuant to a contractual arrangement, but that any money expended by Mr Gibbons on her was intended as a gift. Doubtless, as in any romantic relationship, some monies went each way and nobody counted the cost...but not all monies. Just as Ms Keogh was not a wealthy person splashing about money with abandon, neither was Mr Gibbons. And in the relatively short-term relationship between the two there was perhaps a more commercial hue to arrangements between them than one might expect to find in a longer-term relationship. Thus when it comes to:

(a) the refurbishment of Ms Keogh's house

two people were moving towards, and for a time became, one couple with two houses and so had the option of renting one out. Mr Gibbons expended money on Ms Keogh's house, and relied on her indication that she would be moving into his house, each expecting that as a couple their moving in together would not just be personally rewarding but would also yield a joint financial boon.

(b) the cost of the stolen business assets

there seemed little, if any, doubt from the evidence – even Ms Keogh, when in the witness-box, appeared physically to balk at the suggestion – that the monies advanced by Mr Gibbons at the relevant time were anything other than a loan repayable in the future.

(c) part-funding of Ms Keogh's business

there is no doubt that Mr Gibbons to some extent funded Ms Keogh's business and that this was a commercial investment – yes, done in the context of a burgeoning romantic relationship (albeit one that was not ultimately one of especially long duration) but also done

with a constant eye to, and an understanding that, there would be a hard financial return in cash terms for both parties.

17. In each of (a), (b) and (c), the court finds an offer moving from Mr Gibbons, an acceptance on the part of Ms Keogh, consideration in the form of monies expended, a prejudicial reliance on the express or understood expectation of a joint future financial benefit, and hence the requisite contractual intention arising. The court is mindful that Mr Gibbons contends that no contractual intention ever manifested in his dealings with Ms Keogh but respectfully disagrees.

D. The Jeeps.

18. At an early point in the relationship between Ms Keogh and Mr Gibbons, Ms Keogh expressed a desire to buy a Jeep that she could not herself afford. Mr Gibbons agreed that he would arrange the necessary hire-purchase financing but that Ms Keogh could drive the Jeep as though it was hers. At a later point, Mr Gibbons 'topped up' the hire-purchase finance, with Ms Keogh's agreement, in order to replace the Jeep with a more up-to-date model. Ms Keogh indicated in her evidence that she believed the Jeep was a gift. But it appears to the court that the arrangement between the two, again in the context of a relatively short-term relationship, was that (a) Mr Gibbons would arrange the financing, (b) Ms Keogh would get the use of the Jeep as though it were hers, and (c) at some future stage there would be a financial reckoning...albeit that, perhaps, this last date might never have come had the romantic relationship endured between the two. Again, the court is mindful that Mr Gibbons contends that no contractual intention ever manifested in his dealings with Ms Keogh, but again respectfully disagrees.

Part 4

The Liabilities Presenting

A. Overview.

19. The court has found that Mr Gibbons owes money to Ms Keogh, and Ms Keogh owes money to Mr Gibbons. The difficulty arising for Mr Gibbons is that an analysis of the funds that have moved between him and Ms Keogh yields the conclusion that he is the party left owing money.

B. Analysis of Figures.

The various cash advances and certain other advances in kind made by Ms Keogh to Mr Gibbons are identified overleaf:

€

20.06.06..... 8,000[a]

23.06.06..... 0[b]

23.06.08..... 7,500[c]

26.01.07..... 3,850[d]

21.05.07..... 1,100[e]

10.07.07..... 32,000[f]

20.07.07..... 0[g]

10.06-08.07..... 6,722.46[h]

26.11.07..... 22,000[i]

€81,172.46

20. The various cash advances and certain other advances in kind by Mr Gibbons to Ms Keogh are identified below:

€

Jeeps..... 43,415[j]

Renovation works..... 6,130[k]

Petrol..... 4,787[l]

Newspapers & tobacco.....1,000[m]

Float..... 0[n]]

€55,332

[a] Only the €8,000 payment to a Mr O'Brien (contractor) is receipted. The remainder of the €16,002.20 withdrawn from Ms Keogh's bank account on that date is unaccounted for. The €2.20 is almost certainly the bank-charge for the draft.

[b] There is nothing to suggest the €10,000 withdrawn on this date went to Mr Gibbons and there is the unaccounted-for fact that €18,000 was returned to Ms Keogh's account at a later stage, which €18,000, the court finds, comprised the €10,000 and the 'missing' €8,000 from [a].

[c] Drawn from loan monies of €12,000 that issued to Ms Keogh on 23.06.08.

[d] This is the cost of the fireplace for what is now Mr Gibbons' home alone. The court considers that the cost of the fireplace can be treated as having been done pursuant to the contractual arrangement as to the construction and

furbishing of Mr Gibbons' home.

[e] This is the cost of certain curtains for what is now Mr Gibbons' home alone. The court considers that the cost of the curtains can be treated as having been done pursuant to the contractual arrangement as to the construction and furbishing of Mr Gibbons' home.

[f] Drawn from loan monies of €76,631 that issued to Ms Keogh on 26.06.07.

[g] It was initially claimed that €20,000 was withdrawn by Ms Keogh from her account on this date. There is no evidence that this occurred and no evidence of any payment to Mr Gibbons. In any event, the court understands that this limb of the claim is now withdrawn. It is likely there was confusion arising on Ms Keogh's part in this regard because of a repayment by her around this time of the €20,000 she owed to her mother.

[h] Thirty-nine withdrawals were made from Ms Keogh's account at this time. Twenty-two of them are home purchases done to acquire furnishings for what is now Mr Gibbons' home alone. The court considers that the cost of these furnishings can be treated as having been done pursuant to the contractual arrangement as to the construction and furbishing of Mr Gibbons' home.

[i] Drawn from loan monies of €30,000 that issued to Ms Keogh on 26.11.07

[j] Mr Walsh formulated two methods of calculating the benefit arising to Ms Keogh by virtue of her exclusive use of the Jeeps. The court has taken the lower figure arising.

[k] The court has allowed the receipted expenses of €6,130.94, as itemised by Mr Walsh in the additional documentation handed up by him in court during his oral testimony. The court considered the figures for additional expense posited by Mr Gibbons in his evidence to be 'guess-timates' on which no proper reliance can be placed by a court.

[l] It is clear from an analysis of Ms Keogh's business accounts that some level of fuel costs on her van must have been met by Mr Gibbons. The fairest means of calculating this has been posited by Mr Walsh in his expert report and yields the above-stated figure.

[m] Apart from Mr Gibbons' 'say-so', there is no evidence before it that he bought the newspapers and tobacco for Ms Keogh. The court has, however, allowed the €1,000 that is mutually acknowledged to have been given by Mr Gibbons and received by Ms Keogh to cover the cost of certain stock stolen from Ms Keogh in Christmas 2004.

[n] Ms Keogh indicated that the float each week was €50. Mr Gibbons corrected her on this, referring to Ms Keogh's longstanding practice of having a €100 float at the start of each business-day to allow for the possibility that, e.g., the first customer would give her a €50 note and so 'wipe out' her float. The court accepts that there must have been a circa. €100 float per day. However, apart from Mr Gibbons' 'say-so', there is no evidence that he ever funded the float monies, and Ms Keogh firmly indicated that he did not.

Part 5

Conclusion

21. For the reasons stated above, the court will order that Mr Gibbons pay to Ms Keogh the amount of €25,840.46, i.e. the net difference between €81,172.46 and €55,332.