SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3633-21

ESTATE OF MAUREEN CURTIS,

Plaintiff-Respondent,

v.

NILES GANT,

Defendant-Appellant.

Submitted June 7, 2023 – Decided June 15, 2023

Before Judges Currier and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0364-21.

Niles Gant, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

J. Wellington Wimpy regularly approached Popeye the Sailor with "I'll gladly pay you Tuesday for a hamburger today." In this appeal, we consider whether defendant was obligated to repay $20,000 conveyed to him on an even

less definite promise to repay than Wimpy's. Finding no infirmity in the judge's determination, which followed a short bench trial, that defendant defaulted by failing to repay plaintiff more than two years after the $20,000 was conveyed to him, we affirm the judgment entered in plaintiff's favor.

On March 13, 2020, Maureen Curtis provided defendant Niles Gant with a $20,000 check. Maureen died a few weeks later. After being appointed executor of her estate, Maureen's brother attempted through counsel to obtain repayment and, failing that, commenced this suit. The eighty-year-old defendant has not denied that Maureen provided him with a $20,000 check that he negotiated, and he has not denied that he has not repaid any portion of it. Defendant's position is, as he testified at trial, that the money was a "repayable gift" and that he was not required to pay back any portion of the $20,000 until he was financially able to do so.

At the conclusion of a one-day bench trial, during which only Maureen's executor and defendant testified, the judge found that Maureen did not gift the money to defendant. Instead, the judge found Maureen lent the money to defendant, and she fully expected to be repaid. And, while the judge found and the record makes clear the parties did not agree on a specific date for repayment – the testimony only suggested that repayment was expected "when the loans

are in place," an apparent reference to some other transaction defendant was then attempting to accomplish – the judge concluded that repayment was certainly expected by the time the trial occurred in June 2022, more than two years from the date of the loan. The judge entered judgment in plaintiff's favor and against defendant in the amount of $20,000.

Defendant appeals, arguing:

> I. THE TRIAL COURT ERRED IN GRANTING THE MOTION FOR A JUDGMENT TO THE PLAINTIFF BECAUSE THERE WAS NOT ANY PAYMENTS DUE TO BE PAID AND THE DEFENDANT DEMONSTRATED A WILLINGNESS TO MAKE PAYMENTS DETERMINED TO BE DUE AND WITHIN HIS REASONABLE ABILITY TO SO DO. THEREFORE THE JUDGMENT SHOULD BE VACATED.
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> II. THE JUDGMENT SHOULD BE VACATED DUE TO THE LACK OF DUE PROCESS BECAUSE OF THE TESTIMONY MISTAKES AND PROCEDURAL MISTAKES.
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> III. THE JUDGMENT SHOULD BE VACATED SINCE THE ORAL DECISION OF THE TRIAL COURT CONTAINED SIGNIFICANT ERRORS AND OMISSIONS SUFFICIENT TO VOID THE LOGIC ON WHICH THIS DECISION WAS BASED.

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following few comments.

First, to clarify the misnomer contained in defendant's first point, the judge did not grant a motion for judgment. The judge conducted a trial and, at its conclusion, rendered findings of fact and conclusions of law that were later memorialized in a judgment entered in plaintiff's favor. Consequently, we have reviewed the judgment in that context and, in applying our familiar standard of review, we defer to those fact findings because they are supported by credible evidence. See Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 619 (2017).

Second, the law does not recognize what defendant has referred to as a "repayable gift." A gift is a gift, and a loan is a loan. Indeed, the very definition of a gift precludes defendant's claim to an oxymoronic "repayable gift." To be a gift, the donor must have the intent to give, must make "an actual (or symbolical) delivery of the subject matter of the gift," and "absolute[ly] relinquish[] . . . ownership and dominion over the subject-matter of the gift." Farris v. Farris Eng'g Corp., 7 N.J. 487, 500-01 (1951); see also Pascale v. Pascale, 113 N.J. 20, 29 (1988). In short, as Justice Francis said for the Court in In re Dodge, 50 N.J. 192, 216-17 (1967), the three elements that make up a gift are "protective devices" meant to ensure that the donor "clearly intended a gift and understood that the thing given was irretrievably gone" (emphasis added). The judge found

that Maureen did not intend a gift; she expected repayment, albeit at a time not clearly fixed. We, thus, find no reason to second-guess the experienced judge's finding that Maureen did not "irretrievably" transfer or otherwise make a gift of the $20,000 check she handed to defendant on March 13, 2020.

Third, having determined a gift was not intended and the conveyance constituted a loan, the judge was next required to determine when repayment was due. Had the parties said nothing about the time for repayment, the loan would have been payable on demand. See Denville Amusement Co., Inc. v. Fogelson, 84 N.J. Super. 164, 169 (App. Div. 1964); see also Green v. Richards, 23 N.J. Eq. 32, 34-35 (Ch.), aff'd, 23 N.J. Eq. 536, 540 (E. & A. 1872). But the judge found the parties did agree on a time for repayment. The parties agreed that repayment was required "when the loans were in place," referring to defendant's pursuit at the time "of getting some sort of loans" that would clear away other debts. In short, as the judge inferred from the evidence, Maureen "expected [the loan] to be paid back [within] some . . . predictable period of time," which depended upon what occurred with defendant's pursuit of some other loans. We discern from these findings, which command our deference, that the judge recognized defendant was obligated to repay within a time subject to these other undescribed activities. That finding, however, only begged the

question about the amount of time after defendant succeeded or failed (he failed) to obtain other borrowed funds. In the final analysis, the judge's determination quite appropriately imposed on defendant a reasonable time within which to repay the loan. See In re Est. of Miller, 90 N.J. 210, 219 (1982); see also WILLISTON ON CONTRACTS § 42:9 (4th ed. 2007); RESTATEMENT (SECOND) OF CONTRACTS § 204 (1981); Helms v. Prikopa, 275 S.E.2d 516, 518 (N.C. App. 1981).

Contrary to defendant's argument, a reasonable time is not the same as an indefinite period of time. In recognizing that more than two years had passed from the date of Maureen's loan to the time of trial – affording defendant more than a reasonable period of time from his failure to secure the other loan or loans referred to in their transaction – the judge properly concluded that defendant was certainly in default when he rendered his verdict.

Fourth, in so holding, we reject an alternative contention that defendant also seems to be making: that he was only obligated to repay the loan when able. While defendant offered no legal authorities to support such a contention, we are mindful that older cases have recognized that a pay-when-able loan requires the lender, in seeking relief, to "allege and prove the ability of the debtor to pay." See, e.g., Guerin v. Cassidy, 38 N.J. Super. 454, 461 (Ch. Div. 1955). If

that legal principle should or should not continue to be followed – a matter we need not decide – we observe that the judge's findings do not support a factual premise for that claim. The trial judge specifically rejected defendant's contention that he and Maureen agreed he was only obligated to repay the $20,000 when able. Because our obligation, in examining the judgment under review, is to defer to the judge's fact findings when based on credible evidence, as here, the factual support for defendant's legal contention – that he was bound to repay Maureen only when he was able – cannot be sustained.

Affirmed.