**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE**
**IN AND FOR NEW CASTLE COUNTY**

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| **ANN ANDERSON,** | ) | |
| | ) | |
| Appellee/Plaintiff, | ) | |
| | ) | |
| v. | ) | **C.A. No. CPU4-15-003320** |
| | ) | |
| **CHRISTOPHER SUTTON,** | ) | |
| | ) | |
| Appellant/Defendant. | ) | |
| | ) | |

**MEMORANDUM OPINION**
**AND ORDER**

Submitted: November 29, 2016
Decided: December 20, 2016

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**WELCH, J.**

This case involves the breach of an oral contract arising from Appellant's promise to reimburse Appellee for a ten-thousand dollar loan. Both parties appeared for trial before the Court on November 29, 2016. The Court reserved its decision. This is the Court's Final Memorandum Opinion after consideration of the pleadings, oral and documentary evidence submitted at trial, the parties' arguments, and the applicable law. For the reasons set forth below, the Court enters judgment in favor of Appellee.

## I. Procedural History

On September 25, 2015, Christopher Sutton ("Appellant") filed an appeal in this Court from the Justice of the Peace Court's judgment in favor of Ann Anderson ("Appellee"), awarding Appellee ten-thousand dollars, plus court costs, and post-judgment interest.

On December 8, 2015, Appellee filed her Complaint on Appeal alleging that she loaned Appellant ten-thousand dollars and Appellant failed to repay the loan. Appellee sought ten-thousand dollars in damages, pre- and post-judgment interest at the legal rate, costs, and any other relief the Court found just.

On December 21, 2015, Appellant filed his Answer. Appellant argued that the loan was actually a gift in exchange for a lifetime membership at Appellant's pet grooming and training business venture, Pampered Pet, LLC ("Pampered Pet").[1] Appellant averred that there was no obligation to repay Appellee's gift; furthermore, Appellant pointed out that the alleged lifetime membership encompassed free canine grooming, free canine training, and the first right to franchise.[2]

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[1] Appellant testified that his friend, who was a Maryland attorney, drafted the Limited Liability Company operating agreement at a social gathering. Appellant admitted that he did not read the agreement "fully" before he initialed and signed either copy of the agreement—one agreement was signed on June 12, 2008 and the second on April 2, 2009. Appellant could not recall why these two nearly identical agreements existed.

[2] Appellant testified at trial that Pampered Pet's washing rates ranged from ten to forty dollars, grooming rates ranged from twenty-five to one-hundred and fifty dollars, and training rates ranged from five-hundred to four-thousand dollars.

## II. Facts

Based on the testimony presented at trial, the Court finds the relevant facts to be as follows.

At the end of 2007, Ann Anderson ("Appellee") was introduced by her longtime friend, Daria Brown, to Christopher Sutton ("Appellant"). In 2008, Ms. Brown approached Appellee regarding the possibility of Appellee loaning Appellant ten-thousand dollars to start a pet grooming and training business, Pampered Pet, LLC ("Pampered Pet"), in Elkton, Maryland. Appellee informed her longtime friend that she would loan Appellant the ten-thousand dollars he needed to start Pampered Pet.

Sometime later, Appellant and his wife drove to Appellee's Delaware residence and parked at the end of Appellee's driveway. Appellee proceeded to walk down her driveway and hand him a check for ten-thousand dollars through his driver-side window. When Appellee handed Appellant the check, Appellant asked her why she had written "Loan" on the check and she told him that they could discuss the particulars later, but that he needed to pay her back the original sum of ten-thousand dollars. While Appellee did not discuss the terms of repayment at that time, she informed Appellant that she would not charge him interest on the principal amount.

Prior to February 2014, Appellant contacted Appellee over the phone on a separate matter, but the loan topic surfaced when Appellant asked Appellee whether his Internal Revenue Service income tax return of five-thousand dollars would satisfy the loan. She informed him that the tax return was insufficient as it did not satisfy the full loan amount. Appellant told her it would be difficult to repay her in full since he did not have the money, yet provided no indication that he could not pay later.

On February 10, 2014,[3] both parties were in a Maryland courtroom for a restraining order hearing, which stemmed from Appellant being informed that Ms. Brown had borrowed ten-thousand dollars and attempted to satisfy his loan with Appellee.[4] During this hearing, Appellant testified that Appellee loaned him ten-thousand dollars and he had not repaid the loan as of February 10, 2016.[5]

After February 2014, Ms. Brown informed Appellee that Pampered Pet had been sold. Appellant never contacted Appellee about the sale or loan.[6] During direct examination, Appellee could not recall the name of Appellant's business or its specific address, only that he had a business partner.[7] Appellee also denied every visiting Pampered Pet as a "lifetime member," taking advantage of her alleged membership status, or calling Appellant and discussing his business with him.[8]

On cross-examination, Appellee admitted that loaning an acquaintance such a large sum was foolish without a written agreement or solidified terms and conditions. Additionally, she

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[3] Transcript of Maryland District Court Hearing, Brown v. Sutton, No. 0302SP000692014 (Feb. 10, 2014) (Joint Exhibit 1).

[4] Appellee admitted to returning the ten-thousand dollars because Appellee knew that Ms. Brown could not afford to borrow such a large sum of money.

[5] Transcript of Maryland District Court Hearing, Brown v. Sutton, No. 0302SP000692014 (Feb. 10, 2014) ("Petitioner: . . . Mr. Sutton, did you borrow $10,000 from Ann Anderson? Respondent: Yes. Petitioner: Have you paid it back? Respondent: No."). On direct examination, Appellant asserted that he only stated the gift was a loan under oath because he was distracted by his worries of potentially losing his job and the upcoming sheriff election. However, this Court is unpersuaded. There is no reason Appellant could not proffer that the transaction was a gift and Appellee was provided a lifetime membership, as he articulated to this Court under oath on November 29, 2016.

[6] Allegedly, he stated that he informed Appellee when he sold the business and told her that he did not have any money, but would like to set up a "process" so he could repay her. Transcript of Maryland District Court Hearing, Brown v. Sutton, No. 0302SP000692014 (Feb. 10, 2014) ("What, our conversation I thought was very cordial and it was to acknowledge to her that it was a sale. I didn't make any money on the sale and I actually talked to her about, you know, I appreciated that she loaned the money and I wasn't making any money and we would see if there was some kind of process we could set up to where, out of good faith, that she could get paid back.").

[7] The business partner owned a twenty-five percent interest in Pampered Pet, LLC.

[8] Defendant's rebuttal witness, Jessika Laird, a former Pampered Pet's employee, testified that she saw Appellee in 2007 or 2008 bring her small, white dog to Pampered Pet for free grooming. Ms. Laird testified that Appellee claimed she was not required to pay and that Ms. Laird verified Appellee's statement with Mrs. Sutton who told Ms. Laird that Appellee was a part owner. The Court finds Appellee's testimony more credible that she never took her large, brown Labrador retriever and Chesapeake bay-mix, which passed away in 2008, to Pampered Pet for any reason. Appellant stated that he never saw Appellee at Pampered Pet.

noted that while her lack of contact with Appellant regarding the loan may seem odd, she worked two jobs, had three kids, and requested updates from her friend Ms. Brown on the loan situation.

## Standard of Review

Appeals from the Justice of the Peace Court are reviewed *de novo*.[9] A *de novo* review from the Justice of the Peace Court "means a trial anew, whether of law or fact, according to the usual or required mode of procedure."[10] In civil actions, such as breach of contract, the burden of proof is by a preponderance of the evidence.[11] The party that establishes the greater weight of evidence in its favor has met the preponderance standard.[12]

As trier of fact, the Court is the sole judge of the credibility of each fact witness and any other information provided. If the Court finds the evidence presented at trial conflicts, it is the Court's duty to reconcile these conflicts—if reasonably possible—in order to find congruity. If the Court is unable to harmonize the conflicting testimony, then the Court must determine which portions of the testimony deserve more weight in its final judgement. The Court must disregard any portion of the testimony which the Court finds unsuitable for consideration. In ruling, the Court can consider the witnesses': demeanor, the fairness and descriptiveness of their testimony, their ability to personally witness or know the facts about which they testify, and any biases or interests they may have concerning the nature of the case.

## III. The Law

### A. Contract Formation

A contract is formed in Delaware when one person ("offeror") makes an "offer" to a second person ("offeree") to enter into a contract and the offeree accepts, intending to be bound

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[9] Ct. Com. Pl. Civ. R. 72.3.
[10] *Cooper's Home Furnishings, Inc. v. Smith*, 250 A.2d 507, 508 (Del. Super. 1969).
[11] *See Gregory v. Frazer*, 2010 WL 4262030, at *1 (Del. Com. Pl. Oct. 8, 2010).
[12] *See Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

by the terms of the contract.[13] Matters concerning the formation of a contract are questions of fact.[14] The trier of fact should "look to surrounding circumstances and the parties' course of dealing in order to ascertain their intent."[15] When the contract is verbally crafted, the trier of fact must find that the parties "intended to be bound" by the contract and the court must "'determine the actual terms'" of the oral contract.[16]

**B. Breach of Contract**

To prevail on a claim for breach of contract, the plaintiff must establish by a preponderance of the evidence that: (1) a contract existed between the parties; (2) the defendant breached his obligation imposed by the contract, and (3) plaintiff suffered damages as a result of the defendant's breach.[17]

Under Delaware law, a contract has been defined "as an agreement upon sufficient consideration to do or not to do a particular thing."[18] "Consideration is a bargained-for-exchange of legal value."[19] All contracts and contract modifications require consideration.[20] In order to create a contract, there must be "mutual assent to the terms of the agreement, also known as the meeting of the minds."[21] "Mutual assent requires an offer and an acceptance wherein 'all the essential terms of the proposal must have been reasonably certain and definite.'"[22] If the parties

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[13] *See* BLACK'S LAW DICTIONARY 341, 1113-14 (8th ed. 2004); *see Siegfried Grp., LLP v. Piotrowski*, 2001 WL 1555544, at *1 (Del. Com. Pl. May 31, 2011) (Welch, J.) ("overt manifestation of assent"); *see also Wilson v. Diienno*, 2001 WL 34077743, at *1 (Del. Com. Pl. Dec. 19, 2001).
[14] *See Sheets v. Quality Assured, Inc.*, 2014 WL 4941983, at *2 (Del. Super. Sep. 30, 2014).
[15] *See id.*
[16] *Siegfried Grp., LLP*, 2001 WL 1555544, at *1 (quoting *Boone v. Howard*, 1989 WL 12238, at *2 (Del. Super. Feb. 7, 1989)).
[17] *See VLIW Technology, LLC v. Hewlett-Packard, Co.*, 840 A.2d 606, 612 (Del. 2003).
[18] *Howlett v. Zawora*, 2012 WL 1205103, at *2 (Del. Com. Pl. Mar. 30, 2012) (*citing Rash v. Equitable Trust Co.*, 159 A. 839, 840 (Del. Super. 1931)).
[19] *Harmon v. State*, 2010 WL 8250826, at *2 (Del. Super. Sept. 27, 2010) (*citing Barnard v. State,* 642 A.2d 808, 818 (Del. Super. 1992), *aff'd*, 637 A.2d 829 (Del. 1994)).
[20] *See id.* at *2; *see also De Cecchis v. Evers*, 174 A.2d 463, 464 (Del. Super. 1961).
[21] *Thomas v. Thomas*, 2010 WL 1452872, at *4 (Del. Com. Pl. Mar. 19, 2010 (citing *Quinones v. Access Labor,* 2008 WL 2410170, at *5 (Del. Super. 2008)).
[22] *Id.* (quoting *Gleason v. Ney,* 1981 WL 88231, at *1 (Del. Ch. 1981)).

do not settle on any portion of the proposed terms, there is no agreement.[23] If the meeting of the minds does not occur, then the contract is unenforceable under Delaware law.[24]

The standard remedy for breach of contract is based upon the reasonable expectations of the contracting parties.[25] Expectation damages are measured by determining "the amount of money that would put the promisee in the same position as if the promisor had performed the contract."[26]

## IV. Discussion

Preliminarily, Appellee's claim for repayment of her loan is not barred by the statute of limitations. Under Delaware law, the statute of limitations for a breach of contract is three years.[27] This three-year time limit will begin to run from the day of the breach.[28] Further, "[u]nder Delaware law, when a contract does not have a deadline or other time specified, the parties have a 'reasonable' amount of time to perform the contract. It is a question of fact as to what time period is reasonable."[29]

In the present case, it was reasonable for Appellee to wait to request repayment from Appellant directly because she understood that her loan was for a business venture and not personal commodities.[30] According to the Delaware Court of Chancery, it is "hardly uncommon" for new businesses to take a "few years" before the business begins to profit.[31] In

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[23] *See id.*
[24] *See Rodgers v. Erickson Air–Crane Co. L.L.C.*, 2000 WL 1211157, at *6 (Del. Super. 2000).
[25] *See Duncan v. Theratx, Inc.*, 775 A.2d 1019, 1022 (Del. 2001).
[26] *Id.*
[27] 10 *Del. C.* § 8106.
[28] *See Nardo v. Guido DeAscanis & Sons, Inc.*, 254 A.2d 254, 256 (Del. Super. 1969).
[29] *Pivotal Payments Direct Corp. v. Planet Payment, Inc.*, 2015 WL 11120934, at *4 (Del. Super. Dec. 29, 2015) (footnote omitted).
[30] *See Carlson v. Hallinan*, 925 A.2d 506, 524 (Del. Ch. 2006) (everyday conversation surrounding the oral contract's formation is vital to interpretation).
[31] *Harbor Finance Partners v. Huizenga*, 751 A.2d 879, 894 (Del. Ch. 1999) ("It is hardly uncommon for new businesses to not profit in their first few years of operations . . . .").

this regard, a reasonable person would not expect repayment until he or she receives word that the business has flourished or failed.[32]

Secondarily, limited liability companies ("LLCs") are unpredictable from a lending perspective, as the operating agreement between the limited partners is a creation of contract and, therefore, the parties are granted considerable latitude in creating the contours of the agreement.[33] Similarly, LLC members with more than two-thirds interest in the LLC profits can dissolve the company,[34] or petition the Court of Chancery to dissolve the business when it is not "reasonably practicable to carry on the business in conformity with a limited liability company agreement."[35] Moreover, when the business is family owned and managed, familial-issues often arise, extinguishing any remaining marketplace predictability.[36]

Here, Appellant owned seventy-five percent of Pampered Pet LLC and testified that his family was involved in managing the business. The intricate nature of small, family managed LLCs adds a further layer of complexity to market predictability. Appellee acted practically when she delayed requesting repayment directly from Appellant. Thus, Appellee acted as a reasonable person would in waiting for Appellant's business to thrive before Appellee requested repayment of her loan.

In the present case, Appellant's business closed in 2013, transforming into a lease-to-own agreement, and Appellee was informed by Ms. Brown that Appellant had sold the business after

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[32] Appellant admitted at trial that he would have paid Appellee if his business had succeeded.

[33] 6 *Del. C.* § 18-1101(b); *see Elf Atochem N. Am., Inc. v. Jaffari*, 727 A.2d 286, 291 (Del. 1999). This Court relies on Delaware law by way of example because of its influence in corporate discourse; however, the full partnership agreement was not part of the record in this case.

[34] 6 *Del. C.* § 18-801; *see Henson v.* Sousa, 2012 WL 6628817, at *3 n.39 (Del. Ch. Dec. 19, 2012) (requiring two members who each had one-third interest in the LLC to consent to dissolution); *see also R&R Capital, LLC v. Buck & Does Run Valley Farms, LLC*, 2008 WL 3846318, at *2 & n.13 (Del. Ch. Apr. 19, 2008) (citing 6 *Del. C.* § 18-803) ("only managers or members have standing to wind up a limited liability company's affairs").

[35] *Vila v. BVWebTies LLC*, 2010 WL 3866098, at *6-8 (Del. Ch. Oct. 1, 2010) (quoting 6 *Del. C.* § 18-802) (reasonably impracticable for LLC to continue operating according to its LLC agreement because the two co-owners, each controlling fifty-percent of the LLC, were deadlocked as to future direction and the LLC agreement provided no solution to resolve the deadlock).

[36] *See* Benjamin Means, *Nonmarket Values in Family Businesses*, 54 WM. & MARY L. REV. 1185, 1190-92 (2013).

the 2014 hearing in Maryland. When Appellant admitted that he had sold the business under oath at the 2014 hearing, Appellee was put on notice—as she was also present at the hearing—that she should seek repayment from Appellant. While the statute of limitations could accrue at a later date since Appellant was still accountable for the building's lease through his lease-to-own arrangement, Appellee was provided with an indisputable bright line on February 10, 2014 of the business's failure. Thus, the statute of limitations began to run on February 10, 2014 and Appellee's claim remains viable until February 10, 2017.

Moreover, while this Court enjoys opining on corporate principles, the Superior Court held in *Alonso v. Maldonado* that when a borrower clearly admits he borrowed the amount in controversy and failed to repay it, the statute of limitations will not bar the lender's recovery.[37] Here, Appellant clearly stated under oath in 2014 that he borrowed a loan from Appellee, the loan was for ten-thousand dollars, and Appellant intended to repay the loan. *Alonso*'s reasoning is supported by the underlying purpose of the statute of limitations, which is to prevent "'stale'" claims from drudging up old, forgotten issues.[38] In the present case, staleness is not a concern since Appellant agreed to the loan's existence, the amount in controversy, the context surrounding the loan, and his desire to repay the loan. He cannot feign a lack of knowledge about a loan he has described in detail.

Likewise, Appellee's claim for repayment is not barred by the statute of frauds. Delaware's statute of frauds requires oral contracts to be written, unless the contract "'*may be*

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[37] *See Alonso v. Maldonado*, 2015 WL 7068206, at *3 (Del. Super. Nov. 12, 2015) ("'[a]lthough no particular form is necessary to remove a case from the statute of limitations there must be a clear, distinct and unequivocal acknowledgement of a subsisting debt and a recognition of an obligation to pay it. There must be more than a vague or loose admission of an obligation.'" (quoting *Synder v. Baltimore Trust Co.*, 532 A.2d 624, 626 (Del. Super. 1986))).

[38] *See Shaw v. Aetna Life Ins. Co.*, 395 A.2d 384, 386 (Del. Super. 1978) (quoting *Keller v. President, Dirs., and Co.*, 24 A.2d 539, 541 (Del. Super. 1942)).

performed within a year.'"[39] Further, if the parties to the contract do not set a specific time of performance at the time of contracting, then, "'if by any possibility [the contract] may be performed with[in] a year, the statute does not apply, and such an agreement need not be in writing.'"[40] Additionally, "if a party admits that the oral agreement existed, they are presumed to have waived the protection of the Statute of Frauds."[41] Here, the parties to the contract did not set a specific time of performance at the time of contracting, Appellant could have repaid Appellee within a year, and both parties have admitted to the oral agreement. Therefore, the statute of frauds does not bar Appellee's claim.

Turning now to the substance, the parties stipulated at trial that the issue before this Court is the breach of an oral contract; hence, the Court will focus on the elements of a contract and requirements for a breach of contract. Appellee's testimony was persuasive; Appellant plainly understood that the ten-thousand dollars was not a gift, but a loan. Appellant and Appellee formed a contract when Appellant's friend, Ms. Brown, suggested that Appellee loan Appellant the remaining amount he needed to start his business and Appellee ("offeror") made an "offer" of a ten-thousand dollar loan to Appellant ("offeree") and Appellant accepted the loan intending to be bound by the repayment term of the loan-contract. Appellant then breached the contract when he failed to repay Appellee the ten-thousand dollar amount, which damaged Appellee's financial condition as a direct result of Appellant's breach.

During trial, defense counsel noted the oddity of a "stranger" handing over ten-thousand dollars at the end of a driveway, however, it would strike the Court as odder for a stranger to hand another stranger a gift of ten-thousand dollars at the end of a driveway. It strains credulity

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[39] 6 *Del. C.* § 2714; *Naylor v. Tumey*, 2013 WL 3946113, at *2 (Del. Com. Pl. July 30, 2013) (quoting *Brandner v. Delaware State Hous. Auth.*, 605 A.3d 1, 1 (Del. Ch. 1991)).
[40] *Naylor*, 2013 WL 3946113, at *2 (quoting *Haveag Corp. v. Guyer*, 211 A.2d 910, 912 (Del. 1965)).
[41] *Steila v. Steila*, 2009 WL 2581887, at *2 (Del. Com. Pl. Aug. 20, 2009).

to assume Appellee handed ten-thousand dollars over to an acquaintance for lifetime benefits at an unopened business. Further, the only benefit Appellee would retain from this alleged gift is for her sixteen-year-old Labrador retriever, whom—the record is unclear on—either passed away prior to this transaction or shortly after this transaction. Appellee even stated that she never adopted another dog. Consequently, she would have no need of lifetime benefits at Pampered Pet.

Importantly, Appellant failed to recall an alternative version of events which supported his position that Appellee understood this transaction to be a "business investment" for lifetime services at Pampered Pet. In fact, Appellant agreed with Appellee that the oral contract was formed at the end of her driveway. Because the Court has no alternative version of events that support Appellant's assertions, it is unpersuaded by Appellant's position that Appellee gifted an acquaintance ten-thousand dollars for an unfamiliar business venture. The Court therefore finds by a preponderance of the evidence that plaintiff has proven by a preponderance of the evidence all obligations in her civil complaint. The Court also must note that Appellant never argued at trial other than this was a gift, not a loan to him personally. The Court finds otherwise. Appellant never argued he received these monies as an officer of an L.L.C. and therefore was barred. The Court finds the subject money was a personal loan to him in an individual capacity and must be repaid.

## V. Conclusion

For the foregoing reasons, the Court hereby enters judgment against defendant for ten-thousand dollars, plus pre- and post-judgment interest at the legal interest rate of 5.75% according to 6 *Del. C.* §2301, *et seq.*

**IT IS SO ORDERED** this 20th day of December, 2016.

John K. Welch, Judge

cc: Ms. Tamu White, Chief Civil Clerk