IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

R. Virginia Scuse,	:	
	:	
Plaintiff,	:	C.A. No. 07-04-0193
	:	
v.	:	
	:	
Cheryl Lynn Howlett,	:	
	:	
Defendant.	:	

Decision after Trial

Date of Trial: July 31, 2007

Date of Decision: August 2, 2007

Judgment for the Plaintiff, R. Virginia Scuse
And against Defendant, Cheryl Lynn Howlett

R. Virginia Scuse, 2706 Urbana Pike, Ijamsville, Maryland 21754, Pro Se Plaintiff.

Kevin Howard, Esq., Young, Malmberg & Howard, P.A., 30 The Green, Dover, Delaware 19901, Attorney for Defendant.

Trader, J.

In this civil action I find that the defendant, Cheryl Lynn Howlett, is indebted to the plaintiff, R. Virginia Scuse, as a result of a loan made to her by the plaintiff and her deceased mother, Ruth R. Porter, on November 16, 2004. Accordingly, judgment is entered on behalf of the plaintiff and against the defendant for $5,000.00, plus costs of these proceedings.

The relevant facts are as follows: Just prior to November 16, 2004, the plaintiff and her mother, Ruth R. Porter, had a discussion about loaning money to the defendant. On November 16, 2004, Ruth Porter delivered a check in the amount of $5,000.00 to Cheryl Lynn Howlett from the joint bank account of the plaintiff and her mother. The check was made payable to Ms. Howlett, personally, and was cashed by her. On November 27, 2004, the defendant signed a note which states as follows: "Cody's owes Aunt Ruth $5,000.00 or in case of her death, Virginia, her daughter named on the check. C.L. Howlett, President Cody's, Inc."

In early 2005, the plaintiff requested repayment of the loan and the defendant stated that she would repay the money in a few weeks after she sold her liquor license. On another occasion the defendant told the plaintiff and her mother that she would have the money in two weeks. On December 11, 2005, Ruth Porter died intestate and letters of administration were subsequently granted on her estate to the plaintiff on the 22nd day of January, 2007. On the day after Ruth Porter's death, the defendant stated to the plaintiff that she would repay the money at tax time. The defendant has refused to repay the money owed and the plaintiff has filed a civil action in this Court for the repayment of the money.

Initially, the question was raised as to whether the plaintiff should bring this claim as administratrix of the estate of Ruth R. Porter. The testimony of the plaintiff indicated

that all of the property of the decedent was held jointly with her. She testified that she established the joint bank account with her own money and she and her mother made the loan jointly. Under these circumstances she has a claim for a return of this money as the surviving joint tenant. *In re: Estate of Margery Gedling,* 2000 Del. Ch. LEXIS 73, *34 (Del. Ch. Apr. 11, 2000); *Short v. Milby*, 64 A.2d 36, 38 (Del. Ch. 1949).

At trial, the defendant raised the objection that the conversation that the plaintiff had with her mother prior to the making of the loan should be excluded as hearsay evidence. Hearsay is defined as a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. D.R.E. Rule 801(c). If a statement is not offered to prove the truth of matter asserted therein, the evidence is regarded as non-hearsay. At this time, I rule that these discussions constituted non-hearsay evidence. A declaration of intention casting light upon the future is treated as non-hearsay evidence as contrasted with a statement pointing backward to the past. *Shepard v. United States*, 290 U.S. 96 (1933); *Mutual Life Insurance Co., v. Hillmon*, 145 U.S. 285 (1892). *See also Wigmore on Evidence,* Sec. 1.8 (2000).

Therefore, the discussions between the plaintiff and her mother concerning the lending of money to the defendant were admissible to show that she and her mother had the intention of lending the money to the defendant and it is probable that they did what they intended to do.

The final issue is whether this is a loan or a gift and if it is a loan, is it a loan to the individual defendant? The defendant testified that the monies were given to her as a gift and later she signed a note in behalf of Cody's, Inc. In considering the credibility of the parties on this issue and the weight and value of their testimony, I do not find the

defendant's testimony credible and I reject it and I accept the testimony of the plaintiff on this issue. The check was made payable to the defendant out of the joint account and she cashed the check. There is no documentary evidence that this sum was deposited in a corporate account. Therefore, there was an agreement between the parties that the joint tenants lent $5,000.00 to the defendant. *See Powell v.* Powell, 2006 Del. C.P. LEXIS 10, *3 (Del. C.P. Jan. 18, 2006) (holding there is no presumption of a gift outside spousal relationship or parent-child relationships); *Brudon v. Rawley,* 2001 Del. C.P. LEXIS 104, *3 (Del. C.P. Nov. 16, 2001). (same). The note subsequently composed by the defendant eleven days later was an effort on her part to evade individual liability.

Finally the plaintiff testified that on at least three occasions the defendant said that she would repay the money. The defendant did not state to her that Cody's, Inc. would repay the loan. I, therefore, conclude that the plaintiff established by a preponderance of the evidence, that she and her mother made a joint loan to the defendant in the amount of $5,000.00 and that the defendant is indebted to the surviving joint tenant for this sum of money.

It is, therefore, ordered that judgment be entered in behalf of the plaintiff, R. Virginia Scuse, and against the defendant, Cheryl Lynn Howlett for the sum of $5,000.00, plus costs of these proceedings.

IT IS SO ORDERED.

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Merrill C. Trader
Judge