

COMMONWEALTH OF THE BAHAMAS

IN THE MAGISTRATE'S COURT

Civil Side

BETWEEN

JULIAN BASTIAN

Plaintiff

VS

LATHERA LOTMORE

Defendant

Before: Magistrate Algernon Allen Jr.

Appearances: Plaintiff appears Pro Se

Mikia Cooper for the Defendant

Hearing Dates: 28th July, 2021; 11th August, 2021

JUDGMENT

1. The Plaintiff, Julian Bastian (**the “Plaintiff”**) seeks from the Defendant, Lathera Lotmore, (**the “Defendant”**) restitution in the sum of \$2,000.00 plus costs in the sum of \$100.00. The claim originated by way of summons filed on the 18th May, 2021 and the parties appeared in court on the 7th July, 2021 when the Defendant denied liability for the claim.
2. The Plaintiff alleges that on the 19th October, 2020 he entered into a written agreement with the Defendant to buy positions from her in a savings Asue program owned and operated by a company called Jasmine242. The Plaintiff gave the Defendant the sum of two thousand (\$2,000.00) dollars to purchase four (4) Asue positions which he expected to pay a return on his investment of eight thousand (\$8,000.00) dollars. Sometime after the 19th October 2020, the company ceased operations and the savings Asue closed, the Plaintiff requested his initial investment of \$2,000.00 be returned by the Defendant, who refused and the Plaintiff commenced the above-mentioned civil action.
3. A trial was commenced and completed before me on the 28th July, 2021 and I reserved my decision until today’s date.

EVIDENCE

Plaintiff’s Evidence

4. The Plaintiff testified that he participated in what he referred to as a savings asue operated by a company called Jasmine242. By way of written agreement between the Plaintiff and the Defendant, the Plaintiff brought four (4) ‘positions’ from the Defendant totaling two thousand (\$2,000.00) dollars. The Plaintiff said the Defendant told him that he would receive \$8,000.00 for the 4 positions he purchased which he never received because the company and asue program ceased operations two weeks later. The Plaintiff contacted the Defendant and requested the return of the \$2,000.00 he used to purchase the positions. The Defendant refused and told the Plaintiff that he would have to take her to court in order to recover the funds.
5. The Plaintiff believed that the Defendant was a representative of the company as a group leader and that she knew that the company was about to cease operations. He further claimed that the Defendant sold her positions in the company and that she was able to receive payment from those positions from September 2020.
6. On cross examination the Plaintiff admitted that playing these positions was akin to gambling and he accepted that he took a risk when he bought into the company. He denied the suggestion that the asue program was a Ponzi Scheme and he maintained that Jasmine242 was a legitimate company.

Defendant’s Evidence

7. The Defendant averred that she entered into a written agreement with the Plaintiff for positions in an ASUE draw. The Plaintiff wanted to purchase her positions which she was selling on behalf of her family members. The Plaintiff paid \$2,000.00 for four positions

which were transferred into his name, each position cost \$500.00 each. The Defendant's responsibility was to transfer the positions to him. The agreement was therefore completed.

8. The Defendant further averred that Jasmine242 was an illegitimate company, with no business licence or fixed address. She stated that she was never a representative of the company, never implemented any programs or was a group leader. She discovered that the company was operating a pyramid scheme as a result of a notice from the Securities Commission of The Bahamas. She denied that she discussed any repayment schedule with the Plaintiff and she confirmed that she joined the program in late August or September.
9. Upon cross-examination the Defendant denied that she sold her personal positions to him, she maintained that she was selling positions for family members who wanted to leave the program. She refuted the Plaintiff's suggestion that she acted as a representative of the company. She further denied that she told the Plaintiff that he would receive a greater return than the money he paid for his positions and that she was aware the program was coming to an end.

Analysis

10. In civil cases, a case must be proved on a balance of probabilities and is not as strict as the criminal burden of proof which requires a case to be proved beyond a reasonable doubt. In the instant case, I have considered both the evidence of the Plaintiff and the Defendant, and I find the Defendant's evidence to be more credible than that of the Plaintiff.
11. The Defendant entered into a written agreement to sell positions on behalf of other persons to the Plaintiff, the terms and intention of the agreement were clear and unambiguous. The Defendant was acting on behalf of her family members to sell the 4 positions owned by her family members to the Plaintiff. There was never any term in the agreement stating the Plaintiff would receive a return of some \$8,000.00 on his investment.
12. The Plaintiff believed that the Defendant was a representative of the company and therefore should be held liable for the return of his initial purchase of the positions. I accept the testimony of the Defendant when she denied that she was a representative of the company. She testified that she was a participant in the scheme and she also lost money from the positions she purchased in the program. The Defendant satisfied the terms of the agreement when she acted on behalf of her family to facilitate the sale of their positions to the Defendant.
13. By his own omission the Plaintiff said that the asue program that he participated in was akin to gambling. Gambling by its definition is to take a risk on playing games of chance in the hope of a desired result or outcome. The Plaintiff accepted that playing positions was a risk in the hope of a substantial gain from his initial investment. For her part, the Defendant discharged her obligation to sell positions on behalf of her family members, she simply assisted with the transaction of money from one party to the next. She was also an unwilling victim in a ponzi/pyramid scheme where both parties lost, this was a case of 'buyer beware'.

14. The court therefore finds that on the balance of probabilities the Defendant is not liable to the loss of the \$2,000.00 claimed by the Plaintiff. The court dismisses the Plaintiff's summons and awards reasonable costs to the Defendant

Dated this 11th day of August 2021

Algernon Allen Jr.