



**IN THE MAGISTRATE COURT OF BELIZE A.D. 2025
(CIVIL)**

Suit 143/25

Between:-

Bathsheba Limited

and

Shermadine Dennison

Date of hearing: 30th May 2025 (13th June 2025, written submissions of Plaintiff; 27th June 2025 written submissions of Defendant), and 18th August 2025.

Before: Senior Magistrate Baja Shoman

Appearances: Mr. Raymond Kearney, appearing as Agent for the Plaintiff;
Attorney Estevan Perrera, for the Defendant who appears.

Dated: 26th August 2025.

Court's ruling: The matter before the court was heard on 27th June 2025, in its entirety. Following the evidence, directions were given and complied with for submissions from both sides. The court had an emergency which caused the matter not to be called up on the date set for the decision. Upon being called up on the 18th August 2025, for Decision, there was a withdrawal filed by the Plaintiff's agent. In his submission to the court, the Plaintiff's agent conceded to the Defendant's filed submission and as such wished to withdraw. The Defence, in their submissions, stated that it was unfair for the Defendant to be dragged through the entire court process and not be given the opportunity to obtain a decision. The court has had the opportunity to review the submissions from both parties in relation to the withdrawal of the matter.

Of note, there are no Civil Procedure Rules that bind the Magistrate Court. The court is thereby guided by legislations and common law. The District Court Act s. 25 states "On the conclusion of the hearing, the court shall, either at the same or at a subsequent sitting of the court, give its judgment in the cause, and shall, if so required by the plaintiff or defendant, give the reasons therefor in writing to the plaintiff or defendant, as the case may be."

The matter was substantially dealt with, in that, the hearing had concluded, and submissions were received. The court based on the Legislation and its discretion, does not find it appropriate for parties at this late stage of proceedings to pick and choose which judgments they wish to have the court give. Each party is entitled to have the issues ventilated and determined by the court. Needless to say, the Defendant does not agree for the matter to be withdrawn, having defended her claim.

Having the evidence concluded and submissions filed, the matter is vested in the hands of the court. The matter is no longer in the hands of the plaintiff. The court has an obligation in the interest of justice to determine the matter since the Plaintiff is a money lending company and more than likely the same issue may arise again. There are no exceptional circumstances to divest the court of its discretion and duty. Therefore, the withdrawal by the Plaintiff is not accepted and the matter will proceed to Decision.

Decision

Addressing the preliminary issue of an objection by way of email, to the submissions of the Defence by the Agent for the Plaintiff; the Court, at the conclusion of the hearing, gave directions for submissions to be filed by both parties. The Court notes that the Plaintiff's submissions were filed on the 13th June 2025, as directed, and that the Defence's submissions were dated and filed 17th June 2025, before the date directed for filing. The court was made aware of the Plaintiff's objection to the Defence's submissions and conducted a revision of the Court's notes of evidence which showed that the Defence was to have filed and served their submissions on or before the 27th June 2025. Therefore, the court accepted the submissions from both the Plaintiff and the Defence.

Introduction:

1. This is a suit taken out by Bathsheba Limited against Ms. Shermadine Dennison on the 17th February 2025 claiming five thousand five hundred and seventeen dollars (\$5517.00) for a loan dated 4th November 2024.
2. This loan falls under the **MONEY LENDERS ACT CAP 260 R.E. 2020** and the **MONEYLENDERS REGULATIONS, 2017 (83 of 2017).**

The Law:

3. The law governing moneylending in Belize is encapsulated in the Money Lenders Act of Belize herein after referred to as "the Act" and the Moneylenders Regulations No. 83 of 2017 herein after referred to as "the Regulations". The Act and Regulations now govern moneylending as all other Acts and Regulations have been replaced.

4. The sections of the Act which are applicable to this matter are as follows:

2.-(1) In this Act, unless the context otherwise requires, "interest" does not include any sum lawfully charged in accordance with the provisions of this Act by a moneylender for or on account of costs, charges or expenses, but except as aforesaid, includes any amount, by whatever name called, in excess of the principal, paid or payable to a moneylender in consideration of or otherwise in respect of a loan;

13.-(1) No contract for the repayment by a borrower of money lent to him or to any agent on his behalf by a moneylender after the commencement of this Act or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract shall be enforceable, unless a note or memorandum in writing of the contract be made and signed personally by the borrower, and unless a copy thereof be delivered or sent to the borrower within seven days of the making of the contract.

(2) No such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed by the borrower before the money was lent or before the security was given, as the case may be.

(3) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and the effective annual rate of interest charged on the loan.

14.-(1) Subject as hereinafter provided, any contract made after the commencement of this Act for the loan of money by a moneylender shall be illegal in so far as it provides directly or indirectly for the payment of compound interest or for the rate or amount of interest being increased by reason of any default in the payment of sums due under the contract,

provided that provision may be made by any such contract that if default is made in the payment upon the due date of any sum payable to the money-lender under the contract, whether in respect of principal or interest, the moneylender shall be entitled to charge simple interest on that sum from that date of the default until the

sum is paid, at a rate not exceeding the rate payable in respect of the principal apart from any default, and any interest so charged shall not be reckoned for the purposes of this Act as part of the interest charged in respect of the loan.

(3) Where, under any contract made in contravention of subsection (1), it is provided that the borrower is required to pay to the moneylender any sum directly or indirectly representing compound interest or an increased rate or increased amount of interest by reason of any default in the payment of any amount due under the contract, such sum—

(a) shall not be recoverable from the borrower or any surety;

(b) if so paid, shall be recoverable as a debt due to the borrower or surety, as the case may be; and

(c) if not recovered, shall be set-off against the outstanding amount of the loan, and all sums of interest, late interest and any fees, costs, charges or expenses prescribed under section 15 that may be payable under the contract.

15.—(1) The Registrar may prescribe the types or amounts of fees, costs, charges and expenses that a moneylender may impose in respect of a loan granted by a moneylender, including the fees or charges for or on account of legal representation or advice.

(2) Any moneylender who imposes fees, costs, charges and expenses other than, or in excess of, those prescribed under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding fifty thousand dollars, or to imprisonment for a term not exceeding one year, or to both.

(3) Where, under any contract for a loan between a moneylender and a borrower, it is provided that the borrower is required to pay to the moneylender any sum representing fees, costs, charges or expenses other than, or in excess of, those prescribed under subsection (1), such sum—

(a) shall not be recoverable from the borrower or any surety;

(b) if so paid, shall be recoverable as a debt due to the borrower or surety, as the case may be; and

(c) if not recovered, shall be set-off against the outstanding amount of the loan, and all sums of interest, late interest and any fees, costs, charges or expenses prescribed under subsection (1) that may be payable under the contract for the loan.

(4) Subsection (2) does not apply to any sum representing payment for or on account of stamp duties or other amounts payable to the Government of Belize through a moneylender on behalf of a borrower by or under this Act or any other law.

16.—(1) In respect of every contract for the repayment of money lent by a moneylender whether made before or after the commencement of this Act, the moneylender shall, on any reasonable demand in writing being made by the borrower at any time during the continuance of the contract and on tender by the borrower of the sum of two dollars for expenses, supply to the borrower or, if the borrower so requires, to any person specified in that behalf in the demand, a statement signed by the moneylender or his agent showing—

(a) the date on which the loan was made, the amount of the principal of the loan and the effective annual interest rate charged on the loan;

(b) the amount of any payment already received by the moneylender in respect of the loan and the date on which it was made;

(c) the amount of every sum due to the moneylender, but unpaid, and the date upon which it became due, and the amount of interest accrued due and unpaid in respect of every such sum; and

(d) the amount of every sum not yet due which remains outstanding, and the date upon which it will become due.

(2) A moneylender shall, on any reasonable demand in writing by the borrower, and on tender of a reasonable sum for expenses, supply a copy of any document relating to a loan made by him or

any security therefor, to the borrower, or if the borrower so requires, to any person specified in that behalf in the demand.

(3) If a moneylender to whom a demand has been made under this section fails without reasonable excuse to comply therewith within one month after the demand has been made, he shall not, so long as the default continues, be entitled to sue for or recover any sum due under the contract on account either of principal or interest, and interest shall not be chargeable in respect of the period of the default, and if such default is made or continued after proceedings have ceased to lie in respect of the loan, the moneylender is liable to a fine not exceeding fifty dollars for every day on which the default continues.

23.—(1) Notwithstanding anything contained in the Limitation Act, no proceedings shall lie for the recovery by a moneylender of any money lent by him after the commencement of this Act or of any interest in respect thereof, or for the enforcement of any agreement made or security taken after the commencement of this Act in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued.

(2) In every other respect, the Limitation Act, shall apply to all transactions and dealings falling within the provisions of this Act.

24.—(1) Where proceedings are taken in any court by a moneylender for the recovery of any money lent after the commencement of this Act, or the enforcement of any agreement or security made or taken after the commencement of this Act, in respect of money lent either before or after the commencement of this Act, **and there is evidence which satisfies the court that the interest charged in respect of the sum actually lent is excessive, or that the amounts charged for expenses, inquiries, fines, bonus, premium, renewals or any other charges, are excessive, and that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief, the court may re-open the transaction, and take an account between the moneylender and the person sued, and may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any**

account already taken between them, and relieve the person sued from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of such principal, interest and charges, as the court, having regard to the risk and all the circumstances, may adjudge to be reasonable.

(2) If any such excess has been paid, or allowed in account, by the debtor, the court may order the creditor to repay it, and may set aside, either wholly or in part or may revise or alter any security given or agreement made in respect of money lent by the moneylender, and if the moneylender has parted with the security, may order him to indemnify the borrower or other person sued.

36.-(1) The Registrar, with the approval of the Minister, may make regulations

5. The provision of the Regulations which are applicable to this matter are as follows:

10.-(1) The maximum rate of interest a moneylender may charge is forty-eight per cent per annum or the corresponding rate of interest in respect of any other period.

(2) The interest charged on the loan is to be-

(a) simple interest; and

(b) charged on the monthly balance of principal remaining after deducting from the original principal the total amount of principal repaid to date.

11.-(1) For the purpose of section 14 of the Act, the maximum rate of simple interest a moneylender may charge upon default in the payment of sums due is 4% per month.

(2) Late interest is to be computed based on the monthly outstanding balance of the amount of principal that is overdue.

12. -(1) The maximum amount of fees and charges a licensee is permitted to impose on a loan, in any thirty-day period, is sixteen per cent of the loan principal minus the amount of any late interest charged under regulation 11 as follows:

maximum fees and charges : (16% x loan principal) - late interest charged.

(2) The fees and charges referred to in subregulation (1) may be imposed in addition to the interest prescribed in regulation 10.

13. Notwithstanding regulations 10, 11 and 12, a licensee shall not in respect of a loan to a borrower, recover from that borrower, interest, late interest or any fee or charge permitted under this or any other enactment, which in aggregate exceeds the principal of the loan.

The Claim:

6. The Plaintiff claims by way of the suit form, five thousand five hundred and seventeen dollars (**\$5517.00**) as follows:

Unpaid Balance: **\$2298.00**

Interest 4.12.24 – 4.3.25 **\$ 234.00**

Seeking also the right to adjust claim to include interest per day of \$2.60 until matter is heard.

Permitted Fees 4.12.24 – 4.3.25 **\$ 960.00**

Seeking also the right to adjust claim to include permitted fees per day of \$3.42 until matter is heard.

Meridian Asset Recovery Fee **\$2000.00**

Service of Process **\$ 25.00**

7. Whereas the Defence through their written submissions and based on the Defence put forth in cross examination, submit that the claim in its entirety is illegal as it is contrary to s.13 (1) and (3) of the Act. Secondly, that the Plaintiff is not entitled to additional monthly interest beyond the \$78 on the Promissory Note. Thirdly, that the Plaintiff cannot charge permitted fees as there exists no agreement between the Plaintiff and the Defendant for permitted fees. Fourthly, that Permitted fees are not automatic or mandatory. Finally, that the Claimant is not entitled to insert legal or collection fees as it takes the amount above the threshold allowed under s13 of the Act and that the fees are in the discretion of the Court.

Undisputed Facts:

8. The Claimant is a moneylending institution registered under the Act. Through the witness for the Claimant, Ms. Ayana Ramos, **AR1** was tendered as the Money Lenders Licence issued by the Central Bank of Belize. The court takes note that

copy of the certificate tendered is effective 31st January 2025, after the issuing of the loan; however, there is no contention from the Defence that the Plaintiff operated as a lawful moneylending institution at the time a loan was issued.

9. It is accepted by both that there was a loan granted to the Defendant in the sum of two thousand dollars (\$2000.00) on 4th November 2024 based on an application of the Defendant as seen in **AR2**.
10. The Defendant wholly accepts that the documents submitted by the Plaintiff as **AR2 -AR5** as documents willingly signed by the Defendant at the time the loan was granted.

Issues in Dispute:

11. The following are in issue between the parties:
 - i. The legality of the promissory note, **AR3**, based on the stipulations of section 13 of the Act.
 - ii. The legality of a monthly interest rate at 3.9% for every month the Defendant remains in Default.
 - iii. The legality of monthly fees/permissible fees at the rate of 16% for every month that the Defendant remains in Default.
 - iv. The legality of the recovery fee of \$2000 as agreed upon as administrative fee for the recovery company in **AR4**.
12. As seen above, the contention lies in the enforceability of the promissory note itself, the interest rate applicable based on the promissory note, the (permissible) fees applicable based on the promissory note; and the capacity of the Plaintiff to enforce a recovery fee having regard to the Act and the Regulations. As such, the Court will address each separately before addressing the enforceability of the promissory note.
13. **Interest** is defined in the Act as stated above at paragraph 4. This was interpreted in the Supreme Court of Belize by Griffith, J in consolidated cases involving moneylending¹ at page 4, paragraph 4 (A) (ii) as:

¹ Elodia Escobar v Rapidito Loans et al, Elloyd Gilharry v Cal et al, and Shannae Caballero; CLAIMS NO. 243 of 2018, 625 of 2018 and 171 of 2018.

“(ii) In relation to the definition of ‘interest’, when deconstructed, a **money lender is permitted to impose costs, charges or expenses in addition to interest** on a principal loan. However, any **amount outside of principal** which is **not properly a charge, cost or expense**, will be **considered interest, regardless of by what name the amount is termed**. There is no definition of what constitutes a proper charge, cost or expense but the Court construes same to mean that they must arise out of and be referable to the moneylender’s **operational or administrative cost** of carrying out the transaction as **already agreed**. The qualification of ‘transaction as already agreed’ is made by virtue of section 15, which speaks to the prohibition of certain charges for expenses on loans.”

14. Regulation 10 stipulates that the maximum rate of interest a moneylender may charge is 48% per annum or the corresponding rate of interest in respect of any other period.
15. The evidence of Ms. Ayana Ramos, Director of Bathsheba, was that the Defendant requested financial services and received a loan on November 4th, 2024 of \$2000 to be repaid on a monthly basis which included interest of 3.9% and permitted fees of 16% for a period of one month. She testified further that the Defendant had received two loans one of \$1000 which she had paid back, and that payment included 3.9% interest and 16% permitted fees.
16. Ms. Ramos also testified that the Defendant signed a promissory note (**AR3**) when she received this loan from Bathsheba Ltd. on November 4, 2024, acknowledging her payback of the principal \$2000, interest 3.9% which amounted to \$78, and permitted fees of 16% which amounted to \$320; totalling \$2398. The evidence of the witness then is that there was monthly interest charge of 3.9% which is below the cap stipulated by regulation 10.
17. The Plaintiff’s submission is that the interest at \$78.00 on a \$2000.00 loan is within the limits prescribed under the Regulations being a rate of 3.9% per month.
18. The contention of the Defence is not that the amount of interest was above that stipulated in regulation 10 but that the promissory note itself did not specify the interest rate as a monthly 3.9%; ergo it does not state the yearly interest rate rather it states the interest as a single amount in dollars being requested.

19. Upon examination of **AR3**, the court notes that the document does not state a specific percentage of interest anywhere in the document. At the top of the document it has a figure labelled as interest which merely states \$78.00 in the table. The body of the document stipulates that the loan is for one month payable on 4th December 2024. The body states that if the loan is not paid interest is payable, however, there is no rate indicated. There is an in-default clause in the body for the payment of interest by the Defendant, however, the line created in the document for the interest rate to be entered was left blank. Thereafter, there is a statement that the undersigned promises to pay "such other variable interest rate or rates as Bathsheba Ltd. may in its absolute discretion from time to time on each defaulted payment from the date of default until payment."
20. Therefore, the court notes that there is no condition on the promissory note for a specific continuous interest rate on the principal owing. The amount of \$78 is stated in the table as a one-time fee on the document tendered as **AR3**.
21. While the Plaintiff is entitled to charge interest in accordance with the Act and Regulations, it is not sufficient to place a blanket statement that other variable interest may be charged, in fact, any and all interest to be charged must be stated and made known to the borrower. That means, it must be in compliance and clearly set out for the borrower to be aware of all obligations should there be a default on the loan. There is no agreement between the borrower and the lender on the interest rate. The Promissory note, not stipulating what the interest is and that it is continuous, the **interest rate claimed by the Plaintiff is unenforceable.**
22. **Permissible fees** falls under regulation 12 which allows for a maximum of a 16% fee of the principal to be charge in any thirty-day period; this however must deduct any late interest charged under regulation 11.
23. Ms. Ramos' testimony is that **AR3**, in the table it states "fees", this she testified is the permissible fees charged by Bathsheba Ltd. as is allowable by regulation 12. As was stated prior, her testimony is that the Defendant signed a promissory note on November 4, 2024, acknowledging her payback of the principal \$2000, interest and permitted fees of 16% which amounted to \$320.
24. The Plaintiff's submission is that the fees or charges for the month being \$320.00 are also within the prescribed limits within regulation 13 being an effective rate of 20% per month.

25. There was great dispute from the Defence in relation to permissible fees. Firstly, that none of the documents tendered by the Plaintiff speak to "permissible fees", secondly that permissible fees is not automatically 16% per month therefore it had to be agreed upon from the onset and finally that as per Ms. Ramos' testimony this fee could not be added on to the interest as was her evidence that it was 19.9% per month.
26. Again, after careful examination of **AR3**, the court notes that the document does not state that the fee is "a permissible fee", it does not state the percentage of the fee being charged anywhere in the document. In the table at the top of the document, it has a figure labelled as "fees" which merely states \$320.00. The body of the document does not indicate whatsoever that the fee will continue. There is no further mention of fees in **AR3**.
27. The court agrees with the submissions of the Defendant that the Regulations allow for a variation of the permissible fees; it is expressly stated as a maximum of 16%. Therefore, the rate of the permissible fees being charged must be agreed upon and expressly stated in the promissory note and that there is to be a calculation to reduce that amount by any late fee being charged. This must be clearly stated in the promissory note so that the borrower is aware of the fee to be absorbed in the event of a default. Therefore, the court finds that this **permissible fee being sought by the Plaintiff is unenforceable.**
28. **Recovery Fee** is not addressed in either the Act or the Regulations, however, section 15(3) provides for the borrower to pay to the moneylender any sum representing fees, costs, charges or expenses in relation to the loan.
29. The testimony of Ms. Ramos is that the Defendant was provided with a document titled "Terms of Business", tendered as **AR4**, which she signed when she received her loan. **AR4** states that "the customer agrees that should they fail to repay on time the lending company will engage a specialist recovery company. The recovery company will charge an administration fee of \$2000 to file the claim at the Magistrate Court. The client expressly agrees that this is a fair and just fee and that they agree to pay the same. The customer understands that it is a fair and reasonable administrative charge for litigation in the Magistrate Court. The recovery services provider may have investments in Bathsheba Ltd. and the client expressly acknowledges the connection". Ms. Ramos also testified that the Defendant initialled that section of the document in addition to signing the document itself.

30. The Plaintiff's submission is that the recovery fee is not a penalty interest on default and as such it does not fall under the prohibition stipulated in section 14(3) but instead is recoverable as per the agreement. The Plaintiff submits that the recovery fee is distinct liquidated damages that arises only upon default.
31. The Defence submitted that the Plaintiff is not entitled to the recovery fee of \$2000 as Regulation 13 stipulates that the lender shall not in recovery of a loan impose interest, late interest or any fee or charge permitted under the Regulations or any other enactment, which collectively, exceeds the principal of the loan. Additionally, that a collection fee is at the discretion of the Magistrate Court in the form of cost upon hearing of the matter as per s.36 of the District Court Act, Cap 97.
32. Griffith, J in the consolidated moneylending cases² addresses the issue of charges and expenses as follows on page 5 paragraph 4(A)(iv)

“(iv) The imposition of costs, charges or expenses, must thus be referable to the cost of carrying out the agreed loan transaction itself (not to the cost of negotiation of the transaction). Further, the costs, charges or expenses must not be excessive. In light of the fact that there are no provisions defining or limiting costs, charges or expenses in the Act, it is considered that such costs, charges or expenses must be reasonable in incurrence as well as quantum. To the extent therefore that there is any charge, cost or expense found to be unreasonably incurred or excessive, the disqualified amounts would according to its definition, be deemed to constitute interest.”

33. Her Ladyship expressed that the cost or charges in carrying out the agreed loan transaction are allowed but must reasonable in incurrence as well as quantum. The recovery fee as per **AR4** is \$2000.00. That is in comparison to the principal amount, 100% of the amount borrowed.
34. While the Plaintiff made submissions in support of the recovery fee and referenced cases; the court looks at them in totality. In looking at Brooks v Newitt (Barbados)³ which was confirmed in Dunlop Pneumatic Tyre Co. Ltd. V New Garage and Motor Co. Ltd. [1915] A.C. 79, 86-88, where Lord Dunedin stated:

² Elodia Escobar v Rapidito Loans et al, Elloyd Gilharry v Cal et al, and Shannae Caballero; CLAIMS NO. 243 of 2018, 625 of 2018 and 171 of 2018.

³ HC Claim 1237 of 2006 Barbados Unreported

"...(3) The question whether a sum stipulated is a penalty or liquidated damages is a question of construction to be decided upon the terms and inherent circumstances of each particular contract, judged at the time of the making of the contract, not as at the time of the breach."

35. Additionally, the case of Starry Benjamin and Caribbean Commercial Bank (Anguilla) Limited⁴⁴ where the Defendant had submitted that the clause under which the Claimant claimed was a penalty clause and not a genuine pre-estimate of damages stated:

"[29] Counsel for CCB states that Clause 16 is a penalty and relies on the principles enunciated by Lord Dunedin in *Dunlop Pneumatic Tyre Company Limited v New Garage and Motor Company Limited* (1915) AC 79 where he stated that the essence of a penalty is a payment of money stipulated as in terrorem of the offending party, whereas the essence of liquidated damages is a genuine covenanted pre-estimate of damage. Lord Dunedin also stated that the question of whether a sum stipulated is a penalty or liquidated damages is a **question of construction** to be decided upon the terms and inherent circumstances of each contract judged at **the time of the making of the contract** and not at the time of breach. To assist with construction, he refers to various tests;

"a. It will be held to be a penalty if the **sum stipulated for is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed** from the breach...

b. It will be held to be a penalty if the **breach consists only in not paying a sum of money and the sum stipulated is a sum greater than the sum which ought to have been paid...**

c. There is a presumption (but no more) that it is a penalty when **"a single lump sum is made payable by way of compensation, on the occurrence of one or more or all of**

⁴⁴ Eastern Caribbean Supreme Court, Anguilla, AXAHCV2013/0079 Unreported.

several events, some of which may occasion serious and others trifling damage...

d. It is **no obstacle** to the **sum stipulated being a genuine pre-estimate of damage**, that the **consequences of the breach** are such as to make **precise pre-estimation** almost an **impossibility**. On the contrary, that is just the situation when it is probable that pre- estimated damage was the true bargain between parties.””

36. In considering the cases above and the guidelines set out, the amount must not be excessive, and the construction of the sum must not be unconscionable in amount. The recovery fee agreed upon by the Plaintiff and the Defendant was \$2000.00. That is a 100% recovery fee charged as an external fee from the recovery company; a separate entity with the same owner as Bathsheba Ltd. Under cross examination, the Defence questioned whether the invoice or payment for such fee was tendered into evidence to which the witness stated it had not yet been paid. Additionally, the witness admitted under cross examination that had the loan been for \$500 the recovery fee would not be \$2000.00.
37. The court takes judicial notice that the procedure and carriage of a case at the magistrate court is the same despite the quantum. Therefore, the court does not find the amount to be a genuine pre-estimate agreed upon, having consideration of the construction set out above.
38. Additionally, the recovery fee being an additional 100% of the amount borrowed, is considered by the court as excessive and unconscionable.
39. Further, section 24 of the Act stipulates that where amounts charged for expenses, or any other charges, are excessive, and that, the transaction is harsh and unconscionable, the court may re-open the transaction. As such, the Court looks at section 24 combined with section 36 of the District Court Act which states that a party's fees and costs in like manner as for the amount of any judgment may be issued.
40. The Court does find that there can be agreed upon charges for the recovery of the loan. That amount, however, must be a genuine pre-estimate of recovery. It must also have consideration of the fact of whether recovery is being done by a trained legal practitioner, to be considered legal fees, or whether it is being done by an agent, to be considered agent recovery fees. Therefore, having found the **recovery fees to be excessive and unconscionable, the Court does not find it to be enforceable.**

41. In considering the **legality of the promissory note**, the Act at section 13 (3) sets out specifically the requirements of the memorandum in writing. It shall contain *all the terms of the contract*, of note is that the recovery fee was in a separate document and not in the promissory note. The Act goes further to state that, in particular, it shall show the *date on which the loan is made*, the *amount of the principal of the loan*, and the *effective annual rate of interest charged on the loan*.
42. The Plaintiff's submission was silent on section 13(3).
43. The Defence submitted that the Plaintiff's promissory note and loan documents are unenforceable and illegal for non-compliance with section 13(1) and (3).
44. Having perused the promissory note **AR3**, the first two requirements that is the date the loan was made and the amount of the principal of the loan are set out. The effective annual rate of interest charged on the loan, however, is not set out in **AR3**.
45. Section 13 has been broken down by Griffith, J in the consolidated moneylending cases⁵ at page 9 paragraph 4E(ii):

"(ii) Section 13 stipulates the basis upon which a moneylending contract is enforceable. It can be broken down as follows:-

(a) A moneylending contract is for repayment of money lent including repayment of interest on the money lent, as well as enforcement of any security given for the money lent;

(b) The money lent can be received by a borrower or agent of a borrower;

(c) In order for the money lending contract to be enforceable (i.e. repayment of money lent including interest thereon and/or enforcement of security given), it is a precondition that:-

⁵ Elodia Escobar v Rapidito Loans et al, Elloyd Gilharry v Cal et al, and Shannae Caballero; CLAIMS NO. 243 of 2018, 625 of 2018 and 171 of 2018.

- The contract is reduced into a note or memorandum signed personally by the borrower (whilst there is provision for the borrower's agent to receive the money, there is no provision for the agent to sign the note or memorandum); and
- The note or memorandum signed personally by the borrower must be delivered or sent to the borrower within 7 days of making the contract; and
- The note or memorandum is to contain all the terms of the contract, particularly the date the loan was made, the principal amount and the effective annual interest rate on the loan."

46. Griffith, J went further at page 28, at the end of paragraph 17 to state:

"... A fortiori therefore, given the absence from the loan ticket of the interest rate, this omission being in contravention of the express requirements of section 13(3), this loan agreement for \$1000 was unenforceable."

47. The case before the court, stands in the same position, in that the promissory note **AR3** does not state the effective annual interest rate on the loan. This omission contravenes the expressed requirements of the Legislation.

48. The court therefore deems that **the promissory note is unenforceable** and having considered all the issues above, finds that the **suit is unenforceable**.

49. Each party is to bear their own cost.

Dated the 26th day of August 2025.




Baja Y. Shoman
Senior Magistrate