

**Horst v Brown**

2012 NY Slip Op 30005(U)

January 3, 2012

Sup Ct, NY County

Docket Number: 602652/2005

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN PART 12

Justice

HORST
- v -
BROWN

INDEX NO. 602652/05
MOTION DATE
MOTION SEQ. NO.
DEC/ORDER AFTER BENCH TRIAL

The papers considered on this motion (and cross motion) are enumerated in the attached decision/order.

Cross-Motion: Yes No

Upon the foregoing papers, it is ORDERED that this motion (and cross motion) be decided in accordance with the annexed decision and order.

bench trial is

FILED
JAN - 5 2012
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 1/3/2012

J.P.S.C.

- 1. Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
2. Check as appropriate: Motion is GRANTED DENIED GRANTED IN PART OTHER
3. Check if appropriate: SETTLE ORDER/JUDGMENT SUBMIT ORDER/JUDGMENT DO NOT POST FIDUCIARY APPOINTMENT REFERENCE PC/CC

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNT OF NEW YORK: CIVIL TERM: PART 12

-----X  
Patricia A. Horst,  
Plaintiff,

- against -

Owen Lloyd Brown,  
Defendant.  
-----X

Index No. 602652/2005

Decision and Order After Trial

Appearances:

Plaintiff

Adams, Fensterman, Fensterman, Eisman,  
Greenberg, Formato & Einiger, LLP  
By: Keith J. Singer, Esq.  
1111 Marcus Ave., ste 107  
Lake Success, NY 11042

Defendant

Owen Lloyd Brown, *pro se*  
122 East 27<sup>th</sup> St.  
New York, NY 10016

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**PAUL G. FEINMAN, J.:**

By decision and order entered April 6, 2010, the Appellate Division, First Department reversed an order of the previously assigned judge, reinstated certain of plaintiff's claims, awarded her summary judgment as to liability and remanded the matter "for a trial as to damages" only. *Horst v Brown*, 72 AD3d 434 (1<sup>st</sup> Dept 2010) (Román, J. dissenting in part), *app dismissed* 15 NY3d 743 (2010). The matter proceeded to a bench trial before me on February 3, 2011 and February 8, 2011, and the transcript of those proceedings was received on August 19, 2011. The reader's familiarity with the prior decisions and orders of the trial and appellate courts is assumed.

***FINDINGS OF FACT***

Plaintiff and defendant are, respectively, a model and a commercial fashion photographer,

who met professionally over three decades ago and eventually became friends. Over the course of an extended period of time (February 1992 to July 1999), plaintiff made a series of personal loans of money to defendant, the overwhelming majority of which have not been repaid. Inasmuch as the issue of liability, including any defense predicated on the statute of limitations, has previously been determined in plaintiff's favor by the appellate court, the court's role at this trial is limited to calculating the sums due and owing.

As an initial matter, the court finds the testimony of plaintiff Ms. Horst was generally credible. While it is true that at times she was clearly not the most meticulous keeper of financial records, the court rejects the defendant Mr. Brown's argument that she either intentionally (or even unintentionally) manipulated documents by superimposing images of signatures. Similarly, the court rejects Brown's contention that Horst added terms relating to interest to the memo lines of certain checks only after the checks were cashed by him.

Loan 1

On February 3, 1992 plaintiff and defendant signed a promissory note drafted by plaintiff for \$2,500.00. (Plaintiff's Ex. 1). Plaintiff funded the loan, in part, by obtaining a \$2,400.00 cash advance from her VISA card. According to the plain terms of the note, defendant was to "pay back Citibank VISA + 18% interest they charge for this cash \$2,400.00 amount each month until it is paid in full." (*Id.*). Plaintiff stipulated at trial that the principal loan amount for this loan was only \$2,400. (Trial Transcript [hereinafter "TT"] 13). Plaintiff also conceded that \$1,300.00 of the loan was repaid. (TT 9, 14). The loan is also memorialized by a writing authored by plaintiff and signed by both parties dated August 5, 1992 (Plaintiff's Ex. 3). Here the loan is referenced as totaling \$2,400.00, "plus interest monthly accumulated." (TT 121).

### Loan 2

On May 21 or 22, 1992, plaintiff loaned defendant \$9,000.00, which she funded by accessing her Citibank Ready Credit account. (TT 16 - 21, 24, 123 and Plaintiff's Ex. 3). This loan is evidenced by an original check stub or receipt signed "rec. May 21" by defendant (Plaintiff's Ex. 2) and an August 5, 1992 writing, written by plaintiff, and signed by both parties recapitulating that on May 22, 1992, plaintiff loaned defendant \$9,000.00.<sup>1</sup> (Plaintiff's Ex. 3). There is no evidence that the parties agreed to an interest rate, and the post-loan recapitulation of the loan merely states "plus interest monthly accumulated." (Plaintiff's Ex. 3).

### Loan 3

On June 5, 1992, plaintiff loaned defendant another \$1,000.00, which she funded by accessing her Citibank Ready Credit account. The loan is referred to in the parties' signed August 5, 1992 recapitulation of outstanding loans, but does not fix an interest rate. (Plaintiff's Ex. 3).

### Loan 4

On June 9, 1992, plaintiff loaned defendant an additional \$6,100.00, which she funded by again accessing her Citibank Ready Credit account. The loan is evidenced by a copy of a teller or ATM receipt signed by the defendant along with the defendant's handwritten statement, "I Owen Brown owe \$6,100.00," as well as a written recapitulation of outstanding loans as of that date (Plaintiff's Ex. 3). While the recapitulation refers to interest, it does not fix a rate. (*Id.*).

### Defendant's Promissory Note re Loans 2, 3, 4 and part of Loan 1

On July 21, 1992, defendant authored and signed a promissory note meant to recapitulate

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<sup>1</sup> The court sustained defendant's best evidence objection to the admission of a photocopy of the un-cancelled Citibank Ready Credit check number 1201, inasmuch as plaintiff did not proffer an explanation as to what became of the original or otherwise establish that the best evidence rule was inapplicable (TT 26 - 31).

Loans 2, 3, and 4 as well as the \$100.00 of Loan 1 which was not funded by plaintiff's VISA card. (TT 35 -36; Plaintiff's Ex. 4). In this note, defendant promised to "pay off Citbanb [sic] loan[s]" by paying plaintiff \$16,200.00, "plus interest," within 60 months. The rate of interest was not fixed. The note is not signed by plaintiff.

#### Loan 5

Plaintiff credibly testified that on June 10, 1993<sup>2</sup>, she loaned defendant another \$4,700.00, funded from her Citibank Equity Source account. The court credits plaintiff's testimony that the defendant agreed to repay this loan with interest at 14% per annum, which corresponded to the rate being charged by the bank to plaintiff. This testimony is buttressed by circumstantial documentary evidence (a microfiche copy of plaintiff's bank statement) and an uncancelled carbonless copy of the check numbered 104 payable to defendant on that date and in that amount. (TT 38 - 42, 52- 54; Plaintiff's Exs. 5 and 6).

#### Loan 6

By Citibank check number 1708, dated November 22, 1994, plaintiff loaned defendant another \$2,500.00. The check's memo section indicates that the check was indeed a loan and that interest was payable at 15%. While the face of the check is silent, in accordance with the other loans and course of conduct between the parties, it appears the rate of interest was per annum. Defendant specifically concedes receipt of the check, which was negotiated and contains his signature in the endorsement section. However, defendant maintains that the memo section notation, "Loan + 15% Interest" was unclear to him. This is a perfect example of defendant's

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<sup>2</sup> The reference in the transcript to June 1, 1993 rather than June 10, 1993 appears to be a typographical error.

approach to the trial; he conceded the incontrovertible, but then disputed whatever details he believes to be plausibly deniable. The court finds that the check contained the memo at the time it was cashed by defendant and clearly set the terms of the loan and rejects defendant's testimony to the contrary. (TT 54 - 55, 153; Plaintiff's Ex. 7).

#### Loan 7

By Citibank check number 1745, dated January 12, 1995, plaintiff loaned defendant \$500.00. The check's memo section indicates that the check was indeed a loan and that interest was payable at 15%. While the face of the check is silent, in accordance with the other loans and course of conduct between the parties, it appears the rate of interest was per annum. Defendant specifically conceded receipt of the check, which was negotiated and contains his signature in the endorsement section. However, defendant again asserted at trial that the memo section notation, "Loan + 15% Interest" was unclear to him. The court finds that the check contained the memo at the time it was cashed by defendant and clearly set the terms of the loan. (TT 55 - 56; Plaintiff's Ex. 8).

#### Loan 8

On March 17, 1995 plaintiff loaned defendant \$250.00 and on March 23, 1995 plaintiff loaned defendant an additional \$2,500.00. Plaintiff borrowed from her Citibank Ready Credit account to fund the loan. According to plaintiff, defendant agreed to reimburse her the \$127.65 finance charge represented on the statement introduced as Plaintiff's Ex. 9. However, the court finds that the \$127.65 is best understood not as a one time fee for borrowing these two sums, but rather the periodic finance charge or that portion of the per annum interest rate that had accumulated on the Citibank Ready Credit account as of the statement date, April 14, 1995.

Because there was clearly already a \$10,340.11 balance on the account before the plaintiff took the March 17<sup>th</sup> and March 23<sup>rd</sup> advances, it cannot be said that the \$127.65 is an additional fee that is not covered by merely calculating the per annum interest rate on the various loans. In other words, granting judgment for the \$127.56 would duplicate the interest awarded on the principal in this decision. Defendant acknowledged receipt of the \$250.00 cash by signing the plaintiff's ATM receipt. Plaintiff did testify credibly that the interest rate for these two loans was intended to be the 12.75% she was being charged by Citibank. (TT 56-60, 128; Plaintiff's Exs. 9 and 10).

#### Loan 9

Citibank check number 1803 dated April 26, 1995 (Plaintiff's Ex. 11) represents a \$5,000.00 loan by plaintiff to defendant. The memo section reads, "3200 fr RC, 1800 fr VISA." The court credits plaintiff's testimony that this means plaintiff funded the loan by accessing \$3,200.00 from her Citibank Ready Credit account and borrowing \$1,800.00 from her VISA account. Defendant conceded that the check was negotiated by him and deposited into his bank account. No interest rate was established for this loan. (TT 60 - 61).

#### Loan 10

Citibank check number 1822, dated June 1, 1995, represents a \$2,500.00 loan by plaintiff to defendant. (Plaintiff's Ex. 12). Defendant acknowledged that it was a loan by placing his signature next to the word "Loan" on the memo line of the check. At trial he conceded that he was "conscious of this transaction." (TT 62). It is unclear to the court when the words "Colonial National Bank," which appear in a different color ink from the rest of the check, were placed on the check face. According to the plaintiff they indicated that the source of the funds was her account with that bank. In any event, the court finds that the interest rate was not established.

(TT 61- 62).

Loan 11

The next loan made by plaintiff to defendant was on July 17, 1995, when she issued Citibank check number 1846 to him in the amount of \$1,500.00. (Plaintiff's Ex. 13). Again, defendant affixed his signature to the face of the check on the memo line next to the word "Loan." He conceded negotiating the check. (TT 62). No interest rate was established.

Loan 12

On November 7, 1995 plaintiff loaned defendant \$500.00, as evidenced by her Citibank check number 97 of that date, bearing the memo "LOAN." No interest rate was established for this loan. (TT 63 - 64; Plaintiff's Ex. 14).

Loan 13

On March 29, 1996, plaintiff loaned defendant \$400.00, as evidenced by her Citibank check number 2072 of that date, bearing the memo "Loan," followed by defendant's signature. The loan was funded by plaintiff's accessing her Citibank Ready Credit account. (TT 65 - 66; Plaintiff's Ex. 16). No interest rate was established for this loan. (TT 64 - 65; Plaintiff's Ex. 15).

Loan 14

Citibank check 2076 dated April 3, 1996 evidences another loan made by plaintiff to defendant in the amount of \$1,600.00. Again, the face of the check bears the notation "LOAN." The check was cashed by defendant. No interest rate was established for this loan, which was funded by plaintiff accessing her Citibank Ready Credit account. (*Id.*). This loan, as well as some of the earlier loans, was referenced in a promissory note of the same date typed on defendant's

stationery and signed by him before a notary public. (Plaintiff's Ex. 17).

#### Loan 15

Citibank check 2079, dated April 15, 1996, in the amount of \$3,500.00 evidences a loan from plaintiff to defendant made on that date. Again, the loan is acknowledged by defendant's signature next to the word "Loan" on the memo line of the face of the check. Defendant cashed the check and acknowledged same at trial. No interest rate was established. (TT 68 - 69; Plaintiff's Ex. 18).

In 1997 and 1998 there do not appear to have been additional loans made by plaintiff to defendant. However, plaintiff and defendant signed the following statement dated November 6, 1997:

"To: Patricia Horst  
I am working on paying you back & I will continue to work on paying  
you for debts on paper & proof."

(Plaintiff's Ex. 19). This statement was written by the plaintiff, in her own handwriting and then signed by defendant. (TT 70). Given the vagueness of this statement, the court finds that it is unhelpful in calculating the amounts due to plaintiff.

#### Loan 16

On June 18, 1999 the parties signed an agreement, drafted and handwritten by plaintiff and signed by defendant to evidence a \$750.00 loan made the same date. (Plaintiff's Ex. 20). The document is a lay attempt at drafting a collateralized loan with an escalating penalty or interest rate if defendant failed to make timely payment. The terms used (e.g., "pay interest of \$50 or possibly more") are so vague as to render the exact intendment of the parties unclear.

Suffice it to say that the document and a copy of the Chase Bank cashier's check, together

with the signatures and words of the parties, evidence that plaintiff loaned defendant \$750.00 on that date with an intention to collect interest. The court credits plaintiff's testimony that she never received any camera equipment from defendant in consideration for making this loan or in repayment of the loan and that defendant received the cash from the bank check. (TT 70 -75; 134). Given the ambiguous wording of the written loan agreement, at trial, plaintiff agreed to have interest on this loan calculated at the statutory rate. (TT 75, lines 19 - 20).

#### Loan 17

On July 23, 1999, the plaintiff again drafted a promissory note with ambiguous or unclear terms, which was then signed by both parties. (Plaintiff's Ex. 21). In the agreement, defendant agreed to pay a total of \$1,950.00 by July 30, 1999, comprised of three debts: a \$350.00 modeling fee; an \$800.00 loan from June 18<sup>th</sup>; and a new loan of \$800.00 of the same date as the note and evidenced by Citibank check number 2470 bearing the memo, "Loan for 7 days." The agreement further provides that "after [due]date [for] payment will add interest upon discussion of both parties ... no lower than 10%." As plaintiff conceded at trial, this clause was essentially an agreement to agree in the future on an interest rate. (TT 77). This clause is therefore sufficiently indefinite to warrant awarding interest above the statutory rate. The court finds that the documentary evidence in support of Loan 16 shows the principal amount of the June 18<sup>th</sup> loan was \$750.00 and not \$800.00. It appeared that at trial plaintiff has conceded that the correct principal amount of the June 18<sup>th</sup> loan was \$750.00 and that she abandoned the claim for the modeling fee. (See Plaintiff's Exs. 22 and 23; TT 75 - 77).

#### Defendant's Payments

Plaintiff testified in a general manner that the various loans were not repaid (TT 77 -

78), but acknowledged receipt of \$4,839.17 in funds from defendant (Plaintiff's Exs. 22 and 23; TT 81 - 85). Counsel for plaintiff took the position that "[i]t would be virtually impossible to apply the payments as they were made back to the different loans." (TT 85).

An uncashed check in the amount of \$4,700.00 drawn on defendant's business account was introduced into evidence as Plaintiff's Ex. 24 and Defendant's Ex. B-9. It was sent or given to the plaintiff around June 18, 1993. As explained by the plaintiff, she never cashed the check because she learned from defendant that there were insufficient funds in the account and she did not want to incur bank fees. (TT 78-79; 172 - 174). Thus, this check does not establish any repayment of the loans by defendant.

The check introduced as Defendant's Ex. A was a voided check and does not establish proof of payment of any of the loans at issue. Some other exhibits were not admitted as they either did not relate to repayment of the loans at issue, or were unable to be authenticated. (Defendant's Ex. B-1, B-2, B-8, B-13, B-21).

Defendant's Ex. B is composed of 21 pages of copies of various exhibits submitted by defendant in opposition to the plaintiff's summary judgment motion. Of these, only pages 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, and 20 were received into evidence in whole or in part. (TT 101 - 117). They consist of various checks, payment stubs and receipts. While, as already noted, plaintiff at trial was willing to concede that defendant had made payments totaling \$4,8319.17, plaintiff and her counsel were unable to allocate the payments by loan in a manner that would permit the court to determine which loans to credit with payments, and which loans, if any were fully repaid, or how to calculate interest on the loans which were being periodically repaid. (TT 80 - 88; 95 -117). Because, as outlined below, the court finds

that the defendant's documentary proof establishes a greater amount of payments, the court need not accept the plaintiff's conceded figure.

Defendant's Exs. B-3 and B-11 establish that \$400.00 was repaid to plaintiff on November 19, 1995. It appears that the \$400.00 was paid in cash, and that plaintiff was to receive a check in the amount of \$1,100.00 to be held as security, but not cashed. Plaintiff was to return the check to defendant when an additional \$700.00 cash was repaid. While there is some ambiguity (TT 109), the court finds that only \$400.00 of repayment is established by these two exhibits. The court cannot trace this payment to a particular loan.

Defendant's Ex. B-4 purports to establish that \$1,000.00 was repaid to plaintiff on November 22, 1994. (TT 156 - 159). However, it is illegible and proves nothing.

Defendant's Ex. B-5 establishes a \$60.00 payment on September 18, 1995. This payment can be attributed to Loan 10, as it was made directly to Colonial National Bank by defendant as part of his repayment to plaintiff.

Defendant's Ex. B-6 establishes that defendant paid \$437.98 directly to plaintiff's Citibank Ready Credit account on August 10, 1995. It would therefore appear to be in repayment of Loan 2.

Defendant's Ex. B-7 establishes that defendant deposited \$500.00 in plaintiff's checking account on October 13, 1992 and \$423.28 to her Citibank Ready Credit account on November 15, 1995. Thus, while the first payment cannot be clearly traced to a particular loan, the latter is clearly attributable to Loan 2.

Defendant's Ex. B-10 establishes another \$60.00 payment to plaintiff's Colonial National Bank account on December 15, 1995, and therefore is attributable to Loan 10.

Defendant's Ex. B-12 purports to establish a \$60.00 payment on September 18, 1995. It is a faint and illegible copy of the front of a check written from defendant's business account. Given that it does not show the check was negotiated, and given the legibility problems, it is difficult to know which loan to credit this payment to; however, plaintiff's counsel did concede that a \$60.00 payment should be credited. (TT 164 -167). However, upon a review of the entire record, it is clear that this is a duplicate of the payment of the same date introduced as Defendant's Ex. B-5. The court cannot credit defendant twice for the same payment.

Defendant's Ex. B-14 establishes two payments to plaintiff's VISA account: \$125.00 on December 24, 1992, and \$130.00 on June 25, 1993. It also establishes a \$542.62 payment by defendant to plaintiff's home equity line of credit, that is, her Citibank Equity Source account, on August 27, 1996. The payments to VISA are attributable to Loan 1. The June 25<sup>th</sup> payment to the Citibank Equity Source account is attributable to Loan 5.

Defendant's Ex. B-15 establishes three payments of \$130.00 each, to plaintiff's VISA, on May 17, 1992, June 18, 1992, and July 14, 1992. These, then, are traceable to Loan 1.

Defendant's Ex. B-16 establishes a \$520.00 payment on October 22, 1992 to plaintiff's Citibank Ready Credit account and another \$498.96 payment on December 23, 1992 to the same account. These are attributable to Loan 2. The first payment ticket on this page was not received into evidence as there was no stamp establishing it had been received or processed by the bank. This is so, notwithstanding defendant's testimony attempting to authenticate the document. (TT 168).

Defendant's Ex. B-17 establishes three payments – two for \$130.00 and one for \$125.00, to plaintiff's VISA account, on August 24, 1992, October 15, 1992 and November 15,

1992, respectively. These are attributable to Loan 1.

Defendant's Ex. B-18 establishes three payments to plaintiff's Citibank Ready Credit account in the amounts of \$425.64 on September 8, 1995, \$500.00 on January 25, 1993 and \$495.52 on November 25, 1992. These are attributable to Loan 2.

Defendant's Ex. B-19 establishes two payments to plaintiff's Citibank VISA account. The first was for \$150.00 on March 13, 1992 and the second, also for \$150.00, was made on April 14, 1992. These are attributable to Loan 1. The third payment ticket on the page was not admitted into evidence as it bore no stamp establishing it was ever received or processed by the bank.

Defendant's Ex. B-20 establishes a single \$60.00 payment made by defendant on May 19, 1994: (TT 115 - 117). The court cannot attribute this payment to a particular loan.

Thus, at trial, the defendant established payments totaling \$5,556.38, which exceeds the amount of the payments totaling \$4,831.17 conceded by plaintiff. Accordingly, rather than use the stipulated figure of the plaintiff, the court has credited the payments as established by defendant's documentary evidence to the extent outlined above. In addition, the plaintiff separately conceded a \$1,300.00 payment on Loan 1. (TT 9, 14).

#### ***CONCLUSIONS OF LAW***

The court concludes that to the extent specific payments cannot be attributed to specific loans, it is logical that they be allocated to the arrears on the oldest loan first. In addition, the court notes that the prior partial judgment entered by Justice York should be vacated as the evidence adduced at trial somewhat duplicates that claim, and ultimately does not fully support the calculation made on that motion. Indeed, it appears that plaintiff has consented to having

one judgment entered representing all sums due under the complaint and having any monetary judgment entered pursuant to Justice York's summary judgment decision vacated. (TT 125 - 126).

Furthermore, the plaintiff's proof fails to account for partial payments and how this would affect the calculation of interest. For example, it is clear that the defendant was making monthly payments on Loan 1 throughout 1992. It would require a complex calculation similar to one made by credit card providers as to how much interest was accrued at the time each monthly payment was made. Given the absence of proof on this point, the court concludes that while payments were being made, they are attributable fully to principal, and interest will only run from the date of the last payment or, if no payments are attributable to the loan, then from the date of the origination of the loan. This accords with the intent of CPLR 5001 (c) which provides that where damages were incurred at various times, interest can be computed "upon each item from the date it was incurred" *or* "upon all of the damages from a single reasonable intermediate date" (*see Spodek v Park Prop. Dev. Assocs.*, 279 AD2d 467, 468 [2d Dept 2001], *aff'd* 96 NY2d 577 [2001]). Here, where defendant continued to make payments on more than one of the loans over the course of a few years, an "intermediate date" from which to calculate the interest accrued, is not easily found. When there is no "single reasonable intermediate date for the accrual of damages," the date of commencement of the action becomes the "appropriate time from which pre-verdict interest was to accrue" (*23/23 Communs. Corp. v General Motors Corp.*, 257 AD2d 367, 368 [1<sup>st</sup> Dept 1999], *lv denied* 93 NY2d 805 [1999]). Applying that reasoning here, however, would render an unfairness to plaintiff because the purpose of awarding interest is to make the aggrieved party whole (*Spodek v Park Prop. Dev. Assocs.*, 279

AD2d at 468). It is based on the theory that that party has been deprived of use of money (*155 Henry Owners Corp. v Lovlyn Realty Co.*, 231 AD2d 559 [2d Dept 1996]). It is here determined that plaintiff was not unfairly deprived of use of her monies so long as defendant was repaying the loans.

Applying the foregoing to the facts found above, the court concludes that the following sums are due and owing on the various loans.

Loan 1

Plaintiff claims \$1,100.00 still due and owing, having conceded at trial that there was \$1,300.00 in payment. She seeks interest at 18% from February 3, 1992. However, in addition to the sum conceded by plaintiff, defendant established through documentary evidence the following payments: \$150.00 on both March 13, 1992 and April 14, 1992; \$130 per payment for each of the five payments made on May 17, 1992, June 18, 1992, July 14, 1992, August 24, 1992, and October 15, 1992; a payment of \$125.00 on November 15, 1992; a payment of \$125.00 on December 24, 1992, and a payment of \$130.00 on June 25, 1993. These payments total \$1330.00. Thus, the principal of this loan is deemed fully paid as of June 25, 1993, and the overage of \$30.00 is applied to Loan 2. Plaintiff is therefore not entitled to any monetary judgment on this loan.

Loan 2

Plaintiff seeks judgment in the amount of \$9,000.00, with interest at the statutory rate from May 22, 1992. However, defendant established the following payments attributable to this loan: \$500.00 on October 13, 1992; \$520.00 on October 22, 1992; \$495.52 on November 25, 1993; \$498.96 on December 23, 1992; \$500.00 on January 25, 1993; \$437.98 on August 10,

1995; \$425.64 on September 8, 1995; and \$423.28 on November 15, 1995, for a sub-total of \$3,801.38. The court also credits the \$400.00 payment of November 19, 1995 to this loan, as well as the \$60.00 May 19, 1994 payment. In addition, the \$30.00 overage from Loan 1 is applied to Loan 2 as well. Classifying this total of \$4,291.38 in payments as principal of Loan 2, the court calculates \$4,708.62 as still due and owing, with interest to run at the statutory rate from November 19, 1995, the last payment date attributable to this loan.

Loans 3, 4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, and 17

These loans are all due and owing in full, with no payments established on this record. Accordingly, the plaintiff is entitled to interest from the date of the loan at the rates found in the findings of fact section.

Loan 5

Plaintiff seeks judgment in the amount of \$4,700.00 with 14% interest per annum from June 10, 1993. As noted above, defendant paid \$542.62 on August 27, 1996. Accordingly, plaintiff is entitled to collect \$4157.38, together with interest at the rate of 14% per annum from August 27, 1996.

Loan 10

Plaintiff claims \$5,000.00, with statutory interest from the date of the loan, June 1, 1995. Defendant established the following two payments: \$60.00 on September 18, 1995 and \$60.00 on December 15, 1995. Accordingly, plaintiff is entitled to collect \$4,880.00, together with interest at the statutory rate from December 15, 1995.

In light of the foregoing it is

ORDERED that the Clerk of Court shall enter judgment after trial as follows:

(1) awarding defendant judgment in his favor dismissing any claims brought by plaintiff premised on the February 3, 1992 loan (Loan 1);

(2) awarding plaintiff judgment against defendant in the amount of \$4,708.62 on the May 22, 1992 loan, with interest at the statutory rate from November 19, 1995 (Loan 2);

(3) awarding plaintiff judgment against defendant in the amount of \$1,000.00, together with interest at the statutory rate from June 5, 1992 (Loan 3);

(4) awarding plaintiff judgment against defendant in the amount of \$6,100.00, together with interest at the statutory rate from June 9, 1992 (Loan 4);

(5) awarding plaintiff judgment against defendant in the amount of \$4,457.38, together with interest at the rate of 14% per annum from August 27, 1996 (Loan 5);

(6) awarding plaintiff judgment against defendant in the amount of \$2,500.00, together with interest at the rate of 15% per annum from November 22, 1994 (Loan 6);

(7) awarding plaintiff judgment against defendant in the amount of \$500.00, together with interest at the rate of 15% per annum from January 12, 1995 (Loan 7);

(8) awarding plaintiff judgment against defendant in the amount of \$2,500.00, together with interest at the rate of 12.75% from March 17, 1995 and an additional \$2,500.00, together with interest at the rate of 12.75% from March 23, 1995 (Loan 8);

(9) awarding plaintiff judgment against defendant in the amount of \$5,000.00, together with interest at the statutory rate from April 26, 1995 (Loan 9);

(10) awarding plaintiff judgment in the amount of \$4,880.00 on the June 1, 1995 loan, together with interest at the statutory rate from December 15, 1995 (Loan 10);

(11) awarding plaintiff judgment in the amount of \$1,500.00, together with interest at

the statutory rate from July 17, 1995 (Loan 11);

(12) awarding plaintiff judgment in the amount of \$500.00, together with interest at the statutory rate from November 7, 1995 (Loan 12);

(13) awarding plaintiff judgment in the amount of \$400.00, together with interest at the statutory rate from March 29, 1996 (Loan 13);

(14) awarding plaintiff judgment in the amount of \$1,600.00, together with interest at the statutory rate from April 3, 1996 (Loan 14);

(15) awarding plaintiff judgment in the amount of \$3,500.00, together with interest at the statutory rate from April 15, 1996 (Loan 15);

(16) awarding plaintiff judgment in the amount of \$750.00, together with interest at the statutory rate from June 18, 1999 (June 16); and


(17) awarding plaintiff judgment in the amount of \$800.00, together with interest at the statutory rate from July 23, 1999; and it is further

ORDERED that any partial money judgment previously entered under this index number in plaintiff's favor by the previously assigned Justice is deemed vacated upon consent of all parties; and it is further

ORDERED the Clerk of Court shall, upon presentation of proof of service of a copy of this decision and order by the plaintiff upon the defendant, enter judgment accordingly.

This represents the court's decision and order after trial. The trial exhibits have been returned by mail to the respective parties, together with a courtesy copy of this decision.

Dated: January 3, 2012

  
J.S.C.

**FILED**

JAN - 5 2012

COUNTY CLERK'S OFFICE  
NEW YORK