

THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCMAP2022/0007

BETWEEN

AUGUSTIN STEPHEN

Appellant

and

SABRINA BUTCHER

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Eddy D. Ventose
The Hon. Mr. Gerard St. C. Farara

Chief Justice [Ag.]
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Horace Fraser for the Appellant
Mr. Leslie Prospere and Ms. Joelle Greene for the Respondent

2024: October 14;
December 9.

Commercial appeal – Partnership – Dissolution of the partnership – Challenges to findings of fact made by the learned trial judge – Whether this Court should overturn the factual findings of the learned trial judge – Whether the trial judge failed to properly analyse the entirety of the evidence – Whether the learned trial judge found as a matter of law that a partner does not owe a fiduciary duty to another partner – Whether the learned trial judge was correct in rejecting the evidence of the appellant on his counterclaim

On 24th June 2020, the respondent filed a claim against the appellant, in which she claimed among other things, the following: (1) an order for the dissolution of the partnership between the respondent and the appellant made in and around August 2009; (2) an order for the taking of an account for the duration of the partnership; (3) an injunction restraining the

appellant and/or his agents or representatives from removing, damaging or disposing of the joint business assets; (4) an injunction restraining the appellant and/or his agents or representatives from removing, damaging or disposing of the respondent's personal assets; (5) a declaration of ownership of the personal assets of the respondent; and (6) damages.

The respondent indicated that she was a businesswoman and chef who operated a restaurant and guesthouse. She stated that the appellant was a construction contractor and her partner in the restaurant business. The respondent claimed that in early 2009, they agreed to form a partnership to run the restaurant, share equally in the net profits of the business and that it was an implied term of the partnership by custom and common law that the partners were to act in good faith. The respondent claimed that she borrowed EC\$20,000.00 from the Choiseul Credit Union (the "**Credit Union**") in August 2009 to start the restaurant business. The respondent alleged that the appellant contributed approximately EC\$19,800.00 towards the renovation of the leased premises of the restaurant business in Soufriere and it was agreed between the parties that the sum would be reimbursed by the landlord through deductions in the monthly rent. The restaurant began operations in October 2010, and the respondent registered with the National Insurance Corporation (the "**NIC**") to make employee contributions. On 4th February 2011, the respondent registered the business name "Local Restaurant & Bar" pursuant to section 5 of the **Registration of Business Names Act** (the "**Act**").

The respondent and the appellant opened a bank account under the registered trading name "Local Restaurant & Bar" with both parties named as signatories on the bank account and transactions for the business were conducted through this bank account. The respondent indicated that she obtained a second loan of EC\$30,000.00 which was used to travel and purchase equipment and groceries abroad for the restaurant business. The respondent stated that the parties rented an apartment to live together, and the rent was paid with proceeds from the restaurant business. They also purchased a jeep for the restaurant operations with the proceeds derived from the restaurant business. The respondent stated that the appellant changed the name of the restaurant to "Petit Peak Restaurant & Bar" on 16th October 2016 without informing her. A new bank account was also opened in the new name of the restaurant with both parties as signatories and the sum of EC\$30,000.00 held in the old bank account was transferred to the new bank account.

The respondent contended that, on 9th August 2019, the appellant sent two letters to her. The first was to evict her from the jointly shared residential accommodation and the other attempted to dismiss her from her post as a manager of the restaurant. The respondent stated that the appellant also removed her name as a signatory on the joint bank account of the restaurant without her knowledge and that, in so doing, the appellant had acted in breach of the partnership agreement and his fiduciary duty.

The appellant filed a defence and counterclaim on 2nd September 2020. The appellant stated that the respondent was an employee of his, managing his restaurant business which operated first under the trade name "Local Restaurant & Bar" and then subsequently under the trade name "Petit Peak Restaurant and Bar". The appellant denies the partnership, claiming the respondent was merely an employee. The appellant stated that the respondent

received a salary of EC\$2,000.00 per month during peak season and EC\$1,000.00 during the off-season.

The appellant stated that on 2nd June 2009 he entered into a lease agreement for a two-story property located in Soufriere for the purpose of operating a restaurant and bar and later a guest house on the top floor. The appellant argued that the respondent contributed EC\$5,000.00 to the establishment of a car rental business but that the rest of the funds came from the restaurant business. The car rental business was registered in 2016 in the sole name of the appellant. The appellant stated that in 2017, the respondent acquired a guest house allegedly from the proceeds of a loan facility at the Credit Union. The appellant stated that he ended his living arrangement with the respondent and terminated her employment at the restaurant due to financial mismanagement. He alleged that an audit revealed that the respondent stole over EC\$264,000.00 from the business between 2017 and 2019. The appellant argued that the respondent owed him a duty of trust in relation to the financial management of the restaurant business or alternatively, as an employee she had an implied duty of trust and confidence in respect of the financial management of the restaurant business.

The trial took place in 2022 and by judgment delivered on 11th July 2022 (reissued on 26th July 2022) the learned judge trial judge held that: (1) the parties operated a restaurant in common with each other; (2) the respondent contributed financially to the start-up costs of the restaurant business; (3) it was irrelevant that the respondent's name was not on the lease of the property occupied by the restaurant business; (4) the registration of the business names of the restaurant at various periods in the name of either the appellant or the respondent was an indication that a partnership was in effect; (5) the respondent was very involved in the management and day to day operations of the restaurant; (6) it did not matter that the respondent earned a salary from the start; (7) the parties shared in the gross profits of the restaurant business; and (8) the placing of the profits of the restaurant business into a joint account of the parties was indicative of a partnership.

Consequently, the learned judge concluded that: (1) there was a partnership between the parties, (2) the parties were joint and equal partners; and (3) they agreed to split profits equally and ordered the dissolution of that partnership. The judge also determined that the appellant did not allege or show that the respondent made use of more than her half share entitlement in the restaurant business and second, it was not shown that she stole or converted the appellant's share in the partnership. The counterclaim was therefore dismissed and the judge determined that the appellant was not entitled to any interest in the respondent's car rental or guest house business.

Being dissatisfied with the judgment in the court below, the appellant appealed. The notice of appeal contained three main grounds of appeal however the main issues that arose for determination were as follows: (1) whether this Court should overturn the factual findings of the learned trial judge because she failed to properly analyse the entirety of the evidence; (2) whether the learned trial judge found as a matter of law that a partner does not owe a fiduciary duty to another partner; and (3) whether the learned trial judge was correct in rejecting the evidence of the appellant on his counterclaim.

Held: dismissing the appeal against the decision of the learned trial judge with costs to the respondent to be assessed if not agreed within 21 days of today's date, that:

1. The Court of Appeal will not easily interfere with a judge's evaluation of the evidence or a judge's findings of fact and inferences of fact made by a judge especially when they depend to a significant extent upon the judge's assessment of witnesses he or she has seen and heard give evidence. An appellate court may intervene if a trial judge failed to analyse properly the entirety of the evidence. However, the Court will be slow to reverse a trial judge in their evaluation of primary facts.

Beacon Insurance Company Limited v Maharaj Bookstore Limited [2014] UKPC 21 applied; **Re B (a child) (care order: proportionality: criterion for review)** [2013] UKSC 33 applied; **Biogen Inc v Medeva plc** [1997] RPC 1 applied.

2. It could not be said that the learned trial judge erred in her findings of fact. In respect of the first issue, it was open to the learned trial judge having seen and heard the witnesses for the parties to believe the version of events as outlined by the respondent and her witnesses to find that: (1) a partnership existed between the appellant and the respondent; and (2) the respondent did not breach any fiduciary duty owed to the appellant. Having seen and heard the witnesses, and then evaluated the evidence before her, the learned trial judge was entitled to reach the conclusions on the facts as she did.
3. The appellant had not shown that the conclusions of the learned trial judge on the primary facts relative to the first and third issues were such that: (1) there was no evidence to support them; (2) the conclusions were based on a misunderstanding of the evidence; or (3) the conclusions were as such where no reasonable judge could have reached them, and that an appellate tribunal would interfere with them. The findings of the learned trial judge were supported by the evidence which she accepted based on her explained preference for accepting the respondent's evidence on the issues before her. Accordingly, the appellant had not established any basis warranting interference by this Court.
4. The learned trial judge did not hold as a matter of law that partners did not have a fiduciary duty to each other as alleged by the appellant. In fact, her statement that both the appellant and respondent owed each other a fiduciary duty as partners in the joint business to account for and manage the business finances contradicted that allegation by the appellant. Therefore, the ground of appeal that the learned trial judge misdirected herself and erred in law when she found that the respondent being a partner in a partnership business and being in charge of the finances of the business did not owe a fiduciary duty to the other partner consequently fails because: (1) the learned trial judge did not make any error of law; (2) she accepted that partners in a business owed fiduciary duties to each other to account for and manage the business' finances; (3) the specific finding of the learned trial judge was that there was no specific fiduciary duty

owed by the respondent in respect of the financial, accounting or business side of the business because the respondent did not have that relevant experience; and (4) the evidence did not reveal any breach by the respondent of any such fiduciary duty, had it existed.

JUDGMENT

- [1] **VENTOSE JA:** This is an appeal from a decision of the learned trial judge dated 11th July 2022 in which she found that there was a partnership between the appellant and the respondent, that they were joint and equal partners, that they agreed to split profits equally and ordered the dissolution of that partnership.

Background

- [2] The respondent (the claimant in the court below) filed a claim form and statement of claim on 24th June 2020 in which she claimed against the appellant, among other things, the following: (1) an order for the dissolution of the partnership between the respondent and the appellant made in and around August 2009; (2) an order for the taking of an account for the duration of the partnership; (3) an injunction restraining the appellant and/or his agents or representatives from removing, damaging or disposing of the joint business assets; (4) an injunction restraining the appellant and/or his agents or representatives from removing, damaging or disposing of the respondent's personal assets; (5) a declaration of ownership of the personal assets of the respondent; and (6) damages.
- [3] The evidence of the respondent was as follows. She said that she was a businesswoman with specialist skills in the hospitality sector, namely as a chef, carrying out the business of a restaurant and guesthouse. She also said that the appellant was a contractor carrying on business as a construction contractor and a partner in a restaurant business with the respondent. The respondent stated that in early 2009 she proposed to the appellant, and he agreed, that they would create a partnership, and it was orally agreed in express terms to carry on a business in common, by operating a restaurant together. The respondent also stated that there

was an agreement with the appellant that they would share equally in the net profits of the restaurant business and that it was an implied term of the partnership by custom and common law that the partners were to act in good faith.

- [4] In reliance on the partnership agreement, the respondent averred that in August 2009 she borrowed the sum of EC\$20,000.00 from the Choiseul Credit Union (the “**Credit Union**”) to put towards the initial start-up of the restaurant business. The loan amount was used to travel and purchase equipment abroad such as a stove and small appliances for the restaurant business. The respondent also averred that she used EC\$10,000.00 for the purchase of groceries for the restaurant business, and she used her personal items such as small appliances and a refrigerator towards the start-up of the restaurant business.
- [5] The respondent alleged that the appellant contributed approximately EC\$19,800.00 towards the renovation of the leased premises of the restaurant business at No. 3 Bay Street, Waterfront, Soufriere, and it was agreed between the parties that the sum would be reimbursed by the landlord through deductions in the monthly rent. In October 2010, the restaurant business began its operations, and the respondent registered with the National Insurance Corporation (the “**NIC**”) to make payments of NIC contributions for the employees of the restaurant business. On 4th February 2011, the respondent registered the business name, “Local Restaurant & Bar” pursuant to section 5 of the **Registration of Business Names Act**.¹
- [6] The respondent and the appellant opened a bank account under the registered trading name “Local Restaurant & Bar” with both parties named as signatories on the bank account and the transactions of the restaurant business were conducted through this bank account. The respondent obtained a second loan of EC\$30,000.00 which was also used to travel and purchase equipment and groceries abroad for the restaurant business.

¹ Cap 13.03 of the Revised Laws of Saint Lucia 2022.

- [7] The respondent stated that the parties rented an apartment to live together on Palmiste Road in Soufriere and the rent was paid with proceeds from the restaurant business. She continued that they also purchased a jeep for the restaurant business operations with the proceeds derived from the restaurant business. The respondent stated that the name of the restaurant business was changed on 16th October 2016 to “Petit Peak Restaurant & Bar” by the appellant without informing the respondent. She continued that a new bank account was opened in the new name of the restaurant business with both parties as signatories. The sum of EC\$30,000.00 held in the old bank account was transferred to the new bank account.
- [8] The respondent contended that, on 9th August 2019, the appellant sent two letters to her. The first was to evict her from the jointly shared residential accommodation and the other attempted to dismiss her from her post as a manager of the restaurant business. The respondent stated that the appellant also removed her name as a signatory on the joint bank account of the restaurant business without her knowledge and that, in so doing, the appellant acted in breach of the partnership agreement and his fiduciary duty.
- [9] The appellant (the defendant in the court below) filed a defence and counterclaim on 2nd September 2020. The appellant stated that the respondent was his employee who managed his restaurant business, which operated first under the trade name “Local Restaurant & Bar” and then subsequently under the trade name “Petit Peak Restaurant and Bar”. The appellant denied that the respondent was his business partner or that they operated a business together. The appellant also stated that the respondent did not have the money or financial means to invest in the restaurant business. The appellant continued that the respondent lacked the requirements to obtain a credit facility from any financial institution and that all funds injected into the restaurant business were sourced by him.
- [10] The appellant stated that on 2nd June 2009, he entered into a lease agreement for a two-story property located at Bay Street in Soufriere for the purpose of operating a

restaurant and bar and later a guest house on the top floor. The appellant also stated that without his approval the respondent registered the trade name of “Local Restaurant and Bar” for the restaurant business. However, the appellant clarified that the respondent accepted that this was a temporary measure until the appellant obtained the registration of his trade name for the restaurant business. The appellant continued that he obtained approval in 2016 for the use of the trade name, “Petit Peak Restaurant and Bar” as he originally intended.

[11] The appellant contended that the restaurant business opened in 2009, and the respondent was hired to manage the restaurant business. The appellant stated that he refurbished the building where the restaurant business was located using his own funds, and that the respondent did not make any financial contribution to the restaurant business in any form as a business partner. The appellant also stated that the respondent received a salary of EC\$2,000.00 per month during peak season and EC\$1,000.00 during the low or off-season. The appellant contended that the respondent contributed EC\$5,000.00 to the establishment of the car rental business but that the rest of the funds came from the restaurant business. The car rental business was registered in 2016 as “Yellow Cab” in the sole name of the appellant. The appellant stated that in 2017, the respondent acquired a guest house allegedly from the proceeds of a loan facility at the Credit Union.

[12] The appellant stated that he ended his living arrangements with the respondent and based on irregularities in the financial management of the restaurant business, he terminated the respondent’s contract of employment. The appellant also stated that a financial audit was conducted which revealed that between 2017-2019, the respondent stole, siphoned off or converted to her use and benefit approximately EC\$264,753.37 from the restaurant business and that sum included payments made to persons associated with the respondent and payments made on their behalf to the NIC. The appellant contended that the respondent owed him a duty of trust in relation to the financial management of the restaurant business or alternatively as an

employee she had an implied duty of trust and confidence to fulfill and observe in respect of the financial management of the restaurant business.

The decision in the court below

- [13] The trial of the claim and counterclaim took place over four days in January, February and March 2022 and the learned trial judge gave her written judgment on 11th July 2022 (reissued on 26th July 2022). The learned trial judge considered the following main issues: (1) whether there was a partnership or joint business venture between the appellant and the respondent; alternatively, whether the respondent was merely an employee of the restaurant business; (2) whether the respondent contributed financially towards the start-up costs and other expenses of the restaurant business; (3) whether the respondent stole, siphoned, or converted sums of money from the restaurant business for her personal use, and if so, how much; and (4) whether the appellant made any monetary contribution to the respondent's car rental and guest house businesses and whether the appellant was entitled to any share in these businesses on account of such contributions; alternatively, by virtue of sums allegedly siphoned from the business.
- [14] In answering the first and third issues, the learned trial judge analysed the evidence of both parties and observed at paragraph 20 of her written judgment that the respondent and her witnesses appeared forthright and sincere in cross-examination. She noted that the evidence of the appellant and his witness in cross-examination was rather weak. The learned trial judge in applying Article 21 of the **Commercial Code of Saint Lucia**,² which defines a partnership as "the relation which subsists between persons carrying on a business in common with a view of profit" noted that the three elements which must be satisfied to establish the existence of a partnership are: (i) the carrying on of a business; (ii) that the business is carried on in common; and (iii) with a view for profit.

² Cap 22.09 of the Revised Laws of Saint Lucia 2022.

[15] After considering the evidence of the parties, the learned trial judge held that: (1) the appellant and the respondent operated a restaurant in common with each other (at para 31); (2) the respondent contributed financially to the start-up costs of the restaurant business (at paras 32-34); (3) it was irrelevant that the respondent's name was not on the lease of the property occupied by the restaurant business (at para 35); (4) the registration of the business names of the restaurant at various periods in the name of either the appellant or the respondent was an indication that a partnership was in effect (at para 35); (5) the respondent was very involved in the management and day to day operations of the restaurant (at para 38); (6) it did not matter that the respondent earned a salary from the start (at para 39); (7) the parties shared in the gross profits of the restaurant business (at para 39); and (8) the placing of the profits of the restaurant business into a joint account of the appellant and the respondent was indicative of a partnership (at para 39). The learned trial judge concluded at paragraph 41 that a partnership was in effect between the appellant and the respondent.

[16] The learned trial judge observed that the third question was based on the appellant's allegation that the respondent was an employee. She continued that since the respondent was in partnership with the appellant, she was entitled to a share in the profits of the restaurant business equally with the appellant. The learned trial judge therefore held at paragraph 42 that, first, the appellant did not allege or show that the respondent made use of more than her half share entitlement in the restaurant business and, second, it was not shown that she stole or converted the appellant's share in the partnership. The counterclaim was therefore dismissed (at para 43). Even after considering the merits of the counterclaim and the evidence of the parties on that issue at paragraphs 43-82, the learned trial judge concluded at paragraph 77 that she was unable to find on the totality of the evidence that the respondent stole, siphoned or converted the funds of the restaurant business to her own use and benefit. In answering the fourth issue, the learned trial judge concluded at paragraph 83 that since it was determined that the appellant failed to prove, on a balance of probabilities, that the respondent stole, siphoned or converted monies belonging to

the restaurant business to her own use, the appellant was not entitled to any interest in her car rental or guest house business on this account.

Grounds of Appeal

- [17] The appellant lodged three grounds of appeal, namely that:
- (1) the learned trial judge's assessment of the evidence was one-sided, unfair and unbalanced in the face of all the evidence leaving out of account material evidence that should have been considered and scant regard was placed on some material evidence leading to wrong conclusions being drawn;
 - (2) the learned trial judge misdirected herself and therefore erred in law when she found at law that the respondent being a partner in a partnership business and being in charge of the finances of the business did not owe a fiduciary duty to the other partner;
 - (3) the learned trial judge's dismissal of the counterclaim based on her rejection of the Disbursement Analysis Report and the expert's report was baseless and without foundation in law.
- [18] The issues that arise on this appeal are as follows: (1) whether this Court should overturn the factual findings of the learned trial judge because she failed properly to analyse the entirety of the evidence; (2) whether the learned trial judge found as a matter of law that a partner does not owe a fiduciary duty to another partner; and (3) whether the learned trial judge was correct in rejecting the evidence of the appellant on his counterclaim.

The First and Third Issues – Appeal on Questions of Fact

- [19] In neither his notice of appeal nor in submissions filed in support of the notice of appeal has the appellant articulated a coherent basis for challenging the findings of fact by the learned trial judge. In respect of the first issue, the appellant submits that: (1) there were inconsistencies in the evidence of the respondent; (2) the documentary evidence contradicted the evidence of the respondent; (3) the effect of Articles 1163 and 1164 of the **Civil Code of Saint Lucia**³ on the documentary evidence was not

³ Cap 4.01 of the Revised Laws of Saint Lucia 2022.

considered by the learned trial judge and their impact on the appellant's case in the court below; and (4) the respondent's evidence of contribution to the business was confusing and not definitively proven. In relation to the third issue, the appellant submits that the learned trial judge's dismissal of the counterclaim based on her rejection of the Disbursement Analysis Report and the expert's report was baseless and without foundation in law.

[20] The effect of these submissions and indeed the first and third ground of appeals is to maintain a frontal challenge to findings of fact made by the learned trial judge. It must be stated at the outset that Articles 1163 and 1164 of the **Civil Code of Saint Lucia**, relating as they do to oral evidence are not relevant to a determination of this issue in the appeal. This Court has repeated on many occasions that it will not easily interfere with a judge's evaluation of the evidence⁴ or a judge's findings of fact and inferences of fact made by a judge especially when they depend to a significant extent upon the judge's assessment of witnesses he or she has seen and heard give evidence.⁵ The Privy Council in **Beacon Insurance Company Limited v Maharaj Bookstore Limited**⁶ stated that occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence (at para [12]). The Privy Council in **Beacon** expressly approved (at para [13]), the following passage of the decision of the United Kingdom Supreme Court in **Re B (a child) (care order: proportionality: criterion for review)**⁷ where it was stated that:

"52 There is no question of this court interfering with, or indeed being asked to interfere with, the findings of primary fact made by the judge. Bearing in mind that it is a second appeal tribunal, the Supreme Court is virtually never even asked to reconsider findings of primary fact made by the trial judge. The Court of Appeal, as a first appeal tribunal, will only rarely even contemplate reversing a trial judge's findings of primary fact.

53 As Baroness Hale JSC and Lord Kerr of Tonaghmore JSC explain in paras 200 and 108 respectively, this is traditionally and rightly explained by

⁴ See *Denise Tuitt v Rosanna Tuitt* MNIHCVAP2021/0003 (delivered 23rd May 2022, unreported) at paras [37]-[39].

⁵ See *Margaret Blackburn v James A.L. Bristol* GDAHCVAP2012/0019 (delivered 12th October 2015, unreported) at para [9].

⁶ [2014] UKPC 21.

⁷ [2013] UKSC 33, [2013] 3 All ER 929.

reference to good sense, namely that the trial judge has the benefit of assessing the witnesses and actually hearing and considering their evidence as it emerges. Consequently, where a trial judge has reached a conclusion on the primary facts, it is only in a rare case, such as where that conclusion was one (i) which there was no evidence to support, (ii) which was based on a misunderstanding of the evidence, or (iii) which no reasonable judge could have reached, that an appellate tribunal will interfere with it. This can also be justified on grounds of policy (parties should put forward their best case on the facts at trial and not regard the potential to appeal as a second chance), cost (appeals on fact can be expensive), delay (appeals on fact often take a long time to get on), and practicality (in many cases, it is very hard to ascertain the facts with confidence, so a second, different, opinion is no more likely to be right than the first).

54 The second and third steps involved in the threshold issue can be combined into the single question of whether the primary facts found and assessments made by the judge were capable of justifying the conclusion he reached that the threshold contained in section 31(2) was satisfied."

[21] In the same way, this Court should be slow to reverse a trial judge in their evaluation of primary facts. Lord Hoffman in **Biogen Inc v Medeva plc**,⁸ stated at p. 45 as follows:

"The question of whether an invention was obvious had been called "a kind of jury question" (see Jenkins LJ in *Allmanna Svenska Elektriska A/B v The Burntisland Shipbuilding Co Ltd* (1952) 69 RPC 63, 70) and should be treated with appropriate respect by an appellate court. It is true that in *Benmax v Austin Motor Co Ltd* [1955] AC 370((1955) 72 RPC 39, 42) this House decided that, while the judge's findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, were virtually unassailable, an appellate court would be more ready to differ from the judge's evaluation of those facts by reference to some legal standard such as negligence or obviousness. In drawing this distinction, however, Viscount Simonds went on to observe, at page 374, that it was "subject only to the weight which should, as a matter of course, be given to the opinion of the learned judge". The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la verite est dans une nuance*), of which time and language do not

⁸ [1997] RPC 1.

permit exact expression, but which may play an important part in the judge's overall evaluation. It would in my view be wrong to treat Benmax as authorising or requiring an appellate court to undertake a de novo evaluation of the facts in all cases in which no question of the credibility of witnesses is involved. Where the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation."

- [22] In my view, it cannot be said that the learned trial judge erred in her findings of fact. In respect of the first issue, it was open to the learned trial judge having seen and heard the witnesses for the parties to believe the version of events as outlined by the respondent and her witnesses to find that: (1) a partnership existed between the appellant and the respondent; and (2) the respondent did not breach any fiduciary duty owed to the appellant. Having seen and heard the witnesses, and then evaluated the evidence before her, the learned trial judge was entitled to reach the conclusions on the facts as she did.
- [23] In relation to the third issue, for the reasons outlined by her at paragraphs 77-82, the learned trial judge was entitled to reject the Disbursement Analysis Report and the expert's report as the supporting evidence for the appellant's counterclaim. In any event, this was obiter as the learned judge had already held at paragraph 42 of her written judgment, as mentioned above, that first, the appellant did not allege or show that the respondent made use of more than her half share entitlement in the restaurant business and, second, it was not shown that she stole or converted the appellant's share in the partnership.
- [24] The appellant has not shown that the conclusions of the learned trial judge on the primary facts relative to the first and third issues were such that: (i) there was no evidence to support them; (ii) the conclusions were based on a misunderstanding of the evidence; or (iii) the conclusions were as such where no reasonable judge could have reached them, and that an appellate tribunal would interfere with them. During the hearing of the appeal, counsel for the appellant conceded that it was open to the

learned trial judge based on the evidence before her to make the findings she did. The findings of the learned trial judge were supported by the evidence which she accepted based on her explained preference for accepting the respondent's evidence on the issues before her. Accordingly, the appellant has not established any basis warranting interference by this Court.

The Second Issue – Fiduciary Duty: Partners

- [25] As mentioned above, in the second ground of appeal the appellant states that the learned trial judge misdirected herself and therefore erred in law when she found that the respondent being a partner in a partnership business and being in charge of the finances of the business did not owe a fiduciary duty to the other partner. It is necessary to quote the following paragraph in her written judgment where the learned trial judge dealt with the issue for context and to determine whether this ground of appeal is made out:

“[44] It does not appear on the evidence that there was any formal designation of roles in managing and carrying on the business, such that Sabrina was designated as solely responsible for financial management. They each seemed to have assumed that role to the degree and extent necessary to operate the restaurant. Augustin's evidence is that he had other sources of income and he was too busy to be more involved. Sabrina appears to have done what was necessary to run the operations to the best of her ability. **To my mind, they both owed each other a fiduciary duty as partners in the joint business to account for and manage the business' finances.** It does not appear that Sabrina had any financial, accounting, or business management qualifications or experience, or that she held herself out as having same. Augustin was the one with business experience, yet he was complacent in allowing her to run the operations by herself, despite her limitations. Thus, it cannot be said that Sabrina owed any particular fiduciary or other duty in relation to the financial management of the business as alleged. In any event, the evidence does not reveal any act by Sabrina which could amount to breach of fiduciary duty. It does not reveal any dishonesty or attempt to gain some unauthorized personal advantage or profit that is in conflict with the mutual fiduciary duty between partners, or breach of trust and confidence. What it does reveal is very informal financial management, of an informal business operation.” (Emphasis added)

- [26] The learned trial judge did not hold as a matter of law that partners do not have a fiduciary duty to each other as alleged by the appellant. In fact, her statement that

both the appellant and respondent owed each other a fiduciary duty as partners in the joint business to account for and manage the business finances flatly contradicts this allegation by the appellant. The learned trial judge's statement that it cannot be said that the respondent "owed any **particular** fiduciary or other duty in relation to the **financial** management of the business" must be put in the context of her earlier finding that the respondent did not have any financial, accounting or business experience but that she was left to run the operations of the restaurant business by the appellant "**despite her limitation**". (Emphasis added)

- [27] Additionally, the learned trial judge held that, in any event, the evidence did not reveal any act by the respondent that could amount to a breach of a fiduciary duty. This ground of appeal therefore fails because: (1) the learned trial judge did not make any error of law; (2) she accepted that partners in a business do owe fiduciary duties to each other to account for and manage the business' finances; (3) the specific finding of the learned trial judge was that there was no specific fiduciary duty owed by the respondent in respect of the financial, accounting or business side of the business because she did not have that relevant experience; and (4) the evidence did not reveal any breach by the respondent of any such duty had it existed.

Disposition

- [28] Based on the foregoing, I would dismiss the appeal against the decision of the learned trial judge with costs to the respondent to be assessed if not agreed within 21 days of today's date.

[29] I am grateful for the assistance provided by learned counsel.

I concur.

Mario Michel

Chief Justice [Ag.]

I concur.

Gerard St. C. Farara

Justice of Appeal [Ag.]

By the Court

Chief Registrar