

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2017/0310

BETWEEN:

TRAVIS RICKY CASEY, Administrator of the
Estate of DONNIE ARMSTRONG, deceased

Claimant

-and-

MILLICENT DOVER

Defendant

Appearances:

Ms. Kamilah Roberts for the Claimant

Ms. Luann M. De Costa for the Defendant

2023: November 29th, 30th,
2024: January 22nd (written submissions)
2025: June 27th

JUDGMENT

- [1] **WILLIAMS, J.** This is a dispute between family members concerning the estate of the late Donnie Armstrong. Donnie Armstrong was deaf and mute from childhood and throughout her life she appeared to have earned a relatively modest income. Despite these adversities, she managed to deposit substantial savings into an account at the

Community First Co-Operative Credit Union which she held jointly with her sister Millicent Dover-the defendant. These funds or at least a substantial part of them were used to construct a house at Mcpond, All Saints on land owned by the defendant and her husband Everton Dover.

- [2] Donnie Armstrong by her next friend Kathnell Black commenced these proceedings in 2017 seeking an account of the funds in the Community First Co-Operative Credit Union account as well as declarations concerning the house at Mcpond. After her death in 2019, the proceedings were continued by her son Travis Ricky Casey who was appointed administrator of her estate. Donnie Armstrong will be referred to as Donnie throughout this decision for ease of reference.

The Claim

- [3] This claim commenced by Fixed Date Claim Form and Statement of Claim filed on 15th June 2017. After a response to a request for information filed by the defendant, the Fixed Date Claim Form and Statement of Claim were amended on 3rd November 2017. The Amended Fixed Date Claim Form seeks the following relief:

1. A declaration that funds held at a savings account (Account No. 00120882001) at Community First Credit Co-Operative Credit Union Ltd. in the names of the claimant and/or defendant were held on trust by the defendant for the claimant absolutely.
2. An account of all money paid to the defendant by the claimant during the period January, 2006 to June 2015 in relation to the box hand agreement.
3. An account of all money paid to the defendant by the claimant from the claimant's wages during the period January 2006 to June 2015 which should have been deposited in the above-mentioned account.
4. An account of all money withdrawn by the defendant from the above-mentioned account during the period January, 2006 to January, 2015.
5. An order that the defendant do pay to the claimant the sum of the EC\$72,304.68 representing monies due and owing to the claimant being the total amount which the defendant failed to deposit to the claimant's account in breach of contract and/or in breach of fiduciary duties or duties as trustee.
6. An order that the defendant do pay to the claimant the sum of the EC\$26,779.80 representing monies withdrawn from the Account No. 00120882001 by the

defendant during the period 2009 to 2015 in breach of contract and/or in breach of her fiduciary duties or duties as trustee.

7. An order that the defendant make good any loss of interest and dividend payment occasioned by the withdrawal from the aforementioned account.
8. A declaration that the claimant is the legal and beneficial owner of a house constructed on the parcel of land at Mcpond, All Saints, St. Paul's, Antigua properly identified as Registration Section: All Saints Block: 23 2286A Parcel: 184 as owned by the defendant and her husband, Everton Dover.
9. An order that the house situate at Mcpond, All Saints, St. Paul's, Antigua be valued by an independent valuator and that the defendant do pay the claimant the value of her interest in the said house.
10. An order that the defendant give an account of rent received from the claimant's house for the period July 2015 to date.
11. Alternatively, to the relief claimed in (8) above, an order that the claimant be granted exclusive possession of the house situate at Mcpond, All Saints, St. Paul's, Antigua and be permitted to remove the house from the current location on the parcel of land owned by defendant and her husband.
12. An order that the defendant give an account of rent received from the claimant's house from the period July 2015 to date.
13. An order that the defendant pay to the claimant all funds received from rent of the claimant's house upon giving such account.
14. General damages for breach of contract/trust to include aggravated damages.
15. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143 of the Laws of Antigua, Revised Edition 1992 on the amount found to be due to the claimant at such rate and for such period as the court may think fit.
16. Costs
17. Such further or other relief as the court may deem fit.

Statement of Claim

- [4] The Amended Statement of Claim filed on 3rd November 2017 alleges that the claimant, due to her disabilities, opened a joint savings account at Community First Co-operative Credit Union Ltd. with the defendant to allow the defendant to manage transactions on her behalf. The defendant was charged with depositing the claimant's funds, including wages and "box hand" entitlements, into this account. The claimant

participated in a "box" savings scheme managed by the defendant, contributing EC\$200.00 weekly for a year, with the expectation that the total contributions would be returned.

- [5] At this point it should be noted that a "box" is an informal community savings scheme where a group of people pay an agreed sum of money on a periodic basis. At the end of each period, one member of the group takes all the money that has been paid. This payment is referred to as a "hand" or "box-hand." These savings schemes are common in Antigua and Barbuda and the Eastern Caribbean. In other islands it is known as a "sou-sou."
- [6] The claim alleges that the claimant intended to save these funds for medical emergencies or property purchase. The claim asserts that the defendant should have deposited EC\$168,400.00 into the account between 2005 and 2015. However, in 2015, the claimant discovered that only EC\$58,395.30 had been deposited during the said period. The claimant alleges the defendant failed to deposit all savings, retained funds, and made unauthorized withdrawals, resulting in a loss of EC\$99,084.48, plus lost interest and dividends.
- [7] In 2011, the claimant authorized the defendant to withdraw EC\$35,000.00 from her account to purchase a chattel house for her. The house was duly purchased. The defendant sold this chattel house for EC\$38,000.00 but allegedly did not return the money to the claimant's account.
- [8] In 2014, the defendant offered to build a new chattel house for the claimant using the EC\$38,000.00 from the sale of the first house. This house was to be placed temporarily on the defendant's land until the claimant acquired her own property. The claimant was to be the sole owner and take possession upon completion, which occurred around November 2014. However, the house built was a wooden house with a concrete bathroom, making it difficult to move.
- [9] In June 2015, the defendant allegedly entered the house, removed furniture, changed locks, and subsequently rented it to a third party, denying the claimant access. The Statement of Claim further alleges that the Defendant has been receiving rental payments since July 2015.
- [10] The filing further alleges that the defendant's attorney-at-law provided a promissory note dated September 22, 2015, for the sum of EC\$48,000.00 which the claimant

considers a partial admission of liability but does not accept as the full amount owed or the repayment terms. The claimant's attorneys then demanded the return of funds and possession of the house in a letter dated January 26, 2016, but the defendant has not responded. Proceedings were then commenced seeking the relief as outlined above.

Defendant's Affidavit-9th May 2019

- [11] In response to an application for an account filed by the claimant on 9th April 2018, the defendant filed an affidavit on 9th May 2019. In it, the defendant states that she has been assisting Donnie both physically and financially, since 2006.
- [12] Regarding Donnie's living conditions, the defendant states that the house she previously lived in was unsuitable, lacking an indoor bathroom, kitchen, and having only one bedroom. The defendant arranged for Donnie to open an account at the Community First Co-operative Credit Union, advising against keeping funds at home. The defendant admits that monies were withdrawn from the account, but states that these were used for building a home and related expenses and denies personal use of the funds.
- [13] Concerning the "box hand" scheme, she states that Donnie brought her contributions directly to her weekly and on several occasions, the contributions were short, requiring the defendant to cover the deficit. The defendant explains that this is a common responsibility for a "box hand" manager. She further alleges that Donnie told her that her relatives Kathnell Black and Gwendolyn Armstrong would borrow or take money from her, causing the shortages.
- [14] The defendant clarifies that Donnie initially contributed EC\$100.00 weekly to the "box hand" in 2006, later increasing to EC\$200.00 weekly. She states that Donnie received approximately EC\$3,000.00 from the EC\$100.00 contribution "box" in 2006 and 2007. Donnie was also a contributor to another "box" valued at approximately EC\$10,000.00 from 2008 onwards. The defendant also claims that in March 2015, Ms. Black and her family removed Donnie from the "box". The defendant alleges that Donnie earned EC\$300.00 weekly.
- [15] Regarding the house, the defendant states she purchased a chattel house for Donnie for EC\$35,000.00 in June 2011. She claims Donnie informed her that Kathnell Black and her mother were purchasing land in Tyrells to place this house. However, the Defendant later discovered no such land purchase had been made since the land was

in dispute. Due to the house sitting for two years on someone else's property and experiencing wear and tear, it was sold in 2013 for EC\$35,000.00 to her son, Amoy Dover. Donnie did not object to this.

[16] The defendant subsequently decided to construct a new house for Donnie in 2013, utilizing funds from the sale of the previous house and other savings. This new residence was built on the defendant's own land to facilitate better care for the claimant due to her condition. Donnie took possession of this house in December 2014, and the defendant affirms it was Donnie's property.

[17] In relation to the circumstances under which Donnie left the house, the defendant denies allegations of wrongful entry or furniture removal, contending that Ms. Black and others relocated the furniture from the claimant's home. She indicates that the relationship between her and Donnie became strained in 2015 due to Ms. Black and her family member's "unfounded accusations" that the defendant was misusing Donnie's money. The defendant clarifies that all withdrawals were made with Donnie's consent and to build the house. To alleviate the "confusion and stress," the Defendant agreed to pay EC\$50,000.00 to Ms. Black and Donnie's son, Travis Casey, perceiving their primary interest to be financial.

[18] The defendant denies being a "thief," asserting that all her actions were motivated by "love and concern" for her sister. She further alleges that Ms. Black's actions are driven by "selfish means" and notes Ms. Black's unemployment. The Defendant denies any breach of fiduciary duties on her part.

Consent Order-14th May 2020

[19] On 14th May 2020 the parties entered into a consent order which provided for the following:

- a. An account of all money received by the Defendant from the Claimant during the period January 2006 to June 2015 in relation to the box hand scheme referenced in the claim.
- b. An account of all money received by the Defendant from the Claimant from the Claimant's wages during the period January, 2006 to June, 2015.

- c. An account of all money withdrawn by the Defendant from the savings account (Account No. 00120882001) at Community First Cooperative Credit Union Ltd during the period January, 2006 to June, 2015.
 - d. An account of all rent received by the Defendant in relation to the house at Mcpond, All Saints, St. Paul's, Antigua as referenced in the claim during the period July 2015 to date.
- [20] The consent order also provided for the defendant to pay all rent received from rental of the house to the claimant's attorney to be held in escrow until final determination of the claim.

Defendant's Affidavit-June 14th 2021

- [21] By affidavit filed on 14th June 2021 the defendant sought to address some of the issues raised in the consent order. In relation to having to account for all monies received from Donnie's wages from January 2006 to June 2015. The defendant avers that she is unable to fully address this request. This is as her niece Anecia Jarvis was responsible for collecting wages from Donnie. According to the defendant when Ms. Jarvis collected the wages she would give her the "box-hand" contribution but would retain the rest of the funds. The defendant further states that she believes that Ms. Jarvis had certain instructions from Donnie concerning what should be done with the balance. However, she is unclear as to what these instructions were.
- [22] In terms of an account of all money withdrawn from Community First Co-operative Credit Union, the defendant relies on her affidavit of 9th May 2019 which exhibits receipts of what was spent on building the house. She further states that she and other family members contributed to costs such as transportation of materials.

Trial

- [23] Trial of this claim took place on 29th and 30th November 2023. The claimant Travis Casey gave evidence on his own behalf along with Kathnell Black. The defendant also gave evidence along with Ruthlyn Martin and Anneica Jarvis-Edwards who gave evidence on her behalf. Expert witness Ms. Patrice Francis an engineer also gave evidence and was cross-examined. The parties filed written closing submissions on

22nd January 2024. Further, in accordance with the court's request made at the close of trial, the defendant on 23rd February 2024 filed an itemized list of all receipts which had been exhibited to her witness statement.

Claimant's Evidence

Kathnell Black

- [24] Kathnell Black is the niece of both Donnie and the defendant. Her evidence-in-chief was given by witness statement filed on 24th May 2025. According to her, Donnie being deaf and mute and largely illiterate (except for writing her name), required assistance in managing her affairs. Kathnell states that she established a unique communication method with Donnie and assumed an active role in her affairs following a discord between Donnie and the defendant in June 2015.
- [25] Ms. Black was officially appointed as Donnie's "next friend" on May 12, 2017, to pursue legal action and also as her attorney via a power of attorney dated April 10, 2017. Upon Donnie's death on November 14, 2019, the claimant- Travis Casey, succeeded her as Donnie's legal representative.
- [26] In approximately late 2005, a family meeting determined that the defendant would oversee Donnie's financial matters, including establishing a joint bank account and facilitating deposits for a future home. An account was opened in February 2006 at Community First Co-Operative Credit Union Ltd. (account number 00120882001), jointly held by Donnie, the defendant, for transactional convenience given Donnie's physical challenges. It was explicitly understood that all funds within this account belonged exclusively to Donnie.
- [27] Donnie participated in a "box hand" savings scheme managed by the defendant, contributing EC\$200.00 weekly. Pay-outs from this scheme were to be deposited into Donnie's credit union account. Black calculated Donnie's contributions to the "box hand" scheme from 2006-2011 as EC\$62,400.00 and from 2012-2015 as EC\$54,000.00. Donnie also remitted EC\$100.00 weekly to the defendant from her EC\$451.00 weekly government wages, intended for deposit into the aforementioned account. The total weekly sum remitted to the defendant was EC\$300.00 (EC\$200.00

for the "box hand" and EC\$100.00 for savings). Black calculated the total wage contributions from 2006 to June 2015 as EC\$49,200.00. Black contends that the defendant should have received a cumulative sum of EC\$165,600.00 from Donnie for both "box hand" and savings, all of which should have been deposited into the designated account at Community First Co-Operative Credit Union.

[28] However, a review of the credit union statements in June 2015 revealed that only EC\$58,295.32 had been deposited between 2006 and 2015. This discrepancy indicated the defendant's failure to adhere to deposit instructions and her unauthorized withdrawals from the account. Black calculates the total deficit, comprising undeposited funds and unauthorized withdrawals, to be EC\$99,084.48 (EC\$72,304.68 in undeposited funds and EC\$26,779.80 in unauthorized withdrawals). Black further asserts that Donnie was deprived of accrued interest on these funds.

[29] In June 2011, the defendant acquired a chattel house for Donnie for EC\$35,000.00 paid from Donnie's account. The defendant subsequently indicated her intention to sell this house to her son, Amoy Dover, for EC\$38,000.00, promising to deposit the proceeds into Donnie's account; this deposit did not occur.

[30] Around 2014, the defendant proposed constructing another house utilizing Donnie's funds, including the purported proceeds from the sale of the preceding house. This newly constructed house was supposed to be temporarily situated on the defendant's vacant land. However, despite an agreement for a movable chattel house to be erected, the defendant instead constructed a wooden house with a concrete bathroom affixed to the land. An engineering report later confirmed that the house could not be safely relocated.

[31] She outlines that in June 2015, all furniture had been removed from Donnie's house. During a subsequent meeting, the defendant claimed partial ownership of the house and offered to reimburse Donnie EC\$53,000.00 for her share, an offer Donnie did not accept. The defendant subsequently changed the locks, thereby denying Donnie access to her residence and compelling her to seek alternative accommodation. Kathnell discovered that the defendant had rented the property and failed to provide Donnie with an accounting of the rental income. Donnie's estate seeks a declaration of ownership and monetary compensation for Donnie's interest in the property. A valuation report from January 2019 assessed the house's value at EC\$83,368.00.

- [32] The defendant executed a promissory note on September 22, 2015, pledging to repay Donnie EC\$48,000.00 in annual instalments. However, this note was prepared without Donnie's consent or input and did not reflect an agreed-upon total debt or repayment schedule. Following the defendant's failure to respond to a demand letter dated January 26, 2016, requesting the return of funds and possession of the house, the instant proceedings were initiated.
- [33] Kathnell admitted under cross-examination that her appointment as Donnie's next friend gave her power over all her financial affairs. It was put to her that she resented the defendant's role in managing Donnie's financial affairs. However, she denied that suggestion. She further conceded that the house built by the defendant for Donnie was satisfactorily constructed and habitable.

Travis Ricky Casey

- [34] Travis Casey is Donnie's son. His evidence-in-chief was given by witness statement filed on 24th May 2025. In October 2020, he was appointed as the administrator of his late mother's estate.
- [35] According to him Donnie despite being deaf and mute possessed a good understanding and could communicate with close individuals. Due to her physical impairments, she required assistance in managing her affairs. Prior to her death, Kathnell Black managed Donnie's affairs and was appointed as her representative in these proceedings.
- [36] He states that he had initially assisted Donnie with saving money in a bank account. However, the defendant had accused him of misusing the money, threatening to involve the police. Travis for his part, states that these accusations were untrue. To avoid further conflict, he states that he gave the saved money to the defendant and transferred the management of his mother's affairs to her.
- [37] He was later informed that a joint account was opened at Community First Co-operative Credit Union in his mother's and the defendant's names, with the defendant's name added for convenience due to Donnie's disabilities. He had limited communication with the defendant afterwards due to their strained relationship. He defers to Kathnell Black's evidence regarding the claims against the defendant concerning her handling of Donnie's money, as he was not personally involved in those matters.

[38] Regarding the house at Mcpond, Travis recalls Donnie informing him that the defendant was constructing a house for her on her land. A dispute later arose concerning the house, leading to a meeting at the All Saints police station attended by Travis, Donnie, Kathnell Black, the defendant, and Ruthlyn Martin. At this meeting, the defendant offered to repay the construction cost, which she stated was over EC\$50,000.00, but she provided no supporting documents or receipts. Donnie did not agree to accept this amount. Travis offered to purchase the land, believing the house could not be moved, but the defendant refused, stating the land belonged to her husband and was designated for one of her sons.

[39] Sometime after the meeting, Travis received a call from the defendant's then-lawyer, asking him to collect a cheque for EC\$7,000.00 on behalf of his mother, which he did, thinking he was assisting her. At that time, he did not hold a power of attorney for his mother. Subsequently, Donnie's lawyer requested Travis to return the cheque, as Donnie had not agreed to accept that sum. Travis complied and returned the cheque to the defendant's lawyer.

[40] Under cross-examination, Travis stated that Donnie had lived with her then-boyfriend in Liberta. He further explained that the house had no running water and uneven flooring and that he would only live there if he had no other choice. He therefore agreed that the house built for his late mother was a good thing and that he found the house to be habitable.

[41] According to him, whilst attending school, he handled his mother's financial affairs until his aunt Kathnell had taken over. However, when he became an adult, he had retaken responsibility for his mother's affairs. He further stated that he had tried to be more involved in his mother's life but had faced interference from his aunts namely Kathnell and the defendant.

Expert Evidence

Patrice Francis

[42] Ms. Patrice Francis, being an engineer by profession had prepared and filed an expert report in these proceedings on 12th July 2022. The terms of reference requested the expert to provide the following:

A. Valuation of the house located on the parcel of land identified as Registration Section: All Saints, Block 23 2286A, Parcel: 184 (building only).

B. Can the above-mentioned house be safely relocated from the parcel of land upon which it is currently located? Kindly give detailed reasons for your conclusion.

C. If the house can safely be moved, please indicate whether there would be any resulting impact to the market value of the house.

[43] According to the report, the house was valued using the replacement value approach. According to the expert this involved an analysis of the cost of constructing the property utilizing current market rates. The house was found to measure 613 square feet with construction cost of EC\$190.00 per square foot. A 25% depreciation was then applied to take deterioration into account. The house was therefore valued at EC\$87,350.00.

[44] In relation to the other aspects of the report, the expert concluded that the house could not be completely or safely relocated as this would require demolition of the masonry section. The expert also observed that the masonry section consists of the bathroom which accounts for 5% of the floor area. This would lead to a corresponding downward valuation of the structure. This aspect of the report will be examined in greater detail later in this judgment.

[45] Under cross-examination, Ms. Francis stated that her investigation was limited to a visual inspection and she did no further testing of the structure. She explained that non-destructive testing of the structure was not needed based on the fact that there is not much deviation in how construction is carried out in Antigua.

Defendant's Evidence

Anneica Jarvis Edwards

[46] Anneica Jarvis Edwards is the niece of both the defendant and Donnie. Her evidence-in-chief was given by witness statement filed on 18th March 2022. She states that she maintained a close relationship with her aunt Donnie during her lifetime. She

acknowledges that the Defendant assisted Donnie in the construction of her own home, noting Donnie's prior substandard living conditions. She further states that Donnie, a government laborer, occasionally requested her assistance in collecting wages and depositing them into her bank account at Community First Co-Operative Credit Union, a task Edwards performed from approximately 2010 to 2011.

[47] She expressed surprise at the legal action initiated by Donnie, with her Aunt Kathnell Black's assistance, against the defendant, as she had no prior knowledge of significant discord between her aunts. She believed Donnie was content with her new residence. She further opines that the defendant's aid in providing Donnie with a home was a commendable act, given the limited assistance Donnie received from other individuals.

[48] Around 2015, subsequent to Donnie's departure from the house the defendant had constructed, Anneica endeavored to locate Donnie. Failing to find her at her known boyfriend's residence in Liberta, Edwards was informed by a neighbor that Donnie had packed her belongings and departed for town in search of "Anneica". She identified herself as "Anneica" and noted that Donnie was unaware of her current address. Subsequently, Anneica's brother, Deno Jarvis, informed her that Donnie was with their aunt Ruthlyn at the market. Deno then transported Donnie to her home in Liberta. Upon arrival, Donnie was distressed and implored Edwards not to compel her to return to live with Kathnell Black. She assented, allowing Donnie to stay with her for a fortnight.

[49] Anneica stated that before Donnie had her own home, she lived in what was deemed to be less-than-desirable conditions, specifically, she mentioned that the deceased lived in Liberta with her boyfriend Mr. Winston Edwards. She described the house to be old and in poor condition.

Millicent Dover

[50] Millicent Dover is the defendant and Donnie's sister. Her evidence-in-chief is contained in a witness statement filed on 18th March 2022. She asserts that she has cared for Donnie, who was born with physical disabilities affecting her speech, since childhood.

[51] Around 2006, Donnie who worked as a laborer at the Central Board of Health, approached the defendant for assistance with her finances. She describes Donnie's living conditions at the time as "terrible." Donnie lived in an old one-bedroom house lacking indoor bathroom and kitchen facilities. Dover also states that Donnie

complained about Kathnell Black and Black's mother frequently borrowing money without repayment, and money going missing from her house.

[52] The defendant claims she contacted Travis about his mother's living situation and financial issues, and he initially agreed to hold Donnie's money for building a home. However, she later learned that Travis used some of Donnie's money for personal matters and Donnie complained about this arrangement. The defendant then assisted Donnie in opening an account at Community First Co-operative Credit Union and with Donnie's consent, she was added as a joint account holder due to Donnie's disability. She also managed a "Box" or "Sou Sou" scheme that Donnie joined, where Donnie would bring money, sometimes short, which the defendant would cover with her own funds. Monies earned from the "box" and unspent portions of Donnie's salary were deposited into the credit union account. The defendant noted that despite knowing Donnie's deplorable living conditions, Travis and Kathnell did not act to improve them.

[53] Concerned for Donnie, the defendant and her sister Ruthlyn discussed helping her acquire her own home, to which she agreed. Around 2011, the defendant began building a home for Donnie, purchasing a framed two-bedroom house for EC\$35,000.00 from one Mr. Charles. She states that Donnie had informed her that Kathnell Black had purchased land for her in Tyrells, but it was later revealed that no land had been secured, leaving the house without a location for approximately two years. Mr. Charles eventually requested the house be moved.

[54] The defendant and her husband then agreed to allow Donnie to place her house on a parcel of land they owned at Mcpond, All Saints, with the understanding that Donnie could reside there as long as she wished. The house sat unused, developing wear and tear, until Donnie agreed to sell it to Dover's son, Amoy Dover. Later in 2013, it was decided a new house would be built for Donnie. The defendant informed Donnie that she and her husband had agreed to place it on their land. She states that all monies drawn from the credit union account were used for constructing Donnie's home to provide her with basic necessities and comfort.

[55] She denies any arrangements or discussions with Kathnell Black regarding Donnie's money, stating she never recognized Black as Donnie's authorized business agent, especially Kathnell's appointment as Donnie's "Next Friend" without her knowledge, her other sisters, or Travis. She claims Kathnell's allegations are unfounded and untrue, and that her involvement strained her good relationship with Donnie. The defendant further states that she furnished Donnie's completed house with her own funds and covered other expenses such as material transportation.

- [56] The defendant asserts that at first Donnie was content in her new home. However, after visits from Kathnell, Donnie's mood reportedly shifted. Donnie expressed a desire to move out of the house and back to Liberta, and to demand all her money back. The defendant believes Kathnell encouraged this due to selfish motivations and financial gain from Donnie's proximity. Donnie subsequently returned to her "deplorable" living conditions in Liberta. She expressed shock at later being named as a defendant in proceedings purportedly initiated by Donnie with Kathnell's assistance.
- [57] She further notes that Donnie died in early 2020, with the cause of death unclear but family members suggesting complications from a fall or cervical cancer. The disputed house remains intact and she has never refused the claimant access to it. She further states an experienced mover can relocate the house to a desired location for Travis and has offered to have the house rented, with rental income paid directly to him or his representative.
- [58] Under cross-examination, it was the defendant's evidence that Donnie's last contribution to the box would have been in 2015 and that she would have received that box's full entitlement of \$11,400.00 as it had been used in the construction of Donnie's house. When questioned by counsel for the claimant as to the total entitlements accredited to Donnie through the box, the defendant was unable to recall the exact figure but was adamant that all funds entitlements went towards the house.
- [59] According to the defendant, the first house bought for Donnie was sold to her son Amoy Dover in 2013 for \$35,000.00. The defendant at that time had already begun construction for new house in December 2013. Thus, instead of depositing the proceeds into the joint account, she used the funds to purchase lumber for the new house. The house was completed in 2014 and had been constructed on land owned by the Defendant and her husband. The house is a two-bedroom wooden house with a concrete bathroom structure, and it is the Defendant's evidence that she purchased furniture for said house with her monies through hire purchase.

Ruthlyn Martin

- [60] Ruthlyn Martin is Donnie's sister. Her evidence-in-chief was contained in her witness statement filed on 18th March 2018. She states that the defendant was Donnie's primary caregiver, frequently visiting her market stall to discuss Donnie's well-being and seek opinions on how to assist her. She further asserts that the defendant cared

for Donnie even when others neglected her. Donnie also often visited her stall, complaining about her living conditions and expressing a desire for her own place.

- [61] According to Ms. Martin, Donnie was living in Liberta with her boyfriend at the time and also spent significant time at Kathnell Black's residence, who lived nearby. Donnie complained of mistreatment by her boyfriend and Kathnell, specifically mentioning no inside bathroom at the boyfriend's home and that Kathnell was frequently borrowing or spending her money without consent.
- [62] Following these complaints, the defendant approached her, expressing concern for Donnie's discomfort and suffering. They decided it would be beneficial to help Donnie acquire her own home. Ms. Martin, not in a financial position to offer much help, was assured by the defendant that she would speak to Travis (the claimant) first. If Travis could not assist, the defendant would find a way to finance a home for Donnie. She is aware that the defendant helped Donnie join a "Box" or "Sou Sou" scheme to save money for a home. She was also aware that the defendant would sometimes cover Donnie's short payments with her own funds. The defendant also helped Donnie open a bank account.
- [63] Later, the defendant informed Ms. Martin that Donnie had no land to build on, and that she and her husband had agreed to allow the house to be built on their land. According to her, the house was completed with financial assistance from the defendant and her husband, including furnishings and transportation costs. Donnie moved into her new home and seemed happy there. However, Donnie did not reside there long before moving in with Kathnell in Liberta. Ms. Martin suggests that Kathnell seemed to have an undue influence over Donnie, which she believed was not in Donnie's best interests.
- [64] She also states that Donnie never complained to her about the defendant misappropriating or misusing her money. Instead, Donnie often expressed happiness with the defendant's help and the prospect of owning her own home. She firmly believes that the defendant acted in Donnie's best interests, especially when others, including Travis Casey, neglected Donnie's well-being. She expressed disappointment that Millicent's genuine efforts to provide a home for Donnie have resulted in a lawsuit initiated by those who did not care for Donnie during her lifetime.
- [65] Ms. Martin also describes a meeting which took place at the Chambers of Attorney-at-Law Luann De Costa between the parties. At that meeting, Travis indicated that he had no desire to pursue the case and expressed willingness to resolve the matter. Travis also stated he was open to the defendant renting the house and paying the rental

income directly to him. She was therefore surprised and disappointed that Travis changed his mind and continued the lawsuit given the significant assistance given to his mother by the defendant. She hoped for an amicable resolution and a fair and reasonable court ruling, noting the toll the proceedings had taken on the defendant.

[66] She also states that she was aware that Donnie's house was completed with the financial assistance of the Defendant and her husband who among many things paid for furnishings and transportation for materials. However, under cross-examination she clarified that she was not directly involved in the construction of the house. Under re-examination, she further stated that as far as she was aware, the source of funds to construct the house was through the box hand entitlements and funds from the defendant and her husband.

Issues

[67] The issues for determination are as follows:

1. Whether the defendant has a duty to account for the funds held at savings account (Account No. 00120882001) at Community First Credit Co-Operative Union Ltd.?
2. Whether the defendant is required to account for all funds which she received as "box hands" and from Donnie's wages?
3. Whether the claimant has any interest in the house constructed on the defendant's property located at Mcpond, All Saints?
4. Whether the defendant is required to account for any rent received in respect of the house constructed on the defendant's property located at Mcpond, All Saints?

Discussion

Joint Account at Community First Co-operative Credit Union

[68] Despite testimony being received from several witnesses and a great deal of documentation provided to the court, there is no evidence from Donnie Armstrong. This

is firstly because she died in 2019, long before this matter came to trial. Further, although she was alive when these proceedings commenced, all documents were signed by Kathnell Black as her Next Friend. Thus, we have no evidence from Donnie herself as to what her intentions were with respect to the account at the Community First Co-operative Credit Union.

[69] Donnie and the defendant signed a joint account agreement in respect of the credit union account on 24th February 2006. The agreement appears to be a standard form issued by the credit union. In the form Donnie is described as the “first-named person” and the defendant as the “second named person.” Clauses 3, 4 and 10 of the agreement provide as follows:

“3. All shares, deposits, loans and fixed deposits affiliated to this joint account are joint.”

4. Either person may sign withdrawals.

10. On the death of the first-named person, the second named person becomes first-named by making the account a single account and insurance applies as if he is the first becoming a member at this stage.”

[70] In *Whitlock v. Moree* the Privy Council provided an overview of the law in relation to joint accounts. At paragraph 29 of that decision, Lord Briggs giving the decision of the majority stated:

“The application of this simple analysis based upon established principles about the ascertainment of beneficial interests in co-owned property leads the Board to this conclusion: that where two or more holders of a joint account all sign an account opening document (or separately sign identical documents) which, on their true construction, declare or set out their respective beneficial interests in the property constituted by the account (loosely, the money in the account), then those are the beneficial interests of the account holders, pending any subsequent variation of them by agreement or otherwise, and an examination of the subjective intentions of the account holders, or of those of them who place money in the joint account, is neither relevant nor permissible.”

[71] Lord Briggs continued:

“This is, therefore, a case in which the two holders of a joint account have, by an agreement with the bank to which they were both parties, expressly set out above their signature a declaration as to the beneficial interests in that joint account which, on its true construction, provides for any balance on the account to be the beneficial

property of the survivor, upon the death of the other account holder, regardless who contributed the money to the credit of the account before that date.”

[72] The above principles apply with full measure to this case. The credit union account was expressly created as a joint account with both Donnie and the defendant having full right to make withdrawals. Further, if Donnie predeceased the defendant (whilst the account remained open) any funds in the account would have accrued to the defendant.

[73] Thus, the legal and beneficial interests in any funds in the account were governed by the joint account agreement which Donnie and the defendant signed. The terms of this agreement as previously outlined, are inconsistent with the claimant’s submission that the funds in the account were held on trust by the defendant for Donnie. In any event as outlined in *Whitlock v. Moree* reliance on extrinsic evidence as to what Donnie and defendant’s intentions were at the time of opening the account is not permissible. Accordingly, the claimant’s claim for a declaration of trust and a further account in respect of the joint account at the Community First Co-operative Credit Union must be dismissed.

Box Hands and Wages

[74] The claimant seeks an account in relation to box-hands and other money from Donnie’s wages which the defendant allegedly collected. The claimant in written closing submissions refers to the following passage from *Snell’s Equity* which I accept:

“Before a party can be ordered to account, liability to account must be established. This liability arises immediately out of the defendant’s receipt of property in an accountable capacity: the “basis of the duty to account is the fiduciary relationship. The claimant bears the onus of proving that the defendant has received property into his control in circumstances sufficient to import an equitable obligation to handle the property for the benefit of another. ”

[75] The claimant submits that the defendant has admitted to facts which support the existence of a fiduciary relationship. Paragraph 16 of the Amended Statement of Claim states “the Defendant was trustee of the Claimant’s funds which were received and in her possession.” In this case there was no trust instrument or deed executed between Donnie and the Defendant. Thus, regard must be had to the principles applicable to constructive trusts.

[76] There is no one all-encompassing definition of a constructive trust as the situations in which such trusts arise are varied. Halsbury's Laws of England states as follows:

"A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow them to assert full beneficial ownership of the property. Thus, some or all of the beneficial interest is subtracted from the person. Such a person will often already hold property in a fiduciary capacity and it will be by virtue of their ownership of or dealings with that fiduciary property that they acquired the specific property subject to the constructive trust."

[77] In *Carl Zeiss Stiftung v. Herbert Smith Edmund Davies* LJ stated as follows:

"The basic question raised by this appeal is whether the defendant solicitors hold the moneys of the plaintiffs as constructive trustees. The American Restatement of the Law of Restitution (1937) sets out to define a constructive trust by declaring in paragraph 160, p. 640, that:

"Where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it, a constructive trust arises."

"English law provides no clear and all-embracing definition of a constructive trust. Its boundaries have been left perhaps deliberately vague, so as not to restrict the court by technicalities in deciding what the justice of a particular case may demand. But it appears that in this country unjust enrichment or other personal advantage is not a sine qua non. Thus in *Nelson v. Larholt* [1948] 1 K.B. 339, it was not suggested that the defendant was himself one penny better off by changing an executor's cheques; yet, as he ought to have known of the executor's want of authority to draw them, he was held liable to refund the estate, both on the basis that he was a constructive trustee for the beneficiaries and on a claim for money had and received to their use. Nevertheless, the concept of unjust enrichment has its value as providing one example among many of what, for lack of a better phrase, I would call "want of probity," a feature which recurs through and seems to connect all those cases drawn to the court's attention where a constructive trust has been held to exist. Snell's Principles of Equity expresses the same idea by saying, 26th ed. (1966) at p. 201, that:

"A possible definition is that a constructive trust is a trust which is imposed by equity in order to satisfy the demands of justice and good conscience, without reference to any express or presumed intention of the parties."

It may be objected that, even assuming the correctness of the foregoing, it provides no assistance, inasmuch as reference to "unjust enrichment," "want of probity" and "the demands of justice and good conscience" merely introduces vague concepts which are

in turn incapable of definition and which therefore provide no yardstick. I do not agree. Concepts may defy definition and yet the presence in or absence from a situation of that which they denote may be beyond doubt. The concept of "want of probity" appears to provide a useful touchstone in considering circumstances said to give rise to constructive trusts, and I have not found it misleading when applying it to the many authorities cited to this court. It is because of such a concept that evidence as to "good faith," "knowledge" and "notice" plays so important a part in the reported decisions. It is true that not every situation where probity is lacking gives rise to a constructive trust. Nevertheless, the authorities appear to show that nothing short of it will do. Not even gross negligence will suffice."

[78] In Attorney General v. Constance Mitcham Gordon JA giving the judgment of the Court of Appeal stated as follows:

"The statement of the rule in terms that a trustee must not put him/herself in a position where fiduciary duty conflicts with personal interest acknowledges that the rule does not apply where the conflict is created deliberately by the person in the position of the settlor or testator."

[79] The claimant has identified the following alleged breaches of the purported fiduciary relationship by the defendant:

- a. The defendant failed to deposit the amount of EC\$35,000.00 as received from the proceeds of the sale of the claimant's house in 2013 to the credit union account.
- b. The Defendant received the claimant's box hand entitlement of EC\$10,000.00 in December 2007 but delayed depositing the amount of EC\$9,000.00 until May 13, 2008.
- c. The Defendant did not deposit the Claimant's box hand entitlement for 2012 in the amount of EC\$10,000.00 as she claimed she "anticipated using it to defray the expenses of moving the wooden house, putting in its doors and windows and connecting its utilities." However, the defendant failed to deposit this sum even when it became clear that the house would not be moved.
- d. The defendant did not deposit the claimant's box hand entitlement for 2012, 2013 and 2014 in the amount of EC\$10,100.00 into the credit union account.
- e. The defendant did not deposit the claimant's box hand entitlement for 2015 in the amount of EC\$11,400.00 into the credit union account and asserts that this sum was used in construction of the house. This evidence is inconsistent with the fact that construction of the house completed in December 2014 whereas the box hand was paid out in 2015.
- f. The defendant's evidence is that she used at least EC\$76,700.00 for construction of the house. However, the sum spent must have been greater as there were

withdrawals from the credit union account which were also allegedly used to fund construction.

[80] It is noted that most of the claimant's complaints concern failure to deposit various sums into the account at Community First Co-operative Credit Union. However, as previously outlined above, if the funds had been deposited in the account they would have belonged to both Donnie and the Defendant.

[81] Secondly, based on the authorities cited above in order to impose a constructive trust the court must be satisfied that there was some lack of probity on the defendant's part or that the defendant would be unjustly enriched. Putting the claimant's case at its highest, the box-hands and Donnie's wages should have been used for one purpose namely construction of Donnie's house. A house was in fact constructed since 2014 and was even occupied by Donnie for a short time prior to her death. Thus, I can see no improper dealing on the part of the defendant which would justify the imposition of a constructive trust in respect of these funds.

[82] Finally, even if I am wrong as to the existence of a constructive trust, the order for an account is a discretionary remedy. In this case requiring the defendant to account for transactions which occurred over ten (10) years ago would prolong this litigation and lead to a disproportionate increase in costs. This would be contrary to the Overriding Objective of the Civil Procedure Rules which is to deal with cases justly and proportionately. I therefore dismiss the claimant's claim for an account in respect of Donnie's box-hands and wages.

Ownership of the House at Mcpond

[83] It is not disputed that the defendant purchased a house for \$35,000.00. The source of these funds were the proceeds from the sale of another house built for Donnie. The house is situated on land owned by the defendant and her husband, Everton Dover which is situated at Mcpond, All Saints and registered in the land registry as Parcel: 184, Block 23 2286A, Registration Section: All Saints.

[84] The issue for determination involves the beneficial ownership of the structure. Baroness Hale of Richmond in the case of *Stack v Dowden* summarized the applicable principles in respect of beneficial ownership as follows:

‘Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all.’

[85] Thus, the burden is on the claimant to prove that Donnie had beneficial ownership of the house. In this case there is ample evidence that the house was bought for Donnie to reside there. The parties are consistent that it was always the family’s intention that Donnie should have a permanent residence. Unfortunately, shortly after moving into the house, Donnie left after a falling out with the defendant never to return. The parties have given extensive evidence on this issue, but ultimately it is not necessary for determination of the issue of beneficial ownership.

[86] In *Abbott v. Abbott* the Privy Council provided guidance on the approach to be adopted as follows:

“There are, of course, two separate questions: first, was it intended that the parties should share the beneficial interest in a property conveyed to one of them only; and second, if it was so intended, in what proportions was it intended that they share the beneficial interest?”

[87] In *Oxley v Hiscock* the court pronounced that:

‘...the second question to be answered in cases of this nature is “what is the extent of the parties’ respective beneficial interests in the property?” Again, in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least in this Court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And, in that context, “the whole course of dealing between them in relation to the property” includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities, repairs, insurance and housekeeping) which have to be met if they are to live in the property as their home.’

[88] There is strong evidence to support that the claimant as representative of Donnie’s estate is entitled to be declared as owner of the house. However, in her witness statement and at trial the defendant outlined that she made contributions towards construction of the house. In her witness statement she states at paragraph 15: “Other

expenses such as transportation of materials to build the house etc. I did pay from my own money.”

[89] The defendant made no attempt to quantify or even estimate her contribution. I therefore give very little weight to her testimony in this regard. Thus, I find that there is no evidence that the Defendant contributed any of her own funds towards construction of the house.

[90] In this case, it is clear from the testimony of all the parties that the house although erected on the defendant’s land belonged to Donnie. It appears that there was no question of the defendant herself having any interest in the house.

[91] Counsel for the claimant has relied on the expert’s conclusion that the house cannot safely be removed. At this point therefore it is necessary to outline what the role of an expert witness is in civil litigation. In *TUI v. Griffiths* the UK Supreme Court outlined the role of experts as follows:

“[36] In this judgment I address civil proceedings and leave to one side questions of criminal procedure. It is trite law that as a generality in civil proceedings, the claimant bears the burden of proof in establishing his or her case. It is trite law that the role of an expert is to assist the court in relation to matters of scientific, technical or other specialized knowledge which are outside the judge’s expertise by giving evidence of fact or opinion; but the expert must not usurp the functions of the judge as the ultimate decision-maker on matters that are central to the outcome of the case. ”

[92] Similarly in *John Oliver Dryud v. Palmavon Jasmin Webster* the Court of Appeal stated as follows:

“This role and function of expert evidence in civil litigation does not extend to supplanting the constitutional role of the court as the decision-maker. Accordingly, an expert witness discharges their duty to the court by providing material (be it opinion or skilled evidence of fact) from which the court can make its own findings and reach its own conclusions on the relevant issues as held in *Pora v The Queen*. ”

[93] Thus, I am not constrained to simply accept the expert’s conclusion that the house cannot be relocated and I must examine in-depth the reasoning which led to this conclusion. This is consistent with the guidance of the UK Supreme Court in *Kennedy v Cordia*, in which, in the judgment of Lord Reed and Lord Hodge with whom the other Justices agreed, it was stated:

“48. An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or ‘bare ipse dixit’ carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated ipse dixit carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371:

‘an expert’s opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert’s bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.’

As Lord Prosser pithily stated in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: ‘As with judicial or other opinions, what carries weight is the reasoning, not the conclusion.’

- [94] The issue of whether the house can be relocated is examined at Section 6.0 of the report. The expert states that she primarily considered (a) the robustness of the structure and (b) the level of fixity to its support or foundation. She states as follows:

“The foundation for the timber section of the building is such that it allows the timber framed joists which make-up the subfloor to be pinned into the foundation. The pin system entails that an extended 4” of steel imbedded in the foundation block walls be bent into the 4” x 4’ dpp sill which sits on the foundation wall. To remove a structure with this pinning system, the bent steel will be straightened or cut and the structure jacked up off the foundation walls.”

- [95] In terms of the concrete part of the structure the expert states:

“The concrete and masonry unit (CMU) of the structure will have to be dismantled in order for the remaining of the structure to be relocated. The timber composite section will have to be separated from the concrete section by way of demolition of the masonry section can only be removed by breaking away the concrete around the rafters and using the grinder with a steel cutting blade to cut away the rafter ties.”

- [96] The report therefore states that the house could not be completely or safely relocated as this would require demolition of the masonry section. However, in the following section of the report (Section 6.0) the expert does not completely rule out the possibility that the structure could be moved. She states that the bathroom accounts for 5% and

if removed would result in a reduction of the floor area and therefore a reduction in value. The report states “The percentage of depreciation applicable is truly dependent on the condition of the property after it has been relocated. Hence the structure will have to be reassessed and re-evaluated following the relocation.”

[97] There is thus an internal inconsistency between sections 5.0 and 6.0 of the expert’s report. This is as the report on the one I describes states that structure (except for the concrete part) can be removed. The report then goes on to describe how this can be done. However, despite this the expert comes to the inexplicable conclusion that the house cannot be safely relocated at all. I therefore find as a fact that the house can be relocated but this may lead to a corresponding reduction in value and risk of damage.

[98] In determining what is the appropriate order to be made I have taken into account the fact that this litigation has been underway for eight years. Thus, any order must bring some degree of finality to this dispute. Accordingly, the appropriate order in this case will be for the claimant to remove the house from its present location and relocate to wherever he may desire. The defendant will have to compensate the claimant for demolition of the concrete part of the structure and any likely damage to the remaining structure. However, in the interests of finality and economy of litigation I would decline the expert’s recommendation for a further assessment to be carried out after relocation.

[99] The report states that the bathroom (the concrete and masonry part of the house) is 5% of the floor area. The report also states that the house may be damaged upon relocation. I will therefore order that the defendant pay the claimant 10% of the value of the house as stated in the report which is \$8,730.00. This takes into account both the value lost as a result of demolition of the bathroom and the possibility of damage which may be caused to the rest of the structure during relocation.

Accounting for Rent

[100] The claimants have sought an accounting for rental income for the period 2015 to 2020 as well as an accounting for any rental income thereafter. The defendant has stated that the house was rented between 2015 and 2020 and was not let for rental thereafter. It is highly likely that the defendant has had to maintain the structure over the past ten (10) years with no contribution at all from the claimant or other family members. Accordingly, requiring the defendant to account for rent would be disproportionate in the circumstances and lead to an unnecessary increase in legal costs. The claim for this relief is therefore dismissed.

Costs

[101] Although the claimant has been partially successful in this claim, I decline to make any order as to costs. There is ample evidence that the defendant attempted to settle this matter by executing a promissory note in favour of the claimant and also offered to pay the claimant part of the proceeds from rental of the property. The defendant also had no objection to the house being removed from the property. In the circumstances, it is appropriate that each party bear their own costs.

Order

[102] The court therefore orders as follows:

1. The structure erected on the land registered as Block: 23 2286A; Parcel: 184 and situated at Mcpond, All Saints, St. Paul's, Antigua is declared to belong to the estate of late Donnie Armstrong.
2. The claimant shall remove the structure from Block: 23 2286A; Parcel: 184 and situated at Mcpond, All Saints, St. Paul's, Antigua within 120 days of this order and in doing so may demolish the concrete and masonry part of the structure.
3. The Defendant shall pay the claimant the sum of \$8,735.00 within 60 days of this order.
4. All other aspects of the claimant's claim are dismissed.
5. No order as to costs.

[103] The court apologizes for the delay in delivery of this decision.

Rene Williams

High Court Judge



By The Court

Registrar