

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO.: SLUHCV2017/0358

BETWEEN:

- 1. ROHAN JAMES**
- 2. KIMBERLY DEMITA**

Claimants

And

TYRONE ROBINSON

Defendant

APPEARANCES:

Mrs Michelle Anthony-Desir for the Claimants

Mrs Carol Gedeon-Clovis for the Defendant

2021: May 25;
June 11 & 15 written closing submissions;
2024: June 17

JUDGMENT

Introduction

[1] **PHILLIP, J:** This is a claim for the recovery of money loaned or invested in a property (comprising 12,430 Square Feet of land and building thereon) situated at Gros Islet in Saint Lucia and recorded in the Land Registry of Saint Lucia in Block 1456 B as Parcel 273 (“the Property”). The claimants, Rohan James (“Mr James”) and Beverley DeMita (“Ms DeMita”) seek an accounting of the defendant, Tyron Robinson (“Mr Robinson”), ownership of the Property from 9th June 2008 to the date of its sale; the repayment by Mr Robinson of US\$36,000.00 or its equivalent of EC\$97,808.40; alternatively that they are entitled to a one-third share each in the proceeds of the sale of the Property and payment by Mr Robinson such sums; interest on the sum found due to them at the rate of 6% per annum under Article 1009A of the Civil Code of St Lucia¹ (“the Code”) for such period the court thinks fit; and costs.

¹Cap 4.01 of the Revised Laws of Saint Lucia

- [2] Mr James and Mr Robinson were longstanding friends, and they discussed the possibility of a real estate venture. Through Mr James, the claimants allegedly paid US\$36,000.00 to Mr Robinson towards the real estate venture, and the parties executed an investment agreement dated 16th June 2008 ("the Agreement"). The Agreement, among other things, stated that the parties agreed to invest in the Property jointly, Mr Robinson was the registered owner of the Property, that the claimants invested the sum of US\$36,000.00 in the Property, and that the parties agreed to hold equal shares, that is a one-third share to each of the parties in the Property. Also, the Agreement provided that if Mr Robinson was no longer capable of managing his affairs, the Property was to be divided into three equal shares and that the value of the Property was \$430,000.00.
- [3] The claimants' case was that they were lenders of Mr Robinson. Notwithstanding the name given to the Agreement, they were not investors in the Property but lenders to Mr Robinson and, upon sale of the Property, were liable to be repaid any sum loaned to him. Still, if the transaction between the parties is deemed an investment, Mr Robinson failed to manage the investment prudently, with the skill and care required and is liable to repay the claimants the sum paid. They asserted that Mr Robinson failed to provide them with an accounting of the rental of the Property and any information regarding arrangements with the bank for their knowledge regarding the status of the Property or the loan. He sold the Property and never notified them that he sold the Property, nor were the sale proceeds accounted for.
- [4] Mr Robinson contends that the claimants were never lenders; they were investors. They invested EC\$62,000.00 less US\$10,000.00 (EC\$34,831.00) and not US\$36,000.00, which did not pay out. Therefore, they cannot claim from him money that never crystallised in his hands. In the circumstances, all parties have suffered loss, and no one is entitled to claim against the other. Mr Robinson denied liability to pay the claimants a two-thirds or any share. He stated that an accounting was given concerning the proceeds of the sale of the Property. He asked that the claim be dismissed with costs to him as the claimants were not entitled to the remedies sought in their prayers.

Issues

- 5] Considering the respective case of the parties, the following issues arise for the court's determination, which I propose to now deal with in turn:
1. Whether the claimants were investors or lenders of Mr Robinson?
 2. Did the claimants pay Mr Robinson the US\$36,000.00 (EC\$97,808.40) as alleged?
 3. Whether, based on the Agreement and the surrounding circumstances, the claimants are entitled to monies paid to Mr Robinson?
 4. Were the claimants entitled to the accounting of Mr Robinson's ownership of the Property from 9th June 2008 to the date of its sale?

Issue 1: Whether the claimants were investors or lenders of Mr Robinson?

- 6] It is common ground between the parties that they executed the Agreement², and Mr Robinson received at least EC\$34,831.00 plus US\$2,400.00 from the claimants towards the Property arrangement³. The claimants pleaded they were lenders of Mr Robinson, however, their evidence appears to be at odds with that position.

Mr James' Evidence⁴:

- 7] Sometime in 2007, Mr Robinson expressed interest in purchasing the Property, which he thought would be a good investment. They talked about it for some time, and Mr Robinson explained that the Property required renovation. Once renovated, the Property could sell for between EC\$1,300,000.00 and EC\$1,500,000.00. Mr Robinson also explained that the worst-case scenario was that should he not immediately obtain a sale for the Property, the Property could be rented to service the mortgage loan he was planning to take to purchase the Property. Mr Robinson indicated that he was seeking financial assistance to purchase the Property and wanted to know if Mr James was interested. Based on their long-standing friendship and previous business dealings Mr James felt confident proceeding into a property ownership arrangement with Mr Robinson.

² See paras 5 and 7 of the statement of claim filed on 31st May 2017 (as amended on 25th July 2017) and admitted at paras 1(a) , 5 and 7 of the defence filed on 6th July 2017

³ Mr Robinson's witness summary filed 18th April 2019, para 16.

⁴ Witness summary filed 15th April 2019, paras 8 – 15, 18 and 19

- [8] In or about 2008, Mr James spoke to his friend, Ms DeMita, about Mr Robinson's idea and told her what the deal involved. She expressed her interest in becoming involved in the Property acquisition. Later, Ms DeMita visited Saint Lucia while Mr James was there, and he introduced her to Mr Robinson. After visiting the Property and hearing more about the work required and the prospects for sale and rentals, Ms DeMita indicated that she was serious about becoming involved in the purchase of the Property. As they were all in Saint Lucia and having agreed to proceed with the Property investment they felt that some legal documentation to formalise the arrangement was required. Mr Robinson suggested they could go to his lawyer's office, and on 16th June 2008, they signed the Agreement.
- [9] They agreed that after the renovation and until the Property was sold, Mr Robinson was to rent the Property. When Mr James first viewed the Property, he realized that the upper part of the dwelling-house needed renovation whilst the downstairs apartment appeared to be completed, furnished and capable of being rented. When the Agreement was signed, Mr James did not appreciate that the Property had already been acquired and that Mr Robinson had already taken a loan to finance the acquisition of the Property. While Mr James and Ms DeMita were not privy to the details of the loan taken by Mr Robinson, including how much was borrowed, the repayment period or the monthly instalment, they had to pay US\$600.00 each towards servicing the loan until the Property was rented. Mr Robinson had advised them verbally of the monthly loan instalment.
- [10] Mr James stated that when he signed the Agreement, he thought that the title for the Property would have reflected the arrangement they had made as specified in the Agreement and that the Property could not be sold without Ms DeMita and him knowing. He had not undertaken any property transactions while he lived in Saint Lucia. He had engaged in property transactions in the United States with his wife and assumed that things happened similarly in Saint Lucia.
- [11] Although the Agreement provided that Mr Robinson was the registered owner of the Property, he did not appreciate when he signed the Agreement that Mr Robinson had already purchased the Property and the title was recorded in his name. He and Ms DeMita did not see any document which spoke to the ownership of the Property. When they signed the Agreement, he assumed their interest in the Property would be recorded somewhere.

[12] In cross-examination, Mr James stated he was a lender to Mr Robinson. While the Agreement referred to him as an investor, he was never given an investor's rights as there was no communication, so he says he was a lender. Yet, when asked if he intended to make a profit when the Property was sold, he answered yes.

Ms DeMita's evidence⁵:

[13] In or about 2008, Mr James discussed with her a business opportunity he wished to embark on with Mr Robinson, his friend of many years. He informed her that Mr Robinson was interested in purchasing the Property and was seeking investors for the venture. Mr James explained that should she agree to be part of the Property acquisition, and their role would have been to provide a down payment towards the purchase and renovation of the Property.

[14] When visiting Saint Lucia, Ms DaMita met Mr Robinson sometime in June 2008. Mr James introduced him to her and indicated that he and Mr Robinson had been friends for several years. After Mr Robinson further discussed his plans, Mr James and her agreed to proceed with the Property acquisition with Mr Robinson. Since they were all on the island at the time, they decided that legal documentation of the agreement was required. Mr Robinson suggested they go to his lawyer's office to formalize the relationship. They all signed the Agreement on 16th June 2008, prepared by Mr Robinson's lawyer.

[15] As far as Ms DeMita was aware, upon completion of the renovation of the Property, the Property was to be sold. The proceeds of the sale after expenses had to be split equally amongst Mr Robinson, Mr James and herself. They agreed that after renovation and before the Property was sold, Mr Robinson would rent the Property so that the rental income would be used to service the mortgage loan. She knew that Mr Robinson secured a loan for the purchase of the Property; however, she was not aware of the full amount taken, nor was she aware of the financial institution which approved the loan nor the full sum to be paid monthly towards servicing the loan.

⁵ Witness summary filed 15th April 2019, paras 7 – 15

- [16] Ms DeMita never purchased a property in Saint Lucia; therefore, she was unaware of the procedure. She believed that once they signed the Agreement, the title to the Property would have reflected their arrangement and that the Property could not be sold without Mr James and her knowledge.
- [17] Although the Agreement specified that Mr Robinson was the registered owner of the Property, she and Mr James did not appreciate at the time that Mr Robinson had already purchased the Property and that the title was recorded in his name. Neither did they see any document which spoke to the ownership of the Property. When they signed the Agreement, Ms DeMita assumed that her and Mr James' interest in the Property would be recorded somewhere.
- [18] In cross-examination, among other things, Ms DeMita reiterated that in 2008, Mr James put the business proposition to her. She visited Saint Lucia in 2008 for the first and only time, and this was the only contact she had with Mr Robinson. When she saw the house, she decided to invest the sum of US\$18,000.00 in the Property. She also made nine payments of US\$600.00

Relevant Legal Principles

- [19] The Code speaks to what a loan (or lender) is but is silent on investor or investment. Article 1662 of the Code provides that loans are of two kinds: loans of things that may be used without being destroyed, called loans for use, and loans of things that are consumed by the use made of them, called loans for consumption. So far as relevant, the Code states:
- “1677. Loan for consumption is a contract by which the lender gives the borrower a certain quantity of things which are consumed by the use made of them, under the obligation by the latter to return a like quantity of things of the same kind and quality.
1678. By loan for consumption the borrower becomes owner of the thing lent, and the loss of it falls upon him or her.
1679. If the loan be in money the obligation which results from it is the repayment of the same numerical amount in money, current at the time of payment, whether the money has increased or diminished in value subsequently to the loan.
1680. ...
1681. ...
1682. The borrower is obliged to return for the things lent a like quantity of other things of the same kind and quality, at the time agreed upon.
1683. If there be no agreement by which the time for lent return can be determined, it is fixed by the Court according to circumstances.
1684. If the borrower fails to return things lent; he or she is bound at the option of the lender to pay the value which they bore at the time and place at which, according to the agreement the return was to be made;

If the time and place of the return be not agreed up payment must be made of the value which the things bore at the time when and the place where the borrower is placed in default; In either of the above cases the borrower pays interest from the time of default.”

- [20] On the other hand, *The Concise Oxford English Dictionary*⁶ defines the verb ‘invest’ from which the noun investor is derived, among other things, as “*put money into financial schemes, share, or property with the expectation of achieving a profit.*”

Discussion

- [21] Both sides have relied on the Agreement (that a lawyer prepared, presumable after their instructions) in putting their respective cases, and neither of the parties pleaded that the arrangement between them was partly written and partly oral. Still, the claimants urge the court to find, among other things, that the parties entered into an arrangement, the terms of which were not specifically set or agreed upon in the Agreement, resulting in uncertainty as to the obligations of the parties. That the Agreement did not establish the relationship of investors between the parties and the monies paid by the claimants to Mr Robinson did not meet the criteria for an investment, and could only have been intended to be a loan entitled to be repaid. Mr Robinson, as owner of the Property, did not recognize the claimants as co-owners and acted as such in his dealings with them.

- [22] Counsel for the claimants referred the court to various authorities⁷ on the approach and test the court should employ to determine what the parties intended or agreed upon, which I have noted. However, in *Attorney General of Belize & Ors v Belize Telecom Ltd & Anor*⁸, Lord Hoffmann, delivering the opinion of the Judicial Committee of the Privy Council, made some general observations about implying terms into a written document, which are instructive:

“16. ... The court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed: see *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912-913.

⁶ 10th Edition Revised, Edited by Judy Pearsall

⁷ ANUHCv2006/0557, *Gene Samuel v Sheron Whinfield* (which cited or referred to *Bank of Credit and Commerce International S.A. (In Liquidation) v Ali* (No. 1), [2001] UKHL 8, [2001] 2 WLR 735 and *Investors Compensation Scheme Ltd. v West Bromwich Building Society*, [1998] 1 All ER 98) and *Shirlaw v Southern Foundries*, [1926] 2 KB 206.

⁸ [2009] UKPC 10 (18th March 2009)

It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument.

17. The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.

18. In some cases, however, the reasonable addressee would understand the instrument to mean something else. He would consider that the only meaning consistent with the other provisions of the instrument, read against the relevant background, is that something is to happen. The event in question is to affect the rights of the parties. The instrument may not have expressly said so, but this is what it must mean. In such a case, it is said that the court implies a term as to what will happen if the event in question occurs. But the implication of the term is not an addition to the instrument. It only spells out what the instrument means.

19. The proposition that the implication of a term is an exercise in the construction of the instrument as a whole is not only a matter of logic (since a court has no power to alter what the instrument means) but also well supported by authority. In *Trollope & Colls Ltd v North West Metropolitan Regional Hospital Board* [1973] 1 WLR 601, 609 Lord Pearson, with whom Lord Guest and Lord Diplock agreed, said:

“[T]he court does not make a contract for the parties. The court will not even improve the contract which the parties have made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made for themselves.”

[23] The only event happening that the Agreement provided for was in clause [3] (c), in the event that Mr Robinson was no longer capable of managing his affairs, then the Property was to be divided into three equal shares. Still, this could only operate subject to the loan (hypothec) arrangements, which both Mr James and Ms DeMita acknowledged that they knew Mr Robinson obtained to purchase the Property. The fact that they did not insist on being provided with the details of this

arrangement cannot now properly be raised to avoid the consequence of the arrangement. Thus, there is nothing to be implied in the Agreement which must operate undisturbed and the consequence lies where it falls.

[24] Apart from the express words of the Agreement that the parties were investors, the whole tenor of the claimants' evidence (paras [12], [13], [17], [19], [21] and [24] above) was that they approached the Property arrangement as investors. Even the pre-action letter from the claimants' counsel dated 18th June 2012 referred to the arrangement as 'a business investment' and not as a loan. There was no mention of the repayment of the allegedly paid monies, whether with or without interest and when it was to be repaid. Indeed, Ms DeMita at no time in her evidence noted that she was a lender. On the other hand, it was only in cross-examination Mr James stated the basis for saying that he was a lender, as he was never given the rights of an investor as there was no communication. The inconsistency or even contradiction between the pleaded cause and the claimants' evidence suggests a recent avoidance of the consequence of their arrangement with Mr Robinson and deceit, which discredits them as witnesses of the truth on this matter.

[25] Thus, even with the claimants' explanation that they did not appreciate when they signed the Agreement that Mr Robinson had already purchased the Property, and the title was recorded in his name, and that they were unaware of the procedure and believed that once they signed the Agreement, the title to the Property would have reflected their arrangement and that the Property could not be sold without their knowledge, it is clear that the contentions argued for by the claimants were not permissible from the language of the Agreement. In the circumstances, the preponderance of the evidence on a balance of probability inevitably leads to the conclusion that I find that the claimants were investors and not lenders of Mr Robinson.

Issues 2 and 3: Did the claimants pay Mr Robinson the US\$36,000.00 (EC\$97,808.40) as alleged, and are they entitled to the monies paid to Mr Robinson?

[26] These issues are interrelated and may be addressed together conveniently. The evidence of Ms DeMita does not advance the issue of what money the claimants paid to Mr Robinson because she accepted in cross-examination that she never paid any money to Mr Robinson. She made all payments to Mr James, had no documents confirming the payments, and did not know if he gave the money to Mr Robinson.

[27] Mr James, in his witness summary (para 17.), stated that before the Agreement was signed, he and Ms DeMita Kimberly paid the total sum of US\$36,000.00 to Mr Robinson, which was supposed to be their investment and used as a down payment towards the purchase of the Property. This amount was paid partly by wire transfers from the Bank of America from an account in his name and his wife Amanda between August 2007 to September 2007 and January 2008 to April 2008 and by cash, which Mr Robinson had received on his behalf from the sale of a Jeep Wrangler which he had purchased and shipped to Mr Robinson. As far as Mr James was aware, the Jeep Wrangler sold for EC\$65,000. Mr Robinson retained EC\$5,000.00 from the sale proceeds as commission, sent US\$10,000.00 to him in Florida and retained the balance towards the funds for the down payment. The claimants paid the equivalent of US\$36,000.00 to Mr Robinson.

[28] In cross-examination, Mr James reiterated that on 31st January 2008 and 21st April 2008, payments of US\$7,000.00 and US\$10,000.00 were wire transferred to Mr Robinson towards the Property. These payments were reflected in the Bank of America account statement referenced in his witness summary.

[29] As mentioned above, Mr Robinson accepted that the claimants paid EC\$34,831.00 towards the investment through a vehicle repaired and sold for Mr James. In his witness statement (paras 12. to 16.), Mr Robinson stated that Mr James came to Saint Lucia to apply for a loan with him. Still, Mr James did not qualify, so the claimants decided to invest by offering US\$36,000.00, which they never paid. Instead, Mr James sent a crashed vehicle to repair and sell so that Mr Robinson could get the monies to apply to the investment, and sent the parts and funds to clear (\$21,000.00) and repair (\$5,000.00) the vehicle. Eventually, the vehicle sold for EC\$62,000.00, of which Mr Robinson was to return US\$10,000.00 to Mr James. Mr Robinson concluded that he only received EC\$34,831.00 plus US\$1,200.00 paid twice on behalf of Mr James and Ms DeMita.

[30] In cross-examination, Mr Robinson initially indicated that the money wired to him by Mr James was related to the Jeep. Other than that, Mr James wired no other money to him. However, when confronted with the specific wire transfer payments to him reflected in the Bank of America account statement, Mr Robinson stated that Mr James had borrowed (loaned) him some money for fencing his property where he had the Jeep Wrangler and insisted that this money had nothing to do with the purchasing of the Property. Still, Mr Robinson accepted that the Agreement stated that the

claimants had invested US\$36,000.00 but maintained that the only money received was the balance from the Jeep sale. He signed the Agreement because he expected them (Mr James and Ms DeMita) to wire it to him.

[31] I have considered Mr Robinson's contradictory response in cross-examination regarding the monies he received from Mr James; the Bank of America account statement extracts disclosed since 15th February 2019, reflecting the various wire transfers from Mr James to him; and the fact that Mr Robinson did not address it in his evidence until confronted in cross-examination. Consequently, on a balance of probability, I believe the evidence of Mr James that the wire transfers were for the investment in the Property. Further, if the US\$36,000.00 were indeed not paid but were payable to Mr Robinson, the parties to the Agreement could have easily stated that fact in the Agreement rather than saying that the claimants have invested that sum in the Property. I therefore find that the wire transfers from Mr James to Mr Robinson on 31st January 2008 and 21st April 2008, of US\$7,000.00 and US\$10,000.00, were made as part of the claimants' investment in the Property.

[32] However, it may be useful to note that even the most favourable computation of the claimants' evidence does not support a US\$36,000.00 payment. Instead, at best, it would be the wire transfers of US\$17,000.00 plus the balance from the sale of the vehicle being EC\$65,000.00 (US\$23,924.33) less US\$10,000.00 returned to Mr James, giving a total of US\$30,924.33. Still, the fact that I have already determined that the money paid by Mr James to Mr Robinson was as investors and not lenders of Mr Robinson, I agree with Mr Robinson's position there is no basis for the repayment to the claimants of the investment in the Property, that was sold to repay the bank loan and generated no profit.

Issue 4: Were the claimants entitled to the accounting of Mr Robinson's ownership of the Property?

[33] The claimants contend in their statement of claim that they beneficially owned a two-thirds share in the Property, having made a valuable financial contribution to the acquisition and or improvement of the Property consequent on the terms of the Agreement (para [2] above) and the payment of the sum of US\$36,000.00 as acknowledged in the Agreement. Mr Robinson, being recorded as the sole registered proprietor and having control of the Property, was a trustee of the claimants' shares and/or interest in the Property as specified in the Agreement.

[34] Upon the sale of the Property, on or about 15th September 2015, unknown to the claimants, by Mr Robinson to Robertson Felicien and Joanne Mills-Felicien for EC\$700,000.00, the claimants' interest would have crystallised, entitling them to a one-third share each in the proceeds of the sale of the Property after deduction of all lawful expenses. After the sale of the Property, Mr Robinson failed and/or refused to account to the claimants for the proceeds of the sale of the Property and has failed and/or refused to repay the claimants the US\$36,000 invested in the Property or any sum at all.

[35] Mr Robinson has acknowledged the Agreement but asserts in his defence that the claimants may have been entitled to a two-thirds share if the investment had worked. The Property was sold, but all the proceeds went to the Bank, and this was the first opportunity he had to account in writing. Still, he did inform Mr James about the status of the Property in the hands of the Bank, so Mr James was fully aware. Mr Robinson had invited Mr James to take full control, and he would relinquish all rights. Mr James did not agree and asked Mr Robinson to try to sell the property.

[36] Mr Robinson continued that the claimants invested, which did not pay out; therefore, they cannot claim money from him that never crystallised in his hand. In the circumstances of the investment, all the parties have suffered a loss, and no one could claim against the other. Mr Robinson asserted that an accounting has been given concerning the sale proceeds for the Property. He reiterated that Mr James, whom he had contact with, was informed that the Property had to be sold to pay off the Bank as he (Mr Robinson) could not pay the loan without help.

[37] Article 2141 of the Code provides that:

“trust” and “trustee” extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and “trustee” where the context admits, includes a personal representative, and “new trustee” includes an additional trustee”.

While regarding the duties incident to the office of a personal representative, Article 603 (3) of the Code states:

- “(3) Any heir, legatee, creditor or other person interested in any succession may bring an administration action against a personal representative claiming—
 - (a) an account of the dealings and intromissions of that personal representative with the succession and payment to him or her of whatever sum of money may be found to be due and payable by that personal representative;”

[38] Thus, the claimants may be entitled to an accounting from Mr Robinson of his ownership and dealings with the Property provided they can establish that he held the Property on trust (implied (resulting) or constructive) for their benefit regarding their investment in it.

[39] In an implied (resulting) trust, the court presumes or imputes a shared (or common) intention between the parties to share the beneficial interest in the property from the parties' action and conduct concerning the property, and in a constructive trust, it ascertains a shared (or common) intention between the parties to share the beneficial interest in the property from the parties' expressed intention, or it may be inferred or imputed from the parties' action and conduct concerning the property. In other words, as was held by the United Kingdom Supreme Court in *Jone v Kernott*,⁹

“46 ... The primary search must always be for what the parties actually intended, to be deduced objectively from their words and their actions. If that can be discovered, then, as Mr Nicholas Strauss QC pointed out in the High Court, it is not open to a court to impose a solution upon them in contradiction to those intentions, merely because the court considers it fair to do so.

47 ... It cannot impose a solution upon them which is contrary to what the evidence shows that they actually intended. But if it cannot deduce exactly what shares were intended, it may have no alternative but to ask what their intentions as reasonable and just people would have been had they thought about it at the time. This is a fallback position which some courts may not welcome, but the court has a duty to come to a conclusion on the dispute put before it.”

[40] Based on the expressed terms of the Agreement that the parties agreed to invest in the Property jointly, Mr Robinson was the registered owner of the Property, the claimants invested the sum of US\$36,000.00 in the Property, the parties agreed to hold equal shares, that is a one-third share to each of the parties in the Property, and if Mr Robinson was no longer capable of managing his affairs, the Property was to be divided into three equal shares, I am satisfied that the parties' shared intentions regarding the Property was that the claimant would each have a one-third beneficial share or interest in the Property despite Mr Robinson was the sole registered owner of the Property. Thus creating a constructive trust against Mr Robinson in the claimants' favour.

⁹[2011] UKSC 53, paras 46 & 47; [2012] 1 AC 776

[41] In the circumstances, the claimants are entitled to an accounting of their investment by Mr Robinson of his ownership and management of the Property, from the date of the Agreement, 16th June 2008, to the date of its sale because although Mr Robinson asserts that he accounted to Mr James, there was no evidence to substantiate this. There were allegations and conflicting evidence of commingling or consolidation by Mr Robinson of the Property loan with his other loans and the rental of the downstairs of the Property. There are matters in my view the claimants, as beneficial owners of the Property are entitled to have clarified by way of an accounting.

[42] However, I hasten to add the caution that in light of the court's decision on the other issues raised above, the parties may wish to consider the practicality of insisting on an accounting - was it economically proportionate with its outcome, bearing in mind the efforts and expense to now discover the requisite information and prepare the accounts.

Conclusion

[43] The claimants and Mr Robinson have succeeded on two of the issues raised in the case (para [5] above) – the claimants on issues 2 and 4 and Mr Robinson on issues 1 and 3. In the circumstances, I believe that it is reasonable and just that there should be no order as to costs, which usually follow the event.

[44] Accordingly, IT IS ORDERED THAT:

1. The claimants' claims for the repayment by Mr Robinson of US\$36,000.00 or its equivalent of EC\$97,808.40, or alternatively that they are entitled to a one-third share each in the proceeds of the sale of the Property and the payment by Mr Robinson such sums, and interest on the sum found due to them at the rate of 6% per annum under Article 1009A of the Code for such period the court thinks fit, are dismissed.
2. Mr Robinson shall provide the claimants with an accounting of his ownership of the Property and manage the investment from 16th June 2008 to the date of its sale, as the parties shall agree.

3. There shall be no order as to costs.

**Justice Rohan A Phillip
High Court Judge**

By the Court

A handwritten signature in black ink, appearing to be 'J. Phillip', written over a horizontal line.

Registrar