EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2020/0054

BETWEEN:

SABRINA BUTCHER

Claimant

And

AUGUSTIN STEPHEN

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini High Court Judge

Appearances:

Ms Kristian Henry, for the Claimant
Mr. Horace Fraser, for the Defendant

2022: January 31;
February 1; 8;
March 15;
July 11.
July 26 [Re-Issued].

JUDGMENT

[1] **ST ROSE-ALBERTINI, J. [Ag]:** The claimant Sabrina Butcher ("Sabrina") instituted this action against the defendant Augustin Stephen ("Augustin"), alleging that in August 2009,

she and Augustin orally agreed to create a partnership to carry on the business of operating a restaurant and bar, in which they were to share equally in the net profits. It was an implied term that they were to act in good faith.

[2] Sabrina says she undertook certain acts and incurred certain expenses in connection with the business partnership. In August 2019, the relationship broke down and Augustin unceremoniously evicted her from their shared apartment and attempted to dismiss her from the role of manager of the business, thereby acting in breach of their partnership agreement and his fiduciary duty to the business. She further claims that Augustin has retained her personal belongings and refuses to return them to her. She seeks (i) a dissolution of the partnership, (ii) an account of the finances of the partnership, (iii) a declaration of ownership of her personal assets, (iv) injunctions restraining Augustin from removing, damaging, or disposing of the joint business assets and her personal assets, (v) damages, (vi) interest; and (vii) costs.

[3] Augustin contends that he is the sole owner of the business and Sabrina was his employee, who managed his business operation. He denies that she was ever his business partner or that they operated the business together. He alleges that she was in no financial position to contribute to or invest in a business venture and denies the expenses allegedly incurred by her. He asserts that she stole, siphoned, and converted to her own use, sums of money belonging to the business, and has breached the trust he reposed in her, in relation to the financial management of his business. He filed a counterclaim in which he seeks a declaration that she holds on trust for him a one-half interest in the assets of her car rental and guesthouse business, allegedly financed with the stolen sums. He also seeks an order that she pays to him a one-half share of the value of the assets and income therefrom, or alternatively that she be ordered to repay him the total sum stolen as special damages, plus interest and costs.

The Issues

[4] The Court is required to resolve the following issues:-

1. Was there was a partnership or joint business venture between Sabrina and Augustin; alternatively, was Sabrina merely an employee of the business?
2. Did Sabrina contribute financially towards the start-up costs and other expenses of the business?
3. Did Sabrina steal, siphon, or convert sums of money from the business for her personal use, and if so, how much?
4. Did Augustin make any monetary contribution to Sabrina's car rental and guest house businesses and is he entitled to any share in these businesses on account of such contributions; alternatively, by virtue of sums allegedly siphoned from the business?
5. Has Augustin retained personal effects belonging to Sabrina, which should be returned to her?

Issues 1 and 2: Was there was a partnership or joint business venture between the parties, or was Sabrina merely an employee of the business? In considering this, did Sabrina contribute financially towards the start-up costs and other expenses of the business?

[5] Augustin's testimony is that Sabrina was an employee, managing his restaurant, firstly under the trade name Local Restaurant & Bar ("LRB") and then Petit Peak Restaurant & Bar ("PPRB"). When he met her in 2007, she had been recently fired from Jalousie Hotel where she was employed in the kitchen making pastries and was in dire financial straits, with four children to maintain. In 2008, he hired her as a timekeeper on a construction project and took her to live with him. During this time, she received no assistance from her relatives. She had no money of her own to inject into the business and her claim that she did so is false. He on the other hand was a contractor for many years and had amassed enough money to go into business. All the funds injected into the business came from him, and she did not bring any special skills, which could earn her the right to be a partner, having not invested any money.

[6] On 2nd June 2009 he entered into a lease agreement for rental of the two-story premises which housed the business and Sabrina's name was not included on the lease. At the time, the building was not in tenantable condition, and repairs and renovations were executed using his own funds. In late 2009 he applied to register the business under the name Petit Peak Restaurant & Bar, however, this required approval from the Piton Management Area, which he eventually obtained in 2016 and the business was subsequently registered under that name. He says he had nonetheless commenced the business in October 2009 using the said name, and at that time hired Sabrina to manage the business. She received a salary of $2,000.00 per month during the peak season and $1,000.00 per month in the off-season. To start the business, he traveled to the United States of America ("USA") to purchase several commercial kitchen appliances and supplies, and paid the shipping, customs duty, and transportation costs. Most payments were made on his credit card which had a limit of US$6,000.00 and none of the funds came from Sabrina, even though she accompanied him when he travelled, and went shopping with him.

[7] He says as manager, he intended to have Sabrina as a signatory to the business' account, and in October 2010 they approached the Bank of Saint Lucia to open a business chequing account for PPRB. This was not possible as the business name had not yet been registered. Shortly thereafter, without his approval, consent, or knowledge, Sabrina registered the business name LRB in her sole name. He learned of this when she approached him to fill out an application for a chequing account in that name. He objected and she accepted that it was a temporary measure, pending registration of PPRB. In 2015, he entered into a further agreement to lease the top flat of the building which housed the restaurant and bar, to operate a guesthouse called 'Petit Peak Haven'. Sabrina played no part in setting up the guesthouse other than to book guests. At that time, she was busy organizing her own guesthouse, so he relied on his daughter Ivory Piltie ("Ivory") to manage bookings.

[8] Ivory's evidence is that she has known Sabrina since 2008 as Augustin's girlfriend who worked for him as a timekeeper on one of his construction sites, and later, as the manager of his restaurant. She stated that she frequently assisted her father to review and keep important documents and was aware of his investments. By June 2009, he had spent over $40,000.00 to renovate the building which housed the restaurant, and paid four months' rent

plus security deposit in advance. In April 2009, she prepared US visa applications for her younger sister, Sabrina, and Augustin to travel to see his mother, and to shop for the restaurant.

[9] She says the restaurant opened by October 2009 using the name PPRB, but Augustin faced challenges with registration of that name because it required approval. At his request, she pursued the approval of the name, as this was necessary to open a bank account for the business. She was overseas for some time and only learned in 2016 of the delay in obtaining approval of the name, and that as a result a temporary name was used for business transactions. She says in 2017 her father diversified the business by opening Petit Peak Haven guesthouse, after a full transformation of the upstairs of the restaurant. Sabrina did not assist in marketing the guesthouse as agreed, as she was over-occupied with her newly acquired Church Street building, renovating same for a guest house and car rental. So she Ivory, did what was necessary, including managing bookings.

[10] Sabrina's testimony is that she and Augustin were in a common-law relationship from 2008. In early 2009, she proposed the idea of opening a restaurant with him. She had experience in the restaurant business and became aware that a two-storey property was available for lease. They agreed to enter into a joint venture to operate the restaurant from which they would share equally in the profits. They also agreed that it would be best if Augustin approached the landlord for the lease, as she was concerned that the property may not be leased to them if the landlord knew she was a partner. This was because she had been an employee of the previous lessee who had a falling out with the landlord. Around June 2009, the lease was obtained, and commenced in October 2009. The agreed monthly rent was $5.000.00. It was agreed that Augustin would pay $19,800.00 towards renovations, to be reimbursed by the landlord through deductions in the monthly rent.

[11] Relying on their agreement, she obtained two loans from the Choiseul Credit Union for the purposes of travelling and purchasing equipment and groceries for the restaurant. She obtained the first loan in the sum of $20,000.00 in September 2009. A manager's cheque for this sum was deposited into her account at the Bank of Saint Lucia and cashed to Augustin. This account has since been closed and she is unable to retrieve the information

pertaining to the transaction. The loan was used to travel to the USA, where she and Augustin stayed at her aunt Eunice's house and shopped for items for the business. Additionally, her grandmother and uncle gave her $10,000 cash towards supplies and groceries for the business.

[12] The business began operations in October 2009. She managed the daily functions such as the hiring of staff, grocery shopping, National Insurance Corporation ("NIC") payments, and payroll. She was also the head chef and worked on average up to 15 hours a day, up until 2016, when Augustin suggested that she should no longer work as the chef, due to health concerns. He had minimal interaction with the day-to-day business operations. He would mainly handle the shopping trips such as purchasing fish when directed, and end of day cashing. As far as she was aware, he acquired no further construction contracts and no longer had a source of income outside of the joint business. She agreed that she received a salary of $1,000.00 to $2,000.00 from the business, reflective of off-peak or peak season and Augustin would receive a salary of $1,000.00, although they would both sometimes be paid more than the agreed amount. They employed around 10-12 staff members at peak times.

[13] Sabrina confirmed that they intended to operate the business under the name PPRB and Augustin applied to register that name. However, as the consent of the Piton Management Area was required, she registered the business name LRB on 9th February 2011 and they opened a bank account for LRB. They were both named as signatories on the account, through which all the business transactions were conducted. She says Augustin did not object to registering the temporary business name, neither did he object to the opening of the bank account.

[14] She obtained the second loan in the sum of $30,000.00 on 6th November 2011, which was again used to travel to the USA, and to purchase equipment and groceries for their business. Her aunt Eunice would also regularly send gifts which were used at the restaurant. Similarly, between 2016 and 2017 her aunt had also bought several items to outfit the Petit Peak Haven guesthouse. She acknowledges that Petit Peak Haven was mainly managed by Augustin.

[15] Sabrina says LRB was profitable and paid for itself. It covered the bills including the rent for its premises, purchase of groceries, payment of staff, and travel expenses to purchase groceries and items for the business. In 2012 they moved into a residential apartment and the rent was paid by LRB. On 8th October 2016 they purchased a vehicle for LRB, which was registered in both their names. That vehicle and its annual expenses were also paid from the business. In 2016 they agreed to change the business name, and PPRB was registered on 18th October 2016 in Augustin's sole name because Augustin indicated that he had encountered difficulties with a previous registration of a business partnership. They set up a bank account for PPRB and were both named as signatories on that account. On 20th June 2017 Augustin transferred the balance of $30,000.00 from the bank account of LRB, into the new bank account of PPRB.

[16] Eunice Butcher ("Eunice") is Sabrina's aunt. She testified that whenever she was able, she would assist Sabrina financially throughout the years. Around 2009, Sabrina and Augustin were in a common law relationship, and they informed her that they would be opening a restaurant together. Throughout the years that the restaurant was in operation, she would purchase items such as blenders, cutlery, dishes, and other items, for the restaurant. She would also purchase groceries on occasion, including coffee, sugar, bulk packets of tea, and creamer and sent them to Saint Lucia. Augustin also requested that she purchase two air conditioning units for the Petit Peak Haven guesthouse. She was never reimbursed for this purchase, and many other items such as several sets of good-quality linen, pillows, comforters, mattress protectors, curtains, bulk pack soap, televisions, and other items, which she bought for the restaurant and guesthouse. She also purchased items such as shoes, wallets, bikinis, and other clothing for Sabrina to sell at the gift shop. Additionally, she purchased batteries, lights, folders, and a mobile phone for Augustin. Eunice says between 2016 and 2017, she spent in excess of $25,000.00 on items for Petit Peak Haven, the gift shop, and the restaurant.

[17] Eunice stated that Sabrina would offer to reimburse her, however, she informed Sabrina that these items were gifts and told her that she could keep the money from the restaurant. Eunice says she also purchased items such as a food processor, toaster, curtains, bedspreads, and towels, for Sabrina and Augustin's shared apartment. She says

unfortunately she does not have receipts for the items she bought throughout the years, but exhibited receipts for some items recently purchased, being hair nets, fairy lights & string lights, an apron, mixer attachments, pizza cover, reserve signs, 3 TV wall mounts, blender, clothes, a life size Santa and bedsheets, which remain in Augustin's possession. She says the restaurant was Sabrina's proposal, into which Sabrina invested large amounts of her own funds, and sums were contributed by other family members. Sabrina also invested a large amount of her time in the business, having worked as a chef, as well as managing their business for many years. Eunice says she would not have given so much to a business in which Sabrina was merely an employee.

[18] Soulina Melius ("Soulina") worked as manager of the restaurant from July to September 2016. Her duties involved opening the restaurant, overseeing operations, managing the boutique, preparing fortnightly payroll and the schedule for shifts, and closing the restaurant. Soulina says she was hired by Sabrina, whom she knew to be the owner of the restaurant and who provided her mandate and job description, paid her, did payroll for staff and everything else that needed attention at the restaurant. Sabrina would also work in the kitchen, assisting the chefs, and washing dishes and glasses whilst managing the restaurant, and staff followed her lead. She was not aware of Augustin having any involvement in, or contribution to, the restaurant. He did not attend meetings, do payroll, or advise on the operation of the business. He was hardly there, and would just come to eat lunch now and then. Soulina testified that when Sabrina would go on vacation, she gave her close to $3,000.00 from her own personal funds to take care of anything the restaurant needed. There was also a bus driver from Gros Islet who would sometimes drop off cash at the restaurant, which was the income from a bus route that Sabrina owns. On one occasion when two suppliers were requesting payments while Sabrina was away, and cash was insufficient cash, Sabrina authorized her to use cash from the bus driver, to pay the restaurant's bills.

[19] Jessica Carter ("Jessica"), Sabrina's daughter, testified that in and around 2009, she was privy to discussions between her mother and Augustin concerning opening the restaurant together. She had overheard conversations to this effect and even participated in some of the discussions, which also involved video conferences with her aunts.

[20] Sabrina and her witnesses appeared forthright and sincere, in cross examination. Although Eunice could not provide documentary evidence how monies were sent to Sabrina, and the receipts and shipping bills for items purchased did not show that they were shipped to Saint Lucia, she maintained that they were purchased for Sabrina and Augustin's business at their request, that they were sent to Saint Lucia, and used in the restaurant and guesthouse. She maintained that she has seen some of these very items in the restaurant and guesthouse. In cross examination Soulina stated that while employed at the restaurant Sabrina had told her that she and Augustin were the owners. She maintained that Sabrina had authorized her to use her personal funds towards the restaurant's expenses, on occasion.

[21] When questioned generally about joint business ventures, Sabrina stated that in starting a business partnership, partners would usually discuss the type of business, individual roles, the amount of money needed, how much each partner would contribute, and the items to be purchased. She accepted that she did not provide any details of such discussions between herself and Augustin and could not recall decisions on these matters. She rejected the assertion that she did not contribute to the expenses when they traveled to Barbados to obtain their visas, and to the US to shop for items for the business. She maintained that she had brought cash with her, although she did not have proof of same.

[22] She disagreed that Augustin paid for all expenses to start the business, and remained resolute that she contributed to the startup expenses through the loans she had borrowed and in respect of each loan she had given Augustin a manager's cheque, which he deposited into his account. She accepted that she only exhibited loan account statements, but did not exhibit any manager's cheque. She insisted that the loan funds were used for the expenses of the business. She says although the restaurant was in operation from 2009, the 2011 loan was also used to purchase items for its operation. She did not accept that she made no investment because the loans were repaid with income from the restaurant. She stated that nothing prevented her from including Augustin's name in the application to register LRB, but she registered it in her sole name because Augustin had indicated that as long as they both had signing authority on the chequing account, his name did not need to be included.

[23] On the other hand, the evidence of Augustin and his witness in cross examination was rather weak. Ivory was not in a position to offer much evidence on this issue. Augustin was inconsistent and evasive in his responses, and appeared less than forthright. For example, when asked what prompted him to go into the restaurant business, he stated that he had built a jetty in Soufriere in 1988 and observed that guests would come to the jetty and that could be a good source of business. He also mentioned bringing roti to Sabrina when she was working at Pirate's Cove. He confirmed that he met her in 2008 when she was working at Jalousie, in the kitchen, preparing breakfast, yet he vehemently denied that she was a chef, initially calling her a cook, before changing his response to "*she used to help in the kitchen*." He was asked whether Sabrina had expressed to him an interest in opening a restaurant and he replied that one day, Sabrina said to him, referring to the location of the old courthouse in Soufriere: "*That place is closed. If I had money, I would open a restaurant there*." He was also asked if he had realized from 1988 that the old courthouse would be a nice place to open a restaurant, to which he said yes. Counsel put it to him that it was very convenient that he decided to open a restaurant only at the time of being in a relationship with Sabrina, who had restaurant experience and had expressed interest in opening a restaurant, so many years after he first became interested in doing so, and suggested that it was Sabrina's idea to open the restaurant, to which he replied, "*I did not know*." He continued to deny that they agreed to open the restaurant together.

[24] He denied that the loan which Sabrina obtained in 2009, two months before the restaurant opened, was for start-up costs. He was insistent that she did not give him a cheque for $20,000.00 or any money towards travel and purchasing items for the business. Although he says he bore all costs, he admitted he could not provide receipts for any of the items he purchased. He agreed that they both approached Bank of Saint Lucia to set up an account for the business, stating "*I had to take somebody there*," yet insisted that she had registered LRB without discussing it with him or putting his name on it. When asked whether it was strange that an employee would be allowed to operate a business in her own name, he replied that "*somebody can grant a favour, she can do it because of her job as manager*." He claims he did not object, because he had no choice, and acknowledged that although

the name LRB was supposed to be temporary, he allowed it to remain in place for 5 years. This, he said, was not his fault, but that of the Piton Management Area.

[25] Although he agreed that Sabrina scheduled shifts, paid staff, assisted in the kitchen, and advised on groceries to be purchased, he sought to deny that she worked long hours, suggesting that she merely sat idle. According to him: "*she used to watch the street and not even take guests to sit. The hours were not all that great.*" He denied that she worked extensively at the restaurant, saying "*she did what she was supposed to do as manager*." As for his role, he stated he had a farm, but he did not provide produce for the restaurant often as he was busy. He received payment when he did provide produce, although according to him the payment was "*nothing to talk about, just a little thing*" and that Sabrina as the manager was supposed to pay him. It was put to him that he had little involvement in the day-to-day operation of the restaurant and did not do much, to which he said, "*I fixed things*." Augustin also agreed that he held a joint account with Sabrina at the Fond St. Jacques Credit Union, in which profits from the restaurant were kept. It was put to him that sharing the profits of the business with her suggested she was a partner, and he disagreed. He however agreed that a smart businessman would not share profits with someone who is just an employee, and not a partner. He also agreed that the salary he received of $1,000.00 was additional to the monies held in the joint account at the Fond St. Jacques Credit Union, and described his salary as "*pocket change for entertainment*."

[26] Augustin testified that once he found out about alleged fraudulent cheques received by the bank, his relationship with Sabrina ended. He said he had accused her of cheating on him in 2016, but prior to that, he, Sabrina and his daughter lived together and the restaurant funds paid for their shared accommodation. Also the restaurant funds paid for his daughter's schooling, and Sabrina also sent her children to school on the same money. He said he trusted Sabrina, but that was at an early stage when she showed him love. Although he was shown the certificate of registration for PPRB bearing registration date 18th October 2016, he insisted that he did not register PPRB in his sole name in 2016 – the same year he accused her of cheating, and was adamant that it was registered in 2017.

[27] Ivory stated she had been told that Sabrina had prior experience in the food industry, but could not say whether she had contributed to the restaurant. She was not aware that Sabrina had obtained a loan in 2009 and insisted that she did not give her father a cheque for $20,000.00. She however agreed that Sabrina made contributions toward the cost of travel, as she did the bookings. She was not aware of any conversation between Sabrina and Augustin about setting up the restaurant together, or that they operated the restaurant together. She agreed that their relationship started in 2008 and the restaurant was opened in 2009, and that this was a short period of time. She said a lease agreement came to her for review, with only Augustin's name on it. She would have known if Sabrina was a partner, as that would require documentation, her father would have placed this in writing and brought such documents to her. Her father would not go into business with someone he was trying to help.

Analysis

[28] Article 21 of the **Commercial Code**[1] defines a partnership as "the relation which subsists between persons carrying on a business in common with a view of profit." The three elements which must be satisfied to establish the existence of a partnership are: (i) the carrying on of a business, (ii) that the business is carried on in common; and (iii) with a view for profit. **Halsbury's Laws of England**[2], defines 'business' to include "trade, occupation or profession." There is no doubt that the restaurant operations constitute a business and was carried on with a view to profit. These matters are not in issue between the parties. The dispute is whether the business was carried on by Sabrina and Augustin in common. In **Albert Oliviere v Augustine de Roche**[3], Baptiste J noted that in determining the existence of a partnership, regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. Further, as partnerships often exist without written agreement, the absence of direct documentary evidence of any agreement for a partnership is entitled to very little weight. In such circumstances, the intention of the parties must be ascertained from their words and conduct.

[1] Cap 13.31
[2] Volume 79 (2020) Partnership, 5th edn.
[3] Saint Vincent and the Grenadines Suit No. 412 of 1998, pages 4-5

[29] In seeking to ascertain the parties' intention, article 22 of the **Commercial Code** identifies some of the factors that may be considered. These include co-ownership of property and the sharing of profits and gross returns. Article 22(2) addresses the weight that may be given to these factors and provides that co-ownership of property and the sharing of gross returns do not, of themselves, create a partnership. Nonetheless it is accepted that these factors may provide some evidence of the intention of the parties. In that regard **Halsbury's Laws of England**[4] states that the "mode in which the property has been dealt with....may well prove important." As well, article 22(3) states that "the receipt by a person of a share of the profits of a business is prima facie evidence that he or she is a partner of the business".

[30] A similar approach was espoused by the court in **Abott v Abott**[5], cited by Counsel for Augustin, Mr Fraser, where the Privy Council stated in the context of ascertaining the common intention of parties regarding acquisition of property and the respective interest of the parties in such property:-

> *"…the search is to ascertain the parties shared intentions, actual, inferred or imputed, with respect to the property in light of their whole course of conduct in relation to it … if the question really is one of the parties' 'common intention', we believe that there is much to be said for adopting what has been called a 'holistic approach' to quantification, undertaking a survey of the whole course of dealing between the parties and taking account of all conduct which throws light on the question what shares were intended."*

[31] Having assessed the words and conduct of the parties, the evidence leads to the finding that Augustin and Sabrina operated the restaurant in common with each other. It was Sabrina's desire, and her idea to open the restaurant, which is admitted by Augustin. It is of no moment that Sabrina does not recall certain discussions, which were likely had, as Jessica recalls. Augustin's reason for wanting to go into the restaurant business is also inexplicable and obviously false. I agree with Ms Henry that it was quite convenient that 20 years prior to Sabrina's suggestion to open a restaurant at a particular location, Augustin had entertained the very same idea. It is telling that despite this, he never in fact carried out the idea until

---

[4] Supra, note 2
[5] [2007] UKPC 53

approximately 1 year after starting his relationship with Sabrina, after she expressed the very idea to him. I accept that Sabrina was the one with experience in the food industry.

[32] I do not accept Augustin's testimony that Sabrina did not contribute to the startup travel costs. She maintained that she did and this is corroborated by Ivory, who did the bookings and would have known. It is also of little consequence that she could not remember the precise sums she contributed over a decade ago. Mr Fraser, took issue with the exhibits provided in respect of the loans and submitted that she has not provided a copy of the manager's cheques which she says she gave to Augustin and was deposited into his account. Mr Fraser submits that the loan statements exhibited show that the loan proceeds never left her account and several smaller amounts were drawn down. Contrary to his suggestion, the loan statements do not show the manner of disbursement of the proceeds of the loan, and merely shows that the proceeds were made available to her. As Counsel for Sabrina, Ms. Henry points out, the statement shows payments towards the loan on a reducing balance in the 'Credit' column and accrual of interest in the 'Debit' column.

[33] I agree with Ms Henry that the inferences Mr. Fraser asks the Court to draw cannot be attributed to the loan statements. I do note the inconsistency in Sabrina testimony in cross examination that she gave Augustin the managers cheques to deposit into his account, and in her witness statement she says the managers cheques was deposited into her account and cashed to him. It appears she may have been a bit confused, but none of this counters the use to which she says the funds were put, which was towards the business. As well, some weight must be given to the timing of the loans. The first loan was obtained only two months prior to the opening of the restaurant and this proximity, makes it very likely that it was used for the startup expenses of the restaurant.

[34] The second loan was taken some three years into the restaurant's operations, which is not in any way curious, as Mr Fraser suggests, as the restaurant would have had continuing expenses. Sabrina remained steadfast in cross examination about the use of the proceeds of both loans. I accept her evidence that on occasion, she diverted her personal funds to the restaurant's operations, from the income derived from her bus route, which remained unchallenged. Weight must also be given to contributions in cash and kind to the business

by Sabrina's family, which appears to be significant - $10,000 from her uncle and grandfather and thousands of dollars' worth of items gifted by her aunt, Eunice. Evidence of these contributions remain uncontroverted, and it is highly unlikely that her family would have made these contributions, if Sabrina was a mere employee and not a partner and co-owner of the restaurant. Although it was said that there is little or no documentary evidence of the contributions by Sabrina and her family, I note that Augustin was also unable or failed to provide documentary evidence of his contributions.

[35] It is of no moment that Sabrina's name is not on the lease. Article 22 of the **Commercial Code** provides that co-ownership of property is not conclusive of the existence or non-existence a partnership, and a rental agreement in the parties' joint names is even more remote. Sabrina gave a plausible explanation for this, which has not been challenged. The restaurant operated for most of its existence (2009-2016) under the trade name LRB, which was registered in Sabrina's sole name. Although it is said that she did so without Augustin's knowledge or consent, and thereafter, approached him to set up the business' chequing account with him as a signatory, her level of initiative and independence is more indicative of the role of a partner in the business, than a mere employee. She denied that Augustin objected to registration of LRB or setting up the account, and his responses under cross examination corroborated her evidence. He appears to have accepted the situation, and certainly did nothing to correct it for over 5 years. If she was in fact a mere employee, acting beyond her authority, it is unlikely this would have been treated so lightly. I agree with Ms. Henry that the registration of the business names in either Sabrina or Augustin's names at different periods during the operation of the business, is an indication that a partnership was in effect.

[36] Mr. Fraser argued that sections 3, 5 and 6 of the **Registration of Business Names Act**[6] cumulatively require the existence of a partnership to be reflected in writing. That is incorrect, as the sections require that every firm carrying on business in Saint Lucia, having a business name that does not consist of the surnames of the partners, without any addition other than their Christian names, be registered. This entails furnishing the Registrar of Companies with

[6] Cap 13.03 of the Laws of Saint Lucia

a statement in writing in the prescribed form, which includes the names of the partners. In my view these sections are requirements for registration of a partnership and not for determining the existence of a partnership. If the name of the partnership included the names of the partners, there would be no need for registration. That distinction is clear from the proviso to section 6 which states:

> *"However, the statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner,* ***is not evidence for or against any other person in respect of his or her liability or non-liability as a partner and that the court may, on application of any person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section."***

[37] It is worth noting that when Augustin registered PPRB in 2016, their relationship was already deteriorating, but they both remained joint signatories on the business' account. They were joint and equal signatories on the LRB account, and when PPRB was registered the LRB account was subsequently closed. Augustin himself opened a new account in the name of PPRB, to which he made both himself and Sabrina joint and equal signatories. As late as June 2017, he transferred the balance of $30,000.00 from the LRB account to PPRB for continuation of the business. In my view this clearly demonstrates that they continued the business together even after PPRB was registered by Augustin in his sole name. Augustin's assertion that Sabrina was only a signatory because she was employed as manager, to my mind is inconsistent with the extent of Sabrina's involvement in the business.

[38] Sabrina was very involved in the management and day to day operations of the restaurant. From all accounts, she performed every job and task to be done as needed to run the operation. She hired and fired staff, scheduled their shifts, did payroll, ordered supplies, paid suppliers, and cooked and cleaned. In my judgment, she worked assiduously to make the restaurant successful. Augustin on the other hand, had minimal involvement and would occasionally purchase fish and deliver produce from his farm, according to the evidence. Although Sabrina and her witnesses mentioned that he was involved in end of day cashing, the extent of this involvement is questionable, as he did not mention performing this function, and it is clear that he had little knowledge of the financial affairs or operations of the business.

[39] It is of no moment that Sabrina earned a salary from the restaurant. Augustin acknowledges that he did too. He described the salary he earned as '*pocket change'* yet this is the same salary, by his account, he paid Sabrina as an employee and the manager of the business in the off-peak season. If he were to be believed, this would be simply unconscionable. He admitted that the profits of the business were placed into a joint account between himself and Sabrina. This is highly probative and indicative of a partnership, as it suggests that they shared in the profits of the business. Equally probative is Augustin's matter of fact admission that Sabrina, like him, sent her children to school from the profits earned from the business. He did not suggest that this was in any way inappropriate or that he had any objection. It appears that under Sabrina's management the business was profitable and paid for itself, including rent, vehicle, payroll, groceries, and equipment, and this has not been challenged. Both parties agreed that the profit from the restaurant paid for their shared residential accommodation and sent both their children to school. I accept that the sharing of the gross profits of the business is strong evidence of a partnership.

[40] Ivory's evidence on this issue is of little weight. She seemed to assist as requested with specific tasks and was remote from Augustin and Sabrina's relationship and the business operations, until the situation deteriorated in or about 2018. Her only bases for saying that Sabrina was not a partner in the business is her belief that her father would not have entered a partnership without putting it in writing and giving her the documents to keep, and that he would not go into business with someone he was trying to help. It must be noted that this was not a strictly professional relationship and Augustin was not merely charitably assisting Sabrina. They were in a common law relationship from 2008 until at least 2016 when the relationship began to deteriorate and the issues concerning the partnership began to surface.

[41] Based on the foregoing, I find that a partnership was in effect. Augustin testified that PPRB has been closed since the Covid-19 lockdown in March 2020 and has not resumed operations. He blames Sabrina for the closure of the business, saying PPRB has no money to pay staff. It is clear that their relationship has broken down and they have gone their separate ways. It is therefore appropriate that the order for dissolution of the partnership be

granted. As provided in **Halsbury's Law of England**[7], the legal position is that partners share equally in the business and assets of the partnership unless there is agreement to the contrary. There is no evidence of a contrary agreement, and it appears that only the monies in the joint account at Fond St. Jacques Credit Union remains. The balance in the said account is to be split equally between them, and the account closed.

Issue 3: Did Sabrina steal, siphon or convert sums of money from PPRB to her own use and benefit, and if so, how much?

[42] Augustin's counterclaim is premised on the allegation that Sabrina was employed as the manager of the restaurant, which included financial management. As such she owed him a fiduciary duty of trust and confidence. He states that she breached this fiduciary duty by stealing, siphoning and converting monies from the business, for her own use. However, this issue must be considered in the context of my earlier finding that Sabrina was at all material times a partner in the business and not a mere employee. Thus, she could not have owed Augustin a fiduciary duty as an employee. As a partner she was entitled to share in the profits of the business equally with him, in the absence of any agreement or indication to the contrary. It has not been alleged or shown that Sabrina made use of more than her half share entitlement in the business. Certainly, it has not been shown that she stole or converted Augustin's share in the partnership according to the legal definition of those terms quoted by Ms. Henry from **Black's Law Dictionary** as follows:

> Steal: *"This term is commonly used in indictments for larceny, ("take, steal, and carry away,") and denotes the commission of theft, that is, the felonious taking and carrying away of the personal property of another, and without right and without leave or consent of owner ... and with intent to keep or make use wrongfully."*
>
> Conversion (law*): "An unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of*

[7] Supra, note 2

their condition or the exclusion of the owner's rights. Any unauthorized act which deprives an owner of his property permanently or for an indefinite time."

[43] In my opinion, on these bases alone, the counterclaim would be defeated. Nonetheless, for completeness I will go on to consider its merits, or lack thereof.

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

[45] In support of his counterclaim Augustin says around May or June 2019, Ivory observed irregularities in the financial management of the business by Sabrina, which she brought to his attention. He caused an audit to be conducted by the accounting firm I.V. Accounting and Tax Services ("IV"), which revealed that between August 2017 and June 2019 Sabrina stole, siphoned, or converted to her own use and benefit the sum of $264,753.37, being payments made to persons associated with her, and NIC payments made on their behalf. In further support of his allegations, he relied on the Expert Report of Leonard Evans ("Mr.

Evans"), an accountant with 34 years' experience. He was solicited by Mr Nelson of IV to review Disbursement Analysis Reports produced by that firm, at the instance of Augustin.

[46] Ivory's evidence is that by 2018, her younger sister Kerdija who was living with Augustin and Sabrina and was working at the restaurant brought to her attention some unusual activities in the way Sabrina was making cash withdrawals. Her initial investigation revealed that these cash withdrawals were not accompanied by invoices to aid reconciliation, and that Sabrina would send her Church Street guests for complimentary breakfast at PPRB, her four children would request meals and make no payments, and she would limit breakfast options for Petit Peak Haven guests. She noticed that Sabrina caused Kerdija to make a salary cheque deposit in Kerdija's name in an amount that did not match current staff's total salary. She obtained a breakdown for all account names and numbers for which deposits were made, from the bank, and discovered that persons who were not staff members were receiving money from the business.

[47] After she had acquired sufficient evidence, she had a meeting with Sabrina at which she agreed that she had not been running the restaurant as she should and had been consumed by her own guesthouse. The filing system needed to be addressed, as Sabrina could not provide clear information on expenses and profits. Ivory says she requested a breakdown of salaries and based on the figures and the NIC remittances, she realized that the figures were inflated, and Sabrina was not being transparent. She requested the cheque book and noticed that stubs and duplicates were missing. Sabrina allowed her to keep the checkbook to fix the bookkeeping system but then behaved suspiciously when she requested several previous cheque books. Ivory says Augustin gave her full authorization to access all banking information for the restaurant, but Sabrina refrained from taking her calls and texts and eventually replied that she was not her boss, and withheld pertinent information needed to analyze the accounts. Ivory says she combed through statements and cheque books to produce a report so that the accountant could have a full picture of Sabrina's mishandling of the business accounts. Additional discoveries were made of utility accounts belonging to Sabrina's guesthouse and her grandfather's house being paid using the business' cheques.

[48] In cross examination, she admitted that she is not an accountant, but had a bachelor's degree in business administration, and prior to 2018 she only assisted with a few administrative tasks. She was not involved in the restaurant's operations such as purchases, payroll nor cheque encashment, save after 2019, shortly before Sabrina departed the restaurant. She agreed she was not present at the restaurant daily and had her own full-time job. Nonetheless, she knew who all the employees were at any given time based on the NIC forms and that from 2019 she was aware that some employees were paid in cash and others by cheque, as informed by Sabrina, and that tips were shared among all employees at the end of the day. She agreed however that tips could be paid by card and that these tips could be included in the payment made to an employees' account along with their salary. Yet she disagreed that it was possible that the amount paid on the NIC forms would not directly relate to the amount on payroll cheques to employees. She disagreed that she did not have sufficient knowledge of these matters, to conclude that irregular payments were made based on the NIC forms.

[49] Ivory stated that payments were made to persons who were not employees and she was aware that the restaurant had daily expenses that required cash, but could not say whether there would not be enough cash for all such cash transactions, at any given time. She could not say whether it was possible that cheques were written to persons to obtain cash for the business, but stated that if salary payment cheques were written to include a surplus to be cashed for urgent daily expenses, the owner would have to be aware. She did not agree that her father was named as a payee and stated that he did not have to know what he was depositing in the bank because he was in a relationship with Sabrina and trusted her.

[50] Ivory agreed that her sister Kerdija assisted at the restaurant, for which she was paid, but was not an employee for NIC purposes and was paid using cashed payroll cheques. These cheques also included cash payments for staff who did not have accounts. She knows which cheques were for cash payroll because usually they have the same date as the cheques deposited into accounts. She was not aware that cash payroll cheques included cheques to named persons who had bank accounts. She insisted that cheques paid to individuals to be cashed were not payroll cheques and would have been for payment of suppliers, and

cheques written to non-employees were not to obtain cash for daily expenses but were cashed cheques that were not for the business.

[51] She disagreed that it was reasonable to expect that persons working in the restaurant would be unable to leave to get cash when the restaurant was busy, and stated that any person assigned to get cash should have been agreed between Sabrina and Augustin. She could not say what each cashed cheque was used for, but insisted that Sabrina stated it was for payroll for persons without accounts and she could not see why it would be used for anything else. She disagreed that she lacked understanding of the restaurant operations and that she was ill-placed to decide whether irregular payments were made. She stated that there was no evidence to show that it was possible that all expenses and transactions were legitimate. She disagreed that her father was also responsible for these matters, as he was the owner of the business and had assigned staff to do these things.

[52] In rebutting these allegations Sabrina says she has no knowledge of any monies being stolen, siphoned, or converted from the joint business. She and Augustin have always been joint signatories on the business' bank account and it has always been a requirement that they both sign any cheques issued by the business. Augustin would be aware of all transactions carried out by the business. He handled the end of day cashing and many of the business' transactions were cash transactions. These ranged from the daily petty cash for the float and reserved daily expenses which would assist in paying suppliers or last-minute orders. Many of the suppliers were paid through cash transactions, such as buying produce from local market stalls, and groceries from wholesalers. Cheques would have to be written in her name so that she could get cash to pay employees who did not hold bank accounts, or seasonal employees. Sometimes cheques would be written in the names of other trusted persons to be cashed for the business depending on how busy the restaurant was. Cheques would also be written for the staff to cash, to cover various restaurant expenses, whilst she and Augustin were travelling.

[53] During the operations of the restaurant, her daughter Jessica, who worked at her father's villa hotel, would sometimes ask to use her personal vehicle to rent to guests. She realized that this would be a good business venture, so she bought another vehicle, to provide rental

services, for which she obtained a loan from the Credit Union. She took further loans for more vehicles to rent on an ad hoc basis. Initially, the car rental business did not have an account and sometimes guests would be asked to make payment at the restaurant and these sums would be reimbursed to her from either the restaurant cash that day, or by cheque. Further, her Church Street guesthouse did not have an account and sometimes guests would be instructed to make card payments at the restaurant. These sums would also be reimbursed by cheque written to her.

[54] Prior to having the restaurant business she owned a bus route jointly with her grandfather and the driver would sometimes drop off cash at the restaurant from his daily earnings. She had instructed the staff that, if necessary, the cash could be used if the float was low or expenses arose during the day. When she remembered, these sums would be reimbursed to her by cheques in her name. In this way, a large of portion of her personal finances went into expenses for PPRB for which she was never reimbursed. She also tried to reimburse her aunt Eunice for all the items she had purchased for the joint business, however Eunice insisted that she keep this money, which was in excess of $25,000. She says she only recouped a fraction of this money and identified a cheque dated 31st December 2018 in the sum of $10,000.00 recorded in the Disbursement Analysis Report, as one of these occasions.

[55] In cross examination, it was put to Sabrina that she could not afford all her expenses on her salary, including the several loans she took over the years. Her response was that the restaurant paid all her expenses, as a result she did not have any significant monthly expenditure. She indicated that the loans taken for the restaurant were repaid with funds earned from the restaurant and similarly, the loans she took for her other businesses (the car rental and the Church Street guesthouse) were repaid from the earnings from these businesses, respectively. She says her salary did not repay any of the loans. She disagreed that the restaurant business repaid her vehicle loans. She agreed that she did mix personal funds with that of the business, but denied that she gave the guests from her Church Street guesthouse complimentary breakfast at the restaurant, or that she allowed her family and friends to eat at the restaurant without paying.

[56] Sabrina agreed that Ivory approached her about the finances of the business and requested cheque books from her. She never turned them over, as Ivory was not the owner of the business. She and Augustin had a restaurant together, and Ivory was a stranger requesting information from her. She insisted that she kept records of receipts of monies but those were all left at their shared apartment, and she was not allowed to retrieve them. Even though Augustin pre-signed cheques, she maintained that he always knew the amount going out, and that she did not use this as an opportunity to write cheques in her name and other people's names. She stated that they were both in charge of the finances of the business between October 2009 and August 2019. She did not know who Mr. Nelson was and she did not agree with his statements as he has never approached her, and would have needed to ask her questions in preparing the Disbursement Analysis Reports.

[57] Sabrina's daughter Jessica stated that in the early days she would assist with administrative tasks. She was not a regular salaried employee but was reimbursed accordingly, on an ad-hoc basis. The majority of the restaurant's operations relied on cash transactions ranging from daily petty cash for the float, reserved daily expenses to pay suppliers or last-minute orders, buying produce from local market stalls, and groceries from wholesalers. She would assist her mother and Augustin with the end of day cashing, which involved compiling receipts in date order, and with payroll which included having cheques written in her name when her mother and Augustin were unavailable to cash such cheques for staff who were paid cash in hand, or for petty cash, or the reserved daily expenses. This practice was also carried out with other trusted employees. Additionally, her cousins and Augustin's daughter would assist, and be paid, but were not salaried employees. When her mother and Augustin travelled, she would often manage the restaurant, including handling all payments.

[58] Jessica says she observed that the Disbursement Analysis Reports provided by Augustin states that she received three salary payments by cheques, but this is an error as the amounts paid are similar to the fortnightly salary of a restaurant employee, and were paid into a Bank of Saint Lucia account. She has never held an account with Bank of Saint Lucia and the corresponding account number does not belong to her. She has also never been on the payroll for NIC, for the restaurant. She was aware that some of the cheques highlighted in the reports were for payroll employees who did not have bank accounts and as such

received cash in hand. Some were written in her name at the request of her aunt who worked as a cook, to be cashed for her, as she was unable to do so herself. Cheques were cashed out to her partner, Che Ryan's account, who helped frequently with the business, as she did not have a Bank of Saint Lucia account.

[59] She says on several occasions her mother would loan her personal vehicle to be rented to guests of her father's villa hotel. Her mother eventually took a loan to purchase a vehicle to offer rentals, and she would book her mother's vehicle out to guests and sometimes have them make payment at the restaurant, if they had not already paid for the rental in their booking fee with her father's villa hotel. This money would be reimbursed by the restaurant to her mother usually by cheques made out to her. When her mother opened Church Street guesthouse in 2017, the restaurant was promoted to the guests and they would be booked in for breakfast and meals at the restaurant. On occasion, as the guesthouse did not have a card machine to accept payments, guests would be directed to make payments at the restaurant, for bookings and additional services from the guesthouse. These monies would be reimbursed by the restaurant to her mother, usually by cheques made out to her.

[60] In cross examination, Jessica confirmed that the restaurant relied on cash transactions and cash came from cashing of cheques, among other sources. She disagreed that there were always several cheques pre-signed by Augustin available for all transactions, and stated that Augustin hardly had any presence at the restaurant. She stated that some of the restaurant work was done at their apartment, so he was aware. Additionally, Augustin and Sabrina would have regular conversations about what was going on at the restaurant, including finances and monies injected, for which Sabrina was waiting to be reimbursed and cash payments made. She rejected the assertion that Augustin had no role in the finance and administration of the business, or would not be aware of financial matters. She reiterated that cheques were written to her to be cashed to pay staff who did not have bank accounts. She maintained that when guests were asked to make payments for vehicle rental at the restaurant, she ensured that the payments were in fact made.

[61] *The Expert Report*: Mr Evans says he perused summary reports prepared by Mr. Nelson based on information provided by Augustin and Ivory, working papers, invoices and receipts,

copies of bank statements and cashed cheques, and calculations according to NIC and PAYE. He sought clarifications from Mr. Nelson, where warranted. He used due diligence as the guide in exercising professional judgment taking into consideration all possible circumstances. He considered the format of IV's reports to be satisfactory, as the information was verified and corroborated by source documents and calculations based on statutory requirements, and were tested for accuracy and reasonableness. He found the reports to be acceptable given that in some cases information was incomplete and there were no other alternatives but to apply reasonableness tests and analysis.

[62] Based on his review, he says there were numerous instances where payments and deductions made could not be substantiated as amounts which were related to the business. He made further inquiries including review of staff recruitment processes, to establish whether there was sufficient knowledge of all employees in the business; the names of all employees; utility accounts which constituted legitimate payments; and the acquisition of items which were either business related or for personal use. The disbursement process was also reviewed to establish whether amounts could have been paid without the knowledge of the owner, and as expected, internal controls were non-existent. He says given the nature of the relationship between Augustin and Sabrina; this arrangement could have lent itself to the present situation.

[63] Mr Evans says upon further enquiry with Augustin and Ivory, it was revealed that at least seven individuals who were not employed by PPRB were being paid by the company over the period August 2017 to June 2019. The salaries payroll was prepared by Sabrina and sums were written as the total for all salaries. Subsequently, deposit slips were written for specific accounts belonging to persons who were not employees. He says this explains why NIC deductions were not submitted for some individuals who were actually paid salaries, and that is a statutory requirement for all employers. Further, inquiry with Augustin and Ivory confirmed that Sabrina was being paid a fortnightly salary of $2,000.00 to manage the affairs of PPRB which would have amounted to two fortnightly payments per month. However, there were five instances where she was paid more than twice. These findings are not exhaustive but serve to highlight some of the irregularities found. Based upon his review of information and explanations provided, he formed the opinion that there was sufficient evidence to

indicate significant misappropriation and misuse of business funds for purposes other than that of the business. A total of $112,298.97 could not be verified and a total of $151,824.40 was paid to Sabrina and persons associated with her, who were not employed by PPRB.

[64] In response to written questions put to Mr Evans pursuant to CPR32.8, he provided further information and elucidation of his findings. He says he was approached by IV to review the Disbursement Analysis Reports, which formed the basis for his engagement. In his view, the reports were sufficient in content to form the basis for his review. Whilst he did not provide any examples of the verifications he undertook of these reports, he clarified that the source documents he used to verify them were NIC remittances. He stated that he did not observe any inaccuracies in the reports and confirmed that both conclusions from the reports were relevant to his Expert Report. He did not provide the additional detail requested on the author of the documents he perused in reviewing the reports, except to say that these documents were verified by and formed part of the reports from IV. In respect of the class of documents entitled "Invoice and Receipts", he said they comprised invoices paid to WASCO and UNICOMER that were not for PPRB, as far as Augustin could ascertain. In relation to his review of business staff recruitment procedures, names of the employees, utility accounts and whether acquisition of items was for business or personal use, he said he obtained this information from Ivory, who informed him that the non-employees in question were not employed by PPRB, and that Augustin would have been aware of the employees working for the restaurant.

[65] Although Mr Evans agreed that a significant number of the transactions for the business, such as customer payments, payments to suppliers, and last-minute grocery purchases were cash-based, he says the cheques being queried did not fall into this category. He arrived at the figure of $151,824.40 through examination of cheque books, bank statements and deposits made to accounts of individuals. He relied upon conversations with Ivory to confirm that the cheques for payroll were specifically allocated for only payroll purposes. Ivory indicated that cheques were signed by the owner to facilitate the payment of salaries, but no specific figure would be written on the cheques. He disagreed that the payroll cheques

could also be used to pay business expenses, such as petty cash or payments to suppliers, as payroll cheques were for the specific purpose of paying salaries.

[66] He stated that he concluded that the 7 persons listed in his report were not employees of the business, through perusal of the NIC remittance forms, which did not include contributions for these individuals. He concluded that salaries payroll was prepared by Sabrina for all employees (including the 7 non-employees) because she was the manager of the business. He failed to identify any instances in the Disbursement Analysis Reports where payments were made to the seven individuals, and where corresponding NIC payments were not made. He confirmed that at no time was he provided with a breakdown of salaries and the amount apportioned to gratuities for all the employees. He agreed that 'wages' as defined by the NIC Act does not include gratuities, Christmas bonuses and annual production bonuses. However, he disagreed that without the breakdown of an employee's gross earnings, such as the amount of gratuities, it would be impossible to ascertain the correct NIC deduction for each salary payment.

[67] Mr. Evans stated that Sabrina received wages of $1,000.00 to $2,000.00, which was one of the largest sums paid as salary, but did not pay NIC contributions. He used NIC forms against payroll cheques to work out legitimate payroll payments and his conclusion was that there was a huge difference between payroll and NIC payments. He agreed that the fact that Sabrina did not pay NIC, and the amount of her salary would affect the difference between payroll and NIC, but not significantly. He was told that tips were shared at the end of the day, but he was not informed that tips were also paid via debit or credit card directly into the business' account, nor was he informed that tips were paid directly into employees' accounts. Although he was aware that NIC contributions are capped he was not provided the age of all employees. He agreed that it was possible that variable factors such as age, tips and the NIC limit could affect his reconciliation of the NIC forms, as against the amount paid out by payroll cheques.

[68] He explained that the sum of $112,928.97 was derived by comparing the salaries paid and the NIC deductions made, which revealed that this amount could not be accounted for. He agreed that there could be a possible legitimate explanation for the difference in payment

between the payroll cheques and the amounts deducted for NIC contributions, given that the restaurant business had a significant amount of cash transactions and that a part of an employee's wages may not be subject to NIC deductions, but stated that some portion of the salary would have been subjected to NIC deductions. He could not confirm that the cheques highlighted in his report as written to Jessica Charles were in fact paid to Jessica Charles. He also could not confirm whether there was a practice of cheques being written to persons who were not employees to facilitate daily operations, such as paying employees and obtaining cash for operations. He questioned why a cheque should be written to a non-employee when this could have been handled from within.

[69] Mr Evans agreed that the Disbursement Analysis Reports illustrated that the majority of payroll cheques were issued to Augustin, and it would be reasonable to assume that as the payee and business owner, he would have had full knowledge of the deposits he was making with the said cheques. He disagreed that it was possible for a person being paid fortnightly, to be paid more than twice in one month. In relation to the finding that Sabrina was paid $99,600.46 over the period August 2017 to June 2019, it was put to him that considering that her fortnightly remuneration of $2,000 calculated over that period totals $98,000.00, that 98% of the sum paid to her was valid remuneration. He was of the view that summarizing the payments in this way, would hide the transactions. In response to the question whether it was reasonable that the business required at least $6,000.00 monthly as an expense reserve and for petty cash, he stated that the issue is not residual amounts or what can possibly be assumed to have transpired, rather it is that the cheques were specifically issued for the payment of salaries. Similarly, he was of the view that because the cheques were specifically issued for payment of salaries, it was an unsubstantiated assumption that the amount by which the cheques exceeded Sabrina's salary (being $2,340.97 per month unaccounted for), could reasonably have been used towards business cash flow for expenses.

[70] He stated that there was no further information that would have assisted with his review concerning the allegation of misappropriation of funds by Sabrina. He did not agree that the Disbursement Analysis Reports from IV were insufficient and unreliable to conclude that there was misappropriation of the business funds, without having been provided a cash flow

statement of the business operations. He opined that the scope was being widened to provide possible explanations. On the issue of establishing wrongdoing by any party, he maintained that despite the limited scope of the Disbursement Analysis Reports, they contained facts in the form of written cheques, bank statements and payments which could be independently verified, when compared with the statements, illustrations and assumptions posed. He therefore disagreed that his Report was unqualified or inconclusive.

[71] In cross examination he acknowledged that his statements that certain cheques were payroll cheques, were based on what he was told by Ivory, and the cheques did not have in the memo section that they were solely for the purpose of payroll. He was aware that Ivory did not work at the restaurant but he would not know whether she knew about all daily transactions. Nonetheless, he did not agree that as she was not an employee or a manager, the information provided by her was not entirely reliable. He says he asked questions and he got answers. He was aware that Sabrina was the manager of the restaurant and agreed that it was possible that she would have knowledge of daily transactions and operations of the restaurant, yet was of the view that Sabrina could not have assisted him in coming to a conclusion in his Report. He did not need her side of the story, as he had sufficient evidence to come to an opinion.

[72] He disagreed that it was possible that the information he had before him was one sided, as his opinion was based on records such as bank statements and NIC forms. He agreed it was possible that not all pertinent information was provided to him, to arrive to an unbiased opinion, but stated the information he had was sufficient to form an opinion, as it was independent of the business. He says while it would have been useful to have information about the restaurant's daily transactions, that such information would not have changed his opinion because Mr Nelson and Ivory told him that there was scant information pertaining to daily transactions. He was not sure if records were available and when it was put to him that there was scant information to ground his opinion of significant misappropriation and misuse of business funds, and this could not be properly formulated, he disagreed.

[73] In light of the legal definitions of 'steal' and 'misappropriation' put to him by Ms Henry he said he confirmed his opinion that there was misappropriation based on the finding of unallocated

sums from perceived payroll cheques. He could not speak to whether invoices could have been used to reconcile unallocated sums and whether as manager Sabrina could have assisted in this regard. According to him, that information was not forthcoming and there was sufficient evidence that there were funds disbursed to individuals who were not part of the restaurant. It was also put to him that bearing in mind the definition of misappropriation, unallocated funds cannot be misappropriated, but rather an assumption of misappropriation would have to be made.

[74] It was pointed out to him that as the exhibits indicate NIC payments for two of the persons listed in his report as non-employees, his statement must be incorrect. He insisted that these persons were not employees as he was told that Sabrina owned another business and that employees of her other business were paid on the restaurant's salaries. He agreed nonetheless that the NIC forms carry more weight than the words of person who commissioned his Report. He admitted that in the Disbursement Analysis Reports, where it showed two different persons – Jessica Charles and Jessica John as having the same account number was an error, and he was not told that Jessica John was an employee. He disagreed that this error would have made his figures incorrect.

[75] It was put to him that he was informed by Ivory that Sabrina was paid by cash, yet his report concerns salary cheque payments to Sabrina, to which he admitted that she was paid by both cash and cheque. He stated that the figure which he says was misappropriated took into account all payroll cheques contained in the Disbursement Analysis Report and nearly half of that sum could include salary payments to Sabrina, based on her fortnightly salary, and would have been taken into account when compiling the alleged misappropriated figure of $151,824.00. He opined that although no NIC deduction was made for salary payments to her, the figure found as being misappropriated was not highly inflated, as it was based on the information he received. He did not agreed that the data he relied upon was inherently flawed, or that his Report was biased, unverified, inconsistent, and inexpert.

[76] Mr. Evans stated that he does not hold an accounting license to practice in this jurisdiction, nor did he hold one when he gave his Report. He did not know whether it was true that he could not provide an audit opinion without a licence. He stated that his report was in line with

the 'Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements. Although he agreed that the Guidelines for reviews state that conclusions should be specific to financial statements, he disagreed that he ought not to have provided an opinion in these circumstances, and says it is a Guideline and not cast in stone. He stated that the misappropriated funds as opposed to unallocated funds is giving an opinion on financial data. He had come across businesses with little to no accounting system, multiple businesses which share one bank account, businesses that utilize accounts of sister businesses or comingling of funds, and that these are all improper accounting systems. He knew that there were also accounting systems configured to meet specific needs and admitted that it was possible that a business could write cheques to non-employees to be cashed, and could include in payroll cheques sums for other operational expenses. He says he would describe this as more than just bad accounting practice, and it would amount to non-existence of internal controls.

Analysis

[77] I am unable to find on the totality of the evidence that Sabrina stole siphoned, or converted the funds of the business to her own use and benefit. Ivory and Mr. Evans were far less than forthright in their testimony which is fraught with inconsistencies and inaccuracies. Sabrina on the other hand appeared sincere even regarding her shortcomings. One of the major difficulties with Augustin's evidence is that the information which formed the basis of the Disbursement Analysis Report from which Mr. Evan's Report was prepared was obtained from Ivory and Augustin. There was no independent or unbiased investigation conducted. Sabrina was never consulted. Ivory indicated that she combed through statements and cheque books to produce a report to show Sabrina's mishandling of the business accounts. She formed her conclusion and then produced information to substantiate it. Mr. Evans states on numerous occasions that he blindly accepted information given to him by Ivory, even in the face of inconsistencies and inaccuracies. Ivory admitted that she was not involved in the operations of the business and was not present on a day-to-day basis. It is clear that she had little understanding of the workings of the business. This renders her

evidence and that of Mr. Evans wholly unreliable for the purpose of proving misappropriation of funds.

[78] The two conclusions reached in the Disbursement Analysis Reports on which Mr. Evans says he relied are qualified by the note "*We are not in a position to identify why the payments were made or the relationship of the person receiving such payments, Ms. Sabrina Butcher*". All the conclusions state is that "*the total of payroll cheques is materially more than payroll for NIC purposes*." This, to my mind, does not prove misappropriation or theft. It also does not prove that the unallocated funds were not used for the business and were appropriated by Sabrina for her own purposes with the intention to deprive the business of same.

[79] Sabrina indicated how the unallocated sums were utilized and neither Ivory nor Mr. Evans have been able to refute same. In large part, they admit that the uses to which Sabrina and her witnesses say the funds were put were possible, such as cheques written to employees and non-employees to be cashed for payroll for employees who did not have bank accounts, and cash reserve for daily expenses. Whether this is good or bad accounting practice is not the subject of this case. Further it was wholly inappropriate to utilize the reconciliation of payroll as against NIC payments to determine the question of misappropriation because of the variable factors admitted by Mr. Evans such as age, the NIC limits, and the breakdown of salaries.

[80] Additionally, the Expert Report is unreliable due to the inaccuracies and omissions observed, among them (i) the failure to take into account Sabrina's salary which eventually was admitted as paid at least in part by cheque, (ii) the fact that she did not pay NIC which must account, to some extent, for the difference between NIC and payroll payments, (iii) the fact that persons who were stated to be non-employees were in fact employees per the NIC documents, (iv) misallocation to Jessica Charles of salary paid to Jessica John who was an employee; and (v) the fact of not having the breakdown of salaries.

[81] Although I question Sabrina's evidence that Augustin was integrally involved in end of day cashing, as the evidence reveals that he was hardly present or involved in the business operations, I do believe that he was a payee and signed cheques to be cashed and used as

necessary. As such he was aware of the general way in which financial matters were handled via cashing of cheques to cover all manner of expenses, be it operational or payroll.

[82] I therefore conclude that the Expert Report and Ivory's evidence added no value to the ventilation of the issue of misappropriation, conversion, and theft. I accept Sabrina's evidence that the employees listed worked at the restaurant at various times and were paid for their services. I accept that payments were made to non-employees who were trusted friends and family for the purpose of obtaining cash for the business. I agree that it was a small informal business with no proper accounting systems or controls in place, and that Sabrina was not trained or experienced in financial and/or business management, but did the best she could to manage the finances of the business. I also agree with Sabrina that if Mr Evans had taken the time to make independent inquiries of her, he would have gotten more fulsome explanations to the matters that he has categorized as irregularities in his Report. The fact that there were bad accounting practices, and an absence of proper systems or controls does not mean that the funds were not used for the purposes of the business. Sabrina has provided reasonable explanations for what Mr. Evans refers to as the unallocated sums. Without independent and unbiased investigations, the Disbursement Analysis Reports and by extension the Expert Report are woefully inadequate to arrive at a finding that funds were stolen, siphoned or converted from the business.

Issue 4: Did Augustin make any monetary contribution to Sabrina's car rental and guesthouse businesses and is he entitled to a half share of these business on account of such contributions or by virtue of sums allegedly siphoned from the restaurant business?

[83] As it has been determined that Augustin has failed to prove, on a balance of probabilities, that Sabrina stole, siphoned or converted monies belonging to the business to her own use, he cannot be entitled to any interest in her car rental or guest house business on this account.

[84] As to whether he has any such entitlement on the basis of contribution, his evidence is that sometime prior to 2016, Sabrina indicated her intention to start a car rental business and suggested they conduct that business as a joint venture. He invested $5,000.00 as part of the startup capital and her grandfather contributed the sum of $5,000.00 The balance came from the restaurant while it was operating under the name LRB, to cover expenses such as vehicle insurance and licensing. The business started with one vehicle which was registered in his name and sometime thereafter she purchased three more vehicles. In 2016 when PPRB was registered he suggested to Sabrina that she transfer the car rental business to her sole name, as he no longer wished to be in joint business with her. She accepted, and on the same day that PPRB was registered, she registered Yellow Cab in her sole name. Then in 2017, she acquired the guesthouse claiming that it was through a loan facility from the Fond St. Jacques Credit Union.

[85] Sabrina's testimony is that in August 2016 she purchased a vehicle for herself with $5,000.00 given to her by her grandfather and $5,000.00 as a gift from Augustin. She subsequently informed Augustin that she would be purchasing property in her own name to operate a guesthouse. He offered to purchase the guesthouse as a joint venture which she refused to do so as the funds to acquire the loan would come from her own personal savings. In August 2017 she obtained a loan from the Fond St. Jacques Credit Co-operative Society Limited with her own savings acquired from family, her other businesses and the profits of the joint business and purchased the property for her guesthouse on 15th September 2017. The guesthouse began operation in 2017 and depending on the time of year, total revenue was US$5,000.00 to US$10,000.00 which was more than adequate to cover the loan repayment, which was approximately $2,200.00 monthly.

[86] In my opinion Augustin has failed to prove his claim on a balance of probabilities. He has not substantiated his allegation that he made any significant contribution to Sabrina's car rental or guesthouse such that he is entitled to any interest therein. With respect to the guesthouse, he has not said that he made any personal contribution to the acquisition of the property or the operation of that business. In respect of the car rental business, he says he contributed $5,000 .00 to purchase the first vehicle. Sabrina's evidence is that this was a gift. I find her evidence more credible, and is substantiated by Augustin's own evidence that

he suggested that the car rental business be transferred to her sole name, and willingly exited. This was done without seeking any compensation or return on investment. In cross examination he stated unequivocally that he was not claiming a stake in her car rental business and that it is registered in her name, so it belongs to her. That is sufficient to dispose of the matter.

[87] Augustin asserts that funds from the joint business may also have gone into acquisition of the Church Street guesthouse, but has provided no evidence to support this bare allegation. Sabrina indicated that the property was purchased using her personal savings and loans, income of the businesses themselves, and profit from the joint business. Based on my previous findings, she is entitled to profits from the joint business as a partner. Augustin has not shown how much of the profits of the joint business were invested in her other businesses or that it exceeded her fair share of profits from that business. Therefore, this claim must also fail.

Issue 5: Has Augustin retained personal assets of Sabrina, which should be returned to her?

[88] Sabrina testified that Augustin has refused to allow her to retrieve her personal belongings left at their shared apartment, when he evicted her in August 2019. She exhibited a copy of receipts from Courts for items purchased solely by her for the apartment and asks that Augustin be compelled to return her belongings. Jessica and Eunice also gave similar evidence, and Eunice testified that she also left her personal effects at the apartment, for use during visits to Saint Lucia, and has not been able to retrieve them.

[89] This has not been denied by Augustin, as far as the evidence goes. In cross examination, Sabrina was asked why she left her belongings at the apartment when asked to vacate, and she indicated it was because she was not given enough time to relocate them. She was asked by Mr Fraser whether she was still willing to collect her belongings, to which she said yes, and Counsel indicated that the necessary arrangements would be made. That disposes of this issue.

Conclusion

[90] Based on the foregoing, I make the following declarations and orders:

1. There was a partnership between the parties, in which they were joint and equal partners and they agreed to split the profits equally, which is hereby dissolved.
2. The claimant contributed to the joint business which commenced as LRB, then transitioned to PPRB and that business ceased operations from March 2020 at the onset of the Covid-19 pandemic.
3. Whatever is left by way of equipment, furniture, and fixtures of PPRB must be valued and sold and the proceeds divided equally between the parties, as it is not possible at this stage to identify and distribute items which each party says they purchased or contributed to the business.
4. As the business was jointly owned, both the claimant and defendant would be entitled to 50% of the profits generated from it, and any sums of money in any bank account belonging to PPRB must be divided equally between the parties and the account closed.
5. The joint account at Fond St. Jacques Credit Union into which profits from PPRB were deposited shall be divided equally between the parties and the account closed.
6. The defendant's counterclaim is dismissed.
7. The defendant is to return to the claimant all of her personal effects which were left at their shared residential accommodation, no later than **18th July 2022**.
8. Cost is awarded to the claimant to be assessed, if not agreed within 21 days.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar