

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CIVIL DIVISION

3 CAUSE NO. G0005 OF 2016
4

5 BETWEEN:

LINDELL WELLINGTON
6 AUDREY WELLINGTON
7 BARRINGTON WELLINGTON
8 SHARON WELLINGTON
9 LYNVAL WELLINGTON
10 LORNA WELLINGTON
11 SANDRA WELLINGTON



12 PLAINTIFFS

13
14 AND:

15 DELROY WELLINGTON

16 DEFENDANT

17
18 Appearances:

Mr. H. Phillip Ebanks for the Plaintiffs

19 The Defendant in Person

20 Before:

Honourable Justice Cheryll Richards Q.C.

21 Hearing Dates:

22 13th, 14th, 15th, 22nd, 27th and 28th February, 1st 14th and
23 15th March 2019

24 HEADNOTE

25 *Civil Division – s.23 of the Registered Land Law (2004 Revision) Express*
26 *Constructive Trust – Property held in a Matrimonial or similar context.*

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28 JUDGMENT



1 INTRODUCTION

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1. The seven Plaintiffs and the Defendant are the children of Edna and Isaac Wellington. A ninth child predeceased her parents. Mother and Father emigrated to the Cayman Islands from Jamaica in the early 1970s. Eight of their nine children emigrated with them. One child, Barrington Wellington remained in Jamaica although he would visit the family in the Cayman Islands from time to time. On occasion by virtue of a work permit granted to him to work as a handy man on his parent’s property he would remain on Island for extended periods.

2. By all accounts Edna and Isaac Wellington were a hardworking and industrious couple. They built a residence at 19 Brinkley Drive in Central George Town and over time added a number of rental apartments to the said property. This property, more formally described on the Cayman Islands Land Register as George Town Central Block 13 D Parcel 111 (“the property”) is at the heart of the dispute between the parties.

3. During their lifetime Edna and Isaac Wellington collected and shared between them the rental income from the property and although they lived in separate apartments, they both continued to reside on the said premises up to the time of their death. As at the trial date the evidence from the Defendant is that eight apartments were rented with a gross monthly rental income of \$3, 875.00. The Defendant and his wife reside on the property in a ninth apartment thus reducing the possible income by \$575.00.

4. Edna Wellington (“Mother”) died intestate on the 24th August 2014. Upon her death the property which was jointly owned with Isaac Wellington passed into his sole ownership, following deletion of her name by virtue of s.115 of the Registered Land Law (2004

1 Revision). Audrey Wellington, one of the daughters had a power of attorney over her
2 financial affairs up until her death. On the 11th November 2014, Isaac Wellington signed
3 a document in the presence of Justice of the Peace, James Arthur Roy Bodden, (“Mr.
4 Bodden”) by which he consented to the appointment of the Defendant as Administrator
5 over the estate of his wife.¹ On the application for Letters of Administration over his
6 mother’s estate, the Defendant attested to an inventory consisting of personal property
7 to a value of CI \$80,000.00 and no real property. His application was granted on the 6th
8 March 2015.

9
10 5. Isaac Wellington (“Father”) died intestate on the 16th March 2015 following a long
11 illness. He was about 85 years old. Prior to his death, on the 5th September 2014, in the
12 presence of Mr. Bodden, he executed a transfer document which added the name of the
13 Defendant, Delroy Wellington as joint owner of the said property at 19 Brinkley Drive
14 in consideration of “natural love and affection for my son.”²

15
16 6. On his father’s death by virtue of s.100 of the Registered Land Law (2004 Revision), the
17 Defendant became the sole owner of the said property. This section is in the same terms
18 as in the 2018 Revision of the Law and provides as follows:

19
20 “100. (1) *Where the land, lease or charge is owned jointly, no proprietor is*
21 *entitled to any separate share in the land, and consequently-*
22 *(a) dispositions may be made only by all the joint proprietors;*
23 *and*
24 *(b) on the death of a joint proprietor, his interest shall vest in*
25 *the surviving proprietor or the surviving*
26 *proprietors jointly.*

27
28 (2) *For avoidance of doubt, it is hereby declared that-*

¹ Attachment to Affidavit of Delroy Wellington dated 21st February 2019

² Exhibit JRB1 to the Affidavit of Roy Bodden dated 20th August 2015



- 1 (a) *the sole proprietor of any land, lease or charge may*
2 *transfer the same to himself and another person jointly; and*
3 (b) *a joint proprietor of any land, lease or charge may transfer*
4 *his interest therein to all the other proprietors.*

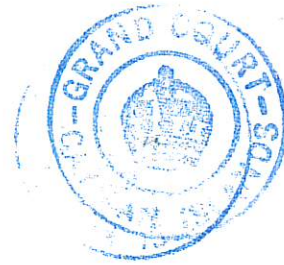
5
6 (3) *Joint proprietors, not being trustees, may execute an instrument in*
7 *the prescribed form signifying that they agree to sever the joint*
8 *proprietorship, and the severance shall be completed by*
9 *registration of the joint proprietors as proprietors in common in*
10 *equal shares and by filing the instrument.”*
11

12
13 7. By Originating Summons filed on the 12th January 2016, the seven Plaintiffs seek, *inter*
14 *alia*, declarations that:

- 15 a. The Defendant is not the sole beneficial owner of the property;
16 b. The property forms part of the estate of the late Isaac Wellington;
17 c. The Defendant holds the property on trust for the estate of the Deceased for himself
18 and all the Plaintiffs;
19 d. The persons entitled to claim or benefit from the said estate are the Plaintiffs and the
20 Defendant;
21 e. The Defendant is liable to account for rents and profits of the property from the date
22 of death of the Deceased Isaac Wellington to the present.

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24 8. The Defendant opposes the application primarily on the basis that his father's wishes are
25 clearly set out in the transfer document signed on the 5th September 2014.





1 **BACKGROUND**

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9. By way of procedural history, the Defendant acknowledged service of the Originating Summons on the 21st March 2016 and indicated his intention to defend the matter. By Order made on the 14th April 2016 the proceeding was stayed pending determination by the Plaintiffs as to whether to apply for the grant of Letters of Administration.
10. On the 20th July 2016, the Defendant filed a notice that he would be acting in person.
11. On the 7th September 2016, the Plaintiffs filed the Affidavit of Mr. Bodden and on the 30th of May 2017, the Affidavit of Lindell Wellington. This stated *inter alia* that Lindell Wellington had been appointed as administrator of his father's estate on the 27th February 2017.
12. On the 4th August 2017, an order was made for the Defendant to file his own Affidavit and any other Affidavits in support of his case by 4th September 2017 and for the Plaintiffs to file any Affidavits in reply within 14 days thereafter.
13. On the 4th September 2017 the Defendant filed two Affidavits, one in response to that of the Plaintiff Lindell Wellington and the other in response to that of Mr. Bodden. He also filed the Affidavits of Donald Cameron, Leroy Roberts and that of his wife Natalie Holder-Wellington.
14. On the 21st September 2017, the Plaintiff, Lindell Wellington filed a Second Affidavit and on the 27th September 2017, the Affidavit of the Plaintiff Audrey Wellington was filed. On the 12th October 2017, the Plaintiffs issued a Writ of Subpoena requesting that

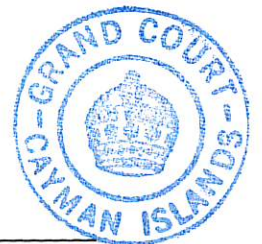
1 the Defendant produce records, receipts, bank statements and other documents in
2 relation to their father's estate.

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4 15. On the 16th November 2017, the hearing of the matter was adjourned, set down for a
5 day's hearing and the Defendant was given leave to file one further Affidavit, following
6 upon which no further evidence was to be filed.

7
8 16. On the said day he filed a summons to strike out the Plaintiffs' claim. This was supported
9 by his Affidavit which asserted that the proceedings had been wrongly commenced. He
10 asserted *inter alia* that the pleadings disclose no reasonable cause of action pursuant to
11 GCR O. 18 r.19 (1) (a), constituted an abuse of process pursuant to GCR O.18 r. 19 1(d)
12 and that the claim is frivolous and vexatious pursuant to Order 18 rule 19 (1) (b).

13
14 17. Unfortunately this summons was not placed on the Court file. Trial of the matter began
15 before Carter J. on the 26th April 2018 and was part-heard to the 11th May 2018. On
16 that date, the fact of the extant summons was brought to the attention of the Court and
17 the continuation of the hearing was adjourned pending a decision on this.

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19 18. On the 29th August 2018, the Defendant's summons was heard by Mangatal J. The Court
20 accepted the submission of the Plaintiffs that the case may be brought by Originating
21 Summons or by Writ of Summons and ruled that there was no basis to strike out the
22 Plaintiffs' claim. Further orders included that the proceedings were to continue as if
23 begun by Writ of Summons, the Affidavits were to stand as pleadings, the parties were
24 to file and serve supplemental Affidavits by the 12th September 2018 and that the matter
25 was to be set down for a three day trial before another judge.
26



1 19. Thus the matter commenced *de novo* before me on the 13th February 2019 and continued
2 over a nine-day period.



3
4 **THE CASE FOR THE PLAINTIFFS**

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6 20. In large measure the Plaintiffs base their factual case on the Affidavit of Mr. Bodden
7 and submit that the Deceased Isaac Wellington intended the creation of an express
8 constructive trust. They particularise this as follows³:

- 9
10 i. That the Deceased at the time of signing the transfer of property
11 documentation had the capacity to do so.
- 12
13 ii. That the Deceased made his intention clear at the time of signing the transfer
14 document and had done so on numerous occasions previously to both Mr.
15 Bodden and the other Plaintiffs.
- 16
17 iii. That the intention was made clear in the presence of Mr. Bodden and the
18 Defendant.
- 19
20 iv. That the Deceased intended the Defendant to be a custodian of the property
21 only (effectively holding on trust for all of the Plaintiffs' and himself).
- 22
23 v. That there was never an intention by the Deceased for the Defendant to hold
24 the property as legal and beneficial owner to the exclusion of all other
25 siblings.
- 26

³ Plaintiffs Written submissions dated 13th March 2019

1 21. On the legal aspect the Plaintiffs rely on a number of cases which set out the principles
2 with respect to common intention constructive trusts and in particular the land mark case
3 of *Stack v. Dowden*⁴. This case, as do a number of the cases cited, deals with issues of
4 property held in a matrimonial or similar context.

5
6 **THE LEGAL PRINCIPLES**

7
8 22. The starting point is s.23 of the Registered Land Law (2004 Revision). This is in the
9 same terms as in the 2018 Revision of the Law and provides as follows:

10 *“Subject to section 27, the registration of any person as the proprietor with*
11 *absolute title of a parcel shall vest in that person the absolute ownership of that*
12 *parcel together with all rights and privileges belonging or appurtenant thereto,*
13 *free from all other interests and claims whatsoever but subject -*

- 14
15 (a) *to the leases, charges and other incumbrances and to the conditions*
16 *and restrictions, if any, shown in the register; and*
17 (b) *unless the contrary is expressed in the register, to such liabilities,*
18 *rights and interests as affect the same and are declared by section*
19 *28 not to require noting on the register:*

20
21 *Provided that -*

- 22
23 (i) *nothing in this section shall be taken to relieve a proprietor from*
24 *any duty or obligation to which he is subject as a trustee; and*
25 (ii) *the registration of any person under this Law shall not confer on*
26 *him any right to any mineral oils unless the same are expressly*
27 *referred to in the register.”*

28



⁴ [2007] UKHL 17

1 23. In order to establish their case, the Plaintiffs would require to satisfy the Court to the
2 civil standard that the Defendant as the registered owner of the property is nevertheless
3 subject to the duties or obligations of a trustee.

4
5 24. There is no document creating a trust in this case. This is a fact which the Defendant
6 repeated throughout the evidence and submissions in this case and to which I have due
7 regard. The absence of a document formal or informal is not fatal to the Plaintiffs' claim.
8 It does however require care to identify the evidence which is capable of giving rise to
9 a constructive trust.



10
11 25. In the cited case of *Stack v. Dowden*, the property in dispute was the family home which
12 was in the joint names of the unmarried parties. Sixty five percent of the purchase price
13 had been provided by the defendant. On the sale of the property following the breakdown
14 of the relationship the Claimant sought an equal share of the proceeds. The Court held
15 that where domestic property was conveyed into joint names without any declaration of
16 trust, there was a *prima facie* case that the legal and beneficial interests in the property
17 were joint and equal. The onus was therefore on the party claiming otherwise to establish
18 that the parties had a common intention that the property was to be held in a particular
19 beneficial interest. In identifying the common intention, a Court should look at the
20 parties' whole course of conduct which was not therefore limited to their respective
21 financial contributions. In dismissing the Claimant's appeal the Court noted in that case
22 that the defendant had made the major contribution to the purchase of the house, the
23 parties had never pooled their financial resources and had for the most part kept those
24 resources strictly separate. These and other factors were strongly indicative that they had
25 not intended their shares in the property to be equal. The Court stated:

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*“Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership. So in sole ownership cases it is upon the non-owner to show that he has any interest at all. In joint ownership cases, it is upon the joint owner who claims to have other than a joint beneficial interest.”*⁵

26. The Court considered the formulation used by Chadwick LJ in *Oxley and Hiscock*⁶ and stated:

“Oxley v Hiscock was, of course, a different case from this. The property had been conveyed into the sole name of one of the cohabitants. The claimant had first to surmount the hurdle of showing that she had any beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each party had made some kind of financial contribution towards the purchase. As to the second, Chadwick LJ said this, at para 69:

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



Oxley v Hiscock has been hailed by Gray and Gray as "an important breakthrough" (op cit, p 931, para 10.138). The passage quoted is very similar to the view of the Law Commission in Sharing Homes (2002, op cit, para 4.27) on the quantification of beneficial entitlement:

"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."

That may be the preferable way of expressing what is essentially the same thought for two reasons. First, it emphasises that the search is still for the result which reflects what the parties must, in the light of their conduct, be taken to have intended. Second, therefore, it does not enable the court to abandon that search in favour of

⁵ Paragraph 56 of Stack v. Dowden supra

⁶ [2003] 3 WLR 715

1 “As to the second question, as the case law examined above explains, to establish a
2 basis for a constructive trust, it is not necessary for the party asserting the beneficial
3 interest to prove either an actual agreement or—when relying upon the entire course
4 of conduct in relation to the property—a specific account of financial contributions.
5 That party must show a common intention for the creation of a beneficial interest
6 which can be expressed or imputed as derived from the whole course of the conduct
7 of the parties in relation to the property in dispute. The relevant intention of each
8 party is the intention reasonably understood by the party asserting the interest as
9 manifest by the whole course of conduct. Thus, equity will not allow the party
10 denying the beneficial interest to rely on deceitful conduct by suggesting that his
11 intentions were other than those assured by him or those reasonably to have been
12 discerned from his course of conduct. Equity acts upon the conscience of the legal
13 owner to prevent him from acting in an unconscionable manner to defeat the
14 common intention.”¹⁰

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17 33. The Court referred with approval to the case of *Lloyds Bank Plc v. Rosset*¹¹, in which
18 Lord Bridge, in dismissing as untenable the wife’s claim to a beneficial interest in the
19 house, described as critical the distinction between a claim of beneficial interest based
20 upon agreement, arrangement or understanding between parties and one which is based
21 upon the conduct of the parties as giving rise to an inference of a constructive trust. He
22 stated:

23 “He explained (*ibid.*) that if there is to be a finding of an actual “agreement,
24 arrangement or understanding” between the parties, it must “be based on
25 evidence of express discussions between the partners, however imperfectly
26 remembered and however imprecise their terms may have been.”¹²
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29 34. In the case of *In Re Hinds*¹³ the Claimant Phillip Bradley Hinds sought to establish inter
30 alia that certain parcels of land, a house in the Cayman Islands and the proceeds of sale
31 from a parcel of land were assets of his father’s estate at the time of his mothers’ death.
32 He was the sole beneficiary of his father’s estate. The house in issue had been registered

¹⁰ Paragraph 114 of *Ebanks v Ebanks* supra

¹¹ [1991] 1 A.C. at 132

¹² Paragraph 97 of *Ebanks v Ebanks* supra

¹³ [2015] (2) CILR 222



1 in his father's sole name. The three respondents, the step brothers of the Claimant urged
2 that although the house was registered in their step father's sole name it had been jointly
3 owned by their mother. The Court of Appeal, noted that this was a case where the legal
4 title was vested in the father alone and thus that a two-stage approach is required. The
5 Court cited with approval the case of Jones v. Kernott¹⁴ which identified the first issue
6 as being whether it was intended that the other party had any beneficial interest in the
7 property and the second as being if so, what that interest is. The Appellate Court stated:

8 *"It is accordingly clear that, in order to establish a common intention constructive*
9 *trust, a two-stage test must be satisfied. First, it must be shown that there was a*
10 *common intention that both parties should have a beneficial interest in the property.*
11 *That is a question of fact that has nothing to do with fairness. It is only once the first*
12 *test is satisfied and a common intention is established that the second stage arises;*
13 *and it is only at that stage that, if it is not clear what beneficial shares were intended,*
14 *the court will determine what share it would be fair for each party to have in the*
15 *light of their whole dealings with regard to the property. In the present case, the*
16 *judge appears to have elided the two stages and sought what he regarded in all the*
17 *circumstances as a fair solution. If that is what he did, he erred in principle."*¹⁵

18
19 35. The Court identified a number of factors which pointed to a compelling intention that
20 mother should have a beneficial interest in the house. These included building contract
21 documents which referred to mother and father as seised of the estate, the sharing of
22 rental income between them during their lifetime and the fact that mother undertook
23 mortgage liability and contributed to building costs from funds which she held.
24



¹⁴ [2011] UKSC53

¹⁵ Paragraph 26 of In Re Hinds, supra

1 36. In James v. Thomas¹⁶, the English Court of Appeal held that a common intention
2 constructive trust could be formed at any time before, during or after the acquisition of
3 a property. The Court stated:



4 *“More pertinently, if the circumstances so demand, a constructive trust can*
5 *arise some years after the property has been acquired by, and registered in*
6 *the sole name of, one party who (at the time of the acquisition), was, beyond*
7 *dispute, the sole beneficial owner : But as those cases show in the*
8 *absence of an express post-acquisition agreement, a court will be slow to*
9 *infer from conduct also that parties intended to vary existing beneficial*
10 *interests established at the time of acquisition.”*

11
12 37. In that case, the Court did not consider that observations of the defendant that
13 improvements to the property “*would benefit us both*” in the context where both parties
14 were residing in the property was intended to be a promise of some property interest. A
15 second assurance which was relied, was the defendant relating to the Claimant that in
16 the event of his death she would be well provided for. The Court did not consider that
17 this could have been a representation that on his death, the Claimant would get a share
18 in the property.

19
20 38. The Court considered the submission which was being made that the trial judge ought
21 to have reflected, the defendant, Mr. Thomas’ own view of what would be fair in an
22 order, recognizing that the Claimant Ms. James was entitled to a share in the property
23 and quantifying that share and in response stated:-

24 *“In my view the judge was right to resist that obvious temptation. It would have been*
25 *a much happier outcome if the parties had been able to agree, at the end of their*
26 *relationship, what financial provision should be made for Miss James to reflect her*
27 *contribution to the business and to the improvements to The Cottage. But that seems*
28 *to have proved impossible. Miss James will be entitled, as a partner, to a share in*
29 *the partnership assets after taking accounts. Her interest in the property (if any)*

¹⁶ [2008] 1 F.L.R. 1598

1 *must be determined by applying principles of law and equity which (however*
2 *inadequate to meet the circumstances in which parties live together in the twenty-*
3 *first century) must now be taken as well-established. Unless she can bring herself*
4 *within those principles, her claim in the present case must fail. As Baroness Hale of*
5 *Richmond observed in Stack v Dowden [2007] UKHL 17, [61]; [2007] 2 WLR 831,*
6 *851 D-E it is not for the court to abandon the search for the result which reflects*
7 *what the parties must, in the light of their conduct, be taken to have intended in*
8 *favour of the result which the court itself considers fair.”¹⁷*

9
10 39. The applicability of these principles to non-matrimonial, non-common law partnership
11 cases was referenced in the case of Singh v. Singh¹⁸. The issue in that case was whether
12 the principles applied to the creation of family-controlled businesses. While noting that
13 there was question as to whether they applied in a commercial context¹⁹, the Court’s
14 view was that some of the considerations in those cases applied with force to a family
15 type claim and thus that it was right to assume that the same principles apply.²⁰

16
17 40. In the circumstances of that case, a father sought to prove that there was a common
18 intention that all of the family’s properties were jointly owned by himself, his wife and
19 their three children in accordance with Hindu principles.

20
21 41. In considering the evidential question, whether the father had demonstrated that there
22 was such an understanding between himself and one of his sons, the Court noted that the
23 father’s case rested on inference, an unspoken assumption from the upbringing of all the
24 children to observe traditional Sikh customs that they would regard any property they
25 acquired as joint family property. The Court said:-

26

¹⁷ Paragraph 38 of James v. Thomas supra

¹⁸ [2014] EWHC 1060

¹⁹ *Crossco No. 4 Unlimited v. Jolan Ltd.* [2011] EWCA Civ 1619

²⁰ Paragraph 117 of Singh v. Singh supra



1 44. I have regard also and remind myself of the conventional equitable principles which
2 were succinctly stated by Lord Browne-Wilkinson in Westdeutsche Landesbank
3 Girozentrale v. Islington LBC²²

- 4
- 5 i) *“Equity operates on the conscience of the owner of the legal interest. In the case*
6 *of a trust, the conscience of the legal owner requires him to carry out the*
7 *purposes for which the property was vested in him (express or implied trust) or*
8 *which the law imposes on him by reason of his unconscionable conduct*
9 *(constructive trust).*
- 10
- 11 ii) *Since the equitable jurisdiction to enforce trusts depends upon the conscience*
12 *of the holder of the legal interest being affected, he cannot be a trustee of the*
13 *property if and so long as he is ignorant of the facts alleged to affect his*
14 *conscience, i.e. until he is aware that he is intended to hold the property for the*
15 *benefit of others in the case of an express or implied trust, or, in the case of a*
16 *constructive trust, of the factors which are alleged to affect his conscience.*
- 17
- 18 iii) *In order to establish a trust there must be identifiable trust property. The only*
19 *apparent exception to this rule is a constructive trust imposed on a person who*
20 *dishonestly assists in a breach of trust who may come under fiduciary duties*
21 *even if he does not receive identifiable trust property.*
- 22
- 23 iv) *Once a trust is established, as from the date of its establishment the beneficiary*
24 *has, in equity, a proprietary interest in the trust property, which proprietary*
25 *interest will be enforceable in equity against any subsequent holder of the*
26 *property (whether the original property or substituted property into which it can*
27 *be traced) other than a purchaser for value of the legal interest without notice.”*

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29

30 45. In the context of this case, applying basic trust law principles, the two elements which
31 are required are the identification of defined trust property and proof of factors affecting
32 the conscience of the Defendant in relation to the alleged trust property.



²² [1996] A. C. 669

1 46. The primary issue here is to determine whether there is evidence as the Plaintiffs assert
2 that their father in the absence of a will intended that the property transferred to the
3 Defendant was to be held on trust for all his children and was to be beneficially owned
4 by all of them and importantly that the Defendant well knew that this was what his father
5 intended for him to do. If the Defendant did so, the equitable position (all other required
6 factors having been proven) is that it would be unconscionable for him to retain both the
7 legal and beneficial interests in the property.
8

9 **THE EVIDENCE IN THE CASE**

10 47. There is no evidence of incapacity on the part of Father in this case. Neither side has
11 raised this as an issue. I accept also as the Defendant says, that Father was free to leave
12 his property on his death, as he chose. He could have left it to a charity or stranger had
13 he so determined.

14
15 48. I am mindful that I am not deciding this case based on some broad notion as to what
16 would have been fair for Father to have done in disposing of property on his death.²³
17 This property was transferred prior thereto. It did not form part of his estate on his death
18 to be considered in the context of Letters of Administration. The issue is as to his actual
19 intention, express or implied at the time of the transfer. The Defendant's case is that
20 his intention is clear from the transfer document. The Plaintiffs ask the Court to consider
21 other evidence and say that his actual intention is clear from a number of statements
22 which he made.
23



²³ Geary v. Rankine [2012] EWCA Civ. 555

1 49. Initially the Plaintiffs based the fulcrum of their case on the evidence of Mr. Bodden and
2 asserted that at the time of the signing of the transfer document, Father made his
3 intentions clear that he was transferring the property to the Defendant for the benefit of
4 all of his children. As Mr. Bodden's evidence unfolded in the manner which I will detail
5 below, the Plaintiffs then sought to place greater reliance on statements made by Father
6 over the course of his lifetime both to Mr. Bodden and to some of his children.

7
8 50. After closing their case, the Plaintiffs sought leave to reopen their case in order to
9 introduce two video recordings of Father himself speaking to the issue of the ownership
10 of the property. These had been mentioned in the Affidavit evidence of Lindell
11 Wellington and in the oral evidence of Audrey Wellington but not produced as part of
12 the Plaintiffs case. On the application, Counsel for the Plaintiff explained that he had
13 made the decision not to introduce them as when first played on a phone they appeared
14 to him to be almost unintelligible. He had more recently been able to listen to them on a
15 larger instrument and was of the view that they were not as unclear as he had initially
16 thought.

17
18 51. I exercised my discretion to allow these to be produced despite the lateness. I did so for
19 three reasons. Firstly, their existence was already clear from the Affidavits and the oral
20 evidence. Secondly and importantly they appeared to be real evidence going directly to
21 the very issue in the case. It is important to the Parties that this evidence be heard.
22 Thirdly the Defendant could be and was given an opportunity to hear the material in
23 advance and to respond by giving further evidence on oath.

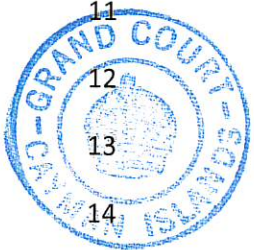


1 52. It transpired that the two videos were undated and no one could recall the precise date
2 when they had been recorded. The best recollection of both Plaintiffs and Defendant was
3 that this must have been after the January 2015 altercation between Lindell Wellington
4 and the Defendant and thus about five months after Father had executed the transfer
5 document.

6
7 53. The Plaintiffs therefore rely on three strands of evidence in order to prove their case on
8 a balance of probabilities, oral statements made by Father before the transfer, to Mr.
9 Bodden and his children, statements made at the time of execution of the transfer and
10 statements made after the transfer to Audrey, Lynval and Sandra Wellington which were
11 video recorded by Audrey Wellington. In summary, on the evidence, in the absence of
12 an express written or oral indication of the creation of a trust, the Plaintiffs ask the Court
13 to construe the words and actions of Isaac Wellington over the continuum of time as
14 being sufficient to create on their behalf an equitable proprietary interest in the property.
15 If indeed there were such words and actions, I would add that there should also be
16 evidence that these words and actions by Father were heard and seen by the Defendant.

17
18 54. Against the legal background which requires a focus on ascertaining Father's true
19 intention and for that intention to be objectively ascertained from all the evidence which
20 is available, much of the oral evidence in this case was unhelpful.

21
22 55. A singular fact on which both Parties agreed was that Father was a deeply religious and
23 strict man who believed that his children should live according to certain high moral
24 values. This led to both sides attempting to recount every youthful and adult indiscretion
25 and fall from Father's standards in order to accuse the other side of not doing what their
26 Father would have wished and putting this forward as the reason that Father chose to



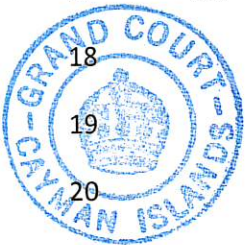
1 disinherit one or other of the siblings or would not have chosen the Defendant as his
2 heir. The Plaintiffs' case is that Father always said that the property was for all his
3 children. The Defendant's case is that Father said that he was not leaving his property to
4 "no wicked children" and he detailed incidents going as far back as 1993. He spoke of
5 the lifestyle choices of one sibling, the criminal convictions of Lindlell Wellington and
6 his involvement in criminal activity as being viewed by Father as bringing shame upon
7 the family. The Plaintiffs countered with the accusation that the Defendant was no
8 different from them. He too had girlfriends outside of marriage before he settled down
9 and he was the only one they say who had physically assaulted their father by punching
10 him to the ground.

11
12 56. The Defendant suggested that he had greater relations with Father than any of the other
13 siblings because he had honor for him and lived up to his beliefs and honored his mother.
14 He said he got married, has no children out of wedlock and did whatever his father asked
15 of him.

16
17 57. A more recent reason for father's displeasure with the other children according to the
18 Defendant was that they had neglected their mother and prematurely caused her death
19 and that Father believed that one of the children was poisoning him. The accusations
20 and counter accusations across the Court room escalated in intensity with each day of
21 trial and culminated in Barrington Wellington who gave evidence by video link from his
22 home in Jamaica calling for the wrath of God's judgment on the head of the Defendant.

23
24 58. Suffice it to say that this was a deeply unfortunate case from start to finish with much
25 bitterness on both sides.

26



1 59. In reviewing the evidence against the legal background of what has to be determined, I
2 do not propose to deal with much of this evidence as to indiscretions, character and
3 conduct of individuals. In effect I am being asked by both sides to conclude that in light
4 of the conduct of one or other, Father must have viewed that child in a particularly
5 negative way and must have made a decision as to the disposition of his property
6 accordingly. My view is that it would be unsafe to do so. The proper approach must be
7 to ascertain what Father actually said or did and what he intended, not what he is likely
8 to have intended in light of a child's conduct.

9
10 **EVIDENCE OF AUDREY WELLINGTON**

11
12 60. In her affidavit evidence Audrey Wellington stated that prior to her father's passing he
13 said to her on various occasions that the property would be for all the children and that
14 the Defendant was to care take it. She said that he told her that Mr. Bodden knew the
15 "full runnings" of the matter. She describes her father as very old school in terms of
16 being quite untrusting by nature and says that she understood from what he told her that
17 he was not going to simply leave the property to any of the children to determine how to
18 share it with the others and thus she says that it made sense to her that he had left Mr.
19 Bodden to witness what he wanted to happen with the property on his death. She stated
20 that she owns her own home and is in a good job and is not in financial need as are some
21 of her siblings.



1 61. She was on good terms with the Defendant and his wife, Natalie up until her mother's
2 passing and they were frequent visitors to her home. She describes the Defendant as
3 being domineering towards his wife, belittling her and sometimes asking her if she was
4 stupid which caused her to become submissive to him.

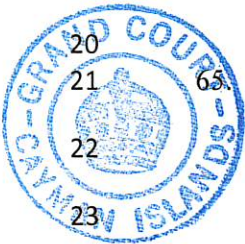
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6 62. She states that neither the Defendant nor his wife cared for either of her parents over the
7 years. They did not visit them regularly and on the Defendant's part he usually visited,
8 only when he needed to borrow money. He had received assistance from them to
9 purchase heavy equipment trucks and sporting vehicles and had difficulties repaying the
10 monies which he had borrowed so tended to avoid his parents and rarely visited them
11 and it was only after the death of Mother that the Defendant became interested in Father.

12
13 63. She said that prior to 2014, the Defendant and his wife had minimal interaction with
14 their parents because they (her parents) expressed their view that the children should
15 work hard to earn their own living.

16
17 64. She stated that over the years, she and her siblings came to know Mr. Bodden with whom
18 her father had been acquainted for many years. They had developed a strong friendship
19 over the years and her father always spoke highly of him.

20
21 65. After the Defendant became caretaker of the property, he installed locks on the gates and
22 instructed the tenants not to allow others onto the property. This prevented family
23 members from visiting Father.

24
25 66. Much time was spent by the Defendant in cross-examination of Audrey Wellington as
26 to the assistance that he rendered to Mother by taking her to various hospital
27 appointments and what he alleges was the lack of care which lead to her death, whether

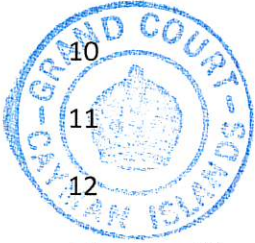


1 she should have had a helper other than her daughter Sandra Wellington who is mentally
2 ill and has irregular sleeping habits because of her medication. He suggested that Mother
3 had been mistreated and other siblings had not sought the proper medical attention for
4 her or taken the appropriate action on the day of her death when it appeared that she had
5 fallen and hit her head.

6
7 67. The Defendant has invited the Court to consider this evidence as being relevant to
8 Father's views on his children and thus as making Father's action in disinheriting them
9 understandable. He suggested to Audrey Wellington that Father said to her that she was
10 too manipulative and that she could not do to him what she had done to her mother. Ms.
11 Wellington denied having any such discussion with Father and robustly denied any
12 neglect of her mother.

13 68. She accepted the Defendant's suggestion that over time there were different incidents
14 between other siblings and their parents which lead her to comment to the Defendant
15 that she wished that they were the only two children for their parents. Lindell Wellington
16 and Father had arguments and so did the Defendant and Father. Due to Lindell's actions,
17 Mother decided to sell a property in Newlands which the three of them (Audrey, Lindell
18 and Mother) had purchased together.

19
20
21 69. Her own relationship was not as close with Father as it was to her mother but they never
22 had a major disagreement. Father gravitated towards his Church brothers and sisters. It
23 is possible that he lost connection with many of the children, she does not know. She
24 said Father tried to get all his children under his religion and the only one who went was
25 her nephew, Lujaney Bouchard ("LB").
26
27



1 70. She said that on the 28th August 2014, she and some of the other children intervened in
2 an attempted signing of documents by Father after receiving a call from Barrington
3 Wellington because Father's stated intention was that the property was not for Lujaney
4 Bouchard. It was for him to be a caretaker and his intention was to have sole ownership
5 of the property. She said that it is not correct that, Father asked to speak with the
6 Defendant privately on that day.

7
8 71. She and the others did not allow Father to make his own decision on that day, because
9 they believed that he did not have the capacity to make his decision and that he was
10 under duress. He was lying on his back at the time. The Defendant was content for the
11 transfer to be effected that day but all the others were not happy.

12
13 72. It was suggested to her that over the years, Father was consistently explaining that he
14 would not be leaving anything for any children who had been disrespecting him and
15 not living up to his rules. She did not agree with this but agreed that it is correct
16 that Father believed in marriage, and no children out of wedlock. She agreed that
17 she did not live up to her father's high Christian beliefs and said that none of the
18 children did.



19
20 73. She said that the Defendant became involved with Father, because Lynval and
21 Barrington Wellington pushed him to be involved and to get active. It was not that
22 he was chosen by Father. About a week or two after the attempted signing incident
23 with Lujaney Bouchard on about 31st August or early September 2014, the
24 Defendant locked them all out of the property by placing a padlock on the gate so
25 that they had no access. He said that they were coming there to disrupt Father.

1 Despite Father confirming to the Police that he had no difficulty with any of his
2 children visiting him, the Defendant locked the gate.

3
4 74. Upon her mother's death the Defendant had said that he had nothing else to do with
5 the family and ceased communication with everyone.

6
7 75. Following the incident in January 2015 between the Defendant and Lindell
8 Wellington, she made inquiries at the Lands and Survey Department. She spoke to
9 Father and thereafter to Mr. Bodden. They did nothing more because Mr. Bodden
10 said that the Defendant would do the right thing based on his discussions with
11 Father.

12
13 76. She said that there was no way in the world that Father would put the property in
14 the Defendant's name alone. Father did not hold him in any higher regard than others
15 and he had no special position in terms of honouring Father. She said that they all knew
16 how Father felt about all of them There were no favorites. They all agreed as a family to
17 bring this claim because what the Defendant was doing was against their Father's wishes.

18
19 77. The Defendant produced his mother's funeral programme and suggested to her that the
20 reason why he was the one who read the lesson was because Father and Mother were
21 aware of what he stood for. She denied this and said it was nothing to do with Father,
22 who did not even attend the funeral. A choice was made based on the Defendant's
23 intellectual capacity. All the siblings attended the funeral except Sharon Wellington.

24 She has not been involved at all in terms of attendance and she has refused to attend any
25 of these events.



1 **EVIDENCE OF LINDELL WELLINGTON**

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78. Lindell Wellington is the youngest child for his parents. He and the Defendant have had a poor relationship over the years and many fights.

79. In his Affidavit evidence Lindell Wellington states that prior to his mother’s death, a hired caretaker in addition to a church brother and sister, Malio and Mable together with a grandchild, Luijaney Bouchard cared for father.

80. Shortly after mother’s death it appeared that LB was attempting to have Father sign over the property to him on the basis of love and affection, but Father advised that the property was not for his sole benefit but for the benefit of all his children. LB objected to this and Family members intervened and the documents were not signed.

81. On visiting his father, Father told him that he was not to worry, he had discussed everything with Mr. Bodden and had things in place.

82. His understanding from multiple discussions with his father was that the Defendant “was to hold the property on trust for all the children, to manage and oversee it and to ensure that any income received was equally distributed among all the children.” He states that Father had made it known to all of them including the Defendant that the Defendant “was to oversee and hold the Property on trust for them all in equal shares”²⁴.

83. He further states that Mr. Bodden’s Affidavit supports this position and that:-



²⁴ Paragraph 9 of Affidavit of Lindell Wellington dated 29th May 2017

1 *“An affidavit from my sister Audrey Wellington with copies of videos which she*
2 *recorded of conversations with my father prior to his death is also filed in these*
3 *proceedings. I saw these videos shortly after they were recorded and before my*
4 *father died (I would say around 3-6 months before my father died. These detail and*
5 *support that the property belongs to all of us and not Delroy Wellington alone.”*

6
7 84. He asserts that the Defendant has failed to act in accordance with the wishes of his late
8 father and has instead acted as if the property is his alone and to the detriment of the
9 Plaintiffs.

10
11 85. In his Second Affidavit dated 20th September 2017, he states that he and the Defendant
12 had an argument about the property and in the course of that argument he damaged a car
13 on the property causing some \$2,839.45 worth of damage and not \$5,000.00 worth of
14 damage as the Defendant claims.

15
16 86. For about six years prior to Father transferring the property, the Defendant had very little
17 relations with his parents and would often pass unpleasant remarks about them. His
18 (Lindell’s) relationship with his father was at least as good as the relationship Father had
19 with the Defendant. Father had no remarkable father-son relationship with the Defendant
20 over any of his other children.

21
22 87. Lindell Wellington denied being particularly close to Mr. Bodden. He has known him
23 he says for some time but was not close to him. He was his manager when he was
24 employed to Horizon Autos in the early 1990s for about 2 years.



1 88. Lindell Wellington was cross examined by the Defendant at some length. He explained
2 that they made inquiries following the altercation in January 2015 and the statements
3 made by the Defendant that he would “deal with him with pen and paper”. When they
4 were outside of Father’s apartment he was told by the Defendant that he was not
5 supposed to be on the property and that he was trespassing. He discussed the situation
6 with Audrey and they made inquiries at the Land Registry and discovered that the
7 property had been transferred into the Defendant’s name. While Father was still alive,
8 they applied to the Registrar of Lands and obtained permission to place a restriction on
9 the property until the matter could be resolved. It was following that incident, that the
10 Defendant placed padlocks and chains on the gates to the property. They called the
11 Police on a few occasions but by the time they received assistance from the Police to
12 enter the property in order to see Father, Father died. In the interim no one could get into
13 the property so he did not approach Father. That is the reason which lead them to seek
14 the assistance of the Police.

15 89. He was aware from Father on the 25th January 2015 that the Defendant was in charge,
16 handling everything, a caretaker because Father could not move around. He believed at
17 that time that his father placed trust in the Defendant to oversee everything. It was not
18 until Father died that they became aware that the property was placed in the sole name
19 of the Defendant and that the Defendant was claiming everything, that he took action.
20

21 90. When Father spoke to Defendant about a room on his behalf, the Defendant replied that
22 there was no room, the room needs repair. Father then said, “*whatever Delroy said, that*
23 *is it, that is what the man in charge say.*”
24
25

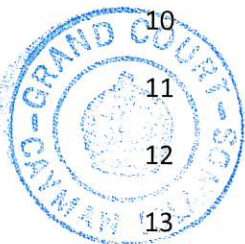


1 91. Audrey Wellington went to visit Father and he heard a few recordings of his Father and
2 what Father wanted him to do. He said that he saw these videos. They were made about
3 3-6 months before Father died when he was healthier. Because of the videos they felt
4 that they did not need to take documentation. They put the videos with Father saying the
5 place is for everybody on a flash drive and they have kept them. He said that they have
6 no documents to show Father's wishes, the documents they have is the videos they have
7 of their father saying that the property is for everybody.

8
9 92. He had lived on the property a dozen times over the past 15 years while the Defendant
10 had lived there only once. Whenever he is in difficulty, he would ask his mother who
11 would speak to Father and he would be permitted to stay. When they were children,
12 they had all assisted to build the property. They had worked hard carrying blocks and
13 zinc to the construction workers.

14
15 93. He either said he did not recall or denied a number of incidents of poor behavior and
16 denied disrespecting his mother several times while there were living at the house they
17 had purchased together in Newlands. He said that it was not true that mother left that
18 residence following an altercation in which he called her names and never returned. He
19 denied that Father had confronted him about this.

20
21 94. He said that it was not true that Father had to bail him from the Police on more than one
22 occasion because from he reached 18 years of age, he could bail himself. He said that he
23 had not served time for assault with a deadly weapon, he had served only one month in
24 Prison for carrying a knife of more than six inches. He said that it was not true that Father
25 distanced himself from him because of issues with women and bringing disgrace to him
26 and that he was problematic to his parents, and continually put financial strain on them.



1 He said that it was not true that Father had changed his heart towards him because Father
2 had a special word for him during the time that he was ill.

3
4 95. He said that Sandra Wellington resided at the property for years in accordance with the
5 wishes of his parents. They saw her as needing help and wanted her to remain there
6 because she was 'physically challenged'. The Defendant caused her to vacate the
7 premises. He had her electricity and water disconnected. The door of her apartment was
8 removed and she had to get water from the neighbors for months. His parents saw
9 Barrington in the same way. They had him there living rent free and he got special care.

10
11 96. Sharon Wellington left the premises some 15- 20 years ago. She is married. She did not
12 visit the premises frequently. There was an incident between Sharon and Father in 2004
13 after Hurricane Ivan. Food was then scarce. Father used to stay at her premises and there
14 was an argument. She was cooking and called the children to eat first before Father.
15 Father said that he deserved more respect. He called a taxi and left and from that time
16 Sharon has never visited the property.

17
18 97. He described Father as a forgiving man, a godly man who did not hold grudges. He
19 would still acknowledge that you are his son. There were no major problems between
20 himself and Father leading up to the 29th January 2015. He accepted that Father did not
21 like incidents with the Police and criminal activity and always warned about this but he
22 would still assist him with lawyer fees. He would lend him money and he would have to
23 pay him back but not with interest.

24
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28



1 **AFFIDAVIT EVIDENCE OF JAMES ROY BODDEN**

2
3 98. Mr. Bodden is a Justice of the Peace and at the time of his Affidavit, 21st August 2015,
4 he was also the president of the University College of the Cayman Islands. He describes
5 himself as a very good friend of Father and that he is familiar and friendly with his
6 family.

7
8 99. In his Affidavit evidence he stated that on the 5th September 2014, he visited Father and
9 realized that he was not in good health. Father told him that he wanted to transfer the
10 property which he owned into his name and that of his son the Defendant so that in the
11 event of his death, he could oversee and manage the property

12
13 100. At paragraph 7 of his Affidavit he said this:



14 *“He indicated to me that his intention was to leave the property equally*
15 *for his 8 children so that all proceeds from the property should be*
16 *divided equally between the 8 children,*

17
18 101. He said that Father made it very clear to him in the presence of the Defendant that this
19 was his intention and that the Defendant who was present throughout the full
20 conversation, would manage and oversee the place.

21
22 102. He stated further that after they had established the intention of Father he and the
23 Defendant signed the transfer form in his presence, to have his and Delroy’s names on
24 the title documents as the owners and he signed witnessing their signatures. He stated
25 that *“This was all done on the basis that the 8 children would benefit equally from the*
26 *property and Delroy would oversee or manage the property.”*

1 103. At paragraph 11, he stated:-

2 *"It is my opinion that Mr. Isaac Wellington made it quite clear to Delroy that he*
3 *was transferring the property to him so that he could "oversee" or "manage" it on*
4 *behalf of his other siblings who were to share the income from the property."*

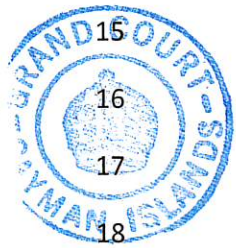
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6 104. He stated that he was shocked to learn that on Father's death the property had been taken
7 over completely by the Defendant and knows that this is totally opposite to what father
8 indicated that his intention was in his presence. The Defendant knows that this is wrong
9 because he was present when Father said that he was to oversee and manage the property
10 on behalf of all of his other brothers and sisters.

11 **CROSS EXAMINATION OF JAMES ROY BODDEN**

12

13 105. In cross examination, Mr. Bodden appeared to resile from some of the specificity of his
14 Affidavit. He said repeatedly that in his role as a Justice of the Peace, he does not ask
15 too many questions because he does not wish to inquire into the personal affairs of
16 persons when he is called to witness a document. He said that he got the impression as
17 to Father's intention based on earlier discussions he had with him, his knowledge of him
18 as a family man and what was said at the time of the signing of the transfer document.



19

20 106. Given the importance of Mr. Bodden to the Plaintiffs' case, I have carefully reviewed
21 all of his evidence and summarize much of it in this judgement. He said that he made
22 two visits in respect of the matter. He thinks that the first occasion was for the transfer
23 of land and the second had to do with a financial transaction. On the first occasion, the
24 Defendant and his wife and his father were present. On the second occasion it was the

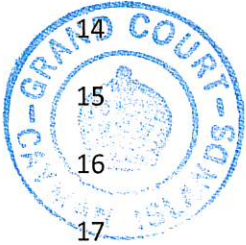
1 Defendant, he cannot recall his wife being in the room but he thinks that he saw her on
2 the premises.

3
4 107. He began by stating that on his attendance at the property on 5th September 2014, after
5 some casual conversation, Father asked him to witness some land documents. He agreed
6 to do so and Father produced the documents and he went through them with him to
7 ensure that he was signing at the correct places. The documents may have been filled
8 out by the Defendant's wife before they were signed by all parties. He is not sure as it
9 was a long time ago. He does not recall miscommunication as to the place to sign and
10 the Defendant's wife insisting as to where the signatures were to be affixed.

11
12 108. He wanted to ensure that Father conveyed to him that he had the interests of other
13 children at heart as he had done on so many occasions previously. Father was always
14 proud of his family. He said that he got the impression that the land transaction was
15 facilitated out of convenience because it would have been manifestly impossible for all
16 persons to be present and that Father chose one person to have power of attorney over
17 his affairs. He recalls that this was particularly so in the case of bank accounts.

18 109. He could recall verbatim what Father's answer was to the question about the interests of
19 the other children but he gave an answer that caused him (Mr. Bodden) to be sufficiently
20 convinced that his wishes were to see the property distributed among his children.

21
22 110. It was suggested to Mr. Bodden that Father's answer was in the negative and included
23 the words "if you want me and you to remain on speaking terms ...no one tells me or
24 instruct me what to do." To this suggestion Mr. Bodden did not agree and said that had
25 he been met with such a response, the person that he is, he (Mr. Bodden) would have
26 then and there refused to witness the transaction.



1 111. He said that his conversation with Father was brief and when he ascertained that Father
2 was acting of his own volition, he did not press the matter. It is not within him to ask
3 about personal affairs. Mr. Bodden stated that as always has been his practice when
4 people ask him to assist as a Justice of the Peace, he never pierces beyond the very
5 cursory involvement. It is not his business beyond that, other than to see that Father was
6 in his right mind doing the transfer. In circumstances where he is called as a Justice of
7 the Peace to witness these kinds of things he wants to be sure that the person doing the
8 transfer is doing so of their own accord and that there was no duress, beyond that, were
9 not his issues. He did not wish to become involved and had not asked any questions other
10 than what pertained to the action he was being requested to do.

11
12 112. He is a professional so does not delve. When a person requests his service as a Justice
13 of the Peace it is not his business to delve into certain personal matters. He makes the
14 assessment:

- 15 - Is it legal and appropriate to sign this affidavit or is it not?
16 - If it is not he says no, he is not doing it.

17
18 113. But he does not question the individual as to why he is doing this. That is not his
19 business. Once he ascertains that it is above board and legal and he can put his signature
20 to it, that is what he does.

21
22 114. It just happened that in the case of Mr. Wellington, they were acquaintances so "*he knew*
23 *a little more of the background than he would know from John Doe coming off the*
24 *street*".
25



1 115. He was lead to put things in his Affidavit, based on the conversations that he had with
2 Mr. Isaac Wellington over the years. He believed that Father was the consummate family
3 man. He was equally proud and always spoke endearingly of all of his children and how
4 proud he was of their accomplishments.

5
6 116. In response to the question as to why he did not take action to have Father put his
7 intention in black and white, he said that it was not for him to tell Father what he was to
8 do with his property. To do otherwise would have been interfering in his personal affairs.

9
10 117. To the suggestion that he was simply making an assumption, he said that is the
11 impression which he was left with, that it was Father's wish that none of his children be
12 excluded. He said that he got that impression, not only on that but on previous occasions
13 from conversations which he had with Father.

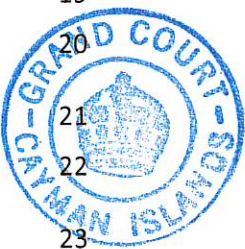
14
15 118. On that occasion he got the impression because he recalls that they had a general
16 conversation before and he was surprised that Father was so calm about his eventual
17 passing. He knew him to be a person of faith. The conversation generated around him
18 saying that he was dying and ready to leave the earth. Mr. Bodden said:

19 *"I recall discussing what is your wish. He intimated the fact that he would wish that*
20 *his children would be taken care of.*

21 *I came away with the impression I didn't ask, I didn't question him that Delroy is*
22 *the youngest son and that he had entrusted him with this responsibility.*

23 *He did not say that in so many words but I saw by the relationship between he and*
24 *Delroy and I got the impression that this is the son, this is the sibling that Mr.*
25 *Wellington trusted."*

26



1 119. Mr. Bodden accepted that he had done land transfers prior to this and that there is more
2 space on the transfer document for names to be added.

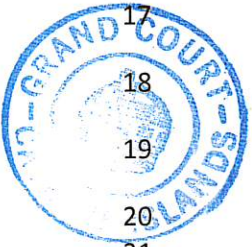
3
4 120. He said that it was his belief that based on conversations that he and father had before
5 that day that Father realised that it would be a complication if more than one person was
6 added and that he wanted to leave the Defendant as a kind of power of attorney. In no
7 way did he get the impression that it was personal to him.

8
9 121. He stated: "*I never categorically asked him that – i.e. what was his intention.*"

10
11 122. He signed the documents believing that Father's wishes at that time were that the
12 Defendant was to be in charge. Father did not sign a document stating that but that was
13 the impression that Mr. Bodden got from the transaction at the time and from previous
14 conversations with him.

15
16 123. He knew father from 1980 and vividly recalls the conversations they had. They met
17 periodically as by coincidence they had the same bankers. They would also meet at an
18 Office where Mr. Bodden previously worked and he would assist father with his work
19 permit applications.
20

21
22 124. Based on his knowledge of him, 'there is no guessing that he (Mr. Bodden knew of
23 father's conscience and 'his proclivity for fairness' and he always spoke of his pride of
24 his children, talked about the girls who were runners and he always beamed with pride
25 so it is on that basis that Mr. Bodden assumed that Father wanted everyone to be
26 inclusive.
27



1 125. It is possible that Father could have mentioned treatment of Mother but it did not register
2 to him. He did not see that as being that important that it would deter him from doing
3 what he thought was correct and 'obliging' in this instance.

4
5 126. Father did say that he wanted to transfer the property so that his son could oversee the
6 property. He bases this on the recollection that he gathered that Father really did not
7 want to obtain the services of an Attorney. He suggested to Father that there was another
8 way of doing that. The essence of the conversation as he recalls was that it was going
9 to be complicated and expensive.

10 127. Before they entered into the intricate details of the signing, there was a brief conversation
11 with Father, the purpose of which was that he (Mr. Bodden) wished to ascertain for
12 himself that Father was conscious of what he was undertaking and that he was doing it
13 of own volition with no duress. So he suggested to Father the whole idea of a will, which
14 is when the idea came up about complication and expenses.

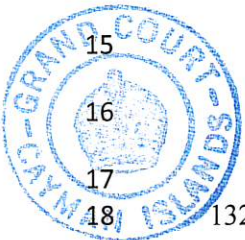
15
16 128. It is true that Father had documents and that they were completed. Mr. Bodden said that
17 he realized then that Father had given some thought to the seriousness of the matter
18 which he raised and it would be appropriate to proceed. The reason that this concerned
19 him is that he saw the potential for multiple claimants and no clear succession plan which
20 was his fear. In hindsight he regrets now not expressing it because, when the matter came
21 to a head and he was requested to give an Affidavit, he realized that he should have
22 raised it with Father, i.e. the possibility for the family to be spilt as a result of there being
23 no clear interpretation or no clear hierarchy.



1 129. He said that the Defendant was not present for every minute of the transaction between
2 himself and father. He recalls vividly that he came and went, he was in and out of the
3 room. While it is true as the Defendant suggested that Father could not sit upright, the
4 Defendant placed him upright, he was propped up with some pillows, and then when he
5 was uncomfortable the Defendant came and changed his position. He was not in the
6 midst of them for every minute of the conversation. He helped Father with his signature
7 but was not present for every minute of the conversation.

8
9 130. Mr. Bodden said that it appeared to him that Father must have had some conversations
10 prior to his coming there as to what his wishes and desires were. He did not go into that,
11 did not press that but that is what he came away with, that Father trusted this young man,
12 he 'may have been a Joseph and he trusted him'.

13
14 131. With respect to paragraph 7 of his Affidavit, when he speaks of Father's intention, he
15 said that it was not an oral indication but based on conversations that he had had with
16 him. He did not express it.



17
18 132. Mr. Bodden said that he was not there to pry and interrogate. He was there because
19 Father called him to witness the signing. He did not want to be interested beyond that.

20
21 133. At the very beginning Father made no expression to him that there was to be anyone to
22 be absolutely and exclusively the owner. He always spoke of his children. He went
23 through with the signing (despite the document being different from his impression)
24 because he did not see that there was any conflict, he did not question Father as to the
25 specificity of what he said. It is not to his recollection that Father mentioned anything
26 about a trust.

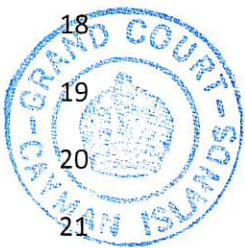
27

1 134. Exclusivity is not the impression that he came away with. It is quite plausible that the
2 Defendant's interpretation could be different from his. He stated in his Affidavit the truth
3 as he saw it.

4
5 135. He said also that he signed the 'financial document'. There was nothing about sharing
6 on this document. He understands that on bank accounts there are a limited number of
7 signatures so he saw nothing out of the way especially for control and management
8 purposes.

9
10 136. Mr. Bodden accepted that he was not privy to information on the family. He said that
11 Father did not bring to his attention that he tried to perform a land transfer previously.
12 He said that he would not have been aware of circumstances leading up to Father's death.
13 He is very particular and peculiar, when people come and request his services as a Justice
14 of the Peace, he is careful not to give the impression that he is too nosy or curious, nor
15 does he want to give the impression that he has any interest in the settlement of their
16 affairs beyond his service as a Justice of the Peace witnessing a document, so he never
17 questioned Father as to what transpired in his family. He did not know that Father had
18 grieved or suffered at the hands of the children. He had no knowledge of what transpired
19 on 29th January 2015 between the Defendant and Lindell Wellington. He admitted that
20 he did not the know full facts, (Father's relationship with the children) when he gave his
21 Affidavit.

22 137. In the aftermath of the signing of the documents, he could not recall any visit or any
23 conversation with any of father's children. The only one of the children who visited him
24 at his house was the Defendant and his wife, perhaps on two or three occasions. He had
25 no recollection if any of the others came to his work place or business.
26



1 138. After father's death, there may have been a telephone call from some of the children
2 who may have called him to say that that they were disappointed that they were left out
3 of the settlement. His recollection is that it was after Father's death that he was first
4 approached by the children and at no time before.

5
6 139. It is possible that he telephoned the Defendant thereafter raising a query about what had
7 occurred. He recalled expressing to the Defendant his disappointment about his locking
8 the gate, and locking his siblings out. He did say to him that this was not his
9 understanding of the transaction. While he acted on the complaint that the siblings made,
10 at the same time he was reluctant to get involved. The only reason he made the call to
11 the Defendant was because his actions were contrary to his understanding and to
12 conversations and impression that his father left.

13
14 140. He was challenged at length about whether he was in breach of his obligations of
15 confidentiality, and denied the suggestion that he was in breach of his functions as a
16 Justice of the Peace by reporting in Affidavit form what he had done as part of his civic
17 duty. There was no secrecy involved. He considered himself free to report what he had
18 done and said that indeed that is the whole essence of the transparency.

19
20 141. When he provided his Affidavit, he did not know that the Plaintiffs were going to be
21 putting a restriction on the property. He was asked to state what his role in the transaction
22 was and he did so. He had no idea what action they were taking and did not question
23 them as to what they were going to do. He considered it his moral obligation to assist
24 them just as he assisted the Defendant. He did what he considered right and what was
25 truthful and what he was requested to do.
26

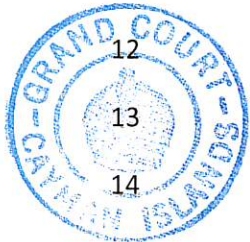
1 142. In response to the allusion that he was favoring one side over the other. He said that he
2 had no special relationship with Lindell Wellington as distinct from other members of
3 the family. At one point they had worked together at the same business location where
4 he was a general manager of a company. He had a professional relationship with all the
5 employees and no closer relationship with Lindell Wellington than with any of the
6 employees.

7
8 143. He said that the Defendant had visited his residence on 2 or 3 occasions and that prior to
9 the phone call on 19th March 2015, they were and still are on good speaking terms. He
10 holds no malice against him. He said that it would be difficult for the Defendant to say
11 that he favoured other siblings over him when the Defendant had been invited to his
12 premises and they had not. He did not see what ground the Defendant would use to say
13 that he would collude or conspire with them against him. He had treated all with equal
14 favour and respect.

15
16 144. He thought that it was sad and would have been disappointing to Father 'to see his
17 progeny squabble over something he worked so hard for and took such pride in'. He did
18 not recall a conversation with Audrey Wellington where he said to her 'not to worry
19 Delroy is going to do the right thing'.

20
21 145. In re-examination, he stated that he had signed his Affidavit six months after father's
22 death and at the time he did so, the facts were fresh in his mind.

23
24 146. He confirmed paragraph 6 of his Affidavit, that Father told him that he wanted to transfer
25 the property so that in event of his death Delroy would oversee and manage the property
26 and he said when he gave his Affidavit, it was accurate and correct to his knowledge and
27 belief.



1 147. He got the distinct impression that father placed a lot of pride in the property because on
2 more than one occasion, it was his concern that the property never pass out of the hands
3 of his family. He placed an almost sacred pride in that property.

4
5 148. With reference to paragraph 11 of his Affidavit, the impression he got was based upon
6 the conversations they had and the relationship he saw with the Defendant. There was
7 no question in his mind that Father had a special trust for him but he never got the
8 impression that it was to the exclusion of other children.

9
10 149. He maintained paragraph 12 of his Affidavit. He came away with the everlasting
11 impression that he was a family man and that one of the things he cherished was keeping
12 his family together. They never held discussions as to the transfers outright and he did
13 not trespass beyond a certain point. He understood that Father was leaving the Defendant
14 in charge of the property as a representative who would administer his wishes. That was
15 the discussion they probably had before about sharing the property among all the
16 children. He mentioned it one time that he did not want any of his children excluded.

17

18 **EVIDENCE OF BARRINGTON WELLINGTON**

19
20 150. Barrington Wellington is the eldest son for his parents. He remained in Jamaica and did
21 not reside permanently in the Cayman Islands. He has visited and resided here from time
22 to time on work permits taken out by Mother, the last such period being for about nine
23 years. He lived with his mother on the property up until the time of her death and would
24 help both parents around the home.

25



1 151. He said, about a week after his mother's death, he became aware that Malio, his wife
2 and a nephew were trying to take over the property and were in the yard with papers. He
3 was very worried about this because Father was very sick and did not look like he knew
4 what was going on. He called his brothers and sisters, and all came to the property except
5 for Lindell and Sharon.

6
7 152. While they were talking, Lynval told the Defendant, that Father had called to see him
8 (Lynval) but that the Defendant should be the one to help Father as Father needed help.
9 Barrington said that he agreed with this and also encouraged the Defendant to help. The
10 Defendant was reluctant at first, saying that he did not want to get involved but they
11 persuaded him. Barrington Wellington said that he knew that the Defendant and Father
12 were never really close but he said that he should still help him which he later did.

13
14 153. After his mother's death, no one took care of his Immigration status and he was
15 eventually detained by Immigration and sent off the Island. He believes from comments
16 made by the Defendant when he was in Immigration detention that he it was who
17 encouraged Immigration to send him off the Island.

18
19 154. All of the children had differences with their parents from time to time but the Defendant
20 was the only one to physically strike Father by punching him to the ground.

21
22 155. Father believed strongly in forgiving and never kept a grudge against any of the children
23 for very long and he feels sure that Father forgave them all including the Defendant for
24 any differences they had along the way.



1 156. Before the incident with Malio and Lujaney, Father and the Defendant had poor
2 relations. He rarely visited Father. When he did come to the property, it was to visit
3 Mother. The problem between them was that Father had lent money to him to purchase
4 a dump truck which he never paid back.

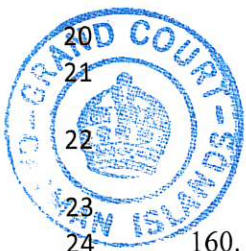
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6 157. In cross examination, he said that he had not been in communication with the Defendant
7 for a couple years now as the Defendant had stopped taking his calls and does not call
8 him and that this was not the agreement between them. He said if he had not stopped
9 Malio and others, the Defendant would not have the property now and the Defendant
10 has neglected him and he is in need. He said that the Defendant is lying about any plot
11 to kill Mother.

12
13 158. As the only child who had remained in Jamaica, he had always been helped by his
14 parents. He was there working in the yard to get a blessing from God, not to get property.
15 For the nine years he was there he could have taken his parents aside and had papers
16 signed but he did not do so. He said that he was giving evidence because he wanted to
17 have the opportunity to speak to the Defendant who has been avoiding him.

18
19 159. He said:

20
21 *"My father made sure tell you property is leaving for everybody. Before he died, he*
22 *said property must leave and anybody who need help, it must help them."*

23
24 160. Father did not hate them more than anybody ease. He said his parents were very strict so
25 everyone had differences with them. Father helped every one of the children. He said
26 that the plan was that Father would have a helper during the day and he would take care
27 of Father until the helper came. It was for both of them to stay there and look after Father.



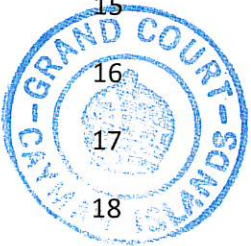
1 He is surprised that the Defendant took over and does not want to share anything with
2 anybody. Sandra was given a room at the house with her children and she was to stay
3 there for as long as life lasts.
4

5 161. He said after he gave his Affidavit, he received a call from Mr. Clive (Facey) He does
6 not know his full name. Mr. Facey called him and asked him if he gave any statement
7 about the case. He suspected at the time that the Defendant was there because “Mr.
8 Clive” does not usually call him.
9

10 **EVIDENCE OF THE DEFENDANT DELROY WELLINGTON**

11
12 162. In his Affidavit evidence of 4th September 2017, the Defendant stated that he has been
13 estranged and in no communication with Lindell Wellington for over thirty years. The
14 finances of father and his well- being were being handled by a couple who were his
15 church friends of ten years, Malio and his wife and by his nephew. This was up until the
16 time of an incident which occurred during which the Plaintiffs threatened to kill them
17 and the Police were called. The Plaintiffs concocted a story to the Officers which resulted
18 in the Police telling them to leave. Shortly thereafter he was contacted about the
19 handover of his father’s keys and bank books.

20
21 163. He stated that this incident lead to his father acting to finalize his affairs in order to avoid
22 the Plaintiffs who had a vendetta to manipulate him. He was instructed by his father to
23 go to the Lands and Survey Department to make inquiries as to the procedure for him to
24 be added to the property title in place of his mother. He did so and reported back to his
25 father. He states that over the years his father constantly reminded the Plaintiffs that



1 they would not be getting anything that he had worked hard to build which always
2 generated animosity and hatred towards his parents.

3
4 164. He said that on the morning of the 28th August 2014, he was at home when he was
5 awakened by a call from Barrington Wellington about a possible attempt by Father's
6 caregivers to force Father to sign documents. He responded by saying that Father was
7 free to do what he wants to do. On receipt of a second call he decided to go to the
8 property. While there sitting on a neighbor's porch, he was approached by Barrington,
9 Audrey and Lynval. They stated that we cannot let these people (referring to Malio and
10 others) take the property. He, the Defendant reminded them that his father had always
11 said that he was not leaving anything for any children of his who are not with him for
12 them to fight over. He reminded them that Father always said that he was not raised by
13 a father, and had to fend for himself from the time he was ten years old "so it is every
14 man and woman for themselves, he was not taking what he worked hard for and give it
15 to no wicked children."



16
17 165. He stated that his Father had made it clear to all the Plaintiffs who were making inquiries
18 that he (the Defendant) was the owner now so anything they wanted to know, they should
19 speak with him. While his father was still alive none of the Plaintiffs dared to ask a
20 question about it. They were not party to information about the decision which his father
21 made in September 2014.

22
23 166. He details the incident on the 29th January 2015, in which Lindell Wellington came to
24 the premises and initially stated that he came to ask about a room. Thereafter he
25 demanded to know what was happening with the property. When he was told that Father
26 had put in it in writing with the Justice of the Peace, Lindell started to become

1 belligerent. The Defendant asked him to leave and an altercation ensued which escalated
2 as Lindell pulled a knife and he responded by punching him.

3
4 167. He said that his father decided and ensured that he took care of his affairs and did so in
5 order to eliminate assumptions and opinions. He said that it was made clear to his father
6 that as per Cayman Islands Law and succession that in the event of his death, once the
7 death certificate was produced, the property would go solely to him, (the Defendant),
8 which his father acknowledged and confirmed.

9
10 168. He said that his father never got over what Lindell Wellington and the other Plaintiffs
11 did to him or put him and his wife through. He gave several examples of this.

12
13 169. Mother had entered into a joint purchase of a home with Lindell and Audrey and had
14 advanced the deposit of \$29,000.00 which had never been paid back to her. Lindell
15 Wellington constantly provoked him and the other tenants who lived on the property
16 causing tenants to leave and great stress on his mother.

17
18 170. On one occasion, Lindell, totally destroyed his father's car, which had been recently
19 restored and which was of great sentimental value to him. Lindell Wellington disobeyed
20 rules and assaulted a girlfriend several times while living on the property, His father
21 asked him to leave after seeing signs of visible injury to the female. Lindell brought
22 disgrace to his parents with Police matters and Court cases involving abuse and other
23 things to women.



1 171. He said that his father had nothing to say or do with him leading up to his illness and it
2 was only after he was bedridden that Lindell tried to befriend him. By this time it was
3 already too late and Father had already changed his heart towards them.

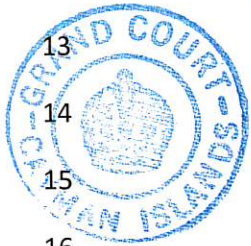
4
5 172. Lynval, Lorna, and Audrey all had borrowed money from Father and all of them
6 exploited Father financially.

7
8 173. He produced a document dated 29th August 2014 which was signed by Father and also
9 witnessed by Mr. Bodden

10
11 *“I known as Isaac Wellington is hereby requesting to have my son Delroy Antony*
12 *Wellington added to all my existing bank accounts..... including my fixed deposit*
13 *accounts. He shall have from the above mentioned date all access and total*
14 *responsibility for my finances. I therefore relinquish all other persons/names form*
15 *the said accounts and responsibility thereby going forward. My son shall have the*
16 *final decision in all matters pertaining to my financial welfare including property*
17 *located at the above address. These decisions stated within were not made with any*
18 *undue influence or fear.”*

19
20 174. In his Affidavit dated 4th September 2017 in response to that of Mr. Bodden, the
21 Defendant states that Mr. Bodden was not a very good friend of Father but only an
22 acquaintance. Instead he says Mr. Bodden was close to Lindell Wellington and had a
23 father son relationship with him.

24
25 175. He and his wife visited Mr. Bodden at his work place, several days prior to the signing
26 and requested his services. They had done so previously for marriage and Immigration
27 documents. They told him of Father’s illness and sought his assistance. On Mr. Bodden’s



1 arrival at the property on 5th September 2014, the written Lands and Survey forms were
2 handed to him. He read out the contents of the document to Father and asked him if he
3 understood and whether this was his true intention. He then asked him if he was forced,
4 or threatened in preparing the document and when he said no, the documents were
5 signed. This process was followed for all the documents, Deletion of death of a Joint
6 proprietor, transfer of land through love and affection, Certificate of Identification and
7 statutory declaration.

8
9 176. He said that while signing the Certificate of Identification Mr. Bodden asked “what about
10 the rest of the children”, whereupon Father responded by saying, “you are here to do
11 what I want, not what you or anyone else wants, so if you want to remain on speaking
12 terms for my remaining time, don’t tell me what to do. My decision is my decision to
13 make, so what is done is done, I wouldn’t change it for anyone.” Mr. Bodden then
14 continued by asking whether Father understood and the voluntary nature of his actions.
15 He said that at no time did Father tell Mr. Bodden of any intentions other than what the
16 document stated and that there was no mention of other children being beneficiaries in
17 any form.

18
19 177. His father chose to disinherit the Plaintiffs and they were told this numerous times over
20 the years. His reasons for doing so were his own. He says that Mr. Bodden is speculating
21 as to what he (Mr. Bodden) wanted his father’s intentions to be.

22
23 178. On the 11th November 2014, he made another visit to Mr. Bodden’s place of work to ask
24 for assistance in witnessing documents for the application for Letters of Administration
25 for his mother’s estate. Mr. Bodden assisted them and they did not speak with him again



1 until the 19th March 2015 when he received what he describes as an unpleasant phone
2 call from Mr. Bodden which made accusations against him.

3
4 179. In cross examination he said that his father had the 29th August 2014 'financial
5 document' prepared and presented it to them. He also said that his father never explained
6 to him that he wanted him to have the property in so many words. He just had the
7 document presented to him and explained that he wanted to get this done. He told him
8 to go to the Lands Department and find out what he needed to do to add him to the
9 property. He and his wife did so and received a template. They returned and explained
10 to Father the procedure.

11
12 180. He admitted to being in the background listening to Mr. Facey's call with Barrington
13 Wellington. He said that the conversation took place while they were at their house. Mr.
14 Facey's house is close to theirs. Upon returning home, Mr. Facey approached him to ask
15 him what was going on. He told Mr. Facey what was happening and Mr. Facey said that
16 he is going to call Barrington. While Mr. Facey was there talking to Barrington, he was
17 there listening. He denied the suggestion that he was colluding with others to assist his
18 case.

19
20 181. He said that his father wanted to turn the whole property over to him but Lands and
21 Survey explained that he could not do that unless he did a sale and also the procedure
22 for removing his mother's name and adding his. He said Lands and Survey contacted
23 Father about it.

24
25 182. To the suggestion that if Father wanted the property to go to him directly this also could
26 have been done for love and affection, he said that they were following the process told
27 to them by Lands and Survey.

1 183. He said he was a frequent visitor to the property as he would go there after he finished
2 his morning shift at work at about 8am and stay there until 12noon. He said that he was
3 a special child for his father and the only one who took traits from him.

4
5 184. On one occasion in late September 2014, he overheard Father tell Lindell Wellington
6 that he had turned everything over to him, (the Defendant) and if he had a problem he
7 should go to him. He was the one who chose to call Mr. Bodden, not his father. Father's
8 choice was for another Justice of the Peace but he had been unable to reach that person.

9
10 185. He admitted his signature on the Police statement shown to him. He had given this
11 statement to the Police after the 29th January 2015 incident with Lindell Wellington. He
12 denied describing himself in that statement as the caretaker of the property. He said that
13 this was the Police Officer's interpretation of what had been said and not his actual
14 words.

15
16 186. He said he locked his siblings out because after the January 29th 2015 incident, Father
17 was traumatized. The Plaintiffs were continually coming to the property and harassing
18 Father to change what he had done. They were still permitted to come there but were not
19 to be left alone with Father. He said that Father did not trust them because of what
20 happened with Mother and what happened when he came out of hospital.

21
22 187. He had no problems with his Father although he had been distanced from him for about
23 4-5 years over a disagreement which they had. This was over money which Father had
24 given to his girlfriend and kept it a secret from him.



1 188. He said that he had received permission to file the Affidavits of Mr. Facey and Mr. West
2 but instead of Mr. West he filed the Affidavit of his sister Sharon. This was suggested
3 to him by Mr. West who had been unwilling to file an Affidavit because of a previous
4 altercation with one of the Plaintiffs. He admitted that he had been listening in on the
5 Attorney's call to his sister that morning²⁵. He said two of his brothers Barrington and
6 Lynval Wellington also had struck their father.

7
8 189. He admitted evicting Sandra Wellington from the property. She owned her own house
9 and her mortgage was finished so he told her she would have to leave. He said their
10 father had tried to get her out of the property but he had signed a document as her
11 guardian. He said he gave her notice and had her utilities disconnected. Sandra had a
12 daughter who had been smoking marijuana on the property and had continued to do so
13 despite his warnings about it.

14
15 190. He said that he is honoring his father's wishes by not sharing the property. He said that
16 Father said he was giving him the property and he was to ensure that it does not get into
17 the hands of the others, this was not in his Affidavit because he was pressed for time.



18
19 191. He claimed not to have been aware that his father had an outstanding hospital bill at the
20 time of his death for about \$24, 534.00. The money in two of his father's accounts could
21 not have settled this bill. He did not make checks as to his father's debts except to ask
22 him whether he had anything outstanding.

23
24 192. He admitted that he too had been before the Courts with respect to an assault incident
25 but had been acquitted.

²⁵ 28th February 2019

1 EVIDENCE OF NATALIE HOLDER-WELLINGTON

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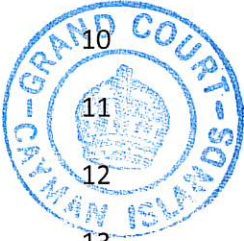
193. Natalie Holder-Wellington is the wife of the Defendant who was called in support of his case. They have been married for just over seven years. In her Affidavit evidence, she detailed concerns with what she alleges was the lack of care that was taken of her mother in law and the failure to provide her with a helper.

194. On the material issues in this case, she states that she witnessed the signing of the transfer document and that at no time did Father mention his other children, nor did he mention “trust, oversee, caretaker, apartments/rooms, equal shares” or any other term suggesting entitlement for them or anyone else. She states that when Mr. Bodden asked about the other children, Father “shut him down in no uncertain terms”.

195. She witnessed the incident between Lindell Wellington and her husband on the 29th January 2015 in which Lindell tried to stab her husband and damaged both of their vehicles. She said that after this incident, Father became fearful and told her husband that he did not want to see anyone except for hospital and hospice staff. Her husband installed padlocks on both gates thereafter for father’s safety.

196. In cross examination her evidence was that Father wanted to make an outright transfer to her husband but they explained the process to him as relayed to them by the Lands and Survey Department. She said Father never mentioned her husband as a caretaker for the property.

197. She said that her husband visited the property regularly once or twice per week, and mostly visited his father.



1 **EVIDENCE OF CLIVEN FACEY**

2 198. Cliven Facey lived next door to the property and knew Father for over thirty years. He
3 visited him regularly when he was alive, assisted him with repairs and had several
4 conversations with him. He continues to work on the property at the request of the
5 Defendant.

6
7 199. He stated that on one occasion shortly before Father became very ill, in the presence of
8 Mother, the Defendant, his wife and Malio, Father stated that he would not be leaving
9 his property or anything for any children. He said that they kept coming around making
10 requests and telling him what they wanted. He said that his own father never gave him
11 anything and he had to take care of himself from the time that he was eleven years old.

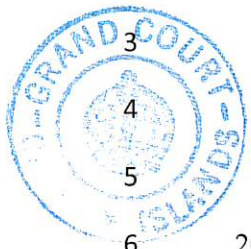
12
13 200. When the Defendant inquired as to when he had ever demanded or requested anything,
14 Father indicated that he was not referring to him. They all tried to tell Father that he
15 should not think that way but Father was adamant that he would rather give his property
16 to charity or the Government and he walked away saying that no one was going to tell
17 him what to do with his property.

18
19 201. Mr. Facey stated:

20 *“To show that Mr. Isaac had no intent to give it to the other children, he went to the*
21 *point where he had a lawyer do up documents on behalf of Lujaney and Malio. Some*
22 *of the children confronted them and the police were called. ...the children who were*
23 *present at the time intervened and stopped it.”*

24
25





1 202. He said that he had been talking on the phone with Barrington Wellington with whom
2 he speaks regularly when the Defendant and his wife came there. The phone was on
3 speaker and they overheard the conversation. They were standing very close to him.
4 They were talking about the case and Barrington was saying that he was going to testify.

5
6 203. There was nothing said to him that the Defendant is to have the property as his own as
7 distinct from him having it as a caretaker to take care of everyone. The last conversation
8 with Father was that he had “turned it over” to the Defendant and was not changing his
9 decision. He did not know what Father meant when he said this, He did not question
10 Father and did not get the chance to speak with him thereafter.

11
12 **EVIDENCE OF LEROY ROBERTS**

13 204. Leroy Roberts was a tenant of Father for about six years and left the property about six
14 months after his death. He describes him as a kind man and that some tenants tried to
15 take advantage of him because of his kindness and age. Father mentioned the Defendant
16 to him as the person who would be collecting all the rents and be in charge of the entire
17 property. He complied with this and would speak to the Defendant who is a friend of
18 his, about rent issues.

19 **EVIDENCE OF DONALD CAMERON**

20 205. Donald Cameron is also a former tenant of Father. He was resident at the property from
21 April 2014. Father informed him that the Defendant would be the new landlord and they
22 were to refer tenant matters to him. He met with the Defendant, paid the rent to him and
23 remained on the property for some time thereafter. After the rent started being paid to
24 the Defendant, he was at the property more often.

1 **ADDITIONAL EVIDENCE**

2 206. In the course of the proceedings the Plaintiffs sought and were granted leave to produce
3 the Affidavit of Barrington Wellington. The Defendant sought leave to produce two
4 further Affidavits, that of Cliven Facey and a Mr. West. Instead he produced the
5 Affidavits of Mr. Facey and his sister Sharon Wellington. The Plaintiffs objected to this
6 with the Plaintiffs' Counsel indicating that he was still on record for her. Leave was
7 refused pending clarification as to her position. I also noted her estrangement from
8 Father since 2004 and that she was unlikely to be able to give any evidence material to
9 the issue. I noted also the Defendant's earlier evidence that she had initially agreed to be
10 a party to the proceedings, believing that there was a document from Mr. Bodden as to
11 Father's wishes and that he, the Defendant had since told her about what was happening
12 in the case, whereupon, she then said according to him, that she could not stay quiet. The
13 Defendant elected to close his case without resolution of her status as a Plaintiff.



14 **THE VIDEO EVIDENCE**

15
16 207. Counsel having sought leave in the midst of his closing address, to introduce the video
17 evidence which had been referred to by a number of witnesses and which he had during
18 the course of the trial stated that he was not producing.

19
20 208. He explained that this was very late in the day but relevant and very important to the
21 case. He submitted that the Court had not yet rendered its decision and that he was
22 seeking leave to produce the same videos which he had earlier seen. He said that viewed
23 on another instrument, the videos were now in a format which is louder and clearer than
24 when he first heard it, albeit that on a higher resolution system there was still going to
25 be some difficulty to listen and really hear what Father is saying.

1 209. He described the video as a discussion between Father and persons who were there.
2 Lynval Wellington was present and Audrey Wellington made the recording and was
3 asking questions. She kept the recording. It had been mentioned in Mr. Lindell
4 Wellington's Affidavit although there was no specific mention in Ms. Wellington's
5 affidavit but she referenced Mr. Lindell Wellington's Affidavit as being true and correct.

6
7
8 210. I invited the Defendant to view the videos and the matter was adjourned over to the
9 following day.

10
11 211. The Defendant opposed the application although he said that he thought that it assisted
12 his case. He submitted that these were two trimmed videos, which appeared to have been
13 substantially modified. No surroundings were visible, only Father's face. There was no
14 time on the videos. He said that such evidence can be manipulated in order to eschew
15 the reality. There was undue prejudice and that no independent persons were present and
16 there was a lack of foundation.

17
18 212. In respect of the timing of the application to produce these videos, I noted the importance
19 of the videos to the issue at hand. While I was concerned about the impact on the
20 Defendant and whether there would be any prejudice to him, I was of the view that the
21 prejudice would be greater if there was some allegedly material evidence which went to
22 the central issue in the case which was not considered. I bore in mind that the issues
23 raised by the Defendant would be important not only to admissibility but also to the
24 question of what weight if any should be given to these videos. As stated above, I
25 therefore exercised my discretion to permit the videos to be entered into evidence.

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1 **AUDREY WELLINGTON RECALLED**

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213. Audrey Wellington was recalled. She said that she recorded the videos at her father's house on a cell phone. It was after their mother's death. She was present and junior (Lynval Wellington) was present as well as Sandra. She kept them on her phone and transferred them to a new cell phone. There are only two recordings. She shared the videos with Counsel on the 21st September 2017. She asked him about them and was advised that the audios were not clear.

214. She produced and identified them as showing her father, her father speaking and her voice. She said that she could not remember how long after Mother died and upon visiting her father that they were taken but that the transfer had already taken place. They came about because upon visiting Father he had several conversations about his property and what he wanted to be done so she made the recordings, so that there would be no misunderstanding. Their purpose in obtaining it was for clarity. It was done after they had been to Lands and Survey in order to get clarity that the property did not belong to the Defendant alone.



215. In cross examination she said that she chose to video father's face rather than the entirety of his room because he was covered with a sheet. She said her father was clearly not under duress and the video was not forced. They did not apply fear to him. There was no physical touching of him and they did nothing to him to cause him injury. He was not coerced or threatened before the videos were recorded. It was not odd that his bed was not inclined. She has visited him several times and he never asked her to recline the bed.

1 216. It was suggested to her that it was strange that there was no date on the videos. She said
2 that there is no full length video as that was all she recorded. Once she got clarity she
3 ended the recording. There was no need to record everything. To the suggestion that any
4 reasonable person would have a more entire period of videos, she said that there were
5 personal conversations prior to this which were not relevant.

6
7 217. The Defendant was given an opportunity to give further evidence on this aspect. He
8 stated that on his becoming aware of this video, it brought clarity and shed light on the
9 reason why his father requested him to take certain steps. He said that thereafter, his
10 father was constantly traumatized and he (the Defendant) had to stay at the property at
11 nights. There was a sudden change in Father and his whole health just changed rapidly.



12
13 218. He said that he can clearly see that Father is in distress in the videos. He knows that
14 there is something wrong in the videos. Father is not speaking freely and the other
15 persons present in the room cannot be seen. Additionally on the videos, Audrey
16 Wellington is telling Father what to say and suggestions are being made to him.

17
18 219. I have listened closely to these videos and set out below what can be heard:

19
20 **Transcript from Audiovisual #1**

21
22 Audrey: "... belongs to Delroy and fi him alone"

23 Father: "It nuh belongs to Delroy alone. Delroy is di only – him come in
24 like a overseer for everything"

25 Audrey: "Right. So it's to be shared with all the children?"

26 Father: "Yeah, well..."

27 Audrey: "I don't want anything but, I am just asking you"

28 Father: "If there's anything there so to be shared."

29 End: End

1 221. It was also submitted that the evidence of the Defendant was self-serving and disgraceful
2 and of note say the Plaintiffs is that he did not expressly say that Father told him that the
3 property was his. Additionally that it speaks volumes that he and his wife would listen
4 in on a conversation between Barrington Wellington and Mr. Facey. Counsel submitted
5 that this behavior ought to give the Court cause for real concern. The fact that Father
6 gave money to the Defendant's divorced girlfriend as the Defendant admitted shows that
7 Father was not as rigid as he would like to have us believe.

8
9 222. As to the videos, Counsel submitted that they speak for themselves and clearly set out
10 the wishes of Father and go to the core issues which are in question in this particular
11 case. Father says therein that the property is for everybody. The circumstances of the
12 videos have been explained. There is no deliberate attempt to do anything untoward.
13 While it is a question of weight for the Court, the evidence is clear. As to the timing of
14 the videos, it was submitted that both videos show clarity in terms of the intention five
15 months earlier and that they do add to the overall considerations before the Court in
16 determining what the Court makes of what happened as at the date and time of the
17 transfer.

18
19 223. Additionally it was submitted that from the videos, Father was not a well man and the
20 essence of communication was between Mr. Bodden, doing the best that he could to
21 communicate with Father. It is sufficiently clear, Counsel urged, that this constructive
22 trust was intended albeit that neither of them saw it in those sorts of express ways.



1 **DEFENDANT’S SUBMISSIONS**

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224. In response the Defendant made oral and provided written submissions. He submitted that although his father was physically frail, he had the mental capacity to perform all his transactions. He made a number of points including the vesting rights of survivorship and the following:-

1. “It is an inherent characteristic of joint proprietorship/tenancy that, on the death of any one joint proprietor, the entire co-owned estate ‘survives to’ the surviving joint proprietor.
2. This right of survivorship (or *ius accrescendi*) ensures that the entitlement of each joint tenancy/proprietor is simply extinguished on his death.
3. In many instances joint tenancy (with an automatic rule of survivorship) operates as a crude testamentary substitute- the poor man’s will so to speak. Particularly in the context of joint ownership of the family home, survivorship plays a valuable modern role as a simple and cost-effective estate planning device in a country where the majority of the population still make no will.
4. Father made absolutely no expression orally/ declaration neither to him nor to the Justice of the Peace (JP) when signing his land transfer, in the presence of himself, his wife and the JP that he was to hold the property for the benefit of all siblings equally. Hence, the property is not on trust.
5. The reality is that the entire claim which is rested on Mr. James Bodden (JP) establishes inconsistent evidence.
6. During his oral evidence, he was never at any time told orally by Father that the property was to be shared or held on trust for the benefit of others.
7. Mr. Bodden went under the ‘impression’, ‘thought’, ‘opinion’ and ‘assumption’; he assumed that he and his father had prior discussions regarding sharing before he reached the premises to conduct the transaction, he and Father had no such discussions.
8. His father’s intention/conscience was documented as is evidenced in adding him as joint-proprietor and by relinquishing all names/persons from his property and bank accounts. Additionally, consenting for him to have Letters of



1 Administration regarding his mother's estate. Nothing of the sort was mentioned
2 regarding 'overseeing', 'managing', 'trust' in his presence by his father.

3 9. Hence, it would be inappropriate to apply the reasoning in any of the case laws
4 highlighted by the Plaintiffs' counsel to this case when no common intention
5 was established to indicate there was a declaration of trust to begin with. It
6 remains, **the** onus was never met.

7 10. The rule requiring that trusts be declared exists to prevent people from
8 unwittingly creating trusts, and the possibility for 'loose conversations' (in this
9 case, 'impression' to be used. There is, therefore, no coherence in treating
10 'impression' which Mr. Bodden had created in his own conscience as a
11 declaration of trust.

12 11. All formalities were complied with regarding all transactions his father
13 performed; which he did voluntarily without undue influence or duress. All
14 decisions **he** made were finalised by way of confirmation with the various
15 personnel **at** the entities (Lands and Bank) he spoke with in his (lifetime)."
16

17 225. The Defendant **also** submitted that Counsel was misleading and giving his own
18 assumption. Mr. **Bodden** clearly stated at the time of signing, that his father made no
19 vocal statement **and** that he did not pry. Mr. Bodden assumed that he and Father had
20 conversations prior **and** agreed that he had limited conversation with Father. Mr. Bodden
21 said that looking at **it** now he agreed that he did not take the right step. He stated it was
22 just his impression **from** the transaction. He basically reacted out of what he thought was
23 the situation. He **said** that he assumed Father wanted everyone to be included. That word
24 assume, comes **back** to things not told to him.
25

26 **ASSESSMENT**

27
28 226. I have carefully **considered** all the evidence and all the submissions made, some of which
29 I have not repeated **herein**. The Defendant gave much detailed evidence which was in
30 most cases the **direct** opposite of that given by his siblings. Having assessed him
31 carefully I was less **inclined** to believe him where he differed from his siblings. His wife



1 even less so. I got the impression that she was bent on supporting her husband rather
2 than on being truthful. I took a dim view of the incident with Cliven Facey and noted
3 that while Mr. Facey stated that they both came upon him while he was in the course of
4 a conversation with Barrington Wellington, the Defendant states that it was Mr. Facey
5 who approached him, asked him what was going on and then decided to call Barrington.
6 The Defendant and his wife listened in as Mr. Facey and Barrington Wellington spoke
7 about the case. I thought Mr. Facey to be dishonest and cagey. Unsolicited at the end of
8 his evidence he declared that he did not want the other siblings to have anything against
9 him as they were all friends. I got the sense that he was also anxious to maintain his
10 relationship with the Defendant for whom he continues to work.

11
12 227. I thought that the Defendant went to great lengths, as far back as 1993 to recount every
13 ill-judged escapade by his siblings and to paint himself as the only sibling of virtue and
14 thus the likely recipient of his father's trust and confidence. Yet surprisingly for some
15 time his father was being assisted by his Church companions and a nephew. He himself
16 agreed that this was the case and that he encouraged the others to allow his father to do
17 as he pleased. I preferred the version given by the other siblings that he was distanced
18 from his Father and rarely visited him. This appeared to me to be the truthful version.

19
20 228. The picture that emerges of Father came from a number of witnesses but was sometimes
21 inconsistent. Leroy Roberts described him as a good man, a kind hearted, fair and down
22 to earth man. Lindell Wellington said his father never held a grudge and would always
23 assist him, he has lived at the property many times over a five year period. Audrey
24 Wellington stated that Father never treated any of them any differently or held up one
25 more than the other. Yet all agreed that following an issue between Father and Sharon

1 Wellington in 2004, the relationship was never the same. This was said to be an issue
2 over the order of service of food and the distance between them continued for some
3 eleven years.

4
5 229. The Defendant tried hard to paint the others as financially ill-treating Father but it was
6 clear to me from all the evidence of his siblings, which I accept, that the Defendant was
7 also borrowing moneys from them. I accept the evidence that Father had loaned him
8 money for a dump truck which he had failed to repay and that as a result he was less
9 inclined to visit Father. This does not go directly to the issue but I have considered and
10 do not accept that there was much light of day between the fall from Father's high moral
11 standards by one side as against the other. I believe Audrey Wellington when she says
12 that none of them lived up to their father's standards.

13
14 230. I do believe the Defendant that he genuinely believes that his mother was ill-treated by
15 his siblings. I hasten to add that I am not concluding whether or not this in fact was the
16 case. Additionally whether or not his father also believed this and turned against the
17 other children shortly after her death, I cannot with confidence so conclude on the
18 available evidence. Certainly, this is what the Defendant asserts.

19
20 231. I accept the evidence of Audrey Wellington and Barrington Wellington who I believe to
21 be both witnesses of truth. I accept the evidence of the latter that he it was who on the
22 28th August 2014 persuaded the Defendant to help his father, and took him into see his
23 father to say that they were going to take care of him. Barrington says that at that point
24 there was no discussion about the property.

25
26 232. I do find it strange that within about a week after this, the transfer document was signed
27 and that the Defendant did not say to at least Barrington that his father had added his



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name to the property. He kept it a secret from his siblings until the altercation with Lindell Wellington on the 29th January 2015. It may be said that he did not want to create an incident but it did seem to me that perhaps the better way to settle the matter was to have had all the children present with his father for Father to say what his decision was and that he was not changing it. Instead he locked them out and changed helpers so that they could not build relationships and enter the home in order to speak to Father.

233. I viewed the evidence of Lindell Wellington with caution in some respects. When he recounts words used by Father in his Affidavit, I found it difficult to accept that Father said or would have used those particular words. I think it is plain that whatever may have been said by Father, he did not use the words ‘on trust for children’.

234. There is conflict as to whether Father always said that the property was for everybody or whether he said in the Defendant’s hearing that he was not leaving anything for “no wicked children.” Having listened and assessed them as witnesses of truth, I prefer the evidence of Audrey Wellington, Lindell Wellington and Barrington Wellington to that of the Defendant. I thought the Defendant not only embellished the stories he told about his siblings but that he is powerfully motivated by his desire to retain the property in which he and his wife now reside. I noted that Audrey Wellington maintains that she has a good job, and owns her own home, she does not need a share of the property and she said so not only in Court but to Father while he was still alive.

235. However none of these points are the deciding factors in this case. The primary issue is whether Father stated his intention at the time of the transfer in a sufficiently clear manner or clarified the matter thereafter in a way on which legal reliance can be placed.

1 236. I was concerned to see whether on the Plaintiffs' case there was any consistency in
2 Father's declarations of intention. Even if I was inclined to dismiss the evidence given
3 on the Defendant's case, on the Plaintiffs' own case, Barrington Wellington stated that:-

4 *"That was agreement from longer time that father said property to be left to take*
5 *care of anybody who need help.*

6 *First he never want dead left anything to give any family memberand children*
7 *don't treat him good but after he find out that everybody resile back, he then said*
8 *that ...it must leave for every one of the children who want help from it get help,*

9 *It was both before mother died and after mother died.*

10 *About two days after the incident with Lujaney and Malio.*

11 *That is when he said place must left and everybody who want help must get help*
12 *from it.*

13 *I used to go out there in the morning time before Delroy come and talk to him and*
14 *that was when he said that.*

15 *Me and him and the helper was there when he said it."*

16
17 237. It is clear from this evidence that Father had over the course of time changed his mind
18 as to what he wanted to do with the property.

19
20 238. Then there is the aborted document signing of 28th August 2014 which appeared to
21 suggest that there was an attempt to transfer the property to persons other than the
22 children. Whether this was in fact Father's intention or something being forced on him
23 is unclear. The Defendant told the others that Father should be allowed to do what he
24 wanted to do with his own property.

25
26 239. In light of all the evidence, I could not say, on the Plaintiff's case, that there had been
27 consistent declarations of intention over the years.

28



1 240. This background made it all the more important that there be clear evidence at the time
2 of the execution of the transfer.

3
4 241. In this respect Mr. Bodden is a significant witness. It was clear to me that he was doing
5 his best to speak the truth as he remembers it. He is an independent witness with no
6 particular attachment to either side. In terms of impartiality, he appears to be the only
7 major witness without an interest to serve in this matter. I entirely accept him as an
8 independent and truthful witness and one of integrity.

9
10 242. Regrettably, I am not able to say that he was very clear as to what took place at the time
11 of the signing. In his oral evidence he varied from his Affidavit evidence and resiled
12 from some of the positive statements which he had made therein. He did say that at the
13 time he gave his Affidavit, the matter was fresher in his mind. What I have to consider
14 is whether from his evidence as a whole there is a sufficiency of evidence to say that
15 Father made his intention sufficiently clear.

16
17 243. For much of his evidence Mr. Bodden spoke of the impression which he had from the
18 limited inquiry which he made and from earlier conversations with Father. Those
19 revolved around Father's pride in his family. Mr. Bodden admitted that he had not been
20 privy to much of the family activity.

21
22 244. While he cannot be faulted for the professional way in which he approached and sought
23 to discharge his responsibilities as a Justice of the Peace, it does mean that there is very
24 limited material available for a determination to be made. The positive statements which
25 he made in the course of his oral evidence are as follows:

26
27



- 1 - He (Father) intimated the wish that his children would be taken care of.
2 - He did say that he wanted to transfer the property so that his son could oversee
3 the property.
4 - When the idea of a will came up, he said that it would be complicated and
5 expensive.
6 - When he (Mr. Bodden) gave his Affidavit, it was true and correct, to his
7 knowledge and belief. Father told him that he wanted to transfer the property so
8 that in the event of his death, Defendant would oversee and manage the property.
9

10 245. Mr. Bodden spoke of having the impression that sharing had already been discussed.
11

12 246. The Defendant says that he was present throughout this but he denies that his father said
13 anything about other children at the time.
14

15 247. At paragraphs 43 and 44 of his written submissions. Counsel on behalf of the Plaintiffs
16 stated:-

17 *"In this case, Mr. Roy Bodden speaks as to what Mr. Wellington's intention, as*
18 *expressed to him at the time papers were being signed. He goes further and sheds*
19 *light on his understanding of how this was a long standing intention.*

20 *If the court accepts Roy Bodden's evidence as truthful then the court should:*
21

- 22
23 (i) *hold for the Plaintiffs that the Defendant holds on trust for all of them*
24 *and so, those who claim do so as beneficiaries to his estate which he*
25 *evidently intended to be held on trust.*
26 (ii) *That the Respondents' conduct in the circumstances has been in breach*
27 *of trust."*
28

29 248. The lack of clarity as to Father's intentions is encapsulated by Mr. Bodden's own
30 evidence. He stated:

31 *"So I suggested the whole idea of a will, which is when the idea came up about*
32 *complication and expenses.*
33

1 *It is true that he had documents and there were filled up. I realized then that he had*
2 *given some thought to the seriousness of the matter which I raised and it would be*
3 *appropriate to proceed.*

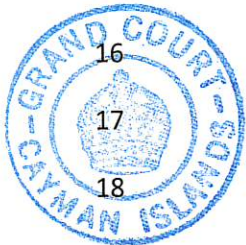
4 *Reason that concerned me is that I saw potential for multiple claimants and no clear*
5 *succession plan which was my fear. In hindsight I regret now not expressing it*
6 *because, when the matter came to a head and I was requested to give an affidavit, I*
7 *realized that I should have raised it with Mr. Wellington's, the possibility for the*
8 *family to be spilt as a result of no clear interpretation or no clear hierarchy."*

9
10 249. At one point Mr. Bodden, also said this in answer to the Defendant:-

11 *"That is not what I came away with, not impression that I came away with. It is quite*
12 *plausible that your interpretation could be different from mine."*

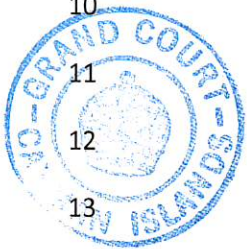
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14 250. Mr. Bodden based his impression partly on the fact that he knew Father to have been
15 equally proud of all his children, yet all the family witnesses spoke of his estrangement
16 from Sharon Wellington who rarely visited the property. Also it very much appears that
17 there would have been occasions that Father could hardly have been proud of some of
18 his children. For quite some time, these were not the people to whom he "gravitated"
19 according to all the witnesses. He was close to his Church companions and his nephew.

20
21 251. The transfer took place on the 5th September 2014, shortly after Mother's passing in
22 August of the same year. The videos produced at best, were made some time after the
23 29th January 2015, about 5 months after the transfer. This was also after a confrontation
24 between the Defendant and Lindell Wellington which began in Father's presence, with
25 injuries being inflicted and ended with Lindell Wellington damaging the two vehicles of
26 the Defendant and his wife.



1 252. In the aftermath of this incident and during the video, Father is confronted by three of
2 his children and is responding to questions asked by them in the face of their obvious
3 concern. There is nothing shown on the videos leading up to the questions and no
4 indication of what went on before those questions were asked. The questions appear to
5 begin abruptly. I am concerned as to the circumstances in which the videos were made,
6 the timing of these recordings and the quality of these recordings.

7
8 253. Thirdly the Defendant was not present. Was this what he had been told at the time of the
9 transfer? Is this what he understood to have been the basis of the transfer at the time it
10 was made? The videos do not assist with these questions. Equity acts on a person's
11 conscience. The evidence for the Plaintiffs as to what the Defendant must have known
12 thus takes us back to the evidence of Mr. Bodden.

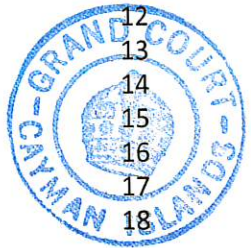


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14 254. Even if I were to put aside any misgivings about these videos, can I be satisfied so that
15 I can safely conclude in law that a declaration made some five months after the transfer
16 was signed reflects what was intended at the date and the time of the transfer. I believe
17 that it would be unsafe to do so.

18
19 255. It was no doubt for good reason as to the likely uncertainties involved that experienced
20 Counsel for the Plaintiff in his written submissions of 10th February 2019, at the start of
21 this case and in his closing submissions of 13th March 2019, placed much emphasis on
22 the expression of intention which the Plaintiffs say was made by Father in the presence
23 of the Defendant at the time of the transfer. At paragraph 40 of his written submissions
24 in closing he submitted:-

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“40. In order to establish an express bargain constructive trust, a claimant must adduce clear evidence that she and the legal owner “orally declared themselves in such a way as to make plain their common intention that [the claimant] should have a beneficial interest in the property” (per Nourse LJ in Stokes v. Anderson [1991] 1 FLR 391 at 398A). She would need to establish that there was “some agreement, arrangement or understanding reached between them that the property was to be shared beneficially” (Lloyds Bank v. Rosset [1991] AC 107 at 132E) albeit that it is not necessary that there should have been express agreement as to the size of the share (Oxley v. Hiscock [2004] 3 WLR 715).



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41. If an express common intention can be established, the range of material “changes of position” or detriment that the court can consider is extremely broad. It is likely, as suggested by Browne- Wilkinson V-C in Grant v. Edwards ([1986] Ch 638 at 657) that “any acts done by [the claimant] to her detriment relating to the joint lives of the parties...is sufficient...The acts do not have to be inherently referable to the house”.

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256. Lindell Wellington produced certain police statements taken after the January 2015 incident between them. One was the statement of PC 115 Ebanks dated 8th June 2015 in which she records the Defendant as saying on the 7th February 2015 that “since his father’s illness he was awarded care taker of the premises by his father.” PC Ebanks did not provide an Affidavit and was not called to give evidence. At best this is hearsay from Lindell Wellington. However even if I accept that in February 2015, he described himself at that time as the caretaker rather than caretaker and co- owner, I cannot see how this assists in determining the issue at hand. The Defendant had in fact taken on care taker responsibilities and on 7th February 2015, he was only a co-owner of the property.

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257. Lindell Wellington also produces a statement of Natalie Holder dated 30th January 2015. In cross examination, Mrs. Holder- Wellington admitted to her signature on the document and agreed that this was a statement which she had given to the Police after the January 2015 incident. In that statement she referred to her husband as care taker and

1 administrator /co-owner of the property. Again the Plaintiffs sought to suggest that such
2 a description was more consistent with knowledge of a limited role with respect to the
3 property than with sole ownership.

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5 258. I cannot see how these statements assist the Plaintiffs' case. Had it been the case that
6 these were made after the death of Father and at the time of sole ownership, there may
7 have been in respect of the first, some faint support that the Defendant was conscious
8 that he was not.

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10 259. The Defendants' own statement dated 12th June 2015 was put to him. He identified his
11 signature. In that statement he is recorded as saying that on the 29th January 2015, his
12 father told Lindell Wellington to ask him for a place to stay because he the Defendant
13 was now the caretaker of the property. The question does arise, why would Father defer
14 to the Defendant if the property was also to belong to Lindell Wellington? Why did
15 Father not say that the property belongs to Lindell Wellington as well, so he is to get
16 what he wants? In referring to the Defendant as a caretaker was Father saying that he
17 was no more than this? On one view the Defendant was not then the sole owner of the
18 property and was in fact a caretaker of it. In light of all the evidence, I do not think that
19 the use of the word caretaker, is conclusive as inevitably having the meaning or bearing
20 the interpretation that the property was held on trust and was to be shared for all the
21 children.

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23 260. The Plaintiffs also point to the Defendant's statements. In his cross examination the
24 Defendant said that Father said that he wanted to "turn the property" over to him but that
25 Father did not explain to him that he wanted him to have the property. He just had the

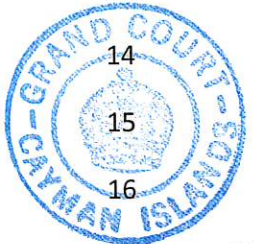


1 document presented to him and explained that he wanted to get this done and told him
2 to go to Lands and Survey Department. He did say that the process was explained to
3 Father and the outcome and that Father's wish is reflected in the document. Additionally
4 it appears that shortly thereafter Father told the tenants that the Defendant was now in
5 charge.

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7 261. I find that the entirety of the evidence lead or relied on by the Plaintiffs in proof of their
8 case to be tenuous and unclear. Weighing heavily is the view that I have taken that the
9 oral evidence of Mr. Bodden was not strong and significantly reduced the import of his
10 Affidavit evidence.

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12 262. There is a material difference between a property which is to be held in trust and
13 beneficially owned by others so that it may be transferred into the names of those others
14 and property which is meant to be held by one person and to be used to help others *if*
15 *they need help*. This latter scenario was the evidence given by Barrington Wellington.

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17 263. I note that Father must have known the effects of what he was doing. I accept that he
18 was advised of the process and would have known that on his wife's death he (himself)
19 became the sole owner of the property. I accept Mr. Bodden' evidence that Father was
20 understanding what was happening on the day that the transfer was executed. Mr.
21 Bodden raised with Father the possibility of a will. Father declined to consider this route.
22 Regrettably he is not here with us to give evidence. Unfortunately what is left behind is
23 a nebulous and uncertain state of affairs, which in my view is essentially no more than
24 speculation and pulling tiny strands of evidence from various statements, as to what
25 Father's intentions were on the day he signed the transfer document and what he must

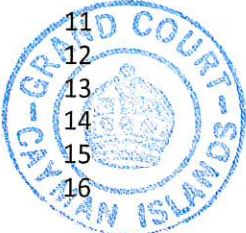


1 have meant. He leaves the Plaintiffs to invite this Court to infer what must have been
2 said to the Defendant in the absence of his other siblings and behind closed doors. That
3 is not an invitation which I can accept.
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5 264. The fact that it is strange or surprising that he would have chosen the Defendant, who
6 was not particularly close to him and who had borrowed monies from his parents which
7 he had not repaid, cannot amount to positive evidence that Father must therefore have
8 meant that the Defendant was to hold the property for all the other children.

9 265. At paragraph 37 of his written submissions, Counsel on behalf of the Plaintiffs submitted
10 as follows:-

11 *“In order to establish that the property is held on trust, the key elements*
12 *of a constructive trust must be established. These are broadly threefold:*
13 *(a) “bargain” (or common intention)*
14 *(b) “change of position” (or detrimental reliance)*
15 *(c) “equitable fraud” (or unconscionable denial of rights).”*
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17 266. I have not in the course of this judgment considered the latter two elements in any detail.
18 I will say that I consider that it is unlikely that these could possibly be established on the
19 available evidence. There is no evidence about any of the children contributing
20 financially to the property or taking any action on the basis that they would inherit the
21 property. I have not gone on to detail the considerations because my view is that the
22 Plaintiffs’ case gets into difficulty at the first hurdle.
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24 267. I have given anxious consideration to this case as I very much appreciate the import of
25 it for all the family. I must be guided by the applicable legal principles and the available
26 evidence. My view is that the evidence of the Plaintiffs is simply too weak to prove the
27 case.
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