



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: FSD OF 2024 ()

BETWEEN:

- (1) DARNOL FAEBERK KELLY**
- (2) DARNEY DUHANEY KELLY**
- (3) DONVERD McCARTHY KELLY**

Plaintiffs

and

- (1) DAVE ERNEST LINDO KELLY**
- (2) ELLEN ANN KELLY VERNON**
- (3) BERKLEY DALVIN KELLY**

Defendants

WRIT OF SUMMONS

TO: Dave Ernest Lindo Kelly, Ellen Ann Kelly Vernon and Berkley Dalvin Kelly c/o
Maples, Ugland House, South Church Street, Grand Cayman, Cayman Islands

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs, of P.O
Box 30069, Grand Cayman, Cayman Islands, KY1-1201 in respect of the claims set out on the
next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 6th day of September 2024

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

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Plaintiffs

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(1) DAVE ERNEST LINDO KELLY
 (2) ELLEN ANN KELLY VERNON
 (3) BERKLEY DALVIN KELLY

Defendants

 STATEMENT OF CLAIM

The Parties

1. The Plaintiffs and the Defendants to these proceedings are all siblings and all are resident in the Cayman Islands. From oldest to youngest the siblings (two of which are not parties to these proceedings) are:

Dave Ernest Lindo Kelly ("**Dave**") - Defendant
 Ellen Ann Kelly Vernon ("**Ellen**") - Defendant
 Berkley Dalvin Kelly ("**Dalvin**") - Defendant
 Derry Dalvert Kelly ("**Derry**") - not a party
 Darney Duhaney Kelly ("**Darney**") - Plaintiff
 Donverd McCarthy Kelly ("**Donverd**") - Plaintiff
 Doey Collins Kelly ("**Doey**") - not a party
 Darnol Faerberk Kelly ("**Darnol**") - Plaintiff

2. The parties' mother is Tweetsie Fay Kelly (known as "**TT**") and their father was Berkley L. Kelly ("**Berkley**"). Berkley passed away on 23 February 2017.
3. TT has a sister, Clair Ennalee Ebanks ("**Ennalee**") who resides in the property next to TT, and did have a brother, Roy Cardiff Ebanks ("**Roy**") who passed away on 3 May 2020.

The Trust Deeds

The Kelly Family Trust

4. By way of Deed dated 22 August 2017 (the "**Trust Deed**"), The Kelly Family Trust was established (the "**Trust**"). The Original Settlor and Protector were TT and the Original Trustees were Dave and Ellen.
5. The Plaintiffs claim that Dave and Ellen are the current trustees of the Trust and TT is the Protector, as to which see paragraph 44, below. In this Statement of Claim the term "**Trustees**" shall refer to Dave and Ellen but, in the alternative, shall refer to any trustee of the Trust or the Updated Trust (as to which see paragraphs 37-43, below) who may be found to be trustees so appointed of either trust as at the date of each of the matters pleaded herein.
6. The Trust is an irrevocable trust governed by the laws of the Cayman Islands with a duration of 150 years. It is a discretionary trust although the discretion is not absolute and is limited by the terms of the Trust Deed, including, but not limited to, those set out in this Statement of Claim.
7. In accordance with paragraph 7 of the Trust Deed and paragraph 7 of Part C of the Schedule to the Trust Deed, subject to obtaining the consent of the Settlor during her lifetime (and, after the Settlor's death or incapacity to act, consent of the Protector) when necessary, the powers of the Trustees may then be exercisable at their absolute discretion; and from time to time as occasion requires.

Beneficiaries

8. In accordance with paragraph 1.3 of the Trust Deed the beneficiaries of the Trust (the "**Beneficiaries**") are:
 - a. TT during her lifetime;
 - b. Ennalee and Roy during their respective lifetimes;
 - c. After the death of TT, Ennalee and Roy, the beneficiaries are Dave, Ellen, Dalvin, Derry, Darney, Doey, Darnol and Donverd, *per stirpes*; and
 - d. Any person or class of persons added to the class of Beneficiaries by the Trustees by deed with the consent in writing of the Protector.
9. In accordance with paragraph 4.2 of the Trust Deed, "*the Trustees shall hold the Trust Fund upon trust for the Beneficiaries who are then living equally; but (if any child who is a Beneficiary is not then living), that child's share shall be held upon trust equally for that child's descendants per stirpes who are then living*". This is subject to the "**Overriding Powers**" (as to which see paragraphs 11 to 14, below).

10. Subject to the Special Trusts (as to which see paragraph 22, below) and paragraph 4.2 of the Trust Deed (see paragraph 9, above), *“the Trustees shall also hold the Trust Fund upon trust for such charities as the Trustees shall determine”*.

The Overriding Powers

11. The Overriding Powers are made up of the powers of appointment, advancement, and, purportedly, resettlement, each exercisable only with the written consent of the Protector and subject to the Special Trusts (as to which see paragraph 22, below).
12. The power of appointment, at paragraph 3.1 of the Trust Deed, grants the Trustees the power to appoint that they hold the Trust Fund for the benefit of any Beneficiaries on such terms as the Trustees think fit.
13. The Power of advancement, by virtue of paragraph 3.3 of the Trust Deed, permits the Trustees to pay or apply Trust Property for the advancement or benefit of any Beneficiaries.
14. The purported power of resettlement, is at 3.2 of the Trust Deed as follows:

“With the written consent of the Protector and subject to the Special Trusts, the Trustees may by deed declare that they hold any Trust Property on trust to transfer it to the trustees of another settlement, wherever established, if the transfer is for the benefit of any one or more of the Beneficiaries (whether or not such Beneficiaries are the only persons who may benefit under the settlement), to hold it on the terms of that settlement, freed and released from the terms of this Trust.”

Trust Property

15. In accordance with paragraph 1.10 and 1.16 of the Trust Deed the trust fund (the **“Trust Fund”**) was initially made up of:
- a. C1\$100 transferred to the Original Trustee;
 - b. The property known as Block 101A Parcel 8
 - c. The property known as Block 44B Parcel 62¹
 - d. The property known as Block 44B Parcel 241²
 - e. The property known as Block 4C Parcel 78
 - f. The property known as Block 4C Parcel 80
 - g. The property known as Block 4E Parcel 64
 - h. The property known as Block 4E Parcel 65
 - i. The property known as Block 4E Parcel 277

¹ Subject to clause 4.1.2, as to which see paragraph 22(b), below.

² Ibid.

- j. The property known as Block 1D Parcel 283
- k. The property known as Block 4E Parcel 652
- l. The property known as Block 4E Parcel 466
- m. The property known as Block 4E Parcel 667
- n. The property known as Block 4E Parcel 668
- o. The property known as Block 4E Parcel 669
- p. The property known as Block 4E Parcel 471
- q. The property known as Block 4E Parcel 708

provided that the Trust Property made up of land was only to become part of the Trust Fund after each parcel was transferred to the Trustees to hold as trustees and duly registered as such on the land register respecting each such parcel. **"Trust Property"** is defined at paragraph 1.18 as any property comprised in the Trust Fund.

16. There are a number of typographical errors in the Trust Deed in the references to land as follows:
 - a. At paragraph 1.10 of the Trust Deed Block 4C Parcel 78 is incorrectly recorded as Block 7C Parcel 78;
 - b. At paragraph 1.10 of the Trust Deed Block 4C Parcel 80 is incorrectly recorded as Block 7C Parcel 80;
 - c. At paragraph 1.10 of the Trust Deed Block 1D Parcel 283 is incorrectly recorded as Block 4E Parcel 283;
 - d. At paragraph 1.10 of the Trust Deed Block 4E Parcel 471 is incorrectly recorded as Block 4E Parcel 671; and
 - e. Although Block 44B Parcel 62 is correctly recorded at paragraph 1.10 of the Trust Deed it is incorrectly recorded as Parcel 623 at paragraph 4.1.2.
17. Rectification of the Trust Deed is therefore sought to amend the misstated parcels so that they refer to the correct Block and Parcels as specified above, or for Block and 1D, Parcel 283, to remove all reference to it as it has since been sold.
18. The properties at paragraph 15, above, (subject to the amended details as sought by way of rectification) were all transferred into Dave and Ellen's joint names on or around 22 October 2021, save for:
 - a. Block 44B, Parcel 62 and Parcel 241 which are both in the names of Lyngard Kelly and Berkley Lyndo Kelly as executors of the estate of Peterson Jacques Kelly; and
 - b. Block 4E Parcels 667 and 668 which were both transferred into Dave's sole name on or around 29 March 2018. All other property transferred to the Trustees to hold on the terms of the trust was also to be included in the Trust Property.
19. Dave and Ellen failed to ensure that the title to the land register for each parties duly reflected that they held the land as Trustees of the Trust. Further, Dave and/or Ellen either caused TT to execute a transfer of land to Dave for Block 4E Parcels 667 and 668 at a time

when she did not have capacity, and/or unduly influenced her to transfer these parcels to Dave instead of to the Trust.

20. A declaration is therefore sought that Block 4E, Parcels 667 and 668 form part of the Trust property, or in the alternative, an order that Dave must transfer the parcels to the Trust. A further order is sought that Dave does account to the Trust for any financial benefit received from the parcels since the date of the transfer to him.
21. A number of the properties listed at paragraph 15, above, have buildings on them which are rented out by the Trustees (the "**Rental Business**"). The money generated by such rentals forms part of the Trust Property.

Special Trusts

22. The following special and specific trusts (the "**Special Trusts**") were also established by virtue of paragraph 4:
 - a. Block 101A Parcel 8 shall be offered for sale the proceeds thereof to be held in trust by the Trustees (paragraph 4.1.1);
 - b. Once Dave and another were appointed as personal representatives of Jacques' estate, the personal representatives were to determine whether they should sell Block 44B Parcels 62³ and 241 or transfer title to the beneficiaries of Jacques' estate (including the Trustees as to a one-half interest in that Estate) (paragraph 4.1.2);
 - c. TT shall continue receiving the rents from the apartments on parcels 4C78, 4C80, 4E277, 1D283 and 4E652 for which she had been receiving such rents as of the date of the Trust Deed (paragraph 4.1.3)⁴;
 - d. The bar on Block 4E, Parcel 64 ("**Kelly's Bar**") shall continue to be operated and managed by Ellen, and TT shall continue receiving the income from it (paragraph 4.1.4);
 - e. Darnol and his family shall continue residing rent-free in the house on Block 4E, Parcel 265; provided he shall also continue to be responsible for the expenses of maintaining the house and paying all the utilities in respect of it (paragraph 4.1.5);
 - f. Respecting Block 4E, Parcel 466:
 - i. TT shall continue receiving the rents from the apartments thereon as she had been receiving at the date of the Trust Deed (paragraph 4.1.6.1);
 - ii. Ellen shall continue receiving the rents from the apartments thereon as she had been receiving as of the date of the Trust Deed, provided she shall also continue to be responsible for the expenses of maintaining said apartments and paying all of the utilities in respect of them (paragraph 4.1.6.2);
 - iii. Dalvin shall continue receiving the rents from the apartments thereon as he had been receiving at the date of the Trust Deed, provided he shall also

³ Incorrectly stated to be Block 44B Parcel 623.

⁴ Block 4C, Parcels 78 and 80 are incorrectly stated to be Block 7C and Block 1D, Parcel 283 is incorrectly stated to be Block 4E Parcel 283.

- continue to be responsible for the expenses of maintaining said apartments and paying all of the utilities in respect of them (paragraph 4.1.6.3);
- g. Respecting Block 4E, Parcel 471:
- i. TT shall continue receiving the rents from the apartments thereon as she had been receiving as of the date of the Trust Deed (paragraph 4.1.7.1);
 - ii. Doey shall continue receiving the income from the take-out restaurant thereon as he had been receiving as of the date of the Trust Deed, provided he shall also continue to be responsible for the expenses of managing and maintaining the restaurant and paying all the utilities respecting it (paragraph 4.1.7.2); and
 - iii. Derry shall continue receiving the rents from the apartments thereon as he had been receiving as of the date of the Trust Deed; provided he shall also continue to be responsible for the expenses of maintaining these apartments and paying all the utilities respecting them (paragraph 4.1.7.3);
- h. Respecting Block 4E, Parcel 669:
- i. TT shall continue residing rent-free in the house thereon where each of them had been residing as of the date of the Trust Deed; provided TT shall at all times have priority in all aspects respecting such residence and she may (with prior written approval of the Trustees) also allow others to reside there with her (paragraph 4.1.8.1);
 - ii. Dave shall continue parking his buses without charge in the yard thereof where he had been parking such buses as of the date of the Trust Deed, and otherwise use of the open space in the yard shall be in the discretion of the Trustees (paragraph 4.1.8.2); and
 - iii. Ennalee and Roy shall continue residing rent-free in the house thereon where they are residing as of the date of the Trust Deed; provided (at the expense of this Trust) the Trustees shall partition parcel Block 4E, Parcel 669 to create a new parcel that includes the house and Dave's garage and that the title for the new parcel is to be transferred to Dave after the death of both Ennalee and Roy (paragraph 4.1.8.3).
 - iv. The vacant land on Block 4E, Parcels 277 and 708 may be kept vacant or developed in the discretion of the Trustees; provided the Trustees shall also consider proposals from time to time from any of the other Beneficiaries for development or use of these Parcels.
23. All of these Special Trusts were subject to all expenses related to any house where TT, Ennalee or Roy reside, and also all expenses related to any apartments for which TT was receiving the rent, being paid by the Trustees out of the Trust Fund; and provided further that the Trustees may in their discretion from time to time promulgate such rules, policies and procedures respecting any or all of these Parcels and notify them to all concerned (including Beneficiaries, tenants and patrons).

The Protector

24. In accordance with paragraph 6.1.1 of the Trust Deed, the Original Protector was TT. By way of execution of the Trust Deed, TT accepted her appointment as such. By virtue of paragraph 6.1.1. Dave accepted his appointment to act as the first person to succeed TT as the Protector.
25. Paragraph 6.1.2. requires that there shall be only one protector at any one time and the same person may not serve at the same time both as a protector and as a trustee.
26. In accordance with paragraph 6.2.1 of the Trust Deed, the powers of the Protector are fiduciary in nature although in accordance with paragraph 6.2.2. the Protector is under no duty to enquire into or interfere with the management or conduct of the Trust, unless he or she has actual knowledge of circumstances which call for enquiry. Paragraph 6.2.3 of the Trust Deed requires the Protector to consider the appropriateness of any act before exercising his or her powers.
27. Only the Protector is empowered, by virtue of paragraph 5.1, to remove and appoint new trustees.
28. TT no longer has capacity and is incapable of performing the duties of the Protector.

Additional Powers

29. In accordance with paragraph 7 of the Trust Deed, the Trustees may exercise additional powers as set out in Part A of the Schedule of the Trust Deed, but only with the Protector's written permission. These powers include permitting a Beneficiary to occupy or use Trust Property on such terms as the Trustees think fit, and the power to lend trust money to a Beneficiary, or to any other person, if the loan is for the benefit of a Beneficiary. Such loan may be interest-free and unsecured, or on such terms as the Trustees think fit.

Indemnity

30. In accordance with paragraphs 10 and 11 of Part C to the Schedule, neither a Trustee nor a Protector shall be liable for a loss to the Trust Fund, unless that loss was caused by his or her own actual fraud or gross negligence. Further, a Trustee and a Protector are entitled to be indemnified from the Trust Fund for all liabilities incurred in their capacity as such, unless they were caused by his or her own actual fraud or gross negligence.

Conflict of Interest

31. In accordance with paragraph 6 of Part C of the Schedule, a Trustee or a Protector may enter into a transaction with the Trustees, or be interested in an arrangement in which the Trustees are or might have been interested, or act (or not act) in any other circumstances even though his or her fiduciary duty under the Trust conflicts with other duties or with his or her personal interest, providing only that:

- a. the Fiduciary first discloses to the Trustees and the Protector the nature and extent of any material interest conflicting with his or her fiduciary duties; and
- b. There is an Independent Fiduciary⁵ in respect of whom there is no conflict of interest, and he or she consider that the transaction, arrangement or action is not contrary to the general interests of the Trust.

Exercise of Discretion

32. In accordance with paragraph 7 of the Trust Deed and paragraph 7 of Part C of the Schedule to the Trust Deed, subject to obtaining the consent of the Settlor during her lifetime (and, after the Settlor's death or incapacity to act, of the Protector) when necessary, the powers of the Trustees may then be exercisable at their absolute discretion; and from time to time as occasion requires.
33. Unless and until that happens then the Trustees must exercise their powers in accordance with the provisions of the Trust Deed which includes the requirement at paragraph 4.2 that *"the Trustees shall hold the Trust Fund upon trust for the Beneficiaries who are then living equally"*⁶. In accordance with the Trustees fiduciary duties, as set out at paragraphs 58-83, below, the Trustees must act with an even hand towards the Beneficiaries.
34. Although paragraphs 3.3 and 3.1 of the Trust Deed grant a power of advancement and a power of appointment, each exercisable only with the written consent of the Protector, the Trustees are still required to exercise their discretion in using any such powers such as to benefit the Beneficiaries equally.
35. Regarding the income accruing from the Trust Property, with the Settlor's written consent, in accordance with paragraph 2.1 of the Trust Deed, the Trustees may pay or apply the income of the Trust Fund for the benefit of any Beneficiaries, as they see fit, provided that, during the lifetime of TT or Ennalee, the Trustees shall first and foremost pay or apply the capital and/or the income of the Trust Fund for their benefit to ensure that their reasonable needs are being met.
36. In accordance with paragraph 2.2, the Trustees shall accumulate the remainder of the income of the Trust Fund and that income shall be added to the Trust Fund.

⁵ An Independent Fiduciary is defined as a Person (which may include a corporation) subject to fiduciary duties under the terms of the Trust, who is not:

6.1.1. a brother, sister, ancestor, descendent or dependent of the Person concerned;

6.1.2. a spouse of the Person concerned or of any of those specified in clause 6.1.1.;

6.1.3. a company controlled by the Person concerned or by those specified above; or

6.1.4. an Associated Party of the Person Concerned (Associated Party meaning any affiliated company of the Person concerned and any director, officer or employee of the Person or of any such affiliated company).

⁶ Save that (if any child who is a Beneficiary is not then living), that child's share shall be held upon trust equally for that child's descendants per stirpes who are then living.

The Updated Trust

37. By virtue of a further Deed, executed 19 October 2021, TT, Dave and Ellen purported to re-settle the Trust on new terms (the "**Updated Trust**"). This resettlement is void and the Plaintiffs seek a declaration in these terms.
38. The Trust and the Updated Trust had the same Trustees and Original Protector. The terms of the two trust deeds are in almost identical terms. The material differences between the Trust and the Updated Trust relate to the purported removal of Trust Property from the Trust as follows:
- a. Block 44B Parcel 62;
 - b. Block 44B Parcel 241;
 - c. Block 44E Parcel 283;
 - d. Block 4E Parcel 667;
 - e. Block 4E Parcel 668; and
 - f. Block 4E Parcel 671 .

(together the "**Removed Parcels**").

39. Block 44E, Parcel 283 has been replaced in the Updated Trust Deed with Block 1D Parcel 283 which reflects the correct parcel reference as sought by way of rectification at paragraph 17, above. Block 4E Parcel, 671 has likewise been replaced with Block 4E Parcel 471, as per the rectification sought at paragraph 17, above.
40. Block 4E, Parcel 667 and Block 4E, Parcel 668 were transferred to Dave's sole name on 29 March 2018.
41. A new paragraph has also been inserted under the heading, "Trust Income" as follows:
- "Pursuant to clause 3.2. of the Earlier Trust deed, the Protector hereby consents and the Trustees hereby declare this Trust to be a resettlement of the Previous Trust and that they now hold the Trust Property on the terms of this Trust; and subject thereto, during the Trust Period and subject to the Overriding Powers and Special Trusts"*
42. The purported resettlement of the Trust was, in effect, a revocation of the Trust, and is in breach of paragraph 8 of the Trust Deed. Further, or in the alternative, the purported power to resettle the Trust has either has been improperly exercised for the purpose of removing Trust Property for the sole benefit of the Trustees and/or Protector, in breach of the conflict of interest provisions at paragraph 6, Part C of the Schedule to the Trust, and/or has no benefit to the Beneficiaries.

43. A declaration is sought that the purported resettlement of the Trust on the terms of the Updated Trust was void or, in the alternative, that it is voidable and that the Updated Trust be set aside and delivered up for cancellation.

The Trustees/Protector

44. The Trustees of the Trust remain Dave and Ellen and the Protector is TT. The purported resettlement is void. As such the Deed of Appointment and Retirement, dated 1 April 2023 (the "**DORA**"), signed by TT, Dave, Ellen and Dalvin, purportedly replacing TT with Dave as the protector of the Updated Trust and Dave with Dalvin as trustee of the Updated Trust, is also void has no effect.
45. A declaration is sought that that the DORA is void and/or has no effect and that from 1 April 2023 onwards the Trustees of the Trust were Dave and Ellen and the Protector was TT.

Breaches of Trust

46. The Plaintiffs have limited material in regard to the management and control of the Trust and, if relevant, the Updated Trust. As such they reserve the right to plead matters more fully upon receipt of discovery.

Breaches of the Express Terms of the Trust Deed

47. Dave has received a loan, or loans for himself and his companies to the value of at least C\$82,362.00, he has used the sale proceeds of Trust Property (Block 1D, Parcel 283) for his own purposes, including to pay off an overdraft on his business account ending 921, and, together with Ellen, he has caused the transfer of Block 4E, Parcels 667 and 668, which should properly be Trust Property, to be transferred into his name.
48. The Trustees have acted in breach of paragraph 6 of Part C of the Schedule, in that the loan(s) to Dave and/or his companies, and the transfers of land to Dave amounted to a conflict of interest which is only permitted in the event that is approved by an Independent Fiduciary. No Independent Fiduciary exists and therefore any application of Trust Funds to benefit Dave did not have the required consent.
49. In breach of paragraph 6 of Part C of the Schedule to the Trust Deed and, if no written consent from the Protector was obtained, in breach of paragraph 3.3 of the Trust Deed the Trustees have caused or permitted:
- a. Expenses for Dave and/or Ellen's personal use and/or businesses to be paid directly from Trust Property, including, but not limited to, salaries, work permit fees, health insurance and mobile phone costs;

- b. The cost for the erection of a fence for Ellen's son (Reynaldo Ashley Vernon ("**Reynaldo**")) on his property at Block 4E, Parcel 794 and/or maintenance of Reynaldo's property; and
 - c. On 28 February 2023 the sum of KYD \$5,300 to be transferred from the account maintained for Kelly's Bar Antonea Kelly Vernon's business account. Antonea Kelly Vernon is Ellen's daughter.
50. In breach of paragraph 4.2 of the Trust Deed, the Trustees have failed to hold the Trust Fund upon trust for the beneficiaries equally and have instead disproportionately benefitted themselves as set out above.
 51. In breach of the Special Trusts the Trustees sold Block 1D, Parcel 283 to Deondra. This parcel was transferred to her on or around 11 April 2022. The parcel was sold without a formal valuation or public auction, to the detriment to the Beneficiaries for whom the Trustees should have ensured they obtained fair value. The Trustees also gifted back to Deondra, KYD \$100,000. This gift was in breach of the terms of the Trust Deed as she was a contingent beneficiary, only becoming a Beneficiary if Doey pre-deceased TT and Ennalee.
 52. In breach of paragraph 4.1.9 of the Trust Deed, which required that Block 4E, Parcel 277 was to be kept vacant or developed at the discretion of the Trustees, provided that the Trustees should consider proposals from the Beneficiaries for development or use, the Trustees commenced the subdivision of this Parcel prior to notifying the Beneficiaries of the existence of the Trust and as such without the Beneficiaries having an opportunity to put forward any proposals.
 53. An order is sought that an account be taken or an inquiry be made for all Trust Property applied for the benefit of the Trustees, the Protector, or any other person in breach of the terms of the Trust or in breach of the Trustees' or Protector's fiduciary duties.
 54. An order is sought for the payment by the Defendants to the Trust of such sums as found due to the Trust after the taking of such an account or the making of such an inquiry;
 55. In breach of paragraph 8 of the Trust Deed, on or around 19 October 2021, the Trustees purported to resettle the Trust Property into the Updated Trust. Such an action would have had the effect of revoking the existing irrevocable Trust.
 56. The above breaches together are referred to as the "Breaches of Express Terms", and together and or separately amount to gross negligence on the part of the Trustees.
 57. By virtue of the gross negligence of the Trustees, they are not entitled to be indemnified from the Trust Fund for their costs and expenses associated with these proceedings.

Breach of Duty

Right to know of the Trust

58. A trustee has a duty to inform a beneficiary of full capacity of his interest under any trust. The Trustees failed to notify the Beneficiaries of the existence of the Trust, or the purported Updated Trust, until the Plaintiffs identified that parcels of land had been transferred into Dave and Ellen's name and made enquiries. On 3 March 2023 the Defendants' then attorney wrote to the Plaintiffs enclosing a copy of the Trust Deed and the Updated Trust. This was the first notice to the Plaintiffs of the existence or terms of the Trust or Updated Trust.
59. The Trustees therefore breached their duties to notify the Plaintiffs of the existence of, and their interest in, the Trust and, if applicable, which is denied, the Updated Trust.

Accounts

60. In accordance with section 27A of the Trusts Act (2021 Revision) a trustee "*shall keep or cause to be kept accurate accounts and records (including underlying documentation) of the trustee's trusteeship appropriate to the trust and trust property*". All such accounts and records are required to be kept for a minimum period of five years from the date on which they are prepared.
61. At the date of the Plaintiffs' first request for trust accounts on 16 March 2023, no such accounts existed. Purported Updated Trust accounts were received on 16 January 2024. These were unaudited accounts which were inadequate and/or incomplete.
62. As such the Trustees are in breach of their statutory duty to keep accurate accounts.
63. An order is sought that the Defendants do provide to the beneficiaries of the Trust and the Updated Trust, if applicable, which is denied, accurate accounts and records (including underlying documentation) of their dealings with the trusts and Property of the Trust or, which is denied, the Updated Trust, since their inception.

The Rental Business

64. A trustee must execute the trust with reasonable diligence, and conduct its affairs in the same manner as an ordinary prudent person of business would conduct their own affairs. The Trustees have failed to operate the Rental Business as a prudent person of business would do.
65. The Rental Business is made up of residential units which are leased on behalf of the Trust on, at least, the following parcels:
 - a. Block 4C, Parcel 78;

- b. Block 4C, Parcel 80;
 - c. Block 4E, Parcel 277;
 - d. Block 4E, Parcel 652;
 - e. Block 4E, Parcel 466; and
 - f. Block 4E, Parcel 471⁷.
66. In carrying out a residential leasing business, an ordinary prudent person of business would:
- a. Obtain a deposit for every property being leased, in the sum at least equivalent to one month's rent;
 - b. Charge market rates for all properties;
 - c. Maintain the rental properties to a reasonable standard;
 - d. Keep accurate accounts both of rents received and of expenditure on properties, including, but limited to, the cost of maintenance, repair and chattels;
 - e. Ensure, so far as reasonably practicable, that rental properties remain leased at all times; and
 - f. Engage a property manager if they were unable to manage the properties themselves.
67. In managing the Rental Business as a Trust asset, the Trustees have failed to manage the Rental Business to the standard that an ordinary prudent person of business would, including, but not limited to the following:
- a. Failure to obtain a deposit, or a reasonable deposit, for every Trust property leased;
 - b. Failure to charge market and/or reasonable rates for trust properties;
 - c. Failed to maintain the rental properties to a reasonable standard;
 - d. Failed to keep any accounts, or any accurate accounts, of income and expenditure;
 - e. Failed to ensure, so far as reasonably practicable, that the Trust properties remain leased; and
 - f. Failed to engage a property manager in circumstances where the Trustees were unwilling, or unable, to properly manage the Rental Business themselves.
68. The Plaintiffs reserve the right to plead their case on the Rental Business more fully upon the receipt of discovery.

Kelly's Bar

69. A trustee must execute the trust with reasonable diligence, and conduct its affairs in the same manner as an ordinary prudent person of business would conduct their own affairs. The Trustees have failed to operate Kelly's Bar as a prudent person of business would do.
70. Kelly's Bar is managed by Ellen in accordance with paragraph 4.1.4 of the Trust Deed.

⁷ Block 1D, Parcel 283 should also be included but has since been sold.

71. In supervising, managing and operating a bar, an ordinary prudent person of business would:
- a. Keep regular opening hours;
 - b. Maintain the premises to a reasonable standard;
 - c. Keep accurate accounts of all income and expenditure;
 - d. Ensure an accurate point of sale system was operational at all times, for both cash and card transactions;
 - e. Pay health insurance for all employees and keep an accurate record of such payments and policies;
 - f. Not pay any expenses from Bar assets which were unrelated to Bar expenses or did not otherwise benefit the Bar; and
 - g. Ensure sufficient security such as to prevent drug use and sale, loud music and other nuisance or illegal conduct occurring at the Bar, such as to potentially jeopardise the licence.
72. The Trustees, as legal owners of the business, and Ellen, as manager and operator of the business, have failed to manage the Bar to the standard that an ordinary prudent person of business would, including, but not limited to the following:
- a. Failure to keep regular opening hours;
 - b. Failure to maintain the premises to a reasonable standard;
 - c. Failure to keep accurate accounts of all income and expenditure;
 - d. Failure to ensure an accurate point of sale system was operational at all times, for both cash and card transactions;
 - e. Failure to pay health insurance for all employees and/or keep an accurate record of such payments and policies;
 - f. Failure to ensure that pay expenses, unrelated to Bar expenses or not otherwise benefitting the Bar, were paid from Bar assets; and
 - g. Failure to ensure sufficient security such as to prevent drug use and sale, loud music and other nuisance or illegal conduct occurring at the Bar, such as to potentially jeopardise the licence.
73. The Plaintiffs reserve the right to plead their case on the Kelly's Bar more fully upon the receipt of discovery.

Valuation

74. The Trustees are under a duty to properly record and report on the value of the Trust. In breach of this duty the Trustees have failed at all to, or otherwise within a reasonable time frame, to obtain valuations of the land making up the Trust Property and the Trust assets as a whole.

Information for Beneficiaries

75. A trustee must furnish to a beneficiary, or to a person authorised by the beneficiary, on demand, information or the means of obtaining information as to the mode in which the trust property or the beneficiary's share in it has been invested or otherwise dealt with, and as to where it is and full accounts respecting it, whether the beneficiary has a present interest in the trust property or only a contingent interest in remainder. The trustee must also allow a beneficiary to inspect the trust accounts and all documents relating to the trust save those documents which would reveal the reasons for the exercise of his discretion.
76. The Trustees have failed to furnish the Beneficiaries with documentation to enable the Beneficiaries to understand how Trust Property has been dealt with or what has happened to cash received from the Trust Property.

Even Hand Towards Beneficiaries

77. It is a duty of the Trustees to hold an even hand between the Beneficiaries, and to look at the interests of all and not to those of any particular Beneficiary. The legitimate expectation of the Plaintiffs must be taken into account in the exercise of the Trustees duties.
78. In breach of the Trustees duties to hold an even hand between the Beneficiaries, the Trustees have exercised their purported discretion such as to disproportionately benefit themselves over and above any other Beneficiaries. The Trustees have failed to take into account the legitimate expectation of the Plaintiffs which is that the Trust Property should be used and applied exclusively for the benefit of TT and Ennalee (and formerly Roy) during their lifetime, unless any other Beneficiary could show an exceptional need, and upon the passing of TT, Ennalee and Roy, all Beneficiaries should benefit equally from the Trust Property.

Safeguarding Trust Assets

79. The Trustees are, and were at all material times, under a duty to obtain the best price for the sale of Trust Property. The Trustees took no steps to value Block 1D, Parcel 283 prior to the sale to Deondra, or any attempts to sell by way of public auction on the open market. As such, in breach of their duty, they failed to ensure that the parcel was sold at the best possible price.
80. The above breaches together are referred to as the "Breaches of Duty", and together and or separately amount to gross negligence on the part of the Trustees.
81. In addition to the above specific breaches, the Trustees have shown poor trust management by failing to open any separate and distinct trust bank accounts prior to 2023, before which time trust funds were co-mingled in non-trust accounts.

Conflict of Interest

82. The Trustees are, and were at all material times, under a duty to ensure that they do not put themselves in a position whether their personal interest conflicts, or where there is a real possibility of conflict with either their fiduciary duties or the beneficiaries' interests.
83. In breach of this duty, on or around 29 March 2018, Dave caused and/or accepted a transfer of Block 4E Parcels 667 and 668, which on the face of the Trust Deed were intended to become Trust Property, to be transferred in his name, thereby putting him in a position where his personal interests conflicted with the interests of the beneficiaries.

Removal of Trustees

84. The Breaches of Express Terms and Breaches of Duty (together the "**Breaches**") amount to gross negligence by the Trustees.
85. The Breaches demonstrate the Trustees incompetent handling of Trust Property, applying Trust Property to further their own interests, to the detriment of the Beneficiaries as a whole, and misapplying Trust Property for the benefit of non-Beneficiaries.
86. The Plaintiffs therefore seek an Order in accordance with section 10(1) of the Trusts Act (2021 Revision) that Darnol and Darney be substituted as the new Trustees of the Trust in place of Dave and Ellen or, in the alternative, which is denied, in place of Ellen and Dalvin.

Removal of the Protector

87. For the conflict of interest provisions at paragraph 6 of Part C of the Schedule to be able to take proper effect, an Independent Fiduciary is required. An Independent Fiduciary must be a Person subject to fiduciary duties under the terms of the Trust. The only persons subject to Fiduciary Duties are the Trustees and the Protector. In accordance with paragraph 6.1.2 there may only be one Protector at any one time.
88. The Plaintiffs therefore seek an order for the removal of TT as Protector and the substitution of Pastor Stanwyck Myles in her stead to ensure, for the proper management of the Trust, that the Trust has an Independent Fiduciary. This order is also sought on the basis that TT does not have capacity to fulfill the role of the protector.
89. If, in the alternative, Dave is the Protector, which is denied, his removal is sought to ensure an Independent Fiduciary, and further because he has either participated the Breaches as Trustee, or, as Protector (which is denied) permitted or been complicit in such Breaches in breach of his fiduciary duties. In particular he has failed to enquire or interfere in the management of the Trust where there is clear knowledge calling for such enquiry and has failed to exercise his powers appropriately.

Removal of Ellen as Manager of Kelly's Bar

90. An order is sought in accordance with section 72 of the Trusts Act (2021 Revision) for the variation of paragraph 4.1.4 of the Trust Deed to remove Ellen as manager of Kelly's Bar in light of the breaches pleaded at 77 above.

91. Paragraph 4.1.4 presently reads:

"The bar on parcel 4E64 shall continue to be operated and managed by Ellen, and TT shall continue receiving the income from it as she has been receiving as of the date of this deed."

The amendment sought is as follows:

"The bar on parcel 4E64 shall be operated and managed by any person or persons so appointed by the Trustees at their discretion, and TT shall continue receiving the income from it as she has been receiving as of the date of this deed."

Costs and Interest

92. The Plaintiffs claim costs against the Defendants personally and interest on any sums awarded at a rate of 2 3/8 per cent in accordance with section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) or at such rate as may be provided for by any amendments to such act or rules.

THE PLAINTIFFS THEREFORE CLAIM:

- (1) An Order for rectification of the Trust Deed such that:
 - a. References to Block 7C, Parcel 78 (or 7C78) be amended to Block 4C, Parcel 78 (or 4C78);
 - b. References to Block 7C, Parcel 80 (or 7C80) be amended to Block 4C, Parcel 80 (or 4C80);
 - c. References to Block 4E, Parcel 283 (or 4E283) be amended to Block 1D, Parcel 283 (or 1D283), or, in the alternative, all references to this parcel removed;
 - d. References to Block 4E, Parcel 671 (or 4E671) be amended to Block 4E, Parcel 471 (or 4E471); and
 - e. References to Block 44B, Parcel 623 (or 44B623) be amended to Block 44B, Parcel 62.

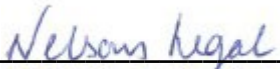
- (2) A declaration that the Block 4E Parcels 667 and 668 are Trust Property or, in the alternative, an Order that Dave shall transfer Parcels 667 and 668 to the Trust;

- (3) An order that Dave account to the Trust for any financial benefit received from the Block 4E, Parcels 667 and 668 since the date of transfer to him;
- (4) A declaration that the Updated Trust is void and or that it is voidable and be set aside and delivered up for cancellation with such necessary consequential orders;
- (5) A declaration is sought that that the DORA is void and/or has no effect and that from 1 April 2023 onwards the Trustees of the Trust were Dave and Ellen and the Protector was TT.
- (6) An order that an account be taken or an inquiry be made for all Trust Property applied for the benefit of the Trustees, the Protector, or any other person in breach of the terms of the Trust or in breach of the Trustees' or Protector's fiduciary duties;
- (7) An order for the payment by the Defendants to the Trust of such sums as found due to the Trust after the taking of such an account or the making of such an inquiry;
- (8) An order is sought that the Defendants do provide to the beneficiaries of the Trust and the Updated Trust, if applicable, which is denied, accurate accounts and records (including underlying documentation) of their dealings with the trusts and Property of Trust or, which is denied, the Updated Trust, since their inception.
- (9) An Order in accordance with section 10(1) of the Trusts Act (2021 Revision) that Darnol and Darney be substituted as the new Trustees;
- (10) An Order that TT or, in the alternative, Dave be removed as Protector and that Pastor Stanwyck Myles be substituted as Protector in her/his place;
- (11) An Order in accordance with section 72 of the Trusts Act (2021 Revision) for the variation of paragraph 4.1.4 to read as follows:

"The bar on parcel 4E64 shall be operated and managed by any person or persons so appointed by the Trustees at their discretion, and TT shall continue receiving the income from it as she has been receiving as of the date of this deed."
- (12) Costs in accordance with clause paragraph 92 of this Statement of Claim; or
- (13) Costs, in the alternative;
- (14) Interest in accordance with paragraph 92 of this Statement of Claim, s.34 of the Judicature Law (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (2021 Revision) as amended from time to time; and

(15) Such further and other relief as this Honourable Court may seem just.

DATED at Grand Cayman this 6th day of September 2024



Nelsons
Attorneys for the Plaintiff

TO: The Clerk of the Grand Court

AND TO: The Defendants

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: FSD OF 2024 ()

BETWEEN:

- (1) DARNOL FAEBERK KELLY**
- (2) DARNEY DUHANEY KELLY**
- (3) DONVERD McCARTHY KELLY**

Plaintiffs

and

- (1) DAVE ERNEST LINDO KELLY**
- (2) ELLEN ANN KELLY VERNON**
- (3) BERKLEY DALVIN KELLY**

Defendants

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

Yes No

Service of the Writ is acknowledged accordingly

Signed

Attorney for the Defendant

Address for service:

Please complete overleaf

Notes on address for service

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Nelsons
Attorneys at Law
PO Box 30069
Grand Pavilion
802 West Bay Road
Grand Cayman KY1-1201
Attn: A Carver
Ref: 5134-00001

Indorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.