EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2024/0088 FORMERLY ANUHCV 2013/0730

BETWEEN:

[1] DANIEL KHOURY
[2] [AGNES KHOURY

CLAIMANTS

And

[1] CHARLES KHOURY
[2] MANDALAY DEVELOPMENT (ANTIGUA) LTD.

DEFENDANTS

APPEARANCES:

Mr. John Carrington K.C.**,** Ms**.** Cherly-Lee Bolton and Ms. Kenhiah Gordon of counsel for the Claimant

Mr. Thomas Rowe K.C. and Ms. Sherrie Ann Bradshaw of counsel for the Defendants

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2025: March15th
2026: June 29th

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[1] **DRYSDALE, J.:** These proceedings arise out of a dispute between close family members concerning the beneficial ownership, management, and

proceeds of a real estate development project comprising two adjacent parcels of land situated at Hodges Bay and Thibous, Antigua.

Procedural History

[2] The Claimants, Daniel Khoury and Agnes Khoury are son and mother respectively. Agnes Khoury is also the mother of the First Defendant, Charles Khoury. These proceedings arise from the Claimants' allegation that the Antigua Project was undertaken pursuant to a Joint Venture Agreement involving themselves and the First Defendant. The venture was implemented through the Second Defendant, Mandalay Development (Antigua) Ltd., a company incorporated and controlled by the First Defendant.

[3] The Claimants allege that the First Defendant failed to perform his obligations under that agreement resulting in the commencement of these proceedings by Claim Form and Statement of Claim filed on 13th November 2013, which was subsequently amended on 22nd May 2014.

[4] By their amended claim, the Claimants seek the following reliefs:

(1) A declaration that the Claimants are beneficially entitled to a 50% share of lands with building thereon registered as Registration Section Hodges Bay & Thibous Block 43 2197B Parcels 201 and 208.

(2) A declaration that any rents, profits and monies received by the second defendant in relation to land and building registered as Registration Section, Hodges Bay and Thibous; Block: 43 2197 B; Parcels 201 and 208 are held on trust for the benefit of the Claimants and the First Defendant in equal shares.

(3) An order that the Claimants be allowed reasonable access and enjoyment of the land and building registered as Registration Section, Hodges Bay and Thibous, Block: 43 2197 B; Parcels 201 and 208.

(4) An order that the Defendants do hereby account to the Claimants for all rents, profits and monies received by the Defendants in relation to land and building registered as Registration Section; Hodges Bay and Thibous; Block; 43 2197 B, Parcels 201 and 208.

(5) An order that any further funds received by the second defendant in relation to rents and profits are received in trust for the benefit of the Claimants, and the First Defendant in equal shares.

(6) Damages for breach of contract.

(7) Interest on such damages pursuant to section 13 of the Supreme Court Act.

(8) Legal Practitioner's fixed costs on issue.

(9) Costs.

(10) Such further or other relief as the court deems just.

[5] The Defendants resist the claim and have filed a defence and counterclaim. They deny that the Claimants have any beneficial interest in the subject lands or the proceeds arising therefrom. The First Defendant further alleges that the second claimant holds Parcel 208 on constructive trust for him and seeks by way of counterclaim, specific performance and other equitable reliefs, which are as follows:

(1) A declaration that Parcel 208 is held on trust by the second claimant for the First Defendant, who is the sole beneficial owner;

(2) An order directing the second claimant to convey Parcel 208 absolutely to the First Defendant;

(3) Interest;

(4) Costs of the proceedings; and

(5) Such further or other relief as the Court deems just.

Background

[6] As previously indicated, the central dispute in these proceedings arises out of a joint real estate development venture undertaken between members of the Khoury family. The subject of the dispute comprises two adjoining parcels of land located at Hodges Bay and Thibous, namely Parcel 201, registered in the name of the First Defendant and Parcel 208 registered in the name of the second claimant. These parcels shall hereafter be referred to collectively as "the disputed properties."

[7] The parties have advanced differing accounts regarding the existence of agreements allegedly entered into between them and the manner in which the disputed properties were dealt with.

[8] The Claimants contend that sometime in 2005 the parties agreed to undertake the joint development of the disputed parcels through the construction of an apartment complex. They maintain that the arrangement was governed by a Joint Venture Agreement ("the JVA") entered into between the first claimant and the First Defendant on the advice of the second claimant.

[9] The question of how the Antigua Project was funded lies at the heart of the parties' competing claims to ownership and profit entitlement. The

Claimants contend that their financial contribution to the project, and the source from which it arose, establishes their beneficial interest in the disputed properties and the income derived therefrom. In this regard, the background to the Antigua Project is closely connected to an earlier family venture, referred to as the "New York Venture" ("NYV") the circumstances of which are material to understanding the origins and nature of the funding applied to the Antigua Project.

Funding of the Antigua Project

[10] That earlier venture concerned a property situated in Jackson Heights, New York, which the second claimant owned. The Claimants allege that the second claimant advanced the sum of US $800,000.00 as collateral for a loan to finance the development of that property on the understanding that her two sons, the first claimant and the First Defendant would be equal joint beneficiaries. However, they assert that the project was subsequently unilaterally taken over by the First Defendant and transferred to a company under his control named American Millennium Management Corp.

[11] The Claimants assert that as part of a compromise the first claimant agreed to accept the sum of US$350,000.00 in full satisfaction of his entitlement under the NYV. That amount was ultimately applied towards the Antigua project pursuant to the JVA. The sum of US$350,000.00 was transferred from American Millennium Management Corp. to the second defendant at the request of the first claimant on or about 15th March 2005. The Claimants assert that this payment has been acknowledged by the First Defendant as representing the first claimant's direct contribution to the JVA.

[12] The Claimants contend that pursuant to the JVA the two parcels were to be treated as a single development site for the construction of an apartment building. The first claimant was to contribute US $350,000.00 by way of financing while the second claimant would permit the use of Parcel 208 as

part of the first claimant's investment. The Claimants further allege that the brothers would share equally in the management, profits, and beneficial ownership of the development and that the First Defendant would render an account of all monies expended and income received.

[13] For the purposes of implementing the development the parties agreed to establish a corporate vehicle. Accordingly, the second defendant, Mandalay Development (Antigua) Ltd., was incorporated in Antigua and Barbuda on 10 November 2004. At all material times the company was solely owned and controlled by the First Defendant.

[14] The Claimants further contend that it was agreed that the first claimant and the First Defendant would each hold an equal shareholding in the company and participate equally in its management. Contrary to this understanding however the First Defendant caused all shares to be issued to himself and appointed himself as sole director. The Claimants maintain that they did not become aware of these actions until around July 2008.

[15] The Claimants further assert that in addition to his financial contribution the first claimant procured building materials, tools, furniture, and other supplies in the United States for use in the Antigua Project. They rely on an email from the First Defendant instructing the first claimant to collect certain materials as well as evidence that the first claimant travelled to Antigua on one occasion during the course of construction. This they say demonstrates his active participation in the venture.

[16] The apartment building was eventually completed on the disputed properties and with effect from September 1, 2006, Mandalay entered into a lease agreement with the American University of Antigua College of Medicine ("AUA"), followed by subsequent perpetual leases. The first lease was for two (2) years which yielded an annual rental income of US

$564,000.00 payable in monthly instalments. The Claimants contend that despite the steady stream of rental income generated by the development from that time onwards the First Defendant never rendered an account of the monies received in breach of the parties' agreement under the JVA.

[17] The First Defendant's account stands in contrast to that of the Claimants. He maintains that although no formal shareholder or joint venture agreement was ever executed an understanding was reached between himself and the first claimant in relation to the financing of the Hodges Bay development. For convenience the court will refer to this management as the "Antigua Project." The project was implemented through the second defendant in which the First Defendant was at all material times the sole shareholder and director.

[18] According to the First Defendant the understanding was that the first claimant would acquire a 50% interest in the company upon contributing 30% of the overall construction costs. He accepts that the sum of US$350,000.00 was transferred to the company in February 2005 at the first claimant's direction but contends that this contribution fell short of the agreed threshold. The First Defendant contends that by his calculation, 30% of the total construction cost (which is said to have been US $1,714,992.00) amounted to US$514,497.00.

[19] The First Defendant says the shortfall in the first claimant's contribution was the subject of ongoing discussions and correspondence including a letter of 17 December 2007 demanding additional funds. He maintains that the first claimant was advised he would need to inject a further 10% (approximately US $164,497.00) if he wished to obtain a 50% shareholding. He accepts that in or about May 2006 an additional US$23,000.00 was paid by the second claimant on the first claimant's behalf but says this remained insufficient to reach the agreed 30%. Despite repeated demands the balance was not paid.

[20] He further contends that the first claimant declined to make up the shortfall citing doubts about the viability of an anticipated lease "AUA". The First Defendant maintains that the project was financed primarily through bank lending for which he bore personal responsibility. In that regard, on 21 February 2005, First Caribbean International Bank ("the Bank") offered Mandalay Development (Antigua) Ltd. a loan of US$952,000.00 to assist with the construction of a 20-unit apartment complex, estimated at US$1,523,000.00, conditional upon adequate security and his personal guarantee.

[21] On 21 April 2005, the First Defendant executed a personal guarantee in favour of the Bank for US$952,000.00. The First Defendant states that on 20 June 2005 he charged Parcel 201 as security for US$891,000.00 plus interest. On that same date the second claimant charged Parcel 208 to secure US$60,500.00 plus interest. The First Defendant explains that the charge documents for Parcel 208 had been executed in or about April 2005 because the transfer of the property had not yet been completed.

[22] The First Defendant's position is that Bank loan proceeds were the principal source of construction funding between April 2005 and September 2006. He puts the total construction cost at US$1,714,992.00 of which the Bank advanced US$952,000.00 with the balance coming from other sources. To this the Claimants say they later learned that the First Defendant had executed a personal guarantee. They maintain however that the Bank would not have needed to call on any guarantee because once the apartments were completed, Mandalay began receiving rental income estimated by the first claimant to cover the monthly instalments of US$8,675.00, under the AUA lease. They further contend that by agreement those rental receipts were to be applied in the first instance to

servicing the Bank loan and thereafter for the benefit of the joint-venture parties.

[23] Against that funding backdrop and in light of what the First Defendant characterizes as the first claimant's partial contribution, the First Defendant says the company offered to issue shares pro rata to the amount actually invested which he calculated at 20.41% of the recorded construction cost. Following that share proposal, the First Defendant states that by email dated 26 January 2008, the first claimant rejected the offer and instead demanded repayment of his investment with interest. The First Defendant maintains that the Defendants agreed in principle to the repayment sought by the first claimant. He states that, by letter dated 24 June 2008 the second defendant advised the first claimant that the funds were available upon his execution of the requisite banking documents. A reminder followed on 8 July 2008 but according to the First Defendant, the first claimant took no further action.

[24] The First Defendant maintains that the first claimant's position became inconsistent. According to him, the January 2008 demand made it clear that the first claimant did not intend to complete his agreed capital contribution. He says that, despite financing later being obtained to enable repayment in accordance with that demand, the first claimant refused repayment and instead resumed his claim to an equity interest in the project once AUA presented a more favorable commercial opportunity. The First Defendant also rejects the first claimant's assertion that the second claimant transferred Parcel 208 to him instead characterizing it as a fabrication attributable to undue influence over their mother.

[25] The First Defendant states further that at no point during the various conversations with the Claimants was the term "joint venture" used by either party nor did the second claimant ever state that Parcel 208 had been given

to the first claimant. He maintained that the only binding agreement was that the first claimant would receive a 50% shareholding upon full contribution of 30% of the construction cost which never materialized. The First Defendant described the first claimant as inconsistent, alternating between the roles of an investor and lender, while refusing to contribute further capital. The First Defendant also disputed the first claimant's assertion that the second claimant had transferred Parcel 208 to him. He maintained that no such transfer had occurred and further alleged that the claim was the product of the first claimant's undue influence over their mother.

The Counterclaim - Constructive Trust

[26] In his claim for constructive trust over parcel 208, the First Defendant alleges that during the development of the property in Jackson Heights, New York, the second claimant frequently visited him and expressed admiration for his business acumen and success. In or about April 2002, the First Defendant states that he informed her of his intention to relocate to St. Martin to pursue a commercial development project. The second claimant he says, urged him instead to return to Antigua to continue his late father’s dream of developing land in Hodges Bay. He alleges that she promised to transfer to him her parcel of land, Parcel 208, which was adjacent to Parcel 201 from their father’s estate for the purpose of constructing a viable apartment complex.

[27] The First Defendant further states that he acted in reliance on the alleged promise by travelling to Antigua with the second claimant in December 2002. While there, he rented a villa at Jolly Harbour and undertook market research into the viability of apartment rentals. He further alleges that during this period and in the presence of his partner Teresa, the second claimant reaffirmed her promise to transfer Parcel 208 to him. He says that she

encouraged him to develop the land for rental to Antigua's expanding internet gaming sector and expressed her wish that he continue and realize the development vision she said had been held by her late husband.

[28] Further the First Defendant states that in early 2003, the second claimant transferred Parcel 201 to him in her capacity as administrator of the estate of Mitchell Khoury, his late father and again confirmed her intention to also transfer Parcel 208 to facilitate the development. He says he accepted this arrangement and considered it binding.

[29] Following this he contends that he assumed full responsibility for the Hodges Bay Development. He secured financing through a loan from First Caribbean International Bank, provided a personal guarantee, managed construction and rental operations, and obtained all necessary development approvals. He states that he devoted his own time, labour, and funds to complete the project, including during periods when he was managing simultaneous real estate obligations in both Antigua and New York.

[30] The First Defendant states that in 2005 while litigation was underway against the project by a neighboring landowner (the Bird claim), the second claimant reiterated that she had gifted him Parcel 208 and urged him to continue construction. She allegedly pledged her financial support to assist with legal costs and directed him to seek legal advice which he did. He claims she told him she had funds available in Martinique from her inheritance to support him all the way to the Privy Council if needed.

[31] Despite delays and legal hurdles the defendant says he pressed ahead and successfully completed the project. In 2006, he secured a lease agreement with AUA for the use of the building as student housing. The lease commenced on 1st September 2006 and the defendant claims that AUA

advanced two months' rent to allow him to meet the turnover deadline. He further states that when the second claimant visited the completed development in October 2006, she expressed her satisfaction with the finished project and thanked him for completing the development and obtaining the lease.

[32] The defendant further recounts discussions in December 2006 at the family home in Florida regarding the challenges faced during construction, the AUA lease, project costs, and the personal financial burden he bore. He says that during these conversations, the second claimant made no indication that Parcel 208 had been given to anyone else nor did she refer to the project as a joint venture.

[33] The First Defendant maintains that at all material times he treated Parcel 208 as land that had been promised to him and that the second claimant's consistent representations, conduct, and support confirmed this position. He says he relied on her assurances to his detriment which included including relocating from the United States, investing substantial resources into the project, enduring litigation, and completing construction under financial strain. On this basis he asserts that a constructive trust arose in his favor over Parcel 208. It is against this backdrop that the First Defendant seeks declarations that Parcel 208 is held on trust for him by the second claimant, that he is its sole beneficial owner, and an order that the second claimant convey the legal title to him. The Defendants also challenge the validity of the powers of attorney executed by the second claimant in favour of the first claimant alleging that she lacked mental capacity and was under the undue influence and control of the first claimant at the relevant time.

ISSUES

[34] The issues which fall for determination are as follows:

i. Whether there existed a binding agreement among the parties in relation to the Antigua Project and if yes the nature and effect of that agreement upon the parties' respective rights and interests in Parcels 201 and 208 and the proceeds thereof.

ii. Whether the Claimants' beneficial interest in the Antigua Project entitles them to an account of rents, profits and other monies derived from the development and to reasonable access to the properties and associated records.

iii. Whether the second claimant promised to transfer Parcel 208 to the First Defendant and, if so, whether that promise gives rise to a constructive trust, proprietary estoppel, contractual right, or other equitable entitlement in his favor

ANALYSIS

Issue 1: Whether there existed a binding agreement among the parties in relation to the Antigua Project and, if so, the nature and effect of that agreement upon the parties' respective rights and interests in Parcels 201 and 208 and the proceeds thereof

[35] The Claimants contend that the parties undertook the Antigua Project pursuant to a joint venture arrangement. They say that under the terms of that arrangement the first claimant contributed US$350,000.00 and the second claimant contributed the use of Parcel 208. In return they claim to have acquired a one-half beneficial interest in the project and the proceeds arising from it. The Defendants accept that the first claimant contributed US$350,000.00 but deny that the contribution entitled the Claimants to a 50% interest. Instead, they contend that the first claimant was only to receive a 50% shareholding in the Second Defendant upon contributing

30% of the overall construction costs, a condition which they say was never satisfied.

[36] Given the passage of almost twenty years since many of the relevant events occurred, greater weight is placed on the contemporaneous documents than on the parties' recollections where the two are inconsistent. As Leggatt J observed in **Gestmin SGPS SA v Credit Suisse (UK) Ltd**[1], "human memory is not like a video recording that a person can replay to recall past events" and that "memories are fluid and malleable, being constantly rewritten whenever they are retrieved." He further stated that, in a commercial case, the best approach is "to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts." That approach has guided my assessment of the evidence.

[37] Whether a contract came into existence is determined by reference to the parties' words, conduct and the surrounding circumstances. The Court is concerned not with the parties' unexpressed intentions but with what a reasonable person having knowledge of the background facts would conclude from their words and conduct. That principle is well established by **RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH & Company KG**[2] and remains the guiding rule for evaluating unwritten commercial arrangements. The Court must therefore examine the parties' overt conduct rather than how they choose to frame it long after the fact.

[38] There can be little doubt that some agreement existed between the parties concerning the Antigua Project. The real dispute is not whether there was an agreement but rather what each party was to receive in return for the

[1] 2013] EWHC 3560 (Comm)
[2] [2010] UKSC 14

contributions made and whether those contributions gave rise to a proprietary interest in the completed development.

[39] I am satisfied that the evidence establishes that the First Claimant contributed US$350,000.00 towards the project through Mandalay Development (Antigua) Ltd. The Defendants accept receipt of those funds. Also undisputed is the fact that Parcel 208 formed part of the land upon which the apartment complex was ultimately constructed and that the second claimant executed a charge over that parcel to facilitate financing of the development.

[40] The documentary evidence establishes that the US$350,000.00 originated from funds which the first claimant regarded as representing his entitlement arising out of the New York Venture. Significantly, there is no contemporaneous document characterizing the payment as a loan. No repayment date, interest rate, repayment schedule or other term ordinarily associated with a loan transaction was agreed at the time the funds were advanced. The absence of such features strongly suggests that the monies were contributed as part of a commercial arrangement rather than as a loan repayable in the ordinary course.

[41] It is also significant that the funds were paid directly to the company established to undertake the development rather than to the First Defendant personally. That fact is consistent with the acquisition of a stake in the project itself and not merely the creation of a debtor-creditor relationship.

[42] The Defendants' submission that the second claimant's role was merely incidental. Parcel 208 formed part of the footprint of the development and was charged to secure financing obtained for the project is rejected. Without her cooperation and the use of that parcel the development could not have proceeded in the form ultimately undertaken. Her contribution was therefore substantial and cannot properly be disregarded.

[43] The evidence further demonstrates that the first claimant's involvement extended beyond the provision of capital. The email correspondence concerning the procurement of furniture, construction materials and other supplies supports his evidence that he remained actively involved in the project after advancing the US$350,000.00. Whilst he was not responsible for the day-to-day supervision of construction his conduct is inconsistent with that of a person who regarded himself solely as a lender awaiting repayment.

[44] The contemporaneous documents are inconsistent with the Defendants' contention that the first claimant's role was confined to that of an investor seeking repayment of monies advanced. Instead, they demonstrate his continuing participation in the project and support the conclusion that he was involved in a common commercial enterprise.

[45] The more difficult question is whether the evidence supports the Claimants' assertion that the parties agreed that the first claimant would automatically acquire a one-half beneficial interest in the project. In determining that question particular significance is attached to the correspondence exchanged between the parties in late 2007 and throughout 2008.

[46] The Defendants rely heavily upon that correspondence as demonstrating that the first claimant's entitlement was contingent upon contributing 30% of the overall construction costs and that he never fulfilled that obligation. They further contend that his request for repayment of the US$350,000.00 is inconsistent with any claim to ownership.

[47] The correspondence is not entirely consistent with the Claimants' case. Had the parties proceeded on the basis that the first claimant had already acquired an unconditional 50% interest arising from his contribution and the use of Parcel 208, it is difficult to understand why that entitlement was not

expressly asserted once relations between the parties deteriorated. The contemporaneous correspondence contains no clear assertion of such an entitlement.

[48] Nonetheless, I am equally unable to accept the Defendants' interpretation of those documents. They do not establish that the first claimant possessed no beneficial interest whatsoever. Nor do they support the proposition that the US$350,000.00 was intended to be treated simply as a loan. Rather, they suggest that the parties were attempting to resolve an existing commercial relationship whose precise terms had become contested.

[49] Of particular significance is the fact that the First Defendant sought to calculate and offer a repayment figure inclusive of interest. Such conduct is difficult to reconcile with a contention that the first claimant was a complete stranger to the enterprise. It reflects an acknowledgement that the first claimant possessed a substantial financial stake in the project which required resolution.

[50] It is noted that the Defendants' alleged requirement that the first claimant contribute precisely 30% of the construction costs was never reduced to writing. There is no shareholder agreement, no joint venture agreement and no contemporaneous document executed at the outset of the project setting out such a requirement. The absence of a written agreement does not preclude the existence of the arrangement alleged by either party. It does however require the Court to determine the competing oral evidence in light of the all the circumstances of the case including documentary evidence, the parties' conduct and the surrounding circumstances.

[51] Upon review of all of the evidence and considered the relevant surrounding circumstances, I am of the opinion that the evidence does not support either of the competing positions advanced by the parties. It does not establish that the first claimant's contribution of US$350,000.00 standing alone,

entitled him to an immediate and unconditional one-half interest in the development irrespective of the additional financing, personal guarantees, management responsibilities and commercial risks assumed by the First Defendant. Nor does it support the Defendants' contention that the contribution gave rise to no proprietary interest whatsoever. Rather, the documentary evidence demonstrates that the US$350,000.00 was contributed pursuant to the parties' commercial arrangement and not by way of a conventional loan. The subsequent discussions concerning repayment did not alter the character of that contribution. Instead they reflected attempts by the parties to resolve their competing claims after their commercial relationship had broken down.

[52] Having determined the nature of the parties' commercial relationship it remains to consider whether that relationship gave rise to the proprietary interest claimed by the first claimant. This is not a case concerning a family home or competing claims arising from domestic arrangements. Rather, it concerns a commercial development undertaken through a corporate vehicle and funded by contributions made by different members of the Khoury family. In determining whether those contributions gave rise to a proprietary interest, the Court is concerned not with the absence of formal documentation but with the substance of the parties' dealings viewed as a whole. As the Court of Appeal explained in **Banner Homes Group plc v Luff Developments Ltd**[3], equity may recognize a proprietary interest where parties act upon a common understanding and it would be unconscionable for the legal owner to retain the property inconsistently with that understanding. The question is therefore whether having regard to the parties' conduct as a whole the contributions made by the Claimants were intended to confer a proprietary stake in the Antigua Project.

[3] [2000] Ch 372

[53] In my judgment, the evidence establishes that each of the parties contributed materially to the success of the Antigua Project albeit in different ways. The first claimant contributed substantial capital and resources. The second claimant contributed Parcel 208 and exposed that parcel to the risks associated with project financing. The First Defendant secured financing, executed personal guarantees, supervised construction, managed the development and assumed the commercial risks associated with its completion and operation.

[54] Drawing the evidence together, I am satisfied that the monies advanced by the first claimant and the contribution of Parcel 208 were not intended to be gratuitous. They were contributed in expectation of a proprietary stake in the development. I therefore find that the Claimants acquired a beneficial interest in the Antigua Project and its proceeds.

[55] In those circumstances, equity will not permit the First Defendant, acting through the second defendant company, to retain the entire beneficial interest in the Antigua Project and its proceeds inconsistently with the parties' common commercial arrangement. I therefore conclude that the project and its proceeds are held upon constructive trust to the extent of the parties' respective beneficial interests, those interests to be determined in accordance with the findings set out below.

[56] The existence of that constructive trust does not resolve the extent of each party's beneficial interest. I am not satisfied that the evidence supports the Claimants' assertion that their contributions automatically conferred a 50% beneficial interest. Nor do I accept the Defendants' contention that the Claimants acquired no beneficial interest whatsoever. The proper extent of the parties' respective beneficial interests must instead be determined by reference to their contributions to the acquisition, financing, development, management and operation of the Antigua Project as a whole.

Issue 2: Whether the Claimants' beneficial interest in the Antigua Project entitles them to an account of rents, profits and other monies derived from the development and to reasonable access to the properties and associated records

[57] Having found that the Claimants possess a beneficial interest in the Antigua Project, it remains to determine whether they are entitled to an account of the rents, profits and other monies generated by the development and whether they should be granted access to the properties and records relating to its operation.

[58] The evidence establishes that since completion of the apartment complex the First Defendant, acting through the second defendant company, has exercised exclusive control over the management and operation of the development. He has been responsible for negotiating leases, collecting rental income, paying expenses, servicing financial obligations and managing the project generally.

[59] The evidence further establishes that the development has generated substantial rental income since at least 2006. The original lease arrangements with the American University of Antigua and subsequent leasing arrangements have produced a continuing income stream. Notwithstanding this the Claimants have not received any comprehensive account of the revenues generated, the expenses incurred or the profits realized from the development.

[60] The Defendants resist such relief principally on the basis of delay and their contention that the Claimants possess no beneficial interest in the project. The passage of time without more does not defeats the claim for an

account. The Claimants have consistently maintained throughout these proceedings that they possess an interest in the Antigua Project and have sought declarations and ancillary relief arising from that interest. The accounting sought is not a free-standing claim but relief ancillary to the enforcement of the beneficial interest which the Court has found to exist. Further having rejected the assertion that the Claimants possess no beneficial interest in the project there is little remaining basis upon which an account can properly be resisted.

[61] It therefore follows that Claimants are entitled to the equitable remedies necessary to give practical effect to that interest. One such remedy is an account of the rents, profits and other monies received from the development. Without an account, the Claimants would have no practical means of determining the income generated by the development, the expenses incurred in its operation or the extent to which profits remain available for distribution. The declaration of a beneficial interest and or constructive trust would otherwise have little practical effect.

[62] I am therefore satisfied that the Claimants are entitled to an account of all rents, profits and other monies derived from the Antigua Project from the commencement of rental operations to the present. They are also entitled to disclosure of such financial and operational records as are reasonably necessary to facilitate that accounting exercise.

[63] I also accept that the Claimants require a measure of access to the properties and relevant records if they are to protect and enjoy their beneficial interest. That does not mean that they are entitled to participate in the day-to-day management of the development. The evidence establishes that management of the project has always been undertaken by the First Defendant through the second defendant company. Nothing in the findings made under Issue 1 justifies disturbing that arrangement.

[64] In my judgment, the appropriate balance is achieved by granting the Claimants reasonable access to Parcels 201 and 208 for inspection purposes and access to such records as are reasonably necessary to enable them to ascertain and protect their beneficial interest. Such relief promotes transparency and accountability whilst preserving the Defendants' ability to continue managing the enterprise.

Issue 3: Whether the second claimant promised to transfer Parcel 208 to the First Defendant and if so, whether that promise gives rise to a constructive trust, proprietary estoppel, contractual right, or other equitable entitlement in his favour

[65] The First Defendant's counterclaim is founded upon the assertion that the second claimant promised to transfer Parcel 208 to him and that in reliance upon that promise he relocated to Antigua, undertook the development of the Hodges Bay project, secured financing, exposed himself to liability under personal guarantees and devoted substantial time and resources to the construction and operation of the completed development. He contends that it would now be unconscionable for the second claimant to deny him ownership of the property.

[66] The First Defendant's claim has been advanced under a number of legal labels, including constructive trust, proprietary estoppel and contract. Regardless of the label applied the central question is whether the second claimant made a sufficiently clear promise that Parcel 208 would belong to the First Defendant and whether he acted upon that promise to his detriment. In the case of a constructive trust the authorities require proof of a common intention that the claimant should have a proprietary interest in the property together with conduct referable to that intention. As explained

by Lord Bridge in **Lloyds Bank plc v Rosset**[4] the Court must first be satisfied that there was an express agreement, arrangement or understanding concerning ownership or alternatively conduct from which such a common intention may properly be inferred. Mere expectation, belief or hope that property will ultimately be transferred is insufficient. Similar considerations arise in the context of proprietary estoppel where there must be a sufficiently clear assurance, reliance upon that assurance and detriment flowing from that reliance.[5]. The central issue in the present case is therefore whether the evidence establishes a sufficiently clear promise or common understanding that Parcel 208 would belong beneficially to the First Defendant.

[67] The legal title to Parcel 208 has at all material times remained vested in the second claimant. The burden therefore rests upon the First Defendant to establish facts sufficient to displace the ordinary consequences of legal ownership.

[68] I readily accept that the First Defendant devoted considerable time, effort and resources to the Antigua Project. The evidence demonstrates that he secured financing, executed personal guarantees, supervised construction, defended litigation relating to the development and managed the completed enterprise for many years. The real issue is not whether he suffered detriment but whether that detriment was incurred in reliance upon the promise he alleges.

[69] The First Defendant's evidence is that in or about 2002 the second claimant encouraged him to relocate to Antigua and promised that Parcel 208 would be transferred to him so that he could pursue the development which he says his late father had envisaged for the Hodges Bay lands. He relies upon

[4] [1991] 1 AC 107

[5] *See* Thorner v Major [2009] UKHL 18 *and* Guest v Guest [2022] UKSC 27

conversations said to have occurred both before and during construction and upon the evidence of Teresa Khoury in support of that assertion.

[70] Given the age of the events in question I consider the documentary evidence to be the most reliable indicator of the parties' intentions and conduct. It is notable that despite the extensive documentary record generated by the project, including financing arrangements, correspondence concerning ownership interests, negotiations relating to repayment of monies and discussions concerning the future of the development, there is no contemporaneous document recording any promise by the second claimant to transfer Parcel 208 to the First Defendant. Given the central importance of such a promise to the counterclaim that omission is striking.

[71] More importantly, certain documents appear inconsistent with the existence of the promise now alleged. The evidence reveals that in correspondence dated 17th December 2007 the First Defendant proposed that Mandalay Development purchase Parcel 208 from the second claimant at market value. Thereafter, in correspondence dated 3rd April 2008, the First Defendant again proposed that the second claimant execute documents for the sale of Parcel 208. Those documents as highly significant. If the First Defendant genuinely believed that Parcel 208 had already been gifted to him or that the second claimant held the property on trust for him it is difficult to understand why he would propose purchasing the property or seek the execution of sale documents. Such proposals are far more consistent with an acknowledgement that ownership remained vested in the second claimant.

[72] In my judgment, those contemporaneous communications are fundamentally inconsistent with the First Defendant's present assertion that beneficial ownership of Parcel 208 had already passed to him years earlier.

[73] It is also significant that the First Defendant never sought to enforce the alleged promise during the relevant period and did not assert any proprietary entitlement arising from such promise in the contemporaneous correspondence. Whilst delay is not necessarily fatal to an equitable claim the absence of any contemporaneous assertion of ownership remains a factor to which considerable weight must be attached.

[74] I have also considered the evidence of Teresa Khoury. At its highest that evidence establishes that the second claimant encouraged the development and wished the First Defendant to undertake it. It demonstrates her support for the project and confidence in his ability to carry it forward. However such encouragement alone be equated with the common intention necessary to found a constructive trust as explained in **Lloyds Bank plc v Rosset**[6]. Nor does it amount to the sufficiently clear assurance required by **Thorner v Major**[7] to sustain a claim in proprietary estoppel.

[75] The First Defendant also relies upon the detriment he says he suffered in undertaking the development. However much of the conduct relied upon is equally consistent with his own commercial interest in the project. He was the sole shareholder and director of Mandalay Development (Antigua) Ltd., controlled the development, managed the completed enterprise and stood to benefit directly from its success. In those circumstances, I am unable to conclude that the detriment relied upon was incurred in reliance upon the alleged promise concerning Parcel 208 rather than in pursuit of his own commercial objectives. As Lord Scott observed in **Yeoman's Row Management Ltd v Cobbe**[8] detriment alone cannot create proprietary rights in the absence of a sufficiently certain assurance. For the reasons

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[6] [1991] 1 AC 107

[7] [2009] UKHL 18

[8] [2008] UKHL 55

already given I am not satisfied that such an assurance has been established in the present case.

[76] The claim fares no better when analyzed as a constructive trust or contractual claim. As previously indicated, the evidence does not establish the common intention required by **Lloyds Bank plc v Rosset**[9] that Parcel 208 would be held beneficially for the First Defendant. Further it does not establish a concluded agreement by which the second claimant agreed to transfer it to him. The alleged promise is unsupported by contemporaneous documentation and is inconsistent with the parties' subsequent conduct, particularly the correspondence in which the First Defendant proposed purchasing the property from the second claimant. For substantially the same reasons, I am unable to conclude that a constructive trust arose in his favor.

[77] Ultimately the documentary record consistently demonstrate that the parties treated Parcel 208 as property belonging to the second claimant. That remained the position throughout the development and operation of the project and is fundamentally inconsistent with the First Defendant's present assertion that beneficial ownership had passed to him years earlier. In those circumstances, I am unable to conclude that it would be unconscionable for the second claimant to continue asserting the ownership which she has always maintained and which the documentary evidence consistently reflects.

ORDER

[78] In light of the foregoing

1. The First Defendant's counterclaim is dismissed.

[9] [1991] 1 AC 107

2. It is declared that the Claimants possess a beneficial interest in the Antigua Project comprising the development situated on Registration Section Hodges Bay and Thibou's, Block 43 2197B, Parcels 201 and 208 and the income and proceeds derived therefrom.

3. The matter is referred to an inquiry before the Court for the determination of: (a) the extent of the Claimants' beneficial interest in the Antigua Project; and (b) the amount, if any, due to the Claimants upon the taking of the account.

4. The Defendants shall within ninety (90) days render a full account of all rents, profits and other monies received from the Antigua Project from the commencement of rental operations to the date of this Order together with all supporting documentation.

5. Liberty to apply.

Justice Jan Drysdale
High Court Judge

By the Court

Registrar