EASTERN CARIBBEAN SUPREME COURT
GRENADA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. GDAHCV2022/0155

BETWEEN:

DEBRA BRANCH
(In her capacity as Administratrix of the Estate of John Augustus Branch, deceased)

Claimant

And

WILLIAM JOHN BARRY BRANCH
WINSTON PHILLIP
(In their capacities as Administrators of the Estate of William Branch, deceased)

Defendants

Before:
The Hon. Mr. Justice Raulston L.A. Glasgow High Court Judge

Appearances:
Mr. Nazim Burke for the Claimant
Ms. Pauline Hannibal for the Defendants

2024: October 24th;
2026: March 23rd;
April 30th;
August 17th .

JUDGMENT

[1] **GLASGOW, J.:** This claim arises out of a longstanding dispute concerning the management and administration of lands known as Dougaldston Estate (the Estate), situate at Gouyave, in the parish of Saint John.

BACKGROUND

[2] By conveyances dated 31st July 1968, and 29th and 30th May 1979 respectively, John Augustus Branch and his brother, William Allan Branch became the owners of approximately 1,572 acres of land situate in Gouyave St. John, commonly known as "Dougaldston Estate".

[3] John Branch died on 19th day of March 1988. By his will, he appointed his daughter, the claimant (Ms. Branch), as executrix of his estate. William Allan Branch died on 27th day of January 1993. He appointed the defendants as the executors of his estate. Following the death of William Allan Branch, the first defendant, William John Branch (Mr. Branch), assumed responsibility for the day-to-day management of the Dougaldston Estate and acted as its de facto manager.

[4] In December 2004, a Board of Directors was established to assist in the management and operation of Dougaldston Estate. The Board comprised Dr. Reginald Pierre, as Chairman, the defendants as representatives of William Branch's estate and Arthur Branch who served on the Board as Ms. Branch's attorney in fact together with Gilbert Mc Sween as representatives of John Augustus Branch's estate.

Ms. Branch's case

[5] Ms. Branch's case is that, following the deaths of John and William Branch, it was agreed that Dougaldston Estate would continue to operate as a going concern for the benefit of their respective estates. According to Ms. Branch, the parties agreed that:

(1) each estate would share in the profits and proceeds of sale of land forming part of the Estate in proportion to its interest;
(2) the operating expenses of the Estate would be met from the revenues generated by its agricultural operations, tourism services and quarrying business;

(3) all revenues would be paid into a bank account maintained in the name of the Estate at Republic Bank (Grenada) Ltd. from which all expenses of the Estate would be paid;

(4) All members of the Advisory Board would be signatories to the account with every cheque requiring the signatures of one representative from each estate, or, where that was impracticable, the signature of one representative together with the chairman.

[6] Ms. Branch contends that, notwithstanding these arrangements, Mr. Branch failed to manage the affairs of the Estate in an open and transparent manner, and repeatedly failed to account to John Augustus Branch's Estate for the management of assets and finances.

[7] Ms. Branch states that Mr. Branch did not provide financial statements from January 2011 to November 2017 despite repeated requests, and that the statements later supplied reflected increased spending.

[8] Ms. Branch further alleges that Mr. Branch failed to render a proper accounting of Estate receipts and, in particular, deposited Estate funds into his personal bank accounts. She relies on bank statements for December 2017 to March 2019, which she maintains evidence significant deposits of Estate monies into one such personal account.

[9] Ms. Branch also raises concerns regarding the handling of proceeds from various land sales. She complains that monies received from the sale of lands forming part of the Dougaldston Estate—including parcels sold to the Government of Grenada in 2006 and 2010—were not distributed between the two estates in accordance with the parties' agreement. She further alleges that some of those proceeds were deposited into Mr. Branch's personal bank account rather than being treated as Estate funds.

[10] Ms. Branch further claims that substantial withdrawals were made from the Estate's Republic Bank account for Mr. Branch's benefit, reducing the account balance from

$470,417.86 on 31 December 2006 to **$1,077.36 on 31 December 2010**. She also laments the fact that many of the cheques authorising those withdrawals were signed solely by representatives of William Allan Branch's estate, contrary to the agreed signing arrangements requiring participation from representatives of both estates.

[11] Ms. Branch also highlights Mr. Branch's alleged failure to convene meetings of the Advisory Board despite repeated requests being made for him to do so. Mr. Branch, in the absence of meetings of the Advisory Board, made significant business and management decisions concerning the Estate without consulting either representatives or beneficiaries of John Augustus Branch's Estate.

[12] Ms. Branch also says that Mr. Branch failed to properly preserve the assets of Dougaldston Estate. In particular, Ms. Branch references the destruction of the Estate's "boucan" by fire on 18th May 2020. There could be no recovery of this loss, she alleges, since Mr. Branch did not ensure that the buildings were insured at the time. Ms. Branch points out that the Estate fell into a state of waste, dereliction and disrepair, with its business operations ultimately ceasing due to Mr. Branch's management.

[13] Ms. Branch filed this Fixed Date Claim Form on 22nd April 2022. In it she seeks, among other relief, an accounting of the management of the Estate, payment of the Estate John Augustus Branch's share of the monies, profits and revenues generated from the Estate, together with interest and costs. Ms. Branch requested and was granted permission by this court to amend her claim. The amended claim was filed on 20th November 2023 to seek, in addition, an order identifying, valuing and selling the real property and assets comprising Dougaldston Estate.

THE DEFENDANTS' CASE

[14] By affidavit in response filed on the 5th September 2022, Mr. Branch responded to Ms. Branch claim. In the response, Mr. Branch denied Ms. Branch's allegations of

mismanagement and breach of duty. He also disputed the assertion that his portrayal of the Estate as a profitable enterprise is inaccurate.

[15] Mr. Branch explained in his evidence that Dougaldston Estate experienced a significant decline in production and profitability well before he assumed responsibility for its management in 1993. According to him, the Estate had been operating at a loss for many years due principally to the downturn in the banana industry, and its financial difficulties pre-dated his involvement in its management.

[16] Mr. Branch further testified that, throughout the period in question, Ms. Branch's attorney-in-fact, Arthur Branch, was actively involved in the affairs of Dougaldston Estate. He testified that Arthur Branch **(1)** participated in the decision-making processes concerning the Estate, **(2)** received, on Ms. Branch's behalf, one-half of the proceeds from land sales up to 2007, and **(3)** possessed knowledge of and consented to the transactions presently under challenge.

[17] Mr. Branch accepts that Dougaldston Estate accumulated substantial liabilities during its operation. His account for this state of affairs is that monies withdrawn from the Estate's bank account were used to satisfy those liabilities and meet the Estate's operating expenses. The state of the liabilities, he claims, compelled him, on numerous occasions, to advance his own personal funds to the Estate in order to pay workers' wages, transportation costs and other operational expenses, thereby enabling the Estate to continue functioning despite its financial difficulties.

[18] Mr. Branch insists that financial statements for the period April 2007 to July 2009 and for the years 2014 to 2018 were provided to Ms. Branch on 26th March 2021. He rejects the allegation that he failed to account for the Estate's financial affairs.

[19] Although Mr. Branch disputes Ms. Branch's charges of wrongdoing and denies that he appropriated Estate funds for his own benefit, he accepts that the relationship between the parties has irretrievably broken down. Accordingly, he suggests a partitioning of the Estate or, alternatively, that the Estate be sold and the net proceeds

distributed between the parties according to their respective entitlements after payment of any outstanding debts and liabilities.

THE EVIDENCE

The Claimant's Evidence

Debra Branch

[20] Ms. Branch is the executrix and personal representative of John Augustus Branch's Estate.

[21] Ms. Branch describes Dougaldston Estate as, historically, a profitable agricultural enterprise and tourist attraction. She testified that the Estate was once among Grenada's leading producers and exporters of bananas and spices.

[22] Ms. Branch's case is that following the deaths of John Augustus Branch and William Allan Branch, it was agreed that Dougaldston Estate would continue to operate as a going concern for the benefit of both estates. According to her, the parties also agreed that any proceeds derived from the sale of lands forming part of the Estate would be shared between the two estates in accordance with their respective interests.

[23] Ms. Branch claims that, at the time Mr. Branch assumed management of the Estate, it remained a viable commercial enterprise. She alleges that, over the ensuing years, Mr. Branch exercised exclusive control over the management of the Estate, making significant business and proprietary decisions without consulting her, her attorney-in-fact, Arthur Branch, or the other representatives of the John Augustus Branch's Estate.

[24] Ms. Branch further testified that Mr. Branch failed to manage the affairs of the Estate transparently and in accordance with the arrangements agreed between the parties. In particular, she points to the fact that:

(1) no shares were ever issued in the company reflecting the parties' respective interests;

(2) annual returns and financial statements were not prepared or made available for lengthy periods despite repeated requests;

(3) proceeds from the sale of lands belonging to the Estate were not distributed in accordance with the parties' agreement, including the proceeds of a 2006 sale of land to the Government of Grenada;

(4) Mr. Branch admitted depositing the proceeds of the 2010 sale of two parcels of Estate land into his personal bank account;

(5) numerous cheques drawn on the Estate's bank account were signed solely by representatives of William Allan Branch's Estate, contrary to the agreed signing arrangements;

(6) Mr. Branch represented that the Estate was no longer conducting business, notwithstanding information available to her suggesting that tourism activities continued during the relevant period;

(7) Mr. Branch failed to preserve and maintain the Estate's assets, resulting in the deterioration of the Estate and the destruction of the Boucan by fire in May 2020;

(8) Mr. Branch acknowledged using his personal bank accounts in connection with the operations of Dougaldston Estate; and

(9) certain expenditure reflected in the financial statements, including fuel expenses, appeared to her to be inconsistent with the actual operations of the Estate.

Valda Branch

[25] Valda Branch, a beneficiary of John Augustus Branch's Estate, testified that neither she nor the other beneficiaries had received regular distributions from Dougaldston Estate. She recalled only one payment, namely a cheque in the sum of $4,000.00 received by Arthur Branch from Mr. Branch on 28th April 2014.

Wayne James

[26] Wayne James gave evidence that, to the best of his knowledge, no meetings of the Advisory Board were convened between 2009 and 2017.

The defendant's case

William Branch

[27] Mr.John Branch disputed, Ms. Branch's, characterization of the Estate as a highly profitable enterprise during the period of his management. He asserted that by the time he assumed responsibility for the Estate, its agricultural operations had already declined significantly. He further stated that there was never substantial spice production during his tenure and that spices sold to tourists visiting the Estate often had to be sourced from external suppliers.

[28] In respect of the conveyance of lands to the Government of Grenada for the expansion of Cuthbert Peters Park, Mr. Branch explained that the Estate received the sum of $601,385.00. He further testified that no portion of those proceeds was distributed to the beneficiaries of either Estate. According to his evidence, this was pursuant to an agreement that the funds would be applied toward the satisfaction of existing liabilities and the ongoing operational expenses of the Dougaldston Estate. His further testimony indicated that the monies were utilized, inter alia, to discharge outstanding National Insurance contributions, effect repairs to Estate roads, and meet workers' wages together with other operational costs.

[29] Mr. Branch further addressed the 2010 disposition of two parcels of land measuring approximately eight thousand square feet. He admitted that the purchase price of $57,300.00 was deposited into his personal account at Scotiabank. He contended, however, that this was done on the basis that he regarded those parcels as part of his beneficial entitlement under his father's estate. He asserted that, pursuant to his father's will, he is entitled to one-quarter of the Dougaldston Estate, comprising in

excess of 600 acres, and that the proceeds of the sale represented a portion of that entitlement.

[30] Mr. Branch, additionally testified that the Dougaldston Estate encountered ongoing financial challenges and accrued significant indebtedness throughout his tenure as manager. He indicated that, between roughly 2014 and 2018, he personally advanced monies to the Estate to meet operational obligations such as employee wages and transportation expenses. He further stated that, in instances where the Estate's bank account was insufficiently funded, he utilized proceeds from the sale of his personal property located at Capital, St. Andrew, to sustain the Estate's operations.

[31] With respect to personal expenditure, Mr. Branch further indicated that he financed the acquisition of motor vehicles utilized in the operation of the Dougaldston Estate between 1993 and 2022. These acquisitions were made entirely from his own resources, without reimbursement or compensation. The Estate bore costs only for the operational use of the vehicles.

The Expert Report

[32] By order dated 19 February 2024, this Court directed the parties to jointly agree on a forensic accounting expert. The parties subsequently agreed on Mr. Glen Harloff, whose report was filed on 29 August 2024.

[33] Mr. Harloff conducted a forensic review of the financial records and other documents made available to him concerning the management and operation of the Estate. His principal observations included the following:

(1) although Dougaldston Estate had historically operated as a profitable agricultural enterprise, its financial performance declined significantly with the downturn of the banana industry and, based on the available financial information, the Estate generally operated at a loss from the late 1980s onwards, save for modest profits recorded in 2009 and 2019;

(2) labour costs represented the Estate's largest annual expense, while motor vehicle expenses constituted the second largest expense despite the Estate not owning any vehicles. In the absence of supporting documentation, the expert considered those motor vehicle expenses to be questionable;

(3) the expert was unable to verify Mr. Branch's assertion that he had advanced personal funds to the Estate, as no documentation evidencing loans or liabilities owed to him was identified;

(4) the proceeds of several land sales could not be fully traced, including the proceeds of sales conducted through Henry, Henry & Bristol and the sale of lands to the Government of Grenada. The expert noted that the proceeds of the Cuthbert Peters Park land sale were deposited into the Estate's bank account and used for operational purposes rather than being distributed to the beneficiaries. He further observed that many of the resulting disbursements lacked supporting documentation;

(5) of the 203 identified cheques drawn on the Estate account, 193, representing approximately 95%, were signed by Mr. Branch and Robert Branch;

(6) the Estate's financial records disclosed significant deficiencies in governance and record-keeping. The expert observed that no proper accounting system had been maintained, financial records were incomplete for substantial periods, multiple bank accounts, including personal accounts, had been used in the Estate's operations, and Estate funds had been commingled with the first defendant's personal funds, making it impossible to reconstruct a complete audit trail;

(7) the expert also observed that no regular meetings of the beneficiaries had been held, the assets of Dougaldston Estate had never been transferred to Dougaldston Limited following incorporation, and the Estate's principal buildings had fallen into significant disrepair. The Great House remained severely damaged following Hurricane Ivan in 2004, the Boucan was

destroyed by fire in 2020 while uninsured, and commercial tourism operations ceased thereafter.

[34] The expert further opined that several management decisions taken during the Mr. Branch's stewardship adversely affected the financial performance of the Estate. These included the absence of any meaningful business or agricultural plan, reductions in labour which affected production, and the cancellation of insurance over Estate buildings, which left the Estate unable to recover losses arising from Hurricane Ivan in 2004 and the destruction of the Boucan by fire in 2020[1].

[35] In his overall opinion, Mr. Harloff was of the view that Mr. Branch had failed to provide a reasonable level of governance and accountability in his management of Dougaldston Estate[2].

LEGAL ANALYSIS

Duties owed by Mr. Branch

[36] The first issue concerns the nature of the obligations owed by Mr. Branch in his management of the Estate.

[37] There is no dispute that the defendants are the executors of William Allan Branch's Estate and that Ms. Branch is the executrix of John Augustus Branch's Estate. As executors, each owes fiduciary obligations in relation to the estates which they represent.

[38] Ms. Branch submits that, by assuming responsibility for the management of the Estate, Mr. Branch also assumed fiduciary obligations, including obligations owed to John Augustus Branch's Estate. I accept that submission.

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[1] Page 11 of the Expert Report filed 29th August 2024
[2] Ibid page 10

[39] It is well established that a personal representative occupies a fiduciary position and is obliged to preserve the assets of the estate, discharge its liabilities and administer the estate for the benefit of those entitled to it. In **Re Hayes Will Trust**[3], where Thomas J. stated:

> "It is well established that…a personal representative…has fiduciary duties with regard to it and their performance will be secured by the court; and he may be made liable for breaches of his fiduciary duties…those functions are to get in the testator's estate, preserve its properties, discharge its liabilities and distribute the resulting net assets. The legal representatives would in due course be concerned to obtain a proper discharge for the net assets and thus to ascertain who are entitled to them and to ensure that the assets were distributed to those entitled."

[40] Equally instructive is the case of **Bristol and West Building Society v Mathew**[4] in which Millet LJ set out as follows:

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal."

[41] The same principles are reflected in **Halsbury's Laws of England**[5] where the authors state the following:

> "Where a person has property or rights which they... are bound to exercise for or on behalf of another or others (the 'beneficiaries'), or for the accomplishment of some particular purpose or particular purposes, the person is said to hold the property or rights in trust for that other or those others, or for that purpose or those purposes, and is called a 'trustee'...
>
> ...

[3] [1971] 1 WLR 758
[4] [1998] Ch. 1
[5] Volume 98 (2024) para 1

> The trustee holds the property or must exercise their rights of property in a fiduciary capacity, and stands in a fiduciary relationship to the beneficiary... The trustee will normally have administrative powers over the trust property, enabling the trustee to manage and administer it for the benefit of the beneficiaries or to further purposes, as well as powers to distribute income or capital to the beneficiaries or to further purposes."

[42] Mr. Branch does not dispute that, as the person responsible for the management of Dougaldston Estate, he owed duties in relation to its administration. His view, however, is that those duties must be considered in light of **Section 20** of the **Trustee Act**, which provides:

> "20. Implied indemnity of trustees
>
> A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him or her notwithstanding his or her signing any receipt for the sake of conformity, and shall be answerable and accountable only for his or her own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom trust monies or securities may be deposited, nor for the insufficiency or deficiency of securities, nor for any other loss, unless it happens through his or her own wilful default; and may reimburse himself or herself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his or her trusts or powers."

[43] The evidence establishes that, following William Allan Branch's death, Mr. Branch assumed exclusive responsibility for the Estate's management. Indeed, Mr. Branch accepts that he managed the Estate from 1993 onwards. During that period, he exercised control over the Estate's finances, banking arrangements, employees, land sales and general business operations.

[44] In those circumstances, I am satisfied that Mr. Branch stood in a fiduciary relationship not only to the William Allan Branch's Estate , which he represented as executor, but also to John Augustus Branch's Estate of whose beneficial interest in Dougaldston Estate he had undertaken to manage. His obligations therefore extended beyond those of the executor of William Allan Branch's Estate. They included duties to act honestly, preserve the assets of the Estate, maintain proper accounts, avoid conflicts

of interest, keep Estate property separate from his own property and account fully for monies received and disbursed in the course of the Estate's management.

Whether Mr. Branch breached his fiduciary duties

[45] Having determined that Mr. Branch owed fiduciary duties in his capacity as the person entrusted with the management of William Allan Branch's Estate and as the person who assumed management of John Augustus Branch's Estate, the next issue is whether those duties were breached.

[46] With respect to breach of trust, **Halsbury's Laws of England**[6] state:

> "Any act by a trustee with reference to the trust property in contravention of the equitable duties imposed on the trustee by the creation of the trust, or in excess of those duties, and any neglect or omission on the trustee's part to fulfil those duties, and the concurrence or acquiescence by one of several trustees in a similar act, neglect or omission on the part of a co-trustee, constitutes a breach of trust. An act or omission of a trustee or a fiduciary operating in such capacity (for example as solicitor for a client) that happens to be a breach of contract or to give rise to a tort (such as negligence or nuisance) is not necessarily a breach of trust or of the fiduciary duty to avoid a conflict of interest and duty. If the breach of trust entails a loss to the trust estate, then as a general rule the trustee, and, after the trustee's decease or bankruptcy, the trustee's estate, are liable for the loss. A trustee who carelessly allows trust property to fall into disrepair is not liable for the costs of reinstatement where these would be greater than the resulting enhancement of the property's value.
>
> Where the breach of trust concerns the trustee's stewardship of the trust property, the obligation of the trustee to produce accounts of what they have done with the property will enable the beneficiaries to falsify or surcharge the accounts. Falsification, by striking out items in the accounts that would not have been there if the trustee had properly performed their duties, restores the trust fund to its proper value, and the trustee is strictly liable to make good that value. Surcharging the accounts with the amounts the trustee would have received but for the trustee's failure to act with the requisite care and diligence makes the trustee liable to make good the losses caused by such failure. Where there is a breach of the fiduciary duty to avoid a conflict of interest and duty, equitable compensation is payable for loss occasioned thereby.

[6] Volume 98 (2024) para 660

> A trustee may be relieved from liability by the provisions of the instrument creating the trust or by statute, or by the fact that the breach of trust has been occasioned by necessity or some other adequate cause, or has been authorised or condoned by the beneficiary injured by it, or has been due to an innocent mistake. A mere error of judgment does not in itself constitute a breach of trust, and a trustee is presumed to have dealt honestly and properly with the trust estate until the contrary is shown.
>
> If a trustee personally makes a profit out of a breach of trust, the trustee is liable to account to the beneficiaries for that profit unless the apparent breach was authorised by the trust instrument or by the beneficiaries."

[47] Mr. Branch submits that Ms. Branch must establish a causal connection between any alleged breach of duty and the loss said to have been suffered by the Estate. He argues that a mere error of judgment, without more, does not constitute a breach of trust or fiduciary duty, particularly where decisions were made in an attempt to preserve the Estate during a period of financial decline.

[48] I accept the general proposition that a trustee is not an insurer of the trust property and is not liable merely because the trust has suffered a loss. **Section 20** of the **Trustee Act** makes clear that a trustee is accountable for losses occasioned by his or her own acts, neglects or defaults and is entitled to be reimbursed for expenses properly incurred in the administration of the trust.

[49] However, those principles do not relieve a trustee of the fundamental obligations to maintain proper accounts, preserve trust property and account fully for the administration of the trust. Where a trustee fails to maintain adequate records, commingles trust property with personal assets or is unable to satisfactorily explain the disposition of trust funds, the Court is entitled to conclude that the trustee has failed to discharge those fiduciary obligations.

Failure to maintain proper accounts

[50] The evidence points indisputably to the fact that Mr. Branch failed to maintain proper accounting records throughout the period during which he managed Dougaldston Estate.

[51] Although Mr. Branch may be accurate in his assertion that the Estate experienced financial decline long before he assumed responsibility for its management, that explanation does not excuse his failure to keep proper books and records. Once he assumed control of the Estate's affairs in 1993, it became his responsibility to ensure that accurate financial records were maintained and that the beneficiaries were able to ascertain how Estate funds were received, applied and distributed. In fact it would have assisted his case entirely to have a financial assessment (most appropriately an audit statement) of the Estate's finances at the time that he assumed management over its affairs and then maintain those sorts of assessment throughout the duration of his management of the Estate.

[52] Significantly, the forensic accounting expert concluded that the Estate's financial records were incomplete, that no proper accounting system had been maintained, and that it was impossible to reconstruct a complete financial history of the Estate because of the absence of adequate supporting documentation. The expert also noted significant deficiencies in record-keeping, governance and financial oversight. The Court accepts the expert's evidence which has not been controverted at all or in any manner sufficient to impugn the findings thereof.

[53] In the circumstances, I find that Mr. Branch failed to discharge his fiduciary obligation to maintain proper books of account and to preserve adequate records of the administration of Dougaldston Estate.

Failure to Properly Account

[54] Closely connected with the duty to maintain proper records is the fiduciary obligation to account for the administration of the Estate.

[55] Mr. Branch submitted that financial statements were eventually provided to Ms. Branch in 2021. While that may be so, producing financial statements many years

after repeated requests may not, in the Court's view, constitute a satisfactory discharge of the obligation to account.

[56] If the lack of timely financial reports was not bad enough, the evidence indicates that the financial statements which were actually produced were incomplete, covered only selected periods, and were unsupported by the documentation necessary to verify many of the transactions reflected therein. Indeed, the expert was unable to verify a number of significant expenditures because invoices, receipts and other supporting documents were unavailable.

[57] A fiduciary cannot simply assert that Estate monies were expended for legitimate purposes. He must be in a position to demonstrate, through reliable and verifiable documentary evidence, how those monies were applied. That evidence is largely absent in the present case.

[58] I therefore find that Mr. Branch failed to provide a full and proper account of his administration of Dougaldston Estate.

Commingling of Estate and Personal Funds

[59] One of the more troubling aspects of the evidence concerns the manner in which Estate funds were intermingled with Mr. Branch's personal finances.

[60] Mr. Branch acknowledged that the proceeds of the 2010 sale of two parcels of Estate land, in the amount of $57,300.00, were deposited into his personal bank account. His explanation was that he regarded those parcels as forming part of his inheritance under his father's estate. I am unable to accept that explanation.

[61] Whatever alleged proprietary interest Mr. Branch may ultimately have had in Dougaldston Estate, the lands remained assets forming part of the Estate and were subject to administration. Until the respective interests of the beneficiaries were lawfully ascertained and distributed, Mr. Branch was not entitled, unilaterally, to

appropriate the proceeds of any sale by depositing them into his personal account. In a word, neither he nor any of the beneficiaries were entitled to any part of the Estate or could deal with the same other than in accordance with its administration. Mr. Branch and the other beneficiaries were entitled to share of the net assets, if any, after the administration of the Estate was completed[7].

[62] The difficulty arising from Mr. Branch's conduct is underscored by the expert's finding that his personal bank accounts were routinely used in managing the Estate, to the point where it is no longer possible to distinguish his personal funds from those of the Estate with any degree of certainty.

[63] Such conduct is fundamentally inconsistent with the obligations of a fiduciary. A fiduciary must maintain a clear separation between trust property and personal property. The use of his personal accounts for Estate transactions inevitably created uncertainty, risk and frustrated accountability.

Preservation of Estate Assets

[64] The evidence demonstrates a progressive decline in the Estate's assets during Mr. Branch's tenure. The expert concluded that major Estate structures had deteriorated, that the Great House remained unrepaired since Hurricane Ivan, and that the Boucan, which was destroyed by fire in 2020, had been left uninsured.

[65] The court accepts that not every aspect of the Estate's decline can fairly be attributed to Mr. Branch. It is a matter of public notoriety that the banana industry experienced a downturn, and the court further acknowledges that this, together with the financial challenges faced by agricultural estates generally, accounts for part of the deterioration observed. However, the evidence demonstrates that the absence of

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[7] Re Charteris [1917] 2 Ch 379; Re Hayes's Will Trusts; Pattinson and another v Hayes and others [1971] 2 All ER 341; Commissioner of Stamp Duties (Queensland) Appellant and Hugh Duncan Livingston Respondent [1965] A.C. 694; Eliza Thompson v Catherine Thompson GDAHCVAP 2021/0002

proper planning, inadequate governance, deficient financial controls, and the failure to maintain appropriate insurance materially exacerbated the losses ultimately sustained by the Estate.

CONCLUSION

[66] Considering the evidence as a whole, I am satisfied that Ms. Branch has established, that Mr. Branch breached the fiduciary duties which he owed in the management of Dougaldston Estate.

[67] Those breaches include his failure to maintain proper accounting records, failure to provide a satisfactory account of his administration, commingling of Estate funds with his personal funds, use of personal bank accounts for Estate transactions and failure to preserve the Estate's assets in accordance with the standard expected of a fiduciary.

[68] While I do not find that every decision taken by Mr. Branch was motivated by bad faith or negligence, the cumulative effect of his conduct demonstrates a prolonged failure to administer Dougaldston Estate with the degree of transparency, accountability and fidelity required of a fiduciary. That failure lies at the heart of the present dispute and substantially undermined the confidence necessary for the continued joint administration of the Estate.

REMEDY

[69] Having found that Mr. Branch, breached the fiduciary duties owed in the administration of Dougaldston Estate, the Court must now determine the appropriate relief. The remedies must directly and effectively address the consequences of those breaches and ensure that the interests of both estates are fully protected.

[70] The evidence reveals a sustained and serious failure by Mr. Branch, to discharge his fiduciary responsibilities. He failed to maintain proper accounting records, failed to

preserve an adequate audit trail, commingled Estate funds with his personal funds, failed to account satisfactorily for substantial receipts from the sale of Estate lands, and administered the Estate without the transparency and accountability required of a fiduciary. These cumulative failures have rendered it impossible to ascertain with certainty the true financial position of the Estate or to determine accurately the amount, if any, presently due to either estate from the operation of the business.

[71] The Court finds that the inability to quantify the precise financial loss suffered by John Augustus Branch's Estate as represented by Ms. Branch, is itself a direct and foreseeable consequence of Mr. Branch's dereliction of his fiduciary obligations. A fiduciary who fails to keep proper accounts cannot rely on the uncertainty created by that failure to avoid or diminish the remedy that equity demands.

[72] Ms. Branch, seeks, among other relief, declarations concerning the parties' respective interests and an order for the sale of Dougaldston Estate.

[73] The Court accepts the principles stated in Halsbury's Laws of England that a trustee who commits a breach of trust must restore the trust estate or provide equitable compensation sufficient to place the trust estate in the position it would have occupied had the breach not occurred. Moreover, where a trustee is also a beneficiary that beneficial interest may be subject to adjustment to make good losses occasioned by the trustee's own breaches.

[74] The Court also derives assistance from in the case of **Eileen Papone and Lourie Anthony v James Anthony**[8], where the administrator of the estate breached his fiduciary duties owed to the beneficiaries, the Court recognised:

> "In his administration of his parents' estates, the defendant is liable for breaches of trust and must reimburse the proceeds to relevant estate, less his share. In addition, the defendant has shown that he is unable to properly discharge the duties and functions of his office to administer the trusts in the interests of the welfare of the beneficiaries, and for that reason he is removed as administrator of both estates."

[8] BVIHCV2010/0113

[75] In the present case, I am satisfied that the relationship between the parties has broken down irretrievably. The evidence demonstrates a prolonged failure of communication, an absence of transparency, and a complete loss of confidence in Mr. Branch's management of the Estate. The Estate itself has ceased to operate as a viable commercial enterprise. Significant assets have deteriorated or been lost, substantial portions of the land have already been sold, and the financial records are incapable of establishing with confidence the true financial position of the Estate.

[76] In those circumstances, I am satisfied that it would neither be practical nor equitable for the parties to continue their joint ownership and management of Dougaldston Estate. Significantly, the defendants themselves do not oppose the sale of the Estate.

[77] I therefore conclude that, subject to the matters addressed below, a just resolution of this claim requires that the remaining assets of the Dougaldston Estate be identified, surveyed, valued, and sold, and that—after any proper adjustments are made—the net proceeds be distributed in accordance with the parties' respective beneficial interests.

[78] Except as indicated below, I do not consider it appropriate, on the evidence before the Court, to make a final monetary award representing one-half of the proceeds of earlier land sales. Although Mr. Branch has failed to provide a satisfactory account of those transactions, the evidence does not allow the Court to determine with sufficient certainty whether and if so, what net sums are properly available for distribution after accounting for legitimate Estate liabilities and expenses. The appropriate remedy is therefore the realisation and distribution of the remaining Estate, rather than the assessment of speculative monetary compensation.

[79] Mr. Branch must however return to the Estate the sum of $57,300.00 which was deposited into his personal bank account. This money was obtained from the sale of two parcels of Estate lands measuring approximately eight thousand square feet. His opinion that he regarded those parcels of land as forming part of his inheritance under

his father's estate is incorrect. I have stated above in this judgment that Mr. Branch was not entitled to treat with this money or indeed any part of the Estate as his personal property or entitlement thereto as beneficiary or otherwise. He held the assets of the Estate as executor and trustee thereof and was required to treat with it as such.

ORDER

[80] Accordingly, it is therefore found and ordered as follows:

(i) The claimant's claim is allowed;

(ii) It is declared that John Augustus Branch's Estate and William Allan Branch's Estate each hold an undivided one-half beneficial interest in the property known as Dougaldston Estate and the assets belonging thereto;

(iii) It is declared that the first defendant breached the fiduciary duties owed in the administration of Dougaldston Estate;

(iv) The first defendant is to reimburse the Estate with the sum of $57,300.00 acquired from the sale of Estate lands and which money was deposited into his personal account;

(v) The remaining lands comprising Dougaldston Estate must be surveyed by a licensed land surveyor to be agreed between the parties, or failing agreement within 28 days of the date of delivery of this judgment, appointed by the court;

(vi) Following the survey, the lands and remaining assets of Dougaldston Estate must be valued and sold and thereafter subject to any proper adjustments that may be required, the net proceeds must be distributed distributed equally between John Augustus Branch's Estate and William Allan Branch's Estate;

(vii) Costs to the claimant in the sum of $7500.00.

Raulston Glasgow
High Court Judge

By the Court

Registrar