IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV. 2013-03381

BETWEEN

SHIRAZE AHAMAD
(ALSO CALLED SHIRAZ AHAMAD)

Claimant

AND

STEVE JAIPERSAD

Defendant

BEFORE THE HON. MADAM JUSTICE E. J. DONALDSON-HONEYWELL

Appearances:
Mr. R. Nanga instructed by Mrs. V. Ahamad for the Claimant
Mr. S. Sharma instructed by Mr. Vivek Lakhan-Joseph for the Defendant

Delivered on May 16, 2016

JUDGEMENT

A. Introduction.

1. The Claimant and the Defendant are middle-aged gentlemen who in their separate endeavours have engaged in business careers for decades. The Claimant holds positions in the Directorate of many publicly listed and unlisted companies in Trinidad and Tobago including Southern Sales, the Car Sales Business founded by his late father. The Defendant

runs a Bandag Tyre Business in Puerto Rico and since August 21st 2006 has served as Honorary Counsel for Trinidad and Tobago to Puerto Rico.

2. The parties shared a relationship based initially on friendship dating back to their teenage years and also to a greater extent on business over the decades that elapsed thereafter. Over the course of the relationship money was spent by each party on the other. In some instances these expenditures were gifts while in others they were business transactions. The parties engaged together in several investments, property and financial transactions over the years. The nature and effect of those executed during the period 2002 to 2008 are now in dispute.
3. At the time of the filing of the action herein the relationship between the parties was at an end. There is no dispute that the relationship ended in February 2011. The Claimant filed this Claim on August 20, 2013 seeking recovery of the money and land that were the subject matter of the disputed transactions from the Defendant.
4. The Claimant's claim is for:
    i. A transfer of the parcel of land known as No 93 or Parcel 4B in Freeport which said land is more particularly described in Deed of Conveyance dated 16th September, 2004 and registered as No. DE200403251097D001 ["the Freeport land"] based on a resulting trust from the Defendant to the Claimant; and
    ii. Restitution of certain monies paid at different times from 2002 to 2008 amounting to TT$1,937,601.69 on the basis of unjust enrichment.
5. The Claimant claims that he and the Defendant had been long-time friends and business partners. His case is that as a result of their relationship several agreements made between them were not made formally or in writing. However, he alleges that there was always a mutual understanding that the Defendant would reimburse him for monies had and received.
6. The Claimant's Statement of Case sets out several different transactions in which money was paid by him on behalf of the Defendant. The Claimant has not provided written documentation of the alleged agreements between himself and the Defendant. The Claimant's claims are for the following payments:
    i. $679.00 paid on or about the **20th January 2002** in respect of legal fees he claims to have paid on behalf of the Defendant for a Power of Attorney which would allow

for him to transact business for the Defendant who at all times resided in Puerto Rico;

ii. $8,000.00 paid on or about the **20th January 2004** in respect of a deposit into the Defendant's Scotiabank a/c 4000109 which the Claimant alleges was done on the Defendant's request to re-activate the account;

iii. $67,049.25 paid on the **1st April 2004** in respect of 2,000 Guardian Holdings Limited ["GHL"] shares from West Indies Stockbrokers' Limited ["WISE"] for the Defendant's benefit, allegedly at his request;

iv. $334,596.58 paid on the **6th April 2004** in respect of a further 10,000 GHL shares for the Defendant;

v. $1,400.00 paid on or about May 27, **2004** in respect of the alleged purchase of a cellular telephone for the Defendant;

vi. $15,236.97 paid between **2004 and 2008** in respect of cellular telephone bills for the Defendant's usage during his visits to Trinidad and Tobago;

vii. $25,328.22 being the balance on a share trading debt of $151,328.00 allegedly incurred by the Defendant in respect of an account with Bourse Securities Limited ["BSL"] which said debt was paid by the Claimant on **12th April 2006.** The Claimant alleges that the Defendant repaid him in part by way of a US$20,000.00 cheque and the balance of $25,328.22 remains outstanding;

viii. USD$107,953.85 paid on **26th January 2007** in respect of an alleged loan to the Defendant which the Claimant says the Defendant requested by email dated January 25, 2007 in which he sent his Puerto Rican Bank Information for the money to be wire transferred. According to the Claimant, the Defendant made this request because his business was faring badly in Puerto Rico at the time;

ix. $175,265.42 paid on **26th April 2007** in respect of interest allegedly owed by the Defendant to BSL which said amount was paid by the Claimant at the Defendant's request because, according to the Claimant, his business was declining due to the poor state of the Puerto Rican economy at that time; and

x. USD$100,000.00 paid on **27th May 2007** in respect of a second loan allegedly based on an urgent call to "bail out" the Defendant who was in a desperate financial position.

7. The Claimant's pleaded case as it relates to all these money claims was that it was evident to him that the Defendant had "*repeatedly taken advantage of his friendship with the Claimant and the Claimant's trust and generosity by requesting loans….and on each occasion, reassuring that he would reimburse the Claimant the monies expended for his benefit.*" He further underscored at paragraph 9 of the Statement of Case that "***Given the relationship that then existed**, the Claimant always relied upon the Defendant's continued assurances that he would be repaid.*" [Emphasis added]
8. The Freeport Land claim advanced by the Claimant is that in 2003 his Real Estate Agent told him about lands in Freeport that were likely to appreciate in value. He shared this information with the Defendant and they both decided to invest in the lands. They each purchased a parcel in their own names. There is no dispute that the Claimant paid the purchase price of $200,000.00 for a second parcel, the Freeport Land currently in dispute. He arranged however for this parcel to be conveyed on September 16, 2004 not into his own name but into the Defendant's. He was going through divorce proceedings at the time and said he did this on the Defendant's suggestion because he trusted him. As such the Freeport Land was, as far as the Claimant believed, always held by the Defendant on a trust for him absolutely.
9. The Defendant claims that their relationship had been characterized by the doing of favours for each other and the giving of gifts. There was never any agreement written or otherwise for the repayment of these gifts by the Defendant. He alleges that the Claimant's generosity was reciprocated in the care for the Claimant when he visited Puerto Rico where the Defendant resided, ran his Bandag Tyre business and served as Honorary Counsel for Trinidad and Tobago.
10. He further alleges that the Claimant never once requested that the Defendant repay the monies given or re-convey the Freeport Land until after the breakdown of their relationship in February 2011. The Defendant claims that the money claims should fail in some instances because the amounts were never advanced and in others because the amounts were due and payable to the Defendant.
11. As it relates to the Freeport Land Claim the Defendant contends that there is no resulting trust because the purchase of the land had to be set off against an equivalent amount of money advanced to the Claimant. The said amount US$40,000.00 was paid to the

Claimant on June 15, 2004 for the purpose of making payments on the Defendant's behalf for a One Woodbrook Place apartment. He says in his Defence that the Claimant failed to make the payment in full according to plan. Furthermore, he claims to have provided US$14,000.00 in cash to the Claimant for a Miami trip at his request. As a result, according to the Defendant, both he and the Claimant agreed that the Freeport Land would be vested in the Defendant's name and belong to him absolutely.

12. The Defendant, in addition to alleging various reasons why he was not liable to repay money given to him by the Claimant, further made a preliminary objection that the Statement of Case disclosed no reasonable cause of action as it relates to the money claims due to the expiration of the limitation period and should therefore be struck out. This objection was dismissed by Jones, J who originally had conduct herein before being elevated to the Court of Appeal. Her decision was appealed by the Defendant. At the Court of Appeal, the Defendant's application was also dismissed but on different grounds to those at the High Court.
13. The Court of Appeal in **P139 of 2014** held that the judge erred in her consideration of the cause of action founded on unjust enrichment as one for equitable relief. The basis for this position by the Court of Appeal was that the relief of restitution on the basis of unjust enrichment exists not only in equity but under the common law.
14. They held therefore, that the limitation period for this action is governed by section **3(1)(a) of the Limitation of Certain Actions Act, Chap 7:09** ["the Limitation Act"] which deals with contract or quasi-contract proceedings and the action would be barred after four years from its accrual. Mendonça, J.A. determined that the date of accrual would be upon the expiration of a reasonable time for repayment. However, the Court of Appeal determined that the question of fact as to what constituted reasonable time for repayment of each item claimed should be determined by the Trial Judge.

B. Issues

15. The issues to be determined presently therefore are:

i) Whether there has been unjust enrichment of the Defendant for which restitution should be ordered;

ii) When the cause of action accrued and whether four years have elapsed since its accrual, barring the present claim; and

iii) Whether the Freeport Land was held on a resulting trust and should be transferred to the Claimant.

C. Evidence and Submissions

16. In addition to giving his own testimony the Claimant called three witnesses. The Defendant gave evidence on his own behalf and called one supporting witness. He also subpoenaed the Claimant's brother Imtiaz Ahamad in the apparent hope that he would give evidence against the Claimant. In particular he wanted him to support the Defendant's case that the alleged US$100,000.00 loan paid to him was in fact payment for professional services rendered in helping the Claimant make a power point presentation to gain rights to sell BMW vehicles. Such support however, did not materialise as Mr. Imtiaz Ahamad corroborated his brother's case that it was the reputable Firm Ernst & Young that was solely retained and paid to render the required services to acquire BMW rights.
17. Other less controversial witnesses called to speak specifically to the business relationship and transactions between the parties were the Claimant's Administrative Assistant and a representative of his bank Scotiabank.
18. The more controversial testimonies came from His Excellency Ambassador Patrick Edwards ["Ambassador Edwards"] on behalf of the Claimant and Merlyne Alexander of the Ministry of Foreign Affairs on behalf of the Defendant. The witnesses gave evidence on an issue raised by the Claimant that did not touch and concern any of the money or land claims. That issue was the contention by the Claimant that his father Naz Ahamad, who had become close to the Defendant based on his own friendship with him over the years, was instrumental through his good friend Ambassador Edwards in assisting the Defendant to secure his appointment as Consul General to Puerto Rico.
19. The Defendant vehemently denied any such assistance. He sought to no avail, through Ms. Alexander to establish that neither Naz Ahamad nor Ambassador Edwards had any influence in the Ministries' appointment process. The Ambassador's evidence was that at Naz Ahamad's request he had lunch with the Defendant, found him to be a good candidate

and thereafter due to his friendship with Naz Ahamad took a personal interest in following up on the Defendant's application.

20. It was clear from the Ambassador's evidence that he did not personally appoint the Defendant but that he was only speaking to his belief that he was instrumental. Likewise the Claimant was also a witness of truth in his belief that his father played this role in the appointment. The evidence served only to support that there was a very strong and almost brotherly relationship between the parties wherein he was embraced by the extended family. Accordingly, the Defendant's denial that there was basis for the Ambassador and the Claimant's belief served only to undermine his own case as to how close he was to the Claimant and his family. This stance defied logic and adversely affected the Defendant's credibility. Other evidence given by the Defendant such as that he was present for the performance of final rites at the deathbed of Naz Ahamad, gave credence to the idea that he would have taken an interest in trying to be instrumental in his appointment.
21. These issues concerning the Consul General appointment were relevant to a central issue in the case which was the extent of the long and enduring relationship between the parties over decades which resulted in the level of trust and understanding they shared. For the Claimant it was important to prove this relationship since it was on the basis of its strength that he argued that he trusted the Defendant to repay him and that when the friendship ended the Defendant unjustly showed his intention not to do so. For the Defendant it was important in supporting his case that the relationship was one of give and take with no understanding of the need to repay all expenditures.
22. Generally, the evidence of both parties was somewhat discredited under cross-examination but the Defendant was less credible than the Claimant. In addition to his lack of credibility regarding the appointment evidence, other reasons for my finding in this regard included those highlighted by Counsel for the Claimant in closing submissions at paragraph 83. These submissions were that the Defendant gave evidence under cross-examination that was inconsistent with his pleadings and sworn witness-statement by raising new and different information that was too significant to be overlooked. Among the new information he raised belatedly was that the Claimant was in financial difficulties due to being dependent on a medical fund set aside by his father in the sum of $35,000,000.00 which his brothers refused to disburse. Similarly, for the first time under cross-examination

the Defendant raised the issue of the Claimant needing to have money in Miami in cash because he was having an extra-marital affair. This conflicted with the Defendant's pleaded case and further harmed his credibility.

23. Although both parties were untruthful and/or evasive in their testimony on some aspects of the factual matrix, this had to be considered in the context that some aspects of the relationship between them clearly had nothing to do with the money and property possession claims herein. Careful consideration had to be given to the fact that both parties were not fully candid with the court regarding the extent and nature of business dealings and friendship they enjoyed over the years. They sought to restrict testimony by and large to the transactions in dispute from 2002 to 2008.
24. On conclusion of the oral hearing, closing submissions in writing were submitted by the parties with the final submission filed herein on April 8, 2016.

D. Law and Analysis.

25. The Court of Appeal in the interlocutory decision herein, **P139 of 2014**, reviewed the development of the law on unjust enrichment as a common law claim and determined that at its present stage of development, there is no single general principle of unjust enrichment. The court found that the law identifies specific grounds for restitution referred to as unjust factors which are the trigger for the restitutionary remedy on the ground that it is unjust to retain the benefit.

Unjust Enrichment: Money claims

26. The essential ingredients to found a claim in restitution on the basis of unjust enrichment can be found in the case of **Rowe v Vale of White Horse**[1], cited with approval in the case of Chief Constable of the **Greater Manchester Police v Wigan Athletic AFC Ltd**[2]:
    i. *"a benefit must have been gained by the Defendant;*
    ii. *the benefit must have been obtained at the Claimant's expense;*
    iii. *it must be legally unjust, that is to say* ***there must exist a factor (referred to as an unjust factor) rendering it unjust, for the Defendant to retain the benefit;***

[1] [2003] EWHC 388 (Admin), [2003] 1 Lloyd's Rep 418 para 11, [2003] 11 EGCS 153
[2] [2008] EWCA Civ 1449

iv. There must be no defence available to extinguish or reduce the Defendant's liability to make restitution."[Emphasis added]

27. The Court of Appeal in **P139 of 2014** analysed the first instance Ruling herein guided by learning in **Goff and Jones, The law of Unjust Enrichment (8th Ed.) at paras 3-13 to 3-22.** Mendonca JA said at para. 16:
28. *In my view the Judge was entitled to regard the Claimant's claim as one for restitution on the basis of unjust enrichment. ……..the general principle is that where there is a subsisting contract between the parties relating to the benefit transferred to the Defendant, a claim in unjust enrichment will not lie. …… Where there is a subsisting contract that requires payment to be made for services and those services have been performed, a party cannot go outside of the contract and claim in unjust enrichment a greater sum for the services rendered (Re Richmond Gate Property Co. Ltd. [1965] 1WLR 335). …… **Where a claim in unjust enrichment does not undermine the contractual risks, then in principle such a claim should be allowed.** [Goff and Jones] recognize that such a claim might be preferred for procedural or evidential reasons. On that basis, since the money claim does not seek to do any more than recover monies paid by the Claimant on behalf of the Defendant, which it is alleged were paid on the basis that they would be repaid, it does not involve any reallocation of the risks the parties assumed, if the allegations of the Claimant are true. In these circumstances a claim in unjust enrichment should be allowed. However, this point was really not pursued in this appeal" [Emphasis added]*
29. Accordingly, although the issue as to whether a claim for unjust enrichment could lie on the facts herein was not in dispute, this obiter dicta by the Court of Appeal makes clear that in the present case the claim for unjust enrichment can be established even if there was a contractual arrangement between the parties. This is so because the money claims do not seek to do anything more than recover the monies paid by the Claimant on behalf of the Defendant with no reallocation of any risk to the parties.
30. Applying the learning from **Rowe v Vale of White Horse** the first major issue regarding the money claims in the present case, is whether the Defendant gained a benefit at the expense of the Claimant with regard to each of the Claimant's claims. Thereafter, for there

to have been an unjust enrichment an "unjust factor" must be present. The Court of Appeal has shed light on the concept of the "unjust factor" at paragraph 23 of the Judgment where Mendonca JA explained,

> "*English law, which the parties agree is the law applicable in this context to this jurisdiction, at its present stage of development, has not recognized a single general principle of unjust enrichment. The law identifies specific grounds for restitution sometimes referred to as unjust factors. These factors are the trigger for the restitutionary remedy on the ground that it is unjust to retain the benefit*."

31. Accordingly each payment made by the Claimant herein in relation to which he is seeking restitution must be examined to determine whether a benefit was received at his expense and if so whether there is an unjust factor in the Defendant not making repayment. The payments are examined separately as follows:

Power of Attorney

32. The Claimant in his claim for TT$674.00 for the execution of a Power of Attorney has annexed an invoice for the said sum as proof of his payment for that document. However, this does not amount to proof of payment as either or neither of them could have paid the invoice. In any event no receipt for payment was disclosed. Under this head, the Claimant has failed to prove that the Defendant was enriched at his expense.

Cell Phone and Cell Phone Bills

33. The Claimant claims the sum of TT$1,400.00 for the purchase of a cell phone allegedly for the Defendant and TT$15,236.97 for payments made for the Defendant's cell phone bills. With regard to this claim, there is nothing in the Claimant's evidence which links the attached receipt for the purchase of the cell phone with the Defendant. There is no evidence of the number on the cell phone bills matching with cell phone use by the Defendant.
34. The cell phone cost, as well as the sums paid for the cell phone bills during the Defendant's visits to Trinidad, if in fact paid for the Defendant, appear to have been expended without expectation of repayment in order to assist during his visits. The Claimant has admitted to providing accommodation and a vehicle to the Defendant while he stayed in Trinidad and

the cell phone expenses appear to be a similar provision. This expenditure if incurred for the Defendant was clearly a gift so no unjust factor arose since it is not apparent from the evidence that the Claimant would have intended to be repaid for these sums.

Scotiabank Account Activation

35. The Claimant also claims TT$8,000.00 for the activation of the Defendant's Scotiabank Account. The Notice provided by the Claimant from Scotiabank as evidence did not however state that the sum was required for activation of the account. It merely noted the Defendant's inactivity and enquired as to whether the Defendant wished to keep it active. Further, although the amount was shown to have been debited from the Claimant's account, there was no proof of its deposit into the Defendant's Scotiabank account. The email sent to Gordon Gatt of Scotiabank attached at "S.A.14" was insufficient to prove that this deposit actually occurred. Therefore, the Claimant has failed to prove that the Defendant was enriched at his expense under this head.

2,000 shares in Guardian Holdings Limited

36. The Claimant claims $67,049.25 for 2000 shares in Guardian Holdings Limited ("GHL") alleging that the Defendant instructed him to pay for the shares and promised to repay. The Defendant's main contention under this head is that the Claimant intended to acquire the shares for himself but did not wish to disclose the acquisition as he was a director of a GHL subsidiary at the time and was subject to blackout periods. This submission, however, does not hold water as, if it were intended for the Claimant, the shares as well as any dividends should have been transferred by the Defendant to the Claimant at the time the relationship ended.
37. This has not been done up to the time of the trial. Additionally, no documentary evidence of these blackout periods was provided by either party. Further, the principles of unjust enrichment do not require there to be an agreement or promise that the sums would be repaid by the Defendant. All that is required is that the Defendant actually benefitted and that it was at the expense of the Claimant along with some unjust factor.

38. In the present claim, it is clear that the Defendant is the one currently benefitting from ownership of the shares and it is through the Claimant's purchase of them. There is no evidence that this was intended to be a gift and therefore the Claimant has sufficiently proven that the Defendant was unjustly enriched and restitution of the monies paid is appropriately claimed.

10,000 shares in GHL

39. The Claimant claims TT$344,596.58 for the purchase on April 6, 2004 of 10,000 GHL shares. The Defendant's submission is that the Claimant was already paid the cost of these shares via a cheque for US$52,380.95 dated March 30, 2004. Using the exchange rate of 6.3 (6.2998 rounded to one decimal place) he claims that this amounts to the exact TT$330,000.00 that was the cost of the shares. However, the Claimant firstly argues at paragraph 43 of written closing submissions that the cheque itself has characteristics that cast doubt on its authenticity. Firstly, the date on the deposit stamp of the cheque pre-dates the date of the cheque itself. Secondly, there is no copy of the back of the cheque showing that it was endorsed by the Claimant and finally, the exchange rate applicable for depositing a US cheque would have been 6.2445 and this would make the sum allegedly deposited less than that required for the shares.
40. Considering all of these elements, it is apparent that the evidence provided by the Defendant in the form of the cheque is insufficient to overcome all of the glaring details that the Claimant has pointed out. There is no evidence to support that the cheque, if actually received by the Claimant, was for shares, save for the Defendant's testimony. On a balance of probabilities, taking into account the overall finding that the Claimant was a more credible witness, I find in favour of the Claimant under this head as there is sufficient proof that he in fact provided the money for the shares and insufficient proof that he was reimbursed for same.

Share-trading Debt to BSL

41. The Claimant claims TT$25,328.22 for payment of the Defendant's share trading debt with BSL. The Defendant denies the debt was his even though the BSL account was in his name.

He says the account was really for the Claimant's use. Further the Defendant says he never paid the alleged cheque to the Claimant but the Claimant may have withdrawn US$20,000.00 from his account. According to the Defendant the Claimant was in the habit of using funds from accounts other than his own including the Defendant's.

42. He presented some evidence to support this general allegation. In particular he alleges that the Claimant failed in his duty to disclose an email sent to Scotiabank which instructed that monies be transferred out of the Defendant's account. This he states discredits the Claimant's evidence as he stated in his Witness Statement that he did not utilise monies from the Defendant's account. The Claimant however, disputes the relevance of this information to the present claim for monies owed by the Defendant to the Claimant.
43. The Defendant's submissions focussed also on the fact that if the US$20,000.00 was utilised to repay some of the debt, the balance remaining was a small sum. According to the Defendant it defies logic that there could be such a small debt outstanding and the Claimant asks the Court to believe that the Defendant wouldn't have paid it.
44. What is more material to this money claim is the admission by the Defendant under cross-examination that he did send email correspondence dated April 20, 2006 attached to the Claimant's witness statement at S.A.18. The correspondence was clearly part of a chain of emails including S.A. 21 which is dated 13th April 2006. In that email the Claimant documented his payment of the $151, 3328.22 to BSL as a payment on behalf of the Defendant. He also acknowledged therein receipt of US$20,000.00 from the Defendant leaving the balance of TT$25,328.22 outstanding on the debt.
45. Another email in the chain, addressed to the Defendant, is also attached at "S.A. 18" dated April 19, 2006. The Defendant denies receiving it, oddly placing reliance on an apparent typographical error in the Claimant's Witness Statement where at paragraph 10 he gave dates of activation, deactivation and replacement of his email account. The March 2004 date for deactivation is clearly an error because if that account had been deactivated the Defendant could not have emailed him to that address in April 2006.
46. The April 19, 2006 email informed the Defendant that the Claimant received dividends from GHL which he would deposit in the Defendant's account. The Defendant admits to sending the email dated April 20, 2006 which is clearly a response to the Claimant's email dated April 19, 2006 where he was informed about the receipt of the two dividend cheques

from shares traded. In his email dated April 20, 2006 the Defendant said that he hoped the dividends would pay the interest on the BSL facility. This shows that he considered the BSL account to be his and therefore hoped that the dividends would cover some of the interest owing. The Defendant's evidence that he knew nothing of the other emails was discredited under cross examination since it was apparent, based on the content of his own emails, that he received the other emails in the chain.

47. The evidence of the Claimant under this head is stronger as the Defendant's submissions did not directly refute the Claimant's claim but sought to discredit the Claimant generally, even going so far as to cast doubt on the Claimant's legal representation. There was no merit to the allegations against instructing Counsel, that it was not in keeping with the customary ethics of the legal profession for her to represent her husband, the Claimant. Her duty to the Claimant, as for other clients, was to render independent professional judgment and candid advice. There was no indication that she had fallen short in this regard.
48. This aspect of the submissions served as a distraction from the substantive issues. Further the Defendant failed to explain his own inconsistencies under cross-examination with respect to the email chain between himself and the Claimant which revealed his apparent acknowledgement of beneficial ownership of the BSL share trading account. His own email dated April 20, 2006 served as some indication that the Defendant was in financial difficulties since he expressed the hope that the Dividends the Claimant told him about would go some way to cover the BSL debt. In all the circumstances, the Claimant has effectively proven entitlement to recover the $25,328.22 spent under this head for the Claimant's benefit.

Loan of US$107,953.85

49. The Claimant claims US$107,953.85 as monies loaned to the Defendant. The Defendant claims that this sum was payment for work done involving preparation of a presentation towards the acquisition of the BMW motor vehicle brand franchise in Trinidad and Tobago. The Defendant highlights pg. 57 of the Transcript of Day 1 stating that the Claimant was inconsistent in his evidence on whether the Defendant assisted with a presentation. However, the inconsistent answer appears merely to be a misunderstanding of the question being asked and the Claimant subsequently clarified the position.

50. The Defendant's submission with regard to the date of accessing of the Wikipedia page on the state of the economy at the time is irrelevant. The Court takes Judicial Notice of the point made by Counsel for the Claimant that information to be found on a website such as Wikipedia is not static. If one prints today, research conducted on a Wikipedia research page some years ago the printed information will be an updated version of what was seen earlier. Thus the fact that the information printed and exhibited by the Claimant as his research done in 2006 on the Puerto Rican economy is an updated version does not discredit him by proving that he did not do such research in 2006. In any event the Defendant has presented no evidence to support his position that neither he nor Puerto Rico experienced financial difficulties in 2006 or at any time thereafter.
51. The Defendant also attempts to place the burden on the Claimant of providing documentation of the BMW presentation as evidence to the court. However, it is to be noted that the Defendant himself did not provide documentary evidence of this presentation to the court although it was on the basis of said presentation that he alleged that the US$107 thousand he received was not a loan. He alleged that he rendered professional services to help with the power point presentation so he ought to have presented cogent proof of it. On this issue, the Defendant's submissions fail and the evidence of the Claimant is sufficient for his claim for repayment of this sum to succeed.

Outstanding interest on BSL account

52. The Claimant claims $175,265.42 for payment made in respect of interest on the BSL account. With regard to this claim the Defendant repeats his submissions which relates to the first payment for the BSL trading debt. Therefore, the Claimant must succeed for the same reasons outlined above. The Defendant's claim that the Claimant used the account for himself is refuted by the emails between the parties evidencing the Defendant's understanding that dividends earned would be applied to his debt. Further, the Defendant's submission that the communications from the BSL agent Carolyn James to the Claimant was evidence that the account was for the Claimant's benefit is without merit. There was in existence the Power of Attorney executed in favour of the Claimant to conduct the Defendant's business while he was abroad. The Claimant's claim must succeed under this head.

Loan of US$100,000.00

53. The Claimant claims US$100,000.00 for a loan provided to the Defendant on 27th May 2007. The Defendant, however, claims that this money was reimbursement for some shares that he had paid for on behalf of the Claimant. There is no evidence of these shares put in by the Defendant but the Defendant has attached to his witness statement as "SJ6" a letter from the Claimant's bankers Scotiabank to the Defendant's Puerto Rican Bankers Euro bank dated September 25, 2007, undisclosed by the Claimant, stating that the money to be transferred to the Defendant's account represented a reimbursement due to the Defendant. The letter does not specify what the reimbursement was for so it does not fully corroborate the Defendant's case that it was a repayment for shares.
54. On the other hand, the Claimant's explanation given for this wording is tenuous in that he says these words were put in the letter based on a request from the Defendant having regard to his status as a diplomat. This explanation required clarification that was not given. On a balance of probabilities, the letter disclosed by the Defendant speaks to the intention of the Claimant. The Claimant has not provided sufficient evidence to prove that the monies were not a reimbursement for shares. Accordingly, it is my finding that there is no proof that the Defendant received this payment as a benefit at the expense of the Claimant.

Limitation Period

55. Having considered the law on unjust enrichment as applied to the facts of each of the money claims the second issue as to whether the claims are statute barred must be addressed. Section 3(1) (a) of the Limitation Act was therefore applicable. This section provides as follows:

"*3.(1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say;*

(a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort;"

56. The Court of Appeal in **P139 of 2014**, analysing the learning in **Goff and Jones, The Law of Unjust Enrichment** (8th Edition) at para 33-08, determined that for the purposes of limitation, common law claims in unjust enrichment are generally treated as founded on

quasi-contract which would apply to claims for monies had and received and should therefore be barred after four years in our jurisdiction.

57. The principles to be applied in ascertaining the limitation period that applies to an action seeking restitution for unjust enrichment were outlined in **Martin Canny, Limitation of Actions in England and Wales** (2013) (at para 9.02) and were considered in **P139 of 2014** to be applicable to our jurisdiction as follows:

"1. First, one must ask whether the action is governed by LA 1980 [i.e. the Limitation Act 1980] or whether it falls outside the Act and is instead governed by the equitable defences of laches and acquiescence.

2. Secondly, if action is governed by the LA 1980, one must determine whether the unjust factor giving rise to the claim is subject to the six-year limitation period for "an action founded on simple contract", which has been given an expansive interpretation [to include claims in quasi-contract]… or whether it is governed by a different statutory limitation period.

3. Thirdly, one must then ascertain when the cause of action accrued to the Claimant, i.e. the date from which the limitation period runs.

4. Fourthly, one must determine whether any reason exists to extend or postpone the limitation period, such as disability, part payment and acknowledgment, fraud, deliberate concealment or mistake…"

58. The fourth stage of this approach was not raised herein so the Court of Appeal in **P139 of 2014** set out a three stage process to determining whether the money claims were statute barred. It was explained at paragraph 23 that "*the first consideration is whether the claim is governed by the Limitation Act of falls outside of it*". The Court of Appeal's observation on this first consideration was that "*The Claimant in his statement of case alleges that he paid monies for and on behalf of the Defendant. The complaint is founded on the basis that the Defendant has been enriched by the retention of those monies which have been paid by the Claimant for the Defendant's sole use and benefit. The monies were not a gift but were paid on the understanding or basis that they would be repaid. It seems to me that that brings the claims within a cause of action founded on quasi-contract, namely a claim for monies had and received*." Accordingly, it was determined that section 3(1) (a) of the

Limitation Act is applicable and the claim in this matter for restitution would be time barred after four years from the date of accrual of the cause of action.

59. The second and third considerations set out by the Court of Appeal were the identification of an "unjust factor" and then determining the date of accrual of the cause of action. On these considerations Mendonca JA ruled as follows:

> "*48. "Cause of action" is not defined in the Limitation Act. The widely accepted definition of the term however may be found in Read v Brown (1888) 22 QBD 128 where Lord Esher MR said at (p 131):*
>
> *"...every fact which it would be necessary for the Claimant to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.*
>
> *49. An essential fact that needs to be established in a claim for unjust enrichment, as I have mentioned above, is, of course, the unjust factor. It is the unjust factor that triggers the restitutionary remedy and the cause of action would therefore not be complete until the unjust factor arises. ……*
>
> *52. …… It would seem to me that when the basis on which moneys have been paid fails, that is the time that the unjust factor arises and when the cause of action accrues."*

60. The Defendant herein contends that the accrual date when the cause of action in unjust enrichment arose must relate either to the date of the loan or the date of the demand. These same contentions were however previously made before the Court of Appeal and rejected at paragraph 54 of the decision.

61. The Court of Appeal determined that the common law position that where no time for a repayment was specified, time runs from the date the loan was made is not applicable to a claim for restitution for unjust enrichment. The Court of Appeal considered that the time of accrual would be when the unjust factor arose. In the present case, that would be the point within reasonable time at which the moneys should have been repaid by the Defendant. The issue left for determination by the High Court was as to what was the time when the Cause of action accrued and based thereon a determination of a reasonable time for repayment in all the circumstances of the case.

62. The monies claimed were paid by the Claimant at various times between 2002 and 2008. The Claimant's submission on this point is that the time of accrual would be at the point where the Defendant was no longer experiencing financial difficulties and from when the relationship between the parties came to an end.

63. There is a dispute in evidence whether or not the Defendant was in fact in financial difficulty. However, on a balance of probabilities it is my finding from the evidence that the Claimant had sound reason to believe that the Defendant was in those difficulties. It was on this basis that he extended him more financial benefits and held back on pressing regularly for repayment in the circumstances. The Defendant claims that the relationship was one of give and take financially during the course of their friendship and that he was never financially constrained. However, the Defendant's evidence at trial did not appear to be truthful in this regard.

64. It is clear from the documentary evidence that the Claimant paid large sums to the Defendant, unmatched by any contributions the Defendant alleged he would have made in providing accommodation and medical assistance to the Claimant. Further, the Claimant's submission that Puerto Rico, where the Defendant resided, was in a recession in or around 2006 is easily confirmed by an examination of international news at that time.

65. From the evidence, it is clear that the Defendant did experience some amount of financial difficulty and that the Claimant contemplated this as a factor affecting when the monies were to be repaid. This would therefore make the date of accrual the date at which the Defendant would have been in a position to repay the debt while the parties remained in a relationship based on friendship and business. However, the break-up of the relationship impacted upon the reasonable time for repayments as well. Once the relationship deteriorated it became apparent that the Defendant was refusing to repay and intended to retain the benefit of all the money spent by the Claimant. Consideration for the Defendant's financial position was no longer afforded to him after this unjust factor came into play.

66. Therefore, the date of accrual of the money claims should be considered to be, in all the circumstances of the case, at the date on which the relationship ended (February 15, 2011). The Defendant confirmed this date under cross-examination as the end of the business side of the relationship which had continued for several months after the friendship ended. Applying February 15, 2011 as the date of accrual of the cause of action the limitation

period did not expire before the filing of this Claim on August 20, 2013. A reasonable time for payment of the money claims would have been within a few months of the accrual of the cause of action.

Resulting Trust: The Freeport Land

67. A resulting trust is a trust arising by operation of law. **Halsbury's Laws of England**[3] outlines a situation where a resulting trust is presumed to have occurred:
"where A makes a voluntary transfer of property to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, when there is a presumption that A did not intend to make a gift to B. The property is held on trust for A (if he is the sole provider of the money)… This has been described as a presumed resulting trust."
68. Cases such as **Fowkes v Pascoe**[4], have determined on the evidence therein that certain transfers of property were intended as gifts and not to be held on a resulting trust. Although the Defendant speaks to a relationship characterised by exchange of financial benefits which were gifts as it relates to certain money transactions it is clear, that he does not base his defence on the Freeport Land claim as being a gift by the Claimant to him. His main submission is that he in fact expended the whole or a major part of the purchase price of the said land. And secondly he alleges that the delay in bringing this action amounts to laches.
69. With regard to the submission on contribution to the purchase price, The Defendant submits that on June 15, 2004 he paid to the Claimant a cheque in the sum of US$40,000.00 to pay on his behalf, monies due to HCL on an unrelated property at One Woodbrook Place. He says however that instead US$20,000.00 of it was applied to the purchase price of the Freeport Land. Thereafter, the Defendant claims that US$14,000.00 in three cash instalments was paid to the Claimant as spending money to be used in Miami.
70. There is no documentary proof of the US$14,000.00 in cash allegedly paid. This possibly could have been shown in the form of bank cash withdrawal statements as the Defendant attached bank correspondence as proof of other payments in this matter. This lack of

[3] Trusts and Powers (Vol. 98 (2013)) [132]
[4] (1875) 10 Ch. App 343, CA

documentary proof has to be weighed against the documentary evidence of the Claimant in the form of receipts showing that he paid the deposit on the One Woodbrook Place apartment for the Defendant and the balance of the purchase price thereon in two parts, thereby fully using the US40, 000.00 given to him by the Defendant for its intended purpose.

71. The Defendant's testimony with regard to the alleged US$ cash payments was further discredited when under cross-examination he gave a totally different reason for paying in cash than he had given in his pleadings and witness statement.

72. The Defendant made an additional submission based on the doctrine that persons seeking equitable remedies should come to the Court with clean hands. Counsel for the Claimant has correctly pointed out that the Defendant has not established that the Claimant brought this claim with unclean hands. The conduct alleged by the Defendant to be dishonest, namely hiding his interest in the Freeport Lands from his ex-wife in divorce proceedings, has not been proven. With regard to the alleged non-disclosure in the Claimant's divorce proceedings, there is insufficient proof that if this occurred it was an unlawful attempt to hide matrimonial assets. The Defendant has not provided sufficient information to make a determination that the Claimant acted in a way that he should be barred from claiming a property which he purchased.

73. Finally, the Defendant's submission on laches would also fail. As cited by the Claimant in his submissions, **Snell's Equity, 32nd Edition, page 117, para. 5-019** states:

"Laches essentially consists of a substantial lapse of time coupled with the existence of circumstances which make it inequitable to enforce the claim in equity. The first of these circumstances is a reasonable, and detrimental, reliance by the Defendant upon the Claimant's delay. Lord Neuberger has recently held that 'some sort of detrimental reliance is usually an essential ingredient of laches.' Alternatively, it is necessary for there to be some clear act of the Claimant which amounts to an acquiescence or waiver of his rights."

74. This is buttressed by the learning in the **Halsbury's Laws of England**[5]:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(1) Acquiescence on the Claimant's part; and

[5] Equitable Jurisdiction (Vol 47 (2014)) [253]

(2) Any change of position that has occurred on the Defendant's part."

75. In the present case, the Defendant has not given any evidence that he acted to his detriment with regard to the Freeport Land, neither has he proven that the Claimant acted in a way that shows acquiescence to the Defendant claiming the said land as his own. The Claimant has shown that he did make a demand for the land to be put into his name despite not going as far as preparing a Deed of Transfer as the Defendant suggests he should have. It is apparent therefore that the Defendant has failed to satisfy the court of these considerations and the defence of laches fails.
76. The Claimant is thus entitled to a transfer of the Freeport land into his name on the basis that the Defendant held it for him on a resulting trust.

E. Findings and Conclusion

77. It is clear from the evidence that both the Claimant and the Defendant recognised that there were two sides to their relationship, namely friendship and business. They both shared the understanding that payments made as business transactions had to be repaid. The business transaction payments were characterised according to the evidence of the parties by a number of factors including quantum. A very large payment was more likely to be one for repayment. The business payments can in certain instances be identified by the careful recorded keeping of amounts owed. Thus from the Claimant's perspective, it was clear from his record keeping that from the outset he expected the money from certain transactions to be re-paid at some time in the future.
78. The Claimant based his payments to the Defendant on the trust he reposed in him that he shared the mutual understanding and intention to repay. This trust was, as specifically pleaded in the Statement of Case, based on their relationship. That trust was shattered when all aspects of the relationship, including the business side that lingered after the friendship, ended on February 11, 2011.
79. The Claimant made his first formal written demand for payment after that. On the evidence he made earlier requests for repayment but none were formal demands with deadline dates and they were not in writing. The Defendant denies that any repayment requests were ever made of him before the relationship ended. On the evidence the Claimant thought the Defendant was in financial difficulty and he wasn't pressing regularly for payment then.

Those early requests referred to by the Claimant served solely as evidence of his ongoing intention to collect the repayment from the Defendant in due course.

80. It was from February 2011 that the Defendant by his actions expressed an intention not to repay and as such the "unjust factor" arose for purposes of a finding of unjust enrichment. The Defendant showed the intention by giving no response at all to the Claimant's oral and written inquiries about repayment evidenced by an email dated May 23, 2011. There was in fact no response to these demands until more than one year later in August 2012. The belated responses only came after the Claimant retained Counsel and they sent letters to the Defendant.
81. February 2011 was in my view the time when the cause of action accrued. The Defendant in reply submissions contends it is ludicrous to suggest that it was only when the friendship ended and the Defendant was financially stable that the Cause of action accrued. The Defendant argues – "*what if the friendship never ended*?" It is my finding however that in the unusual circumstances of this relationship a lengthy time of forbearance was contemplated so long as the Defendant shared the understanding that he had to make repayments.
82. I find as a fact that had the business and friendship relationship or at least the common understanding continued to exist for many more years the Claimant could still reasonably have expected to be repaid eventually when the Defendant was in a position of financial good standing. The unjust factor that became apparent from February 2011 was akin to the moment when, due to the clear change of circumstances in their relationship, the Claimant may have been in a position to say "*but wait nah, this man does not intend to pay me my money*!"
83. If the relationship had continued, with the Claimant touching base from time to time on the amount owed, the unjust factor of this "*but wait nah*" moment may never have come to pass. The Claimant's right to recover the money and the Freeport Land could have endured, even surviving the passing of one or both the parties.
84. The Claimant has succeeded in proving that the Defendant was unjustly enriched with no statutory limitation period having been breached in relation to the payments as follows:
    i. Payment for 2,000 GHL shares in the amount of TT$67,049.25
    ii. Payment for 10,000 GHL shares in the amount of TT$344,596.58

iii. Share trading Debt of TT$25,328.22 to Bourse Securities

iv. Loan of US$107,953.85

v. Interest of TT$175,265.42 on outstanding Bourse Securities debt

85. The other money claims have not been borne out by the Claimant's pleadings and evidence herein due either to insufficient proof of their expenditure on behalf of the Defendant or as it relates to some of the smaller payments on telephone bills because these were gifts.

86. The Claimant has also succeeded in proving that the Defendant held the Freeport Land on a resulting trust for him due to his payment of the whole of the purchase price and is therefore entitled to the transfer of the property into his name.

87. Having considered the pleadings, evidence and submissions of both parties it is **HEREBY ADJUDGED AND DECLARED** that:

i. The parcel of land known as Lot No.93 of Parcel 4B in Freeport which said land is more particularly described in a Deed of Conveyance dated 16th September, 2004 and registered as No. DE200403251097D001 ["the Said land"] and standing in the name of the Defendant is held on trust by him for the Claimant absolutely.

ii. The Defendant is not the lawful and beneficial owner of the said land.

iii. The Defendant is not entitled to enter into any contract for sale or to sell or in any way otherwise to dispose of the said land.

It is **HEREBY FURTHER ORDERED** that:

iv. The Defendant and/or his servants and/or agents or otherwise are restrained from in any way disposing of the said lands.

iv (a) The Defendant do transfer the said land to the claimant and in default that the Registrar of the Supreme Court do execute the Deed of Transfer.

v. The Defendant is to pay to the Claimant by way of restitution the sums of TT$612,239.47 plus US$107,953.85 ["the said sums"] being monies had and received by the Defendant from the Claimant and/or paid on his behalf and for his benefit expended by the Defendant for his own use and benefit at the expense of the Claimant, whereby the Defendant was unjustly enriched.

vi. The Defendant is to pay to the Claimant Interest at the rate of 6% on the said sums from the date of service of the Claim herein to the date of Judgment.

vii. The Defendant is to pay to the Claimant prescribed costs of the Claim in the amount of $118,420.67[6].

Delivered on May 16, 2016

…….

Eleanor Joye Donaldson Honeywell

Judge

Assisted by: Christie Borely

Judicial Research Counsel I

[6] Quantified on $1,376,827.04 comprising value of the restitution award of TT$612,239.47 and US$107,953.85 converted to TT$714,587.57 using an exchange rate of TT$6.6 to US$1.0 as well as $50,000.00 representing the property declaration award.