REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2016-02134

BETWEEN

RICHARD PATRICK CHARLES

Claimant

AND

TROY LEACOCK

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Thursday 23 June 2022

Appearances:

Mr. Yaseen Ahmed instructed by Ms. Chantelle Le Gall for the Claimant

Mr. Saeed Trotter instructed by the firm of Scoon's for the Defendant

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JUDGMENT

I. INTRODUCTION

1. The facts of this case have been detailed in the Decision of this Court on the Claimant's Application for Summary Judgment. The Decision of the Court was given on 5 December 2017.

2. In that Decision the Court granted summary judgment to the Claimant in relation to relief 1 and relief 4 of the claim form and statement of case.

3. The remaining reliefs to be dealt with in the instant Claim are:

> *"2. A declaration that the Defendant holds the said Motor Vehicle Registration Number TCJ 4156 on trust for the Claimant.*
>
> *3. Damages for breach of trust.*
>
> *5. Costs.*
>
> *6. Interest.*
>
> *7. Any further and/or other relief as this Honourable Court deems just."*

4. The Defendant's counterclaim seeks:

> *"(a) An order that the Claimant do pay to the Defendant the sum of $15,000.00.*
>
> *(b) Damages for breach of contract.*
>
> *(c) Interest pursuant to section 25 of the Supreme Court of Judicature Act Ch. 41:01.*
>
> *(d) Costs.*
>
> *(e) Such further and or other relief as this Honourable Court may think just in the circumstances."*

5. The issues to be determined are as follows:
   - **(i) Did the Defendant hold the subject vehicle on trust for the Claimant? If so, did he breach that trust?**
   - **(ii) If the answers to issue (i) are in the affirmative, is the Claimant entitled to damages for loss of use, and if so, how much? and**
   - **(iii) Was it a term of the contract between the parties that upon the loan being paid off, the Claimant would pay to the Defendant $15,000.00 as compensation?**

II. EVIDENCE

6. The Claimant filed a witness statement and was his sole witness. The Defendant filed a witness statement of his own, as well as, a witness statement of Angela Leacock.

Pursuant to **Part 29.11 (1) (e) of the Civil Proceedings Rules 1998 (as amended) ("the CPR")** the witness statement of Angela Leacock was, by agreement of the parties, tendered into evidence as her evidence-in-chief without her being called to the witness stand. Consequently, there was no cross-examination of this witness.

The Claimant's witness statement

7. The Claimant's evidence is that in March 2012, he attempted to obtain insurance for the vehicle but was unable to do so as his name was not on the said vehicle. On 13 February 2013, when he visited Trinidad, he visited Scotiabank to pay off the loan and found out that $41,708.00 was outstanding. He made arrangements and paid off the loan by visiting Royal Bank on the said date where he obtained a bank draft in the exact amount. He returned to Scotiabank and paid off the loan on the same date.

8. Shortly after paying off the loan, in or about February 2013 he called the Defendant and made arrangements to meet with him for about 8:00am at the licensing office in San Fernando to transfer the legal ownership of the vehicle into his name and which the Defendant agreed to do. The Claimant and his friend Tyrone waited until around 3:00pm at the licensing office but the Defendant never showed up.

9. The Claimant met the Defendant the same evening and they spoke on the street in front of the Recreation Centre in Princes Town. He asked the Defendant to transfer the legal title to the vehicle as he had fully paid off the loan. Upon making the request the Defendant told him that he owed him compensation (the amount of which he did not specify) for having the loan taken out in his name. This was the first time that the Defendant ever raised the issue of him being entitled to compensation from the Claimant for having the loan taken out in his name.

10. Before the Claimant returned to New York, he again contacted the Defendant to discuss transferring the ownership of the vehicle as well as the new issue of compensation.

11. The Claimant retained attorneys to handle the issue of the transfer and a pre-action protocol letter was sent to the Defendant on 8 March 2013. He was referred to another attorney in May 2013, and gave instructions to obtain a court order for the transfer but this was not fruitful despite his attempts with the attorney up until 2015. He then retained his present attorneys and a pre-action letter was sent to the Defendant on 24 May 2016, requesting amongst other things, that he transfer the legal title. These proceedings were then commenced on 5 December 2017.

12. The Claimant stated that at the time of entering into the agreement for the establishment of the landscaping business, he carried out his own investigations as to the equipment necessary to use in the business and the rates, which were charged at that time by individuals involved in the landscaping business.

13. He spoke to Jean Vialva who worked in landscaping. He also spoke to his friend, Tyrone's brother-in-law, Neville Cooper, who had been in landscaping for over ten years and who was the recipient of government contracts under the Community Environmental Protection and Enhancement Programme (CEPEP) as to the fees that he charged to provide various landscaping services.

14. From his investigations he knows that in or about 2008 the cost for cutting of grass alone on a single property was between $100.00 to $150.00 depending on the height of the grass and the size of the property. In addition, from his investigations, he knows the cost of cutting grass, weeding lawns, raking-up leaves and general cleaning of properties through the use of a pressure washer was between $150.00 to $200.00 depending on the size of the property and the number of services provided.

15. At the start of the landscaping business with the Defendant, these services would have been offered in Princes Town as well as Buen Intento, San Fernando and St. Madeleine.

16. Therefore, assuming that through the use of the said vehicle, two jobs would have been completed per day at a cost of $100.00 per job, the gross monthly income which would

have been generated by the landscaping business partly through the use of the vehicle would have amounted to $2000.00. In addition, the expenses for fuel would have amounted to an average of $120.00 per week ($480.00 per month).

17. However, due to the Defendant's failure to transfer the said vehicle to him after he repaid the loan in 2013, he was unable to use the said vehicle at all. As a result, he lost $50.00 per day for every day that he did not have use of the said vehicle.

The Defendant's witness statement

18. Having had a discussion about his liability in the event the Claimant could no longer pay the loan, and sensing the Defendant's hesitation, the Claimant then and there stated that *"I didn't have to worry and that he would take care of me."* The Claimant stated that when the loan was paid in full he would give him $15,000.00 for all his troubles. It is on this basis he agreed to go to Scotiabank to request a loan in his name for the purchase of the vehicle.

19. After obtaining the loan, and before the Claimant left the country, he thanked the Defendant for his help and promised to *"take care of me"* which he of course meant a reiteration of his promise to pay him $15,000.00.

20. If the Claimant had requested an insurance renewal in his (the Claimant's) name or in Tyrone Bowrin's name, he would have agreed. While he wanted the money for the transfer, he never intended to prevent the Claimant from using the vehicle.

21. The Claimant never informed him of his plans to use the vehicle or for further renewals of the insurance. After their last discussion, where he demanded the transfer of the vehicle, the Defendant never heard from the Claimant until the loan was paid in full.

22. When the Claimant finished paying the loan, he did request that the Defendant transfer the vehicle in the Claimant's name. However, the Defendant refused because the

Claimant was pretending that he never promised to pay him the $15,000.00 in accordance with their agreement.

23. The Defendant felt that given the circumstances it was only fair and reasonable that he be paid the $15,000.00. Firstly, he was reluctant to take the loan in his name because he was in fear of the risk of incurring liability, and he did in fact incur such liability, because during the currency of the loan he could not apply for another loan. He inquired on the ability to acquire a next loan. On occasions when the Claimant was late with payment, money would be deducted from the Defendant's account and he simply was not in a position to take the risk of paying two loans.

24. It was based on the Claimant's promise to pay $15,000.00 to the Defendant that he wholeheartedly acceded to the Claimant's request to take the loan in his name and purchase the vehicle in his name or to take time off to carry him around to purchase the vehicle and obtain the loan and assist him with collecting equipment for setting up the business and later on assisting his girlfriend.

Angela Leacock's witness statement

25. The Claimant indicated that he would approach the Defendant to obtain the loan in his name. The Claimant indicated that he would "*give Troy something"* for his assistance. She was not party to the discussions the parties had but she observed the Defendant agreed to assist the Claimant. The Defendant later indicated to her that the Claimant had promised to give him some money to purchase the vehicle in his name.

III. SUBMISSIONS

The Claimant's submissions

26. With respect to the purported existence of the term for the payment of $15,000.00 to the Defendant, the Claimant submitted that the cross-examination of the Claimant failed to establish the existence of such a term. His evidence was in line with his pleaded case and evidence-in-chief.

27. It was the Defendant's case that one of the motivating factors behind the Claimant agreeing to pay the sum of $15,000.00 to the Defendant was that the Defendant was precluded from taking a further loan in his name until the existing loan for the said vehicle was paid off.

28. This strains belief on account of the lack of evidence in this regard of the Defendant's attempts to obtain a loan as well as material contradictions in his evidence.

29. However, it was the Claimant's unchallenged evidence that upon being made aware that the Defendant wished to obtain a loan, the Claimant proceeded to liquidate the loan ahead of the repayment schedule.

30. The Claimant submitted that his unchallenged evidence in this regard lends support to the view that it is more probable than not that if there was in fact such a term for the payment of $15,000.00 to the Defendant, the Claimant would have upheld this portion of the agreement as the Claimant has shown that despite the pre-existing family issue, when called upon to repay the loan early so that the Defendant could make certain financial arrangements, he did in fact do so.

31. The knowledge or lack thereof of both the Claimant and Ms Leacock as to whether CEPEP was awarding contracts at the time that the agreement was for the landscaping business was entered into in May 2008 is irrelevant to the issue of whether the Claimant is entitled to an award for the loss of use of the vehicle during the period in issue (February 2013 to date of transfer).

32. It is also the Claimant's evidence that he had continued intention to utilise the vehicle for commercial purposes by enquiring and obtaining information from one Mr Neville Cooper through his friend Tyrone Bowrin as to the awarding and rates payable by CEPEP for landscaping contracts after he had seized the vehicle from the Defendant in 2009.

33. It is submitted that the Claimant has evinced a continuing intention to utilise the vehicle for commercial usage.

34. It is submitted that there was no agreement for $15,000.00 from the Claimant to the Defendant. The Defendant ought not to be permitted to rely on the Claimant's decision not to request that he renew coverage for the vehicle as that would essentially amount to the Court sanctioning a material pecuniary benefit to the Defendant based entirely on his own wrong-doing. As soon as the loan was liquidated, whether the Claimant requested the insurance renewal or not, the Defendant was contractually obligated to transfer the vehicle to the Claimant.

35. The Claimant submitted that there is a clear causal connection on the evidence between the Defendants failure to transfer the said vehicle to the Claimant and the Claimant's loss of use of the said vehicle. The losses sustained by the Claimant would not have occurred had the Defendant not committed the breach of trust and transferred the said vehicle upon repayment of the loan as previously agreed between the parties.

36. The Court ought to take into account the Claimant's unchallenged evidence as to the rates that were payable by CEPEP for the landscaping services which the Claimant intended to provide. The Claimant's cross-examination did not touch on whether the rates were too high or incorrect.

37. It is clear from the Claimant's evidence that he purchased the equipment necessary to provide these services. This was accepted by the Defendant.

38. In the circumstances, the Claimant has demonstrated, on a balance of probabilities in law, that he is entitled to $91,950.00 (a period of 1,839 days).

The Defendant's submissions

39. Only the Claimant is alleging that no compensation was promised to the Defendant, while the Defendant and Angela Leacock maintain that the Claimant did in fact promise the Defendant compensation in the sum of $15,000.00.

40. The Court can resolve this issue on the basis of credibility and the Claimant was exposed as an extremely unreliable witness under cross-examination.

41. The Claimant's version of events that he had intimate knowledge of the landscaping business through his research and his connection to a CEPEP worker, Neville Cooper, and that after he took possession of the vehicle from the Defendant, he continued the landscaping business with Tyrone Bowrin, fully supports the Defendant's and Angela Leacock's version of events that they were never approached by the Claimant to set up a landscaping business as CEPEP was awarding contracts and it was the Claimant's idea.

42. Therefore, it is submitted that the Court ought to find that it was a term of the contract that the Defendant was to be paid the sum of $15,000.00.

43. In terms of whether the Defendant was entitled to terminate the contract due to the Claimant's refusal to pay him $15,000.00, reliance was placed on **Halsbury's Laws of England**[1]. It was submitted that based on the Defendant's case as pleaded, his only stake in agreement with the Claimant was for compensation in the sum of $15,000.00 for taking the loan in his name for the purchase of the vehicle. Therefore, this term of the agreement would have been the most important term for the Defendant.

44. As to loss of use, the landscaping business never got off the ground and the Claimant was not in a position to use the vehicle physically because he was not in Trinidad.

[1] Volume 22 (2012) paras. 556 and 557

45. The Claimant generally did not have any pleadings regarding the loss of use of the vehicle after he took possession of it since 2009. By his own pleading that he refused to take out insurance in the name of the Defendant and so could not use the vehicle, the Claimant has defeated any claim to loss of use.

46. In terms of evidence, the Claimant could not provide a mileage stamp for a car that has been in his possession for close to ten years.

47. The Defendant signed for insurance renewals on at least two occasions and was willing to sign for further renewals.

48. In the circumstances, even if there was a breach of contract by the Defendant for the refusal to transfer ownership of the vehicle, there was a clear avenue for the Claimant to mitigate his damages for loss of use and he unreasonably refused to do so.

49. Based on the Claimant's pleaded case and all the evidence, there is no nexus between the alleged damages for loss of use and the Defendant's refusal to transfer ownership of the vehicle.

IV. LAW AND ANALYSIS

(i) Did the Defendant hold the subject vehicle on trust for the Claimant? If so, did he breach that trust?

50. According to **Halsbury's Laws of England**[2], a resulting trust may arise by operation of law in two set of circumstances:

[2] Halsbury's Laws of England > Trusts and Powers (Volume 98 (2019)) > 1. Nature and Creation of Trusts and Powers > (3) Constructive and Resulting Trusts > (ii) Resulting Trusts > a. In General > 131. Nature of resulting trust.

"A resulting trust is a trust arising by operation of law. Such a trust arises in two sets of circumstances.

The first set of circumstances occurs 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) or in the case of a joint purchase by A and B in shares proportionate to their contributions. This has been described as a presumed resulting trust. *It is, however, not to be relied upon in determining interests in a property occupied as a family home; instead reliance is placed upon the common intention constructive trust.*

The second set of circumstances occurs where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest. This has been described as an automatic resulting trust. A special case is the Quistclose trust where X transfers money to Y on the agreed basis that Y is not free to use it as his own but must (or may) use it exclusively for a particular purpose, like paying creditors or buying property, in which eventuality occurring a debtor-creditor relationship is to arise between Y and X. Equity presumes that until then Y holds the money from the outset on a resulting trust for X.

Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. *However, a resulting trust can be regarded as imposed where it cannot be proved that the transferor intended to part with his beneficial interest. A resulting trust is not imposed by law against the intentions of the trustee (as may happen for a constructive trust), but gives effect to his presumed intention.*

…

***<u>The presumption of a resulting trust can be rebutted by evidence that the transferor intended to part with beneficial ownership</u>**."* [Emphasis mine]

51. In the instant case, there are no issues as to what was the main aspect of the agreement between the parties. That is, the agreed facts are:

    i. That the claimant would pay for part of the purchase price of the Vehicle and a loan would be taken out to cover the balance.

    ii. That because the claimant did not satisfy the necessary banking requirement to obtain the loan, it was agreed that the loan would be taken out temporarily under the defendant's name due to the fact that the defendant resided in Trinidad.

    iii. That despite being in the defendant's name, the claimant would be solely responsible for all payments for the Vehicle.

    iv. That once the loan was paid off, the Vehicle would be transferred to the claimant's name at the claimant's expense.

52. It is clear therefore that the facts of this agreement fall within the first set of circumstances as stated in **<u>Halsbury's</u>** as to how a resulting trust is created.

53. The Defendant agreed to take the loan for the Claimant and upon full repayment was to transfer the vehicle onto the Claimant's name. There was never any intention of the Claimant that the vehicle would be a gift or belong to the Defendant. In fact, the Defendant never pleaded nor gave evidence of this. The Defendant too, agreed that he was to transfer the vehicle upon the Claimant's full repayment of the loan.

54. It can be said that the Defendant was holding the vehicle on trust for the Claimant. This is what was agreed between them and the Court is simply being asked to give effect to the common intention of the parties.

55. By not handing over the vehicle upon full repayment of the loan, the Defendant was in breach of trust as the agreement was established that upon repayment of the loan, he would transfer legal title.

(ii) If the answers to issue (i) are in the affirmative, is the Claimant entitled to damages for loss of use, and if so, how much?

56. The answers to issue (i) are in the affirmative as shown from the above analyses and therefore the questions to be answered are whether the claimant is entitled to loss of use of the said Vehicle, and if so, how much. According to **Hanbury and Martin: Modern Equity**[3], as relied on by the Claimant:

> *"A trustee who fails to comply with his duties is liable to make good the loss to the trust estate. Even if there is no loss, the trustee is accountable for any profit made in breach of trust. The object of the rule is not to punish the trustee, but to compensate the beneficiary.*[4]
>
> *…*
>
> *…With other breaches of trust or fiduciary duty, the measure of liability is the loss caused to the trust estate, directly or indirectly and* ***the onus is on the claimant to prove that there is loss and that it would not have occurred but for the breach***.[5]
>
> *…*
>
> *…Thus the rules of remoteness and foreseeability applicable in contract and tort are not relevant, but* ***causal connection must be established****."*[6]
>
> [Emphasis mine]

57. I accept this learning as the current state of the law and relevant to the facts of this case.

[3] Seventeenth Edition by Jill E. Martin
[4] Ibid at para 23-001
[5] Ibid at para 23-006
[6] Ibid at para 23-006

58. While I am satisfied that the Defendant was holding the vehicle on trust for the Claimant, I am not satisfied that the Claimant has proven his loss.

59. As the learning states, the onus is on the Claimant to prove that there is loss and that it would not have occurred but for the breach. Further, there must be a causal connection.

60. The business of the Claimant never got off the ground. No contracts from CEPEP were awarded and no other works were done, privately. This is not in dispute, as the Claimant accepts this.

61. While I agree that due to the Defendant refusing to transfer the vehicle, the Claimant could have suffered loss, as he could not use the vehicle for the intended purpose, he has not provided any substantial evidence to support his claim for loss of use.

62. He has informed the Court of conversations he had with persons about the costs associated with a landscaping business, however, he did not provide any of these persons to be cross-examined or to supply documentary evidence to support their values.

63. The Court cannot grant loss of use without evidence, which shows that he did in fact suffer loss. Such loss must be specifically pleaded and proved.

64. From the Claimant's pleadings and evidence, it is more appropriate for the Claimant to say "I could have suffered loss if I had any business" rather than "I did suffer loss because I could not conduct business." In other words, he has not satisfied the Court that but for the alleged breach, he would not have suffered loss.

65. In cross-examination, he testified that he ran into bad luck in the business as he made call cards which he sent out, but they never got any answers back. He admitted that there was a lack of business, which was the reason he was not using the vehicle.

66. His evidence was that he tried to get the Defendant to transfer legal title, but nowhere in his evidence does he state that he needed this transfer to conduct landscaping business, which he had and could not conduct because of his inability to use the vehicle. He testified that he in fact had no business. Therefore, he has failed to establish that there was a causal connection between any loss and the Defendant's breach of trust.

67. In fact, he has failed to establish any loss whatsoever. He is therefore not entitled to any loss of use due to his lack of evidence.

(iii) Was it a term of the contract between the parties that upon the loan being paid off, the Claimant would pay to the Defendant $15,000.00 as compensation?

68. Based on the parties' respective pleaded cases, there are factual disputes to be resolved in order to determine the aforesaid issues. In such circumstances, the Court has to satisfy itself which version of events is more probable in light of the evidence. To do so, the Court is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions: (**Horace Reid v Dowling Charles and Percival Bain**[7] cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**[8]).

69. The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**[9] where it was stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

[7] Privy Council Appeal No. 36 of 1897
[8] CV 2006-01661
[9] Civ. App. No. 86 of 2011 at paragraph 31

70. The Defendant's counterclaim is for $15,000.00 for what he describes as breach of contract as it was an express term of the parties' agreement that he would be paid this sum upon final repayment of the loan. The Claimant denies this.

71. The onus was therefore on the Defendant to prove that this was in fact a term of the contract.

72. The Defendant's evidence was that he was told by the Claimant that, *"I didn't have to worry and that he would take care of me."* He also said that the Claimant promised, *"to take care of me."*

73. Angela Leacock was not present at trial and so was not cross-examined. The Court is therefore restricted in the weight to attach to her evidence. In any event, her evidence does not lend any support to bolster the Defendant's case. She stated that she was not privy to the discussions between the parties, and her only relevant evidence is that the Claimant said he would *"give Troy something"* for his assistance.

74. Her evidence does not assist the Defendant but instead casts more doubt on whether there was in fact any agreement that the Claimant would pay the Defendant $15,000.00 as compensation upon final repayment of the loan.

75. In cross-examination the Defendant testified that he was promised the $15,000.00 when the loan was taken out and it was to be paid when the loan was repaid.

76. While the Defendant's evidence was that he assumed risk for the loan, he testified that he could not say when in 2013 the loan was repaid, and accordingly could not say when that risk stopped.

77. The Defendant also testified that in February 2013, when the Claimant arranged with him to go to licensing office, he said to the Claimant that he owed him compensation for having taken out the loan. When told that he did not specify what this compensation

was, he testified that when he spoke to the Claimant prior to taking out the loan, the Claimant told him *"I will take care of you."*

78. The Claimant's evidence was that he never promised the Defendant $15,000.00 as compensation and that was never a term of their agreement.

79. In cross-examination, he denied that he promised Troy benefits from the business agreement and there was no profit sharing. He testified that he never discussed what benefits would go to Troy.

80. When put to him in cross-examination that he offered to compensate the Defendant the sum of $15,000.00 after he finished payment of the vehicle and upon transfer, he testified that that was not true, and it was not in the agreement from the beginning.

81. He also testified that he was aware that the Defendant wished to obtain another loan. As a result, he paid off the loan the Defendant had taken on his behalf, two years early, so that the Defendant could apply for his own loan.

82. The cross-examination of the Claimant on this issue was very short and did not in any way assist the Defendant's case.

83. From the evidence before the Court, it is more probable that the Claimant said to the Defendant that he would "take care of him" or "give him something" as is common parlance here in Trinidad and Tobago, than expressly stating the amount of $15,000.00 as compensation. It is also more probable that if the Claimant did in fact promise the Defendant compensation, the Defendant would have been more aware and conscious of when his risk stopped and when the opportunity for his compensation arose.

84. Even when he was informed by the Claimant that he had paid off the loan and requested the transfer be done, the Defendant's evidence was that he knew the loan had more time to go and he refused the transfer.

85. The evidence of the Defendant does not in any way support his contention that the payment of $15,000.00 as compensation was promised to him by the Claimant, upon the Claimant's final repayment of the loan. He himself did not quote in his evidence when the Claimant made the promise of an express value for compensation.

86. In his witness statement, he used quotation marks to say that the Claimant promised *"I didn't have to worry and that he would take care of me,"* and that the Claimant promised *"to take care of me."* While this may seem insignificant, it goes to supporting the Court's view that while he may have been promised something, there was no promise or express statement of what that "something" may have been. It certainly goes to support the Claimant's case that there was never any promise of compensation in the amount of $15,000.00.

87. The Defendant remembered the words of the Claimant at that time so much so to use it as quotations in his evidence, but did not give any evidence of a similar nature as to what words the Claimant used in promising the exact amount of compensation.

88. There was no inconsistencies in the Claimant's evidence as he denied throughout the matter that he made any such promise. He was also honest in his cross-examination, even admitting that the business failed and this was the reason he was not utilising the vehicle. Whilst he may not have realised this would possibly deny him loss of use, it shows that he was not fabricating any stories and was not creating evidence as he went along in an attempt to sway the Court in his favour.

89. I therefore find that the Defendant has failed to satisfy the Court that there was any term in the agreement between himself and the Claimant that he would be paid $15,000.00 as compensation for having taken the loan on behalf of the Claimant, once the loan was fully repaid.

V. ENTITLEMENT TO COSTS

90. The general rule is that the Court must order the unsuccessful party to pay the costs of the successful party: **CPR Part 66.6(1).** However, under the CPR, this general rule that costs follow the event is just a starting point since **CPR Part 66.6(2)** gives the Court the discretion to order the successful party to pay all or part of the costs of the unsuccessful party: [see **A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd**[10] per Lord Woolf and **Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd**[11] per Jackson J.]

91. The new approach which is the issue-based approach, requires the Court to consider issue by issue to ascertain where costs should fall, particularly in cases which are not "money claims" which more accurately reflect the level of success achieved: [see the cases of: (1) **Summit Property Ltd v Pitmans**[12]; (2) **Secretary of State v Frontline**[13]; (3) **Fulham Leisure Holdings v Nicholson Graham**[14] per Mann J.; and **A.E.I. Rediffusion** (supra).

92. In exercising its discretion as to who should pay costs, the Court is mandated to consider all the circumstances of the case including, but not limited to: (a) the conduct of the parties (both before and during proceedings); (b) whether the party has succeeded on particular issues even if not wholly successful; (c) the manner and reasonableness in which a party pursued the proceedings, a particular allegation or issue; and all other factors provided for in **CPR Part 66.6 (5) and (6)**: [see **Firle v Data Point International Ltd**[15] and **Islam v Ali**[16].

93. The question as to who is the successful party was considered in the case of **BCCI v Ali (No. 4)**[17] which was approved in **Day v Day**[18] in which it was stated that the Court

[10] [1999] 1 W.L.R. 1507, CA
[11] [2008] EWHC 2280 (TCC)
[12] [2001] EWCA Civ. 2020
[13] [2004] EWHC 1563
[14] [2006] EWHC 2428, Ch
[15] [2001] EWCA Civ. 1106, CA
[16] [2003] EWCA Civ. 612]
[17] The Times March 2, 2000
[18] [2006] EWCA Civ. 415

must treat "success" not as a technical term but "a result in real life" to be determined with the "exercise of common sense". In **CPR Part 66.6(3)**, the Court is given the power in particular to order a person to pay (a) only a specified proportion of another person's costs; (b) costs from or up to a certain date only; or (c) costs relating only to a certain distinct part of the proceedings.

94. It has long been settled that a **Claim** and a **Counterclaim** must be treated as distinct and separate actions and so for the purposes of entitlement and quantification of costs separate orders must be made. In light of the new regime to the entitlement of costs under the CPR, it appears to me that in relation to the **Claim** and **Counterclaim** there is no question that the Claimant is the successful party and therefore the general rule that costs follow the event ought to be applied with some modification as rationalised below.

95. The Claimant was successful in proving that there was a trust, and claimed **$91,950.00** damages for the loss of use of the vehicle as a result of breach of the trust. However, he failed to provide evidence to substantiate this loss.

96. Accordingly, since he has been successful on only one aspect of the issues dealt with in this judgment, and given the past decisions in this matter, I am inclined to award only a percentage of the total costs on the Claim. Since the dominant relief claimed was breach of trust of which the Claimant was the clear winner but he was not able to prove his quantifiable loss, it appears just to award him **75%** of his costs on the Claim. Since no "value" of the Claim was agreed by the parties or determined by the Court, for the purposes of calculating costs, the Claim will amount to a non-monetary claim the value of which will be deemed to be **$50,000.00** in accordance with **CPR Part 67.5(2)(c)**. Full trial costs on the prescribed scale will be **$14,000.00**. However, since the order of the Court is for **75%** of the trial costs, the Claimant will be entitled to **$10,500.00** prescribed costs on the Claim.

97. The Claimant is also the clear winner on the Counterclaim which was pursued to the end, in the Court's opinion, unreasonably so. The Defendant sought the relief of damages for breach of contract, an order for the payment of $15,000.00, interest, costs and any further relief the Court may deem just. No value was placed on the Counterclaim but the dominant relief appears to be damages for breach of contract, the value of which could only be worked out were the Defendant to be successful and assessment follows. In this regard, the Counterclaim is to be treated as a claim for **$50,000.00** prescribed costs of which will be **$14,000.00**. However, I have determined that there was much overlap in the work to be done and the evidence required in the Claimant defending the Counterclaim *vis-à-vis* him pursuing the Claim. I therefore adjudge him to be entitled to **65%** of the costs on the Counterclaim. Consequently, prescribed costs will be quantified as follows: **$50,000.00 x 65%% = $9,100.00**.

VI. DISPOSITION

98. Given the reasoning, analyses and findings above, the Order of the Court is as follows:

ORDER

1. **Judgment be and is hereby granted to the Claimant against the Defendant on both the Claim and Counterclaim in the terms provided hereunder.**

2. **A declaration that the Defendant held the said motor vehicle registration number TCJ 4156 on trust for the Claimant and that the Defendant was in breach of that trust.**

3. **The Defendant's Counterclaim be and is hereby dismissed.**

4. **The Defendant shall pay to the Claimant <u>75%</u> of his costs on the Claim quantified in the sum of <u>$10,500.00</u> in accordance with the Scale of Prescribed Costs appended to Part 67 of the CPR 1998.**

5. **The Defendant shall also pay to the Claimant <u>65%</u> of his costs on the Counterclaim quantified in the sum of <u>$9,100.00</u> in accordance with the Scale of Prescribed Costs appended to Part 67 of the CPR 1998.**

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Robin N. Mohammed
Judge