THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2019-01058

BETWEEN

CHRISTOPHER GEORGE EVERETT

First Claimant

JUDLYN AVA EVERETT

Second Claimant

AND

PHILLIP MAYNARD

Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Mr. Frank Lorris Peterson for the Claimants

Mr. Kevin Lewis for the Defendant

Date of Delivery: 20 October 2021

JUDGMENT

The Claimants' Case

1. In support of their case, the claimants filed a claim form and statement of case on the 14 March 2019 and a reply to the defendant's defence on the 22 July 2019.

2. The claimants are husband and wife who reside in the United Kingdom and visit Trinidad and Tobago from time to time. The defendant is the brother of the second claimant.

3. The second claimant, the defendant and their other siblings own a parcel of land. The parcel is registered as Certificate of Title Volume 3350 Folio 207 comprised all and singular that and certain piece or parcel of land situate in the Ward of Diego Martin in the Island of Trinidad comprising 7 Acres 0 Rood 27 Perches (being more or less) bounded on the North partly by lands of Stephens and Danni Mohamed Mathuen on the South partly by lands of the heirs of N. Tang and A.J. Farfan and Janet Heath and F. Corbie on the East by Broome Street and on the West partly by lands of the heirs of N. Tang and A.J. Farfan ("the said lands").

4. The said lands are known as L.P. #9 Broome Street Heights, Four Roads, Diego Martin and was conveyed by Memorandum of Assent to Carlton Maynard in his capacity as Personal Representative of the estate of Joseph Maynard (deceased) to hold the same for the benefit of the siblings.

5. In or around the year 2008, the claimants and the defendant entered into an oral joint venture agreement whereby the parties agreed to the following terms:
    i. The claimants were to provide investment money to help finance the construction/building of six townhouse condominium apartments to be constructed upon the said lands.
    ii. The claimants would acquire a greater share of the townhouse condominium apartments. Initially, the claimants were to own one apartment but this agreement was changed to the claimants owning three apartments.

iii. The claimants would own Apartments 1, 2 and 3 and the defendant would own Apartments 4, 5 and 6.

6. Pursuant to the joint venture agreement, during the period 3 March 2008 and 1 May 2013, the first claimant remitted a total sum of US$119,000.00/TT$802,000.00 into the defendant's savings account number 890005735 by way of a series of wire transfers:

Date	**Amount/USD**
03-03-2008	$ 14,000.00
24-06-2008	$ 15,000.00
27-08-2009	$ 15,000.00
23-09-2008	$ 15,000.00
12-01-2009	$ 15,000.00
02-04-2009	$ 14,000.00
03-03-2010	$ 10,000.00
01-12-2010	$ 14,000.00
15-04-2011	$ 6,000.00
01-05-2013	$ 5,000.00
TOTAL	**$119,000.00**

7. The second claimant whilst in the United Kingdom authorized the defendant to access her Scotiabank savings account number 4005350. Accordingly, during the period 15 August and 15 September 2010, the defendant made withdrawals in the sum of TT$400.00 to purchase material for the construction of the said apartments.

8. The second claimant also authorized the defendant to access her RBTT savings-premium account number 100090171860257. During the period 20 February and 19 May 2011, the defendant made several cash withdrawals from the said account totaling TT$17,995.27 to purchase material for the apartments.

9. In 2014 while staying in apartment 2, the claimants advised the defendant that more accountability was required in relation to how their money was

being spent. At that time, the claimants had already invested more than planned and the apartments were still unfinished. Moreover, the defendant was unwilling to produce evidence of Town and Country Planning, Electrical Certificates, breakdowns of costs and he had made no effort to formalize the agreement regarding ownership as requested.

10. Therefore, the claimants advised the defendant that future payments for work would be through Daniel Maynard. Daniel would disburse the claimants' money to the defendant upon proof of costs and receipts. On the 8 April 2014, the first claimant communicated with the defendant via email to confirm the receipt of the total sum of US$119,000.00/TT$802,000.00 and to ask the defendant to keep better records of the monies sent to ensure a fair split of the costs in the project.

11. Between the years 2014 and 2016 the second claimant gave her brother Daniel Maynard (now deceased) approximately TT$69,391.86 to do electrical and other works on the apartments.

12. During the period 2010 and 2016, the claimants paid the defendant the sum of approximately GBP£8,500.00/TT$73,355.00. The claimants say that during the defendant's visit to the United Kingdom in 2013, he was paid GBP£5,000.00. Out of that sum, it was agreed that GBP£1,500.00 would be sent to another sibling who needed a loan and GBP£3,500.00 was to be applied towards the construction of the apartments. Later, GBP£5,000.00 was sent to the defendant via his nephew Keron Maynard.

13. In or about December 2016, the second claimant gave the defendant the sum of US$4,500.00/TT$30,330.00 to pave the front yard to facilitate parking and access to the property.

14. The claimants admit that the defendant did travel to the United Kingdom in 2008, 2010, 2011 and 2013. The claimants pleaded that the defendant's visit in 2008 was a family holiday but his visit in 2010 and 2011 was to assist with renovation on the claimants' farmhouse. In 2013, while the defendant's visit was more of a family visit he did assist with work on the claimants' property.

15. The claimants avow there was no agreement that the defendant would be paid for his work on the farmhouse. It was however agreed that the claimants would cover the defendant's airfare in 2010 and 2011. Additionally, the second claimant paid for the defendant's shopping for himself and his family.

16. The claimants contend that permission was granted to Kester Moses to stay in apartment 2 once he carried out works so that the claimants could rent out the said apartment. The defendant never requested payments for electricity and water. There was an understanding that as the defendant was renting apartments 1 and 6, from which the claimants never benefitted, it was agreed that these sums would go towards the defendant's living expenses, construction work on the apartments and any service charges for apartment 2.

17. The claimants claim that in breach of the joint venture agreement, in or around September 2018, the defendant disconnected the water, electricity and drainage to Apartment 2. Due to the defendant's breach of the joint venture agreement, upon their visit to Trinidad to attend the funeral of Daniel Maynard, the claimants were denied quiet and/or peaceful enjoyment of Apartments 1, 2 and 3.

18. By telephone conversation on the 30 September 2018, the defendant told the first claimant that the agreement regarding the ownership of the apartments was null and void, he wanted no further business dealings with the claimants and he would return the claimants' money. The defendant also indicated that he would never request payment for works done to the claimants' farmhouse.

19. Therefore, on the 26 November 2018 the claimants through their Attorney at Law sent a Pre-Action Protocol letter by registered mail informing the defendant that by reason of his words and/or conduct he breached the contract and/or joint venture agreement. In or around January 2019, the Pre-Action Protocol letter was returned to the claimants' Attorney at Law.

20. The claimants claim that the value of the four finished townhouse condominium apartments are approximately TT$674,000.00 and the two unfinished apartments are approximately TT$471,800.00, not inclusive of the land element.

21. As a result, by claim form and statement of case filed on 14 March 2019, the claimants claimed against the defendant:
    i. An order by way of Specific Performance of the joint venture agreement entered into with the defendant that the claimants acquire Apartments 1, 2 and 3 of the townhouse condominium apartments situate on the said lands;
    ii. Interest;
    iii. Costs; and
    iv. Further or other reliefs as the Court deems just and reasonable.

The Defendant's Case

22. The defendant asserts that at no point has he ever had any joint venture agreement, business arrangement or contractual agreement with the claimants whereby they would be the owners of Apartments 1, 2 and 3. The defendant's case is that he constructed his six townhouse condominium apartments upon his 1/13 undivided share of the said lands.

23. In or around 2008, the first claimant informed the defendant that he had money in a Cyprus Bank, which he did not want to bring into England because he would lose the majority, if not all, after the government taxed it. The first claimant said he preferred to give the money to the defendant than the British government. In return for his generosity, the defendant offered to make an apartment available to the claimants when they visited Trinidad, once they gave the defendant three months' notice prior to their arrival.

24. In or around 2008, the defendant verbally agreed with the claimants that in exchange for his labour costs and airfare, he would refurbish the claimants' farmhouse situate in the United Kingdom. As a result, during the years 2008 to 2013 the defendant travelled to the United Kingdom to perform the works on the said farmhouse.

25. Accordingly, the defendant contends that TT$405,000.00 out of the sum of US$119,000.00/TT$802,000.00 remitted into his RBTT savings account number 980005735 went towards his labour costs for refurbishing the claimants' farmhouse and his return airfare from the UK. The balance of the money remitted into his account was given to the defendant as part proceeds from the Cyprus Bank account.

26. The defendant denied ever receiving the sum of GBP£8,500.00/TT$73,355.00. Instead, the defendant avers that sometime in 2013 whilst in the United Kingdom, the claimants paid him the sum of GBP£3,500.00 for work done to their bathroom. The defendant asserts that he is unaware that the claimants gave money to Keron Maynard and no such monies were remitted to him.

27. Further, the defendant denied ever receiving the sum of US$4,500.00/TT$30,330.00 to pave the front yard. The defendant states that the second claimant gave him GBP£450.00 and TT$4,500.00 totaling TT$9,000.00 to assist in paving a carport and a portion of the yard leading to the apartment the claimants occupied whilst on vacation in or about December 2016.

28. The defendant contends that at no point did Daniel Maynard inform him that the claimants gave him money to be applied to the defendant's apartments.

29. In or around 2013, the claimants asked the defendant for three of the apartments. However, the defendant refused to do so and informed the claimants that the apartments were investments for his children's future. Moreover, in or around 2014 the defendant denied the second claimant's request to put all the apartments in her name to protect his investment from the hands of his children's mother.

30. In relation to the second defendant's Scotiabank savings account, the defendant asserts that the second defendant authorized him to withdraw TT$400.00, spend it on his children and to close off the said account as it remained dormant and the bank was withdrawing money as administrative fees.

31. In relation to the second claimant's RBTT savings-premium account, the defendant avers that the second claimant authorized him to withdraw the balance of approximately TT$500.00 for his personal use and to close off the said account. However, instead of closing off the RBTT savings-premium account, with the permission of the second claimant, the defendant kept the account active by depositing approximately TT$17,400.00 over a period of time, which was subsequently withdrawn by him during the period 20 February and 19 May 2011.

32. As it relates to the disconnection of the water, electricity and drainage to Apartment 2, the defendant's case is that in or around 31 December 2017 he observed his and the second claimant's nephew, Kester Rocky Moses occupying the unfinished apartment the claimants occupied while they were in Trinidad in 2017. The defendant then called upon his nephew to vacate the apartment in order for the defendant to complete it. Sometime in March 2018, the defendant enquired from his nephew about the sound of a jackhammer emanating from the said apartment. In response, the defendant's nephew indicated that he was living there and was finishing the apartment. Therefore, in order to regain possession of the said apartment, the defendant had to deny his nephew of all the necessary facilities relating to the apartment.

33. The defendant asserts that there is one completed apartment at an estimated value of TT$1.5 Million. Of the five unfinished apartments one has an estimated value of TT$1.2 Million. The remaining four unfinished apartments have an estimated value of $800,000.00 each.

The Issues

34. The issues for the court's determination are whether:

i. The claimants have established the requisite elements of an enforceable agreement;
ii. The claimants are entitled to the remedy of specific performance; and
iii. The claimants are permitted to access the remedy of unjust enrichment.

The Evidence

35. In support of the claimants' case, both claimants along with Donzella Moses-Antoine, Kenneth Maynard and David Maynard filed witness statements. David Maynard did not give evidence. The defendant Phillip Maynard testified in his defence.

- **The Claimants' Evidence**

36. The second claimant's evidence is that prior to entering into the joint venture agreement with the defendant, in 2006 a family meeting was held among the second claimant, the defendant, Donzella Moses-Antoine also called Dawn Maynard, David Maynard and Samuel Maynard. In that meeting, the parties orally agreed that they would invest money to construct six condominium townhouse apartments on a portion of land owned by the Maynard family situated on the said lands. The second claimant's understanding at the material time was that she and her husband would provide the sum of US$30,000.00/TT$189,000.00 to construct one apartment for them to stay in when they visited Trinidad.

37. Shortly thereafter, but before the commencement of any construction, the defendant indicated to the second claimant that the other siblings involved had pulled out of the venture.

38. In or around the year 2008, the defendant approached the claimants to enter into a separate joint venture arrangement. The terms of that agreement were not reduced into writing. However, it was the claimants' understanding that they would provide investment money to help fund the construction of the six apartments. Additionally, the terms of the original agreement, whereby the claimants would acquire one apartment was changed. According to the terms of the new agreement, the claimants acquiring ownership of three apartments namely Apartments 1, 2 and 3. The defendant would have Apartments 4, 5 and 6.

39. Pursuant to the joint venture agreement with the defendant, the claimants between the period 3 March 2008 and 1 May 2013 transferred US$119,000.00/TT$802,000.00 into the defendant's savings account.

40. The second claimant's evidence is that during the period 20 February and 19 May 2011 she authorized the defendant to use her RBTT premium savings account bankcard to purchase building materials for the apartments, which amounted to a total of $17,995.27. On the 1 March 2011, the defendant used the second claimant's ATM card to purchase materials amounting to $1,685.00 from Modern Electrical. On the 9 May 2011, the defendant used the ATM card to purchase material from Bhagwansingh Hardware valued at $4,197.50 and from Northern Hardware valuing $703.70. Additionally, the defendant was authorized to make cash withdrawals of sums totaling $11,409.07.

41. Sometime in or about 2010/2011 the second claimant gave the defendant the sum of approximately GBP£5,000.00 where GBP£1,500.00 from that money was given to a sibling and the balance was used towards the cost of building the claimants' apartments. In 2011, the second defendant gave

Keron Maynard a further GBP£5,000.00 to pass on to the defendant towards the construction of their apartments.

42. In December 2016, when the second claimant visited Trinidad she stayed at apartment 2 and gave the defendant the sum of US$4,500.00/TT$30,330.00 towards paving the front of the apartments.

43. Moreover, the second claimant avers that between the period 2014 and 2016 she gave her brother Daniel Maynard the approximate sum of $69,391.86 to:
    i. obtain a transformer and electrical certificates from the Trinidad & Tobago Electricity Commission for Apartments 1-6;
    ii. purchase material for the construction of a retaining wall and drain behind Apartments 1-4;
    iii. do works on the roof of Apartment 2 including flashing and under ceiling (scoffing pan); and
    iv. do metal work on Apartment 2 including the staircase, porch railing, balustrade and overall maintenance.

44. The claimants also admit that the defendant did work on their property in 2010, 2011 and 2013. However, there was no agreement that the defendant would be paid for those works. The only agreement was that the claimants would pay for the defendant's airfare.

45. In 2008, there was no work to be done on the farmhouse, as it was not yet owned by the claimants. At that time, the farmhouse was in the hands of the executors of the first claimant's deceased mother. When it failed to sell on the open market, it went on auction in 2010 and the claimants purchased it.

46. In 2010, the defendant:

v. built six wooden doors and frames for outbuildings;

vi. casted concrete slabs 2ft by 4ft and 3ft by 3ft, 3 inches thick and put them in place;

vii. rebuilt a boiler room with stone, one gable end of a small shed;

viii. built and installed two small basic windows in the aforementioned gable end;

ix. removed mortar from the farmyard wall, repointed to approximately $10m^2$ and re-plastered it;

x. refurbished the pantry;

xi. removed rotten wall strips from the master bedroom and attic;

xii. replaced board and repainted as the plastering of the master bedroom was carried out by a professional plasterer;

xiii. refurbished and repainted cupboards in the master bedroom, but the defendant did not replace the floorboards;

xiv. did not operate heavy machinery. Rather he drove the farm tractor and once started some work without the first claimant's knowledge, which resulted in £4,000.00 to repair a clutch due to the defendant's improper use.

47. The claimants have no recollection of the defendant cutting over-growth from barns 35ft high. The claimants assert that an estimated fair figure for the aforesaid works done in 2010 would be in the region of £2,500.00.

48. In 2011 the defendant:

xv. remodeled a bathroom including electrical and plumbing works which the claimants say were minor works;

xvi. refurbished a wet-room complete with handrail and tiled the floor from floor to ceiling. The defendant did not build the said wet-room;

xvii. did not repaint the front and back kitchen but assisted the second claimant with touching up the paint work in the front kitchen. The second claimant painted the back kitchen;

xviii. refurbished the tool room and work shed which consisted of making/fitting rough shelves and workbench.

49. The claimants say that if a price was to be placed on this labour for the works done in 2011, a fair price would be in the region of £3,500.00.

50. In 2013, the defendant:

xix. Built a greenhouse which works consisted of fitting a simple plastic/wood roof and side panels;

xx. Built a gazebo which works consisted of renewing the roof and side to existing steel framework;

xxi. Erected a fence;

xxii. Built ground and laid pavers;

xxiii. Built a stone hedge and backfill for garden;

xxiv. Operated heavy machinery whereby the defendant on occasions drove the farm tractor and mini digger.

51. The claimants assert that if a price were to be assigned to this labour for 2013, a fair figure would be in the region of £1,500.00 as the defendant's brothers Sam and Daniel assisted him whilst on a family holiday.

- **The Defendant's Evidence**

52. The defendant's evidence was that sometime in 2002, he constructed three apartments on a foundation and decking that was already on the said

lands. Those apartments were tenanted and the total monthly rent was $7,000.00. In 2006, the defendant purchased building materials and began constructing the six apartments on the said lands.

53. In 2007, the defendant visited the claimants in England and helped the first claimant in the fields with his cattle. The defendant told the first claimant that he did not mind helping on the farm but he was building apartments in Trinidad, which would take about 2 to 3 years to complete. The first claimant then offered to give the defendant some money he had in a Cyprus bank towards the apartments because if the first claimant brought that money to England he would lose the majority, if not all, in government taxes. In return, the defendant offered the first claimant an apartment when it was finished but he refused. Instead, it was agreed that the defendant would make an apartment available to the claimants when they visited Trinidad, once at least three months' notice was given prior to their arrival.

54. In or around 2008, after discussions with the second claimant, the defendant agreed to go to England to do repair works on a farmhouse for the claimants in exchange for payment to be used in building the apartments in Trinidad. They also agreed that the defendant's airfare would be paid for; his labour would be paid in British currency by the first claimant; that the defendant would bring in his luggage, food items valued at about TT$2,000.00; and that the second claimant would purchase clothing for him and his children.

55. Sometime in 2008, the first claimant began sending the money he promised into the defendant's bank account.

56. When the defendant visited the claimants in 2008, the second claimant brought workmen to assess and start the work on the farmhouse and also for the defendant to observe the British way of doing work. After one day's work when six stones were laid and a wall in the bedroom was plastered, the second claimant paid them £200.00 and the workmen did not return. The defendant then:

xxv. built and installed six doors and frames for the claimants' properties;

xxvi. cast concrete slabs 2' x 4' and 3'3" in thickness;

xxvii. put in place a boiler room built with stone;

xxviii. built and installed windows;

xxix. removed and installed windows;

xxx. removed mortar from front wall and re-plastered the wall;

xxxi. refurbished and repainted the pantry; and

xxxii. cut approximately 35' high overgrown from the barns.

57. In or around 2010 the claimants again requested the defendant to visit England to do work on their property which included:

xxxiii. gutting and removing rotted wall strips from the master bedroom and attic;

xxxiv. replacing floor with boards;

xxxv. re-plastering and repainting master bedroom and operating heavy machinery on the claimants' farm.

58. In 2011, the defendant stopped work on his apartments, left his two children behind and travelled to England spending approximately two months working on the farmhouse. At times the defendant worked until 11 o'clock in the night. The defendant avers that he:

xxxvi. remodeled the bathroom which included electrical and plumbing works;

xxxvii. built a wet-room complete with handrail and tiled it from the floor to the ceiling;

xxxviii. painted the front and back kitchen;

xxxix. refurbished the tool room and work shed.

59. The defendant says that second claimant informed him that she got estimates from two separate contractors in relation to the bathroom, which was estimated at £10,000.00. However, the claimants paid him £3,500.00 for the works done to their bathroom.

60. In 2013, the defendant again stopped working on his apartments and went to England with his daughter to continue working on the claimants' farmhouse. The second claimant gave the defendant a list of works left by the first claimant, who was out at sea, to be completed on the farm. The defendant spent two and half months working day and night:

xl. repairing a greenhouse;

xli. constructing a gazebo;

xlii. erecting a fence 60 feet by 25 feet;

xliii. building and installing two gates;

xliv. excavating the ground and laying pavers;

xlv. building a stone hedge;

xlvi. backfilling the garden;

xlvii. operating heavy machinery; and

xlviii. cleaning and gutting a stable with the assistance of his brother Sam.

61. On that visit, the second claimant asked for three of the defendant's apartments. The defendant denied her request, telling her that the apartments were an investment for his children's future.

62. In 2014, the defendant ignored the second claimant's suggestion to put the apartments in her name to protect his investment from the hands of his children's mother.

63. In or about December 2016, the defendant received GBP£450.00 and TT$4,500.00 amounting to TT$9,000.00 to assist in paving a carport and a portion of the yard leading to the apartment the claimants were to occupy the following year on their visit to Trinidad.

64. The defendant used the remaining monies TT$400.00 and TT$500.00 respectively from the second claimant's Scotiabank and RBC accounts on his children and personal use pursuant to the second claimant's instruction. The defendant also did not close off the second claimant's RBC account as he informed her that it was convenient for his use. She consented to the defendant's use of the account and over a period, he deposited $17,400.00 into the account, which was subsequently withdrawn between 20 February and 19 May 2011.

65. In or around the 30 September 2018, the first claimant told the defendant via telephone conversation that due to the US$119,000.00 sent, he should have an apartment.

- **Credibility**

66. The evidence of the claimants and defendant are at odds. As such, the court is tasked with determining issues of fact. The well-known authorities of *Reid v Dowling Charles and Percival Bain Privy* Council Appeal No. 36 of 1987 and *The Attorney General of Trinidad and Tobago v Anino Garcia* Civil Appeal No. 86 of 2011 are pertinent guides which the court used when assessing the credibility of witnesses. The court placed less emphasis on

the demeanour of the witnesses and while conducting a forensic analysis of the witnesses' testimony. In *Anino Garcia* [supra] Bereaux JA in adopting the guidance from *Reid v Dowling Charles* [supra] emphasized assessing the credibility of witnesses as against the pleaded case, contemporaneous documents and the inherent probabilities of the rivalling contentions. This court also placed similar emphasis.

67. In relation to the claimants' evidence, the court observed some inconsistencies in their evidence in chief, their pleaded case and their evidence under cross-examination.

68. While the claimants' pleaded case and evidence in chief was that the defendant went to the United Kingdom to help refurbish a wet-room for the first defendant's father in 2011, the first claimant's evidence under cross-examination was that the defendant helped with the wet-room in the year 2010.

69. Under cross-examination, the first claimant indicated that in 2011 the defendant replaced the floor with boards. However, the first claimant's pleaded case and evidence was that in 2010 while works were done to the master bedroom, the floorboards were not done as the existing size did not match what was available on the market.

70. The second claimant's evidence under cross-examination was that in 2010, she did not request her brother to do any work for her and in 2011, she did not request the defendant to come to England. However, in the claimants' reply to the defendant's defence, they accepted that while the defendant's visit to the United Kingdom in 2008 was a family holiday, his visit in 2010 and 2011 was to assist with renovation work on their farmhouse.

71. I found these inconsistencies to be immaterial. The claimants admitted and agreed that the defendant did travel to England in different years and did assist them in the renovations works. Variance in the evidence about the years certain works were undertaken or in what order the works were completed, can be accounted for by human frailty and memory lapses. Had the claimants denied that the defendant assisted with renovations then these issues might have been important – but given admissions by the claimants and the issues in dispute, these inconsistencies were not material and resolution of these matters were not important.

72. The claimants' pleaded case was that during period 2010 and 2016 the defendant was paid the sum of approximately GBP£8,500.00/TT$73,355.00. During his visit to the United Kingdom in 2013, the defendant was given GBP£5,000.00 and out of that sum, GBP£1,500.00 was to be given to a sibling who needed a loan. The remaining portion of the money was given to the defendant via his nephew Keron Maynard. Contrarily, the second claimant's evidence in chief was that all these events occurred in 2010/2011 and that Keron Maynard was given a further GBP£5,000.00 to pass to the defendant towards the cost of building their apartments. Again, this inconsistence is not material – in the main the evidence on quantum is consistent.

73. The second claimant's pleaded case and evidence in chief was that in or about December 2016, she gave the defendant the sum of US$4,500.00/TT$30,330.00 to pave the front yard as parking and access to the property. However, under cross-examination when it was put to the second claimant that in December 2016 she and her husband gave the defendant GBP£450.00 and TT$4,500.00 amounting to TT$9,000.00 to pave the yard leading to the apartment, the second claimant accepted that

she gave the defendant money in mixed currencies. The court accepted the evidence as admitted by the second claimant that the money to pave the yard was the sum of $9,000.00.

74. The cross-examination evidence of the second claimant and Donzella Moses-Antoine were also at odds in relation to where the initial 2006 meeting took place. The second claimant said she believed that the meeting took place at Dawn's house. In the second claimant's witness statement she indicated that Donzella Moses-Antoine was also called Dawn Maynard. On the other hand, the said Donzella Moses-Antoine stated that the meeting took place at one of the houses in Broome Street owned by Kenneth, which was formerly owned by Phillip. The witnesses were giving evidence about a meeting which occurred in 2006, the court found that the evidence of the occurrence of a meeting was more important that its location.

75. In addition, there were also inconsistencies about the persons present at the initial 2006 family meeting. Donzella Moses-Antoine indicated that herself, Phillip and Sam was present. However, she was unable to recall whether anyone else including the second claimant was present at the meeting. Kenneth Maynard while stating that Phillip, David, Donzella, Kerry and himself was at the meeting he admitted that he was unable to recall every person that was present. The second claimant's evidence in chief and under cross-examination in this regard was that she, Phillip Maynard, Donzella Moses-Antoine, David Maynard and Samuel Maynard was present at the meeting. The court did not find anything unusual about different persons having different recollections about the persons present for a family meeting, which occurred in 2006.

- **Claimants' failure to put their case**

76. The defendant contended that the claimants failed to put their case to the defendant as it relates to:
    a. the defendant did no work on the farmhouse in 2008;
    b. the claimants never agreed to pay the defendant for works done on the farmhouse;
    c. the defendant received an email from the first claimant asking for an account of the money spent on the apartments; and
    d. the defendant told the first claimant by telephone that the joint venture agreement regarding the ownership of the apartments was null and void.

77. In so doing, the defendant relied on the case of CV2007-02831 *Vishnu Andrew Sagar v Bissoondaye Mungroo and Rajesh Sagar* wherein the court explored the law as it relates to rule in *Browne v Dunn*[1] requiring counsels to put their case to a witness.

78. The court quoted the Canadian case of *R v Werkman*[2] where Justice Côté of the Alberta Court of Appeal said:

> "[7] The rule in Browne v. Dunn requires that counsel put a matter to a witness involving the witness personally if counsel is later going to present contradictory evidence, or is going to impeach the witness' credibility...... Though it is not necessary to cross-examine upon minor details in the evidence, a witness should be provided with an opportunity to give evidence on "matters of substance" that will be contradicted……... The purpose of the rule is to ensure that parties and witnesses are treated fairly; it is not a general or absolute rule........... The rule also has exceptions.
>
> [8] In this case, the trial judge concluded the Crown witnesses were not cross-examined on a number of significant points which formed

[1] (1893) 6 R. 67 (H.L.)
[2] 2007 ABCA 130 at paragraphs 7 and 8

> the entire basis of Werkman's defence.......... Werkman contends that these were just details, but a review of the record belies that characterization. So the trial judge had an appropriate bases on which to apply the rule in Browne v. Dunn."

79. The court in *Vishnu Andrew Sagar* [supra] also considered the English authority of *EPI Environmental Technologies Inc and another v Symphony Plastic Technologies plc and another*[3] where Peter Smith J. addressed the issue of "putting one's case" to a witness of the opposing side. The learned judge stated at paragraph 74 of the judgment that:

> "Third, I regard it as essential that witnesses are challenged with the other side's case. This involves putting the case positively. This is important for a judge to enable him to assess that witness' response to the other case orally, by reference to his or her demeanour and in the overall context of the litigation. A failure to put a point should usually disentitle the point to be taken against a witness in a closing speech. This is especially so in an era of pre-prepared witness statements. A judge does not see live in-chief evidence, thereby depriving the witness of presenting himself positively in his case".

80. In Cross on Evidence, Australian Edition (2004)[4] exceptions to the rule in *Browne v Dunn* were considered. It was stated that the rule does not apply where the witness is on notice that the witness' version is in contest. The notice may come from the pleadings, or a pre-trial document indicating issues or the other side's evidence. It may come from the general manner in which the case is conducted. In general, however, this exception to the rule should only operate where the issue is a fairly clear and obvious one.

81. The defendant was on notice from the pleadings and witness statements filed before the trial of the claimants' contradictory position on these issues. Regarding the works allegedly done in 2008, the defendant was

[3] [2005] 1 WLR 3456
[4] at page 541 para. [17445]

cross-examined on the fact that the claimants did not own the farm in 2008.

82. Regarding any agreement to pay the defendant for the works done in England, the claimants did question the defendant sufficiently that the monies transferred to him was for the purpose of building the apartment. It was the defendant's defence that those monies were for works done by him on the claimants' farmhouse. Proof of the claimants' case would be sufficient to dispel this assertion made by the defendant.

83. The first claimant's evidence is that they sent the defendant an email asking for an account of the money spent on the apartments, the defendant's evidence is that he did not know about any email, that he had no email account and that the email account was created by Ava. It was not necessary for the claimants to put that they sent an email.

84. The claimants' case is that there was a joint venture and the defendant's defence is that there was never any joint venture. Whether or not the claimants put to the defendant that the defendant by telephone told the first claimant that the joint venture agreement regarding the ownership of the apartments was null and void is a subset of the claimants' case.

85. The claimants' case was set out in the pleadings – both the statement of case and the reply to the defendant's defence. This allowed the defendant ample opportunity to answer the claim in the defence and his witness statement. The case put to the defendant in cross-examination was sufficiently clear to permit the defendant an opportunity to answer the allegations made and assertions of the claimants. The defendant was cross-examined on all the aforementioned issues sufficiently to satisfy the

court of the claimants' position. Therefore, the court is of the view that *Browne v Dunn* does not apply.

- **Findings of Fact**

86. In determining whether there was a joint venture agreement between the parties, the court considered the testimonies of the second claimant's brother and sister, Kenneth Maynard and Donzella Moses-Antoine.

87. Both witnesses stated that they were present at the family meeting in or about the year 2006. However, Kenneth Maynard said under cross-examination that he mentally abandoned himself from the meeting because he had already purchased a building in the sum of $180,000.00 from Phillip so he was not interested in any joint venture agreement.

88. Donzella Moses-Antoine said that it was the defendant's idea for the family to come together and build apartments to generate income to develop the land. The defendant suggested that everyone put $2,500.00 towards blocks and cement. However, some of the siblings pulled out from the arrangement. When this happened, Donzella Moses-Antoine said that she heard the defendant say he would speak to the second claimant for both of them to continue building the apartments.

89. Kenneth Maynard was unable to ascertain the date the parties entered into the joint venture agreement. Nevertheless, his evidence is that he spoke to both the second claimant and the defendant about the joint venture. The second claimant told Kenneth Maynard that she and her husband invested sums of money towards the construction of the apartments, whereby the defendant and the claimants were to acquire three apartments each. The defendant also at one stage told Kenneth

Maynard that one apartment was for the claimants but in a later conversation, he said that the claimants were entitled to three apartments.

90. While the defendant submitted that the evidence of the claimants' witnesses were not clear and cogent, the court disagreed with his contentions. The court found that although the witnesses could not recall the exact date the parties entered into a joint venture agreement or the precise persons who were present at the family meeting, their evidence supported the claimants' case. There was supposed to be a family venture and when that did not materialize, the claimants and the defendant agreed to construct the six apartments on the said lands. For the claimants' contribution towards financing the construction of the apartments, they would receive three of the apartments.

91. The court also considered the feasibility of the contrary position advanced by the defendant. The defendant's evidence was that the first claimant preferred to give him the sums of money in his Cyprus bank account than to transfer it to England because of the high government taxes. In return, the defendant if given three months' notice of their impending arrival to Trinidad would permit the claimants to stay in one of the apartments. Although the second claimant gifted the defendant his money from Cyprus, which he used in the construction of the apartments the defendant still charged the claimants' for the renovation works done on their farmhouse.

92. It is also not believable that having gifted the defendant so much money, the claimants would also gift the defendant $9,000.00 to pave the yard and driveway in front of Apartment 2. If the defendant is to be believed, the

claimants were only entitled to use of that apartment if they gave three months' notice of their intention to visit Trinidad and Tobago.

93. The defendant's pleaded case was that TT$405,000.00 out of the sum of US$119,000.00/TT$802,000.00 remitted into his RBTT savings account number 980005735 went towards his labour costs for refurbishing the claimants' farmhouse and his return airfare from the UK. Therefore, on the defendant's evidence TT$397,000.00 was the alleged gift promised to the defendant.

94. Furthermore, the defendant's evidence was that in 2007, when the first claimant promised him the money from the Cyprus account, the first claimant refused the offer of one of the defendant's apartments. Although, before the Apartment 2 became available, they stayed by one of the second claimant's brothers when visiting Trinidad.

95. The defendant alleged that on 30 September 2018, the first claimant told the defendant that due to the US$119,000.00 sent, he should have an apartment. The defendant's evidence in this regard is illogical. The first claimant would have known how much money he had in his Cyprus account. He would have known it was a large sum. It did not make sense to the court that on the one hand the first claimant was satisfied sending such a large amount as a gift and approximately five years later, he rescinded on this gift. From the evidence, it was more reasonable for the court to believe that the first claimant had money in a Cyprus account and he decided to invest it in Trinidad on the apartments.

96. The court also considered the timing in which the money from the Cyprus account was sent. The money from the first claimant's Cyprus account was

sent to the defendant from 2008 to 2013. The transfer began at the commencement of the joint venture agreement in 2008 and stopped in 2013, the last year the defendant did work on the claimants' property.

97. It is not in dispute that the defendant over the period 2010 to 2013 visited the claimants in England and performed work on their property. The claimants say that there was no agreement that the defendant would be paid for those works whereas the defendant disagreed. The claimants' evidence was that the defendant assisted with works. Further, if those works were to be valued, it would be in the region of £2,500.00 for 2010, £3,500.00 for 2011, and £1,500.00 for 2013.

98. On the other hand, attached to the defendant's witness statement[5] was a schedule of works he performed and he assigned a value to his works as £8,000.00 (including airfare) for 2008, £12,00.00 for 2010, £10,000.00 for 2011 and £8,000.00 for 2013. Accordingly, the defendant valued his works at £38,000.00.

99. The court believed the claimants' evidence that in 2008 no work was done on the farmhouse because they did not own it. In 2010 when the claimants purchased the farmhouse, they needed assistance to refurbish it. Since the second claimant's brother, the defendant, was a builder, they asked him to assist with the works on the farmhouse in 2010 and 2011 and in return, they paid for his airfare and for his vacation. The parties agreed that the defendant remodeled the wet-room inclusive of tiling, electrical and plumbing. He also did work on the claimants' farmhouse, garden, master bedroom, attic, tool shed and kitchens.

[5] At "PM1" Trial Bundle 2 page 107

100. The court did not believe that the defendant charged his sister the sum of TT$405,000.00 for the works done, nor does the court believe that the defendant did all those works he alleged or that there was no benefit to the defendant.

101. On the defendant's own evidence, based on the relationship among the siblings, it was not unusual for them to assist each other. The defendant's evidence is that when he needed a transformer Danny bought it for him. The act of generosity by Danny did not surprise him because he had done buildings for Danny and never took any money from Danny. Where Danny obtained the money from to purchase the generator is another issue.

102. Additionally, the evidence demonstrated that around 2008, the second claimant shared a close relationship with her brother, the defendant. He had access to her Scotiabank and RBTT/RBC accounts. At paragraph 5 of the statement of case, the claimants pleaded that the second claimant authorized the defendant to access her Scotiabank account and he withdrew the sum of TT$400.00. The second claimant was silent on this point in her witness statement but under cross-examination, she admitted that she allowed the defendant to use the money for himself and his children and to close the account.

103. With respect to the second claimant's RBTT account, the second claimant's evidence was that she permitted the defendant to use her bankcard to purchase material, which amounted to a total of $17,995.27. The defendant on the other hand averred that the account contained TT$500.00, which he was authorized to withdraw for his personal use. The second claimant permitted him to use the RBTT account in the interest of

convenience and the defendant subsequently deposited TT$17,400.00 into the account.

104. The bank statement for the account adduced into evidence for the period 20 February to 19 May 2011 shows that on the 6 May 2011, TT$15,000.00 in cash was deposited into the account. The defendant's evidence under cross-examination was that he put the money into the account and that money did not belong to the second claimant. He took money from the account the first claimant sent money in, and deposited it into the second claimant's account so he could use the bankcard to purchase things. The bank statement also demonstrated that purchases from Modern Electrical, Bhagwansingh Hardware and Northern Hardware were made.

105. The evidence in its totality illustrates that the defendant was transferring portions of money the first claimant sent to him, into the second claimant's RBTT account to conveniently purchase items using her bankcard. It seems as though this was the reason the second claimant permitted the defendant to use her account.

106. The court did not believe the defendant's evidence that the money belonged to him. Based on the evidence it was apparent that during the period 2008 and 2013 the claimants sent the defendant the total sum of US$119,000.00/TT$802,000 into the defendant's bank account. This was not due to any gift or payment for works done to the claimants' property. The court did not believe that the first claimant would make a charitable donation of some TT$397,000.00 out of his hard-earned money to the defendant without receiving some benefit. This just did not seem logical to the court.

107. The court accepted that the defendant visited the claimants in England on three occasions and labored on their property during the years 2010 to 2013. The court did not believe that the defendant would charge his sister and his brother-in-law the total sum of TT$405,000.00. Firstly it does not seem that the works done would attract that labour costs and secondly it is apparent that the second claimant and the defendant shared a close relationship.

108. Based on the evidence, it was more rational that the US$119,000.00/TT$802,000.00 remitted into the defendant's bank account was to purchase material for the construction of the apartments. With his sister's permission, because the defendant did not want to walk around with large sums of cash, he withdrew the cash the first claimant sent to his account and deposited it into the second claimant's account in order to use her bankcard to purchase material for the construction of the apartments.

109. All the evidence points to, and the court finds that the second claimant and the defendant shared a close relationship. This is why they agreed to build the apartments together, why the claimants trusted him with disbursing the finds, why he was permitted to withdraw from and use the second claimant's bank accounts and why they paid for his trips to England and purchased items for him and his family. It therefore does not appear odd that the defendant assisted with the Farmhouse.

110. The court also considered the email from the first claimant to the defendant dated 8 April 2014. The second claimant's evidence under cross-examination was that when she saw the apartments upon her visit to Trinidad in 2014, what she saw did not reflect the works done as told to her by the defendant on the phone. By then the claimants' investment had

reached US$119,000.00 and the apartments had not been completed and there was no real record keeping. As such, the first claimant emailed the defendant asking that he confirm receipt of the various sums of money totaling US$119,000.00. The defendant claims he did not receive the email and there is no evidence from which the court can be satisfied that the email was received.

111. The court finds that it was in and around 2014, when the relationship became strained. For the claimants they were not satisfied with how far their money had stretched and they wanted more accountability. For the defendant, it seems and the court finds, he took issue with having to account and having to be managed through another sibling.

112. This evidence was corroborated by both witnesses Kenneth Maynard and Donzella Moses-Antoine who testified that the claimants were sending money for Daniel. This is why the defendant claimed that it was in 2014, that the second claimant asked for all the apartments to be placed in her name. In 2018, he denied the claimants the opportunity to stay at Apartment 2 and in 2018 stated the claimants asked for an apartment to be given to them. Also in 2018, the defendant disconnected the water and electricity supply and disrupted the drainage to Apartment 2. The defendant had not issues with the claimants and their contribution to funding the joint venture until 2014.

113. Accordingly, the court finds as fact that the claimants remitted US$119,000.00/TT$802,000 into the defendant's bank account pursuant to a joint venture agreement to build apartments on the said lands. In addition, they gave the defendant and Keron Maynard further sums of

money to be utilized towards the joint venture agreement. The defendant would provide the labour and some money to construct the apartments and the claimants would provide additional finances to purchase the building materials.

114. The court is satisfied on a balance of probabilities that the parties agreed that a fair return for their respective financial contributions and the labour and management of the project by the defendant, would be three apartments for the claimants and three apartments for the defendant.

115. With respect to the telephone conversation of the 30 September 2018, the claimants aver that the defendant terminated the joint venture agreement whereas the defendant said that the first claimant wanted an apartment and cancelled the monetary gift sent to the defendant. The court did not believe the defendant's evidence. The court already made a finding that there was a joint venture agreement between the parties whereby they each own three apartments.

The Law and Analysis

I. Whether the claimants have established the requisite elements of an enforceable agreement

116. The claimants aver that there was a binding joint venture agreement between themselves and the defendant however submitted that the claimants have not established the requisite elements of an enforceable agreement.

117. Halsbury's Laws of England[6] elucidates that to constitute a valid contract, there must be an agreement between separate and existing parties and those parties must intend to create legal relations because of their agreement. The promises made by each party must be supported by consideration or by some other factor, which the law considers sufficient.

118. According to Chitty on Contracts[7], an offer is an expression of willingness to contract on specified terms made with the actual or apparent intention to be bound, as soon as the person to whom it is addressed accepts it.

119. The court in *Select Properties Limited v Texaco (Trinidad) Limited and Nealco Properties Limited*[8], distinguished between an offer and an invitation to treat. In that case, when NLP acting as Texaco's exclusive agent wrote to SPL stating that the asking price of the property was $4.5M, the Judge found that based on the construction of the documents there was no offer to sell. SPL's letter was an indication of the price at which Texaco was prepared to sell and as such, SPL's letter was construed as an invitation to SPL to make an offer to purchase.

120. In *Winston Barrow v National Insurance Board of Trinidad and Tobago*[9] the need for *consensus ad idem* was explored as a requirement of a binding contract i.e. the parties must have agreed to the material terms whereby there is sufficient correlation between the offer and acceptance. It was further stated, that an offer could be made and accepted by conduct (unless there is a prescribed method of acceptance). The objective test in

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[6] Volume 22 (2019)
[7] Volume 1, 31st Edition (London: Sweet & Maxwell) at paragraph 2-003
[8] HCA No. S-765 of 2003
[9] Civil Appeal No. 59 of 2011

determining whether an offer was accepted by conduct was explained in Chitty on Contracts[10] as:

> "Under this test, once the parties have to all outward appearances agreed in the same terms on the subject matter, they neither can, generally, rely on some unexpressed qualification or reservation to show that he had not in fact agreed to the terms to which he had appeared to agree. Such subjective reservations of one party therefore do not prevent the formation of a contract."

121. In *Clinitech Company Limited v South-West Regional Health Authority*[11] Justice Margaret Mohammed in highlighting the need for certainty and completeness of the terms in an enforceable contract quoted the authors of The Law of Contract at paragraph 2.157:

> "If an agreement is to be enforced as a contract the parties to it must have reached agreement on all its essential terms which must be expressed with sufficient clarity to permit enforcement. If the terms of an agreement are incomplete, unclear, ambiguous or uncertain it will often be assumed that the parties did not intend their agreement to be legally binding, or that they have not yet reached a final agreement; and since an acceptance must agree to all the terms of the offer, it follows that the offer must contain all the terms of the contract, so that a statement which contains terms which are unclear or ambiguous is unlikely to be regarded as an offer. Similarly a statement which indicates that important issues remain to be agreed is unlikely to be construed as an offer."

122. The third essential element of a valid contract is consideration. If a promise is made without any consideration, it is merely a bare promise, which cannot be enforced by law.[12] Therefore to enforce an agreement there must be some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other at his request. Thus, consideration for

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[10] Vol 1 (31st Ed.) at paragraph 2-002
[11] CV2016-03434 at paragraph 23
[12] Halsbury's Laws of England Volume 22 (2019) paragraph 109

a promise may consist in either some benefit conferred on the promisor or some detriment suffered by the promisee or both.[13]

123. Another important factor of a binding contract is whether the parties intended to create legal relations. There is a presumption against an intention to create legal relations in social, domestic and family arrangements[14]; however, this is a rebuttable presumption. Therefore, in *Jones v Padavatton* [1969] 2 All ER 616 at 621 Salmon LJ found that mutual promises between brother co-directors that they would not withdraw the money which each of them had put into the family business was a binding contract.

124. The court made a finding of fact that the Maynard siblings, including the second claimant and the defendant, agreed to build six condominium apartments. They were to invest certain sums of money, on completion the apartments, the second claimant would own one unit and the investing siblings would own the other units. The defendant has experience with this type of venture as on is evidence in 2002 he constructed three apartments on the family lands which he rents for $7,000.00.

125. After the venture to build the six condominium apartments among the Maynard siblings fell through, in 2008 the defendant approached the claimants that they jointly finance, manage and construct the apartments. The court construes the defendant's action towards the claimants as an offer. The framework for the venture was already discussed in the family meeting; six apartments with joint financing. The defendant proposed that he and the claimants to enter into an agreement.

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[13] Halsbury's Laws of England Volume 22 (2019) paragraph 110
[14] *Balfour v Balfour* [1919] 2 KB 571

126. The claimants in response accepted the defendant's offer and agreed with the defendant finance and the defendant would construct the six condominium townhouse apartments. Since there were now two parties to the agreement, they would each own three apartments. As a reflection of the claimant's acceptance and agreement with the defendant, on the 3 March 2008 the first claimant began sending sums of money into the defendant's bank account. By doing so, the claimants fulfilled the third essential element of consideration in the formation of valid and enforceable contract. The detriment the claimants suffered when they expended their money was the consideration for the joint venture agreement. Consideration for the agreement was further demonstrated when the claimants:

xlix. remitted US$119,000.00/TT$802,000 into the defendant's bank account from 2008 to 2013;

l. gave the defendant and Keron Maynard sums of cash towards the construction of the apartments;

li. gave Daniel Maynard $69,391.86 to spend on the construction of the apartments; and

lii. gave the defendant mixed currencies towards paving the front of the apartments.

127. The defendant submitted that there was not sufficient certainty and completeness of the terms to be considered an enforceable contract. However, the court disagreed with this submission. Based on the evidence adduced and the court's finding of fact, there was certainty on the essential terms of the contract. The court found that the terms of the agreement were:

liii. the claimants would provide financial assistance towards the construction of six townhouse apartments;

liv. the defendant would also contribute financially towards the construction of the apartments;

lv. the defendant as a builder would provide the labour required to construct the apartments; and

lvi. of six townhouse apartments constructed, the claimants would own three and the defendant would own three.

128. The terms were clear, certain and unambiguous. Moreover, there was sufficient correlation between the offer and acceptance to establish *consensus ad idem*. Although this was an oral agreement, the existence of an offer and acceptance was objectively demonstrated by the parties' conduct when the claimants provided the finances for the agreement and the defendant withdrew and used the sums of money given to him by the claimants and constructed the apartments.

129. The court also disagreed with the defendant's submission that because the parties were family there was no intention to create legal relations.

130. The evidence of Kenneth Maynard reinforced the court's opinion in this regard. Kenneth Maynard indicated that because he had already purchased a building from the defendant in the sum of $180,000.00, he was not interested in any joint venture agreement. This evidence demonstrated the defendant had a history of creating legal relations with his family and the agreement to build the six apartments was yet another of these binding agreements.

131. Based on the application of the law to the facts of this case, the court is satisfied on a balance of probabilities that the claimants have

established the requisite elements of an enforceable agreement between themselves and the defendant.

II. Whether the claimants are entitled to access the remedy of specific performance

132. The court examined the case of *Maddison v Alderson*[15] on specific performance. Lord Selborne L.C. set out the test to be applied by the courts[16]:

> "All the authorities shew that the acts relied upon as part performance must be unequivocally, and in their own nature, referable to some such agreement as that alleged...
> The law deductible from these authorities is, in my opinion, fatal to the appellant's case. Her mere continuance in Thomas Alderson's service, though without any actual payment of wages, was not such an act as to be in itself evidence of a new contract, much less of a contract concerning her master's land. It was explicable, without supposing any such new contract, as easily as the continuance of a tenant in possession after the expiration of a lease."

133. Further, at page 485 Lord O'Hagan stated:

> "… there is no conflict of judicial opinion, and in my mind no ground for reasonable controversy as to the essential character of the act which shall amount to a part performance, in one particular. It must be unequivocal. It must have relation to the one agreement relied upon, and to no other. It must be such, in Lord Hardwicke's words, 'as could be done with no other view or design than to perform that agreement.' It must be sufficient of itself, and without any other information or evidence, to satisfy a court, from the circumstances it has created and the relations it has formed, that they are only consistent with the assumption of the existence of a contract the terms of which equity requires, if possible, to be ascertained and enforced."

[15] (1883) 8 App. Cas. 467
[16] at pp. 479 and 480

134. The House of Lords in the case of *Steadman v Steadman*[17] considered *Maddison v Alderson* [supra] and that lead to the relaxation of the doctrine.[18]

135. Viscount Dilhorne addressed the issue as to the proper interpretation of the word "unequivocal" as used by Lord Selborne LC in *Maddison v Alderson* [supra]. He stated at p. 556:

> "I think it does not mean any more than that the acts of part performance which are alleged to have taken place must point to the existence of some such contract as alleged."

136. In relation to the doctrine of part performance, Lord Reid observed at pages 541-542:

> "I am aware that it has often been said that the acts relied on must necessarily or unequivocally indicate the existence of a contract. It may well be that we should consider whether any prudent reasonable man would have done those acts if there had not been a contract but many people are neither prudent nor reasonable and they might often spend money or prejudice their position not in reliance on a contract but in the optimistic expectation that a contract would follow. So if there were a rule that acts relied on as part performance must of their own nature unequivocally show that there was a contract, it would be only in the rarest case that all other possible explanations could be excluded.
> In my view, unless the law is to be divorced from reason and principle, the rule must be that you take the whole circumstances, leaving aside evidence about the oral contract, to see whether it is proved that the acts relied on were done in reliance on a contract: that will be proved if it is shown to be more probable than not."

137. Further Lord Simon of Glaisdale said at page 564:

> "I am therefore of opinion not only that the facts relied on to prove acts of part performance must be established merely on a balance of probability, but that it is sufficient if it be shown that it was more

[17] [1976] AC 536
[18] Spry's Equitable Remedies, 8th Edition, pp. 263-264

> likely than not that those acts were in performance of some contract to which the defendant was a party."

138. In Spry's Equitable Remedies (8th edition) that the acts of part performance must be sufficiently unequivocal. The learned author emphasised at pages 280-281 of the text that:

> "It should also be emphasised that, as has long been established, an act of part performance must be judged, not in the abstract, but in the light of all the material circumstances, in order to establish whether it is sufficiently unequivocal. So it must not be thought that what is not itself an act of part performance should be disregarded. In order to establish whether a particular act is sufficiently unequivocal, 'it is necessary to exclude from consideration the evidence of the alleged parol agreement between the parties and to look at the act relied upon in the light of the surrounding circumstances as revealed by the rest of the evidence'. This matter is of importance, not only in the cases that have been discussed here already, but also when executed documents that do not contain the alleged contract, or the entry into collateral contracts either between the parties to the proceedings or with third persons, or any other such matters, are to be considered."

139. The instant case involves an agreement where, the claimants would own three apartments and the defendant would own three apartments. There is no written agreement but the terms were established and agreed to orally. By virtue of equity, the court is empowered to order specific performance despite the lack of a written agreement, where there has been sufficient acts of part performance.

140. While the rigors in the requirements have been relaxed since *Maddison v Alderson* [supra], one thing remains certain; to satisfy the equitable doctrine of specific performance, the acts of part performance of the contract must be clear and unequivocal. The doctrine will not be satisfied if a party acted to their detriment in the hopeful expectation that

a contract would follow. The acts of part performance must clearly show on a balance of probabilities that the acts performed were pursuant to a contract.

141. Therefore, the court must first examine the alleged acts of part performance to determine whether those acts are referable to a contract as alleged by the claimant.

142. Between the years 2008 to 2013, the claimants remitted the total sum of US$119,000.00/TT$802,000 into the defendant's bank account. The various sums of moneys sent to the defendant over the years was for him to purchase material in order to construct the six townhouse condominium apartments. The defendant's evidence is that he purchased materials with the money.

143. The claimants also gave the defendant cash directly and indirectly through his nephew Keron Maynard, on their visits to England to be utilized towards the construction of the apartments. The evidence is that the defendant used the money he got from the claimants in the construction of the apartments.

144. Because the defendant's accounting exercise of the expenditure of the claimants' money was insufficient and was not reflective of the works actually done on the apartments, the claimants then gave Daniel Maynard various sums of money amounting to $69,391.86 to be used towards the development of the apartments. While the defendant claims not to know the source of the funds, his evidence is that Daniel purchased electrical equipment for use in the construction of the apartments.

145. In addition, the claimants gave the defendant further monies in mixed currencies to pave the front of the apartments. While not agreeing on the amount, the defendant did admit the claimants gave money for paving in front of Apartment 2.

146. It was clear to the court that the claimants' expended their financial resources towards the construction of apartments. The majority of the money was sent directly to the defendant himself to be used to construct six townhouse condominium apartments. The claimants were not residing in Trinidad at the time and entrusted their monies with the defendant and Daniel Maynard to a lesser extent, to ensure that the apartments were completed.

147. The claimants have demonstrated sufficient acts of part performance to be entitled to the remedy of specific performance. Accordingly, the defendant ought to deliver up possession of Apartments 1, 2 and 3 to the claimants pursuant to the joint venture agreement.

III. Whether the claimants are entitled to access the remedy of unjust enrichment

148. In an unjust enrichment claim, the unjust enrichment is the cause of action and restitution is the remedy.[19] The three central elements that a claimant is required to prove for a successful claim in the law of unjust enrichment was stated in the recent Privy Council case of *Samsoondar v Capital Insurance Company Ltd (Trinidad and Tobago)*[20] – that the

[19] Civil Appeal No. S296 of 2013 *Wayne Lum Young and another v Pooran Sookdeo and another*
[20] [2020] UKPC 33 at paragraph 18

defendant has been enriched, that the enrichment was at the claimant's expense, and that the enrichment at the claimant's expense was unjust.

149. Their Lordships further opined that the ideal pleading of a statement of case by the claimant should indicate that the claim is for restitution of unjust enrichment and should identify facts that satisfy each of those three elements. While it may be desirable, it is not essential, that the words “unjust enrichment” are used but the claimant must identify sufficient facts to show how those three elements are satisfied. The important purpose of a statement of case is to ensure, as a matter of fairness, that the defendant knows the case it has to meet.

150. Furthermore, the Board stated that the claimant must identify the “unjust factor”. Examples of unjust factors include mistake, duress, undue influence, failure of consideration, necessity and legal compulsion.[21] The Board quoted Mann J in *Uren v First National Home Finance Ltd*[22] who opined on the need to identify an established unjust factor:

> “[I]t seems to me that it has not been established that the authorities have yet moved to a position in which it can be said that there is a freestanding claim of unjust enrichment in the sense that a claimant can get away with pleading facts which he says leads to an enrichment which he says is unjust … A claimant still has to establish that his facts bring him within one of the hitherto established categories of unjust enrichment, or some justifiable extension thereof.”

151. The claimants for the first time in these proceedings raised the claim of unjust enrichment at the stage of closing submissions. They attempted to rely on the relief claimed in the claim form, “Further or other relief as the Court deems just and reasonable.”

[21] Ibid, at paragraph 19

[22] [2005] EWHC 2529 (Ch) at para 16

152. The claimants' pleading are deficient in respect of unjust enrichment. The statement of case failed to identify any facts to satisfy the requirements that the defendant has been enriched at the claimant's expense and that enrichment was unjust. Moreover, the claimants failed to identify any unjust factor.

153. According to *Samsoondar* [supra] since the claimants failed to plead unjust enrichment it would be unfair to the defendant if the claimants were availed of this claim. The defendant was not aware of this claim and as such could not prepare for the case it had to meet.

154. Therefore, having regard to the claimants' failure to plead unjust enrichment, the court is not of the view that they are entitled to access the remedy at this late stage.

Disposition

155. It is hereby ordered:

i. That there be judgment for the claimants against the defendant;

ii. The court orders Specific Performance of the joint venture agreement entered into between the claimants and the defendant for the ownership and title to Apartments 1, 2 and 3 to the claimants and Apartments 4, 5 and 6 to the defendant on that piece or parcel of land situate in the Ward of Diego Martin in the Island of Trinidad comprising 7 Acres 0 Rood 27 Perches (being more or less) bounded on the North partly by lands of Stephens and Danni Mohamed Mathuen on the South partly by lands of the heirs of N. Tang & A.J. Farfan and Janet Heath and F. Corbie on the East by

Broome Street and on the West partly by lands of the heirs of N. Tang and A.J. Farfan;

iii. The claimants are free to complete the construction of and otherwise deal with Apartments 1, 2 and 3;

iv. The defendant is free to complete the construction of and otherwise deal with Apartments 4, 5 and 6;

v. The claimants and the defendant are to equally share any attorneys’ fees and other costs associated with acquiring legal titled to their respective apartments; and

vi. The defendant shall pay the claimants costs as prescribed on a claim valued $50,000 in the sum of $14,000.00.

156. There shall be a stay of execution of three months.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran