

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO ANUHCV 2005/0142

BETWEEN:

KENNETH PROVIDENCE

Claimant

And

ELNATHAN LITTLE

Defendant

Appearances:

Mr. Dane Hamilton Snr for the Claimant

Mr. Hugh Marshall Jnr. and Mrs. Cherissa Roberts-Thomas for the Defendant

.....
2007: February 28th
May 22nd
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JUDGMENT

- [1] **Blenman, J:** This is a claim for possession of a dwelling house and land (the property) together with mesne profits and damages. There is also a counterclaim for several declarations including one in relation to the beneficial ownership of the property; alternatively, there is a counterclaim for the value of work done on property. In addition, there is a counterclaim for trespass to goods. Damages are also sought for breach of trust.

Background

- [2] Mr. Kenneth Providence (Mr. Providence) and Mr. Elnathan Little (Mr. Little) are childhood friends. They both originated from Saint Vincent and the Grenadines and have been living in Antigua and Barbuda for several years now. Mr. Providence contends that he is the registered proprietor of a parcel of land with a dwelling house thereon situate at Seaview

Farm in the Parish of Saint John in Antigua and registered at the Land Registry as Parcel 117; Block 14 2088A in Registration Section Central (the property).

- [3] Mr. Providence says that with his permission Mr. Little occupied the property rent free. However, he subsequently gave Mr. Little notice to vacate the property and notwithstanding the receipt of the said notice, Mr. Little has continued to occupy the property and has failed to deliver possession. Mr. Providence says that the value of the benefit to him (Mr. Providence) is \$24,000.00 per annum being the rental value of \$1,200.00 per month which would have been payable on the open market for rental of the said property as of 1st February, 2004 (the date of the termination of the licence). Further, Mr. Providence contends that he is entitled to claim interest on all sums recovered pursuant to the Eastern Caribbean Supreme Court Act at such rate and for such period as the Court thinks fit.
- [4] Alternatively, Mr. Providence contends that Mr. Little's continued occupation of the property constitutes trespass and he also claims mesne profits at the rate of \$1,200.00 a month from February 1st 2004 together with damages for trespass together with interest. He also seeks costs. Further, Mr. Providence denies that he is indebted to Mr. Little for work done to the benefit of himself. Finally, Mr. Providence disputes that he owes Mr. Little any monies. He complains that Mr. Little, by letter dated January 28th 2003, acknowledged receipt of the notice which terminated the licence and wrongfully asserted a claim to entitlement to the property by way of being the beneficial owner knowing that the property was purchased and constructed respectively out of moneys belonging solely to him (Mr. Providence).
- [5] Mr. Providence also disputes that he owes Mr. Little any monies realized from the sale of animals or that he has trespassed on the animals that were jointly owned by himself, Mr. Little and Mr. Jordon.
- [6] In his defence, Mr. Little denies that Mr. Providence is the owner of the property. He contends that in or about 1998 he left Trinidad to reside and work in Antigua at the

invitation of Mr. Providence. The parties orally agreed that Mr. Providence would assist him (Mr. Little) in obtaining a parcel of land and erecting a dwelling house and that he (Mr. Little) would work for Mr. Providence to repay the cost of the property and materials. Mr. Little further contends that it was an expressed term of the agreement that Mr. Providence would have the property transferred into his (Mr. Providence's) name until such time as he (Mr. Little) being non-national became eligible to acquire land in his own name. Mr. Little further asserts that, pursuant to that agreement Mr. Providence assisted him (Mr. Little) in acquiring a parcel of land from the Government of Antigua and Barbuda and erecting a dwelling house on it where he (Mr. Little) has resided since in or about 1988. Mr. Little says that his contribution to the said property was his labour to the value of \$10,000.00 and Mr. Providence's contributions was monetary and totalled \$22,500.00 and are as follows:

Purpose of Contribution	Value
Cost of the land	4,500.00
Cost of material for the dwelling house	<u>18,000.00</u>
Total	<u>\$22,500.00</u>

[7] Mr. Little further contends that he has worked for Mr. Providence since his arrival in Antigua doing various jobs including landscaping, deliveries, repairs and renovations on various properties belonging to Mr. Providence situate at Crosbies, Nevis Street, Redcliffe Street and Buckleys Village respectively. Mr. Providence has to date withheld compensation for a number of these jobs as a setoff against the cost of the property and material to a value of \$23,800.00. In relation to the property, Mr. Little complains that in breach of their agreement, Mr. Providence has failed, neglected and or refused to transfer or cause the transferring of the property to him (Mr. Little) thereby causing him loss and damage.

[8] Mr. Little asserts further that in or about April 1992, Mr. Providence approached him and a Mr. Charles Jordon (Mr. Jordon) to assist him in starting and operating a farm. Through the efforts of Mr. Providence and his (Mr. Little's) own effort coupled with that of Mr. Jordon's an area in North Sound in the Parish of St George was identified and 10 acres of

lands was leased from the Government of Antigua and Barbuda for the purpose of operating the farm. Mr. Little says that he and Mr. Providence orally agreed that Mr. Jordon and himself would carry out all of the manual labour on the farm as well as much of its administration in exchange for 1/3 of the livestock from on the farm. It was their common agreement that Mr. Providence would benefit from a 2/3 share for his financial contribution to the farm. In pursuance of this agreement, Mr. Little says that he and Mr. Jordon during the period April 1992 through to August 1998 worked on the farm for the benefit of Mr. Providence and themselves. Mr. Little says that during this period he (Mr. Little) and Mr. Jordon generated in excess of \$100,000.00 in sales. Livestock was initially purchased for the farm and others were born on the farm. As at August 1998, 800 goats were on the farm of which some 300 were "in kid". He states the value his (Mr. Little's) and Mr. Jordon's combined interest in the farm are particularized as follows:

1/3 of livestock sold during the period	
April 1992 – August 1998	\$33,333.33
1/3 of live stock not in kid and existing as at	
August 1998 begin 311 goats at \$250.00 per goat	\$25,916.66
1/3 of live stock in kid existing as at August 1998	
Being 300 goats at \$300 per goat	<u>\$30,000.00</u>
Total	<u>\$89,249.99</u>

[9] Mr. Little further complains that, sometime in or about August 1998, Mr. Providence caused both himself and Mr. Jordon to be forcefully removed from the farm and occasioned trespass to his clothing and bed at the farm by placing chemicals thereon. Mr. Providence has failed, neglected and or refused to acknowledge his (Mr. Little's) interest in the said farm thereby causing him loss and damage.

[10] In view of the above contentions, Mr. Little seeks the following reliefs against Mr. Providence namely:

- (a) A declaration that he is the owner of the property more particularly described as in the Registry of Lands as Registration Section: Central Block 14 2088A parcel 117, alternatively damages for money had and received;

- (b) Damages for breach of trust;
- (c) Damages for trespass to his goods;
- (d) Interest and cost;

[11] Alternatively, Mr. Little seeks the following reliefs namely:-

- (a) The value of work carried out by him on the property being \$10,000.00;
- (b) The value of work carried out for the benefit of Mr. Providence and to the extent of \$23,800.00;
- (c) A declaration that the livestock on Mr. Providence's Farm during the period April 1992 through to August 1998 was held on trust for him, Mr. Little and Mr. Jordon;
- (d) The value of one third of the livestock on Mr. Providence's Farm during the period April 1992 through to August 1998 was \$89,249.99 held for the benefit of himself and Mr. Jordon;
- (e) Damages for breach of trust;
- (f) Damages for trespass to his goods;
- (l) Interest and costs.

Issues

[12] The issues to be determined are:

- (a) Whether Mr. Providence is entitled to possession of the property together with mesne profits and damages;
- (b) Whether Mr. Little is entitled to the declaration that he is the beneficial owner of the property;
- (c) Alternatively, whether Mr. Little is entitled to be compensated for the work that he alleges he did for Mr. Providence;
- (d) Whether Mr. Little is entitled to be compensated for one-third of the value of the animals that were born on the farm owned by Mr. Providence.

- (e) Whether Mr. Little is entitled to damages for the trespass to his goods.

Law

- [13] The relevant law is the Non-Citizens Land Holding Regulation Act Cap 293 Laws of Antigua and Barbuda (the Non-Citizens Land Act).

Section 2 of the Non-Citizens Land Act states:

“non-citizen” means a person who is not a citizen and includes-

(a) Any company incorporated in Antigua and Barbuda which is under the control of non-citizens in accordance with the provisions of section 6 of this Act; and

(b) Any company incorporated outside of Antigua and Barbuda;

“share” includes stock and in the case of a company not having a share capital the interest of a member in the assets of the company;

“unlicensed” means not holding a licence granted under this Act.”

Section 3 of the Non-Citizens Land Act states:

“Subject to the provisions of this Act, neither land in Antigua and Barbuda nor a mortgage on land in Antigua and Barbuda shall, after the commencement of this Act, be held by an unlicensed non-citizen, and any land or mortgage so held shall be forfeited to Her Majesty.”

Section 4(1) of the Non-Citizens Land Act states:

“The Governor-General may, if he thinks fit, grant to any non-citizen a licence to hold land as owner or tenant or mortgagee for any estate or interest either subject to any conditions or not:

Provided that a licence shall be operative only as to the land described and as to the estate or interest specified therein, and shall be of no force or effect until registered in the Record Office of Antigua and Barbuda.”

Section 14 of the Non-Citizens Land Act provides:

“This section applies to the following property only, namely, land situate in Antigua and Barbuda, mortgages of such land, and shares and debentures of any company incorporated in Antigua and Barbuda.

With a view to preventing evasion of the foregoing provisions of this Act, no person shall without the licence of the Governor-General hold any property to which this section applies in trust for a non-citizen and any such property so held shall be forfeited to Her Majesty.

Any person who intentionally contravenes the provisions of this section shall be guilty of a misdemeanour punishable summarily by a Magistrate or on indictment, but the punishment on summary conviction shall not exceed a fine of five hundred dollars.

Nothing in this Act shall apply to a trust in favour of a non-citizen subsisting at the commencement of this Act.

In this section the expression "trust" includes any arrangement whether written or oral, express or implied, and whether legally enforceable or not, whereby any property to which this section applies or any interest therein or any rights attached thereto is or are held for the benefit of or to the order or at the disposal of a non-citizen; but does not include:-

- (a) The duties incident to a mortgage;
- (b) The duties of a satisfied mortgagee to the mortgagor, if within three months after satisfaction of the mortgage the mortgaged property is reverted in the mortgagor or his interest therein is extinguished;
- (c) The duties of a vendor to the purchaser pending payment of the purchase money, or after payment of the purchase money, if within three months after such payment the property sold is vested in the purchaser or his interest therein is extinguished;
- (d) The duties of a trustee in bankruptcy to the bankrupt or his creditors; or
- (e) The duties of a trustee for the purpose of any composition or scheme of arrangement for the payment of debts to the debtor of his creditors."

Section 15 of the Non-Citizens Land Act states:

"The provisions of this Act as to licences and the effect of breach of a condition in a licence shall apply to land, mortgages, shares and debentures intended to be held or held in trust for a non-citizen in like manner as it applies to land, mortgages, shares or debentures intended to be held or held by a non-citizen."

[14] I would also refer to the Limitation Act No. 8 of 1997 Laws of Antigua and Barbuda (the Limitation Act).

Section 5 of the Limitation Act states as follows:

"Where any cause of action in respect of the conversion of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion takes place, no action shall be brought in respect of the further conversion after the expiration of six years from the accrual of the cause of action in respect of the original conversion.

Where any such cause of action has accrued to any person and the period prescribed for bringing that action has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished."

Section 7 of the Limitation Act states that:

"An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."

Section 17 of the Limitation Act stipulates that:

"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

Section 23(1) of the Limitation Act states as follows:

"No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action:-

- (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- (b) to recover from the trustee trust property, or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

(2)(a) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of subsection (1) (b) to recover that property shall be limited to the excess over his proper share;

- (b) This subsection only applies if the trustee acted honestly and reasonably in making the distribution.
- (3) Subject to the proceeding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued. For the purposes of this subsection the right of action shall not be treated as having accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession."

Evidence

- [15] Mr. Providence testified on his own behalf. Mr. Little testified on his own behalf and called as witnesses Mr. Charles Jordon (Mr. Jordon) and Ms. Maryline St Luce-Thomas (Ms. St Luce-Thomas)

Mr. Providence's Evidence

- [16] Mr. Providence stated in his witness statement as follows:

"I am a businessman and I operate a pharmacy at Redcliffe Street known as Reliance Pharmacy. I am also the Landlord of premises situate at Nevis and Temple Streets. I know the Defendant, Elnathan Little. He and I grew up together like brothers in St Vincent. We were very close friends.

In the 1980's the Defendant was living in Trinidad and going through some hard times. He was a carpenter so I invited him to come to Antigua and I asked the contractor who was working on my building on Nevis Street to give him a job. He was paid by the contractor for the work done on the building.

During the first six months that the Defendant was living in Antigua, he lived at my home in Buckleys rent and expense free. My wife at the time expressed her displeasure of having him there and not contributing towards the expenses of the household. Sometimes when I am doing chores around the house, like cutting the grass he would come and assist me.

The Defendant left my home in Buckleys, about six (6) months after he came to Antigua, he then rented a house owned by the Contractor who was working on my building on Nevis Street and who was also his employer. I realized that the Defendant having to pay rent would be

difficult for him so I started looking around for a piece of land to buy and to build a house where he could live. Given our close relationship I thought it was the proper thing to do."

[17] Mr. Providence further asserted as follows

"I went to CHAPA and I was allocated a piece of land in Seaview Farm which I paid for in full on or around the 23rd day of June, 1988. The land is registered as Registration Section Central Block: 14 2088A; Parcel 117. I bought the material for the house and started the construction of which the Defendant contributed his skills as a carpenter. I also paid other workers to work on the construction of the house.

I used my own funds to purchase the land with no contribution from the Defendant. At no time did I indicate to the Defendant that I was purchasing the land for him or holding it in trust for him until such time that his status as a citizen is regularized.

After the completion, I allowed the Defendant to live in the house rent free as a licensee given our close relationship. During his period of occupancy at no time did I agree with the Defendant that he would have any interest in the house or land. He has lived in the house rent free until his status as a licensee was duly determined effective January, 31st 2004.

That I do not deny that the Defendant performed various odd jobs for me during 1989 and 1991 but on each and every occasion he was duly paid. I made no agreement to set off any money owed to him (which I deny ever owing him) against the property. There was nothing to set off since I paid him for all jobs which he did for me. In addition he has never made any claim prior to this that I owe him any money for any work that he has done for me and in any event I am advised that such a claim is statute barred, the same falling outside the limitation period of six years.

The Defendant never performed any landscape work for me at my house in Buckleys. Neither did he deliver any flour from my premises on Nevis Street on my behalf to bakeries around the island. He was paid for work done on the shelves at the pharmacy at Redcliffe Street and my premises at Nevis Street and for whatever other work he did at the pharmacy at Redcliffe Street. In 1991 the building on Nevis Street was flooded and he helped in the cleanup.

As to the farm situate at North Sound, the arrangement was that I financed it in full and the profit, if any, be shared two-thirds to me and one-third for the Defendant and one for Charles Jordon, who also worked on the farm. Both the Defendant and Charles Jordon worked full time with different contractors. They like me worked after the normal working hours

on the farm. I employed a labourer full time to work on the farm and he was paid by me. This was about 1992.

I tried selling off the meat from the cows which I purchased with the farm but there was a drought around that time and I lost quite a lot.

I had about 40 pigs at Cassada Gardens prior to starting the farm. When I started the farm I purchased the stock – 67 cows from the previous owners of the farm. I took over the lease from them. I paid a total of \$75,000.00. I expended money in stocking the farm with livestock (inclusive of goats, sheep, ducks, and fowl). I fenced the farm which costs me about \$25,000.00 I purchased a pickup for the use of the workers (including the Defendant and Charles Jordon) for \$20,000.00 and paid to maintain it, including providing petrol. I purchased all the feed and paid a backhoe about \$80,000.00 for clearing the farm.

Sales of meat were made between 1992 and September, 1995 which could not cover the costs of operating the farm. The feed for the animals was imported from St Vincent and whatever sales were made could not even cover the costs of the feed. The Defendant is well aware of this since he was keeping record of the same. He made no financial contribution towards the operation of the farm.”

- [18] Learned Counsel Mr. Marshall Jnr cross examined Mr. Providence at length and he admitted that Mr. Little was his close friend and that when Mr. Little came to Antigua and Barbuda he stayed with him, however after being there for a few weeks and not six (6) months as he had earlier stated, Mr. Little was forced to leave since his (Mr. Providence's) wife had a difficulty with Mr. Little being in her home. At this time, Mr. Providence was constructing a premises and Mr. Little who is a good carpenter worked on the premises. Mr. Providence said that it was his idea to get Mr. Little the land and he did that for Mr. Little's benefit. He approached CHAPPA for the benefit of Mr. Little. He purchased the materials that were used in constructing the house and he did all of that because at the time their friendship was strong. Mr. Little worked on the construction of the house and was not paid since all of that was done for his (Mr. Little's) benefit. They did not enter into a tenancy or lease agreement since he caused the house to be built for the benefit of Mr. Little. The house was built by Mr. Little to his own likeness and Mr. Little treated it as if it were his own property. He agreed that the arrangement they had was to help Mr. Little so that Mr. Little would not have had to pay rent. Mr. Providence vehemently denied ever having any arrangement with Mr. Little in relation to the beneficial interest in the property.

It is untrue that he went forward and purchased the property in his name for the sole benefit of Mr. Little.

[19] He however admitted, during further cross examination by learned counsel Mr. Marshall Jnr. that while Mr. Little was in Antigua he did several odd jobs both on his (Providence's) home and on two pharmacies that he owned but denied that Mr. Little was not paid for all of the jobs that he had done. Mr. Providence later accepted that Mr. Little performed carpentry for him but not on a regular basis but maintained that he had paid Mr. Little for all the work he had done for him.

[20] In relation to the farm, Mr. Providence maintained that it was all his idea to start the farm and he acquired the property in his name for the benefit of himself, Mr. Little and Mr. Jordon; however, this arrangement was very different from the one he had in relation to the property. Mr. Providence agreed during further cross examination that Mr. Little and Mr. Jordon were to have a beneficial interest in the farm but not one-third of the livestock. He purchased the land and spent his money to purchase some of the livestock, material and feed. Mr. Jordon and Mr. Little contributed their labour to the farm in managing it and butchering animals and selling the produce. On completion of the sales they gave him all of the money. It is untrue that he provided no accountability to them; rather on each occasion that he spent money he informed them accordingly. He denied that they obtained \$100,000 from the sales which was handed over to him. Mr. Providence maintained that he spent approximately ECM\$1,000,000 (one million dollars) on the farm. He has been a successful businessman for over 30 years. He agreed that from 1992 – 1993 the farm had produced many animals and sales of livestock were had since the farm was managed by him with the assistance of Mr. Little and Mr. Jordon. The hurricane in 1995 destroyed the farm and many of the animals on the farm were killed. The farm was relocated; both Mr. Little and Mr. Jordon helped him to relocate the farm.

[21] Mr. Providence said that when monies were expended he kept no records rather it was Mr. Jordon who was responsible for keeping the records. Everything the farm produced was turned into cash and the moneys were given to him. He admitted that Mr. Little, Mr.

Jordon and himself fell out over money. The farm has 'produced' many animals that were born on the farm. Mr. Little and Mr. Jordon are insisting that they are entitled to one-third of all of the animals that were born on the farm. He provided Mr. Jordon with accounting which indicated that the farm made no profit even though he did not state this in his witness statement.

[22] Originally, he denied that he tried 'to get' Mr. Little out of the house, he later said that himself and Mr. Little stopped speaking since 1995 and he took steps to recover the house from him, and the steps were ignored by Mr. Little. While he always asserted that the house belonged to him, nevertheless Mr. Little always occupied the house as if it were his. Mr. Providence said that there were two proceedings prior to this, one in 1998 and another one.

[23] During re-examination by learned counsel Mr. Hamilton Snr, Mr. Providence insisted that he was unable to give either Mr. Little or Mr. Jordon any moneys since he had made no profits. He had incurred lots of expenses in running the farm including fencing it, purchasing a backhoe and feed for the animals. When the hurricane struck in 1995 the farm suffered tremendous losses. He admitted that around 2004 he sold the livestock that remained on the farm and kept the proceeds. He suffered "heavy losses" from the closure of the farm in 2004.

Mr. Jordon's Evidence

[24] Mr. Jordon in his witness summary stated as follows:

"I worked with the Defendant in Trinidad prior to him moving to Antigua in 1989. I subsequently joined him in Antigua in 1990. At the time he was living in at Seaview Farm on property which he explained his friend, the Claimant has assisted him in acquiring in exchange for him working off the amount owed.

The Defendant allowed me to live with him and arranged for me to work for the Claimant as well. The Claimant was the agent for flour out of St Vincent at the time and we assisted him with deliveries. We also looked after his properties at Crosbies and Buckleys doing landscaping and repairs as needed.

We were not paid for most of the jobs as I understood that the Defendant was working off a debt to the Claimant for the property where he lived. As I lived there rent free I did not complain, we did other jobs which allowed us to get by paying the bills and putting food on the table.

In early 1992 we entered into a partnership agreement with the Claimant with respect to the farm to be divided one-third to the Defendant and myself and two-third to the Claimant. By this time the Defendant estimated that he had already repaid his debt to the Claimant for the property particularly as we had began receiving payment for some of the jobs we did.

At the time a Mr. Browne had over 60 acres of land at North Sound which he leased from the Government and was about to give up the lease. The Defendant and I identified 10 acres out of the 60 which we felt were suitable for the farm and had it surveyed. The Claimant then leased the 10 acres from the Government. He also purchased 70 heads of cattle from Mr. Brown in addition to goats, sheep and pigs."

[25] Mr. Jordon further said in his witness summary as follows:

"The Defendant and I prepared the farm for the animals by building pens with material provided by the Claimant. We also built a watchman house with our own material where the Defendant would overnight on the farm to ensure the safety of the animals.

Once the farm was set up and running the Defendant undertook the role of primary caretaker for the animals and I would assist but mainly I was the butcher and in charge of filling orders for meat. We were also assisted by a Maryline St Luce who would often take orders and assist us with sales and deliveries.

The monies generated from the sale of animals and meats were given to the Claimant to reinvest into the farm. We have never taken any proceeds as we felt the farm was a joint effort which we would all jointly benefit from in the long run.

In September 1995 the farm was devastated by the passage of hurricane Luis. We loss over 500 animals and the pens were all destroyed. The Defendant and I were able to salvage some of the material and upon the suggestion of the Claimant we relocated all the pens to higher ground to avoid future risk of the animals drowning. Thereafter we continued operating the farm as we did prior to the hurricane until sometime in or about 1998 when the Claimant appeared to take all steps in his power to remove us from the farm.

We even received a letter from Lawyer Trevor Kendal indicating that we were no longer committed to the farm. This came as a great surprise as we have put all our spare time into that farm since we started in 1992. Both the Defendant and I had been employed full time but were dedicated to the progress of the farm.

We operated the farm from 1992 through 1998 but were never paid a salary or took any money from the proceeds of sales as we were relying on our agreement with the Claimant and expected we would all benefit.

During our operation we sold over \$100,000.00 worth of produce of which we are entitled to one-third. We are also entitled to one-third of the value of the animals which remained on the farm in 1998 when we were deprived of our interest."

[26] Mr. Jordon was cross examined by Mr. Hamilton Snr and he confirmed that around 1992, himself, Mr. Providence and Mr. Little started a farm. Mr. Providence provided all of the finances for the farm and he (Mr. Jordon) was responsible for the accounts. He was involved in selecting the land on which the farm was situate. He recalled that initially, Mr. Providence had rented a backhoe in order to clear the land and that he (Mr. Providence) subsequently purchased a backhoe. He recalled that the backhoe that Mr. Providence bought would have cost approximately \$US\$15,000. The accounts that he kept were revenue and expenditure accounts. The farm purchased feed from Saint Vincent and the Grenadines. Animals on the farm were sold and the monies that were realized were used to purchase the feed. In his estimation, on a weekly basis the farm realized approximately \$3,000 to \$4,000 from sales. While the farm started with approximately 5 pigs owned by Mr. Providence, by 1992 the farm had over 800 goats and sheep. The pigs were increasing rapidly for example, "one mother pig give birth to 15", there were 300 pigs in 1992. Mr. Jordon admitted that Mr. Providence had fenced the property and that he had purchased 60 cows. The cows and land cost \$70,000 even though Mr. Providence had never provided him with a receipt he did inform him of these costs. Mr. Providence bought the materials that were used to fence the farm and he (Mr. Little) provided the labour.

[27] During further cross examination by learned counsel Mr. Hamilton Snr Mr. Jordon was showed records which he admitted to having authored and he agreed that they do not reflect any sales in excess of \$3,000. He was adamant that Mr. Providence had expended

approximately \$70,000 to start the farm. There was an agreement between the parties that he and Mr. Little together were entitled to one-third of the livestock born on the farm even though it was not discussed as to whether this was to have been before or after the expenses were deducted. The arrangements that they had spoke of no profits. He stated that after the hurricane had struck there was only one pen left on the farm which they had to re-construct. In fact, they had to relocate the pen on the higher part of the land due to the flooding. He maintained that after the hurricane some of the animals were salvaged and that himself and Mr. Little were entitled to one-third of the animals that were on the farm and which had survived the hurricane.

- [28] During re-examination by Mr. Marshall Jnr. Mr. Jordon stated that while he was in charge of the accounts, he only took care of the sale of animals and what passed through his hands.

Ms. St Luce-Thomas' Evidence

- [29] Ms. St Luce-Thomas in her witness statement said as follows:

"I know both the Claimant and the Defendant as well as Charles Jordon. I initially met Mr. Jordon in 1991 and subsequently became involved with him. In 1992, I move into the house he shared with the Defendant at Seaview Farm. Shortly thereafter the Defendant and Mr. Jordon formed a partnership with the Claimant for the farm at North Sound.

At the time, both Little and Jordon were in full time employment. Although I was not invited to attend their meetings it was apparent to me from observation what their respective roles were. The Claimant seemed to have financed the farm while the Defendant and Mr. Jordon fenced the land and built the pens for the animals. The Defendant also built a little guard house on the farm where he slept and would spend most of his free time tending to the animals and ensuring their safety. Mr. Jordon's responsibilities included slaughtering and sale of the animals although he would assist the Defendant with the care of the animals as well.

Due to the demands of the farm it became necessary for me to assist Mr. Jordon and the Defendant. Every week between Thursday and Friday I would call customers to take their orders of pork, mutton, goat and at times beef and based on the orders Mr. Jordon together with the Defendant and sometimes the Claimant would decide how many animals to slaughter.

On Saturdays Mr. Jordon and I would go out to do deliveries driven by the Defendant. Mr. Jordon was the butcher and sales person and I the cashier. This process usually took us all day ending approximately 530pm after which we returned to the farm to care for the animals.

Even Sundays were spent on the farm. This cause some problems in our personal lives as we had little or no time to ourselves and I felt that there was no benefit or reward for all the hard work, whether financial or otherwise, just a mere promise or agreement that the Defendant and Mr. Jordon would benefit or be entitled to one-third of the animals born on the farm.

As money was raised from the sale of the animals it was handed to the Claimant for injection into the farm by way of food and medicine for the animals and the general up keep of the farm."

[30] Mrs. St Luce-Thomas further stated that:

"Between 1992 and 1998 the animals originally purchased when the farm was started were either slaughtered or were lost in Hurricane Luis which devastated the farm in 1995. What remained were the animals which had been born on the farm and the Defendant and Mr. Jordon relocated and rebuilt the pens after the hurricane so that the farm could continue its operation. Their role and responsibility remained the same and I can only assume their arrangement with the Claimant did as they continued to hand the proceeds of sale to him to be injected into the farm.

A few years after the hurricane the Claimant's attitude changed and there appeared to be some dispute as a result of which he no longer wanted the Defendant or Mr. Jordon operating the farm. There were several confrontations which were mostly focused around compensation for the operation of the farm according to their agreement but it became obvious to me that the Claimant did not intend to compensate them. Mr. Jordon and I parted ways in or about 1999."

[31] Ms. St Luce-Thomas during cross examination by Mr. Hamilton Snr stated that she assisted Mr. Jordon with the farm and in this regard she dealt both with the sales of the animals and the farm itself. From her observations, she came to the conclusion that Mr. Providence had provided the financing for the purchase of the animals. He used the monies and bought the feed for the animals and the medicine that was given to the animals. There were lots of sheep, pigs and goats on the farm but after the hurricane a lot of the animals were destroyed. She was however working on the farm during the period when many young ones were born and some of the animals were slaughtered. She was of

the view that almost all of the animals that remained on the farm after the hurricane were born there even though she did not know how many animals remained on the farm after the hurricane.

Mr. Little's Evidence

[32] I am of the view that it is necessary to state Mr. Little's evidence in detail.

Mr. Little in his witness statement said as follows:

"I left Trinidad in 1998 for Antigua. Ken met me at the airport and took me to his home in Buckleys where I met his wife and two children. I initially stayed there with Ken and his family for approximately two weeks before it became apparent that alternative arrangements would have to be made as I could not be expected to remain a guest in Ken's home on a long term basis. Ken indicated that he was already a land owner so it was unlikely he would be eligible for any more and that I would not yet qualify. But he accompanied me to Mr. Humphreys, who was the Minister of Agriculture, Land and Fishery at the time, to attempt to get a piece for me; this was in or about May 1998. He assured me that he would "set me up"

Ken and I went to see Mr. Humphreys as promised to discuss the land issue. I was introduced to Mr. Humphreys and we had a brief conversation then Ken and Mr. Humphreys worked out the details with respect to the land and I was told that the procedure would take a while.

In the meantime Ken had arranged for me to stay in a small house in the yard to a Tekkie Samuel in All Saints. While staying in All Saints Ken informed me that he had obtained a piece of land in Seaview Farm for me at the cost of \$4,500.00 being the subject property in these proceedings more particularly described in the Land Registry as Registration Section: Central Block: 14 2088A parcel: 117. The said land was initially registered to Ken as he explained I was not eligible to hold land in Antigua at that time.

Ken took me to see the land and asked me to provide him with a list of the materials I would need to build a house for myself on the said land. I prepared a list as requested and gave it to Ken. He then gave it to his friend Nisbett who traveled to Puerto Rico regularly to purchase material for sale in Antigua.

I received the materials, built a house on the land and moved in all in or about 1988. Ken had given me the receipts for the material which totaled \$18,000.00 I enquired of him what the arrangement for the land and material would be as he financed them. I was told that I would have to do work for him from time to time to repay him and once I became eligible

and had repaid him the land would be put in my name. The receipts were subsequently destroyed by Hurricane Hugo in 1989."

[33] Mr. Little further stated as follows:-

"I also began paying the land tax shortly after it was acquired. The tax documents initially came in Ken's name until sometime in or about 1999. For one year thereafter nothing came then in 2001 I notice that the tax documents were coming in the name of Hyacinth Burton. I was not sure what that meant or why the name had been changed but at the time Ken and I were involved in a dispute so I did not pay any further tax as I felt Ken was being malicious.

As agreed I worked for Ken doing odd jobs such as landscaping at his Crosbies and Buckleys properties, repairs to his home at Buckleys following Hurricane Hugo, carpentry and repairs for his business property in Nevis Street. This went on between 1988 and 1992 and I was never paid a cent as I understood the arrangement to be that I was repaying him for the Land and material used to build my home at Seaview Farm.

Sometime in or about 1990 I was joined by Mr. Charles Jordon, a friend I had worked with in Trinidad. He came to live with me and I explained the arrangement I had with Ken to him. As a result he agreed to assist as his contribution for living there. Much of the work I did for Ken between 1990 and 1992 was done with the assistance of Charles Jordon.

The jobs performed totaled \$23,000.00 in value.

I assume that Ken was then satisfied that he had been repaid for the land and material as I subsequently received payment for jobs done totaling \$6,500.00 and including painting and tiling the store room at Nevis Street and repairs to the porch of the house at Crosbies following the passage of Hurricane Lenny. In my mind the only outstanding issue was the transfer of the land to me."

[34] Next, Mr. Little said that:

Sometime in or about January 1992 Ken approached both myself and Mr. Jordon for assistance in starting a farm. We agreed that Ken would provide the financing for the farm and Mr. Jordon and I would run it. We also agreed that one-third of the value of the animals born on the farm would be shared between myself and Mr. Jordon and that Ken would take the benefit of the other two-thirds.

In preparation for starting the farm we visited a few farms including the Abbots farm and Vat ton's Farm to observe the operations. We also

visited a number of potential sites for the farm including lands in Bethesda, Pares and North Sound.

We all agreed that the land at North Sound was the most suitable for the farm. Ken initially sub-leased 10 acres from a Mr. Browne who had a lease of approximately 60 acres from the Government. The land was surveyed by a Mr. Dennis in the presence of Mr. Jordon and myself. We started the farm with some goats, sheep and pigs which Ken had purchased while Mr. Jordon and I fenced the land and built pens for the animals. Ken was subsequently able to obtain a lease over the remaining land which Mr. Brown held. Ken also purchased seventy heads of cattle from the said Mr. Browne.

I also built a small guard house on the farm which I would spend most of my nights and free time tending the animals and ensuring their safety. Mr. Jordon also assisted in tending the animals but his major role to slaughter the animals for sale based on the orders we received weekly.

At the time both Mr. Jordon and I had fulltime jobs in construction at Gortory Engineering and Geotech respectively, therefore we were assisted by Maryline St Luce who would take the weekly orders of pork, mutton, goat, and beef at times and based on those orders Mr. Jordon would slaughter. Ms. St Luce would also accompany us making deliveries and accept the monies as the meat was sold.

Records were kept of the orders taken and the animals slaughtered and sold and all the monies were given to Ken for re-investment into the farm by purchasing supplies such as feed and medicine for the animals.

Shortly after we started operating the farm it was decided that we would focus on the goats and sheep so Mr. Jordon slaughtered and sold all of the cattle and pigs which Ken had initially acquired when we started.

The farm was devastated by Hurricane Luis in 1995. We lost quite a bit of the animals and the pens were destroyed. We all discussed the way forward and it was decided that we would move the pens to higher ground. Mr. Jordon and I re-used the salvageable material to rebuild the pens and get the farm up and running again. Mr. Providence suggested that we use some of the galvanize to cover the pens as most of the damage had been from flooding. Thereafter the operation of the farm continued as it was prior to the hurricane. I had even purchased a few local pigs of my own which I raised on the farm with Ken's knowledge.

During the period April 1992 through August 1998 Mr. Jordon and I worked the farm for the benefit of Ken and ourselves without taking a cent until August 1998 when we were unceremoniously removed from the farm by calculated, malicious acts of Ken. The relationship between myself

and Ken began to turn sour following my refusal steal other people's animals. I also frequently expressed my disapproval when Ken himself would do that as he would even lie to persons indicating he had not seen their animals when he knew he had taken them and penned them on the farm."

[35] Further, Mr. Little said as follows:

"As a result, things went down hill as I had seen him in a different light and it seemed we could no longer see eye to eye. Ken subsequently made many attempts to get me to leave the farm including throwing "cowich" on my bed which caused severe itching, causing chemical to be poured unto my bed in the guard house which resulted in severe skin irritation, breaking all the windows to the guard house where I slept, and locking me out of the guard house then reporting to the police that I had broken in. Ken had even resorted to poisoning my pigs which was reported to the police and an autopsy was carried out but the investigation did not seem to go anywhere much like all the reports I made of Ken's actions mentioned above. I lost one sow and nineteen piglets as a result.

All of our attempts to secure payment for our contributions to date have been unsuccessful. There have been many broken promises to compensate us and on one occasion Ken offered to give us the property at Seaview Farm for our share in the farm. I refused his offer as we had already had an arrangement for that property and I felt that Ken was taking advantage of us. I then indicated to him that at the very least we should be paid \$150.00 per week for the duration of our operation but he refused and said he would rather see us get nothing.

Although we are unaware what Ken has done with the animals which remained on the farm as at August 1998 we can only assume that they have been sold. I am aware, however, that we had sold in excess of \$100,00.00 worth of livestock between 1992 and 1998. We had caused some 800 goats to be born on the farm of which 300 were in kid as at August 1998. I therefore estimate that Mr. Jordon and I are entitled to the following:

1/3 of the livestock sold between 1992 and 1998	\$33,333.00
1/3 of the livestock not in kid as at August 1998	
Being 311 goats at \$250.00 per goat	25,916.66
1/3 of the livestock in kid existing as at August 1998	
Being 300 goats at \$300.00 per goat	<u>\$30,000.00</u>
Total	<u>\$89,249.99"</u>

[36] Mr. Little during cross examination by Mr. Hamilton Snr. stated that he did not receive a notice to quit and was not served either with the amended notice to quit. He, however, had

received a hand written letter from Mr. Kendall in 2002. He maintained that he did the construction on the house pursuant to the agreement he had with Mr. Providence and denied that he did the work because he understood that Mr. Providence had wished to assist them. The agreement that he had was that Mr. Providence would have purchased the land and material and that he would have worked and repaid Mr. Providence by providing him with the labour. He lived at Mr. Providence's home for approximately (two) 2 weeks and after that period of time Mr. Providence told him that his wife did not agree for him (Mr. Little) to remain there so he had to seek alternative accommodation. In relation to the house which he eventually constructed, Mr. Little denied that Mr. Providence provided any of the labour. In fact, Mr. Little stated that he obtained the assistance of neighbours in the construction of the house. The house is 20ft by 24ft and has three bedrooms; it is also built of wood. He has been living in the house from September 1988 to the date of the trial. It was always their common intention that Mr. Providence would have eventually transferred the property into his (Mr. Little's) name.

[37] Mr. Little admitted that during the period when he was living in the house he worked on several jobs. He maintained, however, that, he built a lot of shelves for Mr. Providence at the latter's pharmacy. In fact, Mr. Providence owns two (2) pharmacies one in Nevis Street and the other in Redcliffe Street. When he first came to Antigua, Mr. Providence did not have the pharmacy on Nevis Street so he worked on that pharmacy from "its inception". When he had completed the shelves, he told Mr. Providence that "it would cost \$20,000 but that from him it would cost Mr. Providence \$3,000." He maintained that he provided landscaping services to Mr. Providence and helped him to set up the iron frames. He maintained that in 1988 he did a lot of jobs for Mr. Providence and was not paid and that this was in breach of the arrangement which he had with Mr. Providence.

[38] In relation to the farm, the arrangement with Mr. Providence was for himself and Mr. Jordon to be given one-third of the livestock that was born on the farm and not one-third of the profit. He admitted that he was aware that the cattle were being sold; yet, he never told Mr. Jordon that the time had come for them to seek to obtain their one-third of the animals that were sold. In August 1995 the livestock count on the farm numbered 600 and

after the hurricane about $\frac{3}{4}$ of the animals had perished. However, after the hurricane there were approximately 100 animals remaining. He denied ever telling Mr. Providence that it no longer made any sense for them to continue the farm and this is why the relationship ended. The relationship broke down because Mr. Providence was slaughtering the neighbour's animals and this did not find favour with Mr. Little.

Mr. Hamilton's submissions

[39] Learned Counsel Mr. Hamilton Snr said that he intended to deal with the evidence in the following manner:

- (a) The acquisition of the land and house;
- (b) The allegation of the Defendant that he did jobs for the Claimant;
- (c) The partnership relating to the farm.

[40] Mr. Hamilton Snr. stated that Mr. Providence purchased a parcel of land (Parcel 117; Block 14 2088A, Registration Section Central) from CHAPA. He bought the material for the construction of a wooden chattel house and according to him; Mr. Little who was a carpenter contributed his skill, as such, in building the house. There is no dispute as to these basic facts. Mr. Providence also claims that he paid other workers to work on the construction of the house, which is disputed by Mr. Little. The nub of this issue is the question whether Mr. Providence holds this house and land on trust for the sole benefit of Mr. Little. Was there any agreement between the parties that the house and land were acquired for the sole benefit of Mr. Little? Mr. Hamilton submitted that it is necessary to go to the pleadings in this matter to ascertain how Mr. Little puts his case. Mr. Little has pleaded that there was an oral agreement that Mr. Providence would assist him in obtaining the land and house and Mr. Little would work for Mr. Providence to repay the cost of the land and materials. Mr. Little has pleaded further, that Mr. Providence would transfer the property to his (Mr. Little's) name when he, being a non-national became eligible to acquire land in his own name. Mr. Hamilton therefore advocated that the agreement alleged by Mr. Little in relation to the property is unenforceable and/or illegal being an attempt to evade the Non- Citizen Land Act.

[41] Learned Counsel Mr. Hamilton Snr. further stated that it is clear from the above that the transaction (alleged) is far from gratuitous. It is work for land and house. In cross examination Mr. Providence sated that when he approached CHAPA he did so for Mr. Little's benefit "as when he put his hand in his pocket" and purchased the materials. There were things he did for the benefit of his friend. That after the building was erected Mr. Little occupied the structure. Mr. Hamilton Snr. submitted that "benefit" as used to Mr. Providence and understood by him is not benefit in the legal sense of beneficial interest, but benefit in terms of assistance. Both parties were good friends. Mr. Providence invited him to Antigua where there was work. Mr. Little found employment on Mr. Providence's building. He lived for a time with Mr. Providence until relations with Mr. Providence's wife became strained. Mr. Providence found rented accommodation for him in All Saints. At that time (1988 – 1989) it is clear that out of friendship, Mr. Providence lent him every assistance which included providing him with place to live in. Mr. Hamilton Snr. submitted that at no time did both parties agree that Mr. Little would own or be given the house if he did work for Mr. Providence. He adverted the Court's attention to the fact that, in cross examination, Mr. Little had stated that he worked on the premises because of their agreement. "I would repay him by doing work for him. The work was supposed to be odd jobs. These odd jobs would arise from time to time over the years". Is it really realistic that two of them prior to the acquisition of the house would sit and agree that the cost would be defrayed by Mr. Little from time to time over years by dong odd jobs? What were the costs? What value was to be placed on such odd jobs from time to time over years? These are questions Mr. Hamilton asked.

[42] According to Mr. Little from the time he arrived in early in 1988 he was employed with Teekie Samuel, Mr. Providence's contractor. When he left Mr. Providence's house, it was he (Mr. Providence) who arranged for him to stay in a small house owned by Teekie. Teekie paid Mr. Little weekly and his employment continued with Teekie. The house that was eventually (constructed) was a three-bedroom house with living room and kitchen. Mr. Little would have us believe that he alone built it (during a period when he was employed weekly with Teekie) and that he only had help a couple of times. The odd jobs which form a part of this arrangement as narrated by Mr. Little comprised of cutting Mr.

Providence's grass every other week at a cost of \$60.00 per week which he claims that he told Mr. Providence was the cost. Mr. Providence on the other hand stated that he never worked for him week after week, month after month and quite clearly so as he had full time employment with Teekie Samuel. Unflinchingly, Mr. Providence stated ".....that Mr. Little did odd jobs on his house" and on his two business premises and as he would help him cut the grass on a weekend and that he paid him for all that he had done." It is passing strange that if what Mr. Little alleges was that agreement that he did nothing for over 10 years to press his claim as to the ownership of the house and land. He had up to at least until August 1988. Most of the work he acknowledged was done in and around 1988 – 1989. He claims \$7,000.00 for landscaping. How does this figure translate into so many weeks at \$60.00?

- [43] Next, Mr. Hamilton Snr. submitted that based on the evidence it is clear that in August of 1998 the relationship between the parties came to an end. It was acrimonious. There were Court proceedings. Trevor Kendall, the Attorney for Mr. Providence in the Court proceedings, sent a Notice to quit the premises to Mr. Little and Charles Jordon on or about 19th October 1998. This was infact a second notice (the first had an error thereon). Mr. Little claims not to have received either notice. The Court is asked to note the letters and affidavits from page 61 – 85 and ask whether such could ever be the case. In fact, that notice to quit is listed in Mr. Little's list of documents. Mr. Hamilton Snr. therefore submitted that the occupation by Mr. Little of the house was entirely permissive. Mr. Little resided in the house primarily because Mr. Providence was assisting him. That there clearly was no agreement in the terms alleged by Mr. Little. He assisted in the construction of the house, that is agreed, but he has had the benefit of living in the house rent free from 1988 to present time. Mr. Hamilton Snr. submitted that the account of Mr. Providence is to be preferred since he was the more truthful of the witnesses.

Farm

- [44] Turning to the farm next, Mr. Hamilton stated that in the year 1992 Mr. Little and Jordon went into livestock farming in partnership. It was done this way: Mr. Providence acquires

a lease firstly of 10 acres, then the entire 68 acres of land at North Sound. He acquired cattle and he brought pigs which he had owned and kept elsewhere to the farm. He had the land fenced in its entirety, he had concrete pens built. The farm was then stocked with goats and sheep some of which were imported from abroad. A building was erected which served as a storeroom and dwelling. He bought all of the equipment for the farm, including a backhoe and a motor pickup. Mr. Providence estimated his investment cost to be over one million dollars (EC\$1,000,000.00). In rebuttal Mr. Little says that he only invested \$200,000. It is also clear that feed stock had to be imported. All of the witnesses agreed that it was Mr. Providence who had provided all of the finance. All agreed that the parties to this farming endeavour worked on the farm in their spare time. Indeed, it was said that Mr. Providence spent a lot of time on the farm. The disagreement between Mr. Providence and Mr. Little relates to the exact terms of the partnership. According to Mr. Providence what was agreed was that the profits of the farm after expenses would be divided two-thirds to Mr. Providence and one-third to Mr. Little and Mr. Jordon. On the other hand, Mr. Little said that the agreement was that he and Mr. Jordon would have been entitled to one-third of all livestock born on the farm, this Mr. Hamilton Snr. submitted is strange and unusual, bearing in mind that Mr. Little kept his own pigs at the farm. He had 27 piglets and 10 big breeders at one point on the farm. Was Mr. Providence entitled to two-third of the progeny of Mr. Little's pigs? Mr. Hamilton Snr. therefore submitted that on the evidence the better view is that of Mr. Providence.

- [45] Next, learned counsel Mr. Hamilton Snr advocated that it is agreed by all of the parties that the farm suffered a devastating catastrophe in September 1995 (Hurricane Luis). Most of the stock was lost and the pens were destroyed. Prior thereto, Mr. Little claimed that roughly \$100,000 was handed over to Mr. Providence from the sales of meat. Yet Mr. Little also claimed that the day to day cost of running the farm was met by revenue obtained from the sales, including the weekly wages of the farm hand. Because of differences over the farm following its devastation the partnership came to an end in August 1998 and Mr. Little initiated Court proceedings High Court Suit No. 364 of 1998 this suit was either dismissed or abandoned. The claim was not pursued until the 12th May, 2005 when Mr. Little made it a part of the proceedings relating to the land and house

at Seaview Farm. Mr. Hamilton Snr. submitted that the cause of action arose in August 1994. The partnership was formally brought to an end on October 5th 1998 by letter from Attorney Trevor Kendall. The Counterclaim was filed (6) years and seven (7) months later. Counsel submitted that the conjoint effect of sections 7 and 25 of the Limitation Act renders Mr. Little's claim time-barred. Mr. Hamilton Snr. stated that although Mr. Little's claim is founded on a contractual agreement the claim is framed in trespass (conversion) and trust. By section 5(1) the time limit for conversion is six (6) years and by subsection (2) of the said section the title of Mr. Little to any of the livestock (if any) is extinguished. The same may be said of the claim in trust; Section 23(3) prescribes a period of six (6) years as the relevant limitation period.

[46] Mr. Little has also in the alternative claimed the sum of \$10,000.00 being the figure he has put on the value of his carpentry work on the house and the sum of \$23,000.00 being the value of the odd jobs. The evidence with respect to the former was that the work was performed by September 1988 (notwithstanding he has had rent free occupation) and in respect of the latter by 1991. It is quite clear that as of August, 1998 no relationship existed. These two sums are statute barred under section 7 of the Limitation Act.

[47] In addition, Mr. Hamilton stated that promissory estoppel was not pleaded by Mr. Little. He pleaded contract in relation to the property. No proprietary estoppel arises on the facts of this case. The evidence here is that of agreement: you fund the house and I will perform odd jobs over the years. Mr. Providence provided the capital for the land and house, Mr. Little did not act to his detriment, nor has he pleaded such as he has had the use of the house rent free as a licensee. Additionally, Mr. Hamilton Snr. argued that Mr. Providence made a representation as to the future conduct (not pleaded) which was relied on, there has been no detriment. Mr. Little gave of his labour because he knew that he would have the benefit of living in the house rent free, not because of being barred from acquiring land under the Non-Citizens Land Act, he relied on a promise by Mr. Providence to transfer the land some time in the distance future in return for performing odd jobs. At no time did Mr. Providence make any representation to Mr. Little. The act of permitting Mr. Little to reside

in the house rent free as a licensee could not be transformed into a representation that he would transfer the legal title to him sometime in the future.

- [48] Finally, Mr. Hamilton submitted that for all of the reasons set out above that Mr. Providence are entitled to an order for possession of the property as he is by reason of having provided the purchase price entitled to the legal and beneficial ownership of the same. Further, Mr. Hamilton posited that since Mr. Little's licence to occupy the house was terminated as of February 1st 2004, Mr. Providence is entitled to obtain mesne profits from him with effect February 1st 2004 to the date of Judgment.

Mr. Marshall's submissions

- [49] Mr. Hugh Marshall Jnr stated that the issues which arise in the case at bar are as follows:

- (a) Whether Mr. Little's counterclaim is statute barred;
- (b) Whether Mr. Providence is the rightful owner of the property;
- (c) Whether or not Mr. Little is entitled to half of one-third of the value of the livestock on the farm during the period April 1992 through August 1988;
- (d) Whether Mr. Little is entitled to claim loss and damage;
- (e) Whether Mr. Little is entitled to damages for breach of trust and for trespass to goods;
- (f) Whether Mr. Providence is entitled to damages and to what extent;
- (g) Whether Mr. Little's counterclaim is statute barred.

- [50] Learned Counsel, Mr. Marshall submitted that no period of limitation is prescribed by the Limitation Act No. 8 of 1997 of the Laws of Antigua and Barbuda in respect of the recovery of trust property or its proceeds by a beneficiary from the trustee. He therefore submitted that Mr. Little's claim for one-third the value of the livestock on the farm during the period April 1992 through August 1998 is not statute barred. Further, Mr. Little has also claimed the value of work done for Mr. Providence's benefit in the alternative to a declaration that

he, (Mr. Little) is the owner of the property. Mr. Marshall submitted that this claim hinges upon Mr. Providence's claim to possession of the property given that, as Mr. Providence puts it in cross examination, Mr. Little personally constructed the house as he wanted it and "has lived there since 1988 rent free as if it was his own". Further, it is useful to note that the preceding statement was "our friendship was strong at the time and I put my hand in my pocket to purchase material for him [the defendant] to construct a house for him to call home." All of this was said against the backdrop that Mr. Providence bought land and material to assist his friend, that it was all for Mr. Little's benefit.

- [51] Mr. Marshall Jnr. next said it is Mr. Little's evidence that there existed an agreement that he (Mr. Little) would repay Mr. Providence by doing work for him, for which he received no remuneration. By virtue of Mr. Providence now seeking possession of the property he has breached that agreement and Mr. Little therefore claims a declaration that he is the rightful owner of the property or in the alternative Mr. Little claims the value of the work carried out for the benefit of Mr. Providence which was to have been applied to the repayment of Mr. Providence being \$23,800, in addition to the value of his labour for the construction of the house being \$10,000.00. Mr. Marshall Jnr. therefore submitted that by virtue of section 23 of the Limitation Act the counterclaim of Mr. Little is not barred by statute. Alternatively, the commencement of time with respect to the monies claimed is as at the 22nd day of December 2003 when Mr. Providence sought possession of the trust property, therefore that claim, too, is valid and representing the value of Mr. Little's contribution to the trust property.

Whether Mr. Providence is the rightful owner of the property?

- [52] Mr. Marshall Jnr. stated that having crossed the hurdle of limitation he then addressed the issue of the ownership of the property. Mr. Little contends that he is the rightful owner of the property. Mr. Marshall Jnr. said that Mr. Little seeks to establish that he has a beneficial interest in the property which Mr. Providence holds upon trust for him. Such a trust is described as a constructive trust which is defined in **Bannister v Banister [1948] 2 ALL ER** as one which is held by a person in circumstances which would be inequitable to allow him to assert full beneficial ownership of the property. Mr. Marshall Jnr. stated that

the law stipulates that there must be evidence of a common intention as a result of which the Defendant being the party asserting the trust herein, has acted to his detriment: He referred the Court to **Gissing v Gissing [1970] 2 ALL ER 780**. Mr. Marshall Jnr. submitted that the evidence of both parties support the existence of a shared intention that the acquisition of the property was from the onset for the benefit of Mr. Little. This is clear throughout the evidence of Mr. Providence who contends he was assisting a long time friend. It is consistent with the evidence of Mr. Little notwithstanding that Mr. Little contends that the arrangement was for Mr. Little to repay Mr. Providence through odd jobs done for Mr. Providence's benefit which he did to a value of \$23,800.00. Mr. Marshall Jnr. opined that it is therefore, left for Mr. Little to establish on the evidence that he has acted to his detriment

- [53] In **Grant v Edwards [1986] 2 ALL ER 426** Nourse L. described the second limb of the test as "conduct on which [he] could not reasonably have been expected to embark unless [he] was to have an interest in the said house." Mr. Marshall Jnr. said that Mr. Little's course of conduct is in keeping with the understanding which he contends he had in relation to the property, in that he was of the understanding that it was his and so acted, even by the admission of Mr. Providence in cross examination as stated in paragraph 2 above. There is other evidence which is consistent with the creation of a trust namely that Mr. Little constructed the house as he wanted it, he carried out odd jobs for Mr. Providence without remuneration all on the understanding that the property would be his. Mr. Little lived in the property from 1988 uninterrupted. By Mr. Providence's own evidence, Mr. Little lived in the house as if it were his own and "it was clear for all to see that he occupied as if he were owner". These actions indicate that Mr. Little has indeed acted to his detriment and that his contributions to the property are in fact of monetary value, it is on this basis that Mr. Little's claims to be the owner of the property which is held upon trust by Mr. Providence for the benefit of his (Mr. Little).

Whether or not the Defendant is entitled to half of one-third of the value of the livestock on the farm during the period April 1992 through August 1988?

[54] Mr. Little's claim in respect of the livestock on the farm during their period of joint operation is based upon a trespass by Mr. Providence. This is a trespass to goods which amounts to a conversion by the sale of the farm in 2004 and is accepted by Mr. Providence's own evidence upon cross examination and re-examination respectively. "Yes everything the farm produced has been turned into cash which has passed to me. My intention is to honour the agreement we have ..." The farm closed in 2004. I gave no money to Little or Jordon because there was no profit". Those statements are consistent with his statement at paragraph 16 of his witness statement". To the best of my knowledge the operation of the farm came to an end in 2004". By converting the farm to cash the obligation to pay Mr. Little and Mr. Jordon by extension, their agreed one-third interest in the farm arose. Mr. Marshall Jnr. next argued that Mr. Providence was always a trustee of Mr. Little's interest in the farm; this does not appear to be an issue as Mr. Providence openly accepts that there was a partnership between himself, Mr. Little and Mr. Jordon. Mr. Marshall said that the underlying issue is the basis upon which the interest of the parties is to be determined.

[55] Mr. Little contends that his interest and that of Mr. Jordon are the same being one-third as opposed to the interest of Mr. Providence being two-thirds. Mr. Providence contends that the arrangement was for one-third of the profit. The distinguishing position is whether the parties' interest was based upon profits. Mr. Providence would have the Court believe that it was and that the farm was completely unprofitable throughout its operation given the vast extent of his (Mr. Providence) investment. This contention is not supported by the evidence before the Court in that he clearly states that "I realized from the closure that I had heavy loses". However, Mr. Providence has not produced an accounting in relation to the farm's income and expenditure for any period of operation including prior to and subsequent to 1998 when Mr. Little and Mr. Jordon ceased joint operation of the farm with Mr. Providence. This certainly is telling of Mr. Providence's intention to honour the agreement. Mr. Marshall said that, notwithstanding the financial investments made solely by Mr. Providence, Mr. Little's investment of time and labour should be given consideration upon the liquidation of the farm as both Mr. Little and Mr. Jordon worked on the farm for a period in excess of six years without remuneration. Again, the evidence is that Mr. Little and Mr. Jordon upon understanding that they held one-third share in the farm's livestock

acted to their detriment. Mr. Marshall further submitted that the likelihood of the agreement being one-third of the profits is remote as Mr. Little's remuneration for time and labour would have been an expense to consider as were Mr. Providence's financial investments. In the circumstances, it is submitted that on the balance of probabilities, it would appear that the agreement was for one-third share of the livestock. Further, in the absence of any evidence to the contrary on the part of Mr. Providence the evidence of Mr. Little with respect to the value of the stock should stand.

Whether Mr. Little is entitled to damages for breach of trust and for trespass to goods?

[56] Learned Counsel, Mr. Marshall Jnr. posited that the evidence of Mr. Providence in cross examination is supportive of the fact that Mr. Providence has dealt with trust property in a manner contrary to the interest of Mr. Little and Mr. Jordon, as beneficiaries, in that he has converted the trust property to cash by sale of the farm and its livestock without the authority of Mr. Little and Mr. Jordon thereby denying them title. Mr. Providence said as follows: - "Yes everything the farm produced has been turned into cash which has passed to me. Mr. Little and Mr. Jordon have received nothing from the farm to date." Mr. Marshall Jnr. further argued that Mr. Providence continues to deny Mr. Little and Mr. Jordon the proceeds of the converted trust property reflective of their beneficial interest therein. Counsel, therefore, submitted that Mr. Little is entitled to damages for destruction of goods and for loss sustained by him as a direct consequence of Mr. Providence's wrongful interference with their interest in the farm. Mr. Providence, as constructive trustee, is by virtue of his breach of trust liable to compensate Mr. Little for his loss both in respect of the farm and in respect to the property as it is clear on the evidence, even of Mr. Providence in re-examination, that the benefit of that property was for Mr. Little from the onset. "The arrangement with the house was to benefit Mr. Little. He was fresh from a different island, one of the major expenses there is house rent if I could help him he could earn some money."

[57] Next, Mr. Marshall said that Mr. Providence has claimed damages without specifying the reason or objective of his claim. However, upon examination of Mr. Providence's entire

claim he submitted that there is no justifiable reason disclosed to support a claim for damages. Further, Mr. Providence is not entitled to damages in these circumstances as his claim for mesne profits would encompass the objective of any award of damages in a claim for possession, being Mr. Providence's financial and material loss incurred as a result of Mr. Little's "adverse possession".

- [58] Finally, Mr. Marshall Jnr. posited that based on the overwhelming evidence adduced by Mr. Little, which he asks the Court to accept, Mr. Little is entitled to succeed on his counterclaim.

Court's finding and analyses

- [59] I have reviewed the evidence adduced in the matter and have given careful consideration to the submissions of both counsel. It proved to be particularly instructive to observe the demeanour of the witnesses as they testified, and this was especially so during the cross examination that sought to test both their credibility and reliability. Let me say straight away that I have no doubt that neither Mr. Providence, Mr. Little or Mr. Jordon was as generous with the truth as they ought to have been and this was in contrast to Ms. St Luce-Thomas the latter who by and large was far more forthright. The three gentlemen endeavoured to provide the Court with evidence, in the main to support their respective positions which did not accord exactly with what had transpired.

Property

- [60] I propose to deal first with the property. Be that as it may, I am satisfied on a balance of probabilities that Mr. Providence and Mr. Little entered into an agreement that Mr. Providence would acquire the land from CHAPPA and provide the financial contribution to construct a house thereon. The entire property, it was agreed between the parties, was to have belonged to Mr. Little. I therefore, accept Mr. Little's evidence on this point in preference to Mr. Providence's. I am equally satisfied that the reason for that agreement was due to the impediment suffered by Mr. Little being a non-citizen of Antigua and Barbuda he was debarred from holding or acquiring any interest in land in Antigua. Mr. Providence had suffered no such impediment having been married to an Antiguan national

he was well placed to obtain citizenship and would have been able to acquire both land and interest in land, in his own right. It was in order to get around the legislative provisions that the very good friends (Mr. Providence and Mr. Little) agreed that Mr. Providence would go forward in his own name and acquire the land which he would hold for the benefit of Mr. Little. I believe that Mr. Providence expended the sum of moneys he stated towards the acquisition of the property and that Mr. Little's contribution was in the form of labour. They were close friends so they agreed that Mr. Little would repay Mr. Providence by doing odds jobs for the latter. This is very consistent with the extent of their relationship and based on the evidence as adduced. It is obvious to me that Mr. Providence is a very shrewd business man who at one stage was very supportive of his friend Mr. Little and this was why he did all of the above things for the benefit of his friend. In addition, Mr. Providence benefited from the various sets of work that Mr. Little did for him pursuant to their agreement. I am satisfied that Mr. Providence did not pay Mr. Little for all of the labour that the latter provided.

- [61] Further, I have no doubt that Mr. Providence did not intend to be the beneficial owner of the property rather he reached out to help a friend (Mr. Little) who at that time was in need of housing since he was forced to leave Mr. Providence's home (where he had been his guest). In fact, Mr. Little came to Antigua at Mr. Providence's invitation and with the clear understanding that he would have lived with Mr. Providence and his family while working as a carpenter for the latter. His stay there was short lived and Mr. Providence thought that he was obliged to assist Mr. Little to find alternative accommodation. This, Mr. Providence did by agreeing to purchase the land and material for the benefit of Mr. Little and in consideration of these actions Mr. Little would provide him with carpentry services (as stated earlier) which he did. A dispute subsequently developed between the parties and Mr. Providence now claims that Mr. Little was a licensee and that he always intended him to so be. I do not believe him for the reasons already stated. I am totally satisfied, therefore that in the case at bar the parties intended the legal ownership of the property to vest in Mr. Providence while the beneficial interest was to vest in Mr. Little. The clear agreement was that Mr. Providence would hold the property on trust for Mr. Little.

- [62] It is clear to me that their agreement brings into sharp focus the legal impediments to such a transaction as stipulated by the Non-Citizens Land Act. Section 3 of the Non-Citizens Land Act clearly prohibits a person such as Mr. Little, who is an unlicensed non-citizen, from holding any interest in land in Antigua without first obtaining a non-citizen's licence. Further, section 14 of the Non-Citizens Land Act makes it an offence for a person without a licence to hold any property on trust for a non-citizen and any such property shall be forfeited where the transaction was carried out in order to evade the provision of the Act.
- [63] The conjoint effect of those sections leaves me in no doubt that in the Non-Citizens Act the intention of the legislature was to expressly prohibit the holding of land by non-citizens in Antigua without first obtaining the requisite licence whether it was held on beneficially or otherwise. It is clear to that the legislature is of the view that the requirement for non-citizens to have licence is for the protection of the public of Antigua and Barbuda. The Court must give effect to the intention of the legislature and protect public policy.
- [64] Accordingly, I hold that the agreement that was entered between Mr. Providence and Mr. Little in relation to the property was illegal. It was in clear breach of the law stated above and its purpose was to evade the provisions of the Act.
- [65] I come now to address the effect of the illegality. It is the law that where a contract is on the face of it illegal or void, the Court will take notice of that fact and refuse to enforce the contract even though the vitiating factor has not been pleaded. See: **North Western Salt Co Ltd v Electrolytic Al Kali Co Ltd [1914] AC 461**. In the case at bar the agreement is clearly illegal and the illegality was pleaded by Mr. Little though not admitted by Mr. Providence. As stated earlier on a balance of probabilities, I am satisfied that the contract was entered into in order to evade, the provisions of the Non-Citizens Land Act. Further, in any event, if it appears during the proceedings that the person invoking the aid of the Court is himself implicated in the illegality, the Court will not assist him even if the defendant has not pleaded the illegality and does not raise the objection See: **Scott v Brown, Doering, McNabb & Co [1892] 2 QB 724** and **Snell v Unity Finance Co [1964] 2 QB 203**. I am

satisfied that both Mr. Providence and Mr. Little shared a common intention to evade the statutory provisions.

- [66] I have now to determine whether the agreement, between Mr. Providence and Mr. Little, in relation to the property, is enforceable even though it is illegal. It is the law that where the purpose of a contract is illegal or contrary to public policy and both parties are aware of that purpose; neither party can sue upon it. See: **Universal Caribbean Establishment v Egg-Hill Holding Co Ltd [1992] 41 WIR 124.**
- [67] There is an infringement of the doctrine of public policy if it is apparent either directly from the terms of the contract or indirectly from other circumstances the design of the parties is to defraud the revenue. See: **Miller v Karlinski [1945] 62 TLR 85; Napier v National Business Agency Ltd [1951] 2 ALL ER 246.** No person can claim any right or remedy whatsoever under an illegal transaction in which he has participated. While learned counsel Mr. Hamilton Snr. said that the thrust of Mr. Little's evidence speaks to a violation of the Non-Citizens Land Act, counsel did not develop the point further since it was not Mr. Providence's case that there was any agreement that the beneficial interest in the property belonged to Mr. Little. In fact, Mr. Hamilton advocated that there was no such agreement.
- [68] Cheshire, Fifoot and Furmston's Law of Contract Thirteenth Edition at page 388 states that "where a contract is illegal as formed it is therefore void abinitio and it is treated in law as if it had not been made at all. It is totally void and no remedy is available to either party. No action lies on a contract which is void at formation in circumstances where the formation of the contract infringes some statutory provision." See: **Re Mahmoud and Isphani [1921] KB 716** in that case the plaintiff agreed to sell linseed oil to the defendant, who refused to take delivery and was sued for non-acceptance of the goods. A statutory order provided that no person should buy or sell certain specified articles, including linseed, unless he was licensed to do so. Before the conclusion of the contract, the defendant untruthfully alleged that he held a licence and the plaintiff, who himself was licensed believed the allegation. In those circumstances, it was later established that each party was forbidden by statute to enter into the contract, it was held in that the Court had no option but to

enforce the prohibition even though the defendant relied upon his own illegality. While learned counsel Mr. Marshall Jnr. did not specifically refer to the illegality by name that is the evasion of the Non-Citizens Land Act, Mr. Little's averments and the evidence clearly showed that in his counterclaim he was relying on his own illegality. Applying the principles enunciated above to the case at bar, I would enforce the prohibition in the Non-Citizens Land Act and hold that the contract is unenforceable. I find further support for my view in **Chitty on Contracts Twenty Seventh Edition at paras 16 – 008** under the heading "Illegality as to formation" which states at page 776 as follows:

"Contracts may be illegal when entered into because they cannot be performed in accordance with their terms without the commission of an illegal act. Thus the contract may involve a breach of statutory law; alternatively it may be a statutory requirement that the parties to the transaction possess a licence and where they do not the contract will be illegal as formed."

Chitty *ibid* referred to **Levy v Yates** and stated that in that case the contract was unenforceable since the agreement could not carry out without the contravention of the law.

- [69] Applying those principles to the case at bar, and by way of emphasis the agreement between Mr. Providence and Mr. Little is unenforceable by or against either party to it since they contracted to do exactly what the Non-Citizens Land Holding Act forbade. I will not allow either Mr. Providence or Mr. Little to sue on the illegal contract. They are both therefore prevented from claiming any remedies under the illegal contract. In my respectful view, this ruling effectively disposes of issues a - c.

The farm

- [70] Similarly, I have further reviewed the evidence adduced by both sides and have paid particular regard to the very able submissions by both learned counsel. With respect, I am of the view that Mr. Providence contributed almost all of the finances to the acquisition of the farm. This in no way negates the fact that both Mr. Little and Mr. Jordon provided invaluable contribution to the farm in the form of their labour. I am equally satisfied that Ms. St Luce-Thomas also assisted Mr. Jordon on the farm, all to the benefit of Mr. Little, Mr. Providence and Mr. Jordon. It seems to me that Mr. Providence has exaggerated the

monies he expended on the farm in the same fashion that Messrs Little and Mr. Jordon have inflated the earnings from the farm.

[71] It seems clear that there was a joint agreement that the farm was to have been run for the benefit of Mr. Providence, Mr. Little and Mr. Jordon. Prior to Hurricane Luis striking in 1995, I am satisfied that the farm earned and that sales were good. In relation to my determination of the nature of the commercial relationship they had with regard to the farm, I have given further careful consideration to all of the evidence that was adduced. I must say that I find Mr. Providence's evidence to be a bit more reliable than both Mr. Little and Mr. Jordon in relation to the nature of their agreement. It strikes as very strange that the parties would have agreed that Mr. Providence would have been entitled to two-thirds of all of the animals that were born on the farm and Mr. Little and Mr. Jordon would have been entitled to one-third yet the animals were slaughtered over several years and Mr. Little and Mr. Jordon made no requests for their share in the proceeds of sale. I do not believe either Mr. Little and Mr. Jordon that they agreed with Mr. Providence to have the animals that were born on the farm distributed as they would have me believe. On this issue, I therefore accept the evidence of Mr. Providence in preference to that of the other two gentlemen; I am satisfied that the parties agreed that the profits that were realized from the farm and not the animals would have been distributed 2/3 to 1/3.

[72] I am fortified in the above view when I examine the arrangements that the parties had in so far as it related to the book keeping for the farm; it is obvious to me that Mr. Providence was more business savvy and did not see the need to properly account to Mr. Jordon and Mr. Little for the income and expenditure of the farm. With respect, it seems to me that it is for this same reason that Mr. Little has sought to conveniently frame the counterclaim as one for 1/3 of the animals as distinct from 1/3 of the profits (since he is unclear or unsure as to whether the farm realized any profits particular after it was devastated by the hurricane). The agreement the parties shared was susceptible to manipulation. In this regard, I find Ms. St Luce-Thomas' evidence very enlightening particularly when she said that from her observations though both Mr. Little and Mr. Jordon were working on the farm "there appeared to be nothing in it for them. Mr. Providence did not intend to compensate

them." She said this caused a lot of pressure on her relationship with Mr. Jordon and I believe her.

[73] With respect, I am satisfied that Mr. Providence purposefully managed the farm in such a manner that left both Mr. Jordon and Mr. Little out of the major financial matters. They as stated earlier could not be sure whether the farm made profits or losses even though it is their genuine belief that it did. However, due to the manner in which Mr. Little has presented his counterclaim I am unable to conclude, on a balance of probabilities, that when Mr. Providence eventually sold the farm he realized a profit. The fact that he converted the monies realized from the sale to his own purposes, without more, does not mean that he profited from the sale to the exclusion of the others. Further, I am not of the view that Mr. Providence committed any trespass to the animals when he caused those that remained on the farm to be sold. He was entitled to sell them but if there were any profits realized from the sale he was legally bound to share the profits with Mr. Jordon and Mr. Little 2/3 to 1/3. By way of emphasis, I have absolutely no evidence on which I could properly conclude that the farm was sold at a profit. It is well settled principle of law that he who asserts must prove.

[74] Accordingly, Mr. Little has failed to establish that Mr. Providence improperly made a profit from selling the farm. In any event this is not his pleaded case. In view of the foregoing and for the above reasons Mr. Little has failed to establish his counterclaim against Mr. Providence for either one-third of the value of the animals born on the farm or for trespass to the animals on the farm.

Conclusion

[75] For the foregoing reasons and in conclusion I make the following orders:

- (1) Mr. Kenneth Providence's claim against Mr. Elnathan Little for possession of the property together with mesne profits is hereby dismissed.
- (2) Mr. Elnathan Little counterclaim against Mr. Kenneth Providence for declarations in relation to the property and the value of work done is also dismissed.

- (3) I also dismiss Mr. Elnathan Little's counterclaim against Mr. Kenneth Providence for breach of trust and trespass to property.
- (4) Each party is to bear his own costs.

[76] I thank all learned counsel for their assistance.

Louise Esther Blenman
High Court Judge