



[2016] JMSC Civ.185

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV03984

BETWEEN	SONIA STANIGAR - REID	CLAIMANT
AND	ROBERT LLOYD YEE	1 <sup>ST</sup> DEFENDANT
AND	GARY LLOYD YEE	2 <sup>ND</sup> DEFENDANT
AND	CRYSTAL BAKERY LTD	3 <sup>RD</sup> DEFENDANT
AND	GARY LLOYD YEE T/A CRYSTAL HARDWARE	4 <sup>TH</sup> DEFENDANT

IN CHAMBERS

Mr. Norman Hill Q.C. and Mr. Raymond Samuels instructed by Samuels and Samuels for the Claimant.

Mr. Michael Howell instructed by Knight Junior Samuels for the First and Third Defendants.

Ms. Laurel Greg for the Second and Fourth Defendants.

HEARD: 24<sup>th</sup> & 25<sup>th</sup> November 2015, 2<sup>nd</sup> to 6<sup>th</sup> May, 15<sup>th</sup> July & 28 October 2016.

*Trusts - Constructive Trusts - Creation of trust - Whether an alleged declaration made by the deceased created a beneficial interest by the Claimant acting to her detriment.*

*Evidence - Whether an alleged declaration by the deceased is an admissible as an exception to the hearsay rule as being a declaration against pecuniary interest*

**CORAM: LAING, J**

**[1]** The Claimant claims the following declarations:

- i) *That a beneficial interest was created by Donald Lloyd Yee in favour of the Claimant when she acted to her detriment by resigning her position at Citrus Growers Association Ltd to work full time in the family business of Donald Lloyd Yee in reliance upon his promise that she would be rewarded in the property situated at 62 Main Street, Ewarton in the parish of St. Catherine and registered at Volume 1235 Folio 568 of the Register Book of Titles equal with himself Donald Lloyd Yee, Robert Lloyd Yee and Gary Lloyd Yee. The equitable interest became fixed on the said property 62 Main Street, Ewarton in the parish of St. Catherine from the time the said offer was accepted by the Claimant in the year 1975.*
- (ii) *A declaration that a beneficial interest was created by Donald Lloyd Yee in favour of the Claimant when she acted to her detriment by resigning her position at Citrus Growers Association Ltd to work full time with the said Donald Yee in his business known as Crystal Bakery Ltd in reliance upon the promise of the said Donald Lloyd Yee to redistribute his five hundred thousand (500,000) shares in the business of the Crystal Bakery Ltd. so that the Claimant would have shares equal in quantity to other shareholders in the said company particularly as regards shares held by Gary Lloyd Yee and Robert Lloyd Yee from the time the said offer was accepted by the Claimant in the year 1975. That this equitable interest became fixed on the said Crystal Bakery Ltd.*
- (iii) *A declaration that the said beneficial interest created in favour of the Claimant in respect of the business operated by Crystal Bakery Ltd extends to any offshoot business created and financed by Crystal Bakery Ltd and in particular the business known as Crystal Hardware being operated by the 2<sup>nd</sup> Defendant Gary Lloyd Yee at 62 Main Street and 57 Main Street, Ewarton in the parish of St. Catherine and in which the Claimant is at all material times personally involved.*
- (iv) *A declaration that the Claimant is entitled to a like sum or provision for a residence similar to that of the said Robert Lloyd Yee and Gary Lloyd Yee and that the said Robert Lloyd Yee and Gary Lloyd Yee do account for properties held by each and both of them in the United State of America such properties having been bought from funds provided by Crystal Bakery Ltd.*
- (v) *A declaration that the said Donald Lloyd Yee was until the time of his death in the year 2012 a constructive trustee for the beneficial*

*interest of the Claimant in property known as 62 Main Street, Ewarton, St. Catherine and registered at Volume 1235 Folio 568 of the Register Book of Titles.*

- (vi) *A declaration that the said Donald Lloyd Yee until the time of his death in the year 2012 was a constructive trustee of the said beneficial interest created in favour of the Claimant in the business of Crystal Bakery Ltd in respect of the equal distribution of the said Five Hundred Thousand (500,000) shares among all shareholders including the Claimant and in particular the quantity of shares held by Robert Lloyd Yee and Gary Lloyd Yee.*
- (vii) *A declaration that the said Donald Lloyd Yee was from the year 1975 until the time of his death a constructive trustee for the beneficial interest claimed by the Claimant in respect of the said business known as Crystal Hardware being operated by the 2<sup>nd</sup> Defendant Gary Lloyd Yee at 62 Main Street, Ewarton in the parish of St. Catherine to the extent of the said beneficial interest being enjoyed by the Claimant in the business known as Crystal Bakery Ltd.*
- (viii) *A declaration that Donald Lloyd Yee was a constructive trustee for the Claimant in respect of her beneficial interests in respect of real estate acquired in the United States of America from funds funneled through Crystal Bakery Ltd as well as funds earned to provide residences for all persons involved in the business known as Crystal Bakery Ltd and Crystal Hardware and numbers 62 and 57 Main Street, Ewarton in the parish of St. Catherine registered at Volume 1235 Folio 568.*
- (ix) *Alternatively that the finances for the said business operated by the said Gary Lloyd Yee at 62 Main Street being obtained from the proceeds of the profits of Crystal Bakery Ltd the said Gary Lloyd Yee be made a constructive trustee of a beneficial interest of the Claimant equal in share value to that held by her in Crystal Bakery Ltd.*
- (x) *Further and in the alternative a declaration that the said Gary Lloyd Yee has been unjustly enriched from the labour of the Claimant in creating the profits from Crystal Bakery Ltd from which his said business was established and financed.*
- (xi) *A declaration that by virtue of the beneficial interest of the Claimant being fixed on the respective assets of the said Donald Lloyd Yee as a consequence of the Claimants acting to her detriment as aforesaid and relying on the promise of the said Donald Lloyd Yee as aforesaid the first and second Defendants be made constructive trustees of the Claimant in respect of all beneficial interest to which the Claimant became entitled thereby.*

7. The Claimant claims the following Orders:

- (i) *That the property situate at 62 Main Street, Ewarton in the parish of St. Catherine and registered at Volume 1235 Folio 568 of the Register Book of Titles be valued by a competent valuer to be agreed upon by the parties or if not appointed by the Court.*
- (ii) *That the beneficial interest of the Claimant in the said property mentioned at (1) be determined and realized.*
- (iii) *That such compensation due to the Claimant be agreed upon between the parties or if not be ordered by the Court.*
- (iv) *That there be a valuation of all the assets of the Crystal Bakery Ltd by a competent valuer agreed upon by the parties or if not one appointed by the Court.*
- (v) *That the goodwill of Crystal Bakery Ltd be assessed and determined by a competent firm of auditors appointed by the parties or if not appointed by the Court.*
- (vi) *That accounts and enquires be taken of Crystal Bakery Ltd from a period of the last twenty (20) years.*
- (vii) *That a firm of competent auditors be appointed either by agreement of the parties or by the court to undertake the enquires and examine and report on the business operation of the said Crystal Bakery Ltd over the said period of twenty (20) years.*
- (viii) *That there be a valuation of the business known as Crystal Hardware being operated at 62 Main Street and 57 Main Street, Ewarton in the parish of St. Catherine by the 2<sup>nd</sup> Defendant Gary Lloyd Yee by a competent valuer either agreed upon by the parties or appointed by the Court.*
- (ix) *That the beneficial interest of the Claimant in the said business be determined.*
- (x) *That account and enquires be taken of the said business being operated by the 2<sup>nd</sup> Defendant at 62 Main Street and 57 Main Street, Ewarton in the parish of St. Catherine as aforesaid over the past twenty (20) years by a firm of competent auditors appointed either upon agreement of the parties or by an order of the court.*
- (xi) *That compensation due to the Claimant from the operation of the said business may either be arrived at by the agreement between the parties or by the Court.*

## **The Background**

- [2]** The Claimant asserted in her witness statement that in 1959 at the age of 7 years old she was taken into the family home of her Aunt Rose Yee (“Rose”) and her Aunt’s husband Donald Yee (“Donald”) at 62 Main Street, Ewarton in the Parish of St. Catherine.
- [3]** Rose and Donald operated a bakery which was downstairs the family home and the Claimant started working in the bakery which later became Crystal Bakery.
- [4]** In 1963 the First Defendant Robert Yee (“Robert”), the son of Donald’s brother, was added to the family at the age of two years and in 1968 the Second Defendant Gary Yee (“Gary”), Donald’s son, was added to the family.
- [5]** The Claimant asserted that she acted as the big sister of Robert and Gary and took care of them she said that she also taught them to read and write.
- [6]** Donald and Rose provided for the Claimant’s education, firstly at the Ewarton Primary School then at Dinthill Technical High School in the Parish of St Catherine.
- [7]** The Claimant later attended Jamaica Commercial Institute located on Duke Street Kingston and boarded at an address off Molyne’s Road.
- [8]** After Graduating from Jamaica Commercial Institute in 1972, the Claimant obtained employment at Jamaica Citrus Growers’ Association (“Citrus Growers”) in Kingston where she was earning \$300.00 per week.
- [9]** The Claimant remained employed at Citrus Growers until 1976 and except for a brief period when she resided in Kingston, travelled daily to and from 62 Main Street where she worked at Crystal Bakery on weekends and in the nights as necessary.
- [10]** The Claimant became pregnant early in 1975 and because of complications arising as a result of the pregnancy, she began to reside in Kingston. Her son

Richard was born in September 1975 and after spending three months on maternity leave, she returned to her job at Citrus Growers.

- [11] The Claimant returned to Ewarton to reside in early 1976 and the Claimant's case is that in April 1976 Donald made her an offer in which he said;

*"since we are one family why don't you give up working in Kingston and work full time in the Bakery and the office doing lodgements and other duties in the business-shop and bakery. You will not get a regular salary but you will be given allowances and loans and the rest of your pay will be used to develop the family business"*

- [12] The Claimant asserted that Donald also promised her that if she should take up the offer she [*"...would be part of the family business with them- the property at Crystal Bakery Limited."*]

- [13] The Claimant's evidence in her witness statement is as follows:

*18. I asked that he give me something in writing. He said that he had already discussed the matter with his wife (Rose Yee) and it was decided to put my name along with Robert and Gary Yee on the title so that the three of us –myself, Robert and Gary Yee have "equal shares in the Business" when they retire or have passed on.*

*19. The said Donald Yee assured me that he would make the necessary changes on the Title for 62 Main Street as well as the shareholding certificate for Crystal Bakery Limited and there was no need to put it in writing as he would be giving each of us copies of the documents after they were amended.*

*20. With this assurance in the presence of my aunt Rose Yee, I accepted the offer and told them that I would give the necessary two (2) weeks notice to Citrus Growers Association.*

*...22. Thus, Donald Yee assured me that "we were one family working for the success of the business" and "we" would share equally in the outcome so I would have nothing to lose.*

### **The issue relating to the hearsay rule**

- [14] The statements allegedly used by Donald ostensibly constitute hearsay evidence. However, at the start of the trial following this issue being raised by Mr. Howell, I found that the promise which the Claimant asserted was made by

Donald was said to be in terms linked to her coming to work full time in the family business. I held that the words ascribed to him made it clear that the assurance was more than a mere statement of intention. I formed the opinion that the statements by Donald, (if the Court accepts that they were made), are capable of constituting a promise, which would have amounted to a declaration by Donald against his pecuniary interest at the time the statements were made. On this basis, I permitted the words which the claimant said were used by Donald to be accepted as original evidence, as being within the exception to the hearsay rule. In doing so I drew an analogy with and relied on the line of cases in which the Courts have permitted proprietary estoppel claims against a deceased's estate such as **Re Basham** 1986 1 WLR 1498 and **Gillett v Holt** [2001] Ch 211. Had I not taken this approach, the claim would have failed at the first hurdle since there would be not have been any evidence before the Court of the alleged Offer upon which the claim is predicated.

### **The applicable law of proprietary estoppels and trusts**

[15] In *Re Basham*, deceased the relevant law of propriety estoppels is stated as follows:

*“The Plaintiff on proprietary estoppels, the principle of which, in its broadest form, may be stated as follows: where one person, A, has acted to his detriment on the on the faith of a belief, which was known to and encouraged by another person, B, that he either has, or is going to be given a right in or over B’s property, B cannot insist on his strict legal rights if to do so would be inconsistent with A’s belief. The principle is commonly known as proprietary estoppels, and since the effect of it is that B is prevented from asserting his strict legal rights it has something in common with estoppel. But in my judgment, at all events where the belief is that A is going to be given a right in the future, it is properly to be regarded as giving rise to a species of constructive trust, which is the concept employed by a Court of Equity to prevent a person from relying on his strict legal rights where it would be unconscionable for him to do so.”*

[16] In **Gissing v Gissing** [1971] AC 886 at 904, Lord Diplock made the following statement of the applicable law;

*Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based upon the proposition that the person in whom the legal estate is vested holds it as a trustee upon trust to give effect to the beneficial interest of the claimant as cestui qui trust. The legal principles applicable to the claim are those of the English law of trusts and in particular, in the kind of dispute between spouses that comes before the courts, the law relating to the creation and operation of “resulting, implied or constructive trusts”....*

*...A resulting, implied or constructive trust-and it is unnecessary for present purposes to distinguish between these three classes of trust –is created by a transaction between the trustee and the cestui qui trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui qui trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui qui trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land.”*

- [17] The claim of the Claimant is founded on the inducement and promise which she asserts was made by Donald (which is referred to in this judgment as “the Offer”). In my view it would therefore be most efficient to firstly make a determination of fact as to whether the Court finds that there was such an inducement as pleaded or at all.

### **Was there an inducement?**

- [18] This is a case in which the credibility of the Claimant is crucial. In addition to the evidence of the Claimant of the words spoken by Donald, the Claimant has given evidence of facts, which it was submitted on her behalf, are consistent with such a promise having been made. The Court will therefore look at these various facts to assess whether they do support the Claimant’s assertion, and will also consider other factors which are capable of assisting the court in reaching a final conclusion.
- [19] In assessing the evidence, I will be guided by the observations of Lord Pearce in the House of Lords case of **Onassis v Vergottis** [1968] 2 Lloyds Rep 403 at page 431. Although these observations are contained in a dissenting speech, the

guidance offered it serves as a good reminder in cases of this sort. At page 431 of the judgment Lord Pearce makes the following observations:

*“Credibility’ involves wider problems than mere ‘demeanour’ which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than the truth on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a Judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part.”*

A. *Analysis of the details of the offer and the reason or motivation therefor*

[20] Based on the account of the Claimant, the Offer was very vague. The Claimant, admitted during cross examination that there was no discussion as to how many years she was expected to work in the bakery business. There was also the absence of any discussion as to what was to be her job description, title, or role and/or function within the business.

[21] The Claimant’s evidence of the words used by Donald suggests that the Offer was born out of the fact that she was a family member. Donald and Rose evidently were kind individuals. They would take less fortunate children into their home at 62 Main Street and provide for their basic needs and education. Some

of those persons to whom reference was made during the trial included, Marcia Harris, David Mopp, Vinny and Tweppy. The Claimant was in a slightly different position from some of these persons because she was the niece of Rose but she was not unique in this regard since it is not disputed and the Claimant admitted, that Donald and Rose always had other family members living at 62 Main Street. Although the Claimant implied that she may have had a special place in the heart of Donald and Rose, the evidence does not suggest that she was treated any differently from the other children or young persons who were taken in. They all worked in and thereby contributed to the family business without receiving a formal payment of a salary. None of them were legally adopted save for Robert.

**[22]** Donald was not without any other family. He had two sons, (one by adoption), to provide for. Whereas there are no limits on human kindness, the fact that the Claimant was a family member, especially a member of the extended family, in and of itself does not lend much support for Donald making the Offer which was weighed positively and heavily in favour of the Claimant. Donald and Rose had taken care of the Claimant since she was 7 years old. They had provided for her needs and education up to the end of her studies which resulted in her obtaining the job at Citrus Growers. There was ostensibly no continuing obligation owed to the Claimant which would necessitate offering her the opportunity to be equal owners with their sons of the business and premises, in exchange for her simply working in the business.

**[23]** The Claimant did not bring any special skills to the business, nor did she demonstrate any exceptional academic acumen. On her evidence she decided to spend only three years at Dinthill Technical High School because she wanted to attend a commercial institution to become a secretary. Her evidence was that she thought she would do better in the commercial (secretarial) subjects. She may will have been able to matriculate at some point but i am not persuaded on a balance of probability that her failure to obtain a university education was as a result of her accepting the offer, as she asserts. On her case, at the point at which the Offer was made to her, she was a secretary who had four years

experience working in an entry level job. On the evidence before the Court she was not an employee of any exceptional skill who needed to be poached by being presented with an attractive proposal to become an equity partner without any contribution on her part other than her skill sets.

**[24]** The Claimant had no managerial, business or other experience which would, on an objective view, justify Donald making the Offer which the Claimant said was made to her. The Claimant could have been adequately compensated as an ordinary employee for any limited skill which she brought to the business, even if at a premium because of her family connection. There is no evidence of any skill or knowledge of the business at all which was peculiar to the Claimant and which may have made her particularly attractive or desirable as an employee. Any specific knowledge she had of the business could have been acquired by other persons who were suitably qualified to perform the tasks which she did perform. The Offer is therefore one which does not make commercial sense and could only be explained by the family bond asserted by the Claimant, a reason which the Court does not find to offer a rational or sufficient explanation.

**B.** *The Absence of any document evidencing the Offer*

**[25]** The Claimant's evidence on this point is referred to earlier in this judgment. In essence, the Claimant said that she asked Donald to give her something in writing but he convinced her that this was unnecessary.

**[26]** While being cross examined by Mr Howell, the Claimant explained that she was sure that the conversation about the Offer was concluded on the same day and that there was no follow up conversation. Her evidence was that since April 1976 up to the point of Donald's death on 14 July 2012 she had no further conversation with him about the Offer and that she had no reason to disbelieve him.

**[27]** I find it very strange, that if the Offer was made as the Claimant asserted, the matter was never again discussed. There was of course the Claimant's evidence

that Donald was not pleased about her marriage in 1987 to her son's father Aubrey Reid, but that he told her that it would not affect the business relationship between them. Save for this, there was never any further discussion with Donald. This in my view defies logic, experience and common sense. In answer to Mr Howell the Claimant asserted that at the time the Offer was made Donald assured her that he would put her name on the certificate of title for the property and the shares but did not give any timeline within which he would do so. If the Offer was indeed made, one would have expected that within a reasonable time the Claimant would have approached Donald and asked him for an update on the promised documents evidencing her ownership. It is simply incredible that if the Offer was made the Claimant would not have pursued the matter with Donald by further discussion if nothing else.

- [28]** The fact that the Claimant did not raise the issue with Donald in an effort to determine whether her name was on the Certificate of Title or shares is made even more difficult to accept when one considers the Claimant's evidence that Donald became seriously ill in the late 80's early 90's as a result of a tumour. The Claimant's evidence was that Donald returned to relatively good health and continued to manage the business but in 2010 he met in an accident which affected his back and resulted in him having to undergo surgery in 2011. Her evidence was also that on 13 February 2012 Donald suffered a heart attack which necessitated him going to the Spanish Town Hospital from where he was transferred to the Tony Thwaites Wing of the University of the West Indies.
- [29]** One would have expected that faced with the stark reality of Donald's mortality, not once, but on three occasions, the Claimant would have sought to ensure that her position was protected and that she had documentary evidence of her ownership in 62 Main Street and Crystal Bakery Limited before the death of Donald. To the contrary, her evidence was that she never asked Donald when could she expect to have her name on the appropriate documents. She stated that she expected that her name would have been so placed and in answer to a

question from the Court said that she was never concerned that Donald might, for example, have forgotten.

C. *Failure to advise anyone of the Offer*

**[30]** On the account given by the Claimant she was just as much a part of the family business as Robert and Gary but on her evidence the first time that she made this assertion was sometime after 2012 when Robert placed her formally on the Payroll. While being cross examined by Mr. Howell in relation to paragraph 59 of her witness statement in which she stated that she considered the action of the Defendants unjust and inequitable, the Claimant explained that she was being treated unfairly because Robert did not believe her when she said that she was a part of the family business. She conceded that she did not tell Robert about the Offer/agreement but simply told him that she was a part of the family business. Her explanation for this was that he should have taken her word and believed her because they grew up together. She said that it was after this assertion that Robert told her to go see a lawyer. It is rather strange that in light of Robert's apparent disbelief, the Claimant even at that point did not see it prudent or sensible to simply explain to Robert the basis for her assertion, the Offer was basis for her assertion.

**[31]** If the Offer was indeed made to the Claimant as she asserted, then I find it difficult to accept that this would not have been mentioned to Robert and/or Gary at some point after it was allegedly made in 1976. No explanation was given to the Court as to why the fact of the Offer was not mentioned to Robert and/or Gary, the two other persons who would be most directly affected by it. Such a significant fact as the Offer, if it existed, was almost certain to arise naturally in conversation with Gary and/or Robert at some point. It would have been in my view unnatural if not bizarre, for any person who was a co-owner of a business such as Crystal Bakery to work there as an ordinary employee, in effect as an "undercover boss", without any of the trappings of ownership, in total secrecy, without the knowledge not just of the other employees, but the other co-owners

as well. In my view there would not have been any need for such secrecy and the Court was not provided with a rational explanation for this secrecy as it relates to the Offer. On a balance of probabilities the reasonable inference to be drawn from there having been no such disclosure by the Claimant is that there was not in fact the Offer made by Donald.

D. *The Loans*

**[32]** The Claimant's evidence was that in 2009 she began to exercise her entitlement to get loans as promised to her when she took up the Offer. The loans taken up were as follows:

- 1 *On 30<sup>th</sup> December 2009, the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) repaid 11<sup>th</sup> February 2011;*
- 2 *On 18<sup>th</sup> February 2011, the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) repaid 30<sup>th</sup> September 2011; and*
- 3 *On 14<sup>th</sup> October 2011, the sum of Three Hundred Thousand Dollars (\$300,000.00) repaid 5<sup>th</sup> April 2013.*

The Claimant further explained that Donald was not at all hesitant to grant her those loans nor was she ever reluctant to pay them back.

**[33]** The Claimant's evidence was that a few days prior to Donald's departure to the United States on 30<sup>th</sup> May 2012 she requested an advance on her entitlement to benefits accrued by virtue of her beneficial interest in the business in the sum of One Million Eight hundred Thousand Dollars (\$1,800,000.00). This was in order to make a deposit on a property. On 12<sup>th</sup> June 2012 she said she received a text message from Robert advising her that Donald had said to go ahead with the One Million Eight Hundred Dollars (\$1,800,000.00). The Claimant then used 2 cheques which were in the office of Crystal Bakery for the purpose of obtaining this sum.

- [34] This sum became a point of dispute between the Claimant and Robert after Robert presented her with a document stating that the sum was a loan with interest and she refused to sign it.
- [35] The Claimant provided no explanation as to why she waited until 30<sup>th</sup> May 2012 to seek what she claims was an advance on her entitlement. Before this time, why was she content to take as part of her entitlement loans which she had to repay, rather than advances. This is rather curious especially in light of her evidence of her husband's illness which necessitated her travelling with him to the United States for an extended period. If this sum was an advance and only her first advance, when was it that she expected to have exploited her interest in the business?
- [36] The Claimant also gave evidence that shortly after Gary returned to Jamaica he established Crystal Hardware. Her evidence was that Rose told her that she gave Gary the money to set up the hardware. This evidence is relevant in that it explains the basis of the Claimant's claim in respect of Crystal Hardware, however it also is helpful in giving an insight into the Claimant's state of mind. What this element of her claim as formulated does is to raise questions as to why in light of the Offer, the Claimant would have been content to sit back silently while the Crystal Bakery funds to which she now claims she would have been entitled, were siphoned off for the benefit of Gary and Robert without any corresponding benefit to her and in fact, potentially to her detriment.

### **Analysis of the Offer and the resignation from the Job at Citrus Growers**

- [37] The Claimant spoke with pride of her job at Citrus Growers for which she was being paid \$300.00 per week. She described it as her first job in the commercial world which she treasured greatly. She said that in acting on the promise of Donald she gave up the prospects of achieving success in this job, in particular the possibility of becoming company secretary, a post which paid a salary of

\$31,000.00 and had a car as a perquisite. She viewed this as being well as within her reach and said she thought it would not have taken long to hold that post.

- [38] Regardless of the sense of satisfaction which the Claimant derived for her job, the fact is that as she said in cross examination her position was that of Typist/Stenographer and there were less than six other typist stenographers. She admitted that there were other Typist/Stenographers with more experience than she had. It is therefore difficult to see the basis for her confidence in being promoted to the post of company secretary. Even if one accepts that this was a realistic possibility, there is no evidence to suggest that this would have been within the short to medium term.
- [39] The Claimant also asserted that she gave up “the exquisite joy” which she experienced travelling from Ewarton to Kingston and back while working at Citrus Growers. I do not accept that anyone including the Claimant would have found travelling as she described to be an “exquisite joy”. The Claimant was travelling by public transportation which even today with the advent of the North-South Highway, multiple route taxis and improved transportation generally, has its challenges which would have been magnified in the years 1972-1976.
- [40] The scenery of the Bog Walk George is absolutely magnificent, but I find that the daily commute by public transportation from Ewarton to Kingston during those years is one which, taking all the factors which a commuter would have had to face then, could hardly be accurately or reasonably described as pleasurable. To the contrary I find that the Claimant facing such a commute would have been open to any reasonable alternative which would obviate the need for that daily experience. An opportunity to work at Crystal Bakery would provide such an option and I do not find that the Claimant’s resignation from her job supports her evidence that she was promised an interest in any property by Donald. The Claimants resignation is at the very least equally consistent with her having been offered an ordinary salaried job by Donald without an accompanying promise of an interest in 62 Main Street or the Company.

E. *Working without a salary*

[41] The Claimant also said that she was giving up a salary of \$300.00 per week for the mere promise of an unqualified allowance, and according to the evidence in her witness statement, none of which was paid until the year 2011. I do not accept that the Claimant worked without a salary and without an allowance between 1976 and 2011. The average Jamaican who is not a successful entrepreneur would have found it difficult to meet their living expenses over this period. The Claimant was married in 1987 but she had a son and there is no evidence to suggest that her husband was so financially successful, that they would have been surviving on his earnings only.

[42] The Claimant admitted that National Housing Trust (NHT) and National Insurance Scheme (NIS) Deductions were paid on her behalf to the respective agencies in the 1980's and 1990's. The contributions were not voluntary but were expressed as a percentage of the Claimant's salary.

[43] The Claimant admitted that she received an allowance. In answer to a question from the Court she could not say what the sum was but said it was about 25 percent of what it would have been if she was being paid as a salaried employee.

[44] The Claimant's position is that she objected to Robert placing her on the formal employee payroll because she was never an ordinary employee and was never on the payroll but based on her NHT contributions, she was for some portion of the time that she worked at the Bakery. I accept the evidence of Robert that the reason she advanced to him for not wishing to be placed on the payroll was that she did not wish to pay the appropriate taxes. I also find that for any period that the Claimant was not formally on the payroll of Crystal Bakery as a salaried employee, she was receiving fair remuneration by way of "off the books" payments as allowances and that such an arrangement was for the benefit of the Claimant having nothing to do with the existence of the Offer.

F. *The Sale of the Claimant's Baked products*

**[45]** The Claimants evidence is that before moving to Christiana and while living at 41 Main Street, she supplied baked products such as gizzada, rock cake, fruit cake and bread pudding to Crystal Bakery which were sold by the bakery with the approval of Donald and Rose. Her evidence is that they charged her a commission. I find that this arrangement is inconsistent with the Offer as allegedly made. I cannot see why if Donald had made the Offer in the terms the Claimant said he did, he would have permitted the Claimant to be operating a side business of selling baked products, albeit products which were not directly competing products. If it was that she was to have acquired such a valuable stake in the Business, on the basis of her contribution to it, then one would have expected that she would have made a much greater contribution by producing these baked products in-house, to supplement the profits of the business, rather than retaining the proceeds, (on her evidence less commission) as her personal income thereby limiting the value she added to the business to her job functions. This is especially so because the Claimant did not bring skills of any significant value to the business.

G. *The Spring Board and other Business*

**[46]** There was also evidence from the Claimant that her husband operated a business known as Spring Board Bar and Restaurant at 41 Main Street, which was premises owned by the Claimant's Husband. In 1989 these premises were sold and the Claimant's husband started another business "further up the street" at 38 Main Street Linstead. This business at 38 Main Street was a Bakery business which also sold spices and herbal products. The Claimant admitted that she assisted her husband in the evenings by baking pastry for the following day. From 38 Main Street the business was relocated to 31 Main Street but the Claimant was unable to recall when this happened. The Claimant admitted during cross examination by Ms. Grey that she also assisted by selling in the business at 31 Main Street in the evenings in addition to baking but rejected the suggestion that she was working during the daytime in the business at 38 Main Street.

H. *The Period in Christiana, Manchester*

[47] The evidence of the Claimant in cross examination was that between 1999 and 2003 she was living in Christiana in the Parish of Manchester, with her husband who had moved there and was then doing farming. She said that during this period she was promoting Crystal Bakery. She said that Crystal Bakery did not have a branch there, but she was “verbally advertising” Crystal bakery and its products. Her husband had incorporated a company named lifeline Health Foods and during this period the Claimant and her husband were also selling baked goods which were baked at their home under the “Craze Life Line” brand. These baked goods were not being sold as Crystal Bakery Products but were supplied to the 2 Crystal Bakery shops, one at Linstead and the other at Ewarton. The Claimant would be paid for these products. In Cross examination the Claimant said that she got permission from the Donald and Rose to move to Christiana. In her words “*they gave me permission to live in Christiana and advance their products*”.

[48] It is difficult to see what benefit Donald and Rose would have had from the Claimant marketing their products in Christiana in the manner described by the Claimant. Crystal Bakery did not distribute or sell products in Christiana. The Claimant residing in Christiana between 1999 and 2003 and not working in the Bakery could only have been for her exclusive benefit. The evidence of the Great latitude given to the Claimant to pursue her and her husband’s business interests without there being any significant enrichment of Crystal Bakery in which she claims she had a beneficial interest and does not support a finding that there was in existence a promise by Donald as she described. By extension this evidence does not support the assertion of the claimant that she gave up her own ambition of establishing her own business. There is no evidence to suggest that she would not of established “own business” if she wanted and if she did not consider what she was doing to be her own business”.

I. *The Period in the United States*

**[49]** In Cross examination the Claimant said that from Christiana she went to the United States of America in August 2003 and returned to Jamaica in April 2008 after the death of Rose. If there is also evidence that she returned in 2016 and worked in the bakery for a long period. She explained that she had received permission from Rose to go to the USA. The Claimant gave no evidence as to whether Rose permitted her to be absent from the business indefinitely or whether there was an agreed timeframe. This would have been another period when the Claimant would not have been working at the Bakery. Such a loose arrangement permitting the Claimant to be absent for approximately 5 years does not seem consistent with the Offer as described by the Claimant even considering the fact that her husband was ill and the fact that because she is related to Rose, Rose may have been overly accommodating.

J. *The inconsistencies*

**[50]** There were a number of inconsistencies highlighted during the cross examination of the Claimant and for purposes of this judgment it is not necessary in my view to identify all of them, but I will refer to just a few for purposes of illustration. By way of example, in paragraph 48 (ii) of her witness statement, the Claimant complained that Robert placed her on the payroll where she had never been placed in her over thirty five years with the Company. In paragraph 58 of her witness statement she again complains that neither Robert nor Gary discussed any aspect of her relationship with Crystal Bakery or Crystal Hardware where she worked for over thirty six years. However in cross examination by Mr. Howell she admitted that she did not work at Crystal Bakery for over 35 years but for over 20 years, 1976 to 1993 then 2008 to 2013. I do not find that the evidence as to her employment was an error but rather that it is a demonstration of her propensity to exaggerate her involvement with the bakery in an effort to establish her claim.

**[51]** In paragraph 37 of her Witness statement the Claimant stated that in June 2008 she returned to Jamaica leaving her sick husband behind and moved into the

room at 62 Main Street. However in cross examination by Mr Howell she said she did not leave him behind that was a mistake. Whether one left one's sick spouse behind in the states is a significant matter and I do not accept that the Claimant was mistaken on this point. Here again there is evidence of the Claimants propensity for exaggeration even although this evidence relates to an issue which is only of emotive value.

- [52] In what was an effective display of cross examination, Ms Grey questioned the Claimant in relation to the contents of paragraph 22 of the Further Amended particulars of Claim which I think it is helpful to reproduce.

*22. The said Donald Lloyd Yee presented to the Claimant a Certificate of Title in respect of 62 main Street, Ewerton in the parish of St. Catherine "see" the said Donald Lloyd Yee said to the Claimant "as it stands it is my name alone on the title but I will add all three of your names on it Robert Gary and yourself, that we all have equal shares in the Property". This registered title bore the Volume and Folio numbers – Volume 706 Folio 128. He then Presented a document representing the share-holders in Crystal bakery Ltd "look" he said to the Claimant "I alone have the shares in Crystal Bakery, at present it is Five hundred Thousand (500,000.00) shares. I am going to change it up and add all three of your names, Robert, Gary and Yourself to the company as directors and shareholders and distribute the Five Hundred Thousand Shares equally among us all. Anytime I finish adding your names to the title and to the company document you can each get a copy of the documents- it will all be here in writing". He said you will need nothing special in writing from me.*

- [53] The Claimant explained that when she first gave the volume and folio numbers to her lawyers she gave the incorrect numbers so they had to be amended. The claimant admitted that she could not remember how many shares she saw but her lawyer told her that it was 500,000 shares and she took it that that was what Donald said but that was a mistake. After being shown a document by Ms. Grey following an application to do so on the basis of the principle in the case of **R v Peter Blake**, the Claimant said she now knows that the share capital of Crystal Bakery in 1976 was \$200.00.

- [54] As the uncontroverted evidence of Gary disclosed, Crystal Bakery Ltd was incorporated with a share capital of \$200.00 which was divided into two hundred

shares of one dollar each. Initially one share was issued to Donald and the other to Rose with Gary taking up the remaining shares on 15 November 1990. It was only on 9<sup>th</sup> October 1995 that the share capital was increased to \$500,000.00.

**[55]** This evidence is very damaging to the credibility of the Claimant because it demonstrates unequivocally that in an effort to advance her case, the Claimant was prepared to inject information acquired after 2012 into a very detailed narrative of what was supposedly said and done by Donald in 1976. Her deliberate and calculated deception was exposed by skilful cross examination and laid bare because the information that she sought to insert into a 1976 factual matrix, namely the number of shares/issued share capital of Crystal Bakery Ltd. was proved to be incorrect since it related to the Company's position post 9<sup>th</sup> October 1995. This has led the Court to conclude that the Claimant could just as easily have fabricated the entire account of the Offer having been made.

K. *The Purported Wills*

**[56]** The evidence of Robert is that Rose and Donald each prepared or had prepared documents purporting to be wills but are not wills because of the failure to comply with the legal requirements for a valid will in each case. In the case of Rose's document it failed because it only had one witness. Robert's evidence is that each document purports to bequeath the sum of Two Thousand Dollars to the Claimant. Although the Court fully appreciates that documents are not wills and therefore do not have any legal effect in that regard, I accept that they purported to be wills and they can nevertheless be used to give an insight into the state of mind of the maker in each case, namely Rose and Donald. If the Claimant had a beneficial interest in the Bakery or 62 Main Street pursuant to the Offer as the Claimant asserted, such a gift would have made no practical sense having regard to the high net worth of the Claimant as far as Rose and Donald were concerned. I find that only reasonable inference to be drawn from these documents is that there was no Offer as asserted by the Claimant and that Rose and Donald were purporting to make a symbolic provision for the Claimant by a

token sum which reflected that she was remembered, but that she was undeserving of any greater gift. This would not be at all strange in light of the benefits that the Claimant would have obtained over the years as a result of her association with Rose and Donald since the time that they took her into their home.

L. *Motive*

**[57]** Crystal Bakery Ltd has grown into a successful business. There was however no evidence led as to a recent valuation, but that would have been unnecessary at this trial stage since a valuation of the assets of Crystal Bakery is one of the reliefs being sought. Counsel for the Claimant asked Robert if it is valued at five hundred million dollars (\$500,000,000.00) and he said he was unable to confirm that. What is undisputed is that considering the evidence as to the current scope of the business, the Claimant would become very wealthy if her claim succeeds. Given the financial stake involved, there is therefore a motive on her part to falsely assert that Donald made the Offer on which her claim is premised. The Claimant also demonstrated an attitude which suggested that she felt that there was a moral obligation on Rose and Donald to treat her as they did their children Robert and Gary. Because of the deep emotion she displayed and the evidence of her feeling that she is morally right to expect some reward, she may very easily have deliberately conjured up facts to ground a legal right that did not exist. I have not attached much weight to this factor of motive in my analysis but it is certainly a consideration to which I have had regard.

M. *Dememeanour*

**[58]** The demeanour of the Claimant did not convey to the Court the impression that she was telling the truth. I appreciate that some of the events of which she spoke occurred many years ago but, notwithstanding that she was oftentimes very hesitant or reluctant to answer questions that were put to her in cross examination. I have not placed much dependence on this in my assessment of

the Claimant's credibility because of the other elements of the factual matrix which guided my analysis, but it is a factor that I have considered in reaching my ultimate decision.

## **Conclusion**

**[59]** I have considered but deliberately not made reference to the evidence of some of the witnesses in the case since my conclusion was not materially influence by them. On the basis of the preceding analysis I have absolutely no hesitation in finding on a balance of probabilities that I do not accept the evidence of the Claimant that the Offer she described or any similar representation was made by Donald to her. I find that Donald did not encourage a belief in the claimant that she would be entitled to any interest in Crystal Bakery Limited or any property. Consequently the Court also finds that the Claimant did not act to her detriment in pursuance of or in reliance on any representation made by Donald to her. The Court having made these findings of fact, there is no basis in law for a finding of a resulting implied or constructive trust by which the Claimant would have acquired an interest in 62 Man Street, Crystal Bakery Ltd. or any property that was owned by Donald. There is also no basis for the appreciation of property Estoppel, or a finding of equitable fraud or any of the heads of claim made by the claimant. Accordingly, the Claim fails and there is no need for the Court to embark on a further examination in order to determine any other facts related to other issues that were collateral to the claim for example whether Gary, Robert and/or Crystal Hardware benefitted from funds belonging to Crystal Bakery Ltd.

**[60]** In the premises the Court makes the following orders.

1. Judgement for the defendants on the claim.
2. Costs to the Defendants to be taxed if not agreed