



[2025] JMSC Civ. 105

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018HCV02199

BETWEEN **ANTHONY DUNN** **CLAIMANT**
AND **NEDITA OWENS-GIBSON** **DEFENDANT**

Mr Sean-Christopher Castle for the claimant

Miss Danielle Archer instructed by Legal Archer for the defendant

Heard: November 6, 2023, December 8, 2023, February 9, 2024, April 26, 2024 and
September 26, 2025

Contract - Whether a quasi-contract existed between the parties - Trusts -
Whether moneys held on a constructive or resulting trust - Whether moneys held on bailment

IN OPEN COURT

CORAM: JARRETT, J

Introduction

[1] Between the years 2009 and 2013, Anthony Dunn (the claimant) and Nedita Owens-Gibson (the defendant) were involved in an intimate sexual relationship. In

December 2013, they had a son (whom I will refer to in this judgment by the cypher "K"). The relationship soured, became extremely acrimonious, and shortly after K's birth, it ended in rancour and dispute. K is the defendant's second child. She has an older daughter from a dissolved marriage. The claimant now claims against the defendant for the return of the sum of \$ 3,282,500.00 which he says he gave to her, not for her own use, but to keep for him as "rainy day" savings. I shall set out the pleadings, summarise the evidence and show why I ultimately dismissed the claim.

- [2] I have carefully considered the submissions and authorities provided by counsel and am thankful for them.

The claim

- [3] The claimant pleads that the defendant is in breach of a raft of legal obligations owed by her to him. He alleges that she is in breach of fiduciary duty, breach of trust, breach of quasi contract or bailment, and he also pleads that she holds the sum of \$3,282,500.00 on a constructive or resulting trust, in his favour. In addition to court fees and fixed costs, he also claims interest on that sum of \$919,100.00. The claim form was filed on June 7, 2018, and on June 16, 2023, amended particulars of claim, was filed without the court's permission. At trial, on the defendant's objection to the amended pleadings, and after hearing from the parties, only those amendments which were in alignment with the claim form were allowed to stand.
- [4] It is alleged that throughout the period February 27, 2009, and July 10, 2013, during the parties' intimate relationship, several bank deposits and transfers were made by the claimant to the defendant's Bank of Nova Scotia Jamaica Limited (BNS) account, amounting in total to \$3,282,500.00. This was with the understanding that the money would be held in the defendant's account until the claimant had urgent need for it. Despite several requests made by the claimant, however, the defendant has failed to return the deposits.

The defence

[5] In her defence filed on November 30, 2018, the defendant denies that the money paid into her account by the claimant was to be held by her for him until he urgently needed it. She alleges that the money transferred or paid to her by the claimant related to; a) the rental and maintenance of her motor vehicle which was used by the claimant and his friend Vincent Cousins; b) contribution to the rent for property at Seymour jointly leased by the claimant and the defendant and which the claimant used for personal and business purposes; c) contribution to the rent for property at Long Mountain, jointly leased by the claimant and the defendant and which the claimant used for personal and business purposes; d) contribution to the living and personal expenses of the claimant and the defendant; and, e) the repayment of personal loans made to the claimant by the defendant in or around 2009 in excess of \$2,100,000.00.

[6] The defendant denies holding any money on trust for the claimant. She alleges that over the years she requested that the claimant pay his outstanding debts and financial commitments, and says that his claim is a malicious fabrication, motivated by malice.

The evidence

The claimant

[7] The witness statement of the claimant filed on April 14, 2023, and dated April 12, 2023, as redacted, stood as his evidence in chief. According to the claimant he is a business executive and a Justice of the Peace. He says that during his and the defendant's intimate relationship throughout the period February 27, 2009, and July 10, 2013, he placed various sums of money by bank transfers and deposits into the defendant's BNS account, amounting to \$3,282,500.00. According to him, his instructions to the defendant, which she understood and agreed to, were that the money was to be held by her on account, and on his behalf as "rainy day" savings, until he had urgent need for it. The defendant knew that these funds were

being held on trust by her, but despite his several requests, she has not returned the money to him.

- [8] In 2013, against his intentions, the defendant purchased property at Camperdown Pen for herself. Their relationship was negatively affected by the fact that the defendant deprived him of his money. They were not always on speaking terms and on July 31, 2018, he wrote an email to the defendant within the context of a custody claim between them in the Family Court. In that email he asked the defendant whether she was going to continue to be his enemy at the expense of their son. By that email he was expressing his willingness to discontinue the Family Court custody matter as it was wasting his time, and the defendant could not afford to retain a lawyer. His actions were honest, he did not intend the money in issue to be a gift to the defendant, or to be used by her for any other purpose but to be held for him as rainy-day savings.
- [9] The claimant says that unknown to him, the defendant sold property owned by her at Camperdown Pen on July 5, 2018. He believes she did this after being served with the claim to relieve herself of property on which a judgment in his favour could be enforced.
- [10] On cross examination, the claimant denied being in a relationship with the defendant during the period 2009 and 2012, preferring to say that he had sexual relations with her up to 2013. He admitted that the defendant bore him a son in December 2013. He said he paid the defendant's rent, sometimes he bought groceries, and at other times he gave her cash to purchase groceries. He, however does not recall sending to her bank account money for groceries. The amounts he paid for the defendant's rent varied. In August 2008, he paid \$80,000.00 per month for property at St Michael's Terrace. Thereafter, he paid \$90,000.00 per month for premises at Fairway Avenue, and then \$70,000.00 per month for property at Long Mountain. In 2011, he paid \$80,000.00 per month for premises at Mona Great House and in 2012, he paid \$80,000.00 per month for 65 Lady Musgrave Road.

In addition to paying her rent, the claimant also said he paid for trips they took together and he gave her money for shopping.

[11] In answer to questions relating to several emails, part of the agreed bundle of documents, the claimant either denied sending them or could not recall if he had sent them. He admitted that there is no written document reflecting the agreement he alleges he had with the defendant for her to hold money for him. He denied that the money (the subject of the claim), was for rent, the repayment of a loan, fees on that loan, Christmas presents, or the refurbishment of the Seymour property. In fact, he denied owing the defendant any money, or that he had promised to repay her. He also denied that the defendant took out a loan, secured by a van, for his benefit.

The defendant

[12] The defendant's witness statement filed and dated April 14, 2023, stood as her evidence in chief. She is a Brand Manager at Stewart's Auto Gallery. According to her, she entered into a romantic relationship with the claimant around 2009. In that same year they both agreed to rent property at 5 Fairway Avenue, Kingston 6, Seymour Square for \$85,000.00. This property was initially for her, but the claimant later used it for both personal and business purposes. After one year, they decided not to renew the contract, as the claimant informed her that he was having financial issues. Together they invested in a public passenger vehicle to generate additional income and to meet their expenses. The claimant gave her the money to buy the vehicle in 2010, and although they applied for a public passenger vehicle licence, the vehicle was sold, as no licences were being issued for Kingston and St. Andrew at the time. With no alternative, they relocated to reduce their expenses. The claimant rented property at Long Mountain which was used by him for both personal and business purposes. During their relationship, they both contributed financially towards their living and miscellaneous expenses. She did not keep a record of every expense incurred as she and the claimant were in a relationship and not a business.

- [13] According to the defendant, at the time of their relationship, she was in possession of two motor vehicles, a 2006 and a 2007 Honda CRV. The latter was imported by her in her sister's name with her sister's permission. When she sold the 2006 motor vehicle for \$2,000,000.00, around April 2010, the claimant asked her to loan to him money to pay for office rental costs for a property on Dumfries Avenue. She gave him a manager's cheque for \$500,000.00 which he delivered to the landlord for the property.
- [14] The claimant had also asked her to take out a loan on the 2007 motor vehicle. Because this motor vehicle was in her sister's name, she asked her sister for permission to do so, and her sister agreed. The loan amount given to the claimant was \$1,520,000.00, and a promissory note was signed by him promising to repay it by March 2010, as he was expecting money from his investments from other sources. When the time for repayment came, the claimant informed her that he needed additional time to pay off the loan as there was a delay in the funds he was expecting to receive. The nonpayment of the loans and the claimant's excuses led to disagreements between them.
- [15] During 2011 and 2012, the claimant was not consistent with his loan repayment. This led to her sister incurring late fees and the development of tension between her sister and her. To resolve the difficulties, she took out a personal loan to clear the loan in her sister's name and to restore her sister's good credit rating. She told the claimant what she had done, and he signed another promissory note agreeing to take responsibility for this new loan and to repay it. He, however, did not repay the loan. She did.
- [16] The claimant's financial problems eventually became more difficult, leading to conflicts and disagreements between them. The claimant became verbally abusive, and he began to remind the defendant that he was paying the rent and that she should be grateful she had a home. He became controlling, requested the use of her motor vehicle, which at times was inconvenient for her, and when she refused his requests, they argued, and he would send her unsavoury messages.

He manipulated and humiliated her, used her credit card without her permission and neither made payments on the card nor repaid her for the moneys he used.

- [17] On various occasions between 2009 and 2011, the claimant made deposits of varying amounts to her BNS savings account , which were used for ; a) rental of townhouses b) refurbishing of the property at 5 Fairway Avenue (Seymour) property; c) cash given back to the claimant when he requested it ; d) daily expenses for both of them, including food, clothes , travel and vacation expenses; e) furniture for the apartment (tv and tv stand) ; f) motor vehicle maintenance ; g) cash to purchase a motor vehicle to operate as a taxi; and h) money to compensate for the use of her 2006 Honda CRV, used by the claimant's friend Vincent Cousins for 7 months.
- [18] They separated several times in 2012, and in 2013, she got pregnant. She sold her 2007 Honda CRV and paid off the loan she had taken out to assist the claimant. They separated again in 2014, and the relationship eventually ended. In April 2014 she purchased an apartment. The claimant was unhappy that he could not visit her as he wished and would randomly visit her apartment indicating that she cannot prevent him from visiting his son. He threatened to kill himself and her, and consequently she obtained a Protection Order against him. He filed for custody of K and in 2016 she filed for disobedience of maintenance, because he refused to maintain K on the basis that he had invested in her, and she left him when he was out of a job. Shortly after she was served with this claim, she received an email from the claimant on July 31, 2018, asking her whether she still wished to be his enemy at the expense of K or does she want to be civil, and they raise him together. According to her, this email shows that the claim is not genuine.
- [19] On cross examination, the defendant said that money for her own personal upkeep, was sometimes given to her by the claimant in cash, cheque or bank transfer. She also said that oftentimes, the money given to her by the claimant was to do various things for his benefit, including grocery shopping, maintenance for her vehicle, which he drove (this included refuelling it and replacing tyres). She

agreed that he was supporting her lifestyle financially. She said that during the period March 2013 and December 2013, she was pregnant with K, and all the money the claimant gave to her during that time, was to finance her preparations for K's birth.

[20] The defendant denied that deposits to her account were made by the claimant for her to hold for him for a "rainy day". She also denied that in conversations she had with the claimant at the start of their relationship, she agreed to hold money on trust for him, as he was going through a divorce and wanted to hide his funds from his then wife. She likewise denied that shortly after their breakup, she bought her apartment with money the subject of the claim. She also denied selling the apartment to prevent it being used by the claimant to enforce a judgment against her. In relation to the custody of K, she said that by order of the court, joint custody was granted to them.

Discussion and analysis

[21] This is a classic case of "he said she said". It is clear from the evidence and the demeanour at trial of both parties, that there is no love lost between them. I am mindful that in these types of cases, the court must be careful in its assessment of the evidence and in drawing conclusions on that evidence, because when intimate relationships turn sour, the recollection of events is often times clouded and influenced by continued anger, animosity and unresolved conflicts. Thankfully, in this case, there are a number of email exchanges between the parties over several years, part of the agreed bundle, which shed significant light on the parties' respective cases.

[22] The claimant has the burden of proof to show, on a balance of probabilities, that between February 27, 2009, and July 10, 2013, he placed in the defendant's bank account, \$3,282,500.00, to hold for him for a "rainy day", and that it was not to be used by her for any other purpose. This is a question of fact.

[23] It is not in dispute, that from the start of their relationship in 2009, the claimant gave money at various times to the defendant for her personal upkeep. It is equally not in dispute that at least up to 2012, the claimant paid the rent for premises of which they both had the benefit. The claimant denied in cross examination that several emails were written by him to the defendant. In some instances, he claimed not to be able to recall if he wrote them. These emails were part of an agreed bundle of documents to which he agreed, and which were put into evidence at the start of the trial. I therefore reject his denial of their authorship. Despite the claimant's denial that he owed money to the defendant for a loan taken out on his behalf, these emails corroborate the defendant's evidence that ; a) in 2010, she used her 2007 Honda CRV motor vehicle to secure a loan which was for the claimant's benefit and that; b) he agreed to repay the loan but failed to do so in full , and c) was inconsistent with his payments between 2011 and 2012.

[24] One of the claimant's emails is dated October 5, 2011. In it, he includes what appears to be a statement of the parties' expenses, and in doing so, he makes reference to \$1,520,400.00 which he describes as "Nedita-BNS Loan". It is recalled that the defendant's evidence is that the loan she took out for the claimant's benefit, was for \$1,520,000.00 on the security of her 2007 Honda CRV.

[25] In another email, this time dated November 3, 2011, this is what the claimant wrote to the defendant:

"Not sure what is there to talk about. Your interest is to get your van loan paid off and get back all the money you have paid on the loan so far, the car transfer and the dentist.

I think once you get that you will be happy again. I am sure you will.

So I don't see what is there to talk about. I got myself in this mess and I will get myself out.

I am sure once you get your funds, I will not hear another bad word from you about me. Isn't what this is all about, honestly."

- [26] From the defendant's emails to the claimant (also part of the agreed bundle), there is evidence of the financial difficulties the claimant was experiencing on or around 2010 and into 2014. These emails corroborate the defendant's evidence of those difficulties. In fact, the claimant's own emails, including the above referenced one, corroborate that evidence. In an email from the claimant to the defendant dated November 1, 2011, he tells her that he will pay his debts and therefore she need not do so. Besides, said he, she does not have the resources to do so and even if she did, he would not allow it as he was brought up to take care of his own responsibilities.
- [27] Up to the December 2014, there are emails from the defendant to the claimant beseeching him to repay the loan. The email dated December 28, 2013, bears reproduction:

"Anthony please note my rent is due on the 28th of each month. As you are aware the van loan comes out of my pay monthly hence this cash is needed to replace the deducted sum. Can you please try to have the sum available on time monthly.

The balance I have from the cash given for medical expense is \$9,450.00. I will deduct the sum of \$4,298.93 used from my card on Dec 22, 2013, by you.

Please note I will have to take a taxi to and from the bank to make credit card payment US40 as I didn't use the cash and will not incur this expense as I will have no income for the next two months."

- [28] Almost one year later, in an email dated December 5, 2014, the defendant wrote:-

"Anthony, I need to get the balance of Sept loan payment. And I need October and November, as it is now December.

I'm behind on my mortgage payment. As a result of the loan payment. Why are you putting me in this position.

I go to work daily and I do my best to pay all the bills including paying Joy as you have decided to discontinue paying Joy.

I am totally frustrated and don't deserve this treatment.

Are you going to let me losey(sic) my apartment just because I have to pay \$38,500 plus \$36,000.00 to Joy?

Can't you have a heart.

I would never do this to you. Where will by kids live Anthony.

If I don't pay Joy I can't go to work and if I don't work how do I pay my bills."

[29] In the claimant's email response dated December 6, 2014, he wrote:

"I will start to treat you right when you admit you cheated on me.

I told you I was leaving your abuse, not leaving you but you betrayed me. I trusted you and believe that no matter what you would never cheat on me, worse in the first year of my son's life.

The fact that you cheated I don't want anything to do with you.

I don't care, you hurt me. If [K] needs a home, he has mine, my moms, his uncles and aunts so he is never short of a place.

Goodbye".

[30] These emails leave me in no doubt that the defendant loaned money to the claimant secured by her 2007 Honda CRV and that their agreement was that he would repay her for that loan. What is remarkable about the email correspondences, however, is that while they demonstrate that the claimant acknowledged that he owed money to the defendant, was not faithfully paying the

loan, and seems to be seeking her forbearance, in none of them does he tell her to apply the “rainy day” funds to his debt. In fact, he does not mention the existence of these funds and neither does she. If these funds had been deposited to the defendants account as the claimant alleges, it seems to me that these financial difficulties would be “rainy day[s]”, to which these funds would be readily applied. In fact, given the obvious acrimony which developed between the claimant and the defendant (as evidenced by the tone and language of their emails) , and the beseeching cries of the defendant for the claimant to repay the loan to ease her own financial burdens, it would be surprising to me, that she would have funds “on account” for the claimant and not apply them to his debt which he clearly had failed to repay.

[31] An important piece of the puzzle is the advent of allegations made by the claimant that the defendant cheated on him and was unfaithful. The claimant’s first email (included in the agreed bundle), in which he alleges infidelity on the part of the defendant, is dated December 9, 2014. In that email, he alleges he has proof that the defendant cheated on him and that he has “told everyone” what she did. He then closed by saying that K will soon be taken away for good. An email dated January 27, 2016, is the first email in evidence, in which the claimant alleges that he is owed \$3,282,500.00 by the defendant. He wrote to the defendant: -

“Please advise me what you did with these monies that were provided to put aside for future investments.

DATE	AMOUNT	BANK DRAWN ON
27-Feb- 09	350,000.00	BNS
03-Apr-09	300,000.00	BNS
09-Jul-09	840,000.00	BNS
01-Sep	600,000.00	BNS
12-Apr-09	200,000.00	NCB

08-Nov-11	200,000.00	NCB
02-Oct-12	200,000.00	Sterling Asset Management
04-Mar-13	200,000.00	Sterling Asset Management
14-May-13	150,000.00	Sterling Asset Management
14-Jun-13	90,000.00	Sterling Asset Management
10-Jul-13	152,500.00	Sterling Asset Management
	3,282,500.00	

Since you cheated and left, kindly return every cent of it. These monies were never part of your rent but an investment in our future." [Emphasis added]

- [32] This email speaks volumes. On any fair and objective interpretation of it, it is plain that the claimant sought an accounting, and the return of \$ 3,282,500.00, from the defendant, because she had left the relationship and he believed that she had cheated on him, so there was now no future in their relationship in which he had invested. After that email, several others followed, accusing the defendant of infidelity. In them, the claimant used vile, abusive and derogatory language to describe the defendant. Included in these emails were threats to have the defendant locked up by the police on her return to the island from a trip overseas, and the suggestion that he had a hand in her being denied a United States of America visa in 2013.
- [33] In an email dated December 11, 2017, the claimant repeats his request for an accounting and the return of \$3, 282,500.00, and says that he has records to show that this money was given to the defendant to hold for him until he needed it. It is notable however, that no such records were disclosed by the claimant in these proceedings.
- [34] It is not disputed that the money claimed by the claimant was placed in the defendant's account. I find, therefore, that the sum \$3,282,500.00 being claimed by the claimant was placed in the defendant's account during their intimate

relationship. However, I am not satisfied that this sum of money was placed in the defendant's account for her to hold for the claimant for a "rainy day". I find that it was not. I have carefully examined the evidence and find the defendant's evidence as to the purpose for these deposits to her account, far more credible than that of the claimant. His emails suggest to me, and I accordingly find , that the claim for an accounting and for the return of funds was actuated by spite, hurt feelings and anger, because he believed that the defendant had been unfaithful and had cheated on him. The defendant's evidence has been corroborated in significant respects by the email correspondences between them. I therefore find, on a balance of probabilities, that the money claimed by the claimant was placed in the defendant's account for a) her personal upkeep, b) their shared expenses, including rental expenses, vacation expenses, c) expenses relating to the maintenance and use of the defendant's 2007 Honda CRV by both parties and Vincent Cousins (the claimant's friend), d) expenses relating to the defendant's pregnancy, and e) the repayment of the loan to the claimant, which was secured by the defendant's 2007 Honda CRV.

[35] Constructive trusts arise by operation of law. Alastair Hudson in **Understanding Equity and Trusts 2nd Edn**, at page 20, reminds us that a constructive trust: -

"[A]rises in circumstances in which the defendant deals with property knowing of something which affects her conscience. The term "constructive trust" refers to the fact that the defendant is construed to be a trustee of that property. In such circumstances the defendant would become a constructive trustee of that property".

[36] Resulting trusts also arise by operation of law. There are typically two circumstances in which they occur. Simply put, one circumstance is where an express trust fails for uncertainty and the equitable interest in the property, the subject of the trust, results back to the settlor. The other is where persons contribute jointly to the acquisition of property, and equity operates to make each one entitled to an equitable interest in it, proportionate to his or her respective

contribution. In such circumstances, the person with the legal interest holds the equitable interest on a resulting trust in proportion to his or her contribution.

[37] Based on my findings, none of the circumstances for the creation of any of these trusts exists in this case. Likewise, based on my findings, no issue of bailment or breach of quasi contract arises as there was no agreement between the parties that the defendant would hold the sum of \$3,282,500.00, for the claimant until he needed it on a "rainy day". There is no evidence of any intention to create legal relations , no evidence that the defendant owed the claimant a fiduciary duty and certainly no evidence of an express trust created by the claimant.

Disposition

[38] Having regard to the forgoing reasons, I make the following orders: -

- I. The claim is dismissed.
- II. Costs to the defendant to be agreed or taxed.

A Jarrett
Puisne Judge