In The Supreme Court of Bermuda

CIVIL JURISDICTION
2014 No: 192

BETWEEN:

BRIGHTSIDE ENTERPRISES LIMITED

Plaintiff

And

RUBY JOANN LIGHTBOURNE-LAMB

Defendant

CIVIL JURISDICTION
2015 No: 130

BETWEEN:

GWYNETH IRENE LIGHTBOURNE

Plaintiff

And

RUBY JOANN LIGHTBOURNE-LAMB

First Defendant

LIEUTENANT COLONEL EDWARD J LAMB

Second Defendant

JUDGMENT

Trial – Claim for Repayment of Unpaid Loans- Whether money advanced as a loan or a gift – Whether written loans were forgiven - Presumption of Undue Influence – Unjust Enrichment – Monies had and received- Breach of Fiduciary Duty – Equitable Doctrine of Laches -Statutory Limitation Period – Sections 7 and 30 of the Limitation Act 1984 - Judgment Interest

Date of Hearings:	Wednesday 6 April 2022 / Thursday 7 April 2022 / Wednesday 22 June 2022 / Wednesday 8 March 2023 / Thursday 9 March 2023
Date of Judgment:	Monday 31 July 2023
Plaintiff:	Mr. Kevin Taylor (Walkers Bermuda Limited)
Defendants:	Mr. Christopher Swan (Christopher E. Swan & Co.)

JUDGMENT of Shade Subair Williams J

Introduction:

1. This is the judgment for two actions which were tried together by reason of the shared factual background. Case 192 of 2014 is a corporate action for a claim of $82,991.35 alleging monies had and received ("the corporate claim"). Case 130 of 2015 consists of personal claims for multiple unpaid loans ("the personal claims").

2. Undeniably, the provenance and result of this litigation is one and of the same: ubiquitous debris trailing from the fractured relationship between a mother and daughter.

3. The mother in this case is Mrs. Gwyneth Irene Lightbourne ("Mrs. L"/ "the Mother"/ the Plaintiff"), now an elderly lady of over 90 years in age, notwithstanding her well-groomed and fashionable presence and her acute sense of awareness. Mrs. L is the Plaintiff in the personal claims and the driving force for the corporate claim. (No issue arose on her capacity to bring a claim in the name of the Plaintiff Company.)

4. The daughter, Mrs. Ruby Joann Lightbourne-Lamb ("Mrs. LL" / "the Daughter" / "the First Defendant") is the sole Defendant party to the corporate claim and is the First Defendant in the personal claims brought by Mrs. L. The Second Defendant to the personal claims is the First Defendant's husband, Lieutenant Colonel Edward J. Lamb ("Mr. LCL" / "the Son in Law"/ "the Second Defendant"). Mr. LCL is neither a shareholder nor director of the Company. This has always been so.

5. Mr. Willard Lightbourne (the "Deceased") was the founding director and a major shareholder of Brightside Enterprises Limited ("Brightside" / "the Company"). He was also husband to Mrs. L and father to Mrs. LL, both of whom are also directors of Brightside.

6. Having reserved the Court's decision at the conclusion of the trial, I now provide the judgment for both the corporate claim and the personal claims with my reasons as outlined further below.

The Agreed and Background Facts

7. At trial, I heard the evidence of Mrs. L (the Mother), Mrs. LL (the Daughter) and Mr. LCL (the Son in law). In doing so I had the benefit of observing the demeanour of each witness and their manner of response as their oral evidence was tested under cross-examination.

8. By way of background, the Plaintiff and the Deceased (collectively "the Parents") achieved much financial success over the course of their marriage and partnership in Brightside. Their legacy clearly targeted the growth of family wealth, evidenced by the assets and properties which were gifted to each of their three children, namely the Daughter, her brother Michael and her sister Andrea (collectively "the Children").

9. The Children are all beneficiaries of the Gwen-Will Lightbourne Trust which was settled by the Parents. Each of the Children are also recipients of a gift of real property from the Parents by way of voluntary conveyance. (The property which was gifted to the First Defendant is located at #6 Spanish Crescent, Knapton Hill, Smith's Parish, adjacent to the property in which the Plaintiff resides or resided at all material times.)

10. There was unchallenged evidence before this Court that the Deceased in his will (the "Will") stated: "*If my wife should predecease me, then I direct my Trustees to distribute my personal estate in the matter hereinafter expressed*." In the Will the Deceased provided directions for the allocation and distribution of the following categories of his assets:

    A. The Deceased's shares held in HSBC Bank of Bermuda and
    B. The Deceased's shares held in Brightside (the Company)

11. These assets were to be bequeathed to each of the Children and the grandchildren of the Deceased in equal shares. The Daughter, under cross-examination, agreed that she and both of her siblings held equal shares in Brightside. She also agreed that each of the Children were Directors in the Company.

12. The Will also provided that the '*rest and residue*' of the assets were to be divided amongst the Children as they themselves would see fit. The Daughter's evidence at trial, however, was that the Deceased, during his lifetime, acted differently to what he expressed to be his desire in his Will. Offering an example, the Daughter told this Court that her father, before

his passing, had gifted his Rolex watch to her son, contrary to the manner in which the distribution of his assets was to be decided in accordance with the Will.

13. As to the timeline related to the Deceased's failing health, contention arose on whether the Deceased was gravely ill by mid-September 2010. The Plaintiff's case was that by this point, the Deceased was on his 'death bed' and was in significant physical pain, such that he was being administered morphine under the joint care of the First Defendant and a private nurse. The First Defendant (the Daughter) refuted this description of the Deceased's health in September 2010 and volunteered in her oral evidence that her father was of sound mind at that stage of his life. Notably, some four months later in January 2011 the Deceased's life expired.

14. It was clear throughout this litigation that there is a profound family divide which now leaves the Mother on one side of the battle and the Daughter and her husband, Mr. LCL, on the other. Both sides, however, agree that the Daughter was always particularly close to the Deceased, her father. Examples of their bond was evidenced at trial and there was no dispute that the Daughter played a major role in his care during his terminal stage of illness. The warmth and adoration between the Deceased and the Daughter seems to have been extended to embrace the Son in Law, Mr. LCL.

15. By sad contrast, it was plain to see on the evidence before this Court that the Daughter never enjoyed an emotionally close relationship with her mother for any prolonged or significant period, even during her childhood. While they appear to have had spurts of affection, the case advanced by the Defence was that the Mother has spent a lifetime obsessing over the growth of the family business, while leaving her daughter to search for love and nurturing elsewhere. Against that background, I dare say that no matter the result of this bitterly-fought litigation, these family members have all lost something far greater than money in the end.

Summary of the Claims

16. The Plaintiff's case in both actions was grounded on the oral evidence of the Mother, who is a director and shareholder of the Plaintiff Company.

17. The impetus for **corporate claim**, which is against only the Daughter, stems from a $90,000.00 payment to her from Brightside's corporate account (the "company payment"). This payment was made in the form of a cheque signed by the Deceased. The Plaintiff's case is that either this payment was a company loan with interest at the rate of 5% per annum or that it was wrongly made to the Daughter as it conferred no benefit to the Company and constituted a breach of her fiduciary duty.

18. The **personal claims** according to the Plaintiff's case may be categorized as four separate loans plus a claim for unpaid rental profits:

(i) The First Loan: A loan made in the principal sum of $165,000.00 with the requirement of payment of interest at the annual rate of 5%. Prior to the extension and increase on the First Loan, payments were made up until February 2009 thereby reducing the balance owed on the principal sum to $77,421.18.

(ii) The Second Loan: A loan made in the principal sum of $150,000.00 together with an annual interest rate of 6% ($24.66 per day) To date, the whole of the principal sum remains outstanding.

(iii) The Combined First and Third Loan: A loan for the additional sum of $50,000.00 was applied as a top-up to the outstanding balance owed on the First Loan. The current balance owed on this combined loan is $98,148.44 plus interest accruing ($13.44 per day).

(iv) The Fourth Loan (The Bank Transfers): Two transfers were made from the joint HSBC account of Mrs. L and the Deceased to Mrs. L-L and/or Mr. LCL. The first transfer was made on 24 September 2009 in the amount of $1,446,422.96 and the second transfer was made on 16 October 2009 for the sum of $110,020.11. The aggregate principal amount is $1,556,443.07.

(v) The Cottage (Claim for half of Rent Profits): By Voluntary Conveyance dated 14 October 1991 Mrs. L and the Deceased conveyed a portion of their interests in the real property situated at Cartwheel Cottage in Smith's Parish ("the Cottage"). The Plaintiff claims 50% of the rents and profits received by the Defendants in respect of the Cottage for the period of 11 January 2011 onwards.

19. The Defendants' case is that the monies which form the subject of the corporate claim for $90,000.00 was at all times a gift from the Deceased.

20. As for the Combined First and Third Loan and the Second Loan, the Defendants say that these loans were forgiven by the Deceased.

21. In respect of the bank transfers (the Fourth Loan), the Defendants maintain this was a gift from the Deceased.

The Corporate Claim

22. Brightside, a limited liability company, was incorporated in Bermuda with its registered address situate at 38 North Shore Road Smith's Parish FL08. On the corporate claim, the Plaintiff's primary case is the company payment of $90,000,.00, made on or about 13 September 2010, was advanced as a loan for the purpose of assisting Mrs. LL and Mr. LCL with the development of their house at Cashew City in St. David's. No end-date for the repayment of this loan was specified.

23. It was broadly unchallenged that this advancement was made by a cheque bearing the Company name "*Brightside Enterprises Ltd*" at the top left-hand corner and the Deceased's signature at the bottom of the cheque. When invited to agree that the name "*Brightside Enterprises Ltd*" was visibly marked on the cheque, Mrs. LL said "*barely*" and hesitantly expressed her agreement that the cheque was indeed a cheque issued by the Company. When questioned about the named addressees on the cheque, Mrs. LL was again hesitant in her responses. Mr. Taylor asked Mrs. LL if she could see her husband's and her name written on the cheque. Without expressing agreement, Mrs. LL asked Mr. Taylor to direct her to where both names where marked. When Mr. Taylor did so, he remarked that the name "Edward J" was visible on the copy of the cheque immediately after the words "paid to the order of". As no agreement from the witness was forthcoming, Mr. Taylor asked Mrs. LL if her husband's middle name started with the letter "J". After some another elongated pause, Mrs. LL agreed that her husband's name did start with the letter 'J'. Mr. Taylor then followed up by asking, "*So, you see that it's made out to both of you?*" to which she again replied; "*barely*". Mr. Taylor continued; "Is 'barely' a 'yes' or a 'no'?" And Mrs. LL answered; "*It appears that way*."

24. Mrs. LL said that she could not say whether or not the $90,000.00 sum was originally a company asset. She was invited to agree that the cheque was paid out of the Company's account. However, she replied; "*I'm not sure where the funds came* [from] *I received a cheque- I don't know where the funds actually* [came from] …" Mrs. LL stated that her mother informed her in a written letter of 31 May 2011 that the money would be taken out of the Glen-Will Trust and that Brightside was only being used as a vehicle account. In that letter Mrs. L (the Mother) was seeking the repayment of the $90,000.00 on the basis that it was a loan. As pointed out by the Plaintiff, the Daughter never provided a written reply to this letter from her mother. That said, she suggested that she did in fact have some verbal exchanges with her mother in lieu of a written reply.

25. The Plaintiff's Counsel directed Mrs. LL to her mother's 28 Jan 2012 letter to her in which it said, in part:

> "*Investment Loan $90,000 from Brightside Enterprises Ltd*
>
> *The Investment Loan mentioned was to assist your husband… to start developing property at Cashew City St David's. While your dad was very ill at home he signed a Brightside cheque #1723 over to you for the amount mentioned with the intent of the money was to be paid back monthly to Brightside Ltd at interest rate of 3%*."

26. Again, no written reply was made to this letter by the Daughter but it was the Daughter's position that she otherwise spoke to her mother about this.

27. By a further letter dated 24 April 2012, the Mother wrote to the Daughter stating; "…*the Brightside… cheque that your father made out to you while he was on his death bed was intended to be a loan with interest…Its been just over a year now since I have been trying to have a dialogue with you and Eddie about the money i.e. the terms of the investment. I wrote to you and Eddie but you never responded*."

28. When challenged with Mr. Taylor's suggestion under cross-examination; "*Up until April 24 you didn't respond at all to your mother*" Mrs. LL fell silent. I asked her whether or not she understood the question to which she requested; "*Would you break it down?*" Having repeated and clarified that the question called for her answer to the Plaintiff's suggestion that she never responded to her mother's letter, whether in writing or otherwise, Mrs. LL maintained that it was not correct that she gave no reply whatsoever.

29. Mr. Taylor put it Mrs. LL that had she truly understood the $90,000.00 payment to have been a gift from her father, she would have said as much in a reply to her mother's letters. To that, Mrs. LL told the Court:

> Mrs. LL: "*... it may not be a written response, but I practically pleaded with my mother. I had conversations with my mother. And just because there is nothing in response to this, doesn't mean that I did not have communication with my mother- even if it was just outside of her door. I pleaded with my mother about the gift that my daddy gave me. I pleaded that- you know, 'Why are you doing this to me? Why?' So, in answer to that, I had communication with my mother. I did*."
>
> Mr. Taylor: "*So your evidence is that what she said in that email about never having responded is incorrect?*"
>
> Mrs. LL: "*Yes sir*."

30. Mrs. LL added in a subsequent part of her evidence that she had also been to Brightside to plead with her mother as described in her evidence above.

31. By email reply dated 25 April 2012 under the subject-heading: '*Re: $90,000.00 (Sept. 2010)*" the Daughter replied:

> "*…Thanks for all your emails this week concerning money owed. It has been a lot to digest all at once and so suddenly. Perhaps we can sit down and discuss all of this as we both have a few important questions to ask you. We look forward to hearing from you...*"

32. By a further email reply dated 26 April 2012 from Mrs. LL she wrote under a new subject heading "Discrepancies" which she accepted to be the email description of her choosing. In that correspondence Mrs. LL told her mother: "*I have perused the information that you have given me. There are definitely discrepancies in the amount owed. Is it possible to meet with you early next week to go over this as I am totally unaware of an education loan that you mentioned pertaining to Jordan. This is very disturbing.*" When Mr. Taylor put it to Mrs. LL that she never stated in that reply that the $90,000.00 was a gift from her father as opposed to a loan, Mrs. LL agreed (having sought clarification of the same question). Her explanation was that she was only engaging her mother on the figures that her mother felt was owed. That is to say, she was merely pointing out that even on her mother's calculations, there were discrepancies on the sums she, the Daughter, was said to owe.

33. Mr. Taylor also pointed Mrs. LL to a transaction record from the Company entitled "*Brightside Guest Apartment Transaction Detail by Account*" which referenced at the bottom of that record "*Cheque to be repaid to Brightside 13-09-10 Check 1723 Ruby Lightbourne-Lamb Cashew City site $90,000.00…*". When Mr. Taylor put it to Mrs. LL that this was part of the Company's record of finances, Mrs. LL responded:

"*I- I- I see – I see this document but I- I don't know how authentic this document is Mr. Taylor… … I mean even looking at this- I- I- I just question this- the authenticity- and I know for a fact that my mother ordered Sonya Darrell, the accountant, to list it in the manner in which it appears- so I- I- I don't know these extra papers- this- I- I- I don't know what the point of this is that I have to respond that this is something that is authentic*."

34. In support of the Plaintiff's case the $90,000.00 sum was advanced as a loan, the Mother pointed to the minutes of a meeting between the Directors of Brightside held on 7 December 2009 (the "2009 Minutes"). In the Minutes it states:

"*Mr. Willard Lightbourne* [the Deceased] *emphasized that loans given by Brightside Enterprises Ltd. should continue to be paid*."

35. However, the Daughter characterized the 2009 Minutes as being fraudulent. She said Brightside was a company that operated on paper only. Her evidence was that they never operated as a company typically would and alleged that the 2009 Minutes were drafted in accordance with a direction issued by her mother, the Plaintiff. The Daughter insisted that she was never present for any meeting of 7 December 2009 and said that no such meeting was even held. In her exact words; "*Definitely not- these are fraudulent*."

36. In support of her contention, Mrs. LL (the Daughter) pointed out that the 2009 Minutes were unsigned and she highlighted that the 2009 Minutes predated her 13 September 2010 receipt of the $90,000.00 monetary gift from her father. She also drew this Court's attention to the general wording used in the 2009 Minutes, implying that one could not be certain that the resolution for repayment of the loan was applicable to the $90,000.00 sum.

37. In her evidence in chief (in the form of a supplemental witness statement) she said [6-8]:

"*My mother harassed and badgered me relentlessly long after my father had passed to force me to admit that my father loaned me this money. My mother was, and still is, prepared to punish me because of the love my father demonstrated towards me.*

When my mother allowed my brother to lock the door to the Brightside office and he cornered me up against the desk because I refused to sign fraudulent Company Minutes, I finally had to accept that my mother was right in telling me: "You are my enemy."

Being held against my will by my mother and brother was extremely traumatic for me. The scene was absolutely horrific and included an onslaught of screaming and shouting by my mother and brother. I feared for my life and safety. I knew I had to escape from this scene

and I immediately decided to jump over the office desk counter and run for my life. As I made my escape, I could hear my brother calling the police informing them that I was causing a disturbance at Brightside."

38. The Plaintiff also relied on the minutes of a 5 October 2012 meeting where she is recorded as having refuted that the $90,000.00 sum was a gift and where it was resolved that the status of payment would be later determined.

39. When challenged under cross-examination, Mrs. LL confirmed her understanding and agreement that she, as a Director of the Company, had a fiduciary duty to act in the best interests of the Company. When asked if she ever reported the so-called fraudulent minutes to the police she replied:

"*Well…yes. I have reported recently to the police, in fact to- in fact to a detective that there have been some fraudulent activities happening- and I've mentioned minutes that happened in Brightside- and recently, when I- in – in-found recently about um my brother being on my land tax bill for 6 Spanish Crescent- that's when I made a police report and I was able to mention about minutes- about things happening with Brightside, because it all ties in*."

40. Mrs. LL was pressed further on the original question as to whether she ever filed a police report in 2009 in complaint of the fraudulent concoction of company minutes; she conceded that she had not.

41. Notwithstanding the dispute as to whether the payment was a gift or a loan, the Defendants accepted that the $90,000.00 payment was purposed to infuse cash into their development project for the Cashew City property, of which they jointly owned.

42. The Plaintiffs case is that in 2012 four separate installments totaling $7,008.65 were paid on the corporate loan leaving an outstanding balance of $82,991.35. On 16 December of that same year, Mrs. L made a demand for the repayment of the loan during a meeting of the Directors of Brightside (the "Directors"). Accordingly, Mrs. LL agreed to make full repayment on the principal sum by monthly installments of $500 commencing on 1 January 2013. However, to date, no portion of those repayments have been made. That is the Plaintiff's primary case.

43. It was put to Mrs. LL that the $90,000.00 company payment was a loan on which she made partial repayments. In reply, Mrs. LL stated that she never made any payments to reduce the $90,000.00 sum because the money was gifted to her by her father on 13 September 2010.

44. Alternatively, the Plaintiff claims that the $82,991.35 sum qualifies as monies had and received or money which is the subject of Mrs. LL's express or implied promise for consideration which wholly failed.

The Personal Claims (The Combined First and Third Loan)

45. The First Loan was advanced to both Mrs. LL and Mr. LCL (collectively the "Borrowers") by the Plaintiff and the Deceased (collectively the "Lenders"). It was created by a written loan agreement dated 30 January 2003 which was signed by both Defendants. On its express terms, the loan was made for the principal sum of $165,000.00 with interest at the annual rate of 5%. Also the Defendants were required to make repayments by monthly installments of $1,750.08 commencing on 3 February 2003. This was to be done by direct deposit into the Gwen-Will Lightbourne Trust Account #121590-800 at Bank of N.T. Butterfield & Sons Limited.

46. The express purpose of the First Loan was to assist the Defendants in paying off their mortgage obligations which arose out of the renovations they commissioned at the Cottage. Another express term of the 30 January 2003 agreement was for the title deeds to the Cottage to be collected by the Lenders upon the activation of the First Loan. When the Plaintiff gave her oral evidence, she stated (via her witness statement) that payments on the First Loan were made up until February 2009 thereby reducing the principal sum to $77,421.18.

47. The same parties to the First Loan agreed to enter into a further loan agreement (the Third Loan) which entailed the advancement of an additional $50,000.00 sum which was to be consolidated with the outstanding balance of the First Loan. The combined First and Third Loan ("the Combined Loan Agreement") was also contained in a written agreement naming the Deceased and Mrs. LL as the Borrowers and the Defendants as the Lenders. It was signed by the Defendants and dated 24 February 2009. The Combined Loan Agreement stipulated the terms of the additional sum of $50,000.00 which was applied as a top up to the First Loan. The annual interest rate for this increase remained the same as it was for the First Loan.

48. On the express terms of the Combined Loan Agreement, repayment was to be made in the first instance by equal monthly sums of $1,837.41 over a period of 84 months. Interest at the rate of 5% in relation to a $130,000.00 portion of the total sum was to be paid and thereafter. The remaining balance of $5,000.00 would then be payment in equal sums of $1,250 over a four month period.

49. Mrs. L produced a balance statement showing the sums paid and owed under the Combined Loan Agreement. According to that statement, several monthly payments in the sum of $1,837.41 were made in 2009 through to 2011 and the sum of $2,500.00 was paid on 2 June 2011. The said statement also shows various missed payments during that period.

50. The Plaintiff says that the aggregate principal amount of the Combined First and Third Loan at the commencement of the extension period was $127,421.18. However, the current outstanding balance on this loan is said to be $98,148.44 plus interest accruing.

51. The Defendants accepted that the $165,000.00 portion was indeed a loan and that she and Mr. LCL had made substantial payments to reduce that loan sum. Mr. LCL's sworn evidence was that he and his wife were "diligently and regularly" making repayments on

this sum until the loan was forgiven by the Deceased. He said that when he and his wife were presented with the opportunity to develop land in St David's, they were in need of borrowing large amounts of money from the bank. Mr. LCL said that the Deceased was keenly aware that the Defendants would be unable to simultaneously meet their loan obligations to him and the payments which they would be obliged to make to the bank. According to Mr. LCL, the Deceased formed the view that they should proceed with the building project and that the $165,000.00 loan would have to be forgiven.

52. Mr. LCL's evidence was that the Plaintiff was not privy to the conversations between the Defendants and the Deceased and that when the loans were being forgiven by the Deceased, Mrs. L's attention was otherwise focused on the affairs at Brightside Guest House. He added that the Plaintiff's marital relationship was also strained, evidenced by the fact that Mrs. L and the Deceased were sleeping in separate rooms for years prior to his passing.

53. As for the additional $50,000.00 sum, the Daughter's evidence was that this advancement was not a loan. In her witness statement, which stood as her evidence in chief, she said her father gifted her that sum because he wanted her son, Jordan, to pursue a college degree in accounting and that the Deceased offered the payment to cover Jordan's boarding school and first year of university tuition. On the Daughter's evidence, the Mother was adamantly against treating the $50,000.00 sum as the gift her father intended and that the written loan agreement was drafted only to appease her.

54. Under cross examination Mrs. LL accepted that it was her belief that her Mother truly considered the $165,000.00 + $50,000.00 sum to be the subject of a loan. Mrs. LL also conceded that when she signed the written agreement, she did not express to her mother that she would nevertheless consider these sums to be gifts not repayable as a loan. Mrs. LL told this Court that in her signing of this written loan agreement, that her mother would treat this as a loan and expect to be repaid.

55. The Plaintiff produced an open letter from the Defendants' lawyer, Mr. Christopher Swan, dated 19 December 2013 ("Mr. Swan's December 2013 letter"). In that letter Mr. Swan outlined his instructions stating:

"*Our instructions setting out our clients' rebuttal to the many matters raised in your correspondence are detailed below; comments made in your letters to our clients. We shall set out our position as you outlined them in your letters.*"

56. The Plaintiff highlighted the inconsistencies between Mr. Swan's December 2013 letter and the case presented at trial.

57. Although the Defendant's case was that the Combined First and Third Loan was forgiven by the Deceased in 2009, Mr. Swan's December 2013 letter provided:

"*For years our clients have honoured their commitment to repay these monies to Mr and Mrs Willard Lightbourne evidenced by the making of regular payments. This is illustrated in the spreadsheet provided by Mrs Lightbourne to our clients. It details that as of June*

2011 a total of $124,255.68 (71 payments of $1,750.08) and $41,085.91 (24 payments of $1,837.41 plus 1 payment of $2,500) were made by our clients.

According to that same spreadsheet, prepared by Mrs Lightbourne, our clients' outstanding balance of these two loans, including accumulated interest, is $49,658.71. This is vastly different to the $98,223.30 that your client now claims is owed by our clients."

58. Mr. Taylor, during his cross-examination of the Daughter and at the stage of closing submissions, underscored the significance of the Defendants' lawyer stating on instruction that his clients were committed to repaying the monies owed without any mention of these sums having been forgiven in part or whole.

59. Referring to the Loan 3 statement showing monthly payments of $1.837.41, Mrs. LL disputed the payments which her mother credited her for making and denied that these payments applied to the Combined First and Third Loan. The Plaintiff's Loan 3 statement reports that between 2 April 2009 and 2 March 2011, a total of 20 monthly payments of $1.837.41 were made. However, Mrs. LL said that the only monthly payments she ever made to her mother in the sum of $1.837.41 were made on both 14 October 2010 and 22 November 2010. According to Mrs. LL those payments were made under the duress she suffered from her mother. That said, Mrs. LL accepted that she had not produced any of her own records of payments made.

60. The Plaintiff says that the outstanding balance on Loan 3 is in the aggregate principal sum of $98,148.44 plus interest.

The Personal Claims (The Second Loan)

61. The Lenders advanced the Second Loan for a principal sum of $150,000.00 by way of a written loan agreement dated 5 February 2003. Both Mr. LCL and Mrs. L-L are named as the Borrowers on this written agreement. The Second Loan carried an annual interest rate of 6% requiring monthly interest payments in the sum of $750 to be made over a five-year period. On this loan the principal sum was due by the end of the term of the loan.

62. It is expressly stated in the written agreement for the Second Loan that it its purpose was to enable the Defendants to raise a mortgage to further develop property on St David's Island in St George's Parish (the "St. David's property"), such property having been willed to both Mr. LCL and his uncle.

63. On Mrs. L's evidence, a verbal agreement was made between her and the Deceased with the Defendants for the date of repayment for the Second Loan to be extended until February 2013 with all other terms of the Second Loan remaining in place.

64. At trial, Mrs. L told this Court that there remains outstanding principal and interest due on this loan and produced a statement (the "Loan 2 statement") prepared by an accountant employed by Brightside. It is reported on the Loan 2 statement that monthly payments in

the sum of $750.00 were consistently made between 15 February 2003 and 15 January 2008 totaling $45,000.00. Further payments in the same monthly sum were made between 15 February 2008 and 15 January 2009, save non- payment for February, August, October 2008 and January 2009. This left a total outstanding balance of $216,774.66 comprising both principal and interest.

65. The term for the Second Loan was extended to amortize in February 2013; however, the Defendants were said to have again defaulted on the Second Loan such that as of 6 November 2017 the outstanding balance, on Mrs. L's evidence, was $66,774.66 in accrued interest plus the whole of the principal sum of $150,000.00. Since which, no other payments were made on the Second Loan making the current outstanding amount calculable by totaling the number of months passing from December 2017 to date and multiplying that total by the monthly $750.00 payments owed in interest.

66. On the witness stand, Mrs. L-L said that she has every reason to disagree with the Plaintiff's record of the monies owed on the Second Loan. However, she accepted under cross-examination that she did not dispute the portions crediting her for the payments she did make. She stated that she acknowledged those payments were made. So, she agreed that by 15 January 2008, she had a credit of $45,000.00 having paid monthly sums of $750.00.

67. When directed to the Mother's Butterfield Bank statements, Mrs. LL agreed that she made a payment into that bank account in the sum of $750.00 on 10 October 2010 and a second payment in the same sum on 22 November 2010. Mrs. LL agreed that she described both of these payments as the "Lamb house loan". When cross-referencing these two payments, she accepted that they corresponded with her mother's schedule of payments.

68. The Plaintiff invited this Court to accept the Mother's record of payments outstanding on the Second Loan as credible and unchallenged evidence as the Defendants failed to produce any banking statement or records evidencing the contrary, notwithstanding the fact that she received her mother's records over 5 years prior.

69. On the subject of the Second Loan, Mr. Swan's December 2013 letter stated:

"*Our clients have likewise been very consistent and regular in their payments of this loan. Whilst the original intent at the outset of the loan was for the payments to be "Interest Only", this condition was subsequently repeatedly discussed with Mr. Lightbourne who agreed that payments could be applied to the Principal. This fact is again illustrated in the spreadsheet compiled, and given to our clients, by Mrs. Lightbourne.*

According to that spreadsheet, as of June 2011, our clients had paid a total of $64,500 (86 payments of $750), leaving an outstanding balance of $105, 341.10. This too, is a significant variance from the $181,500 your client is now claiming."

70. When referred to this letter, Mrs. LL agreed that she approved the draft version of this letter before it was sent out.

71. Pointing out that it is not stated in Mr. Swan's December 2013 letter that the loans were forgiven, the Plaintiff asks this Court to reject the Defendant's case that the Deceased pardoned these loans in 2009. The Plaintiff argued that had he done so, the monthly payments of $750.00 would have ceased from that period onwards.

72. The Daughter, however, insisted that the loans were pardoned in December 2009. She said that the reason for her payments after 2009 was to appease and bring an end to the constant harassment she was subjected to by her mother. When pressed further, the Daughter conceded that when she made the October and November 2010 payments, her father, on her account, was in good health. Here, the Plaintiff emphasized that it was the Daughter's evidence that the Deceased was the unquestioned head of the financial matters of the family. So, as the Plaintiff contends, it is not believable that the Daughter would have acquiesced to any harassment from the Mother while the Deceased was alive and well. In answer to those points, the Daughter stated that she respected both of her parents and that she was merely seeking to avoid any acrimony. She said that her subsequent $750 payments did not change the fact that her loans were forgiven by the Deceased in 2009.

73. When Mr. LCL gave his oral evidence he stated that he agreed that "in practice and in theory" payments were made on this the Second Loan. He said that they were making regular payments of $750 per month but that he had not scrutinized this record meticulously but would accept that the Plaintiff's records would be correct in the portions where the Defendants are credited for making payments.

74. On this part of the Plaintiff's claim, it is said that the Defendants now owe a principal sum of $150,000.00 plus interest on the Second Loan.

The Personal Claims (The Fourth Loan: Transfer of $1,556,443.07)

75. On one version of the Plaintiff's evidence, in September 2009 both she and her husband loaned the Defendants the principle sum of $1,556,443.07 by way of two separate advances in the sum of $1,446,422.96 and $110,020.11 respectively bearing an annual interest rate of 2.5%. These transfers were made by way of a transfer from her HSBC bank account 010-576015-511 which was held jointly with her husband. She said that those monies were transferred to the Defendants' joint account 010-207702-511 at HSBC bank.

76. The receipt of those monies is not disputed and the parties agree that it was purposed and used to develop the Defendants' property in St David's known as "Cashew City". Mr. LCL's oral and written evidence was that it was in September 2009 that the Deceased not only offered the gift of $1,500,000.00 to his daughter, Mrs. LL, but that it was during this time-frame that he also absolved the Defendants of their responsibilities to repay the outstanding loans. Mr. LCL's evidence was that the Deceased was the one who encouraged

the Defendants to purchase and develop Cashew City as he, the Deceased, was keen to see a family legacy in the St. David's area established.

77. Under cross-examination, Mr. LCL conceded that the loan agreements were in writing but that the Deceased took no steps to commission a written document to evidence his agreement to revoke any entitlement to the loan repayments. Mr. LCL said that about a year later (late 2010) he asked the Deceased to provide him with a written agreement to evidence the loan forgiveness but that the Deceased refused stating that his word was his bond. Mr. LCL described the Deceased as "old school".

78. The Plaintiff described these monies as her life savings which were redeemed and liquidated investment assets. Statements evidencing those transfers were produced on the Plaintiff's case. She informed this Court that she opened HSBC bank account 010-576001-513 based on the understanding that Defendants would repay this loan into that account (the "pay-back account"). However, no portion of the aggregate sum of $1,556,443.07 has been repaid to date. According to the Mother, the Fourth Loan was not recorded in a written loan agreement because the Deceased, at the time, was gravely ill.

79. However, in the Plaintiff's second supplemental witness statement, which was part and parcel of her evidence in chief, rejected any notion that she intended to transfer these monies to her daughter, whether in the form of a loan or otherwise. At trial, the Plaintiff's evidence was that she had more or less been tricked into making the transfer. Mrs. L's case was that her daughter had taken advantage of her.

80. The Plaintiff stated in her oral evidence that her daughter spent much time with her during a period leading up to these bank transfers. She said that she and the Daughter lived like neighbours when the Deceased had fallen ill. Mrs. L said that the Daughter was assisting her with many things during that timeframe, crediting Mrs. LL for greatly assisting with the care of her father during his illness. Both parties agreed that in 2009 and in the spring of 2010, the Daughter accompanied the Deceased overseas for his medical care. This evidence was supported by that of Mr. LCL who told this Court of his wife's care of her ill father and how she took him to doctor's appointments and monitored and administered his medication.

81. Mrs. L said that the Daughter was also a big help to her, personally. As an example, Mrs. L spoke about the Daughter dependably providing her with transportation and the collection of anything that she, the Mother, might have needed. Mrs. L added that the Daughter was also working closely alongside the Company Accountant, Ms. Sonya Darrell, in order to assist with Brightside's financial matters. Mrs. L said that she could have called upon her daughter for any purpose and that her daughter would have been there at her aid.

82. It is against this background that the Plaintiff felt that she had been unduly influenced. In her evidence she, the Mother, said:

"…

I was aware at the time that certain construction work on the Cashew City Property owned by Ruby and Edward had been halted due to Ruby and Edward's non-payment of the contractors and that, as a result, Ruby and Edward were desperate for money at that time. I recall that Edward was in debt to such an extent that Baptiste Limited ("Baptiste"), a local home improvement store, had erected a notice listing the individuals or entities from which Baptiste would not accept cheques, which included Edward.

On or around 21 September 2009, I attended the Premier Banking Centre on the 2nd Floor of the Harbourview Centre at the offices of HSBC…in order to check on the balance of Willard and I's investments with HSBC Corporate Money Funds Ltd. Class B USD Curotmer #B039112 (which held the entire life savings for both Willard and I) and HSBC Managed Income Growth. The reason for my attendance at the bank was because my husband was terminally ill, and I wanted to know how much money was in our joint investment account. I recall that the bank had informed me that the investment was about to 'mature', and I had to decide whether to reinvest the money for a further term or redeem it into a cash account.

I asked Ruby to accompany me for emotional support due to my reliance upon her during that difficult time in my life, given my husband's health troubles. At this time, Ruby was:

a. in charge of the corporate affairs of the Company, including payment of annual company fees and the submission of annual return of shareholding filings to the Registrar of Companies;
b. responsible for the preparation of the Company's month and year-end financial reports, in conjunction with the Company's accountant Sonya Darrell;
c. increasingly present in Willard's and my home, assisting me in caring for Willard; and
d. often accompanied and assisted me when I attended to personal administrative matters.

At that time, it was my understanding that Edward's grandmother, Ms. Pitcher, had left behind some property on Texas Road in St. David's that she wanted Edward and Edward's cousin to inherit. However, Ruby had informed me that she and Edward were having problems 'settling the property with the bank'. It was my understanding that this meant that the property in question was mortgaged and was, somehow, restricting Ruby and Edward's plans to develop this property.

When Ruby and I were at the bank, I was informed by the bank teller…of the balance in relation to these two accounts in front of Ruby. This was the first occasion that Ruby was made aware of the total value of these two accounts. It was during this visit I learned that Ruby and the Bank Teller already knew each other…

I do not recall the exact conversation that I had with Ruby and the Bank Teller at the time. However, what ultimately transpired is that Willard and my life savings were redeemed and transferred into Ruby's account. I do distinctly recall asking Ruby which account she wanted the funds to be paid into, and Ruby telling the Bank Teller the relevant account

number. I also distinctly recall that when the Bank Teller confirmed the funds were to be paid into Ruby's account, the Bank Teller said to Ruby "you are a lucky girl".

While I cannot distinctly recall the circumstances in which the redemption request and transfer was made into Ruby's account, I do vividly remember how I felt when we left the bank that day. I felt foolish. I felt that I had been 'caught with my pants down'; Willard and I had always made significant financial decisions as a couple, and I knew that he would never have agreed to transfer our shared life savings to Ruby. I had no intention of loaning that money to Ruby, let alone gifting it to her. My ability to think logically during that time was heavily affected by the amount of stress and emotional drain I was experiencing in dealing with Willard being ill and away in Lahey Clinic.

On my way out of the bank, I recall that Ruby's demeanour had changed. She acted as if the world had been lifted from her shoulders. In the weeks that followed, I actively pursued Ruby to try and recover our money, but was unsuccessful. I prayed, I cried, I emailed her on several occasions. I even went to other properties in St David;s to try and make contact with her. Since that day at the bank, neither Ruby nor any other member of the Lamb family has made any attempt to contact me, visit me or call me.

Ruby says… that Willard was present at the bank on or about 21 September 2009 when the Fourth transaction was entered into. I was surprised to read this, as my clear and distinct recollection of my attendance at the bank that day was that I was accompanied by Ruby alone. It was impossible for Willard to have attended the bank with us, because at the time he remained at the Lahey Clinic receiving treatment for cancer…"

83. In an email from the Mother to the Daughter dated 22 June 2012, the Mother wrote:

"*Ruby*
… …
… …

I now come to the deeply disturbing part of this email. In 2009 my husband was terminally ill, and this was very stressful for me and family members. But you, and your husband, who were sticking closely by our sides, became the recipient of our HSBC Corporate Money Funds class B USD, customer #B039112. This fund held the entire life savings, of myself and my husband; along with the investment for the Trust. Now, if you follow closely all the other monies that were loaned to yourself and Eddie, you will recall that the procedure was to write up an agreement with signatures attached.

When Sherri bean, the premier relationship manager at HSBC handled the transaction, I was expecting to follow up with the paper work but, no paper work was forthcoming. So I continued to pressure you to inform me about the transaction you did with the Global investment money. Also I wanted to know what returns would be generated by the money. You finally gave me 2 papers that revealed that the funds went into a joint account between you and Eddie, and that is the only paper work that you gave me.

While we were at the bank, we were told that Account 010 576 001 513 would be the pay back account where the returns from the money would go. I have never taken any money out of this account nor should you. So I ask you to explain exactly what is happening.

I ask you both "What explanation can I give to the beneficiaries of the Gwen-Will Lightbourne Trust concerning their money? … …"

84. By way of reply in an email dated 22 June 2012 the Daughter wrote:

"…*You refer to the Gwen Will Trust and moneys owed to the trust. I am unclear as to what you are talking about. An account set up at the bank with all of our signatures (including dad's) was set up for me to credit with the understanding that when Eddie and I had finished the building project in St David's I could make more consistent payments*…"

85. The evidence of the Daughter, however, was that it was her father who "instigated" her going to the bank for her to receive these funds as a gift. She said that both of her parents who asked her to accompany them to the bank in 2009 in order to make a money transfer to her. Her case is that there were two trips made to the bank to effect these transfers and that her father attended with her and her mother on both occasions.

86. The Daughter said that she otherwise had no prior knowledge of these monies which had been invested with the bank for several years prior to maturing. The Daughter's evidence was that this transfer would be made by way of a gift in furtherance of her father's efforts to help her and her husband, Mr. LCL, with their building projects in St David's and to also assist them in reducing their liability on their mortgage obligations. Mrs. L, on the other hand, reiterated that no discussions in which this transfer was characterized by either side as a loan were ever held.

87. The Daughter told this Court that these two advances were made to her solely and clarified that at no point were those monies advanced to her husband. She accepted however, that these monies were used to develop two properties held by her and her husband in St David's. (One property was held jointly with her husband (Cashew City) and the other property (Texas Road) was held only by her husband. Both properties were mortgaged to the bank.)

88. On Mr. LCL's evidence, the Plaintiff was wrong to suggest that he and his wife were financially desperate in September 2009 and that the construction work at Cashew City had been brought to a stop because of it. He told the Court that the Cashew City renovations had not even begun at the point in time of the transfers and the property had not been purchased until the following month. Mr. LCL explained that the demolition work at Cashew City commenced in May 2010. Mr. LCL also dismissed his mother-in-law's account of his troubles with Baptiste Limited. He explained that his dispute with this establishment arose out of his refusal to pay for defective cabinetry.

89. While Mr. LCL denied being in a state of financial despair in September 2009, he notably spoke about the financial trouble that he and his wife were having in the early part of 2009. In his supplemental witness statement forming part of his evidence in chief he stated:

"*At this juncture, I would also like to point out that early in 2009 we could no longer meet our financial obligations to the Lightbournes due to the costs of our development in St. David's. We therefore, had to stop our payments to them. This we did with the full knowledge, understanding and blessing of Mr. Lightbourne. This was all well before Mr. Lightbourne passed. He never demanded that we pay nor did he threaten us with legal action if we did not do so.*"

90. In an attempt to rebut the Plaintiff's evidence, Mr. LCL stated in his evidence that his maternal grandmother, to whom the Plaintiff referred in her evidence, died some 8 years prior to the two impugned bank transfers. His evidence was that he bought his uncle's share in the property (not that of his cousin) shortly after his grandmother's passing on 11 December 2001. Mr. LCL also provided corroborating evidence before this Court showing that the Texas Road property was rented in February 2009. This evidence was tendered to undermine the Plaintiff's evidence that money was desperately needed by the Defendants for property development in September 2009.

91. Speaking more broadly, Mr. LCL categorically denied that the Plaintiff was capable of being unduly influenced or coerced against her will to the extent that it would result in an unwanted transfer of a sum like $1,556,443.07. In any event, his evidence was that he never had a conversation with Mrs. LCL about the transfer and that she was not privy to the conversations held between him and Mrs. L and the Deceased.

92. He also said that his mother-in-law continuously considers him to be an outsider to the family and that their relationship was not one of warmth or closeness.

93. The Plaintiff's case is that Defendants continue to owe the principal sum of $1,556,443.07 plus interest on the Fourth Loan.

The Personal Claims (The Cottage: Claim for Half Portion of Rental Profits)

94. The Plaintiff's case is that since 11 January 2011, she and her daughter, as joint tenants, each became entitled to one-half portions of the rents received from the Cottage. Notwithstanding, the Plaintiff says that since 14 October 1991, she never received any rents. She is therefore seeking (i) an Order of this Court requiring the Daughter to produce an accounting of the rents received covering the period between April 2012 and April 2018 and (ii) an Order for the Daughter to pay 50% of the rents received during that period.

95. In answer to this claim the Defendants' case is that the Deceased never pursued any entitlement that he had for a share of the rental profits. In the First Defendant's evidence she stated that she and her husband moved into the Cottage in 1990 when they had their son, Jordan. According to her evidence, she and Mr. LCL made several renovations to the property, thereby increasing its rental value. This was done with the active involvement of

the Deceased and the renovation projects became a source of the father's immense pride, she said. She also said that her father arranged for short-term tenants to occupy the property as a means of infusing her household with extra cash. In her sworn evidence she said; "*At no time did he* [the Deceased] *or my mother ever ask for any financial remuneration from these rentals*."

96. The Defendants also relied on a rent-free setup afforded to the Daughter's brother, Michael, as an example of her parents' generosity when it came to their occupation of family property. The First Defendant told this Court that Michael resided at one of the guesthouses for several years without having to pay rent. She explained that he did so during and after his marriage and that at one stage he was even permitted to combine two units in order for him to dwell in a larger space.

Findings and Decision

Analysis and Decision on the Corporate Claim

97. As a starting point, I find on the evidence that the $90,000.00 payment was paid out of the Company's assets. This is supported by the uncontroverted evidence that the cheque was marked (at the top left-hand corner) with the Company name "*Brightside Enterprises Ltd*". The Plaintiff also produced a copy of the Company transaction record reporting on the payment made and the fact that it was to be repaid.

98. I was not impressed or left with any notable measure of doubt about the authenticity of this document, notwithstanding the First Defendant's implicit invitation to this Court to reject its veracity. The First Defendant, being an active Director of the Company, was and is well-placed to enforce her entitlement to access and review any financial record of the Company which might otherwise show that the $90,000.00 was not paid out of the Company. In the absence of any real evidence to controvert the records produced by the Plaintiff, I accept this part of the Plaintiff's case to have been proven on a balance of probabilities.

99. I also find that the Plaintiff's letter to the First Defendant suggesting that the sum would be subsequently drawn from the Glen-Will Trust does not undermine the clear evidence that the value of $90,000.00 was withdrawn from the Company in order to make the payment to the Defendants.

100. I now move on to the question as to whether or not the payment was a gift or a loan. There was a good deal of circumstantial evidence before me allowing for inferences to be drawn from the Daughter's responses when tasked by the Mother to make good the repayment of the $90,000.00. I found this evidence to be particularly persuasive, if not compelling. I have reviewed the correspondence sent by Mrs. L (the Mother) to the Daughter. This comprised of email letters of 31 May 2011, 28 January 2012 and 24 April 2012. From each of those letters it was plain that (i) the Mother was seeking repayment of the $90,000.00 with 3% interest and (ii) the Mother had not received any real response from her daughter as to her position on the payment.

101. I accept the Daughter's evidence that she saw her mother to speak to in person between May 2011 and April 2012. However, I find that the Daughter's evidence, that she pleaded with her mother during those run-ins is more consistent with the pleadings of a borrower who seeks for the lender to loosen the noose. This assessment of the evidence is reinforced by the fact that First Defendant avoided engaging in a written reply to her mother for over a year.

102. When the Daughter finally introduced her pen to paper on 24 April 2012, she sought to distract the Mother's attention from the debts by highlighting her feelings of being overwhelmed and dishonestly suggested that she was being confronted with these claims in a sudden manner. The next day when she, Mrs. LL (the Daughter) followed up with a further email reply to the Mother, she spoke only about the discrepancies on the figures owed. This was wholly inconsistent with the response of a person who was being accused of owing money which was granted as a gift. I find that Mrs. LL was trying to deceive this Court in stating that she was only engaging her mother in a hypothetical sense to demonstrate that even if her mother's assertions were true, her mother's figures were somehow off. Instead, I accept the Plaintiff's evidence that four separate installments totaling $7,008.65 were paid by the Daughter (and/or her husband) to reduce the $90,000.00 total to $82,991.35.

103. All of this evidence supports my findings on the facts that the Daughter well understood the payment to be a loan. From that, it follows that the Deceased did not intend or ever express to her that the $90,000.00 payment would be a gift. In my judgment, it was mutually understood between the Deceased and the First Defendant that this cheque would be a Company loan to assist the Daughter and the Son in Law in their property development aspirations. In consideration for extending the loan, the Daughter and her husband would pay interest at the rate of 3%.

104. The Plaintiff's alternative case is that even if the Deceased had intended to gift the $90,000.00 cheque, he would have had no unilateral right to do so because those monies were the property of the Company, not him personally. Further, any such gift would have amounted to a breach of the First Defendant's fiduciary duty as she, a Director of the Company, knowingly engaged in a transaction which personally benefitted her and conferred a burden on the company.

105. In judging this complaint, I would refer to the First Defendants statutory duty under section 97(1)(a)-(b) of the Companies Act 1981 on the duty of care of officers which provides:

97(1) Every officer of a company in exercising his powers and discharging his duties shall-

(a) Act honestly and in good faith with a view to the best interests of the company; and

(b) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

106. In my judgment, the Daughter's receipt of a $90,000.00 sum, if it had been made as a gift, would have been a clear misappropriation of company assets and a breach of her fiduciary duties under statute and at common law, resulting in the unjust enrichment of both Defendants.

107. For all of these reasons, I find that the Plaintiff's corporate claim has been proven.

Analysis and Decision on the Personal Claims (The Combined First and Third Loan)

108. The Defendants accepted that the Plaintiff and the Deceased loaned them the sum of $165,000.00 which was recorded in a written agreement to which they were both party. They also agreed that the Combined Loan Agreement was drafted and signed for the Third Loan by which an additional $50,000.00 would be applied to the outstanding balance of the First Loan. However, the Defendants' case is that in reality the Combined Loan Agreement was a farce in so far as it was a document drafted only for the purpose of appeasing the Plaintiff.

109. The First Defendant's evidence was that the $50,000.00 sum was never a loan. Her evidence was that it was a gift from the Deceased for the specific purpose of covering the boarding and university tuition fees of the Defendants' son. Mrs. LL said that her mother was set against any notion of a $50,000.00 gift and that she was determined to instead treat that sum as a loan. This is the Defendants' explanation for having signed the Combined Loan Agreement on 24 February 2009 wherein equal monthly sums of $1,837.41 were agreed for the first 84 months of the loan span.

110. I reject the Defendants' assertions that they had no intention of being legally bound by the Combined Loan Agreement when they signed it on 24 February 2009. They clearly knew that the Mother considered the Combined Loan Agreement to be legally binding and nothing was ever said to her to disabuse her of that view. I also find the Daughter's evidence that she signed the Combined Loan Agreement under some form of duress to be implausible. On her evidence, her father, the real financial decision-maker, was alive and well on 24 February 2009 when the Defendants signed the Combined Loan Agreement. The First Defendant agreed that her family members bowed to his will on all financial matters, including the Mother. In fact in the Daughter's witness statement of 19 January 2018 (forming part of her evidence in chief) she stated [14] and [16]:

"…*I hasten to mention that my father was the dominant and controlling figure in the family to decide on the finances that family members would receive. This was true Pommy (his renowned nickname) Lightbourne style! My father made all of the financial decisions of the family, having for years been the driving force of entrepreneurship and industry in the family. He was the one to make all the decisions on how his money would be spent, for personal and business reasons.*

…

…As I mentioned previously, my father had undisputed authority of the family finances and, he was adamant that I did not have to continue paying on these loans as he recognized

the financial challenges that Eddie and I were having with the Bank. Even when I was reluctant to initially accept the $90,000 check that my father gave to me, he told me not to worry about what my mother would say because he was prepared to deal with her later. He expected her to rant and rave and question his decision. This was common practice for my mother to behave when it came to how my father gave money to me and my siblings. … … There was never any mention from my father for me to pay any outstanding loans before giving me the $90,000. He simply gave it to me and I received it with a grateful heart."

111. So, it seems to me that if the Deceased had truly intended the $50,000.00 to be a gift, there would have been no cause for the Defendants to feel any pressure during his lifetime (for as long as he was healthy and well) to enter into a legal agreement that was contrary to his financial will.

112. I also find that the Defendants' prolonged compliance with the express terms of the Combined Loan Agreement is very much probative of the Plaintiff's case that both parties knowingly entered into a contractual and legally binding relationship. I accept the Plaintiff's balance statement showing the sums paid and owed under the Combined Loan Agreement as proven. As pointed out during Mr. Taylor's cross-examination of both Defendants, the Defence had ample opportunity to produce evidence to controvert these records. Instead, they produced no such evidence and were unable to specify in their oral evidence any particular portion of the Plaintiff's financial records which they disputed. More so, on Mr. Swan's December 2013 letter they appear to have expressly accepted the authenticity of the Plaintiff's record.

113. Having examined these financial statements, I see no reason to doubt its authenticity which was most persuasively verified by the Plaintiff herself. I am satisfied on a balance of probabilities that the Defendants did in fact make several monthly payments of $1,837.41 from 2009 through to 2011. I also accept that the sum of $2,500.00 was paid by the Defendants on 2 June 2011.

114. Mr. LCL's sworn evidence was that he and his wife were "diligently and regularly" making repayments on this loan. He said they did so up until the loan was forgiven by the Deceased. That was plainly incorrect. When Mr. Taylor put it to Mr. LCL that he in fact made payments long after the Deceased was said to have forgiven this loan, Mr. LCL claimed the moral high-ground stating that these extra payments were made in good faith. However, Mrs. LL's evidence was that payments were made to subvert the constant and intense harassment exacted by her mother.

115. I am not persuaded by either proposition put forth by the Defendants. I reject the suggestions that payments were made gratuitously. After all, it was Mr. LCL himself who told this Court that he and his wife could not afford to proceed with the Cashew City building project opportunity if they had to continue to make repayments on the $165,000.00 loan. So, it seems to me that even if they were able to carve out the budget space to keep up with the loans and the building project, it would have still been a real burden and strain on them to do so. This makes it even less believable that they would have voluntarily offered up these hefty payments. I find the First Defendant's claim that the payments were

made to put an end to her mother's bullying equally far-fetched. On my analysis, if the Defendants were truly so pliable and vulnerable to the Mother's unlawfully made demands (to the point of making numerous monthly payments for a 2 year period), they would not likely have been emboldened to engage in this bitterly fought litigation.

116. There is more compelling evidence in support of the Plaintiff's case: Mr. Swan's December 2013 letter. The Defendants would have this Court believe that they, having instructed an attorney to represent their legal interests, never once asserted through Mr. Swan that the monies allegedly owed were instead a gift and/or a forgiven loan. Surely, it would have been far simpler and less expensive to instruct their attorney to state that no monies were owed. Instead, Mr. Swan's letter of rebuttal delved into the purported inaccuracies of the sums calculated and expressly affirmed the Defendants' commitment to repay their debts under this loan. In my judgment, it is most unconvincing that the Defendants would have instructed an attorney to defend these allegations in this manner had they sincerely believed in their primary case that no monies whatsoever were owed.

117. For all of these reasons, I find that the Plaintiff claim for $98,148.44 plus interest has been proven on a balance of probabilities.

Analysis and Decision on the Personal Claims (The Second Loan)

118. There is no dispute between the parties about the fact of the Second Loan for a principal sum of $150,000.00 (plus interest at 6% per annum) which was evidenced by the written loan agreement of 5 February 2003 requiring monthly interest payments of $750.00 to be made over a five-year period. It is also non-contentious that repayment for the Second Loan was extended to February 2013.

119. The issue for determination is whether this Loan was effectively pardoned in December 2009 as the Defendants contend.

120. On the Plaintiff's Loan 2 statement two monthly payments were made in October and November 2010, nearly a year after Loan 2 was said to have been forgiven. (For the avoidance of doubt, I accept the authenticity and veracity of the Plaintiff's Loan 2 statement for the same reasons that I accepted the evidence of the payment schedule tendered in respect of Loans 1 and 3.) These payments are particularly significant because they were made during the period that the Defendants say the Deceased was alive and well and of sound mind.

121. As I found to be the case in respect of Loans 1 and 3, I accept the agreed evidence that the Deceased operated as a financial patriarch during his years of healthy living. So, on my assessment of the evidence before this Court, the Defendants would not have been vulnerable to the Mother's fury and persistence if it was for a cause contrary to the financial wishes and decisions of the Deceased.

122. I also find it relevant that the terms of the Loan 2 agreement were rigid. Before the original agreement was extended, the Defendants were required to pay 6% interest for a 5 year period. At the end of that term the whole of the principal sum was to be repaid. It seems unlikely to me that the lenders of such an agreement would be apt to forgive the loan without evidencing the terms of the pardon in writing. This reinforces my reasoning for having found in favour of the Plaintiff on Loans 1 and 3. Mr. LCL told this Court that he invited the Deceased to evidence the withdrawal of the loan obligations in a written document but he refused, stating words to the effect that 'his word is his bond'. That, in my judgment, is inconsistent with the visible practices of the Plaintiff and the Deceased when it came to the loaning of money.

123. I am also mindful that Mr. Swan's 2013 letter also referred to Loan 2 only in terms of how the outstanding balance was to be calculated. Never once was it stated that Loan 2 had been forgiven.

124. In my judgment, the Defendants' assertion that they owe no monies on the basis that this loan was forgiven in 2009 is a desperate concoction designed to escape the cloud of financial liability lurking. While I accept that the Deceased would not have likely prosecuted these claims himself in a court of law, as Mrs. L has now done, I also find that he never truly intended to relieve either Defendant from their liability under the law to make full repayment. It is more likely than not that he was simply prepared to show the Defendants some leniency by extending the timeframe within which payment could be made.

125. Notwithstanding, I find that any assurance which might have been given by the Deceased would have been legally ineffective as a means of releasing the Defendants of their liability under any of the written loan agreements if not made as a release by deed (See *Bank of Credit and Commerce International S.A. v Ali and Others* [1999] I.C.R 1068). Further, I find that the Deceased was not empowered to release the Defendants' liability without the joint agreement of the Plaintiff. She was a joint lender and was therefore entitled to jointly partake in any decision to release, given the absence of any words of severalty in any of the written loan agreements.

126. I now turn to the Defendant's pleaded case that the Plaintiff is statutorily barred from bringing this claim by reason of section 6 of the Limitation Act 1984. Section 6 applies to time limits in respect of claims for stolen chattel or conversion related to stolen chattel. Of more relevance, section 7 provides:

> "***Time limit; actions founded on simple contract***
> *An action founded on simple contract shall not be brought after the expiration of 6 years from the date on which the cause of action accrued*."

127. Section 7, as Mr. Taylor pointed out in his closing submissions, must be read with section 30(5) of the 1984 Act. Subsection (5) states that where any person who acknowledges a liquidated pecuniary claim or who makes any payment in respect of it, the right of action against that person "*shall be treated as having accrued on and not before the date of the*

acknowledgment or payment". Section 31 requires the acknowledgment to be in writing and signed by the alleged debtor. Section 30(7) states: "*An acknowledgment or part payment made after the expiration of the relevant limitation period shall be capable of reviving a time-barred remedy.*"

128. Mr. Taylor argued that the Defendants' payment of 22 November 2010 qualifies under subjection (7) as a revival since this action was originated on 30 March 2015 i.e. less than the 6 year period prescribed by section 7.

129. I find, as a matter of law, that Mr. Taylor is indeed correct. So the Plaintiff is not time-barred under the 1984 Act.

130. For all of these reasons I find in favour of the Plaintiff's claim that the Defendants are liable for the moneys borrowed under Loan 2.

Analysis and Decision (The Fourth Loan: Transfer of $1,556,443.07)

131. The Defendants do not deny that the Daughter was the beneficiary of bank transfers in September 2009 for a total amount of $1,556,443.07, which were made by way of two separate advances in the sums of $1,446,422.96 and $110,020.11. It was also agreed on the evidence that these transfers originated from an HSBC bank account held jointly by the Mother and the Deceased.

132. However, a conflict arose on the Plaintiff's evidence as to the factual circumstances under which these transfers were made. On one version of her written evidence she stated that the $1,556,443.07 total was made as a loan bearing an annual interest rate of 2.5%. This loan agreement, she said, was to be later formalised in a written loan agreement. However, due to the father's illness and eventual death, this never came to pass. Where the Mother described this transfer as a loan, she also stated that the purpose of the advancement of the funds was to assist with the development of the Defendants' property in St David's known as "Cashew City".

133. That said, on the Mother's oral evidence, which accorded with her most recent witness statement before the Court, she insisted that these transfers were the result of the Daughter's trickery, aided by her familiarity with the bank officer who the Daughter personally knew. On this narrative, the Plaintiff's case was that her daughter had taken advantage of her and that she, the Mother, had been unduly influenced.

134. On both accounts, the Plaintiff was consistently adamant that neither she nor her late husband ever gifted the Defendants with the sum of $1,556,443.07. The Plaintiff says that the Defendants' explanation that the Deceased was present at the bank and intended these monies to be given free and clear of any liability is a fabrication. The Defendants' case is that in September 2009 the Deceased not only offered the gift of $1,556,443.07 to his daughter, but that he simultaneously absolved the Defendants of their responsibilities to repay the outstanding loans.

135. I have rejected the Defendants' evidence that the Deceased forgave the loans made to the Defendants. In my earlier analysis of the evidence, I found that the Deceased, at best, was prepared to pardon the Defendants for their delays in repaying their debts. This would be consistent with the Deceased's refusal to provide of written statement evidencing his forgiveness of the loan when Mr. LCL requested for him to do so in the later part of 2010 when he would have likely been gravely ill, having died from his illness in January 2011. (The Court heard evidence that his illness required around-the-clock treatment locally and overseas.)

136. On the findings of this Court, it is implausible that the Defendants would have continued to make loan payments after September 2009 during the interim period when the Deceased was well and after he had supposedly forgiven the loans.

137. The Mother's evidence was that her husband was terminally ill when she went to the bank in September 2009. She stated that she wanted to know how much money was in their joint investment account as she had been told that the money was on the point of maturing. I accept the Mother's evidence that the monies transferred from her HSBC account were her life savings which were redeemed and liquidated investment assets.

138. The Mother's evidence is that she had to decide between reinvesting this money and redeeming it. The evidence clearly shows that she decided that she would redeem those funds before transferring them into what she described as a "pay-back account", an account which she opened for the Defendants to repay the monies transferred. On my assessment of the evidence, the Mother well understood, before departing from the bank that the transfers had been made to an account held by the Daughter. This is supported by her own evidence that she distinctly recalled asking her daughter which account her daughter wanted the funds to be paid into. The Mother's evidence is that the daughter provided the bank officer with the relevant account number and that the bank officer remarked; *"you are a lucky girl".*

139. Mrs. LL told this Court that she did not know anything about this money before she accompanied her mother to the bank. While I accept that she may not have known precisely or even broadly how much money her Mother had in this investment account, I find that she must have discovered at some point prior to her arrival at the bank that her mother had investment monies to redeem and that it was a significant sum that would assist her and her husband to develop the Cashew City property. So, when she took her mother to the bank, she well intended or hoped for a large sum of money to be transferred to her for that purpose.

140. I also find that the Mother, herself, knew that the Daughter not only wanted to receive this money but that she wanted it in order to develop the Cashew City property. It is evident that at some point, hesitantly or not, the Mother knowingly agreed to make the transfers to an account held by the Daughter. That said, I do not accept any notion that the Mother ever intended or intimated that the transferred sums would be gifted to the Daughter. It is clear,

when looking at the evidence as a whole, the practice of both the Mother and the Deceased was to loan sums of money to the Defendants with strict terms of interest, not to gift it.

141. On this occasion, the evidence reveals that the Mother agreed to make the money available to the Daughter by way of a loan but only for a portion of the sum transferred as part of these monies belonged to the Gwen Will Trust. This is consistent with the evidence that the Mother expected that the Daughter would seek her permission before making any withdrawals.

142. In my judgment, it is relevant that the Mother and the Daughter had been unusually close during the period leading up to these bank transfers. There is no real dispute on the evidence that the Daughter had been particularly helpful to her parents in facilitating their day-to-day needs and that the Mother had been feeling especially grateful to the Daughter for that routine assistance. Clearly, this was a period during which the Mother and the Deceased were both vulnerable.

143. The parties were in dispute as to the state of the Deceased's health in September 2009 and whether he had personally accompanied the Mother and the Daughter to the bank on one or two trips to effect the transfers. The Mother's evidence is that the Deceased was not present as he was overseas during this period receiving medical treatment. This is arguably consistent with the evidence agreed by both sides that at some point in 2009 and in the spring of 2010, the Daughter accompanied the Deceased overseas for his medical care. Whether or not he was overseas during the September 2009 bank transfers, I find that it is more likely than not, that the Deceased was indeed unwell during this period and not in attendance at the bank when the transfers were effected.

144. The Deceased's poor health is why the Daughter's assistance with the Company's and the Mother's personal affairs was so crucial and valuable to the Mother. On Mr. LCL's evidence, his wife and a hired nurse took good care of the Deceased during his period of illness. The Daughter accompanied him for his medical appointments and assisted him with the taking of his medications. This was a major source of the Mother's gratitude. In my judgment, the level of dependency that the Mother had on the Daughter leading up to September 2009 is good evidence that the Mother highly trusted Mrs. LL to safeguard her welfare and best interests. This makes it more likely than not that the Mother felt that she could transfer these sums to an account within her entrusted daughter's reach, prior to making a written agreement evidencing a loan for a portion of that sum with interest terms at the rate of 2.5% per annum. However, the Daughter betrayed that trust, evading her mother for a prolonged period after the transfers had been finalized, rendering further discussions on repayment of the loan impracticable.

145. I have also considered the Mother's 22 June 2012 email to the Daughter where the Mother referred to her life savings at HSBC. The Mother informed the daughter that this account held not only her "entire life savings" but also the investment of the Gwen-Will Lightbourne Trust. The Mother also wrote "…*Now, if you follow closely all the other monies that were loaned to yourself and Eddie, you will recall that the procedure was to write up an agreement with signatures attached*..." In closing, the Mother sought an

explanation from the Daughter to be shared with the beneficiaries of the Gwen-Will Lightbourne Trust.

146. The Daughter's reply to this communication is significant. She wrote:

"…*You refer to the Gwen Will Trust and moneys owed to the trust. I am unclear as to what you are talking about. An account set up at the bank with all of our signatures (including dad's) was set up for me to credit with the understanding that when Eddie and I had finished the building project in St David's I could make more consistent payments*. *Before I left with dad to go to Lahey I had started to build the account to a substantial amount but unfortunately, I have not been able to put anything more in. In fact I did have to use some monies last year and when you found out you brought this to my attention and scolded me for not getting permission from you…*"

147. Nowhere in this email does the Daughter claim that these funds were advanced as a gift. This is inconsistent with her evidence at trial that this transfer would be made by way of a gift in furtherance of her father's efforts to help her and Mr. LCL with their mortgage obligations and building projects in St David's. In my judgment, the Defendants both knew that these sums were never gifted to them and that any moneys taken were to be repaid.

148. It is perhaps worthwhile for me to consider the alternative position, had I instead found that the Mother and the Deceased indeed communicated that these transfers totaling $1,556,443.07 were made as a gift to the Daughter. If those were the established facts, which they are not, I would be bound to apply the presumption of undue influence, as settled by the Privy Council in *Inche Noria v Shaik Allie Bin Omar* [1929] AC 129 where Lord Hailsham said:

"*It is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donor was acting independently of any influence from the donee and with the full appreciation of what he was doing; and in cases where there are no other circumstances this may be the only means by which the done can rebut the presumption*."

149. Further assistance may be found in the speech of Lord Nicholls in *Royal Bank of Scotland plc v Ettridge* (No. 2) [2001] 3 WLR 1021 where he outlined a particularly relevant example of the kind of background evidence on which the donor may ordinarily rely to discharge the burden of proof and bring the presumption of undue influence into effect. Where the donor has successfully discharged that burden, an evidential burden is then placed on the donee to prove that the gift was made freely and independently of the donee's influence. Lord Nicholls said:

"*Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the*

contrary, to discharge the burden of proof. On proof of these two matters, the stage is set for the court to infer, that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise would be drawn."

150. On the facts of this case, I would have found that the Plaintiff discharged the burden of proof of undue influence by pointing to the following background facts:

(i) The Plaintiff and the Deceased were of an elderly age when the transactions were made;
(ii) The Deceased was gravely ill and vulnerable to the care and affection he was receiving from the Daughter;
(iii) The Daughter played a major role in the management in the finances of the Company and did so as a Director of the Company;
(iv) The Mother was particularly vulnerable to the Daughter who was aiding her with her daily personal and business needs in relation to the Company;
(v) The practice of the Mother and the Deceased was to lend, not gift, the Daughter with significant amounts of money, as evidenced by previous written loan agreements under which strict interests terms were fixed;
(vi) In the immediate or near aftermath of the transactions, the Mother was clearly distressed by the Daughter's possession and control over these funds;
(vii) The Mother confronted the Daughter about her access and withdrawals of the money in written corresponding in which the moneys were referred to as a liability;
(viii) The Daughter evaded the Mother's confrontation for a prolonged period;
(ix) In the Daughter's delayed written replies, she never asserted that moneys had been freely gifted to her; and
(x) The monetary value of the two transactions was so large and significant that it calls for a real explanation as to why the Plaintiff and the Deceased would ever convey those sums as a gift.

151. On the evidence before this Court, the Defendants would have failed to sufficiently discharge the evidential burden and I would have found that the transfers, if gifted, were not made of the Plaintiff's or the Deceased's free will but as a result of the undue influence of the Daughter.

152. I would only add that on both my primary and alternative findings, the Defendants were both unjustly enriched by these transactions.

153. For these reasons I find in favour of the Plaintiff's claim for the principal sum of $1,556,443.07 plus interest at 2.5% per annum.

Analysis and Decision on the Claim for half portion of Rental Profits)

154. The Plaintiff's case is that since 11 January 2011, she and her daughter, as joint tenants, each became entitled to one-half portions of the rents received from the Cottage. Notwithstanding, the Plaintiff says that since 14 October 1991, she never received any rents. She is therefore seeking (i) an Order of this Court requiring the Daughter to produce an accounting of the rents received covering the period between April 2012 and April 2018 and (ii) an Order for the Daughter to pay 50% of the rents received during that period.

155. The Defendants admit that the Cottage is jointly held by the Plaintiff and the First Defendant, as effected by a Voluntary Conveyance dated 14 October 1991. However, they contend that there was never a request or any agreement between the parties for rents to be paid to the Plaintiff or the Deceased. The Defendants, on their pleaded case, contend that '*after 27 years of occupation, control, and treating the property exclusively*' as their own, the Plaintiff is now statute barred under the Limitation Act 1984 and/or barred by the equitable doctrine of laches.

156. I shall first consider the defence of laches on which I was minimally addressed by Counsel. Suffice to say, in asserting this defence, the Defendants would say that both the Plaintiff and the Deceased's conduct and delay in asserting their rights to the rental profits to such an extent that it would now be practically unjust to allow the Plaintiff the remedy sought.

157. While I was not referred to any authorities outlining the principles relevant to laches, I would point to Lord Selborne's speech in the judgment of the Privy Council in *Lindsay Petroleum v Hurd* (1874) LR 5 PC 221 (PC) in which he said:

> "*Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy*."

158. The Defendants say that prior to this litigation, neither the Plaintiff nor the Deceased ever raised any issue as to their entitlement to collect any share of these rents. That delay spans the entire period running from October 1991 through to March 2015, or through to the point at which any pre-litigation correspondence asserting the entitlement might have been communicated. That is an approximate 24 year period that the Plaintiff and her late husband

is said to have refrained from exercising this right. I accept that statement of fact to be true since the Plaintiff never suggested otherwise at trial.

159. Here, I should address my mind to the Plaintiff's concession on the limitation point, in that the Plaintiff is only seeking an accounting for the 6 year period leading up to March 2015 when this action commenced. So, the question raised by the Defendants is more so whether the doctrine of laches should bar the Plaintiff from pursuing her right to rental profits for the first time in respect of a 6 year period. In considering that delay, I nevertheless think it relevant to the defence of laches that the preceding 18 years lapsed without any pursuit of the right.

160. On those facts, I find that it was reasonable for the Defendants to assume that they could keep and use any rental profits they accumulated between 2009 and 2015 for their sole benefit. This is informed by the previous 18-year period of silence between 1991 and 2009. In my judgment, it is indeed relevant that the Plaintiff and the Deceased had a history of diligently recording the Defendants' financial liabilities to them in writing. They, jointly and severally, were acutely successful business personalities who demonstrated their competence and ability to claim monies owed to them. So, in my judgment their conduct of silence makes it now unconscionable for this Court to award the Plaintiff the sought-after remedy where it applies to any period prior to the filing of the Writ.

161. As for the period subsequent to 30 March 2015, I find that the doctrine of laches does not apply as I see no reason why the Plaintiff should be barred from asserting her right to a half share of future rents. For that reason, I direct an accounting of all rents received in respect of the Cottage applying to the period of 30 May 2015 onwards.

Conclusion:

162. The Plaintiff's claim against the First Defendant for the recovery of the principal sum of $82,991.35 plus judgment interest at the statutory rate of 3.5% per annum pursuant to Part IV of the Interest and Credit Charges (Regulation) Act 1975 (as amended in 2017) (in respect of the Corporate Claim) is awarded.

163. The Plaintiff's claim for the recovery of the following liquidated sums against the Defendants (jointly and severally) is awarded:

(i) The aggregate principal sum of $98,148.44 plus interest[1] at the annual rate of 5% (in respect of Loan 1 and Loan 3);

(ii) The principal sum of $150,000.00 plus interest[2] at the annual interest rate of 6% ($24.66 per day) (in respect of Loan 2) and

[1] Total Interest due as at March 2023 being $62,160.40

[2] Total Interest due accruing from 16 March 2009 to 7 March 2023 (less $21,000.00 paid) being $96,000.00

(iii) The principal sum of $1,556,443.07 plus judgment interest at the statutory rate of 3.5% per annum (in respect of Loan 4).

164. Further, the Defendants shall provide an accounting of all rents received in respect of the Cottage for the period of 1 April 2015 onwards.

165. Unless either party files a Form 31D to be heard on costs within 14 days of the date of this Judgment, I award the Plaintiff her costs on a standard basis, to be taxed if not agreed.

Monday 31 July 2023

HON. MRS. JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE OF THE SUPREME COURT