

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

ADVOCACY PROGRAMME

YEAR II

CIVIL BRIEF

**STORY SO FAR BOOKSHOP LIMITED v.
BRENDA STEWART**

NANCY ANDERSON

PARTICULARS OF CLAIM

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT

AND BRENDA STEWART DEFENDANT

1. The Claimant is a duly incorporated limited liability company registered under the Companies Act with registered office at 123 Jackson Heights, Kingston 24 in the Parish of St. Andrew.
2. Since incorporation of the Claimant, on June 13, 2005, the shareholders and Board of Directors of the company have been Jean Stewart, Ruth Stewart and the Defendant, Brenda Stewart.
3. The Claimant company issued 100 shares, the Defendant holds 98 shares and Jean Stewart holds 1 share and Ruth Stewart holds 1 share.
4. The Defendant was as employee of the Claimant and the Managing Director in charge of the day to day administration of the Claimant and acting under the directions of the Board of Directors.
5. On February 14, 2009, in breach of the terms of her position as Managing Director the Defendant drew on the Claimant's account a cheque in the sum of \$2.78M which the Defendant gave to one Daniel Williams for a 2003 BMW motor car. The Defendant retained the motor car for herself and has never accounted to the Claimant for it or for the Claimant's funds with which it was purchased.
6. The said Daniel Williams was at the time of the transaction an employee of the Claimant and he left the employ of the Claimant on February 15, 2009 and his current whereabouts are unknown to the Claimant.
7. The Defendant is liable to account to the Claimant for the sum of \$2.78M.

8. Further or alternatively, the Claimant is entitled to trace the sum of \$2.78M into and claims equitable title to the motor car, which the Defendant holds on trust for the Claimant.

AND THE Claimant claims:

1. A declaration that the Defendant is liable to account to the Claimant for the sum of \$2.78M;
2. An order that the Defendant pay to the Claimant \$2.78M;
3. Further or alternatively, a declaration that the Claimant is entitled to trace the sum of \$2.78M into and claims equitable title to the motor car; and an order that the Defendant deliver up the motor car to the Claimant;
4. Damages;
5. Interest;
6. Costs.

Dated the 16 th Day of September, 2009

Signed John Fitzgerald
Attorney-at-law

I certify that all the facts set out in this Particulars of Claim are true to the best of my knowledge, information and belief.

Signed: Jean Stewart,
Director, Story So Far Bookshop Limited

The Claimant's address for service is that of its Attorney-at-law, John Fitzgerald, of 13 Duke Street. Kingston whose telephone number is 123-4567/ fax - 234-5678.

DEFENCE

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT

AND BRENDA STEWART DEFENDANT

1. The Defendant admits that the Claimant company was incorporated as stated in paragraph 1 of the Particulars of Claim.
2. Save and except that Jean Stewart and Ruth Stewart are not members of any Board of Directors of the company, paragraph 2 of the Particulars of Claim is admitted.
3. Paragraph 3 of the Particulars of Claim is admitted.
4. Paragraph 4 of the Particulars of Claim is denied. The company is solely owned by the Defendant who is the Managing Director and sole Director and in charge of the daily operations and administration of the Claimant.
5. Paragraph 5 of the Particulars of Claim is denied, A cheque in the sum of \$2.78M was made payable to an employee of the Claimant, Daniel Williams, on February 14, 2009 as a retirement/redundancy payment on Mr. Williams leaving the Claimant.
6. The Defendant denies that the said cheque was for the purchase of Daniel Williams' 2003 BMW motor car and states that the Claimant's funds were not used to purchase the motor car as alleged, or at all.
7. The Defendant admits that Daniel Williams was in the employ of the Claimant as set out in paragraph 6 of the Particulars of Claim and that he left the employ of the Claimant on February 15, 2009. Daniel Williams died on February 19, 2009.
8. Paragraph 7 of the Particulars of Claim is denied.

9. The Defendant denies paragraph 8 of the Particulars of Claim. The sum of \$2.78M was not paid to for the purchase of the said motor car.
10. In the premises, the Defendant denies that the Claimant is entitled to the relief sought or any relief at all.

Dated the 11th day of November, 2009

Signed: William Deer, Q.C.
Attorney-at-law

I certify that all the facts set out in this Defence are true to the best of my knowledge, information and belief.

Signed; Brenda Stewart

The Defendant's address for service is that of her Attorney-at-law, William Deer, Q.C., 14 Star Road, Kingston in the Parish of Kingston whose telephone number is 987-1234/ Fax number - 987-5432.

Claimant - WITNESS STATEMENT – JEAN STEWART

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2009/HCV 0089

BETWEEN **STORY SO FAR BOOKSHOP LIMITED** **CLAIMANT**
AND **BRENDA STEWART** **DEFENDANT**

1. I, Jean Stewart, am a teacher and am 48 years of age and I reside at 15A Oxford Street, Diamondvilla, in the Parish of St. Andrew.
2. I am a director of the Claimant along with my two sisters, Brenda and Ruth Stewart.
3. At a family Christmas get-together in December 2002, my sister Brenda informed me and Ruth that the book store where she worked at the time was closing down and she thought it would be a good idea for us to form a company to go into the book business. We agreed with her and discussed the financing of the company.
4. The three of us met several more times in the New Year 2003 to discuss this venture and on June 13, 2003 the company was incorporated. I am being shown the Certificate of Incorporation, marked Exhibit JS I. The company, Story So Far Bookshop Limited has 100 shares: Brenda has 98 Shares, Ruth has 1 share and I have 1 share.
5. I was the principal at a primary school in June 2003 and I was also in a good position to advise the company on text books and other books appropriate for children.
6. My sister Brenda had worked for over ten years with a bookstore and therefore had a lot of knowledge and experience in the operations of a

bookstore. We decided that she would be the Managing Director of the company and in charge of the day to day operations. We trusted her and she was put in charge of everything including the accounts and was the sole signature on company cheques.

7. The business went on successfully and in December 2004, I was granted a scholarship to go to England to do my Master's degree in Education and was to leave in January 2005. My sister Ruth was to be married in late December 2004 to a man from Miami and would be living there after the wedding.
8. I returned to Jamaica in August, 2007 and Ruth and her husband separated in October 2007. She also returned to Jamaica and her marriage was declared a nullity by the Supreme Court on November 22, 2007.
9. Ruth was working at a travel agency and I was appointed principal of a new high school and we were both very busy, so we left the managing of the company to Brenda. Neither Ruth nor I got any money from the company. We knew and agreed that Brenda should be paid by the company as she was managing the business.
10. In late March, 2009 I received some information from a friend of the family George Young and as a result of this information I spoke to the accountant at the company, Mr. Doller who told me that Brenda had recently purchased a 2003 model BMW motor car with the company's funds from a former employee, Daniel Williams, for \$2.78M. He gave me a photocopy of the returned cheque in this sum and this is the photocopy of the cheque shown to me as Exhibit 2.
11. I asked Mr. Doller to call Mr. Williams to allow me to speak to him, but was told that he had resigned in February, 2009 and no longer worked for the company. I have failed in all subsequent inquiries to locate Mr. Williams.
12. I informed Ruth of this and we agreed to call a meeting of the Board of Directors of the company to talk to Brenda about this. At this meeting, I took the minutes and wrote them up and Brenda signed them as Managing

Director. Unfortunately, I cannot find the Minutes and have no idea where they are today.

13. At this meeting, Brenda reported on her management of the company and stated that payments were made to her for her salary and emoluments as she did all the work. She stated that she was entitled to a new motor car as a part of her emoluments.
14. It was decided at this meeting, by a majority of the company's Directors, 2 to 1, that Brenda transfer the motor car into the name of the company.
15. I requested Mr. Lucky Buckwood, a used car salesman to examine the car and issue a report on its value and on August 11, 2009 he delivered a report to me, which I now mark as exhibit 3, stating that the car is only worth \$1.2M.
16. I felt that this was the final straw and on September 03, 2009 another meeting of the Board of Directors was held at which Ruth and I voted to remove Brenda as managing director. Brenda then stated that this was her bookshop company and she would continue to manage the company. At this meeting Ruth and I also passed a resolution to hire lawyers to institute a claim, on behalf of the company, against Brenda.
17. The company is still at 123 Jackson Heights and Brenda continues to manage it with help from her son Michael Coke.

STATEMENT OF TRUTH: I believe that the facts stated in this witness statement are true.

Signed: Jean Stewart

Date - November 14, 2009

FILED BY John Fitzgerald, Attorney-at-law, of 13 Duke Street. Kingston for and on behalf of the Claimant, telephone number is 123-4567/ fax - 234-5678.

Claimant - WITNESS STATEMENT – Ruth Stewart

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT
AND BRENDA STEWART DEFENDANT

Witness Statement –

1. I live at Apartment 207A, Welmax Apartments, Maxwell Street, Kingston 10 and I am a travel agent with Saturn World Travel Agency Limited and the sister of Brenda and Jean Stewart.
2. At a family Christmas get-together in December 2002, my sister Brenda informed me and my other sister, Jean, that the book store where she worked at the time was closing down and she thought it would be a good idea for us to form a company to go into the book business. We agreed with her and discussed the financing of the company.
3. The three of us met several more times in the New Year 2003 to discuss this venture and on June 13, 2003 the company was incorporated. The company, Story So Far Bookshop Limited has 100 shares and I have 1 share, Jean has 1 share and Brenda has 98 shares.
4. My sister Brenda had worked for over many years with a bookstore and has a lot of knowledge and experience in the operations of a bookstore and we decided that she would be the Managing Director of the company and in charge of the day to day operations.
5. In December 2004, Jean was granted a scholarship to go to England to do a Master's degree in Education and she left in January 2005. I was married in late December 2004 to John Doe from Miami and went to live in the USA after the wedding.
6. Jean returned to Jamaica in August, 2007 and I left Miami in October 2007 and returned to Jamaica and my marriage was declared a nullity by the Supreme Court on November 22, 2007.
7. I got a job working at a travel agency and Jean was appointed principal of a new high school and we were both very busy, so we left the managing of the company to Brenda. Neither Jean nor I got any money from the company. We knew and agreed that Brenda should be paid by the company as she was managing the business.

8. Jean informed me that Mr. Doller told her that a cheque had been drawn in favour of a former employee, Daniel Williams in the sum of \$2.78M. I knew Mr. Williams as a purchasing agent for the Claimant. He was an American who had married a Jamaican and was living and working in the country.
9. Jean and I agreed to talk with Brenda. This was at a meeting of the directors of the company. At this meeting, Jean took the minutes and wrote them up and Brenda signed them as Managing Director.
10. At this meeting, Brenda reported on her management of the company and told us that the money had been paid to Mr. Williams as he was leaving the company. I do not remember Brenda saying anything about a motor car, but I did leave the meeting once or twice to take several calls.
11. Sometime in August, 2009, Jean told me she had a report on the value of a motor car, a 2003 BMW and I was surprised to hear it was valued for only \$1.2M when I was told by Jean that Brenda paid \$2.78M for it.
12. On September 03, 2009 another meeting of the Board of Directors was held at which Jean and I voted to remove Brenda as managing director. Brenda then stated that it was her bookshop company and refused to have anything further to do with Jean and me and said she would still manage the Claimant Company. At this meeting Jean and I also passed a resolution to hire lawyers to make a claim, on behalf of the company, against Brenda.

STATEMENT OF TRUTH: I believe that the facts stated in this witness statement are true.

Signed: Ruth Stewart

Date - November 14, 2009

FILED BY John Fitzgerald, Attorney-at-law, of 13 Duke Street. Kingston for and on behalf of the Claimant, telephone number is 123-4567/ fax - 234-5678.

EXPERT REPORT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT
AND BRENDA STEWART DEFENDANT

1. My name is Lucky Buckwood and I have my true place of abode and postal address at Bog Valley in the Parish of St. Stephen, and I am a used car salesman with over forty years experience buying and selling cars and operate my own business called "Good Cars Cheap" situated in Bog Valley.
2. I was asked by Jean Stewart, in late July, 2009 to examine a BMW motor car and give her a report on it value.
3. She also told me the motor car could be viewed at the Story So Far Bookshop at 123 Jackson Heights, Kingston 24, but that I should be careful that no one saw me examining it.
4. I went to the Bookshop on two days in early August 2009 and looked at the car and on the second day a young man named Mike had the bonnet up and was doing something with the engine.
5. I asked him if I could help and he said his mother had reported a problem with the starter. I told him to let me have a look and while I was examining the starter Mike was called into the Bookshop for about 10 minutes. While he was gone I was able to examine the car's engine more thoroughly.
6. From my examination of the vehicle and its engine, it is my opinion that it is a BMW vehicle, model year 2003, chassis number 123456789, 5 seater, with fair wear and tear to the upholstery and body frame. The engine was well cared for and in excellent condition and I would value the car at \$1.2 M.

I understand that it is my duty to help the Court impartially on all matters relevant to my expertise and that duty overrides any obligation to Mr. Rhudd who instructed me and paid me for the report. I have read Part 32, in particular Rules 32.3 and 32.4 of the

Civil Procedure Rules and state that I believe that I have carried out my duty in the manner set out in the Rules.

I have included all matters within my knowledge and area of expertise relevant to the issue on which my expert evidence is given. There is nothing to my knowledge which affects the validity of this report.

I certify that the matters contained in this Expert Report are true to the best of my knowledge and belief and outlines all matters within my knowledge and area of expertise relevant to the issue on which the expert evidence is given.

STATEMENT OF TRUTH

I believe that the facts stated herein are true.

Signed: *R. Buckwood*

Date - August 16, 2009

WITNESS STATEMENT – BRENDA STEWART

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT

AND BRENDA STEWART DEFENDANT

1. I live at 154 Jefferson Avenue, Kingston 24 and I am the Managing Director of Story So Far Bookshop Limited.
2. In 2003 my younger sisters, Jean and Ruth discussed with me the formation of a company to deal in book selling and the operation of a bookshop. I had years of experience in this field and my sisters looked up to me for advice and guidance. For this reason I thought I would bring them into this venture that they could learn more about business.
3. On June 13, 2005 the company was incorporated with the name that I suggested - Story So Far Bookshop Limited. Of the 100 shares in the company, I hold 98 and Jean holds 1 share and Ruth 1 share. The company is mine alone and I only put the names of my two sisters there for convenience. They have no interest in the company except as a learning experience in business operations.
4. I have over twenty years of experience in the book industry and have operated businesses on my own for nearly thirty years. My sisters had no experience in the business world and I wanted them to have the opportunity to be part of a business venture but I was not so foolish as to have them undertake any management responsibilities.
5. Since its inception, I have operated the company as it is my business. The company had its own account which since it was opened had my name only on it.
6. I paid myself a salary and emoluments as well as commissions from the company's funds as any good manager would. As manager I also am in charge of the hiring and firing of employees and all matters pertaining to the company's employees.
7. The company was doing very well because of my constant efforts to get the best books and sell them at the best prices. I also expanded the business to include stationery and small appliances.
8. I have 4 children, 2 girls and 2 boys, for whom I am solely responsible for. My business has enabled me to send them all to universities in the US. Three of them live and work in the US. One is a nurse, another a teacher and one of the

boys is a police officer in New York City. My youngest son, Michael Coke, works with me.

9. My two sisters Jean and Ruth were abroad for sometime and both returned home in 2007 and I welcomed them with a big party in early November, 2007. The party was very lavish and everyone who was anyone was there. After this I noticed that my sisters rarely spoke to me or called to see me and I figured that they were jealous of my lifestyle and connections in society.
10. In March, Mr. Doller, my accountant, told me Jean had come to him and asked about some money the business had paid to an employee. He told me he did not want to get involved in any family feud and he was soon to go up to the UK to live with his son. He took his vacation time shortly after this and then left for London.
11. Next thing I know Jean and Ruth asked to talk to me at a meeting of the Board of Directors of the company. I agreed to the meeting but at the meeting I told them there was no Board of Directors as this was my company.
12. At this meeting, they asked me a lot of questions about the company and I told them the truth as I had nothing to hide. I told them about my salary and emoluments and the commissions as well as my management of the employees and matters concerning the employees.
13. Jean asked me about a cheque from the company to Mr. Daniel Williams and I told her it was none of her business. She asked me about a car, a BMW, that Mr. Williams had transferred to me in February, 2009 just before he left the company. I told her this also was none of her business.
14. From the time the company opened, I have been solely responsible for all the affairs of the company and Jean and Ruth have never been concerned with anything to do with the company and have displayed no interest in it.
15. Mr. Williams was my best employee; he bought books and other equipment for the company and was very good at getting special discounts for me and in keeping the stock up to date. He was a valued employee and I was very fond of him and his wife, June.
16. In January 2009, Mr. Williams developed a serious medical problem, I do not know exactly what it was, I did not ask. He told me he had to go immediately to the States for an operation and he was going to resign and wanted to know what the company could do to assist him with the costs involved. I agreed to pay him, retirement/redundancy pay amounting to \$2.78M, the amount needed for the airline tickets for him and his wife and the costs of the operation. This is what the cheque was for from the company.
17. Before Mr. Williams left he transferred his BMW motor car to me as he felt he would not be returning to Jamaica and wanted me to have it.

18. I was told by Mrs. June Williams that Daniel Williams died in hospital in the United States on February 19, 2009. She stayed in the state of Ohio where his parents live and where he was buried.

19. To my surprise, Jean and Ruth came to my office on September 3, 2009 and said this was to be another Board meeting and immediately held a "vote" and stated that they were terminating my position as Managing Director of the Company. I just laughed and said it was my business and I would continue to manage it and I left.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: *Brenda Stewart*

Date - December 18, 2009

WITNESS STATEMENT – JUNE WILLIAMS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009/HCV 0089

BETWEEN STORY SO FAR BOOKSHOP LIMITED CLAIMANT

AND BRENDA STEWART DEFENDANT

1. I live at 46 Rocky Road, Port Huron, Ohio in the United States of America and am the widow of Daniel Williams who died on February 19, 2009 at St. Francis Hospital in Port Huron, Ohio.
2. I attended his funeral on February 26, 2009 and saw his body interred in a grave at Gardens of Rest Cemetery in Port Huron, Ohio.
3. My husband, Daniel, was born in Port Huron and we met in 2000 when he was on vacation in Ocho Rios. We fell in love and married on June 12, 2001 in Kingston and lived in Kingston all our married life until February 15, 2009 when he went to Port Huron for a heart operation. He never recovered from the operation.
4. Daniel and I met Brenda Stewart in late 2001 and the three of us have been close friends ever since.
5. Daniel was a writer of children's books, but had not sold any stories so he worked as a salesman and procurer of books and he was very good at it.
6. In July 2005, he went to work with Brenda Stewart in a new business she had just established called Story So Far Bookshop, in fact Daniel told me he suggested the name to Brenda.
7. Daniel worked very hard at his job with Brenda's company, many long hours and often on weekends.
8. When he became ill in January 2009, we both went to Brenda concerning the costs of going to Port Huron for the operation and

talked with her about the possibility of not returning as we both feared he would not fully recover.

9. Brenda asked us for an estimate of the expenses and after we gave this to her, she called both of us to her home and she gave Daniel a cheque to cover all the expenses. I do not remember now the exact sum but Brenda said it was a retirement or redundancy payment from the company.
10. Daniel had a BMW motor car that he loved very much and he asked Brenda to take it from him as a gift for her generosity and he transferred it to her before he left for Ohio.
11. Although I live in Ohio now with Daniel's parents, I am willing to come to court for Brenda as she is a good person and helped Daniel so much when he needed help.

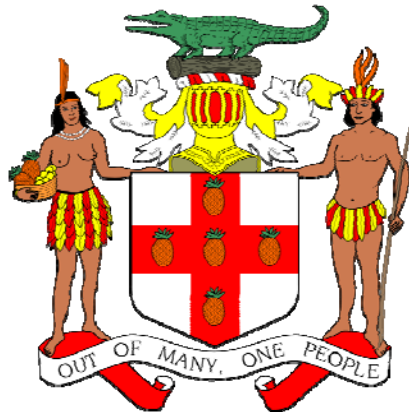
STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: **June Williams**

Date - December 18, 2009

CERTIFICATE OF THE INCORPORATION OF A COMPANY



I hereby certify that

STORY SO FAR BOOKSHOP LIMITED

was Incorporated under the

Companies Act as a Limited Company

On the

THIRTEENTH Day of JUNE, Two Thousand and Five

Given under my hand at St. Andrew this

FIFTEENTH day of JUNE two Thousand and Five

G. Selton

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**Gillian Selton
For the Registrar of Companies**

Company Number 87909