JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2005/HCV-00723
CIVIL DIVISION

BETWEEN	**GRETEL SMITH**	**CLAIMANT**
AND	**MARLON INGRAM**	**1ST DEFENDANT**
AND	**ROSE INGRAM**	**2ND DEFENDANT**

IN OPEN COURT
Heard: 16th, 17th, 19th June and 28th September 2009

Mrs. Senior-Smith and Mr. Scott for the Claimant.
Ms. Hudson instructed by K.Churchill Neita & Co. for the Defendants.

CONTRACT-NATURE OF AGREEMENT-DETINUE –CONVERSION-APPLICATION FOR ACCOUNTING FOR PROFITS

Mangatal J:

1. The Claimant "Mrs. Smith" is the Aunt of the 1st Defendant "Mr. Ingram" and the sister-in-law of the 2nd Defendant "Mrs. Ingram". Mrs. Ingram is Mr. Ingram's mother.
2. The parties had certain unwritten arrangements between them in respect of a front–end loader "the loader". They have fallen out, and it is now the Court's task to unravel exactly what was the nature of the agreement, and having done so, to decide what, if any, remedy should be granted. Mrs. Smith has sued Mr. and Mrs. Ingram for damages for breach of contract, for detinue and conversion, and for an accounting and certain inquiries. Interest is also being claimed at a commercial rate.

3. **THE CLAIMANT'S CASE**

Mrs. Smith resides in the United States, in New York. She states that in May 2004 she entered into an agreement with her nephew Mr. Ingram for him to purchase a front-end loader "the loader" on her behalf in the United States. He would take the loader down to Jamaica where he lived and worked in the trucking business and operate the loader on behalf of Mrs. Smith. It was agreed that Mr. Ingram would retain 30% of the profits generated by the operation of the loader as his remuneration for managing the operation and Mrs. Smith was to receive the balance of the net profits, i.e. 70 percent and she asked Mr. Ingram to deposit the profits due to her at the Bank of Nova Scotia, Spauldings branch, Clarendon.

4. Mrs. Smith asked Mr. Ingram how the loader would earn monies and he advised her that the earnings would come from the rental of it and that the sums apportioned to the owner were calculated on the material per cubic yard carried by the loader. She asked him how they would get contracts for use of the loader, and Mr. Ingram said that he knew persons with mining licenses and persons who could operate it.

5. Prior to this arrangement, Mrs. Smith had on several previous occasions loaned sums to Mr. Ingram in U.S. dollars and certain of these loans were evidenced by promissory notes, both dated 11th March 2000, one in the sum of U.S.$1,000, the other in the sum of U.S. $ 4,000. Both promissory notes were witnessed by a Justice of the Peace for the Parish of Saint Ann, Jamaica.

6. Mrs. Smith paid for Mr. Ingram's airline ticket so he could travel to Florida and identify and assist her in choosing a loader for purchase. Before Mr. Ingram's arrival she told him that she had seen a Loader on the internet for U.S.$18,000. However, Mr. Ingram went to look at the loader in Florida and told Mrs. Smith that it was not in good condition. Mr. Ingram told Mrs. Smith that

he had located another loader which was being sold for U.S.$34,000. This loader was purchased for U.S.$34,000 and was paid from sums as follows:

a) U.S. $ 24,000 from Mrs. Smith wired from her account in New York to Mr. Ingram in Florida.

b) U.S. $5,000 owed to Mrs. Smith by Mr. Ingram which she had loaned him to buy a truck and which he had not repaid.

c) U.S.5,000 of Mr. Ingram's funds which he had agreed to lend Mrs. Smith in relation to the purchase of the loader.

7. The loader was shipped to Jamaica and Mrs. Smith also sent to Mr. Ingram shipping costs of U.S. $ 5, 700 and J$120,000.

8. Mrs. Smith claims that when she came to Jamaica in August 2004 for the first time after the loader was shipped, in order to register the loader in her name and that of her son, both Mr. Ingram and Mrs. Ingram sought to evade her. Mr. Ingram even told her that the loader was sold when it was not. Mr. Ingram had agreed to meet Mrs. Smith and her son at the Tax Office in Christiana but although they waited there, Mr. Ingram never turned up. After her return to the United States, in a telephone call with Mr. Ingram, he told her that he had sold the loader for U.S. $50,000.

9. Mr. Ingram has sought to return monies to Mrs. Smith which he says she gave him as a loan to purchase the loader, but Mrs. Smith does not wish to retain such funds as she wished to recover the loader and profits due to her. There is evidence from Mrs. Smith that she sought to return monies, totaling U.S.$20,000 sent to her by Mr. Ingram however Mr. Ingram refused to accept a return of the money and sent it back to Mrs. Smith's account.

10. Upon one of the occasions when Mrs. Smith saw that U.S.$5,000 had been sent to her by the Defendants, she telephoned Mrs. Ingram who disclosed that she and Mr. Ingram would be keeping the loader. Mrs. Ingram added that "we owe a little bit more money

that we do not have now, but you will just have to wait until we have the money".

11. Mrs. Smith claims that the loader has been hired out to three different persons. She claimed that Mr. Ingram had earned in excess of J$500,000. However, at the end of the evidence, there was no proof of that figure forthcoming.

12. Mrs. Smith commenced an action in 2005 against Mr. and Mrs. Ingram for damages for breach of contract and detinue and conversion. Some time after filing the law suit Mrs. Smith learnt that the loader was sold to a third party for J$3.1 Million.

13. **The First Defendant's Case**

According to Mr. Ingram, in or about May 2004, the discussion which he had with Mrs. Smith concerned his acquiring a loader for himself in the United States and Mrs. Smith agreed to assist him by providing some of the funds required for the purchase and shipment to Jamaica by way of loan. The loader was to be purchased by Mr. Ingram as the sole owner. In return for Mrs. Smith's financial assistance Mr. Ingram understood his obligation to be to repay the loan to Mrs. Smith along "with a little something on it".

14. Mr. Ingram agrees that Mrs. Smith purchased an airline ticket in order for him to travel to Florida to purchase a suitable loader but he denies that he was traveling to assist Mrs. Ingram in choosing a loader to buy for herself.

15. In his Statement of Case, Mr. Ingram stated that he took with him U.S.$10,000 as part of the money to purchase the loader . He states that the purchase price was U.S.$35,150 for the loader and that he paid down U.S.$5,000 from his own funds. Mrs. Smith wired the sum of U.S.$24,000 from New York to him in Florida as a loan to assist Mr. Ingram to purchase the loader. In his Witness Statement dated 18th February 2009 and in his oral evidence in

cross-examination however, Mr. Ingram stated that when he said he took $10,000, that was an error, and that he really took the sum of U.S.$15,000.00, of which he used U.S.$11,000 towards the purchase price of the loader. He claims to have paid U.S. $4,000 to a trailer driver to transport the loader to the seaport in order to be shipped to Jamaica.

16. At the time of the purchase of the loader he did not owe Mrs. Smith U.S.$5,000 nor was he lending her any money. He indicated that he received a further sum of U.S.$5,700 from Mrs. Smith to assist in clearing the loader from the port in Jamaica but he denied obtaining another Ja $120,000 from Mrs. Smith.

17. Mr. Ingram admits that he did tell Mrs. Smith that the loader was sold at a time when it had not yet been sold but he claims that he did so because Mrs. Smith was exerting increasing pressure on him to repay the sums she had loaned him. He denies that Mrs. Smith requested that he return the loader to her since the loader was never hers. He claims that what really got Mrs. Smith riled up was the fact that it was taking a protracted period of time to retrieve all of the sums loaned.

18. Mr. Ingram has paid to Mrs. Smith's account in New York the sum of U.S.$20,000.00. Mrs. Smith apparently sent it back to Mr. Ingram, however he in turn sent it back again. According to the parties in response to the Court's query, it is an agreed fact that the sum of $20,000 is at present in Mrs. Smith's bank account in New York.

19. Mr. Ingram admits that the loader was hired out but he claims that it did not generate the income that he had anticipated as it developed mechanical problems and had to be repaired frequently.

20. The loader was sold in January 2005 for J $3.1 Million, which Mr. Ingram states at the exchange rate applicable then was approximately U.S.$50,000. Mr. Ingram has offered to pay Mrs.

Smith further sum of U.S.$10,000 but she has refused to accept this sum. In any event, Mr. Ingram admits that he owes the sum of U.S.$10,000 to Mrs. Smith but as a sum outstanding on the loans.

21. **The Second Defendant's Case**

Mrs. Ingram states that her son Mr. Ingram sometime in March 2004 made arrangements with Mrs. Smith to purchase a loader for use in his haulage contracting business.

22. After discussion with Mr. Ingram, Mrs. Ingram allowed the loader to be shipped to Jamaica in her name since she had a valid Tax Compliance Certificate which was needed to clear the loader and which both she and Mr. Ingram say he did not have as he was not tax compliant. Mrs. Ingram was not a party to any agreement and /or discussions between Mrs. Smith and Mr. Ingram and she denied having converted the loader to her own use and/or earning or sharing in any profits from the operation of the loader. She also denies having the conversation which Mrs. Smith alleges she had with her, about, amongst other things, the intention on Mrs. Ingram's part and that of her son, to retain the loader.

23. **RESOLUTION OF THE ISSUES**

This case turns largely on credibility and so in arriving at my decision, I have relied quite substantially on my assessment of the witnesses. I examined their demeanour while giving evidence, and the intrinsic credibility of their responses while being tested in cross-examination. There is no written agreement for the court to construe. Mrs. Smith is adamant that the loader was hers, and that there was an agreement to share the profits of its operation. Mr. Ingram is equally insistent that the loader belonged to him and that what he owed Mrs. Smith he owed by way of loan. He denies that Mrs. Smith had any right to the loader or any right to demand the return of it to her, and he states that there was no agreement that he would be accountable to her for any share in the profits

obtained from hiring out the loader. Both versions of the agreement between them cannot be true.

I found Mrs. Smith to be a credible witness. Although I agree with Miss Hudson, who appeared for Mr. and Mrs. Ingram, that the amendment at trial to state that the agreement to share profits between Mrs. Smith and Mr. Ingram was in the proportions 70 percent and 30 percent, did indeed come late in the day, I accept Mrs. Smith's answer in cross-examination that she had in fact told her lawyers about the 70:30 split from the time when she first approached them with a view to filing suit. It was sought to make much of the fact that Mrs. Smith conceded that she gave Mr. Ingram the information, including her account number for her U.S.$ account in New York. Miss Hudson relied on this as supportive of Mr. Ingram's case. She argued that Mrs. Smith's explanation as to how Mr. Ingram may have come into possession of this information, i.e. as a result of receiving wire transfers from her account, was not credible and was evasive. She argued that Mrs. Smith was trying to distance herself from having given Mr. Ingram the information because the real reason she gave Mr. Ingram the information as to this U.S. account was so that Mr. Ingram could pay her back the loan. In cross-examination Mrs. Smith ultimately said that she personally gave Mr. Ingram the information but not for the purpose of him lodging money to her account on account of the loan in relation to the loader. She stated that she does not know when she gave him that information or for what purpose. Given the type of relationship between Mrs. Smith and Mr. Ingram, and the business relationships that they seem to have had from time to time, I do not find it unacceptable that Mr. Ingram could have been given this information at some time during their history, and for some purpose which had nothing to do with the repayment of monies owed in respect of the loader.

24. In her written closing submissions, paragraph 16, Miss Hudson argues that whereas according to Mrs. Smith during the initial discussions, one of the advantages of the loader was that it "need not be registered", Mrs. Smith goes on to claim that she and her son came down to Jamaica to get the loader registered at the Tax Office and that Mr. Ingram did not show up. Miss Hudson submits that there was no reason advanced by Mrs. Smith for what Miss Hudson termed a "change". However, on a close reading of Mrs. Smith's witness statement, notably, paragraph 6, what Mrs. Smith recounts that Mr. Ingram described as an advantage was that "there is no registration of the type required for other motor vehicles" (my emphasis). I therefore do not consider that there is any inherent or material inconsistency in Mrs. Smith's evidence in that regard.

25. Mr. Ingram, on the other hand, I did not find to be a very credible witness. I will mention some of the instances and aspects of the evidence which caused me to form the impression that Mr. Ingram was neither candid nor forthright.

26. Mr. Ingram in his Witness Statement admitted that he had lied to Mrs. Smith at one point when he told her that he had sold the loader. In cross-examination he said he did this because that was what Mrs. Smith wanted him to do and he told her that that was where he was getting the money from to pay her back. In paragraph 9 of Mr. Ingram's Affidavit which was filed in respect of an earlier interlocutory application, he said that he carried U.S.$10,000 approximately as part of the money to purchase the loader for himself. In paragraph 26 of that Affidavit Mr. Ingram stated that he spent his own funds in clearing the loader from the port on its arrival in Jamaica. However, in his Witness Statement, paragraph 7 Mr. Ingram states that he carried U.S.$15,000 . In paragraph 12 he states that when the loader arrived in Jamaica he

was required to pay U.S.$5,700 as shipping costs. He states that this sum was wired to him in Jamaica by Mrs. Smith as he had no money at the time. He stated that the customs duty, was incorrectly stated as $40,000.00, in his Witness Statement; that too was a mistake. He said in oral evidence that the customs duty was really $400,000, and that that sum was paid by him without any financial assistance from Mrs. Smith.

27. In cross-examination Mr. Ingram claims that he carried U.S.$15,000 and that that is the correct figure. He claimed that where U.S.$10,000 was stated as having been carried by him, that was another mistake. However, I note that if he carried the $10,000, and used that towards the purchase price, added to the U.S.$24,000 which was wired by Mrs. Smith, that would add up to the U.S.$34,000 purchase price which Mrs. Smith claims was the price paid. Mr. Ingram said that he carried that sum of U.S. $15,000 in cash in his pocket. He did not declare it in his Customs Declaration so he says he ran into problems with the U.S. Customs. The Customs officers pulled him out of the line, and had him complete a Declaration form. Mr. Ingram states that the customs officer gave the money, the U.S.$15,000 cash back to him and he then went on his way. I do not find this evidence, what with the various changes and inconsistencies, in addition to the evidence itself about the occurrence at Customs, particularly credible.

28. Then in cross-examination, Mr. Ingram sought to explain that when he said in paragraph 26 of his Affidavit that "he spent his own funds in clearing the loader from the port on its arrival in Jamaica", he meant that the loader traveled freight collect. He claims that the U.S.$5,700 which Mrs. Smith spent was for the loader to travel on the ship.

29. In his Affidavit Mr. Ingram says that he sold the loader in March 2005. Yet in his Witness Statement Mr. Ingram says that it was in January 2005 that he sold the loader. In fact, in cross-examination he said that he remembered that it was January that he sold the loader because it was sold on January 23, which was his birthday. When taxed about the January and March dates, he said that it was not a complete sale in January. He said it was a forced sale, he had to beg the person to buy it from him. The two receipts in relation to the sale were exhibits. One is for J$1 Million and is dated 18th February 2005, the other is for J $2.1 Million and is dated 21st March 2005. Oddly, neither receipt is dated January 23rd, or January for that matter.
30. To my mind, Mr. Ingram's evidence was of a shifting nature and did not have the ring of truth.
31. Mr. Ingram said that at the time when he sold the loader the exchange rate was about J$60 to U.S.$1, which would make the purchase price for the loader approximately U.S.$50,000. It is difficult to see how a loader described by Mr. Ingram as not being able to do much, and so broken down and in need of repairs, could have sold for so much money, indeed, far more than it was purchased for, less than a year later.
32. The evidence in this case about the promissory notes suggests to me that when Mrs. Smith was lending Mr. Ingram monies, she was quite meticulous and careful in securing documentation to evidence the loan, even ensuring that the signing of those documents was witnessed by a Justice of the Peace. The earlier loans were for far less money, i.e. U.S. $4,000 and $1,000 and yet here, where Mr. Ingram claims that he was loaned the much larger sum of U.S.$24,000, and then further sums, including U.S.$5,700, Mrs. Smith did not secure, or bother to secure any promissory notes or other documentation. It seems far more probable to me in

the circumstances, including the sums which Mrs. Smith sent to Mr. Ingram subsequent to the purchase, in respect of the shipping, and the sums which she spent before the purchase, i.e. the U.S.$300 for the airline ticket for Mr. Ingram to travel to Florida, that she was providing funds in respect of her own property, which property she had expected to be an income-earning asset.

33. On a balance of probabilities, I accept Mrs. Smith as a truthful and credible witness and I accept her evidence that the loader was purchased by Mr. Ingram on her behalf and at her request and that Mr. Ingram was simply to operate the loader in Jamaica on her behalf. I find that the purchase price was U.S.$34,000 and not U.S.$35,000, or $35,150 as Mr. Ingram claimed in cross-examination. I find further that it was agreed that after expenses were deducted from the earnings, Mrs. Smith was to receive 70 percent, and Mr. Ingram 30 percent. I find as a fact that Mr. Ingram did wrongfully convert Mrs. Smith's loader for his own use and that he has failed to account to her for profits due and in respect of the income earned from the operation of the loader. I find that on a balance of probabilities Mr. Ingram has failed to satisfy me that the nature of the transaction was that of a loan in his favour. As regards Mrs. Ingram, I find that the part she played in this transaction and the evidence she gave was to facilitate and advance the interests of her son. I accept Mrs. Smith's evidence that the conversation which she claims to have had with Mrs. Ingram did in fact take place.

34. **The Law**

Detinue and Conversion

35. Since it is common ground that the loader has been sold to a third party, specific delivery up of the loader is not a remedy which Mrs. Smith can be granted at this stage. The amendment to Mrs.

Smith's Particulars of Claim, removing such relief, appears to acknowledge that fact.

36. In England, the action of detinue was abolished by statutory intervention from 1977. However, I agree with the authors' of **Bullen & Leake & Jacob's Precedents of Pleadings**, 13th edition, page 953, under the heading "Conversion by detention" comment that detention as a remedy has largely fallen by the wayside in most cases, and would do so in circumstances such as those which obtain in this case. The learned authors state:

> ***Conversion by detention.*** *The distinction between detinue and conversion used to be that with the former mere possession adverse to the rights of the person entitled to possession was sufficient and it was unnecessary to show any intention to deal with the goods in a way inconsistent with those rights. In practice, however, a demand by the person with possessory title followed by an unjustified refusal to delivery up was treated as a conversion, thus rendering detinue largely otiose even before its abolition in 1977.*

37. Mrs. Smith's remedy lies essentially in conversion. Conversion occurs where there is an interference with both a person's possessory and proprietary interest in goods. As is stated in **Bullen & Leake**, page 952, any act which is an interference with the dominion of the true owner is a conversion of those goods (my emphasis) and further, sale and delivery of another person's goods is a typical conversion of those goods. On the facts as I have found them, it is clear that there has been a conversion of Mrs. Smith's loader by Mr. Ingram.

38. The issue of Mrs. Ingram's liability also arises for consideration. The loader was shipped in her name and she transacted the sale of the loader, and issued the receipts in respect of the purchase price.

Again, at page 952 of the **Bullen & Leake**, the following points are made, with cases cited,

> *In some senses, conversion is a tort of absolute liability. Any person who deals with chattels does so at his peril. ....*
>
> *.....A person therefore is guilty of conversion if he deals with goods in a manner inconsistent with the rights of the true owner intending to negative the rights of the true owner or to assert a right inconsistent with that right (Lancashire & Yorkshire Rly. V. MacNicoll (1919) 88 L.J.K.B.601).*
>
> *.....A wrongful seller need not claim to be himself the owner. An auctioneer or commission agent selling for a client with no title is guilty of conversion (Willis (R.H.) and Son v. British Car Auctions Ltd. [1978] 1 W.L.R. 438).*
>
> Based on the authorities, in my judgment Mrs. Ingram's actions and the role that she played in relation to the transactions and status of the loader, render her liable to Mrs. Smith for conversion along with Mr. Ingram.

39. The next question therefore is what the correct measure of damages would be. Here again, I have found useful guidance in **Bullen & Leake**, page 955, under the heading "damages".

> ***Damages**. Prima facie the measure of damages is the market value or replacement value of the goods at the date of the conversion (**Hall v. Barclay [1937] 3 A.E.R. 620**). If the value of the goods has increased since conversion, the increase can be recovered as consequential damages (**Sachs v. Miklos [1948] 2 K.B.23).***
>
> *If a chattel is one of a kind used by the plaintiff in the course of a business (eg. let out for hire), the plaintiff can recover the loss of income from the chattel and if the plaintiff has been put to additional expense by being deprived of the chattel(eg. by hiring in a replacement), he can recover his loss.*

40. I shall now therefore turn to examine the evidence as it relates to the measure of damages outlined above. The only evidence that has been led in this case as to the value of the loader has been the evidence of the purchase price of the loader of U.S.$34,000 in 2004 and of a sale price of J$3.1 Million in early 2005. Somewhere between the date of acquisition and the date of sale the conversion occurred.

41. In my judgment, the fairest measure of damages is the sale price of the loader in 2005, converted to U.S. dollars at the time of the transaction, which I shall treat as March 2005, or the Jamaican sum actually paid of $3.1 Million. Mr. Ingram's evidence was that at the time of the sale the rate of exchange was J$60 to U.S.$1. Mrs. Smith also indicated that at one point Mr. Ingram told her that he had sold the loader for U.S.$50,000. According to Khan's Volume 6, Recent Personal Injury Awards, page 266, from a source stated to be Bank of Jamaica, January 19, 2009, the average annual exchange rate of Jamaican to U.S. dollars was U.S. $1 to J$62.50 in 2005, the average for the year being calculated as a simple average from all the daily exchange rates for the respective year. I am of the view that Mrs. Smith is entitled to U.S. $50,000 less the U.S.$20,000 already in her bank account and the U.S.$5,000 (which she claims she borrowed from Mr. Ingram in order to purchase the loader), i.e. less U.S.$25,000, which amounts to U.S$25,000.

42. Had there been evidence as to the income which was earned from the hireage of the loader, Mrs. Smith would also have been able to recover her percentage share of the net profits. However there was no hard evidence led upon this point. I do however, think that Mrs. Smith is entitled to an accounting from Mr. Ingram in respect of the earnings and expenses in relation to the loader's operation

between June 2004 and March 20 2005 and I shall be making certain orders referring the matter to the Registrar on this issue.

43. The remaining question is the matter of an appropriate measure of interest to award in the circumstances of this case. Although the parties are related, it does seem to me that they had every intention of operating on a commercial basis. Indeed, the loader was to be operated for profits, to be shared between Mrs. Smith and Mr. Ingram. The authorities are clear that interest in commercial cases can be awarded on the basis of one percent above the prime lending rate at which the Claimant could have borrowed money, the Claimant being compensated for being kept out of her money. At my request, the Attorneys for Mrs. Smith provided some rates of interest for commercial credit and average lending rates obtained from the Bank of Jamaica. However, these excerpts are not entirely helpful since I cannot trace any reference to the years 2005 to 2008 which would obviously be relevant. Also, since the transaction of purchase of the loader occurred in the United States in U.S. dollars, and Mrs. Smith resides in the United States, it may be that the relevant rates require evidence about relevant lending rates for U.S. dollars either in the United States or in Jamaica, neither of which I have. In all the circumstances, I consider it appropriate to exercise my discretion and to award interest at the rate of 6 per cent per annum from the 20th March 2005 to September 28 2009.

44. There will therefore be Judgment for the Claimant against The 1st and 2nd Defendants as follows:

    (a) In the sum of U.S.$25,000 or the Jamaican equivalent thereof at the date of payment, being the market value or replacement value of the loader at the date of conversion, viz. March 21 2005, less the sum of U.S. $25,000 which falls to be deducted.

(b) The matter is referred to the Registrar of the Supreme Court for an account to be taken of the net earnings of the loader between June 2004 and March 20 2005.

(c) The Defendants are to provide an accounting of all of the gross earnings and income in relation to the loader between June 2004 and March 20 2005 as well as all expenses occasioned in respect of the operation of the loader. It is ordered that the Defendants, within 14 days after service of the formal Judgment on their Attorneys-at-Law, do leave at the Registry of the Supreme Court, King Street, Kingston the Account ordered duly verified by Affidavit, and serve a copy of same on the Claimant's Attorneys-at-Law.

(d) The Claimant is at liberty to serve notice of objection to the account within 56 days after service upon her Attorneys-at-Law of copies of the Account and Affidavit.

(e) It is Further ordered :

(i) That the Defendants do give to the Claimant access on demand to all books, vouchers and other documents in their respective possession or custody relating to the Accounts ordered.

(ii) That the Defendants do pay to the Claimant 70 percent of the sums (if any)

found due as the net earnings on the taking of the said accounts.

(f) Interest is awarded at the rate of 6 percent per annum on the sum of U.S.$25,000 or the Jamaican equivalent at the date of payment, and on any sums found due after the taking of the Accounts ordered. Interest runs from the 21st March 2005 to the 28th September 2009.

(g) Costs to the Claimant against both Defendants to be taxed if not agreed or otherwise ascertained.

Dm 28/9/09.