

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

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**NAOMI TURNBULL, as Successor Trustee of )  
THE KENNETH TURNBULL, SR. )  
REVOCABLE TRUST, )**

**Plaintiff, )**

**v. )**

**KENNETH TURNBULL, JR., )  
KEITH TURNBULL, KLARIA TURNBULL, )  
and KAREN TURNBULL-WHEATLEY, )**

**Defendants. )**

**CASE NO. ST-10-CV-550**

**ACTION FOR PARTITION  
AND DEBT**

**Cite as 2019 V.I. Super. 94 P**

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**CARTY, RENÉE GUMBS, Judge**

**MEMORANDUM DECISION**

¶ 1. **THIS MATTER** came on for a bench trial on March 13, 2019. Plaintiff was present and represented by Anna Paiewonsky, Esquire. Defendants Karen Turnbull-Wheatley, Keith Turnbull, Klaria Turnbull, and Kenneth Turnbull Jr. failed to appear and were not represented by counsel.<sup>2</sup> The Court heard the sworn testimonies of real estate appraisal expert Elissa Runyon; Evelyn Marks, sister to Kenneth Turnbull, Sr.; Bernice Turnbull, wife of Kenneth Turnbull Sr.'s uncle, Ludence Turnbull; Naomi Turnbull, aunt of Kenneth Turnbull, Sr. and the Successor Trustee of the Kenneth Turnbull, Sr. Revocable Trust; Eavey-Monique James, a former tenant and friend of Kenneth Turnbull, Sr.; Francisco Mejia, custodian of records for Banco Popular de Puerto Rico; and Terrance Lake, custodian of records for FirstBank of the Virgin Islands. The Court took all witness testimony and exhibits produced at trial under advisement and based on the evidence presented, this Court now enters Judgment against all Defendants based on the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

¶ 2. Kenneth Turnbull, Sr. and Ivy Turnbull were the parents of Defendants Kenneth Turnbull, Jr. (Kenneth Jr.), Keith Turnbull (Keith), Klaria Turnbull (Klaria), and Karen Turnbull-Wheatley (Karen).<sup>3</sup> Ivy R. Turnbull, the wife of Kenneth Turnbull, Sr., passed away on September 14, 2001. Her estate was admitted to probate on July 25, 2002, pursuant to the March 6, 2009 Adjudication, which the Court took judicial notice of on February 6, 2017. Prior to her passing, Ivy R. Turnbull purchased Parcel No. 13BAA Estate Enighed, St. John, Virgin Islands (hereafter "the Property"), by

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<sup>2</sup> The record reflects that all Defendants were served with process at their respective addresses. In addition, default was entered against Kenneth Turnbull, Jr. and his wife Vivette Turnbull by an Order dated March 12, 2014.

<sup>3</sup> See March 6, 2009 Adjudication, p. 1 (Probate File ST-02-PB-024).

Warranty Deed dated September 25, 1961, from Wesley Samuel.<sup>4</sup> The Property is approximately 4,789 square feet, consisting of a 2,400 square feet two-story building (1,200 square feet per floor) with 8 bedrooms (4 bedrooms upstairs, 4 bedrooms downstairs) and 2 bathrooms on each floor.<sup>5</sup> The March 6, 2009 Adjudication of the Estate of Ivy Turnbull awarded Kenneth Turnbull, Sr. an undivided one-third interest in the Property. In addition, each of the children, Kenneth, Jr., Keith, Klaria, and Karen received an undivided one-sixth interest in the Property.<sup>6</sup> Karen Turnbull-Wheatley was named the Executrix of her mother's estate.<sup>7</sup>

¶ 3. Ivy Turnbull and her husband Kenneth Sr. had started construction on the Property prior to her passing. After Ivy Turnbull's passing, her husband decided to finish the construction. On October 19, 2004, Kenneth Sr., together with his son, Kenneth Jr., and his son's wife, Vivette Turnbull took out a \$100,000.00 mortgage with Banco Popular de Puerto Rico on Kenneth Sr. and Ivy Turnbull's marital home located at No. 3C Estate Tutu a/k/a Lot No. 3, Block 2-C Parcel No. 129-53 Estate Anna's Retreat, St. Thomas, V.I. (hereafter "the Home") in order to fund the construction on the Property.<sup>8</sup> Thereafter, Kenneth Jr. signed an agreement with each of his siblings (Keith, Klaria, and Karen), authorizing him to complete construction of the building on the Property and in exchange, Kenneth Jr. was given "complete dominion and control" of the Property for one year after an occupancy permit has been granted.<sup>9</sup> Kenneth Jr.'s agreement with Karen, in particular, explicitly stipulated that any excess money from rental of the Property would be paid out in quarterly distributions to all heirs, only after all expenses incurred were repaid in full.<sup>10</sup> Since

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<sup>4</sup> See March 6, 2009 Adjudication, p. 1, fn. 2 (Probate File ST-02-PB-024).

<sup>5</sup> See EXHIBIT 3.

<sup>6</sup> See March 6, 2009 Adjudication, p. 1.

<sup>7</sup> See March 6, 2009 Adjudication, p. 1.

<sup>8</sup> See EXHIBIT 8.

<sup>9</sup> See EXHIBIT 1.

<sup>10</sup> See EXHIBIT 1 (noting that Karen's agreement differs with respect to the last provision regarding repayment and distribution from the agreements with Keith and Klaria).

Kenneth Jr. resided in Florida, he verbally assigned his rights pursuant to the signed agreements with his siblings to his father, Kenneth Sr. because his father resided on St. Thomas and had the ability to complete the construction and rent the property. He also agreed to reimburse Kenneth Sr. for the mortgage taken out on the Home, as well as other associated expenses. Kenneth Sr. completed construction on the Property sometime between August and December of 2005. On December 9, 2005, he promptly began renting out the entire building for \$8,500 per month for 10 months. Subsequently, from 2006 to 2007, Kenneth Sr. rented out the entire building for \$9,000 per month for 10 months. Then again for \$8,000 per month from January 2008 until April 30, 2008.<sup>11</sup>

¶ 4. In May of 2008, acting in direct contravention of the signed and notarized October 18, 2005 agreement between Karen and Kenneth Jr., Karen took control of the Property and unilaterally removed Kenneth Jr.'s explicit authority to make quarterly distributions after all expenses were paid in full.<sup>12</sup> At the time Karen took control of the Property, Kenneth Sr. rented the entire property to a construction company. However, Karen told the construction company to refrain from making anymore rental payments to her father because she was now in charge as Executrix of her mother's estate and that they had to pay her instead. As a result of Karen's actions, the construction company broke the lease and vacated the Property. As of the date Karen took over the Property, Kenneth Sr. had only recouped a total of \$207,000 from renting the property from 2005 until April 30, 2008.<sup>13</sup> In early June 2008, Karen began renting the Property. Thereafter, on June 26, 2008, Kenneth Sr. filed a claim in the amount of \$57,887.26 against Ivy Turnbull's estate, but Karen, acting as Executrix,

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<sup>11</sup> See Verified Notice of Claims (noting that the Court orally took judicial notice of the Verified Notice of Claims during the trial).

<sup>12</sup> See EXHIBIT 1.

<sup>13</sup> See Verified Notice of Claims (\$207,000 is the rental income Kenneth Turnbull, Sr. received to offset a portion of his expenses: 2005 through 2006 @ \$8,500 per month for 10 months, 2006 through 2007 @ \$9,000 per month for 10 months, and January 2008 through April 2008, \$8,000 per month for 4 months).

filed a Notice of Rejection of Creditor's Claim on July 10, 2008.<sup>14</sup> On March 24, 2009, Kenneth Sr. requested an accounting in the Estate of Ivy Turnbull putting Karen on notice of her obligation to provide an accounting and fulfilling the beneficiary's obligation to demand an accounting, yet, no accounting was provided.<sup>15</sup>

¶ 5. On September 27, 2010, Plaintiff Kenneth Sr. filed his Verified Complaint and again sought an accounting. Once again, Defendant Karen failed to provide any such accounting.<sup>16</sup> In addition, during the discovery process in this case, Kenneth Sr. sought Interrogatories and Requests for Production of documents including an accounting of the rents collected by Karen, but these requests remained unanswered.<sup>17</sup> Subsequently, Plaintiff sought judicial intervention to compel the accounting. This Court had multiple hearings and issued court orders mandating Defendant Karen Turnbull-Wheatley to respond to Plaintiff's accounting requests.<sup>18</sup> Consequently, the Court compelled third party, FirstBank VI, to produce the documents and ordered Defendant to reimburse Plaintiff in the amount of \$2,266.25.<sup>19</sup> However, upon Karen's failure to comply with the Court's repeated orders and subsequent failure to appear, this Court further sanctioned Defendant Karen Turnbull-Wheatley in the amount of \$2,000 and held her in contempt of court.<sup>20</sup> Defendant now owes a total of \$4,266.25, which was ordered to be paid by December 14, 2018, and which this Court notes, to date, are still outstanding.<sup>21</sup> At trial, Plaintiff requested that the Court address Karen Turnbull-Wheatley's repeated failure to comply with the Court's contempt of court ruling and issue

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<sup>14</sup> See March 6, 2009 Adjudication.

<sup>15</sup> The Court orally took judicial notice of the March 24, 2009 Request for Accounting.

<sup>16</sup> The Court orally took judicial notice of the Request for Accounting in the Verified Complaint.

<sup>17</sup> The Court orally took judicial notice of the filing of Plaintiff's First Set of Interrogatories and Requests for Production of Documents.

<sup>18</sup> See this Court's March 21, 2017 Order and May 8, 2018 Order.

<sup>19</sup> See this Court's November 13, 2018 Order.

<sup>20</sup> See this Court's November 13, 2018 Order (noting that Defendants failed to appear for a June 8th show-cause hearing for failure to comply with this court's prior orders).

<sup>21</sup> See this Court's November 13, 2018 Order.

additional sanctions. Despite all the court orders and efforts by the Plaintiff to obtain an accounting, Karen Turnbull-Wheatley has yet to comply with any of the Court's orders.<sup>22</sup> In addition, evidence in the record demonstrates that Karen Turnbull-Wheatley sought and obtained bank records from FirstBank VI from July 2008 to August 2010.<sup>23</sup> Despite paying for these records and obtaining them, she never disclosed the evidence to Plaintiff during discovery, and due to the long delays precipitated by her refusal to comply with multiple court orders, FirstBank VI no longer has those records.

¶ 6. Kenneth Turnbull, Sr. passed away on June 18, 2013.<sup>24</sup> (Kenneth Turnbull, Sr.'s Death Certificate). Upon his death, Naomi Turnbull became the trustee of the Kenneth Turnbull, Sr. Revocable Trust and was substituted as the Plaintiff.<sup>25</sup> To date, the Court finds that neither Kenneth Sr. nor Plaintiff have ever received any funds from Karen Turnbull-Wheatley. As of the date Karen took over the Property, Kenneth Sr. was still owed \$57,887.26 for outstanding expenses relating to the Property construction.<sup>26</sup> In addition, Kenneth Sr. incurred the following expenses as debts, which were never reimbursed, in order to finish the Property so that it could be rented:

- i. Insurance expenses in the amount of \$4,743.01 paid to Family Insurance Agency in 2008;<sup>27</sup>
- ii. Banco Popular Mortgage - Interest expenses from 2008 to 2013 totaling \$26,210.13, and principal expenses totaling \$49,219.52 on the Mortgage of the Home;<sup>28</sup>
- iii. Banco Popular Loan No. 104-001-0178072-003 (representing Kenneth Turnbull, Sr.'s Consumer Loan on his Dodge Safari) - a loan in the amount of \$44,000.00 plus

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<sup>22</sup> See this Court's November 13, 2018 Order (reflecting that this Court also granted Attorney Clive Rivers' Motion to Withdraw as Defendants' counsel because counsel communicated to the Court that despite his numerous attempts, he has been unable to reach Defendants and has yet to receive any compensation for his services. The Order also granted Defendants leave to file a notice of appearance for new counsel or to appear as a self-represented litigant, and the record reflects that no such filings were ever made).

<sup>23</sup> See EXHIBIT 72.

<sup>24</sup> See EXHIBIT 71.

<sup>25</sup> See March 10, 2014 Order granting Plaintiff's Motion for Substitution.

<sup>26</sup> See generally EXHIBITS 32, 36, 37, 50, 52, 53, 54, and 64.

<sup>27</sup> EXHIBIT 32.

<sup>28</sup> See EXHIBIT 12 including the 2013 documentation submitted post trial from Banco Popular de Puerto Rico. See also March 27, 2019 Notice of Filing (regarding 2013 Mortgage records for interest and principal).

- interest from 2005 through 2007 in the amount of \$9,698.50, for a total of \$53,698.50;<sup>29</sup> and
- iv. Banco Popular Loan No. 104-001-0178072-0005 (representing Kenneth Turnbull, Sr.'s Consumer Loan on his Toyota Camry refinance, also using his taxi medallion as collateral) – a loan in the amount of \$25,000.00 plus interest through 2007 in the amount of \$1,176.92, for a total of \$26,176.92.<sup>30</sup>

Thus, the total expenses incurred by Kenneth Turnbull, Sr. related to constructing the property and not reimbursed comes to \$217,935.34. In addition, Plaintiff is owed an undivided one-third from the rents collected from the building from May 2008 to date. However, evidence highlights that Defendant Karen Turnbull-Wheatley collected rent for the following years and in the following amounts:

|                                     |                    |
|-------------------------------------|--------------------|
| May 2008 – December 31, 2008        | \$64,000.00        |
| January 1, 2009 – December 31, 2009 | \$84,000.00        |
| January 1, 2010 – December 31, 2010 | \$84,000.00        |
| January 1, 2011 – December 31, 2011 | \$72,000.00        |
| January 1, 2012 – December 31, 2012 | \$50,400.00        |
| January 1, 2013 – December 31, 2013 | \$50,400.00        |
| January 1, 2014 – December 31, 2014 | \$50,400.00        |
| January 1, 2015 – December 31, 2015 | \$50,400.00        |
| January 1, 2016 – December 31, 2016 | \$50,400.00        |
| January 1, 2017 – December 31, 2017 | \$57,600.00        |
| January 1, 2018 – December 31, 2018 | \$60,720.00        |
| January 1, 2019 – March 31, 2019    | <u>\$15,180.00</u> |

<sup>29</sup> EXHIBIT 9.

<sup>30</sup> EXHIBIT 9.

|                                 |                            |
|---------------------------------|----------------------------|
| <u>Total excluding interest</u> | \$689,500.00 <sup>31</sup> |
|---------------------------------|----------------------------|

The Court finds that the monthly rent will continue to accrue at a rate of \$5,060.00 per month until the Judgment is satisfied in full, with Plaintiff being awarded one-third of the monthly rent plus interest at a rate of 9% per annum until the Judgment is entered.<sup>32</sup> The Court also finds that Karen Turnbull-Wheatley paid the following funds to her siblings:

|                       |                                |                          |
|-----------------------|--------------------------------|--------------------------|
| Kenneth Turnbull, Jr. | amount known to have been paid | \$3,269.00               |
| Keith Turnbull        | amount known to have been paid | \$150.00                 |
| Klaria Turnbull       | amount known to have been paid | \$2,269.00 <sup>33</sup> |

¶ 7. Furthermore, the evidence proffered at trial showed that because Kenneth Sr. did not receive any disbursement of funds from his one-third interest in the Property for the years, he borrowed money from his sister, Evelyn Marks, in the amount of \$6,000.00; from his aunt, Naomi Turnbull, in the amount of \$3,500.00; and from his aunt-in-law Bernice and uncle Ludence Turnbull in the amount of \$3,000.00.<sup>34</sup> Also, Kenneth Sr. had a \$100,000.00 life insurance policy that lapsed shortly before he passed away.<sup>35</sup> The Court finds that Defendants, as children of Kenneth Sr., did not contribute anything to his funeral expenses after he passed away. His aunt-in-law Bernice and uncle Ludence paid all the funeral expenses totaling \$14,226.00.<sup>36</sup> After Kenneth Sr.'s passing, Bernice Turnbull paid \$350.00 for the balance on the Home Mortgage, which Kenneth Jr. had

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<sup>31</sup> See EXHIBIT 29; see Plaintiff's Findings of Fact, Conclusions of Law and Order dated March 27, 2019 (noting that the record reflects that Plaintiff was unable to obtain all leases from the years 2008 through the present; thus, the Court relied on and accepted expert witness testimony of rental value estimates in place of actual figures.)

<sup>32</sup> See EXHIBITS 3 and 29. See 11 V.I.C. § 951(a)(1) and 11 V.I.C. § 951(a)(4) (stating that 9% per annum is the rate of interest that accrues on "monies that have become due" and on "money due or to become due where there is a contract and no rate is specified").

<sup>33</sup> See EXHIBIT 31.

<sup>34</sup> EXHIBIT 71.

<sup>35</sup> EXHIBIT 70.

<sup>36</sup> EXHIBIT 71.

agreed to repay but never did. She also paid the outstanding electric bill in the amount of \$100.88.<sup>37</sup> Kenneth Sr. incurred a total of \$217,935.34 for the construction of the Property and he also incurred a total of \$12,950.88 representing the various amounts borrowed from relatives, and subsequent to his passing, Plaintiff incurred a total of \$15,450.00 in funeral costs and appraisal fees for expert witness Elisa Runyon. Thus, bringing Plaintiff's outstanding debt owed by Defendants to **\$246,336.22**. Furthermore, since the Property cannot be partitioned, it must be sold. The current appraised value as of March 1, 2019 is \$560,000.00.<sup>38</sup> Thus, Plaintiff is owed a one-third interest from all rental income from year 2008 until March 31, 2019, plus 9% interest per annum, which is valued at \$360,873.53.<sup>39</sup>

## **II. CONCLUSIONS OF LAW**

### **Basis of the Court's Jurisdiction**

¶ 8. The Court has jurisdiction over this civil action pursuant to Title 4, section 76(a) of the Virgin Islands Code. This Court has personal jurisdiction over Defendants by virtue of them being duly served with process.

### **Defendants' Culpability based on Theories of Contract Law: Validity, Breach, and Unjust Enrichment**

¶ 9. The question for this Court is to characterize what type of contract existed between Plaintiff and Defendants. A contract may be "express, implied-in-fact, or implied-in-law."<sup>40</sup> An express contract is memorialized "in oral or written words," and an implied-in-fact contract is "inferred

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<sup>37</sup> See EXHIBIT 71.

<sup>38</sup> See EXHIBIT 3.

<sup>39</sup> See generally March 6, 2009 Adjudication, p. 1; see also 11 V.I.C. § 951(a)(1) and 11 V.I.C. § 951(a)(4) (stating that 9% is the preferred interest rate where none is expressly provided, and the figure represents Plaintiff's one-third share of the estimated \$689,500.00 that Defendant Karen Turnbull-Wheatley has collected on the Property).

<sup>40</sup> See *Peppertree Terrace v. Williams*, 52 V.I. 225, 241 (V.I. 2009).

wholly or partially by conduct.”<sup>41</sup> Here, there were binding express contracts entered into amongst Defendants, of which the rights and duties contained therein were subsequently verbally assigned to Kenneth Turnbull, Sr.<sup>42</sup> In addition, “extrinsic evidence includes... the conduct of the parties that reflects their understanding of the contract's meaning.”<sup>43</sup> Thus, applying the same rationale here, this Court concludes that the actions of the parties subsequent to the signing of the contractual agreements signals that Defendants acknowledged and understood that the agreements now applied to Kenneth Turnbull, Sr. as Defendants did not object and allowed Plaintiff to deduct his expenses from December 2005 until May 2008 without interruption.<sup>44</sup> Therefore, even if no express contract existed between Kenneth Sr. and Defendants, there exists a valid implied-in-fact contract given the nature of the conduct of both parties for about three (3) years, which was subsequently breached by Defendant Karen Turnbull-Wheatley when she unilaterally exercised physical control of the Property and began collecting the rents.

¶ 10. Even if the Court were to find that Defendants did not have a contractual obligation to reimburse Plaintiff, Defendants cannot be unjustly enriched by the improvements performed by Kenneth Sr. to his detriment. Unjust enrichment occurs when: 1.) the defendant was enriched, 2.) at the plaintiff's expense, 3.) where the defendant appreciated or had knowledge of the benefit, and 4.) that the circumstances are such that in equity or good conscience, the defendant should return the money or property due to plaintiff.<sup>45</sup> “Unjust enrichment is an equitable remedy that imposes liability in the absence of an enforceable contract between the parties but fairness dictates that the

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<sup>41</sup> *Id.*

<sup>42</sup> See EXHIBIT 1.

<sup>43</sup> See *United Corp. v. Tutu Park, Ltd.*, 55 V.I. 702, 707-08 (V.I. 2011).

<sup>44</sup> See Verified Notice of Claims.

<sup>45</sup> See *Isaac v. Crichlow*, 63 V.I. 38, 67 (V.I. Super. Ct. 2015); *Walters v. Walters*, 60 V.I. 768, 780 (V.I. 2014).

plaintiff receive compensation for services provided.”<sup>46</sup> Thus, the work performed, and the expenses associated with constructing the Property constitute a debt owed by Defendants to Plaintiff and to which Plaintiff is entitled to reimbursement from Defendants.

**Defendants’ Culpability under V.I. Statutory Provisions**

¶ 11. Since the Property cannot be physically divided amongst the five (5) owners, pursuant to 28 V.I.C. §§§ 451, 457, and 458, it must be sold, and the proceeds distributed to the owners minus the amounts awarded to Plaintiff for expenses incurred in completing the building that have yet to be reimbursed.<sup>47</sup>

¶ 12. Further, according to 15 V.I.C. §§§ 495, 497, and 498, the Property could have been sold or partitioned under the probate matter of the Estate of Ivy R. Turnbull. Since Karen Turnbull-Wheatley was the Executrix of the Estate of Ivy Turnbull, the Court concludes that Karen’s actions during and after the Adjudication was issued on March 6, 2009 until the present, were intentional and calculated and that her intention behind not selling or partitioning the Property in the Probate matter was to deprive her father of his one-third interest, so that she could collect the past 10 years of rent for her personal gain. In accordance with V.I. R. Civ. P. 37(a)(1), and *Insurance Corp. v. Compagnie Des Bauxites*, 456 U.S. 694 (1982), Plaintiff as a one-third owner was entitled to an accounting and sought an accounting both during and after the probate of Ivy Turnbull’s Estate.<sup>48</sup> However, Plaintiff never received an accounting from Karen Turnbull-Wheatley. Accordingly, the Court finds that an adverse inference is warranted against Karen Turnbull-Wheatley for her failure

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<sup>46</sup> *Cacciamani and Rover Corp., v. Banco Popular De Puerto Rico*, 61 V.I. 247, 251-52 (V.I. 2014).

<sup>47</sup> See generally *Walters v. Parrott*, 58 V.I. 391 (V.I. 2013); *Martin v. Martin*, 54 V.I. 379 (V.I. 2010); *Bryan v. Bryan*, 2016 V.I. Lexis 44 (V.I. Super. Ct. Apr. 13, 2016); *Brin v. Dessout*, 2015 V.I. Lexis 118 (V.I. Super. Ct. Sept. 29, 2015).

<sup>48</sup> This Court has, in the record, at least 3 documented occasions, in keeping with Rule 37(a)(1), where Plaintiff sought an accounting. See e.g. Plaintiff’s March 24, 2009 Request for Accounting; Plaintiff’s Verified Complaint filed on September 27, 2010; and Plaintiff’s First Set of Interrogatories & Request for Production of Documents.

to account for the funds received. Furthermore, Karen Turnbull-Wheatley's failure to comply with the Court's repeated orders to produce an accounting as well as orders imposing sanctions for this failure, which have yet to be paid, further unjustly prejudices Plaintiff.<sup>49</sup> Karen Turnbull-Wheatley bears the burden of proof regarding money she received from the rental proceeds, but she has intentionally and repeatedly thwarted her legal and ethical obligations as Executrix by failing to produce an accounting of the rental income she has collected from 2008 to present in violation of V.I. R. Civ. P. 37(a)(1).

¶ 13. Pursuant to 15 V.I.C. §1-108, during her time as Executrix, Karen Turnbull-Wheatley was deemed to be acting for the beneficiaries when she collected rent on a monthly basis; therefore, in accordance with 15 V.I.C. §567, Karen Turnbull-Wheatley, in her capacity as Executrix, was not permitted to profit from the rental income. Yet, the evidence is unrefuted that she collected all the rent and made no distributions to all beneficiaries during the pendency of the probate of Ivy Turnbull's estate, thus violating 15 V.I.C. §318 and 15 V.I.C. §1-106.

#### **Defendants' Culpability through Principles of Negligence**

¶ 14. In addition, based on the contractual agreement, Karen Turnbull-Wheatley was supposed to allow Kenneth Jr. to collect the rent and make quarterly distributions. Karen Turnbull-Wheatley breached the terms of the Agreement.<sup>50</sup> Therefore, aside from her contractual obligations, Karen, by unilaterally taking it upon herself to rent the property, then owed a duty to the other owners to not only account for the funds collected, but also to make distributions of the rental income to the

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<sup>49</sup> This Court offers once again that its Orders still remain ignored by Defendant Karen Turnbull-Wheatley. *See e.g.* March 21, 2017 Order, May 8, 2018 Order, November 13, 2018 Order (which was also in tandem with Defendant's failure to appear for a June 8, 2018 show-cause hearing).

<sup>50</sup> *See Phillip v. Marsh-Monsanto*, 66 V.I. 612, 620-21 (V.I. 2017); *Merchs. Commercial Bank v. Oceanside Vill., Inc.*, 64 V.I. 3, 14-15 (Super. Ct. 2015); *Chapman v. Cornwall*, 58 V.I. 431, 437 (V.I. 2013); *Rainey v. Hermon*, 55 V.I. 875, 881 (V.I. 2011) (enumerating that Virgin Islands courts have established that in order to bring a breach of contract claim, the plaintiff must satisfy four elements: 1.) the plaintiff must show that a contract existed, or the parties had an

owners.<sup>51</sup> Karen Turnbull-Wheatley breached this duty owed to Plaintiff. Under the four-factor test, traditional negligence claims can be brought when: “(1) defendant had a legal duty of care to the plaintiff, (2) a breach of that duty of care by the defendant (3) constituting the factual and legal cause of (4) damages to the plaintiff.”<sup>52</sup> Since she breached her duty of care, Plaintiff has both a factual and legal cause of action and has been damaged from May 2008 to the present due to Karen Turnbull-Wheatley’s failure to pay Plaintiff his rightful and legal one-third interest in the rental income. The Court also finds that based upon the evidence presented at trial, Karen Turnbull-Wheatley knew that her actions would result in an invasion of Plaintiff’s property interests and that she intentionally acted in this manner with the specific purpose of depriving Plaintiff of his property interest. Her actions were culpable and not justified and as a direct result of her actions, Plaintiff was injured and cheated of his rightful interest. It is clear that Karen Turnbull-Wheatley used everything in her power to preclude Plaintiff from obtaining an accounting of the actual rents she collected from June 2008 through the present. The Court finds that an adverse inference is warranted due to her complete failure to comply with multiple court orders and threats of further sanctions.

¶ 15. This Court also finds that had Kenneth Turnbull, Sr. been receiving his one-third interest in the property, he may have been able to renew his life insurance policy and to pay for his medical needs. Without his share of the rental income, he was unable to pay for any medications that would have contributed to his health. In addition, his life insurance policy may not have lapsed, and he would have been in a better position to reimburse those who had lent him money prior to his passing

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agreement, 2.) the contract or agreement created a duty, 3.) the duty was breached, and 4.) the plaintiff suffered damages as a result of the breach).

<sup>51</sup> See 28 V.I.C. §751.

<sup>52</sup> *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 380 (V.I. 2014).

or he may not have even borrowed at all.<sup>53</sup>

¶ 16. It is clear from the evidence adduced at the trial that after the passing of Ivy Turnbull, Defendants treated their father deplorably. They demonstrated incredibly appalling behavior and essentially worked hard to disinherit him, despite his one-third interest in the Property and his rights to the proceeds of the rental income. Therefore, Karen Turnbull-Wheatley owes a debt to the Plaintiff for collection of rent and failure to distribute Plaintiff's one-third interest plus interest at the rate of 9% per annum.<sup>54</sup> Currently the amount Karen owes to Plaintiff is **\$360,873.53** in rental proceeds. But this Court finds it necessary to award treble damages in accordance with 28 V.I.C. § 334 because of Defendant Karen Turnbull-Wheatley's egregious, reprehensible behavior and continued defiance of this Court's Orders and the perplexing silence of the other Defendants demonstrating their utter lack of concern in this matter. Thus, Plaintiff's one-third interest is valued at the amount of **\$1,082,620.59** and continues to accrue at a pre-judgment rate of \$266.95 per diem and at a post-judgment rate of \$118.64 per diem until paid in full.

¶ 17. **THEREFORE, EFFECTIVE IMMEDIATELY,** this Court enjoins **KAREN TURNBULL-WHEATLEY, KENNETH TURNBULL, JR., KEITH TURNBULL, AND KLARIA TURNBULL** from renting the Property at Parcel No. 13BAA Estate Enighed, St. John, Virgin Islands.

¶ 18. In addition, pursuant to 5 V.I.C. § 251, Plaintiff is permitted to attach a lien or request a Marshal's Sale on any property owned by Karen Turnbull-Wheatley to satisfy this judgment in the total amount of **One Million, Three Hundred Twenty Eight Thousand, Nine Hundred Fifty-Six Dollars and 81/100 (\$1,328,956.81)**, representing Plaintiff's one-third share of unpaid rental income in the amount of \$1,082,620.59 and Plaintiff's outstanding debts related to construction

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<sup>53</sup> EXHIBIT 70.

costs and other expenses incurred in the amount of \$246,336.22.

Accordingly, it is hereby

**ORDERED** that Judgment is entered against Defendants and in favor of Plaintiff in the amount of **\$246,336.22** for failure to reimburse Plaintiff for the expenses incurred to complete construction of the Property at Parcel No. 13BAA Estate Enighed, St. John, Virgin Islands and for other outstanding debts incurred by Plaintiff; and it is further

**ORDERED** that within 21 days of the date of entry of this Order, the Property must be listed for sale on the market; and it is further

**ORDERED** that if the Property cannot be sold by a real estate agent within 6 months from the date of this Order, then it must be seized and sold at a Marshal's Sale by public auction to the highest bidder with the proceeds distributed pursuant to this Order; and it is further

**ORDERED** that after the deduction of **\$246,336.22**, Plaintiff is further entitled to one-third of the proceeds from the sale of the Property and proceeds from the sale of the Property must be paid to the Court Registry where it will remain until complete disbursement in accordance with this Order; and it is further

**ORDERED** that the real estate agent is deemed to have power-of-attorney for all owners to sign all documents to effectuate a closing once the contract of sale is approved by the Court; and it is further

**ORDERED** that during the time that the property is listed on the market, the real estate agent, upon Court approval, may rent the property and shall deposit the rental proceeds into the Court Registry; and it is further

**ORDERED** that Plaintiff shall have the right of first refusal to purchase the Property,

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<sup>54</sup> See 11 V.I.C. §951.

applying Plaintiff's portion of the Judgment less Plaintiff's one-third interest towards any offer made to the real estate agent from a third-party buyer enabling Plaintiff to keep the Property in the family. Plaintiff shall have **sixty (60) days** to exercise its right of first refusal once a valid offer has been submitted to a real estate agent signed by a third party; and it is further

**ORDERED** that upon the sale of the Property, the sale proceeds will first be applied to any outstanding mortgage balance on the Property, then a portion of the sale proceeds will be applied to satisfy the Virgin Islands realtor's commission (which shall not exceed 6%), other closing costs and/or liens related to the Property (including satisfaction of the foregoing **\$246,336.22** debt owed to Plaintiff), then after all obligations have been satisfied, Plaintiff is first entitled to a payout of **\$1,082,620.59** to satisfy his one-third interest in rental income that was never received, then the balance of the sale proceeds, if any, shall be distributed in accordance with all parties' interests; and it is further

**ORDERED** that any and all of Karen Turnbull-Wheatley's one-sixth interest in the proceeds from the sale of the Property shall go to Plaintiff to satisfy Plaintiff's one-third interest in the rental income that was never distributed to Plaintiff and to pay down any balance on the **\$1,082,620.59** entered against her and in favor of Plaintiff; and it is further

**ORDERED** that the V.I. Marshals are hereby authorized to seize any and all assets belonging to Karen Turnbull-Wheatley, including any bank accounts at FirstBank Virgin Islands, Bank of Nova Scotia, Banco Popular de Puerto Rico, Merchants Commercial Bank, GERS pensions, retirement funds, and any real or personal property to satisfy the balance of the debt plus interest at 4% per annum until judgment is satisfied in full; and it is further

**ORDERED** that if after Plaintiff receives Karen Turnbull-Wheatley's one-sixth interest and the **\$1,082,620.59** judgment is not satisfied, Plaintiff shall receive any and all of Kenneth, Jr., Keith,

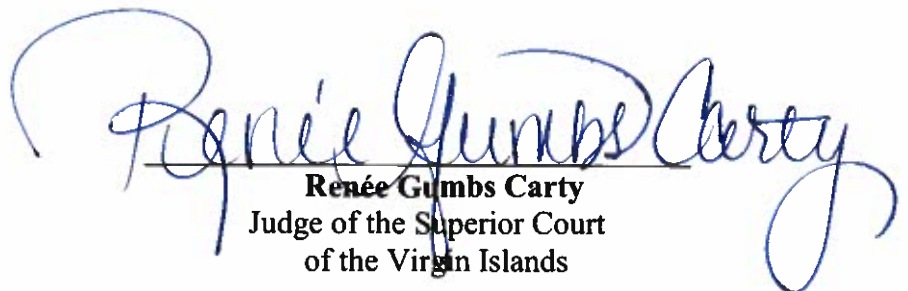
and Klaria's one-sixth interests in equal amounts to satisfy the outstanding balance of the judgment that represents Plaintiff's one-third interest; and it is further

**ORDERED** that any remaining funds after disbursements to Plaintiff as set forth herein shall be distributed equally to Kenneth, Jr., Keith, and Klaria Turnbull pursuant to their one-sixth interests. Those funds shall remain in the Court Registry until claimed by those owners in person; no one else shall be authorized to claim those funds on behalf of the legal owners; and it is further

**ORDERED** that interest shall accrue at the post-judgment rate of 4 percent (4%) per annum, which equals a per diem of \$118.64, until judgment is satisfied in full; and it is further

**ORDERED** that copies of this Order shall be served upon Anna H. Paiewonsky, Esquire, Kenneth Turnbull, Jr., Keith Turnbull (P.O. Box 622-461, Orlando, Fl. 32862/**and Hand Delivered to:**#30 Agnes Fancy, Queens Quarter, St. Thomas, V.I. 00802), Klaria Turnbull (195 Shenandoa Dr., Winder, GA 30680/**and Hand Delivered to:**#30 Agnes Fancy, Queens Quarter, St. Thomas, V.I. 00802), and Karen Turnbull-Wheatley **Hand Delivered to:** (#30 Agnes Fancy, Queens Quarter, St. Thomas, V.I. 00802 and mailed to: P.O. Box 306352, St. Thomas, V.I. 00803).

Dated: July 15, 2019

  
**Renée Gumbs Carty**  
Judge of the Superior Court  
of the Virgin Islands

ATTEST:  
Estrella H. George  
Clerk of the Court

By 

Donna D. Donovan  
Court Clerk Supervisor

7/15/2019