SAINT LUCIA

IN THE COURT OF APPEAL

HCVAP 2008/025

BETWEEN:

[1] DORINA JOSEPH
[2] RICHARD FREDERICK

Appellants

and

[1] NORA ST. LOUIS representative of the Estate of VERONIQUE EDWARDS (nee Blanchard)
[2] NORA ST. LOUIS representative of the Estate of PHILOMENE ST. LOUIS (nee Blanchard)

Respondents

Before:

The Hon. Mde. Janice George Creque	Justice of Appeal
The Hon. Mr. Michael Gordon, QC	Justice of Appeal [Ag.]
The Hon. Mde. Rita Joseph Olivetti	Justice of Appeal [Ag.]

Appearances:

Ms. Petra Nelson with Ms. Lydia Faisal for the appellants
Mr. Andie George with Mr. Ermin Moise for the respondents

2009: March 25;
July 6.

Civil Appeal – Land Law – Prescription – whether the cause of action lies in delict or quasi-delict – whether the cause of action lies in equity as a result of breach of trust – whether there was an underlying cause of action to account – Articles 2047, 2085, 2122, 2129 and 916A of the Civil Code of Saint Lucia

In April 1995, Letters of Administration in the estate of St. Martin Blanchard ("the deceased") were granted and registered in the name of Mr. Patrick Blanchard ("Mr. Blanchard"), from which estate the appellants purchased property in May 1995. In December 1997, Veronique Edwards and Philomene St. Louis, now deceased and represented by Nora St. Louis, commenced proceedings against Mr. Blanchard seeking revocation of the Letters of Administration. Injunctive relief was subsequently sought and by a judgment dated October 1998, cautions were placed on a variety of parcels belonging or formerly belonging to the deceased's estate, including that purchased by the appellants. Leave was also given to serve an amended claim adding all the parties who had received property from Mr. Blanchard.

In 2005, the second appellant applied to the court for the removal of the caution against his land. The respondents, in June 2006, filed an amended claim form adding the appellants as two of seven defendants. A further amended statement of claim, filed subsequently, alleged breach of (constructive) trust by Mr. Blanchard and sought an account of monies, among other things. Breach of trust was also alleged as against the appellants who are said to have purchased the land well below market value. The appellants and one other defendant applied to the High Court for the trial of a preliminary issue, namely, prescription. The learned judge found that the claim was not prescribed having regard to Mr. Blanchard's failure to account; against which decision the appellants have appealed. The appellants argue that the cause of action lies in delict or quasi-delict and is accordingly prescribed. The respondents argue that the cause of action is in equity for which there is no period of limitation except were the court to apply the doctrine of laches.

Held: allowing the appeal, striking out the claim and awarding costs to the appellants in this court and in the court below to be assessed on the basis of CPR 65.11:

1. Article 2047 of the Civil Code of Saint Lucia provides that prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law. Actions in delict or quasi-delict are prescribed by three years under Article 2122.

2. Interruption of the period of prescription only takes place if an action is filed and served before the prescribed period under the Civil Code. If service of process takes place after the relevant period of prescription has elapsed, it matters not at all when the suit was filed.

   David Sweetnam et al v The Government of Saint Lucia represented by the Attorney General Civil Appeal No. 42 of 2005 followed.

3. Article 916A of the Civil Code imported wholesale the concept and laws of trust from the laws of England. The Code prevails where there is a conflict between the express provisions of the Code and the law of England.

4. An administrator is a trustee in the limited sense that he is liable in equity for all breaches of ordinary trusts which are considered to arise from his office.

   Commissioner of Stamp Duties v Livingston [1964] 3 All ER 692 applied.

5. The difference as between the common law concept of tort and the civil law concept of delict/quasi delict is that whereas the common law concept gives rise to obligations in rem the civil law gives rise to obligations in personam.

6. A breach of trust or conspiracy to cause a breach of trust, such as is alleged in this case against the appellants, falls squarely within the realm of a delict or quasi-delict being dependent on the finding of fact by a trial court. In other words, the substantive rights

(trusts) are imported by Article 916A but the remedy for the breach of those substantive rights, as in this case, are provided for by the provisions of the Code.

7. The cause of action for breach of trust, being a delict or quasi-delict, is prescribed having been filed and served well outside the three year prescription period under Article 2122 of the Civil Code.

8. An obligation to account can only arise if there is some other underlying obligation the extent of which is to be discovered by way of the action on account. The action for breach of trust being prescribed, there can no longer be an underlying cause of action (obligation) which would support an action or an account.

JUDGMENT

[1] GORDON, J.A. [AG.]: By a Writ of Summons with a Statement of Claim attached these proceedings were commenced on the 31st December 1997, by Veronique Edwards and Philomene St. Louis as plaintiffs against Patrick Blanchard as defendant. The gravamen of the claim, as it then stood, was for the revocation of Letters of Administration in the estate of St. Martin Blanchard (hereinafter referred to as "the Deceased") granted to the then sole defendant, Mr. Patrick Blanchard (hereinafter referred to as "Mr. Blanchard") on 14th April 1995 and registered in the Registry of Deeds and Mortgages on 28th April 1995. There were also ancillary claims for injunctive relief, improbation of certain deeds by which Mr. Blanchard conveyed parcels of land comprising parts of the estate, an account of the monies received by Mr. Blanchard and damages.

[2] In a written judgment dated October 1998, in response to an application for an interlocutory injunction, the High Court held as follows:

> "Having viewed the matters brought to the attention of the Court, it appears that a proper order to be made at this stage is one that will freeze all the lands either in the name of the Administrator, or assented to, or transferred, that are question able, including those put into the names of the Plaintiffs by the Defendant. An injunction freezing only the parcels of land still in the name of the Defendant and not yet disposed of will be insufficient. An injunction freezing the status of all the parcels of land derived from the estate may be too wide……An order preserving the estate for the determination of the Court must be crafted to allow maximum protection in possibly questionable transactions while leaving untouched those transactions that are not suspicious."

[3] The learned judge then ordered that cautions be placed on a variety of parcels of land which either formed part of the estate of the Deceased or formerly formed part of the estate of the Deceased including parcels belonging to the appellants in this case. Both appellants purchased property from the estate in May 1995. In addition, the learned judge gave leave to "serve an amended statement of claim adding all of the parties who have received property from the Administrator/Defendant mentioned in paragraph 10 of the Statement of Claim and against whose property a Caution above mentioned is placed".

[4] The next thing that happened, as affecting this case, is that in 2005 the second appellant applied to the court for the removal of the caution against his land placed there as a result of the October 1998 judgment referred to above. Whether the respondents to this appeal (for the original plaintiffs had both died) were spurred into action by the application of the second appellant or not, the fact is that in June 2006 an Amended Claim Form was filed which, inter alia, cited the appellants herein as two of seven new defendants.

[5] Prior to the filing of the amended claim form, by order of the court dated April12, 2006, the Administrator General was appointed as administrator of the estate of Mr. Blanchard who had, in the mean time, died.

[6] A further amended statement of claim was filed by the now claimants some ten days after the first amended statement of claim. This latter further amended statement of claim will hereafter be referred to simply as the statement of claim. A defence and counterclaim was filed on behalf of three of the added defendants, including the appellants herein, in November 2006 claiming damages occasioned by the placing of the cautions. As found by the trial judge, no defence to the counterclaim has been filed. An application for the trial of a preliminary issue was made by three of the defendants including the appellants herein. The application was heard by the High Court resulting in a judgment from whence this appeal derives. The preliminary issues raised in the application related to prescription, abuse of process arising out of the elapse of time between the 1998 judgment and the filing of the 2006 amended statement of claim and the failure of the respondents to diligently prosecute the claim as exemplified by the failure to amend the claim for 8 years after they had been ordered to do so.

[7] In so far as prescription was concerned, the trial judge found as follows:

> "The issue of prescription has given me much pause yet at the end of the day I have concluded this action is not prescribed. I have come to this conclusion only because I accept the claimant's position that this is an action to compel an administrator to account. His failure to account continues to today. Defendants 3, 5 and 8 are alleged to have acted in concert with him in furtherance of his fraudulent dealing with the Estate."[1]

[8] The appellants being aggrieved by the decision of the trial judge sought and were granted leave to file an appeal against this interlocutory decision. The grounds of appeal were numerous. However, given the tenor of this decision only the issue relating to prescription will be discussed.

[9] The claim against the first named defendant (not an appellant before this court) as articulated in the amended claim form is a claim for:

(i) Revocation of Letters of Administration granted to the First Named Defendant on the 14 April 1995 and registered on the 28 April 1995 in Vol. 148a No. 172159 as L.A. No. 07/95.

(ii) An injunction restraining the First Named Defendant whether by himself, his servants and or agents howsoever otherwise, from selling, disposing of, transferring, mortgaging or in any other way dealing with the following parcels of land registered in the Land Registry of Saint Lucia as Block No. 1824B Parcel Nos. 29, 33, 34, 41 and 44.

(iii) A declaration that the First Named Defendant holds Parcels 29, 33, 34, 41 and 44 on constructive trust for the Heirs of St. Martin Blanchard.

(iv) Improbation of the deed conveying the aforesaid properties to the First Named Defendant.

(v) An order that the Parcel Nos. 29, 33, 34, 41, 44 be restored to the Estate of St. Martin Blanchard.

(vi) A declaration that the First Named Defendant is liable to pay to the Estate of St. Martin Blanchard the difference between the fair market value of

[1] Paragraph 7 of judgment of Cottle J.

Parcels 26, 27, 28, 31,36, 37, 38, 39, 42 and 43 and the prices paid for the said properties.

(vii) A full and proper account of all monies received by the First Named Defendant, its expenditure and its whereabouts.

(viii) An order that the First Named Defendant pay to the Estate of St. Martin Blanchard the sums due to it.

(ix) An order that the First Named Defendant pay to the Claimants the sums due to them.

(x) A declaration that the immoveable properties described as Parcels Numbered 26 to 44 were unlawfully partitioned. ……

[10] As against the first appellant, the fifth named defendant, the claim is that she bought two parcels of land at well below market value with knowledge or imputed knowledge that the parcels of land formed part of the estate of the Deceased and that the first appellant received and dealt with the property "in breach of trust in that she was at all times a knowing and willing partner of Mr. Blanchard."

[11] At paragraphs 33 and 35 of the statement of claim the respondents, as claimants, allege as follows:

> "33 The Fifth Named Defendant [the first respondent] knew or ought to have known that the First Named Defendant was dealing with the properties in breach of his duties to the Claimants and knowingly assisted the First Named Defendant in so doing, and so acted dishonestly"
> "35 As a result of the matters aforesaid, the Fifth Named Defendant is liable to account to the Claimants as constructive trustee for the fair market value of Parcels Numbered 36 and 43."

[12] The claim against respondent No. 2 is in very similar terms, save that in addition, it is alleged that the second appellant acted as the solicitor of Mr. Blanchard.

[13] In my respectful view the first issue with which the court must contend is what is the cause of action, for only then can the issue of prescription, argued most strenuously by learned counsel for the appellants, be determined.

[14] Perhaps the best starting point is the relevant law on prescription. Article 2047 of the Civil Code of Saint Lucia, Chap 4:01 of the Laws of Saint Lucia (hereafter "the Civil Code" defines prescription. It reads as follows:

> "2047. Prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law.
>
> In positive prescription title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession.
>
> Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law."

[15] Article 2122 sets out the period required to prescribe certain types of causes of action. It reads in part:

> "2122. (Am. 34–1956). The following actions are prescribed by three years;
> 1. For seduction, or lying-in expenses;
> 2. For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply;…."

[16] Article 2085 of the Civil Code reads in part:

> "2085. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption."

In a decision of this court, David Sweetnam et al v The Government of Saint Lucia represented by the Attorney General[2] it was held that interruption of the period of prescription only takes place if both requirements are met, namely the filing of a judicial demand in a court of competent jurisdiction and the service of such demand on the person whose prescription it is sought to hinder. If service of process takes place after the relevant period of prescription has elapsed, it matters not at all when the suit was filed.

[17] Finally, on the relevant Codal provisions on prescription, Article 2129 sets out the effect of prescription in certain circumstances. It reads:

> "2129. In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of

[2] Civil Appeal No. 42 of 2005 judgment delivered Octoberr 28, 2005

exchange, where prescription is precluded by a writing signed by the person liable upon them."

[18] It is the appellants' case that the cause of action lies in delict or quasi delict. The respondents, on the other hand, assert that the basis of the respondents' claim is equity as a result of breach of trust. As a part of the argument in support of the respondents position, the respondents argue that both delicts and quasi delicts speak to "the tortious liability of individuals whose actions cause injury to persons to whom they hold a duty of care" in contra-distinction to what, they argue, is an action based on breach of trust. There is no period of limitation, the respondents' argument goes, for breach of trust, though they concede that the court may exercise its discretion to strike out a cause of action for laches.

[19] In 1956 when a revision of the Civil Code was undertaken by Sir Allen Lewis, former Chief Justice of this court, there was added Article 916A [3] which imported wholesale the concept and laws of trusts from the laws of England. Article 916A is worthy of reproduction:

> "916A. (1) All persons capable of disposing freely of their property, may convey property, movable or immovable, to trustees by act *inter vivos* or by will for the benefit of any persons in whose favour they can validly dispose of their property. They may also constitute themselves, either alone or jointly with others, trustees of their own property for the benefit of other persons.
>
> (2) Implied, constructive and resulting trusts shall arise under the law of the Colony in the same circumstances as they arise under the law of England.
>
> (3) Subject to the provisions of this Code or of any other statute the law of England for the time being in force governing the rights, powers and duties of trustees and beneficiaries under a trust shall extend to and apply in the Colony.
>
> (4) Whenever by the law of England a beneficiary of a trust is entitled to a right in equity a beneficiary shall be entitled to a like right under this Code.
>
> (5) Notwithstanding any other provisions of this Code as to the acceptance of gifts *inter vivos* the acceptance of a gift by a beneficiary shall not be necessary for the creation of a valid trust."

[20] Learned counsel for the respondents argued that on the authority of Commissioner of Stamp Duties v Livingston[4] an administrator of a deceased's estate finds himself in the

[3] By Act No. 34 of 1956
[4] [1964] 3 All ER 692

position of a trustee. With great respect to learned counsel, I am of the view that Livingston will not take him so far. As stated by Viscount Radcliffe:

> "When Mrs. Couslon died she had the interest of a residuary legatee in the testator's unadministered estate. The nature of that interest has been conclusively defined by decisions of long established authority, and its definition no doubt depends on the peculiar status which the law accorded to an executor for the purposes of carrying out his duties of administration. There were special rules which long prevailed about the devolution of freehold land and its liability for the debts of a deceased, but subject to the working of these rules whatever property came to the executor *virtute officii* came to him in full ownership, without distinction between legal and equitable interests. The whole property was his. He held it for the purpose of carrying out the functions and duties of administration, not for his own benefit; and these duties would be enforced on him by the Court of Chancery, if application had to be made for that purpose by a creditor or beneficiary interested the estate. Certainly, therefore, he was in a fiduciary position with regard to the assets that came to him in the right of his office, and for certain purposes and in some aspects he was treated by the court as a trustee. KAY, J., in *Re Marsden*, Bowden v. *Layland, Gibbs* v. *Layland*, said (7):
> "An executor is personally liable in equity for all breaches of the ordinary trusts which, in courts of equity, are considered to arise from his office." He is a trustee "in this sense"

What is clear, however, is that were the circumstances of this case to arise in England, it is to Equity that the parties would go to determine their rights and remedies.

[21] The difference in approach between counsel for the parties brings into stark relief the dangers (perhaps difficulties is a more apt word) of the hybrid legal system that is the heritage in Saint Lucia. Articles 985 and 917A, in part, of the Civil Code read as follows:

> "985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising."
>
> "917A. (As. 34-1956) (1) Subject to the provisions of this article, from and after the coming into operation of this article the law of England for the time being relating to contracts, quasi-contracts and torts shall *mutatis mutandis* extend to this Colony, and the provisions of articles 918 to 989 and 991 to 1132 of this Code shall as far as practicable be construed accordingly; and the said articles shall cease to be construed in accordance with the law of Lower Canada or the "Coutume de Paris":……
>
> (3) Where a conflict exists between the law of England and the express provisions of this Code or of any other statute, the provisions of the Code or of such statute shall prevail. (emphasis added)"

[22] In 'Essays on the Civil Codes of Quebec and St. Lucia'[5], at page 53, Dr. Kenny D. Anthony (in another life) wrote:

> "It is clear that article 917A does not *in its terms* abolish article 985. If that was intended then the legislature would have simply deleted the provision as had been done in the case of other provisions. Article 917A says that 985 is to be construed "as far as practicable to the law of England". Thus, article 985 is to be assimilated, *mutatis mutandis*, in the direction of English tort law. English law is not, therefore, being assimilated in the direction of the civilian provision. But there is the proviso that the jurisprudence of Québec or France is not to be utilized in rendering decisions.
>
> One may summarise as follows. Article 917A is intended to absorb those elements of fault liability which are coterminous and converge with tort liability under common law. Where this happens then the purity of the English law is to be maintained, so recourse may not be had to civilian jurisprudence whether from Québec or France.
>
> Now, if it is accepted that fault liability under the civil law is wider in its ambit and effect than the common law, it would seem that absorption by 917A of 985 was not complete, so that zones or residues of civilian liability remain. If that is the case, then what civil law zones or residues continue to exist?
>
> Here, little guidance is forthcoming from the Courts.
>
> The Courts have not always treated article 985 as otiose. Some actions and judgments were based on article 985. The reasons for this are unclear and may be questioned."

[23] I am of the view that considerable assistance might have been gained from the definition of delict and quasi delict to be found at Article 1 (15) which reads as follows:

> "1. The meaning, explanation or application assigned in this section to a word, term or enactment, attaches to it whenever occurring in this Code, in the Code of Civil Procedure, or in any ordinance or proclamation, unless such meaning, explanation or application is inconsistent with the context or with the object of the provision in which such word, term or enactment occurs, or is repugnant to some special provision of law….
>
> 15. Each of the terms "delict" and "quasi-delict" indicates an injurious act or incident which, in the absence of any contract gives rise to an obligation towards the injured person (the creditor), on the part of another person (the debtor). The act or incident is termed "delict" when there is, and "quasi-delict" when there is not, injurious intention or culpable negligence on the part of the debtor."

[24] In his treatise "The French Civil Code[6], Jean Louis Halperin[7] writes of the French Civil Code:

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[5] University of Ottawa Press, 1984

[6] University College of London Press, 2006

[7] Professor of Law at the Ecole Normale Superieure in Paris

> "The chapter on delicts and quasi-delicts starts out with the famous article: 'Every act whatever of man that cause damage to another obliges him by whose fault the damage arose to repair it' (Art 1382). 'Fault' is not defined, though Art 1383 states that a person is responsible not only for his act ('*fait*' – alluding to intentional fault as delictual?) but also for his 'negligence' or 'imprudence'. Responsibility is then extended to include not only 'those for whom one is answerable' – thus mothers and fathers are answerable for their minor children, masters and employers for servants and employees, teachers and workmen for their students and apprentices – but also 'things under one's control', owners of animals or buildings which collapse being made liable for the damage they cause.
>
> "Some explanations of these very terse articles on which the law of civil responsibility was to be based were offered by those who spoke for the government or in the Tribunate. The extremely comprehensive formula ('every act whatever of man') was designed to make individuals (including, according to the spokesmen, the spendthrift) 'warrant their conduct', fault being a 'failure of self-control' and answer for every 'unlawful act' (Tarrible) – that is, any act which 'harms the rights of others' (Bertrand de Greuille). Monetary reparation of all damage (except 'the work of fate') is called for by public order and the 'preservation of property of all kinds'. Delicts are seen 'exclusively from the viewpoint of the person whose interests are injured' (Tarrible), for 'the law cannot treat in the same way the person at fault and the person who suffers' (Bertrand de Greuille).
>
> "But Arts 1382 – 1386 should not lead us to suppose that they are concerned only with the rights of individuals. As well as being a 'civil guarantee' of the property of others they constitute an important incentive 'to vigilance on the part of those with the sacred office of authority' such as fathers and mothers, masters and employers, and teachers and artisans. Their liability will 'focus attention on the conduct of those in their charge' and 'prevent any relaxation of domestic discipline' (Tarrible). Logically enough, the liability of parents ceases when the children leave the family home and that of masters and employers arises only as regards the function for which their employees and servants are engaged."

[25] I am of the view that Article 1 (15) and Article 985 of the St. Lucia Civil Code and Articles 1382 et seq of the French Civil Code are similar in juridical concept and meaning.

[26] Conceptually, the definition of delict/ quasi delict is significantly different from the definition of Tort. According to the classic definition of tort of Winfield "[t]ortious liability arises from the breach of a duty primarily fixed by the law; such duty is towards persons generally and its breach is redressable by an action for unliquidated damages"[8] The difference, as I

[8] Winfield, *Province of the Law of Tort* (1931)

perceive it, as between the Common Law concept and the Civil law concept is that whereas the common law concept gives rise to a obligations *in rem* the Civil law gives rise to obligations *in personam*. As it is put in Clerk & Lindsell on Torts:[9]

> "Winfield's classic definition of tort focused on two key issues in distinguishing tort from contract. First, tortuous duties are primarily fixed by law; contractual duties are based on the consent of the parties and the content of the duties are settled between those parties. Put slightly differently, contract is concerned with voluntary obligations and tort with involuntary obligations. Secondly, tortuous duties are owed to persons generally *(in rem)* whereas contractual duties are undertaken towards a specific person or persons *(in personam)"*

[27] The Rt. Hon. Sir Vincent Floissac Q.C, former Chief Justice of this court, wrote in Essays on the Civil Codes[10] at page 348, "The cardinal rule of interpretation of our Civil Code must be the Vagliano rule – the rule which was expounded in Bank of England v Vagliano Brothers[11]". In that case, which dealt with the interpretation of section 7 (3) of the Bills of Exchange Act, a codifying act, Lord Halsbury LC said:

> "It seems to me that, construing the statute by adding to it words which are neither found therein nor for which authority could be found in the language of the statute itself, is to sin against one of the most familiar rules of construction, and I am wholly unable to adopt the view that, where a statute is expressly said to codify the law, you are at liberty to go outside the code so created, because before the existence of that code another law prevailed."

[28] In Despatie v Tremblay[12] Lord Moulton said the following when discussing the interpretation of Article 127 of the Civil Code of Quebec:

> "The essence of a code, whether it relates only to a particular subject or is of a more general character, is that it is a new departure. The codifiers have no doubt the task of examining the various authorities on each point in order to come to a right conclusion from the conflicting decisions as to what is the law upon the subject and their duty is to embody the result in the corresponding clause of the code they are framing. But when they have done this and the code has become a statute, the question whether they were right or wrong in their conclusion becomes immaterial. From thenceforth the law is determined by what is found in the code and not by a consideration of the conclusions which ought to have been drawn from the materials from which it has been framed. The language used by Lord Herschell in the case of the *Bank of England v. Vagliano Bros.* has always been accepted as expressing the object of codification."

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[9] 19th Ed. At paragraph 1-03
[10] Op cit
[11] [1891] AC 107
[12] [1921] 1 AC 702

[29] A comparable expression of the Vagliano rule of interpretation is to be found at Article 13 of the Civil Code of Louisiana which is headed "Plain meaning of text" and reads as follows:

> "When a law is clear and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit."

Conclusion

[30] Notwithstanding any sensitivities which purists of the Civilian tradition may have, the plain fact is that the substantive law of trusts, that is relationships deriving from the separation of ownership of property from benefit in certain defined circumstances, is part and parcel of the law of St. Lucia. I am, however, of the firm opinion that a breach of trust, or rather conspiracy to cause a breach of trust, such as is alleged in this case against the two appellants, would fall squarely within the realm of a delict or quasi delict (dependent on the finding of fact by a trial court) as defined in the Civil Code. Put another way, the substantive rights (trusts) are imported by Article 916 A; the remedy for the breach of those substantive rights, as in this case, are provided for by the provisions of the Code.

[31] The inevitable corollary of the view expressed in paragraph 30 above is that a cause of action based on such a delict or quasi delict would be prescribed after three years[13]. In my view the learned trial judge misled himself by regarding an action to account as a free-standing cause of action in tort. The reality is that the obligation to account can only arise if there is some other underlying obligation the extent of which is to be discovered by way of the action on account. As Article 2129 of the Civil Code declares that "the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired…" there can no longer be any underlying cause of action (obligation) which would support an action for an account.

[32] In the premises therefore, I would allow the appeal and, with some reluctance, accede to the application of the appellants to strike out the claim as against them on the grounds that the claim is prescribed. I would award costs to the appellants both in this court and the

[13] See paragraph [9] above

court below to be assessed on the basis of Part 65.11 of the Civil Procedure Rules, if not agreed.

[33] Finally, had I not come to the conclusion to which I have come, I would not have disturbed the discretion as exercised by the learned trial judge as expressed at paragraph 14 of his judgment for the reasons therein expressed.

Michael Gordon, QC
Justice of Appeal [Ag.]

I concur.

Janice George-Creque
Justice of Appeal

I concur.

Rita Olivetti-Joseph
Justice of Appeal [Ag.]