

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV2009/0514

BETWEEN:

JULIEN SPRECHER
(as lawful attorney of Jean Francois Sprecher)

Claimant

and

1. PRICEWATERHOUSECOOPERS (A Firm)
2. CHARLES WALWYN
3. FREDERIC LEGOUBEY
4. OLIVIER LEGOUBEY
(the latter two Defendants as Personal Representatives
of the Estate of Jean Legoubey, deceased)

Defendants

Appearances:

Ms Jean Dyer for the Claimant
Mr Kendrickson Kentish for the First and Second Defendants
Ms Eleanor Solomon for the Third and Fourth Defendants

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2012: March 20, 21
August 8
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JUDGMENT

- [1] MICHEL, J: By fixed date claim form filed on 9th September 2009 (with affidavit in support) the Claimant, Julien Sprecher (as lawful attorney of Jean Francois Sprecher) instituted proceedings against PricewaterhouseCoopers (A Firm) and Charles Walwyn.
- [2] By Order dated 23rd October 2009, following an application by the two named defendants for relief by way of interpleader (pursuant to Part 54 of the CPR) to be substituted by Frederic and Olivier Legoubey as the defendants to the suit, Thomas, J. ordered that the estate of Jean Legoubey be added as a defendant in the suit and granted leave to the parties to amend the fixed date claim form and to file additional affidavits as necessary.
- [3] On 18th November 2009, the Claimant filed an amended fixed date claim form naming Frederic Legoubey and Olivier Legoubey as defendants in their capacity as personal representatives of the estate of Jean Legoubey, deceased, and making consequential and other amendments to the claim.
- [4] On 19th January 2010, an affidavit [in response] sworn to by Charles Walwyn, the Second Defendant and the senior partner in the firm of PricewaterhouseCoopers, was filed on behalf of the First and Second Defendants. On the same date, an affidavit [in response] sworn to by Robert Wilkinson, a partner in PricewaterhouseCoopers, was also filed on behalf of the First and Second Defendants.

- [5] On 2nd March 2010, an affidavit sworn to by Frederic Legoubey was filed on behalf of the Third and Fourth Defendants.
- [6] On 29th July 2010, on application by the Claimant, Harris, J. made an order directing the First and/or the Second Defendant to deliver up custody of the bearer share certificates representing 50% of the shareholding interest in Sunshine Enterprises Holdings Limited and to deposit same with an authorized custodian to be selected and retained by the First Defendant or the First and Second Defendants in their own discretion. Harris, J. also ordered that the authorized custodian be caused by the First Defendant or the First and Second Defendants to hold the said bearer share certificates in trust for either the First Defendant or the First and Second Defendants until further order of this court.
- [7] At case management of the matter on 10th June 2011, Remy, J. gave leave to the parties to file further affidavit evidence on or before 29th July 2011 and adjourned the matter to 30th September 2011 for further case management.
- [8] On 29th July 2011, an affidavit sworn to by Jean Francois Sprecher was filed on behalf of the Claimant pursuant to the Order of 10th June 2011.
- [9] On 30th September 2011, trial dates were fixed for the case on 20th, 21st and 22nd March 2012 and the parties were ordered to file skeleton arguments on or before 13th February 2012.

[10] On 13th February 2012, skeleton submissions were filed on behalf of the Claimant and on behalf of the Third and Fourth Defendants and on 21st February skeleton submissions were filed on behalf of the First and Second Defendants.

[11] The trial of the matter took place on the scheduled dates, except that it did not extend into the third scheduled day.

[12] Five witnesses gave evidence at the trial - two for the Claimant, two for the First and Second Defendants and one for the Third and Fourth Defendants.

[13] The first witness for the Claimant was Mr Jean Francois Sprecher. In his affidavit sworn to on 28th July 2011, Mr Sprecher gave the history of the close personal friendship and business relationship he had with Mr Jean Legoubey and the circumstances under which they came to be partners in a business venture in Antigua operating under the corporate name of Lipstick (Antigua) Limited. Of direct relevance to the issues in dispute in this case are his assertions that sometime in or around 1998, after he and Mr Legoubey had decided to undertake the joint venture in Antigua, he travelled to Antigua with Mr Legoubey and they met with Mr Charles Walwyn (the Second Defendant) at the offices of the First Defendant and they took certain advice from and gave certain instructions to him relative to the incorporation and establishment in Antigua by the First Defendant of a company called Lipstick (Antigua) Limited (hereafter "Lipstick") with 33.33% of the shares in Lipstick to be held by Ms Isha Ryan (who was to be their Antiguan partner in the business) and the other 66.67% of the shares to be held by a holding company to be incorporated in the British Virgin Islands. The shares in the holding company were to be held as bearer shares in two blocks of 25,000 shares

per block, with the bearer share certificates to be held by the First Defendant in trust for Messrs Jean Francois Sprecher and Jean Legoubey, each with a 50% share in the company.

[14] Mr Sprecher swore that, with banking details provided to him by Mr Walwyn, he caused to be wire transferred to the bank account of the First Defendant identified by Mr Walwyn the sum of US\$200,000 for the incorporation and establishment by the First Defendant of Lipstick and the holding company which came to be called Sunshine Enterprises Holdings Limited (hereafter "Sunshine").

[15] Mr Sprecher swore too that it was agreed between him and Mr Legoubey that 50% of the US\$200,000 provided by him for the incorporation and establishment of the companies would be his investment in the joint venture and the other 50% would be a loan to Mr Legoubey to finance his (Mr Legoubey's) investment in the joint venture.

[16] Mr Sprecher swore that the instructions given to Mr Walwyn for the incorporation and establishment by the First Defendant of the two companies were carried out and late in 1998 Lipstick began its operations at Heritage Quay in Antigua, with Ms Ryan managing the company's store and Mr Legoubey (who resided in the Caribbean) having de facto control of the business of Lipstick and the other joint business ventures which they (Mr Sprecher and Mr Legoubey) had in the Caribbean. Mr Legoubey was to account to him in respect of his interests in the businesses. These arrangements proceeded amicably until in or around 2005 when some strains developed in the relationship between them.

[17] Upon the death of Mr Legoubey in May 2008, Mr Sprecher - with the assistance of his son, Julien Sprecher (hereafter "the Claimant") - endeavoured to secure his interests in all of the joint business ventures which he had with Mr Legoubey, including Lipstick and Sunshine. These endeavours (with respect to Lipstick and Sunshine) were however thwarted by the representatives of the First Defendant, who at first requested the appropriate authorization in order to hand over the bearer share certificates and related documents to the Claimant, then indicated that the consent of the representatives of the Estate of Jean Ligoubey was required, then denied the entitlement or any knowledge of the entitlement of Mr Sprecher to the bearer shares.

[18] Mr Sprecher was examined, cross-examined and re-examined on the contents of his affidavit, in the course of which he essentially maintained his version of the events surrounding this case. Under cross-examination, he appeared to be intent on telling his story no matter what the question to him was, and sometimes he failed to answer the questions actually asked of him in favour of relating his story. He never appeared however to be seeking to mislead the Court.

[19] The second witness was the Claimant. In his affidavit sworn to on 5th November 2009, the Claimant largely repeated and reaffirmed much of what is contained in the affidavit sworn to by his father on 28th July 2011. The Claimant also swore to an affidavit on 6th May 2010 in which he replied to affidavits sworn to by Messrs Robert Wilkinson, Charles Walwyn and Frederic Legoubey, disputing several of the material allegations contained in these affidavits.

[20] The Claimant was examined and cross-examined on the contents of his affidavits and he too essentially maintained his version of the material events surrounding the case. His testimony in court was given with more circumspection but less reluctance than was the case with his father.

Under cross-examination, the Claimant appeared to be trying as best as he could to offer detailed explanations of the issues on which he was questioned, particularly in relation to questions which did not easily lend themselves to “yes or no” answers. His evidence as a whole, however, suffered from the defect of having been derived almost entirely from things told to him by his father.

[21] The first witness for the defence was Mr Charles Walwyn, the Second Defendant. In his affidavit sworn to on 19th January 2010, the Second Defendant swore that he was the senior partner in the firm of PricewaterhouseCoopers (the First Defendant) and gave evidence which conveyed that the instructions to the First Defendant to arrange for the incorporation of Lipstick and Sunshine and to maintain custody of two bearer share certificates in respect of the shares in Sunshine came from Mr Jean Legoubey only. He swore that he does recall from memory that the First Defendant had received a wire deposit in the sum of US\$200,000 in 1998 in relation to the establishment of the operations of Lipstick, but that he cannot now confirm specifically the party who sent the money, and swore that the records and files relating to this wire were destroyed several years ago. He recalled too that the First Defendant paid out the US\$200,000 to an account designated by Jean Legoubey and Isha Ryan, but he cannot recall the details of the account or the bank, and the First Defendant's records in this regard no longer exist. He swore that the Third and Fourth Defendants (through their Attorneys) wrote to the First Defendant demanding that the First Defendant turn over to the Third and Fourth Defendants both of the bearer share certificates in Sunshine, claiming ownership and possession of them and disputing any entitlement of the Claimant or his father to shares in Sunshine. He swore too that neither he nor the First Defendant has any absolute or conclusive evidence as to the true beneficial ownership of the bearer shares.

[22] The Second Defendant was examined and cross-examined on the contents of his affidavit. Under cross-examination, he seemed to be endeavouring to ensure that nothing he said in the witness box would be inconsistent with the basic position of the firm of PricewaterhouseCoopers that at all material times the firm acted on the instructions of Mr Jean Legoubey and that the firm was never aware of the beneficial interest of Mr Jean Francois Sprecher in the bearer shares in Sunshine. In the course of this endeavour, the Second Defendant's evidence appeared at times to be somewhat contrived and at times internally inconsistent. There also appeared to be a degree of incredibility in his evidence to the effect that the sum of US\$200,000 was wire transferred to an account of the First Defendant in Canada, which money the firm proceeded to disburse in full without knowing who was the sender of the money, and the firm then proceeded to destroy the records and files relating to the transaction. Equally incredible was his evidence to the effect that for over ten years the First Defendant held 50,000 bearer shares in a company (which company is the majority shareholder in a business operating in Antigua) without ever knowing or even enquiring who the beneficial owners of these shares were. Indeed, it is to be noted that in a letter written on behalf of the Second Defendant to the Fourth Defendant on 21st January 2009 following the death of Mr Jean Legoubey (over ten years after the First Defendant became the holder of the bearer share certificates) Mr Walwyn wrote (Exhibit FL3) - "If we are to continue to hold the bearer shares of the company then we must have knowledge as to the beneficiary of these shares."

[23] The second witness for the defence was Mr Robert Wilkinson, who swore to two affidavits in this matter – one on 21st October 2009 and the other on 19th January 2010. In his affidavits, Mr Wilkinson swore that he is a partner within the firm of PricewaterhouseCoopers in Antigua. The other material part of his affidavit evidence can be quoted verbatim from paragraph 3 of his affidavit sworn on 19th January 2012: "I reiterate that the first-named Defendant does not have in its

possession any documentation or information that would identify the beneficial ownership of the bearer shares of Sunshine Enterprises Holdings Ltd or identify the sender of the wired sum of US\$200,000.00 referred to by the Claimant.”

[24] Under cross-examination by Counsel for the Claimant, Mr Wilkinson testified that the source for most of his information about the case was the Second Defendant. At times he spoke quite authoritatively about the handling of the whole affair by the First Defendant but, when confronted with probing questions, he took refuge in his own lack of involvement in the affair and his responsibility for only the audit side of the business of the First Defendant. The incredibility of some aspects of the evidence on behalf of the First Defendant which emerged from the testimony of Charles Walwyn was not mitigated by the testimony of Mr Wilkinson.

[25] The final witness for the defence and the only witness on behalf of the Third and Fourth Defendants was the Third Defendant, Frederic Legoubey. In his affidavit of 2nd March 2010, the Third Defendant swore that the affidavit was made on behalf of him and his brother, Olivier Legoubey, the Fourth Defendant, and that the two of them are the legal representatives and the beneficiaries of the estate of their deceased father, Jean Legoubey. Having sworn that his father and Jean Francois Sprecher were friends, the remainder of his affidavit evidence relevant to this case consisted of allegations of things said to him by others and things read by him from documents exhibited; there was in fact virtually no direct evidence he gave in his affidavit of matters relevant to the case before the Court.

[26] From the mainly indirect evidence given by the Third Defendant, the case for the Third and Fourth Defendants appears to be that Lipstick and Sunshine were incorporated and established on

instructions from their father (Jean Legoubey) with a loan of US200.000 given to Mr Legoubey by Mr Sprecher and that this loan was repaid over time to Mr Sprecher; and the Third and Fourth Defendants, as the beneficiaries of the estate of their father, are entitled to all of the shares in Sunshine.

[27] Under cross-examination by Counsel for the Claimant, the Third Defendant appeared to be evasive. Sometimes he spoke confidently about things which had everything to do with his father's affairs, then at other times, when the questions were too probing, he claimed to be unable to speak for his father. At some point under cross-examination he said that the only business of his father that he was involved in was the Cliffe in St. Maarten, with the suggestion that he knew nothing about his father's other businesses, but yet he purported to give evidence to counter the evidence of the Claimant as to the business dealings between the elder Mr Sprecher and the deceased Mr Legoubey.

[28] I did not put much weight on the evidence of the Third Defendant and I noted the fact that his brother and co-defendant, who was present throughout the trial, took no part in the proceedings.

[29] Having perused the affidavits of and documents exhibited by the five witnesses who gave evidence at the trial, and having considered the viva voce evidence of the five gentlemen whom I saw and heard testify at the trial, I have come to the following conclusions –

1. Jean Francois Sprecher and Jean Legoubey were long-standing friends and business partners who were associated in certain business ventures in France - their country of origin – and who continued their business association in the Caribbean by undertaking various ventures in the

- region, including incorporating and establishing Lipstick (Antigua) Limited in Antigua and incorporating in the British Virgin Islands a holding company which came to be called Sunshine Enterprises Holdings Limited.
2. Sunshine is the holder of 66.67% of the shares in Lipstick, with the remaining 33.33% being held by Isha Ryan.
 3. The incorporation of Sunshine was done by the firm of PricewaterhouseCoopers on the instructions of Mr Jean Legoubey and Mr Jean Francois Sprecher.
 4. The funds for the incorporation of Sunshine and part of the funds for the incorporation and establishment of Lipstick (together totalling US\$200,000) were provided by Jean Francois Sprecher, which was effected by means of a transfer from a Swiss bank account of Mr Sprecher to a Canadian bank account of PricewaterhouseCoopers. (The remainder of the funds for the incorporation and establishment of Lipstick were provided by Isha Ryan.)
 5. Half of the US\$200,000 represented the contribution and investment of Mr Sprecher in the enterprise and the other half represented a loan advanced by Mr Sprecher to Mr Legoubey for financing his (Mr Legoubey's) contribution to and investment in the enterprise.
 6. On the instructions of Messrs Legoubey and Sprecher, the shares in Sunshine were issued as bearer shares in two blocks of 25,000 each and the bearer share certificates were held by PricewaterhouseCoopers in trust for their beneficial owners, Jean Francois Sprecher and Jean Legoubey.

7. Upon the death of Jean Legoubey, the Claimant endeavoured on behalf of his father to secure from PricewaterhouseCoopers the bearer share certificate for his father's 25,000 shares in Sunshine.
8. After first requiring verification of the authority of the Claimant to have delivery made to him of his father's bearer share certificate, then requiring the consent of Jean Francois Sprecher and the representatives of the Estate of Jean Legoubey to deliver the bearer share certificate of Jean Francois Sprecher to the Claimant, the representatives of PricewaterhouseCoopers then appeared to deny the entitlement of Jean Francois Sprecher to the bearer shares in Sunshine Enterprises Holdings Limited.

[30] Based on the foregoing, I make the following findings –

1. Sunshine Enterprises Holdings Limited is the owner of 66.67% of the shares in Lipstick (Antigua) Limited, with the other 33.33% of the shares in Lipstick being owned by Isha Ryan.
2. Jean Francois Sprecher is the lawful owner of 50% of the shares in Sunshine Enterprises Holdings Limited.
3. The partners in the firm of PricewaterhouseCoopers are the trustees of the bearer shares in Sunshine, with Jean Francois Sprecher being the beneficiary of one of the two blocks of 25,000 bearer shares.
4. The Claimant is entitled to a declaration of the status of PricewaterhouseCoopers as trustees and Jean Francois Sprecher as beneficiary of one of the two blocks of 25,000 bearer shares in Sunshine Enterprises Holdings Limited.

5. The Claimant is entitled to an order for the delivery up to him of the bearer share certificate for one of the two blocks of 25,000 shares in Sunshine Enterprises Holdings Limited.
6. Jean Francois Sprecher is not the lawful owner of 33.33% of the shares in Lipstick (Antigua) Limited, the shares in which are owned by Sunshine Enterprises Holdings Limited as to 66.67% and Isha Ryan as to 33.33%.
7. There is no evidence of PricewaterhouseCoopers holding shares in Lipstick (Antigua) Limited in trust for anyone, or at all.
8. There is no basis for the First Defendant to have to account to Jean Francois Sprecher or to the Claimant on his behalf for the US\$200,000 transferred to the First Defendant by Jean Francois Sprecher when the uncontradicted evidence is that the First Defendant used this money to do that which they were instructed to do, that is, to incorporate and establish Lipstick and Sunshine.
9. There is no claim by the Claimant for an account to him and/or to his father by the Third and Fourth Defendants of their or their father's dealings with the business and funds of Sunshine Enterprises Holdings Limited and/or Lipstick (Antigua) Limited.
10. There is no basis for an award of damages to Jean Francois Sprecher, because there is no evidence that he suffered any loss by virtue of the share certificate for the 25,000 bearer shares not being earlier transferred to him or to the Claimant on his behalf.
11. The Claimant is entitled to his costs, but there is no basis however for an award of costs against the Second Defendant, who has at all material times acted as a partner in and agent of the firm of PricewaterhouseCoopers.

[31] In the circumstances, I make the following orders:

1. The Court hereby declares that Sunshine Enterprises Holdings Limited is the lawful owner of 66.67% of all the paid up and issued shares in Lipstick (Antigua) Limited.
2. The Court hereby declares that Jean Francois Sprecher is the lawful owner of 50% of all the paid up and issued shares in Sunshine Enterprises Holdings Limited.
3. The Court hereby declares that the partners in the firm of PricewaterhouseCoopers are trustees for Jean Francois Sprecher in respect of 50% of all the paid up and issued shares in Sunshine Enterprises Holdings Limited legally or beneficially held by them.
4. The partners in the firm of PricewaterhouseCoopers shall deliver up or cause to be delivered up to Jean Francois Sprecher (or to the Claimant on his behalf) the bearer share certificate for one of the two blocks of 25,000 bearer shares in Sunshine Enterprises Holdings Limited being held by the First Defendant or by an authorized custodian in trust for the First Defendant or the First and Second Defendants.
5. Costs to the Claimant to be agreed or otherwise assessed and to be paid to the Claimant by the First, Third and Fourth Defendants jointly or severally.

Mario Michel
High Court Judge