

EASTERN CARIBBEAN SUPREME COURT

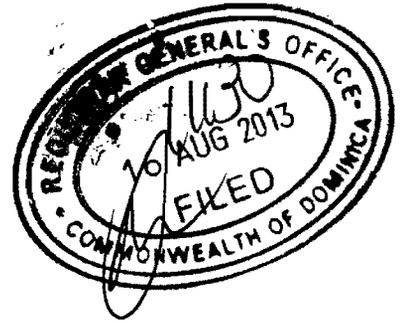
IN THE HIGH COURT OF JUSTICE

(CIVIL)

COMMONWEALTH OF DOMINICA

DOMHCV2010/0282

BETWEEN:



ELAINE PRINGLE-TOULON

Claimants

LEASE ENTERPRISES LTD.

and

AYANNA PRINGLE

Defendants

LETITIA BUTLER

(As personal Representatives of Ian Pringle)

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. Henry Shillingford for the Claimants

Mr. Jeffrey Douglas Murdock for Defendants

JUDGMENT

[2012: September 11th]

[October 12th]

[2013: August 16th]

- [1] **Cottle J:** The claimants filed a claim to which the defendants filed a defence and counterclaim. The claim was discontinued. The counterclaim subsists and the claimants have defended it. The claimants, through their counsel have applied to have the counterclaim struck out.

BACKGROUND

Ian Pringle owned two parcels of land at Fond Cole. He was the son of Elaine Pringle-Toulon and chairman of the Board of Directors of Lease Enterprises Ltd. Ian Pringle disappeared in May 1996. His mother and/or Lease Enterprises continued to rent out the properties to various persons. The defendants are the personal representatives of Ian Pringle. By their counterclaim they say that the claimants by their dealings have constituted themselves constructive trustees for the estate of Ian Pringle.

- [2] They say that the assets of Lease Enterprises were acquired by the use of funds provided by Ian Pringle and they seek to have the claimants account to the defendants for the beneficial interest that Ian Pringle held in assets thus acquired by Lease Enterprises. The defendants also claim that Elaine Pringle Toulon had a passbook for a bank account in her name "in trust for" Ian Pringle and also held a certificate of deposit in a bank in her name "in trust for" Ian Pringle.
- [3] The application to strike out is based on two grounds. As far as the claim for an interest in real property is concerned, counsel for the original claimants submits that such a claim cannot be maintained as it is for real property of which the company is the registered proprietor. Counsel points out that there is no claim for shares in the company. The claim for an interest in the bank accounts is resisted because counsel for the claimants says these are Totten trusts. As I understand it, counsel says that the beneficial interest in such accounts does not form part of the estate of the account holder, but is passed to the named beneficiaries upon the death of the account holder. Mr. Shillingford thus argues that these accounts, although designated "in trust for" Ian Pringle, are not classic trusts and confer no benefit to Ian Pringle's estate.

The Real Property Interest

- [4] Mr. Shillingford assisted the court with helpful written submissions. He was not able to adduce any decided cases which supported his contentions. He relied on what he viewed as basic legal principles. The defendants in their counterclaim say that Ian Pringle provided the money that financed the acquisition by Lease Enterprises of certain real estate. Mr. Shillingford says that Lease Enterprises being an artificial person could not have any common understanding with Ian Pringle, a natural person, that his provision of the money to buy the lands would entitle him to any equitable interest in the lands. Since an artificial person can only exist on paper, it can only think and agree on paper that is by a resolution.

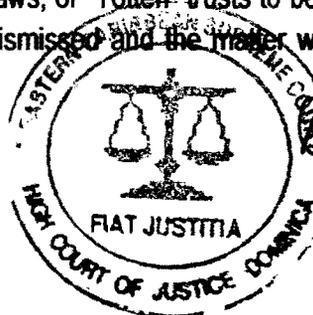
[5] As a second string to his bow, Mr. Shillingford contends that "one cannot have an equitable interest in land registered in the name of a company without contending the issue of the Certificate of Title itself that is that the title was incorrectly issued to the company as sole proprietor." As I understand his submission one cannot have an interest in land registered in another person without attacking the registration of that other person.

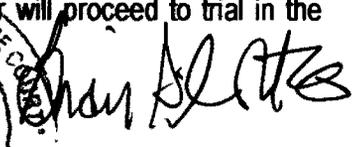
The Totten Trusts

[6] Mr. Shillingford says the bank accounts were Totten trusts. This is because there was no trust deed. A Totten trusts is a well known creature of United States law and the British Virgin Islands where the accounts were held, is a United States dollar jurisdiction. He says a Totten trusts operate like a joint account. On the death of Ian Pringle all interest in the account would pass to Elaine Pringle-Toulon with nothing going to the estate of Ian Pringle. I have given careful consideration to Mr. Shillingford's submissions. The principles which guide a court in considering whether to strike out pleadings as disclosing no reasonable grounds under CPR 2000 part 26.3 1(b) are well known. I do not repeat them here. They have been well set out in many cases. (See for example Ian Peters v Robert George Spencer HCVAP2009/016.)

[7] Striking out is a drastic step, to be used only in a clear and obvious case. I do not consider that the suggestion that it is impossible for a person to have an equitable interest in lands registered to a company to be a clear and obvious case. In Apple Auction Corporation by its Trustee in Bankruptcy Exelby and Partners Ltd v Half Moon Lake Resort Ltd 2001 ABQB 270 the court refused an application to strike out a statement of claim which averred that the claimant had an agreement with the defendant to provide funds for the acquisition of shares in the defendant by the claimant. The claimant was said to have received a beneficial interest in certain lands registered to the defendant.

[8] As that court did, I decline to strike out the counterclaim as disclosing no reasonable grounds on this basis. Similarly I consider the issue of whether the bank accounts expressed to be "in trust for" Ian Pringle are in fact trusts as known to our laws, or "Totten" trusts to be a matter fit for trial. The application to strike out the counterclaim is dismissed and the matter will proceed to trial in the normal course.




Brian Cottle

High Court Judge