IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2011/0132

BETWEEN:

RITA JOSEPH-OLIVETTI

Claimant

and

DICKON MITCHELL

Defendant

Appearances:

Mr. John Carrington Q.C, and Ms. Karina Johnson for the Claimant
Mr. Alban John and Ms. Thandiwe Lyle for the Defendant

2014: February 17 and 18,
April 10, June 30.

DECISION

[1] MOHAMMED, J.: The practice of law in Grenada is characterized by sole practitioners with a few small law firms. The dispute which has engaged the Court's attention arises from one of these small law firms, Grant, Joseph & Co. ("the Firm"). The Claimant is one of its former partners who later became a Judge of the Eastern Caribbean Supreme Court ("the ECSC") and the Defendant is one of its present partners. In this action the Claimant is calling upon the Defendant to account for his activities when, as her employee, he operated and took decisions which affected the bank accounts of the Firm during the period 15th April 2005 to 28th February 2006 ("the relevant period"). She has also asked for an order that the Defendant pay to her any sums due to her on the taking of the account together with interest from the 28th February 2006 until judgment or payment at the

commercial lending rate during the relevant period of the RBTT Bank of Grenada and her costs.

[2] The Claimant contends that together with Linda Grant, deceased, they were partners in the Firm. There was no written partnership agreement setting out the terms of their partnership and the effect of death of either partner on the partnership. In April 2002 she joined the Bench of the ECSC whereby she ceased active participation in the Firm but still continued to be a partner. When Linda Grant died on 27th April 2005, as the sole surviving partner, the Claimant became the sole partner and owner of the Firm which she continued, retaining all the employees including the Defendant.

[3] According to the Claimant, during the relevant period the Defendant was a co-signatory of the Firm's bank accounts with Valerie Parris, a secretary and paralegal at the Firm, and another associate attorney-at-law, Karen Samuel, who left at the end of December 2005, was also a co-signatory with Valerie Parris. The Claimant contends that at a meeting in August 2005 the Defendant agreed to and did manage the Firm and as a consequence the Defendant owed her a duty to account for the Firm's expenditure as a co-signatory of the Bank accounts, as her employee and/or as manager of the Firm for the relevant period.

[4] She also contends that she was unaware of any discrepancies in the Firm's financial statements for the relevant period until November 2006, some 10 months after she sold her 35% shares in the Firm to the Defendant for the sum of $200,000.00. In her view any sums which were incorrectly spent during the relevant period is payable to her as the immediate former owner of the Firm and that such sums do not form part of the assets which were transferred to the Defendant in the Agreement.

[5] Not surprisingly, the Defendant's position is diametrically opposite to the Claimant's. He disputes that the Claimant continued to be a partner in the Firm after she joined the Bench of the ECSC in 2002 but he is unable to say when the partnership between Linda Grant and the Claimant came to an end. He admits

being employed as an associate attorney-at-law in the Firm in late 2002 but he denies that he was ever an employee of the Claimant. He admits that after the death of Linda Grant, the Firm continued and he remained as an employee on the same terms and conditions but he denies being re-employed by the Claimant. He also denies that anyone including the Claimant asked him to manage the Firm and that he did not manage the Firm during the relevant period. He admits that he was a co-signatory to the Firm's bank accounts during the relevant period but he denies having knowledge of the Firm's expenses, its bank accounts and being involved in the preparation of the financial statements of the Firm. In his view the Claimant is attempting to re-open the Agreement dated 1st March 2006 ("the Agreement") where she sold her 35% share in the Firm.

[6] To determine whether the Claimant is entitled to the relief sought in her claim, it falls upon the Court to resolve the following issues:

(a) When did the partnership in the Firm between the Claimant and Linda Grant come to an end?

(b) Was the Defendant ever an employee of the Claimant?

(c) Was the Defendant the manager of the Firm during the relevant period?

(d) Was the Defendant under any duty to account to the Claimant for any property entrusted to him in the course of his employment in particular for the bank accounts to which he was a signatory during the relevant period?

(e) What did the Defendant acquire when he purchased the Claimant's 35% shares in the Firm?

[7] To assist the Court in resolving the aforesaid issues at the trial, both the Claimant and Defendant gave evidence. The Defendant also called two witnesses; Valerie Parris, who was also one of the executors of the estate of Linda Grant and the other executor, Hugh Dolland. At the time of the trial, Helen Delves, the accountant who prepared the financial statements for the Firm had passed away.

When did the partnership in the Firm between the Claimant and Linda Grant come to an end?

[8] The Claimant's position is the partnership came to an end when Linda Grant died on 27th April 2005. She stated that there was no written partnership agreement and they did not discuss if the partnership would continue after death of either partner. In her view, the partnership did not come to an end on 31st March 2002 when she ceased active participation in the Firm to join the Bench of the ECSC neither did it end when she did not return to work at all with the Firm.

[9] The Defendant cannot say when the partnership between the Claimant and Linda Grant ended[1] especially since she did not plead the terms of the partnership. However, he submitted that the Claimant terminated the partnership when she told Linda Grant in March/April 2003 that she was not returning to work with the Firm thereby dissolving the partnership. His position is thereafter, the sole partner in the Firm was Linda Grant, and the Firm continued for winding-up purposes.

[10] There is no legislation governing partnerships in Grenada. Section 11 (1) of the West Indies Associated States Supreme Court (Grenada) Act[2] ("the Act) provides:

> "The jurisdiction vested in the High Court in civil proceedings, and in probate, divorce and matrimonial causes shall be exercised in accordance with the provisions of this Act and any other law in operation in Grenada and rules of court, and where no special provision is therein contained such jurisdiction shall be exercised as nearly as may be in conformity with the law and practice for the time being in force in the High Court of Justice in England." (emphasis mine)

[11] There is no definition in the Act for the word "law". However, one of the definitions for the word "law" in Black's Law Dictionary[3] which I adopt is "the aggregate of legislation, judicial precedents and accepted legal principles". The UK 1890 Partnership Act, which codified the pre-existing common law, was the law which was in force in the High Court of Justice in England when the Act came into force.

[1] Paragraph 9 of the Defendant's witness statement filed 31st July 2012
[2] Chapter 336.
[3] 8th ed

In my view, based on the reception provision of section 11 of the Act, the law and practice arising from the 1890 UK Partnership Act is the relevant law to be applied in Grenada for partnerships. I therefore do not agree with Counsel for the Claimant that section 11 of the Act is not applicable and that only the common law before the UK 1890 Partnership Act is the applicable law.

[12] A partnership such as the partnership between Linda Grant and the Claimant where there was no fixed duration is a partnership at will[4]. Such partnerships are terminable at a moment's notice[5] which does not have to be in writing. The notice takes effect at the moment it is given and the partnership is thereby dissolved[6]. Once notice is given of termination of the partnership, it continues for the purpose of dissolution[7]. The legal effect of a dissolution notice, once clear and unambiguous, does not have to be appreciated by the partner giving it[8] and a dissolution notice once given cannot be withdrawn without the consent of all the partners[9]. It is also settled law that a partnership terminates upon the death of a partner[10] since death is in fact notice of the fact that the partnership has been terminated by the death[11]. After dissolution the partnership subsists merely for the purpose of completing pending transactions, winding up the business and adjusting the rights of the partners, and it is only for these purposes that the authority, rights and obligations of the partners continue[12].

[13] I do not accept that when the Claimant told Linda Grant that she was not returning to work at the Firm in March/April 2003 this amounted to notice on her part that the partnership was dissolved since Linda Grant's subsequent actions demonstrated that she did not appreciate and treat with the Claimant and/or the partnership as if it was terminated. I have come to this conclusion for the following reasons.

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[4] Para.43 Vol 35 Halsbury's Laws 4th Ed
[5] Para.163 Vol 35 Halsbury's Laws 4th Ed; Crawshay v Maule[1818] 1Swan 495 at 508
[6] Crawshay v Maule[1818] 1Swan 495 at 508
[7] Crawshay v Maule[1818] 1Swan 495 at 523-524
[8] Para, 22 Lindley & Banks and per Lord Justice Kerr in Toogood v Farrell [1988] 2EGLR 233
[9] Para, 24 Lindley & Banks and per Lord Justice Kerr in Toogood v Farrell (supra)
[10] Halsbury's Laws of England 5th ed Vol 79 para. 176
[11] Crawshay v Maule[1818] 1Swan 495 at 508
[12] Halsbury's Laws of England 5th ed Vol 79 at para. 198

[14] Linda Grant did not remove the Claimant as a signatory to the Firm's bank accounts. She continued to sign cheques made out to the Claimant which was confirmed by Valerie Parris as drawings and to pay certain expenses for the Claimant. Although Linda Grant told the Claimant that she would expedite the preparation of the accounts so that they could bring the partnership to an end, she did not instruct Helen Delves to treat with the accounts for the period before March/April 2003 differently from the period afterwards since the partnership had been terminated. In my view, she may have expedited the preparation of the Firm's accounts since she knew that until the Claimant's shares were purchased, the latter remained a partner of the Firm. Hugh Dolland, one of the executors of Linda Grant even stated that Linda Grant confided in him that the Claimant was still a partner since there were no accounts and she had no money to pay the Claimant for her shares in the Firm. In my view, the actions by Linda Grant must be construed in favour of the Claimant still being a partner after March/April 2003 since Linda Grant treated her as such, despite what she represented otherwise.

[15] However, Linda Grant's actions alone do not support the Defendant's contention. Indeed, the Defendant's evidence was inconsistent with his contention on this issue. He admitted that he was not surprised that the Claimant signed a new mandate to the banks advising them of the signatories to the Firm's bank accounts after Linda Grant died. There was no evidence that he questioned the Claimant's authority to do so neither did he refuse to sign cheques after the execution of the mandate.

[16] Further, the Defendant admitted that he knew in April 2005 that the Claimant still owned 35% shares of the Firm. It was on this very basis that he negotiated the sale of her shares to him which he expressly states in the recitals of his deed as "owner of 35% of the law firm trading or known as Grant Joseph & Co". He cannot now deny the truth of this statement in the said recitals[13] and I do not accept his submission that this recital was simply the Defendant's acknowledgment of the Claimant's shareholding in the Firm and not an admission that she was a partner

[13] Phipson on Evidence 17th ed para 5.14-5.17

in the Firm. He even admitted that he was aware while working as an associate of the Firm that it did certain legal matters for the Claimant prior to and subsequent to Linda Grant's death since he personally did some of the work. Despite what he represented at the trial, in my view, the only reason the Defendant was not surprised was because he knew that the Claimant was still a partner and an owner of 35% shares in the Firm and the distinction which he chose to draw between the Claimant's ownership of shares and her still being a partner was self-serving.

[17] Even the Defendant's witness, Valerie Parris' evidence did not support his contention on this issue. Valerie Parris also knew that the Claimant still had shares in the Firm. She admitted under cross-examination that the Claimant was being paid drawings by the Firm and certain expenses since she prepared the cheques, which were signed by Linda Grant. She responded when the Claimant instructed her to prepare the mandate for the bank after Linda Grant died, and she took it to her for signature.

[18] Subsequent to Linda Grant's death, Valerie Parris stated that the Claimant would call the office from time to time to inquire about the state of the practice. This was confirmed by two emails[14] where the Claimant made inquiries about the operations of the practice and the finalization of the accounts for the Firm. Valerie Parris sent the financial statements, prepared by Helen Delves, for the period 2002 to 28th February 2006, to the Claimant's address in the BVI. She also faxed the Firm's bank statements to the Claimant. In my view, if indeed Valerie Parris believed the Defendant's contention that the Claimant was no longer a partner in the Firm, and which was told to her by Linda Grant, then she would not have complied with any of the instructions given to her by the Claimant concerning the Firm's business. There was no evidence that she protested or even hesitated. The evidence is she willingly complied.

[19] Further, the accounts prepared by Helen Delves treated with the partnership as terminated when Linda Grant died. There was no evidence of any objection by the

[14] Email dated 28th September 2005 from the Claimant to Valerie Parris and email dated 30th September 2005 from Valerie Parris to the Claimant

executors of the estate of Linda Grant or even the Defendant before he purchased the Claimant's shares in the Firm on the basis that the accounts were prepared on the incorrect assumption that the partnership continued after March/April 2003.

[20] For the aforesaid reasons, I find that the evidence presented by both parties supports the Claimant's position that the partnership was dissolved upon the death of Linda Grant.

Was the Defendant ever an employee of the Claimant?

[21] The Claimant's contention is upon the dissolution of the partnership on the 27th April 2005 the business of the Firm could only be carried on for the purpose of winding up its affairs and the contract of employment between the Defendant and the Firm came to an end. As the partnership no longer continued after the 27th April 2005, the practice could only have continued as the sole practice of the Claimant since she was prevented by law from having a practice with the executors of the estate of Linda Grant, who were not attorneys. She also contends that she was entitled to use the Firm's name as the goodwill attached to that name would have passed to her on the death of Linda Grant. In her view, when the Defendant continued as an employee of the Firm after 27th April 2005, he was the Claimant's employee since she was the sole owner of the practice under that name.

[22] It was not in dispute that the Defendant joined the Firm as an associate attorney-at- law in September/October 2002, by which time the Claimant had ceased active practice in the Firm. The Defendant has maintained throughout these proceedings that he never became the employee of the Claimant. His position is he was interviewed and hired by Linda Grant and he remained employed by the estate of his late employer, Linda Grant, after she died. He contends that from the time he joined the Firm until he purchased the shares of the Firm he took no instructions from the Claimant, who did not give him instructions, save and except at a meeting in August 2005 when the executors of the Estate of Linda Grant, Valerie Parris

and Hugh Dolland, and the Claimant asked both he and Karen Samuel to continue doing the legal work of the Firm.

[23] There is no bar against the surviving partner carrying on business in the name of the Firm as the sole proprietor[15] provided that there had been no agreement by the partners on the disposition of the goodwill upon the dissolution of the Firm and there is no substantial risk of liability to the estate of the deceased partner from the conduct of the Firm[16]. In the case of death by a partner, the goodwill survives to the remaining partners[17]. A change in the partners or members of a firm requires an agreement that the new partnership be treated as continuing and so far as concerns third parties, such agreement is *res inter alios acta*, unless such third party consents to be bound by that agreement[18].

[24] I accept that upon the death of Linda Grant, in the absence of any agreement stating otherwise, the goodwill of the Firm survived to the Claimant who was the sole remaining partner and that she carried on the business of the Firm as the sole proprietor.

[25] I do not agree with the Defendant's position that he was never an employee of the Claimant and in particular after Linda Grant's death for the following reasons. Firstly, immediately after the death of Linda Grant the Defendant accepted the Claimant's authority to give the mandate to the banks so that he and the other signatories could continue to sign cheques for the Firm. Indeed there was no evidence that he questioned the Claimant's authority to do so. In my view it is irrelevant whether the Defendant sought the mandate on the bank accounts of the Firm or the Claimant forced it on him.

[26] Secondly, the Defendant's actions indicate that he acknowledged that the Firm was continued by the Claimant as a sole proprietor. He admitted that after Linda Grant his employer died, he did not start packing up his desk to look for another

[15] Halsbury's Laws of England 5th ed Vol 79 at para. 213
[16] Burchell v Wilde [1900] 1 Ch 551
[17] Halsbury's Laws of England 5th ed Vol 79 at para. 164
[18] Lindley & Banks on Partnership 19th Ed para. 3-38

job since he still felt he had a job as a lawyer at the Firm. He admitted that he continued to be employed under the same terms and conditions. In my view such actions demonstrates acquiesce on his part. He was unaware of any move to get rid of clients but he did not know who took the decision for business to continue "as usual". His own witness, Valerie Parris, confirmed under cross-examination that after Linda Grant's death the business of the Firm continued as usual since everyone who was working at the Firm continued operating as normal with the Claimant taking drawings, but no drawings were made to the estate of Linda Grant. Valerie Parris also confirmed the Claimant's status as an owner of the Firm when she stated in her witness statement[19] that "the Meeting (of August 2005) was held on the basis that the owners of the Firm were Ms. Joseph and Mrs. Grant, represented by her executors".

[27] Thirdly, the position adopted by the Defendant, an attorney-at-law is inconsistent with his knowledge of the law. Section 84 of the Act prohibits a barrister or solicitor from sharing profit and costs in respect of contentious and non-contentious business with any person who is not enrolled as a barrister or solicitor (save and except in limited circumstances which are irrelevant to the issue at hand). The Defendant knew of this section since he acknowledged under cross-examination that he was unaware of any law firm in Grenada being owned by non-lawyers, but he still he considered the estate of Linda Grant to be his employer and he believed that the executors of Linda Grant's estate who, in his view, were the sole owners and whom he knew were not attorneys would take care of the Firm. Yet he was contradicted by his witness Hugh Dolland who acknowledged in cross-examination that he did not have the competence to run a law firm and had no intention to run it.

[28] I therefore find that the Defendant was an employee of the Firm and by extension the Claimant, who was still a partner during the period September/October 2002 to 27th April 2005. After Linda Grant died the Defendant was an employee of the

[19] Witness statement of Valerie Parris filed 31st July 2012 at paragraph 30.

Claimant between the period 28th April 2005 to 28th February 2006 since the Firm continued with the Claimant as the sole proprietor.

Was the Defendant the manager of the Firm during the relevant period?

[29] The Claimant contends that in August 2005 she and the executors of the estate of Linda Grant met with both the Defendant and Karen Samuel where the latter requested an increase in remuneration, which was refused. Subsequent to that meeting the Claimant and the executors of Linda Grant met with the Defendant alone where he was asked to manage the operations of the Firm and pursuant to that request he did manage the Firm until he purchased the shares in March 2006.

[30] The Defendant has vehemently denied having any discussion with the Claimant and the executors of the Estate of Linda Grant to manage the Firm either at the August 2005 meeting or otherwise and he also denies that he managed the Firm at any time during the relevant period.

[31] The determination of this issue is a question of fact. There were inconsistencies in the evidence from both parties on this issue. In the Claimant's first affidavit[20] she stated that in August 2005 the Defendant agreed with her to manage the operations of the practice on her behalf. Then she stated in her affidavit in response[21] that during the month of August 2005, the Defendant agreed in a meeting with her in Grenada to manage the Firm and that Hugh Dolland and Valerie Parris were at that meeting. At that meeting she stressed the importance of keeping proper accounts since she had realized that there were some problems in the keeping of accounts prior to Linda Grant's death. At that time she said the request to the Defendant was based on her understanding that he was managing the practice prior to Linda Grant's death. She denies that she ever asked Karen Samuel to co-manage the firm with the Defendant after Linda Grant's death.

[20] Filed 21st March 2011 at para 11
[21] Filed 11th July 2011 para 4

[32] However, in the Claimant's clarification and expansion of her witness statement she stated that in August 2005 she first met with Hugh Dolland, Valerie Parris and Helen Delves. Afterward she, Hugh Dolland and Valerie Parris met with the Defendant and Karen Samuel to ascertain how the business was going. Karen Samuel raised concerns about her salary. The management of the Firm by the Defendant was first discussed with her and the executors of Linda Grant and they agreed to ask the Defendant to run the Firm until a decision was made on its future. After the discussions they met with the Defendant and asked him to manage the Firm, which he agreed to.

[33] Under cross-examination, the Claimant's position was that in August 2005 she met with Hugh Dolland, Valerie Parris and Helen Delves at Cinnamon Hill and then at a next meeting at the Firm, the Claimant and the executors met with Karen Samuel and the Defendant where Karen Samuel requested an increase in salary and the outstanding accounts of the Firm were discussed. Karen Samuel was excused and then they met with the Defendant alone where they reached an agreement with the Defendant to manage the Firm.

[34] The Claimant's position which remained unchanged was the Defendant was asked at the August 2005 meeting to manage the Firm. The only distinction was whether at the August 2005 meeting she and the executors of the estate of Linda Grant asked him to do so or whether she alone asked him to do so in the presence of the said executors. In my view, it was immaterial whether the Claimant alone or the Claimant and the executors of the estate of Linda Grant asked the Defendant to manage the Firm. The common thread is the Defendant was asked to manage the Firm.

[35] The Defendant and his witnesses, Valerie Parris and Hugh Dolland all strongly denied that the Defendant was asked or agreed to manage the Firm in the August 2005 meeting. They also denied that he managed the Firm after August 2005. However, their position was not supported by their evidence.

[36] The Defendant's evidence was inconsistent. Firstly, he said after Linda Grant's death he did not know who made the decisions on the expenditure of the Firm but then he said that it was Valerie Parris who made the decisions to pay the expenses. However, under cross-examination he admitted that he took the decision to go to the Law Fair in the BVI in September 2005 at the Firm's expense.

[37] Secondly, he denied having any knowledge of the operations of the Firm since all he did was legal work until he took over the practice in March 2006. Yet while he was negotiating the purchase of the Claimant's shares his own email of 30th December 2005 referred to "funds generated by the business". In my view, this is a clear indication that the Defendant was aware at that time of more than just the legal work at the Firm and I do not accept his explanation that this statement was based on his knowledge of clients' fees.

[38] Another example of the Defendant's knowledge of the Firm's operation was the sale of Linda Grant's motor vehicle. Valerie Parris confirmed that the Firm did not own a motor vehicle but that it paid the expenses associated with Linda Grant's vehicle. After Linda Grant died she took the decision to continue paying the expenses until it was sold to the Defendant shortly after Linda Grant's death. However, neither she nor the Defendant provided any explanation why the Defendant made the cheque payable to the Firm which Valerie Parris deposited and then wrote out a cheque to the estate of Linda Grant in the sum of $20,900.00. In my view this was a significant sum to be withdrawn from the account of the Firm and clearly the Defendant as one of the signatories would have been aware of the payment of the cheque to the estate of Linda Grant.

[39] Thirdly, he denied that he had any idea of the Firm's expenses but he said knew that it had employees so he was expected to pay employees, the utilities and items such as paper, but then he admitted that by 30th December 2005 while he was in negotiation with the Claimant for the sale of her shares that he had a general knowledge of certain expenses of the Firm such as telephone, stamps, stationery, printing, repairs and maintenance of equipment.

[40] Fourthly, the emails demonstrated that the Defendant performed acts of management. The email from Helen Delves to the Claimant dated 3rd February 2006[22], which the Defendant put into evidence, Helen Delves stated "*Dickon will be employing someone to do the accounts";* in his email dated 6th February 2006 at 14:28:45[23] he indicated that he will ask Helen Delves to complete the accounts and in the Defendant's email dated 13th February 2006 at 3:03pm[24] he confirmed that he discussed the finalization of the accounts of the Firm with Helen Delves and the executors of the estate of Linda Grant.

[41] The Defendant's evidence was not supported by the evidence from his witnesses in material aspects. Firstly, the Defendant denied that he had anything to do with the management of the Firm but this was contradicted by Hugh Dolland, who admitted under cross-examination that the Defendant and Karen Samuel managed the "legal side of the Firm". This was consistent with the Defence filed by Hugh Dolland and Valerie Parris in suit GDAHCV 2008/479[25] where they stated that the Defendant and Karen Samuel managed the Firm before and after the death of Linda Grant. This was also not supported by the evidence of Valerie Parris who said that the decisions taken depended on the type of work in the Firm. She stated that she and Hugh Dolland made decisions and told the Defendant and Karen Samuel what the decision was and then the Defendant and Karen Samuel would then indicate if it was alright to implement the decision.

[42] The Defendant also denied having anything to do with the closure of the Grenville office but again, this was contradicted by Hugh Dolland who stated under cross-examination that the Defendant would have participated in the decision to close down the Grenville Office.

[43] The Defendant denied making any decisions regarding the expenditure of the Firm but he admitted that he made the decision to go to the Law Fair in the BVI in 2005. Hugh Dolland stated that Valerie Parris determined if an expense was significant

[22] Page 18 of Supplemental Bundle of Documents filed 6th February, 2014
[23] Supplemental Bundle of Documents filed on behalf of the Claimant on 14th February, 2014
[24] Supplemental Bundle of Documents filed on behalf of the Claimant on 14th February, 2014
[25] Page 12 of Trial Bundle C

and she then consulted the Defendant and Karen Samuel on the significant expenses.

[44] On a balance of probabilities I accept the Claimant's evidence on this issue and I find that the Defendant managed the Firm from August 2005 to 28th February 2006.

Was the Defendant under any duty to account to the Claimant for any property entrusted to him in the course of his employment in particular for the bank accounts to which he was a signatory during the relevant period?

[45] It was not in dispute that by the 15th April 2005 the Defendant was made a signatory of the Firm's bank accounts jointly with Valerie Parris and that Karen Samuel, another signatory, was also made a co-signatory with Valerie Parris. After Linda Grant died, the Claimant gave instructions to the bank on 28th April 2005 requesting that the same mandate continue. The Claimant contends that as an employee who was entrusted with the responsibility of the Firm's bank account the Defendant had a duty to account for the period he was a signatory to those accounts and an additional duty as the person who managed the practice during the relevant period to provide an explanation for all payments into and out of the Firm's bank accounts whether or not he was directly responsible for such payments.

[46] The Defendant maintained the position that he understood his role simply to be a co-signatory to the cheques of the Firm's bank account and that he was not in a position to refuse to sign cheques when presented to him. He denied that he made any decisions on the expenses of the Firm to be paid and in any event it was only for the period January 2006-February 2006 he signed cheques with Valerie Parris exclusively.

[47] In Vyse v Foster[26] Lord Hatherley described the role of the Court in equity in scrutinizing relationships between parties where one party is entrusted with the property of another. He noted at page 340 that:

> "… the general assumption which the Court of Chancery most properly makes, that a man who is acting in a position in which his duty may conflict with his interest is not allowed to say "I did nothing wrong;" but the Court will jealously scrutinize all that he does, and will take care to see that his duty has been performed, in case there is any reasonable degree of doubt thrown upon the subject."

[48] Chitty on Contracts[27] has described the duty of an employee to account to his employer as:

> "An employee is bound to account to his or her employer for all property entrusted to him or her by the employer, and for all the property received by him or her from a third person for or on account of the employer."

[49] Snell's Equity[28] position is that:

> "Before a party can be ordered to account, liability to account must be established". This liability arises immediately out of the defendant's receipt of property in an accountable capacity: the "basis of the duty to account is the fiduciary relationship". The claimant bears the onus of proving that the defendant has received property into his control in circumstances sufficient to import an equitable obligation to handle the property for the benefit of another."

[50] Therefore the onus is on the Claimant to prove on a balance of probabilities that the Defendant received property in his control, in circumstances sufficient to import an equitable responsibility to handle the property for her benefit. The duty to account is to provide explanations for payments into and out of the Firm's bank accounts.

[51] I have found that the Defendant has a duty to account to his employer, the Claimant, for the operation of the Firm's bank accounts during the relevant period for the reasons set out hereafter. Firstly, as previously stated, it was irrelevant whether the Defendant sought the signing mandate on the bank accounts or the Claimant forced it on him. The undisputed evidence is the Defendant accepted the

[26] [1874 Law Report 318 at page 340
[27] 31st ed at para 39-065
[28] 32nd ed at para 20-014

Claimant's authority to give such mandate, he acted in accordance with it and he was a signatory to the Firm's bank accounts during the relevant period.

[52] Secondly, the Defendant had information relevant to his duty to account when cheques were presented to him for signature. Under cross-examination the Defendant confirmed that by the time he was authorized to sign cheques he was working at the Firm for 2½ years. He stated that Valerie Parris prepared the cheques, provided supporting documentation, and she also explained what the cheques were for. This was confirmed by Valerie Parris.

[53] Thirdly, I do not accept that the Defendant did not appreciate his responsibility and duty in the signing of cheques for the Firm's bank accounts. The Defendant stated[29]:

> "When the cheques were presented to me it never occurred to me that I could refuse to sign them, nor did I do so." My understanding was as one of the two lawyers employed by the Firm that the signing of the cheques, when presented by Mrs. Parris was part of my job description, but it was never in the capacity that I was the manager or managing the firm."

[54] However, under cross-examination the Defendant stated that if Valerie Parris presented a cheque for her to take a cruise around the world, there is a possibility that he would have signed it. I find this position adopted by the Defendant to be unacceptable. The Defendant was not a paralegal in the Firm. He was an attorney with at least two years' experience to fully appreciate his responsibility. In any event, while the Defendant denied his involvement in the preparation of the accounts, this did not mean that he did not have a full appreciation of the Firm's financial standing. His evidence was by the end of December 2005 he had sufficient appreciation of the financial obligations of the Firm to the extent that he could indicate to the Claimant what he could pay for her shares based on the income generated from the Firm[30].

[29] Paragraph 18 of the Defendant's witness statement filed 31st July 2012
[30] Email dated 30th December 2005 from the Defendant to the Claimant.

[55] In this regard I agree with Counsel for the Claimant that the authority of Re Stephenson Cobbold Ltd. (in Liquidation)[31] upon which the Defendant relies to absolve himself from any duty as an employee who was a co-signatory to the Firm's bank accounts could not impose on him a legal duty to account to the Claimant, can be distinguished from the instant case. In Re Stephenson Cobbold the application was by the Secretary of State to disqualify a director inter alia on the basis that he caused the company to have a policy not to pay Crown debts. It was held that the ground of the application could not be made out merely by reference to the fact that the director was a co-signatory to the company's account. However, pages 34-36 of the judgment do not support the Defendant's contention that all he did was act as a co-signatory without any corresponding responsibility since Mr. Henstock, the director in question, had signed company cheques for the school fees for the managing director's son and even Mr. Henstock had questioned these cheques and had received assurances from the company's officers concerning them.

[56] Fourthly, I do not accept the Defendant's position that the person responsible to account to the Claimant was Helen Delves, the accountant, who prepared the financial statements for the Firm. It was not in dispute that Valerie Parris communicated with Helen Delves, providing her with information pertaining to the Firm's bills, invoices, cheque stubs, bank statements and other related materials. In my view, Helen Delves prepared the accounts after certain expenses were already incurred. Her role was limited to matching up the expense incurred to the documentation in support, and there was no evidence that she played any part in making the decisions concerning the expenses during the relevant period. The Defendant's witness, Hugh Dolland confirmed under cross-examination that when a decision was taken to incur a particular expenses, such as motor vehicle expense, Helen Delves was not part of the decision to pay but as the accountant preparing the financial statements, she would have seen something such as a bill and check the item. He stated that the decision to pay was before Helen Delves got involved. In the circumstances, the Defendant's duty to account cannot be

[31] [2001] BCC 38

satisfied by saying that it was Helen Delves' responsibility since she was not entrusted with the Firm's bank accounts or property.

What did the Defendant acquire when he purchased the Claimant's 35% shares in the Firm?

[57] The Claimant's position is when she sold her 35% shares in the Firm to the Defendant she only sold her net share in the partnership at the date of dissolution of the Firm on 27th April 2005 and that the surplus generated in the continuation of the Firm from the 28th April 2005 to the 28th February 2006 do not form part of the partnership assets and belongs to the Claimant solely.

[58] The Defendant's position is the Agreement binds both parties. The terms and conditions are clear, and as such, a literal interpretation is to be applied in interpreting the Agreement. He also contends that the Claimant contracted to sell her 35% shares in the Firm which included the Firm's bank accounts up to the 28th February 2006 and the Claimant has not challenged the financial statements which show a negative partners' equity at the date of purchase of the Firm by the Defendant. In the circumstances the Claimant cannot establish a lien on the assets of the Firm because there was no surplus.

[59] The principles to be applied in interpreting an agreement was again recently examined in the Privy Council decision of Attorney General of Belize & Ors v Belize Telecom Ltd. & Anor.[32] Lord Hoffman who delivered the judgment of the Board described the role of the Court as:

> "…The Court has no power to improve upon the instrument which it is called upon to construe, whether it be a contract, a statute or articles of association. It cannot introduce new terms to make it fairer or more reasonable. It is concerned only to discover what the instruments means. However, that meaning is not necessarily or always what the authors or parties to the documents intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed …. It is this objective meaning which is conventionally called the intention of

[32] [2009] UKPC 10

the parties or the intention of Parliament, or the intention of whatever person or body was or is deemed to have been the author of the instrument."[33]

[60] Lord Hoffman continued at paragraph 19 where he referred to Lord Pearson in Trollope v North West Metropolitan Regional Hospital Board[34] and further stated:

> "The court does not make a contract for the parties. The court will not even improve the contract the parties made for themselves, however desirable the improvement might be. The court's function is to interpret and apply the contract which the parties have made for themselves. If the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings: the clear terms must be applied even if the court thinks some other terms would have been more suitable. An unexpressed term can only be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them; it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, though tacit, formed part of the contract which the parties made themselves."

[61] The aforesaid position is consistent with the position stated by Lord Hoffman in the earlier decisions of Investors Compensation Scheme Ltd. v West Bromwich Building Society[35] and Chartbrook Ltd. v Persimmon Homes Ltd.[36]. The guidance provided by the said authorities is when a Court is interpreting an agreement if the express terms are perfectly clear and free from ambiguity, there is no choice to be made between different possible meanings since the clear terms must be applied even if the Court thinks some other terms would have been more suitable. It must refrain from interpreting the meaning of the words but rather strive to arrive at an interpretation which a reasonable person with the objective background information which the parties had at the time of contracting would have intended it to mean. In doing so the Court must not attribute to the parties an intention which they plainly could not have had.

[62] The recitals of the Agreement state that:

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[33] Supra at para 16
[34] [1973] 1 WLR 601,609
[35] [1998] 1 WLR 869 at pages 912-913
[36] [2009] 1 AC 1101 at para 33

"(1) The Vendor is the owner of thirty five (35) percent (hereinafter "the Share") of the law firm trading or known as Grant, Joseph & Co. carrying on business at Lucas Street in the City of St. George's Grenada (hereinafter "the Firm")

(2) The Vendor has agreed with the Purchaser to sell the Share to the Purchaser and the Purchaser has agreed to buy the Share on the terms and conditions contained herein."

[63] The operative parts of the Agreement state:

"1. The Vendor shall sell and the Purchaser shall purchase the Share free from all charges or liens or any other incumbrances and with all the rights attaching thereto for the price set out in the First Schedule ("the Price") with interest on the Price as set out in the Second Schedule ("Interest") and upon the payment terms set out in the Third Schedule ("the Payment Terms")."

[64] The crux of the disagreement between the parties is the meaning of the term "the Share" and the source is the Agreement which fails to define the said term. I find that the interpretation of "the Share" in the Agreement is not clear and free from ambiguity and in the absence of such clarity it is necessary to examine the objective background information to understand what the parties intended "the Share" to be when they entered into the Agreement.

[65] The relevant objective background is as follows. Both parties agreed that neither discussed the scope of the assets which was the subject matter of the Agreement. Both parties confirmed that at the time when they started the negotiations for the sale of the Claimant's shares in December 2005, the Claimant was not in receipt of the financial statements for the relevant period for the Firm. Indeed, the Claimant stated she received the said statements some nine months after, in November 2006, which was not challenged by the Defendant. Both agreed that at the time of the Agreement the said financial statements were not completed and they did not know the balances in the Firm's bank accounts, and there was no discussion that the Claimant would waive her right to any profit from the Firm to apply it to its liabilities and that she would waive any income from the Firm.

[66] In my opinion, the absence of the discussion on the details of the assets, the cash in the Firm's bank accounts and the lack of financial statements for the relevant period are indicators that when the parties were entering into the Agreement the only assets, and by extension the Claimant's share which were within their contemplation, was the Claimant's net share as at 27th April 2005. In my view, the relevant objective background facts leading up to the Agreement do not support a literal interpretation but rather a purposive interpretation of the Agreement.

[67] Additionally, the Defendant's evidence does not support his position that the terms of the Agreement are clear and therefore a literal interpretation is to be applied. The Defendant stated under cross-examination that he understood from the terms of the Agreement he was purchasing future work, physical assets and cash in bank, yet he agreed there was no specific discussions on cash and the cash was payment for past work from clients. He said to continue the practice it was necessary to have the past earnings of the Firm but he did not know what they were. Then he said that it was necessary because it was agreed. He thought that he was entitled to the cash since the Agreement was for all the assets and it did not exclude any assets, and as a lawyer he did come across people selling money. However, he failed to provide any explanation for sending an email on 30th December 2005 where he spoke about generating funds from the business.

[68] Further, the Defendant agreed that as at 28th February 2006 one current account at Scotia Bank 39810 had EC$246,181.24 and the other, #13412 had US $184,521.51 which is approximately a total of EC$750,000.00. He agreed that on his theory he purchased the Claimant's shares for $200,000.00 and Linda Grant's shares for $371,000.00 but the accounts in the Firm had more cash than the total sum and he could have written two cheques and paid them. However, he disagreed that he acquired these two accounts since he said they were client accounts. He then agreed that if the Claimant and the executors of Linda Grant had written cheques and cleaned out the Bank account, the Agreement would still be binding. The Defendant acknowledged that the Claimant was not wrong if she withdrew all the funds from the Firm's Bank account on the 27th February, 2006.

[69] Finally, the Defendant's contention is not supported by the law. After dissolution, a partnership subsists solely for the purpose of completing pending transactions, winding up the business and adjusting the rights of the partners[37]. When a Firm is in dissolution the *"share"* of a partner was described in Lindley & Banks on Partnership [38] as *"his proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged"*. I have understood this to mean that the partners shares are limited to whatever, if any, surplus after all debts and liabilities have been paid. The extent of this responsibility extends even to the shares of other partners. Lindley & Banks on Partnership[39] describes it as:

> "In order to discharge himself from the liabilities to which a person may be subject to a partner, every partner has a right to have the property of the partnership applied in payment of the debts and liabilities of the firm. And in order to secure a proper division of the surplus assets, he has a right to have whatever may be due to the firm from his co-partners, as members thereof, deducted from what would otherwise be payable to them in respect of shares in the partnership. In other words, each partner may be said to have an equitable lien on the partnership property for the purpose of having it applied in discharge of the debts of the firm; and to have a similar lien on the surplus assets for the purpose of having them applied in payment of what may be due to the partners respectively, after deducting what may be due from them, as partners, to the firm."

[70] It was further stated that:

> "On dissolution, the lien will only be exercisable in respect of the partnership property at that time and will not extend to assets acquired subsequently, unless they can properly be said to be partnership assets. It follows that, if surviving or continuing partners carry on the business and, in the course of so doing, acquire property, it will prima facie be free of the lien."[40]

[71] Having found that the Claimant did carry on the business of the Firm as a sole proprietor after 28th April 2005, she has a lien on any surplus assets of the Firm after this date. I pause at this juncture to state that I understand the Claim to be to determine *if* she had a lien on the assets for the period 28th April 2005 to 28th

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[37] Halsbury's Laws of England 4th ed at para 186
[38] 17th ed at para 19-04
[39] 17th ed at para 19-28
[40] Lindley & Banks on Partnerships 17th ed at para 19-32

February 2006 and *not the extent* at this stage. In this regard, the submission by Counsel for the Defendant that there was no surplus in the Firm's bank accounts as at 28th February 2006 are premature and indeed irrelevant at this stage since the Claim is for an account. In any event, the bank accounts only state the activities of deposits and withdrawal but do not provide any explanation for such activities, which is the crux of the Claim.

[72] Based on the aforesaid reasons, I have concluded that the Claimant's partnership assets which the Defendant acquired pursuant to the Agreement was her net surplus in the Firm as at 27th April 2005.

CONCLUSION

[73] The partnership in the Firm between the Claimant and Linda Grant came to an end upon the death of Linda Grant on 27th April 2005. The Claimant continued the Firm as a sole proprietor from the 28th April 2005 until 28th February 2006. The Defendant was an employee of the Firm and by extension the Claimant who was still a partner during the period September/October 2002 to 27th April 2005, and thereafter from the 28th April 2005 to 28th February 2006 he was an employee of the Claimant. The Defendant managed the Firm from August 2005 to 28th February 2006 and as an employee and manager he has a duty to provide explanations sought by the Claimant in paragraph 17 of the Claimant's first affidavit[41]. The share of the Claimant's partnership assets which the Defendant acquired pursuant to the Agreement was her net surplus assets of the Firm as at 27th April 2005, and any surplus arising from the continuation of the practice between 28th April 2005 to 28th February 2006 is to be accounted for by the Defendant and any surplus paid over to the Claimant.

[41] Filed 21st March 2011

ORDER

[74] The Defendant is to provide an account of his activities as an employee of the Claimant and of the operation of the bank accounts of the Claimant's law practice under the name of Grant, Joseph & Co during the relevant period within 28 days from the date of this order.

[75] The Defendant do pay to the Claimant any sums due to her on the taking of such account together with interest thereon in equity from the 28th February 2006 until judgment at the commercial lending rate of RBTT Bank Grenada during the relevant period.

[76] The Defendant do pay the Claimant costs of the action which is prescribed costs with a value of the claim of EC$50,000.00 as was ordered by Ellis J on the 11th June 2012.

Margaret Y. Mohammed
High Court Judge