THE EASTERN CARIBBEAN SUPREME COURT

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2011/0190

BETWEEN

NORRIS LEWIS

FIRST CLAIMANT

and

JOAN LEWIS

SECOND CLAIMANT

and

CLIVE CRICK

DEFENDANT

Appearances:

Dr. Linton Lewis for the claimants.

Mr. Richard Williams with him Ms. Dannielle France for the defendant.

2018: May 29

Jul. 5

Jul. 30

JUDGMENT

BACKGROUND

[1] Henry, J.: Mrs. Joan Lewis and Mr. Clive Crick are brother and sister. Mrs. Lewis and her husband Norris alleged that some years ago they wanted to buy land in Prospect, Saint Vincent and the Grenadines. They were living in England at the time. They claimed that they asked Mr. Crick (who resides in Saint Vincent) to act as their agent and conclude the purchase of the land on their behalf.

[2] Mr. and Mrs. Lewis averred that between 1987 and 1988, they sent approximately $57,500.00 to Mr. Crick to pay for the land. Mr. Crick denies this. He contended that even if the Lewises are entitled to recover the monies claimed, their claim is statute-barred pursuant to the Statute of Limitations Act[1]. The Lewises brought this action against Mr. Crick to recover those monies. The outcome of this dispute is based largely on credibility because there was very little documentary evidence. I prefer the account given by Mr. and Mrs. Lewis. I have found that Mr. Crick is liable to them.

ISSUE

[3] The issues are whether:

1. Mr. and Mrs. Norris Lewis transferred $57,500.00 to Mr. Clive Crick from their joint account at National Westminster Bank in England between 1987 and 1988 which:
   (a) he converted to his own use? or
   (b) created a resulting trust?
2. Whether Mr. and Mrs. Norris Lewis' claim is statute-barred? and
3. To what relief is Mr. Norris Lewis and Mrs. Joan Lewis entitled?

ANALYSIS

Issue 1 – Did Mr. and Mrs. Norris Lewis transfer $57,500.00 to Mr. Crick from their joint account at National Westminster Bank in England between 1987 and 1988 that (a) he converted to his own use; or (b) created a resulting trust?

[4] Mr. Lewis and his wife gave a similar account. Mrs. Lewis is a retired nurse. Her husband is a joiner. They live at Belvedere in the State of Saint Vincent and the Grenadines. Mr. Crick also testified. He called no witnesses. He is a retired real estate agent and lives at Cane Garden.

[5] The parties accept that they had a relatively good relationship until disputes in this and another matter arose. Mr. Crick explained that his sister and he are embroiled in another land matter before the High Court. Be that as it may, it did not seem that the two cases were interconnected. No

[1] Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines.

evidence was led that they were. I have no reason to believe that they are. I find therefore that the other proceedings are irrelevant to the instant case.

[6] Mr. and Mrs. Lewis alleged that in December 1986 they decided to buy land in Saint Vincent for construction of their retirement home. They averred that they intended to return to the State for the 10th annual carnival, mass and music and to locate a suitable parcel of land. Mrs. Lewis did not make that trip but Mr. Lewis did. He stayed at Mr. Crick's home on that visit. He testified that he and Mr. Crick looked for suitable lands and he identified a parcel in Prospect which comprised approximately a quarter acre.

[7] He indicated that he and the vendor agreed to an initial price of $3.50 per square foot for part of the land. Mr. Lewis explained that the vendor wanted to keep the other portion to raise pigs. He said that this did not appeal to him so he offered a higher price of $5.00 per square foot for entire lot to which the vendor agreed. He said that he returned to London a few days later after getting Mr. Crick to agree to complete the sale transaction for his wife and him.

[8] Mr. and Mrs. Lewis testified that they requested Mr. Crick's assistance to open a bank account in their names at Barclays Bank Plc in Saint Vincent which he did. They attested that they sent him a total of £11,500.00, the equivalent of $57,500.00[2] between 1987 and 1988. They claimed that the monies were transmitted in three separate installments of £5,000.00, £6000.00 and £500.00 with the intention that it be deposited into the Barclays Bank account for the sole purpose of purchasing the subject land.

[9] Mrs. Lewis said that she was responsible for the money transactions because she had more time than her husband, to do so. She claimed that she got the money from their joint account at National Westminster Bank Plc in England. Mrs. Lewis stated that she was unable to obtain a receipt for the remittance of £6,000.00[3]. She said that she was told that the account into which the funds went

[2] At the exchange rate of $5.00.

[3] Ref. STFBR87111750028.

was held in her brother's sole name. Mr. Lewis exhibited copies of documents which he alleged evidenced the remittances for £5,000.00 and £500.00.

[10] One was a copy of a payment standard transfer from National Westminster Bank Plc dated 17th Nov 1987 for the sum of £5000.00. It recorded the remitter's name as Mrs. J A Lewis and the beneficiary as Mr. Clive Crick. The paying bank was identified as Barclays Bank Plc. The other document appears to be a copy of an International Money Order[4] for the amount of £500.00, dated 23rd February 1988. The name of the payee is entered as 'Mr. Clive Crick' and the sender's name is 'JA Lewis'. Neither document was an original or certified copy. They therefore did not satisfy the requirements of the Evidence Act for purposes of admissibility[5].

[11] The Lewises indicated that the vendor contacted them soon after they had sent those funds to Mr. Crick. They said that based on their conversation with him they raised the offer to $7.50 per sq. ft. to encourage him to honour his promise to sell them the land. They testified that communications broke down and the sale did not go through.

[12] They stated that they visited Saint Vincent between 1989 and 2001 and that on each occasion they kept asking Mr. Crick to accompany them to the bank to insert their names on the bank account that was opened at Barclays Bank. They testified that on each occasion he always promised to take them the next day but never did. They said that he always had an excuse why he could not take them. They explained that they trusted him and did not think that he would have been dishonest to them. They testified that since they realized that no account was established in their names they repeatedly asked Mr. Crick for the $57,500.00 but without success.

[13] Mr. and Mrs. Lewis returned to Saint Vincent permanently in July 2001. They said that they continued their requests for Mr. Crick to return the $57,500.00. They said he always promised to give them but never did. They said that he eventually stated that they had given him permission to lend his brother Valentine Crick CND$5,000.00. They maintained that they have not received any

[4] Numbered 501 0001 055 709.

[5] Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009, sections 47, 49, 51 and 55.

part of the monies from Mr. Crick although they have made many more requests of him and had their attorney write him a demand letter in May 2010.

[14] Mr. and Mrs. Lewis asserted that they sent the funds to Mr. Crick to purchase the land at Prospect which he never did. They alleged that he has bought them no other lands. They contended that he holds the $57,500.00 in trust for them for the purpose of buying the land. They submitted that Mr. Crick has an obligation to return the money to them.

[15] Under cross-examination, Mrs. Lewis said that she waited all this time before making the claim because her brother kept promising to pay. I appreciate that it must have been a difficult decision to make. It could not have been easy for her to decide to take legal action against her biological sibling. I believe her.

[16] Mr. Crick denied ever receiving any such money from Mr. and Mrs. Lewis. He said there was never any promise or agreement between him and them to purchase any lands at Prospect as alleged and no monies were sent to him for that purpose. He averred that in the 1980s he and his sisters Joan Lewis and Judith Nyapadi agreed to renovate their father's house. He said that Mrs. Lewis and Ms. Nyapadi sent monies to assist with the renovations and he also made contributions to the repairs which were completed as agreed.

[17] Mr. Crick said that in 2009 Mr. Lewis informed him by telephone that he owed him 'a couple of pennies'. He said that he believed that the monies referred to were from sharecropping a lot of agricultural land in Belair. He said that he told Mr. Lewis they would speak further about the matter when he (Mr. Crick) returned to Saint Vincent.

[18] He explained that when Mr. Lewis returned to the State he told him that he and his family had sent him some monies and he was 'looking for it.' Mr. Crick said that he told Mr. Lewis that any money he received from Mrs. Lewis was used to do repairs on their father's house and that he did the repairs as agreed. He denied that Mrs. Lewis has ever asked him about any monies sent to him. He denied owing the Lewises any money. Mr. and Mrs. Lewis submitted that Mr. Crick holds the

monies on resulting trusts for them. They argued that the Court should rule in their favour and grant the reliefs that they seek.

[19] Mr. Crick contended that the Lewises' evidence is neither cohesive nor consistent and takes the scattergun approach. He submitted that the Court should find that he never received the sum of £11,500.00 in three installments or at all. He argued that Mr. and Mrs. Lewis are unable to prove that £6,000.00 of the funds were ever sent to or received by him. He submitted that the preferred evidence should be his. He contended that the Court should find that Joan Lewis sent some monies in the 1980's but for the purpose of repairing their father's home and further that the works were carried out.

[20] He submitted that the face of the documents appended to the Norris Lewis' witness statement of reveals that Joan Lewis and not Norris Lewis was the remitter. He pointed out that the National Westminster Bank records do not indicate whether the account was held jointly. He accepted that the other piece of documentary evidence indicates that Joan Lewis and not Norris Lewis, sent £500 by Money Order. He submitted that the two documents do not indicate that monies were deposited directly into a bank account held by Mr. Crick.

[21] Mr. Crick submitted that Mr. and Mrs. Lewis were not able to prove that they sent or that he received the £6000.00 as alleged. He contended that the Court should find that he did not receive the £11,500.00 as alleged or at all. For what it is worth, in his skeleton arguments filed on 23rd March 2018 he contended that the preferred evidence should be that Joan Lewis sent him some money in the 1980s for the purpose of repairing their father's house. In his later submissions (filed on 11th July 2018, after the trial), he submitted that 'the preferred evidence' is that Joan Lewis sent him £5000.00 in 1987 to repair their father's house. He appeared to be relying not on his own recollection regarding the quantum but on Ms. Lewis'. I therefore accept Mrs. Lewis' account.

[22] Under cross-examination Mr. Crick admitted that he opened an account at Barclays Bank plc for £5000.00 that he received from Mrs. Lewis. He said that the sum was equivalent to EC$23,000.00. He testified that he opened that account because he did not want to walk around with the money.

He admitted that he never had an account at Barclays Bank before then and that he had other accounts at other banks. He explained that he did not put the money at the other banks because the bank employee Mrs. King suggested that he leave the money there.

[23] Mr. Crick said that the account was closed when the money was utilized. This suggests that the account was kept open for less than 12 months and only until it was used to pay for the expenses associated with the repair work. This is not how people normally conduct their affairs. I find this to be incredible. It does not make sense. I reject that testimony totally.

[24] The opening of an account at Barclays Bank accords with the Lewises testimony. They presented their evidence in a forthright and frank manner. Their demeanour throughout were at times pained and suggestive of candour. They struck me as credible witnesses. Mr. Crick on the other hand, was halting and seemingly evasive and unsure. I prefer the Lewis' account to Mr. Crick's. I accept Mr. and Mrs. Lewis' oral testimony and find therefore that Mr. and Mrs. Lewis sent Mr. Crick the monies as alleged – a total of £11,500.00 for the purpose of paying for a parcel of land at Prospect.

Conversion

[25] Mr. Crick contended that it would appear that Mr. and Mrs. Lewis seek restitution of the monies on the ground that he converted it to his use. He argued that it cannot be that they are positing on the one hand that the monies are held on trust, and at the same time say that the monies have been converted by Mr. Crick. He did not indicate whether some legal principle exists which precludes them from doing so. I am not aware of any.

[26] Mr. Crick submitted that the tort of conversion is broadly concerned with cases where a person has misappropriated goods belonging to another. He contended that it is based on the old common law action of trover and has been replaced by the Tort (Interference with Goods) Act 1977 in the UK. He correctly noted that there is no such legislation in this State.

[27] He submitted that Lord Ellenborough CJ explained in the case of Taylor and Another v Plumber[6] that the tort of conversion or trover does not extend to money, unless it is clearly identifiable (such

[6] [1814 – 1823] All ER Rep 167.

as money in a bag); and that the plaintiff's action lies in recovery of the identifiable property into which the defendant would have converted the money.

[28] In that case a draft for money was entrusted to a broker to buy Exchequer bills for his principal. The broker received the money and misapplied it by purchasing American stock and bullion, intending to abscond to America with it. He did abscond, but was taken before he quitted England, and thereupon surrendered to the principal the securities for the American stock and the bullion, who sold the whole and received the proceeds. It was held that the principal was entitled to withhold the proceeds from the assignees of the broker, who became bankrupt on the day on which he so received and misapplied the money. It was characterized as an abuse of trust conferring no right on the party abusing it, nor on those who claimed in privity with him.'

[29] The learned authors of Halsbury's Laws of England observed that 'Money, in the sense of physical coins and banknotes, can form the subject matter of a property right and is therefore protected by the tort of conversion in much the same way as any other chattel'. They pointed out however that:

> 'The only peculiar feature of a claim for the conversion of a bank note is the availability of a good faith purchase defence in such cases. If A has title to a bank note, and B steals the bank note, and B in turn uses the bank note to pay for goods from C, then if C can show that he took the money in good faith and for value, then the money is said to 'pass into currency', destroying A's title. However, this good faith purchase defence is not generally available in the chattel torts. It is only applicable to money because of the important status it has as a means of currency.

[30] Mrs. Lewis' testimony is that she sent £500 by money order and the two amounts of £5000 and £6000 by wire transfer. She indicated that she mailed the £500 to Mr. Crick by registered post. She explained that she has moved house several times and therefore misplaced the receipts for the wire transfers. Her account had the ring of truth to it and I believe her.

[31] In Marfani & Co. Ltd. v Midland Bank Ltd., Diplock LJ described the tort of conversion and explained that negotiable instruments such as cheques are regarded as 'goods' which are capable of being converted. He said:

> 'It may also seem odd that the basis of their liability is that the piece of paper on which the cheque was written was "goods" belonging to the plaintiff company, and that the

defendant bank's acts in accepting possession of that piece of paper from Kureshy, in presenting it to the Bank of India, and in accepting payment of it, constituted an unjustifiable denial by them of the plaintiff company's title to its goods, from which damage flowed. Such, however, is the common law of England, and one of the consequences of the historic origin of the tort of conversion and its application to negotiable instruments as "goods" is that the tort at common law is one of strict liability in which the moral concept of fault in the sense of either knowledge by the doer of an act that it is likely to cause injury, loss or damage to another, or lack of reasonable care to avoid causing injury, loss or damage to another, plays no part.'[7] (underlining added)

[32] He continued:

'At common law, one's duty to one's neighbour who is the owner, or entitled to possession, of any goods is to refrain from doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in them. ... it matters not that the doer of the act of usurpation did not know, and could not by the exercise of any reasonable care have known, of his neighbour's interest in the goods. The duty is absolute; he acts at his peril.'[7]

[33] Mr. and Mrs. Lewis made no submissions regarding the character of the wire transfers and the money order. The Bills of Exchange Act[8] defines neither money order nor wire transfer. It defines a bill of exchange as follows:

'3. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer. (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. (3) ... an unqualified order to pay, coupled with an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the

[7] [1968] 1 WLR 956 at 970-971.

[8] Cap. 137 of the Revised Laws of Saint Vincent and the Grenadines, 2009, section 3.

amount, or a statement of the transaction which gives rise to the bill, is unconditional.'

[34] The foregoing definition covers and is applicable to a number of negotiable instruments including a money order. The learned authors of Halsbury's Laws of England indicated also that negotiable instruments are capable of being converted.[9]

[35] They outlined the following meaning of a negotiable instrument:

> 'A negotiable instrument is one which embodies the characteristics of negotiability. In the case of bills and cheques, they must order the payment of money; in the case of notes, the instrument must contain a promise to pay. To be a negotiable instrument a document should contain substantially an order or a promise to pay a definite sum of money and no more; hence a document which is a receipt but contains no such promise is not a negotiable instrument.[10]

[36] In light of this definition and the definition in the Bills of Exchange Act, it is clear that the money order for £500.00 is a negotiable instrument whereas the wire transfers are not. Accordingly, while the money order could be the subject of a claim for conversion, the proceeds of the wire transfers being money, could not be. Mr. Crick would be liable for conversion of the £500.00 but not the £11,000.00 transferred by wire.

[37] Mr. Crick argued that the Lewises never relied on the pleaded fact that he was to have opened a Bank Account at Barclays Bank to receive the funds. He submitted that 'their evidence by ambush at paragraph 7 of their witness statements is conflicting'. I do not agree.

[38] Mr. and Mrs. Lewis filed individual witness statements on 28th April 2017. They both said at paragraph 7 that they:

> '... requested the assistance of the Defendant to open an account in our names at Barclays Bank Plc in St. Vincent and the Grenadines and which was located at Halifax

[9] (2015) Vol. 97, para. 642.

[10] (2015) Vol. 49, para. 186.

Street in Kingstown. The defendant did open an account at Barclays Bank and between 1987 and 1988 my husband and I remitted a total of £11,500.00 x $5.00) EC$57,500.00 in three separate installments, namely £5000.00, £6,000.00 and £500.00 for the Defendant to deposit into that account and for the sole purpose of purchasing the said parcel of land. An exchange rate of $EC5.00 to £1 was used to calculate the equivalent in Eastern Caribbean Dollars. With respect to the remittance of £6,000.00 efforts to obtain he document which showed the receipt by Barclays Bank of the said £6,000.00 have been futile because my husband (wife) and I were told that the account into which the said remittance was deposited was in the sole name of the Defendant.' (Underlining mine)

[39] Paragraph 3 of their Statement of Claim states:

'Between 1987 and 1988 the Claimants transferred from the joint Westminister Bank account in England $57,000.00 Eastern Caribbean dollars to the Defendant to purchase the Claimants approximately 8,000 square feet of land in Prospect in this State.'

[40] Although the Lewises did not state in their Statement of Claim that they asked Mr. Crick to open an account at Barclays Bank on their behalf, by use of the verb 'transferred' it is implied that they sent him monies from England by some mode of transmission. Their choice of words does not suggest that they had an agreement whereby Mr. Crick undertook to open any account on their behalf. I note however that such assertion, or proof of it, is not a critical element in a claim in conversion. In any event, I am satisfied that Mr. and Mrs. Lewis sufficiently particularized their case to afford Mr. Crick adequate opportunity to understand the claim against him or to seek further particularization.

[41] By order dated 24th January 2018, the parties were granted an extension of time to 19th February 2018 to file any application to strike out any portion of a witness statement. Mr. Crick filed no such application and he made no application during the trial to strike out the impugned part of paragraph 7. At the same time he applied for and was successful in having the final statement in Mrs. Lewis' paragraph 7 struck out. He cannot now be heard to complain about the part of their testimony which he belatedly finds objectionable. Moreover, the opening of a bank account is not an essential ingredient of breach of trust or the tort of conversion.

[42] Mr. Crick argued that it is unknown to banking practice that one party can open a joint account in the names of two other persons. I agree. However, I note that it is not impracticable or impossible for one person to be charged with opening an account on behalf of someone else in their absence, with the expressed or implicit intention to be added as a joint account holder at a subsequent date. It would be implicit where the person making the request is unaware of how the bank functions in such matters. I infer that the Lewises intended that Mr. Crick was charged with doing everything necessary to facilitate the payment of the purchase price to the intended vendor. Their knowledge or lack thereof of the banking procedures does not necessarily negative such intentions.

[43] Mr. Crick queried why if the account was opened in their names, were the monies sent to Mr. Crick and not to the account set up in their names? The Lewises were not asked. Mrs. Lewis testified that the money was sent to him at the account number on the wire transfer. I find that the two wire transfers of £6000.00 and £5000.00 were sent to him as alleged by the Lewises. I accept their testimony. It was credible.

[44] Mr. Crick submitted that the assertion that Mr. and Mrs. Lewis cannot obtain evidence as to the £6,000.00 is a lame excuse to cover the fact that they cannot prove their case. He submitted that they were at liberty to obtain *Banker's Trust*[11] type relief for disclosure. He contended that they failed to do so. He reasoned that the Court cannot accept their assertion on just *ipse dixit* - their say so. The Court takes judicial notice that financial institutions have a legal obligation to maintain financial records for no more than 6 to 7 years. Mr. and Mrs. Lewis gave compelling testimony on their inability to recover those records. In all the circumstances, I accept their version because it accords with customary practice.

[45] Their failure to provide documentary evidence does not by itself deprive them of a right to be heard. They did not provide the best documentary evidence in the form of originals or certified copies of the international money order or wire transfer. However, I accept their testimony as being credible and the Court may act on such testimony if it is relevant and probative. I find that it is relevant.

[11] Described in Bankers Trust v Shapira (1980)1 WLR 1274.

While I do not regard the contents of the document to be probative (because they did not satisfy the evidentiary rules), I believe Mr. and Mrs. Lewis when they said that they sent the wires for £11,000.00.

[46] Mr. Crick contended that the Lewises' version does not add up. He argued that it is highly unlikely that they would have agreed to the selling price of $3.50 let alone $5.00 per square foot if they knew that their retirement home would be next to a pigsty; notoriously known for its nuisance of smell. He submitted that this defies logic. He submitted that even more defiant to logic, is that the Lewises still insisted on an agreement when the price was raised to $7.50 per square foot.

[47] I agree with Mr. Crick that no reasonable person would buy land next to a pigsty for the purposes of building their retirement home. I also note that Mr. Lewis testified that he was not going to buy the property if the vendor retained any portion of it for a pigsty and for this reason he offered him the higher price which he accepted. This explains their decision to go ahead with the purchase.

[48] Mr. Crick contended that furthermore, the Lewises said that they left Mr. Crick to complete the sale. He asked rhetorically 'but where is the Power-of-Attorney? How was he supposed to have executed this?' The Lewises were not asked and they did not volunteer information regarding the mechanics of how the legal transfer was to be effected. I remain mindful that persons use the mail and courier services to transmit legal documents over great distances to overcome such issues. It is not unrealistic to conceive of the Lewises adopting that or some similarly effective approach in that regard.

[49] Mr. Crick submitted that the Lewises appear to have departed from their pleaded case. He pointed out that in the Statement of Claim they pleaded that they were to purchase approximately 8,000 square feet of land at Prospect and increased the area to one quarter acre in their witness statement. He argued that the Court can take judicial notice that a quarter acre is 10,890 square feet. He contended further that the alleged $57,500.00 does not correlate to the two differing sizes of parcels of land nor the alleged price per square foot they intended to pay. He is correct on both counts.

[50] Mr. and Mrs. Lewis explained in her testimony that the vendor was getting somewhat reluctant to sell the land after some time had passed. They indicated that they convinced him to sell them by offering to pay him more which he accepted. They also explained that they were sending the money in installments as it came to hand. According to them, at some point the purchase was aborted. This explanation is reasonable, credible and addresses Mr. Crick's contentions. I believe them.

[51] Mr. Crick submitted that the crux of this case may very well lie in the letters appended to the Lewises' witness statements. The letters are purportedly from Bertram Valentine Crick dated January 20, 2015 and the other from Judith Nyapadi-Crick dated April 27, 2017, who are Mr. Crick's and Mrs. Lewis' siblings. Mr. Crick argued that the letters show the animus between the parties. He submitted that this will no doubt reveal itself in the Lewises' oral testimony. Neither Mr. nor Mrs. Lewis mentioned the letters in their written or oral testimony.

[52] Mr. Crick was cross-examined about a possible motive for the Lewis' claim. He mentioned that there are other proceedings in the High Court in which he and Mrs. Lewis are opposing parties. He indicated that the matter involves a family land dispute. He invited the Court to take cognizance of what may well be Mr. and Mrs. Lewis' motivation behind 'what is clearly a false claim brought umpteen of years after.' The Court does not think that those matters are relevant to a determination of this claim and disregards them totally.

[53] I find as matter of fact that Mr. and Mrs. Lewis sent £11,500.00 to Mr. Crick as they alleged and that he did not utilize it for the stated purpose of paying for the land they wished to buy at Prospect. He used it for his own purposes and therefore converted £500.00 of the monies to his own use.

[54] I reject Mr. Crick's averments that he was not requested to pay for the land at Prospect as alleged by Mr. and Mrs. Lewis. I accept that Mr. Lewis asked him to finalize the arrangements for the land purchase and that he did not disburse the money for that purpose but instead used it in some unspecified and unauthorized purpose for his benefit.

Resulting trust

[55] Mr. Crick submitted that for the Court to declare that a trust was created in favour of the Lewises, it must find that such a trust was validly made. He referred to Lord Langdale's judgment in Knight v

Knight[12] where he set out the proposition that, in order for a trust to be valid, the 'three certainties' must be present, namely certainty of words, certainty of subject and certainty of object.

[56] Mr. Crick argued that no valid trust was created. In this regard, he contended that there is no written agreement creating a trust between the parties and no clear words from the written evidence which would indicate that there was any intention to create a trust fund for the purpose of purchasing land. He submitted that the Court has to consider the oral evidence.

[57] He submitted that the allegations are that Mr. Lewis was conducting negotiations with the landowner by himself. He argued that he was not privy to those discussions. He submitted that the Lewises claim only that he was to simply open a bank account in their names. He contended that this points away from an intention by them to have him do anything with the transaction.

[58] He submitted that there are simply no precatory words in the instant case by which the Court can find such intention. He argued that the authorities show that the Court is slow to infer intent from written words as in and should be even slower to infer them from bare speech. He cited in support the decisions in Re Adams and the Kensington Vestry; Re Hamilton; and Mussoorie Bank Ltd v Raynor[13].

[59] Mr. Crick submitted that the subject matter of the trust is not certain. He contended that the Lewises have vaguely referred to 'a parcel of land at Prospect', have not named the landowner, or accurately identified the parcel of land by means of a survey. He submitted that it cannot be as loose as 'approximately 8,000 square feet' or a 'quarter acre of land' somewhere about on the Prospect Estate.

[60] He submitted further that there was no settled contract between the purported landowner and the Lewises. He contended that the evidence is that the landowner kept raising the selling price and there was no settled contract in writing for the sale. He concluded that the object of the monies could not be for the purchase of land when there was no valid contract itself for the sale. He did not provide any legal authority which established this proposition.

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[12] (1840) 3 Beav 148 at pg. 159.

[13] Reported respectively at (1884) 27 Ch D 394 at 410; [1895] 2 Ch 370 at 374; and (1885) 7 App Cas 321, PC.

[61] The law is that, the objects or persons to be benefited by an express trust must be 'expressly designated or so defined that they are capable of being ascertained, except where the trust is for charitable purposes. Otherwise the trust is void for uncertainty, and there is resulting trust.[14] Mr. Crick's assertion that a resulting trust will fail if one on the three certainties is absent is without merit.

[62] It is established in law that a resulting trust arises by operation of law, in two different circumstances:

> '... where A makes a voluntary transfer of property to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, when there is a presumption that A did not intend to make a gift to B. The property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. This has been described as a presumed resulting trust. ... The second set of circumstances occurs where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest. This has been described as an automatic resulting trust. A special case is the *Quistclose* trust where X transfers money to Y on the agreed basis that Y is not free to use it as his own but must (or may) use it exclusively for a particular purpose, like paying creditors or buying property, in which eventuality occurring a debtor-creditor relationship is to arise between Y and X. Equity presumes that until then Y holds the money from the outset on a resulting trust for X.'[15](underlining added)

[63] The scenario described by Mr. and Mrs. Lewis fits under the Quistclose trust umbrella. Mr. Crick could have rebutted the presumption of the creation of a resulting trust by proving that Mr. and Mrs. Crick intended to part with ownership of the monies. He has not done so. I therefore hold that a resulting trust was created when Mrs. Lewis sent the monies to him. I find too that he received the £11,500.00 to pay towards the purchase price of the land at Prospect, that he failed to do so and that he holds it on a resulting trust for Mr. and Mrs. Lewis.

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[14] Halsbury's Laws of England (2013) Vol. 98, para. 70.

[15] Halsbury's Laws of England (2013) Vol. 98, para. 132.

Issue 2 – Is Mr. and Mrs. Norris Lewis' claim statute-barred?

Conversion

[64] Conversion is a tort. Section 4 of the Limitation Act[16] provides that an action founded on tort must not be brought after the expiration of six years from the date when the cause of action accrued. The Lewises' testimony is that they sent the £11,500.00 to Mr. Crick between 1987 and 1988. Accordingly, their cause of action in conversion would have arisen in 1993. They filed their claim 18 years after. It is therefore statute-barred. Therefore, notwithstanding the finding that Mr. Crick converted the money to his own use, Mr. and Mrs. Lewis conversion claim is defeated by the limitation defence.

[65] Mr. Crick contended that the Lewises claim in trust is covered by section 23 of the Limitation Act He argued that subsection (1)(a) and (b) provides that there is no limitation period in respect of fraud or fraudulent breach of trust, or to recover trust property that the defendant has taken for himself. He submitted that the effect of subsection (3) is that the starting point is six years from the date on which the right of action accrued, i.e. the date of the breach (not the date of the loss). He submitted further that it is for the Lewises to show that the claim is not statue-barred.

[66] He maintained that he is entitled to succeed on the defence of limitation for a number of reasons. Firstly, he submitted that this is not a case where he is in possession of any real property held on trust and he is not in possession of any monies that were the proceeds of sale of trust property.

[67] He contended that for the Lewises to defeat the limitation defence, their case should have been framed in fraudulent breach of trust. He argued that on the face of the pleadings, there is no pleading of fraud specifically or otherwise. I agree that this is the case.

[68] Mr. Crick submitted that section 23 of the local Limitation Act is in like terms of section 21(1) of the Limitation Act 1980 of the UK. He submitted that in interpreting the section in Halton International Inc and another v Guernroy Ltd[17], Carnwart LJ explained that a mere pleading of fraud will not be sufficient to avoid the ordinary rule that the six year limitation applied, but rather, there must have been an element of fraudulent concealment. There can be no argument with this statement.

[16] Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[17] [2006] EWCA Civ 801 at paragraph 22.

[69] Mr. Crick submitted that there is no pleading of fraud, let alone fraudulent concealment. He is correct. He reasoned that the Lewises by their own admission said that they began to request the monies back from Mr. Crick since 1989. He argued that the attempt to purchase a parcel of land in Prospect must have already fallen through since late 1987 or 1988. He argued that it must be passing strange that they came back to Saint Vincent between 1989 and 2001 and "requested" Mr. Crick to repay them these monies and he failed to do so.

[70] Mr. Crick asked 'Why would the Lewises allow 12 years to pass without taking any legal action?' He submitted that it certainly cannot be, that he kept promising to do so. He submitted that it is inconceivable that they would have reasonably held that belief for so long. He contended that this is even compounded when they finally settled back in St. Vincent in 2001; and they alleged that requests were made again, promises made by him, and no legal action until 2011. He argued that something is definitely amiss after 19 years.

[71] Mr. and Mrs. Lewis submitted that the relevant provision is section 23 which states:

> '(1) No period of limitation prescribed by this Act shall apply to an action by the beneficiary under a trust, being an action-
>
> (a) In respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) To recover from the trustee any trust property, or proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.'

[72] They submitted that when Mr. Crick received the money but did not use it for purchasing the property in Prospect or any other property, a resulting trust was created and this precluded the application of any limitation period to their claim. They contended that where a trust was created and it fails for some reason the trust property which remains in his hands as trustee is to be held on resulting trust for them as the settlors and beneficiaries.

[73] They argued that once the purpose has not been fulfilled then the monies result back to the Claimants. They cited the House of Lords case of Westdeutsche Landesbank Girozentrale v

Islington London Borough Council[18] in support. They argued that it outlined the two circumstances in which a resulting trust is established. They submitted further that the Privy Council also outlined the operation of a resulting trust in the case of ***Air Jamaica Ltd v Charlton***[19].

[74] Mr. and Mrs. Lewis submitted that even if the trust is void because it lacks all the ingredients that are necessary to create a valid trust, the trust property is to be held on trust for the settlor. They submitted that in the case of ***Re Astor's Settlement Trusts***[20] the trust failed because it did not satisfy the beneficiary principle. The submitted that in that case, the Court held that the trust was created for '...the promotion and understanding between nations and the preservation of the independence and integrity of newspapers...'; but held nonetheless, that the trust property was held on a resulting trust.

[75] They argued that Lord Millet provided guidance regarding the implications of a resulting trust in the case of Twinsectra Ltd v Yardley where he opined:

> 'The lender pays the money to the borrower by way of loan, but he does not part with the entire beneficial interest in the money, and in so far as he does not it is held on a resulting trust for the lender from the outset. Contrary to the opinion of the Court of Appeal , it is the borrower who has a very limited use of the money, being obliged to apply it for the stated purpose or return it. He has no beneficial interest in the money, which remains throughout in the lender subject only to the borrower's power or duty to apply the money in accordance with the lender's instructions. When the purpose fails, the money is returnable to the lender, not under some new trust in his favour which only comes into being on the failure of the purpose, but because the resulting trust in his favour is no longer subject to any power on the part of the borrower to make use of the money.' [21]

[76] Mr. and Mrs. Lewis contended that the statement is applicable to the instant case. They contended that the monies were given to Mr. Crick to buy property on their behalf but he never purchased the property as instructed. They reasoned that he therefore holds the monies on resulting trust for

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[18] [1996] AC 669

[19] [1999] UKPC 20

[20] [1952] Ch 534

[21] [2002] 2 All ER 377 at 403.

them. They submitted that their right to bring an action for the recovery of the monies is not statute barred because Section 23 expressly provides that no limitation period applies to an action which is brought by a beneficiary under a trust.

[77] As noted by Mr. Crick, Mr. and Mrs. Lewis did not allege that he committed a fraudulent breach of trust. I will not consider the law in relation to such breach because it is not relevant. Section 23 (1) (b) of the Limitation Act states:

> 'No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action-
>
> (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
>
> (b) to recover from the trustee any trust property, or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.' (Bold added)

[78] The authors of Halsbury's Laws of England considered that provision. They noted:

> 'No period of limitation prescribed by the Limitation Act 1980 applies to a claim by a beneficiary under a trust, being a claim in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy, or to recover from the trustee trust property or the proceeds of it in the trustee's possession, or previously received by the trustee and converted to his use. ... If, however, the claim is not one of these types, the mere fact that property is trust property does not prevent time from running.[22] (underlining added)

[79] Mr. Crick did not comment on sub-paragraph (b) of section 23 (1) of the Limitation Act. It effectively exempts from periods of limitation, claims to recover trust property from a trustee where he has received it and converted it to his use.[23] This is one such case. It does not matter that Mr. and Mrs. Lewis' claim in conversion is statute-barred. Practically, this means that Mr. and Mrs. Lewis' claim as beneficiaries of the resulting trust is not statute-barred. I so find.

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[22] (2016) Vol. 68, para. 1138.

[23] Halsbury's Laws of England, (2016) Vol. 68, para. 1140.

[80] Mr. and Mrs. Lewis are entitled to bring this claim for breach of trust to recover monies which they entrusted to Mr. Crick to pay for the land at Prospect. Such a claim is separate and apart from the conversion claim. Pursuant to section 23(1)(b) of the Limitation Act, the breach of trust claim is not statute-barred, since no limitation period attaches to such a claim.

Issue 3 – To what relief is Mr. Norris Lewis and Mrs. Joan Lewis entitled?

[81] Mr. and Mrs. Lewis have established that Mr. Crick hold $57,500.00 on a resulting trust for them. Mr. Crick is therefore liable to repay them the $57,500.00 which he received from them. Mr. Crick shall pay to Mr. and Mrs. Lewis the sum of $57,500.00.

[82] Judgment debts attract interest pursuant to the Interest Act[24]. Mr. Crick submitted that Mr. and Mrs. Lewis failed to set out their case for interest in accordance with CPR 8.6 (4) & (4). He argued that they have not activated the Court's powers under section 27 of the Interest Act. He reasoned that they are therefore not entitled to any interest other than judgment interest under the Interest Act. Mr. and Mrs. Lewis did not make any submissions on this point.

[83] The CPR[25] imposes a duty on a claimant to expressly claim interest and to articulate in his/her claim form the basis for such claim, the rate and period. The Lewises have not done so. Accordingly, they may in accordance with the Interest Act, only recover interest at the rate of 6% per annum, from the date of judgment until payment.[26] Mr. Crick shall therefore pay interest at that rate until the judgment is wholly satisfied. I so order.

Costs

[84] Mr. Norris Lewis and Mrs. Joan Lewis have prevailed in this matter. As the successful parties, they will also recover prescribed costs. Accordingly, Mr. Crick shall pay to Mr. and Mrs. Lewis prescribed costs of $8,625.00 pursuant to CPR 65.5 (2) (a).

ORDER

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[24] Cap. 27 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

[25] Rule 8.6(4).

[26] Pursuant to section 5 of the Interest Act.

[85] It is ordered:

1. Judgment is entered for Norris Lewis and Joan Lewis.

2. Mr. Clive Crick shall pay to Mr. Norris Lewis and Mrs. Joan Lewis the sum of $57,500.00 with interest at the rate of 6% per annum from the date of judgment until full satisfaction.

3. Mr. Clive Crick pay to Mr. Norris Lewis and Mrs. Joan Lewis prescribed costs of $8,625.00 pursuant to CPR 65.5 (2) (a).

[86] The parties submitted fulsome and very helpful written submissions. I wish to acknowledge the assistance provided by counsel in this regard.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar