

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

ANTIGUA AND BARBUDA

ANUHCVP2019/0035

BETWEEN:

**[1] CLICO INTERNATIONAL LIFE INSURANCE LTD
[2] WILBUR HARRIGAN (AS ADMINISTRATOR OF
CLICOINTERNATIONAL LIFE INSURANCE LTD.)**

Appellants

and

**[1] EASTERN CARIBBEAN BAPTIST MISSION
[2] JERRIANN GEORGE
[3] HENSWORTH JONAS**

Respondents

Before:

The Hon. Mde. Margaret Price Findlay
The Hon. Mde. Vicki Ann Ellis
The Hon. Mr. Eddy D. Ventose

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. Ramon Alleyne SC, Mr. Rene Butcher and Ms. Talia DaCosta for the
Appellants
Ms. Chantal Marshall and Ms. Andrea Smithen-Henry for the Respondents

2025: February 28;
May 06.

Civil Appeal – Sale of land – Enforcement of judgment – Beneficial interest – Lifting the corporate veil – Whether the learned trial judge was correct in finding that the first appellant is the beneficial owner of the Land – Whether the learned trial judge was correct in holding that the circumstances warranted lifting the corporate veil

Colonial Life Insurance Company (Trinidad) Limited ("CLICO TT") is the owner of a parcel of land: Registration Section Sutherlands Block 64 17928 Parcel 153 ("the Land"). An appraisal of the Land on 16th February 2011 valued it at \$1,829,520.00. The respondents in each of the appeals obtained default judgment against the appellants in various sums. Pursuant to leave obtained on 27th February 2014, the respondents filed an application on 26th March 2015 to sell the Land. Following a hearing on 2nd July 2015, the application was rejected. Cottle J found that the reasons advanced by the respondents did not mean that the first appellant was the true owner of the Land or that it had any beneficial interest in the Land. The learned judge further found that the land register shows that the first appellant is not the owner of the Land and that the court could only order the sale of the Land if it was the property of the first appellant.

The respondents then applied on 8th June 2016 for an oral examination of Mr. Patrick Toppin, a court appointed judicial manager of the first appellant, as to the rights, title or interest of the first appellant in Antigua and Barbuda to satisfy the appellants' judgment debts. The oral examination took place on 24th April 2017 and subsequently, the respondents filed another application for leave for an order to enforce their judgment by sale of the Land. The court granted leave and on 31st January 2018 the respondents filed a second application for an order for the sale of the Land.

The application for the sale of Land came on for hearing before the learned trial judge on 17th October 2018 and her judgment was handed down approximately one year later. The learned trial judge noted that before Cottle J was the evidence of the judicial manager, Mr. Terrance Thornhill, who deposed that the Land was always considered as part of an asset of the appellant and the judicial manager listed the Land as that of the first appellant in his report dated 27th January 2012. The learned trial judge also referred to the additional evidence obtained from the oral examination and emphasised that since there were two separate entities the only way the Land could be an asset of the first appellant is: (1) by way of a formal transfer from CLICO TT to the first appellant, or (2) by lifting the corporate veil of CLICO TT if the evidence supports such a move and the court makes an order deeming the Land available to satisfy the judgments.

The learned trial judge made findings on the limited instances of when the corporate veil of a company is lifted: (a) an abuse of the corporate form; (b) a group of companies which can be regarded as one because in reality they are not independent of each other either in human or commercial terms, (c) a group of companies - the concept of agency, a subsidiary is regarded as a holding agent; (d) illegality, fraud and improper conduct, and (e) the personal relationship company. The learned trial judge stated that there was no evidence of the instances at (a), (d), and (e) but determined on the evidence of the judicial manager that the instances of (b) and (c) apply. The learned trial judge therefore ordered that the Land be sold by public auction to satisfy the judgments entered on 17th May 2010 in the three consolidated suits and that any remaining funds are to be delivered to the judicial manager.

Dissatisfied with the order of the learned trial judge, the appellants appealed. The main issues arising from their 12 grounds of appeal are: (1) whether the learned trial judge was correct in finding that the first appellant is the beneficial owner of the Land; and (2) whether

the learned trial judge was correct in holding that the circumstances warranted lifting the corporate veil.

Held: allowing the appeal and setting aside the order made at paragraph [26] of the learned trial judge's written judgment with costs to the appellants to be paid by the respondents to be assessed if not agreed within 21 days of the date of this order, that:

1. There is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The learned judge's summary in her written judgment cannot be regarded as correct law in light of the decision in **Prest v Petrodel Resources Ltd**. There was no evidence in the court below to support a finding for the corporate veil to be pierced. It cannot be said that CLICO TT is under an existing legal obligation or liability or subject to an existing legal restriction which it deliberately evaded or whose enforcement it deliberately frustrated by interposing a company, the first appellant, under its control. The learned judge was therefore wrong to find that the circumstances were such that the court should pierce the corporate veil since none of these purposes were found to exist on the facts before her.

Prest v Petrodel Resources Ltd [2013] UKSC 34, [2013] 2 AC 415 followed; **Sergey Taruto v JSC VTB Bank** BVIHCMAP2021/0002; BVIHCMAP2021/0008; BVIHCMAP2021/0012 (delivered 2nd June 2021, unreported) followed; **Broad Idea International Limited v Convoy Collateral Limited** BVIHCMAP2019/0026 (delivered 29th May 2020, unreported) followed.

2. The following principles can be distilled from **Prest**: (1) the onus was on the respondents to satisfy the court that the first appellant has a beneficial interest in the Land; and (2) the court was required to consider the parties' shared intentions and the surrounding circumstances before, during and subsequent to the acquisition of the Land in order to determine whether the first appellant was in fact the beneficial owner of the Land. The statements and conclusions of the learned trial judge that the first appellant was the beneficial owner was arrived at without applying ordinary principles and presumption of equity especially those relating to gifts and resulting trusts. There was no explanation of the nature of the trust that was created such that the first appellant would become the beneficial owner of the Land. Moreover, the learned trial judge did not set out any of the elements necessary to establish any trust nor did she consider or assess the elements of resulting or constructive trust. It is difficult to see how the learned trial judge arrived at her conclusion on beneficial ownership given the very limited evidence before her. The learned trial judge therefore erred in her finding of beneficial ownership.

Prest v Petrodel Resources Ltd [2013] UKSC 34 followed.

3. A finding of beneficial ownership could not, without more, lead to a lifting of the corporate veil to facilitate enforcement of liability. The decision in **Prest** makes clear that piercing the veil of incorporation can only occur in limited circumstances and only to prevent the abuse of corporate legal personality. It is only if there was evidence that CLICO TT was abusing the corporate legal personality that the learned trial judge would have been justified in piercing the veil of incorporation. Nonetheless there was nothing on the facts before the learned trial judge that would lead her to find that the first appellant was the beneficial owner of the Land. Even if there was such evidence, this alone would not be sufficient to pierce the corporate veil. The learned trial judge would need to find that there was impropriety on the part of CLICO TT in that it used the corporate group structure to avoid liability.

Prest v Petrodel Resources Ltd [2013] UKSC 34 followed.

JUDGMENT

- [1] **VENTOSE JA:** This is an appeal from the decision of the learned trial judge dated 7th October 2019 in which she ordered the sale of a parcel of land registered in the name of Colonial Life Insurance Company (Trinidad) Limited by public auction to satisfy the judgments entered on 17th May 2010 in favour of the three respondents in this consolidated appeal.

The Factual Background

- [2] The respondents in each of these appeals obtained default judgments against the appellants in various sums. Colonial Life Insurance Company (Trinidad) Limited ("CLICO (TT)") is the owner of a parcel of land: Registration Section Sutherlands Block 64 17928 Parcel 153 (the "Land"). An appraisal of the Land on 16th February 2011 valued it at \$1,829,520.00. Pursuant to leave obtained on 27th February 2014, the respondents filed an application on 26th March 2015 to sell the Land. After a hearing on 2nd July 2015, Cottle J in his written judgment dated 17th August 2015 rejected the application stating that the reasons advanced by the respondents did not mean that the first appellant was the true owner of the Land or that it had any beneficial interest in the Land. He continued that the land register shows that the first

appellant is not the owner of the Land, and that the court could only order the sale of the Land if the Land was the property of the first appellant.

- [3] The respondents applied on 8th June 2016 for an oral examination of Mr. Patrick Toppin, one of the court appointed judicial managers of the first appellant, as to the rights, title or interest of the first appellant in Antigua and Barbuda to satisfy the appellants' judgment debts. The oral examination of Mr. Toppin took place on 24th April 2017. The following exchange took place, which is reflected in paragraph [10] of the decision of the learned trial judge:

"The Court: So that property ought not to part of the assets of CLICO?
(sic)

Mr. Toppin: Madam, this is where the past is not necessarily reflected clearly. In the Books of CIL, the assets of Colonial Life have been included but are not registered to CIL. They are still registered to Colonial Life.

Ms. Smithen: For clarification then, on what basis is this property included in the List of Assets of CLICO Antigua? That aspect I am still not very clear on.

Mr. Toppin: I will give you a little bit of history so you can understand. When the Barbados company CIL was established, the intention was that that company would take over the operations of Colonial Life in Barbados and [the] Eastern Caribbean. The transfer required the technical approval of Supervisors/Superintendents of Insurance in all the jurisdictions. And so, although it was recognized that, the fact that the transfer had not been approved is more of not really following through rather than a specific decision not to. During all that time CIL managed the operation as though it was its own. So the assets and liabilities of Colonial Life was part of the operations of CIL. (My emphasis)

Ms. Smithen: So for clarification, by saying CIL you are referring to CLICO Antigua, correct?

Mr. Toppin: Yes.

Ms. Smithen: So during all that time CLICO Antigua managed all the operations including the assets, including this property as CLICO's?

Mr. Toppin: Yes. That is correct."

- [4] The respondents filed another application for leave for an order to enforce their judgment by sale of the Land. The court granted them leave and the respondents filed a second application on 31st January 2018 for an order for the sale of the Land.

The decision of the court below

- [5] The application for the sale of the Land came on for hearing before the learned trial judge on 17th October 2018 and approximately one year later she handed down her written judgment of 8 pages. The learned trial judge noted at paragraph [18] that before Cottle J was the evidence of the judicial manager, Mr. Terrence Thornhill, who deposed that the Land was always considered as part of an asset of the first appellant and that the judicial manager listed the Land as that of the first appellant in his report dated 27th January 2012. The learned trial judge also referred to the additional evidence obtained from the oral examination namely, that '[d]uring all that time [the first appellant] managed the operation as though it was its own. So the assets and liabilities of [CLICO (TT)] was (sic) part of the operations of [the first appellant]'. The learned trial judge emphasised at paragraph [19] that since there were two separate entities the only way the Land could be considered as an asset of the first appellant is: (1) by way of formal transfer from CLICO (TT) to the first appellant; or (2) by lifting the corporate veil of CLICO (TT) if the evidence supports such a move and the court makes an order deeming the Land available to satisfy the judgments.
- [6] The learned trial judge explained at paragraph [20], without citing any authority, that the corporate veil of a company is lifted in limited instances and they include: (a) an abuse of the corporate form; (b) a group of companies which can be regarded as one because in reality they are not independent of each other either in human or commercial terms; (c) a group of companies - the concept of agency, a subsidiary is regarded as a holding agent; (d) illegality, fraud and improper conduct, and (e) the

personal relationship company. The learned trial judge stated at paragraph [21] that there was no evidence of the instances at (a), (d) and (e) which would allow the court to lift the corporate veil of CLICO (TT) but that from the evidence of the judicial manager it appeared that the instances of (b) and (c) apply.

- [7] The basis for the learned trial judge's conclusion that the instances of (b) and (c) applied is found in the following paragraphs of the decision of the learned trial judge:

"[22] It appears to the Court that if in all the circumstances the Judicial Manger, Mr. Toppin and before him, Mr. Thornhill hold the view that Parcel 153 is the property of CLICO, albeit at this stage, the beneficial owner, the Court could hold no less. It therefore appears to the Court that such being the Judicial Manager, Mr. Toppin's view, he could under a court's order take the necessary actions to settle any other debt aside or apart from that of ECBM, Mr. George and Mr. Jonas by sale of Parcel 153.

[23] On the evidence before the Court, the Court does not see why it should not lift the corporate veil under the instances of (b) and (c) above to find that CLICO is the beneficial and true owner of Parcel 153. The Court declares that it finds CLICO to be the beneficial and true owner of Parcel 153.

[24] The Court having declared CLICO to be the beneficial and true owner of Parcel 153, will grant ECBM, Ms. George and Mr. Jonas an order for sale of Parcel 153."

- [8] As previously stated, the learned trial judge therefore ordered at paragraph [26] that the Land be sold by public auction to satisfy the judgments entered on 17th May 2010 in the three consolidated suits and that any remaining funds are to be delivered to the judicial manager.

The Appeal

- [9] The appellants filed a Notice of Appeal on 19th November 2019 in which they set out no less than 12 grounds of appeal. The two main issues that arise from these grounds of appeal are as follows: (1) whether the learned trial judge was correct in finding that the first appellant is the beneficial owner of the Land; and (2) whether the learned trial judge was correct in holding that the circumstances warranted lifting the corporate veil.

Piercing the Corporate Veil

- [10] The leading case on 'piercing the veil' is the decision of the United Kingdom Supreme Court ("UKSC") in **Prest v Petrodel Resources Ltd.**¹ Lord Sumption, giving the leading judgment of the UKSC, stated that:

"[27] In my view, the principle that the court may be justified in piercing the corporate veil if a company's separate legal personality is being abused for the purpose of some relevant wrongdoing is well established in the authorities. It is true that most of the statements of principle in the authorities are obiter, because the corporate veil was not pierced. It is also true that most cases in which the corporate veil was pierced could have been decided on other grounds. But the consensus that there are circumstances in which the court may pierce the corporate veil is impressive. I would not for my part be willing to explain that consensus out of existence. This is because I think that the recognition of a limited power to pierce the corporate veil in carefully defined circumstances is necessary if the law is not to be disarmed in the face of abuse. I also think that provided the limits are recognised and respected, it is consistent with the general approach of English law to the problems raised by the use of legal concepts to defeat mandatory rules of law.

[28] The difficulty is to identify what is a relevant wrongdoing. References to a "facade" or "sham" beg too many questions to provide a satisfactory answer. It seems to me that two distinct principles lie behind these protean terms, and that much confusion has been caused by failing to distinguish between them. They can conveniently be called the concealment principle and the evasion principle. The concealment principle is legally banal and does not involve piercing the corporate veil at all. It is that the interposition of a company or perhaps several companies so as to conceal the identity of the real actors will not deter the courts from identifying them, assuming that their identity is legally relevant. In these cases the court is not disregarding the "facade", but only looking behind it to discover the facts which the corporate structure is concealing. The evasion principle is different. It is that the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement. Many cases will fall into both categories, but in some circumstances the difference between them may be critical. This may be illustrated by reference to those cases in which the court has been thought, rightly or wrongly, to have pierced the corporate veil."

- [11] He then summarised and concluded as follows:

¹ [2013] UKSC 34, [2013] 2 AC 415.

[34] These considerations reflect the broader principle that the corporate veil may be pierced only to prevent the abuse of corporate legal personality. It may be an abuse of the separate legal personality of a company to use it to evade the law or to frustrate its enforcement. It is not an abuse to cause a legal liability to be incurred by the company in the first place. It is not an abuse to rely on the fact (if it is a fact) that a liability is not the controller's because it is the company's. On the contrary, that is what incorporation is all about. Thus in a case like *VTB Capital v Nutritek* [2012] 2 Lloyd's Rep 313; [2013] 2 AC 337, where the argument was that the corporate veil should be pierced so as to make the controllers of a company jointly and severally liable on the company's contract, the fundamental objection to the argument was that the principle was being invoked so as to create a new liability that would not otherwise exist. The objection to that argument is obvious in the case of a consensual liability under a contract, where the ostensible contracting parties never intended that any one else should be party to it. But the objection would have been just as strong if the liability in question had not been consensual.

[35] I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil. Like Munby J in *Ben Hashem v Al Shayif* [2009] 1 FLR 115, I consider that if it is not necessary to pierce the corporate veil, it is not appropriate to do so, because on that footing there is no public policy imperative which justifies that course. I therefore disagree with the Court of Appeal in *VTB Capital v Nutritek* [2012] 2 Lloyd's Rep 313 who suggested otherwise at para 79. For all of these reasons, the principle has been recognised far more often than it has been applied. But the recognition of a small residual category of cases where the abuse of the corporate veil to evade or frustrate the law can be addressed only by disregarding the legal personality of the company is, I believe, consistent with authority and with long-standing principles of legal policy."

- [12] This Court has applied the principles in **Prest** on a few occasions, including its decisions in **Sergey Taruta v JSC VTB Bank**² and **Broad Idea International Limited v Convoy Collateral Limited**.³ It must be stated straight away that the principles emerging from the judgment of Lord Sumption are stated at paragraph [35] where he concludes that: (1) there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control; and (2) the court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality.
- [13] It does not seem that the decision in **Prest** was drawn to the attention of the learned trial judge. Her summary at paragraph [20] of the written judgment of the circumstances in which the corporate veil may be pierced cannot be regarded as correct in law in light of the decision in **Prest**. There was no evidence in the court below to support a finding for the corporate veil to be pierced. The learned trial judge found at paragraph [21] that CLICO (TT) had not: (1) abused the corporate form; and (2) engaged in any illegality, fraud or improper conduct. It cannot be said that CLICO (TT) is under an existing legal obligation or liability or subject to an existing legal restriction which it deliberately evaded or whose enforcement it deliberately frustrated by interposing a company, the first appellant, under its control.
- [14] The learned trial judge was wrong to find that the circumstances were such that the court should pierce the corporate veil, because none of these purposes were found to exist on the facts before her.

² BVIHCP2021/0002; BVIHCP2021/0008; BVIHCP2021/0012 (delivered 2nd June 2021, unreported).

³ BVIHCP2019/0026 (delivered 29th May 2020, unreported).

Beneficial Ownership

- [15] Notwithstanding this finding, at paragraph [22] of the written judgment the learned trial judge went on to find that the appellant was the beneficial owner of the Land. In her judgment, the learned judge indicated that it appeared to her that if in all the circumstances the judicial managers, Mr. Toppin and Mr. Thornhill, held the view that the Land is the property of the first appellant, ‘albeit at this stage, **the beneficial owner**, [she] could hold no less’ (emphasis added). The learned trial judge was seemingly saying that since the previous judicial managers were of the view that the Land belonged to the first appellant, she could not demur from the view so held by them.
- [16] At paragraph [23] the learned trial judge stated that, based on the evidence before her, she did not see why she should not lift the corporate veil under the instances of (b) and (c) ‘to find that CLICO is **the beneficial and true owner** of Parcel 153’ (emphasis added). The learned trial judge then immediately declared that she found the first appellant ‘to be **the beneficial and true owner** of [the Land]’ (emphasis added). It must be noted that a finding of beneficial ownership could not without more lead to a lifting of the corporate veil to facilitate enforcement of liability. The decision in **Prest** makes clear that piercing the veil of incorporation can only occur in limited circumstances and only to prevent the abuse of corporate legal personality. It is only if there was evidence that CLICO (TT) was abusing the corporate legal personality would the learned trial judge have been justified in piercing the veil of incorporation.
- [17] There is nothing on the facts before her that would lead the learned trial judge to find that the first appellant was the beneficial owner of the Land. In **Prest**, Lord Sumption stated that:
- “**37** From his review of these authorities he drew out the following principles. (a) Ownership and control were not in themselves sufficient to pierce the corporate veil. (b) Even where there was no unconnected third party interest the veil could not be pierced only because it is necessary in the interests of justice. (c) The veil can only be pierced if there is impropriety. (d) The impropriety must be linked to the use of the company structure to avoid or conceal liability. (e) In order to pierce the veil, both control by the wrongdoer

and impropriety must be demonstrated. (f) A company may be a façade even though originally incorporated without deceptive intent.”

- [18] Even if there was evidence on which to find that beneficial ownership was proved, that was not sufficient to pierce the corporate veil. The learned trial judge also had to find that there was impropriety on the part of CLICO (TT) in that it used the corporate group structure to avoid or conceal liability. As noted above, the learned trial judge at paragraph [21] accepted that there was no evidence that CLICO (TT) had abused the corporate form or had engaged in any illegality, fraud or improper conduct.
- [19] In **Prest**, the UKSC had to determine whether the assets of the defendant companies might be available to satisfy a lump sum order against the husband on a divorce on, among others, the following bases: (1) that exceptionally the court can disregard the corporate veil in order to give effective relief; and (2) the defendant companies might be regarded as holding the properties on trust for the husband, not by virtue of his status as their sole shareholder and controller, but in the particular circumstances of this case. Lord Sumption held at paragraph [36] that the trial judge was correct in finding that he could not pierce the corporate veil under the general law without some relevant impropriety and declined to find that there was any.
- [20] Lord Sumption then proceeded to determine whether the defendant companies might be regarded as holding the properties on trust for the husband. Lord Sumption, having rejected the argument concerning piercing the corporate veil, explained at paragraph [43] that the only basis on which the companies can be ordered to convey the seven disputed properties to the wife is that they belong beneficially to the husband, by virtue of the particular circumstances in which the properties came to be vested in them. At paragraphs [46] to [51], he examined the facts as found by the trial judge concerning the acquisition of the properties in some detail and concluded that none of the properties were beneficially owned by the husband. This type of enquiry, Lord Sumption explained, was a ‘highly fact-specific issue’.

[21] The statements and conclusions of the learned trial judge that the first appellant was the beneficial owner was arrived at without applying, as Lord Sumption stated at paragraph [52] of **Prest**, ordinary principles and the presumption of equity especially those relating to gifts and resulting trusts. There was no explanation of the nature of the trust that was created such that the first appellant would become the beneficial owner of the Land. I agree with the submission of the appellants that the principles which can be distilled from the foregoing authorities are as follows: (1) the onus was on the respondents to satisfy the court that the first appellant has a beneficial interest in the Land; and (2) the court was required to consider the parties' shared intentions and the surrounding circumstances before, during and subsequent to the acquisition of the Land in order to determine whether the first appellant was in fact the beneficial owner of the Land. The respondents submit that the beneficial interest in the Land belonged to the first appellant because it was the evidence of Mr. Toppin during the oral examination that before judicial management commenced: (1) the Land should have been transferred into the first appellant's name; (2) the transfer was not completed due to the relevant parties' failure to act; and (3) the first appellant managed the Land as if it was its own. In the respondents' view, another factor to that conclusion was that the Land was identified as an asset and 'investment property' of the first appellant in its Statement of Financial Condition presented during Mr. Toppin's oral examination.

[22] The appellants submit that the learned trial judge came to the conclusion concerning the beneficial interest on the basis of the statement by the judicial manager that the first appellant managed all operations including the property as if it was its own and that the property could not be transferred because the legal owner was under judicial management and any transfer would require the approval of the Superintendent of Insurance which had not been obtained. It cannot be said that the circumstances identified by the learned trial judge amounted to a resulting trust. More importantly, the judgment does not set out any of the elements necessary to establish any trust, does not consider or assess the elements of resulting or constructive trust and it is

difficult to see how the learned trial judge could have arrived at her conclusion on beneficial ownership given the very limited evidence that was before her.

[23] The learned trial judge did not identify any evidence that CLICO (TT) failed to transfer the property to the first appellant or to declare a trust that had failed, to make clear who is to take the beneficial interest in the property. Additionally, the learned trial judge did not identify any evidence that the first appellant contributed to the purchase price of the Land such that it acquired an equitable interest in the Land on resulting trust in proportion to the size of its contribution. The learned trial judge also did not identify any evidence such that a constructive trust would arise by operation of law.

[24] I agree with the submission of the appellants that there was no evidence before the learned trial judge regarding the circumstances surrounding the acquisition of the Land, and whether it was the intention of the parties that the Land was to be held on trust for the benefit of the first appellant. In my view, the evidence of Mr. Toppin was not sufficient to establish that the first appellant was the beneficial owner of the Land.

[25] Based on these findings, it is not necessary to consider whether the learned trial judge was entitled to make the order for the enforcement of a claim against the first appellant in circumstances where it was under judicial management.

Disposition

[26] Accordingly, I would allow the appeal against the decision of the trial judge and set aside her order made at paragraph [26] of the written judgment. I would order that the appellants shall have their costs to be paid by the respondents to be assessed if not agreed within 21 days of the date of this order.

[27] I am grateful for the assistance provided by learned counsel.

I concur.

Margaret Price Findlay
Justice of Appeal

I concur.

Vicki Ann Ellis
Justice of Appeal

By the Court

Chief Registrar