

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

SAINT LUCIA

SLUHCVAP2021/0010

BETWEEN:

**[1] NATIONAL CONTRACTORS LIMITED
[2] DAVE BORIEL (AS ADMINISTRATOR OF
THE ESTATE OF THE LATE THOMAS BORIEL)
[3] DAVE BORIEL**

Appellants

and

RAYMOND BORIEL

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mde. Gertel Thom
The Hon. Mr. Paul Webster

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mrs. Kimberley Roheman for the Appellants
Mr. Gerard R. Williams for the Respondent

2022: June 8;
2023: March 24.

Civil appeal – Appeal against dismissal of application for summary judgment – Summary judgment – Whether master erred in failing to grant the appellants’ application for summary judgment – Whether summary judgment available on the basis of prescription – Prescription – Whether the respondent’s cause/causes of action is/are prescribed – Equitable remedies – Specific performance – Declaratory relief – Whether equitable remedies are prescriptible – Difference between limitation of actions and prescription under the Civil Code of Saint Lucia

Mr. Raymond Boriel ("the respondent") claims that in 1989, he entered into an agreement with the first named appellant, National Contractors Limited (hereafter "the company") for the sale to him of 310,000 one-dollar shares in the company. He averred that, although he made payments to the company (in cash and in kind) of over \$310,000.00, the company never effected a transfer of the shares to him. He further averred that the second named appellant, Mr. Thomas Boriel (now deceased) and the third named appellant, Mr. David Boreil, were the shareholders and directors of the company at the time when he entered into the contract with the company.

Following an unproductive exchange of correspondence between the respondent and the company in 1998, on 20th February 2020 the respondent instituted proceedings against the appellants seeking 8 reliefs, namely: (i) a declaration that the respondent is entitled to and purchased 310,000 - \$1.00 shares in the company and that such shares are being held on trust for him; (ii) specific performance and/or registration of his legal interest in the company, being the 310,000 - \$1.00 shares purchased in the company, in so far as the same is capable of registration or, alternatively, registration in his name of the maximum number of shares held by the company, being \$50,000.00; (iii) his appointment as a director of the company; (iv) an account of all dealings with the company for the past 30 years and copies of all minutes and relevant events; (v) payment to him of any dividends or any other benefits which he would be entitled to as shareholder and director of the company; (vi) any other order as the court deems just in the circumstances; (vii) interest; and (viii) costs.

On 28th October 2020, the appellants filed an application seeking summary judgment against the whole of the respondent's claim on the ground that the underlying causes of action for the remedies sought by the respondent were prescribed. The crux of their argument was that the claim for breach of contract is prescribed and, therefore, all underlying causes of action, equitable or otherwise, are prescribed. The respondent on the other hand contended that his claim is for equitable relief and is not founded on a cause of action for breach of contract, tort, or breach of trust. The equitable remedy that he seeks is in the form of a declaration that he is the beneficial owner of a trust, whether implied, expressed, resulting or constructive, as it relates to the issued shares in the company.

The master dismissed the application and instead gave directions for the progression of the matter to trial. He found, in essence, that most of the relief being sought was equitable relief and that the court was being asked to exercise its equitable jurisdiction for which no time is prescribed. While he acknowledged that there were obvious hurdles regarding delay and limitation, he was of the view that he ought not to treat with the case

summarily and that the issue of equitable relief should be considered by a trial court.

Being dissatisfied, the appellants appealed to this Court. Both the appellants' and the respondent's submissions before this Court mirrored their submissions in the court below. Despite the 6 grounds of appeal raised by the appellants in their notice of appeal, two main issues fell for determination: (i) whether the cause(s) of action on which the respondent relies is/are prescribed under the Civil Code of Saint Lucia; and (ii) whether equitable remedies are prescriptible under the Code.

Held: allowing the appeal and making the orders set out at paragraph 62 of the judgment, that:

1. The court may grant summary judgment on a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue. This does not mean that summary judgment will only be granted if a claimant's claim or defendant's defence is bound to fail at trial, but the claimant or defendant must have a case or defence that is more than merely arguable. From the learned master's own findings, reliefs 3, 4 and 5 of the claim arose from a breach of contract and any claim for these reliefs would be caught by prescription. The master admits that these were compelling arguments for 'striking out' that portion of the claim, but he declined to do so on the basis that a court in equity may consider granting some of these reliefs after a declaration is made. The master ought to have exercised his powers under rule 15.2 of the Civil Procedure Rules 2000 and accordingly, he erred in failing to grant summary judgment in relation to these reliefs.

Swain v Hillman [2001] 1 ALL ER 91 applied; Rule 15.2 of the **Civil Procedure Rules 2000** applied.

2. Specific performance is an equitable remedy that is available to a party to a contract to compel the defaulting party to perform his or her contractual obligations. The Court of Appeal of England and Wales has opined that there are instances where an equitable remedy can be available in circumstances where no cause of action exists at law, because there is no statutory limitation period barring claims for equitable relief. However, the Eastern Caribbean Supreme Court, certainly when sitting on cases from Saint Lucia, has not adopted and applied the English position on this issue and has instead taken the position that if a cause of action is prescribed then all remedies are extinguished. When both a right and remedy

are prescribed under the Civil Code, it matters not whether the relief being sought is equitable relief.

P & O Nedlloyd BV v Arab Metals Co and others [2007] 2 All ER (Comm) 401 distinguished; **Norman Walcott v Moses Serieux** Saint Lucia Civil Appeal No. 2 of 1975 applied; **Michele Stephenson et al v Lambert James-Soomer** SLUHCV2003/0138 and SLUHCV2003/0453 (delivered 19th April 2004, unreported) considered.

3. A claim by a party having entered into a contract with a company engaged in business for the purchase of shares in that company, payment for which would be made partly in cash and partly by the provision of heavy equipment for use in the business of the company, is a claim of a commercial nature. The alleged contract for the sale of shares in this case took place between the company, which is, or was at the material time, carrying on a business;, and the respondent, who was at the material time an individual seeking to invest in a company. The contract for the sale of shares in the company to the respondent therefore constituted a sale of movables between a trader and a non-trader and falls within the definition of commercial matters. Actions on such sales would therefore be prescribed by 6 years, in accordance with article 2121(5) of the Civil Code.

Articles 2121(4), 2121(5) and 2129 of the **Civil Code of Saint Lucia** Chapter 4:01 of the Laws of Saint Lucia applied.

4. An equitable remedy, such as declaratory relief or specific performance, may not be granted by a court in Saint Lucia arising from a contract, action on which contract is prescribed by article 2121 of the Code and extinguished by article 2129. Moreover, the effect of article 2103 is to close all doors after 30 years have elapsed since the cause of action arose. Even if any right or remedy might have survived article 2121, and might have escaped article 2129, it would be caught by article 2103 and cease to exist altogether, leaving the court with no jurisdiction to adjudicate on it once the lapse of 30 years is established. Accordingly, it is unequivocal that the respondent's claim, being grounded in contract, and having been brought some 31 years after the cause of action arose, was prescribed. It can hardly be contemplated that a claim can be sustained, and moreover have a real prospect of success, if the cause of action upon which it is based is prescribed and the remedies extinguished. Accordingly, the master erred in

determining that the rest of the respondent's claim was not prescribed because the respondent sought equitable relief only and that there is no time bar to the grant of equitable relief. It follows therefore, that he also erred in failing to enter summary judgment for the appellants.

Norman Walcott v Moses Serieux Saint Lucia Civil Appeal No. 2 of 1975 applied; **Michele Stephenson et al v Lambert James-Soomer** SLUHCV2003/0138 and SLUHCV2003/0453 (delivered 19th April 2004, unreported) considered; **Swain v Hillman** [2001] 1 ALL ER 91 applied; Articles 2103, 2121 and 2129 of the **Civil Code of Saint Lucia** Chapter 4:01 of the Laws of Saint Lucia applied.

JUDGMENT

- [1] **MICHEL JA:** This appeal challenges the decision of a master to dismiss an application by the appellants (who were the defendants in the court below) for summary judgment against the respondent (who was the claimant in the court below). The appellants sought summary judgment on the basis that the respondent's claim was prescribed under **the Civil Code of Saint Lucia**¹ (hereafter "the Civil Code" or "the Code") and therefore had no realistic prospect of success.

Background

- [2] The respondent, Mr. Raymond Boriel, claims that in 1989 he entered into a contract with the first named appellant, National Contractors Limited (hereafter "the company") for the sale to him of 310,000 one-dollar shares in the company. He averred that, although he made payments to the company (in cash and in kind) of over \$310,000.00, the company never effected a transfer of the shares to him. He averred too that Mr. Dave Boriel and Mr.

¹ Chapter 4:01 of the Laws of Saint Lucia.

Thomas Boriel (now deceased and represented by his son, Dave Boriel, as administrator of his estate) were the shareholders and directors of the company at the time when he entered into the contract with the company. After an unproductive exchange of correspondence between the respondent and the company in 1998, on 20th February 2020 the respondent instituted these proceedings against the appellants claiming the following remedies:

- (1) A declaration that the Claimant is entitled to and purchased 310,000 - \$1.00 shares in the First Named Defendant and that such shares are being held on trust for him.
- (2) Specific performance and/or registration of his legal interest in the First Named Defendant being the 310,000 - \$1.00 shares purchased in so far [as] the same is capable of registration. Alternatively, registration in his name of the maximum number of shares held by the First Named Defendant being \$50,000.00.
- (3) His appointment to the First Named Defendant as Director.
- (4) An account of all dealings with the First Named Defendant for the past 30 years and copies of all minutes and relevant events.
- (5) Payment to him of any dividends or any other benefits which he would be entitled to as shareholder and director of the First Named Defendant.

(6) Any other order as the court deems just in the circumstances.

(7) Interest on all sums awarded to the Claimant; and

(8) Costs.

[3] On 28th October 2020, the appellants filed an application seeking summary judgment against the whole of the respondent's claim on the ground that the underlying causes of action for the remedies sought by the respondent were prescribed. In a judgment dated 26th July 2021, the learned master dismissed the appellants' summary judgment application and treated the hearing as a case management conference whereby directions were given for the progression of the matter to trial.

The judgment

[4] In considering the application for summary judgment, the learned master noted that '[i]f the Defendants are correct in contending that all the causes of actions alleged arose on this sale, then the Claimant's claim will fail.'² The learned master then went on to acknowledge that reliefs 3, 4 and 5³ all arose from a breach of contract and that '[t]he cause of action to obtain these reliefs arose in 1989 when the Claimant says the contract was completed.'⁴ The learned master went on to say that – '[i]n this regard, any claim for these relief[s] would be caught by prescription'. However, the learned master declined to strike out this portion of the claim, reasoning that 'a court of equity may consider granting some of

² Paragraph 3 of the judgment of the master.

³ For the purposes of this judgment, each relief will be referred to using the corresponding number as they appear in the list in paragraph 2.

⁴ Paragraph 27 of the judgment of the master.

these equitable reliefs from a date in the future after a declaration is made, if one is eventually made’.

- [5] In relation to reliefs 1 and 2 for a declaration of trust and specific performance, the learned master found that ‘these reliefs were grounded purely in equity ’ and that the court was being asked to exercise its equitable jurisdiction for which no time is prescribed. He suggested that the court’s equitable jurisdiction was invoked by the respondent’s claim of an ‘equitable ownership’ of a part of the company, with the reliefs sought being a declaration of his entitlement to the alleged shares purchased and that those alleged purchased shares were being held on trust for him. The learned master went on to say:

“On the issue of equitable ownership of a portion of the company this would have had to be the result of a contract. Evidence would have to be led and findings of facts made by the Court on this issue.”⁵

The learned master then held that:

“...the Claimant’s claim for declaratory relief on the issue of the equitable ownership of a part of the First Defendant Company however weak the same may be is not fanciful. Whilst there are obvious hurdles reading (sic) delay and limitation, as the Court’s equitable jurisdiction is being invoked there is sufficient reason to pause and not treat with the case summarily. I am of the respectful view that the issue of the equitable relief ought to be first considered by a trial Court. This Court will also at that stage be able to deal with the other relief claimed.”⁶

The appeal

- [6] The appellants sought and obtained leave to appeal and then filed a notice of appeal on 18th October 2021 appealing the judgment of the learned master. In their notice of appeal, the appellants set out

⁵ Paragraph 38 of the judgment of the master.

⁶ Paragraph 40 of the judgment of the master.

6 grounds on which they challenge the learned master's judgment dismissing their application for summary judgment. However, from the oral and written submissions of counsel, it appears that these 6 grounds can be condensed into 2 main issues for determination on this appeal: (i) whether the cause(s) of action on which the respondent relies is/are prescribed; and (ii) whether equitable remedies are prescriptible.

Appellants' submissions

- [7] The appellants' submissions on appeal essentially mirror their arguments before the court below in support of their application for summary judgment. The crux of their submissions is that the claim for breach of contract is prescribed and, therefore, all underlying causes of action are prescribed. The appellants contend that the respondent's claim concerns an alleged sale of shares by the company to the respondent that took place on 26th May 1989. This alleged sale of shares is a contract for sale, which is 'a commercial transaction'. The appellants say that an action of a commercial nature, such as the contract for the sale of shares in issue in the case at bar, is prescribed by 6 years by virtue of article 2121 of the Civil Code, and the remedies are extinguished by virtue of article 2129 of the Code. In any event, the appellants submit that the prescription period at its highest would be 30 years under article 2103 of the Civil Code, and more than 30 years had elapsed between the time when the claim arose in 1989 and when the proceedings were instituted in 2020.
- [8] The appellants also submit that the reliefs claimed by the respondent are only available if breach of contract is established by the respondent. In relation to relief 1, which seeks a declaration that: (i) the respondent is entitled to and purchased 310,000 one-dollar

shares in the first named appellant, and (ii) such shares are being held on trust for the respondent, the appellants say that the remedy must fail as the cause of action, breach of contract, is prescribed. Additionally, the appellants submit that in order for the respondent to obtain a declaration of trust, he must first establish that there was a contract for the sale of shares and that this contract was breached. Counsel for the appellants invited this Court to find that the time for bringing an action for breach of contract has long passed. This, counsel submits, was acknowledged by the learned master at paragraph 23 of his judgment and as such the learned master was in error when he declined to grant summary judgment.

[9] The appellants also take issue with the dicta of the learned master when he said that a declaration is a relief of an equitable nature and as such is not prescribed. On this point, counsel for the appellants referred this Court to the case of **Woodeson and another v Credit Suisse (UK) Ltd**⁷ as an authority on the point that although a declaration is not in itself a cause of action, and there is no period within which it must be sought, a court would not make a declaratory judgment of a right which could not be enforced because a claim to enforce it is statute barred.

[10] Similarly, in relation to relief 2 for specific performance, the appellants contend that notwithstanding that it is an equitable remedy, it is a remedy that is available when there is a breach of contract. Accordingly, they submit that the master fell into error when he found that the respondent's claim fell into the realm of equitable relief for which there was no applicable period during which a cause of action would need to arise.

⁷ [2018] EWCA Civ 1103.

[11] The appellants also say that the learned master clearly erred when he refused to grant summary judgment in relation to reliefs 3, 4 and 5 (which are referred to in the master's judgment as 'c, d and e'). The reliefs which were sought in 3, 4 and 5 are for the appointment of the respondent as a director of the company, an account of all dealings for the past 30 years and copies of any minutes and relevant documents, and payment of dividends and other benefits due to the respondent as a shareholder and director of the company. The appellants contend that these reliefs are based on a statute-barred contract; that the learned master accepted that these reliefs are premised on there having been a contract for the sale and purchase of shares; and that action on that contract would have been prescribed by the time that the proceedings were instituted by the respondent. The appellants also submitted that the learned master made contradictory findings in his judgment, when at paragraph 38 he spoke about evidence having to be led and findings of fact made by the court on the respondent's 'equitable ownership' of a portion of the company, but at paragraph 23 he said that the time for obtaining this remedy for breach of the alleged contract had passed, because the time for bringing the action was prescribed.

[12] Based on the above submissions, the appellants invite this Court to set aside the order of the learned master dismissing their application for summary judgment and to enter summary judgment for the appellants, with costs.

Respondent's submissions

[13] The respondent in response submitted that the appellants have wholly misconceived his claim. He says that his claim is for equitable relief and is not founded on a cause of action for breach

of contract, tort, or breach of trust. The equitable remedy that he seeks is in the form of a declaration that he is the beneficial owner of a trust, whether implied, expressed, resulting or constructive, as it relates to the issued shares in the company.

[14] Counsel for the respondent in his oral submissions conceded that reliefs 3,4 and 5 are reliefs based in contract which are prescribed and that the respondent cannot pursue an action in contract. However, learned counsel argued that the master made a distinction between those reliefs and reliefs 1 and 2 and that, unlike reliefs 3,4 and 5, reliefs 1 and 2 are equitable reliefs. The prayer for a declaration and specific performance, counsel argued, are remedies based strictly in equity. The respondent also submitted that reliefs 1 and 2 are interconnected because the respondent cannot seek specific performance if the court has not made a declaration. The respondent submitted further that there is no need to establish a cause of action when seeking a declaration, and that he only had the burden of establishing the factual basis upon which he claims that he is entitled to a declaration.

[15] The respondent relied on article 916A of the Civil Code which imports into St. Lucia the equitable principles of trust as they apply in England. Accordingly, the respondent submitted that a declaration of a trust can be sought no matter how long ago the cause of action arose, because it is an equitable relief which is not subject to time bars. In relation to article 2103 of the Civil Code, the respondent submitted that this article would have been applicable if breach of trust was being argued as a cause of action. The respondent reiterated that he does not rely on breach of trust as a cause of action in this case and, since he is only seeking a

declaration, there is no need for the Court to concern itself about deciding whether there was a breach of trust.

[16] The respondent accordingly asks this Court to dismiss the appeal.

Discussion

[17] Perhaps the best starting point is the relevant parts of the Civil Code which deal with prescription. Article 2047 defines prescription as:

“...a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law.

...

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his or her claim within the time fixed by law.”

Article 2121 states:

“The following are prescribed by 6 years:

...

4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; bank notes, however, being excepted from this prescription.

5. Upon sales of movable effects between non-traders, or between traders and non-traders, these latter sales being in all cases held to be commercial matters.”

Article 2129:

“In all the cases mentioned in articles ...2121..., the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired...”

Article 2103:

“All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.”

[18] It is the appellants' case that the cause of action in the respondent's claim lies in contract, particularly breach of contract, and falls within the provisions of articles 2121 and 2129 which attract a prescription period of 6 years, after which both the right and the remedy are extinguished. Alternatively, the appellants submit, the claim is caught by article 2103 which prescribes all things, rights or actions, not otherwise regulated by law, after 30 years.

[19] The respondent, on the other hand, asserts that his claim is grounded in equity, seeking a declaration and specific performance for which there is no applicable prescription period.

Reliefs 3, 4 and 5

[20] In his judgment, the learned master dealt first with reliefs 3, 4 and 5 before addressing reliefs 1 and 2. I will do likewise.

[21] Relief 3 seeks the respondent's appointment as a director of the company, relief 4 seeks an account of all dealings for the past 30 years and copies of all minutes and relevant events, and relief 5 seeks payment of dividends to the respondent and any other benefit that he would be entitled to as shareholder and director. At paragraph 27 of his judgment, the learned master said this:

“These relief all arise from a breach of contract. Upon successful completion of the contract the [respondent] would have been entitled to these relief. The cause of action to obtain these relief arose in 1989 when the [respondent] says the contract was completed. In this regard, any claim for these relief would be caught by prescription.”

However, the learned master continued:

“Whilst this relief may be barred in a common law action, a court of equity may consider granting some of these reliefs from a date in the future after a declaration is made, if one is eventually made... In this regard, whilst there are very compelling arguments to strike out this portion of the claim, to the extent that it may be more convenient to deal with the claim as a whole, I will not do so at this stage.”

At paragraph 41 the learned master said:

“I have already expressed strong views on the relief claimed save for the declaration and specific performance which are equitable remedies. I have not struck out the other relief as I will not wish to box in the Judge trying the matter. It is only for this reason that I decline to strike out the other portions of the claim at this stage.”

[22] The court may grant summary judgment on a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue.⁸ The master, in considering the application for summary judgment, was tasked with applying the test of whether the respondent's claim had a real prospect of success, which is determined having regard to the overriding objective of dealing with cases justly, proper allocation of the court's time and resources, and saving expense. It is well within the parameters of the court's case management powers to 'weed out' and dispose of weak claims or issues at an early stage of the proceedings.

[23] The authors of **Blackstone's Civil Practice 2017**⁹ wrote, on summary judgment, that it is 'used where a purported defence can be shown to have no real prospect of success and there is no other compelling reason why the case should be disposed of at trial'.

⁸ Rule 15.2 of the Civil Procedure Rules 2000.

⁹ Stuart Sime and Dereck French (Oxford 2017), chapter 34.

They also opine that summary judgment ‘should only be entered where on the untested written evidence and whatever further evidence may be found in the future, there is no real prospect of success’.¹⁰

[24] In the seminal and oft cited case of **Swain v Hillman**,¹¹ Lord Wolfe MR said:

“[t]he words ‘no real prospect of succeeding’ do not need any amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success... they direct the court to the need to see whether there is a ‘realistic’ as opposed to a ‘fanciful’ prospect of success”.

This does not mean that summary judgment will only be granted if a claimant’s claim or defendant’s defence is bound to fail at trial,¹² but the claimant or defendant must have a case or defence that is more than merely arguable.

[25] On questions of law, Professor Gilbert Kodilinye and Vanessa Kodilinye¹³ put it this way:

“Where questions of law are raised on a summary judgment application, the position would appear to be as follows:

- (a) if the claimant’s case or the defendant’s defence is based solely on a point of law and the court can see at once that the point is misconceived, summary judgment may be given;
- (b) if at first sight the point appears to be arguable, but with a relatively short argument is shown to be unsustainable, summary judgment may be given; or
- (c) if the point of law relied upon by either party raises difficult questions of law which call for detailed

¹⁰ Ibid, page 585.

¹¹ [2001] 1 ALL ER 91.

¹² See Korea National Insurance Corporation v Allianz Global Corporate and Specialty AG [2007] EWCA Civ 1066.

¹³ Commonwealth Caribbean Civil Procedure (4th Edn.), page 80.

argument and mature consideration, summary judgment is inappropriate.”

- [26] From the learned master’s own findings in his written judgment, reliefs 3, 4 and 5 arise from breach of contract and any claim for these reliefs would be caught by prescription. The master admits that these were compelling arguments for ‘striking out’ that portion of the claim, but he declined to do so on the bases that a ‘court in equity may consider granting some of these reliefs from a date in the future after a declaration is made, if one is made’ and not wishing ‘to box in the judge trying the matter’.
- [27] Having considered the principles applicable to summary judgment alongside the reasons proffered by the learned master for refusing to grant summary judgment on this portion of the respondent’s claim, I find great difficulty in reconciling the two. It is difficult to conceive that a court may consider granting contractual reliefs for a cause of action in contract which is prescribed. The learned master himself does not describe these reliefs as falling within the realm of equitable reliefs and specifically distinguishes reliefs 3, 4 and 5 from the ‘equitable remedies’ of a declaration and specific performance. The master ought, therefore, to have exercised his powers under rule 15.2 of the **Civil Procedure Rules 2000** and granted summary judgment in relation to these reliefs.
- [28] On this portion of the application, I find that the learned master erred in refusing to grant summary judgment. In any event, the respondent has conceded in his oral submissions before this Court that reliefs 3,4 and 5 are based in contract and are prescribed.
- [29] I pause to note that the master in his judgment did not say which of the articles of the Civil Code is engaged or specify the prescription

period applicable to an action for breach of contract, but he did however find that these reliefs were prescribed. I will return to this issue later in this judgment.

Reliefs 1 and 2

- [30] Having determined that reliefs 3, 4 and 5 are based on a cause of action founded in contract, which is consistent with both the submissions of counsel and the findings of the learned master, I will now address reliefs 1 and 2 which are really the subject matter of the contest between the parties to this appeal.
- [31] The appellants assert that the respondent's claim is based in contract, while the respondent asserts that his claim is based in equity. The respondent's claim form does not expressly state the cause of action in which he brings his claim. Instead, the claim form simply states that the respondent claims against the appellants for 'the following remedies', and then proceeds to list the remedies reproduced at paragraph 2 above. This Court must therefore conduct the exercise of determining the cause or causes of action engaged in this case.
- [32] The statement of claim avers that by letter dated 26th May 1989, the company offered to sell the respondent 310,000 one-dollar shares payable by the input of 'plant heavy equipment' in addition to cash deposits. The respondent avers that, by letter of even date, he accepted the offer and in performance of this agreement, he conveyed to the company 'the plant equipment' and cash deposits. By letter dated 2nd June 1989, the company communicated to the respondent that, at 'a General Meeting of the Board of Directors' on 2nd June 1989, he was appointed a director of the company following his input to the value of \$345,774.00 in the company. The

respondent also avers that his shareholding and directorship in the company were never registered and that he acted to his detriment because he believed that he had a legal and beneficial interest in the company.¹⁴

[33] It appears from the pleadings (in the statement of claim) of the elements of offer, acceptance and consideration¹⁵ necessary for the creation of a valid contract, that the respondent intended his claim to be based on an action in contract. All of the reliefs which the respondent sought derive from the conclusion of the alleged contract for sale in May 1989 and the failure of the appellants to perform their end of the bargain by transferring the shares to the respondent and registering him as a director of the company and the holder of 310,000 one-dollar shares.

[34] The respondent's prayer for declaratory relief is twofold. Firstly, he seeks a declaration that he is entitled to and purchased 310,000 one-dollar shares in the company and, secondly, that these shares are being held on trust for him. In relation to the former, a declaration as to the respondent's entitlement to the shares would be dependent on the court finding that there was a valid contract of sale. As to the latter, there are instances where the distinction between a contract and a trust may be difficult to draw or where there are facts that give rise to both; contracts and trusts are not mutually exclusive.¹⁶ However, the appellants and the respondent have made it clear to this Court that neither of them rely on breach of trust as a cause of action. So, the respondent is not alleging a breach of trust by the appellants, but he is alleging that the

¹⁴ Bundle 3- Statement of Claim, page 9 paragraph 7 and page 10 paragraph 13.

¹⁵ The term consideration used here and otherwise in the judgment, where the context suggests, adopts the meaning it would have under the English law of contract not Article 917 of the Civil Code.

¹⁶ Hanbury & Martin. Modern Equity 15th Edn. page 48.

appellants did not carry out their side of the bargain by transferring the shares to him, registering him as the holder of 310,000 one-dollar shares in the company and appointing him as a director of the company. The respondent's claim is therefore founded in contract, though the relief which he seeks includes a declaration that he purchased the shares and is entitled to them and that the shares are being held on trust for him. This is relief 1.

[35] As it relates to relief 2, the learned master in his judgment stated that 'no quarrel is made with the general position of the law as stated on specific performance. The Claimant simply says his claim is not grounded in specific performance'¹⁷. This is a little difficult to understand, because the respondent's case in the court below was based on his entitlement to equitable relief (like specific performance) notwithstanding that the cause of action at law is prescribed. The consequence of the respondent abandoning the claim to specific performance is that relief 2 (like relief 3, 4 and 5) is not in play, leaving the respondent with an argument based solely on whether a court can grant a declaration of a party's entitlement to a benefit under a contract when the cause of action in contract is prescribed. I will, out of an abundance of caution, and for the sake of completeness, address the issue (if only briefly) of whether the remedy of specific performance was available to the respondent on the facts of the case at bar.

[36] Specific performance is an equitable remedy that is available to a party to a contract to compel the defaulting party to perform his or her contractual obligations. In **P & O Nedlloyd BV v Arab Metals Co and others**¹⁸ it was held that there are instances where specific

¹⁷ Paragraph 36 of the judgement of the master.

¹⁸ [2007] 2 All ER (Comm) 401.

performance can be available in circumstances where no cause of action exists at law so that the factual circumstances giving rise to the claim did not need to be the same as those which would support a claim for breach of contract. A claim such as this would be regarded as a claim in equity.

[37] It is important to consider the context in which the remedy of specific performance was sought in the present case. The respondent made it clear in his submissions that the remedy of specific performance is dependent on whether a declaration is made. His claim was not brought as a claim exclusively for an equitable remedy separate from his claim in contract. In these circumstances, all the reliefs sought by the respondent emanate from the alleged contract of sale of shares and the underlying cause of action is breach of contract.

[38] The learned master in various parts of his judgment alluded to a similar conclusion. At paragraph 3 he said:

“... [i]f the [appellants] are correct in contending that all the causes of actions alleged arose on this sale, then the [respondent’s] claim will fail.”

At paragraph 23 he says:

“The closing of the contract for the sale would have entitled the [respondent] to be registered as a shareholder. Again, this is the substantive relief now claimed. Surely the time for obtaining this remedy for breach of the alleged contract has now passed, the time for bringing that action being prescribed.”

Paragraph 38:

“On the issue of equitable ownership of a portion of the company this would have had to be the result of a contract.”

Applicable prescriptive period

[39] The appellants submit that any action by the respondent against them in respect of the alleged contract for the sale of shares in the company to the respondent is prescribed by 6 years under article 2121 of the Civil Code. Article 2121 consists of 7 sub-articles, one of which speaks of claims of “a commercial nature” and another speaks of cases held to be “commercial matters”. The appellants have not referred the Court to the specific sub-article upon which they rely, but I am of the view that either or both of sub-articles (4) and (5) apply to the claim in this case.

[40] Article 2121 (4) of the Code is quoted in full in paragraph 17 above, but the material portion of it in relation to this case reads:

“The following actions are prescribed by 6 years: ... upon any claim of a commercial nature, reckoning from maturity”

[41] Although I have not found any direct authority defining a ‘claim of a commercial nature’, it would be difficult to come to any other conclusion than that a claim by a party of having entered into a contract with a company engaged in business for the purchase of shares in that company, payment for which would be made partly in cash and partly by the provision of heavy equipment for use in the business of the company, is a claim of a commercial nature. Action on such a claim would therefore be prescribed by 6 years.

[42] Article 2121 (5) of the Code is also quoted in full in paragraph 17 above, but it bears repeating at this juncture:

“The following actions are prescribed by 6 years: ... Upon sales of movable effects between non-traders, or between traders and non-traders, these latter sales being in all cases held to be commercial matters”

[43] With regards to this sub-article, there is direct authority from the Civil Code itself establishing that the sale of shares in a company comes within the definition of “commercial matters”. Article 344 of the Code states:

“Those immovables are movable by determination of law, of which the law for certain purposes authorises the conversion into movables: so are all obligations, although secured by mortgage, and actions respecting movable effects, including debts created or guaranteed by Saint Lucia or by corporations, also all shares or interests in financial, commercial or manufacturing companies, although such companies, for the purposes of their business, should own immovables”

[44] By virtue of article 344 of the Civil Code, when read in conjunction with article 2121(5) – “all shares or interests in financial, commercial or manufacturing companies” are movable by determination of law, so that sales of shares between traders and non-traders are held to be commercial matters.

[45] A trader, it is to be noted, is defined in the **Commercial Code**¹⁹ as including ‘every person whose normal occupation consists in carrying on some business, other than agriculture, with a view of profit’. The alleged contract for the sale of shares in this case took place between the company, which is, or was at the material time, carrying on a business, and the respondent, who was at the material time an individual seeking to invest in a company. The contract therefore for the sale of shares in the company to the respondent constituted a sale of movables between a trader and a non-trader and falls within the definition of commercial matters. Actions on such sales would therefore be prescribed by 6 years, in accordance with article 2121 (5) of the Civil Code.

¹⁹ Chapter 244 of the Revised Laws of Saint Lucia.

[46] The effect of prescription of actions in accordance with articles 2121(4) and (5) of the Code is that – by virtue of article 2129 – ‘the debt’ (as defined in article 1 (11) of the Code) is absolutely extinguished and no action can be maintained after 6 years have elapsed since the cause of action arose.

[47] In any event, if the respondent’s claim does not come within the meaning of ‘any claim of a commercial nature’ under article 2121(4) or of ‘cases held to be commercial matters’ under article 2121(5), the claim would still be caught by article 2103 of the Civil Code. Article 2103 acts as the ‘catch all’ provision for all things, rights and actions not specifically provided for in the Civil Code or other law. The article is quoted in full in paragraph 17 above, but I will repeat here the relevant portion of the article:

“All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years”

The alleged contract for the sale of shares in this case was concluded in 1989; the respondent filed his claim in 2020; there had been no previous judicial demand prior to the institution of the proceedings in 2020 so as to interrupt prescription; there was also no acknowledgment by the appellants of any right of the respondent to the benefit claimed and no renunciation by the appellants of any prescriptive rights. The lapse of 31 years between the making of the alleged contract and the institution of proceedings to enforce it would therefore have effectively taken away the jurisdiction of the court to adjudicate any claim or action which the respondent may have had against the appellants arising from the 1989 contract.

Are equitable remedies prescriptible?

- [48] Counsel for the respondent submitted that his claim is based in equity by virtue of him seeking declaratory relief, which he says is an equitable remedy and therefore not subject to any time bar. The learned master agreed with the respondent and found that the court was being asked to exercise its equitable jurisdiction, the exercise of which was not prescribed.
- [49] This finding by the learned master raises the question of whether equitable remedies are prescriptible.
- [50] In the case of **P & O Nedlloyd**²⁰, the Court of Appeal of England and Wales opined that there are instances where an equitable remedy can be available in circumstances where no cause of action exists at law, because there is no statutory limitation period barring claims for equitable relief. In that case, the Court of Appeal held that a claim for specific performance did not attract the same time limit as a claim in contract at law and that specific performance of a contract could be pursued even after the limitation period for an action in contract had passed. Where, therefore, a limitation period of 6 years in an action in simple contract had passed, a claim for specific performance could still be pursued.
- [51] The Eastern Caribbean Supreme Court, certainly when sitting on cases from Saint Lucia, has not adopted and applied the English position on this issue and has instead taken the position that if a cause of action is prescribed then all remedies are extinguished.

²⁰ Supra note 18.

[52] This was the position taken by this Court in the case of **Norman Walcott v Moses Serieux**²¹ where Peterkin JA referred to the English case of **Rodriguez v Parker**²² and stated that:

“a close study of the ratio decidendi in the Rodriguez case discloses that Neild J held that the Limitation Acts in England can properly be regarded as dealing with practice and procedure rather than conferring substantial rights.”

Peterkin JA went on to say that:

“Indeed at page 363 of his judgment we find these words: ‘the benefit which a defendant derives from the Statute of Limitations is not I think properly described as a substantive benefit but really merely as a right to plead a defence if he chooses to, so that the plaintiff is barred from prosecuting his claim’.

Peterkin JA concluded his judgment as follows:

“In article 2129 quoted above, both the right and the remedy are extinguished, and therefore there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter.”

[53] In **Michele Stephenson et al v Lambert James-Soomer**²³, Edwards J (as she then was) - sitting then as a judge of the High Court in Saint Lucia – also referred to and quoted from the judgment of Neild J in **Rodriguez v Parker**²⁴ on the nature of limitation under the English Statute of Limitation, as follows:

“Under the English Rules of Limitation, the plaintiff’s right is not extinguished where the statutory period expires before the action is brought. He is merely deprived of his remedies of action and set off. He is free to pursue other methods other than legal action to satisfy the debt.”

She also quoted the following from Neild J:

²¹ Saint Lucia Civil Appeal No. 2 of 1975.

²² [1966] 2 All ER. 349.

²³ SLUHCV2003/0138 and SLUHCV2003/0453 (delivered 19th April 2004, unreported).

²⁴ Supra at 360.

“Where a Foreign Rule of Limitation extinguishes both the right and the remedy, it is not regarded as a matter of procedure in the English Court. The creditor can take no further action, legal or otherwise to satisfy an extinguished debt.”

[54] Having quoted Neild J (as per paragraph 52 above) Edwards J opined that:

“It is obvious that Article 2129 of the Civil Code exemplifies that ‘foreign rule of limitation’ which extinguishes both the right and remedy.

Edwards J concluded that:

“The Court of Appeal in *Walcott v Serieux* held that under Article 2129, there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the Judge has no discretion”.

[55] From this review of the provisions of the Civil Code addressing prescription under the laws of Saint Lucia, the references to the English Statute of Limitation and Rules of Limitation, and the examination of the cases – both English and Saint Lucian – I come to the following conclusions:

(1) There is a material difference between the principles of limitation of actions in England and prescription of actions in St. Lucia.

(2) Statutory limitation in England limits the pursuit of a cause of action (for instance a breach of contract) but not necessarily the remedy (say a declaration or specific performance), so that it is possible for a party to be barred from pursuing an action for breach of contract but yet be able to seek and obtain a remedy arising from the breached contract.

- (3) Prescription in St. Lucia operates - at least in the case of all rights or causes of action prescribed by virtue of several specified articles of the Code²⁵ - to extinguish both the right and the remedy arising from causes of action prescribed by the specified articles.
- (4) When both the right and the remedy are prescribed under the Civil Code, it matters not whether the relief being sought is equitable relief.
- (5) There are certain rights (which do not necessarily constitute causes of action) that are subject to prescription under the Civil Code, but which may yet be subject to some form of action after the period for prescription has elapsed.
- (6) After 30 years have elapsed since any 'things, rights, and actions' arose (which must include both rights and remedies and both legal and equitable rights) the jurisdiction of the court to adjudicate claims brought before it, except claims by and against the Crown, is effectively taken away by article 2103 of the Civil Code.

[56] On the facts of the case at bar, the cause of action is in contract, more specifically, a contract that gives rise to a claim of a commercial nature and/or a claim involving commercial matters. The cause of action arose in 1989, when a contract was allegedly entered into between the respondent and the company. The claim is prescribed by article 2121 (4) and/or 2121 (5) of the Civil Code, 6 years having elapsed before proceedings were instituted on the

²⁵ See article 2129 of the Civil Code.

contract in 2020. By virtue of article 2129 of the Code, the debt (meaning – ‘anything due under an obligation’) is absolutely extinguished, and no action can be maintained in respect of it after the period for prescription has expired.

- [57] An equitable remedy, such as declaratory relief or specific performance, may not be granted by a court in St. Lucia arising from a contract, action on which contract is prescribed by article 2121 of the Code and extinguished by article 2129. Moreover, the effect of article 2103 is to close all doors after 30 years have elapsed since the cause of action arose. So that even if any right or remedy might have survived article 2121, and might have escaped article 2129, it would be caught by article 2103 and cease to exist altogether, leaving the court with no jurisdiction to adjudicate on it once the lapse of 30 years is established.

Whether the master erred in refusing summary judgment

- [58] Considering all of the above, it is unequivocal that the respondent’s claim, being grounded in contract, was prescribed. In my discussion of reliefs 3,4 and 5, I laid out the applicable test for the grant of summary judgment. The test is that of whether the claimant’s claim has a real prospect of success. It can hardly even be contemplated that a claim can be sustained, and moreover have a real prospect of success, if the cause of action upon which it is based is prescribed and the remedies extinguished. Once a cause of action is prescribed by virtue of articles 2121 and 2129 of the Civil Code, or by article 2103 of the Code, the court has no discretion in the matter. The learned master, therefore, fell into error when he found that there was no prescriptive period applicable to equitable reliefs. This error led the master into further error when he did not even grant summary judgment on the part of the respondent’s claim

which the respondent conceded and the master acknowledged had been prescribed.

Conclusion

[59] Having regard to my findings above, the master clearly erred when he failed to grant summary judgment on that part of the respondent's claim which was conceded and acknowledged as having been prescribed. He also erred when he determined that the rest of the respondent's claim was not prescribed because the respondent sought equitable relief only and that there is no time bar to the grant of equitable relief.

[60] The order of the master dismissing the appellants' application for summary judgment must therefore be set aside and the appellants be granted summary judgment on the whole of the claim instituted by the respondent against them on 20th February 2020.

[61] Having regard to rule 64.6 (1) of the **Civil Procedure Rules 2000**, the appellants having prevailed in the appeal, are entitled to their costs both here and in the court below.

[62] My order therefore is, as follows:

(1) The appeal is allowed.

(2) The order of the master dated 26th July 2021 dismissing the defendants' application for summary judgment and making no order as to costs is set aside.

(3) Summary judgment is entered for the defendants in Claim No. SLUHCV2010/0100.

(4) The case management orders made by the master in his judgment of 26th July 2021 are set aside.

(5) The respondent is ordered to pay the appellants' costs in the court below, to be assessed unless agreed by the parties within 21 days, and costs on the appeal of two thirds of the amount assessed for costs in the court below.

I concur.

Gertel Thom
Justice of Appeal

I concur.

Paul Webster
Justice of Appeal [Ag.]



By the Court

Chief Registrar