

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2019/0167

BETWEEN

JANICE DICK
LEONARD DICK

CLAIMANTS

and

ROSALINE WEEKES

DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Mr. Cecil Blazer Williams for the claimants

Mrs. Kay Bacchus-Baptiste for the defendant

2022: Apr. 26 & 28
May 5
Jul. 14 & 26
Sept. 20 & 22

Oct. 6

Dec. 13

2023: Feb. 22

JUDGMENT

INTRODUCTION

[1] **Henry, J.:** It has been said that ‘... a conflict is never about the surface issue. It’s about ones unsaid, untreated and unhealed wounds.’¹ In this case, a mother (Mrs. Janice Dick) has sued her daughter

¹ Anonymous

Ms. Rosaline Weekes, for the repayment of \$60,000.00 which she claimed she entrusted to Ms. Weekes' safekeeping. Mrs. Dick asserts that Ms. Weekes has refused to repay her.

[2] The mother and her husband Leonard Dick averred that they financed the purchase of parcel of land at Mesopotamia, on the island of Saint Vincent, which they intended to give to Ms. Weekes and her brother Ruel Weekes in equal shares. They claimed that Ms. Weekes was instructed to finalize the transfer from the seller, by liaising with the lawyer since the mother lived and worked in another island – Mustique. Mrs. Dick learnt subsequently that the property was registered in Ms. Weekes' sole name. She alleged that Ms. Weekes promised to but now refuses to convey a half share to Ruel as agreed. The Dicks contend that Ms. Weekes holds the disputed land in trust for Ruel Weekes and herself. They seek an order compelling her to complete the transfer of half of the disputed land to Ruel Weekes.

[3] Rosaline Weekes refuted those claims. She maintained that her mother gave the disputed property to her absolutely and instructed the lawyer to register it in her sole name. She has since constructed a concrete dwelling house on the disputed land and lives there. She asserted that her mother actually purchased 2 parcels of land, one of which she conveyed to Ruel Weekes. She also denied that her mother entrusted \$60,000.00 to her care. She stated that Mrs. Dick deposited \$40,000.00 into her bank account in 2014, that her mother's instructions were that \$20,000.00 was a gift to her (Weekes') children. She asserted that of the balance, \$12,000.00 was paid out to her mother in instalments from time to time and that \$8000.00 remains in the account.

ISSUES

[4] Three issues arise for consideration, namely: -

1. Whether Rosaline Weekes holds the disputed land in trust for her and Ruel Weekes in equal shares?
2. Whether Rosaline Weekes received from Janice Dick and converted to her own use the sum of \$60,000.00? and
3. To what remedies, if any, are Janice Dick and Leonard Dick entitled?

Issue 1 - Does Rosaline Weekes hold the disputed land in trust for Ruel Weekes and herself in equal shares?

[5] Mrs. Dick and Mr. Dick averred that Mr. Dick was approached by one Glenroy Samuel in 1996 who offered to sell to Mrs. Dick a parcel of land in Mesopotamia for \$24,000.00. She accepted the offer and together with Mr. Dick secured a loan from the Bank of Nova Scotia in 1996 to buy the property. She produced a copy of the Promissory Note² as proof. Mrs. Dick alleged that at the time she was employed full-time as a housekeeper on Mustique.

[6] According to her, she decided to buy the disputed land and made the decision to have the property conveyed to her daughter Rosaline Weekes and her son Ruel Weeks in equal shares. She said that she sought the assistance of Mr. Othneil Sylvester, a lawyer, to prepare the Deed. She arranged for Ms. Weekes to accompany her to see the lawyer. She testified that she asked Ms. Weekes to ensure that the transaction was completed to such effect and instructed Mr. Sylvester accordingly. She explained that Rosaline Weekes was her 'hand and foot' and she relied on her to do her business while she was in Mustique.

[7] Ms. Weekes recalled that she was about 12 or 13 years old when her mother went to Mustique to work. At that time, she was just entering form 1 at the Emmanuel High School. She testified that she began to take care of her mother's business about the age of 14 or 15 years. She accepted that her mother took her to the lawyer's office. However, she denied that her mother instructed her to have the property conveyed to her and her brother Ruel Weekes. She maintained that Mrs. Dick gave her the entire parcel of land and that it was duly registered in her name by Deed No. 430 of 1997 to effect the gift.

[8] Mrs. Dick testified that it was only when she collected the Deed from Mr. Sylvester's office on one of her trips to the mainland that she became aware that it was prepared in Ms. Weekes' sole name. She said Mr. Sylvester told her that he did not add Ruel Weekes' name because he was not yet 18 years old. On asking Rosaline Weekes why she did not contact her at the time to relay this information, Mrs. Dick claimed that her daughter replied that Mr. Sylvester told her 'to put on the

² Dated 29th June 1996.

boy name when the boy is 18'. From all accounts, Ruel Weekes was 16 years old in 1996, presumably around the time that the instructions were given to Mr. Sylvester. Mrs. Dick indicated that he was born on 3rd September 1979. In such case, he would have turned 18 on 3rd September 1997. Ruel Weekes confirmed this.

[9] Mrs. Dick explained that after collecting the Deed, she went to her friend Tina Jackson's house and recounted to her what had happened and she left the Deed with her for safe-keeping. She returned to her employment at Mustique. She stated that after Ruel Weekes turned 18 she routinely reminded Ms. Weekes to complete the transaction to have his name added to the Deed. She testified that her daughter consistently promised to do so but never did. For her part, Ms. Weekes denied having such conversations with her mother. She maintained that her mother gave the disputed land to her and she knows that she owns it because her mother told her that she bought it in her name. She was adamant that she was never told that it was bought for Ruel Weekes and her or that he owned an interest in it.

[10] Meanwhile, Mr. Dick and Ruel Weekes took the opportunity to plant crops on the disputed land. Ruel Weekes continued doing so until he went off to sail. Leonard Dick and Ruel Weekes attested as much. Ms. Weekes accepted this to be so.

[11] Part of the disputed property was occupied by a chattel house when the land was sold to Mr. and Mrs. Dick. The occupant, Bernadette Caine paid a yearly rent for the portion occupied by her house. Mrs. Dick said that she arranged for Ms. Weekes to collect the rent from Ms. Caine and directed her to use the proceeds to pay subscriptions to the Marriaqua Friendly Society for Ms. Weekes', Ruel Weekes', Shereka Weekes', Sherek Weekes' and Aldane Weekes' benefit.

[12] Ms. Caine testified that she was approached by Mrs. Dick after Mr. Samuel sold the land. Mrs. Dick told her that she had bought the land from Mr. Samuel. Mrs. Dick directed her to pay the rent to her daughter Rosaline Weekes because she worked on Mustique. Ms. Caine said that from that time she paid the rent to Ms. Weekes and did so for over 20 years until Mrs. Dick stopped her. She now pays the rent to Mrs. Dick and has done so for the past 3 years. Ms. Caine said that Rosaline

Weekes provided her with receipts for the years that the rent was paid to her. She acknowledged that the receipts were issued as if the rent was due and payable to Rosaline Weekes. However, she insisted that Rosaline Weekes did not rent her the land.

[13] At some point, Rosaline Weekes constructed a concrete dwelling house on part of the disputed land and began living there. The parties accept that this house belongs to Ms. Weekes. Sometime later, a plywood house was built on the disputed land. According to Mrs. Dick, she told Ruel Weekes that she was going to mark his spot on the land by building a house. She averred that from his earnings as a seaman, he transmitted monies to her for this purpose. It was built on the portion of the land that was allocated to him.

[14] Mr. Dick corroborated Mrs. Dick's account as to the construction of the plywood house. He stated that Ruel Weekes sent money to his mother to buy materials and to pay the workmen. He indicated that he did the plumbing. Their witness Mr. Anthony Shallow stated that he was employed by Mr. and Mrs. Dick to build the house for Ruel Weekes. Under cross-examination, he stated that he learnt from Mrs. Dick that the disputed land belonged to Rosaline and Ruel Weekes. He testified that Mrs. Dick told him this in Rosaline Weekes' presence. He added that she made no objections to the house being built there for Ruel Weekes and moreover, the materials for building the house were stored at Rosaline Weekes' house.

[15] Mr. Shallow averred further that after he was contracted to build the house and before Mrs. Dick returned to Mustique, she instructed her husband to pay him for the construction work and he did so for the entire construction period. He denied that Rosaline Weekes purchased any materials to construct that house. Another witness – Stephenson Wright - also worked on the house. He stated that Mr. and Mrs. Dick paid him his wages. He explained that usually it was Mr. Dick, but on a few occasions when Mrs. Dick came over from Mustique she paid him herself. He denied ever being paid by Rosaline Weekes.

[16] Ms. Weekes contradicted the Dicks and their witnesses regarding the genesis and construction of

the plywood house. She said that she suggested to her mother that they build a small house to rent and she agreed to do so. She stated that when the house was 'being built for Ruel Weekes' she played a role by contributing money, electricity, water, sand and some of her materials. She was employed at that time at Great Works Depot and was also selling in the market. She worked at Great Works Depot for almost 4 years. Ms. Weekes insisted that she and her mother owned that home in equal shares.

[17] Ms. Weekes averred further that after the house was built, her mother opened an account at the credit union, gave her the book and told her to put the money on the account and pay a number of Marriagua Friendly Society books. Ms. Weekes produced several copies of extracts from the referenced Marriagua Friendly Societies and Account book³ and copies of the Marriagua Co-operative Credit Union Ltd. Deposit book in the name of Janice Weekes-Dick⁴ (Exhibited as 'RW1 (b) and (c)' respectively). She explained that sometimes Mr. Dick came to collect the rent or her mother would say that she wanted it and at other times they took it all. She asserted that she was trying to be good to her mother 'because all the other children had ripped her off of thousand (sic) of dollars so I did not want to be like the others'.

[18] Her brother Ruel Weekes testified that while he was away at sea, his mother encouraged him to build a chattel house on the part of the land that Rosaline was supposed to transfer to him. He did so around 2004 by sending money to finance the construction. He explained that his mother rented the house. He said that he is entitled to a half share interest in the disputed land.

[19] Regarding the house spot occupied by Ms. Caine, Ms. Weekes claimed that the rent was being paid to her in her right as landlady and owner of the land. She insisted that she was not collecting rent from Ms. Caine on her mother's behalf.

[20] Mrs. Dick produced a copy of Deed of Conveyance No. 430 of 1997. It records a transfer of the

³ Dated respectively 4.11.14; April 18, 2016, June 6 2016, July 27, 2016, and 4.9.2016; 4.9.2016, 4.9.2016; at pg. 25-27 of Supplemental Trial Bundle.

⁴ See pg. 21 – 24 of the Supplemental trial bundle.

disputed property from Glenroy Samuel to Rosaline Dick. The Schedule describes the property as comprising three and a half lots at Sayers in the Mesopotamia Valley. The purchase price of \$24,000.00 is expressed to have been paid by Ms. Weekes to Mr. Samuel.

[21] On behalf of Mr. and Mrs. Dick, learned counsel Mr. Williams submitted that the parties' conduct indicate that they had an understanding that only part of the disputed land was intended to be given to and was actually given to Ms. Weekes. He submitted further that a constructive or resulting trust was created in favour of Ruel Weekes and them. He cited in support **Vere Murphy v Cynthia Quigg and Roger Quigg**⁵, **Dyer v Dyer**⁶ and **Eves v Eves**⁷.

[22] In **Dyer v Dyer**, Lord Chief Baron [Eyre] is quoted as saying:

'The clear result of all the cases, without a single exception, is, that the trust of a legal estate, whether freehold, copyhold, or leasehold: whether taken in the names of the purchasers and others jointly, or in the name of others without that of the purchaser; whether in one name or several; whether jointly or successive, results to the man who advances the purchase money. This is a general proposition supported by all the cases, and there is nothing to contradict it; and it goes on a strict analogy to the rule of common law, that where a feoffment is made without consideration, the use results to the feoffer.'⁶

[23] On Ms. Weekes' behalf, learned counsel Mrs. Bacchus-Baptiste argued that on the face of the Deed No. 430 of 1997, neither Mr. nor Mrs. Dick's name appears and therefore they are not linked to it. She contended that as between the seller and buyer the deed is unassailable. She submitted that the Dicks' claim to recover the disputed land is statute-barred under section 17 of the **Limitation Act**⁸ having not been made within 12 years of the date of conveyance of the land to Ms. Weekes. She argued further that the Dicks' reliance on section 23 of the **Limitation Act** is ill-

⁵[1996] ECLR 249.

⁶[1775-1802] ALL E.R. 206.

⁷[1975] C.A. 1339.

⁸Cap. 129 of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

founded since no trust was created and no allegation of fraudulent breach of trust has been made in the case at bar.

[24] Learned counsel submitted further that no cogent evidence exists of an agreement between Mr. and Mrs. Dick and Ms. Weekes. She submitted further that there is no evidence that the Dicks acted to their detriment or altered their position and accordingly the legal principles relative to the creation of a constructive trust are not applicable in this case. She distinguished the circumstances in this case from **Eves v Eves** on the grounds that in the instant case the parties had no relationship and did not share a home as in the **Eves** case.

[25] Another argument advanced by Ms. Weekes is that there are no facts as to why the lawyer ignored the instructions given to him or regarding who was responsible for preparing the deed to '[put] Ruel's name on after he became 18 and why this was the Defendant's responsibility.' She contended further that the court must believe that the prominent law firm of Sylvester and Williams told a client that a minor's name could not be put on a deed until he became 18 and never inquired as to the children's ages when first given the instructions to prepare the deed. She argued further that the court would need to find on a balance of probabilities that for over 22 years she ignored her mother's instructions to transfer one half share of the disputed property to Ruel Weeks without the Dicks taking action to compel her to do so.

DISCUSSION

Limitation

[26] Ms. Weekes filed her Defence on 21st November 2019. She did not raise any issue relating to a period of limitation in her defence. It arose for the first time in her written submissions filed on 28th July 2020 after the pleadings had closed. It is trite law that the defence of limitation must be specifically pleaded. Moreover, Parts 8 and 10 of the **Civil Procedure Rules 2000 ('CPR')** enjoin all litigants to concisely set out their full case in their pleadings. The limitation defence could have been raised without advert to the **Limitation Act**, by merely referring to the factual reality that no action had been brought within a period of 12 years from a specific date. This was not done. Ms. Weekes' failure to plead a limitation defence removes it from consideration in this case, even

though the parties made submissions on that legal principle. I therefore make no ruling on the issue of limitation as argued.

Resulting trust

[27] It is established that equity presumes that a resulting trust is created in favour of a purchaser (or transferor) who buys property and has it conveyed gratuitously to another person, unless the facts disclose that the purchaser intended the transferee to benefit exclusively from the property, or some presumption exists to the latter effect.⁹ This principle was distilled by the Court of Appeal in **Ng, Man Sun (also known as Ng Wei) v Peckson Limited (a BVI company) and Chen, Mei Huan**¹⁰ where it was expressed in the holdings as follows:

‘The principles of equity provide for the identification of beneficial interests arising from a gratuitous transfer of property under three categories. Under the first category, if either the transferor or the transferee makes a written (or oral) declaration as to those beneficial interests, or they do so together, that will generally be decisive, regardless of the intentions of either of them. In default of any such declaration, under the second category, the court looks for evidence from which a common intention as to beneficial ownership may be inferred. Finally, recourse may be had to presumptions, such as the presumption of advancement or the presumed resulting trust, but only where there is no evidence from which an inference as to the common intention may properly be drawn.’

[28] The Court explained that the starting point is to take into account the content of the registering instrument which provides *prima facie* evidence of the legal and beneficial interests, whereupon the burden shifts to the other party to ‘displace ... by cogent evidence’ in writing or from ‘the surrounding circumstances of the transaction’ that the beneficial interest remains with the purchaser. Only if the purchaser can establish some right to the disputed property which leads to a finding that a

⁹ Halsbury’s Laws of England, Vol. 98 (2019), para. 139.

¹⁰ BVIHCMAP2019/0011.

presumptive resulting trust exists in his favour would the burden shift back to the registered owner.¹¹

[29] The concept of advancement within the context of a gift to a child is also relevant in circumstances such as exist in the present case. On this subject, the learned authors of **Halsbury's Laws of England** note: -

'Generally, where a parent ..., purchases property in the name of a child or transfers property into the name of a child, there will be evidence of the intention with which the transfer is made and that will be conclusive. The transaction will not thereby create a resulting trust for the purchaser or transferor. There remains authority that absent such evidence (or where circumstances are such as to raise a contrary presumption), the transaction will be an advancement or gift to the child, ...'.¹²

[30] A constructive trust is created or imposed in 'circumstances where it is unconscionable or contrary to fundamental equitable principles for the owner of particular property to hold it purely for his own benefit.'¹³ Does a resulting trust or constructive trust arise from the facts and circumstances of this case?

[31] Having heard all of the witnesses, I was left with the distinct impression that underlying this dispute between mother, stepfather and daughter is some unspoken conflict. Be that as it may, Mrs. Dick, Mr. Dick and their witnesses gave a cohesive account of the acquisition of the disputed property and subsequent dealings with respect to it. Their accounts were straightforward and unembellished. Their testimony had the ring of truth to it and I believe them. The Dicks have presented a truthful description and record of how they financed the purchase of the property and for what purpose.

¹¹See also *Stack v Dowden* [2007] 2 AC 432.

¹²Vol. 98 (2019), para. 141.

¹³ Halsbury's Laws of England 4th Edition, Reissue, 1995, para. 524.

- [32] Deed No. 430 of 1996 recites that it is made between Glenroy Samuel as Vendor and Rosaline Weekes as Purchaser in consideration of payment of the purchase price of \$24,000.00. It is beyond dispute that the purchase price was paid not by Ms. Weekes but by the Dicks. I am satisfied on a balance of probabilities that they obtained a loan from the Bank of Nova Scotia and that they paid the purchase price for the disputed land. I so find.
- [33] The Deed makes no mention of Janice Dick, Leonard Dick or Ruel Weekes. It does not purport to be a conveyance between Janice and/or Leonard Dick to Rosaline Weekes. Furthermore, there is no evidence of an oral or written declaration as to Mr. Samuel's or Ms. Weekes' intention in relation to the conveyance. I find therefore that those circumstances provide no evidence which is sufficiently probative of the creation of a resulting trust arising from the gratuitous conveyance to Ms. Weekes à la **Ng v Peckson Limited et al.** I find therefore that no resulting trust was thereby created.
- [34] The evidence as to the intention with which the purchase and transfer were made comes primarily from Mrs. Dick, her husband and Ms. Weekes. The Dicks have established to the appropriate standard not only that they financed the purchase the property but that it was their intention that it be registered in the names of Rosaline Weekes and Ruel Weekes as joint owners in equal shares. I accept Mrs. Dick's testimony that she communicated this to Mr. Sylvester and also to Ms. Weekes whom she trusted to ensure that her instructions were carried out. I also accept her testimony that she was surprised when she collected the Deed and found out that this was not done. I believe her testimony.
- [35] This was a mother who obviously reposed tremendous confidence in her daughter to take care of so many details of her personal financial and business dealings on mainland Saint Vincent while she worked in Mustique. She trusted Rosaline Weekes implicitly only to have her trust betrayed in this most disappointing and uncaring fashion. I am satisfied on a balance of probabilities that Ms. Weekes promised her repeatedly to have the registration corrected to include Ruel Weekes' name and also that she waited patiently for many years to have this done. I find that she relied on Ms. Weekes' repeated empty promises to do so. I totally reject Ms. Weekes' account on this score. It

would be unconscionable to permit her to retain the full benefit of the disputed land in the circumstances of this case where her mother and stepfather financed the purchase of the disputed property for the mutual benefit of Ruel and Rosaline Weekes. It matters not if Leonard Dick purchased a separate parcel of land for Ruel Weekes.

- [36] In my considered opinion, a constructive trust was created in favour of Rosaline Weekes and Ruel Weekes when Janice Dick financed the purchase of the disputed property with her husband and instructed that it be registered in the names of Ruel and Rosaline Weekes. I hold that in all the circumstances it is unconscionable for Ms. Weekes to hold the legal and beneficial interests, rights and title to the entire disputed property to the exclusion of Mr. Ruel Weekes and in total disregard of the expressed wishes of the purchasers. It is therefore declared that Rosaline Weekes holds the beneficial and legal interests in the disputed land (exclusive of her concrete dwelling house) in trust for her and Ruel Weekes in equal shares as tenants in common.

Issue 2 –Did Rosaline Weekes receive from Janice Dick and convert to her own use the sum of \$60,000.00?

- [37]Mrs. Dick produced a copy of a cheque payable to her in the amount of \$67,500.00 dated 26th May 2014 and drawn on the account of Malcolm and Angela Healey at the First Caribbean International Bank (Barbados) Limited. She testified that she received this sum as her gratuity in respect of her services as house assistant to Malcolm Healey. She claims that of that sum, she gave Ms. Weekes \$60,000.00 in cash around June or July 2014 to hold in safe-keeping for her. The FCIB stamp and endorsement appears on the face of the cheque along with the date 'Jun 16 2014'.

- [38] Mrs. Dick said that she accompanied Ms. Weekes to the RBTT bank where she deposited the monies into her (Weekes') account. She explained that she did not go to the counter with Ms. Weekes and trusted her to deposit the entire sum. She added that she trusted her daughter with the monies and that was why she handed her that amount of cash. She stated that Ms. Weekes has refused to repay her any part of the monies although she has been asked repeatedly since 2014. She claimed that when she asked her for the money she responded with expletives that she would not be returning it.

[39] For her part, Ms. Weekes asserted that she deposited only \$40,000.00 into her account at RBTT and not \$60,000.00. Of that amount, she averred that her mother gave her \$20,000.00 as a gift for her two children. She explained that since then, she has over the years returned most of the other \$20,000.00 to her mother through periodic payments in US currency, as and when requested by her mother who travelled to the United States of America from time to time. She said that a balance of \$8,000.00 remains from the deposit. She insisted that this claim is motivated by her stepfather's malice. Ms. Weekes produced a deposit slip which reflects that \$40,000.00 was deposited into her RBTT account on 16th June 2014.

[40] Ms. Weekes recalled that on the day in question she accompanied her mother to the RBTT bank where she had an account. She explained that she did not go to the counter with her mother at first but was prompted to do so when she heard a 'commotion' between the teller and her mother. She explained that she was sitting in the in the waiting area while her mother was dealing with the teller. She noticed the teller started to get frustrated and her mother started speaking loudly. She intervened and facilitated the transaction whereby \$40,000.00 was deposited into her account. She said that she signed the deposit slip. This is evidenced by the deposit slip that she produced into evidence. Interestingly, it was not put to Mrs. Dick that there was any such 'commotion' as described by Ms. Weekes.

[41] Mrs. Dick contended that Ms. Weekes was not being truthful about the money she received from her. Ms. Weekes submitted that she pleaded in paragraph 19 of her Defence that she gave various sums of 'US money' to Mrs. Dick over the years from the \$40,000.00 to which no Reply was made. She argued that 'the Claimants are therefore deemed to have accepted this pleading'. Suffice it to say that failure to file a Reply to a Defence does not constitute an admission of statements of fact in a Defence which arise from the Statement of Claim. It is trite law that in the absence of a Reply there is an implied joinder to any such allegations of fact.

[42] The legal principles which are applicable to the tort of conversion are not complex or in dispute in this case. While 'conversion' is not susceptible to a precise definition, it is now accepted that: -

'The tort of conversion is broadly concerned with cases where one person has misappropriated goods belonging to another.... its basic features are as follows:

- (1) the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession);
- (2) the conduct was deliberate, not accidental; and
- (3) the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods.'¹⁴

[43] Atkin J. attempted a definition of conversion in **Lancashire & Yorkshire Ry Co v MacNicol**. He described it as: -

"Dealing ... with goods in a manner inconsistent with the right of the true owner amounts to a conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."¹⁵

[44] Determination of the issue of conversion in the instant case turns largely on the parties' credibility. Mrs. Janice Dick impressed the court as a witness of truth. It was evident that she is a simple, hard-working woman who wanted to assist her children to the best of her ability. It is clear from the evidence that she relied on Rosaline Weekes a great deal to handle most of her business affairs on the mainland in Saint Vincent, particularly while she herself lived and work on Mustique. This is borne out in the respective narratives presented by mother and daughter.

[45] Ms. Weekes' involvement in her mother's affairs is borne out even in her presentation of records regarding payments she made into accounts at the Marriaqua Co-op Credit Union Ltd. and the Kingstown Co-operative Credit Union Ltd. on her mother's behalf. Similarly, the fact that her mother

¹⁴ Words and Phrases Legally Defined – LexisNexis Ed.

¹⁵ (1918) 88 LJKB 601 at 605, DC.

relied on her to collect the rent from Ms. Caine is further proof of the type of relationship they had and the trust reposed in her by her mother.

[46] Regarding the allegation of conversion, Ms. Weekes painted a colourful picture of how she came to deposit \$40,000.00 into her account at RBTT bank. I do not believe that she received only \$40,000.00 from her mother and that she return part of it to her in US currency from time to time. I totally reject that version of events. I accept Mrs. Dick's testimony as to what happened with the \$60,000.00. I believe her. Her testimony that Ms. Weekes refused to return the money to her is also credible and I prefer her account to Ms. Weekes'. Accordingly, I find on a balance of probabilities that Ms. Weekes received \$60,000.00 from Mrs. Dick and that she converted those monies to her own use and benefit by refusing to deliver any part of it to her mother when requested. She has a duty to account to Mrs. Dick and to reimburse her. She is not entitled to retain any part of it.

Issue 3 - To what remedies are Janice Dick and Leonard Dick entitled?

[47] Having established their claim against Ms. Weekes, the Dicks are entitled to the reliefs sought. As constructive trustee of the disputed property, Ms. Weekes is under a legal duty to ensure that the beneficiary Ruel Weekes receives his share of the trust property¹⁶. Rosaline Weekes must therefore on or before April 27th 2023 execute a transfer to Ruel Weekes of 50% of the disputed land registered by Deed of Conveyance No. 430 of 1997 (exclusive of her concrete house and its immediate surroundings).

[48] To facilitate this transfer, the parties must on or before March 30th 2023, jointly engage and pay for the services of a licensed land surveyor to demarcate the disputed property into equal shares. The Dicks shall bear 50% of the expenses associated with the survey costs and Ms. Weekes shall bear the other 50%. The Dicks' legal practitioner at their expense shall on or before April 7th 2023 prepare the conveyance to effect the transfer to Ruel Weekes and deliver the requisite documents to the Registrar of the High Court for execution and registration. The Registrar is charged with facilitating and completing the registration. Rosaline Weekes shall on or before April 13th 2023 make arrangements with the Registrar of the High Court to execute the referenced transfer and do

¹⁶United Australia Ltd. v Barclays Bank Ltd. [1941] AC 1 (HL).

all such things as maybe necessary to effect the conveyance to Ruel Weekes. All other expenses associated with registration of the transfer to Ruel Weekes shall be borne by Mr. and Mrs. Dick.

[49] As to the repayment of the sum of \$60,000.00 to Mrs. Dick, I consider that a period of six months should be adequate for this to be accomplished. Accordingly, Ms. Weekes shall on or before August 28th2023 pay to Mrs. Janice Dick the sum of \$60,000.00, with interest at the rate of 6% per annum¹⁷ from the date of judgment until full satisfaction.

[50] In her witness statement Ms. Weekes stated 'I have been "Billy Button" all of these years. She responded to a question in cross-examination by saying that she was not there referring to 'Billy Button' in the sense of the local saying 'Billy Button work for nutten'. She explained that she meant that she was the one working for her mother and she turned and treat her like a dog and she had been 'droguing' all the load and sending them to Mustique to her and 'this is how she repaid me'. Perhaps this explanation provides a glimpse into the hidden dispute alluded to in the opening paragraph of this judgment. Maybe it does not. Be that as it may, it is hoped that the parties can salvage their familial relationships and move beyond the obvious pain and chagrin of this unpleasant episode in their lives.

Costs

[51] CPR 65.5 (2) (a) provides that prescribed costs are payable to the successful party in claims for specified or unspecified sums that are combined with other claims. The Court may stipulate a value of the claim if it is not agreed by the parties. In the absence of evidence as to the value of the disputed, I consider that the global sum of \$60,000.00 is appropriate. Prescribed costs are calculated at the rate of 15% in respect of claims that are resolved after a trial. Ms. Weekes shall therefore pay to Mr. and Mrs. Dick the global sum of \$9,000.00 as prescribed costs.

DISPOSITION

[52] It is declared and ordered:

¹⁷ Pursuant to section 4 of the Interest Act, Cap. 27, of the Laws of Saint Vincent and the Grenadines, Revised Edition 2009.

1. Rosaline Weekes holds the subject land registered by Deed of Conveyance No. 430 of 1997, in trust for Ruel Weekes and herself as tenants in common in equal shares.
2. Janice Dick, Leonard Dick and Rosaline Weekes shall on or before March 30th 2023 jointly commission a licensed land surveyor to conduct a survey of the subject land, demarcate, delineate and partition it in two equal parts so that the portion allocated to Rosaline Weekes contains her concrete house; and arrange for the survey plan to be approved and lodged at the Survey Department.
3. Janice Dick and Leonard Dick shall bear 50% of the expenses associated with commissioning the survey plan pursuant to paragraph 2 of this order and Rosaline Weekes shall bear the other 50% of such expenses.
4. Janice Dick and Leonard Dick shall on or before April 7th 2023 arrange at their expense for their legal practitioner to prepare the conveyance to effect the transfer from Rosaline Weekes to Ruel Weekes and to deliver the requisite documents to the Registrar of the High Court for execution and registration.
5. Rosaline Weekes shall on or before April 13th 2023 make arrangements with the Registrar of the High Court to execute the referenced conveyance of one half of the subject property to Ruel Weekes in accordance with the demarcations, delineations and partition undertaken by the land surveyor pursuant to this order and she must complete all things necessary to effect its registration in the Deeds Registry.
6. Janice Dick and Leonard Dick shall bear the expenses associated with preparation and registration of the Deed of Conveyance to Ruel Weekes.
7. Rosaline Weekes shall on or before August 26th 2023 pay to Janice Dick the sum of \$60,000.00 with interest at the rate of 6% per annum from the date of judgment until full satisfaction.

8. Rosaline Weekes shall pay to Janice Dick and Leonard Dick prescribed costs of \$9,000.00 pursuant to CPR 65.5(2)(a).

[53] I am grateful to counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar