

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

SAINT LUCIA

SLUHCVAP2017/0055

BETWEEN:

**Khardisha Lindy Princess Jawahir
Heir-at-Law of the Estate of the late Marcellinus Jawahir**

Appellant

and

**Davis Garvin Jawahir
Administrator of the Estate of the late Marcellinus Jawahir**

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE

Chief Justice

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

Appearances:

Mr. Leevie Herelle for the Appellant

Ms. Maureen John-Xavier for the Respondent

2019: April 8

Civil appeal – Prescription of action – Articles 603(3), 916A and 2103 of the Civil Code Cap. 4:01 Revised Laws of Saint Lucia 2013 – Trust – Breach of trust – Delict – Quasi-delict – Whether a claim for breach of trust in St Lucia will be prescribed by three years as a delict or quasi-delict – Conspiracy to commit a breach of trust – Tort of conspiracy – Prescription of claims for administration actions, breach of trust and conspiracy to commit breach of trust

This is an appeal against an oral judgment delivered on 6th December 2017 in which a high court judge struck out the claimant's claim and ordered her to pay prescribed costs to the defendant.

By fixed date claim and statement of claim filed on 19th May 2017, the claimant claimed a 50% beneficial interest in the estate of her father, a declaration that her beneficial interest in the estate was equal to that of the defendant, a declaration that a portion of the estate's land which was sold by the defendant was valued in excess of one million dollars, an order that the defendant fully discloses all financial transactions made in relation to their father's estate, an account of the administration of the estate by the defendant, an order for the improbation of the letters of administration granted to the defendant, and an order that the defendant immediately pays to and surrenders all monies up to and including the amount of the claimant's entitlement to her father's estate.

In his defence, the defendant admitted and/or accepted (with qualifications) much of what was averred in the statement of claim, except that he denied that the portion of the estate's land sold by him, was sold at an undervalue and that he had not accounted to the claimant for his dealings with the proceeds of sale of the land. However, the defendant filed an amended defence wherein he averred that the claim against him was prescribed in law and was incapable of being revived, having been absolutely extinguished because more than three years had elapsed between the sale of the portion of land in July 2013 and the filing of the claim in May 2017. The defendant also averred in his amended defence that the claimant could not obtain the relief of improbation since she did not add the notary who presented the petition in the high court as a defendant.

The defendant later filed an application to strike out the claim form and statement of claim on the basis that the wrong form was used to commence the claim, the claim was prescribed, and the proper procedure for bringing an improbation claim was not followed.

Held: allowing the appeal, restoring the claim as an administration action pursuant to Article 603(3) of the Civil Code of St. Lucia, setting aside the costs order in the court below and awarding costs to the claimant in accordance with rule 65.5(2)(b) in the court below and two thirds of that amount on appeal, that:

1. The case of *Dorina Joseph v Nora St Louis* is distinguishable from the present case. In that case, the appeal concerned the tort of conspiracy, in particular, a conspiracy to commit a breach of trust, which - under the Civil Code of St. Lucia - would be a delict and therefore be prescribed after a period of three years. The case at bar does not concern the tort of conspiracy, but instead the issue involved is one of a breach of trust.

Dorina Joseph v Nora St. Louis St. Lucia HCVAP2008/0025 (delivered 6th July 2009, unreported) distinguished.

2. A conspiracy to commit a breach of trust is a common law tort and a delict under the Civil Code, but a breach of trust is neither a tort nor a delict.

3. A claim for breach of trust has its own nature - as an invocation of the court's equitable jurisdiction - which is separate and distinct from an action in tort, or its codal cousin, delict. A claim for breach of trust in St Lucia will not, therefore, be prescribed by three years as a delict or quasi-delict. The period for prescription of actions for breach of trust, like the period for prescription of administrative actions, not being otherwise provided for in the Civil Code, is prescribed by thirty years, in accordance with article 2103A of the Code.

Article 2103 of the **Civil Code** of St. Lucia Cap. 4:01 Laws of St Lucia Revised edition 2013 applied; **Re Lake Ex p Dyer** [1901] 1 Q.B. 710 considered; **Sturt v Mellish** (1743) 26 ER 765 considered; **re Williams, Williams v Williams** [1897] 2 CH 12 considered; **Halsbury's Laws of England** Fourth Edition Vol 48 applied.

REASONS FOR DECISION

- [1] **MICHEL JA:** This is an appeal against an oral judgment delivered on 6th December 2017 in which a High Court judge struck out the claimant's claim and ordered her to pay prescribed costs to the defendant. The claimant in the court below is the appellant before this Court and the defendant below is the respondent here. The defendant/respondent was the applicant in the strike out application, upon which application the judge gave the judgment being appealed, whilst the claimant/appellant was the respondent to that application. So as to minimize opportunity for any uncertainty as to which party is being referred to in the course of this judgment and, in particular, to avoid confusion when the appellant in the appeal is the respondent in the strike out application and the respondent in the appeal is the applicant in the strike out application, I will refer to the appellant in this appeal as the claimant (even when she is the respondent in the strike out application) and the respondent in the appeal as the defendant (even when he is the applicant in the strike out application).

Background

- [2] The claimant, who initiated the proceedings in the High Court, is an heir to the estate of the late Marcellinus Jawahir, whilst the defendant is the administrator of the estate. The claimant and the defendant are the two children of Marcellinus Jawahir.

- [3] By fixed date claim and statement of claim filed on 19th May 2017, the claimant claimed a 50% beneficial interest in the estate of her father, a declaration that her beneficial interest in the estate was equal to that of the defendant, a declaration that a portion of the estate's land which was sold by the defendant was valued in excess of one million dollars, an order that the defendant fully discloses all financial transactions made in relation to their father's estate, an account of the administration of the estate by the defendant, an order for the improbation of the letters of administration granted to the defendant, and an order that the defendant immediately pays to and surrenders all monies up to and including the amount of the claimant's entitlement to her father's estate.
- [4] By a defence filed on 3rd July 2017, the defendant admitted and/or accepted (with qualifications) much of what was averred in the statement of claim, except that he denied that the portion of the estate's land, sold by him, was sold at an undervalue and that he had not accounted to the claimant for his dealings with the proceeds of sale of the land. However, on 22nd September 2017, the defendant filed an amended defence wherein he averred that the claim against him was prescribed in law and was incapable of being revived, having been absolutely extinguished because more than three years had elapsed between the sale of the portion of land in July 2013 and the filing of the claim in May 2017. The defendant also averred in his amended defence that the claimant could not obtain the relief of improbation since she did not add the notary who prepared the letters of administration as a defendant in the high court.
- [5] On the same 22nd September 2017, the defendant filed an application to strike out the claim form and statement of claim on the basis that the wrong form was used to commence the claim, the claim was prescribed, and the proper procedure for bringing an improbation claim was not followed. The strike out application was accompanied by an affidavit in support. The claimant filed an affidavit in reply on 19th October 2017 and on 2nd November 2017 the defendant filed a document entitled "supplemental affidavit and affidavit in response", but which substantially amplified and expanded his application to strike out the claimant's claim.

[6] By order of the court, the defendant filed written submissions in support of his strike out application on 8th November 2017 and the claimant filed her written submissions in opposition on 17th November 2017.

[7] On 6th December 2017, the learned judge gave an oral judgment (on the written submissions) by which he ordered that the claimant's case be struck out and that she pay prescribed costs to the defendant in accordance with Part 65 of the **Civil Procedure Rules 2000**.

The appeal

[8] By notice of appeal filed on 15th December 2017, the claimant appealed against the judge's order. The grounds of appeal are as follows:

- (1) The learned judge erred in law and in fact when he ruled in favour of the defendant's application to strike out the claimant's claim on the basis that the claim was prescribed.
- (2) The learned judge misapplied the ratio decidendi in the court of appeal's judgment in **Dorina Joseph et al v Nora St Louis et al**¹ as it related to a beneficiary's claim against the administrator of a deceased's estate.
- (3) The learned judge erred in law and in fact when he failed to recognize that the issue of prescription had not begun to run in this case because the administrator had not completed his administration of the estate as is required.
- (4) The learned judge erred in law and in fact by failing to recognize that the claimant's cause of action was an [administration] action and that [administration] actions are prescribed by thirty years and not three years as alleged by the defendant and ruled by the learned judge.

¹ SLUHCVP2008/025 (delivered 6th July 2009, unreported).

- [9] On 14th November 2018, the claimant filed skeleton arguments in support of the appeal and on 27th November 2018 the defendant filed skeleton arguments in opposition to the appeal.
- [10] The appeal was heard on 8th April 2019, with counsel on behalf of the parties making oral submissions to supplement their written submissions. After hearing counsel, the Court ordered that: (1) the appeal is allowed; (2) the claim is restored and is to proceed before the high court as an administration action pursuant to Article 603(3) of the **Civil Code of St. Lucia**²; (3) the cost order made in the court below is set aside and costs are ordered to be paid to the claimant in accordance with rule 65.5(2)(b) in the court below and two thirds of that amount for the appeal.
- [11] We promised to give written reasons for our decision, which we now do.

Claimant's submissions

- [12] The claimant's submissions on appeal centered largely around the fact that the action which she instituted against the defendant in the court below was an administration action pursuant to article 603(3) of the **Civil Code** and not an action for breach of trust. She contends that the case of **Dorina Joseph et al v Nora St Louis et al** relied on by the defendant, and evidently by the judge as well, was about a breach of trust by the administrator of an estate and a conspiracy by the appellants who allegedly purchased land belonging to the estate well below the market value. This, the claimant submits, is distinguishable from the case at bar, and so the dicta of Gordon JA in the **Dorina Joseph** case cannot be applied to this case.
- [13] The claimant has also submitted on appeal that, in any event, the issue of prescription had not yet arisen by the time her claim was filed because, at least up to that time, the administrator had not completed the administration of the estate and could therefore be called to account for his administration of the estate.

² Cap. 4:01 Revised Laws of Saint Lucia.

Defendant's submissions

- [14] The defendant's submissions on appeal (rephrased for purposes of clarity) are that the reliefs sought by the claimant in the court below are remedies which arise out of an alleged breach of trust or breach of fiduciary duties by the defendant in his capacity as administrator of his deceased father's estate, and/or alternatively are remedies for which the substantive cause of action lies in breach of trust. The defendant submits too that, in accordance with the judgment of this Court in **Dorina Joseph v Nora St Louis**, breach of trust or breach of fiduciary duties are delicts under article 2122 (2) of the **Civil Code**, for which the prescriptive period is three years from the date that the cause of action arose. He submits too that because the claimant had not filed and served her claim within three years of receiving knowledge of the sale of the portion of land from which she claims an interest, the claimant's claim is prescribed, extinguished and incapable of being revived.

Discussion and analysis

- [15] The claimant's claim was a claim by an heir of her deceased father to her share in the property of the estate of her father, which estate was being administered by her brother as the administrator of the estate. It was not, as the defendant contended, a claim of an interest in a portion of land sold by the defendant more than three years before the filing and serving of her claim. The claimant's claim, as detailed in paragraph 3 hereof, was clearly an administration action brought by an heir in the succession of her father against the administrator of the estate of her father for relief to which she was entitled. The claim was therefore a claim under article 603(3) of the **Civil Code**.

- [16] It may be useful to quote in full Article 603(3) of the **Civil Code**, which reads:

“Any heir, legatee, creditor or other person interested in any succession may bring an administration action against a personal representative claiming –

- (a) an account of the dealings and intromissions of that personal representative with the succession and payment to him of whatever sum of money may be found to be due and payable by that personal representative;
- (b) damages for loss to the succession caused by conversion, waste or neglect on the part of the personal representative; or

- (c) any other relief to which the person bringing the action may in law be entitled.”

[17] I agree with counsel for the claimant that the case of **Dorina Joseph v Nora St Louis** is distinguishable from the present case.

[18] The **Dorina Joseph** appeal was an appeal by two purchasers of land from the administrator of the estate of the deceased owner of the land. The appellants were not the administrators of the estate of the deceased, of which the respondents were beneficiaries, nor did they have any fiduciary relationship with the respondents. The reason for them being joined in the claim in the court below was that they were alleged to have conspired with the administrator of the estate of the deceased to purchase lands from him at an undervalue. The claim against them by the beneficiaries was as participants in a conspiracy with the administrator to breach the trust reposed in him by virtue of his office as administrator of the estate of the deceased. The claim would therefore be for the tort of conspiracy, which would be a delict under the **Civil Code**, and would be prescribed after a period of three years between the conspiracy and the institution and service of the proceedings in the court below. Any statement made by Gordon JA in the **Dorina Joseph** appeal concerning a breach of trust and the period for prescription of an action for breach of trust would therefore be obiter dicta.

[19] It may be useful to quote paragraph 30 of Gordon JA’s judgment in its entirety, since such heavy reliance appears to have been placed on it by the defendant and by the judge. It reads:

“Notwithstanding any sensitivities which purists of the Civilian tradition may have, the plain fact is that the substantive law of trusts, that is relationships deriving from the separation of ownership of property from benefit in certain defined circumstances, is part and parcel of the law of St Lucia. I am, however, of the firm opinion that a breach of trust, or rather conspiracy to cause a breach of trust, such as is alleged in the case against the two appellants, would fall squarely within the realm of a delict or quasi delict (dependent on the finding of fact by a trial judge) as defined in the Civil Code. Put another way, the substantive rights (trusts) are imported by Article 916A; the remedy for the breach of those substantive rights, as in this case, are provided for by the provisions of the Code.”

The first sentence of paragraph 31 (following on from paragraph 30) may also be useful to quote. It reads:

“The inevitable corollary of the view expressed in paragraph 30 above is that a cause of action based on such a delict or quasi delict would be prescribed after three years.”

[20] It would not be open to this Court to overturn the judgment of the Court of Appeal in **Dorina Joseph v Nora St Louis**, in so far as the ratio decidendi of that case is concerned, unless of course the decision of the court contained in the judgment was reached per incuriam. But it is open to me to disagree with statements made by Gordon JA in his judgment, in so far as the statements were made obiter dicta.

[21] I take the view that a conspiracy to commit a breach of trust is a common law tort and a delict under the **Civil Code**, but a breach of trust is neither a tort nor a delict.

[22] By virtue of article 916A of the **Civil Code**, the law of England on trusts - whether expressed, implied, constructive or resulting, and whether concerning the rights, powers and duties of trustees or of beneficiaries under a trust – is applied wholesale to St Lucia. If one is looking to address any aspect of trust, such as a breach of trust, then it is to the law of England that one must turn. In England, breach of trust is not extracted from the general law of trusts and transported into the law of torts, which can be considered to be the common law cousin of the codal delict (or quasi delict); it is treated entirely within the ambit of trust law. Why then should a court in St Lucia treat with a breach of trust not within the scope of a common law breach of trust but within the realm of a delict, there to apply to it the period for prescription applicable to delicts and quasi-delicts?

[23] A breach of trust is really a violation or dereliction of the duties of trustees, with respect to which article 916A (3) of **the Code** specifically states - “the law of England for the time being in force ... shall extend to and apply”. According to **Halsbury's Laws of England**:³ “A breach of trust in itself is merely a violation of an equitable obligation; the remedy for it, therefore, lies in equity only and must be sought in a court of equitable jurisdiction”.

³ Halsbury's Laws of England, Fourth Edition, Vol.48, para. 942.

According to **Lewin on Trusts**:⁴ “A trust differs from such relations as contract and bailment in that it is enforceable only in equity. That system was originally administered only in the Court of Chancery, but now law and equity are administered in all courts concurrently”. According to Lindley LJ in the case of **re Williams, Williams v Williams**:⁵ “A trust is really nothing except a confidence reposed by one person in another, and enforceable in a court of equity”. In the same vein, in the old English case of **Sturt v Mellish**,⁶ the Lord Chancellor said that “a trust is where there is such a confidence between parties, that no action at law will lie, but is merely a case for the consideration of [the court of chancery]”. In the English Court of Appeal in the case of **re Lake Ex parte Dyer**,⁷ Rigby LJ said: “How is a trustee a debtor? Can he be sued at common law? I do not see how he can be a ‘debtor’, for the money he is fraudulently dealing with is, at law, his own money. No doubt he can be called upon to replace the money, but that must be a suit in equity, not at law”.

Conclusion

- [24] These sources confirm that a claim for breach of trust has its own nature (as an invocation of the court’s equitable jurisdiction) which is separate and distinct from an action in tort, or its codal cousin – ‘delict’. A claim for breach of trust in St Lucia will not, therefore, be prescribed by three years as a delict or quasi-delict. The period for prescription of actions for breach of trust, like the period for prescription of administration actions, not being otherwise provided for in the **Civil Code**, is prescribed by thirty years, in accordance with article 2103 of the **Civil Code**.

⁴ (16th Edition, Sweet & Maxwell Ltd 1964) page 5.

⁵ [1897] 2 Ch 12 at 18.

⁶ (1743) 26 ER 765.

⁷ [1901] 1 Q.B. 710.

[25] For the foregoing reasons, we ordered and now affirm that the appeal be allowed, the claim which was struck out be restored and proceed before the high court as an administration action pursuant to article 603(3) of the **Civil Code**, and the cost order be reversed and the defendant be ordered to pay the claimant's costs here and in the court below.

I concur.
Dame Janice M. Pereira, DBE
Chief Justice

I concur.
Paul Webster
Justice of Appeal [Ag.]

By the Court

Chief Registrar