

**EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. DOMHCV2010/0282

BETWEEN:

- 1. ELAINE PRINGLE TOULON**
- 2. LEASE ENTERPRISE LTD.**

Claimants/Counterclaim Defendants

and

- 1. AYANNA PRINGLE**
- 2. LETITIA BUTLER**

Defendants/Counterclaimants

Appearances:

Mr. Hugh Marshall instructed by Mr. Henry Shillingford for Counterclaim
Defendants

Mrs. Heather Felix Evans for Counter Claimants

2015: June 8,9
December 18

JUDGMENT

- [1] **Stephenson J.:** Elaine Pringle Toulon is the mother of Ian Pringle and Lease Enterprises Ltd was a Dominica Registered Company allegedly owned by Ian Pringle and Elaine Pringle Toulon. (Hereinafter referred to as the counterclaim defendants)
- [2] Ayanna Pringle and Letitia Butler are the daughters of Ian Pringle (deceased) and the personal representatives of his estate. They are the defendants in this matter and filed a defence and counterclaim in the matter.
- [3] Ian Pringle was a pilot/businessman who disappeared in May 1996 whilst piloting his plane and has never been heard from again. He was subsequently declared dead

and his two adult daughters in Dominica were appointed personal representatives of his estate.

[4] This matter commenced by fixed date claim form filed on behalf of the second named claimant and was discontinued on 14th July 2015.

[5] The matter proceeded to trial on the counterclaim filed by Ayanna Pringle and Letitia Butler. (I shall refer to them as the “counter claimants”)

[6] In their counterclaim the counter claimants in their re-amended defence and counterclaim, claimed the following:

1) “24A: At the time of Ian Pringle’s disappearance, the 1st claimant had access, and possession of the pass book for safekeeping; saving account No. 21524727 in the name of Elaine Marie Rita Pringle-Toulon in trust for Ian Pringle held at the Barclays Bank PLC, Road Town, Tortola. As at 8th September 1994 the account balance in that account was US\$34,297.91. The Claimant has failed to-

- I. disclose the existence of the account to the defendants;
- II. give an account to the defendants of the monies that were in this account at the time of Ian Pringle’s disappearance;
- III. give an account to the defendants of the amount of these monies now;
- IV. inform the defendants of the location of these monies or
- V. hand over these monies with any interest which may have accrued thereon to the defendants.

2) 24B Following the disappearance of Ian Pringle, deceased, the 1st Claimant was written to about and/or dealt with a Certificate of Deposit/Barclays Bank Account #215968243 (CD2310) in Tortola, British Virgin Islands, in the name of Elaine M. R. Pringle Toulon in trust for Ian Pringle. As at 6th February 1997 the balance in that certificate of deposit was US\$134,024.36. The first claimant failed to-

- i. disclose to the Defendants the existence of this certificate of deposit or account;
- ii. give the defendants an account of the monies that were in this certificate of deposit or account;
- iii. inform the defendants of the location of the monies that were in the certificate of deposit or account;
- iv. hand over these monies to the defendants.”

[7] The defendants claimed:

"6A – A full account of all monies referred to in paragraphs 24A and 24B above, that were in Barclays Bank PLC, Road Town, Tortola Accounts no. 215968243 in the name of Elaine M. R. Pringle-Toulon ITF Ian Pringle and No. 215724727 in the name of Elaine Marie Rita Pringle-Toulon IF Ian Pringle from 2nd May 1996 to the date these accounts were closed including, but not limited to, the current location of these monies and interest accrued thereon to date.

...

8. An order for payment by the Claimants, individually and/or jointly, to the Defendants of all sums found to be due from the Claimants to the Defendants on the taking of the account under ... (6) (6A).

..."

- [8] The counterclaim defendants in their Defence to the re –amended counterclaim respond as follows:

"7 As to the re-amended claim in paragraph 24A the saving account referred to was at all times the sole account and property of Elaine Marie Rita Pringle-Toulon and as such she did not disclose, account, inform and or hand over any such funds to Ian or anyone else as she was not required to and he was not entitled. The "in trust for" so keenly relied on by the counter claimants was not and never was intended to be a trust properly so called. It is revocable at the behest of the creator of the account. It is a common banking instrument known as a "Totten Trust" account which as said is an instrument used almost exclusively by the banking industry in that the purpose of the instrument is that if the depositor dies then the money will go to the beneficiary and escape all the complexities of Probate. This is a freely revocable instrument and the key factor is that it is not really an active instrument until the creator dies it *is more akin to a bequest in a will. The beneficiary does not receive the bequest if he/she pre-deceases the grantor.*"

- [9] The court heard from four witnesses for the counter claimants and at the close of their case when called upon to lead his defence learned counsel for the counterclaim defendants informed the court that he would not be calling witnesses and that he wished to make a no case submission. The court permitted him to proceed on his no case submission.

No Case Submissions by Counsel for the counterclaim defendants

- [10] In his no case submission Learned Counsel Mr. Hugh Marshall invited the court to look at the pleadings in the matter, he said that the claim relating to the bank accounts was stated solely in paragraphs 24 (a) and 24 (b) of the re-amended

counterclaim and reference was made to them at paragraph 4 of the reply which stated that Ian Pringle was the beneficial owner of these accounts and the monies in the accounts were for the maintenance costs of the planes. Counsel stated that the counter claimants failed to expressly plead that either of the accounts belong to them, the estate of Ian Pringle or that the funds belong to the estate of Ian Pringle.

[11] Mr. Marshall submitted that:

- 1) It has not been pleaded that the counterclaim-defendants had any arrangement with the deceased from which they have departed or that at any time gave rise to the creation of a constructive trust.
- 2) The evidence which the counter claimants are burdened to bring is evidence which would fulfill the pleadings.
- 3) They must bring the evidence to show that the account numbers 215724727 and 215968243 were opened. They must bring the evidence of the monies in those accounts where the purposes of the accounts and that the counterclaim defendants have departed from the purpose of the trust.
- 4) Despite the loneliness of the pleadings in the counterclaim when one turns to paragraphs 7 and 8 of the defence to re-amended counterclaim, the court would see that the counter claim defendants have expressly stated that the account referred to at Para 24 (a) and (b) of the re-amended counterclaim was at all time the sole account and property of Elaine Marie Rita Pringle Toulon.

[12] Learned Counsel Mr. Marshall submitted that the burden of the counter claimants are to establish their case, that is, to establish in the evidence the identity of the accounts pleaded at paragraph 24(a) & (b) of their re-amended counterclaim. Counsel invited the court to consider the pleadings as glasses and each glass must be filled with evidence.

[13] That in the circumstances of the case at bar that the counter claimants have failed through their witnesses to identify the accounts specified in their pleadings and that really is the crux of the matter. That even before the court can go onto determine what was the state of the accounts, the court must be able to decide what accounts

[14] Counsel submitted that in the case presented by the counter claimants some of them refer to one account when the pleadings refer to two accounts.

- [15] Learned counsel made reference to the evidence of Ms. Benjamin who spoke in cross examination to only one account, further, that the witness spoke to being the keeper of the accounts but that she failed to produce to the court any records.
- [16] Learned counsel submitted that he did not know whether the documentary evidence which the counter claimants had access to was not presented or whether no effort was made to get it. It is to be noted at this juncture that it is the undisputed evidence of the counterclaimant through the evidence of Mrs. Butler Moses that attempts were made by her and her sister as personal representatives of their father's estate to get more information from the counterclaim defendants but to no avail. That is the evidence which this court has before it.
- [17] Learned Counsel Mr. Marshall submitted that there is no obligation on the counterclaim defendants to disprove the claim and that in the case at bar the evidence presented by the counter claimants does not support their pleadings.
- [18] Learned counsel submitted that the court in this case is in fact being asked to declare a constructive trust. That the counter claimants have asked for an accounting and the only way that could be done is if Mrs. Elaine Pringle was a constructive trustee of the estate of Ian Pringle and that upon his death the funds were misappropriated, either by retaining them or using them for another purpose, otherwise she would be a trustee.
- [19] Mr. Marshall submitted that there was no deed of trust and no claim of a resulting trust which could only leave one trust that is a constructive trust, and he cited the learning in Halsbury's Laws of England which states

“ A constructive trust attaches by law to property which is not expressly subjected to the trust, but which a person holding other property in trust for some other person or object, or occupying in respect of other property in a fiduciary position towards some other person or object, has acquired by means of his ownership of or dealings with that trust or fiduciary property”¹

¹ Halsbury's Laws of England Vol 38 Paragraph 1440

[20] Further, that there is no basis for an accounting based on the fact that there is no evidence to support the existence of these accounts as identified in the pleadings.

[21] Counsel's final salvo was that the rules governing civil procedure provide for specific discovery and that the rules for the burden of proof never changes and there is always the right to apply for specific discovery which was never done by the counter claimants.

Response by Counsel for the counter claimants

[22] Learned Counsel for the counter claimants Mrs. Heather Felix Evans submitted that there is a case to answer. Mrs. Felix Evans submitted that there are pleadings that are....., that there is a counterclaim, a defence to counterclaim and there is a reply. That there are also witness statements which speak to the accounts and learned counsel submitted that it is a question as to what weight the court gives to the evidence.

[23] Counsel submitted that a *prima facie* case has been raised and so this is not a case that where the court can properly hold that there is no case to answer.

[24] Mrs. Felix Evans submitted that in a trial there is evidence that is direct evidence and there is circumstantial evidence, and that circumstantial evidence is very much a part of the law of these courts.

[25] Learned counsel submitted that while it is recognised that it is always the claimants' duty to prove its case, when the claimant puts forward a *prima facie* case and the defendant does not respond then that is the evidence upon which the court will have to decide on as to whether a sufficient case has been brought forward to satisfy their burden or the standard which is on a balance of probabilities.

- [26] Counsel submitted that where there is evidence on both sides, then it is admitted that the claimant will have a heavier burden but where the counterclaimant has put forward their case in their pleadings and the counterclaim defendants have admitted the existence of the accounts and the counter claimants have brought evidence to show that Ian Pringle was accessing an account at the very same bank then in the circumstances the counterclaim defendants cannot say that there is no case to answer. That it is the court that has to determine how to treat the evidence.
- [27] Learned counsel submitted that for instance that there is the evidence of Bernadette Benjamin who gave evidence that she was present when the accounts were opened by Ian Pringle but in the name of Elaine Pringle in trust for Ian Pringle.
- [28] Counsel also pointed out to the court that in the reply states that "Ian Pringle ...it states among other things what he did "with those accounts"²
- [29] Learned Counsel Mrs. Felix Evans submitted that there was sufficient evidence brought forward by the counter claimants to shift the burden to the counterclaim defendants to give some response in relation to the operation of the accounts.
- [30] Learned counsel submitted in closing that this is not a case for a no case submission and what we are asking that we prepare submissions in closing on the evidence that was put forward.

The Law

- [31] "The test in deciding whether there is a prima facie case is to see if there is evidence, which, if uncontradicted, would justify men of ordinary reason and fairness in affirming the proposition which the proponent is bound to maintain, having regard to the degree of proof demanded by the law with regard to that particular issue"³

² Re: Paragraph 4 of Counterclaimant's reply

³ Cross & Tapper on Evidence (9th Ed, 1999) pp 171-172

[32] The issue of no case to answer in civil cases, the procedure to be adopted and the tests to be applied was reviewed at length by the Lord Justice Mance in the Court of Appeal decision of Micael John Miller (t/a Waterloo Plant –v- Margaret Cawley⁴. In his judgment Lord Justice Mance reviewed the approach to be taken by the court where the defendant is not called upon to mount a defence and the actions which have been taken by the court in such situations. The court looked at both the pros and cons of such actions taken by the court and opined on what should be done in such circumstances.

[33] In the case at bar, the court is however more interested in what the Lord Justice had to say regarding the test to be applied where the defence has opted not to lead a defence and sought to make a no case to answer submission.

[34] Lord Justice Mance stated⁵

“17. Where a defendant is put to his or her election and elects to call no evidence, the position is quite different. As I said in *Boyce* at para. 4:

‘First, where a defendant is put to his election, that is the end of the matter as regards evidence. The judge will not hear any further evidence which might give cause to reconsider findings made on the basis of the claimant’s case alone. The case either fails or succeeds, even on appeal.’

18. The issue after an election is, in other words, not whether there was any real or reasonable prospect that the claimant’s case might be made out or any case fit to go before a jury or judge of fact. It is the straightforward issue, arising in any trial after all the evidence has been called, whether or not the claimant has established his or her case by the evidence called on the balance of probabilities.”

[35] The defendant, having opted in the case at bar to call no evidence and made a no case submission, the only issue as stated by Lord Justice Mance would be “*whether in the light of the evidence already adduced the claimant has made out his case on*

⁴ [2002] EWCA Civ 1100

⁵ *ibid*

the balance of probabilities and that was the test (more favourable to the defendant) which the judge ought to have been invited to apply”⁶

[36] This test was approved and applied by Lord Justice Simon Brown in the case of Benham Limited –v- Kythira Investments Ltd and another ⁷

[37] Lord Justice Simon Brown in his judgement also examined whether or not an adverse inference can be drawn from the defendant’s option not to call evidence and he stated the following principles enunciated by LJ Henry Brooke in the case of Wisniewski –v- Cental Manchester Health Authority⁸

“1. In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

2. If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

3. There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.”

[38] At paragraph 30 of his judgment Lord Justice Simon Brown stated

“The point is worth making too even in those cases where the defendant elects to call no evidence. ..., the only issue then is whether the claimant has established his claim on the balance of probabilities. But it must be recognised that he may have done so by establishing no more than a weak *prima facie* case which has then been strengthened to the necessary standard of proof by the adverse inferences to be drawn from the defendant’s election. Such adverse inferences can in other words tip the balance of probability in the claimant’s favour.”⁹

The Evidence

⁶ Ibid Paragraph 20

⁷ [2003] EWCA Civ. 1794

⁸ [1998] Lloyds report Med 223 (Unreported) see paragraph 26 of Mann LJ judgment in the Benham Limited Case op cit

⁹ Benham Limited Case op cit

- [39] What then at the close of their evidence were the facts and circumstances upon which the counter claimants sought to rely on to make good their claim that the first named counterclaim-defendant indeed held the accounts in Tortola on trust for the estate of Ian Pringle deceased.
- [40] The court heard from Miss Violeta Elfreda Abraham who gave evidence on behalf of the counter claimants. She is the mother of Ayanna Pringle one of the personal representatives and beneficiaries of the estate of Ian Pringle. She told this court that she was the mother of Ayanna Pringle one of the counter claimants herein and told the court of her relationship with Ian Pringle which resulted in the birth of a daughter. Miss Abraham told the court of how she knew of Ian Pringle being a pilot and a businessman and of his businesses that he conducted in Dominica.
- [41] After Ian Pringle disappeared in 1996 she was called to a meeting with Mrs. Elaine Pringle Toulon and Ian Pringle's adult daughters Giselle and Letitia Pringle and that Mrs. Pringle Toulon invited her to sign a document stating the monies kept in an account at a bank in BVI belonged to her Mrs. Toulon and she said that on occasion she said Roseanne Pringle Ian Pringle's sister produced a savings book with a single entry in it sometime in 1996 in the sum of US \$1,200.00 and a bank statement was also shown to her with approximately US\$235,000.00 on the account.
- [42] The witness stated that she then informed Mrs. Pringle Toulon that she would want to verify that the money in the account was hers as she was told certain things by Ian Pringle during his lifetime and she also asked for documents from Mrs. Pringle Toulon supporting the growth of the money on the account that those documents were never produced. It is to be noted that Miss Benjamin when she met Ian Pringle in 1985, she was an officer at the AID bank and met him while he was conducting business there. I mention that to say that I am sure that this witness would have been very familiar with basic banking documents such as a bank book and she would instinctively look for certain information on the banking book that was handed to her, that she noted that the names on the bank book was Elaine Ritter Pringle Toulon in

trust for Ian Pringle to be credible that that is what she saw when the bank statement and bank book was shown to her. While this is not absolute proof that the bank statement and bank book existed it does suggest that there were such documents.

It is noted also that her evidence in this regard was not challenged by learned counsel when he sought to cross examine her¹⁰.

[43] I accept the evidence of this witness and note also that it would have been normal and prudent for her to ask the questions as stated in her evidence¹¹. This is also in keeping in what can be reasonably expected of someone who has had some experience in the banking industry.

[44] The court also heard from Ms. Bernadette Benjamin who was the former wife and intimate partner of Ian Pringle. It is noted that even though her marriage to Mr. Pringle was short lived she did in fact according to her evidence continue in a relationship with him which resulted in the birth of two children.

[45] Miss Benjamin told this court about her knowing of the existence of the accounts held by Ian Pringle at the Barclays Bank in Tortola. She told this court about filling out the deposit slips and accompanying the deceased to Tortola to make deposits to the account.

[46] It is noted that she did not recall or remember the bank account numbers and she offered what this court considers to be a reasonable reason for not producing copies of the bank account as she had submitted those to the territorial court in the United States Virgin Islands. That there were proceedings in the Virgin Islands was spoken to by Miss Benjamin in her evidence and it is noted that there is a claim by the claimants regarding the monies expended in the Probate proceedings in the Virgin Islands in St. Croix.

¹⁰ Paragraphs 21 and 22 of the witness statement of Miss Violeta Elfreda Abraham and amplified in her *viva voce evidence*

¹¹ *ibid*

[47] In the absence of any challenge to her evidence by learned counsel having conduct of the case on behalf of the counterclaim defendants and to the production of any evidence to the contrary I accept the evidence of this witness.

[48] This witness also told the court where the money came from regarding the monies that was deposited in the bank account in Tortola. This evidence was not challenged by learned counsel for the counterclaim defendants during trial and thus remains uncontroverted. It is to be noted that “Phipson on evidence”¹² states that

“In general a party is required to challenge on cross examination the evidence of any witness of the opposing party if he wishes to submit to the court that the evidence should not be accepted on that point.
Re: **Rahme –v- Smith & Williamson Trust Corporation Ltd.**

[49] It is noted that when a party fails to or declines to cross-examine a witness it amounts to a tacit acceptance of the witness’ evidence in chief save where the evidence given by the witness is so incredible that the matter upon which he is to be impeached is manifest and in such circumstances it is unnecessary to waste time in putting questions to him upon it.

[50] The court also heard from Mr. Brian Bruney. Learned Counsel for the counterclaim defendants’ declined to cross examine Mr. Bruney and therefore Mr. Bruney’s evidence also stands unchallenged before this court. Mr. Bruney told the court both in his witness statement and viva voce evidence that he was the trusted friend of Ian Pringle (deceased). He spoke of being with Ian Pringle when Ian Pringle opened the bank account in Tortola and the purpose of the account.

[51] Mr. Bruney who I accept as a truthful witness spoke with great familiarity briefly about Ian Pringle’s business. It is noted that he spoke of going to different banks which concurs with the statement made by Miss Abraham who in her evidence stated that when she was shown the amounts on the bank statement and what was on the bank book and she asked for a reason for the growth of the funds and when she asked

¹² Phipson page 354 at paragraph 12-12

Mrs. Pringle Toulon as to where the money came she was told by her that Ian Pringle moved the money around.

[52] Mr. Bruney also told us that he accompanied Ian Pringle on his many visits to the bank and indeed on his many business trips. He gave evidence that the account in Road Town, Tortola was opened primarily to maintain the plane engines and that he also accompanied Ian Pringle to the bank before going up to the U.S. mainland to service the said plane. I find that this witness gave credible evidence not only as to the existence of the bank accounts in Tortola but also as to the use of the monies on the accounts.

[53] The court also heard from Mrs. Letitia Butler-Moses who is the daughter of Ian Pringle and who along with her younger sister were appointed the personal representatives of their deceased father's estate. Learned counsel for the counterclaim defendants also declined to cross examine this witness so in the circumstances of the case her evidence too stands uncontroverted in the matter.

[54] Mrs. Butler Moses was unable to give much evidence regarding the bank accounts however it is to be noted that her evidence provided this court with evidence of both Mr. Bruney's and Ms. Benjamin's involvement with the deceased Ian Pringle. This in my view buttresses the evidence given by these two witnesses as to their involvement with Mr. Pringle and being around and with him when he conducted his business and in his absence and in the absence of any evidence contradicting it, this court accepts as to what his business dealings were. For the sake of clarity, this court accepts that there is *prima facie* evidence to suggest that Mr. Pringle opened and operated the accounts in Tortola, British Virgin Islands and that he used those accounts in his business.

[55] Mrs. Butler-Moses spoke to being summoned by her grandmother along with some of her father's children and Ms. Abraham to a meeting at the Belfast Apartments where they were requested to sign a document stating that they had no rights to a

bank account in Tortola which she, the grandmother held in trust for Ian Pringle. The witness said that she along with her older sister and the mother of her youngest sister Ms. Abraham refused to sign any such document because they had no clue as to why the grandmother (the counterclaim defendants herein) would want them to state something like that and that she had not provided to them any proof that the money held in trust for Ian Pringle belonged to her.¹³

[56] It is to be noted also that this witness spoke of trying to get information from the counterclaim defendants in this matter regarding the bank accounts but to no avail.

[57] Learned counsel for the counterclaim defendants Mr. Marshall took the point that the pleadings in this matter had not been supported by the evidence adduced by the counter claimants.

[58] The fundamental function of the statements of case filed by parties to a civil action is to ensure that when the matter is at pretrial stage the matters in issue are clearly determined so that the parties can decide in advance of the trial what evidence they will need to adduce to achieve a satisfactory result.

[59] It is trite law that any fact in a statement of claim which is admitted in the defence because it is either expressly admitted or because it is impliedly admitted by omission of the defendant to traverse it expressly ceases to be in controversy between the parties and no evidence will be required to admit to prove such a fact.

[60] It is therefore not open for the counterclaim defendants to deny that the existence of the bank accounts in the British Virgin Islands or to call on the claimants to prove the accounts because upon perusal of the statements of case in the case they have never denied the existence of the said bank accounts.

¹³ Paragraph 11 of the witness statement of Letitia Butler

[61] The question in my view which has to be asked is was the existence of the bank accounts sufficiently proved. For the counter claimants to succeed Learned Counsel Mr. Marshall submitted that they need to prove that the bank accounts existed at the bank in the BVI in the name of the Elaine Pringle Toulon in trust for Ian Pringle.

[62] I am of the considered view and so find that the counter claimants have adduced evidence through their witnesses that accounts do exist and evidence which establishes *prima facie* that Ian Pringle accessed accounts in Tortola, British Virgin Islands.

[63] I am also of the view that this is one case where had the counterclaim defendant chosen to give evidence it would have shed some light on the issue in that the counter claimants' case would have either been shot out of the water and it would have been made clear that it was the counterclaim defendants' account or evidence would have been adduced that would have weakened the counter claimants case.

[64] In the counterclaim defendants failing to call their evidence has in my mind only served to strengthen the counter claimants' evidence in the circumstances of this case, as the court has been called upon to make a decision in light of the evidence which has in fact been adduced to decide whether they have made out their case on the balance of probabilities. The court in reality only has the counter claimants' evidence to consider. In the case at bar it is even more so that most of the counter claimants' evidence is in fact unchallenged by counsel exercising preference not to cross examine some of the witnesses.

[65] In the Murray Case¹⁴ Lord Simon Brown had this to say in this regard

"The issue after an election is, in other words, not whether there was any real or reasonable prospect that the claimant's case might be made out or any case fit to go before a jury or judge of fact. It is the straightforward issue, arising in any trial after all the evidence has

¹⁴ Op cit

been called, whether or not the claimant has established his or her case by the evidence called on the balance of probabilities.”¹⁵

Decision of The Court

[66] The matter which falls to be resolved at this juncture is whether or not the counter claimants have presented a case that has a reasonable prospect of success. Based on the pleadings in this case and upon the evidence of the witnesses the counterclaim defendants would have material evidence to give on the critical issue in the case at bar.

[67] I adopt the words of Lord Justice Simon in the Benham Limited Case¹⁶ when he said

“ have the claimants advanced a *prima facie* case, a case to answer, a scintilla of evidence to support the inference for which they contend, sufficient evidence to call for an explanation from the defendants? That it may be a weak case and unlikely to succeed unless assisted, rather than contradicted, by the defendant’s evidence, or by adverse inferences to be drawn from the defendants’ not calling any evidence, would not allow it to be dismissed on a no case submission” (emphasis mine).

[68] In my judgment it is more probable than not given the evidence adduced before the court that Ian Pringle deceased did go to Tortola, British Virgin Islands and that he conducted banking business on his own behalf and that of his company. I accept that his former wife/partner accompanied him to the banks from time to time and I also accept the evidence of Mr. Bruney that he too accompanied Ian Pringle to the banks in Tortola British Virgin Island to conduct the business as stated in his evidence.

[69] I am satisfied that it is more probable than not that those accounts were opened in the name of his mother for in trust for Ian Pringle and I am of the considered view that there is sufficient evidence adduced by the counter claimants which would in

¹⁵ Ibid paragraph 18

¹⁶ Op cit

the normal course of things have called for an explanation from the counterclaim defendants.

[70] Balancing all the factors I have no doubt that this case crossed the evidential threshold essential to defeat the no case submission. For all these reasons, balancing all the factors involved in this case. I am of the view that the counterclaim defendants' application that there is no case to answer should fail. I therefore enter judgment in favour of the counter claimants as follows:

- 1) That the counterclaim defendants give a full accounting of all monies that were held in account numbers 215682243 and 2157234727 in the Barclays Bank PLC Road Town, Tortola, BVI from 2nd May 1996 to the date that said accounts were closed, including, but not limited to, the current location of those monies and the interest accrued there on to date.
- 2) Costs to be prescribed costs if not agreed to the counter claimants.

[71] I would apologize to counsel and the parties herein for the length of time that it has taken me to produce this judgement however the circumstances of this case where there was no authority presented to the court regarding no case submissions by learned counsel making the application. I was for my own benefit forced to conduct my own research on the law and practice in this regard.

[72] It is noted that there is one consistent thought running through all the authorities which I have read, which is that *"it is only in a rare case that the judge should be asked to determine the issues before him before all the evidence is completed"*¹⁷. Further, that in a civil trial a defendant should think long and hard before embarking on a submission of no case to answer to the trial judge as such a decision can leave the defendant in a *"... cleft stick"*¹⁸.

[73] In coming to my conclusion I have examined the following cases:

- 1) *Benham Limited –v- Kythira Investments Ltd*¹⁹

¹⁷ Michael Bentley –v- John Harris & Company [2001] EWCA 1724 @ 75

¹⁸ Per LJ Holroyd Pearce in Payne –v- Harrison [1961] 2 All E R 873 @ 278

¹⁹ Op cit

- 2) *Portland Managements Ltd –v- Harte et al*²⁰
- 3) *Michael Bentley –v- Jones Harris & Company*²¹
- 4) *Michael John Millar (t/a Waterloo Plant) –v- Margaret Cawley*²²
- 5) *Storey –v- Storey*²³
- 6) *Wisniewski –v- Central Manchester Health Authority*²⁴
- 7) *Rex –v- Williams*²⁵
- 8) *Laurie –v- Raglan Building Co Ltd*²⁶

M. E. Birnie Stephenson
High Court Judge

²⁰ [1976] 1 All E R 225

²¹ Op cit

²² Op cit

²³ Op cit

²⁴ [1998] Lloyds Report Med. 233 (Unreported)

²⁵ [1994] 3 WLR 745

²⁶ 1942 1 KB 152