

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2008-01935

BETWEEN

DULICE SAITH also called **DIANE SAITH**

PHILLIP MEDFORD

HARRY MEDFORD

Claimants

AND

ROOKMIN MEDFORD

(as Administratrix of the Estate of Carl Medford, deceased

And in her personal capacity)

(Substituted by Patrick Medford

by order of Hon. Mme. Justice Joan Charles dated 8th July 2016)

JAMES CHRIS MEDFORD

SURENDRANA CAPILDEO

(Substituted by his wife Shakti Capildeo)

Defendants

Before The Honourable Justice David C. Harris

Appearances:

Mr. H.R.M. Seunath instructed by Mr. Shastri Maharaj **for the** Claimants.

No Counsel or In-Person Appearance **for the** First Defendant

Ms. Veena Badrie-Maharaj **for the** Second Defendant.

Ms. Shobna Persad, Representative of the Estate of the Third Defendant **for the** Third Defendant.

JUDGMENT

INTRODUCTION

1. This matter commenced by writ of summons filed on the 9th November 2000; it was converted and transferred under the Civil Proceedings Rules as amended (the "CPR") in 2008. The Claimants

claim damages for the failure of the First Defendant to share any property of the estate of Carl Medford deceased, with the Claimants – the children of the deceased and beneficiaries of the said estate. The Second Defendant and the Claimants are siblings and the children of the First Defendant (now deceased) and the deceased Carl Medford who died on the 24th May 1958. The First Defendant did not appear in the matter and filed no defence or provide any testimony at trial. The Claimants, Second and Third Defendants were represented by counsel at trial.

2. The **Claimants' case**¹ is that the First Defendant obtained Letters of Administration for the estate of Carl Medford on the 20th November 1959. Subsequently, by Deed of Assent No. 12963 of 1975 she unlawfully and in breach of her fiduciary duty transferred 4 lots of land at Caroni Savannah Road to herself and subsequently to the Second Defendant and his wife. These lots formed part of the deceased estate and the deed was prepared by the Third Defendant, now deceased.
3. The said lots were then conveyed to the Second Defendant and his wife (8th August 1983 – Deed No. 18388 of 1983). Thereafter the Second Defendant's wife conveyed her interest in the lots to the Second Defendant, who remains the owner/title holder of the 4 lots at Caroni Savannah Road.
4. The First Claimant states that prior to 1998, she was not aware of the extent of property her father had left, nor that her mother had applied for and obtained Letters of Administration for her father's estate.² It was at this time, during the Second Defendant's divorce proceedings, that she became aware of her father's land at Caroni Savannah Road and that her mother had transferred land to the said Defendant and his wife. She further states that the transfer was temporary and the property would be divided equally among the children.³
5. The Claimants contend that the First Defendant's actions were fraudulent and/or in breach of trust as she was aware that she was not the sole beneficiary of the deceased Carl Medford's estate. Further, they have never received any share or part of the said estate.
6. The First Defendant died on the 3rd December 2001.

¹ Extracted from the Claimants' Statement of Case

² Witness Statement at para. 8

³ Witness Statement at paras. 9-10

7. The **Second Defendant's case**⁴ is that by Deed No. 18388 of 1983, he and his wife purchased the disputed 4 lots of land at Caroni Savannah Road from his mother for \$180,000.00⁵. Further, the Claimants were aware of the sale, which was discussed in their presence, and acknowledged the Second Defendant and his wife as the owners of the said lots.
8. The couple subsequently divorced and on the 20th March 1998 the Second Defendant's wife conveyed all her rights, title, estate and interest in the property to the Second Defendant, subject to the existing mortgage (Deed No. 200100044445).
9. The **Third Defendant**⁶ prepared the Deed of Assent No. 12963 of 1975, which conveyed the 4 lots to the First Defendant. He states that the First Defendant gave him instructions to prepare the Deed of Assent in respect of certain properties in the estate of Carl Medford. Further, her instructions were that she was a widow and the only person entitled to be vested with his (Carl's) property. The First Defendant did not inform him that Carl Medford was the lawful father of the Claimants or the Second Defendant.

ISSUES TO BE DETERMINED

10. The following issues fall for the court's determination:
 - i. Whether the Claimants' action is outside the limitation period for fraud, pursuant to the Real Property Limitation Ordinance Ch. 5. No. 7;
 - ii. Whether the estate of Carl Medford was distributed in accordance with the Administration of Estates Ordinance Ch. 8. No. 1;
 - iii. If not, whether the Deed of Assent No. 12963 of 1975 was lawfully executed or fraudulently executed;
 - iv. Whether the sale of the 4 lots by the First Defendant to the Second Defendant can stand;
 - v. Whether the actions of the First Defendant constitute fraud and/or a breach of trust;
 - vi. In all of the circumstances, whether the court is empowered to redistribute the estate of Carl Medford, pursuant to the Administration of Estates Ordinance Ch. 8. No. 1.

⁴ Extracted from the affidavits and witness statement of the Second Defendant

⁵ The claimants challenge this fact on the basis of his allegedly contrary assertions made in para 26 of the Affidavit filed in another court action exhibited at pp 194 of the 1st Trial Bundle in the instant case; see also para 23 and para 24(iv) of the claimants written submissions in the instant case for a fuller basis of the objection.

⁶ Witness statement at paras. 5-8

THE LAW

11. Section 21 of the Real Property Limitation Ordinance provides:

“In every case of a concealed fraud, the right of any person to bring a suit in equity for recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered...”

12. The Administration of Estates Ordinance provides at section 24:

“The widow or surviving husband of an intestate person dying after the commencement of this ordinance shall be beneficially entitled as follows:

- a) If there is no lawful issue of the deceased, to the whole estate of the deceased;*
- b) If there is lawful issue of the deceased, to one-third thereof...”*

13. Wooding CJ in **Roberts v Toussaint & Ors**⁷ accepted that *“fraud is not proved by the wanton use of the label ‘fraudulent’, nor is a transaction negative by a cavalier description of it as ‘alleged.’ Moreover, in actions in which a registered title is being impeached, fraud means some dishonest act or omission, some trick or artifice, calculated and designed to cheat some person of an unregistered right or interest...”*

14. In **Paragon Finance plc v D B Thakerar & Co**⁸ Millette LJ stated at page 9 of the judgment:

“It is well established that fraud must be distinctly alleged and distinctly proved, and that if the facts pleaded are consistent with innocence it is not open to the court to find fraud. An allegation that the defendant ‘knew or ought to have known’ is not a clear and unequivocal allegation of actual knowledge and will not support a finding of fraud even if the court is satisfied that there was actual knowledge...”

15. In **Singh v Singh and Tai Chew**,⁹ Narine J (as he then was) described the test to be applied in cases of fraud as: “the burden of proving fraud lies on the person who alleges it. It must be distinctly

⁷ (1963) 6 WIR 431

⁸ [1999] 1 All ER 400

⁹ HCA 530 of 1991

alleged and distinctly proved. The standard of proof is on the balance of probabilities commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities.”¹⁰

THE EVIDENCE

16. There was evidence from four witnesses in this matter. Dulcie Saith, the **First Claimant**, gave evidence on behalf of the Claimants; no witness statement or testimony was forthcoming from the **First Defendant**, Rookmin Medford (as Administratrix of the Estate of Carl Medford, dec’d and in her personal capacity¹¹); James Chris Medford and Edward Medford for the Second Defendant; the witness statement of Surendranath Capildeo (dec’d.), Third Defendant’s witness statement, was by agreement tendered into evidence on behalf of the Third Defendant. The First Defendant, as of December 2001 and more recently the Third Defendant, are deceased. The Second Defendant is the executor of the Will of the First Defendant.

17. A true account of the relevant history of the main subject property is conveniently set out in the witness statement of the Second Defendant. There has been no sufficient evidence to contradict the objective core facts there stated. The court accepts them as true. The brief account is as follows;

18. **Deed No. 12963/1975** (the “1975 Deed”): the First Defendant was vested the 4 lots in her personal capacity as “*the lawful widow*” of Carl Medford (dec’d) and “*the only person entitled to his estate*”. The Third Defendant, solicitor, was involved in the preparation and execution of this Deed. At the time this Deed was executed the Second Defendant was residing in the USA.

19. **Deed No. 18388/1983** (the “1983 Deed”): the 4 lots were vested in the Second Defendant and his wife, Elizabeth for the consideration of the sum of \$180,000.00 paid to the vendor, the 1st Defendant, Rookmin.

¹⁰ HCA 530 of 1991 at page 24

¹¹ As intitled on the Writ of Summons and Statement of claim.

Deed No. 6898/96 (the “1996 Deed”): this deed purported to vest the Second Defendant’s wife, Elizabeth’s ½ share in the 4 lots back to the First Defendant for the sum of \$200,000.00.

20. **Deed No. DE 200100044445** (the “1998 Deed”): In 1998, pursuant to a consent order in the matrimonial Ancillary proceedings between the Second Defendant and Elizabeth Medford, Elizabeth transferred all her interests in the 4 lots to the Second Defendant.

21. **Deed No. DE 200102721247** (the “2001 Deed”): In 2001 the First Defendant and the Second Defendant executed a Deed of rectification to correct and put doubts about the effectiveness of the previous Deed 6898/96 Deed, to rest.

22. There are several other, what I would call, non-pivotal Deeds exhibited in the matter concerning other transactions with the 4 lots, such as a mortgage for instance. To put the allegations of fraud against the Third Defendant in context, he is alleged to have committed the fraud in the only transaction that he participated in, the 1975 Deed vesting the 4 lots in Rookmin Medford, the First Defendant, who was at the time happened also to be the Administratrix of the Estate of Carl Medford.

23. The Claimant led evidence that her deceased father, Carl Medford (“**dec’d**”), died intestate leaving an estate comprising several properties and an insurance policy. Her mother, the First Defendant applied for and was granted Letters of Administration (“**L of A**”) on or around November 1959. The First Claimant said that she wasn’t aware of application at the time. Her testimony in cross examination by counsel for the Third Defendant in particular, was that prior to 1998 she was not aware that her mother had applied for L of A to her father’s estate or that she was entitled to a share in the 4 lots at Caroni Savannah Rd. and that in those days she was ignorant about how property moved from a deceased to a living person. Her evidence is, that the First Defendant improperly transferred the interest in 4 lots of land situate on the Caroni Savannah Rd. to her herself and then to the Claimant’s brother, the Second Defendant, and his wife in 1983¹². The Second Defendant’s wife’s ½ share in the 4 lots was subsequently vested in the Second Defendant in his sole capacity in the 1998 Deed. She became aware of these facts she said, when

¹² There were further transactions thereafter.

in assisting the Second Defendant in his Divorce proceedings in around 1998, she happened upon and read an affidavit by him in those proceedings, which set out the fact that her father had left an estate including the 4 lots to which she was entitled to a share of. Further, she noted that her mother, the Administratrix of her father's estate, had in the end, transferred the said 4 lots of land to him. He had subsequently built upon lands that spanned two of the lots.

24. I do not accept this evidence from the First Claimant – that the First Claimant first became aware of the L of A and subsequent transfer of the 4 lots to the First Defendant and then to the Second Defendant only after 1998 - as the truth and proved fact. No party has, for the most part denied the fundamental facts in the case save for the Second Defendant's assertion that the First Claimant became aware of the extent of her father's estate, her entitlements and the Second Defendant's acquisition of the four lots, well before the date she claimed she did. This is not a mere bald statement on the part of the Second Defendant. On the evidence, several of the discussions between the Second Defendant, his wife Elizabeth and the First Defendant leading up to this sale were done in the presence of the First Claimant and the other Claimants. In addition the Second Defendant testified that during the construction on the lots that ensued from around 1983, the First Claimant came upon the site to speak with his wife and other brothers actually assisted in aspects of the construction. I accept this evidence of the Second Defendant as true and plausible, according more with common human experience and more likely than the First Claimant's assertion that she knew nothing of it. That this ownership of the lots would not have come to the First Claimant's knowledge in ordinary discussions with the various family or even community members during that construction period of activity is again, less plausible than the contrary assertions of the Second Defendant. Further, the earlier High Court Action HCA3889/1983 commenced by the now First and Second Defendants against the now Second and Third Claimants, Phillip Medford the Second Claimant in the instant action had there deposed to the fact and details of the First Defendant's ownership of the 4 lots. It is not a plausible assertion that the Second and Third Claimants could have been involved in that earlier trial and the information of the First Defendant, Rookmin's proprietary interest in the 4 lots, not coming to the wider family knowledge and that of the First Claimant since at least 1983, if not during the earlier preparation of that matter. The Second and Third Claimants themselves testified to this or pleaded this, in that earlier trial. The testimony of the First Claimant is that the relationship

between her and the family would have been good at that time. The court finds that the First Claimant was aware of these facts as early as 1983.

25. There is no sufficient cogent evidence to contradict that of the Second Defendant on this narrow but crucial point. The First Claimant has not provided evidence with sufficient detail, nuances and cogency, in contradiction to the evidence of the Second Defendant. What the First Claimant knew or did not know is within her peculiar knowledge. Merely cavalierly and repeatedly stating that she did not know the full extent of her father's estate, the date and/or fact of the application for L of A, and that the 4 lots vested in her mother at one time and subsequently in the Second Defendant does not make it a proved fact; is not helpful to the case for the First Claimant and simply does not meet muster.

26. The First Claimant testified to having attended the office of the Third Defendant with her mother on several occasions in the 1970's where the mother, First Defendant, had gone there to see about matters dealing with some lands¹³. She testified that she was not familiar with such matters at that time of her life. The court accept this likely to be so. In the circumstances of her limited level of formal education, she having married at the early age of 14 yrs., her evidence on not recalling the minute details or knowing the significance of the land matters her mother had gone to discuss with the lawyer, is more plausible than any contention to the contrary. However, the First Claimant also testified to her brothers attending the same office with her mother for the same or related purposes on other occasions during that period. The First Claimant's evidence suggests that on those occasions she was not herself present. From the Claimant's own evidence, the First Claimant has no personal knowledge of where they went and what was done or said, of her own knowledge. Very simply, the court holds that on the evidence she provided, the purpose of those trips with mother and sons and indeed even the fact of attendance by the First Defendant along with any of the First Claimant's siblings, at the offices of the Third Defendant are not proved. Further still, the Second Defendant and Edward Medford (another brother) have not accepted this allegation by the First Claimant.

27. The First Claimant is saying that not only in fact was she entitled to a share of the estate and the 4 lots of land, but that the Second Defendant was aware, by virtue of those visits to the Third

¹³ See the "further and Better Particulars" to the Statement of Claim filed in the matter.

Defendant and later, through the process of having the properties transferred to him, that she was entitled to a share of the lots and estate. She further testified that in the meetings with the lawyer and on one occasion she was reintroduced to the Third Defendant as the First Defendant's and the dec'd daughter. She said that in fact the Third Defendant's father, a solicitor, had visited her father on several occasions at their home. She testified that the Third Defendant well knew that her father and mother had children who would then be entitled to a share of the estate, but notwithstanding that, conspired with the First and Second Defendants to fraudulently dispose of the 4 lots to the Second Defendant to the detriment of the Claimants.

28. As a general proposition; fraud means some dishonest act or omission; some trick or artifice, calculated and designed to cheat some person of a right or interest¹⁴. In this case the Claimants allege that the three Defendants conspired to do just that. They allege that was achieved by the First Defendant's breach of her fiduciary duty to hold the properties in trust for the Claimant and other beneficiaries, in stating on the application for the 1975 Deed that she was the only person entitled to the estate of the late Carl Medford, and that the Third Defendant well knowing this fact, facilitated the First Defendant vesting the properties in herself in breach of that trust.

29. The facts in support of the visits by the First Defendant along with the First Claimant were pleaded by way of the further and better particulars provided by the Claimants. These particulars were filed for purposes of this trial in the bundle captioned: "*Supplemental First Trial Bundle of Documents Pleadings, Witness Statements and Affidavits*". The original filing stamp date endorsed on the documents is 15th December 2003. The bundle was filed for this trial on January 17, 2018. It is noteworthy that neither the defence nor the witness statements of either the Second or Third Defendant address the factual allegations of the meetings contained in the further and better particulars at which the first Claimant was in attendance, with any particularity that suggests the inaccuracy of the Claimant's account. The Claimants have not said and indeed cannot say that the 1975 Deed was executed at any one of these visits to the lawyer at which the First Claimant was in attendance.

30. The Third Defendant in his defence at para 9 admits to preparing and executing the Deed No. 12963 of 1975. The aspects of the evidence from the Third Defendant's witness statement is also

¹⁴ Wooding CJ in Roberts v Toussaint & Ors. (1963) 6 WIR 431; see also the Claimants' written submissions.

in the way of *expert* evidence on the law and procedure in the application for L of A. There is no evidence that suggests that the Third Defendant can give evidence of the circumstances and content of the meetings between the First Defendant, the First Claimant and his deceased father at the Claimants' family home or the law offices. The Third Defendant does however, in his witness statement, deny that he was aware of the First Claimant and the Second Defendant at the time he prepared and had executed the "Deed of Assent". He testified to taking instructions from the First Defendant for the purpose of the preparation of a Deed of Assent including the First Defendant's representation that she was the only person entitled to be vested with her deceased husband's property. The First Claimant for her part acknowledged in her evidence that she was never in the room with her mother and the solicitor during the discussions/instructions. In any event her evidence is that in those times she knew nothing about those matters concerning the L of A and/or matters legal. I accept that in the first part of 1975 the First Claimant was unlikely to have been familiar with the nature of the transactions. She certainly would have learnt along the way, from that period. The content of the instructions passing from the First Defendant to the Third Defendant for the preparation of the 1975 Deed are peculiarly within their knowledge.

31. Other than the inferences the Claimants are calling on this court to draw from these objective facts: that the Deed was prepared and executed by the Third Defendant; there was in existence the L of A with the First Defendant as the Administratrix; that all the siblings of the Second Defendant including the Claimants are in law entitled to share in 2/3rds of the estate on an intestacy and the Second Defendant is the registered proprietor of the 4 lots; no more in proof of the Third Defendant's knowledge of the disenfranchisement of the Claimants or his "*conspiracy in a fraudulent design to deprive the plaintiffs of their entitlement*" or in proof of his conduct as a Solicitor violating "...the ordinary standard of honest behaviour" has been led.
32. I do not accept the evidence of the First Claimant that at the time the Third Defendant prepared and executed the Deed that he was aware of her as the daughter of the dec'd and First Defendant. It may well have been that she, as may have very many other persons, was introduced to him years before as the dec'd daughter, but that does not necessary mean that he was aware of such

matters at the time of preparation and execution¹⁵. Further, even if he knew of her status it does not necessarily follow that the Solicitor would be aware that the execution of the Deed would have any impact on her entitlement. The First Defendant's instructions are set out in the evidence and accepted by this court as the best evidence of them in this case. The First Claimant has not shown the detriment to her of the property being vested in the First Defendant in the 1975 Deed. At that time the First Defendant was still the Administratrix, under a fiduciary duty to the beneficiaries and duty bound to perform her role and protect the estate, identify and collect the assets, discharge its liabilities and to distribute the estate. Further and very importantly in the court's view, the beneficiaries including the First Defendant were entitled to their statutorily specified share of the whole Estate and not to each item on the inventory. The First Defendant having vested the property in herself was well able to discharge her fiduciary duty to the Claimants at that time. On the evidence, the Claimants have not proved that the Third Defendant defrauded them or participated in a scheme along with the First and Second Defendants to defraud the Claimants and other siblings.¹⁶ The Claimants have not proved their detriment either.

33. The Second Defendant has testified that he purchased the 4 lots from his mother for the sum of 180,000.00. The amount is endorsed on the Deed. This fact of this endorsement is not in dispute. The First Claimant has on one hand testified to acknowledging the Second Defendant as having purchased the lands and also vacillating and testifying that to date she is not sure that he actually purchased the lands. There is no evidence in the matter that sufficiently contradicts the evidence of the Second Defendant and the documentary evidence of the purchase amount. Again, a mere bald statement by the Claimant that the Defendant did not purchase the lots is insufficient to satisfy her burden of proof in this matter. The Claimants have pointed out the statement in the filed affidavit by the Second Defendant in an earlier court action where he said that the lands were transferred to him by the first defendant *temporarily* in order to facilitate a financial transaction at the time. Both that version and the position adopted now cannot be true. The court has to accept a version of what in fact transpired. This court does not have the full context and other evidence led in that earlier matter. However, in this matter the Second Defendant's

¹⁵ Paragon Finance plc v D B Thakerar & Co [1999] 1 All ER 400 Millette LJ at pg. 9 of judgment "*An allegation that the defendant 'knew or ought to have known' is not a clear and unequivocal allegation of actual knowledge and will not support a finding of fraud...*"

¹⁶ See Wallingford v Mutual Society [1880] 5 App Cas 685 at p 709, cited in CV2015-02816 Jim Peter Grant and Anor. v Lerie Bovell, Ramcharan J at para. 39.

assertions are not implausible, illogical or inconsistent with the whole of the narrative by all sides in this case. It is further supported in the testimony and documentary evidence. The court notes also that no matter what the conclusion i.e. whether he bought it or had it temporarily transferred to him, the allegation by the Claimants of the First Defendant's breach of trust as framed by the Claimants, would still stand. The court holds that the Second Defendant did purchase the lots from the First Defendant. There is no evidence that the lots were purchased at a value outside of the range of value which the market would bear¹⁷. In any event it is not pleaded that he purchased at an under value. The pleading is that he either did not purchase at all; ought not to have purchased or in any way receive the benefit of the 4 lots at all in the circumstances of his siblings' entitlement to a share of the estate. The allegation is that he knew of this entitlement and sought to defraud the Claimants in his conspiracy with the First Defendant by purchasing or otherwise acquiring the 4 lots.

34. The Claimant's evidence is that the Second Defendant knew of the Claimants' entitlement to the specific lots. The Defendant indicated that he did not. What is the evidence that he did? He must have known in what capacity his mother was divesting herself of the property. He went on to say that initially his mother had transferred certain of the lots to him temporarily, to facilitate him in another transaction. I accept on the evidence that given his education and professional status that it simply is not plausible he would have gone through the process which involved a solicitor and not known in what capacity his mother was acting. The lots were acquired by the Second Defendant and his wife as joint tenants in the 1983 Deed. The lands and the legal status of those land were relevant in his Divorce proceedings also. During and at the end of it all he would have been fully aware that his mother was the Administratrix of his father's estate who had died intestate. The court is being asked to infer that the Second Defendant at the time was aware of the statutory proportions in which the estate was to be divided. I do not think that necessarily follows. Further, he was purchasing the property but not receiving a gift. Furthermore, it is not proved that the disposal of the lots to him was in breach of the Ordinance or the fiduciary duty of the First Defendant.

35. Then there is the issue of the First Defendant. The case against the Second and Third Defendants is substantially moored upon the knowledge, actions and alleged breaches of the First Defendant.

¹⁷ The valuation shows a price higher but is unclear as to what considerations might have gone into that value.

That is; if she was not aware of her statutory limits as an Administratrix and/or if she did not in fact do anything in breach of her role as an Administratrix, then it is difficult to see how the Second or Third Defendant can be held to have fraudulently acted in concert with the First Defendant to the detriment of the Claimants.

36. The court has to resort to the Statute here. The statute provides simply that the siblings all, share equally in 2/3rds of the Estate. The surviving spouse, the First Defendant, takes 1/3rd of the Estate. There is no law that requires the Administratrix to distribute 2/3rds of the physical lots or any individual asset equally amongst the siblings. The duty of the Administratrix is to distribute the whole of the estate in the proportions set out in the law. In doing so the Administratrix can choose to sell all the whole or part of assets and distribute the proceeds in accordance with the statutory proportions and intent. There is no evidence in this matter as to the value of the other assets as set out in the inventory, including the 11 acres for instance, and whether the \$180,000 paid by the Second Defendant for the lots diminish the value of the entitlement of the other siblings and indeed the entitlement of the First Defendant¹⁸. In the absence of this the Claimants would not have been able to establish any detriment to their interests or that they were defrauded.

37. I note that no evidence has been produced to this court sufficient to establish the status of the other properties listed on the inventory. The court does not know whether the assets still exist or whether they have been reduced to money etc. The Claimants at para 3 of the relief claimed in the statement of claim, have asked for an account of all the income received by the First or Second Defendant from lands belonging to the Estate of Carl Medford, deceased, and an account of any of the dealings with those 11 acres of land at Pierre Rd, Chaguanas and two parcels of lands of 40 acres and 11 acres more or less, at Mamural . The Claimants also ask that their respective shares in these properties be conveyed to them as they are surely entitled.

38. The Claimants are obviously entitled to the estate being distributed forthwith as sought in the relief claimed. In determining the distribution proportions, the Claimants would in the normal course of things be entitled to see the Second Defendant's interests in the balance of the estate set-off against any premium he may have gained at the time of purchase of the 4 lots, were the

¹⁸ The Administratrix must now account for the \$180,000.00 which now forms part of the Estate to which all are entitled to a prescribed share.

purchase at that time to be shown to have been purchased at an undervalue. The documents on file do not suggest that it was an undervalue. In any event the highly speculative and artificial valuation exercise that would be required in 2020, to come up with a value in 1975, would render its evidential and commercial value somewhat useless.

The counterclaim

39. The Second Defendant counterclaimed for a declaration that the conveyance of the 4 lots of land is a valid conveyance. The said conveyance is a valid conveyance in this court's view.

40. Further, he counterclaims for relief for the Defendants under the Trustees ordinance. The Second Defendant defended this matter in his own right as the Second defendant only. There is no basis upon which the Court can assume he represents either of the other Defendants in his counterclaim.

41. Section 62 of the Trustees Ordinance provides

If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Ordinance, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

42. In Locher v Howlett (1894), 13 NZLR 584, 40 Digest (Repl) 169, *735) it was held that, although a purchaser from a registered proprietor is not affected by knowledge of the mere existence of a trust or unregistered interest, he is affected by knowledge that the trust is being broken, or that the owner of the unregistered interest is being improperly deprived of it by the transfer under which the purchaser himself is taking.¹⁹

¹⁹ Cited in Roberts v Toussaint & Ors [1963] 6 WIR 431 at 435.

43. The Second Defendant seeks relief on his counterclaim, pursuant to s.62 of the Trustee Ordinance. Any breach of trust, if it existed, would be on the part of the First Defendant and not the Claimants. The findings of the court are that on the evidence of the Claimants, such breach and knowledge of the Second Defendant are not proved. On the evidence it appears that the Second Defendant was aware of the extent of what appeared to be a reasonably substantial estate of his father in 1983. The further findings below at para. 54 of this judgment support these initial findings. This court is not satisfied that the second defendant was aware of a breach of trust on the part of the first Defendant. Even if he were aware of the 1975 Deed or the entitlement of all the family on an intestacy, without the knowledge of the value of the whole estate one could not be culpable(directly or by acting in concert with another) for a breach as alleged by the claimants in all the circumstances of this case. Section 62 would certainly come to the aid of the second defendant(and indeed the first defendant) in the circumstances of this case.
44. In any event, the Claimants having not proved their case against the Second Defendant, relief from a breach of trust pursuant to s. 62 of the Ordinance would be rendered unnecessary.

The limitation Defence

45. The finding of fact by the court is that facts in support of the alleged fraud would have come to the knowledge of the Claimants by 1982 for the latest. This matter was filed in 2000. This is some 8 yrs. after the time started to run against the filing of this matter. The matter of the fraud was Statute barred after 4 years - by 1986.

FINDINGS AND CONCLUSIONS

Fraud

46. At the onset, this court finds that the limitation period ran out since 1986. The Claimants are barred from pursuing the action in fraud against the Defendants, all. But even if they were not faced with this successful Limitation Defence the court concludes as follows below.
47. The First Claimant has not been shown to have breached her duty and function as an Administratrix in the subject estate;

48. The Claimants or anyone else, have not been shown to have had the value of their interest as at 1975 or at any time, to be diminished by the actions of the First Defendant and more particularly with respect to the 1975 Deed.
49. In the circumstances, the fraud alleged against the First Defendant has not been proved²⁰. The fraud alleged against the Second and Third Defendants are substantially predicated on the alleged fraud of the First Defendant. The fraud against the First Defendant not having been proved, the underlying basis for the allegations against the Second and Third Defendants fall away. This diminishes the case against the Second and Third Defendants. Further, quite apart from the link with the First Defendant's liability, on the evidence the direct case against the Second and Third Defendants is unsustainable.
50. Again, quite apart from this knock-on effect from the First Defendant, the Claimant has failed to establish the following **essential ingredients** in the fraud alleged: (i) *Dishonest act, omission or trick designed to cheat the claimants of a right and interest*²¹ to the Estate of the Carl Medford: In relation to the Second Defendant, the court has found that the Second Defendant did not know he was depriving the Claimants of an entitlement when he paid for and purchased the lands²². The Claimants have not established that they are entitled to a physical share in that specific part of the estate. Further, the Claimants simply have not established the fact of a fraud: In relation to either the Second or Third Defendant, in the context of the duty of the Administratrix to distribute the **whole** of the estate in accordance with the law, the act of transferring the said lots for consideration, do not necessarily suggest negligence or fraud. The court is satisfied that the First Defendant's instructions were as alleged by the Third Defendant and indeed reflected in the content of the Deed. Further still, the court accepts that the Third Defendant did not in any event have the recall that the Claimant was the daughter of the deceased and had a specific interest and claim in the 4 lots of land. (ii) *Detriment and loss of an interest or right*: In relation to the Second Defendant again, no act on his part

²⁰ Standard of proof see Hornal v Neuberger Products Ltd [1957] 1 QB 247; HCA 530 of 1991 Singh v Singh and Tai Chew. For a more recent perspective CV2015-02816 Jim Peter Grant and Anor. v Lerrie Bovell, Ramcharan J from para. 50 of judgment

²¹ Ibid para. 20

²² This would be so even if he were gifted the lands.

resulting in a discernible loss of a right or interest has been proved. The sale (or even gift) of the lots to him do not represent the loss of the right or interest to which the Claimant is entitled on this intestacy. That the Claimants cannot by virtue of the disposal of the 4 lots obtain their rightful part of the 2/3rd share in the value of the estate is simply not proved such as to sustain the claim in fraud or in 'breach of trust'; In relation to the Third Defendant on this point – *loss of right or interest* – likewise, the execution of the 1975 Deed did not of itself alienate the interests or rights of the Claimants in the estate. The First Defendant without having the lots conveyed to her could have as Administratrix carried out the same physical act of conveying the said lots to the Second Defendant for or without consideration. That 1975 Deed left intact the full capacity of the First Defendant to carry out her duty as Administratrix in vesting the property in a beneficiary²³. Indeed the 1983 Deed vesting the lots in the Defendant and his wife represents and reflects the legal capacity the First Defendant retained to vest in, and give good title to, a purchaser or a beneficiary on an intestacy as the case might be.

51. The question of whether the property was sold at below market value and the whereabouts of the proceeds of sale of the 4 lots at the time of filing this action or now, are not issues canvassed in this trial. In any event the Claimants have not proved any of these facts to the benefit of their pleaded case.

Breach of trust

52. Suffice it to say, the allegations of breach of trust against both the Second and Third Defendants is not proved. That the First Defendant represented that she was the sole beneficiary to the estate would only reflect a fraudulent intent if, first, she understood the full limits of her and others interests in the estate and wanted to vary that entitlement. The Claimant herself said that she (Claimant) did not understand these things until well into her adult life. No evidence has been led as to the level of education of the First Defendant and whether she would have understood her role and function as an Administratrix and whether she had disposed of assets which were not recoverable for the benefit of the estate. There is no evidence to prove that the 4 lots were sold at

²³ There may be a cost of going through an indirect route for which an Administratrix may have to account.

an undervalue. As such, the rights and interests of the beneficiaries are preserved in money kind. The accounting for that money is perhaps the issue but not the conversion of the assets from one form to another. Further still, in the absence of an understanding of the value of the whole of the remaining estate, one cannot conclude that the sale of the 4 lots, even at an under value, diminishes the Claimants' entitlements to a part of the 2/3rds of the estate and the prospects of realizing those entitlements. The estate must now be fully accounted for and administered and distributed with urgency. Given the essential duties of an Administratrix, this court is unable to glean from the actions of the First Defendant a breach of her fiduciary duty. The Second and Third Defendants' participation in the alleged breach of trust is simply not proved on the pleaded case.

53. For the reasons provided above; **IT IS HEREBY ORDERED THAT**

- (i) The Claimants' case for the First, Second and Third Defendants in (i) fraud and (ii) breach of trust, is dismissed;
- (ii) The Claimants' claim for a declaration that the Second Defendant holds the legal title of those four (4) lots at Cor. Edward Street and Caroni Savannah Road in trust for the beneficiaries of the Estate of Carl Medford, is dismissed;
- (iii) The Claimants' claim for an account of all income received by the First and Second Defendants from the lands belonging to the Estate of Carl Medford deceased, and an account of any dealings with those 11 acres 2 roods and 8 perches of land at Pierre Road, Chaguanas and those two parcels of land 40 acres and 11 acres 3 roods and 38 perches at Mamural, being land formerly owned by Carl Medford deceased and an Order that shares of these parcels of land be conveyed to the Claimants as they are entitled, and in relation to any assets whatsoever and howsoever derived from the Estate, is granted and to be complied with forthwith at the expense of the Estate unless agreed otherwise by all of the parties unanimously in writing;

- (iv) The Counterclaimant's/Defendant's claim on the counterclaim at para. 2 thereof is granted;
- (v) The Counterclaimant's/Defendant's claim on the counterclaim at para. 1 thereof is granted;
- (vi) There is no order as to Damages on the Claim; Defences; Counterclaim ;
- (vii) Each party to bear their own costs in this matter unless otherwise agreed between the parties.

DAVID C. HARRIS
HIGH COURT JUDGE
April 28, 2020