REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub-Registry San Fernando

No. S – 81 of 2005

BETWEEN

TORRENCE DOOKRAN NEEBAR Plaintiff

AND

BARRY SAWACK NEEBAR Defendant

Before: The HONOURABLE MR. JUSTICE DAVID ALEXANDER (Ag.)

Appearances:

Mr. Prem Persad-Maharaj for the Plaintiff;

Ms. Cindy Bhagwandeen for the Defendant;

REASONS

1. By specially endorsed writ of summons, the plaintiff TORRENCE DOOKRAN NEEBAR claims against the defendant BARRY SAWACK NEEBAR the sum of $245,000.00 being money held in trust for the plaintiff and / or alternatively on an account stated between them and for money lent by the plaintiff to the defendant. The particulars of claim provide that the sum of $245,000.00 was the amount due and owing on the 31st December, 2004.

2. In his defence, the defendant contends that the monies claimed by the plaintiff were given to him as a gift at the request of and on the instruction of his late grandmother, SUMARIE NEEBAR. The defendant also counter-claims the sum of $115,000.00 which he says was loaned to the plaintiff on or about the 28th May, 2004, for his divorce settlement, Attorney's fees and living expenses. The defendant seeks to set off so much of this sum from that which may be found owing to the plaintiff.

3. The issues are whether or not the said $245,000.00 was held on trust for the plaintiff by the defendant or whether or not this said sum was a gift to the defendant at the request of or on the instructions of his grandmother and whether or not the plaintiff is indebted to the defendant in the sum of $115,000.00 loaned to him on or about the 28th May, 2004.

4. I propose to deal with these issues together for the sake of convenience.

5. In his evidence-in-chief, the plaintiff stated that the defendant is the younger of his two sons. His aunt Alicia Persad – his mother's sister – with whom he had a very close relationship died sometime in 1996, a widow. He and his mother cared for her during her illness and she desired that he should benefit from her assets.

6. Alicia Persad opened two joint accounts with the plaintiff, one in the sum of $400,000.00 and the other in the sum of $250,000.00. Pursuant to Alicia Persad's instructions, after her death, the plaintiff distributed the said $250,000.00 to several family members.

7. Sometime in 1998, the plaintiff deposited the said $400,000.00 in Colonial Life Insurance Company Limited (CLICO).

8. Around the 17th June, 2003, he changed this account to a joint Account (at CLICO) in the names of his sister Vegenti Buchoon and the defendant. The plaintiff said that he was the named beneficiary on this joint account. The arrangement was that the money belonged to him and whenever he requested or wanted money, it would be given to him. He said that the money was therefore put by him on trust in the names of his sister and the defendant.

9. In support of this aspect of his evidence, the plaintiff is relying on two documents, a CLICO certificate for Executive Flexible Premium Annuity II (E F P A II) dated July 1, 2003, and a CLICO receipt NO. 1853008 dated 06/17/2003. The certificate reflects the defendant as annuitant and the defendant and Vegenti Buchoon as owners. Nowhere in this document is the plaintiff mentioned as beneficiary. Similarly, the receipt shows that the sum of $400,000.00 was an initial premium received from the defendant but the plaintiff's name does not appear on this document.

10. The plaintiff's evidence continued, that on the 28th November, 2003, he instructed the policy holders i.e. the defendant and Vegenti Buchoon to withdraw $50,000.00 from the account which they did. A letter to CLICO dated 17th November, 2003, signed by the defendant and Vegenti Buchoon requested a cheque in the sum of $50,000.00 payable to the defendant only with the remainder to be credited to a new EFPA II in the name of the defendant only with the plaintiff as the sole beneficiary. There was no document before the Court which showed that CLICO complied with this latter request, but a document titled CLICO TRANSFER dated 26th November, 2003, shows that POLICY No. R 0068007 with the defendant as

the insured in the amount of $355,063.01 was transferred to POLICY No. R 0076379, the effective date of transfer being the 18th November, 2003.

11. The cheque for $50,000.00 in the defendant's name was deposited in his account No. 830704627001 at Republic Bank Cipero Street, San Fernando. The plaintiff said that he and the defendant agreed that his name would be joined on this account, but again there is no documentary evidence of this having been done.

12. This $50,000.00 was used for the plaintiff's ill mother who died on the 7th December, 2003. On the plaintiff's instructions, $18,000.00 therefrom was withdrawn by the defendant on the 10th December, 2003, to meet funeral expenses.

13. On the 1st June, 2004, the defendant in the presence of the plaintiff withdrew $115,000.00 from the CLICO account leaving a balance of $245,000.00. The $115,000.00 was for payment of the plaintiff's divorce settlement in the sum of $75,000.00 to his wife and legal fees of $10,750.00.

14. The defendant subsequently slowly withdrew the balance of the said $245,000.00 for his own use without the plaintiff's instructions.

15. The plaintiff said that the monies received by his mother from his aunt (her sister) she distributed before her death to her daughter, nephew and nieces. At the time of her death she had no funds left.

16. The plaintiff was not challenged in cross-examination on his evidence that his aunt Alicia Persad had given him the $400,000.00 as a gift or that he was the named beneficiary on the several accounts in the defendant's name and instructed the defendant on how the monies should be spent.

17. Vegenti Buchoon the plaintiff's sister next testified on his behalf. By and large, her evidence-in-chief corroborated the plaintiff, save and except her statement that it was her impression that the monies held by her and the defendant on trust for the plaintiff were for the purpose of the defendant renting premises as a dry goods store and purchasing stocks for sale.

18. In cross-examination, Ms. Buchoon contradicted herself when she stated that Alicia Persad gave her mother the $400,000.00 which she in turn gave to the plaintiff for his sole use. She also stated that her mother had an additional $175,000.00 which she shared amongst her and other relatives.

19. One Patricia Emerald Gajadhar was the plaintiff's last witness. Her evidence in my view did not affect the outcome of this action.

20. The defendant's evidence was that the plaintiff, sometime in June, 2003, informed him that he had instructions from his grandmother to give him $400,000.00. This sum was deposited in a CLICO policy in the joint names of the defendant and Vegenti Buchoon. Sometime in late November, 2003, the defendant surrendered this policy and withdrew therefrom the sum of $50,000.00. He gave the plaintiff $25,000.00 for his personal use and used the other $25,000.00 to restock his mini mart.

21. The balance of the account in the sum of $355,063.00 the defendant placed on an Executive Flexible Premium Annuity II Policy. On or about May, 2004, at the plaintiff's request, the defendant cashed in the insurance policy and loaned the plaintiff $115,000.00 for his divorce settlement and legal fees. This sum was deposited in a joint account in both the plaintiff's and defendant's name at Republic Bank, Cipero Street.

22. The defendant was then left with $245,645.00 from which the sum of $200,000.00 was used to construct a home and the balance placed on a CLICO fixed deposit in the joint names of the defendant and his son.

23. The defendant said that his grandmother confided in him that she did not trust the plaintiff and Vegenti Buchoon because she felt that they were trying to exploit her and "thief" her.

24. In cross-examination, the defendant agreed that the plaintiff was the named beneficiary of the various sums deposited at CLICO. He said at no time did he understand that the $400,000.00 put in his and his aunt's name was a loan. Sometime shortly after the death of Alicia Persad, both he and his brother received $15,000.00 from his grandmother.

25. I find that the totality of the evidence in this action supports the plaintiff's contention that the sum of $400,000.00 was money given to him by Alicia Persad for his personal use. This sum was not given to him by his mother to give to the defendant. I so find because I find it difficult to accept that this sum of money would on the plaintiff's instructions be placed on an account in the joint names of the defendant and Vegenti Buchoon with the plaintiff as beneficiary in the first instance and thereafter the balance in the name of the defendant with the plaintiff as beneficiary.

26. I find further that the sums withdrawn from the CLICO accounts i.e. $50,000.00 and $115,000.00 were withdrawn on the instructions and at the request of the plaintiff. The $115,000.00 was not a loan to the plaintiff by the defendant. Indeed, the fact that the defendant was given $15,000.00 by his grandmother shortly after the death of Alicia Persad suggests that his grandmother never intended that the defendant should be given another $400,000.00. I also do not believe the defendant's evidence that his grandmother told him that she did not trust the plaintiff and Vegenti Buchoon whom she felt were trying to exploit and "thief" her. It is unlikely that the defendant's grandmother would harbour those sentiments yet entrust the plaintiff with such a large sum of money to give to her grandson. Then there is the will of Soomaria (the plaintiff's mother) dated 7th August, 1996, in which the plaintiff was named the sole executor and beneficiary. A testatrix would hardly make such a will in favour of one whom she believes untrustworthy.

27. The sum of $245,000.00 being the balance in the CLICO account in the defendant's name was in my opinion held by the defendant in resulting trust for the plaintiff. A resulting trust arises when a transferee is required by equity to hold property on trust for the transferor. The concept of a resulting trust is appropriately explained by Lord Denning M.R. in HUSSEY v PALMER [1972] 3 ALL.E.R. 744 at 747 C where he stated:

> "By whatever name it is described, it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded on large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or share in it. The trust may arise at the outset when the property is acquired, or later on, as the circumstances may require. It is an equitable remedy by which the Court can enable an

aggrieved party to obtain restitution. It is comparable to the legal remedy of money had and received which, as Lord Mansfield said, is very beneficial and, therefore, much encouraged."

28. I am of the view that had the plaintiff sought the remedy of monies had and received, the result in this action would have been unchanged. Whatever the reason for the plaintiff placing the $400,000.00 in the defendant's name, there is no evidence that he intended the defendant to be the owner thereof; a resulting trust therefore arose in the plaintiff's favour.

29. I order judgment for the plaintiff with costs to be paid by the defendant certified fit for advocate attorney to be taxed in default of agreement. The defendant's counterclaim is dismissed with costs to be paid by the defendant to the plaintiff certified fit for advocate attorney to be taxed in default of agreement.

August 16, 2010 ……

DAVID ALEXANDER

Former Judge (Ag).