

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2015-03860

BETWEEN

WARREN LEARIE QUASHIE

CLAIMANT

AND

RBC TRUST (TRINIDAD & TOBAGO) LIMITED

(Formerly RBTT TRUST LIMITED)

Executor of the Estate of Monica Gloria Quashie

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 12th June 2018

APPEARANCES:

Ms. Beverley Lushington Attorney at law for the Claimant.

Mr. Lemeul Murphy instructed by Ms. Tracey Rojas Attorneys at law for the Defendant.

JUDGMENT

Background

1. The Claimant's wife, Mrs. Monica Quashie ("the Deceased") departed this life testate on 13th November, 2011. In her will dated 14th October, 2003 ("the Will") she appointed the Defendant as the Executor of the estate. The residuary estate ("the residuary estate") was left by the Deceased for her nephew, Marc Diaz. The residuary estate consisted of investments ("the investments") namely:
 - a. monies in Home Mortgage Bank ("the Home Mortgage Bank money").
 - b. 2340 Guardian holdings ordinary shares ("the Guardian shares").
 - c. 589 RBC shares ("the RBC shares").
 - d. Guardian Life Insurance policies No. 8000716364 and No. 8000716356 ("the Guardian Life Policies").
2. The Claimant has not challenged the validity of the Will. The Grant of Probate of the Deceased's estate was obtained by the Defendant on 16th November, 2012.
3. The Claimant has instituted the instant proceedings against the Defendant where he has alleged that he is the beneficial owner of the investments in the residuary estate on the basis that they originated from monies that he gave the Deceased. The Claimant has sought declarations that the investments do not fall beneficially into the estate of the Deceased and are held upon trust for him.
4. The Defendant in its defence alleged that the Deceased held both the legal and beneficial interest in the investments. The Defendant averred that with respect to the issue of the source of funds for the investments, that upon retirement the Deceased was entitled to the sum of \$674,249.27 and that the provisions of the Will are clear as to distribution. The Defendant also pleaded that some of the Deceased's assets were already transferred to the

residuary beneficiary and no longer in its hands at the time of the institution of the instant action.

5. During the management of the instant proceedings the Court had directed that the Claimant serve a copy of the documents filed in the instant proceedings on the beneficiary of the residuary estate, Marc Diaz since he is a party who may be affected by the outcome of the instant action. Mr Diaz attended on one occasion after being served with the documents but he did not file any documents to intervene and he took no part in the proceedings.
6. The sole issue for determination was whether the investments which form the residuary of the Deceased estate was held on trust by the Deceased for the Claimant.

Applicable legal principles

7. **Hanbury & Maudsley Modern Equity**¹ describes a resulting trust as:

“A resulting trust is a situation in which a transferee is required by equity to hold property on trust for the transferor or for the person who provided the purchase money for the transfer. The beneficial interest results, or comes back to the transferor or to the party who makes the payment. This situation can arise in a wide variety of circumstances and it has been seen that the resulting trusts overlap with other categories.”
8. Lord Browne-Wilkinson in **Westdeutsche Landesbank Girozentrale v Islington London Borough Council**² described a resulting trust and the two circumstances in which it arises as:

... (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the

¹ 13th ed at page 226

² 2 All ER 1996 961 (HL)

case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer [...] (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial interest.”

9. The presumption of advancement is a presumption working in the opposite direction. It arises where certain relationships exist, situations where the donor or purchaser is under an obligation recognized in equity, to support or provide for the person advanced. It arises if the person to whom the property is transferred to is the wife or child of the donor, or someone to whom he stands in loco parentis. Like the presumption of resulting trust, it is rebuttable by evidence that the donor intended to keep the beneficial interest for himself³.

10. In the case of joint bank accounts, the author Phillip Pettit in **Equity and the Law of Trust**⁴ describes this as:

“Special mention should be made of joint bank accounts between husband and wife where both parties have power to draw cheques on the account. Prima facie in such a case during their joint lives each spouse has power to draw cheques not only for the joint benefit of both, but also for his or her own separate benefit, and accordingly if either spouse draws on the account to purchase chattel or an investment in his or her name alone, that spouse will be the sole owner of the chattel or investment both at law and in equity. If the purchase were in joint names they would prima facie be joint tenants. And on the death of one spouse the survivor would be entitled to the balance of the account. These prima facie rules may be displaced by the evidence.”
(Emphasis added).

11. The onus was on the Claimant to prove that a resulting trust arose in his favour for the investments on the basis that when he gave the Deceased his money to use for the

³ Hanbury & Maudsley Modern Equity 13th ed at page 242

⁴ 5th Edition at page126

investments it was for his benefit. Once the Claimant has established that a resulting trust was created in his favour then the onus shifted to the Defendant to rebut the presumption of the resulting trust by demonstrating that the money was a gift to the Deceased as his wife for her to use for her own benefit or that the money which the Deceased used to secure the investments in her name were her own funds.

12. One of the challenges which a Court is faced in determining if a resulting trust exists is that the Deceased is not in a position to defend herself. In such circumstances the Court is usually very circumspect when treating with evidence and allegations being levelled at a person who is Deceased. Ibrahim J (as he then was) in **Harold Stauble v Dulcie Bholai**⁵ described the position at page 6 as:

“Where the claim is made against a deceased person the evidence must be examined with great care, it must be jealously scrutinized and looked at with suspicion, cooperation should be looked for but its absence is not fatal to the Plaintiff if the evidence of the Plaintiff brings conviction to the Tribunal”.

13. Jamadar J (as he then was) followed the aforesaid approach in **Rosalind Saroop v John Ishmael and Lall Heerasingh**⁶ at page 3 where he stated:

“Where an allegation is made against the interest of a deceased person, who has had no opportunity to answer it, the evidence must be examined with great care and approached with measured suspicion. What this approach demands is a high standard of proof on a balance of probabilities.” (Emphasis mine)

14. In **Lipkin Gorman (a firm) v Karpnale Ltd**⁷ the House of Lords accepted that a change of position was a general defence to restitutionary claims. In order to establish a change of position defence, there is no need to establish any representation on the part of the Claimant. It is sufficient to show that the Defendant has bona fide changed his position as a result of the enrichment he has received from the Claimant. To the extent that the

⁵ H.C.A. No. 803 of 1976

⁶ H.C.A. No. S 1405 of 1994

⁷ [1991] A.C.548

Defendant would be prejudiced by having to restore the enrichment, the Defendant will have a defence to the claim.⁸

Analysis

15. It was submitted on behalf of the Claimant that in the instant case there is a presumed resulting trust since the Claimant gave his money to the Deceased to invest in the investments for his retirement and the Deceased placed the investments in her name only. It was also argued that the Claimant's intention in giving the Deceased his money was not to benefit her. Counsel for the Claimant further submitted that the onus was on the Defendant to adduce evidence to rebut the presumption that the Claimant gave the money for her own benefit. In support Counsel for the Claimant relied on the learning in several cases and textbooks on resulting trust.
16. Counsel for the Defendant contended that the Claimant failed to adduce clear and cogent evidence to satisfy the high evidential burden on him to prove that he provide the money to the Deceased to make investments for his benefit and that in any event the Deceased had money in her own right which she used in making the investments in her own name.
17. In order to prove that there was a resulting trust with respect to the investments the Claimant gave evidence and he called one witness Ms Jacqueline Lee King.
18. The Claimant's evidence in his witness statement was that he had joint accounts with the Deceased and that he gave her money to invest. According to the Claimant's witness statement, the Deceased passed away on the 13th November 2011 at the age of 63 years. He annexed a copy of her death certificate as "W.L.Q.1" and copy of their marriage certificate as "W.L.Q.2". He testified that he and the Deceased were married in on the 23rd May 1971 and they lived together until her death. The Deceased worked at Royal Bank of Canada from 6th October 1966 to 31st October 1996 and he worked at Express Newspaper Limited from 27th April 1968 to 31st October 2012.

⁸ Bullen & Leake & Jacob's Precedents of Pleadings Sixteenth Edition pg.1728

19. After they got married they purchased their first home at Santa Rosa Heights, Arima in 1980 with proceeds from the Claimant's parent's estate. Being a banker, the Deceased always managed their financial affairs. They agreed to establish a joint account at RBC where their salary would be deposited in account number 100088055323258. They also established other joint accounts such as account number 11-0-7591198 held at RBC San Juan branch and 100088075943565 that the Deceased used for their savings. They also established Roytrin and Unit Trust accounts which the Deceased managed.
20. According to the Claimant, in addition to his salary, he received as part of his compensation shares in his ESOP plan and he received dividends from his employers, One Caribbean Media Limited. All of his income was given to the Deceased to manage except his travel allowance of about \$1,500.00. According to the Claimant, the Deceased gave him a small monthly allowance to meet any of his other expenses such as lunch at work. She paid all the bills and other expenses from their pooled income and invested any extras on their behalf.
21. From about 1985, the Deceased invested in trade bills, deposits at General Finance Company and Home Mortgage Bank. She moved around the deposits based on the available rates and when rates dropped she invested in the Guardian Life Insurance Policies with a friend she knew from Royal Bank. According to the Claimant since the Deceased could not get around due to her illness, he personally carried the cheques to be invested. The investments rolled over during the years. The withdrawals from the joint savings account No. 11-0-7591198 held at Royal Bank San Juan in the sums of \$109,771.00 on the 17th February 2009 reflected some of the withdrawals that were invested. He annexed "W.L.Q.4" in support of this.
22. The Claimant claimed all the investments namely, the Home Mortgage Bank money, the Guardian shares, the RBC shares, and the Guardian Life Insurance Policies. In support of this evidence he annexed copies of documents pertaining to the investments as "W.L.Q.18".

23. The Claimant testified that after the Deceased was diagnosed with rheumatoid arthritis in 1986, she had to undergo knee joint replacement surgery in Venezuela because it could not have been done in Trinidad at the time. On the 8th March 1993, the Deceased underwent surgery in Venezuela for a total left knee replacement and synovectomy of the hand. On the 2nd November 1993, she underwent further surgery for a right knee replacement and Cleyton foot and she was hospitalized for 9 days in Venezuela after her doctor allowed her to stay at a hotel close to the hospital for the remainder of her stay. The Deceased submitted a claim to M&M Insurance Services Limited in the sum of TT\$99,137.06 and was refunded \$8,349.79.
24. By 1993, the Deceased already exceeded the maximum of her health plan. In addition, the insurance companies did not cover the cost for airfare, hotel accommodation, ground travel and other expenses such as food in Venezuela.
25. The Claimant accompanied the Deceased to Venezuela on every occasion that she was required to go for either surgery or for doctor's visits and he stayed and took care of her while there. The cost of all his expenses were not refundable including airfare, hotel accommodation and maintenance while there. He stayed in the hospital room when it was permitted and if not he stayed at hotels.
26. The Deceased had further surgeries in Venezuela on the 27th July 1995 on both hands and left foot and by May 1996 she had both of her hips replaced. Her condition deteriorated to the point where she eventually had four joint replacements and it was extremely difficult for her to manage the stairs at RBTT Chancery Lane where she worked. She took early retirement and she retired on the 31st October 1996.
27. On retirement in 1996, the Deceased was given a lump sum payment of \$165,622.32. She received a pension from the Annuity plan as at 19th April 1998 in the sum of \$681.00 monthly when she attained the age of 50. From 1996 to 1998 she received no pension. When the Deceased attained the age of 60 on the 1st May 2008, she received a pension in the sum of \$1,213.56 monthly from ALGICO for twelve years after she retired. The

Deceased's estate was paid the sum of \$323,000.00 from her Group Life Insurance and Survivor's Insurance as reflected in the inventory exhibited and marked as "W.L.Q.14".

28. After her retirement, the Deceased continued her treatment in Venezuela and by October 1998 she had her right shoulder joint replaced and she stayed in Venezuela from 18th October 1998 to 30th October 1998. During the period 1993 when the Deceased commenced her medical procedures in Venezuela until 2003 she traveled to Venezuela for medical treatment, follow-up visits, consultation with her doctors and surgeries a total of twenty-two times and she received no reimbursement for those travel expenses. The Claimant attached and marked "W.L.Q.11" which were copies of his passport for the same period as confirmation of his visits together with the Deceased.
29. After the Deceased's insurance was exhausted for her particular ailment, they used the Claimant's insurance together with most of the Deceased's savings. Due to her chronic illness, many claims were not paid and although the Claimant's insurance paid some of the excesses it did not cover the majority of the Deceased's medical cost and her monthly medication which was about TT\$2000.00.
30. The Deceased's health deteriorated to the point where her kidneys failed. They then had to concentrate more on specialist services rather than the twice yearly visits to Venezuela for treatment. The Deceased was hospitalized on a number of occasions at Westshore Hospital and St. Clair Medical and she frequently visited specialist doctors for her illness.
31. According to the Claimant, the Deceased did a good job of moving investments around to take advantage of the best interest rates at the time. She told the Claimant she was moving their funds to secure the Home Mortgage Bank and the Guardian Life Insurance Policies to secure their retirement since these companies were giving the best rates at the time. He said they agreed that the Deceased would invest his bonuses and savings in their for retirement.
32. According to the Claimant although the Deceased had not been employed since 1996, he had trusted her judgment after having more than 30 years' experience in the financial

industry. She received his salary and bonuses through their joint accounts. It was only after her passing, when the Claimant attended RBC Human Resources Department and he was sent to RBC Trust Company where he learnt that the Deceased left the Will and that she gave her estate to their nephew Marc Diaz. The Claimant attached a copy of the Will and marked it as “W.L.Q. 14” together with the grant of probate and Inventory of the Estate.

33. The Claimant also testified that he paid the Deceased’s funeral expenses from the little resources which were available to him since most of his money was invested by the Claimant in her name only.
34. In cross examination the Claimant indicated that he was married to the Deceased in 1971 but they only started joint accounts in 1985. He had two joint accounts with the Deceased namely a savings and a chequing account. He also stated that he maintained a First Citizens Bank account which he still uses. He stated that from 1985 to the Deceased’s death he gave her all his earnings to manage and that the funds for the investments came from the joint account. He said that he later sent his salary to RBC Independence Square Branch joint account He stated that the Deceased thought that he was a spendthrift.
35. The Claimant also stated that he carried cheques to the Home Mortgage Bank and Guardian Life Insurance and that the monies came from their joint account. He indicated that he had seen the Deceased’s insurance policies and he was aware that he was not a named beneficiary on them. He indicated that the Deceased’s policies and certificates were filed away and he had access to them so that he did not need to go through the Deceased’s personal belongings upon her death. He admitted that he would not be surprised that the Deceased had received close to a half a million dollars upon her retirement. He indicated that he sought legal advice 1 year after the Deceased’s death in 2012 and then commenced an action for “recovery” of his alleged funds in 2015. He indicated that upon the Deceased’s death, he gave the Guardian Insurance Policies to the said insurance company and he did not make a copy of the documents. He indicated that he felt the will was ambiguous but never challenged it. He indicated that the Deceased managed his monies until her death. He could not differentiate which insurance policy contained the value of his investment.

He acknowledged that he knew the Deceased's intention was to provide her nephew with a proper education.

36. Ms. Jacqueline Lee King filed a witness statement in support of the Claimant's case in which she stated that she is a retired banker. She stated that she knew the Deceased well and they were close friends for about fifty-six years. The Claimant became her close friend also. She said she and the Deceased confided in each other on almost all matters. They both worked at Royal Bank of Canada so they had even more in common and they were able to relate to personal and financial affairs. She said the Claimant was easy going and willing to go along with mostly everything the Deceased wanted. He trusted her and her judgment. The Deceased developed serious health problems before her 40th birthday but the Claimant never abandoned her. According to Ms. Lee King, the week the Deceased died, she spent the whole weekend with her and realized she looked very ill. She said she asked the Deceased whether she wanted a priest to administer "Extreme Unction" and whether her finances were in order. Ms. Lee King called Josianne Bovell, her agent and a former Royal Banker whom Ms. Lee King knew very well.
37. Ms. Lee King stated that she assisted the Claimant with funeral arrangements, and in visiting the various offices to complete whatever financial matters that needed to be done. She went with the Claimant to the Human Resource Department of Royal Bank to obtain information on the Deceased's insurances and other documents. They were directed to the Trust Company on Independence Square however she was not allowed to sit-in on the meeting at the Trust Company. She said she was shocked when the Claimant emerged from the meeting saying that the Deceased had left a Will and everything was left to her nephew. She said she was perturbed by the contents of the Will and she took it upon herself to speak to the parents of the Deceased's nephew and ask that at least they meet the outstanding bill to St. Clair Medical Hospital and the outstanding funeral expenses. She said she is aware that a portion of those bills were settled by the Estate. She was not cross examined by Counsel for the Defendant.
38. The thrust of the evidence from Ms. Lee King was that the Claimant did not receive the bulk of the Deceased's estate. However she had no first hand knowledge to support the

Claimant's assertion that the Deceased held the investment on trust for the Claimant. Therefore her evidence did not assist the Claimant's case.

39. The Defendant had one witness at the trial, Ms Catherine Hannays who is the Manager of Pensions and Benefits Administration of RBC Bank Limited. She testified that she has been employed at the RBC Bank for the past 38 years since June 1978. She stated that in her capacity as Manager of Pensions and Benefits Administration, she had access to the human resource and pension and benefits records of RBC's past and present employees. She is responsible for overseeing the administration of the RBC pensions and benefits shared services and she provides direction and guidance to the department's team of professionals. She provides technical support to the Human Resources Managers across the Caribbean, monitors pension and benefits changes and administers the necessary changes to the RBC Bank's policies, among other related functions.
40. She stated that the Deceased was an employee of RBTT Bank Limited now RBC Bank Limited for over 30 years. The Deceased started in October 1966 and opted for early retirement in the year 1996. By letter dated 30th October 1996, the RBTT Bank communicated its approval of the Deceased's request for early retirement and detailed a comprehensive breakdown of all the benefits to which she was entitled. The content of the letter was agreed and accepted by the Deceased.
41. Additionally, under the RBC's pension plan the Deceased opted to receive a 25% lump sum payment and benefits applicable to retirees under its Joint & Survivor 10 year guarantee pension plan. Ms. Hannays attached copies of the letters and marked them as "C.H.1".
42. Ms. Hannays testified that under RBC's Joint and Survivor with 10 Year Guarantee plan, a pension is paid to the pensioner until death. If the pensioner dies receiving less than 10 years pension, the pension will continue to be paid to the spouse until the end of the guarantee period. If the pensioner dies after receiving more than 10 years pension a reduced pension plan of 50% will be paid to the spouse commencing on the death of the pensioner until the death of the spouse.

43. According to Ms. Hannays, the Deceased's pension commenced in November 2006 and at the time of her death her last monthly pension was \$939.76. In accordance with its pension policy the Claimant now receives 50% of the monthly pension payment (\$469.88) until his death.
44. In cross examination, Ms. Hannays stated that there was an error in paragraph 7 of her witness statement and that it should read the Deceased's pension commenced in April 1998. When the Deceased died the pension was \$939.00 and it would have increased over the years. She said that as far as she was aware the Deceased only received the pension. She was referred to the document "C.H.1" and she explained that a Joint and Survivor guarantee period meant if anything were to happen to the employee during the first 10 years her spouse will get 100% of the remaining guarantee period and thereafter the spouse would receive 50%. Based on her calculation that 10 year period expired in 2008. She said she did not know how much the Deceased's pension started off as but it could have been less than \$939.00. The Deceased took early retirement in October 1996 so she would have been 48. She said she could not say the reason why the Deceased took early retirement. She said she knew at the time RBC offered early retirement to its employees and it could have been related to her health. The annuity would have been paid to the Deceased when she started to receive the pension in April 1998. The annual pension would have been divided into monthly pension payments approximately five hundred and something per month. In relation to the group insurance, the Deceased would not have received it during her lifetime and it would have been paid to her estate.
45. In cross examination, Ms. Hannays stated in relation to group health coverage, the \$20,000.00 is over a three year period. The Deceased and her dependents would have been each covered for \$20,000.00 and it was renewable every three years. The Deceased could have claimed up to \$20,000.00 over a three year period. If she had any claims for medical, the insurance would not have paid more than \$20,000.00. In relation to the retirement bonus, when the first pension plan was wound up in 1984, it was replaced by a retirement bonus plan and the units were payable upon retirement. Therefore the Deceased should have received this at the date of her retirement. She also stated that RBC funded that

retirement bonus plan on an annual basis during the fiscal year period which the Deceased would have received.

46. Ms. Hannays testified that the rate of units on the ESOP plan was subject to change so she was unable to say what it was at that time. She testified that the Deceased should have received it at her retirement date. She said she was not familiar with how the stock option plan operated because it was 21 years ago and she was only in Human Resources from 2006. Therefore, she was not sure how that plan operated 21 years ago. She said it seemed that when the Deceased retired it was a prorated amount for that period. In relation to platinum payment, the Bank paid out to all employees a certain amount of money called platinum which was payable to the Deceased upon her retirement. She said she was unable to say for the other plans but the retirement plan/bonus was not taxed. She was certain that the annuity is not supposed to be taxed. She testified that the others may have been taxed but she was unable to say for certain. The annual pension would depend on the tax credit at the time which was stated on the TD1. It is a taxable income.
47. In relation to the mortgage subsidy, Ms. Hannays said it would have been paid if she had a mortgage. The Mortgage life instrument of \$3588.00 similarly would not have been paid if there was no mortgage. She testified that from the date of the Deceased's retirement November 1st 1996 to when she died, her pension would not have gone beyond the nine hundred plus per month and that is what would have been paid monthly.
48. Taking into account that the Deceased was unable to defend herself and that the Court must exercise great care when scrutinizing the evidence to determine if a resulting trust can be presumed I have concluded that the Claimant's evidence has fallen short in proving a resulting trust for the investments for the following reasons.
49. The Claimant's case was that his funds were co-mingled with the Deceased's funds in the joint accounts. Based on the learning in **Equity and the Law of Trust** there is no presumption of a resulting trust where moneys were held in a joint account. The burden was on the Claimant to prove with cogent evidence that the moneys in the joint account were not that of the Deceased. However, the Claimant's own evidence was general and

lacking in details. While the Claimant stated that he placed his salary into the joint accounts he gave no evidence of the sums he deposited as salary over the period. The Claimant also did not produce any documentary evidence that supported his assertion that his salary went to the joint account or that the monies were transferred from the joint account to establish the investment. The Claimant's evidence did not link his money to the investments since there was no trace of his money or the money from the joint accounts to the investments.

50. Further, there was a noticeable lack of viva voce evidence to corroborate the Claimant's evidence. All the evidence to support the Claimant's assertion was from him. The evidence from his witness Ms Lee King did not assist his case since she did not have any direct knowledge of any arrangements between the Claimant and the Deceased. There was no evidence from any close member of the Deceased family who could have corroborated the Claimant's evidence. In particular, the lack of evidence from the Deceased's nephew, Marc Diaz, the beneficiary of the residuary estate and the investments was noticeable. In the absence of the Deceased being able to defend her actions, it is reasonable for the Court to assess the Claimant's evidence of the resulting trust as self serving. In my opinion, the Claimant's action of taking cheques to the Home Mortgage Bank and Guardian Life Insurance can be easily explained as a husband assisting his wife who was physically incapacitated due to her illness.
51. In any event, the Claimant's evidence was inconsistent with his case. The Claimant's evidence was that he provided some part of the money in the joint accounts which was used for the investments but he was not claiming part of the investments but the entire investment. Therefore based on the Claimant's own evidence he could not have made out a case for the entire investments.
52. The Claimant's case was also weakened since he failed to exhibit any contemporaneous documents to corroborate his evidence there was an agreement or a mutual understanding between himself and the Deceased that the investments were being held by her for his benefit.

53. The Claimant also failed to provide any documentary evidence to support his assertion that the Deceased had depleted her retirement funds on her medical care and therefore she did not have her own funds which she used for the investments. Based on the evidence, it was not in dispute that: the Deceased took early retirement in 1996; at the time of her retirement her employer, the predecessor the RBC Bank communicated to her retirement benefits; the Deceased retirement benefits were reflected in the documents annexed as C.H 1 to the witness statement of Ms. Hannays; the Will was made in 2003 after she retired and it specifically stated the remainder of the estate was left to the residuary beneficiary. Even in cross examination the Claimant acknowledged that the Deceased may have received in excess of half a million dollars upon retirement from her employer. Therefore, it is highly probable that the funds the Deceased used to make the investments after she retired was from her own funds which she was legally and beneficially entitled to.
54. Further, the Claimant's evidence of his sole reliance on the Deceased's judgment after she got ill was inherently improbable. Although the Claimant testified that the Deceased managed his monies until her death, at paragraph 2 his Claim and in his witness statement, the Claimant stated due to the Deceased's physical incapacity and that he was her sole caretaker. In the Claimant's Reply filed on 18th November 2016 and in his witness statement, the Claimant set out in great detail the Deceased's history of chronic illness and numerous surgeries on her hands, foot, hip. In my opinion, it was not reasonable that the Claimant gave the Deceased all his income and allowed her autonomy over his monies to the extent that she had created investments in her name only, when she was in such an advanced stage of physical incapacity.
55. In any event, the Claimant stated that he was aware that the investments were not in his name and he had access to the documents concerning the investments which were at his home. However, upon the Claimant's death in 2011 he took no steps to make a claim to these sums when the Will was being probated in 2012 but he only did so in 2015 when this action was initiated. There is also no evidence that the Claimant raised any concerns with the Deceased while she was alive. In my opinion since the Claimant was aware his name was not on the investment and he knew that the Deceased was ill for a period of time, the

failure by him to take steps to ensure that his name was also placed on the investments meant that he knew that the Deceased was the sole beneficial and legal owner of the investments.

56. In any event, the Deceased's actions by leaving the residuary estate for her nephew was rationale given the Claimant's own evidence. The Claimant confirmed in cross examination that the Deceased was interested in her nephew obtaining a proper education. In my opinion this is a reasonable explanation to explain the Deceased's rationale for leaving her residuary estate to her nephew.
57. Even if the Claimant had established that there was a resulting trust for the investments for his benefit, I was satisfied from the evidence presented by the Defendant that upon the Deceased's retirement, she was in possession of funds gained solely through her employment with the Defendant which supported the Defendant's assertion that the monies from which the investments were derived, were the Deceased's monies alone and not that of the Claimant.
58. Mrs. Hannays confirmed the Deceased's entitlement at the time of her retirement. She established that upon early retirement the Deceased received a monthly pension. Upon retirement the Deceased immediately received a retirement bonus, ESOP 1 plan shares, and platinum payment, as a minimum. She indicated that upon retirement the Deceased still had access to the Defendant's medical plan which provided for reimbursements of \$20,000.00 over a three year period.
59. In my opinion, there was no evidence from the Claimant to challenge the evidence from Mrs Hannays that even after retirement the Deceased received funds in her own right.

Conclusion

60. I have concluded that the Claimant failed to discharge the burden of proving that a resulting trust arose in his favour. I have found that the Claimant's evidence was inconsistent with his pleaded case. The Claimant claimed the entire investment but his own evidence was

that his salary was combined with the Deceased's salary to form a joint account, from which monies were invested by the Deceased.

61. In my opinion, the Claimant failed to provide cogent evidence to prove that the monies in the joint account were not the Deceased's. In assessing the evidence I took into account that the Deceased was unable to defend herself and I found the Claimant's evidence of the resulting trust to be self-serving. There was a lack of viva voce evidence to corroborate the Claimant's case and the evidence of his sole witness, Ms. Lee King, did not assist because she had no knowledge that the Deceased held the investment on trust for the Claimant.
62. The Claimant also failed to adduce any documentary evidence to demonstrate that his salary went into the joint account or that monies were transferred from the joint account to establish the investments. As a result there was no way of tracing the Claimant's money to the investments. There was also no documentary evidence to show that the Deceased depleted her retirement funds on her medical care and that she did not have her own funds for the investments. The Claimant also failed to produce any contemporaneous document to demonstrate that there was an agreement between the Claimant and the Deceased for the investments to be held by her for his benefit.
63. In my opinion, based on the Claimant's own evidence the Deceased's action in leaving the residuary estate to her nephew was reasonable. Even if the Claimant had established that there was a resulting trust for the investments for his benefit, I was satisfied from the evidence presented by the Defendant that upon the Deceased's retirement, she was in possession of funds gained solely through her employment with the Defendant which supported the Defendant assertion that the monies from which the investments were derived, were the Deceased's monies alone and not that of the Claimant.

Order

64. The Claimant's action is dismissed.

65. The Claimant is to pay the Defendant's costs. I will hear the parties on quantum.

**Margaret Y Mohammed
Judge**