**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016-00990**

BETWEEN

**ELSIE PIERRE**

**Claimant**

AND

**ANSONIA PIERRE**

**(In her personal capacity and as Legal Personal Representative of the estate of Marcus Pierre, deceased)**

**First Defendant**

**RICOLSON PIERRE**

**Second Defendant**

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery**: **Thursday 16 October 2019**

**Appearances**:

Mr. Gerard Raphael for the Claimant

Ms. Chimere Gibson-Wadi for the First Defendant

Mr. Sterling D. John for the Second Defendant

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**DECISION ON THE CLAIMANT'S APPLICATION FOR SUMMARY JUDGMENT FILED ON 11 JULY 2017**

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## I. Introduction

[1] On 4 April 2016, the Claimant initiated the instant claim by filing her Fixed Date Claim and Statement of Case. The Claimant sought against the Defendants, the following relief:

1. An Order that the Defendants do deliver up possession to the Claimant of All and Singular that piece or parcel of land situate formerly in the Ward of Laventille now in the Ward of St. Ann's comprising **FIVE THOUSAND ONE HUNDRED AND TWENTY FOUR (5,124) SUPERFICIAL FEET** more or less (being portion of a larger parcel of land described in the First Part to the Schedule to Deed registered as No. 1126 of 1995) measuring 84 feet on the Northern and Southern boundary lines and 61 feet on the Eastern and Western boundary lines and bounded on the North by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia in occupation of Yvonne Neil on the South partly by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia and partly by lands in occupation of Bently Francis on the East by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia and of the West by a Trace approximately 8 feet wide (hereinafter called "the said property").
2. The Claimant's share and interest in proceeds of the accounts held at Eastern Credit Union and at the Unit Trust Corporation.
3. That the First Defendant provide an account of all rental income collected by her in respect of the said dwelling house and pay to the Claimant the amount found to be due and owing to her.
4. That the Defendants do pay the Claimant their share of the water rates in respect of the said dwelling house.
5. Costs
6. Further and/or other relief.

[2] On 13 April 2016, the First Defendant entered an appearance indicating an intention to defend the Claim. Thereafter, the Second Defendant entered an appearance on 3 May 2016 giving notice of intention to defend the Claim.

[3] Subsequently, on 10 June 2016, the Second Defendant filed his defence, which was later amended on 9 December 2016. The defence of the First Defendant was filed on 21 June 2016.

[4] The Claimant filed a Reply to the Amended Defence of the Second Defendant on 3 March 2017.

[5] By Notice of Application filed on 11 July 2017, the Claimant applied to the Court for Summary Judgment on her claim pursuant to **Part 15.2 of Civil Proceedings Rules 1998 ("CPR")**. The Claimant bases her application on the ground that the Defendants' Defences disclose no defence to the Claim and that the Defendants have no realistic prospect of success on their Defences.

[6] The First and Second Defendants filed affidavits in response to the Claimant's application on the 15 and 18 September 2017, respectively.

[7] Thereafter, in accordance with the directions of the Court, the Claimant filed her written submissions on 1 December 2017. The First and Second Defendants filed response submissions on 8 January 2018 and 15 January 2018 respectively. The Claimant filed her reply submissions on 7 February 2018.

## II. Factual Background

### *Undisputed Facts*

[8] Marcus Pierre also called Marcus Theophilus Pierre (hereinafter called "the Deceased") died on 7 April 2005. The Claimant, the First Defendant and the Second Defendant are all siblings and the children of the Deceased. The Deceased died testate but left a will executed on 14 October 1998. In this will, the Deceased appointed Raymond Grant as the sole executor and trustee. However, Raymond Grant renounced on 7 November 2007.

At the date of his death, the Deceased was a statutory tenant of Dulcie and Dominic Ramnarine, the lessors and owners of the said property, pursuant to the **Land Tenants**

**[Security of Tenure] Act, 1981 Chap. 59:54**. He was the owner of the dwelling house on the said property. The dwelling house comprised of an upstairs and downstairs with three apartments. There is one apartment upstairs and the other two downstairs.

[9] On 22 January 2010, the First Defendant obtained a Grant of Letters of Administration with Will annexed of the Estate of the Deceased. By Deed of Assent registered on 28 June 2011 as No DE20110137230D001, the First Defendant assented and assigned unto the Claimant, the Second Defendant and herself the tenancy rights in respect of the said property for the unexpired residue of the term of the statutory tenancy.

Neither the Deceased, the Claimant, the First Defendant nor the Second Defendant gave notice of the renewal of the statutory lease to the lessors and owners of the said property under the provisions of the **Land Tenants [Security of Tenure] Act, 1981**. As a result, the statutory lease expired by effluxion of time on 31 May 2011.

[10] By letter dated 9 January 2012, the owners of the said property offered the occupiers of the said property the option to purchase or to enter into some other arrangement to retain possession of the said property. By Deed registered on 18 February 2012 as No. DE201400390524, the Claimant became the owner and entitled to possession of the said property.

***Claimant's case***

[11] It is the Claimant's case that she is in possession of the upstairs apartment while the First Defendant resides downstairs and the Second Defendant resides in the United States of America.

The Claimant averred that neither of the Defendants responded to the offer made by the owners of the said property contained in letter dated 9 January 2012. She therefore offered to and did purchase the said property.

[12] It is the Claimant's pleaded case that between the years 2012 to 2013, she effected repairs to the roof and ceiling of the said property at a cost of approximately $45,908.37. She also installed certain fixtures to the said property at the cost of US$1,038.36.

[13] By pre-action protocol letter dated 25 February 2014, the Claimant's then attorney-at-law, Messrs. A. F. Douglas and Company, wrote to the Defendants demanding that they vacate the dwelling house by 30 April 2014. The letter also requested that the First Defendant account for monies standing to the credit of the Deceased at the date of his death at the Eastern Credit Union Cooperative Society Limited and other monies at the bank.

The Claimant averred that the Deceased left the sum of $22,266.50 at the Eastern Credit Union and that the First Defendant has failed to account for the sum of money in excess of $5,000.00, which she paid to the named beneficiary.

[14] The Claimant contended that she and the First Defendant are the holders of Account No. 4211642-2 at the Trinidad and Tobago Unit Trust Corporation which sum total is $19,953.50. The Claimant further contended that the signatures of both parties are required to transact any business with respect to the said account.

The Claimant pleaded that she is desirous of realising her share and interest in the said account. Notwithstanding repeated requests made by the Claimant, the First Defendant has failed and/or refused to take any steps to visit the said institution to allow the Claimant to realise her share of the said account.

[15] It is the Claimant's case that the First Defendant has rented out portions of the dwelling house and has failed and/or refused to account for any rent collected by her. The Claimant averred that the First Defendant has collected rent in excess of $13,800. The Claimant further averred that the Defendants have failed to contribute towards the water rates for the dwelling house standing in the sum of $2,800.

[16] The Claimant pleaded that, notwithstanding the determination of the statutory lease on 31 May 2011 and the fact that the Defendants have no share and/or interest in either the said property or the dwelling house left by the Deceased on the said property, the Claimant entered into without prejudice negotiations with the Defendants to purchase whatever share and/or interest they had in the dwelling house. She contended that she had two valuations undertaken on the said property.

The Claimant contended that there has been no resolution of the matters and she is now desirous of recovering possession of the said property from the Defendants.

***First Defendant's Defence***

[17] The First Defendant admitted that she had obtained the Grant of Letters of Administration with Will annexed. However, she averred that she had no knowledge of the duties of an executor and became the executor of the estate only on the advice of the Claimant and the Claimant's attorney-at-law. They indicated to her that she should adopt that role since she was the only child/beneficiary of the Deceased who was habitually resident in this jurisdiction. The First Defendant averred that the Claimant is habitually resident in the United States of America.

[18] The First Defendant contended that she did receive a copy of the letter dated 9 January 2012. However, she averred that all parties met to discuss the options with regard to the property and that neither of the parties responded to the said offer due to what the First Defendant thought was on-going deliberations between the parties. She further averred that Ms. Stacy Charles and Ms. Jennifer Saunders were also present at the meeting.

It is the First Defendant's case that during this meeting, the Claimant and Second Defendant indicated to her their willingness to purchase the said property and asked whether she had any money to contribute to the purchase price. The First Defendant indicated that she did not since her job at that time only paid $1,800.00 per month and that she was repaying a loan and had no significant savings. She indicated to them, however, that she would try to come up with her portion of the purchase price.

[19] The First Defendant averred that Claimant and the Second Defendant collaborated and told her that she had two options, namely, either, (i) the Claimant and the Second Defendant would purchase her interest in the said property and she would have to find alternative living accommodations or (ii) she could purchase the entire interest in the property. She further averred that this resulted in a breakdown in negotiations and an undertaking to address the matter on another occasion.

[20] The First Defendant agreed that the Claimant offered to purchase the said property but did so without the knowledge or consent of any of the Defendants.

The First Defendant averred that she has no knowledge of the extent of the repairs done to the upstairs apartment nor does she have any knowledge of the quantum spent.

[21] The First Defendant admitted that she and the Claimant are the holders of the account at Unit Trust Corporation. She, however, averred that the Claimant has never asked her to transact any business in relation to the Unit Trust Account.

[22] It is the First Defendant's pleaded case that a portion of the rent money referred to was used in relation to maintenance and other property related expenses. She further averred that the remainder of the rent money accrued was deposited directly into the Unit Trust Account, which is held by her and the Claimant jointly. The First Defendant contended that the Claimant came into possession of the receipts annexed to her Statement of Case by removing them from the First Defendant's home without her knowledge and consent.

***Second Defendant's Defence***

[23] The Second Defendant also averred that the Claimant resides in Brooklyn, New York in the United States of America.

[24] The Second Defendant pleaded that he only became aware of the letter dated 9 January 2012 through these proceedings. He, however, agreed that in or about 2012, the intention among the parties was to purchase the said property jointly for their use and benefit. As

such, he gave money to the Claimant for the conduct of a survey of the said property, which was required for its purchase. The Second Defendant averred that it was the Claimant who informed him about the need for a survey and he paid her two-thirds of the costs to cover payment for both himself and the First Defendant.

[25] It is the Second Defendant's case that the Claimant in exercising the option to purchase acted as trustee on behalf of all the owners of the dwelling house and as such, holds the property on trust for them.

The Second Defendant pleaded that at no time did he give consent to the Claimant to undertake any works on the dwelling house and that he is a stranger to the alleged repairs done by the Claimant.

[26] The Second Defendant averred that shortly after the Deceased's death, he retained the services of two contractors to undertake works on the dwelling house. However, no work was undertaken because the Claimant raised objections to same, the basis of which was the need for consensus among the parties.

[27] The Second Defendant admitted that he received the letter dated 25 February 2014 from Mr. A.F. Douglas and Company. He averred, however, that the sum of money held in Eastern Credit Union does not form part of the estate of the Deceased.

It is the Second Defendant's case that the Deceased, prior to his death, requested assistance from the Second Defendant to realise finances to purchase the freehold interest in the said property. The Deceased was seeking to raise the sum of $30,000.00 to effect the said purchase. As such, the Second Defendant sent the Deceased US$5,000.00. The Second Defendant pleaded that the Deceased was unable to complete the transfer owing to the death of the landlord. As such, the successors in title were reluctant to complete the transaction for the initial half-price value of the said property.

[28] The Second Defendant contended that the funds given to the Deceased by the Claimant (sic)[1] were placed into an account with Eastern Credit Union and the Second Defendant was named as the beneficiary on the said account. The Second Defendant pleaded that he was never a party to the dealings at the Unit Trust Corporation between the Claimant and the First Defendant; thus, he is a stranger to the allegation.

***Claimant's Reply***

[29] The Claimant, in reply, pleaded that it was never the intention of the parties to purchase the property jointly for their use and benefit. She denied that a survey was required for the purchase of the said property or that the Second Defendant paid two-thirds cost of the survey for himself and the First Defendant. She averred instead that the said property had already been surveyed in May 2004 by Bhaghirathi Maharaj, licenced Land Surveyor. A copy of the said survey report was annexed to her Reply.

[30] It is the Claimant's case that she never acted as trustee on behalf of the owners of the dwelling house in exercising the option to purchase or that she holds the property in trust for the Defendants. She contended that neither of the Defendants contributed any money towards the purchase price.

## III. Application for Summary Judgment

[31] By Notice of Application filed on 11 July 2017 together with an affidavit of Danielle Marcano, sworn to and filed on even date, the Claimant applied for Summary Judgment on her Fixed Date Claim pursuant to **Part 15.2 of the CPR 1998**. The Claimant based her application on the ground that the Defendants' Defences disclose no defence to the Claim and that the Defendants have no realistic prospect of success on their Defences.

[32] Ms. Marcano, in her affidavit in support, maintained the pleaded case of the Claimant and did not depose to anything further. Accordingly, there is no need to restate the pleaded case under this heading.

[1] This is the exact averment from the Second Defendant's Defence. Taken contextually, it is likely that he meant to plead the "Second Defendant" rather than the "Claimant".

[33] The First Defendant, in her affidavit in response, maintained that when the letter dated 9 January 2012 was received, a meeting was held to address the issue of purchasing the said property. She, however, added that this was the only issue in contention since there existed an agreement between the parties. The agreement was that she would remain in possession of her apartment on the ground floor of the dwelling house, the Claimant would occupy the upstairs apartment and the Second Defendant would have interest in the second ground floor apartment.

[34] The First Defendant further deposed that she has an equitable interest in the said property. She admitted that the Claimant did effect repairs to the upstairs apartment but she did not know the extent of those repairs. Furthermore, these repairs were effected before her purchase of the said property according to the registered deed, which is dated 22 August 2013. The First Defendant stated that the receipts submitted by the Claimant show that they were in or before the period 2012.

She added that this was consistent with the arrangement between all parties, which maintained that the Claimant would occupy the upstairs apartment. She stated that the Claimant made no repairs to either of the two ground floor apartments.

[35] The First Defendant deposed that she did not receive a letter from the attorney-at-law for the Claimant informing her that the Claimant had purchased the said property and calling on her to account for the estate of the Deceased. She stated that she had no knowledge before this matter that she was required to specifically account for all disbursements in the estate of the Deceased. She maintained that the Claimant retained the attorney-at-law who guided her through the application for Letters of Administration for the Deceased's estate.

She further stated that she was never advised of the account aspect of the process and due to her ignorance, she disbursed the funds under the estate as she was instructed.

Nonetheless, in this affidavit, the First Defendant has undertaken to file an account as soon as is practicable.

[36] The First Defendant denies that she has no realistic prospect of success in this matter. She stated that the Claimant relied on her knowledge of the situation and unscrupulously sought to enrich herself and oust the interest of her family in the said property.

The First Defendant stated that the purchase of the property by the Claimant should be declared a trust for the estate since she knew of the intention of the beneficiaries of the estate to purchase the said property. She added that the Claimant took advantage of the legal principles unknown to the other parties in order to acquire an exclusive interest in the said property to the exclusion of the First Defendant and the Second Defendant.

[37] The First Defendant further stated that the Claimant's actions were contrived to extinguish the claim of the Defendants and that the Claimant did not come to court with clean hands. Therefore, she should not be granted the remedies sought.

[38] The Second Defendant, in his response affidavit, maintained his pleaded case. He, however, deposed that he is not in possession of the said property. He stated that the dwelling house has three apartments: the upstairs, which was occupied by the Claimant, one of the downstairs apartment, occupied by the First Defendant and the other was rented out. He added that he became aware that the Claimant and the First Defendant had rented out the downstairs apartment and placed the rental income into a joint Unit Trust account held by them.

The Second Defendant stated that the First Defendant as the Legal Personal Representative of the Deceased's estate and the only one living in Trinidad was mainly responsible for attending to the Deceased's affairs. He maintained that the letter dated 9 January 2012 was never brought to his attention nor was he aware of its existence prior to these proceedings. Thus, he was denied the opportunity to respond to it but that he was always aware of the owners' willingness to sell and at all material times, his discussions with his siblings were that they would put up and purchase the land jointly.

[39] The Second Defendant stated that the offer to purchase was made to the estate of the Deceased and it was his understanding that his sisters were acting on behalf of the estate of the Deceased and for the benefit of three of them.

The Second Defendant denied that his defence discloses no realistic prospect of success. He added that his defence is that the Claimant, having purchased the property, did so for the benefit of the estate and as such, she holds the beneficial title on trust for all the beneficiaries of the estate. He stated that he is prepared to rely on the evidence of David Pierre and Stacey Charles at the trial of this matter to prove that money was paid to the Claimant for a valuation, if the need arises. He added that the said money was given to her directly in cash for which no receipt was produced.

[40] The Second Defendant deposed that at no time, either before or at the time of the Claimant's conveyance, did she inform him that she was purchasing the land or that she was doing it for herself absolutely. He stated that the purchase was secretive.

He further stated that it is his belief that the manner of the Claimant's purchase was to defeat the interest of the estate of the Deceased and that of both Defendants. He contended that it was never the case that he was given the option to purchase and opted not to do so but rather that the Claimant acted as if on behalf of the estate and without our knowledge and consent to obtain title to the property for herself.

## IV. Submissions

[41] Mr. Raphael, Counsel for the Claimant, submitted that the First Defendant has agreed with paragraphs 1-8, 10, 13 and 20 of the Claimant's Statement of Case. The contents of these paragraphs are recited in summary in this judgment from paragraphs [8] to [10] under the sub-heading **"*undisputed facts*"**.

He further submitted that the First Defendant has not disputed that the lessors of the said property sent a letter dated 9 January 2012 offering the occupiers of the said property the

option to purchase or enter into some other arrangement to retain possession of same nor that the Claimant's attorney-at-law sent a pre-action protocol letter dated 25 February 2014 demanding that the First Defendant vacate the dwelling house and account for monies standing to the credit of the Deceased at the Eastern Credit Union Cooperative Society and other monies at the bank. Thus, the First Defendant must be taken to have accepted these facts. He relied on **Part 10.5 of the CPR** in support of this proposition.

[42] Mr. Raphael also submitted that the Second Defendant has agreed with paragraphs 1-6, 8, 10 and parts of 12 of the Statement of Case. The contents of these paragraphs are stated above from paragraphs [8] to [10] under the heading **"*undisputed facts*"**.

[43] He further submitted that the Second Defendant has made bare denials of the other allegations in the Claimant's Statement of Case as he has neither admitted nor denied the allegations and has not put the Claimant to strict proof thereof. Thus, the Second Defendant must be taken to have accepted these allegations. Again, he relied on **Part 10.5 of the CPR** in support of this proposition.

[44] Mr. Raphael contended that the Defendants have not complied with **Rule 10.5(4) of the CPR** by setting out reasons for denying the Claimant's allegations or by presenting a different version of events, from which the reasons for denying the allegation will be evident. He therefore submitted that the Court is entitled to treat the allegations in the Statement of Case as undisputed or the defence containing no reasonable defence to the allegation. Counsel in support of his proposition relied on the local authority of **M.I.5 Investigations Limited v Centurion Protective Agency Limited**[2] and the Jamaican case of **Jamaican Creditors Investigations and Consultant Bureau Ltd and others v Michmont Trading Limited**[3].

[45] Mr. Raphael advanced that an examination of the pleadings and the evidence contained in the documents provided by the parties to this action would reveal that the Defendants'

[2] Civil Appeal No. 244 of 2008
[3] Suit No. C.L. J-015 of 2002

defences disclose no reasonable defence to the Claim brought by the Claimant. Counsel referred to the Court of Appeal decision of **Mitchell v Cowie**[4], wherein Wooding CJ stated at page 15 of the judgment as follows:

> *"Because a tenant possesses no more than a right to sever his fixtures thereby to reconvert them into chattels during the term of his tenancy, it is only that right which he can assign or transfer; see Lee v Gaskell (1876) 1 QBD at p. 701, per Cockburn CJ. Even so, he must assign or transfer them during the subsistence of his tenancy since, if they remain unsevered after the term has come to an end, the general presumption of law is that they pass to the landlord with the freehold reversion; Re Roberts, Brook (1878) 10 Ch. D. 100; Leschallas v Woolf [1908] 1 Ch. 641"*

[46] Mr. Raphael, therefore, submitted that since the Defendants have admitted that they failed to notify the landowner of their intention to purchase the land, on the authority of ***Mitchell v Cowie*** (supra) the Defendants acquired no interest in law or in equity in the house or the lot of land on which it stands. Consequently, the Claimant became absolutely entitled to it upon her purchase of the land on which it stood. It is for this reason, Counsel submitted, that the Defendants have no reasonable defence to the Claimant's Claim for possession of the said property.

[47] Mr. Raphael submitted that the First Defendant has not disputed that the Claimant requested that she account for the sum of money in excess of the $5,000.00 paid to a named beneficiary. He further contended that the First Defendant has made bare denials of all other allegations in the Statement of Case without providing the Court with any basis for the denial.

Mr. Raphael pointed out that the First Defendant, in her affidavit in response, undertook to file an account as soon as practicable. Accordingly, there is no factual or legal basis for denying the Claimant's claim and that this is an appropriate one for the grant of summary judgment as there are no disputes as to facts and no mountains of documents to consider.

[4] (1964) 7 WIR 118 at p. 130 para A

Consequently, it does not require the Court to be engaged in a mini trial in determining this issue.

[48] Mr. Raphael submitted that the Second Defendant has pleaded in his defence and stated in his affidavit in response that the Claimant acted as a trustee on behalf of all the owners of the dwelling house when she exercised the option to purchase and as such, holds the property on trust for them.

He, however, contended that this is untenable. The Defendants have not pleaded (i) that they expended monies on the property; (ii) that they were promised an interest in the property; or (iii) that there was an agreement between themselves and the Claimant giving rise to an equitable interest in the property. They have also not pleaded that they advanced any monies towards the purchase price of the property.

[49] Mr. Raphael submitted that the Second Defendant's allegation that the Claimant was a trustee must fail because the Claimant was never a trustee for either of the Defendants and the Second Defendant has failed to particularise the circumstances giving rise to any trustee relationship between the parties. Counsel contended that the Second Defendant has not pleaded or identified any circumstances giving rise to any express trust in the Defendants' favour or even that the course of dealing between the parties revealed the existence of any trustee relationship. Counsel referred to **Halsbury's Laws of England (2012) 5th Edition Volume 48 at paragraph 624** which classified trusts in one of two ways: either (i) express trusts which are created expressly or impliedly by the actual terms of some instrument or declaration or which by some enactment are expressly imposed on persons in relation to some property vested in them, whether or not they are already trustees of that party; or (ii) trusts arising by operation of law (other than express trusts imposed by enactments). Trusts implied by law are resulting and constructive trusts.

[50] Mr. Raphael further submitted that none of the parties to this action had any right to purchase the said property when offered for sale and that the Claimant was acting in her sole rights as an individual to purchase the said property.

He contended that the Defendants did not deviate from their pleadings when confronted with the Claimant's reply. Neither the First nor the Second Defendant asserted that she or he had an equitable interest in the property or that money was paid to the Claimant for the valuation of the property as opposed to having the property surveyed. Counsel asked the Court to note that the Schedule of the Claimant's registered deed makes no reference to any recent survey plan. He therefore asked the Court to treat the assertions of the Defendants in their affidavits as contradictory, self-serving and untrue.

[51] Ms. Gibson-Wadi, Counsel for the First Defendant, submitted that the unconscionable acts committed by the Claimant in her dealings with the property in contention gave rise to a defence in equity, namely, that of a constructive trust. Therefore, the First Defendant has a realistic prospect of success, once she can establish the necessary criteria of a constructive trust.

Counsel submitted that the issue of a constructive trust arose because the Claimant exercised the option to purchase, which was available to the estate, while the other parties believed that they undertook to do the same together. The Claimant, however, did so without the knowledge or consent of the other parties to the proposed transaction. Ms. Gibson-Wadi contended that the Claimant is now using the Court to attempt to extinguish the Defendants' interest in the said property left to them by virtue of the estate of the Deceased. Counsel relied on the authority of **Marlon Henry v Joel Sussman and others**[5], which applied the principles of Lord Brown Wilkinson in **Westdeutsche Landesbank Girosentrale v Council of the London Borough of Islington**[6].

[52] Ms. Gibson-Wadi contended that the Court in deciding whether to impose a constructive trust in the circumstances must consider: (i) the conduct of the parties; and, in particular, (ii) that the potential trustee must have the knowledge as to the effects that her actions would have on the other potential beneficiaries.

[5] H.C.A No 1396/2005, CV No 2919/2006
[6] [1996] UKHL 12

Counsel submitted that both Defendants agree that the parties intended to purchase the property together and had no knowledge that the Claimant purchased the property without their consent. As such, this speaks to the conduct of the parties herein and that equity can step in to ensure that the Claimant does not benefit unjustly from her unconscionable acts.

Ms. Gibson-Wadi further contended that the Claimant, in her submissions, stated that she purchased the property "in her sole right as an individual to purchase the parcel of land" and then brought this action for the reliefs sought, the effect of which would nullify the Defendants' interest in the said property.

[53] Ms. Gibson-Wadi advanced that if these issues are considered, on the face of the submissions, the Defendants have succeeded in achieving the criteria for the imposition of a constructive trust. Thus, they do have a realistic prospect of success due to the fact that the conduct of the Claimant was unconscionable and that she did in fact know of the effect such an action would have on the interests of the Defendants.

[54] Ms. Gibson-Wadi submitted that these issues "operate on a factual basis and can only be properly determined by tested evidence". So that if the Court were to grant the reliefs sought by the Claimant, she contended, it would severely prejudice the Defendants. Consequently, therefore, an application for summary judgment ought not to succeed. Counsel relied on the cases of **Royal Brompton Hospital NHS Trust v Hammond No. 5**[7] and **Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd**[8], both of which advised the Court to be mindful of the evidence that may be available at trial and that it should be careful in making any determination without fuller investigations into the facts at trial.

[7] [2001] E.W.C.A Civ 250
[8] [2006] EWCA Civ 661

[55] Counsel submitted that the case of **Dowaga Daniel v Ruthvin Daniel**[9] holds a similar factual matrix to the instant case in that the existence of a proposed family arrangement in dealing with lands was a pivotal issue. She further submitted that Seepersad J declared in paragraph 46 of his judgment that the resolution of that issue was fact-dependent. The Judge considered, *inter alia*, the witness statements and cross-examination of the parties before determining their intention and declared that a family arrangement did in fact exist between the parties.

Accordingly, Ms. Gibson-Wadi contended that the issues arising in this matter must be determined by a fuller investigation of the factual matrix, which would require a trial. These issues are, she contended, *inter alia*, (i) Was there in fact a family arrangement? (ii) Did the parties meet with the intention of exercising the option to purchase? (iii) Did the Defendants not exercise the option to purchase due to ongoing deliberations between the parties?

[56] Mr. Sterling John, Counsel for the Second Defendant, submitted that in order to determine whether the Defence discloses a basis for defending the Claim, the Claimant's case must first be examined. He contended that the Claimant is seeking possession and is relying on her title which was derived from purportedly exercising the option to purchase given to the estate of the Deceased. Counsel submitted that it is an undisputed fact that the Second Defendant is not in possession of the said property or any part thereof. However, the Second Defendant asserts that he has an equitable interest in the said property.

[57] Mr. John submitted that the Claimant's inability to establish a cause of action against the Second Defendant provides him with a very real prospect of success in relation to the instant Claim, which goes beyond that which may be classed as fanciful.

Counsel further contended that the Second Defendant enjoys a beneficial interest in the said property, an issue that this Court has to determine. Mr. John submitted that the contention of both Defendants is that the Claimant surreptitiously exercised the option to

[9] CV2008-02860

purchase in her sole name, to the exclusion of the Defendants, which denied them the collective benefit that was afforded to the estate of the Deceased. He further submitted that this gives rise to a constructive trust in favour of the estate of the Deceased.

Counsel relied on the authority of **Ramdhanie v Ramdhanie**[10] wherein the Honourable Madam Justice Dean-Armorer outlined the considerations to be taken into account by the Court when considering the imposition of a constructive trust.

[58] Mr. John advanced that the relevant principles to be considered by the Court in determining whether the Defendants are entitled to a beneficial interest are issues, which require fuller ventilation and testing at trial. He submitted that though the evidence presently before the Court does tend to suggest that there exists such a beneficial interest in their favour, for the Court to make a decision at this stage would not be in the interest of justice and would certainly be contrary to the learning in **Western United Credit Union Co-operative Society Limited v Corrine Ammon**[11].

[59] Mr. Raphael, in reply to the submissions of the Defendants, submitted that the sole issue identified by the Defendants in their submissions is whether the Claimant, in acquiring the legal title to the said property, held it on constructive trust for them. Counsel submitted that the facts identified by the Defendants in their submission are not capable of satisfying the requirements of a constructive trust.

Counsel submitted that it is no surprise that the instances in which the Court makes a finding that property is held on constructive trust for another typically relate to marital and cohabitant relationships. However, before a constructive trust is found to exist, the Court first has to be satisfied that there was an express agreement that the property would be shared. If the agreement is found to exist, the Court then considers whether the person asserting a claim can show that he or she acted to his or her detriment in relying on that

[10] CV2013-03877
[11] Civ Appeal No 103 of 2006

agreement. Counsel relied on the authority of **Lloyds Bank plc v Rosset**[12] which was discussed in the local case of **Plato v Taylor**[13].

[60] Mr. Raphael contended that neither Defendant has satisfied the requirements for the existence of a constructive trust. In support of this contention, he submitted the following arguments. First, the parties to this action have never shared a home in like manner to a spouse or cohabitant, asserting a claim in a matrimonial property, or property held in the name of one cohabitant. Secondly, the Defendants have not stated any facts in their pleadings that support a finding that there was an expressed agreement for the property to be shared by the parties to the action.

Counsel further contended that there is simply no evidence before the Court that points to any express agreement between the parties to this action that the property would be shared. They have not shown that they have acted to their detriment by contributing to the acquisition of the property or that their position has changed in reliance on an alleged promise.

[61] Mr. Raphael advanced that even if the authorities relied on by the Defendants, reveal that a constructive trust was successfully asserted, they do not assist the Defendants since they have not pleaded that they have done anything that would give rise to such a finding. Counsel submitted that it is clear that direct contributions to the purchase price by the non-owner would justify an inference of a constructive trust. However, the Defendants have admitted that they have not done so having stated that the property was purchased by the Claimant without their consent. Counsel, therefore, contended that the Defendants have not provided the Court with any evidence that would permit a ruling that a constructive trust exists or can be inferred.

[62] Mr. Raphael submitted that the assertion by the First Defendant that the arrangement between the parties to the action was that the First and Second Defendants have an interest

[12] [1990] 1 All ER 1111 at 1118(h)
[13] HCA 2168/1998

in one of the two downstairs apartments while the Claimant's interest was in the upstairs apartment simply could not stand. This is so because the dwelling house would lawfully have belonged to the landlord upon the determination of the tenancy and, therefore, all rights of the Defendants and the Claimant to the dwelling house would have been extinguished prior to the purchasing of same by the Claimant.

[63] Counsel submitted that the case of **Western Union Co-operative Society Limited v Corrine Ammon** cited by Defendants does not assist them in resisting the Claimant's application because unlike that case, the Defendants have not successfully raised a Defence to the Claimant's case for possession. He further submitted that the Defendants have asserted that the Claimant became a constructive trustee for the Defendants but they have not identified any facts capable of satisfying the requirements of a constructive trust.

## V. Issue

[64] The fundamental issue in this application for summary judgment is *whether the Defendants have put forward a defence with a realistic prospect of success.*

[65] In determining this fundamental issue, the following questions must be answered:

*(i)* ***Does the First Defendant's Defence comply with Part 10.5 of the CPR?***

*(ii)* ***Did the Claimant act as a trustee on behalf of the Defendants when she exercised the option to purchase the said property?***

*(iii)* ***Has there been the imposition of a constructive trust in favour of the Defendants at the time of the Claimant's purchase of the said property?***

## VI. Law and Analysis

[66] **Part 15 of the CPR** governs the application for summary judgment. In particular, **Part 15.2** provides as follows:

*"The court may give summary judgment on the whole or part of a claim or on a particular issue if it considers that—*

*(a) on an application by the claimant, the defendant has no realistic prospect of success on his defence to the claim, part of claim or issue; or*

*(b) on an application by the defendant, the claimant has no realistic prospect of success on the claim, part of claim or issue."*

[67] The fundamental principles of summary judgment are well established and settled in case law. The authority of **Western United Credit Union Co-operative Society Limited v Corrine Ammon**[14] which referred to the decisions of **Toprise Fashions Ltd v Nik Nak Clothing Co Ltd and ors**[15] and **Federal Republic of Nigeria v Santolina Investment Corp.**[16], is often cited for its comprehensive outline of the basic principles as follows:

*(i) The Court must consider whether the defendant has a realistic as opposed to fanciful prospect of success: Swain v Hillman 2001 2 All ER 91;*

*(ii)A realistic defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: ED & F Man Liquid Products v Patel 2003 E.W.C.A. Civ 472 at 8;*

*(iii) In reaching its conclusion the court must not conduct a mini trial: Swain v Hillman;*

*(iv)This does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel 2003 E.W.C.A. Civ 472 at 10;*

*(v) However in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be*

[14]Civ App No 103 of 2006 [3] per judgment of Kangaloo JA
[15] 3 (2009) EWHC 1333 (Comm)
[16] (2007) EWHC 437 (CH) Page 12 of 18

*available at trial: Royal Brompton Hospital NHS Trust v Hammond No. 5 2001 E.W.C.A Civ 550;*

*(vi)Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd 2007 F.S.R. 63.*

[68] Lord Hope in **Three Rivers District Council v Governor and Company and Bank of England No 3**[17] explained a judge's duty in respect of the test in summary judgment applications in the following way:

*"The rule… is designed to deal with cases which are not fit for trial at all'; the test of 'no real prospect of succeeding' requires the judge to undertake an exercise of judgment; he must decide whether to exercise the power to decide the case without a trial and give summary judgment; it is a discretionary power; he must then carry out the necessary exercise of assessing the prospects of success of the relevant party; the judge is making an assessment not conducting a trial or a fact-finding exercise; it is the assessment of the case as a whole which must be looked at; accordingly, 'the criterion which the judge has to apply under CPR Pt 24 [our Rule 15] is not one of probability; it is the absence of reality."*

[69] Accordingly, in this application for summary judgment, it is decisive that the Defendant must have a realistic prospect of success in defending the claim – an implicit suggestion, of necessity, that their defences must be properly pleaded. **Part 10.5 of the CPR** sets out what the Defendants must include in their defences.

[17] [2001] UKHL 16

**Part 10.5** states as follows:

1) *The Defendant must include in his defence a statement of all the facts in which he relies to dispute the claim against him.*
2) *Such statement must be as short as practicable.*
3) *In his defence the defendant must say—*

    *a) which (if any) allegations in the claim form or statement of case he admits;*

    *b) which (if any) he denies; and*

    *c) which (if any) he neither admits nor denies, because he does not know whether they are true, but which he wishes the claimant to prove.*
4) *Where the defendant denies any of the allegations in the claim form or statement of case—*

    *a) he must state his reasons for doing so; and*

    *b) if he intends to provide a different version of events from that given by the claimant, he must state his own version.*
5) *If, in relation to any allegation in the claim form or statement of case the defendant does not—*

    *a) admit or deny it; or*

    *b) put forward a different version of events,*

    *he must state each of his reasons for resisting the allegation.*
6) *The defendant must identify or annex to the defence any document which he considers to be necessary to his defence.*

[70] Mendonça JA in the case of **M.I.5 Investigations Ltd v Centurion Protective Agency Ltd**[18] explained how a Defence should be drafted pursuant to **Part 10.5 of the CPR** as follows:

*"In respect of each allegation in a claim form or statement of case therefore there must be an admission or a denial or a request for a claimant to prove the allegation. Where there is a denial it cannot be a bare denial but it must*

[18] Civil Appeal No 244 of 2008

*be accompanied by the defendant's reasons for the denial. If the defendant wishes to prove a different version of events from that given by the claimant he must state his own version. I would think that where the defendant sets out a different version of events from that set out by the claimant that can be a sufficient denial for the purposes of 10.5 (4) (a) without a specific statement of the reasons for denying the allegation. Where the defendant does not admit or deny an allegation or put forward a different version of events he must state his reasons for resisting the allegation (see 10.5 (5)). The reasons must be sufficiently cogent to justify the incurring of costs and the expenditure of the Court's resources in having the allegation proved."*

**First Defendant's Defence**

[71] Upon examination of the First Defendant's Defence it is clear that it is non-compliant with **Part 10.5 of the CPR**.

The Court is of the view that the First Defendant, in her Defence, has not made any statements in defence to the Claimant's pleaded facts. In fact, the First Defendant agrees to paragraphs 1-8, 10, 13 and 20 of the Claimant's Statement of Case. Furthermore, the First Defendant has not disputed paragraphs 9, 12, 16, 17, 18 and 19 of the Statement of Case. In that regard, the First Defendant has not only admitted these facts by her failing to address them, far less deny them, but also, as a consequence, has thereby offered no defence to the Claim.

The First Defendant, however, indicated that she has no knowledge of the extent of the repairs done to the upstairs apartment or the quantum spent (as pleaded by the Claimant in paragraph 11 of the Statement of case). She also denied that the Claimant ever asked her to transact any business in relation to the Unit Trust Account (as pleaded by the Claimant in paragraph 14). She further indicated that a portion of the rent money referred to in paragraph 15 of the Statement of Case was used in relation to the maintenance of the said property and other property-related expenses. However, she did not annex any

receipts, bills or invoices to her Defence upon which she would rely in the event that the matter proceeds to trial, which is a requirement under **Part 10.5 (6)**.

[72] In her affidavit in response and in her submissions, the First Defendant stated that she has an equitable interest in the said property. This she contended on the basis that the Claimant knew of the intention of the beneficiaries of the estate to purchase the said property. Accordingly, she argued that the purchase of the property by the Claimant should be declared a trust for the estate.

[73] I have noted, however, that these facts on which she contended that she has an equitable interest in the said property and that the purchase of the said property by the Claimant should be declared a trust for the estate, were never pleaded in her Defence to the Fixed Date Claim and Statement of Case nor did she file a Counterclaim seeking such relief. In that regard, should this matter go to trial, the First Defendant would be effectively barred from leading such evidence.

[74] It is evident that the First Defendant has failed to set out her Defence as is required by **Part 10.5 of the CPR**. In this regard, **Part 10.6(1)** stipulates the consequences for such failure as follows:

> "*The defendant may not rely on any allegation which he did not mention in his defence, but which he should have mentioned there, unless the court gives him permission to do so.*"

[75] As a further implication of the First Defendant's non-compliance with **Part 10.5** and the consequential invocation of **Part 10.6(1) of the CPR**, the First Defendant has effectively admitted to all of the reliefs sought by the Claimant in her Fixed Date Claim and Statement of Case.

[76] Accordingly, based on the above, the Court finds that the First Defendant's defence has no realistic prospect of success. In that regard and in accordance with **Part 15.2 of the**

**CPR** the Claimant's application for summary judgment against the First Defendant ought to succeed.

**The Second Defendant's Defence**

[77] The Second Defendant has mounted his Defence to the Claimant's claim for possession of the said property on the allegation that the circumstances of the purchase by the Claimant point to the creation of a constructive trust in favour of the Defendants.

Justice Rajkumar (as he then was) in considering a claim for the imposition of a constructive trust in **Singh & others v Harrygin**[19], cited the text of **Lewin on Trusts (18th Edition) (2008) paragraphs 9-50 to 9-51** which state as follows:

> *"**9-50** And where the purchaser of the property shares a common intention with the claimant that the claimant is to have a beneficial interest in the property even though he is not a legal owner, and the claimant acts to his detriment upon the basis of the common intention, a trust is imposed so as to give effect to the common intention. We call this a common intention trust without attempting to say whether it is a resulting or constructive trust, which is not important. Such trusts are, however, commonly called "common intention constructive trusts". They are certainly implied trusts in the sense that they are not express, and such a trust has been spoken of in the House of Lords as a "resulting or implied trust". It would now seem that the common intention trust can more readily be seen as constructive, imposed in order to provide relief against unconscionable conduct."*
>
> *"**9-51** The principles previously developed in matrimonial property cases are still relevant in that they apply in cases where the parties in dispute are not married to each other or civil partners, or in cases involving a husband and wife or civil partners where the family jurisdiction or the court is unavailable, for example, if one of the parties has become bankrupt or died."*

[19] CV2010-1371

[78] Counsel for the Claimant correctly submitted that instances in which the Court makes a finding that property is held on constructive trust for another typically relates to marital and cohabitant relationships. However, the authorities establish that the principles of law which determine those types of cases arise under the law of trusts which fall to be universally applied and which apply equally in the more complicated cases: **Tackaberry and another v Hollis and others**[20].

[79] Where land is acquired in the sole name of an acquiring party, the burden of proof rests on a non-acquiring party or parties to show that there was some agreement between the acquiring party and the non-acquiring party or parties, express, or to be inferred from their conduct at the time of the acquisition, that the beneficial ownership of the property acquired was to be shared between them: per Lord Hope in **Stack v Dowden**.[21]

[80] Applying this principle laid down in **Stack v Dowden** it is clear that the onus is on the Second Defendant to demonstrate that at the time of the purchase by the Claimant, there was an express or implied agreement that the beneficial ownership of the said property would be shared among them (the Claimant, the First Defendant and himself).

[81] The Second Defendant, at paragraph 3 of his Amended Defence filed on 9 December 2016, averred that in or about 2012, the intention among the parties was to purchase the said property jointly for their use and benefit. Towards this end, he gave the Claimant two thirds of the cost of conducting a survey of the said property which he said was required for its purchase. In his response affidavit, however, he deposed that the money given to the Claimant was for a valuation (not a survey as pleaded). He said the money was given to her directly in cash and no receipt was produced.

In his affidavit in response to the application, he stated that he was always aware of the owners' willingness to sell and at all material times, his discussions with his siblings were

[20] [2007] EWHC 2633 Ch
[21] [2007] UKHL 17

that they would put up and purchase the land jointly. He stated that the offer to purchase was made to the estate of the Deceased and that it was his understanding that his sister (the Claimant) was acting on behalf of the estate of the Deceased and for the benefit of the three of them. I have noted that neither in his Amended Defence nor in his response affidavit did he state the amount of money given to the Claimant.

[82] I keep in mind the principles laid down in **Western United Credit Union Co-operative Society Limited v Corrine Ammon (supra)** which instruct that it is not wise for the Court to accept at face value the documents in support of the application for summary judgment placed before it without analysis. Rather, in some cases, it may be prudent to examine his pleadings, along with the documentary and other evidence that can reasonably be expected to be available at the trial: [*Royal Brompton Hospital v Hammond (supra) refers*].

[83] However, the Second Defendant has not put forth any further affidavit evidence in support of his Defence nor any documentary evidence to enable the Court to test the veracity of his Defence. In his affidavit, he indicated that he intended to rely on the evidence of David Pierre and Stacey Charles. However, this is only as it relates to the payment of money to the Claimant for the survey (or valuation) and not to the issue of whether there was an express or implied agreement that the Claimant will hold the beneficial interest in the said property on a constructive trust for him and the First Defendant. The latter being the substance of his Defence.

[84] In that regard, the Court is of the opinion that it is unlikely that the Second Defendant will have any further evidence available to him at the trial. The primary purpose of the affidavit in response to the application for summary judgment is to provide the Court with evidence which shows that the Defendant does in fact have a realistic prospect of success on his Defence. He must put forward his best evidence at this stage bearing in mind that the prospect of his success on his defence is being challenged. The Second Defendant has failed to so do.

[85] Accordingly, considering the lack of evidence of the Second Defendant in support of his Defence, the Court is of the view that the Defendant does not have a realistic prospect of success against the Claimant. Any prospect of success on the Defence entertained by the Second Defendant is merely "fanciful" as opposed to "realistic" and therefore the application for summary judgment against the Second Defendant ought to succeed.

## VII. Disposition

[86] Given the reasoning, analyses and findings above, the Order of the Court is as follows:

**ORDER**:

1. **Summary judgment be and is hereby granted in favour of the Claimant against the Defendants on her Notice of Application filed on 11 July 2017 for the following reliefs:**

   **(i) An Order that the Defendants do deliver up possession to the Claimant of All and Singular that piece or parcel of land situate formerly in the Ward of Laventille now in the Ward of St. Ann's comprising FIVE THOUSAND ONE HUNDRED AND TWENTY FOUR (5,124) SUPERFICIAL FEET more or less (being portion of a larger parcel of land described in the First Part to the Schedule to Deed registered as No. 1126 of 1995) measuring 84 feet on the Northern and Southern boundary lines and 61 feet on the Eastern and Western boundary lines and bounded on the North by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia in occupation of Yvonne Neil on the South partly by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia and partly by lands in occupation of Bently Francis on the East by lands of Imrit Dhanaisar also called Imrit Ramnarine and Kowsillia and of the West by a Trace approximately 8 feet wide together with the dwelling house standing thereon (hereinafter called "the said property").**

   **(ii) The Claimant is entitled to her share and interest in the proceeds of the accounts held at Eastern Credit Union and at the Unit Trust Corporation.**

**(iii) The First Defendant to provide an account of all rental income collected by her in respect of the said dwelling house and shall pay to the Claimant the amount found to be due and owing to her.**

**(iv) That the Defendants do pay to the Claimant their share of the outstanding water rates in respect of the said dwelling house.**

2. **In relation to the reliefs granted at clauses (ii), (iii) and (iv) of this Order it is hereby further ordered that an account is to be taken by the Registrar of Supreme Court pursuant to Part 2.4A (1) (c) of the CPR 1998 on a date to be fixed by the Registrar within 60 days from the date of this order.**

3. **Upon completion of the taking of accounts, the Registrar is directed to prepare a report thereof and refer this matter and the said report back to this Court for final determination of the amount to be awarded, if any, to the Claimant in accordance with the reliefs granted in clauses (ii), (iii) and (iv) herein.**

4. **The Defendants shall pay to the Claimant her costs of the Notice of Application filed on 11 July 2017 to be assessed in accordance with Part 67.11 of the CPR 1998, in default of agreement.**

5. **Such assessment of costs shall take place after the accounts have been taken by the Registrar and after this Court gives its final decision on the reliefs granted at clauses (ii), (iii) and (iv) of this order.**

**Robin N. Mohammed**
**Judge**