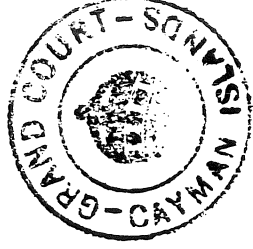


*Smellie J.*

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. 344/92



*MSJ*  
4-10-93

RITA GAY SANDELL AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ALAN  
MICHAEL SANDELL  
FIRST PLAINTIFF

AND: RITA GAY SANDELL  
SECOND PLAINTIFF

AND: RAYENA SANDELL  
THE ROYAL BANK OF CANADA  
FIRST DEFENDANT  
SECOND DEFENDANT

AND: MICHAEL DAVIS  
THIRD DEFENDANT

Mr. Pierre Lamontagne with Mr. Boni for plaintiffs  
Mr. Turner for second defendant  
Mr. Watler for first defendant

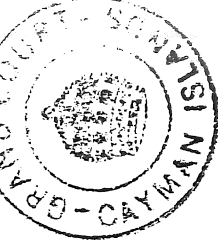
Schofield J.

ORDER

Alan Michael Sandell and Rita Gay Sandell ("the second plaintiff") were married at the date of Mr. Sandell's death, the 21st June, 1992. At the time of his death they held a joint safekeeping account with the second defendant, the Royal Bank of Canada ("RBC"). Either of the two account holders could authorize or direct RBC in relation to securities held in the account. It is alleged that on 30th June, 1992, certificates representing 27,500 shares in the stock of GAP Inc. (or GAP Stores), 17,000 shares in the stock of Mountain States Resources and 6,600 shares in the stock of Carter Hawley Hale Inc. were held in the account. On or prior to that day RBC received instructions to transfer all these securities into the account of Rayena Sandell, the first defendant, to whom Mr. Sandell was previously married. RBC transferred all the securities to an account which it kept jointly for the first defendant and Michael Davis, the third defendant. It is alleged that the instructions, which were purported to be signed by Mr. Sandell, were forged.

The second plaintiff is the duly appointed personal representative of the estate of her late husband and she brings this action in that capacity as well as in her personal capacity.

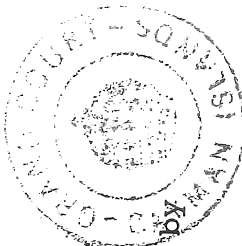
Very briefly the plaintiffs in their amended Statement of Claim seek, inter alia, as against the defendants:



- (a) a declaration that the plaintiffs are the legal and equitable owners of the shares and dividends paid on them;
- (b) a declaration that the defendants or any of them hold all the said shares upon constructive trust for the benefit of the plaintiffs;
- (c) an order for all necessary accounts and enquiries to enable the plaintiffs to trace and recover the shares and dividends;
- (d) an order for delivery up and for transfer to the plaintiffs of the shares and dividends;
- (e) damages; and
- (f) interest

There was also a prayer for a Mareva injunction which has been put into effect and the shares which are the subject of the suit, and the dividends paid on those shares, are still held by RBC, albeit to the account of the other two defendants.

On this summons by RBC, that the writ of summons and amended Statement of Claim so far as it concerns RBC be struck out, I am asked to exercise my inherent jurisdiction. It is pointed out that all the shares and dividends are still held at the Bank in the names of the first and third defendants. RBC has provided discovery of all documentation in its possession relevant to the transfer of the shares, a Bank official is prepared to testify at the trial and the Bank is prepared to abide by any order of the Court made pursuant to the suit. Furthermore it is argued for RBC that any damages which are claimed must be restricted to any loss which the plaintiffs would suffer as a result of the inability of the second plaintiff to trade in the shares and thus increase the value of the securities. So, says RBC, any such damages would be impossible to calculate in the absence of specific proof, of which none has been shown to exist, of details that the second plaintiff sought to trade a particular



security and invest elsewhere, and any profit to the portfolio by that trade.

It is argued that in any event RBC has secured the agreement of the first defendant that she has no objection to the second plaintiff trading in the shares provided the proceeds remain the subject of the Mareva injunction. As a consequence, so the argument goes, any claim for damages against RBC is now totally unnecessary.

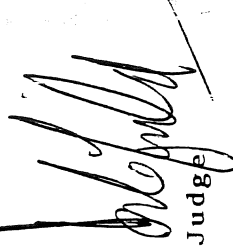
RBC has not persuaded me that damages cannot lie against it. The plaintiffs clearly have an arguable case that damages lie. In that event the summons must fail. RBC held shares to the account of the plaintiffs. The claim arises, say the plaintiffs, out of breach of contract and out of breach of fiduciary duty, a constructive trust arising out of the fraudulent transfer of the shares. It is alleged that the Bank wrongfully transferred shares to the account of the other two defendants. If the second plaintiff wanted to trade in those shares and could profit by that trading, to hold her out of control of the shares could sound in damages. Damages may be difficult to assess but that does not preclude an award. On the arguments before me at this stage I am unable to conclude that damages are so highly speculative as to be incapable of measurement.

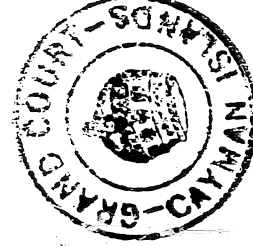
There can be no doubt that the second plaintiff has been held out of control of the shares. A letter has been produced which shows that as late as 8th January, 1993, the attorneys for the first defendant were opposing a suggested order that the shares be put into an account to be operated by the second plaintiff. They suggested that the shares be under the joint control of the parties. As pointed out by counsel for the plaintiffs this position would have been practically unworkable. Successful trading in shares depends upon speedy action and communication which would have been impossible given the avenues of communication involved if both parties, through their

attorneys, were to be involved in any decision on trading the shares. The alternative suggestion of the first defendant's attorneys, that the shares remain the subject of the Mareva injunction, again held the second plaintiff out of control of the shares.

The Mareva injunction which is in force at the present time, having been amended from its original form, does not permit the second plaintiff to control any trading in the shares. At the hearing of this summons counsel for the first defendant indicated that there was no objection to the second plaintiff trading in the shares so long as the proceeds remain the subject of the Mareva injunction. It must be left for the hearing of this action whether the Court is satisfied after hearing all relevant evidence, that the plaintiffs have suffered damage as a result of the second plaintiff being denied the opportunity up to the hearing on this summons to trade in the shares the subject of the suit. It must also be left to the hearing to determine whether the first defendant's concession has any bearing on the question of whether damages lie for the period before the hearing of this summons or after it. I am unable to say on the matter before me that the plaintiffs have not so suffered damage. It may be that now the defendants have no objection to the second plaintiff having control of any trading in the shares. But that was not the position before the suit was filed and is not the position the defendants have taken throughout the course of proceedings thus far. It is possible that thereby RBC, as well as the other defendants, are responsible for loss suffered by the plaintiffs.

Accordingly, I dismiss the summons with costs to the plaintiffs.

  
Judge



Dated this 4th day of October, 1993.