EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

COMMERCIAL DIVISION

CLAIM NO. SLUHCM2024/0003

BETWEEN:

ROBERT ANGUS BAIN

Claimant

And

LAWRENCE BAIN

Defendant

Before:

The Hon. Mde. Justice Cadie St Rose-Albertini High Court Judge

Appearances:

Ms Renee St Rose KC with Ms Tianah Foster for the Claimant
Ms Alberta Richelieu for the Defendant

2025: October 7
November 5 (Written Submissions filed),
November18 (Final Oral Submissions),
December 29

JUDGMENT

[1] **ST ROSE-ALBERTINI, J. [Ag]:** This claim concerns a father's attempt to revoke a transfer of shares made to his son in a family company, Northwest Limited ("Northwest"), pursuant to Articles 751 and 753 of the Civil Code[1] ("the Code"). The claimant contends that the

[1] Cap 4.01 of the Revised Edition pf the Laws of Saint Lucia

shares were transferred as a gift and should be revoked on the ground of ingratitude, or alternatively declared void for want of lawful cause or consideration. The Defendant denies that the transfer was a gift and contends that it was a valid commercial transaction supported by consideration for past services. Alternatively, he says that the legal threshold for ingratitude has not been met. He also raises, as a preliminary issue, a plea of prescription.

The Claimant's Case

[2] Robert Angus Bain ("the claimant or Mr Bain") asserts that he founded Northwest as a family business in 1983. He is currently chairman of the board of directors of the company and holds 10% of its shares, having transferred 600,000 of his ordinary shareholdings, representing 30% of Northwest's issued shares, to his son Lawrence Bain ("the defendant or Lawrence"). On 27th May 2006, the board resolved to appoint Lawrence, who had over the years provided ad hoc services to Northwest and was recorded on the books as an employee, as a director of the company. Thereafter, by Share Transfer Form dated 26th July 2006[2] (the "Share Transfer Form"), Mr Bain transferred a portion of his shares in the company to Lawrence. He asserts that the transfer was made gratuitously, as a gift *inter vivos*, without any payment or other form of consideration from Lawrence, on the understanding that Lawrence would act in the best interest of Northwest and the family.

[3] Mr Bain further asserts that Lawrence has instead shown profound ingratitude and has engaged in acts designed to discredit and injure him, and Northwest. The particulars relied on include undermining the company's management; acting unilaterally without board approval; asserting an entitlement to Mr Bain's property during his lifetime; filing proceedings against Northwest and Mr Bain containing allegations said to be false and damaging to their reputations; circulating a false and defamatory email about Mr Bain to more than forty recipients; severing communication with him and showing no care or concern for his well-being since March 2020, particularly after he, Mr Bain, suffered a stroke in 2021; threatening staff at Northwest; and trespassing at his home to leave threatening correspondence addressed to him. Mr Bain pleads that this conduct amounts to "ill-usage" and "grievous

[2] See Exhibit RAB 6

injury" under Articles 753(1) of the Code, sufficient to justify revocation of the gift of shares for ingratitude pursuant to Article 751(1).

[4] Mr Bain says, despite repeated efforts to reconcile, and to even repurchase the shares from Lawrence for a substantial sum, Lawrence remained uncooperative and instead escalated hostilities. He relies in particular on a letter dated 17th November 2023, which he regards as the clearest and most recent manifestation of Lawrence's ingratitude and which, he says has prompted the present claim. He therefore seeks an order revoking the gift of shares for ingratitude. Alternatively, he contends that, if the Court finds that the transfer was not a gift, it should nonetheless be set aside for want of cause or consideration, pursuant to Article 918 of the Code.

The Defendant's Case

[5] Lawrence admits that he is the holder of 30% of the issued shares in Northwest, his father Mr Bain having transferred 600,000 shares to him in 2006. He avers that the shares, for which no money was paid, were not a gift but were transferred in recognition of his long-standing contribution to Northwest's growth and success. He avers that he was instrumental in promoting and expanding Northwest, particularly through his work in marketing initiatives such as the "Kia Tennis Championships", car promotions, and collaborations with financial institutions. He maintains that he was actively engaged in Northwest's affairs as both a director and employee and that his role was integral to its success. He asserts that the allocation of shares was based on merit and service, not on any donative intention, and therefore cannot be revoked as a gift.

[6] Lawrence denies his father's portrayal of his involvement in Northwest as minimal, or disruptive, and says that Mr Bain publicly recognized his efforts in the July/August 2018 issue of *Saint Lucia Business Focus*. He states that his operation of "The Visitors Channel", an initiative he personally pursued from Northwest's premises, was undertaken with his father's full consent, and that contributions were made for the use of the space. He further denies having acted without authority, or in bad faith, and contends that any management

differences with Northwest's Chief Executive Officer (CEO), his brother Randall Bain ("Randall"), were professional disagreements rather than acts of disrespect or ingratitude.

[7] Lawrence denies the allegations of misconduct, defamation, threats, and trespass. He avers that Mr Bain has mischaracterized his efforts to secure transparency and accountability in Northwest's affairs, including raising concerns about corporate governance and alleged financial irregularities. He states that his communications, including the email of 20th August 2021[3] and subsequent correspondence, as well as the related claim, were directed at addressing serious governance and financial concerns within Northwest, protecting his interests as a shareholder, and correcting what he viewed as mismanagement, rather than harming his father.

[8] Lawrence further avers that the provisions of the Code concerning revocation for ingratitude are inapplicable because there was no valid gift *inter vivos* capable of revocation. He contends that Mr Bain has not complied with the procedural requirements for revocation, including the statutory timeframe, and that the claim is an abuse of process intended to retaliate for a related claim which he instituted against Mr Bain, Randall, and Northwest. He asks that the claim be dismissed, with costs.

The Issues

[9] The following preliminary and substantive issues arise for determination:

1. Is the claim prescribed pursuant to Article 2121(4) of the Civil Code?
2. Whether the letter exchanged between counsel for the parties in the related claim is inadmissible in the present proceedings pursuant to section 110 of the Evidence Act?
3. Whether the shares held by Lawrence in Northwest were transferred to him as a gift *inter vivos* or in consideration of past services rendered to Northwest?
4. If the transfer is a gift, whether Mr Bain has satisfied the statutory requirements for revocation on the ground of ingratitude under Articles 751(1), 753(1), and 753(2) of the Code?
5. Alternatively, what is the effect of a failure to provide consideration for the transfer of shares in light of Article 918 of the Civil Code and section 30 of the Companies Act[4]?

[3] See Exhibit RAB 5
[4] Cap 13.01 of the Revised Edition of the Laws of Saint Lucia

6. Whether shares gifted to a party can be revoked under Article 751(1) of the Civil Code for ingratitude, after the formalities of the share transfer have been completed?

The Claimant's Evidence

Mr Bain

[10] At the time of trial Mr Bain was 91 years old. He testified that he is the founder, chairman, and currently a 10% shareholder of Northwest, a family business established by himself and his wife in 1983. He and his older son, Randall, built up the physical location and dedicated their lives to building and growing the company. In 2006, he transferred 600,000 of his ordinary shares, representing 30% of Northwest's issued shares, to his younger son, Lawrence (the Defendant), by way of a gift. He explained that no money or other form of consideration was given or expected in return and that the transfer was motivated solely by paternal affection and a desire to safeguard his son's financial future. Mr Bain says he gave the gift on the understanding that Lawrence would act in the best interest of the family, and the business, and would not show ingratitude toward him.

[11] Mr Bain further stated that Lawrence provided very little input in Northwest's affairs for the majority of its existence because he was pursuing alternative businesses and careers. He says that from 2006 to 2014 Lawrence built and operated the business known as "The Visitors Channel" and only started working at Northwest in 2015, when he was employed as the Human Resources Director and was also tasked with coordinating marketing campaigns. However, he hired a Human Resources Manager to undertake the duties assigned to him, and organized marketing campaigns infrequently and in an ad hoc manner. Over time, he became disruptive at Northwest, acting without authority, interfering in company operations, and undermining the authority of Randall, as CEO. Mr Bain referred to two written reprimands issued to Lawrence by the CEO in 2019. He noted that Lawrence unilaterally increased his own salary beyond that of himself and Randall, hired and dismissed staff without approval, and was absent from work for long periods. Mr Bain also stated that Lawrence circulated defamatory emails, including the one sent on 20th August 2021 to over

forty recipients, in which he accused Mr Bain and Randall of misconduct and mismanagement.

[12] He testified that, since being terminated from Northwest, Lawrence trespassed at his home to deliver threatening handwritten letters, and that since 2020 he had completely ceased communication with him, showing no affection or concern, even after he, Mr Bain, had suffered a stroke in 2021. Mr Bain says that despite this, he made several attempts to reconcile and even offered to repurchase Lawrence's shares for between XCD$1-2 million, but Lawrence rejected his offers. He referred to the letter of 17th November 2023, from Counsel for Lawrence which contained what he described as false, offensive, and excessive demands, including claims to his own property during his lifetime. Mr Bain stated that this letter was the final act of ingratitude and injury, prompting him to bring this claim seeking revocation of Lawrence's 30% shareholding in Northwest.

[13] In cross-examination, he confirmed that he voluntarily, without undue influence, threat or pressure, signed the Share Transform Form to convey his shares to Lawrence and that as an accountant he understood the effect. He accepted that the form did not describe the transfer as a "gift" or "donation," but stated consideration of $600,000.00. He agreed that the minutes of the board meeting of 27th May 2006[5], at which the shares were transferred to both his sons, also made no mention of the shares being transferred as a gift. He accepted that the transfer occurred nearly twenty years ago, and that there was no allegation of ingratitude immediately thereafter. He admitted that the decision to revoke the shares arose after disagreements with Lawrence over company management. He agreed that no threats, assaults, or attempts on his life were ever made by Lawrence, and he acknowledged that the matter largely arose from family disagreements. He nonetheless maintained that he was seeking revocation because of conduct by Lawrence, which, in his view, harmed the company and caused him emotional distress. He stated that despite the dispute, he still loved his son.

[5] See Exhibit RAB1

Randall

[14] Randall is Mr Bain's eldest son and the CEO of Northwest. He gave evidence on behalf of his father, stating that he has been employed with the company since 1991 and was appointed CEO in 2006. Lawrence, his younger brother, was appointed a director at that time but, according to Randall, he contributed little to the business and often created discord within the management team. He supported his father's claim that Lawrence acted without authority by signing contracts without board approval and caused disruption within the business by ignoring directives relating to staff and financial decisions.

[15] He testified that Lawrence Lawrence's conduct became increasingly hostile, which led to his removal as a director in February 2020. Thereafter, he circulated the email of 20th August 2021 to more than forty recipients, including business associates and family members, and that it contained serious allegations against their father and Northwest which, in his view, damaged their reputations. He stated that Lawrence's removal as a director was necessary because his conduct had become disruptive and detrimental to Northwest's operations.

[16] In cross-examination, Randall agreed that there had been disagreements between himself and Lawrence, and their relationship had broken down over time. He confirmed that no threats or assaults were committed by Lawrence against their father, and that no police reports had been lodged. He accepted that Lawrence had, at times, requested meetings to discuss his dissatisfaction with Northwest's management and had expressed governance concerns before this dispute arose. He agreed that the Share Transfer Form was signed by both Mr Bain and Lawrence, and witnessed by their late mother Mrs Wendy Bain. Randall accepted that the Share Transfer Form recorded consideration in the sum of $600,000.00 and made no mention of a gift. He acknowledged that if the shares were revoked, they would revert to Mr Bain, but denied having any personal interest in the outcome of this claim.

The Defendant's Evidence

[17] Lawrence was 61 years old, at the time of trial. He testified that he did not receive 600,000 shares as a gift but as recognition for his service and contribution to the growth of Northwest. He stated that after returning to Saint Lucia in the late 1990s, he joined the company in 1998

and worked in marketing, human resources, and business promotion. He cited his role in establishing major advertising campaigns, including the Kia Tennis Championships and car promotions, and maintained that the transfer was made to reward these efforts, when his father began reducing his active involvement in 2006.

[18] He denies all allegations of ingratitude, ill-usage, or grievous injury to Mr Bain, stating that his communications and actions were motivated by legitimate concerns about corporate governance and financial mismanagement within Northwest. He maintained that his email of 20th August 2021 was factual and intended to expose irregularities involving Randall's handling of company funds. He says he did not commit trespass at his father's residence or send any threatening messages to him, and that their relationship deteriorated only after he began to demand transparency and accountability in the company's operations.

[19] He stated that he did not abandon the business, but was unfairly removed as a director in February 2020. He rejected the suggestion that he acted maliciously or sought to injure his father's reputation. He maintained that the share transfer was not a donation in the manner contemplated by the Code, and therefore could not be revoked on the basis of ingratitude. He contended that the present proceedings are a retaliatory measure following the claim he had earlier instituted against Mr Bain and Randall and the company, as Claim No. SLUHCM2022/0034. He asks that this claim be dismissed and that his entitlement to the 30% shareholding be affirmed.

[20] In cross-examination, Lawrence accepted that he did not pay his father the sum of $600,000.00 stated on the Share Transfer Form in cash, and that the document did not describe the transfer as a gift. He maintained that both he and Randall received shares as part of a broader restructuring when their father contemplated retirement. He said his work with Northwest overlapped with his personal ventures, such as The Visitors Channel, which his father had supported, and had served as guarantor for a business loan for that venture. He insisted that the shares were transferred on acknowledgment of his years of contribution and service to the company, and not as a gratuitous donation.

[21] Lawrence admitted to having circulated the email of 20th August 2021, which contained strong criticism of his father and brother, which he copied to about forty recipients. He agreed that it included hurtful remarks such as accusing his father of dishonesty and saying his late mother would be ashamed, but denied intending to humiliate his father. He says that he circulated the email in an attempt to seek support from family members. He admitted leaving a hand-delivered letter at his father's residence on 1st September 2021, but said it was merely to ensure delivery, and not to threaten or harm him. He confirmed that he filed the related claim concerning corporate governance matters, and admitted rejecting his father's settlement offer of XCD$1.25 million, and instead made a counteroffer of around XCD$13.0 million, which included suggestions relating to transfer of immovable property. He denied that this amounted to a demand or attempt to hold his father to "ransom." He maintained throughout that his actions were not motivated by malice but rather by a desire for fairness and recognition, and that the share transfer was lawful and irrevocable.

PRELIMINARY ISSUES

Is the claim prescribed?

[22] Lawrence submits that the transfer of shares was a commercial transaction supported by consideration in the form of past services, and any challenge to that transfer is subject to a six-year prescription period, pursuant to Article 2121 (4) of the Code, which has long expired, as the transfer occurred in 2006. Accordingly, he contends that the claim, filed in 2024, is statute-barred.

[23] Mr Bain submits that the claim, properly characterized, is not a simple contractual challenge but a claim for revocation of a gift for ingratitude and/or nullity under the Code. The Claimant contends that the cause of action arises from the Defendant's conduct in recent years and not from the date of transfer of the shares. He contends that he regarded the letter dated 17th November 2023 from Lawrence's attorney as the epitome of ingratitude. Accordingly, he says that the cause of action crystallized in November 2023 and that time began to run from that date. Pursuant to Article 754, the limitation period is one year from the date of the offence imputed to the donee. The claim was filed on 24th January 2024, approximately two months after the alleged cause of action arose, and is therefore not prescribed.

Analysis

[24] Article 2121 (4) of the Code provides as follows:

> 2121. The following actions are prescribed by 6 years:
>
> 4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, **or upon any claim of a commercial nature**, **reckoning from maturity**; bank notes, however, being excepted from this prescription ;

[25] Article 754 of the Civil Code provides as follows:

> 754.The demand for revocation on the ground of ingratitude **must be made within one year from the date of the offence imputed to the donee, or within one year from the day on which such offence became known to the donor.**

[26] Lawrence plea of prescription is premised on characterizing the transaction as a commercial contract concluded in 2006. Mr Bain's cause of action, on the other hand, is grounded primarily in Articles 751 and 753 of the Code, namely revocation for ingratitude, and alternatively nullity for want of lawful cause or consideration under Article 918. The allegations of ingratitude concerned conduct occurring between 2020 and 2023, including defamatory communications and financial demands.

[27] This Court rejects the characterization of the claim as a purely commercial or contractual dispute. The essence, is not to enforce or rescind a commercial bargain concluded in 2006, but rather to invoke a statutory civil law remedy permitting revocation of a gratuitous disposition on specific grounds. Accordingly, the applicable legal framework is the Code provisions governing gifts and their revocation, not the ordinary limitation rules applicable to contractual claims. In a claim for revocation for ingratitude, the cause of action does not arise on the date the gift was made. It arises when the alleged acts of ingratitude occur. On the evidence, the acts complained of are recent, including conduct in 2020, 2021 and 2023. The limitation period therefore runs from those acts, not from 2006.

[28] The claimant's alternative case is that the transfer is void for lack of lawful cause or consideration. Such a claim is conceptually distinct from an action for breach of contract,

and may not be subject to the same prescription rules, particularly where absolute nullity is asserted. The defendant did not address this distinction, in submissions. While the Court recognizes the importance of finality in commercial transactions, that principle cannot override express statutory rights under the Code, particularly where the claim arises from subsequent conduct, and the remedy sought is revocation for ingratitude, and not contractual rescission.

[29] The Court therefore concludes that the Defendant's reliance on the six-year limitation period applicable to commercial contracts is misplaced. The claim is not a contractual challenge to a 2006 transaction but one based on subsequent conduct giving rise to rights under the provisions of the Code. Since the alleged acts of ingratitude are said to extend as late as November 2023, the claim is properly before the Court.

Whether the letter of 17th November 2023 exchanged between counsel for the parties in the related claim (SLUHCM2022/0034) is inadmissible in the present claim?

[30] Counsel for Lawrence objected to the admissibility of exhibit RAB6, which is the letter dated 17th November 2023, on the basis that it offends section 110 of the Evidence Act ("the Act") because it arose in the course of negotiations aimed at settling a dispute. Counsel submitted that section 110 applies to communications made in connection with an attempt to negotiate settlement and that the letter was written in that context. It was not a demand but a settlement communication containing a counteroffer which the Claimant remained free to accept or reject.

[31] Counsel for the Mr Bain submitted that the letter was not marked *"without prejudice"* and should not be excluded. Although it concern the same parties and related matters, the letter is relevant because it evidences the nature of Lawrence's conduct, his demands, and his treatment of his father. Counsel further submitted that section 110 excludes only communications made in connection with a genuine attempt to negotiate settlement, and that Lawrence must show that this was the dominant purpose of the letter. Counsel contends that the letter was not truly a settlement communication because it responded to and challenged factual allegations, advanced substantive accusations of fiduciary breaches, oppressive conduct, wrongful termination, undervaluation of shares, and governance

failures, and asserted Lawrence alleged rights. Its dominant purpose, Counsel posits, was to set out Lawrence position and level accusations central to the related oppression claim, rather than to negotiate a compromise.

Analysis

[32] Section 110 of the Act states:

(1) Evidence may not be adduced of –
  (a) a communication made –
    (i) between persons in dispute, or
    (ii) between one or more persons in dispute and a third party, being a communication made in connection with an attempt to negotiate a settlement of the dispute; or
  (b) a document that has been prepared in connection with an attempt to negotiate a settlement of a dispute, whether or not the document has been delivered.
(2) Subsection (1) does not apply where –
(a) the persons in dispute consent to the evidence being adduced or, if one of those persons has adduced the communication or document in evidence in some other proceedings, all the other persons so consent."

[33] Upon close examination, the Court notes that the letter is correspondence sent by Counsel for Lawrence to Counsel for Mr Bain, in the related claim SLUHCM2022/0034, which involves the same parties, and is said to be in response to an offer made by Mr Bain to purchase the shares from Lawrence. Section 110(1) of the Act excludes communications made between persons in dispute, or documents prepared, in connection with an attempt to negotiate a settlement of the dispute. Section 110(2) permits such material to be adduced in other proceedings, only if the relevant parties consent. There is no such consent between the parties.

[34] The principle which section 110 of the Act seeks to legislate has its genesis in the common law principle traditionally referred to as the "*without prejudice rule*" which protects bona fide communications of compromise for the settlement of disputes, from disclosure. The classic description of that privilege is set out in **Phipson on Evidence**[6] as follows:

[6] 16th Edition at paragraph 24-14.

> "Written or oral communications which are **made for the purpose of a genuine attempt to compromise a dispute between the parties** may generally not be admitted in evidence."

[35] In summary, the letter is a strongly worded communication, written in the context of the related claim SLUHCM2022/0034. It is **not** headed *"Without Prejudice"*, nor does it reflect a genuine attempt to compromise the dispute. Although it rejects Mr Bain's offer to purchase the shares for XCD$1.25 million and advances a counterproposal of no less than XCD$13.9 million together with other concessions and payment of full legal costs, the substance of the letter is not conciliatory. It is dominated by accusations of misconduct and corporate mismanagement, allegations of complicity on the part of Mr Bain, allegations of financial misconduct and breach of fiduciary duty against Randall, and assertions about supposed property and inheritance rights of Lawrence.

[36] This Court finds that the letter is admissible because, viewed objectively, its dominant purpose was not to negotiate a settlement but to assert Lawrence's position and level accusations central to the wider dispute. For that reason, it falls outside the protection afforded by section 110. The letter is also relevant to the issue of Lawrence conduct and state of mind, and forms part of the factual matrix on which the allegation of ingratitude is framed.

[37] The Court is therefore satisfied that the letter is admissible, and its weight is a matter for evaluation, not exclusion.

SUBSTANTIVE ISSUES

Whether the shares held by Lawrence in Northwest were transferred as a gift *inter vivos* or in consideration of past services rendered by him to Northwest.

The Claimant's Submissions

[38] Counsel for Mr Bain submitted that the shares were a gratuitous gift made by Mr Bain to Lawrence, as his son, without any financial or service-based consideration, with the intention of securing Lawrence's future and preserving the family succession in Northwest. Counsel submitted that Lawrence's involvement in Northwest was minimal, sporadic, and largely

symbolic, as he pursued other ventures and provided no sustained contribution warranting compensation in shares. There was no bargain, no exchange, and no mutual obligation. Counsel maintained that there was no valid consideration in kind, and that the transfer ought to be treated as gratuitous, as opposed to a commercial transaction.

[39] Counsel argued that Mr Bain's position is supported by Lawrence's own admission in his defence and testimony, that no monetary payment was made for transfer of the shares. In support, Counsel referred to Article 918 of the Civil Code, which defines a valid contract as requiring a lawful cause or consideration, and Article 696, which distinguishes between contracts for which cause is onerous (for value) and gratuitous (gift).

[40] Moreover, Counsel argued that given the gratuitous nature of the transaction, the formal requirements of Article 717, for execution and acceptance by notarial act, were required but not satisfied. Counsel argued that the transaction was never perfected as a lawful gift and urged a finding that Lawrence holds the shares without legal title, as the failure to comply with Article 918 or 717 renders the transfer *void ab initio*. Article 717 states that "Deeds containing gifts inter vivos must under pain of nullity be executed in notarial form and the original thereof be kept of record. The acceptance must be made in the same form.

[41] In the circumstances, Counsel submitted that Mr Bain is entitled to restitution of the shares, by way of an order for revocation and cancellation of the Share Transfer Form and reversion of the shares to him.

The Defendant's Submissions

[42] Counsel for Lawrence submitted that the transfer was not a gift, but was supported by valid consideration, consistent with section 30(1) of the Companies Act which provides that a share shall not be issued until fully paid in money, property, or past service that is the fair equivalent of money. Counsel submitted that the said shares were transferred to Lawrence in recognition of past services he rendered over several years in marketing, business development, and promotion of Northwest. Those services, Counsel contends constituted

valid consideration in kind, being the fair equivalent of money, as contemplated by section 30(1)(b).

[43] Counsel further submitted that consideration is defined by Article 917A(1)(b) of the Code as being either onerous or gratuitous, and that either form of consideration is legally sufficient to support a valid contract. Counsel argued that the share transfer was a commercial transaction, achieved by the duly executed Share Transfer Form which was registered in the company's records, thereby vesting legal and beneficial ownership in Lawrence. From the date of the transfer (27th May 2006), Mr Bain ceased to hold any ownership rights or interest in the shares, irrespective of whether the consideration for the transfer was onerous or gratuitous. Further, by signing the Share Transfer Form, Mr Bain was deemed to have acknowledged that the transfer was supported by lawful consideration and cannot now allege a lack of consideration merely because no money changed hands. The services rendered by Lawrence would have provided lawful cause.

Analysis

[44] Articles 695 and 696 of the Code provide as follows:

> 695. A person cannot dispose of his or her property by gratuitous title, otherwise than by gift *inter vivos* or by will.
>
> 696. Gift *inter vivos* is an act by which the donor divests himself or herself, by gratuitous title, of the ownership of a thing, in favour of the donee, whose acceptance is requisite and renders the contract perfect. This acceptance makes it irrevocable, saving the cases provided for by law, or a valid resolutive condition.

[45] The parties agreed on the definition of gift as contained in the Code. Counsel for Mr Bain also referred the Court to the Sri Lankan case of **Dona Podi Nona Ranaweera Menike v Rohini Senanayake**[7] in which the term 'gift' was defined as a giving or promising of a thing without compulsion or legal obligation or stipulation for anything in return, freely, out of sheer liberality or beneficence. The essential characteristics of such a gift are the donor's intention to give**,** the absence of reciprocal obligation, and the acceptance by the donee.

[7] [1992] 2 Sri L.R. at 196

[46] Mr Bain's case is that he gave 600,000 of his ordinary shares in Northwest to Lawrence 600,000 as a gift and that no money was paid by him for acquisition the said shares. Lawrence's case is that the transfer to him, by his father, was not a gift but was a transfer done in recognition of his services rendered to Northwest up to 2006 and which satisfied the need for consideration outlined in Article 918 of the Civil Code[8] and section 30(1)(b) of the Companies Act[9].

[47] Before addressing this issue further, it is important to clarify that the transaction under scrutiny does not concern an "issue" of shares, as suggested by counsel for Lawrence, but rather a transfer of shares previously issued to Mr Bain and owned by him as part of the company's issued shares. He says that he chose to give 600,000 of his existing shares to Lawrence. That is separate and distinct from the issuing and allotment of share in relation to the company's share capital. For this reason, the Court is of the considered view that section 30 of the Companies Act would not apply to this transaction.

[48] Lawrence's contention that the transfer constituted payment for services rendered, and Mr Bain's contention that the transfer was a gift, must be assessed against the evidence. His own evidence establishes a long pattern of intermittent and largely unrelated personal and professional pursuits throughout the late 1980s, 1990s, and early 2000s, during which he was not consistently engaged in the operations of Northwest. He stated in cross-examination that, after spending a year with Northwest following his studies between 1986 and 1987, he travelled abroad for about three months, then worked with Bryden and Partners for approximately 18 months, and briefly with Windjammer Landing Villa Beach Resort.

[49] He further admitted that between 1994 and 1998 he was not employed by Northwest, having worked first with Videotech and then spent almost a year overseas filming and undertaking additional travel for acting stints. He said that he pursued acting opportunities in Guadeloupe, St. Maarten, Trinidad and Tobago, and the United States of America. He accepted that, upon his return from New York in 1994, he worked exclusively for Videotech, and that The Visitors Channel, a venture he later co-founded, did not become operational

[8] A contract to be valid must have a subject and a lawful cause or consideration. The parties to it must be legally capable and their consent legally given.
[9] Shares issued for past services must be supported by services that are 'the fair equivalent of money'.

until 2005, at which time it employed only a handful of persons and required he and his partner to undertake most of the writing and travel. Although he claimed to have joined Northwest full-time in 1998, he provided no evidence of deductions for National Insurance Corporation (NIC) contributions, no salary slips, no employment contracts, and no tax filings to corroborate that he was employed by or remunerated by Northwest between 1998 and 2006. The absence of this evidence supports the inference that the alleged services were minimal, voluntary, and intermittent. Mr Bain's evidence that Lawrence's involvement before 2015 was ad hoc and informal is therefore preferred and accepted as credible. When asked to produce proof of his employment for that period, Lawrence stated, *"If the evidence is not in my bundle, then it is an oversight of mine… I was employed [with Northwest] from 1998 to 2006".*

[50] Lawrence's evidence further demonstrates that, prior to May 2006 when the shares were transferred, he was engaged in a range of independent activities including acting, marketing, hospitality, and media production, and was employed by other entities for extended periods. His own evidence does not support any continuous or substantial involvement in the operations of Northwest during that period. The 2018 *Saint Lucia Business Focus* article on which he relies does not materially assist his case. Its date of publication, July/August 2018, post-dates his employment at Northwest from 2015. In the article, Mr Bain is quoted as saying, *"… Larry came in at a critical point and formalized the Human Resources Department in a professional manner, bringing a much needed element the company was missing."* That statement supports Mr Bain's evidence that Lawrence's consistent employment with Northwest was from 2015 to 2020 as Human Resources Director, which was a salaried position and was subsequent to the share transfer. Accordingly, the Court is satisfied that Lawrence did not provide services to Northwest of such nature or value, to support his assertion that the transfer by Mr Bain was made in consideration of past services equivalent to the value of the shares he received.

[51] Moreover, the minutes of the meeting of the board of directors of Northwest, held on 27th May 2006[10], at which the decision was made to transfer a substantial portion of Mr Bain's

[10] See Exhibit RAB 1

shares to his sons Randall and Lawrence, provide important context to this issue. In summary, Mr Bain informed the meeting that he wished to transfer the majority of his shares to his two sons and retire from active management of the company. Reference was made to an agreement to govern his future relationship with Northwest prior to relinquishing control to the new majority shareholders. The proposals, all of which were accepted by the board, made provision, among other things, for Northwest to (a) maintain two cars for Mr Bain and his wife, (b) pay the utilities, property taxes, house insurance, and staff wages at Mr Bain and his wife's residence, (c) contribute to the maintenance of Mr Bain and his wife's property, and (d) pay Mr Bain's life insurance premiums and include himself and his wife in Northwest's accident and medical insurance plan.

[52] This is reflective of a family arrangement, within the context of family succession planning and retirement planning for Mr Bain and his wife, rather than a strict commercial transaction. These are the expressed conditions that Mr Bain put in place to provide for and protect himself and his wife during retirement in exchange for relinquishing his controlling interest in Northwest to his two sons. There was no mention of the transfer being made in consideration of past services, or as repayment of a debt owed to Lawrence.

[53] Additionally, Lawrence was employed by Northwest on a full-time basis from 2015 to 2020 as Human Resources Director and was paid for that service. The Court accept that this was his only sustained period of service to Northwest. There is also no indication in the minutes of the meeting of 27th May 2006, or elsewhere in the evidence, that Mr Bain transferred his shares to Lawrence in exchange for work to be performed after the transfer. This is consistent with his account that he wished to secure his sons' future, and contradicts Lawrence's assertion that the transfer was made in consideration of past service.

[54] Although the shares were conveyed by way of the Share Transfer Form, in which the parties are described as transferor and transferee and the consideration is stated as $600,000.00, in language more commonly associated with a commercial conveyance than a gratuitous disposition, the minutes provide context for the underlying arrangement and in reality point in a different type of transaction. When determining whether a conveyance amounts to a gift

in civil law, the language of the instrument whilst treated as *prima facie* indicative of the transaction, is not always conclusive.

[55] In the **Dona Podi** case Amerasinghe J observed that *"….. it has been laid down in several decisions that a court ought to ascertain the 'real', 'actual', 'essential' nature of a transaction, what it was 'in substance', what it was 'in fact', regardless of the labels and technical phrases or words, the parties, or their notary, might have chosen to employ. For one thing, the parties may deliberately use inaccurate terms with ulterior purposes…. Further, the nature of a document is a question of law to be determined by a court; and in doing so, a court does not permit itself to be misled by the terminology used in the document*".

[56] Thus, it is generally accepted that whilst the form and descriptive wording of a document may serve as a useful initial indicator of the parties' intention, such labels are not always conclusive. This position finds support in the decision in **Bas Spuybroek v Motor Yacht Diamante**[11] where it was held that the mere execution of a transfer instrument does not perfect a transfer when no real consideration is given; and the court is entitled to look behind the face of the document to ascertain the substance of the transaction, and the intent of the parties.

[57] In the present case, although the Share Transfer Form recorded a nominal value of $1.00 for each share transferred, this does not evidence the passing of any actual consideration. The uncontroverted evidence is that no money was paid to Mr Bain by Lawrence for the shares he received. In the email of 20th August 2021, Lawrence also appears to have agreed that the shares were gifted to him when he said concerning his father Mr Bain "*You … even declared that **since my shares in Northwest were gifted**, as were Randall's, that you would like to reclaim them like a selfish child losing at marbles.*"[12] Additionally, Lawrence has failed to satisfy this Court of his assertion that the shares were transferred in exchange for his service to Northwest from 1998 to 2006. The purported value on the Share Transfer Form

[11] SLUADM2000/0004 (unreported, delivered on 29th March 2001)
[12] See exhibit RAB5 at paragraph 4

in these circumstances is illusory and not capable of converting what was in substance a gratuitous act into a contractual one.

[58] The authorities establish that the decisive question is the donor's intention. **Dona Podi** is instructive on this point, where the court stated:

> "What the parties may name a transaction to be or how they describe its purpose is not conclusive. In interpreting a deed, the relevant question is what was the donor's intention or primary motive? In the case of a gift, the intention or primary motive should be the enrichment of the donee for the sake of enrichment. The crucial test is whether the donor was moved or induced to give his property simply by the desire to enrich the donee: whether that which influenced his volition was liberality."[13]

[59] In the same way that a document labelled 'deed of gift' does not automatically create a gift, the document styled as the Share Transfer Form containing a nominal recital of consideration does not of itself convert a gratuitous act into a sale or contract for value. Here, Mr Bain's intention was plain from the minutes of the board meeting, and was donative as opposed to a commercial transaction. He was transferring a substantial shareholding to his sons without payment, in an effort to provide for himself and his wife financially and as part of a family arrangement to ensure continuity of the company he founded many years ago. There is no recorded objection from Lawrence in the minutes.

[60] Regarding the form of acceptance of a gift, Article 729 of the Code provides:

> "The acceptance of a gift need not be in express terms. **It may be inferred from the deed** or from circumstances, **among which may be counted the presence of the donee to the deed**, and **his or her signature."**

[61] In **Polinere et al v Felicien**[14], a case from this jurisdiction, the Privy Council emphasized that acceptance is essential to perfect a gift and confirmed that such acceptance may be expressed or implied under certain circumstances. Although Counsel for Mr Bain argued that the transaction lacked execution and acceptance in notarial form, it is trite that the formalities required for the transfer of shares in this jurisdiction do not require execution by notarial act**.** Such transaction concerns movable property, and under both the Companies Act and the Code, shares may be validly transferred by execution of a share transfer form and registration in the Company's Share Register.

[13] See page 180 at [2] of the headnote
[14] [2000] 56 WIR 264 at page 268

[62] Articles 696 and 717 of the Civil Code concerning notarial acts apply principally to immovable property and certain formal donations. Article 717 also provides that '*gifts of movable property, accompanied by delivery, may however be made and **accepted by private writings**, or verbal agreements.'* The absence of a notarial deed is therefore of no moment, and has no bearing on the validity or characterization of the transaction between Mr Bain and his son. The relevant inquiry remains whether the transfer was onerous or gratuitous, and not whether it complied with notarial formalities.

[63] Mr Bain as the lawful owner of the shares divested his ownership by signing the Share Transfer Form which conveyed his shares to Lawrence, who signed the form in acknowledgment. It was subsequently lodged at the Registry of Companies on 31st July 2006. In this case, the Share Transfer Form is considered a "private writing' for the purposes of Article 717 of the Code. Lawrence, having signed the form is deemed to have accepted his father's intention of donating the shares to him, thereby completing the gift *inter vivos* within the meaning of Article 696. The underlying motive, intention, and basis for this transaction were recorded in the minutes of the meeting of 27th May 2006. There having been delivery and transfer of the shares on that basis, and there being a clear admission that no money was paid, notwithstanding the figure stated on the form, the transaction was in substance gratuitous rather than commercial.

[64] The Court therefore concludes that Lawrence has failed to show on a balance of probabilities that the transfer of shares to him was supported by consideration in kind, for past services rendered to Northwest. His claim of 'past service' is unsupported by the evidence. The extent of his travels and foray into the film and acting industry and other business would have taken him away from the family business for prolonged periods. The Court accepts Mr Bain's evidence which is coherent, corroborated by documentary proof and consistent with the probabilities of this case.

[65] Thus, the transfer by Mr Bain to Lawrence of 600,000 shares in Northwest was a gift made out of natural affection, a desire to secure his son's future, and as part of Mr Bain's retirement planning in relation to Northwest, rather than remuneration for services rendered by Lawrence.

Has Mr Bain satisfied the statutory requirements for revocation of the gift on the basis of "ingratitude" as outlined in Articles 751(1), 753(1), and 753(2) of the Code?

<u>The Claimant's Submissions</u>

[66] Counsel submitted that the requirements for revocation on the ground of ingratitude, as set out in Articles 751(1), 753(1), and 753(2) of the Code, have been satisfied. Article 751(1)

provides that gifts made *inter vivos* may be revoked by reason of ingratitude on the part of the donee. Article 753(1) defines ingratitude as ill-usage of the donor, grievous injury done to him or her, or a crime committed against him or her. Article 753(2) adds that refusal to maintain the donor, having regard to the nature of the gift and the circumstances, also constitutes ingratitude.

[67] Counsel again relied on **Dona Podi**, where that court held that ingratitude may be inferred from conduct showing deliberate injury to the donor and may arise from a single act or a series of acts. Counsel submitted that the principle is drawn from civil law systems analogous to this jurisdiction and confirms that revocation may be warranted where the donee's conduct causes serious moral or emotional injury or trauma to the donor. Counsel submitted that Mr Bain has pleaded and proved a series of acts by Lawrence which, taken cumulatively, amount to grievous injury and ill-usage. Those acts were said to include defamatory communications, hostile correspondence, unlawful entry into Mr Bain's home, entitled demands, and complete neglect of Mr Bain's welfare. Counsel contended that the shares were given to Lawrence on the understanding that he would act in the interests of the family business and not take steps detrimental to his father and the company, and that his conduct has caused Mr Bain substantial emotional distress.

[68] Counsel further relied on **Sansoni v Foenander** [DC Colombo, No. 54,687], cited in **Dona Podi**, where revocation was upheld for calumnious and defamatory slander against a donor and for failure to fulfil conditions attached to the gift. In that regard, counsel submitted that the letter of 17th November 2023, containing demands for approximately XCD$13 million and claims to Mr Bain's immovable property, constituted the most recent act of ingratitude, which triggered the one-year period for filing the claim under Article 754. Counsel also relied on the case of **Langevin v Mercier**[15], where the Quebec Court of Appeal upheld the revocation of a gift of shares made by a father to his daughter, in circumstances where she had made defamatory allegations, demanded excessive compensation, and emotionally estranged her children from their grandparents. There, the court said the following concerning such conduct that:

[15] 2010 QCCA 1763

"*This proceeding… represents the highest level of the most seriously reprehensible ingratitude." The defence to the counterclaim constitutes the ultimate insult by a daughter to her father and easily justifies the revocation on account of ingratitude."*

[69] Counsel submitted that Lawrence conduct towards his father mirrors the behavior condemned in **Langevin mirrored** and urged the Court to consider the nature of such acts, the intent behind them, and their impact on Mr Bain's health, and to hold that the statutory test for ingratitude has been satisfied.

<u>The Defendant's Submissions</u>

[70] Counsel for Lawrence contends that Mr Bain has failed to establish the legal prerequisites for revocation of a gift under Articles 751 and 753 of the Code. Counsel submitted that revocation is permitted only in limited circumstances expressly set out by law. Revocation for ingratitude, she argued, requires proof of serious and reprehensible conduct by the donee, capable of amounting to ill-usage, grievous injury, or a crime against the donor. Counsel contended that, consistently with French and Quebec jurisprudence from which the Code evolved, the threshold for ingratitude is high and should not be extended to ordinary familial or professional disagreements, disappointments, or dissatisfaction with the donee's conduct.

[71] Counsel relied on the case of **Del Vecchio v De Angelis[16]** a decision of the Quebec Court of Appeal, which confirmed that revocation for ingratitude[17] must be grounded in grave misconduct. Mere neglect, passive failing or ordinary family quarrels may not suffice, and the conduct must be active and blameworthy. In that case the appellant alleged that the respondents forced her to live in the basement of the house which she had donated to them and sold her furniture, ignored and insulted her on several occasions, threatened to place her in a retirement home and she was targeted by the anger of the respondent when she wanted to give gifts to other relatives. The respondent whose evidence was preferred by the trial judge, comprised a denial the allegations. The Court of Appeal concluded that such

[16] [2020 QCCA 594]
[17] Pursuant to Article 1836 of the Civil Code of Quebec

behavior did not meet that high threshold, as there was insufficient proof of active, grave and deliberate misconduct.

[72] Counsel also referred to academic commentary in ***The Unworthy and the Ungrateful: On the Mirroring Legal Patterns of France, Quebec and Romania***, which explains that ingratitude in the civil law tradition generally encompasses only extreme conduct such as violence, grievous injury, or exposure to mortal peril. Counsel submitted that these authorities demonstrate that the evidence led by Mr Bain, including allegations of lack of communication, unpleasant correspondence, internal company disputes, and an email sent to third parties, falls short of the statutory threshold. Counsel stated that no physical harm, violence, or serious injury to Mr Bain was alleged or proved, and that his distress arose from family and business disputes rather than legal wrongdoing.

Analysis

[73] Once accepted *inter vivos* gifts are irrevocable, save in the cases provided for by law, or a resolutive condition. The Code does provide the remedy of revocation to the donor of an *inter vivos* gift when the prescribed conditions have been met.

[74] Article 751(1) provides that *"Gifts* inter vivos *accepted are liable to be revoked by reason of ingratitude on the part of the donee."*

[75] Article 753 states that *"Ingratitude on the part of a donee justifying revocation of a gift consists in –*

(1) Ill-usage of donor, grievous injury done to him or her, or crime committed against him or her.

(2) Refusal to maintain donor, regard being had to the nature of the gift and the circumstances of the parties."

[76] The Code is modelled on the Québec Civil Code and incorporates many of its provisions. In **Poliniere** the Privy Council opined that:

> "In matters which are within the ambit of the Civil Code of St Lucia, the Civil Code of Québec 1865 and the Civil Code of France (from which the Code of St Lucia is derived) have, at the very least, considerable persuasive authority and it is unwise to attempt to construe the Civil Code of St Lucia without reference to that background."

[77] Their Lordships stated further at page 267 of the decision, *"In adopting the St Lucia Civil Code, the legislature must in their lordships' view have intended that its terms should be construed with due regard to what they had been understood to mean in Québec and France".*

[78] Article 1836 of the Civil Code of Québec provides that "*Gifts inter vivos may be revoked on account of ingratitude. Ingratitude is a ground of revocation where the donee has behaved in a seriously reprehensible manner towards the donor, having regard to the nature of the gift, the faculties of the parties and the circumstances".* This provision as well as Articles 751 and 753 of the Code provisions recognize that a donee's conduct may justify revocation where it amounts to serious moral or emotional harm to the donor (ill-usage or grievous injury). The court in **Langevin** emphasized that revocation is warranted where the donee's behaviour is "seriously reprehensible," and the assessment to be undertaken must consider the nature of the gift, the donor's expectations, and the impact of the donee's actions.

[79] Although the Code enumerates specific forms of misconduct, such as ill-usage, grievous injury, and crime against the donor, or refusal to maintain the donor, each of these instances is capable of standing on its own, as justification for revocation.

[80] In **Desmaris v Ziggiotti**,[18] a decision of the Quebec Court of Appeal cited by Counsel for the defendant, Rochon J refused to revoke the gift of a large sum of money from an older woman to a younger man with whom she was smitten, when she became jealous. While there is no factual similarity with the present case, that case is instructive in determining the sort of conduct which would satisfy the test of ingratitude by a donee. Rochon JA stated:

> "[20] Ingratitude sanctioned by law does not result from a simple lack of recognition. For example, friendship that dries up, affection that is lost will not be sanctioned even if this friendship or affection is at the origin of the gift. The ingratitude of the article 1836 CCQ is only punishable if it arises from positive facts that reveal the existence of seriously reprehensible behaviour directed against the donor by the donee. The action of the ungrateful person will be serious and deliberate. **<u>As a general rule, there must be malicious intent</u>**. It is necessary to closely examine the motive

[18] 2003 CanLII 40666 (QC CA); [2003] RJQ 840

underlying the culpable action to identify the more or less perverse nature of the reprehensible act.

[21] On the other hand, the courts excuse spontaneous gestures, often motivated by anger and which do not demonstrate a marked intention to fall in one's duty of gratitude. Similarly, any provocative element attributable to the donor will be taken into account…

[22] The "seriousness" of the misconduct is the dominant factor set out in the article 1836 CCQ. It marks the legislative desire to make revocation for ingratitude a legislative measure of exception to the principle of irrevocability of donations inter vivos. This factor takes up the traditional approach which requires that insults, abuse and offenses present a certain character of gravity."

[81] Similarly, in the **Dona Podi** case the court noted that,

"Ingratitude was a form of mind which had to be inferred from the donee's conduct. Such an attitude of mind will be indicated either by a single act or a series of acts. The daughter, by assaulting her donor parents, was guilty of the foul offence of ingratitude. Revocation is not, however, automatic. It requires a decision of the court."[19]

[82] In **Langevin v Mercier**[20] the Superior Court of Quebec emphasized the guidelines to be followed when assessing ingratitude, and stated:

"[87] The facts relevant to the application for revocation of the gift of shares on account of ingratitude should be analysed in a specific legal context because it is a complex, little used proceeding, and especially because it is based on evidence that is emotional, at times vague or even nearly imaginary, but seldom neutral or objective.

[88] In such matters, more than any others, there are probably no two cases that are alike. It is therefore imperative that we analyze all of the relevant facts while taking into consideration the credibility of the witnesses, stripping the arguments of their emotional content, and taking note of the bond that exists between the parties, the specific context in which the actions were committed, and the words spoken, all in order to extract from the evidence only those relevant, objective facts that either support or do not support the argument of ingratitude."

[83] In **Langevin**, Giles who operated a dairy farm executed a notarial deed of gift transferring 41% of his shares to his daughter Nancy, 41% to his son Tony, and 18% to their mother

[19] At page 183

[20] 2010 QCCA 1763 at [33]

Jacqueline. The deed expressly stated that the gift was made “in consideration of the esteem” that he had for his daughter. For roughly nine years thereafter, the family operated the farm together, though with increasing conflict among Nancy, her husband and her brother Tony. Negotiations broke down regarding the daughter’s continued involvement in the business, and following mediation and her resignation as an employee, she and the other shareholders reached an informal agreement under which she would sell her 41% shareholding back to the family for $350,000.00 composed of $300,000.00 cash and $50,000.00 representing land previously sold by her husband, to the claimant. This agreement fell apart when she determined that a purchase by the company, rather than the individual shareholders, would have tax consequences unfavorable to her, and she demanded fair market value of $778,383.18 and later commenced proceedings seeking either a forced purchase at that value or judicial liquidation of the company. Giles in a counterclaim sought revocation of the shares donated to Nancy, on the basis of ingratitude.

[84] The acts of ingratitude relied on by Giles, and accepted by the trial judge centered on two main categories of conduct. The first was that Nancy cut off all contact between her three children and their grandparents, including threatening that they would never see their grandchildren again and following through on that threat. The evidence accepted at trial showed that Giles and his wife were thereafter completely deprived of access to their grandchildren, despite having previously been very close to them and that this caused Giles significant emotional suffering. Secondly, Gilles relied on a series of false or injurious allegations made by Nancy through counsel in her legal pleadings. These included assertions that the 1997 gift was a “poisoned” transfer because the farm was allegedly in precarious financial condition, claims that she and her husband alone were responsible for the farm’s success, allegations that Gilles had fired her, and a particularly serious allegation that Gilles had “dipped into the company coffers” to pay his legal fees. Evidence from Gilles demonstrated that these accusations were untrue, deeply hurtful, and inconsistent with his past conduct, including personal financial sacrifices to support the farm during the dispute.

[85] The trial judge held that this combination of deliberate and prolonged estrangement of the grandchildren and repeated false, harmful allegations impugning Gilles’ integrity and the

circumstances of the gift constituted behaviour that was “seriously reprehensible”, satisfying article 1836 Civil Code of Quebec and justifying revocation of the 41% shareholding gifted to Nancy. The Court of Appeal affirmed the revocation but modified the restitution amount, holding that the fairest indicator of the value for restitution purposes was the sum of $350,000.00 agreed between the parties.

[86] The parallels in **Langevin** and the present case are compelling. The acts relied upon by Mr Bain include (a) Lawrence’s circulation of an insultive and defamatory email dated 20th August to more than forty recipients; (b) his initiation of proceedings containing false and injurious allegations against Mr Bain, Randall and Northwest; (c) threats to company staff; (d) trespass at the claimant’s home to deliver threatening correspondence; (e) his withdrawal of personal contact and care even when Mr Bain suffered a stroke; and (f) communication through his counsel for a substantial monetary payment far exceeding the stated value of the gifted shares, including an asserted entitlement to a share in Mr Bain’s personal property during his lifetime.

[87] The Code contains no definition of ill-usage. The ordinary meaning, as reflected in the **Collins English Dictionary**, defines ill-usage as unfair, unkind, or cruel treatment or abuse. This definition accords with the purpose of Article 753(1), which is to protect the donor from treatment that is morally wrongful or abusive, even if not physically violent. Thus, ill-usage and grievous injury in this context are not confined to physical acts; they encompass conduct that seriously harms the donor’s dignity, fragility, emotional well-being, or reputation.

[88] In **Sansoni v Foenander** cited by Counsel for Mr Bain, calumnious slander, i.e. malicious and defamatory speech about the donor was held to be sufficient to ground revocation. In that case the claimant gifted by way of a deed, a house and premises to the defendant, her nephew, whom she had brought up and educated, and who had always lived with her in her house, subject to right of enjoyment thereof during her life. The defendant thereafter systematically used foul and contumelious abuse and reproaches to the claimant which made it impossible for her, as a decent and respectable woman, to remain in the house with him. The claimant having under these circumstances left the house, brought an action to recover possession. The court, both at first instance and on appeal held that the claimant

was entitled to revoke the gift, for breach of the condition to which it was subject, and for the use of atrocious and contumelious slanders and reproaches by the donee to the donor.

[89] In the present case, particular regard must be given to the following conduct complained of by Mr Bain:

(a) Circulation of insulting and defamatory correspondence:

Lawrence's email of 20th August 2021[21], widely disseminated to third parties including business associates, friends and family members, contained numerous statements that are plainly injurious to Mr Bain's honour and reputation. Among the most egregious are that Mr Bain 'lied through [his] teeth', 'actively worked to cover [Randall's actions] all up', 'conspir[ed] to illegally remove [Lawrence] from the board and terminate [his] employment' and was guilty of 'corporate malfeasance'. Lawrence further accused his father of "valu[ing] [his] image of Northwest over all else, even over [his] own flesh and blood," and insulted him by calling him "a selfish child losing at marbles," "small, pathetic," "not a man at all," that he would "forever wear the filthy stench of all [his] abhorrent actions" and assertions that his late wife "would not be bursting with pride" at what he had become. He concluded the email by stating "*I have now said all I wish to ever say to you. I will never again voluntarily waste a moment of my time with either of you. You have summoned this storm so now a tsunami of truth and transparency is gathering speed and is heading your way; there will soon be nowhere to run and nowhere to hide.*"

(b) Demand for excessive compensatory payments and property through his Counsel, in the letter dated 17th November 2023 (Exhibit RAB6):

In correspondence sent through his attorneys following Mr Bain's offer to purchase the gifted shares, Lawrence refused Mr Bain's offer of XCD$1.25 million and demanded a substantially larger sum of XCD$13 million, which included a claim to a share of Mr Bain's real estate (including his current residence). No evidence was provided to justify the amount demanded for the shares, except that Lawrence considered it an entitlement due to him. Such demand evidences a profound sense of entitlement. Which is inconsistent with gratitude and filial respect. To assert a right to a living parent's property, beyond the subject of the original gift, demonstrates disregard for the donor's ownership and autonomy, and Lawrence appears to have treated the gift as a basis for further material gain.

(c) Refusing to Communicate:

Lawrence's complete severance of communication and lack of care following Mr Bain's stroke may not on its own amount to ingratitude. Though it was said in **Desmaris v Ziggiotti** that friendship that has dried up or affection that is lost is insufficient, without more, to prove ingratitude, the relationship here is one of father and son, where Mr Bain had divested a

[21] Exhibit RAB 5

significant portion of his shareholding to Lawrence on the understanding that he would always act in the best interest of the family and Northwest. Each case must be considered on its own facts and merits.

[90] In cross examination Lawrence spoke of the closeness once shared between himself and his father, noting that they would have lunch together for many years after the death of his mother, in his attempt to care for his father. He accepted that given his once close relationship with his father, Mr Bain would have undoubtedly felt hurt by his lack of care for him following his stroke. He, however sought to justify his actions by stating that following his dismissal from Northwest that relationship deteriorated to the point that there was absolutely no communication and that "no one called each other". Lawrence spoke in very derogatory terms about his father even when cross examined about reconciliation and how he feels about his father presently. He was adamant that he would never apologize to his father. His outright refusal to apologize, speaks volumes about his character, which in this Court's view confirm his reprehensible behavior toward his father.

[91] The Court noted that the tone and content of the email goes far beyond the expression of grievance, and reflects deep animus intended to destroy Mr Bain's personal and professional standing. The deliberate distribution of such vile statements about his father to numerous recipients compounds the injury and is indicative of deliberate malice rather than spontaneous anger. Further, when asked in cross examination whether he thought of the effect of this letter on his father Lawrence retorted "*No one thought of me"*. Similarly, when asked whether he thought the proper thing to do in the circumstances was to retract the claims, given how hurt Mr Bain was, Lawrence also answered that he did not.

[92] Lawrence's conduct in the present case bears great similarity to the conduct considered in **Langevin**, in that it involved defamatory allegations, financial demands, and emotional harm. The cumulative effect of such conduct is sufficient to satisfy the statutory threshold of ill-usage and grievous injury towards Mr Bain, as donor of the 600,000 shares to Lawrence. Such conduct must be treated as atrocious and placed Lawrence's conduct squarely within the scope of Article 753(1). Although there was no evidence of physical assault or threats, the injury caused by the words and actions of Lawrence in these circumstances were no

less injurious. The derogatory correspondence, the unfounded excessive financial demands, the right of inheritance to property, and the prolonged and sustained disrespect toward Mr Bain are sufficient to establish ingratitude within the meaning of Articles 751(1) and 753(1).

[93] While loss of affection or communication alone would not be decisive, taken together with the insulting conduct, defamatory correspondence, unreasonable financial demands, and cessation of familial relations reinforces the pattern of ingratitude associated with Lawrence's conduct. Whilst there is no evidence of refusal to maintain under Article 753(2), the conduct on Iii-usage and grievous injury proven under Article 753(1) is sufficient to justify revocation.

What is the effect of a failure to provide consideration for the transfer of shares, in light of Article 918 of the Civil Code and section 30 of the Companies Act.

[94] Having determined that the transfer of shares constituted a gift, it is unnecessary to consider the effect of the absence of consideration under Article 918. As noted earlier, section 30 of the Companies Act concerns the issue of shares in the company. This transaction concerned Mr Bain's disposal of his existing shares, and not the allotment of new shares by the company. In those circumstances, section 30 of the Companies Act does not apply.

Whether shares conveyed as a gift can be revoked under Article 751(1) for ingratitude after the formalities of the share transfer have been completed.

[95] This issue was identified for determination but was not addressed by the parties in their submissions. For completeness, I consider it necessary to address it briefly. In this jurisdiction, the Code applies to private-law relations unless a particular statute expressly displaces it. Shares, though routinely governed by the Companies Act, are a form of movable property as defined by the Code. Where shares are transferred gratuitously as a gift *inter vivos*, as in the present case, the transaction falls within the Code's regime governing gifts. No provision of the Companies Act abrogates the Articles of the Code in relation to gifts or revocation. In the absence of an express conflict, the two regimes coexist. An action for revocation on the ground of ingratitude is therefore maintainable, and if successful would require rectification of the share register. Accordingly, the gift of 600,000 ordinary shares to

Lawrence can be revoked for ingratitude, notwithstanding that the formalities for transfer of those shares had been completed.

Conclusion

[96] As noted in **Bas Spuybroek v Motor Yacht *Diamante***, the Court may examine the reality of the transaction beyond formal recitals or language used. Services were **not proved to be substantial, continuous, or bargained for**, by Lawrence, and there is **no evidence that the shares were issued as remuneration** equivalent to monetary value. It is common ground that no monetary consideration was paid to Mr Bain by Lawrence for the shares. In the absence of payment of monetary consideration, or substantiated past service, the Court easily concluded that the shares were transferred to Lawrence as a gift. This was supported by the intent of Mr Bain as the owner of the shares, as documented in the minutes of the meeting which encapsulated the purpose of the transaction.

[97] The threshold for ingratitude although high, is not confined to physical violence or crimes, and may be established by a course of conduct which is sufficiently grave and reprehensible Defamatory accusations, entitled demands and emotional estrangement constitutes ill-usage and grievous injury within the meaning of Article 753 (9). The gift is therefore revocable for ingratitude

[98] In light of these findings, I make the following orders:

1. The transfer of the 600,000 ordinary shares in Northwest Limited by the Claimant to the Defendant was made gratuitously, without consideration, and accordingly constituted a gift *inter vivos* within the meaning of Article 696 of the Civil Code.

2. The gift of those shares is hereby revoked for ingratitude pursuant to Article 751 of the Civil Code, and ownership of the 600,000 shares previously transferred to the Defendant is restored to the Claimant.

3. The share register of Northwest Limited shall be rectified to reflect this revocation by deleting the Defendant's name as shareholder in respect of those shares and reinstating the Claimant as the registered holder of the said shares.

4. The Registrar of Companies shall, upon presentation of this Order, make all necessary entries and amendments to give effect to the revocation, in accordance with section 244 of the Companies Act**.**

5. The defendant shall pay the claimant's costs, to be assessed if not agreed within 21 days.

Cadie St Rose-Albertini
High Court Judge

By the Court

[SEAL]

Registrar