

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2022/CLE/gen/01673

B E T W E E N

JUAN JOSE SARTORI PINEYRO

Claimant

AND

FRANCISCO ORTIZ VON BISMARCK

Defendant

Before: The Hon. Madam Justice Simone I. Fitzcharles

Appearances: Mr. Leroy Smith with Mrs. Kimberley Peterson-Turnquest for the Claimant
Mrs. Gail Lockhart-Charles KC with Ms Tatiana Maynard for the Defendant

Hearing: 24 March 2025

RULING

FITZCHARLES, J.

The Application

1. This is an application for judgment on admissions and/or summary judgment by Juan Jose Sartori Pineyro (“**the Claimant**”) against Francisco Ortiz Von Bismarck (“**the Defendant**”). By his Notice of Application filed on 24 July 2024, the Claimant applies for:
 - (i) an order pursuant to the Supreme Court Civil Procedure Rules, 2022 (“**CPR**”) Part 14 that judgment on admissions be entered for the Claimant on the basis that the Defendant has, by way of letter dated 16 June 2021 (the “**16 June Letter**”), variously: (a) admitted to having sold an investment (i.e. a “participation interest”) in Flowr Corporation belonging to the Claimant for a total of US\$3,000,000.00 (Three Million dollars) (the “**Flowr Corporation Share Sale Proceeds**”), (b) admitted to having received and retained the Flowr Corporation Share Sale Proceeds,

and (c) undertaken to release and transfer the Flowr Corporation Share Sale Proceeds to an account of the Claimant's choosing on Monday 1 July 2024;

- (ii) further or alternatively, an Order pursuant to CPR Part 15 that summary judgment be entered for the Claimant on the basis that the Defendant has no real prospect of successfully defending the claim set forth in the Amended Writ of Summons and Statement of Claim filed herein on 16 April 2024;
- (iii) an Order that the Defendant do pay the Claimant's costs in and occasioned by this Action, such costs to be assessed if not agreed;
- (iv) Such further and/or other relief as the Court may deem just.

2. The Claimant makes this application on the grounds set out below.

- (i) Despite the Claimant's repeated demands of the Defendant for the remittance to the Claimant of the Flowr Corporation Share Sale Proceeds, the Defendant has, wrongfully and without lawful justification, failed and/or refused to pay or transfer Flowr Corporation Share Sale Proceeds to the Claimant and/or to otherwise account for the same.
 - (ii) The Defendant has by means of the 16 June Letter from the Defendant to the Claimant admitted to selling Flowr Corporation for USD\$3,000,000.00, retaining the Flowr Corporation Share Sale Proceeds in his custody and undertaking in writing to release and transfer the US\$3,000,000.00 to an account of the Claimant's choosing on Monday 1 July 2024.
 - (iii) The amount of monies that the Claimant claims as against the Defendant is a substantial sum of money. The Claimant has been wrongfully deprived of his property and has, and continues to, suffer loss and damage as a result of the Defendant's breaches of trust and fiduciary duty.
 - (iv) The Defendant is liable to pay to the Claimant the Flowr Corporation Share Sale Proceeds in addition to interest thereon and such other sums as shall be found to be payable by means of equitable compensation.
 - (v) There is no reason why this case should go to trial.
3. In brief, the Defendant resists this application on the basis that the case is one that must go to trial and be established on evidence. The Claimant's case hinges on the existence of a trust called 'the Inception Trust'. The 16 June Letter does not prove the existence of such a trust

or, for that matter, a bare trust. Failing the establishment of such trust, the Claimant's case must collapse entirely. The Defendant further asserts that the 16 June Letter is insufficient to found a case for the judgment on admissions or summary judgment as sought by the Claimant.

4. For this application the Claimant relies upon his Notice of Application filed on 24 July 2024, the Affidavit of Miguel A Darling filed on 24 July 2024, the First Affidavit of Juan Jose Sartori Pineyro filed on 14 January 2025, the Amended Writ of Summons filed on 16 April 2024, Written Submissions of the Claimant and oral presentations at the hearing of this application. The Defendant relies upon his Defence filed on 5 July 2023, the Defendant's written Skeleton Arguments and oral presentations opposing the Claimant's application at the hearing before this Court.
5. The primary issue to be determined in this application is whether, having regard to the pleaded cases of the parties, the contents of the 16 June Letter and the circumstances of the case, there is a sufficient foundation upon which to exercise the discretion of the Court to grant either a judgment on admissions or summary judgment in favour of the Claimant.

Background

6. The background facts are taken from the pleadings of the parties and the affidavit evidence of the Claimant. There was no affidavit evidence filed by the Defendant to oppose this application.

The Claimant's Pleaded Case

7. The Claimant states that he was the settlor and primary beneficiary of a trust known as the Inception Trust (prior to its revocation). He was also the beneficial owner of the Flowr Corporation Shares and/or the Flowr Corporation Share Sale Proceeds which totaled approximately US\$3,000,000.00. The Defendant is the former remunerated Trustee of the Inception Trust and constructive trustee of the Flowr Corporation Share Sale Proceeds.
8. The Claimant further alleges that by a Deed of Settlement made on 3 August 2017 the Claimant as settlor and the Defendant as trustee established a revocable trust known as the Inception Trust, which was governed by New Zealand law. The Claimant states that he transferred certain property to the Defendant to hold on trust pursuant to the trusts of the Inception Trust. The trust fund of the Inception Trust included shares representing 100% of the paid-in capital of Inception Investment Corp (the "**Underlying Company**"), which was a pure equity holding company incorporated and existing under the laws of the British Virgin Islands.
9. The Claimant states that as trustee of the Inception Trust the Defendant owed the Claimant, as primary beneficiary of such trust, certain duties which were, amongst others, the following:

- (i) To act in the best interests of the Claimant as sole beneficiary of the Inception Trust;
 - (ii) To account to the Claimant for his stewardship of trust assets;
 - (iii) To exercise reasonable care and skill in his execution of the Inception Trust;
 - (iv) To act honestly and for a proper purpose;
 - (v) to act upon the Claimant's instructions only.
10. The Claimant alleges that in or around September 2018, the Defendant used assets owned by the Inception Trust in order to purchase shares in a certain Uruguayan entity (the “**Uruguayan Entity**”). These shares were transferred to the Defendant and held by him in his capacity as trustee of the Inception Trust. In or around November 28 2019, the Uruguayan Entity was acquired by Terrace Global Inc. (a company traded on the TSX Venture Exchange) by way of a share swap. Pursuant to this share swap, 46,632,600 common shares in Terrace Global Inc. came to be held or controlled by the Defendant in his capacity as trustee of the Inception Trust and became subject to the trusts of the Inception Trust.
11. The Claimant then asserts that in 2020, the Claimant instructed the Defendant to sell the shares in Terrace Global Inc, which the Defendant failed to do, causing the Claimant to sustain financial loss. Further, all of the issued and outstanding shares of Terrace Global Inc were acquired by The Flowr Corporation (a company also traded on the TSX Venture Exchange) on 24 December 2020 by way of a court-approved plan of arrangement. The Claimant alleges that this acquisition involved a share swap by virtue of which the Defendant received 23,190,392 of newly issued shares in The Flowr Corporation (the “**Flowr Corporation Shares**”) in exchange for Terrace Global Shares.
12. The Claimant avers that notwithstanding that the Flowr Corporation Shares were subject to the trusts of the Inception Trust, the Defendant, without the consent of the Claimant and in direct conflict with his role and duties as trustee, registered the shares in his own name instead of that of the Inception Trust and/or the Underlying Company and transferred some of those shares to a third party and non-beneficiary.
13. Particularly material to this application are the additional, or alternative, averments set out in the Amended Statement of Claim of the Claimant filed on 16 April 2024 in respect of the existence of a bare trust of the Flowr Corporation Shares and Flowr Corporation Share Sale Proceeds (“the **Bare Trust Claim**”). The Bare Trust Claim is advanced on the basis that the Defendant is liable to account to the Claimant for the Flowr Corporation Shares and the Flowr Corporation Share Sale Proceeds.
14. The Claimant avers that between December 2020 and June 2021 the Defendant as bare trustee for the Claimant held or controlled the Flowr Corporation Shares for and on behalf of the Claimant as the absolute beneficial owner of the Flowr Corporation Shares. It is alleged that in or around June 2021 the Defendant caused the Flowr Corporation Shares to be sold for the sum of USD3,000,000.00 and subsequently personally received the Flowr Corporation Share Sale Proceeds.

15. The Claimant further asserts that the Defendant sent him the 16 June Letter. The Defendant does not controvert sending the 16 June Letter, nor is there any denial of its contents, which are material to this application. The 16 June Letter is expressed as follows:

“Wednesday, June 16, 2021

“To whom it may concern,

“Following Juan Sartori’s instruction of selling his participation in The Flowr Corporation every time Juan Sartori and I met in person over the past six months even at a 25% discount of the share price of The Flowr Corporation, I proceeded to find a buyer for Juan Sartori’s participation.

“Juan Sartori insisted to sell his participation in Flowr because according to Juan Sartori The Flowr Corporation shares were worthless and would go to CAD \$0. He made emphasis that the company was never going to make money and the shareholders were going to continue to get diluted in future financing rounds. He wanted a solution to sell his participation.

“Therefore, I proceeded to sell Juan Sartori’s participation in The Flowr Corporation for a total of USD 3 million.

“Currently, I face a substantial fiscal risk until July 1st 2024 larger than USD 3 million as I acted as Director and Beneficial Owner of Ofina Financial Inc, Volex International S.A. and Chameli Limited in the name and in the form of trustee of Juan Sartori.

“Consequently, the USD 3 million will be released and transfer to an account of Juan Sartori’s choosing on Monday July 1st 2024 as long as I do not have any tax investigation in relation with Ofina Financial Inc, Volex International S.A. and/or Chameli Limited.

“In case something were to happen to me and in case there is not a tax investigation in relation with Ofina Financial Inc, Volex International S.A. and/or Chameli Limited, my heirs would follow through the terms of this agreement and transfer the USD 3 million on Monday July 1st 2024 to an account of Juan Sartori’s choosing.

“Sincerely

[signature included here in 16 June Letter]

“Francisco Ortiz von Bismarck”.

16. In his Amended Statement of Claim, the Claimant avers that by the 16 June Letter, the Defendant:

(i) admitted to having received the Flowr Corporation Share Sale Proceeds;

- (ii) purported to be retaining the Flowr Corporation Share Sale Proceeds in view of an unspecified tax investigation threat; and
- (iii) promised that the Flowr Corporation Share Sale Proceeds would be paid to the Claimant by 1 July 2024.

17. The Claimant pleads that he has on several occasions demanded of the Defendant the remittance to him (i.e. the Claimant) of the Flowr Corporation Share Sale Proceeds which were held by the Defendant on and subject to a bare trust or constructive trust for the absolute benefit of the Claimant. The Claimant asserts that in breach of the bare or constructive trust, the Defendant continues to hold the Flowr Corporation Share Sale Proceeds.

The Defendant's Pleadings Answer

18. In answer to the Claimant's specially indorsed Writ of Summons filed on 12 December 2022, the Defendant filed his Defence on 5 July 2023. He has filed no amended Defence to answer the Amended Statement of Claim in which the Bare Trust Claim has been added, and continues to rely upon his Defence.
19. The Defendant denies the averments contained in each of the 9 paragraphs of the Statement of Claim and any particulars supplied in that document. No facts are pleaded in the Defence as to any relationship or business dealings between the parties.
20. In paragraph 11 the Defendant recites "reasons for denying the allegations of fact identified" in the Statement of Claim as set out below:
- a. "The Defendant was never a party to, nor did he sign any Deed of Settlement called 'Inception Trust Deed of Settlement' between the Plaintiff as settlor and the Defendant as trustee establishing any trust called and known as 'The Inception Trust'.
 - b. "The Defendant did not receive any property as trustee of the Inception Trust as alleged in the Statement of Claim or at all.
 - c. "The shares of Inception Investment Corp., a company incorporated and existing under the laws of the British Virgin Islands, are legally and beneficially owned solely by the Defendant.
 - d. "The Defendant denies the existence of the duties alleged in the Statement of Claim, because no such trust existed to give rise to the alleged or any duties.
 - e. "The Defendant denies exercising any powers whatsoever under the trust alleged in the Statement of Claim, because no such trust existed.
 - f. "The Defendant denies any breaches of trust as alleged in the Statement of Claim, because no such trust existed."

Argument in Summary

Judgment on Admissions

21. The Defendant contends that the applications for summary judgment and judgment on admissions must be considered in the context of the Defendant's Defence, which categorically denies any trust arrangement. The Claimant argues that the Defence is "woefully deficient and is itself susceptible to being struck out given that it contains only bare denials. Moreover, the Claimant states that the Defence contains no answer to the Bare Trust Claim and that the Court ought to consider that the 16 June Letter contains unequivocal admissions of the principal elements of the Claimant's claim.
22. In summary, the Claimant asserts that the Defendant has admitted to every material averment he has made in relation to the Bare Trust Claim and, as such, there is no lawful basis upon which the Defendant is entitled to retain the Flowr Corporation Share Sale Proceeds. Further, no basis for doing so has been pleaded by the Defendant. In the circumstances the Claimant prays that judgment on admissions be entered against the Defendant in relation to the matters set forth in the 16 June Letter.
23. In summary, the Defendant argues that the Claimant fails in his pleadings to establish the existence of the Inception Trust. As such, the entire claim of the Claimant fails for without the Inception Trust, the Defendant owes no fiduciary duties or duty to account for trust property as alleged. The Defendant further contends that nowhere in the 16 June Letter is there an admission of the core issues in the Claimant's pleaded case, namely the existence of the Inception Trust and ownership by the trust of the shares in the BVI Company, Inception Investment Corp. Nor is there any contradiction of the Defendant's rebuttal of these core issues in the Defence.
24. It is further argued by the Defendant that at its highest, the 16 June Letter is an admission that the Claimant and the Defendant were involved in a complex set of arrangements and the Defendant was attempting to resolve their differences amicably in the manner set forth in the 16 June Letter. The Defendant therefore asks that the Claimant's application be dismissed and the matter be set down for trial to determine the complex and disputed issues of fact and law that arise in the present proceedings.

Analysis and Disposition

25. Pursuant to **CPR Part 14** the Court may grant judgment on admissions where a party has admitted to a claim or part of a claim and an application under the CPR is made. The CPR provides, in part:

"14.1 Making an admission.

- (1) A party may admit the truth of the whole or any part of any other party's case.

- (2) A party may do this by giving notice in writing, such as in a statement of case or by letter, before or after the issue of proceedings.

...

“14.4 Admission by notice in writing – application for judgment.

- (1) Where a party makes an admission under rule 14.1(2), any other party may apply for judgment on the admission.
- (2) The terms of the judgment must be such as it appears to the court that the applicant is entitled to on the admission.”

26. The rationale for this mechanism is clear. As observed by Orr J (Actg) in the Jamaican Supreme Court case of **Roy Andrade v Ravi Chatani** [2022] JMSC Civ 77, *“it would not be in keeping with the overriding objective of saving expenses and indeed a waste of the parties’ and the court’s resources to proceed to a trial on the admitted issues.”* Also in **Andrade**, the court further observed:

“[18] The wording of 14.4(2) is important in that the court must only enter the judgment against the party on the sum he has admitted. The court is therefore only able to consider the information contained in that party’s admission, whatever form the admission may take.”

27. Further guidance is given by Pemberton J (as she then was) in the case of **Claude Denbow v The AG of Trinidad and Tobago** CV 2005-00740 as follows:

“[8] ... The admission must speak to facts pertinent to the claim between the parties to a cause or matter. The admission must be clear. Usually such an Order is made to save time and costs. There must be an admission as to all the constituent parts of the claim made.”

28. I first turn to consider the Bare Trust Claim alongside the Defence. The Defence, particularly paragraph 11 at sub-paragraphs a), b) and c), contains averments which speak specifically to the claim made concerning the ‘Inception Trust’. As for paragraph 11 at sub-paragraphs d) and e) of the Defence, there is no express mention of the ‘Inception Trust’. However, these sub-paragraphs refer specifically to the “Statement of Claim” (and not the Amended Statement of Claim), *“the duties alleged in the Statement of Claim”* and *“any powers whatsoever under the trust alleged in the Statement of Claim”*. These are clearly references to the duties and powers set out in the Statement of Claim as they pertain to the ‘Inception Trust’ and not references to the Bare Trust Claim (which does not rely upon the existence of a trust called ‘the Inception Trust’) set out in the Amended Statement of Claim.
29. At paragraph 11, sub-paragraph f), perhaps the most generally worded of all the foregoing parts of paragraph 11 of the Defence, the breaches of trust referred to are those contained in the Statement of Claim (and not the Amended Statement of Claim). Further, where it is

averred that “*no such trust existed*” those words by clear implication refer to the trust alleged in the Statement of Claim, namely the ‘Inception Trust’, and not to the bare trust or constructive trust pleaded in the subsequently created and filed Amended Statement of Claim.

30. It is observed that the Defendant opted not to file an amended defence to specifically plead its case in relation to the Bare Trust Claim (which included a full recounting of the contents of the 16 June Letter). Because of this, the Defendant must now withstand the onslaught of this application.
31. The 16 June Letter is key, as it is the document which, it is argued, sets out the **CPR Part 14.1(2)** admission. I turn to consider the 16 June Letter. In it the Defendant states that:
 - (i) **Solution of Selling the Claimant’s Shares.** The Claimant instructed the Defendant to sell his (the Claimant’s) participation in The Flowr Corporation because the Claimant was of the view that the Flowr Corporation shares were worthless, the company was never going to make money and the shareholders were going to continue to be diluted in future financing rounds. Therefore, the Defendant states that the Claimant wanted the solution of selling his participation.
 - (ii) **Sale of the Claimant’s Shares.** The Defendant therefore proceeded to sell the Claimant’s shares in The Flowr Corporation for a total of US\$3,000,000.00.
 - (iii) **Trustee of the Claimant and Potential Liability of Defendant.** The Defendant alleges that there is a risk until July 1st 2024 of his liability to pay for a sum larger than US\$3,000,000.00 by virtue of having acted as Director and Beneficial Owner of Ofina Financial Inc, Volex International SA and/or Chameli Limited (“**certain named companies**”) “*in the name and in the form of trustee of Juan Sartori.*”
 - (iv) **Promise to Pay.** The Defendant promised to release and transfer the US\$3,000,000.00 proceeds from the sale of the Claimant’s Flowr Corporation Shares to an account of the Claimant’s choosing on Monday July 1 2024 “*as long as*” he does not “*have any tax investigation*” in relation to certain named companies.
 - (v) **Heirs of Defendant to Pay Claimant.** The Defendant agreed that his heirs would pay the Claimant the US\$3,000,000.00 on Monday July 1 2024 if something were to happen to him (the Defendant) and if there is no tax investigation regarding certain named companies.
 - (vi) The 16 June Letter contained a signature with the words ‘Francisco Ortiz von Bismarck’ written below the signature at the foot of the Letter.
32. In my opinion, the Defendant clearly admits in the 16 June Letter that he has sold property belonging to the Claimant (the Claimant’s shares in The Flowr Corporation). By virtue of

such sale, the Defendant has unequivocally represented that he has in his possession the Flowr Corporation Share Sale Proceeds in the amount of US\$3,000,000.00, which the Defendant admits he holds for the account of the Claimant. Further the Defendant agreed to pay the US\$3,000,000.00 proceeds to the Claimant. However, he fears he may be subject to a tax investigation for which he may have to pay an amount in excess of US\$3,000,000.00. He therefore promises to pay the Claimant the Flowr Corporation Share Sale Proceeds on Monday 1 July 2024, unless he is investigated in relation to certain named companies.

33. Importantly, the Defendant has, neither in pleadings nor in an affidavit, given an alternative meaning or explanation of the statements made in the 16 June Letter. He has not denied he wrote the same or shown how its meaning is not precisely as interpreted by the Claimant in these proceedings. The Defendant has not explained why he yet retains the Flowr Corporation Share Sale Proceeds and has not paid the same to the Claimant, or whether he has otherwise disposed of the US\$3,000,000.00 claimed by the Claimant. Moreover, the Defendant has advanced no counterclaim for the Flowr Corporation Share Sale Proceeds. In my judgment, the Claimant has established his case on the application for judgment on admissions. The response of the Defendant to this application and to, amongst others, the Bare Trust Claim as set out in the Amended Statement of Claim, is inadequate.
34. In accordance with the guidance provided by the Overriding Objective set out in the CPR, the Court, in dealing with cases justly, should have regard to a number of factors including saving the expense and resources of the Court and the parties while dealing with cases expeditiously and fairly. Having regard to the CPR and to the admissions made by the Defendant as discussed above, the Court is satisfied that this matter should not proceed to trial. I am also satisfied that the Claimant's establishment of relevant and sufficient admissions by the Defendant in relation to the Bare Trust Claim, obviates the need to venture further into an analysis of the summary judgment claim.
35. In the circumstances, I grant the Claimant judgment in the amount of US\$3,000,000.00 ("**the judgment sum**"), which shall be paid by the Defendant to the Claimant within 21 days of the date of this ruling. Interest on the judgment sum is awarded at the statutory rate to the Claimant from the date of this judgment until the date of payment of the judgment sum in full.
36. Costs are awarded to the Claimant to be summarily assessed, if not sooner agreed by the parties. In the event the parties do not agree costs, the Court shall provide directions as to their written costs submissions on short notice.

Dated this 15th day of May 2025.

Simone I Fitzcharles
Justice