

**IN THE SUPREME COURT OF BELIZE, A.D. 2019**

**CLAIM NO. 474 of 2019**

**BETWEEN**

**(RUPERT RITCHIE  
(ADMINISTRATOR OF THE  
(ESTATE OF DALMOND RITCHIE**

**CLAIMANT/APPLICANT**

**(  
(AND**

**(  
(CITRUS PRODUCTS OF  
(BELIZE LTD.**

**1<sup>st</sup> DEFENDANT/ RESPONDENT**

**(CITRUS COMPANY OF  
(BELIZE LTD.**

**2<sup>nd</sup> DEFENDANT/RESPONDENT**

**AS SERVANT AND AGENT OF CITRUS  
PRODUCTS OF BELIZE LTD.**

**BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG**

**Decision Date:**

24<sup>th</sup> September, 2021

**Appearances:**

Mr. Hubert Elrington, SC, Counsel for the Claimant.

Mr. Nigel Ebanks Counsel for the Defendants.

**JUDGMENT**

1. This matter concerns the proceeds of the sale of citrus product (oranges and grapefruits) to the Defendants which the Claimant says belongs to him as the

Administrator of the Estate of Dalmond Ritchie. Dalmond Ritchie was a citrus farmer and had conducted business with the Defendants before he died on 4<sup>th</sup> October, 2015. This business continued after he had died but eventually ceased.

2. The Claimant says that by a statement of accounts dated 14<sup>th</sup> September, 2016, the Defendants informed the Claimant that the proceeds of sale of produce from Dalmond Ritchie's farm was \$337,586.56 less deductions of \$16,111.69. By a further statement dated 7<sup>th</sup> July, 2017, the Defendants also informed that the sum of \$126,165.02 less deductions of \$30,675.57 was derived from the sale of additional produce. They informed, both times, that these sums had for the most part been paid into an account at Heritage Bank.
3. However, when the Claimant made enquiries at the said bank about that specific account, the funds were not there. He says he is owed these sums and seeks the Court's assistance in ordering an accounting from the First Defendant of all monies due and payable to him in respect of Dalmond Ritchie's Estate; and whatever that sum may be found to be, that it be paid over to him forthwith.
4. He also seeks an injunction to stop any other sums owed to the Claimant by the Defendants from being paid into the account at Heritage Bank or elsewhere unless so authorized by him in writing.
5. The Defendants say they have paid all of the proceeds (as shown on the statements delivered to the Claimant), save a small balance of \$12,407.44, directly into a bank account #31813405 held at the Heritage Bank. This they did as they had always done and as had been authorized by Mr. Dalmond

Ritchie before he died. They say further that they were unaware that Dalmond Ritchie had died until 13<sup>th</sup> December, 2016.

6. There had been no interruption in the sale of the produce nor any objection whatsoever to the process by which payment was being made. They were only advised by the Claimant on the 1<sup>st</sup> September, 2017 that he had applied for a Grant of Letters of Administration in Dalmond Ritchie's Estate. He produced this grant to them on October 5<sup>th</sup>, 2017, and since that date, they have made payment to the Claimant as the duly appointed Administrator.
7. They stand ready to pay out the sum, which they hold on trust for the Estate, as the Court may direct. They deny that they are liable to account in any way to the Claimant or that the Claimant is entitled to the injunction sought.

**Preliminaries:**

8. This matter has taken a most circuitous path. For the most part, Senior Counsel for the Claimant failed to adhere to the rules and many orders given by the Court. Following the trial, directions were given for the filing of written submissions. The date of filing for submissions by the Claimant passed and had not been complied with. Counsel for the Defendants, who were ordered to file in response, sought the Court's guidance on how best to proceed and was given a date by which to file submissions. He has complied and the Court has had the benefit of those submissions only.

**Issues:**

The issues as the Court finds them:

1. Are the Defendants liable to account to the Claimant as alleged or at all?

2. Are the Defendants to pay over any sum to the Claimant and if so, how much?
3. Is the Claimant entitled to an injunction?

**Are the Defendants liable to account to the Claimant as alleged or at all?**

9. The Claimant says that since the Defendants admit that they owe sums to the Estate of Dalmond Ritchie, they must be made to account for and pay same over. It appears to this Court that the Defendants have already accounted for any sums which may have been owing to the Estate of Dalmond Ritchie. It is this same account which the Claimant has used to ground his Claim. In fact, he has offered no evidence whatsoever which could impugn the statement of account voluntarily furnished by the Defendants. Those accounts will stand as they are.
10. This Court can find nothing which places a debtor under a duty to account to a creditor. It is the creditor who must prove his debt. As the Defendants have pointed out, the Claimant, as the duly appointed Administrator, may hold anyone who has intermeddled in the Estate duty bound to account to the Estate: *Lamonthe v Janet Hendricks and others [2018] ECSC No. 275*. The Defendants do not fall into this category.

**Are the Defendants to pay over any sum to the Claimant?**

11. The Claimant's case is that although the Defendants say they paid money into the bank account at Heritage, there was no money in the account when he checked. The Claimant also consented to the Defendants belatedly putting evidence before the Court to prove that they had paid the sums owed into the said account. This was done and the Court finds on a balance of probability

that the full amount accounted for, save for \$12,407.44 which the Defendants admit to holding, has been paid into the account at Heritage Bank.

12. The issue now is whether the sums accrued ought to be paid to the Claimant. This was not a debt owed personally to the deceased before he died. It appears that the enterprise was a sole proprietorship, the business in law would have died with the owner. However, in reality the establishment continued to conduct business with the Defendants.
13. There is no evidence produced by the Claimant to refute the Defendants' testimony that the deceased's death only became known to them on 13<sup>th</sup> December, 2016. Neither is there any evidence to show that fruit did not continue to be delivered in the usual way without interruption or that they did not continue to pay in the usual way without any objection whatsoever. All this supports the view that the Defendants would not have known that there was any need to reconsider the arrangements made regarding payment.
14. In these circumstances where there was no change in the conduct of business and the Defendants have not been proven to have known of the deceased's death, it would be absurd indeed if the Defendants were under any duty whatsoever to enquire as to whether the Defendant had died and what arrangements had been put in place in relation to a personal representative.
15. On learning that Dalmond Ritchie had died, the Defendants continued to make payment in the usual way. The Claimant, in his Pre-trial Memorandum, relied on the **Administration of Estates Act CAP. 197**, Section 13 which directs that:

*“Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice in the same manner and to the same extent as formerly in England in the case of personal estate it vested in the Ordinary.”*

16. It appears that his assertion was that any outstanding monies due to the Estate was to be paid over to the Chief Justice as Trustee for the Estate until such time as a personal representative is appointed. Ergo, the Defendants’ failure to take this action meant that they remained liable for the cost of the produce received. If this proposition is valid, it could only possibly be applied after the Defendants were made aware of the death of the deceased.
17. In his submissions, Counsel for the Defendants was certain that the section did not lend itself to any such practical result or effect and the Claimant’s reliance on it was misconceived. This Court is minded to agreeing.
18. Counsel drew the Court’s attention to ***Re Deans (deceased); Westminster Bank Ltd v Official Solicitor [1954] 1 All ER 496***. In that case, Section 9 of the **Administration of Estates Act, 1925 (UK)** was under consideration. That section is worded similarly to our Section 13:

*“Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Probate Judge in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary.”*

19. Wynn-Parry J, at page 498, found that the Probate judge *“has no duties whatsoever to perform. No obligations fall upon him. It is a mere matter of necessary convenience and protection which has led to the introduction of s 9 in the Administration of Estates Act.....The whole operation of that section is that where the condition is fulfilled of a person dying intestate, his estate, real and personal, vests in the senior judge of the Probate Division, and that property remains vested in him until the second condition is fulfilled, namely, that administration is granted in respect of that property.”*

20. *Re Deans* was followed in the Trinidadian case *Rousseau v Rousseau (1960)* **3 WIR CHECK PAGE**. Here, the Administrator General was joined as a Defendant against whom a claim for an account was made and a declaration sought that the Claimant was entitled to half of property the deceased had held as a trustee. The Claimant asserted that the Administrator General was the one in whom property became vested on the death of the trustee by virtue of a similar section of the **Administration of Estates Ordinance, Cap 8** and so the order and declaration could rightly be made against him.
21. The Court, in dismissing the claim, found that the Administrator General was “*nothing more than a bare trustee out of possession, against whose title time would run in favour of a beneficiary in possession. (See PRESTON and NEWSOM’S LIMITATION OF ACTIONS, 3rd Edn., p.147 as to the law in England before 1940).*” There were no duties or obligations imposed on him.
22. It seems clear, therefore, that similarly, the Chief Justice would have no obligation to hold money on trust for the estate of any deceased between his death and the appointment of his personal representative. It would seem even less likely that a person who owes a debt to the estate of a deceased person would be bound in law to pay such sums over to the Chief Justice. I could find no authority for such a proposition, and none has been presented.
23. The Defendants continued to conduct business in the same way as was their right. They continued to pay the proceeds into an account which was not in the deceased’s sole name but was held jointly with another. They have proven that they paid as they usually did and as they had been instructed by the deceased. It is surprising that the Claimant chose to claim against the purchasers who had

proven that they paid for the citrus in the usual way, rather than perhaps bringing a Claim in conversion against the vendors or seeking to recover any estate property otherwise.

24. Counsel for the Defendants offered Section 28 of the **Administration of Estates Act** as an appropriate route if the Claimant hoped to seek relief. It provides:

*“28. If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting-*

- (a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and*
- (b) Any payment made by him which might properly be made by a personal representative.”*

25. This Court can find no reason for the Defendants to be made to pay over any sum to the Claimant other than that which they admit to holding on trust. Consequently, the Claim for payment must fail.

### **Is the Claimant entitled to an injunction?**

26. An injunction is an equitable remedy granted only where it is necessary, fair and just. The circumstances presented demonstrates no inclination whatsoever on the Defendant’s part to pay money over to anyone other than the Claimant as administrator of Dalmond Richie’s Estate. In fact, the Defendants say the account at Heritage bank, to which they had paid the claimed sums, has long been closed. I can, therefore, find no reason to exercise my discretion by granting the injunction as prayed.



**DETERMINATION:**

[1.] The Claim is dismissed with costs to the Defendants in the sum of \$9,000.00  
as agreed.

**SONYA YOUNG**  
**SUPREME COURT JUDGE**