

IN THE HIGH COURT OF FIJI (AT SUVA)

CIVIL JURISDICTION

Civil Action No. HBC 339 of 2014S

BETWEEN: **SANJU REDDY** of 301 Heatherway, South San Francisco, California 94080, United States of America, Widow, as Administrator of the Estate of **Rajana Reddy** aka **Rajana** aka **Shiu Narayan** aka **Shiu Narayan Reddy** aka **S. N. Reddy**

PLAINTIFF

AND: **YANKTESH PERMAL REDDY** of Waterfront Hotel, Marine Drive, Lautoka, Company Director

FIRST DEFENDANT

AND: **REDDY CONSTRUCTION COMPANY LIMITED** a company duly incorporated in Fiji and having its registered office at 35 Ravouvou Street, Lautoka

SECOND DEFENDANT

Counsel: Mr. M.A. Khan for the Plaintiff
Mr. S. Parshotham and Mr. V. Singh for the Defendants

Date of Judgment: 7.10.2025

JUDGMENT

INTRODUCTION

- [1] This case represents dispute concerning the estate of the late Shiu Narayan Reddy (SNR), claiming reliefs under paragraph 21 (a) to (r) of fifth amended – Statement of Claim. They are based on alleged ‘*investment*’ by SNR and based on alleged promise of a deceased brother Ram Samy who was not a party to this action. Plaintiff is seeking 25% of in second Defendant’s equity.
- [2] SNR was a carpenter who got married to original Plaintiff and remained in extended family involved in construction business as a carpenter.

- [3] Later, with three of the brothers entered the construction field. Initially construction business was operated as a partnership, but SNR was not a partner and later legal entity was incorporated as the Second Defendant, Reddy Construction Company Limited (RCCL). Again, SNR was not a shareholder and he worked in these business entities as a worker and he was paid wages weekly. The core of the claim is that despite SNR not being a shareholder whether he can be declared a shareholder of RCCL for twenty five percent on equity .
- [4] SNR worked as a carpenter and supervisor and had also paid a salary he had migrated with his family to greener pastures around in 1970s and by this time he was sick and did not work till his death in 1999. SNR's wife had worked in USA as a house keeper .
- [5] SNR was aware of his position in RCCL, as he was paid only weekly wages for a long period till he migrated around mid 1970s. SNR was the eldest in the family but had not raised the issue of not being a shareholder of RCCL with late Y.P. Reddy till two of the brothers and both parents died.
- [6] On 5.5.1995 , SNR had written a letter to Y. P. Reddy , where he alleged that one deceased brother(Ram Samy) had told him in 1958 that he had '*invested*' about one thousand eight hundred pounds in the '*company*' and it should be allowed to grow. There was no allegation against first Defendant , Y.P Reddy, that he had given a promise in that letter.
- [7] He stated in the same letter, that he and late Ram Samy commenced '*the company*' (RCCL) and did not take salary and Y. P. Reddy and Raanga Samy joined later. He stated that he was cheated by two deceased brothers and stated *he was angry with both for not doing the right thing by him when they were alive.*
- [8] It is strange for eldest in the family of Indian culture ,to wait till two younger brothers demise and then state to Y P Reddy that they had promised his money was invested in RCCL and would *grow* and that meant he was a shareholder. In the same letter at the last paragraph , he stated that he would go *public* in order to obtain '*justifiably entitled*'.
- [9] Y.P.Reddy had replied to this letter promptly where he had stated why SNR did not raise the issue of him being left as shareholder for over the years with him. He had even visited SNR in USA after he left Fiji , numerous occasions , but no such issue raised . He had admitted SNR being recorded as a creditor of

RCCL till 1973 . He denied having given any assurance to SNR for shares of RCCL and further stated if SNR was not satisfied with his explanation he could proceed with whatever suited him , which was the litigation he was contemplating in his communications of 5.5.1999

- [10] Neither SNR nor his estate took any action till 2014, and as there was no fraud proved against Defendants this delay is fatal in terms of Section 10 of Limitation Act 1971.
- [11] There were five amendments to statement of claim and there was an application for strike out the last amendment was dated 12.01.2022.
- [12] First Defendant, Y.P. Reddy, passed away during trial . He also produced evidence to the effect that he was not fit to give evidence before he died, and died before commencement of witnesses for Defendants.
- [13] First Defendant's estate is represented by his daughter, Sandra Padmini Reddy, as the Executrix .
- [14] Section 4(2) of Limitation Act 1971 states that action based on accounts cannot be commenced after six years and the rationale for that is to prevent fishing exercise by parties and non-availability of supporting documents for the financial statements over long period of time. This action is struck off in terms of Section 10 of Limitation Act 1971.

THE PLAINTIFF'S CASE

- [15] The Plaintiff's case, in summary, as stated in the fifth amended statement of claim is that:
- a. SNR was a carpenter and he remained so till he got sick around mid 1970s when he with his family migrated to greener pastures and remained there.
 - b. The Reddy family business began in 1947 it was a partnership between SNR and his brother, Ram Sami Reddy, with the financial backing of their father.
 - c. The Deceased was a skilled carpenter and builder whose labour and expertise were fundamental to the business's early success.
 - d. The Deceased made significant capital contributions:
 - (i) 30 gold sovereigns from his wife, used as security for business loans, and
 - (ii) a sum of £1,868/8s/1d in or around 1957/58.

- e. When the partnership was formally registered and later incorporated into RCCL in 1962, the Deceased was assured by his brothers, including Y.P. Reddy, that he would retain a 25% beneficial interest and receive equal benefits, even if his name did not appear on the formal register to avoid administrative difficulties.
- f. The Deceased relied on these promises and continued to work in the business based on the understanding that his interests were secure.
- g. The sum of £1,868 was wrongly classified in RCCL's accounts as a "current liability" (a debt) instead of as shareholder capital, and its subsequent disappearance from the accounts in 1974 was fraudulent.
- h. The Defendants, particularly Y.P. Reddy, were in a fiduciary relationship with the Deceased and breached their duties by concealing the true nature of his interest, misappropriating his share of the profits, and ultimately denying his entitlement.
- i. The discovery of the fraud only occurred in 2014 during pre-action correspondence, thus negating any limitation defence.

THE DEFENDANTS' CASE

[16] The Defendants' case, in summary, is that:

- a. The initial partnership, was registered in 1949 and comprised only Ram Sami Reddy and Ranga Sami Reddy. SNR was never a partner.
- b. Upon its incorporation in 1962, RCCL's subscribers and initial shareholders were only Ram Sami Reddy, Ranga Sami Reddy, and Y.P. Reddy. Again SNR was never a shareholder, director, or officer of the company.
- c. SNR was an employee of RCCL and the partnership registered in 1949, receiving a weekly wage, unlike the shareholders who were remunerated through directors' fees and dividends.
- d. The sum of £1,868 was recorded as a debt owed by the company to the Deceased. The Defendants state from the records of accounts, this debt was repaid in or around 1974, which is why it no longer appears in the accounts thereafter. Defendants state that evidence of payment was not available as records were not kept for a long period.

- e. The allegations primarily concern representations and promises made by the late brothers Ram Sami Reddy and Ranga Sami Reddy, whose estates are not parties to this action. The First Defendant denied personal knowledge of any such arrangements.
- f. The claim is statute-barred under the Limitation Act 1971 in terms of Section 10 read with Section 9(1) of Limitation Act 1971.
- g. Under equitable doctrine of laches, having been filed decades after the alleged causes of action accrued and fifteen years after the Deceased's death.
- h. The Plaintiff has failed to discharge the burden of proof to establish any of its claims on a balance of probabilities.

The Issues for Determination

[17] The following issues arise for determination:

- a. Is the Plaintiff's claim barred by the Limitation Act and/or the doctrine of laches?
- b. Did SNR he have a legal or beneficial interest (whether as a partner, shareholder, or beneficiary of a trust) in RCCL?
- c. Was a fiduciary or trustee relationship established between the Defendants and the Deceased?
- d. Has the Plaintiff proven fraud or deliberate concealment on the part of the Defendants?
- e. The Specific Claims – On the evidence, are the Plaintiff's claims for the return of the gold coins, compensation for the Nayau Street property, and an account of profits made out?

Analysis of the Evidence

[18] The Plaintiff called six witnesses including an accounting professional for estimation of present value for alleged investment of SNR in RCCL. First witness was widow of SNR and next her daughter gave evidence, and son also gave evidence. A sister of SNR who was not involved in family business and residing abroad also gave evidence.

[19] None of the witnesses for Plaintiff could testify the affairs of the RCCL as they were not involved in shareholding or board meeting level as to shareholding of

RCCL. They did not give evidence to prove an assurance by Y.P.Reddy that SNR was a shareholder or on par with that.

- [20] All the evidence before the court proves on balance of probability that SNR was not promised shares of RCCL.
- [21] The Defendants' witnesses were primarily based on the records and documents .
- [22] There is no dispute as to the registration of partnership and RCCL and SNR's name not being recorded as partner or shareholder respectively.
- [23] The most compelling evidence were documentary and in this action these were the recording of late S.N. Reddy as creditor of RCCL's books of accounts. But this cannot be taken in isolation as other documentary evidence in the same token evaluated .
- [24] Business Registration for 1949 lists only Ram Sami and Ranga Sami Reddy as partners. This proves that allegation contained in SNR's letter of 5.5.1999 was incorrect. In that letter SNR state that he and Ram Samy commenced the 'company' and Y.P.Reddy and Ranga Samy jointed latter . So this is factually incorrect.
- [25] The Memorandum and Articles of Association of RCCL from 1962 list only the three brothers (Ram Sami, Ranga Sami, and Y.P. Reddy) as subscribers and initial directors.
- [26] SNR had also alleged that Ram Samy had told that a his money of about one thousand eight hundred pounds '*invested*' in the 'company' in 1958. If so when RCCL became successful why SNR did not even write a letter or sought return for his *investment* for more than forty years not explained. SNR's wife worked as house keeper in USA when she migrated in 1970s.
- [27] It was evidences that around 1974 he became sick and stopped working for RCCL . So why didn't he ask about his long term '*investment*' in RCCL and to what extent it was grown over the years and his share or return.
- [28] Financial Statements of RCCL from the 1960s and 70s consistently record the sum owed to the Deceased under "Current Liabilities," distinct from shareholder equity and capital accounts.
- [29] The amount fluctuated and is fully absent from the 1974 accounts onwards. SNR stopped working due to his sickness and left Fiji for greener pastures and

lived there without raising an issue of him not being made a shareholder of RCCL till 1995 for more than twenty years. After migrating SNR had financial difficulties around 1997. This was about two years after his communication to Y.P.Reddy seeking his share in RCCL.

- [30] Around 1997, August , Y.P.Reddy had even remitted money to SNR when he was in need of money to the value of \$25,000 after having obtained necessary approval to repatriate money. This was after Y.P.Reddy had denied any share of SNR in RCCL , in good faith.
- [31] For the said gesture SNR's son Krishna Reddy had expressed '*deepest appreciation for financial assistance*' extended to Y.P.Reddy , unreservedly. (letter of 9.9.1997)
- [32] If SNR genuinely thought he had shares in RCCL that was the time for him to seek return for his investment and not to seek good faith payments from Y.P.Reddy who allegedly had breached his duties as trustee and fiduciary.
- [33] It is improbable that if SNR genuinely thought he had any shares in RCCL in 1997 when he was in need of money. If so , he would not use that or ask money in exchange of alleged '*investment*' from RCCL including Y.P.Reddy.
- [34] 1995 Correspondences between SNR and Y.P.Reddy is pivotal. In his letter of 5 .5. 1995, the Deceased expressed his grievances primarily against his deceased brothers, Ram and Ranga. Why he waited till their demise to raise any assurance given be them to Y.P. Reddy ? In this letter there was no mention that Y.P.Reddy had made him to believe that he was a shareholder at any time before 1995 or his money which was shown as a debt was an '*investment*' in RCCL.
- [35] Y.P. Reddy's response of 22 .5.1995 clearly delineated the amount as a recorded debt that appeared to have been paid off by 1974 and stated he had no knowledge of any shareholder arrangements had with deceased brothers. He was disillusioned as to why such a claim was not made while those two brothers against whom the allegations made were alive.
- [36] Both parties presented with two expert accounting reports.
- a. Mr. Jawahar Lal for the Defendants gave a coherent explanation based on standard accounting practice. He opined that the debt's classification as a current liability and its subsequent disappearance, without a corresponding entry in share capital or as a write-off in the profit and loss account, most logically indicated repayment. His opinion was that record-keeping

requirements do not oblige a company to retain documents from the 1950s indefinitely.

- b. Mr. Ralph McClane for the Plaintiff prepared a report projecting the value of the initial debt on the basis that it was not paid and it was equity.

Limitation and Laches

[37] Section 10 of Limitation Act 1971 states,

“[LIM 10] Limitation of actions claiming personal estate of a deceased person

10 Subject to the provisions of section 9(1), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.”

[38] This action was filed fifteen years from SNR’s death by representative of his estate. Section 10 of Limitation Act 1971 is subject to Section 9(1) of Limitation Act 1971. Accordingly, if the Section 9(1) of Limitation Act 1971 applies Section 10 of Limitation Act 1971 and limitation not applicable and delay of fifteen years does not make this action statute barred.

[39] So Plaintiff is required to establish either Section 9(1) (a) or (b) of Limitation Act 1971 if it cannot establish either of the situation stated;

- (a) In respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- (b) To recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his or her use.

[40] Plaintiff could not prove fraud or fraudulent breach of trust. There was no proof of trust being created by Y. P. Reddy while he was working in RCCL as carpenter, or before that when there was working in the same position in partnership.

- [41] There was no proof of trust property or trusteeship established from evidence of Plaintiff to RCC or Y P Reddy. There was no trust created for the estate of SNR.
- [42] The plea of fraud under section 15 of Limitation Act 1971 fails because SNR had, or with reasonable diligence could have had, knowledge of the material facts by 22.5.1995, when Y.P.Reddy had denied any beneficial interest in RCCL.
- [43] Y.P. Reddy had admitted that SNR was a creditor of RCCL and this fact was recorded in the books of accounts. So there was no fraud proved or discovered other than facts that were available to SNR while he was alive.
- [44] SNR had in 1995 alleged that a deceased brother Rama Samy at that time had stated that in 1958, about one thousand eight hundred sterling pounds which was recorded as a debt, was an *investment* and should be allowed to *grow*. If so why he did not request return for such investment while he was alive or before he left Fiji for good? By the same token 'investment' in RCCL and how it was dealt by RCCL's books cannot be proved due to long period of time, but SNR had accepted the position that he was not a shareholder of RCCL.
- [45] Even at the time when he got sick and stopped working for RCCL he could have inquired about the 'investment' and 'growth'. A reasonable person who is going for good would inquire and be concerned about investment in Fiji and how such thing would be dealt. This will be more applicable to SNR as when he left to USA his wife who had gone earlier was working as housekeeping and already two of the children had gone and he was sick and stopped working by this time. So SNR has no income earning capacity.
- [46] In such a situation as the head of the family he required money to live in USA and his *'investment'* which was allowed to *'grow'* should have been utilized. SNR did not request even a part of his investment or ask how much it was worth at that time. There was no evidence that SNR had at any time inquired from any of the three brothers about his *'investment'* in shares of RCCL.
- [47] SNR for the first time had sought return for alleged investment from Y.P.Reddy on 5.5.1995 more than twenty years after he left Fiji for good and during this time he was unemployed and required income for his living expenses.
- [48] SNR's position on SNR on said letter, was denied by Y.P.Reddy who had indicated that SNR's interest was recorded in the books of RCCL as a creditor and this had remained in the books till 1973 and had also reduced over the time, and was not recorded in the Balance Sheet of 1974.

- [49] The Current Liabilities of RCCL in 1973 was \$630,029.69 and from this SNR's liability was \$ 2,370.00. This indicate how much RCCL had grown over a decade from incorporation of RCCL, and this exponential growth should be known to SNR who worked in RCCL. So why didn't he ask for return for his alleged *'investment'* till 1995 if SNR truly believed he had his money in equity of RCCL. This shows that SNR had never thought or believed that he was a shareholder of RCCL.
- [50] After Y.P.Reddy replied to SNR on 22.5.1995 SNR had not taken legal action to recover his alleged investment. In 1997 SNR and his child thanked Y P Reddy for helping SNR from financial contribution. This conduct does not support Y.P. Reddy breaching any promise or trust.
- [51] There was evidence that SNR was in need of money in 1997 and Y.P.Reddy had remitted \$25,000 to SNR and he as well as his son Krishna Reddy had written letters to confirm the receipt and their deep appreciation of the said gesture. In the analysis of evidence the conduct of the parties including SNR and his family including his son Krishna Reddy proves that none of them thought SNR had shares in RCCL due to alleged investment.
- [52] So the content of letter of 5.5.1995, cannot be accepted as to proof of any of promise for shares in RCCL. After Y.P.Reddy's letter of 22.5.1995 it seemed SNR had accepted the position and did not request for any interest in RCCL there after. He had thanked Y.P.Reddy when he remitted money in August 1997 and had even offered accommodation at SNR's place when he visited USA. This show there was no rift between SNR and Y.P.Reddy and no allegation of fraud or cheating against Y.P.Reddy by SNR.
- [53] Shortly before SNR died Y.P.Reddy had spoken to him over the phone and had allegedly promised to him to pay off the mortgage of the house in USA. Any promise or assurance given at that time cannot create an equity as SNR had not acted on that to his detriment as moments after speaking to Y.P. Reddy , SNR died. No one would like to make a person who is about to die unhappy or angry and such a humanitarian gesture cannot create equitable interest for the estate of SNR.
- [54] After death of SNR, Sanju Reddy who is the present substituted Plaintiff, and the current administrator of SNR's estate had also faxed a letter of 2.8.1999, to Y.P Reddy after demise of his father ,where he stated SNR's share in the *'business he started and worked for all his life would finally be paid to his widow.'* To which Y.P. Reddy on 10.8.1999 had replied in detail with denial and

faxed the same to Sanju Reddy and the end he stated in the final paragraph, that

“I must now inform you that as far as I am concerned , I have done all that I could and that’s the end of the matter. I do not wish to entertain any further communication from any of you . As for your discussion with ‘legal experts’ if you imply legal action, it is up to you.’

[55] So even after death of SNR the beneficiaries including substituted Plaintiff There was no fraud proved in this action and SNR as well as his estate with reasonable . Material facts were known to parties and delay of more than fifteen years is fatal to this action.

[56] Defendants rely on the Sections 4(2), 9 and 10 of Limitation Act 1971, and laches.

[57] The Plaintiff seeks to avoid this statutory bar by pleading fraud under section 15 of the Limitation Act 1971, which postpones the limitation period until the fraud is discovered.

[58] Section 15 of Limitation Act 1971, states,

“15

Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant or his or her agent or of any person through whom he or she claims or his or her agent; or

(b) the right of action is concealed by the fraud of any such person; or

(c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run **until the plaintiff has discovered the fraud or the mistake, as the case may be**, or could **with reasonable diligence have discovered it**, provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

(ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.”
(emphasis added)

[59] If there was a fraud by not recording SNR’s *‘investment’* in shares of RCCL this was known to SNR long before 1995 , but from his letter to Y.P.Reddy he knew about it.

[60] However, correspondence of SNR dated 5.5.1995, fatally undermines the contention that fraud was discovered later. In his own letter, SNR was fully aware of his grievances and the core facts he now relies upon: his belief in his shareholding, the existence of the £1,868 debt in the books, and the failure of his brothers to "*do the right thing.*" He even desired to "*go public.*" In the analysis of evidence this was evasive threat of litigation.

[61] In my mind having analysed the evidence SNR as well as his son Sanju Reddy were making evasive threat of litigation not being direct on that and their actions do not support a genuine claim based on trust or beneficial interest.

[62] SNR was clearly aware of the essential facts giving rise to claims in this action by 1995 at the very latest. His estate’s failure to act for a further fifteen years until 2014 which is fatal.

[63] In *Singh v Singh* [2016] FJSC 48 the Supreme Court emphasized that equity aids the vigilant, not those who sleep on their rights.

[64] In *Raj v Sumintra* [1998] FJCA 5 the Fiji Court of Appeal after analyzing authorities submitted in that case held

“The authorities suggest:

(a) There is no finite limitation period applicable to a claim based in equity - such as the claim by one tenant-in-common against another for an accounting for the exclusive use of that other tenant-in- commons share in the commonly owned land.

(b) Equity discourages stale claims: see *Smith v. Clay* (1767), 3 Bro. C.C. 639n

(c) The Court must endeavour to do justice in a given situation. **The principal considerations are the length of delay in asserting known rights and acts done by the parties during the period of delay.**

The appellant sought an accounting from 1973 until 1990 for her share throughout the whole period. Although she never abandoned her claim, the Plaintiff's evidence was that she had asked her brother to account to her only once - in 1976. She took no positive action until 1988 - after his death. **Equity should not allow her to make a claim for more than a reasonable period in the face of such a lengthy period of inaction when she deliberately failed to assert her rights. The statutory 6 years applicable to claims in contract or tort could be starting point for fixing a period over which an accounting should be given.**(emphasis added)

[65] The Court of Appeal, in Raj (supra) held that that the statutory six-year period is a useful starting point and that lengthy inaction can bar a claim. The delay here is inordinate . Y.P.Reddy had admitted SNR being recorded in the books of accounts as a creditor till mid 1970s. So there was no concealment or fraud as alleged.

[66] After analysis of evidence it is clear Plaintiff's action cannot sustain in law or equity. It would be unequitable to allow such a claim on hearsay and conjecture which the Defendant could not meet due to long delay as evidence of records of financial statements were not available for such a long period of time.

[67] Hong Kong Court of Appeal decision of Tsao Chin Lan v Tin Ka Kung, CACV10/1995(decided on 28 .6. 1995) held that it is iniquitous to require a defendant to defend a claim so long after the event when memories have faded and evidence is lost. RCCL's supporting documents in 1974 as to evidence how its creditor SNR was dealt was not available due to long time period that had lapsed. Plaintiff cannot use this for its advantage.

[68] Section 4(2) of the Limitation Act 1971, states

“(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action. “

[69] So Plaintiff cannot seek remedy under '*an action for account*' in '*any matter*' which had arisen, more than six years before the commencement of this

[70] This is applicable for the part of action which is based on the account and cannot be applied to cause of action based on fraud. Admittedly the incidents relevant to this action, happened more than six years prior to institution of this action in 2014, but allegation of fraud without proof cannot sustain the claim.

[71] According to Defendant irrespective of the claim being in equity Section 4(2) of Limitation Act 1971, is statute barred and relied on two Australian cases and they were Feiglin & Anor v Ainsworth & Ors [2011] VSC 454 (decided on 19 .9. 2011) Jane v Bob Jane Corporation Pty Ltd & Anor [2013] VSC 406 (decided on 9.8. 2013) . Both these cases can be distinguished as they were not based on fraud and the facts were distinguishable to the case before this court.

[72] Generally limits actions in contract and tort to six years. Section 4(2) of Limitation Act specifically bars an action for an account “in respect of any matter which arose more than six years before the commencement of the action.” Section 9(2) imposes a six-year limitation for actions for breach of trust. It reads

“9(1) No period of limitation prescribed by the provisions of this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee, trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his or her use.

(2) Subject as aforesaid and to the provisions of the Trustee Act 1966, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued, provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.”

[73] The Rationale for this limitation is based on the fear that leaving account actions unbounded would undermine the entire limitation system. Since accounts can go back decades (especially in trusts, estates, partnerships), imposing six years limits “*fishing expeditions*” and forces claimants to act diligently. Accordingly how SNR’s debt was dealt in the books of account cannot be dealt as evidence of such recording were lost.

[74] In the analysis of evidence of SNR’s communication to Y.P.Reddy dated 5.5.1995 the allegations of alleged promise were made against two dead brothers. Why SNR waited till demise of these two brothers and also their parents to make such an allegation cannot be accepted . It is also noteworthy

that Y.P.Reddy had replied to this letter promptly and denied of existence of any assurance or promise or creation of any trust. He had also raised why SNR never raised such an issue since he left Fiji and numerous times he had visited him abroad prior to 1995 for more than twenty years.

[75] At the same time not all account claims are automatically barred at six years. For trustees, certain breaches (like fraud or misappropriation of trust property) are not time-barred under equity and under statutory carve-outs. Thus, while ordinary account actions have a six-year limit, exceptions remain under equity considering the circumstances demands so. The two Australian cases cited the facts supported application of limitation on cases under equity, but in my mind it should not apply to actions based on fraud, but court should (see Court of Appeal decision Raj v Sumintra [1998] FJCA 5; Abu0043u.96s (12 February 1998))

[76] Raj v Sumintra [1998] FJCA 5; Abu0043u.96s (12 February 1998) after considering authorities submitted regarding application of limitation period for accounts based on a claim for equity held,

“The authorities suggest:

(a) There is no finite limitation period applicable to a claim based in equity - such as the claim by one tenant-in-common against another for an accounting for the exclusive use of that other tenant-in-commons share in the commonly owned land.

(b) Equity discourages stale claims: see *Smith v. Clay* (1767), 3 Bro. C.C. 639n

(c) The Court must endeavour to do justice in a given situation. The principal considerations are the length of delay in asserting known rights and acts done by the parties during the period of delay.

The appellant sought an accounting from 1973 until 1990 for her share throughout the whole period. Although she never abandoned her claim, the Plaintiffs evidence was that she had asked her brother to account to her only once - in 1976. She took no positive action until 1988 - after his death. Equity should not allow her to make a claim for more than a reasonable period in the face of such a lengthy period of inaction when she deliberately failed to assert her rights. The statutory 6 years applicable to claims in contract or tort could be starting point for fixing a period over which an accounting should be given. An accounting would have to take account of reasonable outgoings for which both tenants-in-common would be legally liable but which only

the tenant-in-common in possession has paid e.g. local authority rules.”

[77] The Plaintiff’s pleaded case is that the critical events the incorporation of RCCL, the representations, the misclassification of the debt, occurred between the 1950s and 1970s. In mid 1970s , SNR and his family had migrated but no claim was made for any legal or equitable or on allegation of fraud, despite he being aware that he was never treated as shareholder of RCCL.

[78] The cause of action, if any, accrued during SNR’s lifetime. He passed away in 1999, yet this action was not filed until 2014. On its face, the claim is out of time in more than one way.

The Nature of the Deceased’s Interest

[79] Without prejudice to above , I find that the Plaintiff has failed to prove on a balance of probabilities that SNR held a 25% legal or beneficial interest in RCCL.

[80] For the Plaintiff six witness gave evidence including an accounting professional for the assessment of worth of the investment, and in summary they are as follow:

- (i) Gangulamma Reddy: She married SNR and lived with SNR family. When she joined the family other brothers including YP Reddy were unmarried. She gave her testimony regarding her relationship with Shiu and the rest of the Reddy family explaining the family history . Her evidence did not support partnership or shareholding of SNR other than working together in the family with her in laws . Her evidence was that she gave gold coins she received at her wedding by her husband’s family back to SNR’s father when father in law was in need of money and it was not clear that this money was used when partnership was created and more so when RCC was incorporated. Even if such money was used by RCC , that itself SNR did not become a shareholder. Shareholding and being a creditor of RCC were two distinct legal positions.
- (ii) SNR knew that he was not a shareholder of RCC and by conduct he had accepted this position. No one in his family including the wife and child who had even worked in RCC, gave evidence accepted this position for a long period.

- (ii) Gita Reddy: in her evidence stated that she briefly worked as an office clerk . Her evidence does not support any trust or beneficial interest in RCCL.
- (iii) Menchamma Reddy: She said her father took a loan from Shankar Sanyasi took from a money lender from Toorak. She also mentioned that she told Y.P. Reddy to give to SNR what was owed to him . She was never involved in RCC or partnership where SNR was treated as an employee only. It was evidenced that SNR was a creditor of RCC for a long period. She had no knowledge about the financial status of RCC Her evidence did not prove trust or beneficial interest in RCC.
- (iii) Sanju Reddy: He confirmed that he was the youngest son of SNR and who worked for the company in his younger days helping his father at the No.2 yard at Moala Street, Samabula. This proves that SNR worked for RCC but was never treated or assured as shareholder of RCC. In his cross-examination, his position was different from the widow of SNR. According to him the debt shown in RCC accounts in favour of his father were his money earned from carpentry before formation of business which SNR invested in RCC.
- (iv) Mr. Navin Maharaj, Former Accountant and Manager Finance for RCCL: As an auditor and former employee, he gave his account of the pay-roll which he paid on a weekly basis . This shows that despite being a brother of other shareholders SNR was treated as a weekly waged labourer. He confirmed that SNR was considered as a creditor but he could not state how the debt reduced and finally paid .

[81] From the above evidence there is no proof of beneficial interest with SNR and he was recorded in books of accounts as creditor till mid 1970s where SNR had stopped working due to his sickness and had gone to USA for good with his family.

[82] When SNR left Fiji for good he required finance and that was the time for SNR to inquire about the alleged 'growth' of his 'investment' in RCCL.A reasonable person who going for good would inquire about investment in Fiji and how that will be handled on behalf of him and his family.

[83] Around 1974, SNR could not work and his wife was also not working and migrating to USA and living there required finance and around 1997 he had

encountered some financial difficulties for which Y.P.Reddy had offered help with remittance of \$25,000 to help him.

- [84] If SNR was made to believe that his money was 'invested' in RCCL to 'grow' from 1958 and this remained so, SNR should have asked return for such a long terms investment for nearly forty years and would have been substantial even with modest return on investment. There was no dispute that RCCL had outperformed expectations and it was time for SNR to seek his return on investment. Investments are for rainy day and when SNR and his wife needed money why he never resorted to this investment shows that there was no assurance or promise from Defendants that his money was invested as equity as opposed to a debt in RCCL.
- [85] There was no evidence that SNR was considered as a partner of initial partnership by others. SNR also worked as an employee rather than a partner. He never received any profits form the partnership.
- [86] When RCC was created again SNR was not a shareholder of RCC at any time and he only worked and paid wages.
- [87] SNR had no legal Interest:- The formal documents are unequivocal. SNR's name does not appear on the partnership registration or share register of RCCL, or any annual return. The company's constitution and shareholding records consistently show only three shareholders.
- [88] Plaintiff had cited number of cases , but the facts does not support a promise to SNR as stated above . Cited cases are discussed for completion
- [89] Analysis of Plaintiff's Cited Cases This analysis reviews cases cited by the plaintiff in the submissions and their application to the facts of this case

UK Cases

- a. *Gillett v Holt* [2001] Ch 210 (Court of Appeal, UK);

In that case , upheld proprietary estoppel where Mr. Gillett relied on Mr. Holt's repeated assurances of inheritance over 40 years, suffering detriment by forgoing other opportunities. Clear assurance, reliance, detriment, and unconscionability.

S.N.R worked in the family business received his entitlement. There was no evidence of assurances by YP Reddy and the alleged promise to SNR was from two dead brothers who preceded SNR and not part of this action. This fact was also not proven on balance of probability.

- b. Boardman v Phipps [1967] 2 AC 46 (House of Lords, UK);

Plaintiff's Summary and Relevance: A fiduciary (solicitor) profited from trust information and had to account for gains despite good faith. Key principles: Strict no-profit rule for fiduciaries, accountability for conflicts. This was an accepted a fiduciary (trust solicitor); here, neither defendant was a trustee or in a fiduciary position.

The evidence before court was that for the first time SNR had alleged that he had beneficial interest to RCCL in 1995 to Y.P. Reddy and this was based on alleged promise by dead brother. There was no fiduciary relationship between Y.P.Reddy and SNR

Australian Cases

- a. Baumgartner v Baumgartner (1987) 164 CLR 137 (High Court of Australia)

Constructive trust imposed on *de facto* partners' property due to pooled contributions and unconscionability., unlike a business and employment even in a family busines. The allegation that SNR worked without a salary was not substantiated and remained allegation similar to alleged promise by two brothers. Even if such work was proved this cannot provide shareholding in RCCL It is also not correct to state SNR and Ram Samy incorporated RCCL where two brothers joined later. Documentary evidence proved otherwise.

- b. Wakim v Wakim [2019] NSWCA 59 (New South Wales Court of Appeal, Australia);

Proprietary estoppel and constructive trust upheld in a family dispute over promises and contributions to property. Key principles: Assurance-induced reliance creates equitable interests, but again this cannot be applied without proof of assurance given in 1960s when RCCL was created or there after.

New Zealand Cases

- a. Lusty v Thorburn [2021] NZHC 1774 (New Zealand High Court)

- b. Lusty v Thorburn [2021] NZHC 1774 (New Zealand High Court)

The Thorburn Trust was established in 1901. Its primary purpose was to hold a piece of land with two distinct parts: 1) a one-rood burial ground "forever for the interment of the settlers residing in the Lower Wade," and 2) the remainder of the land, which was to be

leased to generate income for the maintenance of the graves and burial ground. In 1990, the then-trustee, Fred Thorburn, entered into a 21-year lease with Kenneth Lusty. The lease covered the entire property, including the burial ground, and granted one right of renewal for 21 years, with a clause providing for perpetual renewal thereafter. After the initial 21-year term expired in 2010, the executors of Mr. Lusty's estate sought to renew the lease. The new trustees of the Thorburn Trust refused, arguing that the original lease was invalid because it breached the terms of the trust by leasing out the burial ground and preventing its use for interments.

Issues Before the Court

1. Was the 1990 Lease consistent with the terms of the Thorburn Trust? The central issue was whether a trustee could lawfully grant a lease that included the dedicated burial ground.
2. Were the Executors entitled to specific performance? Should the court order the current trustees to execute a renewal of the lease, despite the alleged breach of trust?
3. Were the Executors in breach of the original lease? The trustees argued the executors were not entitled to renewal due to their own breaches of the lease terms.

Court's Findings & Decision

1. The Lease was Inconsistent with the Trust: The court found that the 1990 lease fundamentally breached the terms of the Thorburn Trust. By leasing the entire property, including the burial ground, and requiring it to be fenced off, the lease permanently frustrated the core charitable purpose of the trust: to provide a burial ground for the local community. A lease consistent with the trust would have had to exclude the one-road burial ground.
2. Specific Performance was Refused: It held that it would be "manifestly inappropriate" to use its discretion to order the current trustees to sign a new lease (the renewal) that would compel them to breach their fiduciary duties and continue to frustrate the trust's purpose.

Plaintiff in this action had not established a trust from evidence so above case cannot be applied

- c. *Chirnside and Anor v Fay* [2006] NZSC 68 [6 .9. 2006] (Supreme Court of New Zealand)

In 1999, Wynston Chirnside and Richard Fay formed a joint venture to develop a commercial property on the former Speights Brewery site in Dunedin, New Zealand, following a prior successful collaboration. Chirnside led the project, securing a conditional purchase agreement and Harvey Norman as the anchor tenant in July 2000, making the project viable. Chirnside then excluded Fay without disclosure, misleading him about "selling" the project, and completed it via Rattray Properties Ltd (controlled by Chirnside's interests). The development, finished in October 2001, had a net value of \$1,290,000 at trial in 2002. Fay sued for breach of fiduciary duty, seeking an account of profits. Chirnside denied fiduciary obligations and claimed an allowance for his disproportionate efforts.

Issues

Whether joint venturers owe fiduciary duties of loyalty, and if Chirnside breached them by appropriating the venture.

Whether the remedy should be an account of profits (disgorgement of Chirnside's gain) or compensatory damages (e.g., based on Fay's "loss of chance").

Whether Chirnside should receive an allowance for his greater pre-breach contributions (e.g., time, skill, and risk), and if so, the amount.

Proper valuation of the development's net profit, including the value of 2,600m² of vacant space (storage vs. retail potential) and capitalization rate.

Findings of the Court

NZ Supreme Court (Elias CJ, Gault, Keith, Blanchard, and Tipping JJ) allowed the appeal and cross-appeal in part, with a majority decision (Elias CJ dissenting on the allowance issue). Unanimous agreement that the relationship was a joint venture (not merely prospective), creating fiduciary duties of loyalty within its scope. Chirnside breached these by excluding Fay, appropriating the venture, and failing to disclose, violating the "no-conflict" and "no-profit" rules.

The appropriate remedy was an account of profits (Chirside's gain), not compensatory damages or "loss of chance" (as adopted by the Court of Appeal). Fay was deprived of an existing interest, not a hypothetical opportunity.

Majority (Blanchard and Tipping JJ, with Gault and Keith JJ concurring) held Chirside entitled to an allowance for pre-breach disproportionate efforts (~500 hours more than Fay), despite the breach, as equity allows modest recompense for skill/effort in exceptional cases to avoid unjust enrichment (citing Boardman v Phipps, Warman International v Dwyer, and Estate Realties v Wignall). Fixed at \$200,000 (effective net \$100,000 impact on Fay's share after equal division), emphasizing restraint to deter breaches. Elias CJ dissented: No allowance justified, as it undermines loyalty; Chirside's efforts were within the venture's scope, and a \$100,000 fee from Rattray sufficed.

Application to Plaintiff's claim

In the *Wynston*(supra) both parties had successfully joint ventured in an earlier project and there was direct evidence of one party deliberately excluding the other . In contrast Y.P. Reddy had neither excluded SNR from RCCL nor there was joint venture between parties . SNR had waited more than forty years before he made a request for his share in alleged 'investment' in RCCL, which was discussed earlier in this judgment. In the analysis of evidence SNR had not established claims made in equity for a share in RCCL. Taking overall evidence proves that SNR had not proved equitable claim for shares in RCCL.

D. *Zheng v Deng* [2020] NZCA 614 (New Zealand Court of Appeal)

Lu Zheng (property developer) and Donglin Deng (project manager) met in 1998. Deng initially worked as Zheng's employee but acquired an ownership interest in projects from 2004. They operated under the "Orient Group," incorporating companies like Orient Homes Ltd (OHL, initial shares: 40% Zheng, 40% Deng, 20% Zheng's brother-in-law), Orient Construction Ltd (OCL), Orient Construction Group Ltd (OCGL), Albany Apartments Ltd (AAL),

Rosedale Apartments Ltd (RAL), and Eversolid Construction Ltd (ECL). Family members assisted in administration and accounting. The group shared resources, moved cash between entities, and undertook property developments.

In 2007, the group bought 11 lots in Bella Vista Drive, Gulf Harbour (initially via AAL and OCGL). During the 2008 Global Financial Crisis, participants withdrew, and Bin Jiang contributed capital under a 2008 "cooperation agreement" (60% Orient Group, 40% Jiang). Sections were transferred to related parties (friends/relatives) as nominees to secure mortgage funding, but development continued for the group's benefit.

In 2011, Tong Zhu invested \$500,000 via ECL (sole shareholder/director Zhu, but managed by Zheng with benefits shared equally by Zheng and Deng). RAL's 40 Rosedale Road project faced issues (e.g., faulty concrete costing \$100,000+).

-By 2015, the relationship strained due to project failures, cashflow issues, and disagreements. They agreed to separate business interests effective 31.5. 2015. Zheng sent a "Principles in Separation" document; exchanges followed but no full agreement. Partial implementation occurred, but disputes remained over finances, including \$290,000 transferred to Deng (alleged as a loan or unjust enrichment) and miscellaneous payments.

- Zheng and OCL sued Deng, OHL, and others in the High Court, claiming an "Orient Partnership" from 2004 (excluding RAL), with companies as vehicles.

Issues

Existence of Partnership/Joint Venture Was there an overarching partnership ("Orient Group") between Zheng and Deng, where they shared profits/losses equally despite using corporate vehicles, nominee holdings, and disparate shareholdings? Or were interests limited to individual company shareholdings and current accounts?

Ownership structure (including Jiang's 40% stake), nominee holdings, and whether transfers were outright sales or for group benefit.

Zheng's claim for repayment of \$290,000 transferred to Deng (as loan or unjust enrichment). Claim for an accounting of mutual dealings post-separation. OCL's claim to recover miscellaneous payments. Deng's set-off defenses (e.g., unpaid amounts under separation principles).

It was held, that a partnership existed despite not having a formal partnership agreement, financial statements, or bank account but there was evidence of equal capital/profit sharing, joint responsibility, Mandarin terminology like "Oriental Company/Firm" (implying partnership) showed Zheng and Deng carried on a joint business in common with a view to profit under the Partnership Act 1908. By March 2010, they were equal partners in the "Orient Group." Assets included shares in companies and nominee-held properties; projects were group undertakings.. Emphasized cultural/linguistic context (Mandarin records, non-alignment with NZ legal norms) but cautioned against assuming impropriety without evidence.

In contrast to above case, there was no evidence of any form of profit sharing by SNR at any time since creating of the partnership and or RCCL SNR had migrated in mid 1970s with his family, and never claimed return for alleged 'investment' which was allowed to 'grow' since 1958, when he stopped working for RCCL. He was paid weekly wages and was never paid any form of profit or dividends .

SNR did not request for return on his alleged 'investment' when he was in financial difficulty and had relied on good faith payment from Y.P.Reddy who had remitted money on or around 9.8.1997 and for that SNR and his son Krishna Reddy had expressed appreciation, without any reservation.

If SNR had substantial invest to the tune of 25% in RCCL in 1997 he could have got a substantial return for investment over forty years . So the evidence show SNR even as late as 1997 had not claimed his 'investment' and this proves on balance of probability he was not assured or promised of any share holding in RCCL by Defendants. So Zheng (supra) cannot be misapplied to facts which can be clearly distinguishable.

US Cases

- a. *Meinhard v Salmon*, 249 NY 458 (1928) (Court of Appeals of New York, US)

This is a case established high standards for fiduciary duties in joint ventures and partnerships. The case emphasizes joint venturers owe each other the utmost good faith and loyalty, beyond mere honesty.

Salmon leased the Bristol Hotel property in New York City from Louisa M. Gerry for a term of 20 years. Salmon then entered into a joint venture with

Morton H. Meinhard, where Meinhard provided half the capital for renovations and operations, while Salmon managed the **property**. **Profits and losses were shared equally**, with Meinhard paying half the costs.

As the lease neared expiration, Gerry approached Salmon about a new, expanded lease covering the original property and adjacent tracts for a major redevelopment. Salmon, without informing Meinhard, formed a new company (Midpoint Realty Corporation) and secured the lease for himself. Meinhard learned of this after the fact and sued for breach of fiduciary duty.

The court held that Salmon breached his fiduciary duty and that the new lease opportunity belonged to the joint venture. Meinhard was entitled to a share in the new lease, modified to give him a 49% interest (with Salmon retaining 51% for control), treated as a trust held by Salmon.

Application to the facts of this case there was no written contract to share profits of RCCL with SNR . So there was no joint venture from the evidence as well as the conduct of the parties for a long period of time till SNR stopped working due to his sickness and after that left for good to USA and resided there since 1970s for more than twenty years without seeking any return from his alleged investment in RCCL. So by conduct of the parties as well as evidence produced there was no joint venture between SNR and Defendants. There was no profit sharing at all he was paid weekly wages. So the facts and evidence can clearly distinguish the said decision.

- b. *Sinclair Oil Corp. v Levien*, 280 A.2d 717 (Delaware 1971) (Supreme Court of Delaware, US) Applies in cases of self-dealing, where the parent received a benefit denied to the subsidiary or minorities. Sinclair Oil Corporation (Sinclair) was the parent company that owned approximately 97% of the stock in its subsidiary, Sinclair Venezuelan Oil Company (Sinven), a corporation engaged in oil exploration and production in Venezuela.

Levien, was a minority shareholder in Sinven who brought a derivative action on behalf of Sinven against Sinclair. The case arose from allegations that Sinclair, as the controlling shareholder, breached its fiduciary duties to Sinven and its minority shareholders through various corporate action.

This decision clarified fiduciary duties in controlled corporations, emphasizing that controlling shareholders owe duties of loyalty but are not scrutinized as harshly when benefits are shared equally.

Application of the facts to the case before me SNR was not a minority shareholder of RCCL and he was not even a shareholder. So there was no fiduciary relationship between SNR and majority shareholder of RCCL.

While equity will impose a constructive trust to prevent unjust enrichment where there is a common intention and detrimental reliance, the evidence here falls short. Evidence needs to be analysed with conduct of the parties.

- [90] Supreme Court decision of Wati v Kumar [2019] FJSC 5 requires an "agreement, arrangement or understanding". This was a case where Plaintiff's husband was promised and allocated the area where he resided and a formal transfer document executed but Defendant who was the brother did not register it. Defendant sought to evict as the share was not transferred to brother that reflects a common intention. In this case there was documentary evidence of executed transfer of the shares to Plaintiff by Defendant, but this transfer was not registered as it was kept by Defendant as the proprietor of entire land which was subdivided and given to other members.
- [91] The 1995 correspondence shows there was no common understanding between SNR and Y.P. Reddy on this point. Y.P. Reddy explicitly refuted allegation of any legal or equitable interest in RCCL to SNR. He had provided a detailed answer to SNR and explained his position promptly and stated that if he was not satisfied with his answer he could seek a suitable remedy to obtain alleged 'investment' he allowed to 'grow' for over forty years even without seeking return on the investment when he was in need of money 1997.
- [92] SNR had blamed his other brothers, not Y.P. Reddy and this was also questionable considering dispute with one brother regarding a residential property registered as personal property to Ram Samy.
- [93] The Plaintiff has failed to discharge the burden of proving that the Deceased held a 25% or any other legal or beneficial interest in RCC or RCCL. The evidence points overwhelmingly to his status as an employee and a creditor.
- [94] A fiduciary relationship requires one party to act in the interests of another with a duty of loyalty and good faith. While fiduciary duties can arise in informal settings there was no such relationship proved where SNR was left from being a partner or shareholder of construction business under partnership and RCCL

respectively. SNR knew about it and by conduct he had accepted for a long period of time.

Specific Claims

- [95] Paragraph 21 of statement of claim sought following reliefs
- a. "A declaration that the Plaintiff as the Administratrix of the estate is entitled to seek and have access to all the records of the Second Defendant in the same manner in which a shareholder is permitted to do so under common law, articles of association and the Companies Act and under equitable rules of justice and fair play.
 - b. A declaration that the First and Second Defendants jointly or severally are liable to account to the estate for such sums as this Honourable Court may deem fit and just and that the said sum or sums be accordingly ordered to be paid to the estate due to the failure to provide information sufficient to calculate the losses and damages to the Plaintiff, despite requests being made to the First Defendant, has meant that there is a need for an accounting to determine the extent of the losses and damages suffered by the Plaintiff as A and the improper benefits obtained by the First and Second Defendants respectively as a result of the breaches of fiduciary duty by the actions of the First and the Second Defendants respectively.
 - c. A declaration that the Plaintiff is the equitable shareholder in the Second Defendant.
 - d. A Declaration that the Defendant are guilty of fraud and or otherwise in breach of the principles in Law and equity and the Plaintiff is thereby entitled to damages, loss of profit and damages on legal and equitable grounds.
 - e. Appointment of an accountant approved by the Court to carry out the accounting.
 - f. An account by the First Defendant and/ or the Second Defendant for all of the legal structuring profit and loss and balance sheet for all family business since 1958 to date to which the Plaintiff is entitled by Law or in equity;
 - g. Payment to the Estate of their one quarter share [25%];
 - h. Compensation for having been dispossessed of the house at 50 Nayau Street, Samabula, Suva;
 - i. Return of:

(i) Return on the investments in the sum of £1,868/8s/1d in pounds sterling equivalent of FID\$4,859.07 in or about 1958 provided to the joint venture family business which was acquired by the Second Defendant;

(ii) Thirty (30) gold coins given as security for the loan taken by the joint venture family business, RCC and/or its present day value to be assessed and valued;

(iii) All interests of Shiu and his family in and to the Family Business, as it Operated from 1947 to 1962 and from 1962 to date which the Second Defendant acquired and continues its Ownership and possession thereof under the control of First Defendant without any payment to the Plaintiff of his legal rights, profits, interests, and entitlements in Law and equity; and

iv. In the alternative if the said sum is held to belong to Shiu as a creditor of the Second Defendant then the damages ARISING IN RELATION THERETO due to the breach of trust and fiduciary duty jointly and severally.

- j. An account of profits from the First and the Second Defendants jointly and severally.
- k. Damages for such as is determined as a result of an account of profits.
- l. An order that all part and present dividends due and owing to the estate be paid, together with interest at 10% per annum.
- m. Damages for breach of fiduciary duty, fraud and breach of the plaintiff's rights and entitlements.
- n. Costs on indemnity basis for Solicitor/ Client costs;
- o. Interest
- p. Compensation

- q. General damages and all monies and interests that the Plaintiff is entitled under the principles of Law and equity.”

Defendant’s position

[96] The reliefs sought by the Plaintiff appear from paragraph 21 (a) to (r) of the Statement of Claim. Defendant had dealt with each relief sought separately in the following manner;

“21 (a) : access to records of the Second Defendant. The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order to seek and access records of the Second Defendant cannot be allowed.

21 (b) : order for liability against the Defendants. Again, the Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for liability against the Defendants cannot be allowed.

21 (c) : a declaration that the Plaintiff is an equitable shareholder in the Second Defendant. Again, the Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an declaration cannot be made that the Plaintiff is an equitable shareholder in the Second Defendant.

21 (d) : a declaration that the Defendants are guilty of fraud and or otherwise in breach of the principles in law and equity and the Plaintiff is entitled to damages and loss of profits. The Plaintiff has failed to establish at the trial any evidence to support the claim for fraud or a breach of the principles in law and equity. Accordingly, an entitlement to damages or loss or profits does not arise. Furthermore; sections 4 and 9 of the Limitation Act bars the bringing of an action for damages 6 years after the cause of action arose.

21 (e) : Appointment of an accountant approved by the Court to carry out the accounting. The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for accounting and the appointment of an accountant cannot be permitted.

21 (f) An account by the Defendants since 1958 to date. The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for accounts cannot be permitted. Furthermore;

Defendants in the submissions objected to the statement of claim and reliefs on following grounds;

(a) Section 4 of the Limitation Act bars the bringing of an action for accounts 6 years after the cause of action arose.

(b) the Statement of Claim pleads an alleged failure to provide accounts. This pleading relates to the lifetime of the Deceased sometime in 1962.

This was about 37 – 52 years before the claim was filed by the Plaintiff.

(c) In any event, the Deceased died in 1999 – 15 years before the claim was filed by the Plaintiff.

(d) The Plaintiff is guilty of laches.

[97] 21 (g) : Payment to the Estate of their one quarter share [25%] - The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for payment of 25% interest cannot be permitted as the Plaintiff has failed to prove such an interest.

[98] 21 (h) : Compensation for having been dispossessed of the house at 50 Nayau Street. The Plaintiff had failed to prove at trial at either of the Defendants had any interest in the house at 50 Nayau Street nor that either one of the Defendants had made any representations in relation to this property. Accordingly, the relief sought by the Plaintiff for compensation cannot be allowed. Furthermore; sections 4 and 9 of the Limitation Act bars the bringing of an action for damages 6 years after the cause of action arose.

[99] 21 (i) : Return of return on investments (monies, gold coins, family business and damages for breach of trust). It is noteworthy that the Plaintiff claims herein as an alternative relief “if the said sum is held to belong to Shiu as a creditor of the Second

Defendant...”. The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for return on investment cannot be made. Furthermore; sections 4 and 9 of the Limitation Act bar the bringing of an action for damages 6 years after the cause of action arose.

[100] Also during the course of the trial in the sparse evidence presented by Gangulamma on the matter of the gold coins she had said that the gold coins were hers and they had been handed over to her father-in-law who had in turn given them to a money lender, Hari Prasad. There was no evidence that the coins or any moneys were given to the Defendants. Gangulamma herself was not a party to the proceedings in a personal capacity and did not have a claim for any gold coins given by her to her father-in-law.

[101] 21 (j) : An account for profits - The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Accordingly, an order for accounts cannot be made. Furthermore;

- (a) Hypothetically, if an order were to be made in terms of this relief, it would be impossible to comply with that order.
- (b) The period for which accounts is sought is not stated.
- (c) Section 4 of the Limitation Act bars the bringing of an action for accounts 6 years after the cause of action arose.
- (d) the Statement of Claim pleads an alleged failure to provide accounts. This pleading relates to the lifetime of the Deceased sometime in between 1962. This was about 37 – 52 years before the claim being filed by the Plaintiff.
- (e) In any event, the deceased died in 1999 – 15 years before the claim was filed by the Plaintiff.
- (f) The Plaintiff is guilty of laches.

21 (k) : Damages for such sum as determined by an account for profits - The Plaintiff has failed to establish at the trial any evidence to support the claim for damages. Accordingly, an entitlement to damages does not arise. Furthermore, sections 4 and 9 of the Limitation Act bars the bringing of an action for damages 6 years after the cause of action arose.

21 (l) : An order for past and present dividends together with interest - The Plaintiff has failed to establish at the trial any evidence to support the claim that the Deceased had a legal or beneficial interest in the Second Defendant. Therefore an order for payment of dividends does not arise.

21 (m) : Damages for breach of fiduciary duty, fraud and breach of the Plaintiff's rights and entitlements - The Plaintiff has failed to establish at the trial any evidence to support the claim that the Defendants were in a fiduciary relationship to the Plaintiff or that there had been fraud or a breach of the Plaintiff's rights or entitlements. had a legal or beneficial interest in the Second Defendant. Accordingly, an entitlement to damages does not arise. Furthermore, sections 4 and 9 of the Limitation Act bars the bringing of an action for damages 6 years after the cause of action arose.

21 (n) : Costs on an indemnity basis for solicitor/client costs – the Plaintiff has failed to prove their case at trial and accordingly an order for costs on an indemnity basis should be made against the Plaintiff in favour of the Defendants.

21 (o) : Interest – the Plaintiff has failed to prove their case during trial and accordingly an order for interest does not arise.

21 (p) : Compensation – this is too vague and general and appears to be a repeat of earlier reliefs claimed and should also not be allowed as there is no basis for it.

21 (q) : General damages and all monies and interest that the Plaintiff is entitled under the principles of law and equity. The Plaintiff has failed to prove its claim at trial. Any claim that the Plaintiff may have would be either barred under the provisions of the Limitation Act or under the principle of laches. Accordingly, the Plaintiff is not entitled to the relief sought herein.

21 (r): Such further and other reliefs, orders and declaration – The Plaintiff has failed to prove its claim at trial. Accordingly, an order for reliefs “as the Honourable Court may deem fit” does not arise. The Honourable Court should dismiss the Plaintiff’s case with costs ordered on an indemnity basis in favour of the Defendants. The costs order would be necessary to ensure that frivolous lawsuits such as that of the Plaintiff are not brought before the courts against defendants 50 – 70 years after any cause of action may have arisen.”

- [102] Considering the nature of the reliefs they can be clustered. Reliefs sought under 21 (a) to (d) are declarations. They relate to alleged equitable shareholding in RCCL and these fail for the reasons given earlier. Accordingly Plaintiff cannot seek the relief sought under 21(e) and (f) relate to appointment of accountant to carry out accounting is refused and there is no entitlement for Plaintiff to seek such orders under law or on equity based on evidence analyzed. Relief under 21(g) was refused for the reasons given earlier.
- [103] Plaintiff cannot seek relief under 21(h) as the property did not belong to Defendants.
- [104] Plaintiff cannot seek return of alleged investment which was recorded as a debt and accepted by SNR for a long period and the reasons given earlier.
- [105] The evidence of original Plaintiff, Gangulamma Reddy, was that the gold coins were given father-in-law, when he was in need of money , who in turn gave them to a money lender. There is no evidence linking this transaction to the Defendants or that the Defendants ever received or held these coins. Her son in evidence stated the sum stated in the accounts as debt to SNR not based on gold coins but SNR’s money . Alleged gold coins belonged to late Gangulamma Reddy and was not part of estate of SNR. Apart from that they were not given to Y.P.Reddy and these were given before incorporation of RCCL. The claim for gold coins fail.
- [106] Relief sought in paragraph 21 (j), (k), (l),(m) are refused for the reasons given earlier and need no reiteration.
- [107] The Nayau Street Property: The title evidence proved the property was never owned by either Defendant. It was owned by Ranga Sami Reddy and later sold to a third party. Any promises made about this property were made by Ranga Sami Reddy, whose estate is not a party. This claim fails.

[108] Account of Profits and Other Reliefs sought under paragraph 21 relate to accounts and this is fishing exercise by Plaintiff .Rationale of Section 4(2) of Limitation Act 1971 is to prevent such futile exercises unless in very specific instances stated in Section 15 of Limitation Act 1971. All other reliefs sought, including an account, declarations of shareholding, and damages, are contingent upon the Plaintiff successfully establishing a proprietary or fiduciary claim. Having failed to do so, and the claim being time-barred, these reliefs cannot be granted.

CONCLUSION

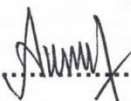
[109] The Plaintiff's claim faces two insurmountable hurdles. First, it was brought far too late, long after the expiration of statutory limitation periods and in defiance of the equitable principle that discourages stale claims. Second, on the merits, the Plaintiff has failed to prove, on a balance of probabilities, the essential elements of his claim, that the Deceased was a partner or shareholder, that a trust or fiduciary duty existed in his favour, or that the Defendants acted fraudulently.

[110] Considering the circumstances of the case cost is summarily assessed at \$8000 to be paid within 21 days.

FINAL ORDERS

1. For the reasons set out above, I make the following orders:
 - a. The Plaintiff's claim is dismissed in its entirety.
 - b. Cost is summarily assessed at \$8,000 to be paid within 21 days from today by Plaintiff to Defendants.




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Deepthi Amarātunga
Judge

At Suva this 07th day of October, 2025.

Solicitors

Khan and Company

Parshotam Lawyers