IN THE SUPREME COURT OF BELIZE, A.D. 2003

ACTION NO. 344

	SHINKYO FUJIMOTO **and** **CO-OPERATIVE WEST INDIAN SEA COTTON JAPAN PROJECT** **(also known as WISICA JAPAN)**	**Plaintiffs**
BETWEEN	**AND**	
	GUSTAVO CARDENAS JR.	**Defendant**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Philip Zuniga S.C. for the Plaintiffs.
Mr. Hubert Elrington for the Respondent.

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JUDGMENT

It must be said at the outset that the pleadings and testimony in this case left much to be desired in terms of clarity as to the issues between the parties. This fact and the copious documentation submitted by both sides constrained the Court in coming to a conclusion and judgment. Matters were not helped also by the fact that the hearing of this case was spread over several months.

The Pleadings

2. However, from the pleadings and testimony in this case, the issues between the parties concern the growing or export of sea island cotton in Belize, and can be stated as follows:

3. The plaintiffs claim that the defendant, Mr. Gustavo Cardenas Jr., was engaged by them at a salary of $500.00 per fortnight as Financial Controller in the business of growing sea island cotton in

the Orange Walk District and for exporting the cotton to Japan. The plaintiffs further claim that it was orally agreed between them and Mr. Cardenas that for convenience, all the property used in the business was to be put in his name. And that on 19th September 2002 in a written agreement between the parties, it was provided that a list of equipment and tools attached thereto belonged to the plaintiffs and that Mr. Cardenas Jr. was devoid of any right of disposal, mortgage or rental of the equipment and tools. The plaintiffs claim further that by an oral agreement between the parties it was agreed that for convenience, 200 acres of land in the Orange Walk District would be leased in Mr. Cardenas' name for use by the plaintiffs who would pay for the lease; and the plaintiffs claim that Mr. Cardenas obtained the lease from one Rudolfo Perrera on 8th March 2003 at $12,000.00 per annum which was paid by the plaintiffs. The plaintiffs claim that on 7th July 2003, the defendant Mr. Cardenas, with the help of the police and an attorney, wrongfully removed vehicles, tools, equipment and 8,000 pounds of sea island cotton seeds belonging to them, from premises at which the first plaintiff, Mr. Shinkyo Fujimoto, resided at BSI Cut Off in Tower Hill, in the Orange Walk District. As a result of this action, the plaintiffs further claim, Mr. Fujimoto had, from 8th July 2003 to 17th December, to take residence at the Chateau Caribbean Hotel in Belize City at a cost of $110.00 plus 7% hotel tax per day. This the plaintiffs claim as special damages in the sum of $19,185.10.

The plaintiffs therefore claim a declaration that Mr. Cardenas, the defendant, holds the properties listed at paragraph 12 of their amended Statement of Claim in trust for them; and a further declaration that Mr. Cardenas holds the benefit of the Lease Agreement with Mr. Perrera of 8th March 2003 for the 200 acres of land in trust for the benefit of the plaintiffs; the plaintiffs claim as

well an order that Mr. Cardenas transfer the title to the property or goods and chattels mentioned in their Statement of Claim to Mr. Fujimoto or a nominee; they also claim an account from Mr. Cardenas of the use of 8,000 pounds of sea island cotton; special damages in the sum of $19,185.10, as well as damages for breach of trust and costs.

4. Mr. Gustavo Cardenas Jr., the defendant, for his part, denies all the claims of the plaintiffs. He denies in particular that he was ever employed by the plaintiffs to grow cotton for them. Mr. Cardenas avers that he was instead, at all material times, an independent producer of sea island cotton. And he states that in order to finance his operation as an independent producer, he borrowed money from a number of sources including the second plaintiff, WISICA. Mr. Cardenas avers in his Defence that the loan from WISICA, for an amount he did not say, was interest free and that its repayment was to be by processing the cotton into lint in Belize and exporting the lint to WISICA in Japan and that the latter would pay an agreed price per pound for the lint, some of which would go towards paying off the loan and the balance remitted to him.

Mr. Cardenas also denied that there was any agreement to operate his business in the name of the plaintiffs. He claims that the business of growing sea island cotton and processing it into lint was, at all time, his own and that he was the owner and boss of his business and that Mr. Fujimoto, the first plaintiff, was in fact his technical advisor. Mr. Cardenas also asserts that the properties, equipment, vehicles and other assets of the business were his solely. He however acknowledges the written agreement of 19th September 2002, but says instead that it was not for the protection of the plaintiffs' proprietary rights in the items there listed, but rather it was a business device to put the listed items beyond the reach of

any other creditor of Mr. Cardenas. He also denies the lease of 200 acres was for the plaintiffs and avers that all the lands used for the production of cotton either belonged to his father or were leased by him for his business and that he paid for all leases out of advances, loans, etc. for which he alone was responsible.

5. Mr. Cardenas however did not deny taking or removing tools, equipment and vehicles from the plaintiffs on 7th July 2003 but avers instead they all belonged to him and not the plaintiffs.

6. Somewhat disconcertingly, although Mr. Cardenas' defence was dated 22nd October 2002 and filed on 30th October 2002, he put in further a Counterclaim dated 30th October 2002 and filed on 31st October 2002, separate and apart from his Defence. I need hardly say that the proper and normal practice is to have a Counterclaim ordinarily to follow a Defence immediately in the same pleading. But this was not done in this case.

7. In his Counterclaim, Mr. Cardenas claims the sum of $800,000.00 as the price of sea island cotton lint he sold and delivered to the plaintiffs and that despite repeated requests, the plaintiffs have failed to pay him.

8. The plaintiffs in their defence to Mr. Cardenas' counterclaim deny that he is entitled to the sum claimed or to any money whatsoever and that they have never in fact received any request whatsoever from Mr. Cardenas for any payment.

The Evidence

9. Three witnesses in all testified in this case, namely, Mr. Shinkyo Fujimoto, the first plaintiff, Mr. Gustavo Cardenas, the defendant, referred to throughout the testimony in this case as "Junior" and his father Mr. Gustavo Cardenas Sr. A number of documents were

also put in evidence. But the documentation in this case was however, not clear or satisfactory in terms of presentation by both sides. As a result both Mr. Philip Zuniga S.C. for the plaintiffs and Mr. Hubert Elrington for the defendant, agreed that bundles of documents would be presented in support of their respective cases. As a result, two bundles (1 and 2) were presented for the plaintiffs and one bundle was presented for the defendant.

10. From the evidence, the second plaintiff, a cooperative of sea island cotton buyers in Japan operating under the name Cooperative West Indian Sea Island Cotton (Japan Project) also known by the acronym WISICA Japan, financed the growing of sea island cotton first in Barbados and later in Belize. Initially in Belize, they financed Gustavo Cardenas Sr., the defendant's father, in the cotton growing venture. Somehow, this venture with the defendant's father went awry. The second plaintiff then sent the first plaintiff over from Barbados to Belize as their agent in June 2002. On the arrival of the first plaintiff in Belize there was a meeting between him and the defendant's father at which the defendant himself was present. This meeting took place in a restaurant in Orange Walk Town. The first plaintiff Mr. Fujimoto stated at this meeting that because of the indebtedness of the defendant's father to the second plaintiff, the latter was not willing to finance the father anymore in the cotton growing venture.

11. The defendant, Mr. Gustavo Cardenas Jr., who had been growing cotton with financing from the second plaintiff, indicated that he would like to continue doing so. In fact, the first document in the defendant's bundle is a copy of a loan agreement dated 12th September 2001 between him and the second plaintiff in the amount of US $20,000.00 for the purpose of growing sea island cotton. From the evidence, the method of repayment for the loan to

grow the cotton was payment in kind, by the deduction of the value of cotton lint (as per invoice) sent to the second plaintiff in Japan. This loan agreement was in response to a request from the defendant dated 3rd September 2001 (both were also put in evidence by the first plaintiff as **Exhibits SF 12 A and B**). From the loan agreement the loan was to be repaid by the defendant as deduction from invoice for cotton covering 2001 – 2002 crop shipment.

12. According to Mr. Fujimoto's testimony the defendant received in all by way of loan to grown cotton the sum of US $42,000.00. But he could not repay all of this sum, and that, even after shipping all his cotton products to Japan he was still indebted to WISICA, the second plaintiff. Mr. Fujimoto stated further that the defendant was and still is, indebted to WISICA in the amount of US $20,000.00. And because of the defendant's financial position, he could not carry on growing cotton as an independent grower as he would have no creditor or financier. He accordingly employed the defendant.

13. The defendant naturally contests this and asserts that he was not employed by the plaintiffs and that he was in fact an independent cotton grower, who apart from the loan from the plaintiffs, was able to secure a loan of BZ $30,000.00 from Scotiabank. The defendant put in evidence a letter from Scotiabank dated 20 November 2003. I must say that I find this letter somewhat enigmatic and it does not satisfactorily explain or account for the independent status as a cotton grower of the defendant.

    This letter on the bank's letterhead rather laconically states:

"Dear Mr. Cardenas:

As per your request, we hereby confirm that a loan of $30,000 was granted to you on March 29, 2001 to invest in the production of cotton. This loan was secured by term deposit #712124 in the amount of $32,000.

This loan was paid out on January 10, 2003 with the term deposit in view that full payment was already past due.

Yours truly

(signed) E. O. Benavidez (Mrs.)
Ass. Manager Credit"

14. The defendant also put in evidence a letter from the second plaintiff as principal of the first plaintiff, to the Belize Ministry of Public Service and Labour in Orange Walk Town, explaining the necessity for the transfer of the first plaintiff from Barbados to Belize in order to advise farmers and workers on cotton growing. The defendant as well exhibited a letter dated 3rd October 2002 notifying him of permission granted by the Ministry of Labour for the first plaintiff to work as Technical Advisor.

15. On the other hand however, in the bundle of documents (in bundle 1) submitted by the plaintiffs, there are copies of employees payroll lists in which the defendant features among the number of employees of the plaintiff. These lists are of bi-monthly payments made to the persons named including the name of the defendant **"Gustavo Cardenas Jr."**. The amount stated against the defendant is $489.71 for every fortnight recorded. And one of the lists is said to be in the handwriting of the defendant.

16. Mr. Fujimoto testified that it was after when the defendant could not repay his loan with the plaintiff that he became employed by him. From the evidence, this happened after the meeting Mr. Fujimoto had with the defendant and his father at a restaurant in Orange Walk Town sometime in June 2002.

17. I can only conclude therefore that notwithstanding the letter from Scotiabank about a loan to the defendant, this does not negative his working for the plaintiff for a fortnightly pay of $500.00. All the payroll lists speaks of period **after** March 29, 2001, the period the letter from the bank said the loan was made to the defendant. I am also satisfied that the work permit for the first plaintiff as technical advisor does not preclude the employment of the defendant by the plaintiffs. The evidence of bi-monthly payments to the defendant is, in my view, highly probative of this.

The ownership of equipment, tools, vehicles and 8000 lbs. of cotton seed removed from Tower Hill BSI Cut Off in Orange Walk District on 7th July 2000

18. This issue is at the heart of this case. The basis of the plaintiffs' case is that the defendant was, since 2002 when he failed to make good the loan to him, employed by them and that he was not anymore an independent grower of cotton. Therefore the plaintiffs claim that all the equipment, tools, vehicles and some 8000 lbs. of cotton seed removed from the premises at Tower Hill, BSI Cut Off in the Orange Walk District were theirs; and that the defendant, accompanied by his attorney at law, together with policemen, wrongfully removed these items on 7th July 2003. These items are more particularly pleaded in paragraph 12 of the plaintiffs' Statement of Claim.

19. The first plaintiff also claims that as a result of the defendant's action he was forced to move out of the premises at Tower Hill and take up residence at the Chateau Caribbean Hotel in Belize City and therefore claims $19,185.10 as special damages representing the cost resulting in his change of residence.

20. In order to buttress their claim to the equipment, tools and vehicles, the plaintiffs rely on a written agreement dated 19th September 2002 and made between the plaintiffs and the defendant.

21. The defendant for his part, denies the plaintiffs' ownership of these items and says that they belong to him in his business as a grower of cotton. He also relies on the same written agreement of 19th September 2002 and says that it was in fact no more than a device to protect the listed items beyond the reach of his other creditors by stating in the agreement that they were the plaintiffs'. The defendant put in this agreement as item number 10 in his bundle of documents. And in the plaintiffs' bundle No. 1 the agreement is Document No. 6.

22. Mr. Fujimoto, the first plaintiff, testified that the items on the list were paid for by the plaintiffs either by cheque or cash and that he had the originals of the cheques where payment was made by cheque. As part of the unsatisfactory documentation in this case as I have already stated, the first plaintiff put in evidence Exhibits SF 2 (1 – 3), SF 3, SF 4 & 5, SF 6 & 7 and SF 8, attesting to purchase of and freight for some of the items. But some of these are, I believe, in Japanese. Mr. Fujimoto further testified that the money for operating the business of growing cotton came from Japan to his account from which he made disbursements. He also testified that most of the equipment, tools and vehicles were put in the name of the defendant for convenience. He further testified that the cotton seeds were acquired from the defendant's father in exchange for the payment of the latter's telephone bill by the plaintiffs.

23. The whole case for the defendant on the other hand is that he was an independent grower of cotton and that the first plaintiff was sent over to Belize by the second plaintiff only to oversee the exercise of growing cotton. The defendant was however candid to state in

evidence that the equipment, vehicles and tractors were bought in his name and that with money provided by the second plaintiff. He however stated that he was to repay by the sale of lint to the second plaintiff. He blithely explained that his name appears as an employee in order to maintain track of expenses. The defendant also admitted receiving monies from the first plaintiff by cash and cheque for the project of cotton growing which he however described as his own. Document No. 7 in the defendant's list however, are certificates of registration of the vehicles in his name.

24. Mr. Gustavo Cardenas Sr., the defendant's father, testified on his behalf. The gist of his testimony was that he had been a cotton grower and was financed by the second plaintiff up to the tune of US $35,000.00. But somehow their relationship soured over accounting for the money. He testified that he agreed to rent the entire factory together with his own equipment to the defendant. He also testified that he made cotton seeds, about 600 lbs., available to the defendant and that he had no arrangement with the first plaintiff to sell or make cotton seed available to him. He admitted however that the plaintiffs paid phone bills for him. He further admitted under cross-examination by Mr. Zuniga S.C. that his factory and equipment were bought by the second plaintiff on his account which he has not yet paid for. I find Mr. Cardenas Sr.'s testimony not very helpful on the whole.

Determination

25. On balance, having seen and heard the first plaintiff and the defendant and his father and in the light of the documentation presented by both sides (confusing as it is), I am inclined to prefer the plaintiffs' version as to the ownership of the equipment, tools, vehicles and the seed in contention in this case.

26. In so far as the equipment and tools and vehicles are concerned, although they may be registered in the defendant's name, and therefore suggestive of his ownership, this point, however, in my view, is tellingly disproved by the agreement dated 19th September 2002 between the defendant (Document No. 10 in the defendant's list of documents and No. 6 in bundle 1 of the plaintiffs' list). A perusal of this agreement which refers to an attached list of equipment and tools (which list was not produced for the Court) but which is relied on by both sides, shows, in my view, that the defendant is anything but the owner of the items referred to therein. He is at best referred to as "user (person in charge)". But it is manifestly clear as stated in paragraph 1 of the Agreement:

> *"1. As of the date of purchase or listing, the ownership of EQUIPMENT & TOOLS belongs to WISICA JAPAN (financier)*
>
> *Locally registered owner or user (person in charge) is devoid of any right to disposal, mortgage or rental".*

WISICA Japan, of course, is the second plaintiff in this action. I find that this agreement undeniably declares it the owner of the items referred to in it.

27. Moreover, I am persuaded on the whole by the evidence in this case that the equipment, vehicles and tools are the plaintiffs'. Document 9 in the plaintiffs' bundle of document No. 1 gives, in my view, a more satisfactory explanation of the list of items and the method for their payment whether by cheque or cash, and where applicable, the cheque number is listed by which a particular item was paid for.

The Lease of 200 acres of Land

28. It is the claim of the plaintiffs' that it was orally agreed between them and the defendant that 200 acres of land would be leased in the defendant's name and that they would pay for the lease which land would be used for growing cotton.

29. The defendant stoutly denies this claim and says that there was no such agreement and that all lands used in the production of cotton either belonged to his father or were leased by him (the defendant) for his business and these leases were paid for out of advances, loans etc. for which he was responsible. The defendant however did not say who provided the loan, advances etc.

30. Both sides relied on the handwritten lease agreement dated 8th March 2003 and expressed to be made between Rudolfo Perera as landlord and the defendant as lessee for 200 acres of land at $12,000.00 for one year. This document is document No. 1 in bundle No. 1 of the plaintiffs' and document No. 9 in the defendant's list of documents.

31. From the evidence it is clear that the plaintiffs paid by cheque in the sum of $11,000.00 to Rudolfo Perera (see cancelled cheque No. 1 in bundle No. 2 of the plaintiffs). Moreover the defendant did not deny this payment but says that it was a loan to be repaid. There is however no evidence of any other payment to Rudolfo Perera other than for the lease.

32. I am satisfied therefore, that the lease was intended to be used for the venture of cotton production. But the relationship between the plaintiffs and the defendant broke down. The lease though in the defendant's name, was in fact paid for by the plaintiffs. It is therefore reasonable, fair and just to hold that the defendant holds it on a resulting trust for the use and benefit of the plaintiffs - see

Hussey v Palmer (1972) 3 All E.R. p. 744 and **Inwards v Baker (1965) 1 All E.R. 446**.

The Claim for Special Damages involved in first plaintiff taking up residence at the Chateau Caribbean Hotel

33. I am afraid in the light of the evidence put before me, am unable to accede to the claim for special damages in the sum of $19,185.10 as being the cost of 163 days residence by the first plaintiff at the Chateau Caribbean Hotel in Belize City as a result of the defendant's action at the first plaintiff's premises near the BSI Cut Off at Tower Hill in Orange Walk on 7th July 2003.

34. The only evidence on this, for what it is worth, is that the first plaintiff testified that he was visited by the defendant accompanied by his attorney together with some police. The attorney, he testified, engaged him in some lengthy discussion about ownership of some items, while the defendant and others removed certain items. The upshot of all this is that the first plaintiff said that because he lived alone he had to move into the Chateau Caribbean Hotel in Belize City. In support of this claim the first plaintiff submitted **Exhibit SF 9**, a "To Whom It May Concern" letter on the letterhead of Chateau Caribbean stating that Mr. Fujimoto, the first plaintiff, owes a grand total of $19,067.40.

35. As I have already said, I am unable to grant this claim. There is no evidence that the defendant forced the first plaintiff out of his former residence at Tower Hill. The only evidence is that he caused certain items to be removed therefrom. I am not convinced therefore that the defendant should be saddled with the costs of the first plaintiff's choice of residence.

The Defendant's Counterclaim of $800,000.00 for Lint sold and delivered to the Plaintiffs

36. I have already referred to the disjunctive way the defendant's counterclaim is pleaded, separate and apart from his Defence.

37. The defendant testified that he shipped lint cotton sold and delivered to the second plaintiff valued at $800,000.00. He tendered Custom Import/Export Declaration Form No. 03509 as document No. 11 in his bundle of document as proof of this delivery. However, there is no amount stated on this. But the sum of $54,022.50 is stated to be the value of all the Orange Walk Cotton Producers packing list consigned to the second plaintiff.

38. I am therefore not convinced of this claim of $800,000.00 as the value of cotton lint sent to second plaintiff by the defendant. Moreover, the plaintiffs rebut the claim by stating that by the arrangement between the parties the lint shipped by the defendant was done as advanced payment and was shipped on instructions to the defendant as employee.

39. However, in the light of the evidence the fact of shipment of cotton lint to the plaintiffs cannot be denied, what is unclear is the value of the shipment. The plaintiffs also say that they have never received any request whatsoever for payment from the defendant. And that in any event the second plaintiff was the real owner of the factors of production, as it were, of the said cotton lint. That is to say, it was the real owner of the lease farm, the equipment used thereon and had paid the wages of all the employees involved, including the defendant.

40. In the light of my findings on the issues between the parties, I must agree with the plaintiffs.

It needs hardly to be said that no disrespect is intended to Mr. Elrington, the learned counsel for the defendant, if his closely argued and tightly written submissions on his behalf did not find much favour. This is for the simple reason that on the evidence and the facts in this case, the balance tilted in the plaintiffs' favour. There was ample evidence that the items removed from the first plaintiff's residence at Tower Hill on 7 July 2002 and the lease were paid for by monies remitted to the Belize Bank account of the first plaintiff Mr. Fujimoto, by the second plaintiff and these were paid for either by cash or cheques and sometimes, at the request of the defendant. The issues of the capacity of the plaintiffs especially of the first plaintiff who on the evidence, was clearly the agent of the second plaintiff, were not therefore material. Nor for that matter was the **vires** of the second plaintiff in the light of its articles of association to engage in the business of cotton growing of any moment, as Mr. Elrington submitted.

Conclusion

41. I therefore hold and declare that:

1) the defendant holds the property as listed in paragraph 12 of the Statement of Claim in trust for the benefit of the plaintiffs;

2) the defendant holds the benefit of the lease agreement dated 8th March 2003 between himself and Rudolfo Perera for 200 acres of land in trust for the benefit of the plaintiffs.

According, I order that the defendant transfer forthwith to the plaintiffs, title of all the properties, goods and chattels and deliver possession thereof to the plaintiffs.

I find the plaintiffs' claim for special damages in the sum of $19,185.10 inadmissible and it is therefore rejected.

I order the defendant to give to the plaintiffs an account of his use of 8,000 pounds of sea island cotton seeds.

I am unable however on the facts of this case to order damages for breach of trust by the defendant in favour of the plaintiffs. The defendant, in my view, would unjustly enrich himself at the expense of the plaintiffs if he were to keep the items removed from the premises at Tower Hill on 7th July 2002 and to take the benefit of the lease of 200 acres of land from Rudolfo Perera for himself. But the defendant came into possession of the items and the lease not **qua** trustee but in the course of his business relationship with the plaintiff. That relationship having foundered, the law would declare a resulting trust in favour of the plaintiffs in respect of the items and the lease. And I have so declared. In view of my findings however and orders, I do not therefore see any purpose in ordering damages for breach of trust against the defendant. The vindication of the plaintiffs' proprietary rights in the removed items and the lease, should, in my view, suffice.

I will now hear counsel as to costs.

Costs for the plaintiffs to be agreed or taxed.

A. O. CONTEH
Chief Justice

DATED: 18th May 2005.