# Sukhpreet Kaur Bajaj d/o Manjit Singh and Another v Paramjit Singh Bajaj and Others [2008] SGHC 207

**Case Number** : Suit 713/2006

**Decision Date** : 13 November 2008

**Tribunal/Court** : High Court

**Coram** : Tan Lee Meng J

**Counsel Name(s)** : Rey Foo Jong Han (K S Chia Gurdeep & Param) for the plaintiffs; Philip Jeyaretnam, SC (instructed) / Elizabeth Yeo (Rodyk & Davidson LLP) / Godwin Campos (Godwin Campos & Co) for the 3rd & 4th defendants

**Parties** : Sukhpreet Kaur Bajaj d/o Manjit Singh; Bhupinder Singh s/o Manjit Singh — Paramjit Singh Bajaj; Manbir Singh Bajaj; Bhajnik Singh Bajaj; Jagjit Singh Bajaj

*Trusts*

13 November 2008 Judgment reserved.

Tan Lee Meng J:

1 The present case involves proceedings commenced by the plaintiffs, Ms Sukhpreet Kaur Bajaj d/o Manjit Singh ("Sukhpreet") and her brother, Mr Bhupinder Singh s/o Manjit Singh ("Bhupinder"), against their maternal uncles (the 1st and 2nd defendants) and their paternal uncles (the 3rd and 4th defendants).

2 Sukhpreet and Bhupinder sued Mr Paramjit Singh Bajaj ("Paramjit") and Mr Manbir Singh Bajaj ("Manbir") (both referred to as the "maternal uncles"), who were the executors of their mother's estate, for breach of their duties as trustees of the said estate. They also sued Mr Bhajnik Singh Bajaj and Mr Jagjit Singh Bajaj (both referred to as the "paternal uncles"), for unconscionably procuring the transfer of trust property to themselves.

**Background**

3 The dispute between the plaintiffs and the defendants has its roots in the estate of the plaintiffs' paternal grandfather, Mr Bhagwan Singh Bajaj ("Bhagwan"), who died intestate on 30 December 1947.

4 Bhagwan owned a number of properties, which were mainly situated in Kuala Lumpur, Malaysia. Following his death in 1947, the plaintiffs' father, Mr Manjit Singh ("Manjit") inherited a one-sixth share of Bhagwan's estate ("the trust property").

5 In January 1972, Manjit assigned the trust property to his wife, Mdm Kuldip Kaur Bajaj ("Kuldip"). Kuldip made a will and she appointed her brothers, Paramjit and Manbir, as her executors. Upon Kuldip's death on 17 June 1980, her four children, including the plaintiffs, became entitled to her estate.

6 In 1982, while the plaintiffs were still minors, the maternal uncles, in their capacity as trustees of the trust property, sold the said property to the paternal uncles. According to the plaintiffs, the trust property was sold for RM50,000. However, this is not borne out by the evidence and Paramjit testified that apart from this sum, the paternal uncles also paid the maternal uncles S$250,000 for

the trust property. The S$250,000 was spent on renovations to Kuldip's house at No 1 Goodman Road. After the said renovations had been completed, the plaintiffs and their siblings moved into that house. The property at Goodman Road was subsequently sold by the plaintiffs and their siblings in 2001 for S$2,000,000.

7 Sukhpreet and Bhupinder, who are now aged 40 and 35 years respectively, asserted that the trust property had been sold at an undervalue by the maternal uncles to the paternal uncles in 1982. Hence, they instituted the present action against their maternal and paternal uncles.

8 Before the trial commenced, the plaintiffs withdrew their claim against their maternal uncles for breach of their duties as trustees. According to them, this step was taken because Paramjit is presently a bankrupt while Manbir cannot be contacted as he now resides in India. As it turned out, Paramjit then agreed to become the plaintiffs' witness.

9 At the close of the plaintiffs' case, counsel for the paternal uncles, Mr Philip Jeyaretnam SC ("Mr Jeyaretnam"), informed the court that his clients took the position that there was no case to answer and that they would not be giving any testimony.

**Effect of a Submission of No Case to Answer**

10 The effect of the paternal uncles' submission that there was no case to answer must first be considered. In *Bansal Hermant Govindprasad v Central Bank of India* [2003] 2 SLR 33, Chao Hick Tin JA, who delivered the judgment of the Court of Appeal, referred to the decision of the English Court of Appeal in *Storey v Storey* [1960] 3 All ER 279, and accepted that there were two situations in which a submission of no case to answer may be made by a defendant. The first situation is where even if the plaintiff's evidence is accepted on the face of it, no case has been made out against the defendant. The second situation is where the plaintiff's evidence is so unsatisfactory or unreliable that the plaintiff's burden of proof has not been discharged.

11 The plaintiffs asserted that their paternal uncles took the position that there was no case to answer because they wanted to avoid cross-examination. That may well be true but the plaintiffs have only themselves to blame because the way they ran their case was most unsatisfactory. The paternal uncles' counsel, Mr Jeyaretnam, asserted that there were a number of important flaws in the plaintiffs' case, including the following:

(a) The claim was time-barred;

(b) There was no credible evidence that the trust property had been sold at an undervalue;

(c) On the basis of the pleadings, there was no evidence that the paternal uncles owed any fiduciary duty to the plaintiffs;

(d) There was no evidence of any breach of trust by the maternal uncles; and

(e) There was no evidence of any misrepresentation by the paternal uncles.

**Time-bar and laches**

12 Although the sale of the trust property took place in 1982 when the plaintiffs were minors, it was not until 2006, some 24 years later, and *long after the plaintiffs had attained the age of majority*, that the present action was initiated against their maternal and paternal uncles. In view of

this, it is not surprising that the paternal uncles pleaded that the action was time-barred by virtue of s 6 of the Limitation Act (Cap 163, 1996, Rev Ed). They added that in any case, the question of laches arose because the plaintiffs were guilty of prolonged, inordinate and inexcusable delay in instituting the present action against them.

***The Limitation Act***

13 It is astonishing that the plaintiffs pleaded nothing specific in response to their paternal uncles' defence of limitation of action and laches. It was only in their closing written submissions, which were forwarded to the court out of time, that the question of limitation was addressed.

14 The plaintiffs had to bring their cause of action within the ambit of s 22(1) or s 29 of the Limitation Act in order to avoid the time-bar in s 6 of the Act. However, they made no reference to s 22(1) or s 29 in their Statement of Claim, and they did not file a reply to the assertions with respect to the time-bar in the Defence.

15 Section 22(1) of the Limitation Act provides as follows:

> No period of limitation prescribed by 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 use.

16 The plaintiffs are in no position to rely on s 22(1) of the Limitation Act for two reasons. To begin with, they did not plead fraud on the part of any of the defendants as trustees so as to bring the case within the embrace of limb (a) of s 22(1). Secondly, they cannot rely on limb (b) of s 22(1) in their action against their paternal uncles because the trustees of the trust property were their maternal uncles and not their paternal uncles.

17 As for s 29(1) of the Limitation Act, the relevant part is as follows:

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

(a) the action is based upon the fraud of the defendant ….

(b) The right of action is concealed by the fraud of any such person as aforesaid; ….

> The period of limitation shall not begin to run until the plaintiff has discovered the fraud ….. or could with reasonable diligence have discovered it.

18 As has been mentioned, the above statutory provision was not pleaded by the plaintiffs and no evidence was furnished by them as to how it may be relevant in the present case. As such, it need not be considered any further.

19 For the reasons stated, I hold that the plaintiffs' action against their paternal uncles is time-barred.

***Laches***

20 Whatever may be the position in relation to the Limitation Act, the question of laches arises in the circumstances of this case. At the outset, it may be noted that s 32 of the Limitation Act provides as follows:

> Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

21 When considering the corresponding English provision in *Green v Gaul* (also known as *Loftus, decd, In re*) [2006] EWCA Civ 1124, [2007] 1 WLR 591, Chadwick LJ noted (at [33]) as follows:

> Section 36(2) of the Limitation Act 1980 provides, in terms, that: "Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise"…. At first sight, therefore, it is difficult to see how an express provision in the 1980 Act that no period of limitation prescribed by the Act shall apply to the claim – or, more generally, the absence of any provision in the Act which does, on a true analysis, prescribed a period of limitation in respect of the claim – can have the effect of excluding a defence of laches if, on the facts, such a defence would otherwise be available.

22 The above approach was endorsed by Sundaresh Menon JC in *Re Estate of Tan Kow Quee (alias Tan Kow Kwee)* [2007] 2 SLR 417 ("*Tan Kow Quee"*) (at [29] – [30]).

23 As for what laches entails, in Underhill and Hayton's *Law Relating to Trusts and Trustees*, the authors, quoting from *Lindsay Petroleum Co v Hurd* (1874) 5 LR PC 221 ("*Lindsay Petroleum*") (at 239-240), stated (at p 1139):

> Laches consists of a substantial lapse of time coupled with circumstances "where it would be practically unjust to give a remedy either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards asserted.

24 In *Scan Electronics (S) Pte Ltd v Syed Ali Redha Alsagoff* [1997] 3 SLR 13 ("*Scan Electronics*"), Karthigesu JA, who delivered the judgment of the Court of Appeal, also referred (at [20]) to *Lindsay Petroleum* as authority for the proposition that "unreasonable delay or negligence in pursuing a right or claim, particularly an equitable one, may disentitle the plaintiff to relief".

25 In *Frawley v Neill* [2000] CP Rep 20, Aldous LJ enunciated what he termed a "more modern approach" to determine whether the defence of laches is available in the following terms (at [32]):

> [T]he more modern approach should not require an inquiry as to whether the circumstances can be fitted within the confines of a pre-conceived formula derived from old cases. The inquiry should require a broad approach directed to ascertaining whether it would in all the circumstances be unconscionable for a party to be permitted to assert his beneficial right. No doubt the circumstances which gave rise to a particular result in decided cases are relevant to the question whether or not it would be conscionable or unconscionable for the relief to be asserted, but each case has to be decided on its facts applying the broad approach.

26 In *Patel v Shah* [2005] WTLR 359 (at [32]), the English Court of Appeal approved of Aldous LJ's modern approach and held that the claims before the court were barred by, *inter alia*, the doctrine of laches, even though they were not statute-barred.

27 In a number of cases before our courts, the defendants were held to be entitled to relief under the doctrine of laches. In *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit (No 2)* [2000] 4 SLR 610, the plaintiff instituted an action against the defendant to recover USD642,451.04 on, *inter alia*, the ground that the defendant's retention of that sum gave rise to a remedial constructive trust. Woo JC made it clear (at [158]) that even if the plaintiff's claim was not within the ambit of the limitation periods prescribed in the Limitation Act, the court's equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise was unaffected. Woo JC followed the Court's reasoning in *Scan Electronics* ([24] *supra*) and held that the plaintiff's claim was defeated by laches because there had been unreasonable delay or negligence on her part in pursuing her claim.

28 More recently, in *Tan Kow Quee*, where a beneficiary sued the personal representatives of the deceased's estate, Menon JC noted (at [39(a)]) that as the action concerned the administration of the estate of a person who passed away some 50 years ago, the delay in commencing the action was a "considerable one by any yardstick". He pointed out that the defendants had incurred substantial expenditure to renovate the disputed property as the plaintiffs had given no indication of any intention to claim anything more than what they had already received. As such, the claim was dismissed.

29 In the present case, the plaintiffs did not adduce any evidence as to why they took such an inordinately long time to sue their paternal uncles. In his closing submissions, counsel for the plainitffs, Mr Rey Foo Jong Han ("Mr Foo"), claimed that the plaintiffs had been "kept in the dark". However, even if the fact that the plaintiffs were minors in 1982 is taken into account, they attained the age of majority quite some time ago. As mentioned earlier, Sukhpreet is 40 years old while Bhupinder is 35 years old. Both of them are not uneducated persons. Sukhpreet has a degree in management from La Trobe University while Bhupinder has a Diploma in Business Studies.

30 Paramjit, one of the maternal uncles and an executor of Kuldip's estate, testified that he met the plaintiffs now and then. In view of this, the plaintiffs could have consulted him about the circumstances of the sale of the trust property in 1982 had they wanted to do so. It is worth noting that the relationship between Paramjit and the plaintiffs was warm enough for at least two decades after the sale of the trust property in 1982. After all, in 2001, when the plaintiffs and their siblings sold their property at No 1 Goodman Road for $2,000,000, they agreed to lend Paramjit a large portion of the sale proceeds. Paramjit admitted when cross-examined that the loan amount was $700,000 to $800,000 and that he still owed his nephews and nieces around $100,000. It must thus be assumed that had the plaintiffs wanted to act against their paternal uncles at a much earlier date, they could have sought more information from their maternal uncles about the circumstances of the sale of the trust property to their paternal uncles in 1982.

31 In these circumstances, it is hardly surprising that the paternal uncles pleaded in their Defence that the plaintiffs had "24 years to avail themselves of the particulars relied on in their Statement of Claim" and that in spite of having had the opportunity to make any claim with respect to the transfer of the trust property in 1982, they filed their claim some 24 years later in 2006. The paternal uncles thus asserted that the plaintiffs were guilty of prolonged, inordinate and inexcusable delay in bringing this action and had waived their rights, if any, to make a claim against them.

32 The paternal uncles had ordered their affairs on the basis that there were no claims against them in relation to the transfer of the trust property to them in 1982 and they would be prejudiced by the plaintiffs' prolonged, inordinate and inexcusable delay in commencing this action. The plaintiffs had also benefited from the sale, which was considered to be in their best interest by their maternal uncles and their extended family, as their home at No 1 Goodman Road had been renovated for them

and it was subsequently sold at a hefty profit. In view of the plaintiffs' delay and the prejudice that this late action would cause, the question of laches arises and the inevitable conclusion is that it is now too late for the plaintiffs to institute the present action against their paternal uncles.

**No expert evidence on the value of the trust property in 1982**

33 Apart from the time-bar and laches, another fatal flaw in the plaintiffs' claim is that they furnished no expert evidence on the value of the trust property in 1982. Where there has been an allegation that property has been sold at an undervalue, it is axiomatic that expert evidence on the real value of the property at the time of sale, as contrasted with the price offered, must be produced. The historical value of property is a category of "special knowledge" (see G D Nokes, An Introduction to Evidence (4th ed, at 177)) for which the opinion of an expert witness would be relevant pursuant to s 47 of the Evidence Act (Cap 97, 1997, Rev Ed) and necessary.

34 In *Brown v Beat* [2002] BPIR 421, where the plaintiff sued his agents for having sold his property at an undervalue, Hart J stressed that it is "*fundamentally unsatisfactory*" for an application to be made in relation to the sale of property at an undervalue if there is a *complete absence of any expert evidence* that the property was sold at an undervalue. His Lordship went so far as to add that in the absence of expert evidence supportive of the client's case, *to embark on litigation would simply be "foolhardy"*.

35 The requirement of proper expert evidence is so stringent that even if an expert on property values is called to testify, a distinction is made between evidence that is within his expertise and his hearsay evidence on property values. In *English Exporters (London) Ltd v Eldonwall Ltd* [1973] 1 Ch 415, the court had occasion to add that hearsay evidence given by the expert himself on the value of property was of too little probative value to be admitted.

36 Why the plaintiffs did not furnish any expert evidence on the value of the trust property in 1982 cannot be fathomed. Although Paramjit said that he "felt sorry" for the plaintiffs, he offered nothing other than his personal opinion that the trust property "was worth more". Instead of introducing expert evidence to guide the court on the value of the trust property in 1982, the plaintiffs sought to rely on some facts, which could lead to the inference that the sale of the trust property had been at an undervalue. These are as follows:

(a) a purported "list" of further assets of Bhagwan;

(b) an affidavit of their paternal grandmother in 1978; and

(c) the acquisition of part of the trust property by the Malaysian government in 1983.

37 The purported "list" of further assets was annexed to the Statement of Claim (Amendment No 1) and marked "Annex B". According to the plaintiffs, the properties referred to in this list should be added to the original list of assets within Bhagwan's estate. The intention was to show that Bhagwan's estate was more extensive than first thought. However, this argument did not get off the ground for apart from the fact that the document in question was not put into any of the trial bundles of documents, agreed or otherwise, no attempt was made by the plaintiffs to prove the authenticity or accuracy of the document in question. Thus, the court was left in the dark as to who drew up the "list" and whether or not the properties described in the "list" were indeed a part of Bhagwan's estate. As such, the "list" of further assets must be wholly disregarded.

38 As for the paternal grandmother's affidavit, this was filed in relation to her application to the

Malaysian courts in Originating Summons No 230 of 1978 for permission to sell a piece of property that was a part of Bhagwan's estate for RM150,000. However, the fact that permission was sought by the grandmother, who was then the executrix of Bhagwan's estate in 1978 does not prove the value of the trust property four years later.

39 As for the acquisition in 1983 of part of Bhagwan's estate by the Malaysian government for RM3,759,660, while one may be tempted to draw inferences from this, the fact remains that no expert evidence was tendered and the court was left in the dark as to whether or not property market conditions in Malaysia, and more specifically, in Kuala Lumpur, were the same in 1982 and 1983 or whether the permitted use of the land, which has an effect on property prices, had remained the same.

40 In short, no matter how much one may sympathise with the plaintiffs, they should not have embarked on this suit against their paternal uncles without bothering to obtain any expert opinion on the value of the trust property in 1982.

***Pleadings do not reveal a breach of fiduciary duty***

41 Apart from furnishing no expert evidence on the value of the trust property in 1982, the plaintiffs' case in relation to a breach of fiduciary duty by their paternal uncles was unclear. They pleaded in their Statement of Claim as follows (at [12]):

> In acquiring the One-Sixth Share at an undervalue, the 3rd and 4th Defendants acted in breach of their fiduciary duty to the Plaintiffs and/or acted in an unconscionable manner.
>
> Particulars of breach of fiduciary duty and unconscionable conduct
>
> a The 3rd and 4th Defendants were trustees of the Husband's (the Plaintiff's father) estate.
>
> b The 3rd and 4th Defendants were also, like the Husband, beneficiaries in their own right in the estate of their father [Bhagwan].
>
> c *As such*, they were aware of the true extent and assets of [Bhagwan] and the One-Sixth Share
>
> d Therefore, they owed a fiduciary duty to the Plaintiffs.
>
> [emphasis added]

42 The plaintiffs' claim must be determined according to their pleadings. Their assertion that there was a breach of fiduciary duty because their paternal uncles were the trustees of their father's estate made no sense at all. After all, the case concerns Kuldip's estate and not Manjit's estate, which was worth only $53. More importantly, Manjit outlived his wife and died in 2001, some 20 years *after* the sale of the trust property. How the fact that the paternal uncles became the trustees of Manjit's estate created a fiduciary relationship relevant to the alleged sale of the trust property at an undervalue in 1982 was not explained to the court.

43 As for the plaintiffs' assertion that there was a breach of fiduciary duty because the paternal uncles were also, like Manjit, beneficiaries in their own right of Bhagwan's estate, it was not explained how this created a fiduciary duty. Elsewhere in their pleadings, the plaintiffs pointed out that the fact

that they were minors when the trust property was sold was known to their paternal uncles. However, the paternal uncles negotiated with the maternal uncles, who were the executors of Kuldip's estate, and not with the plaintiffs. The maternal uncles were certainly not novices in business matters. Indeed, when cross-examined, Paramjit, testified that he was a successful businessman at the time the trust property was sold by him and his brother to the paternal uncles in 1982. He was then a co-owner of Satnam House, a very valuable commercial building in High Street, Singapore, and a director of Bajwa Textiles. It was not pleaded that there was any collusion between the maternal and paternal uncles. Paramjit was emphatic that he and his fellow executor had consulted the extended family, including the plaintiffs' grandmother and all of them thought that the sale in question was in the interest of the plaintiffs.

44 In his closing submissions, counsel for the plaintiffs, Mr Foo, asserted that the paternal uncles were administrators of their grandfather's estate in 1982 and in that capacity, they owed the plaintiffs a fiduciary duty. However, this was not pleaded by the plaintiffs. Admittedly, the plaintiffs pointed out that in the answer to paragraph 12(c) of the Particulars Served Pursuant to the Order of Court dated 5 May 2008 with respect to how the paternal uncles became aware of the true extent and assets of Bhagwan, they had stated that their paternal uncles were "made aware of the assets of [Bhagwan] through the probate documents in respect of [Bhagwan's] estate" and that their paternal uncles were also "administrators of the estate of [Bhagwan]". However, counsel for the paternal uncles, Mr Jeyaretnam, pointed out that the last sentence could not be relied on to found a different cause of action from that pleaded in the main body of the Statement of Claim. He added as follows (at [17] and [18]) of his closing written submissions:

> First, it was not pleaded, and therefore, not relied on, as a specific fact giving rise to a fiduciary duty owed by the 3rd and 4th Defendants to the Plaintiffs, but a fact which the Plaintiffs sought to rely on only for the purpose of the 3rd and 4th Defendants' knowledge of the extent of [the] Grandfather's assets, in their capacity as beneficiaries of the Grandfather's estate.
>
> Secondly, if it is attempted to set it up as a new cause of action – ie a claim against the 3rd and 4th Defendants as administrators of the estate of [Bhagwan] - then it is not an answer to the particulars requested. …

45 As a general rule, a party cannot, without more, introduce a new cause of action by volunteering particulars: see *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and Others* [1992] 2 SLR 793; affirmed by the Court of Appeal [1993] 2 SLR 113. At this juncture, it should be noted that the plaintiffs were specifically asked during the trial whether they wanted to amend their pleadings to take into account their assertion that the paternal uncles were the executors of Bhagwan's estate and their counsel, Mr Foo, informed the court that his clients were not going to seek leave to amend their pleadings. This was, to say the least, a rather strange position to adopt and the plaintiffs must live with the consequences of their decision.

46 After the trial had ended, the plaintiffs sought to admit documents that showed that their paternal uncles were indeed administrators of Bhagwan's estate at the time of the sale. However, as the plaintiffs had not pleaded this fact and had declined to amend their pleadings during the trial to reflect this assertion, the application to admit the fresh documents did not relate to the issues pleaded with respect to the paternal uncles' alleged breach of fiduciary duty. As such, it served no purpose to consider the admission of the fresh documents.

***Knowing receipt***

47 Although it was not specifically pleaded, the plaintiffs also asserted in their counsel's closing submissions that a constructive trust should be imposed because of knowing receipt by the paternal uncles of property that was passed to them in breach of trust by the maternal uncles. There were problems with this line of argument. To begin with, one of the elements for liability for knowing receipt is "knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty" (see the Court of Appeal's judgment in *Caltong (Australia) Pty Ltd (fka Tong Tien See Holding (Australia) Pty Ltd) & Anor v Tong Tien See Construction Pte Ltd(in liquidation)* [2002] 3 SLR 241 (at [31]), citing the words of Lord Hoffmann in *El Ajou v Dollar Land Holdings* [1994] 2 All ER 685 at 700). It follows that the plaintiffs had to establish knowledge on the part of the paternal uncles that their receipt of trust property was traceable to a breach of trust by the maternal uncles. The plaintiffs failed to establish such knowledge on the part of the paternal uncles. Apart from the fact that the plaintiffs withdrew their action against their maternal uncles for breach of trust, it remained unclear after the trial what breach of trust had allegedly been committed by the maternal uncles.

48 The plaintiffs complained that their maternal uncles "did not value nor ascertain the nature of the trust property". This may mean that they were negligent but whether this involved a breach of trust is another thing altogether. It is worth noting that in *Bristol and West Building Society v Mathew* [1998] Ch 1 (at 17), Millet LJ, approving a comment by Ipp J in *Permanent Building Society v Wheeler* (1994) 14 ACSR 109 (at 157), said as follows:

> It is essential to bear in mind that the existence of a fiduciary relationship does not mean that every duty owed by a fiduciary to the beneficiary is a fiduciary duty. In particular, a trustee's duty to exercise reasonable care, though equitable, is not specifically a fiduciary duty ….

49 When cross-examined, Paramjit did not admit to any breach of trust. As has been mentioned, he said that the decision to sell the trust property to the paternal uncles was a decision taken by the executors of Kuldip's estate and the extended family, including the plaintiffs' maternal grandmother, in the interest of the beneficiaries of the trust property. It follows that the question of knowing receipt of property disposed of in breach of trust does not arise.

**Misrepresentation**

50 Although the plaintiffs alleged that the paternal uncles misrepresented the value of the trust property to the maternal uncles, this was not borne out by the evidence and the plaintiffs accepted in their closing submissions (at [80]) that "no substantial evidence was led in respect of any misrepresentation" by their paternal uncles. That being the case, the question of misrepresentation need not be further considered.

**Conclusion**

51 The manner in which the plaintiffs pursued their claim against their maternal uncles left much to be desired. They did not, in their pleadings, counter their paternal uncles' assertion that their claim was barred by the Limitation Act and by laches. In any case, the plaintiffs failed to establish through expert evidence that the sale in 1982 was at an undervalue. They also failed to properly plead the nature of the fiduciary relationship owed by the paternal uncles to them and, when invited to amend their pleadings during the trial, they declined to do so. For the reasons stated, the plaintiffs' claim is dismissed with costs.