

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE (CIVIL) A.D. 1999

SUIT NO: 165 OF 1993

BETWEEN

MARINUS FRANCOIS

PLAINTIFF

and

FRANCIS JOSEPHAT

DEFENDANT

Appearances

Oswald W Larcher for the Plaintiff
Evans Calderon for the Defendant

FEBRUARY 1st, 2nd and 8th

JUDGMENT

Allen J in Court

In this action the Plaintiff who is a sculptor claims inter alia that he is entitled to one half share of four wood carvings worked on together with the Defendant between 1981 and 1983. One of them which I will call the masterpiece stands 15 feet tall on its base is 13 feet at its widest part and depicts Christ between the two thieves. It has been given the name **TRIBULATION**.

The Defendant on the other hand seeks a declaration that he owns 75% of all four pieces; he also claims other relief.

The Evidence

The Plaintiff states the he is a sculptor and the Defendant is a wood-

carver. In September 1980 the Defendant came to him and solicited his help in sculpting a piece of wood that he himself could not handle alone.

They held a meeting and agreed to put their expertise and resources together and form a partnership to produce art work for sale on a 50/50 basis. They worked on several pieces successfully. They worked together for about two years on a piece which was to become their masterpiece. The wood for this work was found on the beach at Choiseul by the Defendant. Together they shaped it so that it could stand in the workshop. After five months of sketching he came up with the idea of Christ and the crucifixion. Using chalk from a nearby school he put the sketches on the wood and provided wood carving tools to the Defendant and together worked on this piece from August 1980 to some time in 1983. He supervised and directed the work of the Defendant during this time. In 1983 the finished work, given the name **TRIBULATION** was exhibited at the Fine Arts exhibition and won an award. Both names were engraved on the trophy and they split the monetary prize of \$1000.00 equally.

The design concept of all the works they produced was his own but they "sculpted" together day and night. Most of the material was brought to the craft centre by the Defendant but he was responsible for tools and design.

In all the works that they sold they shared the proceeds 50/50.

The Defendant never discussed with him the expenses incurred in acquiring the wood and getting it to the craft centre.

In 1983 they received an offer of \$50,000.00 for **Tribulation** but thought it was worth over \$100,000.00.

They continued to work well together until 1991.

Under cross examination he admitted that it took ten men to load it onto a flat bed truck when they brought it to the exhibition. He agreed it was much bigger (meaning the driftwood) when he first saw it but denied that any carving work had started, he could not tell how the Defendant got it to where he first saw it, but agreed that there is no motorable road to the beach where it was found. He agreed that the Defendant had tools of his own but not the professional tools necessary for work on jobs like **Tribulation**.

He agreed that all materials except the base for **Tribulation** were furnished by the Defendant.

The Defendant's evidence is that he is a sculptor and not a woodcarver as described by the Plaintiff.

In 1981 he entered into an oral agreement to work with the Plaintiff.

The contention between them concerned four works. The agreement according to him was that they would work together and the Plaintiff would be paid his labour cost. He never at any time agreed to share 50/50 with the Plaintiff. In 1979 in his search for material he found this huge piece of driftwood on the beach at Choiseul. He bought a come-along for \$1000.00 to lift the wood in order that it may dry, then he bought 12 drums and made a raft to cross two rivers. From there a loader took it to the handcraft centre; this was in 1979. He worked on

the wood on the beach for several months before it could be put on the loader. When he was doing all this the Plaintiff was not yet with him. When the Plaintiff joined him the wood already had its shape and he himself had already conceived the idea of Christ between two thieves.

He also produced the wood from which the other three works in issue are made. They are the **PRIME MINISTER'S HEAD AND SHOULDER** an unfinished work, the **STAFF OF LIFE** and the **SOCCER PLAYER**.

He contended that while the Plaintiff usually worked only from 8.00 a.m. to 4.00 p.m. he lived near the Centre and slept in the Centre for five years and often worked into the night. He was unaware of the offer of \$50,000.00 made for **TRIBULATION**. He is contending that all four works are his own property and that the Plaintiff is only entitled to one quarter share because he only contributed to labour.

While the Plaintiff and the Defendant who are both very gifted young men have invariably described themselves as sculptors and wood carvers there is little significance in the context of this case since all the works are in wood. I find however that the Plaintiff was more talented and assumed the role of senior partner throughout.

Further I find that they agreed in loose terms to share profits equally, but that the confidence and enthusiasm with which they looked to the day when they would complete their masterpiece caused them to ignore an important aspect of their partnership agreement, that is, whether there should be an accounting in respect of materials and other capital inputs before an equal split of profits or whether regardless of what was put in by either party, whether it be design,

tools, materials, carving skill or artistic temperament, the assets on dissolution of the partnership would belong to them in equal shares.

Because of this innocent omission I must deal in some detail with the masterpiece and say at the onset that a tree trunk large enough and with sufficient potential to excite the imagination of these two young men in the way that it did was a major "find".

Certainly it was the Defendant who first recognized its potential and his perseverance in getting it across land and water to where the Plaintiff first saw it more than a year later was no mean effort, and although the Defendant has not always been frank with the Court to hold that **TRIBULATION** is owned by the Plaintiff and the Defendant in equal shares would be totally unconscionable.

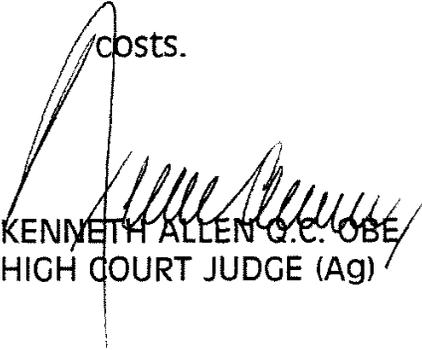
On the other hand I have no difficulty in finding in respect of the other three pieces that these are owned in equal shares.

I am unable to assist the parties with any marketing directions since the Court will not make an order that it cannot properly supervise. One can only hope that notwithstanding their unhappy differences they will act sensibly from here onwards at least until they are able to realize the well earned fruit of their labour.

The Court declares that -

1. 60% of the masterpiece **TRIBULATION** is owned by the Defendant and 40% by the Plaintiff.
2. All the other works that is **SOCCER PLAYER, STAFF OF LIFE** and **PRIME MINISTER'S HEAD AND SHOULDER** are owned by the Plaintiff and the Defendant in equal shares.

3. All expenses incurred in the restoring, preserving and marketing of the works from the date of this Judgment are to be met by the Plaintiff and Defendant in the proportion of their ownership.
4. Since this order incorporates both the claim of the Plaintiff and the Counterclaim of the Defendant each party will bear his own costs.



KENNETH ALLEN G.C. OBE
HIGH COURT JUDGE (Ag)