

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.SLU 1093 (B) of 1996

BETWEEN:

IRENE JOSEPH

Claimant

and

DANIEL JOSEPH

Defendant

Appearances:

Mr. Martinus Francois for the Claimant
Mrs. Michelle Anthony-Desir for the Defendant.

2002: May 29
October 31

SEPARATION OF PROPERTY...PARTIES ARE ST. LUCIAN NATIONALS MARRIED
AND LIVING IN ST. THOMAS...PROPERTY IN ST LUCIA...WHETHER COMMUNITY
OF PROPERTY APPLIES...DOMICILE OF HUSBAND...REMY v PROSPERE
APPLIED...CONTRIBUTIONS...COMMON INTENTION ...SECTION 25 OF DIVORCE
ACT 1973

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** Mr. and Mrs. Joseph are Saint Lucian Nationals. They were lawfully married on 27th day of June 1970 at St. John's Catholic Church, St. Thomas, U.S. Virgin Islands. After their marriage, they continued to live in St. Thomas. Mrs. Joseph still resides there. Mr. Joseph now lives permanently with his new wife in Saint Lucia.

2. On 24th day of August 1996, a decree of divorce was pronounced in the Dominican Republic bringing their twenty-six years of marriage relationship to an unhappy end. And like most divorces, this was the beginning of a bitter contest to decide their respective interests in a four-apartment complex which was constructed during the subsistence of the marriage on a lot of land at New Development, Soufriere registered in the Land Registry as Block 0231C 172.

3. The Claimant claimed a one-half share in the said property. She based her claim on two grounds:
 - (i) That the property in question is part of the legal community existing between the Defendant and herself in accordance with Articles 1190 to 1193 of the Civil Code and
 - (ii) Further or in the alternative, that she made valuable contributions to the improvement of the said property and as such she is a resulting or constructing trustee thereto.

4. The Defendant contended that the land and the four-apartment complex were purchased with his separate funds. He asserted that he moved out of the marital home in 1982 and the land was brought the year after. He alleged that he bought the land with funds which he earned as a taxi-driver.

5. The Defendant next alleged that sometime in 1985, he built a small two-bedroom dwelling house on the land with his own money with no contribution from the Claimant except for a few of her things which she sent to the house. In 1992, he commenced construction of a four-apartment complex with his own funds and two loans from the National Commercial Bank which were radiated in 1997. In August 1997, his second wife and himself took a mortgage loan over the same property with the said bank, The existing mortgage has not been paid off.

THE APPLICATION OF COMMUNITY

6. In his two paragraph document entitled "Claimant's Skeleton Arguments" filed on 12th day of March 2002, Mr. Francois for the Claimant stated that the Claimant will contend at the trial that the land and the four-apartment complex should be deemed to be community property by virtue of Articles 1190 to 1193 of the Civil Code of Saint Lucia. At the trial, Mr. Francois did not actively pursue this limb of argument.

7. Article 1 (4) of the Civil Code defines "community" as follows:

"Community" means the common interest of a man and his wife in certain of their property, and is further explained in article 1188, et seq. The term is also used to designate the property to which this common interest attaches. The term " a community" or "the community" is always used in the latter sense."

8. Article 5 of the said Civil Code states:

"The laws of the Colony govern the immovable property situated within its limits. Movable property is governed by the law of the domicile of its owner. But the law of the Colony applies to determine the nature of the property and in cases of disputed possession, and also in questions with reference to privileges and rights of lien, to the jurisdiction and procedure of the courts, to the mode of execution and attachment, to public policy and the rights of the Crown, and in other cases specified in the Code."

The law of the Colony relative to persons apply to all persons being therein, even to those not domiciled there; except that the laws of status and capacity do not apply to persons domiciled elsewhere, and do apply to persons domiciled in the Colony, although they be absent therefrom."

9. Article 1180 provides that:

" If no covenants have been made, or if the contrary have not been stipulated, the spouses are presumed to have intended to subject themselves to the general laws and customs of the country, and particularly to the legal community of property.

From the moment of the celebration of marriage, these presumed agreements become irrevocably the law between the parties, and can no longer be revoked or altered:

Provided, however, that where the marriage takes place outside the Colony and the husband is at the time of the marriage domiciled in the Colony, and no covenants were made before the marriage, the spouses may within six months

from the date of the husband's first return to the Colony make a declaration in notarial form to the effect that they are married in separation of property, and such declaration shall have the effect of a contract of marriage stipulating for the exclusion of community and the separation of property and shall take effect as from the date of the marriage."

10. The definition of "community" as contained in the Civil Code indicates that community of property is a question of status or matrimonial status. The definition signifies that community is a product, incident or consequence of the matrimonial status. In the well-known Saint Lucian case of *Remy v Prospere* (1992)44 WIR 173, Sir Vincent Floissac, Chief Justice in delivering the judgment of the Court had this to say (at page 176G):

"Since article 5 provides in effect that the St. Lucian laws relating to matrimonial status (which is the source of community) apply only to persons domiciled in St. Lucia, it follows that the St. Lucian laws of community do not apply to a husband who was not domiciled in St. Lucia at the time of his marriage."

11. And according to Article 48 of the Civil Code:

"The domicile of a person, for all civil purposes, is at the place where he has his principal residence."

12. Mrs. Anthony-Desir for the Defendant submitted that applying the principles which were so pristinely elucidated by Sir Vincent in *Remy v Prospere* (*supra*), the Defendant was domiciled in St. Thomas at the date of his marriage and as such, community of property would not apply.

13. In her witness statement, the Claimant alleges that both the land and the four-apartment complex were part of the community between herself and her husband. Except for her bare assertion, the Claimant has failed to prove that she was married in community of property.

CONTRIBUTIONS

14. It is accepted that the land as well as the two-bedroom dwelling house which was later demolished to facilitate the construction of a four-apartment dwelling house were acquired

during the subsistence of the marriage. The land was purchased from Developers (Soufriere) Company Limited in the sole name of the Defendant on 25th day of March 1983. The Defendant alleged that on that date, he had already moved out of the matrimonial home but he and his wife were not yet divorced. The Claimant painted a more colourful picture. She alleged that she and the Defendant lived together at Bovvoni Building, Apt. 263, St. John, St. Thomas until 1996 although the Defendant lived in St. Lucia intermittently during the period.

15. The Claimant alleged that she made valuable contributions to the improvement of the property in dispute and as such, she is a resulting or constructing trustee thereto. She deposed that that her husband paid \$300.00 for the land and stopped and she had to continue with the payment until the purchase price was fully liquidated. She also alleged that when the two-bedroom dwelling house was being built, she sent money to build it and when the four-apartment complex was completed, she sent chandeliers, face basins, lamps etc. Unfortunately, she was unable to provide any documentary evidence to substantiate her testimony.
16. The Defendant alleges that the land and the property standing on it were all acquired with his own private funds with no contribution whatsoever from the Claimant and that she is not entitled to any share of the four-apartment complex. However, under cross-examination, the Defendant admitted that the Claimant is entitled to a share in the two-bedroom dwelling house.
17. At paragraph 6 of his witness statement filed on 4th day of February 2002, the Defendant stated as follows:

"The property in issue, Parcel No. 0231C 172 was purchased by me in 1983 from Developer's (Soufriere) Company Limited and is situate at New Development Soufriere. The purchase price was paid for with my funds from my work as a Taxi Driver in St. Thomas. During the marriage the Claimant and I did not keep joint accounts. She worked as a housekeeper in St. Thomas. I maintained the home paying all the bills- utilities/rent/food. Her salary was used to maintain herself and provide for the children."

18. It is therefore admitted that the Claimant was not only a working mother but one who provided for and took care of four children. I found as a fact that the Claimant did provide some of the paraphernalia for the two-bedroom dwelling house. The Claimant alleged that she paid for the land and she sent money for the construction of the said two-bedroom house. In the absence of documentary evidence, I am unable to conclude that she did so. In fact, I prefer the evidence of the Defendant to that of the Petitioner. I believed the Defendant when he stated that they were not living together as husband and wife when he bought the land in 1983 as well as when he embarked on the subsequent construction of the two-bedroom dwelling house and later the four-apartment complex. I also believed the Defendant that after the two-bedroom dwelling house was built, the Claimant sent some of her paraphernalia as they were on friendly terms.
19. Having arrived at these factual conclusions, the principal issue to be determined is whether the Claimant is entitled to a beneficial interest in the four-apartment complex and if so, what is the extent of her beneficial interest therein?
20. To quote Lord Denning MR in *Wachtel v Wachtel* (1973) 1 All ER 829 at page 837:

“Twenty-five years ago, if the matrimonial home stood in the husband’s name, it was taken to belong to him entirely, both in law and in equity. The wife did not get a proprietary interest in it simply because she helped him buy it or to pay the mortgage instalments. Any money that she gave him for these purposes would be regarded as gifts, or, at any rate, not recoverable by her: see *Balfour v Balfour* (1919) 2 KB 571. But by the long line of cases, starting with *Re Rogers’ Question* (1948) 1 All ER 328 and ending with *Hazell v Hazell* (1972) 1 All ER 923, it has been held by the court that, if a wife contributes directly or indirectly, in money or money’s worth, to the initial deposit or to the mortgage instalments, she gets an interest proportionate to her contribution. In some cases, it is a half-share. In others, less.”

21. And at page 838, Lord Denning continued:

“Now we have the legislation.”

SECTION 25 OF THE DIVORCE ACT 1973

22. In Saint Lucia, the appropriate legislation is Section 25 (1) of the Divorce Act 1973 which expressly says that, in considering whether to make a transfer of property, the Court is to have regard to all the circumstances of the case including the following matters, that is to say:

- (f) contributions made by each of the parties to the welfare of the family including any contribution made by looking after the home or caring for the family..."

23. Broadly speaking, it is the duty of the Court so as to exercise those powers as to place the parties, so far as practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards each other.

THE PRINCIPLE OF CONSTRUCTIVE TRUST

24. I should point out that the Divorce Act 1973 recognized the principle of constructive trust and contributions to the home by the housewife for her services and even more cogent contributions being direct contributions towards the matrimonial property and maintenance of the household by a working wife. See: *Lang v Lang (Civil Suit No.30 of 1991)(Saint Lucia)*.

25. In the present case, it is established that the land as well as the two-bedroom dwelling house and later the four-apartment complex were acquired during the subsistence of the marriage. It is also established that the Claimant and the Defendant lived together until 1982 when the Defendant moved out of the marital home to live with someone else. It is accepted that the Defendant was the sole legal owner of the four-apartment complex and that the entire beneficial interest therein resided in him solely until 7th day of August 1997 when he donated a one-half share in the said property to his second wife, Felicia Joseph

as appears by Deed of Donation dated 7th day of August 1997 and registered in the Land Registry on the 12th day of August 1997 as Instrument No. 3040/1997.

26. It is settled law that in the absence of an agreement, understanding or common intention between the parties, the Court has no power to vary the beneficial interest of the parties therein. In the absence of an express agreement, a common intention must be implied having regard to all the circumstances of the case. Nourse LJ in *Grant v Edwards et al* [1986] 2 All ER 426 at page 431 had this to say:

"In order to decide whether the Plaintiff has a beneficial interest in 96 Hewitt Road, we must climb again the familiar ground which slopes down from the twin peaks of *Petitt v Petitt* [1969] 2 All ER 385 and *Gissing v Gissing* [1970] 2 All ER 780. In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the Plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the Defendant, acted on by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the Defendant to deny that interest and will construct a trust to give effect to it.

In most of these cases, the fundamental, and invariably the most difficult question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the court has to look for expenditure which is referable to the acquisition of the house: see *Burns v Burns* [1984] 1 All ER 244 at page 252-253 per Fox LJ. If it is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted on it."

See also:

- (1) *Lloyds Bank PLC v Rosset et al* [1990] 1 All ER 1114;
- (2) *Eves v Eves* [1975] 3 All ER 768;
- (3) *Heseltine v Heseltine* [1971] 1 All ER 952;
- (4) *Cooke v Head* [1972] 1 WLR 518;
- (5) *Wachtel v Wachtel* [1973] 1 All ER 829.
- (6) *Williams v Williams* (1986) 39 WIR140

27. Then, after referring to *Eves v Eves* (1975) 3 All ER 768, Nourse LJ continued at pages 432-433:

"It seems therefore, on the authorities as they stand, that a distinction is to be made between conduct from which the common intention can be inferred on the one hand and conduct which amounts to an acting on it on the other. There remains this difficult question: what is the quality of conduct required for the latter purpose? The difficulty is caused, I think, because, although the common intention has been made plain, everything else remains a matter of inference....In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house...."

28. *Sir Nicholas Browne-Wilkinson V.C.* in *Grant v Edwards* expressed his view on what is necessary to prove that the claimant so acted to her detriment. He said at *page 438*:

"What 'link' has to be shown between the common intention and the actions relied on? Does there have to be positive evidence that the claimant did the acts in conscious reliance on the common intention? Does the court have to be satisfied that she would not have done the acts relied on but for the common intention e.g. would not the claimant have contributed to household expenses out of affection for the legal owner and as part of their joint life together even if she had no interest in the house? Do the acts relied on as a detriment have to be inherently referable to the house, e.g. contribution to the purchase or physical labour on the house?"

29. I do not think it is necessary to express any concluded view on these questions in order to decide this case. *Eves v Eves* indicates that there has to be some 'link' between the common intention and the acts relied on as a detriment. In the instant case, the Claimant's contributions to the household expenses of providing for herself and the children were essentially linked to the Defendant's saving up his money to purchase the land and the two-bedroom dwelling house. Without her contributions, the Defendant's means as a taxi driver and the operator of a bar were insufficient to purchase these properties. In my judgment where the Claimant has contributed whether directly or indirectly to the acquisition of the land and property, this is a sufficient link between the detriment suffered by the claimant and the common intention. The Court could infer that the Claimant would not have contributed to the maintenance of herself and her four children were it not for her belief that she had an interest in the two-bedroom dwelling house. I asked myself: why would she want to send such paraphernalia such as chandeliers, face basins, lamps and so forth if she did not envisage that the property was that of her husband and herself.

30. On this ground, I find that the Claimant has acted to her detriment in reliance on the common intention that she had a beneficial interest in the land and two-bedroom dwelling house and accordingly, she has established such beneficial interest.
31. What then is the extent of the Claimant's beneficial interest? This is indeed the most difficult part of any matrimonial case.
32. Counsel for the Claimant argued that the Claimant is entitled to a one-half share in the four-apartment complex. Counsel for the Defendant maintained that the Claimant is not even entitled to a beneficial interest in the two-bedroom dwelling house much less the four-apartment complex despite the letter written by the then Attorney for the Defendant in 1996 wherein the Defendant acknowledged that the Claimant has a legal interest in the two-bedroom dwelling house.
33. In *Wachtel v Wachtel* [1973] 1 All ER 829, Lord Denning, MR at page 838 said:
- "In the light thus thrown on the reason for s. 5(1)(f), we may take it that Parliament recognized that the wife who looks after the home and the family contributes as much to the family assets as the wife who goes out to work. The one contributes in kind. The other in money or money's worth. If the court comes to the conclusion that the home has been acquired by the joint efforts of both, then, when the marriage breaks down, it should be regarded as the joint property of both of them, no matter in whose name it stands. Just as the wife who makes substantial money contributions usually gets a share, so should the wife who looks after the house and cares for the family for 20 years or more."
34. Applying the principles in *Wachtel v Wachtel* (supra) and more recently, the learning of the recent House of Lords decision of *White v White* (2000) 3 WLR 1571, I would therefore hold that the Claimant is entitled to a one-half interest in the two-bedroom dwelling house. In the event that I was wrong to apply the principles as enunciated in *Wachtel v Wachtel*, I would go a step further to justify the Claimant's entitlement.
35. Counsel for the Claimant argued and rightly so, that where as in the instant case, it is not clear from the evidence the proportion of contribution made by the parties, the principle of "equality is equity" should be applied.

36. On this issue, the following passage in *Lord Diplock's* speech in *Gissing v Gissing* at page 792 provides useful guidance. He declared:

"If the Court is satisfied that it was the common intention of both spouses that the contributing wife should have a share in the beneficial interest and that her contributions were made on this understanding, the court in the exercise of its equitable jurisdiction would not permit the husband in whom the legal estate was vested and who has accepted the benefit of the contributions to take the whole beneficial interest merely because at the time the wife made her contributions there had been no express agreement as to how her share in it was to be quantified. In such a case the court must first do its best to discover from the conduct of the spouses whether any inference can reasonably be drawn as to the probable common understanding about the amount of the share of the contributing spouse on which each must have acted in doing what each did, even though that understanding was never expressly stated by one spouse to the other or even consciously formulated in words by either of them independently. It is only if no such inference can be drawn that the Court is driven to apply as a rule, and not as an inference of fact, the maxim "equality is equity" and to hold that the beneficial interest belongs to the spouses in equal shares."

See: (1) *Redhead v Redhead* (OECS Law Reports) Volume 2, 311 (unreported)
(2) *Stoutt v Stoutt* [Civil Appeal No. 10 of 1994] [unreported] *British Virgin Islands*.

37. This case however presents another difficulty. From the evidence adduced, I was unable to find that the Claimant contributed directly or indirectly to the four-apartment complex which would entitle her to an interest therein. I find that the Defendant commenced construction of this complex in 1992 with his own private funds and with two loans. These loans were radiated in August 1997 and in August of the said year, his second wife and himself took another loan with the said National Commercial Bank of Saint Lucia (now The Bank of Saint Lucia). This loan is still subsisting.

38. But the Claimant is entitled to a half-share in the two-bedroom dwelling house which no longer exists and which was demolished to make way for the four-apartment complex. To begin with, she holds a half-share in the land on which the complex stands. The value of the land in 1994 was \$82,845.60 as shown in the report of Mr. Mitchelson Gibson, Building

Inspector. No valuation of either the two-bedroom dwelling house or the four-apartment complex was tendered in evidence.

39. In the case of *P.V.P.* [1978] 1 W.L.R. 483 at page 487, Ormond LJ, after analyzing Section 25 of the Matrimonial Causes Act [U.K.] had this to say:

"It is useful to ascertain these interests in a broad way so that one can see the justice of each side's case, but I would prefer to avoid quantifying or seeking to quantify these rights in terms of figures because the moment one quantifies them people begin to do arithmetic with the figures, and it is a well-known statistical fallacy that if you start with an estimate and you multiply it and divide it, you multiply and divide the error as well. So that I am not helped particularly by these valuations."

40. The only information that was available to the Court was that of Mr. Gibson done in 1994. And it was not a valuation report. How then should the Court, in the absence of any valuation figures exercise its discretion? I turn my attention to Section 25 of the Divorce Act 1973 to carry out the exercise required therein systemically and realistically, to ascertain those interests in a broad way so that one can see the justice of each side's case.

41. The parties were married on 22nd day of June 1970. The marriage was finally dissolved on 24th day of August 1996. The marriage lasted for twenty-six years although the Defendant left the marital home in St. Thomas in 1982 to live with another woman. He continued to maintain and support the household for at least two to three years after he left. He purchased groceries and paid the bills. But as I see it, the Claimant had to fend almost single-handedly for herself and her four minor children who were all still fairly young.

42. From all indications, the parties had nothing substantial when they got married. The Claimant worked as a housekeeper and at the same time, took care of her children. The Defendant was a taxi-driver and the operator of a bar. A few months after the Defendant left the marital home, he was able to purchase the land on which the present four-apartment complex stands. Two years thereafter, he constructed a two-bedroom dwelling

house. In my view, he could not have saved to purchase the land and construct the said house overnight.

43. He has now remarried and with his new wife, he has taken loans to construct the four-apartment complex. The Defendant took a loan of \$137,000.00 and subsequently took another loan of \$125,000.00 with his new wife to construct the four-apartment complex. These loans totaled \$262,000.00. The value of the land is estimated at \$82,845.60. There were further related costs in the construction of this property. Thus, if my mathematics is correct, the value of the four-apartment complex is no less than \$500,000.00.
44. On an analysis of the facts and the legal principles, I would therefore hold that the Claimant is entitled to a one-quarter share of the four-apartment complex or the equivalent thereof.
45. In respect of the items which are particularized in the Claimant's Statement of Claim, it is common nowadays for husbands and wives to decorate and to make improvements to the family home with no intention than to indulge in a popular hobby and to make the home pleasanter for their use and enjoyment. After all, she enjoyed the home when she vacationed in Saint Lucia. In my opinion, it is only in the bitterness engendered by the break-up of the marriage that so bizarre a notion to pay back would enter their heads. I therefore make no order in this respect.
46. In the result, my Order will be:
 - a. That the Claimant be and is hereby entitled to a one-quarter share of the four-apartment complex situate at New Development, Quarter of Soufriere or the equivalent thereof.
 - b. That a valuer to be mutually agreed upon by the parties be appointed to view and value the aforementioned property in order to determine the true value of the property.
 - c. That the costs of the valuation is to be borne equally by both parties.

- d. That the Defendant do pay to the Claimant's Costs of \$3,500.00 on or before 31st day of December 2002.

INDRA HARIPRASHAD-CHARLES
High Court Judge