

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SUIT NO.: 1066 of 1997

BETWEEN

LEON CHERRY

Claimant

and

BENOIT LERICHE

Defendant

Appearances

For the Claimant: Mr. K. Monplaisir QC with Ms. M. John

For the Defendant: Mr. R. Glasgow with Ms. S. Willie

2003: January 14, 15 and 16

JUDGMENT

Saunders J:

- (1) The parties to this matter are brothers. Leon Cherry, the claimant, is a self made man. By dint of hard work and ambition he worked his way up from cutting cane in Martinique and Guadeloupe to what appears to be a reasonable standard of living for himself in Canada where he became a citizen.
- (2) Benoit Leriche, the defendant, remained in St. Lucia all his life. He gave the court little credible evidence as to his sources of income and the extent of that income but from what he did say it seems as though he engaged in farming activity.
- (3) Mr. Cherry alleges that between the years 1979 to about the mid 1990s he entrusted his brother with the handling of his business affairs in St. Lucia. To this end, Mr. Cherry says that he sent his brother or gave him access to sums of money from time to time to purchase real estate and other property.

- (4) Two parcels of land, along with other property, were in fact purchased by Mr. Leriche. One piece of land, situate at LaBorne, was bought in 1979 from Henry Julian Greaves. The other piece was purchased from Ms. Altonato Richelieu in 1985. Both parcels of land are registered in Mr. Leriche's name only.
- (5) Mr. Leriche denies Mr. Cherry's claims to a share in either of these properties. He states that these parcels of land are owned solely by him. He insists that they were purchased with his own money.
- (6) Fundamentally, this case turns on issues of fact. Counsel did not disagree on the principles of the law of trusts which govern the case. The court really had to decide the following questions. Was Mr. Leriche his brother's agent? Whose money paid for the properties that were acquired? In the face of diametrically opposed allegations of fact, to which side does the objective evidence lean?
- (7) If the factual evidence supported Mr. Cherry's assertions that the properties were wholly or partially paid for with his, Mr. Cherry's money, then Mr. Leriche will be holding that property, or at least Mr. Cherry's share of the same, in trust for Mr. Cherry. On the contrary, if Mr. Cherry's claims could not be supported by the evidence, then his case must be dismissed.
- (8) I have little difficulty in finding for the claimant on almost all the disputed issues of fact. Mr. Cherry's case was carefully placed before the court and was amply supported by documentary exhibits and relevant oral testimony adduced from persons with nothing to gain one way or another from this action. A Power of Attorney was produced that was registered in March, 1983 whereby Mr. Cherry gave his brother wide powers to purchase property and to handle his business affairs in St. Lucia. A receipt from Ms. Altonato Richelieu was produced substantiating that Mr. Cherry had in fact entered into an agreement with her for the purchase of land at Mongiraud. A copy of a banker's cheque was produced evincing a payment by or on behalf of Mr. Cherry of approximately one half of the

purchase price of that land. A Mazda truck bought by the defendant was actually registered and insured in the name of the claimant. A bank book was produced showing substantial withdrawals from an account owned by Mr. Cherry around the time the Mazda truck was bought. The court also had documentary evidence showing the source of some of the funds Mr. Cherry alleges were used to help to pay for one of the parcels of land. In relation to the LaBorne land, a witness testified that he had done some work with a tractor on that land and that for this purpose he had been retained and was paid by Mr. Cherry. This witness also testified that he had carried out this work with the full knowledge of the defendant.

- (9) I could go on and on but suffice it to say that I was very impressed with the candour of the claimant, the manner in which his case was presented to the court and the array of supporting testimony that was marshalled in support of his allegations.

- (10) On the other hand, I found many aspects of Mr. Leriche's testimony to be incredible. He admitted a very close relationship with his brother and agreed that his brother stayed by him whenever the latter came to St. Lucia. He steadfastly maintained however that he never knew of the existence of a Power of Attorney made by Mr. Cherry in his favour. Yet, on the basis of this very Power of Attorney Mr. Leriche, in 1989, prosecuted an action in the High Court in Mr. Cherry's name. Mr. Leriche's testimony sharply contradicted the evidence of several witnesses who gave evidence for the claimant including Mr. Wendell Phillips, a reputable surveyor in St. Lucia, and Mr. Peter Leonce, who in 1997 was a Building Inspector employed with the National Commercial Bank. No attempt was made to explain why these two professionals would sully their reputations by giving patently false testimony to this court. Having exhibited a bank book of his that showed activity as far back as 1983, Mr. Leriche wanted me to accept that in 1985 he paid for the Mongiraud land partly with \$45,000.00 cash that he had stuffed into his pockets. This money, he said, had previously been placed under his mattress and distributed in other secret places at his home so as to thwart the evil intentions of

potential thieves. When asked to explain why he registered and insured in his brother's name a Mazda truck bought by him allegedly with his own money, Mr. Leriche's explanation was equally unconvincing. I was not at all impressed with Mr. Leriche's testimony. I do not accept him as a witness of truth and wherever his evidence conflicts with the testimony of the claimant I prefer to accept that of the latter.

(11) I believe that both the LaBorne and the Mongiraud lands were purchased by Mr. Leriche for and on behalf of himself and Mr. Cherry. I believe that the common intention was that Mr. Leriche would have operated a farm on the LaBorne land for the benefit of both brothers.

(12) In his closing submissions Mr. Monplaisir QC reminded the court of the words of Lord Diplock in *Gissing vs Gissing (1970) 2 A.E.R. 780 @ 790* when the learned Lord Justice stated that:

"...A resulting, implied or constructive trust – and it is unnecessary for present purposes to distinguish between these three classes of trust – is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

(13) Learned Counsel also reminded me of the words of Lord Denning in *Hussey v. Palmer (1972) 3 A.E.R. 744 @ 747*

".....The two ...[resulting and constructive trusts]... run together. By whatever name it is described, it is a trust imposed by law whenever justice and good conscience require it. It is a liberal process, founded on large principles of equity, to be applied in cases where the defendant cannot conscientiously keep the property for himself alone, but ought to allow another to have the property or a share of it. The trust may arise at the outset when the property is acquired, or later on, as the circumstances require.

It is an equitable remedy by which the court can enable an aggrieved party to obtain restitution...."

- (14) Counsel for the defendant took the view that there were no or no sufficient acts and circumstances proved by the claimant that were referable to him having a share in the lands acquired, especially the LaBorne lands. This submission becomes otiose once I choose to accept the claimant's testimony and disbelieve the defendant. I fully accept the direct evidence of the claimant that he sent monies to his brother to purchase the LaBorne lands. The witnesses called by the defendant to support his case did not contradict that evidence since none of them could give any evidence as to the source of the funds that were used for that purchase.
- (15) There is a further reason in law why it would be most unconscionable for the defendant to keep the Mongiraud lands for himself alone. Article 1606 of the Civil Code states
- "An agent employed to buya thing cannot be the buyer of it on his own account without full disclosure of the circumstances; and the onus of proving that there has been full disclosure is upon the agent."
- (16) Mr. Leriche admitted that when he purchased those lands he was told by the vendor that the vendor had previously had an agreement with the claimant for the purchase of the same lands. Mr. Leriche had by then been given a Power of Attorney by the claimant who was then in Canada. It seems to me that before rushing headlong into acquiring this property for himself, Mr. Leriche's obligation, upon being given this information by the vendor, was first to communicate with Mr. Cherry and so ensure that he was not acting in a manner that was in conflict with the wishes or actions of his principal.
- (17) In all the circumstances I hereby declare that the defendant holds the said properties situate at Mongiraud and LaBorne in the Quarter of Gros Islet, being Parcel No. 1254B 77 and Parcel 1652B 28, in trust for himself and the Claimant. I order that the said lands be partitioned and that the defendant do convey to the

claimant a one half share in each of the said properties. In default of the defendant conveying the same the Registrar of the Supreme Court is hereby authorised so to do. I further order that the defendant do pay the claimant's costs of this action which I fix at \$45,000.00.

Adrian D. Saunders
High Court Judge