

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2003/0146

BETWEEN:

SIMON FRANCIS

Claimant

and

IRENE SERIEUX

Defendant

Appearances:

Ms. Beverley Downes for the Claimant

Ms. Kate Wilson for the Defendant

2004: January 19, 27
February 02, April 29

COMMON LAW RELATIONSHIP...PRINCIPLES OF CONSTRUCTIVE TRUST
APPLIED...WHETHER CLAIMANT IS ENTITLED TO SHARE IN PROPERTY ACQUIRED
DURING RELATIONSHIP...WHETHER COMMON LAW RELATIONSHIP OR VISITING
RELATIONSHIP

JUDGMENT

Introduction

1. **HARIPRASHAD-CHARLES J:** Mr. Francis, a St. Lucian National has been living and working in the United Kingdom for many years. Since 1993, he has been separated from his wife and he was looking for a partner in St. Lucia to share the twilight days of his life. Ms. Serieux was also looking for a companion to share her life with. A mutual friend called May told Mr. Francis about Ms. Serieux and they began corresponding by letters from 1995. A few months later and sometime in 1996, he traveled to St. Lucia to meet her in person. She met him at the airport

and took him to her house at Patience. They became romantically involved and he stayed in St. Lucia for about 6 months before returning to the UK.

2. The relationship blossomed as the years went by. In the meantime, the parties pooled their resources for the benefit of their household. Mr. Francis assisted Ms. Serieux financially to repair and improve and to add a grocery and rum shop to her house. He also assisted her in starting up the business.
3. But like so many relationships, trouble started brewing. They eventually broke up in January 2002. Mr. Francis left the house taking away his personal effects with him. Shortly thereafter, he instituted these proceedings claiming a half-share of the property which was acquired during the period of his relationship with Ms. Serieux. Alternatively, he claims that Ms. Serieux holds a one-half share of the beneficial interest in the property on trust for him.

The evidence

4. At the trial, I heard evidence from both parties and their witnesses. Mr. Francis gave evidence and I had the opportunity of observing his demeanour. He impressed me as an honest and candid witness. He chose not to call any witness to testify on his behalf simply because he could not persuade anyone to come to court. He wanted to call Mr. Albert Samuel, the builder to testify on his behalf but Mr. Samuel wished not to be involved in a personal embroilment. The Court on its own accord, subpoenaed Mr. Samuel who confirmed that he constructed a concrete gutter and paved the yard and also constructed a 4 feet by 8 feet plywood extension to the shop. He was shown some receipts (claimant's exhibits) and he confirmed the authenticity of those receipts as evidencing the work he did and the monies he received from Mr. Francis.
5. Ms. Serieux gave oral testimony and called her daughter, Elizabeth James and her son-in-law, Johnny James to testify on her behalf. Ms. Serieux denied that Mr. Francis ever assisted her financially to repair, renovate or improve her house, or contribute to the extension of the shop or, for that matter, had any input in the shop at all. She alleged that her son, Walter who lives in the USA sent her money regularly and that she also worked for 6 months in England and

earned £1200.00 which Mr. Francis held and gave to her upon her leaving the UK. I pause to remark that the latter allegation that she worked in England was never pleaded in her defence.

6. At paragraph 7 of her witness statement, Ms. Serieux said:

"I had constructed a small grocery shop valued at \$8,000.00 and that was later extended to a larger shop which is currently valued at \$25,000.00. I operate that shop myself. The claimant had no input in my shop. It was funded solely by me. The first phase of the renovations on the shop was done by John Mathurin a.k.a. Cherry. Albert [sic] Samuel however was the one who did the later extension. I paid both Cherry and Albert from monies sent to me by my son, Walter [my emphasis].(See Exhibit IS1- receipt from John Mathurin dated 16th April 2003).

7. In her supplementary witness statement, she also stated (at paragraph 13):

"The claimant never constructed any concrete gutter. He only paved a small section of the front of the shop. He paid Albert Samuel \$300.00 and not \$3,000.00 for this. It is not true that he helped extend on my house. The claimant never spent any money renovating my home, grocery and rum shop in pursuance of a life together with me. The relationship with the claimant and I was only a visiting relationship, it was never intended to be permanent. The claimant never established a good relationship with my children and was never around long enough to make any concrete plans with me regarding any life together."

8. Under cross-examination, she simply denied any financial contributions from Mr. Francis. However, when questioned by the court, she changed her account and admitted that Mr. Francis added an extension to the shop. In her oral testimony, she stated that she had a visiting relationship with Mr. Francis and in the same breadth, she admitted that she was involved in a relationship "where we were hoping to have a life together."

9. I find Ms. Serieux to be an evasive and untruthful witness. There are material discrepancies within her own evidence. I am of the firm view that she consciously set out to counter what Mr. Francis said. For example, she alleged that "the claimant paid Mr. Samuel \$300.00 and not \$3,000.00" There was no justifiable basis for saying so. She had no documentary evidence to support her allegation. And in my respectful view, this was the trend of her defence. In fact, there are material discrepancies between her evidence and that of her witness, Mr. James. Under cross-examination, she stated that Mr. Francis met her with her house and small shop at Mon Repos. Under cross-examination, Mr. James said: "There was no old shop at Mon Repos."

10. Next to testify was Mrs. James. She flatly denied that Mr. Francis contributed to any repairs, renovation and improvements of her mother's house. All she knows is that her mother toiled tirelessly to build her house and the shop. However, under cross-examination, she stated:

"I was not present when my mother and Mr. Francis were in England. I don't know if Mr. Francis gave her any money to come to St. Lucia. I don't know if Mr. Francis paid Mr. Samuel to construct an extension to the shop. I don't know if he paid \$3,000.00 to the construction of the shop. I know as a fact that he did not give any money to my mother."

11. In my opinion, Mrs. James' evidence adds very little to her mother's testimony. Her evidence was self-serving and as such, I reject it in its entirety.

12. Mr. Johnny James was the final witness to be called by Ms. Serieux. He is her son-in-law and a police officer by profession. In my opinion, he was more candid and truthful than his wife. The gist of his testimony is that he assisted his brother, Mr. Antoine James with the extension of Ms. Serieux' house and she paid him \$40.00 per day. Whether or not Mr. Francis assisted financially to the improvements of the house is beyond his knowledge. When questioned, he admitted that Ms. Serieux lived in an old house at Patience and parts of it were renovated. He also stated that there was no old shop at Mon Repos because Ms. Serieux continued to sell her chicken by the roadside.

13. Reviewing the evidence as a whole, I have no hesitation in accepting the evidence of Mr. Francis. I base this conclusion on the demeanour of the witnesses; the fact that Mr. Francis' evidence was confirmed by the unchallenged evidence of Mr. Samuel and the documentary evidence which was tendered. On the basis of the evidence, I make the following relevant findings of fact.

Factual Findings

14. Ms. Serieux was living in an old and dilapidated house at Patience when Mr. Francis met her. Before he left for the UK, he assisted her financially to effect some repairs to one side of her house. He purchased 8 sheets of plywood. Some time after his return to the UK, Ms. Serieux informed him that she had been given notice to leave the land at Patience and as a result, she had broken the house and rebuilt it on a spot at Mon Repos which she rented from Mr. Wills.

15. The parties maintained regular contact with each other. In 1997, Mr. Francis sent an air ticket for Ms. Serieux to visit him in the UK. She travelled to the UK and spent 6 months with him. Before her departure to St. Lucia, he gave her £1200.00 to construct a kitchen. Her son-in-law and his brother, Antoine James built the kitchen. Mr. Francis was not in St. Lucia when the kitchen was constructed. However, after its construction, Ms. Serieux telephoned him stating that she would have to withdraw monies from her savings to install the kitchen sink. He told her not to do so. He subsequently sent her £400.00 to cover the cost of doing so.
16. Later that same year, Mr. Francis returned to St. Lucia and stayed with Ms. Serieux at the relocated house at Mon Repos. Thereafter, Mr. Francis made annual visits to St. Lucia and stayed with Ms. Serieux for varying periods extending to 6 months. In 1999, he returned to St. Lucia. This time he decided to build a shop. He purchased the materials. He paid Mr. John Mathurin, a builder the sum of \$3,000.00 to construct a 10 feet by 9 feet shop.
17. He purchased the initial stock for the shop. He purchased soft drinks, beer, rum, sugar and other groceries for the shop. He even brought candies and other items from England to sell in the shop. Ms. Serieux could not assist much financially as she was selling food by the Castries market and earning a paltry sum of approximately \$150.00 weekly; enough to maintain herself.
18. In 2000, Mr. Francis engaged the services of Mr. Samuel to construct a concrete gutter and to pave the yard. He purchased all the materials and paid Mr. Samuel \$3,000.00 for his labour. In 2001, he again sought the services of Mr. Samuel to construct a 4 feet by 8 feet plywood extension to the shop. He again purchased all the materials and paid him \$2,000.00 for his labour. Subsequently, he purchased a hi-fi set for \$500.00 for the shop which was allegedly stolen.
19. Following the break up in January 2002, Mr. Francis left the house taking with him his personal belongings. Ms. Serieux continues to run the shop and earn an income. She has valued the net worth of the shop at \$25,000.00.

20. Ms. Wilson appearing as Counsel for Ms. Serieux submitted that Ms. Serieux was able to acquire her house and shop by dint of hard work and also from moneys given to her by her son. However, no receipts from Western Union were produced to confirm that Ms. Serieux was indeed receiving moneys from the USA. She was also unable to produce a bank account to demonstrate her net worth at the bank prior to 2002.

21. Ms. Wilson fought hard to classify the parties' relationship as a visiting relationship as opposed to a common law relationship. She submitted that Mr. Francis came to St. Lucia in order to accommodate his divorce. Ms. Downes submitted that both Ms. Serieux and Mr. James recognized the relationship as a common-law relationship.

22. In her own words, Ms. Serieux' stated:

"We were involved in a relationship where we were hoping to have a life together. We started corresponding and he came down to St. Lucia to spend time with me."

23. Her son-in-law was even more direct. When questioned by the court, he said: "I knew them to be involved in a relationship –husband and wife relationship."

24. Both Ms. Downes and Ms. Wilson agreed that this is a simple case which turns on facts –who is to be believed? On a balance of probabilities, I prefer the evidence adduced by Mr. Francis. It was more credible and reliable and was supported by contemporaneous documentary evidence. I found Ms. Serieux and her daughter to be untruthful witnesses. As a consequence, I rejected their evidence. The exhibits which she produced were realistically unhelpful.

Conclusion

25. For the reasons given, I declare that the claimant, Mr. Francis is entitled to a half-share of the following:

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| (a) | The Value of the grocery and rum valued at \$25,000.00 | \$12,500.00 |
| (b) | Value of the kitchen and improvements to the house and its Surrounding valued at \$7,500.00 | \$ 3,750.00 |

26. There will be No Order as to Costs.

Indra Hariprashad-Charles
High Court Judge