

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SAINT LUCIA

CLAIM NO. SLUHCV 2003/0871

BETWEEN:

FELICITA THOMAS

Claimant

and

HENRIETTA TAYLIAM

Defendant

Appearances :

Ms. L. Verneuil with Ms. M. Juliana Charles for Claimant
Mr. R. Frederick for Defendant

2005: January 12;
February 21;
March 4;
2007: March 23.

JUDGMENT

INTRODUCTION

[1] **EDWARDS, J.:** The ownership of a concrete house, consisting of 1 bedroom, sitting room, kitchen, bathroom with toilet and balcony, is at the center of this dispute between aunt and niece. This house is on Crown land at Aux Leon in the Quarter of Dennery.

BACKGROUND FACTS

- [2] The Claimant Ms. Felicita Thomas is the aunt. Her case is that in 1997 she built this house for her old mother to live in while she was alive; and that upon her death, the house should revert to her. She is relying on a Statutory Declaration purportedly made by her deceased mother more than 3 years prior to her death, confirming her version of the events. The Statutory Declaration was made on the 10th July 2000 before Justice of the Peace Mr. Harrison Augustin Smith, by the deceased Marie Georgiana Flavius. The deceased died on the 27th August 2003 at the age of 90 years.
- [3] The Defendant Ms. Henrietta Tayliam is the niece. She is relying on a Will allegedly made by the deceased who was her grandmother, on the 31st December 1999. In this Will the Defendant is named as the sole Executrix and sole beneficiary.

THE PLEADINGS

- [4] By a Fixed Date Claim filed on the 1st November 2003, Ms. Thomas is seeking:
- (1) A Declaration that the concrete building situate at Aux Lyon in the Quarter of Dennery was held on Trust for the Claimant by the Deceased absolutely.
 - (2) A Declaration that the Claimant is the Absolute Owner of the concrete building situate at Aux Lyon in the Quarter of Dennery and is entitled to possession of the said building.
 - (3) A Declaration that the Defendant delivers and give to the Claimant the keys to the said concrete building.
 - (4) Damages
 - (5) Interests
 - (6) Costs

(7) Further and Other Relief

- [5] By the Defence filed on the 22nd December 2003 Ms. Tayliam has challenged the authenticity of the Statutory Declaration, she contends that the Statutory Declaration cannot vitiate a valid will duly executed before 2 notaries. She has pleaded that the Claimant and her deceased mother were bitter enemies and had not been on speaking terms since April 1999 to December 2002. She contends that she is not a Trespasser as alleged by the Claimant, since she is entitled to possession and occupation of the house under the Will of her deceased grandmother. She has requested the Court to dismiss the Claim of Ms. Thomas and award her (the Defendant) Costs.

THE EVIDENCE

- [6] Ms. Thomas has testified and adduced evidence from 5 Witnesses to support her claim. There are several discrepancies in the testimony of these Witnesses concerning the details about the construction of the house, the time when the bathroom was added to the house, the cost, the time when the house was completed, what became of the deceased's dilapidated wooden house at the site when the construction of the new concrete house began, and where the deceased stayed when the house was being built.
- [7] But for the Justice of the Peace Mr. Smith who the deceased confided in, when she made the Statutory Declaration which he signed, all of the Witnesses for the parties are related.
- [8] Ms. Tayliam adduced evidence from her sister Ms. Angella Lawrence, and her uncle Mr. Cyrus Tayliam in support of her Defence. Again there are discrepancies in their evidence concerning the making of the deceased's Will, the Claimant's contributions to her mother, and the financial viability of the deceased during her lifetime. They testified that the deceased had begun converting her dilapidated

wooden house into a wall house on her own over the years while the Claimant was living in England. They contend that after the Claimant had built her house at Despin, and had returned to St. Lucia to live, the deceased had requested that she assist her in finishing the house. They allege that it was then that the Claimant took over and completed the house with funds the deceased had given her.

- [9] They have made out the Claimant to be a greedy, selfish, calculating and unkind person, who neglected her mother over the years. They claim that she had quarrelled with the deceased because she had a close relationship with the Defendant, and had given jewelry to the Defendant, and that she constantly harassed the deceased, after learning about the deceased's Will. They described the deceased as a hardworking labourer, gardener and housewife prior to her old age, who was self sufficient and loving to her grandchildren.
- [10] They testified about the close relationship that they had with the deceased over the years, from their childhood. The deceased whom they had lived with, had subsequently raised 2 children for Ms. Lawrence, and 2 children for Ms. Tayliam while these Witnesses were living and working in Martinique. During this time they contributed money and groceries to the deceased. Ms. Lawrence did not stay in Martinique for long, and upon her return to St. Lucia she continued to have a close relationship with the deceased.
- [11] Ms. Tayliam frequently traveled from Martinique to St. Lucia with goods to sell, and up to the time of the deceased's death, she was living in the same yard near the deceased's house, in another structure they referred to as being formerly the deceased's kitchen. Ms. Tayliam testified that she had originally built this kitchen for the deceased because she had been cooking in a dirt-floor hut with a roof but no sides. Ms. Thomas testified that it was the deceased who had converted this kitchen into a wall kitchen, and added a room to this kitchen where the Defendant lived.

- [12] Ms. Thomas testified that she did not know if at 80+ years old in 1992, the deceased had built the room and kitchen for the Defendant to live. She denied that the deceased had asked Defendant to come and live there. She said the Defendant had come there to live at her own will.
- [13] The Defence witnesses testified that Ms. Lawrence gave up her job to take full time care of the deceased from the 23rd December 1999 because she was very sick and had difficulty moving. Ms. Lawrence testified about how the deceased came to make the Will. She said that the Defendant told her that the deceased had said that because she was taking good care of her she would make a Will for her. She described how the deceased walked down the rocky hill to the transport which took them to Castries on the date that the Will was made.
- [14] Though the Defendant testified that she was not present when the Will was made, her sister Ms. Lawrence contradicted her evidence. Ms. Lawrence testified that the Defendant was present and remained with the lawyer when the deceased was giving the lawyer instructions for the Will. Though other documentary exhibits in the case, including the deceased's identification card, disclose that she used the name Marie Georgiana Flavius only, her Will had all the names she was known by, and she signed it in the name Georgiana Tayliam.
- [15] Ms. Lawrence was the only witness who testified that the deceased could read and write her own letters. All of the other witnesses related to the deceased, testified that she could not read and write, but she could sign her name. One witness testified about how secretive the deceased was, and how she would ask persons other than her relatives to write letters for her.
- [16] The circumstances surrounding the making of the Statutory Declaration was described only by the Justice of the Peace Mr. Smith. He testified that she visited him about 3 times prior to the signing of the Declaration. He said that though she was accompanied by someone, she discussed the details of her business

concerning the making of the house and what she wanted only in his presence. He said on one of those visits he wrote out the Statutory Declaration in his own handwriting according to what she told him, and then he gave it to her and she left. She subsequently returned on another visit with the Declaration typed out. He said he read it back to her and she agreed and she said that was what she wanted.

The Statutory Declaration is in the name "**Marie Georgiana Flavius also called Georgiana Tayliam.**" It was executed in the name "**Marie Georgiana Flavius**" only with "**her mark.**" Mr. Smith testified that the deceased was frail, her hands were trembling and shaking, and she told him she cannot sign her name. He said he asked her name, she told him, he wrote it and put a cross between her name because she could not sign. When he was finished he returned the Statutory Declaration to her, and she left.

- [17] The Defendant and her sister Ms. Lawrence, have denied that the deceased could have gone to Mr. Smith to make this Statutory Declaration on the 10th July 2000, because according to them, she was sick, and trembling and confined to bed, and Ms. Lawrence was always with her, looking after her needs from the 23rd December 1999.
- [18] The Claimant deposed in her Witness Statement that she did not know that the deceased had made the Statutory Declaration. She said that the deceased came to her home in Despin, pulled the Statutory Declaration out of her bag and handed it to her, telling her: "**look, do not tell anybody not even your husband.**" Ms. Thomas also testified that she did not know that the deceased had made a Will prior to the deceased's death.
- [19] The Claimant described the deceased in 2000 as not sick but frail. All of the Witnesses agree that from around 1999 the deceased was frail and shaking.

- [20] According to the evidence of Ms. Thomas and her sister Ms. Magdalene Tayliam, Ms Thomas regularly and continuously contributed money, groceries, and clothing among other things to her mother the deceased, while Ms. Thomas was living in England. When she returned to St. Lucia, she continued maintaining the deceased, visited her, took her to spend time at her house and cared for her up until the time of her death.
- [21] There were several unpleasant incidents that the Defendant and her witnesses said had occurred between the Claimant and the deceased. Ms. Thomas and her witnesses have denied these allegations.
- [22] Upon the death of the deceased, the Defendant paid for the casket while the Claimant took care of the other funeral expenses. The Defendant testified that she was told by the lawyer that she should stand the funeral expenses. The Claimant and her sister testified that Defendant said she wanted to pay for the casket as a gift, because her deceased grandmother had been so good to her.
- [23] There are other salient aspects of the evidence that are not reflected in this judgment. Suffice it to say, that I have considered all of the evidence contained in the Witness Statements and Cross Examination of Felicita Thomas, Joseph Tayliam, Magdalena Tayliam, Marcella Tayliam, Ancio Tayliam, Henrietta Tayliam, Angella Lawrence and Cyrus Tayliam. I have also considered the submissions of Counsel concerning this evidence.

FINDINGS OF FACT

- [24] From the evidence in its totality, I make the following findings of fact –
- (1) The Claimant contributed substantially to the maintenance and welfare of the deceased throughout the Claimant's adult life from the

time the Claimant migrated to England, up until the Claimant returned home to St. Lucia, and thereafter until the deceased died.

- (2) Throughout this period the Claimant and the deceased had a very good and loving relationship.
- (3) Though the Defendant and the deceased also had a close relationship, and the Defendant also contributed money and groceries to the deceased, this was not for the welfare and maintenance of the deceased, but for the Defendant's 2 minor children who she had left in the care and custody of the deceased.
- (4) Though the deceased was a hardworking woman, apart from minimal savings which she may have had from "**Society Contributions**", she did not have a Bank Account as stated by the Defendant. Had there been any such account, the Defendant as Executrix or Ms. Lawrence would have been able to provide documentary evidence of it.
- (5) The deceased was therefore not in a position to construct the concrete house in question from her own funds, or from financial contributions coming from Mr. Cyrus Tayliam or the Defendant.
- (6) Despite the discrepancies in their testimony, I accept the evidence of Claimant and her Witnesses Mr. Joseph Tayliam, Mr. Ancio Tayliam and Marcello Tayliam concerning their involvement in the construction of the said concrete house financed by the Claimant. I find that in 1997/98 it was the Claimant who with her own money constructed the house for her old deceased mother to live in comfortably until her death, after the deceased's house which was a board structure, had been torn down.

(7) Though the Will of the deceased was made by her in the presence of the Defendant, there is no evidence to prove that the Defendant abused the relationship between her and the deceased, or procured the deceased to make the Will in her favour, or that the Will was obtained by coercion. The evidence discloses that the deceased may have been led to make the Will, leaving all her possessions to the Defendant, so as to please the Defendant and not because she was driven to do so. The Will is therefore valid.

(8) The Statutory Declaration was voluntarily made by the deceased in the manner described by Mr. Smith so as to make it clear to the Defendant and other relatives who were warring with the Claimant, that the house belonged to the Claimant. After the deceased had made the Will, it is probable that because of what the Defendant and her witnesses were saying concerning the Will that the deceased in her wisdom, decided to indicate by this Statutory Declaration, that the house built by the Claimant for her to live in, was excluded from the dispositions under her Will.

(9) The deceased at the date of making the Will did not specifically describe the property that she wished to pass to the Defendant. The description of the property she wished to dispose of was in general terms. The relevant dispositions were stated as follows:

"4. I give devise and bequeath to my grand-daughter HENRIETTA TAYLIAM all my rights title and interest in the immovable property situate at Aux Leon in the quarter of Dennerly.

5. I give devise and bequeath to my said grand-daughter HENRIETTA TAYLIAM all monies that I have in any Bank or Banks at the date of my death.

6. I give devise and bequeath to my grand-daughter HENRIETTA TAYLIAM all the remainder of my property moveable and immovable real and personal wherever situate and whatever the same may amount thereby constituting her my universal legatee and devisee."

(10) The evidence disclosed that the deceased probably had an interest in the kitchen and one room structure that the Defendant was living in at the date of the deceased's death. The deceased also probably had an interest in family lands mentioned by the Defendant and her witnesses. The deceased probably had also her personal property in the house where she was living up to the time of her death. In these circumstances, the deceased probably had property at the time of her death that would qualify as that described under her Will, apart from the house in question which she specifically excluded by her subsequent Statutory Declaration.

[25] The submissions of Counsel for the parties, on the law that must be applied to the facts. I have found, raises the following issues for my determination –

- A. Whether or not the house was held on trust by the deceased for the Claimant, or was it an outright inter vivos gift from the Claimant to the deceased that cannot be recovered by the Claimant?

- B. Whether the Statutory Declaration can validly exclude a disposition under the Will of the deceased.

SUBMISSIONS OF COUNSEL

- [26] Learned Counsel Mr. Frederick submitted that the Claimant had failed to prove that the contributions she made to building the house were not an inter vivos outright gift to her mother, or that there was a common intention between her and her deceased mother that she should have a beneficial interest in the house. He argued that equity will not assist a volunteer, and a presumption of advancement should be inferred in a relationship as existed between the Claimant and the deceased. He referred to Article 136 of the Civil Code of St. Lucia Cap. 242. It states that **“children are bound to maintain their father, mother and other ascendants who are in want.”** Mr. Frederick argued that in light of the Claimant’s obligation to maintain her mother, the presumption of advancement arises. He contended that a Statutory Declaration is not the manner in which a Will is revoked and it cannot be interpreted as being a Codicil to the Will.
- [27] Mr. Frederick relied on the following authorities to advance his argument: Green v Green Privy Council Appeal No. 4 of 2002; Grant v Edwards [1986] Ch. 638; Hanbury & Martin on Trust 15th ed. pages 112, 246, 247.
- [28] In Green v Green (supra) Lord Hope in his Judgment at paragraph 12 discussed the ingredients necessary to establish a constructive trust, where a plaintiff is claiming that she has a beneficial interest in property for which the defendant only has a title, and there is no direct evidence of any agreement that the plaintiff was to have a beneficial interest in it. In that situation the plaintiff has to establish **“a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she could do that equity would not allow the defendant to deny that interest and would construct a trust to give effect to it.”**
- [29] It was made clear in Grant v Edwards (supra) that two matters need to be demonstrated to establish a constructive trust. At pages 654C-655G, Sir Nicholas

Browne-Wilkinson V.C. stated the first, that it must be shown that there was a common intention that both parties should have a beneficial interest in the property; and the second is that it must be shown that the Claimant has acted to his or her detriment on the basis of that common intention.

- [30] In Hanbury supra at pages 112-113, it is pointed out that: a trust may be constituted where a person who is owner of property at law and in equity declares that he holds the property on trust for another person. At page 246 it is stated that “The presumption of advancement . . . arises where certain relationships exist, where the donor or purchaser is under an obligation recognized in equity, to support or provide for the transferee . . . like the presumption of resulting trust, it is rebuttable by evidence that the donor intended to keep the beneficial interest for himself.” At page 247, it is stated that: “The presumption can be rebutted by evidence which tends to show that no gift was intended.”
- [31] Learned Counsel Ms. Verneuil countered these arguments of Mr. Frederick, by referring to Articles 817 and 828 of the Civil Code; Keeton & Sheridan’s Law of Trust, 12th ed by L.A. Sheridan (1993) pages 3, 189, 190, Winkworth v Edward Baron Development Co. Ltd [1987] 1 All E.R. 118; and Lloyds Bank Plc v Rosset and Another [1990] 1 All E.R. 1111 at page 1119 b.
- [32] Article 817 of the Civil Code states that “The bequest of a thing which does not belong to the testator, whether he was aware or not of another’s right to it, is void even when the thing belongs to the heirs or legatees charged with payment of it ...”
- [33] Article 828 states – “Wills and legacies cannot be revoked by the testator except:

1. By means of a subsequent will revoking them either expressly or by the nature of his dispositions;
2. By means of a Notarial or other written act by which a change of intention is expressly stated . . ."

[34] In Keeton & Sheridans Law of Trust (supra) the following definitions of a trust and applicable principles are stated:

“. . . A trust is a relationship which arises whenever a person (called the trustee) is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title for the benefit of some persons (of whom he may be one and are termed beneficiaries) or some object permitted by law, in such a way that the real benefit of the property accrues not to the trustees, but to the beneficiaries or other objects of the trust . . . As well as being expressly, a trust maybe imposed by operation of law either to give effect to the intention of the parties to a transaction (implied or resulting trust) or to correct the enrichment of one person, who has acquired the property unjustly, in favour of another person who ought, in equity, to have the property (constructive trust): [at page 3] . . . The function of the Court in enforcing implied and resulting trusts is to carry out the actual or presumed intention of the parties, whereas a constructive trust is imposed on parties irrespective of their intentions and sometimes in opposition to their intentions: [at page 189] . . . In recognizing whether there is a trust or not: there are trusts arising by the act of parties, either expressly creating a trust or so acting that their intentions can be only affected by an implied trust, and trust imposed by the operation of law (constructive trusts) to correct what parties have done when that is inequitable. If a trust which is not expressed has been held to exist, it does not seem to

matter whether it is implied, constructive or resulting; or, therefore, what it is called.”

- [35] Ms. Verneuil has reminded the Court that “. . . **Equity is not a computer. Equity operates on conscience but is not influenced by sentimentality**”: (Per Lord Templeton in Winkworth supra at page 118 b).
- [36] Counsel Ms. Verneuil submitted that the Claimant built the house solely, and the intentions of the Claimant as she testified, was that her mother would live in the house comfortably until her death. There was also a common intention between the Claimant and the deceased, she argued, since the deceased had expressed her intention to the Justice of the Peace Mr. Smith before her death which was subsequently committed to writing in the form of the Statutory Declaration.
- [37] Ms. Verneuil argued, that in such circumstances the Claimant's actions ought not to be interpreted as an advancement to her mother, and Article 136 of the Civil Code which relates to obligations arising out of marriage would be irrelevant. There is no room, she argued, for the presumption of advancement to operate in light of the clear evidence.
- [38] Moreover, she submitted, by spending her money to buy materials and pay workers, the Claimant had in fact acted to her detriment. This, coupled with the intention of the parties justifies the inference necessary to create a constructive trust.
- [39] As for the argument of Counsel Mr. Frederick concerning the Statutory Declaration not being a Codicil that can revoke a valid Will, Ms. Verneuil relied on Article 828 (2) of the Civil Code. She submitted that the Court ought to apply this provision which defeats Mr. Frederick's contention. It states that the Will of the deceased can be revoked by “**other written act**” by which a change of intention is expressly stated, and the Statutory Declaration qualifies as that “**other written act.**”

[40] Article 718 of the Civil Code states that "It is essential to gifts intended to take effect *inter vivos* that the donor should actually divest himself of his ownership in the thing given.

The donor may reserve to himself the usufruct or precarious possession, or he may pass the usufruct to one person . . . provided he completely divests himself of his ownership."

CONCLUSIONS

[41] In my opinion, the evidence establishes on a balance of probability that the Will of the deceased was not revoked by the Statutory Declaration since there was never any intention by the deceased to dispose of the house in question under her Will by devising it to the Defendant. The Statutory Declaration discloses that the deceased did not regard the house as belonging to her. Since she had no intention to do this, the Statutory Declaration cannot be regarded as "a **change of intention under Article 828 (2) of the Civil Code.**"

[42] I accept the other submissions of Counsel Ms. Verneuil and I hold that a trust did exist between the Claimant and the deceased in respect of the house. In my view the Claimant made no verbal agreement with the deceased to build the house for her as an *inter vivos* gift.

[43] The Claimant and the deceased in her lifetime, intended that the deceased would have only the usufruct of the house and that upon her death the real benefit of the house would accrue to the Claimant.

[44] The intention of the Claimant and deceased is reflected in the Statutory Declaration of the deceased and the Court should carry out the actual intention of the Claimant and the deceased.

- [45] I hold the view that the Claimant should succeed in her Claim against the Defendant.
- [46] The Court therefore grants the Declarations claimed at paragraphs 1 to 3 of the Statement of Claim, and sets this matter down for a Report on the 29th March 2007 as to who has had possession of the house since the filing of the Claim.
- [47] On the 29th March 2007 the Court will make a Final Order which will include Prescribed Costs.

Dated this 12th day of March 2007

OLA MAE EDWARDS
HIGH COURT JUDGE