

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

CLAIM NO: ANUHCV 2004/0247

BETWEEN:

FOSTER CRUMP
KETURAH CHARLES

Claimants

And

LYNETH FRANK

Defendant

Appearances:

Mr. John Fuller for the Claimants
Ms. Samantha Marshall for the Defendant

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2007: May 22 July 30
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RULING

[1] **Thomas J:** By fixed date claim filed on 30th June 2004, the Claimants claim against the Defendants:

1. A declaration that the Claimants are beneficially entitled to an interest in the house situate in Codrington Barbuda and forming part of the estate of the mother of all the parties, Italas James.
2. An order that the Defendant to be prevented from denying us the Claimants, access to the said house.
3. An order that the Claimants and the Defendant are equally entitled to possession of the said house.
4. Costs.

[2] In their affidavit in support filed on 30th June 2004 the Claimants depose, in part, as follows:

- "3. We along with the Defendant and Kenford Frank are the lawful children of Italas James (deceased) who last resided at 1050 Wheeler Ave, Apt 2V, Bronx NY, 10472 and who died on the 5th day of October 1995 in New York in the United States of America. True Copies of the birth certificates of we, the Claimants, are attached hereto and marked "FC1" and "FC2" respectively. A true copy of the death certificate of Italas James is attached hereto and marked "FC3".
4. We, the Claimants, the defendant and Kenford Frank are entitled to equal shares in the estate of Italas James.
5. The said Italas James was a national of Antigua and Barbuda.
6. Prior to her death, Italas James, owned a wooden house with a concrete foundation in Codrington, Barbuda.
7. No one has applied for letters of administration in the estate of the said Italas James.
8. The Defendant has sought to utilize and renovate the said wooden house to the exclusion of us, the Claimants and our brother, Kenford Frank, and has denied access to the Claimants, saying that she did not want anyone staying at the said house.
9. In the premises, we ask that the Court grant an injunction for the Defendant to be prevented from denying us, the Claimants, access to the house of our dear departed mother, Italas James and pray this Honourable Court will grant the order as prayed."

[3] The Defendant in her affidavit in response filed on 18th.February 2005 deposes as follows:

- "1. That I am the Defendant herein and I have read the Claim Form and Supporting Affidavit of the Claimants herein and I make this Affidavit in response to the Claim and the statements of the Claimants as made in the aforesaid Affidavit herein.
2. That I am the daughter of Italas James and the sister of the Claimants Foster Crump and Kethurah Charles. We also have another sibling being Kenford Frank, whom is not a party to this suit.
3. That the property to which the Claimants are seeking a declaration of the Court as to having an interest in the said property was property first owned and/or occupied by our grandmother, Kethurah James.
4. That it was on that same property that our mother Italas James and her 2 other siblings grew up. However, of the 3 children for my grandmother only my Aunt Georgiana James is alive to date.
5. That our mother had lived on the said property for all of her life up until sometime in or about the late eighties early nineties when our mother moved to the United States of America until her death in October, 1995.

6. That during the time that my mother had resided in Barbuda on the property aforesaid I had always assisted her financially not only to care for herself but also to assist in repairing and/or renovating the said house.
7. That initially the house was a wooden chattel house and in time the house began to deteriorate. It was I, without any assistance whether financial or otherwise, from the Claimants herein who paid for the materials and labour necessary to construct in concrete to the said house a kitchen, a bathroom and another bedroom. Hence making the house a 2 bedroom house.
8. That whilst our mother was alive and residing in the house I would send all monies necessary to do the relevant repairs or renovation works direct to her, but I would ask a family friend, one Mr. Constance Charles, also of Barbuda, to hire and supervise the builder to carry out the necessary works.
9. That again as time passed the house became in need of serious repair in particular the wooden part of the house and it was costing me more to keep repairing the house, hence I demolished the wooden structure of the house in stages and began to rebuild it with concrete. As done on all other occasions I sent the money with instructions for her to give Mr. Charles the sums he required to have the necessary building/repair works done.
10. That after our mother died in October, 1995 and I sometime thereafter had the whole structure of the said house demolished. This was as a result of the fact that the house had not stood up well under several Hurricanes and also through no lack of maintenance during my mother absence had badly deteriorated.
11. That on the same property I rebuilt a completely new and larger concrete structure with 2 bedrooms and 1 bathroom and a verandah.
12. That to rebuild this structure I requested the services of Andre Chapiteau to design and construct the roof of the said house as well as to do major renovation work so as to keep the unique design and Mr. Chapiteau with Mr. Len Beazer did the construction of the building itself.
13. That I do have some receipts for materials I purchased, labour paid for, utilities paid for, monies sent to cover these expenses all paid for by me. Some of the copies of these receipts are now produced and shown to me and I exhibit them hereto as a bundle marked "LF1".
14. That I estimate that I have spent approximately \$150,000.00 - \$200,000.00 on the said house without any financial assistance of the Claimants."
15. That in the circumstances I seek a declaration of this Honourable Court that the Claimants are not beneficially entitled nor otherwise entitled to any interest in the said House situate at Codrington Barbuda which is the subject matter of this suit. I further seek an Order of the Court that the Claimants be restrained whether by themselves, their servants and or agents from access to the said House. Further I seek that this Honourable Court declared me as the sole person entitled to any interest whatsoever within the said house.
16. That I am advised by Counsel and do verily believe that if successful the Court may award Cost to me pursuant to the Civil Procedure Act 2000 and I pray that if successful this Court award me the relevant costs in this matter."

ISSUE AND EVIDENCE

[4] The parties to these proceedings are siblings being the children of Italas James, deceased.

[5] The narrow issue revolves around land situate in Barbuda in respect of which the Claimants are seeking a certain declaration and other reliefs as a result of what they contend is the action of the Defendant in preventing them from having access to house rebuilt on the said land.

[6] For her part the Defendant puts the land in historical context when she deposes at paragraph 3 of her affidavit thus:

“That the property to which the Claimants are seeking a declaration of the Court as to having an interest in the said property was first owned and/or occupied by our grand mother, Kethurah James.”

[7] At paragraphs 10 to 14 of her said affidavit the Defendant outlines the circumstances in which the house was rebuilt and what was spent by her in the process. For these reasons a declaration is sought that the Claimants are not beneficially entitled nor otherwise entitled to any interest in the said house situate at Codrington, Barbuda, which is the subject matter of this suit. Also sought by the Defendant is a restraining order against the Claimant in terms of access to the house.

[8] It is common ground that the house in issue is a fixture and by dint of that fact the law relating to land tenure in Barbuda comes into sharp focus. The relevant law is the BARBUDA ACT, CAP. 42 (“the Act”).

THE BARBUDA ACT

[9] In the Act sections 4 and 5 (1) to (3) are of immediate relevance and prescribe as follows:

“4. All lands within the Island of Barbuda are hereby vested in the Governor-General on behalf of the crown and shall be dealt with in accordance with the provisions of this Act.

5(1) All persons inhabiting the Island of Barbuda shall be and are hereby declared to be tenants of the Crown; and as such persons shall neither hold nor deal with any land situate within the said island save and except as hereinafter appears by the provisions of this Act and subject to any by-law made by the Council on that behalf.

- (2) Nothing in this section shall be construed as precluding the grant by the Crown of any interest in or over any piece or parcel of land within Barbuda to any person is an inhabitant of Barbuda .
- (3) Notwithstanding the provisions of any other law, no person shall acquire ownership of any piece or parcel of Crown land within Barbuda by prescription”.

[10] For present purposes the following rules can be derived from the foregoing:

1. All lands in Barbuda are owned by the Crown. Put otherwise the only owner of land in Barbuda is the Crown unless a person is granted an interest in such land.
2. The inhabitants of Barbuda are tenants of the Crown.
3. Such tenants of the Crown cannot hold or deal in land in Barbuda except in accordance with the provisions of the Act.
4. The Crown may however grant an interest in land in Barbuda.

[11] Section 3 of the **BARBUDA LOCAL GOVERNMENT ACT, CAP. 44** established a Council for Barbuda (called “the Council”). In turn the Council, in relation to land in Barbuda is given certain specific powers by section 6 of the **BARBUDA ACT**. This section provides that:

- “6. It shall be lawful for the Council, with the sanction and approval of the Cabinet, to allot, distribute and divide all land within the village amongst villagers subject to the following conditions –
- (a) The lands shall be laid out in allotments of such dimensions and areas as the Council shall direct.
 - (b) Every such allotment shall be used exclusively by the allottee thereof for the purpose of erecting and maintaining a house or hut thereon as a place of residence”

[12] In the face of the evidence and these provisions of the Act learned counsel for the Claimants has made the following submissions:

- “1. The Claimants rely on section 5 (1) of the Barbuda Act which provides that all persons inhabiting Barbuda are tenants of the Crown. As such the Claimants submit that the Defendant has no lawful authority to deal with the property in any manner indicating that she is the sole owner of the property.
2. The Claimants further contend that the Defendant has no greater right to the use of the property than the Claimants and as such the Defendant cannot lawfully deny the Claimants access to and use of the said property.
3. The Claimants further contend that in any event under cross-examination the Defendant admitted that:

- she is not the sole owner of the property,
 - she has no problem with her siblings staying at the house when they visit,
 - that she had not made any arrangement/agreement with her siblings to undertake repairs to the house,
 - she would not have a problem if the locks were all changed and each sibling will have a key to the property.
5. The claimants finally contend that in light of section 5(1) of The Barbuda Act the 'interest' referred to in item 1 of the Fixed Date Claim Form be properly construed as a reference to the Crown Tenancy, which is the highest possible interest that can be held in the said property.
 6. The Claimants submits that the Court Order that the Claimants and Defendant are equally entitled to possession of the property and that the Defendant be restrained from denying the Claimants access to the property."

CONCLUSION

[13] While the Claimants recognize and address the provisions of the Act, especially section 5, their submissions go beyond the vires of the statute by introducing the notion of equal tenants of the Crown. This is said because the Court interprets land tenure in Barbuda to be entirely statutory. This is made clear by section 2 of the Act which says:

"All Acts of Antigua and Barbuda, together with all rules, regulations, by-laws and other instruments thereunder made shall, with respect to the Island of Barbuda, be repealed in so far, but so far only, as the provisions of the same are repugnant to the provisions of this Act and any by-laws or other instruments made thereunder or any Act amending the same in the same manner as if such Acts, rules, regulations, by-laws and other instruments had been specifically and particularly mentioned and set forth."

[14] In view of section 6 of the Act the Court has interpreted the position of the deceased Italas James to be an allottee of the Council. Thus, however, by virtue of section 5 (1) of the Act the Claimants are not fee simple ownership as is known in Antigua. The critical point however is that section 6 does not go beyond a mere allotment which in a sense is consistent with section 5 (1) of the Act so that the land remains vested in the Crown unless and until the rules are changed.

[15] It is therefore the conclusion of the Court in the absence of evidence of an allotment or better yet an interest in favour of the Claimants or the Defendant the reliefs sought by the

Claimants cannot be granted since the Claimants do not have locus under the land tenure law of Barbuda. In fact in the present circumstances they are mere tenants of the Crown.

[16] Contrary to the submission of the Claimants the Court cannot, having regard to the letter and spirit of the Act, declare the Claimants and the Defendant to be equally entitled to possession of the property. These are matters to be regularized by the Council.

[17] The Claimants' claim is accordingly dismissed. There is no order as to costs. Order accordingly.

Errol L. Thomas
Judge