

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

SAINT LUCIA

CLAIM NO. SLUHCV2006/0118

BETWEEN

NILES NATHANIEL

Claimant

AND

HENRY NATHANIEL

Defendant

Appearances:

Ms. Diana Thomas for Claimant
Mr. Kenneth Monplaisir QC in association with
Ms. Marcellina John for Defendant

.....
2007: September 27
October 30, 31
2008: March 19
.....

JUDGMENT

Mason J

[1] The late Flossie Elivique (hereinafter referred to as “the deceased”) who died intestate on 4th April 1984, was the mother of three (3) sons, two (2) of whom are the litigants in these proceedings. The third (3rd) son died on 13th November, 2003.

[2] The deceased at the time of her death was the registered owner of a property situate at the owner of Peynier and Brazil Streets in the city of Castries.

[3] The Defendant on the 25th April 2005 in applying for Letters of Administration to his deceased mother's estate, alleged in his affidavit in support of the application that his brother, the Claimant, had disclaimed his inheritance to the property, an allegation which the Claimant denied by filing a caveat opposing the grant of Letters of Administration to the Defendant and by ultimately lodging the present action.

[4] By the action the Claimant is claiming:

1. *a declaration that he is a lawful heir of his deceased mother's estate;*
2. *a declaration that he is entitled to a 1/3 share of the said estate;*
3. *an order that the property be sold and he be paid his 1/3 share of the market value of the property*
4. *an account or enquiry as to the monies due to him from the Defendant by way of rent for use of the property;*
5. *an order that the Defendant pay to him the rent monies due to him;*
6. *interest on such amount*
7. *costs; and*
8. *further or other relief*

- [5] The Defendant refutes these claims and counterclaims for the granting to him for the Letters of Administration. The children of the parties' deceased brother by statutory declaration renounced their interest in the disputed property giving over their share to the Defendant.
- [6] The evidence reveals that from 1972 the three (3) brothers began and operated the Nato's Educational and Sports Supplies business at the said property where they also lived with their mother. All three (3) brothers were directors of the company but were also engaged in full time operation elsewhere. After three (3) years in operation the Claimant left his job and took over as Managing Director of the business. The discord between the brothers is not of recent origin. From as far back as the early 1990's there developed an estrangement in their relationship surrounding the operation of the business which eventually resulted in legal action and in 1999 the Claimant being ousted by the court from the company. The last company directors' meeting at which they were all present was held in March 1994. The minutes of that meeting have been tendered in evidence.
- [7] There is no denial that the property in question was sold to the deceased, for among the documents produced in evidence were a couple of letters attesting to this:- one dated 10th September 1987 from the priest of the Roman Catholic Vestry of Castries which owned the property stating:

"I sold the property to Miss Flossie during the time her son Henry Nathaniel was getting married"

and the other dated 14th October 1987 from the Archbishop of Castries to the Project Manager of the Land Registration and Titling Project confirming that sale.

[8] While the Defendant acknowledges that the three (3) brothers are ostensibly heirs to their mother's estate it is however his evidence that it was when he was planning to get married that he provided the purchase monies but permitted the deceased to place her name on the documents. For his part the Claimant at paragraph 6 of his witness statement stated:

"I remember clearly that the whole family moved from a house on Mary Anne Street in Castries to a house at the corner of Peynier and Brazil Street owned by the Roman Catholic Vestry. At that time it was my mother, the three brothers and Henry's wife. I am not sure whether he was married or was about to get married. As far as I recall the property was being tenanted by my mother from the Vestry and the Roman Catholic Vestry later sold the property to my mother"

Under cross examination he stated:

"I don't know how my mother acquired this land. It is possible that it was a gift to her. I don't know if she purchased it. The only thing I know is that my mother said it was hers. There were three (3) of us at the time. She could buy it. She had money to buy. The money she would receive every month from us. She could have bought it".

And later when shown the letters referred to above, he said:

"I did not know that the property was sold to her. She just said it was hers. I don't know why they said the property was sold to her during the time her son Henry was getting married"

- [10] The Defendant maintains that consequent upon a decision made at the last directors' meeting he has since received the rental sums of \$2,000.00 per month for the property, said sums having been begun to be paid to him by the Claimant as managing director before he left the company. The Claimant on the other hand was vehement in his denial of ever having paid any monies for rent to the Defendant stating that it was merely a proposal by the meeting. He also stated that as managing director he was the sole signatory to cheques for the company before he was ousted and denied the Defendant's assertion that the two (2) of them were responsible for the signing of the company's cheques.

Findings

- [11] It is my view that the sole issue for consideration is whether in fact the Claimant disclaimed his interest in the property for by Article 579 of the Civil Code of St. Lucia it is provided that:

"If the deceased being a single woman leaves illegitimate children...her succession falls to them as if they had been born legitimate"

[12] Thus prima facie the three (3) sons of the deceased are entitled to succeed to her estate which in the present circumstances is the property in dispute.

[13] Unless otherwise agreed or under certain prevailing circumstances, it falls to the eldest child of an intestate to apply for letters of administration to that deceased's estate. In this instance it is the youngest who has applied in the belief that his brothers have acknowledged that the property belongs to him and have thus disclaimed and/or renounced their interest. This the Claimant seeks to refute.

[14] It is curious to note that after he was ousted from the business, the Claimant never attempted to procure his share in the property or that as the eldest of the three (3) children he never sought to apply for letters of administration so that he could receive his share. His rather implausible reason is that he was concentrating on establishing his own business and this even some 21 years on.

[15] It is also remarkable that it was the Claimant who in 1987 registered the property as follows "Heirs of Flossie Elivique c/o Henry C. Nathaniel". He stated under cross examination:

"It was when the land registration process that I took the document (i.e. that given by the Father of the church) to the Land Registry and by that time my mother was dead".

[16] It is therefore puzzling that when he registered the property, he did so not in care of himself as the eldest child of the deceased, not even in care of all of the three (3) brothers,

but in care of the Defendant alone. This in my view gives some credence to the Defendant's declaration that the brothers acknowledged that he having provided the monies for the acquisition of the property, the property was his. Determination of this matter does not end there however.

[17] Both parties relied on the minutes of the last Board of Directors' meeting held in March 1994, which under Agenda 3 it is stated:

The following proposals were made:

- (a) *That the Managing Director be paid a salary of \$5,000.00 monthly*
- (b) *That director Henry Nathaniel be paid a salary of \$900.00*
- (c) *That property rentals of \$4,000 and \$2,000 respectively be paid to the Managing Director and Director Henry Nathaniel in respect of properties on Mary Ann Street and Brazil Street*
- (d) *Increased overdraft facilities be sought*

[18] The parties concentrated on proposal (c) to the exclusion of the others. This proposal was interpreted by the Defendant to have been a decision which he said was acted upon in his case but not in favour of the Claimant. This gave the court pause in accepting the Defendant's assertion that the proposal was a Board decision which had in fact been acted upon. Under cross examination the Defendant stated:

"I am basing my ownership on Agenda item 3. Those notes are true and correct. I am saying that because I was to receive \$2,000.00 for the Brazil

Street property that it belongs to me. I disagree that it follows because Niles was to get \$4,000.00 that the Mary Ann Street property belongs to him. The Mary Ann Street property belongs to Nato's"

The Defendant insisted that he had been paid rental cheques but did not produce said cheques in evidence nor could he say how many cheques he had received. There was also on the court's part an inability to rationalize the supposed payment vis a vis the time frame involved.

[19] The evidence is that the Claimant left the company in 1994 (soon after the meeting of March), the court's determination leading to the Claimant's ouster was in 1999, yet the Defendant is arguing that while he received his money, the Claimant never received any money that he was supposed to be paid because "the court said that he was not entitled to it". There is no indication that the Claimant had had to repay any monies to the company. It is highly unlikely that the Claimant as managing director would have paid monies to the Defendant and not to himself when a proposal (for the Defendant read decision) to that effect had been made.

[20] Reference was also made to Agenda 2 of the minutes of March 1994 where ownership of the property was raised:

"The Managing Director prefaced this item by disclosing an apparent disparaging remark made by director Henry Nathaniel, that the two properties on Brazil Street belong to him personally, while the one on Mary

Ann Street belongs to the company The Managing Director saw this remark as having dangerous implications for the future of the company....."

The minutes continue:

"In reply director Henry Nathaniel denied having made such statement....."

and under cross examination the Defendant stated:

"Niles said that people said that I owned the properties. I did take umbrage at that statement. It showed to me that he did not trust me".

[21] While not gainsaying the Defendant's belief in his ownership of the property I considered the responses to be rather perplexing. Both were instances where the Defendant could have taken the opportunity to forcefully assert his ownership but instead in one instance when confronted he "denied having made such statement" and in other he "took umbrage at the statement".

[22] However, such contemplations aside, the Defendant having failed to furnish the court with the best evidence available – copies of the rental cheques –or to have convinced the court that the Claimant either intended to or did renounce his interest in the property, the court finds that the property in question must be declared to be part of the deceased's estate to which the Claimant is entitled as to one third share.

[23] Accordingly in words reminiscent of Plowman VC in Tweddle v Henderson 1975 1 WLR 1496 at 1504, while the Defendant might have the merits, the Claimant has the law. Having come to this conclusion, the doctrine of promissory estoppel as submitted by the Defendant in⁵⁴ his defence will not be considered.

[24] The Claimant has made a claim for his share of the rents received for the property. In response the Defendant contends – a contention with which I agree - that if he is so entitled, his share would be limited to five (5) years as the other period would be statute barred under Article 2121.4 of the Civil Code. However the Article to be cited is Article 2111.

[25] The order of this court is therefore as follows:

1. *That the Claimant as a lawful heir to his deceased mother's estate is entitled to 1/3 share in the disputed property*
2. *That an independent valuation be carried out to determine the market value of the property – the valuer to be agreed by the parties.*
3. *That a proper accounting be carried out and the Claimant paid his 1/3 share of the property including rents over a 5 year period backdated from the date of filing of this action. Deductions must be made for the regular outgoings necessary for the upkeep of the property including all insurances etc.*
4. *That all costs incurred be borne by the property viz costs of the independent valuation, accounting costs and legal costs of the parties*

including the application for Letters of Administration but excluding the valuation made by the Claimant.

5. *That unless the Defendant is within a reasonable time able to pay to the Claimant his 1/3 share, the property is to be sold by public auction and the Claimant paid his share.*
6. *Liberty to apply.*

SANDRA MASON QC

High Court Judge