

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2007/0859

BETWEEN:

(1) **JOSEPH ROSEMOND**
(2) **LERA ROSEMOND**

Claimants

AND

(1) **CICILY ROSEMOND**
(2) **CLETUS SIMON**

Defendants

Appearances:

Mr. Sandy John for the Claimants
Mr. Alfred Alcide for the Defendants

2011: 2nd February
2012: 9th February

Judgment

[1] **BELLE J:** Sometime during the 1980's the Defendants began living together in a house which was situated on land owned by the Claimants. In September, 1986 the Claimant borrowed \$26,000.00 from the Bank of Saint Lucia.

[2] In 1989, the Defendants agreed with Lera Rosemond's mother to pay her \$3,600.00 for the dwelling house in which they resided. The dwelling house was a small wood and wall house at the time. The Claimant's said that the house was never fully paid for and that the Defendants only paid \$1,500.00 and still owed the remainder.

- [3] The Defendants with some assistance from others rebuilt the wood and wall house. But produced no receipts or other information that could explain how the rebuilding was financed. But the Claimants say they financed the renovations with a loan requested by the 1st Defendant and her then husband, Mr, Moses in 2003. They said they used the same \$26,000.00 borrowed in 1986 to lend to the 1st Defendant and her husband.
- [4] The 2nd Defendant played no part in the loan transaction because the 1st Defendant and himself had already broken up when this occurred and he had left the residence to reside elsewhere.
- [5] The 1st Defendant left the island of Saint Lucia soon after getting married to Mr. Moses and travelled to the United States where she now resides. She failed to file a defence and played no further role in the proceedings.
- [6] The Claimant's claim is that the Defendants owe them for both the original house and the renovated house. The Defendants have never repaid the alleged loan. Based on these facts they claim ownership of the house.

Issues

- (1) Is the Claimant entitled to the possession of the house situated at Ti Rocher in the Quarter of Castries erected on Block 1046C Parcel 52?
- (2) Do the Defendants hold the house in trust for the Claimants?
- (3) What is the effect of the 1st Defendant's failure to file a defence?
- (4) What is the 2nd Defendant's position?

The issues above will be determined based on the evidence of:

- a. A verbal agreement between the Claimant and the Defendant for the purpose of borrowing \$26,000.00 to convert the old structure of the house at Ti Rocher on Block 1046C Parcel 52.
- b. An alleged loan procure by the Claimants with Bank of Saint Lucia for the benefit of the Defendants and,

- c. Whether the Claimants promised to sell the Defendants the land on which the house was erected.
- d. Whether the Defendants acted to their detriment in spending sums of money to renovate the house and make it a comfortable family residence based on the promise made by the Claimants to sell them the land.
- e. What is the effect of the Defendants erecting a new house or renovating a house which stands on the land of another person, in this case the Claimant's land?
- f. Should the existing occupants of the house be added as parties?

[7] In my view, the Claimants are not entitled to possession based on the evidence. The Claimants' evidence that they lent \$26,000.00 to the 1st Defendant in about 2003, is not only contradicted by the evidence of Nancy Rosemond, it is also dubious because of the length of time the money was held in the disclosed bank account i.e. September, 1986 to 2003 before it was allegedly loaned to the Defendant and her husband to renovate the house.

[8] The documentary evidence shows that during this entire period the Claimants were repaying the loan. Hence, the Court is being asked to believe that for about 17 years the proceeds of the loan lay unused in the bank account while they repaid the loan.

[9] It is clear that the renovation of the house took place after 1986, probably in the 1990's. I arrive at this conclusion because the 1st Defendant's daughter says that her mother went to the USA in the year 2000 and the renovation was done before she left.

[10] However, the Claimants insist that the Defendants asked to borrow the money around 2003. Indeed they do not place this request anywhere near 1986. I therefore conclude that the Claimants procured the loan for other purposes. It is possible they wanted to renovate the house or do other renovations on other houses with the money. But on a balance of probabilities it is very unlikely that the loan was taken for the purpose of lending to the 1st Defendant and her husband.

- [11] However the 1st Defendant failed to file a defence. She attempted to have her case argued in the shadow of the 2nd Defendant's evidence. But the 2nd Defendant knew nothing about how the renovation of the house was done and he had not lived there since the renovations were done.
- [12] Consequently then the Claim stands up against the 1st Defendant's failure to file a Defence. So that judgment could be granted to the Claimants against the 1st Defendant because she failed to put up any defence against the Claim.
- [13] But the 1st Defendant is in no position to hand over the property to the Claimants since her children reside there and they have not been ordered to hand over possession of the property. The Court will not make an order which cannot be enforced.
- [14] The evidence that there are other persons occupying the subject house is of concern to the Court since these persons have not been joined in the suit even though they are adults and reside in the subject house. In my view it would not be fair for an order to be made which affects them without giving them an opportunity to respond to the Claim before the Court.
- [15] The evidence shows that the Claimants were always aware of the persons who occupied the said house. They would have been aware that the original occupants left the house and left other persons in the house. The relationship between the parties always remained vague and even the initial payment for the house has been left open to argument. Meanwhile there is no mention of the position of the existing occupants. But any order for possession will affect them directly.
- [16] No order can be made against the 2nd Defendant for possession since he gave evidence that his relationship with the renovated house is firstly that of an initial co-owner and later just a visitor. He had asked for no pay-out of his investment in the house and he was not interested in such a pay-out. He did not consider the house in its present form to be his even though his defence and counter-claim seemed to have raised that prospect. He

clearly was of the impression that the house belonged to Cicily Rosemond. But not unlike Cicily Rosemond, Cletus Simon is not in a position to deliver possession of the house.

- [17] The Claimants themselves say that the 2nd Defendant had nothing to do with the renovation and he did not reside in the house after the renovation. The claim against the 2nd Defendant should therefore be dismissed.
- [18] It is important to note that the Claimants never rented the house to the Defendants. But there is evidence that they made a promise to sell the house to the 1st Defendant and her husband and the land as well. I am of the view that this was the plan until the 1st Defendant decided to go off to the United States to reside rather than stay and purchase the land. The Claimants' desire to sell the house to another purchaser now gives rise to the Claim.
- [19] Based on my earlier conclusions it would not be possible for me to hold and make a declaration that the Defendants hold the house in trust for the Claimants. Since the Claimants have not proved their case on the evidence but only by default against the 1st Defendant.
- [20] I would not exercise my discretion to declare the Defendants trustees of the house in favour of the Claimants. The 2nd Defendant could not be a trustee since he was not a party to any agreement to renovate the house and to use the Claimants' money to do so.
- [21] I also find that since the Claimants have not proved that they lent the money to the 1st and 2nd Defendant to renovate the house the substratum of any trust has failed to materialise and there is no evidence that they acted to their detriment in expending sums of money on the house in expectation of anything.
- [22] Since I have already concluded that I reject 4 (a), (b) and (c) above I can move to 4 (d). In this regard the evidence of the two witnesses for the Defence and of the Claimants provides no support for the Defendants to be deemed to have an equitable interest in the house since the actual agreement to renovate and purchase can no longer be regarded as viable.

[23] It may be that prior to leaving to go to the USA the 1st Defendant may have been in a position to say that she was led to believe that if she renovated the house she would be able to purchase it . This would have been seen to be acting to her detriment if some other owner had come along and tried to remove her without consideration to her position. But this is not the case. There is no evidence that the 1st Defendant paid for the renovation alone. No receipts or bills have been produced. She is not in need of the house for any purpose. Her children who are themselves adults reside in the house and they have not said that they were made any assurances in this case. My conclusion then is that the counter-claim also fails and is dismissed.

[24] A determination is also needed on the issue raised in paragraph 4 (e). The Defendants have renovated a house which is on the Claimants' land. The Claimants' evidence shows that there was a good relationship between the parties pursuant to which the licence of the Defendants must have been extended from time to time.

[25] On this basis the property was renovated and remained on the Claimants' land. I do hold in the absence of other evidence that the house being attached to the land is considered part of the land.

[26] It may be that in circumstances where the evidence is clear the Claimants would be entitled to possession on having paid the Defendants for any money they spent on the house with the Claimants' permission or encouragement. However since that situation remains unclear I will not exercise my discretion to order possession in favour of the Claimants on that basis either.

[27] However, I am satisfied that the 1st Defendant occupied the house as a licensee and left others in the house who would have obtained similar licensee status over the passage of time.

[28] The final issue that requires some elucidation then is the position of the present occupants of the house who have not been made parties to these proceedings. In most circumstances it would be possible to terminate their licences by serving them notices to

quit. However such a process may simply generate new litigation. In an effort to avoid multiple law suits on the same subject matter the Court therefore orders that the Claimant serve the claim form on the occupants who are adults and that the matter be adjourned to Chambers on a date to be set by the Court Office for Case Management.

[29] Overall I am not satisfied that Counsel on either side pursued this matter with the greatest of diligence. The evidence led by both sides failed to establish certain important aspects of the statements of case and the parties failed to comply with the Court's pre-trial review orders to file a core trial bundle which would make it easier for the trial judge to refer to relevant documents and preside over the trial.

[30] The missteps included the following:

1. The 1st Defendant failed to file a defence and
2. The Claimants sued the 2nd Defendant even though they knew that he was no longer in possession of the renovated house.
3. The Claimants proceeded in full knowledge that the present occupants of the house would be affected by any order granted but apparently made no attempt to serve the Fixed Date Claim on any of them.

[31] In the circumstances and the additional supporting basis that there is no clear winner in this case, I decline to order costs for either side.

[32] The Court therefore orders:

That the existing occupants of the house be served with the Fixed Date Claim and that the matter be adjourned to chambers on a date to be set by the Court Office for Case Management.

[33] The Claim against the 2nd Defendant is dismissed.

[34] The 2nd Defendant's counter-claim is also dismissed.



Francis H V Belle
High Court Judge