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

SLUHCV2011/0592

BETWEEN:

CECILE BERYL RYAN-COX
THEOBALD COX

CLAIMANTS

and

RHONA AKA LORNA MARY COX

DEFENDANT

Appearances:
Mr. Winston Hinkson for the Claimants
Ms. Veronica Barnard for the Defendant.

2012: October 15th,
2013: February 4th.

JUDGMENT

[1] WILKINSON J.: The Claimants filed their fixed date claim form and statement of claim on June 11th 2011, they are the children of Richardson Cox, deceased and his first wife, Flavien Cox who predeceased him. Their statement of claim had inadvertently referred to them as his brother and sister. This error was subsequently corrected by both the Defendant and the Claimants. Following the death of his first wife, Richardson Cox courted the Defendant and they subsequently married. This suit is one of succession to the estate of Richardson Cox and in particular Champagne Estate in the Quarter of Anse-La-Raye therefore the Court is to be guided by CPR 2000 Part 68 for the bringing of these proceedings.

[2] Before his marriage to the Defendant, Richardson Cox at May 14th 1942, purchased from Mcfarlane Junior and Company and others a portion of land measuring approximately 19 acres 3 roods 28 perches dismembered from the "Francois Maragon Lands" situate in the Quarter of Anse la Raye. This lot of land is not in contention before the Court.

[3] During the period of courtship between Richardson Cox and the Defendant, at November 13th 1948, they made in anticipation of their marriage to be celebrated shortly thereafter, a deed referred to as a Deed of Marriage Covenants (hereinafter "the marriage covenants") which was registered in the Registry of Deeds and Mortgages on December 18th 1948, in Vol. 92A as deed No. 56218. The marriage covenants being in notarial form appears to conform with all legal requirements. The marriage covenants provided:

> "… Between 1. Richardson Cox of La Dauphine Estate in the Quarter of Soufriere in the said Island Planter Widower of the full age of majority (hereinafter called the future husband) of the one part.
>
> And 2. Lorna St. Marie of Dugard in the Quarter of Choiseul in the said Island Seamstress Single woman of the full age of majority (hereinafter called the future wife) of the other part…
>
> Witness that the future consorts in view and with the intention of uniting themselves in the holy bond of matrimony have covenanted and stipulated and agreed to do hereby covenant stipulate and agree with each other as follows:
>
> 1. The future consorts shall hold and enjoy as community property all property which they shall acquire whether moveable or immoveable during their marriage.
>
> 2. The future consorts shall hold and enjoy as community respectively reserve as their separate property all property moveable and immoveable which they may have acquired before their marriage and whether moveable or immoveable property they may acquire during marriage by succession.
>
> 3. Each of the future consorts shall be responsible and personally liable for his or her debts contracted previously to the said marriage.

4. <u>There shall be no dower whether customary or prefix and the said future wife hereby renounces for her children all or any dower.</u>(My emphasis)

5. The future husband shall of himself bear and pay all household expenses including the necessary personal expenses of the said future wife and the maintenance and education of children that may be born to them.

6. In order to establish what shall constitute the property of the consorts it is declared that the property of the future wife shall consist of her wearing apparel jewels trinkets and paraphernalia and of all property marked with her initials or name or otherwise bearing her mark as well as of all property which she can prove be (by) vouchers or otherwise to be hers."

[4] Two (2) weeks later, at November 27th 1948, Richardson Cox married the Defendant.

[5] Following the marriage, on February 8th 1954, Richardson Cox purchased in his sole name from Gabriel Paul and Rachael Paul the property in issue, Champagne Estate which was described as being comprised of approximately one hundred (100) acres. The deed of sale was registered in the Registry of Deeds and Mortgages at February 20th 1954, in Vol.94 as deed no. 61664. The deed of sale provided:

> "Dated 8th February 1954. Sale (Subject to certain Hypothecary Obligations) by 1. Gabriel Paul 2. Rachel Paul to Richardson Cox of the Champagne Estate in the Quarter of Anse-la-Raye. For £2000…
>
> And Whereas the vendors have agreed to sell the property described in the Schedule hereto the purchaser for the sum of Nine Thousand Six Hundred Dollars subject to the existing encumbrances on the said Property.
>
> And Whereas the total indebtedness of the encumbrances herein before set out amount to Eight thousand eight hundred and forty-two dollars and twenty cents.
>
> And Whereas the parties hereto have agreed that the purchaser shall pay in cash to the vendors the sum of Seven hundred and fifty-seven Dollars and eighty cents being the difference between the purchase price of Nine

> Thousand six hundred Dollars and liabilities under the aforesaid encumbrances.
>
> Now These Presents Witness that in consideration of the sum of Nine thousand six hundred Dollars which the purchaser undertakes to pay in the manner herein before stipulated part whereof to wit the sum of Seven Hundred and Fifty –seven Dollars and eighty cents which is paid by the purchaser to the vendors (receipt whereof the vendors hereby acknowledge) the vendors hereby sell and convey free and clear of all encumbrances save and except the encumbrances herein before set out unto the purchaser thereof accepting the property described in the Schedule hereto….
>
> Schedule: All that Estate known as Champagne situate in the Quarter of Anse-la- Raye consisting of Twenty eight carres of land more or less or one hundred acres more or less and bounded…."

[6] Richardson Cox died on October 6th 1963. According to the Defendant, at the time of his death she was pregnant, had eight (8) other children of school age and she had to find money to pay off the liabilities due on purchase of Champagne Estate. None of the children of Richardson Cox's first wife assisted her with working the estate or money or in any way to meet the payments due on the land. She persevered with the assistance of her children who worked the estate alongside her to pay off the liabilities due on the land.

[7] Richardson Cox made a will which he executed on November 6th 1959. The Defendant applied for and at June 29th 1968, obtained a grant of probate of the will of Richardson Cox.

[8] Richardson Cox's will provided for the usual declaration of sound mind, the making of provision for the payment of his funeral, just debts, expenses and thereafter he made the following provisions:

> "3. I name appoint and constitute my wife Rhona (also called Lorna) Mary Cox (born St. Marie) of Anse la Raye aforesaid, Housewife, the sole executrix of this my will.
>
> 4. To my said wife Rhona (also called Lorna) Cox (born St. Marie) I give devise and bequeath the usufruct or enjoyment during her natural life of my estate known as Champagne Estate together with all the appurtenances and dependencies thereof as more particularly described

in Deed of Sale by Gabriel Paul and Rachael Paul to me registered on the 20th February 1954 in Vol. 94 No. 61664.

5. To all the children born of or conceived by my said wife during my lifetime I give devise and bequest in equal shares the nuda properties or bare ownership of the said Champagne Estate; together with all its appurtenances and dependencies.

6. Subject to the foregoing legacies I give devise and bequeath all the rest residue and remainder of all my property moveable and immovable real and personal wheresoever situate and to whatsoever value the same may amount to the following persons whom I hereby constitute my residuary legatees and devisees to wit:-

(a) Wills Cox (b) Russel Cox (c) Kitchener Cox (d) Frances Cox
(e) Agnes Cox
(f) Rachael Cox (g) Emmanuel Cox (h) Beryl Cox (i) John Cox (j) Theobalds Cox."

[9] Nearly twenty (20) years after the Defendant had obtained the grant of probate, on the petition of Phillip Cox in the High Court suit no. 92/1988 the Court at October 21st 1988, ordered:

> "Letters of Administration of all the Succession of the Deceased Richardson Cox be granted to the Petitioner PHILLIP COX."

The letters of administration were registered on January 11th 1989, Vol.142a as deed No. 161357 and LA 92/1988.The schedule to the Court's order described Richardson Cox's estate as comprising of land measuring 19 acres, 3 roods and 28 perches dismembered from the "Francois Maragor lands situate in the Quarter of Anse-La-Raye, with title being the deed of sale from MacFarlane Junior and Company and others to Richardson Cox dated May 14th 1942. No mention was made of Champagne Estate.

[10] At February 13th 2006, the First Claimant executed a deed, a vesting assent between herself as the Personal Representative and the Heirs-at-Law. Therein the vesting assent was stated to be concerned with two (2) lots of land described as Block 0437 B Parcel 12 and Block 0240 C Parcel 88, neither of which were Champagne Estate.

[11] Disclosed to the Court were three (3) land registers for land in the Quarter of Anse-La- Raye and their details were as follows:

Description	History recorded on Land Register
Block No. 0440B 38 (60. 51 hectares)	1. Date: 29.1.2004. Instrument: 436/2004, Name: Rhona Cox, as Executrix of the Estate of Richardson Cox (struck through and followed by 2nd entry). 2. Date: 3.6.2011. Instrument: 2412/2011, Name: Anthony Cox, Andrew Cox, Thomas Cox, and Augusta Cox as Trustees for sale. Incumbrances section: Date 3.6.2011, Instrument 2412/2011 Rhona Mary Cox for Life.
Block No. 0437 12 (no acreage recorded)	1. Date: 29.1.1987 Instrument: A Record. Name: Heirs of Richardson Cox (struck through and followed by 2nd entry). Nothing recorded under incumbrances. 2.Date: 10.3.2006 Instrument: 1208/2006 Name: Agnes Mathurin, Wills Cox, Joseph Cox and John Cox, as Trustees for Sale. Nothing recorded under incumbrances.
Block No. 0240C 88	1.Date: 28.4. 1987 Instrument: A Record, Name: Richardson Mathurin Cocque (struck through and followed by 2nd entry) 2. Date: 10.3. 2006 Instrument 1208/.2006, Name: Agnes Mathruin, Wills Cox, Joseph Cox & John Cox, as Trustees for Sale. Nothing recorded under incumbrances.

[12] According to a survey prepared at March 23rd 2012, by Otneb Consulting Limited of Block 0440B Parcel 38, Champagne Estate, the area of land is approximately 60.51 hectares or 149.52 acres with a market value of EC$1,285,880.00.

ISSUE

1. Whether Richardson Cox could devise and bequeath Champagne Estate to the Defendant for life and ownership to their children thereafter notwithstanding clause 4 in the marriage covenants and dower being abolished in 1956, this being before the will was executed in 1959.

LAW

[13] The marriage covenants being dated November 13th 1948, and registered December 18th 1948, was made pursuant to the Civil Code as it was at 1876.

[14] The Civil Code Ordinance of 1876 provides:

> " BOOK FOURTH
> MARRIAGE COVENANTS AND THE EFFECT OF MARRIAGE UPON THE PROPERTY OF CONSORTS.
>
> 1177. All kinds of agreements may be lawfully made on contracts of marriage, even those which, in any other act inter vivos, would be void; such as the renunciation of successions which have not yet devolved, the gift of future property, the appointment of an heir, and other dispositions in contemplation of death.
>
> 1178. All covenants contrary to public order or to good morals, or forbidden by any law, are, however, excepted from the above rule... (My emphasis)
>
> 1180. If no covenants have been made, or if the contrary have not been stipulated, the consorts are presumed to have intended to subject themselves to the general laws and customs of the country, and particularly to the legal community of property, and to the legal dower in favour of the wife and of the children to be born of their marriage.
>
> From the moment of the celebration of marriage these presumed agreements become irrevocably the law between the parties, and can no longer be revoked or altered.(My emphasis)
>
> 1181. In the case of the preceding article, the community is established and governed in accordance with the rules of the second chapter, and in respect of dower with those of the third chapter of this book.
>
> 1182. Community of property, which the consorts are free to exclude by stipulation, may be altered or modified at pleasure by the contract of marriage, and is called, in such case, conventional community, the principal rules concerning which are contained in the second section of the second chapter of this book.
>
> 1183. Legal dower, which the parties are likewise at liberty to exclude, may also be altered or modified at pleasure, by the contract of marriage, and is called in such case conventional dower, the most ordinary rules concerning which are contained in the first section of the third chapter of this book. (My emphasis)
>
> 1184. A marriage covenant must be made in notarial form, and before the solemnization of marriage, upon which it is conditional.
>
> 1185. After marriage, the marriage covenants contained in the contract cannot be altered, nor can the consorts in any other manner

confer benefits inter vivos upon each other, except that a husband may insure his life for the benefit of his wife and children. The mutual donation of usufruct may be made by the marriage covenant. (My emphasis)

1186. …

1325a. The consorts may establish by their contract of marriage a general community of their property, both moveable and immovable, present and future, or of all their present property only, or their future property only.

1329. There are two kinds of dower, that of the wife and that of the children.

1340. Legal dower is a charge which the law, independently of any agreement, and from the mere act of marriage, attaches to the property of the husband, in favour of the wife as usufructuary, and of the children as owners.

1341. Conventional dower is that which is agreed upon by the contract of marriage. It can only affect the property of the husband acquired before marriage.

1342. Conventional dower excluded legal dower; it is however lawful to stipulate that the wife and the children shall have the right to either the one or the other, at their option.

1343. The choice made by the wife, at the time when dower comes into operation binds the children.

If she dies without having made the choice, the right of making it passes to the children. (My emphasis)

1344. If there be no contract of marriage, or if that which has been made contains no explanation on the subject, legal dower is held to be intended. But it is lawful to stipulate that there shall be no dower, and such a stipulation binds children as well as mother. (My emphasis)

1345. Dower whether conventional or legal is not regarded as a benefit subject to the formalities of gifts, but as a simple marriage covenant.

1346. The right of conventional dower accrues from the date of the contract of marriage, and that of legal dower also at the date of the contract, if there be one which it is stipulated, or otherwise at the date of the marriage.

> 1351. Dower, whether legal or conventional, is a right of survivorship which comes into operation by the death of the husband...
>
> 1353. Conventional dower is taken from the private property of the husband".

[15] The Civil Code of 1876 was amended by the Civil Code (Amendment) Ordinance, No. 34 of 1956. By amendment a number of provisions applicable for consideration in this suit were repealed or amended. Indeed by that amendment, dower, which is at the root of this case was abolished by:

> "1183. (Subst. 34-1956) (1) Dower, both legal and conventional is hereby abolished. All stipulations in a contract of marriage made after the coming into operation of this article, purporting to create dower, are null and void". (Emphasis is mine)

But by the second provision in that article of amendment there was preserved:

> "1183 (subst. 34-1956)
>
> (2) The preceding article and this article shall not operate to affect the rights of spouses under contracts of marriage entered into before the coming into operation of these articles. (Emphasis is mine)

And this position is reinforced by:

> "2203. (34-1956, s222). Nothing in the repeals effected by the Civil Code (Amendment) Ordinance, No. 34 of 1956, shall affect the validity, invalidity, effect, or consequences of anything already done or suffered, - or any right, title, or obligation or liability, already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof, - or the proof of any past act or thing."

[16] Should there be any doubt as to the position at articles 1183(2) and 2203, the Court finds that the Interpretation Act Cap. 1.06 provides the same in substance as it provides:

> "27.(1) Where an enactment repeals or revokes an enactment the repeal or revocation shall not, save as in this section otherwise provided –
>
> (a) …

(b) affect the previous operation of the enactment so repealed or revoked, or anything duly done or suffered thereunder;
(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the enactment so repealed or revoked…

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

[17] On the matter of whether it is lawful for consorts to agree that there shall be no dower, The Law of Real Property Quebec[1] states:

> "407. Customary dower: - The law recognizes two kinds of dower, that of the wife and that of the children. These dowers are either legal or customary, or prefixed or conventional. C.c. 1426…
>
> It is lawful to stipulate in the contract of marriage between the consorts that there shall be no dower, and such a stipulation binds the children also, c.c. 1431.(My emphasis)
>
> Customary dower is a right of survivorship which opens by the death of the husband, c.c. 1438."

Analysis and findings

[18] It is a fact that Richardson Cox died at October 6th 1963, that being some nine and a half (91/2) years after purchase of Champagne Estate and it is a fact that Richardson Cox, purchased the land subject to certain liabilities which he undertook to pay off. The Defendant has said that she paid off those outstanding liabilities on the purchase of Champagne Estate notwithstanding that the Court was not provided with a single iota of documentary proof that: (a) there continued to exist the liabilities at date of death, and (b) the Defendant made payments against the debt. Then again, the Claimants did not challenge that evidence.

[19] The language of the marriage covenants is clear as to its intention. It speaks to the Parties anticipating marriage, how the Parties intended to deal with their property and debts acquired prior to marriage, deal with community property moveable and

[1] William DeMontmollin Marler B.A, D.C.L., LL.D completed and arranged by George C. Marler, B.C.L. 1932 Burroughs and Company [Eastern] Limited paragraph 407 p.177

immoveable acquired during the course of their marriage and finally it provided that there shall be no dower for the Defendant or her children with her husband, Richardson Cox. The net effect of the provision providing for no dower was that the Defendant and her children fathered by Richardson Cox were not to benefit from his estate whether under intestacy or by will.

[20] It was almost thirteen (13) after his marriage that Richardson Cox made his will and it may very well have been his intention to resile from the provisions of the marriage covenants which would deny the Defendant and their children any inheritance from his estate.

[21] Article 2203 of the Civil Code (as amended) provides that rights and obligations such as those in the marriage covenants were not affected by the 1956 amendments made to the Civil Code of 1876. This being the case, the Court is of the view that for the following reasons that the marriage covenants continue to bind the Defendant and her children with Richardson Cox.

[23] Article 1180 of the Civil Code (1876) provides that in circumstances where there have been no marriage covenants, then the general laws and customs of Saint Lucia would govern the relationship and to the Court's mind, this would include succession. It also provides that should there be marriage covenants like those existing between the Defendant and Richardson Cox that on celebration of marriage the marriage covenants became the applicable law between the Defendant and Richardson Cox.

[24] That the marriage covenants was to remain the only law applicable to the Defendant and Richardson Cox and could not be altered by either or both Parties is buffered by article 1185 of the Civil Code (1876) as it provides that there can be no alteration of the marriage covenants. Indeed according to the article, the only benefit Richardson Cox could confer on the Defendant was by way of insuring his life for the benefit of the Defendant and their children on his death.

[25] While the Court recognizes that dower was abolished by the 1956 amendment and this was before Richardson Cox executed his will in 1959, the provisions on marriage covenants and in particular the application of marriage covenants being the law governing the marriage relationship was not repealed or amended. The marriage covenants would therefore be the law governing disposal of Richardson Cox's estate and which net effect of clause 4 was that neither the Defendant nor her children with Richardson Cox were to benefit from his estate. The Court therefore finds that Richardson Cox could not devise and bequeath to the Defendant and her children with him, Champagne Estate. The gifts of rights and interests in Champagne Estate to the Defendant and her children with Richardson Cox are therefore void and invalid.

[26] In considering the relief, there exist a valid will with a duly appointed executor, the Defendant and like any will, void and invalid gifts do not make invalid the entire will, those parts that can survive will do so. The Court is therefore not prepared to improbate the grant of probate to the Defendant. Since the gift of Champagne Estate is void, the Defendant as executrix will have to make the necessary application for it to be administered as land passing under the laws of intestacy save and except that neither the Defendant nor her children with Richardson Cox shall benefit because of the marriage covenants.

[27] The Court will order cancellation of all the entries in the land register pertaining to Champagne Estate and will order that the Letters of Administration granted to Phillip Cox be improbated.

[28] At pre-trial review at July 12th 2012, the Parties agreed that there would be no costs and so none will be ordered.

[29] Finally, considering that the Defendant has resided at Champagne Estate upwards of sixty four (64) years, the Court is of the view that she ought to be given a reasonable time to vacate the premises and be allowed to reap any crops that

she has continued to plant and harvest on the land with her family. The Court will therefore order that she vacate Champagne Estate at July 31st 2013.

[30] It is ordered:

1. It is declared that clauses 4 and 5 of the will of Richardson Cox made at 6th November 1959 and wherein provision is made to give interests and rights to the Defendant and her children with the said Richardson Cox are void and invalid.

2. It is declared that the Defendant and her children have no interests or rights in Champagne Estate.

3. The Defendant is to vacate Champagne Estate by July 31st 2013.

4. It is declared that the sole beneficiaries of Champagne Estate are the children of Richardson Cox with his first wife, Flavien Cox and their interests is to be given to them pursuant to the laws of intestacy.

5. The Registrar of the High Court is directed to take all necessary steps to improbate LA 92/1988 letters of administration in the estate of Richardson Cox.

6. The Defendant, as the executrix of the estate of Richardson Cox is ordered at the expense of the estate of Richardson Cox and or the beneficiaries of Champagne Estate to take all necessary steps to administrate and distribute to the beneficiaries their shares in Champagne Estate.

7. The Registrar of Lands is directed to cancel all deeds made, registered and bearing whatsoever Block and Parcel number in relation to Champagne Estate.

8. There is no order as to costs.

Rosalyn E. Wilkinson
High Court Judge