

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**SVGHCV2013/0062**

**BETWEEN:**

**CARLTON PATTERSON**

**-AND-**

**LISA FREDERICKS**

**CLAIMANTS**

**-AND-**

**CORETHA SPENCER**  
**of Layou/Bequia**

**DEFENDANT**

Appearances: Mr Sten Sargeant for the Claimants, Mr Moet Malcolm for the Defendant.

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2015: Jun. 9  
Jul. 23  
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**JUDGMENT**

**BACKGROUND**

[1] **Henry, J.:** Carlton Patterson and Coretha Spencer were involved in a romantic relationship from 1995 until about 2012. They had two children together. Prior to getting intimately involved with Ms Spencer, Mr Patterson fathered two children with Ms Judiana Frederick – Nickel and Lisa Fredericks. Mr Patterson is the owner of a parcel of land at Layou. He claims that he and Judiana Fredericks constructed a dwelling house there in 1992. The subject property was registered

jointly in Mr Patterson's and Lisa Fredericks' names by Deed No. 922 of 2013.<sup>1</sup> Ms Spencer claims that she contributed to the construction of the dwelling house. Mr Patterson denies this. He and Lisa Fredericks have brought this action seeking a declaration that Ms Spencer has no interest in the property and an order restraining her from trespassing in or occupying it. Ms Spencer maintains that she is entitled to a half share interest in the property by virtue of a constructive or resulting trust and she seeks a declaration that Mr Patterson and Ms Fredericks hold the legal and equitable estate in the property in trust for her and Mr Patterson in equal shares. Further, she seeks an order for sale of the property and equal division of the net proceeds of sale.

## **ISSUES**

[2] The issues to be determined are:

1. Whether Carlton Patterson and Lisa Fredericks hold the disputed property in trust for Coretha Spencer?
2. If so, to what interest in the subject property, if any, is Ms Spencer entitled?  
and
3. Whether Mr Patterson and Ms Frederick are entitled to an injunction restraining Ms Spencer from trespassing on or occupying the disputed property?

## **ANALYSIS**

### **Issue 1 – Do Carlton Patterson and Lisa Fredericks hold the disputed property in trust for Coretha Spencer?**

[3] Determination of this issue involves consideration of the factual reality surrounding the acquisition of the subject land and construction of the dwelling house on it (collectively "the disputed property"). The disputed property comprises 2,132 sq. ft of land and two buildings utilized as residences. Title to

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<sup>1</sup> Dated 20<sup>th</sup> March, 2013.

the land was vested in the Housing and Land Development Corporation (“HLDC”) immediately before registration to Ms Fredericks and Mr Patterson. Mr Patterson deposed that he entered into possession of the lands as a squatter in 1992. He alleges that in that year, he and Ms Judiana Fredericks began construction of the first dwelling on the property. He recalled that Ms Frederick gave him \$1000.00 which he used to purchase materials. He explained that he purchased the other materials and provided the resources for construction that dwelling from salary he earned as a carpenter between February 1988 and December 1991. He deposed that two of his friends assisted with the construction resulting in a livable dwelling in 1995.

[4] Mr Patterson deposed that he parted ways with Ms Judiana Fredericks in 1995 after he met and became romantically involved with Ms Spencer who he then invited to live with him in the recently constructed house. He asserts that while Ms Spencer lived with him she never contributed any money to “the running” of the house for bills or purchase of food. He explained that Ms Spencer was employed for about 3 months in 2008 as a caretaker for an elderly lady, but gambled her wages away. He claims also that he did no additional work to the house while Ms Spencer was living there, and that in any event Ms Spencer never had a job which would have provided her with the resources to contribute to the building of that house or the second one.

[5] He recalled that he received a letter from the NHLC in 2009 which identified him as owner of the house and land. He remarked that this is so because Ms Spencer gave his name to the Crown Surveyors when they visited the premises in 2006 and enquired of her whose land and house it was. He reasons that if Ms Spencer thought she had an interest in the property she would have so informed them. I note that the land was still registered to the NHLC at that time. Mr Patterson asserts that the relationship with Ms Spencer ended in 2012 and although he has asked her repeatedly to remove her belongings from the house,

she steadfastly refuses to do so and continues to occupy the house intermittently during her sojourns from Bequia where she partly resides.

[6] Mr Patterson deposed that Lisa Fredericks asked him in 2012 about building a second house on the land, because she could not get along with Ms Spencer's son and he decided to go along with that suggestion. He explained that Lisa Fredericks bought some of the materials for that second house and he bought the remainder. He refutes Ms Spencer's claim to a half share in the property and denies that she has any interest in it whatsoever. He states that Lisa Frederick's name is on the Deed because she is the most intelligent of his children.

[7] Lisa Frederick corroborated her father's account. She deposed that in 2012 she asked him about building a second house on the subject land because she was having difficulties getting along with her grandmother and he agreed. She avers that she and her father started buying materials in 2012 to construct the house, and that she bought blocks and other materials from money she saved from her babysitting job while she was living in Canada. She denies that Ms Spencer contributed any money towards the construction of that house. She stated that Ms Spencer was living in Bequia at that time. Ms Fredericks explained that she has developed a good relationship with Ms Desleen Solomon who is her father's current girlfriend. She testified that when Ms Solomon mentioned to her that she was living in a rented house at the time, she invited her to live in the second house which she did and still continues to do.

[8] I view Ms Frederick's description of the circumstances under which Ms Solomon came to live in the second house with suspicion. By all accounts she contributed \$1000.00 to the construction of the house and nothing to acquisition of the land. If Mr Patterson's and her accounts are true, Mr Patterson would have a greater interest in that house than she would. Further, she would have been a teenager at that time and would have been the less likely person of the two to make such a significant decision. For those reasons, I have difficulty accepting her account.

[9] I note too that in their Amended Defence to Counterclaim<sup>2</sup> Mr Patterson and Ms Frederick's state that the disputed property was registered partly in Lisa Frederick's name because that was Mr Patterson's and Ms Judiana Frederick's intention. This contrasts with Mr Patterson's testimony. Mr Patterson's and Ms Frederick's testimony also conflict as to the reason why Ms Frederick proposed that a second house be built. Ms Frederick did not impress the court as a witness of truth. She left me with the distinct impression that she was a witness of convenience who was prepared to give evidence in support of her father's version of events regarding matters she would not have been old enough to fully understand or perhaps even fully recall. For these reasons, where her testimony conflicts with that of other witnesses, that of the other witnesses will be preferred.

[10] Ms Desleen Solomon testified that she and Mr Patterson have been involved as intimate partners since 2008. She recounted that she would visit Mr Patterson at the house between 2008 and 2012 when Ms Spencer was not around. She recalled that Mr Patterson started building a second house on the premises in 2012 which is yet unfinished. She states that the windows, doors and roof were already fitted but the floor was not plastered and other work was left to be done. She corroborated Ms Fredericks' testimony that she was invited to live there in 2012 after she told Ms Fredericks that she was paying rent. It appears Mr Patterson is a confirmed womanizer which both parties seem to have come to accept and live with.

[11] Ms Coretha Spencer testified that she entered a common law relationship with Mr Patterson in 1994 which produced 2 children. She testified that she and Mr Patterson were engaged in farming in 1995 for a period of approximately 14 months during which they raised short crops such as tomatoes, carrots, cabbages, cucumbers and beans. She explained that she was responsible for selling the produce. Ms Spencer indicated that she gave to Mr Patterson

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<sup>2</sup> Filed on January 5, 2015.

between \$450.00 and \$650.00 (presumably weekly) which was later used to buy materials to construct the house. The median figure of \$550.00 over a period of 12 months<sup>3</sup> would generate \$26,400.00. Ms Spencer's evidence is that she worked at farming for 14 months and as a security guard for one year and "some months" at a salary of \$645.00, presumably monthly. She would have earned a minimum of \$7,740.00 at that job, a not inconsequential sum. While I believe that Ms Spencer was so engaged, not only as a farmer but also a security officer, it is not clear what her total income for the combined periods would have been. The absence of pay slips and receipts does not assist. Mr Patterson did not provide pay slips or receipts either.

[12] Ms Spencer claims that she gave Mr Patterson the monies she received from the sale of the vegetables to save as she did not have a savings account. She alleges that Mr Patterson told her that they must build their own dwelling house on a small foundation he had started on lands adjoining his mother's. She testified that she cleared the grass from the foundation and with her son Telong Spencer who was about 9 years old at the time. Ms Spencer indicated that he was born on September 6, 1986. She recalled going and picking up fine stones and sacks of bay sand at Layou Bay and carrying them to the building site. Under cross-examination Ms Spencer seems to have resiled from her statement that she and Telong physically carried the sacks to the building site from the roadside where they were deposited by truck. Ms Spencer said she used a particular truck driver to transport the sand and stones.

[13] Ms Spencer avers that most of the work was done on the building on evenings and weekends with Mr Patterson laying the concrete blocks while Telong mixed the sand and cement. I have great difficulty imagining a 9 year old undertaking the arduous task of mixing the concrete necessary to construct a house. I can imagine him helping to pack stones and perhaps even fill bags with sand but

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<sup>3</sup> This period takes account of the time allowed for the produce to mature and be ready for reaping.

definitely not mixing any great amount of concrete. Ms Spencer states that she and Mr Patterson put the roof on the building with help from neighbours. She indicated that it was two neighbours, one of whom is dead and the other was unavailable to attend court to testify. Ms Spencer's account in some respects is vague and scanty but she provided specific descriptions in other respects which are compelling and credible. I accept that she assisted Mr Patterson with construction of the first house, with gathering transporting sand and fine stones and also passing him concrete while he laid blocks on evenings and weekends. Ms Spencer states that she worked as a security officer with Oswald Regisford's security firm in Kingstown in 1998 and earned a take home pay of \$645.00. She did not indicate the payment period. In any event, she said she spent her money on buying food for the house or contributing to the purchase of building materials for the original house. I believe her.

[14] Ms Spencer described the original building to be a 2 bedroom dwelling house with a living room and a kitchen, which she said was extended in 1998 with the addition of an upper storey which housed 3 bedrooms, sitting and dining room, bath and toilet and porch. She indicated that a kitchen, spare room and porch were added to the lower storey and completed in 2002 with assistance from her friends and Mr Patterson's friends. Ms Spencer acknowledged that it was Mr Patterson who purchased the materials for the construction. She deposed that concrete, blocks, steel, bay sand and fine stones were left over and these were used to "enforce" the house.

[15] In relation to the second building on the premises, Ms Spencer deposed that Mr Patterson "said he was going to put up a small wall structure in the yard very close to the dwelling house... for us to do business." That building consisted of 2 bedrooms, a sitting room, a kitchen and bath and toilet. She claims that she contributed substantially towards the building of the second building which she claims was built from materials produced by Mr Patterson and her. She denies that Lisa Fredericks contributed towards the construction of either the first or the

second building. Ms Spencer has provided no details about the contributions she claims to have made towards the second building. I reject her testimony on this especially since her relationship with Mr Patterson ended in 2012 and because I do not accept that the materials she assisted in getting for the first house were sufficient enough to leave excess after it was completed.

[16] Ms Spencer's and Mr Patterson's daughter, Natasha Spencer, provided similar testimony to her mother. Ms Natasha Spencer was quite composed and articulate in the witness box. She presented herself well. She was the most credible witness in the case. She deposed that her parents used to do agricultural cultivation of vegetables which her mother sold. She recalls too that her mother worked as a security officer with a firm in Kingstown. She alleges that her mother told her that she was building a dwelling house with her father. She remembers that her mother and Telong her brother, used to take bay sand and fine stones from Layou Bay put them in sacks and have the sacks transported to the building site. She testified that the house was built largely on earnings and labour of both her parents and Telong Spencer. She stated that Telong Spencer mixed the cement and sand while her mother passed the concrete mixture to her father. Her mother she recalls gave up the security job to take care of domestic duties at the house, which she refers to as the family house. She says that her mother lived with her father from the 1990s to 2012 when she sought employment in Bequia. Ms Spencer deposed that her mother spent her money and took care of the family's domestic needs from the 1990s to 2012.

[17] Telong Spencer was not a good witness. Essentially his testimony was similar to his sister's. His witness statement was almost identical to Natasha Spencer's. He supported his mother's testimony that she and he gathered bay sand and fine stones and took them to the building site. The evidence lacks specificity regarding the number of bags of sand and stones which were taken, the number of days this activity lasted, how many truck loads of sand and stones were taken. She did say that they collected the materials between 1995 and 1997, usually



when the children come from school, but not every day. In my opinion, that was more than enough time for them to accumulate sand and stone to meet most of the needs for the construction.

[18] On balance, I give them both credit for making significant contributions to acquisition of the first house although Mr Patterson's would have likely exceeded Ms Spencer's. I make this finding because whatever income they realized from farming would have been earned jointly with neither earning more than the other. I do not accept that Ms Spencer gave all of her earnings at either job to Mr Patterson. That goes against all reason but I believe she gave him the earnings from the farming and that they worked collaboratively to complete the house because they needed somewhere to live.

[19] Ms Spencer restricted her assertions regarding contribution of labour to the construction of the first dwelling house. By 2012 when the second house was being built, the relationship between her and Mr Patterson had ended and she had moved to Bequia. Her assertion that she and Mr Patterson built the second building "with money, labour and materials supplied by" them both<sup>4</sup> is therefore baseless and not sustainable. I find that she made no contributions to the second building.

[20] Ms Spencer claims that she and Mr Patterson had an agreement to construct a dwelling house on the subject property<sup>5</sup> and she contributed to the construction of the said dwelling house.<sup>6</sup> It is on those bases that she claims that a resulting or constructive trust has been created in her favour in relation to the disputed property.<sup>7</sup> A constructive trust is created and deemed to exist where property is vested in someone in circumstances where the law considers that it is inequitable

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<sup>4</sup> See paragraph 11 of the Amended Counterclaim filed on November 28, 2014.

<sup>5</sup> See paragraph 2 of the Amended Defence filed on November 28, 2014.

<sup>6</sup> Ibid. at paragraph 3 of the Amended Defence.

<sup>7</sup> Ibid. at paragraph 17 of the Amended Defence.

for him to assert full ownership over it.<sup>8</sup> A resulting trust is created by operation of law and is deemed to exist where an intention to create the trust was expressed but not effected or where someone places the trust property in another person's name without a clear expression of intent that he is to hold it in trust for the first person.<sup>9</sup> Anyone wishing to establish a beneficial interest to property through a constructive or resulting trust must demonstrate that:

1. there was a clear agreement or declaration that she owns a beneficial interest in the property;
2. she provided a part of the purchase price; or
3. the parties had a common intention that she would own an interest in the property.<sup>10</sup>

[21] In the instant case there is no evidence that Mr Patterson and Ms Spencer had an agreement that she would own a beneficial interest in the land or the two houses on it. Neither party has testified of such an agreement. While Ms Spencer claims that she provided part of the purchase price of the materials for building the two houses on the property, she does not assert that she provided any monies to purchase the land. In fact the land was acquired after the relationship between Ms Spencer and Mr Patterson had ended. I therefore find that there was no such agreement. Ms Spencer's evidence of her contributions to the purchase of materials to construct the houses is not detailed. I believe that she and Telong collected sand and fine stones for the construction of the first house. Her evidence such as it is, is general in nature and does not include details of how much sand and stones they brought to the site. Nonetheless, I believe her. I also accept that she and Mr Patterson were engaged in farming from which they generated monies which assisted in purchasing materials for the construction. There is sufficient basis on which to

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<sup>8</sup> See Halsbury's Laws of England 4<sup>th</sup> Ed. Vol. 48 at para. 585.

<sup>9</sup> Ibid. at para. 599 of Halsbury's Laws of England.

<sup>10</sup> See **Burns v Burns [1984] 1 All E.R. 244 at 250.**

conclude that Ms Spencer contributed substantial resources to the building to earn her a small beneficial interest in it.

[22] There is conflicting evidence regarding whether the parties agreed that Ms Spencer would own an interest in the property. Mr Patterson denies such agreement existed while Ms Spencer insists that Mr Patterson and she embarked on a common enterprise to build a home for their growing family. I find that Mr Patterson and Ms Judiana Fredericks had commenced construction of a house but that it was not completed when he and Ms Spencer began living together. Based on the testimony of the parties, I find that although Mr Patterson never intended for Ms Spencer to own an interest in the property, he led her to believe that she would and that he expressed such intention to her based on which she threw her lot in with him and assisted him in the construction by transporting sand and fine stone, contributing labour and purchasing materials. Consequently, I find that there was a common intention between them that they would both build the house and jointly own it. Having regard to his age at the time, Telong Spencer would not have been able to make any significant impact in the labour. His assistance is therefore discounted.

**Issue 2 - If so, to what interest in the subject property, if any, is Ms Spencer entitled?**

[23] Based on the foregoing and all of the circumstances of this case, I conclude that Coretha Spencer is entitled to a small interest in the first dwelling house. I do not think that it is negligible and distinguish it from the Cupid case on the basis that Ms Spencer's contributions to the household expenses and construction of the dwelling house were tangible and sufficiently substantial and it would be unfair not to recognize them and reward her for her efforts. Accordingly, I find that Carlton Patterson and Lisa Frederick hold a 1/10<sup>th</sup> share in the first dwelling house on the subject property in trust for Coretha

Spencer. In the absence of a valuation of the property, it is ordered that Carlton Patterson shall arrange for the dwelling house be valued on or before October 23, 2015 by a licensed property valuator. Mr Patterson and Lisa Fredericks shall pay to Ms Coretha Spencer a sum equivalent to a 1/10 share in the first dwelling house on or before November 30, 2015. Coretha Spencer is to remove all of her personal belongings from the said dwelling house on or before November 30, 2015.

**Issue 3 - Are Mr Patterson and Ms Frederick entitled to an injunction restraining Ms Spencer from trespassing on or occupying the disputed property?**

[24] The court has wide power to grant a permanent injunction. It may do so if it is satisfied having regard to all the circumstances of the case that it is just and equitable to do so and if the party seeking it has a sufficient interest in the property and has acted promptly. Mr Patterson and Ms Fredericks brought this claim within 2 months after the property was registered in their names. That time period is relatively short and satisfies the requirement that they apply for relief in a timely manner. The court will grant an injunction if presented with evidence that a strong probability exists that the applicant will suffer grave damage in the future and damages would be an inadequate remedy. Mr Patterson and Ms Fredericks have presented no such evidence. I believe that damages would be an adequate remedy if they were to experience any loss by reason of a trespass by Ms Spencer's. In any event, the evidence is that she still has property there. I entertain no doubt that Ms Spencer will comply with an order of the court to remove her belongings from the property. Such an order would suffice in these circumstances. Mr Patterson and Ms Fredericks have not proven that it is just and equitable to grant injunctive relief against Ms Spencer. I therefore dismiss their claim for an injunction.

## ORDERS

[25] It is accordingly ordered and declared:

1. Coretha Spencer's is entitled to a 1/10<sup>th</sup> share in the first house constructed on the subject property registered by Deed No. 922 of 2013. Carlton Patterson shall arrange for the said house be valued on or before October 23, 2015 by a licensed property valuator.
2. Mr Patterson and Lisa Fredericks shall on or before November 30, 2015 pay to Ms Coretha Spencer a sum equivalent to a 1/10<sup>th</sup> share in the said dwelling house.
3. Coretha Spencer shall remove all of her personal belongings from the said dwelling house on or before November 30, 2015 and deliver vacant possession to Carlton Patterson and Lisa Fredericks.
4. Carlton Patterson and Lisa Frederick's claim for an injunction to restrain Coretha Spencer from trespassing in or occupying the said property is dismissed.
5. Carlton Patterson and Lisa Fredericks shall pay costs of \$7,500.00 to Coretha Spencer.

[26] I wish to record thanks to counsel for their written submissions.

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**Esco L. Henry**  
**HIGH COURT JUDGE**