

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2008/0985

BETWEEN:

(1) Mollison Walcott
(2) Walcott Construction Company Limited

Claimants

and

Marie Walcott represented by her Curator Norman Walcott Jr.

Defendant

Consolidated with
SLUHCV2010/0600

BETWEEN:

Bryan Walcott

Claimant

and

(1) Mollison Walcott
(2) Mollison Walcott qua Executor of the Estate of the
late Norman Bartholomew Walcott

Defendants

Appearances:

Mr. Owen Edgar for Mr. Mollison Walcott, Mollison Construction Company Limited
and Mollison Walcott qua Executor of the Estate of Norman Bartholomew Walcott.
Mr. Oswald W. Larcher for Mrs. Marie Walcott and the Estate of Marie Walcott and
Mr. Bryan Walcott.

2014: April 14th
2015: October 19th and 20th.
2019: February 25th.

JUDGMENT

- [1] WILKINSON J.: SLUHCV2008/0985 was filed on 13th November 2008, and therein the Claimants, Mr. Mollison Walcott (MW) and Walcott Construction Company Limited (the Company) sought the following relief:- (i) the removal of the cautions placed on Block 0848D Parcels 204 and 655 by Mrs. Marie Walcott (Mrs. MW), (ii) damages, (iii) further or other relief, (iv) costs. Mrs. MW filed a defence and counterclaim. By her defence she claimed that she was entitled to a share by virtue of the purchase having occurred during the marriage. By her counterclaim she sought by way of relief: (i) a declaration that she had a share in Block 0848D Parcels 204 and 655 and (ii) further or other relief as the Court thinks just.
- [2] At this juncture, **the Court observes that while MW's evidence** on his own behalf and on behalf of the Company spoke of how long Block and Parcel 0848D 655 had been vested in the Company without complaint from Mrs. MW and alleged her consent to the ownership by the Company, there were no pleadings of limitation or relief sought by way of declarations or otherwise in this regard.
- [3] During the trial it came to light as per a copy of a rectification of the register document from the Registry of Lands, that at 25th September 2013, the cautions on Block 0848D and Parcels 204 and 655 had in fact been removed by the Registrar of Lands for the reason that suit SLUHCV2007/0452 had by order of the Court dated 22nd May 2013, been dismissed for want of prosecution.
- [4] SLUHCV2010/0600 was filed on 20th August 2010, and therein the Claimant, Mr. Bryan Walcott (BW) as Representative of the Estate of Mrs. MW sought the following relief:-(i) a declaration that Blocks and Parcel Nos. 1052B 50, 1048C 85, 1252B 326 and 1048C 96 were community property and the heirs of Mrs. MW had an overriding interest thereon; (ii) that MW holds Mrs. MW's **one**-half share in Block and Parcel 1052B 50 in trust for her heirs; (iii) Mrs. MW was entitled to the sum of \$5000.00 as stated in clause 18(a) of the Will of Norman Bartholomew Walcott (NBW); (iv) Mrs. MW was entitled to 25 percent of the monies held in the

bank account of NBW held with the Royal Bank of Canada; (v) such consequential orders as may be necessary; (vi) costs, (vii) further or other relief.

- [5] The net effect of the 2 suits was that the first suit attacked the residue of the estate that was transferred to MW and the transfer to the Company by NBW, and the second suit attacked matter of all other lands purchased and disposed of without reserving Mrs. MW one-half share.

Issue

- [6] The first issue is what was the effect of the marriage which occurred on 29th November 1950, between NBW and Mrs. MW in regard to the acquisition of land from that date onwards.
- [7] The second issue is whether NBW was free to dispose of any or all land acquired after 29th November 1950, but registered in his sole name by his Will or otherwise.

The Evidence

- [8] The facts are largely straightforward. Historically, NBW was a businessman and building contractor employed with the Company. NBW was married twice. His first marriage on 21st November 1934 was to Mrs. Josephine Walcott neé Compton. While the Court was not made aware of how many children were born of this union, MW who was 75 years of age at time of preparing his witness statement in 2012, was a child of that union. Mrs. Josephine Walcott died on 10th March 1943. They were married for 9 years.
- [9] On 29th November 1950, NBW remarried. He married Mrs. MW neé Edwards. **They remained married until NBW's death on 15th October 2003.** They were married for 53 years.
- [10] On 30th **January 2004, being approximately 31/2 months after NBW's death,** an order was made declaring Mrs MW incapable of managing her affairs and Mr.

Norman Walcott Jnr (NW Jnr) was appointed her curator. Mrs. MW died approximately 6 years later on 14th March 2010.

[11] According to the marriage certificate of NBW and Mrs. MW, she was a spinster and housekeeper. On the marriage certificate it was recorded that NBW claimed paternity to 4 children of Mrs. MW and requested to have them registered as the lawful children of both Parties. The 4 children were Rufus Bryan born 18th December 1945, Christina Joan born 8th January 1947, Myron Eyron born 8th August 1948, and James Larry born 12th August 1949. Subsequently another son was born, NW Jnr.

[12] NBW left a Will executed on 27th June 1997 at the Chambers of Edgar & Edgar. Probate was granted of the Will on 8th March 2005, to the appointed executors named therein - MW and BW.

[13] **NBW's Will** stated:-

"2. I name and appoint MOLLISON WALCOTT OF Contractor and BRYAN WALCOTT OF Accountant, Executors of this my Will with power to either of them to act independently of the other in the event of the death incapacity or absence from the said State of the other or in the event of the other's refusal to act in the office of Executor.

3...

4. I give devise and bequeath unto my son MOLLISON WALCOTT the house, inclusive of land on which it is erected, known as Building No. 1 situate at Marisule, Gros Islet.

5. I give devise and bequeath to my daughter MARJORIE SHANKS the house known as Cottage No. 1 together with one-quarter acre of land situate at Marisule aforesaid.

6. I give devise and bequeath unto my son THOMAS WALCOTT the house known as Building No. 2 together with one-quarter acre of land situate at Marisule aforesaid.

7. I give devise and bequeath to my son BRYAN WALCOTT the house known as Cottage No. 2 situate at Marisule aforesaid, with my wife Marie Walcott being paid one half of the current rental.

8. I direct my Executors to pay to my wife MARIE WALCOTT the sum of \$1000.00 monthly from my share of the Company known as WALCOTT CONSTRUCTION COMPANY situate

9. I also direct my Executors to pay to my brother FREDERICK WALCOTT the sum of \$600.00 monthly from my share of the Company known as WALCOTT CONSTRUCTION COMPANY situate during his lifetime and after his death to pay to his wife MILDRED WALCOTT the sum of \$400.00 during her lifetime.

10. I give devise and bequeath unto JOAN FRICOT and PAMELA HINKSON my property situate at Marchand, Castries in equal shares.

11. I give devise and bequeath to my son NORMAN WALCOTT (Junior) the usufruct or life interest of my half-share in the matrimonial home situate at La Clery and upon his death the usufruct or life interest shall rejoin unto the Nudas Proprietas my wife MARIE WALCOTT.

12. I give devise and bequeath unto my son NORMAN WALCOTT (Junior) my property situate at Morne Avite, Castries.

13. I give devise and bequeath unto MARIE SHANKS, BRYAN WALCOTT, PAMELA FADLIN and DIANA WALCOTT 10,000 sq. ft each of my land situate at Grand Riviere, Gros Islet which I purchased from one Josephat and the balance to MOLLISON WALCOTT.

14. I give devise and bequeath to my daughter SHARON WALCOTT my property situate at La Pansee, Castries.

15. I direct my Executor MOLLISON WALCOTT to give to JOSEPH JAMES a lot of land the size of which I leave to his discretion from my lands situate at Morne Dudon, Castries and the remainder to wit: the vacant and rented lots to be divided as follows:

- | | |
|-------------------------|-----|
| (a) Unto TYRONE WALCOTT | 25% |
| (b) ALDRICK WALCOTT | 25% |
| (c) COLVILLE WALCOTT | 25% |
| (d) SHARON WALCOTT | 25% |

16. With regards to my property situate at Morne Dudon aforesaid on which is erected two wooden houses, the larger of which was formerly occupied by one FREDEREICK I give and bequeath to ANTHONY WALCOTT with the other smaller house to MICHAEL WALCOTT.

17. As to my lands situate at Gros Islet with a proposed sub-division of 17 lots I devise and bequeath to ANTHONY WALCOTT, BRYAN WALCOTT, KEVON WALCOTT, SHARON, COLVILLE, ALDRICK, LILYN ST. LOUIS,

JANNINE FRICOT, NORMAN (Junior) one (1) lot each and the balance of eight (8) lots to be sold by my Executors and subject to the payment of all expenses of the sale, the balance of the proceeds to be divided among TARA, VILTERION WALCOTT, TOONDAY FADLIN, KIMBER WALCOTT, QUINCY IGLIS, CABBY WALCOTT, and KEITH WALCOTT in equal shares.

18. I direct my Executors to make the following pecuniary bequests as follows:-

(a) From **the proceeds of my life policy with Barbados Mutual Life**

(i) Unto Marie Walcott the sum of \$5000.00 and the balance

(ii) Unto Marie Shanks and Mollison Walcott in equal shares.

(b) From my shares held in Walcott Construction Company:-

(i) Unto MOLLISON WALCOTT 55 shares

(ii) Unto NORMAN WALCOTT (Junior) 5 shares

(iii) Unto BRYAN WALCOTT 5 shares

(iv) Unto BRYAN WALCOTT 5 shares

(c) From my monies held in account at the St. Lucia Co-operative Bank:-

(i) Unto Mollison Walcott.

(d) From my monies held at the Royal Bank of Canada:-

(1) Unto Marie Walcott 25 % and the balance to be divided as follows:

(2)

(e) From the shares **held at C.I.B.C Caribbean Ltd.**

(a) Unto Marie Walcott 25 %

(b) Unto...

19. I give devise and bequeath all the rest remainder of my property real and personal movable and immovable wheresoever situate to which I may be entitled at the time of my death to my son, MOLLISON WALCOTT **thereby constituting him my residuary legatee and devisee."**

[14] At 8th February 2007, a designation of immovable and vesting assent deed (the vesting deed) was made by the executors MW and BW and therein they sought to distribute the estate per the Will in favour of the Beneficiaries named therein.

[15] In the vesting deed, the first schedule recorded that NBW owned sole Blocks and Parcels No. 1052B 50 and 0848E 896. It was also recorded that NBW owned an

undivided one-half share in Blocks and Parcels 0848E 108, 0848D 664, 1048C 82, 90, 98, 104, 113 and 168.

- [16] The executors then distributed parcels of the land as follows:
- i. Block and Parcel 1052B 50 to Marie Shanks, Thomas Walcott and Mollison Walcott.
 - ii. Block and Parcel 0848E 896 to Joan Fricot and Pamela Hinkson.
 - iii. Block and Parcel 0848E 108 to Norman Walcott Jr.
 - iv. Block and Parcel 0848D 664 to Sharon Walcott
 - v. Block and Parcels 1048C 82, 90, 98, 106, 113, 168 to Tyrone Walcott, Aldrick Walcott, Colville Walcott, Sharon Walcott.

The Company

- [17] The Company had its registered office at 2A Chisel Street, in the City of Castries. According to the articles of incorporation dated 25 January 1969, the subscribers were:-
- (i) NBW – 1 share
 - (ii) Frederick Emmanuel Walcott – 1 share
 - (iii) MW – 1 share
 - (iv) Thomas Raynold Walcott – 1 share
- [18] At 9th November 1981, Mr Thomas Walcott transferred his 1 share for the consideration of \$1.00 to MW.
- [19] At July 1992, Mr. Frederick Walcott transferred his 1 share for the consideration of \$1000.00 to MW.
- [20] According to the annual return dated 30th October 1991 and filed in the Registrar's Office on 31st October 1991, at 11.05 a.m. the directors of the Company were as follows:
- i. NBW

- ii. Frederick Emmanuel Walcott
- iii. MW
- iv. Mrs. MW

The secretary was – Phillipa Walcott

The shareholding was recorded as follows:

- i. NBW – 600 shares with nominal value of \$6000.00
- ii. Frederick Emmanuel Walcott – 100 shares with nominal value of \$1000.00
- iii. MW – 200 shares with nominal value of \$2000.00
- iv. Mrs. MW -100 shares with nominal value of \$1000.00.

This annual return was signed off by NBW, MW, Frederick Walcott and Mrs. MW.

[21] According to the evidence of Mr. Maurice Lennie (ML) certain matters on the annual return of 30th October 1991, were **amended on the Registrar of Companies'** instructions because there were no supporting documentation filed with the Registrar. The amended return of same date and time listed the directors as:

- i. NBW
- ii. Frederick Emmanuel Walcott
- iii. MW
- iv. Mrs. MW
- v. Thomas Reynold Walcott

Ms. Phillip Walcott was struck off (with line thru her name) as secretary and no one was named as a replacement.

The shareholding was recorded as follows:

- i. NBW 1 share (previous 600 deleted by a line thru it) with value \$6000.00
- ii. Frederick Emmanuel Walcott 1 share (previous 100 deleted by a line thru it) with value \$1000.00
- iii. MW 2 shares (previous 200 deleted by a line thru it) with value \$2000.00
- iv. **Mrs. MW's** name and shareholding previous noted was deleted with a line thru it all.

A note on the amended document stated that it was affixed on 3rd April 2006, and stated that the annual return was amended pursuant to section 504 and a letter dated 25th January 2006.

- [22] At 4th February 1999 an annual return was filed for the year ending 31st December 1992. Therein the shareholding was as follows:
- i. NBW - 600 shares and this was deleted by a line thru it and 1 share inserted
 - ii. MW - 200 shares and this was deleted by a line thru it and 3 shares inserted.

The directors of the Company were shown as:

- i. NBW
- ii. MW
- iii. Frederick E Walcott
- iv. Mrs. MW

The Secretary was shown as Mrs. MW but her name was deleted by a line thru it. As a result there was no secretary recorded.

A note at the bottom of the page said that the amendment was pursuant to section 504 and a letter dated January 24th 2006.

- [23] At 30th **March 1999, there was filed in the Registrar's Office a notice of change of** directors. The directors were listed as:
- i. NBW
 - ii. MW
 - iii. Frederick E. Walcott
 - iv. Mrs. MW

- [24] An annual return was filed on 6th October 2006, for the period 1st January 2004 to 31 December 2004. The directors were:
- i. NBW (the Court observes that he was deceased at 15th October 2003, i.e some 3 years prior)

ii. MW

And the shareholding was stated to be:

- i. NBW – 1 ordinary share
- ii. MW – 3 ordinary shares

[25] On 11th February 2010, there was filed in the Registry of Companies & Intellectual Property a return on allotments of shares. It provided:

- i. MW – 210 shares (previous holding was 207 shares with value \$2070.00)
- ii. NBW – 70 shares (previous holding was 69 shares with value of \$690.00)

[26] While the Court has recorded these matters about the Company and MW sought to say that Mrs. MW consented to the transfer by NBW of Block and Parcel 0848D 655 to the Company, it appears that Mrs. MW was never a part of the Company as resolutions were never passed to support her being part of the Company in any way. In addition there were no resolutions disclosed as to the Company purchasing the land from NBW and the conditions of purchase, if any.

The Land

[27] It is uncontested that during the course of the marriage between NBW and Mrs. MW that several parcels of land were acquired in the name of NBW. There was no evidence before the Court of any land purchased before 29th November 1950, the date of marriage to Mrs. MW.

[28] The Court observed 2 matters on the purchase of 1 parcel of land Block and Parcel 0848D 655 – (i) the deed of sale made 6th December 1985 between NBW to the Company with price of \$50,000.00 states that the root title to the land is a deed of sale between NBW to NBW and made 28th February 1959 and registered in Volume 99 Number 67905, and (ii) the first recital states:

“BETWEEN: NORMAN BARTHOLOMEW WALCOTT of La Clery in the Quarter of Castries in St. Lucia, Building Contractor, stipulating as to his property acquired prior to marriage (hereinafter referred to as THE VENDOR) of the one part.” (My emphasis)

- [29] The transfer of land to the Company is an issue raised by the Estate of Mrs. MW because at 1959, NBW and Mrs. MW were already married 9 years.
- [30] According to the documents disclosed including those put forward during the adjudication process, the land acquired after the marriage between NBW and Mrs. MW in 1950 included :-
- i. Deed of sale made 31st January 1953 between Leon Whiteman and NBW of 2 contiguous parcels of land measuring 3 acres more or less, and 1 acre 2 roods 14 perches situate at Morne Du Don in the Town of Castries. Purchase price was \$450.00. By the adjudication record this became identified as Block and Parcel 1048C 85.
 - ii. Deed of sale made 6th June 1957, between Paul St. Marie and NBW 1 parcel of land measuring 1 carre (3.2 acres) situate at Bon Air Estate in the Quarter of Gros Islet. Purchase price \$1560.00. By the adjudication process this became identified as Block and Parcel 1052B 50
 - iii. Deed of sale made 28th February 1959, between Hetty Cox et al and NBW 1 parcel of land measuring 10, 850 sq. ft. in the Town of Castries. Purchase price \$12,112.00. Located on this land were 6 houses known as No. 4,6,6A and 8 Chisel Street and Nos. 86 and 88 Victoria Street. By the adjudication process this became identified as Block and Parcel 0848D 204 and 655.
 - iv. Deed of sale made 31st March 1966 between NBW and MW a parcel of land measuring 1 carre situate at Bon Air Estate situate in the Quarter of Gros Islet for \$55,000.00. By the adjudication process this became Block and Parcel 1052B 50.
 - v. Deed of sale made 16th December 1966, between MW (with his wife Phillippa Walcott intervening) and NBW of 1 parcel of land measuring 1 carre situate at Bon Air Estate situate in the Quarter of Gros Isle for \$1000.00 - Block and Parcel 1052B 50.
 - vi. Deed of sale made 6th December 1985 between NBW and the Company of a parcel of land. Purchase price \$50,000.00 – Block 0848D 655.

[31] On perusal of the documents within the trial bundles including the Will, the Court observed the following parcels of land as owned by NBW sole or with Mrs. MW. The Court acknowledged that many of the parcels could have come about by mutation of the land referred above. This is simply a record of the land disclosed. According to the Land Registers they were: -

- i. Land Register opened at 4th December 1997, Parcel 0848D 204 – 0.07 hectares (9,757.44 sq ft)
- ii. Land Register opened at 4th December 1997, Block and Parcel 0848D 655 – less than 0.02 (.0.02 is 2787.84 sq ft) – the Company
- iii. Block and Parcel 0848D 664
- iv. Block and Parcel 0849E 279
- v. Block and Parcel 1052B 50
- vi. Block and Parcel 0848E 896 - the Company
- vii. Block and Parcel 0848E 108
- viii. Block and Parcel 0848D 204
- ix. Block and Parcel 0848D 664
- x. Block and Parcel 1454B 53
- xi. Block and Parcel 1048C 85
- xii. Block and Parcel 1048C 96
- xiii. Block and Parcel 1048C 82, 90, 98,104, 106, 113, 168,
- xiv. Block and Parcel 1252B 326
- xv. Block and Parcel 1455 218
- xvi. Block and Parcel 0849E 279
- xvii. Block and Parcel 0848D 204
- xviii. Block and Parcel 0650E 16 – the Company

[32] According to MW during the lifetime of NBW he worked with him in excess of 44 years and this being the case he was privy to most, if not all of NBW's business dealings and affairs. He was also familiar with the signature of NBW.

[33] MW knew well his stepmother, Mrs. MW and her curator, his brother NW Jnr.

- [34] In regard to Mrs. MW, he said that he never knew her to be gainfully employed. He only knew her to be a housewife.
- [35] According to MW, he recalls when NBW purchased 10,850 sq. ft. of land from Hetty Cox et al on 28th February 1959. He said that while the deed was registered on 28th February, 1959, it is stated therein that payment was partly before and partly at the execution hereof. This meant that part of the purchase price was paid before the solemnization of **NBW's** marriage to Mrs. MW.
- [36] According to MW, he recalled that at about 28th February 1959, NBW executed a hypothecary obligation in favor of Saint Lucia Co-operative Bank Limited (now 1st National Bank St. Lucia Limited) for the sum of \$ 10,000.00. The proceeds of the loan were used to finance the balance of the purchase price for the said parcel of land purchased from HETTY COX et al. The sole signatory to the hypothec was NBW.
- [37] According to MW, a perusal of the respective title documents submitted reveal that NBW and the Company were registered as absolute owners of the Block and Parcel 0848D 204 and 0848D 655 for 44 years and 18 years respectively. Mrs. MW was aware from the outset that Block and Parcel 0848D 204 was in the sole name of NBW, and as a director of and privy to the affairs of the Company from 1969 to 2006, that Parcel 0848D 655 was registered in the name of the Company and in neither instance did she take any steps to be included in the Land Register as a co-proprietor.
- [38] Under cross-examination MW said that BW made no objection to the vesting deed. Rather when the vesting deed was put to him, he took it away and then brought it back the following day to the Chambers of Counsel, Edgar & Edgar.

- [39] MW also said that Mrs. MW knew about the vesting deed. He said that he was certain that she knew about the vesting deed because she knew about the Will and the vesting deed was made after the Will. He also said that she did not object to the contents of the vesting deed.
- [40] MW admitted that there was some land in which Mrs. MW had a one-half share. He said that he could not say off-hand which land Mrs. MW had a one half-share with NBW.
- [41] Under cross-examination MW was asked with reference to the vesting deed which in properties cited therein did Mrs. Marie Walcott have a one half share? He responded Block and Parcels 0848E 896 and 108, Block and Parcel 0848D 664, Block and Parcel 1048C 82, 90, 98, 106 113, 168.
- [42] The Court inquired of MW what was the status of Block and Parcel 1052B 50. He responded that it belonged to NBW and in the vesting deed it was given to Marjorie Shanks, Thomas Walcott and himself.
- [43] When asked if Mrs. MW had a one-half share in Block and Parcel 1252B 326, MW replied that she did not.
- [44] When asked if Mrs. Marie Walcott had a one-half share in Block and Parcel 1048C 96, MW replied that she did not.
- [45] ML gave evidence on behalf of MW. He provided accounting and financial statement services for the Company for 8 years prior to his witness statement which was signed at 25th January 2012. His accounting qualifications were not disclosed.
- [46] ML said that in respect of the Company, he acted more as a corporate secretary. He maintained the records of the Company in accordance with its articles of

association and memorandum of association and sought to ensure that there was compliance with the Commercial Code and Companies Act. MW as the majority shareholder and managing director of the Company and was the person who gave him instructions from time to time on matters pertaining to the Company. If there was a change of director or company secretary then he would be instructed by MW in this regard and this included instructions in relation to directors who were not registered in compliance with the Company Act. A similar situation also arose with the issuance of shares cited in the annual return.

- [47] According to ML, it was the **Registrar of Companies in her audit of the Company's** file at the Registry when he was seeking to register the annual return for 2001 who referred to the previous returns filed. **The Registrar's instructions to** him per her query sheet specified that he should prepare the annual returns to include only the appointments of directors that was duly registered on her file and also to record the issuance of shares on the return in the name of the shareholders that were registered in the file in the form of shares issued upon registration of company.
- [48] Under cross-examination ML said that he was contracted by the Company because the Company was in arrears with its compliance requirements for the Inland Revenue Department and Registry of Companies. He was instructed at that point in time to bring all outstanding annual returns and financial statements up to date.
- [49] Mrs. MW's **name** was familiar to ML. He knew her to be married to Mr. NBW during her lifetime.
- [50] ML did recall seeing the October 1991 annual return and he had noted thereon that Mrs. MW was recorded as a director and a shareholder of 100 shares.
- [51] ML was asked about how did termination of directorship and shareholding come about? He said that termination of the shares noted in the annual return would

have resulted from a directive of the Registrar of Companies as related to the 1991 annual return or any other annual return if she recognized that the procedure required to appoint directors and issue shares had not been complied with. This was evident by the absence of the appropriate documents showing appointment of director and allotment of shares to individuals.

[52] ML said that it was the Registrar who informed him that when shares were allotted to Mrs. MW that the manner of allotment did not comply with the Companies Act. **He said that he conducted a search of the Company's file and there were no documents to effect the appointment of director and allotment of shares to persons shown in the return dated October 1991.**

[53] On a question from the Court about the accuracy of the amended annual return dated 31st October 1991, and why should it believe any of the information stated thereon. ML responded that even the record that NBW had 1 share with a value of \$6000.00 was incorrect.

[54] On a further question from the Court about what was the value of the annual returns if such information was incorrect? ML said that they were worth nothing to the Court and his position was supported by the Registrar of Companies due process for allotting of the shares by 1st the provision of minutes of directors approving the allotment and **there were no directors' resolutions approving the allotment per the Company's articles and also a return of allotment to indicate increase or not of shares allotted.** Such documents were not submitted to the Registrar. And so acting in accordance with the Companies Act, **the Company's management had to regularize and authorise the Registrar to amend the annual returns filed to reflect what was duly registered on the Company's file.** This he said was what the amended October 31st 1991 annual return was about.

[55] ML said that during his time with the Company there were no shares issued other than the reorganization of the share capital. This reorganization was to reflect the

same person percentage shareholding to allow the share units to be easily divisible and allotted whenever the need arose. He said that this was also necessary so as to avoid difficulty at the Inland Revenue Department as shareholding was taxed upon transfer and registration.

[56] NW Jnr gave evidence in relation to the first suit challenging the ownership of the by the Company of Block and Parcel 0848D 655 and MW of Block and Parcel 0848D 204.

[57] NW Jnr stated that NBW purchased the land described as Block and Parcel No.0848D 655 on 28th February 1959, from Hetty Cox Beaubrun et al. The deed of sale as executed before Maurice Charles Salles Miquelle Notary Royal was registered at the office of Deeds & Mortgages on 28th February 1959 in Vol.99 No.67905. Part of the said parcel of land shown as Block and Parcel No. 0848D 655 was later sold by NBW to the Company as seen in the deed of sale dated 6th December 1985. It was stipulated in the said deed of sale by NBW to the said Company that the land was acquired prior to his marriage to Mrs. MW. This he said was a clear stipulation contained in the said deed of sale that was in conflict with what is contained in previous deed of sale dated 25th February 1959. The said properties were acquired after the solemnization of the marriage of NBW and Mrs. MW and so it was subject to the legal community that existed between his parents.

[58] According to NW Jnr, NBW disposed of his share of Block and Parcel No.0848D 655 to the Company without the consent or knowledge of Mrs. MW. He kept 0848D 204 as his land and erected a structure on it in or about the year 1983. In the circumstances since NBW did not acknowledge Mrs. MW as having a share in Block and Parcels 0848B 655 and 204 it was being claimed that one-half share of both Block and Parcels be conveyed to Mrs. MW notwithstanding any encumbrances upon the said Parcels of land.

- [59] Under cross-examination NW Jnr was asked if he knew if Mrs. MW made any objection to deed of sale being in the sole name of NBW and he responded that she did not make any objection. He agreed that she knew that the deeds were in the sole name of NBW.
- [60] NW Jnr. said that being born in 1953, at his age at the time, he was not fully aware of the land matters under discussion. He just knew he was connected to the land but did not know the details.
- [61] The Court observes for example that in 1966 when NBW sold the land on 31st March 1966, to MW for \$55,000.00 and then at 16 December 1966 when MW resold the land to MBW for \$12,000.00 that NW Jnr would only have been approximately 13 years old. The Court believes that it would be unreasonable to expect for him to be aware of these matters in any depth unless he was present at discussion about same.
- [62] BW was a co-executor of the estate of NBW until he resigned from the appointment. Under cross-examination he said that while as brothers he got on with MW, in the role of co-executor of the estate of NBW he was frustrated by **MW's attitude for example when he asked for financial statements for the Company**, he was going back and forth between MW and ML and getting nothing. In addition when he asked the lawyers for information about the NBW's estate he got a negative reply.
- [63] He was subsequently appointed the executor of the estate of Mrs. MW and for which probate was granted 19th January 2011.
- [64] According to BW, during their marriage and lifetime NBW and Mrs. MW purchased several properties together. One such property was Block 1052B 50. On this land his parents constructed several houses and occupied them together with their children, all of whom are now their legitimate heirs.

[65] He says that by a deed of sale dated 31st day of March 1966, NBW and Mrs. MW elected to sell Block and Parcel 1052B 50 to MW for \$55,000.00. In the said deed of sale it is stated:

“At the making of these presents there came and intervened Marie Walcott wife common as to property of the vendor who declares that she is fully aware of the transaction and consents and agrees thereto as appears by her presence and her signature hereto.” (My emphasis)

[66] By a subsequent deed of sale dated 16th December 1966, MW re-sold Block and Parcel 1052B 50 to NBW and Mrs. MW \$1,000.00. While this sale was recorded solely in the name of NBW, he was still married to Mrs. MW, and they were still living together in their matrimonial home.

[67] BW said that NBW by his Will pursuant to clause 4 made provision for MW of house, land and the residue of his Estate, clause 5 made provision for Marjorie Shanks of house (cottage no.1) and land, clause 6 made provision for Thomas Walcott of house (building no.2) and land, and by clause 7 for himself of a house (cottage no.2)

[68] BW said that by his understanding there are 2 things, first that NBW was only distributing his one-half share of the land, and second, it is only he that was not **given land from NBW's one-half share of the land.**

[69] BW said that logically and accordingly, **MW's** share was no doubt the remainder from **NBW's one-half share** after dismembering the area mentioned in clauses 5 and 6 of **NBW's Will. The dismembering should not include the one-half share of Mrs. MW.**

[70] BW said that the executors in the vesting deed erroneously vested by instrument no. 1333/2007 unto MW the one-half share belonging to Mrs. MW.

- [71] According to BW, the total area of the land accordingly to the schedule of the original deed of sale to NBW was (1) carre or approximately 132,680 square feet. It has an estimated value of \$ 2,693,600.00.
- [72] According to BW, Mrs. MW during her lifetime was entitled to an undivided one-half share thereof and during his lifetime NBW the other undivided one (1/2) share.
- [73] That being the case, MW was only entitled to the rest and remainder of **NBW's** undivided one-half share after the 24,000 sq. ft had been dismembered according to clauses 5 and 6 of **NBW's Will**.
- [74] According to BW, MW has embarked on a development and sub-division of the entire one (1) carre or 132,680 square feet with the conscious and deliberate decision of denying the heirs of Mrs. MW their legal entitlement, share and interest in the land.
- [75] BW said that further still, in addition to the issue with Block and Parcel 1052B 50, MW as executor of NBW had also failed and or refused to acknowledge that Mrs. MW had any interest in (i) Block and Parcel 1048C 85, (ii) Block 1252B 326 and (iii) Block 1048C 96. These Blocks and Parcels he says have an estimated value of approximately \$1,000,000.00.
- [76] According to BW, again in relation to the Will, MW as executor had blatantly and arrogantly refused to comply with the provisions in the Will which provide for: (i) payment to the heirs of Mrs. MW the sum of \$ 5,000.00 from proceeds of **NBW's** life insurance policy with Barbados Life formerly Travelers Life Ltd., and as stated in clause 18(i), (ii) pay the heirs of Mrs. MW 25% from monies held at the Royal Bank of Canada as stated in clause 18(d), and (iii) pay the heirs of Mrs. MW their respective shares held at C.I.B.C Caribbean LTD. and 25% of the dividends received as outlined in clause 18(e).

[77] As regards other land, in addition to Block 1052B 50, it was **BW's view** that Mrs. MW had an interest and one-half share in Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96. **It was also BW's view that Mrs. MW's heirs** were entitled to a share in the Blocks and Parcels referred. In the circumstances, he asked that MW as executor of the estate of NBW be compelled to produce for the Court:-

- i. **NBW's** bank statements held at the Royal Bank of Canada six (6) months before his death;
- ii. a full account of all dividends paid on shares held at C.I.B.C Caribbean Ltd.;
- iii. a full account of all lands sold at Gros Islet in respect of the proposed sub-division of 17 lots, specifically stated in Clause 17 of **NBW's Will**;
- iv. a full and comprehensive account of the entire estate of **NBW's** Will.

[78] BW asked that MW as executor of the estate of NBW do transfer to the estate of Mrs. MW all of her interest and share in the Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96.

[79] BW also asked that MW as executor of the estate of NBW do vest **Mrs. MW's one-half** share in Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96 unto the heirs of Mrs. MW.

[80] BW said that he is fearful that unless the MW as executor of NBW do vest Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96 unto the heirs of Mrs. MW they will suffer loss and damage.

[81] **BW stated that by MW as the executor of NBW's estate failure to act that the heirs** of Mrs. MW have suffered loss and damage by not benefitting from the:-

- i. sum of \$5,000.00 as stated in Clause 18 (a) of **NBW's** Will;
- ii. 25% monies held **in NBW's** account at the Royal Bank of Canada; and
- iii. the inability of the heirs of Mrs. MW to develop their respective share of Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96.

- [82] BW says that he therefore seeks on behalf of the heirs of Mrs. MW a declaration that Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and (iii) 1048C 96 belonged to both NBW and Mrs. MW in equal shares as they were married and living together in their matrimonial home at the time of the purchases.
- [83] Under cross-examination BW said that in relation to the claims for monies from the various Banks that as far as he could recall, as co-executor of the estate of NBW that the executors had approached Counsel to write to the Banks and he recalled in particular that the Royal Bank said that at the date of his death that NBW did not have a balance in his account. He said that after that letter that he had asked for copies of Bank statements for 6 months prior to **NBW's death**. He kept following up with Counsel for the Estate about replies from the other 4 banks and then he just gave up.
- [84] BW was asked if he knew whether Mrs. MW objected to Block and Parcel 1052B 50 being in the sole name of NBW? He responded that he did not know.
- [85] Under cross-examination he was asked whether he remembered signing the vesting deed, taking it away from Chambers and returning saying that he had read it. He responded that he thought that he had signed the vesting deed.
- [86] He agreed that at one time he was an executor for both the estates of both NBW and Mrs. MW, his parents.
- [87] BW said that as it related to Mrs. MW, that he asked for everything that was in the Will. He did ask for 25 percent of the income at Royal Bank, he did ask for shares at CIBC and subsequently the heirs got theirs.
- [88] BW said that on inquiry about Block and Parcels 1048C 85, 1252B 326 and 1048C 96 he was trying to find out about Mrs. **MW's interest** and MW told him that she had none.

- [89] Under re-examination BW by way of update on the Will said:
- i. On paragraphs 4,5,6 and 7 he had no problem.
 - ii. On the matter of the shares of the **Company Ltd, he didn't know what** happened. He had not received any shares.
 - iii. On paragraph 11, his brother and sister lived in the house at La Clery.
 - iv. On paragraph 13, he had not received a share of land.
 - v. On paragraph 18 (a) Mrs. MW never got, 18(b) – he never got shares in the Company.
 - vi. On paragraph 18 (d) Royal Bank of Canada – was a dud
 - vii. On paragraph 18 (c) the heirs got their shares.
- [90] Under re-examination, BW was referred to Block and Parcel 1052B 50 and asked what was his understanding when he signed the vesting deed conveying the parcel and did he see Mrs. MW as having interest in the designation? He responded No he did not see her name there and what he understood by the remainder of the paragraph was that she was entitled to a one-half share and what NBW was entitled to, he left to MW. He said that **Mrs. MW's** half-share of Block and Parcel 1052B 50 was still available.

The Law

- [91] The Civil Code of Saint Lucia Cap. 4.01 provides:

“COMMUNITY OF PROPERTY

SECTION 1 LEGAL COMMUNITY

1188. With respect to marriages taking place after the coming into operation of this article there shall be only one kind of community of property, namely: legal community, the rules governing which are contained in this Chapter.

1189. Community commences from the day the marriage is solemnized: the parties cannot stipulate that it shall commence at any other period.

1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.

1191. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor implicitly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.

The Assets and Liabilities of the Community

1192. (1) The property of persons married in community is divided into separate property and the property of the community.

(2) Separate property comprises –

(a) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized;

(b) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse;

(c) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly;

(d) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived;

(e) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.

(3) Property which is acquired by the husband and the wife during marriage in any manner different from that above declared is the property of the community.

1193. (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set out in article 1192, or to otherwise belong to one of the spouses only.

(2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds. e

1211. The spouses shall together administer the property of the community.

1212. One spouse cannot, to the prejudice of the other, bequeath more than the share of such spouse in the community.

The bequest of an object belonging to the community is subject to the rules which apply to the bequest of a thing of which the testator is only part owner.

If the thing has fallen into the share of the testator and be found in his succession the legatee has a right to the whole of it.”

Findings and Analysis

- [92] As the Court sees it, the 2 issues fall squarely to be determined pursuant to articles 1188 to 1211 (as amended in 1989) of the Civil Code as from the day of marriage and by the mere fact of the marriage any property (and which would include land) acquired by either party during the course of the marriage save that described in article 1192 (2) falls to be described as community property, namely legal community. Legal community could be established by a simple declaration, but such was not necessary and where there was no declaration, legal community was deemed to exist. For a contrary intention to be established, article 1192 would be applied. Article 1192 is not applicable on the facts before the Court.
- [93] MW in his evidence stated that Mrs. MW knew about the vesting deed. This is contradicted because the vesting deed was made on 8th February 2007, exactly 3 years after the Court’s order on 24th January 2004, wherein it was declared that Mrs. MW was unable to look after her affairs and NW Jnr. was appointed her curator.
- [94] MW was at great pains to inform the Court on a few occasions that his step-mother, Mrs. MW was not gainfully employed and was only a housewife. This is a non-issue as there is no such caveat or restriction against land falling into the **community property “pool”**. Further MW contradicted himself under cross-examination when he admitted that MW had an interest in Block and Parcels 0848E 896 and 108, Block and Parcel 0848D 664, Block and Parcel 1048C 82, 90, 98, 106 113, 168. All the land was ultimately purchased by NBW.
- [95] MW was also at great pains to demonstrate to the Court that BW knew what the vesting deed was about and accepted it. As the Court sees it, even if BW as co-

executor agreed to the disposition, he could not give away the rights created and acquired by article 1188 et seq. of the Civil Code.

- [96] On review of all the Blocks and Parcels referred to in the documents before the Court, the Court finds that every single parcel of land was acquired after the marriage on 29th November 1950. On none of the documents disclosed save for Block and Parcel 0848D 655 (sale to the Company) and which the Court does not accept due to lack of evidence, was it recorded that the land was to be held as the separate land of NBW.
- [97] In answer to the first issue, it therefore appears to the Court, that all land acquired after the marriage of the Parties fell to be described as land being in legal community. The Court so holds. Following on therefore, Mrs. MW had an undivided one-half share in all the land acquired after marriage.
- [98] This **is the Court's** position to (a) the land sold to the Company by NBW – Block and Parcel 0848D 655 and to MW – Block and Parcel 0848D 204, and (b) Blocks and Parcels 1052B 50, 1048C 85, 1252B 326 and 1048C 96.
- [99] Having come to the conclusion that all land acquired during the marriage fell into legal community, this brings the Court to the second issue – disposition of the land **by Will or otherwise of namely, Mrs. MW's undivided one**-half share.
- [100] The first sub-issue here is the sale by NBW to the Company on 6th December 1985 and wherein he records the root title deed as being a sale between NBW to NBW by deed made 28th February 1959. As observed earlier, there was the stipulation in the deed to the Company to the effect that the land was acquired prior to marriage. Clearly the statement in the root title contradicts this. This was not disclosed to the Court the 1959 root title. That being the case, on the facts before the Court, in 1959, 9 years after the marriage of 1950, NBW came into ownership of the property. At that moment in 1959, it fell into legal community.

- [101] That being the case, NBW was not free to transfer to the Company the land without regard to the one-half share of Mrs. MW.
- [102] As noted prior, MW was at great pains to demonstrate to the Court that Mrs. MW knew and accepted the transfer to the Company of the land. As stated prior, in regard to the first suit, the Company has not pleaded that any claim by Mrs. MW is statute barred. Such bar must be particularly pleaded pursuant to the rules of pleaded.
- [103] It therefore appears to the Court that the Company must be held to hold one-half share of the land transferred to it by sale on 6th December 1985 in trust for Mrs. MW and order that one-half share be transferred to the Estate of Mrs. MW within 30 days. A caution is to be placed on the land forthwith and is only to be removed **on compliance with the Court's order.**
- [104] The second issue here and which arises from the Court's declaration is whether or not NBW could dispose of the properties as he did under his Will. According to article 1212, NBW could not to the prejudice of Mrs. MW one-half share bequeath more than his one-half share of the land in legal community.
- [105] A review of **NBW's Will finds that there** was no reference to NBW only seeking to gift or bequeath only his one-half share in the properties. He was not free to distribute all of the land as he saw fit without regard and separation of the one-half share owned by Mrs. MW. BW specifically referred to Blocks and Parcel 1052B 50, 1048C 85, 1252B 326, and 1048C 96. The Court will declare that Mrs. MW owned a one-half share in each of the Blocks and Parcels and order that Mrs. MW one-half share be transferred to her Estate by whoever hands they may be in presently within 30 days. A caution is to be placed on these Blocks and Parcels **and is only to be removed on compliance with the Court's order.**

[106] Looking at the other relief sought, (a) the \$5000.00 payment and (b) the distribution from the Barbados Mutual Life Insurance, and the money in the Royal Bank of Canada., the Court will order that both entities be approached to produce a statement setting out status 6 months prior to the death of NBW and thereafter if there was any money at date of death, then the Estate of NBW must pay in full the sums and as far as possible the sums bequeathed **to Mrs. MW's estate.**

[107] **Court's Order:**

- i. The claim of Mr. Mollison Walcott and the Company in SLUHCV 2008/0985 is struck out.
- ii. The Company is to transfer to the estate of Mrs. Marie Walcott a one-half share in Block and Parcel 0848D 655 within 30 days. A caution is to be placed **on the land forthwith and is to remain in place until the Court's order is complied with.**
- iii. Mr. Mollison Walcott is to transfer to the estate of Mrs. Marie Walcott a one-half share in Block and Parcel 0848D 204 within 30 days. A caution is to be **placed on the land forthwith and is to remain in place until the Court's order is complied with.**
- iv. The defence of Mr. Mollison Walcott and the Company in SLUHCV2010/0600 is struck out.
- v. Mr. Mollison Walcott in his own person and as the executor of the estate of Norman Bartholomew Walcott are to transfer to the estate of Mrs. Marie Walcott a one-half share in Blocks and Parcels 1052B50, 1048C 85, 1252B 326, and 1048C 96. A caution is to be placed on all of the parcels of land **forthwith and is to be removed only on compliance of the Court's order.**
- vi. For the gift of \$5000.00 from the Barbados Mutual Life, the executor, Mr. Mollison Walcott is to produce within 90 days a statement from the insurance company setting out a **statement of Mr. Norman Bartholomew Walcott's** insurance policy with the Company. If the policy was terminated before the death of Mr. Norman Bartholomew Walcott then there will be no payment and the gift is to be deem void. If the policy was terminated after the death of Mr.

Norman Bartholomew Walcott then the estate of Norman Bartholomew Walcott is to fulfill the gift in the Will by making a payment of \$5000.00 to the estate of Mrs. Marie Walcott.

- vii. For the gift of 25 percent of the monies held with the Royal Bank of Canada, the executor, Mr. Mollison Walcott is to produce bank statements for the 6 months prior to the death of Mr. Norman Bartholomew Walcott. If upon review of the statements there is any money in the account on the date of death of Mr. Norman Bartholomew Walcott, the estate of Mr. Norman Bartholomew Walcott is to pay to the estate of Mrs. Marie Walcott 25 percent of the balance.
- viii. Costs in the sum of \$12,500.00 is awarded to the estate of Mrs. Marie Walcott and is payable in equal shares by the estate of Norman Bartholomew Walcott and Mr. Mollison Walcott.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar