THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2019/0592

BETWEEN:

1. FELICIA ALEXANDER
2. FELICIA ALEXANDER
(Administratrix of the Estate of Joseph Alexander)

Claimants

and

TERRENCE ALEXANDER

DefeSndant

Before:
The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:
Mrs. Maureen John-Xavier of Counsel for the Claimants
Mr. Alvin St. Clair of Counsel for the Defendant

2022: March 16; (Trial)
April 7, 8; (Submissions)
2025: December 9. (Decision)

JUDGMENT

[1] **CENAC-PHULGENCE J**: By this claim the claimants, Mrs. Felicia Alexander ("Mrs. Alexander") in her personal capacity and in her capacity as the Administratrix of the estate of her late husband, Joseph Alexander ("Joseph") ("together the claimants") seek against the defendant, Mr. Terence Alexander ("Terence") the following relief: (1) a declaration that the claimants are the sole owners of the parcel of land registered as Block and Parcel No. 1430B 41 ("the Land"); (2) a declaration that Terence has no right, title or interest in the Land; (3) an order that the Registrar of Lands cancel the registration of a caution placed on the Land at the instance of Terence; (4) damages in the sum of $20,980.00 (5) interest; and (6) costs.

[2] Conversely, Terence, by way of counterclaim seeks an order that; (1) the claimants hold on trust an undivided one-half share of the Land for his benefit; (2) the claimants transfer to him an undivided one-half share of the Land; and (3) costs.

[3] Without meaning any disrespect to the parties, for ease of reference, I have referred to Joseph and Terence Alexander by their first names.

Background

Mrs. Alexander's Case

[4] Mrs. Alexander is employed as an office attendant with IHM Incorporated and JMJ Limited and has been employed with her current employers from about 1984. She and her late husband Joseph own a parcel of agricultural land in the community of Polen in the Registration Quarter of Praslin, registered as Block and Parcel 1430B 0041,[1] (the Land). Her husband passed away on the 17th of May 2014, and she was granted Letters of Administration in relation to his estate on the 14th of September 2015.[2]

[5] The Land was purchased by Mrs. Alexander and her husband, Joseph on the 24th of July 1992 from Ms. Cynthia John for $57,000.00. The purchase price was paid with $15,500.00 which she and Joseph had saved and $41,500.00 which they borrowed from the National Commercial Bank of Saint Lucia Limited (now called the Bank of Saint Lucia Limited). A single cheque was issued by the National Commercial Bank of St. Lucia Limited for the full amount of the purchase price. The loan was repaid by Mrs. Alexander and Joseph solely.

[6] Terence is Joseph's brother and Joseph permitted Terence during his lifetime to farm on a portion of the Land rent free.

[7] Following the death of her husband, Mrs. Alexander contacted Terence to inquire whether he was interested in purchasing the Land as she and her children were not desirous of retaining it. She avers that Terence in response

[1] p 77 of Trial Bundle (TB).
[2] p 81 of TB.

informed that he was not interested in purchasing the land as he was getting old and did not know for how much longer he would be able to go to the country.

[8] A few weeks later, Mrs. Alexander contacted Terence and informed him that she was going to sell the Land, at which point he informed her that he had helped her husband, Joseph to pay the loan for the Land and that Joseph had agreed to give him 'a piece of the land'. He further informed her that the Land measured 6 acres, and he wanted 3 acres.

[9] Around the time of the discussion, Mrs. Alexander received an offer to purchase the Land. The proposed purchaser visited the Land and spoke with Terence. A few weeks later, Mrs. Alexander received a Notice from the Registrar of Lands informing her that a caution had been placed on the Land at the instance of Terence.

[10] Mrs. Alexander further avers that because of the caution she has suffered loss and damage. By an agreement for sale dated the 11th of April 2019, she agreed to sell the Land to Mr. Iran Cox for $109,800.00. Mrs. Alexander received a deposit of 10% of the purchase price amounting to $10,980.00. She avers that she was unable to complete the sale within the agreed period as a result of the registration of the caution against the Land by Terence. The agreement was therefore cancelled by the purchaser Mr. Cox who then claimed double the deposit sum because of the breach of the agreement for sale.

Terence's Case

[11] Terence avers that his brother Joseph first came to him about acquiring the Land after speaking to Cynthia John, who had told him that she had a parcel of land for sale for $60,000.00. They went to their brother Cyril to inquire whether he was interested in purchasing the Land with them, but he was not. He and his brother Joseph then went to their parents to discuss the matter with them, and it was agreed that they would take a loan to pay for the Land. According to Terence, it was agreed that another property belonging to Joseph and the Land would both be used as security for the loan.

[12] Terence alleges that there was a common intention between him and the claimants that the Land would be paid for by them and owned by them equally, half to the claimants and the other half to him.

[13] He avers that because of his inability to read or write except for being able to sign his name, he had no problem with the Land being in the name of the claimants because according to him they were using their other property as security for the loan to pay for the Land and the Land could be left in the claimants' names because he trusted and had confidence in the claimants, especially his brother.

[14] Terence and Joseph began occupation of the Land in 1992, and he began to work the land. He and his brother, Joseph, on the advice of their father decided that the Land had to be divided as between the two of them. Since there was a road on the Land, the road would serve as the dividing line and that the ILnd should be occupied and owned such that the claimants will own and occupy the forest side area while Terence would own and occupy the seaside area. Terence planted both temporary and permanent tree crops on his side of the Land and cut down trees and made charcoal on a regular basis.

[15] According to Terence, Joseph had told him that the monthly instalment for the loan was $950.00. However, they agreed that they would each pay $1,000.00 monthly so that the loan would be paid off in half the time thereby reducing the amount of interest they would have to pay. Terence avers that he paid the $1,000.00 to the claimants from the time they started occupying the Land up until May 1997 when Joseph told him that the loan was in arrears. They then proceeded to the bank whereupon the loan was divided between them, and he continued to pay his share of the loan directly to the bank.

[16] Terence avers that he had to take the action of placing the caution on the Land to safeguard his share of the property. He is the beneficial owner of a half share of the Land and is therefore entitled to be registered as a legal owner of that half share.

Issues

[17] The following issues have been identified for determination:

(a) Whether the claimants hold an undivided one-half share interest in the Land on trust for Terence?

(b) If no, whether the claimants are entitled to damages as a result of the registration of a caution against the Land by Terence?

The Evidence

[18] Evidence for the claimants was given by Mrs. Alexander whilst that for the defendant was given by Terence, Anthony Biscette, Christopher Frederick. Jessica Burin and Paul Cherubin had given a witness summary and a witness statement respectively but did not attend trial. These statements were therefore struck out.

Issue (a)- Whether the claimants hold an undivided one-half share interest in the Land on trust for Terence?

Mrs. Felicia Alexander (Mrs. Alexander")[3]

[19] In her evidence, Mrs. Alexander says that she and her husband purchased the land from Cynthia John and Terence was not involved in the transaction to purchase the Land because she had never seen him and had never discussed it with him. The purchase price of the Land was always $57,000.00. She never had any discussion with Terence and her husband or by herself about the price of the Land. Mrs. Alexander says she, Joseph and Cynthia John visited the Land before the purchase but only the three of them were present. Terence was not there. On that visit they all walked the Land.

[20] Mrs. Alexander accepted in cross-examination, that she was not aware of any discussion between Joseph and Terence alone or of any discussion between the brothers and their father about the purchase of the Land or how to separate it based on the road. In cross-examination, Mrs. Alexander said that the road was always there and agreed that it was used to show the side of the Land which Terence occupied.

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[3] p 45 of TB.

[21] It is Mrs. Alexander's evidence that Terence was permitted by Joseph to occupy the Land and permitted to farm a portion of the Land rent free. She said she did not have a problem with Terence being given permission by her husband to occupy the Land rent free because they are brothers, and she saw nothing wrong with giving Terence a little permission to farm.

[22] In cross examination, Mrs. Alexander stated that she has never received any money from Terence. She denied that he gave her money every month. She said she and Joseph sold bananas, and the money would go to their bank account and be deducted from there to pay for the loan. She denies that the loan was ever in arrears and states that she was aware of everything her husband did concerning the loan. She was not aware of any agreement between herself, her husband and Terence that she and her husband would own half of the Land and Terence would own the other half. She said further that she never had any dealings with Terence concerning the Land. The agreement in relation to the Land was between her husband, Joseph, herself and Cynthia.

[23] In her evidence, Mrs. Alexander says that following the death of her husband, Terence approached her and informed her that he wanted to apply for a loan to purchase a motor van and he wanted a document from her to show that he owned the Land for the bank to use as security. This request, she says bothered her and as result she sought legal advice. She subsequently informed Terence that she was not prepared to give him the document he requested but would issue him a 10-year lease instead. Terence agreed, gave her a photocopy of his ID Card but never contacted her or followed through with the lease.

[24] According to Mrs. Alexander, after some time had elapsed she contacted Terence to inquire whether he was interested in purchasing the Land as she and her children were not desirous of retaining it. Terence, she says responded that he was not interested in purchasing the Land because he was getting old and that he was happy she had given him first priority, but he would not be able to, and she could sell the Land. There was no discussion about her selling the Land and paying Terence his share of the Land.

[25] Mrs. Alexander says that a few weeks after that conversation with Terence, she contacted him and informed him that she was going to sell the Land. It was at that point she says that Terence informed her that he had helped Joseph pay for the Land and that Joseph had agreed to give him 'a piece of the land'. Terence also informed her that the Land measured six (6) acres and he wanted three (3) acres.

[26] In cross examination, Mrs. Alexander said that because Terence said he gave her husband money, but he could not remember how much, and because they had a good relationship, she decided she would give him two (2) acres of the Land.

[27] It was suggested to Mrs. Alexander that she had offered Terence two acres of the Land because she knew that there was an agreement that they would buy the Land together, that she was paid towards Terence's share in the Land and that he stopped paying in 1997. As a result, it was suggested to Mrs. Alexander that knowing that Terence had not paid his full share, he was not entitled to half of the Land, and she therefore offered him the two acres. Mrs. Alexander responded and said she had offered him the two acres because he told her so, she did not know whether he had paid the money, but she did it in good faith.

<u>Mr. Terence Alexander ("Terence")</u>

[28] According to Terence, his brother Joseph informed him about purchasing the land after Joseph had spoken to Cynthia about it. At that time his brother was married and lived with his wife, Mrs. Alexander and their children and was farming on lands at Mahaut.

[29] Terence says Joseph told him that Cynthia was selling the land for $60,000.00. He says he saw Cynthia once, the same day she went to show Joseph, Mrs. Alexander and himself the Land. However, Mrs. Alexander stayed on the road because she said she had a bad leg and she could not go down on the Land. Cynthia, Joseph and Mr. Alexander went on the Land and Cynthia showed them the various boundaries of the Land.

[30] According to Terence, at the time the purchase price was discussed, the price was $60,000.00. He was not aware that the actual price was $57,000.00, as he was always told that the price was $60,000.00. According to Terence, he had placed his full trust and confidence in his brother, Joseph and Mrs. Alexander with whom he had a very close relationship as good friends, and because of which he had no problem leaving everything that had to do with the loan to them. All he knew he had to do was simply give money to the claimants regularly towards the purchase price. Terence says that he had given money firstly by cash, then by cheque and later by direct payment towards a loan taken to pay off the Land.

[31] According to Terence, prior to and upon acquisition of the Land there was a common intention by all the parties that the Land would be paid for by the parties and owned by them equally. Terence insisted that Mrs. Alexander was there when they made this agreement. He says the conversation took place at his mother's house and was between his brother, Joseph, their parents and Mrs. Alexander. Mrs. Alexander was there from the beginning and according to Terence she was supposed to be part of the purchase.

[32] According to Terence, the claimants had the assets, and they would take the loan, however, they did not have the full capacity to repay the loan, so the payment was by him and Joseph. He and Joseph would repay the loan at $1000.00 every month and then when it was fully paid, they would share the Land in half. However, during cross-examination, Terence agreed that at that time his brother could pay the $1000.00 himself but because of the relationship they had they decided to buy the Land together and everything Joseph did he wanted Terence there with him.

[33] Terence says he paid the $1,000.00 to the claimants from the time they started occupying the property up until 1997 when his brother, Joseph told him that the loan was in arrears. In cross examination, Terence explained that every Friday at the end of the month his brother would not go to Vieux Fort to the bank. Every month end, he would give money to Mrs. Alexander to pay the loan. Joseph would come sometimes on a Saturday and Terence would give the money to

him if he did not give it on the Friday. Despite this, when it was put to him, Terence did not deny that the loan was being paid from the claimants' account at the bank but he insisted that his brother was making him give Mrs. Alexander $1000.00 'in her hand' every month to pay the loan. He said further that he would give his children's mother, Ms. Jessica Burin with whom he lived at the time $1,000.00 to give Mrs. Alexander 'in her hand' to pay the loan but he could not say what she did with the money.

[34] Terence says he asked Joseph to see the loan documents and where the money was being paid but was informed that the documents were at the bank and could not be given to him. When he inquired about the monthly payments, he was informed that the money was given to Mrs. Alexander to pay the loan.

[35] According to Terence's evidence in chief, he then informed Joseph that he would stop making the payments if he could not see the documents whereupon Joseph said that they could not allow the bank to seize the Land and that they should go to the bank. In 1997, Terence and Joseph visited the bank and after Joseph explained to the loans officer, the loans officer said that the only thing he can do is to divide the loan equally between them. The loans officer then brought out two bank cards so that Terence would have his share of the loan to pay while the claimants would have theirs. Terence says Joseph instructed the loans officer to deduct $5,000.00 from Terence's loan balance and add that amount to the claimants' loan balance because the claimants were owing $5,000.00 to Terence which he had lent to the claimants for the purchase of an encyclopaedia set for their children.

[36] According to Terence, the bank card shows the loan account number, his name, Joseph's name and represents all the payments which he (Terence) made towards the loan which was used to pay for the Land after May 1997. Terence says he is also the owner of a motor vehicle registration number FAR1356 and he was able to obtain the FAR registration number because his brother signed an affidavit for the authorities stating that he is the owner of a one-half share in the Land. The affidavit was not exhibited by Terence as he says he was

informed that these documents are not readily available and may have been archived.

[37] Mrs. Alexander during cross-examination said that the loan card produced by Terence is false because it does not include her name and it does not disclose the interest rate of the loan taken by herself and Joseph. However, this is the first time that Mrs. Alexander is alleging that the loan cards referred to by Terence are false. In her reply, she says that she had no knowledge of the discussions which allegedly took place between Joseph, Terence and the loan officer as she was not a party to these discussions and has no knowledge of this meeting. As Counsel for the defendant points out in his submissions allegations of fraud must be pleaded and there are no such pleadings.

[38] At paragraph 2 of the statutory declaration[4] in support of the application for the caution, Terence deposed that in or about 1985 he and Joseph decided to purchase the Land. However, during cross-examination, Terence agreed that everything about the land happened in 1992. He said that the statement in the Statutory Declaration is not correct, he does not know anything about 1985, that he cannot read and write. He also stated that he can understand his name, the date, figures, and the month but that he cannot write the numbers in words, but he can write the numbers.

[39] Terence agreed in cross-examination that Mrs. Alexander was also part of the transaction spoken about at paragraph 2 of the statutory declaration, and that she was there from the beginning; she was always there. When he was told that that statement was somewhat incorrect because it did not say that Mrs. Alexander was part of the transaction, Terence responded that her name was always mentioned and said that she was always there from the beginning.

[40] At paragraph 3 of the statutory declaration,[5] Terence stated, "we paid the purchase price initially by monthly payments to the vendor on a cash basis, however, in 1992 with a balance of $30,000.00 being left to be paid on the

[4] Para 102 of TB.
[5] Ibid.

purchase price, we decided to take a loan to complete the payments to the vendor." However, during cross-examination, Terence explained that when the Land was bought in 1992, his brother and Mrs. Alexander told him that the Land was purchased for $60,000.00 and that they each had to pay $30,000.00. Joseph and his wife said the bank asked for $950.00 but if they each pay $1,000.00, they will finish faster and pay less interest. Terence clarified that there was no $30,000.00 paid first and then $30,000.00 paid by way of a loan. This is totally contrary to what Terence had said in the statutory declaration.

[41] Terence was referred by Counsel for the claimants to paragraph 4 of the statutory declaration where he said, 'We obtained the said loan…', the 'we' referring to Joseph and himself. He was asked whether he was a party to the loan and he admitted he was not, that he did not sign any document and that he did not attend at the bank for a loan.

[42] Later in cross examination, Terence was asked whether the loan account number stated on the loan was in the name of Joseph and Mrs. Alexander's name only, and he responded that the loan was not in the name of Joseph and Mrs. Alexander alone because his name was on the loan card with the loan number on it for that same loan and that same purpose. He was now saying that he was a party to the loan. In fact, when Counsel for the claimants ventured to press Terence that he was not a party to the loan his response was, 'I was not a party to the loan, and I have a card with my name on it making payments?'

[43] Terence was asked in cross examination what was the payment agreed for him to pay when the bank gave him the cards. He never answered that question but instead went on say that when they separated the loan, he did not pay a monthly sum to the bank, he was paying fortnightly because he was going to pay the loan for him to finish. Sometimes, he would pay any amount of money he had, sometimes he would pay twice in the month. The cards produced by Terence tell a different story though. It shows only one instance where two payments were made in one month and there are months that were skipped and no payment appeared to have been made.

[44] Terence's evidence in chief is that he had no idea when the Deed of Sale was executed nor when the mortgage was taken out, however at paragraph 6 of his statutory declaration,[6] he deposed that when the vendor was ready to prepare the Deed of Sale in 1992, having received the full sale price, he was unable to personally attend, and Joseph informed him that the Land would be conveyed to him and he would later convey Terence's share to him. Interestingly, in cross examination Mr. Alexander said both of these statements were true. Counsel for the claimants suggested to Terence that he knew when the Deed of Sale was signed, and that the reason his name did not appear in the document was because he was not a party to the transaction to which Terence responded that this was not true. The inconsistency in Terence's responses is clear.

[45] According to Terence, one month before Joseph died, he came to him and told him that he would give him the 'land paper', so that Terence could get a land surveyor, to remove his half share of the Land. He says he told Joseph that the deal was that both of them would get a surveyor and that things had to be done together.

[46] Terence says further that approximately three months after Joseph's death, Mrs. Alexander came to him acknowledging that he was the owner of the Land by saying, "I know half of the property is yours, so I have made up my mind to sell my share of the property to you". He says he responded that he was not interested in purchasing forest land, (the claimants' share) and that since the claimants' names are on the Land they can sell it and pay him his half share of the proceeds.

[47] Terence's evidence is that afterwards he was approached by certain persons while he was on the Land enquiring whether Mrs. Alexander owned land in the area and he showed them the Land. The next day Mrs. Alexander called him and said that the persons saw bananas on the Land and asked how long it would take to have it removed, and he said two (2) years.

[6] p 102-103 of TB.

[48] Terence says the next day, Mrs. Alexander called again and stated two years was too long. Terence says he informed her that he was no longer interested in selling his land and although he was entitled to three and a half acres (3 1/2), the claimants could simply give him three acres (3) from the whole Land and use the half acre to pay for all legal and surveying expenses necessary to carry out the exercise of surveying and separating their share to sell. After a week, Mrs. Alexander called him again and said she is only giving him two (2) acres. Terence says he then indicated this was not right as he was entitled to three and a half (3 ½) acres.

[49] In cross-examination, Terence said that Mrs. Alexander came his home to discuss her intention to sell her half share of the Land to him. She offered to sell him her half share and told him that half was hers and half was his. Asked whether it was only after the person came to see the Land he first mentioned about having a half share in the Land, he responded that he did not have any conversation with the purchaser because the topic he had was with Mrs. Alexander; that it was not he Terence, who claimed a half share; it was his brother and Mrs. Alexander that made an agreement that he would have a half share.

[50] Terence in his evidence in chief says that he had to place the caution on the Land to safeguard his share of the Land. According to him, he is the owner of a half share of the Land and is entitled to be registered as a legal owner of that half share. In cross examination, Terence was questioned as to why he placed a caution on the Land if he had agreed for Mrs. Alexander to sell the Land and he said because Mrs. Alexander told him that she knew he had a half share, and she knew that he paid for the Land with her husband. He told Mrs. Alexander that he was not interested in buying the land but if she wanted, she could sell all and give him half share.

The Law and Analysis

[51] Terence has asserted in his defence and counterclaim that he has a half share in the Land and that the claimants hold that half share on trust for him. It is therefore for him to show on a balance of probabilities that this is the case.

[52] The law on implied, resulting and constructive trusts was considered by the House of Lords in in **Stack v Dowden**.[7] Baroness Hale, with whose opinion the other members of House agreed stated and approved the following legal principles:

> "Just as the starting point where there is sole legal ownership is sole beneficial ownership, the starting point where there is joint legal ownership is joint beneficial ownership. **The onus is upon the person seeking to show that the beneficial ownership is different from the legal ownership.** So in sole ownership cases it is upon the nonowner to show that he has any interest at all. ..." (my emphasis)

[53] The House of Lords went on to say that since **Pettitt v Pettitt**[8] and **Gissing v Gissing**,[9]

> "... The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties shared intentions, actual, inferred or imputed, with respect to the property in light of their whole course of conduct in relation to it."[10]

[54] In **Oxley v Hiscock**[11] cited with approval by the House of Lords in **Stack v Dowden**, the Court said that the claimant had to first surmount the hurdle of showing that she had a beneficial interest at all, before showing exactly what that interest was. The first could readily be inferred from the fact that each part had made some kind of contribution towards the purchase. As to the second, Chadwick L.J. said this:

> "... in many such cases, the answer will be provided by evidence of what they said and did at the time of the acquisition. But, in a case where there is no evidence of any discussion between them as to the amount of the share which each was to have – and even in a case where the evidence is that there was no discussion on that point – the question still requires an answer. It must now be accepted that (at least this court and below) the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to the property. And in that context, the whole course of dealing between them in relation to the property includes the arrangements which they make from time to time in order to meet the outgoings (for example, mortgage contributions, council tax and utilities,

[7] [2007] 2 AC 432 at para 56.
[8] [1970] AC 777.
[9] [1971] AC 886.
[10] Stack v Dowden at para 60.
[11] [2004] 3 WLR 715.

repairs, insurance and housekeeping) which have to be met it they are to live in the property as their home".[12]

[55] The Court in **Stack v Dowden** speaking on the burden of proof said:

> "The burden will therefore be on the person seeking to show that the parties intend their beneficial interest to be different from their legal interests, and in what way. This is not a task to be lightly embarked upon. In family disputes, strong feelings are aroused when couples split up. These often lead parties, honestly but mistakenly, to re-interpret the past in self-exculpatory or vengeful terms. They also lead people to spend far more on the legal battle than is warranted by the sums actually at stake. A full examination of all of the facts is likely to involve disproportionate costs. ..."[13]

[56] In a case such as this, the Court is entitled to consider the totality of the evidence having had the opportunity to hear and see the witnesses as the Court of Appeal said in **Henrieta Tayliam v Felicite Thomas**,[14]

[57] **Ellis J** in the case of **Joy Ann Lewis v Calvin James**[15] cites the elements of a constructive trust as espoused in the decision of **Gissing**. At paragraph 24 of the judgment the learned judge summarised the principles in **Gissing** as follows:

> "...the English House of Lords held that a claimant must prove that the legal owner of the land induced him to believe they would be entitled to a share in the ownership. He may prove this by demonstrating an (i) express agreement or (ii) contribution to the acquisition. In addition, the claimant must have acted to his detriment. If these factors are demonstrated, the defendant will be considered to hold the property on a constructive trust for themselves and the claimant. The court will then calculate the respective shares in the property either by a 'holistic' examination of the whole course of dealing between the parties or, where no clear intention can be found, imputing what is fair in the context."

[58] Although the cases above were in the context of domestic relationships, the principles espoused in them apply to a case such as this one.

[59] The evidence in this matter is critical to the Court's determination of the respective claims of the parties. Having examined the evidence, I found that

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[12] Oxley at paras 69.
[13] Stack v Dowden at para 68.
[14] SLUHCVAP2007/0016, (delivered 20th November 2009, unreported).
[15] BVIHCV2015/0259, (delivered 3rd April 2019, unreported)

Mrs. Alexander was forthright in the majority of her responses. Terence's evidence on the other hand contained several inconsistencies and it appeared that he was more focused on ensuring that he got his narrative in almost as if he had rehearsed it.

[60] The documentary evidence shows that the Land was recorded in the names of Joseph and Felicia Alexander in community at the Land Registry on 23rd October 1992. The Deed of Sale in relation to the Land shows the parties to the sale were Cynthia John as the vendor and Joseph Alexander and Felicia Alexander as the purchasers. The purchase price is stated as $57,000.00 and says the vendor acknowledged receipt thereof.

[61] The hypothecary obligation taken in relation to the Land from the then National Commercial Bank ("NCB") shows that the sum borrowed was $41,500.00 which suggests that Joseph and Mrs. Alexander would have had to have obtained the balance of the purchase price from another source. This makes Mrs. Alexander's evidence of she and her husband having to put the balance of the purchase price more probable than not. I also note Mrs. Alexander's evidence that she has been employed for over thirty-seven (37) years which shows that at the time the transaction for the Land took place she and husband who planted bananas and farmed land in Mahaut were capable of obtaining a loan.[16] Terence himself in cross-examination supported this when he said that payments for the sale of bananas were being transferred directly to the bank accounts of the banana farmers at their respective banks by SLBGA, to whom the farmers sold.

[62] The documentary evidence shows that the security for the loan was the Land itself which goes contrary to Terence's evidence that Joseph and Mrs. Alexander were going to use their house as the security also.

[63] What is clear from all of the above is that in none of these transactions does it show that Terence was a party.

[16] See document from National Insurance Corporation showing the contributions received from Mrs. Alexander and the places she was employed.

[64] The evidence reveals that Terence could not present a single document, note or memorandum explicitly evidencing the agreement between him and his brother, Joseph and/or with Joseph and Mrs. Alexander. He also could not present any evidence of a loan executed by him and his brother for the purchase of the Land nor receipts evidencing payment to his brother or Mrs. Alexander or to the bank itself whether by cash, cheque or direct deposit, being the payments which he said he made towards the loan.

[65] I also ascribe very little weight to the bank card presented by Terence which does not bear Mrs. Alexander's name and for which he could not identify an interest rate. It will be recalled that the parties to the loan were Mrs. Alexander and Joseph so it is curious that a card would be done up and not reflect both the parties to the loan. The card also does not show the purpose for which the payments listed therein were made. Although it contains Terence's and Joseph's names, it does not refer to Mrs. Alexander at all who is a party to the loan. It also does not confirm who made the payments which are recorded as it has both Joseph and Terence's names on it.

[66] I also note that these records have the loan account number which corresponds to the loan account number stated in the letter from Bank of Saint Lucia Limited (BOSL) (the successor to National Commercial Bank) dated 22nd September 2019. In that letter BOSL states that (i) the purpose of the loan was to purchase 7.32 acres of land Block and Parcel 1430B 41; (ii) the parties to the loan were Felicia Alexander and Joseph Alexander; (iii) they were able to confirm that these were the parties; (iv) the Bank's records do not indicate that Terence Alexander or any other third party was a joint account holder of the loan and (v) which is significant, that the copy of the card resembles the loan card issued at the time, but that <u>they were unable to find any evidence to confirm the accuracy of its contents</u>.

[67] I also note that 4.7% and 4.70% are stated on the bank cards which Terence exhibited. It is not clear what this refers to but it is clear that the interest rate on the loan taken by Joseph and Mrs. Alexander was 12.5 % and not 4.70%. All

of the above to my mind renders the bank cards unreliable evidence and does not provide any conclusive evidence of any payments being made by Terence towards the loan taken by Joseph and Mrs. Alexander in 1992.

[68] I also note the several inconsistencies in Terence's evidence particularly the discrepancies between his evidence in chief, cross-examination and the statutory declaration executed by him in support of the caution, namely the date of the purchase and the involvement of Mrs. Alexander in the purchase.

[69] It will be remembered that in the statutory declaration Terence had said that the purchase transaction commenced in 1985 and then in 1992, they took out a loan to pay the balance which was $30,000.00. This is different to what he said in his evidence in chief. I note the submissions of Counsel for the claimants where she submits that the Deed of Sale shows that Synthia John, the vendor acquired title to the Land in 1991. Further, the person who sold the Land to Synthia John acquired title to the Land in 1988. Therefore, Counsel submits correctly and I agree, that Terence could not have agreed to purchase the Land with Joseph in/or about 1985 if [C]Synthia John or her predecessor in title were not owners of the Land in/or around 1985 when he alleged that the discussions took place.

[70] Terence's evidence is that Mrs. Alexander was always involved in the agreement in relation to how the Land would be purchased and shared between him, Joseph and Mrs. Alexander, a version of events which has been consistently denied by Mrs. Alexander. On the contrary, the evidence presented by Mrs. Alexander shows her and her husband as the owners of the Land, the loan was executed between them and NCB for the purchase of the Land, the Land was purchased by them in 1992, and the loan repaid by her and her husband by direct deduction from their bank account.

[71] Mrs. Alexander's evidence certainly does not lead me to believe that she had any intention that the Land was to be owned jointly between her, her husband, and Terence. The evidence also does not support a finding that that any such agreement existed. I also note from Terence's own evidence that he only attempted to claim his share of the Land after the death of his brother Joseph,

and some 14 years after the loan appears to have been paid off. In all the circumstances of this case, the evidence on a balance of probabilities does not support a finding of any common intention or a constructive trust in favour of Terence. I find that Terence has not made out his case on a balance of probabilities that he is entitled to a half share of the Land.

Issue (b)- If no, whether the claimants are entitled to damages as a result of the registration of a caution against the Land by Terence?

The Evidence

[72] It is Mrs. Alexander's case that by an Agreement for Sale dated the 11th day of April 2019, the claimants agreed to sell the Land to Iran Cox for $109,800.00. They received a deposit of ten per cent (10%) in the sum of $10,980.00. The parties were to complete the sale within 90 days of its execution date. The claimants' completion of the sale was frustrated by the wrongful placing of a caution on the Land by Terence. By reason of the claimants' breach in performing their contractual obligation under the Agreement for Sale, the purchaser rescinded the Agreement and claimed double the deposit in accordance with article 1387 of the **Civil Code of Saint Lucia**.[17]

[73] According to Mrs. Alexander, the proposed purchaser viewed the Land, and he agreed to purchase the Land. At that point, she called Terence to find out from him how much time he needed to vacate the land. Terence responded that he needed two years to harvest everything he had on the Land. When cross examined Mrs. Alexander said that despite the purchaser saying two years was too long she entered into an agreement with him because she thought Terence would come off the land but that is when he said that he had given his brother money towards the land.

[74] In cross-examination, Mrs. Alexander stated that she could not recall when the intended purchaser came to visit the Land but that at the time of his visit, they had not yet signed the Agreement for Sale[18] of the Land. This could not be accurate as the Agreement for Sale was executed on 11th April 2019. Further,

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[17] Cap 4.01. Revised Laws of Saint Lucia 2020.
[18] p. 112 of TB.

according to Mrs. Alexander's evidence, a few weeks later, after the visit, by letter dated 8th July 2019, she received a notice from the Registrar of Lands (Saint Lucia) informing her that a caution had been placed on the Land at the instance of the Terence.

[75] In the Agreement for Sale, the purchase price is stated as $109,800.00 which was to be paid by way of deposit to be held in the escrow account of the Chambers of John & John. The balance of the purchase price was to be paid at closing.

[76] Terence placed a caution on the Land to protect his half share interest as Mrs. Alexander told him that she knew he had a half share, and she knew that he paid for the Land with her husband. The caution was recorded on the land register on 3rd July 2019.

Law and Analysis

[77] Article 1387 of the Code states:

> "1387. If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he or she who has given the earnest, by forfeiting it, and he or she who received it, by returning double the amount."

[78] Mrs. Alexander in her evidence in chief said that around the period when she had offered Terence the two (2) acres and he had refused, she received an offer for the purchase of the Land, and the proposed purchaser had visited the Land. She received the notice of the caution on 8th July 2019. In cross-examination, Mrs. Alexander was asked to explain why the Agreement for Sale was dated April 2019 when the intended purchaser had visited the Land in June 2019 it would appear. Mrs. Alexander in response said that the intended purchaser had visited the Land before that month and then she said she could not recall when he had visited the Land. The defendant however did not raise any issue with the Agreement for Sale in his defence or counterclaim.

[79] In the letter dated 26th September 2019, the intended purchaser, Iran Cox says "I paid you a deposit of $10,980.00 to your lawyer Chambers of John & John and I was to pay you the balance within 90 days.

My loan was approved at the bank but the bank lawyers have said that you cannot sell because of a caution on the land."

[80] That letter was responded to on 7th October 2019 where Counsel for the claimants wrote:

> "Our client … wishes to advise that
> 1. She agrees to return to you the deposit in the sum of $10,980.00 (copy of cheque attached)
> 2. She would like [to] time to pay to you the additional sum of $10,980.00 and is requesting a period of one (1) year to do so"

[81] It is clear that the damages claimed are as a result of the registration of the caution against the Land by Terence. When the caution was registered in July 2019, the Agreement for Sale had already been executed. It was solely as a result of the caution being registered that the sale was not completed. It therefore follows that the additional $10,980.00 which the claimants would now be obliged to pay the intended purchaser pursuant to article 1387 was solely caused by the actions of Terence in registering the caution.

Conclusion

[82] Based on the foregoing discussion, I make the following orders:

On the claim and counterclaim:

1. Judgment is granted for the claimants on their claim.
2. The defendant's counterclaim is dismissed.
3. The parcel of land registered as Block and Parcel No. 1430B 41 is hereby declared to be the sole property of the claimants.
4. The Court declares that the defendant does not have a half share or any interest in Block and Parcel 1430B 41.
5. The Registrar of Lands is hereby directed to cancel the registration of the caution against Block and Parcel No. 1430B 41 registered as Instrument Number 2555/2019.
6. The defendant shall pay the claimants damages in the sum of $10,980.00 together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.

7. The defendant shall pay the claimants prescribed costs pursuant to CPR 65.5 on the value of $10,980.00 in relation to the claim and of $50,000.00 in relation to the counterclaim.
8. The prescribed costs shall be calculated in accordance with the Civil Procedure Rules 2000 as these were the applicable costs at the date of the trial.

[83] I thank Counsel and the parties for their patience in awaiting the delivery of this judgment and apologise for any inconvenience caused.

Kimberly Cenac-Phulgence
High Court Judge

By The Court

Registrar