

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2024/0027 (FORMERLY CLAIM NO. GDAHCV2021/0122)

BETWEEN:

COSMOS PYSADEE

CLAIMANT

AND

**CURLIN JOSEPH – BAPTISTE
SEPTIMUS BAPTISTE**

DEFENDANTS

AND

THERESA JOSEPH – PYSADEE

ANCILLARY CLAIMANT

AND

**COSMOS PYSADEE
NORTSFORD PYSADEE**

ANCILLARY DEFENDANTS

Before:

The Hon. Justice Raulston L.A Glasgow

High Court Judge

Appearances:

Ms. Amy Jawahir – Bullock for the Claimant and Ancillary Defendants

Ms. Caryn Adams for the Defendants and Ancillary Claimant

JUDGMENT

2024: 5th December

2025: 18th March

Background

[1] **GLASGOW J:** The present dispute involves two claims – the claimant’s (“Cosmos Pysadee”) claim for recovery of possession of a portion of land situate at Tuilleries, St. Andrew, and the ancillary claimant’s (“Theresa Joseph”) claim for an indemnity, and a declaration of beneficial interest in the same property

situate at Tuilleries, St. Andrew. The court made an order dated 11th March 2024 effectively determining and partially granting Cosmos Pysadee's claim for possession. This is since there was no dispute that the paper title to the land in question is in Cosmos Pysadee's name. The defendants are not claiming that the title was ineffectual or that Cosmos Pysadee was dispossessed or in any way lost title to the land. They are asserting, however, that for a number of reasons explored below, Cosmos Pysadee holds the property or part thereof on trust for Theresa Joseph.

- [2] Theresa Joseph filed an ancillary claim to this effect on 18th July 2022. Accordingly, this court granted Cosmos Pysadee 0part of his claim for possession. See order dated 11th March 2024. Whether the defendants ("the Baptistes") have trespassed and are required to compensate Cosmos Pysadee for that trespass are questions that may only be properly answered on the issues raised on the ancillary claim. It will be helpful to outline the respective claims made by the parties in determining the remaining issues.

Cosmos Pysadee's claim

- [3] Cosmos Pysadee initiated the claim on 26th March 2021 against the Baptistes claiming recovery of possession of a lot of land situate at Tuilleries St. Andrew, being a portion of the Tuilleries Estate, containing by admeasurement 1 Rood 21 Pls ("the property"), currently mortgaged to Republic Bank (Grenada) Ltd ("the Bank"). Cosmos Pysadee claims to be entitled to possession of the property because he purchased the property from his brother, Nortsford Pysadee ("Nortsford Pysadee")¹ on 13th August 2009 as detailed in a Deed of Conveyance of even date and recorded in the Deeds and Land Registry of Grenada in Liber 28 – 2009 at page 689. The property was mortgaged to the Bank on the same date as the Conveyance as security for Cosmos Pysadee's repayment of the mortgage sum. The mortgage deed is recorded in the Deeds and Land Registry of Grenada in Liber 29 – 2009 at page 699.

¹ Cosmos and Nortsford Pysadee are together referred to as the "Pysadee brothers"

[4] Cosmos Pysadee claims that the Baptistes reside on a portion of the property as trespassers. He accepts that the Baptistes started their occupation of the property by residing there with Nortsford Pysadee's permission, in a wooden house situated on the property but claims that Nortsford Pysadee ended this permission. He also claims that he also ended this permission after purchasing the property from Nortsford Pysadee in 2009. Cosmos Pysadee alleges that the Baptistes erected another house on the property without his consent and that he instructed his counsel to send written notice to them to remove the house. The letter demanded possession of the property from the Baptistes on 31st August 2009 and again on 7th October 2020.

[5] Cosmos Pysadee informs the court that the second notice was delivered to the Baptistes on 15th October 2020. He claims that the Baptistes have since communicated their refusal to vacate the property. Cosmos Pysadee contends that the Baptistes' refusal to vacate the property and their continuing residence unlawfully as trespassers have deprived him of the use and enjoyment of his property and has caused him to suffer damages. In addition to his recovery of possession claim, Cosmos Pysadee also requests mesne profits for the use and occupation of the property from August 2009 until possession is delivered up, damages for trespass, costs and legal practitioner's fixed costs of \$750.

The Baptistes' defence

[6] The Baptistes filed a joint defence, in which they assert that Cosmos Pysadee's claim should be struck out because it discloses no cause of action against them, as they are improper parties to the claim. The Baptistes indicate that they only became aware of Cosmos Pysadee's ownership and mortgage of the property when they were served with his claim. They insist that their right to reside on the property was granted by Theresa Joseph, Curlin Baptiste's mother, who is the wife of Cosmos Pysadee's brother, Nortsford Pysadee. They explain that Nortsford Pysadee granted his wife Theresa Joseph permission for her daughter, Curlin Baptiste and her husband Septimus Baptiste to reside on the property from 2001.

- [7] The Baptistes' further case is that Theresa Joseph and Nortsford Pysadee were married on 30th September 2001. Subsequent to the marriage, Curlin Baptiste moved to the property to assist Nortsford Pysadee in her mother's absence. They further aver that prior to Theresa Joseph's marriage to Nortsford Pysadee, she moved her chattel house from Tivoli, St. Andrews at Nortsford. Pysadee's request and attached it to his house. Nortsford Pysadee and Theresa Joseph thereafter resided in the property. For that reason, the Baptistes conclude that the property was not Nortsford Pysadee's sole property but was matrimonial property which belonged to Nortsford Pysadee and Theresa Joseph.
- [8] Septimus Baptiste visited Curlin Baptiste periodically and later resided on the property in 2014 after his marriage to her. The Baptistes' assert that they both resided on the property with the consent, approval and authorization of Nortsford Pysadee and Theresa Joseph. The Baptistes deny that they have erected any further structures on the property and they continued to reside in the property until the court's order herein granting possession to Cosmos Pysadee.
- [9] The Baptistes admit receiving Cosmos Pysadee's letter written by his attorney but aver that he failed to disclose that their attorney responded to that letter, advising that the Baptistes' have been in occupation of the property in excess of 20 years and that Theresa Joseph has an interest in it. They deny that they claim an interest in the property through adverse possession, as Curlin Baptiste's mother has an interest in the property and for these reasons, the Baptistes' contend that Cosmos Pysadee is not entitled to any of the relief he seeks.

Cosmos Pysadee's reply to the Baptistes' defence

- [10] Cosmos Pysadee denies that his claim did not disclose any cause of action against the Baptistes. He maintains that the instant claim is not the Baptistes' first notice of his ownership of the property. He also maintains that he has always communicated, both verbally and in writing, through himself or his attorneys that he is the owner of the property on which the Baptistes unlawfully reside. He further replies that in 2009, he attempted to enter and use the property. On that

occasion, he and/or his servants/agents were violently confronted by Curlin Baptiste and her servants/agents. He explains that in 2017, the Bank exercised its power of sale and advertised the property for sale. Septimus Baptiste then made an offer of \$36,000 to purchase the property, which was accepted by the Bank, but the sale was never completed, apparently due to lack of financing.

[11] After receiving his attorney's letter of 7th October 2020, which requested that the Baptistes vacate the property, he asserts that Curlin Baptiste visited his attorneys' office and informed them that the Baptistes had already made an offer to purchase the property from the Bank and were awaiting a loan from the credit union to facilitate the purchase. Cosmos Pysadee further contends that prior to his purchase of the property, it was solely owned by Nortsford Pysadee, who was the only person who could have authorized the Baptistes to reside there. Theresa Joseph could not give any such authorization. He reiterates that any authorization that may have been given by Nortsford Pysadee was terminated in August 2009 when he purchased the property. He has no knowledge of whether Theresa Joseph moved a chattel house on to the property and denies that the property formed any part of Nortsford Pysadee's and Theresa Joseph's matrimonial property.

[12] Cosmos Pysadee argues that if anything were to form matrimonial property, it would be the chattel house on the property which does not extend or bind the property and cannot create any equitable or legal interest in it. Cosmos Pysadee indicates that if a beneficial or equitable interest is claimed, his lawful ownership of the property is not affected in any way as he is a bona fide purchaser for value without notice of any such interest pursuant to section 6 of the Deeds and Lands Registry Act of Grenada. Cosmos Pysadee also recounts that an additional wooden structure which he believes to be a kitchen was recently erected by the Baptistes in immediate proximity to the existing chattel structure. He insists that he is entitled to the relief sought in his claim and asks the court to grant the relief sought.

Theresa Joseph's ancillary claim

[13] On 18th July 2022, Theresa Joseph filed an ancillary claim against the Pysadee brothers, indicating that they are her brother in law and husband respectively. Her claim asserts that Cosmos Pysadee was always aware of her relationship with Nortsford Pysadee and of her subsequent marriage to him. She recounts that she married Nortsford Pysadee on 30th September 2001, and that prior to their marriage, she moved her chattel house from Tivoli, St. Andrew and attached it to her husband's chattel house. The conjoined properties then became their matrimonial home where they resided from 2001 until Nortsford Pysadee left Grenada to reside in the United States of America. She also claims that they bore a male child from their union who is now 19 years old, attends the New Life Organization and resides at the property to date. Theresa Joseph also claims that Curlin Baptiste is her daughter who resided at the property with herself and Nortsford Pysadee from the time of their marriage to present day.

[14] Theresa Joseph also claims that Cosmos Pysadee was aware of when her daughter, Curlin Baptiste began residing at the matrimonial property. This is since, at the time of her moving into the home, Cosmos Pysadee transported Curlin Baptiste's belongings to the property. Curlin Baptiste was 25 years old at the time. Curlin Baptiste later married Septimus Baptiste and he also commenced residing at the property with herself and her husband, Nortsford Pysadee. When the property was sold to Cosmos Pysadee, her marriage to Nortsford Pysadee was still subsisting, and Cosmos Pysadee knew this, since he held a close relationship with the family for years. Cosmos Pysadee once resided across the street from the property and enjoyed meals prepared by her until he moved to Simon, St. Andrews in 2009.

[15] On 13th August 2009, Nortsford Pysadee purported to sell the property to Cosmos Pysadee unknown to her. She pleads that she only became aware of the sale when she received a letter from Cosmos Pysadee's attorney. She laments that Cosmos Pysadee was not a bona fide purchaser for value without notice since he was knows that she holds an interest in the property, as it was matrimonial property. Theresa Joseph asserts that since she was never aware

of the sale, she suffered loss and damage. In her ancillary claim based on these facts, Theresa Joseph claims a contribution and/or indemnity; a declaration that she is entitled to an undivided 40 % share or a reasonable share to be determined by the court in the dwelling house and the property as a matter of equity/constructive trust/resulting trust/proprietary estoppel or unjust enrichment. Theresa Joseph also seeks an order that the dwelling house and the property be valued and Cosmos Pysadee forthwith pay to her, her share/interest in the dwelling house and the property as a matter of equity/constructive trust/resulting trust/proprietary estoppel or unjust enrichment and costs.

The Pysadee brothers' defence to Theresa Joseph's ancillary claim

[16] The Pysadee brothers filed a joint defence to Theresa Joseph's ancillary claim wherein they denied that they are Theresa Joseph's brother-in-law and husband. The Pysadee brothers admit that Nortsford Pysadee was in a relationship with Theresa Joseph and that during that time they did hold a 'wedding ceremony' in 2001. They, however, deny that the wedding was a legal one, as no marriage was ever registered and there is no marriage certificate in existence. They recite that in 1989 prior to the relationship with Theresa Joseph, Nortsford Pysadee purchased the property with a chattel dwelling house, and when Theresa Joseph and Nortsford Joseph's relationship became serious just before 2001, she moved on to the property, but there were never any additions, annexations or extensions to Nortsford Pysadee's chattel house.

[17] In 2005, when Theresa Joseph and Nortsford Pysadee's relationship terminated, Theresa Joseph vacated the property and returned to Tivoli, St. Andrew to reside in her own home, where she lived from then to date. Nortsford Pysadee never permanently resided on the property with Theresa Joseph, as he always traversed to and from the United States of America for work purposes. In 2004, after the passing of Hurricane Ivan, a portion of the chattel house was destroyed. Nortsford Pysadee was living outside of the jurisdiction at that time. Theresa Joseph called him to come to Grenada to assist her as the chattel house was damaged. The Red Cross was passing through villages assisting

persons affected by the Hurricane and Nortsford Pysadee secured their assistance to rebuild the roof and reinforce the weather side area of the chattel house. Neither Theresa Joseph nor the Pysadee brothers expended any money towards rebuilding/altering/adding to the chattel house.

[18] When Northford Pysadee met Theresa Joseph, she was the mother to five children, the youngest being 12 or 14 years old at the time. They contend that Theresa Joseph did bear a 6th child, but that child died as an adult in an accident involving a truck prior to them knowing each other. The only small male children of which Nortsford Pysadee is aware are two of Theresa Joseph's young grandsons. Soon after Theresa Joseph moved onto the property, she requested that two of her grandsons reside with herself and Nortsford Pysadee temporarily. Nortsford Pysadee admits that he granted a license to Curlin Baptiste to reside on the property with Theresa Joseph and himself.

[19] At the time when Theresa Joseph and Nortsford Pysadee first resided together, the Baptistes and their young daughter Carina resided with an elderly gentleman in Munich, St. Andrew, as Curlin Baptiste was the full-time caretaker of an elderly gentleman. When the elderly gentleman died, they assert that this situation left Curlin Baptiste unemployed and the Baptistes and their daughter homeless. Theresa Joseph then requested that Nortsford Pysadee permit the Baptistes and their daughter to reside on the property temporarily – an expected period of 2 – 4 weeks, until they got their own accommodation. This 2 – 4 week period turned into months and thereafter years. This state of affairs contributed to the breakdown of Theresa Joseph and Nortsford Pysadee's relationship.

[20] Since the end of Nortsford Pysadee's relationship with Theresa Joseph around 2005, Nortsford Pysadee requested that the Baptistes' remove themselves and their belonging from the property but they refused. Nortsford Pysadee claims that he has been met with extreme physical violence as a result. By then, Theresa Joseph had moved back to Tivoli, St. Andrew where she resided. Cosmos Pysadee admits to knowing of the "marriage" between Theresa Joseph and Nortsford Pysadee as well as Theresa Joseph's period of residence on the

property. Together, he and Nortsford Pysadee deny that the property formed any matrimonial property, as Nortsford Pysadee purchased the property prior to meeting Theresa Joseph. The property belonged solely to Nortsford Pysadee until it was legally sold, when it became the sole property of Cosmos Pysadee. Cosmos Pysadee also denies transporting Curlin Baptiste's belongings to the property.

[21] Cosmos Pysadee denies having intimate knowledge of the parties' familial dynamics as alleged but admits that he did live near the property and visited Nortsford Pysadee and Theresa Joseph often. Cosmos Pysadee denies moving to Simon St. Andrew and avers that he moved to Pearls, St. Andrew but he does not recall the exact date. The Pysadee brothers both aver that the property was lawfully sold by Nortsford Pysadee to Cosmos Pysadee, and that Nortsford Pysadee was able to conduct this sale freely without needing Theresa Joseph's consent, as the legal title was vested solely in him. Theresa Joseph knew of the sale of the property as Nortsford Pysadee told her that she can take the chattel house for her use and benefit, to which she agreed. By the time of the sale, the relationship between Theresa Joseph and Nortsford Pysadee had long ended and neither of them were residing on the property. Theresa Joseph had no interest in the property and therefore no notice of the sale was required to be given to her.

[22] The Pysadee brothers assert that the Baptistes were given a license to reside on the property by Nortsford Pysadee, which could be revoked at any time. This licence was in fact revoked by the letter of 31st August 2009 when Cosmos Pysadee made efforts to have the Baptistes' removed from the property. The Baptistes' – knowing that they were permitted to reside on the land and having no interest, legal or equitable in the property – approached the Bank to purchase the property when the Bank was exercising its power of sale. Cosmos Pysadee always acted in good faith without any unconscionable conduct, and the understanding which Nortsford Pysadee had of the relationship between himself and Theresa Joseph was that their relationship had come to an end and that neither of them resided on the property since 2005, some 4 years before Cosmos Pysadee purchased the property.

[23] Even if Theresa Joseph made some contribution, they aver that such contribution and any equivalent equitable interest is limited to the chattel house and does not extend to the property, the sole legal title of which began with Nortsford Pysadee and thereafter was lawfully transferred to Cosmos Pysadee. Until such time as a court determines that Theresa Joseph has an equitable interest, it does not exist or materialize to the extent that the Baptistes' have a right to remain on the property, given the repeated requests for them to vacate the property since 2009. The equitable interest would be in the form of monetary damages equivalent to the extent of Theresa Joseph's interest in the property. The Pysadee brothers deny that Theresa Joseph is entitled to the relief set out in the ancillary claim, as she has no locus standi to seek contribution/indemnity from the instant claim.

Theresa' Joseph's reply to the Pysadee brothers' defence

[24] Theresa Joseph avers that she was married to Nortsford Joseph at La Sagesse, St. David's on 20th September 2001 and the marriage certificate can be found in the marriage register as No. 0091 dated 30th September 2001. The only land that she knows Nortsford Pysadee to own was located in Tuilleries, St. Andrew, as his parents lived on it. There was a house on the property which was not in good condition. She and Nortsford Pysadee together decided that they would take her house in Tivoli and join it to his house in Tuilleries. She denies that her relationship with Nortsford Pysadee ended in 2005, but in 2010, when she met her husband with a female "rasta" woman in a pasture at Tuilleries. Thereafter, Nortsford Pysadee moved to the United States of America and this ended their relationship. They both stayed in the house from 2000 to 2010 permanently.

[25] Theresa Joseph contends that she brought her house from Tivoli, which was a house she expended money to build. She had to incur some expenses in joining the two houses together, which expenses including trucking of materials to the site. However, no exorbitant sum of money was spent, since it was wooden

houses that were being attached to each other. Theresa Joseph avers that when she met Nortsford Pysadee, she had three children, the youngest being 21 and denies the death of any of her children.

[26] She asserts that Curlin Baptiste first moved into the house in 2001, as the Baptistes were living with an elderly gentleman and shortly after he died, they vacated his premises, but there was no timeframe for the Baptistes to leave the property and they were never asked to leave the property. Nortsford Pysadee told the Baptistes to come stay with Theresa Joseph as at the time Curlin Baptiste was staying with another gentleman and paying rent. Theresa Joseph contends that she never left Tuilleries and moved back to Tivoli, as she brought her house from Tivoli and added it to Nortsford Pysadee's house. In 2009, she was still residing on the property and had no knowledge of the sale of the property.

[27] She denies that she was ever given a license to occupy the property and puts Nortsford Pysadee to strict proof or evidence of the licence. She asserts that Nortsford Pysadee has created a farce to conceal the existence of the marriage/relationship/ and the property, since he sold the property without her knowledge. Theresa Joseph claims that she never got any letter in 2009 to vacate the property, as the magistrate in Grenville ruled that Cosmos Pysadee cannot take them off the property and gave him 6 months to stay away from the property. She claims that she does have an equitable interest in the property and that the Pysadee brothers have failed, refused or neglected to alert the Bank that there was a third party interest in the property.

The Evidence

[28] Cosmos Pysadee called three witnesses in support of his claim, himself, Nortsford Pysadee and Joseph Baptiste. Theresa Joseph called four witnesses in support of her ancillary claim, herself, the Baptistes and Kenny Joseph as outlined hereunder.

Joseph Baptiste's evidence

[29] Mr. Baptiste lived at Post Royal, St. Andrew for about four years. He is familiar with the property and lived on it as an adult for some years in a chattel house with the Pysadee brothers' parents, Mary and Michael Pysadee, who are now both deceased. The three of them vacated the property in or about the year 2000. He then constructed his own chattel house where he used to reside up until about four years ago. A small shop was attached to this house in which he operated his business. This shop is within close proximity to the property which is the subject of the suit. He could stay at his then premises and see the property. Nortsford Pysadee, the son of Michael and Mary Pysadee, entered possession of the property in 2000. Mr. Joseph was aware that the property belonged to the said Nortsford Pysadee and though he primarily resided in the United States of America, he would often come to Grenada.

[30] When Nortsford Pysadee took possession of the property, Theresa Joseph moved onto the property with him along with her two grandchildren, Tayee and Rachim. Mr. Joseph was aware that Theresa Joseph and Nortsford Pysadee were in a relationship with each other. Nortsford Pysadee lived on the property when he came to Grenada together with Theresa Joseph and her two grandchildren for about two years before the Baptistes and their daughter Carina moved on to the property. After the passage of Hurricane Ivan in 2004, part of the house on the property was damaged. The Red Cross Foundation assisted with rebuilding part of the house which was damaged.

[31] When Theresa Joseph moved on to the property in 2000, she never brought any chattel house or portion of a chattel house to affix to the house that was already on the property. The house that he resided in when he lived on the property was the same house that Theresa Joseph resided in until it was partially destroyed by Hurricane Ivan and then the Red Cross assisted with rebuilding the house. Theresa Joseph moved to Tivoli where she resided prior to her coming to live in Tuilleries and has been permanently living in Tivoli from then to present. However, he recalls that to the date of filing his witness statement, the Baptistes reside on the property with their children and grandchildren. He claims to know

that over the years, Theresa Joseph would visit her daughter, Curlin Baptiste and others on the property but to the best of his knowledge, Theresa Joseph never resided permanently on the property after her relationship with Nortsford ended.

Cosmos Pysadee's evidence

[32] Cosmos Pysadee resides at Pearls St. Andrew and is Nortsford Pysadee's brother. In 2009, his brother sold his land at Tuilleries St. Andrew to him and he obtained a loan from the Bank in the sum of \$50,000 to pay for the property. A few years before he purchased the property, his brother resided in the chattel house on the property with Theresa Joseph and some members of her family. At the time of the purchase, neither his brother nor Theresa Joseph resided in the chattel house on the property, but the Baptistes were residing there. His brother had made efforts to remove the Baptistes, but they refused to move off the property. About two years prior to him purchasing the property, Theresa Joseph had returned to live at Tivoli where she lived before she came to live at Tuilleries. Theresa Joseph had been residing at Tivoli from then to present. The Baptistes and their family are the ones residing on the property since he purchased same to present.

[33] Since he purchased the property, he has been making efforts to have the Baptistes removed therefrom. He never had any cause to have Theresa Joseph removed from the property because she was not residing there. Even up to the time of filing the herein claim in 2021, Theresa Joseph was not residing on the property. He has been relentlessly trying to get the Baptistes off the property and they have refused to do so. He asserts that the Baptistes have within the past three years erected another small wooden structure on the property which looks like an outside kitchen. In 2009, he instructed his then lawyers to write to the Baptistes requesting that they vacate the property but that proved futile. In 2017 or thereabout, Septimus Baptiste approached the Bank and offered to purchase the property, as the Bank was threatening to sell the property to a third party. The Baptistes knew that they were given permission to reside on the

property and were now trespassing on same. Cosmos Pysadee has also had his present lawyers write to the Baptistes in 2020 again requesting that they vacate his land. The Baptistes refused and as a result he was advised to initiate the claim against them, as he has been deprived of the use of property.

Nortsford Pysadee's Evidence

[34] Nortsford Pysadee resided at Mt. Carmel, St. Andrew but he presently resides in the United States of America. He is 61 years old and was born on 10th March 1962. He is a Fire and Life Safety Director by profession, and he is Cosmos Pysadee's brother. The property in question was previously owned by him. He purchased the property, which included a chattel house in 1989 for the sum of \$8, 000. He allowed his parents Mary and Michael Pysadee, to reside in the chattel house on the property, as he was mostly in the United States of America. In 2009, he sold the property to his brother. He is aware that Cosmos Pysadee took a loan from the Bank in the sum of \$50,000 to pay him for the purchase. When Nortsford Pysadee purchased the land, he was in and out of Grenada, that is to say that he worked in United States of America and came to Grenada for some months of the year.

[35] In the year 2000, he commenced a relationship with Theresa Joseph in Grenada. He allowed Theresa Joseph to come to live with him on the property in the year 2000. By then, his parents had vacated the property. He and Theresa Joseph held a marriage ceremony in 2001, but since he was unable to locate any record of the marriage, having made extensive searches in Grenada, he was of the belief that the marriage was not a legitimate one and never registered. He has now had sight of the marriage certificate filed on 13th October 2022. Theresa Joseph, he and two of her small grandsons lived on the property alone for approximately two years. Theresa Joseph then requested that the Baptistes' come to live with them for two weeks. Septimus Baptiste is Curlin Baptiste's partner. Curlin Baptiste worked with an elderly gentleman in Munich, St. Andrew at his house taking care of him. The Baptistes together with their daughter, Carina lived with this elderly gentleman at Munich.

[36] When the elderly gentleman died, the Baptistes had nowhere to live as the elderly man's house was required by his family members. It is for that reason that Theresa Joseph asked him to allow the Baptistes and Carina to come and reside on the property for two weeks and he accommodated them. This two-week period was never ending and this resulted in conflict between him and Theresa Joseph. He told Theresa Joseph that the Baptistes had to find a place to live as they could not stay at the property indefinitely. This was a few months in 2003 when the Baptistes were living on the property. Around that time, he had to go to the United States of America. He left the property with Theresa Joseph residing there with the two boys, the Baptistes and Carina.

[37] In 2004, at the passing of Hurricane Ivan, a portion of the chattel house on the property was destroyed. He was in USA during the passing of Hurricane Ivan. He came to Grenada as soon as he could, as Theresa Joseph told him that the house was completely destroyed and requested that he come to Grenada. When he came to Grenada, he realized that the chattel house was still standing but that the roof was damaged. The Red Cross at the time was offering assistance to persons whose properties were affected by the hurricane. The Red Cross rebuilt the roof and reinforced the weather side area of the house. At no point did Theresa Joseph or the Baptistes spend any monies towards the rebuilding, alterations or additions to the house after Hurricane Ivan.

[38] Also, Theresa Joseph did not affix or extend or bring any chattel house or part thereof and place same on the property or on the chattel house that already exists as the Baptistes allege. Theresa Joseph left the property in 2004/2005 after their relationship ended and returned to live in Tivoli, St. Andrew where she resided prior to moving in with him. He has had no contact with her since and they did not have any children together. By then, the Baptistes were living on the property for approximately two years and he was in and out of Grenada. When he sold the property to his brother in 2009, it remained in the same condition in which it was when the Red Cross refurbished it after Hurricane Ivan in 2004.

[39] By 2009, he was not living in the house as he was back and forth in Grenada and Theresa Joseph was already gone from the property and living at her house in Tivoli. The Baptistes were the ones living on the property and requests were made for them and Carina to vacate the property. Curlin Baptiste attacked him with a cutlass, damaging his finger. He then proceeded with the sale to his brother with the Baptistes residing on the property because they seemed to have no intention of leaving the property and he did not want to have anything to do with them. He and Theresa Joseph agreed that she would take the chattel house, as he wanted to sell the land to his brother. The chattel house was of no use to him or his brother and he just needed the Baptistes to vacate the land so that his brother could have vacant possession.

[40] Since the incident where Curlin Baptiste attacked him with the cutlass, he has had no contact with the Baptistes, and he has mostly resided in the USA. When he came to Grenada, he resided with his brother at his home in Pearls, St. Andrew. His brother, being the true and legal owner of the property since 2009, has been making efforts since then to remove the Baptistes' from the land. No efforts have been made to have Theresa Joseph vacate the property with the chattel house thereon because she has never been residing on same since she vacated same in 2004/2005.

Theresa Joseph – Pysadee's witness summary

[41] She resides at Tuilleries, St. Andrew, was born on 12th May 1948, is 75 years old and unemployed. She met her husband in the 1980s and they got married on 30th September 2001. She lived for most of her life in Tivoli St. Andrew. After developing a relationship with her husband, but before they were married, she broke down her chattel house in Tivoli and moved it to Tuilleries. She moved on to a lot of land and the chattel house thereon, both of which she knew to be owned by her husband. She moved on the property and lived there with her husband's knowledge and consent. They lived on the property from then in 2001 until her husband traveled to the USA. She attached the material with which her

chattel house in Tivoli was made to the house that her husband lived in on the property.

[42] When she was in the process of moving her house, Cosmos Pysadee along with her last son Kenny Joseph and Septimus Baptiste helped her to move it. She and her husband lived in the house on the property. Her daughter moved into the property in 2001 when her husband was preparing to travel to the USA. Her husband suggested that her daughter come to live with her so that she would not be alone. Her daughter helped him maintain the property which included planting crops like peas, potato, beans, corn and cassava.

[43] Cosmos Pysadee was always aware of the relationship and later marriage to her husband. He was also aware that her husband consented to her removing her chattel house in Tivoli and moving it to Tuilleries to be attached to the already existing chattel house on the property in Tuilleries. She knows this because Cosmos Pysadee helped him move material from Tivoli to the property. When her husband was preparing to travel to the USA, he consented to her daughter moving in with her. Her daughter moved in before her husband left Grenada. When her daughter began living in the property with her husband and herself, Cosmos Pysadee helped them transport her daughter's belongings to the property and into the house. She was not aware of any letters or notices being served in 2009, as she never received any such documents. Her daughter and Septimus Baptiste were married in 2014. They resided at the property and were there with the consent of both herself and her husband. Cosmos Pysadee was well aware of this.

[44] Over the years, her husband has returned to Grenada a few times. Initially he would return to their house on the property. However, on the last occasion that she recalls him visiting, he did not come to the house. She has never entered or been either on the property or in the house unlawfully. At all times, Cosmos Pysadee was aware that her husband consented to her move from Tivoli to the property and that her husband had no objection to her daughter and Septimus Baptiste living in the house. She was not aware that Cosmos Pysadee

possessed “land papers” for the property prior to being served with the claim and her permanent place of residence is still on the property in Tuilleries.

Ann – Marie Curlin Baptiste’s evidence

[45] She resides at Tuilleries, St. Andrew, was born on 4th September 1966 and is 57 years of age. She is a caretaker and immediately before she moved to Tuilleries, she lived in Munich, St. Andrew and worked at Crochu R.C. School. Prior to that, she lived in Tivoli where he grew up with her mother, Theresa Joseph. When her mother met her stepfather, her mother still lived in Tivoli in a chattel house. Her mother and stepfather were married on 30th September 2001. However, prior to her mother and stepfather’s marriage, she knew that her mother removed her chattel house from Tivoli to her stepfather’s property in Tuilleries, where she added the material from her chattel house to the chattel house that her stepfather lived in on the property. She helped her make refreshments like sandwiches for the people who were helping move the house. She also knows and saw that Cosmos Pysadee helped her mother with the moving of her house to the property.

[46] Curlin Baptiste started living with her mother and her stepfather on the property in 2001, in the building that consisted of the structure that was already on the property and also the house that her mother brought from Tivoli. When her stepfather was preparing to travel outside of Grenada, her stepfather suggested that she should move in with her mother on the property. In response, she suggested to him that he ought to seek the concurrence of her mother that she move into the house, so that her mother would not be alone when Cosmos Pysadee traveled out of Grenada. Her mother confirmed that she should come and live with her in the house on the property. She therefore moved from Munich and started living with her mother in the house on the property. She helped her mother plant peas, potatoes, beans, corn and more. She also helped her mother by giving her money when she needed it.

[47] Curlin Baptiste has known her husband for over 20 years. He moved into the house on the property with her and their daughter who was born on 18th March 1999. Her stepfather was not opposed to her husband living on the property because they all shared a good relationship at the time. Additionally, Cosmos Pysadee was always aware that her mother, she and her husband lived in the house on the property at the time that he purchased it. Neither her husband nor herself had entered or lived on the property or in the house unlawfully, as Cosmos Pysadee knew that they were there with the consent of her stepfather and for many years never bothered them.

[48] Cosmos Pysadee was aware that her mother moved her house to Tuilleries since he helped with the move and for some time, he lived on the opposite side of the road to the property. Cosmos Pysadee had a very good view of the property, and he knew when she moved into the house and when her husband moved into the house. Curlin Baptiste was not aware of any letters or notices being served in 2009, as she never received any such documents. She has never been violent in any way towards Cosmos Pysadee and was not aware that Cosmos Pysadee possessed "land papers" for the property prior to being served with the claim documents.

Thaddeus Septimus Baptiste's Evidence

[49] He resides at Tuilleries, St. Andrew, he is 59 years old and was born on 28th September 1967. Curlin Baptiste is his wife, and they have known each other for a very long time, first as friends and then they became romantically involved. They were married on 26th October 2014. He knew his wife to be living in Tivoli at first, then she moved to Munich. His wife moved from Tivoli to Tuilleries in 2001. When she moved to the property in Tuilleries, she lived with Nortsford Pysadee and her mother. He later moved into the house on the property.

[50] Cosmos Pysadee was always aware of who lived in the house as Cosmos Pysadee used to live opposite the property. There was a concrete road separating the houses. It was so close that he could stay from the house on the property and call out to Cosmos Pysadee. Cosmos Pysadee shared a cordial

relationship before and after he moved onto the property and Cosmos Pysadee did not object to his living on the property in Tuilleries. Regarding Nortsford Pysadee, both he and his wife were present and saw Nortsford Pysadee and Theresa Joseph's wedding. He even assisted him by giving him a suit to wear on the day of their wedding.

Kenny Joseph's Evidence

[51] He resides at Tivoli, St. Andrew, was born on 15th October 1987 and is 36 years of age. He is Theresa Joseph's youngest child. In 2001, his mother moved from their home in Tivoli. She moved her chattel house to Tuilleries and attached it to the chattel house of Nortsford Pysadee, his stepfather. He helped his mother dismantle the house. He and other men helped load the material on to a truck. He rode on the truck from Tivoli to Tuilleries and helped off load the material from the truck at the property in Tuilleries. His mother brought her mattress and other items.

Remaining issues for determination by the Court

[52] As aforesaid, by order of this court dated 11th March 2024, it was determined that Cosmos was entitled to possession of the property. The order was made in the following terms:

- "1) The claimant is entitled to and granted an order for possession of the property;
- 2) The defendants are to give up possession of the property on or before 31st October 2024;
- 3) Liberty to apply;
- 4) No order as to costs;
- 5) The matter will proceed to trial on 5th December 2024 on the question raised on the ancillary claim viz whether the ancillary claimant held a beneficial interest in the property, the extent of that interest and if the

second ancillary defendant is to give an account and/or pay damages with respect to the said beneficial interest;

6) The first ancillary defendant, Cosmos Pysadee is removed as a party to the ancillary claim.

7) The claimant has carriage of this order.”

[53] By virtue of the order of 11th March 2024, these are the issues for the court’s determination:

- 1) Whether Theresa Joseph is entitled to a beneficial interest in the property?
- 2) If Theresa Joseph holds a beneficial interest in the property, what is the extent of that beneficial interest?
- 3) If Theresa Joseph is found to have a beneficial interest, whether Nortsford Pysadee is required to give an account and/or pay damages with respect to Theresa Joseph’s alleged beneficial interest?

Discussions and conclusions

[54] Reading the written submissions filed by the parties indicates that they agree on the applicable legal principles required to determine the dispute in this case, but they part ways on the application of the law to the facts. Before commenting on what I think ought to be the outcome in this claim, I will address two issues raised by counsel for the Pysadee brothers in her closing submissions –

(1) Whether the property is a chattel house or a fixture

[55] Counsel reminds the court that Nortsford Pysadee purchased the land with a wooden house on it. However, the purchase price for the land did not include the chattel house. If one looks at the Indenture of Conveyance, counsel points out, the consideration for the sale to Nortsford Pysadee made mention only of the land and not the building. Counsel argues that this is important because, on the facts of this case, Theresa Joseph could not request a share of the land as there is no evidence of her contributions to the same or that she was intended to have a share of it. Rather, as a matter of law, Theresa Joseph could only claim a share of the chattel house.

[56] Counsel recites the law that the court must have regard to the degree of annexation and intention of annexation as the basis for deciding whether the house was a fixture or chattel.² Counsel argues that the house in question was a chattel house because it could be easily dismantled and removed and that no evidence was provided by the Baptistes or Theresa Joseph that it was affixed to the land. Further, counsel relies on the Pysadee brothers' evidence that they did not object to Theresa Joseph taking the wooden house for her own use and benefit.

[57] Not much needs to be expounded on this issue. This is since neither Theresa Joseph nor the Baptistes made much of whether the house formed part of the land. I think that they, with good reason, did not do so since, for one thing, there is no disputation that the house is a wooden one. There is also no argument that any substantial expansion took place to change its character. Additionally, there is evidence from both sides to support the charge that the structure is a chattel house. For the Baptistes and Theresa Joseph, it is made clear that it was a wooden house to which Theresa Joseph's wooden house was attached. For the Pysadee brothers, their case is that it is a wooden house which they both did not object to Theresa Joseph removing from the land.

[58] I am of the view though that counsel for the Pysadee brothers misses a part of the case for Theresa Joseph where she contends that she did contribute to the upkeep of not only the house but the land by the acts of cultivating the same. Whether or not this is true and whether, if true, it indicates that Theresa Joseph is entitled to a beneficial interest in the land as well as the building are matters for determination on the facts and the law.

[59] The second issue raised by counsel for the Pysadee brothers is that of –
Whether the property is matrimonial property.

[60] This second issue is in response to the suggestion by Theresa Joseph on her claim that the property was utilised as matrimonial property. Interestingly, and

² Pages 2 to 4 of the Pysadee brothers submissions filed on 17th January 2025

for good reason I presume, this contention was not developed by counsel for Theresa Joseph at trial or on the closing submissions. Counsel for the Pysadee brothers reasons eloquently that for a number of reasons, factually, the property could not amount to matrimonial property. Although well presented, I think that counsel's better arguments rest on the law.

[61] The law on identifying what is matrimonial property and determining the extent of the interests therein and how such property is rightly to be shared, is as counsel points out, a matter for the court sitting in its matrimonial jurisdiction. For those purposes and in the absence of local legislation delineating the matters for the court's consideration in that regard, the courts in Grenada have resort to United Kingdom's Matrimonial Causes Act 1973 and the cases applying the same for guidance. More particularly, section 24 of the Matrimonial Causes Act permits the court to make property adjustment orders "*on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at anytime thereafter*".

[62] Counsel indicates correctly that this is not a claim for relief on or after the grant of divorce, nullity of marriage or judicial separation since, besides the assertion that Theresa Joseph and Nortsford Pysadee separated and lived apart, there is no evidence that they are divorced or judicially separated. Compounding this fact is the fact that Theresa Joseph has not made any claim invoking the court's jurisdiction to grant relief in such circumstances. She seeks relief based on equitable principles of law that she made a contribution to the build-up of the chattel house and property with Nortsford Pysadee with their conjoint understanding and intention that she would acquire a share therein.

[63] As indicated above, Theresa Joseph's ancillary claim focused on the prayer that she is entitled to a beneficial interest in the property by virtue of several equitable pillars – "*equity, constructive trust, resulting trust, proprietary estoppel or unjust enrichment*"³. At trial the discussions proceeded along the lines of

³ See paragraphs 2 and 3 of the relief claimed in the Theresa Joseph's ancillary claim form in Trial Bundle 1 at page 48.

whether the ancillary claim could succeed on either the grounds of constructive trust or proprietary estoppel. In closing submissions, counsel for Theresa Joseph indicated that *“the sole issue to be determined is whether an equity interest can be established in favour of the Ancillary Claimant via a common intention constructive trust.”*⁴

[64] On the claim for constructive trust, the main question for the court is whether Theresa Joseph is entitled to a beneficial interest in the property based on the applicable principles. **Halsbury’s Laws of England** provides guidance on defining the nature of a constructive trust:

“A constructive trust attaches by law to specific property which is not expressly subject to any trust, but which is held by a person in circumstances where it would be inequitable to allow them to assert full beneficial ownership of the property. Thus, some or all of the beneficial interest is subtracted from the person... The property will have been properly acquired, legally and beneficially, but then circumstances develop such that it would be unconscionable for the owner to retain full beneficial ownership. Usually, the justification for the imposition of a constructive trust will be some original common intention of the parties that is subsequently denied or reneged on, which the law would allow, but equity finds ...to be unconscionable.”⁵

[65] Webster JA provided further learning on constructive trusts in **Paul S. Webster v Lois Dunbar**⁶, where he said:

“The legal principles relating to the acquisition of a beneficial interest in property by a person who does not have the legal title are well settled by the courts in England and the Eastern Caribbean. In its simplest terms it is that the claimant must prove that there was a common intention between the parties that they should share the beneficial title,

⁴ Paragraph 18 of Theresa Joseph’s submissions filed on 24th January 2025

⁵ Halsbury’s Laws of England, Equitable Jurisdiction (Volume 47 (2021) at para 230.

⁶ ANUHCVP2011/004.

and the claimant acted to his detriment on the basis of that common intention.”⁷

Webster JA continued:

“Common intention can be established in one of two ways. Firstly, by direct evidence of an agreement between the parties that the person without the legal title will have a beneficial interest in the property. Secondly, where there is no express agreement, but the parties have conducted themselves in such a way as to show that they intend joint ownership, the court will draw the inference of a common intention that they should both have a beneficial interest in the property. In both cases, the claimant must go on to prove that he or she acted to his or her detriment on the basis of the express or inferred common intention that in so acting, he or she would acquire a beneficial interest.”⁸

[66] It is for the party who asserts that a beneficial interest exists to establish the same on the evidence⁹. As the party claiming to be entitled to a beneficial interest, the burden of proof therefore falls on Theresa Joseph to establish this beneficial interest. The evidence of the parties are worlds apart. There is clearly no express agreement between the Pysadee brothers and Theresa Joseph on her evidence or that of her witnesses that there was any agreement or understanding that she would obtain a beneficial interest in the property. Given the absence of evidence of an express agreement, it remains to ascertain from the evidence whether there was a common implied intention between the parties that Theresa Joseph should so benefit from a share of the property. In order to determine whether an implied intention is exposed on the facts, regard must be had to the whole course of conduct of the parties¹⁰.

[67] There must also be an element of detriment to justify equity’s intervention¹¹, where the party who is claiming the beneficial interest did acts in furtherance of

⁷ Ibid at 17.

⁸ ANUHC VAP2011/004 at 21.

⁹ Stack v Dowden [2007] 2 AC 432.

¹⁰ Gissing v Gissing [1970] 2 ALL ER 780.

¹¹ Grant v Edwards [1986] Ch 638.

the common intention. These acts or contributions can be financial or non – financial¹², but they must show an implied understanding or common intention. It is said though that, “[O]nce common intention has been established, whether by direct evidence of common agreement or by inference from conduct, the courts are ready... to accept that the claimant acted to their detriment or significantly altered their position in reliance on the agreement rather than out of love for the defendant.”¹³.

[68] For the reasons to follow, I do not find that Theresa Joseph has satisfied this court that she is entitled to a share in either the land or the wooden building that stands on it.

[69] For Theresa Joseph, it is argued that the course of dealings between herself and Nortsford Pysadee points to a common intention that she held a beneficial interest in the property. In that regard, counsel for Theresa Joseph indicates the following evidence –

- (1) Theresa Joseph’s insistence that she moved her house from Tivoli to Tuilleries and joined the same to Nortsford Pysadee’s house;
- (2) Notwithstanding the denial that Theresa Joseph moved her house from Tivoli to Tuilleries, Nortsford Pysadee acknowledged that Theresa Joseph moved into his residence with him;
- (3) Nortsford Pysadee’s acknowledgment that he did not permanently reside in the house but that he left Theresa Joseph, the Baptistes and the Baptistes’ child there. Counsel submits that Theresa Joseph was left to be burdened with all the financial responsibilities of the home and as such one can extrapolate that she suffered detriment indicative of the intent that she share a beneficial interest in the property;
- (4) Theresa Joseph’s assertion that she planted crops like peas, potato, beans, corn and cassava on the land, a task with which her daughter assisted;
- (5) Theresa Joseph’s insistence that her permanent dwelling remained at Tuilleries notwithstanding the fact that she returned to Tivoli. This counsel

¹² Ibid.

¹³ Halsbury's Laws of England, Trust and Powers (Volume 98 (2024) at para 125

argues, is demonstrated by the fact that even though Theresa Joseph went back to live at Tivoli, her intention to maintain her rights in the Tuilleries property was revealed by her daughter remaining in the Tuilleries property.

[70] Counsel for Theresa Joseph concludes that in light of the foregoing material statements, *“it is not far-fetched that the Ancillary Claimant [Theresa] would have understood from the course of dealings between herself and the Second Ancillary Defendant [Nortsford] that she would have some sort of beneficial entitlement in the property.”*

[71] Counsel for Nortsford Pysadee takes a different view of matters. It is firstly quite evident, counsel submits, that there was no express agreement or understanding that Theresa Joseph would hold a share in either or both house or land. I agree that there is no such evidence. In fact, the evidence suggests that Nortsford Pysadee purchased the land quite some time before he was in a relationship with Theresa Joseph. Counsel also submits that the parties' course of dealings hardly suggests such a common intention. In this latter regard, counsel observes, correctly, that *“the burden of proof falls on the Ancillary Claimant to prove that there was in fact a common intention between herself and Nortsford and that she relied on same to her detriment.”*

[72] Theresa Joseph was not present at trial for her oral statement to be tested by cross examination. Three other witnesses were called for the case of the ancillary claimant, Kenny Joseph, Septimus Baptiste and Curlin Baptiste. The Baptistes and Mr. Joseph are interested parties to this claim who have fiercely defended their case that Theresa Joseph, not only moved her house to Tuilleries at the instance of Nortsford Pysadee, but that Theresa Joseph is entitled to a beneficial share of the house and land.

[73] Of considerable difficulty to the case for the Baptistes and Theresa Joseph, I believe, is the fact that they did not support their oral testimony of their contentions with any substantial independent material whether oral or not and as such, they did not carry matters very far. In particular, their insistence that Theresa Joseph moved her house to Tuilleries and that she did so at the instance of Nortsford Pysadee is not supported by any other material or

otherwise than their oral testimony. This is of some significance since it would not be farfetched to assume that a considerable amount of effort and labour would be engaged where a person is moving a wooden structure from one place to another. It would have assisted the case for Theresa Joseph a great deal if, for instance, some of the persons who were involved (besides those who are clearly self-interested) were called as witnesses.

[74] To be fair to the case for the Baptistes and Theresa Joseph, they have presented some receipts for delivery of hardware material which purportedly support their claim that Theresa Joseph moved her house to Tuilleries and that she contributed financially to the build-up of the house and land at Tuilleries. Counsel for the Pysadee brothers points out three reasons, with which I wholly agree, that these receipts do not aid Theresa Joseph's case as she claims –

- (1) These are not invoices or receipts for payment but rather they are delivery statements. In a word, they do not indicate that Theresa Joseph paid for the material as she claims;
- (2) There is no part of the case for the ancillary claimants that Theresa Joseph bought material to repair or add to the house at Tuilleries. Her case is simply that she moved her house from Tivoli to Tuilleries and attached it to Nortsford Pysadee's house.
- (3) The face of the receipts show that the "*recipients to be PADCO/GRC/Theresa Joseph*". Counsel for the Pysadee brothers reminds the court that the case for the Pysadee brothers is that any repairs done to the house at Tuilleries house were only done after the damage caused by Hurricane Ivan in 2004. Such repairs were performed by the Grenada Red Cross ("GRC"). Counsel observes that PADCO was also a nonprofit organization assisting Grenadians to repair their damaged houses after the passage of Hurricane Ivan.

[75] The long and short of all of this is this – I do agree with counsel for Theresa Joseph that she was left in the house by Nortsford Pysadee. I do believe her

case that she resided there for some time before returning to Tivoli. Some disputations arose as to how long she remained at Tuilleries before returning to Tivoli but I do not believe that the resolution of the debate about the length of her stay at Tuilleries affects the outcome of this case materially. I do believe that Theresa Joseph and/or her daughter and son in law would have been tasked with maintaining the house and land and paying the expenses of the basic upkeep like utilities etc. while residing there.

[76] These are all matters that may aid the inference, where it is shown to be the case that the common intention existed that the one or both parties were intended to share in the property. But it must be remembered that it is for the person claiming that the parties were meant to hold shares alike or not to do so, to prove how this is the case. The mere fact that the party remaining in the home maintained it, without more, is not sufficient to meet the requisite threshold. Put more bluntly, it has not been shown how Theresa Joseph made any material financial or non-financial contribution to the build-up of the house and land in question indicative of her contention that she did so further to a common intent or understanding with Nortsford Pysadee that she should hold a beneficial interest in either the house or the land.

Conclusion

[77] As stated above, Cosmos Pysadee's claim for possession was previously granted by this court by order dated 11th March 2024. At the reading of his judgment, counsel for Cosmos Pysadee indicated that there are no other issues being pursued on his claim. With respect to Theresa Joseph's ancillary claim, for the reasons stated above, her claim must be dismissed and is so dismissed.

IT IS HEREBY ORDERED THAT:

- 1) The Ancillary Claim is dismissed;
- 2) Costs are awarded to Cosmos Pysadee on his claim in the sum of \$1,000.00 on the claim; and

- 3) Costs are awarded to the Pysadee brothers in the ancillary claim in the sum of \$2,500.00.

Raulston L.A. Glasgow

High Court Judge

BY THE COURT

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